

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM YORK COUNTY
COURT OF GENERAL SESSIONS
LEE S. ALFORD, RESIDENT JUDGE

APPELLATE CASE NO. 2014-002630

THE STATE _____ RESPONDENT

JEFFREY LYNN CHRONISTER _____ V. _____ APPELLANT

RECORD ON APPEAL

pro se, JEFFREY LYNN CHRONISTER, #189827
KIRKLAND CORR. INST., B-II, 39
4344 BROAD RIVER ROAD
COLUMBIA, S.C., 29210

<u>TABLE OF CONTENTS</u>	<u>PAGES</u>
A- STATEMENT OF THE ISSUES	1
B- STATEMENT OF THE CASE	1-3
COMPLAINT	
ISSUE (I)	3-17
ISSUE (II)	17-18
ISSUE (III)	18-22-A
D- CERTIFICATION	22-A
E- ORDER- JUDGE LEE S. ALFORD	120
F- LETTER AND ORDER- THE SC COURT OF APPEALS	120-122-A
G- INDICTMENT	123-124
H- ARREST WARRANT	125-126
I- INCIDENT REPORT	127
J- EXHIBIT 1 INCIDENT REPORT	128
K- PROOF OF SERVICE	129
L- APPLICATION TO PROCEED WITHOUT COSTS	130

STATEMENT OF THE ISSUES

(I) WAS THE DIRECTED VERDICT PRODUCED BY PROSECUTORIAL MISCONDUCT, AND MISREPRESENTATION BY COUNSEL? (a) FRAUD ON THE COURT COMMITTED BY COUNSEL'S MISREPRESENTATION, AND SOLICITOR'S PROSECUTORIAL MISCONDUCT THAT ALSO PRODUCED THE DIRECTED VERDICT." (Rp. 3-17)

(II) WAS APPELLANT'S ARREST MADE WITHOUT PROBABLE CAUSE BY VIOLATING THE STATE'S CONSTITUTION, AND THE 4TH AND 14TH AMENDMENT OF THE U.S. CONSTITUTION? (a) "THE ARREST MALICIOUSLY MADE FOR THE LACK OF PROBABLE CAUSE WAS BROUGHT FORTH BY THE FRAUD ON THE COURT." (Rp. 17-18)

(III) WAS THE CIRCUIT COURT PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION TO HAVE OBTAINED CONVICTION? (a) "APPEARING THAT THE GRAND JURY RETURNED AN NO BILL-ED INDICTMENT, AND ALSO OTHER FACIAL IRREGULARITIES OF INDICTMENT RAISING DEFECTS IN SUBJECT MATTER JURISDICTION." (Rp. 18-p. 22-A); APPELLANT'S CERTIFICATION (Rp. 22A)

STATEMENT OF THE CASE

APPELLANT ARRESTED ON THE SAME MORNING OF TRAGEDY, FEBRUARY 14, 1992, AND INDICTED ON APRIL 6, 1992, FOR "MURDER AND UNLAWFUL POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF A VIOLENT CRIME." AN JURY TRIAL HELD ON SEPTEMBER 21-22, 1992 RESULTED IN THE VERDICT OF GUILTY (1992-GS-46-1224). DEFENSE COUNSEL THROUGHOUT CROSS EXAMINATIONS WAS GERALD W. SMITH OF THE YORK COUNTY PUBLIC DEFENDERS OFFICE, THE SOLICITOR WAS LARRY F. GRAVI, AND THE HONORABLE DON S. RUSHING SENTENCED APPELLANT TO LIFE PLUS FIVE (5) CONSECUTIVE YEARS.

THIS MATTER COMES FROM APPELLANT'S prose MOTION FOR REVER
NEWLY DISCOVERED EVIDENCE TO THE YORK COUNTY COURT OF GENER-
AL SESSIONS, AND APPEALING OF THE HONORABLE LEE S. ALFORD'S
REDACTED ORDER OF NOVEMBER 21, 2014 THAT STATES:

"THIS COURT CANNOT GRANT RELIEF ON A MOTION UNLESS TIMELY
MADE. YOU WILL NEED TO FILE A POST CONVICTION ACTION IN ORDER
FOR THE COURT TO CONSIDER YOUR MOTION." [Rp. 120]

APPELLANT APPEALING THE DECISION AS IN ERROR. FOR THE MOTION
WAS SUBMITTED UNDER RULE 29(b) SCR CRIM. P, AND PURSUANT TO
RULE 60(b) SCR CP. AS TO RULE 60 AND ISSUES I AND II. UNDER CASE
OF CHEWNING v FORD MOTOR CO. (S.C. 2003) 354 SC 72, 579 SE2d 605:

"THERE IS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE
A JUDGMENT DUE TO FRAUD ON THE COURT." UNDER U.S. v McDONALD
161 F3d 4 (TABLE) C.A. 4 (N.C. 1998), "A DECISION PRODUCED BY FRAUD
ON THE COURT IS NOT IN ESSENCE A DECISION AT ALL AND NEVER BE-
COMES FINAL." SEE WRIGHT AND MILLER, FEDERAL PRACTICE AND PRO-
CEDURE § 2870 A1 409 (1995), QUOTING KENNES v COMMISSION OF IN-
TERNAL REVENUE, 387 F2d 689, 691 (7TH CIR. 1968). AS TO ISSUE III.
THE SIMILAR CASE OF STATE v SCOTT (S.C. APP. 2003) UNPUBLISHED OP.
No. 2003-UP-037, HOLDS, "BECAUSE OF ITS FUNDAMENTAL NATURE,
THE ISSUE OF A DEFECT IN SUBJECT MATTER JURISDICTION MAY BE
RAISED AT ANY TIME INCLUDING WHEN RAISED FOR THE FIRST TIME
ON APPEAL TO THIS COURT."

APPELLANT RECEIVING LETTER FROM THE HONORABLE CLERK,
JENNY ABBOTT KITCHING'S, OF THE COURT OF APPEALS THAT IS DATED
OCTOBER 27, 2015 AND STATING THIS RECORD IS TO BE SERVED NO
LATER THAN THIRTY (30) DAY FROM THE DATE OF LETTER (SEE Rp.

ORDER
121-122]; ~~PROOF OF SERVICE TO~~ EXTEND TIME [Rp. 122-A]
COMPLAINT

STATEMENT: THE INITIAL DIRECT EXAMINING OF OTIS WHITSTINE SHOWS THAT HE WAS WITH THE YORK COUNTY SHERIFF'S DEPARTMENT, AND INVOLVED IN AN INVESTIGATION OF TRAGEDY ON DATE THAT IT OCCURRED [Rp. 37, LINE 12-22]. HE WAS THE PRIMARY INVESTIGATOR OF THE CASE. FOR BEING THE "AFFIANT," "PROSECUTING OFFICER" OF THE ARREST WARRANT, AND INDICTMENT'S SOLE WITNESS [Rp. 123-124]. HE WAS ADDRESSED AS OFFICER AND OR DETECTIVE DURING THE TRIAL, AND THE ONLY LAW OFFICIAL TO TESTIFY AS TO HAVING TALKED WITH OR INTERVIEWED WITNESS TOMMY AUTEW ON THAT MORNING OF THE TRAGEDY. SOLICITOR ADDRESSING WITNESS AS "THE EYE WITNESS IDENTIFICATION, AND LINE-UP" [Rp. 23, LINE 17-20], AND THE WARRANT STATES, "PROBABLE CAUSE BASED ON WITNESS'S,"
ISSUE ON INTERVIEW

(I) WAS THE DIRECTED VERDICT PRODUCED BY PROSECUTORIAL MISCONDUCT AND MISREPRESENTATION BY DEFENSE COUNSEL? (a) FRAUD ON THE COURT COMMITTED BY DEFENSE COUNSEL'S MISREPRESENTATION, AND SOLICITOR'S PROSECUTORIAL MISCONDUCT WHICH ALSO PRODUCED THE DIRECTED VERDICT.

SUPPORTING FACTS: THE TRIAL RECORD FAILS TO SHOW ANY INITIAL DIRECT EXAMINING OF INVESTIGATOR OF HAVING TALKED WITH OR INTERVIEWING WITNESS AUTEW ON THAT MORNING [Rp. P. 23 LINE 12 - p. 34 LINE 8] AND ONE OF THE MAIN SUBJECTS THAT SHOWS INTENTIONAL MISREPRESENTATION BY COUNSEL IS HIS SECOND DAY CROSS EXAMINING. BEFORE THE JURY. BECAUSE THE FURTHER FACTS SHOW THAT THE ONLY EVIDENCE OF INVESTIGATOR'S INVOLVEMENT IN THE INVESTIGATION WAS PRESENTING OF AN PHOTO LINE-UP TO WITNESS AT THE WITNESS'S

RESIDENCE" ON THAT AFTERNOON.

INITIAL CROSS-EXAMINING: (Q) "NOW WHEN YOU TALKED WITH HIM, DID YOU TALK WITH HIM EARLIER IN THE MORNING THAT DAY?"

(A) "I DON'T RECALL, BUT IT'S POSSIBLE THAT I DID." [Rp 41, LINE 19-21]

SECOND DAY DIRECT: (Q) "AND WHERE DID YOU TALK TO HIM PLEASE?"

(A) "THE FIRST TIME I BELIEVE WAS AT DUKE POWER CATAWBA NUCLEAR STATION, AND THE SECOND TIME WAS AT HIS RESIDENCE."

[Rp 101, LINE 10-12]

CROSS EXAMINING: (Q) "DETECTIVE, YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT AT THE CATAWBA STATION EARLY IN THE MORNING CORRECT, SIR?"

(A) "YES SIR. DOING INTERVIEWS"; (Q)

AND THAT THAT WOULD HAVE BEEN ABOUT 8:00--7:30, 8 O'CLOCK,

CORRECT, SIR?"; (A) "I ASSUME, IT WAS EARLY IN THE MORNING."

[Rp 103, LINE 10-17]

APPELLANT RESPECTFULLY CONTENDS THAT THE SECOND DAY CROSS EXAMINING SHOWS COUNSEL COMMITTED THE MISCONDUCT BY ABUSING RULE 611(C) SCRPC IN IMPROPERLY USE OF LEADING QUESTIONS BY THAT OF UNLAWFULLY INDUCING FALSE TESTIMONY, WHICH RAISES FRAUD ON THE COURT IN MISLEADING THAT AN INTERVIEW HAD OCCURRED, VIOLATING SC CODE 16-9-10(A), (1) (C), AND RULE 407, RULE 8.4 (a), (b), (d), (e), (f), (g) SCACR BECAUSE THE EVIDENCE THAT REFUTES INVESTIGATOR'S TESTIMONY IS: (1) AFTER HIS TESTIFYING TO BEING INVOLVED IN AN INVESTIGATION HIS IMMEDIATE FOLLOWING TESTIMONY SHOWS HE MET WITH WITNESS AT RESIDENCE INSTEAD OF INTERVIEWING HIM ON THAT MORNING. [Rp 37 LINE 24 - p 38]; (2) MOST SIGNIFICANT IS WITNESS'S TESTIMONY OF INVESTIGATOR'S INTRODUCTION UPON ARRIVAL AT RESIDENCE. FOR IT SUPPORTS

THAT THIS WAS THEIR INITIAL MEETING OF EACH OTHER, WITNESS;

"HE TOLD ME WHO HE WAS, IDENTIFIED HIMSELF" [Rp 97, LINE 13]

(3) THERE IS NO PHYSICAL EVIDENCE TO SUPPORT THE INVESTIGATOR'S TESTIMONY OF THE INTERVIEW NOR TO SUPPORT THAT HE HAD BEEN INVOLVED IN THE INTERVIEWING OF ANY OF THE WITNESSES OF THAT MORNING. FOR THE ONLY COPY OF AN INCIDENT REPORT FROM THE YORK COUNTY SHERIFF'S DEPARTMENT THATS BEEN ENTERED INTO APPELLANT'S TRANSCRIPT OF RECORD SHOWS WITNESS AULEN AS REPORT'S "COMPLAINANT". BUT DUE TO THE COPY BEING ENTERED WITHOUT SHOWING OF THE REPORTING OFFICER(S) NAME(S) [Rp. 127] APPELLANT ASKED FAMILY MEMBER TO REQUEST ALL COPIES OF INCIDENT REPORTS, AND OF NOTES OF THE TRAGEDY FROM THE SHERIFF'S DEPARTMENT. THERE WERE NO COPIES OF NOTES, AND THE ONLY COPY OF AN INCIDENT REPORT PROVIDED WAS OF THE SAME REPORT ENTERED INTO TRANSCRIPT [Rp 128, EXHIBIT-1] WHICH NOT ONLY SUPPORTS THE LACK OF EVIDENCE THAT INVESTIGATOR HAD INTERVIEWED THE WITNESS, IT ALSO SUPPORTS THE LACK OF ANY LAWFUL PHYSICAL EVIDENCE OF ANY WITNESS HAVING BEEN INTERVIEWED ON THAT MORNING. FOR OUTSIDE OF ITS SHOWING OF THE REPORT'S REPORTING OFFICER WAS "T. B. SMITH." THE FOLLOWING REPORT'S PRESENTMENTS AS TO THAT OF WITNESS AULEN'S TESTIMONY, AND WITNESS'S LACK OF TESTIMONY SHOWS THE REPORT WAS FALSELY CONSTRUCTED, FABRICATED FROM SOURCES SUCH AS DRIVER'S LICENSE, AND OTHER WITNESSES. VIOLATING S.C. CODE 16-9-10 (A), (2);

REPORT; "B/P STATED AS HE WAS EXITING THE VEHICLE HE DROVE TO WORK THAT HE HEARD APPROXIMATELY 5 RAPID GUN SHOTS"

WITNESS; "AS I PARKED MY VEHICLE I DID HEAR SOMETHING THAT WAS A LITTLE STRANGE. I HEARD WHAT I THOUGHT WAS A

SMALL PACK OF FIRECRACKERS BEING DISCHARGED OVER IN THE ADMINISTRATIONS PARKING LOT.", (Q) "ALL RIGHT SIR WHERE WERE YOU WHEN YOU HEARD THAT?", (A) "I WAS IN MY VEHICLE, IN MY PICK UP TRUCK" [Rp 92, LINE 23-p. 93] WITNESS AUTEN TESTIFYING TO THE NOISES HE HEARD WERE "AT LEAST 5", AND THEY WERE IN A "VERY RAPID SUCCESSION" [Rp 25, LINE 8-11] WHEREAS WITNESS DANNY WILSON'S SHOWS THAT HE HEARD "AT LEAST 5 SHOTS" THAT WERE IN FAIRLY RAPID SUCCESSION" [Rp 69, LINE 2-6] AND IT ALSO SHOWS THAT THE REPORT'S PRESENTMENT OF THE "N.C. PARTIAL REGISTRATION DRL" WAS GIVEN TO "THE LAW ENFORCEMENT" BY WITNESS SIDNEY BALLANGER [Rp 61, LINE 12-14, p. 70, LINE 1-5, p. 88 LINE 5, AND p. 90 LINE 7-9] THE TRIAL RECORD FAILS TO SHOW ANY WITNESS TESTIMONY AS TO THE REPORT'S PRESENTMENTS OF THE SUBJECT'S "AGE 38/42", HIS COLOR OF HAIR AND EYES BEING "BROWN": [TOMMY AUTEN, Rp 28, LINE 10-p. 29, LINE 4; p. 97, LINE 2-21; p. 98, LINE 20-p. 99, LINE 23-p. 100] NOTING WITNESS IDENTIFYING SUBJECT AS TO KNOWING SOME PEOPLE IN THE PLANT WHO LOOK LIKE THAT "THEY HAVING "DARK HAIR AND A RED BEARD." [p. 28, LINE 21-23]. OPPOSE TO THE PRESENTMENT OF ONLY BEARD. ALSO IDENTIFYING APPELLANT TO SUBJECT OF "THE EYES (AREA p. 98, LINE 25), AND THE COLOR OF THE MUSTACH" [Rp 34, LINE 18-20]: WITNESS BALLANGER TESTIFYING, "SORT OF DARK FACIAL HAIR WITH MUSTACHE", AND "IT BEING SORT OF DARK, HIS HAIR LOOKED DARK" [Rp. 89, LINE 11-13]. NO IDENTITY MADE BY JOEL SMITH [Rp 51, LINE 10-12] OR DAN WILSON [Rp 65 LINE 24] AS TO SUBJECT'S PRESENTMENTS OF "HEIGHT, 5'09", AND "WEIGHT 160" WITNESS AUTEN TESTIFIED "APPROXIMATELY 5'10 TO 6'00", "PROBABLY 170,

180 POUNDS" [Rp. 28 LINE 24 - p. 29 LINE 4]

THE ONLY IDENTITY PRESENTMENT THAT WAS CORROBORATED BY WITNESS AUTEN IS THAT THE SUSPECT WAS A "MALE," AND THE NARRATIVE PRESENTMENT OF "A WHITE DODGE VAN" WHICH APPELLANT RESPECTFULLY CONTENDS IS INSUFFICIENT TO OVERCOME THE MAJOR DISCREPANCIES OF REPORT AND SUPPORT THE INTERVIEW HAD OCCURRED. PLUS GIVEN REPORT'S SHOWING TO HAVE BEEN FABRICATED FROM OTHER WITNESSES, AND WITNESS BALLANGER'S ALSO WILSON'S TESTIMONIES SHOW "A MALE," AND "A WHITE DODGE VAN" [Rp. 62, LINE 5, AND p. 89, LINE 24-25]

OFFICER SMITH'S NAME WAS CALLED ON THE FIRST DAY OF TRIAL [Rp. 119, LINE 2-3] BUT HE WAS NOT PRESENT THROUGHOUT THE PROCEEDINGS, AND HIS PRESENCE SHOULD HAVE BEEN ENSURED, BECAUSE OF WITNESS AUTEN WAS THE STATE'S CHIEF WITNESS, AND THE REPORT'S THE ONLY POSSIBLE PHYSICAL EVIDENCE THAT COULD HAVE SUPPORTED AN INTERVIEW OCCURRING. THUS APPELLANT RESPECTFULLY CONTENDS THAT
 → FRAUD ON THE COURT WAS FURTHERED BY COUNSEL'S ACTIVE MISREPRESENTATION, AND THE MISCONDUCT BY SOLICITOR IN THEIR NOT ENSURING OF THE OFFICER'S PRESENCE TO TESTIFY AS TO WRITING OF THE REPORT. APPELLANT CONTENDS THEIR MISCONDUCT IN NOT ENSURING THE PRESENCE WAS BECAUSE OF HAVING KNOWLEDGE PRIOR TO THE TRIAL OF THE REPORT BEING FALSE, AND WHICH WOULD HAVE BEEN BROUGHT FORTH IN COURT BY WITNESS AUTEN'S TESTIMONY, LACK OF TESTIMONY, AND THE OTHER WITNESSES TESTIMONIES. THUS OFFICER'S ABSENCE WOULD HAVE LED THE COURT INTO APPEARING AN INTERVIEW HAD OCCURRED.

THE CONTENTIONS ARE SUPPORTED BY THE FOLLOWING SHOWING OF COUNSEL'S INITIAL CROSS EXAMINING OF WITNESS AUTEN.

FOR THE RECORD FAILS TO SHOW ANY INITIAL DIRECT EXAMINING OF THE WITNESS AS TO "TALKED WITH" AN OFFICER OR HAVING "GAVE A DESCRIPTION" ON THAT MORNING. [R p 24 LINE 1 - p 34 LINE 10] THEREFORE THE EXAMINING SHOWS COUNSEL'S KNOWLEDGE OF WITNESS TALKING WITH SOLICITOR, AND IT TOOK PLACE PRIOR TO TRIAL ALSO SHOWING OF COUNSEL'S PRIOR TO TRIAL KNOWLEDGE OF REPORT, AND IT BEING FALSE IS HIS SHOWING OF ATTEMPTING TO INDUCE WITNESS INTO COORBORATING THE PRESENTMENTS OF THE SUBJECT'S HEIGHT AND WEIGHT. WHEREAS THE FOREGOING SHOWING OF WITNESS'S TESTIMONY OF THE HEIGHT AND WEIGHT WAS DURING INITIAL DIRECT EXAMINATION. CROSS EXAMINING;

(Q) "DID YOU GIVE A DESCRIPTION TO ANY OFFICER AT THE SCENE?" (A) "YES SIR. I DID"; (Q) "AND THAT DESCRIPTION WAS APPROXIMATELY 5'9", 160, 170 POUNDS?", (A) "YES SIR. THAT SOUNDS ABOUT RIGHT I THINK"; (Q) "AND YOU TOLD THE SOLICITOR THAT YOU TALKED WITH THE ORIGINAL - GAVE A DESCRIPTION - ORIGINALLY GIVEN AT APPROXIMATELY 8:30 OR SO IN THE MORNING, VERY EARLY IN THE MORNING RIGHT AFTER THIS HAPPENED?" (A) "YES SIR" [R p 35 LINE 20 - p 36, LINE 4]

THE INTENTIONAL MISCONDUCT BY COUNSEL'S EFFORTS TO ESTABLISH AN ALLEGED INTERVIEW OCCURRING IS ALSO SUPPORTED BY HIS NOT QUESTIONING WITNESS OF THE OFFICER'S NAME, WAS THERE ANY REPORT TAKEN, AND WHEN HAD HE TOLD THE SOLICITOR? THUS NOT SEEKING FACTS.

APPELLANT RAISES THE MISCONDUCT BY COUNSEL IN NOT ENSURING OFFICER SMITH'S PRESENCE, AND OR OBJECTING TO HIS ABSENCE COMES FROM THE RECORD FAILING TO SHOW ANY MENTIONING OF AN "SUM -

MARY OF THE INTERVIEW" DURING THE INITIAL DIRECT EXAMINING OF WITNESS WILSON [Rp. 61-p. 71 LINE 23]. THOUGH IT SHOWS COUNSEL EXAMINING THE WITNESS OF THE SUMMARY DURING INITIAL CROSS EXAMINATION [Rp. 71 LINE 25-p. 72], AND THE SUMMARY WAS SHOWN INVALID AS LAWFUL PHYSICAL EVIDENCE BY WITNESS'S TESTIMONY. BECAUSE OF SHOWING OF OFFICER JIM WILLIAMS TWICE USING HIS OWN INTERPRETATION INSTEAD OF WHAT WITNESS ACTUALLY SAID AND ALSO ERRED IN HIS WRITING THE SUMMARY [Rp. 72, LINE 25-p. 73]. OFFICER WILLIAMS NAME ALSO CALLED ON THE FIRST DAY BUT WAS NOT PRESENT DURING THE PROCEEDINGS.

PHOTO LINE-UP: APPELLANT RESPECTFULLY CONTENTS THAT THE FOLLOWING FACTS CONCERNING THE LINE-UP FURTHER SHOWS FRAUD ON THE COURT COMMITTED BY COUNSEL'S ACTIVE MISREPRESENTATION, AND ACTIVE PROSECUTORIAL MISCONDUCT BY THE SOLICITOR.

APPELLANT HAS NEVER SEEN THE ALLEGED LINE-UP NOR HAS OBTAINED A COPY OF IT, AND PRIOR TO TESTIMONIES COUNSEL NOTIFIED THE COURT THERE WOULD BE AN IDENTIFICATION "BASED ON IT. ALSO MOVING TO QUASH IT" AS HAVING TAINTED THE IN COURT IDENTIFICATION" [Rp. 23, LINE 3-6] AFTER WHICH CAME WITNESS AULEN'S FOLLOWING TESTIMONY UNDER INITIAL DIRECT EXAMINING, AND HIS SECOND DAY TESTIMONY. WHICH NOT ONLY SHOWS THAT HE WAS UNRELIABLE IN IDENTIFYING APPELLANT IT ALSO SHOWS THE LINE-UP WAS THE LINCHPIN TO IDENTIFICATION.

(A) "NO SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIED IN THE LINE-UP WAS THE PERSON I SAW IN THE PARKING LOT" [Rp. 34, LINE 16 20], AND "IF THIS MAN IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS INDEED THE SAME PERSON" [Rp. 100

LINE 1-3].

AFTER WITNESS'S TESTIMONY CAME INITIAL DIRECT EXAMINING OF INVESTIGATOR WHITSTINE'S THAT SHOWS HE HAD THE SUSPECTS LIST OF NAMES THAT WERE ASSOCIATED WITH THE NUMBERS THAT WERE BESIDE OF THEIR PHOTOGRAPHS OF THE LINE-UP, AND HAD PREPARED IT PRIOR TO SEEING WITNESS AULEN [R p 37 LINE 24 - p. 38 LINE 4]. TO THE QUESTION OF "WHO MADE THAT RECORD?" THE INVESTIGATOR ANSWERED, "THE LINE-UP WAS MADE BY DETECTIVE JETER IN GASTON COUNTY" [R p. 39, LINE 14-19], AND THE RECORD FAILS TO SHOW ANY MENTIONING OF THE LIST OF NAMES DURING THE DETECTIVE'S TESTIMONY. ONLY THAT OF HIS PREPARING OF THE SUSPECTS' PHOTOGRAPHS TO MAKE THE RECORD OF LINE-UP. [R p 106 - p. 108]. THUS INVESTIGATOR WHITSTINE'S PREPARING OF THE NAMES TO THE NUMBERS BESIDE OF SUSPECTS PHOTOGRAPHS WOULD HAVE RENDERED LINE UP UNDULY SUGGESTIVE, AND TAIINTED HIS IN COURT IDENTIFICATION OF APPELLANT. THE IDENTIFICATION IS FURTHER SHOWN IN THIS ISSUE.

APPELLANT RESPECTFULLY CONTENTS THAT THE FOLLOWING SHOWING OF COUNSEL'S INITIAL CROSS EXAMINING OF INVESTIGATOR WHITSTINE CONCERNING LINE-UP SHOWS FURTHER FRAUD ON THE COURT BY COUNSEL'S ACTIVE MISREPRESENTATION IN ATTEMPTING TO INDUCE INVESTIGATOR INTO FALSELY TESTIFYING AS TO HAVING NO KNOWLEDGE OF THE LINE-UP'S PREPARATION. WHICH IN TURN WOULD APPEAR HIS IDENTIFICATION OF APPELLANT WAS RELIABLE. WHEREAS THE FORGOING SHOWS WITNESS AULEN'S WAS NOT. THE CONTENTION IS SUPPORTED BY COUNSEL'S AGAIN IMPROPER USE OF LEADING QUESTIONS INSTEAD OF PROPERLY QUESTIONING

FOR FACTS. AS TO WHERE, AND WHO DID PREPARE THE LIST OF NAMES? ALSO NOT QUESTIONING HIM ABOUT HIS PRIOR TESTIMONY OF SHOWING HAVING HAD THE LIST, AND HOW DID HE PREPARE LINE-UP PRIOR TO SEEING WITNESS? THUS AVOIDING IMPLICATING QUESTIONING;

(Q) "NOW, YOU DID NOT PREPARE THE LINE-UP; IS THAT CORRECT OFFICER?", (A) "NO SIR."; (Q) "AND YOU DON'T KNOW WHERE THE PHOTOGRAPHS CAME FROM OR WHO OBTAINED THEM OR ANY THING OF THAT NATURE?", (A) "THEY CAME FROM DETECTIVE JETER WITH THE GASTON COUNTY POLICE DEPARTMENT", (Q) "BUT THEY PUT IT TOGETHER?", (A) "YES SIR."; "AND THE PHOTOGRAPHS WERE IN THE FOLDER AS THEY ARE TODAY?", (A) "YES SIR". THE FOLDER WAS COMPLETE AS NOW". [Rp. 42, LINE 9-19]

PHOTOGRAPH'S NUMBER

WITNESS AULEN'S INITIAL DIRECT TESTIMONY SHOWS THAT HE WAS ALONE WITH INVESTIGATOR WHITSTINE THROUGHOUT VIEWING OF LINE-UP, AND GIVING INVESTIGATOR THE NUMBER BESIDE OF THE SUSPECT'S PHOTOGRAPH. THOUGH THE RECORD FAILS TO SHOW ANY FOLLOW-UP QUESTIONING BY SOLICITOR AS TO WHICH OF THE SIX NUMBERS HE GAVE [Rp 30, LINE 21- p.34], AND THIS WAS ALSO THE CASE IN THE WITNESS'S SECOND DAY DIRECT EXAMINING [Rp 97, LINE 6, p.99 LINE 9]. WHEREAS UNDER INITIAL DIRECT EXAMINATION OF INVESTIGATOR THERE IS QUESTIONING OF THE WITNESS PICKED-OUT [Rp. 40, LINE 14- p.41 LINE 3], AND ALSO DURING SECOND DAY DIRECT [Rp. 102, LINE 5-25; AND REDIRECT EXAMINATION [Rp. 104, LINE 22-25]

THE RECORD FAILS TO SHOW ANY INITIAL CROSS EXAMINING OF THE INVESTIGATOR BY COUNSEL AS TO THE NUMBER OR OF THE WITNESS. IT ALSO FAILS TO SHOW ANY SECOND DAY CROSS EXAMINING

OF WITNESS AS TO THE NUMBER. THOUGH CROSS, AND RECROSS EXAMINING INVESTIGATOR. [Bp 103, LINE 25 - p. 104 LINE 6, p. 105 LINE 10-19] APPELLANT RESPECTFULLY CONTENDS THAT THE FOREGOING SHOWS FURTHER FRAUD ON THE COURT BY THE ACTIVE MISCONDUCT OF COUNSEL AND OF THE SOLICITOR THAT ALSO FURTHER VIOLATED APPELLANT'S 6TH AND 14TH US CONSTITUTIONAL RIGHTS. BECAUSE OF THEIR ONLY QUESTIONING THE INVESTIGATOR, AND NOT QUESTIONING WITNESS WHICH WAS MANDATED IN ORDER TO HAVE COOROBORATED THE INVESTIGATOR'S TESTIMONY OF THE NUMBER. ESPECIALLY GIVEN THAT THEY WERE ALONE DURING THE VIEWING, AND ALSO THE RECORD FAILS TO SHOW ANY EFFORT BY THE PROSECUTION TO SECURE COUNSEL'S PRESENCE TO APPEAR WITH INVESTIGATOR. OR ANY EFFORT BY COUNSEL TO PROTECT APPELLANT'S RIGHTS, AND APPEAR. ALSO COUNSEL'S NOT OBJECTING TO THE PRESENTATION SUPPORTS THE MISCONDUCT OF MISREPRESENTATION. UNDER STATE V LYON 251 SC. 541, 161 SE2d 445, "AN OUT OF COURT IDENTIFICATION OF AN ACCUSED AT A POLICE-LINE UP IS A CRITICAL STAGE AT WHICH THE ACCUSED HAS A CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL" USC AMEND 6. STATE V NORTHCUTT, 372 SC 202, 222, 641 SE2d 873 (2007) THE SOLICITOR'S "DUTY IS NOT TO CONVICT DEFENDANT BUT SEE JUSTICE DONE"

RECORD SHOWING AFTER THE INITIAL CROSS EXAMINATION OF INVESTIGATOR WHITSTINE COUNSEL MOVED TO SUPPRESS ANY IN-COURT IDENTIFICATION BY WITNESS AUTEN BY STATING (IN-PART) HE WAS "SIMPLY UNSURE" [Bp 43, LINE 20 - p 44]

APPELLANT RESPECTFULLY CONTENDS THAT FRAUD ON THE COURT WAS FURTHERED BY COUNSEL'S ACTIVE MISREPRESENTATION IN NOT

REQUESTING ANY IN COURT IDENTIFICATION BY INVESTIGATOR ALSO BE SUPPRESSED, BECAUSE OF THE INVESTIGATOR'S TESTIMONY THAT WOULD HAVE RENDERED THE LINE-UP UNDULY SUGGESTIVE AND TAILORING IDENTIFICATION. ALSO HIS NOT HAVING FIRST HAND KNOWLEDGE OF WHAT OCCURRED AT THE VIEWING BY NOT APPEARING.

