

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

Alison Renee Lee, Circuit Court Judge

ROBERT CANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002143

A P P E N D I X

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN JAMESON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBITS # 37 (PHOTO), # 39 (PHOTO), # 92 (PHOTO), # 111 (PHOTO),
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1 is why it's very important --

2 **MR. MEADORS:** I object, Your Honor.

3 **MR. KENDRICK:** Do you object?

4 **MR. MEADORS:** I do.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** You may proceed. I overrule the
7 objection. Go ahead.

8 **MR. KENDRICK:** Thank you, Your Honor. So that's
9 why the judge tells you at the beginning or earlier
10 when he gave you his speech about trying this case
11 truly. You're the finders of the facts. It's very
12 important.

13 You have been here for almost a whole day now,
14 and you know we have been in this courtroom working,
15 working on the law part, working on these complex,
16 strange things that you might hear about in the news
17 or on TV or on Court TV.

18 But this case comes down to a simple decision of
19 what the facts were, what they can show you. And
20 that's what you all are, finders of fact.

21 Now, Mr. Meadors' talked about the burden of
22 proof that he has, and Mr. Whitlark explained it from
23 our point of view. But what that means for you is a
24 little different. This is the highest burden of
25 proof in any court, beyond a reasonable doubt.

1 So there is a level of respect, a level of
2 evidence, a level of certainty that you have to get.
3 And you get it from here. You get it from the State.
4 You get it from the prosecution. They owe you that.

5 There's no doubt they've indicted our clients.
6 They've brought them in here to be tried. Now they
7 have to put up or shut up. They have to show you
8 what they have. And as jury members your
9 responsibility that extends from that reasonable
10 doubt is to demand that level off evidence that makes
11 you certain, to demand it.

12 And what you've heard from Mr. Whitlark is true.
13 The physical evidence that links these defendants to
14 this crime doesn't exist. It's all circumstantial
15 evidence. And even the circumstantial evidence
16 you'll see is shaky at best.

17 We start out in this very trial, the first words
18 you heard from any lawyer when Mr. Meadors talked
19 about how Mr. Zoch is dead in this brutal crime with
20 a baseball bat. You know what those are? That's
21 just things to get your blood boiling, to get your
22 emotions running.

23 In our day-to-day lives what do we know happens
24 when our emotions get out of control and when our
25 emotions get heightened? We lose sight of reality.

1 So we make up for a lack of evidence by trying to get
2 your emotions going, by telling you how horrible this
3 is, by telling you all the stuff you're going to
4 hear. You know what? Maybe that did happen. And if
5 the State can show you in any way how that's relevant
6 to these guys, maybe it will become important. But
7 for now all it is is emotion, trying to get your
8 blood boiling, trying to get you all in a position
9 where you won't see reality.

10 I agree with the State here that they represent
11 the people of Kershaw County. But they aren't the
12 sole representatives of the people in this courtroom.
13 You all are. It's you people that have to speak for
14 the truth, whether you can find it or not. And
15 sometimes you can't find the truth. Sometimes the
16 State who has the burden of proof, the State which is
17 the only party that has any duty in this courtroom to
18 put something up, sometimes they can't do it. They
19 can't give you an answer. And that's okay. That's
20 what our system is founded upon, that unless you have
21 that answer you cannot convict someone. So sometimes
22 you may come to a situation where you don't get an
23 answer.

24 So as we look at this evidence, as we try to
25 determine what's there, see what this stuff says to

1 you. Tell us what these receipts are in the end if
2 you see them. What is this? What does it mean?
3 What does it prove?

4 All this stuff as they string it together and
5 try to come up with some picture that will combine
6 with these emotions running high in a courtroom, that
7 isn't how you get a guilty verdict, Ladies and
8 Gentlemen. And when this case is over and you have
9 heard what happened, you've heard what they can
10 prove, you've heard how they got the evidence they
11 are using, then you won't be able to do it.

12 Ladies and Gentlemen, I'm not going to take up
13 any more of your time because I know we have one week
14 to go. But I just ask you to pay very careful
15 attention what you hear in this courtroom, but pay
16 even more careful attention to what you do not hear
17 in this courtroom, because sometimes that might hold
18 the answer for you. Thank you.

19 **THE COURT:** All right, Solicitor. Call your
20 first witness. I'm sorry. Mr. Riley. Pardon me,
21 Madam Forelady and members of the jury. Strike that.
22 Mr. Riley, you may proceed.

23 **MR. RILEY:** May it please the Court?

24 **THE COURT:** Yes, sir.

25 **MR. RILEY:** Ladies and gentlemen, my name is

1 Neil Riley. I represent and have the privilege of
2 representing Mr. Christopher Whitehead along with my
3 co-counsel, David Reuwer. I know that you all have
4 had many words and a lot of verbiage addressed to you
5 already this afternoon. And I promise to be
6 merciful. I'll be very brief.

7 I have been doing this for a long time. I've
8 been practicing law for many years, was in private
9 practice, was an assistant solicitor, a prosecutor,
10 and am now a defense attorney. And as has been
11 pointed out to you by Mr. Kendrick and my other
12 distinguished co-counsel, there are a lot of
13 reasonable doubts in this case. In fact, I don't
14 think I've ever seen a case where the State is in the
15 position of presenting a case that has so many
16 reasonable doubts in it.

17 It's your obligation to weigh very carefully all
18 of the testimony and evidence that is presented to
19 you. Of all of the roles of everyone in this
20 courtroom, the courthouse personnel, the judge, the
21 lawyers, the bailiffs and the security guards, yours
22 is the most difficult job, and I don't envy you. You
23 have the obligation to decide whether these gentlemen
24 are to be found guilty or not guilty based on the
25 State's case.

1 The presumption of innocence which you already
2 heard and will hear a lot more about, that legal rule
3 or that legal principle holds that until you all
4 reach a decision otherwise, these three individuals
5 are innocent. They are cloaked in a garment which we
6 call the presumption of innocence.

7 At the end of the case the judge will provide
8 you with all of the details about the law that's
9 applicable to this case. You 12 are the sole judges
10 of the facts. And you have a difficult job. I urge
11 you, and I have full confidence, that all of you will
12 listen carefully and pay close attention to each and
13 every witness. Because there's a lot of information
14 that will be coming out in the course of this case,
15 you need to in your own individual consciences, you
16 need to listen and weigh and deliberate carefully
17 what each and every witness says to you and what each
18 and every document that's introduced is aimed at
19 providing what information it's aimed at providing
20 you with. So having said that, I promised I would be
21 merciful; it's about time I lived up to that. Thank
22 you very much.

23 **THE COURT:** All right. Now, Solicitor, call
24 your first witness, please.

25 **MR. MEADORS:** Sir?

1 **THE COURT:** Call your first witness.

2 **MR. MEADORS:** Oh. May it please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. MEADORS:** Okay. Allen Brown.

5 ALLEN C. BROWN, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Thank you. Please be seated in the
8 witness chair and state your full name for the
9 record.

10 **THE WITNESS:** My name is Allen Charles Brown.

11 DIRECT EXAMINATION

12 **BY MR. MEADORS**

13 **Q** Good afternoon, Mr. Brown. Would you please acquaint
14 yourself or let the jury know a little bit about
15 Allen Brown, specifically where you're from, where
16 you're born, raised, and went to school?

17 **A** I was born in Florence, South Carolina in 1957. I
18 was three years old when my family moved to Columbia.

19 **Q** Where did you go to school in Columbia?

20 **A** I went to school at Spring Valley High School and
21 graduated in '75.

22 **Q** Tell the ladies and gentlemen of this jury what you
23 did after that, Mr. Brown?

24 **A** Upon graduation from Spring Valley High School I
25 attended Carolina for one year. I worked for an

1 office equipment company, Hudson Office Equipment
2 Company in downtown Columbia for several years,
3 including several part-time while in school. I
4 worked for Pepsi Cola Bottling Company for a while,
5 the State of South Carolina for a while, and then
6 landed in the food service industry.

7 Q And did you work at Substation II?

8 A Yes, I did. I worked at Substation II both on Two
9 Notch Road and in Blythewood.

10 Q And in the food services industry, did there come a
11 time when you started working for Sonic?

12 A Yes, I did. Back I believe it was in July of about
13 2002.

14 Q And what Sonic were you working at at that point?

15 A Sonic Drive-In on Two Notch Road.

16 Q How long did you stay there?

17 A I was at that Sonic until about October of 2002, at
18 which point in time I transferred to the Broad River
19 Road store with a --

20 Q What -- I'm sorry.

21 A -- gentleman by the name of Darren McGee who was
22 taking over at Broad River to help him run that
23 store.

24 Q What was your job at each one of these Sonics, your
25 position, if you will?

1 **A** Assistant manager.

2 **Q** And did you go to work at another Sonic after that?

3 **A** I interviewed with back Pat Heathcoe to become the
4 assistant manager over at Hard Scrabble which is
5 closer to my home.

6 **Q** Pat Heathcoe?

7 **A** Pat Heathcoe.

8 **Q** And --

9 **A** And that would have been in November of 2004.

10 **Q** And as a result of that interview, did you start
11 working for Sonic and specifically Ms. Heathcoe?

12 **A** Yes, I did.

13 **Q** When did that Sonic store on Hard Scrabble open?

14 **A** Around November the 20th, the 22nd I believe it was
15 of 2004.

16 **Q** And tell these ladies and gentlemen, you're now at
17 Sonic on Hard Scrabble. That's in Richland County?

18 **A** Yes, it is.

19 **Q** And what was your position there for Ms. Heathcoe?

20 **A** Assistant manager.

21 **Q** What does it mean to be an assistant manager at
22 Sonic?

23 **A** My duties are to assist in running shifts, ensure
24 that they're properly staffed. Also if there are any
25 equipment problems, typically I'm the one that gets

1 called. My responsibility, my personal
2 responsibilities include being sure that we have
3 enough product to sell for the customers, and in the
4 absence of Pat Heathco to make sure that the money
5 gets in the bank.

6 Q And do you have -- what are your normal working
7 business hours for Sonic?

8 A In any given week they vary. Some days I will open.
9 Some weeks I'll open one day but usually not much
10 more than one day a week. Typically I work one or
11 two lunches during the week but then will close three
12 to four nights depending upon the week.

13 Q How many shifts do you have?

14 A Some weeks it will be five and some weeks six.

15 Q I mean not you yourself but employees.

16 A Oh.

17 Q Approximately how many?

18 A Approximately three different shifts.

19 Q How many?

20 A Three.

21 Q And tell the jury, how many employees do you all have
22 right now?

23 A Right now, probably between 25 and 30.

24 Q And back in December of 2006, how many employees did
25 you have at Sonic on Hard Scrabble?

1 **A** Probably around 25, give or take a few.

2 **Q** What's just generally the age range, or what type of
3 employees age-wise do you hire?

4 **A** Typically the daytime will be people who are just out
5 of high school. Sometimes a little bit older, but
6 typically they're younger just out of high school.
7 In the evenings typically most of our stores are
8 hiring high school kids.

9 **Q** And is your store near a school?

10 **A** We're near Ridgeview High School and several other
11 middle schools and elementary schools.

12 **Q** And moving on into December of 2006, you were
13 employed at Sonic Drive-In on Hard Scrabble?

14 **A** Yes.

15 **Q** As an assistant manager?

16 **A** Yes.

17 **Q** And let me just ask you, do you know Christopher
18 Whitehead?

19 **A** Yes, I do.

20 **Q** And how do you know him?

21 **A** At that point in time Christopher was an employee of
22 our store.

23 **Q** And do you know Robert Cannon?

24 **A** Yes, I do.

25 **Q** And how did you come to know Robert Cannon?

1 **A** Robert had been an employee of our store.

2 **Q** And then Derrick McDonald, did you know Derrick
3 McDonald?

4 **A** Yes, I do.

5 **Q** Okay. How did you know him?

6 **A** And again, Derrick had been an employee of our store.

7 **MR. MEADORS:** Beg the Court's indulgence.

8 (WHEREUPON, State's Exhibit No. 8 is marked for
9 identification.)

10 **THE COURT:** Any objection?

11 **MR. RILEY:** No objection, Your Honor.

12 **MR. WHITLARK:** None.

13 **MR. MEADORS:** Your Honor, we'd offer State's 8
14 which is a December 2006 calendar.

15 **THE COURT:** Without objection.

16 (WHEREUPON, State's Exhibit No. 8 is admitted
17 into evidence.)

18 **Q** In December of 2006 -- this is State's 8 I'm
19 referring to, Mr. Brown -- specifically the week of
20 December 10th, 2006, were you working?

21 **A** Yes, I was.

22 **Q** At that time during this week was Christopher
23 Whitehead employed by Sonic?

24 **A** Yes, he was.

25 **Q** And was Robert Cannon employed by Sonic?

1 **A** No, he was not.

2 **Q** And Derrick McDonald?

3 **A** No, he was not.

4 **Q** They had worked there previous to this?

5 **A** Yes, they had.

6 **Q** How long had you known -- you said Christopher
7 Whitehead was working there then. How long had you
8 known Derrick McDonald? How long had he been working
9 there?

10 **A** I'm not sure exactly when Derrick started working
11 there. I know he had been working there probably
12 five or six months, a guess.

13 **Q** And Robert Cannon?

14 **A** Robert, probably around the same length of time.

15 **Q** Now, specifically, I mean, do you know from watching
16 them; did any of them hang out together, either
17 Whitehead or Cannon or McDonald?

18 **A** I know that Robert and -- both Robert Cannon and
19 Christopher Whitehead hung out together.

20 **Q** Cannon and Whitehead hung out together. And do you
21 know whether or not McDonald hung out with them at
22 all?

23 **A** To my knowledge, no.

24 **Q** Now, specifically -- and just, I want to move right
25 to December 12th of 2006. What were your hours, if

1 any, that day? Were you working at Sonic?

2 **A** Yes, I was. I worked the 4 to close shift.

3 **Q** 4 to close. And what does that mean, close? In
4 December of 2006, what did it mean? Close what time?

5 **A** In the month of December we would close at 11:00.

6 **Q** Is that true no matter whether you have customers or
7 not?

8 **A** Yes.

9 **Q** I mean, if it's like quarter 'til 11 and nobody is
10 there and you haven't had traffic in an hour, you're
11 still going to stay open until 11?

12 **A** Yes, we are.

13 **Q** Now, approximately 10:00 or shortly thereafter, did
14 you have an occasion to see any of these three
15 defendants in this case?

16 **A** Yes, I did.

17 **Q** Please tell the ladies and gentlemen of the jury
18 about that, please?

19 **A** I recall coming through the kitchen area. There is
20 kind of two halves to the store. There is a kitchen.
21 Back in the middle of the store there would be the
22 kitchen area, and then on the other side of a wall
23 there is a storage, dry stock/storage area. I
24 remember -- you can get to the front of the store
25 through either area. And I remember walking through

1 the kitchen toward the front of the store.

2 And up at the front counter where we place the
3 trays of food to be delivered to customers, I
4 remember seeing a young man standing up front with a
5 ski mask pulled over his face. And based upon his
6 size and so forth and the fact that the person wasn't
7 the -- there were other employees around that weren't
8 saying anything to him, they weren't demanding money
9 or anything like that, I determined it probably based
10 on his size and so forth was Robert.

11 Q And did you say anything?

12 A At that point I told Robert he didn't work at Sonic
13 any more and he needed to go ahead and leave.

14 Q And then do you remember what the weather was like
15 that night?

16 A Not overly cold. Probably somewhere in the 50-degree
17 range.

18 Q So you saw -- told Robert Cannon to take the mask
19 off?

20 A (Nods head affirmatively).

21 Q And you say he was not working there then?

22 A He was not an employee at that point. And we have a
23 sign posted on the door saying "Employees Only".

24 Q And did you have an occasion to see Derrick McDonald?

25 A A few minutes later Derrick came in to say hello. I

1 again told Derrick, you know, you're no longer an
2 employee; you need to go as well.

3 **Q** And did he leave?

4 **A** Yes, he did.

5 **Q** And after that did you have an occasion to see
6 Christopher Whitehead?

7 **A** Yes, I did. Chris came kind of from the dry stock
8 area back toward the front of the store. And he was
9 not working. He was in street clothes, not in his
10 Sonic uniform. And so I informed him that, you know,
11 he was off duty and out of uniform and he needed to
12 stay up front.

13 **Q** And what did he do?

14 **A** At that point he went on and left.

15 (WHEREUPON, State's Exhibit No. 9 is marked for
16 identification.)

17 **MR. WHITLARK:** No objection from McDonald, Your
18 Honor.

19 **MR. KENDRICK:** None for Cannon either.

20 **MR. RILEY:** No objection, Your Honor.

21 **MR. MEADORS:** Your Honor, State's No. 9.

22 (WHEREUPON, State's Exhibit No. 9 is admitted
23 into evidence.)

24 **MR. MEADORS:** If I can approach briefly?

25 **THE COURT:** Yes, sir.

1 Q State's 9, do you recognize these?

2 A They are pictures of our Sonic.

3 Q And on the first page of page 9, describe that?

4 A That's what we would refer to as the patio area, the
5 seating area for customers who wish to have a place
6 to sit and eat outside of their car.

7 Q Does the Sonic primarily -- it says Sonic Drive-in.
8 Can people go in and eat if they want to, or do they
9 have to stay at the car?

10 A We do not have an indoor eating area as such. We do
11 have an outdoor patio. But the majority of the
12 customers will either get the food to go or pull up
13 to one of our stalls and eat in the car.

14 Q And still on State's 9, on the third picture, what is
15 that?

16 A That is a picture of the front of our restaurant
17 looking at the front counter where the trays are set
18 up to place food on to serve the customers.

19 Q Now, you said Defendant Chris Whitehead came in the
20 store?

21 A Yes, I did.

22 Q Can you show in here where he came?

23 A When I saw him he would have been over toward this
24 side, over on the right-hand side of the picture.

25 Q And do employees have a certain place they can park?

1 Did they have in 2006 a certain place they parked?

2 Excuse me.

3 **A** Typically we parked toward the right-hand side of the
4 store. If you're looking at the front of the store,
5 we'll park on the right-hand side of the building
6 back behind the stall area.

7 **Q** Now, did you know Joshua Zoch?

8 **A** Yes, I did.

9 **Q** And how did you know him?

10 **A** Josh had previously been employed at our store.

11 **Q** Molly Waltemath?

12 **A** Yes, I know Molly. Molly is currently an employee of
13 our store and was at that time.

14 **Q** Okay. Zack Waltemath?

15 **A** Yes. At that time Zack I believe was still an
16 employee of our store.

17 **Q** Cecile Trapp?

18 **A** Yes. Cecile was an employee of our store at that
19 time.

20 **Q** December 2006?

21 **A** December 2006.

22 **Q** Christopher Rust?

23 **A** Christopher Rust was an employee of that store, of
24 our store at that point in time and is an employee of
25 our store now.

1 Q Now, when did you learn of the death of Joshua Zoch?

2 A I don't recall the exact time. I remember Pat called
3 the Wednesday after his death or Wednesday of his
4 death up in the day to tell me about it before
5 learning of it possibly through the news.

6 Q What was the last part? I'm sorry. I just
7 couldn't --

8 A She wanted to tell me personally before I possibly
9 learned of it seeing the newscast.

10 Q And that's Pat Heathco?

11 A Pat Heathco, yes.

12 Q Thank you. That's all.

13 **THE COURT:** Cross examination, Mr. Whitlark.

14 CROSS EXAMINATION

15 **BY MR. WHITLARK**

16 Q Mr. Brown, did you give a statement in this case, a
17 written statement?

18 A Yes, I did.

19 Q Okay. You remember filling it out, right?

20 A Yes, I do.

21 Q Do you have a copy of it with you?

22 A I have it in my notebook back in ...

23 Q Who was the manager at Sonic before you started
24 working there?

25 A I was part of the original assistant manager crew

1 that was hired at that store. Pat Heathcoe has been
2 the owner/operator since it opened.

3 Q Since it opened. Okay. Was there a lady named, is
4 it Keefe or Kife that used to work there?

5 A Melissa O'Keefe. She was an assistant for a while.

6 Q Ms. O'Keefe. Does she work there any more?

7 A No, she does not.

8 Q All right. Do you know why she left?

9 A No, I do not.

10 Q Okay. Do you know when she left?

11 A It would have been somewhere in and around that time,
12 but I'm not sure exactly. But, I mean, it was -- I
13 believe it preceded that, but I'm not positive.

14 Q You always got along fine with these folks?

15 A Pardon me?

16 Q You always got along fine with these gentlemen here?

17 A Well, you know, like any employer/employee
18 relationship, from time to time you have to tell them
19 this is the way it's going to be. But as a general
20 rule, yes.

21 Q Thank you. That's all I have, Your Honor.

22 **THE COURT:** Mr. Kendrick.

23 **MR. KENDRICK:** Thank you, Your Honor.

24 CROSS EXAMINATION

25 **BY MR. KENDRICK:**

1 Q Mr. Brown, I'm Josh Kendrick. I represent Mr.
2 Cannon. I'm going to be very brief. I just have a
3 couple of questions. The schedule that you make for
4 the weekly people that work there, what date is that
5 made on?

6 A That is posted on Sundays.

7 Q Okay. And the night you're talking about on December
8 the 12th, Mr. Whitehead wasn't supposed to be up
9 there because he wasn't working, right?

10 A He was not supposed to be behind the set up counter
11 there where we place the trays because he was off
12 duty.

13 Q Okay. That's all I have. Thank you.

14 THE COURT: Mr. Riley.

15 CROSS EXAMINATION

16 BY MR. RILEY

17 Q Mr. Brown, at this point in time, do you know whether
18 Mr. Whitehead worked another job?

19 A It was my understanding that in and around that time
20 he also -- he I believe was working as an assistant
21 manager at a movie theater over at Sandhills Shopping
22 Center.

23 Q All right, sir. Thank you.

24 THE COURT: Any redirect?

25 MR. MEADORS: No, sir.

1 **THE COURT:** All right. You may come down, sir.

2 **MR. MEADORS:** Can we approach, Your Honor?

3 **THE COURT:** May the witness be excused? Without
4 objection.

5 **MR. KENDRICK:** No objection.

6 **MR. MEADORS:** Can we approach?

7 **THE COURT:** Sure.

8 (Whereupon, a bench conference is had)

9 **THE COURT:** All right, ladies and gentlemen.
10 We're going to take just a short break. As I told
11 you, we -- let me just say something. When the jury
12 is present, nobody leaves. If I say we're going to
13 take a break, we take a break after the jury leaves.
14 All right? Everybody understand that? Nobody moves.
15 Nobody stands up. Nobody starts moving around until
16 the jury is out of the room.

17 What was I going to say? We started back --
18 well, actually we worked right through lunch. So
19 everybody needs a short break, including the lawyers
20 and the defendants and probably the court reporter.
21 I always blame it on the court reporter. But anyway,
22 if you'll go to the jury room, don't discuss the case
23 among yourselves.

24 Let me ask you to discuss one thing. And, Madam
25 Forelady, you can tell us if there's any problem when

1 we return. We may run past 5:00. But I generally
2 will not run past 6:00. Now, sometimes people have
3 child care problems or family things that we need to
4 know about because we don't want to interfere with
5 those types of things. So if you'll just check and
6 see if anybody has any things that they need to --
7 not just run to the grocery store and get a bottle of
8 milk, there's just some things that you have to do
9 that you can't avoid in the early evening.

10 So if you'll let us know if it's all right to
11 stay 'til, say, 5:30, we're just trying to -- we want
12 to move it along because you heard me read the list
13 of witnesses. I certainly don't think that many
14 witnesses are going to testify. But we want to just
15 keep it moving. So if you'll let us know that at the
16 end of the break, we'd appreciate it. Thank you very
17 much. You may retire to the jury room for a short
18 break.

19 (Jury out at 4:00 p.m.)

20 **THE COURT:** Counsel, let me see you one second
21 before we take a break.

22 (Whereupon, a bench conference is had)

23 (Whereupon, a break is taken)

24 (WHEREUPON, State's Exhibit No. 10 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 11 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 12 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 13 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 14 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 15 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 16 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 17 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 18 is marked for
16 identification.)

17 **THE COURT:** The State ready to proceed?

18 **MS. MCDUFFIE:** No, sir, Your Honor.

19 (Pause)

20 **THE COURT:** The State ready to proceed?

21 **MR. MEADORS:** Yes, sir.

22 **MR. KENDRICK:** Your Honor, Mr. Whitlark is
23 talking with a witness.

24 **THE COURT:** Was what?

25 **MR. KENDRICK:** Mr. Whitlark was talking with a

1 witness outside.

2 **THE COURT:** Outside the building.

3 **MR. KENDRICK:** Your Honor, when I went out
4 there, I know he is on the phone with somebody about
5 the case. He's on his way.

6 **THE COURT:** All right. He is represented.
7 Bring the jury, please.

8 (Jury in at 4:17 p.m.)

9 **THE COURT:** All right. Madam Forelady, any
10 problems with staying a little late tonight?

11 **MADAM FORELADY:** No, sir. That's fine.

12 **THE COURT:** All right. Thank you very much.
13 I'm considerate of your time. So we'll try to make
14 it as -- call your next witness.

15 **MR. MEADORS:** Cosmo Baccomo.

16 COSMO BACCOMO, after being duly sworn, testifies
17 as follows:

18 **THE CLERK:** Thank you. Please be seated in the
19 witness chair and state your full name for the
20 record.

21 **THE WITNESS:** My full name is Cosmo Baccomo.

22 **COURT REPORTER:** Would you spell your last name,
23 please.

24 **THE WITNESS:** B-A-C-C-A-M-O.

25 **COURT REPORTER:** Thank you.

DIRECT EXAMINATION

BY MR. MEADORS

Q Good afternoon, Mr. Bacco. Good afternoon.

A Thank you. Good afternoon to you, too.

Q And I don't mean any disrespect. Do you have a little hard time hearing?

A Just a little bit.

Q All right. Can you tell these folks about yourself?

A I was born in 1947 in Beacon, New York. I went to Roy C. Cantrell High School in Wappinger's Falls. In 1965 I joined the United States Army, went to Vietnam in '66/'67, came back from Vietnam, stationed at Fort Bragg, got out of the service, worked for IBM. I got divorced from my first wife, went back in the service in 1971. And while I was in, I was in Fort Bragg, Athens, Greece, Germany, Korea; and then I got out in '82 with a medical discharge. And I moved to South Carolina in 1987. And I've been working for the United States Post Office since I've been down here. I'm retired.

Q And how long did you work for the United States Post Office?

A Twenty years.

Q Did you work at one branch?

A I worked in -- I started out in Harbison. I worked

1 there for six months, went to Five Points for three
2 months, went to Eau Clair for three months, and spent
3 the rest of my time at Northeast station on Two
4 Notch.

5 **Q** And you retired in what year?

6 **A** 19 -- 2005, June 30th.

7 **Q** All right. What have you been doing since then,
8 Mr. Baccomo?

9 **A** I'm retired but I still work a nonpaying job with the
10 Union. I represent all the carriers. I'm the
11 N.A.L.C. president, National Association Letter
12 Carrier president for our branch. And I represent
13 them in all grievance procedures.

14 **Q** Now, just going back briefly into your period when
15 you were in the Army, did you ever work with cars?

16 **A** Yes, sir.

17 **Q** In what aspect?

18 **A** In 1965 I was sent to Fort Dix for wheel school, Fort
19 Knox for track school. That's mechanics. And then I
20 went back to Fort Dix for driving school which is
21 also known. And I was a mechanic for the first seven
22 years while in the service. And when I got out I
23 worked for a Pontiac dealership in Fishkill, New
24 York.

25 **Q** Where in New York? Fish --

1 **A** Fishkill.

2 **Q** Fishkill. Now, in December of 2006, Mr. Baccomo,
3 where were you living?

4 **A**

5 **Q** Who were you staying there with?

6 **A** My wife.

7 **Q** And do you still stay there?

8 **A** No, sir.

9 **Q** You live in Lugoff now?

10 **A** Yes, sir.

11 **Q** Do you still own that residence?

12 **A** Yes, sir.

13 **Q** Is somebody there now?

14 **A** Yes, sir.

15 **Q** Mr. Baccomo, I've shown you this. You looked at this
16 a little while ago. State's 17, do you recognize
17 this?

18 **A** That's a map of Rocky Branch Subdivision.

19 **Q** Is it kind of an aerial view of it? I mean, it shows
20 kind of an overview of it?

21 **A** Right.

22 **Q** And is the residence where you lived on here?

23 **A** Yes, sir.

24 **MR. MEADORS:** All right. Your Honor, we'd offer
25 State's 17, I believe without objection.

1 **THE COURT:** Without objection?

2 **MR. KENDRICK:** Yes, sir, Your Honor.

3 **MR. RILEY:** No objection.

4 **MR. WHITLARK:** No objection.

5 (WHEREUPON, State's Exhibit No. 17 is admitted
6 into evidence.)

7 **Q** Before I get to that, Mr. Baccamo, let me ask you a
8 couple of questions. On December 12th, specifically
9 of 2006, were you residing on Ryan Lane in your
10 house?

11 **A** Yes, sir.

12 **Q** And you got any children?

13 **A** Yes, sir. I've got two boys.

14 **Q** Does one of them have dogs?

15 **A** They all got dogs.

16 **Q** Okay. Well, were you keeping one of them's dogs
17 during this week in December of 2006?

18 **A** Yes. I was keeping my oldest boy's Great Dane with
19 me.

20 **Q** And was your son on vacation or something?

21 **A** He was on a cruise with his wife and mother-in-law
22 and father-in-law.

23 **Q** And do you also have dogs?

24 **A** Yes, sir. I've got three.

25 **Q** And on December 12th of 2006, you had your son's dog.

1 What kind of dog did you say it was?

2 **A** A Great Dane.

3 **Q** Can you remember that evening taking or having to
4 take the dog out?

5 **A** Yes, sir.

6 **Q** That's what I want you to tell these ladies and
7 gentlemen about. What do you remember about that,
8 Mr. Baccomo?

9 **A** It was roughly 10:25. The dog was really restless in
10 the cage. So I took him outside. And I've got to go
11 out with him because he's got a bad habit of maybe
12 going over the fence because he's so big.

13 **Q** Did you say 10:25 or 11:25?

14 **A** 11:25. I'm sorry. About 11:25. And I was standing
15 outside by my security light. And the dog likes to
16 jump on your shoulders. And maybe 11:28, 11:30, I
17 heard a lot of knocking noise, loud, like somebody
18 kicking something or slamming doors. And I looked up
19 the road. I didn't see anything. So I just went
20 back with the dog.

21 And about ten minutes later I heard a lot of
22 noise, I mean a lot of people getting excited and,
23 you know, like they're talking real loud. Then I
24 heard like a door slam. I seen headlights in the
25 road, and a car spun down the road, spun out, went up

1 the street.

2 Q You could hear voices?

3 A Yes.

4 Q And could you -- did it sound like it was one person
5 or more than one person?

6 A It sounded like a couple of people.

7 Q And did it sound like female or male voices?

8 A Male voices.

9 Q And could you hear the car?

10 A Could I hear the car?

11 Q Yes, sir.

12 A Not at the first time. The second time when they're
13 getting ready to leave, yes, I could.

14 Q Did their muffler sound quiet or loud?

15 A Loud.

16 Q Now, Mr. Baccomo, you've been pretty specific on your
17 times here. What, if anything -- how do you know it
18 was around 11:25, 11:28?

19 A I usually go to bed at 10:00 and watch M*A*S*H every
20 night. And after M*A*S*H I watch Fresh Prince of
21 Bel-Air.

22 Q And you said 10:00. Do you mean 11:00?

23 A Yeah. Well, he's on from 10 to 11, is M*A*S*H, and
24 then 11 to 12 is Fresh Prince.

25 Q 11 to 12 is Fresh Prince. Was that your habit to

1 watch that?

2 **A** Excuse me?

3 **Q** Was that your habit to watch those programs?

4 **A** Yes, sir. Those four programs every night.

5 **Q** And you say you usually go to bed earlier. But do
6 you usually have your son's dog with you?

7 **A** Usually I just let my dogs out and they go out. But
8 then I had to take this dog out at 10:30 -- I mean
9 11:30.

10 **Q** Is that dog is not usually with you?

11 **A** No, sir. Thank God.

12 **Q** Well, Your Honor, with the Court's permission I'm
13 going to ask Mr. Baccomo if he can step down.

14 **THE COURT:** Sure.

15 **Q** Mr. Baccomo, if you could keep your voice up and come
16 down here just very briefly. And if you'd stand over
17 here so madam court reporter can hear you. I'll move
18 this back. Do you have a pointer? Help me. Where
19 is your residence on here?

20 **A** Sessions Road or Lane. So right there. My residence
21 is right there.

22 **Q** Okay. And again, for the record, we're referring to
23 State's 17. Mr. Baccomo, you just did it, but could
24 you use this pointer and show these ladies and
25 gentlemen of the jury where you live?

- 1 **A** Right there.
- 2 **Q** That's Cosmo Baccomo's residence?
- 3 **A** Yes, sir.
- 4 **Q** And after you said approximately 11:25 you were
5 watching Fresh Prince, where did you go outside?
- 6 **A** I went out to my security light which is roughly
7 about 25 foot off of my fence line which is right
8 there, about right there.
- 9 **Q** All right. And at some point you said you hear some
10 kind of banging or noise?
- 11 **A** Yes, sir.
- 12 **Q** All right. And what direction was that coming from?
- 13 **A** It was coming from right there.
- 14 **Q** Okay. And how do you -- are you sure it was coming
15 from that way?
- 16 **A** Yes.
- 17 **Q** And then after that you stated you heard some more
18 noise?
- 19 **A** Yes, sir.
- 20 **Q** Okay. And where was that noise coming from?
- 21 **A** That noise was coming from somewheres in front of the
22 house. And the reason I can say that, there was no
23 leaves on the trees and you could -- it was very
24 plain to hear.
- 25 **Q** And is that where you heard what you said were the

1 voices?

2 A Yes, sir.

3 Q Male voices. And you saw a car leaving in what
4 direction?

5 A The car left in -- they were coming out of the
6 driveway, went to the right and coming around this
7 way.

8 Q And do you know what type of car that was?

9 A I couldn't tell you the exact make, but I know it was
10 like a size of a Neon or maybe the small, old Mustang
11 type of cars.

12 Q Midsized car?

13 A Well, yeah. It's a little bit smaller, about
14 midsized, maybe just a little bit smaller.

15 Q And it went away from your house?

16 A Yes, sir.

17 Q How long from when you first heard the slam until you
18 heard the -- heard and/or saw or whatever the car
19 going away; how long inbetween there?

20 A Ten, twelve minutes tops.

21 Q Now, had you met the individuals who lived in that
22 house where you heard where the noise come from?

23 A You mean this house right here?

24 Q Yes.

25 A Yes, sir, I have met him, him and his girlfriend.

1 Q Seen them when you were walking your dogs?

2 A Yes, sir. Not when I was walking my dog. But they
3 had trouble over this guy here. And we were over
4 there talking to him one night. And then I met them
5 at Ryan's when they worked at Ryan's. And I went by
6 his house a couple of times. We just saw him on the
7 front porch. We just sat and talked.

8 Q You can have a seat back, please. Thank you. And,
9 Mr. Bacco, did you have an occasion to talk to law
10 enforcement and tell them what you observed that
11 night?

12 A Yes, I did.

13 Q And was that around the time period when this
14 happened?

15 A Well, it had to be two days after -- a day after they
16 got to the house. They got to the house that night,
17 the next morning; the next day.

18 Q They came and talked to you about what you heard
19 and/or observed?

20 A No, sir. They left a card on my door.

21 Q All right. What happened? Excuse me.

22 A And when I was coming up from where I work, they were
23 leaving. And I stopped them. And I said, "Did you
24 leave this card?" They said, "Yeah." I said, "What
25 did you want?" They said, "Did you hear anything?"

1 I said, Yes, sir." And they came down. They took a
2 statement.

3 Q And that's when you gave them a statement?

4 A Yes, sir.

5 Q Beg the Court's indulgence. Mr. Baccomo, thank you.
6 That's all I have.

7 **THE COURT:** Yes, sir.

8 **MR. WHITLARK:** Your Honor. May it please the
9 Court.

10 CROSS EXAMINATION

11 **BY MR. WHITLARK**

12 Q Mr. Baccomo, you were pointing to that picture there.
13 Have you seen that picture before, that large aerial
14 picture?

15 A That map?

16 Q Yes, sir.

17 A Yes, sir.

18 Q How many times have you seen it before?

19 A Twice.

20 Q Okay. You've had meetings with the solicitor about
21 the case?

22 A Excuse me?

23 Q You've met with the --

24 A Yes.

25 Q -- prosecutors about the case?

1 **A** Yes.

2 **Q** Okay. You did give a statement. You don't remember

3 the date of it, that you gave it?

4 **A** The date?

5 **Q** Yes, sir.

6 **A** No. It was December 12th. I think it was.

7 **Q** Who took a statement from you? Do you remember?

8 **A** A Richland County sheriff investigator in civilian

9 clothes.

10 **Q** Do you see him in this courtroom?

11 **A** If I did I wouldn't recognize him it's been so long.

12 **Q** All right. Now, in your statement did you -- you

13 never mentioned anything about hearing excited voices

14 or anything, did you?

15 **A** No, sir. I just said I heard loud voices.

16 **Q** All right. And you said that the car lights were on

17 the whole time?

18 **A** No, sir. I did not say that. I said when I turned

19 around the second time the lights were shining out.

20 **Q** Okay. Now, and this car, you have mentioned that it

21 didn't have stock pipes, did it?

22 **A** No, sir. It either had a hole in the exhaust or my

23 opinion it had a -- they call them extensions that

24 make the car sound a little bit hotter than what it

25 is. It's a chrome piece that goes on the tailpipe.

1 Q All right. And that's because of your background?

2 A Yes, sir.

3 Q And you said -- did you mention anything in your

4 statement about the car spinning out or fishtailing?

5 A Well, I told the policeman that when it took off it

6 like fishtailed up the road. But I didn't put that

7 in my statement.

8 Q Okay. And you wrote your statement?

9 A Yes, sir.

10 Q Okay. All right. It didn't have stock pipes.

11 Extension pipes? Is that what you said?

12 A It sounded like extension pipes.

13 Q You didn't see anything though other than the lights?

14 A No, sir.

15 Q Okay. Had you ever heard any trouble at that house

16 before, heard any fighting going on or anything?

17 A A couple of arguments between him and his girlfriend,

18 but it was nothing serious. Like everybody else,

19 they yell at each other, like I do with my wife. But

20 it was no fights or nothing.

21 Q How well did you know him?

22 A Excuse me?

23 Q How well did you know the two?

24 A I met his wife one time; I mean, his girlfriend one

25 time. But I met Josh probably five or six times. I

1 usually stay to myself. If I'm walking up the street
2 and he's outside, we'll stop and talk.

3 **Q** What did you know about him?

4 **A** I knew he was a young man. He was engaged. I think
5 he was just about ready to get engaged or was
6 engaged. And he worked at Ryan's. He was a cook at
7 Ryan's. His girlfriend was a waitress at Ryan's at
8 the time. And I happened to see them there a couple
9 of times when I went in and ordered something to eat
10 and he was cooking steaks.

11 **Q** Did he mention to you that he was out on bond?

12 **A** No, sir.

13 **Q** For armed robbery or --

14 **A** I didn't want to know all that.

15 **Q** For burglary?

16 **A** That's not me for to know.

17 **Q** Did he ever talk to you about armed robbery or
18 burglary charges?

19 **MR. MEADORS:** Objection, Your Honor.

20 **A** No, sir.

21 **Q** All right. Thank you. That's all I have.

22 **THE COURT:** Mr. Kendrick.

23 **MR. KENDRICK:** Begging the Court's indulgence,
24 Your Honor. Your Honor, I don't have anything
25 additional of this witness.

1 **THE COURT:** Mr. Riley or Mr. Reuwer.

2 **MR. REUWER:** May it please the Court, Your
3 Honor.

4 CROSS EXAMINATION

5 **BY MR. REUWER**

6 **Q** Mr. Baccomo, I'm still unclear on the time. First
7 you said it was 10:25 or 10 something. And then the
8 solicitor corrected you. Which?

9 **A** No. It was 11:25. I wrote that in my statement.

10 **Q** Also on your statement, did you look at your
11 statement to review it for today's --

12 **A** Not since I wrote it.

13 **Q** Oh, okay. You mentioned that there was one voice you
14 heard. And then today you've said that there were a
15 couple of voices?

16 **A** I just said loud voices. I never said one or two. I
17 don't think I ever said one or two.

18 **Q** All right. May I show you your statement?

19 **A** Sure. If I did, it was a mistake, because I said
20 loud voices.

21 **Q** Okay. I just want to know the truth of which one it
22 is. Was it one voice that you made in the statement
23 back then or voices now?

24 **A** It was just loud noises, voices; you know, loud
25 voices. Voices, you know, like more than one.

1 Q More than one. But you didn't write "more than one"
2 on your statement?

3 A No, sir, I did not.

4 Q Okay. With your background and training, sir, can
5 you tell the difference between two voices and three
6 or three and four?

7 A I can tell the difference of more than one. Yes,
8 sir.

9 Q But you don't know how many more than one?

10 A Like I said, I couldn't tell you whether it was 5, 10
11 or 20. I just know it was more than one.

12 Q More than one. Okay.

13 A It heard different tones.

14 Q Can you tell -- again, with respect to your
15 background with mechanics and cars and vehicles, can
16 you tell the difference between what you call normal
17 mufflers and what did you call it? Extension
18 mufflers?

19 A Yes, sir.

20 Q And you can tell those differences?

21 A Yes, sir. A normal muffler, if you step on the gas,
22 it like purrs. But extensions or holes in the
23 mufflers give that like a bom-bom-bom-bom-bom sound.

24 Q And this was clearly which one?

25 A The one was going loud.

1 Q The last one?

2 A It gives you like a popping sound.

3 Q Okay.

4 A And that's a big thing with kids and their cars

5 anyway today.

6 Q Just two more questions, Mr. Baccomo, please. Can

7 you -- at night, are you aware that noise travels

8 further?

9 A Yes, sir.

10 Q Okay. Than it does during the day?

11 A Yes, sir.

12 Q And why is that?

13 A Because of the air.

14 Q Okay. Can you tell whether the noise that you heard

15 is reverberating off something or bouncing off

16 something? Or is it direct to you? If you recall?

17 A It was more or less -- it wasn't bouncing off

18 anything. It was a direct -- I heard direct -- on

19 the street that I live on at that time, everybody is

20 in bed by 11, 11:30. We've got a lot of elderly on

21 our street.

22 Q Yes, sir.

23 A And there was nobody out but that one house.

24 Q Okay. Thank you. Nothing further, Your Honor.

25 **THE COURT:** Any redirect?

1 **MR. MEADORS:** Yes, sir. Very briefly. Can I
2 approach briefly?

3 **THE COURT:** Sure.

4 REDIRECT EXAMINATION

5 **BY MR. MEADORS**

6 **Q** I want to show you what's marked as State's 18 for
7 identification only. A couple of these gentlemen
8 asked you about your statement. Is that one Cosmo
9 Baccomo?

10 **A** Yes, sir.

11 **Q** That's you?

12 **A** Yes, sir.

13 **Q**

14 **A** Yes, sir.

15 **Q** Now, I think specifically Mr. Reuwer asked you about
16 whether or not you put one or -- can you look on the
17 second page there? After it says, "I heard", what
18 does that say?

19 **A** "I heard some noises."

20 **Q** Some noises?

21 **A** "Like someone talking."

22 **Q** Some noises?

23 **A** Some noises.

24 **Q** Like someone talking. You know the difference
25 between a male voice and a female voice?

- 1 **A** Yes, sir.
- 2 **Q** And this sounded like how many voices to you?
- 3 **A** No more than I would say two. It could have been
- 4 more; but like I said, I can't distinguish exact
- 5 numbers.
- 6 **Q** But it was some noises, right?
- 7 **A** Yes, sir.
- 8 **Q** And did you put in here the type of car?
- 9 **A** Yes, sir.
- 10 **Q** All right. What did you put?
- 11 **A** Let's see. It took off kind of fast. It was the
- 12 size of a Neon, midsized.
- 13 **Q** And did you put also in your statement approximately
- 14 what time it was when you talked to the police?
- 15 **A** Yes, sir.
- 16 **Q** What did you put in there?
- 17 **A** 11:25 p.m.
- 18 **Q** Did you put in there what you were watching on TV?
- 19 **A** Yes, sir.
- 20 **Q** What did you put?
- 21 **A** Fresh Prince on TV.
- 22 **Q** Did you put in there it was your son's dog that you
- 23 were taking out?
- 24 **A** Yes, sir.
- 25 **Q** Did you put in here that you heard a loud noise like

1 someone slamming or kicking a door?

2 **A** Yes, sir.

3 **Q** You put that in the statement just a few days after
4 this incident. Is that right?

5 **A** Yes, sir. I didn't write down everything I heard
6 because I didn't think it was relevant at the time I
7 guess.

8 **Q** Did you put in here that you stayed outside ten to
9 twelve minutes?

10 **A** Yes, sir.

11 **Q** And I think Mr. -- correct me if I'm wrong. Mr.
12 Reuwer was asking you about the tailpipe. You know
13 cars, don't you?

14 **A** Yes, sir.

15 **Q** From your track thing in the Army?

16 **A** Yes, sir. I was a mechanic for 15 years.

17 **Q** And you couldn't see the pipe, tailpipe?

18 **A** No.

19 **Q** You're not saying that. You're saying you heard it
20 sounded like it wasn't a stock pipe, right?

21 **A** Right.

22 **Q** Could it be just a messed up muffler?

23 **A** It could have been a hole in the muffler. It could
24 have been a hole in the pipe. It just makes a louder
25 noise.

1 Q But you heard that noise?

2 A Yes, sir. And that's what caught my ear.

3 Q And you put that in here, didn't you? You put that
4 in your statement, didn't you?

5 A Yes, sir.

6 Q Thank you. That's all.

7 MR. WHITLARK: Briefly, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WHITLARK: One question.

10 THE COURT: Yes, sir.

11 RE CROSS EXAMINATION

12 BY MR. WHITLARK

13 Q Now, you met with the officers and the solicitor on
14 more than one occasion before coming to testify. Is
15 that right?

16 A Yes, sir.

17 Q Did you go up to their office?

18 A No, sir.

19 Q They came out to see you?

20 A Yes, sir.

21 Q Did they bring that picture with them?

22 A Last night they did.

23 Q Okay. All right. And did they give you a copy of
24 your statement?

25 A No, sir. I had a copy but I lost mine. The police

1 gave me a copy.

2 Q All right. All right. Thank you. That's all I
3 have.

4 THE COURT: Anything further?

5 MR. KENDRICK: Nothing else, Your Honor.

6 MR. REUWER: No, sir.

7 THE COURT: You may come down, sir. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Bacco, you're free to go
10 without objection.

11 MR. WHITLARK: We have no objection, Your Honor.

12 THE COURT: Next witness.

13 MR. MEADORS: Chris Rust.

14 THE COURT: Is somebody named Chris Rust here?

15 MR. MEADORS: Yes, sir.

16 THE COURT: All right.

17 CHRISTOPHER J. RUST, after being duly sworn,
18 testifies as follows:

19 THE CLERK: Thank you. Please be seated and
20 state your full name for the record. Right this way,
21 please.

22 THE WITNESS: Christopher Joseph Rust.

23 DIRECT EXAMINATION

24 BY MR. MEADORS

25 Q Good afternoon, Mr. Rust.

1 **A** How you doing today?

2 **Q** Fine. How are you? If you'd just please speak up
3 and make sure that the ladies and gentlemen, the
4 court reporter, His Honor, everybody can just hear.
5 Just speak into that there, please. Mr. Rust, tell
6 these ladies and gentlemen of this jury about
7 Christopher Rust. Where were you born? Where did
8 you grow up?

9 **A** I was born -- I was born in South Carolina. I grew
10 up most of my time in Blythewood and Eastover. Now I
11 currently just graduated high school, currently work
12 at --

13 **Q** Wait a minute. Slow down. Where did you go to high
14 school?

15 **A** Blythewood High and Lower Richland in Ridgeview.

16 **Q** When did you get out of high school?

17 **A** Last year. So this would be '07.

18 **Q** And what did you do after high school?

19 **A** Worked a few jobs. And I started working with the
20 State, for D.P.S.

21 **Q** And what did you do there?

22 **A** Now I'm currently working there. I work with
23 surplus.

24 **Q** Okay. And did you ever work at Sonic on Hard
25 Scrabble Road in Richland County?

1 **A** Yes, sir. I currently am employed there. It is my
2 second job now.

3 **Q** Prior to that, prior to today; well, specifically in
4 December of 2006, did you work at Sonic?

5 **A** Yes, sir.

6 **Q** And do you remember when you first started working at
7 Sonic?

8 **A** It was before Christmas. It was probably a few
9 months before then.

10 **Q** Okay. Before -- the end of 2006?

11 **A** Yeah.

12 **Q** Okay. And what job did you have at Sonic?

13 **A** I was a cook.

14 **Q** And did you have a certain shift that you worked?

15 **A** Yeah. Generally I worked the night shift. I might
16 have worked the morning shift on a few weekends.

17 **Q** And the night shift was what in December 2006 for
18 you, Christopher Rust?

19 **A** Monday through Friday it was 5 to 11. And on the
20 weekends we closed at 12. Well, like I said, they
21 closed at 12 on weekends, Friday and Saturday.

22 **Q** And December 2006, where were you in your life
23 school-wise?

24 **A** At school I was a senior. I mean, I was having a
25 little bit of trouble in school. But I was still

1 going to all my classes. I had early dismissal.

2 Q So your senior year you're going school, plus you're
3 working?

4 A Yes, sir.

5 Q Now, let me just ask you about a couple of folks.
6 Did you know Defendant Christopher Whitehead?

7 A Yes, sir.

8 Q Tell these folks, how did you know him?

9 A I worked with him at Sonic. I met him through
10 Derrick McDonald.

11 Q And that would be Derrick McDonald here. How did you
12 know Derrick McDonald?

13 A I met him at school, and he was the actually one that
14 helped me get my job at Sonic.

15 Q And again, I know everybody else knows it. But just
16 remind me, what school did you meet him at?

17 A Blythewood High School.

18 Q Did you all go to high school together?

19 A Yes, sir.

20 Q And how long had you known him?

21 A I'd known him I want to say the end of my junior
22 year, somewhat through my senior year.

23 Q Did you know Robert Cannon?

24 A I met him at Sonic as well.

25 Q And just to ask you a few more. Melissa Davy?

1 **A** Yeah. I knew her. She worked at Sonic as well, too.

2 **Q** How about a Molly Waltemath?

3 **A** She worked at Sonic as well, too.

4 **Q** Zack Waltemath?

5 **A** He worked at Sonic as well.

6 **Q** Sonic is kind of the central, how you knew most of
7 these folks except for Derrick McDonald?

8 **A** Yes, sir.

9 **Q** How about a Cecile Trapp?

10 **A** I knew her through Sonic.

11 **Q** Sonic. Of course. Now, Joshua Zoch?

12 **A** I didn't know him, but I did know that he, you know,
13 was going with Melissa Davy at the time.

14 **Q** And you said you started -- I think you were saying
15 before December of 2006 you started at Sonic. How
16 long did you work there? I know you're back there
17 now. But how long did you work there through then?

18 **A** Like I said, I believe I started in either October or
19 November. And then I quit I want to say the end of
20 March or the beginning of April.

21 **Q** Now, did you ever hang out with these three?

22 **A** I hung out with Derrick McDonald. Me and him, you
23 know, I took him to work sometimes. I hung out with
24 Robert Cannon a few times. I worked with Chris maybe
25 one or two shifts. We never really hung out.

1 Q So primarily out of the three of them: Whitehead,
2 Cannon and McDonald, it's fair to say you hung out
3 with McDonald the most?

4 A Yes, sir.

5 Q Knew him the most because you all had been in school
6 together?

7 A Yes, sir.

8 Q And would you ever take Derrick McDonald to school?
9 To work?

10 A Yes, sir.

11 Q Now, let me -- I think maybe you can stay right
12 there, if the Court doesn't mind if I approach,
13 please. Referring to State's 8, do you recognize
14 this as a December 2006 calendar?

15 A Yes, sir.

16 Q And you've testified you were working at Sonic then,
17 correct?

18 A Yes, sir.

19 Q So the week of the 10th you'd have been working at
20 Sonic?

21 A Yes, sir.

22 Q And I want to point you or direct you directly to
23 December 12th of 2006. You said you were primarily
24 working the second shift?

25 A Yes, sir.

1 Q And were you working the second shift on December
2 12th, 2006?

3 A Yes, sir.

4 Q Now, on that night or that shift, did you have an
5 occasion to see either Defendant Christopher
6 Whitehead, Defendant Robert Cannon or Defendant
7 Derrick McDonald?

8 A Yes, sir.

9 Q Please tell these ladies and gentlemen of the jury
10 about that?

11 A They came in one night. Me, Allen Brown were
12 working, and Nick Adams. We were in the kitchen.
13 Robert Cannon came in. He had a mask on. And
14 Derrick McDonald and Christopher Whitehead were with
15 him.

16 Q And how long did they stay there?

17 A I am not exactly sure.

18 Q But then do they leave?

19 A I saw them go out the front door. I don't know if
20 they left together or what.

21 Q But you saw all three of them go, leave?

22 A Yes, sir.

23 Q The Sonic business?

24 A Yes, sir.

25 Q And how long did you -- when did you get through that

1 night? When was the shift over? When did you all
2 close that night?

3 **A** We closed the lights, shut all the lights off at 11.
4 So I got out of there sometime after 11 because of
5 cleaning and all that.

6 **Q** And where was your car parked?

7 **A** In the back parking lot.

8 **Q** When you got back to your car, what did you do?

9 **A** I got in my car, left and went home.

10 **Q** By yourself?

11 **A** Yes, sir.

12 **Q** Was anybody in your car?

13 **A** No, sir.

14 **Q** And you went home. Where were you living?

15 **A** in Blythewood.

16 **Q** All right. Thank you. Now, from the time you
17 testified you'd seen Defendant Whitehead, Defendant
18 Cannon and Defendant McDonald, since you said they
19 left the store; had you seen them again until you
20 left that night?

21 **A** No, sir.

22 **Q** When you got home had you seen them?

23 **A** No, sir.

24 **Q** No doubt about that in your mind?

25 **A** No, sir.

- 1 Q Where did my calendar go? Were you in school?
- 2 A Yes, sir.
- 3 Q And did you have school the next day?
- 4 A Yes, sir.
- 5 Q And did you go to bed that night?
- 6 A Yes, sir.
- 7 Q And in the early morning hours of December 13th, did
- 8 anything happen?
- 9 A Yes, sir. Derrick McDonald knocked on my door later
- 10 in the evening, probably around 1 or so in the
- 11 morning, maybe a little later.
- 12 Q 1 or something in the morning Derrick McDonald
- 13 knocked on your door?
- 14 A Yes, sir.
- 15 Q Did you let him in?
- 16 A Yes, sir.
- 17 Q Had he been to your residence before?
- 18 A Yes, sir.
- 19 Q Was it usual or unusual for him to come to your house
- 20 at 1:30 in the morning?
- 21 A The time was unusual, but it wasn't unusual for him
- 22 to come over.
- 23 Q The time was unusual?
- 24 A Yes, sir.
- 25 Q 1:30 in the morning?

1 **A** Yes, sir.

2 **Q** As a matter of fact, had he ever been over there that
3 time of the morning before?

4 **A** No, sir. Not just showing up.

5 **Q** And did he call you and tell he was coming?

6 **A** No, sir.

7 **Q** Just knocked on the door?

8 **A** Yes, sir.

9 **Q** Where did he stay that night specifically?

10 **A** That night he showed up at my door?

11 **Q** Yes, sir.

12 **A** I let him stay at my house that night.

13 **Q** And I know that was a terrible question.
14 Specifically in your house, where did he stay?

15 **A** In my room. I have a couch and a bed in my room. He
16 slept on the couch.

17 **Q** Beg the Court's indulgence. When you saw him at
18 1:30, he came over to your house and you let him in,
19 can you describe his demeanor to these folks?

20 **A** Well, I mean, he seemed a little upset, but he had
21 told me had an argument with his mom. I didn't think
22 nothing of it, let him in. You know, I went to sleep
23 because I had school in the morning.

24 **Q** And you went to sleep?

25 **A** Yes, sir.

1 Q And you got up the next morning and he was still
2 there?

3 A Yes, sir. And I took him home on my way to school
4 that morning.

5 Q And where did you take him?

6 A To Boney Road where he lived.

7 Q Now, who is your mama?

8 A Chanin M. Ray.

9 Q And had some point later in the week, did you learn
10 about the arrest of these individuals?

11 A Yes, sir. I saw it on the news.

12 Q And as a result of that, did you or your mama do
13 anything?

14 A Yes, sir. Me and my mother went the day after we saw
15 him on the news and wrote a statement that Derrick
16 McDonald stayed one of those nights at the house, at
17 my house.

18 Q At 1:30?

19 A Yes, sir.

20 Q And was that on a weekend you gave that statement?

21 A Yes, sir.

22 Q Do you remember who you gave it to?

23 A Not exactly, sir. I believe it was Kershaw County
24 Sheriff's Department.

25 Q Was it the same night or later on the next morning

1 when you saw him with the ski mask that he came over
2 later on, earlier that day, later that night to come
3 stay with you?

4 **A** I never saw Derrick McDonald with a ski mask.

5 **Q** Strike that. That wasn't my question. The same
6 night that you saw Cannon with the ski mask on that
7 night, was this early the next morning when you saw
8 him?

9 **A** Yes, sir.

10 (WHEREUPON, State's Exhibit No. 19 is marked for
11 identification.)

12 **Q** State's 19 for I.D., is this the information you gave
13 to someone with the police department?

14 **A** Yes, sir.

15 **Q** And is your name on here?

16 **A** Yes, sir.

17 **Q** Is your mama's name on here?

18 **A** Yes, sir.

19 **Q** And phone number?

20 **A** Yes, sir.

21 **Q** And for the record, would you point out Christopher
22 Whitehead?

23 **A** The one all the way to the end on the left, on my
24 left.

25 **Q** The white shirt and the tie?

1 **A** The white shirt, blue jacket.

2 **Q** And Mr. Cannon or Defendant Robert Cannon?

3 **A** In the green shirt with a tie.

4 **Q** And Derrick McDonald?

5 **A** In the gray shirt.

6 **Q** Right here that just -- we'd like the record to
7 reflect he's pointed to the defendants.

8 **THE COURT:** The record will so reflect the
9 witness identified the defendants.

10 **Q** That's all. Thank you.

11 **THE COURT:** Cross examination, Mr. Whitlark.

12 **MR. WHITLARK:** May it please the Court, Your
13 Honor.

14 CROSS EXAMINATION

15 **BY MR. WHITLARK**

16 **Q** It is Chris Rust?

17 **A** Yes, sir.

18 **Q** Have I ever met you before, Mr. Rust?

19 **A** No, sir.

20 **Q** Mr. Rust, Derrick is a friend of yours, right?

21 **A** Yes, sir.

22 **Q** You know him fairly well?

23 **A** Yes, sir.

24 **Q** You knew he was in the ROTC in school?

25 **A** Well, I didn't know him then; but, yes, I knew he was

1 in the ROTC.

2 **Q** You knew that he was in the band, too, wasn't he?

3 **A** I am not sure about that.

4 **Q** Well, did you know that he did charity work at the
5 Harvest Hope food bank?

6 **MR. MEADORS:** Objection. Relevance.

7 **THE COURT:** There's no relevance to that.

8 **MR. WHITLARK:** I'm just trying to find out how
9 well he knows him, Your Honor.

10 **THE COURT:** Well, you can ask him that.

11 **Q** You know him fairly well?

12 **A** Yes, sir. I told you I went to school with him. I
13 took him to work. I told you he helped me get my job
14 at Sonic.

15 **Q** Right. Okay. And this information here, you were
16 shown a document by the solicitor. Right?

17 **A** Yes, sir.

18 **Q** Were you there when this was handed in, or who wrote
19 this?

20 **A** I'm not exactly sure who wrote it. I wrote it. I
21 gave the information to Kershaw County.

22 **Q** Okay. And this was after he was arrested?

23 **A** Yes, sir.

24 **Q** Okay. And you had heard about what happened or
25 whatever?

1 **A** Well, I saw their pictures on the news.

2 **Q** Okay. And you went out there telling them that he
3 was with you?

4 **A** I told him that he came to came to my house one night
5 that week.

6 **Q** Right.

7 **A** Yes, sir.

8 **Q** All right. And he'd stayed at your house before
9 then?

10 **A** Yes, sir.

11 **Q** Okay. How long had you known him?

12 **A** Probably close to a year.

13 **Q** You worked at Sonic for how long, sir?

14 **A** The first time I worked there from, like I said,
15 probably around October or November to the end of
16 March or beginning of April.

17 **Q** Did you know Mr. Zoch?

18 **A** Not personally, no.

19 **Q** Did you know anything about him?

20 **A** I mean, I knew that he went with Melissa Davy. That
21 was his girlfriend.

22 **Q** She worked up there at the time you worked there?

23 **A** Yes, sir.

24 **Q** All right. Do you know anything about people selling
25 drugs at the Sonic?

1 **A** No, sir.

2 **Q** You never heard that?

3 **A** No, sir.

4 **MR. WHITLARK:** That's all I have, Your Honor.
5 Thank you.

6 **THE COURT:** Mr. Kendrick.

7 **MR. KENDRICK:** Thank you, Judge.

8 CROSS EXAMINATION

9 **BY MR. KENDRICK**

10 **Q** Mr. Rust, I'm Josh Kendrick. I represent Robert
11 Cannon. How are you doing this afternoon?

