

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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Carmen T. Mullen, Circuit Court Judge **MAR 17 2016**

SC Court of Appeals

Case No. 2009GS0702636, 2009GS0702637, 2009GS0702639,
2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

RECORD ON APPEAL - VOLUME VI

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1 THE COURT: Thank you.

2 MR. STONE: With that, the State rests, your Honor.

3 STATE RESTS.

4 THE COURT: Okay. Ladies and gentlemen of the
5 jury, the State has rested their case. There is a
6 matter of law I need to take up with the attorneys at
7 this time. I'm going to send you back to your jury
8 room. Again, do not discuss this case. It wouldn't be
9 appropriate to do so, and we'll be right back with you,
10 and leave your pads right here in your seats. Thank
11 you.

12 JURORS LEAVE COURTROOM 3:08 P.M.

13 MOTION FOR DIRECTED VERDICT,

14 BY MR. MCGUIRE:

15 BAILIFF: Jury is clear, your Honor.

16 THE COURT: Okay. All right. Any motions?

17 MR. STONE: None from the State.

18 THE COURT: Clearly.

19 MR. MCGUIRE: Move for a directed verdict,
20 primarily based on the case being almost entirely
21 circumstantial, with no direct evidence; and the State's
22 burden is to show substantial circumstantial evidence.
23 They failed to do so. We rely on -- primarily on the
24 South Carolina public case of *Bostick*.

25 THE COURT: Well, I appreciate it, and I actually

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1 just had a recent re-lesson on directed verdict and the
2 standard in circumstantial evidence, based on the *Logan*
3 case, and the requested charge that we're looking
4 towards in this case. I can tell you, as you know, I'm
5 concerned with the existence or not existence of
6 evidence. And again, you know, even if it's a
7 circumstantial case, I do think in this case there is
8 substantial circumstantial evidence in this case, and I
9 think it, appropriately, goes to the jury.

10 MR. MCGUIRE: Thank you, your Honor.

11 THE COURT: Thank you. At this point, do you know
12 if you intend on putting anything up, or is now a good
13 time to go through your client's rights? What would you
14 prefer to do?

15 MR. MCGUIRE: Your Honor, I would suggest we take
16 an afternoon break for about ten, fifteen minutes. We
17 do have a couple of witnesses that are here and are
18 ready to go.

19 THE COURT: Okay. Okay.

20 MR. MCGUIRE: And I'll -- we -- I have addressed
21 the issues with Mr. Daise regarding testimony and
22 closing, but I can do that one more time.

23 THE COURT: Okay. I appreciate that. Okay. All
24 right. We'll go ahead and take about ten-, fifteen-
25 minute break right now, and we'll be back. Okay?

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1 MR. MCGUIRE: Yes, ma'am. Thank you.

2 THE COURT: Okay.

3 OFF THE RECORD 3:11 P.M.

4 BACK ON THE RECORD 3:29 P.M.

5 BY THE COURT:

6 BAILIFF: All rise.

7 THE COURT: Thanks, you all. Please be seated.

8 Mr. McGuire, if you prefer, let's go ahead and put up
9 your witnesses; and then, your client can have some more
10 time. Or did you want to put him under oath now, in
11 regards to testifying?

12 MR. MCGUIRE: I can call witnesses first. We can
13 do that later.

14 THE COURT: Okay. All right. You guys ready for
15 me to bring the jury in?

16 MR. MCGUIRE: Yes, ma'am.

17 THE COURT: Okay. All right. Let's bring them in,
18 Norman. Thank you.

19 BAILIFF: Yes, ma'am. Jury is entering, your
20 Honor.

21 JURY ENTERS COURTROOM 3:31 P.M.

22 BAILIFF: Your Honor.

23 THE COURT: Thank you. Welcome back, ladies and
24 gentlemen. Mr. McGuire?

25 MR. MCGUIRE: Thank you, your Honor. Defense calls

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1 Officer Chris Wilson.

2 THE COURT: Okay.

3 MADAM CLERK: Place your left hand on the *Bible*,
4 raise your right hand. Do you solemnly swear or affirm
5 that the testimony you give shall be the truth, so help
6 you God?

7 SERGEANT CHRISTINE WILSON: I do.

8 MADAM CLERK: Thank you. If you'll have a seat,
9 please..

10 MR. MCGUIRE: Your Honor, can we approach briefly?

11 ON-THE-RECORD BENCH CONFERENCE,

12 OUT OF HEARING OF JURORS:

13 MR. MACDOUGALL: Just briefly, your Honor, can we
14 ask that the styrofoam heads be removed from the State's
15 table, and put someplace where they're not in view of
16 the jury?

17 MR. STONE: I'll be glad to. All you've got to do
18 is ask me.

19 MR. MACDOUGALL: I didn't see them 'til the witness
20 was already out.

21 THE COURT: Yes. Again, I'd also like to see
22 what's facing that way, as well. And if there's
23 anything, let's just go ahead and turn them around right
24 now. Okay?

25 MR. MACDOUGALL: Thank you.

1 END BENCH CONFERENCE.

2 MADAM CLERK: If you'll state your name for the
3 record, and spell your last name, please.

4 SERGEANT CHRISTINE WILSON: Christine Wilson,
5 W/i/l/s/o/n.

6 SERGEANT CHRISTINE WILSON

7 DIRECT EXAMINATION BY MR. MCGUIRE:

8 Q Officer Wilson, how are you doing this afternoon?

9 A Fine, sir.

10 Q Thanks for coming back and joining us. I'm just
11 going to ask you a couple of follow-up questions.

12 MR. MCGUIRE: Your Honor, if I could approach the
13 witness.

14 ITEMS MARKED DEFENDANT'S EXHIBIT

15 NUMBERS 20, 21, 22, 23, 24, FOR

16 IDENTIFICATION.

17 BY MR. MCGUIRE:

18 Q I'm going to hand you what's been marked Defense
19 20, 21, 22, 23, and 24. If you could just take a look
20 at them if you would, and tell me if you recognize them.

21 A Yes, I do.

22 Q Okay. All photographs of the residence at Poppy
23 Hill Road.

24 A That's correct.

25 Q All of them photographs of the inside of the right,

1 rear bedroom, that identified as belonging to Mr.
2 Earnest Daise.

3 A I don't believe that is correct. These are --
4 these are not the right, rear bedroom. That one is not
5 the right rear.

6 Q Fair enough. And if you would, step down with me
7 for just a brief second. And these are all fair and
8 accurate depictions of the bedroom as it existed when
9 you searched it.

10 A Yes, it is.

11 MR. MCGUIRE: And permission to publish, your
12 Honor.

13 THE COURT: You may.

14 MR. THORNTON: The State has no objection.

15 BY MR. MCGUIRE:

16 Q Defense Number 20, if you would, that's the right,
17 rear bedroom, and that depicts the bed of Mr. Daise.

18 A That's correct.

19 Q And shoes by the bed.

20 A Yes.

21 Q And the gray sweatshirt that was taken into
22 evidence.

23 A Yes.

24 Q Now, in Defense Number 21, that's the gray
25 sweatshirt that was taken on the first search.

1 A It is.

2 Q And when I say the *first search*, there were
3 actually two searches, two search warrants. The first
4 time you gathered what was pretty obvious items of
5 interest, And then, you went back and were a little bit
6 more thorough the second time. Fair enough?

7 A We did do a second search for various reasons, yes.

8 Q Sure. And Defense Number 22, closet of the rear
9 bedroom.

10 A Yes.

11 Q Again, bedroom of Earnest Daise.

12 A Yes, it is.

13 Q There's a laundry basket in the closet?

14 A Yes.

15 Q Looks like some laundered clothes.

16 A Yes.

17 Q And again, all of these will be in evidence in the
18 jury room. Defense Number 24, that's the laundry
19 basket.

20 A Yes, it is.

21 Q Clean clothes. Do they look clean?

22 A I couldn't tell if they were clean or not.

23 Q Well, that would be fair. You can go back on the
24 stand. Thank you, ma'am.

25 With regard to the search, the second search, that

1 actually expanded into -- that actually expanded into
2 Mr. Simmons' part of the house.

3 A Yes, it did.

4 Q And his bedroom was searched, correct?

5 A It was.

6 Q And a black, Nike shoe box was found. Is that
7 correct?

8 A Yes, one was.

9 Q And inside the shoe box was remnants of what
10 appeared to be marijuana.

11 A Yes, that's correct.

12 Q And a power bill to SC&G in the name of Jay
13 Simmons.

14 A Yes.

15 Q So, Jay's power bill is in his marijuana box, his
16 marijuana's in his marijuana box, and \$1,000.00 was in
17 his marijuana box.

18 A That's correct.

19 Q And that's the \$1,000.00 that was seized because it
20 was associated with drugs.

21 A Yes.

22 Q And handed over to Officer Rice.

23 A Correct.

24 Q For forfeiture proceedings.

25 A That's correct.

1 Q And that's the money that was returned to Mr.
2 Simmons after he gave a statement favorable to law
3 enforcement.

4 MR. THORNTON: Objection, your Honor.

5 THE COURT: Okay. You can answer that question.

6 BY MR. MCGUIRE:

7 A It was returned to Mr. Simmons.

8 Q Okay. Fair enough. And when you went back on the
9 second search after the gray sweatshirt that was right
10 by the bed, that was seized in the first search, right?

11 A Correct.

12 Q Okay. Then, you went back, and -- I've got a copy
13 of your return if you don't have it in front of you.

14 A I have one.

15 Q You have? Okay. I thought you might. On the
16 second search, the return, every pair of shoes found in
17 Mr. Daise's bedroom were seized, right?

18 A Yes, they were.

19 Q Okay. And just to make sure that you had all of
20 the possible sweatshirts, there were two more, I think,
21 sweatshirts seized, Item 14 and Item 18?

22 A Yes.

23 Q Okay. And all of these pieces of evidence were
24 turned over to the appropriate evidence department.

25 A Correct.

1 Q For whatever testing they might want to do.

2 A Yes.

3 Q Okay.

4 MR. MCGUIRE: And your Honor, I move the
5 photographs mentioned into evidence.

6 THE COURT: Any objection to those photos coming
7 into evidence?

8 MR. STONE: No objection, your Honor.

9 THE COURT: Okay. They're in evidence without
10 objection.

11 MR. STONE: Thank you, your Honor.

12 ITEMS IDENTIFIED AS PHOTOGRAPHS
13 TAKEN AT 43 POPPY HILL ROAD
14 MARKED DEFENSE EXHIBIT NUMBERS
15 20, 21, 22, 23, and 24, ADMITTED
16 AS EVIDENCE.

17 MR. MCGUIRE: That's what I have for Officer
18 Wilson. Thank you, ma'am.

19 SERGEANT CHRISTINE WILSON

20 CROSS-EXAMINATION BY MR. THORNTON:

21 Q Officer Wilson, it may be a little odd, me cross-
22 examining you. To your knowledge, was anybody in this
23 case, or any other case that you've worked on, paid to
24 give a statement favorable to law enforcement?

25 A No.

1 Q Are you qualified to give explanations or
2 discussions about forfeiture proceedings?

3 A No, I'm not.

4 MR. THORNTON: Thank you.

5 MR. MCGUIRE: Nothing further. Thank you, ma'am.

6 THE COURT: You may step down. Any objection to
7 Ms. Wilson being excused?

8 MR. THORNTON: None from the State, your Honor.

9 MR. MCGUIRE: Of course not.

10 THE COURT: Thank you. Mr. McGuire?

11 MR. MACDOUGALL: Defense calls Lieutenant Robert
12 White.

13 THE COURT: Okay.

14 MADAM CLERK: If you'll place your left hand on the
15 Bible, please, and raise your right hand. Do you
16 solemnly swear or affirm the testimony you give shall be
17 the truth, so help you God?

18 LIEUTENANT ROBERT SCOTT WHITE: I do.

19 MADAM CLERK: Thank you. If you'll have a seat,
20 please.

21 LIEUTENANT ROBERT SCOTT WHITE: Sure.

22 MADAM CLERK: If you'll state your full name for
23 the record, and spell your last name, please.

24 LIEUTENANT ROBERT SCOTT WHITE: Robert Scott White,
25 W/h/i/t/e.

1 LIEUTENANT ROBERT SCOTT WHITE

2 DIRECT EXAMINATION BY MR. MACDOUGALL:

3 Q Good afternoon, Lieutenant White. Could you tell
4 us, please, what you do for a living.

5 A Well, I'm now retired from the West Virginia State
6 Police, and I'm working privately, my own business,
7 doing forensic work for attorneys and police
8 departments.

9 Q How long were you with the West Virginia State
10 Police?

11 A Thirty years.

12 Q And what rank did you retire at?

13 A Lieutenant.

14 Q What was your job? Or if you can just give us a
15 history of your jobs with the West Virginia State
16 Police.

17 A I started out as a trooper and through the academy;
18 and then, in the forensic laboratory the whole 30 years,
19 doing testing on alcohol and drugs, and trace evidence
20 and some serology. I specialized in gunshot residue
21 toward my last so many years.

22 Q Now, in South Carolina, we have a department that
23 is known by the acronym SLED, the State Law Enforcement
24 Division, the South Carolina Law Enforcement Division.
25 In West Virginia, the comparable agency is the CIB. Is

1 that right?

2 A Yes, sir.

3 Q What does that stand for?

4 A Criminal Identification Bureau.

5 Q And how long were you in the Criminal
6 Identification Bureau and the West Virginia State
7 Police?

8 A Thirty years, with the exception of six months at
9 the academy.

10 Q And did you reach a particular administrative rank
11 in the CIB?

12 A I was director of the laboratory the last three
13 years.

14 Q What undergraduate degree did you earn?

15 A Bachelor of science in chemistry.

16 Q Okay. And have you received other specific
17 training, particularly in the analysis of trace evidence
18 or gunshot residue?

19 A Yes. During the 30 years, I've attended numerous
20 courses and seminars around the country at different
21 universities and federal organizations specifically for
22 gunshot residue. I trained with North Carolina up here,
23 laboratory twice, establishing gunshot residue in West
24 Virginia in the early '70s. Later, I trained with the
25 FBI laboratory four times, the ATF laboratory twice, and

1 the Scotland Yard laboratory, specifically for gunshot
2 residue.

3 And I established the gunshot residue program in
4 West Virginia. I trained all the police officers, and I
5 -- I developed a training program where I spent a whole
6 year training myself, and then, trained other people,
7 and did gunshot residue there until retirement.

8 Q When did you retire? What year?

9 A December of '92, 1992.

10 Q Have you been qualified as an expert witness in the
11 analysis of gunshot residue in the past?

12 A Yes.

13 Q About how many times?

14 A I just have to estimate, five or six hundred times.

15 Q Five or six hundred. And what courts were those
16 qualifications granted in?

17 A Well, I've testified in all -- all the counties in
18 West Virginia but one, 54 of them; all of the federal
19 jurisdictions; 14 other states; and the two British
20 Islands.

21 MR. MACDOUGALL: Your Honor, with this foundation,
22 we'd move that Lieutenant White be admitted as an expert
23 in the analysis of gunshot residue.

24 MR. STONE: No objection.

25 THE COURT: Ladies and gentlemen, in this case,

1 Lieutenant Wright -- White, excuse me, is being
2 qualified as an expert in the area of gunshot residue.
3 Again, that allows him to give his opinions and the
4 reasons for his opinions. And that, of course, is for
5 you to see as is appropriate with the other evidence.

6 BY MR. MACDOUGALL:

7 Q Lieutenant White, could you just tell us generally
8 what evidence have you reviewed? What materials have
9 you reviewed in preparation for your testimony today?

10 A Well, I basically reviewed materials supplied to me
11 by the attorneys in the case by the way of emails. I
12 looked at the -- the gunshot residue analysis that were
13 done on the different samples in this case. I looked at
14 the complete case file that had all the documents, all
15 the items that were tested; all the documents, such as
16 the gunshot residue information sheets and the
17 submission forms; and all of the information that's
18 supplied -- that came supplied with the gunshot testing.

19 Q Thank you, Lieutenant. The jury has heard
20 testimony regarding gunshot residue generally, but I'd
21 like you to please describe, if you would, what is
22 gunshot residue and how does it arise?

23 A Gunshot residue is a single particle composed of
24 lead, barium, and antimony. And when a gun is
25 discharged, and the -- the material that comes out from

1 all of the leak areas in the gun, some of it's
2 gunpowder, also; it provides a smoke cloud around the
3 gun about several feet in diameter. And within that
4 smoke cloud, you'll have particles of gunshot residue
5 that comes from the primer.

6 The primer's made up of the elements barium,
7 antimony, and lead, and they come out as a very hot,
8 high-pressured gas. And they condense into -- into
9 particles that have lead, barium, and antimony, and
10 other combinations in them. And when this material then
11 falls on the hands or the face or anywhere, that's --
12 that's gunshot residue.

13 Q So, if I understand correctly, gunshot residue is a
14 combination of those three elements.

15 A Well, if you find one particle with all three
16 elements of lead, barium, and antimony in it, that can
17 be classified as gunshot residue. The other elements,
18 or the other particles that have two or one support the
19 three component particles.

20 Q Now, is gunfire the only source of that combination
21 of the three elements, antimony, barium, and lead?

22 A Well, for years it was described as being unique.
23 That was the only place you could find it. Somebody
24 found a particle or two in a brake shoe in a car in
25 Italia -- in Italy. So, at that point, they stopped

1 using the word *unique*.

2 Q And lead particles in particular, the jury's heard
3 testimony of a number of lead particles, are there
4 sources for lead particles in the environment other than
5 -- other than gunfire or gunshot residue?

6 A Many of them.

7 Q What are some examples?

8 A Well, lead's very common. You'll find lead in
9 fishing sinkers, wheel weights, battery terminals,
10 electrical supplies, plumbing supplies, about anyplace
11 where using sheet metal or -- or metals like this, you
12 potentially find lead.

13 MR. MACDOUGALL: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 BY MR. MACDOUGALL:

17 Q Lieutenant, I'm going to show you a photograph
18 that's been admitted into evidence as Defendant's
19 Exhibit 6. I'd like you to take a look at that for a
20 moment. And I'm going to hold it out here so the jury
21 can see it, as well. I'll tell you, for purposes of
22 introduction, that that's the back of a -- of a van.
23 You see that item inserted in the dead center, with a
24 piece of rope around it?

25 A Yes.

1 Q Do you recognize that?

2 A I don't.

3 Q Okay. I would represent to you that's a
4 transmission.

5 A Okay.

6 Q Under what circumstances, if any, would lead
7 particles be distributed by a piece of metal like that?

8 A Well, I'm not a mechanic, and I would think a
9 transmission is primarily steel. I don't really know if
10 lead's involved in it or not.

11 Q What are the other sources of lead particles in the
12 environment?

13 A Other than what I just mentioned?

14 Q Yeah. I mean day-to-day things.

15 A On day to day things, anyone's working on a car
16 battery, for instance, is likely to get lead particles
17 on their hands. If they're doing any kind of electrical
18 work, soldering work, or using plumbing supplies, they
19 could get residue from that on their hands.

20 Q Okay. You mentioned a car battery. So, if you're
21 working around an automobile, there's a lot of lead in
22 automobile; isn't there?

23 A Yes.

24 Q Okay. And if you're pulling a transmission out of
25 an automobile, is there any risk whatever of lead being

1 distributed as you're removing it?

2 A Well, it's a possibility.

3 Q Okay. Now, does the presence of lead particles, in
4 particular, and the jury's heard testimony about two GSR
5 particles, and then, nine lead particles. Lead
6 particles alone are my question. Does the presence of
7 lead particles indicate that a firearm has been
8 discharged?

9 A Lead by itself, no.

10 Q Okay. I'm going to show you what I believe is now
11 marked --

12 MR. MACDOUGALL: Could I have a moment, your Honor?

13 THE COURT: Of course.

14 BY MR. MACDOUGALL:

15 Q Lieutenant White, I will now give you a pair of
16 gloves, but I won't ask you to hold the exhibit, but
17 I have to. Lieutenant, I'm holding up a pair of
18 jeans that have been previously marked as State's
19 Exhibit 80.

20 COURT REPORTER: 80?

21 Q 80. State's Exhibit 80 in evidence. And I'll
22 represent to you that these jeans are the subject of the
23 gunshot residue reports you've reviewed. The gunshot
24 residue reports that are in evidence now from the State
25 describe one GSR particle on one pant leg, and one GSR

1 particle on the other.

2 A Yes.

3 Q What conclusion can you reach with regard to these
4 jeans and the use of them, based upon the finding of one
5 gunshot residue particle on each leg?

6 A Well, gunshot residue was found on each of those
7 samples, and the standard answer from all gunshot
8 residue experts in the world says it can get there from
9 discharging a gun, being close to a discharging gun, or
10 touching anything else that's already contaminated with
11 gunshot residue. So, any of those three areas..

12 Q What expectation, if any, would you have if a gun
13 had been fired in close proximity to those jeans, close
14 in time to the evaluation?

15 A I don't understand the question.

16 Q Okay. What expectation would you have with regard
17 to the volume of gunshot residue on those jeans had a
18 firearm been fired in close proximity to the jeans?

19 A Well, if a gun is fired in close proximity to the
20 jeans or anything else, there is a lot of -- many
21 gunshot residue particles get deposited, up to a hundred
22 or more gunshot-residue-related particles. It depends
23 on -- it depends on if the jeans were washed, they could
24 all be removed. If they went through a -- a agitation,
25 some of it could be removed. So, it depends on other

1 factors.

2 Q Okay. Assume for a moment that the jeans had not
3 been washed, and that they are put into a sealed
4 container within hours of a firearm being used. What
5 conclusion would you reach with regard to the level of
6 gunshot residue on the jeans?

7 A Well, there ought to be numerous particles of
8 gunshot residue deposited from that gun that I
9 understand was shot five times. And -- and most of it
10 would be on the -- on the upper level of the shooting
11 area. But there ought to be some -- quite a few on the
12 pants, also.

13 Q Okay. Going back to State's Exhibit 80 again,
14 there are two front pockets in these jeans. You see
15 those?

16 A Yes, sir.

17 Q And the jury's heard evidence and you've reviewed
18 lab reports indicating that no gunshot residue was found
19 in either pants pocket. Remember reading that?

20 A Yes.

21 Q Okay. My question to you is, assuming
22 hypothetically, hypothetically, that an individual fired
23 a weapon, a mid-caliber weapon, five times at waist
24 level or thereabouts; and then, thereafter, reached for
25 keys or cell phone or some other item in those pockets

1 at any time within the next six hours, what conclusion
2 would you reach or what expectation would you have with
3 respect to gunshot residue in the pants pockets?

4 A Well, the person who fired a gun five times would
5 have a lot of gunshot residue on his hands. If he put
6 his hands in that pocket right away, he would distribute
7 a lot of that residue on the inside of the pocket or
8 whatever was there. And as time goes by, there's going
9 to be some of it removed from his hands and be a lesser
10 amount.

11 Q All right. But with respect to the inside pockets
12 of the jeans, what conclusion would you reach?

13 A Well, as I stated, there would be numerous gunshot
14 particles wherever the hands touched.

15 Q How long does GSR remain on an item of clothing?

16 A If it's not washed or agitated, if it's just
17 allowed to lay still, indefinitely.

18 Q And by indefinitely, it's not forever, but could it
19 be a year?

20 A It could be forever.

21 Q Okay. Could it be a couple years?

22 A Yes.

23 Q Lieutenant, I'm going to show you an item I've
24 taken out of the bag that's been marked State's Exhibit
25 77 in evidence. Do you recognize that?

1 A Yes.

2 Q What is it?

3 A This is a box of ammunition that is manufactured by
4 Wolf, W/o/l/f, 7.62 by .39 caliber.

5 Q Okay. So, that's used in a high-powered rifle. Is
6 that right?

7 A Yes.

8 Q And you, as a long-time analyst of firearms, know
9 that a high-powered rifle can have a clip and can have
10 many rounds of ammunition in it. Is that right?

11 A Yes, it could have different amounts, different
12 amounts of rounds.

13 Q More than 20 at a time.

14 A More or less, depending on -- on the clip.

15 Q Okay. And a semi-automatic could fire those rounds
16 repeatedly.

17 A Yes.

18 Q And some people who like to shoot for sport, not
19 necessarily target shooting, will sometimes shoot at a
20 hip. Is that right?

21 A Yes.

22 Q Or hold the gun at the hip. Where does the gunshot
23 residue expelled from a high-powered rifle that would
24 use that ammunition?

25 A Well, on -- on any gun, there a lot of it goes out

1 of the muzzle, probably more than anywhere else. But
2 anywhere there's a leaky area of the gun, especially
3 with a high-powered rifle, every time one shot is
4 discharged, it kicks the empty back out, opens the
5 chamber up, and out goes the empty cartridge and a lot
6 of the residue. And around a -- a hammer or trigger, or
7 anything where there's any opening, that residue will go
8 out.

9 Q Again, assume for me for a minute you've got an
10 individual dressed in an unremarkable fashion, shirt,
11 pants; fires mid-caliber weapon five times. Where on
12 that person would you expect to find gunshot residue?

13 A Well, that residue is going to come out of the gun
14 in a -- as I mentioned, all the leaky areas of the gun.
15 If it's a revolver, out the front cylinder gaps, the
16 rear cylinder gap, the hammer, the trigger, and the
17 muzzle. And it will come out in a smoke cloud that you
18 can see from the powder, probably in a five-foot
19 diameter around the gun; and it will get all over the
20 arm, the hands, the face, the body, and behind and to
21 the right, and farther down range of the shooter.

22 Q So, it can come out of all kinds of orifices?

23 A Yes. Anywhere there's an orifice, it comes out.

24 Q Transference, is there a concept of transference in
25 gunshot residue analysis?

1 A Yes.

2 Q Tell us what that is, please.

3 A Well, the third way that I mentioned that the
4 gunshot residue is explained as the way it can get there
5 is by touching anything else that has gunshot residue on
6 it. It's been -- gunshot residue has been likened to
7 baby powder or talcum powder. You get it all over your
8 hands, you touch a table, it's on the table; you touch
9 somebody else's hands, it's on their hands.

10 Q And in a law enforcement environment, could you
11 tell us generally how transference takes place, in your
12 experience?

13 A Well, in a law enforcement environment, there --
14 most police officers are subject to having gunshot
15 residue on their hands, and on their clothing, and in
16 their cars and on their handcuffs, and in their -- in
17 their police back seat of their car, and in the precinct
18 or the office where they interview suspects. All these
19 places could be contaminated with gunshot residue.

20 Q Now, when you -- you detect gunshot residue using a
21 high-powered microscope. Is that right?

22 A It's a scanning electron microscope.

23 Q It's not visible to the naked eye, the individual
24 particles.

25 A It is not.

1 Q All right. When you -- when you look at a particle
2 of gunshot residue on the one hand that has been
3 deposited on an item of clothing as a result of
4 proximity to gunfire, compared to a particle of gunshot
5 residue that has been transferred by transference of
6 some kind, is there a difference between the two?

7 A You can't tell the difference.

8 Q Okay. So, we've heard testimony to the contrary,
9 but is there anything about those particles, as you look
10 at them under the microscope, that would allow you to
11 distinguish the transferred particle from the particle
12 that was placed there as a result of the proximity of
13 the gunfire?

14 A I've looked at gunshot residue from -- from test
15 firing every gun imaginable, and I've looked at it from
16 a transferring from one cloth to another, and I've
17 looked it from handling a dirty gun, and I can't see the
18 difference.

19 Q Okay. You ever heard of this theory before?

20 A No.

21 Q Have you ever read any published or peer review
22 articles that talk about that?

23 A No.

24 Q Have studies been performed on secondary transfer
25 of gunshot residue? And published?

1 A Yes.

2 Q And what have those studies found generally, with
3 regard to transfer of gunshot residue in a law
4 enforcement environment?

5 A Well, I've done a study myself, but mostly, in a
6 law enforcement environment, there have been
7 laboratories that have collected samples from police-
8 related items, such as the back seat of a patrol car, or
9 the inside of a interview room where suspects are
10 interview, places like that.

11 Q If you were to do testing in the back seat of a
12 police car, or ten or twenty police cars, what would you
13 expect to find with regard to gunshot residue? And
14 assume that these are cars that are being used regularly
15 by law enforcement officers.

16 A You would find some that did have gunshot residue
17 in them.

18 Q Okay. And when a suspect is -- is manacled either
19 in front or in back, and placed in the back seat of a
20 police car, would you have any expectation with regard
21 to the possibility, the possibility, of transference of
22 gunshot residue to that suspect?

23 A I have seen studies where that's happened, yes.

24 Q And the same thing would be true when a suspect is
25 frisked by a law enforcement officer. Now, let me ask

1 you a couple of preliminary questions. What have you
2 found in your -- in your work and in your career with
3 regard to the presence of gunshot residue on working law
4 enforcement officers?

5 A Well, I haven't seen any studies or done anything
6 on -- on that specifically, where an officer is frisking
7 or handling an individual, and then, collect samples. I
8 haven't seen any studies on that specifically. But I
9 would expect, if he did have residue on his hands, it
10 could transfer to the subject.

11 Q Okay. Let me ask you a preliminary question,
12 though. You've been working around police officers and
13 law enforcement all your life.

14 A Yes.

15 Q What would your expectation be if you took ten
16 officers at random out of patrol officers in any major
17 city, urban, suburban area, and tested them for gunshot
18 residue. Would you find it?

19 A I would expect it on approximately half of them.

20 Q On any given day, half of them would just have it
21 on them because of the nature of the work.

22 A Yes.

23 Q Going to the firing range, cleaning their weapon,
24 all of that.

25 A Yes.

1 Q Okay. And so, what expectation would you have when
2 a suspect is being taken into custody, and is being
3 frisked by a law enforcement officer, with regard to the
4 possible, possible, transference of gunshot residue from
5 that officer to the suspect?

6 A Well, if the officer did have gunshot residue on
7 his hands, and he's frisking the defendant, he could
8 transfer it to him.

9 MR. MACDOUGALL: One moment, your Honor. Nothing
10 further, Lieutenant White. Thank you very much. Thank
11 you, your Honor.

12 LIEUTENANT ROBERT SCOTT WHITE

13 CROSS-EXAMINATION BY MR. STONE:

14 Q So, Lieutenant, I want to make sure I'm clear about
15 this, because, as far as law enforcement officers
16 concerned, in your experience and your study, law
17 enforcement officers many times have gunshot residue on
18 their hands. Is that correct?

19 A Yes.

20 Q And so, if they take their hands and they put it on
21 the suspect, there's a possibility -- I think the
22 possibility was the word Defense counsel used -- that
23 they could actually transfer that or put the gunshot
24 residue on the person. Is that correct?