THE INVESTIGATOR'S IDENTIFICATION TESTIMONY AS FOLLOWS THAT WAS ALSO INADMISSIBLE BY LAW. FOR THE RECORD FAILS TO SHOW ANY EVIDENCE OF HAVING MET OR OBSERVED APPELLANT PRIOR TO THE BEGINNING OF THE TRIAL IN ORDER TO HAVE MADE SUCH IDENTIFICATION VIOLATING RULE 801, 1, (C) SCRC, AND WHICH IS SUPPORTED BY HIS ANSWER UNDER RECROSS EXAMINING. THE ANSWER ALSO SUPPORTS THAT THE IDENTIFICATION WAS BASED UPON THE LINE-UP / UNDULY SUGGESTIVENESS. U.S. v. WADE, 87 S. CT. 1926 (1987) HOLDS "ABSENCE OF COUNSEL ~~RENDERS~~ AT PRETRIAL LINE UP RENDERS COURT ROOM IDENTIFICATION INADMISSIBLE UNLESS COURT ROOM IDENTIFICATION IS BASED ON OBSERVATION OF SUSPECT OTHER THAN LINE-UP". UNDER STATE v. ANDERSON, 422 SE2d 161 (SC APP. 1992), "RELIABILITY IS LINCH-PIN IN DETERMINING ADMISSIBILITY OF IDENTIFICATION TESTIMONY."

SOLICITOR: (Q) "WAS ANYBODY THERE BESIDES YOU AND HIM?", (A) "NO SIR"; (Q) "AND WHO WAS THE PICTURE THAT HE PICKED OUT?", (A) "JEFFREY LYNN CHRONISTER, NO. 3 IN THE LINE-UP"; (Q) "AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN COURT?"

COUNSEL: "OBJECT TO LEADING, YOUR HONOR."

SOLICITOR: "IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE TODAY IN COURT AS IN THE PICTURE LINE-UP?"

COUNSEL: "YOUR HONOR THE SAME OBJECTION"

THE COURT: "NO SIR. I OVERRULE YOU. GO AHEAD"

(A) "HE HAS NO BEARD AT THIS TIME" [BP. 102, LINE 22 - P. 103]

BE CROSS EXAMINING: (Q) "AND YOU DIDN'T KNOW NO. 3 FROM ADAM'S HOUSE CAT OF YOUR OWN KNOWLEDGE, DID YOU SIR?"

(A) "NO SIR." [BP. 105, LINE 5-19]

FRAUD ON THE COURT WAS FURTHERED BY THE ACTIVE MISCONDUCT BY SOLICITOR BECAUSE OF HIS KNOWLEDGE OF THE IDENTIFICATION BEING INADMISSIBLE. WHICH IS SHOWN BY HIS FIRST QUESTION TO THE INVESTIGATOR, HIS INITIAL QUESTIONING OF WITNESS AITEN OF "ANYBODY ELSE" WITH THE INVESTIGATOR AT THE VIEWING [BP. 30, LINE 21-22], AND HIS INITIAL QUESTIONING OF INVESTIGATOR OF "ANY OTHER OFFICER" BEING AT THE VIEWING [BP. 41, LINE 4-6]. ALSO THE FRAUD WAS FURTHERED BY THE ACTIVE MISCONDUCT BY COUNSEL BECAUSE ALSO OF HIS KNOWLEDGE THAT THE IDENTIFICATION WAS INADMISSIBLE, AND IS SHOWN BY HIS BE CROSS EXAMINING AND NOT OBJECTING. ALSO BY HIS NOT OBJECTING TO THE LINE-UP UPON IT BEING ENTERED AS THE STATES' EXHIBIT [BP. 39 LINE 6-24]. THE MISCONDUCT^(ALSO) DEPRIVING APPELLANT DUE PROCESS OF LAW TO A FAIR TRIAL, AND TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. USCA 6, 14

COUNSEL'S FOLLOWING CROSS EXAMINING SUPPORTS APPELLANT'S PRIOR CONTENTION OF FRAUD ON THE COURT BY COUNSEL'S MISREPRESENTATION IN THE INITIAL CROSS EXAMINING OF INVESTIGATOR. FOR IT SHOWS ACTIVE MISLEADING EFFORTS / INTENT TO FALSELY APPPEAR THE INVESTIGATOR HAD NOTHING TO DO WITH OR HIS HAVING ANY KNOWLEDGE OF THE LINE-UP'S PREPARATION. WHICH WOULD HAVE FALSELY IMPRESSED UPON THE JURY THAT THE IDENTIFICATION WAS RELIABLE, AND THAT HIS ONLY INVOLVEMENT WAS PRESENTING THE LINE UP. WHICH IS SHOWN BY COUNSEL'S AGAIN AVOIDING TO

QUESTIONING HIM ABOUT HIS PRIOR IMPLICATING TESTIMONY TO HAVING LIST OF NAMES, AND PREPARING OF LINE-UP PRIOR TO SEEING THE WITNESS. ALSO AGAIN IMPROPERLY USING LEADING QUESTIONS INSTEAD OF SEEKING ANSWERS TO DEVELOPE FACTS. AS TO WHO THEN DID PREPARE THE LINE-UP, AND DID YOU HAVE A ROLE IN IT? WHERE DID THE LIST OF NAMES COME FROM, AND WHO DID PREPARE THE NAMES ASSOCIATED WITH THE NUMBERS? WHO DID PREPARE THE PHOTOGRAPHS? WHEREAS HIS PREVIOUS TESTIMONY SHOWS HE KNEW WHO DID. CROSS EXAMINING:

(Q) "NOW I BELIEVE YOU YOURSELF DID NOT PREPARE THE LINE-UP, CORRECT, SIR?", (A) "NO SIR."; (Q) "DETECTIVE, YOU DID NOT PREPARE THE PHOTO LINE-UP?", (A) "NO SIR.", (Q) "NOR DID YOU PREPARE THE LIST OF NAMES ASSOCIATED WITH THE NUMBERS, DID YOU SIR?", (A) "NO SIR."; (Q) "ALL YOU KNOW IS THAT NO. 3 WAS THE PERSON THAT WAS PICKED-OUT BY MR. AUTEN?", (A) "ON THE SHEET IT HAS A LIST OF NAMES OF THE PEOPLE IN THE PICTURES, AND MR. CHRONISTER WAS LISTED AS NO. 3.", (Q) "BUT YOU DIDN'T PREPARE THAT LIST, YOU DIDN'T PREPARE THE PHOTOGRAPHS?", (A) "NO SIR."

[Rp 104 LINE 5-19]

DIRECTED VERDICT

COUNSEL MOVED FOR A DIRECTION OF VERDICT ON THE GROUNDS OF (1) (1) "NATURE OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY," (2) "NO WEAPON OR PROJECTILES PRODUCED," (3) "STATE'S PRIMARY FAILURE OF PRODUCING ANY EVIDENCE TO MAKE OUT NECESSARY CASE FOR MALICE." EVEN THOUGH MALICE MAY BE INFERRED FROM THE USE OF A WEAPON, THERE HAS BEEN NO WEAPON CONNECTED TO MY CLIENT, AND I JUST SIMPLY FEEL THAT BASED ON THE TESTIMONY THAT WE HAVE, THAT THE STATE HAS FAILED TO MAKE-

OUT A CASE FOR MURDER. THE PRIMARY FAILURE BEING THE STATE HAS FAILED TO SHOW THE REQUIRED MALICE" [Rp 114, LINE 19p. 115]

THE JUDGE'S DECISION: "THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT THE SCENE. THAT HE WAS IN POSSESSION OF A WEAPON THAT GUNSHOTS WERE HEARD, AND VERY SHORTLY IN SECONDS THEREAFTER THE VICTIM'S BODY WAS FOUND. SHE WAS DEAD, OF COURSE, THE STATEMENTS MADE BY THE OFFICER -- ALL OF THOSE, AND THE USE OF A WEAPON YOU DON'T HAVE TO FIND THE WEAPON IF THERE'S TESTIMONY OF USE OF A WEAPON. USE OF A WEAPON IS SUFFICIENT FOR INFERENCE OF MALICE TO SUPPORT A CONVICTION FOR MURDER. MALICE AFORETHOUGHT. FOR THOSE REASONS THE MOTION FOR DIRECT VERDICT AT THIS STAGE IS DENIED."

[Rp. ^{115-P116} 114, LINE 8-11]

COUNSEL SUBSEQUENTLY RENEWING THE MOTION ON THE SAME GROUNDS, AND WAS DENIED BY THE JUDGE ON HIS SAME GROUNDS.

[Rp 117, LINE 8-11]

APPELLANT RESPECTFULLY CONTENDS THAT HE WAS ENTITLED TO THE VERDICT BECAUSE OF THE FOREGOING FACTS OF THE INTERVIEW AND OF THE PHOTO LINE-UP SHOW THAT THE DECISION WAS PRODUCED BY THE FRAUDULENT IDENTIFICATION BY INVESTIGATOR WHITSTINE. ID. McDONALD: RULE 19(a) SCR CRIM. P.

OUTSIDE OF WITNESS BUTEN'S TESTIMONY ON PAGE 9-11 SHOWING THAT AT NO TIME DID HE MAKE A POSITIVE IN COURT IDENTIFICATION OF APPELLANT BEING THE PERSON THAT HE SAW IN THE PARKING LOT" OR THAT HE "IDENTIFIED ON THE PHOTOGRAPH," PAGES 6-7 SHOW THERE WAS NO OTHER WITNESS OF THAT MORNING THAT

MADE SUCH A POSITIVE IDENTIFICATION AS IN THE DECISION. WHICH LEAVES OFFICER / INVESTIGATOR'S WHITSTINE'S. FOR ALSO HE WAS THE ONLY APPEARING LAW OFFICIAL TO TESTIFY CONCERNING THE WITNESS OF THAT MORNING, AND SUPPORTIVE OF THE JUDGE'S USE OF THE INVESTIGATOR'S IDENTIFICATION IS THE STATEMENT OF "THE STATEMENT MADE BY THE OFFICER", AND ALSO IT BEING USED IN THE CONTEXTS OF THE TRAGEDY'S OCCURRENCE ON THAT MORNING.

COUNSEL'S PERMITTING OF THE DECISION BY NOT OBJECTING ALSO SHOWS ACTIVE MISREPRESENTATION. BECAUSE OF THE DECISION BEING CLEARLY AGAINST COUNSEL'S INCLUSION OF THE MOTION THAT "THE TESTIMONY BY THE PEOPLE AS TO IDENTITY". COUNSEL'S MISCONDUCT ALSO DEPRIVING APPELLANT DUE PROCESS TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. USCA CONST. AMEND 6, 14

(11) WAS APPELLANT'S ARREST MADE WITHOUT PROBABLE CAUSE BY VIOLATING THE STATE'S CONSTITUTION, AND THE 4TH AND 14TH AMENDMENT OF THE U.S. CONSTITUTION? (a) "THE ARREST MALICIOUSLY MADE FOR THE LACK OF PROBABLE CAUSE WAS BROUGHT FORTH BY THE FRAUD ON THE COURT"

SUPPORTING FACTS: APPELLANT RESPECTFULLY COWTENDS THAT THE FOREGOING FACTS OF THE INTERVIEW AND OF THE PHOTO LINE UP SHOW THAT INVESTIGATOR WHITSTINE MISREPRESENTED THE TRUTH OF HAVING PROBABLE CAUSE IN THE OBTAINING OF ARREST WARRANT, AND THUS THE ARREST WAS MALICIOUSLY MADE. WHICH WAS BROUGHT FORTH BY THE FRAUD ON THE COURT. BECAUSE OF THE FACTS SHOW HE FALSELY TESTIFIED AS TO INTERVIEWING WITNESS AUTEN, AND ALSO RAISING OF NO EVIDENCE THAT HE HAD BEEN INVOLVED IN THE INTERVIEWING

OF ANY WITNESSES OF THAT MORNING SHOWING HIS LACK OF SUFFICIENT KNOWLEDGE OF THE "FACTS AND CIRCUMSTANCES" OF THE TRAGEDY OCCURRING IN ORDER TO HAVE WARRANTED PROBABLE CAUSE IN OBTAINING THE ARREST WARRANT. SEE S.C. CONST. (1976) 21 SUPP., USC CONST. AMEND. IV, NOTE (10), STATE v DUNBAR, (S.C. APP. 2003), 354 SC 479, 581 SE2d 840, 356 SC 138, 587 SE2d 691, 361 SE2d 240, 303 SE2d 645, ARREST 63.4(2); UNDER U.S. v GRAY, 137 F3d 756 (4TH CIR. 1998) "TO COMPLY WITH THE 4TH AND 14TH AMENDMENT AN ARREST MUST BE PREDICATED ON PROBABLE CAUSE" SEE PARCAUON v CITY OF JACKSONVILLE, 405 U.S. 156, 92 S.Ct. 156, 31 L.Ed.2d 110.

GIVEN THAT INVESTIGATOR WHITSTINE OBTAINED THE WARRANT WITHOUT PROBABLE CAUSE. THE ARREST AND EXTRADITION WAS THEREFORE MALICIOUSLY MADE. BECAUSE THE TESTIMONY BY SERGEANT JOHNNIE MIMS OF THE GASTON COUNTY (NORTH CAROLINA) POLICE DEPARTMENT SHOWS HE TOOK APPELLANT "INTO CUSTODY" SHORTLY AFTER "8:01 A.M." ON THAT MORNING OF THE OCCURRENCE [RP. 108, LINE 24; P. 77 LINE 5; P. 74, LINE 17-18], AND APPELLANT WAS EXTRADITED TO THIS STATE ON THAT AFTERNOON.

(11) WAS THE CIRCUIT COURT PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION TO HAVE OBTAINED THE CONVICTION? (a) "APPEARING THAT AT THE GRAND JURY RETURNED AN NO BILLED INDICTMENT, AND ALSO OTHER FACIAL IRREGULARITIES OF THE INDICTMENT RAISING DEFECTS IN SUBJECT MATTER JURISDICTION."

SUPPORTING FACTS: THE INDICTMENT FOR MURDER UNDER "S.C. CODE ANN. 16-3-10, CDR CODE 11G" [RP. 123] IS THE SUBJECT OF THIS ISSUE BECAUSE THERE IS NO EVIDENCE OF PRESENTMENT FOR COUNT TWO OF THE INDICTMENT'S SEPARATE FIREARM'S CHARGE UNDER THE S.C.

CODE 16-23-490. NOR DID APPELLANT WAIVE PRESENTMENT OF THE INDICTMENT, AND THIS IS SUPPORTED BY NO WAIVER INTRODUCED IN COURT BY THE SOLICITOR, AND ALSO THE ONLY INDICIMENT THAT WAS INTRODUCED BY HIM WAS THE INDICTMENT FOR MURDER [Rp. 109, LINE 25 - p. 110 LINE 18]. ALSO AN COPY OF THE MURDER INDICTMENT IS THE ONLY COPY OF AN INDICTMENT THATS BEEN ENTERED INTO THE TRANSCRIPT OF RECORD, AND IT FAILS TO "REFLECT" ANY WAIVER(S) FOR PRESENTMENT(S). OR FOR ANY STATUTORY OR CONSTITUTIONAL RIGHTS. SEE STATE V PATTERSON 278 SC 319, 295 SE2d 264 (1982); UNDER TILLY V STATE OF SC. 511 SE2d AT 691 (S.C. 1999), "S.C. CODE ANN. 16-23-490 (1976 AND SUPP. 1997) PROVIDES FOR A MANDATORY FIVE YEAR SENTENCE FOR A PERSON CONVICTED UNDER THIS SECTION." ALSO SEE S.C. CONST ART. I (11): UNDER STATE V EVANS 307 SC 477, 415 SE2d 816 (1992), "A VALID INDICTMENT OR WAIVER OF PRESENTMENT PREREQUISITE FOR CIRCUIT COURT'S SUBJECT MATTER JURISDICTION". USCA CONST. 5, 14: 17-23-120-150

THE ISSUE OF THE INDICTMENT FOR MURDER IS THAT THE COURT OF GENERAL SESSIONS FAILED TO COMPLY WITH STATUTORY LAW JURISDICTIONAL IN NATURE OF TRUE BILLED INDICTMENTS, S.C. CODE ANN. 17-19-10, AND NOT A CHALLENGE TO THE COURT'S GENERAL GRANT OF AUTHORITY TO HEAR AND DETERMINE CASES. THAT AUTHORITY IS RIGHTFULLY GRANTED BY OUR CONSTITUTION, STATE V GENIRY, 363 SC 93, 601 SE2d 464 (2005), AND WILL NOT BE AN ISSUE HERE.

APPELLANT RESPECTFULLY CONTENTS THAT THE CIRCUIT COURT WAS ALSO NOT PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION. FOR THE INDICTMENT FAILS TO SHOW ANY INDICATION OF BEING STAMPED TRUE BILLED, AND OUTSIDE OF IT APPEARING THAT THE GRAND JURY FAILED TO FIND ENOUGH EVIDENCE TO RETURN IT TRUE BILLED

UNDER STATE V. SCOTT, UNPUBLISHED OP. NO. 2003-UP-037 (S.C. APP. 2003) "A REVIEW OF THE 1998 INDICTMENTS REVEALS NO INDICATION THAT EITHER OF THEM WAS STAMPED "TRUE BILLED" NOR THAT A WAIVER OF PRESENTMENT WAS EXECUTED BY SCOTT." ALSO THE COURT STATING "MORE OVER WHEN A QUESTION EXISTS REGARDING WHETHER AN INDICTMENT WAS TRUE BILLED OR A VALID WAIVER WAS EXECUTED THIS COURT SHOULD REMAND CASE TO THE CIRCUIT COURT TO CONDUCT AN EVENTUARY HEARING TO DETERMINE WHETHER THE INDICTMENT WAS TRUE BILLED, OR RESUBMIT THE INDICTMENT FOR GRAND JURY'S RECONSIDERATION OF EFFECT A WAIVER OF PRESENTMENT OF INDICTMENT TO THE GRAND JURY, AND THE JURY AGAIN ENTERTAIN THE DEFENDANT'S PLEA OR SIMPLY ALLOW WITHDRAWAL OF THE PLEA, AND PROCEED A NEW." A PLEA OF NOT GUILTY WAS ENTERED IN APPELLANT'S CASE. THE COURT REMANDED SCOTT'S CASE FOR AN EVENTUARY HEARING PURSUANT TO GRIMS 533 SE2d 330, 341 SC 63 (2003) IN ORDER TO DETERMINE WHETHER THE ABSENCE OF TRUE BILLED FROM THE FACE OF THE INDICTMENT WAS "A MERE SCRIVERER'S ERROR", AND ON REMAND IF THE STATE COULD NOT PROVE THAT THE CIRCUIT COURT WAS PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION IT WAS ORDERED BY THE COURT OF APPEALS TO VACATE SCOTT'S CONVICTION. ALSO UNDER GRIMS 533 SE2d A1329, "RELYING ON PRINGLE (339 SE2d 127, 287 SC 409) THE COURT OF APPEALS HAS HELD AN INDICTMENT PROPER EVEN THOUGH IT WAS NOT STAMPED TRUE BILLED WHERE THERE IS EVIDENCE IN THE FORM OF SWORN TESTIMONY FROM THE GRAND JURY'S DOCKET COORDINATOR, A COURT REPORTER, AND A LEGAL SECRETARY THAT THE INDICTMENT WAS IN FACT TRUE BILLED." WHEREAS IN APPELLANT'S CASE THE RECORD FAILS TO SHOW ANY SUCH TESTIMONIES ALSO

THE INDICTMENT, AND UNDER STATE V MUNN SUPRA, "SUBJECT TO CERTAIN MINOR EXCEPTIONS NOT PRESENT THE TRIAL COURT LACKS SUBJECT MATTER JURISDICTION TO CONVICT DEFENDANT FOR AN OFFENSE WHERE THERE IS NO TRUE BILLED INDICTMENT AGAINST THE DEFENDANT."

APPELLANT RESPECTFULLY CONTENTS THAT CUMULATIVE TO THIS ISSUE IS THAT THE INDICTMENT FAILS TO SHOW THAT IT WAS LAWFULLY WRITTEN AND PUBLISHED BY THE CLERK OF COURT, AND THAT THE GRAND JURY'S FOREMAN ONLY SIGNING "T. BILL" IS ALSO AN FACIAL IRREGULARITY, AND ALSO NOT COMPLYING WITH THE LEGAL FORMALITY PROCEDURE OF INDICTMENTS UNDER WEST'S SOUTH CAROLINA DIGEST 14 "INDICTMENT AND INFORMATION" SECTION III, AN TRUE BILL IS OF THE "FORMAL REQUISITES" OF AN INDICTMENT ALSO SEE S.C. CODE 17-19-130, 17-19-10: "WHILE IT IS PREFERABLE FOR GRAND JURY FOREMAN TO SIGN TRUE BILL. FOREMAN'S SIGNATURE IS NOT ESSENTIAL WHERE INDICTMENT IS WRITTEN AND PUBLISHED BY THE CLERK" Id. PRINGLE: ANDERSON V STATE 529 SE 2d 348, 338 SC 629 (CT. APP. 2000) HOLDS "A FACIAL IRREGULARITY DOES NOT RENDER AN INDICTMENT INVALID WHERE INDICTMENT IS IN WRITING AND PUBLISHED BY THE CLERK"

FURTHERMORE "SUBJECT MATTER JURISDICTION IS THE POWER TO HEAR AND DETERMINE CASES OF GENERAL CLASS TO WHICH PROCEEDINGS QUESTIONS BELONGS BELLS V MONSANTO CORP., 577 SE 2d 325 (SC 2003) AND INASMUCH THE COURT'S POWER ~~AND~~ ^{TO} HEAR AND DETERMINE CASES SUBJECT MATTER JURISDICTION DOES NOT ONLY COVER AND OR INVOLVE WHETHER OR NOT THE MATTER RESIDES IN PROPER COURT OF JURISDICTION TO HEAR AND DETERMINE IT ALSO INVOLVES AN ISSUE THAT

MAY AFFECT THAT POWER AND OR ABILITY TO ACT IN ACCORDANCE TO LAW THIS ISSUE CAN BE RAISED AT ANYTIME, CANNOT BE WAIVED BY THE MOVANT; AND THE COURT SHALL NOT FAIL TO TAKE NOTICE BROWN v STATE, 343 SC 342, 540 SE2d 864 (2001); STATE v BROWNING 320 SC 368, 465 SE2d AT 357, CITING STATE v MUNN 357 SE2d 461 (1987)

APPELLANT RESPECTFULLY CONTENTS THAT GIVEN THE MAGNITUDE OF THE CHARGES MISREPRESENTATION BY COUNSEL AND PROSECUTORIAL MISCONDUCT BY SOLICITOR WAS SHOWN BY THEIR INJUSTICE OF PERMITTING THE CONVICTION BEING OBTAINED ON THE DEFECTIVE INDICTMENT FOR MURDER, AND IN ABSENCE FOR PRESENTMENT FOR THE FIREARMS CHARGE. Id. NORTH CUTT: "A CONVICTION OBTAINED WITHOUT PRESENTMENT OF A GRAND JURY WILL BE VOIDED ON APPEAL" ANDERSON v STATE 527 SE 2d 399, 338 SC Ct. 629 (S.C. APP. 2000) S.C. CONST. ART. I (11); UNDER 41 AMERICAN JOURNAL 2d "INDICTMENT AND INFORMATION" SEC. 299 (1968) "ALTHOUGH THE MOVANT DID NOT OBJECT TO THE INDICTMENT BEING TRUE BILLED, THE NO BILL RENDERED THE INDICTMENT WHOLLY INVALID. AN NO BILLED INDICTMENT IS OF SUCH A FUNDAMENTAL CHARACTER AS TO MAKE AN INDICTMENT WHOLLY INVALID, AND SUBJECT TO WAIVER BY MOVANT"; UNDER STATE v BEACHUM 342 SE2d 597 (S.C. 1986) "AFTER THE JURY WAS SWORN AND TESTIMONY FROM SEVERAL WITNESSES WAS TAKEN THE SOLICITOR NOTICED THAT THE KIDNAPPING INDICTMENT WAS NEITHER SIGNED BY THE GRAND JURY FOREMAN NOR STAMPED "TRUE BILLED". WITH CONSENT OF DEFENSE COUNSEL, THE TRIAL WAS TEMPORARILY SUSPENDED. THE KIDNAPPING INDICTMENT WAS SUBMITTED TO THE GRAND JURY. THE INDICTMENT WAS TRUE BILLED AND PUBLISHED BY THE CLERK, AND THE TRIAL PROCEEDED. THOUGH THIS DID NOT FIX SUBJECT MATTER JURISDICTION OF THE COURT

VIOLATIONS OF SC CODE 17-30 AND 17-3-150 THAT REQUIRES THE PROSECUTOR FULFILL AND SEE THAT ALL DUTIES REQUIREMENTS AND RULES OF CRIMINAL PROCEDURES RELATED TO DUE PROCESS AND THE SOUTH CAROLINA CONSTITUTION ARE ADHERED TO AND COMPLETED WITHIN THE COURT. AND S.C. CONST ART. I, USCA CONST. AMEND. 14

CONCLUSION

APPELLANT REQUEST IMMEDIATE RELEASE FROM THE ILLEGAL CONFINEMENT, OR APPOINTMENT OF EXPERIENCED CRIMINAL APPEALS ATTORNEY, AND HOLD SUCH HEARING AS REQUIRED IN RESOLVING THIS MATTER.

CERTIFICATION

I, JEFFREY LYNN CHRONISTER, DO CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL PROPOSED TO BE INCLUDED BY ANY OF THE PARTIES, AND NOT ANY OTHER MATERIAL.

THIS 18TH DAY OF DECEMBER, 2015

Jeffrey Lynn Chronister
JEFFREY LYNN CHRONISTER, #189827
KIRKLAND CORR. INST. B-II 39
4344 BROAD RIVER ROAD
COLUMBIA, S.C., 29210

1 PRESENCE OF THE COURT. AT THIS TIME THE COURT IS NOW GOING TO
2 TAKE UP WHATEVER LEGAL MATTERS THE COURT NEEDS TO RESOLVE. AS
3 I UNDERSTAND, I'VE BEEN NOTIFIED BY COUNSEL THAT THERE WILL BE
4 AN IN-COURT IDENTIFICATION MADE BASED ON A LINE-UP, THAT THE
5 DEFENSE MOVES TO QUASH THE LINE-UP AS HAVING TAINTED THE IN-
6 COURT IDENTIFICATION.

7 THERE IS ALSO BEEN AN ALLEGED STATEMENT MADE BY THE
8 DEFENDANT WHICH THE STATE CONCLUDES OR IS OF THE OPINION IS
9 NOT APPLICABLE. I WILL HEAR IT IN CAMERA BOTH AS TO LAW
10 ENFORCEMENT INDIVIDUAL AND A NON-LAW ENFORCEMENT INDIVIDUAL.

11 SO WE'RE GOING TO TAKE UP ALL OF THOSE ISSUES FOR THE
12 COURT TO RULE ON. AND THAT SHOULD RESOLVE THE LEGAL ISSUES IN
13 THIS CASE UP TO THE POINT THAT WE ARE AWARE OF; ISN'T THAT
14 CORRECT, GENTLEMEN?

15 MR. GRANT: YES, SIR, YOUR HONOR.

16 MR. SMITH: YES, SIR.

17 THE COURT: YOU MAY PROCEED, MR. SOLICITOR. WHICH ONE
18 ARE YOU GOING TO PROCEED ON FIRST?

19 MR. GRANT: THE EYEWITNESS IDENTIFICATION AND LINE-UP. I
20 CALL TOMMY AUTEN FIRST.

21 THE COURT: LET THE RECORD REFLECT THAT THIS IS BEING
22 CONDUCTED IN CAMERA, OUTSIDE THE PRESENCE OF THE JURY.

23 MR. GRANT: MR. AUTEN. AUTEN OR AUTEN?

24 WITNESS: AUTEN.

25 MR. GRANT: AUTEN. I'M SORRY. COME AROUND HERE PLEASE.

STATE V. CHRONISTER

1

THOMAS EDWARD AUTEN, BEING

2

FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3

DIRECT EXAMINATION

4

BY MR. GRANT:

5

Q MR. AUTEN, STATE YOUR FULL NAME FOR THE COURT PLEASE.

6

A MY FULL NAME IS THOMAS EDWARD AUTEN.

7

Q BY WHOM ARE YOU EMPLOYED?

8

A I AM EMPLOYED BY DUKE POWER COMPANY, CATAWBA NUCLEAR

9

STATION.

10

Q ON FEBRUARY 14TH OF THIS YEAR WERE YOU WORKING?

11

A I WAS REPORTING FOR DAY SHIFT DUTY, YES, SIR.

12

Q APPROXIMATELY WHAT TIME WOULD THAT HAVE BEEN?

13

A APPROXIMATELY 10 MINUTES BEFORE 7:00.

14

Q AND WHEN YOU WENT TO WORK THAT MORNING, WHERE DID YOU

15

PARK?

16

A I PARKED IN OUR MAIN PARKING LOT, WHICH BORDERS THE

17

SMALLER ADMIN LOT WHERE THE INCIDENT TOOK PLACE. I PARKED ON

18

THE END OF THE FIRST DOUBLE ROW TOWARD THE BACK.

19

Q AND WHAT DID YOU OBSERVE UNUSUAL ONCE YOU STARTED TO WORK

20

IN THE PARKING LOT, WHAT IF ANYTHING DID YOU OBSERVE UNUSUAL?

21

A WELL, WHEN I GOT THERE, I PULLED IN THE PARKING LOT AND I

22

SAW TWO OF MY CO-WORKERS IN THE ROW IN FRONT OF ME LOOKING AT

23

A BOAT. AND I KNEW THEY WERE LEAVING FROM THE NIGHT SHIFT.

24

WENT AHEAD AND PARKED MY VEHICLE. AS I WAS TURNING OFF THE

25

IGNITION, I HEARD WHAT I THOUGHT WAS A SMALL PACK OF

STATE V. CHRONISTER

1 FIRECRACKERS BEING DISCHARGED OVER IN THE SMALLER ADMIN LOT.

2 SO NATURALLY WHEN I HEARD SOMETHING, I LOOKED OVER THERE
3 TO SEE WHAT WAS GOING ON. AND I SAW ONE INDIVIDUAL STANDING
4 ON THE SIDEWALK IN FRONT OF THE ADMIN BUILDING.

5 Q HOW FAR WERE YOU FROM THE ADMIN BUILDING WHERE YOU WERE
6 STANDING?

7 A APPROXIMATELY 100, 120 FEET, SOMETHING LIKE THAT.

8 Q ALL RIGHT, SIR. WHEN YOU SAY YOU HEARD WHAT SOUNDED LIKE
9 FIRECRACKERS, HOW MANY NOISES DID YOU HEAR?

10 A IT WAS AT LEAST FIVE, SOMEWHERE AROUND THERE. THEY WERE
11 IN VERY RAPID SUCCESSION. AND SO IT WOULD BE HARD TO COUNT,
12 BUT AT LEAST FIVE.

13 Q WHEN YOU HEARD THOSE NOISES, WHERE DID YOU LOOK?

14 A WELL, FROM WHERE I WAS SITTING, I WAS STILL IN MY VEHICLE
15 AT THE TIME SO I HAD TO LOOK OUT MY DOOR WINDOW RIGHT OVER THE
16 TOP OF MY REAR VIEW MIRROR. AND I SAW THE INDIVIDUAL OVER IN
17 FRONT OF THE ADMIN BUILDING AT THAT TIME.

18 Q WHAT IF ANYTHING DID YOU SEE THIS INDIVIDUAL DOING?

19 A HE WAS STANDING THERE ON THE SIDEWALK AT THAT TIME. I
20 MEAN, JUST NORTH OF THE FRONT DOOR THAT GOES INTO OUR ADMIN
21 BUILDING.