12 **A** Good. How are you doing today, sir?

13 **Q** You told us a minute ago that when you saw my client,
14 Robert Cannon, and you saw Mr. McDonald and Mr.
15 Whitehead at the Sonic the night of the 12th, right?

16 **A** Yes, sir.

17 **Q** And you told us you on direct -- I just want to make
18 sure -- it was you, Allen Brown and Nick Adams --

19 **A** Yes, sir.

20 **Q** -- frequent in the back when they came in?

21 **A** Yes, sir.

22 **Q** And you all were all working --

23 **A** Yes, sir.

24 **Q** -- right then?

25 **A** Yes, sir.

1 Q Okay. All three of you all?

2 A Yes, sir.

3 Q Okay. And made them leave?

4 A Yeah. Allen Brown asked them to leave because they
5 were no longer employed at that time.

6 MR. KENDRICK: Okay. That's all I have, Your
7 Honor.

8 THE COURT: Mr. Riley or Mr. Reuwer.

9 CROSS EXAMINATION

10 BY MR. RILEY

11 Q Mr. Whitehead was still employed there at that time,
12 correct?

13 A Yes, sir.

14 Q Do you know what his job title was?

15 A Cook.

16 Q Thank you.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. MEADORS

20 Q What kind of car did Mr. Whitehead drive?

21 A I'm not exactly sure.

22 Q Do you remember what type it was?

23 A It was a four-door. It was probably a midsize car.

24 Q Did you ever see it?

25 A Yes, sir.

1 Q Did you ever hear it?

2 A I mean, yeah.

3 Q Was it kind of loud?

4 A It was noticeable.

5 Q Noticeable? Thank you. That's all.

6 MR. WHITLARK: Excuse me, your Honor.

7 RECROSS EXAMINATION

8 BY MR. WHITLARK

9 Q And you've discussed that with the solicitor before,
10 what you just said, haven't you?

11 A Yes, sir.

12 Q And you all talked about that before you came in here
13 today?

14 A Yes, sir.

15 Q And you haven't ever stated that in any statement or
16 anything else, have you?

17 A Never thought it was relevant.

18 Q I've got you. But you all talked about this?

19 A Yes, sir.

20 Q All right. Thank you. That's all I have.

21 THE COURT: Mr. Kendrick.

22 MR. KENDRICK: Nothing further, Your Honor.

23 MR. RILEY: No, sir.

24 THE COURT: All right. You may come down, sir.

25 May this witness be excused?

1 **MR. MEADORS:** Yes, sir.

2 **THE COURT:** Without objection?

3 **MR. MEADORS:** No objection.

4 **THE COURT:** Next witness.

5 **MR. MEADORS:** Yes, sir. Can we approach? I've
6 got a long one and a short one, see which one you
7 want me to do.

8 (Whereupon, a bench conference is had between
9 the Court and Mr. Meadors)

10 **MR. MEADORS:** Zack Waltemath.

11 ZACHARY W. WALTEMATH, after being duly sworn,
12 testifies as follows:

13 **THE CLERK:** Please be seated and state your full
14 name.

15 **COURT REPORTER:** Could you state your full name
16 and spell your last name, please?

17 **THE WITNESS:** My name is Zachary William
18 Waltemath. That's W-A-L-T-E-M-A-T-H.

19 DIRECT EXAMINATION

20 **BY MR. MEADORS**

21 **Q** Mr. Waltemath, you're going to have to speak up so
22 everybody can hear you or just speak into the
23 microphone, please, sir. Okay? Can you tell these
24 ladies and gentlemen of the jury a little about Zack
25 Waltemath, where you were born?

- 1 **A** I was born in Fort Wayne, Indiana, and I lived in
2 Churubusco at that time with my parents. And then we
3 moved down to Orangeburg, South Carolina when I was
4 12 because my dad's job moved him. And then I moved
5 to Columbia, South Carolina about -- let me think.
6 Well, I lived in Orangeburg about eight years. Then
7 I moved to Columbia. And then I moved to Indiana
8 with my grandparents and then came back down here in
9 like 2006. And then I started working at Sonic and
10 stuff.
- 11 **Q** Tell me which business your dad was in?
- 12 **A** He was a tool and die.
- 13 **Q** Tool and die?
- 14 **A** Yeah.
- 15 **Q** So the first time you came to South Carolina was
16 when?
- 17 **A** Was when I was about 12 years old. We lived in
18 Orangeburg.
- 19 **Q** Where did you to school in Orangeburg?
- 20 **A** Cardova.
- 21 **Q** Cardova?
- 22 **A** Yeah. Cardova High School and Middle School.
- 23 **Q** All right. And you went from Orangeburg to where?
- 24 **A** To --
- 25 **Q** To Columbia for a while?

- 1 **A** Yeah. I lived in Columbia with my parents in an
2 apartment for about three weeks.
- 3 **Q** Where was that?
- 4 **A** I don't know what the name of the apartments was. It
5 was right down Hard Scrabble, right down the street
6 from that Sonic.
- 7 **Q** And where did you go after that?
- 8 **A** I moved -- I had moved to Indiana with my
9 grandparents because the apartment was too small for
10 all the people that was living there.
- 11 **Q** Tell us again; where were your grandparents?
- 12 **A** They lived in Churubusco, Indiana. It's a little,
13 small town.
- 14 **Q** How long were up there?
- 15 **A** About a year and a half, something like that.
- 16 **Q** And did you get your GED or finish --
- 17 **A** Yeah. I got my GED and I worked around there at a
18 few places, a tool and die place and a paper place.
19 I inserted papers and stuff.
- 20 **Q** And that's with your grandmama?
- 21 **A** Yeah. I was in Indiana.
- 22 **Q** And when did you come back to South Carolina year
23 wise?
- 24 **A** I came back to South Carolina in about -- let me
25 think what month it was -- probably September or

1 October, between there sometime, in 2006 or so.

2 Q And I found my notes now, by the way. You worked at
3 CNC and Lay's?

4 A Yeah. Well, I was at the Bushy place. That was the
5 tool and die work I was doing.

6 Q The paper place?

7 A That was in Columbia City.

8 Q And how long before this incident were you back in
9 Columbia?

10 A I lived -- I probably lived there maybe two months,
11 maybe a month before this happened.

12 Q And when did you start working at Sonic?

13 A Probably about from -- oh, shoot. About October
14 sometime I believe, around Halloween.

15 Q Of 2006?

16 A Or either right after -- yeah. Either right after
17 Halloween or right before.

18 Q And what was your job at Sonic when you first started
19 there?

20 A I was a cook on the dresser station dressing burgers
21 and stuff.

22 Q And who is Molly?

23 A That's my little sister.

24 Q Molly Waltemath?

25 A Yeah.

1 Q And was she working at Sonic back in December of
2 2006?

3 A Yes, sir, she was.

4 Q How long had she been there?

5 A She has probably been there four years, maybe five
6 now.

7 Q And so she was working there before you?

8 A Yeah. Long before me.

9 Q Did she help you get a job there?

10 A Yeah. Partially. It was her and my brother. And
11 then I went in and talked to the owner by myself,
12 too. But it was part -- yeah. Mostly her help
13 and --

14 Q What's your brother's name?

15 A Cody.

16 Q He also worked there?

17 A He did work there before, but he don't now. He
18 didn't then either. He had worked there long before
19 I did.

20 Q And the owner/operator of the Sonic is whom?

21 A Ms. Pat.

22 Q Pat Heathcoe?

23 A Yeah.

24 Q What are you doing now?

25 A I'm actually a manager at Sonic right now.

1 Q Where were you before?

2 A Working on being a GM or an AGM.

3 Q Where?

4 A At Myrtle Beach, South Carolina, on 544.

5 Q And how long have you been down there?

6 A Probably about eight months, nine months now.

7 Q And you are working towards being a manager?

8 A Yeah. An ARA. Well, I'm a manager now. I'm moving

9 up to a GM or an AGM, assistant general manager.

10 Q And what hours do you work now?

11 A Right now I'm opening. I work from 5:30 to 3:00.

12 Q Well, let's go back in time to December of 2006.

13 Were you working there at the Sonic?

14 A Yes, sir.

15 Q And your role was what?

16 A I was a cook.

17 Q And what shift would you work or did you work then?

18 A I usually worked either 11 to 5 or 10 to 5.

19 Q And before we get to this, let's just tell everybody,

20 did you know Joshua Zoch, the victim in this case?

21 A I knew him a little bit. I had met him a few times

22 before.

23 Q How did you come about to meet him?

24 A Through my sister and her friends.

25 Q And your sister, Molly --

- 1 **A** Yeah.
- 2 **Q** -- Waltemath, and her friend?
- 3 **A** Yeah.
- 4 **Q** Who was that?
- 5 **A** Well, her friend was Melissa Davy which was Josh's
- 6 girlfriend at that time.
- 7 **Q** And was he working at Sonic?
- 8 **A** Joshua? No. Not at that time.
- 9 **Q** Had he worked there? Do you know?
- 10 **A** I had heard he worked there, yeah. But --
- 11 **Q** But you didn't know?
- 12 **A** No. I didn't know for sure.
- 13 **Q** Let me just pull this down just a tad.
- 14 **A** Okay.
- 15 **Q** Who is Jenny?
- 16 **A** Oh. Jeanne? That's a friend of Molly's and
- 17 Melissa's.
- 18 **Q** Okay. Did you know the defendant, Christopher
- 19 Whitehead?
- 20 **A** Yeah. I had hung out with him a few times, but I
- 21 didn't really know him that well.
- 22 **Q** How did you meet him?
- 23 **A** I met him through my sister because him and her was
- 24 talking or something I guess. I'm not sure.
- 25 **Q** You met him through your sister, Molly?

1 **A** Yeah.

2 **Q** And she knew Christopher --

3 **A** Yeah.

4 **Q** -- Whitehead? And did you know Robert Cannon?

5 **A** I had met him before.

6 **Q** And where did you meet him?

7 **A** Through Chris I had met him. One time when I would

8 hang out with Chris, I had met him a couple of times.

9 **Q** And Derrick McDonald, did you know him?

10 **A** A little bit. I had met him a couple of times.

11 **Q** Who did you meet him through, or how did you meet

12 him?

13 **A** I met him through Chris and then, Robert and all

14 them.

15 **Q** And you said you had hung out some. I don't know.

16 **A** A couple of times, yeah.

17 **Q** Which one of these?

18 **A** Chris. I had really hung out with Chris a couple of

19 times more. I didn't really know him that well, you

20 know. I had only lived here a couple of months

21 before this happened. So ...

22 **Q** Okay. Now, do you recognize this as a December 2006

23 calendar?

24 **A** Yes, sir.

25 **Q** That's kind of what it says. This week of

1 December 10th of 2006 you were living in Columbia.
2 Working at Sonic?

3 **A** Yes, sir.

4 **Q** And specifically, that Monday, were you at Sonic?

5 **A** Yeah. I had probably worked 11 to 5 or 10 to 5.

6 Yes, sir.

7 **Q** And did you have an occasion to see Joshua Zoch that
8 day?

9 **A** Oh, yeah. He had come up there that day to talk to
10 Melissa because they had got in an argument over the
11 weekend and they were trying to resolve things or
12 something. They were just trying to work things out
13 I guess. He had came up there to see her, you know,
14 for I don't know what reason. I wasn't really being
15 nosy. But then after that I seen him speed off and
16 all that. So I didn't know what was exactly going
17 on.

18 **Q** All right. You said they were trying to work things
19 out. On Monday, December the 11th, where was Melissa
20 Davy staying?

21 **A** She was staying with my sister.

22 **Q** Okay. At you all's place?

23 **A** Yeah.

24 **Q** And how long had she been over there with you, using
25 that week as a reference?

1 **A** Probably since Saturday night I think.

2 **Q** And Saturday night, Sunday morning would be the 10th?

3 **A** Yeah.

4 **Q** The 11th would be Monday. 12th would be Tuesday.

5 Did she stay, she being Melissa Davy, stay with you

6 all at you all's residence; you, Molly, your mama,

7 daddy, Cody your brother?

8 **A** Yeah.

9 **Q** That Sunday, Monday, Tuesday?

10 **A** Yes, sir.

11 **Q** And this is that Monday when you say Josh came by?

12 **A** Yes, sir. At work, yeah. At Sonic. He had been

13 there.

14 **Q** Did you see him after that?

15 **A** No, I hadn't seen him.

16 **Q** That Monday?

17 **A** No. No. I seen him that Monday and that was the

18 only time I seen him.

19 **Q** Did you get to talk to him that Monday?

20 **A** No. I was taking the trash out when he was there.

21 That's why I seen him leaving.

22 **Q** Let's go to Tuesday, December the 12th, 2006,

23 Mr. Waltemath. Did you go to work that day?

24 **A** Yes, sir. I went in probably 10. I think I went in

25 at 10:00.

1 Q And how were you -- that Tuesday, how did you get to
2 work?

3 A We had actually rode with Melissa because she was
4 working. Because Molly and them, we was all working
5 at the same place. So it was easier because my
6 parents only had one vehicle and they had to go --
7 they worked from 3 in the afternoon 'til 3 in the
8 morning. So they had -- they were sleeping at the
9 time we was getting up to go to work.

10 Q That's your mom and dad?

11 A Yes, sir.

12 Q Well, who had driven you? How did you get to work
13 that Monday?

14 A Melissa had taken us.

15 Q And this Tuesday, Melissa?

16 A Yeah. Because she had been staying out with Molly.

17 Q And again, your shift was when on Tuesday?

18 A I believe I went in at 10:00. It could have been 11;
19 you know, inbetween there.

20 Q And just for -- were you still then doing the dress
21 station, or what were you doing?

22 A Yeah. Mostly then. Because I hadn't been working
23 there very long, so I didn't know very much of the
24 kitchen.

25 Q Now, on that Tuesday did you have an occasion to see

1 Defendant Christopher Whitehead, Defendant Derrick
2 McDonald, and Defendant Robert Cannon?

3 **A** Tuesday morning? Yeah. Chris had worked in the
4 morning until probably 1 or 2 or so, something like
5 that.

6 **Q** And was there anybody else working the morning shift
7 then?

8 **A** I believe Cecile was working the morning shift then.

9 **Q** Was that Cecile Trapp?

10 **A** Yeah. I believe that's her last name.

11 **Q** All right. Now, what time did you get off work
12 Tuesday?

13 **A** I would have got off around 5:00.

14 **Q** And do you remember what you did then?

15 **A** Well, we had left work and I think we went by Goody's
16 or something and then to the store for cigarettes or
17 something. Then we went out to my house and hung out
18 there.

19 **Q** And you said "we", Mr. Waltemath. Who is "we"?

20 **A** That was me and my sister and Melissa.

21 **Q** And your sister is Molly?

22 **A** Yeah. Molly.

23 **Q** Waltemath and Melissa Davy?

24 **A** Yeah.

25 **Q** And where were all leaving? What house specifically

1 did you go to?

2 **A** We went to my house, my sister's. Well, it was
3 actually my parents' house. But, you know ...

4 **Q** And that's on what road?

5 **A** Yeah. That's on Heyward Higgins.

6 **Q** Heyward Higgins?

7 **A** Yeah. I think that's the name of the road. It's
8 right in front of the captain of the Richland County
9 Sheriff's Department, his house.

10 **Q** In front of his house?

11 **A** Yeah.

12 **Q** Or near his house?

13 **A** He's my dad's landlord.

14 **Q** I'm sorry. I didn't hear you.

15 **A** Oh, I'm sorry. It don't matter. I was just
16 mumbling.

17 **Q** After you got home that night, this would be the 12th
18 of December 2006?

19 **A** Yes, sir.

20 **Q** Did you have an occasion to hear from either
21 Defendant Cannon, Defendant McDonald or Defendant
22 Whitehead?

23 **A** Actually, Defendant Whitehead actually called me
24 later that night, probably about, I'm guessing
25 between 7 and 8 or so or a little bit later than

1 that. But he had said something about he wanted me
2 to call Josh and see what he's doing because he
3 wanted to go over there and fight him or something.
4 And I told him I wouldn't do it because I didn't want
5 to be involved with anything like that. And then he
6 hung up. We hung up. And he called me back. And I
7 was -- you know, he asked me if I had called him. I
8 was like, "No." And he said that, well, I want you
9 to or something. I don't know exactly. I had a
10 conversation with him. But then we hung up from
11 there and I never heard from him after that.

12 Q Were you to go with him to fight Joshua?

13 A Yeah. He wanted me to call him to see what he was
14 doing to see if he was home or to see if he was --
15 you know, what was going on or something, you know.

16 Q And that was on December 12th of 2006?

17 A Yeah. That was --

18 Q That evening?

19 A -- that evening after we got home and everything.

20 Q And you talked to Chris before? You talked to him?

21 A Yeah. I talked to him.

22 Q You heard his voice? Was that his voice?

23 A Yeah.

24 Q Is there any doubt in your mind that was Christopher
25 Whitehead you talked to?

1 **A** No. No doubt.

2 **MR. WHITLARK:** Objection to the leading, Your
3 Honor.

4 **THE COURT:** Overruled. Go ahead.

5 **Q** Whose voice was that?

6 **A** That was Chris's voice.

7 **Q** And how many times did he call you?

8 **A** He called me twice.

9 **Q** And you were at what residence?

10 **A** My parents'.

11 **Q** And do you remember their phone number?

12 **A** No, not exactly. I know it starts with 865.

13 **Q** And did you see Christopher Whitehead that night
14 after that?

15 **A** No, sir.

16 **Q** Did you see Derrick McDonald after that, that night?

17 **A** No, sir.

18 **Q** Robert Cannon?

19 **A** I didn't see anybody. I didn't leave my house after
20 that.

21 **Q** And was Molly at the house?

22 **A** Yes, sir. She was there.

23 **Q** Molly Waltemath?

24 **A** Yes, sir.

25 **Q** And was Melissa Davy at the house?

- 1 **A** Yes, sir, she was. My grandparents were at my house,
2 too, that night. So ...
- 3 **Q** I'm sorry. I turned my back.
- 4 **A** My grandparents were staying with me at that point in
5 time, too. So they were there, too.
- 6 **Q** Did Molly and/or -- your sister Molly and/or Melissa
7 Davy to your knowledge leave the house that night?
- 8 **A** No, sir. They didn't.
- 9 **Q** Let's go to Wednesday, December the 13th. Do you
10 remember that day?
- 11 **A** (Witness nods head affirmatively).
- 12 **Q** You remember that day, don't you?
- 13 **A** Yeah.
- 14 **Q** Did you go to work?
- 15 **A** Yes, sir. I went in probably the same schedule the
16 day before, 10:00 in the morning.
- 17 **Q** How did you get to work?
- 18 **A** We rode with Melissa I believe. Or my parents could
19 have took us that day. There was one of them days in
20 there my parents took us, and I don't know exactly.
- 21 **Q** And what time did you get off of work that day?
- 22 **A** Around 5:00.
- 23 **Q** And after work do you remember where you or anybody
24 else went?
- 25 **A** Yes, sir. I was riding with -- Melissa was going to

1 take us home. But first she wanted to stop by her
2 house to get her toothbrush and extra clothes or
3 something because she hadn't been there in a few
4 days. So we was going to ride over there with her I
5 mean, and then we stopped by the gas station or
6 something on our way there. And we got there. And
7 she walked in the house, freaked out and saw him.

8 Q She walked in the house?

9 A Yeah, and seen what had happened. And we called the
10 cops immediately. And we sat there and waited for
11 the cops to get there.

12 Q Who all -- and you said you went to her house. What
13 are you talking about, her house?

14 A Well, her and Josh's house. They were living
15 together.

16 Q And that's where?

17 A That was in Rocky Branch. Is it? Is that what it's
18 called?

19 Q Had you been there before?

20 A I had been there a couple of times before.

21 Q Did you all go to the same house you had been before?

22 A Yes, sir.

23 Q And when you -- who was with you? You and Melissa
24 and who?

25 A Me, Melissa and Molly, my little sister.

1 Q Whose car you in?
2 A Melissa Davy's car.
3 Q And who went to the door?
4 A Melissa Davy did.
5 Q And describe her reaction?
6 A Well, she opened the door. She freaked out, screamed
7 and started getting hysterical. And then I walked
8 over to see what had happened and I seen that, him
9 laying in there.
10 Q You seen that. What did you see?
11 A Him laying in there unconscious, he looked like not
12 alive.
13 Q He looked like he was dead?
14 A Yes, sir.
15 Q And did you go inside?
16 A No, sir, we didn't.
17 Q Was law enforcement called then?
18 A Yes, sir. They was there within probably ten minutes
19 of us talking to 'em.
20 Q And did you talk to law enforcement?
21 A No, I didn't talk to law enforcement personally. No.
22 Well, I said -- they asked us if we had went in and I
23 said no, I hadn't went in. So that's probably the
24 only words I said to them though.
25 Q And did you give law enforcement your name?

1 **A** Yes, sir.

2 **Q** And were Molly and/or Melissa still there when the
3 police arrived?

4 **A** Yes, sir.

5 **Q** You don't remember the deputy's name who got there
6 first, do you?

7 **A** No, sir, I don't.

8 **Q** When you were coming up to this house you had been
9 before you said where Joshua and Melissa lived, did
10 you notice anything unusual?

11 **A** Yeah. It was unusual because the lights were turned
12 all off. Everything was off. It was real dark. And
13 the car was backed into the little car park thing
14 they had. And they had never parked the cars under
15 the carport as far as I had known.

16 **Q** And you'd been there before?

17 **A** Yeah. I had been there a couple of times before.
18 Yes, sir.

19 **Q** And that was unusual to you?

20 **A** Yes, sir.

21 (WHEREUPON, State's Exhibit No. 20 is marked for
22 identification.)

23 **Q** And at some point did you give a statement to law
24 enforcement?

25 **A** Yes, sir.

1 Q I'm just going to show you what's marked 20 for I.D.
2 and ask you if you recognize this?

3 A Yes, sir.

4 Q Your name at the bottom?

5 A Yes, sir.

6 Q And was this written by Investigator Catoe?

7 A Yes, sir.

8 Q For you?

9 A Yes, sir.

10 Q All right. Were these your words?

11 A Yes, sir.

12 Q And this statement was on 12-27-2006?

13 A Yes, sir.

14 Q Beg the Court's indulgence. Just one second, Your
15 Honor. I apologize.

16 MR. WHITLARK: Your Honor, we have a matter of
17 law to take up with the Court.

18 MR. MEADORS: About these pictures, Your Honor.

19 THE COURT: Let me see it. No. Just let me see
20 what it is.

21 (Document handed to the Court)

22 THE COURT: All right.

23 MR. MEADORS: We might can resolve it right
24 here.

25 (Whereupon, a bench conference is had)

1 **MR. WHITLARK:** That's fine. Thank you, Judge.

2 **THE COURT:** All right, Solicitor. You may
3 proceed.

4 **MR. MEADORS:** If it please Your Honor.

5 **Q** I'm going to show you State's 13 and ask you, do you
6 recognize that, and does it relate to this case?

7 **A** Yes, sir. That looks familiar.

8 **Q** State's 14?

9 **A** Yes, sir.

10 **Q** They relate to your testimony?

11 **A** Yes, sir.

12 **Q** State's 16?

13 **A** Yes, sir.

14 **Q** State's 15?

15 **A** Yes, sir.

16 **Q** State's 10?

17 **A** Yes, sir.

18 **Q** And you testified that you came to the door and you
19 looked in and you saw a body in a room, correct?

20 **A** Yes, sir.

21 **Q** Does State's 11 --

22 **A** Yes, sir.

23 **Q** -- relate to your testimony there?

24 **A** Yes, sir.

25 **MR. MEADORS:** Your Honor, at this time we'd

1 offer 10, 11, 15, 16, 14 and 13. Sorry. That's not
2 in earlier. So --

3 **THE COURT:** Subject to the defendant's
4 objections, they're admitted.

5 **MR. MEADORS:** So that would be 10, 11, 13, 14,
6 15 and 16. Thank you.

7 **COURT REPORTER:** No 12?

8 **MR. MEADORS:** No. 12.

9 (WHEREUPON, State's Exhibit No. 10 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 11 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 13 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 14 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 15 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 16 is admitted
20 into evidence.)

21 **Q** Now, a minute ago you testified I think about a car.
22 Well, first of all, this State's 16 and 15, is that
23 the residence you all were going to?

24 **A** Yes, sir.

25 **Q** And that's where Melissa Davy and Joshua Zoch had

1 lived? That was what you said?

2 A Yes, sir. That was her residence.

3 Q You were going to their residence to get something?

4 A Yes, sir.

5 Q And I believe you said it was kind of unusual. You
6 came up, you saw a car backed in?

7 A Yes, sir.

8 Q Is that depicted in 14?

9 A Yes, sir.

10 Q And is that 13 the other picture of that?

11 A Yes, sir.

12 Q The other side of the car? And State's 10, as you
13 were approaching the residence that night, does that
14 depict the front of the residence?

15 A Yes, sir.

16 Q Mr. Waltemath, you said after Ms. Davy had looked in
17 you went and looked in the door?

18 A Yes, sir.

19 Q Did you touch anything?

20 A No, sir.

21 Q Does that depict what you saw?

22 A Yes, sir.

23 Q State's 11. You and Molly worked at the Sonic.

24 Melissa Davy worked at the Sonic, correct? And at
25 the time Melissa Davy was dating Joshua Zoch?

1 **A** Yes, sir.

2 **Q** And you were not dating Melissa Davy?

3 **A** No.

4 **Q** And she was friends with your sister also?

5 **A** Yes, sir. She was very good friends with my sister.

6 **Q** And at a time after that did you and Melissa Davy
7 become friends?

8 **A** Yes, sir.

9 **Q** Have a relationship now?

10 **A** Yes, sir; a long time after that happened.

11 **Q** Your folks still live here?

12 **A** Yes, sir.

13 **Q** You're living at the beach?

14 **A** Yes, sir.

15 **Q** Thank you. That's all.

16 **THE COURT:** Mr. Whitlark.

17 **MR. WHITLARK:** May it please the Court, Your
18 Honor.

19 CROSS EXAMINATION

20 **BY MR. WHITLARK**

21 **Q** Now, you're the new boyfriend of Melissa Davy?

22 **A** Yes, sir.

23 **Q** Are you all are together now?

24 **A** Yes, sir.

25 **Q** And you knew Mr. Zoch, the decedent, was abusing her,

1 didn't you? She told you that, didn't she?

2 **A** No. I didn't know that. And I just found that out
3 recently.

4 **Q** She never told you that?

5 **A** No, sir.

6 **MR. MEADORS:** Your Honor, I couldn't hear the
7 question. What was that?

8 **THE COURT:** Read back the question.

9 (Whereupon, the court reporter reads back the
10 following question and answer)

11 "Q And you knew Mr. Zoch, the decedent, was
12 abusing her, didn't you? She told you that, didn't
13 she?

14 "A No. I didn't know that. And I just found that
15 out recently."

16 **MR. MEADORS:** And that was the objection, the
17 relevance of the question.

18 **THE COURT:** All right. Overruled.

19 **Q** You found out about it, didn't you? You found out
20 that he was hurting her, wasn't he?

21 **A** Yeah. She told me that recently. Yes.

22 **Q** You didn't know that back then?

23 **A** No, sir. I didn't know them that well then. I had
24 just --

25 **Q** Do you know Chanin Smith?

- 1 **A** Do what?
- 2 **Q** Do you know Chanin Smith?
- 3 **A** Chanin Smith. No, I don't.
- 4 **Q** You don't know Chanin Smith. Do you know Adrian,
- 5 Adrian Duran?
- 6 **A** I've heard the name before. But, no, I don't know
- 7 who he is.
- 8 **Q** You buy drugs from him, don't you?
- 9 **A** No.
- 10 **Q** You know Anthony?
- 11 **A** Anthony? Yeah. That's Cecile's boyfriend.
- 12 **Q** Do you buy drugs from him?
- 13 **A** No, sir.
- 14 **Q** Okay. Do you know anything about selling drugs up at
- 15 the Sonic, who was selling drugs up there? Did you
- 16 ever know anything about that?
- 17 **A** I heard about it, but I think it was happening long
- 18 before I ever started working there.
- 19 **Q** You knew that the decedent, Mr. Koch (sic), had --
- 20 **MR. MEADORS:** Your Honor, it's Zoch. Joshua
- 21 Zoch. He's called him Koch.
- 22 **THE COURT:** I understand that.
- 23 **Q** Mr. Zoch, the decedent, you knew he had the social
- 24 security card and the driver's license of Mr. Chanin
- 25 Smith, didn't you?

1 **A** No, sir; I did not know that.

2 **Q** You didn't tell that to Adrian Duran?

3 **A** No, sir. I don't even know who Adrian is. I've
4 never met him before.

5 **Q** Okay. You've never seen him at Sonic before?

6 **A** No, sir.

7 **Q** Hmm-mm (Negative). Okay. Did you know that -- or
8 were you aware that Mr. Koch -- is it Koch?

9 **FATHER OF MR. ZOCH:** His name was Joshua Zoch.

10 **THE COURT:** Mr. Whitlark.

11 **MR. WHITLARK:** Yes, sir.

12 **THE COURT:** I'm not going to stand for you
13 continually calling the victim by his wrong name.
14 Now, it may be inadvertent.

15 **MR. WHITLARK:** It is, Your Honor.

16 **THE COURT:** It may not be.

17 **MR. WHITLARK:** I'm not meaning any disrespect to
18 the fellow.

19 **THE COURT:** Listen. Do you understand?

20 **MR. WHITLARK:** Yes, sir.

21 **THE COURT:** Zoch was his name. You may
22 continue.

23 **Q** You knew that Mr. Zoch was working for law
24 enforcement, didn't you?

25 **A** No, sir; I did not know that.

1 Q You didn't know that? You didn't tell anybody that?

2 A No, sir.

3 Q You knew he was out on a bond for burglary, right?

4 A I had heard that; yes, sir.

5 Q And armed robbery?

6 MR. MEADORS: Your Honor, objection. There's no
7 armed robbery. This is not relevant.

8 THE COURT: It's not relevant. Ladies and
9 gentlemen of the jury, I'm going to ask you to strike
10 that. There has been two or three references,
11 questions. They have been objected to by the State.
12 I'm going to sustain the objection. They are not
13 relevant to this case. I'm going to ask the court
14 reporter to strike it from the record and disregard
15 those comments, the question and the answer.

16 MR. WHITLARK: Yes, sir. May it please the
17 Court, Your Honor?

18 THE COURT: Yes, sir.

19 Q Now, how do you pronounce your last name?

20 A Waltemath.

21 Q Waltemath?

22 A Yes, sir.

23 Q Mr. Waltemath, you claim that Mr. Chris Whitehead
24 called you?

25 A Yes, sir.

1 Q He called you at your house --

2 A Yes, sir.

3 Q -- and asked you to go fight. Is that right?

4 A Yes, sir.

5 Q And you have been to the Solicitor's Office and
6 talked about your testimony, right?

7 A Yes, sir, I have.

8 Q And they have gotten your phone records and you've
9 gone over them with them, haven't you?

10 A Yes, sir.

11 Q And they have looked through at every record from --
12 what's your number? 865? Do you have an 865 number?

13 A That's my parents' number. Yes, sir.

14 Q What is it?

15 A I'm not real sure what the number is. I'm horrible
16 with numbers.

17 Q But you know that there is no call from Mr. Whitehead
18 coming into those records, don't you?

19 A Well, no, sir. I do not know that.

20 Q You haven't gone over that with the solicitor? You
21 haven't talked with him?

22 A I've looked at the phone numbers; yes, sir. But he
23 said that he had found a number that was linked back
24 to him. But I don't know. I don't know nothing
25 about that kind of stuff. So ...

1 Q Okay. Well, if I showed you your bill from that
2 night or if I showed you a record of that night,
3 would you be able to decipher that?

4 A Not really. I'd be able to tell what my phone number
5 was, but I wouldn't be able to tell what was incoming
6 or outgoing or what.

7 Q You haven't looked at a record of that?

8 A Briefly. He showed us one.

9 MR. MEADORS: We have no objection to that
10 coming into evidence if he wants to offer a clean
11 copy.

12 Q Do you recognize this document? Go ahead. You can
13 hold it.

14 A Something like this. Yes, sir.

15 Q Okay. You've gone over this document with the
16 solicitor, haven't you?

17 A Yeah. Briefly. I've seen it. Yes, sir.

18 MR. MEADORS: Your Honor, I have no objection to
19 him offering that.

20 THE COURT: Sir, let him run his own case,
21 please. Mr. Whitlark.

22 MR. MEADORS: If he's going to ask questions off
23 of it, we'd ask it be entered.

24 THE COURT: Well, not necessarily. You ask a
25 lot of questions off documents that are not evidence.

1 So let him ask the question.

2 Q Now, you have sat down and gone over this with the
3 solicitor, have you not?

4 A Yes, sir.

5 Q At a table?

6 A We have looked over it, yes.

7 Q And looked very carefully at it, haven't you?

8 A (Nods head affirmatively).

9 Q When did you become the boyfriend of Melissa Davy?

10 A Eight months after that happened or so. We have only
11 been together about six months now maybe, something
12 like that.

13 Q What's her cellphone number?

14 A It starts with 466. I don't know the last four.

15 Q All right. Do you have a cellphone?

16 A I do now.

17 Q What's the number?

18 A I don't know.

19 Q She was with you staying over at your house, right,
20 the night that Mr. Zoch died?

21 A Yes, sir. She was staying with my sister.

22 Q All right. And she was with you watching movies,
23 right, for a couple of hours?

24 A Yes, sir. We were just sitting around watching
25 movies was with my grandparents and my sister. We

1 was all just watching movies.

2 Q All right. And she heard this phone call we're
3 talking about that came in from Mr. Whitehead?

4 A Well, she had known I was on the phone. Yes, sir.

5 Q All right. And you were with her the whole night?
6 You sure she didn't go anywhere?

7 A No. I know she didn't go nowhere. I was at the
8 house all night.

9 Q Okay. Beg the Court's indulgence. 466-6226?

10 A Yeah. That sounds right.

11 Q Whose number is that?

12 A It sounds like Melissa's I think. Yeah. 466. Yeah.

13 Q Okay. I'm going to hand you this document again and
14 ask if you can take a look. Is that your number? Is
15 that your number there in column 3?

16 A Yes, sir.

17 Q All right. And is this a record of phone calls on
18 what date? Does it say?

19 A Yes, sir, it does.

20 Q Okay.

21 A It says 12-12.

22 Q All right. And that's the night we're talking about,
23 right?

24 A Yes, sir.

25 Q What number is that right there? There's a number,

1 an incoming number, a called number.

2 **MR. MEADORS:** Your Honor, again, for the record
3 and under the rules, I think if he's going to read
4 off of it, he's got to offer it in evidence.

5 **THE COURT:** No, sir. Go ahead.

6 **A** Where at? I didn't see where you pointed.

7 **Q** Right here. Let me show you this number right there.
8 Whose number is that right above that page right here
9 in this column?

10 **A** That would be Melissa's.

11 **Q** All right. And what time was that?

12 **A** It says 8:16.

13 **Q** All right. She called your number at 8:16, didn't
14 she?

15 **A** No. That would be my house calling her number,
16 wouldn't it? It says numbers called or called
17 numbers.

18 **Q** All right. So it was you calling her?

19 **A** No, sir. She was at the house the whole entire
20 night.

21 **Q** But that record shows that though, doesn't it, son?

22 **A** But it could be her checking her voice mail or
23 something or something or another.

24 **Q** All right. You see right there? Do you see that?
25 Further numbers below there, was that her number

1 again?

2 **A** Yes.

3 **Q** How long was she on the phone? Can you see?

4 **A** I am not sure. Is that the time limit on here? Or

5 is that the time of when it came in?

6 **Q** Is that a second call from her that night?

7 **A** Yes, sir.

8 **Q** It's a second call from her that night, isn't it?

9 **A** To her. To her number. Yes, sir.

10 **Q** Okay. And this is the night when you all were

11 together, right?

12 **A** Yes, sir.

13 **Q** The entire night?

14 **A** Yes, sir.

15 **Q** And you have no information at all about Mr. McDonald

16 during those phone calls, do you?

17 **A** No, sir.

18 **Q** You don't know anything about Mr. McDonald that night

19 or anything at all, do you?

20 **A** No, sir.

21 **Q** Okay. Were you pretty good friends with Mr.

22 Whitehead?

23 **A** No. Not really. I didn't really know him that well.

24 I had hung out with him maybe five or six times. But

25 I had only lived there a couple of months before this

1 had happened. So ...

2 Q Well, did he call you all the time?

3 A I talked to him maybe once every other day maybe.

4 Maybe. If that much. I don't even know. It wasn't

5 very often. Because he was talking to my sister a

6 lot. That's the only reason I would ever talk to

7 him. Because he'd come over and hang out with my

8 sister and I'd talk to him a little bit then. But

9 besides that, no, I didn't really talk to him.

10 Q Okay. Now, when you went to the -- you were with Ms.

11 Davy when you all went over and found the body,

12 right?

13 A Yes, sir.

14 Q What time was that?

15 A That was at like -- we had left work at probably

16 5:20, maybe 5:30 or so.

17 Q Mm-hmm (affirmative).

18 A We had got there probably about -- I don't know what

19 time exactly. But we drove. We stopped by the gas

20 station. Then we left there and went over to there

21 as far as I know. As far as I can remember, we went

22 straight over there after that.

23 Q Who was with you?

24 A It was me, Melissa and my little sister.

25 Q All right. Who was the other boy that was there that

1 day?

2 A Other boy?

3 Q Yeah. In another car?

4 A In another car?

5 Q Mm-hmm (affirmative).

6 A There was nobody there with us. I don't know.

7 Q All right. Nobody left the scene?

8 A Not that I seen. No, sir.

9 Q And you were always there yourself?

10 A Yes, sir. Well, I rode with her -- we rode with her

11 from work and went there. And when we got there,

12 there was nobody there that I seen, no.

13 Q Well, is it your testimony that you called 911 as

14 soon as you got there?

15 A Yes. She did. I didn't call nobody, but she did.

16 Because she had the phone.

17 Q She did?

18 A Yeah. Yes, sir. She called immediately, right when

19 we got there.

20 Q So how long were you there before the police got

21 there?

22 A Maybe ten minutes.

23 Q Ten minutes?

24 A Maybe. Before -- that's after getting off the phone

25 with them.

1 Q Did you see anybody moving a car out of the garage or
2 out of the carport over at Mr. Zoch's house?

3 A No, sir, I didn't.

4 Q Okay. And you were there the whole time?

5 A Yes, sir.

6 Q You never left the scene?

7 A I was there the whole time.

8 Q Why didn't you give a statement to the police that
9 day?

10 A Because I was scared.

11 Q You were scared?

12 A Yeah.

13 Q Well, did they tell that you if you're scared you
14 don't have to give them a statement?

15 A I didn't understand the question.

16 Q Well, why didn't -- you didn't give a statement to
17 the police although you were at the scene, right?

18 A Yes, sir. Well, they told us to go home afterwards.
19 And Melissa stayed there and talked to them.

20 Q Did you hear Melissa say anything to the police?

21 A No, sir. I never heard anything that she had talked
22 to them about.

23 Q Now, you did talk to the police on the 27th of
24 December, about two weeks later, right?

25 A Yes, sir.

1 Q Okay. And at that time you gave a lengthy statement
2 to them --

3 A Yes, sir.

4 Q -- about the thing? And why did you go to the police
5 station on the 27th? Who called you and told you to
6 come down there, if anybody did?

7 A The sheriff did. Because he said he had some kind of
8 phone records of them calling me or something.

9 Q Mm-hmm (affirmative). And you went down there and
10 gave a statement, right?

11 A Yes, sir.

12 Q And the reason you waited two weeks was what? Why
13 two weeks later? Do you know why?

14 A No. Not really.

15 Q Now, you've met with the solicitor about your
16 testimony, right?

17 A Yes, sir.

18 Q And you've gone over these phone records?

19 A Yes, sir.

20 Q But you can't point to one that shows Chris
21 Whitehead's number on it, can you?

22 A No, sir. I can't.

23 Q Beg the Court's indulgence. Last question for you.

24 You got there after you left work. You went over to
25 that house, right?

1 **A** Yes, sir.

2 **Q** What time was it again?

3 **A** We probably left -- I don't know. We left work
4 between probably 5 and 5:30 or so.

5 **Q** Okay. And you went straight over to that house to
6 get her a toothbrush?

7 **A** Probably stopped by the gas station or something to
8 get cigarettes. But besides that, we went straight
9 over there.

10 **MR. WHITLARK:** That's all I have right now, Your
11 Honor.

12 **THE COURT:** Mr. Kendrick.

13 CROSS EXAMINATION

14 **BY MR. KENDRICK**

15 **Q** Mr. Waltemath, how are you doing today?

16 **A** I'm doing all right.

17 **Q** Good. I'm Josh Kendrick. I represent Robert Cannon.
18 You and I don't know each other, do we?

19 **A** No, sir.

20 **Q** You told me you all think you got off work around
21 5:00, you, Molly and Melissa?

22 **A** It was around 5, yeah. Probably after, because we
23 don't ever get out of there right on time.

24 **Q** Okay. And it took you how long to get to Ryan Lane?

25 **A** I'm not sure. A good 25, 30 minutes.

1 Q 25, 30 minutes roughly?

2 A Yeah. With traffic and all that, 5:00. So you never
3 really know.

4 Q So it took a little while longer than usual?

5 A Yeah. It took me a little while longer than usual
6 because traffic was probably backed up a little bit.

7 Q And on the day you're there, the police come and they
8 don't talk to you about anything?

9 A No. They asked me my name and I gave them my name
10 and all that stuff and told them -- well, that's
11 pretty much all I told them, was my name. I told
12 them my phone number and how they could get ahold of
13 us.

14 Q They said, we'll talk with you later?

15 A Yes, sir.

16 Q And then the later that they were talking about was
17 two weeks --

18 A Yes, sir.

19 Q -- down the road?

20 A Yes, sir.

21 Q They call you. And what do they tell you two weeks
22 down the road?

23 A I don't believe I talked to them. I think they
24 talked to my parents. But they said that they wanted
25 me to do come down because they had some phone

1 records or something, that he had talked to me that
2 night.

3 Q Okay. So the police told you they had phone records?

4 A Yes, sir. As far as I know, that's what was said.

5 Q On December 27th?

6 A Yes, sir.

7 Q Okay. So you went down there and talked to them.

8 Did they show you these phone records?

9 A No, sir. I never seen no phone records then.

10 Q Did you ask them, hey, I thought you guys had phone
11 records?

12 A No. I wasn't really thinking about it. I was -- my
13 mind was all on other things there, you know, on
14 other stuff I guess.

15 Q So during that time they start questioning you about
16 the night that this happened?

17 A Yes, sir.

18 Q And during those questions you say you received two
19 phone calls from Mr. Whitehead?

20 A Yes, sir.

21 Q And you agree from what Mr. Whitlark was just showing
22 you that those two phone calls don't show up on your
23 records?

24 A Yeah. I don't see no numbers on there. No.

25 Q You have no explanation for that?

1 **A** No, I don't.

2 **Q** The statement you gave on December the 27th -- it was
3 the 27th, right?

4 **A** Yes, sir.

5 **Q** You didn't say anything about Robert Cannon, did you?

6 **A** No, sir.

7 **Q** You don't know anything about him, do you?

8 **A** No, sir.

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

10 **THE COURT:** Mr. Riley?

11 CROSS EXAMINATION

12 **BY MR. RILEY**

13 **Q** Mr. Waltemath, I'm Neil Riley. I represent Chris
14 Whitehead. How are you doing today?

15 **A** I'm doing all right.

16 **Q** Have you ever attended any parties that Josh held at
17 his house?

18 **A** I had stopped by one or two of them. Yes, sir.

19 **Q** How long before this date that we're talking about
20 was the last one?

21 **A** Maybe a week or so before.

22 **Q** Were drugs served at those parties?

23 **A** Not that I know of. I never seen them.

24 **Q** Did you know that Josh and Melissa were having
25 relations?

1 **A** Yes, sir. I knew they were dating.

2 **Q** Now, you admit in previous testimony that the phone
3 record does not show that you received two calls?

4 **A** Yes, sir. I -- I don't know how to explain that.

5 **Q** Do you have a copy of your statement there? Has that
6 been --

7 **MR. MEADORS:** It's up there.

8 **A** I don't have it in my hand. No, sir.

9 **Q** All right, sir. It's State's Exhibit No. 20. Is
10 that entirely in your own handwriting?

11 **A** It's not in my own handwriting. No, sir. It's in my
12 own words though.

13 **Q** Did more than one person write that?

14 **A** No. Only one person did.

15 **Q** Okay. And that was who again?

16 **A** That would be Officer Catoe.

17 **Q** Okay. All right. If -- begging the Court's
18 indulgence for a minute. Thank you, Mr. Waltemath.

19 **THE COURT:** Redirect.

20 **MR. MEADORS:** Yes, sir.

21 REDIRECT EXAMINATION

22 **BY MR. MEADORS**

23 **Q** Mr. Riley was just asking about this statement. Did
24 you say these were your words?

25 **A** Yes, sir.

1 Q And who wrote it for you?

2 A It was officer Catoe I believe.

3 Q Did he put in here: "I asked him, Catoe, to write my
4 statement for me"?

5 A Yes, sir.

6 Q "Because of my handwriting. This statement was
7 written in my own words"?

8 A Yes, sir.

9 Q Did you sign right underneath that?

10 A Yes, sir.

11 (WHEREUPON, State's Exhibit No. 21 is marked for
12 identification.)

13 Q I show you what's marked State's 21. I think Mr.
14 Whitlark asked you about this, State's 21. That's
15 865-7326. Was that the home number of the Waltemaths
16 where you were staying?

17 A Let me see. Yes, sir.

18 Q I mean, that's the phone numbers they have been
19 asking you about, correct?

20 A Yes, sir.

21 Q You remember him asking you about that?

22 A Yes, sir.

23 Q So that was the phone number of your folks' house?

24 A Yes, sir.

25 Q And they asked you about some phone calls you made

1 to -- excuse me -- that Chris Whitehead you've
2 testified made to you, correct?

3 **A** Yes, sir.

4 **Q** Now, that number down there, 465-4253, do you see
5 that number?

6 **A** Yes, sir.

7 **Q** You don't know whose number that is, do you?

8 **A** No, sir, I don't.

9 **Q** Have you ever heard of a trunking line?

10 **A** No.

11 **Q** So you don't know if that's a trunking line which
12 really comes back to an Alltel phone owned by
13 somebody else, do you?

14 **MR. KENDRICK:** Your Honor, objection. If he's
15 never heard of a trunking line, I don't think --

16 **THE COURT:** Slow down. Slow down. Believe it
17 or not, the court reporter cannot take down two
18 people talking at the same time.

19 **MR. KENDRICK:** I apologize, Your Honor.

20 **THE COURT:** Now, who is making the objection?

21 **MR. KENDRICK:** Your Honor, I'll object to this
22 question. The witness just testified that he does
23 not know what a trunking line is. Now I believe Mr.
24 Meadors is asking him more questions involving
25 detail.

1 **THE COURT:** Sustained.

2 **MR. KENDRICK:** Thank you, Judge.

3 **MR. MEADORS:** We'd offer State's 21.

4 **THE COURT:** All right. Any objection?

5 **MR. KENDRICK:** No objection.

6 **MR. WHITLARK:** No objection.

7 **THE COURT:** Without objection.

8 (WHEREUPON, State's Exhibit No. 21 is admitted
9 into evidence.)

10 **Q** And did you put in this statement, do you remember
11 Josh coming by around 11:30 to 12 to see Melissa?

12 **A** Yes, sir.

13 **Q** Okay. You sat around the house and watched a couple
14 of movies. Did you put that in here?

15 **A** Yes, sir.

16 **Q** Did you put in here about Chris Whitehead calling you
17 and asking you to call Josh and see what he was
18 doing?

19 **A** Yes, sir.

20 **Q** Because he wanted to go over there and fight him?

21 **A** Yes, sir.

22 **Q** Did put that in your statement?

23 **A** Yes, sir.

24 **Q** Did you put in here you didn't want to call him and
25 you hung up?

1 **A** Yes, sir.

2 **Q** Then Chris called back about 20 or 30 minutes later?

3 **A** Yes, sir.

4 **Q** Asking you to go with him?

5 **A** Yes, sir.

6 **Q** You put that in your statement?

7 **A** (Nods head affirmatively).

8 **Q** Did you put in here you told him, no, you didn't want

9 to have anything to do with it?

10 **A** Yes, sir.

11 **Q** Did you put in here about the next day that after

12 work Melissa wanted to go by the house and pick up

13 some personal stuff?

14 **A** Yes, sir.

15 **Q** Clothes and toothbrush?

16 **A** Yes, sir.

17 **Q** Did you put in here about the carport and the lights

18 being off? Did you put that in this statement?

19 **A** Yes, sir.

20 **Q** You put in here about her reaction when she went to

21 the door?

22 **A** Yes, sir.

23 **Q** Did you put in here whether or not you asked them not

24 to say anything about Chris calling you because you

25 were scared?

1 **A** Yes, sir.

2 **Q** Afraid they may come after you?

3 **A** Yes, sir.

4 **Q** That's all. Thank you.

5 **MR. WHITLARK:** Briefly, Your Honor?

6 **THE COURT:** Absolutely. Go ahead.

7 RE CROSS EXAMINATION

8 **BY MR. WHITLARK**

9 **Q** Of course we now know there's to record of him
10 calling you, is there, sir?

11 **MR. MEADORS:** Your Honor, the record is right
12 there. Objection.

13 **THE COURT:** Sir.

14 **Q** There's no record of Mr. Whitehead ever calling you
15 that night, is there, son?

16 **A** Yes, there is, sir. Yes, sir.

17 **Q** You talked to Officer Catoe, Investigator Catoe,
18 didn't you?

19 **A** Yes, sir.

20 **Q** Let me hand you this. Do you know what that is? Do
21 you remember that?

22 **MR. MEADORS:** Could I see it?

23 **MR. WHITLARK:** I'm sorry. It's the --

24 **A** No, sir, I don't. Oh. Yes, sir, I do. I believe I
25 know what that is. That's the rights. That's your

1 waiver of rights.

2 Q And he made you sign that, didn't he?

3 A Yes, sir.

4 THE COURT: Let counsel look at it. He
5 identified it as a waiver of rights.

6 MR. MEADORS: We have no objection to that
7 coming in if they want to offer that.

8 THE COURT: Well, he doesn't have to.

9 Q This is a waiver of your Miranda rights, right?

10 A Yes, sir.

11 Q And Detective Catoe, Investigator Catoe made you sign
12 that, didn't he?

13 A Yes, sir.

14 Q He was telling you something at the moment you signed
15 that, wasn't he, or right before that? Didn't he?

16 A I don't remember what he told me.

17 Q Well, didn't he tell that they needed these phone
18 calls, this record on these phone calls?

19 A No. He didn't tell me that he exactly needed them.

20 Q What did he tell you?

21 A Oh, the records to prove it, to show them? Yes, sir.

22 Q Huh? He told you that, didn't he?

23 A Yes, sir.

24 Q And that's why he had you up here, right?

25 A Yes, sir.

1 Q Right?

2 A As far as I know, yes, sir. That's what I remember.

3 Q And he contacted you about that, didn't he?

4 A Yes, sir.

5 Q And you don't know whether or not Melissa Davy told
6 him anything at the scene that day, do you, about
7 that?

8 A No, sir, I don't --

9 Q About the phone calls?

10 A -- know about any -- no, sir.

11 Q And you gave no statement at all on the day --

12 A No, sir, I didn't.

13 Q -- that you all found --

14 A Not when that happened, no.

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

16 THE COURT: Anything further?

17 MR. KENDRICK: Nothing further, Your Honor.

18 MR. RILEY: Nothing further, Your Honor.

19 MR. MEADORS: Your Honor, one final question on
20 that last one?

21 THE COURT: No, sir.

22 MR. MEADORS: Judge, --

23 THE COURT: You've had redirect. That's it.

24 MR. MEADORS: -- total new matter he brought up.
25 One question.

1 **THE COURT:** No, sir. Have a seat. You may come
2 down, sir. May this witness be excused?

3 **MR. MEADORS:** No, sir.

4 **THE COURT:** All right.

5 **MR. MEADORS:** He'll be recalled --

6 **THE COURT:** All right, ladies and gentlemen.
7 That will conclude the testimony for today. I'll ask
8 you to be back in the courtroom or the jury room at
9 9:00 in the morning. He will resume the trial.

10 Again, don't the discuss the case among
11 yourselves or with anyone else over the evening hours
12 or among yourselves when you return to the jury room.
13 Have a pleasant evening. We'll see you at 9:00 in
14 the morning. We'll continue this trial.

15 (Jury out at 5:55 p.m.)

16 **THE COURT:** All right now. Mr. Whitlark, you
17 had an objection. You want to place it on the record
18 as to State's Exhibit No. 11.

19 **MR. WHITLARK:** Yes, sir, Your Honor.

20 **THE COURT:** All right. You may proceed.

21 **MR. WHITLARK:** Defendant McDonald objects to
22 that picture because of the inflammatory nature of it
23 and the fact that they can describe it in words and
24 don't need a picture in front of the jury. We object
25 to it coming into evidence.

1 **THE COURT:** Joyce, let me see No. 11.

2 **MR. WHITLARK:** It depicts an inflammatory scene,
3 Your Honor. We'd ask that that be -- for the record.

4 **THE COURT:** What was the other one? It was 12?

5 **MS. MCDUFFIE:** The one that we did not introduce
6 was State's 12, Your Honor.

7 **MR. WHITLARK:** I think that's the only one.

8 **MR. MEADORS:** Your Honor, we're going to have a
9 lot more graphic pictures through Dr. Sexton. Of
10 course we will go by Your Honor's ruling on them.

11 **THE COURT:** Just wait a minute. Let me take
12 them one at a time, if you will. Let me see No. 12.
13 All right. At a side bar conference with all counsel
14 I observed or looked at, examined State's Exhibit No.
15 11 and State's Exhibit No. 12. The objection was
16 made at that time by Mr. Whitlark as to the
17 inflammatory nature of both pictures.

18 After reviewing, looking at the pictures, I
19 ruled at that time that Exhibit No. 12 based on this
20 witness was unnecessarily descriptive and was
21 objectionable. I sustained the objection, although
22 not on the record at that time. But I told Mr.
23 Whitlark I would sustain his objection to State's
24 Exhibit No. 12.

25 As to State's Exhibit No. 11, No. 11 in my

1 opinion depicts a room in great disarray which the
2 witness said he saw when he walked into the room. I
3 do not see it -- I frankly don't see it inflammatory
4 at all. It represents a room that is severely in
5 disarray. And there appears to be -- and I am
6 assuming it is the -- in just a small portion of the
7 picture the body of Mr. Joshua Zoch. But I do not
8 find it inflammatory in the least. And I advised Mr.
9 Whitlark and all counsel for the defendants that I
10 felt it was admissible. That's why I admitted it.
11 That's why the jury saw it.

12 **MR. WHITLARK:** Yes, sir.

13 **THE COURT:** I understood that both --

14 **MR. KENDRICK:** Just for the record, Your Honor,
15 I also would join in that objection.

16 **MR. RILEY:** And I, too, Your Honor.

17 **THE COURT:** All counsel objected to the, quote,
18 inflammatory nature of the photograph. It was
19 overruled. Thank you very much.

20 **MR. WHITLARK:** One last thing, Your Honor. I
21 just want to state for the record that I am not
22 trying to disrespect Mr. Zoch's name. Z-O-C-H, to
23 me, I keep seeing the Z-H. And I don't mean to
24 disrespect anyone.

25 **THE COURT:** Well, I have figured out why you may

1 have made that error inadvertently; and that is
2 because in some of your motions you spell his name
3 K-O-C-H.

4 **MR. WHITLARK:** That's right.

5 **THE COURT:** And that may have stuck in your
6 mind.

7 **MR. WHITLARK:** It has. It has, Your Honor. So
8 forgive me for that.

9 **THE COURT:** It starts with a Z. It should be
10 easy to remember.

11 **MR. WHITLARK:** Thank you, Your Honor.

12 **THE COURT:** We'll stand at ease until 9:00. Oh.
13 Mr. Meadors, are there other pictures that need to
14 be --

15 **MR. MEADORS:** Not now. No, sir.

16 **THE COURT:** All right.

17 (Whereupon, the proceedings are concluded for
18 the day, to be reconvened tomorrow morning)

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1 Wednesday, May 7, 2008

2 (WHEREUPON, Court's Exhibit No. 1 is marked for
3 identification.)

4 **THE COURT:** Counsel, approach the bench, please.
5 (Whereupon, a bench conference is had)

6 **THE COURT:** The State ready to proceed?

7 **MR. MEADORS:** Yes, sir.

8 **THE COURT:** Defense ready to proceed?

9 **MR. MEADORS:** We're ready.

10 **MR. KENDRICK:** Your Honor, I have a matter to
11 bring up.

12 **THE COURT:** Yes, sir.

13 **MR. KENDRICK:** Your Honor, yesterday I had
14 brought up in the pre-trial hearing the fact that
15 there were some records, the underlying records
16 related to the polygraphs of several people. The
17 State yesterday turned over those records as related
18 to my client.

19 I think also we need the records as related to
20 Mr. Duran and Ms. Davy. Your Honor, I'm not arguing
21 at this point that polygraph records would be
22 admissible, but the actual related records have a
23 great deal more than just the charts. They have the
24 questions asked. They have some notes. They have
25 the investigator that scheduled the polygraph which

1 of course would be the person who gave the polygraph
2 examiner an idea of what he wanted asked. Your
3 Honor, being the fact that there is absolutely no
4 mention of those two people --

5 **THE COURT:** Who are --

6 **MR. KENDRICK:** An Adrian Duran and Melissa Davy.
7 And there is no mention of them in the notes by
8 Investigator Catoe or any other notes. Mr. Duran
9 particularly is listed as suspect number one on the
10 incident report filed by the responding officer in
11 this case.

12 Your Honor, without arguing that the polygraph
13 is admissible or that the evidence would be
14 admissible, I don't think that's the standard for
15 discovery; I think we're entitled to it because it
16 may be useful.

17 I would just ask that this morning and certainly
18 before Mr. Crawford and maybe before Mr. Catoe
19 testifies that those records be turned over so we can
20 do something with them. I did ask for them in a
21 timely manner, and I think there was just some
22 confusion on the State's side. So I don't think
23 there's anything improper. But at this point, Your
24 Honor, I'm not willing to let that particular request
25 go.

1 **THE COURT:** All right. These are the associated
2 documents with the polygraph?

3 **MR. KENDRICK:** Yes, sir. What it looks like
4 there is in the package I got, it's a cover sheet.
5 There is a scheduling form that has some case facts
6 which was relayed to the polygrapher by the
7 investigator. It's kind of a reason why they want to
8 polygraph these people. That may be crucial, Your
9 Honor, because we've never had any mention of these
10 people in the discovery investigation. There is a
11 polygraph report which I agree that we already have
12 that. And that's simply a summary sheet of what
13 happened.

14 **THE COURT:** That's just your client. Your
15 client?

16 **MR. KENDRICK:** I believe we have those for the
17 other two, Your Honor, also. But again, that's the
18 only thing we have. There is an examiner note.

19 **THE COURT:** I thought the testimony yesterday
20 was to the fact that only your client was taken to
21 Mr. Crawford.

22 **MR. KENDRICK:** No, sir. There were two other
23 people that were suspects originally, I assume based
24 on the --

25 **THE COURT:** Oh. I thought you said the other

1 two defendants.

2 **MR. KENDRICK:** No Your Honor. These are just
3 two suspects --

4 **THE COURT:** Two lay witnesses.

5 **MR. KENDRICK:** -- that were -- one of the
6 suspects in particular was listed as a subject on the
7 incident report that was filed immediately after the
8 arrest.

9 **THE COURT:** Okay.

10 **MR. KENDRICK:** But I would like those records,
11 Your Honor. And I think they're relevant. I don't
12 know that it should be on me to get those records and
13 then be placed in the position of having to recall a
14 State witness to go over evidence that hasn't been
15 disclosed.

16 **THE COURT:** State your position.

17 **MR. MEADORS:** May it please the Court. He's not
18 listed as suspect number one. That would be
19 Christopher Whitehead, for the record.

20 **THE COURT:** Well, that's not the point.

21 **MR. MEADORS:** Well, I just want to correct him.
22 If that comes up later, that's wrong. And second of
23 all, Judge, the printout has all the questions on it.
24 So he does have the questions. And yesterday I think
25 the underlying data -- and I haven't seen it -- but I

1 guess the lieutenant just on his client, obviously
2 that was an oversight as he stated. He wanted the
3 underlying data. And then the two other people in
4 our opinion have no relevance whatsoever in this
5 case.

6 **THE COURT:** May not.

7 **MR. MEADORS:** And obviously we'll get with
8 Lieutenant Crawford and try to get him that same
9 thing on those before he testifies, in answer to your
10 question.

11 **THE COURT:** Is that satisfactory?

12 **MR. KENDRICK:** Well, Your Honor, my other
13 problem is that if there is something relevant to why
14 Investigator Catoe asked Crawford to do this, I need
15 it before Lieutenant Catoe gets up and testifies. I
16 don't know what order they're calling them. And so
17 it may not be a problem at all.

18 **THE COURT:** I don't see the link between Catoe
19 and Crawford.

20 **MR. KENDRICK:** Because, Your Honor, Investigator
21 Catoe is the officer --

22 **MR. MEADORS:** Your Honor, to stop this so we
23 don't have to hear this, we'll get to it him before
24 he testifies.

25 **THE COURT:** All right. How about that?

1 **MR. KENDRICK:** Thank you, Judge. Thank you, Mr.
2 Meadors.

3 **THE COURT:** Anything else?