25 A That's correct.

1 Q All right. So, if, for instance, a officer had
2 gunshot residue on his hands and he stuck them in your
3 pockets, then, you would expect, would you not, for
4 gunshot residue to be transferred to those pockets?

5 A That's correct.

6 Q But in this case, there was no gunshot residue in
7 these pockets; were there?

8 A That's correct.

9 Q You did review this report; did you not?

10 A Yes.

11 Q But you didn't test these jeans yourself, right?

12 A I did not.

13 Q You were just checking from the report and going
14 through that. Is that correct?

15 A Yes.

16 Q All right. So, is it safe to say, then, if the
17 officer didn't have gunshot residue -- or gunshot
18 residue wasn't transferred into the pockets, then, most
19 likely he didn't transfer it anywhere else either; did
20 he?

21 A That's a possibility.

22 Q Okay. Do you have any question -- and I think the
23 expert obviously testified that these -- well, let me
24 back up and ask one other question first. You said
25 something earlier about you would expect gunshot residue

1 to stay on cloth unless the pants were washed, or I
2 think you used the word *agitated*. Is that correct?

3 A Yes.

4 Q Okay. And sir, the agitation you're talking about
5 is, I guess, rubbing up against things. Is that
6 correct?

7 A Anything like that. It does adhere into the fibers
8 better than the hands, but any kind of rubbing or
9 shaking or -- or wiping could remove some of it.

10 Q So, basically, if something can be transferred --
11 can somebody transfer pretty -- I think you described
12 baby powder. It can be transferred easily onto fabrics.

13 A Yes.

14 Q Is that what you're saying? So, I'm assuming that
15 it also can be transferred easily off of fabrics.

16 A Yes.

17 Q So, if we're talking about transfer, any agitation
18 is easily on, easily off. Is that correct?

19 A That's correct.

20 Q Let me ask you about agitation of running in jeans
21 through the woods. Would that be an agitation that you
22 were referring to?

23 A Any movement could be something that would start
24 removing residue.

25 Q And in your time as an expert in the field of

1 gunshot residue, I'm assuming that you testified a
2 number of times as to finding gunshot residue. Is that
3 correct?

4 A Yes.

5 Q And you testified earlier there are three ways
6 gunshot residue comes on somebody. That's either they
7 shot a gun, they were in close proximity of the gun
8 being shot, or it was transferred on. Is that right?

9 A Or they touched -- they touched something else that
10 had residue on it.

11 Q Right. And that would have been, of course, the
12 transfer. Is that correct?

13 A Yes.

14 Q So, that's your third option.

15 A That's right.

16 Q And in your time testifying as an expert in these
17 fields, and when you were with the crime lab in West
18 Virginia, I'm assuming that you testified to the
19 presence of gunshot residue for the variety of
20 particles. Is that correct? In other words, if you
21 found gunshot residue, I believe, as you testified
22 earlier, antimony -- is it antimony or antimony?
23 Antimony?

24 A Antimony.

25 Q Antimony, lead, and barium, if those three items

1 are present, along with lead, you're going to find that
2 that's gunshot residue.

3 A If I found a particle with lead, barium, and
4 antimony present, I reported it as gunshot residue.

5 Q And that would be a particle.

6 A A particle.

7 Q I'm assuming in your experience, then, you've found
8 instances in which you testified that there was gunshot
9 residue on clothes or other items, and they may have a
10 lot of particles, or not many particles, but you still
11 said it was gunshot residue.

12 A That's correct.

13 Q And you, again, did not test these pants; did you?

14 A No, I didn't.

15 Q So, you can't tell us one way or the other if
16 there's gunshot residue on those pants at all.

17 A Well, I can testify that I have reviewed Ms.
18 Simmons' report, and she found gunshot residue there.

19 MR. STONE: Okay. Okay. Nothing else, your Honor.

20 THE COURT: Anything further?

21 MR. MACDOUGALL: Nothing else. Thank you,
22 Lieutenant.

23 THE COURT: All right. You may step down, sir.

24 A Thank you.

25 MR. MCGUIRE: May we approach, Judge?

1 THE COURT: You may.

2 BAILIFF: Excuse me, your Honor. The jurors would
3 like to use the restroom.

4 THE COURT: Absolutely. Ladies and gentlemen of
5 the jury, I'm going to go ahead and send you back to
6 your jury room again. Do not discuss the case. It
7 wouldn't be appropriate to do so. When you all are
8 refreshed, knock on the door and bring you back out.
9 Okay?

10 BAILIFF: Thank you, your Honor.

11 ON-THE-RECORD BENCH CONFERENCE, OUT
12 OF PRESENCE OF JURORS:

13 MR. MCGUIRE: So, Judge, we're in a position where

14 --

15 THE COURT: Okay. Wait just a second.

16 MR. MCGUIRE: Oh, I'm sorry.

17 THE COURT: The jury is not out yet. They are now.

18 JURY LEAVES COURTROOM 4:10 P.M.

19 THE COURT: Okay.

20 BAILIFF: Jury is clear, door is closed, your
21 Honor.

22 THE COURT: Thank you.

23 MR. MCGUIRE: So, we're in a position where we only
24 have one more potential witness.

25 THE COURT: Okay.

1 MR. MCGUIRE: He's not here today, and he's doing a
2 test on what remained on some of the cuttings from the
3 blue jeans.

4 THE COURT: Okay.

5 MR. MCGUIRE: And that test, as we speak, is sort
6 of going on.

7 THE COURT: Okay.

8 MR. MCGUIRE: And we will receive information
9 tomorrow morning whether we would call that person or
10 not, depending.

11 THE COURT: When you say *received information*, does
12 that mean they are going to be here tomorrow morning?

13 MR. MCGUIRE: If we had to have them here, yes.

14 THE COURT: Okay.

15 MR. MCGUIRE: I hate to speak cryptically, but I
16 can just say that it's going to break one way or the
17 other.

18 THE COURT: Okay.

19 MR. MCGUIRE: It's going to be a bright line.

20 THE COURT: Okay.

21 MR. MCGUIRE: And I'm expecting it not to break
22 where we would even need the person.

23 THE COURT: Okay.

24 MR. MCGUIRE: So, if we can just --

25 THE COURT: My question is, if it does break to

1 you, how much time will you need to get that person
2 here?

3 MR. MCGUIRE: The person's in Charleston, so it's
4 close.

5 THE COURT: Okay. That was easy enough.

6 MR. MCGUIRE: Okay.

7 THE COURT: Thank you. As long as they're not
8 coming from somewhere out of state, it's all right.

9 MR. LEDDY: I can --

10 THE COURT: Well, I think what we need to plan --

11 MR. MCGUIRE: No, you don't need to say it. I took
12 care of it for you.

13 MR. LEDDY: Okay. All right.

14 THE COURT: If you have a determination, let's say
15 at night or in the morning, whatever, and of course, you
16 know you're going to them, tell them be here first thing
17 in the morning.

18 MR. MCGUIRE: Sure.

19 THE COURT: You okay with that?

20 MR. LEDDY: They won't know -- I won't know whether
21 or not it has broken our way until around 11:00.

22 THE COURT: Okay.

23 MR. STONE: Tonight?

24 MR. LEDDY: Tomorrow morning. And it's something
25 that I -- where I've been for the last while, trying to

1 figure it out.

2 THE COURT: Okay. Okay. Let's do this. I am
3 going to go ahead and go over Mr. Daise's rights with
4 him. Is that okay right now?

5 MR. MCGUIRE: Okay. Yes.

6 THE COURT: Or do I need to wait until after -- I
7 think I should be able to go ahead and do it right now.

8 MR. MCGUIRE: You could.

9 THE COURT: And then, I could just specifically ask
10 him again in the morning. I guess what I could do is I
11 could bring the jury back at 11:00 o'clock. If you've
12 got your guy, we're going to put him up fast. If not,
13 we'll go straight into closings.

14 MR. MCGUIRE: Perfect.

15 THE COURT: Okay. I hope the jury's going to be
16 fine with that. I'm assuming that, if there is a guilty
17 verdict, you are going to invoke your 24-hour --

18 MR. MCGUIRE: Yes, ma'am.

19 THE COURT: I would assume as much. So, to me it's
20 for scheduling purposes. We'll go through them, and
21 again, I don't know how long they're going to go. But
22 let's say they do reach a verdict any time before
23 Sunday, that we could start Monday on the mitigation
24 phase.

25 MR. MCGUIRE: Sure.

1 THE COURT: Okay. Because that's what we're, I
2 guess, we're all headed towards. Is that what we're
3 looking at?

4 MR. THORNTON: Today's Wednesday.

5 THE COURT: Today's Wednesday, yeah, I know, I
6 know.

7 MR. STONE: Yeah. And --

8 THE COURT: It's been a short week.

9 MR. MCGUIRE: It actually feels -- been a short
10 week, but it feels very long.

11 THE COURT: There you go. Okay. So, if that's all
12 right with you, --

13 MR. STONE: Sure.

14 THE COURT: -- I'm going to tell them to come back
15 at 11:00. And Mr. Leddy, I don't know what I'm going to
16 do if you're people call and say they need more time,
17 they need more time. I'm hoping that's not the case.

18 MR. LEDDY: I'm actually trying to get a different
19 person who would maybe know faster, so that it would be
20 -- so that I won't --

21 COURT REPORTER: So that, so that?

22 THE COURT: *I won't invoke the ire of the Court.* I
23 will tell you that no one -- no one has invoked the ire
24 of the Court. Maybe the Solicitor, but not you
25 personally.

1 MR. STONE: Me?

2 THE COURT: I'm sorry. You may invoked the ire of
3 the Solicitor. I know he's ready to go, and he moves
4 his cases fast. Which by the way, Mr. MacDougall, I
5 will tell you, too, you said I was -- I don't even know
6 what the word you used, you said it was frustrated or --
7 you all have done a great job, I just want everybody to
8 know that.

9 MR. MACDOUGALL: Thank you.

10 MR. MCGUIRE: Thank you.

11 THE COURT: But despite it being the topic and how
12 difficult this is, and the type of case it is, it's been
13 a pleasure with all of you.

14 MR. MACDOUGALL: Thank you.

15 THE COURT: And I mean, I can't begin to tell you.

16 MR. MACDOUGALL: Thank you.

17 THE COURT: Let's just do that. I'm going to bring
18 the jury back at 11:00, and I'm going to go ahead and
19 tell them. Are we okay with saying we are going to
20 conclude this phase of the case, this phase of the
21 trial?

22 MR. MCGUIRE: Yes.

23 THE COURT: Okay. I want to be, you know --

24 MR. MCGUIRE: We'll -- we'll be -- I mean, I can't
25 imagine that would not be the case.

1 THE COURT: Okay. So then, we'll just go from
2 there, and I'll just let them go, and I'll talk to Mr.
3 Daise about his rights, and we'll put anything else we
4 need on the record. So, I'll just let you kind of stay
5 open until then. Okay?

6 MR. MACDOUGALL: Thank you, Judge.

7 MR. MCGUIRE: Thank you very much.

8 THE COURT: Sure, sure. Let's go ahead and bring
9 the jury out.

10 BAILIFF: Thank you.

11 THE COURT: You want to hear what's going on, Al,
12 or you heard?

13 BAILIFF: Ma'am?

14 THE COURT: Did you hear what -- never mind. Just
15 go ahead.

16 BAILIFF: I heard, your Honor.

17 THE COURT: Thank you.

18 BAILIFF: May I approach, your Honor?

19 THE COURT: Yeah. They're bringing them out,
20 right?

21 BAILIFF: Yes, ma'am.

22 THE COURT: Okay.

23 OFF-THE-RECORD BENCH CONFERENCE,

24 THE COURT, BAILIFF.

25 END BENCH CONFERENCE.

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1 DEFENDANT'S RIGHTS, BY THE COURT:

2 THE COURT: Thank you. All right. Really briefly,
3 Mr. Daise, I know your attorneys have spoken to you
4 about your right to testify or not testify. I'm just
5 going to go over those rights for the record. Is that
6 all right, sir?

7 DEFENDANT DAISE: Yes, ma'am.

8 THE COURT: Do you mind just raising your right
9 hand, sir? Do you swear or affirm the testimony you
10 give will be the truth, so help you God?

11 DEFENDANT DAISE: Yes, I do.

12 THE COURT: Thank you, Mr. Daise. At this time,
13 I'm going to explain certain rights that you have. I
14 know your lawyers have explained them to you, and I'm
15 sure you already understand them, but I'm required to go
16 over them for the record. And again, I want to make
17 sure you understand and appreciate that, while I expect
18 you to speak with your lawyers and counsel with them
19 about these rights, that this is a personal decision,
20 and only you can invoke these rights.

21 Sir, we've reached the stage in the trial where you
22 may present your defense, and I want you to know that
23 you have the right to claim the protections that are
24 afforded to you by the *Fifth Amendment* to the
25 *Constitution*, which states, in small part, that no

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1 person in a criminal trial is compelled to be a witness
2 against themselves. The importance of that, sir, is
3 that you cannot be required to testify in this case.
4 However, I want to make sure you understand that you do
5 have the right to testify on your own behalf if you so
6 choose. However, I want to make sure that you
7 understand, sir, that, if you decide to testify, you
8 would be subject to the same rules that govern the other
9 witnesses, and you can be examined and cross-examined on
10 any relevant issue in this case, sir.

11 And in addition, if you have any convictions for
12 dishonesty or moral turpitude or false statement, or for
13 crimes that are punishable by imprisonment for more than
14 one year, and I determine that their probative value
15 outweighs any prejudice to you, sir, the Solicitor's
16 Office would be able to introduce that to try and attack
17 your credibility.

18 Sir, I want to make sure you understand that, if
19 you decide to testify, this decision on your part must
20 be freely, voluntarily, knowingly, and intelligently
21 made, aware of the protections that are provided to you
22 by the *Fifth Amendment*, and that you understand the
23 consequences of your decision.

24 Sir, if you decide not to testify in this case, in
25 my jury charge, I'm going to tell the jurors that they

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1 are not even to discuss that back in the jury room. As
2 you know, you are never required to prove your
3 innocence. The burden is on the State to prove your
4 guilt beyond a reasonable doubt. So, I would tell the
5 jury that, if they were to even discuss that in any way,
6 that would be completely inappropriate. Mr. Daise, have
7 you understood the questions I've asked you?

8 DEFENDANT DAISE: Yes, I did.

9 THE COURT: Sir, and do you have any questions for
10 me about what I've just explained to you?

11 DEFENDANT DAISE: No, I don't.

12 THE COURT: All right, sir. And I'm going to give
13 you overnight and further time to talk with your
14 lawyers, sir, about whether or not you wish to testify.
15 In the morning, I'm just going to have you stand back
16 up, I am going to swear you in again, and I'm just going
17 to ask you whether or not you wish to testify, and if
18 that is your decision. All right, sir?

19 DEFENDANT DAISE: All right.

20 THE COURT: All right. You may be seated. Thank
21 you.

22 All right. Anything else that we should put on the
23 record, other than I do want you all -- Caroline is
24 going to give you a copy of my jury charge. Do you
25 already have it? Very good. Do you want to go over it

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1 now, or would you rather wait 'til the morning?

2 MR. MCGUIRE: Probably sounds like we'll have a
3 little bit of time in the morning.

4 THE COURT: I think we're going to. I think maybe
5 -- Mr. Thornton?

6 MR. THORNTON: I was going to say yes, ma'am, I
7 think in the morning would be better.

8 THE COURT: Okay. My suggestion to you all, of
9 course, I don't want you to have to come here too
10 terribly early, but I'm thinking maybe 10:00 o'clock for
11 the rest of us, we can get things rolling.

12 MR. MCGUIRE: Yes, ma'am.

13 THE COURT: Soon as we know what we're going at
14 11:00, we'll go ahead and go into closing arguments.
15 Okay?

16 MR. MCGUIRE: Yes, ma'am.

17 MR. THORNTON: The State will be ready, Judge.
18 Thank you.

19 THE COURT: All right. And again, after reading
20 those tonight, if there are any additional requests to
21 charge, again, email them to Caroline and me, both of
22 us, so we can take a look at them and have them before
23 in the morning. Okay?

24 MR. MCGUIRE: Yes, your Honor.

25 THE COURT: I will tell you, what Caroline gave

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1 you, did you strictly put in -- you put in the *Logan*
2 charge, correct?

3 LAW CLERK SCRANTON: I did.

4 THE COURT: Okay. Just to let you know, we've put
5 in the *Logan* charge. And again, if there's anything
6 else that's applicable that, you know, maybe I missed,
7 please let me know. Okay?

8 MR. THORNTON: Thank you, your Honor.

9 MR. MCGUIRE: Thank you, your Honor.

10 THE COURT: Thank you all. Goodnight. See you all
11 in the morning.

12 END DAY SEVEN, WEDNESDAY,

13 OCTOBER 16, 2013, 4:23 P.M.

14 BEGIN DAY EIGHT, THURSDAY,

15 OCTOBER 17, 2013, 10:34 A.M.

16 BY THE COURT:

17 BAILIFF: All rise.

18 THE COURT: Thank you. Please be seated.

19 THE COURT: I wanted to talk about the jury charge
20 very briefly. Caroline had given it to you all, and you
21 all said you didn't have problems with it. There are a
22 couple of things we snuck in there, though, not knowing
23 what was coming. So, I want to go ahead and just
24 discuss a few things that I have a question about.

25 The first one would be identity. There really was

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1 no identity testimony in this case. I think we
2 anticipated that when we thought -- especially when
3 Rebecca Nations was going to testify, and she didn't.
4 So, I don't think identity and the identification
5 portion of the charge is appropriate in this case.
6 Anyone disagree?

7 MR. THORNTON: The State does not disagree, your
8 Honor.

9 MR. MCGUIRE: We don't disagree, your Honor.

10 THE COURT: Okay. And then, also, too, we stuck,
11 out of an abundance of caution, an alibi charge. Thus
12 far, I don't see it as being appropriate. I haven't
13 seen anything yet. We didn't know if anyone was put on
14 notice, but we just kind of had it in there just in
15 case.

16 Lastly, let me see the attorneys up here. Have you
17 all already gone through the verdict form?

18 MR. MCGUIRE: Yes, your Honor.

19 THE COURT: And the State?

20 MR. STONE: Yes, your Honor.

21 THE COURT: Very good. Okay.

22 OFF-THE-RECORD BENCH CONFERENCE.

23 BACK ON THE RECORD.

24 THE COURT: Norman, I know I told the jurors not
25 until 11:00, but soon as they're ready to go, the

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1 lawyers are ready to go.

2 BAILIFF: Yes, ma'am.

3 THE COURT: So, as soon as we get everybody (--
4 okay.

5 DEFENDANT'S RIGHTS, BY THE COURT:

6 THE COURT: Good morning, Mr. Daise.

7 DEFENDANT DAISE: Good morning.

8 THE COURT: Sir, do you mind standing, and just
9 raise your right hand again, sir, and I'm going to swear
10 you in just like yesterday, sir. Do you swear or affirm
11 the testimony you give will be the truth, so help you
12 God?

13 DEFENDANT DAISE: Yes, I do.

14 THE COURT: Thank you. Mr. Daise, I wanted to give
15 you overnight to have further opportunity to speak with
16 your lawyers about whether or not you wish to testify or
17 invoke your *Fifth Amendment* right. Have you had an
18 adequate amount of time to speak with your lawyers about
19 that?

20 DEFENDANT DAISE: Yes, ma'am.

21 THE COURT: All right, sir. And have you made a
22 decision as to whether or not you wish to testify or
23 not?

24 DEFENDANT DAISE: Yes, I have.

25 THE COURT: What is that decision, sir?

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1 DEFENDANT DAISE: I'm going to invoke my *Fifth*
2 *Amendment* right.

3 THE COURT: Okay. Thank you, sir. I appreciate
4 it. You may be seated. All right. We will, I guess,
5 be at ease, unless there's anything else. Any issues as
6 far as during closing statements? The only thing I'm
7 going to maybe ask just to make sure everyone does, is
8 when you are finished, possibly, with your demonstrative
9 evidence, we could put them behind. And same thing, if
10 you all would, just for the courtesy of the exhibits
11 that are out there, as far as turning them away from the
12 jury. I want to make sure, in all fairness, everyone
13 does that. Anything else we need to do?

14 MR. STONE: Not from the State, your Honor.

15 THE COURT: Ready to go? Okay. And again, I would
16 never cut anyone in on the amount of time for your
17 closing. Solicitor, roughly? I know you're fast.

18 MR. STONE: This will be probably the fastest --
19 the longest closing I do. I expect it to be about 30
20 minutes.

21 THE COURT: All right, sir. Mr. MacDougall, again,
22 I'm not going to hem you in any way, but?

23 MR. MACDOUGALL: Not more than 30 minutes, your
24 Honor.

25 THE COURT: Okay. Thank you, sir. All right.

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1 Well, we'll be at ease until we have all the jurors. If
2 you all will stick close, if they happen to all be here
3 before 11:00, we're going to get going. Okay?

4 MR. STONE: Thank you, your Honor.

5 THE COURT: Thank you.

6 JURY CHARGE, EVIDENCE PHASE, MARKED

7 COURT'S EXHIBIT NUMBER 90.

8 VERDICT FORM, EVIDENCE PHASE, MARKED

9 COURT'S EXHIBIT NUMBER 91.

10 ITEM IDENTIFIED AS TYPED STATEMENT

11 OF ALLEEN CARLETTA PORTER MARKED

12 COURT'S EXHIBIT NUMBER 92.

13 ITEM IDENTIFIED AS SUPPLEMENTAL

14 INCIDENT REPORT CASE NUMBER 200911150557

15 MARKED COURT'S EXHIBIT NUMBER 96.

16 OFF THE RECORD 10:38 A.M.

17 BACK ON THE RECORD 11:06 A.M.

18 BY THE COURT:

19 BAILIFF: All rise. Court's now in session, the
20 Honorable Carmen Mullen presiding.

21 THE COURT: Thank you all. Please be seated. Good
22 morning. Let's go ahead, and are you all ready to just
23 bring the jury in? We'll go ahead and have you rest for
24 them, and I'll send them back out, we'll do motions, and
25 we'll go from there. Okay?

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1 MR. MCGUIRE: Yes, ma'am. Thank you.

2 THE COURT: All right. Let's bring them in,
3 Norman.

4 BAILIFF: Yes, ma'am.

5 MR. MACDOUGALL: Just one administrative question.
6 For the closing, does the Court object to me moving the
7 podium to the middle of the Bench?

8 THE COURT: You can move it anywhere you want.

9 MR. MACDOUGALL: Thank you.

10 THE COURT: Anywhere you want. Just don't get too
11 close to the jury.

12 BAILIFF: Your Honor, the jury is entering.

13 THE COURT: Thank you.

14 JURORS ENTER COURTROOM 11:08 A.M.

15 BAILIFF: All right, your Honor. The jury is
16 seated.

17 THE COURT: Good morning, ladies and gentlemen.

18 RESPONSES FROM JURORS.

19 THE COURT: Thank you all for being here so
20 promptly. Mr. McGuire.

21 DEFENSE RESTS.

22 MR. MCGUIRE: Your Honor, at this time, the Defense
23 rests.

24 BY THE COURT:

25 THE COURT: Ladies and gentlemen, at this time, the

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1 Defense has rested their case. What I need to do is
2 take up a very brief matter of law with the attorneys.
3 And when we bring you back in here, you're going to hear
4 the closing arguments from the attorneys; I'm going to
5 charge you on the law that's applicable to this case;
6 and we're going to send the case to you for your
7 deliberation. All right?

8 So, at this time, again, I need to remind you,
9 while you have heard all the evidence, you haven't heard
10 the lawyers' closing arguments; you haven't heard my
11 charge on the law. And again, it would be inappropriate
12 for you to discuss this case. All right? So, I'm going
13 to excuse you back to your jury room. We'll be back
14 with you very shortly.

15 JURORS LEAVE COURTROOM 11:09 A.M.

16 DEFENSE MOTIONS:

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: Thank you.

19 MR. MCGUIRE: Thank you, your Honor. We renew our
20 directed verdict motion for the same grounds stated at
21 the closing of the State's case, entirely relying on the
22 *Bostick* case.

23 THE COURT: All right. Thank you, Mr. McGuire.

24 MR. MCGUIRE: Yes, ma'am.

25 THE COURT: Again, as you know, concerning the

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1 existence or non-existence of evidence, I do think there
2 is substantial evidence in this case which could prove
3 the defendant guilty, and respectfully, I'm going to
4 deny your motion for a directed verdict, so.

5 MR. MCGUIRE: Yes, your Honor.

6 THE COURT: Thank you. All right. You all ready
7 to go? Do we need a few minutes?

8 MR. STONE: State's ready your Honor.

9 MR. MCGUIRE: Defense is ready, your Honor.

10 THE COURT: Okay. I want to make sure. Do you
11 think the jury's ready?

12 BAILIFF: Yes, ma'am.

13 THE COURT: Okay. Ladies and gentlemen, for those
14 of you that are here, again, I need to ask you to please
15 try to refrain from any head-bobbing or shaking your
16 head, or any disagreements in regards to what these
17 attorneys are saying.

18 Additionally, I know they are going to secure the
19 back of the courtroom. I, again, just ask to please
20 keep your movement to a minimum. I want the jurors
21 paying attention to the attorneys and the arguments
22 they're giving, as well as my charge on the law. So, if
23 you do not want to stay, I'm going to go ahead and ask
24 you to excuse yourself now. But I appreciate it, and
25 I'm confident no one will have any difficulties.

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1 Let's bring them in, Norm.

2 BAILIFF: Yes, ma'am.

3 BAILIFF: May I approach, your Honor?

4 OFF-THE-RECORD DISCUSSION, THE
5 COURT, BAILIFF.

6 THE COURT: Yes, sir. And just for the jury,
7 before they come in, I want to go ahead and make sure I
8 put on the record, for the State and the Defense, you
9 have no objection to either of the jury charge, which I
10 provided both of you all a copy, or the verdict form.
11 Is that correct, from the State?

12 MR. STONE: That's correct, your Honor.

13 MR. MCGUIRE: Yes, your Honor.

14 THE COURT: That's correct from the Defense? Thank
15 you.

16 BAILIFF: Your Honor, jurors are entering.

17 JURORS ENTER COURTROOM 11:14 A.M.

18 BAILIFF: Your Honor, seated.

19 THE COURT: Thank you. Ladies and gentlemen, at
20 this time, we are going to go ahead and hear the closing
21 arguments from the attorneys. I am going to charge you
22 on the law that's applicable to this case. Ladies and
23 gentlemen, if, at any point, anyone needs a break,
24 again, just wave to me, and we'll go ahead and take a
25 break. All right? All right.

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1 CLOSING ARGUMENT, EVIDENCE PHASE.

2 CLOSING ARGUMENT ON BEHALF OF

3 THE STATE, BY MR. STONE, 11:15 A.M.:

4 MR. STONE: Earnest Daise told her. He told her.

5 He said:

6 *Bitch, you don't know me. I'll kill*
7 *you and I'll kill your children.*

8 He told her. And you know what? She didn't know
9 him. She didn't know him. She thought that she loved
10 him, and she thought he loved her. She didn't know him.

11 She had moments of clarity. I mean, clearly, she
12 had moments where she knew she was afraid. She told
13 that to her friends. She shared that. She had told her
14 friends and family she was done with him, and she was
15 going to break it off. She had those moments of
16 clarity. But she didn't know him. She didn't know what
17 he was capable of. He told her.

18 The Defense, yesterday, put in an exhibit they
19 didn't publish to you, but I want to today. It was text
20 messages sent from Jeanine Mullen, back and forth, to
21 Earnest Daise. And I want you to hear something in
22 these text messages, and try to figure out what this
23 relationship was. Her comments to him -- and she called
24 him E-dub, and she talked about her son, J-dub, his son,
25 the nickname *Dub*.

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1 And she said:

2 *Even though you're harsh, you're*
3 *my best friend, and you're caring at times.*
4 *You are my comforter.*

5 Listen to what Earnest Daise says to her:

6 *I miss that warm ass meat.*

7 She wanted friendship. She wanted comforting. She
8 wanted love. He wanted sex. She looked at him as if he
9 was her best friend, her comforter. And how did he look
10 at her? Like she was his property. Property, that's
11 how that man right there looked at Jeanine Mullen and
12 her children and that house and that van, and everything
13 that he dealt with that day was his. It was his
14 property.

15 And you know the thing about property? We all have
16 property. Sometimes we take care of our property.
17 Sometimes we keep it clean. Sometimes we keep it. And
18 then, sometimes we don't. Sometimes it pleases us, and
19 we take care of it. And sometimes, it just doesn't
20 please us anymore, and we just get rid of it. That's
21 how we treat property. That's how Earnest Daise treated
22 Jeanine Mullen. That's how Earnest Daise treated
23 Jeanine Mullen's children. And that's how he treated
24 his own child. It was property. And when he was done
25 with them, he was just done with them.

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1 Now the Judge is going to tell you in a few
2 moments, about evidence and what kind of evidence comes
3 into a criminal case to help you make your decision.
4 And she's going to tell you that there are two types of
5 evidence. There's circumstantial evidence and there's
6 direct evidence; and that the State can prove its case
7 through circumstantial evidence; the State can prove its
8 case through direct evidence; or it can prove its case
9 through a combination of both.

10 Ladies and gentlemen, I'm going to talk to you
11 about both of those types of evidence today, but I'm
12 going to talk to you in the context of what we put up on
13 that witness stand, and what you know and what you
14 heard.

15 And there are three things that we did, any one of
16 which, any one of which, proves that Earnest Daise is a
17 murderer, but we did three. We did circumstantial
18 evidence, and I'll go over that in just moment. There's
19 scientific evidence that also points to Earnest Daise as
20 the killer. And there's also direct evidence that
21 points to Earnest Daise as the killer.

22 And I want to take just a moment with you, and I
23 want to back up, and I want to put everything in
24 perspective, because, unfortunately, for you, the jury,
25 you had to hear from the witness stand and you had to

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1 hear bits and pieces. But I want to go through it with
2 you very slowly and try to explain to you everything
3 that you heard.

4 Let's start first at the evening before. November
5 14, 2009, the night before, where **Jai. M.** told you that
6 Jeanine and the kids go over to 43 Poppy Hill Road to
7 pick up Earnest Daise. This is something, by the way,
8 that Earnest Daise will later tell law enforcement never
9 happened.

10 *It's not true. I didn't spend the*
11 *night over there.*

12 This is how the house looked. And that's Earnest
13 Daise's car, right back here with the hood up. Earnest
14 Daise could get to the house only one way -- in that
15 van. He didn't have any other way of doing it.

16 That night, he goes and he spends the night with
17 Jeanine Mullen at their house. The next morning **Jai. M.**
18 tells you that Earnest Daise gets up early in the
19 morning, he sees him, he leaves, and he takes the van.
20 He takes the van, something else Earnest Daise told law
21 enforcement he didn't do.