22 Q AND AFTER YOU SAW HIM STANDING THERE WHAT DID YOU DO
23 PLEASE, SIR?

24 A WELL, I WAS TRYING TO GET TO WORK, SO I STILL WAS
25 THINKING THAT WHAT I'D HEARD WAS FIRECRACKERS, SO I WENT AHEAD

1 AND GOT MY LUNCH BOX, GOT OUT OF MY TRUCK, AND STARTED WALKING
2 TOWARD OUR PERSONNEL ENTRANCE WHICH I HAVE TO GO BY THE
3 DIRECTION IN WHICH THIS -- WHERE I SAW THIS INDIVIDUAL.

4 AS I STARTED TO WALK IN THAT DIRECTION, THE INDIVIDUAL
5 LEANED OVER LIKE HE WAS LOOKING AT SOMETHING OR TO PICK UP
6 SOMETHING. AND, YOU KNOW, I STILL WAS TRYING TO FIGURE OUT
7 WHAT WAS GOING ON OVER THERE. I TOOK A FEW MORE STEPS AND I
8 SAW THAT THIS INDIVIDUAL HAD A GUN WITH HIM.

9 SO, YOU KNOW, I STILL DIDN'T KNOW EXACTLY WHAT WAS GOING
10 ON, TOOK A FEW MORE STEPS, AND I SAW A PERSON'S BODY LAYING ON
11 THE SIDEWALK.

12 Q AND HOW NEAR WAS THE PERSON WITH THE GUN TO THE BODY ON
13 THE SIDEWALK?

14 A APPROXIMATELY 10 FEET.

15 Q ALL RIGHT. WHAT DID YOU SEE HAPPEN THEN AFTER YOU SAW
16 THAT?

17 A THE INDIVIDUAL WITH THE GUN STOOD UP ERECT AND STARTED
18 WALKING DOWN THE SIDEWALK TOWARD THE MAIN PARKING LOT AND IN
19 MY DIRECTION. AND I WAS JUST PROCEEDING ON.

20 YOU KNOW, ONCE I SAW -- ONCE IT WAS CLEAR TO ME WHAT WAS
21 TAKING PLACE, I WAS ALREADY IN THE MAIN THOROUGHFARE IN WHICH
22 MOST THE VEHICLES EXIT. THERE'S NOTHING -- NOWHERE TO GO OR
23 ANYTHING. SO I DECIDED THE BEST THING FOR ME TO DO WOULD JUST
24 PRETEND I DIDN'T SEE HIM OR THE PERSON LAYING THERE AND JUST
25 KIND OF IGNORE IT AND WALK ON BY UNTIL I FELT I WAS SAFE.

STATE V. CHRONISTER

1 THE INDIVIDUAL WITH THE GUN DIDN'T RUN. HE JUST WALKED
2 PERPENDICULAR TO MY PATH. AND I MADE SURE HE CROSSED IN FRONT
3 OF ME. AND THEN HE PROCEEDED ON TO GET IN A VAN OVER IN THE
4 MAIN PARKING LOT.

5 Q AND HOW NEAR DID HE COME TO YOU WHEN YOU SAW HE CROSSED
6 IN FRONT OF YOU?

7 A APPROXIMATELY 15 FEET.

8 Q AS FAR AS IN THE COURTROOM, YOU CAN DIRECT ME ABOUT HOW
9 CLOSE OR ---

10 A APPROXIMATELY WHERE YOU'RE AT NOW.

11 Q AND COULD YOU SEE HIM FROM THAT DISTANCE?

12 A YES, SIR.

13 Q HOW WAS THE PARKING LOT LIGHTED?

14 A WELL, THAT TIME OF DAY THE SKY WAS BECOMING FAIRLY WELL
15 LIT, BUT THE PARKING LOT HAS LIGHTS IN IT AND WE DO HAVE
16 SIDEWALK LIGHTS ALSO. IT WAS VERY WELL LIT.

17 Q AND WAS THERE ANYTHING BLOCKING YOUR VIEW OF THIS
18 INDIVIDUAL?

19 A NO, SIR, NOT WHEN OUR PATHS CROSSED. WE WERE BOTH IN THE
20 MAIN THOROUGHFARE OF THE PARKING LOT AND WE BOTH FACED EACH
21 OTHER.

22 Q WHERE DID HE HAVE THE WEAPON?

23 A HE WAS CARRYING IT IN HIS RIGHT HAND DOWN BY HIS SIDE.
24 HE HAD IT BY THE GRIP DOWN BY HIS RIGHT LEG.

25 Q AND WHEN YOU LOOKED, WHAT PORTION OF HIS BODY DID YOU

STATE V. CHRONISTER

- 1 SEE?
- 2 A I SAW THE FRONT PART OF HIS BODY, JUST FACING ME.
- 3 Q YOU ALL FACING EACH OTHER?
- 4 A YES, SIR.
- 5 Q FOR HOW LONG A PERIOD OF TIME WERE YOU ALL THERE, WERE
- 6 YOU ABLE TO OBSERVE HIS FACE?
- 7 A JUST A FEW SECONDS, JUST LONG ENOUGH FOR US TO -- WE WERE
- 8 BOTH WALKING IN A NORMAL FASHION. SO JUST LONG ENOUGH FOR
- 9 BOTH OF US TO CONTINUE OUR PATHS.
- 10 Q DO YOU RECALL HOW HE WAS DRESSED?
- 11 A YES, SIR. I NOTICED FIRST HIS HAIR, THAT HE HAD LONG
- 12 WAVY HAIR AND IT WAS REAL APPARENT THAT IT HADN'T BEEN
- 13 COMBED, LIKE THIS PERSON HAD JUST GOTTEN OUT OF BED. AND HE
- 14 HAD ON A LIGHT COLORED SHIRT. IT SEEMED LIKE HE HAD ON A
- 15 LOOSE FITTING JACKET, LIKE A BLUE JEAN JACKET, LIGHT JACKET
- 16 AND DARK PANTS, MAYBE BLUE JEANS.
- 17 Q ANY FACIAL HAIR?
- 18 A YES, SIR, HE HAD A FULL BEARD. AND I NOTICED THAT RIGHT
- 19 OFF BECAUSE HIS BEARD DIDN'T MATCH HIS HAIR ON HIS HEAD. IT
- 20 WAS A RED COLOR. AND I KNOW SOME PEOPLE IN THE PLANT WHO LOOK
- 21 LIKE THAT, YOU KNOW, THAT THEY HAVE DARK HAIR AND A RED BEARD,
- 22 SO IT KIND OF STRUCK A NOTE. IT LOOKED A LITTLE FAMILIAR TO
- 23 SOMEONE.
- 24 Q AND APPROXIMATELY HOW TALL WAS HE?
- 25 A HE WAS APPROXIMATELY MY HEIGHT, 5'10" TO 6 FOOT,

1 SOMEWHERE IN THERE.

2 Q AND HIS SIZE?

3 A HE WAS A LITTLE SMALLER BUILD THAN I AM. I'D SAY
4 PROBABLY 170, 180 POUNDS, SOMEWHERE IN THERE.

5 Q AND DID YOU SAY ANYTHING TO HIM?

6 A NO, SIR.

7 Q DID HE SAY ANYTHING TO YOU?

8 A NO, SIR. WE DID MAKE EYE CONTACT FOR JUST A SECOND OR SO
9 IN THE PARKING LOT.

10 Q YOU MADE EYE CONTACT?

11 A YES, SIR.

12 Q AND THEN WHERE DID HE GO?

13 A HE CROSSED MY PATH AND WALKED IN HIS NORMAL FASHION ON
14 OVER TO A WHITE DODGE VAN THAT WAS PARKED IN THE MAIN PARKING
15 LOT. IT WASN'T PARKED IN A SPACE. IT WAS PARKED IN THE
16 AISLE. THE HEADLIGHTS WERE ON. AND I'M PRETTY SURE THE
17 ENGINE WAS RUNNING. IT WAS ALMOST AT THE END OF THE AISLE.

18 I MADE A DIAGRAM JUST SO I -- FOR PERSONAL REFERENCE.

19 THIS IS OUR PARKING LOT. I PUT ON THERE WHERE I PARKED AND
20 WHERE THE VAN WAS PARKED AND WHERE THE INCIDENT TOOK PLACE.

21 AND YOU'RE WELCOME TO LOOK AT THAT IF YOU NEED TO.

22 BUT THE VAN WAS LINED UP WITH THE SIDEWALK THAT HE WAS
23 WALKING DOWN. HE DIDN'T HAVE TO TURN OR ANYTHING. IT WAS
24 JUST A STRAIGHT LINE FROM WHERE THE INCIDENT TOOK PLACE BACK
25 TO THE VAN.

STATE V. CHRONISTER

1 Q AND WHERE DID YOU GO? AFTER HE WENT TO THE VAN, WHERE
2 DID YOU GO?

3 A ONCE I FELT SURE HE WAS GETTING IN THE VAN, I TURNED AND
4 RAN BACK TO WHERE THE INDIVIDUAL WAS LAYING ON THE SIDEWALK.

5 Q AND THE MAN WITH THE GUN, DID YOU SEE HIM ANY MORE THAT
6 MORNING?

7 A NO, SIR. WHEN I GOT BACK TO WHERE THE PERSON WAS LAYING,
8 I LOOKED BACK OVER TO SEE WHERE THE VAN HAD GONE, AND HE HAD
9 BACKED UP AND WAS LEAVING BY ANOTHER ENTRANCE UP BY OUR
10 TRAINING CENTER. AND THAT'S THE LAST I SAW OF THE VAN, WAS IT
11 GOING UP THE HILL AND THAT'S THE LAST I SAW IT.

12 Q AND LATER ON THAT SAME DAY DID YOU HAVE AN OCCASION TO
13 SEE A PICTURE LINE-UP?

14 A YES, SIR, I DID. ONE OF THE DETECTIVES CAME UP TO MY
15 RESIDENCE AND HAD A PICTURE LINE-UP WITH SEVERAL PICTURES IN
16 IT AND ASKED ME TO PICK OUT THE PERSON I SAW THAT MORNING.

17 Q DO YOU RECALL APPROXIMATELY WHAT TIME IT WAS PLEASE, SIR?

18 A THAT AFTERNOON?

19 Q WHEN THE DETECTIVE CAME?

20 A SOMEWHERE AROUND 3:00 O'CLOCK. I'M NOT EXACTLY SURE.

21 Q AND WAS ANYBODY ELSE WITH THE DETECTIVE?

22 A NO, SIR.

23 Q DO YOU RECALL HOW MANY PHOTOGRAPHS HE SHOWED YOU?

24 A IT WAS AROUND SIX.

25 Q HOW DID HE SHOW YOU THESE? WHAT PROCEDURE DID HE USE

1 PLEASE, SIR?

2 A HE TOLD ME WHAT HE WANTED ME TO DO, THAT HE HAD SOME
3 PHOTOS HERE AND HE WANTED ME TO LOOK AT AND TAKE MY TIME AND
4 SEE IF I SAW THE INDIVIDUAL THAT I'D SAW AT THE PLANT THAT
5 MORNING. AND THEY WERE NUMBERED. THEY WERE ARRANGED ON A
6 MANILA FOLDER AND HE ASKED ME TO LOOK AT IT AND TAKE MY TIME
7 AND GIVE HIM THE NUMBER OF THE PERSON THAT I THOUGHT WAS
8 THERE.

9 SO I TOOK MY TIME AND LOOKED OVER EACH ONE OF THEM.

10 AND HE ASKED ME DID I SEE THE PERSON?

11 I SAID, YES, SIR, I DO.

12 AND SO I GAVE HIM THE NUMBER THAT WAS BESIDE THE
13 INDIVIDUAL'S PICTURE.

14 Q DID THE OFFICER -- I BELIEVE IT WAS MR. WHITSTINE?

15 A YES, SIR.

16 Q DID HE IN ANY WAY INDICATE TO YOU WHICH PHOTOGRAPH TO
17 PICK OUT?

18 A NO, SIR. NO, SIR.

19 Q DID YOU LOOK AT ALL THE PHOTOGRAPHS BEFORE YOU PICKED ONE
20 OUT?

21 A VERY DEFINITELY, YES, SIR.

22 Q WERE YOU ABLE TO SEE THE MAN THAT YOU HAD SEEN EARLIER
23 THAT MORNING?

24 A YES, SIR.

25 Q WAS THERE ANY DOUBT IN YOUR MIND?

STATE V. CHRONISTER

1 A NO, SIR.

2 Q WERE YOU ABLE TO PICK HIM OUT?

3 A YES, SIR.

4 Q DID YOU SHOW MR. WHITSTINE WHICH ONE YOU PICKED OUT?

5 A I DID.

6 Q DID YOU KNOW THE MAN?

7 A NO, SIR.

8 Q HAD YOU EVER SEEN HIM BEFORE THAT MORNING?

9 A NO, SIR.

10 Q HAVE YOU SEEN HIM SINCE THEN?

11 A NO, SIR.

12 Q AND HOW MUCH ATTENTION DID YOU PAY TO THIS INDIVIDUAL
13 WHEN YOUR PATH'S CROSSED IN THE PARKING LOT?

14 A I WAS PAYING A WHOLE LOT OF ATTENTION TO HIM BECAUSE, YO
15 KNOW, IT WAS VERY APPARENT WHAT HAD JUST TAKEN PLACE. AND I
16 FELT I WAS IN PRETTY MUCH DANGER. SO I WAS WATCHING WHERE HE
17 WAS LOOKING AND WHERE HE WAS POINTING THE WEAPON. SO I WAS
18 LOOKING, WATCHING FOR HIS -- YOU KNOW, SOME KIND OF MOTION OR
19 EMOTION FROM HIS FACE TO INDICATE MAYBE HE WAS GOING TO ATTAC
20 ME OR WHATEVER.

21 Q WHEN YOU ALL WERE MEETING, WHAT DIRECTION WAS HE COMING
22 FROM? CAN YOU JUST POSITION YOU AND I SO YOU CAN -- WHAT
23 DIRECTION HE WAS COMING TO? YOU SAY YOU ALL CROSSED PATHS.
24 HOW DID ---

25 A FROM WHERE THE INCIDENT TOOK PLACE ON THE SIDEWALK, HE

1 WAS WALKING BACK DOWN THE SAME SIDEWALK TOWARD THE MAIN
2 PARKING LOT IN THIS DIRECTION. AND I WAS HAVING TO CROSS HIS
3 PATH GOING THIS WAY. SO WE MET PERPENDICULAR IN THE MAIN
4 THOROUGHFARE WHERE THE CARS EXIT THE MAIN PARKING LOT.

5 Q WOULD HIS LEFT SIDE HAVE BEEN TO YOU OR HIS RIGHT SIDE?

6 A HIS RIGHT SIDE.

7 Q HOW FAR DID YOU OBSERVE HIM AS HE WALKED IN FRONT OF YOU?

8 A THE ENTIRE DISTANCE FROM WHERE THE PERSON WAS LAYING
9 UNTIL WE CROSSED PATHS. AND I HAD TO LOOK BACK TO MAKE SURE
10 HE WAS GOING TO HIS VEHICLE.

11 Q AND WHAT IS THAT DISTANCE FROM YOUR ESTIMATION?

12 A FROM WHERE THE INCIDENT TOOK PLACE?

13 Q YES.

14 A I'D SAY AROUND 80 FEET.

15 Q HOW FAR PAST YOU DID HE GO?

16 A ANOTHER 60 FEET.

17 Q YOU MADE EYE CONTACT ONE TIME?

18 A YES, SIR, JUST FOR A COUPLE OF SECONDS THERE WHEN HE --
19 YOU KNOW, IN THE CLOSEST PROXIMITY TO HIM.

20 Q THE PERSON THAT YOU SAW THERE, IS THAT THE PERSON THAT
21 YOU PICKED OUT OF THE PICTURE LINE-UP ---

22 A YES, SIR.

23 Q --- THAT MR. WHITSTINE HAD?

24 A YES, SIR.

25 Q AND DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

1 A YES, SIR. HE -- THE DEFENDANT LOOKS VERY FAMILIAR. OF
2 COURSE, THE HAIR IS CUT AND THE BEARD IS GONE, BUT THE EYES
3 LOOK THE SAME.

4 Q I ASK YOU: DO YOU SEE THE MAN THAT YOU SAW PASSING YOU
5 IN THE PARKING LOT?

6 A THE PART THAT WAS UNCOVERED FROM THE FACIAL HAIR AND ALL
7 LOOKS LIKE HIM. THAT INDIVIDUAL LOOKS VERY DIFFERENT BECAUSE
8 OF THE HAIR STYLE AND THE ABSENCE OF THE BEARD. BUT THE
9 MUSTACHE COLOR IS THE SAME AS THE PERSON I SAW THAT MORNING.

10 MR. GRANT: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS MR.
11 SMITH MAY HAVE.

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q MR. AUTEN, WHAT YOU'RE TELLING US IS WHAT YOU ARE
15 IDENTIFYING IS A RED MUSTACHE, CORRECT, SIR?

16 A NO, SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIED
17 IN THE LINE-UP WAS THE PERSON I SAW IN THE PARKING LOT.

18 Q WHAT YOU ARE IDENTIFYING TODAY, YOU ARE IDENTIFYING A
19 COLOR OF THE MUSTACHE, CORRECT, SIR?

20 A THE EYES AND THE COLOR OF THE MUSTACHE, YES, SIR.

21 Q JUST A FEW QUESTIONS THAT I WOULD LIKE TO ASK YOU. YOU
22 TOLD US THAT INITIALLY YOU SAW THIS INDIVIDUAL -- SAW AN
23 INDIVIDUAL ON THE SIDEWALK SOME 120 FEET AWAY FROM YOU; IS
24 THAT CORRECT?

25 A YES, SIR.

- 1 Q AND THAT PART OF YOUR LINE OF SIGHT WAS OBSTRUCTED BY
2 YOUR REAR VIEW MIRROR; IS THAT CORRECT?
- 3 A NO, SIR.
- 4 Q WELL, YOU TOLD US YOU HAD TO LOOK OVER YOUR REAR VIEW
5 MIRROR?
- 6 A RIGHT. BUT THE INCIDENT WAS FAR ENOUGH AWAY, YOU KNOW,
7 IT WASN'T ON A DOWN GRADE OR ANYTHING, IT WAS JUST THAT
8 DIRECTION I HAD TO LOOK.
- 9 Q BUT YOU TOLD US YOU DID LOOK OVER YOUR REAR VIEW MIRROR?
- 10 A YES, SIR.
- 11 Q OKAY. AND YOU SAID THAT WHAT YOU WERE -- AT THAT POINT
12 IN TIME WHAT YOU WERE INTENT UPON WAS GETTING TO WORK?
- 13 A RIGHT.
- 14 Q YOU TOLD US THEN THAT THE INDIVIDUAL THAT YOU SAW STARTED
15 WALKING AND YOU PRETENDED THAT YOU DIDN'T SEE; IS THAT
16 CORRECT?
- 17 A ONCE -- YES, SIR. ONCE I HAD DETERMINED WHAT HAD JUST
18 TAKEN PLACE OVER THERE, I FIGURED IT WAS IN MY BEST INTEREST
19 TO PRETEND.
- 20 Q DID YOU GIVE A DESCRIPTION TO ANY OFFICERS AT THE SCENE?
- 21 A YES, SIR, I DID.
- 22 Q AND THAT DESCRIPTION WAS APPROXIMATELY 5'9", 160, 170
23 POUNDS?
- 24 A YES, SIR, THAT SOUNDS ABOUT RIGHT I THINK.
- 25 Q AND YOU TOLD THE SOLICITOR THAT YOU TALKED WITH THE

1 ORIGINAL -- GAVE A DESCRIPTION -- ORIGINALLY GIVEN AT
2 APPROXIMATELY 8:30 OR SO IN THE MORNING, VERY EARLY IN THE
3 MORNING, RIGHT AFTER THIS HAPPENED?

4 A YES, SIR.

5 Q AND YOU VIEWED THE PHOTOGRAPHS APPROXIMATELY 3:00 O'CLOCK
6 IN THE AFTERNOON?

7 A YES, SIR, THAT'S CORRECT.

8 Q OKAY. LET ME ASK YOU: DID YOU KNOW MRS. CHRONISTER?

9 A I WAS AN ACQUAINTANCE OF HERS AT THE PLANT. I DID NOT
10 KNOW HER PERSONALLY. BUT, YES, I DID.

11 Q BUT YOU HAD OBSERVED -- YOU SAW HER AT WORK?

12 A RIGHT, YES, SIR.

13 Q BETWEEN THE TIME YOU GAVE THE DESCRIPTION AND THE TIME
14 THAT YOU LATER TALKED TO THE OFFICERS AND VIEWED THE
15 PHOTOGRAPHS, YOU TALKED WITH OTHER CO-WORKERS ABOUT THIS
16 INCIDENT, CORRECT, SIR?

17 A NO, SIR. NO, SIR. I WAS A LITTLE UPSET THAT MORNING AND
18 I HAD ASKED MY SUPERVISOR, YOU MIND IF I WENT HOME?

19 AND THEY AGREED TO LET ME DO THAT.

20 Q SO YOU WERE UPSET AND YOU WENT HOME?

21 A YES, SIR. I DIDN'T WANT TO HAVE TO TALK TO ALL MY CO-
22 WORKERS ABOUT WHAT I HAD SEEN THAT MORNING. AND IT IS A
23 LITTLE UPSETTING TO SEE SOMEONE LAY THERE DIE ON THE SIDEWALK,
24 YES, SIR.

25 Q YOU TOLD US ABOUT THE EYE CONTACT AND YOU SAID THE

STATE V. CHRONISTER

1 APPROXIMATE TIME WAS JUST A COUPLE OF SECONDS, THIS EYE
2 CONTACT THAT YOU HAD?

3 A YES, SIR.

4 MR. SMITH: OKAY. JUST ONE MOMENT, YOUR HONOR.

5 (PAUSE.)

6 MR. SMITH: THANK YOU. NOTHING FURTHER.

7 THE COURT: ANY REDIRECT?

8 MR. GRANT: NO, SIR.

9 THE COURT: YOU MAY STEP DOWN.

10 (THE WITNESS LEAVES THE WITNESS STAND.)

11 MR. GRANT: WE CALL OTIS WHITSTINE PLEASE.

12 OTIS J. WHITSTINE, BEING

13 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. GRANT:

16 Q IF YOU WOULDN'T MIND, STATE YOUR FULL NAME FOR THE COURT?

17 A OTIS JULLIAN WHITSTINE.

18 Q I BELIEVE YOU'RE WITH THE YORK COUNTY SHERIFF'S

19 DEPARTMENT?

20 A I AM.

21 Q AND WERE YOU INVOLVED IN AN INVESTIGATION OF THE DEATH OF
22 MARIE CHRONISTER ON FEBRUARY THE 14TH, 1992?

23 A I WAS.

24 Q DID YOU HAVE OCCASION TO MEET WITH MR. THOMAS AUTEN,

25 A-U-T-E-N?

STATE V. CHRONISTER

- 1 A YES, SIR.
- 2 Q WHEN DID YOU MEET WITH HIM PLEASE, SIR?
- 3 A IT WAS ON FEBRUARY THE 14TH OF THIS YEAR.
- 4 Q WHERE DID YOU SEE HIM?
- 5 A HE WAS AT HIS RESIDENCE.
- 6 Q AND PRIOR TO GOING TO SEE HIM HAD YOU PREPARED A
- 7 PHOTOGRAPHIC LINE-UP FOR HIM TO VIEW?
- 8 A YES, SIR.
- 9 Q AND I'LL ASK YOU: DID YOU HAVE THE DEFENDANT'S PICTURE
- 10 IN THAT PHOTOGRAPHIC LINE-UP?
- 11 A I DID.
- 12 Q DO YOU HAVE THAT SAME LINE-UP THAT YOU USED?
- 13 A YES, SIR.
- 14 Q SHOW IT TO ME PLEASE.
- 15 (PAUSE.)
- 16 Q AND IF YOU WOULD IDENTIFY THAT, THAT'S CONTAINED IN THE
- 17 MANILLA ENVELOPE. WHAT IS THAT PLEASE, SIR?
- 18 A THAT'S THE PHOTOGRAPHIC LINE-UP THAT I SHOWED MR. AUTEN.
- 19 Q AND THIS PIECE OF PAPER, WHAT IS THAT PLEASE?
- 20 A THESE ARE THE NAMES OF THE PEOPLE IN THE SIX PICTURES IN
- 21 THE PHOTOGRAPHIC LINE-UP.
- 22 Q WERE THESE NAMES IN THERE WHEN YOU SHOWED IT TO MR.
- 23 AUTEN?
- 24 A NO, SIR.
- 25 Q WHERE WAS THIS ITEM?

1 A I HAD IT IN MY POSSESSION.

2 MR. GRANT: FOR THE PURPOSE OF THIS HEARING, WE WOULD
3 OFFER THIS.

4 THE COURT: HAND IT TO COUNSEL.

5 (PAUSE.)

6 THE COURT: MARK IT FOR THE PURPOSE OF THIS HEARING, IT'S
7 AN IN-CAMERA HEARING.

8 (PHOTO LINE-UP MARKED FOR IDENTIFICATION AS STATE'S
9 EXHIBIT NO. 7.)

10 Q YOU IDENTIFIED THAT AS WHAT AGAIN PLEASE, SIR?

11 A THESE ARE THE NAMES OF THE PICTURES. THE LINE-UP CONSIST
12 OF SIX PICTURES, AND THESE ARE THE NAMES OF THE PEOPLE IN THE
13 SIX PICTURES.

14 Q WHO MADE THAT RECORD?

15 A THE LINE-UP WAS MADE BY DETECTIVE JETER IN GASTON COUNTY.

16 Q THESE ARE NAMES THAT YOU HAD?

17 A YES, SIR.

18 MR. GRANT: WE WOULD OFFER THIS FOR THE PURPOSE OF THIS
19 HEARING.

20 THE COURT: WITHOUT OBJECTION ---

21 MR. SMITH: WITHOUT OBJECTION TO THE MOTION.

22 THE COURT: --- MARK IT.

23 (LIST OF NAMES AND D.O.B. OF PHOTO LINE-UP MARKED FOR
24 IDENTIFICATION AS STATE'S EXHIBIT NO. 8.)

25 Q MR. WHITSTINE, WOULD YOU DESCRIBE WHEN YOU TOOK THAT

1 LINE-UP TO MR. AUTEN WHAT PROCEDURE DID YOU USE PLEASE, SIR?
2 WHAT DID YOU DO WHEN YOU GOT THERE?

3 A WHEN I WENT TO MR. AUTEN'S RESIDENCE, I TALKED WITH HIM
4 BRIEFLY, EXPLAINED THE REASON THAT I WAS THERE, AND ADVISED
5 HIM THAT I HAD A PICTURE LINE-UP TO SHOW HIM. AND IF HE
6 WOULD, JUST TAKE HIS TIME AND LOOK THE PICTURES OVER REAL GOOD
7 AND SEE IF THE DEFENDANT OR THE SUSPECT AT THAT TIME WAS IN
8 THAT LINE-UP. AND HE DID SO.

9 Q AND WHAT DID MR. AUTEN DO ONCE YOU GAVE HIM THIS FOLDER
10 WITH THE PICTURES IN IT?

11 A WHAT DID ---

12 Q WHAT DID MR. AUTEN DO? WHEN YOU GAVE HIM THE FOLDER WITH
13 THE PICTURES IN IT, WHAT DID HE DO?

14 A WHEN I GAVE HIM THE FOLDER WITH THE PICTURES IN IT, HE
15 LOOKED AT THEM FOR ABOUT THREE OR FOUR MINUTES AND THEN HE
16 SAID THAT WAS HIM.

17 AND THEN I ASKED HIM WHICH -- WHAT NUMBER?

18 HE SAID, NO. 3.

19 Q AND WAS HE CERTAIN WHEN HE PICKED OUT NO. 3?

20 A HE WAS POSITIVE.

21 Q DID YOU IN ANY WAY INDICATE TO HIM WHICH PICTURE HE
22 SHOULD CHOOSE?

23 A NO, SIR.

24 Q DID HE SHOW ANY HESITATION AT ANY TIME WHILE YOU WERE
25 SHOWING HIM THE LINE-UP?

1 A NO, SIR.

2 Q WHO WAS PICTURE NO. 3?

3 A JEFFERY L. CHRONISTER.

4 Q WAS ANY OTHER OFFICER WITH YOU WHEN YOU SHOWED MR. AUTEN
5 THE LINE-UP?

6 A NO, SIR.

7 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY
8 HAVE.

9 CROSS EXAMINATION

10 BY MR. SMITH:

11 Q OFFICER, YOU TOLD THE SOLICITOR THAT WHEN YOU WENT AND
12 TALKED WITH MR. AUTEN AT HIS HOME, BASICALLY YOU ASKED HIM TO
13 SEE IF JEFFERY CHRONISTER WAS IN THE LINE-UP?

14 A NO, SIR.

15 Q YOU SAID TO SEE IF THE DEFENDANT WAS IN THE LINE-UP?

16 A WELL, WHAT I DID WHEN I SHOWED HIM THE LINE-UP, I SHOWED
17 HIM THE PICTURES AND ASKED HIM IF THE MAN THAT WAS AT DUKE
18 POWER ON THAT -- EARLIER THAT DAY WAS IN THAT LINE-UP.

19 Q NOW, WHEN YOU TALKED WITH HIM -- DID YOU TALK WITH HIM
20 EARLIER IN THE MORNING THAT DAY?

21 A I DON'T RECALL, BUT IT'S POSSIBLE THAT I DID.

22 Q AND YOU HAD TO GO TO HIS HOUSE TO TALK TO HIM BECAUSE HE
23 WAS SOMEWHAT UPSET, CORRECT, SIR? HE HAD TO LEAVE WORK?

24 A AS I REMEMBER CORRECTLY, WE TALKED WITH A BUNCH OF
25 WITNESSES THAT MORNING AT DUKE POWER. AND THEN HE HAD LEFT

1 AND WENT HOME. AND I CALLED HIM AT HOME. AND THEN I WENT AND
2 TOOK THE LINE-UP TO HIS HOME.

3 Q AND WHEN YOU GOT THERE, HE WAS STILL UPSET CONCERNING
4 THIS INCIDENT THAT HAD HAPPENED?

5 A I WOULD SAY SO.

6 Q YOU SAID THAT WHEN HE LOOKED AT THE PHOTOGRAPHS, THAT HE
7 LOOKED AT THEM THREE OR FOUR MINUTES?

8 A YES, SIR.

9 Q NOW, YOU DID NOT PREPARE THE LINE-UP; IS THAT CORRECT,
10 OFFICER?

11 A NO, SIR..

12 Q AND YOU DON'T KNOW WHERE THE PHOTOGRAPHS CAME FROM OR WHO
13 OBTAINED THEM OR ANYTHING OF THAT NATURE?

14 A THEY CAME FROM DETECTIVE JETER WITH THE GASTON COUNTY
15 POLICE DEPARTMENT.

16 Q BUT THEY PUT IT TOGETHER?

17 A YES, SIR.

18 Q AND THE PHOTOGRAPHS WERE IN THE FOLDER AS THEY ARE TODAY?

19 A YES, SIR. THE FOLDER WAS COMPLETE AS IT IS NOW.

20 Q YOU SAID THAT YOU TALKED WITH HIM, MR. AUTEN, BRIEFLY.

21 IN TALKING WITH HIM YOU DISCUSSED WHAT HAD OCCURRED OUT AT

22 CATAWBA?

23 A YES, SIR.

24 Q DID YOU DISCUSS THE DECEASED LADY, MRS. CHRONISTER?

25 A AS FAR AS WHEN I WENT TO HIS HOME?

1 Q YES, SIR.

2 A NO, SIR. HE HAD ALREADY ANSWERED THE QUESTIONS AT DUKE
3 POWER EARLIER IN THAT DAY.

4 Q AND YOU HAVEN'T GONE BACK AND TALKED WITH HIM FURTHER
5 CONCERNING ANY IDENTIFICATION SINCE THE LINE-UP ON THE 14TH?

6 A NO, SIR.

7 MR. SMITH: THAT'S ALL I HAVE OF THIS WITNESS, YOUR
8 HONOR.

9 THE COURT: REDIRECT?

10 MR. GRANT: NO, SIR. THANK YOU. YOU MAY COME DOWN.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 MR. GRANT: YOUR HONOR, THAT WOULD BE OUR OFFER ON THE
13 IDENTIFICATION AND LINE-UP PROCEEDING.