4 **MR. KENDRICK:** Your Honor, I guess the only
5 other issue we still haven't talked about is the
6 Bruton issue. I think you said we'd do that later.

7 **THE COURT:** Well, I've been advised that --

8 **MR. KENDRICK:** The redaction is not going to
9 work for me, Your Honor.

10 **THE COURT:** What?

11 **MR. KENDRICK:** I am objecting to the redaction.

12 **MR. WHITLARK:** We join in that objection.

13 **THE COURT:** All right. Then we'll take that up
14 at a later date. I mean, when we get to the
15 statements we'll take it up.

16 **MR. KENDRICK:** Yes, sir. I just don't want to
17 have to stop when the jury is out. That's why I
18 wanted to do it at this point.

19 **THE COURT:** I think there's a lot more to come
20 before we get there. But I'm not sure.

21 **MR. MEADORS:** I thought we said it clear. We're
22 going to go over all that before they testify. They
23 know that.

24 **THE COURT:** All right. Anything else? Bring
25 the jury, please.

1 (Jury in at 9:18 a.m.)

2 **THE COURT:** Good morning, ladies and gentlemen.
3 We're ready to continue with the trial. Let me make
4 a brief comment before we get started with the
5 witnesses this morning. Yesterday as we were winding
6 up one of the jurors had a question. And my normal
7 policy is that if a juror has a question, I ask them
8 to write it out. I can't talk with you individually
9 during the course of the trial.

10 So the juror wrote out the question. And it
11 deals with some of the evidence. And let me just say
12 this. All of the evidence, you're going to have all
13 of the evidence. And it was a question, something to
14 do with I think the last exhibit involving telephone
15 records. You are going to have all of those exhibits
16 in the jury room with you when the case is over.

17 You will have only the exhibits that the
18 attorneys offer and that are placed in evidence. So
19 you won't be able to ask for other things. But the
20 attorneys, they know their case. They know what they
21 need to prove. They know what they want to prove or
22 in some cases disprove. So the procedure is to allow
23 them to do that.

24 Your question that you might have today or
25 yesterday may be answered tomorrow. So we don't

1 generally -- well, we don't at all -- make trials a
2 question and answer trial. It's just not the way it
3 works. They have the responsibility, and they know
4 it. They are trained to do this. Sometimes you may
5 have a question that doesn't get answered. But
6 that's just the way the system works.

7 And we've got 12 of you. And I'm sure if we
8 said, anybody have any questions, we'd have 12
9 questions perhaps as we go along. So all I want you
10 to do and understand is that you just need to be
11 patient, let the evidence come in. You are going to
12 have it all. You're going to see it all. And
13 hopefully your questions will be answered as the
14 trial goes along.

15 And even if at the end of the trial, if you have
16 a question about some of the evidence, you're going
17 to be to be able to look at it in the jury room and
18 examine it and see if it satisfies the questions you
19 may have. So with that little prologue, we'll
20 continue. Solicitor, call your next witness.

21 **MR. MEADORS:** If it pleases, Your Honor.

22 **THE COURT:** Yes, sir.

23 **MR. MEADORS:** The State would now call one Pat
24 Heathcoe.

25 **PATRICIA HEATHCOE,** after being duly sworn;

1 testifies as follows:

2 **THE CLERK:** Thank you. Please be seated in the
3 witness chair. State your full name for the record.

4 **THE WITNESS:** Patricia Heathcoe.

5 DIRECT EXAMINATION

6 **BY MR. MEADORS**

7 **Q** Good morning, Ms. Heathcoe.

8 **A** Good morning.

9 **Q** It's H-E-A-T-H-C-O-E?

10 **A** Yes, sir.

11 **Q** Just pull this microphone up to you. Please tell the
12 ladies and gentlemen of this jury, Ms. Heathcoe,
13 about Pat Heathcoe, where you're from, kind of a
14 little bit about your background?

15 **A** I'm originally from Hattiesburg, Mississippi. Up
16 until about the last five years we've been in South
17 Carolina. Originally, 1984, I went to work for
18 Wendy's which is a fast food franchise. I ended up
19 being a district manager and stayed in that business
20 for approximately 14 years. The four years following
21 that I supervised a chain of convenience stores for
22 four years. And then I moved to South Carolina to
23 take a district manager's position with Wendy's here.

24 **Q** What year was that?

25 **A** 2002 I believe. 2000. The latter part of 2002.

1 Q Yes, ma'am.

2 A I stayed with Wendy's a year and bought into a Sonic
3 franchise which is the store on Hard Scrabble Road in
4 Columbia. We opened that store in November of '04.

5 Q Now, when you were a district manager in Wendy's when
6 you came here, when you say here, do you mean the
7 Midlands? Columbia? What do you mean?

8 A To Columbia, South Carolina.

9 Q And what area did you manage with Wendy's when you
10 were the district manager?

11 A I had three stores in Columbia, one in Chester, and
12 one in Greenwood.

13 Q And you got into the Wendy's organization or
14 franchise in 2004?

15 A No. That was in 1984.

16 Q Okay. Excuse me. All right. The Sonic franchise.
17 I'm sorry.

18 A In 2004 I went to work August the 8th, did my
19 training at the store here in Lugoff, South Carolina,
20 and opened the new store. We opened that November
21 the 22nd of '04.

22 Q Okay. And you say "we". Is there another
23 owner/operator?

24 A I have a 20 percent partnership The Irons Group.

25 Q And so this was a brand new store?

1 **A** Yes, sir.

2 **Q** You opened it. When did you actually start serving
3 the public?

4 **A** November the 22nd.

5 **Q** Okay. And tell these folks a little bit about Sonic
6 just as a background. I mean, what hours are you
7 open? What hours were you open back then in 2004 or
8 5?

9 **A** Back then we opened at 6:30. We now open at 6 a.m.
10 Through the school year we close at 11, and then when
11 school is out we'll close seven days a week at 12.
12 Right now we close at 11 Sunday through Thursday and
13 12 on Friday and Saturday.

14 **Q** And you have different shifts that work,
15 Ms. Heathcoe?

16 **A** Yes, I do.

17 **Q** How many employees do you have right now,
18 Ms. Heathcoe?

19 **A** Right now I have a little over 40.

20 **Q** And age-wise, just roughly, what kind of age range of
21 employees do you have?

22 **A** They normally average from 16. However, I have two
23 15-year-olds right now that work part time. 16 to
24 20, 22. My management personnel, I have a couple
25 that's older than that.

1 Q As part of business, do you attract and/or are you
2 looking for younger type folks?

3 A Most of the employees that we have, this is their
4 first jobs which is why we kind of I say mother them
5 a little bit. Because how we teach them and train
6 them usually follows them. And the same thing
7 applied with Wendy's.

8 Q And is there an interview process where you
9 interview, or somebody does, in management level?

10 A I personally interview all of my employees.

11 Q You do. Now, let's move along to State's Exhibit 8
12 is which December 2006. Do you recognize this at the
13 calendar of December 2006?

14 A Yes, sir.

15 Q And, Ms. Heathcoe, you were still owner/operator of
16 Sonic on Hard Scrabble in December of 2006?

17 A Yes, sir.

18 Q And who is Allen Brown?

19 A Allen Brown is my assistant manager. Actually I
20 hired Allen before I ever opened the store. He
21 transferred to me from another Sonic, the one on
22 Broad River Road.

23 Q Yes, ma'am.

24 A And he opened the store with me.

25 Q Now, I want to ask you if you know some folks and if

1 they've either worked for you or specifically worked
2 for you in this time period or if they work for you
3 now, Ms. Heathcoe. Melissa Davy?

4 **A** Did work for me.

5 **Q** Okay. During this time period, December of 2006?

6 **A** Yes, sir.

7 **Q** Okay. Christopher Rust?

8 **A** Yes, sir.

9 **Q** He worked for you back during this time period?

10 **A** And recently he's been rehired.

11 **Q** Did Zack Waltemath work for you?

12 **A** Yes, sir.

13 **Q** Molly Waltemath?

14 **A** Yes, sir. And still does.

15 **Q** Molly still does. And is Zack working in a Sonic in
16 another part of the State?

17 **A** Zack moved to Myrtle Beach and works at a Sonic
18 there.

19 **Q** Cecile Trapp?

20 **A** No longer works with me but did during that time.
21 Cecile has worked for me twice.

22 **Q** Okay. Now, let me ask you; Christopher Whitehead, do
23 you know him?

24 **A** Yes, sir.

25 **Q** And tell the ladies and gentlemen of the jury how you

1 knew Christopher Whitehead?

2 **A** He was an employee of mine.

3 **Q** Was he employed during this time on State's 8,

4 December 2006?

5 **A** Yes, sir.

6 **Q** Derrick McDonald?

7 **A** He was an employee of mine.

8 **Q** During the time period we're going to be talking

9 about, was he actually an employee then?

10 **A** No, sir.

11 **Q** Robert Cannon?

12 **A** Was an employee of mine.

13 **Q** Was Robert Cannon an employee of yours at Sonic

14 during December 2006?

15 **A** No, sir.

16 **Q** Joshua Zoch?

17 **A** Yes, sir.

18 **Q** And was he an employee?

19 **A** Not at the time.

20 **Q** Had he worked for you before?

21 **A** Two or three times.

22 **Q** Now, I want to specifically go back to State's 8

23 again and refer to the week of December 10th, 2006.

24 **A** Yes, sir.

25 **Q** And, Ms. Heathcoe, tell these folks, what -- I don't

1 know. Sometimes the bosses may not do quite as much
2 as other folks. But what about you? Do you -- as
3 the owner/operator, what was your schedule? I mean,
4 were you there? How much of the day -- did you have
5 a set schedule?

6 **A** I'm there mostly anywhere from six to six and a half
7 days a week, anywhere from 5:30 in the morning
8 'til -- at that time I was having to work sometimes
9 'til 8 and 9:00 at night.

10 **Q** All right. And let me ask you this much. Did you
11 have a system in place where you wouldn't necessarily
12 have to be there every morning?

13 **A** Yes, sir.

14 **Q** Okay. And how would that come about? Did you have
15 certain folks that you would do like the morning
16 shift?

17 **A** I had trusted people that have keys to my store, as I
18 do now. I have two crew leaders or shift managers,
19 whichever you'd like to call them. They had keys to
20 my store and I trusted them, you know, to unlock my
21 doors and let whoever was opening with them in. And
22 they would run the shift basically 'til I got there
23 or another manager. Normally I'm there then, well,
24 as now, anywhere from 8:30 to 10:00.

25 **Q** But would that enable you not to have to be there

1 every morning bright and early?

2 **A** Absolutely.

3 **Q** And is there a process that you would go through or
4 you had to determine, or was there a time period or
5 training period before somebody got keys to the store
6 to open the door?

7 **A** Oh, absolutely.

8 **Q** Now, specifically the week of December 10th, 2006,
9 who was working the morning shifts?

10 **A** Would you say that again?

11 **Q** Okay. And I'm sorry. During this week of
12 December 10th, 2006 on State's 8, were there any
13 employees that were opening up, doing the morning
14 shift, if you will?

15 **A** Cecile and Chris.

16 **Q** Cecile Trapp?

17 **A** Yes, sir.

18 **Q** And Chris ...?

19 **A** Whitehead.

20 **Q** Whitehead. And --

21 **A** Excuse me.

22 **Q** -- how long had Chris Whitehead been there at this
23 point?

24 **A** Several months. I'm not sure. But Chris has
25 recently been promoted to crew leader. And as the

1 matter of fact, the very next week I was making him
2 his keys.

3 Q So he had progressed and was on his way to getting
4 his own keys?

5 A Yes.

6 Q And Cecile Trapp, did she already have keys?

7 A Yes, sir.

8 Q And so at this point in it, you would say Chris
9 Whitehead was doing a good job, being a good
10 employee?

11 A Yes, sir.

12 Q Now, let's go to December 12th, 2006 on State's 8. A
13 Tuesday, correct?

14 A Yes, sir.

15 Q Did you go into Sonic on Hard -- and the Sonic on
16 Hard Scrabble is not in this county. It's in
17 Richland County, correct?

18 A It is.

19 Q And did you work or go to Sonic on December 12th,
20 2006?

21 A Yes, sir.

22 Q And did Chris Whitehead work that day?

23 A Yes, sir.

24 Q Did you see him that day?

25 A Yes, sir. I worked.

1 Q You watched him work?

2 A Yes, sir.

3 Q Did he have any difficulty working that day?

4 A No, sir. He and Cecile had opened that morning.

5 Q And again, when -- well, back then, or even I don't

6 know if it is now, too. But when would the morning

7 shift end?

8 A The morning shift usually got off between 1:30 and 2.

9 They were actually scheduled to get off at 1:30 or 2.

10 Q So at some point prior to them getting off you saw

11 Christopher Whitehead?

12 A I worked with him all day until he left that day.

13 Q And did you notice anything unusual about him that

14 day?

15 A No, sir.

16 Q Now let's go to December 13th, 2006.

17 A Yes, sir.

18 Q The next day?

19 A Uh-huh (affirmative).

20 Q Did you have an occasion to see Christopher Whitehead

21 that day?

22 A Yes, sir.

23 Q And at Sonic? At Sonic?

24 A Yes, sir.

25 Q All right. Can you describe Christopher Whitehead on

1 December 13th, 2006, Pat Heathcoe? Can you describe
2 him? Anything different from Tuesday to Wednesday?

3 **A** Yes, sir.

4 **Q** Will you tell them, please?

5 **A** He had a little scratch under one of his eyes. And I
6 don't remember. It was kind like a little half moon.
7 Because the reason I noticed, the kids were picking
8 with him about it. He didn't say it directly to me
9 but he said, you know, him and some of his friends
10 had been playing around. But he was not talking
11 directly to me. I don't remember which one, if he
12 was talking to Cecile or who.

13 Sometime during that day I noticed he kind of
14 had a little limp and he told me that he had slipped
15 and fell. He told me the walk-in cooler. I asked
16 him did he need to go to the doctor. He said no.
17 And that was on Wednesday.

18 **Q** He said he didn't need to go to the doctor?

19 **A** Yes, sir.

20 **Q** You saw a limp?

21 **A** Yes, sir.

22 **Q** Saw a scratch under his eye?

23 **A** Yes, sir.

24 **Q** Did you see him again that Wednesday?

25 **A** Until he got off from work.

1 Q That's a terrible question. Okay. After he got off
2 work, did you see him after that?

3 A No, sir.

4 Q Okay. And --

5 A Not that I recall.

6 Q That's fine. Then going to Thursday, Ms. Heathcoe,
7 did you have an occasion then to see Christopher
8 Whitehead?

9 A I did.

10 Q Tell these folks about it.

11 A He was there when I got to work that morning. He and
12 Cecile had opened again.

13 Q So they were the morning shift crew that whole week?

14 A Yes, sir.

15 Q Okay. And how long -- or what happened, if anything,
16 on Thursday, between you and Mr. Whitehead or any
17 conversation you may or may not have had?

18 A Well, he was kind of limping around and he was
19 wanting a Workmen's Comp form filled out on his leg.
20 And we were a little slow that day. So I was going
21 to let somebody go home early and it was going to be
22 Chris. And he just kind of -- he got real adamant.
23 He didn't want to leave, you know, until the
24 Workmen's Comp form was filled out on him. And I
25 don't remember what I was in the middle of, but he

1 just kind of got real cocky, you know, and, you know,
2 told me that a buddy of his had got screwed one time
3 by falling and not getting a report filled out and
4 ended up paying his own medical bills. And, you
5 know, it was just the way he said it; it kind of hurt
6 my feelings because I take care of my employees.
7 I've never ever had one get hurt that needed to go to
8 the doctor that we didn't pay for their medical
9 bills. So I was in the process --

10 Q Did you tell him that?

11 A Oh, yes. I was in the process of going to train
12 Michelle Boyt which is another assistant manager of
13 mine that happens also to be my daughter, you know,
14 how to call in Workmen's Comp claims. So I sent her.
15 I just took her off line and sent her with Chris to
16 the desk to call in the 1 (800) number for Gallagher
17 and file the claim. He had told me on Wednesday that
18 he had slipped the day before. So I had her call
19 that in. And he clocked out somewhere between 11:20
20 and 11:30 and went home. But he never went to the
21 doctor.

22 Q And do you recognize this document?

23 A Yes, sir. This is a document that Gallagher faxes
24 back to us --

25 Q And --

1 **A** -- when we file a Workmen's Comp claim. And I keep
2 it in a little file.

3 **Q** What's the date on there that's reflected of the
4 injury that's reported?

5 **A** 12-12 of '06.

6 **Q** 12-12 of '06 which is Tuesday, December 2006,
7 correct?

8 **A** Yes, sir.

9 **Q** And that was a claim filed on behalf of whom?

10 **A** This was for Christopher Whitehead.

11 **Q** And at whose request or at whose demand had you done
12 that?

13 **A** At his.

14 **Q** And the day you did this was Thursday?

15 **A** Yes, sir. The reason I know it was Thursday is
16 because we did that before we let him leave and he
17 left between 11:20 and 11:30.

18 **Q** Had he been working there a while?

19 **A** Yes, sir.

20 **Q** Had he been progressing?

21 **A** Yes, sir.

22 **Q** Was he fixing to get his own keys?

23 **A** Yes, sir.

24 **Q** Did you go to work Friday?

25 **A** A little earlier than usual.

1 Q Okay. Explain then why you went to work a little
2 earlier than usual on Friday?

3 A Cecile called me about five minutes to 7 and told me
4 that Chris had walked out on her.

5 MR. KENDRICK: Your Honor, I object to her
6 testifying as to what Ms. Trapp told her. It's
7 hearsay.

8 THE COURT: Hearsay.

9 Q As a result of the phone call that Cecile Trapp gave
10 to you, what did you do? Or let me go back. Who was
11 working the morning shift that day?

12 A Cecile and Chris.

13 Q What time did Cecile call you?

14 A Five 'til 7.

15 Q As a result of that, what did you do? As a result of
16 that phone call, what did you do?

17 A I freaked out because I knew she was there alone.
18 Molly had not quite got there yet. Molly was
19 scheduled to be there at 7.

20 Q As a result of the phone call, did you go anywhere?

21 A The first thing I did was I called Allen Brown
22 because he lives ten minutes away because he could
23 get there faster than I could. I had him in route
24 and then I went ahead and got dressed.

25 Q And after you got dressed, Ms. Heathcoe, where did

- 1 you go, if anywhere?
- 2 **A** Sonic.
- 3 **Q** About what time did you get at Sonic?
- 4 **A** Somewhere around 8:30, 8:20, 8:15. Somewhere in
- 5 there between 8:15, 8:30.
- 6 **Q** How long was the morning shift supposed to last? How
- 7 long are the morning shift employees supposed to be
- 8 there. From 6 'til when? How long is the shift?
- 9 **A** 1:30 or 2:00.
- 10 **Q** Who was supposed to work the morning shift that day?
- 11 **A** Cecile and Chris.
- 12 **Q** When you got there who was there?
- 13 **A** Cecile, Molly and Allen.
- 14 **Q** And as a result of talking with them, did you
- 15 discover Chris had left?
- 16 **A** Yes, sir.
- 17 **Q** And what did you do?
- 18 **A** I called him on his cellphone.
- 19 **Q** You called who on his cellphone?
- 20 **A** Chris.
- 21 **Q** And what day was this?
- 22 **A** It was on a Friday.
- 23 **Q** Specifically Friday ...?
- 24 **A** The 15th.
- 25 **Q** Friday, the 15th, of December 2006?

1 **A** Yes, sir.

2 **Q** Tell the ladies and gentlemen of the jury about the
3 phone call you had with Chris Whitehead on Friday,
4 December the 15th, 2006?

5 **A** When he answered the phone, I don't know if maybe he
6 had seen who was calling; but the first thing he said
7 to me was, F Sonic. I said, "Chris, what is wrong
8 with you?" And he started just ranting. I said,
9 "You walked out and left Cecile by herself." I said,
10 "Why would you do that?" And he was just ranting.
11 You know, I don't need that f'g job. I've got
12 problems. I'm about to move to Aiken. And I was
13 just trying to talk to him. I mean, he was just -- I
14 never heard him sound like that ever. That wasn't
15 the kid I hired or knew.

16 **Q** Was that the kid that was on that phone that you were
17 going to give your keys to?

18 **A** Yes, sir.

19 **Q** And had the week or two, or at some period prior to
20 this, had you noticed a change in Christopher
21 Whitehead?

22 **A** He just got to where he was a little smart aleck
23 sometimes. And that was not -- that was not Chris.
24 I mean, when I hired Chris, that was one of the most
25 polite young men that had ever worked for me. He was

1 so soft spoken.

2 Q And on Friday, December the 15th, 2006, he said F
3 Sonic?

4 A I thought I was talking to a different person.

5 Q That was Christopher Whitehead on the phone though,
6 wasn't it?

7 A It was. I just couldn't believe he -- he did that.
8 I mean, you know, I'd work with him through anything.
9 If he had a problem, I would have come in and worked
10 for him.

11 Q How did that phone call end?

12 A He hung up on me.

13 Q Now, did you end up paying him, Christopher
14 Whitehead, for the -- do you all have some -- when
15 somebody leaves, do you have a procedure for giving
16 notice? And if you're -- does it affect a paycheck
17 if you just walk out?

18 A If you walk out, quit your job without notice, we can
19 reduce you to minimum wage.

20 Q And do you request a certain period of notice for
21 somebody to leave?

22 A We like two weeks. But if somebody will just give me
23 a week, I've never reduced their pay.

24 Q And in this case you did reduce his pay?

25 A Absolutely.

1 Q Now, had you seen Joshua Zoch that week at some
2 point?

3 A I saw Josh on Tuesday.

4 Q And do you remember how that came about?

5 A I do. He came to Sonic and he parked at stall -- I
6 don't remember if it was 9 or 10, but it was right at
7 the front door. I think it was 10. And he was
8 wanting to see Melissa. He and Melissa had been
9 arguing. And from what I understand, they were not
10 together right then. So I sent Michelle out. She
11 was working shift with me that day. And I said,
12 "Tell Josh to go on home before he gets in trouble."
13 And she went out there and was talking to him, and I
14 just walked to the door. And he threw his hand up,
15 said, "I'm going, Ms. Pat." I said, "Well, go on
16 before you get in trouble." That was the last time I
17 saw him.

18 Q Were you at your store on the night of December 12th?

19 A No, sir.

20 Q Is the person that had been working at your store for
21 five or six months, the person that you were fixing
22 to give keys to and the person that said F Sonic on
23 December 15th, 2006 in this courtroom?

24 A Yes, sir.

25 Q Would you point him out, please?

1 **A** Chris.

2 **Q** What color shirt is he wearing?

3 **A** I believe it's green or either gray.

4 **MR. MEADORS:** We'd ask the record to reflect she
5 has pointed to Christopher Whitehead.

6 **THE COURT:** The record will so reflect.

7 **Q** And as employees you said who had been there
8 previously, would you point out Robert Cannon and
9 Derrick McDonald, please?

10 **A** Robert is in a white shirt, and Derrick has a white
11 with stripes.

12 **Q** Beg the Court's indulgence. Thank you. That's all.

13 **THE COURT:** Mr. Whitlark.

14 **MR. WHITLARK:** May it please the Court, Your
15 Honor.

16 **THE COURT:** Yes, sir.

17 CROSS EXAMINATION

18 **BY MR. WHITLARK**

19 **Q** Ms. Heathcoe?

20 **A** Yes, sir.

21 **Q** Is this the form that was filled out for the ankle
22 injury that he had?

23 **A** Yes, sir.

24 **Q** What date was that prepared?

25 **A** I'm not sure the date that it was prepared is on

1 here. It's the date of injury.

2 Q That would be the same date, right?

3 A No, sir.

4 Q I'm going to direct you to this box right here.

5 Could you take a look at that for me?

6 A I can't see that without my glasses.

7 Q You can't see it?

8 A It says "date prepared".

9 Q Okay. What's the date on there?

10 A It says 12-12.

11 Q So the date that this was prepared was actually

12 12-12. Right?

13 A No, sir. It was 12-14. I don't know why that date

14 is down there unless they put the date of injury

15 there.

16 Q I know that you don't have your glasses on. But do

17 you have your glasses in the courtroom?

18 A I saw that, sir.

19 Q I'm talking about I've got another one. Do you want

20 to get your glasses?

21 A I don't have them.

22 Q Right there, that first box, --

23 A Yes, sir.

24 Q -- what is the title of that box?

25 A I can't see that. If you'll read it to me though,

1 I'll --

2 Q Okay. "Date administrator notified"?

3 A I am the administrator.

4 Q Okay. What's the date say right there on that?

5 A 12-12.

6 Q The 12th again. Okay. Did you make this form?

7 A Gallagher typed out that form and faxed it back to

8 us.

9 Q Okay. You had mentioned that -- you had mentioned

10 that on the 13th that he, Mr. Whitehead, was at work,

11 right?

12 A Yes, sir.

13 Q And he was kidding around. They were kidding him

14 around about his scratch or whatever, right?

15 A Yes, sir.

16 Q And Ms. Davy was there, wasn't she?

17 A I believe so, but I'm not certain. But I think she

18 was.

19 Q And you saw her kidding around with him, too, didn't

20 you?

21 A I'm not sure who was standing back in the kitchen.

22 Q And he did show up for work the next two days, didn't

23 he?

24 A Yes, sir.

25 Q Did Mr. McDonald work there while you were there?

1 **A** Yes, sir. But he wasn't working at that time.

2 **Q** Okay. You never had any problem with him, did you?

3 **A** No, sir.

4 **MR. WHITLARK:** Okay. That's all I have, Your
5 Honor.

6 **THE COURT:** Mr. Kendrick.

7 **MR. KENDRICK:** Your Honor, I don't have any
8 questions for this witness. Thank you.

9 **THE COURT:** Mr. Reuwer.

10 **MR. REUWER:** If it please the Court.

11 CROSS EXAMINATION

12 **BY MR. REUWER**

13 **Q** Ms. Heathcoe, thank you for being here this morning.

14 **A** Thank you.

15 **Q** Ma'am, you had said that Christopher Whitehead was a
16 good worker?

17 **A** Yes, sir.

18 **Q** A good employee?

19 **A** Yes, sir.

20 **Q** And you had promoted him?

21 **A** Yes, sir.

22 **Q** How many times had you promoted him? Was it more
23 than once?

24 **A** No.

25 **Q** He hadn't worked his way up two or three levels?

1 **A** Oh. He had gotten raises. But as far as
2 promotions --

3 **Q** And how many raises had he gotten?

4 **A** I'm sure two or three.

5 **Q** And are those raises indication of a good worker?

6 **A** Yes, sir.

7 **Q** Because you wouldn't give a raise if they weren't?

8 **A** No, sir.

9 **Q** The box, you have seen the Workers' Compensation form
10 now which I'd like to have marked as Defendant's
11 Whitehead Exhibit.

12 **COURT REPORTER:** That would be No. 2.

13 (WHEREUPON, Whitehead's Exhibit No. 2 is marked
14 for identification.)

15 **THE COURT:** For identification?

16 **MR. REUWER:** For identification, Your Honor.

17 **Q** So the box at the bottom that Mr. Whitlark was
18 showing you does say "date administrator notified"?

19 **A** Yes, sir.

20 **Q** And that date is ...?

21 **A** That is the day he said he was hurt, was on the 12th.

22 **Q** Well, wouldn't that be -- the date that he said he
23 was hurt, wouldn't that be the box up in the middle
24 of the form that says "date of illness"?

25 **A** I'm sure it probably should be, sir. Why those dates

1 are the way they are I don't know. But I am certain
2 about the day that was called in because I have my
3 time sheet to verify it. That is the only day that
4 Michelle worked lunch with me. I sent her to call it
5 in. And that is the only day that Chris left before
6 lunch other than Friday, the 15th.

7 Q And the 12th would have been which day of the week?

8 A On a Tuesday.

9 Q And down at the bottom it says the person who filled
10 it out or the title that was notified. Can you read
11 that box for me, please? It says the person's name.
12 And that is ...?

13 A Michelle Boyt.

14 Q So she would have been what capacity on Tuesday, the
15 12th?

16 A She was assistant manager.

17 Q Okay. Chris did come into work on the 12th, right?

18 A Yes, sir.

19 Q And were you notified of what the circumstances were
20 of the accident, of his injury?

21 A He told me on Wednesday.

22 Q Okay. What was the nature of that?

23 A He said he slipped in the walk-in cooler --

24 Q And then on --

25 A -- and hurt his leg.

1 Q Hurt his leg from slipping?

2 A Yes, sir.

3 Q Then on Wednesday morning he showed up for work at

4 the regular time?

5 A Yes, sir.

6 Q And you said that he did have a limp?

7 A When I saw him Wednesday, I noticed he was limping.

8 Q On Wednesday, the 13th?

9 A That's when he told me he had slipped.

10 Q And you noticed the limp?

11 A Yes, sir.

12 Q And then on the Thursday, the 14th, did Christopher

13 Whitehead show up on time?

14 A Yes, sir.

15 Q For work as regular?

16 A Yes, sir.

17 Q And is it your testimony he had a limp that day, too?

18 A Yes, sir.

19 Q Okay. And then on Friday, the 15th, did he show up

20 for work on time?

21 A Yes, sir.

22 Q Okay. Had Christopher Whitehead ever told you that

23 he felt he was getting the -- having to do more than

24 his share of the work with the other person he was

25 working with that day, those days, in the morning?

1 **A** I don't recall. I'm --

2 **Q** Is it possible?

3 **A** It's possible. They all have that complaint.

4 **Q** Do you know what time that he left the work on

5 Friday, the 15th?

6 **A** He clocked out at 6:50.

7 **Q** So he'd been there about an hour working?

8 **A** (Nods head affirmatively).

9 **Q** And who was he working with?

10 **A** Cecile.

11 **Q** The same person he had been working with on Monday,

12 Tuesday, Wednesday. Is that right?

13 **A** Yes, sir.

14 **Q** You said that you had a conversation but you called

15 Christopher Whitehead?

16 **A** Yes, sir.

17 **Q** And what number did you call? Do you remember?

18 **A** It was his cellphone.

19 **Q** And do you remember what number that was?

20 **A** I'm not sure.

21 **Q** Okay. Can I show you the Workers' Comp form,

22 Defendant Whitehead Exhibit No. 2 again. And it

23 lists a phone number on the form from Tuesday, the

24 12th, where it says home phone?

25 **A** Yes, sir. I see that. But I can't swear to you

1 that's the number I called.

2 **Q** Okay. But can you read what number that is, please?

3 **A** It says -- I believe that's 530-1646.

4 **Q** Okay. Thank you. Just one moment, please.

5 **A** Yes, sir.

6 (Pause)

7 **MR. REUWER:** Nothing further for this witness.

8 Thank you, ma'am.

9 **THE COURT:** The exhibit.

10 (WHEREUPON, State's Exhibit No. 22 is marked for
11 identification.)

12 REDIRECT EXAMINATION

13 **BY MR. MEADORS**

14 **Q** I'm going to refer you to what's State's Exhibit 22,
15 at least two of those lawyers asked you about.

16 Underneath "injury", what date does it say?

17 **A** 12-12.

18 **Q** 12-12-2006. Date of injury, right?

19 **A** Yes, sir.

20 **Q** And he told you about it the next day?

21 **A** On Wednesday.

22 **Q** And then you called it in Thursday, correct?

23 **A** Yes, sir.

24 **Q** And this form was prepared by the Worker's Comp folks
25 and sent to you?

1 **A** Yes, sir. They got that information from our
2 telephone call. And they fill it out as you're
3 talking to them and then they fax it back to us.

4 **Q** 12-12, the injury, correct?

5 **A** That's what he said.

6 **Q** That's what he told you?

7 **A** Yes, sir.

8 **MR. MEADORS:** Your Honor, we'd offer State's 22,
9 I'm sure without objection.

10 **MR. WHITLARK:** Yeah. No objection.

11 **MR. KENDRICK:** No objection, Your Honor.

12 **MR. REUWER:** No objection, Your Honor.

13 **THE COURT:** That's the same document that you
14 just --

15 **MR. REUWER:** It is.

16 (WHEREUPON, State's Exhibit No. 22 is admitted
17 into evidence.)

18 **MR. MEADORS:** I have nothing further.

19 **THE COURT:** Anything further?

20 **MR. WHITLARK:** Court's indulgence, Your Honor.

21 RE CROSS EXAMINATION

22 **BY MR. WHITLARK**

23 **Q** According to your own guidelines at Sonic, isn't it
24 mandatory that as soon as you get injured, you're to
25 report, aren't you?

1 **A** Yes, sir.

2 **Q** Okay. And that's what he did, didn't he?

3 **A** On Wednesday.

4 **Q** Have you had people get hurt there before in the
5 past?

6 **A** Say that again?

7 **Q** Have you had people hurt under similar circumstances
8 in the past?

9 **A** Yes, sir.

10 **Q** Okay. So you've seen this type of form before,
11 haven't you?

12 **A** Yes, sir.

13 **Q** I mean, how many times do you think you've seen it?

14 **A** Probably six or seven since I've opened that store.
15 We've been real fortunate. .

16 **Q** And the date notified was 12-12, right?

17 **A** That's normally the date of injury.

18 **Q** The only --

19 **A** Oh, date of notified, I don't know why that says the
20 12th.

21 **Q** The only date on that document is 12-12, isn't it?

22 **A** Yes, sir.

23 **Q** All right. Thank you.

24 **A** Thank you.

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

1 **THE COURT:** Mr. Kendrick.

2 **MR. KENDRICK:** Your Honor, just one question in
3 follow-up.

4 CROSS EXAMINATION

5 **BY MR. KENDRICK**

6 **Q** Ms. Heathcoe, how you doing today?

7 **A** I'm fine. How are you?

8 **Q** Good. I'm Josh Kendrick. I represent Mr. Cannon.
9 We've met once before I think?

10 **A** We've met. Yes, sir.

11 **Q** Your daughter is Michelle Boyt?

12 **A** Boyt.

13 **Q** And tell me how you are certain that she was at work
14 on Thursday with you?

15 **A** Yes, sir.

16 **Q** And how did you --

17 **MR. MEADORS:** Your Honor, this is not proper re
18 at all.

19 **MR. KENDRICK:** She just again said --

20 **THE COURT:** Go ahead.

21 **MR. KENDRICK:** Thank you, Judge.

22 **A** I'm -- would you ask me that again?

23 **Q** You said you were certain she was at work with you on
24 Thursday?

25 **A** Mm-hmm (affirmative).

1 Q Even though the form says that the report was made on
2 Tuesday?

3 A Right.

4 Q How do you remember that?

5 A Because I know that we filled that form out the day
6 that Chris went home early. And he clocked out at
7 11 -- it was either 11:20 or 11:30. I'm sure I can
8 get you a copy of that time sheet if you need it.

9 Q Thank you.

10 THE COURT: Anything further?

11 MR. REUWER: Just two, Your Honor.

12 RECROSS EXAMINATION

13 BY MR. REUWER

14 Q Ms. Heathcoe, on the exhibit, the Workers' Comp
15 exhibit, I just want to make sure you have it in
16 front of you; there are actually three boxes that are
17 relevant.

18 A I see that. I do.

19 Q And the one box for the accident is dated what date?

20 A 12-12.

21 Q And then there's a box down at the bottom which we've
22 already said is administrator notified?

23 A Right.

24 Q And what date is that?

25 A 12-12.

1 Q And then there's one more box that says date prepared
2 which would mean --

3 A They all say 12-12.

4 Q And that would mean the date that this form was
5 prepared?

6 A It 'should.

7 Q Okay. Thank you, ma'am.

8 A Mm-hmm (affirmative)

9 REDIRECT EXAMINATION

10 **BY MR. MEADORS**

11 Q But he didn't get hurt on Tuesday when you were there
12 with him, did he?

13 A No, sir.

14 **THE COURT:** All right. Come on down.

15 **MR. WHITLARK:** Excuse me, Your Honor.

16 **THE COURT:** No, sir. You can come down. You're
17 finished. May this witness be excused? Without
18 objection. Thank you very much. Next witness.

19 **MR. MEADORS:** Yes, sir. Cecile Trapp.

20 CECILE TRAPP, after being duly sworn, testifies
21 as follows:

22 **THE CLERK:** Thank you. Please be seated in the
23 witness chair and state your full name for the
24 record. Right this way, please, ma'am.

25 DIRECT EXAMINATION

1 **BY MR. MEADORS**

2 **Q** Would you please state your name?

3 **A** Cecile Trapp.

4 **Q** Ms. Trapp, if you will, just talk into that
5 microphone so everybody can hear you, please, ma'am.

6 **A** Okay.

7 **Q** As I do with all my witnesses, would you please just
8 familiarize these ladies and gentlemen of this jury
9 about you; who you are, where you're from, where you
10 went to school, please?

11 **A** Yeah. I was born born and raised in
12 South Carolina. I went to school: Elementary,
13 Bethel Hanbury; Middle School in Blythewood Middle --

14 **Q** Ms. Trapp, let me slow you down a little bit. And
15 with all due respect, if I can approach.

16 **A** Okay.

17 **Q** Are you a little nervous?

18 **A** Yes, I am.

19 **Q** And I don't mean this. But will you try to stop
20 rocking?

21 **A** Yeah.

22 **Q** Okay. Thank you. Where were you born?

23 **A** South Carolina.

24 **Q** Where were you raised?

25 **A** In South Carolina.

1 Q Where did you go to school?

2 A Bethel Hanbury Elementary, and then I went to
3 Blythewood Middle, Alcorn Middle and Blythewood High
4 School.

5 Q And did you get your GED at some point?

6 A Yes, I did.

7 Q What year?

8 A I want to say 2006, around that year.

9 Q And so you went through school?

10 A Mm-hmm (affirmative).

11 Q When did you get out of school?

12 A I dropped out in tenth grade. And then after that,
13 that's when I went and got my GED.

14 Q Okay. And were you working while you were in school?

15 A Yes.

16 Q And can you tell these ladies and gentlemen where you
17 were working?

18 A I was working at Sonic Drive-in on Hard Scrabble
19 Road.

20 Q And about when did you start that, Ms. Cecile Trapp?

21 A I don't really remember the year. Somewhere in
22 November. I want to say like 2005.

23 Q And can you tell these folks what it's like working
24 in Sonic and what it was like in 2005? What's the
25 first job you had?

1 **A** I was a car hop.

2 **Q** Tell them what a car hop is?

3 **A** The car hop is the one that skates out and we deliver
4 the food to the customers and stuff like that.

5 **Q** And how long were you a car hop?

6 **A** I was a car hop the whole entire time I worked there.
7 I didn't get my crew leader position until about
8 maybe six months to a year after I was working there.

9 **Q** You had to work up to that?

10 **A** Yes, sir.

11 **Q** Did you ever work the drive-thru?

12 **A** Yes, sir.

13 **Q** It's kind of obvious. But what do you do at the
14 drive-thru?

15 **A** You take orders, make sure you've got your drinks and
16 you just collect the money and pass the food out the
17 window.

18 **Q** And then you then became a crew leader?

19 **A** Yes.

20 **Q** And what did it mean -- what does it mean to be a crew
21 leader?

22 **A** Just that you have a higher position than some
23 people. You know, you've got to make sure your crew
24 is in line, make sure nothing is happening, you know,
25 just make sure everything is getting done.

- 1 Q A little more responsibility?
- 2 A Yeah.
- 3 Q A little better pay?
- 4 A Yes.
- 5 Q Did you work at some other fast food places?
- 6 A Yeah. I worked at Steak Out. That was after I quit
- 7 Sonic in January and then I went to Steak Out.
- 8 That's when I moved to Two Notch.
- 9 Q So you stopped working in Sonic in January of what
- 10 year?
- 11 A This past year.
- 12 Q So how long after December 2006?
- 13 A Not long.
- 14 Q Was it January 2007?
- 15 A I want to say so. Yeah.
- 16 Q And you then went to work at Steak Out?
- 17 A Yes, sir.
- 18 Q And then what did you do?
- 19 A I just -- it was like another fast food restaurant,
- 20 you know, taking orders over the phone and doing
- 21 stuff like that.
- 22 Q I apologize. That was a terrible question. After
- 23 that where did you stay? After Steak Out what did
- 24 you do?
- 25 A I just stayed at home.

1 Q Were you with your grandmother?
2 A No. That was with my fiance.
3 Q And after that did you stay with your grandmama?
4 A Yes.
5 Q Here?
6 A Yes.
7 Q And do you know -- did you know Joshua Zoch?
8 A Yes.
9 Q Melissa Davy?
10 A Yes.
11 Q Christopher Rust?
12 A I think I -- yeah. Yeah. He worked at Sonic. I
13 didn't hang out with him; but, yes, he worked at
14 Sonic.
15 Q Allen Brown?
16 A Yes.
17 Q Is he a pretty good fellow?
18 A He's pretty cool.
19 Q Christopher Whitehead?
20 A Yes.
21 Q Where did you know Christopher Whitehead from?
22 A I met him at Sonic.
23 Q You met him at Sonic?
24 A Mm-hmm (affirmative).
25 Q Robert Cannon?

1 **A** I met him at Sonic.

2 **Q** Okay. And Derrick McDonald?

3 **A** I met him actually at Blythewood High School.

4 **Q** At what high school?

5 **A** At Blythewood High School. And then I met him again
6 at Sonic.

7 **Q** So you knew him prior?

8 **A** Mm-hmm (affirmative).

9 **Q** Did you have any part of him getting a job?

10 **A** No. Not really.

11 **Q** But the other two defendants you knew exclusively
12 from Sonic?

13 **A** Yes, sir.

14 **Q** And going back to Josh Zoch, when did you meet him?

15 **A** I met Josh when I first started working at Sonic.
16 And --

17 **Q** How did you meet him? Through whom, if anybody?

18 **A** My fiance, Anthony, he was friends with him. And
19 then we started hanging out, and that's how I met
20 him.

21 **Q** At that time what?

22 **A** That's when I met Josh, whenever I was dating
23 Anthony, which is now my fiance.

24 **Q** Now, if I could go specifically to the week that
25 we're all here talking about; do you recognize this

1 as December 2006, State's 8 I believe?

2 A Yes, sir.

3 Q You recognize this is a calendar of that month?

4 A Yes, sir.

5 Q And the week of December 10th through the 16th, were
6 you working at Sonic?

7 A Yes, sir.

8 Q Tell these folks, what was your job that week?

9 A I was a crew leader and I opened up the store every
10 day from 6 until 2. And basically all you do is you
11 go in. You know, you get the store prepared. You
12 cook the food that needs to be cooked. You make the
13 drinks that need to be made and everything like that
14 for first thing in the morning until somebody gets
15 there normally at 7 or at 11, 10 or 11.

16 Q And at that time, in December of 2006, what time did
17 the store open? Sonic?

18 A 6:30.

19 Q And what time does it open now?

20 A 6.

21 Q So you get there a little earlier to make preparation
22 for the morning crowd?

23 A Yes, sir.

24 Q And would you usually have a morning crowd?

25 A Sometimes, yeah. It wouldn't necessarily be busy all

1 the times, mainly on like certain days.

2 Q And would you open up by yourself, or would there be
3 somebody else?

4 A Yes. There would be somebody else with me.

5 Q Okay. Who was working the morning crew shift at
6 Sonic on Hard Scrabble in December of 2006 with you?

7 A Christopher Whitehead.

8 Q And so you all would both go there in the morning and
9 open up?

10 A Yes, sir.

11 Q Now, did you work Monday, December 11th?

12 A Yes, sir.

13 Q What time did you get off?

14 A Two.

15 Q And did you see Joshua Zoch that Monday?

16 A Yes, sir.

17 Q Tell the ladies and gentlemen about that. Where was
18 that? When was the last time you saw him?

19 A I had not off work, you know, went home, got dressed,
20 you know, took a shower and everything. And then I
21 went over to Josh's house. I'm not sure what time.
22 I just remember being at Josh's house that Monday
23 night. We were just hanging out.

24 Q Just slow down. I'm sorry. Respectfully. I don't
25 mean that bad. Take your time.

1 **A** We were just hanging out, you know. We had stopped
2 by to see Josh. We had heard him and Melissa had got
3 in a fight. And so we were stopping by to see how he
4 was doing and we had hung out with him for a couple
5 of hours.

6 **Q** Who is "we"?

7 **A** Me, my fiance, Anthony; my brother, Blake; and my
8 friend, Jeanne Smart.

9 **Q** And do you know about what time you all left?

10 **A** I'd say about between like 9 and 10.

11 **Q** And that was on Monday?

12 **A** Yes, sir.

13 **Q** And did you have an occasion to go to work on
14 Tuesday, December 12th, 2006?

15 **A** Yes, sir.

16 **Q** And what time did you get there?

17 **A** I got there about 5:45.

18 **Q** Did Christopher Whitehead get there?

19 **A** He did.

20 **Q** And you all opened up?

21 **A** Mm-hmm (affirmative).

22 **Q** And how long did you work that day on December 12th
23 at Sonic?

24 **A** From 6 until 2.

25 **Q** Did anything unusual happen between 6 and 2?

1 **A** No, not really. Other than when Chris came in, he
2 had a scratch on his face and his ankle was --
3 **Q** I'm talking about Tuesday now, not Wednesday.
4 Tuesday.
5 **A** Oh, yeah. No. Nothing happened on Tuesday.
6 Everything was normal. Everything was fine.
7 **Q** And you got off at what time?
8 **A** 2.
9 **Q** And to acclimate that -- here is something over
10 here -- but to acclimate that, that Tuesday, did you
11 go in that night, too?
12 **A** Yes, sir.
13 **Q** What did you go in for?
14 **A** I think I was getting something to eat. I know I was
15 checking my schedule because I didn't look at it that
16 Monday to see, you know, what time I had to be in the
17 next day.
18 **Q** Did you see anybody there that night?
19 **A** Yes, sir.
20 **Q** Who?
21 **A** I seen Christopher Whitehead and Robert Cannon.
22 **Q** And were you there long?
23 **A** No.
24 **Q** Tuesday night?
25 **A** No, sir.

- 1 Q Now, going back to that day, Tuesday, December 12th,
2 what time did you get off?
- 3 A At 2.
- 4 Q At 2?
- 5 A (Nods head affirmatively).
- 6 Q And you came back later that night to check your
7 schedule?
- 8 A (Nods head affirmatively).
- 9 Q Did you work Wednesday, December the 13th?
- 10 A Yes, sir.
- 11 Q What time did you get in then?
- 12 A 6.
- 13 Q And did Christopher Whitehead get in there?
- 14 A Yes.
- 15 Q And what, if anything, happened that day?
- 16 A Everything, you know, started out normal and
17 everything. Chris came in and he was complaining
18 that his ankle was hurting, and he had a scratch on
19 his face.
- 20 Q And that was December the 13th?
- 21 A Mm-hmm (affirmative).
- 22 Q You said 12th a minute ago. Did you just make a
23 mistake?
- 24 A Yeah. Yes, sir.
- 25 Q Is there any doubt in your mind it was December 13th

1 of 2006?

2 **A** No, sir.

3 **Q** And explain to the jury about what he said
4 specifically to you, Cecile?

5 **A** He told me that he had got into like a play fight
6 with his cousin and that he hurt his ankle and his
7 cousin accidentally scratched him on his face.

8 **Q** And he tells you that this Wednesday?

9 **A** Yes, sir.

10 **Q** Could you see the scratch on his face?

11 **A** Yes, sir.

12 **Q** And did he look like he was limping?

13 **A** Yes, sir.

14 **Q** Had he been limping Tuesday?

15 **A** No, sir.

16 **Q** Had he said anything to you about getting hurt
17 Tuesday?

18 **A** No, sir.

19 **Q** When you saw him Tuesday night was he limping?

20 **A** No, sir.

21 **Q** So now, Wednesday, December 13th, he tells you all
22 that. What, if anything, did he say after that?

23 **A** He said that he was going to pretend that he fell on
24 grease and hurt his ankle so that Ms. Pat could pay
25 for the hospital bills.

- 1 Q Pretend he fell on grease and tell Ms. Pat?
- 2 A Yes.
- 3 Q What did you say in response to that?
- 4 A He asked me, you know, if I would just play along.
- 5 And I was like, well, I'm not going to have to
- 6 anything to do with it.
- 7 Q So you didn't agree to play along?
- 8 A No, sir.
- 9 Q How long did you work Wednesday?
- 10 A Until 2:00. Until 2:00.
- 11 Q Did you go back to work Thursday?
- 12 A Yes, sir.
- 13 Q Please tell the ladies and gentlemen, how long did
- 14 you work Thursday?
- 15 A From 6 until 2.
- 16 Q Was Christopher Whitehead there on Thursday?
- 17 A Yes, sir.
- 18 Q And how long did he stay Thursday?
- 19 A I'd say until about 11 or 12.
- 20 Q Do you know why he left early?
- 21 A I believe he said he had like a doctor's appointment
- 22 to go to or some type of appointment.
- 23 Q I didn't hear your last part.
- 24 A Some type of appointment.
- 25 Q So he left Thursday?

- 1 **A** Yes, sir.
- 2 **Q** What time did you get off Thursday?
- 3 **A** I got off at 2.
- 4 **Q** What kind of car did Christopher Whitehead drive?
- 5 **A** It was a baby blue Honda, either a Civic or Accord.
- 6 **Q** And had he driven that car Monday?
- 7 **A** Yes, sir.
- 8 **Q** Had he driven it Tuesday?
- 9 **A** Yes, sir.
- 10 **Q** Did he drive it Wednesday?
- 11 **A** No, sir.
- 12 **Q** You say he did not?
- 13 **A** (Nods head affirmatively).
- 14 **Q** And moving to Friday, I think December 15th of 2006,
- 15 Ms. Trapp.
- 16 **A** Mm-hmm (affirmative).
- 17 **Q** Were you supposed to work that day?
- 18 **A** Yes, sir.
- 19 **Q** And did you in fact go into Sonic on Friday,
- 20 December 15th?
- 21 **A** Yes, sir.
- 22 **Q** And what time did you get there?
- 23 **A** 6.
- 24 **Q** And who, if anybody else, got there with you? Did
- 25 somebody else come that morning?

1 **A** Yes, sir.

2 **Q** Who was that?

3 **A** That was Chris, Christopher Whitehead.

4 **Q** And tell the jury; again, on Friday, how long were

5 you and Christopher Whitehead supposed to work?

6 **A** Until 6 -- from 6:00 'til 2:00.

7 **Q** Morning shift?

8 **A** Mm-hmm (affirmative).

9 **Q** How long did Christopher Whitehead stay there?

10 **A** Not long.

11 **Q** How long is "not long"?

12 **A** Maybe ten to fifteen minutes.

13 **Q** And do you know how he left?

14 **A** Yes. His mother came to the store. And at that time

15 the doors were locked. So she was waiting outside

16 for me to come and unlock the doors. I went and

17 unlocked the doors and Chris was right behind me and

18 he said it was fine. He went ahead and just talked

19 to his mom. And after he talked to his mom, I'm not

20 sure what was said, he came in and he kind of freaked

21 out and was just like, "I have to go." I told him,

22 "You can't go. I can't run the store myself. Can

23 you please stay, you know, or can you tell me what

24 the problem is?" And he wouldn't tell me anything;

25 he wouldn't stay, and he just clocked out and he

1 left.

2 Q And had that ever happened before?

3 A No, sir.

4 Q Ever?

5 A Ever.

6 Q So how had Christopher Whitehead gotten to the store
7 that day?

8 A His mother.

9 Q And then just a short while later she came back?

10 A Yes, sir.

11 Q Beg the Court's indulgence. On Friday, the 15th, did
12 you ever tell Pat Heathcoe, your boss, the owner,
13 owner/operator, Ms. Heathcoe, about that Chris had
14 tried to get you to -- or about the lie, is what
15 you've testified on --

16 MR. WHITLARK: Objection.

17 Q You used the word --

18 THE COURT: Overruled.

19 Q Did you ever tell Pat Heathcoe that he had told you,
20 Christopher Whitehead, that he was going to tell her
21 he got hurt here so he could get Workers' Comp?

22 A Yes, sir.

23 Q And do you remember when you told her about that?

24 A I believe it was Thursday.

25 Q I'm sorry?

- 1 **A** I believe it was Thursday.
- 2 **Q** And did you and Christopher Whitehead ever have a
- 3 conversation about a cellphone?
- 4 **A** Yes. He said something about like his cellphone had
- 5 got taken away. His mom had took his cellphone away.
- 6 **Q** And he told you that?
- 7 **A** Yes, sir.
- 8 **Q** Do you remember when that was?
- 9 **A** No, sir.
- 10 **Q** Was it that week?
- 11 **A** Yes, sir.
- 12 **Q** Is Christopher Whitehead in the courtroom?
- 13 **A** Yes, sir.
- 14 **Q** Please point him out.
- 15 **A** He's sitting right there.
- 16 **Q** And you said you knew McDonald, Defendant McDonald
- 17 and Defendant Cannon. Did you know them prior to
- 18 working there?
- 19 **A** Other than D.J., no.
- 20 **Q** That's right. You knew Mr. McDonald and Whitehead.
- 21 But which ones did you see Tuesday night?
- 22 **A** Robert and D.J. I mean Robert and Chris.
- 23 **Q** Did you see Robert wearing anything then?
- 24 **A** Yes. He was wearing a black ski mask.
- 25 **Q** And would you point out Robert Cannon, please?

1 **A** That's him right there.

2 **Q** And you saw Christopher Whitehead?

3 **A** Yes.

4 **Q** And again, did Christopher Whitehead appear to you to
5 be injured on Tuesday night?

6 **A** No.

7 **Q** And Derrick McDonald, you went to high school with
8 him and worked with him at Sonic, is he in the
9 courtroom?

10 **A** Yes.

11 **Q** Would you point him out?

12 **A** (Witness points).

13 **MR. MEADORS:** We'd like the record to reflect
14 she's pointed out all defendants, Your Honor. Beg
15 the Court's indulgence.

16 **THE COURT:** The record will so reflect.

17 **MR. MEADORS:** Ms. Trapp, thank you.

18 **THE COURT:** Mr. Whitlark.

19 **MR. WHITLARK:** May it please the Court, Your
20 Honor?

21 **THE COURT:** Yes, sir.

22 CROSS EXAMINATION

23 **BY MR. WHITLARK**

24 **Q** You were in a position of a little more authority at
25 Sonic than regular workers there, right?

1 **A** Yes, sir.

2 **Q** You were familiar with the rules and regulations and
3 forms and so forth that were used?

4 **A** Yes, sir. Pretty much, yes.

5 **Q** I hand you this form here and ask you if you
6 recognize that type of form?

7 **A** I have never seen this form before.

8 **Q** Do you know what it is?

9 **A** I see that it's a Workers' Comp, a Comp form. Yes.
10 I have seen it a couple of times, but I never dealt
11 with stuff like this.

12 **Q** Okay. Does it say what date on the bottom of it the
13 injury occurred?

14 **MR. MEADORS:** Your Honor, she said she doesn't
15 deal with them. Objection.

16 **THE COURT:** Go ahead.

17 **A** I'm sorry. Can you repeat the question?

18 **Q** Could you read the box in the lower left corner about
19 the date of an injury reported on Mr. Whitehead?

20 **A** 12-12-2006.

21 **Q** Okay. Thanks.

22 **A** Mm-hmm (affirmative).

23 **Q** How long did you work at Sonic?

24 **A** I worked there for a pretty good time, since I was
25 the age of 15.

1 Q And you knew Mr. Zoch?

2 A Yes.

3 Q Joshua Zoch. You knew Melissa as well?

4 A Yes.

5 Q You knew Mr. Zoch was in some trouble at that time,
6 didn't you, that this happened?

7 A I mean, I had heard. I didn't know but I had heard.

8 Q You saw Ms. Davy the morning of the 14th, right?

9 A I am not -- I'm not sure.

10 Q Do you remember?

11 A I'm not sure.

12 Q Do you remember the day that Chris Whitehead, what
13 the prosecutor was talking about, about he got
14 injured. Do you remember that day?

15 A Yes.

16 Q Do you remember it clearly?

17 A Yes.

18 Q Was Ms. Davy there?

19 A I'm not sure.

20 Q Who else was there that day?

21 A All I can remember is me and Chris being there from
22 the first thing in the morning by ourselves.

23 Q Have you been to the Solicitor's Office to meet with
24 him about your testimony?

25 A Yes.

1 Q How many times have you been there?

2 A Maybe twice.

3 Q Who else was up there with you?

4 A I'm not sure.

5 Q Were there other witnesses there?

6 A No. Not in the same room with me, no.

7 Q All right. Do you know Adrian Duran?

8 A I don't know of him. I've heard of him, but I don't
9 know -- I've never met him myself.

10 Q Okay. I'm going to hand you this.

11 MR. MEADORS: Your Honor, he needs to mark it.

12 Q Yeah. For identification. We'll mark it. It's
13 three pages. I'm going to ask hand you this document
14 and ask you if you recognize it. Take a look at
15 that. If you wouldn't mind taking a look at that and
16 tell me if you recognize that document?

17 A Yes, I do recognize this document.

18 Q Is that your statement you gave?

19 A Yes.

20 Q You know Investigator Catoe here, don't you?

21 A Yes.

22 Q He came up to the Sonic. Is that where you first met
23 him?

24 A Yes.

25 Q Okay. And what day of the week? Do you remember

1 what day that was?

2 **A** I want to say it was that Friday.

3 **Q** Okay. And when he got there, you told him a few
4 things. You knew about things, right?

5 **A** Yes.

6 **Q** You told him that Melissa Davy had told you some
7 stuff, right?

8 **A** Yes.

9 **Q** Do you remember what you told him?

10 **A** Not strongly. I don't remember.

11 **Q** Do you remember saying that she said that Mr. Zoch
12 had been hit with something?

13 **A** Yes.

14 **Q** She knew about that?

15 **A** Yes.

16 **Q** Okay. She didn't tell you anything, or you didn't
17 say anything about her telling you anything about Mr.
18 Whitehead was going to fight him?

19 **A** Yes. I did hear about that.

20 **Q** You did?

21 **A** Yes.

22 **Q** Did you tell that to the investigator?

23 **A** I believe so.

24 **Q** Well, take a look at your --

25 **A** I'm not -- like I'm not positive.

1 Q Okay. I know it's hard to remember all this stuff.
2 Mr. Zoch -- you said that Mr. Zoch had possession of
3 somebody's social security card and driver's license,
4 didn't you, in your statement?

5 A A copy of it. Yes, sir.

6 Q Whose driver's license and social security card did
7 he have?

8 A It was a guy I've seen before. I think his name is
9 Chanin.

10 Q And what did you tell the investigator about that?

11 MR. MEADORS: Your Honor, objection. It's not
12 relevant at all to this proceeding.

13 THE COURT: I don't know. Go ahead. Overruled.

14 A I forgot the question. I'm sorry.

15 Q Okay. You knew that Josh Zoch had possession of
16 somebody named Chanin Smith's driver's license and
17 social security card?

18 A Yes.

19 Q He had it. You knew that, right?

20 A Yes.

21 Q And you also knew that they were scared he was going
22 to bust them, right?

23 A Bust who?

24 Q That Mr. Josh Zoch was going to bust them --

25 MR. MEADORS: Objection, Your Honor.

1 Q Please refer to your statement.

2 THE COURT: Ask her questions about the
3 statement. Don't put words in her mouth.

4 MR. WHITLARK: Yes, sir. I understand. Yes,
5 sir.

6 THE COURT: Ma'am, just take a minute. Just
7 stop.

8 Q It's okay.

9 THE COURT: Look at that. He asked you to look
10 at it and then he asked you a question before you had
11 a chance to look at it. So just read over it for a
12 minute. Okay?

13 A Okay.

14 MR. RILEY: Your Honor, could you ask the
15 witness to speak up a little bit?

16 THE COURT: Well, we're doing the best we can.

17 A This statement here doesn't mention anything. Hold
18 on. There is more pages.

19 THE COURT: He's going to ask you other
20 questions about it I assume. So you might as well
21 just take a minute and read it.

22 Q Yeah. I'm sorry, Ms. Trapp. Okay. Did you see it?

23 A Mm-hmm (affirmative).

24 Q Did you say something in there about Mr. Josh Zoch
25 had robbed somebody?

1 **MR. MEADORS:** Your Honor, objection. This is
2 irrelevant. He's already been -- we've got a matter
3 of law. This is ridiculous, Your Honor. I've got to
4 ask the jury to step outside.

5 **THE COURT:** All right. Just, you stay right
6 there. All right, ladies and gentlemen, let me try
7 to get this straightened out with the attorneys.
8 I'll ask you to go to the jury room for a few
9 minutes. We'll call you when we're ready. Don't
10 discuss the case among yourselves while you're in the
11 jury room.

12 (Jury out at 10:24 a.m.)

13 **THE COURT:** All right. What's the objection? I
14 said, what's the objection?

15 **MR. MEADORS:** Are they out?

16 **THE COURT:** The jury is out.

17 **THE BAILIFF:** They're gone.

18 **MR. MEADORS:** Relevance, Your Honor. He's going
19 into other stuff about whether the victim might have
20 been charged with or not charged with dealing with
21 Adrian Duran who is not even involved in this case.

22 **THE COURT:** Is it in the statement?

23 **MR. MEADORS:** I don't know. But I don't know if
24 that the matters. It's not relevant.

25 **THE COURT:** I asked you a question. Is it in

1 the statement?

2 **MR. MEADORS:** I don't know. I don't think
3 everything he's asked is. He's asking some stuff
4 that is and some stuff that isn't, Your Honor.

5 **MR. WHITLARK:** Your Honor.

6 **THE COURT:** Listen. Everybody doesn't need to
7 be standing up.

8 **MR. KENDRICK:** Oh, sorry, Judge. I wasn't
9 paying attention. I apologize.

10 **THE COURT:** Everybody is jumping up at the same
11 time. Now, I don't know what's in the statement.