22 *I wasn't in that van that day. I*
23 *wasn't at the house the night before,*
24 *and I didn't take the van.*

25 At 11:39, Jeanine starts calling Earnest. Why?

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1 It's **John Doe 1** birthday. The plan is, is we're going
2 -- they're going on a birthday party that day, and she
3 needed the van to get them there. At 11:46, where's
4 Earnest Daise? He's in the van at the B.P. station at
5 Dobbs, right off Highway 21. How do we know that? We
6 have photographs of him. Again, proving that Earnest
7 Daise was in the van during that day, despite the fact
8 that later on to law enforcement, he'll say he was never
9 in that van.

10 At 12:18, Daise leaves Dobbs in the van. And from
11 12:22 to 2:39, Jeanine calls Daise twice. Again:

12 *Where's the van? I need to get the*
13 *van back.*

14 That afternoon, Frank Mullen arrives at the house.
15 And you know when Frank Mullen first gets there, there
16 is no van there. He says:

17 *I got there. There's no van. I go in,*
18 *all the kids are there, Jeanine's there. I*
19 *take **Jas. M.** and **Jai. M.** with me.*

20 Remember, **Jai. M.** said:

21 *Mom was getting kind of antsy. She*
22 *was ready to get the shoes up for the kids.*

23 She's trying to find the shoes. She's trying to
24 get everybody ready to go. There's a birthday party.
25 Where's the van? Earnest has got the van. She was

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1 getting a little antsy, and **Jai. M.** wanted out.

2 *Granddad's here. I'm going with Granddad.*

3 Thank goodness.

4 And then, from 2:55 to 3:52, Jeanine calls Earnest
5 Daise 13 times. Let's take a look at those phone calls
6 a minute. She started at the time I showed you
7 initially, at 11:39. At 11:39 she makes those first two
8 calls, and she actually talks to him. And then, at
9 12:22, the rapid fire starts. She calls Daise. It goes
10 to his voice mail. At 2:39, voice mail. 2:55, voice
11 mail.

12 And as the Sprint man told you, he turned his phone
13 off. Every one of these calls, Jeanine to Daise at
14 2:55, 2:56, 2:56, almost 2:57, 2:57, 2:57. What she's
15 doing?

16 *I want the van back. I need the van*
17 *back. Where are you?*

18 And every time, voice mail. He's turned the phone
19 off. Until finally, she reaches him. What time does
20 she get him? 3:52, almost 4:00 o'clock in the
21 afternoon, he finally turns the phone back on, and the
22 phone call lasted 28 seconds, just long enough for her
23 to tell him, for that property that Earnest Daise thinks
24 of, to tell him she needed that van back, in language
25 probably so angry towards him that his response was just

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1 like Mr. Wilson said, and I apologize:

2 *Who the fuck do you think you're*
3 *talking to?*

4 At Eddie's Disco, he's in the van at Eddie's Disco.
5 Mr. Wilson sees him there. He hears that call. Earnest
6 Daise makes that comment, and then, he takes off.

7 We know between then and 6:00 o'clock, Earnest
8 Daise has to get that van back to the house. We know
9 that, because when we take a look at the van, he's taken
10 the van back to the house, the van eventually that Mr.
11 Mullen will see. The doors are open. Her purse is in
12 it. And as the Defense said, this van was ransacked.

13 For those of -- any of you or any of us out here
14 that have ever had small children and a mini van, that's
15 not a ransacked mini van. That is a mother looking
16 through the van for the shoe she's trying to find for
17 the kid. This is the mother trying to get two small
18 children that she's trying to get together on her own,
19 ready for the birthday party. This is her purse. If
20 the thieves were going through the van to ransack it, as
21 suggested by the Defense, they probably would have
22 stolen the purse. This is, as one of the witnesses
23 referred to, soccer mom van, and that's what she was in
24 the middle of.

25 But Earnest Daise was mad. He took the van back.

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1 She goes through it. She's putting the stuff in.
2 They're going back and forth, and something happened.
3 Because the next thing that we know for sure, at 4:00
4 o'clock, we know Jeanine Mullen's alive, because she's
5 calling him. We know that Earnest Daise takes the van
6 over to the house, and at 6:00 o'clock, Daise calls Jay
7 Simmons for a ride.

8 *I need a ride.*

9 If everything was okay, why do you need a ride?
10 Why did he need a ride? They're going to Applebee's.
11 They drive right by on 21, right by 43 Poppy Hill Road.
12 Why does he need a ride, if everything's okay?
13 Everything's not okay. He needs to get out of there.
14 He needs to get out of there fast, and he needs to cut
15 ties with that van.

16 Daise calls Jay Simmons not once, but twice, and
17 let's go over here back to these phone things. At 6:00
18 o'clock, Daise to Jay Simmons. At 6:02:02, Daise back
19 to Jay Simmons. Finally, Jay Simmons says:

20 *I'm on the way. I'm coming to get you.*

21 And where does he go to get him? At the
22 intersection of Keans Neck, right here, about 1.6 miles
23 from the house, if you're taking the roads. But if
24 you're running through the woods, a little bit shorter
25 than that.

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1 Oh, and by the way, according to Earnest Daise to
2 law enforcement, he was never in that neighborhood,
3 either. He was never in the van; he was never in the
4 neighborhood; he was never at her house. And yet,
5 that's where Jay Simmons picked him up.

6 But what time did Jay Simmons pick him up? He gets
7 an on-the-way text at 6:04. And then, from 6:02 to
8 6:18, Daise is calling Simmons nine times. What's going
9 on? He's already getting a ride. What's wrong?

10 *Come get me. Come get me. Come get me.*

11 He's panicking and he's trying to get away and he
12 needs help. And he needs him to come and get him, and
13 he needs him to do it now. He needs to do it at 6:02,
14 at 6:04, at 6:05, at 6:06, at 6:06, at 6:13, all the way
15 to 6:18.

16 And here's what's interesting. We know that Jay
17 Simmons didn't pick him up before 6:18, because Earnest
18 Daise is calling him. Then, Jay Simmons picks him up.
19 So, let's assume he picks him right up after that last
20 call at 6:18. Frank Mullen gets to the house at 6:30,
21 somewhere between 6:30 and 6:45.

22 What the Judge will explain to you about
23 circumstantial evidence, is it's chains and facts and
24 circumstances that point to a logical conclusion. What
25 this does is, it does two things. It tells you two

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1 things. Number one, Earnest Daise is the only person
2 who could have done this. And number two, Earnest Daise
3 is the only person that had time to do this.

4 The Defense said we know there were a lot of home
5 invasions and burglaries and things like that going on
6 in the neighborhood, and maybe that's what happened.
7 And he talked about three. The law enforcement didn't
8 have the specifics of it, but the Defense asked him
9 about some, and here were the specifics the Defense
10 gave. People broke into the house, demanded money,
11 demanded property, stole things, found people.

12 Well, here's the problem. There's nothing broken
13 into and there's nothing stolen. Earnest Daise didn't
14 need to break into the house. He just walked in. He
15 didn't need to steal the van. He had the keys. He
16 didn't need to steal the property inside the house,
17 because all the property was already Earnest Daise's,
18 even the people.

19 And you know what else separates this from those
20 other three crimes the Defense talked about? In the
21 other three, nobody died. In this one, almost everybody
22 did. Almost everybody did.

23 And one other thing. When you ask who or the how,
24 this, as the doctor told you, was a direct contact shot
25 to the forehead. Taking the gun and literally putting

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1 it up on her forehead, right here, and pulling the
2 trigger. That's not an accident. That's not a drive-by
3 shooting. That's not a robbery gone bad. That is
4 personal. And who's personal? That man right there.
5 That man right there. This was a personal killing.

6 Earnest Daise wasn't there to steal, he wasn't
7 there to break in, he wasn't there to kidnap. He wasn't
8 there to ransack. She said something. She finally
9 stood up to him and said something, and his property
10 didn't suit him anymore. This was personal. It wasn't
11 a random break-in.

12 Earnest Daise talked to law enforcement, and what
13 did he say?

14 *I wasn't there. I wasn't in the van.*

15 *I didn't spend the night.*

16 All of which, by multiple witnesses, is now shown
17 to be lies. Why did he have to lie? Why did he need a
18 ride from Jay Simmons? Why did he need to get away from
19 that house? And why did he need to distance himself
20 from the van? Because two things were wrong. He didn't
21 know two things. The first thing he didn't know was
22 that, that van was not the only link to him. See, he
23 thought it was. Why? Everybody else is dead. There
24 are no eyewitnesses.

25 This is the crime scene that Earnest Daise left.

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1 And remember, it wasn't until EMS started working on
2 **John Doe 2** that he came to. Because initially, when poor
3 Frank Mullen had to go through this house, he thought,
4 just like Earnest Daise did, everybody was dead.

5 There were no eyewitnesses, according to Earnest
6 Daise. So, what did he do? He had to get away from the
7 van. He had to cut breaks with the van. The van, in
8 his mind, was the only link.

9 Here's the problem, and here's where the other two
10 parts of our case come in. What he didn't know was
11 microbiology, DNA, and science. This alone tells you
12 Earnest Daise is the only person that could do it. This
13 alone tells you Earnest Daise is the only person who
14 time to do it. And yet, that's not all.

15 Science. These jeans, the jeans that Earnest Daise
16 was wearing when law enforcement got there, had his
17 blood from his hand, which is very difficult to see.
18 Wasn't a particularly good picture, but there's no scab
19 on that. It's fresh. It's not a big cut, but it's big
20 enough to leave a blood smear on some door that looks
21 pretty fresh, the door to his bedroom, where he's
22 asleep, and his blood on his pants, along with gunshot
23 residue.

24 Gunshot residue, which their own expert said the
25 following:

1 Gunshot residue gets on clothes in
2 only one of three ways. Number one, you
3 shoot a gun. Number two, you're right beside
4 somebody that shoots a gun. Or number three,
5 it's transferred there.

6 Now, transfer, as he described it, it's like baby
7 powder, and it can get there very easily, which means it
8 can also fall off very easily, as he put it, if the
9 clothes are in an agitated state. The Defense made a
10 big deal out of, well, there's not a lot of gunshot
11 residue on here. Well, if the pants are washed, or if
12 they're, as their own expert said, the pants are
13 agitated, as they're running through the woods trying to
14 get away.

15 Oh, and the transfer from law enforcement? That
16 doesn't work, either. Because as their own expert said,
17 if law enforcement had gunshot residue on their hand,
18 and they put their hand in the pocket, there'd be
19 gunshot residue in the pocket, but there wasn't any.
20 So, law enforcement didn't transfer gunshot residue on
21 it, either.

22 So, the Defense says, well, you can't date any of
23 that. That blood, which is Earnest Daise's blood; the
24 blood which is Jeanine Mullen's blood; the blood that's
25 a mixture of the two; and the gunshot residue, all there

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1 at the same time. It could have been old.. There could
2 have been a time in the past in which somehow her blood
3 and gunshot residue got on those pants, and they just
4 stayed there, indefinitely. It wasn't just that he
5 didn't wash the clothes -- although they did take great
6 pains in showing you that he had a washing machine right
7 down the hall -- it could have been there indefinitely.
8 It could have been there for a long time. It could have
9 been there from the other time when, somehow, she bled,
10 and he shot a gun at the same time. That's the theory.
11 The blood and the gunshot residue are there from the
12 last time he shot her?

13 Science, the science that he didn't know about.
14 It's why he had to lie to law enforcement and say:

15 *I wasn't there.*

16 It's why:

17 *I didn't have the van.*

18 It's why I lied about everything.

19 And you know what else it is? The very thing that
20 was curious to me, where was he when law enforcement got
21 there? He was asleep. He knew about Jeanine Mullen.
22 He knew, at least partially, about **John Doe 2**. And
23 he knew it from his sister, Marida, at either 8:00
24 o'clock that night or 11:00 o'clock at night. But when
25 law enforcement got there, it was 2:30 in the morning,

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1 and where was he? He was asleep. Was he at the
2 hospital? Was he calling to check? Did he ask law
3 enforcement one single time, how's my child? No. Why
4 not? Because he thought he already knew.

5 You see, thank goodness Earnest Daise was wrong.
6 Thank goodness. Because as he sat there and talked to
7 law enforcement and denied everything that you now know
8 is true, and said, oh, I would have gone, but I needed a
9 ride, when there are two cars in the driveway, in the
10 house he's in, with Jay Simmons, with Asia Palmer. Jay
11 Simmons, who had already given him a ride earlier, and
12 certainly would have had no problem giving him a ride to
13 the hospital, since he was driving him away from a
14 murder scene. But he couldn't get a ride. He was
15 asleep.

16 And did he show any emotion about that, how's my
17 child? Not Jeanine. How's your own child? What'd he
18 do? He laughed. He laughed. Can you imagine laughing
19 when your child's been shot? You can, if your child's
20 property. You can, if you don't care. You can, if
21 you're the one that did it, and if you think the only
22 link to you is that van.

23 But he didn't know about science. He didn't know
24 the second part of our case that shows that there's her
25 blood, his blood, and gunshot residue on those jeans.

1 And no, it wasn't on the sweatshirt, and I can't tell
2 you why. I cannot, because I don't know if he was
3 wearing the sweatshirt when he shot and killed them.
4 None of us do. We know he wore it earlier, we think, if
5 that's the same one that's in the Dobbs video. But we
6 know he wasn't wearing it when law enforcement got
7 there. And we know he had some time in that house while
8 Jeanine Mullen was going back and forth to the van. Did
9 he take it off? I don't know. He wasn't wearing it.
10 But you can take a sweatshirt off. You can't take your
11 pants off, and he didn't. And that's there, and it's
12 not from the last time he shot Jeanine Mullen, which was
13 November the 15th, 2009, when he thought he had
14 eliminated all of the witnesses, and he had put away his
15 property.

16 And then, the third thing and the third piece of
17 evidence and the third section of evidence that we have
18 in this case is what the Judge will tell you is direct
19 evidence, eyewitness testimony. And where does that
20 come from? Literally, the mouth of a babe. Literally,
21 the mouth of his own child. The child, and the third
22 mistake Earnest Daise made, thinking this child's last
23 days were on that floor next to his mother. And but, by
24 the grace of God, he made it, and by just literally
25 inches.

1 And what did he tell Danny Tinnel in that back of
2 that ambulance? Told him three things, according to
3 Shayna Orsen and Danny Tinnel:

4 *What's your name?*

5 Something that sounds like Doug.

6 *Do you know who did this?*

7 Yes.

8 *Who was it?*

9 Daddy.

10 Danny Tinnel testified that that's what he heard,
11 and he was no more than a foot away from the child's
12 lips when he said it. So, either the child is lying or
13 Danny Tinnel is lying. And you know neither one of
14 those are true. Neither one of them are true. Danny
15 Tinnel told you what he heard.

16 And you know what? Here's something that's very
17 interesting. Danny Tinnel didn't know what the child's
18 name was at all. And if he'd have gotten a name, he'd
19 have gotten **John Doe 2**. If Danny Tinnel was going to take
20 the witness stand and lie and say, what's your name, and
21 he said, **John Doe 2**, he didn't. He said:

22 *Something that sounded like Doug.*

23 Something that we now know was Dub. Named after
24 his own father's nickname, E-dub, J-dub. You'll see it
25 in the text messages, Dub. Tattooed -- tattooed on

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1 Jeanine Mullen's foot. A nickname that his brothers
2 called him, a nickname Roberta refused to call him, but
3 she knew about. Dub.

4 If Danny Tinnel was going to make it up, if he
5 didn't hear it, how did he come up with that? How did
6 he do that? He didn't make it up. He heard it, and he
7 heard it very well. He heard that just as well as he
8 heard:

9 *Daddy hurt me. Daddy.*

10 Three types of evidence, circumstantial, which
11 shows you no doubt who and when. The second type,
12 science. The third type, direct.

13 And I told you earlier, if I didn't prove this case
14 to you beyond a reasonable doubt, your job is to come
15 back here and find him not guilty. But I also told you
16 I'd do something else, and I'm going to do it, and I'm
17 going to do it right now. I'm going to ask you to come
18 back here with a verdict that does one thing, and one
19 thing only. It speaks the truth.

20 After you deliberate, after you think about the
21 evidence that you've heard in this case, I want each one
22 of you to come back here and tell us one thing, and one
23 thing only -- the truth.

24 Thank you.

25 THE COURT: Thank you. Mr. MacDougall.

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1 MR. STONE: I'll move my stuff here.

2 THE COURT: Thank you.

3 MR. MACDOUGALL: May I have a moment, your Honor?

4 THE COURT: Yes, sir.

5 CLOSING ARGUMENT, EVIDENCE PHASE,

6 ON BEHALF OF DEFENSE, BY MR. MACDOUGALL,

7 11:46 A.M.:

8 MR. MACDOUGALL: Good morning. This is the only
9 time at trial when lawyers on either side get to
10 actually speak directly to the jury, so it's as
11 important as it gets in the trial. And there's one
12 thing I want to tell you on behalf of Mr. McGuire, Mr.
13 Leddy, everybody over at that table, it's a horrible
14 crime. We agree with the State. It's a horrible,
15 terrible crime. Mother, two boys shot, two dead.
16 I've got three sons, my wife and I do. They're all
17 grown, fine men now. But you know, when I think about
18 them, I think about them at the same age as **John Doe 1**
19 and **John Doe 2**. I don't see them every day, because we're
20 off doing good things, but I remember them. And don't
21 let anybody convince you, and I beg you, don't convince
22 yourselves, that there's anybody over at that table that
23 doesn't understand that. And that's -- that's the most
24 important thing I can tell you today. We understand
25 what this is all about. But you have a different job

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1 than us.

2 And I want to read you something that I found in an
3 old law book. It's from the *Statutes at Large of the*
4 *Colony of South Carolina, 1706*, just one sentence:

5 *If the defendant doth deny the matter,*
6 *and put himself upon the country, a jury*
7 *shall be summoned to try the fact.*

8 It's over 300 years ago, when there was a king, and
9 the king had a governor. And that was when Africans
10 could be brought to this country and sold. It was
11 before we understood that there wasn't to be a state
12 religion. It was before women could vote. It was
13 before white men without property could vote. It was
14 before all the rights that we understand today were
15 realized and written into our laws.

16 And I tell you that, because what you're doing is
17 as important as it ever gets. Before this country
18 existed, when the great Sea Island cotton plantations
19 were just being planted and the rice industry was just
20 growing, when there was a king and a royal governor, the
21 people who lived here and lived elsewhere in this
22 country believed that this was the most important thing
23 they needed. They needed a jury.

24 Maybe we don't get to vote. Maybe if you're a
25 Catholic or a Jew or a Baptist, you can't practice your

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1 religion; but we need the jury. 1706. And that lives
2 today.

3 In the state I'm from, when we empanel a jury,
4 they're charged as follows:

5 *To this complaint, the defendant*
6 *pleads that he is not guilty, and for trial,*
7 *places himself upon the country.*

8 Those words again:

9 *Places himself upon the country.*

10 *Which country you are. You are now*
11 *sworn to try the issue. If he's guilty,*
12 *you will say so. If he's not guilty, you*
13 *will say so, and no more.*

14 *Members of the jury, harken to the*
15 *evidence.*

16 Juries being empaneled today in the Commonwealth of
17 Virginia hear exactly those words, just as you have now.

18 And I tell you that, *harken to the evidence,*
19 because that's all that matters here. And the evidence
20 in this case does not meet the burden that the State
21 just told you they met, not even close.

22 The State has powerful investigative tools, but
23 they have to use them. When I was a younger man, I sat
24 on that side of the court room. I know what those tools
25 are like. They can do very powerful things. They can

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1 find the truth. They can find the facts. But you have
2 to use them, and that's not what happened here.

3 The Sheriff's Department, the police department,
4 they decided within a few minutes of arriving at that
5 scene who did it, Earnest Daise. And as soon as they
6 decided that, everything else didn't really matter.

7 From the beginning of the trial, we showed you the
8 photograph of the van. Now, Mr. Stone would have you to
9 believe -- have you believe that that's really not
10 significant; that, you know, the van was open and
11 Earnest was driving it. If there was a piece of
12 evidence that screams for investigation, it's that. And
13 you heard from the very people charged with doing it,
14 they didn't even do it. They didn't search for prints.
15 They didn't search for blood. They searched for
16 nothing, because they already knew. They don't need to
17 investigate a crime. They know who did it. Forget
18 about the van.

19 The supervising investigator took the stand
20 yesterday, and I asked him, he said:

21 Oh yeah, it was -- that was searched.

22 No, it wasn't. It wasn't.

23 You heard Lieutenant Crooks say that. Remember the
24 van when you go into the jury room.

25 You also heard testimony that there were no

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1 fingerprints at the trailer. They found no fingerprints
2 in a trailer occupied by an adult woman, four children,
3 and sometimes an adult man. They found no fingerprints.
4 Do you believe that? Do you believe that with all the
5 technology that SLED has at its disposal, and Sheriff's
6 Department, they can't find a single fingerprint in a
7 highly-occupied, closed-in, domicile home, with kids
8 running around? There were no fingerprints. There were
9 lots of fingerprints. They just didn't find them. And
10 they need to find them, because they didn't need to look
11 at them.

12 How else do we know they didn't investigate? Jay
13 Simmons. You heard Mr. Stone talk at length about Jay
14 Simmons. Well, you saw Jay Simmons here, and you saw
15 that whole bizarre episode where he first gives a
16 statement to the police, *I didn't pick up Earnest.*

17 Then, they come and they raid his house, and they
18 find the marijuana and they find the cash. And then,
19 they get a statement from him that says: *Oh, yeah,*
20 *yeah, I picked up Earnest. Yeah, just like you said.*

21 And then, our investigator goes to see him, and he
22 says: *I was lying. I didn't pick anybody up that day.*

23
24 But in the meantime, the police give him back his
25 cash. The drug dealer gets his cash back. And then, he

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1 comes here on the stand and he's under oath and he tells
2 you what really happened. You heard that, you saw him,
3 you know what he said.

4 And lastly, Mr. Stone talked about the other home
5 invasions. He said: *Well, don't pay attention to*
6 *those. Nobody got killed.*

7 They were all armed. They were all close by. I
8 don't -- I don't know what happened that day, but he
9 doesn't either. And I would submit to you that neither
10 do you.

11 The police knew of other crimes, and they did not
12 investigate them, because they didn't feel they had to,
13 because they knew. They knew that afternoon. They
14 didn't feel responsibility to their job and to you, to
15 go and find all the facts, so that, when they did come
16 to court, you would hear them, you would know it, and
17 you could do the job. You could be the country. You
18 could be the jury that you need to be.

19 You don't need to know that. You just need to know
20 what we got for you, and what we got for you is, we've
21 decided this guy is guilty.

22 Don't do it. Don't believe it.

23 So, what about the evidence the State wants you to
24 believe? I want to talk about four things. Mr. Stone
25 talked about scientific evidence and circumstantial

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1 evidence and direct evidence, and I want to talk about
2 each of those, but I'll be very specific.

3 Gunshot residue. They want you to believe that
4 there was gunshot residue on Earnest Daise's pants, and
5 that that gunshot residue means he committed this crime.
6 The State's witness testified there was one part, one on
7 each leg of the jeans, a single part. The State's
8 witness also agreed it could have been there for months
9 or years.

10 Now, Mr. Stone tried to convince you that what that
11 really meant was that somehow the gun was fired and the
12 blood was deposited. And then, we'll talk about the
13 blood in a minute. That's not what the evidence is. He
14 knows that, I know that, you know that. That gunshot
15 residue could have been there forever.

16 You heard Ila Simmons, the State's witness, say as
17 much. She described being deer hunting and a little
18 test she did herself. Went out in the fall, put her
19 jacket away, came back nine months later, tested for
20 gunshot residue. Bingo, there it is, undisturbed.

21 So, the truth is, the truth is, nobody knows how
22 the gunshot residue got there, and nobody knows how long
23 it had been there. What we do know is, there's
24 ammunition all over the Poppy Hill Road house. These
25 are people -- these are, you know, this is not

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1 necessarily who we all might be, but they apparently
2 like to have guns and ammunition around, automatic
3 weapons, and go out and blast away.

4 Exhibit. Well, you've seen the ammunition exhibit.
5 Here it is. State's Exhibit 77. Box of 762 by 39
6 ammunition. You don't keep that around if you're
7 spending the weekends fishing. Do I know how the
8 gunshot residue got on Mr. Daise's pants? I don't.
9 They don't either. Neither do you.

10 Mr. Stone mentioned that there's no gunshot residue
11 on the sweatshirt, and he said he couldn't tell you why
12 that is. Well, I can't tell you why that is, either.
13 But what I can tell you is, what that does say to all of
14 us and to the scientists who look at it, is that, that
15 whoever was wearing that shirt -- and you've seen the
16 photographs of Earnest Daise wearing that shirt three
17 hours before -- he didn't fire a gun. Didn't fire a
18 gun. And they tested it, as you saw yesterday, every
19 spot they could find.

20 So, once again, Mr. Stone asks you to speculate.

21 *Well, maybe he took the shirt off.*

22 And you know why? Because that doesn't fit with
23 the decision that they made within a few minutes of the
24 crime, here's who did it.

25 And if you listen carefully to Mr. Stone, what you

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1 heard was, every time he was confronted with something
2 that didn't work for his case, he used the word *assume*,
3 *could have*. Assume he took the shirt off when he went
4 in, committed this terrible crime, then put the shirt
5 back on, drove home, and hung it up. That's all we
6 have.

7 The second piece of evidence is the blood on the
8 pants. They want you to believe that that was blood
9 that resulted from the shooting of Jeanine Mullen.

10 Yesterday, you saw dramatic testimony from the
11 doctor who talked about the proximity of the gun at the
12 time of the shootings. But you heard Lieutenant Crooks
13 testify that that little spot of blood on those jeans
14 was the result of transference. He said it wasn't
15 splatter. So, you can't have both of those things
16 existing in the same world. You can't have the dramatic
17 demonstration with the styrofoam heads and doctor and so
18 forth, and then, Lieutenant Crooks saying, no, no,
19 that's not -- how that blood got there, I don't know,
20 but it wasn't from splatter; it was from some other way;
21 it was transference.

22 And what you do know, and what I'll talk about more
23 in a minute, is that these were people who are in a
24 highly personal, intimate, sexual, cohabiting
25 relationship. And as you saw from the photographs, at

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1 the time of Mr. Daise's arrest, these are not
2 particularly clean jeans. These are jeans he keeps
3 around. And you also saw that when he was arrested, the
4 jeans had the cuffs turned up, but you heard the SLED
5 agent say, no, they didn't find any blood down there,
6 despite -- despite the photographs that you also saw of
7 the floor of the house at Player Road, and it was blood
8 all over the place. They don't have any explanation for
9 that. And the reason they don't have any explanation
10 for that is that they made the decision at the
11 beginning, and the facts just don't suit them.

12 Mr. Stone talked about **John Doe 2**, the poor, injured
13 toddler. Unconscious when the EMTs arrived, revived,
14 survived, and is okay today, as you heard from the
15 testimony. Thank God. And he's asked a couple of
16 questions. He says:

17 *Daddy.*

18 And he says:

19 *What's your name?*

20 He says:

21 *Doug.*

22 You heard the testimony -- *Doug*. Not **John Doe 2**, not
23 *Dub* -- *Doug*.

24 Now, the State worked greatly to make that
25 something else. You heard the pathologist yesterday

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1 talk about the tattoo on the foot. Mr. Stone said:

2 *What's that tattoo say?*

3 Said:

4 *Dooley.*

5 No, it's Dub. It's Dub. They want to take you on
6 a journey from the testimony you heard and what they
7 would like it to be.

8 **John Doe 2**, thank God, is healthy and living today
9 outside of Washington. You heard that testimony, but we
10 didn't hear from him. And you also heard testimony that
11 the police didn't feel they needed to go and get a
12 statement from him shortly after or anytime after the
13 shooting. I don't know why they didn't do that, but I
14 would suggest to you the reason they didn't do that,
15 they didn't think they needed it. They didn't think you
16 would need to hear that. They didn't think you would
17 need to hear from that little boy. They've got the
18 story, they've got the evidence, and that's all you
19 need.

20 Don't let them do it. That's not why any of us are
21 here.

22 And finally, you heard testimony of an extremely
23 volatile, personal relationship. I will speak only for
24 myself. I have not had one, thank God, but I know many
25 people who have, and I'm related to them. And it's an

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1 unhappy life, and it's filled with great intensity and
2 passion and anger and explosive tempers, and all kinds
3 of unhappy things. But it's also an intimate
4 relationship. And I would ask you, please, because this
5 wasn't broadcast during the course of the trial, when
6 you go back to the jury room, read defendant's Exhibit
7 15, and read it all, please, the text messages back and
8 forth. These people may get angry with each other, but
9 boy, they sure love each other. And in very graphic
10 terms, on November 13, 2009, they sure want each other.
11 This is a highly passionate, intimate, unhappy, and
12 volatile relationship, and all kinds of things happen
13 when that kind of relationship exists.

14 And it might be that a speck of blood gets on the
15 pants because of some interaction. It may be that
16 people, you know, write things that I wouldn't repeat to
17 you here. But that's what it was. So, if you want to
18 understand what it was really like to be Jeanine Mullen
19 and Earnest Daise in November of 2009, I beg you, read
20 this. I beg you, before you deliberate, before you
21 vote, read this Defendant's Exhibit 15.

22 Now, Earnest Daise, as the Judge will tell you, is
23 not required to prove anything here. That's not what we
24 view our job to be, but that's the law. The State tried
25 to show consciousness of guilt. Mr. Stone made

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1 reference to that; this officer who got up and described
2 Earnest Daise as lying, as laughing, and clowning and
3 carrying on. They tried to show consciousness of guilt.
4 This was a man who knew what he did.

5 I ask you to consider the evidence, the evidence,
6 not what someone says someone else said, but the
7 evidence. And in this case, undisputed evidence of
8 consciousness of innocence, consciousness of innocence.
9 Here's a man who knows that there's been a terrible
10 shooting, and he's got -- he's no stranger to law
11 enforcement. He knows he's going to be a suspect. He
12 comes home. He's got \$3,000.00 in cash. He's got a
13 sizeable supply of crack, which you heard has a street
14 value of up to \$1,200.00. He's got a half a pound of
15 marijuana, which we heard has street value of \$500.00.
16 And what does he do? He goes to bed.

17 Now, does that signal compassion for his woman and
18 son? No, I'm not going to try to tell you that. Does
19 that signal someone who is a model citizen? Absolutely
20 not. Does it make him a killer? I'll tell you, it
21 makes him just the opposite -- consciousness of
22 innocence. This is a guy who could have run. \$5,000.00
23 in narcotics and cash, you can get -- you can get pretty
24 much on the road, particularly if you're willing to do
25 things like take a bus. He doesn't. He goes to bed.

