

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

Alison Renee Lee, Circuit Court Judge

VOLUME I OF V

RECEIVED

JUN 20 2018

SC SUPREME COURT

ROBERT CANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002143

A P P E N D I X

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STATE'S EXHIBIT # 113 - # 119 (PHOTOS)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

State of South Carolina,

Respondent,

V.

Robert L. Cannon, III

Appellant.

RECORD ON APPEAL
Volume One

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF KERSHAW

COURT OF GENERAL SESSIONS

3
 4 STATE OF SOUTH CAROLINA

5 -vs-

TRANSCRIPT OF RECORD

6 CHRISTOPHER WHITEHEAD,
 7 ROBERT CANNON, and
 DERRICK McDONALD,

07-GS-28-19, et al

8 Defendants.

9

10 May 5, 2008
 11 Camden, South Carolina

12 B E F O R E:

13 HONORABLE G. THOMAS COOPER, JR., Judge; and a jury.

14

15 A P P E A R A N C E S:

16 JOHN P. MEADORS, Deputy Solicitor
 17 JOANNA A. McDUFFIE, Asst. Solicitor
 RONALD W. MOAK, Asst. Solicitor
 Attorneys for the State

18 NEIL J. RILEY, Public Defender
 19 DAVID P. REUWER, Asst. Public Defender
 Attorneys for the Defendant Whitehead

20 JOSHUA S. KENDRICK, Esquire
 21 Attorney for the Defendant Cannon

22 JAMES MARCUS WHITLARK, Esquire
 23 NATHAN J. SHELDON, Esquire
 Attorneys for the Defendant McDonald

24

25 L. COCONUT PANTSARI, R.P.R.
 Circuit Court Reporter

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Date: 5/5/08County: Kershaw

VOIR DIRE

Case No: 07-GS-28-0019, et al Judge: CooperPl./State: State State/Pl's. Atty: J. MeadorsDefendant: Christopher Whitehead Defense Atty: N. Riley, J. Kendrick
Robert Cannon & Derrick McDonald M WhitlarkCourt Reporter: Pontsari

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
194	Rosa M. Seawright	F	B				✓①
215	Paula H. Swails	F	W				✓②
129	Nancy E. Martinich	F	W			✓①	
77	Cheryl E. Gifford	F	W			✓②	
257	Leah R. Lacroix	F	W				✓③
226	Todd	F	W	✓①			
212	Barbara A. Stewart	F	B			✓③	
196	Carmen M. Shrader	F	W		✓①		
174	Potts	(excused)					
9	Coleen A. Beaty	F	W				✓④
125	Timothy R. Maloney	M	W			✓④	
238	Corey W. Way	F	W			✓⑤	
163	Lisa H. Owens	F	W			✓⑥	
236	Michelle B. Watkins	F	W				✓⑤
110	Claude F. Jones	M	W				✓⑥
179	Amira S. Reames	F	B		✓②		
26	Sheila T. Brown	F	B				✓⑦
34	Josanne Canty	F	B			✓⑦	

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 5/5/08County: Kershaw

VOIR DIRE

Case No: 07-GS-28-0019, et alJudge: CooperPl./State: StateState/Pl's. Atty: MeadorsDefendant: Whitehead, Cannon, &
Mc DonaldDefense Atty: Riley, Kendrick, &
WhitlarkCourt Reporter: Pontzari

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Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
103	Joan G. Horton	F	W			✓(8)	
8	Stanley G. Baker	M	W			✓(9)	
79	James A. Given	M	W				✓(8)
208	George P. Stanikus	M	W			✓(10)	
130	Stephen J. Marvin	M	W				✓(9)
41	Olivia C. Caudill	F	W			✓(11)	
75	Leonard C. Gantt	M	W			✓(12)	
171	Charles L. Pinkerton	M	W				✓(10)
59	Mauricio De la Torre	M	W		✓(3)		
185	John G. Richards	M	W			✓(13)	
149	Clyde J. Moseley	M	W			✓(14)	
233	Michael B. Ware	M	W				✓(11)
161	Adam S. Osborn	M	W			✓(15)	
242	Lanny R. Williams	M	M		✓(4)		
144	Frank M. Miranda	M	H			✓(16)	
52	Susan R. Cox	F	W				✓(12)
Alternates							
213	Hubert T. Stokes, Jr	M	W			✓(1)	

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 5/5/08

County: Kershaw

VOIR DIRE

Case No: 07-GS-28-0019, et al

Judge: Cooper

Pl./State: State

State/Pl's. Atty: Meadors

Defendant: Whitehead, Cannon, E
McDonald

Defense Atty: Riley, Hendrick, & Whitlark

Court Reporter: Pontari

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[illegible]

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 (The following proceedings were reported on
2 May 5, 2008).

3 THE COURT: Yes, sir.

4 MR. WHITLARK: Your Honor, if I could point
5 something out to the Court before we get started here
6 today. We do not have the witness, the jailhouse
7 confession witness. He is represented by a lawyer in
8 the Public Defender's Office.

9 Of course, our lead attorney for Mr. Whitehead
10 is also in that office. For purposes of future P.C.R.s
11 and so forth, I note that they did not conflict out on
12 this. I just wanted to bring that to the Court's
13 attention.

14 THE COURT: They did?

15 MR. WHITLARK: They did not. That's what I am
16 pointing out to you before we get started if something
17 happens on that.

18 (Pause).

19 THE COURT: Just as a matter of security, all
20 Defendants at the present are secured with belly chains
21 and leg irons. I have just inquired of the security
22 forces here, and it's their request that the belly
23 chains and handcuffs be removed at such time as the jury
24 is present in the courtroom, but the leg irons will not
25 be.

1 So unless I hear some other objection, that is
2 the way we will proceed from a security standpoint. Any
3 objection?

4 MR. KENDRICK: I got it first. Yes, sir, Your
5 Honor, I will object to them having chains on while the
6 jury is in here.

7 THE COURT: What?

8 MR. KENDRICK: I would object to my client
9 being shackled while the jury is in here.

10 THE COURT: I said they are not going to be.

11 MR. KENDRICK: I thought you just said that
12 they would have the leg chains still on.

13 THE COURT: The leg irons, but not the cuffs.

14 MR. RILEY: That will be obvious to the
15 jurors, Judge.

16 THE COURT: Not necessarily.

17 MR. KENDRICK: They will be able to see it,
18 Your Honor, and hear it. It makes our clients look that
19 they are dangerous.

20 THE COURT: No, sir. They will not be moved
21 while the jury is in here. In other words, they are not
22 going to be brought in after the jury is here. All
23 Defendants will be seated at such time as the jury is in
24 the courtroom.

25 MR. KENDRICK: For the record, Your Honor, I

1 still object. If something were to happen in the middle
2 of the trial, we would have to ask for a mistrial.

3 THE COURT: That's fine. You can ask for a
4 mistrial.

5 MR. KENDRICK: Thank you, Judge.

6 MR. RILEY: I would like to record my
7 objection also. From the jury box they can clearly see
8 the feet and ankles of these Defendants.

9 THE COURT: Well, I'd suggest A., that they
10 keep their feet and ankles somewhat underneath them, but
11 if necessary, I will get a screen and put it on the
12 tables.

13 MR. KENDRICK: I would ask that we go ahead
14 and do that.

15 THE COURT: Just have a seat. We have other
16 things we are going to do. The jury is not -- it's not
17 going to be until tomorrow when the jury appears at the
18 same time as your clients.

19 MR. WHITLARK: Your Honor, can I put on the
20 record that I would object to it also because these men
21 are presumed innocent. We know they have been denied
22 bond for 16 months.

23 It looks like there has been a presumption by
24 the officials or whatever that they are guilty for sure.
25 So I object to it on that grounds.

1 THE COURT: Thank you very much. Solicitor,
2 call your cases.

3 MR. MEADORS: If it pleases, Your Honor. At
4 this time the State would call the case of Kershaw
5 County true bill indictment, 2007-GS-28-22, the State
6 versus Christopher Ryan Whitehead, an indictment for
7 murder.

8 2007-GS-28-0019, the State of South Carolina
9 versus Christopher Whitehead, an indictment for burglary
10 in the first degree. The Defendant Christopher
11 Whitehead is here with this attorneys, Mr. Neil Riley
12 and Mr. David Reuwer.

13 THE COURT: Just one minute. I have got two
14 stapled-together indictments, one of which is signed and
15 one of which is unsigned for Christopher Whitehead.

16 MR. MEADORS: We took it to back to the grand
17 jury because there inadvertently wasn't a stamp. So
18 that's the amended one, but it should say on the front
19 the one I read out. The signature is on that one.

20 THE COURT: It's been amended.

21 MR. MEADORS: Yes, sir.

22 THE COURT: Are you aware of that, Mr. Riley?

23 MR. RILEY: Judge, could you repeat that
24 please?

25 THE COURT: I said that there was a murder

1 indictment issued against Mr. Christopher Ryan Whitehead
2 February 7, 2007.

3 MR. RILEY: And then they obtained an amended
4 indictment.

5 THE COURT: Then they amended one with the
6 signature of the Solicitor on it on February 7, 2008. I
7 just asked if you were aware of that.

8 MR. RILEY: Yes, sir.

9 THE COURT: All right. Thank you.

10 MR. MEADORS: May it please the Court.
11 2007-GS-28-0015, the State versus Derrick McDonald,
12 indictment for murder.

13 2007-GS-28-0016, the State versus Derrick
14 McDonald, indictment for burglary in the first degree.
15 Mr. McDonald is present and here with his attorney,
16 Mr. Mark Whitlark and Nathan Sheldon.

17 Finally, Your Honor, the State of South
18 Carolina versus Robert Cannon, Indictment
19 2007-GS-28-0018, an indictment for murder.

20 2007-GS-28-0017, the State of South Carolina
21 versus Robert Cannon, indictment for burglary first.
22 The Defendant Robert Cannon is in the courtroom with his
23 attorney, Mr. Joshua Kendrick. The State is ready to
24 proceed, Your Honor.

25 THE COURT: Any matters of a pretrial nature

1 that need to be heard prior to the impanelment of the
2 jury?

3 MR. WHITLARK: May it please the Court, Your
4 Honor.

5 THE COURT: Yes, sir.

6 MR. WHITLARK: Your Honor, we filed a
7 suppression hearing and a Jackson v. Denno motion in
8 this case.

9 THE COURT: You did?

10 MR. WHITLARK: Yes, sir.

11 THE COURT: Well, let me get it.

12 MR. WHITLARK: Also, Your Honor we have a
13 pending motion to change venue.

14 THE COURT: Yes, sir, I will hear that at a
15 later time.

16 MR. WHITLARK: Yes, sir.

17 THE COURT: Mr. Whitlark, I see in the file a
18 suppression motion that you identified and also it looks
19 like a Rule 5 motion.

20 MR. WHITLARK: Yes, sir.

21 THE COURT: I assume that has been complied
22 with.

23 MR. WHITLARK: No, sir.

24 THE COURT: It has not?

25 MR. WHITLARK: No. We asked for the burglary

1 file on the decedent, Mr. Zock, and they said they can't
2 locate it. It's a very important item of evidence in
3 this case.

4 THE COURT: Evidence?

5 MR. WHITLARK: Yes, sir, the burglary file on
6 the decedent. He was out on bond for a burglary
7 committed about 60 or 70 days before his death, a
8 burglary and armed robbery. I have asked to see that
9 file. I brought it to the Court's attention last week
10 when we were together over in Richland County.

11 THE COURT: And now we are on the record.

12 MR. WHITLARK: Yes, sir. And that's a file
13 they said they can't locate, and I was informed of that
14 by Investigator Catoe. We are very interested in seeing
15 that information, Your Honor.

16 THE COURT: We will take that up.

17 MR. WHITLARK: Yes, sir.

18 THE COURT: I will hear you fully on that at
19 the appropriate time.

20 MR. MEADORS: Your Honor, I will look at the
21 file. I went to that meeting last week, but that has no
22 relevance to this case whatsoever.

23 THE COURT: Regardless, if he is asking for
24 it, I would like to at least know if it's available and
25 know what it contains, what he is referring to. I have

1 no idea what he is referring to.

2 Let's proceed. This is in relation to
3 Mr. McDonald only? Is that the only matter?

4 MR. KENDRICK: Your Honor, I also have the
5 same motions. I haven't filed it in writing, but I
6 think the solicitor is aware that I am going to
7 challenge the statement. So I don't know how you want
8 to handle it from a judicial point of view.

9 THE COURT: We will just get started.

10 MR. KENDRICK: Yes, sir.

11 THE COURT: So on behalf of Robert Cannon, you
12 are also moving to suppress any statements given to law
13 enforcement; is that correct?

14 MR. KENDRICK: Yes, Your Honor. Also I don't
15 know how you want to do this. There are some other
16 motions out there. Do you just want to take these one
17 at a time?

18 THE COURT: I don't know what they are.
19 Mr. Whitlark has filed his motions.

20 MR. KENDRICK: Yes, sir, Your Honor. There's
21 going to be other pretrial matters. I can tell you now
22 what I anticipate us having to talk about or we can go
23 through them one by one, however Your Honor wants to do
24 it.

25 THE COURT: Have you told them?

1 MR. KENDRICK: I think they are aware of them.
2 One of the major ones is we will have a Bruton issue
3 because we have three codefendants. I think that needs
4 to be cleared up before we start.

5 THE COURT: I think we all can assume there
6 will be Bruton issues.

7 MR. KENDRICK: Your Honor, I think if you look
8 at the statements, how they will be redacted, there's a
9 huge problem. It doesn't look like there is a good way
10 to do that.

11 THE COURT: Y'all haven't talked about that?

12 MR. MEADORS: Your Honor, I have got a way to
13 do it. It's not problem at all as far as I'm concerned.

14 THE COURT: See there. Have you seen the
15 proposed redaction?

16 MR. KENDRICK: I have not seen the proposed
17 redaction.

18 THE COURT: Maybe you need to look at it, and
19 it may not be a problem.

20 MR. WHITLARK: We have our own samples of the
21 redactions, Your Honor, that we would like to submit to
22 the Court.

23 THE COURT: Wait a minute. Wait a minute..
24 One at the time.

25 MR. WHITLARK: Sorry, Your Honor.

1 MR. KENDRICK: I will see what they have, Your
2 Honor. That's fine. I have tried to redact the
3 statements myself and don't see a good way to do it. If
4 the State -- I will certainly be happy to look at what
5 they have got.

6 THE COURT: Certainly. And as long as we get
7 it done by 2:00 o'clock, we'll all be fine. So you have
8 got a Bruton issue?

9 MR. KENDRICK: Yes, sir.

10 THE COURT: What else?

11 MR. KENDRICK: In addition, Your Honor, I was
12 told -- I guess this started on Wednesday -- that there
13 was somebody who is now testifying against my client
14 from inside the jail.

15 I have just been told this morning the nature
16 of his testimony. I would move to suppress that, just
17 based on what I have been told by the solicitor that the
18 witness won't be credible or competent to testify. So I
19 would ask the State to proffer his testimony before it
20 goes up in front of the jury.

21 THE COURT: All right. We'll do that. We
22 will proffer his testimony. What is his name?

23 MR. REUWER: I believe it's Chad Moore, Your
24 Honor.

25 THE COURT: Chad Moore?

1 MR. KENDRICK: Yes, sir, and that's the same
2 witness that Mr. Whitlark referred to that the Public
3 Defender's Office also represents. I think he came
4 forward or the information was obtained very late last
5 week, so we know very little about him, Judge.

6 THE COURT: What else? You have got Bruton,
7 Chad Moore testimony.

8 MR. KENDRICK: I believe that's it for me.

9 THE COURT: And Denno.

10 MR. KENDRICK: And Denno, yes, sir.

11 THE COURT: Mr. Riley.

12 MR. RILEY: Judge, I have filed a motion and
13 served it on Mr. Meadors, a motion to suppress a voice
14 identification.

15 THE COURT: Let me get it. It's a motion from
16 Mr. Riley.

17 Mr. Whitlark, I assume you have the same
18 concerns about Chad Moore; is that correct?

19 MR. WHITLARK: Yes, Your Honor.

20 THE COURT: All right. Thank you. Go ahead,
21 Mr. Riley. You have got the voice identification?

22 MR. RILEY: Yes, sir.

23 THE COURT: Tell me what was identified or who
24 did it.

25 MR. RILEY: The State proposes, as I

1 understand it, to call a witness by the name of Michael
2 Jenkins, who was incarcerated for a period of time at
3 the Kershaw County Detention Center and overheard --
4 allegedly overheard -- comments that my client made.
5 The State proposes to call him as to those --

6 THE COURT: Wait a minute. Was he in his
7 presence?

8 MR. RILEY: No, sir.

9 THE COURT: In an adjoining cell or something
10 like that?

11 MR. RILEY: In an adjoining cell. The speaker
12 was unknown to him at the time he heard these comments.

13 THE COURT: So this is not Chad Moore, this is
14 a different --

15 MR. RILEY: Yes, sir.

16 THE COURT: -- inmate.

17 MR. RILEY: Yes, sir.

18 THE COURT: Who allegedly overheard Whitehead
19 say something?

20 MR. RILEY: Yes, sir. And Whitehead wasn't
21 known to him and wasn't pointed out to him until some
22 subsequent time.

23 THE COURT: All right. Why can't we do that
24 in the form of a proffer?

25 MR. RILEY: Whatever suits you, Your Honor.

1 That's fine.

2 THE COURT: I think we would have to at least
3 proffer it to determine if it was reliable. Any other
4 motions on behalf of Whitehead?

5 MR. RILEY: No, sir.

6 THE COURT: Denno?

7 MR. RILEY: I'm sorry?

8 THE COURT: No Denno?

9 MR. RILEY: My client did not write out a
10 statement, sir, no.

11 MR. MEADORS: There may be -- when he is first
12 stopped, when Danny Catoe is looking for Derrick
13 McDonald, he comes in contact with Christopher
14 Whitehead. There was a general discussion, which we
15 will go over in camera, which they may want to object to
16 in a minute, but we will bring that out.

17 THE COURT: So he does have a statement,
18 although it's not recorded.

19 MR. MEADORS: Correct, just a brief oral
20 statement we'll go over in a minute and let Your Honor
21 make a decision on that. I'm sure they will object to
22 that.

23 MR. RILEY: Judge, what Mr. Meadors is
24 referring to, I have no idea what he is referring to.
25 None of the material I have been provided says anything

1 about any kind of statement.

2 MR. MEADORS: We will explain it to them.

3 It's in the notes, in the outtake of the notes.

4 THE COURT: In an outtake of the notes?

5 MR. MEADORS: He says he was basically hostile
6 and he is describing how he was hostile. It's very
7 short. We will do that right off the bat.

8 THE COURT: So you have no statements, no
9 Denno. How about this Chad Moore testimony? I don't
10 know if it implicates your client.

11 MR. RILEY: Judge, all I know is that just
12 last Friday I learned his name. Apparently it's another
13 voice identification witness as to Defendant Cannon.
14 Mr. Moore is currently represented by Jason Kirincich in
15 our office.

16 He is charged with armed robbery, and I can't
17 remember what else, but Mr. Kirincich is his current
18 lawyer on those charges. I believe that since the
19 robbery was a bank robbery, that the Federal Government
20 has the intention of indicting him in U.S. District
21 Court, but that hasn't been accomplished yet.

22 THE COURT: All right. Well, do you know if
23 Chad Moore implicates your client?

24 MR. RILEY: I have heard nothing that relates
25 to my client. I have heard that he relates only to

1 Defendant Cannon.

2 THE COURT: Solicitor, are you aware of the
3 motions? Do you understand?

4 MR. MEADORS: Some of them weren't filed, but
5 I anticipated all of them and are prepared to argue each
6 and every one of them, yes, sir.

7 THE COURT: Call your first witness on the
8 Denno issue.

9 MR. MEADORS: Yes, sir. Danny Catoe.

10 DANNY CATOE, being
11 first duly sworn, testified as follows:

12 CLERK: State your full name for the record.

13 THE WITNESS: Investigator Danny Catoe.

14 MR. MEADORS: May it please the Court.

15 IN CAMERA EXAMINATION

16 BY MR. MEADORS:

17 Q Good morning, Investigator.

18 A Good morning.

19 Q Investigator, were you the chief investigating
20 officer in this case?

21 A Yes, I was.

22 Q I am going to ask you questions now specifically
23 and directly related to the opportunity you had to
24 speak to each one of these Defendants. In leading
25 up to that, will you tell His Honor when you got

DANNY CATOE -- IN CAMERA -- MR. MEADORS

21

1 involved in this case?

2 A I was called to the scene back on December 13,
3 2006.

4 MR. RILEY: Judge, I can't hear the witness.

5 THE COURT: Speak into the microphone.

6 Mr. Riley, do you have somewhat of a hearing problem?

7 MR. RILEY: My hearing is less than perfect,
8 Judge.

9 THE COURT: Would you care to sit in the jury
10 box so you could hear this better?

11 MR. RILEY: If Your Honor would allow me.

12 THE COURT: Sure.

13 MR. RILEY: Thank you.

14 THE COURT: It just so happens you got the
15 last rung on the ladder down there.

16 (Pause).

17 BY MR. MEADORS:

18 Q What was the incident location that you responded
19 to, Investigator Catoe?

20 A It was on Ryan Lane in Elgin, Kershaw County.

21 THE COURT: This was 12/13/05 or '06?

22 THE WITNESS: '06.

23 BY MR. MEADORS:

24 Q And as a result of that, for these purposes the
25 body of Joshua Zock was found; correct?

- 1 A That's correct.
- 2 Q And the next day on December 14th, did you have an
- 3 occasion to talk with anybody?
- 4 A Yes, I did.
- 5 Q And going on to December 15th, did you have an
- 6 occasion to go to Sonic?
- 7 A Yes, I did.
- 8 Q On Hard Scrabble Road?
- 9 A Yes, I did.
- 10 Q Why did you go there?
- 11 A We went there to talk to some people that had been
- 12 acquaintances with the suspects and with the
- 13 victim's girlfriend.
- 14 Q And had you learned that information on the 14th?
- 15 A Yes, I had.
- 16 Q Specifically had you talked to Melissa Davey?
- 17 A That's correct.
- 18 Q And I think her father?
- 19 A That's correct.
- 20 Q As a result of that, you went to Sonic on the 15th?
- 21 A That's correct.
- 22 Q And who did you talk to at the Sonic on Hard
- 23 Scrabble Road on December 15, 2006?
- 24 A We spoke with -- she was the supervisor, Pat, and
- 25 we also spoke with Cecile.

- 1 Q Pat Heathcoe?
- 2 A That's correct.
- 3 Q And Cecile Trapp?
- 4 A That's correct.
- 5 Q And as a result of that, where did you go?
- 6 A As a result of that, we went to try and find
- 7 Derrick McDonald out on Boney Road.
- 8 Q Derrick McDonald on Boney Road?
- 9 A That's correct.
- 10 Q Who, if anybody, was going with you?
- 11 A Investigator George Marthers.
- 12 Q And did you have Derrick McDonald's address at that
- 13 point?
- 14 A Yes, I did.
- 15 Q What is his address? Is it on Boney Road?
- 16 A It's actually
- 17 Q And do you remember what, if anything, happened
- 18 when you were going to look for Derrick McDonald?
- 19 A At that time when we were a couple of driveways
- 20 away from Derrick McDonald's driveway, we actually
- 21 came across Christopher Whitehead.
- 22 Q And had his name already been brought to your
- 23 attention, Christopher Whitehead, prior to going
- 24 out to Boney Road looking for Derrick McDonald?
- 25 A Yes, he had.

- 1 Q And had you had the opportunity to get a picture of
2 him?
- 3 A Yes, I did.
- 4 Q How did you do that?
- 5 A I did that through a D.M.V. website that we use to
6 obtain D.L. photos and information.
- 7 Q What, if anything, did that tell you?
- 8 A It told me the address listed on his driver's
9 license. It give a picture of him, give his date
10 of birth, and it also showed his driver's license
11 was under suspension.
- 12 Q His driver's license was under suspension?
- 13 A Yes, sir.
- 14 Q Did you know that prior to coming in contact with
15 him?
- 16 A Yes, I did.
- 17 Q Tell the judge, you are out looking for Derrick
18 McDonald and you see Christopher Whitehead?
- 19 A I did.
- 20 Q Tell the judge how that happened.
- 21 A We were actually on Boney Road looking for the
22 specific address of Derrick McDonald. Just a few
23 driveways short of Derrick McDonald's actual
24 driveway, Christopher Whitehead met us on Boney
25 Road driving a light blue Honda.

- 1 Q And did you have an occasion to talk to him?
- 2 A Yes, I did.
- 3 Q How did that happen?
- 4 A He pulled into a driveway. He had slowed down and
- 5 pulled into a driveway. We backed up and turned
- 6 around and went back, and we stopped and talked
- 7 with him in the driveway that he had pulled into.
- 8 Q Did you recognize his face?
- 9 A I did.
- 10 Q From what?
- 11 A From the D.L. photo.
- 12 Q And how close were you to Derrick McDonald?
- 13 A Just a few driveways down.
- 14 Q And did you have any information that Christopher
- 15 Whitehead lived in that area?
- 16 A No, I didn't.
- 17 Q And what, if anything, happened then? Did you have
- 18 an occasion to talk to him? Tell the judge what
- 19 happened when you ran into Christopher Whitehead.
- 20 A Once he stopped I got out of my vehicle, and I
- 21 approached Mr. Whitehead. I told Mr. Whitehead
- 22 that I would like to talk with him. He asked me
- 23 about what, and I told him it was in reference to
- 24 the death of Joshua Zock.
- 25 Q And did he talk to you?

- 1 A No. He made one comment, and after that he didn't
2 wish to talk to me at all.
- 3 Q Tell the judge what the comment was.
- 4 A When I told him what it was about, he said -- and
5 pardon the expression -- he said, I don't know a
6 damn thing about that.
- 7 Q So you wanted to talk to him. He said, What about?
8 You said, About Joshua Zock?
- 9 A That's correct.
- 10 Q He said, I don't know a damn thing about it. Was
11 he in custody then?
- 12 A No, he was not.
- 13 Q Under arrest?
- 14 A No, he wasn't.
- 15 Q What did you do? You checked his driver's license
16 and saw he was under suspension? What did you do,
17 if anything?
- 18 A We then called our central dispatch to have them
19 notify Richland County to meet us over there
20 because we knew by the D.L. photo that we had
21 pulled that he was under suspension.
- 22 Q And did Richland County -- or did you hook up with
23 the Richland County officials?
- 24 A Yes, we did.
- 25 Q And approximately what time did you call Richland

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1 County Sheriff's Department?

2 A Approximately around 1:30.

3 Q And did they come -- they being the Richland County
4 Sheriff's Department -- come and arrest Christopher
5 Whitehead?

6 A Yes, they did.

7 Q And point him out to the judge if you can.

8 A He is sitting on the end in the blue sports coat
9 and white shirt.

10 MR. MEADORS: Next to Mr. Reuwer. We would
11 ask that the record reflect that.

12 THE COURT: The record will so reflect that
13 the witness identified the Defendant.

14 BY MR. MEADORS:

15 Q What happened? What did you do after that,
16 Investigator?

17 A After that I took a few photos of the vehicle, and
18 Richland County pretty much took care of
19 Mr. Whitehead and the process that they had to go
20 through with him.

21 THE COURT: For the D.U.S.?

22 THE WITNESS: For the D.U.S., yes, sir.

23 BY MR. MEADORS:

24 Q What did you do next?

25 A After that, after we cleared up from the incident

- 1 location with Mr. Whitehead, we then proceeded up
2 Boney Road to Mr. Derrick McDonald's residence.
- 3 Q And was anybody there at Boney Road at
4 Mr. McDonald's residence?
- 5 A No one was there at that time.
- 6 Q Still on the 15th of December, 2006?
- 7 A That's correct.
- 8 Q Mr. Whitehead has already gone with the Richland
9 County folks?
- 10 A That's correct.
- 11 Q What did you do after you did not find Mr. McDonald
12 on Boney Road?
- 13 A We then went back to the Sonic on Hard Scrabble.
- 14 Q And did you have an occasion to talk to anybody
15 else there?
- 16 A Yes, we spoke with Mr. Allen Brown.
- 17 Q Did you also speak with somebody named Molly
18 Waltemath?
- 19 A Molly and her brother Zach.
- 20 Q And did you have actually get a statement from
21 Mr. Brown?
- 22 A Yes, I did.
- 23 Q And as a result of that, did you have even more
24 information about the three of these folks being
25 together earlier in the week?

- 1 A Yes, I did.
- 2 Q What did you do next in the investigation?
- 3 A After I spoke with Mr. Brown and Molly, we then
- 4 went out to Mr. Robert -- or went back to
- 5 Mr. McDonald's residence on Boney Road.
- 6 Q So this is still -- first the 1:30 issue is
- 7 Christopher Whitehead, correct?
- 8 A That's correct.
- 9 Q And then we go to 12/15, and we are now at Robert
- 10 Cannon's house -- excuse me -- Derrick McDonald's
- 11 house?
- 12 A Derrick McDonald.
- 13 Q You had been there before, he wasn't there, you go
- 14 to Sonic, and you come back to Derrick McDonald's
- 15 house?
- 16 A That's correct.
- 17 Q About what time was this?
- 18 A It was somewhere around 5:00 o'clock.
- 19 Q Tell the judge what, if anything, happened there
- 20 and what specific address. Where were you?
- 21 A This was We went to the residence
- 22 there. At that time we found Mr. Derrick McDonald
- 23 at home, and I told Mr. McDonald I would like to
- 24 talk with him about a death of Mr. Joshua Zock that
- 25 occurred over in Kershaw County.

1 He said, Well, I don't know anything about any
2 death. We continued to briefly, briefly talk
3 there, and he advised me he would like to talk with
4 me further with his mother present.

5 Q Did he say anything else about Christopher Rust and
6 where he had been earlier in the week?

7 A Yes. When I asked him about where he was at that
8 night of this death, he advised me that he was at
9 the Sonic and that he was with a Christopher Rust
10 and that he had actually slept in Mr. Rust's car
11 from 10:30 to 11:30 that night.

12 Q And he gave you that time period?

13 A Yes, he did.

14 Q This is out at his residence on December 15th?

15 A That's correct.

16 Q And did he tell you anything else specifically
17 after he told you about where he slept in Chris'
18 Rust's car?

19 A He had just made a few comments.

20 Q Specifically if you will tell the judge what they
21 were for purposes of this hearing.

22 A He said that Christopher Whitehead was at the
23 Sonic. We had told him that this Christopher had
24 been arrested for driving under suspension down the
25 road. He said, Well, Christopher was at the Sonic,

1 and that Christopher -- the only thing he told him
2 was that he had to go make some moves.

3 Q Go make some moves?

4 A Go make some moves.

5 Q What else did he tell you?

6 A He also said that Robert, Robert Cannon, was also
7 at the Sonic that night, but he was picked up by
8 his brother.

9 Q And did you leave him a card if he wanted to get
10 back in touch with you?

11 A I did. I left him a card, and I told him to give
12 me a call or have his parents give me a call as
13 soon as they got home.

14 Q You said it a minute ago. Did you say this was at
15 five?

16 A This was somewhere around 5:00 o'clock.

17 Q Still on the 15th. That would be the first time
18 you talked to Derrick McDonald, correct?

19 A That's the first time, yes, sir.

20 Q Tell the judge, was Derrick McDonald at
21 5:00 o'clock on December 15, 2006, when you go back
22 to his residence, was he was under arrest?

23 A No, he was not.

24 Q Was he in custody in any way?

25 A No, he was not.

- 1 Q Was his freedom of movement -- did you try to keep
2 him from going somewhere?
- 3 A No, I did not.
- 4 Q As a matter of fact, did you just leave and left
5 him there?
- 6 A I did.
- 7 Q And he said he didn't want to talk to you anymore
8 right then?
- 9 A That's correct.
- 10 Q You left your card and said, Give me a call;
11 correct?
- 12 A That's correct.
- 13 Q Was anybody with you?
- 14 A Investigator Marthers.
- 15 Q George Marthers. So you had been to Sonic a couple
16 of times. You've now talked to McDonald. Tell the
17 judge, what do you do next?
- 18 A After we leave Mr. McDonald's house, we then go to
19 Mr. Robert Cannon's address.
- 20 Q Before I get there, the person that gave you this
21 oral statement here about being in Rust's car and
22 being at Sonic and putting Chris Whitehead and
23 Robert Cannon at Sonic, is that person in the
24 courtroom, Mr. Derrick McDonald?
- 25 A Yes, he is.

1 Q Where is he?

2 A He is sitting behind the attorneys in a gray sports
3 coat --

4 Q Behind Mr. Whitlark in the burgundy shirt?

5 A With a burgundy shirt.

6 MR. MEADORS: We would like the record to so
7 reflect.

8 THE COURT: The record will reflect that the
9 witness identified the Defendant McDonald.

10 BY MR. MEADORS:

11 Q You go to Robert Cannon's next?

12 A That's correct.

13 Q Tell the judge where Robert Cannon lived.

14 A Mr. Cannon's address was in
15 Columbia.

16 Q And who else is with you, if anybody?

17 A Investigator Marthers.

18 Q Please tell the judge, you are at Trowbridge Road,
19 what happens?

20 A We first come in contact with Mr. Cannon. We
21 briefly talked to Mr. Cannon, and he pretty much
22 gives us a statement as to what took place that
23 evening of the 13th -- actually the 12th.

24 Q Sir?

25 A On the 12th.

- 1 Q The 12th?
- 2 A Uh-huh. (Indicating affirmative response).
- 3 Q Of December 2006?
- 4 A That's correct.
- 5 Q Do you go inside Mr. Cannon's residence?
- 6 A Yes, I do.
- 7 Q Does Investigator Marthers go with you?
- 8 A Yes, he does.
- 9 Q Did you have an occasion to read him his Miranda
- 10 rights?
- 11 A Yes, I did.
- 12 Q Where were you specifically in his house -- I'm
- 13 referring to Mr. Robert Cannon's house -- when you
- 14 read him his Miranda rights?
- 15 A We were basically sitting in the living room. We
- 16 were just carrying on a normal conversation. It
- 17 was just normal.
- 18 Q And did you read him his rights?
- 19 A I did.
- 20 Q Tell the judge how you read him his rights.
- 21 A We have a statement of Miranda, a form that we use
- 22 at our department, and I took that out of my binder
- 23 and went over it with him.
- 24 MR. MEADORS: Your Honor, we have previously
- 25 just marked this for State's 1 for identification only.

1 I think everybody has got a copy.

2 THE COURT: It's the waiver?

3 MR. MEADORS: Yes, sir.

4 (State's Exhibit Number 1 is marked for
5 identification).

6 BY MR. MEADORS:

7 Q I am showing you State's 1, what has been marked
8 for I.D. only, is this the waiver you are talking
9 about?

10 A That's it.

11 Q Could you hold State's 1 and tell Your Honor
12 specifically and in detail, did you have occasion
13 to read Robert Cannon his rights on December 15,
14 2006?

15 A Yes, I did.

16 Q Tell the judge how you did it.

17 A I pretty much have the same system on all my forms.
18 I will go through and I will read one line. The
19 first line says, You have the right to remain
20 silent. After he acknowledges that he understands
21 that, I will initial it and circle my initials. I
22 will then go to the second line, which says,
23 Anything you say can and will be held against you
24 in a court of law.

25 Q So you read the first one to him?

- 1 A That's right.
- 2 Q The first being, You have the right to remain
3 silent?
- 4 A That's correct.
- 5 Q Did he indicate to you that he understood that?
- 6 A He did.
- 7 Q How?
- 8 A I would ask, Do you understand that, and he would
9 say yes.
- 10 Q When did you initial that you had done that?
- 11 A After he said yes.
- 12 Q What's the next right you read him?
- 13 A Anything you say can and will be held against you
14 in a court of law.
- 15 Q Did he indicate to you that he understood that?
- 16 A Yes, he did.
- 17 Q And did you sign that form that you had read it to
18 him and that he understood it?
- 19 A I initialed it and circled it.
- 20 Q What is the next right you read to him?
- 21 A You have the right to talk to a lawyer and have him
22 present with you while you are being questioned.
- 23 Q Did he say he understood that right?
- 24 A He did.
- 25 Q And did he understand it based on your training and

1 experience in being there at his house,
2 Investigator Catoe?

3 A Oh, yes.

4 Q And were his answers to you timely? Like if you
5 read him that right, did he respond, I understand
6 that?

7 A They were.

8 Q Did he appear to understand it?

9 A Yes.

10 Q What is the next right you read him?

11 A If you cannot afford to hire a lawyer, one will be
12 appointed to represent you before any questioning
13 if you wish.

14 Q And did he indicate to you in any way that he
15 understood that right?

16 A He did.

17 Q How so?

18 A He said yes.

19 Q He said he understood it?

20 A That's correct.

21 Q Did you then sign that you had read it and that he
22 understood it?

23 A I initialed it and circled it.

24 Q Do the next one.

25 A You can decide at any time to exercise these rights

- 1 and not answer any questions or make any
2 statements.
- 3 Q Did he indicate to you that he understood that?
- 4 A He did.
- 5 Q Did you initial it?
- 6 A And circled it, yes, sir.
- 7 Q Whose name, if anybody, is underneath those rights
8 as being the person that read those rights?
- 9 A My name.
- 10 Q You signed that?
- 11 A That's my signature.
- 12 Q Underneath that is what is known as the waiver of
13 rights. Did you have an occasion to read that to
14 Robert Cannon?
- 15 A I did.
- 16 Q Read it as you read it to him that night,
17 Investigator.
- 18 A This is to certify that I have read or have had
19 read to me the above statement of my rights. I
20 understand each of these rights, and having these
21 rights in mind, I waive them and willingly make a
22 statement. No pressure or threats have been made
23 to me and no pressure or coercion of any kind has
24 been used against me.
- 25 Q You read that to Robert Cannon?

- 1 A I did.
- 2 Q Did he indicate to you that he understood his
3 rights and wanted to waive his rights?
- 4 A Yes, he did.
- 5 Q And how did you indicate that you had read that to
6 him?
- 7 A I initialed beside it and circled my initials.
- 8 Q Underneath that is the waiver of rights. Whose
9 signature is there?
- 10 A I then told him there was a line. I made an X. and
11 he signed it.
- 12 Q Robert Cannon signed it?
- 13 A Robert Cannon signed it.
- 14 Q In your presence?
- 15 A In my presence.
- 16 Q Underneath that it has got a witness, who is that
17 witness?
- 18 A Investigator George Marthers.
- 19 Q And did he fill that out after you had read those
20 rights to the Defendant?
- 21 A Yes, he did.
- 22 Q You have been doing this awhile. At any time
23 during this process, did you threaten Robert
24 Cannon?
- 25 A Absolutely not.

- 1 Q Did you promise him anything or hold out any hope
2 of reward?
- 3 A No, I didn't.
- 4 Q Tell Judge Cooper, did he appear to be -- he,
5 Robert Cannon -- appear to be under the influence
6 of anything?
- 7 A No, he did not.
- 8 Q Any intoxicating substance and/or alcoholic
9 beverage?
- 10 A No.
- 11 Q Did he appear to understand your questions?
- 12 A Yes, he did.
- 13 Q Could you understand his answers, the actual words,
14 when he talked to you?
- 15 A Yes, I could.
- 16 Q Did you have any trouble understanding him?
- 17 A No, I didn't.
- 18 Q Did he voluntarily give you this statement?
- 19 A Yes, he did.
- 20 Q After you read him those rights, Investigator, did
21 you have an occasion to talk to him?
- 22 A Yes, I did.
- 23 Q And were you still at his house?
- 24 A Yes, I was.
- 25 Q And tell the judge just your procedure. How did

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1 you go about talking to him?

2 A Pretty much I just told him I wanted to talk with
3 him about the death of Joshua Zock. I had a
4 notebook there, pretty much wrote down just basic
5 information and took some notes of what he had to
6 say about that night.

7 Q So you took notes first?

8 A Yes, I did.

9 Q From talking with him?

10 A On the first statement, yes, sir.

11 Q And after you had taken notes, did you do anything
12 else to memorize Robert Cannon's statement? Did
13 you put it on another form?

14 A Yes, I did. We put it on an actual statement form.

15 Q And where did that take place?

16 A That took place at his kitchen table.

17 Q Shortly after you talked to him and took notes, you
18 then put it on a statement form or it was put on a
19 statement form?

20 A That's correct.

21 Q Do you have that marked State's 2?

22 A Yes.

23 MR. MEADORS: Your Honor, I have now what is
24 marked State's I.D. 2 that I think all of them have.
25 It's the statement of Robert Cannon.

1 (State's Exhibit Number 2 is marked for
2 identification).

3 BY MR. MEADORS:

4 Q After you talked to Robert Cannon and were taking
5 these notes, was this statement put down on State's
6 2 for I.D.?

7 A It was.

8 Q And who wrote that statement?

9 A I wrote the statement for Mr. Cannon.

10 Q Whose words are in that statement?

11 A That's Mr. Cannon's words.

12 Q Why did you write the statement?

13 A He was actually -- had told us he was hungry, and
14 he was eating a bowl of cereal. He wanted to eat
15 cereal while he give the statement and not have to
16 handwrite it.

17 Q So he's in his house and he's eating?

18 A That's correct.

19 Q You had already talked to him and taken notes?

20 A That's correct.

21 Q Did you ask him if he would put it on this form or
22 if the information could be put on this form?

23 A I did.

24 Q And State's 2 for identification at the top, it has
25 got a name and address, city, and Social Security

- 1 number. Who provided all that information?
- 2 A I had Mr. Cannon fill that out.
- 3 Q Let me just ask you specifically, did you observe
- 4 him writing it?
- 5 A Yes, I did.
- 6 Q Social Security number, did he have any trouble
- 7 putting that down on the paper?
- 8 A No, he did not.
- 9 Q Date of birth?
- 10 A Right off the bat.
- 11 Q And home and work phone, did he have any trouble in
- 12 your opinion in putting those down or writing it?
- 13 A No, he didn't.
- 14 Q So he filled out the top part?
- 15 A Yes, he did.
- 16 Q And then tell the judge, as you are writing this
- 17 statement, specifically how did you do it,
- 18 Investigator?
- 19 A What I did was I sat down. I told him that I would
- 20 write the statement in his own words and for him to
- 21 tell me exactly what happened on the night of the
- 22 12th.
- 23 Q And did you go through and write that down on five
- 24 separate pages?
- 25 A I did.

1 Q Looking on page 1 at the bottom, it has got, I have
2 made the foregoing statement freely and
3 voluntarily, without fear, threat, promise of
4 reward or hope of reward of any kind. This is to
5 certify I have read or had read to me the foregoing
6 consisting of five pages and a true copy has been
7 given to me. Did you read that to him and go over
8 that with Robert Cannon?

9 A Yes, sir.

10 Q On the bottom of page 1, it has got a signature
11 there on the left, signature of individual giving
12 statement. Who is that?

13 A Robert Cannon.

14 Q On the right it has got two witnesses. Who is
15 that?

16 A Investigator Danny Catoe and Investigator George
17 Marthers.

18 Q On each one of these pages, it has the signatures;
19 correct?

20 A It does.

21 Q Did you, after you had taken this statement, go
22 back over it with Robert Cannon?

23 A I did.

24 Q And before we get to that, on page 4 it looks like
25 you have basically taken a statement, and then

1 there's some specific questions. Can you explain
2 that to the judge.

3 A There was just some -- after he had got through
4 giving me his statement, there was still some
5 questions that I had that I wanted to see if he
6 could answer for me that he didn't provide in the
7 statement.

8 So I went back and actually explained the
9 process of a question and answer and the way I did
10 it. I explained to him that I was going to write
11 down a question on the piece of paper and that I
12 wanted him to give me the answer to the question,
13 and I would write his answer down beside of it.

14 Q So like, Question: What kind of gloves? Answer:
15 Purple latex, and I had on two pair of white and
16 purple ones on top?

17 A That's correct.

18 Q Now, when you went back over this with Mr. Cannon,
19 I see on page 1 it looks like there is an initial
20 here, R.C. Can you explain that to the judge.

21 A During the time of taking a statement, sometimes
22 there may be an error or some type of grammar, the
23 way I misspelled something. It could be anything.
24 But once I do that, in order to correct it, what I
25 do is with it being in ink, I will scribble out the

1 mess up.

2 Then I will actually put the correction above
3 it, and I will have him initial it showing that the
4 correction was made with his -- whatever. I'm
5 looking for the word.

6 Q Knowledge?

7 A With his knowledge.

8 Q And as you went over this, that correction was made
9 and that R.C. stands for him, Robert Cannon?

10 A It does.

11 Q At any time during the taking of this five -- at
12 any time during the first oral statement, if you
13 will, when he is orally telling you what happened
14 and you are putting it in your notes, and at any
15 time during this statement that you put down as his
16 words, did the Defendant Robert Cannon ever tell
17 you, I don't want to talk to you?

18 A Absolutely not.

19 Q Did he tell you, I want a lawyer?

20 A No, he did not.

21 Q Did he say, Danny, stop talking to me?

22 A No, he did not.

23 Q Did you threaten, coerce him or hold out any hope
24 of reward or promise?

25 A I did not.

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- 1 Q Did he, during this process, seem to understand
2 what you were talking about?
- 3 A Yes, he did.
- 4 Q Did he appear to be under the influence of any
5 alcohol, drugs or any other intoxicant?
- 6 A No, he didn't.
- 7 Q Danny, on the last -- Investigator Catoe, excuse
8 me -- on the last page, it appears the Defendant
9 has signed five times?
- 10 A That's correct.
- 11 Q Initialed the front. And on the bottom here, read
12 for the judge what is on page 5 underneath the last
13 answer. The last question was, Did y'all change
14 clothes that night after the incident? Answer:
15 Yes, and Chris done something with them. What is
16 the sentence underneath that?
- 17 A It says, I asked Investigator Danny Catoe to write
18 this for me, and this is in my own words as they
19 are written.
- 20 Q And what's the date on that?
- 21 A 12/15/06.
- 22 Q At what time?
- 23 A 9:51 p.m.
- 24 Q Who signed there?
- 25 A Mr. Robert Cannon.

1 Q Would the person that you talked to on December 15
2 at Trowbridge Road, is that person in the courtroom
3 that you took the oral statement from initially and
4 made the notes on and this written statement, is
5 that person in this courtroom? If so, please point
6 him out.

7 A Yes, he is. He is in the green shirt.

8 Q Next to Mr. Kendrick?

9 A Sitting beside Mr. Kendrick.

10 MR. MEADORS: Let the record so reflect.

11 THE COURT: The record so reflects the witness
12 has identified the Defendant Cannon.

13 BY MR. MEADORS:

14 Q What did you do next in this investigation,
15 specifically relating to any statements
16 specifically?

17 A At that time we actually went back to
18 Mr. McDonald's residence after we finished up at
19 Mr. Cannon's residence.

20 Q Had you received a phone call from anybody at that
21 residence?

22 A I had received a phone call from his mother stating
23 that she was at home and she wanted to talk to me.

24 Q What did you tell her?

25 A I told her that I would be over there just as soon

- 1 as I finished up where I was at. I didn't tell her
2 where I was at.
- 3 Q You didn't tell her where you were at or what you
4 were doing?
- 5 A I did not.
- 6 Q But you did tell her you would come over there
7 whenever you got through doing what you were doing?
- 8 A That's correct.
- 9 Q And did you go over to the McDonalds?
- 10 A I did.
- 11 Q Approximately what time was that?
- 12 A That was somewhere in the neighborhood of around
13 11:00 o'clock or so that night.
- 14 Q What, if anything, had you all, Kershaw County,
15 done between -- after you talked to Mr. Cannon?
- 16 A After we had spoke to Mr. Cannon, our office then
17 obtained a warrant for Mr. McDonald's arrest.
- 18 Q And before we move on to that, going back just to
19 Mr. Cannon, I apologize, the first oral statement
20 you took at his house, did he initially deny that
21 he was involved?
- 22 A Yes, he did.
- 23 Q And then you continued talking to him, correct?
- 24 A That's correct.
- 25 Q He admitted his involvement in the -- it's one

1 continuous statement, but it was basically a denial
2 in the notes, and they have all got it in
3 discovery -- and then the final written statement,
4 correct?

5 A That's correct.

6 Q Take us to the McDonald's house right now. You
7 said you had gotten a warrant?

8 A We had gotten a warrant, we had it countersigned in
9 Richland County, and we obtained some help from the
10 Richland County Sheriff's Office, and we went to
11 Mr. Derrick McDonald's residence that night.

12 Q At this point you had talked to Cecile Trapp?

13 A We had.

14 Q You had talked to Allen Brown?

15 A Yes.

16 Q And now had a statement from Robert Cannon?

17 A That's correct.

18 Q Then you went to -- where do the McDonalds live?

19 A We went back to Boney Road,

20 Q And tell the judge what happened when you got
21 there.

22 A We got to Boney Road. As I said, we had two
23 Richland County deputies with us. Myself and
24 George Marthers and one of the Richland County
25 deputies went to the door.

1 Ms. McDonald invited us in. Derrick was
2 actually in the back part of the house, and she
3 called him to come into the living room area of the
4 trailer.

5 Q And what happened next?

6 A At that time we advised him that we had an arrest
7 warrant for Mr. McDonald.

8 Q When you are serving a warrant, and in this case a
9 murder warrant, do you usually tarry in the house
10 or do you like to go ahead and serve it?

11 A We usually take either the original or a copy in
12 and let them see it so that they know that it's
13 legit.

14 Q Did you inform them that Derrick McDonald was under
15 arrest?

16 A Yes, we did.

17 Q Informed somebody in the house?

18 A That's correct.

19 Q Was Derrick McDonald taken from this residence on
20 Boney Road?

21 A Yes, he was.

22 Q Where was he taken? Who brought him out of the
23 house?

24 A He was escorted out of the house by -- actually
25 George Marthers had him and was escorting him out

1 of the house with the assistance of myself and the
2 Richland County deputy was behind him.

3 Q And did you leave after that?

4 A Yes, we did.

5 Q Did you have an occasion to talk to anybody at the
6 McDonald house before you left?

7 A Just very briefly, answering questions to his
8 mother about what the phone number was to the
9 detention center where he would be and that kind of
10 stuff.

11 Q Do you then leave the house?

12 A Yes, I do.

13 Q Where specifically do you take Derrick McDonald, in
14 a car?

15 A I actually put him in my truck.

16 Q And who else was with you?

17 A George Marthers.

18 Q What happens next?

19 A We actually place Mr. McDonald in the front seat of
20 my patrol truck, secure him in with a seat belt.
21 Investigator Marthers gets in the back seat, and we
22 leave the residence and head back towards Kershaw
23 County.

24 Q What, if anything, did you do heading back toward
25 Kershaw County from Boney Road?

1 A The time we left his residence, I looked over at
2 Mr. McDonald, and I told him, I said, I really
3 would not like to talk to you in the truck. I
4 said, But if you want to talk to me, I would be
5 glad to talk with you or I can take you straight to
6 the detention center in Kershaw County. It's your
7 choice.

8 Q Did you read him Miranda rights on the way to
9 Kershaw County?

10 A He then stated that he would like to talk to me at
11 the Sheriff's Office, and I told him what I was
12 going to do was verbally read him his Miranda.
13 Then when we got to the Sheriff's Office, we would
14 go over it again, and I would listen to what he had
15 to say.

16 Q Tell the judge how you read the Miranda, obviously
17 verbally, on the way in your truck back to Kershaw.

18 A I done it the same way. Of course, I was driving.
19 I told him that I was going to read him his
20 Miranda, and I needed him to answer to me that he
21 understood everything I read to him.

22 I started by saying, You have the right to
23 remain silent. Anything you say can and will be
24 held against you in a court of law. Each time I
25 went through, I would have him answer.

1 I would ask him, Do you understand that? And
2 he would say yes. I then said, You have the right
3 to talk to an attorney or have him present with you
4 while you are being questioned. He answered that
5 yes, he understood that.

6 I said, If you cannot afford to hire an
7 attorney, one can be appointed to represent you
8 before any questioning if you wish. I asked him if
9 he understood and he said yes.

10 I told him he could decide at any time to
11 exercise these rights and not answer any questions
12 or make any statements. I asked him if he
13 understood that and he said yes.

14 Q As you are heading back -- and did you have any
15 trouble understanding him when he answered you?

16 A No, sir.

17 Q Did he appear to understand you?

18 A Yes, he did.

19 Q Were the answers appropriate to the questions,
20 subject matter wise?

21 A Yes, they were.

22 Q And he indicated to you that he understood those
23 rights?

24 A He did.

25 Q Did he ever indicate at all that he wanted to talk

1 to an attorney?

2 A No, he did not.

3 Q Did he say, Investigator, call an attorney for me?

4 A No, he did not.

5 Q Or I don't want to talk to you?

6 A No, he did not.

7 Q Did he appear -- he being Derrick McDonald -- on

8 December 15, 2006, when you talked to him to be

9 under the influence of alcohol, drugs or any other

10 intoxicants?

11 A No, he did not.

12 Q Did you threaten or coerce him?

13 A No, I did not.

14 Q Promise him anything?

15 A No, I did not.

16 Q What happened next?

17 A We proceeded on into Kershaw County, and we took

18 him back to the Sheriff's Office.

19 Q On the way from Boney Road to Kershaw County, did

20 he say anything to you about recognizing the area?

21 A He made one comment to myself and George Marthers

22 right in the area of Cherokee and Bowman that, This

23 is the way we came back the other night. At that

24 time I told him, I said, Mr. McDonald, I said, You

25 have been advised of your rights, but I really wish

1 you would wait and talk to me when I get to the
2 Sheriff's Office so I can make notes on what you
3 say.

4 Q Let go on down to the Sheriff's Office. Did y'all
5 have an occasion to talk to him down there?

6 A Yes, we did.

7 Q Do you have with you an advise of rights form that
8 you went over with the Defendant Derrick McDonald?

9 A I do.

10 MR. MEADORS: It has been marked State's 3 for
11 I.D., Your Honor. I believe everybody has a copy.

12 (State's Exhibit Number 3 is marked for
13 identification).

14 BY MR. MEADORS:

15 Q Is this the advise of rights you read for Derrick
16 McDonald?

17 A It is.

18 Q Could you go through that for the judge and tell
19 him how you read those rights.

20 A We sat down in my office at the old Kershaw County
21 Sheriff's Office, the old building.

22 Q Right next door?

23 A Right next door.

24 Q Whose office were you in, yours?

25 A It was actually shared by myself, Phil Crawford,

1 and Investigator Rick Bailey. There was three of
2 us in one office.

3 Q Who else was in there with you, if anybody, in that
4 office when you were reading his rights?

5 A Investigator George Marthers.

6 Q Can you tell the judge how you read him those
7 rights and what your procedure was.

8 A I explained to him that this was the Miranda
9 warning sheet that I had talked about earlier. I
10 then went back over the Miranda, and I read them to
11 him. Each time I read the line of Miranda, I asked
12 him if he understood it. He would answer yes. I
13 would initial it and circle my initials.

14 Q Every one of them?

15 A Every one of them.

16 Q For the record go down for His Honor as you went
17 down. Just read it through.

18 A You have the right to remain silent. He answered
19 yes he understood that. I initialed and circled
20 it. Number two was, Anything you say can and will
21 be held against you in a court of law. I asked him
22 if he understood it. He said he did. I initialed
23 it and circled it.

24 You have the right to talk with an attorney
25 and have him present with you while you are being

1 questioned. I asked him if he understood that. He
2 said yes. I initialed it and circled it.

3 If you cannot afford to hire an attorney, one
4 will be appointed to represent you before any
5 questioning if you wish. I asked him if he
6 understood that. He said he did. I initialed it
7 and circled it.

8 The last one I said, You can decide at any
9 time to exercise these rights and not answer any
10 questions or make any statements. I asked him if
11 he understood that. He said he did. I initialed
12 it and I circled my initials.

13 Q Danny, if he said, I want to talk to an attorney,
14 would you have not talked to him?

15 A I would have stopped right there.

16 Q Did you read his waiver of rights?

17 A I did.

18 Q And that is, I certify I have read or had read to
19 me the above-statement of my rights. I understand
20 each of these rights and having these rights in
21 mind, I waive them and am willing to make a
22 statement. No promise or threats have been made to
23 me and no pressure or coercion of any kind has been
24 used against me. Did you read that to him?

25 A Yes, I did.

- 1 Q Did he indicate to you he understood it?
- 2 A He did.
- 3 Q Did you initial that after you read to him?
- 4 A I initial it and circled it.
- 5 Q And did he sign that?
- 6 A Yes, he did.
- 7 Q Did you make him sign it?
- 8 A No, I didn't.
- 9 Q Did you threaten or coerce him in any way?
- 10 A I did not.
- 11 Q During the reading of these rights and the
- 12 subsequent statement, did he appear to understand
- 13 and knew what you were doing?
- 14 A Yes.
- 15 Q Was the statement voluntarily given to you, Danny?
- 16 A Yes, it was.
- 17 Q And below that it's witnessed by who?
- 18 A Investigator George Marthers.
- 19 Q And that advise of rights time after you finished
- 20 was what?
- 21 A 11:45 p.m.
- 22 Q Did you then have an occasion to talk to Derrick
- 23 McDonald?
- 24 A I did.
- 25 Q And, again, we will have to go over this at some

1 point to see what we are Brutoning, but did you
2 take initial notes from orally talking to him?

3 A I did.

4 Q And those notes have been provided to everybody,
5 correct?

6 A They have.

7 Q After that did you have an occasion to put the
8 notes into a written form, as you did with
9 Mr. Cannon, in another document?

10 A I did.

11 Q Do you have that with you?

12 A I do.

13 MR. MEADORS: This has been marked as State's
14 4 for I.D., the statement of Derrick McDonald.

15 (State's Exhibit Number 4 is marked for
16 identification).

17 BY MR. MEADORS:

18 Q Again, as I did before, who provided this
19 information to start with?

20 A Mr. McDonald did.

21 Q So that's his name, Derrick McDonald?

22 A Yes, it is.

23 Q Social Security number?

24 A That's correct.

25 Q Did he appear to you to have any trouble writing

- 1 that down?
- 2 A No, he did not.
- 3 Q And the current date and current time?
- 4 A I actually put that.
- 5 Q You put that down?
- 6 A Because he left it blank, yes, sir.
- 7 Q
- 8 A He put that on there.
- 9 Q And Blythwood, South Carolina?
- 10 A That's his handwriting.
- 11 Q Danny, again, this is a one, two, three, four-page
- 12 statement. Tell the judge, how were you taking
- 13 this down?
- 14 A I basically followed the same procedure that I
- 15 followed with Mr. Cannon. I told Mr. McDonald I
- 16 just wanted him to be completely truthful with me
- 17 on what happened the night of the 12th and if he
- 18 would go through the statement, I would write it
- 19 for him. At some time I had to slow him down
- 20 because he would get anxious and he would get ahead
- 21 of me.
- 22 Q Again, at the bottom of each page, it's got, I made
- 23 the foregoing statement freely and voluntarily
- 24 without fear of threat, promise of reward or hope
- 25 of reward any kind.

- 1 This is to certify I have read or had read to
2 me the foregoing statement consisting of -- it's
3 got, it looks like, something scratched out and
4 then four pages -- and a true copy has been given
5 to me. Did you read that to him?
- 6 A I did.
- 7 Q Did he say he understood this and that it was
8 freely and voluntarily given?
- 9 A Yes, he did.
- 10 Q It looks like a little change was there made from
11 three to four. Explain that to us.
- 12 A It was just an error on my part. I had wrote down
13 three instead of four.
- 14 Q And what was to the left of that?
- 15 A I had him initial it stating that he understood the
16 mess up.
- 17 Q And he puts D.J. there, correct?
- 18 A Yes, he does.
- 19 Q That's kind of his nickname, wasn't it, D.J.?
- 20 A Yes, it is.
- 21 Q Down here at the bottom underneath that is what,
22 Derrick McDonald?
- 23 A Yes, it is.
- 24 Q Right here (indicating), whose name is that?
- 25 A Mine.

