

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2013-001772

RECEIVED

JAN 21 2014

S.C. Supreme Court

ISAIAH WALKER, 322149,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

INDEX

VOUME I of II

Index	i
Record on Appeal Volume I	
Index	1
Exhibits	5
Indictment, ...	41
Trial Transcript May 29-31, 2007	43
Record on Appeal Volume II	242

VOUME II of II

Record on Appeal Volume III	494-697
Notice of Appeal filed May 31, 2007	698
Order of Dismissal dated May 27, 2008	699
Motion to Reinstate filed June 6, 2008	700
Court of Appeals Order Granting Petition to Reinstate dated June 18, 2008	702
Anders Brief of Appellant dated August 8, 2008	703
Designation of the Matter	710
Court of Appeals Unpublished Opinion 2010-UP-114 filed February 11, 2010	713
Remittitur from the Court of Appeals dated March 4, 2010	715
Application for Post-Conviction Relief filed October 6, 2010	716
State's Return dated April 26, 2011	723

Clerk of Court Records	729
SCDC Records	768
Amended Application for Post-Conviction Relief filed September 6, 2012	770
PCR Hearing Transcript dated September 6, 2012.....	774
PCR Exhibits	894
Applicant's Exhibit 1 Spartanburg Sheriff's Office Master Name Index Report	894
Applicant's Exhibit 2 SLED Arrest Record Brent Gentry	897
Applicant's Exhibit 3 Rodney Richey's letter to Isaiah Walker dated 2/16/07	901
Applicant's Exhibit 4 Voluntary Statement of Chavez Miller.....	902
Applicant's Exhibit 5 SLED Arrest Record Amanda Murphy	903
Applicant's Exhibit 6 SLED Arrest Record Kenneth Foster	904
Order of Dismissal filed July 15, 2013	905
Notice of Appeal filed August 19, 2013	926

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

HONORABLE ROGER L. COUCH

Case No: 2007-GS-42-625

STATE OF SOUTH CAROLINA,

RESPONDENT,

against

ISAIAH WALKER,

APPELLANT.

RECORD ON APPEAL

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INDEX

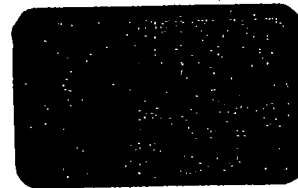
Index.....	1
State exhibit#1 Color photo.....	5
State exhibit#2 Color photo.....	6
State exhibit#3 Color photo.....	7
State exhibit#4 Color photo.....	8
State exhibit#5 Color photo.....	9
State exhibit#-6 Aerial Color photo.....	10
State exhibit#7 Aerial Color photo.....	11
State exhibit# 8 Aerial Color photo.....	12
State exhibit#9 Crime Scene Diagram.....	13
State exhibit#10 Timberland Boot-Right	(filed under separate cover)
State exhibit#11 Timberland Boot-Left	(filed under separate cover)
State exhibit#12 Black Sweat Shirt	(filed under separate cover)
State exhibit#13 Driver's License/CPM Card	(filed under separate cover)
State exhibit#14 Shell Casing in container	(filed under separate cover)
State exhibit#15 Two Cartridge Castings	(filed under separate cover)
State exhibit#16 Brent Gentry DNA swab	(filed under separate cover)
State exhibit#17 Red Sweat Pants	(filed under separate cover)
State exhibit#18 Spent 9mm Shell in Container	(filed under separate cover)
State exhibit#19 Projectile	(filed under separate cover)

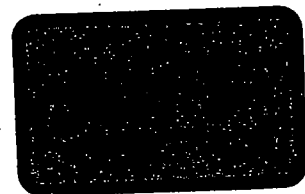
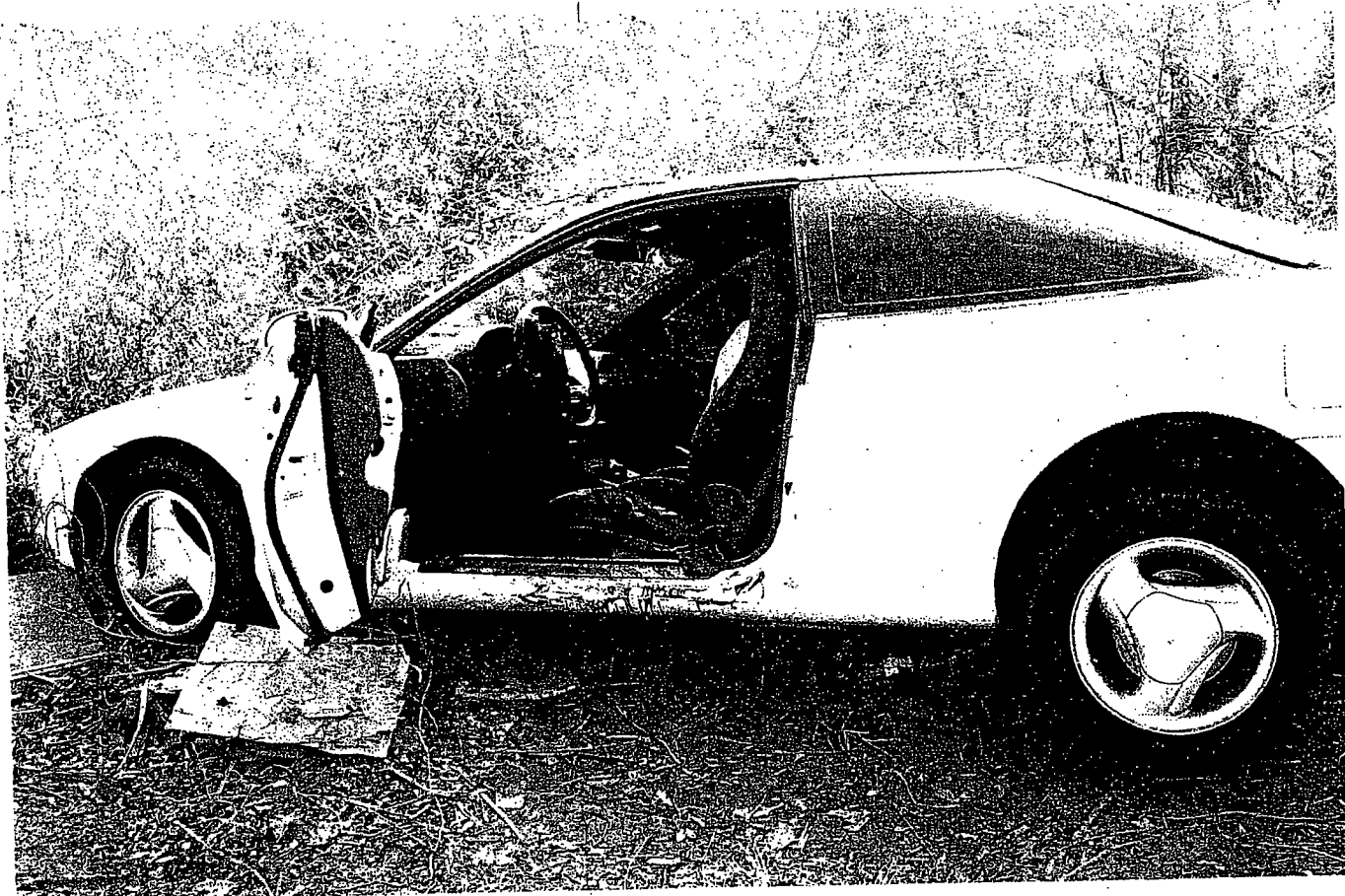
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State exhibit# 21 Projectile	(filed under separate cover)
State exhibit# 22 Projectile	(filed under separate cover)
State exhibit#23 Projectile	(filed under separate cover)
State exhibit#24 Projectile	(filed under separate cover)
State exhibit#25 Projectile	(filed under separate cover)
State exhibit#26 Projectile	(filed under separate cover)
State exhibit#27 Projectile	(filed under separate cover)
State exhibit#28 Projectile	(filed under separate cover)
State exhibit#29 Projectile	(filed under separate cover)
State exhibit#30 Projectile	(filed under separate cover)
State exhibit#31 Projectile	(filed under separate cover)
State exhibit#32 Projectile	(filed under separate cover)
State exhibit#33 Projectile	(filed under separate cover)
State exhibit#34 Projectile	(filed under separate cover)
State exhibit#35 Projectile	(filed under separate cover)
State exhibit#36 Projectile	(filed under separate cover)
State exhibit#37 Projectile	(filed under separate cover)
State exhibit#38 Projectile	(filed under separate cover)
State exhibit# 39 Projectile	(filed under separate cover)
State exhibit#40 Projectile	(filed under separate cover)
State exhibit#41 Projectile	(filed under separate cover)

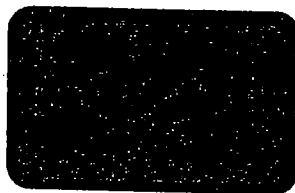
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State exhibit#43 Swab	(filed under separate cover)	
State exhibit#44 Swab	(filed under separate cover)	
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State exhibit#46 Swab	(filed under separate cover)	
State exhibit#47 Swab	(filed under separate cover)	
State exhibit#48 Swab	(filed under separate cover)	
State exhibit#49 Swab	(filed under separate cover)	
State exhibit# 50 Swab	(filed under separate cover)	
State exhibit#51 Swab	(filed under separate cover)	
State exhibit#52 Swab	(filed under separate cover)	
State exhibit#53 Swab	(filed under separate cover)	
State exhibit#54 Swab	(filed under separate cover)	
State exhibit#55 Swab	(filed under separate cover)	
State exhibit#56 Blood Swab of Victim	(filed under separate cover)	
State exhibit#57 DNA Oral Swab	(filed under separate cover)	
State exhibit#58 Three small photographs	(filed under separate cover)	
State exhibit#59 Mr. Walker's Phone Records.....		14
State exhibit#60 Mr. Hubbard's Phone Records.....		20
State exhibit#61 Aerial Photo of Mr. Walker's Home.....		23
State exhibit#62 Color Photograph.....		24
State exhibit#63 Color Photograph.....		25

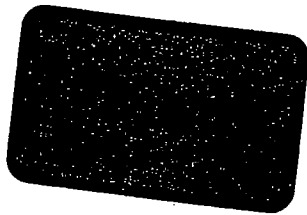
State exhibit#64 Pre-Interrogation Waiver.....	26
State exhibit#65 Mr. Walker's Fingerprint Card.....	27
State exhibit#70 Cylinder Containing 35mm Negatives (filed under separate cover)	
State exhibit#71 Diagram of 111 Dove Hill Rd.....	36
State exhibit#72 Four items/DNA Swabs (filed under separate cover)	
State exhibit#73 Four Items/DNA Swabs (filed under separate cover)	
State exhibit#74 Cutting 28.1 (filed under separate cover)	
State exhibit#75 Cutting 28.2 (filed under separate cover)	
State exhibit#76 Cutting 28.3 (filed under separate cover)	
State exhibit#77 Cutting 28.5 (filed under separate cover)	
State exhibit#78 Cutting 28.6 (filed under separate cover)	
State exhibit#79 Cutting/Swab 28.7 (filed under separate cover)	
State exhibit#80 Chart/Fingerprints (filed under separate cover)	
State exhibit#81 Autopsy Diagram - Bullets.....	37
State exhibit#82 Autopsy Diagram - Injuries.....	38
State exhibit#83 Raymond Annas Name & Phone Number.....	39
Court's exhibit#1 Jury's Question.....	40
Indictment.....	41
Trial transcript.....	43

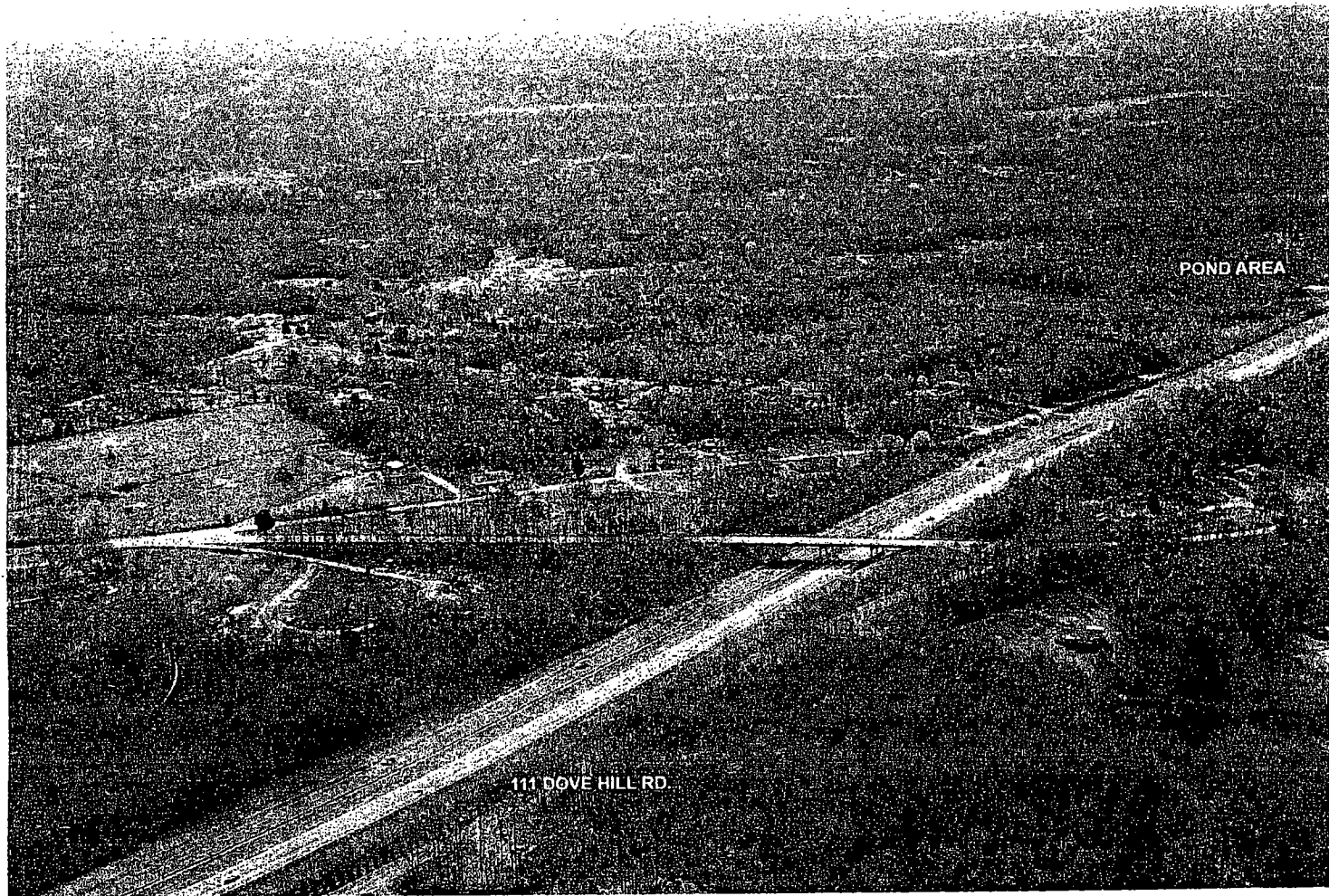






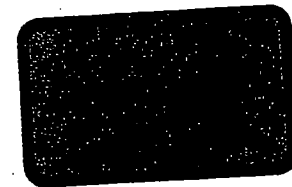






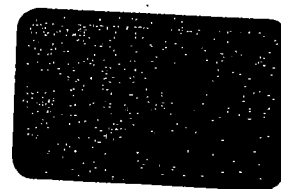
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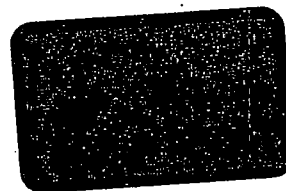
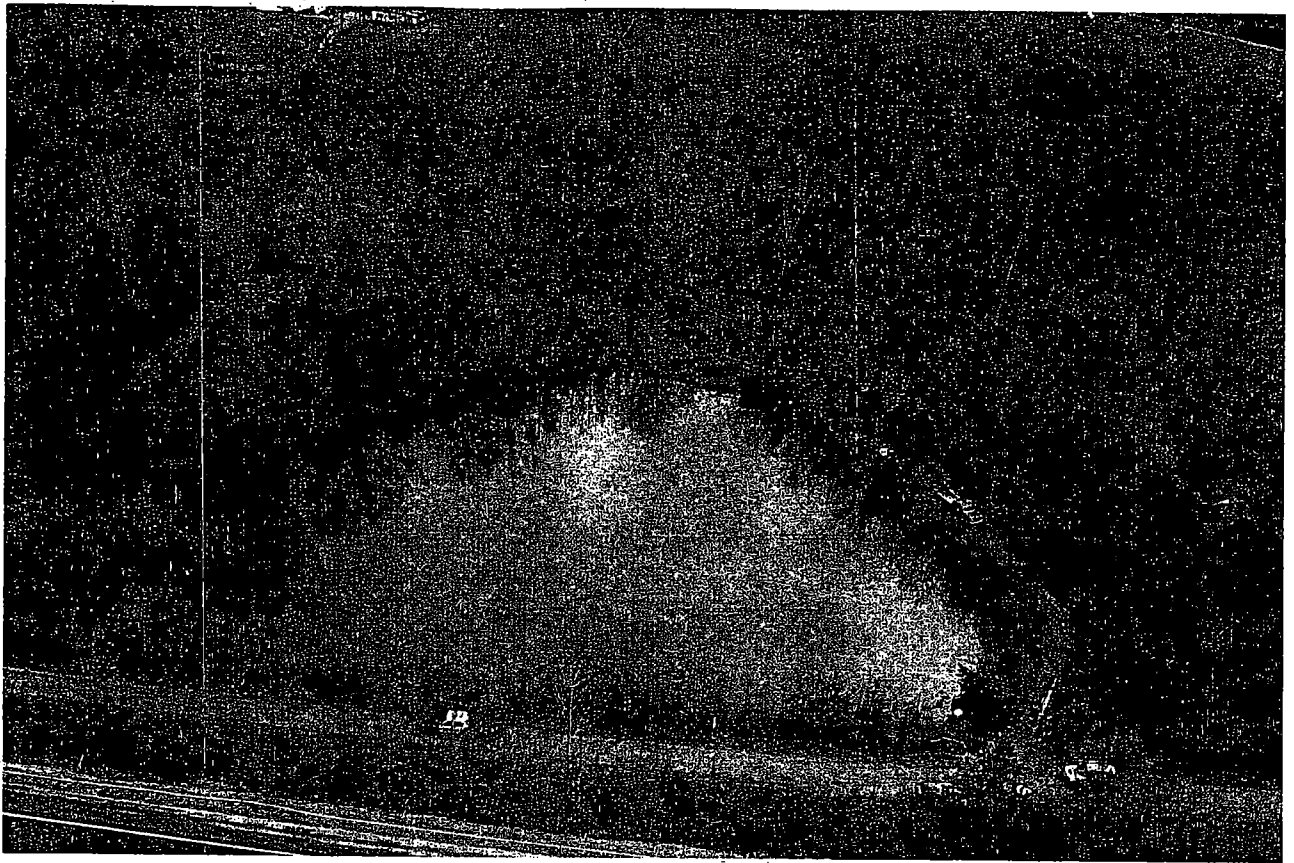
1428792



2/16/2007

12:38:28PM





Case# 2006 02 0987

Location: Westside Rd.

Victim: Hubbard, J.