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1 And at 2:00 a.m., when the SWAT team shows up, he
2 pulls on his jeans, his dirty old jeans, and walks to
3 the door. And you heard the officers who arrested him,
4 who took him in initially and read him his rights, tell
5 you he didn't resist, he didn't object. And as Officer
6 Purdy said, never asked for a lawyer. Consciousness of
7 innocence. Consciousness of innocence.

8 So, when you go in that jury room, remember those
9 facts. Remember how this man behaved in the 12 hours
10 after the shooting. And you also heard the testimony,
11 that he had called and said that he was looking for a
12 ride to the hospital. I don't know why he didn't go to
13 the hospital. As I said, I'm not here to convince you
14 that he's a model citizen. I am here to make sure you
15 understand that the evidence in this case does not make
16 him a killer.

17 When I'm finished, Judge Mullen is going to give
18 you a jury charge. That's another word for
19 instructions. And that is a very, very important part
20 of any trial, because you can hear the facts and you can
21 listen to the witnesses, you can look at objects, you
22 can read, as I said, please God, those text messages, so
23 you'll understand what was in people's minds, but until
24 you know the law, you can't be a jury. You can't be the
25 country. You can't deliberate and you can't do your

1 job.

2 And what I'm going to do, because we know what the
3 charge is going to be, I'm going to ask you to think
4 about three of them. And when you hear them from Judge
5 Mullen, I'd ask you to sort of focus on these three
6 things.

7 And the first is the following:

8 *To the extent the State relies on*
9 *circumstantial evidence, all of the*
10 *circumstances -- all of the circumstances*
11 *must be consistent with each other. If*
12 *these circumstances merely portray the*
13 *defendant's behavior as suspicious, the*
14 *proof has failed.*

15 Those will be in your instructions.

16 Ladies and gentlemen, I will tell you, nothing here
17 is consistent. There is a little bit of GSR on the
18 pants. There's none in the pockets. There's none on
19 the sweatshirt, even though they want you to look at the
20 pictures of him wearing the sweatshirt. And that's the
21 heart of inconsistency. Here, look at this picture,
22 noontime, wearing a black sweatshirt. Whoops, that's
23 negative for GSR; well, don't pay attention to that.
24 Inconsistency.

25 Mr. Stone would have you believe that Earnest Daise

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1 is running away from the scene. And when people are in
2 flight, what do they do? They take things out of their
3 pocket, they put them in their pockets. They test the
4 pockets of the jeans, no GSR. Inconsistency.

5 The pathologist yesterday described in graphic
6 detail how the victim was shot at close range, but there
7 is no splatter. The little bit of blood they've got is
8 transference, from someone with whom Earnest Daise was
9 in a highly intimate relationship. There's no question
10 about that. Inconsistency.

11 The EMTs, the paramedics, said to you that **John Doe 2**
12 said *Doug*. That doesn't work for their theory. So,
13 they want it to be Dub. And they try, and they work
14 with witnesses in front of you to try to get them to
15 say, no, it wasn't Doug; it was Dub. Why is that
16 important? Because the poor, injured, little boy didn't
17 know his own name. He didn't know his own name. That's
18 the only piece of evidence that the State argues is
19 direct evidence, what you heard from the EMTs and from
20 the paramedics -- he didn't even know his own name.
21 Inconsistency.

22 And when Earnest was found, he's asleep. He's got
23 narcotics that have a significant street value. He's
24 got cash. He's got a way to run, and he doesn't do it.
25 It's consciousness of innocence. It's also inconsistent

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1 circumstantial evidence. That's not what a man does,
2 who has done what the State has accused Earnest Daise of
3 doing. Inconsistency.

4 The second charge you'll hear -- let me just read
5 it to you -- talks about reasonable doubt. It says:

6 *A reasonable doubt is the kind of*
7 *doubt that would cause a person to hesitate*
8 *to act -- to hesitate to act.*

9 So, you know you've got a reasonable doubt if the
10 matter that's in front of you makes you hesitate to act,
11 makes you pause, makes you think.

12 Now, the State will tell you that Earnest fired the
13 gun that committed these crimes. Now, you've all
14 noticed, I'm sure, by now, there is no gun. You've
15 seen no gun. The State has offered no gun. I don't
16 know where the gun is. They don't either. And neither
17 do you. And in fact, they didn't believe a gun was
18 necessary, because they decided, as you've seen, within
19 a few minutes of discovering the crime scene, who did
20 it, without really needing to know why or know what the
21 facts are.

22 The State wants you to believe that Earnest Daise
23 committed this terrible crime. But wait, he has cash;
24 he has narcotics; he has a way to run; and he doesn't do
25 it. Hesitate to act. The State says that the blood on

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1 the jeans is from the murder. But wait, their own
2 witness says it's a transference; it's a smear; it's not
3 splatter. Does that make you hesitate to act?

4 They want you to believe that Jeanine -- the State
5 wants you to believe that Jeanine was afraid of Earnest.
6 But wait, Exhibit 15. Read the text messages. This is
7 not a woman suggesting she's afraid, or a man suggesting
8 he's unhappy to be in her company. Please read this.

9 The State wants you to believe that **John Doe 2** said
10 *Daddy* to the paramedics. But wait, he also said his
11 name was Doug. They want to massage you into believing
12 it was something else, but you heard it, just as I heard
13 it.

14 Hesitate to act. Think of those things when you're
15 hearing the Judge's instruction and you're wondering how
16 I'm going to reach a verdict. Does it make you hesitate
17 to act? Maybe I'm not right. Maybe the State's not
18 right. That's what you need.

19 And the third statement in Court's charge is as
20 follows:

21 *The proper performance of the duty*
22 *of the jury requires each of you to reach*
23 *the height of freeing your mind.*

24 Very powerful stuff. The height of freeing your
25 mind of all improper influences. You cannot allow

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1 yourselves to be governed by prejudice for or against
2 any person, by public opinion, or by any other arbitrary
3 factor. You'll hear that from Judge Mullen in a few
4 minutes.

5 Each morning when you come in, the Judge has asked
6 you about whether you've read the newspaper or been on
7 the Internet, because she, like we, like all of us, want
8 you to reach that height of freeing your mind, without
9 being affected by outside influences. And that could be
10 the news, it could be a discussion with a neighbor,
11 could be doing some of the things the Court asked you
12 not to do. It could also be rage and sorrow and horror
13 and pain at what these people went through, and the
14 loss. All those things that the State wants you to
15 embrace, because that helps them convince you of
16 something the facts will not convince you of. They want
17 you to be angry, and they want you to make somebody pay.

18
19 I agree somebody ought to pay, but not this
20 defendant and not on this evidence.

21 This trial, the law, the jury, the country is only
22 about evidence. The jury is what stands between the
23 king and his governor 300 years ago, who would go out
24 and bring in someone who is -- who had become
25 disfavored, and lock him up for as long as they need to

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1 be. That doesn't happen in this country. And the only
2 reason it doesn't happen is because of you. Because you
3 stand between. You, the country, stand between the
4 government and the citizen. And that's as important a
5 place as any of us will ever have.

6 On this evidence, you can't do what the State asked
7 you to do today, because they asked you to do it based
8 on emotions of rage and sorrow and anger and
9 retribution. And you have to put all of those out of
10 your mind, because, as the Judge will instruct you, you
11 have to reach the height of freeing your mind. That's
12 what you're being asked to do today, and that is not an
13 easy job, and certainly not in this case. But that's
14 what you have to do, because that's what we all have to
15 do.

16 So, the State wants somebody to pay. They decided
17 within a few minutes it was Earnest Daise. The State
18 has not met its burden, not in this evidence. It's not
19 Earnest Daise. So, we make a request, too, on behalf of
20 Earnest Daise, on behalf of the country, all of you, we
21 ask that you weigh the evidence, and you listen
22 carefully to the Judge's instructions, and you follow
23 those instructions. Because it's easy to listen to
24 them, but then you have to follow them and think about
25 them and apply them to the evidence you have here,

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1 because that's the law. You will hear the law from the
2 Bench, but you know the evidence and you know the facts.
3

4 So, we beg you, on behalf of my colleagues and Mr.
5 Daise, to apply that law carefully. And when you do,
6 when you do, there's only one verdict you can return,
7 based upon the law that you'll hear from the Bench and
8 the facts you've seen, and that is not guilty of murder
9 and not guilty of assault with intent to kill.

10 Thank you for being here today and this week in
11 this courthouse. I thank you for being the country.
12 God bless you.

13 Thank you, your Honor.

14 END CLOSING ARGUMENTS, EVIDENCE

15 PHASE, 12:13 P.M.

16 THE COURT: Ladies and gentlemen, does anyone need
17 a break? You all okay? All right.

18 JURY CHARGE, EVIDENCE PHASE,

19 BY THE COURT:

20 THE COURT: Mr. Foreperson, ladies and gentlemen of
21 the jury, you have heard the testimony and evidence to
22 be presented in this case. It's now my duty to charge
23 you on the law that's applicable to this case.

24 The State has charged the defendant, Earnest Daise,
25 with two counts of Murder; as well as Assault and

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1 Battery with Intent to Kill; Possession with Intent to
2 Distribute Marijuana; and Trafficking Crack Cocaine 10
3 grams or more, but less than 28 grams.

4 I remind you, ladies and gentlemen, that the fact
5 the defendant was arrested, charged, and indicted in a
6 case is not evidence in this case, nor does it create
7 any presumption or inference of guilt.

8 Ladies and gentlemen, defendant has pled not guilty
9 to these indictments, and that plea places the burden on
10 the State to prove the defendant's guilt beyond a
11 reasonable doubt. A person charged with committing a
12 criminal offense in South Carolina is never required to
13 prove himself innocent.

14 I charge you that it is an important rule of law
15 that a defendant in a criminal trial, no matter what the
16 seriousness of the charges may be, will always be
17 presumed to be innocent of the crime for which the
18 indictment was issued, unless and until guilt has been
19 proven by evidence satisfying you, the jury, of that
20 guilt beyond a reasonable doubt.

21 Ladies and gentlemen, the presumption of innocence
22 does not end when you begin your deliberations. The
23 presumption of innocence accompanies a defendant
24 throughout the trial, until you reach a verdict of
25 guilt, based on evidence satisfying you of that guilt

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1 beyond a reasonable doubt.

2 The presumption of innocence is not merely a legal
3 theory. It's not just a legal phrase we use. It is a
4 substantial right to which every defendant is entitled,
5 unless you, the jury, are satisfied from the evidence of
6 the defendant's guilt beyond a reasonable doubt.

7 Now, ladies and gentlemen, what is a reasonable
8 doubt in the law? A reasonable doubt is the kind of
9 doubt that would cause a reasonable person to hesitate
10 to act. Now, the State has the burden of proving the
11 defendant guilty beyond a reasonable doubt.

12 Now, some of you may have served as jurors in civil
13 cases, where you were told that it is only necessary to
14 prove that a fact is more likely true than not true,
15 such as by the greater weight or preponderance of the
16 evidence. In criminal cases, the State's proof must be
17 more powerful than that. It must be beyond a reasonable
18 doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt.

21 Now, ladies and gentlemen, there are very few
22 things in this world that we know with absolute
23 certainty. And in criminal cases, the law does not
24 require proof that overcomes every possible doubt. If,
25 based on your consideration of the evidence, you are

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1 firmly convinced that the defendant is guilty of the
2 crimes charged, you must find him guilty. If, on the
3 other hand, you think there is a real possibility that a
4 defendant is not guilty, you must give the defendant the
5 benefit of the doubt and find him not guilty.

6 I remind you that, during the trial, you and I have
7 certain duties to perform. As the trial judge, it is my
8 responsibility to preside over the trial of this case,
9 and I also have the duty to rule on the admissibility of
10 the evidence that's offered during this trial. You are
11 to consider only the competent evidence before you. You
12 are to consider only the testimony which has been
13 presented from this witness stand, and any exhibits
14 which have been made a part of the record in this case,
15 and any stipulations of counsel.

16 Ladies and gentlemen, I have the additional duty to
17 charge you the law that's applicable to this case. As
18 the presiding judge, I am the sole judge of the law of
19 this case, and it is your duty as jurors to accept and
20 apply the law as I now state it to you. If you already
21 have any idea as to what the law is or what the law
22 ought to be, and it does not agree with what I now tell
23 you the law is, you must abandon this idea, because you
24 are sworn to accept the law and apply the law exactly as
25 I state it to you.

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1 Ladies and gentlemen, in every case tried in this
2 court before a jury, the jury becomes the sole and
3 exclusive judge of the facts in a case. A trial judge
4 cannot intimate, comment on, or make any statement to a
5 trial jury about the facts in a case. Since you, the
6 jury, are the sole judge of the facts in this case, you
7 are not to infer from what I have said during the
8 progress of this trial in ruling upon the admissibility
9 of evidence, or otherwise, or anything that I say now
10 during the course of this instruction to you, that I
11 have any opinion about the facts in this case. The law
12 does not allow me to have an opinion about the facts in
13 this case. Again, this is a matter solely for you, the
14 jury, to determine.

15 Now, ladies and gentlemen, there are two types of
16 evidence which are generally presented during a trial:
17 direct evidence and circumstantial evidence. Direct
18 evidence directly proves the existence of a fact and
19 does not require deduction. Circumstantial evidence is
20 proof of a chain of facts and circumstances indicating
21 the existence of a fact.

22 Ladies and gentlemen, crimes may be proven by
23 circumstantial evidence. The law makes absolutely no
24 distinction between the weight or value to be given to
25 either direct or circumstantial evidence. However, to

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1 the extent the State relies on circumstantial evidence,
2 all of the circumstances must be consistent with each
3 other, and when taken together, point conclusively to
4 the guilt of the accused beyond a reasonable doubt. If
5 these circumstances merely portray the defendant's
6 behavior as suspicious, the proof has failed.

7 Ladies and gentlemen, the State has the burden of
8 proving the defendant guilty beyond a reasonable doubt.
9 This burden rests with the State regardless of whether
10 the State relies on direct evidence, circumstantial
11 evidence, or some combination of the two.

12 Ladies and gentlemen, necessarily, you must
13 determine the credibility of witnesses who have
14 testified in this case. And credibility simply means
15 believability. It becomes your duty as jurors to
16 analyze and to evaluate the evidence, and determine
17 which evidence convinces you of its truth.

18 In determining the believability of witnesses who
19 have testified in this case, you may believe one witness
20 over several witnesses or several witnesses over one
21 witness. You may believe a part of the testimony of a
22 witness, and reject the remaining part of the testimony
23 of that same witness. You may believe the testimony of
24 a witness in its entirety, or reject the testimony of a
25 witness in its entirety. And you may consider whether

1 any witness has exhibited to you any interest, bias,
2 prejudice, or other motive in this case. Ladies and
3 gentlemen, you may also consider the appearance and
4 manner of a witness while on the witness stand.

5 Now, ladies and gentlemen, the *Rules of Evidence*
6 ordinarily do not permit witnesses to testify to
7 opinions or conclusions. An exception to this rule
8 exists for witnesses that we call expert witnesses. A
9 witness who, by education and experience, has become an
10 expert in some art, science, or profession, may give an
11 opinion as to the subject the witness claims to be an
12 expert in, and may also give the reasons for the
13 opinion.

14 Ladies and gentlemen, you should consider any
15 expert opinion given by a witness, and, like any other
16 evidence, give it the weight you think it deserves. If
17 you decide that an expert witness' opinion is not based
18 on sufficient education or experience, or if you decide
19 that the reasons given in support of the opinion are not
20 sound, or that the opinion is outweighed by other
21 evidence, you may disregard the opinion entirely.
22 An expert witness' testimony is to be given no greater
23 weight than that of other witnesses simply because the
24 witness is an expert, and you do not have to accept an
25 expert's opinion, even though it is uncontradicted.

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1 Ladies and gentlemen, I instruct you and emphasize
2 that the fact a defendant did not testify is not a
3 factor to be considered by you in any way in your
4 deliberation and in your consideration on the question
5 of the guilt or the innocence of the defendant. It must
6 not be considered by you in any manner whatsoever. A
7 defendant has the Constitutional right to remain silent,
8 and the assertion of this right must not be considered
9 by you in your deliberations.

10 I repeat, ladies and gentlemen, under your oath,
11 you are to draw no conclusion whatsoever from the fact
12 that a defendant did not testify. The fact the
13 defendant did not testify should not even be discussed
14 in the jury room. Again, ladies and gentlemen, the
15 burden of proof, as I told you, is on the State. The
16 defendant is not required to prove his innocence. And
17 the burden of proof remains on the State to prove guilt
18 beyond a reasonable doubt.

19 Now, ladies and gentlemen, there has been evidence
20 presented that witnesses have make prior statements
21 which are not consistent with the witnesses' present
22 testimony. You may use this evidence to decide whether
23 to believe the witness. You may also use evidence of
24 the earlier contradictory statements to determine the
25 truth of those statements. It is up to you to decide

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1 whether to believe the earlier statements or the
2 testimony given at trial.

3 If a witness is shown to have knowingly testified
4 untruthfully concerning any material matter, you may
5 consider this in determining whether to trust the
6 witness' testimony as to other matters. You may reject
7 all testimony of that witness or give all or part of the
8 testimony the weight you think it deserves.

9 Now, ladies and gentlemen, in order to establish
10 criminal liability, criminal intent is required. For
11 example, the mental state required to be proven by the
12 State for a particular crime might be purpose, intent,
13 knowledge, recklessness, or criminal negligence.

14 Criminal intent must be proven by the State beyond
15 a reasonable doubt. Criminal intent is always a matter
16 that must be determined by the jury from the
17 circumstances surrounding the situation. There is no
18 way to prove intent to a mathematical certainty. There
19 is no way medical science can dissect a person's brain
20 and determine what the person has in mind. So, the law
21 says that criminal intent may be inferred from the
22 circumstances shown to have existed.

23 This is how you make a determination of whether or
24 not the element requiring intent was present. It is not
25 necessary to establish intent by direct and positive.

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1 evidence, but intent may be established by inference in
2 the same way as any other fact, taking into
3 consideration the acts of the parties and all the facts
4 and circumstances of the case based on evidence
5 introduced during the trial of this case.

6 Ladies and gentlemen, criminal intent is a mental
7 state, a conscious wrongdoing. And it is up to you to
8 determine what the defendant intended to do, based on
9 the circumstances shown to have existed.

10 Ladies and gentlemen, criminal intent can arise
11 from action or it can arise from a failure to act.

12 Ladies and gentlemen, the indictment in this case
13 alleged different offenses against the defendant. Those
14 charges are two counts of murder; one count of assault
15 and battery with intent to kill; one county of
16 possession with intent to distribute marijuana; and one
17 count of trafficking in crack cocaine, more than 10
18 grams, but less than 28 grams.

19 Ladies and gentlemen, each charge is a separate and
20 distinct offense. You must decide each charge
21 separately on the evidence and the law applicable to it,
22 uninfluenced by your decision as to any other charge.

23 You will be asked to write a separate verdict of
24 guilty or not guilty for each charge, following the
25 instructions on your verdict form.

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1 Ladies and gentlemen, at this time, I'm going to go
2 ahead and define each of these charges for you. And he
3 first one is murder. As you know, the defendant is
4 charged with two counts of murder. The State must
5 prove, beyond a reasonable doubt, that the defendant
6 killed another person with malice aforethought.

7 Malice is hatred, ill will, or hostility towards
8 another person. It is the intentional doing of a
9 wrongful act without just cause or excuse, and with an
10 intent to inflict an injury, or under circumstances that
11 the law will infer an evil intent.

12 Ladies and gentlemen, malice aforethought does not
13 require that malice exists for any particular time
14 before the act is committed, but malice must exist in
15 the mind of a defendant just before and at the time of
16 the act's commission. Therefore, there must be a
17 combination of the previous evil intent and the act.

18 Ladies and gentlemen, malice aforethought may be
19 express or inferred. And these terms, *express* and
20 *inferred*, do not mean different kinds of malice, but
21 merely the manner in which malice may be shown to exist.
22 That is, either by direct evidence or by inference from
23 the facts and circumstances which are proven.

24 Ladies and gentlemen, express malice is shown when
25 a person speaks words which express hatred, ill will for

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1 another, or when a person prepared beforehand to do the
2 act which was later accomplished. Ladies and gentlemen,
3 malice may be inferred from conduct showing a total
4 disregard for human life.

5 Now, ladies and gentlemen, the defendant has been
6 charged with assault and battery with intent to kill.
7 In order to prove assault and battery with intent to
8 kill, the State must prove, beyond a reasonable doubt,
9 that the defendant committed an unlawful act of a
10 violent nature to the person of another with malice
11 aforethought.

12 Now, again, an assault occurs when a person
13 unlawfully attempts or offers to commit a violent injury
14 upon another person and had the present ability to
15 complete the attempted injury. An assault is the
16 intentional creation of a reasonable fear of immediate
17 bodily harm. It is not necessary that the attempted
18 injury or harm actually take place for an assault. For
19 example, if I walk up to you, and when you are within
20 arm's reach, I draw back to hit you, that is the
21 assault.

22 Ladies and gentlemen, a battery is the unlawful
23 touching of another person by a person who has committed
24 the assault. An unlawful touching can be caused by a
25 part of the accused's body or by any object the accused

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1 puts in motion. A battery is the completion of the
2 assault by using or applying force to another person,
3 however slight, in a rude, angry, or resentful manner
4 without legal justification for doing so. Using my
5 earlier example, if I carry through the assault by
6 hitting you, that is a battery.

7 Ladies and gentlemen, defendant is charged with
8 possession with intent to distribute marijuana. The
9 State must prove, beyond a reasonable doubt, the
10 defendant possessed marijuana with the intent to
11 distribute it. To prove possession, the State must
12 prove, beyond a reasonable doubt, that the defendant had
13 both the power and the intent to control the disposition
14 or use of the marijuana. Possession may be either
15 actual or constructive.

16 Actual possession means that the marijuana was in
17 the actual physical custody of the defendant.
18 Constructive possession means that the defendant had
19 dominion and control, or the right to exercise dominion
20 or control, over either the marijuana itself or the
21 property on which the marijuana was found.

22 Ladies and gentlemen, mere presence at the scene
23 where the drugs were found is not enough to prove
24 possession. Actual knowledge of the presence of the
25 marijuana is strong evidence of a defendant's intent to

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1 control its disposition or use. The defendant's
2 knowledge and possession may be inferred when a
3 substance is found on the property under the defendant's
4 control. However, ladies and gentlemen, this inference
5 is simply an evidentiary fact to be taken into
6 consideration by you, along with other evidence in the
7 case, and to be given the weight you decide it should
8 have.

9 Ladies and gentlemen, the State must also prove,
10 beyond a reasonable doubt, that the defendant intended
11 to distribute the marijuana. And distribute means to
12 deliver, other than by administering or dispensing, a
13 drug.

14 Ladies and gentlemen, intent may be shown by acts
15 and conduct of the defendant and other circumstances
16 from which you may naturally and reasonably infer
17 intent. In determining whether the defendant had the
18 intent to distribute the marijuana, you may consider the
19 circumstances surrounding the defendant's alleged
20 possession. You may consider the amount of the
21 substance alleged to have been possessed, the manner in
22 which it was allegedly possessed, the place in which it
23 was allegedly possessed, and other factors which you
24 consider to be important. You must find that the
25 defendant did not intend to have the marijuana solely

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1 for his own use.

2 Ladies and gentlemen, possession of more than 28
3 grams, or one ounce, of marijuana creates an inference
4 that the defendant possessed the marijuana with intent
5 to distribute it. This inference does not relieve the
6 State from proving, beyond a reasonable doubt, that the
7 defendant had the intent to distribute it. It is simply
8 an evidentiary fact to be taken into consideration by
9 you, along with the other evidence in the case, and to
10 be given the weight you decide it should have.

11 Now, ladies and gentlemen, lastly, the defendant is
12 charged with trafficking in crack cocaine more than 10
13 grams, but less than 28 grams. The State must prove,
14 beyond a reasonable doubt, that the defendant knowingly
15 sold, manufactured, cultivated, delivered, purchased,
16 brought into this state, provided financial assistance
17 or aided, abetted, attempted, or conspired to sell,
18 manufacture, cultivate, deliver, purchase, or bring into
19 this state, was knowingly in, or knowingly attempted to
20 become in, actual or constructive possession of crack
21 cocaine.

22 Ladies and gentlemen, the State must also prove,
23 beyond a reasonable doubt, that the amount of the
24 cocaine, or any mixture containing cocaine, was 10 grams
25 or more, but less than 28 grams.

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1 Ladies and gentlemen, actual possession means that
2 the crack cocaine was in the actual physical custody of
3 the defendant.

4 As I told you before, constructive possession means
5 the defendant had dominion and control, or the right to
6 exercise dominion or control, over either the crack
7 cocaine itself or the property on which the crack
8 cocaine is found.

9 Ladies and gentlemen, again, mere presence at the
10 scene where the drugs were found is not enough to prove
11 possession. Actual knowledge of the presence of the
12 crack cocaine is strong evidence of the defendant's
13 intent to control its disposition or use. The
14 defendant's knowledge and possession may be inferred
15 when a substance is found on the property under the
16 defendant's control. However, this inference is simply
17 an evidentiary fact to be taken into consideration by
18 you, along with other evidence in the case, and to be
19 given the weight you decide it should have.

20 Ladies and gentlemen, to define for you the word
21 *deliver*, deliver means to actually, constructively, or
22 attempt to transfer the drug. Distribute means to
23 deliver, other than by administering or dispensing, a
24 drug. And manufacture means to produce, prepare,
25 convert, process, plant, cultivate, grow, or harvest a

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1 drug naturally or chemically. And manufacturing
2 includes any packaging or re-packaging of the drug or
3 labeling or re-labeling of the drug's container.

4 Ladies and gentlemen, in this case, I have
5 permitted you to take notes. Your notes should be used
6 only as aids to your memory, and should not be allowed
7 to take precedence over your independent memory of
8 facts. The notes are only for the jurors' personal use
9 in refreshing recollection of the evidence.

10 When in deliberation of the case, do not rely on
11 the recollection of a juror who took notes about the
12 testimony of a witness solely because the juror took
13 notes. You should not be unduly influenced by the notes
14 of other jurors. As we all know, notes can be wrong.
15 Notes are not entitled to any greater weight than each
16 juror's memory of the evidence. Those jurors who do not
17 take notes, should rely on their independent
18 recollection of the evidence, and not be influenced by
19 the fact that another juror has taken notes.

20 Mr. Foreperson, ladies and gentlemen of the jury,
21 as you retire to begin your deliberations, I wish to
22 express the hope that each of you will be mindful of the
23 importance of your responsibility here today. You're
24 not called upon very often to serve as jurors, and the
25 proper performance of the duty requires that each of you

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1 reach the height of freeing your mind of all improper
2 influences. You and I are acting for the community, and
3 that is why we must see to it that this trial is fair
4 and the verdict is just.

5 Ladies and gentlemen, you are sworn to fairly and
6 impartially try and determine the facts of this case,
7 and when you comply with your oath to do so, no one can
8 criticize your verdict. You are to decide the case
9 based solely on the testimony you have heard from the
10 sworn witnesses who have testified before you, along
11 with the evidence in the case, and exhibits presented to
12 you, which you will have back in the jury room, and any
13 stipulations entered into, and nothing else.

14 Ladies and gentlemen, you must decide the issues in
15 this proceeding without any bias or prejudice towards
16 either party. Ladies and gentlemen, you cannot allow
17 yourself to be governed by prejudice for or against any
18 person, by public opinion, or by any other arbitrary
19 factor. Both the defendant and the State have the right
20 to expect that each of you will carefully and
21 impartially consider all the evidence in this case, and
22 that you will follow the law as I've instructed you in
23 reaching your verdict in this case.

24 Now, ladies and gentlemen, please don't get the
25 idea that I am trying to intimate to you how I might

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1 think you should decide this case. Again, as I have
2 already told you, under the laws of the State of South
3 Carolina, you, the jury, are the sole judge of all
4 questions of fact, and it would be highly improper for
5 me to influence you in the performance of your duty.

6 But, ladies and gentlemen, as the presiding of
7 officer of the Court, I am vitally concerned that
8 whatever verdict you reach will be the result of your
9 going into the jury room and confining your
10 consideration to the evidence and the law that you've
11 heard in this courtroom, weighing it fairly and
12 impartially, as I have every confidence that you will.

13 Ladies and gentlemen, everyone is entitled to
14 justice in this case, both the State and the defendant.
15 You owe no support or sympathy to anyone. The Court is
16 of the confirmed opinion that whatever verdict you will
17 reach will represent truth and justice for all parties
18 involved.

19 Mr. Foreperson, I remind you that you must
20 determine, unanimously, as a jury, the guilt or
21 innocence of the defense.

22 Ladies and gentlemen, please understand, the
23 verdict must be the verdict of all 12 jurors. And to
24 that end, ladies and gentlemen, my law clerk, Carolina,
25 prepared a verdict form. It has five questions, all of

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1 which you must answer.

2 It simply has the case caption at the beginning.

3 It says:

4 *State of South Carolina versus Earnest*

5 *Daise,*

6 and lists the indictment numbers. And states:

7 *As to the Indictment Number -- the*

8 *charge of murder of Jeanine Mullen, we,*

9 *the jury, unanimously find the defendant,*

10 *Earnest Daise,*

11 either:

12 *guilty or not guilty.*

13 *As to the next indictment, the charge*

14 *of murder of **John Doe 1** , we,*

15 *the jury, unanimously find the defendant,*

16 *Earnest Daise,*

17 again,

18 *guilty or not guilty.*

19 As to the next indictment number:

20 *The charge of assault and battery*

21 *with intent to kill, we, the jury,*

22 *unanimously find the defendant, Earnest*

23 *Daise,*

24 and again,

25 *guilty or not guilty.*

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1 And the same, ladies and gentlemen, as to the
2 charges of possession with intent to distribute
3 marijuana and trafficking in crack cocaine, more than
4 10, but less than 28 grams.

5 Ladies and gentlemen, the order that I list guilty
6 or not guilty, please, it has no meaning. Every case,
7 we just reverse it.

8 There is then a place, Mr. Foreperson, for you to
9 sign your name. When the jury has reached a unanimous
10 verdict, I am going to ask that you knock on the jury
11 room door, and we are going to accept you back into the
12 courtroom to give us your verdict.

13 Mr. Foreperson and members of the jury, for the
14 very last time in this portion of this case, I'm going
15 to send you back to your jury room, and I'm going to ask
16 you not to begin your deliberations. I'm going to ask
17 the attorneys if there's anything further I need to
18 charge you on the law. If there is, I'm going to bring
19 you back out, and I'm going to charge you further.