14 THE COURT: ALL RIGHT. DO YOU WISH TO OFFER ANY
15 TESTIMONY OR EVIDENCE, MR. SMITH, ON THAT?

16 MR. SMITH: I HAVE NO EVIDENCE AS TO THAT, YOUR HONOR.

17 I WOULD JUST BRIEFLY ---

18 THE COURT: ALL RIGHT.

19 MR. SMITH: --- LIKE TO STATE MY POSITION.

20 YOUR HONOR, THE TESTIMONY OF MR. AUTEN I BELIEVE IN AND
21 OF ITSELF IS SUFFICIENT TO SUPPRESS ANY IN-COURT

22 IDENTIFICATION BY MR. AUTEN. THE TESTIMONY FROM HIM WAS THAT
23 HIS IDENTIFICATION IN COURT TODAY WAS BASED UPON THE COLOR OF
24 THE MUSTACHE, THAT HE -- AND I THINK THAT IN AND OF ITSELF
25 WOULD BE SUFFICIENT TO SUPPRESS -- OR TO SUPPRESS ANY IN-COURT

1 IDENTIFICATION. HE WAS SIMPLY NOT SURE.

2 I THINK THE LAST QUESTION THAT I ASKED WAS: WAS THE
3 IDENTIFICATION TODAY BASED UPON THE COLOR OF THE BEARD -- OR
4 THE MUSTACHE?

5 AND HE ANSWERED THAT IT WAS, YOUR HONOR.

6 AND I THINK THAT BASED UPON THAT THE IN-COURT
7 IDENTIFICATION SHOULD NOT BE PERMITTED.

8 HE'S TESTIFIED HE OBVIOUSLY WAS UPSET. AND IT WAS
9 OBVIOUS FROM HIS DEemeanOR ON THE STAND THAT HE WAS UPSET. HE
10 WAS UPSET TODAY.

11 AND I JUST THINK THAT THE IN-COURT IDENTIFICATION BY MR.
12 AUTEN SHOULD BE SUPPRESSED. I DO NOT THINK THAT IT HAS THE
13 INDICIA OF RELIABILITY THAT IT SHOULD HAVE TO BE -- TO HAVE
14 HIM SIT UP THERE AND POSITIVELY POINT OUT THAT THIS IS THE
15 PERSON THAT HE SAW.

16 THE COURT: SOLICITOR.

17 MR. GRANT: YOUR HONOR, FOR THE COURT, HE DID NOT AND HAS
18 NOT SAID THIS IS THE MAN. HE DESCRIBED HIM AS BEING THE SAME
19 EYES, THE SAME MUSTACHE, THE SAME HAIR. AND I SUBMIT THAT
20 THAT BASED UPON HIS DEGREE OF OPPORTUNITIES TO VIEW HIM AS HE
21 DESCRIBED TO YOU, THE DEGREE OF ATTENTION WHICH HE DESCRIBED
22 THAT HE WAS CONCERNED ABOUT THE SITUATION. HE WAS WATCHING
23 THIS GUY THE BEST HE COULD. THE LEVEL OF CERTAINTY WHEN HE
24 PICKED THE PICTURE OUT OF THE PHOTOGRAPHIC LINE-UP AND THE
25 TIME BETWEEN THAT BETWEEN 7:00 AND 3:00 AND THAT THE FACT THAT

STATE V. CHRONISTER

(DECISION)

-45-

141

1 HE PICKED HIM OUT OF THE LINE-UP IS PROBATIVE AND ADMISSIBLE.

2 AND THE FACT FROM THE WITNESS STAND HE CAN SAY THIS MAN
3 HAS THE SAME EYES AND THE SAME MUSTACHE, SAME EYES AS THE MAN
4 I SAW IN THE PARKING LOT WOULD BE PROBATIVE AND ADMISSIBLE.

5 OF COURSE, THE OFFICER'S TESTIMONY I WOULD SUBMIT WOULD
6 BE PROBATIVE AS TO THE LINE-UP PROCEDURE, HE PICKED OUT THE
7 PICTURE OF THE DEFENDANT.

8 MR. SMITH: YOUR HONOR, JUST ONE MORE BRIEF THING IN
9 SUPPORT OF MY ARGUMENT. NEVER AT ANY TIME ON THE WITNESS
10 STAND, EVEN WITH THE PHOTOGRAPHS IN FRONT OF HIM TODAY, DID
11 MR. AUTEN IDENTIFY MR. CHRONISTER. AND THERE WAS NO CERTAINTY
12 TODAY WITH BOTH THE PHOTOGRAPH AND MR. CHRONISTER HERE ON THE
13 PART OF MR. AUTEN.

14 AND I SUBMIT THAT IT IS NOT -- IT IS NOT RELIABLE AND IT
15 SHOULD BE SUPPRESSED.

16 THE COURT: WELL, THERE ARE TWO THINGS, TWO ISSUES: AND
17 THAT IS WHETHER OR NOT THE STATE WOULD BE PERMITTED TO USE THE
18 LINE-UP IDENTIFICATION, THEN OF COURSE ANY IN-COURT
19 IDENTIFICATION OF THE WITNESS.

20 INSOFAR AS THE IN-COURT IDENTIFICATION, HE TESTIFIED THAT
21 BASED UPON HIS MUSTACHE AND HIS EYES THAT HE APPEARS TO BE THE
22 ONE THAT HE IDENTIFIED; THAT'S WHAT THE WITNESS SAID.

23 ON THE ISSUE OF THE LINE-UP, PHOTOGRAPHIC LINE-UP
24 IDENTIFICATION, WHICH IS BEFORE THE COURT, THERE ARE SIX
25 PHOTOGRAPHS. THEY APPEAR TO BE ALL SIX WHITE MALES. YOU

STATE V. CHRONISTER

(DECISION)

-46-
142

1 CANNOT DISTINGUISH ANY DIFFERENCES IN HEIGHT. ONE OF THEM
2 LOOKS A LITTLE HEAVIER, ONE OF THEM LOOKS A LITTLE SMALLER
3 THAN THE OTHER THREE OR FOUR. EACH OF THEM HAVE FACIAL HAIR,
4 THE SAME TYPE OF FACIAL HAIR, THAT APPEARING TO BE A BEARD AND
5 A MUSTACHE. ONE OF THEM HAS A LITTLE LESS, THERE'S A LITTLE
6 DIFFERENT CUT OF IT I GUESS.

7 THERE DOESN'T APPEAR TO BE ANYTHING SUGGESTIVE IN THE
8 PHOTO LINE-UP.

9 THE TESTIMONY IS IN ADDITION TO WHICH THEY HAD A LISTING
10 OF WHO THE ACTUAL INDIVIDUALS WERE SHOWING BIRTH DATES. THERE
11 IS A WIDE RANGE OF AGE IF THE BIRTH DATES ARE CORRECT.
12 HOWEVER, YOU CANNOT CONCERN THAT FROM THE PHOTOGRAPHIC
13 PICTURES -- OR THE PHOTOGRAPHIC LINE-UP.

14 THE COURT FIRST EXAMINES THE PHOTOGRAPH ARRAY, LOOKING AT
15 THE SIZE OF THE ARRAY, THAT BEING THE SIX, THE AMOUNT OF THE
16 PRESENTATION BY THE OFFICER, AND WHAT IS PRESENTED BY THE
17 ARRAY OF PHOTOGRAPHS AND DETERMINE WHETHER OR NOT THERE IS
18 ANYTHING INHERENTLY PREJUDICIAL ABOUT THE PRESENTATION IN
19 THIS.

20 THERE CERTAINLY DOESN'T APPEAR TO BE ANYTHING
21 PREJUDICIAL. AS I SAID, THERE'S NO CHARACTERISTICS THAT WERE
22 GIVEN BY THE WITNESS TO THE OFFICERS THAT ARE NOT SHOWN IN THE
23 PHOTOGRAPHIC LINE-UP.

24 I DO FIND THAT THE PHOTOGRAPHIC LINEUP AS PRESENTED TO
25 THE COURT AND EVIDENCE BEFORE THE COURT IS NOT SO UNDULY

STATE V. CHRONISTER

-46-

1 DOES ANYBODY WANT NOTES?

2 (NO RESPONSE.)

3 THE COURT: VERY GOOD. IF ANYONE STARTS TAKING NOTES,
4 YOU NOTIFY ME FIRST. I HAVE TO GIVE YOU A LITTLE CHARGE IN
5 THAT REGARD. OKAY. THANK YOU VERY MUCH.

6 AT THIS TIME, SOLICITOR, YOU MAY CALL YOUR FIRST WITNESS.

7 MR. GRANT: WE CALL JOEL SMITH.

8 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, IF AT ANY
9 TIME YOU CAN'T HEAR OR SEE, RAISE YOUR HAND AND LET ME KNOW.
10 THE COURT REPORTER WILL PLAY IT BACK FOR YOU OR HAVE THE
11 WITNESS SPEAK UP. IF YOU GET TIRED BEFORE I GIVE YOU A BREAK,
12 JUST RAISE YOUR HAND AND WE'LL STOP FOR YOU.

13 BE SWORN PLEASE.

14 JOEL GORDON SMITH, BEING
15 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE COURT: IF YOU WILL, SIR, THAT MICROPHONE WILL MOVE
17 AROUND. JUST TRY TO SPEAK INTO IT. IF YOU WOULD, SPEAK OUT.
18 THANK YOU, SIR.

19 DIRECT EXAMINATION

20 BY MR. GRANT:

21 Q MR. SMITH, IF YOU WOULD, STATE YOUR FULL NAME FOR THE
22 COURT?

23 A JOEL GORDON SMITH.

24 THE COURT: PULL THAT MICROPHONE A LITTLE BIT CLOSER.

25 A JOEL GORDON SMITH.

- 1 THE COURT: VERY GOOD.
- 2 Q WHERE DO YOU LIVE PLEASE, SIR?
- 3 A 450 SOUTH SHILOH ROAD, YORK.
- 4 Q AND WHERE DO YOU WORK?
- 5 A FOR DUKE POWER COMPANY AT CATAWBA NUCLEAR STATION.
- 6 Q BACK ON FEBRUARY 14, 1992 WHERE WERE YOU WORKING?
- 7 A AT CATAWBA NUCLEAR STATION.
- 8 Q AND DO YOU RECALL THE MORNING OF FEBRUARY 14?
- 9 A YES, I DO.
- 10 Q DO YOU RECALL WHAT DAY OF THE WEEK IT WAS?
- 11 A FRIDAY.
- 12 Q ALL RIGHT, SIR. WHAT TIME WOULD YOU HAVE GONE TO WORK
- 13 THAT FRIDAY MORNING?
- 14 A I WAS SCHEDULED TO REPORT TO WORK AT 7:00 O'CLOCK A.M.
- 15 Q AND DID YOU GO TO WORK?
- 16 A YES, I DID.
- 17 Q WHERE HAD YOU PARKED WHEN YOU GOT TO WORK PLEASE, SIR?
- 18 A IN THE ADMIN PARKING LOT, JUST IN FRONT OF THE MAIN
- 19 ENTRANCE TO THE ADMINISTRATION BUILDING AT CATAWBA NUCLEAR
- 20 STATION.
-
- 21 Q WAS ANYBODY ELSE WITH YOU?
- 22 A NO, THERE WAS NO ONE ELSE IN MY VEHICLE WITH ME.
- 23 Q DID YOU KNOW THE LADY, MARIE GAIL CHRONISTER?
- 24 A YES, I DID.
- 25 Q HOW DID YOU KNOW HER?

- 1 A JUST FROM -- A FELLOW EMPLOYEE AT WORK.
- 2 Q HOW LONG HAD YOU KNOWN HER AS A FELLOW EMPLOYEE?
- 3 A APPROXIMATELY SEVEN YEARS I WOULD THINK.
- 4 Q WERE YOU FAMILIAR WITH THE TYPE VEHICLE THAT SHE HAD?
- 5 A YES, I WAS.
- 6 Q WHAT TYPE OF VEHICLE DID SHE HAVE?
- 7 A IT WAS A TAN COLORED SMALL DODGE, TWO-DOOR. I'M NOT SURE
- 8 OF THE YEAR OR MODEL.
- 9 Q AND WHEN YOU GOT TO WORK THAT MORNING IN THE PARKING LOT,
- 10 DID YOU SEE MARIE GAIL CHRONISTER?
- 11 A YES, I DID.
- 12 Q WHERE WAS SHE WHEN YOU FIRST SAW HER?
- 13 A SHE HAD JUST EXITED HER VEHICLE WHICH WAS PARKED JUST IN
- 14 FRONT OF ME. AND SHE WAS WALKING TOWARD THE FRONT DOOR OF THE
- 15 ADMIN BUILDING.
- 16 Q AND COULD YOU SEE HER VEHICLE WHERE YOU WERE?
- 17 A YES, I COULD.
- 18 Q HOW NEAR WERE YOU TO HER?
- 19 A PROBABLY WITHIN 50 TO 60 FEET.
- 20 Q WAS ANYBODY ELSE IN HER VEHICLE?
-
- 21 A I DIDN'T SEE ANYONE ELSE.
- 22 Q ALL RIGHT. AND WHAT DID YOU SEE HER DO? DID YOU SEE HER
- 23 GET OUT OF THE VEHICLE?
- 24 A I DID NOT ACTUALLY SEE HER GET OUT OF HER VEHICLE.
- 25 APPARENTLY, SHE HAD JUST EXITED THE VEHICLE AND WAS WALKING

1 TOWARDS THE FRONT DOOR AS I WAS PARKING MY VEHICLE.

2 Q ALL RIGHT, SIR. AND AFTER YOU PARKED YOUR VEHICLE, DID
3 YOU SEE ANYTHING GOING ON RIGHT WHEN YOU PARKED YOUR VEHICLE?

4 A NO, I DIDN'T.

5 Q DID YOU HEAR ANYTHING?

6 A NO, I DID NOT.

7 Q WHAT DID YOU DO AFTER YOU PARKED YOUR VEHICLE?

8 A APPROXIMATELY -- THE BEST I CAN RECALL, 30 TO 45 SECONDS
9 LATER I EXITED MY VEHICLE AND I ALSO HEADED TOWARDS THE FRONT
10 DOOR OF THE ADMIN BUILDING. WHEN I CLEARED THE VEHICLES THAT
11 WERE PARKED IN FRONT OF ME, THAT'S WHEN I SAW HER LAYING ON
12 THE SIDEWALK JUST OUTSIDE THE DOOR.

13 Q THIS WAS HOW LONG AFTER YOU HAD SEEN HER GET OUT OF HER
14 VEHICLE?

15 A I'M THINKING ABOUT 30 TO 45 SECONDS.

16 Q WHEN YOU SAW HER, WHAT POSITION WAS SHE IN?

17 A SHE WAS LAYING ON HER LEFT SIDE AND HER HEAD LAYING ON
18 THE -- ON THE SIDEWALK.

19 Q WAS ANYBODY ELSE AROUND HER AT THAT TIME?

20 A I DIDN'T SEE ANYONE ELSE AT THAT TIME.

21 Q I WOULD LIKE TO SHOW YOU THIS PHOTOGRAPH FIRST AND ASK IF
22 YOU CAN IDENTIFY THE VEHICLE AND THE LOCATION OF THAT
23 PHOTOGRAPH?

24 A YES, THIS APPEARS TO BE MARIE'S VEHICLE AND THIS IS THE
25 PARKING LOT OF ADMIN PARKING LOT WHERE BOTH OF US PARKED OUR

1 VEHICLES.

2 Q AND IS THAT WHERE HERE VEHICLE WAS LOCATED ON THE MORNING
3 THAT YOU SAW HER, FEBRUARY 14?

4 A YES, IT IS.

5 Q AND DOES IT ACCURATELY REFLECT WHERE SHE PARKED HER
6 VEHICLE IN RELATION TO THE ADMIN BUILDING?

7 A YES, IT DOES.

8 Q THE WAY YOU SAW IT?

9 A YES.

10 MR. GRANT: WE WOULD OFFER THIS AS STATE'S EXHIBIT NO. 1.

11 THE COURT: ANY OBJECTION?

12 MR. SMITH: YOUR HONOR, I DON'T THINK THE PROPER
13 FOUNDATION HAS BEEN -- HAS BEEN ELICITED FOR THAT TO GO IN.

14 THE COURT: WHAT DO YOU MEAN BY THAT? THE WITNESS SAYS
15 THAT HE CAN IDENTIFY THE PHOTOGRAPH. IT ACCURATELY SHOWS THE
16 CONDITION IN THE PHOTOGRAPH ON THE DATE THAT HE SAW HER. WHAT
17 OTHER FOUNDATION WOULD HE HAVE TO LAY?

18 MR. SMITH: HE SAID THAT APPEARED -- HE SAID THAT
19 APPEARED TO BE THE VEHICLE THAT -- THERE'S NO INDICATION WHEN
20 IN TIME THIS PHOTOGRAPH WAS TAKEN, YOUR HONOR. AND ON THAT
21 BASIS, I SAY THAT THE PROPER FOUNDATION HAS NOT BEEN LAID.

22 THE COURT: MOTION IS OVERRULED. HAVE THE COURT REPORTER
23 MARK THE EXHIBIT PLEASE AND HAND IT UP TO THE COURT,
24 SOLICITOR.

25 (5 X 7 COLOR PHOTOGRAPH MARKED IN EVIDENCE AS STATE'S

1 EXHIBIT NO. 1.)

2 THE COURT: NOW IN THE RECORD OF THIS CASE OVER THE
3 OBJECTION OF THE DEFENDANT AN EXHIBIT DESIGNATED AS STATE'S
4 EXHIBIT NO. 1. IT IS DESCRIBED AS A COLOR PHOTOGRAPH
5 APPROXIMATELY 5 X 7 IN SIZE NOW ENTERED OVER OBJECTION. YOU
6 MAY PUBLISH IT TO THE JURY.

7 MR. GRANT: YOUR HONOR, IF I MAY, I'D LIKE TO OFFER ONE
8 OTHER, THEN PUBLISH BOTH AT THE SAME TIME.

9 THE COURT: THAT WILL BE FINE, SOLICITOR.

10 Q I SHOW YOU THIS PHOTOGRAPH AND ASK YOU IF YOU CAN
11 IDENTIFY THAT? WHO'S VEHICLE IS THAT IN THAT PHOTOGRAPH
12 PLEASE, SIR?

13 A THAT APPEARS TO BE MARIE'S VEHICLE ALSO.

14 Q AND IS THAT THE LOCATION IT WAS ON THE MORNING OF THE
15 14TH?

16 A YES, I BELIEVE IT IS.

17 Q WHERE WERE YOU PARKED?

18 A MY POSITION WOULD HAVE BEEN FURTHER BEHIND. AND IF YOU
19 WERE LOOKING AT THE BACK OF HER CAR, PROBABLY ABOUT 2 PARKING
20 SPACES TO THE RIGHT.

21 Q ~~AND LOOKING AT THAT PHOTOGRAPH, DOES IT ACCURATELY~~
22 ~~REFLECT WHERE SHE PARKED ON THAT MORNING?~~

23 A YES, IT DOES.

24 Q IS THAT AS YOU SAW IT THAT MORNING?

25 A YES, IT IS.

1 Q ALL RIGHT, SIR. I BELIEVE THAT'S A CLOSER PHOTOGRAPH
2 THAN THE OTHER SHOWING THE LOCATION OF THE BUILDING?

3 A THAT'S CORRECT.

4 MR. GRANT: WE WOULD OFFER IT, YOUR HONOR.

5 THE COURT: COUNSEL PLEASE?

6 MR. SMITH: YOUR HONOR, I'VE SEEN IT AND SUBJECT TO THE
7 SAME OBJECTION.

8 THE COURT: THE SAME OBJECTION. OBJECTION IS OVERRULED.
9 HAVE THE COURT REPORTER MARK IT.

10 (5 X 7 COLOR PHOTO MARKED IN EVIDENCE AS STATE'S EXHIBIT
11 NO. 2.)

12 THE COURT: NOW IN THE RECORD OF THIS CASE OVER THE
13 OBJECTION OF THE DEFENDANT AN EXHIBIT WHICH WILL BE DESIGNATED
14 AS STATE'S EXHIBIT NO. 2 DESCRIBED AS A COLOR PHOTOGRAPH
15 APPROXIMATELY 5 BY 7 IN SIZE. YOU MAY PUBLISH IT TO THE JURY.

16 MR. GRANT: THANK YOU, YOUR HONOR.

17 Q MR. SMITH, COULD YOU COME DOWN AND IDENTIFY THIS
18 PHOTOGRAPH FOR THE JURY PLEASE, SIR?

19 (WITNESS STEPS DOWN FROM THE WITNESS STAND.)

20 THE COURT: SOLICITOR, IF YOU WOULD, HAVE HIM STAND THERE
21 IN FRONT OF THAT MICROPHONE WHEN HE MAKES A DESCRIPTION.

22 MR. GRANT: YES, SIR.

23 THE COURT: AND HOLD THE PHOTOGRAPH UP SO ALL THE JURORS
24 CAN SEE IT. STAND BACK JUST A LITTLE MR. SMITH.

25 MR. GERALD SMITH, YOU MAY MOVE OVER WHERE YOU CAN SEE AS

STATE V. CHRONISTER

1 WELL.

2 MR. SMITH: THANK YOU, YOUR HONOR.

3 Q SHOWING YOU STATE'S EXHIBIT NO. 1, IF YOU COULD, DESCRIBE
4 FOR THE JURY WHAT IS SHOWN IN THAT PHOTOGRAPH? YOU COULD JUST
5 START WITH THE ADMINISTRATION BUILDING IF YOU WOULD.

6 A OKAY. THAT'S -- THE DOORWAY YOU SEE IS THE ENTRANCE,
7 MAIN ENTRANCE, TO THE ADMIN BUILDING.

8 Q GO AHEAD AND POINT OUT THE ---

9 THE COURT: HOLD IT JUST A MINUTE. THIS IS SUPPOSED TO
10 BE THE MICROPHONE HERE.

11 WITNESS: ALL RIGHT, SIR.

12 A THIS IS THE MAIN ENTRANCE TO THE CATAWBA NUCLEAR STATION,
13 TO THE ADMIN BUILDING. AND THIS IS MARIE CHRONISTER'S
14 VEHICLE.

15 THE COURT: TAKE IT DOWN TO THE OTHER END SO THE OTHER
16 JURORS MAY SEE.

17 MR. GRANT: ALL RIGHT.

18 THE COURT: GIVE THE SAME INFORMATION.

19 A THIS IS THE MAIN ENTRANCE TO THE CATAWBA NUCLEAR STATION
20 ADMIN BUILDING. THIS VEHICLE IS MARIE CHRONISTER'S.

21 ~~THE COURT: WERE ALL THE JURORS ON THIS SIDE ABLE TO SEE?~~

22 (NO RESPONSE.)

23 THE COURT: IF NOT, RAISE YOUR HAND AT ANY TIME.

24 YOU MAY PROCEED.

25 Q WHERE WERE YOU PARKED IN RELATION TO MARIE'S VEHICLE?

STATE V. CHRONISTER

1 A OKAY. FROM BEHIND LOOKING AT THE BACK OF HER VEHICLE,
2 I'D HAVE BEEN APPROXIMATELY 50 FEET BEHIND HER VEHICLE IN THE
3 NEXT PARKING ROW, APPROXIMATELY 2 SPACES TO THE RIGHT.

4 THE COURT: AND IF YOU WOULD, POSITION IN FRONT OF THAT
5 MICROPHONE.

6 MR. GRANT: YES, SIR.

7 THE COURT: POSITION SO THAT EVERYBODY CAN HEAR.

8 MR. GRANT: YES, SIR.

9 Q WHERE WERE YOU PARKED FOR THIS PORTION OF THE JURY
10 PLEASE, SIR?

11 A OKAY. LOOKING AT THE BACK OF MARIE'S VEHICLE, I WAS IN
12 THE NEXT PARKING ROW BEHIND HER APPROXIMATELY 50 FEET AND
13 APPROXIMATELY 2 SPACES TO THE RIGHT IF YOU WERE LOOKING AT THE
14 BACK OF THE VEHICLE.

15 THE COURT: THAT WAS ON STATE'S EXHIBIT 1, SOLICITOR?

16 MR. GRANT: YES, SIR, ALL THAT WAS ON STATE'S 1.

17 Q NOW SHOWING YOU STATE'S EXHIBIT NO. 2, IF YOU CAN
18 IDENTIFY THE ADMINISTRATION BUILDING PLEASE, SIR?

19 A THE ADMINISTRATION BUILDING -- AND THIS IS THE MAIN
20 ENTRANCE TO THE ADMIN BUILDING. AND THIS IS MARIE

21 CHRONISTER'S VEHICLE.

22 Q AND WHEN YOU SAW MARIE CHRONISTER LYING ON THE GROUND,
23 WHERE WOULD SHE HAVE BEEN PLEASE, SIR?

24 A IF YOU WERE LOOKING -- IF YOU WERE WALKING TOWARDS THE
25 DOOR, SHE WAS ON THIS SIDEWALK JUST TO THE LEFT OF THE

STATE V. CHRONISTER

- 1 DOORWAY, JUST OUTSIDE THE DOOR.
- 2 Q CAN YOU MARK THAT ON THIS PHOTOGRAPH PLEASE, SIR?
- 3 A APPROXIMATELY RIGHT HERE.
- 4 Q IF YOU WOULD, SHOW THE JURY WHERE?
- 5 A APPROXIMATELY HERE IS WHERE SHE WAS.
- 6 THE COURT: HOW ---
- 7 A WHERE SHE WAS LAYING.
- 8 THE COURT: HOW DID YOU MARK THAT? WITH AN "X"?
- 9 WITNESS: WITH AN "X".
- 10 Q LET'S SHOW THIS PORTION VERY BRIEFLY.
- 11 A THIS IS WHERE I SAW MARIE LAYING.
- 12 Q APPROXIMATELY HOW FAR IS THAT FROM HER VEHICLE?
- 13 A I'D SAY 40 TO 50 FEET.
- 14 Q YOU MAY GO BACK ON THE WITNESS STAND.
- 15 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 16 Q WHEN YOU SAW MARIE LYING THERE, WHAT DID YOU DO?
- 17 A WHEN I SAW HER LYING THERE, I RAN UP TO HER. AND AT THAT
- 18 TIME SHE WAS LAYING THERE, I COULD TELL SHE WAS HURT REAL BAD.
- 19 SO AT THAT TIME I RAN INTO THE ADMIN BUILDING, THROUGH THAT
- 20 FRONT DOOR TO A TELEPHONE EXTENSION, CALLED THE SECURITY
-
- 21 CENTRAL ALARM STATION AND ADVISED THEM THAT THERE WAS A FEMALE
- 22 EMPLOYEE THAT WAS INJURED IN THE PARKING LOT AND THAT THEY
- 23 NEEDED TO SEND THE MEDICAL RESPONSE TEAM DOWN HERE.
- 24 Q AND WHEN YOU SAW YOU COULD TELL SHE WAS HURT, WHAT DID
- 25 YOU SEE ABOUT HER THAT INDICATED SHE WAS HURT?

1 A SHE HAD BLOOD POOLED UP IN HER EAR AND SOME BLOOD RUNNING
2 DOWN BEHIND HER EAR, DOWN THE SIDE OF HER FACE.

3 Q COULD YOU TELL BY LOOKING AT HER WHAT HER INJURIES WERE?

4 A I WASN'T SURE AT THE TIME. I JUST KNEW SHE WAS REALLY
5 HURT BAD.

6 Q AND DID SHE APPEAR TO BE ALIVE WHEN YOU SAW HER LYING
7 THERE?

8 A NO, SHE DID NOT.

9 Q WHAT DID YOU DO AFTER YOU HAD CALLED FOR MEDICAL
10 ASSISTANCE?

11 A THAT'S WHEN I WENT BACK OUTSIDE, AND AT THAT TIME TOMMY
12 AUTEN, WHO IS ---

13 Q DON'T GO INTO ANYTHING ANYBODY ELSE MAY HAVE TOLD YOU.

14 A RIGHT.

15 Q BUT WHAT DID YOU DO?

16 A OKAY. WHEN I CAME BACK OUTSIDE, ANOTHER EMPLOYEE AT THE
17 PLANT HAD RAN OVER ALSO TO THE FRONT DOOR. AND HE ---

18 Q DON'T. AS A RESULT OF TALKING TO HIM WHAT DID YOU DO?

19 A AS A RESULT OF TALKING TO HIM, I THEN REALIZED WHAT HAD
20 HAPPENED, THAT SHE ---

21 Q WHAT DID YOU DO AFTER YOU TALKED TO HIM PLEASE, SIR?

22 A AT THAT TIME I WENT BACK TO MY PERSONAL VEHICLE AND
23 ATTEMPTED TO CATCH THE VEHICLE THAT I HAD A DESCRIPTION OF IN
24 ORDER TO GET THE TAG NUMBER OFF OF IT.

25 Q DID YOU EVER SEE THAT VEHICLE?

1 A NO, I DIDN'T.

2 Q MR. SMITH, DID YOU KNOW THIS DEFENDANT, JEFF CHRONISTER?

3 A NEVER SEEN HIM BEFORE, NO, EXCEPT ON TELEVISION.

4 Q AND THE CATAWBA NUCLEAR PLANT IS LOCATED IN YORK COUNTY;
5 IS THAT CORRECT?

6 A YES, IT IS.

7 MR. GRANT: PLEASE ANSWER ANY QUESTIONS THAT GERALD SMITH
8 MAY HAVE.

9 CROSS EXAMINATION

10 BY MR. SMITH:

11 Q MR. SMITH, WHAT YOU'RE TELLING US IS THAT ON THIS
12 PARTICULAR MORNING THAT YOU ARRIVED AND YOU WERE IN THE
13 PARKING LOT OUT IN FRONT OF THE ADMIN BUILDING, CORRECT, SIR?

14 A THAT'S RIGHT.

15 Q AND YOU NOTICED MRS. MARIE CHRONISTER IN THE PARKING LOT?

16 A YES, I DID.

17 Q YOU TOLD US THAT YOU DID NOT SEE HER GET OUT OF HER
18 VEHICLE, CORRECT, SIR?

19 A THAT'S CORRECT.

20 Q AND THE NEXT THING YOU TOLD US ABOUT IS THAT YOU SAW MRS.

21 CHRONISTER ON THE SIDEWALK OUT IN FRONT OF THE ADMIN BUILDING?

22 A THAT'S CORRECT.

23 Q THIS WAS RIGHT NEAR THE FRONT DOOR AND THE FLOWER BED AND
24 WHERE THE MULCH IS, WHATEVER YOU WANT TO CALL IT, UP THERE?

25 A ON THE SIDEWALK IS WHERE SHE --- I SAW HER LAYING AT.

DAN / DANNY WILSON (DIRECT) 99

1 Q YOUR INITIAL LOCATION YOU SAID WAS SOME 50 FEET
2 APPROXIMATELY BEHIND HER CAR; THAT'S WHAT ---

3 A THAT'S WHERE I PARKED MY VEHICLE, YES.

4 Q AND ACCORDING TO YOUR BEST ESTIMATE, HER AUTOMOBILE WOULD
5 HAVE BEEN ABOUT 50 FEET FROM THE ADMIN BUILDING?

6 A APPROXIMATELY, YES.

7 Q AND YOU TOLD US THAT YOU THEN SUBSEQUENTLY LEFT; IS THAT
8 CORRECT, GOING AFTER SOME KIND OF VEHICLE?

9 A YES.

10 Q OKAY. YOU TOLD THE SOLICITOR THAT YOU PULLED UP OR YOU
11 PARKED AND YOU SAW NOTHING AND HEARD NOTHING, CORRECT, SIR?