1. White Ford Probe 2 door
SC tag 556-PLU

2. Victim: Hubbard, J.

3. Cartridge casing

4. Shoe Impression

5. Shoe Impression

6. Timberland Boot

7. Black Sweat Shirt

8. Timberland Boot

9. Two Projectile Fragments

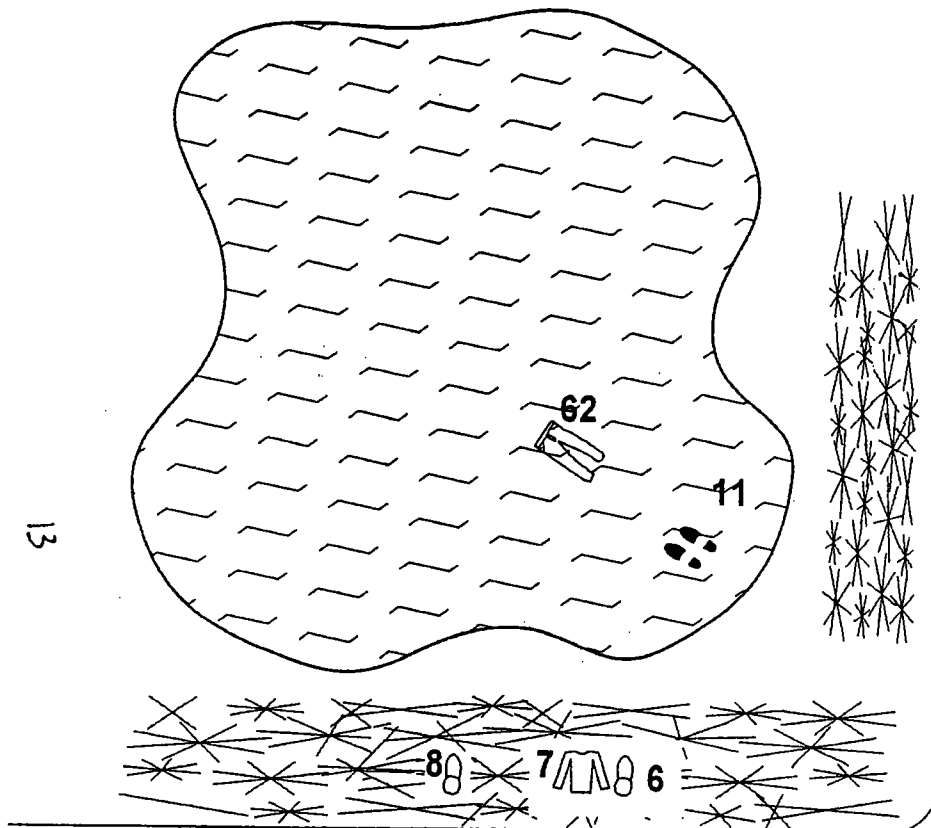
10. Projectile

11. Impressions in water

62. Red Colored Sweat Type
Pants

Indicates brush and wooded
areas

Dirt Road



5

4



Reference Point A

Reference Point B

Westside Road

Reference Point 'A' to:
Left Rear Tire: 60' 3"
Right Rear Tire: 61' 2"
4: 86' 7"
6: 84' 3"
6: 33' 0"
7: 32' 6"
8: 28' 7"
62: Leg Area 66' 2.5"
62: Waist Area 66' 4"

Reference Point 'B' to:
Left Rear Tire: 33' 10"
Right Rear Tire: 28' 11"
4: 40' 0"
6: 60' 1"
6: 46' 10"
7: 46' 1"
8: 63' 1"
62: Leg Area 74' 7"
62: Waist Area 77' 3.5"

Westside Road Width: 16' 7"
Width of Dirt Road Entrance: 19' 7"
Width of Dirt Road at Vehicle: 9' 0"

Not To Scale
D. Hogsd I-57
SCSO

ISAIAH WALKER PHONE RECORDS

CDR Details
Report

Time Stamp	Record Type	Call Type	CDR Type	Service Type	Caller Number	Called Number	Forwarded Number	Duration	Initial-Cell/ Final-Cell
2/17/2006 0:01	Incoming	Long Distance	Wireless PostPaid	Voice	18643571086	18649782934		0:01:30	304/304
2/17/2006 0:09	Incoming	Long Distance	Wireless PostPaid	Voice	18645809622	18649782934		0:03:02	343/343
2/17/2006 0:16	Incoming	Long Distance	Wireless PostPaid	Voice	18645952395	18649782934		0:01:06	343/343
2/17/2006 1:02	Incoming	Long Distance	Wireless PostPaid	Voice	18643571086	18649782934		0:00:08	419/419
2/17/2006 1:29	Incoming	Long Distance	Wireless PostPaid	Voice	18642058810	18649782934		0:01:08	343/343
2/17/2006 1:54	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18642058810		0:00:27	367/413
2/17/2006 1:55	Incoming	Long Distance	Wireless PostPaid	Voice	18642053901	18649782934		0:00:13	413/413
2/17/2006 1:55	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18642058810		0:00:23	305/305
2/17/2006 2:03	Outgoing	Local	Wireless PostPaid	Voice	18649782934	18643571086		0:00:22	367/367
2/17/2006 4:18	Outgoing	Local	Wireless PostPaid	Voice	18649782934	18643571086		0:00:39	304/304
2/17/2006 6:18	Incoming	Long Distance	Wireless PostPaid	Voice	18643571086	18649782934		0:03:23	304/304
2/17/2006 9:30	Outgoing	Local	Wireless PostPaid	Voice	18649782934	18643843659		0:00:51	004/004
2/17/2006 9:37	Incoming	Long Distance	Wireless PostPaid	Voice	18645745929	18649782934		0:01:57	304/304
2/17/2006 9:56	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18645745929		0:02:35	304/304
2/17/2006 10:00	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18643844435		0:00:37	004/043
2/17/2006 10:00	Incoming	Long Distance	Wireless	Voice	18642051054	18649782934		0:03:05	304/304

T-597 P-006/011 F-780

2007 FEB 19 12:54:08

From ALTEL FORD MA

03-10-2006 04:18 pm

9:10 PostPaid		12:15							
2/17/2006 10:25	Incoming	Long Distance	Wireless PostPaid	Voice	18645745929	18649782934		0:00:28	304/304
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2/17/2006 10:34	Incoming	Long Distance	Wireless PostPaid	Voice	18645294420	18649782934		0:00:53	335/335
2/17/2006 10:36	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18645745929		0:01:06	367/367
2/17/2006 10:46	Incoming	Long Distance	Outroamer	Voice	18642057582	18649782934		0:01:03	24/ 24
2/17/2006 10:55	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18642058810		0:05:40	304/304
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0:01:24	367/367
0:00:29	367/367
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2/17/2006 21:34	Outgoing	Long Distance	Wireless PostPaid	Voice	18649782934	18642052622
2/17/2006 21:36	Incoming	Long Distance	Wireless PostPaid	Voice	18643571086	18649782934

0:00:35	343/343
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0:00:40	304/304
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0:00:37	343/343
0:00:42	343/343
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0:00:21	304/304
0:00:31	304/304
0:00:32	304/304
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0:01:09	335/335
0:00:41	335/335

-597 P.011/011 F-790

2/17/2006 21:47	Incoming	Long Distance	Outroamer	Voice	18642052622	18649782934	0:00:04	24/ 24
2/17/2006 21:00	Incoming	Long Distance	Wireless	Voice	18645768038	18649782934	0:00:40	043/043
48:49:00	PostPaid	49:29:00						
2/17/2006 22:04	Incoming	Long Distance	Wireless PostPaid	Voice		18649782934	0:03:23	335/335

JEFFERY HUBBARD PHONE RECORDS

Transaction Search: Call Detail Record

No.	Serving Switch ID	Init Cell ID	Originating Number	Dialed Digits	vCall Start Timev	Call End Time	Duration
1	grvgs	4169 -	8649782934		Feb-17-2006 12:44:13	Feb-17-2006 12:46:03	00:01:51
2	grvgs	4169 -	18642058810	8649783646	Feb-17-2006 12:42:15	Feb-17-2006 12:43:06	00:00:52
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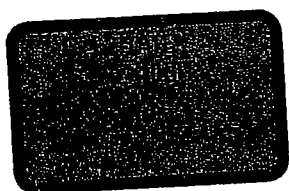
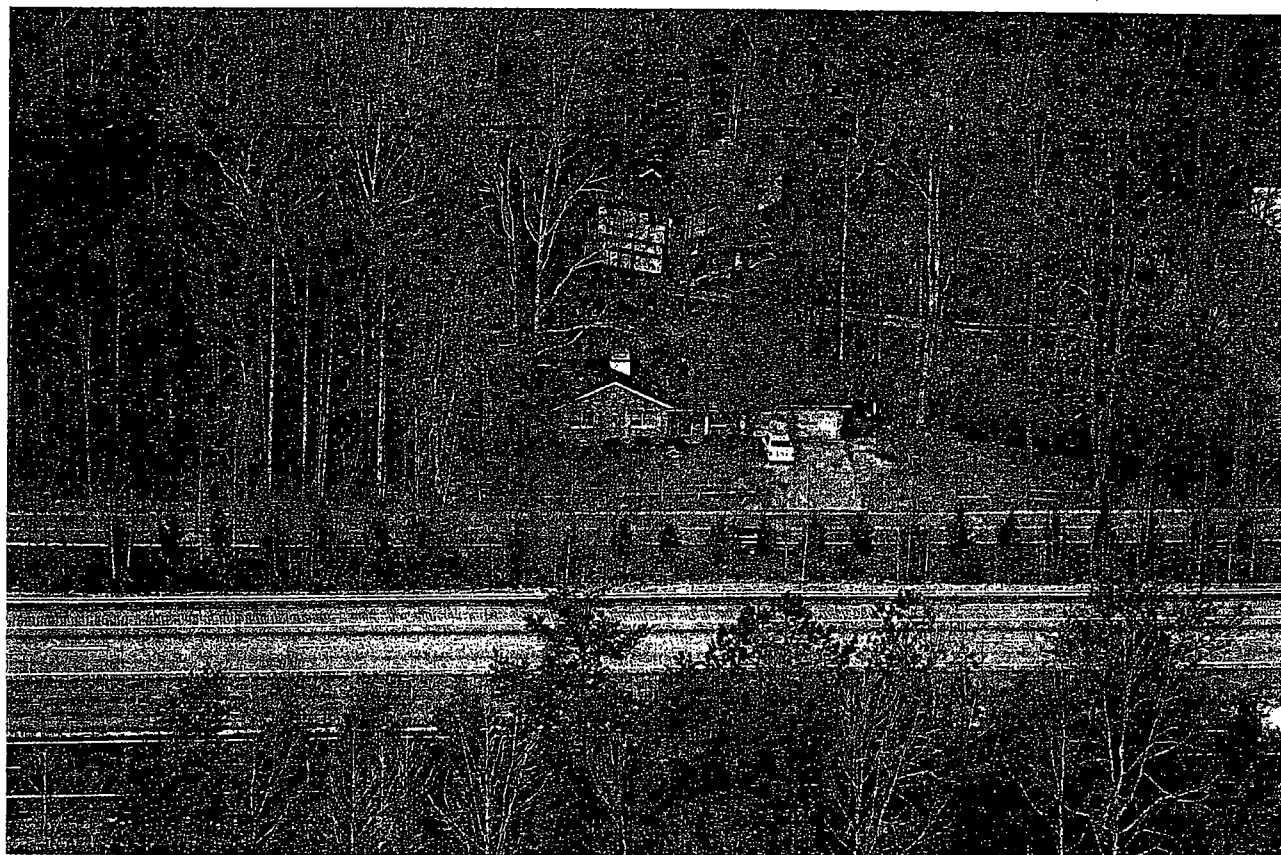
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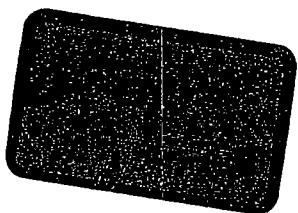
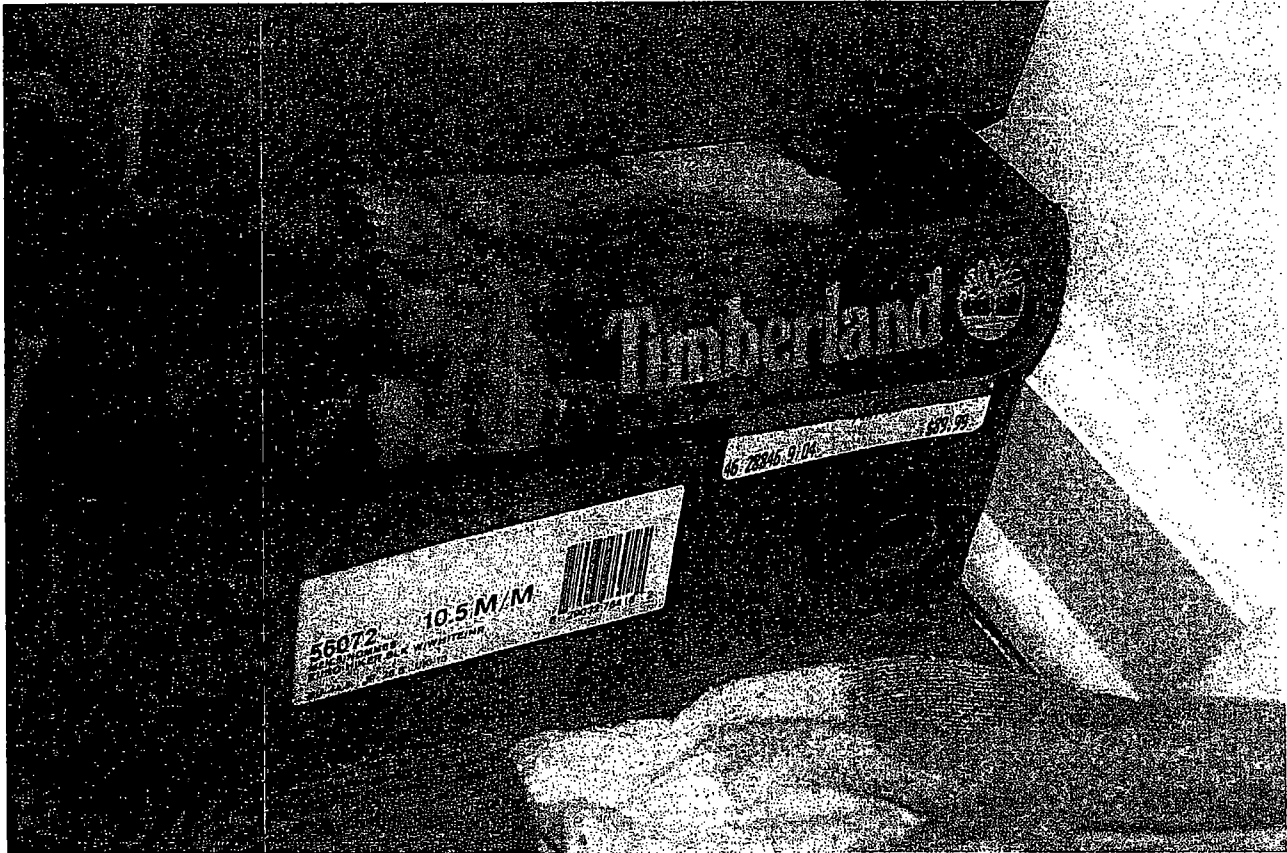
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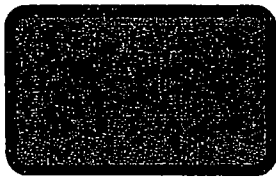
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SPARTANBURG COUNTY SHERIFFS DEPARTMENT
Spartanburg, South Carolina

CASE NUMBER

2006070487

RE-INTERROGATION WAIVER FORM

Name ISAIAH FREDERICK WALKER Address _____Age 19 DOB: 05-12-86 Date 02-18-06 Time 0332Location DETECTIVES OFFICE

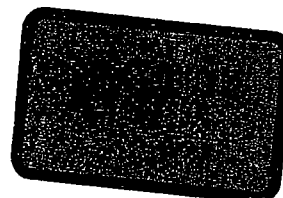
1. I have the right to remain silent.
2. Anything I say can and will be used against me in a court of law.
3. I have the right to talk to a lawyer and to have him present with me while I am being questioned.
4. If I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I so wish.
5. I have the right to stop answering questions at any point in the questioning.

The above rights have been read to me by IN. KEVIN BOBO

I have read same and I understand my rights fully.

Witness William R. [Signature] Signed Isaiah WalkerI waive (give up) my rights as explained above and agree to talk to officer BOBOin reference to DEATH INVESTIGATION
(CASES OR CHARGES), and my statement that I may

make is of my own free will, without fear, threat or promise or favor or reward of any kind.

I am able to read and write the English Language and finished 13 years in school.Witnessed William R. [Signature] Signed Isaiah WalkerNotorized Kevin BoboExpiration Date 12-09-2013

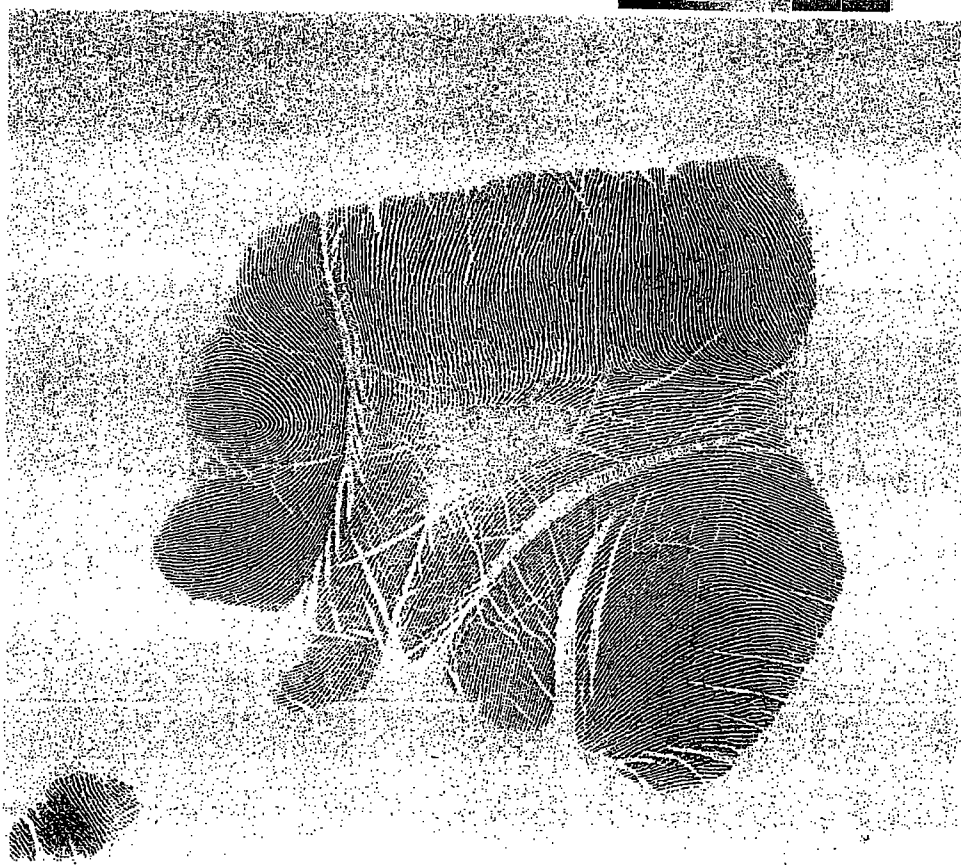
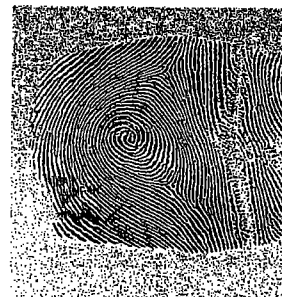
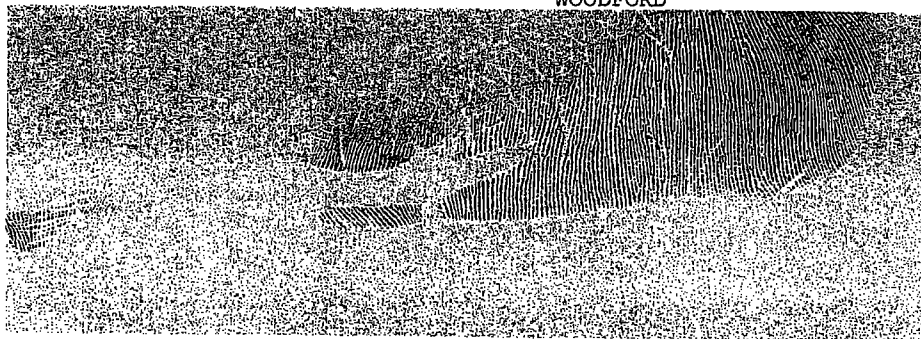
422100103017

WALKER, ISIAH FREDERICK

20060218

WOODFORD

SC0420000



422100103017

STATE USAGE

SIGNATURE OF PERSON FINGERPRINTED

THIS DATA MAY BE COMPUTERIZED IN LOCAL STATE AND NATIONAL FILES

DATE

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

CHARGE

FINAL DISPOSITION

ALIASES

CONTRIBUTOR

PD SC0420100
SPARTANBURG, SCDATE OF BIRTH DOB
Month Day

WALKER, ISAIAH FREDERICK

DATE ARRESTED OR RECEIVED DOA

SEX

RACE

HGT

WGT

EYES

HAIR

PLACE OF BIRTH POB

YOUR

FBI NO. FBI

SID NO. SID

SOCIAL SECURITY NO. SOC

CAUTION

☐

LEAVE BLANK

CLASS.

REF.