20 If not, Mr. Foreperson, you are going to be sent
21 back to the jury room all the evidence that's been
22 entered into this case. Additionally, you're going to
23 receive the jury charge that I have just read to you,
24 ladies and gentlemen. The verdict form, as well. All
25 right? That is going to be your signal to begin your

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1 deliberations. Okay?

2 Ladies and gentlemen, thank you so much for your
3 time and attention. We'll be back with you verdict
4 shortly.

5 JURORS LEAVE COURTROOM 12:39 P.M.

6 BAILIFF: Jury's clear. Door's closed, your Honor.

7 THE COURT: Thank you. Any exceptions or additions
8 to the charge from the State?

9 MR. STONE: No, ma'am, not from the State.

10 THE COURT: From the Defense?

11 MR. MCGUIRE: No, ma'am.

12 THE COURT: Okay. We need to go through the
13 evidence and make sure everything that needs to be
14 admitted. Do you have a copy, Wanda, of the jury charge
15 marked?

16 COURT REPORTER: I do, your Honor. It's Court's
17 Exhibit Number 90.

18 THE COURT: Actually, I need to -- is that the one
19 that actually had the note-taking in there? It doesn't?
20 I think we need to switch those two out. This is my
21 actual jury charge, and I remembered about the note-
22 taking and put it in. So, I need you to go ahead and
23 just switch out for me, if you would. Just marked
24 through it and just make this my Court's. Okay?
25 Additionally, here is the verdict form.

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1 COURT REPORTER: Court's Exhibit Number 91.

2 THE COURT: Could I see the attorneys up here for
3 just a moment. I'll put it on the record. You do that.
4 You're fine.

5 MR. STONE: May we approach, your Honor.

6 THE COURT: Please. And I want to talk to you all
7 a little bit.

8 OFF-THE-RECORD BENCH CONFERENCE.

9 COURT REPORTER AND ATTORNEYS

10 REVIEWING EXHIBITS.

11 THE COURT: And you all, could we please just come
12 into order. I'm going to talk to the alternates, if you
13 don't mind. Okay?

14 BAILIFF: Order, please.

15 THE COURT: If you all don't mind, just take a seat
16 very quickly. I'll take care of them.

17 BAILIFF: Here are the alternates, Judge.

18 THE COURT: Thank you.

19 BAILIFF: If you all will, just come right here and
20 stand and face the judge.

21 THE COURT: Thank you for being here, you all. As
22 you probably did or did not know, during the trial of
23 this case you three were alternates in this case. I
24 will tell you that, as of right now, my jury of 12 is
25 still here and intact. I am required, though, to keep

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1 you. If something happens to one of them during the
2 deliberations, one of you will be instructed and will go
3 back into the jury room, and I will instruct the jury
4 that they would start all over again in their
5 deliberations.

6 Out of an abundance of caution, I need to keep you
7 all tight. I will go ahead and tell you that right now
8 and apologize. Additionally, I will tell you that the
9 reason why we don't tell you that you're alternates, we
10 want to make sure you understand and listen to the trial
11 just as if you would be seated in there.

12 I am going to ask, ladies and gentlemen, they are
13 going to go ahead and put you in a separate room. I
14 will tell you this, again, I may need to keep you here.
15 We, of course, will feed you until they've reached a
16 verdict, ladies and gentlemen.

17 I will also tell you, if you need to conduct some
18 business, provided I have your word that, of course, you
19 are not going to do any research, read anything, simply
20 ask to use a phone, and you are welcome to do so. Okay?
21 I certainly understand that you all have other things
22 going on. Again, though, out of an abundance of
23 caution, I just have to remind you under your oath. I
24 have no idea how long this jury's going to be out. So,
25 just sit tight with us, and again, if we can be of

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1 assistance to you in using a phone or anything you all
2 need, to let me know. All right?

3 I also need to tell you all, you, of course, cannot
4 discuss this case with each other. Again, if there is a
5 possibility that I lose a juror and I have to send one
6 of you in, again, it would be inappropriate for you to
7 be influenced. So, just sit tight with us. Okay? And
8 I want to tell you how much we appreciate it. All
9 right? So, go ahead with Bob. Thank you.

10 BAILIFF: Thank you, your Honor.

11 THE COURT: Thank you. Thank you. See the
12 attorneys for a moment. Just for the record, Wanda, the
13 alternates were Juror Number 408, Juror Number 449, and
14 Juror Number 482.

15 COURT REPORTER: 482?

16 THE COURT: 482.

17 COURT REPORTER AND ATTORNEYS

18 CONTINUE REVIEWING EXHIBITS.

19 EXHIBITS, JURY CHARGE, AND VERDICT

20 FORMS LOCKED UP BY BAILIFF UNTIL AFTER

21 JURORS HAVE LUNCH 1:35 P.M.

22 ON-THE-RECORD BENCH CONFERENCE.

23 END BENCH CONFERENCE.

24 OFF THE RECORD 1:40 P.M.

25 EXHIBITS, JURY CHARGE, AND VERDICT

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1 FORM TAKEN TO JURORS BY BAILIFF 1:50 P.M.

2 BACK ON THE RECORD 3:21 P.M.

3 VERDICT, EVIDENCE PHASE:

4 OFF-THE-RECORD BENCH CONFERENCE.

5 END BENCH CONFERENCE.

6 THE COURT: Ladies and gentlemen, I understand the
7 jury has reached a verdict. I am respectfully asking
8 anyone that doesn't think they can contain themselves,
9 if they please would excuse themselves. If there is any
10 type of outburst, of course, we would have to take you
11 into custody. We certainly wouldn't want that to
12 happen. So again, I appreciate it, ladies and
13 gentlemen. State ready?

14 MR. STONE: State's ready, your Honor.

15 THE COURT: Is Defense Ready?

16 MR. MCGUIRE: Yes, your Honor.

17 THE COURT: Let's bring them in.

18 BAILIFF: Are you ready, your Honor?

19 THE COURT: Yes, sir.

20 BAILIFF: Your Honor, the jury is entering.

21 THE COURT: Thank you.

22 JURORS ENTER COURTROOM 3:27 P.M.

23 BAILIFF: Your Honor, the jury is seated.

24 THE COURT: Thank you. Mr. Foreperson, I
25 understand the jury has reached a verdict.

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1 FOREPERSON: Yes, we have, your Honor.

2 THE COURT: Would you please hand it to the
3 bailiff.

4 BAILIFF: Your Honor.

5 THE COURT: Thank you. Okay. If the Defense would
6 rise. Ms. Young, will you publish the verdict for me.

7 MADAM CLERK: *The state of South Carolina versus*
8 *Earnest Daise, as to Indictment Number 2009-GS-07-02636,*
9 *the charge of murder of Jeanine Mullen, we, the jury,*
10 *unanimously find the defendant, Earnest Daise, guilty.*

11 *As to Indictment 2009-GS-07-02639, the charge of*
12 *murder of **John Doe 1**, we, the jury,*
13 *unanimously find the defendant, Earnest Daise, guilty.*

14 *As to Indictment Number 2009-GS-07-02637, the*
15 *charge of assault and battery with intent to kill, we,*
16 *the jury, unanimously find the defendant, Earnest Daise,*
17 *guilty.*

18 *As to Indictment Number 2009-GS-07-02595, the*
19 *charge of drugs, possession with intent to distribute*
20 *marijuana, we, the jury, unanimously find the defendant,*
21 *Earnest Daise, guilty.*

22 *As to Indictment Number 2009-GS-07-02594, the*
23 *charge of drugs, trafficking crack cocaine, 10 to 28*
24 *grams, we, the jury, unanimously find the defendant,*
25 *Earnest Daise, guilty.*

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1 Signed by the Foreman, Thomas Reilley.

2 POLLING JURORS, BY MADAM CLERK:

3 MADAM CLERK: Mr. Reilley, was this your verdict?

4 FOREPERSON: Yes, it was.

5 MADAM CLERK: If all agree, would you please raise
6 your right hand? Thank you.

7 THE COURT: Please indicate everyone has raised
8 their right hand. You all may be seated.

9 Ladies and gentlemen, at this time, we're going to
10 individually poll you. Ms. Young is going to ask you if
11 this is your verdict, and if it's still your verdict.
12 When your name is called, if you would, please rise.
13 Okay? Ms. Young.

14 MADAM CLERK: Yes, ma'am. Patricia Youmans, was
15 this your verdict?

16 JUROR NUMBER 695: It is.

17 MADAM CLERK: Is it still your verdict?

18 JUROR NUMBER 695: It is.

19 MADAM CLERK: Thank you, ma'am.

20 THE COURT: You may be seated, ma'am.

21 MADAM CLERK: Frank Nappi, was this your verdict?

22 JUROR NUMBER 469: Yes, it is.

23 MADAM CLERK: Is it still your verdict?

24 JUROR NUMBER 469: Yes, it is.

25 MADAM CLERK: You may be seated. Thank you, sir.

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1 Gladys Simmons.

2 JUROR NUMBER 570: Yes, ma'am?

3 MADAM CLERK: Was this your verdict?

4 JUROR NUMBER 570: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 JUROR NUMBER 570: Yes, ma'am.

7 MADAM CLERK: Thank you, ma'am. You may be seated.

8 Dietra Holmes, was this your verdict?

9 JUROR NUMBER 318: Yes, ma'am.

10 MADAM CLERK: Is it still your verdict?

11 JUROR NUMBER 318: Yes, ma'am.

12 MADAM CLERK: Thank you, ma'am. You may be seated.

13 Henry White, was this your verdict?

14 JUROR NUMBER 669: Yes, ma'am.

15 MADAM CLERK: Is it still your verdict?

16 JUROR NUMBER 669: Yes, ma'am.

17 MADAM CLERK: Thank you, sir. You may be seated.

18 Geoffrey Jackson.

19 JUROR NUMBER 339: Geoffrey, Miss.

20 MADAM CLERK: Sorry. Was this your verdict?

21 JUROR NUMBER 339: It is.

22 MADAM CLERK: Is it still your verdict?

23 JUROR NUMBER 339: It is.

24 MADAM CLERK: Thank you, sir. You may be seated.

25 Jacqueline Underhill, was this your verdict?

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1 JUROR NUMBER 639: Yes, ma'am.

2 MADAM CLERK: Is it still your verdict?

3 JUROR NUMBER 639: Yes, ma'am.

4 MADAM CLERK: Thank you, ma'am. You may be seated.

5 Stephen Wallace, was this your verdict?

6 JUROR NUMBER 654: Yes, ma'am.

7 MADAM CLERK: Is it still your verdict?

8 JUROR NUMBER 654: Yes, ma'am.

9 MADAM CLERK: Thank you, sir. You may be seated.

10 Ben Johnson, was this your verdict?

11 JUROR NUMBER 345: Yes, ma'am.

12 MADAM CLERK: Is it still your verdict?

13 JUROR NUMBER 345: Yes, ma'am.

14 MADAM CLERK: Thank you, sir. You may be seated.

15 Thomas Reilley, was this your verdict?

16 JUROR NUMBER 526: Yes, ma'am.

17 MADAM CLERK: Is it still your verdict?

18 JUROR NUMBER 526: Yes, ma'am.

19 MADAM CLERK: Thank you, sir. You may be seated.

20 James Nasuti.

21 JUROR NUMBER 470: Nasuti.

22 MADAM CLERK: Thank you, sir. Was this your
23 verdict?

24 JUROR NUMBER 470: Yes, ma'am.

25 MADAM CLERK: Is it still your verdict?

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1 JUROR NUMBER 470: Yes, ma'am.

2 MADAM CLERK: Thank you, sir. You may be seated.

3 And Ruth Groh, was this your verdict?

4 JUROR NUMBER 283: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 JUROR NUMBER 283: Yes, ma'am.

7 MADAM CLERK: Thank you, ma'am. You may be seated.

8 BY THE COURT:

9 THE COURT: Thank you, Ms. Young. Is there
10 anything further you require of this jury before I send
11 them home with my instructions to return on Monday?

12 MR. STONE: Nothing from the State, your Honor.

13 MR. MCGUIRE: Not from the Defense, your Honor.

14 THE COURT: All right. Ladies and gentlemen, thank
15 you so much for your service. As you know, and as we've
16 explained to you, this case, if necessary, and it is
17 now, is to be tried in two phases. You have now taken
18 care of the first phase of this trial.

19 Ladies and gentlemen, I am going to ask that you
20 return on Monday morning at 9:30, where we are going to
21 go ahead and begin the second phase of this trial, which
22 is also called the penalty or sentencing phase.

23 Ladies and gentlemen, I need to continue to caution
24 you, as I always have, and it becomes that much more
25 important over this long weekend that we're going to

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1 have. You are not to discuss this case with anyone.

2 You are not to discuss the verdict with anyone. You are
3 not to do any of your own independent research.

4 Ladies and gentlemen, you are simply to have a nice
5 weekend, come back well rested on Monday morning, where
6 we'll go ahead and continue the trial of this case.

7 Ladies and gentlemen, additionally, if anyone
8 attempts to contact you or talk to you in any way
9 regarding this case, I want to make sure that you
10 understand that you are required to report it to me
11 first thing on Monday morning. Is that understood by
12 everyone on the jury?

13 RESPONSES BY JURORS.

14 THE COURT: Thank you. Additionally, my alternates
15 need to be back Monday morning at 9:30, as well. I look
16 forward to seeing you.

17 Ladies and gentlemen, again, thank you very much.
18 Again, lastly, as I said, no independent research, no
19 contact, nothing on the television or the newspaper.
20 Again, that wouldn't be appropriate. We'll see you all
21 Monday morning at 9:30.

22 BAILIFF: Thank you, your Honor.

23 THE COURT: Thank you.

24 JURORS LEAVE COURTROOM 3:33 P.M.

25 BAILIFF: Jury is clear, your Honor.

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1 THE COURT: Thank you.

2 BAILIFF: Door is closed.

3 DEFENSE MOTIONS:

4 THE COURT: Thank you. Mr. McGuire.

5 MR. MCGUIRE: Judge, we would just put on the
6 record we would renew our motions for directed verdicts
7 of acquittal and, obviously, with regard to moving for a
8 new trial, our time wouldn't start running until the end
9 of the penalty phase.

10 THE COURT: Thank you, sir. Okay. 9:30 Monday
11 morning?

12 MR. MCGUIRE: Yes, ma'am.

13 MR. STONE: Yes, ma'am.

14 THE COURT: Anything else we need to take up, as
15 far as scheduling with the Court? Any concerns?

16 MR. STONE: There is not, not from the State.

17 THE COURT: Thank you. From the Defense?

18 MR. MCGUIRE: No, ma'am.

19 THE COURT: Okay. Thank you all. We'll see you
20 Monday morning at 9:30.

21 END DAY EIGHT, THURSDAY,

22 OCTOBER 17, 2013, 3:35 P.M.

23 BEGIN DAY NINE, MONDAY,

24 OCTOBER 21, 2013, 9:37 A.M.,

25 PENALTY PHASE.

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1 THE COURT: Thank you.

2 JURORS ENTER COURTROOM 4:33 P.M.

3 BAILIFF: All right. Your Honor, the jury is
4 seated.

5 THE COURT: Thank you. Mr. Foreperson, I
6 understand the jury has reached a verdict.

7 FOREPERSON: Yes, we have, your Honor.

8 THE COURT: Could you please pass it to the
9 bailiffs.

10 The Defense will stand.

11 *In the case of the State of South*
12 *Carolina versus Earnest Daise, as to the*
13 *finding of aggravating circumstances, we,*
14 *the jury in the above-entitled case, have*
15 *unanimously found beyond a reasonable doubt*
16 *the existence of the following statutory*
17 *aggravating circumstances: that two or*
18 *more persons were murdered by the defendant*
19 *by one act or pursuant to one scheme or*
20 *course of conduct, and the murder of a*
21 *child eleven years of age or younger.*
22 And it is signed by all the members of the jury.

23 *As to the imposition of sentence, we,*
24 *the jury in the above-entitled case, hereby*
25 *fix the punishment of Defendant Earnest*

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1 Daise at life imprisonment without the
2 possibility of parole.

3 Signed by our Foreperson.

4 Ladies and gentlemen of the jury, -- you may be
5 seated, you all.

6 Ladies and gentlemen of the jury, if this is your
7 verdict, will you please indicate by raising your right
8 hand.

9 REPORTER'S NOTE: ALL JURORS RAISED
10 THEIR RIGHT HAND.

11 THE COURT: Thank you, ladies and gentlemen. Is
12 there anything further required of this jury from the
13 State?

14 MR. STONE: Nothing from the State, your Honor.

15 THE COURT: Anything from the Defense?

16 MR. MCGUIRE: No, your Honor.

17 THE COURT: Ladies and gentlemen, on behalf of the
18 State, the Defense, the court staff and everyone that
19 was involved with this case, I want to thank you for
20 your service. Not only did we take you away from your
21 daily lives and your family, we asked you to consider
22 your opinions, beliefs, and values on a very difficult
23 subject.

24 Ladies and gentlemen, few people in their lifetime
25 will sit in the same seats you sit, deciding this type

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1 of case. I want you to understand that we recognize the
2 gravity of our imposition, and we want to thank you for
3 your service, and no one will have the right to
4 criticize your verdict in any way, shape, or form.

5 Ladies and gentlemen, after the service is
6 concluded in this trial, you have the right to either
7 refuse to discuss the verdict you rendered, or to
8 discuss your verdict to the extent that you desire.

9 If you choose to discuss the verdict, you are free
10 to terminate any such discussion at any point. If the
11 person with whom you are speaking continues to pursue
12 the discussion of the verdict after you have
13 communicated the desire to terminate that discussion,
14 or, if the person continues to harass you after you have
15 refused to discuss the verdict, you should report that
16 harassment or that continuation to the Clerk of Court's
17 Office, Ms. Jerri Roseneau, up here at the Beaufort
18 County Courthouse.

19 Ladies and gentlemen, I'm going to give you a piece
20 of paper that is going to give you the phone number and
21 address. Ms. Roseneau will immediately bring it to my
22 attention, and I will take care of anyone that continues
23 to try to discuss this case, if you choose not to. All
24 right?

25 Ladies and gentlemen, at this time, I am going to

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1 go ahead and sentence Mr. Daise. You are free to remain
2 here, or you may leave at this time. Ladies and
3 gentlemen, it is up to you whether or not you wish to
4 remain. You certainly are excused if you would like to
5 be excused. Would anyone like to leave?

6 Thank you, ma'am. And we thank you for your
7 service, and thank you for being here.

8 BAILIFF: Thank you, your Honor.

9 THE COURT: Thank you.

10 SIX JURORS LEAVE COURTROOM.

11 SENTENCING, PENALTY PHASE:

12 THE COURT: Do I need any sentencing sheets or
13 anything? Are they prepared? Are we ready to go?

14 MR. STONE: I don't believe so. We'll be glad to
15 fill those out and make sure they're filled out later,
16 but I don't have those with us.

17 THE COURT: Okay. Mr. McGuire, are you ready for
18 me to go forward with the sentencing?

19 MR. MCGUIRE: Do you have the sentencing sheets for
20 the narcotic charges?

21 THE COURT: I do not have the sentencing sheets. I
22 have the indictments.

23 MR. MCGUIRE: Well, we're not insistent upon
24 sentencing sheets.

25 THE COURT: All right. So, are you ready to go

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1 forward at this time?

2 MR. MCGUIRE: Yes, ma'am.

3 THE COURT: All right. Is there anything further
4 from the State or the Defense before we go ahead and
5 sentence Mr. Daise?

6 MR. STONE: Not from the State, your Honor.

7 MR. MCGUIRE: No, your Honor. Obviously, there's
8 no discretion in your sentence, so we have nothing to
9 add.

10 THE COURT: Thank you. Additionally, you
11 understand that I am going to sentence Mr. Daise for the
12 remaining three charges that are also outstanding.

13 MR. MCGUIRE: Yes, ma'am.

14 THE COURT: Is that your understanding?

15 MR. MCGUIRE: Yes, ma'am.

16 THE COURT: All right, sir.

17 All right. Mr. Daise, if you would stand with your
18 counsel.

19 Sir, as you know, on the offense of capital murder
20 of Jeanine Mullen, the sentence of this Court is you be
21 committed to the Department of Corrections for a period
22 of life without the possibility of parole.

23 On the offense of capital murder of **John Doe 1**
24 **John Doe 1**, again, the sentence of this Court is you
25 be committed to the Department of Corrections for a

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1 period of life without parole.

2 On the charge of assault and battery with intent to
3 kill **John Doe 2**, the sentence of this Court is you
4 be committed to the Department of Corrections for a
5 period of 20 years.

6 On the charge of trafficking of crack cocaine,
7 third offense, the sentence of this Court is that you be
8 committed to the Department of Correction for a period
9 of 30 years and a fine of up to \$50,000.00.

10 On the charge of possession with intent to
11 distribute marijuana, third, the sentence of this Court
12 is you be committed to the Department of Corrections for
13 a period of 20 years.

14 Those are all to run consecutive to your life
15 sentences, and also to each other.

16 Good luck to you, sir. And good luck to the Mullen
17 family. Thank you.

18 MR. MCGUIRE: Thank you, your Honor.

19 MR. STONE: Thank you!

20 THE COURT: We'll be at ease. Thank you.

21 ITEM IDENTIFIED AS JURY CHARGE,

22 PENALTY PHASE, MARKED

23 COURT'S EXHIBIT NUMBER 100.

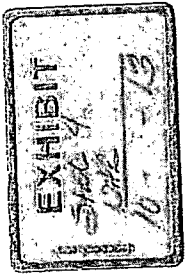
24 ITEM IDENTIFIED AS VERDICT FORM,

25 PENALTY PHASE, MARKED

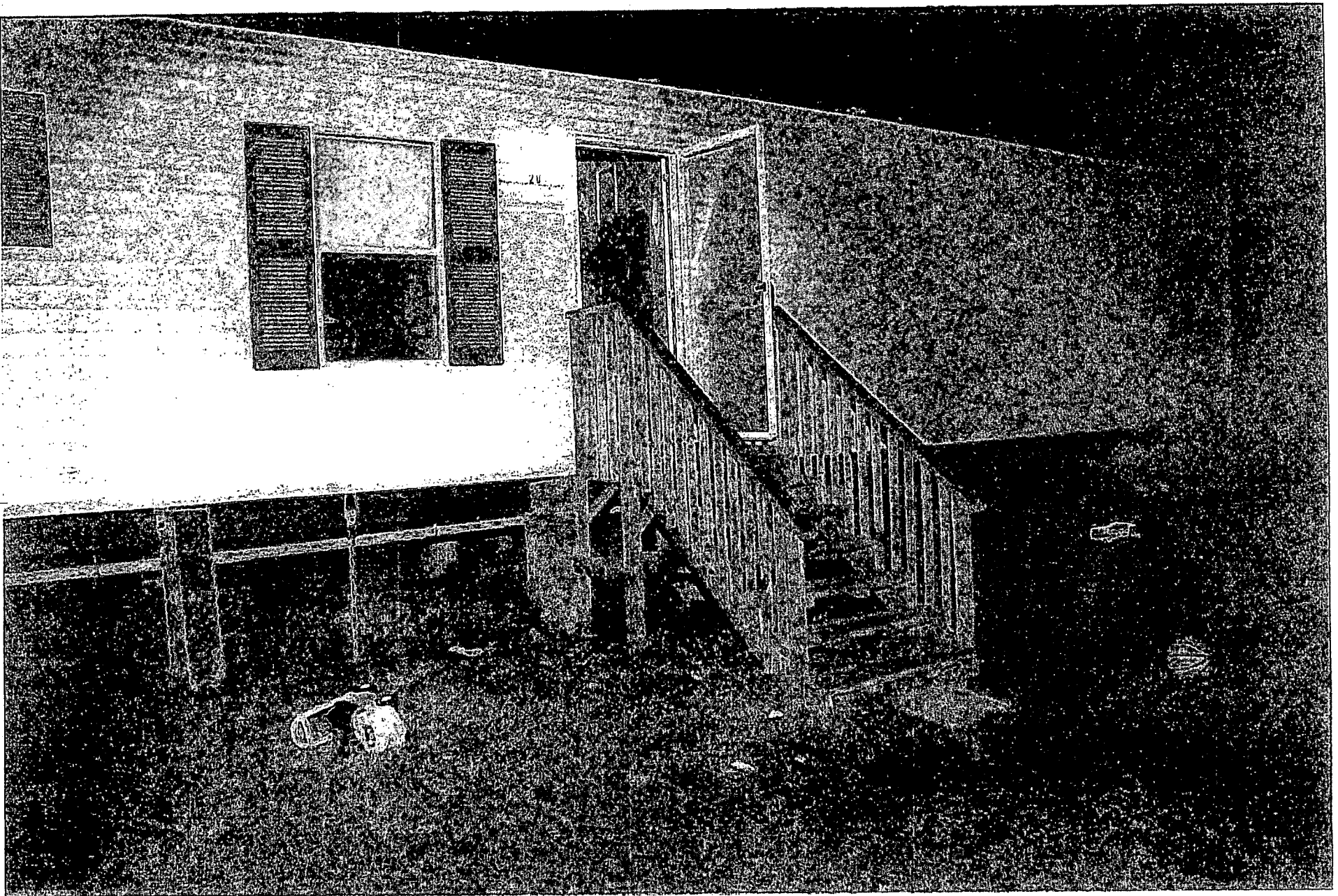
State v. Earnest S. Daise

1 COURT'S EXHIBIT NUMBER 101.
2 END DAY ELEVEN, WEDNESDAY,
3 OCTOBER 23, 2013, 5:45 P.M.
4 END TRIAL.

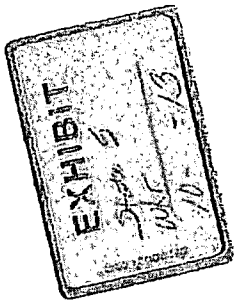
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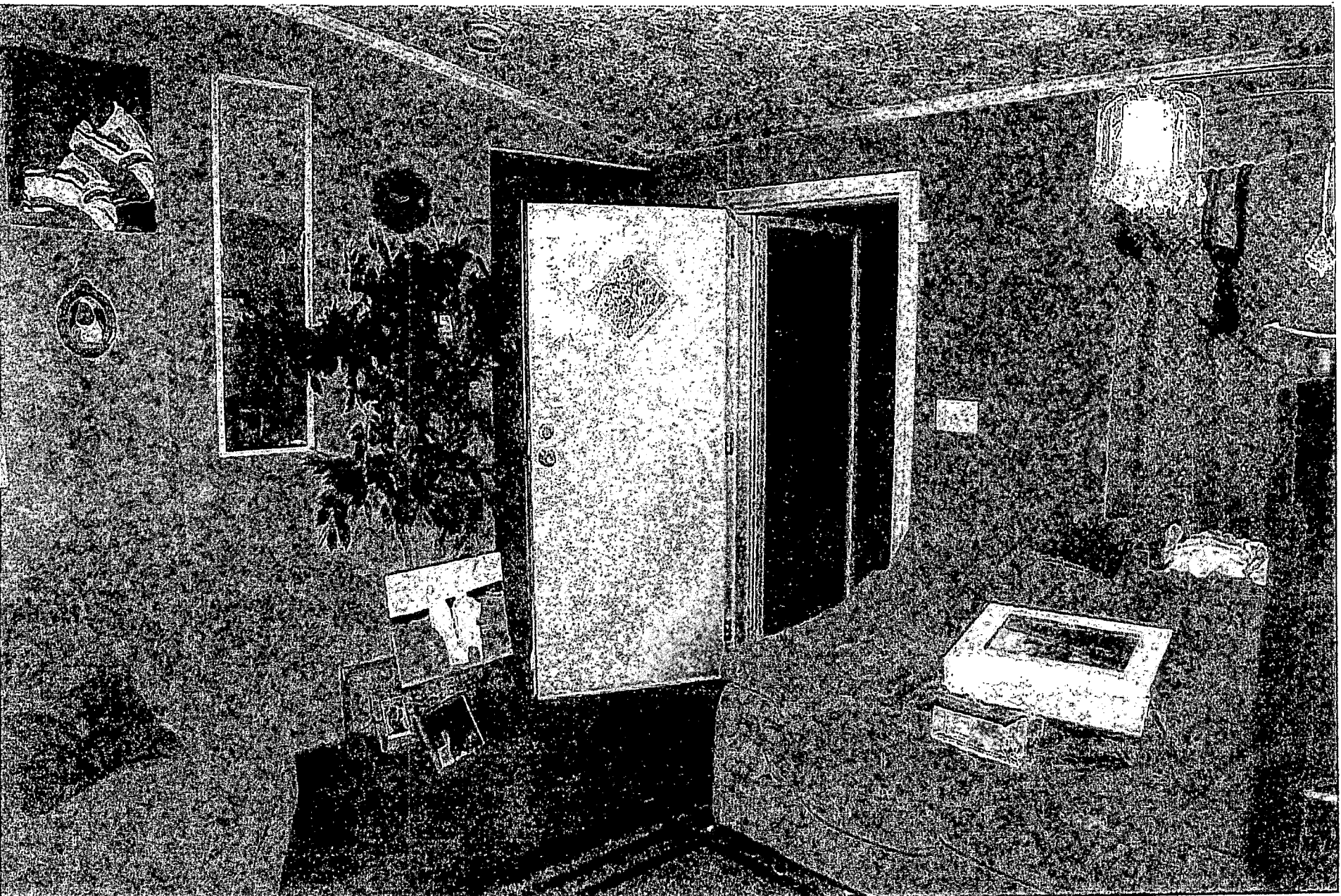


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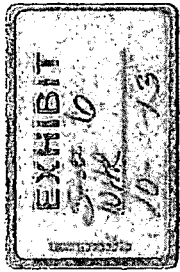


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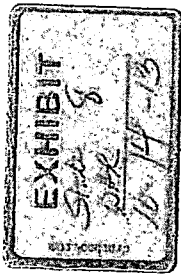