- 1 Q And did he sign each page?
- 2 A Yes, he did.
- 3 Q And did you go back over it with him?
- 4 A Yes, I did.
- 5 Q Were these his words?
- 6 A They were.
- 7 Q And again on page 1, it looks like there has been a
8 correction made?
- 9 A Yes, sir.
- 10 Q Whose initial is on top of that?
- 11 A Mr. McDonald's.
- 12 Q So you went over each one of these pages with him?
- 13 A I did.
- 14 Q And did you, if there were any corrections,
15 specifically on page 1, did he initial it?
- 16 A Yes, he did.
- 17 Q On page 1 did he put D.J. as his initials?
- 18 A Yes, he did.
- 19 Q And on page 2 does there appear to be another
20 correction on line 3?
- 21 A Yes, there was.
- 22 Q And does he -- again, it looks like you put three
23 as the number of pages all the way through?
- 24 A That's correct.
- 25 Q And on page 2 how does he put his initials?

- 1 A On page 2 he actually puts D.M.
- 2 Q D.J.M.?
- 3 A D.J.M.
- 4 Q But does that indicate that you went back over this
- 5 with each one?
- 6 A Yes, sir.
- 7 Q And if there were any corrections, you got him to
- 8 initial it?
- 9 A That's correct.
- 10 Q And initial on the bottom of each page saying it's
- 11 four pages and not three?
- 12 A That's correct.
- 13 Q In looking at the final page, Investigator, you
- 14 actually have 4 of 4 there; correct?
- 15 A That's correct.
- 16 Q What's the last sentence there on page 4?
- 17 A The last page was actually where I write in there
- 18 that: I asked Investigator Danny Catoe to write my
- 19 statement for me. This is written in my own words.
- 20 Q And who signed that?
- 21 A Mr. Derrick McDonald.
- 22 Q That's 12/16?
- 23 A That's 12/16.
- 24 Q Had he asked you to write this for him?
- 25 A Yes, he had.

- 1 Q Did he sign each and every page: One, two, three,
2 and four?
- 3 A Yes, he had.
- 4 Q So this statement was freely and voluntarily given?
- 5 A Yes.
- 6 Q And that no hope of reward was promised, correct?
- 7 A That's correct.
- 8 Q At any time during the taking -- at any time during
9 the oral part where took your notes or this part
10 where you are putting it on the statement form, did
11 Derrick McDonald tell you, I don't want to talk to
12 you?
- 13 A No, he did not.
- 14 Q Did he tell you, Give me a lawyer?
- 15 A No, he did not.
- 16 Q Did you threaten or coerce him or promise him
17 anything?
- 18 A No, I did not.
- 19 Q Danny, if he wanted to go to the bathroom or get
20 any food or drink, would he have been allowed to
21 and was he perhaps?
- 22 A Absolutely.
- 23 Q And it was you and Investigator Marthers for the
24 advise of rights, correct?
- 25 A Yes, sir.

- 1 Q Is that person, is Derrick McDonald who you took
2 the oral statement from and the written statement
3 from, in the courtroom?
- 4 A Yes, he is.
- 5 Q Please point him out for Your Honor.
- 6 A McDonald is in the great coat with the burgundy
7 shirt sitting behind the attorneys.
- 8 Q Was he handcuffed?
- 9 A He was handcuffed on the way to the Sheriff's
10 Office, but once when we got back in the office, we
11 took the handcuffs off of him.
- 12 Q And going back to Mr. Cannon real quick, Mr. Cannon
13 was at his residence when you talked to him?
- 14 A Yes, he was.
- 15 Q And was he handcuffed?
- 16 A No, he was not.
- 17 Q And between -- I am going back, and I apologize to
18 Your Honor -- but after you first read Mr. Cannon
19 his rights and he initially told you some facts
20 that turned out different from later, did Captain
21 Tomley come out to the scene?
- 22 A Yes, he did.
- 23 Q Did Captain Tomley briefly talk to Mr. Cannon?
- 24 A Yes, he did.
- 25 MR. MEADORS: Beg the Court's indulgence.

1 Your Honor, let me check with co-counsel, please.

2 (Pause).

3 MR. MEADORS: Your Honor, as to any and all
4 statements that Investigator Catoe and Marthers had,
5 that is it. There is one other witness on another
6 issue, Mr. Crawford, a statement that was made by
7 Mr. Cannon, but that's all we have.

8 THE COURT: Counsel for the Defendants, how do
9 you wish to proceed? Because I think we ought to go
10 ahead and establish an order at this point in terms of
11 cross examination of witnesses. Have you discussed that
12 among yourselves?

13 MR. WHITLARK: We have discussed it, Your
14 Honor, and I would proceed initially, Your Honor.

15 THE COURT: Is that correct, Mr. Riley?

16 MR. RILEY: Yes, sir.

17 THE COURT: Correct, Mr. Kendrick?

18 MR. KENDRICK: Yes, sir, Your Honor.

19 THE COURT: And followed by whom?

20 MR. KENDRICK: I don't know that we have had
21 time to figure that.

22 MR. RILEY: Judge, as to this issue, I think
23 Mr. Kendrick ought to go next.

24 THE COURT: I understand that. I am trying to
25 establish some sort of pattern so we can have one.

1 MR. RILEY: I will bring up the rear, Judge.

2 THE COURT: All right. That's what we will
3 do.

4 MR. MEADORS: And that will be for the whole
5 trial, Judge?

6 THE COURT: That's what I'm hearing, unless
7 there is some reason to deviate from that procedure.
8 Mr. Whitlark.

9 MR. WHITLARK: Yes, sir. Your Honor, pursuant
10 to State v. Fletcher, the objection problem we are going
11 to have, do we all need to object to the same thing
12 every time or say we join in on every time? I know that
13 has been required before.

14 THE COURT: I think it would be a good thing
15 for the record.

16 MR. WHITLARK: Yes, sir.

17 THE COURT: Any cross examination?

18 MR. WHITLARK: Yes, sir. May it please the
19 Court.

20 THE COURT: Yes, sir. This is only as to the
21 voluntariness issue --

22 MR. WHITLARK: Yes, sir.

23 THE COURT: -- correct?

24 MR. WHITLARK: Oh, yes, sir.

25 THE COURT: We are not talking about Bruton at

1 this stage.

2 MR. WHITLARK: No, sir.

3 IN CAMERA EXAMINATION

4 BY MR. WHITLARK:

5 Q He was in custody, wasn't he, when you were
6 questioning him?

7 A He who?

8 Q He was in custody, wasn't he?

9 A Which one?

10 Q Mr. McDonald, when you took him over to the
11 Sheriff's Department.

12 A Oh, yes, sir.

13 Q So he was under arrest?

14 A That's correct.

15 Q And in custody. You were told by him, the second
16 time you talked to Mr. Derrick McDonald, that he
17 didn't want to talk about anything unless his
18 mother was with him; right?

19 A No, sir, that was not the second time.

20 Q Did he tell you that before he was arrested that
21 night, that he wanted to talk to his mother?

22 A The first time we went to his residence.

23 Q He wanted her present during any questioning,
24 right?

25 A That's correct.

1 Q And when you got there to the house that night, who
2 answered the door?

3 A I believe his mother answered the door.

4 Q His mother. And his brother was present, right?

5 A I'm unsure who all was in the house. There were
6 several people in the house.

7 Q Do you recognize this gentleman in the white
8 shirt?

9 MR. WHITLARK: Would you stand up, sir.

10 (Man stands in the audience).

11 BY MR. WHITLARK:

12 Q Do you recognize this gentleman?

13 A No, I don't.

14 Q Now, when you were over at their house and you
15 arrested him, he told you he wasn't going to talk
16 to you unless he had a lawyer; didn't he?

17 A No, he did not.

18 Q He didn't. Did you let anybody leave the room?
19 When you were inside his living room arresting him,
20 did you keep everybody in there with you?

21 A I don't remember. I know that somebody went back
22 and called his name and had him come into the
23 living room.

24 Q Okay. His mother told you that -- told his brother
25 here to go call a lawyer, and you wouldn't let him

- 1 leave the room, would you, or the sheriff's deputy
2 from Richland County wouldn't let him leave that
3 room; right?
- 4 A I can't answer for Richland County.
- 5 Q You were there, weren't you?
- 6 A I was there but I don't know what they told him.
- 7 Q Did you hear Ms. McDonald say, Go call the lawyer
8 for Derrick?
- 9 A I did not hear that.
- 10 Q Now, you were driving your truck; right?
- 11 A That's correct.
- 12 Q And you told him his Miranda rights while you were
13 driving. He was behind you, right?
- 14 A Nope, he was sitting in the front passenger seat.
- 15 Q He was in the front. Where was the other
16 investigator?
- 17 A He was sitting behind him in the back seat.
- 18 Q You didn't have him read the Miranda to him, did
19 you?
- 20 A No, I read the Miranda.
- 21 Q Well, sir, when you were testifying just now, you
22 were referring to the written copy every time you
23 were asked the question of what was in the Miranda;
24 right?
- 25 A That's correct.

1 Q You were holding it in your hand reading it, right?

2 A That's correct.

3 Q Now, you knew that another fellow was a suspect in
4 this case named Adrian Durant, right?

5 A He was someone --

6 MR. MEADORS: Your Honor, objection. There is
7 no relevance to the voluntariness of the statement on
8 this Defendant.

9 THE COURT: I don't know. I will allow it.
10 The jury is not here. Go ahead.

11 A He was someone that we had talked to during the
12 course of the investigation.

13 Q When did you talk to him?

14 A We talked to him actually on the 14th, I believe.

15 Q On the 14th. Where is his written statement that
16 he gave?

17 A I don't know if he give a written statement.

18 Q He was the victim of a burglary and an armed
19 robbery, right, by the decedent a few months before
20 this; right?

21 MR. MEADORS: Again, objection, relevance.

22 THE COURT: I didn't realize that's where you
23 were going. Tell me the relevance with regard to -- and
24 I understand you may just be doing some discovery here,
25 Mr. Whitlark. But tell me, because the issue here today

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1 at this point is the voluntariness of these statements
2 and whether or not they will be admissible.

3 MR. WHITLARK: Yes, sir.

4 THE COURT: Tell me what relevance --

5 MR. WHITLARK: Yes, sir.

6 THE COURT: -- some other defendant in some
7 other crime who happens to be the victim has to do with
8 this proceeding.

9 MR. WHITLARK: Your Honor, this fellow has a
10 signed Miranda waiver.

11 THE COURT: This fellow?

12 MR. WHITLARK: This fellow, Mr. Adrian Durant,
13 the initial suspect in the case.

14 THE COURT: All right.

15 MR. WHITLARK: But yet there is no statement
16 from him, and there is no question and answer and no
17 nothing.

18 I want to ask him the question about the
19 degree with which he questioned our guys as opposed to
20 this fellow who was the number one suspect and is
21 actually on the incident report as the chief suspect in
22 this case.

23 MR. MEADORS: Again, my objection -- and he
24 just stated it for me -- not relevant. He was not the
25 number one suspect. It has nothing to do with the

1 voluntariness of this man's statement.

2 THE COURT: It may. So I will allow you
3 limited inquiry as to this matter --

4 MR. WHITLARK: Yes, sir.

5 THE COURT: -- Mr. Whitlark. I have not
6 linked it up yet.

7 MR. WHITLARK: I will do so for Your Honor.

8 BY MR. WHITLARK:

9 Q You have a signed Miranda waiver from Mr. Adrian
10 Durant, don't you?

11 A I believe so.

12 Q Yet you have no notes at all of your interview with
13 him, do you?

14 A Not that I'm aware of, no, sir.

15 Q And he took and failed or showed deception on the
16 polygraph test about whether or not he had killed
17 this fellow, right?

18 A I'm not a polygraph examiner, so I don't know if he
19 failed it or not.

20 Q But you knew that, didn't you, that he took that?

21 A I knew that he had took a polygraph.

22 Q Where on the notes --

23 MR. MEADORS: Objection. He is going into a
24 polygraph on somebody who, for the record, had nothing
25 to do with this crime.

1 THE COURT: I know.

2 MR. MEADORS: Nothing whatsoever. There is no
3 evidence that he failed it because he murdered him. He
4 had nothing do with it.

5 THE COURT: I know that. I hear it, too.

6 MR. WHITLARK: Your Honor?

7 THE COURT: The question is whether these
8 statements were voluntary.

9 MR. WHITLARK: Yes, sir.

10 THE COURT: All right.

11 MR. WHITLARK: All right. I will move on,
12 Judge.

13 THE COURT: It's not a third-party guilt
14 hearing.

15 BY MR. WHITLARK:

16 Q You told Derrick McDonald that you were taking him
17 to the Kershaw jail when you left his house with
18 him, right, and you told his mother that, too;
19 right?

20 A I told him that's where he would be taken and
21 housed was at the Kershaw County Detention Center.

22 Q And you told his mother that you were taking him to
23 jail, to the detention center, and not to worry
24 about him, right, because she was concerned; wasn't
25 she?

- 1 A I may have told her not to worry about him, that he
2 would be taken care of.
- 3 Q She told you, I want a lawyer for him. I will get
4 a lawyer for him. Didn't she?
- 5 A She did not specifically say she was going to --
6 she didn't specifically tell me she was going to
7 get a lawyer for him.
- 8 Q What did she tell you?
- 9 A The only thing that was said about an attorney was
10 when we was putting him in the truck, she hollered
11 at him and said, I will get you an attorney.
- 12 Q And that's because he had asked for one inside,
13 hadn't he? He said he was not going to talk unless
14 he has an attorney with him, right?
- 15 A He did not say that to me.
- 16 Q So is it your testimony that this young man who
17 stated that he wasn't going to talk to you unless
18 his mother was present, right?
- 19 A That's correct.
- 20 Q And his mother said, I'm getting a lawyer for you,
21 right? Right?
- 22 A As we was putting him in the truck.
- 23 Q And then when you had him in the truck, he, on his
24 own initiative, is what your testimony is -- you
25 correct me if I'm wrong -- started saying, Look, I

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1 want to tell you all about it?

2 A I asked him if he wanted to talk to me, because he
3 was of age to make his own decision. I said, Do
4 you want to go straight to the detention center or
5 do you want to talk to me about what happened the
6 night of the 12th? If so, I will take you to the
7 Sheriff's Office, and he said, I want to talk with
8 you about it.

9 Q And he did that on his own initiative without you
10 saying anything to him?

11 A After I give him his choice, yes.

12 Q After you gave what?

13 A After I give him the choice of what he wanted to
14 do, yes.

15 Q So you were asking him about whether or not he
16 wanted to talk about it, right?

17 A I asked him did he want to go to the Sheriff's
18 Office and talk to me or go to the detention
19 center.

20 Q Well, when he told you he wanted a lawyer, didn't
21 you tell him he watched too much T.V. --

22 MR. MEADORS: Objection, Your Honor. That's
23 not what he told him.

24 THE COURT: Ask the question. What's the
25 question?

1 BY MR. WHITLARK:

2 Q Did you tell Derrick McDonald, You watch too much
3 T.V., and this is not the way it's done with
4 lawyers?

5 A I did not.

6 Q Did you ever -- do you recall telling him that he
7 was going to be a witness in this case and not a
8 defendant?

9 A I told him that he may could be a witness or a
10 defendant.

11 Q Did you tell him the object of your investigation
12 was Chris Whitehead, and you just wanted him to
13 testify for y'all?

14 A No, I would not have told him that.

15 Q But you did mention Chris Whitehead to him, didn't
16 you?

17 A Oh, I'm sure I did.

18 Q And didn't you tell him that he could either be a
19 witness or a participant in a death penalty trial
20 as a defendant?

21 A I don't -- no.

22 Q Do you remember saying or talking about the death
23 penalty, trying a death penalty trial?

24 A No, I don't.

25 Q Sir, when you have him sign or offered the

1 statement to him, didn't you tell him, All right.
2 You can be a witness if you sign this and then you
3 can go home if you will sign this?
4 A No, I did not.
5 Q Well, you have one version of this statement,
6 right, only one, handwritten by you; right?
7 A That's the statement that we obtained from him at
8 the Sheriff's Office.
9 Q And you wrote it, right?
10 A In his own words.
11 Q You wrote the statement, right?
12 A In his own words.
13 Q Did you unhandcuff him when he got inside the
14 interview room?
15 A I unhandcuffed him when we got inside of our
16 office.
17 Q And did you rehandcuff him at the end of it?
18 A When we went to go to the detention center, he was
19 transported by another deputy.
20 Q What questions did you ask him in the truck on the
21 way to Kershaw?
22 A I didn't ask him any questions.
23 Q You didn't ask him any questions at all?
24 A Other than, Do you want to go to the detention
25 center or would you like to talk with me at the

- 1 Sheriff's Office.
- 2 Q Did you tell him why you wanted to talk to him?
- 3 A No, that's all. I left it at that.
- 4 Q He had been charged with murder at this point,
- 5 right? You told him that at his house, right?
- 6 A In the truck -- we told him that he had been
- 7 charged at his house, yes, sir.
- 8 Q He had already told you earlier that night what he
- 9 was doing earlier that night, and it didn't involve
- 10 going and killing this fellow; did it?
- 11 A That was his first statement.
- 12 Q Was that before or after he told you he's not going
- 13 to talk to you unless his mom was with him?
- 14 A That was before.
- 15 Q Is it your testimony you gave him Miranda warnings
- 16 verbally while riding in the truck?
- 17 A That's correct.
- 18 Q And he waived them? He said, I want to tell you
- 19 everything, right?
- 20 A He said, I want to talk to you. Take me to the
- 21 Sheriff's Office.
- 22 Q Did he ask you, say, Well, can I get out of trouble
- 23 if I talk to you? Did he ask you that?
- 24 A No, he didn't.
- 25 Q You knew he was in high school, right?

1 A I didn't know if he was still in school or not at
2 the time.

3 Q You are saying -- did you take his statement at
4 1:24 a.m.; is that right?

5 A I can tell you. I have a time on the statement.
6 If you will hand me the statement, I can tell you
7 what time it was exactly.

8 Q Okay.

9 A On the statement, the current time when we started
10 the statement was 12:24.

11 Q Is that what time you started it?

12 A That's what time I wrote down as the current time.

13 Q And you didn't ask him any questions about what he
14 was doing that night before he signed the Miranda,
15 the waiver of rights? Is that what you are saying?

16 A Repeat that question.

17 Q I said did you ask him whether or not -- what he
18 was doing, as far as Christopher Whitehead went and
19 the death of Joshua Zock, before he signed the
20 Miranda waiver?

21 A In the very start of the process where he was
22 actually -- where I was taking notes and he was
23 talking, before we started the written statement, I
24 may have asked him that, yes, sir. That started at
25 11:48 p.m.

1 Q All right. Well, is it true, sir, that you were
2 asking him about his involvement in the murder and
3 the death of Joshua Zock before he signed that
4 Miranda waiver?

5 A No, that's not true.

6 Q At what time did you know you were going to arrest
7 him? When did you decide that?

8 A We arrested him at his house.

9 Q Yes, sir. But when did you decide you were going
10 to arrest him, that you knew you were going to
11 arrest him?

12 A When we obtained the warrant before we ever went to
13 his house.

14 Q How long does it take to drive from Mr. Cannon's
15 house to Kershaw County?

16 A From where?

17 Q From Cannon's house to Kershaw, how long does it
18 take, to Camden?

19 A I don't know from Mr. Cannon's house to Kershaw
20 County. I don't know.

21 Q About how long?

22 MR. MEADORS: Your Honor, is he saying Cannon
23 or McDonald, his client?

24 THE COURT: Sir, he asked the question.

25 MR. MEADORS: I couldn't hear it.

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- 1 MR. WHITLARK: Mr. Cannon's house.
- 2 A I really don't know. I don't know how long it
- 3 would take. I guess it would depend on traffic and
- 4 a lot of different things. I don't know, like
- 5 which route we took.
- 6 Q Do you know how long it took that night?
- 7 A I do not know.
- 8 MR. MEADORS: Your Honor, for the record he is
- 9 asking about Cannon.
- 10 THE COURT: I know that.
- 11 MR. MEADORS: It has nothing to do with --
- 12 THE COURT: I'm listening. I hear the same
- 13 thing you do.
- 14 BY MR. WHITLARK:
- 15 Q Now, isn't it true you had him handcuffed the whole
- 16 time until you wanted him to sign the documents
- 17 when you were at the Sheriff's Department?
- 18 A No, that's not true.
- 19 Q In his statement to you, in his statement to you --
- 20 and I'm asking if you can refer to it, please.
- 21 A I've got it.
- 22 Q Take a look at that, would you.
- 23 A Okay.
- 24 Q He says in there, the statement in there, was there
- 25 were phone calls made between Mr. Whitehead and a

1 fellow named Zach Waltemath, right, the night of
2 the death of Mr. Zock?

3 A That's correct.

4 Q Now, how many phone calls did he say he made in
5 that statement to this fellow Zach Waltemath?

6 A Let me see. It appears that there were two phone
7 calls made.

8 Q Is that what he told you?

9 A That's what is in the statement.

10 Q Well, you didn't put down something he didn't tell
11 you; did you?

12 A I sure didn't.

13 Q Now, your investigation revealed there is no
14 evidence of that, that didn't happen; hasn't it,
15 sir?

16 MR. MEADORS: Again, objection.

17 THE COURT: I will sustain this objection.

18 The contents of the statement are not at issue here.

19 MR. WHITLARK: Yes, sir.

20 THE COURT: That's for the cross examination
21 for the jury. We are talking about the voluntariness of
22 the statements.

23 MR. WHITLARK: All right.

24 BY MR. WHITLARK:

25 Q You had mentioned before about Christopher

1 Whitehead in your testimony to the prosecution
2 here, about how he came to your attention. How did
3 he come to your attention?

4 A He was actually -- when we were talking to
5 Ms. Melissa Davey, which was the victim's
6 girlfriend, we had asked her if there was anybody
7 that may have had some trouble with Josh, the
8 victim, anybody that she worked with, he worked
9 with, just giving us some names. That was the
10 first initial way that his name came up. Then we
11 had an anonymous call come in.

12 Q You had an anonymous call come in on
13 Mr. Christopher Whitehead?

14 A Yes, we did.

15 Q Do you have your investigative file with you?

16 A Yes, I do.

17 Q Can you point out where that is in there?

18 A We don't write down anonymous calls. It's
19 anonymous.

20 Q You don't write down anonymous calls in your
21 investigations?

22 A It's anonymous. I have no information to write
23 down, other than the fact.

24 Q Now, you went over to talk to Derrick McDonald
25 after you learned that he was at the Sonic; is that

1 right?

2 A Say that again.

3 Q I said you went over to talk to Derrick McDonald
4 because you had gone to the Sonic and heard that he
5 was up there the night before, right?

6 A That's correct.

7 Q So you drove right to his house, right?

8 A I had obtained an address and went to his house.

9 Q But you were already looking for Chris Whitehead
10 though, right?

11 A No, we had not been looking for Chris Whitehead.

12 Q You weren't?

13 A We went to Derrick McDonald's house first.

14 Q But you were already wanting to talk to Whitehead
15 though, right?

16 A Yes, but we had not looked for him.

17 Q But you had a picture of him already printed,
18 right?

19 A That's correct.

20 Q And you say you got to McDonald's house at about
21 11:00 o'clock; is that right?

22 A When we arrested him.

23 Q I'm sorry, when you arrested him.

24 A Uh-huh. (Indicating affirmative response).

25 THE COURT: Is that a question?

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1 MR. WHITLARK: Yes.

2 BY MR. WHITLARK:

3 Q What time was it? I'm sorry. Do you know what
4 time it was when you arrested him and went to his
5 house?

6 A It was somewhere around 11:00 o'clock.

7 Q Now, you had already left Cannon over at his house,
8 right? You didn't arrest him, right?

9 A We did not arrest him at that time, no, sir.

10 Q And he had just more or less stated that he was an
11 accomplice to murder, and you just left him at his
12 house?

13 A He had given us a statement.

14 Q You told him the same thing you told McDonald
15 though, about if you will be a witness in this case
16 and not on a death penalty trial if you sign these
17 statements; right?

18 MR. MEADORS: Objection, Your Honor. That's
19 not what he said.

20 THE COURT: It's an inquiry.

21 BY MR. WHITLARK:

22 Q Is that right?

23 A No, I didn't.

24 Q You never mentioned the trial of Chris Whitehead to
25 these young men when you were asking them or

1 telling them what was going to happen if they
2 didn't sign the statements?

3 A No, I didn't.

4 Q Did you ever mention death penalty to them?

5 A Not that I recall, no.

6 MR. WHITLARK: Beg the Court's indulgence.

7 (Pause).

8 MR. WHITLARK: That's all I have, Your Honor.

9 Thank you.

10 THE COURT: Mr. Kendrick.

11 MR. KENDRICK: Thank you, Judge.

12 IN CAMERA EXAMINATION

13 BY MR. KENDRICK:

14 Q Investigator Catoe, how are you doing today?

15 A Just fine.

16 Q Good. On the 14th at some point did my client's
17 name, Robert Cannon's name, come up in relation to
18 this case?

19 A It was brought up, something about a pair of tennis
20 shoes.

21 Q Did you investigate that allegation at all?

22 A It just all kind of fell in on the same
23 investigation.

24 Q Somehow you end up with Robert Cannon's name on
25 your radar, right?

- 1 A That's correct.
- 2 Q You are just keeping it in your head at this point,
3 right?
- 4 A That's right.
- 5 Q You didn't put it in your notes of anything like
6 that?
- 7 A No.
- 8 Q On the 15th you go to talk to some Sonic people,
9 and you get this story about this ski mask;
10 right?
- 11 A We go talk to some people at the Sonic, and they
12 tell us that they were together the night of the
13 murder.
- 14 Q When you say they, you are talking about
15 Mr. Whitehead, Mr. Cannon, and Mr. McDonald?
- 16 A That's correct.
- 17 Q They were seen together at the Sonic horsing
18 around, right?
- 19 A That's right.
- 20 Q When did you get this information, what time on the
21 15th, on Friday?
- 22 A It was somewhere around dinnertime, somewhere in
23 the neighborhood of dinnertime.
- 24 Q When you say dinnertime, you mean?
- 25 A Twelve or one.

- 1 Q What I might call lunch?
- 2 A Lunch.
- 3 Q I got you. I just wanted to make sure we are clear
4 on that. So around twelve or one, you get that
5 information. Is that when this arrest of
6 Mr. Whitehead goes down?
- 7 A Actually, Mr. Whitehead was -- we ran into
8 Mr. Whitehead somewhere around 1:30, somewhere in
9 that neighborhood.
- 10 Q You call Richland County and they come and arrest
11 him?
- 12 A Yes, sir.
- 13 Q Where did you go at that point?
- 14 A When we leave Mr. Whitehead, Richland County has
15 him in custody. Then we go to Mr. McDonald's
16 residence.
- 17 Q And then you leave Mr. McDonald's residence and
18 where do you go from there?
- 19 A We actually came back to the Sonic, I believe.
- 20 Q Now, we had a chance to get together Thursday, and
21 I looked at your file, the original investigative
22 file, which I believe is right there in your hand,
23 right? At some point you pulled a variety of
24 people's driving records, correct?
- 25 A Uh-huh. (Indicating affirmative response).

1 Q Why did you do that?

2 A To obtain information on them, maybe to check their
3 age, check their driving status, to get a visual of
4 them.

5 Q Were you the one that pulled Mr. Robert Cannon's
6 driving record that is found in that file?

7 A I do not remember if I pulled it or not.

8 Q Is there someone else involved in this
9 investigation that may have done that?

10 A Yes.

11 Q Can you give me an idea who that person might have
12 been.

13 A It could have anybody from Investigator George
14 Marthers to Captain David Tomley. It could have
15 been just somebody in the office, one of the
16 secretaries. It could have been anybody that I had
17 asked.

18 Q That's Investigator Marthers right here, right?

19 A That's correct.

20 Q In the brown shirt. And Captain Tomley here in the
21 white shirt on the other end?

22 A That's correct.

23 Q So around 4:00 o'clock, you pull a driving record
24 for Robert Cannon; right? Do you remember doing
25 that?

1 A I do not remember pulling a driver's picture on
2 Robert Cannon. So I couldn't tell you what time it
3 was pulled.

4 Q Did you obtain a cell phone for him at some point?

5 A I don't remember, unless we obtained a phone number
6 from a past employer or something. I don't
7 remember.

8 Q Did you contact Mr. Cannon before you went to his
9 house on that Friday night?

10 A I believe we did talk with him by telephone and
11 tell him that we were coming out to his
12 residence.

13 Q So somehow you got the cell phone number for
14 Mr. Cannon, but you don't remember how you got
15 that?

16 A No, I don't.

17 Q But you told him, We are going to come over to your
18 house. We need to talk to you about something?

19 A Yes.

20 Q Did you tell him what you were going to talk to him
21 about?

22 A Not on the phone, no, sir.

23 Q What did he tell you?

24 A I don't remember. I don't remember what he said.

25 Q Did he make arrangements to meet with you?

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1 A Yes. I know we went to his house to talk with him.

2 Q Do you remember him calling you back a few hours
3 later and saying, I'm at home. Y'all can come on
4 over?

5 A That's correct. He did.

6 Q And you would agree with me that you arrived at his
7 house when? Actually I don't have any times. I
8 can't tell you when you got there. Do you know
9 when you got there?

10 A It was probably around 6:00 p.m., somewhere in that
11 neighborhood.

12 Q Okay. I'm not trying to pin you down. So at
13 6:00 o'clock you get to Mr. Robert Cannon's house.
14 Who is at the house?

15 A I remember while we were there, his mother and his
16 father was there.

17 Q Okay.

18 A Mr. Cannon was there, and at some point his sister
19 came in a little bit later -- I think it was his
20 sister. But specifically him and both his parents
21 were there.

22 Q Who were you with? Were you by yourself when you
23 went there?

24 A No, sir, Investigator Marthers was with us.

25 Q You were with Mr. Marthers right here, okay. Y'all

- 1 walk in the door and you introduce yourselves,
2 right?
- 3 A That's right.
- 4 Q But you haven't told Robert why you are there yet,
5 right?
- 6 A No.
- 7 Q Now, you are going to tell him though, right? You
8 explain why you are there and what you are going to
9 talk to him about, right? You told him, We are
10 going to come and question you about a murder?
- 11 A When we were at his house, we wanted to talk to him
12 about the death of Joshua Zock.
- 13 Q And his parents were in the room when you said
14 that?
- 15 A I don't remember if they were in the room, but I
16 mean, they knew when we were talking to him what we
17 were talking to him about.
- 18 Q Would you agree with me that during the time you
19 were in the house, the parents were in the vicinity
20 of Mr. Cannon the entire time?
- 21 A Not the entire time, not the whole evening, no.
- 22 Q Tell me when they weren't there.
- 23 A At one point Mr. Cannon asked could he talk with us
24 outside away from his parents.
- 25 Q So you guys went outside for how long?

1 A I really don't have the time frame on that. We
2 stood at the front of my truck, which was parked in
3 their driveway as a matter of fact.

4 Q Did you explain to his parents what you were doing
5 there?

6 A Yes, they knew.

7 Q What was your explanation for why you were there?

8 A To investigate the death of Joshua Zock.

9 Q Did you think that Mr. Cannon may have had
10 something to do with this death before you got
11 there?

12 A We were still in the investigative process.

13 Q Tell me why you went to his house.

14 A His name was brought up as being an acquaintance
15 with these people, and there was also an issue
16 brought up about some shoes that Josh had stolen
17 from his house and thought that possibly Robert had
18 taken them.

19 Q Okay. So that's your information before you walked
20 in the door?

21 A That's correct.

22 Q So you go in there. Tell me, did you at any point
23 in time tell the parents, Listen, he's going to be
24 a witness against Mr. Whitehead in this case?
25 Whitehead is not a cooperative guy, we need your

- 1 son's help?
- 2 A Sometimes I will say or make a statement, you know,
- 3 you can be used -- you can also be used as a
- 4 witness.
- 5 Q Right.
- 6 A You know.
- 7 Q So you don't disagree with me that you may have
- 8 told Mr. Cannon that he could be used as a witness
- 9 in this trial?
- 10 A I will not disagree with you on that.
- 11 Q Did you tell him what that would entail?
- 12 A I don't know how in depth we went.
- 13 Q And would you agree or disagree that you told
- 14 Mr. Cannon that he wasn't in a lot of trouble at
- 15 this point?
- 16 A No, I wouldn't have told him that in a case with
- 17 this severity.
- 18 Q This is a pretty bad case, isn't it?
- 19 A (Witness nods). (Indicating affirmative response).
- 20 Q If we forget about these guys period, the scene at
- 21 this case was one of the -- probably one of the
- 22 worst ones you have seen; right?
- 23 A It was bad.
- 24 Q Now, this statement that you get from Mr. Cannon,
- 25 he's not telling you this story and you are writing

1 it down; is he? You are asking him questions about
2 what happened, and you've got to prod him to some
3 degree; don't you?

4 A Not very much. Pretty much when I first started
5 talking with him, just asking him, you know, where
6 was he at that night, how did he know that Josh had
7 passed.

8 Q And he came out right away with this story?

9 A With the actual statement itself?

10 Q Right.

11 A The actual second statement that he give me was
12 taken an hour or so later.

13 Q What was going on in the hour in between the first
14 time and the second time y'all talked?

15 A He actually give us a bogus story.

16 Q What was the nature of that bogus story?

17 A He was telling us that a guy by the name of
18 Christopher Rust had told him around 8:00 p.m. that
19 Joshua Zock was dead. He had made comments to us
20 that he had heard that Chris Whitehead committed
21 the murder, but he didn't know that for sure.

22 He would give us some information about the
23 relationship between Chris Whitehead and Melissa
24 Davey, which was the victim's girlfriend, and that
25 they had had a dispute in the past and that Joshua

1 Zock was always punking Chris Whitehead out and
2 that kind of stuff.

3 Q And you wrote down everything he said, right,
4 because this is a pretty important part of your
5 investigation?

6 A I wrote down brief little facts that he was giving
7 me.

8 Q And you agree -- I assume you have got his
9 statement up there with you in that file.

10 A That's his statement (indicating).

11 Q And you write in your notes around 6:47 is when all
12 this starts up, right?

13 A That's correct.

14 Q And at 8:10 is when he gives you the second
15 statement? Does that sound right?

16 A At 8:10 is when we actually -- is after he tells us
17 he wants to be completely honest with us, and he
18 wants to cooperate with us. At 8:10 is when he
19 starts giving us the true account of what happens,
20 and I start taking notes.

21 Q You don't know that that is a true account of what
22 happened though, do you?

23 A That's what he said what happened. That's what he
24 said happened.

25 Q But as far as whether it's the truth, we don't know

1 that. You only claim that's what Mr. Robert Cannon
2 told you that day.

3 A That's what he said was the truth.

4 Q For about an hour, he is telling you a few little
5 details about this dispute between Melissa and
6 Zock, and you are not asking him any questions?

7 A I'm sure I did. I am sure I asked him where he was
8 at that night and, you know, what was the
9 relationship with some of these people he worked
10 with. We was just carrying on a basic conversation
11 about the incident.

12 Q And he told you where he had been that night,
13 right? He gave you an explanation of where he had
14 been that night, right?

15 A Yes. I believe he said he had been up to the
16 Sonic.

17 Q So the information you had that he was at the
18 Sonic, he is not disputing that; is he?

19 A No, he didn't.

20 Q So why are you not believing the story?

21 A Because he went back a little bit later and told us
22 he wanted to talk outside the presence of his
23 parents and told us he was scared and that he
24 wanted to be honest with us.

25 Q So until he said that, you believed him? You

1 believed him about, it was -- he didn't have
2 anything to do with this, not sure what happened,
3 doesn't really know these people or if he does, he
4 knows --

5 A I had no reason or nothing to prove that he was
6 lying.

7 Q So you are not asking him any questions or
8 anything?

9 A At which point?

10 Q During the first statement that he gives when he is
11 telling you what happened, he was at Sonic, he got
12 dropped off at party, doesn't have anything to with
13 this murder. Are you meeting that statement with
14 belief or disbelief?

15 A I'm just taking it as he gives it to me. I don't
16 believe I formed an opinion at that time.

17 Q You have no opinion at that time. What changed
18 between 6:47 and 8:10?

19 A I guess Mr. Cannon wanting to be truthful.

20 Q Why did he want to be truthful, do you know? Do
21 you have any idea? Was it in reaction to a
22 particular question or anything like that?

23 A I think he began to realize the severity of what
24 had taken place, and he was scared.

25 Q What was making him realize the severity of what

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1 had taken place?

2 A Because he had two investigators at his house and
3 he knew what he had done.

4 Q Why was he scared?

5 MR. MEADORS: Objection, Your Honor,
6 speculation.

7 MR. KENDRICK: He just answered it, Your
8 Honor.

9 THE COURT: If he knows. Go ahead.

10 BY MR. KENDRICK:

11 Q I will ask it a different way. Was there anything
12 you did that may have scared Mr. Cannon?

13 A Absolutely not.

14 Q But you agree that with two investigators at his
15 house, y'all may have been making him nervous?

16 A I can't answer. I can't answer as to whether he
17 would be nervous. I can't answer on his feelings.

18 Q That's okay because you just did a few minutes ago.
19 So actually you can answer it.

20 MR. MEADORS: Your Honor, objection.

21 THE COURT: I'm sorry?

22 MR. MEADORS: He was making a comment. I
23 don't know what that was that Mr. Kendrick was just
24 saying.

25 THE COURT: Just go ahead. Move right ahead.

1 MR. KENDRICK: Thank you, Your Honor.

2 BY MR. KENDRICK:

3 Q What are you telling Mr. Cannon about what this
4 case is going to end up involving? What are you
5 telling him about murder? Do you know anything
6 about murder? I mean, you know about the legal
7 part of this; right? You know more than the
8 arrest.

9 A I don't remember what -- I don't remember if he
10 even asked me.

11 Q Did you talk to him talk about the penalties of
12 murder?

13 A I may have told him about some of the penalties of
14 murder.

15 Q What do you think you told him? What are the
16 penalties as you understand them?

17 A Murder is 30 to life.

18 Q And possibly the death penalty, too --

19 A It's possible.

20 Q -- depending on what Mr. Meadors decides?

21 A It's possible.

22 Q So at this point you haven't talked to the
23 solicitor very much. It could be a death penalty
24 case, right?

25 A That's not my decision.

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1 Q But you know it's possible?

2 A Oh, it's possible.

3 Q And you have that conversation with --

4 MR. MEADORS: Objection, Your Honor. He
5 didn't say he told him about the death penalty at all.
6 He is trying to put those words in his mouth. He didn't
7 say that.

8 MR. KENDRICK: Then he can say no, Your Honor.
9 That's the point of cross examination.

10 THE COURT: Go ahead.

11 BY MR. KENDRICK:

12 Q Did you in fact ever have that conversation with
13 Mr. Cannon or his parents?

14 A Not about the death penalty.

15 Q You are 100 percent sure of that?

16 A I'm 100 percent sure of that.

17 Q Why did y'all go outside at 8:10?

18 A We did not go outside at 8:10.

19 Q How did y'all get in front of your truck?

20 A Mr. Cannon asked us to speak with us outside away
21 from his parents.

22 Q Did he tell you why he didn't want to be around his
23 parents?

24 A He didn't want his parents to hear what he had to
25 say.

1 Q Okay. So you took that whole statement outside?

2 A I didn't take a statement outside.

3 Q Where did you take this statement where he
4 describes what happened that night?

5 A Sitting at the kitchen table.

6 Q His step-dad was standing right there, wasn't he?

7 A And his mother, and they were cooking supper.

8 Q So why did he tell you something that -- you are
9 telling us at one point he said, I don't want my
10 parents to hear this, but you agree with me they
11 heard everything; right?

12 A After he give the initial statement to start with,
13 he then told us that he would like to talk with us
14 outside away from his parents.

15 Q Right.

16 A So we walked outside in front of my truck which was
17 parked in the driveway.

18 Q And you just testified that he told you he didn't
19 want his parents to hear any of this?

20 A That's right.

21 Q But then he walks back inside and tells it to you
22 in front of them?

23 A That's correct.

24 Q And you write it down?

25 A That's correct.

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1 Q At some point during this questioning, you just
2 told me that Captain Tomley shows up at the house.
3 What time was this?

4 A That was approximately 15, 20 minutes after
5 Mr. Cannon asked to walk outside.

6 Q So as Mr. Cannon starts telling you what you
7 believe really happened that night, why does
8 Captain Tomley show up?

9 A He began -- I think Mr. Cannon kind of doubted my
10 seniority, I guess you would say. So I told him
11 that I was going to call my captain and let him
12 come up there and talk with him, and that's what
13 happened. I called Captain Tomley to see if it
14 would make Robert feel better.

15 Q Make him feel better about what?

16 A I don't know. I am just trying to -- I'm just
17 trying to solve the murder.

18 Q What did Captain Tomley tell him?

19 A I don't know. They talked away from my presence.

20 Q And when he got back from that conversation with
21 Captain Tomley, had his demeanor changed in any
22 way?

23 A No, his demeanor hadn't changed.

24 Q Did his actions change in any way?

25 A No, his actions didn't change.

- 1 Q Did Captain Tomley at some point ever tell you what
2 they talked about?
- 3 A No. Robert just said, I'm ready to talk, and
4 Captain Tomley made the comment to me that I
5 believe he is wanting to cooperate with you and
6 tell you the truth.
- 7 Q So at the time that this is going on, before
8 Captain Tomley shows up, he is reluctant to talk to
9 you?
- 10 A He was not reluctant to talk to me, but he just
11 wasn't telling the truth.
- 12 Q Okay. At some point you believe that it would
13 benefit you to have your boss come up and talk to
14 Mr. Cannon, right?
- 15 A (Witness nods). (Indicating affirmative response).
- 16 Q And your boss does, in fact, talk to Mr. Cannon.
17 He comes back and says he wants to cooperate, and
18 Mr. Cannon tells you his story; right?
- 19 A That's right.
- 20 Q But you don't know what the nature of that
21 conversation with Mr. Tomley was?
- 22 A I don't know what they talked about.
- 23 Q How long was he there?
- 24 A Captain Tomley was probably there 15 to 20 minutes
25 at the most. Because after that we all walked back

- 1 into the house, and I introduced Captain Tomley to
2 the parents. Then we talked a little bit and then
3 he left.
- 4 Q What were Robert Cannon's parents' demeanor? How
5 were they taking it during this time?
- 6 A They were nice people.
- 7 Q Nice people?
- 8 A Invited us right in.
- 9 Q Did his mother get very upset at one point?
- 10 A Not extremely upset but, I mean, you could tell
11 that this was really concerning her.
- 12 Q Did you discuss her concerns with her at any point?
- 13 A I may have. I don't remember our conversation.
- 14 Q Do you remember having any conversation with her
15 regarding the amount of trouble her son was in?
- 16 A I'm sure that we talked about the severity, but I
17 don't remember the specifics of the conversation.
18 I didn't take any notes or anything on that.
- 19 Q At the time this statement was given, was there any
20 evidence at all implicating Mr. Robert Cannon in
21 this murder?
- 22 A Just his statement itself.
- 23 Q Before this statement is written, is there any
24 evidence at all implicating him?
- 25 A Not to the point that we could have gotten an

1 arrest warrant.

2 Q Do you agree with me that if this confession is in
3 fact true, then Mr. Cannon has admitted to being
4 involved in a fairly serious crime?

5 A (Witness nods). (Indicating affirmative response).

6 Q But you didn't think he posed any danger to anybody
7 that night, right?

8 A No, I didn't think he posed any danger to anybody
9 that night, and he was there with his parents.

10 Q Because you left him at his house, right?

11 A I did.

12 Q And asked him if he would come voluntarily turn
13 himself in at the police station, right?

14 A Actually we asked him if he would come down to the
15 Sheriff's Office and take a polygraph.

16 Q And he said sure?

17 A Uh-huh. (Indicating affirmative response).

18 Q Why did you leave him at his house?

19 A Well, he was willingly cooperating with us at that
20 point, and we wanted to continue with the
21 investigation.

22 Q Did you want to foster an air of cooperation
23 between the two of y'all? Did you want him to feel
24 like he was getting a benefit for his cooperation?

25 A I don't know that that would necessarily -- maybe

- 1 to some point.
- 2 Q At the time you arrested him, you didn't have
- 3 anything other than this statement; right?
- 4 A At the time of Mr. Cannon's arrest, we also had
- 5 Mr. McDonald's statement.
- 6 Q And you arrested Mr. McDonald based on Mr. Cannon's
- 7 statement?
- 8 A I did.
- 9 Q So this statement is what you needed, right? You
- 10 needed somebody to break this case.
- 11 A That's fair.
- 12 Q And in your arrest warrant for Mr. McDonald, it in
- 13 fact says, We got a codefendant's statement
- 14 admitting to both their involvement?
- 15 A That's correct.
- 16 Q So you left at 10:00 o'clock, you went down and you
- 17 had the magistrate in Kershaw sign that warrant.
- 18 Did y'all write it in the car on the way down?
- 19 A Nope.
- 20 Q How did you get it written?
- 21 A We called another investigator who actually signed
- 22 the warrant and brought it to Richland County and
- 23 had it countersigned.
- 24 Q So he took that to the magistrate?
- 25 A He did.

1 Q And then he met you at Derrick's house?

2 A No, he actually -- we actually met with Richland
3 County over in Blythwood.

4 Q That's Derrick's house. He lives in Blythewood.

5 A It wasn't at Derrick's house. We met at a neutral
6 location together before we went out there.

7 Q Why did you want to gather up before you went out
8 there?

9 A We had to wait on Richland County to get there.

10 Q Did y'all come up with a plan on how you were going
11 to make this arrest?

12 A Not really. We just told them what we had, showed
13 them the warrant and where it was countersigned,
14 and told them this address we needed to go to. We
15 went there.

16 Q But no doubt in your mind that when you get to that
17 house, Derrick McDonald is going to jail; right?

18 A We had an arrest warrant for him, yes, sir.

19 Q But you didn't get one for Mr. Cannon that night?

20 A Did not get one for Mr. Cannon that night, no.

21 MR. KENDRICK: That's all I have from this
22 witness.

23 THE COURT: Mr. Riley.

24 MR. RILEY: Your Honor, could we take a short
25 break, please? My client wants to use the rest room.

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1 THE COURT: Let law enforcement take him.

2 MR. WHITLARK: Your Honor, my client would
3 like to join him in using the facilities.

4 THE COURT: Join him?

5 MR. WHITLARK: Yes, sir.

6 THE COURT: Counsel, approach the bench,
7 please.

8 (Whereupon there was a bench conference off
9 the record).

10 (Whereupon there was a recess).

11 MR. KENDRICK: If Your Honor would indulge me,
12 I had a few more questions.

13 THE COURT: You may proceed, Mr. Kendrick.

14 MR. KENDRICK: Thank you, Judge.

15 (Defendant's Exhibit Number 1 is marked for
16 identification).

17 BY MR. KENDRICK:

18 Q Investigator Catoe, I will show you what has been
19 marked as Defendant Cannon's Exhibit Number 1.
20 That's a page out of your notes from your file; is
21 that correct?

22 A That's correct.

23 Q Would you read the last line to me?

24 A He started to tell us, away from parents, that he
25 knew more but wanted to make sure that he could get

1 some help.

2 Q To be absolutely clear, you were referring to
3 Robert Cannon in those notes when you were at his
4 house?

5 A That's absolutely correct.

6 MR. KENDRICK: Your Honor, for purposes of
7 this hearing, we would ask that that be admitted as
8 Cannon's Exhibit Number 1.

9 THE COURT: It's for identification.

10 MR. KENDRICK: That's all I have, Your Honor.
11 Thank you.

12 THE COURT: Mr. Riley.

13 MR. RILEY: Thank you, Judge.

14 IN CAMERA EXAMINATION

15 BY MR. RILEY:

16 Q Investigator Catoe, this morning you have testified
17 that when you approached Mr. Whitehead after
18 stopping him on Boney Road and asked him about this
19 incident that he responded with the words, I don't
20 know a damn thing about it; is that correct?

21 A That's correct.

22 Q I have been through your handwritten notes, which
23 I'm sure you have there in your file, and can you
24 point out to me where you recorded that in your
25 handwritten notes?

1 A I did not record it.

2 Q Also, I have two pages of typewritten notes that
3 you apparently prepared at a later date. Can you
4 point out to me where you recorded that statement
5 in those typewritten notes?

6 A It was not recorded.

7 Q When did you recall that comment?

8 A I mean, I remember him making the comment. I just
9 failed to make a notation.

10 Q You didn't think it was important enough to record
11 in your cases notes but today you do?

12 A I just failed to make the notation.

13 Q Any particular reason? In other words, my question
14 is why was it not important then, but it's
15 important now? You have no answer?

16 A I don't know what you want me to say.

17 Q At the time you were talking with Mr. Whitehead,
18 isn't it true that his mother came over to speak to
19 you?

20 A He actually called his mother.

21 Q And she did appear and speak with you; is that not
22 correct?

23 A That's correct.

24 Q All right, sir. Isn't it also true that
25 Mr. Whitehead said, before his mother arrived,

- 1 isn't it true he said, I need to speak to my mother
2 and an attorney?
- 3 A I remember him saying he was going to call his
4 mother, and I told him to call his mother.
- 5 Q Did he not also say he needed to speak to an
6 attorney?
- 7 A No.
- 8 Q Now, after the Richland County officers arrived and
9 took Mr. Whitehead away, did you not meet up with
10 them at a gas station at the corner of Hard
11 Scrabble and Clemson Roads?
- 12 A Yes, we did.
- 13 Q Did you not spend over an hour talking to
14 Mr. Whitehead?
- 15 A No, we did not.
- 16 Q Did you talk to Mr. Whitehead at all at that
17 location?
- 18 A I don't remember. I don't remember if we spoke to
19 Mr. Whitehead or just the Richland County officers
20 did.
- 21 Q You don't recall leaning in the Richland County
22 Sheriff's Department car and conducting an
23 conversation with Mr. Whitehead?
- 24 A I don't remember conducting a conversation with
25 Mr. Whitehead.

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- 1 Q Did you, on that day, which would have been the
2 15th of December, 2006, did you at any time read
3 Mr. Whitehead his Miranda rights?
- 4 A I did not.
- 5 Q Did any of the other officers that were there,
6 Officer Marthers or any others?
- 7 A I can't answer for Richland County.
- 8 Q But you deny meeting up with him at the gas station
9 at Clemson and Hard Scrabble?
- 10 A I didn't deny that.
- 11 Q So you did meet the Richland County Sheriff's car
12 there with Mr. Whitehead in the car?
- 13 A I did.
- 14 Q But you don't remember engaging in a conversation
15 with him?
- 16 A No, I don't.
- 17 Q Do you recall saying to Mr. Whitehead, I don't want
18 you to go to prison. I want the other two to go?
- 19 A No, I don't.
- 20 Q Thank you, sir.

21 THE COURT: Redirect for this witness?

22 MR. MEADORS: Very briefly.

23 IN CAMERA EXAMINATION

24 BY MR. MEADORS:

25 Q Let's go back in reverse order. Mr. Riley was

1 asking you about your notes. Could you look on
2 page 4 of your notes. He was asking you if it was
3 in here anything about that comment that Defendant
4 Whitehead made about, I don't have a damn thing to
5 do with this. I don't know any damn thing about
6 it. It's page 40 of your notes that I think he was
7 asking you about.

8 A Which?

9 Q Did you make a reference in there about what you
10 have testified and what he asked you about, about
11 flagging down Whitehead?

12 A He was very upset and very defensive.

13 Q "I asked him to come to our Sheriff's Office to
14 talk, and he got very upset and defensive." Did
15 you put that in your notes?

16 A I did.

17 Q Did he express verbally that -- why did you think
18 he was upset and defensive that you put it in your
19 notes? Did he say anything?

20 A He said, I don't know a damn thing about it.

21 Q Is that why you put in here real upset and
22 defensive?

23 A That's correct.

24 Q Did you take those words to mean that he was -- and
25 did it appear to you that he was upset and

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1 defensive based on that comment?

2 A Yes, I did.

3 Q Mr. Whitlark had asked you about, I believe, when
4 you talked to Derrick McDonald on 12/15 at
5 5:00 o'clock. Do you remember that?

6 A Yes, sir.

7 Q Where he initially gave you a few statements. At
8 that point did he say, I don't want to talk to you
9 anymore right now. I want to talk to my mom?

10 A Yes, he did.

11 Q Not that he wasn't going to talk anymore to his mom
12 and dad, but just he wanted to talk to her?

13 A That's correct.

14 Q And at any time after the arrest of Derrick
15 McDonald on 12/15, did he ask for a lawyer?

16 A He never did.

17 Q You mentioned something, and I believe you said it
18 at some point -- I can't remember who -- that
19 someone may have said, I will get a lawyer. Did
20 Derrick McDonald ever say to you, I want a lawyer?

21 A He never did.

22 Q Did you ever threaten him or coerce him?

23 A I did not.

24 Q If he had said, Danny Catoe, I want a lawyer, would
25 you have talked to him?

- 1 A No, I would not.
- 2 Q He was 18 years old, wasn't he --
- 3 A Yes, sir.
- 4 Q -- Derrick McDonald. And Cannon is 17 years old,
- 5 correct?
- 6 A That's correct.
- 7 Q And there have been several, at least two, I think,
- 8 folks who have asked you about it, maybe three,
- 9 about the death penalty. Did you ever mention the
- 10 death penalty whatsoever to any of these folks?
- 11 A No.
- 12 Q Is that a no?
- 13 A It's a no.
- 14 Q Is there any doubt about that?
- 15 A No.
- 16 Q And I think Mr. Whitlark was asking you about the
- 17 statements you made, the questions that you had
- 18 asked Derrick McDonald on December 15th. Did you
- 19 ask him any questions prior to reading his Miranda
- 20 to him involving this case, Derrick McDonald, after
- 21 you arrested him?
- 22 A Not after we arrested him.
- 23 Q In the statement you testified that Derrick
- 24 McDonald gave as you were getting back to the
- 25 Sheriff's Department, was that a statement he

- 1 volunteered to you about, This is the way we came
2 the other night?
- 3 A Yes, it was.
- 4 Q At that point is that when you said, Wait until we
5 get back down to the Sheriff's Department before we
6 talk?
- 7 A Yes, it was.
- 8 Q Did you verbally Mirandize him in the truck?
- 9 A Yes, I did.
- 10 Q And the written Miranda after that?
- 11 A Yes, I did.
- 12 Q And I think it might have been Mr. Kendrick, but
13 was Cannon taken and he failed the polygraph the
14 next day with Phil Crawford; correct?
- 15 A That's correct.
- 16 Q That's when he went on to say, I also kicked Joshua
17 Zock, too; right? He hadn't told y'all that to
18 start with?
- 19 A That's correct.
- 20 Q But after failing the polygraph, he admitted, Well,
21 I did kick him, too; right?
- 22 A That's correct.
- 23 Q "I just didn't hit him with the bat and drop the
24 base on him," right?
- 25 A That's correct.

1 Q Did you promise any of these folks anything?

2 A No, I did not.

3 Q Did you threaten them in any way?

4 A No, I did not.

5 Q Were their statements to you voluntary?

6 A Yes, they were.

7 Q Thank you.

8 MR. MEADORS: That's all.

9 THE COURT: Mr. Whitlark.

10 MR. WHITLARK: Briefly, Your Honor. May it
11 please the Court.

12 IN CAMERA EXAMINATION

13 BY MR. WHITLARK:

14 Q I will hand you up a typed version of a summary of
15 your investigative report. I will ask you if you
16 can identify it. Take a look at that. I will ask
17 you to read right down here (indicating). Read
18 that sentence back, all the way through would you,
19 please.

20 THE COURT: Just identify it for the record,
21 what you are looking at.

22 MR. WHITLARK: This is a typed summary of --

23 THE COURT: Let him tell me.

24 MR. WHITLARK: I'm sorry, Your Honor.

25 THE WITNESS: This is my case summary,

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1 basically some typed notes of the case.

2 THE COURT: When was it made?

3 THE WITNESS: I don't have a date that I
4 actually typed the notes.

5 THE COURT: Was it the same day or a week
6 later or what?

7 THE WITNESS: No, that was after, probably the
8 week after the arrests were made.

9 THE COURT: Go ahead.

10 A We briefly spoke with Derrick and advised him why
11 we were there, stated he wanted to talk with his
12 mother first or have her present with him while we
13 talked.

14 Q Okay. So he didn't want to talk with you unless he
15 had his mother present, did he?

16 A At that time.

17 Q And he also told you that he didn't want to talk
18 with you or say anything unless he had a lawyer
19 present?

20 A He did not.

21 Q When you took him to the truck, he said that to
22 you; didn't he, sir?

23 A He did not.

24 Q But his mother said, Don't worry. We'll get you a
25 lawyer?

1 A The mother said that.

2 Q The mother said that. All right. Sir, haven't you
3 already testified that before Miranda, you were
4 questioning him about his involvement in this case.
5 When you were taking him up and before you got a
6 written waiver from him, you were questioning him
7 about this case; weren't you?

8 A That was before we arrested him.

9 Q Didn't ask you him some questions about the
10 substance of this case, his involvement in this
11 murder, before you got a written waiver from him
12 about his Miranda rights at 11:40 at night?

13 A I think I asked him about what he was doing on that
14 night.

15 Q Haven't you previously testified you were asking
16 him about his involvement with this murder before
17 he signed that Miranda waiver?

18 A Not directly involved in the murder, no.

19 Q But you were just asking him about it, right?

20 A I was just asking him about what he was doing that
21 night.

22 Q And he was under arrest at that time, right?

23 A No, he was not.

24 MR. MEADORS: Your Honor, for the record, he
25 is talking about the 5:00 o'clock time, not 11,

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1 Investigator Catoe is.

2 THE COURT: The witness is fully competent to
3 answer the questions that are being asked.

4 BY MR. WHITLARK:

5 Q Sir, Robert Cannon failed the polygraph test the
6 next day; didn't he?

7 A That's what I was aware of. That's what I was
8 told.

9 Q That's in your file, isn't it?

10 A Yes.

11 Q And the question asked was: Did you tell the truth
12 in your statement? That was the question to him,
13 wasn't it?

14 A I don't know what the question was.

15 Q All right. While you were still at the premises of
16 Mr. Derrick, Derrick McDonald, you heard, I don't
17 want to talk to anybody unless my mom is present,
18 and we are going to go get him a lawyer. Don't
19 worry, I will get you a lawyer. You heard that,
20 didn't you, before you took him off in your truck?

21 A You are talking about when we arrested him?

22 Q Yes, sir.

23 A The first time we talked to Mr. McDonald, he asked
24 to have his mother there. When we arrested him, he
25 never asked for an attorney.

1 Q Sir, didn't you tell him the same thing you told
2 Robert Cannon, that you would give him some help
3 and he would be a witness in this case and he
4 didn't need a lawyer?

5 A No, I would never tell him that.

6 Q Thank you.

7 MR. WHITLARK: That's all I have, Your Honor.

8 THE COURT: Anything further, Mr. Kendrick?

9 MR. KENDRICK: Yes, just in some direct
10 response to what Mr. Meadors asked.

11 IN CAMERA EXAMINATION

12 BY MR. KENDRICK:

13 Q Investigator Catoe, I'm confused. A minute ago
14 Mr. Meadors asked you about this polygraph Robert
15 Cannon took, right? So you are aware of that
16 polygraph?

17 A Yes, I am.

18 Q Were you involved in it?

19 A No, I'm not a polygraph examiner.

20 Q Do you know what questions were asked?

21 A I don't know the specific questions, no.

22 Q Do you know what, if any, conclusions could be made
23 based on the results of that test?

24 A I was told that it was deceptive.

25 Q Were you told what was deceptive?

1 A No.

2 Q So again, are there any conclusions you can make,
3 other than -- I mean, you say it's deceptive, but
4 you don't know about what; right?

5 A No, I don't know what questions or anything, no.

6 Q So they could have asked, Are you guilty, and he
7 said yes. If deception was indicated, he would be
8 innocent, right, according to your understanding?