NCIC CLASS - FPC

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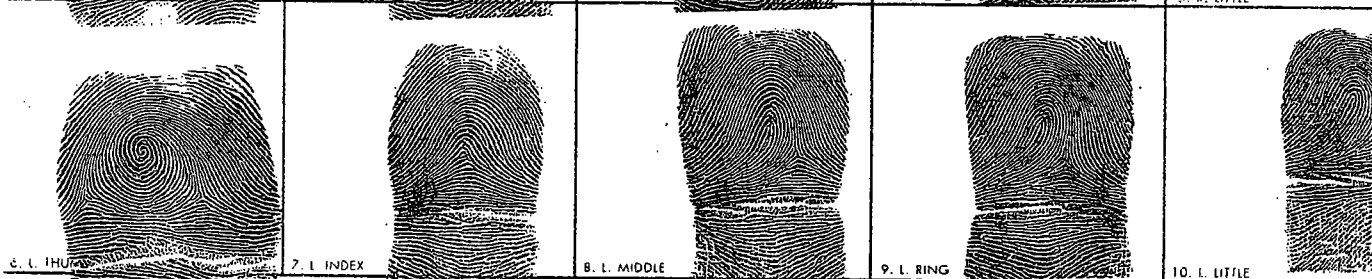
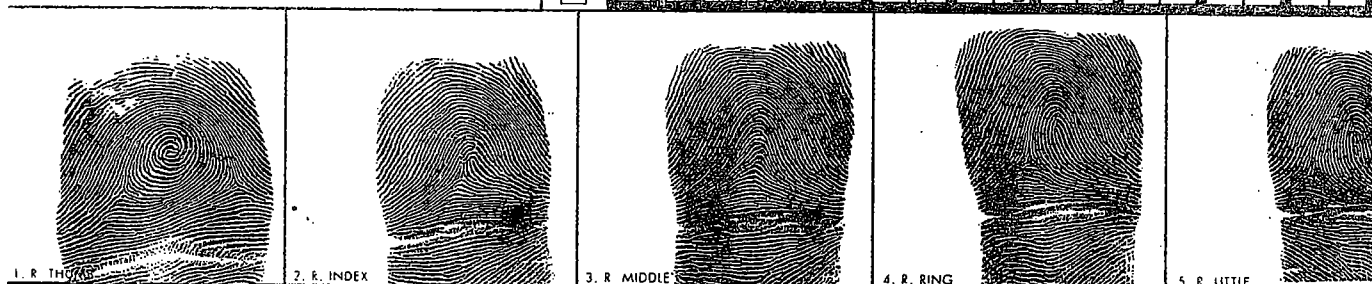
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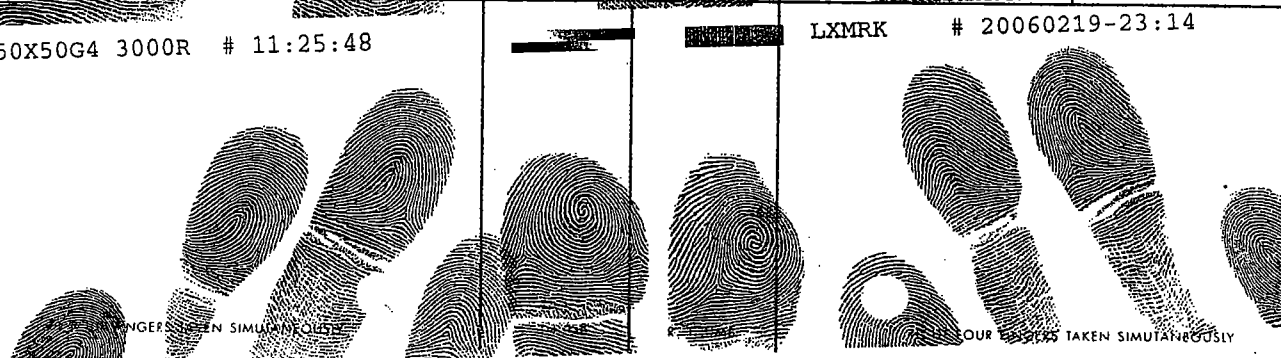
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WALKER ISAIAH FREDRICK

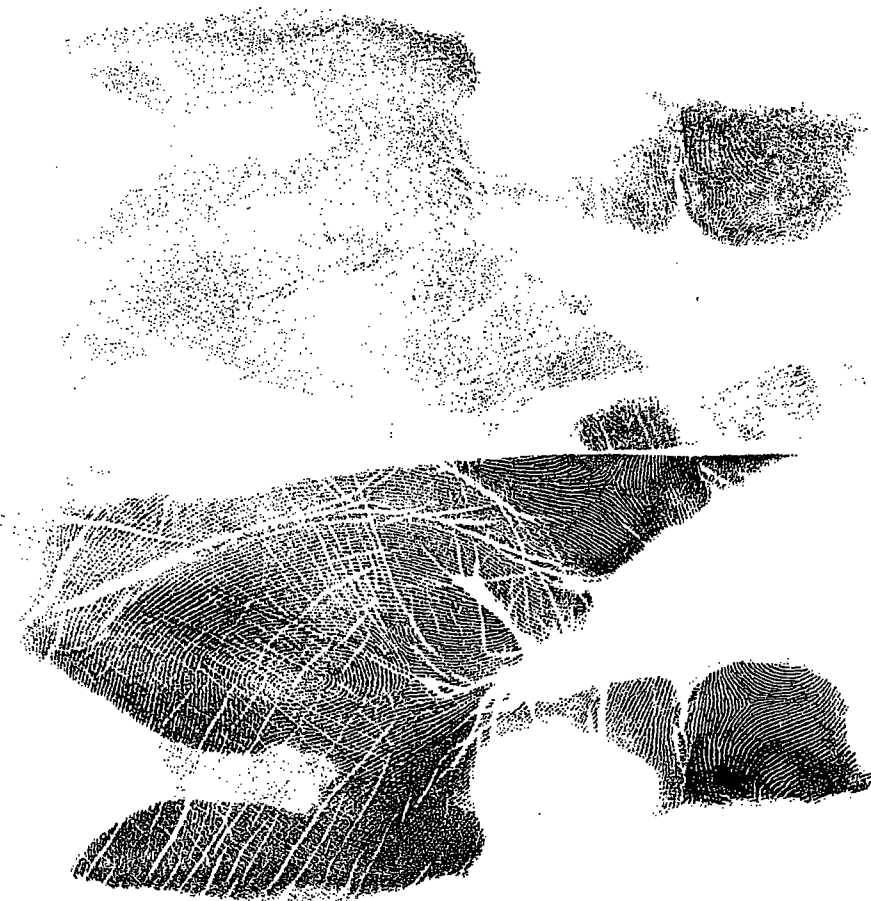
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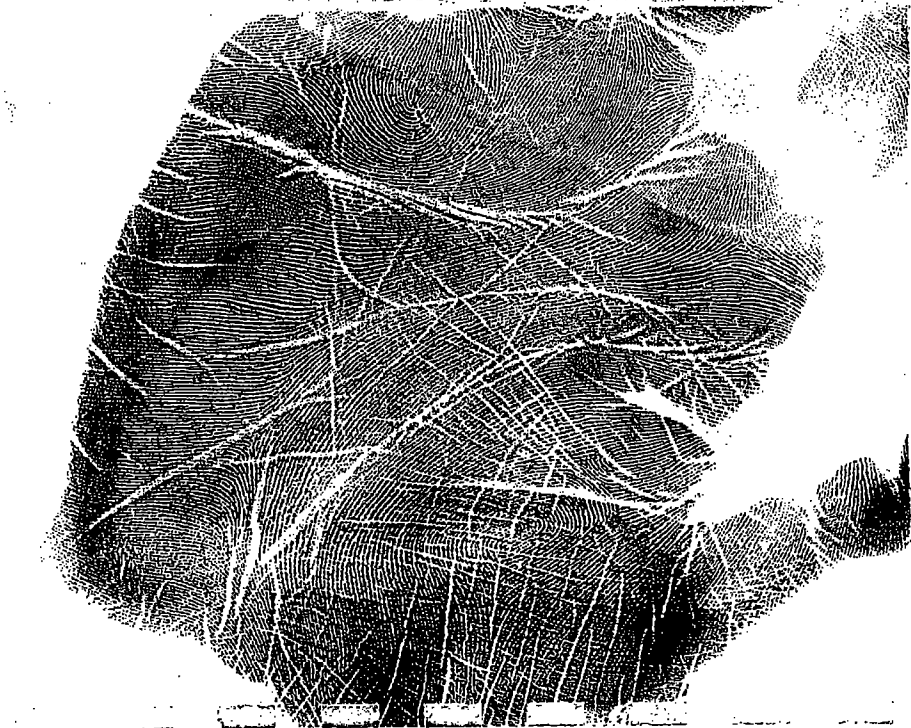
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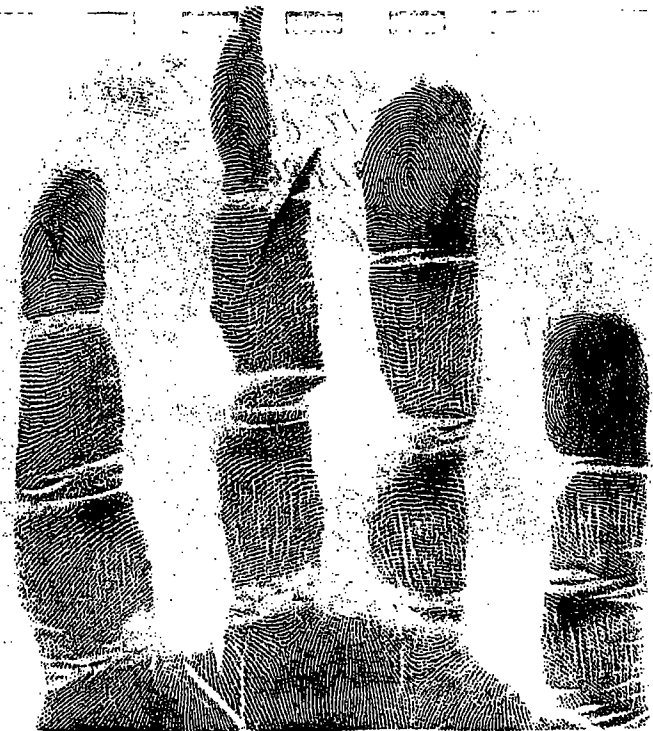
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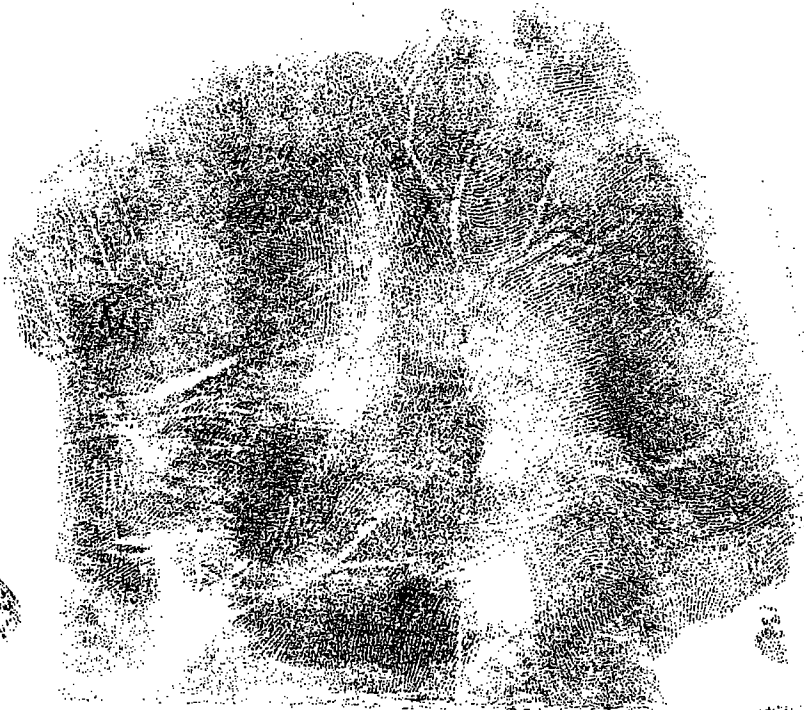
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WALKER ISAIAH FREDRICK

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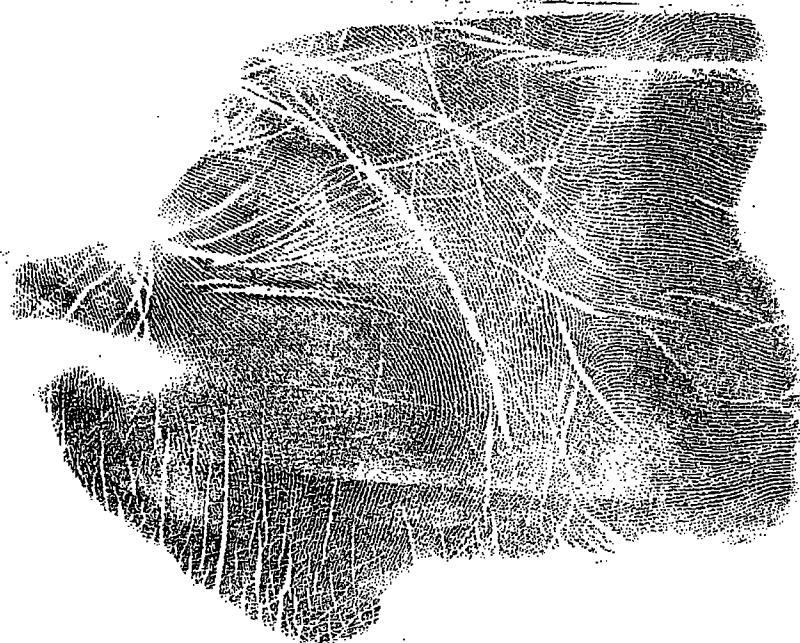
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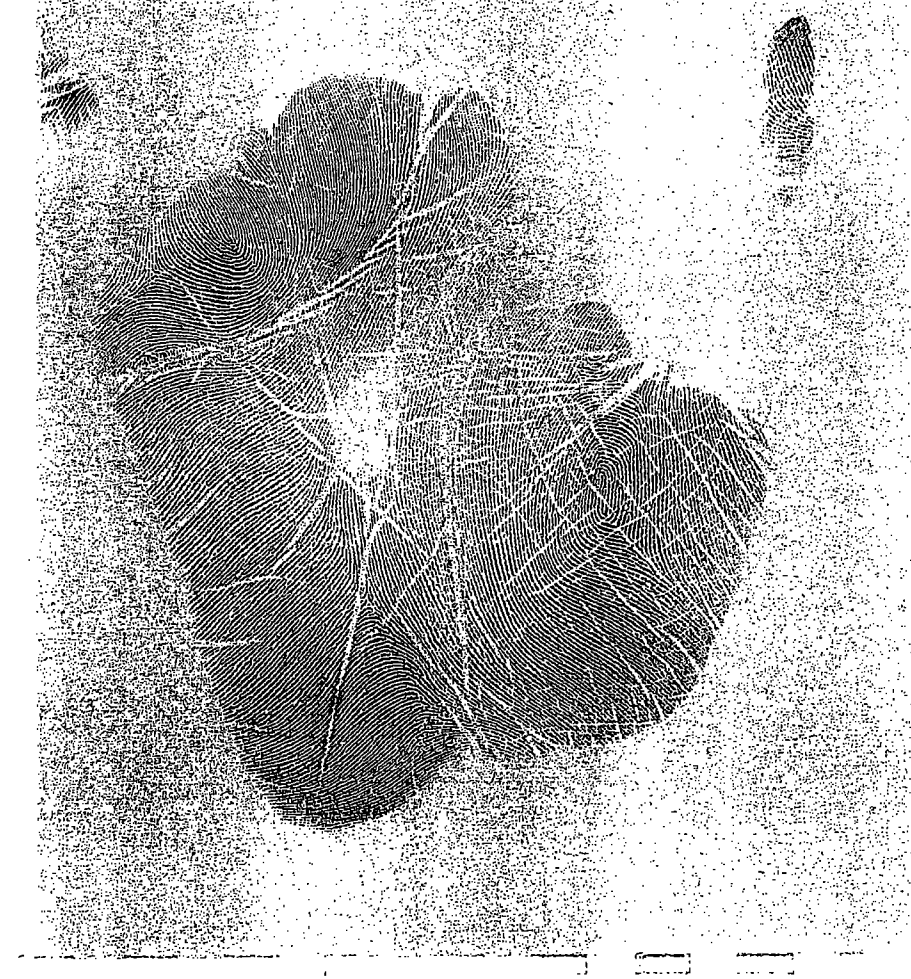
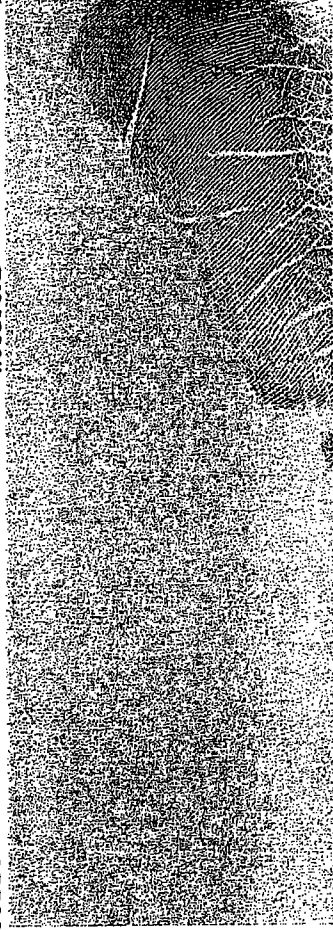
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WALKER, ISAIAH FREDERICK

0060218

WOODFORD

SC0420000



PAIM PRINTS TAKEN?	YES ☐	NO ☐
PHOTO AVAILABLE?	YES ☐	NO ☐
02/18/2006		
IF ARREST FINGERPRINTS SENT FBI PREVIOUSLY AND FBI NO. UNKNOWN, FURNISH ARREST NO. _____ DATE _____		
STATUTE CITATION (SEE INSTRUCTIONS NO. 9) <u>CIT</u>		
1.	02/18/2006 SC	
2.		
99176		
ARREST DISPOSITION (SEE INSTRUCTION NO. 5) <u>ADN</u>		
<u>MOORE, SC</u>		
EMPLOYER: IF U.S. GOVERNMENT, INDICATE SPECIFIC AGENCY. IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.		
2006021042		
WOODFORD		
OCCUPATION		
RESIDENCE OF PERSON FINGERPRINTED JACKSON SANATATION REMOVAL		
02-18-2006, 1A0186, ANNUAL POSSESSOR OTHER SUB SCH I, WITD-1ST K077836		
02-18-2006, 1A0186, ANNUAL POSSESSOR OTHER SUB SCH I, WITD-1ST K077837		
DATE OF OFFENSE <u>DOO</u>		
SKIN TONE <u>SKN</u>		
MISC. NO <u>MNU</u>		
ADDITIONAL INFORMATION		

INSTRUCTIONS

- UNLESS OTHERWISE PROVIDED BY REGULATION IN YOUR STATE, FINGERPRINTS ARE TO BE SUBMITTED DIRECTLY TO FBI IDENTIFICATION DIVISION. FORWARD IMMEDIATELY FOR MOST EFFECTIVE SERVICE.
- FINGERPRINTS SHOULD BE SUBMITTED BY ARRESTING AGENCY ONLY (MULTIPLE PRINTS ON SAME CHARGE SHOULD NOT BE SUBMITTED BY OTHER AGENCIES SUCH AS JAILS, RECEIVING AGENCIES, ETC.) REQUESTS COPIES OF FBI IDENTIFICATION RECORD FOR ALL OTHER INTERESTED AGENCIES IN BLOCK BELOW. GIVE COMPLETE MAILING ADDRESS INCLUDING ZIP CODE.
 - TYPE OR PRINT ALL INFORMATION.
 - NOTE AMPUTATIONS IN PROPER FINGER BLOCKS.
 - LIST FINAL DISPOSITION IN BLOCK ON FRONT SIDE. IF NOT NOW AVAILABLE, SUBMIT LATER ON FBI FORM R-84 FOR COMPLETION OF RECORD. IF FINAL DISPOSITION NOT AVAILABLE SHOW PRE-TRIAL OR ARRESTING AGENCY DISPOSITION e.g., RELEASED NO FORMAL CHARGE, BAIL, TURNED OVER TO, IN THE ARREST DISPOSITION BLOCK PROVIDED ON THIS SIDE.
 - MAKE CERTAIN ALL IMPRESSIONS ARE LEGIBLE, FULLY ROLLED AND CLASSIFIABLE.
 - CAUTION - CHECK BOX ON FRONT IF CAUTION STATEMENT INDICATED. BASIS FOR CAUTION (ICD) MUST GIVE REASON FOR CAUTION, e.g., ARMED AND DANGEROUS, SUICIDAL, ETC.
 - MISCELLANEOUS NUMBER (MNU) - SHOULD INCLUDE SUCH NUMBERS AS MILITARY SERVICE, PASSPORT AND/OR VETERANS ADMINISTRATION (IDENTIFY TYPE OF NUMBER.)
 - PROVIDE STATUTE CITATION, IDENTIFYING SPECIFIC STATUTE (example - PL for PENAL LAW) AND CRIMINAL CODE CITATION INCLUDING ANY SUB-SECTIONS.
 - ALL INFORMATION REQUESTED IS ESSENTIAL.
 - PRIVACY ACT OF 1974 (P.L. 93-579) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION, AND USES WHICH WILL BE MADE OF IT.

REPLY DESIRED? YES ☐ NO ☐

TRASH TECHNICIAN

(REPLY WILL BE SENT IN ALL CASES IF SUBJECT FOUND TO BE WANTED)

IF COLLECT WIRE OR COLLECT TELEPHONE REPLY DESIRED,
INDICATE HERE: (WIRE SENT ON ALL UNKNOWN DECEASED)

WIRE REPLY ☐ TELEPHONE REPLY ☐ TELEPHONE NO. AND AREA CODE _____

SEND COPY TO: NAME, OR NUMBER AND ADDRESS

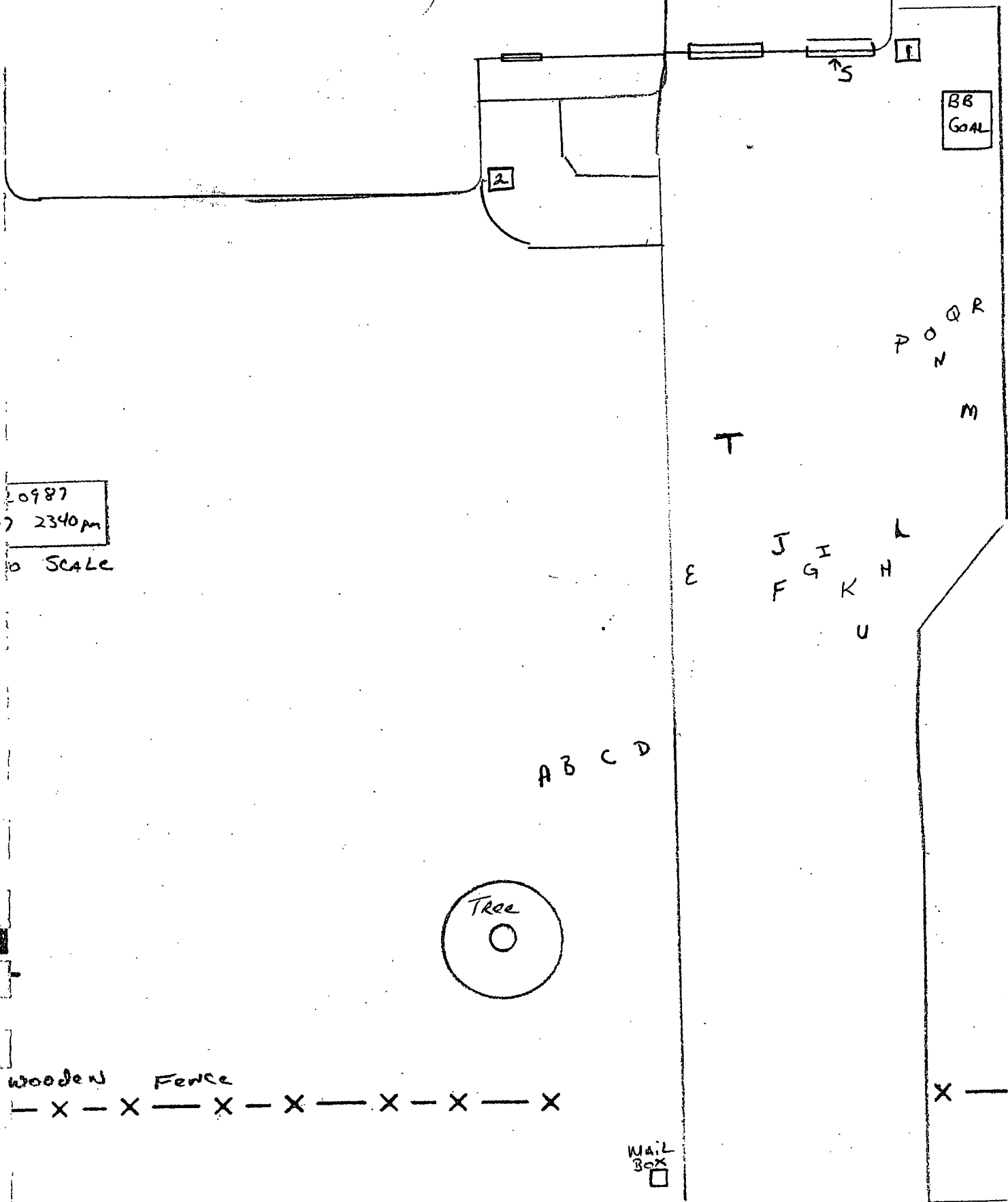
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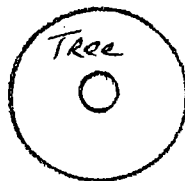
GARAGE