12 **MR. MEADORS:** I'd like for him to proffer what
13 he wants to ask her.

14 **THE COURT:** I'm fixing to do that. But if she
15 told the officer something that may have something to
16 do with this case, it obviously has a lot to do with
17 this case or she wouldn't have been making a
18 statement to the officer. Now, what else is
19 contained in there? I don't know. I don't know how
20 she knows unless she was told something which makes
21 it hearsay in the statement.

22 **MR. MEADORS:** Well, he'll ask a question about
23 something that's not in here and then get her to look
24 about something in here and try to relay that.
25 That's what he's doing. I mean, he's good at it.

1 **THE COURT:** All right.

2 **MR. WHITLARK:** Your Honor, if I could. Your
3 Honor, this goes to -- if we could, if you want to
4 have a full-blown legal argument about third party
5 responsibility for this, we're ready to do that,
6 because we have --

7 **MR. MEADORS:** We need to do that before we go
8 into it. Yes.

9 **MR. WHITLARK:** Yes, sir. And I think we should,
10 because that's going to be a big part of our defense
11 in this case. And I would like to do the legal
12 argument on it, Your Honor, because we know based on
13 what we have in our possession that we satisfied the
14 law of South Carolina in regards to the admissibility
15 of this. And we'd like to let the Court hear from us
16 about it.

17 **MR. MEADORS:** Your Honor, he's handed us Holmes.
18 I think Your Honor is familiar with Holmes.

19 **THE COURT:** Sir?

20 **MR. MEADORS:** It's Holmes he's handed me.

21 **THE COURT:** It's Holmes?

22 **MR. MEADORS:** Yes, sir.

23 **MR. WHITLARK:** Yes, sir. This case, Your Honor,
24 --

25 **THE COURT:** I'm familiar with Holmes.

1 **MR. WHITLARK:** Okay. Well, we have all of the
2 criteria set forth in that case that say that
3 admissibility would be proper on the third party
4 involvement, Your Honor. First of all, one of the
5 main criteria they look at is the strength of the
6 forensic case against the defendants.

7 **THE COURT:** Yes, sir. I know that.

8 **MR. WHITLARK:** Well, --

9 **THE COURT:** And I agree. I agree.

10 **MR. WHITLARK:** And as well, Your Honor, the fact
11 of the matter is, is that the relation in time to the
12 burglary, the burglary of Mr. Duran close in time to
13 this, with the statement of these other witnesses
14 that he was going to get him, identified two
15 identified witnesses that one of them said he's going
16 to get him when the police get away from him and the
17 other one said he wasn't waiting around two years to
18 get his \$4,000 back, that and in conjunction with
19 what happens to snitches. Now, we've got an eye
20 witness that heard that, you know, snitches get
21 stitches, and they had a joke between them. And then
22 they said --

23 **THE COURT:** Just hold it.

24 **MR. WHITLARK:** This is testimony. This is from
25 the record, Your Honor.

1 **THE COURT:** You're --

2 **MR. MEADORS:** What's he saying? This is from
3 the record?

4 **MR. WHITLARK:** From the information provided by
5 the solicitor, Your Honor.

6 **THE COURT:** Let's go back. You take the
7 position that there is a third party who could have
8 committed this crime.

9 **MR. WHITLARK:** Yes, sir.

10 **THE COURT:** All right. And that being -- have
11 you identified that person? Or is this a --

12 **MR. WHITLARK:** Yes, sir.

13 **THE COURT:** -- figment?

14 **MR. WHITLARK:** No. We've specifically
15 identified Mr. Adrian Duran, the victim of this
16 burglary 60 or 70 days before.

17 **MR. MEADORS:** Judge, he's asking her about a
18 robbery.

19 **THE COURT:** Just wait a minute. We're not even
20 near that. 60 to 70 days prior.

21 **MR. WHITLARK:** Yes, sir. It's in late or middle
22 of September I believe. And the death occurred in
23 the early part of December.

24 **THE COURT:** And you say there is evidence that
25 threats were made by Mr. Duran.

1 **MR. WHITLARK:** Yes, sir.

2 **THE COURT:** And you have evidence. I mean,
3 that's your defense.

4 **MR. WHITLARK:** Yes, sir. We have two identified
5 eye witnesses that were discovered by the
6 investigator for Kershaw County. And those are exact
7 quotes actually from the materials they provided to
8 us.

9 **THE COURT:** And those witnesses are ...?

10 **MR. WHITLARK:** Dixon and -- Mr. Dixon. And who
11 is the other one?

12 **MR. MEADORS:** Who is the second one?

13 **MR. WHITLARK:** Mr. Barker was the -- there is
14 actually three witnesses. Barker, Dixon and Joe
15 Wilson.

16 **THE COURT:** All right.

17 **MR. WHITLARK:** We also have the fact that
18 Mr. Adrian Duran was polygraphed by the Sheriff's
19 Department at Kershaw on the 14th of December. And
20 his plea questions were: Did you kill Mr. Zoch? Do
21 you know he did it or do you know anything about it?
22 And he showed deception on all three answers.

23 **MR. MEADORS:** I dispute that. He may have known
24 they did it, but he didn't -- that may probably be
25 why he failed it. There's no indication he failed it

1 on the document.

2 **MR. WHITLARK:** Well, the document speaks for
3 itself.

4 **THE COURT:** Well, it doesn't speak very loudly.
5 All right. Now, assume that those three witnesses
6 will be called --

7 **MR. WHITLARK:** Yes, sir.

8 **THE COURT:** -- as to cast doubt on Adrian Duran;
9 is that correct?

10 **MR. WHITLARK:** Yes, sir. Your Honor, could I
11 mark this for proffer purposes?

12 **THE COURT:** I don't know what it is.

13 **MR. WHITLARK:** This is the polygraph result for
14 Mr. Duran.

15 **THE COURT:** You can put a number on it.

16 **MR. WHITLARK:** I think that's Defense No. 1.
17 Mark it for purposes of the in camera hearing. Your
18 Honor, may I?

19 **THE COURT:** All right.

20 (WHEREUPON, Defendant McDonald's Exhibit No. 1
21 is marked for identification.)

22 (Document handed to the Court)

23 **MR. WHITLARK:** This guy drops off the radar,
24 Your Honor. Of course they're going up to Sonic and
25 they hear this that fellow here was wearing a ski

1 mask and acting funny. And then they hear some
2 rumors about Mr. Whitehead might have had a fight
3 with him or something. And so things just kind of
4 snowballed on these young men from there.

5 And our position is is that the real hard
6 evidence in this case needs to be looked at, is that
7 Mr. Adrian Duran was burglarized by Mr. Zoch close in
8 time to this. \$4,000 was stolen from him. We have
9 two witnesses stating that he -- or a witness stating
10 that he has said he will get him once the police get
11 away from him and that he is not waiting two years to
12 get his \$4,000 back.

13 That evidence coupled with the failing of the
14 polygraph and the fact that this was the first person
15 that the Kershaw County investigators went to. As
16 soon as the death was reported of Mr. Zoch, they
17 drove right over to where this fellow was and grabbed
18 him. And we have a polygraph failure of this man.
19 But we don't have any notes. We don't have any notes
20 about the interview with him and what happened there.

21 So the fact is is that they had a relationship,
22 Mr. Zoch and Mr. Adrian Duran. And the relationship,
23 the allegation is going to be that they were selling
24 drugs together or in the same vicinity together and
25 that Mr. Zoch was cut out of the business by

1 Mr. Duran and that there were some hard feelings
2 about it.

3 These men knew each other. The man that
4 burglarized him, he knew Mr. Duran. And the reason
5 that we are mentioning this, Your Honor, under
6 Holmes, I think we've got an extremely strong
7 position as far as the admissibility of this third
8 party information.

9 Also, Your Honor, we intend to prove here that
10 Mr. Adrian Duran lived not far from where the
11 decedent lived. So we've got a lot of factors, plus
12 the fact of zero forensic evidence, Your Honor, no
13 forensic evidence.

14 **THE COURT:** Well, that's to be seen. What's the
15 State's position on third party guilt?

16 **MR. MEADORS:** First of all, this witness has no
17 knowledge of anything. So that was my initial
18 objection.

19 **THE COURT:** That may may be.

20 **MR. MEADORS:** He's trying to get all in that
21 through her.

22 **THE COURT:** I understand.

23 **MR. MEADORS:** I'm just saying for the record
24 that was my objection. Number two, the fact that
25 there may or may not be forensic evidence does not

1 change the standard at all for third party guilty. I
2 think he is misreading it. He just said Holmes. It
3 doesn't change what you look at. Holmes just said
4 the fact, if there's a lot of DNA evidence, that's
5 not the controlling factor. That's what Holmes says.
6 The standard is still the same as it has always been.
7 It hasn't changed. And that's crystal.

8 **THE COURT:** Well, Holmes I think -- and I am
9 talking about the U.S. Supreme Court case.

10 **MR. MEADORS:** Yes, sir.

11 **THE COURT:** Not just the state Supreme Court
12 case, changed the Gregory standard in South Carolina
13 on third party guilt. The rule was always very
14 restrictive on third party guilt. I think it
15 loosened up the rules on third party guilt.

16 **MR. MEADORS:** Only to the extent of how you
17 value DNA or forensic evidence, Your Honor. The
18 standard is still the same. And I've got a memo.
19 I'm going to prepare it for you. I have it, but I
20 just want to put a thing on it. The common theme of
21 the cases is that the evidence of third party guilt
22 must be inconsistent with the guilt of the defendant.

23 **THE COURT:** Right.

24 **MR. MEADORS:** If the defendant cannot show such
25 inconsistencies, it should not be admitted. That's

1 never changed.. I think that's still the standard.

2 **THE COURT:** Well, they haven't offered it yet.

3 **MR. MEADORS:** So, number one, all you have is --
4 and this supposedly is the victim of a burglary.. Not
5 a robbery. Not a robbery. He keeps throwing out
6 this robbery, armed robbery. That's not out there.
7 We'd ask Your Honor to instruct him and admonish him
8 not to mention the word "robbery" any more.

9 **MR. WHITLARK:** Your Honor, I won't do it. I
10 won't say it again.

11 **MR. MEADORS:** He's said that three or four
12 times.

13 **THE COURT:** Well, what is it?

14 **MR. MEADORS:** The victim was alleged to have
15 broken into the residence of Mr. Adrian Duran.
16 That's what it was, a burglary charge.

17 **THE COURT:** First? Second?

18 **MR. MEADORS:** I don't know. It was filed
19 yesterday.

20 **MR. KENDRICK:** We can let you look at the file,
21 Your Honor. That's not quite what happened. He held
22 a gun to somebody's head and demanded money and
23 items.

24 **MR. MEADORS:** Was he charged with robbery?

25 **MR. KENDRICK:** No. But I think that's where Mr.

1 Whitlark gets robbery from, because a robbery clearly
2 is committed. I don't know why Kershaw didn't charge
3 him with a robbery.

4 **MR. MEADORS:** Well, he was trying to imply there
5 was a robbery, Mr. Kendrick.

6 **MR. KENDRICK:** And I'm only saying that it was a
7 robbery. They didn't charge him with it.

8 **MR. MEADORS:** Well, that's not the same thing.
9 He was saying there was an armed robbery.

10 **MR. SHELDON:** All I'm doing is stating the
11 facts. I'm not arguing.

12 **MR. WHITLARK:** Your Honor, that's --

13 **MR. MEADORS:** The fact is he wasn't charged.

14 **MR. WHITLARK:** Can I say why I said that, you
15 know, just to clear it up?

16 **THE COURT:** Well, if he's charged with burglary,
17 he's charged with burglary. And throwing other
18 things around or --

19 **MR. MEADORS:** Misleading.

20 **THE COURT:** -- attempts to influence the jury
21 and inflame the jury. Now, if he's charged with
22 burglary, that's a serious crime. You can go to jail
23 for the rest of your life. But mischaracterizing the
24 crime, the alleged crime, is not proper. You know
25 that.

1 **MR. WHITLARK:** Yes, sir.

2 **MR. MEADORS:** Judge, to follow up on that
3 evidence. It's my understanding -- and they've been
4 provided with all these notes -- that there was an
5 interview. And, yes, the gentleman was upset his
6 house had gotten broken into. He may have said some
7 things, but then he also said, I didn't do anything.
8 I think there's a reference in there to karma, you
9 know, look what happened; clearly nothing that's
10 inconsistent with their guilt at all, Your Honor.

11 **MR. WHITLARK:** We disagree with that, Your
12 Honor. As far as the records provided to us on
13 Mr. Duran, we've gotten nothing on Mr. Duran as far
14 as the actual interview by the police of this man.
15 We have never seen those notes.

16 **MR. MEADORS:** Your Honor, he's got the same
17 thing I do which are his notes from Catoe regarding
18 the Duran situation. And Mr. Kendrick will agree
19 with that. They have that.

20 **MR. WHITLARK:** Mr. Catoe admitted under oath,
21 Your Honor, that he had made notes of Adrian Duran
22 and that he --

23 **THE COURT:** Well, you're getting far afield
24 here.

25 **MR. WHITLARK:** I understand, Your Honor.

1 **THE COURT:** You say you've got witnesses named
2 Dixon, Barker and Wilson --

3 **MR. WHITLARK:** That's right.

4 **THE COURT:** -- that will testify that Adrian
5 Duran offered threatening comments about Mr. Zoch to
6 them.

7 **MR. WHITLARK:** That's right, Your Honor.

8 **THE COURT:** Is that correct?

9 **MR. WHITLARK:** Yes, sir. Now, also, Your Honor,
10 remember, there is two crimes committed. He was
11 charged with grand larceny as well. I just want to
12 point out to the Court I'm not trying to do something
13 improper.

14 **THE COURT:** That's fine. Burglary and grand
15 larceny.

16 **MR. WHITLARK:** And in order to let the Court
17 know that I am not attempting to engage in that
18 conduct, there is an eye witness statement from the
19 woman in the house that Zoch burglarized said he put
20 a pistol to her head and said, "I'll kill you if you
21 say anything about this." So that's why I keep
22 thinking armed robbery, Your Honor.

23 **THE COURT:** All right.

24 **MR. MEADORS:** Judge, number one, we don't think
25 it's inconsistent. Number two, we'd ask you to

1 instruct them not to ask any other witness about it
2 until they bring those witnesses here and we proffer
3 their testimony which is the way I think we're
4 supposed to do it and then Your Honor make a
5 decision.

6 **MR. WHITLARK:** Your Honor.

7 **MR. MEADORS:** They can't get it in the back
8 door.

9 **THE COURT:** I understand that.

10 **MR. WHITLARK:** Your Honor, are we going to be
11 allowed to cross examine the investigators who took
12 down this information about this before?

13 **THE COURT:** I mean, I can't tell you what's
14 coming ten minutes from now.

15 **MR. WHITLARK:** Yes, sir.

16 **MR. MEADORS:** Judge, I don't think they can
17 illicit hearsay from these people, because they may
18 not even have these people.

19 **THE COURT:** I understand.

20 **MR. MEADORS:** I don't even know if they have
21 them.

22 **THE COURT:** I don't know either.

23 **MR. MEADORS:** Well, let's ask them. Do you have
24 the witnesses?

25 **THE COURT:** He said he does.

1 **MR. MEADORS:** No, sir. He didn't.

2 **THE COURT:** As an officer of the court.

3 **MR. MEADORS:** You have got all the witnesses?

4 **THE COURT:** He said he has Mr. Dixon, Mr. Barker
5 and Mr. Wilson who will testify.

6 **MR. WHITLARK:** We don't have Mr. Adrian Duran,
7 Your Honor. Apparently he's moved to Texas or
8 something. We do not have him. But we have the
9 process server ready to testify regarding this.

10 **THE COURT:** That's not my question.

11 **MR. MEADORS:** Well, everything else will be
12 hearsay if they don't have him.

13 **THE COURT:** Have you got Dixon, Barker and
14 Wilson?

15 **MR. WHITLARK:** We've got Barker, Your Honor, for
16 sure. And we are searching down Mr. Dixon and
17 Mr. Wilson. And we know that our case is probably
18 not going to start under Thursday, which is tomorrow.
19 And if the Court could give us ten minutes, I'll go
20 out and find out what the status involving our
21 process servers are.

22 **THE COURT:** How about Duran?

23 **MR. KENDRICK:** Your Honor, I have Duran under
24 subpoena. My investigator has been to the last known
25 address. And we looked at it together. The last

1 address, that was a month ago or so. Several times
2 he isn't there. He's talked to people around the
3 area who say that he still lives around here. But as
4 to where he is, we can't find him. My investigators
5 are pretty good.

6 On another point, Your Honor, I think that the
7 statements they made that Catoe has done actually
8 aren't hearsay if he's --

9 **THE COURT:** Well, I'm not -- I'm trying to get
10 to the bottom of this third party guilt.

11 **MR. KENDRICK:** Well, Your Honor, just before we
12 go into where the witnesses are, Your Honor, to
13 shorten it, I think that the statements absolutely
14 come in through the investigator because they
15 wouldn't be hearsay.

16 **MR. MEADORS:** I absolutely disagree.

17 **THE COURT:** Statements of who?

18 **MR. KENDRICK:** Of any of these people about what
19 they said Mr. Duran said, Your Honor. Obviously if
20 he threatened to kill somebody, that's a statement
21 against your interest which is clearly not hearsay.

22 **MR. MEADORS:** He's not on trial. That's why
23 it's hearsay.

24 **MR. KENDRICK:** Right, Your Honor. But I --

25 **MR. WHITLARK:** Our position is he should be,

1 Your Honor.

2 **MR. KENDRICK:** Hold up a minute. And I
3 understand what Mr. Meadors' says. And I think that
4 the standard, Your Honor, for a statement against
5 interest is simply, are they making a statement that
6 would subject them to some penalty.

7 **THE COURT:** What's the physical evidence?

8 **MR. KENDRICK:** Your Honor, I think it's --

9 **THE COURT:** To the police?

10 **MR. KENDRICK:** No, Your Honor. My position is,
11 period, I think that any time you make a statement to
12 anyone that would subject you to criminal
13 consequences, that's a statement against interest. I
14 don't think there's a limit that has to be to police.

15 **THE COURT:** But you say they were made to the
16 police.

17 **MR. KENDRICK:** They were -- the police have them
18 in their notes, Your Honor. We'd have to specify
19 with Catoe. I don't think that he -- we don't know
20 what Mr. Duran said to him because there aren't any
21 notes of that interview. So the threats I think that
22 we know of in the notes were made to someone else and
23 then told to Mr. --

24 **MR. MEADORS:** Judge, --

25 **MR. KENDRICK:** I don't know how Mr. Cannon found

1 them. I'll be honest with you.

2 **MR. MEADORS:** -- they can't even explain it,
3 Judge, and they're trying to get it out through
4 another witness.

5 **MR. KENDRICK:** And, Your Honor, the State can
6 object to that. I mean, we're defending our clients.
7 We're not trying to --

8 **MR. MEADORS:** Yes, you are trying to get it in.

9 **MR. WHITLARK:** If I could speak to what he just
10 said.

11 **MR. KENDRICK:** They are --

12 **COURT REPORTER:** One at a time, please, Your
13 Honor.

14 **MR. KENDRICK:** What I said, Your Honor, I'm not
15 trying to do anything improper. I'm simply putting
16 up a defense. If you rule against me, I'm going to
17 honor your ruling, and Your Honor knows that about
18 me.

19 **THE COURT:** Well, we don't have Duran. The
20 defense does not have Duran. He is the party alleged
21 to have made the threats --

22 **MR. WHITLARK:** Yes, sir.

23 **THE COURT:** -- to Dixon, Barker and Wilson.

24 **MR. WHITLARK:** Yes, sir.

25 **THE COURT:** And the only way we know that is

1 because the investigator inquired of them. Is
2 that --

3 **MR. WHITLARK:** We have Barker, Your Honor.

4 **THE COURT:** How can Barker say what Duran said?

5 **MR. WHITLARK:** Because he was present during the
6 conversations.

7 **THE COURT:** You mean --

8 **MR. WHITLARK:** Yeah. He was present. That's
9 what I've read in the notes, that he was present.
10 This man owned a restaurant, Your Honor, apparently.
11 And this guy worked there or -- and his wife worked
12 there I think. So this is where the information
13 comes from and he heard it.

14 **THE COURT:** That's not my question.

15 **MR. WHITLARK:** Yes, sir. He was there, Your
16 Honor, and heard Mr. Duran say it.

17 **THE COURT:** So what is -- other than Mr.
18 Kendrick's point that it's a statement against
19 interest, why is it not hearsay? I mean, if Barker
20 says that Duran said, "I'll get him", that doesn't
21 get it, unless --

22 **MR. MEADORS:** It would be double hearsay
23 actually.

24 **THE COURT:** Mr. Kendrick takes the position that
25 it's a statement against interest to a third party,

1 not to law enforcement. Is that your position?

2 **MR. KENDRICK:** Yes, sir, Your Honor. But I
3 think we could also question Mr. Catoe about it based
4 on the fact that he learned it in the course of his
5 investigation and took acts on it. That's a hearsay
6 exception.

7 **THE COURT:** That may be true.

8 **MR. KENDRICK:** Okay.

9 **THE COURT:** We're not there.

10 **MR. KENDRICK:** Okay.

11 **THE COURT:** So I'm not denying you the right to
12 present third party guilt. If there's third party
13 guilt, there's third party guilt. But you've got to
14 prove it, too.

15 **MR. WHITLARK:** Yes, sir.

16 **THE COURT:** Or at least --

17 **MR. WHITLARK:** Your Honor, if I could. Your
18 Honor, in order to make sure -- I don't want to
19 overstep anything at this point. Regarding this
20 witness right here, this young lady, according to her
21 notes and her statement, she knew these men and knew
22 that Mr. Zoch had possession of a driver's license
23 and an identification card --

24 **THE COURT:** She says she knew that.

25 **MR. WHITLARK:** Yes, sir. She did say that.

1 **THE COURT:** She knew that.

2 **MR. WHITLARK:** And she also said --

3 **THE COURT:** She can testify to that.

4 **MR. WHITLARK:** Yes, sir. She also said in the
5 notes or her statement that they were upset because
6 they thought that he was working for the police and
7 was going to turn them in.

8 **THE COURT:** That's hearsay.

9 **MR. MEADORS:** Your Honor, he's saying notes and
10 statement. They are two different things. She gave
11 a statement and he's referring to Catoe's notes. Are
12 you saying all this is in her statement or in Catoe's
13 notes?

14 **MR. WHITLARK:** It's in both. It's inbetween
15 both.

16 **MR. MEADORS:** That's what I'm saying. He's
17 going back and forth with the witness and now Your
18 Honor. I just don't think that's -- respectfully,
19 I'm not saying he's doing it purposely, but he's
20 doing it effectively.

21 **THE COURT:** You got it?

22 **THE WITNESS:** No. He took it back from me.

23 **THE COURT:** Oh. Well, let me see it. Do you
24 understand all this?

25 **THE WITNESS:** Yeah.

1 **THE COURT:** She can't say what somebody else
2 told her that somebody else told her.

3 **MR. WHITLARK:** Yes, sir. I understand that.

4 (Document handed to the Court)

5 **THE COURT:** Well, down through the bottom of
6 page 3 she doesn't say anything in the statement
7 other than what she observed. Then she starts at the
8 bottom of page 3 and the top of page 4 talking about
9 things, that there is a guy named Chanin?

10 **THE WITNESS:** Chanin.

11 **THE COURT:** "Chanin that's Robert's brother
12 might have something to do with all of this." I
13 mean, I think all that is -- that's all. And from
14 there on out, I'm not sure that she witnessed or
15 heard the things she's talking about. So --

16 **MR. WHITLARK:** Your Honor, could I speak to it,
17 Your Honor? Could I proffer the testimony and ask
18 three questions to the witness, Your Honor, proffer
19 testimony on this issue?

20 **THE COURT:** It's where we started. Go ahead.

21 IN CAMERA EXAMINATION

22 **BY MR. WHITLARK**

23 **Q** Ms. Trapp, you knew, or you've previously stated,
24 that there was -- the possession of this thing made
25 Mr. Smith thought he was going to bust him? Didn't

1 you tell the officer that?

2 **A** Could you repeat the question? I didn't understand
3 it.

4 **Q** Didn't you tell the investigator here that the fact
5 that Mr. Koch had -- Mr. Koch --

6 **A** Mr. Zoch?

7 **Q** Zoch. Mr. Zoch had possession of the driver's
8 license and the social security card of Chanin Smith
9 and that he thought he was going to try to bust him
10 or turn him into the police? Didn't you say that to
11 Investigator Catoe?

12 **A** Not exactly word-for-word like that, no.

13 **Q** Okay. Well, tell us what you did say.

14 **A** Okay. I told the investigator that I had seen the
15 copy of his I.D. and social security card at Josh's
16 house and that he might have something to do with it.

17 **Q** You didn't ever say that they were scared that he was
18 trying to bust him?

19 **A** I believe I said, yeah, that, you know, they might,
20 you know, have been, you know, nervous that Josh was
21 involved with the police and was trying to bust him.

22 **Q** Okay.

23 **THE COURT:** That's one.

24 **MR. WHITLARK:** Yes, sir. Thank you, Your Honor.
25 The second one is -- that's enough right there, Your

1 Honor.

2 **MR. MEADORS:** And, Judge, for the record, he was
3 asking previous questions. I've just figured it out.
4 I want the record to reflect it took me a while. He
5 was asking her questions about notes she'd given an
6 investigator. It's Cecil Barker. It's not even her.
7 And he was asking her questions about it. That's why
8 I couldn't figure it out because I had never seen it.
9 But it was about somebody totally different, giving
10 information about Adrian that he was asking her about
11 on the stand. And that's why I objected. Those
12 weren't even notes taken from this lady. And I want
13 the judge to know that and the record to reflect it.
14 And that's what I want the record to reflect.

15 **THE COURT:** This is her statement. That's all.

16 **MR. MEADORS:** The questions you were asking her
17 were not even notes from her. They were from a Ms.
18 Barker individual, Cecil Barker, not Cecile Trapp.

19 **THE COURT:** That's why you objected. I
20 understand that. You ready for the jury? For this
21 witness.

22 **MR. WHITLARK:** Yes, Your Honor. Your Honor, can
23 we take a bathroom break while we're still out?

24 **THE COURT:** Go ahead.

25 **MR. WHITLARK:** Thank you.

1 (Whereupon, a break is taken)
2 **THE COURT:** All right. You ready for the jury?
3 **MR. WHITLARK:** McDonald is ready, Your Honor.
4 **THE COURT:** As to this witness?
5 **MR. KENDRICK:** Yes, sir, Your Honor.
6 **MR. RILEY:** Ready, Your Honor.
7 **THE COURT:** Bring the jury, please.
8 (Jury in at 11:10 a.m.)

9 **THE COURT:** Thank you, ladies and gentlemen.
10 Mr. Whitlark, you may continue.

11 **MR. WHITLARK:** May it please the Court, Your
12 Honor?

13 **Q** Ms. Trapp, you had seen the social security card and
14 driver's license of a young man named Chanin Smith
15 over at the house, hadn't you?

16 **A** Yes, sir.

17 **Q** And I'm going to refer you to page 4 of your
18 statement.

19 **THE COURT:** Here.

20 **Q** You got page 4?

21 **A** Yes, sir.

22 **Q** Would you read from the second line what you told the
23 investigator in this case? Read from the second line
24 on.

25 **A** "He thought Josh was trying to bust him on drugs."

1 Q Okay. Who were you talking about?

2 A Chanin.

3 Q Chanin Smith, the guy you saw the I.D. cards over at
4 Mr. Zoch's house, right?

5 A Yes.

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

8 THE COURT: Mr. Kendrick.

9 MR. KENDRICK: May it please the Court, Your
10 Honor.

11 CROSS EXAMINATION

12 BY MR. KENDRICK

13 Q Ms. Trapp, how are you doing?

14 A I'm doing good.

15 Q Good. I'm Josh Kendrick. I represent Robert Cannon.
16 You and I have never met, have we?

17 A No.

18 Q You were -- and I'm going to apologize if you went
19 over some of this already.

20 A That's okay.

21 Q You were a crew leader at Sonic which makes you sort
22 of a supervisor, right?

23 A No, not necessarily.

24 Q Okay. Tell me what that means as far as a higher
25 level of responsibility, if there is any?

1 **A** There is. You have to earn it though, you know.

2 Like always, you've got to earn it. But all it

3 really is is that you're in control of your crew.

4 You have to make sure that your crew is doing what

5 they're supposed to do. That's what, you know ...

6 **Q** So you have some level of authority over that small
7 crew of people?

8 **A** Yes.

9 **Q** Okay. Now, in your testimony you were talking about
10 whether the day that Mr. Whitehead had a scratch or a
11 limp, did you say that Melissa Davy was working that
12 day?

13 **A** No. I said I wasn't sure.

14 **Q** Okay. So you didn't know one way or the other?

15 **A** Well, there's so many people. Different people work
16 each day. So I wasn't sure.

17 **Q** How many people work at the same time at the Sonic?

18 **A** Depending on the timeframe, honestly. It was me and
19 Chris until about 6, until about 7, sometimes,
20 sometimes a little later. And then after that there
21 would be a full crew. I would say about six, maybe
22 seven.

23 **Q** Six or seven people? Thank you, Ms. Trapp.

24 **A** You're welcome.

25 **Q** That's all I have.

1 **THE COURT:** Mr. Riley?

2 CROSS EXAMINATION

3 **BY MR. RILEY**

4 **Q** Good morning, Ms. Trapp.

5 **A** Good morning.

6 **Q** My name is Neil Riley. I represent Chris Whitehead.

7 You and I have never met, have we?

8 **A** No, sir.

9 **Q** Before I begin, Ms. Trapp, I want to say that nothing
10 I ask you is intended to embarrass you. We're all
11 here interested in a pursuit of the truth. You
12 testified I believe that you had worked at Sonic for
13 a pretty good while, I think was the phrase that you
14 used?

15 **A** Yes, sir.

16 **Q** Could you be a little more specific?

17 **A** Since the age I was 15 up until January of last year.

18 **Q** Okay. All right. So, you had been there what?

19 Approximately 12 months or so as of December '06? Am
20 I correct?

21 **A** Probably a little bit longer than that.

22 **Q** A little bit longer than that?

23 **A** Yeah.

24 **Q** Okay. And for the morning shift at Sonic, you
25 were -- the week of December the -- I guess it was

1 the week of December the 11th, which would have been
2 Monday, you were on the morning shift, correct?

3 A Yes, sir.

4 Q And were you like the senior person on the morning
5 shift?

6 A I don't understand what you mean.

7 Q I'm sorry?

8 A I don't understand what you mean.

9 Q Were you the senior employee during the morning shift
10 hours?

11 A I still don't understand. Like --

12 Q Well, who had a key to open up the restaurant?

13 A I had the key.

14 Q Okay. Would that not make you sort of the senior
15 person?

16 A I mean, I don't really know.

17 Q Ms. Trapp, please speak up. I'm an old man and I
18 have difficulty hearing. Okay?

19 A Okay. Well, I don't really know. I mean, I don't
20 know.

21 Q Okay. Well, were you -- did you have more employee
22 authority than, for instance, the other people on the
23 morning shift?

24 A There was only two people on the morning shift, and
25 that was me and Chris. The only other thing that

1 made it a little bit stronger maybe than Chris was I
2 did have the keys.

3 **Q** Okay. All right. Now, you testified that on
4 December the 15th which was Friday of that week that
5 Christopher got there. Christopher Whitehead got to
6 Sonic at about 6:00 and left at about 6:50, correct?

7 **A** Yes.

8 **Q** And I believe you testified that he didn't give you
9 any reason. Is that correct?

10 **A** Reason for what?

11 **Q** Please speak up.

12 **A** Reason for what?

13 **Q** Leaving.

14 **A** Yeah. He didn't give me any reason.

15 **Q** Okay. Do you still have your statement there in
16 front of you?

17 **A** Yes.

18 **Q** Let me direct your attention to -- let me find it
19 now -- page 2. Excuse me. Page 3. Isn't it true
20 that you wrote in your statement -- and I'm referring
21 to the first five or six lines there, you were
22 speaking of Christopher. Could you start reading
23 where it says: "Then Friday morning"?

24 **A** "Then Friday morning he came in at 6" --

25 **Q** "He" being Christopher, correct?

1 A Yes. "He came in at 6 and talked to me about his
2 cousin getting arrested."

3 Q All right, ma'am. That's a reason, correct?

4 A A reason for what?

5 Q For him being upset and leaving?

6 A It could have been. It could have been. I mean, I
7 don't know.

8 Q Why earlier did you testify he gave you no reason?

9 A He didn't give me any reason, not when he left.

10 Q You don't regard what you had written in your
11 statement as a reason or as an explanation?

12 A I didn't take that as a reason. No, sir.

13 Q You also -- how many times during the time you were
14 employed at Sonic did you just walk out of work?

15 A Honestly, I did walk out on Ms. Pat a couple of
16 times.

17 Q Okay. Just a couple of times?

18 A Mm-hmm (affirmative).

19 Q Just abruptly left, correct?

20 A Mm-hmm (affirmative).

21 Q No reason given?

22 A The last one, yes; there was a reason.

23 Q How about the first time?

24 A No.

25 Q So what Chris did, what you allege Chris did on

1 Friday, the 15th, was not anything you hadn't done,
2 correct?

3 **A** Well, I did let someone know that I was leaving each
4 time I left, you know. Like I said, "Hey, I'm
5 leaving", and I left.

6 **Q** Now, let's focus on the night of Tuesday, the 12th.
7 I believe you testified that you were there, correct?

8 **A** Right.

9 **Q** At Sonic?

10 **A** Yes.

11 **Q** But you were not working, correct?

12 **A** No.

13 **Q** Why were you there?

14 **A** I was getting my schedule.

15 **Q** I'm sorry?

16 **A** I was getting my schedule for the next day.

17 **Q** Okay. How long were you there that night?

18 **A** Not even more than ten minutes. Probably not even
19 ten minutes.

20 **Q** All right. You said in your testimony earlier that
21 you saw Christopher Whitehead there that night?

22 **A** Yes.

23 **Q** Do you -- are you aware of anyone else that can
24 verify that you were there that night?

25 **A** Anybody that was working that shift that night.

1 Q Do you recall who was?

2 A No.

3 Q Okay. Do you know very much about what relatives
4 Christopher Whitehead might have living in this area?

5 A His mother.

6 Q Okay. Anyone else you know of?

7 A No.

8 Q You don't know whether he might or might not have,
9 for example, cousins living in this area?

10 A He may have. He talked about cousins and stuff like
11 that. He never said where they stayed or anything.

12 Q Including the one that had just been arrested, right?

13 A Yes.

14 Q Did Chris mention anything to you on the morning of
15 Friday, the 15th, about his mother being ill?

16 A No.

17 Q Or her being on account of illness out of work?

18 A No.

19 Q And Friday when Christopher left, I believe you
20 stated that his mother picked him up?

21 A Yes.

22 Q You I think were asked earlier whether you had at
23 this point in time, December of '06, a cellphone?

24 A No. I did not have a cellphone.

25 Q You didn't have a cellphone?

1 **A** Not that I can -- not that I'm aware of.

2 **Q** Okay. Did you at some point prior to December of '06
3 have a cellphone?

4 **A** I had a cellphone but it wasn't for a very long
5 period.

6 **Q** Okay. Why didn't you in December '06 have a
7 cellphone?

8 **A** I don't know.

9 **Q** You don't know?

10 **A** No. I mean, I couldn't afford my cellphone bill. So
11 I had it for about a month and then I couldn't pay
12 it. So I got rid of it.

13 **Q** So it was for nonpayment of a bill?

14 **A** Yes.

15 **Q** At this point in time that we're focusing on,
16 December of '06 -- and some of this might be
17 repetitious, and I apologize for that -- but did you
18 have a steady boyfriend at that time?

19 **A** Yes.

20 **Q** Who was that?

21 **A** Anthony Andrena.

22 **Q** I'm sorry?

23 **A** Anthony Andrena.

24 **Q** Okay. Did you and Christopher Whitehead have a
25 sexual relationship at any time?

1 **A** No.

2 **MR. MEADORS:** Objection to relevance.

3 **THE COURT:** Overruled. Go ahead.

4 **MR. MEADORS:** Oh, I'm sorry. I didn't hear what
5 she said.

6 **Q** I'm sorry, ma'am.. I didn't --

7 **A** No.

8 **Q** At no time?

9 **A** At no time.

10 **Q** Never?

11 **A** Never.

12 **Q** How long had you and Anthony -- was that his name?

13 **A** Yes.

14 **Q** How long had you and Anthony been -- you weren't
15 engaged at this time, were you?

16 **A** No.

17 **Q** But you were -- as I said earlier, I'm an old man. I
18 use outdated phrases. But were you going steady at
19 that time?

20 **A** Yes.

21 **Q** How long had you been going steady?

22 **A** Maybe a year.

23 **Q** Okay. All right. Isn't it true that there was a lot
24 more going on at Sonic than serving food?

25 **A** I don't understand what you're saying. I mean, I

1 don't know.

2 Q Well, for example, were you not involved in -- or
3 were you not a regular pot smoker at work?

4 A Not at work, no.

5 MR. MEADORS: Objection to relevance.

6 THE COURT: Overruled. Go ahead.

7 Q Who is -- what is the last name of Shannon?

8 A Trapp.

9 Q Okay. Did you know Shannon Trapp?

10 A Yes. That's my brother.

11 Q Okay. I believe you wrote in your statement that --

12 A Are you considering Chanin or Shannon?

13 Q You wrote C-H-A-N-I-N.

14 A That's Chanin.

15 Q Okay. All right.

16 A And I don't know his last name.

17 Q Okay. That is a male, right?

18 A Yes.

19 Q Okay. How do you know that person?

20 A Just seeing him at Sonic, you know, people knew him.

21 That's how I found his name out. He was a regular at
22 Sonic though. And I carhopped, so I seen him
23 regularly.

24 Q Okay. All right. How did you know that that
25 individual's I.D. card and S.S. card was in someone

1 else's hands?

2 **A** I was hanging out at Josh's house.

3 **Q** Could you please speak up?

4 **A** I was hanging out at Josh's house. And I had come
5 across it and I noticed it. But I just put it right
6 back.

7 **Q** Okay. At the time you made this discovery, was your
8 boyfriend there?

9 **A** Yes.

10 **Q** Were you -- at the time of this incident, were you a
11 frequent user of marijuana?

12 **A** Hmm, here and there.

13 **Q** Other drugs?

14 **A** No.

15 **Q** If you'd indulge me a minute, Judge.

16 **THE COURT:** Sure.

17 (Pause)

18 **Q** Did you ever make a comment to either Melissa or
19 Molly about a romantic involvement with Mr.
20 Whitehead?

21 **A** I'm sorry. Could you repeat that?

22 **Q** Did you ever made a comment to Melissa Davies (sic)
23 or Molly Waltemath, I believe her name is, about a
24 romantic liaison with Mr. Whitehead?

25 **A** No.

1 Q You did not?

2 A No.

3 Q On Tuesday night, the 12th, was Shannon there? I
4 know there's a confusion of names here. Let me --
5 S-H-A-N-N-O-N. Was Shannon there that night?

6 A I can't recall.

7 Q You can't recall?

8 A I don't remember.

9 Q You don't recall seeing Shannon there that night?

10 A I can't remember.

11 Q Okay. Thank you, Ms. Trapp.

12 A You're welcome.

13 THE COURT: Redirect?

14 MR. MEADORS: Yes, sir. Is this -- it's not
15 been marked?

16 (WHEREUPON, State's Exhibit No. 23 is marked for
17 identification.)

18 COURT REPORTER: What number was that?

19 MR. MEADORS: 23 for ID. I thought it was
20 marked.

21 REDIRECT EXAMINATION

22 BY MR. MEADORS:

23 Q I'll show you what's marked 23 for ID. Is this your
24 statement that at least two of these attorneys have
25 been asking you about on?

1 **A** Yes, sir.

2 **Q** In detail?

3 **A** Yes, sir.

4 **Q** When was this given?

5 **A** That was given on 12-15 of 2006.

6 **Q** That Friday of 2006?

7 **A** Yes, sir.

8 **Q** And did you put in this statement the last time you

9 saw Josh was on Monday, the 11th?

10 **A** Yes, sir.

11 **Q** Did you put in this statement on Monday and Tuesday

12 Chris Whitehead drove his four-door car, a blue Honda

13 Accord to work?

14 **A** Yes, sir.

15 **Q** But he didn't on Wednesday?

16 **A** Yes, sir.

17 **Q** And did you put in your statement on December 15th,

18 2006 that on Wednesday morning Chris came into work

19 with a scratch under his left eye and a hurt ankle?

20 **A** Yes, sir.

21 **Q** Did you put in your statement that he was playing

22 around, he said he was playing around with some

23 friends and hurt himself?

24 **A** Yes, sir.

25 **Q** Did you put in there that on Tuesday night he had

1 come up to Sonic with Robert and that Robert had a
2 ski mask on?

3 **A** Yes, sir.

4 **Q** Did you put that in your statement on December 15th
5 of 2006?

6 **A** Yes, sir.

7 **Q** Was D.J. there, too?

8 **A** I'm not too positive. I mean, he might have been; he
9 might not have been.

10 **Q** Did you put in your statement that the next day is
11 when Chris was hurt?

12 **A** Yes, sir.

13 **Q** Did you put in your statement this day that he left
14 early was Thursday, he got ready to leave at 11:30?

15 **A** Yes, sir.

16 **Q** Did you put in your statement about him coming in
17 Friday at 6 and talking with you? And I think
18 specifically Mr. Riley asked you about this. Do you
19 remember? He was saying, did he give you a reason.
20 Do you remember when he asked you that? Do you
21 remember that a minute ago when he said that?

22 **A** Yes, sir.

23 **Q** And he said, then Friday morning he came in at 6 and
24 talked to me about his cousin getting arrested. Do
25 you remember he said that?

1 **A** Yes, sir.

2 **Q** And then he asked you, said, well, that's a reason,
3 isn't it? And your answer was maybe?

4 **A** Yeah. Maybe.

5 **Q** All right. But then read on. Did he say about his
6 cellphone being taken away so his mom could give
7 money to his cousin?

8 **A** Yes, sir.

9 **Q** You told him about the cellphone on the 15th?

10 **A** Yes, sir.

11 **Q** And read that next statement. Mr. Riley didn't you
12 have read it. But he ended up -- read that on page
13 3. One, two, three, four, five, six, seven lines up
14 on page 3.

15 **A** "And his cellphone was being taken away from his
16 mom."

17 **Q** The sentence after that.

18 **A** Okay.

19 **Q** It starts with "He".

20 **A** Okay. "He ended up walking out at 6:50 and said he
21 had to go somewhere but wouldn't tell me why."

22 **Q** "But wouldn't tell me why"?

23 **A** Just left.

24 **Q** So he didn't tell you why?

25 **A** Yes, sir.

1 Q And you told them that December 15th, 2006?

2 A Yes, sir.

3 Q And you put in here about seeing some I.D. card. Was
4 that an actual card or a photocopy of a card?

5 A It was a photocopy.

6 Q You signed each one of these statements at the
7 bottom?

8 A Yes, sir.

9 Q That's your signature?

10 A Yes, sir.

11 Q Your signature on each one of them?

12 A Yes, sir.

13 Q Beg the Court's indulgence. Was there any bad blood
14 between Chris Whitehead and Josh or Robert and Josh?

15 A There was --

16 Q Any hard feelings?

17 A I don't know why there were hard feelings. They
18 never got along when they were around each other.

19 Q That's all. Thank you.

20 THE COURT: Yes, sir.

21 MR. WHITLARK: Briefly, Your Honor.

22 RE CROSS EXAMINATION

23 BY MR. WHITLARK

24 Q Ms. Trapp, Investigator Catoe came up to Sonic that
25 day and was investigating the death of Mr. Zoch,

1 wasn't he?

2 **A** Yes, sir.

3 **Q** And the information you gave him -- and you correct
4 me if I'm wrong -- is, well, there was this robber
5 who was up there with a ski mask on the night before
6 and he was with Chris and Mr. McDonald, and he had a
7 scratch on him and he was limping?

8 **A** Yes.

9 **Q** That's what you told him, right?

10 **A** Yes.

11 **Q** And you also told him he wasn't driving the same car
12 one day after that, two days later, right?

13 **A** Yes.

14 **Q** You told him that?

15 **A** Yes.

16 **Q** You knew he was investigating?

17 **A** Yes.

18 **Q** A death?

19 **A** (Nods head affirmatively).

20 **MR. WHITLARK:** That's all I have.

21 **THE COURT:** Mr. Kendrick.

22 RE CROSS EXAMINATION

23 **BY MR. KENDRICK**

24 **Q** Ms. Trapp, how many times would you say that you were
25 around both Joshua Zoch and my client, Robert Cannon,

1 at the same time?

2 A Could you are repeat that again?

3 Q How many times were you around both Joshua Zoch and
4 my client, Robert Cannon, at the same time?

5 A Maybe once.

6 Q Okay. Thank you.

7 THE COURT: Anything further, Mr. Riley?

8 RECROSS EXAMINATION

9 BY MR. RILEY

10 Q Ms. Trapp, in answering Mr. Meadors' earlier
11 question, you said there was bad blood, you knew
12 there was bad blood but you didn't know why?

13 A Yes.

14 Q Between these names that he mentioned?

15 A Yes.

16 Q Well, on page 4 of your statement you give reasons
17 why. Correct?

18 A Yes, I did give a reason.

19 Q How well did you know Josh Zoch?

20 A I knew him pretty well.

21 Q Okay. For about how long prior to his death?

22 A Since I was the age of 15. I started working at
23 Sonic.

24 Q Since the age of 15 what?

25 A Ever since I've been working at Sonic.

1 Q Okay. Did you know that he had recently gotten
2 locked up?

3 A I don't think I was familiar with that. No, sir.

4 Q Okay. Thank you.

5 THE COURT: All right. You can come down.
6 Thank you very much, ma'am. Is the witness free to
7 go? Any objection?

8 MR. WHITLARK: No objection from McDonald, Your
9 Honor.

10 MR. KENDRICK: No, Your Honor.

11 THE COURT: Next witness.

12 MS. MCDUFFIE: The State calls Molly Waltemath.

13 MOLLY L. WALTEMATH, after being duly sworn,
14 testifies as follows.

15 THE CLERK: Thank you. Please be seated in the
16 witness chair and state your full name for the
17 record.

18 THE WITNESS: My name is Molly Lowaire
19 Waltemath.

20 DIRECT EXAMINATION

21 BY MS. MCDUFFIE

22 Q Good morning, Molly.

23 A Good morning.

24 Q Will you spell your last name for the court reporter,
25 please?

1 **A** W-A-L-T-E-M-A-T-H.

2 **Q** Molly, how old are you?

3 **A** I am 19.

4 **Q** And where are you from?

5 **A** I am originally from Indiana.

6 **Q** And when did you move to South Carolina?

7 **A** When I was like turning eight. I was like seven and

8 a half, something like that.

9 **Q** So you've been here a while?

10 **A** Yeah.

11 **Q** And did you go to high school here?

12 **A** Not in Columbia. We moved down to Orangeburg.

13 Whenever we first moved down here, I went to Edisto.

14 **Q** And then did you go to -- did you end up in high

15 school in Columbia?

16 **A** For a little while. It was like maybe three months I

17 went there. It was only a little while. I went to

18 Ridgeview for a little while.

19 **Q** You went to Ridgeview? And were you employed while

20 you were in high school?

21 **A** When I went to Ridgeview, yeah. I was working at

22 Sonic.

23 **Q** And that's the Sonic on Hard Scrabble?

24 **A** Yes, ma'am.

25 **Q** Are you currently employed there?

1 **A** Yes, ma'am.

2 **Q** And what is your position at Sonic?

3 **A** Well, my main position is carhop. But I can pretty
4 much do anything in there.

5 **Q** And how long have you been working at Sonic?

6 **A** About three years.

7 **Q** About three years. And were you working at Sonic in
8 December of 2006?

9 **A** Yes, ma'am.

10 **Q** And did you know Josh Zoch?

11 **A** Yes, ma'am.

12 **Q** How did you know Josh?

13 **A** Mainly from work because of his girlfriend and stuff
14 like that. That's pretty much how I met him.

15 **Q** And who was his girlfriend?

16 **A** Melissa Davy.

17 **Q** And how did you know Melissa Davy?

18 **A** From work.

19 **Q** At Sonic?

20 **A** Yes, ma'am.

21 **Q** And about how long have you known Melissa?

22 **A** Before I met Josh?

23 **Q** Or just in total. How long have you known her?

24 **A** Oh. How long have I known her now? Probably about
25 two, maybe two and a half years.

1 Q And you'd known her a while in December of 2006?

2 A Yeah. That would have been like maybe -- it's so
3 long ago, I couldn't even tell you.

4 Q And are you all pretty good friends?

5 A Well, now, yeah. We are.

6 Q And back in December of 2006, would y'all hang out
7 together?

8 A Yeah. We hung out.

9 Q In the week of December the 10th of 2006, do you
10 remember that week? I show you what's been marked as
11 State's Exhibit No. 8.

12 A All right.

13 Q Saturday, December the 10th. I'm sorry. Sunday,
14 December the 10th?

15 A Sunday. Okay.

16 Q Do you remember that day?

17 A Kind of, sort of, yeah.

18 Q Did Melissa Davy end up staying at your house that
19 week?

20 A Oh. Yes, ma'am.

21 Q And what day did she come over to your house?

22 A She came over to my house, it was about 3 something
23 in the morning Sunday morning.

24 Q So it would have been Saturday night into Sunday
25 morning?

1 **A** Yes. Yeah.

2 **Q** She came over to your house? And why did she come
3 over to your house.

4 **A** Because her and Josh got into an argument. So --

5 **Q** Where was she living at the time?

6 **A** With Josh.

7 **Q** So she came to stay at your house because they'd
8 gotten in an argument?

9 **A** Yes, ma'am.

10 **Q** And how long did she stay at your house?

11 **A** For about a week.

12 **Q** And so, on -- she stayed at your house Sunday night?

13 **A** Mm-hmm (affirmative).

14 **Q** And then on Monday, did you all do anything?

15 **A** Monday we went to work.

16 **Q** And about what time would you have you gone to work?

17 **A** Most likely 10 or 11 because that's what I was
18 usually working back then.

19 **Q** And who would have taken you to work?

20 **A** If she was there, I most likely rode with her. But
21 if she went in earlier, then my grandpapa took me.

22 **Q** And your brother is Zack Waltemath?

23 **A** Yes, ma'am.

24 **Q** And he was also staying with you all?

25 **A** Yes, ma'am.

- 1 Q And where was Melissa staying at your house during
2 this time?
- 3 A She was sleeping in my room on the extra love couch I
4 had in my room.
- 5 Q So on Monday you all went to work?
- 6 A Mm-hmm (affirmative).
- 7 Q And what about on Tuesday?
- 8 A Tuesday. Tuesday we probably went to work again.
- 9 Q You went to work. And did you see Melissa on
10 Tuesday?
- 11 A Yes, ma'am.
- 12 Q She was still staying at your house?
- 13 A Yes, ma'am.
- 14 Q And did you see her after work at your house?
- 15 A Yes, ma'am.
- 16 Q And do you remember anything happening on Tuesday
17 night?
- 18 A Not that I know of.
- 19 Q Nothing unusual? Melissa was with you the whole
20 night?
- 21 A (Nods head affirmatively).
- 22 Q Did Melissa leave at any time?
- 23 A No, ma'am.
- 24 Q Did Zack leave at any time?
- 25 A No, ma'am.

- 1 Q Did you all go anywhere, out to eat or anything?
- 2 A No, ma'am.
- 3 Q Did you get any phone calls on Tuesday night?
- 4 A Tuesday night? Yeah. I --
- 5 Q And who called your house on Tuesday night?
- 6 A Chris Whitehead.
- 7 Q And who did he speak with?
- 8 A Zack.
- 9 Q And did you overhear any of that conversation?
- 10 A No, ma'am.
- 11 Q And then Tuesday night Melissa stayed at your house?
- 12 A Yes, ma'am.
- 13 Q And then Wednesday morning, did you all go to work?
- 14 A Yes, ma'am.
- 15 Q And what happened after work on Wednesday?
- 16 A We went to go get Melissa her toothbrush and stuff
- 17 like that.
- 18 Q And where would you have gone to do that?
- 19 A Her and Josh's house.
- 20 Q Her and Josh's house?
- 21 A Yeah.
- 22 Q And who was driving?
- 23 A Melissa.
- 24 Q And who else was in the car?
- 25 A Zack and me.

1 Q You and Melissa and Zack?

2 A Yeah.

3 Q And what happened when you got to Josh's house?

4 A She thought it was kind of weird that his car was
5 pulled in the garage and all the lights were off.

6 Q And what happened after that?

7 A She called his grandma and talked on the phone with
8 her as she was opening the door and everything.

9 Q And how did Melissa open the door?

10 A She didn't really go quick. I mean, she was like
11 kind of nervous to open it, but --

12 Q Did she have keys? Was it unlocked?

13 A Yeah. She had keys.

14 Q And what happened after Melissa opened the door to
15 Josh's house?

16 A She saw him laying there and freaked out.

17 Q And what do you mean by freaked out?

18 A She pretty much freaked, like panicked, went into --
19 she just freaked.

20 Q And did someone call 911?

21 A Yes, ma'am.

22 Q Who did that?

23 A Melissa did.

24 Q And did you wait for the police to arrive?

25 A Yes, ma'am.

1 Q And what happened after the police got there?

2 A They pretty much told us to go up across the road and
3 everything so they could investigate everything and
4 all that.

5 Q They made you back away from the house?

6 A Yeah.

7 Q And did you have the opportunity to talk to them that
8 night?

9 A No, ma'am.

10 Q Later that week did you have the opportunity to talk
11 to the police?

12 A Yes, ma'am. They came to Sonic and talked to us.

13 Q And were you working at Sonic on Wednesday?

14 A During the day?

15 Q During the day.

16 A Yeah.

17 Q Did you see Chris Whitehead on Wednesday before you
18 went to Josh's house?

19 A Before? Not that I know of.

20 Q And did you work on Thursday?

21 A Yes, ma'am.

22 Q And did you go to work on Friday morning?

23 A Yes, ma'am.

24 Q And did you see Chris Whitehead at work on Friday
25 morning?

1 **A** No, ma'am. I saw him pulling out.

2 **Q** And who was he with when he was pulling out?

3 **A** With his mom.

4 **Q** And about what time was that?

5 **A** I usually got there at 7. So it was probably about
6 6:55, something like that.

7 **Q** Beg the Court's indulgence. And, Molly, are you
8 still working at that Sonic?

9 **A** Yes, ma'am.

10 **Q** No further questions.

11 **THE COURT:** Mr. Whitlark.

12 CROSS EXAMINATION

13 **BY MR. WHITLARK**

14 **Q** Ms. Molly, did you ever go in the house that day when
15 you all arrived there that afternoon and you all
16 found Mr. Zoch?

17 **A** No, sir.

18 **Q** Did your brother go in there?

19 **A** No, sir.

20 **Q** Did Ms. Davy go in there?

21 **A** She might have took five steps in, but that was about
22 it, and she walked right back out and called the
23 cops.

24 **Q** Did she ever mention to you that he had been hit with
25 a softball bat?

1 **A** What was that?

2 **Q** Did Ms. Davy tell you that he had been hit with a
3 softball bat?

4 **MS. MCDUFFIE:** Objection, Your Honor. Hearsay.

5 **THE COURT:** Sustained.

6 **THE WITNESS:** Do I still answer?

7 **THE COURT:** No. Don't answer it.

8 **Q** What time do you think you arrived there? Did you
9 work -- I'm sorry. Did you work that day?

10 **A** Wednesday. Yes, sir.

11 **Q** All right. And when you left work, you went over
12 there?

13 **A** It probably wasn't exactly right when we left work
14 because we stopped by a gas station and stuff like
15 that and got cigarettes and stuff.

16 **Q** Have you had meetings with the solicitor about your
17 testimony in this case? Do you recognize this
18 gentleman sitting over here?

19 **A** Yes, sir.

20 **Q** Have you had meetings with him up at his office about
21 testifying in this case?

22 **A** Not testifying, no. I've talked to him but not
23 about --

24 **Q** You didn't go over your testimony and what you knew
25 with him? Did you talk about what you knew with him?

1 **A** Well, yeah. He asked me what I knew.

2 **Q** Okay. How many times?

3 **A** Just once.

4 **Q** One time? You were pretty good friends with Ms. Davy
5 at that time, weren't you?

6 **A** All right.

7 **Q** You knew that Mr. Zoch had been hurting her, didn't
8 you? She had told you that, right?

9 **MS. MCDUFFIE:** Objection, Your Honor, as to
10 hearsay.

11 **THE COURT:** Yep. Sustained.

12 **Q** Did you know anything about that? Did you know
13 anything about Mr. Zoch --

14 **THE COURT:** Mr. Whitlark, I sustained the
15 objection. You just can't ask it again or in a
16 different form.

17 **Q** Did you ever see Mr. Zoch hurt in your presence Ms.
18 Davy?

19 **A** No, sir.

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

21 **MR. KENDRICK:** May it please the Court, Your
22 Honor.

23 CROSS EXAMINATION

24 **BY MR. KENDRICK**

25 **Q** Ms. Waltemath, I'm Josh Kendrick. I represent Robert

1 Cannon. You and I have never met before, have we?

2 A No, sir.

3 Q You said that the week that we're talking about, the

4 week of the 10th --

5 A Mm-hmm (affirmative).

6 Q -- Melissa came to your house after a fight with Mr.

7 Zoch at 3 something in the morning?

8 A (Nods head affirmatively).

9 Q You had been at your house all night?

10 A No. I was over there with them when they got in the

11 argument.

12 Q Okay. So you were able to observe the argument?

13 A I didn't really pay much attention because I tried

14 not to get in their business. But --

15 Q Did you observe a lot of arguments between them?

16 A I heard yelling. That's pretty much it. It was just

17 yelling back and forth.

18 Q So did you and Melissa then leave his house together?

19 A Yeah.

20 Q And who did you all leave with?

21 A We left with Melissa. She drove.

22 Q Just the two of y'all?

23 A Yeah.

24 Q Okay. Who was left at the house that night?

25 A Excuse me. Josh.

- 1 Q There was no one else there?
- 2 A Not that I know of.
- 3 Q Had there been anyone else there earlier that night?
- 4 A Not that I can remember.
- 5 Q So it was just you, Melissa and Josh hanging out.
- 6 This is Saturday night, probably started into early
- 7 Sunday morning?
- 8 A Yeah.
- 9 Q Okay. Now, you testified that when you all went to
- 10 the house that night Melissa was nervous before she
- 11 opened the door to the house, right?
- 12 A She just had a weird feeling. That's what she -- she
- 13 had a weird feeling, because his car was parked in
- 14 the garage and all the lights were off and because he
- 15 never usually parked in the garage.
- 16 Q So that weird feeling occurred well before she opened
- 17 the door, right?
- 18 A Yeah.
- 19 Q Okay. Where did she call 911 from?
- 20 A I believe it was Melissa's cellphone.
- 21 Q She called it from her own cellphone?
- 22 A I believe.
- 23 Q About how long after she arrived do you think she
- 24 called 911?
- 25 A It was probably maybe -- maybe 20 minutes.

1 Q Okay. What happened for the -- inbetween the time
2 you all got there and the 20 minutes? What was going
3 on?

4 A She was pretty much freaking out. I was trying to
5 calm her down. And that's pretty much it.

6 Q Was anyone else there besides you, her and your
7 brother?

8 A No, sir.

9 Q Were there any other cars that drove by?

10 A Not that I can remember.

11 Q What kind of car were you all in?

12 A I couldn't even tell you what kind of car that was.

13 Q That's all right. I'm not good at that either. Do
14 you remember what color it was?

15 A I believe it was the red one.

16 Q Okay. The dark red?

17 A Yeah.

18 Q Okay. And the police when they got there, a lot of
19 police showed up?

20 A I think only one showed up at first with the
21 ambulance and then more came.

22 Q Okay. Were you there as these police kept arriving?

23 A Yeah.

24 Q Okay. Do you remember any of the policemen on the
25 scene?

1 **A** No, sir.

2 **Q** Did any of them talk to you?

3 **A** No, sir.

4 **Q** Did any of them give you their card?

5 **A** No, sir.

6 **Q** Did any of them ask you any questions about what
7 happened?

8 **A** No, sir.

9 **Q** Did they get your name?

10 **A** Yeah, they got my name.

11 **Q** And then they said -- what did they say to you after
12 that?

13 **A** They just asked us to cross the street and wait over
14 there.

15 **Q** And how long did y'all wait across the street?

16 **A** It was maybe an hour, maybe 30 minutes.

17 **Q** Okay. So 30 minutes to an hour you think?

18 **A** Yeah.

19 **Q** And then what happened?

20 **A** Then Melissa's dad drove me and Zack home.

21 **Q** And Melissa stayed there?

22 **A** Yeah. I believe so. I'm not really sure about that.

23 **Q** So her dad also arrived on the scene?

24 **A** That was after like all the cops got there. Then
25 they came.

1 Q At some point --

2 A Yeah.

3 Q -- between the time you all get there and the time
4 you leave he gets there?

5 A Yeah.

6 Q Did she call him?

7 A Yes, sir.

8 Q Okay. Before you left did you talk to any police
9 officers and tell them you were going to be leaving?

10 A No, sir. I don't believe so.

11 Q Okay. That's all right. That's fine. Did they tell
12 you -- they didn't say come check in with us before
13 you go or anything like that?