9 A That's --

10 Q I'm not asking you to commit to something, but you
11 don't really know what that polygraph signifies; do
12 you?

13 A I don't know what questions was asked in the
14 policy.

15 Q So your knowledge of whatever statements he may
16 have given at that polygraph are not direct
17 knowledge, right?

18 A No, I did not take them.

19 Q So when he asked you, Did he say this? Did he say
20 that? How are you able to answer that question?

21 A Only from what the other investigator had told me.

22 MR. KENDRICK: That's all I have, Your Honor.

23 Thank you.

24 THE COURT: Mr. Riley?

25 MR. RILEY: Nothing, Judge.

1 THE COURT: Thank you very much. You may come
2 down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Mr. Meadors, how many more
5 witnesses do you have?

6 MR. MEADORS: Three.

7 THE COURT: As lengthy?

8 MR. MEADORS: None of them should be, no, sir.
9 I wouldn't think that none of them will be that lengthy
10 from my side.

11 THE COURT: The jury will be here in 40
12 minutes. Let's go ahead and take a lunch break. Just
13 for planning purposes, the jury comes in at two. They
14 will go through a roll call. Of course, counsel, I
15 assume you will be present during the roll call.

16 MR. WHITLARK: Yes, sir.

17 THE COURT: But it's not necessary to have
18 your clients here during the roll call?

19 MR. WHITLARK: No, sir.

20 THE COURT: Agreed, Mr. Kendrick?

21 MR. KENDRICK: I would prefer they not be
22 here, Your Honor.

23 THE COURT: Mr. Riley?

24 MR. RILEY: Judge, I didn't hear your
25 question. I was talking with Mr. Reuwer.

1 THE COURT: That's a problem. You need to
2 listen.

3 MR. RILEY: Yes, sir.

4 THE COURT: Does your client need -- I don't
5 think your client needs to be here during the roll call.

6 MR. RILEY: No, sir.

7 THE COURT: During qualification we will bring
8 them all back in.

9 MR. RILEY: Yes, sir.

10 THE COURT: During qualification. But as far
11 as -- as a matter of fact, they need to be here during
12 qualification. They can be here during the voir dire
13 when we get there.

14 MR. RILEY: Yes, sir.

15 THE COURT: Is that satisfactory with
16 everybody?

17 MR. WHITLARK: With McDonald, yes.

18 MR. KENDRICK: Yes, sir, Your Honor.

19 MR. RILEY: Yes, it is, Your Honor.

20 THE COURT: Then we will break now until
21 2:00 o'clock. That will give you an opportunity to get
22 something to eat, the clerk, the bailiffs and -- of
23 course, the deputies don't need anything. They all look
24 like they are well fed.

25 MR. MEADORS: Your Honor, 2:00 o'clock. Is

1 the clerk going to do her separate thing? So we don't
2 come in at two?

3 CLERK: I will come and get you.

4 THE COURT: What is your separate thing?

5 CLERK: When I talk to the jury.

6 THE COURT: She will chitchat, then the roll
7 call will be done, then the qualification will be done,
8 and then the voir dire will be done.

9 We will continue this hearing in all
10 likelihood in the morning because I don't know if we can
11 get through all that this afternoon and get the jury
12 seated. We will stand at ease until 2:00 o'clock.

13 (Whereupon there was a luncheon recess).

14 THE COURT: Counsel, we are having skirts made
15 for the tables, and they will be ready in the morning.
16 I have, just for the record, I have no proposed voir
17 dire. If there is something I leave out, call it to the
18 Court's attention.

19 I have a witness list from the State. I have
20 what I believe is a witness list from Mr. Whitehead's
21 counsel. That is Chris Whitehead, Jr. Is that your
22 client?

23 MR. RILEY: Yes, sir.

24 THE COURT: And Chris Whitehead, Sr. Redonna
25 Whitehead. I have Veronica Davis. Is that for your

1 client?

2 MR. KENDRICK: Yes, sir.

3 THE COURT: And Mario Munnerlyn.

4 MR. KENDRICK: Munnerlyn, yes, sir.

5 THE COURT: And from Mr. McDonald I have no
6 witnesses.

7 MR. WHITLARK: Yes, I have it, Your Honor.

8 (Hands to Court).

9 (Pause).

10 THE COURT: Anything else?

11 MR. KENDRICK: Your Honor, can I ask a
12 question? Before we bring the jury in, I know the last
13 time I tried a case down here, we bring them around and
14 seat them in the box when they are selected.

15 Obviously at this point with the table, the
16 skirts not being made yet, you can clearly see from the
17 box down under the table. I bring that to Your Honor's
18 attention. I would obviously ask if we can come up with
19 some other way.

20 THE COURT: Of seating a jury?

21 MR. KENDRICK: The point of my objection is
22 that they can see these clients in claims.

23 THE COURT: I think you have to tell your
24 clients to move their feet.

25 MR. KENDRICK: For the record, Your Honor, I

1 will just say that.

2 THE COURT: That's fine. Thank you very much.
3 Have we got any towels? How about some briefcases?

4 (Pause).

5 MR. KENDRICK: Your Honor, can I ask the Court
6 one more thing. Normally my practice would be to have
7 my client stand up. Obviously because he in shackles, I
8 don't want him to do that. I want to make sure the
9 Court doesn't have any objection to him not standing.

10 THE COURT: He can turn his chair around if he
11 wants to do that.

12 MR. KENDRICK: I would rather not do it at all
13 unless Your Honor wishes for me to.

14 THE COURT: No. Whether they stand or not is
15 irrelevant to me.

16 MR. KENDRICK: Thank you, Judge.

17 MR. MEADORS: Judge, it just came to my mind.
18 Number 13 on the jury list is a gentleman by the name of
19 Ty L. Benson.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Mr. Moak informed me over the
22 break we have pending charges on him.

23 THE COURT: He is not on Mr. Moak's list.

24 MR. MEADORS: No, sir, they are pending
25 charges. Anyway, I don't know how -- if we either

1 approach or do a side bar. I didn't realize he has
2 pending charges in our office right now.

3 I think it might be hard for him to be fair
4 and impartial either way. He may want to help us. He
5 may want to hurt us. I don't know. It's assault and
6 battery of a high and aggravated nature charges.

7 THE COURT: Do the Defendants have any
8 preference?

9 MR. KENDRICK: Your Honor, with the fairness
10 of this office, I think he would be perfectly happy
11 sitting or not sitting, whatever they want to do. I
12 don't think we need to remove him right now.

13 MR. MEADORS: For the record we do treat
14 people fairly. I am sure he would do the right thing.

15 THE COURT: Then we will see if he speaks up.

16 MR. WHITLARK: Your Honor, we have three more
17 names we would like to offer up.

18 THE COURT: Let Ms. McDuffie look at them and
19 see if we have already got them on the list.

20 (Pause).

21 THE COURT: Ready for the jury, counsel?

22 MR. MEADORS: The State is ready.

23 THE COURT: Defense?

24 MR. WHITLARK: McDonald is ready.

25 MR. KENDRICK: Yes, sir, Your Honor.

1 MR. RILEY: Yes, sir, Your Honor.

2 THE COURT: Bring the jury in, please.

3 (The jury panel enters the courtroom).

4 THE COURT: Counsel, approach the bench.

5 (Whereupon there was a bench conference off
6 the record in the presence of the jury panel but out of
7 the hearing of the jury panel).

8 THE COURT: Ladies and gentlemen, as I told
9 you, we are about to go into the trial of the first
10 criminal case. I will explain a little bit about it in
11 a few minutes.

12 I will tell you what it's about, tell you the
13 people who are, and I will call out a list of potential
14 witnesses. Basically this is a search to find out
15 whether or not you know anything about this case or have
16 any connections with this case one way or the other.

17 As in any criminal case, the State prosecutes
18 the case or the State brings the case through what are
19 known as indictments. I will tell you what those
20 indictments say in just a minute.

21 But as the prosecuting entity here in South
22 Carolina, the Solicitor's Office actually does the
23 prosecution or conducts the trial on behalf of the
24 prosecution.

25 I need to know, based on that, something about

1 any connection that you may have with the State
2 Solicitor's Office. The State's Solicitor for this
3 district is Mr. Barney Giese.

4 I need to know if any member -- he was here
5 earlier in the day. I don't see him here now, but I
6 need to know if any member of the jury panel is related
7 by blood, connected by marriage or employment or a close
8 personal acquaintance of Mr. Barney Giese, the Fifth
9 Judicial Circuit Solicitor. If so, please stand.

10 (There is no response).

11 THE COURT: Mr. Giese may be here during the
12 course of the trial. I don't know. But the primary
13 counsel that are on his staff that are prosecuting this
14 case today are Deputy Solicitor, John Meadors -- if you
15 will stand and face the jury -- Mr. Ron Moak and
16 Ms. Joanna McDuffie.

17 I need to know if any member of the jury panel
18 is related by blood, connected by marriage or employment
19 or a close personal acquaintance of any of these three
20 attorneys who work in the Solicitor's Office, either
21 here in Kershaw County or in Richland County. Does any
22 member of the jury panel know any one of these three
23 lawyers?

24 (There is no response).

25 THE COURT: The State Solicitor's Office and

1 the State prosecuting entity, as a rule, have very close
2 contact with law enforcement. In other words, it's sort
3 of like Law and Order. Law enforcement makes arrests
4 and the direct attorney or in this State the Solicitor's
5 Office actually does the prosecution.

6 So I need to know if any member of the jury
7 panel or any member of your family is employed within
8 law enforcement. That could be anything from the City
9 of Camden Police Department to the Kershaw County
10 Sheriff's Department or S.L.E.D. or Richland County
11 Sheriff's Office or the F.B.I. or any military police
12 force or any police force in central South Carolina, let
13 me say, or even for that matter if it was an F.B.I.
14 agent, I would like to know that.

15 I will ask if any member of the jury panel,
16 either you or any member of your family, is employed
17 within law enforcement. If so, please stand.

18 (Jurors stand).

19 THE COURT: I will ask you your -- just hold
20 on a minute. Ladies and gentlemen, in criminal cases
21 some jurors would rather be known only by their number.
22 They might feel more comfortable if their names were not
23 used.

24 I have only seen that through experience. So
25 let's try this -- and the reason I am hesitating is

1 because I'm not sure everybody remembers their number.

2 Madame Clerk, if you would step up here a
3 moment.

4 (Pause).

5 THE COURT: It looks like we will have to go
6 with your names. The lady with the striped jacket on,
7 could you tell me, what is your name, please?

8 PROSPECTIVE JUROR: Lisa Owens.

9 THE COURT: Ms. Owens. Yes, ma'am, what
10 connection do you have with law enforcement?

11 PROSPECTIVE JUROR: I have a cousin on the
12 Sheriff's Department.

13 THE COURT: In Kershaw County?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Can you tell me his name?

16 PROSPECTIVE JUROR: Ty Cobb.

17 THE COURT: Ms. Owens, would the fact that you
18 have a cousin on the Kershaw County Sheriff's
19 Department, would that in any way interfere with your
20 ability to give both the State and the Defendant a fair
21 and impartial trial in this case?

22 PROSPECTIVE JUROR: Can you repeat that, Your
23 Honor?

24 THE COURT: Yes, ma'am. I will ask this same
25 question of everybody, so just listen up. I will ask

1 you if you disclose something like this -- and we want
2 you to disclose whatever is appropriate.

3 I will ask you if the fact, for example, that
4 you have somebody in your family in law enforcement, if
5 that fact alone would prevent you from being fair and
6 impartial to both the State and the Defendant.

7 In other words, do you feel you can be fair
8 both to the State -- I don't know if your cousin is on
9 the witness list or not, possibly could be -- but do you
10 feel based on that family connection that you could be
11 fair and impartial to both the State and the Defendant
12 in this case?

13 PROSPECTIVE JUROR: (Nods head). (Indicating
14 affirmative response). I could be fair.

15 THE COURT: That's all I need to know. Thank
16 you very much. Yes, ma'am.

17 PROSPECTIVE JUROR: Were you just asking about
18 Kershaw and Richland County or any county?

19 THE COURT: Any county.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Your name, please?

22 PROSPECTIVE JUROR: Amira Reames.

23 CLERK: Number 179, Your Honor, Amira Reames.

24 THE COURT: Ms. Reames, who is involved in law
25 enforcement?

1 PROSPECTIVE JUROR: My uncle.

2 THE COURT: And where does he work?

3 PROSPECTIVE JUROR: Lee County.

4 THE COURT: Lee County Sheriff's Office or
5 Bishopville?

6 PROSPECTIVE JUROR: Bishopville.

7 THE COURT: Bishopville Police Department?

8 PROSPECTIVE JUROR: Uh-huh. (Indicating
9 affirmative response).

10 THE COURT: Ms. Reames, the fact that you
11 have -- who was it, your uncle?

12 PROSPECTIVE JUROR: Uh-huh. (Indicating
13 affirmative response).

14 THE COURT: That fact that your uncle is
15 involved in law enforcement, would that in any way
16 interfere with your ability to give both the State and
17 the Defendant a fair and impartial trial?

18 PROSPECTIVE JUROR: No, it wouldn't.

19 THE COURT: Thank you very much, Ms. Reames.
20 Yes, sir.

21 PROSPECTIVE JUROR: One-fifty-three.

22 THE COURT: One-fifty-three. Mr. Murphy?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right, sir.

25 PROSPECTIVE JUROR: I've got a cousin, he is

1 with law enforcement.

2 THE COURT: Where?

3 PROSPECTIVE JUROR: He's Reginald Lloyd.

4 THE COURT: Reginald Lloyd?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: He is sort of with law
7 enforcement. Mr. Murphy, I need to let you know, he
8 runs law enforcement. Now, Mr. Murphy, would the fact
9 that Reginald Lloyd is -- is he your nephew?

10 PROSPECTIVE JUROR: He's my cousin.

11 THE COURT: Cousin. Would that fact in any
12 way interfere with your ability to give both the State
13 and the Defendant a fair and impartial trial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: You could be fair to both parties?

16 PROSPECTIVE JUROR: Absolutely.

17 THE COURT: Thank you very much, Mr. Murphy.

18 Mr. Best.

19 PROSPECTIVE JUROR: Yeah, I've got a first
20 cousin with S.L.E.D. and a first cousin who is a retired
21 magistrate from Kershaw County.

22 THE COURT: If you would give us their names,
23 please.

24 PROSPECTIVE JUROR: Marvin Brown is with
25 S.L.E.D. and Ted Davis was a retired magistrate with

1 Kershaw County.

2 THE COURT: Mr. Best, would that fact in any
3 way interfere with your ability to give both the State
4 and the Defendant a fair and impartial trial?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you very much, Mr. Best.
7 Yes, sir, in the back row.

8 PROSPECTIVE JUROR: Steven Baneer (phonetic).

9 CLERK: Number 14, Your Honor.

10 THE COURT: Mr. Baneer, yes, sir.

11 PROSPECTIVE JUROR: I have an uncle that's a
12 correctional officer with Richland County.

13 THE COURT: He is a correctional officer in
14 Richland County?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Mr. Baneer, would that fact in any
17 way interfere with your ability to give both the State
18 and the Defendant a fair and impartial trial in this
19 case?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Thank you very much, Mr. Baneer.
22 Anybody else?

23 (There is no response).

24 THE COURT: I need to know -- I will expand
25 that a little bit, ladies and gentlemen. Is there any

1 member of the jury panel, you or -- let's leave it at
2 that -- who is a contributor or supporter of any group
3 which has as its primary concern the support of law
4 enforcement or victims' rights?

5 For example, does any member of the jury panel
6 belong to groups such as Mothers Against Drunk Driving
7 or Students Against Drunk Driving or Sistercare or
8 belong to such groups as the Troopers' Association or
9 the Sheriffs' Association, any of these groups that you
10 might support that have, as I say, their primary
11 function is support of law enforcement or support of
12 victims or victims' rights?

13 In other words, if you donate to them or
14 sometimes people volunteer for these groups that you may
15 participate in, any member of the jury panel who, with
16 some regularity, either donates to or participates in
17 activities involving either, as I say, law enforcement
18 support or victims' rights groups? Any member of the
19 jury panel?

20 (Juror stands).

21 THE COURT: Yes, ma'am, on the front row.

22 Your name, please?

23 PROSPECTIVE JUROR: Olivia Caudill.

24 THE COURT: Ms. Caudill.

25 CLERK: Number 41, Your Honor.

1 THE COURT: Yes, ma'am, and which of these
2 groups do you support?

3 PROSPECTIVE JUROR: We donate to both, sir.

4 THE COURT: To what?

5 PROSPECTIVE JUROR: Law enforcement and
6 M.A.D.D., Mothers Against Drunk Drivers.

7 THE COURT: And to what else?

8 PROSPECTIVE JUROR: Law enforcement.

9 THE COURT: Troopers' Association?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: You donate to the Troopers'
12 Association?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: I always ask jurors when they tell
15 me that if they have got a little sticker to go on the
16 back of the car.

17 PROSPECTIVE JUROR: I don't know if we have it
18 on the car or not.

19 THE COURT: But you got the sticker, didn't
20 you?

21 PROSPECTIVE JUROR: (Nods head). (Indicating
22 affirmative response).

23 THE COURT: And you didn't put it on the car?

24 PROSPECTIVE JUROR: I have my children's
25 stickers on mine.

1 THE COURT: Let me give you a little hint. If
2 you put that sticker on the car, you might not get a
3 ticket. I don't know. I don't know that, and you don't
4 tell them I said so.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: Thank you, Ms. Caudill. Anybody
7 else?

8 (Juror stands).

9 THE COURT: Yes, sir, your name?

10 PROSPECTIVE JUROR: Tim Maloney.

11 THE COURT: Mr. Maloney, let me find you on my
12 list.

13 PROSPECTIVE JUROR: I apologize for not having
14 my number.

15 THE COURT: That's all right.

16 CLERK: Number 125, Your Honor.

17 THE COURT: Yes, Mr. Maloney.

18 PROSPECTIVE JUROR: I donate to the Troopers'
19 Association and Kershaw County Sheriff's Department.

20 THE COURT: All right. Thank you very much.

21 PROSPECTIVE JUROR: Thank you. By the way, it
22 doesn't prevent you from getting a ticket. My wife
23 proved that.

24 THE COURT: I have been wrong all these years.
25 Thank you, Mr. Maloney, for the entertainment. Anybody

1 else?

2 (There is no response).

3 THE COURT: Any of these other groups,
4 Sistercare or anything like that?

5 (There is no response).

6 THE COURT: Ladies and gentlemen, the
7 Defendants in this matter today -- and there are three
8 Defendants -- I will call each of them out. I will tell
9 you where they are seated. They are seated in front of
10 you at the counsel table, this big table in front of me
11 here.

12 We have got a number of lawyers and a number
13 of Defendants. The first Defendant is Mr. Christopher
14 Ryan Whitehead. This is Mr. Whitehead. Is any member
15 of the jury panel related by blood or connected by
16 marriage or employment or a close personal acquaintance
17 of Mr. Christopher Whitehead? If so, please stand.
18 Does anybody know Mr. Whitehead?

19 (There is no response).

20 THE COURT: Mr. Whitehead is represented in
21 this matter today by Mr. Neil Riley and Mr. David
22 Reuwer, both attorneys practicing here in Camden.

23 I will ask if any member of the jury panel is
24 related by blood, connected by marriage or employment or
25 a close personal acquaintance of either Mr. Neil Riley

1 or Mr. David Reuwer. If so, please stand. If perhaps
2 you been represented by either of these gentlemen either
3 presently or in the past. Any member of the jury panel?

4 (There is no response).

5 THE COURT: Thank you very much. The next
6 Defendant just from my left to my right is Mr. Robert
7 Cannon. Mr. Cannon, will you turn and face the jury.
8 This is Mr. Robert Cannon.

9 Is any member of the jury panel related by
10 blood, connected by marriage or employment or a close
11 personal acquaintance of Mr. Robert Cannon? If so,
12 please stand.

13 (There is no response).

14 THE COURT: Thank you, Mr. Cannon. Mr. Cannon
15 is represented in this matter by Mr. Josh Kendrick, an
16 attorney who practices law both in Richland County and
17 Kershaw County.

18 I need to know if any member of the jury panel
19 is related by blood, connected by marriage or employment
20 or a close personal acquaintance of Mr. Josh Kendrick or
21 perhaps represented by him, either presently or at some
22 time in the past. Does anybody know Mr. Kendrick?

23 (There is no response).

24 THE COURT: The third Defendant in this matter
25 today is Mr. Derrick McDonald. This is Mr. McDonald.

1 Is any member of the jury panel related by
2 blood, connected by marriage or employment or a close
3 personal acquaintance of Mr. Derrick McDonald? Does
4 anybody know Mr. McDonald? He is the gentleman in the
5 middle with the burgundy shirt on.

6 (There is no response).

7 THE COURT: Thank you very much, Mr. McDonald.
8 Mr. McDonald is represented in this matter by two
9 attorneys, Mr. Mark Whitlark and Mr. Nathan Sheldon.

10 I need to know if any member of the jury panel
11 is related by blood, connected by marriage or employment
12 to either Mr. Mark Whitlark or Mr. Nathan Sheldon or
13 perhaps have been represented by them, either presently
14 or in the past. Does anybody know either of these two
15 attorneys?

16 (There is no response).

17 THE COURT: Thank you very much. Ladies and
18 gentlemen, what I hold in my hand are what are known as
19 indictments. These are formal documents by which a case
20 is brought into court.

21 They are not evidence of anything. You are
22 not to assume from the mere fact that individuals have
23 been indicted that they are guilty of anything. Our
24 system of justice demands that any individual charged in
25 an indictment, that the indictment not be considered as

1 evidence and that no defendant can be convicted of any
2 crime without the unanimous consent of a jury.

3 So, in other words, what I want to say is that
4 you are not to take anything that I say in terms of
5 these indictments or what these indictments say as any
6 evidence of guilt of any of the three Defendants.

7 All three Defendants are presumed innocent at
8 this stage of the proceedings until such time, as I say,
9 they are proven guilty to a jury of their peers. So I
10 am serious about this. This is a very important point
11 that I must always make to the jury before I read the
12 indictments.

13 But the indictments, all three of the
14 Defendants are charged with the same two crimes. All
15 three Defendants are charged with murder and with
16 burglary in the first degree.

17 I will tell you briefly about it, and I will
18 ask you something about it in a few minutes, whether you
19 know anything about it. But just for the sake of
20 introducing this case to you, I need to tell you that
21 these indictments alleged that on or about December 12,
22 2006 -- that's about a year and a half ago, somewhere
23 around in there -- that all three Defendants, that is
24 Mr. Whitehead, Mr. Cannon, and Mr. McDonald did, as I
25 say, on or about December 12 -- where did this take

1 place, Solicitor?

2 MS. McDUFFIE: Lane.

3 THE COURT: That's in Elgin?

4 MS. McDUFFIE: Yes, sir, Your Honor.

5 THE COURT: Lane in Elgin. I don't
6 know where everybody lives. Somebody might live close
7 to this incident. But at that location on December 12,
8 2006, that all three Defendants did feloniously,
9 willfully, and with malice aforethought kill one Joshua
10 Zock by means of hitting and kicking the victim and that
11 the victim died as a proximate result thereof. That's
12 the allegation of murder.

13 The allegation as to burglary in the first
14 degree is that on or about the same date, same time,
15 same location, the three Defendants did willfully and
16 unlawfully enter the dwelling of Joshua Zock without
17 consent and with the intent to commit a crime therein
18 and that they entered during the hours of darkness.

19 Those are, as I say, those are the two charges
20 against all three of the Defendants. I'm going to ask
21 you if you know something about this case. It
22 apparently was covered by the press. The extent of the
23 press coverage, I'm not really sure of, but I do need to
24 know if you know something about it.

25 Let me ask you to do this. If you know

1 something about it, if you have read about it or heard
2 about it, I will ask you to stand and tell me that.
3 Now, if you just read about it in the paper or saw
4 something about it on television and drew no conclusions
5 or had no further contact with it, that's perhaps one
6 group of jurors.

7 Another group of jurors may have been jurors
8 who heard something about it, it was close to them, they
9 had discussions about it, those types of things. I will
10 ask you, if you tell me that you know something about
11 this case, I will ask you to come forward.

12 Because whatever you know and tell me in an
13 open courtroom might somehow affect some of your fellow
14 jurors. So I will ask you to come forward and tell me
15 what you know about it.

16 I guess the best procedure is just to ask each
17 of you to come forward if you tell me that you know
18 something about it or recall reading something about it,
19 saw it on television, and whether or not it affected you
20 one way or the other.

21 Ultimately the question is going to be, can
22 you be fair and impartial and serve as a fair and
23 impartial juror even though you might have known
24 something about the case or you might have read
25 something about the case.

1 As I said, I'm certain there was press
2 coverage of this incident that took place about a year
3 and a half ago. I need to know and if you will just
4 stand if you know anything about it, have read anything
5 about it, talked to anybody about it or have any other
6 contact, whether you lived in the neighborhood or didn't
7 live in the neighborhood and had somebody come up to you
8 and say something about it, any kind of contact that you
9 have might have had with this case prior to today. If
10 you will please stand.

11 (Jurors stand).

12 THE COURT: Let me take you one at a time.
13 Ladies first.

14 PROSPECTIVE JUROR: You want me to come up
15 there?

16 THE COURT: Yes, ma'am.

17 (The juror comes forward, and a bench
18 conference was reported as follows).

19 THE COURT: What is your name or number?

20 PROSPECTIVE JUROR: Two-forty-nine, Darlene
21 Yandel.

22 THE COURT: Yes, ma'am.

23 PROSPECTIVE JUROR: Well, I live in Elgin. I
24 just remember hearing about it. It took place in Elgin.

25 THE COURT: Do you know anything more about

1 it?

2 PROSPECTIVE JUROR: I think it's the one with
3 the tennis shoes? I don't know.

4 THE COURT: Something to do with tennis shoes?

5 PROSPECTIVE JUROR: It seems like somebody was
6 going to reclaim a pair of tennis shoes or something.

7 THE COURT: Did you read or hear about it?

8 PROSPECTIVE JUROR: I think I just read about
9 it in the newspaper.

10 THE COURT: Did anybody else talk to you about
11 it?

12 PROSPECTIVE JUROR: Not really.

13 THE COURT: Have you talked to anybody about
14 it?

15 PROSPECTIVE JUROR: Not really.

16 THE COURT: You don't know anybody that was
17 involved?

18 PROSPECTIVE JUROR: No, not at all.

19 THE COURT: So you have just been exposed to
20 press?

21 PROSPECTIVE JUROR: Yes. Living in Elgin, you
22 pick up on stuff like that.

23 THE COURT: It's a small community.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Do you think you could be fair and

1 impartial to both the State and all three of these
2 Defendants if you were seated on this jury?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you very much, Ms. Yandel.

5 (The juror leaves the bench, and a bench
6 conference with the next juror was reported as
7 follows).

8 THE COURT: Yes, sir, your name, please?

9 PROSPECTIVE JUROR: One-thirty-nine.

10 THE COURT: You did it the easy way for me.
11 Mr. Melton.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Yes, sir. What do you know about
14 it?

15 PROSPECTIVE JUROR: We take the Chronicle, we
16 take the State paper, and just read about it. I heard
17 about it on the news, but...

18 THE COURT: Is that about it?

19 PROSPECTIVE JUROR: That's about it.

20 THE COURT: Has anybody else talked to you
21 about it?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Any connection with it by way
24 of --

25 PROSPECTIVE JUROR: I drew no conclusions one

1 way or the other. I don't even recall who was ever
2 arrested in the case.

3 THE COURT: Do you know any of these
4 Defendants?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Mr. Melton, do you think you would
7 be fair and impartial to both the State and the
8 Defendant?

9 PROSPECTIVE JUROR: Yes, sir, I do.

10 THE COURT: You just knew a little bit about
11 it from the press?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Thank you, Mr. Melton.

14 (The juror leaves the bench, and a bench
15 conference with the next juror was reported as
16 follows).

17 THE COURT: Yes, sir, how are you doing?

18 PROSPECTIVE JUROR: Good.

19 THE COURT: Your name or number?

20 PROSPECTIVE JUROR: Ninety-nine.

21 THE COURT: Ninety-nine is good. Yes, sir,
22 what do you know?

23 PROSPECTIVE JUROR: Just in listening to that
24 on T.V. and everything. The only way I remembered about
25 the case and stuff is whenever you mentioned

1 Mr. Whitehouse's name, that's the part I remember.

2 At the time, you know, at work and everything,
3 we discussed it. In the break room we discussed it. It
4 sounded like it was a brutal situation. So we kind of
5 have a --

6 THE COURT: Where do you work?

7 PROSPECTIVE JUROR: Martin Manufacturing over
8 in Elgin.

9 THE COURT: Do you know any of the people
10 involved?

11 PROSPECTIVE JUROR: No, just when you called
12 it out, and I just remember hearing Mr. Whitehouse's
13 name.

14 THE COURT: Let me ask you this. Do you think
15 after you hear all the evidence, listen to the
16 attorneys, listen to what I tell you about the law,
17 could you be fair and impartial to both the State and
18 the Defendant?

19 PROSPECTIVE JUROR: Truthfully I'm not sure if
20 I could be.

21 THE COURT: Okay, that's fine. That's what I
22 want to know. In other words, you went past the point
23 of just reading about it -- and people do that. There's
24 nothing wrong with that.

25 PROSPECTIVE JUROR: Without the name I

1 probably wouldn't remember the case.

2 THE COURT: Thank you, sir.

3 PROSPECTIVE JUROR: What do I need to do?

4 THE COURT: Just have a seat. Thank you. I
5 needed that information.

6 (The juror leaves the bench, and a bench
7 conference with the next juror was reported as
8 follows).

9 PROSPECTIVE JUROR: Steven Baneer, 14.

10 THE COURT: Mr. Baneer, you had said earlier
11 you had an uncle in law enforcement?

12 PROSPECTIVE JUROR: Yes, sir. I heard about
13 it on T.V. and the lady works with me, it's her nephew
14 that died.

15 THE COURT: The lady that works with you, it's
16 her nephew?

17 PROSPECTIVE JUROR: She told me about it last
18 week, and it was going to be about her nephew, the
19 trial.

20 THE COURT: So the fellow that got killed was
21 her nephew?

22 PROSPECTIVE JUROR: (Nods head). (Indicating
23 affirmative response).

24 THE COURT: Where do you work?

25 PROSPECTIVE JUROR: The Bag Lady.

1 THE COURT: She works there with you?

2 PROSPECTIVE JUROR: (Nods head). (Indicating
3 affirmative response).

4 THE COURT: And she told you this last week?

5 PROSPECTIVE JUROR: (Nods head). (Indicating
6 affirmative response).

7 THE COURT: Do you think you could be fair to
8 the State and the Defendant about this case? You don't
9 know any of these Defendants, do you?

10 PROSPECTIVE JUROR: Not that I know of.

11 THE COURT: Do you think you could be fair to
12 both parties?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Are you sure?

15 PROSPECTIVE JUROR: I guess, yeah.

16 THE COURT: You are not real sure?

17 PROSPECTIVE JUROR: Not sure.

18 THE COURT: All right. Thank you, Mr. Baneer.
19 You can have a seat.

20 (The juror leaves the bench, and a bench
21 conference with the next juror was reported as
22 follows).

23 PROSPECTIVE JUROR: Your Honor, I was the
24 first juror up this afternoon, and the mother of one of
25 the guys who is on trial greeted me. She happens to be

1 the receptionist or former receptionist of my family
2 physician. So I do know her and I don't feel
3 comfortable.

4 THE COURT: What is your name?

5 PROSPECTIVE JUROR: Ms. Todd.

6 THE COURT: Ms. Todd?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: She is the receptionist of your
9 family physician?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: You have seen her more than once?

12 PROSPECTIVE JUROR: I have over the past
13 couple of times I have been there and over the years.

14 THE COURT: I am trying to find Todd.

15 CLERK: Number 226, Your Honor.

16 THE COURT: There's a lot of T.s on this list.
17 Again, thank you. You would feel uncomfortable to be on
18 the jury?

19 PROSPECTIVE JUROR: I can go home?

20 THE COURT: Don't be in such a hurry. You've
21 got to talk to these lawyers. Do you think you could be
22 fair?

23 PROSPECTIVE JUROR: I don't think I could be
24 impartial, no, sir. I would be afraid to be on the
25 jury.

1 THE COURT: Thank you, Ms. Todd. Just have a
2 seat. We will wind this up in a few minutes.

3 (The juror leaves the bench conference, and
4 the following was reported).

5 THE COURT: Let's talk real quick. The last
6 one said she can fair.

7 MR. MEADORS: Yes, sir.

8 THE COURT: Take 226 out. Number 99 said he
9 didn't think he could be fair or he would be -- he would
10 feel uncomfortable, agreed?

11 MR. WHITLARK: Yes, sir.

12 MR. MEADORS: Yes, sir.

13 THE COURT: Who was the other one?

14 MR. WHITLARK: Number 14.

15 THE COURT: Yes.

16 MR. MEADORS: I guess first I think he said,
17 I'm not sure if I could be. I asked Josh if that's what
18 he said and he confirmed it.

19 MR. KENDRICK: And he switched back.

20 THE COURT: Fourteen.

21 MR. MEADORS: Sir, we would ask to use a
22 strike but we respect if Your Honor's -- he does work
23 for the aunt of the victim.

24 THE COURT: Any others?

25 MR. WHITLARK: None from McDonald.

1 MR. MEADORS: I don't know if it's for cause,
2 but we have got one juror who was a Jehovah's Witness.
3 It may come up later when they feel they couldn't judge
4 people. We have that one Jehovah's Witness. They don't
5 think they can judge anyone. We do have one on there.

6 THE COURT: I will call them up. Who is it?

7 MR. MEADORS: One-thirty-three. That was on
8 her questionnaire that Ms. McDonald sent out. She put
9 that on the back.

10 THE COURT: One-thirty-three?

11 MR. MEADORS: Yes, sir.

12 THE COURT: Do you want to voir dire her?

13 MR. MEADORS: I've just had that come up in
14 the past that they couldn't judge anyone.

15 (The bench conference was concluded).

16 THE COURT: Is Amy McAdams here? Ms. McAdams,
17 can I see you a minute, please. You haven't done
18 anything wrong. I've just got to check one thing.

19 (The juror comes forward, and a bench
20 conference was reported as follows).

21 THE COURT: I generally and usually don't ask
22 questions about somebody's religion. But this is on the
23 questionnaire. You put the fact that you are a member
24 of the Jehovah's Witness church; is that correct?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Is it a teaching of the church and
2 a policy of the church that you can or cannot sit in
3 judgment of other people?

4 PROSPECTIVE JUROR: To tell you the truth, I
5 do not know for sure.

6 THE COURT: Okay. Are you a new member?

7 PROSPECTIVE JUROR: No, I've been a member for
8 awhile. I've never been in this situation.

9 THE COURT: I understand that. Well, these
10 are serious charges, and you have to sit and decide the
11 guilt or innocence of all three of these Defendants,
12 separate, not just as a group but separately. Do you
13 feel you could do that?

14 PROSPECTIVE JUROR: I can tell you this. As
15 far as our religion, we do believe in an eye for an eye,
16 but it's not like -- you have to know for sure. It
17 would have to be convincing.

18 THE COURT: There is a standard that we have,
19 this Court has, and it has to be yond a reasonable doubt
20 that they are guilty before you can find somebody
21 guilty.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Is that pretty much the way you
24 feel?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay. Let me ask you this. Do
2 you think you could be fair and impartial to both the
3 State of South Carolina and these Defendants?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Thank you very much, Ms. McAdams.
6 (The juror leaves the bench, and the following
7 bench conference was reported).

8 THE COURT: She is qualified. Anything else?

9 MR. WHITLARK: Nothing from McDonald, Judge.

10 MR. KENDRICK: Nothing else.

11 THE COURT: As far as the rest of your voir
12 dire, what else do you need, victim and charges and all
13 that? Okay. Thank you, gentlemen.

14 (Whereupon the bench conference was
15 concluded).

16 THE COURT: Thank you very much, ladies and
17 gentlemen, for your patience. There are still a few
18 more questions I need to ask you.

19 Now that you know the people involved, you
20 know what the charges are, and you know where and when
21 the alleged events took place, I do need to ask you a
22 couple more questions.

23 I think you can stand and tell me, unless you
24 choose -- if you want to come forward and talk to me
25 personally, you can do that. But I do need to know if

1 any member of the jury panel or any member of your
2 family has every been the victim of a violent crime.

3 I will ask you what it was and who it was and
4 when it was. I will not ask you a lot about the
5 details, but I just need to know if you or a member of
6 your family has been the victim of a violent crime.
7 Anybody?

8 (Juror stands).

9 THE COURT: Yes, ma'am, and please forgive me
10 if I don't remember your name.

11 PROSPECTIVE JUROR: Two-forty-nine.

12 THE COURT: Yes, Ms. 249.

13 PROSPECTIVE JUROR: Victim of felony D.U.I.,
14 myself, and my nephew was shot. He survived.

15 THE COURT: This is two different events?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: The first being?

18 PROSPECTIVE JUROR: I was a victim of D.U.I.

19 THE COURT: Ma'am?

20 PROSPECTIVE JUROR: I was a victim of a felony
21 D.U.I.

22 THE COURT: When was that?

23 PROSPECTIVE JUROR: '86.

24 THE COURT: That matter is concluded?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Next was?

2 PROSPECTIVE JUROR: My nephew was shot.

3 THE COURT: When was that?

4 PROSPECTIVE JUROR: Approximately eight years
5 ago.

6 THE COURT: That matter is concluded also?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Was that in Richland or Kershaw
9 County.

10 PROSPECTIVE JUROR: In Richland County.

11 THE COURT: In Richland County?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Ms. Yandel, as a result of those
14 life experiences that you have had, do you feel that you
15 could be fair and impartial to both the State and the
16 Defendant in this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you very much, Ms. Yandel.
19 The lady with the orange or pink shirt on, your name,
20 please?

21 PROSPECTIVE JUROR: Stacy Hood.

22 THE COURT: Hood?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Let me find you on my list,
25 Ms. Hood.

1 PROSPECTIVE JUROR: Pardon me?

2 THE COURT: I said let me find you on my list.

3 Yes, Ms. Hood, can you tell me briefly about it.

4 PROSPECTIVE JUROR: I have a very close
5 family member that was a victim of rape.

6 THE COURT: How long ago?

7 PROSPECTIVE JUROR: About 15 years.

8 THE COURT: Fifteen years ago?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: I assume that matter is concluded
11 at this time?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Ms. Hood, as a result of that life
14 experience you have had, do you feel that you could be
15 fair and impartial to both the State and the Defendant
16 in this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you very much, Ms. Hood.
19 Yes, ma'am.

20 PROSPECTIVE JUROR: Nancy Martinich, 129.

21 THE COURT: Let me get to that. Yes,
22 Ms. Martinich.

23 PROSPECTIVE JUROR: About 30 years ago my
24 cousin was stabbed to death.

25 THE COURT: Three years?

1 PROSPECTIVE JUROR: Thirty.

2 THE COURT: Thirty. Where did that take
3 place?

4 PROSPECTIVE JUROR: In Connecticut.

5 THE COURT: Ms. Martinich, would the fact that
6 you had that experience in your lifetime, would that in
7 any way interfere with your ability to give both the
8 State and the Defendant a fair and impartial trial?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you very much.

11 Mr. Richards, I believe.

12 PROSPECTIVE JUROR: Judge, in 1967 my uncle
13 was a judge trying a case in this courtroom, and he was
14 shot and killed.

15 THE COURT: Is it 1967? No, it's not 1967.

16 CLERK: It's 1985, Your Honor.

17 THE COURT: Yes, 1985. When was that,

18 Mr. Richards?

19 PROSPECTIVE JUROR: 1967.

20 THE COURT: What was his name?

21 PROSPECTIVE JUROR: His name was Francis
22 Stevenson.

23 THE COURT: In this courtroom?

24 PROSPECTIVE JUROR: No, it was in
25 Bennettsville.

1 THE COURT: Oh, I didn't think it was in this
2 courtroom. Mr. Richards, would that in any way
3 interfere with your ability to give both the State and
4 the Defendant a fair and impartial trial in this case?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you very much, Mr. Richards.
7 Yes, ma'am.

8 PROSPECTIVE JUROR: Number 212.

9 THE COURT: Ms. Stewart?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: My nephew was shot about
13 three years ago and I was robbed.

14 THE COURT: At the same time?

15 PROSPECTIVE JUROR: No, this was about 20
16 years ago.

17 THE COURT: Would those two events in your
18 lifetime, ma'am, Ms. Stewart, would that in any way
19 interfere with your ability to give both the State and
20 the Defendant a fair and impartial trial?

21 PROSPECTIVE JUROR: No, it wouldn't, sir.

22 THE COURT: Thank you very much, Ms. Stewart.
23 Yes, ma'am.

24 PROSPECTIVE JUROR: Starling.

25 CLERK: Number 210.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: My nephew was killed about
3 five years ago.

4 THE COURT: Five?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Where was that, ma'am?

7 PROSPECTIVE JUROR: In Lugoff.

8 THE COURT: Lugoff. Is that matter concluded
9 now? Everything is over?

10 PROSPECTIVE JUROR: I don't know. They never
11 found who did it.

12 THE COURT: Never found who did it?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Ms. Starling, that was your
15 nephew?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Would that fact in any way
18 interfere with your ability to give both the State and
19 the Defendant a fair and impartial trial?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Do you think you could be fair to
22 both?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you, Ms. Starling. Anybody
25 else?

1 (Juror stands).

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: May I approach you?

4 THE COURT: Yes, ma'am. Come on up.

5 (The juror comes forward, and a bench
6 conference was reported as follows).

7 PROSPECTIVE JUROR: Canty. I think I'm 34 or
8 39 or something like that.

9 CLERK: Number 34.

10 THE COURT: Ms. Canty.

11 PROSPECTIVE JUROR: Yes, my daughter was a
12 rape victim.

13 THE COURT: How long ago?

14 PROSPECTIVE JUROR: About 15 years ago. My
15 daughter, she was five.

16 THE COURT: She was arrested?

17 PROSPECTIVE JUROR: No, she was raped.

18 THE COURT: She was assaulted?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. Your daughter was five when
21 she was assaulted?

22 PROSPECTIVE JUROR: Uh-huh. (Indicating
23 affirmative response).

24 THE COURT: Do they know who did it?

25 PROSPECTIVE JUROR: They told me my cousin did

1 it.

2 THE COURT: What happened to him, was he
3 prosecuted?

4 PROSPECTIVE JUROR: He got ten years.

5 THE COURT: He did ten years?

6 PROSPECTIVE JUROR: Uh-huh. (Indicating
7 affirmative response).

8 THE COURT: What was his name?

9 PROSPECTIVE JUROR: Jerry Hudson.

10 THE COURT: You said it was -- how long ago
11 was that?

12 PROSPECTIVE JUROR: She was five years old and
13 she is 21, 22.

14 THE COURT: So 16 years ago?

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: Ms. Canty, do you think you could
17 be fair and impartial to both the State and the
18 Defendant?

19 PROSPECTIVE JUROR: It depends. I don't know.

20 THE COURT: You are not sure?

21 PROSPECTIVE JUROR: No.

22 THE COURT: If you hear all the evidence and
23 you hear what the lawyers have to say and what I have to
24 say, do you think you could sit and decide one way or
25 the other on the case?

1 PROSPECTIVE JUROR: I don't know. I might
2 try.

3 THE COURT: Okay. You can have a seat,
4 Ms. Canty.

5 (The bench conference with the jury was
6 concluded).

7 MR. RILEY: That was what number?

8 THE COURT: Thirty-four. What say you?

9 MR. MEADORS: I think she would be a fine
10 juror.

11 MR. REUWER: She said she didn't know if she
12 can be fair. We move to strike her for cause. She has
13 to know.

14 THE COURT: She doesn't have to. She has to
15 hear the evidence.

16 MR. KENDRICK: She has to be fair, whatever
17 the evidence. She said she didn't think she could be
18 fair.

19 THE COURT: I never struck anybody for cause
20 if they don't know. The juror would have to take an
21 oath and say she is going to be fair, regardless of what
22 she hears in this courtroom, but you can strike her.

23 MR. MEADORS: Judge, are you going to ask the
24 reciprocal? If anybody --

25 THE COURT: Yes, I am trying to get through

1 this.

2 (The bench conference was concluded).

3 THE COURT: Ladies and gentlemen, now the
4 opposite of that question -- anybody else by the way,
5 victim?

6 (There is no response).

7 THE COURT: The opposite of that question, I
8 need to ask if any member of the jury panel or any
9 member of your family has ever been accused of
10 committing a violent crime? Any member of the jury
11 panel or any member of your family been accused?

12 By that I mean it goes as far as law
13 enforcement being involved with the case. Has any
14 member of the jury panel or any member of your family
15 been accused of committing a violent crime?

16 (Jurors stand).

17 THE COURT: Yes, ma'am, your name, please?

18 PROSPECTIVE JUROR: One-ninety-six.

19 THE COURT: One-ninety-six?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Ms. 196, can you tell me briefly
22 about it.

23 PROSPECTIVE JUROR: May I approach you?

24 THE COURT: Yes, ma'am.

25 (The juror comes forward, and a bench

1 conference was reported as follows).

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: My brother was convicted
4 of criminal sexual conduct.

5 THE COURT: How long ago?

6 PROSPECTIVE JUROR: A month and a half.

7 THE COURT: Here?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: In Kershaw County?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: That's your brother?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: What was his name?

14 PROSPECTIVE JUROR: Johnny Shipley.

15 THE COURT: He was sentenced?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Is he in the Department of
18 Corrections now?

19 PROSPECTIVE JUROR: Kirkland.

20 THE COURT: Did that C.S.C. occur with any
21 member of your family?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: It was a third party?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: As a result of this, do you think

1 you would be fair --

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: -- to these people?

4 PROSPECTIVE JUROR: Yes, sir, I could.

5 THE COURT: Thank you very much.

6 (The juror leaves the bench, and a bench
7 conference with the next juror was reported as follows).

8 PROSPECTIVE JUROR: I'm back.

9 THE COURT: It's all right.

10 PROSPECTIVE JUROR: Two-forty-nine.

11 THE COURT: Darlene Yandel.

12 PROSPECTIVE JUROR: I had an uncle about
13 approximately 40 years ago convicted for murder, and it
14 was later overturned. He murdered his father-in-law.

15 THE COURT: You know Ted Yandel?

16 PROSPECTIVE JUROR: That's my uncle. That's
17 the one that did it. Luke did it. Ted, Jr. was killed.

18 THE COURT: So 40 years ago?

19 PROSPECTIVE JUROR: Yeah.

20 THE COURT: Ms. Yandel, would that affect you
21 in any way from being fair and impartial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: You can be fair and impartial,
24 correct?

25 PROSPECTIVE JUROR: Yes.

1 (The juror leaves the bench, and a bench
2 conference with the next juror was reported as follows).

3 PROSPECTIVE JUROR: Lanny Williams.

4 THE COURT: Mr. Williams. Let me get your
5 number.

6 CLERK: Number 242.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I had a son that shot --
9 him and a fellow were accused of shooting a woman at the
10 house eight or nine years ago. He spent 14 months in
11 prison for it.

12 THE COURT: This is your son?

13 PROSPECTIVE JUROR: Son.

14 THE COURT: There was a shooting?

15 PROSPECTIVE JUROR: Over drugs.

16 THE COURT: It was in Kershaw County or
17 Lancaster?

18 PROSPECTIVE JUROR: Kershaw County.

19 THE COURT: He is in the Department of
20 Corrections now?

21 PROSPECTIVE JUROR: No, he is locked up
22 somewhere else now.

23 THE COURT: Oh.

24 PROSPECTIVE JUROR: He is locked up in Union
25 now.

1 THE COURT: This took place how long ago?

2 PROSPECTIVE JUROR: I will say about nine or
3 ten years ago.

4 THE COURT: Ten years ago.

5 PROSPECTIVE JUROR: I'm not sure it's been
6 that long.

7 THE COURT: That's an estimate. That's good
8 enough. Do you think based on that that you can be fair
9 to both these parties, both the State and the Defendant
10 in this case?

11 PROSPECTIVE JUROR: I reckon.

12 THE COURT: Do you feel comfortable sitting on
13 this case?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you very much, Mr. Williams.

16 (The juror leaves the bench, and a bench
17 conference with the next juror was reported as follows).

18 THE COURT: Yes, sir, what is your name?

19 PROSPECTIVE JUROR: Tracy Outen.

20 THE COURT: Let me find you on my list.

21 CLERK: Number 162, Your Honor.

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR: I was charged with
24 lynching in 1990. I was charged.

25 THE COURT: What was the outcome of that?

1 PROSPECTIVE JUROR: Not guilty.

2 THE COURT: Not guilty, okay. As a result of
3 that, do you think you can be fair to both the State and
4 the Defendant in this case?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: You don't feel comfortable sitting
7 on this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Thank you very much.

10 (The juror leaves the bench, and the following
11 bench conference was reported).

12 MR. MEADORS: Judge, I think you asked about
13 any family members. With Ms. Starling out there, she
14 didn't come up. Her son has current murder charges in
15 our office. Would you ask her to come up here?

16 THE COURT: Sure, Gloria Starling.

17 CLERK: Number 210.

18 THE COURT: Ms. Starling, let me ask you if
19 you would come up, ma'am. I want to ask you about
20 something, what you told me a few minutes ago.

21 THE COURT: What is her son's name?

22 MR. MEADORS: Van.

23 (The following bench conference with the juror
24 was reported).

25 THE COURT: How are you doing?

1 PROSPECTIVE JUROR: All right.
2 THE COURT: Is Van Starling your son?
3 PROSPECTIVE JUROR: My nephew.
4 THE COURT: Your nephew? He is charged with
5 something now?
6 PROSPECTIVE JUROR: Yes, sir.
7 THE COURT: Do you know what he is charged
8 with?
9 PROSPECTIVE JUROR: No.
10 THE COURT: Does he live close to you?
11 PROSPECTIVE JUROR: No, Van is in prison.
12 THE COURT: Van is in prison?
13 MR. MEADORS: On other charges. He still has
14 another pending charge.
15 THE COURT: What is it?
16 MR. MEADORS: It's murder.
17 THE COURT: They say they have a pending
18 charge against him.
19 PROSPECTIVE JUROR: I know they got some
20 charges, but I didn't know what they are.
21 THE COURT: Ms. Starling, do you think you
22 could be fair --
23 PROSPECTIVE JUROR: I don't know. I'm not
24 sure.
25 THE COURT: Do you feel uncomfortable sitting

1 on this jury?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you very much, Ms. Starling.

4 (The juror leaves the bench, and the following
5 bench conference was reported).

6 THE COURT: Strike her.

7 MR. MEADORS: Yes, sir, I think she said, I
8 can't be fair.

9 MR. WHITLARK: She said she couldn't be --
10 wouldn't be comfortable.

11 THE COURT: She has got a nephew charged with
12 murder.

13 MR. WHITLARK: And one that was killed, too.

14 MR. KENDRICK: She didn't say she couldn't be
15 fair. She said she would be uncomfortable.

16 MR. MEADORS: She didn't say anymore than the
17 last one that was struck for cause.

18 THE COURT: Let's strike her for cause. Take
19 210 out. Let's review this latest list.

20 COURT REPORTER: Judge, I'm having trouble
21 hearing y'all whispering.

22 THE COURT: That's all right. We are just
23 reviewing the numbers. Who else?

24 MR. KENDRICK: Number 162.

25 THE COURT: One-sixty-two?

1 MR. MEADORS: Yes, sir.

2 THE COURT: Outen?

3 MR. MEADORS: Yes, sir.

4 THE COURT: One-ninety-six, she said she could
5 be fair.

6 MR. MEADORS: That was Johnny Shipley's
7 sister.

8 THE COURT: The last lady, 226.

9 CLERK: We have got that one.

10 THE COURT: Yes. Then 14 and 99? Any other
11 ones? How about Number 14?

12 MR. KENDRICK: Yes, sir, he is out.

13 THE COURT: Out.

14 CLERK: Yes, sir.

15 MR. WHITLARK: Two-twenty-six and 99.

16 CLERK: Which ones?

17 MR. WHITLARK: Two-twenty-six and 99.

18 THE COURT: What about 34?

19 MR. MEADORS: I thought that was the one you
20 said you were going to keep.

21 THE COURT: She is the one whose daughter --

22 MR. MEADORS: Thirty-four, they moved to have
23 her struck for cause, and I argued she shouldn't be.

24 THE COURT: She thought she could be fair.
25 Anybody else?

1 MR. MEADORS: Am I missing Mr. Lanny Williams?

2 CLERK: Was he excused?

3 MR. REUWER: It's 242.

4 THE COURT: He said he could be fair. He said
5 he's got a kid in a shooting and he did ten years, and
6 he didn't know where he was. He was in Union somewhere.

7 MR. KENDRICK: He said he could be fair.

8 THE COURT: Anything else?

9 MR. KENDRICK: That's it.

10 THE COURT: We are done.

11 (The bench conference was concluded).

12 THE COURT: Ladies and gentlemen, I promise I
13 will get you out of here in time for supper. Besides
14 that it might be raining right now. I don't know.

15 Ladies and gentlemen, I am going to call out a
16 list of names. These are potential witnesses in the
17 case. I will ask any potential witness in the case who
18 is present to please stand as I call your name so the
19 jury can look at you and maybe recognize you one way or
20 the other.

21 The question with regard to these witnesses --
22 and there are a lot of them who aren't going to be
23 called, a lot of them who are going to be called. We
24 don't know. It's just that these are the potential
25 witnesses in this case.

1 The question is the same as to each. Is any
2 member of the jury panel related by blood, connected by
3 marriage or employment or close personal acquaintances
4 of any one of the following.

5 Cosmo Bocco (phonetic), Allen Brown, Allen
6 Campbell, Devon Cohen, Melissa Davey, Pat Heathcoe,
7 Michael Jenkins, Natascha Luserro (phonetic), Chad
8 Moore, Jordan Myers, Christopher Rust.

9 Cecile Trapp, Molly Waltemath,
10 W-A-L-T-E-M-A-T-H, Zachary Waltemath, Helen Zock. Is
11 Helen Zock here? Does anybody know Ms. Zock? Deputy
12 Mickey Sellers, Investigator Danny Catoe, Phillip
13 Crawford.

14 Investigator George Marthers, Captain Tomley,
15 Richland County Sheriff's Department -- sorry -- Kershaw
16 County Sheriff's Department. I just promoted you.
17 Lieutenant Hopple, Rick Bailey -- these are all Kershaw
18 County Sheriff's officers -- Rick Bailey.

19 Captain Robinson with the detention center;
20 Darla Harris, works with Wal-Mart; George Nicholson with
21 BellSouth; Allison Martin with Alltel; Angela Evans with
22 Alltel.

23 MaryAnn Sheheen with S.L.E.D.; Vickie Hallman,
24 S.L.E.D.; Amy Stevens, S.L.E.D.; Jennifer Stoner,
25 S.L.E.D.; Toni Broome, S.L.E.D.; Tammy Banister,

1 S.L.E.D.; Karonda Williams, S.L.E.D.; Sheree Brown,
2 S.L.E.D.; Salena Kinard, S.L.E.D.

3 Joe Wilson with the Kershaw County Coroner's
4 Office; Joel Sexton from Newberry, Dr. Joel Sexton;
5 Denise Eargle, S.L.E.D.; Nikki Perry, S.L.E.D.; Steve
6 Knoffel (phonetic), Kershaw County Sheriff's Department.

7 Ben Varnadore, S.L.E.D.; Teresa Hooks,
8 S.L.E.D.; Eric Tisdale with Kershaw County; Angela Evans
9 with Alltel, Gayle Heath with S.L.E.D.; Mark Austin;
10 Timmy Dial -- these are Richland County.

11 Jessie Moon, Richland County; Murray Hudson,
12 Kershaw County Detention Center; Officer Harvey, also at
13 Kershaw County; Anthony Branham; Veronica Davis; Mario
14 Munnerlyn; Chris Whitehead, Sr.; Redonna Whitehead;
15 Josey McDonald; Adrian Duran; Jonathan Davey; Mickey
16 Dawson; Neville McDonald; Cecil Barker; Chad Rodney;
17 Sheila Rodney; Joe Wilson; Jamie Duran; Christian Davis;
18 Don Eunice.

19 MS. McDUFFIE: Your Honor, I believe you had
20 skipped Brandon Williams with S.L.E.D.

21 THE COURT: Brandon Williams with the State
22 Law Enforcement Division.

23 (There is no response).

24 THE COURT: Anything further from the State?

25 MR. MEADORS: Nothing from the State.

1 THE COURT: From the Defendants?
2 MR. WHITLARK: Nothing from McDonald.
3 MR. KENDRICK: Nothing from Cannon, Your
4 Honor.
5 MR. RILEY: No, Your Honor.
6 THE COURT: All right, Madame Clerk, give us a
7 jury, please.
8 (The jury is impaneled at 6:27 p.m.)
9 (During the jury selection process, the jurors
10 were called forward and peremptory strikes were
11 exercised as noted by the attached voir dire sheet made
12 a part of this record at page 3).
13 THE COURT: Any objection to the jury
14 selection process from the State?
15 MR. MEADORS: Beg the Court's indulgence.
16 THE COURT: I'm sorry, I didn't hear you.
17 (Pause).
18 MR. MEADORS: Nothing from the State.
19 MR. WHITLARK: Nothing from McDonald, Your
20 Honor.
21 MR. KENDRICK: Nothing from Cannon, Your
22 Honor.
23 MR. RILEY: Nothing from us, Your Honor.
24 (The jury panel is excused).
25 THE COURT: Ladies and gentlemen of the jury,

1 I will dismiss you now for the evening, and I will ask
2 you to be back in the jury room at 11:00 o'clock
3 tomorrow morning, the jury room.

4 The bailiffs are going to show where the jury
5 room is here in the courthouse. You need not come back
6 in the courtroom because we will probably be in here
7 working on some pretrial matters that need to be
8 resolved before the trial actually starts.

9 I will ask you to do several things. I don't
10 know if there has been or will be any press coverage of
11 this trial. There has been in the past obviously. So
12 there may be some press coverage, I just don't know.

13 I will ask you if you see anything that even
14 looks like press coverage of this trial, I will not ask
15 you not to read it. I will ask you to please refrain
16 from either watching television -- as it applies to this
17 case, not generally speaking -- or reading anything,
18 accounts, about this case in the press.

19 There is a very simple reason for that. If
20 you read something in the press, it's what somebody else
21 thinks went on in the courtroom. It's what whatever
22 member of the press reports, it's what they think goes
23 on in the courtroom.

24 You are here. You will see the evidence. You
25 will hear the witnesses. You are the judges. You are

1 going to be the judges of the facts in this case, and I
2 will tell you more about that tomorrow, but I will ask
3 you not to avail yourself of any press reports of this
4 trial. That will hold true throughout the trial.

5 The second thing I will ask you to do is when
6 you return to the jury room in the morning, if you
7 select one of your members. It doesn't matter who it
8 is, but it cannot be the last two jurors selected
9 because they will be our alternates in case somebody has
10 a problem or physical problem or something during the
11 course of the trial.

12 I will ask you to select one of your members.
13 Obviously it doesn't matter who it is, to be the
14 foreperson of the jury. That person will eventually, if
15 necessary, preside in the jury room and write the
16 verdict if that becomes necessary.

17 I always tell jurors that the foreman doesn't
18 get paid anymore than anybody else. It's something that
19 I need for you to do. Select one of your members as
20 foreperson. That person will sit in the seat where the
21 lady with the black and blue shirt or blouse is now.
22 You know who I mean, the lady on the front row.

23 The foreperson will take that seat and will
24 maintain that seat through the trial. The rest of the
25 seats don't have any names on them or any numbers or

1 anything like that. I just want you to sit where you
2 are going to be comfortable and where you can hear what
3 is going on in the courtroom.

4 The witnesses will be seated and speak from
5 this microphone here beside me. If you have a hearing
6 problem, you might want to sit closer up to this end.
7 The attorneys will probably stand out in front of the
8 bar there and examine the witnesses.

9 I don't know how many witnesses there are
10 going to be. I don't know what evidence the trial is
11 going -- that will be introduced during the course of
12 the trial, but I just want you to sit where you are most
13 comfortable.