36



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Spartanburg Regional Healthcare System
Morgue
101 E Wood Street
Spartanburg, SC 29303

Document No: FORM.MORG.0010
Page 1 of 1

MAN DIAGRAM

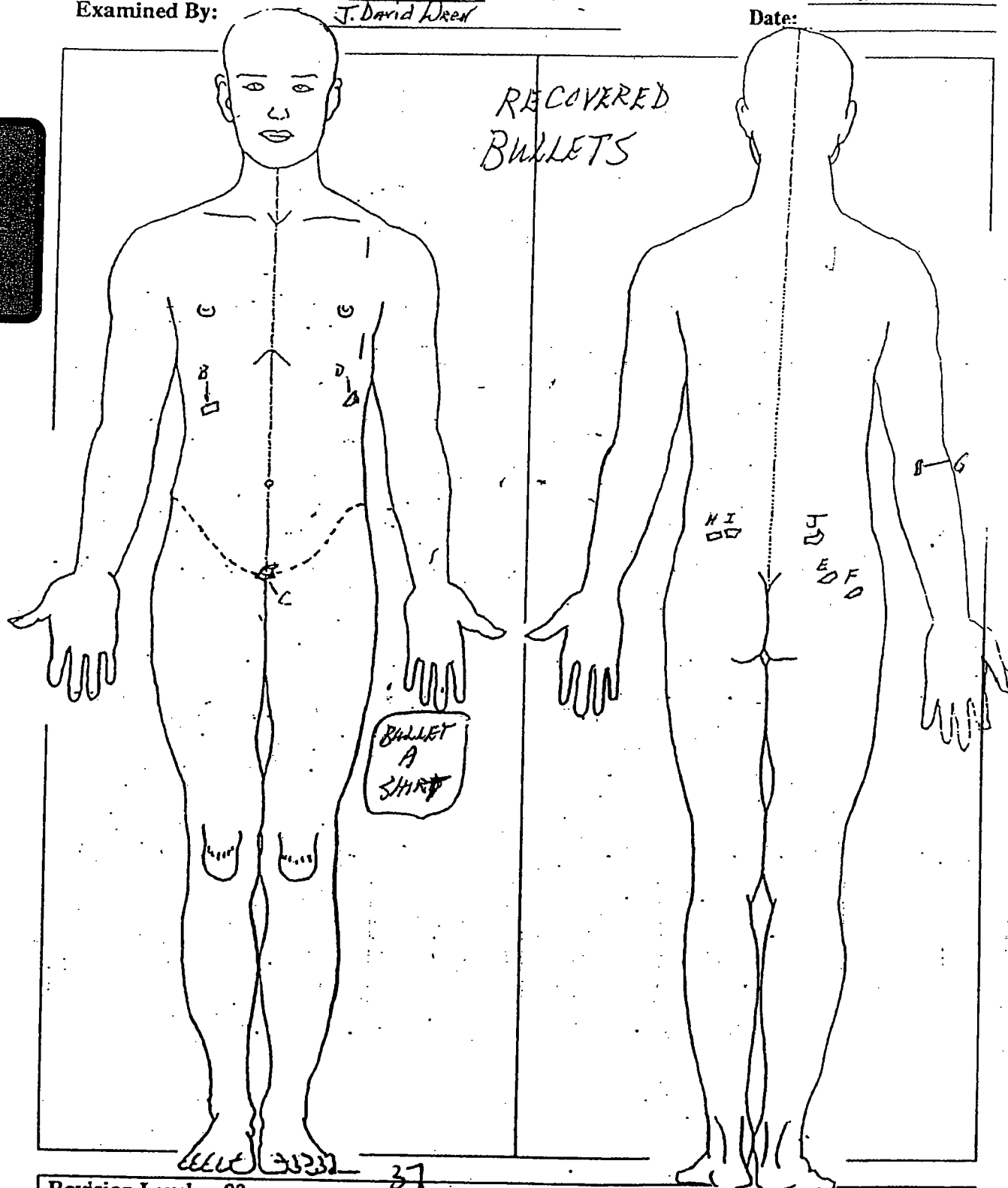
Name:

H. L. BARNARD, JefferyAutopsy No. FA06-042Height 71 inchesDate: 2/18/06

Examined By:

J. David Wren

Date:



Spartanburg Regional Healthcare System
Morgue
101 E Wood Street
Spartanburg, SC 29303

Document No: FORM.MORG.0010
Page 1 of 1

MAN DIAGRAM

Name:

HUBBARD, Jeffery

Autopsy No. FAS 6-042

Height

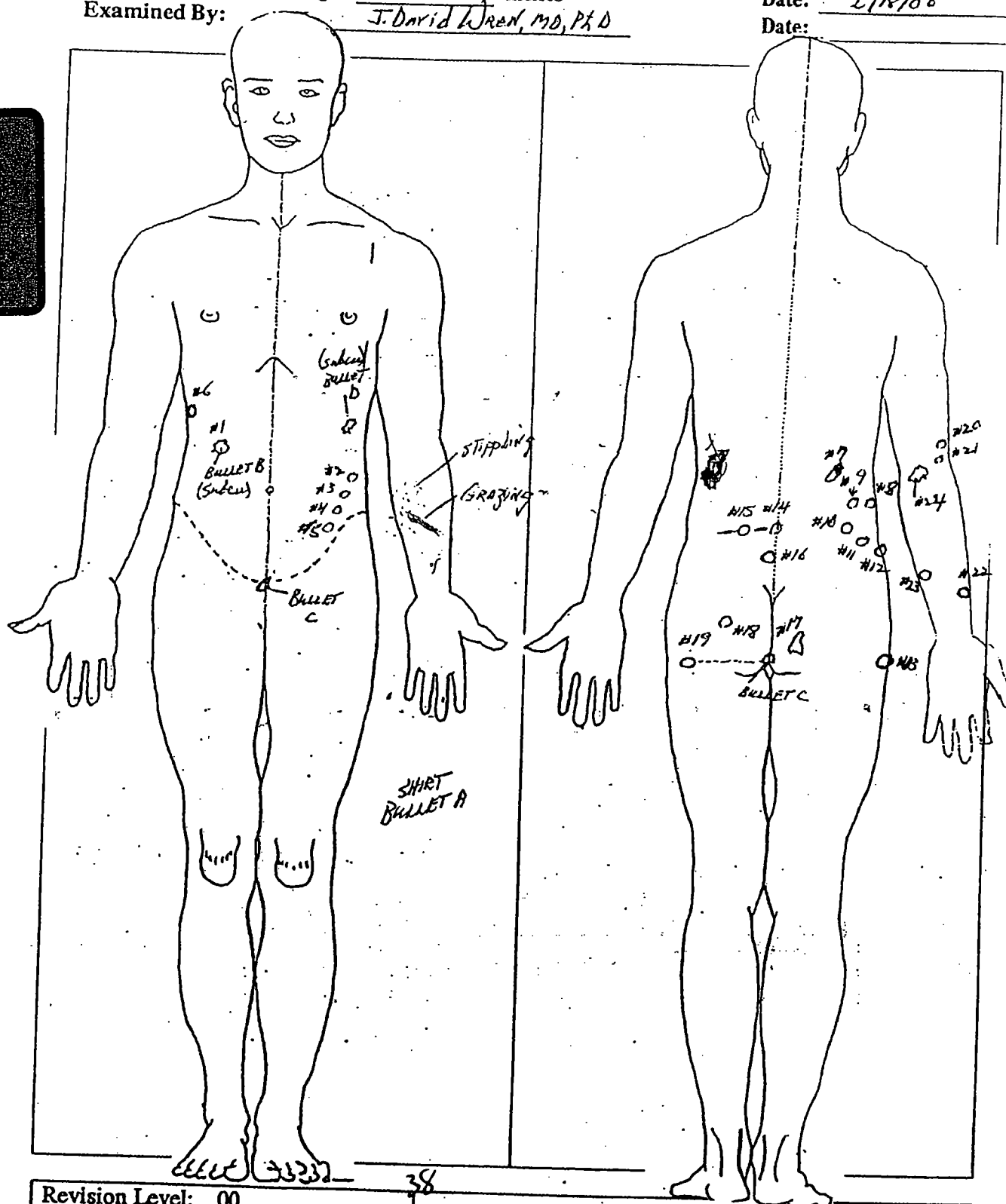
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Date: 2/18/06

Examined By:

J. David Wren, MD, PhD

Date:



Revision Level: 00

Revision Date: 9-22-05

41
1. SENTENCE MADE ☒ WITNESSES
2. REPORT ENDED ☒ Computer
SPARTANBURG CO SHERIFF'S OFFICE
4. INDEXED ☒
5. CHECKED WARRANT ☒
6. CHECKED RETURN ☒
7. ASSESSMENT AND ☒ Computer
FINE AND MAKE
Spartanburg County Sheriff's Office
8. TRAFFIC VIOLATIONS CODE ☒

ARREST WARRANT NUMBER

K077951

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2-22-07

VERDICT

Guilty

Charl M. Math May 31, 2007
Foreperson of Petit Jury
Date:

DOCKET NO.
07-GS-42-0025

The State of South Carolina
County of Spartanburg
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2007

TERM

THE STATE

v

ISAIAH FREDERICK WALKER

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 FEB 27 PM 3:28
MARC KITCHENS

41

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

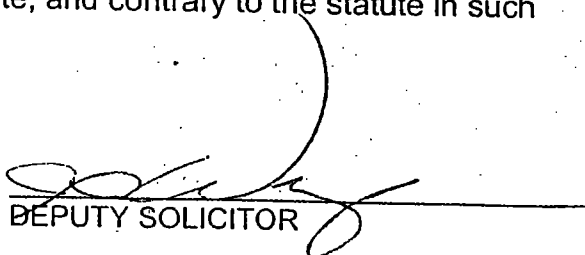
At a Court of General Sessions, convened on FEB 22 2007, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

That the defendant, Isaiah Frederick Walker did, in Spartanburg County on or about February 17, 2006, feloniously, willfully, and with malice aforethought, kill Jeffrey Wayne Hubbard by shooting the victim multiple times, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2007-GS-42-0625

 THE STATE OF SOUTH CAROLINA

-VS-

ISAIAH F. WALKER,

Defendant.

TRANSCRIPT OF RECORD

May 29, 30, & 31, 2007

Spartanburg, South Carolina

Ordered: July 12, 2007

Delivered: March 7, 2008

B E F O R E:

THE HONORABLE ROGER COUCH, Presiding Judge, and a jury.

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

 MR. DONNIE WILLINGHAM, Esquire
 Assistant Solicitor for the State

 MR. RODNEY RICHEY, Esquire
 MS. CAROLINE HOLSBECK, Esquire
 Attorneys for the Defendant

 Pamela Faucette
 Circuit Court Reporter

PAMELA FAUCETTE - (864) 574-9534 OR (336) 260-2864

MOTIONS & MATTERS:

Page:

Voir Dire.....	16
Jury Selection.....	28
Pre-Trial Motions.....	41
Preliminary Charge to the Jury.....	45

OPENING STATEMENTS:

Page:

Mr. Willingham.....	57
Mr. Richey.....	61

I N D E X O F W I T N E S S E S

Officer Larry Sprouse

Page:

Direct by Mr. Willingham.....	68
Cross by Mr. Richey.....	72
Redirect by Mr. Willingham.....	76

Mr. Brian Harvey

Page:

Direct by Mr. Willingham.....	77
Cross by Mr. Richey.....	83

Deputy David Hogsed

Page:

Direct by Mr. Willingham.....	88
Cross by Mr. Richey.....	111
Redirect by Mr. Willingham.....	134
Recross by Mr. Richey.....	135
Redirect by Mr. Willingham.....	141
Recross by Mr. Richey.....	141

Deputy Dominick Baird

Page:

Direct by Mr. Willingham.....	145
Cross by Mr. Richey.....	154
Redirect by Mr. Willingham.....	186
Recross by Mr. Richey.....	196

Detective Kevin Bobo

Page:

Direct by Mr. Willingham.....	203
Cross by Mr. Richey.....	230
Redirect by Mr. Willingham.....	268
Recross by Mr. Richey.....	270

I N D E X O F W I T N E S S E S**Deputy Russell Holthaus****Page:**

Direct by Mr. Willingham.....273
Cross by Mr. Richey.....284

Investigator Rusty Clevenger**Page:**

Direct by Mr. Willingham.....291
Cross by Mr. Richey.....300
Redirect by Mr. Willingham.....302
Recross by Mr. Richey.....303

Deputy Robert Talanges**Page:**

Direct by Mr. Willingham.....309
Cross by Mr. Richey.....312

Agent Dan DeFreese**Page:**

Direct by Mr. Willingham.....313
Cross by Mr. Richey.....329
Redirect by Mr. Willingham.....346

Agent John Roberts**Page:**

Direct by Mr. Willingham.....349
Cross by Mr. Richey.....358
Redirect by Mr. Willingham.....364
Recross by Mr. Richey.....365

Agent Bruce Gantt**Page:**

Direct by Mr. Willingham.....367
Cross by Mr. Richey.....373
Redirect by Mr. Willingham.....375

Agent Patti Ruff**Page:**

Direct by Mr. Willingham.....377
Cross by Mr. Richey.....386
Redirect by Mr. Willingham.....400

Captain Jackie Kellet**Page:**

Direct by Mr. Willingham.....401
Cross by Mr. Richey.....418
Redirect by Mr. Willingham.....426
Recross by Mr. Richey.....427

I N D E X O F W I T N E S S E S

Ms. Kathy Bader (Out of the Jury's Presence)	Page:
Direct by Mr. Willingham.....	432
Agent Jennifer Clayton	Page:
Direct by Mr. Willingham.....	436
Cross by Mr. Richey.....	455
Redirect by Mr. Willingham.....	474
Recross by Mr. Richey.....	476
Mr. Brent Gentry	Page:
Direct by Mr. Willingham.....	478
Cross by Mr. Richey.....	514
Redirect by Mr. Willingham.....	533
Recross by Mr. Richey.....	537
Dr. David Wrenn	Page:
Direct by Mr. Willingham.....	540
Cross by Mr. Richey.....	551
Redirect by Mr. Willingham.....	556
Mr. Raymond Annas	Page:
Direct by Mr. Willingham.....	558
Cross by Mr. Richey.....	564
Ms. Kathy Bader	Page:
Direct by Mr. Willingham.....	566
Cross by Mr. Richey.....	569

E X H I B I T S

State's Exhibits:	Marked:	Received:
1 - (Color Photograph)	41	79, 144
2 - (Color Photograph)	41	79, 144
3 - (Color Photograph)	41	80, 144
4 - (Color Photograph)	41	82, 144
5 - (Color Photograph)	41	82, 144
6 - (Aerial Color Photograph)	41	91, 144

E X H I B I T S

State's Exhibits:	Marked:	Received:
7 - (Aerial Color Photograph)	41	91, 144
8 - (Aerial Color Photograph)	41	91, 144
9 - (Crime Scene Diagram)	41	95, 144
10 - (Timberland Boot - Right)	41	144
11 - (Timberland Boot - Left)	41	144
12 - (Black Sweat Shirt)	41	144
13 - (Driver's License/CPM Card)	41	101, 144
14 - (Shell Casing in Container)	41	102, 144
15 - (Two Cartridge Casings)	41	104, 144
16 - (Brent Gentry DNA Swab)	41	106, 144
17 - (Red Sweat Pants)	41	109, 144
18 - (Spent 9mm Shell in Container)	143	144
19 - (Fragment of Two Projectiles)	143	144
20 - (Projectile)	143	144
21 - (Projectile)	143	144
22 - (Projectile)	143	144
23 - (Projectile)	143	144
24 - (Projectile)	143	144
25 - (Projectile)	143	144
26 - (Projectile)	143	144
27 - (Projectile)	143	144
28 - (Projectile)	143	144
29 - (Projectile)	143	144
30 - (Projectile)	143	144

E X H I B I T S

State's Exhibits:	Marked:	Received:
31 - (Projectile)	143	144
32 - (Projectile)	143	144
33 - (Projectile)	143	144
34 - (Projectile)	143	144
35 - (Projectile)	143	144
36 - (Projectile)	143	144
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38 - (Projectile)	143	144
39 - (Projectile)	143	144
40 - (Projectile)	143	144
41 - (Projectile)	143	144
42 - (Projectile)	143	144
43 - (Swab)	143	144
44 - (Swab)	143	144
45 - (Swab)	143	144
46 - (Swab)	143	144
47 - (Swab)	143	144
48 - (Swab)	143	144
49 - (Swab)	143	144
50 - (Swab)	143	144
51 - (Swab)	143	144
52 - (Swab)	143	144
53 - (Swab)	143	144

E X H I B I T S

State's Exhibits:	Marked:	Received:
54 - (Swab)	143	144
55 - (Swab)	143	144
56 - (Blood Swab of Victim)	143	144
57 - (DNA Oral Swab - Mr. Walker)	143	144
58 - (Three Small Photographs)	187	188
59 - (Mr. Walker's Phone Records)	202	436
60 - (Mr. Hubbard's Phone Records)	202	436
61 - (Aerial Photo of Mr. Walker's Home)	210	211
62 - (Color Photograph)	215	215
63 - (Color Photograph)	215	215
64 - (Pre-Interrogation Waiver)	224	230
65 - (Mr. Walker's Fingerprint Card)	272	295
66 - (Fingerprint Card)	272	297
67 - (Fingerprint Card)	272	297
68 - (Fingerprint Card)	272	297
69 - (Fingerprint Card)	272	297
70 - (Cylinder Containing 35mm Negatives)	272	299
71 - (Diagram of : _____ .)	275	276
72 - (Four Items/DNA Swabs)	380	381
73 - (Four Items/DNA Swabs)	381	384
74 - (Cutting 28.1)	383	385

E X H I B I T S

State's Exhibits:	Marked:	Received:
75 - (Cutting 28.2)	383	385
76 - (Cutting 28.3)	383	385
77 - (Cutting 28.5	383	385
78 - (Cutting 28.6)	383	385
79 - (Cutting/Swab 28.7)	383	385
80 - (Chart/Fingerprints)	415	416
81 - (Autopsy Diagram - bullets)	539	547
82 - (Autopsy Diagram - injuries)	539	547
83 - (Raymond Annas Name & Phone Number)	563	563 (Over Obj.)

Defendant's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
1 - (Jury's Question)	647	647

Motions & Matters:	Page:
Motions at the End of the State's Case.....	571

Closing Arguments:	
Mr. Willingham.....	582
Mr. Richey.....	605
Jury Charge:.....	623
Verdict:.....	648
Sentencing:.....	651
Reporter's Certificate:.....	655

1 Tuesday, May 29, 2007

10:28 a.m.

2 (Off-the-Record Comments)

3 (Jury Roll Call began at 10:29 a.m. and concluded at

4 10:49 a.m.)

5 (Jury qualification began at 10:50 a.m. and concluded at

6 11:10 a.m.)

7 THE COURT: That completes the jury qualification
8 process, so, I will declare that the jury -- the jury, as now
9 composed, is qualified to serve as jurors in the Circuit Court
10 this week.

11 There are a few matters I want to go over with you at
12 this time. And this may have already been discussed with you
13 earlier today, but I want to emphasize a few points concerning
14 your jury service.

15 First of all, please, turn off, or do not bring into the
16 courtroom, any electronic devices that might disrupt the court
17 process. Our Supreme Court Chief Justice has issued an order
18 banning those items from the courtroom.

19 I am required to confiscate them should they disrupt the
20 Court proceedings. I don't want to be in possession of your
21 blackberry or your blue tooth or whatever else they call those
22 things; pagers, cell phones, so, please, leave them outside of
23 the courtroom.

24 I can assure you I do not want to take them up; you do
25 not want me to take them up. The bailiffs will assist you in

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1 that matter if you bring them here. They'll take possession
2 and hold them for you if that's necessary, but, please, don't
3 bring them into the courtroom, so, we won't have to deal with
4 those issues during the trial of a case.

5 It's very important, during this week, that you not have
6 contact with the lawyers or people that might be involved in
7 the trial of cases. You have little badges that we placed on
8 your chest. That's there for a couple of reasons: It
9 identifies you as you come into the courthouse as a juror and
10 the bailiffs can get you in the right place.

11 It should indicate to the attorneys and litigants that
12 they should not have contact with you. Spartanburg County,
13 thank goodness, is still a small enough community that you
14 probably know somebody here, or have dealt with somebody here,
15 and you might wish to have a friendly conversation with someone
16 when you come into the courthouse.

17 I hope you can appreciate the fact that, if that
18 conversation is viewed by someone who is on the other side of a
19 legal controversy, from the people before this Court, that it
20 can be taken in the wrong way. Even the most innocent
21 conversation can be twisted or turned into something that it's
22 not.

23 I don't think you want, to be in the position of accused
24 of being involved in jury tampering, so, let's not talk as you
25 come and go from the courthouse. We won't have to deal with

1 those issues if you don't.

2 Next week, once you've got the badge off, be your old
3 friendly self and talk to anybody want to. But you're a juror
4 this week, come and go, do your business, and everybody will
5 get along much better if we do that and not tarry and talk in
6 the courtrooms.

7 I realize that we checked your situation this morning;
8 however, emergencies do arise. If you have a family emergency,
9 a death in the family, an illness, sickness, or something,
10 yourself become ill, please, let the clerk's office know, so,
11 that we can make the proper arrangements for you.