12 A THAT'S CORRECT.

13 MR. SMITH: THANK YOU, MR. SMITH.

14 THE COURT: ANY REDIRECT?

15 MR. GRANT: NO, SIR. YOU MAY COME DOWN.

16 (THE WITNESS LEAVES THE WITNESS STAND.)

17 MR. GRANT: WE WOULD CALL DAN WILSON.

18 THE COURT: SOLICITOR, IF YOU INTEND TO USE THIS WITNESS

19 AGAIN ---

20 MR. GRANT: NO, SIR, I DO NOT.

21 THE COURT: --- YOU NEED TO SEND HIM BACK OUT OR HE CAN

22 BE RELEASED FROM SUBPOENA UNLESS THERE'S NO OBJECTION.

23 MR. GRANT: I WOULD ASK HE BE RELEASED IF HE CHOOSES TO
24 DO SO.

25 THE COURT: ANY OBJECTION TO HIM BEING EXCUSED?

1 MR. SMITH: I HAVE NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION, MR. SMITH, YOU MAY STAY OR
3 GO, WHATEVER YOU CHOOSE. THANK YOU.

4 COME AROUND PLEASE, SIR.

5 DANNY HAROLD WILSON, BEING
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. GRANT:

9 Q MR. WILSON, I NEED YOU TO PULL THE MIKE UP A LITTLE
10 CLOSER AND STATE YOUR FULL NAME TO THE COURT.

11 A MY NAME IS DANNY HAROLD WILSON.

12 Q PULL A TINY BIT CLOSER AND SPEAK JUST A LITTLE BIT
13 LOUDER. WHERE DO YOU LIVE PLEASE, SIR?

14 A I LIVE AT 6688 PINE FOREST DRIVE, YORK.

15 Q AND WHERE DO YOU WORK?

16 A I WORK FOR DUKE POWER.

17 Q WHERE?

18 A MAGUIRE NUCLEAR STATION.

19 Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE DID YOU WORK?

20 A CATAWBA NUCLEAR STATION.

21 Q CATAWBA NUCLEAR?

22 A YES, SIR.

23 Q IS THAT IN YORK COUNTY?

24 A YES, SIR.

25 Q ALL RIGHT. DO YOU RECALL THE MORNING OF FEBRUARY THE

1 14TH, 1992?

2 A YES, SIR, I DO.

3 Q DID YOU WORK THAT MORNING?

4 A I WORKED THAT NIGHT AND I WAS GETTING OFF THAT MORNING.

5 Q ALL RIGHT. WHAT TIME DID YOU GET OFF WORK?

6 A APPROXIMATELY 20 MINUTES UNTIL 7:00.

7 Q IN THE MORNING?

8 A YES, SIR.

9 Q WHAT DID YOU DO ONCE YOU GOT OFF WORK?

10 A I WALKED TO THE PARKING LOT WITH ANOTHER MAN.

11 Q WHO WAS THAT?

12 A SI BALLANGER.

13 Q SI BALLANGER?

14 A YES, SIR.

15 Q WHAT DID YOU DO WHILE YOU WERE THERE IN THE PARKING LOT?

16 A I BROUGHT A BOAT IN THAT NIGHT THAT I WAS SELLING TO SI.

17 AND WE WERE CHANGING THE TRAILER HITCH BALL ON HIS TRUCK. WE

18 WERE KIND OF BENT DOWN, SQUATTED DOWN BEHIND HIS TRUCK. AND

19 WE WERE GETTING READY TO ATTACH THE BOAT TO HIS TRAILER HITCH.

20 Q ALL RIGHT. AND WHAT HAPPENED WHILE YOU AND MR. BALLANGER

21 WERE THERE WORKING WITH THE TRAILER HITCH?

22 A WHILE WE WERE WORKING A WHITE VAN PULLED UP AND A MAN GOT

23 OUT OF IT. AND HE WALKED AROUND, ABOUT HALFWAY DOWN THE

24 RIGHT-HAND SIDE OF THE TRUCK WE WERE WORKING BEHIND. I STOOD

25 UP. AND WHEN I STOOD UP, HE TURNED AROUND AND WALKED BACK

1 DOWN THE FRONT SIDE OF THE VAN AND WALKED OVER TOWARD THE
2 ADMIN BUILDING PARKING LOT.

3 Q WHEN YOU SAY A "WHITE VAN," CAN YOU DESCRIBE WHAT TYPE OF
4 VAN IT WAS PLEASE, SIR?

5 A YES, SIR. IT WAS A WHITE DODGE VAN WITH WINDOWS ALL THE
6 WAY AROUND IT.

7 Q AND HOW NEAR WERE YOU TO IT?

8 A PARDON ME?

9 Q HOW NEAR WERE YOU TO THE VAN?

10 A THE LENGTH OF A SMALL PICK-UP TRUCK.

11 Q I'D LIKE TO SHOW YOU THESE FOUR PHOTOGRAPHS. JUST LOOK
12 AT EACH ONE OF THEM FIRST AND THEN I WOULD ASK YOU IF YOU CAN
13 IDENTIFY THE VAN IN THOSE PHOTOGRAPHS?

14 (PAUSE.)

15 Q CAN YOU IDENTIFY THE VEHICLE, SIR?

16 A THAT'S THE VAN LIKE THE ONE THAT WAS PARKED IN FRONT OF
17 THE TRUCK.

18 Q LIKE THE ONE THAT WAS PARKED THERE?

19 A YES, SIR.

20 Q YOU CAN'T SAY IT WAS THE SAME VAN?

21 A ~~I THINK IT WAS THE SAME VAN, BASED ON THE LICENSE PLATE~~
22 NUMBER. ME AND SI BALLANGER TRIED TO GET THE LICENSE PLATE
23 NUMBER, AND WE GOT THE FIRST THREE LETTERS. AND IT'S THE SAME
24 AS WHAT'S ON THERE NOW, ON THAT PICTURE.

25 Q WHAT WERE THE FIRST THREE LETTERS THAT YOU GOT AS FAR AS

1 THE LICENSE PLATE?

2 A I THINK THEY WERE D.R.L.

3 MR. GRANT: WE WOULD OFFER THESE, YOUR HONOR. I THINK
4 WE'LL OFFER THEM FOR IDENTIFICATION AT THIS TIME.

5 THE COURT: YOU ARE GOING TO OFFER THEM OR ARE YOU JUST
6 GOING TO HAVE THEM MARKED?

7 MR. GRANT: HAVE THEM MARKED:

8 THE COURT: HAVE THEM MARKED STATE'S I.D. ONLY.

9 (FOUR, 4, 8 X 10 COLOR PHOTOS MARKED FOR IDENTIFICATION
10 AS STATE'S EXHIBIT NOS. 3, 4, 5, AND 6.)

11 Q AND I BELIEVE YOU STATED THE VAN WAS HOW NEAR WHERE YOU
12 AND MR. BALLANGER WERE?

13 A IT WAS AT THE FRONT OF THE VEHICLE, WE WERE AT THE REAR
14 OF IT. HE HAD US BLOCKED IN OUR PARKING SPACE.

15 Q AS FAR AS IN THE COURTROOM, HOW CLOSE WOULD YOU HAVE
16 BEEN? CAN YOU TELL WHERE TO STAND?

17 A PROBABLY ABOUT WHERE YOU ARE, MAYBE A LITTLE CLOSER.

18 Q A LITTLE CLOSER? ALL RIGHT, SIR.

19 A ABOUT THERE.

20 Q ALL RIGHT, SIR. AND WHAT TIME OF THE MORNING WAS THIS?

21 A IT WAS -- LIKE I SAID, IT WAS IN FEBRUARY IT WAS DARK.

22 THE PARKING LOT WAS DIMLY LIT.

23 Q AND COULD YOU SEE THE VAN?

24 A I SAW THE VAN WELL.

25 Q COULD YOU SEE THE PERSON THAT WAS IN THE VAN?

STATE V. CHRONISTER

63-

BACK →

1 A YES, SIR.

2 Q WHAT COULD YOU SEE HIM DO?

3 A WELL, AS I STATED, HE GOT OUT OF THE VAN AND WALKED
4 HALFWAY DOWN ON THE RIGHT-HAND SIDE OF THE VEHICLE THAT WE
5 WERE CROUCHED DOWN BEHIND.

6 WHEN I -- I SAW THE VAN PULL UP, JUST SAW THE TOP REAR OF
7 IT. AT FIRST I THOUGHT IT WAS A SECURITY VAN FOR DUKE POWER.
8 SO I STOOD UP AND I SAW THE INDIVIDUAL COMING BETWEEN THE TWO
9 VEHICLES ON MY RIGHT.

10 AND WHEN I STOOD UP, HE TURNED AROUND AND WALKED BACK TO
11 THE FRONT OF THE VEHICLE, THEN HE WALKED TO THE FRONT OF IT.

12 I STEPPED OVER TO THE LEFT-HAND SIDE. AS HE WALKED PAST I SAW
13 HE WAS CARRYING -- AT THAT TIME I THOUGHT IT WAS A SHOTGUN.
14 IT WAS A -- YOU KNOW, A LONG RIFLE-TYPE WEAPON. HE WAS
15 HOLDING IT DOWN BESIDE HIS LEG. AND HE WALKED OVER TO THE
16 ADMIN PARKING LOT, TO THE REAR OF IT.

17 Q ALL RIGHT, SIR. LET ME ASK YOU THIS: IF YOU WOULD,
18 COULD YOU DESCRIBE HOW HE WAS HOLDING THIS LONG WEAPON THAT
19 YOU THOUGHT WAS A SHOTGUN? COULD YOU JUST DESCRIBE HOW IT WAS
20 BEING HELD?

21 A WELL, HE WAS HOLDING IT, YOU KNOW, ABOUT THE MIDDLE OF
22 THE WEAPON. I'M NOT SURE IF HE HAD HIS HAND ON THE TRIGGER

23 GUARD. I COULDN'T SEE THAT. I JUST SAW THE WEAPON, AND HE
24 WAS HOLDING IT DOWN HIS RIGHT HAND NEXT TO HIS RIGHT LEG.

25 Q IF YOU WOULD, JUST STAND WHERE YOU ARE AND SHOW THE JURY

1 HOW HE WAS HOLDING IT PLEASE?

2 A JUST KIND OF HOLDING IT DOWN LIKE THIS. AS HE WALKED HE
3 TRIED TO KEEP IT NEXT TO HIS LEG.

4 Q AND WAS ANYBODY ELSE IN THE VAN?

5 A NOT TO MY KNOWLEDGE. I DIDN'T SEE ANYBODY ELSE.

6 Q DID YOU SEE ANYBODY ELSE WITH THAT PERSON?

7 A NO, SIR.

8 Q AND WHERE DID HE GO WITH THE WEAPON?

9 A THERE'S TWO PARKING AREAS AT CATAWBA. AND WE WERE IN THE
10 MAIN PARKING LOT, WHICH IS A BIG PARKING LOT. THERE'S A
11 SMALLER PARKING LOT THAT'S IN FRONT OF THE ADMIN BUILDING WITH
12 A SEPARATE ENTRANCE. AND THERE'S A ROW OF DIAGONAL PARKING IN
13 BETWEEN THOSE TWO AREAS. AND THIS INDIVIDUAL WALKED THROUGH
14 THOSE DIAGONALLY PARKED CARS AND WENT TO THE REAR OF THE ADMIN
15 BUILDING PARKING LOT. AND HE MOVED AROUND THERE A LITTLE BIT
16 AND THEN HE STARTED BACK THROUGH THE CARS AGAIN IN THE GENERAL
17 DIRECTION OF THE FRONT DOOR OF THE ADMIN BUILDING.

18 Q AND WHEN HE WAS WALKING FROM THE VAN DOWN TO THAT AREA,
19 HOW WAS HE WALKING?

20 A ALL THE TIME SLOWING AND DELIBERATELY. HE LOOKED BACK
21 ACROSS THE PARKING LOT A COUPLE TIMES AT ME -- YOU KNOW, IN MY
22 DIRECTION. I NEVER MADE EXACT EYE CONTACT WITH HIM EXCEPT
23 WHEN HE WALKED PAST THE VAN TO START WITH.

24 Q DID YOU EVER SEE THE PERSON WELL ENOUGH TO IDENTIFY HIM?

25 A NO, SIR. MY ATTENTION WAS RIVETED ON HIS WEAPON AND I

1 DIDN'T LOOK AT HIS FACE THAT WELL.

2 Q ALL RIGHT, SIR. AFTER HE WALKED DOWN TOWARD THE
3 ADMINISTRATION BUILDING, WHAT DID YOU SEE HIM DOING?

4 A WELL, I THOUGHT HE GOT IN THE CAR ---

5 MR. SMITH: OBJECTION, YOUR HONOR. HE CAN TESTIFY TO
6 WHAT HE SAW.

7 WITNESS: OKAY.

8 THE COURT: I SUSTAIN THE OBJECTION. MR. WITNESS, YOU
9 ARE TO TESTIFY TO WHAT YOU SAW AND OBSERVED, NOT IF YOU
10 THOUGHT OCCURRED.

11 A OKAY. HE ---

12 THE WITNESS: THE JURY IS INSTRUCTED TO DISREGARD THE
13 LAST RESPONSE. YOU MAY CONTINUE, SOLICITOR.

14 A MOST OF THE TIME THAT HE WAS IN THE PARKING LOT, I COULD
15 SEE HIS HEAD AN SHOULDERS. AND AS HE NEARED WITHIN A CAR
16 LENGTH OF THE LAST CAR NEXT TO THE FRONT OF THE BUILDING, HIS
17 HEAD DROPPED FROM MY SIGHT; THAT'S THE LAST TIME I SAW HIM
18 BEFORE THE SHOTS WERE FIRED.

19 Q ALL RIGHT. SO YOU SAW HIS HEAD GO OUT OF SIGHT?

20 A YES, SIR.

21 Q ALL RIGHT, SIR. AND HOW NEAR WOULD HE HAVE BEEN TO THE
22 FRONT OF THE ADMINISTRATION BUILDING WHEN YOU SAW HIS HEAD GO
23 OUT OF SIGHT?

24 A I WOULD ---

25 MR. SMITH: OBJECTION, YOUR HONOR, UNLESS THE WITNESS ---

1 THE COURT: I'M SORRY. I CAN'T HEAR YOU, MR. SMITH.

2 MR. SMITH: OBJECTION, YOUR HONOR. HE ASKED HIM HOW NEAR
3 HE WOULD HAVE BEEN TO A CERTAIN POINT. THIS WITNESS HAS
4 TESTIFIED HE WAS SOME DISTANCE AWAY IN ANOTHER PARKING LOT,
5 AND I OBJECT TO THE -- I OBJECT TO THAT QUESTION.

6 THE COURT: I OVERRULE THE OBJECTION. THE WITNESS CAN
7 TESTIFY TO WHAT HE SAW. IT'S UP TO THE JURY TO DETERMINE
8 WHETHER OR NOT THEY BELIEVE HIM.

9 GO AHEAD, SIR.

10 A THE PARKING LOT IS LAID OFF IN SINGLE PARKING SPACES, THE
11 APPROXIMATE LENGTH OF COMMON VEHICLES. AND HE WAS -- THE LAST
12 I SAW OF HIM, HE WAS ONE CAR AWAY FROM THE END OF THE ROW. SO
13 THAT WOULD MAKE HIM THE LENGTH OF A VEHICLE AND THE WIDTH OF
14 THE ROAD FROM WHERE THE SHOOTING OCCURRED.

15 Q AND DID YOU HEAR ANYTHING AT THAT TIME?

16 MR. SMITH: YOUR HONOR, OBJECTION. LEADING, I MEAN.

17 THE COURT: ALL RIGHT. SOLICITOR, YOU ARE LEADING FROM
18 TIME TO LEAD. DON'T LEAD. YOU'VE GOT HIM ON DIRECT. THE
19 RULES REQUIRE THAT YOU LET THE WITNESS ANSWER. DON'T GIVE HIM
20 ANSWERS.

21 Q AFTER YOU SAW HIS HEAD GO OUT OF SIGHT, WHAT HAPPENED
22 NEXT?

23 A WELL, I TURNED AWAY AT THAT TIME AND I SQUATTED BACK DOWN
24 WHERE SI WAS WORKING ON THE TRAILER HITCH. AND I REMEMBERED
25 THE HEADS MOVING IN THE PARKING LOT, AND I THINK THAT WAS THE

1 FIRST CONSCIOUS THOUGHT THAT I HAD.

2 MR. SMITH: YOUR HONOR, HE'S TESTIFYING AGAIN AS TO WHAT
3 HE THOUGHT. I THINK THAT IS THE FIRST CONSCIOUS THOUGHT, AND
4 I OBJECT TO THAT AND I ASK THE JURY BE INSTRUCTED TO DISREGARD
5 IT.

6 THE COURT: COUNSEL, SOMETIMES WITNESSES TESTIFY ON THE
7 FACTS THAT THEY KNOW. IT DIDN'T APPEAR TO ME THAT HIS
8 TESTIMONY IN THAT REGARD WAS TESTIFYING IN THAT REGARD. HE'S
9 TESTIFYING AS TO WHAT HE SAW.

10 MR. WITNESS, I REMIND YOU TO TESTIFY AS TO WHAT YOU SAW
11 AND OBSERVED, NOT WHAT YOU MAY THINK. ALL RIGHT, SIR. THAT'S
12 REACHING A CONCLUSION OR OPINION.

13 WITNESS: OKAY.

14 THE COURT: YOU'RE NOT PERMITTED TO DO THAT. YOU ARE
15 PERMITTED TO TESTIFY TO WHAT YOU SAW AND OBSERVED. TO THAT
16 EXTENT, YOUR OBJECTION IS SUSTAINED.

17 YOU MAY CONTINUE, SOLICITOR.

18 A ALL RIGHT. AS I SQUATTED BACK DOWN TO SI, I SAID TO HIM
19 THEN, I THINK WE BETTER GET OUT OF HERE. SOMETHING BAD IS
20 GETTING READY TO HAPPEN. THAT WAS MY FIRST CONSCIOUS THOUGHT

21 OF THERE BEING ANY DANGER OR OF ANYTHING HAPPENING.

22 Q AFTER YOU SPOKE TO SI, WHAT HAPPENED NEXT PLEASE, SIR?

23 A OKAY. SI -- SI'S RESPONSE ---

24 Q DON'T GO INTO ANYTHING ---

25 A I'M SORRY.

1 Q --- SI MAY HAVE TOLD YOU.

2 A OKAY. I HEARD -- THE NEXT THING WAS I HEARD THE SHOTS.
3 AND THERE WERE AT LEAST FIVE SHOTS.

4 Q AND WHAT IN SUCCESSION? HOW CAN YOU DESCRIBE THE SHOTS
5 PLEASE, SIR?

6 A THEY WERE IN FAIRLY RAPID SUCCESSION. THE WAY I REMEMBER
7 IT IS THREE SHOTS, A PAUSE, AND THEN MAYBE TWO MORE. BUT IT
8 WAS FROM ABOUT 150 FEET WITH SOME BUILDINGS THERE. AND I
9 COULDN'T DISTINGUISH BETWEEN THE SHOTS AND ECHOES.

10 Q AND WHEN YOU HEARD THE SHOTS, WHAT DID YOU DO THEN?

11 A I GRABBED SI BY THE ARM AND WE RAN TO THE END OF THE ROW.
12 I KNEW THAT THE PERSON WITH THE GUN WAS COMING BACK TO THE
13 LOCATION WE WERE AT, AND I DIDN'T WANT TO BE NEAR THERE. SO
14 WE RAN DOWN TO THE OPPOSITE END OF THE SAME ROW THAT WE WERE
15 PARKED ON, AND WE HID BEHIND A VEHICLE THERE.

16 Q AND DID YOU SEE THE PERSON WITH THE GUN AFTER YOU HEARD
17 THE SHOT?

18 A YES, SIR. HE WAS -- WHEN WE RAN DOWN TO THE END OF THE
19 ROW, WE STOOD UP AND WE SAW HIM WALKING BACK TOWARD THE WHITE
20 VAN STILL HOLDING THE RIFLE AT THAT POINT. AND HE GOT IN THE

21 VAN. AND WE WERE STANDING UP TRYING TO GET THE LICENSE TAG
22 NUMBER. AND HE KIND OF SURPRISED US BECAUSE HE BACKED UP AND
23 CAME ALL THE WAY BACK TO WHERE WE WERE AND TURNED AROUND, THEN
24 WENT OUT THE UPPER END OF THE PARKING LOT.

25 Q WERE YOU ABLE TO SEE THE TAG NUMBER?

1 A WE COULD SEE THAT IT WAS A NORTH CAROLINA PLATE, AND WE
2 GOT THE FIRST THREE LETTERS, WHICH TO THE BEST OF MY MEMORY
3 WERE D.R.L.

4 Q DID YOU GIVE THAT INFORMATION TO THE LAW ENFORCEMENT?

5 A I DIDN'T, NO. THEY -- SI GAVE IT TO THEM. WE TALKED
6 ABOUT IT AT THAT TIME. HE WAS CLEAR ON WHAT ---

7 MR. SMITH: I OBJECT, YOUR HONOR.

8 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
9 INSTRUCTED TO DISREGARD THE RESPONSE BY THE WITNESS. IT DOES
10 NOT APPEAR TO BE A STATEMENT OF HIS OWN KNOWLEDGE OR SIGHT.

11 Q AND WHERE DID THE VAN GO PLEASE, SIR, FROM YOUR
12 OBSERVATION?

13 A HE DROVE OUT FROM THE PARKING LOT OUT OF THE UPPER
14 DRIVEWAY. AND OUT FROM THERE I DIDN'T SEE WHERE HE WENT AFTER
15 THAT.

16 Q AFTER THE VAN LEFT, WHAT DID YOU DO?

17 A WELL, I WAS PRETTY CERTAIN THAT SOMEONE HAD BEEN SHOT AT
18 OR ---

19 MR. SMITH: I OBJECT. YOUR HONOR, WHAT HE IS CERTAIN OF
20 AND PRETTY CERTAIN OF, THAT'S SPECULATIVE. I MEAN, HE CAN
21 TESTIFY OF WHAT HE OBSERVED.

22 THE COURT: I SUSTAIN THE OBJECTION. JUST TESTIFY TO
23 WHAT YOU SAW, WHAT YOU DID. DON'T TESTIFY TO WHAT YOU BELIEVE
24 OCCURRED.

25 WITNESS: I'M SORRY.

1 THE COURT: THE ULTIMATE CONCLUSION WILL BE REACHED BY
2 THE JURY, NOT BY WITNESSES.

3 Q WHAT DID YOU DO AFTER THE VAN LEFT?

4 A I RAN TO THE AREA WHERE I THOUGHT THE SHOOTING OCCURRED;
5 AND THAT'S WHERE ME AND SOME OTHER PEOPLE CONVERGED AT ABOUT
6 THE SAME TIME AND FOUND MARIE CHRONISTER'S BODY.

7 Q WHERE WAS MARIE CHRONISTER'S BODY?

8 A HER BODY WAS LAYING ON THE SIDEWALK JUST TO THE LEFT OF
9 THE ADMIN BUILDING ENTRANCE.

10 Q AND DID YOU OBSERVE HER BODY?

11 A YES, SIR, I DID.

12 Q DID SHE APPEAR TO BE DEAD OR ALIVE?

13 A SHE -- SHE APPEARED TO BE DEAD.

14 Q DID YOU SEE ANY WOUNDS ON HER?

15 A YES, SIR.

16 Q WHERE?

17 A I SAW WOUNDS IN HER -- HER RIGHT EAR, HER RIGHT NECK WERE
18 THE ONLY WOUNDS THAT I SAW.

19 Q DID YOU KNOW HER?

20 A YES, SIR, JUST AS AN ACQUAINTANCE. SHE WORKED IN THE

21 ~~SAME AREA THAT I DID.~~

22 (PAUSE.)

23 MR. GRANT: MR. WILSON, PLEASE ANSWER ANY QUESTIONS MR.
24 SMITH MAY HAVE.

25 CROSS EXAMINATION

1 BY MR. SMITH:

2 Q MR. WILSON, I BELIEVE THAT ON THE 14TH OF FEBRUARY AT
3 8:45 A.M. YOU TALKED TO OFFICER JIM WILLIAMS, CORRECT, SIR?

4 A YES, SIR.

5 Q AND DO YOU RECALL WHAT YOU TALKED TO HIM ABOUT? WOULD
6 YOU CARE TO SEE THE SUMMARY OF THE INTERVIEW?

7 A BASICALLY I TALKED TO HIM ABOUT WHAT I JUST DESCRIBED TO
8 THE COURT.

9 Q ALL RIGHT. LET'S GO OVER THAT. I ASK YOU TO LOOK AT
10 THIS PAGE HERE PLEASE, SIR.

11 A (COMPLIED.)

12 Q NOW, WHEN YOU TALKED WITH THE LAW ENFORCEMENT OFFICER AT
13 8:45 ON FEBRUARY 14 OF THIS YEAR, YOU TOLD HIM THAT YOU AND
14 ANOTHER PERSON WERE WORKING ON A BOAT?

15 A YES, SIR.

16 Q AND YOU THEN SAID THAT A WHITE DODGE VAN PULLED IN,
17 CORRECT, SIR?

18 A YES, SIR.

19 Q AND YOU TOLD HIM THAT IT POSSIBLY PULLED IN FRONT OF THE
20 TWO OF YOU, CORRECT, SIR?

21 A ~~THAT'S WHAT'S WRITTEN ON THE PAPER. BUT HE PULLED~~
22 DIRECTLY IN FRONT OF US.

23 Q THAT'S WHAT YOU SAID THEN; IS THAT CORRECT?

24 A NO, I DON'T REMEMBER SAYING THAT. THAT'S HOW HE
25 INTERPRETED WHAT I SAID.

1 Q ALL RIGHT.

2 A I'M REAL CLEAR ON THE POINT WHERE THE VAN WAS PARKED.

3 Q ALL RIGHT. MUCH CLEARER TODAY THAN YOU WERE?

4 A I DON'T KNOW HOW THE MAN WROTE THAT DOWN -- THAT'S NOT MY

5 HANDWRITING. I DON'T KNOW HOW HE INTERPRETED WHAT I SAID, BUT

6 I'M REAL CLEAR ON THAT POINT. I REMEMBER IT VIVIDLY.

7 Q BUT YOU DID TALK WITH OFFICER JIM WILLIAMS?

8 A YES, SIR.

9 Q OKAY. NOW, ON FEBRUARY THE 14TH WHEN YOU TALKED WITH

10 OFFICER WILLIAMS, YOU TOLD HIM THAT YOU NOTICED A RIFFLE, AND

11 AT THAT TIME ---

12 THE COURT: HOLD IT JUST A MINUTE. YOU ARE GOING TO HAVE

13 TO EITHER TALK UP OR STEP RIGHT UP HERE IN THIS MICROPHONE.

14 MR. SMITH: I APOLOGIZE.

15 THE COURT: SPEAK INTO THAT MICROPHONE. WE CANNOT HEAR.

16 PUSH IT UP SO IT WILL BE POINTING TOWARD YOUR FACE. PUSH IT

17 ON UP. IT'LL GO UP. THAT'LL BE FINE. JUST TRY TO SPEAK INTO

18 IT AND USE IT.

19 MR. SMITH: ALL RIGHT, SIR.

20 Q MR. WILSON, ON THAT DAY YOU DID NOT GO INTO THE DETAIL

21 WITH THE OFFICER THAT YOU HAVE GONE INTO FOR THE JURY'S

22 BENEFIT TODAY, DID YOU, SIR?

23 A YES, I DID. I TOLD THAT STORY SEVERAL TIMES ---

24 Q BUT THAT'S ---

25 A --- THAT MORNING.

1 Q --- NOT REFLECTED ---

2 MR. GRANT: YOUR HONOR, I BELIEVE HE'S TRYING TO ANSWER
3 THE QUESTION.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 MR. GRANT: GIVE HIM AN OPPORTUNITY.

6 THE COURT: YOU'VE GOT TO GIVE HIM AN OPPORTUNITY TO
7 ANSWER. MR. SMITH, YOU HAVE GOT TO GIVE HIM AN OPPORTUNITY TO
8 ANSWER. YOU MAY USE IT FOR PURPOSE OF IMPEACHING HIM ON A
9 PRIOR INCONSISTENT STATEMENT OF SOMEONE ELSE, BUT YOU CAN'T BE
10 ARGUMENTATIVE ABOUT IT. YOU CAN ASK HIM, DID HE SAY IT? IF
11 HE DENIES IT, YOU CAN CALL THE OTHER WITNESS. LET'S DO IT
12 THE RIGHT WAY.

13 MR. SMITH: I APOLOGIZE.

14 A I TOLD THE STORY TO THE OFFICER JUST AS I TOLD IT TO THE
15 COURT. BUT I TOLD THAT STORY TO SEVERAL PEOPLE AND I DON'T
16 KNOW WHOSE HANDWRITING THAT IS.

17 Q WHEN YOU TALKED WITH OFFICER WILLIAMS THAT MORNING, YOU
18 TOLD HIM THAT YOU LOST TRACK OF THE PERSON CARRYING THE
19 RIFLE, DIDN'T YOU, SIR?

20 A YES, SIR, I DID JUST PRIOR TO THE SHOOTING -- OR THE
21 SHOTS BEING FIRED.

22 Q AND THAT YOU THOUGHT THAT THE PERSON HAD GOTTEN INTO A
23 VEHICLE; IS THAT CORRECT, SIR?

24 A YES, SIR, I DID. THAT'S WHAT I EXPECTED HIM TO DO.

25 Q AND YOU THEN TOLD THE OFFICER THAT THAT WAS SOME FEW

1 MINUTES BEFORE ANY SHOTS, CORRECT, SIR?

2 A THAT WAS A FEW SECONDS BEFORE THE SHOTS.

3 Q SO YOU NEVER TOLD THE OFFICER IT WAS A FEW MINUTES?

4 A NO, SIR, I DON'T THINK SO. I REMEMBER THE INCIDENT
5 CLEARLY, AND IT WAS JUST A FEW SECONDS AFTER I TURNED AWAY
6 THAT THE SHOTS WERE FIRED.

7 Q THEN IF THE OFFICER HAD NOTED THAT YOU SAID A FEW
8 MINUTES, THE OFFICER WOULD BE IN ERROR?

9 A YES, SIR. THIS WHOLE INCIDENT ONLY TOOK A FEW MINUTES.

10 Q YOU TOLD THE OFFICER THAT MORNING AT 8:45 ON FEBRUARY 14,
11 THAT WHEN ALL THIS OCCURRED, IT WAS STILL DARK; IS THAT
12 CORRECT, SIR?

13 A YES, SIR, IT WAS PRETTY DARK.

14 Q OKAY.

15 A BUT YOU HAVE TO REMEMBER THAT WE WERE IN A DIMLY LIT
16 PARKING LOT.

17 Q DIMLY LIT PARKING LOT?

18 A YES, SIR.

19 Q AND IT WAS STILL DARK?

20 A IT WAS DARK OUTSIDE, BUT, YOU KNOW, YOU COULD SEE FOR A
21 PRETTY GOOD WAYS IN THE LIGHTS OF THE PARKING LOT.

22 Q AND JUST A COUPLE MORE QUESTIONS. BUT YOU SAY THAT YOU
23 AND MR. BALLANGER WERE INITIALLY CONCENTRATING ON WORKING ON
24 THE BOAT?

25 A MR. BALLANGER WAS ACTUALLY WORKING ON THE BOAT. I WAS

1 KNELT DOWN. I WAS DOING NOTHING EXCEPT WATCHING HIM. I HAD
2 ALREADY DISCONNECTED THE BOAT AND MOVED IT OVER FROM MY
3 VEHICLE AND HE WAS CHANGING THE TRAILER HITCH BALL ON HIS AS
4 THIS INCIDENT OCCURRED.