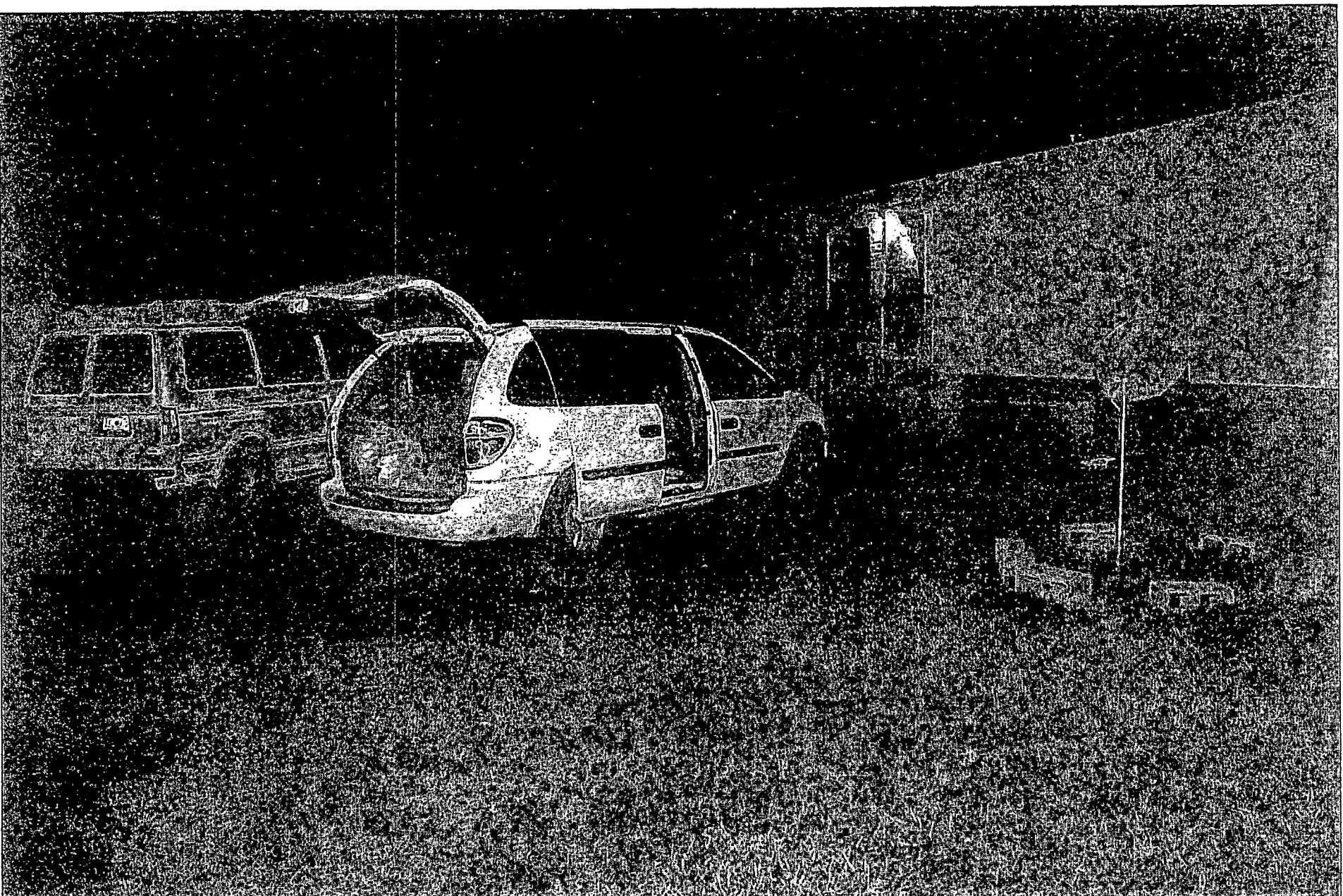
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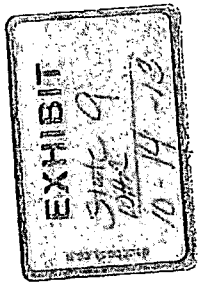
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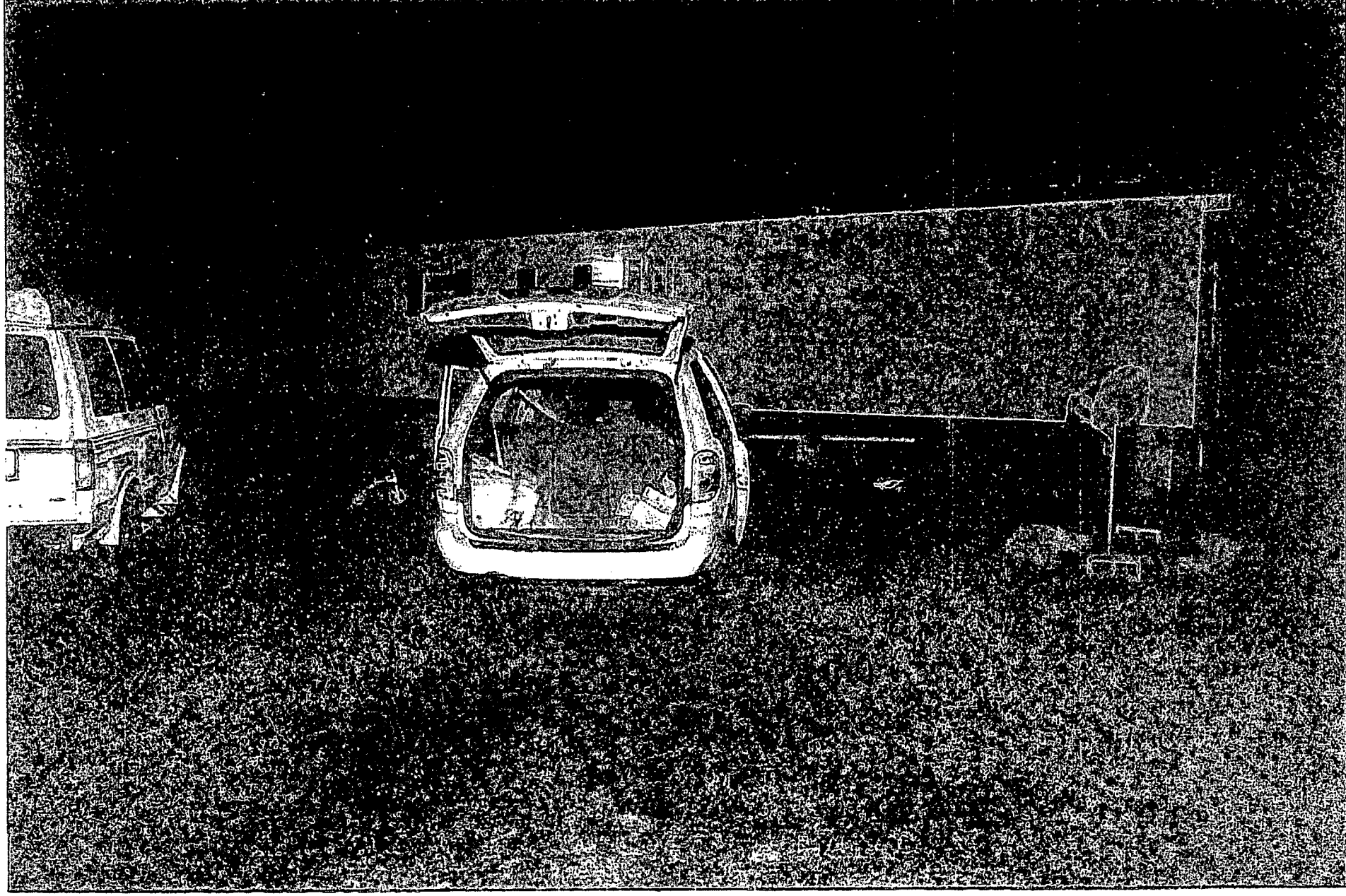




ROA_2623

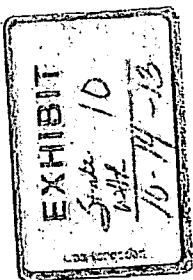
9

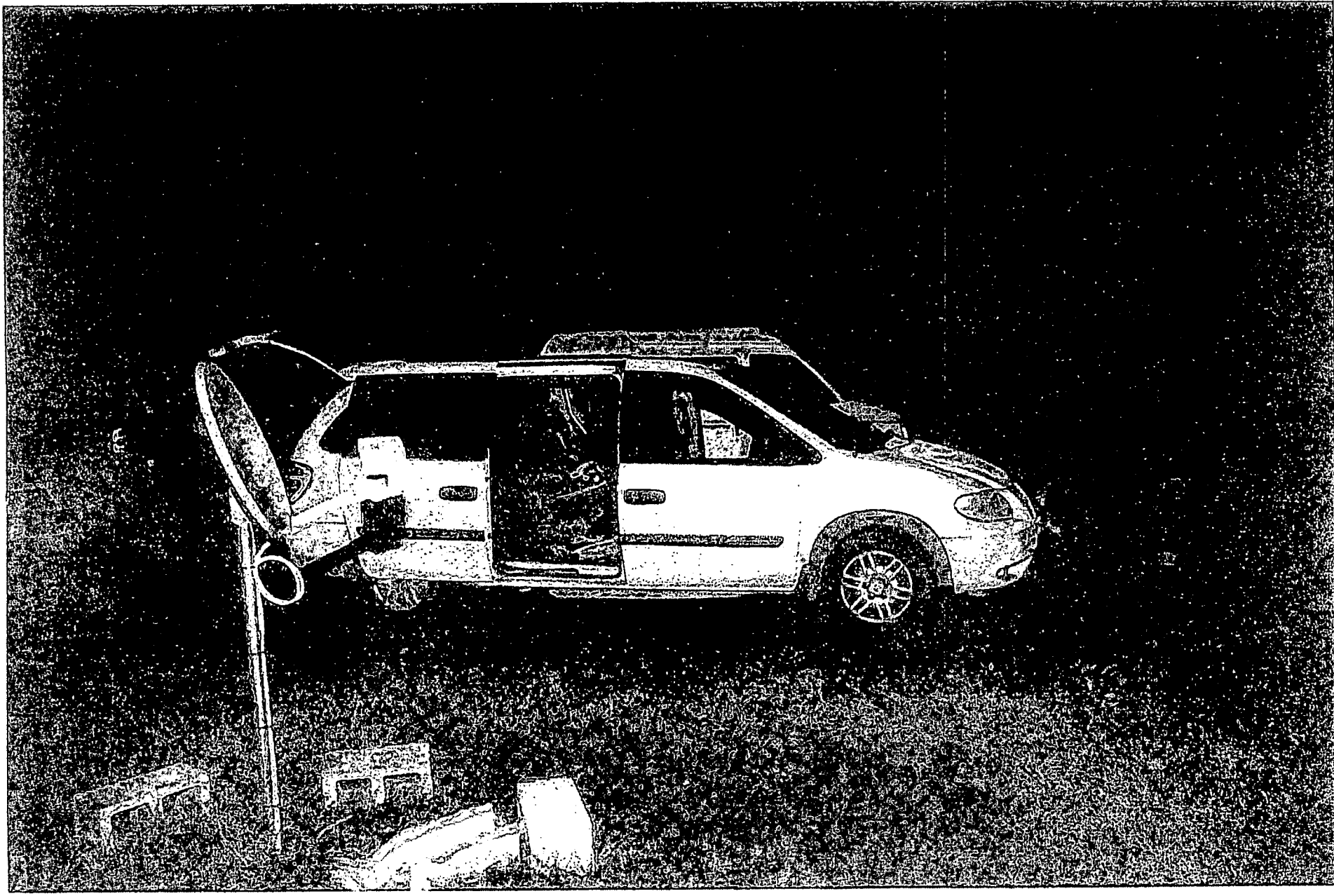




ROA_2625

D





ROA_2627



EXHIBIT
11
10-14-13

EXHIBIT
State 12
WHR
10-14-13

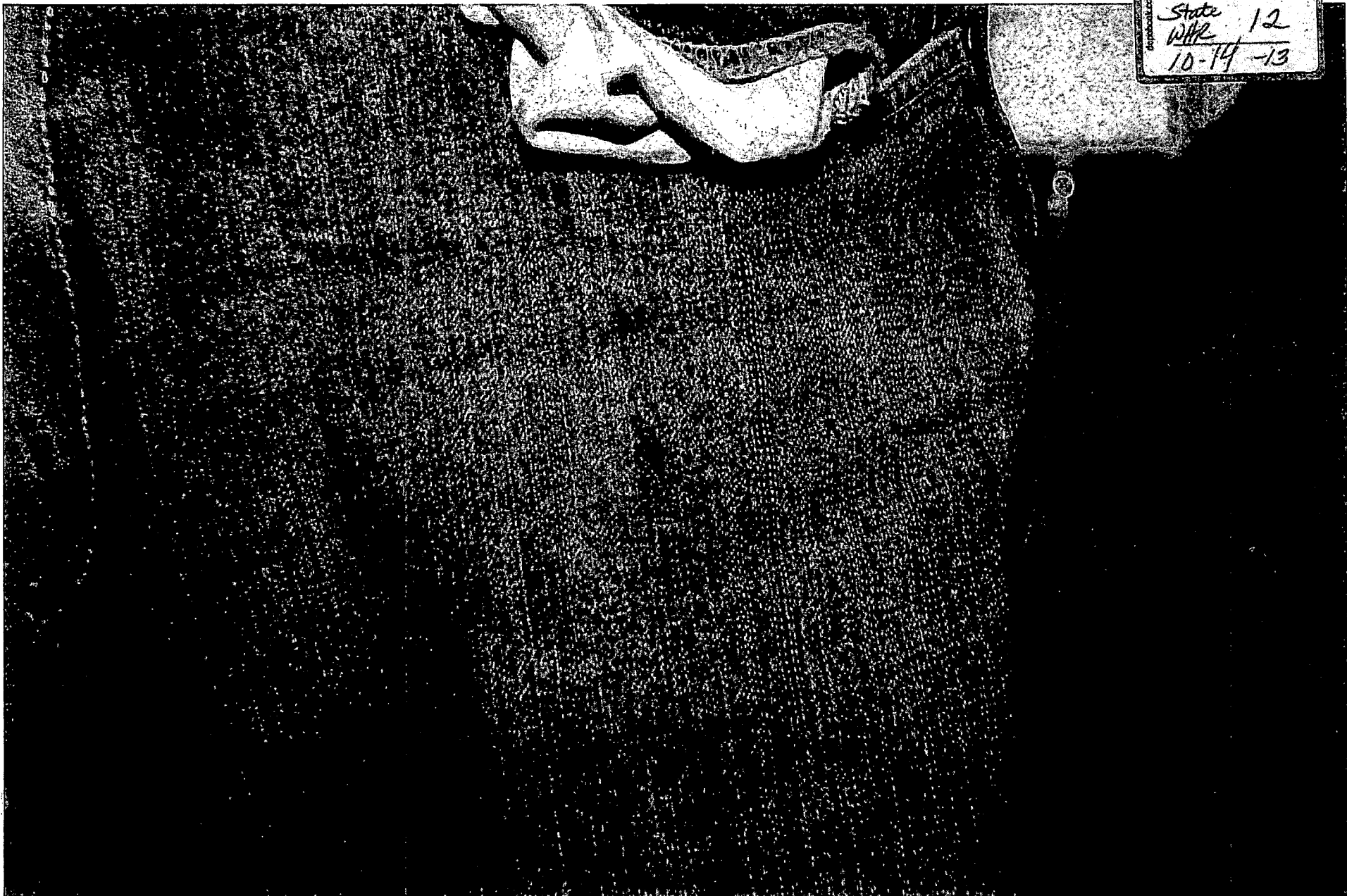


EXHIBIT
State 13
NHC
10-14-13
depbook.com

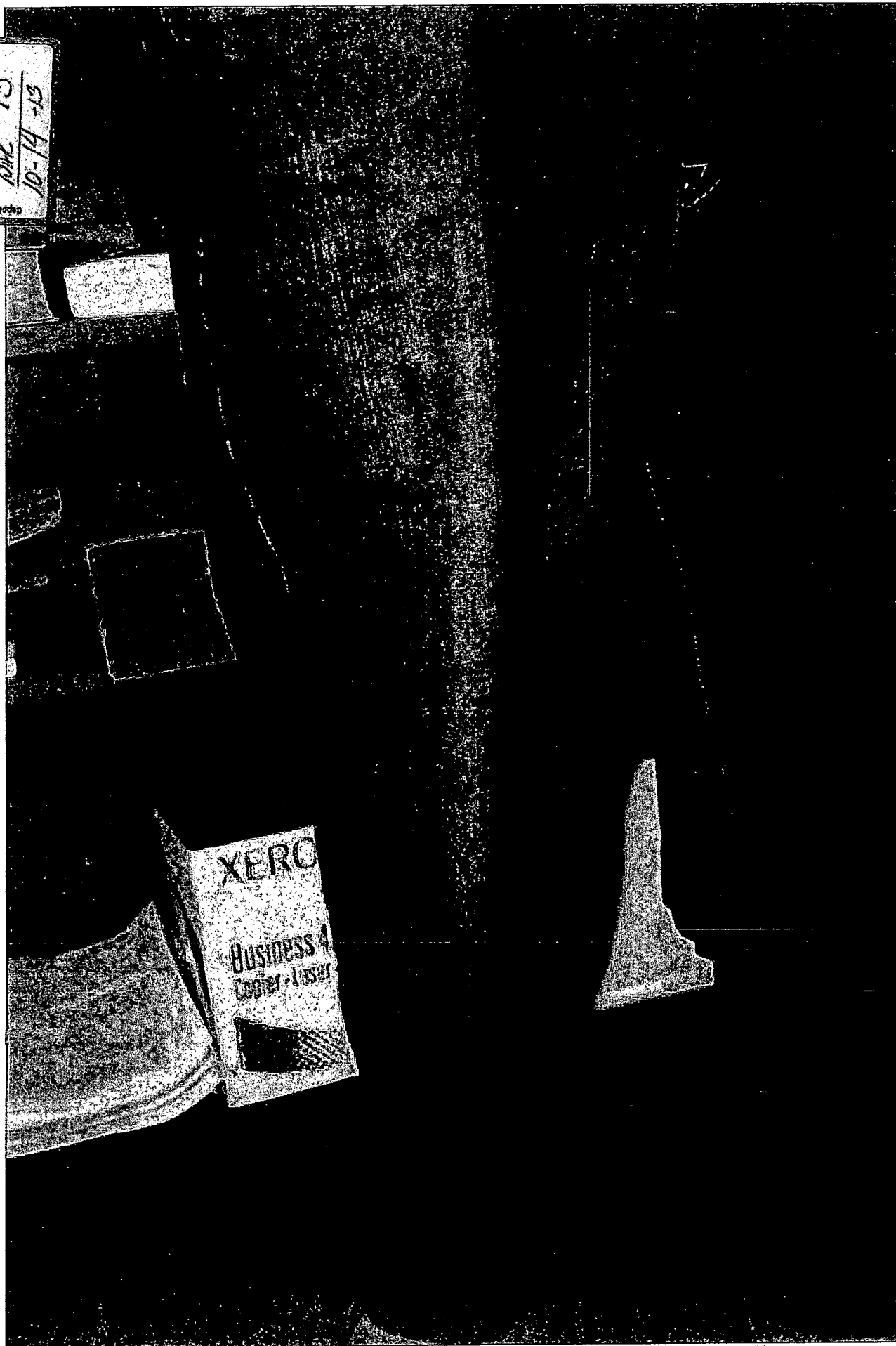
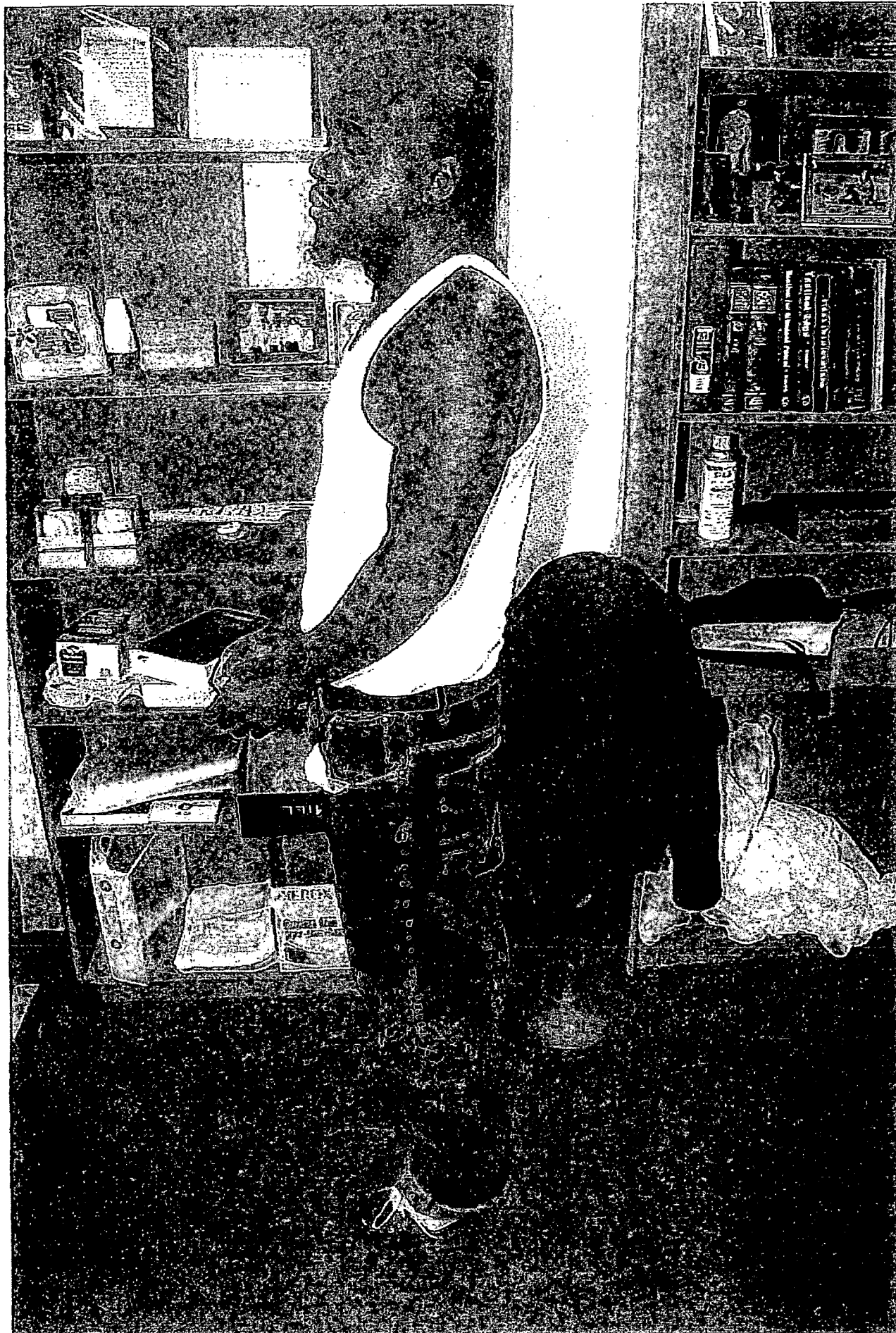


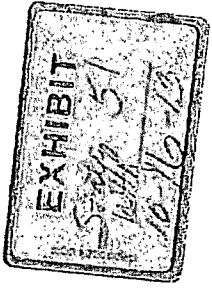
EXHIBIT
State 26
WHR
10-14-13

614



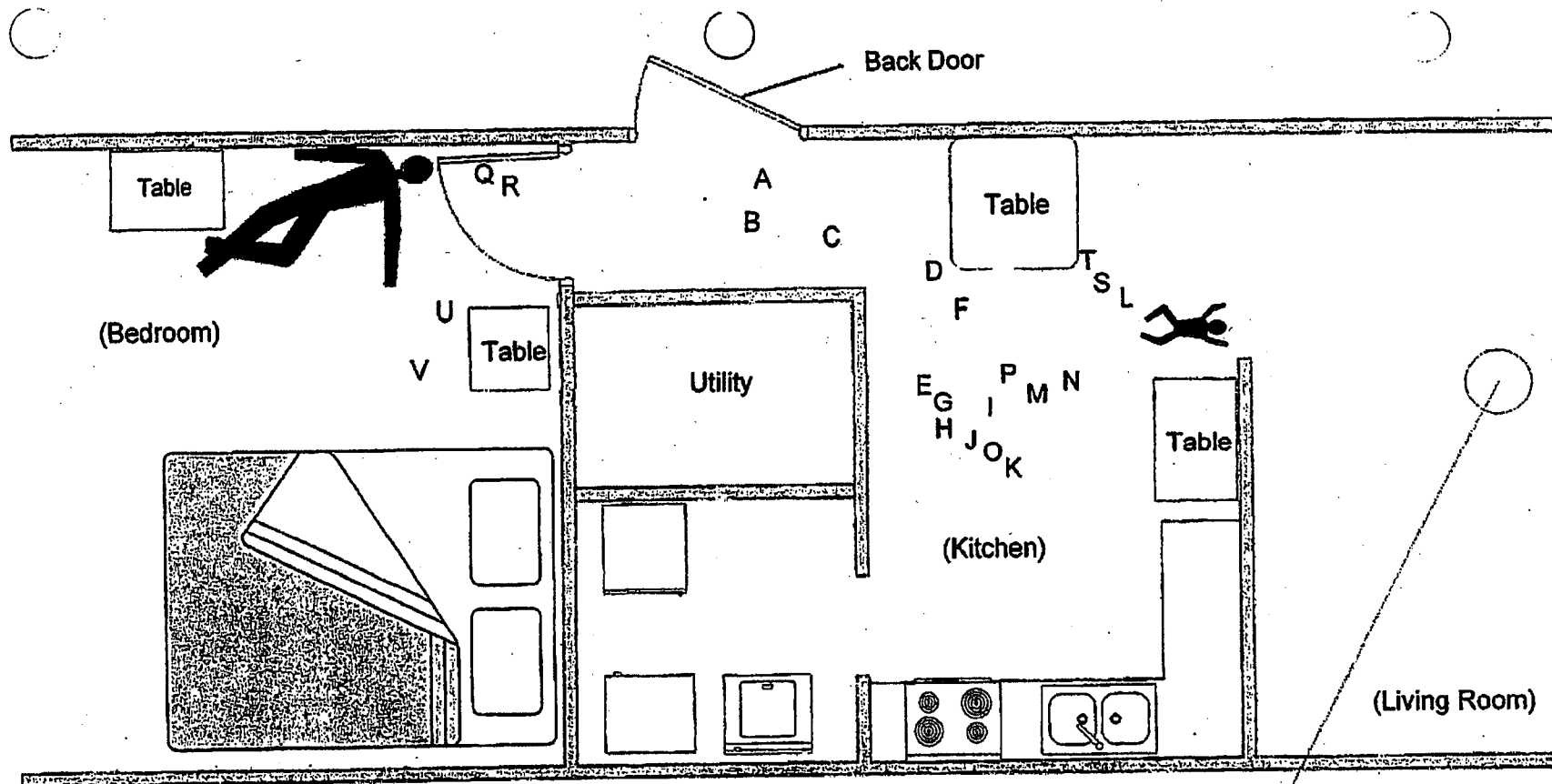


59



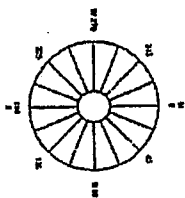


ROA_2635



L09-13704
Not to Scale
J. Crooks

A thru T - Footwear Impressions
U-V - Blood



DEFENDANT'S
EXHIBIT

7 WH2
10- -13

2009/11/15/09

Date 11/15/09

Page No. 1

STATEMENT OF:

Name: Shauna Orsen

DOB:

H:

Add:

SSN:

C:

W:

On 15 Nov 2009 EMS 2 staffed by Crew Chief Danny Tinnel and Paramedic Shauna Orsen responded to 20 Plumer Rd for a possible code 17. Upon arrival I found Paramedic Sampson on the floor of the livingroom with a child. The child was moved from the scene into the ambulance by myself. While enroute to the hospital Crew Chief Tinnel asked the child his name to which he responded with something that sounded like "Doug". Tinnel asked "Doug" if he knew who did this to him and he answered "Yes". Danny then asked him who it was and the child said "Daddy". After that the child would not respond to any more questions. The child was transported to Beaufort Memorial Hospital by EMS 2 (3)

DEFENDANT'S
EXHIBIT13 WHE
11-14-13

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
211

***** Key *****

Destination-Address Date Time System-ID Source-Address Billstate
Deliverstate

Message-Text

8432630455 13-NOV-09 09:32:38 VMU_SMS[249] 8435753108 Not-Processed
Received
Hi feeling betta Queen b

8432630455 13-NOV-09 09:54:56 VMU_SMS[251] 8435753108 Not-Processed
Received
Hi feeling betta Queen b

8432630455 13-NOV-09 09:58:58 VMU_SMS[255] 8435753108 Not-Processed
Received
E fuc u Queen b

8432630455 13-NOV-09 09:59:12 VMU_SMS[250] 8435753108 Not-Processed
Received
E fuc u Queen b

8432630455 13-NOV-09 14:30:34 VMU_SMS[249] 8433385776 Not-Processed
Received
You ready 2 take me shopping? Shit!

8433385776 13-NOV-09 14:42:08 ICGTX[73] 8432630455 Not-Processed
Received
Re: U a mess

8432630455 13-NOV-09 14:44:56 VMU_SMS[251] 8433385776 Not-Processed
Received
Woe<0d><0a>Wow!

8432630455 13-NOV-09 15:06:46 VMU_SMS[259] 8433385776 Not-Processed
Received
Didnt mean to say woe but yes on wow!

8433385776 13-NOV-09 15:49:32 ICGTX[69] 8432630455 Not-Processed
Received
Re: Wow wat

8432630455 13-NOV-09 15:55:10 VMU_SMS[249] 8433385776 Not-Processed
Received
I ask u when am I doing this lil shopping thing

DEFENDANT'S
EXHIBIT

15 WPK
10-16-13

8433385776 13-NOV-09 16:16:52 ICGTX[71] 8432630455 Not-Processed
Received
Re: Whn i get sum spare change

8432630455 13-NOV-09 16:18:08 VMU_SMS[249] 8433385776 Not-Processed
Received
Wow,spare change?

8433385776 13-NOV-09 16:19:17 ICGTX[72] 8432630455 Not-Processed
Received
Re: Yea ima broke nigga babe tryna get my weight up

8432630455 13-NOV-09 17:13:44 VMU_SMS[249] 8434418131 Not-Processed
Received
Hey baby!<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:16:56 VMU_SMS[250] 8434418131 Not-Processed
Received
Home. Im on my way to your side now for church.... Havnt been to church in almost 3 months<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:18:06 VMU_SMS[253] 8434418131 Not-Processed
Received
What hav u ben up to<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:19:24 VMU_SMS[248] 8434418131 Not-Processed
Received
Thats whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:20:41 VMU_SMS[256] 8434418131 Not-Processed
Received
Lol... Dont say that<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:21:48 VMU_SMS[251] 8434418131 Not-Processed
Received
It aint ben that long hun<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:23:45 VMU_SMS[251] 8434418131 Not-Processed
Received
You be on this side you could stop by and say hello sometimes<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 18:27:44 VMU_SMS[252] 8434418131 Not-Processed
Received
Yes i do.<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 18:37:14 VMU_SMS[251] 8433385776 Not-Processed
Received
I hear you!