12 The bailiffs, the gentlemen in the red jackets here,
13 they're here for the Court's assistance and for your
14 assistance. If you have a problem, let one of these gentlemen
15 know; they'll surely let me know, and we'll deal with it in the
16 appropriate fashion.

17 We're not here to make this any more inconvenient for you
18 than it has to be. We would like to make you as comfortable as
19 we can as you serve.

20 Also, I'm going to ask you that you be prompt in coming
21 and going from the courthouse. If you're selected, to be on a
22 jury, we can't begin the trial of the case until all of the
23 jurors have been accounted for.

24 If you're going to be late getting to the courthouse, for
25 whatever reason, call the clerk's office, let them know where

1 you are and when you will arrive.

2 If you're having trouble getting here, we do have sheriff
3 deputies throughout the county. We can see that you get here
4 in that fashion if that's necessary.

5 So, there's not really an excuse for being late. If
6 you're going to be late, call us. We'll make arrangements to
7 get you here if we have to. So, be prompt.

8 It's not fair to your fellow jurors to have to sit in a
9 small jury room and wait while we try to run down somebody who
10 is supposed to be on the jury. So, please, get back here on
11 time and be prompt and we'll get on with our business. And
12 we'll try to make this as -- as pleasant an experience as
13 possible.

14 Now, we use a separate jury assembly room in this
15 courthouse. You've been in that room already this morning.
16 But, once you're selected to serve on a jury, don't go back to
17 that room until you're told to do so.

18 When you report back to the courthouse, if you're
19 selected on a jury, you'll report directly to your jury room
20 that you're using. The bailiffs will make sure you know where
21 that is.

22 We've lost a few jurors by people going back and getting
23 in the pool when they're serving on a jury; we called their
24 home and they say, "Well, they're at the courthouse." And, so,
25 then, we have to start looking for you.

1 So, please, go to the jury room if you're selected on a
2 jury that's being used for that trial. If you're not selected
3 on a jury, then, you would report to the jury assembly room for
4 selection in the next trial.

5 Now, the general operating hours of this court -- and
6 I'll explain to you; I'm holding court this week and also Judge
7 Hayes from Spartanburg is also holding Court in General
8 Sessions Court across the hall. So, there will be two
9 courtrooms going on this week as we try cases.

10 And, so, you -- you will be coming and going from those
11 courtrooms, but the operating hours for the courts are
12 generally the same. We start and stop around 9:00 to 9:30
13 every morning. We start at that time; we stop around 5:30 to
14 -- five o'clock (5:00) to 5:30 in the afternoons.

15 We stop the trials normally, at a natural break point,
16 when someone has completed testifying or one side has finished
17 presenting their evidence or the other. And, so, those break
18 points fall not necessarily exactly at five o'clock.

19 And I realize that you have a life outside of the court
20 -- courthouse; I have one too. We'll try to get out as close
21 to five o'clock (5:00) as we can. We normally break -- break
22 for lunch around 12:00 to 1:30, so, I mean, somewhere in those
23 range; usually around 12:30 to one o'clock (1:00) is when the
24 break will occur.

25 And the length of lunch will depend sometimes on the

1 things that are going on in the trial that you're not
2 necessarily here for, motions and things of that nature, so,
3 the lunch hour can vary.

4 So, I'm telling you that I can't tell you a definite
5 start and stop time, but that's generally the hours in case
6 someone in your family wants to know when you're going to be
7 getting home or what's going on.

8 You have a telephone number that's on your jury -- juror
9 pamphlet. Don't leave the courthouse without that number.
10 It's kind of like the American Express card ads; you don't want
11 to go anywhere without that number this week.

12 The reason is, that provides you a means to call the
13 courthouse and find out when you're going to be needed here
14 next. Back in the '70s, when I started practicing law, the --
15 all jurors had to report every morning at nine o'clock (9:00)
16 and stay in that room until we decided whether or not there was
17 going to be a jury trial going on that day; very inconvenient
18 for the jurors, wasted a lot of your time.

19 We developed a call-in system so that every evening, or
20 when we tell you to call in, you can call in. You'll find out
21 if the cases that we've already started are still going on, so,
22 therefore, you're not needed. And you can go about your day-
23 to-day business and not have to come here.

24 So, it's for your convenience, as well as ours. Be sure
25 you have that number, and we'll tell you when to call back in

1 and get information concerning the future service during this
2 week.

3 I want to personally thank each of you for coming forward
4 and serving on the jury this week. Without your help, and
5 without your presence, this Court could not go forward.

6 Ours is a system that allows for direct citizen
7 participation, in the justice system, unlike most juries - most
8 systems in our world today. The jury system is an important
9 right. It's guaranteed under the Bill of Rights of our
10 Constitution.

11 It's a fundamental part of our democracy to have citizens
12 participate in the trials of other citizens who are charged
13 with crimes. I hope you appreciate that fact; I know I do
14 appreciate it.

15 We'll try to make this as incon -- as small of an
16 inconvenience in your life as possible. However, it is my
17 personal belief that service on a jury is the second highest
18 service that a citizen can render to your government; of
19 course, the first being service in the military services.

20 So, again, thank you very much for your willingness to
21 come forward. You're allowing this branch of government to
22 function this week. And, even if you're not selected on a
23 jury, your presence will have -- will require that some people
24 make decisions concerning the disposal of their cases.

25 A lot of cases will be disposed of this week because

1 you're here and ready to go forward with a jury trial if
2 necessary. So, again, thank you very much for your
3 willingness to come forward and serve.

4 Now, we've been going for a little over an hour now, and
5 -- and I'm going to take a short break and allow you to step
6 outside and smoke a cigarette. The rest rooms are on this
7 level. There's a canteen on the second level of the
8 courthouse, the one below us, if you need something to eat or
9 drink or a snack or something of that nature.

10 But I'm going to take a break and discuss some matters
11 with the attorneys that are going to be in the first case that
12 I'm trying. I'm going to ask that you be back in your seats
13 at 11:30.

14 So, that's almost fifteen (15) minutes from now. So,
15 that should give you time to smoke a cigarette, move around,
16 stretch your legs, but be back in this courtroom in fifteen
17 (15) minutes. We should be in a position to discuss the
18 beginning of the next case. Thank you very much.

19 (Whereupon, a morning recess was taken from 11:18 a.m.
20 till 11:30 a.m.)

21 BAILIFF: Come to order, please.

22 THE COURT: Okay. Thank you, sir. Mr. Solicitor, you
23 may call the first case.

24 VOIR DIRE

25 MR. WILLINGHAM: Thank you, Judge. We call the case of

1 The State v. Isaiah Walker, charged in indictment 2007-GS-42-
2 625. Your Honor, it's a true billed indictment for murder.

3 THE COURT: Pass it up, please.

4 (Document handed up to the Court.)

5 (Brief Pause)

6 THE COURT: Mr. Richey, I believe you represent the
7 Defendant in the case; is that correct?

8 MR. RICHEY: Yes, sir.

9 THE COURT: And your client has been arraigned and his
10 plea was not guilty; is that correct?

11 MR. RICHEY: Yes, sir.

12 THE COURT: Thank you. Ladies and gentlemen, of the
13 jury panel, we're about to begin the trial in the case of The
14 State of South Carolina v. Isaiah Frederick Walker (phonetic).
15 As indicated by the Solicitor, I have now been presented with
16 an indictment.

17 An indictment is a document which is issued by the grand
18 jury in Spartanburg County. It represents the formal charges
19 that have been lodged against a citizen.

20 It is presented to this Court to inform this Court of the
21 trial which is to be conducted. It also has been presented to
22 the Defendant. It informs him of the charges that have been
23 lodged against him.

24 An indictment simply represents the formal charges that
25 have been made. It cannot be used by a jury, in any fashion,

1 in determining the guilt or the innocence of a person charged
2 with a crime.

3 I'm going to read the indictment, so, that you will be
4 aware of the date and the place that this particular incident
5 occurred and the alleged victim in the case. That will allow
6 you to perhaps more fully and completely answer some questions
7 that I'm going to ask of you in just a few minutes.

8 As indicated, the indictment presented to the Court is
9 case number 07-GS-42-625. The indictment is for the crime of
10 murder. The indictment states that, "The Defendant, Isaiah
11 Frederick Walker, did in Spartanburg County, on or about
12 February 17 of two thousand and six (2006), feloniously,
13 willfully, and with malice aforethought, kill Jeffrey Wayne
14 Hubbard (phonetic), by shooting the victim multiple times.

15 "And that the victim died, as a proximate result thereof,
16 all in violation of Code Section 16-3-10 and 20 of the South
17 Carolina Code of Law, 1976 as amended, against the peace and
18 dignity of the State and contrary to the statute and such case
19 made and provided." That's the indictment presented to this
20 Court. That's the indictment that we're about to try.

21 Again, in order to assure that the answers that you're
22 about to give to the questions that I'm going to ask
23 concerning this case, are truthful, honest, and complete, it
24 is necessary that the prospective jury panel be sworn
25 concerning your responses.

1 So, at this time, Madam Clerk, please, swear the
2 prospective jury panel.

3 (The jury panel was sworn at 11:38 a.m.)

4 **THE COURT:** Now, if any member of the prospective jury
5 panel failed or refused, to take the oath just administered by
6 the clerk, I ask that you now, please, stand.

7 (No Response)

8 **THE COURT:** The record in this trial will reflect that
9 all jurors have been sworn concerning their responses to my
10 questions.

11 Before I begin to question you, I will ask that the
12 attorneys that are going to be involved, in the trial of this
13 case, please, introduce themselves to you.

14 First of all, for the State of South Carolina?

15 (Mr. Willingham stands and faces the jury panel.)

16 **MR. WILLINGHAM:** If it please the Court?

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

18 **MR. WILLINGHAM:** My name is Donnie Willingham. I'm a
19 deputy solicitor here in Spartanburg.

20 **THE COURT:** Thank you, Mr. Willingham. And for the
21 Defense?

22 (Mr. Richey stood and faced the jury panel.)

23 **MR. RICHEY:** Thank you. I'm Rodney Richey. I'm an
24 lawyer at Richey & Richey. Our offices are in Greenville and
25 Spartanburg.

1 THE COURT: Mr. Richey, if you would, please, introduce
2 the Defendant to the jury panel.

3 MR. RICHEY: This is my client (indicating) Mr. Isaiah
4 Walker.

5 THE COURT: Sir, please, stand and face the jury panel.

6 (Mr. Walker stood as requested by the Court.)

7 THE COURT: Thank you very much, Mr. Richey.

8 (Both Mr. Richey and Mr. Walker sat down.)

9 THE COURT: Now, has any member of the jury panel ever
10 been related, by blood or marriage, to either the Defendant,
11 Isaiah Frederick Walker, or to the alleged victim, Jeffrey
12 Wayne Hubbard? If so, please, stand.

13 (No Response)

14 THE COURT: Has any member of the jury panel ever had a
15 close personal or a social relationship with either the
16 Defendant, Isaiah Frederick Walker, or the alleged victim,
17 Jeffrey Wayne Hubbard? If so, please, stand.

18 (No Response)

19 THE COURT: Has any member of the jury panel ever been
20 represented by either of the attorneys who are involved in the
21 trial of this case, or have you ever -- have those attorneys
22 ever appeared on the other side of a legal controversy from
23 you? If so, please, stand.

24 (No Response)

25 THE COURT: Is there any member of the jury panel who is

1 related, by blood or marriage, or ever been related by blood
2 or marriage, or have you had a close personal or a social
3 relationship with either of the attorneys who are involved in
4 the trial of this case? If so, please, stand.

5 (No Response)

6 THE COURT: Now, I'm going to lead -- read over a list
7 of prospective witnesses in this case; the list is rather
8 lengthy. These are the witnesses who could possibly be called
9 as witnesses during the trial of this case.

10 Once I have completed reading the list, I will, then,
11 have some questions to ask you concerning these individuals.
12 And I will also give you a little information, so, that
13 perhaps you might more easily recognize the individuals on the
14 list:

15 Raymond Annas of _____ in Robuck; Richard
16 White with the Spartanburg County Sheriff's Office; Larry
17 Sprouse of _____ in Spartanburg; Brian Harvey, Stone
18 Station Road in Roebuck; Kevin Bobo, Spartanburg County
19 Sheriff's Office; Hugh Murphy, Spartanburg County Sheriff's
20 Office;

21 Robett Talanges, Spartanburg County Sheriff's Office;
22 David Hogsed, Spartanburg County Sheriff's Office; Tim Davis
23 with the Spartanburg County Sheriff's Office; Dominick Baird
24 with the Spartanburg County Sheriff's Office; Rusty Cleavenger
25 with the Seven Circuit Solicitor's Office;

1 William Gary with the Spartanburg County Sheriff's
2 Office; Robert Rosenberg with the Spartanburg County Sheriff's
3 Office; Russell Holt -- Holthouse or Holthaus -- let me get
4 that right -- Spartanburg County Sheriff's Office; Margaret
5 Greer with the Spartanburg County Sheriff's Office;

6 John Roberts, South Carolina Law Enforcement Division;
7 Jennifer Clayton with the South Carolina Law Enforcement
8 Division; Dan Defreese with the South Carolina Law Enforcement
9 Division; Patti Ruff with the South Carolina Law Enforcement
10 Division;

11 Emily Reinhart with the South Carolina Law Enforcement
12 Division; Bruce Gantt with the South Carolina Law Enforcement
13 Division; Carol Brooks also with SLED, South Carolina Law
14 Enforcement Division; Christine Barrickman with SLED; Ira
15 Jeffcoat with SLED; Karonda Williams with SLED; Sheree Brown
16 with SLED; Amy Stephens with SLED; J. F. Kellett with the
17 Greenville County Sheriff's Office;

18 Brent Gentry, Pyle Court, Spartanburg; Willie Paul
19 Gentry, Westside Road, Moore; Chavez Miller, Austin Court,
20 Roebuck; Dr. David Wrenn with the Spartanburg Regional Medical
21 Center; Reid Lindsey with the -- with the sheriff's office,
22 Spartanburg Sheriff's Office; Jason Bryant with the
23 Spartanburg County Sheriff's Office;

24 Allan Wood with the Spartanburg County Sheriff's Office;
25 Chavez Miller from Austin Court in Spartanburg; Katrice

1 Gentry, Pyle Court, Spartanburg; Phillip Yarbrough, Earls Fort
2 Road, Landrum; Cynthia Lars -- Larson -- Larson, Silver --
3 _____ in Spartanburg; Amanda Pruitt, Moore, South
4 Carolina; Kathy Bater, CPM Federal Credit Union; Frank Foy
5 with the CPM Federal Credit Union.

6 Now, is there any member of the jury who has ever been
7 related, by blood or marriage, or have you had a close,
8 personal or a social relationship with any of the individuals
9 that I just listed, as potential witnesses, in the trial of
10 this case. If so, please, stand.

11 (Potential witness stands in response.)

12 THE COURT: Yes, sir, I need your name and juror number.

13 POTENTIAL JUROR: Yes, my name is Coy Eaton, and my
14 number is 181.

15 THE COURT: Yes, sir?

16 POTENTIAL JUROR: I know Dr. David Wrenn. I'm a
17 physician. I'm on staff at Spartanburg Regional. I'm chief
18 of staff this year, and he's on the Med Exec Committee
19 (phonetic) representing the Department of Pathology.

20 THE COURT: Okay. So, you're -- you're familiar with
21 him on a professional basis; is that correct?

22 POTENTIAL JUROR: And -- and -- and personal.

23 THE COURT: All right, sir. Now, would that
24 relationship, in any way, prevent you from being fair and
25 impartial, to either the State or the Defense, in this case

1 assuming that Dr. Wrenn will testify concerning -- I believe
2 he's a pathologist, matters within his expertise?

3 POTENTIAL JUROR: No.

4 THE COURT: That it affect your ability to be fair and
5 impartial?

6 POTENTIAL JUROR: No, sir.

7 THE COURT: Okay. Thank you. You can be seated, sir.
8 Thank you very much. Anyone else?

9 (Potential witness stands in response.)

10 THE COURT: Yes, ma'am, I need your name and number,
11 please.

12 POTENTIAL JUROR: Gail Whitmire, number 175.

13 THE COURT: Yes, ma'am?

14 POTENTIAL JUROR: I'm a teacher in Spartanburg, District
15 7. One of the names sounds awfully familiar to me.

16 THE COURT: Yes, ma'am.

17 POTENTIAL JUROR: Gentry.

18 THE COURT: Yes, ma'am. Would this be a former student
19 or somebody you just know from the school?

20 POTENTIAL JUROR: It might be. I'm just not sure.

21 THE COURT: Well, Ma'am, would that fact that you might
22 know one of the individuals ---

23 POTENTIAL JUROR: No.

24 THE COURT: --- would that affect your ability to be
25 fair and impartial?

1 POTENTIAL JUROR: Oh, no.

2 THE COURT: Okay. Thank you very much, ma'am.

3 POTENTIAL JUROR: Thank you.

4 THE COURT: You can be seated. Thank you for your
5 information. Anyone else?

6 (No Response)

7 THE COURT: Is there any member of the jury panel who
8 has been a victim of or have you had a member of your
9 immediate family who has been a victim of a violent crime? If
10 so, please, stand.

11 (Potential jurors stand in response.)

12 THE COURT: I'll start with you, ma'am, the lady in the
13 black and white.

14 POTENTIAL JUROR: Juror number 97 ---

15 THE COURT: Yes, ma'am.

16 POTENTIAL JUROR: ---- Sonya McGowen. My brother was
17 murdered in two thousand and two (2002).

18 THE COURT: Now, ma'am, has that case been completed, or
19 is that case ---

20 POTENTIAL JUROR: Yes.

21 THE COURT: --- still open?

22 POTENTIAL JUROR: It's completed.

23 THE COURT: All right. Ma'am, would that fact prevent
24 you from being fair and impartial in the trial of this matter?

25 POTENTIAL JUROR: No.

1 THE COURT: Thank you very much for your answer, ma'am.
2 Yes, ma'am, your name and number?

3 POTENTIAL JUROR: I'm Deborah Dreher, juror number one,
4 sixty-three (163). I had a nephew that was murdered. At this
5 time, that is being heard in North Carolina.

6 THE COURT: All right, ma'am. Would that fact affect
7 your ability to be fair and impartial in the trial of this
8 case?

9 POTENTIAL JUROR: Yes, it would.

10 THE COURT: All right, ma'am, I'm going to excuse you
11 from service in this case. If you'll have a seat, we'll talk
12 with you in just a moment. Did you get your name and number,
13 Madam Clerk?

14 MADAM CLERK: Yes, sir.

15 (Whereupon, juror number 163 was excused by the Court.)

16 THE COURT: All right. Your name and number, please?

17 POTENTIAL JUROR: Celeste Pauley, one, twelve (112). My
18 nephew, in West Virginia, it was about two months ago, it was
19 attempted murder, but it ended up being a self defense case.

20 THE COURT: All right. So, that case is -- has that
21 been ended?

22 POTENTIAL JUROR: No.

23 THE COURT: It's still going on?

24 POTENTIAL JUROR: Uh-huh (affirmative).

25 THE COURT: Now, ma'am, would that fact affect your

1 ability to be fair and impartial in the trial of this case?

2 **POTENTIAL JUROR:** No.

3 **THE COURT:** All right. Thank you very much. You can be
4 seated. Anyone else?

5 **(No Response)**

6 **THE COURT:** Has any member of the jury panel gathered
7 any information, concerning this case outside of this
8 courtroom, or have you already formed or expressed an opinion
9 concerning any matter which would be involved in the trial of
10 this case? If so, please, stand.

11 **(No Response)**

12 **THE COURT:** Is there any member of the jury panel who is
13 aware of any bias or prejudice, either for or against the
14 State or the Defense, in the trial of this case? If so,
15 please, stand.

16 **(No Response)**

17 **THE COURT:** Is there any member of the jury panel who
18 was a member of the grand jury who may have issued the
19 indictment in this case, and this indictment was issued in
20 this year, two thousand and seven (2007). If so, please,
21 stand.

22 **(No Response)**

23 **THE COURT:** Is there any member of the jury panel who is
24 a member of or a contributor to any group which has, as its
25 primary concern, the promotion of law enforcement or victims

1 rights? These groups include, but are not limited to, such
2 groups as Mothers Against Drunk Driving, Students Against
3 Drunk Driving, Citizens Against Violent Crime or other similar
4 organizations. If so, please, stand.

5 (No Response)

6 THE COURT: Does any member of the jury panel know of
7 any reason whatsoever why he or she should not serve as a
8 juror in the trial of this case, with particular emphasis
9 being placed upon your ability to be both fair and impartial
10 to the state and to the Defense. If so, please, stand.

11 (No Response)

12 THE COURT: Any further questions from the State?

13 MR. WILLINGHAM: No, sir, Your Honor. Thank you.

14 THE COURT: Any further questions of the Defense?

15 MR. RICHEY: No, sir.

16 THE COURT: All right. I'm going to declare the jury
17 panel, as amended now, is qualified to serve in the trial of
18 this case.

19 (Voir dire concluded at 11:49 a.m.)

20 JURY SELECTION

21 THE COURT: Ladies and gentlemen of the jury, we're
22 going to begin the jury selection process in just a moment.
23 The clerk is going to place your name in a barrel, she'll give
24 it a spin, and then, she'll randomly begin to select names
25 from that barrel.

1 Now, when your name is called, I'm going to ask that you
2 pick up any personal belongings that you brought, into the
3 courtroom with you, come forward down to the center in front
4 of the courtroom. There will be a bailiff standing there.

5 When you get there, turn and face the back of the
6 courtroom. At that point in time, the State and the Defense
7 will be in a position to exercise their strikes.

8 In this particular case, the State will have five (5)
9 strikes. The Defense will have ten (10) strikes. We will
10 select one alternate, the State having one (1) strike and the
11 Defense having two (2).

12 Is the State ready to begin jury selection?

13 MR. WILLINGHAM: Yes, sir, Your Honor.

14 THE COURT: Is the Defense ready to begin jury
15 selection?

16 MR. RICHEY: Yes, sir.

17 THE COURT: Madam Clerk, you can begin the jury
18 selection process.

19 (The jury selection began at 11:50 a.m.)