5 MR. SMITH: THAT'S ALL I HAVE.

6 THE COURT: ANY REDIRECT, SOLICITOR?

7 MR. GRANT: NO, SIR.

8 THE COURT: YOU MAY STEP DOWN. DO YOU WANT HIM EXCUSED?

9 MR. GRANT: YES, SIR.

10 THE COURT: ANY OBJECTION TO ME EXCUSING HIM, MR. SMITH?

11 MR. SMITH: NONE, YOUR HONOR.

12 THE COURT: YOU MAY GO.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 MR. GRANT: MR. WILSON, YOU ARE FREE TO GO IF YOU WOULD
15 LIKE.

16 THE COURT: MR. FOREMAN, I'M GOING TO GIVE THE PEOPLE OUT
17 HERE A BREAK. WE STARTED BACK BEFORE YOU ALL CAME DOWN. STEP
18 BACK IN THE JURY ROOM. TELL THE BAILIFF WHEN EACH OF YOU HAVE
19 HAD AN OPPORTUNITY TO GO TO THE BATHROOM THAT NEEDS TO GO, SO
20 THAT I KNOW THAT YOU'VE HAD ENOUGH TIME. ALL RIGHT. AND
21 WE'LL PROCEED AS SOON AS I HEAR FROM YOU. ALL RIGHT.

22 YOU MAY STEP BACK. NO DISCUSSION OF THE CASE. THIS WILL
23 BE THE ONLY RECESS WE TAKE UNTIL WE STOP FOR THE DAY.

24 (THE JURY RETIRES TO THE JURY ROOM.)

25 THE COURT: MR. BAILIFF, IF YOU WILL, TELL ME AS SOON AS

1 TOLD OR SAID, BUT ON THAT MORNING, DID YOU HAVE OCCASION TO
2 SEE THIS DEFENDANT, JEFFERY LYNN CHRONISTER?

3 A YES, SIR, I DID.

4 Q AT APPROXIMATELY WHAT TIME DID YOU FIRST SEE HIM?

5 A I FIRST OBSERVED HIM AT 8:01 A.M. IN THE MORNING.

6 Q AND WHERE WOULD THAT HAVE BEEN?

7 A IT WAS ON ELLINGTON DRIVE IN THE SOUTHERN PART OF GASTON
8 COUNTY.

9 Q AND WHAT WAS MR. CHRONISTER DOING WHEN YOU FIRST OBSERVED
10 HIM?

11 A HE WAS OPERATING A WHITE DODGE VAN.

12 Q AND WHAT DID YOU DO WHEN YOU SAW HIM OPERATING A WHITE
13 DODGE VAN?

14 A I PASSED HIM GOING IN OPPOSITE DIRECTIONS. AND WHEN I
15 OBSERVED HIM, I TURNED AROUND AND STARTED FOLLOWING HIS
16 VEHICLE.

17 Q AND DID YOU EVENTUALLY STOP THE VEHICLE?

18 A PARDON ME, I DIDN'T ---

19 Q WAS THE VEHICLE EVENTUALLY STOPPED?

20 A YES, SIR, IT WAS.

21 Q I SHOW YOU THESE PHOTOGRAPHS FOR IDENTIFICATION 3 THROUGH
22 5, 6, AND ASK YOU TO IDENTIFY THEM PLEASE, SIR?

23 A YES, SIR, I CAN.

24 Q WHAT ARE THEY PHOTOGRAPHS OF?

25 A THESE ARE PHOTOGRAPHS OF THE VAN THAT MR. CHRONISTER WAS

1 DRIVING THAT DAY.

2 Q AND DO THEY ACCURATELY REFLECT THE VAN AS IT WAS WHEN YOU
3 STOPPED HIM IN IT?

4 A YES, SIR, THEY DO.

5 Q JUST DIFFERENT VIEWS, JUST FOUR DIFFERENT VIEWS?

6 A THAT'S CORRECT..

7 MR. GRANT: WE WOULD OFFER THESE.

8 MR. SMITH: YOUR HONOR, SUBJECT TO THE PREVIOUS
9 OBJECTION.

10 THE COURT: HAVE THE COURT REPORTER MARK THEM ENTERED FOR
11 THE COURT.

12 (FOUR, 4, PHOTOGRAPHS RECEIVED IN EVIDENCE AS STATE'S
13 EXHIBIT NOS. 3, 4, 5, AND 6.)

14 THE COURT: MR. SMITH, YOU SAID PREVIOUS OBJECTION. I
15 DON'T RECALL ANY PREVIOUS OBJECTIONS TO THIS.

16 MR. SMITH: YOUR HONOR, THEY WERE OFFERED AND ---

17 THE COURT: HE'S OFFERING THEM NOW. THE QUESTION IS
18 WHETHER OR NOT YOU HAVE ANY OBJECTION TO THEM NOW.

19 MR. SMITH: YOUR HONOR ---

20 THE COURT: IF THERE ARE, STATE YOUR OBJECTION.

21 MR. SMITH: THE OBJECTION WOULD BE THAT THEY HAVE NOT
22 BEEN PROPERLY -- THEY HAVE NOT BEEN PROPERLY -- I OBJECT TO --
23 THE PROPER FOUNDATION HAS NOT BEEN LAID AS TO WHO TOOK THE
24 PHOTOGRAPHS, WHEN THE PHOTOGRAPHS WERE TAKEN. THEY WERE
25 CERTAINLY TAKEN AT A TIME SUBSEQUENT TO ANY EVENT THAT THIS

1 OFFICER, IS NOW TESTIFYING TO.

2 THE COURT: WITH THAT OBJECTION, THEN YOUR OBJECTION IS
3 OVERRULED.

4 NOW IN THE RECORD OF THIS CASE OVER THE OBJECTION OF THE
5 DEFENDANT AS STATED AN EXHIBIT WHICH WILL BE DESIGNATED
6 STATE'S EXHIBITS 3, 4, 5, AND 6, EACH BEING COLOR PHOTOGRAPHS
7 APPROXIMATELY 8 BY 10 IN SIZE NOW ENTERED.

8 YOU MAY PUBLISH THEM, SOLICITOR.

9 MR. GRANT: THANK YOU.

10 Q AND SHOWING YOU, OFFICER, STATE'S NO. 3, SPECIFICALLY
11 DOES IT SHOW THE TAG NUMBER OF THAT VAN?

12 A YES, SIR, IT DOES.

13 Q WHAT IS THAT TAG NUMBER PLEASE, SIR?

14 A D.R.L. 8643.

15 Q IS IT A NORTH CAROLINA TAG?

16 A YES, SIR, IT IS.

17 Q DID YOU TAKE MR. CHRONISTER INTO CUSTODY THAT MORNING?

18 A YES, SIR, I DID.

19 Q WAS HE LATER TURNED OVER TO THE SHERIFF'S DEPARTMENT --
20 YORK COUNTY SHERIFF'S DEPARTMENT?

21 A I TURNED HIM OVER TO ONE OF OUR DETECTIVES.

22 Q AND WHEN YOU FIRST SAW MR. CHRONISTER IN THE VAN, HOW WAS
23 HE DRESSED?

24 A I DON'T RECALL, SIR.

25 Q ALL RIGHT, SIR. HIS FACIAL APPEARANCE DESCRIPTION, CAN

1 YOU RECALL THAT?

2 A YES, SIR. HE HAD A BEARD AND MUSTACHE.

3 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY
4 HAVE.

5 CROSS EXAMINATION

6 BY MR. SMITH:

7 Q OFFICER, YOU TOLD THE SOLICITOR THAT BASICALLY YOU CAME
8 UPON MR. CHRONISTER AT ABOUT 8:00 O'CLOCK IN THE MORNING?

9 A YES, SIR.

10 Q AND WHERE WAS THAT? WOULD THAT HAVE BEEN WARREN
11 (PHONETIC) ROAD, SOUTH POINT ROAD, THAT AREA?

12 A THIS WAS OFF OF LOWER ARMSTRONG FORD (PHONETIC) ROAD --
13 IT CUTS ONTO ELLINGTON ROAD WHEN I FIRST OBSERVED HIM.

14 Q AND I BELIEVE THAT ACTUALLY SOMEONE ELSE STOPPED THE VAN;
15 IS THAT CORRECT, SIR?

16 A THERE WAS THREE VEHICLES INVOLVED, YES, SIR.

17 Q AND ELLINGTON ROAD, THAT IS WHERE HIS HOUSE IS LOCATED;
18 IS THAT CORRECT?

19 A I'M SORRY, I DIDN'T ---

20 Q THAT'S WHERE HIS HOUSE IS LOCATED, ELLINGTON ROAD?

21 A YES, SIR.

22 Q AND YOU SAY YOU RECALL NOTHING ABOUT THE WAY -- YOU DON'T
23 KNOW THE WAY HE WAS DRESSED OR DON'T RECALL?

24 A NO, SIR, I DON'T RECALL THAT.

25 Q AND YOU TURNED HIM OVER TO SOMEBODY ELSE?

1 HAVE ONE THAT MAY BE IN COURT IN GASTONIA.

2 THE COURT: WELL, YOU HAVE THE RIGHT TO THE USE OF THE
3 SUBPOENA POWER OF THIS COURT AND IT HAS NOT BEEN RESTRICTED.
4 IF YOU HAVE NOT SUBPOENAED THEM, I CANNOT DO ANYTHING ABOUT
5 IT. BUT WE'RE READY TO GO. THE CASE WAS CALLED YESTERDAY.
6 THAT MEANS EVERYBODY'S SUPPOSED TO BE HERE. LET'S PROCEED.

7 MR. SMITH: ALL RIGHT, SIR.

8 THE COURT: ANYTHING ELSE?

9 MR. SMITH: NOTHING.

10 THE COURT: BRING THE JURY IN PLEASE.

11 (THE JURY RETURNS TO THE COURTROOM AT 9:38 A.M.)

12 THE COURT: GOOD MORNING, MR. FOREMAN, LADIES AND
13 GENTLEMEN OF THE JURY. I HOPE YOU HAD A NICE EVENING. WE
14 COMPLETED THOSE MATTERS THAT WE NEEDED TO DO YESTERDAY
15 EVENING, AND I THANK YOU FOR YOUR PATIENCE WITH US. WE'RE
16 READY TO PROCEED.

17 SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

18 MR. GRANT: WE CALL SIDNEY BALLANGER.

19 SIDNEY BALLANGER, III,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE COURT: MR. BALLANGER, YOU CAN MOVE THAT MICROPHONE
22 AROUND, JUST TO KIND OF POSITION IT WHERE YOU CAN SPEAK INTO
23 IT FOR US PLEASE, SIR.

24 WITNESS: OKAY.

25 DIRECT EXAMINATION

1 BY MR. GRANT:

2 Q MR. BALLANGER, IF YOU WOULD, STATE YOUR FULL NAME FOR THE
3 COURT?

4 A SIDNEY HOLMES BALLANGER, III.

5 Q AND WHAT DO YOU GO BY PLEASE, SIR?

6 A SI, S-I.

7 Q AND WHERE DO YOU LIVE, MR. BALLANGER?

8 A ROCK HILL.

9 Q WHERE DO YOU WORK?

10 A DUKE POWER, CATAWBA NUCLEAR STATION.

11 Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE WERE YOU WORKING?

12 A CATAWBA NUCLEAR STATION.

13 Q DO YOU RECALL THE MORNING OF FEBRUARY 14, 1992?

14 A YES, SIR.

15 Q AND EARLY THAT MORNING WHERE WOULD YOU HAVE BEEN?

16 A I'D BEEN WORKING ON SHIFT THAT NIGHT AND THEN DAN WILSON
17 AND I HAD GONE OUT TO THE PARKING LOT TO SWAP A TRAILER HITCH
18 ON MY TRUCK AND HOOK UP A SMALL FISHING BOAT.

19 Q AT APPROXIMATELY WHAT TIME WERE YOU AND MR. WILSON
20 WORKING ON THE TRAILER HITCH?

21 A IT WAS BETWEEN 6:30 AND 7:00 O'CLOCK IN THE MORNING.

22 Q ALL RIGHT, SIR. AND WHILE YOU WERE THERE DID YOU OBSERVE
23 ANYTHING UNUSUAL GOING ON?

24 A YES, SIR, THERE APPEARED TO BE A SHOOTING IN THE PARKING
25 LOT.

1 Q AND PRIOR TO THAT WHAT DID YOU SEE HAPPENING THERE IN THE
2 AREA OF THE PARKING LOT?

3 A DAN AND I CAME OUT AND UNHITCHED THE SMALL BOAT FROM HIS
4 TRUCK AND PICKED THE TRAILER UP AND MOVED IT OVER TO THE BACK
5 OF MY TRUCK. AND THE TRAILER HITCH ON THE BOAT TRAILER TAKES
6 A 1 7/8 INCH TRAILER BALL AND I HAD A 2 INCH ON MY TRUCK, SO I
7 WAS SWAPPING IT OUT, PUTTING THE 1 7/8 INCH TRAILER HITCH ON
8 THE BACK OF MY TRUCK.

9 I SQUATTED DOWN AND WAS CHANGING OUT THE NUT -- TAKING
10 THE NUT OFF AND CHANGING THE BALLS. AND THE FIRST THING I
11 NOTICED, DAN WAS -- WE WERE MAKING SOME SMALL TALK, BUT DAN
12 SAID ---

13 MR. SMITH: OBJECTION, YOUR HONOR.

14 THE COURT: I SUSTAIN THE OBJECTION. DON'T TESTIFY TO
15 WHAT SOMEBODY ELSE TOLD YOU. JUST TESTIFY TO WHAT YOU SAW,
16 WHAT DID YOU DID. ALL RIGHT, SIR?

17 WITNESS: OKAY.

18 THE COURT: YOU MAY SAY AS A RESULT OF SOME STATEMENT YOU
19 OBSERVED OR SAW SOMETHING.

20 WITNESS: OKAY.

21 A I WAS DOWN CHANGING THE TRAILER HITCH. AND ONCE I GOT
22 THE TRAILER BALL ATTACHED AND HOOKED THE TRAILER UP ONTO THE
23 BALL, I GOT UP, WALKED AROUND THE SIDE OF MY TRUCK. AND I
24 NOTICED THERE WAS A WHITE VAN WAS PARKED RIGHT IN FRONT OF MY
25 PICK-UP TRUCK. AND IT KIND OF MIFFED ME OFF JUST A LITTLE BIT

1 BECAUSE I HAD MY TRUCK CRANKED UP WARMING UP AND THERE WAS
2 THIS VAN THAT HAD PULLED UP RIGHT IN FRONT OF MY TRUCK,
3 BLOCKING WHERE I COULDN'T PULL OUT, AND IT WAS SITTING THERE
4 RUNNING.

5 Q HOW NEAR WAS THE VAN TO YOUR TRUCK?

6 A I'D SAY IT WAS 5 TO 6 FEET AWAY FROM THE FRONT OF MY
7 TRUCK.

8 Q AND WHERE WERE YOU IN RELATION TO YOUR TRUCK IN RELATION
9 TO THE VAN, HOW FAR AWAY WERE YOU?

10 A OKAY. WHEN I GOT UP FROM THE BACK OF MY TRUCK AND MOVED
11 AROUND THE RIGHT-HAND SIDE, CAME UP TO APPROXIMATELY THE
12 PASSENGER DOOR ON THE RIGHT-HAND SIDE OF MY TRUCK AND STOPPED.
13 AND THERE'S THIS VAN SITTING THERE.

14 Q WHAT DID YOU SEE THERE? WAS THE VAN RUNNING?

15 A YES, SIR.

16 Q ALL RIGHT, SIR.

17 A SO THEN I WONDERED MYSELF AND SAID TO DAN, WELL, WHO'S
18 GOT ME BLOCKED IN NOW? SO I SAID, WELL, I'LL GO BACK AND
19 CHECK THE LIGHTS ON THE TRAILER BECAUSE I HADN'T CHECKED
20 THOSE. SO I WENT BACK AROUND TO DAN AND SQUATTED BACK DOWN

21 AND CONNECTED THE TRAILER LIGHTS -- WORKING ON CONNECTING THE
22 TRAILER LIGHTS UP.

23 AND WHILE I WAS SQUATTED DOWN WORKING ON THAT I HEARD
24 THREE POPS: POP, POP, POP. AND IT CAUGHT MY ATTENTION
25 BECAUSE IT WAS FAIRLY QUIET. THERE WASN'T ANYTHING ELSE

1 REALLY GOING ON IN THE PARKING LOT, WASN'T A LOT OF NOISE OR
2 TRAFFIC OR ANYTHING LIKE THAT. IT WAS JUST POP, POP, POP.

3 AND IT KIND OF CAUGHT MY ATTENTION.

4 AND DAN TURNED AROUND AND SAID ---

5 MR. SMITH: OBJECTION.

6 WITNESS: OKAY.

7 THE COURT: I RECOGNIZE THE OTHER PERSON HAS TESTIFIED,
8 COUNSEL. I STILL WANT HIM TO SAY WHAT HE DID.

9 MR. GRANT: YES, SIR.

10 Q DON'T GO INTO WHAT DAN SAID OR YOU ALL'S CONVERSATION,
11 JUST WHAT YOU DID AND WHAT YOU SAW AND WHAT YOU HEARD.

12 A OKAY.

13 Q BUT NOT WHAT DAN SAID.

14 A OKAY.

15 Q YOU HEARD THREE POPS I BELIEVE YOU SAID?

16 A I HEARD THREE POPS. AT THAT TIME IT APPEARED THAT
17 SOMETHING WAS GOING ON. AND SO I GOT UP AND MOVED DOWN THE
18 LINE OF CARS AWAY FROM THE PLANT. THE CARS -- THERE'S A ROW
19 OF THEM PARKED LIKE THAT. I MOVED DOWN THE BACK ROW OF THE
20 CARS, DOWN TO THE LAST CAR ON THE END AND MOVED IN AROUND

21 BEHIND IT, STAYED THERE. I COULD LOOK DOWN THE ROW OF CARS,
22 THERE WAS THIS WHITE VAN SITTING -- STILL SITTING DOWN IN
23 FRONT OF MY TRUCK.

24 AFTER SOME SHORT INTERVAL A MAN COMES WALKING AROUND THE
25 SIDE OF THE TRUCK, AROUND CARS AND KIND OF TOWARD THE SIDE OF

1 THE VAN HEADED TOWARD ME AND THE VAN.

2 THIS INDIVIDUAL HAD -- IT APPEARED TO BE A RIFLE, A
3 FAIRLY SMALL BARREL ON IT. AND AT THAT TIME HE WAS WALKING
4 SORT OF TOWARD ME. I WAS LOOKING UP OVER THE HOOD OF THE CAR
5 SO I EASED BACK DOWN BEHIND THE HOOD OF THE CAR.

6 AND THE INDIVIDUAL STOPPED, GOT IN THE TRUCK, AND SHUT
7 THE DOOR.

8 AND AT THAT TIME I WASN'T REALLY SURE WHAT WAS GOING ON.
9 I DIDN'T THINK ANYTHING REALLY SUPER SERIOUS WAS GOING ON. SO
10 I MOVED OUT FROM AROUND THE CARS AND MOVED UP ON THE BACK OF
11 THE TRUCK TO SEE IF I COULD GET A MAKE ON THE TAG SO I COULD
12 REPORT IT TO SECURITY. I GOT CLOSE ENOUGH AND STARTED READING
13 THE TAG WHERE I COULD READ IT, AND THEN THE BACK-UP LIGHTS
14 CAME ON THE TRUCK -- ON THE VAN.

15 AND AT THAT TIME I MOVED BACK AROUND INTO THE CARS THAT
16 WERE PARKED THERE. AND THE VAN STARTED BACKING UP. IT CAME
17 BACKING BACK DOWN THE ROW. SO I MOVED -- AS IT CAME BACK
18 THIS WAY, I KIND OF DUCK WALKED BACK BEHIND THE CARS AND MOVED
19 IN THE OPPOSITE DIRECTION SORT OF LIKE THAT.

20 AS THE VAN BACKED UP, I NOTICED AN INDIVIDUAL WAS IN THE
21 DRIVER'S SEAT.

22 AND ONE THING I THOUGHT WAS KIND OF STRANGE ---

23 MR. SMITH: OBJECTION, YOUR HONOR.

24 THE COURT: JUST TESTIFY AS TO WHAT YOU SAW.

25 WITNESS: OKAY.

1 THE COURT: WHEN YOU SAY THOUGHT STRANGE, YOU'RE REACHING
2 A CONCLUSION.

3 WITNESS: OKAY.

4 THE COURT: AND YOU'RE NOT AN EXPERT, YOU CAN'T RENDER AN
5 OPINION. YOU HAVE A RIGHT TO TESTIFY TO WHAT YOU SAW. ALL
6 RIGHT, SIR?

7 WITNESS: OKAY.

8 THE COURT: AND DESCRIBE IT.

9 A I SAW THE GENTLEMAN DRIVING THE TRUCK NEVER LOOKED
10 AROUND. HE WAS BACKING THE TRUCK USING THE MIRROR. I ONLY
11 GOT A SIDE VIEW OF THE FACE, BECAUSE THE INDIVIDUAL NEVER
12 LOOKED AROUND AND TURNED AROUND IN THE VAN THAT I SAW. HE WAS
13 LOOKING IN THE MIRROR BACKING THE VAN. HE BACKED IT DOWN TO
14 THE END OF THE ROW.

15 AND WHEN HE GOT DOWN TO THE END OF THE ROW OF CARS, HE --
16 THE VAN KIND OF TURNED LIKE THAT AND THEN IT STOPPED FOR A
17 LITTLE BIT. AND THEN IT -- AFTER SOME SECONDS IT MOVED OFF
18 AND DROVE OUT OF THE PARKING LOT.

19 IT WASN'T MOVING WITH ANY GREAT SPEED, SQUEALING OF TIRES
20 OR ANYTHING LIKE THAT. IT SEEMED TO BE CALM AND CONTROLLED
21 MOVEMENT UP AROUND AND OUT OF THE PARKING LOT AND UP THE HILL.

22 Q ALL RIGHT, SIR. DID YOU SEE THE VAN ANYWHERE AFTER THAT?

23 A NO, SIR.

24 Q AND YOU INDICATED YOU WERE LOOKING AT THE TAG. WERE YOU
25 ABLE TO SEE THE TAG?

SIDNEY BALLANGER(DIRECT)

1 A YES, SIR.

2 Q WERE YOU ABLE TO GET THE TAG NUMBER?

3 A PARTIAL NUMBER.

4 Q AND WHAT WAS THAT?

5 A I BELIEVE IT WAS D.R.L. AND THERE WERE SOME OTHER
6 LETTERS, BUT THE BACK-UP LIGHTS CAME ON THE VAN AT THAT TIME
7 AND I STOPPED TRYING TO READ THE LETTERS --- THE NUMBERS.

8 Q AND PRIOR TO HEARING THE POPS THAT YOU DESCRIBED, HOW
9 MANY POPS DID YOU HEAR?

10 A MY RECOLLECTION IS I HEARD THREE, THEY WERE SHORT,
11 STACCATO TYPE BURST, POPS. IT WASN'T A RANDOM TYPE THING.
12 THE THING THAT CAUGHT MY ATTENTION WAS IT WAS A POP, POP, POP.
13 IT WASN'T POP. POP. IT WAS POP, POP, POP.

14 Q PRIOR TO HEARING THOSE, HAD YOU SEEN ANY PERSON AROUND
15 NEAR THE VAN?

16 A NO, SIR, HADN'T SEEN ANY PERSON. THERE WAS SOME MOVEMENT
17 IN THE PARKING LOT OF PEOPLE COMING AND GOING, BUT THERE WAS
18 NO -- I DIDN'T NOTICE ANY CLOSE PERSONAL ACTIVITY AROUND WHERE
19 I WAS.

20 Q AND WHEN YOU FIRST SAW THE MAN WITH THE WEAPON, WHERE WAS
21 HE IN RELATION TO YOUR VAN AND THE ADMINISTRATION BUILDING?

22 A HE WAS COMING FROM THE FRONT OF THE VAN. THE
23 ADMINISTRATION BUILDING RAN ALONG LIKE THIS. THE CARS ARE
24 PARKED IN ROWS, SORT OF PARALLEL TO THE LINE OF THE BUILDING.
25 THE FRONT OF THE BUILDING IS RIGHT THERE. THE VAN HAD PULLED

1 DOWN IN FRONT OF MY TRUCK. AND WHEN I SAW -- FIRST SAW THE
2 INDIVIDUAL, HE CAME WALKING FROM AROUND THIS DIRECTION, AROUND
3 THE EDGE OF THE CARS AND UP TO THE SIDE OF THE VAN RIGHT
4 THERE, TURNED AND GOT IN THE VAN.

5 Q HOW WAS HE WALKING?

6 A VERY DELIBERATE, CALM, AND CONTROLLED.

7 Q WERE YOU ABLE TO SEE HIM WELL ENOUGH TO RECOGNIZE HIM?

8 A I GOT A GENERAL FEATURES LOOK AT THE INDIVIDUAL, BUT HE
9 WAS SOME DISTANCE OFF AT THAT TIME, AND IT WAS ---

10 Q WOULD YOU DESCRIBE HIM AS BEST YOU COULD?

11 A SORT OF A DARK FACIAL HAIR WITH A MUSTACHE. LOOKED LIKE
12 A BEARD TYPE GROWTH DOWN HERE. IT BEING SORT OF DARK, HIS
13 HAIR LOOKED DARK.

14 Q WHAT SIZE WAS HE?

15 A AVERAGE SIZE, AVERAGE BUILD.

16 Q COULD YOU TELL HOW HE WAS DRESSED?

17 A I DON'T REALLY REMEMBER SPECIFICALLY HOW HE WAS DRESSED.

18 Q I SHOW YOU THESE PHOTOGRAPHS WHICH ARE FOR IDENTIFICATION
19 6, 5, 4, AND 3, AND ASK YOU TO LOOK AT THEM -- LOOK AT ALL
20 FOUR OF THEM FIRST PLEASE, SIR.

21 A OKAY.

22 Q WHAT IS THAT A PICTURE OF?

23 A THAT LOOKS LIKE THE VAN THAT I SAW THAT MORNING.

24 Q LOOKS LIKE THE VAN THAT YOU SAW?

25 A YES, SIR.

1 Q WHEN YOU LAST SAW THE WHITE VAN, WHERE WAS IT?

2 A IT PULLED OUT AROUND AND WENT OUT THE -- SORT OF THE FAR
3 ENTRANCE TO THE PARKING LOT -- NOT THE EXTREME REAR, BUT
4 THERE'S SORT OF A SIDE ENTRANCE -- WENT OUT IT, TURNED TO THE
5 LEFT AND MANEUVERED UP THE HILL AND WENT ON UP THE HILL TOWARD
6 THE TRAINING CENTER.

7 Q AND THE PARTIAL TAG NUMBER THAT YOU HAD GOTTEN, DID YOU
8 REPORT THAT TO THE AUTHORITIES?

9 A YES, SIR.

10 Q COULD YOU TELL WHAT STATE THE VAN WAS REGISTERED IN, THE
11 TAG?

12 A IT LOOKED LIKE A NORTH CAROLINA TAG. AS BEST I COULD
13 TELL IT WAS NORTH CAROLINA.

14 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MIGHT
15 HAVE.

16 CROSS EXAMINATION

17 BY MR. SMITH:

18 Q MR. BALLANGER, BASICALLY WHAT YOU'RE TELLING US IS ON
19 THAT PARTICULAR MORNING YOU HEARD THREE POPS IN RAPID
20 SUCCESSION AND YOU ---

21 A YES, SIR.

22 Q --- NOTICED THE VAN; IS THAT CORRECT, SIR?

23 A YES, SIR.

24 Q AND THAT YOU SAW SOMEONE ---

25 A YES, SIR.

1 Q --- THEN GET INTO THE VAN AND LEAVE?

2 A YES, SIR.

3 MR. SMITH: THAT'S ALL.

4 THE COURT: YOU MAY STEP DOWN.

5 (THE WITNESS LEAVES THE WITNESS STAND.)

6 MR. GRANT: WE'D ASK MR. BALLANGER BE EXCUSED.

7 THE COURT: ANY OBJECTION?

8 MR. SMITH: NONE, YOUR HONOR.

9 THE COURT: WITHOUT OBJECTION, MR. BALLANGER, YOU MAY BE
10 EXCUSED.

11 MR. GRANT: WE CALL TOMMY AUTEN.

12 THOMAS EDWARD AUTEN, BEING

13 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. GRANT:

16 Q MR. AUTEN, STATE YOUR FULL NAME FOR THE COURT?

17 A MY NAME IS THOMAS EDWARD AUTEN.

18 Q AND WHERE DO YOU LIVE PLEASE, SIR?

19 A I LIVE AT 2882 BILLY WILSON ROAD IN ROCK HILL.

20 Q WHERE DO YOU WORK?

21 A I WORK FOR DUKE POWER AT THE CATAWBA NUCLEAR STATION.

22 Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE DID YOU WORK?

23 A I WORKED AT CATAWBA NUCLEAR STATION.

24 Q AND EARLY ON THE MORNING OF FEBRUARY THE 14TH DID YOU

25 HAVE AN OCCASION TO BE IN THE PARKING LOT THERE AT THE CATAWBA

-92-

1 NUCLEAR STATION?

2 A YES, SIR, I WAS REPORTING FOR WORK ON THE DAY SHIFT WHICH
3 BEGINS AT 7:00 O'CLOCK. AND I REPORTED TO WORK ABOUT 10
4 MINUTES BEFORE 7:00.

5 Q ALL RIGHT. AND WHEN YOU REPORTED TO WORK, WHERE DID YOU
6 PARK YOUR CAR?

7 A I PARKED IN THE LARGER PARKING LOT THAT WE HAVE FOR
8 EMPLOYEES. I PARKED ON THE END OF THE FIRST DOUBLE ROW TOWARD
9 THE BACK. AND THAT PARKING LOT BORDERS A SMALLER PARKING LOT
10 THAT WE USE FOR ADMINISTRATION -- FOR OUR ADMINISTRATION
11 BUILDING.

12 Q AND WHAT DID YOU NOTICE THERE IN THE PARKING LOT WHEN YOU
13 WERE ON YOUR WAY TO WORK? DID YOU NOTICE ANYTHING UNUSUAL?

14 A WELL, WHEN I PULLED IN THE PARKING LOT I CHOSE THE SPACE
15 THAT I WAS GOING TO PARK IN. I NOTICED TWO OF MY CO-WORKERS
16 IN THE ROW IN FRONT OF ME LOOKING AT A BOAT. THEY WERE
17 EXAMINING ---

18 Q WHO WERE THEY?

19 A THAT WAS SI BALLANGER AND DAN WILSON.

20 Q MR. BALLANGER AND MR. WILSON?

21 A RIGHT. AND I KNEW THAT THEY WERE ON THE NIGHT SHIFT AND
22 FIXING TO LEAVE, AND I DIDN'T THINK ANYTHING UNUSUAL OF THAT.

23 AS I PARKED MY VEHICLE, I DID HEAR SOMETHING THAT WAS A
24 LITTLE STRANGE. I HEARD WHAT I THOUGHT WAS A SMALL PACK OF
25 FIRECRACKERS BEING DISCHARGED OVER IN THE ADMINISTRATION

TOMMY AUTEN(DIRECT)

191

1 PARKING LOT.

2 Q ALL RIGHT, SIR. WHERE WERE YOU WHEN YOU HEARD THAT?

3 A I WAS STILL IN MY VEHICLE, IN MY PICK-UP TRUCK.

4 Q ALL RIGHT, SIR. AND THEN WHAT DID YOU DO ONCE YOU HEARD
5 THAT SOUND THAT SOUNDED LIKE A FIRECRACKER?

6 A WELL, I WANTED TO SEE WHAT IT WAS SO I LOOKED UP. AND
7 FROM WHERE I WAS SITTING I HAD TO LOOK OUT THE DOOR WINDOW AND
8 IT WAS KIND OF IN THE DIRECTION OF RIGHT OVER MY REAR VIEW
9 MIRROR -- I HAD TO LOOK IN THAT DIRECTION TO SEE. AND WHAT I
10 NOTICED WHEN I LOOKED OUT THE WINDOW WAS I SAW ONE INDIVIDUAL
11 STANDING ON THE SIDEWALK RIGHT IN FRONT OF THE ADMINISTRATION
12 BUILDING.