14 A No, sir.

15 Q Okay. Did they give you their card?

16 A No, sir.

17 Q Did they give you a name?

18 A No, sir.

19 Q That's all I have. Thank you.

20 MR. REUWER: May it please the Court.

21 THE COURT: Mr. Reuwer.

22 CROSS EXAMINATION

23 BY MR. REUWER

24 Q How are you, Ms. Waltemath?

25 A I'm fine.

1 Q Just a couple of questions. Did you ever make phone
2 calls to Chris Whitehead?

3 A Yeah, I have.

4 Q Do you know what his cellphone number is?

5 A Not now, no.

6 Q You don't recall what it is?

7 A No, sir.

8 Q Could it have been 530-1646?

9 A It could have been. I'm not really positive.

10 Q But you made a number of phone calls to him?

11 A Probably not a number, but I've called him before.

12 Q Okay. Did Cecile Trapp ever tell you about kissing
13 or being --

14 MS. MCDUFFIE: Objection, Your Honor. Hearsay.

15 THE COURT: Well, sustained.

16 Q Did you know -- did you ever know that Josh Zoch had
17 been recently locked up?

18 A No, sir.

19 Q Had you never been to parties at Josh's house?

20 A Maybe one. I'm really not sure, sir.

21 Q Okay. You're not sure you had ever been to one or
22 you're not sure of the number, Ms. Waltemath?

23 A I think I've only been to like maybe one of his
24 parties.

25 Q Okay. And was there -- were there drugs at that

1 party?

2 A Sometimes.

3 Q Sometimes there were drugs at that one party or more
4 than one party there were drugs? You said you had
5 only been -- I want to just to be clear, and I'm not
6 trying to confuse you. You've been to at least one
7 party at Josh's house?

8 A Yeah.

9 Q And there were drugs at that party?

10 A At that one, yeah.

11 Q Okay. Could you have been at more than one party at
12 Josh's house?

13 A I'm not even sure. It's so long ago, I'm not even
14 sure.

15 Q But it's possible?

16 A It's possible, yes.

17 Q And is it possible there were drugs at more than one
18 party?

19 A It's possible.

20 Q Are you okay?

21 A Yeah.

22 Q On the morning of December 13th you went over at
23 about what time to the house, to Josh's house? You
24 went over in the afternoon or --

25 A It was like probably like 6. I think, 6, 7.

1 Q Later?

2 A It was late.

3 Q Okay. That morning, that day, was Melissa -- had
4 Melissa Davy ever told you that she was mad at Chris
5 Whitehead?

6 MS. MCDUFFIE: Objection, Your Honor, to
7 hearsay.

8 THE COURT: Yes, sir. Sustained. You don't
9 have to answer.

10 MR. REUWER: Nothing further, Your Honor. Thank
11 you, ma'am.

12 THE COURT: Any redirect?

13 MS. MCDUFFIE: None, Your Honor.

14 THE COURT: All right. Thank you. All right.
15 You may come down. You're free to go. Without
16 objection the witness be excused?

17 MR. WHITLARK: No objection from Mr. McDonald,
18 Your Honor.

19 MR. KENDRICK: None from Cannon, Your Honor.

20 THE COURT: Thank you. Unless I hear an
21 objection, I'm going to release the witness. Okay?

22 MR. WHITLARK: That's fine.

23 THE COURT: We don't need to go through that
24 procedure every time. Next witness.

25 MR. MEADORS: May we approach?

1 **THE COURT:** Sure.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** Next witness.

4 **MR. MEADORS:** The State calls Melissa Davy.

5 **THE CLERK:** Thank you. Please have a seat in
6 the witness box. State your full name for the
7 record.

8 **THE WITNESS:** My name is Melissa Ann Davy.

9 DIRECT EXAMINATION

10 **BY MR. MEADORS**

11 **Q** And I'll put this back so maybe you don't have to
12 lean up so much if you don't want to. But as long as
13 you're comfortable, make sure you speak into that,
14 please, Ms. Davy. Ms. Davy, as with all of my
15 witnesses, please tell them about you, where you were
16 born, where you were raised, where you went to
17 school, just a little about your background, please?

18 **A** I born in Wichita, Kansas. And I was only there for
19 like a couple of years. And we moved to South
20 Carolina because my mom was in the Navy. She got
21 transferred here. And I went to Windsor Elementary
22 School and E. L. Wright. And I transferred to Summit
23 from there and then I went to Ridgeview High School
24 and then transferred to Blythewood from there.

25 **Q** How far did you go? What year did you go in

1 Ridgeview? Freshman or Sophomore?

2 A I went to my junior year.

3 Q And then you went to Blythewood?

4 A For my senior year, yes, sir.

5 Q And did you graduate?

6 A Yes, sir.

7 Q And why have I got culinary arts written down here?

8 A That's what I'm taking right now. I took it in high
9 school and I'm taking that right now in college.

10 Q I don't think you have to be quite that close. But
11 that's fine. Thank you. After -- are you studying
12 that now?

13 A Yes, sir.

14 Q Where?

15 A At Horry/Georgetown Technical College in Myrtle
16 Beach.

17 Q And you're studying culinary arts?

18 A Yes, sir.

19 Q What's your plan, if any, when you graduate from that
20 or get that degree?

21 A To have my own restaurant.

22 Q Now, when you were in Columbia, where were you
23 living?

24 A I lived with my parents for a while. And then when
25 me and Josh met, we lived off of Hard Scrabble at

1 first, and then we moved to Rocky Branch.

2 Q And I want to go back to when you first -- when you
3 were first living with your parents. Were you living
4 in the Summit?

5 A When we first moved to South Carolina, we lived on
6 Alpine Road.

7 Q And then later, did you live in the Summit?

8 A Yes.

9 Q And you stayed off Hard Scrabble Road with Josh Zoch?

10 A Yes.

11 Q And when was that?

12 A I'm not really sure. After we had been together like
13 two years.

14 Q And then at some point you moved to this incident
15 location, correct? Is that Ryan Lane?

16 A Yes, sir.

17 Q You said Rocky Branch. It is it off Rocky Branch?

18 A Yeah. It's Lane.

19 Q That's in Kershaw County, isn't it?

20 A Yes, sir.

21 Q And when did you go down to and start working -- or
22 strike that. I apologize. When did you go down to
23 the technical school that you're in now?

24 A About a year ago.

25 Q Okay. May, June of '07?

- 1 **A** Yes.
- 2 **Q** And you may have said some of this. If you did, I
- 3 certainly apologize to everybody. When did you first
- 4 meet Joshua Zoch?
- 5 **A** My sophomore year in high school.
- 6 **Q** And do you remember what class you met him in?
- 7 **A** A computer class.
- 8 **Q** And did you all become friends?
- 9 **A** Yes.
- 10 **Q** And started dating?
- 11 **A** Yes.
- 12 **Q** What time did you start working -- what time period
- 13 did you start working at Sonic? Or when did you
- 14 start working at Sonic?
- 15 **A** I don't exactly know. Josh worked there first and he
- 16 got me the job there.
- 17 **Q** Okay. And how long did he work there?
- 18 **A** He only worked there for like three, maybe six
- 19 months.
- 20 **Q** Okay. And let's go down this table here. Do you
- 21 know Christopher Whitehead?
- 22 **A** Yes, sir.
- 23 **Q** Please tell the ladies and gentlemen of the jury how
- 24 you know him, when you know him?
- 25 **A** I actually met him through my friend, B.J., when he

1 was working at the movie theaters.

2 Q Who when who was working at the movie theaters?

3 A Chris Whitehead and my friend, B.J.

4 Q And do you remember when that was?

5 A No, sir.

6 Q And did Chris Whitehead work at Sonic?

7 A Yes, sir.

8 Q The same time period you were?

9 A He started working there after I did.

10 Q But during this incident was he working there?

11 A Yes, sir.

12 Q Did you know -- or when did you meet Derrick
13 McDonald?

14 A I went all through middle school and high school with
15 him.

16 Q And again what middle school and high school was
17 that?

18 A Summit Middle School and Ridgeview High School. And
19 then I was with him at Blythewood.

20 Q Were you all close or just know each other or what?

21 A We knew each other. Like he weren't like best
22 friends but we knew each other.

23 Q All right. And Robert Cannon, did you know him?
24 And, if so, when did you meet him?

25 A I didn't really know him. I met him at Sonic.

1 Q And so Cannon worked at Sonic. Did McDonald also
2 work at Sonic at some point?

3 A Yeah. He worked there at some point in time.

4 Q Now, do you recognize State's 8 as a December 2006
5 calendar?

6 A Yes, sir.

7 Q All right. When did you all -- and I say you all;
8 you and Joshua Zoch -- move out of Lane?

9 A I couldn't tell you the exact date.

10 Q Okay. And who had gotten him that? Whose place was
11 that?

12 A It was his grandparents' house.

13 Q Helen and John Zoch?

14 A Yes, sir.

15 Q Are they in the courtroom? Is that them right there?

16 A Yes, sir.

17 Q So they had gotten that for him?

18 A Yes, sir. They're great people.

19 Q Well, thank you. I appreciate that. But they had
20 gotten that for him when? Did you say a minute ago
21 you didn't know?

22 A Probably about -- we had been living there probably
23 like eight months.

24 Q And during December of 2006, Ms. Davy, were you
25 working at Sonic?

- 1 **A** Yes, sir.
- 2 **Q** And what was your position there then?
- 3 **A** At the time I was a crew member.
- 4 **Q** A crew member?
- 5 **A** Yes.
- 6 **Q** What does that mean?
- 7 **A** I was pretty much a fountain, carhop and drive-thru
- 8 and then a crew leader.
- 9 **Q** Fountain, carhop, drive-thru, crew leader. In the
- 10 week prior to December 10th were you and Joshua Zoch
- 11 at Lane? Were you all staying there?
- 12 **A** Yeah, we were staying there.
- 13 **Q** If you can answer this, how long had you all been
- 14 dating?
- 15 **A** Three years.
- 16 **Q** You're friends. You started dating?
- 17 **A** Three years.
- 18 **Q** Three years?
- 19 **A** (Nods head affirmatively).
- 20 **Q** And you'd been living together how long?
- 21 **A** Probably two years.
- 22 **Q** Did you all ever get in a fight?
- 23 **A** Yes, sir.
- 24 **Q** Did you get in arguments?
- 25 **A** Yes, sir.

1 Q Was it at times a volatile relationship? Would you
2 argue?

3 A Yes.

4 Q And when you say fight, I guess -- there have been
5 some questions before. What does fight mean? Fight,
6 just you all were arguing fight?

7 A Arguing.

8 Q Or fight fighting?

9 A Arguing.

10 Q Okay. Now, prior to -- if you can look at State's 8,
11 if you can see it, this weekend before the 10th,
12 what's that Saturday? That 8th and 9th of December,
13 do you recognize that 8th and 9th of December as
14 Friday and Saturday?

15 A Yes, sir.

16 Q At some point that weekend did you get in an argument
17 or disagreement with Joshua Zoch?

18 A Yes, sir. Saturday night.

19 Q And where did that take place?

20 A At his house.

21 Q Well, your house, too, where you were staying?

22 A Yeah.

23 Q And about what time did that take place?

24 A Probably close to 1:30, 2:00 in the morning.

25 Q And you were upset about that there were some drugs

1 in the house, weren't you?

2 **A** Yes, sir.

3 **Q** Tell it all. You were upset they were there, weren't

4 you?

5 **A** Yes, sir.

6 **Q** And you told him that, didn't you?

7 **A** Yes, sir.

8 **Q** And you all got in a dispute about it?

9 **A** Yes, sir.

10 **Q** And you left?

11 **A** Yes, sir.

12 **Q** And who did you leave with?

13 **A** Molly and Zack. They left with me.

14 **Q** Molly Waltemath?

15 **A** And Zack Waltemath.

16 **Q** And describe your relationship with Molly and Zack?

17 **A** We were good friends.

18 **Q** How long had you known Molly?

19 **A** Ever since she started working at Sonic.

20 **Q** About how long was that?

21 **A** Maybe two years, two and a half years.

22 **Q** How long had you known Zack?

23 **A** Only like maybe a month.

24 **Q** Had you been to Molly and Zack's house before?

25 **A** Many a times.

1 Q So what time did you get back to their house when you
2 left after you all had got in an argument that
3 weekend?

4 A It would have been between 2:30 and 3:00 in the
5 morning.

6 Q So that would have been what morning?

7 A Sunday morning.

8 Q Sunday morning, the 10th, 3:00?

9 A Yes.

10 Q And where specifically when you went into Molly and
11 Zack's house did you go to spend the night?

12 A Molly's room.

13 Q Had you been there before?

14 A Yes.

15 Q You'd stayed there before?

16 A Yes.

17 Q Spent the night there that night?

18 A Yes.

19 Q That Sunday, Ms. Davy, did you see Mr. Zoch that
20 Sunday which would have been December the 10th of
21 2006?

22 A No, sir.

23 Q And going along 'til the Monday of December 6th which
24 would be the 11th, Monday, were you working at Sonic
25 then?

1 **A** Not that day I wasn't. I was off on Monday.

2 **Q** And did you see Joshua Zoch?

3 **A** Yes, I did.

4 **Q** Where did you see him?

5 **A** I met him in the Super Bi-Lo in Sandhills.

6 **Q** And tell them what happened then?

7 **A** We went inside and he filled out an application on
8 the computer. And then we rode down the road. And
9 some guy came up to my car trying to sell me perfume,
10 so he bought me some. And then I gave him some money
11 so that he can go Christmas shopping. And then we
12 went our separate ways.

13 **Q** And that was on ...?

14 **A** Monday.

15 **Q** And how much money did you give him?

16 **A** I probably gave him either 60 or \$80.

17 **Q** Why had you given him, him being Joshua Zoch, that
18 money?

19 **A** Because he gave me some money of his to hold onto.

20 **Q** Was he going to buy you something?

21 **A** Yes.

22 **Q** What?

23 **A** Christmas presents. I don't know what.

24 **Q** Did you see him again on Monday?

25 **A** No, sir.

1 Q Where did you spend Monday night?

2 A At Molly and Zack's house.

3 Q Did you go to bed there?

4 A Yes.

5 Q Where did you go the next morning? Did you go to

6 work?

7 A Yes.

8 Q Did you drive them into work?

9 A Yes, I did. On Tuesday?

10 Q Yes, ma'am.

11 A Yes.

12 Q And what was your shift then?

13 A 10 to 5.

14 Q Did you see Joshua Zoch on Tuesday, December the

15 11th, 2006?

16 A He stopped by Sonic. And our manager, Michelle, told

17 him to leave.

18 Q And what did he do?

19 A He left.

20 Q Did you get off at 5 or whenever?

21 A Yes.

22 Q What time did you get off?

23 A I got off at 5.

24 Q What did you do after that, if anything?

25 A Molly and Zack rode with me home and they rode with

- 1 me to Goody's to get a new pair of work pants, and
2 then we went back to their house.
- 3 Q And did you have an occasion to go back to
4 Lane?
- 5 A Not on Tuesday, no.
- 6 Q What did you do after that?
- 7 A I went to Zack and Molly's house after we got off
8 work.
- 9 Q Did you talk to Joshua Zoch on Tuesday after you'd
10 seen -- well, you said you saw him at the Sonic. I
11 can't remember if you said you talked to him or not.
12 But Michelle or somebody said leave and he left?
- 13 A Yes.
- 14 Q Did you see or talk to him after that?
- 15 A Yes. He called me.
- 16 Q When was that?
- 17 A Inbetween 6 and 7 when he got off work.
- 18 Q And you talked to him then?
- 19 A Yes.
- 20 Q And where were you then?
- 21 A Riding in my car on our way back to Molly and Zack's
22 house.
- 23 Q And after that did you hear from him again?
- 24 A No.
- 25 Q Do you know -- or were you in the presence of anyone

1 else when they received a phone call from him?

2 **A** Yes.

3 **Q** Who was that?

4 **A** From Josh or --

5 **Q** From Christopher Whitehead. I'm sorry.

6 **A** Yes. He called Molly's house. And I believe their

7 grandma answered the phone and brought it in.

8 **Q** And that was on what night?

9 **A** That was Tuesday night.

10 **Q** So you had talked to Joshua earlier?

11 **A** Yes.

12 **Q** Then a phone call from Chris Whitehead to Molly's

13 house?

14 **A** Yes.

15 **Q** And did Zack answer that phone?

16 **A** I think his grandma actually answered the phone and

17 brought him the phone.

18 **Q** Did you talk to Josh again after that?

19 **A** No, I did not.

20 **Q** Did you try to call him the next day?

21 **A** Yes.

22 **Q** Did you ever get an answer from him after that?

23 **A** No.

24 **Q** So the last time you spoke to Josh was when?

25 **A** On Tuesday between the hours of 6 and 7.

1 Q Had he called you?

2 A Yes.

3 Q And did you all engage in a conversation?

4 A Yes.

5 Q And how long did that last?

6 A It was really brief, maybe not even five minutes.

7 Q And let me ask you this. Did he ever buy you
8 anything with the money?

9 A No.

10 Q And when did you realize that?

11 A On Tuesday.

12 Q And I apologize. I missed it. On Tuesday he had not
13 bought you anything?

14 A Right.

15 Q How did you know that?

16 A Because when he called me he told me that he spent
17 all of his money.

18 Q Go ahead and tell them what he told you he spent it
19 on.

20 A Drugs.

21 Q And that was Tuesday. What time?

22 A Between the hours of 6 and 7. It might have been
23 6:30. I don't really know.

24 Q In the morning?

25 A In the afternoon.

1 Q And that did not please you?

2 A No. Not really.

3 Q Let's go to Wednesday. Did you go to work?

4 A Yes.

5 Q And what time did you get off work?

6 A That day I actually worked 7 to 5.

7 Q And did anybody else go to work with you?

8 A Nobody went with me that day. No, sir.

9 Q Who left with you that day, if anybody?

10 A Zack and Molly.

11 Q And where did you all go?

12 A I know I might have stopped by the store. We

13 probably didn't leave work 'til 5:30 because you

14 never get out of there right on time. And --

15 Q Why is that?

16 A Because you've got to get ready for the next shift.

17 And they --

18 Q Prepare for the next shift?

19 A Yeah. Like stock up everything, make sure they've

20 got everything ready to go for the night shift.

21 Q So whose car were you in?

22 A My car.

23 Q Which was what kind of car?

24 A It was a '96 Chevy cavalier, four door.

25 Q So this is now on Wednesday?

1 **A** Yes.

2 **Q** What time? And where did you go after you left
3 Sonic, if anywhere?

4 **A** We might have stopped by the gas station when we left
5 work. And then I went to Lane.

6 **Q** Why did you go there?

7 **A** To pick up a toothbrush and some clothes to change
8 into.

9 **Q** Had you taken clothes from any -- a bag or anything
10 when you left early Sunday morning to go back to the
11 house?

12 **A** No. I just left.

13 **Q** And so, was this the first -- is this the first time
14 you'd been back to Lane since you left
15 Sunday morning?

16 **A** Yes, sir.

17 **Q** Tell the jury what, if anything, happened as you're
18 arriving up to Lane after work on
19 Wednesday, December the 13th?

20 **A** Tell them what happened when I got there?

21 **Q** Tell them what you observed, what happened, and
22 just --

23 **A** Well, when I got there, all of the lights in the
24 house were off. And that was really unusual because
25 we always had some lights on in the house, always.

1 And --

2 **Q** Let me stop you.

3 **A** Yes.

4 **Q** So you came up. You saw no lights on?

5 **A** Yes. I didn't even expect to see his car there. I

6 thought he wasn't there because I tried to call him

7 and he didn't answer.

8 **Q** So, staying there, was it your habit to leave lights

9 on at night?

10 **A** Yes.

11 **Q** So you see there are no lights on. What happens

12 next?

13 **A** I called Josh's grandma, Helen, and told her that I

14 was really nervous; I had a bad feeling about going

15 inside.

16 **Q** Was the car there?

17 **A** Yeah. I had just pulled in the yard.

18 **Q** No, ma'am. No, ma'am. Was another car there at

19 2505?

20 **A** Josh's car was backed into the garage.

21 **Q** Was that normal or usual?

22 **A** No. He never parked his car in the garage.

23 **Q** And it was backed in there?

24 **A** Yes.

25 **Q** So you saw no lights. You saw the car where it

1 wasn't supposed to be. You called Ms. Zoch, Helen?

2 **A** Yes, I did.

3 **Q** All right. And what happened next?

4 **A** I actually got in my car and went to leave. And she
5 told me, no, no, no. You've got to go check on him,
6 make sure he's okay. And I was still talking to her
7 on the phone when I went and opened the door. I
8 unlocked it and turned the light on. And then I saw
9 Josh laying there not moving. And like I noticed my
10 whole house was trashed, but I didn't really notice
11 anything else but him laying there. And I told her
12 that I thought he was dead, and she told me to get
13 off the phone with her and call 911, and I did
14 immediately.

15 **Q** So you're on the phone with Ms. Zoch as you're going
16 into the house?

17 **A** Yes, sir.

18 **Q** Did you tell her what you saw?

19 **A** Yes, sir.

20 **Q** And you had not called 911 at that point. Did you
21 call them after that?

22 **A** I called them as soon as I got off the phone with
23 Helen.

24 **Q** Describe the inside of the house. Oh, first of
25 all -- I don't know -- did you go inside the house?

- 1 **A** I walked -- at first I didn't, and then Molly and
2 Zack came up to the door when I was freaking out.
3 And I might have walked five steps in there. I
4 didn't touch anything. I just walked in to see if he
5 was breathing or not.
- 6 **Q** You did -- did you touch his body?
- 7 **A** No.
- 8 **Q** Did you move anything around about in the house?
- 9 **A** No. I didn't touch anything. Just the door.
- 10 **Q** If I asked you this, I apologize to everybody. What
11 kind of car did Christopher Whitehead drive, if you
12 know?
- 13 **A** He had like a bluish, greenish Honda Accord.
- 14 **Q** Another I've got my days all messed up. But Tuesday
15 night, did you go up to Sonic?
- 16 **A** No.
- 17 **Q** And is Christopher Whitehead in the courtroom? If
18 so, point him out.
- 19 **A** He's over there on the end.
- 20 **Q** In the green shirt?
- 21 **A** I can't really see his shirt.
- 22 **Q** He's on the end there?
- 23 **A** Yes.
- 24 **Q** Is Mr. Robert Cannon in the middle?
- 25 **A** Yes.

1 Q And is this Derrick McDonald?

2 A Yes.

3 Q Did you hang out with any of them?

4 A A couple of times; yes, I did.

5 Q And did Josh hang out with them?

6 A A couple of times; yes, sir.

7 Q Anyone more so than the other?

8 A No, sir. Him and D.J. never hung out together I
9 don't think.

10 Q Go ahead.

11 A I don't really think they knew each other that well.

12 Q Had any of them ever been over to Lane?

13 A Yes.

14 Q When?

15 A I'm not sure. They'd been over there a couple of
16 times.

17 Q And specifically, who is they?

18 A Chris and Robert and our friend, B.J., came over one
19 night. And I told them I didn't want them there, I
20 told them, because I wasn't getting along with them.
21 So, you know, I asked them to leave. And they just
22 stood out on my porch. And the only people that were
23 there is me, Josh and Molly.

24 Q How long was that prior to this December 10th date?

25 A Maybe two weeks.

1 Q Beg the Court's indulgence.

2 (WHEREUPON, State's Exhibit No. 24 is marked for
3 identification.)

4 (WHEREUPON, State's Exhibit No. 25 is marked for
5 identification.)

6 (WHEREUPON, State's Exhibit No. 26 is marked for
7 identification.)

8 (WHEREUPON, State's Exhibit No. 27 is marked for
9 identification.)

10 (WHEREUPON, State's Exhibit No. 28 is marked for
11 identification.)

12 (WHEREUPON, State's Exhibit No. 29 is marked for
13 identification.)

14 (WHEREUPON, State's Exhibit No. 30 is marked for
15 identification.)

16 (WHEREUPON, State's Exhibit No. 31 is marked for
17 identification.)

18 (WHEREUPON, State's Exhibit No. 32 is marked for
19 identification.)

20 (WHEREUPON, State's Exhibit No. 33 is marked for
21 identification.)

22 (WHEREUPON, State's Exhibit No. 34 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 35 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 36 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 37 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 38 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 39 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 40 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 41 is marked for
12 identification.)

13 **Q** What was your phone number then?

14 **A** (803) 466-6226.

15 (WHEREUPON, State's Exhibit No. 42 is marked for
16 identification.)

17 **Q** (803) 466-6626?

18 **A** Yes, sir.

19 **MR. MEADORS:** Your Honor, we'd offer State's 42
20 without objection.

21 **THE COURT:** Is that without objection?

22 **MR. WHITLARK:** No objection from McDonald, Your
23 Honor.

24 **MR. RILEY:** No objection, Your Honor.

25 **A** Yes, sir.

1 Q That's all I have. Thank you.

2 (WHEREUPON, State's Exhibit No. 42 is admitted
3 into evidence.)

4 CROSS EXAMINATION

5 **BY MR. WHITLARK**

6 Q Hello, Ms. Davy. Ms. Davy, you have a sister, don't
7 you?

8 A Yes, I do. I have two of them.

9 Q Okay. Mr. Zoch had slapped you and your other sister
10 when your sister was around before, hadn't he?

11 **MR. MEADORS:** Your Honor, what did he say?

12 Q I said did Mr. Zoch abuse you and one of your sisters
13 previously, physically abuse you all?

14 A One time, yes.

15 Q Okay. And your dad didn't like that very much, did
16 he?

17 A What dad would?

18 Q That's right. As a matter of fact, your dad had
19 threatened to kill --

20 **MR. MEADORS:** Objection, Your Honor.

21 **THE COURT:** Sustained.

22 **MR. MEADORS:** There's no relevance.

23 Q Now, you say that you were on the phone. You were on
24 the phone with Mr. Zoch's grandmom?

25 A Yes.

1 Q And you weren't going to go inside the house?

2 A No, I wasn't.

3 Q So you were leaving and she told you to go in?

4 A I felt uncomfortable about going inside.

5 Q Did the police take you inside the house when they
6 got there to investigate?

7 A No, sir.

8 Q Did they discuss with you after they got there what
9 they were looking for or what they found or anything?

10 A Yes, sir.

11 Q All right. What did they tell you?

12 MR. MEADORS: Objection to hearsay.

13 THE COURT: Yes, sir. Sustained.

14 Q Was the manner of which he died discussed at all?

15 A They didn't know at the time.

16 Q Did they ask you anything about any weapon or any
17 other instrument in the house?

18 A Not at that time, no.

19 Q All right. Later on did they?

20 A Yes.

21 Q When was that?

22 A When I went down to the police station and talked to
23 Officer Catoe.

24 Q And what day was that?

25 A I'm not sure.

1 Q Was it the next day?

2 MR. MEADORS: Your Honor, can we approach
3 briefly?

4 A The next day I --

5 THE COURT: Just hold on a minute.

6 (Whereupon, a bench conference is had)

7 THE COURT: All right. Ladies and gentlemen,
8 I'm going to ask you to go to the jury room one more
9 time. This one will be a little quicker. We're
10 going to take a lunch break around 1:00. So just
11 don't discuss the case among yourselves while you're
12 in the jury room.

13 (Jury out at 12:24 p.m.)

14 THE COURT: For the record, what's the
15 objection?

16 MR. MEADORS: Your Honor, Ms. McDuffie and I
17 were talking and he was starting to go down it.
18 There's a --

19 THE COURT: He asked her --

20 MR. MEADORS: -- polygraph report. And I am
21 anticipating that he might go down there based on --
22 no disrespect -- some of the other things he's done,
23 asking questions off other documents. And no
24 disrespect to Mr. Whitlark. I don't know what he's
25 going to do.

1 And I'd ask Your Honor to ask him not to mention
2 or ask her about any polygraph. Clearly that's
3 inadmissible in this trial. It's irrelevant for
4 these purposes. And if he'll commit now that he's
5 not going to do that, she knows she can't mention the
6 polygraph, then we're fine. But I just wanted to
7 make sure that doesn't come out and we have a
8 mistrial.

9 **MR. WHITLARK:** Your Honor, if I may, Your Honor?

10 **THE COURT:** Sure.

11 **MR. WHITLARK:** Your Honor, she was given a
12 polygraph and asked whether she knew who killed Mr.
13 Zoch, did she know anything about it; I believe three
14 questions. And she showed deception on all three of
15 them. Again, Your Honor, I don't know what she knows
16 about Mr. Adrian Duran or what. I just know that --

17 **THE COURT:** Well, you can ask her that.

18 **MR. WHITLARK:** Yes, sir. If they thought enough
19 of it at the --

20 **THE COURT:** You can ask her what the officer
21 asked her. But you can't say that the results were
22 inconclusive.

23 **MR. MEADORS:** Sir? Do what?

24 **MR. WHITLARK:** The results were conclusively to
25 show deception.

1 **THE COURT:** That's what you can't -- you can't
2 get into that because that calls into -- you're going
3 to need an expert to testify, you know, even if you
4 are considering offering the polygraph results.

5 **MR. MEADORS:** Judge, there were three questions
6 asked. This does not indicate it's a deception
7 indicated. It could have been on any question.

8 **THE COURT:** I'm not going to allow any
9 deception, talk about deception.

10 **MR. MEADORS:** And I just couldn't hear. But
11 you're --

12 **THE COURT:** Well, he said -- what are the
13 questions? Do you than to kill -- did you plan with
14 anyone to kill Joshua? Is that the question?

15 **MR. MEADORS:** No, sir.

16 **MR. WHITLARK:** He's got to three questions, Your
17 Honor.

18 **THE COURT:** Well, that's what I'm looking at.
19 It's what you showed me.

20 **MR. MEADORS:** I didn't show you anything.

21 **MR. WHITLARK:** That's fine. That's Adrian
22 Duran. That's the wrong person.

23 **THE COURT:** Well, that's what he handed me.

24 **MR. MEADORS:** Well, that's ...

25 **THE COURT:** Now, the question is, are you

1 withholding any -- he can ask the question, did she
2 withhold any information regarding the death of
3 Joshua.

4 **MR. MEADORS:** Who can?

5 **THE COURT:** He can ask her that.

6 **MR. MEADORS:** Okay.

7 **THE COURT:** The same question that's on here.
8 Did she withhold any information regarding the death
9 of Joshua. And does she know who caused Joshua's
10 death. He can ask those questions.

11 **MR. MEADORS:** Okay. And if she says no, or
12 whatever she says to all of them, he can't go back in
13 and use this report.

14 **THE COURT:** No.

15 **MR. MEADORS:** Okay. I just misheard you. Okay.

16 **MR. WHITLARK:** But, Your Honor, if I can't
17 reference the polygraph, the deceptive result of --

18 **THE COURT:** You can, with an expert.

19 **MR. WHITLARK:** Yes, sir.

20 **THE COURT:** Not with her.

21 **MR. MEADORS:** And the same token, we'd be able
22 to do that with when Mr. Cannon failed the polygraph,
23 the same thing.

24 **THE COURT:** Well, we're not there yet. But
25 that's probably something for a later discussion.

1 **MR. MEADORS:** Your Honor, we'd object to the
2 polygraph. I don't know of any -- there is a case in
3 Sumter that --

4 **THE COURT:** We're not even there talking about a
5 polygraph. The question is what can he ask this lady
6 about what she knows about the death of the decedent.
7 That's all. Otherwise, he's got to put the polygraph
8 results in and he can't do it.

9 **MR. MEADORS:** And I want to be clear with the
10 witness that she can't mention the word "polygraph".

11 **MR. WHITLARK:** But, Your Honor, can I inquire
12 around it? I swear to you I won't say the word
13 "polygraph".

14 **MR. MEADORS:** Judge, he'll say everything but.
15 He'll have "graph" in there and "poly". No offense.
16 And meeting in a room down there. And I don't mean
17 that bad, but that's why --

18 **THE COURT:** I've told him what he can do.

19 **MR. WHITLARK:** Yes, sir.

20 **THE COURT:** He can ask her if she knows anything
21 about it. But without the polygraph. I mean, even
22 if you get to the -- that's a whole other issue.

23 **MR. MEADORS:** Right. But, I mean, even the
24 reference you didn't meet with Lieutenant Crawford in
25 the polygraph room, did you? He can't even set it up

1 that way. I want him to be clear that he wouldn't
2 even go down that road. I don't think he would do
3 that.

4 **THE COURT:** In that case he's inviting a
5 mistrial and ...

6 **MR. WHITLARK:** Your Honor, I agree with the
7 Court and I'll follow your admonition. I will not
8 mention lie detector test, polygraph or anything like
9 that. But I do want to inquire about her being
10 called down to the station and asked some questions.
11 And I'm going to verbatim ask her those questions,
12 and I'm going to ask her what her answer was.

13 **THE COURT:** All right. That's fine. Bring the
14 jury.

15 **MR. MEADORS:** And he's committing not to go into
16 the polygraph no matter what her answers are? Or go
17 ahead.

18 **THE COURT:** You'll have to prove it some other
19 way.

20 **MR. MEADORS:** And then again we'd have an
21 objection to it coming in at all. We'd have to have
22 a hearing.

23 **THE COURT:** I understand.

24 **MR. MEADORS:** And we'd object to the document,
25 too. Judge, I don't want him holding the document

1 up. He said he was going to do that.

2 **THE CLERK:** Are you ready for the jury?

3 **THE COURT:** Yes.

4 **THE CLERK:** Bring them in.

5 **THE COURT:** I said bring the jury in. Didn't I
6 say bring the jury?

7 **MR. MEADORS:** Your Honor, again, he has that
8 document. We'd object to him bringing that around
9 where the jury can see that document when he's asking
10 her these questions.

11 **MR. WHITLARK:** Your Honor, they must all be
12 eagles if they can see it from over there.

13 (Jury in at 12:31 p.m.)

14 **THE COURT:** Mr. Whitlark, you may continue.

15 **MR. WHITLARK:** May it please the Court, Your
16 Honor?

17 **THE COURT:** Yes, sir.

18 **Q** Ms. Davy, you were asked some questions by law
19 enforcement, Investigator Catoe, about what you knew
20 about the death of Mr. Zoch, weren't you?

21 **A** Yes, sir.

22 **Q** All right. In fact, they called you down to the
23 station, didn't they?

24 **A** Yes, sir.

25 **Q** All right. Do you remember what day that was?

- 1 **A** Yes, sir.
- 2 **Q** Okay. What day was it?
- 3 **A** The very next day, Thursday.
- 4 **Q** Do you remember what time it was?
- 5 **A** In the morning. No, I don't know what time it was.
- 6 **Q** Early in the morning. Were you told what you were
- 7 going to be asked about?
- 8 **A** Not really.
- 9 **Q** Okay. So you didn't know why you were going down
- 10 there?
- 11 **A** I figured it was questions about Josh.
- 12 **Q** All right. I'm going to ask you a question and ask
- 13 you if you remember being asked this. Okay?
- 14 **A** Okay.
- 15 **Q** Are you withholding any information regarding the
- 16 death of Joshua?
- 17 **A** No.
- 18 **Q** Do you remember that question?
- 19 **A** Yes.
- 20 **Q** And what was your answer?
- 21 **A** No.
- 22 **Q** Okay. Regarding Joshua's death, are you withholding
- 23 any information from the police?
- 24 **A** No.
- 25 **Q** Do you remember that question?

- 1 **A** Yes.
- 2 **Q** And what was your answer?
- 3 **A** No.
- 4 **Q** Okay. Do you know for sure who caused Joshua's
- 5 death?
- 6 **A** No.
- 7 **Q** Do you remember that question?
- 8 **A** Yes.
- 9 **Q** And your answer was?
- 10 **A** No.
- 11 **Q** Okay. Now, Ms. Davy, did Investigator Catoe tell you
- 12 about what he thought was used to kill Mr. Zoch?
- 13 **A** Yes.
- 14 **Q** When did he talk to you about that?
- 15 **A** I don't remember. It was a couple of days later.
- 16 **Q** A couple of days. Okay. And he told you he thought
- 17 it was the softball bat?
- 18 **A** Yes.
- 19 **Q** Okay.
- 20 **A** He said his death was due to a blunt force object to
- 21 the head.
- 22 **Q** Where did you all keep that bat?
- 23 **A** In our house.
- 24 **Q** Where in your house?
- 25 **A** I don't know where it was at at the time. It might

1 have been behind the door where he usually kept it
2 at, but I don't know.

3 Q Was that the usual place behind the door that it was
4 kept?

5 A Wherever he put it. I was gone for a couple of days,
6 so I don't know where it was at.

7 Q Why did he have the bat in there, if you can tell me?

8 A Yes, I can. Our house got broken into once before,
9 and Helen and John gave us baseball bats for our own
10 protection.

11 Q Is it actually a softball bat?

12 A Baseball bat. Softball bat. I don't know.

13 Q Okay. Was it ever discussed with you by Investigator
14 Catoe; the questions I'm asking you now about where
15 it was, what it was used for?

16 A No.

17 Q Did your father ever hit Mr. Zoch?

18 A Once.

19 MR. MEADORS: Objection to relevance.

20 Q Tell us why --

21 MR. MEADORS: Your Honor.

22 THE COURT: Overruled.

23 Q Tell us why your dad hit Mr. Zoch?

24 MR. MEADORS: Your Honor, objection to
25 relevance. This has nothing to do with this time

1 period.

2 **THE COURT:** I understand. You know about
3 speaking objections. I've overruled it. Go ahead.

4 **A** No, I don't know. Just because they didn't get
5 along.

6 **Q** It wasn't because he was hurting you?

7 **A** No. He only put his hands on me one time.

8 **Q** And he hurt your sister, too, didn't he?

9 **A** One time. The same day.

10 **MR. MEADORS:** Objection to relevance.

11 **THE COURT:** Overruled.

12 **MR. MEADORS:** Relevance.

13 **Q** One last question to you, ma'am; the issue of what
14 time you left work that day and you found Mr. Zoch.
15 Okay?

16 **A** Okay.

17 **Q** Now, you've discussed that specifically with the
18 solicitor before you've testified today, haven't you?

19 **A** Yes.

20 **Q** He talked to you about stretching that time out?

21 **MR. MEADORS:** Objection.

22 **THE COURT:** Sustained.

23 **MR. WHITLARK:** I withdraw it.

24 **MR. MEADORS:** I've got a matter I would like to
25 talk about with him.

1 **MR. WHITLARK:** I'll withdraw the question.

2 **THE COURT:** Sir, sit down, please. Are you
3 finished?

4 **MR. WHITLARK:** I'm done. Thank you, Your Honor.

5 **THE COURT:** Strike that last comment from the
6 record, ladies and gentlemen, the question and the
7 answer, if there was an answer.

8 **MR. KENDRICK:** May it please the Court?

9 **THE COURT:** Yes, sir.

10 **MR. KENDRICK:** Thank you.

11 CROSS EXAMINATION

12 **BY MR. KENDRICK**

13 **Q** Ms. Davy, I'm Josh Kendrick. I represent Robert
14 Cannon. How are you doing today?

15 **A** I've been better.

16 **Q** I can understand that. Let's start kind of along the
17 timeline you went through with Mr. Meadors. You
18 remember this week obviously of the 8th, 9th,
19 starting out around then. That Friday night -- I'm
20 sorry. That Saturday night, do you remember the
21 night I'm talking about?

22 **A** Yes.

23 **Q** Were you all have having a little party at the house?

24 **A** If that's what you want to call it, yes.

25 **Q** How many people do you think were there?

- 1 **A** Maybe five.
- 2 **Q** Do you remember those five people?
- 3 **A** I know it was me, Zack, Molly, Josh and my friend,
- 4 B.J.
- 5 **Q** Okay. There is somebody named Bryson there?
- 6 **A** That's B.J.
- 7 **Q** That's B.J. Somebody named Shelton?
- 8 **A** Yeah. He was with B.J. Bryson.
- 9 **Q** So all those people were at the house?
- 10 **A** Yes.
- 11 **Q** Okay. And at some point Saturday night did Josh
- 12 leave with B.J. and Shelton?
- 13 **A** Yes.
- 14 **Q** How long was he gone?
- 15 **A** Two or three hours.
- 16 **Q** Okay. And do you know why he left?
- 17 **A** No.
- 18 **Q** What happened when he came back?
- 19 **A** We got in an argument.
- 20 **Q** What specifically started the argument?
- 21 **A** Because he brought drugs in the house that I didn't
- 22 want in there.
- 23 **Q** What kind of drugs did he bring back? I'm asking you
- 24 a question. Do you not know?
- 25 **A** Yeah.

1 Q Okay. Could you please tell me what kind of drugs he
2 brought back?

3 A Crack.

4 Q Crack cocaine, right?

5 A Yes.

6 Q And did he start to smoke those drugs in front of
7 you?

8 A Yes.

9 Q And you got upset about that, right?

10 A Yes.

11 Q And you in fact slapped the crack pipe out of his
12 hand, right?

13 A Yes.

14 Q And did he go crazy at that point?

15 A Kind of.

16 Q Okay. At that point all the people that we talked
17 about earlier, Molly, Zack, B.J., Shelton -- was a
18 Jeanne there?

19 A No.

20 Q So just those four plus you. Everybody was still
21 there, right?

22 A Yes.

23 Q So when you left, you left with --

24 A I drove. Zack and Molly rode with me. And B.J. and
25 Shelton road in B.J.'s car. So I guess they went

1 home.

2 Q So everybody left at the same time?

3 A Yes. Josh asked to us leave.

4 Q Did he politely ask you to leave?

5 A No.

6 Q What was his demeanor when he asked you to leave?

7 A What's the question? What do you mean?

8 Q How was he acting? Describe his attitude I guess

9 would be a good way. Was he mad?

10 A Yeah.

11 Q Was he extremely mad?

12 A I wouldn't say extremely mad, no.

13 Q Was he high?

14 A I don't know.

15 Q Okay. And then you didn't see him at all on Sunday,

16 right?

17 A Right.

18 Q You all spent most of the day together Monday you

19 said?

20 A Yes. The afternoon together.

21 Q Okay. What time were you with him on Monday?

22 A I don't remember.

23 Q You went to work later that day, right?

24 A No.

25 Q You had Monday off?

1 **A** Yes.

2 **Q** Are you sure about that?

3 **A** Yes.

4 **Q** You remember clearly that you had Monday off?

5 **A** Yes. I met up with Josh during the day that day.

6 **Q** Okay. Will you mark this for identification, please.

7 (WHEREUPON, Defendant Cannon's Exhibit No. 3 is
8 marked for identification.)

9 **MR. MEADORS:** Your Honor, if I could see that.
10 Your Honor, we have no objection to him offering this
11 as evidence, which I think the rules require.
12 Otherwise, he can't ask her questions off of it.

13 **MR. KENDRICK:** That's not what the rules say.

14 **THE COURT:** Overruled.

15 **MR. MEADORS:** It is what the rules require. You
16 don't publish something. We object. Otherwise, let
17 him offer it.

18 **THE COURT:** Proceed.

19 **MR. KENDRICK:** Thank you, Judge. I just didn't
20 hear your ruling. I apologize.

21 **Q** If I show you what's been marked as Defendant's
22 Exhibit 3 which are the payroll records from Sonic,
23 can you look on there and find your name?

24 **A** Yes.

25 **Q** Okay. Can you look on there and tell me if you

1 remember more clearly now whether or not you were
2 working on Monday?

3 A Yes. I must have closed that night. I left at 4:55.
4 But I didn't work during the day.

5 Q And I'm not accusing you of anything. I just want to
6 make sure we've got our timeline straight. So you
7 were working Monday. What color is your Chevy
8 Cavalier?

9 A Well, it was --

10 Q The one you had at the time. I'm sorry.

11 A Like a reddish color.

12 Q Dark red or light red?

13 A Like a dark reddish, orangish color.

14 Q Okay. Now, you got off work at 5:00 that night,
15 right?

16 A What night?

17 Q The night -- I apologize. Tuesday, the night that --
18 I'm sorry. Let me stop. I'm confusing myself.
19 Wednesday, the night that you showed up at the house,
20 you got off work at 5:00, right?

21 A Yes. But I probably didn't leave 'til 5:30, 6:00.

22 Q What would you have been doing until 5:0 or 6:00?

23 A Stocking up, getting ready for night shift.

24 Q Were you doing that off the clock?

25 A No.

1 Q Okay. So if you --

2 A I might have stuck around if we got busy and helped
3 after I clocked out.

4 Q So if you were on the clock though you were working,
5 right?

6 A Actually I'd come in there and work off the clock
7 sometimes.

8 Q So sometimes you worked when you didn't clock in?

9 A Yes.

10 Q Okay. All right. So how long does it take to get to
11 Sonic to -- what was your house -- at Lane?

12 A It was 5:00 traffic. So it might have took me 30
13 minutes to get there.

14 Q So if you left Sonic as 6, then you would have gotten
15 there at -- well, it took 30 minutes to get there.
16 But you stopped somewhere along the way, right?

17 A Yes. I might have left work between 5:30 and 6. I
18 don't remember.

19 Q And that's my next question. Is it possible that you
20 don't really remember the exact times that this stuff
21 happened?

22 A I am possible what time I got to his house.

23 Q What time did you get to his house?

24 A Probably about 6:20, 6:30.

25 Q Okay. And I think that -- tell me, you were on his

1 phone with his grandmother right when you got there?

2 **A** No.

3 **Q** Okay. When were you on the phone with her?

4 **A** I called her when I was outside.

5 **Q** Do you remember how long after you got there that
6 was?

7 **A** Maybe three minutes.

8 **Q** Do you remember what her phone number is?

9 **A** Yes.

10 **Q** What is that?

11 **A** (803)238-3745.

12 **Q** Okay. I think that -- did Mr. Meadors show you your
13 phone records earlier?

14 **A** No. Yeah. He showed them to me.

15 **Q** Okay. Did he give you a chance to look at them?

16 **A** No. I didn't look at them.

17 **Q** Okay. I'm going to ask you -- this is State's
18 Exhibit 42. If you would, would you please flip
19 through to the December 13th? I'm not sure what page
20 it's on. But are you finding it?

21 **A** No.

22 **MR. KENDRICK:** Your Honor, may I approach and
23 help her find the dates we're looking at on this
24 exhibit?

25 **THE COURT:** Sure.

1 Q I think if we keep going this way --

2 A They all say December 11th.

3 Q I may not have the right ones. Let me look at them.

4 All right. If I'm looking right here where we see on

5 State's Exhibit 42 where we go from --

6 A There's her phone number right there.

7 Q Okay. Tell me what time that call was?

8 A At 6:50 p.m.

9 Q And there are a couple of other calls to her before

10 then, right?

11 A Yes.

12 Q Okay. Tell me when the first call after you would

13 have left work that day to her occurs?

14 A Do what?

15 Q The 238 number we're talking about which we know is

16 Mrs. Zoch's number, --

17 A Yes.

18 Q -- if you'll look and tell me -- you pointed out one

19 call that was --

20 A 6:33 p.m.

21 Q Okay. So if --

22 A So if I got there at 6:30, I called her three minutes

23 after I got there.

24 Q Absolutely. And that's exactly what I was getting

25 ready to ask you. If we have that number, we can

1 kind of establish a time of when you got there,
2 right?

3 A Yes.

4 Q Okay. So she wanted you to go inside the house,
5 right?

6 A Yes.

7 Q Did you get off the phone with her?

8 A No.

9 Q Okay. So you stayed on the phone with her for how
10 long?

11 A Seven minutes.

12 Q Okay. And at some point did you call 911?

13 A Yes.

14 Q Okay. Did you call it from your cellphone?

15 A Yes.

16 Q Okay. And I don't know. Do you know which number on
17 there is 911 on those phone records?

18 A No.

19 Q Is there a number on there that could have been a
20 call to 911?

21 A What would it show up as? 911?

22 Q Is there a number you don't recognize in the time
23 period that you made the call?

24 A Yes.

25 Q Okay. What number is that?

1 **A** It's a 446 number.

2 **Q** Okay. Tell me what line number that is on your
3 exhibit. All the way to the end right in front of
4 the date there should be a number. Or you can tell
5 me what time it happened. What time did you call?

6 **A** Never mind. I recognize that number.

7 **Q** 466-1874?

8 **A** That's my dad.

9 **Q** Okay. That's your dad. So you called your dad at
10 6:47, right?

11 **A** Yes.

12 **Q** Okay. Are there any calls on there --

13 **A** Do you have the 911 phone conversation?

14 **Q** And, please, don't mean any disrespect, but I get to
15 ask the questions. It's one of the only benefits of
16 this job. But you did call 911 from your cellphone,
17 right?

18 **A** Yes.

19 **Q** Okay. It may not just be on there. I'm not accusing
20 you of anything. When you called the police, do you
21 have an idea of what time it was?

22 **A** Yeah. Right after I found him.

23 **Q** Okay. So you would have found him right at about
24 6:33, 6:35?

25 **A** Yes.

1 Q Around then? How long did it take for them to show
2 up?

3 A I was talking to them on the phone when they showed
4 up. I was still talking to them. They didn't want
5 to get off the phone with me. So I talked to them
6 until they got there. Maybe five or ten minutes, if
7 that.

8 Q Is it a police car that shows up with lights on the
9 top of it?

10 A Yes.

11 Q And do you remember who got out of that car?

12 A A police officer.

13 Q Okay. Did he tell you his name?

14 A He might have. I don't remember.

15 Q Did he give you a card or anything like that, any
16 identification?

17 A He might have. I don't remember.

18 Q Okay. Did he ask you what was going on?

19 A All I told him is that I walked in and I thought he
20 was dead. And then he told me to go park my car out
21 by the road and started putting caution tape up.

22 Q Okay. And where did you -- I assume at this point,
23 were the police there kind of starting an
24 investigation or whatever it is they were doing?

25 A After I moved my car out into the street, a lot of

1 cops showed up.

2 Q And what were you doing while all those cops were
3 present on the scene?

4 A Waiting outside.

5 Q Where were you waiting?

6 A Outside in front of the house. Not in the driveway.

7 Q Okay. In the front yard?

8 A No. On the road.

9 Q Okay. So you're waiting out on the road?

10 A Yes.

11 Q Okay. You had gone there because you needed a
12 toothbrush?

13 A And a change of work clothes, yes.

14 Q Okay. And when you got there, you had a funny
15 feeling before you even got to the house, right?

16 A No. When I got to the house I had a funny feeling.

17 Q I'll be specific. I apologize again. Before you
18 walked in the front door of the house you had a funny
19 feeling?

20 A Yes.

21 Q Before the car stopped on the road and you got out of
22 that car you had a funny feeling?

23 A Yes. Because I didn't think he was going to be
24 there. I didn't expect to see his car there.

25 Q But all the lights were out, right?

1 **A** Right.

2 **Q** So you're saying the funny feeling was a result of
3 maybe he was there?

4 **A** Well, I knew he was there because his car was in
5 there.

6 **Q** Okay. Why did you not think he was going to be
7 there?

8 **A** Because I tried to call him and I didn't get no
9 answer.

10 **Q** Okay. Did you -- you moved your car. You are
11 100 percent certain you moved your car out of the
12 driveway after the police arrived?

13 **A** Yes.

14 **Q** Now, while you're at the house and the police are
15 investigating, at some point do they tell you to
16 leave? Do they let you leave? What happens?

17 **A** No. I stayed there for a long time.

18 **Q** How long?

19 **A** Maybe three or four hours. I don't really know.

20 **Q** Okay. Then where did you go?

21 **A** To my parents' house with my parents.

22 **Q** Okay.

23 **A** I didn't even drive. They drove my car.

24 **Q** Okay. At any time before you left did any of the
25 investigators talk to you?

1 **A** Yes.

2 **Q** Who talked to you?

3 **A** I believe it was Officer Catoe.

4 **Q** Okay. Did he ask you any questions about what had
5 happened?

6 **A** No. Not really. He asked me if I knew what happened
7 or if I knew anything about it.

8 **Q** Okay. And what was your response to that question?

9 **A** No. He just asked me if I knew who could have done
10 it.

11 **Q** Okay. And did he contact you on your cellphone or
12 did you contact him? How did you all get together
13 the next morning?

14 **A** I don't remember. He might have called me. He might
15 have called my dad's phone. I don't remember.

16 **Q** Who took you to the police station?

17 **A** My dad.

18 **Q** How long were you there?

19 **A** Maybe an hour, two hours.

20 **Q** At the time you were there, did Investigator Catoe
21 know that you and Mr. Zoch had a relationship?

22 **A** Yes.

23 **Q** Did he know that you were a resident of that house?

24 **A** Yes.

25 **Q** Did he know that you were very first person on the

1 scene of this crime?

2 A Yes.

3 Q Did he take a written statement from you?

4 A No.

5 Q Did he write anything down while you all were
6 talking?

7 A I don't remember.

8 Q Did he ask you questions about you arriving on the
9 scene?

10 A Yes.

11 Q Did he ask you questions about where you had been
12 prior to coming to that house?

13 A Yes.

14 Q And you don't remember if he was writing those
15 answers down?

16 A No, I don't.

17 Q And you left the police station on the 14th?

18 A Yes.

19 Q Obviously. Did you ever go back on that day or on
20 the next day?

21 A It was actually a couple of days later. And it
22 wasn't a police station. It was a house.

23 Q A couple of days later you went to a house?

24 A I don't know if it was a couple of days. It might
25 have been a week. I don't know.

1 Q And you met with Investigator Catoe?

2 A Yes.

3 Q This was later on in the week?

4 A Yes. And my dad took me there, too.

5 Q Did he take a written statement from you on that
6 date?

7 A I don't remember.

8 Q Did he ask you questions on that date?

9 A He was just pretty much answering my questions.

10 Q Okay. That's all I have, your Honor. Thank you.

11 **THE COURT:** Mr. Riley.

12 CROSS EXAMINATION

13 **BY MR. RILEY**

14 Q Good afternoon, Ms. Davy.

15 A Good afternoon.

16 Q I am Neil Riley. I know you've been up there a long
17 time, so I'll try to cover what I have to as quickly
18 as I can. The party that you described having at
19 your house and Josh's house on the 9th, I believe it
20 was Saturday, the 9th?

21 A Yes.

22 Q All right. Was Cecile Trapp there?

23 A Not that night, no.

24 Q I'm sorry?

25 A Not that night, no.

- 1 Q Okay. Was Blake Trapp there?
- 2 A Not that night, no.
- 3 Q Was Jeanne Smart there?
- 4 A Not that night. It might have been the night before.
- 5 Q Was Anthony Andrena there?
- 6 A Not that night.
- 7 Q Molly and Zack Waltemath?
- 8 A Yes.
- 9 Q Bryson Andrena?
- 10 A Yes.
- 11 Q And someone named Shelton?
- 12 A Yes.
- 13 Q Was alcohol being served at that party?
- 14 A They were drinking beer.
- 15 Q Was pot being smoked at that party?
- 16 A It might have been.
- 17 Q Was crack being smoked at that party?
- 18 A No.
- 19 Q Okay. When Josh left, he left for about three to
- 20 four hours. Is that correct?
- 21 A Yes.
- 22 Q And when he came back he had with him crack cocaine,
- 23 correct?
- 24 A Correct.
- 25 Q And you got angry when he started smoking it in front

1 of you, right?

2 **A** Correct.

3 **Q** Okay. And he basically ordered everyone to leave the
4 house, right?

5 **A** Right.

6 **Q** But you stayed, correct?

7 **A** No.

8 **Q** You left, too?

9 **A** Yes.

10 **Q** Okay. When he and you met the following day -- or
11 excuse me -- two days later -- well, the party would
12 have broken up earlier Sunday morning, correct?

13 **A** Correct.

14 **Q** So the next day would have been Monday. And did you
15 and he agree to meet at the Bi-Lo at Sandhills?

16 **A** Yes.

17 **Q** And did you in fact meet him there?

18 **A** Yes, I did.

19 **Q** Okay. And he asked you to give him \$60, correct?

20 **A** Something like that.

21 **Q** Okay. All right. Now, going to Tuesday was the
22 12th. You spoke with him the morning of the 12th.
23 Is that correct?

24 **A** No, I did not. He stopped by Sonic but I didn't talk
25 to him.

- 1 Q Oh, okay. All righty. Did he tell you that he
2 needed more money from you that day?
- 3 A No.
- 4 Q He didn't. Okay. Had he said to you anything about
5 where the money he had borrowed from you the previous
6 day had gone?
- 7 A Yes.
- 8 Q Where did he say it had gone?
- 9 A He spent it on drugs.
- 10 Q What kind of drugs did he say he'd spent it on?
- 11 A Crack.
- 12 Q Okay. At Sonic, how long had you worked there prior
13 to December 12th?
- 14 A I worked there on and off inbetween like a three-year
15 period of time.
- 16 Q Okay. And you knew Christopher Whitehead through
17 your relationship at work, right?
- 18 A No. I met him through my friend, Bryson and Trina,
19 when he was working at the movie theaters.
- 20 Q I didn't catch that. You met him through --
- 21 A I met him through my friend, B.J.
- 22 Q Oh, okay. All righty. But he also worked at Sonic,
23 too, correct?
- 24 A Yeah. Sometime after I met him, yes.
- 25 Q Look. All righty. At Sonic, do you know whether

1 Christopher Whitehead was what is called a crew
2 leader?

3 A Yes, he was.

4 Q Okay. At any time from let's say September '06 up
5 through December '06 was Christopher your boss or
6 your superior?

7 A He was a crew leader.

8 Q And you were not, right?

9 A Right.

10 Q Okay. Would you sometimes argue with Christopher
11 when he would tell you what to do at work?

12 A No.

13 Q Never?

14 A Not when he would tell me what to do.

15 Q You didn't at times act resentful based on his
16 instructions?

17 A No. We didn't get along, but I listened to him, what
18 he had to say to me at work.

19 Q Okay. You lived with Josh Zoch about two years I
20 think you said?

21 A Yes.

22 Q How frequently did Josh do drugs?

23 A Every once in a while.

24 Q What does that mean?

25 A Not so frequently.

1 Q I can't hear you.

2 A Not so frequently.

3 Q Well, how do you define "frequently"?

4 MR. MEADORS: Objection to relevance.

5 THE COURT: Overruled. Go ahead.

6 A Every once in a while.

7 Q Weekly? Daily?

8 A No.

9 Q Not daily?

10 A No.

11 Q How about weekly?

12 A Maybe.

13 Q Okay. Had he done drugs that often ever since you

14 knew him?

15 A No.

16 Q When did he start using drugs that often?

17 A I don't remember.

18 Q Did you do drugs with Josh?

19 A Yes.

20 Q Every time he used drugs did you?

21 A No.

22 Q How many times did he do them and you didn't?

23 A I don't know.

24 Q Did you and -- during the two years that you and Josh

25 were living together, did you ever cheat on him?

1 **A** No.

2 **Q** Never?

3 **A** Never.

4 **Q** Would you have known if Josh had been cheating on
5 you?

6 **MR. MEADORS:** How can she answer that?

7 Objection. And relevance.

8 **THE COURT:** I understand. Go ahead.

9 **A** No.

10 **Q** Now, what day was it? I believe you testified there
11 was a day -- and I'll be honest with you. I'm not
12 trying to confuse you because I'm confused enough.
13 But you met Josh at Sonic on a particular day,
14 correct? He drove to Sonic and met you there?

15 **A** Yes.

16 **Q** What day was that?

17 **A** Tuesday.

18 **Q** Okay. All righty. Did you and he have anything to
19 eat at Sonic there?

20 **A** No. I didn't even talk to him.

21 **Q** I'm sorry?

22 **A** No. I didn't even talk to him.

23 **Q** Oh, you didn't?

24 **A** No.

25 **Q** Okay. All right.

1 **A** My manager asked him to leave.

2 **Q** And he left and you didn't even talk to him. Is that
3 correct?

4 **A** Right.

5 **Q** Now, on Wednesday, the 13th, were you working at
6 Sonic that day?

7 **A** Yes I was.

8 **Q** What hours?

9 **A** 7 to 5.

10 **Q** Okay. Was Chris working that day?

11 **A** Yes, he was.

12 **Q** But your hours, did your hours and his overlap?

13 **A** He came in at 6. I came in at 7.

14 **Q** Okay. All righty. Were Zack and Molly working that
15 day?

16 **A** Yes.

17 **Q** Okay. Again, I apologize for jumping around from
18 day-to-day. Wednesday, the 13th, at your house and
19 Josh's house, I believe you said in questioning by
20 Mr. Kendrick you got there around 6 or 6:30. Is that
21 correct?

22 **A** Something like that.

23 **Q** Okay. Would you -- and I know Mr. Kendrick asked you
24 this. And in December of '06 what kind of car and
25 what color was your car?

1 **A** It was like a '96 Chevy Cavalier, four door, reddish,
2 orangish.

3 **Q** Reddish orange?

4 **A** (Nods head affirmatively).

5 **Q** Okay. Were you aware that a neighbor along that
6 street said that a car was parked in front of the
7 house --

8 **MR. MEADORS:** Objection. Hearsay.

9 **THE COURT:** Ask the question. You're going to
10 get an objection but ask the question so I can rule.

11 **Q** Were you aware that a neighbor has said that at
12 5:15 --

13 **MR. MEADORS:** Objection.

14 **THE COURT:** Sir, I understand you're objecting.
15 You've done it and I heard. I want to hear the
16 question. Do you understand?

17 **MR. MEADORS:** Yes, sir. It's going to have the
18 answer in it though.

19 **THE COURT:** Thank you.

20 **Q** At 5:15 p.m. there was a car parked in front of
21 Josh's house. Were you aware of that?

22 **THE COURT:** I sustain the objection.

23 **Q** You were not at Josh's house any time previously than
24 you have testified to, correct?

25 **A** Correct.

1 Q When you were at Josh's house, you've already stated
2 you may have gone four or five steps into the house,
3 correct?

4 A Correct.

5 Q The only time you entered the house up until the
6 police arrived?

7 A Yes.

8 Q But of course at some subsequent time in the course
9 of that evening you did enter the house, right, when
10 the police were there?