20 MADAM CLERK: Juror number 179, Judy M. Ray.

21 (Potential juror steps forward.)

22 MADAM CLERK: What say the State?

23 MR. WILLINGHAM: Please, present the juror.

24 MADAM CLERK: What say the Defense?

25 (Brief Pause)

1 MR. RICHEY: Please, excuse the juror from the trial of
2 this case.

3 MADAM CLERK: Juror number 173, Mollie Brown.

4 (Potential juror steps forward.)

5 MADAM CLERK: What say the State?

6 MR. WILLINGHAM: Please, present the juror.

7 MADAM CLERK: What say the Defense?

8 MR. RICHEY: Please, excuse the juror.

9 MADAM CLERK: Juror number 57, William Gregory.

10 (Potential juror steps forward.)

11 MADAM CLERK: What say the State?

12 MR. WILLINGHAM: Please, present the juror.

13 MADAM CLERK: What say the Defense?

14 MR. RICHEY: Please, present the juror for the trial of
15 this case.

16 THE COURT: Come around and have a seat in the box, sir.
17 Thank you.

18 MADAM CLERK: Juror number 33, Charles Deming.

19 (Potential juror steps forward.)

20 MADAM CLERK: What say the State?

21 MR. WILLINGHAM: Please, present the juror.

22 MADAM CLERK: What say the Defense?

23 MR. RICHEY: Please, present the juror in the trial of
24 this case.

25 MADAM CLERK: Number 103, Deborah Moore.

1 (Potential juror steps forward.)

2 MADAM CLERK: What say the State?

3 MR. WILLINGHAM: Please, present the juror.

4 MADAM CLERK: What say the Defense?

5 MR. RICHEY: Please, excuse the juror from the trial of
6 this case.

7 MADAM CLERK: Number 49, Paul Forster.

8 (Potential juror steps forward.)

9 MADAM CLERK: What say the State?

10 MR. WILLINGHAM: Please, present the juror.

11 MADAM CLERK: What say the Defense?

12 MR. RICHEY: Please, excuse the juror from the trial of
13 this case.

14 MADAM CLERK: Number 91, Charles Martin.

15 (Potential juror steps forward.)

16 MADAM CLERK: What say the State?

17 MR. WILLINGHAM: Please, present the juror.

18 MADAM CLERK: What say the Defense?

19 (Brief Pause)

20 MR. RICHEY: Please, present the juror for the trial of
21 this case.

22 MADAM CLERK: Number 75, Cynthia Keith.

23 (Potential juror steps forward.)

24 MADAM CLERK: What say the State?

25 MR. WILLINGHAM: Please, present the juror.

1 MADAM CLERK: What say the Defense?

2 MR. RICHEY: Please, present the juror for the trial of
3 this case.

4 MADAM CLERK: Number 56, Robert Green.

5 THE COURT: Was that 66?

6 MADAM CLERK: Fifty-six (55).

7 THE COURT: Fifty-six (55)? Thank you.

8 (Potential juror steps forward.)

9 MADAM CLERK: What say the State?

10 MR. WILLINGHAM: Please, present the juror.

11 MADAM CLERK: What say the Defense?

12 MR. RICHEY: Please, excuse the juror from the trial of
13 this case.

14 MADAM CLERK: Number 79, Shannon Lamb.

15 (Potential juror steps forward.)

16 MADAM CLERK: What say the State?

17 MR. WILLINGHAM: Please, present the juror.

18 MADAM CLERK: What say the Defense?

19 MR. RICHEY: Please, excuse the juror from the trial of
20 the case.

21 MADAM CLERK: Number 185, Donnie Seay.

22 (Potential juror steps forward.)

23 MADAM CLERK: What say the State?

24 MR. WILLINGHAM: Please, present the juror.

25 MADAM CLERK: What say the Defense?

1 (Brief Pause)

2 MR. RICHEY: Please, present the juror for the trial of
3 this case.

4 MADAM CLERK: Number 178, Jennifer Hipp.

5 (Potential juror steps forward.)

6 MADAM CLERK: What say the State?

7 MR. WILLINGHAM: Please, present the juror.

8 MADAM CLERK: What say the Defense?

9 (Brief Pause)

10 MR. RICHEY: Please, excuse the juror from the trial of
11 this case.

12 MADAM CLERK: Number 22, Brett Clavani -- Clavenna.

13 (Potential juror steps forward.)

14 MADAM CLERK: What say the State?

15 MR. WILLINGHAM: Please, present the juror.

16 MADAM CLERK: What say the Defense?

17 MR. RICHEY: Please, present the juror for the trial of
18 this case.

19 MADAM CLERK: Number 175, Gail Whitmire.

20 (Potential juror steps forward.)

21 MADAM CLERK: What say the State?

22 MR. WILLINGHAM: Please, present the juror.

23 MADAM CLERK: What say the Defense?

24 (Brief Pause)

25 MR. RICHEY: Please, present the juror for the trial of

1 this case.

2 MADAM CLERK: Number 151, Tyler West.

3 (Potential juror steps forward.)

4 MADAM CLERK: What says the State?

5 MR. WILLINGHAM: Please, present the juror.

6 MADAM CLERK: What say the Defense?

7 (Brief Pause)

8 MR. RICHEY: What number was it again?

9 MADAM CLERK: One, fifty-one (151).

10 (Brief Pause)

11 MR. RICHEY: Please, present the juror.

12 MADAM CLERK: Number 68, Deborah Hyatt.

13 (Potential juror steps forward.)

14 MADAM CLERK: What say the State?

15 MR. RICHEY: Please, present the juror.

16 MADAM CLERK: What say the Defense?

17 MR. RICHEY: Please, excuse the juror.

18 MADAM CLERK: Number 111, Mary Patskoski.

19 (Potential juror steps forward.)

20 MADAM CLERK: What say the State?

21 MR. WILLINGHAM: Please, present the juror.

22 MADAM CLERK: What say the Defense?

23 (Brief Pause)

24 MR. RICHEY: Please, present this juror.

25 MADAM CLERK: Number 139, Randy Tillotson.

1 (Potential juror steps forward.)
2 MADAM CLERK: What say the State?
3 MR. WILLINGHAM: Please, present the juror.
4 MADAM CLERK: What say the Defense?
5 (Brief Pause)
6 MR. RICHEY: Please, present the juror for the trial of
7 this case.
8 MADAM CLERK: Number 35, Ann Downs.
9 (Potential juror steps forward.)
10 MADAM CLERK: What say the State?
11 MR. WILLINGHAM: Please, present the juror.
12 MADAM CLERK: What say the Defense?
13 MR. RICHEY: Please, excuse the juror.
14 THE COURT: I have nine strikes for the Defense.
15 MADAM CLERK: Number 157, Judy Khang.
16 (Potential juror steps forward.)
17 MADAM CLERK: What say the State?
18 MR. WILLINGHAM: Please, present the juror.
19 MADAM CLERK: What say the Defense?
20 MR. RICHEY: Please, present the juror.
21 MADAM CLERK: Number 176, Tammy Brown.
22 (Potential juror steps forward.)
23 MADAM CLERK: What say the State?
24 MR. WILLINGHAM: Please, present the juror.
25 MADAM CLERK: What say the Defense?

1 (Brief Pause)

2 MR. RICHEY: Please, present the juror for the trial of
3 this case.

4 THE COURT: And we'll select the alternate. Again, the
5 State has one (1) strike, and the Defense has two (2).

6 MADAM CLERK: Number 65, Edward Hoppes.

7 (Potential juror steps forward.)

8 MADAM CLERK: What say the State?

9 MR. WILLINGHAM: Please, present the juror.

10 MADAM CLERK: What say the Defense?

11 (Brief Pause)

12 MR. RICHEY: Please, present the juror.

13 (Jury selection concluded at 12:06 p.m.)

14 THE COURT: Any objection to the jury selection process
15 from the State?

16 MR. WILLINGHAM: No, sir, Your Honor. Thank you.

17 THE COURT: Any objection from the Defense?

18 MR. RICHEY: None, Your Honor.

19 THE COURT: All right. Is there any need for the jurors
20 to return?

21 BAILIFF: Just Judge Hayes.

22 THE COURT: Check -- check across the hall before I
23 release them.

24 BAILIFF: Okay.

25 (Brief pause while bailiff checks to see if Judge Hayes

1 needs the jury panel.)

2 THE COURT: All right. To the people -- to the members
3 of the jury panel who were not selected, at this point in
4 time, I am going to release you for the remainder of the day.

5 Be sure that you have your call-in number with you when
6 you leave the courthouse. Call in after six o'clock (6:00)
7 this afternoon. There should be some instructions on the
8 recording machine telling you concerning your future jury
9 service.

10 Again, I want to thank you very much for your willingness
11 to come forward and assist us this week in the judicial branch
12 of government. And, again, if you have any problems,
13 questions, or concerns, concerning your service, please, let
14 one of the bailiffs know. We'll be happy to try to work with
15 you on those.

16 But, at this point in time, you're free to go. This is a
17 public courtroom. You have the right to stay if you wish to;
18 however, you're free to go if you would like. Thank you very
19 much.

20 (Off-the-Record Comments)

21 (The jury panel exited the courtroom at 12:11 p.m.)

22 THE COURT: All right. Those of you who have been
23 selected on this jury, it's already 12:15, and so, we're not
24 going to begin the trial until after we've taken your lunch
25 break.

PAMELA FAUCETTE - (864) 574-9534 OR (336) 260-2864

1 I will -- I do have some cautions or some instructions to
2 you concerning that break and any future breaks. When you
3 return to the courtroom, you will be asked to take another
4 oath.

5 I know you've already been sworn a couple of times today,
6 but we have another oath that directly deals with your duties
7 as a jurors in this case. You will find that that oath
8 requires that you decide this case solely upon the evidence
9 presented during the trial.

10 Therefore, it would be very improper for you to try to
11 gather any information concerning this matter outside of the
12 courtroom from any source; the internet, newspaper, news
13 article, news reports, television, all of those sources will
14 probably include information which is not admissible, under
15 the Rules of Evidence, that this Court is governed by and that
16 you are to decide this case by.

17 So, again, do not attempt to gather any information
18 outside this courtroom. Do not listen to, read, or watch any
19 media reports concerning the trial of this case.

20 And, again, I'm going to ask you each time, when you
21 leave the courtroom, not to discuss this case with anyone
22 whatsoever, even your fellow jurors.

23 Even the most innocent conversation you might have, with
24 a fellow juror, concerning simply the charges that are
25 involved in this case could begin to color your ultimate

1 opinion and decision in this matter.

2 You've been chosen, as fair and impartial jurors, who
3 have open minds on this case. You should keep that mind open,
4 until you have heard all of the evidence both from the State
5 and the Defense, you've heard the arguments by counsel, and
6 I've charged you concerning the law to be applied in this
7 case.

8 Only -- once you have all of that information only, then,
9 should you begin to formulate an opinion concerning the
10 ultimate outcome of this case, and that would be during your
11 deliberations, when you discuss the case among yourselves at
12 the time that I will ask you to reach your ultimate decision
13 in this case.

14 So, again, it's okay to tell someone you've been selected
15 on a jury; just don't discuss the type of case, what it's
16 about, anything else that has to do with it.

17 Tell them, once the case is completed, at that time, I'll
18 tell you, you have the right to discuss the case with anyone
19 you wish to discuss it or not discuss the case with anyone if
20 you choose to do so.

21 Should anyone attempt to contact you concerning your
22 participation, as a juror on this case, during any break of
23 this court, please, report that fact back to this Court. I
24 can assure you, I'll take the appropriate action should anyone
25 attempt to tamper with the jury in this matter.

1 The bailiff, on the way out, will show you the jury room
2 that we're going to be using during the trial of this case.
3 When you return to the courthouse, return to that jury room.

4 Don't go back to the jury assembly room; go back to this
5 jury room and we should be in a position to begin the trial at
6 that point in time.

7 I expect to be able to start the trial by two o'clock
8 (2:00) this afternoon. So, be back in the jury room at two
9 o'clock (2:00) this afternoon. And, again, do not discuss the
10 case during the break. Do not attempt to gather any
11 information outside the courtroom.

12 One other factor I will discuss with you; Spartanburg
13 County is still a small town and there's a limited number of
14 places to eat in the city. If you see someone who is a
15 participant, in this trial in a restaurant, please, don't sit
16 so close that you overhear their conversations. Again, those
17 conversations I'm sure will involve information that you
18 should not consider in reaching your ultimate decision.

19 You should decide this case solely upon witnesses who
20 swear to tell the truth, and who testify from this witness
21 stand (indicating), and the evidence that comes in through
22 that testimony.

23 Have a good lunch. Be back in the jury room at two
24 o'clock (2:00) this afternoon. Thank you very much.

25 (The jury exited the courtroom at 12:17 p.m.)

1 THE COURT: Any objection to my final comments to the
2 jury before break?

3 MR. WILLINGHAM: No, sir, Your Honor.

4 THE COURT: Any from the Defense?

5 MR. RICHEY: None, Your Honor.

6 THE COURT: All right. We'll be in recess, then, until
7 two o'clock (2:00). The Defendant remains in custody. Thank
8 you very much.

9 (Whereupon, a lunch recess was taken from 12:18 p.m. till
10 1:57 p.m.)

11 (Whereupon, State's Exhibit Numbers 1 through 17 were
12 marked for identification.)

13 THE COURT: Okay.

14 MR. RICHEY: Your Honor, I think me and Mr. Willingham
15 agree on this, the sequestration order in this case, of the
16 witnesses. And I think that's ---

17 THE COURT: Mr. Willingham?

18 MR. WILLINGHAM: That's fine, Judge. We ask that our
19 case agent be allowed to stay.

20 THE COURT: Who is that? Identify him.

21 MR. WILLINGHAM: That would be Kevin Bobo.

22 THE COURT: Okay. Mr. Bobo.

23 MR. WILLINGHAM: And, of course, the victim's family is
24 here. I don't believe they're on the witness list.

25 THE COURT: They have the right to stay, the victim's

1 family does.

2 MR. WILLINGHAM: And we ask that Robert Rosenberg be
3 allowed to stay. He's the evidence custodian of all our
4 evidence here.

5 THE COURT: Any objection to his staying in the
6 courtroom?

7 MR. RICHEY: No, Your Honor. And -- and ---

8 (Off-the-Record Discussion)

9 MR. RICHEY: One moment, Your Honor. All right.
10 Nothing else.

11 THE COURT: All right. Identify who is included with
12 the victim's family, so, that we have that on record.

13 MR. WILLINGHAM: Okay. Judge, this is Ken Hubbard.
14 This is the victim's father.

15 THE COURT: Yes, sir.

16 MR. WILLINGHAM: And Mrs. Hubbard is his mother. His
17 two sisters, Ashley -- Amanda, sorry, and Sarah and his
18 brother, Mike.

19 THE COURT: All right. Thank you very much. Anyone
20 else?

21 MR. RICHEY: Your Honor, I would ask the Court to
22 consider -- I know I'm making this motion. My client's mother
23 is here and she is going to be a potential witness, you know.
24 I know the State may object to that, but we just ask that she
25 be allowed to stay.

1 **THE COURT:** Well, the victim's -- the victims are
2 specifically allowed to stay by -- by statute, so, they have
3 the right to be present. Does the State object to the
4 Defendant's mother being present?

5 **MR. WILLINGHAM:** Judge, he has -- that's the only
6 witness that he listed, so, otherwise, we have no reciprocal
7 meaning at all.

8 **THE COURT:** Okay. What I'm going to do, then, all other
9 individuals who are not named, who intend to be witnesses in
10 the case, I'm going to ask you to step outside the courtroom.

11 Let me also tell you that you should not discuss your
12 testimony with anyone else who is going to test -- who is
13 going to testify in the case. Or, once you've completed your
14 testimony, you should not discuss what went on the courtroom,
15 your testimony, or the contents thereof until such time as the
16 trial has been completed.

17 So, at this point in time, anyone who intends to be a
18 witness, other than the case officer, the victim's family,
19 should leave the courtroom. Thank you very much.

20 (Whereupon, the potential witnesses exited the courtroom
21 at 1:58 p.m.)

22 **THE COURT:** All right. Anything else before we bring
23 the jury in?

24 **MR. WILLINGHAM:** No.

25 **THE COURT:** Have we agreed on any exhibits to be placed

1 into the record?

2 MR. WILLINGHAM: Judge, no, sir. We -- we have not. We
3 did -- there is a stipulation, and -- and I can mark these
4 later. It's an agreement as to the admissibility of phone
5 records. Mr. Richey and I have agreed those -- those will be
6 marked and introduced.

7 I had hoped to be able to accomplish that over lunch, but
8 we were unable to, so, we'll -- we'll take it as we go.

9 THE COURT: That will be fine. All right. Is the State
10 ready?

11 MR. WILLINGHAM: Yes, sir, Your Honor.

12 THE COURT: Is the Defense ready?

13 MR. RICHEY: Yes, sir.

14 THE COURT: Bring the jury back.

15 (The bailiff stepped out to summon the jury.)

16 (The jury entered the courtroom at 2:00 p.m.)

17 THE COURT: All right. The record will reflect that all
18 jurors have returned to the courtroom. I trust everyone had a
19 good lunch and you're now ready to begin the actual trial of
20 this case.

21 And I explained to you, before you retired for lunch,
22 that upon your return to the courtroom, it would be necessary
23 for you to take an oath concerning your duties as jurors in
24 this particular trial. So, at this point in time, I will ask
25 the clerk to, please, swear the jury.

1 (The jury was impaneled at 2:01 p.m.)

2 THE COURT: Now, if any member of the jury panel either
3 failed or refused to take the oath just administered by the
4 clerk, I'm going to ask that you now stand.

5 (No Response)

6 PRELIMINARY CHARGE

7 THE COURT: The record will reflect that all jurors have
8 been sworn for the purposes of this trial.

9 Ladies and gentlemen of the jury, before we begin the
10 actual trial of the case, there are some things that I'm going
11 to go over with you to explain the procedure that we'll be
12 following, the roles and responsibilities of the various
13 persons who will appear before you, in the trial of this case,
14 also explain to you your roles and responsibilities as jurors
15 concerning this matter.

16 What I'm telling you now is not a charge concerning the
17 law to be applied to the facts in this case. You will find,
18 at the close of the trial, once all of the evidence has been
19 presented and arguments made, at that time, I will charge you
20 concerning the law that you are to apply to the facts as you
21 find them to be.

22 I would suspect that for most of you, this is your first
23 experience in serving on a jury of any kind. Probably, at
24 this point in time in your life, most of the information that
25 you have about how our court system works, or the functions of

1 a jury, have come from such sources as books that you might
2 have read, movies that you've seen, or television shows that
3 you've watched.

4 And, while those sources of information can be helpful to
5 you, those particular forms of trials and jury participation
6 are intended for your entertainment. They're intended to keep
7 your attention. They have riveting facts and good acting.

8 And, in the case of television, they start on time, end
9 on time, and take breaks for commercials. Those trials,
10 again, are for your entertainment.

11 I can assure you that this trial is for anything but your
12 entertainment. What you're engaged in, at this point in time,
13 is a search for the truth.

14 A search for the truth can be slow. It can be
15 deliberate. It won't start on time and it won't necessarily
16 end on time, just as you would expect a search for the truth
17 to be.

18 What you're participating in, as I indicated to you
19 earlier, is a fundamental part of our democracy. You've been
20 chosen as citizens from your day-to-day courses of -- of life.
21 You've been brought into this courtroom.

22 You're going to perform an important function in this
23 trial, an important part of our judicial system. If you've
24 looked around the world lately, you've probably have not
25 noticed very many countries where citizens have the right to

1 directly participate, in the trial of fellow citizens, who are
2 charged with the commission of a crime.

3 This courtroom is a place of honor. It's dedicated to
4 the preservation of citizens' right through what many people
5 believe to be the greatest justice system ever devised on the
6 face of the earth.

7 I didn't say a perfect justice system, but a system,
8 again, where ordinary citizens, such as yourselves, stand
9 between a person who is accused of a crime, by the State, to
10 make important determinations concerning the facts involved in
11 the matter before this Court.

12 Now, the attorneys in this case are advocates for their
13 clients, and they're here to present their client's case in
14 the best way that they know how.

15 You can expect from them that they act in a professional,
16 courtesy, and ethical manner, in the presentation of their
17 court -- cases, because first and foremost, they are also
18 officers of this Court. They have taken an oath, before this
19 Court, to assist you in your search for the truth.

20 I will also remind you that you have now come before this
21 Court. You have also taken an oath. You're expected to act
22 in a fair, professional, and ethical manner in the
23 consideration of the tasks that are laid before you as jurors
24 in this case.

25 As I have, on a couple of occasions already this morning,

1 I want to thank you very much for your willingness to come
2 forward and serve in this case as jurors today.

3 I indicated to you that there is an indictment in this
4 case. And I read that to you before we began the jury
5 selection.

6 I'm going to go over that indictment again, but before I
7 do, I remind you that an indictment is not evidence in the
8 case. It is simply the formal written charge that brings this
9 case before this Court.

10 It informs you and I of the charge to be tried in this
11 courtroom. It also informs the Defendant of the charge which
12 has been lodged against him.

13 The indictment, again, states that, "The Defendant,
14 Isaiah Frederick Walker, did in Spartanburg County, on or
15 about February 17th of two thousand and six (2006),
16 feloniously, willfully, and with malice aforethought, kill
17 Jeffrey Wayne Hubbard, by shooting the victim multiple times.

18 "And the victim died as a proximate result thereof, all
19 in violation of Code Section 16-3-10 and 20 of the South
20 Carolina Code of Laws, 1976 amend -- as amended, against the
21 peace and dignity of the State and contrary to the statute in
22 such case made and provided."

23 That's the indictment that the grand jury has issued to
24 this Court. To that indictment, the Defendant has pled not
25 guilty. And, by that plea, the laws and the Constitution of

1 our State now place the burden upon the State to prove the
2 allegations that are contained in the indictment, by proof
3 which satisfies you of its truth, beyond a reasonable doubt.