13 Q AND COULD YOU TELL WHAT THAT INDIVIDUAL WAS DOING? WHEN
14 YOU SAW THAT PERSON, WHAT WERE THEY DOING?

15 A WHEN I FIRST SAW HIM, HE WAS JUST STANDING THERE -- JUST
16 STANDING THERE.

17 Q ALL RIGHT, SIR. DID YOU SEE ANYBODY ELSE FROM WHERE YOU
18 WERE AT THAT TIME?

19 A NO, SIR, I SAW NO ONE.

20 Q ALL RIGHT, SIR. WHAT HAPPENED THEN? WHAT DID YOU SEE?

21 A WELL, I NEEDED TO GET TO WORK SO I WENT AHEAD AND GOT MY
22 LUNCH BOX AND GOT OUT OF MY TRUCK AND STARTED WALKING TOWARD
23 OUR PERSONNEL ENTRANCE DOOR. I HAVE TO WALK IN THE SAME
24 DIRECTION PRETTY MUCH AS THE DIRECTION I SAW THE INDIVIDUAL.
25 AS I TOOK A COUPLE OF STEPS, THE INDIVIDUAL BENT OVER LIKE HE

1 WAS LOOKING ---

2 MR. SMITH: OBJECT ---

3 A --- AT SOMETHING.

4 MR. SMITH: --- TO WHAT THE INDIVIDUAL -- HIS TESTIMONY
5 IS HE WAS BENT OVER LIKE.

6 THE COURT: WELL, COUNSEL, A WITNESS CAN ONLY TESTIFY AS
7 TO WHAT APPEARS TO HIM. I'M GOING TO LET HIM TESTIFY TO WHAT
8 IT APPEARED HE WAS DOING.

9 YOU'RE DESCRIBING WHAT YOU SAW, AREN'T YOU, MR. AUTEN?

10 WITNESS: YES, SIR.

11 THE COURT: DESCRIBE WHAT YOU SAW.

12 A WHEN I TOOK A COUPLE STEPS, THE INDIVIDUAL STOOPED OVER
13 AS IF HE WERE LOOKING AT SOMETHING OR TO PICK UP SOMETHING.
14 AND I CONTINUED MY PROGRESS TOWARD THE DOOR. AND THE
15 INDIVIDUAL STOOD UP ERECT, WALKED AT A NORMAL PACE. HIS PATH
16 WAS GOING TO CROSS MINE. AND I NOTICED AT THAT TIME THAT HE
17 DID HAVE A WEAPON WITH HIM, A LONG BARREL WEAPON, AND HE WAS
18 CARRYING IT IN HIS RIGHT HAND DOWN BY HIS RIGHT LEG.

19 AND, YOU KNOW, IT DID SEEM VERY STRANGE TO ME AND IT GOT
20 MY ATTENTION, SO I KEPT MY EYES ON HIM, JUST TRY TO FIGURE OUT
21 WHAT WAS GOING ON OVER THERE.

22 I TOOK A COUPLE MORE STEPS AND I DID FOCUS ON A PERSON'S
23 BODY LAYING ON THE SIDEWALK AT THE SAME PLACE WHERE I'D FIRST
24 SEEN THIS INDIVIDUAL WAS STANDING. IT BECAME VERY APPARENT TO
25 ME WHAT HAD JUST TAKEN PLACE.

1 A THE BODY WAS LAYING IN THE SAME AREA THAT I SAW THE
2 INDIVIDUAL STANDING.

3 Q AND IT'S DESIGNATED BY?

4 A THE RED DOT.

5 Q THE RED DOT. AND WHAT ROUTE DID YOU TAKE FROM YOUR
6 VEHICLE?

7 A THE DOOR THAT I HAVE TO GO IN IS RIGHT DOWN HERE. SO I
8 JUST STEPPED OUT AND WENT IN THIS DIRECTION.

9 Q WHERE DID YOUR PATHS CROSS WITH THE MAN WITH THE RIFLE?

10 A RIGHT HERE. HE CAME RIGHT ALONG THE SIDEWALK HERE TO THE
11 VAN, AND I PROCEEDED THIS WAY. SO WE MET RIGHT HERE IN THIS
12 MAIN -- THIS IS THE EXIT THOROUGHFARE HERE.

13 Q THANK YOU. YOU CAN SIT BACK DOWN.

14 (THE WITNESS RETURNS TO THE WITNESS STAND.)

15 Q AND THE AREA THERE WHERE YOUR PATHS CROSSED, WHAT WAS THE
16 LIGHTING IN THAT AREA?

17 A WELL, IT WAS ABOUT 10 MINUTES BEFORE 7:00. THE SKY WAS
18 BECOMING LIT. WE HAVE ADEQUATE LIGHTING IN OUR PARKING LOT.
19 THOSE LIGHTS WERE ON THAT MORNING. AND THERE ARE ALSO LIGHTS
20 ALONG THE SIDEWALK.

21 Q AND COULD YOU CLEARLY SEE ---

22 MR. SMITH: OBJECTION, LEADING, YOUR HONOR.

23 THE COURT: SUSTAIN THE OBJECTION.

24 A THE LIGHTING WAS ADEQUATE FOR ME TO SEE THE INDIVIDUAL
25 FROM THE DISTANCE, AND ESPECIALLY FROM THE 15-FOOT DISTANCE.

1 I COULD SEE ALL OF HIS FEATURES.

2 Q AND DESCRIBE THE INDIVIDUAL AS YOU SAW HIM THAT MORNING
3 AS HE PASSED YOU THERE IN THE PARKING LOT?

4 A THE INDIVIDUAL WAS ABOUT 5'10" AND I WOULD GUESS
5 AROUND ---

6 MR. SMITH: OBJECTION, YOUR HONOR. HE'S GUESSING. HE
7 CAN TESTIFY TO WHAT HE OBSERVED BUT NOT WHAT HE GUESSES.

8 THE COURT: COUNSEL, THE WITNESS IS GIVING A DESCRIPTION.
9 A DESCRIPTION BY ITS TERMS IS OFTENTIMES AN APPROXIMATION. A
10 GUESS IS SOMETIMES AN APPROXIMATION. I'M GOING TO ALLOW HIM
11 TO TESTIFY IN THAT FASHION. GO AHEAD, SIR.

12 A I WOULD SAY AROUND 170 POUNDS. THE INDIVIDUAL'S HAIR WAS
13 FAIRLY LONG. IT WAS DARK, WAVY TYPE. I COULD TELL IT HADN'T
14 BEEN COMBED. IT WAS LIKE THIS INDIVIDUAL HAD JUST GOTTEN OUT
15 OF BED. HE HAD A FULL BEARD. AND I NOTICED IT WAS KIND OF
16 STRANGE BECAUSE THE HAIR ON HIS HEAD AND THE FACIAL HAIR
17 DIDN'T MATCH. HIS HAIR WAS DARK. HIS FACIAL HAIR WAS RED.

18 Q ALL RIGHT, SIR. HOW ABOUT HIS CLOTHING?

19 A HE HAD ON A LIGHT COLORED SHIRT AND SOME TYPE OF LIGHT
20 JACKET, OPEN, MAYBE LIKE A BLUE JEAN TYPE JACKET AND DARK
21 COLORED TROUSERS LIKE BLUE JEANS.

22 Q HAD YOU EVER SEEN HIM BEFORE?

23 A NO, SIR.

24 Q DID YOU KNOW HIM?

25 A NO, SIR.

1 Q AFTER YOU PASSED HIM THERE ON THE SIDEWALK AND HE GOT IN
2 HIS TRUCK DID YOU EVER SEE HIM IN PERSON AGAIN?

3 A NO, SIR.

4 Q DID YOU HAVE OCCASION TO TALK TO ONE OF THE DETECTIVES
5 THAT SAME AFTERNOON?

6 A YES, SIR, I DID. ONE OF THE DETECTIVES THAT AFTERNOON
7 CAME OUT TO MY RESIDENCE. AND HE WANTED ME TO LOOK AT SOME
8 PICTURES IN A FOLDER AND SEE IF I COULD IDENTIFY THE MAN THAT
9 I SAW THAT MORNING.

10 Q DO YOU REMEMBER WHICH DETECTIVE THAT WAS?

11 A WHITSTINE.

12 Q APPROXIMATELY WHAT TIME WAS THIS?

13 A IT WAS APPROXIMATELY 3:00 O'CLOCK IN THE AFTERNOON.

14 Q AND WHAT DID OFFICER WHITSTINE DO WHEN HE GOT THERE
15 PLEASE, SIR?

16 A HE TOLD ME WHO HE WAS, IDENTIFIED HIMSELF, AND TOLD ME
17 WHAT HE WANTED ME TO DO, THAT HE WANTED ME TO LOOK AT THE
18 PICTURES AND TAKE AS LONG AS I NEEDED TO AND SEE IF I COULD
19 IDENTIFY THE MAN THAT I SAW THAT MORNING. AND SO HE SAT ON
20 ONE SOFA I HAVE. I SAT ON ANOTHER. AND I DID, I TOOK A FEW
21 MINUTES AND LOOKED THEM OVER, LOOKED AT EACH PICTURE.

22 Q HOW MANY PICTURES WERE THERE?

23 A ABOUT SIX.

24 Q HOW WERE THEY PRESENTED TO YOU, IN WHAT FORMAT?

25 A THEY WERE ALL ON A FOLDER AND THEY WERE JUST ARRANGED

1 DIFFERENT -- IN DIFFERENT CORNERS AND AREAS ON -- THEY HAD A
2 PROFILE VIEW AND A FRONT VIEW OF DIFFERENT INDIVIDUALS WITH
3 THE SAME CHARACTERISTICS. THEY EACH HAD A NUMBER BESIDE THEM.

4 AND HE ASKED ME AFTER A COUPLE MINUTES, DID I SEE THE MAN
5 THAT I SAW THAT MORNING?

6 AND I SAID, YES, SIR, I DO.

7 Q AND DID YOU SEE THE MAN IN THAT PHOTOGRAPHIC LINE-UP THAT
8 YOU SAW THAT MORNING?

9 A YES, SIR, I DID.

10 Q ARE YOU SURE?

11 A YES, SIR, POSITIVE.

12 Q DID YOU HAVE ANY PROBLEM PICKING HIM OUT?

13 A NO, SIR.

14 Q AND DID YOU TELL MR. WHITSTINE, SHOW HIM WHICH ONE?

15 A YES, SIR, I DID.

16 Q AND THE PHOTOGRAPH THAT YOU PICKED OUT, WHERE HAD YOU
17 SEEN THAT MAN BEFORE?

18 A I SAW HIM AT DUKE POWER PROPERTY THAT MORNING ON THE
19 SIDEWALK WITH THE RIFLE.

20 Q AND DO YOU RECOGNIZE THIS MAN, MR. CHRONISTER, AS HE SITS
21 HERE TODAY?

22 A THE GENTLEMAN LOOKS FAMILIAR. BUT -- AND HIS HAIR COLOR,
23 HIS MUSTACHE COLOR ARE THE SAME. THE INDIVIDUAL THAT MORNING,
24 THE HAIR WAS LONGER. IT WAS ALL DISARRAYED. AND HE HAD A
25 FULL BEARD. THE EYE AREA, THE PART THAT WAS NOT COVERED THAT

STATE V. CHRONISTER

-99-

- 1 MORNING DOES LOOK VERY FAMILIAR.
- 2 Q AND, AGAIN, WHEN YOU SAW THE PHOTOGRAPHIC LINE-UP, DID
- 3 YOU HAVE ANY PROBLEM IDENTIFYING THE PERSON THAT YOU HAD SEEN?
- 4 A NO, SIR, I DID NOT.
- 5 Q AND YOU'RE SURE THAT'S THE PERSON YOU SAW IN THE PARKING
- 6 LOT THAT MORNING?
- 7 A ABSOLUTELY.
- 8 MR. GRANT: BEG THE COURT'S INDULGENCE.
- 9 (PAUSE.)
- 10 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY
- 11 HAVE.
- 12 CROSS EXAMINATION
- 13 BY MR. SMITH:
- 14 Q MR. AUTEN, WHAT YOU ARE TELLING US IS THAT ON THIS
- 15 PARTICULAR DAY THAT YOU WERE OUT THERE, THAT AN UNUSUAL EVENT
- 16 OCCURRED; IS THAT RIGHT?
- 17 A YES, SIR.
- 18 Q AND THAT LATER ON AT YOUR HOUSE THAT THE DETECTIVE CAME
- 19 AND SHOWED YOU SOME PHOTOGRAPHS, CORRECT?
- 20 A THAT'S CORRECT.
-
- 21 Q AND THAT YOU PICKED OUT ONE OF THOSE PHOTOGRAPHS?
- 22 A YES, SIR.
- 23 Q AND YOU'RE TELLING US THAT TODAY YOU CAN'T BE SURE THAT
- 24 THIS IS THE MAN YOU SAW, CORRECT, SIR?
- 25 A I CAN TELL YOU THAT THIS MAN IN THE COURTROOM HAS SIMILAR

1 CHARACTERISTICS. A LOT OF FEATURES ARE THE SAME. IF THIS MAN
2 IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS
3 INDEED THE SAME PERSON.

4 Q AND YOU CAN'T BE SURE BECAUSE YOU'RE TELLING US THAT THIS
5 MAN LOOKS SIMILAR; ISN'T THAT CORRECT?

6 A WITH THE ABSENCE OF THE HAIR AND THE ABSENCE OF THE
7 BEARD, I CAN ONLY TELL YOU HIS FEATURES ARE VERY SIMILAR.

8 Q AND THERE ARE A LOT OF VERY SIMILAR PEOPLE IN THE WORLD,
9 CORRECT, SIR?

10 A TRUE.

11 MR. SMITH: THAT'S ALL.

12 MR. GRANT: THANK YOU, MR. AUTEN. YOU MAY COME DOWN.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 MR. GRANT: WE CALL OTIS WHITSTINE. WE WOULD ASK MR.
15 AUTEN BE EXCUSED IF HE SO DESIRES, YOUR HONOR.

16 THE COURT: ANY OBJECTION?

17 MR. SMITH: NONE, YOUR HONOR.

18 THE COURT: WITHOUT OBJECTION YOU MAY BE EXCUSED.

19 MR. GRANT: YOU MAY STAY IF YOU LIKE.

20 OTIS J. WHITSTINE, BEING

21 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. GRANT:

24 Q MR. WHITSTINE, STATE YOUR FULL NAME FOR THE COURT?

25 A OTIS JULLIAN WHITSTINE.

SECOND-DAY
OTIS WHITSTINE(DIRECT)

-101-

205

1 Q AND BY WHOM ARE YOU EMPLOYED?

2 A YORK COUNTY SHERIFF'S DEPARTMENT.

3 Q I'M GOING TO NEED YOU TO GET THAT MICROPHONE A LITTLE BIT
4 CLOSER TO YOU SO I CAN HEAR YOU BACK OVER HERE.

5 (PAUSE.)

6 A YORK COUNTY SHERIFF'S DEPARTMENT.

7 Q THANK YOU, SIR. DID YOU HAVE OCCASION ON FEBRUARY THE
8 14TH TO TALK TO MR. TOMMY AUTEN?

9 A I DID.

10 Q AND WHERE DID YOU TALK TO HIM PLEASE?

11 A THE FIRST TIME I BELIEVE WAS AT DUKE POWER, CATAWBA
12 NUCLEAR PLANT, AND THE SECOND TIME WAS AT HIS RESIDENCE.

13 Q AND WHEN YOU WENT TO HIS RESIDENCE, DID YOU TAKE ANYTHING
14 WITH YOU?

15 A I DID. I TOOK A PHOTOGRAPHIC LINE-UP.

16 Q AND HOW MANY PICTURES ARE IN THE PHOTOGRAPHIC LINE-UP?

17 A IT CONTAINED SIX PICTURES.

18 Q HOW WERE THEY LAID OUT?

19 A THEY WERE NUMBERED 1 THROUGH 6.

20 Q DID THE LINE-UP CONTAIN THE PICTURE OF THIS DEFENDANT,
21 MR. CHRONISTER?

22 A IT DID.

23 Q WHAT DID YOU DO WHEN YOU WENT TO MR. AUTEN'S RESIDENCE
24 THAT AFTERNOON WITH THE LINE-UP? WHAT DID YOU DO?

25 A I BRIEFLY TALKED WITH HIM AND TOLD HIM -- ASKED HIM TO

STATE V. CHRONISTER

-101-

-102-

1 TAKE HIS TIME AND LOOK AT THE PICTURES AND SEE IF HE
2 RECOGNIZED ANYBODY IN IT, AND WAS THE MAN IN THE LINE-UP AT
3 DUKE POWER ON THAT PARTICULAR DAY.

4 Q AND WHAT DID MR. AUTEN DO?

5 A HE LOOKED AT THE PICTURES FOR ABOUT THREE OR FOUR MINUTES
6 AND SAID, THAT'S HIM.

7 AND I ASKED HIM, WHICH ONE?

8 HE SAID, NO. 3.

9 Q WHOSE PICTURE WAS PICTURE NO. 3?

10 A JEFFERY L. CHRONISTER.

11 Q DID MR. AUTEN HESITATE ---

12 MR. SMITH: OBJECT TO LEADING, YOUR HONOR.

13 THE COURT: JUST ASK HIM TO TELL WHAT HE DID.

14 Q DESCRIBE HOW MR. AUTEN PICKED THE PICTURE OUT AND HOW
15 MUCH TIME HE TOOK?

16 A IT TOOK HIM -- I TOLD HIM WHEN I EXPLAINED THE DIRECTIONS
17 AS FAR AS LOOKING AT THE PICTURES, I TOLD HIM TO TAKE AS MUCH
18 TIME AS HE NEEDED AND LOOK AT THE PICTURES GOOD.

19 AND HE SAID, THAT'S THE MAN RIGHT THERE.

20 Q DID ANYBODY INDICATE WHICH PICTURE OF HIM TO PICK?

21 A NO, SIR.

22 Q WAS ANYBODY THERE BESIDES YOU AND HIM?

23 A NO, SIR.

24 Q AND WHO WAS THE PICTURE THAT HE PICKED OUT?

25 A JEFFERY L. CHRONISTER, NO. 3 IN THE LINE-UP.

STATE V. CHRONISTER

-102-

OWS WHITSTINE(DIRECT)*(CROSS)

20

1 Q AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN COURT?
2 MR. SMITH: OBJECT TO LEADING, YOUR HONOR.

3 Q IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE
4 TODAY IN COURT AS IN THE PICTURE LINE-UP?

5 MR. SMITH: YOUR HONOR, THE SAME OBJECTION.

6 THE COURT: NO, SIR. I OVERRULE YOU. GO AHEAD.

7 A HE HAS NO BEARD AT THIS TIME.

8 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY
9 HAVE.

10 CROSS EXAMINATION

11 BY MR. SMITH:

12 Q DETECTIVE, YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT
13 AT THE CATAWBA STATION EARLY IN THE MORNING, CORRECT?

14 A YES, SIR, DOING INTERVIEWS.

15 Q AND THAT THAT WOULD HAVE BEEN ABOUT 8:00 -- 7:30. 8:00
16 O'CLOCK, CORRECT, SIR?

17 A I ASSUME. IT WAS EARLY IN THE MORNING.

18 Q EARLY IN THE MORNING. AND THEN AT ROUGHLY 3:00 IN THE
19 AFTERNOON YOU TALKED WITH HIM AT HIS HOUSE?

20 A I DON'T REMEMBER WHAT TIME IT WAS, BUT I PHONED HIM AND
21 THEN WENT TO HIS RESIDENCE. IT WAS IN THE EVENING.

22 Q AND YOU SHOWED HIM CERTAIN PHOTOGRAPHS AND HE PICKED A
23 PHOTOGRAPH, CORRECT?

24 A YES, SIR.

25 Q AND HE PICKED A NUMBER, CORRECT, SIR?

STATE V. CHRONISTER

104

- 1 A YES, SIR.
- 2 Q NO. 3?
- 3 A HE POINTED FIRST. AND THEN I ASKED HIM WHICH ONE?
- 4 HE SAID, NO. 3.
- 5 Q AND HE PICKED NO. 3?
- 6 A NO. 3.
- 7 Q NOW, I BELIEVE YOU YOURSELF DID NOT PREPARE THE LINE-UP,
- 8 CORRECT, SIR?
- 9 A NO, SIR.
- 10 Q HOW LONG ALL TOLD WERE YOU AT HIS HOUSE, DO YOU RECALL?
- 11 A ABOUT 15 MINUTES.
- 12 Q ABOUT 15 MINUTES. AND WHEN YOU -- YOU HAD TO TALK WITH
- 13 HIM AT HIS HOUSE BECAUSE HE HAD LEFT THE POWER STATION BECAUSE
- 14 HE WAS UPSET?
- 15 A WELL, FROM WHAT -- FROM WHAT I KNOW HE TOLD ME HE WAS
- 16 GOING HOME. I DON'T KNOW WHAT THE REASON WAS, BUT.
- 17 Q BUT YOU HAD TO GO TO HIS HOUSE?
- 18 A YES, SIR.
- 19 MR. SMITH: THAT'S ALL, YOUR HONOR.
- 20 THE COURT: REDIRECT?
- 21 MR. GRANT: YES, SIR.
- 22 REDIRECT EXAMINATION
- 23 BY MR. GRANT:
- 24 Q AND, MR. WHITSTINE, PHOTO NO. 3 IS A PHOTOGRAPH OF WHOM?
- 25 A JEFFERY L. CHRONISTER.

STATE V. CHRONISTER

-104-

1 MR. GRANT: THANK YOU, SIR.

2 MR. SMITH: JUST ONE -- I JUST HAVE A QUESTION.

3 RE CROSS EXAMINATION

4 BY MR. SMITH:

5 Q DETECTIVE, YOU DID NOT PREPARE THE PHOTO LINE-UP?

6 A NO, SIR.

7 Q NOR DID YOU PREPARE THE LIST OF NAMES ASSOCIATED WITH THE
8 NUMBERS, DID YOU, SIR?

9 A NO, SIR.

10 Q ALL YOU KNOW IS THAT NO. 3 WAS THE PERSON THAT WAS PICKED
11 OUT BY MR. AUTEN?

12 A ON THE SHEET IT HAS A LIST OF NAMES OF THE PEOPLE IN THE
13 PICTURES, AND MR. CHRONISTER WAS LISTED AS NO. 3.

14 Q BUT YOU DIDN'T PREPARE THAT LIST, YOU DIDN'T PREPARE THE
15 PHOTOGRAPHS?

16 A NO, SIR.

17 Q AND YOU DIDN'T KNOW NO. 3 FROM ADAM'S HOUSE CAT OF YOUR
18 OWN KNOWLEDGE, DID YOU, SIR?

19 A NO, SIR.

20 MR. SMITH: THANK YOU.

21 THE COURT: ANYTHING ELSE?

22 MR. GRANT: NO, SIR. WE'D ASK MR. WHITSTINE COME DOWN.

23 THE COURT: YOU MAY STEP DOWN, SIR.

24 (THE WITNESS LEAVES THE WITNESS STAND.)

25 MR. GRANT: WE CALL WILLIE JETER.

STATE V. CHRONISTER

1

WILLIE ALLEN JETER, BEING

2

FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3

DIRECT EXAMINATION

4

BY MR. GRANT:

5

Q MR. JETER, STATE YOUR FULL NAME FOR THE COURT PLEASE?

6

A WILLIE ALLEN JETER.

7

Q BY WHOM ARE YOU EMPLOYED?

8

A GASTON COUNTY POLICE.

9

Q AND I ASK YOU: BACK IN FEBRUARY OF 1992 DID YOU HAVE

10

OCCASION TO PREPARE A LINE-UP FOR THE YORK COUNTY SHERIFF'S

11

DEPARTMENT?

12

A YES, SIR, I DID.

13

Q DID YOU PERSONALLY PREPARE THAT LINE-UP?

14

A YES, SIR, I DID.

15

Q AND DO YOU KNOW JEFFERY CHRONISTER?

16

A I KNOW HIM NOW, YES, SIR.

17

Q AND AT THAT TIME DID YOU KNOW WHO HE WAS?

18

A NO, SIR, I DID NOT.

19

Q WOULD YOU DESCRIBE HOW YOU PREPARED A LINE-UP WITH HIS

20

PICTURE IN IT PLEASE, SIR?

21

A AFTER A PHOTOGRAPH OF THE SUSPECT WAS MADE I GOT THAT

22

PHOTOGRAPH AND WENT THROUGH OUR MUG BOOK, WHICH CONTAINS

23

NUMEROUS PHOTOGRAPHS. I WENT THROUGH THAT BOOK AND FOUND

24

PHOTOGRAPHS THAT WAS SIMILAR TO THE SUSPECT, WHITE MALE WITH A

25

BEARD.

STATE V. CHRONISTER

1 Q AND THE PHOTOGRAPH OF MR. CHRONISTER DID YOU PLACE THAT
2 INTO THE LINE-UP?

3 A YES, SIR, I DID.

4 MR. GRANT: YOUR HONOR, THIS IS FOR IDENTIFICATION.

5 Q BUT I'D LIKE TO ASK YOU, CAN YOU IDENTIFY THAT LINE-UP?

6 A YES, SIR, I CAN.

7 Q AND WHERE DID YOU PLACE THE PHOTOGRAPH OF JEFF CHRONISTER
8 IN THAT LINE-UP PLEASE, SIR?

9 A I PLACED HIM IN PHOTOGRAPH NO. 3.

10 Q AND THAT PHOTOGRAPH WAS TAKEN AFTER HE HAD BEEN ARRESTED
11 THAT MORNING?

12 A THAT'S CORRECT.

13 Q DID YOU THEN GIVE THIS LINE-UP TO YORK COUNTY
14 AUTHORITIES?

15 A YES, SIR, I DID.

16 MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY
17 HAVE.

18 CROSS EXAMINATION

19 BY MR. SMITH:

20 Q MR. JETER, YOU SAID THAT YOU DID NOT KNOW MR. CHRONISTER
21 PRIOR TO THIS?

22 A NO, SIR, I DID NOT.

23 Q AND YOU TESTIFIED THAT ALL -- WHAT YOU DID IS YOU JUST
24 TOOK THE PHOTOGRAPH AND PUT IT IN THE FOLDER ALONG WITH OTHER
25 PHOTOGRAPHS THAT YOU PICKED OUT RANDOMLY?

1 A THAT'S CORRECT.

2 Q ALL RIGHT. YOU DID NOT TAKE THE PHOTOGRAPH, CORRECT,

3 SIR?

4 A THAT'S CORRECT, I DID NOT.

5 Q AND AFTER YOU HAD TAKEN -- HAD BEEN GIVEN THIS

6 PHOTOGRAPH, YOU PLACED IT AND YOU GAVE THAT FOLDER TO SOMEONE

7 WITH THE YORK COUNTY SHERIFF'S DEPARTMENT?

8 A THAT'S CORRECT.

9 MR. SMITH: THANK YOU, SIR.

10 MR. GRANT: THANK YOU. YOU MAY COME DOWN.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 MR. GRANT: WE'D ASK MR. JETER BE EXCUSED.

13 MR. SMITH: I HAVE NO OBJECTION.

14 THE COURT: WITHOUT OBJECTION, YOU MAY GO.

15 MR. GRANT: WE CALL SERGEANT MIMS.

16 JOHNIE R. MIMS, BEING

17 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. GRANT:

20 Q SERGEANT MIMS, IF YOU WOULD, SPEAK INTO THE MICROPHONE

21 AND STATE YOUR FULL NAME FOR THE COURT?

22 A SERGEANT JOHNIE R. MIMS.

23 Q AND BY WHOM ARE YOU EMPLOYED?

24 A THE GASTON COUNTY POLICE DEPARTMENT.

25 Q AND ON FEBRUARY 14, MR. MIMS -- NOT ANYTHING YOU WERE

1 THEN COUNSEL FOR DEFENSE WILL MAKE THEIR OPENING STATEMENT.

2 THE STATE WILL THEN PROCEED BY PUTTING UP ITS EVIDENCE
3 AFTER WHICH THE SAME OPPORTUNITY WILL BE AFFORDED MR. SMITH.
4 AFTER THAT WE'LL HAVE CLOSING ARGUMENTS AND THEN I'LL CHARGE
5 THE JURY ON THE LAW.

6 I IMPRESS UPON YOU AND REMIND YOU ONCE AGAIN, NO
7 DISCUSSION OF THIS CASE AMONG YOURSELVES AND CERTAINLY NOT
8 WITH ANYONE ELSE. AND YOU'RE NOT TO OBSERVE, LISTEN TO, READ,
9 DISCUSS ANY NEWS MEDIA AS WELL, ANY NEWS MEDIA ACCOUNTS OF IT
10 IF THERE BE ANY UNTIL THIS CASE IS OVER.

11 THANK YOU VERY MUCH.

12 MR. SOLICITOR, ON BEHALF OF THE STATE YOU MAY MAKE YOUR
13 OPENING STATEMENT.

14 MR. GRANT: MAY IT PLEASE THE COURT.
15 OPENING STATEMENT BY MR. GRANT
16 ON BEHALF OF THE STATE:

17 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, I'M
18 LARRY GRANT, SOLICITOR FOR THE SIXTEENTH CIRCUIT, YORK AND
19 UNION COUNTIES. I REPRESENT THE STATE OF SOUTH CAROLINA IN
20 THE PROSECUTION AND PRESENTATION OF CRIMINAL CASES.

21 YOU HAVE BEEN DRAWN TO TRY THE CASE OF THE STATE VERSUS
22 JEFFERY CHRONISTER, WHO IS SEATED HERE BETWEEN HIS COUNSEL,
23 MR. GERALD SMITH WHO YOU HAVE ALREADY INTRODUCED TO, AND MR.
24 HARRY DEST OF THE PUBLIC DEFENDER'S OFFICE.

25 THIS WHITE PIECE OF PAPER I HAVE IS SIMPLY AN INDICTMENT.

STATE V. CHRONISTER

(SOLICITOR-INDICTMENT)

1 IT IS NOT EVIDENCE. YOU MAY OR MAY NOT HAVE IT WITH YOU IN
2 THE JURY ROOM. BUT IT IS SIMPLY A FORMAL STATEMENT OF THE
3 CHARGE. THIS INFORMS ANYBODY WHO NEEDS TO KNOW, THE COURT,
4 THE DEFENDANT, ANYBODY ELSE WHO HAS A NEED TO KNOW OF THE
5 FORMAL STATEMENT OF THE CHARGE.

6 THIS INDICTMENT CHARGES JEFFERY CHRONISTER WITH MURDER,
7 WITH THE MURDER OF HIS WIFE, MARIE CHRONISTER.

8 YOU WILL HEAR THE FACTS FROM THE WITNESS STAND. YOUR
9 JOB, AS HIS HONOR HAS ALREADY TOLD YOU -- AND I WON'T REPEAT
10 THAT -- IS TO FIND THE TRUE FACTS OF THE MATTER, AND THEN
11 APPLY THOSE FACTS TO THE LAW AS HIS HONOR CHARGES YOU. AND
12 HIS HONOR IS IN CHARGE OF THE LAW OF THIS CASE. AND YOU DO
13 NOT KNOW WHAT THE LAW IN THIS CASE IS AND YOU WILL NOT KNOW
14 UNTIL HIS HONOR CHARGES YOU THE LAW AT THE END OF THE CASE.