14 The third thing I will ask you to do is not
15 discuss the case with anyone over the evening hours. It
16 might be tempting to say, Oh, I get selected on such and
17 such a trial. You never know who you might be talking
18 -- I'm sure you'll know who you are talking to, but you
19 don't know what they might know about it, and they might
20 try to say something to you about it, including family
21 members.

22 So I will ask you just not to discuss the
23 case. If anybody asks you about it, just tell them the
24 judge instructed you not to talk about it. It's a very
25 simple way out of an embarrassing situation. So if you

1 will do that for me.

2 The last thing I will ask you to do is have a
3 pleasant evening. We will see you at 11:00 o'clock
4 tomorrow morning. Hopefully we will be ready to start
5 the trial at that time.

6 There will be times when you are in that jury
7 room, and you might wonder what is going on out here.
8 You might wonder why we don't always run precisely by
9 the clock. Things just happen. I will tell you that.

10 I can assure you if you are in there, if you
11 are here, that I will be here, and I will be working and
12 so will these attorneys. So it's not that we are trying
13 to hold you up or abuse your time.

14 Thank you very much for coming. We will see
15 them at 9:00 o'clock and see you at 11:00 o'clock.
16 Thank you very much.

17 (The jury is excused for the day at 6:36 p.m.)

18 THE COURT: Counsel, anything? We will
19 continue with hearing in the morning.

20 MR. MEADORS: Did you say 9:15 for us?

21 THE COURT: Did I? I thought I said nine.

22 MR. MEADORS: You said nine. I was trying to
23 get 9:15. That's fine. We will ready at nine.

24 THE COURT: The only reason I say that,
25 Mr. Meadors, we may start -- once the trial starts, we

1 may start a little later, but we've got to get this
2 pretrial done before the jury comes in at 11.

3 I'm concerned about time for the remainder of
4 the trial. It is a State holiday on Friday. At this
5 point I do not plan to take it and don't know if that
6 creates any problems. Obviously it doesn't for the
7 attorneys, and Ms. Pantsari advises me she is not going
8 to be here anyway. So I won't make her mad. Thank you
9 very much. See you at 9:00 o'clock.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Kershaw County, South Carolina on the 5th day of May, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 20, 2008

L Coconut Pantsari

Court Reporter

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4 STATE'S EXHIBITS

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14	34	Photograph	578	
15	35	Photograph	578	
16	36	Photograph	579	
17	37	Photograph	579	666
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18	63	Photograph	625	695
19	64	Photograph	625	695
20	65	Photograph	625	706
21	66	Photograph	625	706
22	67	Photograph	625	701
23	68	Photograph	625	701
24	69	Photograph	625	701
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8	78	Photograph	626	702
9	79	Photograph	626	702
10	80	Photograph	626	1108
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14	84	Photograph	626	702
15	85	Photograph	708	
16	86	Photograph	708	
17	87	Photograph	708	
18	88	Photograph	708	
19	89	Photograph	708	
20	90	Photograph	708	
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Tuesday, May 6, 2008

(Note - The following exhibits were marked yesterday by another court reporter but included here for purposes of this court reporter's record)

(WHEREUPON, State's Exhibit No. 1 is marked for identification.)

(WHEREUPON, State's Exhibit No. 2 is marked for identification.)

(WHEREUPON, State's Exhibit No. 3 is marked for identification.)

(WHEREUPON, State's Exhibit No. 4 is marked for identification.)

(WHEREUPON, State's Exhibit No. 5 is marked for identification.)

(WHEREUPON, State's Exhibit No. 6 is marked for identification.)

(WHEREUPON, State's Exhibit No. 7 is marked for identification.)

(WHEREUPON, Defendant Cannon's Exhibit No. 1 is marked for identification.)

THE COURT: Are you ready for the defendants?
Where are your clients?

MR. KENDRICK: They're still in the back, Your Honor. They're dressed I think and ready to come out.

1 **THE COURT:** Are y'all ready for them?

2 **MR. KENDRICK:** Yes, sir.

3 **MR. WHITLARK:** Yes, sir.

4 **THE COURT:** They say they're ready. Is the
5 State ready to proceed?

6 **MR. MEADORS:** Yes, sir.

7 **THE COURT:** Defense ready to proceed?

8 **MR. WHITLARK:** Ready, Your Honor.

9 **MR. REUWER:** Yes, sir.

10 **MR. KENDRICK:** Yes, sir.

11 **THE COURT:** All right, Solicitor. Call your
12 next witness.

13 **MR. MEADORS:** If it please Your Honor, the State
14 would call Captain David Thomley.

15 DAVID THOMLEY, after being duly sworn, testifies
16 as follows:

17 **THE CLERK:** Thank you. Please be seated in the
18 witness stand and state your full name for the
19 record.

20 **THE WITNESS:** David Thomley, T-H-O-M-L-E-Y.

21 DIRECT EXAMINATION

22 **BY MR. MEADORS**

23 **Q** Good morning, Captain.

24 **A** Good morning.

25 **Q** Captain, would you tell the judge, please, on

1 December 15th of 2006, that evening, did you have an
2 occasion to go to which I think is
3 actually in the Richland County?

4 A Yes, I did.

5 Q And whose residence was that, Captain?

6 A That is the residence as I was told of Mr. Cannon and
7 his parents.

8 Q And were any of your officers there when you got
9 there?

10 A Yes. Investigator Catoe was on the scene as well as
11 Investigator Marthers.

12 Q And had you been requested to come there by somebody?

13 A Yes. I received a phone call from Investigator
14 Catoe. I'm not sure of the time, but it was after
15 dark.

16 Q As a result of that you went?

17 A That's correct. I went to the residence.

18 Q Once you got there did you have an occasion to meet
19 with and/or talk with Robert Cannon?

20 A Yes, I did.

21 Q And can you please tell the judge specifically how
22 that came about and how that went and where you
23 talked with him?

24 A Yes, Judge. When I got to the residence,
25 Investigator Catoe, Investigator Marthers and Mr.

1 Cannon were all outside the residence. I believe
2 they may have been standing at the front of
3 Investigator Catoe's truck. Investigator Catoe made
4 introduction, introduced me to Mr. Cannon and said
5 that he would like to speak with me. I asked
6 Investigator Catoe if he'd been advised of his
7 rights. He indicated that he had. Myself and Mr.
8 Cannon then walked to the back of the truck and spoke
9 briefly, maybe just a minute or two. It was very
10 brief.

11 Q And did you know Mr. Cannon prior to that?

12 A No, I did not.

13 Q And, Captain, as far as your observations, is this
14 Mr. Cannon over here?

15 A Yes, with the green shirt.

16 Q Did he appear to be under the influence of alcohol,
17 drugs or any other intoxicant?

18 A No. He didn't appear to be under the influence of
19 anything.

20 Q And when you were talking with him, were you able to
21 understand him?

22 A Yeah. I understood him. I mean, he was -- I mean,
23 he was somewhat I guess meek, reserved. He wasn't
24 loud or boisterous. And he was answering my
25 questions. And we just had a conversation.

1 Q Were you able to understand his words when he talked
2 to you?

3 A Oh, absolutely.

4 Q And when you were talking with Mr. Cannon, where were
5 you specifically? You said you were by the
6 investigator's truck?

7 A Yeah. I think we walked to the back of the truck and
8 spoke for just a few minutes.

9 Q Tell the judge about that conversation, Captain?

10 A He -- I think Mr. Cannon had -- maybe he requested me
11 to be there. I don't know. But Investigator Catoe
12 had indicated that he was at this residence and that
13 Investigator Catoe himself would have felt more
14 comfortable if I were to come out, and he thought Mr.
15 Cannon would be more comfortable speaking to me as
16 well, being that I'm Investigator Catoe's supervisor.

17 Q And you are the Captain and were the Captain of
18 investigations?

19 A That's correct.

20 Q For Sheriff McCaskill?

21 A Yes, sir.

22 Q And as a part of that, Sheriff McCaskill is your
23 boss?

24 A Absolutely.

25 Q You are investigator Catoe's superior as far as the

1 hierarchy?

2 A That's correct.

3 Q And as a result of that, you talked with Robert

4 Cannon?

5 A Yes, I did.

6 Q Did you threaten him?

7 A Oh, no.

8 Q Did you coerce him?

9 A No.

10 Q You said you'd already asked Investigator Catoe if

11 I'd been read his rights and he said he had?

12 A Correct.

13 Q Did you hold out any hope of reward or promise in any

14 way if he cooperated with you all?

15 A No. We have a standard I guess line, if you will.

16 Of course we don't promise anyone anything. He would

17 have been told, and I told him, that we'd be glad to

18 let you know as the prosecuting agency and the judge

19 know that he cooperated with us and that his

20 cooperation in any statement that he may have given

21 is subject to a polygraph, what we call a statement

22 verification polygraph examination.

23 Q So you told him you'd let his cooperation be known to

24 His Honor?

25 A Yes, sir. And I will.

1 Q And your last thing is the you will?

2 A I will.

3 Q Other than that did you promise -- or that isn't a
4 promise. Did you promise him anything?

5 A No.

6 Q And how long did you talk with Mr. Cannon?

7 A It was just maybe a minute or two. It was very
8 brief.

9 Q And after that did you have an occasion to go into
10 the residence of Robert Cannon?

11 A Yes, I did.

12 Q And can you tell the judge about what happened, if
13 anything, in there?

14 A Yeah, Judge. I spoke briefly to Mr. Cannon's mother.
15 And I also spoke briefly with the person I believe to
16 his stepfather. And that was just a couple minute
17 conversation, just basically to tell them who I was
18 and just let them know that I had been called to the
19 residence.

20 Q And how would you describe that encounter?

21 A You know, ms. Cannon I'm sure was upset that we were
22 there, but she was very cordial. She was somewhat
23 emotionally upset. And I understood that; and, you
24 know, I did what I could to calm her fears. And the
25 stepfather, we -- I don't think we discussed anything

1 to do with the case itself. I think we were talking
2 about football, and I think he said he went to South
3 Carolina State University. I think that's correct.

4 Q At any time when you were with Mr. Cannon, Captain,
5 did he request a lawyer?

6 A No.

7 Q Did he say I don't want to talk to you or
8 Investigator Catoe or anybody?

9 A No.

10 Q Judge, thank you. That's all we have. Thank you,
11 Captain.

12 THE COURT: Mr. Whitlark.

13 MR. WHITLARK: Briefly, Your Honor. May it
14 please the Court?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. WHITLARK

18 Q Captain?

19 A Yes, sir.

20 Q Sir, you have been in law enforcement for how long?

21 A Twenty years.

22 Q Twenty years. Have you ever had occasion to
23 investigate murder cases before?

24 A Approximately 35.

25 Q Okay. Have you ever gone to investigate a case, a

1 suspect in a murder, and he implicates himself and
2 you let him stay there and don't take him into
3 custody?

4 A Yes.

5 Q You have?

6 A Yes.

7 Q So that's a standard procedure for the Kershaw
8 Sheriff's Department?

9 A I don't know if it's the standard procedure, but it's
10 done on a case-by-case basis.

11 Q Okay. That's all I have, Your Honor.

12 **THE COURT:** Mr. Kendrick.

13 CROSS EXAMINATION

14 **BY MR. KENDRICK**

15 Q Captain Thomley, good morning.

16 A Good morning.

17 Q I'm Josh Kendrick. I am Mr. Cannon's lawyer. I
18 don't think we have really met before today. What
19 are the things on those case-by-case bases you were
20 talking about would make you leave somebody at their
21 house after they confessed to a crime?

22 A In this situation the parents I think had as much to
23 do with it as anything else. They were what I'd
24 classify as credible, honest people.

25 Q Okay. So in your opinion these are Mr. Mario

1 Munnerlyn and Veronica Davis that you met, his mom
2 and dad; you trusted them?

3 A I felt -- yes, I did.

4 Q Okay. And I'm not too familiar with the Sheriff's
5 Department. When we say Sheriff McCaskill is your
6 boss, is he your immediate boss?

7 A He's everybody's boss. He's the sheriff.

8 Q But are you second in command I guess is my question?

9 A I'm third in command.

10 Q Third in command?

11 A Yes.

12 Q How many people work at the Kershaw County Sheriff's
13 Department?

14 A I think we 67 sworn officers.

15 Q So you've got a lot of people underneath you?

16 A Correct.

17 Q You have a lot of authority?

18 A Yes.

19 Q You said that Investigator Catoe wanted you to come
20 over there because Robert Cannon would feel more
21 comfortable. What was it about you that you would
22 make him feel more comfortable?

23 A I don't know that I can answer that. I think that's
24 a question Mr. Cannon can answer.

25 Q Okay. Would you agree that compared to Investigator

1 Catoe you have more authority?

2 A Yes, sir.

3 Q And you told us a minute ago that you explained to
4 Robert that if he did give a statement that you were
5 going to tell the judge and tell the prosecutor that
6 he cooperated?

7 A Sure.

8 Q What was the point of you telling the judge and the
9 prosecutor he cooperated?

10 A We tell everyone that.

11 Q You tell every suspect that we'll tell the judge and
12 the prosecutor you cooperated?

13 A Sure.

14 Q Okay. Why do you do that?

15 A I don't know that there is a reason for not doing it.
16 He, Mr. Cannon, had indicated at some point he wanted
17 to cooperate, but I think he was apprehensive and
18 wanted know what was going to happen if he did
19 cooperate. And I think he was wanting a promise out
20 of us that we can't give.

21 Q Okay. Then why did you need to come and not give him
22 a promise? Why couldn't Investigator Catoe not give
23 him a promise?

24 A You know, you'd have to ask Mr. Cannon. Maybe he
25 didn't trust Mr. Catoe. I don't know. Maybe he

1 wanted somebody that Mr. Catoe had to answer to.

2 Q So from what you're telling me today, you didn't do
3 anything different from what Mr. Catoe did?

4 A I don't know what Mr. Catoe did. I'm telling you
5 what I did.

6 Q You never told Robert that y'all were going to help
7 him out if he signed that statement?

8 A I think I've answered that question. I told him that
9 I would let the judge know and the prosecutor know
10 that he cooperated with us.

11 Q Well, I apologize for repeating it. You said you've
12 done 35 murder cases in 20 years?

13 A Yes, sir.

14 Q If we throw in burglaries, rapes, all kinds of
15 serious crimes, how many times do you think you've
16 been involved in the investigation of serious crimes?
17 More than you can count?

18 A I mean, I wouldn't have any way of knowing that.

19 Q It's a lot, right?

20 A Over a thousand I'm sure.

21 Q Okay. And in the majority of those cases I guess, or
22 a significant number, at some point did you have a
23 chance to interrogate a suspect?

24 A Yes, sir.

25 Q How many suspects do you think you've interrogated?

1 A I wouldn't have any way of knowing that. Thousands.

2 Q Thousands?

3 A Sure.

4 Q If we add in the times when you might have come in
5 peripherally to be involved like you were with
6 Investigator Catoe, the number goes -- just we
7 probably couldn't count it, right?

8 A I wouldn't have any way of knowing it.

9 Q What have you done to learn about interrogating a
10 suspect?

11 A What have I done?

12 Q Mm-hmm (affirmative). In 20 years, how do you know
13 how to interrogate a suspect?

14 A I've had advanced training in interview
15 interrogation. I had advanced training at the
16 Polygraph Institute in Atlanta, Georgia. I've been
17 offered as an expert witness in the field of
18 interview and interrogation previously.

19 Q Okay. So you've actually testified as an expert on
20 interrogation?

21 A Correct.

22 Q So you know what this book I have in my hand is,
23 right?

24 A I'm not familiar with any of those authors.

25 Q You are not familiar with the Embow Reid's book of

1 Criminal Interrogations and Confessions?

2 **A** I'm not familiar with that book or those authors.

3 **Q** Okay. So you don't know that for the last 50 or 60
4 years in the United States of America that is the
5 absolute leading authority on training police
6 officers on how to properly interrogate somebody?

7 **MR. MEADORS:** Your Honor, he said he wasn't
8 familiar with the book.

9 **THE COURT:** Yes. And I'm afraid you're
10 testifying, Mr. Kendrick.

11 **MR. KENDRICK:** I'm asking him a question, Your
12 Honor, if he's aware of a fact. I think on cross
13 that's proper.

14 **THE COURT:** Well, that's a fact not in evidence.
15 So move on.

16 **MR. KENDRICK:** Okay. Beg the Court's
17 indulgence, Your Honor.

18 **Q** You knew at the time you appeared at Mr. Cannon's
19 house that he had told Investigator Catoe that he
20 needed some help, right?

21 **A** No.

22 **Q** Okay. So Investigator Catoe never told you that he
23 went away from our parents and said, if you all help
24 me out, I can tell you a little bit more?

25 **A** No.

1 Q You were not aware of those facts?

2 A No.

3 MR. KENDRICK: That's all I have, Your Honor.

4 THE COURT: Mr. Riley?

5 MR. REUWER: No questions, Your Honor.

6 THE COURT: Any redirect? Any redirect?

7 MR. MEADORS: Oh, I'm sorry. Beg the Court's
8 indulgence. No, sir.

9 THE COURT: All right. You may come down,
10 please. Thank you very much. Next witness.

11 MS. MCDUFFIE: The State calls Investigator
12 George Marthers.

13 THE COURT: Come around, Mr. Marthers.

14 GEORGE MARTHERS, after being duly sworn,
15 testifies as follows:

16 THE CLERK: Thank you. Please be seated in the
17 witness chair. State your full name for the record.

18 THE WITNESS: George Marthers, M-A-R-T-H-E-R-S.

19 DIRECT EXAMINATION

20 BY MS. MCDUFFIE

21 Q Good morning, Investigator Marthers.

22 A Good morning.

23 Q Did you have the occasion to be called out to
24 : in December of 2006?

25 A Yes, ma'am, I did.

1 Q And what was that in reference to?

2 A A death scene.

3 Q And what were your duties when you arrived at that
4 scene?

5 A At the time I was to assist Investigator Catoe and
6 also the evidence custodian.

7 Q And did you have further involvement with the
8 investigation after the evening of December the 13th?

9 A Yes, I did.

10 Q And what was your involvement with this
11 investigation?

12 A I assisted Investigator Catoe with whatever he needed
13 at the time with going out, interviewing people.

14 Q And were you with Investigator Catoe on December the
15 15th of 2006?

16 A Yes, I was.

17 Q And what did you and Investigator Catoe do on
18 December the 15th?

19 A Let me get my days straight. We went several places.
20 We went out to Sonic and spoke to some people there.

21 Q Did you speak with the manager of the Sonic that
22 morning?

23 A Yes, ma'am.

24 Q And with Cecile Trapp?

25 A Yes, ma'am.

1 Q And based on those conversations, what did you then
2 do?

3 A We gathered some information from them, and that led
4 us to the defendants at that time.

5 Q And what did you do after you left the Sonic that
6 day, that morning?

7 A Which time?

8 Q I'll rephrase the question. Did you have the
9 occasion to go to Boney Road that morning or that
10 afternoon?

11 A That afternoon; yes, ma'am.

12 Q And what was the reason for going there?

13 A We was going to look for Derrick McDonald's
14 residence.

15 Q And what happened when you arrived at Boney Road?

16 A As we turned onto Boney Road, it wasn't but maybe a
17 block or so from Mr. McDonald's residence, we run
18 across Mr. Whitehead, Chris Whitehead.

19 Q And what happened after that?

20 A We stopped. Mr. Whitehead stopped. We spoke to him,
21 identified him and asked him if he could pull over,
22 we needed to speak to him a minute. He did. And we
23 got out the vehicle and talked with him.

24 Q Did you speak to Mr. Whitehead, or did Mr. Catoe?

25 A Mr. Catoe did.

1 Q And what was the nature of that conversation?

2 A It was -- I think Investigator Catoe asked him about
3 the situation, the death of Joshua Zoch. He got kind
4 of arrogant, a little belligerent.

5 Q And did Mr. Whitehead say anything?

6 A He said a lot of things. I just -- you know, I was
7 on the other side of the vehicle at the time. I
8 didn't hear exactly what he had said, but I could
9 tell he was hostile.

10 Q And what happened after that?

11 A We found out -- we knew that he was under suspension.
12 We notified Richland County. Richland County came
13 out, made the arrest on driving under suspension.
14 And once we cleared up with that, we went to Mr.
15 McDonald's house.

16 Q And did you speak to Mr. McDonald at that time?

17 A At that time, no, we did not.

18 Q Did you do anything while you were at Mr. McDonald's
19 house?

20 A We left a card.

21 Q And where did you and Investigator Catoe go after
22 that?

23 A We went back to the Sonic.

24 Q And did you have the occasion to speak with Allen
25 Brown and some other individuals there?

- 1 **A** Yes, we did.
- 2 **Q** And then what happened after you left the Sonic?
- 3 **A** We went back to Mr. McDonald's residence.
- 4 **Q** And did you have the occasion to speak with Mr.
- 5 McDonald at that time?
- 6 **A** Yes. He was there at that time.
- 7 **Q** And what was the nature of that conversation?
- 8 **A** Investigator Catoe asked him if he knew anything
- 9 about the death of Joshua Zoch. He made the comment
- 10 that he would rather talk with his mother present.
- 11 And we said that was fine, to make sure he had the
- 12 card and told him to notify us whenever she returned
- 13 home.
- 14 **Q** And you then left his residence?
- 15 **A** Yes, we did.
- 16 **Q** And what did you do after that?
- 17 **A** I think we went back to the Sonic and spoke to
- 18 someone else.
- 19 **Q** And did you have the occasion to go to
- 20 the residence of Robert Cannon?
- 21 **A** Yes, we did.
- 22 **Q** And what happened when you arrived there?
- 23 **A** Once we got there we met Mr. Cannon. Also his
- 24 parents were there. And we spoke to him.
- 25 **Q** I want to show you what's been marked as State's

1 Exhibit 1 for identification. Do you recognize this
2 form?

3 A Yes, ma'am.

4 Q Can you please tell His Honor what that is?

5 A That's a Kershaw County Sheriff's Office statement of
6 Miranda rights.

7 Q And were you present when Investigator Catoe read
8 those rights to Mr. Cannon?

9 A Yes, I was.

10 Q And how was that accomplished?

11 A Investigator Catoe read his rights individually. And
12 once he completed each right, he initialed each one
13 and at the end asked his waiver of rights
14 investigator Catoe read to him. And Mr. Cannon
15 signed that he understood his rights, and
16 Investigator Catoe initialed and circled beside it.

17 Q Did Investigator Catoe ask him if he understood each
18 right after he read them?

19 A Yes, he did.

20 Q And what were Mr. Cannon's responses to those
21 questions?

22 A That he understood.

23 Q And from your knowledge and experience as a law
24 enforcement officer, did you think that Mr. Cannon
25 understood what was being read to him?

1 **A** Yes, ma'am.

2 **Q** And how did he indicate that he understood?

3 **A** Once he asked, read the right, he asked, do you
4 understand these rights? And he advised, yes, he
5 did.

6 **Q** And then at the bottom of the form, who signed that?

7 **A** I did.

8 **Q** Who else signed that?

9 **A** The waiver of rights would be Robert Cannon.

10 **Q** Robert Cannon; then your signature is below that?

11 **A** Yes, ma'am.

12 **Q** And what does that signify?

13 **A** That's a witness by. That would be myself, my
14 department; and also the date and time which would be
15 12-15-2006 at 18:45.

16 **Q** That would be 6:45 p.m.?

17 **A** Yes, ma'am.

18 **Q** And during your time with Mr. Cannon, did he appear
19 under the influence of drugs or alcohol at the time?

20 **A** No, ma'am, he did not.

21 **Q** Did he appear to understand your questions?

22 **A** Yes, he did.

23 **Q** Did you have the occasion to speak with Mr. Cannon on
24 that evening?

25 **A** I was there. I may have asked him a question or two,

1 but mainly Investigator Catoe talked with him.

2 Q And did you accompany he and Investigator Catoe
3 outside?

4 A Yes, I did.

5 Q And were you there when the two of them were
6 speaking?

7 A Yes.

8 Q And what was the nature of that conversation?

9 A We had talked inside. And Mr. Cannon felt kind of I
10 guess uneasy about talking about the situation in
11 front of his parents. He asked us to step outside.
12 Once we stepped outside he said he would want to talk
13 to us a little more.

14 Q And then Captain Thomley came?

15 A Yes, ma'am.

16 Q And were you there when Captain Thomley spoke with
17 Mr. Cannon?

18 A Yes, ma'am.

19 Q Could you hear that conversation?

20 A No, ma'am.

21 Q And what happened after Captain Thomley spoke with
22 the defendant?

23 A After that we walked back inside. Like I said,
24 Captain Thomley spoke with the parents, advised them
25 who he was and what he was doing there. Myself,

1 Investigator Catoe and Mr. Cannon sat down at the
2 kitchen table. And that's when he said he wanted to
3 tell us the whole story.

4 Q And did he begin to give you an oral statement about
5 what happened on that date?

6 A Yes, he did.

7 Q And you were all seated where?

8 A At the kitchen table.

9 Q And where were the defendant's parents at the time?

10 A They were in the house, in the kitchen/living room
11 area.

12 Q Wandering about the whole time?

13 A Yes, ma'am. They was kind of just moving around.

14 Q And the defendant gave an oral statement of what
15 happened that night?

16 A Yes, ma'am.

17 Q And at some point did either you or Investigator
18 Catoe ask him to give a written statement?

19 A Yes, we did.

20 Q And did he say that he would give a written
21 statement?

22 A He did.

23 Q And I show you what's been marked as State's Exhibit
24 2 for identification. Please tell His Honor what
25 that is?

1 A This is a statement form that we used for retrieving
2 statements from individuals.

3 Q And is that the statement that Mr. Cannon gave on
4 December the 15th of 2006?

5 A Yes, it is.

6 Q And were you present when that statement was given to
7 Investigator Catoe?

8 A Yes, ma'am.

9 Q Who wrote that statement?

10 A The top half was filled out by Mr. Cannon; the date,
11 address, social security number, phone numbers. It
12 was all filled out by Mr. Cannon.

13 Q And who actually wrote the body of the statement?

14 A Investigator Catoe wrote the body of the statement
15 for --

16 Q And why is that?

17 A Mr. Cannon said he was hungry and he fixed him a nice
18 big bowl of cereal. And he sat down and told
19 Investigator Catoe what had happened. And
20 Investigator Catoe told him he would write this for
21 him in his words.

22 Q And whose signature is that at the bottom of each
23 page?

24 A Of each page it's the signature of the individual
25 giving the statement. It would be Robert Cannon.

1 Q And did you witness this statement being given?

2 A Yes, I did.

3 Q At any time were any threats, promises or coercion
4 made?

5 A No, ma'am, it was not.

6 Q Did the defendant seem to understand what was going
7 on?

8 A Yes, he did.

9 Q Did not seem under the influence of drugs or alcohol
10 at any time?

11 A No, he did not.

12 Q And he asked Investigator Catoe to write the
13 statement because he was eating?

14 A Yes, ma'am.

15 Q Did the defendant have the opportunity to read over
16 the statement when he was finished giving it?

17 A Yes, ma'am. Once it was done, completed,
18 Investigator Catoe sat down, was sitting beside him.
19 And actually they read it together, and through the
20 whole statement.

21 Q Was he given the opportunity to make any corrections
22 that were necessary?

23 A Yes, he was.

24 Q And did he in fact make corrections on that
25 statement?

1 A Yes, he did.

2 Q And then what happened after that statement was
3 given?

4 A After it was given --

5 Q What did you then do? What did you and Investigator
6 Catoe then do?

7 A We left.

8 Q And what did you do after that?

9 A That's whenever we met with Investigator Bailey of
10 the Richland County Sheriff's Office at the beginning
11 of Boney Road.

12 Q What was the reason for meeting with him?

13 A We obtained a warrant for the arrest of Mr. McDonald.

14 Q And did you arrest Mr. McDonald that night?

15 A Yes, we did.

16 Q And what, if anything, was said to Mr. McDonald at
17 his residence?

18 A We approached the door, knocked on it. His mother
19 came to the door. We advised her what we was there
20 for. They called him to the front. I placed
21 handcuffs on Mr. McDonald. And we left.

22 Q And where did you take Mr. McDonald?

23 A I walked him out to Investigator Catoe's patrol
24 truck.

25 Q And where was Mr. McDonald seated?

1 A He was sitting in the front seat.

2 Q And where were you?

3 A Directly behind him in the back seat.

4 Q And then what happened after that?

5 A We left the residence. Investigator Catoe advised

6 him of his Miranda verbally.

7 Q And how did he do that?

8 A He read it. Well, he verbally Mirandized him.

9 Q And did Defendant McDonald respond at all?

10 A Yes, he did.

11 Q What did he say?

12 A It's just like if he was reading it off the paper and

13 checking it off, Investigator Catoe read or gave him

14 each Miranda. He asked if he understood, and Mr.

15 McDonald stated he did.

16 Q And did you believe that he was under the influence

17 of drugs or alcohol at that time?

18 A No.

19 Q And do you believe that he understood you?

20 A Yes.

21 Q Did he answer appropriately to the questions?

22 A Yes.

23 Q And what happened after that?

24 A On the way back, we was at probably on the

25 intersection of Cherokee and Bowen. And that's

1 whenever he said, "This is the way we came that
2 night." Investigator Catoe had told him, spoke to
3 him and said, "Look. You know, if you want to talk
4 to us, just wait. We'll go to the Sheriff's office.
5 If not, we'll just transport you on down to the
6 Kershaw County Detention Center."

7 Q And at any point in time did Defendant McDonald ask
8 for an attorney?

9 A No, he did not.

10 Q Did he tell you that he did not want to talk to you?

11 A No, he did not.

12 Q And what happened after that?

13 A We left. We continued on, went to the Kershaw County
14 Sheriff's Office. At the time we was nextdoor to the
15 courthouse. We took him back to Investigator Catoe's
16 office and actually sat down and re-Mirandized him on
17 the form.

18 Q And I'm going to show you what's been marked as
19 State's Exhibit 3. Is this the form that you
20 re-Mirandized him with?

21 A Yes, ma'am.

22 Q And explain how that process went?

23 A Just like we always do, Investigator Catoe read each
24 right. After each right was read, he asked him if he
25 understood that right. He advised yes. Investigator

1 Catoe then initialed it and circled each one. And at
2 the end of the rights, it said officer name and
3 title. It would be Danny Catoe, investigator.

4 Q And he responded that he did understand those rights
5 after they were read to him?

6 A Yes, ma'am.

7 Q And he did waive those rights by signing the form?

8 A Yes, ma'am. At the bottom is the waiver of rights.
9 Investigator Catoe read those rights, initialed. And
10 at the bottom it says Derrick McDonald.

11 Q And did you also sign that form as the witness?

12 A Yes, I did.

13 Q At any time did he, Defendant McDonald, ask for an
14 attorney?

15 A No, he did not.

16 Q Did he tell you that he did not want to talk to you?

17 A No, he did not.

18 Q And what would have happened had he asked for an
19 attorney or told you he did not want to talk to you?

20 A We'd have stopped all questioning. We'd have called
21 the officer over, the road deputy to pick him up and
22 transport him to the Kershaw County Detention Center.

23 Q And after that waiver of rights, did Mr. McDonald
24 then give a statement?

25 A Yes, he did.

1 Q And were you present when the statement from Mr.
2 McDonald was being taken?

3 A Yes, ma'am. I was in and out of the office at that
4 time.

5 Q And I'm going to show you what's been marked as
6 State's Exhibit 4. Please tell His Honor what that
7 is?

8 A This is going to be a statement form with Derrick
9 McDonald's name at the top.

10 Q Who wrote that statement?

11 A The top is filled out by Derrick McDonald. And the
12 bottom is wrote by Investigator Catoe.

13 Q And do you know why Investigator Catoe wrote that
14 statement?

15 A Mr. Derrick McDonald didn't write it because I think
16 he had some trouble with spelling and stuff like
17 that.

18 Q And after the statement was given, did he have the
19 opportunity to make any changes?

20 A Yes, he did.

21 Q And did he in fact make any changes?

22 A Yes, he did.

23 Q And did he sign the bottom of each page?

24 A Yes, he did.

25 Q Were you there when he signed?

1 **A** No, ma'am, I was not.

2 **Q** Beg the Court's indulgence. Investigator Marthers,
3 will you please identify Robert Cannon for the
4 record, please?

5 **A** Yes, ma'am. Robert Cannon is seated over there in
6 the green shirt.

7 **Q** And can you please identify Derrick McDonald?

8 **A** Yes, ma'am. He's wearing the burgundy type shirt
9 with the gray sweater.

10 **Q** And Chris Whitehead, please?

11 **A** Chris Whitehead would be the young man with the white
12 shirt and the blue sports jacket.

13 **MS. MCDUFFIE:** Your Honor, please let the record
14 reflect he has identified the three defendants.

15 **THE COURT:** The record will indicate the witness
16 identified all three defendants.

17 **Q** Investigator Marthers, when you were meeting with
18 Robert Cannon and Derrick McDonald, did offer them
19 food, drink; or deny them that in any way?

20 **A** No. We did not deny anything.

21 **Q** And if they would have asked for that ...?

22 **A** They'd have got it.

23 **Q** No further questions.

24 **THE COURT:** Mr. Whitlark.

25 **MR. WHITLARK:** May it please the Court.

CROSS EXAMINATION

BY MR. WHITLARK

Q Mr. Marthers.

A Yes, sir.

Q Investigator Marthers, when you went over to Mr. Cannon's house and he was giving a statement, he was eating a bowl of cereal. Is that what you said?

A Correct.

Q And you all were discussing or Investigator Catoe was writing down the statement that we're looking at in this case?

A Correct.

Q All right. How many statements did you take down yourself?

A I didn't take any statements.

Q In this case?

A None.

Q None. Okay. Investigator Catoe wrote just about everything in this case, didn't he?

A Correct.

Q Didn't he wrote most of the statements out for the witnesses in this case for various reasons?

A Yes, sir.

Q All right. Are you aware of what the various reasons are that he wrote the statements out and didn't let

1 the actual witness write out the statement?

2 A Because they asked him to do.

3 Q Okay. So every one of them asked him, would you mind

4 writing this out for me?

5 A Exactly.

6 Q After they filled out the top of it?

7 A Exactly.

8 Q They said, fill it out and I'll sign it?

9 A Excuse me?

10 Q So they filled out the top first, right?

11 A Exactly.

12 Q And then the information was written down by Catoe?

13 A The information that was given to him he wrote down.

14 Q And then they signed it?

15 A Correct.

16 Q But they didn't want to write it. None of them

17 wanted to write the thing?

18 A Exactly. They didn't want to write.

19 Q None of the witnesses wanted to write anything?

20 A No.

21 Q When you went over to Derrick McDonald's house,

22 McDonald said he didn't want to say anything unless

23 his mother was present?

24 A At that time, correct.

25 Q Isn't that true?

- 1 A At that time, correct.
- 2 Q Okay. And also you heard the mother at least say
- 3 that we're getting a lawyer for you right now?
- 4 A No, sir, I did not say that.
- 5 Q I'm saying did you hear her say that?
- 6 A No, I did not.
- 7 Q Okay. So you didn't hear her yell that while you all
- 8 were putting him in the truck?
- 9 A No, sir. I did not.
- 10 Q Were you inside the house when the warrants were
- 11 served?
- 12 A Yes, sir, I was.
- 13 Q All right. And you all had two Richland County
- 14 deputies with you, right?
- 15 A Correct.
- 16 Q All right. You all initially went after his brother
- 17 thinking that was Mr. McDonald, right?
- 18 A No, sir. I don't recall that.
- 19 Q Where was Mr. McDonald when you went in the house?
- 20 A I think he was in a back room.
- 21 Q Do you remember his brother? Can you stand, please?
- 22 Do you remember him?
- 23 A No, sir. I don't recall his face.
- 24 Q Okay. All right. Who served the warrants on Mr.
- 25 McDonald?

- 1 A Who actually presented the warrant to him?
- 2 Q Yes.
- 3 A I want to say Richland County did.
- 4 Q Were you present?
- 5 A I was there, yes.
- 6 Q Could you hear everything that was going on?
- 7 A Yes.
- 8 Q All right. Didn't Derrick McDonald say that I'm not
- 9 saying anything unless I have a lawyer?
- 10 A I did not hear that. No, sir; I did not.
- 11 Q Didn't his mother tell his brother in your presence,
- 12 go call our attorney right now?
- 13 A No, sir. I did not hear that.
- 14 Q Are you aware that his attorney was there the next
- 15 morning to see him at the jail?
- 16 A No, sir, I was not.
- 17 Q Okay. What involvement did you have with this case
- 18 after McDonald was arrested and Cannon was arrested
- 19 and Whitehead was arrested? Have you done any
- 20 further investigations on this case?
- 21 A I just assisted Investigator Catoe in whatever he
- 22 needed done.
- 23 Q You did interview witnesses in this case?
- 24 A Who? Me?
- 25 Q Yes, sir.

1 A No, I didn't interview them. I was there when he
2 interviewed.

3 Q Did you canvas the neighborhood and so forth and talk
4 to witnesses out there?

5 A No, sir, I did not.

6 Q Okay. All right. Who did that?

7 A I'm not sure.

8 Q Okay. Were you there when he took the statement of
9 Adrian Duran?

10 A No, sir, I was not.

11 Q You all didn't know anything about Derrick McDonald
12 when you were heading up to the Sonic, did you, to do
13 your investigation before you ever even heard his
14 name? You hadn't heard his name before you went to
15 Sonic, had you?

16 A I can't be sure of that, sir.

17 Q Okay. You all were looking for Mr. Whitehead,
18 weren't you?

19 A We knew that he worked there, yes.

20 Q Well, you had already heard that he had some trouble
21 with this fellow, right. Mr. Koch?

22 A Mr. Zoch?

23 Q Zoch. I'm sorry.

24 A Yes, sir. They had a run-in at one time.

25 Q You knew that before you went to Sonic then, didn't

1 you?

2 **A** Yes.

3 **Q** Okay. You say that you all pulled Mr. Whitehead over
4 near Derrick McDonald's house before you had gone to
5 McDonald's?

6 **A** I said we had stopped in the road and talked with Mr.
7 Whitehead. We did not pull him over.

8 **Q** Okay. You all have a road -- didn't Richland County
9 have a roadblock set up for that?

10 **A** No, they did not.

11 **Q** All right. When you got in the truck with Mr.
12 McDonald and you all were riding back there, you gave
13 him his Miranda rights?

14 **A** Investigator Catoe did, sir.

15 **Q** You heard that?

16 **A** Yes, I did.

17 **Q** At what point did you all do that?

18 **A** Not long after we got in the vehicle, sir, and left
19 the residence.

20 **Q** So you read him his rights shortly after you all left
21 in Catoe's truck, right?

22 **A** Yes.

23 **Q** Okay. And you read him his rights for what reason?

24 **A** It's standard, in case he wants to start talking.

25 **Q** And so on his own volition he started telling y'all

1 stuff?

2 A Yes, sir.

3 Q Is that your testimony?

4 A Yes, sir, it is.

5 Q Okay. You all didn't make any promises to him or
6 anything else?

7 A No, sir, I did not.

8 Q Okay. How long have you been a Sheriff's
9 investigator?

10 A Four years.

11 Q Four years. All right. And you were told, the first
12 thing you heard from Mr. McDonald was that I don't
13 know what you're talking about; I was with somebody
14 else that night or I was not out at that place.
15 Right?

16 A That was the first time we spoke to him at his home?

17 Q Yes.

18 A Yes, sir.

19 Q And the same thing with Cannon, right? Cannon told
20 you he didn't know anything about this, didn't he?

21 A No, he did not. He had heard some stuff about it he
22 said but he didn't know exactly what went on.

23 Q And he heard that he had found out sometime at 8:00
24 the night before, right? Cannon?

25 A I don't know what time it was.

1 Q All right. Did you call your chief? What's his
2 name? Your superior officer who came to the scene?

3 A My Captain?

4 Q Yes, sir.

5 A It would be Captain Thomley?

6 Q Yes, sir.

7 A I did not.

8 Q Were you involved in the decision to call him out to
9 the scene?

10 A No, I was not.

11 Q Who decided that?

12 A That would be the chief investigator. It would be
13 investigator Catoe.

14 Q Catoe didn't discuss that with you before you called
15 him out there?

16 A No.

17 Q Did he discuss with you that this young man was
18 asking for some help?

19 A Well, he just said he wanted to talk to us outside.
20 He didn't want to talk in front of his parents.

21 Q I want to show you what's been marked as Defense
22 Exhibit No. 1 for this in camera hearing. I'm going
23 to ask you, do you recognize that document?

24 A Yes, sir. It's going to be a copy of Investigator
25 Catoe's notes.

1 Q All right. Have you read through the investigative
2 file in this case?

3 A I have in the past. Yes, sir.

4 Q So you do recognize that?

5 A Yes.

6 Q Would you read what's in that last paragraph for me,
7 please?

8 A "He started to tell us away from parents that he knew
9 more but wanted to make sure he could get some help."

10 Q All right. And it was at that point that Catoe
11 said -- or didn't tell you. He just called Thomley
12 to the scene?

13 A Yes.

14 Q All right. So in connection with that, Thomley is
15 called to the scene. How long was Thomley out there?

16 A Captain Thomley was there probably ten, fifteen
17 minutes.

18 Q So he came to the scene, spoke to Cannon at the back
19 of the truck?

20 A Yes.

21 Q And then left?

22 A Well, he spoke to Cannon. He walked inside and spoke
23 with Cannon's parents.

24 Q He was nervous, wasn't he? Mr. Cannon?

25 A I'd be nervous, too, if two investigators were at my

1 house. But it wasn't no more than normal.

2 Q Right. So he was very nervous you felt?

3 A Yeah.

4 Q And his parents were paying close attention to what

5 was going on with him, weren't they?

6 A I feel sure they was listening, but they wasn't

7 sitting on top of us. No, sir; they were not.

8 Q Well, you had to go outside to get away from them,

9 didn't you?

10 A We did not. He asked to go outside. So we

11 accommodated him.

12 Q Let's take a look at this one more time. This is

13 Exhibit No. 1. Right there?

14 A Yes, sir.

15 Q Do you see that? Can you read that?

16 A Yeah. "Walked outside away from parents."

17 Q Okay. And the reason you did that is because they

18 were very interested in this, weren't they? They

19 were listening to everything that was going on,

20 weren't they?

21 A I feel sure they were. But we walked outside under

22 the request of Robert Cannon.

23 Q Okay. So Cannon didn't say anything implicating

24 himself until he was away from his parents?

25 A Yes, sir.

- 1 Q And McDonald didn't tell you anything about anything.
2 until he was away from his mother?
- 3 A Correct.
- 4 Q Okay. And Mr. Cannon at that point hadn't told you
5 all anything about this, had he? He said he didn't
6 know anything about it up to that point, didn't he?
- 7 A Mr. Cannon?
- 8 Q Yes.
- 9 A He knew something about it, but he didn't know -- he
10 didn't tell us he was involved.
- 11 Q He hadn't given you any information that you are
12 going to use in this trial until after the point
13 that's described in Exhibit No. 1, right?
- 14 A Correct.
- 15 Q Now, is it your testimony that you all never offered
16 him a deal to testify against Chris Whitehead and be
17 a witness and not a defendant in this case?
- 18 A I did not.
- 19 Q But you heard it, didn't you?
- 20 A I don't recall if I heard that or not.
- 21 Q The same thing was said to McDonald, wasn't it? We
22 need to you testify against Chris Whitehead?
- 23 A No, sir. I don't recall that.
- 24 Q Okay. Isn't it true that the reason that Mr.
25 McDonald didn't write out his statement is because he

1 was handcuffed in the interview room, wasn't he?

2 A No, he was not.

3 Q He wasn't?

4 A No, sir.

5 Q Were you there the entire time?

6 A I was there when he was brought in because I was the
7 one that walked him in the room.

8 Q All right.

9 A I took the cuffs off of him. He sat in a chair.

10 Q Did you sit there the entire time that the interview
11 was going on with him?

12 A No, sir. I got up at least once.

13 Q Okay.

14 A To get him a drink of water.

15 Q Okay. You came back, sat through the rest of it?

16 A I can't say I sat through the rest of it. I did get
17 up and go outside again.

18 Q Were you in and out?

19 A Somewhat. Yes, sir.

20 Q You weren't there when he signed it, right?

21 A No, sir.

22 Q Okay. And what was the reason that Catoe wrote the
23 statement out and McDonald didn't write it out? What
24 did you say before?

25 A I assume that his spelling wasn't very well and he

1 didn't want to write it.

2 Q You assumed that?

3 A Yes, sir. I assumed that. Yes, sir.

4 Q Did you hear a conversation as to why he didn't want
5 to write it? Did he say, I don't want to spell; will
6 you please write this for me?

7 A No, I did not.

8 Q Did you hear any witness in this case tell Catoe that
9 I want you to write a statement for them?

10 A Yeah. I heard Robert Cannon state that.

11 Q Robert Cannon said, will you please write the
12 statement?

13 A Yes, he did.

14 Q While I'm eating cereal?

15 A Exactly right.

16 Q So he sat there and ate cereal and said, hey, how
17 about write this out?

18 A Exactly.

19 Q Why did you all have them fill out the top of all of
20 these statements in their own handwriting?

21 A Well, he started it. Cannon started the statement.
22 Then he decided he wanted something to eat, and we
23 accommodated him. He ate while he gave us a
24 statement and we wrote it. Or Investigator Catoe
25 wrote it.

1 Q You're familiar with this file?

2 A Yes, sir.

3 Q Isn't it true that all of the statements that are
4 written out in this case, the top is filled in by the
5 defendant, these defendants over here, the two that
6 gave statements, Cannon and McDonald?

7 A Once again I've answered that question. Yes.

8 Q Isn't that a standard procedure you have when you're
9 investigating and taking statements from witnesses?

10 A Standard procedure to write them for them?

11 Q To have them fill in the top.

12 A Well, normally sometimes they fill in the top; they
13 don't want to write the statement. So they ask us to
14 write them for them. Or we'll have a family member
15 write for them.

16 Q Okay. Well, neither one of them -- did both of them
17 ask Catoe to write the statement out for them?

18 A Yes, sir.

19 Q So they both asked him, will you please write the
20 statement?

21 A Yes, sir.

22 Q And you weren't there when he signed it?

23 A No, sir, I was not.

24 Q McDonald?

25 A No, sir, I was not.

1 Q Beg the Court's indulgence. Just to be clear on
2 this, sir, if you don't mind. You called -- or
3 Thomley was called to the scene by Catoe?

4 A Captain Thomley was called by Investigator Catoe.

5 Q And up to that point you all had learned nothing of
6 all of any substance in this case, none of the stuff
7 that's being used here, none of the information
8 you're going to testify to in court about his
9 involvement in this; you learned none of it up to
10 that point?

11 A Other than he knew something about the situation.
12 But he didn't implicate himself at that time.

13 Q All right. So he wants some help. Thomley came to
14 the scene. And then you all got the information?

15 A I don't know about the help, but he spoke with
16 Captain Thomley. Then he decided to talk to us, yes.

17 Q Have you ever had an occasion where you were asked
18 for help by a witness and you promised him leniency
19 or if he'd be a witness we'll get this other guy.
20 Have you ever done that?

21 A No, sir. I don't promise anything.

22 MR. WHITLARK: That's all I have, Your Honor.

23 THE COURT: Mr. Kendrick.

24 CROSS EXAMINATION

25 BY MR. KENDRICK

- 1 Q Investigator, how are you doing this morning?
- 2 A Fine.
- 3 Q Good. Your title at the Sheriff's Office is
- 4 investigator, correct?
- 5 A That's correct.
- 6 Q So when you are working a case, how do you all
- 7 determine who is going to be the lead investigator in
- 8 the Kershaw County Sheriff's Department?
- 9 A On this particular case the Captain had asked Danny
- 10 to be the lead investigator on this case at that
- 11 time.
- 12 Q So that puts him in charge. And you're just kind of
- 13 helping him out, doing what he asked you to do,
- 14 right?
- 15 A Exactly.
- 16 Q And sometimes maybe you're the lead investigator?
- 17 A Sometimes. Yes, sir.
- 18 Q You all went to the Sonic and spoke with you said the
- 19 manager and Cecile Trapp. That was the morning of
- 20 the 15th, correct?
- 21 A Correct.
- 22 Q And Ms. Trapp relayed a story to you about the
- 23 defendants messing around with a ski mask, right?
- 24 A Correct.
- 25 Q She said she had personal knowledge of that story?

1 A Yes.

2 Q Why was she at the Sonic?

3 A She works there.

4 Q Okay. So you checked to make sure she was working

5 that night?

6 A Well, she'd stopped by to get her schedule, make sure

7 her schedule was right.

8 Q Okay. She told you all that?

9 A Yes.

10 Q But you didn't include that in any notes, any

11 statements, anything?

12 A I didn't write it, take the notes.

13 Q Okay. So if Catoe doesn't do it, you're not going to

14 do it, right? I mean, you're kind of going along

15 with him?

16 A I'm just there to assist him, yes.

17 Q Did you take any notes during the investigation of

18 this case?

19 A No, sir, I did not.

20 Q So you never wrote a single word down during the

21 investigation of this case?

22 A No, sir, I did not. Other than my name.

23 Q Okay. Where did you write your name?

24 A On the statements that was given.

25 Q Okay. Did you have occasion to do any kind of

1 background investigation of Robert Cannon before you
2 went to his house that night?

3 A We spoke to a few people.

4 Q Did you learn anything about his criminal record?

5 A I don't recall his criminal record. I don't.

6 Q According to what you testified to earlier, mainly
7 you're just riding around with Catoe. Your
8 involvement in this case is extremely limited, right?

9 A I was just there to assist him in whatever he needed.

10 Q Right. And you have no idea why Mr. Cannon would
11 have called Captain Thomley to the scene?

12 A I figured he had a question. Being as he's our
13 superior, he asked the question of Captain Thomley,
14 whatever it may be.

15 Q Something --

16 A I didn't listen to the call conversation.

17 Q So you thought maybe there was something he needed to
18 do in person?

19 A It's whatever they felt.

20 Q You didn't really concern yourself with why he was
21 there, did you?

22 A Not really. Other than he's our superior and
23 Investigator Catoe needed to ask him what he felt
24 that he needed to ask him, so he called him.

25 Q Okay. And as far as whether any kind of deal was

1 ever offered to Robert Cannon, you can't say that.
2 that didn't happen, right?

3 A I don't know.

4 Q Okay. So you weren't present for a lot of the
5 conversation between Mr. Catoe and Mr. Cannon?

6 A Yeah, I was there; but there was no deal made between
7 us, no.

8 Q Right. But you just said you can't recall and you
9 didn't know.

10 A I thought you were referring to Captain Thomley.

11 Q Okay. So you didn't hear the conversation with Mr.
12 Cannon then?

13 A No, I did not.

14 Q Did you hear the entire conversation between
15 Mr. Catoe --

16 A I was there. Yes.

17 Q -- and Mr. Cannon? So everywhere Catoe went in the
18 Cannon house you went with him?

19 A Yeah. We didn't go a whole lot of places; living
20 room or the kitchen.

21 Q Okay. When he went outside, you went outside with
22 him?

23 A I walked outside, yes.

24 Q Okay. So you heard Mr. Cannon say, I can tell you
25 all more but I want some help?

- 1 **A** He asked to go out, walk outside. He said he wanted
2 to talk with us out of the presence of his parents.
- 3 **Q** Okay. And according to Investigator Catoe he said,
4 I'll tell you more but I need some help. Did you
5 hear that conversation?
- 6 **A** I'm just trying to -- I'm trying to back up and
7 think.
- 8 **Q** Take your time. Take your time. We're in no rush.
- 9 **A** I don't recall it.
- 10 **Q** Okay.
- 11 **A** Like I said, I wasn't standing beside him the whole
12 time. I was there with him, but I wasn't standing
13 beside him to listen, you know.
- 14 **Q** Okay. And that's what I was getting to earlier. And
15 I understand that this --
- 16 **A** You know, we wasn't joined at the hip or nothing.
- 17 **Q** Right. So there were times when Catoe may have been
18 conversing with Cannon and you didn't hear what was
19 being said?
- 20 **A** Correct. I could have been on the phone with someone
21 else.
- 22 **Q** Okay. You were doing other stuff while this was
23 going on?
- 24 **A** Exactly.
- 25 **Q** All right. And during the course of this

1 investigation, since you're not the chief
2 investigator, the decisions that are made about this
3 case are not going to be made by you?

4 A No.

5 Q And it sounded like from what you told us earlier --
6 please correct me if I'm wrong -- but you're not even
7 going to be consulted on some of these decisions,
8 right?

9 A It's possible. Like I said, he's the chief
10 investigator. He is not going to consult with me on
11 everything he needs to do.

12 Q Sure.

13 A You know, if he wants to call the Captain, he can
14 call the Captain. You know, I'm not his superior.
15 He's a grown man.

16 Q Yeah. So he does what he has to do?

17 A Exactly.

18 Q And if you're the chief investigator, you do what you
19 have to do?

20 A Exactly.

21 Q Okay. Now, and I don't remember if you said this --
22 correct me if I'm wrong -- but did you describe to me
23 Mr. Cannon's demeanor during this time, during the
24 time you were at his house?

25 A No. Other than he was nervous.

1 Q Okay. He was nervous. And I know that Captain
2 Thomley, you probably heard him say he was uneasy?
3 A Correct.
4 Q Reserved. Would you agree with that description of
5 him?
6 A Well, I don't know if he was really uneasy for us.
7 But, you know, he was nervous. He had concerns.
8 Q Okay. And you said at some point he just sat down
9 and started eating a bowl of cereal, right?
10 A Exactly right.
11 Q So at that point he was no longer uneasy and he
12 didn't have those concerns, according to his
13 demeanor?
14 A I feel sure he still had some concerns and uneasy,
15 but if he wanted to eat he could eat.
16 Q Okay. And you've probably -- you said you've been
17 doing this about four years?
18 A Investigations, yes.
19 Q So you've had the opportunity to question people --
20 A Correct.
21 Q -- a good bit in your experiences as a law
22 enforcement officer, right?
23 A Correct.
24 Q Okay. So looking at his demeanor, did it obviously
25 change from nervous to less nervous when he sat down

1 to eat that bowl of cereal?

2 A I guess he felt somewhat at ease once we were there
3 for a while and we discussed with him and talked.

4 Q And according to what we have learned about what
5 Catoe was doing up there; and I know that you weren't
6 there joined at the hip or anything, but obviously
7 you were in the house most of the time; you will
8 agree with me that his demeanor changed after he went
9 outside and came back in and started telling you all
10 this statement you have now produced, right?

11 A Not a whole lot.

12 Q But it did change?

13 A Of course. Of course.

14 Q A minute ago you said he was nervous and then you
15 said he was less nervous, right? You agree with me
16 that's what you said?

17 A As the time went on, yes.

18 Q Okay. Now, at some point -- let me go back. A
19 second ago on I think Mr. Whitlark's cross, you said
20 that my client started writing his statement and then
21 stopped and had Mr. Catoe write the rest of it?

22 A No, he did not start the statement. He filled out
23 the top half of his personal information.

24 Q All right. And I think I'm probably confused. So he
25 didn't -- when we have name, address, telephone

1 number, home phone, work phone, current date and
2 time, date of birth; he didn't fill all that out?

3 A Yes, he did.

4 Q What was it that he started writing and then stopped?

5 A That's what I'm saying. He filled out his personal
6 information on the top. That would be name, address,
7 date of birth. He filled that part out. He did not
8 start this statement.

9 Q So Catoe wrote that entire statement?

10 A Correct.

11 Q Once you get this statement from Mr. Cannon, you will
12 agree with me that based on what's in that exhibit
13 that you just pointed at -- and I don't know the
14 number on that statement. But if you look at it for
15 me, I'd appreciate it.

16 A It would be 2, sir.

17 Q All right. So on State's Exhibit 2, that's the
18 statement that you allege you received from Robert
19 Cannon?

20 A Correct.

21 Q And your position today and your allegations for the
22 last year and a half have been that that statement is
23 a true depiction of what happened, right?

24 A Correct.

25 Q And you would also agree with me that even in your

1 experience as an investigator that this crime
2 probably falls under the more severe end of the
3 spectrum, right?

4 **A** Correct.

5 **Q** And for some reason you decided to leave Robert
6 Cannon at home, at his house?

7 **A** That wasn't my decision, sir.

8 **Q** So you had nothing to do with that decision?

9 **A** No, sir.

10 **MR. KENDRICK:** That's all I have, Your Honor.

11 **THE COURT:** Mr. Reuwer.

12 **MR. REUWER:** If it please the court.

13 CROSS EXAMINATION

14 **BY MR. REUWER**

15 **Q** Good morning again, Investigator Marthers.

16 **A** Good morning.

17 **Q** Where exactly did you stop Chris Whitehead?

18 **A** I don't know if you're familiar with Boney Road?

19 **Q** A little bit.

20 **A** Okay. Probably less than half a mile, less than half
21 a mile from the school at the beginning of Boney Road
22 right near Blythewood.

23 **Q** How did it come that you came across him? The notes
24 say you ran across him.

25 **A** We was on the way to Mr. Derrick McDonald's

1 residence.

2 Q And what's the nature of the driveway where he

3 stopped?

4 A Where he stopped?

5 Q Mm-hmm (affirmative).

6 A It's a driveway. Explain that a little bit now?

7 Q Well, is it like a one-person driveway, a cement

8 driveway or a dirt driveway?

9 A It's paved up to a certain point. It's a dirt

10 driveway.

11 Q How many houses are on the driveway?

12 A I didn't count. Because we didn't go all the way

13 down the driveway. We stopped right there at the

14 edge of the --

15 Q Several?

16 A I'm not sure.

17 Q About how far is it from the driveway to the

18 McDonalds' house?

19 A Maybe a block.

20 Q Okay. But there's more than one house on the

21 driveway?

22 A On the road?

23 Q The driveway to it.

24 A We didn't stop in the McDonalds' driveway.

25 Q On the road?

1 **A** Yeah.

2 **Q** You said that the -- was it Chris Whitehead's
3 attitude or demeanor that was -- you said it was
4 belligerent?

5 **A** He was not a happy person.

6 **Q** Well, how so was he belligerent?

7 **A** I could hear raised voices. He was just getting a
8 raised voice and belligerent.

9 **Q** You also then used a stronger word, "hostile"?

10 **A** Yes.

11 **Q** How did he become hostile?

12 **A** Well, I'm just saying his demeanor, he just was
13 offensive, very offensive and hostile towards us.

14 **Q** Okay. You're familiar with Investigator Catoe's
15 notes?

16 **A** Yes.

17 **Q** And I want to show you one page from his notes. You
18 didn't take any notes of Mr. Whitehead's attitude?

19 **A** No, I did not.

20 **Q** Okay. Can you read what words Investigator Catoe
21 used for Chris Whitehead's attitude?

22 **MR. MEADORS:** Your Honor, can he mark it?

23 **MS. MCDUFFIE:** Your Honor, could he mark that?
24 Can we see what he's showing the witness, please?

25 **MR. REUWER:** Have it marked for identification

1 purposes only, Your Honor.

2 (WHEREUPON, Defendant Whitehead's Exhibit No. 1
3 is marked for identification.)

4 Q I'm showing you what's been marked for identification
5 purposes as Whitehead Defense No. 1. Can you tell me
6 what Investigator Catoe's words were for Mr.
7 Whitehead?

8 A Do you want me to read the whole passage?

9 Q Well, if you'll go down to the sentence where he
10 identifies his attitude.

11 A Let's see here.

12 Q It's about in the middle, Investigator.

13 A "He got real upset and defensive."

14 Q Okay. Would you say being upset is the same thing as
15 being hostile?

16 A Yes, sir.

17 Q Oh, you would?

18 A Well, I'm not -- he wasn't fighting mad, but he was
19 upset and he got kind of agitated.

20 Q Do you have any reason to know why Investigator Catoe
21 didn't use the word "belligerent" or the word
22 "hostile"?

23 A I guess because we're not the same person, sir.

24 Q Okay. Investigator Marthers, did you read Chris
25 Whitehead his rights?

1 **A** No, sir. I did not.

2 **Q** Okay. Were you there when Investigator Catoe read
3 his rights?

4 **A** No, sir, he did not.