4 Your purpose as jurors is to find and determine the facts
5 of this case. You are the sole judges of the facts in this
6 case.

7 I am the presiding officer of this trial and I will
8 explain or give you the law to be applied at the close of the
9 trial. If -- and it's going to be necessary, in the discharge
10 of my duties, from time-to-time, to discuss matters with the
11 attorneys or make rulings on questions or the appropriateness
12 of questions or the admissibility of evidence.

13 Please, do not take anything that I might say, in the
14 discharge of my duties, as the presiding officer, that I have
15 any opinion whatsoever as to how you ultimately determine --
16 determine the facts in this case.

17 The law does not allow me an opinion on that subject, and
18 I can assure you, I have no opinion as to how you determine
19 the facts in this matter.

20 Now, the same law that makes you the sole judges of the
21 facts in this case makes me the sole judge of the law in this
22 case. The law, as I give it to you at the close of the trial,
23 is the only law that you can use in determining the outcome of
24 this case.

25 If you came into this courtroom and sat in that jury box

1 with any opinion or notion as to what the law is or what the
2 law ought to be on this subject, I will tell you now to leave
3 that notion outside of this courtroom.

4 You have taken an oath, now, to decide the case solely
5 upon the evidence and the law as given to you by this Court.
6 So, the law that I give you is the only law that you can use
7 in determining the outcome of this case.

8 The law doesn't allow me to disagree with you concerning
9 a determination of the facts of this case, and the law does
10 not allow you to disagree with me concerning the law to be
11 applied to the facts as you find them to be at the close of
12 the trial.

13 As I told you, when we took our break, until I advise you
14 to begin your deliberations, you should not discuss the case
15 with anyone. I expect this case will go on through today and
16 into tomorrow and maybe even longer than that.

17 And, during that period of time, you, again, should not
18 discuss the case because, at any given time, in that process,
19 you won't have all of the information, in your possession,
20 that you will need to decide the case.

21 Only, when you have heard all of the evidence, heard the
22 arguments of counsel, and heard me charge you with the law,
23 will you have the information sufficient to begin to decide
24 the issues which are laid before you.

25 So, again, do not begin any discussions concerning this

1 matter, even with your fellow jurors, until such time as I
2 advise you it would be proper to do that.

3 It's important that you keep an open mind and not decide
4 any issues, until I advise you to begin your deliberations,
5 because it is your solemn responsibility, at the close of this
6 trial, to determine the guilt or the innocence of the
7 Defendant who is before this Court.

8 Now, in a few minutes, I'm going to allow the attorneys
9 to make what is called an opening statement or an opening
10 argument. I will tell you, at this time, statements made by
11 attorneys, during the trial of this case, are not evidence.

12 The only evidence that comes into this case are from
13 witnesses who are sworn to tell the truth, who testify from
14 this witness stand (indicating), and such documents and other
15 information or -- or objects that come in through that
16 testimony into evidence.

17 The attorneys' statements will serve several purposes,
18 however. At the beginning of the trial, they will tell you a
19 little bit about what they expect the case will be about and
20 what they expect that you will hear and what you should be
21 listening for.

22 At the close of the trial, once all of the evidence has
23 been presented and the testimony has been given and the
24 evidence put into the record, we'll allow the attorneys to
25 make a closing statement.

1 Again, the statements made by the attorneys is not
2 evidence in the case. At the close of the trial, they will
3 sum up the evidence, from their client's perspective, and they
4 will suggest to you or tell you what inference they believe
5 that you can draw from that evidence.

6 But, again, a jury cannot use the arguments of counsel
7 directly to determine the guilt or the innocence of the
8 Defendant. The only thing that can use to determine the guilt
9 or the innocence of the Defendant is the evidence that is
10 issued -- that is placed into the record during the trial of
11 this case.

12 Now, during my job, and -- and during the performance of
13 my job, it -- there may be issues that come up that involve
14 discussions with the attorneys concerning the admissibility of
15 evidence.

16 If it is my belief that, during those discussions matters
17 will be discussed which may not be admissible into evidence,
18 I, at that time, will ask you to leave the courtroom while
19 those discussions take place.

20 The reason is, it's my job to see to it that you decide
21 the case solely, upon the properly admitted evidence in the
22 case, not upon information that is not admissible.

23 The attorneys and I will complete our discussions and I
24 will make a ruling. At that time, I will ask you to come back
25 into the courtroom, announce the ruling, and we'll go forward

1 with the trial.

2 But, again, do not think, from the fact that I have asked
3 you to step outside the courtroom, again, that I have any
4 opinion of how you determine the facts in this case. It's
5 simply me doing my job to see to it that only properly
6 admissible evidence is considered in reaching a verdict in
7 this case.

8 Now, I've told you that you are the sole judges of the
9 facts in this case. And, in determining what the true facts
10 are in this case, you must decide whether each and every
11 witness who testifies in this case is -- is telling the truth
12 or is deserving of a finding of credibility.

13 It is my responsibility to rule on whether or not that
14 evidence is presented to you. But, once it's admitted, it
15 will be your job to decide whether or not you believe the
16 evidence that's presented. And that is your job as a juror to
17 determine that.

18 In deciding whether to believe a witness, you have the
19 right to consider many factors, but I will tell you first and
20 foremost, use your own good common sense that you brought into
21 the courtroom with you today.

22 You have the right to consider such factors as whether or
23 not the witness had a stake in the outcome of the case;
24 whether or not the witness might have some bias or prejudice,
25 either for or against the State or the Defense; whether or not

1 the witness actually had the ability to know, see, feel,
2 touch, or taste the matters about which that witness
3 testified.

4 And, perhaps most importantly of all, the witness chair
5 is always directly across from the jury box; you can observe
6 the witnesses as they testify, the manner in which they speak,
7 the way in which they deliver their -- their testimony.

8 Take all of the factors that I've just suggested to you,
9 and again, use your own good common sense and reach a
10 determination as to whether or not a witness is deserving of a
11 finding of credibility by you.

12 So, it will be important for you to pay -- pay close
13 attention to what goes on in the courtroom; what's said,
14 what's done. Pay attention to what the witnesses say, what
15 the attorneys say.

16 Try not to let your thoughts wonder, during the trial,
17 but give strict attention to the testimony as it is given by
18 the -- by the witnesses and also to the arguments of counsel
19 and to the charge of the law by the Court.

20 If you do that, at the close of the trial, you will be in
21 a position to deliberate, with your fellow jurors, and render
22 a just, true, and a fair verdict in this case.

23 Now, please, do not think that because I have not
24 appointed a foreperson of your jury that I have forgotten
25 about that. I'm a little different from other judges. I like

1 to make that appointment when I do my final charge on the law.

2 I like to observe the jury, as the trial goes on, and
3 make a determination as to who I believe will be the best
4 person to serve as the foreperson on the jury. So, I make
5 that appointment at the close of the trial.

6 The foreperson has no function during the trial of this
7 case. The only time the foreperson has any function is during
8 deliberations. At that time, the foreperson will preside over
9 your discussions.

10 If you have questions that you want submitted to the
11 Court, the foreperson would write those down and submit them
12 to the bailiff to the Court and the foreperson also is the
13 person who records the verdict once the verdict has been
14 reached in the case. And submits it, again, through the
15 bailiff to the Court.

16 But the foreperson has no greater say, in the outcome of
17 this case, than any other juror who is sitting in on the
18 deliberations. Before this jury can reach a verdict, each and
19 every one of you must agree on that verdict.

20 It must be unanimous before a verdict can be -- be
21 reached. So, again, the foreperson, or any other juror, has
22 no greater say than any other juror in the outcome of the case
23 once the deliberations have begun.

24 Now, as the sole judges of the facts, I was talking to
25 you about the -- the credibility of the witnesses. I will

1 tell you, as the sole judges of the facts, you have the right
2 to believe every witness who testifies against one or one
3 witness who testifies against every other witness who
4 testifies.

5 You have the right to believe all of what a witness tells
6 you, part of what a witness tells you, or none of what a
7 witness tells you.

8 You are the sole judges of the facts in this case. You
9 are the sole judges of the credibility of the witnesses who
10 testify. You're also the sole judges of the weight that you
11 choose to assign to each and every witness who testifies in
12 this case.

13 So, again, pay -- pay close attention to all of the
14 witnesses, so, you'll be in a position to make that
15 determination once the deliberations have begun.

16 It's -- it's especially important that you perform your
17 duties, in determining the facts in this case, diligently and
18 conscientiously because, under our system of justice,
19 ordinarily there is no means to correct an erroneous
20 determination of facts made by a jury.

21 Now, in order to be sure that I have not violated
22 anyone's rights, in my opening comments, is there any
23 objection from the State?

24 MR. WILLINGHAM: No, sir, Your Honor.

25 THE COURT: Any objection from the Defense?

1 MR. RICHEY: None, Your Honor.

2 THE COURT: Now, ladies and gentlemen, I indicated, to
3 you in this case, the Defendant pled not guilty to the
4 indictment. That places the burden of proof upon the State to
5 prove its case beyond a reasonable doubt.

6 Because the State has the burden of proof in the case, we
7 allow the State to go first, giving its opening argument,
8 followed by the Defense. And, in the actual presentation of
9 evidence, the State, again, will be called upon to present its
10 evidence first, followed by presentation of evidence by the
11 Defense.

12 Once all the evidence is in, we'll do the closing
13 arguments by counsel. Then, I will charge you concerning the
14 law. And, once that's been completed, we'll submit the case
15 to you for your decision.

16 At this point in time, the State may begin with its
17 opening statement. Mr. Willingham?

18 MR. WILLINGHAM: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 (Mr. Willingham's opening statement began at 2:18 p.m.)

21 MR. WILLINGHAM: Ladies and gentlemen, on February the
22 17th, two thousand and six (2006), early afternoon, law
23 enforcement responded to what would have been a routine type
24 call. There was a call of -- of livestock on the loose.

25 So, an officer, with animal control services, went down

1 to — Road. That's here in Spartanburg County, kind of
2 parallels I-26, a little dead end road.

3 He goes down that road. He doesn't find any cows on the
4 loose; he finds a white Probe Ford.

5 The car was still running. The wheels still turning;
6 looks inside, in the back seat, and he finds my victim,
7 Jeffrey Hubbard.

8 Jeffrey Hubbard is there not as the result of a wreck.
9 He's there as a result of the actions of that man
10 (indicating), Isaiah Walker.

11 Jeffrey Hubbard was a young fellow. He worked at the
12 Swim Center here in Spartanburg. On that day, he called in
13 sick. He should have gone to work.

14 So, what he did instead, he spent a good little bit of
15 that day with the Defendant, Isaiah Walker. Met up at Isaiah
16 Walker's house on — Road, where Isaiah Walker murdered
17 Jeff Hubbard.

18 He didn't strangle him; he didn't stab him. He shot him
19 over and over and over again. He loaded him up in his car, in
20 the victim's own car, and pulled out of the driveway and went
21 to a stop sign, at the end of his road, turned left, took the
22 next road to the right, which was — Drive.

23 Drove down there and turned into next to a pond and the
24 car got stuck. The car got stuck and one wheel was even up
25 off the ground.

1 He got out, leaving Jeffrey Hubbard in the back, in the
2 back seat of that car, with twenty-four (24) bullet holes in
3 him. Not twenty-four separate shots, but in and out twenty-
4 four holes.

5 He gets out and starts shedding his clothes; takes his
6 sweatshirt off and slings out. Takes his sweat pants and
7 slings those; his boots, just throwing them. When he's done,
8 he's standing there in his underwear. And he flees the scene.

9 After Jeffrey Hubbard is found, law enforcement is
10 called. They come and they begin their investigation. And
11 every trail they'll follow leads to Isaiah Walker.

12 And ultimately, as a result of their investigation, he is
13 charged with murder. And that's why we're here today.

14 As we told you before, I am the prosecutor. I have the
15 burden of proof. I have to show you those facts. And the way
16 that I'll do is by calling witnesses to this witness stand
17 (indicating).

18 You'll hear from the officers that responded to the
19 scene. They'll tell you about what they found and what they
20 saw and what they did. And you will hear, from the people
21 that were -- that were with the Defendant and the victim that
22 morning; what they saw, what they heard, and what they did.

23 You'll hear from a number of crime scene specialists.
24 They process crime scenes, and they collect evidence. And
25 you'll hear about what they found and what they did, and where

1 they sent that evidence.

2 They send that evidence to SLED, State Law Enforcement
3 Division. And you will hear from a number of experts with
4 SLED. It'll almost be like CSI.

5 You'll hear from ballistic experts. You'll hear from
6 fingerprint experts. You'll hear from DNA experts. They will
7 tell you what tests they did, what evidence they examined, and
8 what conclusions they came to.

9 And, at the end of all the evidence, I'll have a chance
10 to come back and talk to you again. And what we'll do, then,
11 is we'll take the facts that we've heard in the courtroom and
12 we'll take the law that the judge will give you and you'll put
13 them together.

14 And, when we put them together, there will be one verdict
15 that speaks the truth. There will be one verdict that tells
16 Isaiah Walker that he's accountable for his actions. There
17 will be one verdict that tells Isaiah Walker he's guilty.
18 Thank you.

19 (Mr. Willingham's opening statement concluded at 2:24
20 p.m.)

21 THE COURT: From the Defense?

22 MR. RICHEY: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 (Mr. Richey's opening statement began at 2:24 p.m.)

1 MR. RICHEY: I'm Rodney Richey and I represent Isaiah
2 Walker. And, in representing a person that has been charged
3 with a crime, especially a serious crime, it is an
4 unbelievable responsibility because, at this point, you are
5 the front line.

6 You are the front line. And, so, it is an unbelievable
7 responsibility. And it's a responsibility that I welcome and
8 Mr. Walker chose me to represent him.

9 And you know, when you're home with your two kids --
10 you've got a kid at home and -- and he comes up crying. I've
11 got two kids at home and they are a year apart and what
12 happens is, they get in a fight all the time.

13 And the first one that comes to you, he gives you the
14 story about what happened. You know, "My brother did da, da,
15 da, da, da."

16 On its face, the story sounds believable, but like any -
17 anything, there's always two sides to a story. There's always
18 two sides..

19 That's -- when they tell you to use your common sense,
20 you know, everybody says, "Use your common sense; use your
21 common sense." That's what they mean.

22 Your common sense tells you there's two sides to every
23 story. And the prosecutor laid out this story and telling you
24 it'll be like CSI. Well, on CSI they give definitive
25 conclusions.

1 You know, when it's five till 10:00, they give you a
2 definitive answer. Okay? They come out and say, "Yes, it was
3 this person."

4 It's sort of like the Perry Mason deal, okay? The guy
5 stands up and says, "I did it." That's the CSI deal, the
6 sophisticated deal.

7 Then, the guy stands up in the end and says, "I did it."
8 "You all got me." The program goes off and they run the
9 credits. That's just is not what this case is.

10 Me and the prosecutor, we agree with certain facts. Yes,
11 this gentleman was killed. Yes, he was killed. He was killed
12 in my client's mother's yard basically. Okay.

13 That -- that is what the evidence will show. But, then,
14 who did the killing, that is -- that's what differs the sides.
15 That's what differs the sides.

16 We pled not guilty. And we will say there will be no
17 credible evidence, no credible evidence, that shows my client,
18 in fact, killed this gentleman.

19 There will be no credible evidence that he killed him
20 because we believe the State is going to bring witnesses in
21 here and we think they going to say that they are all involved
22 in drugs.

23 The victim stayed home. He withdrew a lot of money out
24 of the bank. A drug deal was set up to happen. The guy --
25 there's a second guy who he was there.

1 That's basically what they're going to say. So, that's
2 basically what the evidence we believe will show. But -- and,
3 during this ensuing drug -- drug transaction -- excuse me --
4 Mr. Hubbard was killed.

5 So, they're going to bring -- it's our position that the
6 evidence will show they're going to bring witnesses in here
7 who claim to have saw all of this. Who will claim they saw.

8 But like the judge instructed you, you have to look at
9 this witness to see what type of bias he has; whether he's
10 credible; whether he is credible.

11 It will be our position that he is not credible. We
12 believe there's evidence that was taken at the scene -- at the
13 scene, that disproves the prosecutor's theory.

14 The prosecutor is going to tell you that Isaiah Walker,
15 like he said, according to him, he shot and -- and killed him.
16 That's what he's saying, that he fired a gun, Mr. Walker fired
17 a gun, that -- that ultimately killed this gentleman.

18 And there's all kinds of ballistic tests. And you'll --
19 and they'll come in about shell casings, bullets, and all
20 that. All that will come in. And that's the type of evidence
21 that you have to look in -- to look at and determine what the
22 full story is; what the full story is.

23 If the theory of it is that Mr. Walker shot him, then,
24 all that evidence should line up to one person. It should
25 line up to one person and one gun.

1 That's -- that's the reason you should use your -- your
2 common sense. And that's why I said there's two sides to
3 every story.

4 When the prosecutor talks about he got in the car and
5 drove away. He shed his clothes and threw them all up in the
6 sky, threw them up in the sky and just walked off and left.
7 Just -- just murdered a man, took his clothes off and drop
8 them.

9 That's what the prosecutor's theory is, that he dropped
10 his clothes right there. And -- and that's why I said you
11 have to use your common sense. That is a perfect example of
12 using your common sense.

13 When you look at that evidence, you're -- you're the
14 trier of fact. You are -- you ultimately say whether you
15 believe that, disbelieve it, or not.

16 You'll be the one to believe whether the clothes were
17 laying there on the bank. You'll be the one to say, "I
18 believe that; I don't believe that," whatever, because you are
19 the triers of facts.

20 And I'm just saying to you just use your common sense.
21 There will be evidence in this case that will be presented
22 that -- that shows Mr. Walker, that he did not murder this
23 man. He did not. He absolutely did not. He did not.

24 And, at this stage of the trial, see, this is the
25 interesting phase of the trial. At this trial -- at this

1 stage of the trial, I'm a winner. Guaranteed winner.

2 Right now (knocks on wood), I'm a winner. Okay? At the
3 end of today, it's like a rain short in baseball game.
4 They're up to five innings and the rain is coming down and the
5 team with the lead wins.

6 At this point, I'm the winner. And the reason why I'm
7 the winner, at this point, is because the law presumes that a
8 Defendant is innocent. The law presumes that.

9 Up and until you deliberate and decide something
10 differently, right now, and through the course of this day,
11 we're the winner. We're the winner.

12 And see, the law has that presumption of innocence. It's
13 -- it's kind of brand of law that, when you think about it, it
14 makes sense, the presumption of innocence.

15 People -- people want to say, "Why do you presume that
16 someone is innocent in a case?" That's all there is to it
17 because, if a person is accused of doing something -- if he's
18 accused of doing something, without adequate proof -- adequate
19 proof -- he wouldn't stand a chance at all.

20 Because, in some civilizations, they just go out and hang
21 you. They don't get the story. On first -- first blush,
22 they're just go hang you.

23 We don't do that here. We don't do that. Okay? We
24 don't do that. We get the full story and we give the
25 defendant, we give him every benefit of the doubt.

1 So, I'm asking you to use your common sense. Don't just
2 -- see, a lot of times you can get caught up in legalese and
3 -- and -- and what the lawyers are saying. But the bottom
4 line is it gets down to your every day experience; you know,
5 how people talk to you.

6 I mean, when my kids talk to me, I know if they're
7 telling the truth or lying, okay? I don't need someone to
8 explain that to me. I can look at their face and say, "You
9 know what? You're not being truthful."

10 Now, sometimes they snow me. Sometimes my oldest boy
11 sings a good song. Okay? But, for the most part, I can tell
12 whether they're telling the truth or not.

13 And that's what the law asks you to do; that you use your
14 every day experience to determine whether this person is
15 telling the truth or not telling the truth. Okay?

16 What do they have to gain? What do they have to gain by
17 telling the truth or not telling the truth? That's what they
18 mean when they use these words "credibility of witnesses."

19 You look and see what they have to gain. Are they going
20 to get something or not get something to determine whether
21 they're telling the truth.

22 The evidence, you have to look at the evidence, in a
23 very, very, very critical way, because this is an important
24 case. This is a very important case.

25 I know everybody -- I'm a lawyer and I have clients and

1 everybody says that their case is the most important case.
2 This is a very important case. It's important for the
3 Hubbards. It's important for them.

4 It's important for me. It's important for Mr. Walker.
5 So, because of that importance, I ask you to be attentive.
6 You were out there in the courtroom enough to know now that --
7 that is not like T.V. It's not like CSI.

8 It's not riveting a lot of times. It's not on the edge
9 of your seat all the time. It's not sometimes the most
10 interesting thing all the time.

11 But it's important. It's important that you stay totally
12 focused. You stay focused. You stay focused because a lot of
13 people need you to do that because we've got nowhere else to
14 go. This is our final stopping place. We have no where else
15 to go.

16 But I believe, when you look at the evidence in this
17 case, and you look, at the two sides of the story, I believe
18 that you're going to come back with a just verdict, with a
19 just verdict, and that's a not guilty verdict.

20 Once, again, I'm Rodney Richey. I represent Mr. Walker.
21 And I look forward to working with you. Thank you.

22 (Mr. Richey's opening statement concluded at 2:34 p.m.)

23 THE COURT: Mr. Willingham, the State may call its first
24 witness..

25 MR. WILLINGHAM: Judge, we call Larry Sprouse.

1 (Mr. Sprouse is summoned.)

2 THE COURT: Sir, come forward and be sworn.

3 (Mr. Sprouse steps forward to be sworn.)

4 (Whereupon,

5 LARRY SPROUSE

6 having been first duly sworn, testified as follows:)

7 THE COURT: Sir, once you've had a seat, move as close
8 to the microphone as you can and state your full for the
9 record.

10 THE WITNESS: Larry Frank Sprouse.

11 THE COURT: Mr. Willingham, it's your witness.

12 MR. WILLINGHAM: Thank you, Judge.

13 DIRECT EXAMINATION by MR. WILLINGHAM:

2:35 P.M.