11 A No.

12 Q You did not?

13 A No.

14 Q Okay. When was the last time you had been in that
15 house before that Wednesday night?

16 A Saturday night.

17 Q What?

18 A Saturday night.

19 Q The night of the party, right?

20 A Yes.

21 Q Okay. Were you and Josh frequent party givers during
22 the two years you lived there?

23 A No.

24 Q And again, I guess I have to ask you how you define
25 "frequent"?

- 1 **A** No. We just had friends come out and over and hang
2 out with us.
- 3 **Q** Sorry?
- 4 **A** We just had friends come over and hang out with us.
- 5 **Q** Now and then would be like what? Weekly?
- 6 **A** No. Like talking about friends coming over?
- 7 **Q** Yes.
- 8 **A** Yes. Daily maybe.
- 9 **Q** But that wasn't having a party, right?
- 10 **A** Right.
- 11 **Q** Okay. Wednesday night, who drove? Or how did Molly
12 leave Josh and your house that night?
- 13 **A** Molly and Zack got a ride with my dad in my car. He
14 took them home.
- 15 **Q** Okay. All righty. And I believe that in answer to
16 one of Mr. Whitlark's questions you said that your
17 dad had punched Josh once?
- 18 **A** One time, yes.
- 19 **Q** One time? Okay. Were you aware of Josh cooperating
20 with the police?
- 21 **A** Yes.
- 22 **Q** How long had you been aware of that?
- 23 **A** Since we got pulled over.
- 24 **Q** I'm sorry?
- 25 **A** Since we got pulled over.

1 Q Since we -- I'm sorry. Since we got --

2 A Since we got pulled over by a cop.

3 Q All right. And when was that?

4 A I don't remember.

5 Q You don't remember how long before December '06 that
6 was?

7 A It was cold outside. No. Maybe a month.

8 Q Okay. All righty. And do you know what Josh was
9 doing for the police?

10 A Not exactly.

11 Q Okay. You have a pretty good idea though, don't you?

12 A Kind of. But, no. I don't really know exactly. I
13 wasn't with him.

14 Q Did it have something to do with drugs?

15 A Yes.

16 Q Okay. Thanks. Begging the Court's indulgence.
17 Thank you, Ms. Davy. I appreciate it.

18 **THE COURT:** Any redirect?

19 **MR. MEADORS:** Nothing further.

20 **THE COURT:** Thank you very much. You may come
21 down, ma'am. Thank you very much. This witness be
22 excused?

23 **MR. MEADORS:** Without objection.

24 **THE COURT:** All right, ladies and gentlemen.

25 Let's take our lunch break at this time. I'll ask

1 you to be back in the courtroom -- I mean, back in
2 your jury room at 2:15 at which time we'll continue
3 with the trial. Don't discuss the case among
4 yourselves when you return to the jury room or with
5 anyone else over the lunch hour. Thank you.

6 (Jury out at 1:07 p.m.)

7 **THE COURT:** All right.

8 **THE BAILIFF:** Okay.

9 **THE COURT:** Clear?

10 **THE CLERK:** Yes, sir.

11 **THE COURT:** It's not clear?

12 **THE CLERK:** No.

13 **THE BAILIFF:** Clear, Your Honor.

14 **THE COURT:** All right. The jury out.

15 Mr. Meadors.

16 **MR. MEADORS:** Yes, sir.

17 **THE COURT:** You indicated you wished to take up
18 the Bruton matter.

19 **MR. MEADORS:** At some point, yes, sir. Ms.
20 McDuffie will be handling all of it.

21 **THE COURT:** I understand. Well, Ms. McDuffie,
22 are we at a position in terms of the witnesses that's
23 going to require that we address this issue now?

24 **MS. MCDUFFIE:** I believe we would have one more
25 witness and then we would get into Bruton issues.

1 **MR. MEADORS:** We do have one short officer who
2 responded to the scene first before that.

3 **THE COURT:** The yellow tape guy?

4 **MR. MEADORS:** Yeah. Exactly. I forgot about
5 him.

6 **THE COURT:** All right. What efforts have been
7 made to resolve the Bruton issues prior to this
8 point?

9 **MS. MCDUFFIE:** We have given defense copies of
10 our proposed redactions and have not heard anything
11 from them.

12 **THE COURT:** All right. Let's start with, are
13 the redactions satisfactory?

14 **MR. KENDRICK:** No, sir.

15 **MR. RILEY:** And, Judge, I haven't seen the
16 redactions. I have gotten nothing from the State.

17 **MR. WHITLARK:** Your Honor, could I offer
18 something, Your Honor? While we're on the lunch
19 break, see if we can work this out. I'm sure we
20 should be able to and not waste the Court's valuable
21 time.

22 **THE COURT:** Well, there are two questions.
23 First, are the redactions themselves proper --

24 **MR. KENDRICK:** Not in my opinion.

25 **THE COURT:** -- under Bruton. That's the first

1 question. And the second question is the method of
2 the redactions. And if there's a way to make the
3 redactions without magic markers, that's a preferable
4 way. But magic markers are not in and of themselves
5 objectionable or prejudicial. So, Mr. Whitlark says
6 it can be worked out.

7 **MR. WHITLARK:** I believe it can.

8 **THE COURT:** I have ultimate faith in his
9 judgment.

10 **MR. KENDRICK:** He'll be doing it, Your Honor.

11 **THE COURT:** 2:15. Let's -- 2:15.

12 (Whereupon, a lunch break is taken)

13 (WHEREUPON, State's Exhibit No. 43 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 44 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 45 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 46 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 47 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 48 is marked for
24 identification.)
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1 (WHEREUPON, State's Exhibit No. 49 is marked for
2 identification.)

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4 identification.)

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6 identification.)

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8 identification.)

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10 identification.)

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12 identification.)

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16 identification.)

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18 identification.)

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16 identification.)

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18 identification.)

19 (WHEREUPON, State's Exhibit No. 82 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 83 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 84 is marked for
24 identification.)

25 **THE COURT:** All right. How do we stand on

1 Bruton?

2 **MS. MCDUFFIE:** Your Honor, the defense gave us
3 their proposed redaction. And we do not agree that
4 their proposed redaction is acceptable, and they
5 don't agree with ours. So it's a matter that the
6 Court I think needs to hear.

7 **THE COURT:** Well, let's go.

8 **MR. KENDRICK:** Your Honor, just so the Court
9 knows, I have spoken with Mr. Riley and Mr. Whitlark
10 at lunch. And what we've decided, unless you have an
11 objection, is to let me argue the law on all of our
12 behalves so you don't have to hear from all three of
13 us.

14 **THE COURT:** On what?

15 **MR. KENDRICK:** I'll argue on all three of our
16 behalves. They may want to come in and add to it.
17 But I think the Court would probably be happier if
18 you didn't have hear all three of us.

19 **THE COURT:** What ever made you think that?

20 **MR. KENDRICK:** I guess I'm smarter than I look,
21 Your Honor.

22 **THE COURT:** Well, I guess I'd better have
23 something to work from.

24 **MR. KENDRICK:** Yes, sir.

25 **THE COURT:** And this is coming up this

1 afternoon. Is that correct?

2 **MS. MCDUFFIE:** Yes, sir.

3 **MR. WHITLARK:** For the record, we adopt their
4 motion and their assertions under Bruton. That would
5 be, they being Robert Cannon's.

6 **MR. MEADORS:** Judge, the originals are -- do you
7 want those or copies, the marked on?

8 **THE COURT:** Well, I want the redacted, I guess
9 originals and the redactions.

10 **MR. MEADORS:** Okay. We can do that. Here are
11 the originals. And we'll hand you both proposed
12 redactions.

13 **THE COURT:** We've got two statements, right?

14 **MR. MEADORS:** Yes, sir.

15 **THE COURT:** Is that what we're dealing with?

16 **MR. MEADORS:** Yes, sir.

17 **MR. KENDRICK:** Yes, sir.

18 **MR. MEADORS:** Here are the two real ones and
19 here is the State's.

20 **MR. KENDRICK:** And, Your Honor, I'll tell you
21 what I have here are -- I just word-for-word typed
22 those into my computer just so I can use my mouse to
23 redact them. But if we reach an agreement and we
24 have additional ones, I don't think we're at that
25 point yet, but I just want to kind of tell you what

1 it is I did.

2 **THE COURT:** Well, one difference is they're
3 typed.

4 **MR. MEADORS:** Are there two different ones here?

5 **MR. KENDRICK:** What we've got here is you've got
6 the statement and then you've got the statement that
7 I redacted what I think needs to be removed. Like I
8 said, I printed it like this because I thought it was
9 just easier for me to use it rather than mark all
10 over the handwritten statement. I believe I gave
11 those --

12 **MR. MEADORS:** Do you have both of those?

13 **MR. KENDRICK:** If you don't, I've got more
14 copies. So I figured ...

15 **THE COURT:** All right. Let's start with Cannon.

16 **MS. MCDUFFIE:** If I may, Your Honor, the State
17 feels that Bruton would be satisfied by taking the
18 places where we have the names of the co-defendants
19 crossed out and changing that or whiting it out and
20 having Investigator Catoe rewrite "another person".
21 That would satisfy Gray v. Maryland which says that
22 it's permissible to redact a confession as "me and
23 some other people" or "another person" did it,
24 instead of having blank spaces or a mark where the
25 name was.

1 **THE COURT:** That is a correct statement of the
2 law. And what -- in other words, you say -- give me
3 the last sentence that you just said. I understand
4 we can use "the other person" or "we" or "they".

5 **MS. MCDUFFIE:** Correct, Your Honor. Right. So
6 then we would propose to take the original statements
7 and have them whited out and have Investigator Catoe
8 write in the phrase "another person", "we" or "they"
9 or whatever is appropriate in those statements where
10 we have marked out in black on the version that we
11 presented to the Court.

12 **THE COURT:** Okay. On this?

13 **MS. MCDUFFIE:** Yes, sir, Your Honor.

14 **THE COURT:** You would white out and write in,
15 "we", "they" or "the other person".

16 **MS. MCDUFFIE:** Correct.

17 **THE COURT:** "And other person". And that's the
18 legal argument.

19 **MS. MCDUFFIE:** Yes, sir, Your Honor. According
20 to Gray v. Maryland.

21 **THE COURT:** Now what Mr. Kendrick?

22 **MR. KENDRICK:** Your Honor, my argument on that
23 point is that just by doing that, I don't think that
24 would be good enough. I think that under State v.
25 Lavaris the court considered a place where the trial

1 court had just replaced the names of Mr. X I think.
2 They said that wasn't sufficient.

3 **THE COURT:** Right.

4 **MR. KENDRICK:** I think in this case that the
5 same thing applies, Your Honor. Because even though
6 you're whitening out the name, there is still a great
7 deal of implicating evidence in there. I'm aware
8 that the law states that if that evidence is later --
9 if some evidence in the statement is later linked to
10 a defendant through independent evidence, then that's
11 okay under, I believe it's the Richardson case.

12 But as far as just whitening out the name, Your
13 Honor, the jury is not going to get past that. So I
14 think that that would violate Bruton because the
15 statement clearly implicates someone else and it's
16 obviously prejudicial to the people who are sitting
17 right here. So the jury will absolutely know.

18 **THE COURT:** But that's not the law. The law
19 says -- I mean, is as Ms. McDuffie stated it. We've
20 been over this. I mean, I've been over this many
21 times. And the courts have said when replacing the
22 offensive language with "the other person", "the
23 other guy" or "we" or "they" when there's no
24 reference, specific reference to a co-defendant, it
25 satisfies Bruton.

1 **MR. KENDRICK:** Your Honor, and I understand
2 that. I am just arguing my position for this record,
3 is that that does not satisfy Bruton. I know you're
4 ruling I'm wrong, but I have to put it on the record.

5 **THE COURT:** I understand that.

6 **MR. KENDRICK:** But our position is that does not
7 satisfy Bruton. The jury won't be able to follow the
8 proper instructions not to consider that evidence
9 against someone else. That is our position for the
10 record under State v. Lavaris.

11 **THE COURT:** Well, what do they replace the
12 language with in Laves? I will tell you I'm not
13 familiar with that one.

14 **MR. KENDRICK:** Your Honor, according to the
15 opinion, they just replaced the name of the defendant
16 with Mr. X, just an alias name.

17 **THE COURT:** Oh.

18 **MR. KENDRICK:** A general name.

19 **THE COURT:** I see.

20 **MR. KENDRICK:** And I will be honest. I don't
21 know that the court made a holding that that was what
22 they said, but they did state at the beginning that
23 it's a powerful argument the redaction was
24 ineffective, by replacing Mr. X it was clear that it
25 was --

1 **THE COURT:** Replacing the language with Mr. X.

2 **MR. KENDRICK:** Right. And I think replacing it
3 with a general article is no different than replying
4 it with Mr. X. That case appears to have no negative
5 history in South Carolina.

6 **THE COURT:** Well, and chances are there are a
7 number of ways to do it. And that may be one way to
8 do it.

9 **MR. KENDRICK:** Your Honor, I think that another
10 argument I'd make to you is that there is -- in this
11 case -- and we've been over this I think in pre-trial
12 and some of our summaries -- is that there really is
13 no evidence here except for these statements. So
14 there is a heightened danger that if these statements
15 are let in improperly that we're --

16 **THE COURT:** We're not going to let them in
17 improperly. You might not --

18 **MR. KENDRICK:** And I don't suggest the court
19 doing that, Your Honor. I would suggest that the
20 admissibility of the statement should be viewed with
21 a more heightened scrutiny because of the peril it
22 causes our clients, because without these statements
23 there's nothing; we're not standing here. So these
24 are obviously the crux --

25 **THE COURT:** So your comments, the Cannon

1 statement is --

2 **MR. KENDRICK:** Your Honor, to explain what I've
3 done; these statements basically -- when Robert
4 Cannon is giving a statement, his statement only
5 relate to what he did. And then it's still in there,
6 Your Honor. And the same thing with Derrick
7 McDonald.

8 **THE COURT:** Oh, I see. You don't even replace
9 them with any type of pronoun.

10 **MR. KENDRICK:** No. We take the information out
11 completely, Your Honor. And I think that Bruton is a
12 very powerful confrontation clause rule that, you
13 know, by changing the names, we're basically letting
14 the statement in, it's clearly going to be considered
15 against the co-defendants. And Bruton is a funny
16 case, Your Honor, because it's the only time the
17 Supreme Court has acknowledged that a jury will not
18 follow the instructions of the court or may not
19 follow it.

20 And that's exactly where the exception in Bruton
21 came from, is that the jury simply can't do that. In
22 this case, Your Honor, you've obviously got -- you've
23 got three people on trial and you've got a statement
24 that is basically about three people. We're taking
25 away --

1 **THE COURT:** If this is Mr. Thomas's statement as
2 you have proposed it, then only -- Mr. Thomas only
3 implicates himself.

4 **MR. KENDRICK:** Well, Cannon, Your Honor.

5 **THE COURT:** Robert Cannon.

6 **MR. KENDRICK:** Yes, sir.

7 **THE COURT:** That's your bottom line.

8 **MR. KENDRICK:** Yes, sir.

9 **THE COURT:** That his statement can only
10 implicate himself.

11 **MR. KENDRICK:** Yes, sir. And while I realize
12 there was exceptions carved out to Bruton, I think
13 that in a case where there is nothing but a statement
14 basically implicating these guys, that there is the
15 right for the Court to look at it with a much
16 stricter standard and take out anything that would
17 implicate the other co-defendants.

18 **THE COURT:** Well, I'm wondering if that doesn't
19 create some misapprehension in the mind of a juror.

20 **MS. MCDUFFIE:** Your Honor, if I may, Lavaris was
21 a 1980 South Carolina case. Gray v. Maryland was a
22 1988 Supreme Court case which said that the
23 permissible redaction was "me and some other guys" or
24 "me and another person" did it.

25 Then there is State v. Fletcher which is a 2005

1 South Carolina Court of Appeals case that says:
2 Where the statement indicates someone other than the
3 co-defendant may have been involved but does not
4 necessarily implicate the defendant, the co-defendant
5 is not testifying against the defendant and there is
6 no confrontation clause problem with that.

7 **THE COURT:** You've got Gray v. Maryland?

8 **MS. MCDUFFIE:** Yes, sir.

9 **THE COURT:** Is that what you said?

10 **MS. MCDUFFIE:** Yes, sir, Your Honor.

11 **THE COURT:** And you've got State v. Fletcher?

12 **MS. MCDUFFIE:** Yes, sir.

13 **THE COURT:** Is that what you said?

14 **MS. MCDUFFIE:** 363 SC 221.

15 **THE COURT:** I've got it. That's a 2005 case,
16 Mr. Kendrick.

17 **MR. KENDRICK:** Your Honor, I have Fletcher. I
18 don't know that it affects my argument. "The
19 redacted version of Perry's statement neither
20 mentions nor" --

21 **THE COURT:** Nor implicates Fletcher.

22 **MR. KENDRICK:** Fletcher. Well, Your Honor, the
23 definition of "implicate", it in some way implies
24 they did something.

25 **THE COURT:** Well, if his name is not in there,

1 how could it implicate him, other than the fact that
2 he's sitting at the table?

3 **MR. SHELDON:** And, Your Honor, that's I think
4 the very heart of Bruton. And I understand that the
5 law has evolved to some degree, but I don't think
6 that means we ignore what Bruton says. And I do
7 think Your Honor has a different position when we're
8 in a trial with nothing but a statement pointing to
9 these young men, no direct evidence. Which, you
10 know, the error could never be harmless if there was
11 error. And I think that gives us a heightened
12 scrutiny of this matter.

13 Bruton's concern was clearly that the jury will
14 look at these two other guys and say those must be
15 the "some other people", and that even if you tell
16 them they can't do, they might still do it.

17 **THE COURT:** Well, I probably would not tell them
18 they can't do that because that only heightens their
19 concern.

20 **MR. KENDRICK:** Your Honor, I mean, there's an
21 easier way to do it, which is simply to not put a
22 reference to what someone else did. Obviously the
23 State can't use one person's confession against the
24 other. So I don't know what the problem would be,
25 period, by saying -- I mean, if the statement still

1 gives a picture, which I think it does, of what
2 happened --

3 **THE COURT:** Gives a what?

4 **MR. KENDRICK:** It still gives a picture of what
5 in essence these two clients allegedly made
6 statements about. It doesn't include evidence that
7 helps cross implicate or implicate the third
8 co-defendant who didn't make a statement. Well,
9 that's the point of what Bruton is. Regardless of
10 what we can do, the point of Bruton is what we should
11 do, which is make sure that none of these clients'
12 rights to confrontation is violated.

13 Now, if there is an easy way the courts allow to
14 us do that, then certainly, Your Honor, I don't think
15 Your Honor is required to do it that way. And I
16 think maybe those cases that would set a minimum of
17 what you can do --

18 **THE COURT:** Well, you know, I've never seen a
19 case that goes as far as you've gone, not that
20 there's any logical reason why the Court couldn't
21 extend it that far at some time in the future. You
22 say this is the intent of Bruton. And I think all of
23 the cases cited by the State clearly refer back to
24 Bruton. It's not as though they ignore Bruton and
25 say, well, you can just slide by by changing the

1 name.

2 But to create two factual scenarios with these
3 statements that don't reflect what the defendants
4 told the police is -- it's just deceptive to the jury
5 I think. So, I mean, these defendants told these
6 officers these things. The way you have
7 characterized the redacted statement, there's a whole
8 different redacted set of facts.

9 **MR. KENDRICK:** Your Honor, the --

10 **THE COURT:** I mean, it's based on these facts.
11 Don't get me wrong. I mean, I'm not trying to say
12 that you've changed the meaning of the entire
13 statement by creating the impression that these
14 parties acted independently. And that's just not
15 what the statements say.

16 **MR. KENDRICK:** But, Your Honor, to the
17 statements, that's the exact problem that's addressed
18 in Bruton. And I will say this in all seriousness,
19 Your Honor; when you point out that there's no
20 logical reason why we couldn't extend the rule, this
21 would be a fine time to do it, Your Honor. And I
22 think that we rarely have that opportunity. The
23 problem in Bruton is that --

24 **THE COURT:** You still have that opportunity.

25 **MR. KENDRICK:** Your Honor, certainly. And, Your

1 Honor, the problem in Bruton that comes in this case
2 is that -- and I'll just for an example use the
3 people here. If Robert Cannon says something that
4 implicates Derrick McDonald, Derrick is not allowed
5 to cross examine Robert Cannon on it because he may
6 not testify.

7 **THE COURT:** Right.

8 **MR. KENDRICK:** Now, that's, as we know, the
9 heart of Bruton. And when Your Honor says that there
10 are facts in there that were given to police that
11 would now not be in evidence, that's what Bruton
12 protects somebody from, because those facts are
13 something someone said which should be subject to
14 cross examination. And that certainly goes to the
15 heart of us presenting a full defense and getting all
16 the rights of cross examination which is, as they
17 have before, the greatest vehicle for finding the
18 truth ever invented. And we are being kept --

19 **THE COURT:** They call it the crucible of cross
20 examination.

21 **MR. KENDRICK:** I like that one, too, Your Honor.
22 I will write it down in my trial book. But I think
23 that what the argument the State has is, if you take
24 this stuff out, then the part of the statement that
25 implicates the other co-defendants doesn't come in.

1 Well, exactly. That's what happened. And if they
2 can give a reason why that's okay to leave it in, I
3 do think that that's the burden here. It clearly
4 implicates other people. And my argument to Your
5 Honor would be that that cannot happen in the
6 courtroom.

7 **MS. MCDUFFIE:** Your Honor, the changing of this
8 to "another person" or "some other guys" does not on
9 its face incriminate the defendant; and, therefore,
10 it can be properly admitted under Supreme Court case
11 law.

12 **THE COURT:** Well, I'm just -- I'm looking. I
13 follow your argument. But let me -- I mean,
14 specifically, you've got four lines on your proposed
15 page 1 redacted Cannon statement. The statement
16 contains 18 lines. You don't have anything about
17 talking to a girl or somebody talking to Leroy or you
18 don't even say that he said, "I don't know Leroy's
19 last name." Leroy is not a defendant, is he?

20 **MR. KENDRICK:** Your Honor.

21 **THE COURT:** Is he?

22 **MR. KENDRICK:** No, Your Honor.

23 **THE COURT:** Okay. Then "we went to Sonic."
24 Well, I submit, I mean, that could mean Leroy. You
25 don't have anything about that. You don't have

1 anything about "I got a ski mask." You don't have
2 anything about riding around; not saying, "You know
3 we need to do something." You don't say "Josh
4 asked." I mean, you don't say that he said he --
5 well, I don't know who said, "Beat Josh's ass."

6 **MR. KENDRICK:** Your Honor, I'll agree that there
7 is two classes of things that I've taken out there.
8 Now, this is my proposed redaction. And obviously,
9 zealously representing my client, I'm going to try to
10 take out everything I can with the knowledge the
11 Court may order a compromise.

12 **THE COURT:** That's the problem I see.

13 **MR. KENDRICK:** Well, the last two things, Your
14 Honor, says especially the part about beating someone
15 up; I mean, that's a statement that directly
16 implicates him in the crime.

17 **THE COURT:** Well, he's implicated himself.

18 **MR. KENDRICK:** But he can't be implicated by the
19 other person.

20 **THE COURT:** Oh, I'm only talking about Cannon's
21 statement, cannon's statement about -- page 2 you've
22 got two lines. The statement has 18 lines.

23 **MR. KENDRICK:** Yes, sir, Your Honor. Page 2
24 directly relates to what happened at Lane.
25 That starts the burglary. That's when the criminal

1 implications begin.

2 **THE COURT:** He said, "I had nothing to do with
3 it and I went home." And the statement says: "We
4 pulled up at Josh's house." I mean, you've just
5 completely changed the meaning of these statements.

6 **MR. KENDRICK:** Your Honor, my redacted statement
7 says: "Because I had nothing else to do and no
8 certain time to be home, that was about 11 p.m., I
9 pulled up to Josh's about 11:30 p.m." My client has
10 implicated himself in a statement allegedly, but he
11 can't implicate the rest of his co-defendants.

12 **THE COURT:** Well, I understand. And I'm just
13 going to -- I think your redaction goes too far. I
14 think it changes the entire meaning of the statement.
15 And I'll overrule your objection to the State's
16 redaction. But the State's redaction has to comply
17 with at least -- the latest I guess is Fletcher.

18 **MR. KENDRICK:** Your Honor, just for the record
19 before we go, I believe without objection also I'm
20 joined by my co-defendants.

21 **THE COURT:** I understand your objection goes
22 both to Mr. Whitlark's client and Mr. Riley's client.

23 **MR. KENDRICK:** Thank you, Your Honor.

24 **THE COURT:** And, as I say, there may be a place
25 and time that you may be right.

1 **MR. KENDRICK:** I hope we will find out here,
2 Your Honor.

3 **THE COURT:** Probably not here. All right. Do
4 your redactions. Have you done the redactions?

5 **MS. MCDUFFIE:** Your Honor, we are working on
6 them. We have not gotten Investigator Catoe to write
7 those in. But we'll --

8 **THE COURT:** Well, how much time do you need?
9 You've got a witness coming, don't you?

10 **MS. MCDUFFIE:** Yes, sir, Your Honor. We could
11 use the blacked out copy for purposes of his
12 testimony, then submit the corrected, redacted one
13 before it goes back to the jury before the jury ever
14 sees it.

15 **THE COURT:** As long as the jury doesn't see the
16 black outs.

17 **MR. RILEY:** Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. RILEY:** I have an additional argument that
20 I'd make. Since, as I understand it, Your Honor has
21 ruled that the State's redacted copies of these
22 confessions --

23 **THE COURT:** I think they comply with the current
24 state of the law, yes.

25 **MR. RILEY:** I would direct your attention, sir,

1 to page 4 of the redacted version of Mr. Cannon's
2 redacted statement.

3 **THE COURT:** Page 4.

4 **MR. RILEY:** Page 4 which has some questions and
5 answers on it.

6 **THE COURT:** Yeah.

7 **MR. RILEY:** About half way down. "Whose car was
8 you and blank and blank in that night?"

9 **THE COURT:** That's not -- oh. You mean the
10 State's redacted. I thought you meant Thomas' (sic)
11 redacted.

12 **MR. RILEY:** No, sir.

13 **THE COURT:** Okay. Go ahead.

14 **MR. RILEY:** The question was who -- I mean, I'm
15 reading from the redacted version.

16 **THE COURT:** Yes, sir. I see it now.

17 **MR. RILEY:** Question: "Whose car was you and
18 blank and blank in that night?" Answer: "Blank's
19 blue Honda Accord." At least two witnesses have
20 testified that that --

21 **THE COURT:** I agree. Blue Honda Accord needs to
22 come out.

23 **MS. MCDUFFIE:** Your Honor, we'll redact that
24 whole question then.

25 **THE COURT:** Well, you can do the whole question.

1 Sure. Anything else?

2 **MR. RILEY:** Not from me, Your Honor.

3 **MR. WHITLARK:** Nothing from McDonald.

4 **THE COURT:** All right.

5 **MR. MEADORS:** Your Honor, I don't think -- and
6 not to hold this up. I thank you for -- I'm going to
7 be -- one of the key issues -- well, I don't think
8 it's an issue, but one thing they're arguing about is
9 these officers lied, made them sign, you know, even
10 signed blank forms, I think one of them said. So not
11 to violate not letting them see them, I am going to
12 be up there showing Investigator Catoe this document,
13 did he sign it. I don't want the jury to
14 inadvertently see these. So we might need to get
15 that done before he testifies.

16 **THE COURT:** That's a good idea. Who is your
17 next witness?

18 **MR. MEADORS:** It's Vickie Sellers who is going
19 to be relatively short.

20 **THE COURT:** Mr. Moak can do that.

21 **MR. MEADORS:** Yes, sir. Mr. Moak is prepared
22 and ready to go.

23 **MR. MOAK:** Your Honor, before we bring the jury
24 in, I've showed the defense some pictures that we're
25 wanting to bring in through Mr. Sellers.

1 **THE COURT:** Who is Mr. Sellers?

2 **MR. MOAK:** I am anticipating approximately half
3 of them they're going to object to.

4 **THE COURT:** Who is Mr. Sellers?

5 **MR. MOAK:** He is the first deputy on the scene.

6 **THE COURT:** All right.

7 **MR. MEADORS:** I just didn't want Investigator
8 Catoe not to be in here while they were doing it.

9 **THE COURT:** I understand.

10 (Pause)

11 **MR. MOAK:** Your Honor, I understand 25 through
12 32 which are the cluttered ones, I think they're not
13 objecting to.

14 **COURT REPORTER:** Which are the what?

15 **MR. MOAK:** Cluttered, basically where the house
16 was ransacked. So I think the first set are fine.
17 The rest of them, Your Honor, are pictures of the
18 living room which includes -- every one of them has
19 the body in there. Also it has several other pieces
20 of evidence that were collected as part of this that
21 are also in the pictures that shows their relation in
22 the living room where they were at, Your Honor. And
23 I believe some of these we're going to seek to bring
24 in through Dr. Sexton I believe. So, I mean, I don't
25 presume that you're going to let all of them in, Your

1 Honor, but --

2 **MR. MEADORS:** You know, if Mr. Moak wouldn't
3 concede to that and Your Honor looked at them, you
4 might.

5 **THE COURT:** Well, --

6 **MR. MOAK:** I said presumed.

7 **THE COURT:** -- you may be able to mark some of
8 these that Sexton can link up as relevant in terms of
9 cause of death.

10 **MR. MOAK:** They're already marked, Your Honor.
11 The ones on the back that have like a handwritten,
12 like a penciled number on them I believe are the ones
13 that --

14 **THE COURT:** Now, wait a minute. You've got some
15 that are not --

16 **MR. MOAK:** These are the ones they're not
17 objecting to. If you want to see those, too, I can
18 pass them up.

19 **MR. WHITLARK:** McDonald has no objection to the
20 ones that counsel is holding in his right hand.

21 **THE COURT:** All right. So let's be specific
22 here.

23 **MR. WHITLARK:** What numbers are they?

24 **THE COURT:** Is it my understanding the defense
25 objects to Exhibit Nos. 34, 33, 41, 30, 39, 38, 37,

1 36 and 35? Is that correct?

2 **MR. WHITLARK:** That's correct.

3 **MR. RILEY:** That's correct, Your Honor. Judge,
4 I don't know the numbers, but anything that shows the
5 victim's body I object to. I think all those
6 shouldn't be admitted. If they're the same ones that
7 I have just looked at with Mr. Moak.

8 **MR. KENDRICK:** Yes, sir, Your Honor. We object
9 to those also.

10 **MR. WHITLARK:** On behalf of McDonald, Your
11 Honor, if it pleases the Court?

12 **THE COURT:** Let me look at them.

13 **MR. WHITLARK:** Yes, sir.

14 **THE COURT:** Well, you know, a lot of these are
15 duplicative, Mr. Moak, in my opinion. They're just
16 walking around in circles showing the same thing.

17 **MR. MOAK:** I would agree, Your Honor. Most of
18 them are different angles of the same shot.

19 **THE COURT:** Well, I mean, that's exactly what
20 they are. It's just somebody walking around in a
21 circle and took photographs from different angles.
22 Which is proper procedure.

23 **MR. MOAK:** What I was going to propose, Your
24 Honor, not knowing which ones Mr. Meadors needs to
25 use and Dr. Sexton, what I was going to propose is to

1 have Mr. Sellers identify all of them.

2 **THE COURT:** Sure.

3 **MR. MOAK:** To lay the foundation. And then if
4 Your Honor would like one of them to come in, we'll
5 just do that at this time.

6 **THE COURT:** Well, we've already got one in there
7 showing -- I would dare to say that the one that's
8 already in evidence -- which one is that?

9 **COURT REPORTER:** I don't know, Your Honor.

10 **THE COURT:** Which one is in?

11 **MR. MOAK:** I have -- Joyce has those, Your
12 Honor.

13 **COURT REPORTER:** I think it's 25 through 32, but
14 I'm not sure.

15 **THE COURT:** Let me see that one. The disarray.
16 There's only -- one of them was not admitted.

17 **MR. MOAK:** I this think 11 is the one that's in,
18 and 12 is not.

19 **COURT REPORTER:** 12 is the one that's not.

20 **THE COURT:** Well, put it at counsel table. I
21 don't want it mixed in with the evidence.

22 **MS. MCDUFFIE:** It was marked. That's why it's
23 left there.

24 **THE COURT:** Well, it's not admissible. So put
25 it somewhere else. I mean, you've got it mixed in

1 with the admissible evidence.

2 All right, Mr. Moak. You can -- number 37 is a
3 little more descriptive of the condition of the room.
4 I don't find that at this point it makes -- that it's
5 overly -- what's the word I'm looking for?
6 Descriptive of -- and I don't think it's
7 inflammatory. The remainder I think are going to
8 have to wait for Dr. Sexton to --

9 **MR. MOAK:** That's why I presented them, Your
10 Honor.

11 **THE COURT:** You can lay the foundation. If
12 he -- I mean, I would assume, and I'm not a doctor,
13 but there are one or two here that bear directly on
14 the cause of death.

15 **MR. MOAK:** Yes, Your Honor.

16 **THE COURT:** And they may be admissible at that
17 time.

18 **MR. MOAK:** I just felt it relevant to bring this
19 up while the jury was out.

20 **THE COURT:** Sure.

21 **MR. WHITLARK:** May it please the Court, Your
22 Honor?

23 **THE COURT:** Sure.

24 **MR. WHITLARK:** On behalf of McDonald, I'd like
25 to say first of all I'd like an admonition to the

1 prosecution over here. We have got -- a number of
2 these pictures are laid out. They are sitting right
3 next to them. For example, Your Honor, I wouldn't
4 want them to walk up and see something like this --

5 **MR. MEADORS:** Which was turned the other way,
6 and that's the document you said get out of here.
7 And I just put it over there. Is mr. Whitlark
8 questioning us on ethics?

9 **MR. WHITLARK:** No, no. Certainly you're a good
10 lawyer and an ethical lawyer. I don't question it.
11 I just question them getting a glance at any of that
12 stuff and then we'll be --

13 **THE COURT:** All right. We'll try to be careful.

14 **MR. WHITLARK:** Yes, sir.

15 **MR. MOAK:** Yes, sir.

16 **THE COURT:** Are you ready for the jury?

17 **MR. MEADORS:** Your Honor, obviously we're going
18 over this right now to see what we can put in.

19 **MS. MCDUFFIE:** Your Honor, we're going to need
20 Investigator Catoe to make the proper changes on this
21 to adequately redact it.

22 **MR. MEADORS:** I just want to -- she's doing that
23 right now.

24 **THE COURT:** I thought you had another witness.

25 **MR. MEADORS:** We do, Judge. But I don't want

1 them doing that in front of the jury, writing on the
2 statements. So, I mean, five minutes would probably
3 save everybody a lot of heartache.

4 **THE COURT:** All right. Thank you. I'll be glad
5 to do it. Which one did I just say was okay?

6 **COURT REPORTER:** 37.

7 **THE COURT:** They're all the same things. Mr.
8 Moak, for the record, 33, 34, 35, 36, 38, 39, 40 and
9 41, for identification only. Counsel, while we're --
10 Solicitor.

11 **MR. MEADORS:** Yes, sir.

12 **THE COURT:** While we're waiting, Mr. Riley --

13 **MR. RILEY:** Yes, sir.

14 **THE COURT:** -- made a motion yesterday. I'm
15 sorry. He made a motion pre-trial filed
16 February 25th, a motion in limine to prevent the
17 testimony of Michael Jenkins.

18 **MR. RILEY:** Yes, sir.

19 **THE COURT:** And we could address that issue
20 now --

21 **MR. MEADORS:** Okay.

22 **THE COURT:** -- move right along.

23 **MR. MEADORS:** Mr. Jenkins is going to be here in
24 the morning. We were just trying to plan ahead. But
25 if you would like to proffer that, I think I can.

1 **MR. RILEY:** Judge, my understanding is we were
2 going to do it by means of a proffer.

3 **THE COURT:** Well, we can. All right.

4 **MR. MEADORS:** Do you want me to proffer it, or
5 do you want the witness to --

6 **THE COURT:** Well, I mean, I'm just -- all I'm
7 looking at is Mr. Riley's motion. And certainly you
8 can proffer it.

9 **MR. MEADORS:** It may well be that you have to
10 hear Mr. Jenkins testify anyway. But I will --

11 **THE COURT:** That's fine. I just didn't know if
12 we could go ahead and just resolve it now, if the
13 facts are as stated in Mr. Riley's motion.

14 **MR. MEADORS:** Well, Your Honor, let me go ahead
15 and proffer what I know with the addition if anything
16 else is -- I think this is a fair --

17 **THE COURT:** Have you seen this?

18 **MR. MEADORS:** I haven't.

19 **THE COURT:** Well, here. Let me just -- those
20 are the facts as Mr. Riley presents them to the
21 Court.

22 **MR. MEADORS:** I don't have the exact --
23 sometime, I think perhaps February, March of 2007 --
24 I'm not sure, and that's why I want the record to
25 reflect we might need -- there is going to be some

1 testimony coming from the jail and/or Mr. Jenkins --
2 Mr. Jenkins had been arrested on a bench warrant I
3 believe from this county. I don't know if it's --

4 **THE COURT:** It doesn't matter.

5 **MR. MEADORS:** Okay. Thank you. And it came
6 into the Kershaw County Detention Center. He was in
7 general population. One night someone came in for a
8 DUI I think, and Mr. Jenkins got into with this
9 person who got arrested for a DUI. They got in a
10 disagreement about the TV or something. I'm not real
11 sure. But he gets put in a pod for one night just to
12 separate them so they won't fight. The jail
13 administrators make the decision just for everybody's
14 peacefulness, whatever. He goes in the A pod.

15 I think he goes in the A2 cell. 2 in A Pod.
16 During that night he's sleeping. He's in there for
17 one night. He hears next to him someone saying,
18 We're going to get out of here and be heros. We
19 basically killed somebody and they ain't got any
20 evidence against us. We're going to get out. We're
21 going to be heros when we get out. We killed
22 somebody. And he hears the name Joshua, hears the
23 name Zoch and also either hears Rocky Branch or
24 something.

25 This Mr. Jenkins knew of or knew the deceased.

1 His testimony is it caught his attention when he
2 heard that language, somebody bragging about killing
3 somebody and getting out and going to be heros. And
4 that caught his attention, made him mad.

5 He asked one of the guards the next day who --
6 and he said it came from a cell right next to him,
7 A3. He said who was that in that cell to him and it
8 was identified as Chris Whitehead.

9 The next sequence I think is that he's going to
10 the chapel, if you will, there; or wherever it is
11 they go to worship, and this has bothered him so much
12 he tells the chaplain about this incident. As he's
13 leaving he sees where a Christopher Whitehead has
14 signed in there. He's coming in asked for
15 forgiveness for something he's done. And he thinks
16 Mr. Whitehead actually might be in this same chapel
17 where he is when he's talking to the priest. The
18 next time he sees him or hears him --

19 **THE COURT:** No confrontation at that point?

20 **MR. MEADORS:** Sir?

21 **THE COURT:** No confrontation at that point?

22 **MR. MEADORS:** No, sir. The next time -- and I
23 don't have this exact day with me today, but I don't
24 think Your Honor needs it to start considering its
25 ruling -- he, being Michael Jenkins, is in the

1 multi-purpose room. They are getting some kind of
2 test. Whatever. They're testing the defendants or
3 giving them some medicine for something, and he hears
4 the same voice, I believe he'd say. And Christopher
5 Whitehead may have been identified to him at this
6 point. I don't know. And he'd have to testify to
7 that.

8 But he hears this voice again talking about
9 Joshua, Rocky Branch; and then he sees -- and I
10 believe his testimony would be he hears the same
11 voice. And at this time he may have had Christopher
12 Whitehead also identified to him. He sees him and he
13 goes after him. I mean, he goes after him, puts his
14 arms around his neck and tries to retaliate for what
15 he said. It was broken up and they were separated.

16 Judge, I didn't know anything about this. I
17 think word -- and I don't think law enforcement
18 did -- the word came in through somebody, family or
19 somebody that this word had come up.

20 **THE COURT:** Is this the same thing as the
21 snitch?

22 **MR. MEADORS:** No, sir.

23 **THE COURT:** That's a different one?

24 **MR. MEADORS:** That's different. We submit this
25 is pure, Judge. It came in. We heard about this.

1 We tracked down Michael Jenkins. I got "Dog" Austin,
2 he played for Georgia, this gentleman right here who
3 won the Heisman right here in front, he started
4 working with Catoe and some of these. They went and
5 found Michael Jenkins. We talked to him.

6 He ended up -- I don't know his exact
7 sentence -- ended up pleading to charges here, got
8 nothing from the State. We didn't even know about it
9 until a few years later. And he came in. I met with
10 him briefly, and he said he did not mind coming
11 forward and to tell you a little more than what I'm
12 able to tell you. But that's what we want to
13 present.

14 **THE COURT:** All right. Factually it sounds a
15 little more -- there's a little more facts than were
16 originally laid out in the motion. Let me have my --

17 **MR. MEADORS:** I'm sorry.

18 **THE COURT:** Yeah. Those are my notes. So, I
19 think, Mr. Riley, it's probably better done by a
20 proffer. It's better done by a proffer.

21 **MR. RILEY:** All right, sir. And then do you
22 want me to argue about it at that time, right?

23 **THE COURT:** Well, until we know exactly what
24 he's going to say and what he saw and what he heard,
25 I don't think we can. I just -- if the facts were as

1 you laid them out, then I might have one idea about
2 how I was going to rule. If the facts are as
3 Mr. Meadors points out, I might have a different
4 opinion as to how to rule.

5 **MR. RILEY:** Yes, sir. I don't recall learning
6 about that part about he jumped on him, on the
7 defendant at a later date on the way to the chapel or
8 outside the chapel or near the chapel.

9 **MR. MEADORS:** It's a separate occasion after
10 that. And I didn't know that either until recently.
11 And I'm not saying we'd be offering that, but I was
12 trying to explain everything I knew.

13 **THE COURT:** Is there anything else?

14 **MR. WHITLARK:** No. But I thought I heard "we
15 are going to be heros." And if I heard that, we've
16 got a stake in this thing, too.

17 **MR. MEADORS:** I'm sorry?

18 **MR. WHITLARK:** I said I heard "we".

19 **THE COURT:** I didn't hear Mr. Whitlark either.

20 **MR. KENDRICK:** I think what he's referring to,
21 Your Honor, is --

22 **MR. MEADORS:** Oh. I'm sorry.

23 **MR. KENDRICK:** We'll just wait for the proffer.
24 I think if there is a "we are going to be heros",
25 then we need to see what the witness, who he says is

1 around.

2 **THE COURT:** Heros?

3 **MR. KENDRICK:** Well, if they're saying that Mr.
4 Whitehead may have made some admission, and when he
5 says "we", I don't know who he's going to say he's
6 talking to. But I think it would be better argued
7 tomorrow, Your Honor. We'll see what the guy says.

8 **THE COURT:** Okay.

9 **MR. KENDRICK:** Thank you, Judge.

10 **MR. MEADORS:** I'll to go check on this right
11 now.

12 (Pause)

13 **MR. WHITLARK:** Your Honor, can I be released?
14 I've got four or five witnesses that I need to
15 release until tomorrow.

16 **THE COURT:** Your guess is as good as mine about
17 time. But I think you can safely assume we will not
18 get to them until tomorrow at the earliest.
19 Solicitor.

20 **MR. KENDRICK:** Whenever you're ready, I just
21 wanted to address one thing, Your Honor.

22 **THE COURT:** Come to order, please. Mr.
23 Kendrick.

24 **MR. KENDRICK:** Your Honor, just again for the
25 record, we would object to the way this redaction is

1 done. It is so obvious that something has been taken
2 out and put back in. We feel based on our earlier
3 arguments we've really not done anything properly to
4 redact the statement. I know Your Honor has already
5 ruled, but I just feel that need to be put it on the
6 record.

7 **THE COURT:** Yes, sir.

8 **MR. RILEY:** Your Honor, I wholeheartedly second
9 that.

10 **THE COURT:** All right.

11 **MR. MEADORS:** For the record, too, previously
12 the Court had instructed us to give a copy of the
13 polygraph and all its, whatever you all didn't have.

14 **THE COURT:** Are you ready for the jury?

15 **MR. MEADORS:** The State's ready. Yes, sir.

16 **THE COURT:** Defense ready for the jury? I
17 assume they are.

18 **MR. WHITLARK:** Yes, sir, Your Honor.

19 **THE COURT:** Bring the jury, please.

20 **MR. WHITLARK:** Sorry about that, Your Honor.

21 (Jury in at 3:25 p.m.)

22 **THE COURT:** All right, ladies and gentlemen.
23 We're now ready to continue. Again, there were
24 matters that will come up during the trial that
25 needed some sort of advance preparation. And that's

1 the delay. I apologize to you for the delay, but
2 sometimes it just happens. You can't ever trust me
3 when I say it will be just a few minutes. But I try.
4 All right, Solicitor. Call your next witness.

5 **MR. MOAK:** The State calls Corporal Mickey
6 Sellers of the Kershaw County Sheriff's Department.

7 MICHAEL SELLERS, after being duly sworn,
8 testifies as follows:

9 **THE CLERK:** Thank you. Please be seated in the
10 witness chair and state your full name for the
11 record.

12 **THE WITNESS:** Michael Sellers.

13 DIRECT EXAMINATION

14 **BY MR. MOAK**

15 **Q** Corporal Sellers, how long have you been with the
16 Kershaw County Sheriff's Department?

17 **A** A little over four years.

18 **Q** And you're a corporal there now?

19 **A** Yes, sir.

20 **Q** Back in December of 2006, what were you?

21 **A** I believe I was a resident deputy of Elgin.

22 **Q** Okay. Before you came to our Sheriff's Department,
23 where were you employed at?

24 **A** Camden Fire Department.

25 **Q** And how long were you there?

1 **A** Just a little over nine years.

2 **Q** Over nine years? So, suffice it to say, the past 13

3 years you've seen some pretty bad things?

4 **A** Yes, sir.

5 **Q** Do you remember being on duty on the night of

6 December 13th, 2006?

7 **A** Yes, I do.

8 **Q** Do you remember being dispatched to go to

9 Lane?

10 **A** Yes, I do.

11 **Q** Do you remember about what time you got there?

12 **A** I believe my arrival time was somewhere around 6:40,

13 6:42 p.m.

14 **Q** When you got there, who did you encounter?

15 **A** I encountered three people that were standing outside

16 the front door. I believe it was Melissa Davy and a

17 brother and sister, Zachary and Molly. I believe it

18 was Waltemath.

19 **Q** Okay. Did you ask them if they'd been inside the

20 house?

21 **A** Yes. They stated they had.

22 **Q** What did you instruct them to do?

23 **A** I instructed them to get back in their vehicle and

24 move it to the end of the driveway which is out in

25 front of the house on the road and I would get back

1 with them.

2 Q Now, can you explain to the jury what your job as the
3 first deputy on the scene was?

4 A My first job, my job when I arrive on a scene is to
5 secure the scene for any oncoming, like EMS, make
6 sure the scene is secure for them to come in and
7 check the victim.

8 Q Now, if there's somebody in the home that's
9 dangerous, can EMS go in there?

10 A No, they cannot.

11 Q So did you actually have to go in the home?

12 A Yes, I did.

13 Q And you went in the home?

14 A Yes, I did.

15 Q When you went in the home, were you -- what did you
16 have in your hands?

17 A My pistol.

18 Q Okay. You understood this was for a serious offense
19 you were dispatched out --

20 A Yes, I did.

21 Q -- for? Okay. I'm going to show you some pictures
22 from inside the home. And the first set I'm going to
23 show you, I'm going to ask if they're a fair and
24 accurate depiction of what you saw when you went in
25 the front door and see if you can identify all of

1 them. And I'll announce the numbers once you get
2 done looking at them.

3 **A** Yes.

4 **Q** Are these are a fair and accurate depiction of what
5 you saw when you entered the home?

6 **A** Yes.

7 **MR. MOAK:** Your Honor, at this time I move to
8 have State's 33, 34, 35, 36, 38, 39, 40 and 41 marked
9 for I.D. only, Your Honor.

10 **THE COURT:** All right.

11 **Q** I show you another stack of pictures. And do these
12 also fairly and accurately depict what you saw when
13 you went into that home?

14 **A** Yes.

15 **Q** Okay.

16 **MR. MOAK:** Your Honor, at this time I move
17 State's 31, 32, 25, 26, 24, 27, 37, 28, 29 and 30
18 into evidence. I believe 37 is subject to their --

19 **MR. MEADORS:** The defendant's objection.

20 **MR. MOAK:** -- objection.

21 **MR. WHITLARK:** No objection as except as to 37,
22 Your Honor.

23 **THE COURT:** Over the defendants' objections.

24 **MR. KENDRICK:** Yes, sir.

25 **THE COURT:** All defendant's objections.

1 **MR. RILEY:** Yes, sir.

2 **THE COURT:** They're admitted.

3 (WHEREUPON, State's Exhibit No. 24 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 25 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 26 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 27 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 28 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 29 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 30 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 31 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 32 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 37 is admitted
22 into evidence.)

23 **Q** Deputy Sellers, I'm going to show you what's marked
24 State's 37. Can you tell us what's in that picture?

25 **A** I believe that's the living room right when you come

1 in the front door and has the victim laying --

2 Q Is the front right here?

3 A Yes. The front door is going to be over here on this
4 side.

5 Q So when you came in, this would have been to your
6 front right?

7 A Kind of to the -- yes.

8 MR. MOAK: Okay. Your Honor, at this time I'd
9 like to publish the pictures to the jury.

10 THE COURT: Yes, sir. Go ahead.

11 Q Now, looking at State's 28, what does that appear to
12 be?

13 A It appears to be one of the bedrooms with the
14 mattress moved over to the side.

15 Q It's not on the bed?

16 A It's not.

17 Q When you went through the home, before I show you all
18 the other pictures, what shape was the home in?

19 A It was in a total wreck, like somebody had went
20 through every drawer, moved the mattresses. It
21 wasn't -- it didn't look like it was livable.

22 Q So the drawers were yanked out?

23 A Yeah. And everything was turned over in the --

24 Q Were items scattered on the floor?

25 A Yes, they were.

1 Q Did it appear to have been ransacked?

2 A Yes.

3 Q And have you been in a home that's been burglarized

4 before?

5 A Yes, sir.

6 Q Did it appear similar to the other homes you've been

7 into?

8 A Yes. But worse.

9 Q Worse? Okay. So this one here, you can look through

10 the door and see the mattress off?

11 A Yes.

12 Q And you've got a little dresser with drawers yanked

13 out?

14 A Yes.

15 Q These next four appear to be the same room I believe.

16 Does this appear to be the master bedroom?

17 A Yes. I do believe it is.

18 Q And is the mattress yanked off of that bed as well?

19 A Yes. And drawers turned over, pulled out and

20 emptied.

21 Q And all four of those show different angles of the

22 room?

23 A Yes.

24 Q This picture here, the second one I showed you, is

25 that a closer up version of that picture?

- 1 **A** Yeah. I believe that's a closer up of one of the
2 pictures they have over there.
- 3 **Q** Is the mattress off the bed?
- 4 **A** Yes.
- 5 **Q** And is this a picture of one of the side rooms?
- 6 **A** I believe so. I'm not 100 percent sure of the exact
7 room that that is.
- 8 **Q** But is there stuff all over the floor?
- 9 **A** Yes.
- 10 **Q** And these two pictures right here, do they appear to
11 be the same picture from opposite angles?
- 12 **A** Yes. From when you come in the front door.
- 13 **Q** And this is where the burgundy chair is on the first
14 picture we saw?
- 15 **A** Right.
- 16 **Q** And again it shows the disarray and everything?
- 17 **A** Yes.
- 18 **Q** So this is what you saw when you were in that home
19 that day?
- 20 **A** Yes, it is.
- 21 **Q** Now, you say you had your firearm out?
- 22 **A** Yes, I did.
- 23 **Q** You were there to make sure -- well, one, you've had
24 some first responder training?
- 25 **A** Yes, sir. When I worked at the fire department, I

1 did medical first response.

2 Q Did the victim appear to be deceased to you?

3 A Yes, he did.

4 Q And based upon all your training as a fireman and at
5 the Sheriff's Department, he was deceased?

6 A Yes, he was.

7 Q Were you also there to make sure nobody else was in
8 the home?

9 A Yes.

10 Q Was there an occasion when you saw a mirror?

11 A Yes, it was.

12 Q Can you tell the jury what happened when you saw that
13 mirror?

14 A As I was clearing the residence, I was going down the
15 hallway, I was in the house by myself. The hall,
16 there was a room to the left and I believe the
17 hallway turned to the right. And you don't just walk
18 around corners. And I kind of looked in that room
19 because the door was open, just did a quick scan.
20 And when I leaned around the corner there was a
21 mirror and I thought someone was standing at the end
22 of the hallway.

23 Q What did that almost cause you to do?

24 A It almost caused me to fire my gun.

25 Q And that's because of what the effect of the scene

1 was on you?

2 **A** Right. A lot of stress.

3 **Q** Okay. And you've been in law enforcement and the
4 fire department for 13 years?

5 **A** Yes, sir.

6 **Q** Okay. Now, do you remember what time you departed
7 the scene?

8 **A** I believe I left at right just before midnight, 11:53
9 I believe.

10 **Q** And I'm actually getting ahead of myself. So far
11 you've checked on the victim. He's deceased. You
12 have checked the house. There's no one in the home.
13 What else did you do to secure the scene?

14 **A** At that time I came back outside. I pulled my patrol
15 car to the end of the driveway, --

16 **Q** Mm-hmm (affirmative).

17 **A** -- got out my security tape and roped off the whole
18 front yard.

19 **Q** That's that yellow tape that says "Caution - Police
20 Line"?

21 **A** Yes.

22 **Q** Did you at some point get the names of the three
23 individuals that were already at the house?

24 **A** After I roped off the front yard, I went directly to
25 the three individuals and wrote down their names and

1 addresses.

2 Q And dates of birth?

3 A Yes.

4 Q And that was Melissa Davy and Zachary and Molly
5 Waltemath?

6 A Yes.

7 Q Did anybody else show up at the scene from law
8 enforcement?

9 A Yeah. There was others that showed up.

10 Q And that was in investigations?

11 A My lieutenant, investigations, EMS and the coroners.

12 Q Okay. And your job was to basically keep the scene
13 the same until they got there?

14 A Yes. I actually stayed at the front door once the
15 other deputies started arriving and I took names of
16 everyone that went inside the residence.

17 Q And Can you just list those names for us?

18 A Yes, sir. Investigator George Marthers, Investigator
19 Danny Catoe, Captain Thomley, Lieutenant Hopple,
20 myself. From EMS, Johnny Burris. And John Stewart
21 from the Coroner's Office, Johnny Fellers, and I
22 believe Joe Wilson.

23 Q Okay. That's who came?

24 A Yes.

25 Q Okay. Now, you said you left shortly before

1 midnight?

2 **A** Yes.

3 **Q** At some point did you write an incident report?

4 **A** Yes, I did.

5 **Q** And do you have a copy of that up there with you?

6 **A** I do.

7 **Q** Looking at the incident report, the basic information
8 down at the subject line, did you fill that in?

9 **A** Yes.

10 **Q** And then after the subject line, that subject box
11 where it says "narrative", did you fill that part in?

12 **A** Yes, I did.

13 **Q** And this incident report is three pages long,
14 correct?

15 **A** Right.

16 **Q** And there are actually one, two, three, four, five
17 blocks for either victim, subject, ID overview or
18 subject with names of people in there?

19 **A** Right.

20 **Q** Four of those blocks, were they filled in by
21 investigations after you had written the report?

22 **A** I believe three of them were.

23 **Q** Just looking at it, the first page is Mr. Whitehead's
24 name?

25 **A** Yes.

- 1 Q On the second page is Mr. McDonald's name?
- 2 A Yes.
- 3 Q And on the third page you've also got Mr. McDonald's
- 4 name again and Robert Cannon?
- 5 A Right. There is four. I did not see that four.
- 6 Q So one is just on there twice?
- 7 A One is twice, yes.
- 8 Q And the fifth name is one that you had put on there,
- 9 you entered yourself?
- 10 A Right.
- 11 Q And that's a name that you had been told by someone
- 12 else?
- 13 A That was the name I was told as I was getting
- 14 information from the people on the scene.
- 15 Q Okay. So that was entered there off of hearsay?
- 16 A Yes.
- 17 Q And looking at your narrative, in your narrative,
- 18 that denotes what you just testified to; you were
- 19 dispatched to Lane. It has some details of
- 20 a 911 call on there?
- 21 A Yes.
- 22 Q And those details, were they told to you by dispatch?
- 23 A Some were told by dispatch and some was told by
- 24 someone else.
- 25 Q Ms. Davy?

1. A Ms. Davy.
2. Q Okay. But pretty much after you have where you were
3. dispatched, up until the third page where it starts
4. back in with responding officer, is that information
5. stuff that you were told by either Ms. Davy or by
6. dispatch?
7. A Right. It was hearsay.
8. Q And that's approximately nine and a half lines?
9. A Yes.
10. Q And at that point you have what you did when you
11. arrived and cleared the residence?
12. A Right.
13. Q And when you went through the home, and I think you
14. mentioned the mirror; near the mirror, was the back
15. door near that mirror?
16. A It was a side door. And, yes, it was right by the
17. mirror.
18. Q Was anything strange about that door?
19. A The wood was all broken in and the door was cracked
20. open. I could tell it had been kicked in.
21. Q It was kicked in?
22. A Yes.
23. Q And you've got that in your report?
24. A Yes.
25. Q That it was kicked in. And then you've got you

1 secured the residence, called the investigators. And
2 then you've got Captain Thomley, Lieutenant Hopple,
3 Investigator Catoe and Investigator Marthers who you
4 just already testified today were there at the scene?

5 **A** Right.

6 **Q** And that's all you wrote?

7 **A** Yes.

8 **Q** No further questions.

9 **THE COURT:** Anything from the defendants?

10 **MR. WHITLARK:** Yes. May it please the Court,
11 Your Honor?

12 CROSS EXAMINATION

13 **BY MR. WHITLARK**

14 **Q** Officer Sellers, in your report you do state that the
15 back door was kicked in. Is that right?

16 **A** Yeah. Side door. Back door. I don't know if it had
17 an actual back door on the residence. I know it was
18 on the end. I would call that a back door from where
19 I live.

20 **Q** And when you went in, you say you had your pistol
21 drawn?

22 **A** Yes, I did.

23 **Q** And you were walking down the hall?

24 **A** Yes.

25 **Q** And then you came upon a mirror and saw a reflection

1 of yourself?

2 **A** Right.

3 **Q** And almost shot? All right, sir. When did you make
4 a determination that the three people that were there
5 weren't involved? Did you make a determination of
6 that?

7 **A** One of them was a caller. She was on the phone with
8 911 while I was in route, and I was getting
9 information from our dispatcher while I was on the
10 way there.

11 **Q** Mm-hmm (affirmative).

12 **A** No, I did not know that they weren't involved.

13 **Q** Right.

14 **A** I made contact with them at the door, told them to
15 stand by while I cleared the residence for my safety
16 and their safety.

17 **Q** Right. Now, most of your background was in being a
18 fireman and so forth?

19 **A** Yes, sir.

20 **Q** A lot of your years? All right. And were you ever
21 trained that, you know, if somebody is at the scene
22 you'd better secure them before you turn your back on
23 them, right?

24 **A** Could be. But I used my judgment and I knew I didn't
25 have to secure them.

- 1 Q All right. Now, what time did you get there again?
- 2 A I arrived at 6:42.
- 3 Q Okay. And you were in route from -- you were at a
- 4 substation? Were you at a substation or a -- you had
- 5 mentioned something about being an officer out in the
- 6 field or something? What were you?
- 7 A I was a resident deputy assigned to the Elgin area.
- 8 Q Oh, I've got you. You all have got a little
- 9 substation out there or something?
- 10 A There is a substation there, but I was actually on
- 11 the road.
- 12 Q Okay. Were you nearby fairly --
- 13 A Five minutes down the road.
- 14 Q Okay. And you listened to the 911 call as it came
- 15 in?
- 16 A No, I have not.
- 17 Q Were you listening as you drove over there?
- 18 A Dispatch talked to me on my radio. I did not listen
- 19 to the 911 call.
- 20 Q Oh. I've got you. All right. Now, you were asked
- 21 about -- I'm going to hand you I guess what you were
- 22 shown. Were you shown these documents just now by
- 23 the solicitor?
- 24 A I have one.
- 25 Q Is this it? Is this it? Are these two of these? I

1 mean, is that what you were shown? I heard you say
2 Mr. Derrick McDonald's name. I was just wondering --
3 A You're missing a page.
4 Q Here you go. I'm sorry.
5 A Mentioned whose name?
6 Q Did you say Derrick McDonald?
7 A No, I did not.
8 Q I thought I heard that read to you.
9 A I believe he mentioned that. I didn't.
10 Q You didn't mention that at all, did you?
11 A No, I did not.
12 Q You didn't have any information about Derrick
13 McDonald at all, did you?
14 A No, I did not.
15 Q As a matter of fact, you didn't have anything to do
16 with those reports he was reading to you, did you?
17 A Yes, I did. If you see on the front page of the
18 original incident report, down at the very bottom it
19 says follow-up investigation. It has a check yes.
20 Q Right.
21 A That's where investigators go back in our reports and
22 add information as they gather it.
23 Q Okay. So they went back and later added Derrick
24 McDonald's name to this?
25 A Yes. That is done frequently.

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

2 **THE COURT:** Mr. Kendrick.

3 CROSS EXAMINATION

4 **BY MR. KENDRICK**

5 **Q** Good afternoon. I'm Josh Kendrick. I represent
6 Robert Cannon. When you got there, I think you
7 testified earlier that this with one of the worst
8 ransackings you had seen?