8433385776 13-NOV-09 18:53:28 ICGTX[72] 8432630455 Not-Processed
Received
Re: Wat u doin

8432630455 13-NOV-09 18:54:11 VMU_SMS[247] 8433385776 Not-Processed
Received
On the phone, was good?

8432630455 13-NOV-09 18:55:36 VMU_SMS[254] 8433385776 Not-Processed
Received
YEA BORED, MAN

8433385776 13-NOV-09 18:56:12 ICGTX[69] 8432630455 Not-Processed
Received
Re: Same here

8432630455 13-NOV-09 19:02:23 VMU_SMS[254] 8438120765 Not-Processed
Received
Nuthn bout 2 go out

8432630455 13-NOV-09 19:15:03 VMU_SMS[252] 8433385776 Not-Processed
Received
ITS FRIDAY U SHUDNT B BORED

8433385776 13-NOV-09 19:17:02 ICGTX[69] 8432630455 Not-Processed
Received
Re: Wat friday got 2 do wit dat

8432630455 13-NOV-09 19:17:29 VMU_SMS[260] 8433385776 Not-Processed
Received
IDK, THERE'S USUALLY SUMTHIN TO DO

8434766636 13-NOV-09 19:34:26 ICGTX[69] 8432630455 Not-Processed
Received
Wat u doin

8432630455 13-NOV-09 19:36:43 VMU_SMS[264] 2297129265 Not-Processed
Received
Home eating soup

8432630455 13-NOV-09 19:42:04 VMU_SMS[247] 8433385776 Not-Processed
Received

Me neither,dis shit depressing..

8432630455 13-NOV-09 19:44:37 VMU_SMS[248] 8434766636 Not-Processed

Received

Jus wakin up from nappin

8434766636 13-NOV-09 19:45:10 ICGTX[71] 8432630455 Not-Processed

Received

Re: Oh no now

8432630455 13-NOV-09 19:45:12 VMU_SMS[248] 8433385776 Not-Processed

Received

Yes,Im only here b/c I have to pay my p/o and shit dass why I got a job and shit man,once I pay it I get off,and Im out.Made up my mind that I came bac 2 what I

8432630455 13-NOV-09 19:45:13 VMU_SMS[247] 8433385776 Not-Processed

Received

left,knawmean

8432630455 13-NOV-09 19:45:43 VMU_SMS[251] 2297129265 Not-Processed

Received

Are you going to be able to get me a 30 doller card

8432630455 13-NOV-09 19:46:55 VMU_SMS[250] 8434766636 Not-Processed

Received

Yep I slept from th time u left until now

8434766636 13-NOV-09 19:51:14 ICGTX[73] 8432630455 Not-Processed

Received

Re: Oh day. my baby tired

8433385776 13-NOV-09 19:51:37 ICGTX[70] 8432630455 Not-Processed

Received

Re: I feel it

8432630455 13-NOV-09 19:52:01 VMU_SMS[248] 8434766636 Not-Processed

Received

Okay I wuz tired as hell all day

8432630455 13-NOV-09 19:52:02 VMU_SMS[248] 8433385776 Not-Processed

Received

Yea man

8434766636 13-NOV-09 19:52:53 ICGTX[72] 8432630455 Not-Processed

Received

Re: Poor thng

8433385776 13-NOV-09 19:53:46 ICGTX[72] 8432630455 Not-Processed

Received

Re: Wats 4 dinner

8432630455 13-NOV-09 19:54:08 VMU_SMS[248] 8434766636 Not-Processed

Received

That power nap did me sum gud tho

8432630455 13-NOV-09 19:54:11 VMU_SMS[253] 8433385776 Not-Processed

Received

Ch? U buying?

8434766636 13-NOV-09 19:55:52 ICGTX[72] 8432630455 Not-Processed

Received

Re: Dats gud u jus need a lil grub now. did u finish ur paper

8433385776 13-NOV-09 19:56:51 ICGTX[69] 8432630455 Not-Processed

Received

Re:depend wats 4 dinner

8432630455 13-NOV-09 19:57:21 VMU_SMS[249] 8433385776 Not-Processed

Received

Chinese Food

8432630455 13-NOV-09 19:57:38 VMU_SMS[248] 2297129265 Not-Processed

Received

Yes i eating some oyster cracker

8433385776 13-NOV-09 19:58:21 ICGTX[71] 8432630455 Not-Processed

Received

Re: Im not big on chinese

8432630455 13-NOV-09 19:58:52 VMU_SMS[248] 8433385776 Not-Processed

Received

Shut up and u just had it the otha night

8433385776 13-NOV-09 20:00:35 ICGTX[72] 8432630455 Not-Processed

Received

Re: I had da chickn smart ass

8432630455 13-NOV-09 20:01:41 VMU_SMS[254] 8433385776 Not-Processed

Received

o

8432630455 13-NOV-09 20:05:42 VMU_SMS[251] 8434766636 Not-Processed
Received

Th one that's due sunday no not yet. And yep it is ab that time 4 me 2 eat. Ev body sleep
except me n seri.

8432630455 13-NOV-09 20:41:38 VMU_SMS[247] 2297129265 Not-Processed
Received

Yes its calming down a little

8434766636 13-NOV-09 20:42:49 ICGTX[73] 8432630455 Not-Processed
Received

Re: Wherd u go

8432630455 13-NOV-09 20:43:41 VMU_SMS[256] 8434766636 Not-Processed
Received

Jdub jus woke up

8432630455 13-NOV-09 20:44:03 VMU_SMS[253] 8434766636 Not-Processed
Received

I'm still here babe

8434766636 13-NOV-09 20:44:03 ICGTX[70] 8432630455 Not-Processed
Received

Re: Oh oh

8432630455 13-NOV-09 20:45:38 VMU_SMS[249] 8434766636 Not-Processed
Received

Okay

8432630455 13-NOV-09 20:47:43 VMU_SMS[257] 8434766636 Not-Processed
Received

Oh ok then I dnt wanna worry my baby then

8434766636 13-NOV-09 20:48:23 ICGTX[73] 8432630455 Not-Processed
Received

Re: I miss dat warm ass meat boy

8432630455 13-NOV-09 20:50:39 VMU_SMS[252] 8434766636 Not-Processed
Received

And I miss u 2 daddy

8434766636 13-NOV-09 20:51:44 ICGTX[71] 8432630455 Not-Processed
Received

Re: Dats luv ther now. 2 sweet

8432630455 13-NOV-09 20:53:15 VMU_SMS[249] 8434766636 Not-Processed
Received
Cuz I love me sum Edub now I aint gne lie

8434766636 13-NOV-09 20:53:55 ICGTX[70] 8432630455 Not-Processed
Received
Re: U dnt even no y!

8432630455 13-NOV-09 20:57:11 VMU_SMS[250] 8434766636 Not-Processed
Received
Yes bcuz even tho u harsh u r still my best friend n u hv a gud heart at times n u r very caring at times 2. U luk out 4 me n my kids. U r my comforter.

8432630455 13-NOV-09 20:58:21 VMU_SMS[251] 8434418210 Not-Processed
Received
Wrk whereelse<0a>Never say never

8432630455 13-NOV-09 21:02:09 VMU_SMS[255] 8434418210 Not-Processed
Received
I dnt seem to see it tryin to do to much to fast<0a>Never say never

8432630455 13-NOV-09 21:03:35 VMU_SMS[255] 8434418210 Not-Processed
Received
I guess<0a>Never say never

8432630455 13-NOV-09 21:08:33 VMU_SMS[252] 8434766636 Not-Processed
Received
Oh stop it

8432630455 13-NOV-09 21:10:09 VMU_SMS[248] 8434766636 Not-Processed
Received
Watchn tv

8432630455 13-NOV-09 21:10:49 VMU_SMS[249] 8434766636 Not-Processed
Received
Jus hung up with mama

8434766636 13-NOV-09 21:12:30 ICGTX[70] 8432630455 Not-Processed
Received
Re: Watchu watchn

8432630455 13-NOV-09 21:13:04 VMU_SMS[251] 8434766636 Not-Processed
Received
Boomerang again

8434766636 13-NOV-09 21:13:12 ICGTX[69] 8432630455 Not-Processed

Received

Re: Wat she doin up she betta get in bed

8432630455 13-NOV-09 21:15:28 VMU_SMS[260] 8434766636 Not-Processed

Received

Okay I gotta go to her early in th morning

8432630455 13-NOV-09 21:21:28 VMU_SMS[251] 8434418210 Not-Processed

Received

Ok a lil busy but im not tired suprising had no meds<0a>Never say never

8432630455 13-NOV-09 21:25:11 VMU_SMS[251] 8435750013 Not-Processed

Received

Yo

8432630455 13-NOV-09 21:29:22 VMU_SMS[254] 8434766636 Not-Processed

Received

Nuthn much she jus can't get her dvr in her room 2 work rite n she wants me 2 go 2 th store with her 2morrow

8434766636 13-NOV-09 21:32:39 ICGTX[70] 8432630455 Not-Processed

Received

Re: Umm i c

8432630455 13-NOV-09 21:34:08 VMU_SMS[259] 8434766636 Not-Processed

Received

Whatchu doing babe?

8432630455 13-NOV-09 21:35:20 VMU_SMS[250] 8434766636 Not-Processed

Received

No u supposed 2 say SHIT

8434766636 13-NOV-09 21:37:56 ICGTX[72] 8432630455 Not-Processed

Received

Re: Shit! lol

8432630455 13-NOV-09 21:38:32 VMU_SMS[251] 8434766636 Not-Processed

Received

I love you!

8434766636 13-NOV-09 21:39:12 ICGTX[70] 8432630455 Not-Processed

Received

Re: I luv u 2, is dis u

8432630455 13-NOV-09 21:40:26 VMU_SMS[248] 8434766636 Not-Processed
Received
It is. We gone make love 2nite? Lol jus kidding

8432630455 13-NOV-09 21:43:09 VMU_SMS[251] 8434766636 Not-Processed
Received
Yo tired ass lol

8434766636 13-NOV-09 21:45:41 ICGTX[72] 8432630455 Not-Processed
Received
Re: U da one

8432630455 13-NOV-09 21:46:13 VMU_SMS[250] 8434766636 Not-Processed
Received
We both are

8434766636 13-NOV-09 21:47:02 ICGTX[73] 8432630455 Not-Processed
Received
Re: Not me im up and i want it ill cum rite now

8432630455 13-NOV-09 21:48:25 VMU_SMS[254] 8434766636 Not-Processed
Received
Rite now?

8434766636 13-NOV-09 21:48:54 ICGTX[71] 8432630455 Not-Processed
Received
Re: Rite now

8432630455 13-NOV-09 21:50:02 VMU_SMS[259] 8434766636 Not-Processed
Received
U like 2 play

8434766636 13-NOV-09 21:55:05 ICGTX[78] 8432630455 Not-Processed
Received
Re: No now and

8432630455 13-NOV-09 21:55:58 VMU_SMS[248] 8434766636 Not-Processed
Received
Well cum on then do I need 2 go n wash now

8434766636 13-NOV-09 21:56:51 ICGTX[73] 8432630455 Not-Processed
Received
Re: No in a few or u can wait 4 me i gotta wash 2

8432630455 13-NOV-09 21:58:34 VMU_SMS[253] 8434766636 Not-Processed
Received

Well I will wait n everybody is back up in here n it sounds like I'm hvn a party

8434766636 13-NOV-09 21:58:59 ICGTX[70] 8432630455 Not-Processed
Received

Re: Dang

8432630455 13-NOV-09 21:59:22 VMU_SMS[254] 8434766636 Not-Processed
Received

Okay

8432630455 13-NOV-09 22:29:03 VMU_SMS[250] 8434418210 Not-Processed
Received

Hi friend<0a>Never say never

8432630455 14-NOV-09 06:30:15 VM1[253] 8435752339 Not-Processed
Received

PLEASE CALL

8432630455 14-NOV-09 10:13:25 VMU_SMS[253] 8434418210 Not-Processed
Received

Hi dear<0a>Never say never

8432630455 14-NOV-09 10:14:20 VMU_SMS[266] 8434418210 Not-Processed
Received

Fine n u at wrk<0a>Never say never

8432630455 14-NOV-09 10:29:57 VMU_SMS[247] 8434418210 Not-Processed
Received

O wat u grubbin on<0a>Never say never

8432630455 14-NOV-09 10:53:22 VMU_SMS[253] 8434418210 Not-Processed
Received

O im bout to walk to chinese Place<0a>Never say never

8432630455 14-NOV-09 12:27:42 VMU_SMS[247] 8434418131 Not-Processed
Received

Whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 14-NOV-09 12:28:58 VMU_SMS[254] 8434418131 Not-Processed
Received

Nothing much just laying down<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 14-NOV-09 12:30:27 VMU_SMS[248] 8434418131 Not-Processed
Received

Idk yet. Y whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455	14-NOV-09 12:31:33 VMU_SMS[251]	8434418131	Not-Processed
	Received		
	Oh<0d><0a>HAILEY DANEICE WRIGHT<0a>		
8432630455	14-NOV-09 13:11:29 VMU_SMS[249]	8435753108	Not-Processed
	Received		
	Hello Queen b		
8432630455	14-NOV-09 13:46:49 VMU_SMS[252]	8435753108	Not-Processed
	Received		
	How r u Queen b		
8432630455	14-NOV-09 14:01:12 VMU_SMS[253]	8435753108	Not-Processed
	Received		
	Im ok just work hard Queen b		
8432630455	14-NOV-09 14:03:47 VMU_SMS[252]	8435753108	Not-Processed
	Received		
	I guess its busy 4 the holidays Queen b		
8432630455	14-NOV-09 17:54:59 VMU_SMS[248]	8432635633	Not-Processed
	Received		
	Hi		
8432630455	14-NOV-09 19:41:02 VMU_SMS[258]	0000000868	Not-Processed
	Received		
	\$VMU\$<0b><08>jMonthly Charge Failed Add \$ to cover charge+tax now or pay		
	20c/min if \$ in account, until service expires.<04>CALL<00><00><03><0b><08><06>		
8432630455	14-NOV-09 20:12:41 VMU_SMS[250]	8435753108	Not-Processed
	Received		
	H Queen b		
8432630455	14-NOV-09 20:13:16 VMU_SMS[254]	8435753108	Not-Processed
	Received		
	Hello Queen b		
8432630455	14-NOV-09 20:26:52 VMU_SMS[256]	8435753108	Not-Processed
	Received		
	I guess i can give up huh u dont want 2 b bothered Queen b		
8432630455	14-NOV-09 21:25:08 VMU_SMS[249]	8435750013	Not-Processed
	Received		
	Yo		

8432630455	14-NOV-09 22:19:03 VMU_SMS[255]	8435753108	Not-Processed
	Received		
	U cud answer icu Queen b		
8432630455	14-NOV-09 22:26:03 VMU_SMS[258]	8435753108	Not-Processed
	Received		
	Fuc u Queen b		
8432630455	15-NOV-09 10:49:42 VMU_SMS[249]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c> >Top-Up: \$50.00<0d><0a>Tax: \$0.00<0d><0a>Total:		
	\$50.00<0d><0a>New Bal:<0d><0a>\$50.13 <0d><0a>		
8432630455	15-NOV-09 11:09:46 VMU_SMS[248]	8435750013	Not-Processed
	Received		
	Yo call me		
8432630455	15-NOV-09 11:14:39 VMU_SMS[249]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c> >Top-Up: \$20.00<0d><0a>Tax: \$0.00<0d><0a>Total:		
	\$20.00<0d><0a>New Bal:<0d><0a>\$69.98 <0d><0a>		
8432630455	15-NOV-09 11:16:45 VMU_SMS[248]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c><00>ZYou've switched to our \$49.99 Totally Unlimited Monthly Plan with		
	a \$10.00 Messaging Pack.		
8432630455	15-NOV-09 11:17:38 VMU_SMS[251]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c><00> Top-Up another \$20.00 by 11/18/2009 09:17:37 to qualify for Virgin		
	Mobile's Service Preserver and extend service for a year!		
8432630455	15-NOV-09 13:24:36 VMU_SMS[248]	8435750013	Not-Processed
	Received		
	Yo		
8432630455	15-NOV-09 13:38:46 VMU_SMS[247]	2297129265	Not-Processed
	Received		
	What you doing		
8432630455	15-NOV-09 17:04:06 VMU_SMS[254]	8432631787	Not-Processed
	Received		
	On the way		
8432630455	15-NOV-09 18:40:05 VMU_SMS[248]	8434418210	Not-Processed
	Received		

U alrite<0a>Never say never

8432630455 15-NOV-09 18:59:15 VMU_SMS[249] 8432635633 Not-Processed
Received
Sweetie rochelle jus call me is everythng ok.... call me

8432630455 15-NOV-09 19:05:19 VMU_SMS[248] 3863387317 Not-Processed
Received
Is thir ew phone *FEELS LIKE MY LIFE IS CAUGHT IN A STORM*

8432630455 15-NOV-09 19:10:30 VMU_SMS[248] 8433385776 Not-Processed
Received
What up?<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:16:44 VMU_SMS[256] 8433385776 Not-Processed
Received
U SLEEP?<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:37:27 VMU_SMS[260] 8433385776 Not-Processed
Received
Georgie aint say nuthin bout how he sounded? He not replying to my text and I damn sure aint bout to call.Girl everybody callin me askin questions bout the damn

8432630455 15-NOV-09 19:37:27 VMU_SMS[260] 8433385776 Not-Processed
Received
boy,and we were only text buddies!<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:46:44 VMU_SMS[247] 2297129265 Not-Processed
Received
What is going on i heard some crazy stuff just now call please

8432630455 15-NOV-09 21:04:28 VMU_SMS[248] 8434418131 Not-Processed
Received
Whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 15-NOV-09 22:05:36 VMU_SMS[249] 8435750960 Not-Processed
Received
Hope u ok dis nikki

8432630455 15-NOV-09 22:07:30 VMU_SMS[249] 8435750960 Not-Processed
Received
Im worried bout u

8432630455 15-NOV-09 22:28:30 VMU_SMS[252] 8434418210 Not-Processed
Received
U alrite<0a>Never say never<0a>

8432630455 15-NOV-09 22:51:26 VMU_SMS[251] 8435750960 Not-Processed
Received

E i hope u ok im worried bout u pls text me so i can no u alrite

8432630455 16-NOV-09 06:57:37 VMU_SMS[248] 8032368262 Not-Processed
Received

Call me

8432630455 16-NOV-09 07:16:25 VMU_SMS[248] 8435750013 Not-Processed
Received

Yo i need a jump i am at the school i have caales

8432630455 16-NOV-09 07:29:57 VMU_SMS[247] 8435750013 Not-Processed
Received

I am good

8432630455 16-NOV-09 08:20:35 VMU_SMS[253] 8435750013 Not-Processed
Received

Yo man wats up

***** Key *****

Destination-Address	Date Time	System-ID	Source-Address	Billstate
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Deliverstate

Message-Text

DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

EARNEST S. DAISE,

Defendant.

Ind. No.s: 2009-GS-07-2636, 2637, 2638,
2639

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RECEIVED
CLERK OF COURT
SOUTH CAROLINA

**MOTION FOR AN ORDER PROHIBITING EARNEST S. DAISE FROM BEING
EXHIBITED IN JAIL CLOTHING OR VISIBLE SHACKLES**

Earnest S. Daise, through undersigned counsel, respectfully moves this Court for an order prohibiting Mr. Daise's future appearances in this courthouse while dressed in jail clothing or visible shackles. This motion is made pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina. In support of this motion, Mr. Daise show as follows:

1. The State has announced its intention to seek the death penalty against Mr. Daise. When a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the death penalty, our system of justice must go "to *extraordinary measures*

to ensure that the prisoner [facing the possibility of being] sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake." *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring) (emphasis added). These "extraordinary measures" must be taken at both stages of any capital trial. *Beck v. Alabama*, 447 U.S. 625, 638 (1980); *see also, Lockett v. Ohio*, 438 U.S. 586, 604 (1978); *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977).

2. Mr. Daise submits that, among the "extraordinary measures" that the Court should take to ensure due process and the reliability of the trial and possible sentencing proceedings in this case, the Court should order that Mr. Daise be permitted to wear normal, "civilian" clothing during all court proceedings, and in all situations in which Mr. Daise may be viewed by the jury venire and trial jury. People who are traveling to and from court on the streets around the courthouse in the area where inmates are being brought in, including potential jurors, are frequently exposed to inmates dressed in distinctive jail garb, restrained with heavy chains.

3. Forcing Mr. Daise to appear in court in jail garb and/or chains is manifestly prejudicial to Mr. Daise's rights to due process and a fair trial. Shackling is an "inherently prejudicial practice." *Illinois v. Allen*, 397 U.S. 337, 344 (1970). Due process prohibits the use of visible shackles or restraints in court absent a finding of state interest specific to a particular defendant at a particular trial. *Deck*, 125 S.Ct. 2007 at 2016. When shackling occurs, it must be subjected to "close judicial scrutiny." *Estelle*, 425 U.S. at 503-04.

4. Compelling an accused to wear identifiable prison clothing during his trial violates the Due Process Clause, because it furthers no essential state interest, and "the constant reminder of the accused's condition implicitly in such distinctive, identifiable attire may affect a juror's judgment," *Estelle v. Williams*, 425 U.S. 501, 504-05, 96 S.Ct. 1691 (1976). In addition,

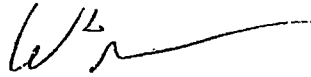
it impairs the presumption of innocence, which is a "basic component of a fair trial under our system of criminal justice." *Id.* at 503; *see also, Deck v. Missouri*, 125 S.Ct. 2007, 2012 (2005); *Elledge v. Dugger*, 823 F.2d 1439, 1450 (11th Cir. 1987); *Collins v. State*, 164 Ga. App. 482 (1982); *State v. Tolley*, 290 N.C. 349 (1976). The "convenience of jail administrators" is not a sufficient justification for this practice. *Estelle*, 425 U.S. at 506.

5. The same prejudicial effect results whether this shackling and exposure to jail garb occurs before the prospective jury in the courtroom, or before the prospective jurors in the media prior to trial. Steps must be taken now, then, to prevent the unconstitutional deprivation of the presumption of innocence. Requiring Mr. Daise to appear at pretrial hearings or at trial in prisoner's clothing or visible shackles will violate his right to a fair trial, fair and impartial jury, the presumption of innocence, and a fair, reliable and objective determination of punishment without furthering any permissible state interest.

WHEREFORE, EARNEST S. DAISE respectfully requests that this Court issue an order directing that at all public appearances in this courtroom and at all occasions when Mr. Daise is brought into court, he be allowed to dress in appropriate civilian clothing and that he not be visibly shackled and/or chained while in the well of this or any other courtroom.

Dated this 12th day of June, 2012.

Respectfully Submitted,



William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
(803)734-7818

Samuel Christopher Bauer
Bauer & Metro, PC
P.O. Box 7965
Hilton Head, SC 29938
(843)842-5297

DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

V.

EARNEST S. DAISE,

Defendant.

Ind. No.s: 2009-GS-07-2636, 2637, 2638, 2639

**MOTION TO SUPPRESS PHYSICAL EVIDENCE
OBTAINED FROM THE DEFENDANT**

COMES NOW, Earnest S. Daise, by and through counsel, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I §§ 3, 9, 10, 11, 12, 14 and 15 of the South Carolina Constitution, and South Carolina law, and respectfully moves to suppress all physical evidence sieved from the Defendant. Mr. Daise states the following in support of this motion:

1. The State has announced its intention to seek the death penalty against Mr. Simmons. When a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976).

2. The physical evidence sieved from the Defendant, was obtained in violation of Mr. Daise's federal and state constitutional rights to be free from unreasonable searches and

seizures under the Fourth and Fourteenth Amendments to the United States Constitution and Art. I, § 10 of the South Carolina Constitution. *Katz v. United States*, 389 U.S. 347, 357 (1967) (subject to a few specifically established and well-delineated exceptions, warrantless searches are *per se* unreasonable); *Mapp v. Ohio*, 367 U.S. 643 (1961); *State v. Weaver*, 649 S.E.2d 479, 483 (S.C. 2007) (South Carolina Constitution provides greater level of protection against unreasonable searches and seizures than federal constitution); *State v. Brown*, 347 S.E.2d 882, 885 (S.C. 1986).

3. Because the seizure of evidence from the Defendant was unreasonable and a violation of Mr. Daise's state and federal rights, all recovered evidence must be suppressed. *Mapp v. Ohio*, 367 U.S. 643 (1967); *Brown*, 347 S.E.2d at 885.

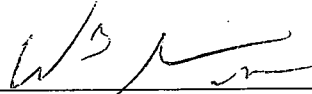
4. If the evidence seized from the Defendant is not suppressed, Mr. Daise will be deprived of his right to be free from unreasonable searches and seizures, his rights to due process of law and the equal protection of the laws, and his rights to a fair trial and reliable sentencing as protected by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and concurrent provisions of the South Carolina Constitution.

WHEREFORE, Mr. Daise respectfully requests that this Court:

- (a) allow Mr. Daise to present evidence and argument on this motion at a hearing outside the presence of the jury;
- (b) grant Mr. Daise's motion to suppress the unconstitutionally obtained evidence;
and,
- (c) grant any other relief that is just and proper under the circumstances.

Dated this 12th day of January, 2012.

Respectfully Submitted,



William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
(803)734-7818

Samuel Christopher Bauer
Bauer & Metro, PC
P.O. Box 7965
Hilton Head, SC 29938
(843)842-5297

M055869
M055870
M055871
M055872

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
STATE OF SOUTH CAROLINA,)
Plaintiff,)
v.)
EARNEST S. DAISE,)
Defendant.)
Indictment Nos. 2009-GS-07-2636, 2637, 2638,
2639

2012 DEC -5

RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant moves before this Court to suppress certain physical evidence that includes all physical items recovered from Defendant's person and from the residence at 43 Poppy Hill Road based upon the Fourth Amendment to the United States Constitution and Article I, § 10 of the Constitution of the State of South Carolina. The State objects to the Defendant's Motion for the reasons set out below.

LEGAL STANDARD

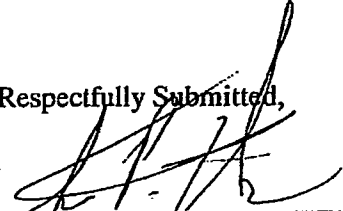
"To be entitled to a suppression hearing... a defendant must, by way of oral or written motion to the trial court, articulate *specific factual and legal grounds* to support his contention that evidence was obtained by conduct violative of his constitutional rights." State v. Patton, 322 S.C. 408; 472 S.E.2d 245 (SC 1995)(emphasis added). "The trial court shall, in the exercise of its discretion, grant a suppression hearing *if the defendant's grounds are sufficiently definite, specific, detailed, and nonconjectural* to enable the court to conclude that contested issues of fact going to the validity of the search are in question. Id at 411-412 (emphasis added). "Standing alone, however, the bare allegations that evidence was obtained in violation of the Fourth

Amendment will no longer suffice to justify the duplicative consumption of the trial court's time required by a suppression hearing." Id at 412.

RESPONSE

The State objects to Defendant's Motion to suppress physical evidence. Defendant fails to articulate specific factual and legal grounds to support his contention that certain physical evidence should be suppressed. In Defendant's motion, he merely alleges that evidence was obtained in violation of the Fourth Amendment. As such, per the Court's ruling in State v. Patton, Defendant's motion is insufficient and Defendant is not entitled to a suppression hearing.

Respectfully Submitted,



Sean P. Thornton
Deputy Solicitor, 14th Circuit

M655869
M655870
M655871
M655872
Pleading # 22

DEATH PENALTY CASE

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

**IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

Earnest Stewart Daise,

Defendant.

**Indictment No.s: 2009-GS-07-2636, 2637,
2638, & 2639**

SUPPLEMENTAL MOTION TO SUPPRESS PHYSICAL EVIDENCE

Earnest Daise, through undersigned counsel, respectfully moves this Court to suppress certain potential evidence that includes all physical items recovered from the Defendant's person and from the residence at 43 Poppy Hill Road in the Grays Hill community of Burton, SC. This motion is based upon the Fourth Amendment to the United States Constitution and Article I, § 10 of the Constitution of the State of South Carolina.

The State seeks to block the Defendant's access to the courts and has requested that the Defendant be prevented from litigating his Fourth Amendment rights to be free from unlawful searches and seizures. See state's Response To Defendant's Motion to Suppress Physical Evidence, filed on December 5, 2012, and attached as Exhibit A.

The property at issue was seized pursuant to two (2) separate search warrants. See search warrants attached as Exhibits B and C. It appears that the warrants at issue were presented solely on their four corners and without any "off the record" oral

supplemental testimony from law enforcement. See e-mail from Sam Bauer, Esq., attached as Exhibit D.

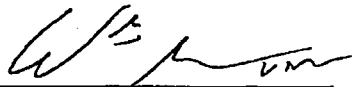
The Defendant will move to suppress all potential physical evidence seized pursuant to the search warrants based on the fact that the warrants are defective. This is based in part on the fact that each warrant was presented containing inaccurate and misleading information and material omissions. These issues will be born out through the testimony of the presenting officers.

CONCLUSION

The Defendant requests that he be allowed access to the courts, and that he be allowed to litigate his right to be free from unlawful searches and seizures. That Fourth Amendment right encompasses the Defendant's right to move to suppress evidence obtained unlawfully based on the fact that law enforcement officers drafted and presented defective subpoenas to the issuing magistrates.

DATED this 24th day of January, 2012.

Respectfully Submitted,



William McGuire
State Bar No. 9722
SCCID, Capital Trial Division
1330 Lady Street, Ste. 401
Columbia, SC 29201
803-734-7818

EXHIBIT

A

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT

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2012 DEC -5
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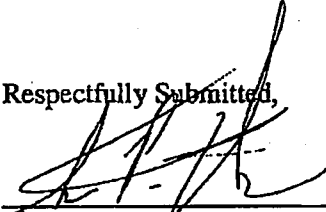
ence that in

Amendment will no longer suffice to justify the duplicative consumption of the trial court's time required by a suppression hearing." Id at 412.

RESPONSE

The State objects to Defendant's Motion to suppress physical evidence. Defendant fails to articulate specific factual and legal grounds to support his contention that certain physical evidence should be suppressed. In Defendant's motion, he merely alleges that evidence was obtained in violation of the Fourth Amendment. As such, per the Court's ruling in State v. Patton, Defendant's motion is insufficient and Defendant is not entitled to a suppression hearing.