5 **Q** Did you know that he didn't read his rights?

6 **A** Yes, I did.

7 **Q** Okay. How did you come to know that Chris Whitehead
8 had quit his job?

9 **A** I believe the manager of the store told us he had
10 quit.

11 **Q** Investigator Marthers, do you believe, or do you know
12 that?

13 **A** You said -- excuse me. I've talked to so many
14 people. We talked to so many people.

15 **Q** I understand.

16 **A** I want to make sure as to which one.

17 **Q** But this is important. I want you to be clear which
18 one it is.

19 **MS. MCDUFFIE:** Objection, Your Honor. This is
20 outside the scope of whether these statements were
21 voluntarily made.

22 **THE COURT:** I'll allow it. Go ahead.

23 **MR. REUWER:** Thank you, Your Honor.

24 **THE COURT:** But it's a limited purpose. I don't
25 know where it's going.

1 A Yes, sir. I want to say that's who advised us of
2 that.
3 Q I'm confused. Who advised you of that?
4 A The manager maybe.
5 Q Do you know when?
6 A I want to say on the 16th.
7 Q Do you know what kind of license he had at the time
8 you made the stop? You said it was suspended. But
9 in fact he had a restricted license, didn't he?
10 A I'm not sure.
11 Q Is Investigator Catoe sure?
12 A You'd have to ask him.
13 Q Did he tell you what kind of --
14 A No, he did not.
15 Q -- license restrictions he had? Okay. Because if he
16 had a restricted license back and forth to work, it
17 wouldn't be suspended. Isn't that correct?
18 A Route restricted?
19 Q Right.
20 A Work and home only.
21 Q It would be different?
22 A Yes.
23 Q And one further question, Investigator Marthers. You
24 said that -- I want to make sure I understood this
25 right. You said that he had talked to --

1 Investigator Catoe had talked to Chris Whitehead for
2 a while. Isn't that what you said?

3 **A** No, sir, he did not. Once we got him pulled over, he
4 asked him he wanted to talk to him about the death of
5 Joshua Zoch. And that's whenever he got kind of
6 upset with everybody, with us. And that was the end
7 of the conversation.

8 **Q** And that was the end of the conversation. I thought
9 I had heard you said you saw him talking for a while?

10 **A** No, I did not.

11 **Q** Okay. Thank you very much, Investigator.

12 **THE COURT:** Any redirect?

13 **MS. MCDUFFIE:** No, sir, Your Honor.

14 **THE COURT:** You may come down, sir. Thank you
15 very much. Next witness.

16 **MR. MEADORS:** Phil Crawford.

17 PHILLIP CRAWFORD, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Please be seated. State
20 your full name for the record.

21 **THE WITNESS:** Phillip Crawford.

22 DIRECT EXAMINATION

23 **BY MR. MEADORS**

24 **Q** Good morning, Investigator.

25 **A** Good morning.

1 Q Beg the Court's indulgence. We had pre-marked some
2 of these. Okay. You are Investigator Phil Crawford?
3 A Lieutenant Phillip Crawford.
4 Q Lieutenant?
5 A Yes, sir.
6 Q I'm going to ask you some questions now specifically
7 and only about the time you had to meet with
8 Mr. Robert Cannon on December 16th of 2006. Do you
9 understand?
10 A Yes, sir, I do.
11 Q Now, specifically on December 16th of 2006, did you
12 have an occasion to talk to one Robert Cannon?
13 A Yes, sir, I did.
14 Q Could you tell the judge where that took place?
15 A It actually took place in the basement of this
16 courthouse.
17 Q Downstairs --
18 A Downstairs.
19 Q -- from where we are right now?
20 A Yes, sir.
21 Q What room was that?
22 A It was a room that we had set aside for polygraphs.
23 Q And do you have with you some items or documents that
24 you used that day when you talked with Robert Cannon?
25 A Yes, sir, I do.

1 Q Specifically, tell the judge what your procedure is
2 and specifically what you did on December 16th, 2006
3 prior to talking to Robert Cannon?

4 A As with every polygraph that we do, we introduce
5 ourselves as a polygraph examiner. I discuss what is
6 going to occur during the polygraph. I go over the
7 basic forms that we'll be filling out and then I get
8 some information from the individual as far as name,
9 address, phone number, those kind of things. And
10 then I go over what's called a Miranda form.

11 Q And do you have an exhibit number on that?

12 A It's State's Exhibit 5.

13 Q And is there another polygraph consent y'all also go
14 over?

15 A Yes, sir, there is.

16 Q And which do you do first?

17 A We do the Miranda form first.

18 Q I'm now referring to State's 5 for I.D. for defense
19 counsel. And this is a copy of a standard form that
20 Kershaw County uses?

21 A Yes, sir, it is.

22 Q Did you have an occasion to read the Miranda rights
23 to Robert Cannon on December 16th?

24 A Yes, sir, I did.

25 Q Please read them as you read them that day?

1 **A** "You have the right to remain silent. Anything you
2 say can and will be used against you in a court of
3 law. You have the right to talk to an attorney and
4 have him or her present with you while you are being
5 questioned. If you cannot afford to hire an
6 attorney, one will be appointed to represent you
7 before any questioning if you wish. And you can
8 decide at any time to exercise these rights and not
9 answer any questions or make any statements."

10 **Q** Now, what's above or on the numbers of this form?

11 **A** As I read those statements, I check each one as I
12 read it and elicit a response from the individual.

13 **Q** And as you went through each one of these rights,
14 Lieutenant; for example, "You have the right to
15 remain silent", did Robert Cannon indicate to you in
16 any form or fashion that he understood that right?

17 **A** Yes, sir, he did. And when I finish with all five of
18 them, I go back and I explain to them, if you have
19 any questions about any of the rights that you've
20 been given, please ask me; I'll explain them to you
21 so that you understand them; I want you to know what
22 they are.

23 **Q** And as far as each one of these five rights you read
24 to him, did he understand those rights?

25 **A** Yes, sir. He stated he did.

1 Q And he indicated that?

2 A Yes, sir, he did.

3 Q And you think he did based on your experience --

4 A Yes, sir. He did.

5 Q -- and just being with him? And after that whose
6 name is signed under those five Miranda warnings as
7 they were read?

8 A My name is signed there.

9 Q And underneath that, I think you kind of may have
10 said it before, it's a waiver of rights?

11 A That's correct.

12 Q And did you read him those rights?

13 A I did read him the waiver of rights. I have a
14 standard procedure that I always use. As I begin
15 reading the waiver I put a check mark to start it.
16 And it is: "This is to certify that I have read or
17 have had read to me the above statement of my rights.
18 I understand each of these rights; and having these
19 right in mind, I waive them and willingly make a
20 statement. No promises or threats have been made to
21 me and no pressure or coercion of any kind has been
22 used against me."

23 I ask them if they understand that and if they
24 understand that it does not mean that they are giving
25 away their rights. They always have those rights and

1 have the right to invoke those rights at any time.

2 Q Read that last sentence for Judge Cooper one time?

3 A "No promises or threats have been made to me and no
4 pressure or coercion has been used against me."

5 Q And right underneath that sentence, who signed that?

6 A Robert Cannon.

7 Q Did you see him sign it?

8 A Yes, sir, I did.

9 Q Did you make him sign it?

10 A No, I did not.

11 Q And during the reading of those rights, could you
12 understand his responses?

13 A Yes, sir.

14 Q Did he appear to understand your questions?

15 A Yes, sir, he did.

16 Q In other words, did he give you appropriate
17 responses?

18 A He did.

19 Q Could you understand it?

20 A Yes, sir.

21 Q You could make out the words that he was giving to
22 you?

23 A Yes, sir.

24 Q Did he appear to be under the influence of alcohol,
25 drugs or any other intoxicants?

1. A No, sir. In fact, I asked him, and he said no.

2. Q And you signed that at the bottom 12-16-06, 11:17?

3. A Yes, sir.

4. Q After that -- you understand it's not admissible in
5. front of the jury. So we certainly can't mention the
6. word "polygraph" at all.

7. A Yes, sir. I understand that.

8. Q But for these purposes, did you in addition to that
9. go over another form?

10. A Yes, sir, I did.

11. Q And what number is that listed?

12. A That is State's Exhibit 6.

13. Q State's Exhibit 6 for I.D. which says Polygraph
14. Consent Form. And can you please tell His Honor
15. about that form?

16. A Yes, sir. This is a polygraph consent form that we
17. fill out. It gives them certain rights as far as
18. taking the polygraph is concerned. It is a standard
19. form that we use. It is also used by the State Law
20. Enforcement Division. I have the individual or I
21. write the individual's name in the top line. It
22. says: I, in this case, Robert Cannon hereby consent
23. to taking a polygraph examination in reference to a
24. murder.

25. I then go over the rights as they are here. "I

1 have been advised of and understand the following."
2 And as I go through them, I do just like I do on the
3 rights form. I check off each one. "I have the
4 right to consult with a lawyer prior to taking the
5 examination." And I ask them do they understand
6 that. They of course -- you know, in this case he
7 said he did.

8 "The examination will be conducted only with my
9 prior written consent." And I explain to them that
10 this form is their written consent for taking the
11 polygraph, that they have the right not to take a
12 polygraph. Nobody can make them take a polygraph.
13 Nobody can force them to take one. It's done on a
14 voluntary basis.

15 Q And based on your time you spent with him that
16 morning, did he understand that?

17 A Yes, sir, he did.

18 Q Go ahead, please.

19 A "No adverse action will be taken against you solely
20 on the grounds that you refuse to consent to this
21 examination." I explain to them that if they decide
22 not to take the polygraph that no one can hold it
23 against them. It cannot be brought up in court that
24 they did not take the polygraph.

25 Number four, "The examination may be monitored.

1 The examination will not be recorded." At the time
2 that this polygraph was run we did not have the
3 ability to record a polygraph. We did, however, have
4 an observation room with video and audio.

5 And number five, "I may stop the examination at
6 any time." At the bottom of this form it says:
7 "With an understanding of the above conditions, I
8 freely consent to be examined with the polygraph. I
9 make this decision freely and voluntarily."

10 Q And whose signature is under there?

11 A Robert Cannon's.

12 Q And underneath that is a witness?

13 A Mine.

14 Q So in this polygraph room, it's just you and the
15 subject?

16 A Yes, sir.

17 Q And during any of this time, did he say, I don't want
18 to talk to you?

19 A No, sir.

20 Q Did he say I want a lawyer?

21 A No, sir. He came in voluntarily.

22 Q Did he say, leave me alone, Lieutenant; get out of
23 here?

24 A No, sir, he did not.

25 Q So you then now read him his Miranda and his

1 polygraph consent. What did you do next? What's
2 your procedure? What did you do this day?

3 **A** We discussed how the polygraph works. I discuss a
4 bit more information with him as far as any medical
5 problems, any medicines he might be taking, whether
6 or not he's under the influence of any alcohol or has
7 had any alcohol or and/or illegal drugs in the last
8 24 hours. All those things we go through.

9 I discuss how they were raised, basically who
10 raised them, that they knew the difference between
11 right and wrong and all, you know, that kind of thing
12 just to get a feel for what type of person they are
13 and how they were raised.

14 After that, when we get ready to go over the
15 questions or just before we go over the questions, in
16 this particular case because it was a statement
17 verification polygraph, I presented Mr. Cannon with a
18 statement that had been given to me prior to the
19 polygraph and was told that that was his statement.

20 **Q** And referring for these purposes to State's No. 2 for
21 I.D., the statement of Robert Cannon, is this the
22 statement you're talking about?

23 **A** Yes, sir. This is the statement.

24 **Q** And, Lieutenant, for these purposes of this hearing,
25 did you go over that statement with him?

1 **A** Yes, sir, I did. In fact, I had him go back over it
2 and read it himself. I handed it back to him. I
3 asked him, read over this statement. Make sure that
4 everything in this statement is correct, that you
5 don't need to add anything or take anything out of
6 there, there are no changes to be made to this
7 statement prior to taking the polygraph.

8 **Q** And this statement was given on what day?

9 **A** That was given on the day of the polygraph. I don't
10 know what the date of that one was. I wasn't there
11 for that. But I think it was on the 15th.

12 **Q** Current date, 15th. And you're now seeing him the
13 day after that, the 16th, correct?

14 **A** Yes, sir.

15 **Q** And you went over this statement with him?

16 **A** Yes, sir.

17 **Q** And said be sure this is all your words, correct?

18 **A** Yes, sir.

19 **Q** Did he tell you he wanted to change anything?

20 **A** Yes, sir, he did.

21 **Q** And what did he say?

22 **A** He said he had to add some things to the statement.
23 I handed him a statement form and said you need to
24 add whatever it is that you want to add on here and I
25 I'll witness it and then we'll go ahead with the

1 polygraph.

2 Q So he didn't want to change anything. He wanted to
3 add some stuff?

4 A Yes, sir.

5 Q Did he change any words that were in here?

6 A No, sir, he did not.

7 Q Excuse me. State's 2, looked at it, said, I don't
8 want to change anything but I'd like to add
9 something?

10 A Right.

11 Q And now referring to what's State's 7 for defense
12 counsel, what did he add?

13 A He added -- he actually wrote his name at the top and
14 put his social security number, his date of birth and
15 how old he was. And he put an 8-0 over the phone
16 number but didn't finish it for whatever reason. And
17 then he added a list of items that he expressed had
18 been taken from the home when they were there.

19 Q The home of Joshua Zoch?

20 A Yes, sir.

21 Q Could you read out for His Honor what he listed he
22 took?

23 A It says a DVD player, presents. I don't know what
24 this one is supposed to be. It looks like DVCLS or
25 something like that. I guess it's --

- 1 Q Could that be DVD's?
- 2 A Could be. It could be. Hair clippers, some old
3 cellphones that were laying around and the house
4 phone.
- 5 Q So after looking at his statement, after reading him
6 his Miranda and then the polygraph consent, looking
7 at his statement --
- 8 A Yes, sir.
- 9 Q -- he said he didn't want to change anything but he
10 added that that's what was taken?
- 11 A Yes, sir. That's correct.
- 12 Q And did you tell him to put that down there?
- 13 A No, sir.
- 14 Q And who is at the bottom of that? Whose statement is
15 at the bottom of that?
- 16 A He signed it as a signature of the person giving the
17 statement and I signed it as a witness.
- 18 Q Did you threaten him or coerce him or hold out any
19 promise or reward to get him to tell you that was
20 taken or he took that from the residence?
- 21 A No, sir. I don't have anything to offer him except
22 the polygraph.
- 23 Q So after going over the statement and adding this,
24 you administered him a polygraph?
- 25 A Yes, sir, I did.

1 Q After that did he give you some more statements?

2 A Yes, sir. He added some information or he gave me a
3 verbal statement. And I always make notes of those
4 statements as far as on the report form that I have.
5 There is an area on the report form where we fill out
6 any comments that were made as a result of giving
7 them the results of the polygraph.

8 Under my post test comments, the examinee was
9 given the results of the polygraph. He confessed
10 that all three suspects; and in quotation, this is an
11 exact quote from him, "hit the back door together but
12 I was still last."

13 He also stated the victim grabbed his leg during
14 the incident and that he kicked him. And prior to
15 the polygraph the examinee wrote a supplemental
16 statement listing additional items they took from the
17 residence.

18 Q That's what you just told us about with the DVD's and
19 all?

20 A Yes, sir.

21 Q So after he took the polygraph, I guess your result
22 was deception indicated?

23 A Yes, sir.

24 Q Did you tell him that?

25 A Yes, sir, I did.

- 1 Q And then after that is when he gave you the oral
2 statement?
- 3 A Yes, sir.
- 4 Q That they all hit the door together and I had kicked
5 him?
- 6 A Yes, sir.
- 7 Q Prior to that, after looking through his statement,
8 he had not admitted that he took any part in actually
9 touching the body of Joshua Zoch. Isn't that
10 correct?
- 11 A That's correct.
- 12 Q And now for the first time he admits to kicking him,
13 correct?
- 14 A Yes, sir.
- 15 Q Were all these statements that he gave you, the
16 additional written form and the oral statement,
17 voluntary?
- 18 A Yes, sir, they were.
- 19 Q Did you promise him anything?
- 20 A No, sir. I don't have --
- 21 Q Did you cheat to get him?
- 22 A No, sir, I did not.
- 23 Q Is the person who you talked to on December 16th in
24 this courthouse in the basement at approximately
25 11:17 in the courtroom?

1 **A** Yes, sir, he is.

2 **Q** Would you please point out him out for the judge?

3 **A** Yes, sir. He's the young man in the green shirt
4 leaning over writing.

5 **Q** We'd ask the record so reflect. That's all we have.
6 Thank you.

7 **THE COURT:** The witness identified the
8 Defendant, Cannon. Mr. Whitlark.

9 **MR. WHITLARK:** May it please the Court.

10 CROSS EXAMINATION

11 **BY MR. WHITLARK**

12 **Q** Mr. Crawford, you just answered some questions with
13 the solicitor regarding some writing by Mr. Cannon,
14 right?

15 **A** Yes, sir.

16 **Q** Take a look at that exhibit. Is it still in front of
17 you?

18 **A** Which one would you be referring to?

19 **Q** The writing you said he did.

20 **A** The additional statement?

21 **Q** Yes.

22 **A** Yes, sir. I have it here.

23 **Q** Did he do another writing? Is there any other
24 writing in there?

25 **A** His signature is on the bottom.

1 Q Do you see that? Do you see that list?

2 A Yes, sir, I do.

3 Q Do you read and write fairly well?

4 A Yes, sir.

5 Q Would you take a look at that list for me?

6 A Yes, sir. I'm looking at it.

7 Q All right. There's not a single misspelled word in
8 there, is there? Not one?

9 A I don't see any misspelled words. There are some,
10 however, that are not legible.

11 Q How many polygraph tests did you give to witnesses in
12 this case?

13 MR. MEADORS: Objection. Relevance. This is on
14 the voluntariness of this statement only, Your Honor.
15 That's all this procedure is about.

16 THE COURT: I understand that, but I'll allow
17 that question.

18 A I believe there were three, sir.

19 Q And did you take statements from them after theirs?

20 A I don't have my notes here in front of me, sir. I
21 can't answer that.

22 Q Did you make notes about your polygraph examination?

23 A I make notes about all my examinations. Yes, sir.

24 Q Handwritten notes?

25 A No, sir. I put them on the document.

1 Q What's typed in there you typed there?

2 A Yes, sir.

3 Q Like this? I hand you this one. Do you recognize
4 that?

5 A It's a copy of a polygraph report form that I did.
6 Yes, sir.

7 Q Did you do that one, too?

8 A Yes, sir, I did.

9 Q And that's Ms. Davy, Melissa Davy?

10 A Yes, sir.

11 Q All right. And the same question was asked of her
12 about involvement or what she knew about it, right?

13 A No.

14 MR. MEADORS: Objection.

15 A They're not the same questions.

16 Q She failed her test, too, didn't she?

17 MR. MEADORS: Your Honor, it's got no relevance
18 to this case.

19 THE COURT: I understand that.

20 MR. MEADORS: I apologize.

21 THE COURT: What's the relevance?

22 A It's listed as deception indicated.

23 THE COURT: What's the relevance to this line of
24 questioning?

25 MR. WHITLARK: I'll withdraw the question, Your

1 Honor.

2 **THE COURT:** Thank you.

3 **Q** Do you have anything to do with this investigation
4 other than this part of the polygraph?

5 **A** No, sir, I don't.

6 **Q** Okay. All right. I think that's all I have, Your
7 Honor. One moment, please.

8 **THE COURT:** Mr. Kendrick.

9 **MR. KENDRICK:** Your Honor, may it please the
10 Court?

11 **MR. WHITLARK:** Thank you, Your Honor.

12 CROSS EXAMINATION

13 **BY MR. KENDRICK**

14 **Q** Lieutenant Crawford, I'm Josh Kendrick. I represent
15 Mr. Cannon.

16 **A** Good morning.

17 **Q** Do you know me?

18 **A** I've seen you.

19 **Q** Have you ever seen me from my office before?

20 **A** Not that I'm aware of.

21 (WHEREUPON, Defendant Cannon's Exhibit No. 2 is
22 marked for identification.)

23 **MR. KENDRICK:** Do you have an objection?

24 **MR. MEADORS:** A preemptive objection to
25 relevance to the question he's fixing to ask about

1 somebody that's not charged, not involved in this and
2 a polygraph. So, objection.

3 **THE COURT:** Ask the question.

4 **MR. KENDRICK:** Actually, Your Honor, that's not
5 the question I'm going to ask.

6 **Q** So just so we're clear, have you ever seen these
7 documents before, Mr. Crawford?

8 **A** Yes, sir, I have.

9 **Q** Okay. What are those, if you know?

10 **A** Those are subpoenas for some polygraph records.

11 **Q** Okay. Did you turn those over to me?

12 **A** No, sir, I did not. I gave the subpoena to the
13 Solicitor's Office.

14 **Q** Are you aware of the Solicitor's Office ever gave
15 that to me?

16 **A** I'm not aware of whether he did or not. That's our
17 standard procedure in a General Sessions case.

18 **Q** Do you mind if I look at what you were pointing to
19 earlier? You said you got a polygraph consent form
20 from my client?

21 **A** Yes, sir. I believe you have a copy of it as well,
22 if they gave you their stuff.

23 **THE COURT:** Mr. Kendrick, you had something
24 marked?

25 **MR. KENDRICK:** Yes, sir.

1 **THE COURT:** Don't walk off with it.

2 **MR. KENDRICK:** I apologize.

3 **THE COURT:** Whatever it is.

4 **Q** Okay. And you don't know whether I have a copy of
5 this or not, do you?

6 **A** No, sir, I don't.

7 **Q** In that file you were just flipping through when I
8 walked up there, you had some stuff that looked like
9 a graph or something?

10 **A** Yes, sir.

11 **Q** What is that?

12 **A** That's charts from the polygraph.

13 **Q** So that's the underlying data?

14 **A** Excuse me?

15 **Q** That's the underlying data from the polygraphs?

16 **A** Yes, sir.

17 **Q** And you say you that you turned that over to the
18 Solicitor's Office?

19 **A** No, sir. I said I turned the subpoenas over to the
20 Solicitor's Office. That is standard procedure for
21 us.

22 **Q** Okay.

23 **A** And they let us know what we need to send you.

24 **Q** Were the subpoenas directed to the Solicitor's
25 Office?

1 **A** No, sir, they were not.

2 **Q** So you just disregarded that subpoena?

3 **A** I sent it to the Solicitor's Office, as is our policy

4 and procedure.

5 **Q** And did you follow up with them to see if they had

6 answered it?

7 **A** No, sir, I did not.

8 **Q** When Mr. Cannon came in the next morning, he came

9 here to this courthouse?

10 **A** He came over to the Sheriff's Office and was brought

11 over here to the courthouse.

12 **Q** Who met him at the courthouse?

13 **A** I believe I was here.

14 **Q** You met him here?

15 **A** Yes, sir.

16 **Q** Do you remember what time it was?

17 **A** I don't remember. I remember what time the polygraph

18 started --

19 **Q** What time did the polygraph start?

20 **A** -- or was scheduled for. Approximately 11:00.

21 **Q** How long did you all talk?

22 **A** How long did we talk?

23 **Q** Before the polygraph started?

24 **A** I don't usually talk very long before the polygraph

25 starts. I don't have a conversation with them.

- 1 Q Do you go over the questions with them?
- 2 A I do prior to them taking the polygraph. Yes, sir.
- 3 Q When was the first time you became involved in this
- 4 case?
- 5 A That morning.
- 6 Q So tell me how you became involved?
- 7 A I was asked to run a polygraph on Mr. Cannon.
- 8 Q Well, who asked you? Let's start with that.
- 9 A I was asked by Investigator Catoe.
- 10 Q What time of the morning did he ask you?
- 11 A Sir, I don't remember.
- 12 Q Early or closer to --
- 13 A I really don't remember what time.
- 14 Q Did he wake you up at your house?
- 15 A I don't remember being woke up. I don't know.
- 16 Q So you don't have a very clear memory of this
- 17 morning?
- 18 A No, sir. The only thing I know is I was scheduled to
- 19 run a polygraph. I came in and ran it.
- 20 Q But the details are fuzzy?
- 21 A As far as how I was notified.
- 22 Q But you clearly remember what my client said and did
- 23 in the polygraph?
- 24 A Yes, sir.
- 25 Q What's the difference?

1 A Excuse me?

2 Q Why do you remember one better than the other one
3 when they happened just hours apart?

4 A There is no difference. The only difference is, when
5 I'm in a polygraph suite I am doing my job. When
6 they call me, if they wake me up in the middle of the
7 night, if that happened to have been when it was, I'm
8 just told a time that I need to be here.

9 Q And what did Catoe tell you about what you were going
10 to do?

11 A He just asked me if I would run a polygraph on Mr.
12 Cannon.

13 Q Did he tell you why he wanted a polygraph run?

14 A He just said he needed a statement verification
15 polygraph.

16 Q Okay. So you went through that statement and you
17 wrote the questions for Mr. Cannon?

18 A I formed the questions and went over the questions
19 with him; yes, sir.

20 Q Did you discuss with Mr. Catoe whether those
21 questions were what he wanted asked?

22 A No, sir.

23 Q Did he have any involvement in the formulation of the
24 polygraph?

25 A No, sir, he did not.

1 Q Do you know what communications Mr. Catoe had with
2 Mr. Cannon the day before?

3 A No, sir, I do not.

4 Q Do you know any communications that Mr. Catoe had
5 with Mr. Cannon?

6 A Nothing other than what's on this statement.

7 MR. KENDRICK: Your Honor, I don't have any more
8 questions for this witness, but I guess after the end
9 of this hearing there will be another issue based on
10 all that stuff he's got in his hands.

11 THE COURT: Mr. Riley.

12 MR. RILEY: No questions, Your Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. MEADORS

16 Q You know he said, I don't want to change anything in
17 that statement, don't you?

18 A Yes, sir.

19 Q And you know he added they took the DVD's and other
20 stuff from the house, right?

21 A Yes, sir.

22 Q Thank you. That's all.

23 THE COURT: Recross?

24 RE CROSS EXAMINATION

25 BY MR. WHITLARK

1 Q Sir, did you write down what time you took any of
2 these polygraphs you did in this case on any of them?

3 A Yes, sir.

4 Q Do you have the exact time on any of them?

5 A Yes, sir.

6 Q On all of them?

7 A Yes, sir.

8 Q Okay. Can you tell me briefly what that was?

9 A I can tell you on this one because I have the folder
10 in front of me.

11 Q Yeah. What time was it?

12 A The exact time that the polygraph started?

13 Q Yes, sir.

14 A Is 11:00.

15 Q A.M.?

16 A Yes, sir.

17 MR. WHITLARK: Thank you. That's all I have,
18 Your Honor.

19 MR. KENDRICK: No more questions, Your Honor.

20 MR. RILEY: No, sir.

21 THE COURT: All right. You may come down, sir.
22 Thank you very much.

23 MR. MEADORS: Your Honor, I have just a
24 follow-up briefly to those last --

25 THE COURT: No, sir. We've had --

1 **MR. MEADORS:** No. I've got something to follow
2 up on just to you.

3 **THE COURT:** You can come down.

4 **MR. MEADORS:** In response to Mr. Kendrick's last
5 thing about the polygraph, I just want to address the
6 Court if that's okay.

7 **THE COURT:** Sure.

8 **MR. MEADORS:** Judge, I have met with them every
9 time we've offered. We've been together several
10 times. And last Thursday they went down to the
11 Kershaw County Sheriff's Department four or five
12 hours looking through everything, looking through the
13 files.

14 I have given I know Mr. Kendrick a copy of the
15 polygraph report involving his client. And also, he
16 was up here a few weeks ago. Here are the other two
17 copies which I believe he's got of Melissa and of
18 Adriene Dorn, which he does have. And he's shaking
19 his head he does. And that's all I've ever had, and
20 we gave him everything we had.

21 **THE COURT:** There's no motion.

22 **MR. MEADORS:** I don't know why last Thursday at
23 the Kershaw County Sheriff's Department he doesn't
24 say while we're down there, Phil is down there and
25 everybody is down there, where's the rest of this

1 stuff? He saves it for now for Your Honor. I just
2 don't understand that.

3 **THE COURT:** There is no motion on the floor.

4 **MR. KENDRICK:** I haven't made the motion yet,
5 Your Honor. But if you want me to make it now, I
6 certainly will.

7 **THE COURT:** We're going to get through what
8 we're dealing with here now.

9 **MR. KENDRICK:** I agree, Judge. I didn't want to
10 let it goes unanswered, what he just said. But I
11 don't think it matters what he says.

12 **MR. MEADORS:** I think it matters what Your Honor
13 thinks.

14 **THE COURT:** Yes, sir. All right. We'll conduct
15 this hearing with due respect for all counsel. Now,
16 any further witnesses on the Denno issues?

17 **MR. MEADORS:** Nothing from the State.

18 **THE COURT:** All right. Any response from either
19 defendant? Any witnesses?

20 **MR. WHITLARK:** There is, Your Honor.

21 **THE COURT:** All right. Mr. Whitlark, call your
22 first witness.

23 **MR. WHITLARK:** We call Ms. Josie McDonald.

24 JOSIE MCDONALD, after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** If you'll please be seated in the
2 witness chair and state your full name for the
3 record.

4 **THE BAILIFF:** State your name.

5 DIRECT EXAMINATION

6 **BY MR. WHITLARK**

7 **Q** Would you state your full name, please?

8 **A** Josie McDonald.

9 **Q** Are you Derrick McDonald's mother?

10 **A** Yes.

11 **Q** All right. Were you present on the date of
12 December 15th, 2006 when the officers arrived to
13 serve warrants on him?

14 **A** Yes, I was.

15 **Q** Tell us in your own words what occurred?

16 **A** When they got there?

17 **Q** Yes. Yes, ma'am.

18 **A** Someone knocked on the door. I opened up the door.
19 When I opened the door, two Richland County deputies
20 along with Investigator Catoe and another gentleman
21 with blonde hair, blondish hair, came in. And when
22 they came in, the Richland County deputy went after
23 my oldest son and put his hand on him. And he said,
24 "Is this him?" He grabbed him in the back and said,
25 "Is this him here?" And I said, "Excuse me. You

1 need to take your hands off my child." And he said,
2 "Is this him?" And Investigator Catoe said, "No,
3 that's not him."

4 And so then I told them to have a seat and I
5 would get Derrick. They all stood up. Investigator
6 Catoe was standing by my sofa. A Richland County
7 deputy, the short one, was standing near the window.
8 The other deputy was standing in front of my trunk
9 from Richland County, and then the other gentleman
10 was standing by the door.

11 At that point my oldest son, Veek, went and got
12 Derrick and brought him out. When he brought him
13 out, then Investigator Catoe had two pieces of paper
14 in his hand. And he said, "Derrick," he said, "You
15 told us that you didn't want to talk with us unless
16 your mother was present." He said, "Since then some
17 new things have arrived," he said, "and you're under
18 arrest for murder."

19 Q All right. What happened next? What was your
20 response, if any, to that?

21 A I told Veek, my oldest son, to get on the phone. I
22 said, "Go on my phone and speed dial 6." And I told
23 him to call an acquaintance of mine that was a judge.
24 And at that point the Richland County deputy said no.
25 We couldn't leave the room, number one; and then,

1 number two, he said that no one from Richland County
2 could help me. He said the only reason that they
3 were there, that they were there to deliver the
4 warrant because Kershaw County could not deliver the
5 warrant. Oh, one thing that happened prior to that;
6 Investigator Catoe told the deputy that I'm speaking
7 of to handcuff Derrick.

8 Q All right. And did he handcuff him?

9 A Yes, he did.

10 Q All right. Did you direct your son -- is it Nivek?

11 A Yes.

12 Q Did you direct Nivek to use the telephone?

13 A Yes, I did.

14 Q Who did you tell him to call?

15 A The first time I told him to call the judge.

16 Q Okay. And ...?

17 A And then the second time Derrick said that he wanted
18 -- he said, "I want a lawyer." So then I told him to
19 call our attorney. And I said, "He's number 9 on my
20 phone."

21 Q Who is the attorney? Who is the attorney?

22 A Overture Walker.

23 Q All right. Go ahead.

24 **THE COURT:** Who was that?

25 A Overture Walker.

- 1 Q All right. Was he allowed to call?
- 2 A No.
- 3 Q What time was this? What time about was it?
- 4 A I am estimating it was somewhere around 11.
- 5 Q Okay. What happened next?
- 6 A Then at that point they still told us that we could
7 not leave the room, that he could not go in and call
8 anyone. Based on escorting Derrick out, when they
9 started escorting Derrick out the door, there were
10 some other officers outside. So I asked Investigator
11 Catoe, I said, "Can I" -- I said, "Well, I'm going
12 with you." And he said no, they were taking him to
13 the Detention Center. And I said, "Where? Where are
14 you taking him?" And he said Kershaw County
15 Detention Center, and I couldn't go because they were
16 taking him there for processing.
- 17 Q Did they mention to you that they would be asking him
18 questions at the Sheriff's Department in Kershaw?
- 19 A No. They did not. They did not. And I followed
20 them on outside.
- 21 Q Okay. Did you say anything else to your son before
22 he was put in the truck?
- 23 A Yes. I told him I was calling a lawyer. I said,
24 "I'm calling a lawyer. I'm calling Overture."
- 25 Q Okay. And did he ask for a lawyer?

1 **A** Yes, he did.

2 **Q** In the presence of these officers?

3 **A** Yes, he did.

4 **MR. WHITLARK:** That's all I have, Your Honor.

5 **THE COURT:** All right. Any cross examination
6 from the State?

7 **MR. MEADORS:** Doesn't it have to go down that
8 way? I think that's the way we did last time.

9 **THE COURT:** I know that.

10 **MR. MEADORS:** Do they not have any questions? I
11 don't want them to come after me. Judge, I just
12 thought we were going to follow the rule.

13 **THE COURT:** Well, this issue applies to one
14 defendant, is my understanding.

15 **MR. MEADORS:** Okay. So there are no questions
16 from either one of those then?

17 **THE COURT:** Well, I don't know yet. But it's my
18 understanding that from what she said there is no
19 implication as to either of the other defendants.
20 All right. Have you got any questions?

21 **MR. KENDRICK:** I do not, Your Honor.

22 **THE COURT:** Mr. Riley?

23 **MR. RILEY:** No questions, Your Honor.

24 **THE COURT:** No questions from the defense.

25 **MR. MEADORS:** Beg the Court's indulgence. No

1 questions.

2 **THE COURT:** All right. You may come down,
3 ma'am. Thank you.

4 **THE WITNESS:** You're welcome.

5 **THE COURT:** Mr. Whitlark.

6 **MR. WHITLARK:** Yes, sir.

7 **THE COURT:** Anything else?

8 **MR. WHITLARK:** Yes, Your Honor. Nivek McDonald.

9 JA'NARD N. MCDONALD, after being duly sworn,
10 testifies as follows:

11 **THE CLERK:** Thank you. Please be seated in the
12 witness chair and state your full name for the
13 record. This way, please.

14 **COURT REPORTER:** I need you to spell your first
15 name after you state it. You can go ahead and have a
16 seat and state your name and spell your first name.

17 **THE WITNESS:** Ja'nard Nivek McDonald. J-A,
18 apostrophe, N-A-R-D. N-I-V-E-K. McDonald, the rest
19 of it.

20 **MR. WHITLARK:** May it please the Court, Your
21 Honor?

22 **THE COURT:** Yes, sir.

23 DIRECT EXAMINATION

24 **BY MR. WHITLARK**

25 **Q** Were you present when your brother was arrested?

1 **A** Yes, I was.

2 **Q** All right. Tell us in your own words what happened
3 after the door was answered?

4 **A** Okay. After the door was answered, two Richland
5 County officers walked in. I was standing in front
6 of my mother's trunk towards the back of the living
7 room. And one of the Richland County officers came
8 and approached me and grabbed the back part of my
9 shoulder and said, "Is this him?" And this was right
10 after Officer Catoe got into the living room. And
11 Officer Catoe said, "No, that's not him."

12 So that's when my brother -- I called my brother
13 from the back for him to come into the living room.
14 And when he came into the living room, they told him
15 there had been new developments in the case and
16 whatnot like that and that he was under arrest.

17 **Q** All right.

18 **A** And he said, "I'm arresting you for murder."

19 **Q** Did your brother say anything then?

20 **A** Not -- no, he didn't. Not at that time. At that
21 time they proceeded to put handcuffs on him.

22 **Q** All right.

23 **A** My mother was asking where was he going to be, and
24 she also asked me to make a phone call for her to
25 Judge Womble.

1 Q All right.

2 A When she told me to do that, the officer that was --
3 that tried to grab me, he told me I couldn't leave
4 the room. And right then he asked me if there was
5 anybody else in the house. I said, "Yes, my sister."
6 My sister was in the kitchen. So she came around to
7 the living room, and they had us all in the same
8 area.

9 Q Right.

10 A So they had him handcuffed. Officer Catoe allowed my
11 mother to hug my brother, and they started taking him
12 outside the house. At that time my brother asked,
13 "Can I call my lawyer when I get down there?"

14 Q All right. And what was the response to that?

15 A They said yes, he could call his lawyer when he got
16 down to the jail since he was, you know, offered a
17 phone call.

18 Q All right. Did your mother direct you to call his
19 lawyer or call a lawyer for him?

20 A Yes, she did.

21 Q Tell us about what that. What happened?

22 A She told me to go ahead and call Overture for her,
23 which is Overture Walker. He was supposed to be
24 Derrick's attorney --

25 Q Right.

1 **A** -- at that time. And they told me I still couldn't
2 leave the room. Basically they said after all the
3 officers left, I could leave the room at that time.

4 **Q** So you were not allowed to leave the room to call?

5 **A** No, I was not.

6 **Q** On either of those calls?

7 **A** No, I was not.

8 **Q** Did you hear your mother talking to your brother
9 outside?

10 **A** Yes. I heard her telling him that she was going to
11 get him a lawyer, that she was going to call Overture
12 for him.

13 **Q** All right. That's all I have, Your Honor. Thank
14 you.

15 **MR. KENDRICK:** Nothing, Your Honor.

16 **MR. RILEY:** Nothing, Your Honor.

17 **THE COURT:** Nothing for the other defendants.

18 CROSS EXAMINATION

19 **BY MR. MEADORS**

20 **Q** Good morning, Mr. McDonald. Good morning.

21 **A** Good morning.

22 **Q** So when the Richland County deputies came over and
23 tried to grab you?

24 **A** Right.

25 **Q** It was Danny Catoe that said, "No, that's not him."

- 1 Right?
- 2 A Right.
- 3 Q He kept them from putting cuffs on you, right?
- 4 A Right.
- 5 Q And you didn't have any problems with Mr. Catoe there
- 6 that day?
- 7 A No, I didn't.
- 8 Q He was nice, wasn't he?
- 9 A Right.
- 10 Q Respectful of you all?
- 11 A Right.
- 12 Q Y'all were respectful of him?
- 13 A Right.
- 14 Q And what speed dial was Judge Womble?
- 15 A 6.
- 16 Q And you've got him on speed dial?
- 17 A Not on my phone.
- 18 Q Okay. But you remember what speed dial it was on
- 19 your mom's phone?
- 20 A Yes.
- 21 Q How do you remember that?
- 22 A Because there was many occasions where we had called
- 23 him before, you know. I mean, we speak with him
- 24 frequently.
- 25 Q And Overture Walker, would he ever get involved in

1 this case?

2 **A** Actually, I believe he might have referred Mr.
3 Whitlark.

4 **Q** You believe. But you're not sure?

5 **A** I'm not very sure. So I can't --

6 **Q** Did he ever make a court appearance in here?

7 **A** No, he hasn't. But he did visit my brother I think a
8 day or two after he was arrested.

9 **Q** And Overture has never filed any documents saying
10 that he was called about being his lawyer, did he?

11 **A** I wouldn't know that.

12 **Q** None that you're aware of?

13 **A** I wouldn't know that.

14 **Q** And you didn't get to talk to Overture that day, did
15 you?

16 **A** No, I did not.

17 **Q** You didn't even call him, did you?

18 **A** My mother called him after they had taken my brother
19 away.

20 **Q** But he's never been involved in this case whatsoever,
21 besides what you say may be a referral?

22 **A** After him visiting my brother in jail, no.

23 **Q** And to your knowledge Overture has never come forward
24 to anybody and said, hey, he asked for a lawyer,
25 prior to today?

1 **A** Not that I know of. '

2 **Q** As a matter of fact, you're the first person and your
3 mom to ever say that he had -- Your Honor, there has
4 been movement back here in the back several times.
5 And when the jury is inside, just at some point if
6 you'd ask them, whoever it is, to please respect this
7 court?

8 **THE COURT:** I haven't noticed it.

9 **Q** This is the first time you've come into a court or
10 told anybody involved in this case besides maybe Mr.
11 Whitlark that your brother asked for an attorney that
12 day. Isn't that right?

13 **A** Yes.

14 **Q** Today?

15 **A** Yes.

16 **Q** Thank you. That's all.

17 **MR. WHITLARK:** Briefly, Your Honor.

18 **THE COURT:** Yes, sir.

19 REDIRECT EXAMINATION

20 **BY MR. WHITLARK**

21 **Q** Of course you're aware Mr. Walker went immediately to
22 the jail the next morning, right?

23 **A** Yes.

24 **MR. WHITLARK:** That's all I have, Your Honor.

25 RECROSS EXAMINATION

1 **BY MR. MEADORS**

2 **Q** When did you become aware of that?

3 **A** The day of.

4 **Q** Thank you.

5 **THE COURT:** All right. You may come down, sir.
6 Thank you very much.

7 **THE WITNESS:** All right.

8 **THE COURT:** Anything further?

9 **MR. WHITLARK:** That's all I have right now, Your
10 Honor. Your Honor, could I ask for a five-minute
11 break? I'm parked in a two-hour parking place and I
12 need to move my car.

13 **MR. MEADORS:** I'll take care of the ticket.

14 **THE COURT:** We'll take care of it.

15 **MR. MEADORS:** I mean I'll pay for it.

16 **THE COURT:** Anything from Mr. Kendrick?

17 **MR. KENDRICK:** Beg the Court's indulgence, Your
18 Honor.

19 **MR. WHITLARK:** I'm sorry, Your Honor. I was
20 going to put Mr. McDonald on the stand. I'm sorry.

21 **THE COURT:** Oh. I thought you were concluded.
22 Go ahead. Call your client.

23 **MR. WHITLARK:** Derrick McDonald.

24 DERRICK MCDONALD, after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** Thank you. Please state your name
2 for the record and have a seat in the witness chair.

3 **THE WITNESS:** Derrick McDonald, for the record.

4 DIRECT EXAMINATION

5 **BY MR. WHITLARK**

6 **Q** How old are you, Derrick?

7 **A** I'm 19 years old. I'll be 20 on August 8th.

8 **Q** When you were arrested were you in school?

9 **A** Yes, sir. I was actually on a probationary period.
10 But I was enrolled, yes.

11 **Q** All right. Do you have any problem reading or
12 writing?

13 **A** No, sir, I don't.

14 **Q** What type of average do you have in school, did you
15 have in high school at the time that this happened?

16 **A** A B minus, C average; able to write and spell.

17 **Q** Tell us, what occurred with the Kershaw County
18 Sheriff's Department on the afternoon of the 15th of
19 December of 2006, if you could recall?

20 **A** Okay. I was in my bedroom sleeping when my brother
21 came in the room and advised me that the Kershaw
22 County deputies stated that they were outside and
23 wanted to speak to me. Excuse me. Investigators.
24 And that's when I went out to the porch. And
25 Investigator Danny Catoe, that man right there,

1 advised me that him and his partner wanted to
2 question me about the death of Joshua Zoch. And I
3 asked them --

4 **Q** What did you say to them?

5 **A** Well, I asked them if they wanted to come inside, you
6 know what I'm saying, and talk about it. They said,
7 no, we can come out here and sit in the truck; it's
8 warm. So I was kind of wondering; well, my house is
9 warm, too. But anyway I walked with them.

10 **MR. MEADORS:** Your Honor, I didn't hear that
11 last thing. What was, too?

12 **THE COURT:** His house was warm, too.

13 **A** My house was warm, too, sir.

14 **MR. REUWER:** Excuse me, Your Honor. Can we move
15 the microphone a bit closer to him?

16 **THE COURT:** That's good. Thank you.

17 **A** Is that good?

18 **THE COURT:** (Nods head affirmatively).

19 **A** I said the house is warm, too. But anyway I walked
20 to the truck with them. And that's when they advised
21 me, you know what I'm saying, hop in the truck and
22 we'll talk. So when I get in the truck, I was kind
23 of reluctant to close myself in because I didn't know
24 exactly what was really going on at the time.

25 **Q** Had you ever seen these men before in your life?

1 A No, sir. No.

2 Q All right. Go ahead.

3 A But when I got inside, they had asked me where I was

4 on the night of the 12th, Tuesday, December 12th,

5 2006.

6 Q All right. Did they give you any warnings or say you

7 were a suspect or anything at all?

8 A No. Not at that time, sir. No. No type of

9 indication whatsoever.

10 Q Did they tell you they were investigating?

11 A Yes. They said that they were investigating the

12 murder of Joshua Zoch, and they said they had a

13 couple of questions for me.

14 Q Did they indicate anything at all other than they had

15 a couple of questions?

16 A No, sir.

17 Q All right. Go ahead.

18 A He began to ask me where I was that night. So I told

19 him that me, Mr. Whitehead, Mr. Cannon, my mother and

20 myself, we went to -- well, excuse me. Myself, Mr.

21 Cannon, Mr. Whitehead and my mother, we went to

22 Wal-Mart to purchase a battery for, I believe it's a

23 '94 Nissan Sentra. And when we went to Wal-Mart they

24 didn't have the type of battery that my mother

25 specified. So we left and went to the Auto Advance

1 and purchased the battery.

2 Q You gave them information, in other words?

3 A Yes.

4 Q All right. What else did you say to them? Did you
5 give them any other identification?

6 A Yes. I told them that we went to the Sonic on Hard
7 Scrabble so I could try to get my job back because I
8 had recently been terminated for reasons that were
9 unknown.

10 Q At any time did they tell you that you were a suspect
11 in this crime?

12 A No, sir.

13 Q What time of day was this?

14 A This was around I'd say 5'ish.

15 Q 5 in the afternoon?

16 A 5 in the afternoon, sir.

17 Q Was your mother present?

18 A No, she wasn't.

19 Q All right. Go ahead.

20 A And so I started to tell them where I was after we
21 rendezvoused at Sonic, that I went inside my friend,
22 at the time a friend, Paul Wall's. Well, Christopher
23 Rust, but we call him Paul Wall's car. And I waited
24 for them him to get. In the meantime, I fell asleep.
25 And after that we left and went to his house.

1 Q All right. How long did this conversation with the
2 police last?

3 A The beginning of the conversation where I was letting
4 them know that night, it took I'd say about five
5 minutes, five or ten minutes.

6 Q All right.

7 A And then after that they asked me did I know anything
8 about the murder of Joshua Zoch. And I told them, I
9 said the only thing I knew was that someone called my
10 phone, I believe it was the 13th, the evening of the
11 13th around 8, 9:00 and told me that he had passed
12 away, that somebody had killed him supposedly.

13 Q All right.

14 A And then that's when they --

15 Q You all had worked together?

16 A Me, Mr. Whitehead, Mr. Cannon, Ms. Trapp, Ms. Davy.

17 Q A lot of people in this case worked at Sonic?

18 A A lot of people. A lot of the people in this case,
19 we all worked at Sonic; yes, sir.

20 Q What happened after the -- well, did the police
21 leave? Did Investigator Catoe leave?

22 A Yes. But that was after they started to make me feel
23 uncomfortable. After I told them I didn't know
24 anything, they kept pressing. So I said, listen. I
25 want to have an attorney because of the fact that

1 you're making it seem like I'm a suspect. You're not
2 asking me questions about where I was that night
3 anymore. You're starting to pressure me.

4 Q What did they say to that?

5 A Well, Investigator Danny Catoe tells me, "Son, I hope
6 you're not saying that because you watched it on TV,
7 because that's not the way our system works." And I
8 quote.

9 Q All right. And what time was this?

10 A This was around 5:25, 5:20.

11 Q All right. And was your mother present?

12 A No, my mom was not present.

13 Q Did they leave?

14 A Yes. They gave me a card and advised me if that if I
15 had any further evidence or anything that I would
16 have to tell them after I talked to my attorney or
17 whatever to call them.

18 Q All right. Did you have contact with them sometime
19 later that day?

20 A Yes. When they arrested me. But as of verbal?

21 Q Yes.

22 A No, I did not. My mother called the phone number
23 that was given because she was wondering what was
24 going on, you know what I'm saying, why I was being
25 questioned. And at the time she was also consulting

1 with Overture Walker letting him know that I was
2 being questioned.

3 Q All right.

4 A And from my understanding, I didn't hear the phone
5 call, but this is what my mother told me he said on
6 the phone; I was there when the phone call was made,
7 that Overture Walker --

8 MR. MEADORS: Objection. Hearsay.

9 Q You can't say what somebody else told you.

10 THE COURT: Sustained.

11 Q That's all right.

12 A Well, I was told that Overture Walker would be
13 helping me in this matter.

14 Q All right. All right. Now, look, did they come to
15 your house to arrest you with some arrest warrants
16 for murder?

17 A Yes, they did. It was what it looked like to be an
18 arrest warrant. I had never seen a handwritten one.
19 But, yes.

20 Q Were you in fact arrested?

21 A Yes, I was.

22 Q All right. Did you tell the officers prior to that
23 that you wanted your mother present during any
24 questioning?

25 A Yes. I vaguely -- I told him, I said, yes, I wanted

1 her. But I mainly proposed an attorney because I
2 know I have the right to that.

3 Q All right. Had you also told them you wanted your
4 mom there?

5 A Yes, sir.

6 Q And this was before you were arrested?

7 A Yes. This was before I was arrested.

8 Q After you were arrested did you say you wanted an
9 attorney?

10 A Yes, I did.

11 Q Tell us what happened?

12 A When they came to arrest me that evening, when my
13 brother came and got me out of the room; again, I was
14 in the room listening to some music as I normally do,
15 I come in the living room. And Investigator Danny
16 Catoe says, "Good evening, Mr. McDonald. I'm sorry,
17 but after the event that we talked, we have received
18 some new information", basically, and he said a
19 statement from one of the co-defendants saying that I
20 was involved with the murder of Joshua Zoch and I was
21 under arrest for the murder of Joshua Zoch. And I
22 looked at him and told him, I said, "I didn't do
23 anything. I don't know what you're talking about."

24 Q All right. Go ahead.

25 A And then that's when he says, "Well, I'm sorry. This

1 is what we have, and I'm going to have to arrest
2 you." So I told him, I said, "I want an attorney. I
3 want a lawyer."

4 Q All right.

5 A And this was inside my house in front of the two
6 Richland County deputies, in front of my mother, my
7 brother, and my sister came in from the kitchen
8 because of the fact that they wanted to make sure
9 that there was nobody else in the house that could I
10 guess do any bodily harm to them, make sure that the
11 perimeter was secure, as they were saying.

12 Q Did your brother attempt to leave the room?

13 A Yes. He attempted to leave the room to go get the
14 phone and call Judge Womble. My mom had advised him
15 to call the judge. Yes, sir.

16 Q And did they tell him to call a lawyer, too?

17 A Yes. She also did.

18 Q Okay. You were taken outside after that?

19 A Yes. I was led to the investigator's truck, the one
20 that I was interrogated in earlier; well, questioned
21 in earlier. And I was placed in the front seat. I
22 was then in handcuffs and in custody. And we started
23 riding towards I guess Kershaw County through -- is
24 it Langford, Langford Road? Langford that comes on
25 out of Blythewood and it leads into Elgin, I would

1 say, I guess. Once we got past the Kershaw County
2 line or near the Kershaw County line, he said, "I'm
3 going to read you your rights" verbally.

4 Q Okay.

5 A And then he read the rights as it's normally said on
6 TV when you get arrested. And he asked me if I
7 understood. I said, "Yes, I understand that."

8 Q Okay.

9 A And then he asked me if I wanted to talk.

10 Q What did you say?

11 A I told him, I said, "I don't know anything to talk to
12 you about." And then that's when he stated to me
13 that "This is a death penalty case. If you do not
14 talk to me, I can't help you. But if you talk to me
15 and give me a statement, you will be a witness and
16 not a suspect in this matter."

17 Q All right. And that was while you were riding in the
18 car?

19 A That's while we were riding in the truck. And
20 Investigator George Meadors was in the back seat.

21 Q All right. And did you tell him that you wanted to
22 talk in the presence of an attorney? Or what did you
23 say?

24 A I told him I didn't want to talk at all. I told him
25 I wanted to talk to my attorney before I said

1 anything to him. And that was the second occasion
2 where I told him that.

3 Q All right. That was the second time you told him
4 that?

5 A Well, actually the third. I told him one time in the
6 vehicle when they came at 5 p.m. and then the other
7 time when I was in the house and they initially
8 arrested me. And that was the third time me stating
9 that when we were inside the pick-up truck.

10 Q Were you handcuffed at the time?

11 A Yes, I was.

12 Q Were you sitting in the front seat?

13 A Yes.

14 Q And when you were heading down the highway, were you
15 taken to the Kershaw County Detention Center?

16 A No, sir. The Sheriff's Department that's nextdoor,
17 the old one, doesn't look like the Detention Center
18 to me, sir.

19 Q Well, did they take you to the Sheriff's Department
20 or the jail?

21 A They took me to the Sheriff's Department.

22 Q What happened there?

23 A They took me to a side room when we first entered the
24 building on the front side. And they -- he sat me
25 down and he started asking me questions about things

1 that I guess must have been in Mr. Cannon's
2 statement. I don't know because I don't know
3 anything about it. I told him, I said, "I don't know
4 what's going on." I told him that -- where I was
5 that evening. I told him on numerous occasions.
6 Q Did you also tell him that you wanted a lawyer?
7 A Yes, I told him I wanted a lawyer.
8 Q How many times that night did you tell him you wanted
9 a lawyer?
10 A Three. I didn't feel like I would have to state it
11 anymore once I was --
12 Q All right. That's all right. That's all right.
13 Were you promised anything if you would give a
14 statement?
15 A Yes. I was told that I would be a witness and not a
16 suspect and I would be going home.
17 Q Who was the focus of the investigation as far as you
18 could tell?
19 A I was told that the focus of the investigation was
20 Mr. Whitehead because of the fact that he was not
21 cooperating with the police and quote, unquote he was
22 a hard ass, for the record.
23 Q Right. And did they say -- did the word "death
24 penalty" come into your conversation?
25 A Yes, it did, on numerous occasions, that I was

1 advised that this was a death penalty case but due to
2 the fact that state law says if any burglary of any
3 degree is performed when a murder is performed, that
4 makes it an aggravating circumstance. That's how he
5 said it.

6 Q All right. And what time of night was this? What
7 time was it?

8 A I would say this was around almost 12 when this was
9 going on when they were talking to me. Almost 12.

10 Q All right. Now, were you promised anything if you
11 would give a statement?

12 A Yes. I was told that I would be a witness and not a
13 suspect and I would be going home.

14 Q All right. Did you still ask for a lawyer?

15 A No. At that point I did not ask again. But I felt
16 like my request was made.

17 Q What was their response to you when you told them you
18 wanted to have a lawyer present?

19 A They were very dismissive about it. They didn't give
20 me -- except for the first time when he gave me the
21 initial, "I hope you didn't say that because you saw
22 it on TV" statement, it was --

23 Q Because why? Why did he say that?

24 A Because he said that it wasn't the way the system
25 worked.

- 1 Q Okay. And where were you at when he said that to
2 you?
- 3 A I was inside of his truck at my house when they came
4 to see me at 5:00 to question me.
- 5 Q Did you sign the Miranda waiver?
- 6 A Yes, I did. I signed that when I signed the supposed
7 statements that none of those words are mine.
- 8 Q All right. You signed the Miranda waiver. What time
9 was that?
- 10 A The same time when I signed the statements. I guess
11 that would be 12:24 a.m., in the morning.
- 12 Q All right. Did you sign them all together, the
13 Miranda waiver and the statement?
- 14 A Yes, at the same time.
- 15 Q Did you read the statement before you signed it?
- 16 A No, sir. I mean, these are the police officers. I
17 felt that anything that I tell them out of my mouth,
18 they would not change up anything that I say.
- 19 Q Were you handcuffed?
- 20 A Yes, I was handcuffed.
- 21 Q The entire time?
- 22 A Yes, sir. Until the point where they asked me to
23 sign the papers and I was allowed to make a phone
24 call.
- 25 Q All right. Who did you call?

1 **A** I called my mother to let her know that I was okay
2 and that they had taken me to the Sheriff's
3 Department and that I was finally going to the county
4 jail.

5 **Q** All right. Now, did you fill in the top of those
6 statements?

7 **A** Yes, I did.

8 **Q** All right. And you signed it? You signed your
9 statements?

10 **A** Yes, I did, sir.

11 **Q** All right. And were you told that if you would do so
12 that you would be given something?

13 **A** Yes. I was told that if I did sign the paper that I
14 would be a witness, not a suspect, and I would be
15 going home; I would be a witness in this matter.

16 **Q** And you did sign all those documents at the same
17 time; that would be Miranda waiver and the
18 statements?

19 **A** Yes, sir.

20 **MR. WHITLARK:** I think that's all I have, Your
21 Honor.

22 **THE COURT:** Anything for this witness?

23 **MR. KENDRICK:** No questions, Your Honor.

24 **THE COURT:** Mr. Riley? Mr. Riley?

25 **MR. RILEY:** Nothing further.

1 **THE COURT:** Cross examination.

2 CROSS EXAMINATION

3 **BY MR. MEADORS**

4 **Q** Let's go back to December 15th at 5:00 when you first
5 said Investigator Catoe here and Investigator
6 Marthers, you saw them outside your house?

7 **A** Excuse me?

8 **Q** Did you not hear what I said?

9 **A** No. That's why I said excuse me.

10 **Q** Investigator Catoe and Investigator Marthers, do you
11 remember you testified you saw them at 5:00 outside
12 your house?

13 **A** No, I didn't testify that I saw them. I testified
14 that I was in my room and that I was called from my
15 room and that we walked --

16 **Q** Did you see them?

17 **A** I talked to them outside.

18 **Q** That's what I'm trying to get.

19 **A** Yes. Yes.

20 **Q** And specifically, for the record, and Mr. Whitlark
21 asked you, you told them that you said you had been
22 at Sonic the night before, correct?

23 **A** Yes, sir.

24 **Q** I mean that Tuesday night?

25 **A** That Tuesday night. Yes, sir, I did.

1 Q That's before Josh got killed around 11:30. A few
2 hours prior to that you were at Sonic?
3 A Sonic on Hard Scrabble in Richland County.
4 Q Right. And you were there with Robert Cannon?
5 A Yes.
6 Q Chris Whitehead?
7 A Yes.
8 Q Robert had a mask on that night, didn't he?
9 A A ski mask; yes, sir.
10 Q Ski mask. Sure did. And also Christopher Rust was
11 there, wasn't he?
12 A Christopher Rust? Yeah, he was at work.
13 Q Cecile came in for a minute?
14 A I don't know anything about that. Cecile never
15 showed her face in that Sonic when I was there any
16 time.
17 Q So could have come in. You just don't know it?
18 A No. I would know for sure that when I was there she
19 didn't come in.
20 Q But you weren't working there then?
21 A No, I was not working there then. I was temporarily
22 terminated.
23 Q But you told your attorney just then that that's what
24 you told this man, Danny Catoe, that all of you all
25 were together at Sonic, right?

1 A Yes. We were together there.

2 Q You said something else. You said you told him about
3 you went to -- you went where?

4 A I went to Wal-Mart with my mother earlier that
5 evening to purchase a battery.

6 Q All right. And who else was with you?

7 A It was myself, Christopher Whitehead, Robert Cannon,
8 and my mother.

9 Q Whose car were you in?

10 A We were in Christopher Whitehead's car because that's
11 why we were getting a battery, because my mother had
12 no transportation.