9 **A** Yes.

10 **Q** So this house thoroughly had been gone through?

11 **A** I don't think they missed a room.

12 **Q** Okay. They were in every single part of the house,
13 too?

14 **A** Pretty much, yes.

15 **Q** Okay. When you were looking at this incident report,
16 you said that you got information on the scene about
17 something, right?

18 **A** Yes, I did.

19 **Q** And then the other names were placed on there by --

20 **A** Investigators.

21 **Q** -- investigators? All right. I notice on this
22 incident report it says entered by M. Sellers and it
23 has your name, date 12-14-2006, at 2:14?

24 **A** Right.

25 **Q** Okay. Is there any way to tell when the other

1 information was entered into this?

2 A Not that I'm aware.

3 Q So it could have been at any time?

4 A Correct.

5 Q Do you all keep any kind of log of when this stuff
6 was entered?

7 A I believe our computer has the dates and stuff on it
8 when it's -- when the other information -- if I go
9 back into my narrative and add something, it prints
10 out the last time that I was in there. It usually
11 has the date on it.

12 Q Okay. So are you saying that what's printed at the
13 top of this, that wouldn't accurately give us any
14 time that these other names were added in there?

15 A Correct.

16 Q Okay.

17 A That is when I put my initial report in.

18 Q Okay. And is that -- I'm sorry, because I know
19 sometimes police use different times. When it says
20 2:14, does that mean 2:14 in the morning?

21 A Correct. If it was P.M., it would have been 14:14.

22 Q 14:14. I've got you. All right. And you were there
23 the entire time this house was being investigated, I
24 guess would be the --

25 A Yes, I was.

1 Q When you left, were you the last person to leave, or
2 was everybody leaving at the same time?

3 A When I left, everyone left.

4 Q And at no point was anybody questioning the three
5 people that were on the scene?

6 A That wasn't my job. I'm not up aware.

7 Q Thanks. That's all I have.

8 THE COURT: Mr. Riley. Mr. Reuwer.

9 MR. RILEY: May it please the Court.

10 CROSS EXAMINATION

11 BY MR. REUWER

12 Q Good afternoon, Corporal Sellers.

13 A Good afternoon.

14 Q Corporal Sellers, did either of the three people who
15 were there when you arrived at the scene on
16 December 13th re-enter the house while you were
17 there?

18 A Not while I was there.

19 Q And you were there from 6:30 'til --

20 A 'Til we left.

21 Q -- 11:30?

22 A Actually 11:53.

23 Q Okay. Do you know how many doors there are that go
24 in the house?

25 A No, I do not. I know I went in the front door and I

1 saw another door that was kicked in on the side of
2 the residence.

3 Q So there could have been another door?

4 A There could have very well been.

5 Q Do you know if any of the windows were accessible?

6 A I'm not aware. I didn't --

7 Q I mean, approximately what level were the windows at?

8 A I'm sure it could be. It's like a regular house,
9 mobile home.

10 Q So some could be climbed in or climbed out?

11 A Very well could be. I'm not sure.

12 Q Were any of the windows open?

13 A I am not aware.

14 Q Could they have been opened?

15 A I can't say that.

16 Q Okay. On page 2 of your incident report you
17 mentioned Adrian Duran's statement.

18 MR. MOAK: Your Honor, I object, if he's asking
19 about something that was hearsay on a report.

20 THE COURT: I don't know.

21 MR. REUWER: It's on page 2 of his report, Your
22 Honor.

23 THE COURT: Ask the question again.

24 Q My question is, Adrian Duran's name appears on page 2
25 of your report?

- 1 **A** Yes, it does.
- 2 **Q** Was he ever arrested in this matter?
- 3 **A** No, he was not.
- 4 **MR. MOAK:** Your Honor, again, on direct it was
- 5 testified that was information he got from hearsay.
- 6 **THE COURT:** Overruled. Go ahead.
- 7 **MR. REUWER:** Thank you, Your Honor.
- 8 **Q** And your answer, Officer?
- 9 **A** Not that I'm aware. I don't believe he was.
- 10 **Q** Okay. How many cars were at the scene at the time
- 11 you arrived?
- 12 **A** There was one car in the carport and I believe the
- 13 car Melissa was driving.
- 14 **Q** And that would be cars on or near the property?
- 15 **A** They were on the property.
- 16 **Q** What color was the car in the carport?
- 17 **A** I don't know. It was dark.
- 18 **Q** That was going to be my next question, Officer. What
- 19 color is Melissa's car?
- 20 **A** I didn't know until I heard them talk about it today.
- 21 **Q** Okay. And I just want you to answer what you know.
- 22 Was it dark the entire time from 6:30 to 11:30 on
- 23 December 13th, 2006?
- 24 **A** Yes, it was.
- 25 **Q** Had you ever been in this home before?

1 **A** No, I have not.

2 **Q** Had you ever been dispatched on or near to this home
3 before?

4 **A** I have been on Ryan Lane numerous times but not this
5 residence.

6 **Q** Anything regarding this residence?

7 **A** No.

8 **Q** Did you get license plates of the two vehicles that
9 were there?

10 **A** No, I did not.

11 **Q** And for my benefit, approximately how many other
12 officers or EMS people were there between 6:30 and
13 11:30?

14 **A** I wrote it all down. I don't know if they give you a
15 copy. I have one, two, three, four, five, six,
16 seven, eight. I believe there's nine people total.
17 That's counting law enforcement, EMS and Coroner's
18 Office.

19 **Q** And, Corporal Sellers, that's nine plus you?

20 **A** That's counting me.

21 **Q** Counting you. Thank you. Was the car in the carport
22 ever moved during the time you were there?

23 **A** Not while I was there.

24 **Q** Just one moment, Your Honor. Two more questions,
25 Corporal. Was Adrian Duran ever arrested for

1 anything else?

2 **A** I'm not aware.

3 **Q** Okay. And as you were explaining securing the scene,
4 is that to make sure that nothing gets taken in or
5 out or moved within the location?

6 **A** That is part of securing the scene. But I have to
7 make sure there's no immediate danger for EMS and
8 other people coming on the scene. Myself, people
9 that are already there, I have to secure the scene
10 for my safety, their safety and everybody's safety
11 that's arriving on the scene.

12 **Q** Once some investigators are there or EMS is there, is
13 there some movement of items in the scene?

14 **A** I'm sure there was. I was not on the inside of the
15 house. Once I cleared the residence I never entered
16 back in the residence. I stood at the front door and
17 did not let anybody go in and out. If they did, I
18 wrote their names down.

19 **Q** Thank you, Corporal Sellers. One last question. You
20 have testified you hadn't been in the house before?

21 **A** No.

22 **Q** So you wouldn't actually know what the condition of
23 the house was inside; you know, for example, how
24 people lived there prior to this Wednesday,
25 December 13th?

1 **A** No, I would not.

2 **Q** Thank you, Corporal.

3 **THE COURT:** Redirect?

4 **MR. MOAK:** No further questions.

5 **THE COURT:** All right. You may come down, sir.

6 Thank you very much. May the witness be excused?

7 **MR. REUWER:** Yes, Your Honor.

8 **THE COURT:** Without objection.

9 **MR. WHITLARK:** That's fine with us.

10 **THE COURT:** Next witness.

11 **MR. MEADORS:** Danny Catoe.

12 DANNY CATOE, after being duly sworn, testifies
13 as follows:

14 **THE CLERK:** Thank you. Please be seated in the
15 witness chair and state your full name for the
16 record.

17 **THE WITNESS:** Danny Catoe.

18 DIRECT EXAMINATION

19 **BY MR. MEADORS**

20 **Q** Good afternoon, Investigator Catoe.

21 **A** Good afternoon.

22 **Q** Please tell these ladies and gentlemen a little bit
23 about Danny Catoe, where you're from, your
24 background, your schooling, your training and how
25 long have you been in law enforcement, please?

1 **A** I'm from here in Kershaw county. I have been in law
2 enforcement since November of '94. I spent several
3 years on the road. I've actually been in criminal
4 investigations here at the Kershaw County Sheriff's
5 Office for the past ten years. I have had several
6 homicide investigation classes along with crime scene
7 processing classes. I've also had the chance to
8 attend some latent lift and documentation classes.
9 One was some comparison classes.

10 **Q** You said latent lift and documentation classes?

11 **A** Yes, sir.

12 **Q** Explain that to the ladies and gentlemen of the jury?

13 **A** Basically it's where they teach you how to lift
14 latent prints from different surfaces and how to
15 document them after you have lifted them for
16 processing.

17 **Q** All right. And how do you attempt to lift a print
18 from a scene?

19 **A** Basically we have -- the most common method is with
20 powder. We apply the powder to the surface, try to
21 develop a print. If a print comes out, we then lift
22 it with tape that we have, place it on a card, and
23 it's then sent to the SLED lab for comparison and
24 identification.

25 **Q** So the different positions you've had with Sheriff

1 McCaskill at the Sheriff's Department are what?

2 **A** I worked the road for Sheriff McCaskill. I was then
3 promoted to resident deputy where I worked the
4 Bethune, Cassatt, Liberty Hill and West Valeria, Mt.
5 Pisgah area of the county. I then in '98 was
6 promoted to criminal investigations and I've been
7 there ever since.

8 **Q** And who is -- there is the sheriff and then there is
9 the chief. And who is head of the investigations?

10 **A** Captain David Thomley is the head of criminal
11 investigations.

12 **Q** And are you all assigned to certain areas now? We've
13 got a new Sheriff's Department. How are you
14 investigators assigned? Are y'all on call? Do you
15 have certain shifts you work? How does that work?

16 **A** I basically work the northern part of the county, but
17 we do have a call week once every six weeks, which is
18 24 hours a day we could be called to any location in
19 the county if something arises after hours that needs
20 our attention.

21 **Q** Now I want to go back to December of 2006,
22 Investigator. State's No. 8, what we've all been
23 talking about, do you recognize that as a December of
24 2006 calendar?

25 **A** I do.

1 Q And you were working for the Sheriff's Department at
2 that time?

3 A I was.

4 Q In what capacity?

5 A As a criminal investigator.

6 Q And did you have an occasion to respond or get called
7 to Lane?

8 A I was.

9 Q And tell the folks where that is? What part of the
10 county?

11 A That's in the Elgin community of Kershaw County.

12 Q And about what time did you respond to the scene?

13 A I was notified somewhere between 6:30 and 7:00. Our
14 dispatch called me at home and advised me that we had
15 a death and they needed an investigator.

16 Q And were you the chief investigating officer on this
17 case?

18 A I was.

19 Q Had you been to -- well, you're familiar with this
20 area I presume?

21 A Somewhat.

22 Q And I'll just briefly show you what I believe has --
23 if I could approach, Your Honor?

24 **THE COURT:** Yes, sir.

25 Q -- already been entered as State's 15. Do you

1 recognize that?

2 A Yes, I do.

3 Q And State's 16?

4 A I do.

5 Q And is that the residence you responded to that

6 night?

7 A It is.

8 Q Describe the scene as you got there that night,

9 Investigator, as far as outside?

10 A It was dark when I arrived at the scene. When I

11 pulled up I parked beside the highway. I approached

12 the front of the trailer. There was three or four

13 people standing right at the highway in the driveway

14 area. I seen Deputy Sellers. He was present at the

15 scene. Captain Thomley immediately met me in the

16 front yard and kind of advised me of what we had.

17 Q You're on the scene December 13th, correct? What's

18 the first thing you did? Or what observations did

19 you make as you were assessing the scene, if any?

20 A The first thing I noticed was that the front door was

21 opened. And that was because Deputy Sellers had

22 cleared the scene. I'd seen some yellow tape. And

23 at that time after I was briefed by Captain Thomley,

24 I immediately went back to my truck and retrieved my

25 camera.

1 Q And as an investigator of the Sheriff's Department,
2 what, if anything, do you try to do at the scene when
3 you first get there?

4 A The first thing we try to do is to make sure that we
5 photograph the scene completely.

6 Q And there's no question the victim was dead, correct,
7 when you -- Deputy Sellers got there?

8 A Yes, sir.

9 Q And did you photograph the scene?

10 A I did.

11 Q Describe the scene. Just describe it when you walked
12 in now. What did it look like when you went inside?

13 A It was a complete mess. When I went through the
14 front door, everything in the living room, everything
15 that I could see appeared to be turned over or pulled
16 out and scattered with the victim's body laying right
17 in the middle of it.

18 Q And how many pictures within the house did you take?

19 A I have no idea of the total number but there was a
20 lot of pictures that I took.

21 Q Were there any other doors at Lane that you
22 examined?

23 A There was.

24 Q And can you describe any of the other doors and if
25 there was any damage to them?

1 **A** This door, if you was looking at the mobile home,
2 this door would have been on the right side of the
3 trailer. I guess some people would call it a back
4 door or a side door. I actually referred to it as a
5 side door. It was kind of on the end of the trailer
6 on the carport side of the mobile home.

7 **Q** Beg the Court's indulgence.

8 (Pause)

9 **MR. MEADORS:** Thank you.

10 **MR. WHITLARK:** Your Honor, the Plaintiff or
11 Defendant McDonald has no objection to 49 -- 48
12 through 55 and 57 through 64. Those are continuous
13 numbers. 48 through 55 and 57 through 64 we have no
14 objection to.

15 **THE COURT:** Let's go.

16 **MR. MEADORS:** And then 45 -- 43, 45, 47 prior to
17 that.

18 **MR. WHITLARK:** No objection to those three from
19 McDonald.

20 **MR. RILEY:** I concur, Judge.

21 **MR. WHITLARK:** It's Exhibits 48 through 55 and
22 then 57 through 64 and then 43, 45 and 47.

23 **MR. MEADORS:** Exactly right. If I could
24 approach?

25 **THE COURT:** Yes, sir.

1 (WHEREUPON, State's Exhibit No. 43 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 45 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 47 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 48 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 49 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 50 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 51 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 52 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 53 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 54 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 55 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 57 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 58 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 59 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 60 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 61 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 62 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 63 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 64 is admitted
14 into evidence.)

15 Q Investigator, I think you just referred to a door,
16 correct?

17 A That's correct.

18 Q And I'm going to show you what's marked State's 50.
19 It's been entered as State's 50. Do you recognize
20 that?

21 A I do.

22 Q Is that the door you were just talking about?

23 A That is.

24 Q Hold that for me a second. Looking at State's 53 and
25 54, you've got State's 54, correct? Look at that.

- 1 **A** State's 54.
- 2 **Q** What is that?
- 3 **A** That is actually what I call striking plates from the
- 4 door facing.
- 5 **Q** Where do they appear to come from?
- 6 **A** They fit the actual -- actually are where the bolts
- 7 go into the doorframe to secure the door shut.
- 8 **Q** So it's fair to say based on your observations, 54
- 9 came from 50?
- 10 **A** That's correct.
- 11 **Q** And that's the way it appeared when you saw it?
- 12 **A** It was.
- 13 **Q** And you took a photograph of it?
- 14 **A** I did.
- 15 **Q** You've got these little things, placards or placcards
- 16 (phonetic), however you want to do it, that's got L
- 17 by it?
- 18 **A** That's correct.
- 19 **Q** Why do you do that?
- 20 **A** At that time just to mark the evidence that we have
- 21 in order so that it will identify it in photos.
- 22 **Q** If you're taking photos, do you kind of take a
- 23 picture from out far back and kind of zoom in, too?
- 24 **A** We do.
- 25 **Q** State's 51, do you recognize that?

1 **A** I do.

2 **Q** And State's 52?

3 **A** I do.

4 **Q** What is -- and that's got a placard H on it, correct?

5 **A** That's correct.

6 **Q** What is that?

7 **A** That is the tip of a purple Latex glove.

8 **Q** And where did you find that?

9 **A** Found it on the vinyl floor right beside or kind of
10 behind the refrigerator where it had been pushed away
11 from the wall.

12 **Q** And is that depicted on 51? In 51. Excuse me.

13 **A** It is. It does.

14 **Q** And does 57 appear to be a closer picture of the
15 door?

16 **A** It does.

17 **Q** Now, what is in 55 with the placard K in there?

18 **A** That is actually a molding from the door facing.

19 **Q** And based on your training, experience and your
20 observation that night, how would that molding -- why
21 is that on the floor?

22 **A** Due to the door being kicked in, the molding had
23 busted and it had throwed it over into the foyer area
24 of the mobile home.

25 **Q** Danny, this is State's 61. Do you recognize that?

- 1 **A** I do.
- 2 **Q** What's that a picture of?
- 3 **A** That's the picture of the frame of a table that was
- 4 inside the living room at the victim's residence.
- 5 **Q** State's 62?
- 6 **A** That's also inside the living room showing the couch
- 7 and the bottom part of the table.
- 8 **Q** Does it appear that a part of this couch is not where
- 9 it should be?
- 10 **A** Yes, it does.
- 11 **Q** What does that appear, and what did it appear to you
- 12 this night, if anything?
- 13 **A** The couch, one part of the couch was actually flipped
- 14 over backwards, not actually turned upside down but
- 15 it was just flipped over back towards the wall.
- 16 **Q** State's 63?
- 17 **A** That shows a bloody pillow and some blood spatter
- 18 throughout the living room area.
- 19 **Q** You said blood spatter, correct?
- 20 **A** Spatter. That's correct.
- 21 **Q** And again a picture of 49?
- 22 **A** It also shows the bottom side of the couch and
- 23 different things that was thrown about the room along
- 24 with some blood stains.
- 25 **Q** Different stuff thrown about a room. Did that

1 appear -- did that stuff appear like it was usually
2 in that position?

3 **A** No, sir.

4 **Q** Just to go through, 48?

5 **A** That is actually a bottom part of a bowl. It's
6 actually the metal part of it, and it does have some
7 blood spatter on it.

8 **Q** And if you back away, in State's 49, do you see it in
9 State's 49?

10 **A** You do.

11 **Q** State's 59?

12 **A** That is just behind one of the recliners and beside
13 the recliner inside the living room, some stuff that
14 was knocked off of a shelf and a baseball bat up
15 under the recliner there, the handle actually
16 sticking out.

17 **Q** Okay. Point to that on here. Where?

18 **A** You can actually see the black taping around the
19 handle of the baseball bat.

20 **Q** And State's 60?

21 **A** That is in a bathroom in the residence where they
22 pulled out the drawers and actually throwed towels
23 and different clothes and shoes and stuff about the
24 room.

25 **Q** How would you describe this room if you were -- well,

1 like you're trying to describe to them right now as
2 the investigator?

3 **A** I mean, it was just ransacked. That's the only way I
4 know to explain it.

5 **Q** Were there several rooms in this house trailer?

6 **A** There was.

7 **Q** And State's 58?

8 **A** This is just a little extra room. At the head, it
9 looks like it might have been a computer room or an
10 extra bedroom with a desk in it. And they pulled out
11 all the papers and throwed things around the room and
12 out of the closet.

13 **Q** Does that appear to be in disarray? That's with your
14 training and expertise and just your regular old eyes
15 that day?

16 **A** It does.

17 **MR. MEADORS:** We're almost through, Your Honor.
18 Your Honor, can the investigator come down for this?

19 **THE COURT:** Sure.

20 **MR. MEADORS:** I think it might be -- Your Honor,
21 and for the record, 67, 68, 69, 70, 71, 72, 73, 74,
22 75, 76, 77, 78, 79, 81, 82, 83 and 84 have all been
23 reviewed and I believe are without objection.

24 **MR. WHITLARK:** McDonald doesn't object to those
25 pictures.

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 Three

Melissa J. Kimbrough
Kimbrough Law Office
1830 Marion Street
Columbia, S.C. 29201
Attorney for Appellant.

Salley W. Elliott
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549
Attorney for Respondent

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1 **THE COURT:** Hearing no objection, we'll move on.
2 (WHEREUPON, State's Exhibit No. 67 is admitted
3 into evidence.)
4 (WHEREUPON, State's Exhibit No. 68 is admitted
5 into evidence.)
6 (WHEREUPON, State's Exhibit No. 69 is admitted
7 into evidence.)
8 (WHEREUPON, State's Exhibit No. 70 is admitted
9 into evidence.)
10 (WHEREUPON, State's Exhibit No. 71 is admitted
11 into evidence.)
12 (WHEREUPON, State's Exhibit No. 72 is admitted
13 into evidence.)
14 (WHEREUPON, State's Exhibit No. 73 is admitted
15 into evidence.)
16 (WHEREUPON, State's Exhibit No. 74 is admitted
17 into evidence.)
18 (WHEREUPON, State's Exhibit No. 75 is admitted
19 into evidence.)
20 (WHEREUPON, State's Exhibit No. 76 is admitted
21 into evidence.)
22 (WHEREUPON, State's Exhibit No. 77 is admitted
23 into evidence.)
24 (WHEREUPON, State's Exhibit No. 78 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 79 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 81 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 82 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 83 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 84 is admitted
10 into evidence.)

11 Q Investigator, can you stand on this side so the court
12 reporter can hear you. You mentioned earlier blood
13 spatter. I just want you to go through and tell me
14 if you recognize, if you see any indication of that
15 on these pictures. This is State's 67.

16 A I do. It's on the wooden part here of the couch.
17 You can see different specks of blood.

18 Q Now, State's 68, what's depicted there, if anything?

19 A This is some shattered glass, some potpourri petals.
20 You can also see a decorative pinecone in the
21 background in the couch. You can also see some
22 pretty heavy blood stains soaked into the couch.

23 Q What appeared to you to be blood stains?

24 A What appeared to be blood stains.

25 Q 69?

1 **A** You can also see more shattered glass, some more
2 potpourri.

3 **Q** Did you take pictures of the inside of the -- were
4 you taking pictures to try to bring the scene to
5 court so you could show it today?

6 **A** I did. That's correct.

7 **Q** What does 70 depict?

8 **A** This is kind of a corner shot over the couch that I
9 took. If you look closely up in the corners of the
10 room up next to the ceiling, you can actually see
11 some blood spatter where the blood was thrown up on
12 to the walls of that room, that corner of the room.

13 **Q** State's 71?

14 **A** This is some blood that was thrown up. There was
15 actually two doors behind this couch and there was
16 some blood that was thrown up on the walls and onto
17 the door. And also you can see a few specks on the
18 shades that was on the door.

19 **Q** State's 72?

20 **A** This is also the same doors behind the couch, and it
21 also has blood spatter on the shade on those two
22 doors, just a closer up picture.

23 **Q** 73?

24 **A** This is a close up picture of the wall. You can
25 actually see more blood up into the corner of the

1 room above the couch. And it even went up onto the
2 ceiling part of the room.

3 Q And did you take, as you do, a further back and close
4 up?

5 A That's correct. We also --

6 Q That's 74 I think.

7 A You will also see here, this is a wall. The couch
8 kind of -- I don't know exactly what kind of couch
9 you'd call it. It just kind of fits into a corner
10 and there's like two pieces that rounds the corner.
11 And you can see the blood here on the wall and you
12 can see where we scaled it with a ruler.

13 Q 75?

14 A This is just another picture of the blood spatter
15 from inside the living room area.

16 Q Spatter?

17 A Spatter.

18 Q And is any potential spatter there? 76? Would you
19 point at it again for this side of the jury? 67.
20 78. Excuse me.

21 A Here, here, here.

22 Q Now, what does placard E on 79 represent? Or why did
23 you take that picture?

24 A This is a bloody pillow laying in front of the
25 fireplace of the living room. You can also see what

1 appears to be soaked-in blood stains in the carpet.

2 **MR. WHITLARK:** Your Honor, McDonald would object
3 to the description. The pictures speak for
4 themselves. I've heard the word "blood" 23 times in
5 a row here. You know, the pictures speak for
6 themselves, Your Honor.

7 **THE COURT:** Well, he can describe what he saw.

8 **Q** State's 81?

9 **A** This is the bottom part of the table. Inside one of
10 the tables in the living room area, you can see a
11 fairly large amount of what appears to be a big blood
12 stain here and some blood spatter on the legs also.

13 **Q** 82?

14 **A** This is a closer up version of the last picture you
15 saw.

16 **Q** And as we get closer?

17 **A** Again, this is the same table fixture that you see.
18 It's just a close up picture of some of the blood
19 spatter that was on there.

20 **Q** And finally 84?

21 **A** Also again this is just showing different areas and
22 closer up views of the blood spatter.

23 **Q** While I've got you up here, wait just a second.

24 We'll ...

25 **THE COURT:** Mr. Meadors, just for the record, he

1 hasn't been qualified as an expert. He ought to be
2 testifying as to what it appears to be.

3 **MR. MEADORS:** And I think that's what I asked
4 him.

5 **THE COURT:** No. He's testified factually that
6 they are.

7 **Q** What does that appear to you to be?

8 **A** It appears to be blood.

9 **Q** And come over here. Do you recognize State's 66 and
10 65?

11 **A** I do.

12 **MR. MEADORS:** Your Honor, if we could approach
13 briefly?

14 (Whereupon, a bench conference is had)

15 **MR. MEADORS:** Your Honor, we'd offer State's 65
16 and 66.

17 **THE COURT:** Over the objection of the
18 defendants.

19 (WHEREUPON, State's Exhibit No. 65 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 66 is admitted
22 into evidence.)

23 **Q** And 65 and 66, let's start with 65 here. It's got
24 placard G.

25 **A** This is part of the couch, cushions on the couch.

1 And as you can see, it's a close up picture of what
2 appears to be a soaked blood stain.

3 Q And is this a different angle of the same couch?

4 A Yes. This is just a different angle of the same
5 couch.

6 Q And I'll show you what's already been entered as
7 State's 11. You described it was just in disarray
8 when you came in. Does state 11 accurately depict
9 the scene when you came in?

10 A It does.

11 MR. MEADORS: Your Honor, I think I'm about
12 through. These we've all agreed are just going to be
13 I.D. And I can get him to recognize them or just
14 enter them as I.D. now for potential later testimony,
15 however you'd like to do it.

16 THE COURT: It's your case.

17 Q Investigator, come over here, if you will, please.
18 State's 12, 44, 46, 56; do you recognize those?

19 A I do.

20 Q Do they relate to this case?

21 A Yes, they do.

22 Q Do they accurately depict the scene as you saw it?

23 A They do.

24 MR. MEADORS: Your Honor, at this time we'd mark
25 these for identification at this time only. I think

1 they've seen them.

2 (WHEREUPON, State's Exhibit No. 85 is marked for
3 identification.)

4 (WHEREUPON, State's Exhibit No. 86 is marked for
5 identification.)

6 (WHEREUPON, State's Exhibit No. 87 is marked for
7 identification.)

8 (WHEREUPON, State's Exhibit No. 88 is marked for
9 identification.)

10 (WHEREUPON, State's Exhibit No. 89 is marked for
11 identification.)

12 (WHEREUPON, State's Exhibit No. 90 is marked for
13 identification.)

14 (WHEREUPON, State's Exhibit No. 91 is marked for
15 identification.)

16 (WHEREUPON, State's Exhibit No. 92 is marked for
17 identification.)

18 (WHEREUPON, State's Exhibit No. 93 is marked for
19 identification.)

20 (WHEREUPON, State's Exhibit No. 94 is marked for
21 identification.)

22 (WHEREUPON, State's Exhibit No. 95 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 96 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 97 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 98 is marked for
4 identification.)

5 **THE COURT:** All right. Go ahead. Keep moving.

6 **Q** 85 do you recognize? Each one of these you
7 recognize?

8 **A** I do. I do.

9 **Q** 86?

10 **A** I do.

11 **Q** 87?

12 **A** I do.

13 **Q** 88?

14 **A** I do.

15 **Q** 89?

16 **A** I do.

17 **Q** That's 90?

18 **A** Mm-hmm (affirmative).

19 **Q** 91?

20 **A** I do.

21 **Q** 92?

22 **A** I do.

23 **Q** 93?

24 **A** I do.

25 **Q** 94?

1 **A** I do.

2 **Q** 95?

3 **A** I do.

4 **Q** 96?

5 **A** I do.

6 **Q** And 97?

7 **A** I do.

8 **Q** Do they accurately reflect the body of Joshua Zoch as

9 you saw it that day?

10 **A** They do.

11 **Q** The position it was in when you saw it?

12 **A** Yes, sir.

13 **Q** The condition of the clothing on him?

14 **A** Yes, sir.

15 **MR. MEADORS:** Your Honor, at this time these

16 will be marked for identification.

17 **THE COURT:** All right. Can the officer re-take

18 the stand?

19 **MR. MEADORS:** Yes, sir. Thank you.

20 **Q** And I believe as far as 43, 45 and 47, they have

21 already been entered without objection. What is

22 State's 45?

23 **A** That is another angle of the wooden baseball bat with

24 the black tape that was up under the recliner.

25 **Q** And 47?

1 **A** That is like a coffee table or end table inside the
2 living room at one end of the couch.

3 **Q** And finally 43?

4 **A** That is some chicken that was taken out of -- what we
5 believe was taken out of the freezer inside the
6 residence lying in the living room floor.

7 **Q** How close to the body of Joshua Zoch was this
8 chicken?

9 **A** It was right at the head of the body.

10 **Q** And was that there when you arrived?

11 **A** It was.

12 **Q** Thank you for that. You've now taken the pictures of
13 the scene?

14 **A** Mm-hmm (affirmative).

15 **Q** Did you observe -- in addition to these pictures, did
16 you collect some items of evidence?

17 **A** We did.

18 (WHEREUPON, State's Exhibit No. 99 is marked for
19 identification.)

20 (WHEREUPON, State's Exhibit No. 100 is marked
21 for identification.)

22 (WHEREUPON, State's Exhibit No. 101 is marked
23 for identification.)

24 (WHEREUPON, State's Exhibit No. 102 is marked
25 for identification.)

1 **Q** Is this the bat that's depicted in those pictures?

2 **A** That's it.

3 **MR. MEADORS:** Your Honor, we'd offer 99.

4 **THE COURT:** Any objection?

5 **MR. RILEY:** No, sir.

6 **MR. KENDRICK:** No, Your Honor.

7 **MR. WHITLARK:** (Shakes head negatively).

8 **THE COURT:** No objection.

9 (WHEREUPON, State's Exhibit No. 99 is admitted
10 into evidence.)

11 **Q** This was collected. And was it sent to SLED for any
12 potential analysis?

13 **A** It was sent to SLED. Yes, sir.

14 **Q** Was anything done to it that day at the scene by you
15 or anybody else?

16 **A** Just collected.

17 **Q** And one of those pictures contains a picture of a
18 part of a Latex glove. Do you recognize 100?

19 **A** I do.

20 **Q** And is that the collected Latex finger tip?

21 **A** It is.

22 **MR. MEADORS:** Your Honor, we'd offer State's
23 100.

24 **THE COURT:** Hearing no objection.

25

1 (WHEREUPON, State's Exhibit No. 100 is admitted
2 into evidence.)

3 Q And also there's been testimony about a picture of
4 that back door striking plate. Did you all collect
5 that?

6 A Yes, we did.

7 MR. MEADORS: Your Honor, we'd offer State's
8 101.

9 THE COURT: Hearing no objection.

10 MR. WHITLARK: No objection.

11 (WHEREUPON, State's Exhibit No. 101 is admitted
12 into evidence.)

13 Q Now, you described in some of these pictures a part
14 of a bowl or some metal objects. Do you recognize
15 this?

16 A Yes, I do.

17 Q And did you collect this in Lane
18 December 13th, 2006?

19 A Yes, we did.

20 MR. MEADORS: Your Honor, State's 102.

21 THE COURT: Hearing no objection.

22 MR. WHITLARK: No objection.

23 (WHEREUPON, State's Exhibit No. 102 is admitted
24 into evidence.)

25 Q Investigator, you've photographed now. You've

1 collected some of this evidence. Did you attempt to
2 dust for any fingerprints?

3 **A** I did. Especially around the entry point to the
4 residence, the door and the door facing, I attempted
5 to lift latents off of that. Also some glass bottles
6 that was laying about inside the residence, I
7 attempted to collect latents off of those also.

8 **Q** And what were your results?

9 **A** Negative results.

10 **Q** Does that mean you couldn't find any potential --

11 **A** That's correct. All I could find was just what we
12 call smudges. You could just tell where something
13 had touched it or had rubbed up against it and there
14 was no detail whatsoever to it.

15 **Q** Based on just your training and maybe everyday common
16 sense; if you were to wear gloves, would you leave a
17 fingerprint?

18 **A** No, you would not.

19 **Q** So you did not find any fingerprints in 2505,
20 identifiable prints from your dusting?

21 **A** No, I did not.

22 **Q** What did you do next? You documented the scene,
23 taking pictures of the scene, gathered some evidence,
24 tried to get some prints. What did you do after
25 that?

1 **A** At that time of course we made sure that the whole
2 scene was photographed, that the evidence was
3 photographed, made sure that Investigator Marthers
4 had collected most of the evidence. We then
5 proceeded outside, and we checked around outside for
6 any other evidence left.

7 **Q** And that was on the 13th?

8 **A** That's correct.

9 **Q** And there were some folks identified there to Sellers
10 as far as their names: Waltemath, Zack, Molly and
11 maybe a -- Zack Waltemath, Molly Waltemath and
12 Melissa Davy?

13 **A** They were.

14 **Q** And let's move on to the next day. Did you have an
15 occasion; and without saying what they said, did you
16 talk to Melissa Davy and get some information from
17 her?

18 **A** I did.

19 **Q** On the 14th?

20 **A** The 14th. Yes, sir.

21 **Q** Let's move on. Did you have an occasion as a result
22 of your investigation to realize that Sonic might be
23 a central or might be a place you ought to go talk to
24 some people there?

25 **A** Yes, I did.

1 Q A lot of people may have known each other through
2 Sonic?

3 A That's correct.

4 Q And did you go to Sonic on December 15th, 2006?

5 A Yes, I did.

6 Q And did you have an occasion to talk to the owner,
7 Pat Heathcoe?

8 A I did.

9 Q And a Ms. Cecile Trapp. Without telling us what they
10 said, did you talk to them?

11 A I did.

12 Q And as a result of that, did you go out looking for
13 Derrick McDonald?

14 A I did.

15 Q And where did Derrick McDonald live?

16 A He lived at, I believe it was

17 Q Where is that?

18 A That's in Richland County.

19 Q Richland County. And who all was with you then?

20 A George Marthers, Investigator George Marthers.

21 Q This is George back here?

22 A That's George.

23 Q And on your way to Boney Road to see Mr. Derrick
24 McDonald, what, if anything, happened?

25 A Right before we got to Mr. McDonald's driveway we

1 come across a light blue Honda Accord being driven by
2 Christopher Whitehead.

3 **Q** And at this point in the investigation had the name
4 of Christopher Whitehead just come in, come to you
5 all?

6 **A** That's correct.

7 **Q** And had you run a driver's license picture for him?

8 **A** We had.

9 **Q** And as a result of that, did you know what he looked
10 like?

11 **A** I did.

12 **Q** And was that the person that you saw coming or that
13 you met up with as you were going to see Derrick
14 McDonald?

15 **A** That was.

16 **Q** Was Christopher Whitehead's residence down there?

17 **A** No, sir.

18 **Q** Did you have an occasion to talk to Christopher
19 Whitehead?

20 **A** Just briefly. He pulled over into a driveway and we
21 pulled over in front of him and briefly spoke with
22 him.

23 **Q** And what did you say to him?

24 **A** He was inquiring as to what we needed. I told him
25 that I'd like to talk with him. He asked what about.

1 I told him it was in reference of the death of Joshua
2 Zoch.

3 Q And what did he say?

4 A He then said, "I don't know a damned thing about
5 that."

6 Q And at that point I think what's been entered as
7 State's 64, do you recognize that?

8 A I do.

9 Q What is that?

10 A That is the light blue Honda Accord four-door that
11 was driven by Mr. Christopher Whitehead.

12 Q Did you take a picture of the -- do you recognize 98?
13 Does it relate to what you're talking about right
14 now? Just yes or no.

15 A It does.

16 MR. MEADORS: Your Honor, we'd offer State's 98.
17 I believe there's an objection from Mr. Whitlark.

18 MR. WHITLARK: Objection, Your Honor.
19 Relevance.

20 THE COURT: Let me see it.

21 (Document handed to the Court)

22 THE COURT: Is this the car he says he saw? Is
23 that it?

24 MR. MEADORS: Yes, sir.

25 Q Whose car is this?

1 **A** That is Mr. Christopher Whitehead's car.

2 **Q** And this is a picture you took of the back of it
3 after you talked to him that day?

4 **A** That's correct.

5 **THE COURT:** Overruled.

6 (WHEREUPON, State's Exhibit No. 98 is admitted
7 into evidence.)

8 **Q** And did someone come to get his car?

9 **A** His mother showed up.

10 **Q** Now, after that, what did you do next in the
11 investigation? You were going to see Derrick
12 McDonald I believe. What did you do next after you
13 had the encounter with Mr. Whitehead?

14 **A** We then immediately notified Richland County.

15 **Q** Okay. But after you did that, what did you do next?

16 **A** We then went on up to Derrick McDonald's address
17 which was just a few driveways up from where we had
18 briefly spoke with Christopher Whitehead.

19 **MR. MEADORS:** And, Your Honor, can we approach
20 again? And this will save time I think. I
21 apologize.

22 (Whereupon, a bench conference is had)

23 **Q** So did you then go to Derrick McDonald's house?

24 **A** I did.

25 **Q** And was he home?

1 **A** He was not.

2 **Q** We're still on the 15th of December, correct?

3 **A** That's correct.

4 **Q** 2006. Where did you go after that?

5 **A** After we left Derrick McDonald's house, we then went
6 back to the Sonic.

7 **Q** To the Sonic. And at that point did you have an
8 occasion to talk to a gentleman named Allen Brown?

9 **A** Yes, I did.

10 **Q** And did you talk to anybody else there? Did you talk
11 to Cecile Trapp earlier? Did you talk to her again?

12 **A** I don't remember if I talked to Cecile Trapp. I
13 believe that Zachary Waltemath and Molly Waltemath
14 was at the Sonic at that time.

15 **Q** And did you take some statements then?

16 **A** I did.

17 **Q** After that, McDonald, ran into Whitehead, back to
18 McDonald, he wasn't there, Sonic; where do you go
19 then?

20 **A** Okay. After we leave the Sonic, by the time we leave
21 Sonic, we then go back to or go up to Mr. Robert
22 Cannon's residence.

23 **Q** Prior to that had you gone back to McDonald's to see
24 him?

25 **A** Yes. We had went back to Mr. McDonald's from the

1 Sonic and briefly spoke with him there.

2 **Q** Okay. And let's talk about that right now.

3 **A** Oh, okay.

4 **Q** Where did you see him?

5 **A** He was -- he actually came out of his trailer and

6 talked with us sitting in the front of my patrol

7 truck in his yard.

8 **Q** And again, what address was that?

9 **A** I believe it was

10 **Q** And the notes, for these purposes, just for this, do

11 you have those with you?

12 **A** I do.

13 **Q** And did you have an -- who was with you, if anybody?

14 **A** Investigator George Marthers.

15 **Q** And on December 15th, 2006, now you're at Mr.

16 McDonald's house, correct?

17 **A** That's correct.

18 **Q** And did you have an occasion to talk to him then?

19 **A** I did.

20 **Q** And please tell us about that conversation?

21 **A** Basically we met Mr. McDonald there, or he met us

22 there in the yard. We sat down inside my patrol

23 truck. I asked him if he knew about the death of

24 Joshua Zoch. He told me that he did not know

25 anything about that. I asked him where he was at

1 that night, which would have been the 12th, the night
2 of the 12th. He said that he had been to Sonic and
3 that he had got into a vehicle belonging to a
4 Christopher Rust around 10:30 and he slept in that
5 vehicle from 10:30 'til 11:30 that night until
6 Christopher Rust got off from work.

7 **Q** Sleep in Christopher Rust's car from 10:30 to 11:30,
8 and then when he got off work Christopher Rust took
9 him home?

10 **A** Yes, sir.

11 **Q** And did you know who Christopher Rust was?

12 **A** I did not.

13 **Q** And at this point was Derrick McDonald under arrest?

14 **A** He was not.

15 **Q** What else did he tell you about what else may have
16 had happened? Or any other questions, referring to
17 your notes, if you will?

18 **A** I asked him, you know, who he had been around. And
19 he just made the comment that someone had made a
20 comment to him that he was going to make some moves
21 that night. At that time he said that he would like
22 to talk with me later but he would rather have his
23 mother present. So at that time I left a card and
24 told him if he could think of anything else between
25 now and then to give me a call.

1 Q Okay. And at that point you and Investigator Mathers
2 (sic) left?
3 A We did.
4 Q Still on the 15th of December?
5 A Still on the 15th.
6 Q Where did you go next, if anywhere?
7 A We then left from there and we ended up at Mr. Robert
8 Cannon's residence.
9 Q Okay. And where was Mr. Robert Cannon's residence?
10 A I believe his address was which
11 wasn't too far from the Sonic on Hard Scrabble.
12 Q Not in this county?
13 A No, sir. It was in Richland County.
14 Q Richland County. And specifically where did you talk
15 to Mr. Cannon, the defendant, Robert Cannon?
16 A We specifically talked with him at his residence.
17 Q Did you go in?
18 A Yes, we did.
19 Q And was anybody else there besides Mr. Cannon?
20 A His parents were there.
21 Q And when you came in, where did you sit or where did
22 you go to talk to him?
23 A We mainly sat and spoke with him and his parents
24 inside the living room area of the residence. And at
25 one point we went outside and spoke for a little

1 while also.

2 Q At this point in the investigation did you have a
3 statement from Allen Brown and Cecile Trapp?

4 A I did.

5 Q Did you know about the incident Tuesday night?

6 A I did.

7 Q I think when some folks had come back with some ski
8 masks. Or Mr. Cannon had?

9 A That's correct.

10 Q All right. And you are at the Cannons' residence.
11 And did you have an occasion to read him what is
12 known as Miranda rights?

13 A I did.

14 Q And I think that's previously been marked. If I can
15 find it. Here we go. Thank you. I've got it. I'm
16 going to show you what's marked State's No. 1. Do
17 you recognize this?

18 A I do.

19 Q Danny, tell these folks, what is that?

20 A This is a statement of Miranda rights which we
21 provide from the Kershaw County Sheriff's Office.

22 Q Did you have an occasion to read the Miranda rights
23 to Robert Cannon on December 15th, 2006?

24 A I did.

25 Q Look over here at these ladies and gentlemen of the

1 jury and tell them; what's your procedure and what
2 did you do this day?

3 **A** What I do is, at the top part of this form you have
4 about five different lines. I read each line. I
5 make sure that the person understands that. I then
6 initial it and circle my initials. I go to the
7 second line. I do the very same thing. I initial it
8 and I circle it; the third line, the fourth line and
9 the fifth line.

10 **Q** Let's go over it like you did that day at Robert
11 Cannon's house. What's the first right?

12 **A** "You have the right to remain silent."

13 **Q** Did you tell that to him?

14 **A** I did.

15 **Q** Did Robert Cannon indicate to you in any form or
16 fashion that he understood that?

17 **A** He did.

18 **Q** How?

19 **A** He said yes.

20 **Q** He told you he understood it?

21 **A** I asked him if he understood it. He said yes.

22 **Q** What does the D.C. beside there mean?

23 **A** That is my initials for Danny Catoe.

24 **Q** And when did you make those initials on there, Danny?

25 **A** Right after he said yes.

1 Q What's the next right you read him?

2 A "Anything you say can and will be held against you in
3 a court of law."

4 Q Did you ask him if he understood that?

5 A I did.

6 Q And did you again mark on here to come testify today
7 and tell these folks that you did it, did you put
8 D.C. on there?

9 A I did after he said yes.

10 Q What's the next right you read him?

11 A "You have the right to talk with an attorney and to
12 have him present with you while you are being
13 questioned."

14 Q Did you explain that to him?

15 A I did.

16 Q Did you ask him if he understood it?

17 A I did.

18 Q Did he tell you whether or not he did?

19 A He said yes.

20 Q And did you initial that?

21 A I did. And I circled it.

22 Q And what's the next right you read?

23 A "If you cannot afford to hire an attorney, one can be
24 appointed to you before any questioning if you wish."

25 Q And did he indicate to you whether or not he

1 understood that right?

2 **A** He did.

3 **Q** Did you also initial that?

4 **A** And I circled it.

5 **Q** And what's the next right you read him, Investigator?

6 **A** "You can decide at any time to exercise these rights
7 and not answer any questions or make any statements."

8 **Q** And did Robert Cannon indicate to you on December the
9 15th of 2006 whether or not he understood that right?

10 **A** He did.

11 **Q** Did he verbally tell you that?

12 **A** He told me. Yes, he did.

13 **Q** And did you mark that?

14 **A** I did. I initialed it and circled it.

15 **Q** Investigator, tell these ladies and gentlemen; as
16 you're talking to him, could you understand what he
17 was saying to you?

18 **A** I could.

19 **Q** Did he appear to understand your questions based on
20 his responses?

21 **A** Yes, he could.

22 **Q** Were they appropriate? I mean subject matter
23 appropriate.

24 **A** Yes, they were.

25 **Q** Were they timely?

1 **A** They were.

2 **Q** Did he appear to you to be under the influence of
3 alcohol, drugs or any intoxicants while you were
4 reading these rights to him?

5 **A** No, he did not.

6 **Q** Did he appear to understand what you were telling
7 him?

8 **A** Yes, he did.

9 **Q** And did he tell you he understood them?

10 **A** He did.

11 **Q** Now, whose name is underneath those rights?

12 **A** That is my name.

13 **Q** You signed that indicating you read them to him?

14 **A** I did.

15 **Q** And he understood them in your opinion?

16 **A** That's correct.

17 **Q** Underneath that is a waiver of rights?

18 **A** That's correct.

19 **Q** Would you read that to the jury like you read it to
20 Robert Cannon on December 15th?

21 **A** It says: "This is to certify that I have read to you
22 the above statement of your rights. Understanding
23 these rights and having these rights in mind, I waive
24 them and willingly make a statement. No pressure or
25 threats have been made to me and no pressure of

1 coercion of any kind used against me." And then I
2 asked him if he understood that. He replied yes. I
3 initialed it and I circled it and I made an X beside
4 the line where he needed to sign, and he signed his
5 signature on the line.

6 Q Read that last line again?

7 A "No promises or threats have been made to me and no
8 pressure or coercion of any kind has been used
9 against me."

10 Q And did you initial that indicating you'd read it?

11 A I did.

12 Q And did he sign it indicating that he understood
13 that?

14 A Yes, he did.

15 Q And waived his rights?

16 A Yes, he did.

17 Q And did he tell you he waived his rights?

18 A Yes, he did.

19 Q At any time during the reading of the rights and the
20 waiver of rights did he say, I don't want to talk to
21 you?

22 A No, he did not.

23 Q Investigator, did he say, I want a lawyer?

24 A No, he did not.

25 Q Did you threaten him or coerce him?

1 **A** Absolutely not.

2 **MR. KENDRICK:** Your Honor, I'm going to object
3 to him leading the witness.

4 **THE COURT:** Yes.

5 **MR. MEADORS:** Your Honor, I don't know how else
6 to do this part.

7 **Q** What threats, if any, did you give Mr. Cannon that
8 day?

9 **A** None.

10 **Q** Did you promise him anything?

11 **A** No, I didn't.

12 **Q** Were any hopes of reward held out for him?

13 **A** No, there was not.

14 **Q** If he had asked for an attorney, would you have
15 questioned him?

16 **A** No, I would not.

17 **Q** Underneath it says: "Witnessed by". Who signed
18 that?

19 **A** Investigator George Mathers (sic), Kershaw County
20 Sheriff's Office.

21 **Q** And what time is underneath that?

22 **A** 6:45.

23 **Q** Military time 18:45?

24 **A** 18:45.

25 **Q** And what time were these rights finished? Is that

1 when you were finished and witnessed by him?

2 **A** He was the last one to actually sign the paper. Yes,
3 sir.

4 **Q** Danny, Investigator Catoe, tell these folks, these
5 ladies and gentlemen what your procedure is, and what
6 did you actually do that day as you were talking to
7 Mr. Cannon? Did you orally talk to him to start
8 with?

9 **A** I did. I sat down and I just told him I wanted to
10 ask him a few questions and talk with him about where
11 he may have been on the night of the 12th. And I
12 just jotted down a few notes from some of the
13 questions I asked him.

14 **Q** And what time did you start taking these notes?

15 **A** At 6:47 p.m.

16 **Q** And did he have a conversation with you? Did he
17 respond to you? Mr. Cannon? Did you all talk?

18 **A** Yes. Yes, he did.

19 **Q** And what, if anything --

20 **MR. KENDRICK:** Your Honor.

21 **Q** -- did he tell you when you first started talking to
22 him?

23 **MR. KENDRICK:** Your Honor, just for the record,
24 if I could have a continuing objection to the entire
25 statement based on earlier arguments.

1 **THE COURT:** Yes, sir. I understand that.

2 **MR. KENDRICK:** Thank you, Your Honor.

3 **THE COURT:** Those objections were overruled.

4 **MR. KENDRICK:** Thank you, Judge.

5 **MR. MEADORS:** Ms. McDuffie just reminded me,
6 Your Honor. We'd offer State's 1.

7 **THE COURT:** Over the objection of the
8 defendants, Defendant Thomas. Cannon. I'm sorry.

9 (WHEREUPON, State's Exhibit No. 1 is admitted
10 into evidence.)

11 **Q** 6:47?

12 **A** 6:47.

13 **Q** And what did Defendant Robert Cannon tell you?

14 **A** He -- I first asked him if he knew about Joshua
15 Zoch's death. He stated that he did. I asked him
16 how he had come to find out about that. He advised
17 me that a Christopher Rust had actually told him of
18 Joshua's death.

19 **Q** Did he tell you a time?

20 **A** He said it was around 8 p.m.

21 **Q** And did he say anything else to you initially as
22 you're talking to him?

23 **A** He did. He give me a name. He said that he didn't
24 know that this person did it but he thinks he did or
25 he may know who did. He also told me that another

1 person named Melissa would always get into arguments
2 and that Josh would always pump this person out. And
3 then about two weeks back, Robert, this person and a
4 B.J. Bryson went to Josh's house. Melissa then asked
5 them to leave after Chris brought a blunt into the
6 house. That was the whole reason behind going over
7 there.

8 Q Prior to that did he mention somebody named Mel? Or
9 is there a Melvin or a house nextdoor to you?

10 A No. I actually asked him about Melvin. That was a
11 name that was brought up.

12 Q Okay.

13 A And he said that he thought he may have lived at 198,
14 which was the house nextdoor, is the statement that
15 he give to me.

16 Q And initially when you're talking, did he tell you
17 anything else?

18 A No. That's --

19 Q About leaving Sonic with someone else, dropping him
20 off at --

21 A Yes. He had said that he had left Sonic with someone
22 and that they had dropped him off at Melvin's. He
23 then later said that -- we asked him about Josh and
24 what he knew about Josh. He told us that he knew
25 that Josh used drugs. I asked him, you know, about

1 what kind of drugs he knew of Josh using. He said
2 that he knew that Josh would smoke crack and that he
3 had sniffed cocaine. He said that he usually kept
4 some in his house.

5 **Q** Did he say someone had called him right after he was
6 pulled over by you and George?

7 **A** He did.

8 **Q** Someone called after being pulled over by you and
9 George?

10 **A** That's correct. That's in my notes.

11 **Q** And did someone call him and tell him he had won the
12 fight?

13 **A** That's correct. That's what he had told me.

14 **Q** Now, are these your initial conversations with
15 Derrick McDonald? Excuse me. With Robert Cannon. I
16 apologize.

17 **A** That is the initial time that I had met, myself and
18 George, had met with Mr. Cannon.

19 **Q** At this point in the process, did Robert Cannon say
20 anything to you about wanting to tell you more away
21 from his parents?

22 **A** Yes, he did. He stated to both myself and
23 Investigator Marthers that he would like to walk
24 outside away from his parents.

25 **Q** And once -- and did that happen?

1 **A** Yeah, that did.

2 **Q** And as a result of that, did Captain David Thomley
3 come?

4 **A** That's correct.

5 **Q** Captain Thomley is sitting over here in the pink
6 shirt and tie?

7 **A** That's Captain Thomley.

8 **Q** And did Captain Thomley have a conversation with
9 Robert Cannon?

10 **A** He did.

11 **Q** And after that did you and Investigator Mathers (sic)
12 continue to talk with Robert Cannon?

13 **A** Yes, we did.

14 **Q** And did the Captain ask you whether or not the
15 defendant had been advised of his Miranda rights?

16 **A** The Captain did ask me that.

17 **Q** Did you tell him yes?

18 **A** I stated that he had.

19 **Q** And what happened after that? Did you continue to
20 talk with Robert Cannon?

21 **A** We did. We actually went back inside the house and
22 continued the conversation.

23 **Q** Thank you. Danny, is it your practice -- what is
24 your practice as far as when you're talking with
25 somebody? You're taking notes as you're talking?

1 **A** I do. I like to take notes first and then go back
2 and have the person give me a statement to what they
3 have previously told me.

4 **Q** And is that what you did in this case?

5 **A** It is.

6 **Q** And for these purposes, would it be called he
7 initially gave you an oral statement then?

8 **A** Yes. That was pretty much an oral statement. And I
9 just was writing down my notes as he was talking.

10 **Q** And did he continue doing that at this point?

11 **A** He did.

12 **Q** After the Captain came, did you go back inside?

13 **A** We did.

14 **Q** Was his family still there?

15 **A** Yes, they were.

16 **Q** At any point during this process up to here, I think
17 it was 6:40 -- I can't remember. 6:45 when you
18 finish your rights?

19 **A** It was 6:45.

20 **Q** You talked to him for a while?

21 **A** That's right.

22 **Q** The Captain came?

23 **A** That's right.

24 **Q** The Captain left, and you continued talking to him?

25 **A** That's correct.

1 Q Approximately what time was it then?

2 A We sat down inside the house and started talking
3 again around 8:10 p.m.

4 Q And at this point did he continue talking to you?

5 A He did.

6 Q And did you all continue talking about the death of
7 Joshua Zoch?

8 A We did.

9 Q And what did he tell you, Danny?

10 A He -- I have several pages of notes that I had taken
11 from him talking. He had basically told me that
12 around 2 p.m. on Tuesday which would have been the
13 12th of December that --

14 Q Somebody?

15 A -- somebody got off work, picked him up. They rode
16 to the mall. He got a new cellphone and some shoes.
17 They went to pick up somebody else. And after that
18 they went to the Blythewood McDonald's. They eat.
19 And then they went to the Sonic, the Sonic on Hard
20 Scrabble.

21 Q And you've got in here "got to Sonics". These are
22 your notes as he's talking?

23 A Yeah. I'm trying to keep up with him because he
24 was --

25 Q Got to Sonic and what?

1 **A** Got to Sonic. And he stated that he had had a ski
2 mask and that him and another person went inside to
3 talk to a girl and that one other person sat in the
4 car. So then they go --

5 **Q** Does it say then he went or I went?

6 **A** Yes. So then I went. What it actually says: "So
7 then I go to the office and push the button with the
8 ski mask." He said he was playing around. "They all
9 knew who I was and it was just a joke." He says, he
10 goes on to say: "So we left and went to Wal-Mart and
11 someone got a ski mask and another person got a ski
12 mask and went riding." He says: "One person said,
13 'you know, we need to do something with this mask.'
14 I said, 'like what?' He said, 'like beat Josh's" --
15 pardon me -- 'Josh's ass because he is a snitch."

16 **MR. WHITLARK:** Excuse me, Your Honor. Could you
17 note the objection of Mr. McDonald to all of this,
18 please?

19 **THE COURT:** Yes, sir. And --

20 **MR. REUWER:** Likewise for Whitehead, too, sir.

21 **THE COURT:** Yes, sir.

22 **Q** Did he tell you anything else as you're talking
23 orally and taking these notes?

24 **A** Further in my notes: "I told him I didn't think he
25 would, that he had snitched on me. So I was like,

1 'whatever.' He asked if I wanted to ride. I said I
2 had nothing else to do. It was about 11 p.m. or so.
3 Someone else was in the car and said he was quiet.
4 So we go to Josh's house and pull up about 11:30.
5 Another person knocked on the front door and Josh
6 didn't answer. Another person said, 'I'm going to
7 pull your move and kick in the door.' He kicked the
8 side door and runs in. And I go in behind him to see
9 the fight. So Josh is asleep on the couch, and
10 another person" -- pardon the wording here; it's what
11 he told me -- "like, 'hey, bitch.' And when he
12 looked up, he hit him with a glass" -- what he
13 described as a glass lamp.

14 After that Josh was in a daze and he drags him
15 off the couch. And he -- someone else pressured
16 another person to hit Josh with the bat, and the
17 other person hit Josh with the bat. Josh was half
18 way on the couch at that time. And then they took
19 the bat from this other person. So after that, the
20 other person starts talking -- this is his words --
21 "starts talking shit to Josh. Josh was basically
22 crawling while another person was talking about Josh
23 being a snitch. So then I wouldn't" --

24 **Q** Did he say: "So then I wouldn't"?

25 **A** Yes. "So then I wouldn't have" -- let's see. That's

1 my scribble. "So then" --

2 Q "So I wouldn't have to beat him"?

3 A -- "I wouldn't have to beat someone's ass. So I went
4 pulling drawers. And he" -- talking about another
5 person -- "flipped the mattress. We were looking for
6 weed. So then the man was unconscious. Another
7 person then said" --

8 Q Just say it, I mean, if that's what he said.

9 A -- "fuck it, because we didn't find weed. And
10 another person pushed the Christmas tree over and it
11 fell on Josh. I told the other person, 'let's go',
12 and another person said, 'fuck, we didn't find
13 anything', and another person got mad because we was
14 not there. Before we left another person did take
15 the house phone. I did put a towel on his head
16 because he was bleeding so bad. And another person
17 went to the freezer and got the chicken for a cold
18 compress. We all had on Latex gloves. One person
19 had on purple gloves, and me and another -- me and
20 someone else had purple gloves, and I had clear and
21 purple gloves on. And after that we leave the same
22 way we went in. Then we drop off another person.
23 Then I was dropped off. Then I guess he went home."
24 Q Now, Danny, as you're taking this, what I'll call for
25 these purposes an oral statement, were you writing

1 this down as Mr. Cannon was telling you?

2 **A** I was.

3 **Q** And during the process of him telling you this, did
4 you promise him anything?

5 **A** I did not.

6 **Q** Did he ask for a lawyer?

7 **A** No, he did not.

8 **Q** Did he appear to understand when you were asking him
9 something, and could you understand his words as you
10 were taking them down?

11 **A** I could.

12 **MR. REUWER:** Your Honor, may we approach?

13 **THE COURT:** Sure.

14 (Whereupon, a bench conference is had)

15 **MR. MEADORS:** Do you want to continue, Judge?

16 **THE COURT:** Yes, sir.

17 **Q** Okay. Investigator Catoe, after you had taken this
18 statement, oral statement from Robert Cannon, is it
19 your practice, and did you this day, to attempt to
20 put that down on a form that you're provided with
21 from Sheriff McCaskill and the Sheriff's Department?

22 **A** I did.

23 **Q** I want to show you what's been marked State's 2. Do
24 you recognize this form?

25 **A** I do.

1 Q And is this the form I just asked you about you said
2 that you all use?

3 A It is.

4 Q And at the top of the form, whose name does it have
5 on it?

6 A Robert Cannon.

7 Q And it has some other background information up there
8 as far as social security number, address, current,
9 the date, address, phone number. Who provided you
10 that information?

11 A Mr. Robert Cannon.

12 Q All right. As he was writing his name down and his
13 address and his phone numbers, did he appear to have
14 any trouble remembering these or putting them down?

15 A No, he did not.

16 Q And as far as his social security number, did he
17 write that down without any hesitation?

18 A He did.

19 Q And when you asked him to do that, did he do it
20 timely?

21 A He did.

22 Q I guess my question, did he still appear to
23 understand what you were asking him?

24 A He did.

25 Q And could you understand what he was telling you?

1 **A** I could.

2 **Q** And at this point did you ask him if the information
3 he'd orally told you, if he would sign a statement,
4 putting all this in statement form?

5 **A** I did.

6 **Q** And did he indicate to you whether or not he would do
7 that?

8 **A** He said he would.

9 **Q** And where did this take place?

10 **A** This took place at the kitchen table actually. It's
11 like a kitchen, and then there is a little area
12 outside the kitchen with a table in it.

13 **Q** And who else is present?

14 **A** Investigator George Marthers and his mother and
15 father was inside the house.

16 **Q** And whose name appears at the bottom of this?

17 **A** Robert Cannon's signature.

18 **Q** And did you write this statement for him to sign, or
19 did he write it? Whose handwriting is this in?

20 **A** The actual body of the statement is written by
21 myself.

22 **Q** And whose words are these?

23 **A** These are Robert Cannon's words.

24 **Q** And why did you write this statement for him?

25 **A** He had asked me to. After he got through giving me

1 the story and I'm taking notes, he stated that he was
2 hungry. He actually went and got him a bowl of
3 cereal and sat down at the table and told me to write
4 the statement for him while he ate the cereal.

5 (WHEREUPON, State's Exhibit No. 103 is marked
6 for identification.)

7 Q And now I'm going to he show you State's 103. And is
8 that the same thing that you're holding in your hand
9 that's just marked now, State's 103?

10 A It is.

11 Q Now, after he's given you this background
12 information, did you have an occasion to continue
13 talking with him and put this information down in
14 statement form?