15 BUT AT THE END OF THE CASE WHEN HE CHARGES YOU THE LAW,
16 THEN YOU TAKE THE FACTS AS YOU FOUND THEM TO BE, APPLY THE LAW
17 AS HIS HONOR CHARGES YOU, AND RENDER A VERDICT WHICH SPEAKS
18 THE TRUTH.

19 THAT'S AS EASILY AS I CAN SAY IT. IT'S NOT AN EASY JOB.
20 JURY DUTY IS CALLED A DUTY BECAUSE IT IS A DUTY. IT'S A DUTY
21 THAT YOU HAVE TO YOUR COUNTRY, TO MR. CHRONISTER, TO THE STATE
22 OF SOUTH CAROLINA TO WELL AND FAIRLY TRY AND A TRUE
23 DELIVERANCE MAKE, A VERDICT WHICH SIMPLY SPEAKS THE TRUTH.
24 AND I ASK YOU TO KEEP AN OPEN MIND THROUGHOUT THIS CASE
25 AND TO THE VERY END, UNTIL YOU'VE HEARD IT ALL, ALL OF THE

1 FACTS AND ALL OF THE LAW, AND THEN THROUGH YOUR DELIBERATIONS,
2 RENDER A VERDICT WHICH SPEAKS THE TRUTH.

3 NOW, THE STATE HAS CHARGED JEFFERY CHRONISTER BY THIS
4 INDICTMENT WITH THE FORMAL CHARGE OF MURDER. I WILL PUBLISH
5 THAT TO YOU: STATE OF SOUTH CAROLINA, COUNTY OF YORK,
6 INDICTMENT FOR MURDER AND USE OF A FIREARM DURING THE
7 COMMISSION OF A VIOLENT CRIME AT A COURT OF GENERAL SESSIONS
8 CONVENED ON APRIL THE 6TH, 1992, THE GRAND JURORS OF YORK
9 COUNTY PRESENT UPON THEIR OATH: COUNT ONE, THAT JEFFERY
10 CHRONISTER DID IN YORK COUNTY ON OR ABOUT FEBRUARY 14, 1992
11 WILFULLY, FELONIOUSLY, AND WITH MALICE AFORETHOUGHT KILL ONE
12 MARIE GAIL CHRONISTER BY MEANS OF SHOOTING HER, AND THAT THE
13 SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

14 COUNT TWO CHARGES THAT JEFFERY LYNN CHRONISTER DID COMMIT
15 THE CRIME OF MURDER WHILE USING A FIREARM AGAINST THE PEACE
16 AND DIGNITY OF THE STATE AND CONTRARY TO THE STATUTE AND SUCH
17 CASE MADE AND PROVIDED.

18 SIGNED, LARRY F. GRANT, SOLICITOR.

19 HIS HONOR HAS ALREADY CHARGED YOU VERY BRIEFLY EARLIER, ON
20 ABOUT THE DEFINITION OF MURDER. YOU HOLD YOUR MIND OPEN UNTIL
21 ~~HE CHARGES YOU AT THE END OF THIS CASE AS TO WHAT THE LAW THAT~~
22 APPLIES TO THIS CASE IS.

23 I SUBMIT TO YOU AGAIN, IF I MISSTATE ANY OF THE LAW OR
24 MR. SMITH, YOU TAKE THE LAW AS HIS HONOR CHARGES IT TO BE.

25 MURDER IS THE UNLAWFUL KILLING, I UNDERSTAND, OF A HUMAN

STATE V. CHRONISTER

-III-

(SOUCITOR JUDICMENT)

-112-

82

1 BEING WITH MALICE AFORETHOUGHT. HIS HONOR WILL CHARGE YOU AS
2 TO THOSE TERMS. THEY HAVE BASICALLY THEIR COMMON-SENSE
3 MEANING. UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE
4 AFORETHOUGHT. MALICE BEING A MALICIOUS ACT OR AN EVIL STATE
5 OF MIND OR A HEART BENT ON MISCHIEF OR DEVOID OF GOOD. AND
6 AFORETHOUGHT, MEANING A THOUGHT, A PERIOD OF TIME. IT DOESN'T
7 HAVE TO BE A MEASURABLE PERIOD OF TIME, BUT IT'S AN
8 AFORETHOUGHT, A THOUGHT EITHER AT OR BEFORE THE TIME OF THE
9 FATAL ACT.

10 THE STATE IS REQUIRED AND THE STATE ACCEPTS THE BURDEN --
11 THE STATE THAT I REPRESENT AND THE STATE THAT MR. SMITH
12 REPRESENTS AS PUBLIC DEFENDER -- WOULD NOT PRESUME ANY ONE OF
13 ITS DEFENDANTS TO BE GUILTY OF ANY CHARGE, ANY ONE OF ITS
14 CITIZENS TO BE GUILTY OF ANY CHARGE. AND THE STATE AGREES
15 WITH THAT AND WELCOMES THAT BURDEN.

16 THE STATE HAS CHARGED MR. CHRONISTER WITH THE CHARGE OF
17 MURDER BY KILLING HIS WIFE WITH MALICE AFORETHOUGHT.
18 PREMEDITATION IS NOT REQUIRED IN SOUTH CAROLINA. IT MAY BE A
19 PART OF THE AFORETHOUGHT FROM YOUR FINDING OF THE FACTS;
20 THAT'LL BE UP TO YOU.

21 ~~MOTIVE IS NOT REQUIRED IN A MURDER CASE IN SOUTH~~
22 CAROLINA. THERE MAY BE FROM YOUR FINDING OF THE FACTS A
23 MOTIVE, BUT IT'S NOT REQUIRED THAT THE STATE PROVE
24 PREMEDITATION OR MOTIVE, BUT SIMPLY UNLAWFUL KILLING OF A
25 PERSON WITH MALICE AFORETHOUGHT. AND THE AFORETHOUGHT CAN BE

STATE V. CHRONISTER

-112-

1 Q AND THE PROJECTILES THEMSELVES?

2 A YES.

3 Q AND, OF COURSE, DOCTOR, THE POSITIONING OF ANY WOUND
4 DEPENDS UPON THE POSITION OF THE PERSON; IS THAT CORRECT?

5 A YES, SIR.

6 MR. SMITH: THANK YOU, DOCTOR.

7 MR. GRANT: THANK YOU, DR. JENKINS. WE'D ASK THAT DR.
8 JENKINS BE EXCUSED.

9 THE COURT: ANY OBJECTION?

10 MR. SMITH: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION, YOU MAY GO, DOCTOR.

12 (THE WITNESS LEAVES THE WITNESS STAND.)

13 MR. GRANT: YOUR HONOR, THAT WILL BE THE STATE'S CASE.

14 THE COURT: THE STATE RESTS.

15 MR. SMITH: YOUR HONOR, I WOULD HAVE MATTERS THAT I WOULD
16 TAKE UP AT THIS TIME NORMALLY.

17 THE COURT: COME UP HERE PLEASE.

18 (A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY
19 BUT OUT OF THE HEARING OF THE JURY.)

20 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
21 JURY, I APOLOGIZE TO YOU FOR ANY INCONVENIENCE THAT MAY CAUSE.
22 COUNSEL NEEDS SOME TIME. WHILE HE WAS ADVISED THAT THE STATE
23 MAY REST THEIR CASE, THEY WERE NOT QUITE PREPARED FOR IT TO BE
24 THAT QUICK. SO THE STATE HAS RESTED ITS CASE AT THIS TIME.
25 SO COUNSEL HAS REQUESTED A FEW MOMENTS FROM THE COURT.

1 HE SAYS HE NEEDS ABOUT 15 MINUTES. I TOLD HIM I COULD GIVE IT
2 TO HIM. SO I'M GOING TO ASK YOU TO STEP BACK IN THE JURY
3 ROOM ONCE AGAIN. JUST TRY TO BE COMFORTABLE.

4 THE OTHER WITNESS, AS YOU KNOW, WAS A MEDICAL WITNESS.
5 AND WE TRY AS BEST WE CAN IN ALL CASES TO ACCOMMODATE THESE
6 INDIVIDUALS IN THE MEDICAL FIELD BECAUSE OF THEIR SCHEDULES
7 AND THE CARE FOR THE MEDICAL TREATMENT OF PEOPLE AS WELL AS
8 THEIR OWN RESPONSIBILITIES. IT WAS A DELAY THAT WE DIDN'T
9 PARTICULARLY WANT, BUT IT OCCURRED AND WE HAVE TO BE
10 UNDERSTANDING.

11 AND I ASK FOR YOUR UNDERSTANDING AND PATIENCE WHILE WE
12 TAKE ANOTHER FEW MINUTES AND DEAL WITH THESE MATTERS. IT
13 SHOULD BE ABOUT 15 MINUTES. OKAY?

14 NO DISCUSSION OF THE CASE. WE'LL TRY TO START BACK AT
15 11:30. YOU MAY STEP OUT.

16 (THE JURY RETIRES TO THE JURY ROOM.)

17 THE COURT: ALL RIGHT. THE JURY'S OUTSIDE THE PRESENCE
18 OF THE COURT. MR. SMITH, YOU MAY MAKE YOUR MOTIONS NOW.

19 MR. SMITH: YOUR HONOR, I WOULD AT THIS TIME MOVE FOR A
20 DIRECTION OF VERDICT ON THE FOLLOWING GROUNDS: THAT THE
21 EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE
22 CERTAINLY SHOWS A KILLING. BUT THE IDENTIFICATION ISSUE, IT
23 DOES NOT SHOW THAT MY CLIENT DID THAT, BECAUSE OF THE NATURE
24 OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY.

25 I WOULD ALSO SUBMIT THAT THERE HAS BEEN NO WEAPON THAT

1 HAS BEEN PRODUCED. THERE HAVE BEEN NO PROJECTILES.

2 THE PRIMARY FAILURE IN THE STATE'S CASE, YOUR HONOR, IS
3 THAT THERE HAS NOT BEEN ANY EVIDENCE TO MAKE OUT THE NECESSARY
4 CASE FOR MALICE. EVEN THOUGH MALICE MAY BE INFERRED FROM THE
5 USE OF A WEAPON, THERE HAS BEEN NO WEAPON CONNECTED WITH MY
6 CLIENT.

7 AND I SIMPLY FEEL THAT BASED ON THE TESTIMONY THAT WE
8 HAVE, THAT THE STATE HAS FAILED TO MAKE OUT A CASE OF MURDER.
9 THE PRIMARY FAILURE BEING THAT THE STATE HAS FAILED TO SHOW
10 THE REQUIRED MALICE.

11 THE COURT: WELL, THE COURT IS NOT CONCERNED WITH THE
12 WEIGHT OF THE TESTIMONY OR ITS BELIEVABILITY. THE COURT IS
13 ONLY CONCERNED WITH THE EXISTENCE OF EVIDENCE FROM WHICH A
14 JURY COULD REASONABLY CONCLUDE THAT THE PERSON IS GUILTY OF A
15 CRIME BEYOND A REASONABLE DOUBT.

16 THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS
17 IDENTIFIED AS BEING THE PERSON AT THE SCENE, THAT HE WAS IN
18 POSSESSION OF A WEAPON, THAT GUNSHOTS WERE HEARD, AND VERY
19 SHORTLY IN SECONDS THEREAFTER THE VICTIM'S BODY WAS FOUND.
20 SHE WAS DEAD, OF COURSE, THE STATEMENTS MADE BY THE OFFICER --
21 ALL OF THOSE. AND THE USE OF A DEADLY WEAPON, YOU DON'T HAVE
22 TO FIND THE WEAPON IF THERE'S TESTIMONY OF USE OF A WEAPON.

23 USE OF A DEADLY WEAPON IS SUFFICIENT FOR AN INFERENCE OF
24 MALICE TO SUPPORT A CONVICTION FOR MURDER, MALICE
25 AFORETHOUGHT.

(DIRECTED VERDICT)

-116-

23:

1 FOR THOSE REASONS THE MOTIONS FOR DIRECTED VERDICT AT
2 THIS STAGE IS DENIED.

3 ANY OTHER MOTIONS?

4 MR. SMITH: NOT AT THIS TIME, YOUR HONOR.

5 THE COURT: MR. SMITH, YOU INDICATED AT SIDE BAR BEFORE
6 WE SENT THE JURY OUT THAT YOU ALSO WERE DISCUSSING WITH YOUR
7 CLIENT CONCERNING HIS RIGHTS UNDER THE FIFTH AMENDMENT.

8 MR. SMITH: THAT IS CORRECT.

9 THE COURT: WOULD YOU LIKE FOR ME TO EXAMINE HIM ON THE
10 RECORD CONCERNING THAT -- NOT EXAMINE HIM, BUT GO OVER THOSE
11 WITH HIM?

12 MR. SMITH: YOUR HONOR, I HAVE ADVISED HIM. I WOULD
13 APPRECIATE IT IF YOUR HONOR WOULD ALSO ADVISE HIM.

14 THE COURT: WOULD YOU PLEASE BRING HIM FORWARD, RIGHT TO
15 THE FRONT.

16 (COMPLIED.)

17 THE COURT: YOU ARE JEFFERY L. CHRONISTER?

18 DEFENDANT: YES, SIR.

19 THE COURT: MR. CHRONISTER, IF YOU WILL SPEAK OUT. IF
20 YOU DON'T UNDERSTAND ANY WORDS OR TERMS THAT I MAY USE, WOULD
21 YOU TELL ME IF YOU DID NOT UNDERSTAND THEM?

22 DEFENDANT: YES, SIR.

23 THE COURT: FOR THE RECORD ONCE AGAIN, HOW FAR DID YOU GO
24 IN SCHOOL?

25 DEFENDANT: TWELFTH.

-116-

STATE V. CHRONISTER

1 THEM UP IF YOU INSIST ON IT?

2 DEFENDANT: YES, SIR.

3 THE COURT: ARE YOU GOING TO FOLLOW YOUR ATTORNEY'S
4 ADVICE IN THAT REGARD?

5 DEFENDANT: YES, SIR.

6 THE COURT: ALL RIGHT, SIR. THEN YOU ARE RESTING IN
7 ESSENCE?

8 MR. SMITH: YOUR HONOR, WE WOULD REST. AND I WOULD RENEW
9 MOTION FOR DIRECTED VERDICT AND IT WOULD BE THE SAME GROUND AS
10 PREVIOUSLY STATED.

11 THE COURT: THE SAME REASON THE COURT DENIED IT
12 INITIALLY, DENIES IT AGAIN.

13 YOU HAVE THE RIGHT TO MAKE THE OPENING AND CLOSING
14 ARGUMENTS SINCE YOU DID NOT OFFER ANY TESTIMONY AND EVIDENCE.
15 ARE YOU GOING TO OPEN OR ARE YOU GOING TO WAIVE OPENING?

16 MR. SMITH: YOUR HONOR, I WOULD NOT OPEN. I WILL MAKE
17 ONE FINAL CLOSING ARGUMENT.

18 THE COURT: ALL RIGHT. MR. SOLICITOR, HOW MUCH TIME DO
19 YOU THINK YOU NEED TO MAKE YOUR ARGUMENT?

20 MR. GRANT: NO MORE THAN 30 MINUTES, PROBABLY 20, 25,
21 YOUR HONOR.

22 THE COURT: WHAT ABOUT YOU? THE SAME AMOUNT?

23 MR. SMITH: ROUGHLY THE SAME, YOUR HONOR.

24 THE COURT: OKAY. I'LL LET YOU REST IN FRONT OF THE JURY
25 BY MAKING THE STATEMENT IF YOU CHOOSE THAT THE DEFENDANT IS

1 THE COURT: DO YOU WISH TO TESTIFY?

2 DEFENDANT: NO, SIR.

3 THE COURT: IS THAT YOUR DECISION TO NOT TESTIFY?

4 DEFENDANT: YES, SIR.

5 THE COURT: MR. SMITH, DO YOU WISH TO ADD ANYTHING?

6 MR. SMITH: YOUR HONOR, I ALSO HAVE EXPLAINED TO MR.

7 CHRONISTER THE POSTURE THAT THE CASE IS IN NOW. WE HAVE
8 WITNESSES THAT ARE AVAILABLE OUTSIDE THE COURTROOM TO BE
9 CALLED. I HAVE EXPLAINED TO HIM THAT IT IS MY OPINION THAT
10 CERTAIN EVIDENCE THAT WE COULD PRESENT WOULD LEAD TO REPLY
11 EVIDENCE BY THE STATE -- THEY WOULD HAVE THE RIGHT TO REPLY;
12 THAT THE SITUATION BASED AS THE CASE STANDS NOW THAT IF HE IS
13 NOT GOING TO TESTIFY HIMSELF, THAT IT WOULD BE MY OPINION THAT
14 THE DEFENSE SHOULD REST.

15 I HAVE EXPLAINED THAT TO HIM, BUT I WANTED TO MAKE THE
16 COURT AWARE THAT THERE WITNESSES ARE AVAILABLE AND I'VE TOLD
17 HIM THAT, AND I HAVE TOLD HIM THAT THAT IS MY OPINION.

18 THE COURT: BUT YOU'RE LEAVING IT UP TO HIM?

19 MR. SMITH: BUT I AM LEAVING IT UP TO HIM. IT'S HIS
20 CASE.

21 THE COURT: YES, SIR. THAT'S RIGHT.

22 DO YOU UNDERSTAND THAT, MR. CHRONISTER?

23 DEFENDANT: YES, SIR.

24 THE COURT: AND YOU UNDERSTAND THAT WHILE YOUR ATTORNEY
25 RECOMMENDS YOU NOT PUT THESE PEOPLE UP, HE IS PREPARED TO PUT

1 EDDIE THOMASSON. MR. THOMASSON.
2 T.B. SMITH.
3 MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.
4 THE COURT: OTIS WHITSTINE, W-H-I-T-S-T-I-N-E. MR.
5 WHITSTINE.
6 CORPORAL B.L. LYTTON, L-Y-T-T-O-N.
7 MR. GRANT: HE'S NOT IN THE COURTROOM.
8 THE COURT: SERGEANT J. R. MIMS. SERGEANT MIMS IS TO MY
9 RIGHT.
10 SERGEANT J. R. PHILLIPS. SERGEANT PHILLIPS IS NOT IN THE
11 COURTROOM?
12 MR. GRANT: NOT IN THE COURTROOM.
13 THE COURT: R. S. JOHNSTON. HE'S NOT IN THE COURTROOM.
14 MR. GRANT: NOT PRESENT.
15 THE COURT: DETECTIVE R. K. POWERS.
16 MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.
17 THE COURT: DETECTIVE W.A. JETER, J-E-T-E-R.
18 MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.
19 THE COURT: PATROLMAN D.M. ROBINSON. MR. ROBINSON IS TO
20 MY RIGHT. THANK YOU, SIR.
21 PATROLMAN A.L. SCHMIDT. PATROLMAN SCHMIDT.
22 BILL RAUM, R-A-U-M.
23 MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.
24 THE COURT: THESE PEOPLE ARE DUKE POWER EMPLOYEES?
25 MR. GRANT: YES, SIR.

1 THE COURT: DAN WILSON. NOT IN THE COURTROOM -- THERE HE
2 IS RIGHT THERE, DAN WILSON.

3 JOEL SMITH. MR. SMITH IS PRESENT.

4 EDDIE HUMPHRIES. MR. HUMPHRIES.

5 MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

6 THE COURT: SHARON LEE. MS. LEE.

7 SCOTT CRAWFORD. MR. CRAWFORD.

8 THOMAS AUTEN, A-U-T-E-N. HE'S PRESENT.

9 GENE WATTS.

10 MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

11 THE COURT: LARONNE SISK, S-I-S-K.

12 MR. GRANT: NOT IN THE COURTROOM.

13 THE COURT: THERE SHE IS.

14 MR. GRANT: BEG YOUR PARDON.

15 THE COURT: MARY WALLACE. MS. WALLACE IS PRESENT.

16 FLOYD NEAL. MR. NEAL.

17 SIDNEY BALLANGER. MR. BALLANGER.

18 DR. THOMAS BEHRMAN, B-E-H-R-M-A-N, BEHRMAN.

19 BARBARA GIBSON.

20 MR. GRANT: NOT HERE, YOUR HONOR.

21 THE COURT: DR. EARL JENKINS.

22 MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

23 THE COURT: JACK CANIPE, C-A-N-I-P-E. JACK CANIPE, NOT
24 PRESENT.

25 WENDY CHRONISTER. WENDY CHRONISTER. NOT PRESENT.

STATE V. CHRONISTER



92-1224 -120-

State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

Lee S. Alford
Judge

Moss Justice Center
1675-1J York Highway
York, SC 29745-7434
Phone: (803) 628-3048
Fax: (803) 628-3139
lalfordj@sccourts.org

November 21, 2014

Jeff Chronister, #189827
Kirkland C.I., B-II, 34
4344 Broad River Road
Columbia, S. C. 29210

RECEIVED

DEC 29 2015

SC Court of Appeals

Dear Mr. Chronister:

This will acknowledge receipt of your motion and correspondence. This Court cannot grant relief on a motion unless timely made. You would need to file a Post-Conviction Relief Action in order for the Court to consider your motion.

With kind regards, I am

Yours Very Truly,

Lee S. Alford /s/

Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit

LSA:rgb

-120-

FILED-RECEIVED
2014 NOV 21 PM 2:57
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 27, 2015

Jeffrey L. Chronister, 189827
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210

Mr. Donald J. Zelenka, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: The State v. Jeffrey Lynn Chronister
Appellate Case No. 2014-002630

RECEIVED

DEC 29 2015

SC Court of Appeals

Dear Mr. Chronister and Counsel:

The Court is in receipt of the appellant's motion in opposition which is being construed as the appellant's initial reply brief. Therefore, the appellant is instructed that when it comes time to file final briefs, the final reply brief's cover should be grey and the final brief of appellant's cover should be blue. Please see Rules 208 and 211, SCACR. The record on appeal is due to be served upon the respondent no later than thirty (30) days from the date of this letter and a proof of service must be filed with the Court. All final briefs and bound copies of the record on appeal shall be due twenty (20) days after the record on appeal has been served upon the respondent.

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT

staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

We suggest that large parcels such as copies of final briefs and the record on appeal be sent directly to the Court via the street address: **1220 Senate Street, Columbia, S.C. 29201**. Thank you for your attention to this.

According to our records, the correct caption for this appeal should read as follows on the record on appeal and all final briefs:

The State, Respondent,

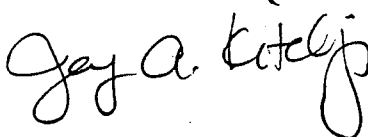
v.

Jeffrey Lynn Chronister, Appellant.

Furthermore, the Court anticipates that the attorney information for all attorneys receiving a copy of this letter will appear on the cover of the record on appeal. The attorney information for the party submitting the brief should appear on the final briefs.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,



CLERK

cc: Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Jeffrey Lynn Chronister, Appellant.

Appellate Case No. 2014-002630

RECEIVED

DEC 29 2015

SC Court of Appeals

The Honorable Lee S. Alford
York County
Trial Court Case No. 1992GS4601224

ORDER

The Court is construing the appellant's letter dated November 9, 2015 as a request to file less than the required fifteen copies of the record on appeal and final briefs. The appellant's request is granted. All parties are permitted to file one unbound original and nine bound copies of the record on appeal and final briefs. The record on appeal is due to be served and filed no later than twenty days from the date of this order. The final briefs will be due to be served and filed no later than twenty days after the record on appeal has been served.

FOR THE COURT

BY

V. Claire Allen, Deputy

CLERK

Columbia, South Carolina

cc:

Jeffrey L. Chronister, 189827
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

FILED

December 2, 2015

WITNESSES

Otis Whistine

YCSD

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

April 6, TERM 1992

THE STATE

vs.

Lynn Jeffery Chronister

ARREST WARRANT NO. D-228986

ACTION OF GRAND JURY

Bice 4/6/92

Im Weedon

Foreman of Grand Jury

VERDICT

Count one - Guilty Murder
Count two - Guilty Possession
of a Firearm when committing
a Violent Crime

Foreman of Petit Jury

Indictment for

MURDER

AND

UNLAWFUL POSSESSION OF FIREARM OR
KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME

(S. C. Code 16-3-10)

(CDR Code 116)

-123-

[Handwritten signature and date 4/6/92]

JUN 20 10 41 AM '01

INDICTMENT FOR

STATE OF SOUTH CAROLINA)

COUNTY OF York)

MURDER AND
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on April 6, 1992,

the Grand Jurors of York County present upon their oath:

COUNT ONE

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 feloniously, wilfully and with malice aforethought, kill one Marie Gail Cronister by means of shooting her and that the said victim died as a proximate result thereof.

COUNT TWO

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 while in possession of a firearm or while visibly displaying what appeared to be a firearm, committed the crime contained in Count One of this Indictment.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

ARREST WARRANT

D- 228986

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
York

THE STATE

against

442

Lynn Jeffery Chronister

Address: 211 Ellington Rd.
Belmont N.C.

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'8" Weight: 170

DL State: _____ DL #: _____

DOB: 8/28/49 Agency ORI #: 0460000Prosecuting Agency: YCSDProsecuting Officer: WhistineOffense: Murder

Offense Code: _____

Code/Ordinance Sec. 16-3-10This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Lynn Jeffery Chronister
on February 14th, 1992

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
York

AFFIDAVIT

S.C. Attorney General
July 28, 1990
SCCA 518Personally appeared before me the affiant Otis Whistine
being duly sworn deposes and says that defendant Lynn Jeffery Chronister
did within this county and state on February 14th, 1992 violate the criminal laws of
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____
in the following particulars:DESCRIPTION OF OFFENSE: Murder: Section 16-3-10 116I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts: Defendant did wilfully and
unlawfully, and with Malice Aforethought kill Marie Gail Chronister by shooting
her. This unlawful act occurred at the Catawba Nuclear Station, Concord Rd., Clove,
York County S.C. All against the Peace and Dignity of the State and against such
Laws as made and provided. Probable cause based on witness's.Sworn to and subscribed before me
on February 14th, 1992
[Signature] (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address Court House, South Congress St.
York S.C.Affiant's Telephone 684-8522

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
York

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe
on February 14th, 1992 defendant Lynn Jeffery Chronister
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:DESCRIPTION OF OFFENSE: Murder (Section 16-3-10)Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.[Signature] (L.S.)
Signature of Issuing JudgeJudge Code: 518Judge's Address South Congress St.
York S.C.Judge's Telephone 684-8514Issuing Court: ☒ Magistrate ☐ Municipal ☐ CircFILED-RECEIVED
BOOK
FEB 21 12 03 PM '92
YORK COUNTY S.C.RETURNED TO
MAIL ROOM
FEB 22 1992
YORK COUNTY S.C.

-125-

BAIL set by

Judge _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

(indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

AGENCY I. D.
SC0460000

YORK COUNTY SHERIFF'S DEPARTMENT
INCIDENT REPORT

CASE NUMBER

9,2-0,2-2,3,1

NCH

INO.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VI
1. Homicide Offense (Murder)		X YES ☐ NO	☐ YES ☐ NO	parking lot		☒ Individ. ☐ Busines ☐ Financ ☐ Govern ☐ Relig. C ☐ Soc./Pl ☐ Other ☐ Unknow ☐ Police
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
Administration Building Catawba Nuclear Stat. York, SC				29745	firearm	
INCIDENT DATE		24 HR CLOCK	TO	DATE	24 HR CLOCK	DISPATCH DATE
2-14-92		06:57		2-14-92	06:58	07:02
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
Auten, Thomas F.		unknown		☒ J ☐ S ☐ O ☐ U	W	M
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO
2882 Billy Wilson Rd.		Rock Hill		SC	29730	RHW
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
Chronister, Gail Marie		wife		☐ J ☒ S ☐ O ☐ U	W	F
HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
510		145	Brn	Brn		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO
1414 Cogeland Park		Mt. Holly		NC	28120	
VICTIM INJURY (VICT 1) YES ☒ NO ☐		EXPLAIN -		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES		
gun shots to head + body						
VICTIM (NO 1) USING ALCOHOL ☐ YES ☐ NO ☒		DRUGS: ☐ YES ☐ NO ☒		TYPE:		
TWO-MAN VEN ☐		ONE-MAN VEN ☐		DETECTIVE PLASMT ☐ OTHER ☐		
ALONE ☐		ASSISTED ☐		J - This Jurisdiction S - State O - Out of State U - Unknown		
X SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
		unknown		W	M	38
RUNAWAY		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		ETH.	DATE OF BIRTH	HEIGHT
		beard		N	unknown	509
WARRANT		ADDRESS		CITY	STATE	ZIP CODE
		unknown		unknown	unk	unknown
ARREST		SUBJECT (NO 1) USING ALCOHOL ☐ YES ☐ NO ☒		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE
JAIL		DRUGS: ☐ YES ☐ NO ☒		TOTAL ARRESTED		DATE/TIME OF ARREST
SUMMONS						
NARRATIVE						
RIP stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. RIP saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van NC partial registration DRL and left the scene. Victim sustained gunshot wound and was pronounced dead at the scene.						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						
JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
TYPE (GROUP)		TOTAL VALUE				
STOLEN /						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		X ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED ☐		ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐
☐ YES ☒ NO		☐ YES ☒ NO				ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVE ☐
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTIVE MERIT 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DENIES COOPERATION 5 ☐ JUVENILE-NO CUSTODY 6 ☐ CIVIL MATTER						
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER

1. Mary Jensen -

451-A

10212 Harbor Dr, Charlotte, NC 28214

2. Mrs. Lucille Mernard
(work) *704-866-2913*(direct)
704-866-2000

Business office

(3) Mr. Elger Mernard
(work) 704-822-2170
shop

9-2-02-231		INC. ENT.										
INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
1. Homicide Offense (Murder)		☒ YES ☐ NO	☐ YES ☐ NO	parking lot		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.						
2.		☐ YES ☐ NO	☐ YES ☐ NO									
3.		☐ YES ☐ NO	☐ YES ☐ NO									
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE								
Administration Building Catawba Nuclear Stat. York, SC		29745		firearm								
INCIDENT DATE 24 HR. CLOCK TO DATE 24 HR. CLOCK		DISP. DATE		DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.						
2-14-92 06:57		2-14-92 06:58		07:02 09:07		LWD						
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
Auten, Thomas F.		unknown		☒ S ☐ O ☐ U	W	M	32	N	324-3128	8327-2331		
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.				
2882 Billy Wilson Rd.		Rock Hill		SC		29730		RHWD				
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
Chronister, Gail Marie		wife		☒ S ☐ O ☐ U	W	F	34	N	unknown	unknown		
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
510	145	Brn	Brn									
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.				
1414 Copeland Park		Mt. Holly		NC		28120						
VISIBLE INJURY (VICT. 1) ☒ YES ☐ NO ☐ EXPLAIN -		gun shots to head & body										
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS: ☐ YES ☒ NO ☐ UNK. ☐ TYPE:		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO ☐ X										
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPL. ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐		*J - This Jurisdiction. S - State. O - Out of State. U - Unknown										
☒ SUSPECT		NAME, (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
☐ RUNAWAY		unknown		W	M	38	N	unknown	509	160	Brn	Brn
☐ WANTED		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
☐ WARRANT		beard										
☐ ARREST		ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.		
☐ JAIL		unknown		unknown		unk		unknown				
☐ SUMMONS		SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. ☒ X		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
DRUGS: ☐ YES ☐ NO ☐ UNK. ☒ X TYPE:		TOTAL # ARRESTED										
RIP stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. RIP saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van NC. partial registration DRH and left the scene. Victim sustained gunshot wounds and was pronounced dead at the scene.												
EXHIBIT-1												
JURISDICTION OF THEFT / ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
TYPE (GROUP)												
STOLEN												
DAMAGED												
BURNED												
RECOVERED												
SEIZED												
TOTAL VALUE												
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER				
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTIVE MERIT. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DENIES COOPERATION. 5. ☐ JUVENILE—NO CUSTODY. 6. ☐ CIVIL MATTER.												
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER		
Smith, T. B.		2-14-92		955								
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO ☐ OFFICER												