13 Q What kind of car has he got?

14 A I believe, if I'm not mistaken, it was a Honda
15 Accord.

16 Q Blue, wasn't it?

17 A Pearl actually. Pearl, candy pink, blue. Yes, sir.

18 Q You've been in it several times?

19 A Oh, yeah. Yes. I've ridden in it.

20 Q And what did you all get there?

21 A We didn't get anything at Wal-Mart.

22 Q And what time were you at Wal-Mart?

23 A I'd say 7'ish, 7:00.

24 Q 7:00?

25 A Approximately 7:00.

1 Q Had you already been to Sonic?

2 A No, sir.

3 Q And where did you go after Wal-Mart?

4 A We went to Auto Advance. And that's where we

5 purchased the battery.

6 Q You got a battery there?

7 A Yes, sir.

8 Q Who paid for that?

9 A My mother did.

10 Q And then you told him you went back to Sonic?

11 A We never went to Sonic before we went to McDonald's,

12 sir.

13 Q Okay. So you went to Sonic?

14 A We went to Wal-Mart and then we went to Auto Advance.

15 Q And then where did you go after that?

16 A And then we went to Sonic.

17 Q And is that what you told him?

18 A Yes. That's exactly what I told them.

19 Q And for this record and for this judge, you saw

20 Christopher Rust?

21 A At work?

22 Q Yes.

23 A Yes, I saw Christopher Rust.

24 Q And you told Danny Catoe, and you just told this

25 judge and this courtroom that -- did you leave with

1 Whitehead and Cannon from Sonic on December 12th
2 after you came back from Wal-Mart and Advance Auto?
3 Did you leave with them later on?
4 A No, sir, I did not.
5 Q And your testimony today and your testimony back then
6 is that you went out to Christopher Rust's car?
7 A Yes, sir.
8 Q You spent the night in Christopher Rust's car?
9 A I didn't spend the night in Christopher Rust's car.
10 Q Slept there?
11 A I said -- yes. I was sitting there.
12 Q Dozed off a little bit?
13 A Dozed off, yes.
14 Q And then Christopher Rust took you on home from
15 Sonic?
16 A Yes, sir.
17 Q When he got off work?
18 A Yes, sir.
19 Q No question about that, is there?
20 A No question at all.
21 Q Now, I think you asked this, Mr. Whitlark. You're
22 pretty smart. You're a pretty smart fellow?
23 A Yes, I am.
24 Q You had B's in school?
25 A B minus, C average.

1 Q You seem very intelligent.

2 A Yes, sir.

3 Q How far did you go in school?

4 A Well, actually I was in my 12th grade year. I was 18

5 days from graduating until I was picked up by Kershaw

6 County.

7 Q But doing well in school?

8 A I was doing okay.

9 Q Had a job?

10 A I had a job.

11 Q Weren't working at Sonic at the time though?

12 A No. Because I had just been terminated.

13 Q Where were you working then?

14 A I wasn't working actually.

15 Q But you didn't have any trouble communicating with

16 these officers?

17 A Well, excuse me. I'm not going to lie. I'm under

18 oath. Every so often I would go and help my mother's

19 boyfriend, Kenny Jamison, sometimes. And I would get

20 paid. He would give me money. It was under the

21 table though. I'm just saying it was work.

22 Q What would he do? What did you do there?

23 A Oh, it was construction. Like he would do different

24 types of stuff, like laying tile on floors.

25 Basically home renovation.

1 Q What do you mean it was under the table? I don't
2 understand that.

3 A I didn't get a check.

4 Q So he was paying you and you weren't paying taxes on
5 it. And that's wrong, isn't it?

6 A Yeah, it's wrong. But I'm not going to lie and say
7 that I was paying taxes.

8 MR. WHITLARK: Note our objection, Your Honor.
9 You have to make a statutory amount before you have
10 to pay any taxes.

11 MR. MEADORS: He said it was under the --

12 THE COURT: Sir, move on.

13 Q Have you ever been in trouble as a juvenile?

14 A As a juvenile?

15 Q Yes, sir.

16 A No, sir.

17 Q No?

18 A No.

19 Q Did you get in trouble in school?

20 A Yes. I got in trouble at school a couple of times.

21 Q Tell us about that?

22 A Well, I mean, it goes back from sixth grade. Well,
23 actually a little bit further than.

24 MR. WHITLARK: Your Honor, I object to this as
25 far as the narrowness of these issues.

1 **MR. MEADORS:** Your Honor, it goes to his
2 credibility.

3 **THE COURT:** What's the relevance?

4 **MR. MEADORS:** Credibility is the whole issue
5 here. What he was charged with. He's given the
6 implication that he's not been in trouble. I asked
7 him if he had been in trouble in school. He was
8 willing to answer it.

9 **A** Oh. Well, --

10 **THE COURT:** This can go --

11 **MR. MEADORS:** Put his character --

12 **THE COURT:** -- way far afield.

13 **MR. MEADORS:** I'm just going to ask him very
14 briefly what that was.

15 **THE COURT:** Let's move on. The issue, as you
16 know, is voluntariness of his statements and whether
17 he was coerced, mislead or whether he invoked his
18 right to an attorney. That's the issue.

19 **Q** Right. And the point of that, did you become charged
20 by officials, law enforcement officials either in
21 school or out of school when you might have got in
22 trouble? School resource officers?

23 **A** Oh. Yes, sir.

24 **Q** You've dealt with them before?

25 **A** Yes, sir.

1 Q And have they explained to you your rights in school
2 before?

3 A What? A right to an attorney?

4 Q All of that. You were familiar with that before this
5 day?

6 A I took law education. So --

7 Q So you're really aware of it?

8 A I know that I have a right to an attorney and that if
9 I ask them for an attorney, then I'm supposed to get
10 that. Yes, I know that.

11 Q And when you talked to them at 5:00 on December 15th,
12 you told them you wanted to talk to your mama before
13 you talked to them any more, right?

14 A Actually, I told them that I wanted to speak with an
15 attorney.

16 Q Did you go talk to an attorney then?

17 A No, I did not talk to an attorney because I had to
18 wait for my mother to get home to be able to
19 actually -- at the time I didn't know exactly how to
20 go about asking for an attorney. So I waited for my
21 mother to come home to let her know the situation so
22 that she could advise me and give me direction to an
23 attorney. And which --

24 Q You were 18, weren't you?

25 A Yeah, I was 18.

- 1 Q You didn't know how to pick up a phone and hit speed
2 dial. Wasn't it on speed dial at your mama's house?
- 3 A Actually, my mama has her own cellphone. I can't
4 tell you what's on the house phone because of the
5 fact that I know for a fact there was no speed dial
6 of --
- 7 Q What was her cellphone number then?
- 8 A Her cellphone number I cannot recall.
- 9 Q So you didn't call an attorney after you met them at
10 5:00 on December 15th?
- 11 A No. I didn't call an attorney.
- 12 Q You go talk to your mama. She didn't call an
13 attorney?
- 14 A From my understanding, she did call an attorney.
- 15 Q What do you mean, from your understanding?
- 16 A You said I can't say anything because that's hearsay.
- 17 Q You have no knowledge an attorney was called for you
18 prior?
- 19 A Well, I mean, I have knowledge, but you said it's
20 hearsay.
- 21 Q You did not call an attorney?
- 22 A No. I didn't call an attorney.
- 23 Q An attorney didn't talk to you that day?
- 24 A No, he did not talk to me.
- 25 Q You also told them outside your house that Chris told

1 you that he had to go make some moves after they left
2 Sonic and you stayed there and rested in Chris Rust's
3 car? Do you remember telling them that?

4 **MR. WHITLARK:** Objection, Your Honor. The same
5 thing. It's just getting way outside the narrow
6 scope of this.

7 **MR. MEADORS:** This goes directly to his
8 statement, Your Honor.

9 **THE COURT:** Overruled. Go ahead.

10 **Q** You remember telling them that, don't you, that Chris
11 said he had to go make some moves after you left the
12 Sonic?

13 **A** Actually, that wasn't a quote. Actually, I was
14 actually talking about a female that he said he had
15 to go see. I don't think it was anything about any
16 moves. I guess he did that for public purposes.

17 **Q** I don't understand what that means. But are you
18 denying that you told him something about Derrick
19 having to make some moves?

20 **A** My name is Derrick.

21 **Q** About Chris.

22 **A** Oh, okay. All right. I told them that Chris
23 Whitehead had to go and do something.

24 **Q** So that's close to that thing, he had to make some
25 moves. You talked to them about something Chris

1 Whitehead was doing?

2 A Yeah. We all split up. That's the only reason why I
3 was letting them know that, is that we all split up
4 from our joint figure at the time.

5 Q Right. And you let them know that Robert's brother
6 came and picked him up, correct?

7 A Yes. Chanin.

8 Q And you told him all three of those things?

9 A I told him that.

10 Q And was he taking notes of those as you were talking?

11 A Oh, yeah. I saw him taking notes.

12 Q Those three things he took notes of?

13 A About the fact of making moves, I didn't see exactly
14 what he wrote but I saw him writing.

15 Q But you saw him writing?

16 A I saw him writing. Yes, sir.

17 Q And then I left a card for him to call me if he could
18 think of anything else?

19 A He skipped the part where I told him that I wanted an
20 attorney.

21 Q He left that off?

22 A Yeah. He must have.

23 Q Go ahead.

24 A I said he must have.

25 Q But you saw him writing?

1 A Oh, I saw him writing.

2 Q Now, the next time you see him is -- what time is the
3 next time you see him?

4 A If I'm not mistaken, it was around 11:20, 11,
5 somewhere around 11, if I'm not mistaken when he came
6 to arrest me.

7 Q He came in your house. He was nice to you, wasn't
8 he?

9 A Yes. He was okay. He let me know that he was sorry
10 and that from further investigation he found that it
11 was in a statement saying that I was involved with
12 the murder of Joshua Zoch.

13 Q And actually your mom, after you told her he'd come
14 and talked to you, she called back to talk to Danny,
15 didn't she?

16 A Excuse me?

17 Q Your mother called back to talk to Danny Catoe,
18 didn't she?

19 A Yes. She called the number that was on there but she
20 never reached him.

21 Q She never talked to him?

22 A Not from my understanding. I can't say on anything
23 that I don't know.

24 Q And they actually kept Richland County from arresting
25 the wrong person, didn't they?

1 A I was in my room, if you heard the testimony prior.
2 Q But you believe your mother?
3 A Excuse me?
4 Q You believe your mother if she testified to that?
5 A Oh, yes, I believe my mother. Yeah.
6 Q And they took you outside, correct?
7 A Yes, sir. After I was put in handcuffs.
8 Q Have you ever read State v. Peake or had it read to
9 you? State of South Carolina v. Peake? I'm just
10 curious. Are you familiar with that case?
11 A No, sir. I'm not.
12 Q Anyway, you gave verbatim language. You said they
13 told you something about the death penalty?
14 A Oh. He told me that this was a death penalty case
15 and that if I did not help myself, help them, then
16 there was just nothing they could do for me.
17 Q But you never told anybody that before today, did
18 you?
19 A Yes, I have. But as I'm pretty sure you're aware
20 because you're my solicitor, I have had random, very
21 seldom times where I've been in a courtroom to even
22 tell anybody that. As of an attorney coming to speak
23 to me, you know also well that I've had many
24 different attorneys at one time. I told --
25 Q And not one of them has called me and told me you

1. said that.

2 **A** Well, I guess they really don't want to tell you too
3 much of anything.

4 **MR. WHITLARK:** Objection, Your Honor.

5 **THE COURT:** Overruled.

6 **Q** And this is the first time in the court that you've
7 ever said it, isn't it?

8 **A** This is the first time I've actually been able to
9 have -- had a chance to speak. The last time I was
10 in the courtroom I believe His Honor and Mr. Danny
11 Catoe was in here for a swab DNA hearing. He was the
12 only person that testified. I never had a chance to.
13 But I do remember on one occasion where my
14 co-defendant tried to say an objection from the
15 stands and we were silenced.

16 **Q** And this is the first time it's ever been to conveyed
17 to law enforcement at all that death penalty was
18 mentioned to you, correct?

19 **A** This is the first time in the courtroom; yes, sir.

20 **Q** The first time ever that it's been conveyed to this
21 office or any law enforcement was today?

22 **A** Oh. You mean to law enforcement, period? Oh, yes.
23 I haven't talked to any law enforcement.

24 **Q** Your lawyer? Nobody has told them about this, have
25 they? You didn't say, go tell them before this, did

1 you?

2 **A** I didn't feel I have to. They're attorneys. I'm
3 paying them. Or the State is paying them at this
4 time.

5 **MR. WHITLARK:** Objection, Your Honor.

6 **THE COURT:** Overruled. Go ahead. Approach the
7 bench.

8 **MR. WHITLARK:** Attorney/client privilege here,
9 Your Honor. He's talking about conversations he had
10 with me or other lawyers.

11 **THE COURT:** All right. I understand that.

12 **MR. MEADORS:** I'm about through, Judge.

13 **THE COURT:** Are you about through with this?

14 **MR. MEADORS:** Getting close.

15 **THE COURT:** All right. Don't intrude on the
16 privilege between he and his counsel.

17 **MR. MEADORS:** Judge, if he testifies in front of
18 the jury, I may want to proffer some things, because
19 if he's opening the door to something, I'm going to
20 ride down it. But we'll go over that later. I
21 apologize.

22 **THE COURT:** Yes.

23 **Q** Now, you admit that when you left the house they read
24 you your Miranda rights?

25 **A** Yes. They read them.

- 1 Q Or they orally said them?
- 2 A They orally said them.
- 3 Q You're in the front seat?
- 4 A Yes.
- 5 Q They're nice to you?
- 6 A Yeah. They're okay.
- 7 Q They didn't threaten you?
- 8 A I mean, they put death penalty, death penalty in my
9 head. But I guess if you consider that nice, I guess
10 that's nice.
- 11 Q I consider I haven't heard it before today. But
12 besides that, did they threaten you?
- 13 A No, they didn't -- well, I consider that a threat,
14 that if you do not help yourself that you're going to
15 get the death penalty. That's a threat to me.
- 16 Q Did they coerce you?
- 17 A Coerce me into talking? I consider that coercion.
- 18 Q Besides that, did they say anything else?
- 19 A No, sir.
- 20 Q Weren't mean to you?
- 21 A No. They weren't mean to me. They basically were
22 nice to me because they said they were trying to get
23 Mr. Whitehead.
- 24 Q Didn't hit you?
- 25 A No. They didn't hit me.

- 1 Q They didn't hit you or do any of that?
- 2 A No, sir.
- 3 Q You understood the rights?
- 4 A The rights?
- 5 Q I mean, you understood them?
- 6 A Yeah. That's why I told them I wanted an attorney.
- 7 Q You're a smart guy. That's not my question. You
- 8 understood the rights?
- 9 A Exactly.
- 10 Q And you understood you had those rights?
- 11 A Yes.
- 12 Q And you told them you understood the rights?
- 13 A Yes, I told them.
- 14 Q I mean, that's not in dispute, that you told them I
- 15 understand those rights you're telling me?
- 16 A I understand what you're saying. Yeah. I understand
- 17 what you're saying.
- 18 Q And that's not in dispute?
- 19 A Okay.
- 20 Q Do you mind if I come up?
- 21 A Oh, no. I don't mind if you come up at all.
- 22 Q And this, they orally told them. And then when you
- 23 get down, that's State's 3 for I.D. right there, Mr.
- 24 McDonald.
- 25 A Okay. Yes, sir.

1 Q You admit that they went over those rights with you,
2 didn't they?

3 A I'm going to tell you this. These circles with --
4 what is this? Initials?

5 Q Just first of all answer the question and then you
6 can explain.

7 MR. WHITLARK: Let him answer the question,
8 please, Your Honor.

9 Q If you would answer the question and then you can
10 explain.

11 A I'm answering the question.

12 Q Did they go over those rights with you?

13 A They did not go over it like this.

14 Q They didn't? So they went over them then?

15 A They went over it in the car. They said, "You have
16 the right to remain silent. Anything you say can and
17 will be used against you in a court of law. You have
18 the right to talk to an attorney and have him or her
19 present while you are being questioned. If you
20 cannot afford to hire an attorney, one will be
21 appointed to represent you before any questioning if
22 you wish. You can decide at any time to exercise
23 these rights and not answer any questions or make any
24 statements." That's what they said --

25 Q And you understood those?

1 A -- inside the car. I signed this paper along with
2 this statement once I was in the Sheriff's
3 Department.
4 Q All right. And they went over these statements with
5 you again?
6 A No, they did not, sir.
7 Q You deny that?
8 A I deny.
9 Q And you put --
10 A Because I know they did not.
11 Q If you'd just let me finish, you can say all you want
12 to.
13 A Sure. Go ahead.
14 Q They put their initials after each one of these when
15 they went through them, didn't they? Danny Catoe
16 did?
17 A No, sir. That was not there when I signed it, sir.
18 Q Do you deny that's Danny Catoe's signature?
19 A I'm not going to deny that, because I believe that
20 is.
21 Q And he read you the waiver of rights, didn't he?
22 A The waiver of rights?
23 Q Yeah. Saying basically that you understand these.
24 Don't you?
25 A Oh, he read the waiver. He read the waiver of

1 rights. Yes, he did.

2 Q And to read them, he had to be there sitting there
3 reading them in the office?

4 A He read the waiver of rights, yes.

5 Q So you admit that?

6 A Yeah. We was in the -- we was in the truck. My
7 waiver of rights was talking to me.

8 Q You said he read them. He was driving. He read them
9 here, right?

10 A Obviously they memorize those things. When I said
11 that he read them, that's what I meant. He read me
12 my rights.

13 Q And you signed that?

14 A Once I signed this paper.

15 Q You said that was in the truck?

16 A No. What I told you was he read me this. He said
17 this to me inside the truck.

18 Q All right. Is that your signature?

19 A Once I was inside the Sheriff's Department, after I
20 told him where I was and after he told me that if I
21 signed the paper I would be a witness and not a
22 suspect, I signed this paper.

23 Q You signed that?

24 A I signed.

25 Q That's your signature?

1 **A** That's my signature.

2 **Q** He didn't make you sign that?

3 **A** No, he didn't make me. Well, basically, if you're

4 saying so, yes. He made me sign it.

5 **Q** George --

6 **A** He told me --

7 **Q** Go ahead. I'm sorry. George Marthers, did you see

8 him sign that?

9 **A** No, I didn't see him sign that. That was already

10 signed.

11 **Q** And again, not to get too close to you. But if you

12 don't mind, State's 4 right here, that's your

13 signature?

14 **A** No. That's my print. Yes.

15 **Q** You made that?

16 **A** Yeah, I made it.

17 **Q** You made it?

18 **A** Yeah.

19 **Q** You put that down?

20 **A** Yes, sir.

21 **Q** You put your address?

22 **A** Yes, sir.

23 **Q** You put your social security number?

24 **A** Yes, sir.

25 **Q** Date of birth?

1 A Yes, sir.

2 Q Didn't have any trouble writing that information

3 down?

4 A No. Actually, I wouldn't have had any trouble

5 writing anything.

6 Q They went through this statement with you after?

7 A No, sir.

8 Q No, sir?

9 A No, sir. You are highly mislead.

10 Q And you signed each statement, didn't you, at the

11 bottom?

12 A Yes, sir. I signed it.

13 Q This is State's 4. You signed it one time, two

14 times?

15 A Two times.

16 Q Three times? Four times?

17 A Five times actually, sir.

18 Q Well, I was going to get to that. That's the fifth.

19 Do you think this is funny?

20 A No. I don't think it's funny at all.

21 Q Okay. Well, you're laughing. This isn't funny.

22 A No. I don't think I laughed.

23 Q You signed this four times before the last signature,

24 didn't you?

25 A Yes, sir, I did.

1 Q They didn't make you sign that, did they? They
2 didn't force you to sign it?

3 A When they told me, I felt that if I signed the paper
4 I could go home. They're telling me death penalty.
5 What am I supposed to do?

6 Q You just hit somebody in the head three to four times
7 with a bat and you think you can go home?

8 MR. WHITLARK: Objection, Your Honor.

9 A That's objectionable. You can't tell me I did
10 something I didn't do.

11 THE COURT: Sir.

12 THE WITNESS: I'm sorry, Your Honor.

13 THE COURT: Don't answer that question.

14 THE WITNESS: I'm sorry.

15 Q You signed. They didn't make you sign those, did
16 they?

17 MR. WHITLARK: That question has been asked and
18 answered. Objection, Your Honor. About five times.

19 THE COURT: I'm not sure which statement he's
20 talking about.

21 Q State's 4, you signed it four times. And then
22 getting to the last time, you signed your signature
23 there 12-16, correct?

24 A Yes, I did.

25 Q And right above that: "I asked Investigator Danny

1 Catoe to write my statement for me, and this is
2 written in my own words, Derrick McDonald." You
3 signed right underneath that, didn't you? Derrick
4 McDonald?

5 A But I didn't read it. So really, actually, to tell
6 you the truth, I wouldn't have known it was in my own
7 words. At the time I was under distress.

8 Q Say that one more time. At the time you were what?

9 A I was under distress. He told me death penalty. If
10 I signed the paper I could go home. I would be a
11 witness and not a suspect. If I didn't sign the
12 paper, I was going to get the death penalty.

13 Q Oh. He told you that again down there?

14 A He told me that the whole time.

15 Q How many times did he tell you if you don't you'll
16 get the death penalty?

17 A Okay. One, two, three, four times about, if I'm
18 not --

19 Q What and where?

20 A He told me two times when we were inside the truck.
21 And I know for a fact he told me about two times when
22 we were inside the Sheriff's Department.

23 Q And right here when there are these corrections, D.J.
24 and D.J., you made those, correct?

25 A Actually, to tell you the truth, I write D.J.M. for

1 my initials.

2 Q Right.

3 A And the only time I remember doing that was when he
4 messed up. If I'm not mistaken, it was here. And I
5 just scribbled those. And here and then there. But
6 I never read them.

7 Q Okay. But just for the record and for Judge Cooper,
8 you made the initials on page 2. Those are your
9 initials?

10 A Yes, on page 2.

11 Q Did he threaten you with the death penalty to change
12 it from 3 to 4 to make you sign that?

13 A No.

14 Q Those are your signature?

15 A He didn't have to.

16 Q And then D.J.M. here, that's your signature? Your
17 initials?

18 A Yes, sir. That's mine.

19 Q And D.J.M., that's your -- it's not on that one. But
20 on page 1 -- you're known as D.J., aren't you?

21 A I'm known as D.J., but any initials are D.J.M.

22 Q All right. So you didn't write the D.J. on this
23 first page?

24 A No, sir, I didn't.

25 Q For the record, you did not? Those are not your

1 initials?

2 **A** For the record, those are not my initials.

3 **Q** That's all. Thank you.

4 **MR. WHITLARK:** That's it.

5 **THE COURT:** That's it? Nothing further. All
6 right. You may come down, sir.

7 **THE WITNESS:** Thank you, sir.

8 **THE COURT:** All right. Approach the bench,
9 counsel.

10 (Whereupon, a bench conference is had)

11 (Jury in at 11:46 a.m.)

12 **THE COURT:** Ms. Beattie.

13 **JUROR:** Yes.

14 **THE COURT:** Thank you for agreeing to serve as
15 foreperson of this jury.

16 **JUROR:** That's okay.

17 **THE COURT:** Now, ladies and gentlemen of the
18 jury, I told you there were a number of pre-trial
19 matters that had to be resolved this morning since we
20 didn't get out here until late last night. Or not
21 late last night, but late for usual court terms.

22 Anyway, we have been here since 9, and we're
23 trying to work out the procedure of -- because we've
24 got basically four parties. We've got the State and
25 three defendants. And it's just sometimes hard to

1 get four people to agree on things. So we're going
2 through this procedure. We have not concluded that.
3 And I don't want to keep you sitting back there
4 waiting any more.

5 I had hoped to be able to get it resolved by 11
6 and then I'm thinking 11:30; and now I'm thinking,
7 no, we're not going make 11:30. So anyway, we're
8 going to continue to work on this procedure problem.
9 And I'm going to let you go to lunch and ask you to
10 be back at 2:00. I hope to have these matters
11 resolved by 2 at which time we'll commence the trial.

12 So you're excused now until 2:00. No sense in
13 you sitting back in that room with no windows. I
14 mean, that's not fair. So of course we don't have
15 any windows in here either. But, nevertheless, have
16 a pleasant lunch. And we'll see you at 2:00. Again,
17 don't discuss the case among yourselves when you
18 return to the jury room.

19 (Jury out at 11:49 a.m.)

20 **THE COURT:** All right. Would you all like to
21 take a short break?

22 **MR. WHITLARK:** Yes, sir.

23 **THE COURT:** Let's take a ten-minute break.
24 Let's be back in the courtroom at straight-up 12:00.
25 Let me say this. Hold on a minute. Members of the

1 audience, the jury is leaving the courthouse. I
2 don't want to hear about anybody trying to talk to
3 the members of this jury. I'll just caution you.
4 Anybody that's not a participant or anybody that is
5 involved in this trial one way or the other, the jury
6 is not to be approached in any manner about anything.

7 If you were to approach a juror even just to say
8 hello, I'm going to ask them to report it to me, and
9 there would be some severe repercussions. So the
10 jury is a body in and of itself and it's not to be
11 tampered with during the course of a trial. I just
12 remind you of that. It's not a threat or anything
13 like that. It's a reminder.

14 (Whereupon, a break is taken)

15 **THE COURT:** All right. Mr. Kendrick, are you
16 ready to proceed?

17 **MR. KENDRICK:** Yes, sir. Your Honor. Thank
18 you. I call Veronica Davis to the stand.

19 **THE COURT:** Approach the bench a minute,
20 counsel.

21 (Whereupon, a bench conference is had)

22 **THE COURT:** Come on around, ma'am. Just wait
23 right there.

24 **THE BAILIFF:** Ms. McDonald is on the way, sir.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** All right. Call your witness.

2 **MR. KENDRICK:** Veronica Davis, Your Honor.

3 VERONICA A. MUNNERLYN, after being duly sworn,
4 testifies as follows:

5 **THE COURT:** Thank you, ma'am. Please take a
6 seat in the witness chair and state your full name
7 for the record.

8 **THE WITNESS:** Veronica Ann Davis.

9 **COURT REPORTER:** What was the last name?

10 **THE WITNESS:** M-U-N-N-E-R-L-Y-N.

11 DIRECT EXAMINATION

12 **BY MR. KENDRICK**

13 **Q** Veronica, I know this seems like a silly question.
14 But for the record, tell me your relationship to
15 Robert?

16 **A** He is my middle child.

17 **Q** So he's your son?

18 **A** Yes, he is.

19 **Q** Do you remember the date of December 15th, 2006?

20 **A** Yes, I do.

21 **Q** Okay. Do you remember when you first knew that the
22 police wanted to question your son?

23 **A** Yes.

24 **Q** And how did you come to get that information?

25 **A** I was at the grocery store and Robert called me on my

1 cellphone and said that the police had called him and
2 told him that they were wanting to question him about
3 a murder. And he told them that he wasn't going to
4 talk to them without his mom. And they said, well,
5 when your mom get in, call me. So he said, "Mom,
6 come home right now." So I went straight home.

7 Q And what happened when you got home?

8 A When I got home he said that he was walking or
9 something and he saw them arrested Chris or pull
10 Chris over or whatever. And that's how they saw him,
11 saw Robert; and that they were saying about -- I
12 don't remember the guy's name -- was murdered. And
13 they wanted to know, you know, what he know about it,
14 if he knew anything about it.

15 And so I said, "Well, Robert, do you know about
16 it?" He said, "Mama, I wasn't there. I don't know
17 about it." So I said, "Well, call them up, tell them
18 to come on over." And so it probably took them about
19 30 minutes, 35 minutes before they did get there.

20 And once they came in, Mr. Catoe and the gentleman in
21 the back with the lavender shirt came in the house.

22 Q And you're referring to Investigator Marthers, just
23 for the record?

24 A Yes. I guess that's his name. Came in the house and
25 introduced theirselves. And my husband got them a

1 chair and we sat in the living room. And he
2 proceeded to say, you know, what transpired. He was
3 telling us, you know, what transpired. And I said,
4 "What?" I said, "Wait a minute. Wait a minute." I
5 said, "Do I need to call a lawyer?" And Mr. Catoe,
6 he said, "No, ma'am. No, ma'am. You don't need a
7 lawyer. That's not necessary. We don't think, you
8 know, Robert did anything. If we thought Robert did
9 anything", his words were, "we already have a warrant
10 and arrested Chris Whitehead, and we've already got a
11 warrant and we have already arrested Derrick
12 Jackson." He said, "So if we thought Robert did
13 anything, we would have arrested him, too. You know,
14 we just want to ask questions."

15 So by this time I'm upset. I'm upset. So I'm
16 sitting there in the kitchen. So he said, "Well, is
17 there anywhere we can go where I can just write some,
18 you know, notes as we talk?" So that's how we
19 proceeded into the kitchen.

20 And so while we were in the kitchen, my daughter
21 was in the kitchen frying chicken. So I don't know
22 where Sarah came from, but she was in the kitchen
23 frying some chicken. And you said his name is
24 Mathers (sic) in the gray shirt?

25 Q In the purple shirt?

1 A Yes.

2 Q Investigator Marthers.

3 A Made the comment about it smelling good. And I said,
4 "Well, she'll be through in a minute. If you want a
5 piece of chicken, you know, you're more than
6 welcome." So we all laughed it off. So Catoe sat at
7 the head of the table. I stood right beside Catoe.
8 My husband stood beside me. Mathers (sic) stood in
9 the door between the living room and the kitchen, and
10 Robert sat at the other end of the table.

11 So Mr. Catoe said, "Robert, you know, tell us
12 what you know. You know, what happened? We already
13 know what happened. We know that Mr. Whitehead did
14 it. He's been in trouble before, and we know he
15 killed him. We just need you to testify on Mr.
16 Whitehead, that he did it."

17 And I'm like testify? Whitehead? I'm sitting
18 here listening to all this, you know, crazy, trying
19 to think what's going on. And so Robert said, "I
20 can't testify to something that I don't know." And
21 that's when Mr. Catoe said, "You'll be helping
22 yourself out. Robert, listen. We don't think you
23 did it. We know you didn't do anything. We know
24 that Mr. Whitehead did it. He has been in trouble
25 before and he has had a pending record. You don't

1 have a record. I already know everything about you,
2 Robert. I know about you."

3 And so I'm like, I said, "Well" -- then
4 Mr. Catoe asked me how did I know Mr. Whitehead and
5 did I know Mr. Whitehead. I said, "I don't know him.
6 I know of him", I said, "because he stayed at my
7 house for a week because he didn't have anywhere to
8 stay." I said, "He stayed at my home for a week." I
9 said, "He was very pleasant, very manner-able." I
10 said, "I talked to his mother on the phone when he
11 stayed there."

12 And so they kept on talking. And by this time
13 Robert -- I was bloodshot red. He said, "I'm so
14 tired." And they kept asking him, "We know. Just
15 tell us. Just tell us." He said, "Where were you
16 that night?" And Robert told him, he said, "I was
17 nextdoor at Chanin's and Mel's house which are our
18 neighbors from nextdoor."

19 Q Right.

20 A He said, "And we were over there drinking and
21 smoking." And that's when Catoe said, "Shannon, your
22 brother?" And I said, "No. Chanin is not his
23 brother; I mean, not a child that I had. But they
24 just call each other brothers."

25 Q Right.

1 A And then that's when Catoe said, "Well, we already
2 know about Chanin. We know he does drugs. But we're
3 not concerned about the drugs. I'm not even bringing
4 those charges in about drugs." And I'm like, "Okay.
5 Drugs? Now we're talking about murder and drugs."
6 So he kept on. And Robert is saying, "I'm tired.
7 I'm tired. I'm sleepy." And Catoe kept saying,
8 "Robert, look." And he was basically telling him,
9 this is what happened. You kicked the door down.
10 You hit him. You stole stuff. I mean, he was going
11 on and on. And Robert said, "I'm tired." So finally
12 Robert said, "I need me a cigarette."

13 Q Okay.

14 A And then that's when Robert proceeded to get up and
15 go outside to get a cigarette. Mr. Catoe followed
16 him outside. Mr. Marthers? Mathers (sic).

17 Q Marthers.

18 A He stayed with him. Because by this time I got out
19 the kitchen. Robert went to go outside to get a
20 cigarette. I got out the kitchen and went in the
21 living room. And I'm sitting there crying. I said,
22 "Oh, Lord, Jesus, what in the world going on?" I
23 said, "I need to call me a lawyer. I need to call me
24 a lawyer. I need to call somebody. I need to call a
25 lawyer."

1 Mr. Mathers (sic) came and took his left hand
2 and put on my shoulder and rubbed it. He said,
3 "Ms. Davis, calm down. You don't need a lawyer.
4 It's not what you think it is. We know Robert didn't
5 do anything. Just calm down. You're getting
6 yourself worked up for no reason." He said, "Just
7 calm down. We just want to ask him questions. We
8 know he didn't do it. Just calm down. You don't
9 need a lawyer."

10 And I said, "Okay." I said, "Because I can call
11 my cousin, Senator Maggie Glover. She'll tell me who
12 to call. She'll tell me who to call." He said,
13 "That's not necessary. Just calm down." And then
14 finally, that's when they came back in the house.
15 And a tall man -- he is not in here now.

16 Q Okay.

17 A But the --

18 Q The mustache?

19 A Yeah.

20 Q Captain Thomley that you saw earlier in the trial?

21 A Yeah. He came in the house. And I was sitting down.
22 My husband was standing up. And he introduced
23 himself. He shook my husband's hand. And he said,
24 "Okay." Told who he was. And he said, "Okay. Well,
25 I'm getting ready to go." And as he was getting

1 ready to go, he turned back to Robert. He said,
2 "Okay, Robert." He said, "Just sign whatever Catoe
3 tells you to sign," he said, "and you'll be clear.
4 You'll be fine." And he walked out the door.

5 Q Okay. And at that point did Robert proceed to sign
6 these statements?

7 A Well, when Catoe was writing, Catoe was writing on
8 yellow paper.

9 Q Right.

10 A There was yellow paper that he was writing on. He
11 was writing yellow stuff on a piece of paper. Not
12 one time -- I don't know where this bowl of cereal
13 came from, where Robert was eating a bowl of cereal,
14 because Robert wasn't eating any cereal. Robert was
15 waiting for the chicken to finish we were cooking.
16 But he was writing on yellow paper.

17 And then when he got through writing on all this
18 yellow paper and Robert kept saying, "I'm tired, I'm
19 tired", so finally he gave some paper like this. Let
20 me back up. That rights paper where he said he read
21 Robert his rights, when he came in with that white
22 paper, he put it on the table. And he said, "I need
23 you to sign this, Robert." And I said, "What is
24 that?" He said, "It's just something giving me
25 permission to talk to Robert." He did not state that

1 said you have the right and word-by-word, verbatim.
2 You didn't do that. He didn't do that. He didn't do
3 that.

4 Q That's fine.

5 A But he just said, "This is just something giving me
6 the right to talk to you." And then that's when
7 Robert signed it. And then after he got through
8 filling out all his stuff on the yellow paper before
9 he was getting ready to go, he said, "Okay, I need
10 you to sign this white paper." Nothing was on the
11 white paper at the time. He said, "I need you just
12 to sign here, and all I'm going to do is transfer
13 what's on this yellow paper onto the white paper."

14 Q Okay.

15 A And then when Robert got through signing the paper,
16 he said, "Okay then." And that's when Marthers,
17 Mathers (sic), whatever, he said, "Okay, man." He
18 said, "Well, go ahead and get you something to eat
19 and go ahead on and go to bed." And that was it.

20 Q And they left?

21 A And they left. Then they called back. And that's
22 when Catoe called and asked Robert to come in 10:00
23 the next morning to take a polygraph test. And I
24 said, "A polygraph test?" I said, "Okay. Well, he
25 done tell me I don't need no lawyer. I mean, what's

1 a polygraph test for?"

2 And I told them when they were there that we
3 were going to Atlanta. And he was like, "Go ahead on
4 your trip. You know, it's no big deal. Go ahead on
5 your trip." I said, "Well, I have my son who was
6 much younger, but I have my son to bring him down.
7 That's no big deal. I'll have my son to drive him up
8 there." He said, "Well, he can just come on down,
9 take the test and come on back home."

10 Well, when my son called me crying, he said,
11 "Mama, they kept Robert." I said, "What you mean
12 they kept Robert?" He said, "They kept Robert." I
13 said, "For what?" He said, "Catoe said that Robert
14 flunked the test." I'm like, "Huh?"

15 So I tried to call because he left his card and
16 I couldn't get him. The whole weekend I couldn't get
17 him. So finally that Monday I got on the phone, and
18 I told them who I was. I said, "What in the world is
19 going on?" I said, "You told me I didn't need a
20 lawyer, I had nothing to worry about." Let me back
21 up. He did say -- at first he did say when he was
22 sitting at the table, he said -- because when Robert
23 kept saying, "I don't know anything", he said,
24 "Robert," he said, "We want Mr. Whitehead."

25 Q Right.

1 **A** He said, "This thing can hold from 25 years to life."
2 He said, "There have even been people who have gotten
3 the death penalty."

4 **Q** Right.

5 **A** He said, "I just need to you testify." He just kept
6 saying that. But anyway, when I called him on Monday
7 and I talked to him, I said, "What in the world
8 happened?" I said, "You told me I didn't need no
9 lawyer, my child had nothing to worry about. Now you
10 arrested him." I said, "For what?" He said,
11 "Because he failed the polygraph." I said, "You
12 arrested him because he failed his test?" He said,
13 "Yes, ma'am; because he failed his polygraph." I
14 said, "So how can I see him?" He said, "Call Kershaw
15 Detention Center and they'll tell you what steps you
16 need to take in getting visitation to see Robert."

17 **Q** All right. Let me just ask you one final question.
18 So, based on what you told us about your trip to
19 Atlanta --

20 **A** Mm-hmm (affirmative).

21 **Q** -- when the police left your house, how did you feel
22 about this situation?

23 **A** Fine. I would have never went to Atlanta because he
24 had me under the impression everything was fine.
25 Everything was fine. I mean, like I said, Mathers

1 (sic) was rubbing me on my shoulder: "You have
2 nothing to worry about. Everything is fine. We just
3 want to ask him questions. We know he didn't do it.
4 We know he didn't do it."

5 Q If you'll answer any questions from Mr. Meadors,
6 please. Thank you, Your Honor.

7 THE COURT: Any other defendant?

8 MR. KENDRICK: Oh. I'm sorry, Judge. I forgot.

9 MR. RILEY: None from me, Judge.

10 MR. MEADORS: Very briefly.

11 CROSS EXAMINATION

12 BY MR. MEADORS

13 Q Good afternoon, ma'am.

14 A Good afternoon.

15 Q Just a couple of brief questions.

16 A Okay.

17 Q Do you mind if I step up here?

18 A That's fine.

19 Q Is that -- that's your son, Robert?

20 A Correct.

21 Q Okay. Did you see him fill out the top part?

22 A Correct.

23 Q You did?

24 A Correct.

25 Q And did you see him fill out the bottom part?

- 1 **A** When he signed his name.
- 2 **Q** Yes, ma'am.
- 3 **A** None of this writing was on there.
- 4 **Q** That wasn't my -- I was going to get to that.
- 5 **A** Okay.
- 6 **Q** But did you see him sign it?
- 7 **A** Correct.
- 8 **Q** So you saw him sign the top part and the bottom part?
- 9 **A** Correct.
- 10 **Q** Okay. On each page?
- 11 **A** I saw just him sign one time. I just saw him sign it
- 12 once because by that time I just put my head -- I was
- 13 trying to figure out, okay, this was over with. And
- 14 then that's what I was thinking; it was over with.
- 15 **Q** But these -- you won't deny that's his signature on
- 16 page 2, page 3, page 4, and page 5?
- 17 **A** No. It's starting to change.
- 18 **Q** Okay. Tell me which one is changing?
- 19 **A** See, you can look at the C's and tell the C's are
- 20 starting to change. See, they're starting to change.
- 21 As they get back to pages 4 and 5, they're starting
- 22 to change.
- 23 **Q** Okay. So you're saying that those, 4 and 5, are not
- 24 his signature?
- 25 **A** I'm saying it's starting to change.

1 Q Okay.

2 A Yeah.

3 Q But could that be his signature?

4 A It's possible.

5 Q But you didn't see him sign anything but the first
6 one?

7 A The first one and the one that he said that this is
8 just giving me permission to talk to you.

9 Q Beg the Court's indulgence. You don't see that up
10 there, do you? Oh, here it is. I'm sorry. This
11 one, does that appear to be his signature?

12 A Yes, sir.

13 Q That's State's 1 for the record. And the one we were
14 referring to earlier was State's 2 for I.D., for the
15 record. And so your testimony today is you saw him
16 sign this, didn't see him do the other ones, and this
17 was blank?

18 A Mm-hmm (affirmative). Yeah. It was blank.

19 Q And you saw him taking some other notes?

20 A On the yellow piece of paper.

21 Q Do you see him taking some notes?

22 A On the yellow piece of paper.

23 Q And he was taking those down as your son was talking?

24 A Well, yeah. He was writing the whole time.

25 Q And those notes were, when your son is talking and

1 he's taking the notes down in the thing, I mean, you
2 saw the yellow piece of page he was taking those on?

3 A Mm-hmm (affirmative).

4 Q And there's no question those words came from what
5 your son was telling him?

6 A Well, if you've got in there where he said that "I
7 don't know what you're talking about; I'm tired; I'm
8 hungry", then, yeah, then he was taking everything
9 Robert said.

10 Q But you actually saw him writing while your son was
11 talking to him?

12 A He was writing before Robert even started talking.

13 Q But you acknowledge --

14 A Yeah.

15 Q -- you saw the sheets that he was writing on?

16 A Right.

17 Q And your son was talking to him?

18 A Right.

19 Q And when he was down with -- you don't know this man
20 right here? Lieutenant Crawford?

21 A I have never seen him before in my life.

22 Q And so you don't know anything about what he told
23 Lieutenant Crawford? You weren't down there? You
24 couldn't know anything?

25 A I wasn't there. Because my only question was why

1 would you have a 17-year-old take a polygraph with
2 someone that's underaged? Which Catoe knew that my
3 son was coming. He said, "Oh, it's fine."

4 Q And he was 17?

5 A He was 17.

6 Q And that is an adult, 17. Correct?

7 A Not -- not in my eyes. I didn't know 17 was adult.
8 I thought you had to be 18. For women it's 18, 21
9 for a man. Robert was 17.

10 Q And just a couple of other quick questions. You
11 said -- what day was it they came to the house and
12 talked to you?

13 A I don't remember a date. All I know it was on a
14 Friday because we were leaving that Saturday to go to
15 Atlanta.

16 Q And you said that they asked him where were you?
17 What were they asking him about where he was? Taking
18 about Robert.

19 A Yeah.

20 Q What was the question?

21 A Catoe asked him where was he that night. Well, first
22 Catoe asked him who was Chanin and Mel.

23 Q Chanin and who?

24 A Chanin and -- they called his real name. I know them
25 by Chanin and Mel. They called their real names.

- 1 Q Okay.
- 2 A And Robert said -- because Catoe asked him was Chanin
3 his brother. I said, "No, Chanin is not his brother.
4 They just play brothers." And Robert told him, he
5 said, "We were nextdoor drinking and smoking and
6 having a party."
- 7 Q Okay. And that's what I'm asking you. I couldn't
8 understand you.
- 9 A Okay.
- 10 Q But you were saying, the question was: "Where were
11 you" when?
- 12 A That night.
- 13 Q What night are you talking about?
- 14 A Whatever date that was Mr. Josh -- he asked him,
15 where were you at around about 11, 11:30 or
16 something? That's what Mr. Catoe asked him. And he
17 said --
- 18 Q Yeah. But you said questioned Mr. Josh. I mean,
19 but --
- 20 A No. Mr. Catoe asked Robert, where were you around
21 11, between 11 and 11:30, the night that -- I don't
22 know the exact date -- that the gentleman got killed.
- 23 Q And what was his answer?
- 24 A And Robert told him, said, "I was nextdoor at a party
25 with Chanin and Mel." And then that's when Mr. Catoe

1 said, "Chanin?" He called his whole name because he
2 knew who Robert was talking about.

3 Q But nextdoor?

4 A Right nextdoor.

5 Q Nextdoor to who?

6 A Right next to me.

7 Q To you?

8 A Mm-hmm (affirmative).

9 Q And what's your address?

10 A

11 Q And Chanin and Mel, you don't know their last name?

12 A No. Mr. Catoe knew it because he gave their whole
13 names.

14 Q And that's where Robert said he was this night?

15 A During that time.

16 Q Did he say specific what time?

17 A He said between 11 and 11:30.

18 Q Okay. Now, what's your date of birth, please, ma'am?

19 I'm sorry.

20 A

21 Q I'm sorry. What?

22 A

23 Q And your social security, please? You can write it
24 on here.

25 A Thank you.

1 Q You don't have to say it out loud. I didn't mean to
2 ask you that. You can just write it on here if you
3 want.

4 (Witness complies)

5 Q Thank you so much.

6 A You're welcome.

7 Q That's all. Thank you.

8 THE COURT: Anything further?

9 MR. KENDRICK: Nothing, Your Honor. Thank you.

10 THE COURT: You may come down, ma'am.

11 MR. KENDRICK: From this witness.

12 THE COURT: Next witness.

13 MR. KENDRICK: Your Honor, we call Mario
14 Munnerlyn.

15 MARIO G. MUNNERLYN, after being duly sworn,
16 testifies as follows:

17 THE COURT: Please have a seat in the witness
18 box. State your full name for the record.

19 THE WITNESS: Mario Gerard Munnerlyn.

20 DIRECT EXAMINATION

21 BY MR. KENDRICK

22 Q Mr. Munnerlyn, how are you doing this afternoon?

23 A Doing fine. And you?

24 Q Tell me for the record your relationship with Robert
25 Cannon?

1 A He's my son.

2 Q Okay. Is he your son or your stepson?

3 A Oh, stepson. But I don't believe in saying the word
4 "step".

5 Q Okay. How long have you been known Robert?

6 A Oh, I've known Robert, oh, Lord, since 2000, 2001.

7 Q So a long time?

8 A Yes, sir.

9 Q Were you at the house on the night of the 15th when
10 the police came to question Robert?

11 A Yes, sir, I was.

12 Q Okay. Tell me what happened that night?

13 A Yes. Well, Robert -- Robert called and stated, you
14 know -- well, he told me, he said that the police
15 officers wanted to talk to him about a murder that
16 had transpired a few days prior. You know, and of
17 course just being a parent, I'm going to ask him why
18 do they want to talk to you and this, that and the
19 third. And he was like, "I don't know." He said,
20 "But they want to talk to me," he said, "but I don't
21 want to talk to them without none of you all being
22 present." So I was like, "Okay, that's cool."
23 Because I had just gotten off from work earlier that
24 morning when he was telling me this.

25 And so when Catoe called his cellphone and was

1 like, "Well, can we come talk to you now", he was
2 like, "Well, my parents are home, so you can come and
3 talk to me now." And then that's when, you know,
4 they came there. And Catoe and Mr. Marthers came in.
5 And then, you know, the first thing, he came in, he
6 said, "You know, Well, we're detectives." They
7 stated their name, where they were from, and what
8 they were there for.

9 And then he said that, "You know, just like I
10 said, you don't have anything to worry about. We're
11 just here. We want to talk to your son about what
12 transpired." I wasn't exactly sure what the date
13 when, you know, it transpired. But he said, "We just
14 want to talk to your son about a murder that
15 transpired a few days ago."

16 Q And tell me how the conversation progressed. Did
17 they immediately start questioning Robert? Did they
18 talk to you? Tell me how this progressed?

19 A Well, you know, well, I'm a question asker. And, I
20 mean, anything involving my children, you know, I
21 want to know what's going on, because I feel as
22 though I have somewhat of a right as a parent. And
23 that's when he was saying, "Well, you know, he isn't
24 in any trouble," he said, "because if he was in
25 trouble, we would have been here with a warrant for

1 his arrest. We just want to talk to him. We just
2 want to get some questions," he said, "because we
3 have the man that we need." Those were his words.
4 Just like I said, the rights were never read to him.
5 I mean, I know, you know, what the rights are and
6 this, that and the third. They were never read to
7 him.

8 And then once he sat down at the kitchen table,
9 that's when he sat down with the Miranda form and
10 just explained to him; he said, "You know, just like
11 I said, this is just something we need for you to
12 sign so we can proceed in talking to you and
13 questioning you about what happened."

14 Q At that point did they begin questioning him about
15 the events of a few days before?

16 A Well, now he started talking, you know, just asking
17 him mainly a lot of questions about Chris, how did he
18 know Chris, just like I said, talking about Chanin,
19 talking about Melvin. Melvin Cornelius. That's his
20 -- I know Melvin's name. I don't know Chanin's last
21 name. And, you know, just kept asking him -- you
22 know, just kept asking him a lot of questions. I
23 mean, in my opinion, I would say badgering; but, you
24 know, that's to each his own. You know, just asking
25 him a lot of questions, basically trying to feed him

1 into a saying a lot of different things.

2 Q What was Robert's demeanor during this time?

3 A You know, I mean, he was nervous of course; because,
4 I mean, just like any child would be. I mean, I
5 would be nervous and I'm an adult. I mean, he was
6 nervous. He was jittery. And, I mean, you know,
7 because he's never had to go through anything of this
8 magnitude.

9 So a lot of things, you know, when he was asking
10 him, just like I said, he was like asking him.
11 Robert wasn't really just talking as he was writing.
12 As Officer Catoe was writing, he kept asking Robert a
13 lot of questions. And he was like, well, did
14 such-and-such-and-such happen, this, that and the
15 third? And Robert just was -- you know, he kept
16 saying, "I'm tired, you know; I'm frustrated." And,
17 I mean, you know, he was like, "I wasn't there, so I
18 can't tell you anything."

19 He said -- and then he kept saying, "Well, we
20 know you were there. You know, there have already
21 been statements saying that you were there, so you
22 may as well go ahead and tell me what you know so we
23 can get you and cleared and taken care of."

24 Q Did they go outside at some point?

25 A Yeah. When Robert went outside to smoke a cigarette,

1 that's when they followed him outside.

2 Q Did you go outside with them?

3 A No, sir. I didn't go outside.

4 Q Were you in the house when they came back inside?

5 A Yes, I was.

6 Q Tell me what happened when they came back inside from
7 going outside?

8 A He just came back in the house and said, "Well, you
9 know, he told us a few things outside." And, you
10 know, he said, "Now we want to get some things on
11 paper," he said, "but things are going to be all
12 right." Those were his exact words.

13 Q Okay. Now, were you also going on the trip to
14 Atlanta with your wife?

15 A Yes. Actually I was taking my wife and daughter to
16 Atlanta.

17 Q Okay.

18 A Because we do -- one weekend every month we do family
19 time, to where it's like, you know, strictly go out
20 of town, do something different. Basically whatever
21 my wife and daughter want to do that weekend of the
22 month they do.

23 Q Were you nervous about leaving Robert to go to the
24 police station by himself?

25 A Oh, yes. I was. I was very nervous. But just like

1 I said, Officer Catoe said that, you know, there was
2 nothing to worry about. And just like I said, to my
3 knowledge, just like I said, I didn't think a person
4 could take a polygraph test under the age of 18
5 without, you know, adult supervision, parent or legal
6 guardian. But whatever.

7 **Q** Based on what you were told by Investigator Catoe on
8 that Friday night, did you expect Robert to be
9 arrested?

10 **A** Oh, definitely not. Because, I mean, I have family
11 members that's attorneys. I mean, I know a lot of
12 attorneys in different places. And if that was the
13 case, first of all, we wouldn't have went to Atlanta.
14 Second of all, I would have had an attorney present
15 at the time. And if not at the time while they we
16 questioning him, I would have had an attorney there
17 with him during the polygraph.

18 **MR. KENDRICK:** That's all I have, Your Honor,
19 for this witness. If you'll answer any questions the
20 other lawyers have, please.

21 **THE WITNESS:** Yes, sir.

22 **THE COURT:** Anything from any defendant, either
23 defendant?

24 **MR. RILEY:** No, sir.

25 **THE COURT:** Solicitor.

CROSS EXAMINATION**BY MR. MEADORS**

Q Was Robert in school then, Mr. Munnerlyn?

A I couldn't --

Q Was Robert in school?

A He wasn't in school then. No, sir.

Q How far did he go in school?

A Eleventh grade.

Q And he had worked, right?

A Yes, sir.

Q Do you know where he was working?

A Sonic on Hard Scrabble.

Q And you saw Investigator Catoe taking notes, right?

A Yeah. He was taking notes as he was asking Robert questions.

Q And did you see him fill out this other sheet?

A Which one?

Q State's -- the one Derrick signed five times. Or do you remember? Excuse me. State's 4?

A I don't remember seeing him sign that.

Q Okay. Do you remember seeing him sign something?

A I know he signed, I think it was a Miranda form.

Q Okay. And I just had it up here. What did we do with it? This right here?

A Yeah. He signed that one.

1 Q And did you see him sign this?

2 A He signed one or two white pieces of paper.

3 Q One or two?

4 A Because Officer Catoe, he wrote actually on a legal
5 pad.

6 Q Right.

7 A And he said, "I just need you to sign it." Because,
8 I mean, it was getting late. I mean, you know, he
9 said, "Time isn't on my side," he said, "but this is
10 a case that's going to take a long time." He said,
11 "So I just need you to go ahead and sign this piece
12 of paper." And he said, "All I'm going to do is
13 transfer what's on this legal pad to this white piece
14 of paper."

15 Q Okay. And so you said you saw him maybe sign one or
16 two?

17 A Yes, sir. And then I went to proceed on to my
18 computer.

19 Q And the rest of these you didn't see him sign?

20 A Well, actually, that's Derrick's actually.

21 Q Oh, I'm sorry. Thanks for straightening me out on
22 that. I apologize. The same thing though on -- I
23 think I said State's 2 right. But you saw him sign
24 one or two?

25 A Yeah. I seen him sign the first page. But anything

1 after that I didn't see him sign with my own eyes.

2 Q That's fine. So just one page you saw him sign?

3 A Yes, sir.

4 Q But you said one or two a minute ago?

5 A No. One or two because that and the Miranda form.

6 That's two.

7 Q I just wanted to straighten that out.

8 A Yes, sir.

9 Q So you do not see him sign these other ones?

10 A No, sir.

11 Q Okay. And they never threatened or coerced him in
12 any way, did they?

13 A Oh. I mean, he just -- well, you know, he just said
14 what the case could actually lead up to as far as how
15 many years of prison, with even the death penalty,
16 what it means, the severity of the case.

17 Q And you left to go on a family outing the next day
18 when he came to the Sheriff's Department?

19 A Well, we were already going before he went to the
20 Sheriff's Department.

21 Q When did you all go?

22 A Atlanta. Atlanta, Georgia.

23 Q Did you go that morning?

24 A Saturday.

25 Q What time was it when they came?

- 1 **A** I'm not exactly sure of the time.
- 2 **Q** And you said he was tired? Robert was tired?
- 3 **A** Yeah. He kept saying he was tired when Officer Catoe
4 was questioning him.
- 5 **Q** And you didn't have any trouble that day
6 understanding Robert, did you? I mean, you talked to
7 him earlier in the day and that night?
- 8 **A** Well, actually I slept pretty much most of the day
9 because I work third shift. I work Thursday night
10 and when I get off, it's Friday morning.
- 11 **Q** What time did you get off?
- 12 **A** When I got off, it was like 5:30, 6:00 in the
13 morning.
- 14 **Q** Did you have an occasion to talk with Robert prior to
15 the police getting there Friday?
- 16 **A** Oh, I mean, just a few minutes before they got there.
17 I didn't talk to him. But I sleep pretty much all
18 throughout the day because I used to work third
19 shift.
- 20 **Q** And when you saw him though and talked to him, he
21 appeared to be -- he wasn't under the influence of
22 anything?
- 23 **A** Oh, no. Definitely not. Not under our roof.
- 24 **Q** Exactly. And you didn't have any trouble talking to
25 him or communicating with him?

1 **A** No. I mean, we didn't talk that long. No, sir.

2 **Q** Right. But the conversation you did have, you could
3 understand him; he could understand you?

4 **A** Oh, yes, sir.

5 **Q** That's all we have.

6 **THE COURT:** Re?

7 **MR. KENDRICK:** Nothing further from the witness,
8 Your Honor.

9 **THE COURT:** All right. You may come down, sir.
10 Thank you very much.

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Next witness.

13 **MR. KENDRICK:** Yes, Your Honor. I call Robert
14 Cannon to the stand, please.

15 ROBERT L. CANNON, after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Please be seated in the witness
18 stand and state your full name for the record.

19 **THE WITNESS:** Robert Lee Cannon, for the record.

20 DIRECT EXAMINATION

21 **BY MR. KENDRICK**

22 **Q** Mr. Cannon, tell me when the police first contacted
23 you on December 15th?

24 **A** Around about 4:30.

25 **Q** In the afternoon?

1 A Yes, sir.

2 Q Okay. And what was the nature of that contact?

3 A Well, they just said they wanted to talk to me about

4 the murder of Josh.

5 Q What did you -- did you make arrangements to see them

6 later that day?

7 A At first I didn't want to talk to them; but, you

8 know, Catoe kind of harassed me into the meeting.

9 Q Did he make it known you had to talk with him?

10 A Yes, sir.

11 Q Okay. So what did you do to get to talk to him?

12 A I called my mother and let her know I was on the way

13 home and that she needed to meet me there right away.

14 Q If you'll speak up just a little bit clearer. She's

15 got to type down everything you say.

16 A I said I called my mother and let her know that I was

17 on the way home and that she needed to meet me there

18 right away.

19 Q Okay. And you met your parents at your house?

20 A Yes, sir.

21 Q And then Catoe and Mr. Marthers showed up, right?

22 A Yes, sir.

23 Q Tell me what happened when they got there?

24 A Well, they came in, you know. They said, "Well, I'm

25 Investigator Danny Catoe. This is George Marthers.

1 We are here on behalf of, you know, the case of
2 Joshua Zoch; and he just want to know where you were
3 at that night, want to talk to you about it."

4 Q And did you deny your involvement in that?

5 A Yes, sir.

6 Q Okay.

7 A A couple of times.

8 Q Okay. And what was going on while you were denying
9 that?

10 A I mean, Officer Catoe was writing down something. I
11 really didn't kind of too much look at what he was
12 writing. But I just kept denying it. He was like,
13 "Well, we just want to know because we think you know
14 something about it. You know, you and Christopher
15 Whitehead are close friends. There's no way he
16 didn't tell you anything if he did do something. So
17 we need you to cooperate with us and tell the truth."

18 Q And did you continue to deny these allegations?

19 A Yes, sir.

20 Q At some point did they take you outside?

21 A No. They didn't take me outside. I took them
22 outside to smoke a cigarette.

23 Q Okay. Tell me what happened while you all were
24 outside?

25 A Well, when we got outside, you know, they kept trying

1 to get me to go along. They was like, "Listen. This
2 is a death penalty case, you know, and we want to
3 know." And I was like "Well, I can't tell you what I
4 don't know. I told you I was at, you know, Mel's
5 house nextdoor." They was like, "Listen, listen, you
6 know; you need to quit playing with us. We can help
7 you. We can make it possible for you not to be
8 charged at all. All you have to do is just sign a
9 piece of paper; we can make this all go away."

10 Q When Investigator Catoe -- if he said, "We can make
11 it possible you're not charged at all", did you
12 believe him?

13 A No, sir.

14 Q Okay. What did you do based on that belief or
15 disbelief?

16 A I said, "With you being an investigator, I doubt you
17 have the power to do that, and I need you to call
18 someone who is going to be able to say something
19 truly about that."

20 Q What did he do then?

21 A He walked away and said he was going to call his
22 supervisor.

23 Q Okay. And then what happened?

24 A So I'd say around about 15 minutes later, you know,
25 Captain Thomley pulled up.

1 Q Okay. And what did Captain Thomley tell you?

2 A Well, he called me to the back of Investigator Danny
3 Catoe's truck. And he was like, "Listen. I can
4 verify that what the investigators are telling is you
5 true. We can make it possible that you don't get in
6 trouble. All you have to do is sign this paper; you
7 won't be charged with anything. You'll be released
8 back in the custody of your parents."