15 A I did.

16 Q And, Investigator, how many pages does this statement
17 include?

18 A Five.

19 Q And looking on the front page, you said Robert Cannon
20 signed on the bottom?

21 A He did.

22 Q Who is next to that signature?

23 A Mine.

24 Q And who is below you?

25 A Investigator George Mathers (sic).

1 Q All right. And above that, read what is written
2 above Robert Cannon's name on page 1 of State's 103?

3 A It states that "I have made the foregoing statements
4 freely and voluntarily, without fear, threat, promise
5 of reward or hope of reward of any kind. This is to
6 certify that I have read or have had read to me the
7 foregoing statement consisting of five pages, and a
8 true copy has been given to me this date."

9 Q And look on page 1 of 103. There appears to be an
10 initial of R. C. one, two, three, four lines up. Do
11 you see that?

12 A Mm-hmm (affirmative).

13 Q Explain that to the jury.

14 A Of course during the time he's telling me what to
15 write I'm trying to keep up with him. At different
16 times I have to slow down. And during the course of
17 doing all this, sometimes you make a mistake. I made
18 a mistake there. That mistake was corrected. And I
19 had him initial it saying that that mistake was
20 corrected. And that is Robert Cannon's initials.

21 Q It stands for R. C.?

22 A It does.

23 Q And after you went over the -- took this statement
24 from him, did you go back over the entire statement
25 and review it with him?

1 **A** I did.

2 **Q** And if you saw any corrections or made corrections,
3 would you ask him to initial it?

4 **A** I would.

5 **Q** Now, on the bottom of page 2, 3, 4 and 5, is Robert
6 Cannon's signature there?

7 **A** That's correct.

8 **Q** And are your signature and Investigator Marthers'
9 signature also on there?

10 **A** They are.

11 **Q** And at any time during the taking of this statement
12 from Robert Cannon, did he ever ask you or tell you
13 that I want a lawyer?

14 **A** He did not.

15 **Q** Did he ever?

16 **A** Never.

17 **Q** If he had, would you have taken a statement from him?

18 **A** No, I would not have.

19 **Q** And during the process of taking State's 103, after
20 the oral statement, did you threaten -- look at these
21 ladies and gentlemen. Did you threaten or coerce him
22 or hold out any hope or promise of reward?

23 **A** I did not.

24 **Q** Did he ever say, Danny, I don't want to talk to you?

25 **A** He did not.

1 Q And did you write down each one of these statements,
2 1 through 5, as he told them to you?

3 A I did.

4 Q And was there some give and take? Were you talking
5 to him some and following up on things?

6 A I was.

7 Q And during that process, could you understand him and
8 could he understand you?

9 A Yes, I could. And I believe he could.

10 Q And, Danny, at the end of the, it looks like a 3 --
11 at the end of 3, maybe the top of the fourth page, it
12 looks like it's a summary kind of. Did after that
13 you start asking specific questions?

14 A I did.

15 Q And those specific questions, did he appear to
16 understand those?

17 A He did.

18 Q Did he give you an answer?

19 A Yes, he did.

20 Q Still in your opinion, was he coherent and
21 understanding what you said?

22 A Yes, he was.

23 MR. MEADORS: Your Honor, at this time we'd
24 offer State's 103.

25 Q And is the person who gave you that, the oral

1 statement, the initial oral statement, the second
2 oral statement you're talking to him and this written
3 statement in the courtroom here today? If he is,
4 point him out.

5 **A** Yes, he is. He's in the white shirt and white tie
6 sitting beside Mr. Kendrick.

7 **MR. MEADORS:** We'd ask the record reflect he's
8 pointed to Mr. Cannon sitting beside Mr. Kendrick.

9 **THE COURT:** The record will so reflect he
10 identified the defendant, Cannon.

11 **MR. MEADORS:** We'd offer State's 103.

12 **MR. KENDRICK:** Your Honor, we have the same
13 objection that we discussed earlier to 103.

14 **MR. WHITLARK:** Excuse me, Your Honor. One
15 thing. I thought I heard him say he wrote it. I
16 just want to object to that. Is that what he said,
17 Cannon wrote it?

18 **MR. MEADORS:** No, sir.

19 **MR. WHITLARK:** All right.

20 **THE COURT:** The objection is overruled. Go
21 ahead.

22 (WHEREUPON, State's Exhibit No. 103 is admitted
23 into evidence.)

24 **Q** Would you please publish State's 103?

25 **A** "On Tuesday, the 12th of December 2006, at 2 p.m.

1 another person got off work and picks me up. We got
2 to the mall and I got a new cellphone and shoes. We
3 then went to pick up another person and then we went
4 to McDonald's in Blythewood and eat, and from there
5 we went to Sonic. I had on a ski mask and was joking
6 around while another person talked to a girl in the
7 back and another person was talking to Leroy. I do
8 not know Leroy's last name. We then left Sonic and
9 went to Two Notch Wal-Mart, and another person got a
10 ski mask. So we went riding and another person said,
11 'You know, we need to do something with these masks.'
12 And I asked and another person asked, 'Like what?'

13 **Q** Wait one second. All right. I'm sorry. Go back.
14 "And another person asked, 'Like what'?"

15 **A** "I asked and another person asked, 'Like what?' And
16 another person said, 'Like beat Josh's ass because he
17 is a snitch.' And I told another person, 'I do not
18 think he was a snitch.' Another person then asked
19 me, and another person wanted to ride, and we said,
20 'Whatever.' Because I had nothing else to do and no
21 certain time to be home, that was about 11 p.m.,
22 another person was real quiet in the car."

23 **Q** That was about 11 p.m. Stop.

24 **A** That was about 11 p.m. that night.

25 **Q** Go ahead. Another person?

1 **A** "Another person was real quiet in the car while we
2 were going to Josh's house. We pulled up to Josh's
3 about 11:30. Another person knocked on the front
4 door and Josh didn't answer. So another person said
5 that he was going to pull one of my moves and kick
6 the door. So another person went to the side door,
7 and he, another person, busted it in. He went in
8 first and me and another person followed him to watch
9 the fight. Josh was asleep on the couch and another
10 person yelled, 'Hey, bitch', and when Josh looked up,
11 another person hit him with a glass lamp. Right
12 after that Josh was in a daze and another person
13 drags him off the couch. Part of the way" --

14 **Q** Is that all one sentence? "Another person drags
15 him"?

16 **A** That's all one sentence, and I'm writing it as he's
17 telling me. "Drags him off the couch part of the
18 way. Then another person started pressuring another
19 person to hit Josh with the bat that was in the
20 house."

21 **Q** "With the bat that was in the house"?

22 **A** "With the bat that was in the house. And another
23 person then hit Josh in back of the head. After that
24 Josh was basically crawling trying to get up, and the
25 whole time another person was talking shit to him

1 about being a snitch. At that time another person
2 kicked Josh in the ribs and asked Josh where the weed
3 was. And Josh was just grunting. That's when
4 another person asked me to check the room and we
5 started pulling drawers and another person flipped
6 the mattress and another person was just standing
7 there. Then Josh went unconscious and I got Josh a
8 towel and put it to his head. Another person said,
9 'Fuck, we don't have anything' and pushed the
10 Christmas tree over on Josh. Another person then got
11 mad again and took the house phone. But before
12 another person left, he got some frozen chicken from
13 the freezer and put it on Josh's head to try and stop
14 the bleeding. After that we went back out the same
15 way we came in. We left, and another person dropped
16 another person off first and me second, and I guess
17 he went home."

18 That was the end of the actual statement. Then
19 began the questioning and answering.

20 **Q** And the question, what is that?

21 **A** The first question I asked him is: "Did you, another
22 person and another person have on gloves?" He
23 replied with the answer "Yes." The next question
24 was: "What kind of gloves?" He replied with this
25 answer. "Purple Latex, and I had on two pair, white

1 and purple ones on top." The next question was:
2 "Where was the bat that was used to hit Josh?" The
3 answer to that question was: "It was in Josh's
4 house. I just looked over there and another person
5 picked it up."

6 The next question asked was: "What were you,
7 another the person and another person wearing that
8 night?" He replied with an answer: "Black pants and
9 shirts and ski masks." The next question: "What
10 color was the ski mask?" His answer when he replied
11 was: "Mine was black and theirs was black or dark
12 blue." The next question: "Did you all change
13 clothes that night after the incident?" His answer:
14 He replied "Yes." And he added: "And another person
15 done something with them."

16 **Q** Now, Danny, Investigator Catoe, all of this in that
17 statement was taken at Robert Cannon's house on
18 December 15th, 2006?

19 **A** It was.

20 **Q** And is it your practice if you write a statement for
21 somebody else that you put something on this form
22 indicating that?

23 **A** I do.

24 **Q** And did you put that on State's 103?

25 **A** I did.

1 Q And read that that's on State's 103?

2 A At the bottom at the end of all the statements and
3 question and answer I wrote: "I asked Investigator
4 Danny Catoe to write this for me, and this is in my
5 own words as they are written."

6 Q And down below that, whose signature is that?

7 A I made an X, and that's Robert Cannon's signature.

8 Q All right. And what's the date and time on that,
9 Investigator?

10 A December the 15th, 2006, at 9:51 p.m.

11 Q And these were his words?

12 A That was his words.

13 Q And on each of these pages, again briefly, on 103 at
14 the bottom below: "I have made the foregoing
15 statement freely and voluntarily, without fear,
16 threat, promise or reward or hope of any reward of
17 any kind, this is to certify I have read or had read
18 to me the foregoing statement consisting of five
19 pages, and a true copy has been given to me this
20 date"; does Mr. Cannon sign at the bottom of each one
21 of those pages?

22 A He does.

23 Q And after he had given this statement to you and
24 signed it, you wrote it for him in his own words, did
25 you all go back over it?

1 **A** We did.

2 **Q** And did he make a correction on the first page, or
3 did you all correct something?

4 **A** He did.. He initialed the correction.

5 **Q** What happened next in the investigation? What did
6 you do next?

7 **A** After obtaining this statement, we then obtained an
8 arrest warrant for Mr. Derrick McDonald.

9 **Q** Now, you had previously talked to Derrick McDonald
10 that day?

11 **A** I had.

12 **Q** Briefly?

13 **A** That's correct.

14 **Q** You told us. The oral statement you've already given
15 us. Did you leave a card and say call me or
16 anything?

17 **A** I left and told him if he could think of anything
18 else when his mother got home to call me.

19 **Q** And did you receive a call from the McDonalds'
20 household?

21 **A** I did receive a call from there.

22 **Q** When was that?

23 **A** This was shortly after I had taken this statement.

24 **Q** And as a result of that, what, if anything, did you
25 tell the McDonald residence you would do?

1 **A** I told the McDonald residence that I would be there
2 just as soon as I finished up what I was doing.

3 **Q** And was that Ms. McDonald who had called you?

4 **A** It was.

5 **Q** And did you tell them what had transpired with Mr.
6 Cannon and what he told you?

7 **A** No, I had not.

8 **Q** And then where did you go after talking with Mr.
9 Cannon?

10 **A** After speaking with Mr. Cannon, we had another
11 investigator obtain a warrant on Mr. Derrick
12 McDonald. And he was bringing the warrant to
13 Richland County to have countersigned and to meet
14 with us.

15 **Q** And did that happen?

16 **A** It did.

17 **Q** And did you end up going back to Derrick McDonald's
18 house?

19 **A** I did.

20 **Q** And did you go with Richland County deputies?

21 **A** We did.

22 **Q** Because you're in Richland County?

23 **A** That's correct.

24 **Q** And is it procedure of the law you had to get a
25 deputy from that county to go make an arrest if

1 you're from another county?

2 **A** That's correct.

3 **Q** And you did that?

4 **A** I did.

5 **Q** You actually talked to me that night, didn't you?

6 **A** I did.

7 **Q** And once -- was Derrick McDonald placed under arrest
8 at his residence?

9 **A** He was.

10 **Q** And you said it. I can't find it. Where is his
11 residence?

12 **A** His residence I believe was

13 **Q** And was Mr. McDonald taken from his residence at that
14 time?

15 **A** He was.

16 **Q** All right. And where was he taken to?

17 **A** He was taken to the Kershaw County Sheriff's Office.

18 **Q** Tell these folks, did you go inside?

19 **A** I did.

20 **Q** Obviously Richland County deputies went inside?

21 **A** That's correct.

22 **Q** And did you tarry or stay long in there while the
23 Richland County deputies, as Mr. McDonald was being
24 arrested?

25 **A** No. We didn't stay very long. We didn't want to

1 cause the situation to get heated or take any extra
2 chances. So we just got Mr. McDonald and got away
3 from there as quick as possible.

4 **Q** And you took Mr. McDonald to your vehicle?

5 **A** Yes. Investigator George Marthers actually escorted
6 him to my vehicle.

7 **Q** What other folks, if any, were in the McDonalds'
8 house, Derrick McDonald's house, when y'all -- when I
9 say y'all, when you and Marthers and the Richland
10 County deputies went to arrest Mr. McDonald?

11 **A** I know that there were some other people. I
12 specifically remember his mother being in there. But
13 as far as recognizing anybody else that was in there,
14 there was a couple of other people in there, but I
15 wouldn't recognize them.

16 **Q** You take Derrick McDonald out of the house into your
17 vehicle. What kind of vehicle was that?

18 **A** It's a Chevrolet truck.

19 **Q** Was Investigator Marthers with you?

20 **A** He was.

21 **Q** And when you got in the vehicle, tell this jury who
22 was where? Just on the way back, who was sitting
23 where?

24 **A** George Mathers (sic) placed Mr. McDonald in the front
25 seat of my truck, secured him in the truck with a

1 seatbelt. And he actually got in the back seat. And
2 it's actually a four-door vehicle. And he sat in the
3 back seat directly behind Mr. McDonald, "he" being
4 George Marthers.

5 Q And is that procedure?

6 A Yes, sir.

7 Q And where were you heading to?

8 A We was pulling out and we was actually going back
9 into Kershaw County.

10 Q And as you were coming back from -- or as you were
11 leaving from Richland County coming back to Kershaw
12 County with the defendant, Derrick McDonald, in the
13 truck, did you have an occasion -- is it your
14 practice and did you this night read him his Miranda
15 rights?

16 A Yes, I did.

17 Q Tell the jury about the trip as you started to come
18 back into Kershaw County?

19 A As we got turned around and got out of Derrick
20 McDonald's driveway, he was in custody. So at that
21 time I told him that I was wanting to advise him of
22 his Miranda rights. I then at that time read him his
23 Miranda rights and asked him if he understood them.
24 And I asked him then if he wanted to speak with me,
25 we could go back to the Sheriff's Office or I could

1 take him directly to the Detention Center if he did
2 not want to speak with me. He told myself and George
3 Marthers that, yes, he wanted to talk with us about
4 the incident.

5 Q And as you're coming back to the Sheriff's
6 Department, you orally at that point read him or gave
7 him his rights?

8 A I had orally gave him his rights and asked him if he
9 understood those rights.

10 Q And do it like you did then.

11 A It's the same as the sheet. I told him that he had
12 the right to remain silent. Anything he said could
13 and would be held against him in a court of law. He
14 had the right to speak with an attorney or have him
15 present with you while you're being questioned. If
16 he could not afford to hire an attorney, one could be
17 appointed to represent him before any questioning if
18 he wished. He could decide at any time to exercise
19 these rights and not answer any questions or make any
20 statements. I asked him if he understood those. He
21 replied, "Yes, I do." And we went from there.

22 Q And that's as you're coming back from -- or as you're
23 going from Richland to Kershaw?

24 A That's correct.

25 Q And cognizant of the Court's rulings earlier; on the

1 way back, did he say anything about the area?

2 **A** He made one comment as I was driving.

3 **MR. WHITLARK:** Note our objection, please, Your
4 Honor.

5 **THE COURT:** Yes, sir. It's a continuing
6 objection. It's been overruled. Yes, sir.

7 **A** As I was driving and we were back to Kershaw County,
8 he made a statement, that: "You know, this is the
9 way we came back the other night." At that time I
10 told him, I said, "Mr. McDonald," I said, "I
11 understand you want to talk with me, but I'd rather
12 wait until we got to the Sheriff's Office and
13 continue the conversation", so that I could take
14 notes as he did so.

15 **Q** So let's head back to the Sheriff's Department as you
16 did on -- this is still December 15th, 2006?

17 **A** This is still December -- actually, it was getting
18 close to midnight.

19 **Q** But this day started out going to Sonic?

20 **A** It did.

21 **Q** All right. And you're heading back to the Kershaw
22 County Sheriff's Office. And at that time,
23 December 2006, Investigator Catoe, where was the
24 Kershaw County Sheriff's Office in relation to where
25 we are right now?

1 **A** Right nextdoor. It was still in Camden.

2 **Q** And is that where you took Mr. Derrick McDonald, the
3 defendant?

4 **A** It was.

5 **Q** And specifically where did you take him?

6 **A** Back then we were kind of cramped in the old office,
7 so we didn't have really but two offices, and three
8 investigators shared each office. We then went to
9 the very back office which was shared by myself,
10 Investigator Crawford and Investigator Rick Bailey.
11 And that's the actual investigator's office that we
12 used that night.

13 **Q** And can you describe the atmosphere when you were
14 there with Marthers and Derrick McDonald?

15 **A** Well, with it being that late, most of the deputies
16 was on the road. So there was nobody at the
17 Sheriff's Office. We go into the Sheriff's Office.
18 We go back to the investigator's office. Once inside
19 we take the handcuffs off of Mr. McDonald. He sits
20 in a chair there that most of our suspects and people
21 that we talk with would sit in. We offered him some
22 water and we began to take information from him.

23 **Q** If he had had to use the bathroom -- or I don't know
24 if he did or not -- would you have offered the
25 facilities to him and made them available?

1 **A** Absolutely.

2 **Q** And did you have an occasion then again to go over
3 the Miranda rights with Derrick McDonald?

4 **A** I did.

5 **Q** And he was under arrest at this point?

6 **A** Yes, he was.

7 **Q** And I want to show you what's marked State's 3 for
8 I.D. at this point. Do you recognize that?

9 **A** I do.

10 **Q** And is this the Miranda warnings that you read to
11 Derrick McDonald?

12 **A** It is.

13 **Q** And would you read them to this jury right here today
14 as you read them to the defendant, Derrick McDonald,
15 on December 15th, 2006, please?

16 **A** I started out --

17 **Q** Take your time?

18 **A** I started out once again. I told Mr. McDonald I was
19 going to read him his Miranda warnings. I started
20 with the first line which says: "You have the right
21 to remain silent." I asked him if he understood
22 that. He replied yes. I initialed it and circled it
23 like I always do.

24 I went to the second line. It says: "Anything
25 you say can and will be held against you in a court

1 of law." I asked him if he understood that. He
2 stated he did. I initialed it and I circled it.

3 The third line says: "You have the right to
4 talk with an attorney or have him present with you
5 while you are being questioned." I asked him if he
6 understood that, and he stated that he did. I
7 initialed it and circled it.

8 The fourth line says: "If you cannot afford to
9 hire an attorney, one will be appointed to represent
10 you before any questioning if you wish." I asked him
11 if he understood that. He said yes. I initialed and
12 circled it.

13 The last line said: "You can decide at any time
14 to exercise these rights and not answer any questions
15 or make any statements." I asked him again, "Do you
16 understand this?" And he said, "Yes." I initialed
17 it and circled it.

18 Q Danny, just let me stop you there. As you're going
19 through each one of these rights, tell these ladies
20 and gentlemen of the jury, based on your training,
21 your experience and being there that night with
22 Derrick McDonald, did he really appear to you to
23 understand these rights as you read them?

24 A Oh, yes, sir.

25 Q I mean, did he tell you he understood them?

1 **A** Yes, he did.

2 **Q** And underneath that did you sign? It says officer's
3 name. And did you sign it as having read those
4 rights to him?

5 **A** I did.

6 **Q** After that, as you had previously with Mr. Cannon,
7 did you read him his waiver of rights?

8 **A** I did.

9 **Q** And please read them to these ladies and gentlemen of
10 this jury right now as you read them or went over
11 them with Derrick McDonald on December 15th, please?

12 **A** I said, "This is the waiver of your rights. This is
13 to certify that I have read or have had read to me
14 the above statement of my rights. I understand each
15 of these rights; and having these rights in mind, I
16 waive them and am willingly make a statement. No
17 pressure or threats have been made to me. No
18 pressure or coercion of any kind has been used
19 against me."

20 I asked him if he understood that. And
21 sometimes I'll make a little joke. I'll say, you
22 know, this means that I haven't threatened to beat
23 you up or hang you or nothing like that. And he kind
24 of laughed, and he said, "Yes, I understand it." I
25 initiated it and I circled it. I then made an X

1 beside the line; and I said, "If you would, please
2 sign this stating that you understand these rights as
3 I have read them to you." And he signed it.

4 Q Now, underneath that, it's witnessed by George
5 Mathers (sic)?

6 A It is.

7 Q And signed 11:45 p.m.?

8 A That's correct.

9 Q And that would be after you had read the rights to
10 him?

11 A That's correct.

12 Q At any time -- and listen to me, Danny. At any time,
13 please, during this process of reading Mr. McDonald
14 his rights and asking him if he understood them, did
15 he appear to understand your questions?

16 A He did.

17 Q And did he indicate to you that he understood them?

18 A Yes, he did.

19 Q Did he appear to you based on your training, your
20 everyday experience, and maybe your nose if you
21 smelled it, did he appear to you to be under the
22 influence of any alcohol, drugs or any other
23 intoxicant?

24 A No, he didn't.

25 Q And was he threatened or coerced or promised

1 anything?

2 **A** No, he was not.

3 **Q** Any hope of reward held out for him?

4 **A** No, there was not.

5 **Q** At any time during this process, reading his rights,
6 did he ask for a lawyer?

7 **A** No, he did not.

8 **Q** If he had, would you have continued questioning him?

9 **A** No, I would not.

10 **Q** What happened after this? Did you talk to Derrick
11 McDonald and did he talk to you?

12 **A** I did. I told him --

13 **Q** And do you have when your notes started after his
14 Miranda was read?

15 **A** Yes. We immediately began right after the Miranda
16 was read. And my notes --

17 **Q** And does it reference "another person" every time, if
18 you will, in your notes?

19 **A** Yes, it does.

20 **Q** The words "another person"?

21 **A** Yes. And I also put the time at the top of the
22 sheet. Which on my notes was 11:48 when I actually
23 started writing.

24 **Q** And is the first thing he told you another person
25 came to the house?

1 **A** Yes. It starts and says: "Another person came to
2 the house and they asked me if I wanted to make
3 money. I decided to go. We went to Sonic. We went
4 to the Sonic and I talked to them about a job. I
5 left Sonic, went to Wal-Mart on Two Notch, and we got
6 a ski mask and a box of Latex gloves that were
7 purple."

8 **Q** Say that one more time?

9 **A** A box of --

10 **Q** He told you he got a ski mask?

11 **A** And a box of Latex gloves that were purple.

12 **Q** Keep going, please.

13 **A** "We are still in the parking lot. We first leaving
14 and someone" --

15 **Q** Another person?

16 **A** "Another person called Zack and asked Zack to see if
17 Josh was at home and to see who was there. I didn't
18 know who they were talking about at that time. Zack
19 said he would call back in ten minutes but didn't.
20 But didn't. Another person called him back and said,
21 'Don't worry about it. We have the situation
22 handled.' Then when we started planning the whole
23 thing, another person then told me that I was to stay
24 put outside once they got in the house and to make
25 sure nobody came up. He parked beside the road.

1 This was between 11 p.m. and 11:30 p.m. So we went
2 to the side door and we all kicked the door on the
3 count of three. The door opened. Another person
4 went in, another person, then me. I then turned
5 around, closed the door, and I went to the other room
6 to look out the window, and my name was called. And
7 I went into the living room. They were talking low,
8 and another person went to the light switch at the
9 dining room area and cut the light on. And another
10 person was on the couch asleep. And another
11 person" --

12 **Q** Does that say "turn the light on and Josh was on the
13 couch asleep"?

14 **A** Yeah. "Josh was on the couch asleep. And another
15 person took a bowl over his head and smashed it on
16 Josh's head. At that point that's when I looked to
17 the left and saw a wooden bat. And I started hitting
18 him on the body. That's when another person stopped
19 me to ask Josh a question. And that's when the bat
20 hit Josh in the face. That's when he really started
21 bleeding and I got scared and dropped the bat. Then
22 another person told me to go outside and pull the car
23 up to the front of the garage. So I did. And they
24 came out with some stuff in plastic bags and put it
25 in the trunk, and I got in the back seat."

1 We go down -- and we was basically just having a
2 discussion. I would ask him something or he would
3 make a response to me. And he made the statement
4 that he hit Josh with bat in back of head once and
5 one time around the temple area. He said another
6 person threw the Christmas tree on him and another
7 person kicked him. He said they got rid of some
8 stuff. Another person got rid of some stuff and that
9 he had some DVD's.

10 **Q** Did he say, "I had some DVD's"?

11 **A** He said, "I had some DVD's they gave me, but I didn't
12 want it. So I burned it in my barrel. I also burned
13 my clothes. I didn't know what they did with their
14 stuff. They dropped me off first. We all had on
15 purple gloves. And another person had two on, but
16 one of another person's ripped and another person
17 gave the other person one of his."

18 **Q** And, Danny, whose words were these?

19 **A** These were Derrick McDonald's.

20 **Q** And you're taking it down as he is talking to you?

21 **A** Yes, I was.

22 **Q** And he was voluntarily talking to you?

23 **A** Yes, he was.

24 **Q** Now, after you had taken those notes, did you ask him
25 if he would -- if this could be put on a form for his

1 signature and statement form?

2 **A** I did.

3 **Q** And I'm going to show you what's originally marked --

4 (WHEREUPON, State's Exhibit No. 104 is marked
5 for identification.)

6 **Q** -- State's 4 and just ask you to look at this
7 statement, State's 104, for the record. Is this the
8 statement that he gave you and he signs?

9 **A** It is.

10 **Q** And, Investigator, again, at the top of State's 104,
11 there's some background information. Who gave you
12 that?

13 **A** Mr. Derrick McDonald had.

14 **Q** Would you go through it again? What name is on
15 there?

16 **A** At the top of the page he put Derrick McDonald,
17 Blythewood, South Carolina, 29016, phone,
18 786-8821. His social, And he failed to
19 fill out the current date and current time and date
20 of birth. So I went back and filled out the current
21 date, current time, and asked him his date of birth
22 and wrote that in.

23 **Q** And at that point did you go over and talk with him
24 some more and put down on paper his words?

25 **A** I did.

1 Q And at the bottom of each page, did he sign these?

2 A He did.

3 Q And again, as with the last one at the bottom of each
4 page, would you read what's there above the signature
5 that Derrick McDonald signed, please?

6 A "I have made the foregoing statements freely and
7 voluntarily, without fear, threat, promise of reward
8 or hope of reward of any kind. This is to certify
9 that I have read or had read to me the foregoing
10 statement consisting of 4 pages, and a true copy has
11 been given to me this date."

12 Q And did Derrick McDonald sign underneath that?

13 A He did.

14 Q The first page, second page?

15 A He did.

16 Q Third page?

17 A He did.

18 Q Fourth page?

19 A He did.

20 Q And did you also sign here as a witness at the
21 bottom?

22 A I did.

23 Q At any time during the giving of State's 104, the
24 information he gave you and the taking of this
25 information down, did you threaten or coerce Derrick

1 McDonald?

2 A No, I didn't.

3 Q Did you hold out any hope or promise of reward?

4 A I did not.

5 Q Did he ever stop you during the taking of this

6 statement and say I don't want to talk to you?

7 A He did not.

8 Q Or I want a lawyer?

9 A No, he did not.

10 Q Could you understand his words?

11 A I could.

12 Q And did he appear to you to understand your words and

13 questions based on his responses?

14 A Yes, he did.

15 Q Did they appear to be timely?

16 A Yes, they did.

17 Q All right. Your Honor, at this time we'd -- oh. And

18 is he in the courtroom, Derrick McDonald that gave

19 you this statement on December 15th --

20 A Yes, he is.

21 Q -- 2004 (sic)? It's actually 12-24? It's at the

22 top?

23 A Yes, it is.

24 Q Would us please point him out?

25 A He's sitting in a white striped shirt between his two

1 attorneys.

2 Q Next to Mr. Whitlark?

3 A Right next to Mr. Whitlark.

4 MR. MEADORS: We'd ask the record to so reflect.

5 THE COURT: Let the record reflect the witness
6 identified the defendant.

7 Q Investigator Catoe, would you please publish State's
8 104? We offer State's 104.

9 MR. WHITLARK: Noting our objection of course,
10 Your Honor.

11 THE COURT: Certainly. Over the objection of
12 the defendant.

13 (WHEREUPON, State's Exhibit No. 104 is admitted
14 into evidence.)

15 A "About 5:30 or 6 p.m. Tuesday, the 12th, 2006,
16 December, another person and another person came to
17 my house and asked if I wanted to make some money.
18 After a while I decided to go with them. We left and
19 went to Sonic and I checked on trying to get my job
20 back. After we left the Sonic we went to Wal-Mart on
21 Two Notch and bought a ski mask and a box of purple
22 gloves. We were still in the parking lot when
23 another person calls Zack."

24 Q Another person calls Zack?

25 A "Another person calls Zack and asked him to see if

1 someone was at home. Zack told him that he would
2 call back in ten minutes, but another person called
3 him back and told him the situation was being
4 handled. That's when they started planning on how we
5 were going to get into the house. But you still
6 didn't know whose house it was going to be."

7 Q Is that you, that you still didn't know, that Derrick
8 McDonald, he still didn't know?

9 A He still didn't know whose house it was going to be.
10 "I didn't know whose house it was until we were
11 already there. Another person had told me that I was
12 to stay put outside to make sure that no one came up.
13 So another person parked beside the road in front of
14 the house and we went to the side door. The door was
15 sturdy and we all -- we all kicked the door on the
16 count of three. Another person and another person
17 went in, and myself and" --

18 Q "Another person, another person went in and myself"?

19 A Myself. That's right. "And I shut the door behind
20 hind me and I went to another window to watch out.
21 That's when my name was -- and I went into the living
22 room, the dining room area. Another person then cut
23 on the lights and picked up a glass bowl with flower
24 petals in it, picked it up over his head and hit Josh
25 in the head with it while Josh was asleep on the

1 couch. Then another person dragged Josh out of the
2 couch. But I first grabbed a bat that was against
3 the wall and I started hitting Josh in the body.
4 Then another person tried to stop me to ask Josh a
5 question about where the money and dope was, and I
6 couldn't stop the bat. I couldn't stop the bat and I
7 hit Josh in the back of the head. I also think I hit
8 him one time in the temple area of his head. Josh
9 then started bleeding more and I got scared. That's
10 when another person and another person started
11 kicking and stomping Josh. Another person then told
12 me to go get the car and pull it up. The last thing
13 I saw was another person pushing the tree over on
14 Josh. Then another person and another person came
15 out with plastic bags of stuff and told me to pop the
16 trunk. I did and got in the back seat. Then another
17 person dropped me off at my house and gave some DVD's
18 and stuff that I didn't want. So I burned them and
19 my clothes in a burn barrel at my house. All of my
20 clothes and shoes and everything burned completely
21 up."

22 Then on the fourth and final page, the only
23 thing on this back page was what I always write when
24 I write a statement for somebody. It was: "I asked
25 Investigator Danny Catoe to write my statement for

1 me, and this is written in my own words." I made an
2 X below it. Derrick McDonald signed it. Dated 12-16
3 of '06.

4 Q Why did you make that X below?

5 A Just so he could -- just to show him where to sign up
6 under the --

7 Q Below that there's an X that marks out the rest of
8 the page.

9 A Oh. I always make that X or try to make that X so
10 that nobody can go in and add anything or make any
11 additions to the statement.

12 Q After you had taken -- and again, these were whose
13 words?

14 A These were Derrick McDonald's words.

15 Q After you had taken this statement, did you go back
16 over it with him?

17 A I did.

18 Q And again, I won't have you read it again; but the
19 bottom, you went over that he had made this statement
20 freely and voluntarily?

21 A I did.

22 Q And on page 1, did he initial and put his initial
23 there at the bottom?

24 A He did.

25 Q And did you initial there because it looks like you

1 put "consisting of three pages" and he initialed, but
2 then when you went and added the last, it made four?
3 **A** It made 4. That's correct.
4 **Q** And did you have him initial that?
5 **A** I did.
6 **Q** And looking also on page 1, do his initials appear
7 anyone else on page 1, three lines from the bottom?
8 **A** Yes, it did.
9 **Q** All right. And why was that on there? Did you go
10 back over the statement with him?
11 **A** It was when we went back over his statement, it was
12 one of the corrections that was made. And I had him
13 initial it saying that he agreed to that correction.
14 **Q** Okay. And on page 1 he puts DJ?
15 **A** He does.
16 **Q** And did you come to find out in the investigation he
17 was known as D.J. or had a nickname?
18 **A** His nickname was D.J.
19 **Q** And on page 2, one, two, three from the top, does
20 there appear to be another correction and another
21 initial there?
22 **A** There is.
23 **Q** And what is that?
24 **A** It appears to be DJM.
25 **Q** So he put all three of his initials then?

- 1 **A** He did.
- 2 **Q** And at the bottom one, two from bottom of page 2, two
- 3 lines up on State's 104, right before the word "but",
- 4 does there appear to be a correction there?
- 5 **A** There is.
- 6 **Q** And whose initial is there?
- 7 **A** That's DJM.
- 8 **Q** And does that signify again you made the correction,
- 9 he initialed it?
- 10 **A** It does.
- 11 **Q** And does it show you went back over it with him?
- 12 **A** It does.
- 13 **Q** And does he initial the bottom of there also?
- 14 **A** He does.
- 15 **Q** DJM. Where you just had put 3 first and it turned
- 16 out 4 because you added the "I wrote the statement"?
- 17 **A** That's correct.
- 18 **Q** And on page 3 also, does he initial at the bottom?
- 19 **A** He does.
- 20 **Q** And then page 4 is the page you added at the end that
- 21 these are your words after he got through with his
- 22 statements?
- 23 **A** That's correct.
- 24 **Q** "I asked Danny Catoe to write this"?
- 25 **A** That's correct.

- 1 Q Now, Investigator, every one of these pages is
2 Derrick McDonald's signature?
- 3 A It is.
- 4 Q Did you go over this statement with him afterwards?
- 5 A I most certainly did.
- 6 Q Were these his words he gave to you?
- 7 A It was.
- 8 Q Is that his signature at the bottom of each page?
- 9 A It is.
- 10 Q Did you watch him sign it?
- 11 A I did.
- 12 Q Page 1?
- 13 A That's right.
- 14 Q Page 2?
- 15 A I did.
- 16 Q Page 3?
- 17 A I did.
- 18 Q Page 4?
- 19 A I did.
- 20 Q Did he have any trouble signing it?
- 21 A No, he didn't.
- 22 Q Did he tell you, I don't want to sign it?
- 23 A No, he did not.
- 24 Q Beg the Court's indulgence. Begging the Court's
25 indulgence just for a second. Did you later on at

1 some point take a statement from Zachary Waltemath?

2 **A** I did.

3 **Q** What was the date of that?

4 **A** That was on December the 27th, 2006.

5 **Q** About ten or eleven days after this statement?

6 **A** Yes, sir.

7 **Q** A couple of little matters and I'll be through,
8 Judge. If you just look at these and tell me if you
9 recognize them. And that's all for these purposes.
10 Okay. State's 97?

11 **A** I do.

12 **Q** Let's do it this way. Judge, could I use this one
13 second just to look? 85 through 89, I don't believe
14 I've asked you about these. Would you just look at
15 them and tell them, do they relate to the scene that
16 night and how you found it?

17 **A** Yes. I recognize them all and they do relate to the
18 scene.

19 **MR. MEADORS:** 85, Your Honor, through 89 for
20 I.D. at this point.

21 **Q** And finally, 91 through 97, the same question, do you
22 recognize them and do they appear to be as you saw
23 the body of Josh Zoch on December 15th, 2006?

24 **A** Yes, they do.

25 **MR. MEADORS:** 91 through 97 for I.D. at this

1 point, Your Honor. Begging one more second.

2 Q Did Mr. McDonald orally tell you he hit Josh Zoch
3 with a bat?

4 A He did.

5 Q Did he tell you in his own words that you put down
6 here and signed in State's 104 that he hit Josh Zoch
7 with a bat?

8 A He did.

9 Q Where did you find State's 99?

10 A We found it up under a recliner, pink colored
11 recliner inside the living room.

12 Q Of whose house?

13 A The victim, Josh Zoch's.

14 MR. MEADORS: That's all we have. Thank you.

15 THE COURT: All right. Approach the bench,
16 counsel.

17 (Whereupon, a bench conference is had)

18 THE COURT: All right, ladies and gentlemen.

19 That will conclude the testimony for the day. I ask
20 you to be back in the jury room at 9:00 in the
21 morning. We'll continue the trial. Again, don't
22 discuss the case when you return to the jury room in
23 the morning or with anyone else over the evening
24 hours. Have a pleasant evening. I know it's been a
25 long day. I've kept you longer than I would normally

1 want to do, but we're trying to move this thing along
2 so we'll finish this week. Thank you very much.
3 Have a pleasant evening.

4 (Jury out at 5:55 p.m.)

5 **THE COURT:** Is the jury gone? All right,
6 Mr. Catoe. I'm going to admonish you not to discuss
7 this case with anyone else over the evening hours.
8 See you at 9:00.

9 **THE WITNESS:** Thank you, sir.

10 **MR. MEADORS:** Your Honor, Ms. McDuffie is going
11 to just come up here, and for my sake and maybe
12 everybody's, if you've got one second, just go over
13 these pictures and make sure we've got them right.

14 **MR. REUWER:** Your Honor, I also want to put an
15 objection on the record.

16 **THE COURT:** All right. Hold on. All right.
17 Mr. Reuwer, go ahead.

18 **MR. REUWER:** If it please the Court. We object.
19 The defense objects to the reference made by
20 Investigator Catoe. In contravention of the
21 redaction he used the word "Chris" when he was
22 talking about his notes and in his statement. And he
23 also used the term "someone else" once or twice
24 instead of using the words "another person" that we
25 had agreed on that we'd use throughout the redaction.

1 Thank you, Your Honor.

2 **THE COURT:** Well, I understand the objection. I
3 told you at a side bar I felt the "someone else" was
4 a generic term and did not offend the Bruton -- did
5 not offend Bruton. I believe that his use of the
6 word "Chris" when he was discussing his own notes was
7 early on in the testimony. Quite frankly, I didn't
8 even catch it. My law clerk caught it. So I presume
9 and assume that it was inadvertent and that it
10 hopefully was harmless error.

11 **MR. REUWER:** Thank you, Your Honor.

12 **THE COURT:** 9:00 in this morning.

13 **MR. KENDRICK:** Your Honor, could we also join in
14 that objection?

15 **THE COURT:** Certainly.

16 **MR. KENDRICK:** That we renew everything we
17 argued earlier, especially after hearing the
18 testimony.

19 **MR. MEADORS:** Your Honor, I just want to note
20 there was not an objection when that inadvertent
21 reference came out.

22 **THE COURT:** There was not.

23 **MR. REUWER:** Well, I didn't want to make that
24 objection, Your Honor, on purpose.

25 **MR. MEADORS:** I just want to make that on the

1 record.

2 **MR. REUWER:** I specifically did not object on
3 purpose at that time.

4 **THE COURT:** I know. I know that. And I
5 wouldn't have either. It just calls attention to it.
6 9:00.

7 (Whereupon, the proceedings are concluded for
8 the day, to be reconvened tomorrow morning)

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Thursday, May 8, 2008

(WHEREUPON, Court's Exhibit No. 4 is marked for identification.)

(WHEREUPON, Court's Exhibit No. 5 is marked for identification.)

MR. MEADORS: Judge, I just inadvertently -- I just want to -- I don't believe there will be an -- I forgot to enter the advice of rights. I did it for ID and I just want to do that real quickly.

THE COURT: As to who?

MR. MEADORS: McDonald, that last witness.

THE COURT: All right.

MR. MEADORS: I thought I'd officially done it but I hadn't. I want to do that real quick.

MR. WHITLARK: What is it?

MR. MEADORS: Advice of rights.

THE COURT: Is the State ready to proceed?

MR. MEADORS: Yes.

THE COURT: Defense ready to proceed?

MR. WHITLARK: Ready, Your Honor.

MR. RILEY: Ready, Your Honor.

THE COURT: Mr. Kendrick, are you ready?

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

THE COURT: Bring the jury, please.

MR. MEADORS: Are you going to do that initial

1 inquiry now when they come out?

2 **THE COURT:** I can. Sure. I'll do it in the
3 form of an admonition.

4 (Jury in at 9:48 a.m.)

5 **THE COURT:** Good morning, ladies and gentlemen.
6 Once again I apologize for the delay but there were
7 some matters I had to take up with the attorneys
8 before we began this morning.

9 Let me just say one thing before we actually get
10 started. If anybody makes any contact with you about
11 this case -- and sometimes we get all sorts of rumors
12 and swirling thoughts of conspiracies and all that
13 sort of thing. If anybody makes any contact with
14 you, if you have any contact with anybody that
15 mentions anything about this case, I wish -- I
16 actually instruct you to come forward. You can come
17 to me privately. You don't have to do it in public
18 here with everybody watching. But if any of that
19 were to take place, I want to you let the clerk know
20 and I'll talk to you privately about it because it's
21 a serious matter.

22 So I know you understand that. I don't have any
23 reason to believe anybody has tried to contact you or
24 you've had any contact with anybody else about the
25 case. I don't have any reason to believe that. But

1 it's just sort of a caveat, I mean, a cautionary
2 thing that I usually tell jurors. And I hope you'll
3 understand. All right. Mr. Whitlark, you may begin
4 your cross examination.

5 **MR. WHITLARK:** May it please the Court, Your
6 Honor?

7 **MR. MEADORS:** Your Honor, inadvertently, we'd
8 offer State's 3. It's the waiver of rights.

9 **THE COURT:** Without objection.

10 **MR. WHITLARK:** No objection.

11 **THE COURT:** Subject to objection.

12 **MR. WHITLARK:** Well, subject to our objection.

13 **THE COURT:** Yes, sir. Go ahead.

14 (WHEREUPON, State's Exhibit No. 3 is admitted
15 into evidence.)

16 CROSS EXAMINATION

17 **BY MR. WHITLARK**

18 **Q** Investigator Catoe, would you agree with me at this
19 point here that all the stuff submitted to SLED and
20 all the fingerprint information you took, there's not
21 a single bit of forensic evidence that you've
22 gathered that connects these three to this case, is
23 there, sir?

24 **A** No. I couldn't necessarily agree with you on that.

25 **Q** Okay. You took fingerprints, right?

- 1 **A** I dusted for prints.
- 2 **Q** Are you an expert in that?
- 3 **A** No, I'm not.
- 4 **Q** But you didn't find any fingerprints, did you?
- 5 **A** I did not.
- 6 **Q** And being a police investigator and a trained
- 7 investigator, you knew when you didn't find any
- 8 fingerprints that gloves must have been used, right?
- 9 **A** Not necessarily. I mean, there could be other
- 10 reasons for not finding fingerprints other than
- 11 gloves.
- 12 **Q** Well, one of the pieces of evidence that you gathered
- 13 was a tip of a rubber glove, right?
- 14 **A** That's correct.
- 15 **Q** And it was under a refrigerator in the kitchen?
- 16 **A** It was not under the refrigerator.
- 17 **Q** Well, do you have a photograph as to where it was
- 18 found?
- 19 **A** There was one shown to me yesterday.
- 20 **Q** Well, do you remember that the refrigerator was
- 21 pulled out in that picture and that the tip was
- 22 laying right there?
- 23 **A** It was laying more towards the back corner of the
- 24 refrigerator.
- 25 **Q** Okay. Now, you don't have -- you submitted some

1 stuff to SLED, right?

2 A No. I didn't.

3 Q As part of your investigation?

4 A I didn't submit anything to SLED, no.

5 Q You're the chief investigator in this case, are you
6 not, sir?

7 A That's correct.

8 Q All right. And you're in charge of this, right?

9 A That's correct.

10 Q You do know what's going on in the case, right?

11 A I do.

12 Q All right. Evidence was submitted to SLED, wasn't
13 it?

14 A There was evidence submitted to SLED.

15 Q And it came back negative as to any connection with
16 these three, didn't it?

17 A I do not know the complete results. Somebody from
18 SLED would have to answer that.

19 Q Do you remember what the report said from SLED?

20 A Not right off the top of my head. I don't know.

21 Q Okay. You don't have any witnesses placing them at
22 the scene, do you?

23 A No. I don't have any eye witnesses.

24 Q No witnesses, right, placing any of these three at
25 the scene at the time of this?

- 1 **A** No eye witnesses.
- 2 **Q** Huh?
- 3 **A** No eye witnesses.
- 4 **Q** No eye witnesses. That's right. Also, so we've got
- 5 no fingerprints that connect them, right?
- 6 **A** That's correct.
- 7 **Q** We have no forensic evidence that we know of, from
- 8 SLED or otherwise, connecting these three to this?
- 9 **A** Not that I can testify to.
- 10 **Q** Okay. And we don't have any eye witnesses saying
- 11 that they were there, right?
- 12 **A** No.
- 13 **Q** Okay. Now, when you first got there that day, what
- 14 time was it when you got there?
- 15 **A** I really don't know the exact time. I would say it
- 16 was somewhere close to 7, maybe a little after 7.
- 17 **Q** All right. And when you got there were all three of
- 18 the young people that arrived earlier, were they
- 19 still there?
- 20 **A** I don't remember. I know that there were some people
- 21 standing kind of at the edge of the highway and the
- 22 driveway. But at that time I don't know exactly who
- 23 they were.
- 24 **Q** All right.
- 25 **A** I went straight to my Captain who was in the front

1 yard.

2 Q Do you know who they are now?

3 A I know one. I know that Melissa was one of them.

4 Q All right. Well, naturally, you questioned her
5 because she was at the scene, right, when they found
6 Mr. Zoch?

7 A I did talk with Melissa.

8 Q Okay. And she told you a lot of things, right?

9 A She talked with me. Yes, sir.

10 Q She was there 'til about midnight, right; something
11 like that?

12 A She was where until midnight?

13 Q At the scene where the body was found.

14 A Yes.

15 Q Where are your notes of that interview? By the way,
16 what day was that, sir?

17 A I believe that would have been on the 14th.

18 Q Do we have the calendar exhibit? The 14th. The 13th
19 is when he was found, right?

20 A The 13th was when he was found. Yes, sir.

21 Q All right. And do you have notes from the 13th when
22 you talked with Ms. Davy?

23 A I don't recall speaking with Ms. Davy at the scene.

24 Q You're the chief investigator on this case?

25 A I am.

1 Q And you didn't talk to the person who found the body?

2 A No. Actually I believe that our Captain, David
3 Thomley, spoke with her while I was processing the
4 scene.

5 Q Okay. And did you come into possession of some
6 information regarding some sort of trouble or
7 something between Mr. Chris Whitehead and the
8 decedent?

9 A Not that night. The next day.

10 Q Okay. Well, when did you come in possession of that
11 allegation?

12 A On the 14th.

13 Q Of what date?

14 A The 14th.

15 Q The 14th. What time did you get in possession of
16 that allegation?

17 A I don't have a time here on my notes. I just have
18 Thursday, the 14th, 2006 of December.

19 Q The 14th. And what were you told?

20 A I mean, I've got -- I've got almost three pages of
21 notes.

22 Q All right. Were you told that there was a rumor
23 about Mr. Zoch being a snitch for the police?

24 A I don't see anything in my notes saying that.

25 Q Okay. Did she tell you or allege to you that Mr.

1 Whitehead had called their house the night before?

2 And when I say "their house", I'm talking about Zack
3 Willmouth (sic). Waltemath.

4 **A** Let me make sure. I'm going through my notes.

5 **Q** Certainly you've read through --

6 **A** I don't --

7 **Q** Go ahead. I'm sorry.

8 **A** I don't see where she said she was at Molly's house
9 when he called.

10 **Q** Sir, didn't you run a license check on Mr. Whitehead
11 before you ever went to Sonic that day?

12 **A** I did.

13 **Q** All right. So you were in possession of some
14 information about him, weren't you?

15 **A** Yes, sir.

16 **Q** All right. Where did you get the information?

17 **A** From our DMV website.

18 **Q** I know. Why did you go to the website?

19 **A** To get his information.

20 **Q** I know. But why did you go looking for it? Who told
21 you about him? How did you get his name?

22 **A** Actually, Melissa Davy had brought his name up.

23 **Q** Well, all right. So she did bring his name up to
24 you, didn't she?

25 **A** Yes, she did.

1 Q All right. And so we can establish one thing. When
2 you went to Sonic that day, you were looking for Mr.
3 Whitehead, weren't you?

4 A I wasn't necessarily looking for him that day at that
5 particular time, no, when I went to Sonic.

6 Q So you ran a DMV check on him before you went up
7 there, but you weren't really looking for him?

8 A Not when I went to the Sonic.

9 Q Sir, you gathered some evidence at the scene when you
10 first got there, right?

11 A I photographed the evidence.

12 Q Exactly. And the exhibits from the scene that you
13 put in yesterday, do you remember them? Do you
14 remember what you got?

15 A Yeah. I remember a good bit of it. Yes, sir.

16 Q Would you agree you got a bat, softball bat?

17 A That's correct.

18 Q You got the lock from the door, right?

19 A They actually were striker plates.

20 Q Okay. Striker plates. You got a fingertip from a
21 rubber glove, right?

22 A That's correct.

23 Q A glove tip. Softball bat. What else did you get?

24 A I had the striker plates.

25 Q Striker plate. What else?

- 1 **A** I believe that's all he put in yesterday.
- 2 **Q** Well, what else did you gather yourself that day?
- 3 **A** I didn't gather any of it. I photographed it.
- 4 **Q** You put it in bags, right?
- 5 **A** I did not put that in a bag.
- 6 **Q** So did you just leave it there that day?
- 7 **A** SLED put that bat in that bag.
- 8 **Q** Did they come to the scene? SLED?
- 9 **A** No.
- 10 **Q** Did you take the bat from the house that day?
- 11 **A** We did.
- 12 **Q** All right. What else did you take from the house?
- 13 **A** We took the striker plate.
- 14 **Q** Okay.
- 15 **A** And the glove tip.
- 16 **Q** Okay.
- 17 **A** And that's the three things I put into evidence
- 18 yesterday.
- 19 **Q** All right. I didn't ask you that. I asked you what
- 20 did you take that day?
- 21 **A** I'm trying to remember. I think we took a pillow. I
- 22 don't remember everything we took. I can't remember
- 23 everything that we took that day. There was several
- 24 items.
- 25 **Q** Well, refer to your file if you don't mind so that

- 1 you can refresh your memory.
- 2 **A** I have the listed items that I photographed.
- 3 **Q** You don't have a list of items you removed as
- 4 evidence?
- 5 **A** I did not remove any evidence. I did not collect the
- 6 evidence. I photographed the evidence.
- 7 **Q** All right. What did you photograph?
- 8 **A** I photographed the victim's body.
- 9 **Q** Okay.
- 10 **A** A Nintendo game.
- 11 **Q** Yeah.
- 12 **A** Dominoes pizza coupon. A bat, a pillow, some towels,
- 13 blood on the couch, purple Latex glove fingertip,
- 14 some black Timberland shoes, door locks, door
- 15 molding, door strikers, and a peroxide bottle.
- 16 **Q** Now, one of the photographs you took had a pack of
- 17 chicken in it, right?
- 18 **A** I believe so. Yes, sir.
- 19 **Q** You're not sure?
- 20 **A** Yeah. It's not -- it's not one of the items that I
- 21 had listed on the -- that I had labeled.
- 22 **Q** Have you ever worked in narcotics division of the
- 23 Sheriff's Department?
- 24 **A** No, I have not.
- 25 **Q** Do you know anything about gangs or anything about

1 drug sales, drug dealers or anything like that?

2 **A** I'm -- I'm not trained in that part.

3 **Q** Okay. So you had a chicken. You knew you had this,
4 right?

5 **A** That's correct.

6 **Q** Glove tip. I'm sorry. Baseball bat. Or softball
7 bat, striker plate, photo of Mr. Zoch, Dominoes,
8 towel, shoes, lock, and peroxide. Right?

9 **A** That's correct.

10 **Q** Now, you knew you that the door or thought that the
11 door had been forced, right? Is that your opinion
12 after you had got there?

13 **A** That is my opinion.

14 **Q** And you took some photographs of the floor area
15 there, right?

16 **A** That's correct.

17 **Q** And some what you thought were footprints or
18 something, right?

19 **A** Some footprints that was outside of the -- around the
20 carport area in the sand.

21 **Q** All right. But none of them match up with anything
22 of these three young men, does it?

23 **A** Nothing --

24 **Q** None of those footprints?

25 **A** Nothing has been linked. No, sir.

1 Q Okay. Now, after you got to the scene -- and you
2 spoke with Ms. Davy, right?

3 A I do not remember speaking with Ms. Davy at the
4 scene.

5 Q Do you remember being informed about Chris Whitehead
6 from Ms. Davy?

7 A The next day, the 14th.

8 Q Okay. Do you remember her saying that there was some
9 difficulties between Mr. Whitehead and Mr. Zoch?

10 A I do.

11 Q Okay. Do you remember what she said to you?

12 A I don't remember the words exactly.

13 MR. MEADORS: Objection to any hearsay, Your
14 Honor.

15 A I don't remember exactly. It was just that there was
16 a little bit of animosity between the two.

17 Q Okay. Well, it's enough for you to go run a license
18 check and so forth on him, right?

19 A Absolutely.

20 Q Okay. Now, you say you didn't send anything to SLED.
21 But of course you are the chief investigator of this
22 case, right?

23 A I am.

24 Q And you have sent things to SLED as recently as three
25 months ago or even a month ago, haven't you?

1 **A** I have not taken anything to SLED.

2 **Q** All right. I know you haven't. Do you know that
3 things were sent there to SLED?

4 **A** I do know things were sent there.

5 **Q** All right. And one of them was the softball bat was
6 sent, right?

7 **A** That's right.

8 **Q** And you all also were checking phone records
9 recently, weren't you?

10 **A** We have checked phone records. Yes, sir.

11 **Q** And recently?

12 **A** I don't know what you would consider recently. I
13 mean, these phone records have been checked.

14 **Q** This year?

15 **A** Before the trial. Yes.

16 **Q** This year?

17 **A** This year.

18 **Q** Okay. This year. You didn't find anything that
19 connected any of these young men in any of that, did
20 you?

21 **A** I don't know that I could really testify to that
22 either, because I couldn't tell you about all the
23 numbers and stuff that was found. I think somebody
24 from the phone company would have to do that.

25 **Q** Well, sir, if you had something, you certainly would

1 have had it in your file and testified to it when you
2 were on the stand, wouldn't you?

3 **A** Not necessarily. The solicitor may have it.

4 **Q** Okay. All right. So you say you weren't looking for
5 Chris Whitehead when you went up to Sonic, right?

6 **A** I was not looking for Chris when I went to the Sonic.
7 No, sir.

8 **Q** You just ran a license check on him and you knew he
9 was working up there, right?

10 **A** At this time anybody could be a suspect, and through
11 any good investigation you would want to see who
12 might would be your suspect.

13 **Q** Right. Anybody could be a suspect, couldn't they,
14 sir?

15 **A** At that time in this investigation; yes, sir.

16 **Q** Well, you had some other suspects, didn't you?

17 **A** Like I said, anybody could be a suspect at that time.

18 **Q** Investigator Catoe, you went and picked up Adrian
19 Duran, didn't you?

20 **A** No. I did not pick up Adrian Duran.

21 **Q** Did somebody from the Kershaw County Sheriff's
22 Department go and grab Adrian Duran?

23 **A** I know that Adrian Duran was at the Sheriff's Office.
24 I don't know what method was used to get Adrian
25 Duran.

1 Q You know he was arrested, don't you?

2 A I know he was brought to the Sheriff's Office.

3 MR. MEADORS: Your Honor, objection. There was
4 no arrest in relation to this case whatsoever. There
5 is no relevance.

6 THE COURT: Not yet. I'm going to allow it. Go
7 ahead.

8 Q Do you know whether or not Adrian Duran was arrested
9 before you went to the Sonic or anywhere else?

10 A Adrian Duran was brought to the Sheriff's Office on
11 the 14th, if I am not mistaken.

12 Q And the question is, do you know whether or not he
13 was arrested?

14 A I do not know whether he was arrested or what charge,
15 if he was arrested, he was arrested on that day.

16 Q You're the chief investigator of this case and you
17 don't know Adrian Duran was arrested?

18 A He didn't have anything to do with our case at this
19 time that we could prove.

20 Q Sir, Adrian Duran was a victim of a burglary by the
21 decedent just a couple of months before this, wasn't
22 he?

23 A That's my understanding.

24 Q And he had \$4,000 taken by the decedent, right?

25 A That is my understanding.

1 **MR. MEADORS:** Your Honor, I'm going to object.
2 None of this is proven and this is speculative. We
3 object.

4 **THE COURT:** The witness is confirming it.

5 **MR. MEADORS:** Well, he's not confirming it.
6 He's --

7 **THE COURT:** So I'll allow it.

8 **Q** He had two people with him when he committed the
9 burglary. Mr. Zoch did, the decedent. Right?

10 **A** That is what I see on the incident report that our
11 office had. I did not work that case.

12 **Q** Well, he became an informant for the police. Mr.
13 Zoch did, didn't he?

14 **A** I cannot confirm that. I do not know.

15 **Q** Were you in court yesterday?

16 **A** I was in court yesterday.

17 **Q** Did you hear Ms. Davy say he was working for the
18 police?

19 **A** I told you I didn't know that for sure. That's what
20 Ms. Davy said.

21 **Q** Now, sir, Mr. Duran was in police custody before you
22 went to the Sonic, wasn't he?

23 **A** Again, I'm not sure. I did not arrest Mr. Duran.

24 **Q** You know he was arrested, don't you, sir?

25 **A** I don't know for sure if he was arrested. I don't

1 know. I did not arrest him at the Sheriff's Office.

2 Q You were talking to people in the neighborhood,
3 weren't you, the day you went there, the first day
4 you went there, on the 13th of December?

5 A No. I did not speak with anybody in the
6 neighborhood.

7 Q Did you all do a neighborhood canvas in this case?

8 A Yes, we did.

9 Q How many witnesses were spoken to that lived in the
10 neighborhood?

11 A I don't know. We had other investigators that also
12 helped in that, that search.

13 Q So your sole focus was on Mr. Whitehead is what
14 you're saying, right?

15 A My sole focus was on making sure the scene was
16 processed, the paperwork was done correctly. I mean,
17 I had other things that I could do. I couldn't do it
18 all by myself.

19 Q What other things? I mean, what's your job?

20 A At which point? I mean, your jobs change during an
21 investigation.

22 Q Is it your job to find out who did this?

23 A And I did.

24 Q Yeah. Is it your job to find out who did this crime?

25 A Exactly right.

1 Q Okay. And you don't know about Adrian Duran?

2 A I know Adrian Duran was brought to the Sheriff's
3 Office.

4 Q All right. But you don't know that he was arrested?

5 A I don't know for sure that he was arrested and I
6 can't testify to that. It should be on the -- if he
7 was arrested, it should be on the warrant who
8 arrested him. I don't know anything about it.

9 Q So you went to the Sonic because you were focused on
10 Mr. Whitehead, right?

11 A No.

12 Q Did you --

13 A I went to the Sonic --

14 Q I'm sorry. Go ahead.

15 A I went to the Sonic to talk with Ms. Pat and Cecile
16 Trapp.

17 Q And when you got there, they told you some things
18 like what? They said, well, you know what? I saw
19 Chris Whitehead that night. He was with these two
20 young men right here, right?

21 A Yes, they did.

22 Q Mr. McDonald and Mr. Cannon. But you didn't have
23 their names before that, did you?

24 A Not until we got to the Sonic.

25 Q Okay. So you never heard a word about them you until

1 you got up there, right?

2 **A** I had heard Mr. Robert Cannon's name brought up about
3 a pair of tennis shoes.

4 **Q** From an interview view with someone?

5 **A** Yes. From an interview with Ms. Davy.

6 **Q** So you do remember that part of it?

7 **A** I do.

8 **Q** Do you remember Ms. Davy telling you that Mr. Zoch
9 had been hitting her and hurting her? Did she tell
10 you that?

11 **A** I know she said that they had been in some arguments.
12 I don't know if she come out and told me about any
13 abuse or not.

14 **Q** As part of your investigation and what you did in
15 this case, are you aware that Mr. Zoch had been
16 hurting Ms. Davy?

17 **A** Yes.

18 **Q** All right. Now, did you review any of the interviews
19 from the neighborhood before you went to the Sonic
20 restaurant?

21 **A** Briefly.

22 **Q** Well, what did you learn?

23 **A** In some of the ones that was collected, nobody had
24 heard or seen anything. I believe there was one guy
25 said that he had been in the bed most of the day. He

1 hadn't seen or heard anything. So I really didn't
2 learn anything at that point.

3 **Q** But you had reviewed it before you went to the Sonic,
4 right?

5 **A** I had reviewed some of it. Yes, sir.

6 **Q** Well, are you aware that there was a witness that saw
7 these young people there at 5:15 in the afternoon?
8 That's in your file, isn't it?

9 **A** I don't see anything about seeing these -- any naming
10 any particular people that they saw.

11 **Q** Sheila Rodden, do you know that? Do you see that
12 name in your file?

13 **A** Say what?

14 **Q** Sheila Rodden, R-O-D-D-E-N.

15 **A** Yes, I do.

16 **Q** Do you see her name?

17 **A** Yes, I do.

18 **Q** All right. And she said that she got home at 5:15,
19 didn't she?

20 **A** That's correct.

21 **Q** And there were two cars there?

22 **MR. MEADORS:** This is classic hearsay.

23 **THE COURT:** Yes, sir. I mean, you're just going
24 to have to ask it a different way. What did he learn
25 from her.