Respectfully Submitted,



Sean P. Thornton
Deputy Solicitor, 14th Circuit

EXHIBIT

B

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SEARCH WARRANT

DATE NOVEMBER 16, 2009

OFFICER SGT. JOHN W. FOSKEY

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
122

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT SC

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Revised 11-13-10
March 14, 1979

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

THE PERSON OF ERNEST DAISE, BLACK MALE, DOB: _____, SSN: _____

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

CLOTHING BEING WORN BY ERNEST DAISE AT THE TIME OF HIS INTERVIEW AT THE BEAUFORT COUNTY SHERIFF'S
INVESTIGATIONS OFFICE AT 1925 DUKE STREET IN BEAUFORT, SC, CLOTHING TO INCLUDE A WHITE TANK TOP
SHIRT, BLUE JEAN PANTS AND A PAIR OF BLUE AND WHITE NIKE SHOES.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort, S.C.
NOVEMBER 16, 19 2009

[Signature]
Signature of Judge

(L.S.)

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
123

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BEAUFORT

Personally appeared before me, one SGT. JOHN W. FOSKEY
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

CLOTHING BEING WORN BY ERNEST DAISE AT THE TIME OF HIS INTERVIEW AT THE BEAUFORT COUNTYSHERIFF'S INVESTIGATIONS OFFICE AT 1925 DUKE STREET IN BEAUFORT SC. CLOTHING TO INCLUDE AWHITE TANK TOP SHIRT, BLUE JEAN PANTS AND A PAIR OF BLUE AND WHITE NIKE SHOES.DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDTHE PERSON OF ERNEST DAISE, BLACK MALE, DOBSSN:REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

THAT ON NOVEMBER 15, 2009 THREE PEOPLE WERE SHOT AT A RESIDENCE 20 PLAYER ROAD IN DALE WITHIN
BEAUFORT COUNTY SOUTH CAROLINA. TWO OF THE PEOPLE DIED AT THE SCENE. DURING THE INVESTIGATION
INFORMATION WAS REVEALED THAT ERNEST DAISE WAS THE POSSIBLE SHOOTER IN THIS INCIDENT. WITNESSES
PLACED THE SUBJECT AT THE SCENE AT THE TIME OF THE INCIDENT. THE SURVIVING VICTIM IS THE VICTIM'S
SON WHO TOLD EMS PERSONNEL THAT "HIS DADDY" ERNEST DAISE WAS THE ONE WHO SHOT HIM. A RED IN
COLOR SUBSTANCE WAS OBSERVED ON THE SUBJECTS CLOTHING AT THE TIME OF HIS INTERVIEW AND THE
SUBSTANCE APPEARS TO BE BLOOD.

Sworn to and Subscribed before me
this 16th day of November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant

Address 1925 DUKE ST. BEAUFORT, SCPhone 843-470-3214

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
124

RETURN

I received the attached Search Warrant November 16, 2009, and have executed it as follows:
On November 16, 2009 at 0625 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Ernest Daise

Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 White Tank Top Shirt
1 Pair Blue Jeans
1 Pair Nike Blue & White Shoes

This inventory was made in the presence of MSET JEFF Pandy + SLED agent JEFF Crooks
AND _____

I swear that the inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 23^d
DAY OF November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
125

EXHIBIT

C

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Beaufort

Personally appeared before me, one Sgt C. L. Wilson
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Evidence related to a murder, including, but not limited to: firearms, spent shell casings, live ammunition, cellular telephones,
letters, photographs, and other documents; and forensic evidence, including, but not limited to: blood, saliva, hair, fibers, other
bodily fluids, and any items containing such forensic evidence, such as clothing, rags, or towels.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The residence located at 43 Poppy Hill Rd in the Grays Hill community of Burton, SC. Said residence is described as a white
double- wide mobile home with green shutters and is surrounded by a wooden privacy fence. A mailbox at the end of the
driveway is marked with the number "43."

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Shortly before 7:00 PM on November 15, 2009, BCSO responded to 20 Player Rd, Dale, SC, regarding the report of three gunshot
victims inside the residence. Two of the victims, a woman (Jeanine Mullen), and her four-year-old son, were pronounced dead at the
scene; her two-year-old son also sustained a gunshot wound and was transported to the hospital. A witness reported that earlier in the
afternoon, Ernest Daise, who is Jeanine Mullen's boyfriend, was observed pulling into the driveway of 20 Player Rd in Ms. Mullen's
van, and getting out of the vehicle. Following the shooting incident, while being treated for his injuries, the two-year-old child said,
"Daddy did it." Ernest Daise is the child's father. Shortly after 2:00 AM on November 16, 2009, Ernest Daise was located at 43 Poppy
Hill Rd, Burton, SC, which is a residence he frequents. He was wearing blue jeans, on which a red stain that appeared to be dried blood
was observed just below the left front pocket opening. It is believed that based on the foregoing information, evidence of the murder
will be located at the premises to be searched.

Sworn to and Subscribed before me
this 16 day of November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant

Address 2001 Duke StBeaufort, SC 29902Phone 470-3213

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
127

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

SEARCH WARRANT

Form Approved by
U.S. Attorney General
Section 17-13-140
March 16, 1914

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Beaufort

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The residence located at 43 Poppy Hill Rd in the Grays Hill community of Burton, SC. Said residence is described as a white double-
wide mobile home with green shutters and is surrounded by a wooden privacy fence. A mailbox at the end of the driveway is marked
with the number "43."

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Evidence related to a murder, including, but not limited to: firearms, spent shell casings, live ammunition, cellular telephones, letters,
photographs, and other documents; and forensic evidence, including, but not limited to: blood, saliva, hair, fibers, other bodily fluids,
and any items containing such forensic evidence, such as clothing, rags, or towels.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort, S.C.
November 16, 2005 [Signature] (L.S.)
Signature of Judge

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
128

RETURN

I received the attached Search Warrant November 16, 2009, and have executed it as follows:

On November 16, 2009 at 5:05 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Asia Palmer

Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

See attached search warrant inventory.

This inventory was made in the presence of SSgt A. Viana

AND PFC A. Rice

I swear that the inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 23^d
DAY OF November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
129

SEARCH WARRANT INVENTORY

CASE NO.: 2009-1115-0557

PAGE: 1 OF 1

LOCATION: 43 Poppy Hill Rd, Burton, SC

DATE: 11-16-09

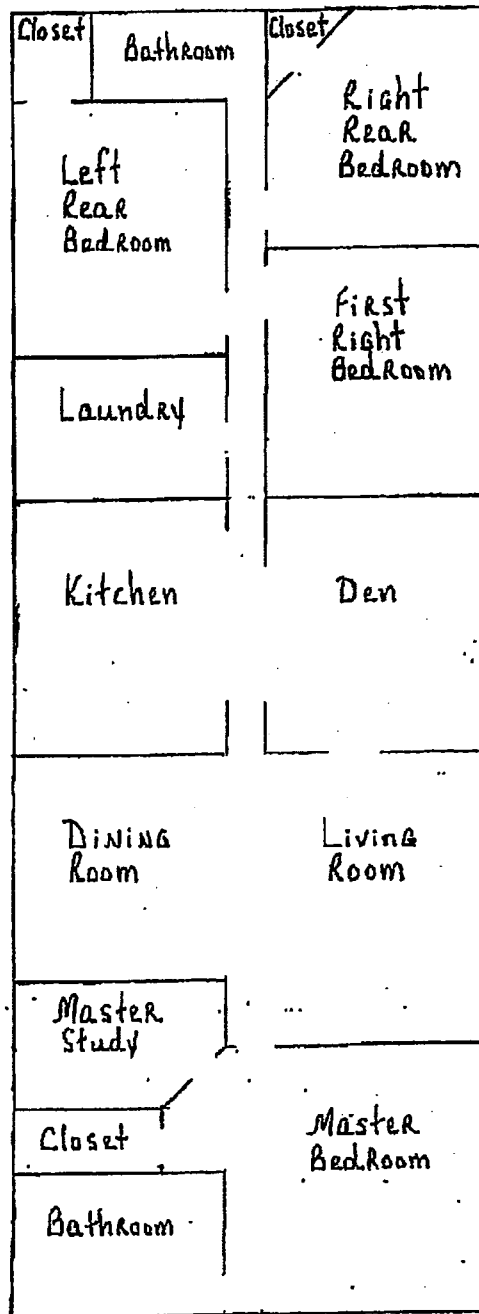
BEGIN: 0505 END: 0745

ITEM NO.	DESCRIPTION	LOCATION	LOCATED BY	TIME
1	Gray Hooded Sweatshirt	@ Rear BR	C. Wilson	0521
2	Plastic baggie w/ white rock substance	@ Rear BR under hoodie	C. Wilson	0521
3	Carputer key ring w/ 5 keys	@ Rear BR under hoodie	C. Wilson	0521
4	Two screws from red stain on door	@ Rear BR Door	C. Wilson	0554
5	\$3000 in @ \$1000 bundles (currency)	@ Rear BR in black vent	C. Wilson	0619
6	Ziploc Bag w/ green vegetable matter	@ Rear BR in cabinet	C. Wilson	0623
7	Manila envelope containing incident reports / indictments in the name of "Ernest Stuart Daise"	@ Rear BR on floor & list of	C. Wilson	0627
8	Palm Tree (Sprint) S/N #PUPE877	@ Rear BR on sofa	C. Wilson	0635
9	Blue Samsung (Verizon) Flip Phone	@ Rear BR on hands above head	C. Wilson	0637
10	Black Samsung (Verizon Mobile) Flip Phone	@ Rear BR on Bed	C. Wilson	0638
11	Box of 62 7.62x39mm rounds of ammunition in "Wolfe" box	@ Rear BR on closet shelf	C. Wilson	0641
12	One spent Winchester .25 S&W shell casing	MAR "weight room" on shelf	C. Wilson	0659
13	Ziploc Bag containing small amt of vegetable matter	MAR "weight room" in Nike box	C. Wilson	0702
14	One unspent 30-06 round	MAR Bathroom in drawers by sink	C. Wilson	0704
15	One unspent .223 round	MAR "weight room" on floor under stairs	C. Wilson	0708
16	One Black "Aals" digital scale with adapter (a/c)	@ Rear BR on floor	C. Wilson	0715
17	Palm Tree (Sprint) S/N #XPC8826	on top screw shelf in den	C. Wilson	0720

C. Wilson 11-16-09
at service

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
130



2009 1115 0557
Layout of Residence at
43 Poppy Hill Rd, Burton, SC
NOT DRAWN TO SCALE

Drawn by: Sgt C.L. Wilson

EXHIBIT

D

Natasha J. Holliday

From: Sam Bauer <sbauer@bauerandmetro.com>
Sent: Thursday, April 26, 2012 2:15 PM
To: Boyd Young; Casey Secor; Bill S. McGuire; Natasha J. Holliday
Cc: Sam Bauer; Amanda Miller
Subject: RE: subpoenas

Gang:

I have served the subpoenas and talked with the judges.
I have also gotten entire copies of the search warrant files.

Both judges say that there was no oral supplement to the sworn affidavit. In fact Judge Chase says he will never accept oral testimony to supplement an affidavit.

The contents of the search warrant files are being emailed to you by my paralegal, Amanda.

Sam
Samuel C. Bauer
BAUER & METRO, PC
P. O. Box 7965
Hilton Head, SC 29938
(843) 842-5297
(843) 842-6563 fax



DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

**IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA,

Plaintiff,

V.

EARNEST STEWART DAISE,

Defendant.

Indictment No. 2009-GS-07-2636,
2637, 2638, 2639

2013 JUN 10 PM 2:29
GS-07-2636
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

**MOTION IN LIMINE TO SUPPRESS
CERTAIN PHYSICAL EVIDENCE**

The Defendant, by and through his attorney, moves this Court to suppress certain physical evidence. The evidence at issue includes all drugs, guns, ammunition and cash found at the Defendant's residence at Poppy Hill Drive.

The evidence described above is not relevant to the instant charges. SCRE 402. Further, if any of this evidence was to be admitted, the danger of unfair prejudice to the Defendant outweighs any probative value this evidence might have. SCRCrimP 403(b).

Because a portion of this evidence is either contraband on its face, or associated with violence or drug dealing, possession of these items constitute evidence of prior and separate bad acts, this evidence should be suppressed pursuant to *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), its progeny, and Rule 404(b), SCRE.

Dated this 7th day of June, 2013.

Respectfully Submitted,



William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
(803)734-7818

DEATH PENALTY CASE

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

**IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

EARNEST STEWART DAISE,

Defendant.

**Indictment No. 2009-GS-07-2636,
2637, 2638, 2639**

**MOTION FOR A HEARING TO DETERMINE THAT CERTAIN PHOTOGRAPHIC
EVIDENCE SHOULD BE SUPPRESSED AS THE DANGER OF UNFAIR PREJUDICE
OUTWEIGHS THE PROBATIVE VALUE OF SUCH EVIDENCE**

Comes now, Earnest Daise, by and through his attorneys, and respectfully requests this Court to schedule a hearing and order that certain photographic evidence be suppressed by this Court. Specifically, this motion is directed towards the potential admission of crime scene and autopsy photographs, or videos.

The defendant requests that certain visual evidence be suppressed pursuant to SCRE 403, the due process clause of the Fourteenth Amendment to the United States Constitution, and Article 1, Section 3 of the Constitution of South Carolina.

WHEREFORE, DEFENDANT respectfully requests the Court:

- (a) order that a hearing be held to establish the existence of any evidence described herein;
- (b) order such evidence be suppressed;

(c) grant such other and further relief as this Court deems proper.

Dated this 18 day of June, 2013.

Respectfully Submitted,



William McGuire
SCCID – Capital Trial Division
1330 Lady St., Suite 401
Columbia, SC 29201

Counsel for Mr. Daise

DEATH PENALTY CASESTATE OF SOUTH CAROLINA
COUNTY OF BEAUFORTIN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

EARNEST STEWART DAISE,

Defendant.

Indictment No. 2009-GS-07-2636,
2637, 2638, 2639**MOTION *IN LIMINE* TO EXCLUDE
VICTIM IMPACT/CHARACTER EVIDENCE AT THE
GUILT/INNOCENCE PHASE OF THE TRIAL**

COMES NOW Earnest Daise, by and through undersigned counsel, and respectfully moves this Court pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 3 and of the Constitution of the State of South Carolina, Section 17-1-10 of the South Carolina Code of Criminal Procedure, and Rule 403 of the South Carolina Rules of Evidence, for an order prohibiting the prosecution from introducing victim impact/character evidence at the culpability phase of Mr. Daise's capital trial.

In support of this motion, Mr. Daise states as follows:

1. The State has announced its intention to seek the death penalty against Mr. Daise.

Trial is currently set for October 14, 2013.

2. "Victim impact evidence" is evidence regarding the victim's personal characteristics and the physical or psychological effect of the alleged crimes on victims or their families or friends and is not limited to the evidence as defined by that term in *Payne v. Tennessee*, 501 U.S. 808 (1991). Such evidence is clearly inadmissible at the guilt-innocence phase of the trial. Such

evidence does not make more or less probable any fact that is of consequence during the guilt/innocence phase of the trial and is highly prejudicial to the Accused, would thereby violate the provisions of Rule 403 of the South Carolina Rules of Evidence.

4. Testimony by witnesses regarding their opinions or characterizations of Mr. Daise or the appropriate sentence, and testimony or evidence that tends to measure the worth of the victim as compared to other members of society are also inadmissible and highly prejudicial at both the guilt-innocence phase and the penalty phase of the trial. *Humphries v. State*, 351 S.C. 362, 570 S.E.2d 160 (2002); *see also Booth v. Maryland*, 482 U.S. 496 (1987) and *Payne v. Tennessee*, 501 U.S. 808 (1991).

5. Mr. Daise accordingly requests that this Court order the State and its counsel, witnesses, and agents, to refrain from making any mention, reference, argument, or interrogation, either directly or indirectly, in any manner whatsoever to the evidence described above. In the alternative, Mr. Daise asks the Court to instruct the aforesaid individuals by appropriate order to refrain from making any such motion, reference, argument, or interrogation without first approaching the Bench and obtaining a ruling from the Court. The Court should further order that any argument as to the admissibility of any of the above evidence should be made outside of the presence of both prospective jurors and those jurors who are sworn to hear this case.

WHEREFORE, PREMISES CONSIDERED, Mr. Daise prays that this Motion be sustained and relief be granted as prayed for herein by appropriate Order of the Court.

Respectfully Submitted,

By:



William McGuire
SCCID – Capital Trial Division
1330 Lady St., Suite 401
Columbia, SC 29201

Counsel for Mr. Daise

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT)

INDICTMENT NO(S): 2009-GS-07-2636

STATE OF SOUTH CAROLINA)

2009-GS-07-2637

2009-GS-07-2638

2009-GS-07-2639

v.

State's Response to Motion #64

EARNEST S. DAISE,
Defendant

2013 JUL 17 4:5
BEAUFORT COUNTY
CLERK OF COURT
S.C.

RESPONSE TO DEFENDANT'S MOTION FOR A HEARING TO DETERMINE THAT CERTAIN PHOTOGRAPHIC EVIDENCE SHOULD BE SUPPRESSED AS THE DANGER OF UNFAIR PREJUDICE OUTWEIGHS THE PROBATIVE VALUE OF SUCH EVIDENCE

The Defendant requests a hearing be held to establish the existence of any photographs or videos of the crime scene and autopsies and that such evidence be suppressed. The State objects to portions of Defendant's motion for the reasons set out below.

LEGAL STANDARD

The State has no objection to the Defendant's request that a hearing be held to determine the existence of autopsy and crime scene photographs. However, the State objects to the Defendant's request that the court order that such evidence be suppressed. Our Courts have repeatedly held that the admission of autopsy and crime scene photographs is admissible under SCRE 403. In State v Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997), the court admitted several crime scene photographs showing the crime scene and the position of the victims body, finding that they were not prejudicial or inflammatory, and accurately represented the crime scene. The court found both crime scene and autopsy photos admissible in State v Johnson, 338 S.C. 114, 129-30, 525 S.E.2d 519, 527 (2000). The

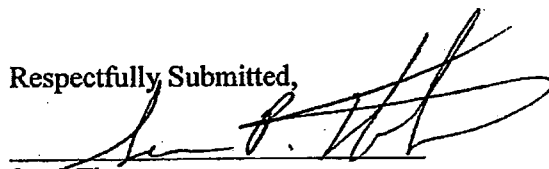
court stated that the prejudicial effect of the photographs did not outweigh the probative value because the photos illustrated the circumstances of the crime and nature of the Victim's injuries. Id.

In the instant case, both the crime scene and autopsy photographs are probative in that they show the crime scene as it appeared at the arrival of emergency personnel and the nature of the Victims' injuries.

RESPONSE

The State does not object to the motion in that it has no objection that a hearing be held to determine the existence of crime scene and autopsy photographic evidence. For the reasons previously stated, the State objects to the Defendant's motion to suppress crime scene and autopsy photographs or video.

Respectfully Submitted,



Sean Thornton
Deputy Solicitor
14th Circuit Solicitor's Office
P.O. Box 1880
Bluffton, SC 29910

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT)

STATE OF SOUTH CAROLINA)

v.)

EARNEST S. DAISE,
Defendant)

INDICTMENT NO(S): 2009-GS-07-2636

2009-GS-07-2637

2009-GS-07-2638

2009-GS-07-2639

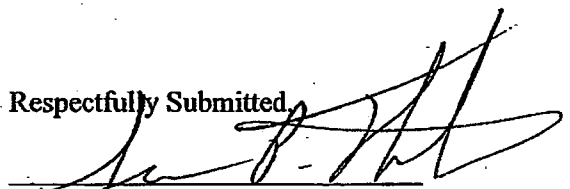
State's Response to Motion #53

2013 JUL 17 PM 4:14
BEAUFORT COUNTY
CLERK OF COURT

**RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE VICTIM
IMPACT/CHARACTER EVIDENCE AT THE GUILT/INNOCENCE PHASE OF TRIAL**

The Defendant requests this Court order the State and its counsel, witnesses, and agents, to refrain from making any mention, reference, argument, or interrogation, either directly or indirectly, in any manner whatsoever to victim impact and character evidence at the culpability phase of Defendant's trial. The State does not object to Defendant's motion to exclude victim impact and character evidence from the guilty/innocence phase of the trial as it is in accordance with State law.

Respectfully Submitted,


Sean Thornton
Deputy Solicitor
14th Circuit Solicitor's Office
P.O. Box 1880
Bluffton, SC 29910

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY BEAUFORT
SOUTH CAROLINA V. EARNEST STEWART DAISE		CASE NO. 2009-GS-07-2636, 2637, 2638, 2639
		SUBPOENA FOR ☒ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: Records Custodian SC Commission on Prosecution Coordination 1401 Main Street, Ste. 825 Columbia, SC 29201-2831		
☒ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Returnable upon receipt or if not received by ~~09:00 a.m.~~ then, please bring documents to Beaufort County Courthouse General Sessions Court 102 Ribaut Road Beaufort, SC 29902	COURTROOM Judge Carmen Mullen	DATE AND TIME ~~September 20, 2013~~ Oct. 9, 2013 9:00 a.m.
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S) All documents regarding jury selection, including but not limited to training documents, training agendas, manuals, policy statements or advisements, correspondence with current or former prosecutors and circuit court judges.		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
Jeri Ann Roseneau CLERK OF COURT POST OFFICE DRAWER 1128 BEAUFORT, SC 29901		DATE
(BY) DEPUTY CLERK <i>Bunda P. Shivers</i>		<i>Sept 17, 2013</i>
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS William S. McGuire, Chief Attorney SCCID-Capital Trial Division 1330 Lady St., Ste 401 Columbia, SC 29201

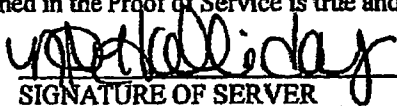
Oct.
1st
2013
H

SCCA 253 (JULY 1, 1993)

PROOF OF SERVICE

SERVED	DATE 9-18-13	PLACE SC Commission on Procreation
SERVED ON (PRINT NAME) DAVID ROSS		MANNER OF SERVICE by e-mail
SERVED BY (PRINT NAME) Natasha Holliday		TITLE Paralegal

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.	
Executed on September 18, 13	 SIGNATURE OF SERVER
	80010 1330 Lady St. ADDRESS OF SERVER Ste. 401 Coh, S. 29201

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
) Case Number: 2009-GS-07-2636, 2637,
2638, 2639

State of South Carolina,

Plaintiff,

v.

Earnest Stewart Daise,

Defendant.

**NOTICE OF MOTION AND
MOTION TO QUASH SUBPOENA**

2013 OCT -7 AM 8:29
CLERK OF COURT
BEAU

TO: WILLIAM S. MCGUIRE, ESQUIRE, ATTORNEY FOR DEFENDANT

COMES NOW the South Carolina Commission on Prosecution Coordination (hereafter "Commission"), by and through the undersigned counsel, who hereby moves (1) to quash the subpoena (copy attached) commanding the Commission to produce certain documents and (2) for a protective order preventing further attempts of obtaining the same. The grounds for this motion are set forth below:

1. The subpoena *duces tecum* served upon the Commission commands the presence of a member of the Commission to appear in court and the production of "[a]ll documents regarding jury selection, including but not limited to training documents, training agendas, manuals, policy statements or advisements, correspondence with current or former prosecutors and circuit court judges."

2. Neither the Commission nor any of its employees are fact witnesses to the events giving rise to the criminal case against Defendant.

3. "There is no general constitutional right to discovery in a criminal case." *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S. Ct. 837 (1977). Any right of a criminal defendant is derived from the federal and state constitutions, statutes, and court rules. *Id.*;

U.S. v. Ruiz, 536 U.S. 622, 122 S. Ct. 2450 (2002); *State v. Childs*, 299 S.C. 471, 385 S.E.2d 839 (1989); *State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997).

4. To protect the right of criminal defendants to fair and impartial trials, both the federal and state constitutions guarantee certain rights. Chief among them is the right to present witnesses and evidence in favor of the defendant. Article I, Section 14, of the South Carolina Constitution provides

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; *to have compulsory process for obtaining witnesses in his favor*, and to be fully heard in his defense by himself or by his counsel or by both.

(Emphasis added.) This constitutional right of a criminal defendant to compulsory process for obtaining witnesses has been affirmed by the South Carolina Legislature. See S.C. Code Ann. §§17-23-60 ("Every person accused shall, at his trial, be allowed to be heard by counsel, may defend himself and shall have a right to produce witnesses and proofs in his favor and to meet the witnesses produced against him face to face."); and 19-7-60 ("In all criminal prosecutions the accused shall have compulsory process for obtaining witnesses in his favor. The compulsory process shall be in misdemeanors a subpoena under the official signature of the clerk of the court or other judicial officer. Such subpoena or a copy thereof shall be served upon the witness a reasonable time before such witness is required to attend court. For any disobedience to such subpoena the court may punish for contempt."). See also Rule 13 (a), SCRCrimP.

The right to the production and presentation of witnesses and evidence – both constitutional and statutory – is not absolute. *State v. Lyles*, 379 S.C. 328, 665 S.E.2d

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#2 of 5

201 (Ct. App. 2008). It is subject to rules of relevancy, materiality, and admissibility. *See State v. Pope*, 78 S.C. 264, 58 S.E. 815 (1907); *State v. Lyles*, *supra*.

In order to obtain court-ordered compulsory process, the defendant must be able to establish that the person against whom the compulsory process is sought – and, by analogy, the evidence that person is to be compelled to present – will be favorable to the defendant and material. *See State v. Pope*, 78 S.C. 264, 58 S.E. 815 (1907). *See also In the Matter of Hammer*, 395 S.C. 385, 718 S.E.2d 442 (2011) (disciplinary case in which an attorney's act of subpoenaing a witness in a civil case who was not a witness to the underlying event without being able to explain how the witness' testimony was "pertinent" to the case formed one basis for finding a violation of the Rules of Professional Conduct); *State v. Myers*, 359 S.C. 40, 596 S.E.2d 488, 492-493 (2004) (Supreme Court upheld trial court's denial of access to defendant to letter because letter contained nothing of relevance to the issues in the case).

5. This case is a pending criminal case that has not yet been tried. The Commission has been subpoenaed to appear in court during pre-trial hearings.

6. The subpoena commands production of "[a]ll documents regarding jury selection, including but not limited to training documents, training agendas, manuals, policy statements or advisements, correspondence with current or former prosecutors and circuit court judges." This request is not limited in its scope, *i.e.*, there is no limitation by time, by specific person, by author, by training attendee, etc. As such, it is overbroad, and it should be quashed.

7. Rule 5(a)(2), SCRCrimP, exempts from discovery work product, or "internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case...."

The subpoena commands production of "[a]ll documents regarding jury selection, including but not limited to training documents, training agendas, manuals, policy statements or advisements, correspondence with current or former prosecutors and circuit court judges." To the extent that any attorney working for the Commission advises or corresponds with prosecutors about legal issues involved in the prosecutors' cases, such communication would be protected by the work product doctrine. The subpoena thus purports to require disclosure of privileged or otherwise protected matters, and should be quashed. See *State v. Myers*, 359 S.C. 40, 596 S.E.2d 488, 492-493 (2004) (Supreme Court upheld trial court's denial of access to defendant to letter because letter contained communication between the Solicitor's Office and police department about the specific case and was thus protected by the work product doctrine)

8. It appears from the face of the subpoena that the requested documents and materials are wholly unrelated, immaterial, and irrelevant to the underlying criminal action (*i.e.*, unrelated and irrelevant to either the issue of Defendant's guilt or innocence). As such, they are beyond the scope of discovery allowed under a subpoena. See *Oncology and Hematology Associates of S.C., LLC v. South Carolina Dept. of Health and Environmental Control*, 387 S.C. 380, 692 S.E.2d 920 (2010). Because the information sought is not remotely relevant to the resolution of an issue involved in this matter, this Court should quash the improper subpoena served upon the South Carolina Commission on Prosecution Coordination.

The South Carolina Commission on Prosecution Coordination further reserves any and all immunities and privileges that may apply to the subpoena or to any testimony of any kind that may be sought in connection with this matter.

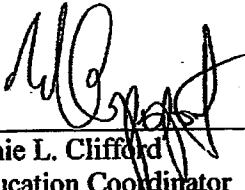
Therefore, based on the foregoing, any additional memoranda that may be submitted in

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#4 of 5

this matter, and any arguments that may be advanced at the hearing on this matter; the South Carolina Commission on Prosecution Coordination hereby requests the following relief:

1. that the attached subpoena be quashed in its entirety;
2. that this Court issue a protective order preventing further attempts to secure documents and materials that are outside the scope of discovery and documents and materials that are exempt from disclosure under South Carolina law;
3. that this Court order the defense to cover the Commission's cost and expenses related to this subpoena; and
4. for such other and further relief that the court deems just and proper in this matter.

Respectfully submitted,

BY: 

Amie L. Clifford
Education Coordinator

N. Mark Rapoport
Staff Attorney

S.C. Commission on Prosecution Coordination
Post Office Box 11561
Columbia, South Carolina 29211
Phone: (803) 343-0765
Fax: (803) 343-0766
Email: aclifford@cpc.sc.gov
South Carolina Bar Number:
Clifford: 1285
Rapoport: 4635

ATTORNEY FOR THE SOUTH CAROLINA
COMMISSION ON PROSECUTION
COORDINATION

Columbia, South Carolina
October 4, 2013

M055869
M055870
M055872
M055850
M055851

DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,
Plaintiff,
v.
EARNEST S. DAISE,
Defendant.

)
)
)
) Ind. Nos: 2009-GS-07-2636, 2009-GS-07-
) 2637, 2009-GS-07-2639, 2009-GS-07-2594,
) 2009-GS-07-2595
)
)
)
)

2013 OCT 31 PM 5:52
BEAUFORT COUNTY
CLERK OF COURT

MOTION FOR NEW TRIAL

Comes now, Earnest S. Daise, through undersigned counsel, and respectfully moves this Court for a new trial. The Defendant was sentenced on Wednesday, October 23, 2013, and on that date was granted ten (10) days within which to file post trial motions.

The Defendant moves for a new trial based on the lack of substantial circumstantial evidence in the prosecution's case in chief at the guilt/innocence phase, and the totality of the evidence at the close of the Defendant's case in chief at the guilt/innocence phase of the Defendant's capital trial. The Defendant bases his motion for a new trial on all objections and motions made *in limine*, and during the guilt/innocence phase of this death penalty trial. Further, Defendant renews his motions for directed verdict of acquittal made at the close of the State's case-in-chief and at the close of the Defendant's case-in-chief.

Respectfully Submitted,



10/28/13

William Sean McGuire

Casey M. Secor

Attorneys, Capital Trial Division

SC Commission on Indigent Defense

1330 Lady Street, Suite 401

Columbia, SC 29201

(803)734-7818

T. Micah Leddy

The Leddy Law Firm, LLC

2008 Lincoln Street

Columbia, SC 29201

Counsel for Mr. Daise