9 Q Okay. So what did you do after that?

10 A Well, I told him all right, because I was tired. I
11 ain't been asleep in like two days.

12 Q Did you think you were going to get in any trouble by
13 signing those papers?

14 A No.

15 Q Why not?

16 A Because they told me I wasn't.

17 Q Why not?

18 A Because they promised me that I wouldn't be charged
19 with anything.

20 Q Okay. And they left you at your house, right?

21 A That night? After they left? Yeah. I stayed home.

22 MR. KENDRICK: That's all I have for this
23 witness, Your Honor.

24 THE COURT: Anything from any defendant?

25 MR. RILEY: No, sir.

1 **MR. WHITLARK:** No, sir.

2 **THE COURT:** State.

3 CROSS EXAMINATION

4 **BY MR. MEADORS**

5 **Q** Yes, sir. How far did you go in school?

6 **A** I left -- actually I left right before the eleventh
7 grade.

8 **Q** Okay. And you obviously know how to read and write?

9 **A** Yes, sir.

10 **Q** You held down a job?

11 **A** Yes, sir.

12 **Q** You don't have any trouble communicating with folks?

13 **A** No, sir.

14 **Q** When you first talked -- the first time you talked
15 with Catoe was where?

16 **A** Physically talked or over the phone?

17 **Q** Either one.

18 **A** I was at the Exxon in Blythewood. He called me
19 around 4:30.

20 **Q** And he called you at the Exxon or you called him?

21 **A** He called me from a private number.

22 **Q** And as a result of that, did you go meet with him, or
23 did he go meet with you?

24 **A** Yeah. He came. Well, we all met at my house.

25 **Q** And nice to you on the phone?

- 1 A No, sir. Not at all.
- 2 Q He was not nice on the phone?
- 3 A No, sir.
- 4 Q What did he say to you on the phone that wasn't nice?
- 5 A He told me that he could come pick my ass up right
- 6 now and throw me in jail.
- 7 Q He could come pick your ass up right now and throw
- 8 you in jail?
- 9 A Yes. And I quote him on that.
- 10 Q Sir?
- 11 A And I quote him on that.
- 12 Q I understand. And then what did you say to that?
- 13 A I told him, "You can't pick me up because I don't
- 14 know anything."
- 15 Q Okay. Did he respond to you?
- 16 A He said, "Stop playing with me, damn it. I know you
- 17 know something."
- 18 Q And then what happened?
- 19 A I told him, "Well, I don't trust you, being alone, so
- 20 we're going to have to talk when my parents are
- 21 home."
- 22 Q All that took place on the phone at Exxon?
- 23 A Yes, sir.
- 24 Q How did he get in touch with you?
- 25 A He must have had got my number from Pat.

- 1 Q What was your number?
- 2 A 556-1597.
- 3 Q He could have gotten from that your parents?
- 4 A From the manager at Sonic, Ms. Pat.
- 5 Q I'm sorry. From who?
- 6 A From the manager at Sonic.
- 7 Q Manager. And you ended up meeting him at your house?
- 8 A Yes, sir.
- 9 Q And you told him that Chris Rust told you Wednesday
- 10 that Josh was dead. Do you remember that?
- 11 A At 8:00.
- 12 Q "Robert doesn't know that Chris Whitehead did it, but
- 13 he thinks he did it or may know who did"?
- 14 A No, sir. I told him I wouldn't know if Chris did it.
- 15 I didn't think he did it.
- 16 Q But he may know who did. Do you remember telling him
- 17 that?
- 18 A No.
- 19 Q You deny you told him that?
- 20 A I deny it.
- 21 Q "Chris and Melissa would always get in arguments and
- 22 Josh would pump Chris out." Do you remember telling
- 23 him that?
- 24 A Yes.
- 25 Q And he's taking these down as you're talking, right?

- 1 A Exactly.
- 2 Q I mean, he wouldn't know that unless you told him.
- 3 "About two weeks back Robert, Chris and B.J., Brian,
- 4 went to Josh's house and Melissa then asked them to
- 5 leave after Chris brought the blunt. That was the
- 6 whole reason behind going over there." You told him
- 7 that, right?
- 8 A Yes, sir.
- 9 Q And then it says you left Sonic with Chris?
- 10 A No, sir.
- 11 Q Chris dropped you off at Melvin's?
- 12 A No, sir. Chanin picked me up.
- 13 Q So you deny you told him that?
- 14 A Yes, sir.
- 15 Q "Robert left Sonic with Chris. Chris dropped him
- 16 off." You deny that?
- 17 A Yes, sir.
- 18 Q "Josh smoked crack, sniffed cocaine and sold weed."
- 19 Did you tell him that?
- 20 A Yes, sir.
- 21 Q So that you told him. "Usually kept a quarter of
- 22 pound at the house"?
- 23 A To my knowledge; yes, sir.
- 24 Q But I'm just saying, did you tell him that?
- 25 A He asked me to estimate, so that's the estimate that

1 I gave him.

2 Q But he's taking these down as you're talking to him?

3 A To my knowledge; yes, sir.

4 Q I mean, you saw him writing? That's all I'm asking.

5 A Yes, sir.

6 Q And Josh's house was a party house?

7 A Yes, sir.

8 Q And then "Right after that Chris called Robert" --

9 MR. KENDRICK: Your Honor, I'm not sure why he
10 would go through it by line-by-line. I think they've
11 pointed out it's the voluntariness of the statement.
12 Right now we're just going through every piece of
13 evidence.

14 THE COURT: He's asking him if he voluntarily
15 said it.

16 MR. KENDRICK: Okay. I'm just objecting for the
17 record.

18 THE COURT: Overruled.

19 Q "Right after that Chris called Robert. Chris called
20 Robert right after he was pulled over by George
21 Marthers"?

22 A Yes, sir.

23 Q And you told him that?

24 A Yes, sir.

25 Q Chris called you right after he was pulled over by

1 Marthers?

2 A Yes, sir.

3 Q "By me and George." Danny put down "by me and

4 George"?

5 A Yes, sir.

6 Q And then didn't you tell him that Chris had called

7 and told you he'd won the fight?

8 A No, sir.

9 Q You deny that?

10 A I don't recall that.

11 Q Could you have told him that?

12 A No, sir. No, I didn't tell him that.

13 Q And didn't there at some point you say, "I want to

14 tell you all some more but I don't want my parents to

15 hear it"?

16 A That's a lie.

17 Q You deny that?

18 A No, I don't deny that. That's a lie.

19 Q So that means you deny it obviously?

20 A Yes, sir.

21 Q But beside those two corrections, everything else he

22 took down there is correct what you told him, that we

23 went over line-by-line?

24 A Yes, sir.

25 Q Correct?

1 **A** Yes, sir.

2 **Q** And if you don't mind if I come up here just for --

3 **A** That's all right.

4 **Q** Dad-gum-it. Just a few quick questions, Mr. Cannon.

5 That is your name, correct? Robert Cannon?

6 **A** Yes, sir.

7 **Q** All right. And above that is Mr. Catoe's? Danny

8 Catoe?

9 **A** Yes, sir.

10 **Q** And below that is George Marthers?

11 **A** Yes, sir.

12 **Q** I mean, you won't deny that's George Marthers,

13 whether you can read it or not?

14 **A** No, sir.

15 **Q** And they read you your rights, correct?

16 **A** No, sir.

17 **Q** They never read you your rights at all?

18 **A** No, sir. He came and he sat down. He slipped me a

19 piece of paper. He says, "This is a paper verifying

20 that I can talk to you." So ...

21 **Q** "A paper verifying that I can talk to you?"

22 **A** Yes, sir.

23 **Q** And you just signed it?

24 **A** Yes, sir.

25 **Q** You didn't look at it and see Miranda -- you've heard

1 of Miranda rights before, haven't you?

2 A No, sir.

3 Q You've never heard of Miranda rights?

4 A I've never been in trouble with the law before this.

5 Q I don't mean from law. But I mean, you watch TV.

6 You've never heard of the Fifth Amendment or having
7 Fifth and Miranda?

8 A I don't watch CSI and Law and Order and things like
9 that.

10 Q So you've never heard the Miranda rights?

11 A Yes.

12 Q But you signed this form saying that I can just talk
13 to you?

14 A No, sir.

15 Q And after that, as with before, Mr. Catoe was taking
16 notes down when you were talking, wasn't he?

17 A Yes, sir.

18 Q I mean, there's no doubt about that. It's on a
19 little sheet of paper, writing it down. And he's
20 taking down the words you gave him? I mean, he's
21 writing down what you're telling him?

22 A Yes, sir.

23 Q And then at that point do you recognize this, State's
24 2? I mean, do you recognize that as Robert Cannon?

25 A Yes, sir.

1 Q And did he ask you to fill out the top part?

2 A Yes, sir.

3 Q And you filled that out? I mean, you weren't under

4 the influence of alcohol or drugs?

5 A No, sir. Just tired.

6 Q Just tired. Did you just say you'd been up a couple

7 of days?

8 A About two days. Yes, sir.

9 Q And all this information correct?

10 A Yes, sir.

11 Q You signed it down here at the bottom?

12 A Yes, sir.

13 Q Signed here?

14 A Yes, sir.

15 Q Signed here?

16 A Yes, sir.

17 Q Signed here?

18 A Yes, sir.

19 Q You started to hesitate. I mean, that's you, isn't

20 it?

21 A Your thumb was covering it.

22 Q Oh, I'm sorry.

23 A Yes, sir.

24 Q And here?

25 A Yes, sir.

1 Q And actually up here: "I asked Investigator Catoe to
2 write this for me, and this is in my own words as
3 they are written." Is that your signature below
4 there, too?

5 A Yes, sir.

6 Q And that's true, isn't it?

7 A That's true as what? That's what I signed?

8 Q No. That's true that you asked Catoe to write this
9 for you?

10 A No, sir. There was nothing written when we were
11 sitting at the table.

12 Q And what was on here?

13 A Nothing.

14 Q Nothing?

15 A It was a blank piece of paper.

16 Q So you signed five blank pieces of paper?

17 A Yeah. Because it was getting late. He said he had
18 other things to do.

19 Q And do you remember talking to Phil Crawford, the
20 Lieutenant?

21 A The next day?

22 Q Downstairs in this basement.

23 A Yes, sir.

24 Q And just very briefly, do you remember him reading a
25 couple of rights for you?

1 A No, sir.

2 Q You deny that?

3 A No, sir.

4 Q He did not go over these rights with you?

5 A I don't remember that.

6 Q You don't remember that?

7 A No, sir.

8 Q And is that your signature at the bottom?

9 A It looks like it, but not really.

10 Q Okay. Take your time. Do you want to hold it?

11 A Mm-hmm (affirmative).

12 Q Hold it and look at that.

13 A It still doesn't look like my signature.

14 Q So you didn't sign that?

15 A To my knowledge, Phil Crawford didn't read me my
16 rights.

17 Q So that's not your signature?

18 A To my knowledge; no, sir.

19 Q Well, you're the only knowledge that would know. So
20 that's not your signature?

21 **MR. KENDRICK:** Your Honor, he's answered it a
22 couple of times. We can ask it different ways, but I
23 think he's put on the record his position on that
24 signature.

25 **THE COURT:** One more time.

- 1 **A** No, sir.
- 2 **Q** No, sir; it's not your signature? Thank you. And do
3 you remember him going over this consent form here, a
4 polygraph?
- 5 **A** Yes, sir. I remember that.
- 6 **Q** And is that your name at the top? I'm not saying you
7 wrote that.
- 8 **A** Mm-hmm (affirmative).
- 9 **Q** Did you sign that?
- 10 **A** Yes, sir. I signed that.
- 11 **Q** You signed that. And do you remember writing this
12 out?
- 13 **A** Yes, sir.
- 14 **Q** DVD player, presents. Is that DVD's?
- 15 **A** Yes, sir.
- 16 **Q** It looks like the little bottom half of the D just
17 doesn't connect to the dot part, right? Hair
18 clippers?
- 19 **A** Yes, sir.
- 20 **Q** Some old cellphones that were laying around the
21 house?
- 22 **A** Yes, sir.
- 23 **Q** You wrote all that out?
- 24 **A** Yes, sir.
- 25 **Q** And you signed that at the bottom?

1 **A** Yes, sir.

2 **Q** That's your signature?

3 **A** (Nods head affirmatively).

4 **Q** And he didn't threaten or coerce you in any way,
5 Lieutenant?

6 **A** No. He was pretty nice.

7 **Q** Pretty nice guy?

8 **A** Yes, sir.

9 **Q** Respectful to you?

10 **A** Yes, sir.

11 **Q** You were respectful to him?

12 **A** Yes, sir.

13 **Q** That's all. Thank you.

14 **THE COURT:** Anything further?

15 **MR. KENDRICK:** Nothing further, Your Honor.

16 **THE COURT:** All right, sir. You may come down.

17 **MR. KENDRICK:** That's all the witnesses I have
18 on this issue, Your Honor.

19 **THE COURT:** Mr. Riley?

20 **MR. RILEY:** Your Honor, I'd call Radonna
21 Whitehead.

22 RADONNA R. WHITEHEAD, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Thank you. Please be seated in the
25 witness stand and state your full name for the

1 record.

2 **THE WITNESS:** Radonna Ray Whitehead.

3 DIRECT EXAMINATION

4 **BY MR. RILEY**

5 **Q** Ms. Whitehead, are you related to Christopher
6 Whitehead?

7 **A** Yes. He's my son.

8 **Q** All right, ma'am. On the afternoon of December 15th,
9 2006, did you have occasion to go to the 200 block of
10 Boney Road in Blythewood?

11 **A** Yes, sir.

12 **Q** Why?

13 **A** My son had called me and asked me to come there.

14 **Q** Okay. When you got there what did you see?

15 **A** When I came down, when I turned down the road, I
16 first saw in a driveway a white pick-up truck with
17 Kershaw County written on it, and it was pulled
18 sideways. Then in front of that was my son's car,
19 and it was pointed towards the road. And I saw my
20 son in the car and two gentlemen standing beside the
21 car towards the back.

22 **Q** Other than your son, did you recognize any of those
23 other gentlemen that were there?

24 **A** No, sir.

25 **Q** Tell the Court what happened then or what you did

1 then?

2 **A** I then got out of the car and I walked up towards the
3 vehicle and the truck. And when I got to where the
4 driver's side of Chris's car, the two men approached
5 me then. And I looked at them and I asked them what
6 was going on. And the investigator introduced
7 himself. I believe it was Investigator Catoe. He
8 then turned towards another man, I believe the man in
9 the purple shirt, and introduced him to me.

10 At that time the man in the purple shirt stepped
11 back towards the back of the car. And Investigator
12 Catoe told me that they had stopped Christopher and
13 wanted to ask him about a murder that had occurred a
14 few days. I then looked at Christopher, and he said,
15 "I told them I didn't know anything."

16 I looked back at Investigator Catoe. He said,
17 "We asked Christopher if he would come down to the
18 Sheriff's Office with us and talk with us and he said
19 no. So then we asked him, well, you can either come
20 down to the Sheriff's Office and talk with us. My
21 partner can ride in your vehicle and you can drive to
22 the Sheriff's Office and we can talk to you. And if
23 you don't want to do that, then we'll call Richland
24 County and have you picked up for driving on a
25 suspended license."

1 He then stated that Christopher said, no, he
2 didn't know anything, and so that they then there
3 called Richland County. Okay. I looked at
4 Christopher then. And he said, "I told him I didn't
5 know anything about this and I had some place to go."
6 At that point Investigator Catoe leaned over towards
7 me and said, "I didn't prevent Christopher from
8 leaving."

9 I then looked at him and said, "Well" -- and
10 looked at Christopher and said, "Well, I'm going to
11 have to call somebody and see what's going on here."
12 So I then tried to call -- I told Christopher I was
13 going to try to call Arnold. He's an attorney that
14 we had previously used.

15 Q What's his full name?

16 A Arnold Beacham. I then picked up the phone and tried
17 to call Arnold. At that time I noticed that
18 Investigator Catoe had kind of gone back towards the
19 back where the other man was standing. I let it ring
20 just a few times and I didn't get an answer. And
21 normally his mom will pick up pretty quick.

22 So I then hung up because I noticed behind me
23 Richland County officers were coming upon the
24 driveway. At that time Investigator Catoe went to
25 the truck to back it out and pull it to the side

1 because there was no way Richland County to pull into
2 the driveway. He pulled the car over towards the
3 road area and Richland County pulled in.

4 At that moment the officer, a young one had got
5 out of the car and came over to by where the car was.
6 And I asked him what he was doing. And he said, "I
7 don't know what's going on yet." Okay.

8 Then at that moment the investigator took the
9 officer to the side and they spoke a minute away from
10 where Christopher and I was. And then when the
11 officer came back over to where we were, I asked him,
12 I said, "What's going on?" I said, "Are you
13 arresting Christopher? Are you taking him?" And he
14 said that, you know, they're going to take him and
15 that I needed to go ahead and go back to the car.

16 And I told him, I said, "Why do I have to leave
17 this area?" He said, "Well, you have a choice. You
18 can leave now or you can go in just a few minutes
19 when I make you go." So at that moment I said okay.
20 I didn't understand what was going on. So then I
21 walked across the street to the car, got in it and
22 then called my husband because I wasn't sure what was
23 going on. And he was at work.

24 At that moment I saw the officer put Christopher
25 in the back of the car. Then I saw the investigator

1 go to his truck, and he got what appeared to be a
2 camera out. And the investigator and the young
3 officer went to the back of the vehicle, and I saw
4 Mr. Catoe take a picture of the back of the vehicle,
5 and then the officer opened the trunk. They stood
6 there for a few minutes, shut the trunk, then went to
7 the driver's side of the vehicle. He then took a
8 picture of the front of the car by where the driver's
9 mirror is, and then the officer opened the passenger,
10 driver's side door, and they began to go through the
11 contents of the back seat.

12 At that point I noticed that the young officer
13 would hold something up and the investigator would
14 look at it and then they put it back in. And then
15 they shut the door. The young man then came over to
16 me. The officer, he gave me Christopher's wallet and
17 said that he wanted me to have that. Okay.

18 I asked him, I said, "Well, what are you going
19 to do?" He says, "We're going to take him to
20 Richland County and book him on driving under
21 suspended license." I told him, I said, "What are
22 you going to do with the car?" Because I had my
23 husband on the phone. And he said, "Well, we're
24 going to tow it." And I told my husband, I said,
25 "They said they're going to take the car and tow it."

1 And so then my husband asked if he could speak
2 to the officer. And he did. I gave him the phone
3 and let him speak to the officer. At that moment
4 then the officer went over to speak to the other
5 patrolman that came from Richland County. And then
6 he came back over to me and said that they decided
7 that they could release the car to me and that I
8 could take it home.

9 I asked him, I said, "Well, what are you doing
10 with Christopher and where are you taking him?" He
11 said, "We're taking him to Richland County. He'll
12 have a bond hearing at 8:00; and you can be there,
13 you know, to pick him up if you want."

14 At that moment then I got out of the vehicle and
15 I went over to go to the car to claim the Honda. And
16 Richland County pulled out. The young man did with
17 Christopher in the back. When he left Investigator
18 Catoe came over to me and asked me if he could speak
19 to me inside the truck for a moment. I then got
20 inside the truck.

21 As Investigator Catoe was getting in the truck I
22 noticed that he was on a cellphone. And I heard
23 him -- I heard, "Yes, she's here." Okay. And he
24 hung up the phone. He then said, "That was my
25 Captain, and I want you to know that you need to talk

1 to Christopher and you need to encourage him to talk
2 with us. He needs to understand that this is a
3 murder that we're talking about and that this can
4 carry murder one charges which you can get the death
5 penalty for." Okay. At that point I said,
6 "Christopher said he didn't know anything about
7 this." Okay.

8 Then Investigator Catoe then said, asked me, he
9 said, "Well, do you know that Christopher had a
10 Workmen's Comp claim this week at work?" I said,
11 "Yes, I'm aware of that." He said, "Well, do you
12 know that he lied about that?" I said, "No, he
13 didn't", you know. And then at that point the
14 investigator stopped talking. He says, "Well, I've
15 got to go. Here is my card." And then I got out of
16 the truck. The other investigator then got in the
17 truck, and they sped off to the right from the
18 driveway.

19 And at that point then the Richland County
20 officer took me over. I got in the Honda, drove it
21 to the grocery store, and then he gave me a ride
22 back. We drove past the elementary school because
23 that's where we have to go to go to the grocery
24 store. And then I came back, got the Honda, got my
25 vehicle and went home.

1 At that point I just thought Christopher was in
2 the Richland County and that he would have a bond
3 hearing at 8:00. At 8:00 I called. They said that
4 he -- go ahead.

5 Q Let me stop you there, ma'am. I'm sorry for
6 interrupting you. So when you first arrived in the
7 200 block of Boney Road, I want to be hear about
8 this. There were how many police officers there?
9 Can you recall?

10 A There were just the two investigators and my son.

11 Q Okay. And then subsequently two more officers
12 arrived from Richland County, correct?

13 A Yeah. In two separate cars.

14 Q At any time while you were there, did you witness any
15 of the officers interrogating Christopher?

16 A Not while I was there.

17 Q Did you -- at any time while you were there did you
18 hear your son say, "I don't know a damned thing about
19 it"?

20 A No. He told me that he didn't know anything about it
21 in front of Investigator Catoe.

22 Q All right. About how long would you estimate you
23 were there from start to finish?

24 A Maybe 45 minutes. I'm not entirely sure.

25 Q What would you -- how would you characterize

1 Christopher's attitude?

2 **A** When I got there Christopher was sitting calm in the
3 seat. He appeared to be relieved when he saw me. He
4 didn't cuss. He didn't say anything. He just
5 appeared to be kind of like, you know, he was upset
6 but he wasn't saying any bad words or acting
7 inappropriate.

8 **Q** Did he appear to you to be belligerent?

9 **A** No, sir.

10 **Q** Did he appear to you to be hostile?

11 **A** No, sir.

12 **Q** Thank you, ma'am. Please answer any questions Mr.
13 Meadors may have.

14 **THE COURT:** Any questions from any of the other
15 defendants?

16 **MR. WHITLARK:** None from McDonald, Your Honor.

17 **MR. KENDRICK:** No, Your Honor.

18 CROSS EXAMINATION

19 **BY MR. MEADORS**

20 **Q** Just two or three. I'm getting tired. You heard him
21 say, your son say to them, "I didn't have anything --
22 or I don't know anything about it" while you were
23 there?

24 **A** Yes, sir.

25 **Q** Okay. And your attorney asked you about -- or your

1 son's attorney -- excuse me -- asked you about
2 Workers' Comp, something about they'd asked you
3 whether you knew he lied; and you say he didn't lie
4 about that?

5 A Investigator Catoe after he had told me that, you
6 know, Christopher needed -- I needed to encourage him
7 to cooperate and what he could receive if he didn't,
8 he then paused and said was I aware that Christopher
9 had filed a Workmen's Comp claim. And I said, "Yes."
10 He said, "Did you know he lied?" I said, "No, he
11 didn't." And that was it.

12 Q That was my question. Not that you didn't know he
13 filed one, but that you know he didn't lie?

14 A Yes.

15 Q But you don't really know that, whether he lied or
16 not?

17 A Well, you're absolutely right. I can't get inside
18 his head and know. I know -- I'm aware that when I
19 dropped him off the morning of the incident he was
20 walking fine, and when I picked him up that afternoon
21 he was limping. So --

22 Q What time did he get in the night before?

23 A I'm not sure.

24 Q You're not sure?

25 A No.

1 Q The night before you dropped him off. You said the
2 night after the incident.

3 A Oh. Which night are you referring to?

4 THE COURT: She's talking about the Workmen's
5 Compensation claim.

6 MR. MEADORS: Yes, sir. But after that she said
7 that --

8 A I'm confused on that.

9 Q The night you dropped him off, what day were you
10 talking about, the night you dropped him off that he
11 wasn't limping?

12 A I believe that was -- I think that was a Tuesday
13 morning I believe.

14 Q Tuesday morning?

15 A I believe. It was either a Tuesday or a Monday
16 morning.

17 Q That you dropped him off and he wasn't limping?

18 A That I did drop him off. And he wasn't limping
19 before he went. And when I picked him up that
20 afternoon, he had said that he had fell in the food
21 preparation area and that he spoke to the manager and
22 he told her, he says, "I've hurt my ankle." And he
23 says, "I need to --"

24 MR. RILEY: Judge --

25 A -- "Fill out a --"

1 **MR. RILEY:** -- this isn't about a Workers' Comp
2 case.

3 **THE COURT:** Is that an objection?

4 **MR. RILEY:** Yes, sir.

5 **THE COURT:** Sustained.

6 **MR. MEADORS:** Your Honor, he brought it up.

7 **MR. RILEY:** I didn't.

8 **THE COURT:** Sir, it's not relevant.

9 **MR. MEADORS:** Your Honor, respectfully, to her
10 credibility, if she's saying I didn't. That's why I
11 thought I could go into it. But I understand. I'll
12 move on.

13 **Q** And I think this is relevant. You said when you
14 picked -- what time did you pick him up that day from
15 work? What day was this when Investigator Catoe --

16 **A** Spoke to him?

17 **Q** Yeah. The incident we're talking about.

18 **A** I believe that it was a Friday.

19 **Q** A Friday?

20 **A** I believe it was a Friday.

21 **Q** And you had picked him up from Sonic -- how did he
22 get to Sonic that day?

23 **A** That morning?

24 **Q** Yes, ma'am.

25 **A** I took him to work.

1 Q And what time did he leave Sonic?

2 A I picked him up that morning.

3 MR. RILEY: Your Honor, this is --

4 Q And what time? 6:50?

5 MR. RILEY: I asked this witness about the
6 events of December the 15th.

7 MR. MEADORS: That's what I'm asking her about.

8 MR. RILEY: Mr. Meadors --

9 Q That's what I'm asking about. December 15th, what
10 time did you pick up your son from the Sonic that
11 morning?

12 A I think it was somewhere between probably about 6:30,
13 somewhere between 6:30 and 7.

14 Q So you dropped him off at 6 and then picked him back
15 up between 6:30 and 7?

16 A I think.

17 Q And then where did you go?

18 A Where did I go?

19 Q Where did you take him?

20 A We went home.

21 Q And the incident that he's asked you about, the
22 statement was after that, right?

23 A Yes.

24 Q And I guess I'm getting to the point. He was route
25 restricted, correct?

1 **A** Yes, sir.

2 **Q** On his license. So he could not -- you had already
3 picked him up from work. So he wasn't going back to
4 work any more that day, correct?

5 **A** We don't know that. I don't know that.

6 **Q** But where he was talking to police wasn't anywhere
7 near Sonic?

8 **A** It wasn't -- it wasn't -- there's not a Sonic right
9 there, no.

10 **Q** But he wasn't going back to work that day?

11 **A** I don't know that.

12 **Q** You picked him up at 6:30, 7 that morning?

13 **A** Well, see, at Sonic, sometimes they go in and they
14 don't need him and they send him back home. And then
15 they have him come back in later. That's a shift
16 work. And if -- a lot of people will go in at one
17 time. They'll send them home. Like I have actually
18 picked Chris up before and he's gone back home soon
19 after that, and then he went back in. There's been
20 times that he's worked in the morning and then worked
21 in the evening shift.

22 **Q** Was the car packed like he was leaving?

23 **A** I don't believe so. No. He had done his laundry.

24 **Q** That's all.

25 **MR. RILEY:** No redirect, Your Honor.

1 **THE COURT:** All right. You may come down.
2 Thank you very much. Anything else?

3 **MR. RILEY:** No, sir.

4 **THE COURT:** From the State?

5 **MR. MEADORS:** No, sir.

6 **THE COURT:** From either other defendant?

7 **MR. WHITLARK:** No, sir.

8 **MR. KENDRICK:** No, Your Honor.

9 **THE COURT:** All right.

10 **MR. WHITLARK:** I do have an argument. Excuse
11 me, Your Honor. May it please the Court. We do have
12 an argument to make about the situation.

13 **THE COURT:** All right. Let's hear from the
14 attorney for Mr. McDonald.

15 **MR. WHITLARK:** Well, Your Honor, --

16 **THE COURT:** Hold on a minute. Just wait a
17 minute. Just give me a minute. Let me sort these
18 exhibits out. I've got seven State's Exhibits. Is
19 that correct?

20 **MS. MCDUFFIE:** Yes, sir, Your Honor.

21 **THE COURT:** Two Cannons and one Whitehead?

22 **MR. REUWER:** That's correct.

23 **MR. KENDRICK:** That should be correct for
24 Cannon, Your Honor.

25 **THE COURT:** All right.

1 (Pause)

2 **MR. WHITLARK:** Excuse me, Your Honor. Are we
3 going to have any time to eat lunch today?

4 **THE COURT:** I don't know, Mr. Whitlark. I hope
5 you're well fortified. We're going to start this --
6 I hope to start this jury trial at 2:00 if we finish
7 before then. If we can save some of these matters
8 until a later time, then we'll do it. But we need to
9 resolve this issue with regard to the statements
10 before we move on. Okay. Mr. Whitlark, I have the
11 statements now, so you may proceed.

12 **MR. WHITLARK:** May it please the Court, Your
13 Honor. Your Honor, first of all, it's our contention
14 that we've proved clearly here that these are not
15 valid waivers. The fact that there was promises made
16 about, if you testify in a case as a witness, you're
17 not going to get a death penalty trial, you're going
18 to be a witness; I mean, that's fairly pervasive
19 throughout this whole thing. And also the fact that
20 the indication of Mr. McDonald that he wants his
21 mother there, they admit that.

22 And also Investigator Catoe admits that
23 Mrs. McDonald was telling them we'll get the lawyer
24 for you as they're putting him in the truck. Now,
25 these are admissions by the police in this case.

1 The testimony of my client and of these other
2 gentlemen were that they asked for an attorney. The
3 one fellow is 17 years old. Now, he's a minor, Your
4 Honor. And he asked for an attorney. And it was
5 told that he didn't need an attorney.

6 Now, the problem with that is, is that that was
7 the evidence used to go get a warrant for my client.
8 Okay. And without that, that's the lynchpin of this
9 case. Without the Cannon statement being properly --
10 written down properly, taken in by the police, this
11 whole case falls because they don't have any probable
12 cause. They didn't have any probable cause to go
13 arrest my client. And the fact that the waivers are
14 not valid makes the suppression of these statements
15 mandatory, Your Honor.

16 The fact is, is that lawyers were asked for by
17 both these boys. This was not a matter of police can
18 keep questioning them. The law is very clear. Once
19 they asked to have an attorney present, they are not
20 to be questioned any more. And they did this all in
21 a matter of rushing through here.

22 Now, the fact that the implication of attorneys
23 or that the desire for attorneys are made by both of
24 these young men and the fact that that was ignored
25 and they were continually questioned and cajoled and

1 threatened with, would you rather be a death penalty
2 defendant or would you rather be a witness in the
3 case; it's extremely coercive, Your Honor.

4 So, on the one hand, we have what the law
5 prohibits, is coerciveness which was used; and we
6 also have promises made, a promise to be a witness.
7 And both of those are improper, Your Honor. And
8 since they're improper, these statements should be
9 suppressed.

10 They were taken in violation of their rights,
11 their Fifth Amendment rights. There is no question
12 that these young men asked for lawyers. We've got
13 proof of it. They admitted it. And they were
14 questioned further.

15 And the fact is, Your Honor, there is no
16 evidence in this case other than these statements
17 that they have, there is no case. They have no
18 forensic evidence. They have no witnesses to put
19 them at the scene. They don't have anything at all.
20 SLED comes back negative, zero. They don't have
21 anything. Nothing ties them to this case except
22 these statements.

23 And these statements are handwritten by the
24 investigator for this case. You've heard the
25 testimony of Mr. Cannon. He signed off on blank

1 pieces of paper. We've had three witnesses say so.
2 I mean, it becomes a situation where Robert Cannon
3 refuses; according to the evidence, if you'll look at
4 Exhibit 1, you'll see there, Catoe writes down
5 himself: "He wanted some help before he said
6 anything." And he admitted it. Catoe admitted it.
7 At that point they didn't have enough evidence to do
8 anything.

9 And then they call the Captain down there. The
10 Captain meets with them. And the next thing you know
11 they're getting the information they want; despite
12 the arguments of Cannon that, I don't know about
13 this, I can't help you with this, he kept telling
14 them that. Then if you'll look at Exhibit 1, he
15 wanted help. The police chief shows up. Or the
16 Captain shows up. He's there for ten minutes. The
17 next thing you know they're writing these statements
18 out and they get the cooperation they want.

19 Your Honor, I mean, clearly the implication is,
20 and the circumstantial evidence is, that they
21 promised him leniency or he'd be a witness in this
22 case. And they got these statements, pulled these
23 statements out. There is no case here. This case
24 needs to be dismissed, Your Honor, because of that.

25 And the fact of the matter is, when you add this

1 whole case up, when you sift through this thing,
2 you're looking at the only piece of evidence tying
3 those two young men to this case. And without it,
4 they should have arrested somebody else, because they
5 don't have anything pointing to these boys. And our
6 argument is, is that they should be suppressed,
7 certainly should be suppressed.

8 Certainly, Your Honor, the waivers are not
9 valid; and, therefore, the statements were taken in
10 violation of the Fifth Amendment. And since they
11 arrested Mr. McDonald here, he had a Sixth Amendment
12 right to counsel, Your Honor, since he had been
13 formally charged at that time.

14 So they violated Mr. McDonald's Fifth Amendment
15 rights. They violated his Sixth Amendment rights
16 when he asked for a lawyer after he was arrested and
17 formally charged. And so we would ask the Court to
18 suppress those statements and not let this jury hear
19 about them. That's what we have, Your Honor. Thank
20 you.

21 **THE COURT:** Mr. Kendrick.

22 **MR. KENDRICK:** Your Honor, may it please the
23 Court. My argument obviously is going to be
24 substantially similar to Mr. Whitlark. What I'd ask
25 you to look at here, and specifically my argument is

1 that my client was made some type of promise, some
2 type of inducement to get this statement out of him.
3 And that's clearly improper.

4 Now, it's very interesting that I believe on
5 cross examination of one of the witnesses that the
6 case of State v. Peake was brought up; Your Honor, a
7 case that I found last night. And I'm sure we don't
8 need this. But can I prove that I've never seen it
9 until last night.

10 **THE COURT:** Well, I have it. I have it. I've
11 read it.

12 **MR. KENDRICK:** Okay. Your Honor knows that that
13 case --

14 **THE COURT:** The officer admitted it. The
15 officer admitted it.

16 **MR. KENDRICK:** Admitted it, correct, Your Honor.
17 And the reason I bring that case up is because that
18 isn't the only case that says this. There is a long
19 line of cases, especially out of the United States
20 Supreme Court that goes to the same thing, Your
21 Honor. And there may be a situation where the
22 officer doesn't have to admit it for you to make the
23 decision. We look at the evidence that's been put in
24 front of us, Your Honor.

25 **THE COURT:** That's true.

1 **MR. KENDRICK:** And I certainly by no means
2 impugn the honor of these officers, just that they
3 were in a position where they trying to get a
4 confession. They were under pressure, Your Honor.
5 There is no doubt about that. This case opened on
6 the 12th; it closed on the 16th. You know, there was
7 obviously tremendous community pressure to make a
8 case here, make an arrest.

9 My client is at his house. He's with his
10 parents. You hear the testimony, Your Honor, and
11 that he's there at his house. He's with his parents.
12 The police come in. They then question him and he's
13 denying his involvement. In the officer's notes,
14 Your Honor, it says: "He told us he would tell us
15 something if we gave him some help." So the officer
16 writes that down.

17 Now, we look at the circumstances that develop
18 at this point. Captain Thomley shows up. Now, he is
19 unclear when he testifies on what he showed up for.
20 He's like, you know, they must have not have thought
21 the investigator could -- and really not sure what he
22 was thinking he was there to do.

23 My client's testimony, the parent's testimony
24 would certainly lend support to the fact that Mr.
25 Catoe is telling my client that he is going to help

1 him out. My client doesn't believe him. He thinks
2 he's just a regular cop; he can't make that promise.
3 So they call in the boss, Your Honor. They call in a
4 higher up. They call in the third in command of a
5 60-something person Sheriff's Department to make that
6 inducement to him, to make that promise.

7 Now, Your Honor, while I agree that State v.
8 Peake has an exact statement that was said which is,
9 you know, we won't seek the death penalty, that is
10 certainly not the end of that question. What the
11 other cases say, Your Honor, and what I would refer
12 to as, I believe it's actually State v. Broome which
13 is the leading case, but it's been I guess further
14 developed by Peake. I can give you these cites, Your
15 Honor. Broome is 268 S.C. 99.

16 **THE COURT:** Peake is a 1987 case.

17 **MR. KENDRICK:** Yes, sir, Your Honor. My point
18 is that Broome starts this line in our State. I only
19 have about four or five cases here. But I think
20 right in conjunction they give you the answer to this
21 question.

22 You've got Brougham vs. United States, 168 U.S.
23 532. That's an 1897 case, a murder on the high seas.
24 That's where this all started, Your Honor; that by
25 offering someone some hope, this is something that

1 goes back to the oldest of English laws, and that's
2 what they discuss in Brougham, that by offering
3 somebody some stretch of hope, some thought they
4 might get out of trouble, you basically make their
5 statement involuntary. It's unreliable. Because
6 there is no way to tell what pressure this officer
7 put on my client and what his reaction to it was.
8 There is no way for us to truly evaluate what
9 happened there. So I think the cases have erred to
10 the side of the defendant on this as they well should
11 have.

12 South Carolina adds kind of a caveat that came
13 out of Peake that the promise of leniency makes it
14 involuntary if it's so connected with the inducement
15 to be a consequence of the promise. Now, that is
16 somewhat convoluted, Your Honor; but the way I read
17 it is that the statement is basically results from
18 the promise.

19 And in this case that's what happens. You have
20 clearly got an officer who says, we'll help you out,
21 we'll make sure you're a witness, write this
22 statement. His boss shows up, Your Honor. That's a
23 strange thing to happen at the exact time that the
24 statement goes from an interrogation and a denial,
25 the boss shows up, now we have an admission. That's

1 clearly what the timeline shows, Your Honor.

2 And it's my position that if those officers held
3 out any hope to a 17-year-old kid that he was not
4 going to get in trouble if he just told them what
5 they wanted to hear, then this statement is
6 involuntary, absolutely.

7 And, Your Honor, it's supported not only by the
8 actions that take place in the hearing, I mean in
9 the -- I apologize. Getting stuck on hearings. In
10 the house, but it's supported by what they do
11 afterwards, Your Honor. They leave him there.

12 Now, that is -- and we've heard several officers
13 up here testify, oh, you know, on a case-by-case
14 basis we will leave people at their home; we won't
15 take them into custody. Certainly Your Honor's
16 experience in the legal field is far greater than
17 mine, but when someone confessed to a crime that has
18 very serious facts, very severe facts, very violent
19 facts, it's almost unthinkable that if the cops truly
20 believe that they have the right suspect they would
21 just leave him there. And, in fact, they didn't do
22 that with the other two.

23 So, Your Honor, I don't know why. The only
24 explanation they give for it is that we thought his
25 parents were honest and credible people. This is

1 coming from the police who had the opportunity to
2 view them on the scene. Their behavior during the
3 questioning of their son on a murder investigation
4 led them to believe they were credible, they were
5 honest people, they would not later lie. That turns
6 out to be true, Your Honor. They come in here and
7 they tell us exactly what they saw that night.

8 Your Honor, they say they got a promise made.
9 So you have one, two, three witnesses saying they had
10 a promise made. You have Captain Thomley saying, we
11 told the judge and the prosecutor that we'll tell
12 them that he cooperated.

13 Now, Your Honor, I think in that case, even
14 there you're getting very close to the line, and if
15 you look at the other facts, the circumstantial
16 evidence surrounding what happened at this night that
17 it tips it over, that that's clearly coming in here
18 in court. He knows that. That's about as far as he
19 can go.

20 And, Your Honor, I'd argue that even that's too
21 far to say, I'm going to tell the judge or the
22 solicitor something favorable about you, because
23 these earlier cases that have not been overturned,
24 they say it's a shred. It's any hope. It's any
25 false inducement, anything. And that leads us to an

1 involuntary confession.

2 Your Honor, I'd ask you to look at the testimony
3 that you heard, look at the fact that Thomley almost
4 admits that he is going to do something improper; he
5 stops just short of it. The notes from Catoe which
6 are our Exhibit No. 1 again suggest that there is a
7 discussion of help; I need some help here. And then
8 there are actions on the scene, Your Honor, surely
9 supporting the fact that they were in fact helping my
10 client.

11 And then, Your Honor, the final thing, they in
12 fact did help my client. They actually were lenient
13 to him. They left him at his home and let him turn
14 himself in the next morning. Your Honor, the parents
15 were not even -- they didn't even stay in town.
16 Obviously there was some promise made to Mr. Cannon
17 to get him to say this; and that's all he needs in
18 this courtroom, Your Honor, for that statement to be
19 held involuntary, and we'd ask that you do that.

20 **THE COURT:** Mr. Riley.

21 **MR. RILEY:** Your Honor, obviously my role in
22 this Jackson v. Denno hearing was much more limited
23 than either Mr. Whitlark's or Mr. Kendrick's because
24 my client did not execute a -- there is no issue
25 concerning a written statement. And my efforts were

1 just devoted to following up on an alleged oral
2 statement. I can't add anything to the eloquent
3 arguments that have been made by my co-counsel.

4 **THE COURT:** All right. Does the State have a
5 position?

6 **MR. MEADORS:** Yes, sir. May it please the
7 Court. Your Honor, there's a case of State of South
8 Carolina vs. Wayne Arrowwood, a case out of our Court
9 of Appeals decided October 17th just this past year
10 by The Honorable Ralph King Anderson. Cert was
11 denied by the Supreme Court. And in my opinion this
12 case is dispositive of this issue. I thought I had
13 three. There's two there and here's a copy for Your
14 Honor.

15 (Document handed to the Court)

16 **MR. MEADORS:** And before I get to this, the
17 difference between this case and State v. Peake was
18 there you had an officer take the stand and say,
19 yeah, I did tell him the death penalty.

20 **THE COURT:** I recognize that.

21 **MR. MEADORS:** And in this case that has been
22 categorically denied by all of these officers. So we
23 think Peake is not the issue here. And again, this
24 case, before I get to Arrowwood has been recently --

25 **THE COURT:** Promise of leniency is apparently

1 the case that Mr. Kendrick relies on.

2 **MR. MEADORS:** Well, this is State v. Arrowood
3 which is directly on point, Your Honor. It's a case,
4 I think there were some North Carolina charges and
5 the Solicitor's Office from Spartanburg. And this
6 individual, Mr. Arrowood, said that the police in
7 North Carolina had talked to the police in
8 Spartanburg; they'd agreed to -- his allegations were
9 they'd agreed to consolidate the charges, maybe get
10 rid of some charges in North Carolina, do it all at
11 one hearing.

12 The officers I assume in a hearing sort of like
13 we have said; no, sir, that's not what happened. We
14 agreed we would make his cooperation known to the
15 Court. Specifically, to do that, you'd have to go
16 through the prosecutor.

17 Judge, I don't know what kind of cases he was
18 talking about leading to. This case is right on
19 point, Judge. And Judge Anderson specifically --
20 obviously Your Honor determines the admissibility by
21 a preponderance of the evidence at this point. And,
22 Judge, on page -- "The officers, Tucker and" -- and
23 I'm on the last page, page 8, of 652 S.E.2d 438. And
24 this again: "Arrowood has asserted his statements
25 were not freely and voluntarily given because they

1 were induced by the officers' promise to help as long
2 as he cooperated with the investigation. The
3 defendant claimed the helped promise was to have the
4 North Carolina charges dropped, secure a low bond,
5 and have other charges run concurrently. The
6 officers in that case categorically denied making
7 those promises. Instead, they insist the only help
8 they offered Arrowood was to testify in court he
9 cooperated with the investigation to make known his
10 cooperation to the court."

11 In this case, Your Honor, unlike the
12 uncontroverted evidence in Peake, at the Jackson v.
13 Denno hearing, Arrowood's testimony challenged the
14 officers' denial that they promised him leniency.
15 The Court encountered similarly conflicting
16 testimony. And he cites another case.

17 In this case, Your Honor, Arrowood's testimony
18 completely contradicts officers. It was within the
19 trial judge's province to determine the admissibility
20 of statements by a preponderance of the evidence and
21 declared that error record in that case, which is
22 identical to here we submit, is not in error if there
23 is any evidence in the record to support it.

24 Judge, wait a minute. Your Honor, this case
25 stands we think for the proposition telling that

1 you're going to let your cooperation be known to the
2 Court is not a promise that Judge Anderson felt and
3 this Court of Appeals where cert was denied by the
4 Supreme Court, there is nothing to show that a
5 person's will is overborne or that the promise is so
6 induced to the outcome to automatically kind of
7 require it. So we rely on this case.

8 A couple of other positions, Your Honor. For
9 the record Mr. Whitlark said that the officers
10 admitted they would get him an attorney as they went
11 out to the car. I don't remember hearing that in the
12 record at all. So we certainly would dispute that.
13 He's shaking his head. I'm shaking my head no. I
14 don't think it's in there.

15 And, Judge, you had some officers take the stand
16 in this case, say, we read him his rights, he
17 understood his rights. They signed the rights, both
18 of them, Your Honor. As to Mr. Cannon, he says he
19 signed five times. Five times. And there is another
20 signature on the fifth page. And just let him go.
21 But he also admits the notes. He saw him take notes.

22 Clearly it comes down to a credibility issue.
23 Obviously Mr. Kendrick says he doesn't mean to impugn
24 anything to the officers; but yet, he's saying
25 they're lying. I mean, there is no other way to say

1 it. He's saying that he put down on that statement
2 and gave them a blank statement. That's what he's
3 saying. He's saying they made that up.

4 We've had one, two, three, four officers who
5 have taken the stand and told Your Honor, we didn't
6 promise him anything. The only thing we said is was
7 we'd let his cooperation be known. That's Captain
8 Thomley. Under oath they said, we didn't promise
9 anything. We didn't talk to the death penalty. They
10 signed these waivers.

11 No dispute Phil Crawford, Robert, Mr. Cannon
12 said, no, he was nice. He was fine. No dispute
13 about that. He denied he even read him the first
14 Miranda. Denied that. I'm not sure that's his
15 signature. But then he says, well, I did sign that
16 polygraph consent form.

17 Respectfully, I'll say it this way, we just
18 think that the credibility is in favor of the State
19 here. Your Honor's burden is preponderance of the
20 evidence in this case. We think we've met that.
21 Wonderful jury closing arguments they've given.
22 Wonderful. And we think that's where they need to be
23 held and who should hear it, the jury. Thank you.

24 **MR. WHITLARK:** Your Honor, if I could briefly
25 respond to that?

1 **THE COURT:** Certainly.

2 **MR. WHITLARK:** Your Honor, certainly the fact
3 that Officer Catoe admitted on the stand there that
4 he heard Mrs. McDonald say, we're getting you the
5 lawyer; now, he admits that, and he admits that
6 McDonald didn't want to talk unless she was there.
7 Now, they're saying that he had a complete
8 turn-around once he got away from everybody and of
9 course he wanted voluntarily to do all this.

10 Now, you've heard his testimony, Your Honor. He
11 asked for a lawyer three or four times. They can't
12 deny that they heard that, that they heard from the
13 mother he was getting a lawyer. And they also have
14 the proof of him not wanting to talk with them at all
15 unless the mother is present.

16 Now, Your Honor, they haven't overcome that by a
17 preponderance of the evidence. And also, Your Honor,
18 I believe Catoe admitted or wasn't sure whether or
19 not he had mentioned the death penalty to them. Now,
20 you know, he didn't say unequivocally, no, I didn't
21 say that. I asked him: Didn't you ask them if they
22 wanted to be a witness or a defendant or a
23 co-defendant in a death penalty case? And he said he
24 couldn't remember if he had said that. He didn't
25 deny that.

1 That is extremely coercive, Your Honor. I mean,
2 obviously what we have proven here today is that they
3 left a young man according to them who has admitted
4 to being involved in a brutal murder, they left him
5 at his house. I don't care how many times, they say
6 they've done this all the time; I've never seen it in
7 27 years, where somebody who admits to murder is left
8 at home.

9 That fact lends strong support to this argument,
10 Your Honor, about the promise of help and then the
11 showing up of the Captain, and then they don't take
12 him into custody. That's strong evidence right there
13 of what occurred here, Your Honor. And they say
14 they've overcome their burden in this hearing. Well,
15 they sure haven't. They can't explain that one away,
16 Your Honor. I mean, that's very clear evidence that
17 this help was provided, these promises were made; and
18 that is in violation of the Fifth Amendment, and it
19 wasn't voluntary. Thank you, Your Honor.

20 **THE COURT:** Mr. Whitlark, do you have any case
21 law as to whether or not a third party can invoke on
22 behalf of the accused?

23 **MR. WHITLARK:** I'm sorry, Your Honor?

24 **THE COURT:** Do you think and do you have any
25 support for the position that a third party, whether

1 it be a mother or any other family member or spouse
2 or anything else, can invoke for a defendant or an
3 individual that's accused?

4 **MR. WHITLARK:** No, sir. That's a personal
5 right.

6 **THE COURT:** That's what I thought.

7 **MR. WHITLARK:** Yes, sir. It is a personal
8 right.

9 **THE COURT:** All right.

10 **MR. WHITLARK:** But, Your Honor, I'll tell you
11 this. You're never going to be in a Jackson v. Denno
12 hearing and have a police officer tell you, yes, he
13 asked for a lawyer but we didn't give him one and
14 took the statement anyway.

15 **THE COURT:** Well, that's why this is a
16 preponderance of the evidence hearing and not a --

17 **MR. WHITLARK:** Yes, sir.

18 **THE COURT:** -- beyond a reasonable doubt
19 hearing.

20 **MR. MEADORS:** That's what the officer in Peake
21 did though.

22 **THE COURT:** I understand.

23 **MR. MEADORS:** Yes, sir.

24 **THE COURT:** All right. Counsel, why don't you
25 take the next -- let me ask you this. Is there

1 anything else prior to the start with the jury that
2 you want to put on the record prior to the jury being
3 here?

4 **MR. WHITLARK:** Yes, sir.

5 **THE COURT:** Tell me about it.

6 **MR. WHITLARK:** Yes, sir. Pursuant to Rule 5,
7 Your Honor, we have asked for a burglary file. We
8 brought it up in your office. They said they were
9 going to give it to us, and I haven't gotten it yet.
10 Now they're trying to say it's not relevant after
11 promising to give it to me. They say they can't find
12 it.

13 **THE COURT:** Why do we need that before the jury
14 starts?

15 **MR. WHITLARK:** Well, it's going to affect my
16 opening argument, I believe what's in there if what I
17 think is in there.

18 **MR. MEADORS:** Judge, it was yesterday when we
19 talked about this. I was here until 10:30 last night
20 working back here with Mr. Moak. But that burglary
21 file, if he's planning on going into that in opening,
22 we need to talk about opening because clearly there's
23 no way that's relevant in an opening statement.

24 **THE COURT:** I don't know if it is or not. What
25 is it?

1 **MR. MEADORS:** There were -- the victim in this
2 case had a -- it's my understanding; I have not seen
3 the file -- had a burglary charge, prior burglary
4 charge.

5 **THE COURT:** Richland County or Kershaw County?

6 **MR. MEADORS:** Kershaw. Obviously that's been
7 dismissed because he is deceased.

8 **THE COURT:** What's the timing of it? I mean,
9 what's the relevance of it?

10 **MR. WHITLARK:** Your Honor, it's about 60 days
11 before this. The first person they pick up in this
12 case is the guy he robbed. He broke in and arm
13 robbed him. This is just shortly before this guy is
14 killed. This witness or this victim of the burglary
15 by the dead guy has --

16 **MR. MEADORS:** That would be Mr. Zoch, for the
17 record.

18 **MR. WHITLARK:** Yes. Mr. Zoch. They have
19 evidence and witness testimony that this guy sworn to
20 get him. The guy that was robbed, 60 days before is
21 sworn to get Zoch; the first guy they pick up, too.

22 **THE COURT:** Where do you have that information?

23 **MR. WHITLARK:** From their file.

24 **MR. MEADORS:** And he's got.

25 **MR. WHITLARK:** Oh, I've got that, Your Honor.

1 **THE COURT:** So you've got it. Okay.

2 **MR. WHITLARK:** They gave this guy a polygraph
3 test. He failed it. Whether or not he was involved
4 in it. And when he falls off the radar. He's the
5 first person they went and picked up in this case.

6 **THE COURT:** So what are you trying to do? I
7 mean, if it's a third party guilt issue, you've got
8 to have more than that.

9 **MR. WHITLARK:** Well, Your Honor, there is two
10 eye witnesses that this guy said he was going to get
11 this guy and that he wasn't waiting -- \$4,000 was
12 confiscated in this case out of that guy's house.
13 There's a statement from that fellow, he ain't
14 waiting two years to get his money back. Not only
15 that, Your Honor; there were two people with Zoch
16 when he robbed this house who have never been
17 identified.

18 **THE COURT:** You know, this has to have something
19 to do with your client's guilt or innocence.

20 **MR. WHITLARK:** I know it does, Your Honor. And
21 it does. Your Honor, about ten days before this
22 young man, Zoch, was killed, it became well known
23 throughout the community, this community -- you'll
24 find out; they won't dispute this -- that he was
25 working for the police. He was a snitch; and that

1 one of the witnesses --

2 **MR. MEADORS:** Your Honor, we'll dispute that.
3 Objection. It is well known; I dispute that.

4 **MR. WHITLARK:** It was well known among these
5 people that we're talking about in this case.

6 **THE COURT:** Who was?

7 **MR. WHITLARK:** That Mr. Zoch, the decedent, he
8 was working for the police, turning people in.

9 **THE COURT:** Okay.

10 **MR. WHITLARK:** Now, Your Honor, if he's turning
11 people in and he's involved in a burglary 60 days
12 before this with two people who haven't been
13 identified yet and he's turning State's evidence on
14 people, and there are about six or eight suspects in
15 this case that have a -- my client has no motive.
16 They can't prove a motive on my client, but you can
17 show a strong motive on these six. The one guy was
18 in the drug business with this fellow and then he arm
19 robbed or put a gun to this guy's wife or girlfriend
20 60 days before this, the first guy they picked up,
21 fails a polygraph by being involved in it, falls off
22 the radar suddenly.

23 You know, Your Honor, they're claiming this case
24 about snitches is that Mr. Whitehead was going to
25 fight him because he had been snitched on by the guy.

1 So they can't claim they don't know about this snitch
2 thing. That's what they're going to argue to the
3 jury, that he was going to get him for that reason.

4 And so, Your Honor, the fact is this burglary
5 file is very important to me. I've got -- we've got
6 two eye witnesses that this guy said he was going to
7 get this fellow and that he wanted his money back
8 right away. And the only way to get it back instead
9 of waiting for trial is to kill the fellow. And it's
10 very, very real relevant to me and my client.

11 **MR. MEADORS:** Your Honor, he's got all the
12 information about any of these threats that have been
13 again to him. The burglary file, I have never seen
14 it. He can have it all.

15 **THE COURT:** Let's go ahead and turn it over.

16 **MR. MEADORS:** I have no problem with that.

17 **THE COURT:** In the spirit of full disclosure.
18 It may not be relevant. It may not be admissible.
19 And whatever Mr. Whitlark is talking about in terms
20 of his opening statement, I doubt that it's a proper
21 matter for opening statement at this point.

22 **MR. WHITLARK:** Obviously that's why I need to
23 see it.

24 **THE COURT:** Well, I understand. I'm trying to
25 get it for you.

1 **MR. WHITLARK:** Thank you.

2 **THE COURT:** Is it available within -- or do you
3 have to go to Lugoff and get it?

4 **MR. CATOE:** No, sir, Your Honor. I'll have to
5 call the investigator that worked that case.

6 **THE COURT:** All right. I'll --

7 **MR. KENDRICK:** Could I ask you something, Your
8 Honor? I don't mean to cut you off. But after Mr.
9 Meadors spoke on Arrowood, I actually would like to
10 point out to the Court some distinguishing factors in
11 that case relevant to our argument on the statements.
12 I wasn't sure if we were moving on beyond that or --

13 **THE COURT:** Well, I'm trying to get -- I'm
14 asking for your final answer. That's what I'm asking
15 for. Is that your final answer?

16 **MR. KENDRICK:** Well, I'm aware of that, Your
17 Honor. I have more argument on the confession issue
18 just in direct response to what Mr. Meadors brought
19 up.

20 **THE COURT:** Go ahead. Put it on the record.

21 **MR. KENDRICK:** Thank you, Your Honor. Your
22 Honor, looking at Arrowood which I just did while Mr.
23 Meadors was reading it, he's certainly correct in how
24 he characterizes the case. But it's obviously
25 distinguishable from this case. The testimony is

1 different, Your Honor. In Peake there is very clear
2 testimony --

3 **THE COURT:** Let's just do away with Peake.
4 Peake is a completely separate case where the officer
5 admits it.

6 **MR. KENDRICK:** Sure. Okay. In Arrowood, Your
7 Honor, there is two cops against one person. And
8 that's the testimony. I think that his statement,
9 credibility is in favor of the State. I mean, I hope
10 he's using that as a persuasive argument. Actually
11 we get the benefit of the doubt, even though it's a
12 very slight benefit. It's not what we get in a
13 reasonable doubt situation. The preponderance of the
14 evidence tells you that if you're not quite sure, if
15 you think it's probably more likely we did it, then
16 we win. Because whether or not I'm making a jury
17 argument, I'm actually making it to the fact finder,
18 Your Honor, which is at this point you.

19 I think if you look at the Arrowood case, the
20 testimony is entirely different. There are two cops
21 who say that absolutely didn't happen and there is a
22 guy in custody who was in custody when all this
23 happened and says it did.

24 The difference in this case is that we have more
25 than they had in Arrowood because we have someone out

1 of custody with two witnesses watching what goes on;
2 and we have, Your Honor, a record of, if you will,
3 strange events for this type of situation where
4 someone is clearly coming from the upper management
5 levels of the Sheriff's Department to a defendant's
6 house to have some type of brief conversation with
7 them and then leave. I think that lends a lot of
8 credence to the parents and my client's testimony
9 that he was coming there to make that promise.

10 Now, and that's all I want to say, Your Honor,
11 is that Arrowood is not on point here any more than
12 anything else. The law is not any different than it
13 has been since 1897. Arrowood is discussing a set of
14 facts; and, again, they're discussing Judge Hayes'
15 ruling, Your Honor, not saying that because he ruled
16 that way that is now the in the lower courts. I
17 think it's very clear that he made a finding of fact
18 on the testimony. So I just think that while
19 Arrowood is on point, it's no more on point than any
20 other status or statement of the law we have made.

21 **THE COURT:** Anything further?

22 **MR. MEADORS:** No, sir.

23 **THE COURT:** Take about a -- the jury will be
24 back in 15 minutes. We'll take about a 15-minute
25 break and I'll give you my ruling. Thank you.

1 (Whereupon, a break is taken)

2 **THE COURT:** All right. With regard to the
3 statements -- and I guess I need to do these one at a
4 time. But in general terms, as you know, the
5 standard by which I must judge the admissibility of
6 evidence is by a preponderance of the evidence. And
7 in this situation obviously we have conflicting
8 statements as to what took place prior to execution
9 of the statements of both Derrick McDonald and Robert
10 Cannon.

11 I have reviewed what you've handed up, counsel.
12 And let me say first that as to the issue of
13 invocation -- and, counsel, you understand what I
14 mean; that is, your right to counsel -- I don't find
15 that there was an invocation. And I'm going to spell
16 this out more clearly in a minute. But I don't find
17 a clear invocation by a preponderance of the evidence
18 on behalf of either of the two defendants who gave
19 statements.

20 And let me just say before I even get too far
21 along; as to Christopher Whitehead, I find the
22 statement was given to either -- or in the presence
23 of the Kershaw County deputies and perhaps the
24 Richland County deputies that he didn't know anything
25 about -- and I forget the exact words. But he

1 basically said, I don't know anything about this
2 case; I don't know anything about the death; I find
3 that was a voluntary statement and is not subject to
4 the strictures of Miranda warnings prior to any
5 statement. Any defendant can make a voluntary
6 statement with or without -- well, let's put it this
7 way; prior to any -- he was not in custody and he was
8 not being interrogated. I find his statement was
9 voluntary. So I don't really need to address that in
10 any greater detail.

11 But as to the invocation, as I say, I asked Mr.
12 Whitlark specifically if he understood or had any
13 case law that would suggest that an individual or a
14 third party could invoke for an individual. And he
15 agreed with I think what is the law, that no one can
16 invoke; it's a personal privilege. No one can
17 invoke, a third party, can invoke the privilege for
18 somebody else.

19 And I'd state -- I mean, I would refer counsel
20 to State v. Benny which is a case in which the wife
21 apparently attempted to invoke for the husband. And
22 the court said that was insufficient, that the
23 individual must invoke himself.

24 Now, I understand we're dealing with young
25 people here, but we're also dealing with rather

1 serious charges. So I also would refer to the State
2 v. Register case in which the juvenile requested that
3 his parents be present. That also does not meet the
4 standard of invocation of Fifth Amendment rights.

5 So, I say as a preliminary matter I don't find
6 by a preponderance of the evidence a clear invocation
7 of either Robert Cannon or Derrick McDonald. Plus
8 the fact that I have in front of me the State's
9 Exhibits waiving their rights to counsel. And that
10 has been testified to by an officer who not only has
11 indicated that there was a -- that both parties
12 executed a waiver, but they also later in the process
13 executed what appeared to be statements.

14 And I frankly haven't even read the statements,
15 whether they're inculpatory or not, but I assume they
16 are. So I do not find by a preponderance of the
17 evidence that there was an invocation.

18 Now, the next question is whether the statements
19 were given freely and voluntarily. And I have
20 reviewed case law, recent case law and some historic
21 case law including Rochester and -- State v.
22 Rochester I should say. And of course we all have
23 been over State v. Peake. And I reviewed the recent
24 case of State v. Arrowood and the historic
25 development of the promise of leniency theory. Or

1 it's not a theory. It's a fact. I mean, it's a
2 tenet of our law.

3 But I don't find again by a preponderance of the
4 evidence that there were promises of leniency. Now,
5 there is certainly conflicting testimony on this
6 issue, and it's very -- it's somewhat troubling. But
7 I still don't believe I can find by a preponderance
8 of the evidence that there was a promise of leniency
9 which extracted the confessions. I mean, State v.
10 Arrowood points out that promises of help are not
11 promises of leniency, or they are not so much as to
12 overpower the mind of a defendant.

13 State v. Register talks a lot about threats of
14 force or violence; or in the case of Hutto v. Rullis
15 talks about the statement must not be obtained by
16 direct or implied promises, however slight, by the
17 exertion of -- or by the exertion of improper
18 influence. And I think that's where Mr. Kendrick is
19 going with this case, that in his opinion that there
20 are implied promises here.

21 But the testimony of the officers say there was
22 some indication that they would mention to the Court,
23 mention to the Solicitor's Office that there was
24 cooperation. But I don't -- I can't find that that
25 in and of itself was a determining factor in whether

1 or not these young men would make a -- give a
2 statement to the police. I assume they're
3 inculpatory or not. I mean, these are one -- Mr.
4 McDonald in particular seems to be, at least by now
5 if not at that time, particularly well educated, well
6 spoken, full knowledge of his rights, ultimately
7 gives a statement.

8 Mr. Cannon, particularly his father, indicates
9 that he clearly understood the law and his son's
10 rights. I mean, both of these defendants had a right
11 to remain silent which they chose not to do.

12 And whether the promise of a recommendation to
13 law enforcement, to the Solicitor's Office or to the
14 Court that there might be some leniency derived as a
15 result of that cooperation in my mind is not so
16 overbearing; as Peake and both Rochester point out,
17 that the statement induced by a promise of leniency
18 is involuntary only if so connected with the
19 inducement as to be a consequence of the promise.

20 And I can't find that -- although that may be
21 what they believed, I can't -- I mean, based on the
22 evidence that I have heard, I can't find that by a
23 preponderance of the evidence.

24 So I think both statements or series of
25 statements are admissible. You understand, and I

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

State of South Carolina,

Respondent,

V.

Robert L. Cannon, III

Appellant.

RECORD ON APPEAL
Volume Two

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1 know you understand, that this is not my decision
2 other than as a preliminary matter that the
3 statements are admissible by a preponderance of the
4 evidence. But as somebody pointed out, it's up to
5 the jury to decide whether or not these statements
6 were freely and voluntarily given. And that has to
7 be beyond a reasonable doubt.

8 So based on that analysis of this case, I have
9 carefully considered all the evidence that's been
10 offered by the State and the defendants and am
11 convinced by a preponderance of the evidence -- and
12 that's my standard, and I so find -- that before the
13 alleged statements were obtained from the
14 defendants -- and this applies to both defendants --
15 the defendants were fully advised of their rights
16 under the Fifth and Sixth Amendments to the
17 Constitution of the United States, and that the
18 defendants were advised of the Constitutional
19 safeguards required by Miranda vs. United States as
20 follows:

21 The defendants were advised prior to any
22 interrogation that they had the right to remain
23 silent. The defendants were advised prior to any
24 interrogation that if they waived their right to
25 remain silent and made a statement that such

1 statement could and would be used against them in a
2 court of law, that the defendants were advised prior
3 to any interrogation that they had the right to
4 employ or select an attorney of their own choice,
5 that if they did not have the money, resources or
6 funds to employ an attorney that the court would
7 appoint and provide an attorney for them; and, if so,
8 if they so desired, without cost or expense to them,
9 and that they had the right to have their attorney
10 present with them at all times during all interviews
11 and interrogations, that the defendants were advised
12 prior to any interrogation that they had the right to
13 consult with their attorneys before interrogation,
14 that they were advised prior to any interrogation
15 they had a right to interrupt and terminate the
16 interrogation at any time.

17 They had further the right to stop answering
18 questions at any time during the interrogation, that
19 they were advised prior to any interrogation that
20 even if during the interrogation they desired an
21 attorney, the interrogation would cease until an
22 attorney was provided for them and they were given
23 the opportunity to consult with their attorney prior
24 to further interrogation, that the defendants
25 knowingly and intelligently waived their rights under

1 the Fifth and Sixth Amendments to the Constitution of
2 the United States and the Constitutional safeguards
3 required by Miranda vs. Arizona, and that the alleged
4 statements given by the defendants were freely and
5 voluntarily given, without duress, without coercion,
6 without undue influence, without reward, without
7 promise or hope of reward, without threat of injury,
8 and without compulsion or inducement of any kind; and
9 that such alleged statements were the voluntary
10 product of the free and unconstrained will of the
11 defendants.

12 This Court finds all of the foregoing
13 conclusions by a preponderance of the evidence; and
14 I, therefore, find the statements are admissible into
15 evidence. All right, counsel. Are you ready for the
16 jury?

17 **MR. WHITLARK:** May it please the Court?

18 **THE COURT:** Yes, sir.

19 **MR. WHITLARK:** I just think we'd better set some
20 parameters on the opening statement. I still don't
21 have that burglary file. And I was planning on
22 saying some things that are contained or relevant or
23 related to that. I think it might help us to have a
24 conference about this.

25 **MR. MEADORS:** The Captain during that short

1 recess has obtained it. I want to thank him for
2 that. Your Honor, it's the original case jacket. I
3 would like to just make a copy real quick so we leave
4 the original with the Sheriff's Department.

5 **THE COURT:** I understand. But let's let Mr.
6 Whitlark look at it.

7 (Pause)

8 **MR. MEADORS:** Your Honor, I think that Mr.
9 Whitlark had seen the incident report he said. And
10 other than that, there are a few other items. They
11 have now reviewed all of it. I'm going to ask
12 somebody in our office to get a copy, a full copy for
13 all of them by this afternoon.

14 **THE COURT:** All right, Mr. Whitlark. Do we need
15 to address any issues?

16 **MR. WHITLARK:** No. No, we don't, Your Honor.

17 **THE COURT:** All right. Thank you.

18 **MR. WHITLARK:** We do have some issues about the
19 redactions of these statements, Your Honor.

20 **MR. KENDRICK:** Your Honor, besides reaching an
21 agreement on the Bruton issue, so I assume that it
22 would be tied to just -- as long as in the opening
23 statements we don't have any phrase along the line of
24 "and then this confession supports or implicates this
25 one", and I think that we can do it that way.

1 **MR. MEADORS:** I'm going to be very brief, but
2 I'm going to say that McDonald admitted to law
3 enforcement to going in. I'm going to -- without
4 mentioning anybody else, that he went in and what he
5 said he did in his statement.

6 **THE COURT:** All he's saying is you should not
7 implicate --

8 **MR. MEADORS:** No, sir. I wouldn't do that.

9 **THE COURT:** -- one or the other defendant with
10 what you know about one defendant.

11 **MR. MEADORS:** Right. Yes, sir. But I am --

12 **THE COURT:** Bruton applies whether it's written
13 or oral.

14 **MR. MEADORS:** I understand that. But clearly in
15 the first words out of my mouth, I'm going to say,
16 you know, the brutality of the injury and that these
17 three did it; and, circumstantially, just beyond just
18 their statements, there's plenty of evidence showing
19 that they did it. Now, when I refer to their
20 statements specifically, I'm just going to say what
21 they said.

22 **MR. KENDRICK:** Yes, sir. Thank you, Judge.

23 **THE COURT:** That's not evidence.

24 **MR. MEADORS:** Thank you.

25 **MR. WHITLARK:** Now, Your Honor, there is one

1 thing. There is two references for these statements.
2 And I'm going to object to any calling them
3 confessions in front of the jury.

4 **THE COURT:** Well, I can't tell him what to say.

5 **MR. WHITLARK:** Thank you, Your Honor.

6 **THE COURT:** They are what they are. All right.
7 We've got to deal with Mr. Marvin first. Do you want
8 to do that?

9 **MR. MEADORS:** We can do it now.

10 **THE COURT:** Oh, I've got to do it now.

11 **MR. MEADORS:** Oh, yes, sir.

12 **THE COURT:** The question is, do you want to do
13 it in open court, or would you approach and let me
14 talk to him? All right. Bring Mr. Marvin in,
15 please. I will just ask him to sit in the witness
16 box. I think you can hear. I'm going to put him in
17 the witness box, but I'm just going to ask him some
18 questions.

19 (Pause)

20 **THE COURT:** Mr. Marvin, come on up. Have a
21 seat. Let me just talk to you for a minute.

22 (Whereupon, the following side bar conference is
23 had)

24 **THE COURT:** Can you hear me okay?

25 **JUROR:** Yes, sir.

1 **THE COURT:** Our clerk of Court tells me you've
2 had a little -- had a conversation with her?

3 **JUROR:** Yes, sir.

4 **THE COURT:** About your beliefs, your personal
5 beliefs?

6 **JUROR:** Yes, sir.

7 **THE COURT:** And whether or not you could feel
8 you could sit in judgment?

9 **JUROR:** That's correct, sir.

10 **THE COURT:** Of another fellow human being
11 basically?

12 **JUROR:** Yes, sir.

13 **THE COURT:** And she tells me that you told
14 her -- and I just want to confirm it with you -- that
15 you have strong beliefs in this regard?

16 **JUROR:** Yes, sir.

17 **THE COURT:** And can you tell me basically what
18 they are?

19 **JUROR:** Yes, sir. I don't believe I could be
20 impartial. I just can't decide based on the fact
21 that --

22 **THE COURT:** Can you all hear him? I just want
23 the lawyers to be able to hear what you have to say
24 also. We're not going to announce it to the whole
25 courtroom.

1 **JUROR:** Okay. Based on the fact that I believe
2 that most of the law enforcement in South Carolina is
3 corrupt, based on SLED being investigated for the
4 crimes that they're doing.

5 **THE COURT:** You've had some experience in that,
6 with that?

7 **JUROR:** No. No. It's my belief.

8 **THE COURT:** Okay. So it's not a religious
9 belief per se?

10 **JUROR:** No, sir.

11 **THE COURT:** Okay. It's just a personal opinion?

12 **JUROR:** Yes.

13 **THE COURT:** Okay. Well, you are certainly
14 entitled to that. Okay. Well, I'm sorry we troubled
15 you. But I tried to -- in my questions yesterday I
16 tried to ask if there were any reasons why people
17 didn't feel that they could sit and judge and hear
18 this case. And I probably didn't ask the right
19 questions.

20 **JUROR:** Well, when I went home last night, I
21 couldn't -- by the time I had finished, I didn't
22 think I could be fair.

23 **THE COURT:** Okay. All right. Well, I'm going
24 to release you now. That's why we have alternates.

25 **JUROR:** Okay.

1 **THE COURT:** We'll put one on the alternates on.
2 We'll be able to keep going. So thank you very much
3 for your service. Thank you for being honest and
4 forthright, because I wouldn't want to find it out
5 after the trial.

6 **JUROR:** Yes, sir. Yes, sir.

7 **THE COURT:** Good luck to you, sir. You're free
8 to go.

9 **JUROR:** Thank you.

10 **THE COURT:** Yes, sir.

11 (Whereupon, the side bar conference is
12 concluded)

13 **THE COURT:** All right, counsel. We will draw
14 per the statute for the alternate to replace the
15 juror. The alternate names are in two -- the deputy
16 clerk is going to draw the alternate. I.S. Leevy
17 Johnson told me that I had to do this. Just call it
18 out.

19 **THE CLERK:** Number 45, Lisa A. Claiborne.

20 **THE COURT:** All right. Ms. Claiborne now
21 becomes a regular juror. Anything further before we
22 call the jury? Bring the jury, please.

23 (Jury in at 2:35 p.m.)

24 **THE COURT:** Ms. Claiborne, I'm going to ask you
25 to serve as a member of the jury. One of our jurors

1 had a conflict and has been excused. So that's why
2 we have alternates. Just have a seat with the
3 regular jury panel.

4 All right. We're ready to proceed, ladies and
5 gentlemen. And as you know, we are about to start
6 the trial of the case of State vs. Christopher
7 Whitehead, State vs. Derrick McDonald and The State
8 vs. Robert Cannon.

9 Now, before we begin the trial I want to talk to
10 you about a couple of things. This trial will
11 probably be different from what you might expect.
12 Many people do not have the chance to attend actual
13 court sessions as you are now doing. You may think
14 from watching television or movies or reading books
15 that trials are always full of high drama, intense
16 action and riveting circumstances as you might see on
17 Law and Order or something of that nature or CSI.

18 While all of these things may be true at times,
19 this trial is not for entertainment. It's a
20 fundamental part of our democracy, a search for the
21 truth in an effort to make sure that justice is done
22 between the parties before this court. Searching for
23 the truth and making sure that justice is done is
24 often a slow, deliberate and repetitive process, the
25 opposite of what you have seen on television, read in

1 movies -- or in movies or read in books. Now, Madam
2 Clerk, will you swear the jury, please.

3 **THE CLERK:** I will, Your Honor. Thank you.

4 (Whereupon, the jury is sworn)

5 **THE CLERK:** Thank you. Please be seated.

6 **THE COURT:** All right, ladies and gentlemen. To
7 continue, this courtroom is a place of honor
8 dedicated to the protection and preservations of
9 citizens' rights through what many have called the
10 greatest justice system ever devised.

11 The attorneys appearing before you are advocates
12 for the parties they represent, but first and
13 foremost they are officers of this court sworn to
14 uphold the integrity and fairness of our judicial
15 system and to help you in a search for the truth.
16 You should expect them to be professional, competent
17 and ethical in the representation of their client's
18 interests.

19 And remember, you've just taken an oath to try
20 this case and reach a fair and just verdict, and you
21 are also expected to be professional, reasonable and
22 ethical. So I want to thank you at this time for
23 accepting this important responsibility of jury
24 service and for your contribution today to our system
25 of justice.

1 Now, what I tell you at this stage of the trial
2 is merely meant to serve as an introduction to the
3 trial of the case. These remarks are not a charge on
4 the law in the case. I will instruct you as to the
5 law that's applicable to this case at the end of the
6 trial before you retire to consider your verdict.
7 This is merely an explanation of the procedure we
8 will follow in the trial of the case so that you may
9 better understand what may be happening from time to
10 time.

11 Now, I have given you pads and pencils from
12 which you may make notes throughout the course of the
13 trial if you choose to do so. You don't have to do
14 so obviously. But if you do take notes I want you to
15 keep them for your own recollection, for your own
16 remembrance. They're not to be used to try to
17 convince somebody else of what you think you heard or
18 what you wrote down and they didn't write down. The
19 notes and the note pads are strictly for your own
20 use.

21 Now, as I said to begin with, the defendants are
22 charged with two separate offenses. They are each
23 charged with murder and they are each charged with
24 burglary in the first degree.

25 Now, again I want to emphasize the fact that

1 these indictments are simply the charge by which
2 these cases are brought into court. They're not in
3 any sense evidence of any of the allegations they
4 contain. The defendants have all pled not guilty to
5 these indictments; and, therefore, the State has the
6 burden of proving each and every element of the
7 crimes that are stated in the indictments beyond a
8 reasonable doubt to you.

9 It will be your duty, ladies and gentlemen, to
10 determine whether the State has met that burden.
11 Your purpose as jurors is to find and determine the
12 facts. You are the sole judges of the facts. If at
13 any time I make any comments about the facts, you
14 must disregard those comments.

15 You are to determine the facts from the
16 testimony you hear and any other evidence that's
17 introduced into court. It's up to you to determine
18 the inferences from which you feel may be properly
19 drawn from that evidence.

20 It's especially important that you perform your
21 duty of determining the facts diligently and
22 conscientiously because ordinarily there is no way to
23 correct an erroneous determination of the facts by a
24 jury. And on the other hand, with equal emphasis,
25 the same law that makes you the judges of the facts

1 makes me the judge of the law. The law as I instruct
2 you is the only law you may consider. You must
3 accept it and follow it even though you may disagree
4 with it.

5 I cannot tell you what the facts are. You
6 should not disagree with me about what the law is or
7 what the law ought to be or should be. Your job is
8 to take the law as I explain it to you, apply it to
9 the facts as you find it from the testimony of the
10 witnesses and any other evidence that's introduced;
11 and after doing that, you will render your verdict, a
12 true and just verdict under the solemn oath you took
13 as jurors.

14 And until I advise you to begin your
15 deliberations, you must not discuss this case with
16 anyone, including your fellow jurors, friends, family
17 members or anyone else involved in the case. After
18 the case has been submitted to you, you must discuss
19 it only in the jury room with your fellow jurors.

20 The attorneys and parties in this case have been
21 advised that they are not to talk to you at all. So
22 if you see anyone involved in the case; and that may
23 be likely because this is a small courthouse, they do
24 not even say hello to you, they're not being
25 unfriendly, they're not being rude; they're just

1 following my instructions.

2 Now, during the trial I'm going to ask you not
3 read, listen to or watch any news reports about this
4 case. This includes anything that may be in the
5 newspapers or on the Internet or on television. You
6 must not consider anything you may have read or heard
7 about the case outside the courtroom whether before
8 or during the trial.

9 It's important that you keep an open mind and
10 not decide any issue in this case until all the
11 evidence has been presented, the parties have made
12 their closing arguments and I have instructed you on
13 the law as it applies to this case. It's your solemn
14 responsibility to determine the guilt or innocence of
15 the defendants, and your verdict must be based solely
16 on the evidence as it is presented to you during this
17 trial and on the law that I instruct you during and
18 at the close of the trial.

19 Now, in just a moment the solicitor will make
20 what's known as an opening statement in which the
21 solicitor will explain to you what the issues in the
22 case are or at least what the solicitor thinks the
23 issues in the case are. The attorney for the
24 defendants may also make opening statements.

25 What the attorneys tell you during their opening

1 statements is not evidence in this case. It's only
2 their contention as to what the issues are. The
3 evidence in this case, the evidence in this case will
4 be presented to you by the testimony of sworn
5 witnesses from this witness stand and any exhibits
6 that may be introduced during the course of the
7 trial.

8 Now, from time to time you may hear one of the
9 attorneys say, "I object", for some reason. Now, I
10 tell you the attorneys are not trying to hide
11 anything from you. They are merely following what
12 are known as the rules of evidence. These are
13 basically the rules of the road that govern all
14 trials, and they are asking the Court to make some
15 ruling on whether or not the other side may or may
16 not have violated one of these rules, whether
17 intentionally or inadvertently.

18 Also from time to time during the trial you may
19 hear one of the lawyers say something like, "Your
20 Honor, I believe we have a question of law or a
21 matter of law to discuss with you", or "may we
22 approach the bench?" Or sometimes I myself might
23 find it necessary to excuse from you the courtroom
24 for a short period of time while I discuss matters of
25 law with the attorneys.

1 The reason for this is because you are the
2 judges of the facts. The facts in this case, I may
3 have to comment about the facts in the case sometimes
4 when I'm discussing matters of law with the
5 attorneys. The purpose of asking you to leave the
6 courtroom is because I am not supposed to tell you
7 what I think the facts are. So the practice is to
8 excuse you from the courtroom while these discussions
9 take place so that in no way will you be in any way
10 influenced by anything that I might say or do in
11 connection with the facts.

12 In determining what the true facts are, you must
13 determine whether or not the testimony of any witness
14 is believable. It will be my responsibility to rule
15 as a matter of law as to whether certain testimony is
16 admissible, as to whether it comes in and it's heard
17 in court; but once the testimony is admitted, whether
18 or not you believe it is solely up to you to
19 determine.

20 In deciding whether to believe a witness you
21 have the right to consider the interest of any
22 witness, the bias of any witness, the prejudice of
23 any witness, the opportunity for the witness to have
24 seen the matters and things about which the witness
25 may testify and the way the witness acts on the

1 witness stand.

2 You have a right to consider anything that's in
3 this record that will help you evaluate the testimony
4 of these witnesses. And that means it is your duty
5 to pay close attention to the witnesses, observe the
6 witnesses and listen to the attorneys. Pay close
7 attention to the attorneys. Try not to let your
8 thoughts wander, but give strict attention to the
9 testimony in this case so at the end of all the
10 testimony, after the arguments of counsel and the
11 charge on the law by the Court, you will then be in a
12 position to determine what the true facts are, apply
13 the law to those facts and thus render a true and
14 just verdict.

15 As I indicated earlier, Madam Forelady, it will
16 be your duty to preside in the jury room and to be
17 the jury's spokesperson here in court. It will also
18 be your duty to write the verdicts if that becomes
19 necessary, but I'll give you further instructions
20 about that at the conclusion of the case.

21 All right, counsel. We'll now begin the trial.
22 Solicitor, you may begin with your opening remarks.

23 **MR. MEADORS:** If it pleases the Court?

24 **THE COURT:** Yes, sir.

25 **MR. MEADORS:** Joshua Zoch is dead. Joshua Zoch

1 is dead. On December 12th of 2006 at Lane
2 here in Kershaw County, Joshua Zoch had a metal and
3 glass potpourri bowl dropped on his head as he lay on
4 his couch and had a wooden bat, a wooden bat taken to
5 his body, was hit in the head two, three times in the
6 back of the head, dragged off the couch, hit in the
7 temple with a wooden bat and died. That's what this
8 case is about, the brutal, brutal murder of Joshua
9 Zoch.

10 Madam Forelady, ladies and gentlemen of the
11 jury, good afternoon. My name is John Meadors. His
12 Honor introduced me earlier. I am the Deputy
13 Solicitor for the Fifth Judicial Circuit. The Fifth
14 Circuit is composed of Kershaw and that other county
15 across the river, Richland County. You all have met
16 by boss, the elected solicitor, Barney Giese, in here
17 yesterday when we were listening to the jury, when we
18 were listening to you all's background.

19 I'm here today with Ms. Joanna McDuffie, Mr. Ron
20 Moak, also Assistant Solicitors here in the Fifth
21 Judicial Circuit. We represent -- and this is the
22 way the system is set up. We represent the people of
23 the State of South Carolina, in this case Kershaw
24 County, the people of Kershaw County against the
25 defendants, Chris Whitehead, Robert Cannon and

1 Derrick McDonald. Their attorneys have been
2 introduced to you.

3 We also stand here representing Joshua Zoch and
4 his family sitting here behind us. When you all came
5 in here yesterday, you all didn't go to school;
6 Ms. McDonald didn't have a school to go to. She
7 talked to you briefly and kind of told you about your
8 role. You all remember that. We're not in here when
9 she does that. She gave you a brief outline I guess
10 of what your duties are. But you didn't come in here
11 and have a school to go to how to be a juror. But
12 you have been going through that school your whole
13 life, your whole life. It's the school of common
14 sense.

15 And that's what all jurors bring in here. It's
16 what they use when they're listening to the case.
17 It's what you all use when you're listening and
18 evaluating the testimony. And that's all we can all
19 ask you, is to keep your common sense. Keep your
20 common sense, listen to the evidence, and you decide
21 what's believable. And that's true of any case. And
22 isn't that pure? That's why this system is so good.

23 We've all got our roles in here. His Honor has
24 got his role, to judge the law. I've got my role.
25 These attorneys have their roles. But your role is

1 the most important role of anybody in here. I heard
2 a female judge say it last year, Ms. Carmen Mullen,
3 Judge Carmen Mullen; I never heard it before, but I
4 say it now; it's like week in and week out we're
5 here. This is my office. I love this courtroom. I
6 love it.

7 But I'm here every week in and out in some
8 courtroom doing something. The judge is here. These
9 lawyers are here. But it's like a team, if you will,
10 and we have a new franchise player that comes in
11 every week. And you all are the franchise players,
12 the jury. You all come in, you all play the role,
13 and you all decide what the case is about, using your
14 common sense, deciding what's believable, listen to
15 the judge, take the facts from that stand, apply the
16 law the judge gives you and come back with a verdict.

17 But it's not a game. It's not a game. This is
18 their day in court. It's Joshua Zoch's day in court
19 and his family. So all we can do is thank you for
20 being here, thank you for your service, thanks for
21 answering and filling out those forms, and thank you
22 for being willing to serve and listen.

23 I'm going to briefly go and outline as the judge
24 said now what I believe the law is very briefly and
25 talk to you what I believe the evidence will show in

1 this case.

2 Y'all all know what our burden is. All of you
3 know it. Our burden, the burden on me, the burden on
4 the State in this case is the same as it is in every
5 courtroom across the country. We have to prove this
6 case against these defendants beyond a reasonable
7 doubt. Not beyond all doubt, beyond a reasonable
8 doubt. If after hearing the evidence you are firmly
9 convinced of the defendants' guilt, you must find
10 them guilty. If after hearing the evidence you think
11 there is a real possibility that they're not guilty,
12 you must find them not guilty. That's the system.

13 Oh, you'll have doubts. You'll have questions.
14 That's not a reasonable doubt. Sometimes questions
15 are just questions. But in my search to explain
16 reasonable doubt and our burden over the years, I've
17 finally come to this conclusion. It's almost like
18 common sense. And you'll know it. And if you know
19 it, either way, that's what the verdict is. You'll
20 know it.

21 What are these individual defendants charged
22 with? His Honor talked to you about it yesterday and
23 some this morning. And I want to briefly go through.
24 All three defendants are charged in two indictments.
25 The Kershaw County Grand Jury handed down these

1 indictments. That's part of the charging process.
2 We have to have a paper to go forward. They've been
3 indicted with burglary and murder.

4 And before I get to that, one of the things that
5 makes this country great, and I like to explain it,
6 too, one of the things is presumption of innocence.
7 They're all sitting there with their attorneys
8 presumed innocent. And that's pure. And that's the
9 way it ought to be. And they stay presumed innocent
10 unless and until the State proves them guilty by that
11 burden I mentioned to y'all, beyond a reasonable
12 doubt. And the evidence will do that in this case,
13 Ladies and Gentlemen.

14 What's a burglary? Do I even need to say it?
15 Burglary is the unlawful entering the dwelling of
16 somebody else with the intent to commit a crime in
17 there. And then to make it a burglary first, it
18 could be one of different elements. The judge will
19 talk to you about this. Ms. McDuffie may talk to you
20 about it more at the end.

21 Entering the dwelling of another without consent
22 with the intent to commit a crime. They killed him.
23 They ransacked the house. And the element in this
24 case to make it burglary first the judge will charge
25 you is that this entering occurred during the

1 nighttime hours. Entering your house without your
2 permission, your house without intent to commit a
3 crime, and you do it at night, that's a burglary
4 first. They've all been charged with that.

5 In addition, in addition they've all been
6 charged with and indicted with murder. You all have
7 all heard of murder. Murder is the unlawful killing
8 of another living human being with malice
9 aforethought; unlawful killing of another human being
10 with malice aforethought.

11 Now, what's malice? What's malice? Malice is
12 the evilness, wickedness, meanness, spitefulness one
13 person shows to another. Kind of you know it when
14 you see it. Malice. Just mean. What's
15 aforethought? Aforethought is a term of art. I
16 don't know if I understand it, but I think I can
17 reasonably explain it.

18 We don't have to have premeditation in this
19 state. You don't have to plan something in advance
20 for a long time. Aforethought means that malice has
21 just got to exist in your mind at the instant, just
22 at that instant that a fatal blow is inflicted on
23 someone else. The dropping of a bowl, the swinging
24 of a bat against someone's skull. Malice
25 aforethought.

1 Now, malice can be shown to y'all by several
2 ways. Murder is the unlawful, intentional killing
3 with malice aforethought. And that intent, you can't
4 open up somebody's brain and look in and see and see
5 what their intent is. So you have to judge it by
6 their actions or inactions, their intent.

7 And like with malice aforethought, the law says
8 as Your Honor will instruct you all this, we can show
9 y'all to meet our burden malice aforethought several
10 ways. It can be express, like if somebody says, "I'm
11 going to kill you"; well, that logically can be shown
12 malice. That makes sense, doesn't it?

13 The law also allows to us infer, to ask you all
14 to infer; and we certainly will ask you in closing to
15 infer malice from the use of a deadly weapon. That
16 makes sense. If you're firing a gun, that
17 aforethought, as soon as you fire the trigger, you
18 know that can use damage or kill somebody. If you're
19 swinging a bat at somebody's head, knocking him in
20 the head with a wooden bat, the law says you can
21 infer malice from the use of that bat. Malice
22 aforethought.

23 Also the law requires us; and in this case we do
24 allege this in each indictment these individuals
25 cause the death of one Joshua Zoch by means of

1 repeatedly hitting and kicking him, in this case we
2 allege with a bat, dropping a bowl on him, kicking
3 him and hitting him. And what's the final piece of
4 evidence, element for murder we have to prove? We
5 have to prove that Joshua Zoch died as a proximate
6 result of those injuries, as a approximate result of
7 the bat, the kicking or the bowl, one or all.

8 And we'll bring in Dr. Sexton tomorrow afternoon
9 or Thursday morning, however far we get. I don't
10 know. Dr. Sexton who examined the body of Joshua
11 Zoch. And he's going to tell you all, this is what I
12 found. This is where the blood spatter is. The
13 shirt is up on his back which shows in my opinion he
14 was dragged off the couch. Blood spatter on the back
15 of his back which came from his head after he was hit
16 with a wooden bat. Joshua Zoch will talk to you
17 through Dr. Sexton. And we'll meet the element of
18 proximate cause of his death. That's the elements of
19 murder and burglary.

20 Now, what are the types of evidence that we're
21 going to use to present that? I presume you all know
22 this. Direct evidence is evidence that a person
23 gathers from one of their senses. They see it, they
24 hear it, they smell it, they taste it. And they come
25 in here and take that witness stand tell y'all, I

1 heard something, I smelled something, I saw
2 something. Eye witness testimony.

3 There's also something called indirect evidence
4 or circumstantial evidence which is proof of a chain
5 of facts and circumstances, proof of a chain of facts
6 and circumstances indicating the existence of a fact.
7 That's beautiful, isn't it? Or I think it's
8 beautiful. It's like if you went to bed at night and
9 there wasn't snow on the ground and you got up the
10 next day and there's snow there; you didn't see it,
11 but it snowed.

12 The law makes no distinction between the weight
13 that you all give to direct or circumstantial
14 evidence. You can both treat them both the same. It
15 doesn't require a greater degree of certainty for us
16 to prove to you all direct or indirect evidence.

17 There is also some other types of evidence.
18 Documentary evidence. Documentary evidence which you
19 may hear in this case, you may receive. Direct,
20 circumstantial, documentary. There is also some
21 other types of evidence in this case that you're
22 going to hear from; statements made by the
23 defendants.

24 These officers are going to take the stand and
25 tell you their encounters specifically with

1 Defendants McDonald and Cannon, talk to you about
2 when they saw them, talk to you about reading their
3 rights to them, talk to you about explaining their
4 rights to them. And they're going to get up and tell
5 you what they said in the statements. And I'm going
6 to get into that in a minute.

7 Ladies and gentlemen, what happened in this
8 case? Well, starting at about whenever everybody
9 gets through, they'll have their opening statements;
10 we're going to call our first witness. On December
11 the 13th at about 6:00 approximately, Deputy Sellers
12 of the Kershaw County Sheriff's Department was called
13 to respond at Lane here in Kershaw County.

14 When he got there he saw three individuals,
15 Molly, Zack Waltemath, Molly and Zack Waltemath. And
16 when he got there, he looked inside. They called
17 him. And he saw -- and Melissa Davy. I forgot one.
18 Melissa Davy and Molly and Zack Waltemath. When he
19 got there, Deputy Sellers, he saw the lifeless body
20 of Joshua Zoch. He roped it off, put that yellow
21 crime scene tape up, and he called in the
22 investigator.

23 And what this case is about, what this case is
24 about is what happened, what happened after that as
25 the case unfolds and they went and talked to people

1 and kind of put the circumstances together. And we
2 are going to bring that into you starting today about
3 what happened.

4 Well, what did happen? Some of you all may have
5 been to a Sonic Drive-In before. I don't know. But
6 this case revolves around Sonic at Hard Scrabble in
7 Columbia. Some of you all may know where that is.
8 Some of you all might have been there. I don't know.
9 And I say it revolves around Sonic because a lot of
10 the players and parties met at Sonic or worked at
11 Sonic, or relationships were developed at Sonic.

12 Well, if we go back in time now to December of
13 2006, specifically the week of December 10th, 2006,
14 the 11th, 12th; the 12th is going to be a Tuesday.
15 And I'm going to show you a calendar. And this is
16 when this case revolves around, the evidence will
17 show.

18 December 2006, this week right here, this week
19 right here. And it's going to show Melissa Davy and
20 the victim, Joshua Zoch, had been dating. They were
21 in an argument over this weekend. And Ms. Melissa
22 Davy went to stay with a friend, Ms. Waltemath, Molly
23 Waltemath. And she was staying at their house. She
24 was also working at Sonic at this time. Chris
25 Whitehead was also working at Sonic at this time.

1 Robert Cannon had worked at Sonic but wasn't at the
2 time. And Derrick McDonald had worked at Sonic but
3 was not at the time.

4 You are going to hear evidence that on
5 December 12th, this day right here, Allen Brown who
6 was a manager at Sonic, shortly after 10:00, 10 p.m.,
7 sees Christopher Whitehead, Robert Cannon, Derrick
8 McDonald come in Sonic on Hard Scrabble Road in
9 Columbia one-by-one.

10 He first sees Robert Cannon come in with a ski
11 mask on. And he is going to tell you that. He said
12 he then realizes right off the bat it's Robert. He
13 says, "Robert, you're not supposed to be in here with
14 a ski mask. Take the ski mask off and leave."
15 Shortly after 10:00 on December 12th -- excuse me.
16 Yeah. December 12th of 2006.

17 After that also Derrick McDonald comes in, no
18 longer working there. He said, "Derrick, you're not
19 supposed to come inside Sonic. You're not working
20 here any more. Leave." He asks him to leave.

21 Sometime during that process Chris Whitehead had
22 come in. He was not working. And Allen Brown said,
23 "Chris, you're not supposed to be here either.
24 Leave." Allen Brown will tell you they all left.
25 Shortly after 10:00 they left the store. There are

1 other witnesses from the Sonic who will come in and
2 tell you they saw them there.

3 Shortly after that, ladies and gentlemen, these
4 three go to Wal-Mart on Two Notch Road. And a lady
5 named Carla something -- I can't remember her name;
6 she'll come in from Wal-Mart; and we're going to
7 present a receipt that on December 12th of 2006 at
8 approximately 10:43 p.m. on December 12th, 2006 --

9 **MR. WHITLARK:** Objection, Your Honor. I object.

10 **THE COURT:** To what?

11 **MR. WHITLARK:** The mention of that evidence.
12 That's not been identified. I've not seen that. I
13 don't know what that is.

14 **MR. MEADORS:** Your Honor, they've all seen it.

15 **THE COURT:** Well, overruled. Go ahead.

16 **MR. MEADORS:** The evidence will show that one
17 box of purple gloves and one mask that was bought
18 that day, the only one that was bought on
19 December 12th, 2006. And she is going to bring that
20 in and show you the records and show you that.
21 Derrick McDonald and Robert Cannon tell these
22 officers later, we went to Wal-Mart after we left
23 there and got a box of purple gloves and a ski mask.

24 You're also going to hear testimony from Zack
25 Waltemath that at some time during that process,

1 sometime during that time period, he received a call
2 from Christopher Whitehead, this man right out here
3 at the end of the table. And Christopher Whitehead
4 told Zack Waltemath, why don't you come go with me to
5 Joshua Zoch's house and beat his ass? Zack said, I
6 don't think so. I'm not going to do that. He said,
7 well, I'll call you back. He ends up talking to him
8 at least one more time. Zack says, I'm not going
9 with you.

10 But Christopher Whitehead after he's seen with
11 these two individuals on December 12th, 2006 calls
12 Zack Waltemath and says, come with me. Let's go.
13 I'm going to Joshua Zoch's house to beat his ass. He
14 doesn't go with him. They've been to Wal-Mart. He's
15 called him.

16 At about 11:25 -- and we're going to have all
17 this timeline in here to show you -- a fellow called
18 Cosmo Baccomo, Cosmo Baccomo who lived a few houses
19 down from Lane is out walking his son's
20 dog. Fresh Prince was either just on or about to be
21 on or just getting through.

22 He comes outside at approximately that time
23 period and he hears what we believe the evidence will
24 show a loud bang or slamming like a door or
25 something. His dog is outside, his son's dog using

1 the bathroom. Some period after that he hears some
2 voices for more than one person. He is going to
3 describe that to you. And he hears a car. He's
4 going to describe what he hears about that car. And
5 he hears that car, sees it leaving, leaving from

6 Lane. He's going to be here to testify, tell
7 you what he saw, what he observed. That's Tuesday,
8 the 12th, is what the evidence is going to show.

9 The next morning, the 13th, Christopher
10 Whitehead, Christopher Whitehead goes to work at
11 Sonic. He's working with a lady named Cecile Trapp
12 opening up Sonic. Cecile may have been a crew
13 member. I think Christopher Whitehead was about to
14 become crew leader, maybe didn't have his keys yet,
15 was about to get keys to the store.

16 And he tells Cecile his leg is hurting him.
17 He's got a scratch on his eye, I believe the evidence
18 will show she will say. And she said, what happened?
19 He said, well, I was with my friends last night
20 playing around and got hurt. The evidence will show
21 he told her, but I'm going to tell Ms. Pat Heathcoe
22 that owns Sonic that I got hurt back here in the
23 store so she'll give me Workers' Comp. You listen to
24 Cecile Trapp. Listen to her. Listen to her when she
25 testifies. That's the 13th. Listen to her. Listen

1 to her.

2 You'll also listen to Chris Rust. Chris Rust
3 may be called. Listen to Chris Rust when he
4 testifies. Listen to him.

5 We go into the body is found by Deputy Sellers
6 the 13th. Law enforcement then gets involved. They
7 talk to Ms. Melissa Davy. They then discover the
8 Sonic connection. They go Friday morning. And pay
9 attention to December the 15th of 2006, ladies and
10 gentlemen. That's the date. Pay attention to
11 December 15th.

12 The law enforcement Investigator Catoe, Marthers
13 back here, they go to Sonic that morning. They talk
14 to Cecile Trapp. She tells them about what she knew
15 about Christopher Whitehead coming in and his ankle
16 that Wednesday morning, talks about some of the
17 people that are there.

18 Well, they go out and start just looking to talk
19 to folks. And they go out to Road here in
20 Richland County. Boney Road not here in Richland
21 County. It is in Richland County, not here in
22 Kershaw. Looking for Derrick McDonald. On the way
23 and close to Derrick McDonald's house who was at
24 Boney, Road, they run into
25 Christopher Whitehead going to look for Derrick

1 McDonald.

2 A brief conversation with Christopher Whitehead.
3 I don't know anything about the death of Joshua Zoch.
4 Now, the evidence will show he went into work; he,
5 Christopher Whitehead, on Friday, December the 15th,
6 at 6:00 and left at 6:50 and never returned, quit at
7 6:50. Pat Heathcoe is going to tell you about that.
8 Cecile Trapp who was there and saw him leave is going
9 to tell you about that. He just left his job at
10 6:50.

11 Law enforcement later that day gets in touch
12 with Robert Cannon and Derrick McDonald. Listen to
13 them. Listen to the evidence. They talked to Robert
14 Cannon at his house, read him his rights, ask him if
15 he understands his rights. Robert Cannon talks to
16 them. They later talk to Derrick McDonald, read him
17 his rights, bring him down to the Sheriff's
18 Department. You all watch, listen. We're going to
19 go over this. He waives his rights, gives him a
20 statement.

21 In those statements, in those statements,
22 specifically Robert Cannon talks about getting the
23 box of purple Latex gloves, talks about getting ski
24 masks, talks about going to Lane, talks
25 about going in the house at Lane. But in

1 that first statement to law enforcement he says,
2 well, I didn't get involved in the beating of Joshua
3 Zoch. I just kind of was ransacking the house
4 looking for something.

5 The next day he talks to Lieutenant Crawford
6 back here, going over his statement, says, well, I
7 did kick him some. I did kick him. Listen to Dr.
8 Sexton when he describes what the marks are. I did
9 kick him; and also, Lieutenant, I took some DVD's. I
10 took some other stuff, a hair something. I don't
11 know what it is. Some other items we're going to
12 present it in evidence.

13 Then law enforcement talks to Derrick McDonald.
14 They'd seen him earlier in the day. They'd seen him
15 earlier in the day. And remember this. When he
16 first saw law enforcement, he said, remember that
17 thing I asked you all to remember, Christopher Rust;
18 he said, he first told law enforcement, yeah, I was
19 at Sonic. Yeah, the three of us were together, but I
20 don't go out with them after that. No, sir. No,
21 ma'am. I went over here in Chris Rust's car and just
22 stayed in that car until Chris Rust got off, 'til
23 Chris Rust got off. And then I went home with him.
24 Listen to Chris Rust when he gets up here. That's
25 what he first tells law enforcement.

1 Then later on that day when they come back they
2 talk to Robert Cannon. They go back to Derrick
3 McDonald's house with an arrest warrant for murder,
4 take him on the way down to the Sheriff's Department.
5 Reading him his rights as they're going to the
6 Sheriff's Department, he says, voluntarily says, this
7 is the way we came back the other night.

8 Then we get down to the Sheriff's Department.
9 They read him his rights again. And you all watch as
10 we go over this. Read him his rights and he gives a
11 statement. Yes, we went to Sonic, went to Wal-Mart,
12 Latex gloves, the mask and then go to Lane.
13 Kicked the door in. I had a wooden bat. I hit him
14 once, hit him twice. I may have hit him on the
15 temple. You're going to have those statements. Look
16 at them. Listen to the officers from the stand when
17 they are up on the stand.

18 And some evidence was gained; a bat with some
19 blood on it, part of a little Latex purple glove that
20 was left there. Listen to it. We're going to have
21 pictures to show you what happened at Lane.

22 Ladies and gentlemen, that's what this case is
23 about. Starting here in just little bit we'll start
24 presenting it. All I can ask you as you are
25 listening, you can't discuss the case until it's

1 over, but as you are listening to the evidence, keep
2 your common sense. At the end of this trial I am
3 going to come before you in closing arguments and ask
4 you to return a verdict, a verdict based on the facts
5 that have been presented and on the law that the
6 judge gives you, a verdict that's right, that's fair,
7 and a verdict that speaks justice in this case, in
8 this county.

9 And we respectfully submit after you've heard
10 the evidence that verdict will be that on
11 December 12th of 2006, at approximately 11:30,
12 Christopher Whitehead, Robert Cannon, Derrick
13 McDonald entered the residence of Joshua Zoch, busted
14 down the door, busted down the door, went in without
15 permission in the nighttime, went to him while he was
16 on the couch and dropped a potpourri glass and metal
17 bowl on his head and then hit him with a bat.

18 And you know I say we? I said hit him. There's
19 one thing that I left out, but I'm kind of glad I
20 left it to the end. Because His Honor is going to
21 charge you that in this case the law is, the hand of
22 one is the hand of all. The act of one is the act of
23 all. That's the law. That's the law. The act of
24 one is the act of all that we'll talk about more at
25 the end. And the act of all in this case caused the

1 death of Joshua Zoch. Thank you.

2 **THE COURT:** Mr. Whitlark.

3 **MR. WHITLARK:** May it please the Court, Your
4 Honor.

5 **THE COURT:** Yes, sir.

6 **MR. WHITLARK:** Good afternoon. My name is
7 Marcus Whitlark and I represent Mr. Derrick McDonald
8 over here. Now, this is a case about the death of a
9 young man and a two-day police investigation that is
10 completely wrong for which there is no forensic
11 evidence connecting Mr. McDonald or these other two
12 to this crime scene or to this crime and basically is
13 a rush to judgment and a refusal to look elsewhere,
14 where they should have in the first place.

15 Ladies and gentlemen, you have a great
16 responsibility and a great duty here today. And
17 you're deciding the life and future completely of
18 these three young men. You've taken an oath to
19 listen to the evidence in a fair way and to use your
20 judgment.

21 You heard about the grand jury. There's nothing
22 grand about a Grand Jury, ladies and gentlemen. The
23 grand jury comes from the Latin meaning grande
24 meaning it's larger than the regular jury. They have
25 18 jurors on there, and you have to have a majority

1 in order to get an indictment. We weren't there. We
2 didn't get to present any evidence. None of these
3 young men did. The State was there saying whatever
4 they wanted to.

5 Now, in a football game, both sides get to run
6 the ball. In a baseball game, both sides get to bat.
7 We didn't have that opportunity here. So that's just
8 a piece of paper. The judge is going to tell you,
9 he's already told you and he'll tell you again,
10 that's just a piece of paper that brings this case to
11 court.

12 Anybody can file a piece of paper. In civil
13 cases you can file something and you'll end up in
14 court whether it's just made up or not. So keep that
15 in mind, that there is no jury, J-U-R-Y. This was a
16 grand, a grande jury, bigger than a regular jury.
17 And what they found there was nothing like what
18 you're going. You're doing the real thing here
19 today.

20 You are the greatest single factor in our
21 system. You keep hearings that from lawyers and you
22 heard it from the judge. But it's true. The first
23 thing done away with in a dictatorship or a
24 totalitarian government is a trial by jury of your
25 peers. It's the first thing they get rid of. It's

1 because you are the greatest single factor, upon you.
2 I mean, the whole system relies upon jurors. You all
3 encompass everything we believe in in this American
4 society. Without you this is system completely
5 crumbles. You're more important than all of us, this
6 judge, this building. You represent the American
7 system, the American society.

8 So while you're thinking about raising your hand
9 up a little while ago from taking an oath, it was a
10 solemn oath you took; that oath says that I will try
11 this case by the facts, that I will listen. And the
12 judge is going to charge you, and you'll learn; you
13 may have heard these before, that every American
14 citizen, every single American citizen has certain
15 rights.

16 You are presumed innocent until proven guilty.
17 That presumption of innocence stays with you the
18 entire time unless and until they're able to prove
19 beyond a reasonable doubt that you did this. They
20 have to prove every element of the crime.

21 During the trial you'll have evidence that will
22 come up in front of you. Under your oath, under your
23 oath and the presumption of innocence, if there is
24 two ways to look at that evidence, under your oath
25 you have to use the presumption of innocence to guide

1 you.

2 So when you're listening today and tomorrow and
3 the coming days, it's going to be a little tiresome
4 and a little grueling, but you're going to learn some
5 things. First of all, there is no forensic evidence
6 in this case tying these young men to this scene.
7 There is no evidence, physical evidence, they can
8 bring in to say this for sure puts them there, this
9 for sure means they did it.

10 This whole thing got started; now, remember,
11 never forget this during this trial, they had this
12 whole thing bottled up, wrapped up and done in two
13 days, less than two days; despite the fact, and
14 you're going to learn this, that they found out that
15 there were a lot of people that had problems with the
16 decedent, people that should have been looked at,
17 were looked at.

18 **MR. MEADORS:** Your Honor, objection. That's
19 improper and wrong.

20 **THE COURT:** That's enough.

21 **MR. WHITLARK:** Yes, sir. Ladies and gentlemen,
22 a two-day investigation is no way to determine the
23 life and future of two 18 and a 19-year-old men.
24 You're going to learn from the evidence that the
25 girlfriend of the decedent, she wasn't there that

1 night. There was a reason she wasn't there. He had
2 been abusing her. You're going to learn that from
3 the evidence.

4 **MR. MEADORS:** Objection.

5 **THE COURT:** Confine your opening to the facts
6 that you know are going to be in evidence. I do not
7 know what facts are going to be in evidence.

8 **MR. WHITLARK:** Proceed, Your Honor?

9 **THE COURT:** Yes, sir. You may proceed.

10 **MR. WHITLARK:** You're going to learn this from
11 the evidence, and you're also going to learn that she
12 told them that there had been some trouble with
13 another Sonic employee, Mr. Chris Whitehead. She
14 never mentions Mr. McDonald or Mr. Cannon. They're
15 not mentioned at all. The police don't even have
16 their names. They don't know who they are until they
17 go to the Sonic where all these people work. You're
18 going to learn in this case that many of these people
19 worked at Sonic. They all know each other.

20 And you're going to hear things about drugs and
21 you're going to hear about sex, and you're going to
22 hear a lot of stuff in this case. And it's all
23 relevant. You'll find out it is truly relevant.

24 Now, they don't know anything about Derrick
25 McDonald when they get there. They heard the story

1 that they had been up there the night before. They
2 were sitting there playing around and messing around.
3 And you are going to hear that in fact Mr. Cannon, he
4 had a ski mask on, a knit ski mask. It's 13th,
5 December 12th. It's cold outside. My client didn't
6 have one. Neither did Mr. Whitehead. And these
7 young men, like I said, they all know each other. So
8 they're playing a game or playing around, and you're
9 going to hear from the manager they were messing
10 around. This guy worked there. He pulled his mask
11 down. He's playing around with them.

12 Based on that, two investigators -- this is down
13 in Richland County, by the way, this Sonic is --
14 based on that Investigator Catoe goes and listens to
15 this. And he has already been told at the scene by
16 Ms. Davy who finds the body, she found the body at
17 6:30 in the evening or thereabouts; he died in the
18 early a.m. hours that morning of December 13th. Of
19 course she has no contact with him or anything else.
20 She's not there. She lived there. You will learn
21 that. She wasn't there that night. And you'll learn
22 why.

23 And when she goes there later in the evening,
24 she is with a young man named Zack Waltemath and his
25 sister. You're going to learn from the evidence that

1 there was somebody else there with them. We're still
2 not sure who that is. And you're going to learn that
3 they did not take a statement from these witnesses.
4 No written statements, not that day. And they also
5 didn't find out who this was that were moving cars
6 around.

7 You're going to learn from the evidence that
8 when they went there that day, they sat at that house
9 for over an hour and 30 minutes before they called
10 911, an hour and 30 minutes. That's what you're
11 going to learn from the evidence.

12 And then Ms. Davy told them a fight had happened
13 or some trouble with Mr. Whitehead. And then they
14 discovered my client is with him and they're off and
15 running. And that's where this thing got started.
16 They went to see my client, Mr. McDonald. When they
17 got there and they said, what about it? He said he
18 didn't know anything about it. Then they went and
19 talked to Mr. Cannon.

20 Now, one of the big issues you all are going to
21 have to decide in this case is this. They said
22 they've got these statements. Beyond a reasonable
23 doubt and to a moral certainty is the burden of proof
24 in a criminal case in the United States.

25 And briefly, in a civil case, preponderance of

1 the evidence, you tip the scale just a little and you
2 win. In a criminal case it's entirely different.
3 You start off with the scales of justice weighted
4 heavily in favor of an American citizen, presumed
5 innocent. And in order to convict, they have to take
6 the scales all the way to the other end, completely,
7 and remove any doubts in your mind about it. Under
8 your oath you can't convict if they only go half way
9 you. You can't guess somebody into the penitentiary.

10 So when you are listening to the evidence in
11 this case, remember they went over there, Ms. Davy,
12 and two friends, had an unidentified person with them
13 who they were moving cars around. And we never have
14 found out who that is.

15 You're going to find out that Ms. Davy is
16 apparently having a romantic interlude with Mr. Zack
17 Waltemath now. They claim that he called up. He
18 called up and said, come up here with me and fight
19 and all this. They don't have any phone proof of it.
20 In the day and age we live in, phone records, they
21 can tell you where you were when you call now. Well,
22 they don't have it in this case. They can't prove
23 that Chris Whitehead made any calls to anybody over
24 at the Waltemath house. They've looked at it,
25 believe me.

1 And so what we have is, we have an accusation
2 made and then the police go and they find the
3 clients. 17 years old Mr. Cannon was; 18 years old,
4 Mr. McDonald. Excuse me. I'm sorry. A lot of these
5 names are very similar. Anyway, my client, Mr.
6 McDonald, says he doesn't know anything. They go and
7 they want to talk to him. And again he says, I'm not
8 talking with anybody unless my mom is with me. I
9 want my mom in there for questioning.

10 They go and they talk to Cannon. And they he
11 says, I don't know anything about it. I don't know
12 anything about it. His parents are with him. They
13 go outside. You're going to learn this from the
14 evidence. They have got to prove that he signed a
15 waiver or that he did all these things beyond a
16 reasonable doubt.

17 Well, while he's out there, you're going to
18 learn he -- in the notes in the police, and you'll
19 see it in their notes, up to that point he said
20 nothing about this. He said, I don't know what's
21 going on. Then he asked for some help. He said,
22 what is this about? I want some help about this.

23 And then a captain comes to the scene, stays 10
24 or 15 minutes, leaves. And the next thing you know
25 he's been told, you'll hear from the testimony from

1 the officers, we didn't threaten him. He was outside
2 by himself. We didn't do anything to him. We didn't
3 tell him we was going to be in a death penalty trial
4 where he could either be a witness or a defendant in
5 a death penalty trial. We didn't threaten anybody.
6 You have to decide these issues, what happened there.

7 They then go over to my client's house. And the
8 police will admit this to you. He didn't want to
9 talk to anybody unless his mom was with him. And
10 then he's a senior in high school. And then they
11 arrested him based upon a statement they allegedly
12 got from Mr. Cannon.

13 And so when they go and arrest him, the first
14 thing out of my client's mouth, and his mom is there
15 and his brother, you're going to hear their
16 testimony, what's this about? And then they arrest
17 him. He says, well, I want a lawyer. I want a
18 lawyer with me. And they say, well, we're just
19 taking you to jail. You can get one later. They
20 didn't let him leave the room and call one. You're
21 going to learn this.

22 He gets in a truck with two Kershaw County
23 investigators while in Richland County. There were
24 two deputies from Richland with them to serve the
25 warrants, and they left. They drove him back to

1 Kershaw. They told his mom, I'm taking him to the
2 jail. They didn't take him to the jail. They took
3 him down to the Sheriff's Department and started
4 questioning him. It was about midnight or so, almost
5 1:00. And he tells them, and you'll learn what he
6 told them, and you're going to learn this; he wanted
7 to be not a defendant in a death penalty trial. He
8 wanted to be a witness. Those are his choices you
9 get.

10 You'll have to determine whether or not he was
11 coerced. You'll have to determine whether or not the
12 fact that there is no forensic evidence, no physical
13 evidence, nobody can place them at the scene, nobody
14 can do any of this, it's all based on these
15 statements.

16 Now, you've heard about that Wal-Mart is
17 involved. Mrs. Josie McDonald is the mom. She was
18 with these boys when they went to Wal-Mart. They did
19 go to Wal-Mart early in the evening. They went to
20 get a battery for her car. And they didn't even buy
21 anything there. They went over to the Auto Zone and
22 bought their battery.

23 They now have started to do an investigation in
24 the case two years later. You're going to find out
25 that when they sent stuff to SLED and it all came

1 back, DNA done, no connection to anybody, nothing to
2 connect any of our guys with it; they sent everything
3 they could, a lot of this stuff wasn't done until
4 just a few months ago. This happened December of
5 2006.

6 I said, well, you know, you're supposed to do
7 your investigation before you arrest somebody. Two
8 days, remember how fast they did this. Now, you've
9 heard that term "rush to judgment". And committing
10 to something? Well, when you hear the evidence in
11 this case, ladies and gentlemen, reasonable doubt is
12 going to be the only thing in your head. Why is
13 there a reasonable doubt? Because they're innocent
14 of this. They didn't do it.

15 And you're going to find out, you're going to
16 hear a lot about other people. You're going to hear
17 a lot about motives. Who has a motive in this case?
18 You're going to find out. It's not my client. No,
19 it's not.

20 Derrick McDonald barely knew this fellow.
21 Derrick was a senior in high school getting ready to
22 graduate. You'll learn about him. And he didn't
23 even really know this fellow. They talk about the
24 brutality of a murder. Well, normally you're going
25 to have evidence of that. Who was connected to it?

1 They don't have it here.

2 Now, the problem with a case like this, ladies
3 and gentlemen, and the thing that's hard is that you
4 have to sift through murky things, smoky stuff to
5 find out what really is going on in the case. They
6 say it's a clash of lies you have to determine the
7 truth from.

8 But in this temple of justice, you remember you
9 represent our society and what's fair and what's
10 right. And you have a tremendous duty and a
11 tremendous responsibility here deciding the entire
12 fate and future of these three young men.

13 Once this thing got started, they can't say
14 they're wrong, they're not going to turn their head
15 away and look where they should have looked in the
16 first place, where they should have gone; and you're
17 going to learn that. They didn't go there.

18 Once you hear the evidence in this case, or I
19 should say the lack thereof, you're going to know
20 beyond a reasonable doubt that not only have they
21 made a mistake in this case; they can't admit it, in
22 the prosecution, and they're going to push this thing
23 all the way. These young then are innocent. They
24 didn't do this. And while you're back there
25 deliberating in a few days from now, never forget

1 what you said this morning: I swear I'll try and
2 truly try on the facts of this case. And when you
3 look at everything in this case you're going to know
4 beyond a reasonable doubt these young men didn't do
5 this. Thank you, Your Honor.

6 **THE COURT:** Mr. Kendrick.

7 **MR. KENDRICK:** Thank you, Judge. Ladies and
8 gentlemen, my name is Josh Kendrick, and I represent
9 Robert Cannon in this trial. I feel a little bad
10 because I think after these two lawyers, I think they
11 might have told you just about everything that I have
12 to say. But since you all have the luck of getting
13 into a trial with a whole bunch of lawyers sitting at
14 this table, a lot of defendants, probably a lot of
15 evidence, we might be here longer than we want, I'm
16 going to try not to repeat too much of what you've
17 already heard.

18 I want to talk to you a little bit about your
19 role here in maybe a different context than what you
20 just heard from Mr. Meadors and from Mr. Whitlark.
21 Both of them are right. Both of them are right about
22 how important you are. You're the only people, as
23 the judge told you earlier, that we can't fix your
24 mistakes. There is no process by which if a jury
25 makes the wrong decision we can correct that, which