14 Q. Now, Mr. Sprouse, it's obvious from your uniform you're
15 in law enforcement?

16 A. Yes, sir.

17 Q. And where do you work?

18 A. I work for Spartanburg County Environmental Enforcement
19 Division.

20 Q. And how long have you been in law enforcement?

21 A. I've been with the Spartanburg County Environmental
22 Enforcement Division probably about eighteen (18) months.

23 Q. Okay. But you've been in law enforcement longer than
24 that, haven't you?

25 A. Yes, sir. Well, I worked with the Magistrate's Court for

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1 seven (7) years.

2 Q. And you were a Constable?

3 A. Yes, sir.

4 Q. All right. Now, back on February the 17th of last year,
5 you were working in your current role as an environmental
6 officer?

7 A. Yes, sir, I was.

8 Q. And did you have an opportunity to go to — Drive?

9 A. I did.

10 Q. Tell the jury where — Drive is.

11 A. — Drive runs off of Old Anderson Mill Road, which
12 runs off of East Blackstock. You take John B. White, Sr.
13 Boulevard and turn left onto East Blackstock and turn right on
14 Old Henderson — Old Anderson Mill at the intersection of
15 Henderson Mill Road and Old Anderson Mill Road.

16 Take Old Anderson Mill and you'll bear off to the left on
17 — Road just before you cross over the bridge at I-26.

18 Q. And did you go there this day, on February 17th?

19 A. I did, sir.

20 Q. And what was the purpose of going?

21 A. We had received a call in reference to --- well, we also
22 -- in our department, we also assist the Animal Control
23 Division, the Spartanburg County Animal Control Division, and
24 we had a call in reference to three (3) cows running loose
25 over there on — Road.

- 1 Q. So, did you respond to that call?
- 2 A. I did.
- 3 Q. And about what time did you get to — Drive?
- 4 A. Approximately 1:45, 1:50, something like that.
- 5 Q. Okay. And did you find any cows?
- 6 A. No, sir, I did not.
- 7 Q. What did you find?
- 8 A. As you proceed down — Road, — road is a
- 9 dead end road. It's not a very long road at all, and it's a
- 10 dead end road.
- 11 And, it's going down — Road. On the left side of
- 12 the road, I saw a white car.
- 13 Q. What type of car was it? You said white.
- 14 A. A white Ford.
- 15 Q. Do you know the make and model?
- 16 A. A white Ford.
- 17 Q. Okay. And did you notice anything unusual about that
- 18 car?
- 19 A. The car was just off to the side, beside -- beside a
- 20 pond. And the car was off -- like stuck on a little
- 21 embankment like.
- 22 Q. Was it still running?
- 23 A. Yes, sir, it was.
- 24 Q. Were the tires still moving?
- 25 A. Yes, sir, it was.

1 Q. Was anybody in the driver's seat?

2 A. No, sir, there was not.

3 Q. Did you look closer to see if anybody was in the car?

4 A. Yes, sir, I did.

5 Q. And did you find anyone?

6 A. Yes, sir, I did.

7 Q. What did you find?

8 A. I found a gentleman, in the back seat, in the passenger
9 back seat, in the center console facing out the back passenger
10 door.

11 Q. Did you call to him?

12 A. I did, sir.

13 Q. Did he respond?

14 A. No, sir, he did not.

15 Q. At that point, what did you do?

16 A. At that point, I went back to my patrol car and called
17 dispatched and advised them that I need fire and rescue to
18 ~~the~~ Road.

19 Q. Did you have any other contact or involvement with that
20 car at that time?

21 A. NO, sir, I did not.

22 MR. WILLINGHAM: If you would, answer any questions the
23 Defense lawyer has.

24 THE COURT: Mr. Richey, your witness.

25 MR. RICHEY: Thank you.

1 CROSS EXAMINATION by MR. RICHEY:

2:38 P.M.

2 Q. Officer Sprouse, you -- you were the first guy on the
3 scene; is that correct?

4 A. Yes, sir, I was.

5 Q. And, sort of as the first guy on the scene, you kind of
6 scoped it out to see what was going on because you really
7 didn't know what was there until you got there; is that
8 correct?

9 A. Yes, sir.

10 Q. And, when you got there, you saw the body in the car; is
11 that correct?

12 A. Yes, sir.

13 Q. And, when you looked at the body, you were kind of
14 suspicious; is that correct?

15 A. Yes, sir.

16 Q. And, so, your suspicions, you called out to the person in
17 the car to get a response; is that correct?

18 A. Yes, sir, I did.

19 Q. When you did not get a response, then, you basically
20 thought the worst; is that correct?

21 A. Yes, sir.

22 Q. And -- and, in fact, the worst had happened; is that
23 correct?

24 A. Yes, sir.

25 Q. So, at that point, that you knew the worst had happened,

1 you didn't believe this was a car accident, did you?

2 A. No, sir.

3 Q. Okay. So, at that point, with your training and skill,
4 you went into criminal investigation mode at that point; is
5 that right?

6 A. No, sir. I just went back to my car and called dispatch.

7 Q. Well, you realized that it was potentially a crime scene
8 at that point; is that correct?

9 A. Yes, sir.

10 Q. And, based on your training, you preserved that crime
11 scene?

12 A. Yes, sir.

13 Q. I mean, you didn't do anything to disrupt the crime ---

14 A. That's correct, sir.

15 Q. Okay. And you were close to that car; is that correct?

16 A. Yes, sir.

17 Q. And -- and you saw all the stuff on -- near the pond; is
18 that correct?

19 A. I saw the car and the pond.

20 Q. Okay. And -- and -- and did you see any clothing by the
21 pond?

22 A. No, sir, I don't recall seeing clothing whatsoever.

23 Q. Did you see any boots by the pond?

24 A. No, sir.

25 Q. Did you see any blood by the pond?

- 1 A. No, sir.
- 2 Q. Those would be items that would be readily identifiable
3 that you could see; is that correct?
- 4 A. Yes, sir.
- 5 Q. Okay. And -- and, so, you didn't take any precaution to
6 preserve any of that because you didn't see it; is that
7 correct?
- 8 A. Yes, sir.
- 9 Q. Okay. And, when you were out there, at the scene, did
10 you notice any foot traffic?
- 11 A. No, sir, I really didn't pay a lot of attention to that.
- 12 Q. Okay. And, so, when you were walking, you didn't see
13 like these boot prints all over the place that would have
14 alarmed you?
- 15 A. No, sir. I just walked up to the side of the car and
16 seen what I saw and went back to my automobile.
- 17 Q. And you -- you're not the person who is responsible for
18 taking photos of the scene? That's not your
19 responsibility ---
- 20 A. No, sir.
- 21 Q. --- is that correct?
- 22 A. Correct.
- 23 Q. And did you call in back up?
- 24 A. Yes, sir.
- 25 Q. And, when you called in back up, did they come?

1 A. Yes, sir.

2 Q. They came. And were you there when they got there?

3 A. Yes, sir.

4 Q. And, when you got there -- when back up was there, was
5 there more than one person, two persons, three persons?

6 A. Several.

7 Q. Several persons. And, at that point, when those several
8 people were there, did any -- did you provide information of
9 what you had found?

10 A. I just provided that I had found the car and an
11 individual in the car.

12 MR. RICHEY: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 (Brief Pause)

15 Q. (By Mr. Richey) When you got there, you saw the car.
16 What time was it when you got there?

17 A. Approximately 1:45, sir.

18 Q. Okay. So, at 1:45, when you got there, the car was still
19 running; is that correct?

20 A. Yes, sir.

21 Q. And the wheels were still turning?

22 A. The right front wheel was still spinning, sir.

23 Q. Did -- did you have any idea how long the car had been
24 there?

25 A. No, sir, I did not.

1 Q. What time did you get your call about the cows?

2 A. I would say approximately 1:40 or some -- some time like
3 that. It doesn't take very long to ~~-----~~ Road from our
4 office.

5 Q. Okay. And -- and you were going there because cows are
6 down in that area?

7 A. Yes, that's correct, yes.

8 Q. But -- but there was no mention to you that this car was
9 there?

10 A. No, sir.

11 MR. RICHEY: Thank you, sir.

12 REDIRECT EXAMINATION by MR. WILLINGHAM:

2:42 P.M.

13 Q. You didn't collect any evidence?

14 A. Sir?

15 Q. You didn't collect any evidence?

16 A. No, sir, I did not.

17 Q. You didn't process any crime scene?

18 A. No, sir, I did not.

19 Q. That was not your role that day?

20 A. No, sir, it wasn't.

21 Q. There were other people with the sheriff's office that do
22 that?

23 A. Yes, sir.

24 MR. WILLINGHAM: Okay. Thank you. I have no other
25 questions for this witness, Judge.

1 THE COURT: Anything further?

2 MR. RICHEY: No, Your Honor.

3 THE COURT: You may step down, sir. Thank you very
4 much.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 MR. WILLINGHAM: We call Brian Harvey.

8 THE COURT: Brian Harvey.

9 (Mr. Harvey was summoned.)

10 THE COURT: Come forward, sir, and be sworn.

11 (Mr. Harvey steps forward to be sworn.)

12 (Whereupon,

13 BRIAN HARVEY

14 having been first duly sworn, testified as follows:)

15 THE COURT: Have a seat, please. Move as close to the
16 microphone as you can and state your full name, please, sir.

17 THE WITNESS: Brian Harvey.

18 THE COURT: Mr. Willingham, it's your witness.

19 MR. WILLINGHAM: Thank you, Judge.

20 DIRECT EXAMINATION by MR. WILLINGHAM:

2:43 P.M.

21 Q. Mr. Harvey, you got a uniform on. Where do you work?

22 A. I'm the chief of the Roebuck's fire district.

23 Q. And how long have you been with Roebuck?

24 A. Thirty (30) years.

25 Q. Were you working on February 17th of two thousand and six

1 (2006)?

2 A. Yes, sir, I was.

3 Q. Did you receive a call about _____ Drive?

4 A. Yes, sir. We receive a call for a motor vehicle accident
5 at _____ Drive.

6 Q. When you got there, what did you find?

7 A. I arrived first before the engine. I was, in a different
8 vehicle going to a meeting, and when I got there, there was an
9 officer there from the Spartanburg County Environmental
10 Control I think is what they call it, the sheriff's
11 department.

12 Anyway, he said there was a wreck and there was somebody
13 in the car and he didn't know if the subject was hurt or not.
14 It was a white vehicle, approximately twenty (20), thirty (30)
15 feet off the road sitting kind of catty cornered in a small
16 gully.

17 Q. Was the car still running?

18 A. Yes, sir, it was.

19 Q. Did you notice anything unusual about the car other than
20 it was still running?

21 A. Well, it was -- it didn't appear to me that it was a
22 major accident. I mean, the car was just sitting, you know,
23 kind of pitched to one side and it was still running and still
24 in gear.

25 And, when I looked inside the driver's door, there was --

1 I didn't see anybody. And, then, I noticed someone in the
2 back seat of the vehicle.

3 (Exhibit handed to witness.)

4 Q. (By Mr. Willingham) I show you what's been marked as
5 State's Exhibit Number 1 and ask if you recognize that.

6 A. Yes, sir. That is the car that I saw that day.

7 (Exhibit handed to witness.)

8 Q. State's Exhibit Number 2?

9 A. Yes, sir, these are views looking from the paved road
10 down a -- it's actually the dam of a -- of a pond that the car
11 was sitting, with one wheel off in the drainage ditch for the
12 pond.

13 Q. Do these photographs accurately reflect how you found the
14 car?

15 A. Yes, sir.

16 MR. WILLINGHAM: Your Honor, at this time, I'd move
17 State's Exhibits 1 and 2 into evidence.

18 THE COURT: Any objection?

19 MR. RICHEY: No objection.

20 THE COURT: Without objection, they'll be admitted --
21 admitted into evidence.

22 (Whereupon, State's Exhibit Numbers 1 and 2 were admitted
23 into evidence without objection.)

24 Q. (By Mr. Willingham) Did you notice anything else unusual
25 about that car?

1 A. Yes. When I started, to get inside the car to check the
2 status of the patient, I noticed that there was quite a large
3 amount of blood, on the driver's door, and on the seat and on
4 the -- I call the -- the bottom of the car right at the door.
5 And, as I said, there was no one in the front seat, so, there
6 was someone in the back.

7 Q. I show you State's Exhibit Number 3.

8 (Exhibit handed to witness.)

9 A. Yes, sir, that's what I noticed.

10 Q. That's the blood on the inside of the ---

11 A. Yes, sir, it is.

12 Q. --- door of the car on the driver's side door?

13 A. Yes, sir.

14 MR. WILLINGHAM: Your Honor, at this time, I move
15 State's Exhibit Number 3 into evidence.

16 MR. RICHEY: No objection.

17 THE COURT: Without objection, it'll be received into
18 evidence.

19 (Whereupon, State's Number 3 was admitted into evidence
20 without objection.)

21 (Brief Pause)

22 Q. (By Mr. Willingham) Now, once you got closer to the car,
23 and you saw blood inside of it, what did you do?

24 A. I asked the law enforcement officer, if there was anyone
25 else at the scene, because at that time it was myself, he, and

1 then, I knew there was -- I could see somebody in the back.
2 He said no, that when he got there, there was no one there.

3 I proceeded to climb, into the front seat, and leaned
4 around to check for the status of the patient. And I checked
5 the pulse and the patient had no pulse and observed what
6 appeared to be some sort of wound to the subject's left arm
7 that to me looked like a -- it looked like he had been shot.

8 Q. Now, did you do anything to the car?

9 A. I put the car in park and turned it off.

10 Q. Okay.

11 A. And, actually, let me digress. I did that first for my
12 own safety. When I got in, I was worried about it maybe going
13 on down in the woods. So, the first thing I did was put it in
14 park and pull the emergency brake and turned the car off.

15 Q. All right. And, then, you checked for a pulse ---

16 A. Yes, sir.

17 Q. --- for the person in the back?

18 A. I did.

19 Q. And didn't find any?

20 A. Pardon?

21 Q. And didn't find one?

22 A. No, sir, I did not.

23 Q. All right. I show you State's Exhibit Numbers 4 and 5
24 and ask you if you recognize those.

25 A. Yes, sir. That's the subject in the back seat of the

1 car.

2 Q. Is this how he appeared when you found him?

3 A. Yes, sir, that's exactly how he appeared. He was sitting
4 in the back, basically in the floorboard, kind of leaned
5 against the back of the driver's seat facing the passenger
6 side of the car.

7 MR. WILLINGHAM: Your Honor, at this time, I move
8 State's Exhibit Number 4 and 5 into evidence.

9 THE COURT: Any objection?

10 MR. RICHEY: None.

11 THE COURT: Without objection, they're admitted into
12 evidence.

13 (Whereupon, State's Exhibit Numbers 4 and 5 were admitted
14 into evidence without objection.)

15 Q. (By Mr. Willingham) Did you have any other involvement
16 with the car at that point?

17 A. No, sir. At -- at that time, I told the gentleman, with
18 law enforcement, -- I didn't -- I don't recall his name -- I
19 told him to call and get a county officer on the way.

20 I -- I felt a little bit fearful for my own safety, at
21 that time, because I felt like this was more than just a
22 wreck.

23 Our fire engine and the paramedics with Med 3 were
24 pulling up at this time. I informed them of what I thought we
25 had.

1 Myself and Assistant Chief Bagwell, from the fire
2 department, we did raise the back hatch on the car. It would
3 not stay up on its own. So, we propped it up with what's
4 called a Halligan tool, which is a steel bar off a fire
5 engine.

6 That -- that gave the paramedics access to get into the
7 car to put a heart monitor on to confirm whether there was any
8 -- any chance of resuscitation.

9 And we stood there and monitored the hatch to make sure
10 it did not come on top of the paramedic as he climbed in to
11 check the patient with the monitor and he made the same
12 assessment that I had.

13 MR. WILLINGHAM: All right. Thank you. If you would,
14 answer any questions the Defense might have.

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Richey, your witness.

17 MR. RICHEY: Thank you.

18 CROSS EXAMINATION by MR. RICHEY:

2:51 P.M.

19 Q. Sir, it's sort of the like the fire department sometimes
20 -- it's like a dual thing, you do fires and EMS; is that
21 correct?

22 A. Yes, sir. And on all motor vehicles accidents, if an
23 ambulance is respond -- is dispatched in Spartanburg County to
24 what we refer to it as MVA, the fire truck is also sent to the
25 scene.

1 Q. So, it's not a fire hazard when you get there a lot of
2 times?

3 A. That's correct, it is not.

4 Q. And -- and the EMS are -- you're going out there to try
5 to see whether you can actually save a person or transport the
6 person to a medical provider; is that correct?

7 A. That's correct, yes, sir.

8 Q. And, when you got there and you got into that car, and
9 you took the pulse and you saw the injury on the arm, you
10 determined that this was kind of suspicious at minimum; is
11 that correct?

12 A. Yes, sir, that's correct.

13 Q. And -- and -- and you are law enforcement; is that
14 correct?

15 A. No, sir. I'm with the fire department.

16 Q. Okay. But you work closely with law enforcement in
17 investigations?

18 A. No, sir. I -- we really don't get involved in any
19 investigation, as far as law enforcement, unless it involves
20 arson.

21 Q. At this point, you seen no pulse, you know something is
22 suspicious; is that correct?

23 A. Well, I felt like, yeah, just from thirty (30) years. I
24 didn't -- I didn't think what's called the mechanism of
25 injury, which is the damage to the vehicle, justified the

1 amount of blood and injury to the patient.

2 Q. Right. So, you felt like something criminal may have
3 happened?

4 A. Yes, sir, I did.

5 Q. Okay. And, so -- so, when -- when you were there, you
6 were careful not do anything to disturb this scene; is that
7 correct?

8 A. Yes, sir, you're right.

9 Q. Okay. And -- and -- and these photos of this car you say
10 that accurately depicts how the scene was; is that correct?

11 A. Yes, sir.

12 Q. Okay. And what kind of shoes do you wear?

13 A. I had on a pair of black uniform tennis shoes that day.
14 I was not in dress uniform. I had on some what we call our
15 station wear, which is a toned down version; a golf shirt and
16 black work tennis shoes and a black uniform pants.

17 Q. So, these photos, of the ground here, of a potential
18 tragedy, that's pretty accurate, right?

19 A. Yes, sir.

20 Q. These photos were -- these photos, where you see all the
21 grass and all the dirt and this and that, that's pretty
22 accurate ---

23 A. Yes, sir, it is.

24 Q. --- is that correct?

25 A. That's right.

1 Q. And that's pretty much where foot traffic would be; is
2 that correct?

3 A. Yes, sir.

4 Q. Okay. And -- and that's kind of worn down because of the
5 foot traffic? Maybe even cars going back there doing stuff
6 they're supposed to; is that correct?

7 A. It's possible, yes, sir.

8 Q. Okay. And -- and -- and you didn't do anything to
9 disturb that area?

10 A. No, sir, other than walking over to the car, after the
11 paramedics did their assessment, and we left the car -- we
12 actually put up this yellow fire line tape for the sheriff's
13 department and no, sir, we did not go back around the car
14 after that.

15 Q. Okay. And, on these photos here, did you observe any
16 blood on the ground?

17 A. Sir, I -- I don't recall.

18 Q. Is that the type of thing that -- that would be apparent
19 to you, that you would remember something if there was blood
20 on the ground?

21 A. I -- yeah, but I run six to eight hundred calls a year.
22 So, I mean, I -- I don't recall. I just remember, when the
23 door was open, there was blood there on the door and on the
24 seat.

25 Q. But this is a substantial call, isn't it? This is not --

1 not -- this is a substantial call? This is not like a fender
2 bender or anything like that, correct?

3 A. Well, it turned out to be a substantial call.

4 Q. Okay.

5 A. It initially was dispatched as a MVA. And, upon arrival,
6 I took it to still be an MVA.

7 Q. And, when you got there, you basically saw a death; is
8 that correct?

9 A. That's correct, I did.

10 Q. And that would be the most serious car accident or
11 anything you could investigate?

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. And, because it got that serious, you took extra
16 precautions, correct?

17 A. Yes, sir, you're right.

18 Q. And those precautions mean not to disturb the scene, not
19 to move anything, not do anything; is that correct?

20 A. That is correct, yes, sir.

21 Q. And you did not do that?

22 A. You're right.

23 MR. RICHEY: Okay. Thank you, sir.

24 THE COURT: Redirect, Mr. Willingham?

25 MR. WILLINGHAM: No, sir, Your Honor. Thank you.

1 THE COURT: You may step down. Thank you very much,
2 sir.

3 MR. WILLINGHAM: Your Honor, we ask that he be excused.

4 THE COURT: Any objection?

5 MR. RICHEY: No objection.

6 THE COURT: Sir, you're free to go. Thank you very
7 much.

8 THE WITNESS: Thank you, sir.

9 (The witness stepped down from the witness stand and was
10 excused.)

11 THE COURT: You may call your next witness.

12 MR. WILLINGHAM: We call David Hogsed.

13 (Mr. Hogsed is summoned.)

14 THE COURT: Come forward, sir, and be sworn.

15 (Mr. Hogsed stepped forward to be sworn.)

16 (Whereupon,

17 DAVID HOGSED

18 having been first duly sworn, testified as follows:)

19 THE COURT: Sir, once you've had a seat, move as close
20 to the microphone as you can and state your full name.

21 THE WITNESS: David Wayne Hogsed.

22 THE COURT: Your witness, Mr. Willingham.

23 MR. WILLINGHAM: Thank you, Judge.

24 DIRECT EXAMINATION by MR. WILLINGHAM:

2:56 P.M.

25 Q. Mr. Hogsed, where do you work?

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1 A. The Spartanburg County Sheriff's Office.

2 Q. How long have you been in law enforcement?

3 A. It'll be eighteen (18) years this October.

4 Q. What's your job? What do you do for the sheriff?

5 A. I'm assigned to the forensics division.

6 Q. And what is the forensics division?

7 A. We respond to and process crime scenes within Spartanburg
8 County.

9 Q. Okay. When you talk about processing crime scenes, what
10 all does that involve?

11 A. Actually, processing a crime scene can entail anything to
12 just taking photographs to documenting the crime scene with --
13 by drawing sketches, fingerprinting for latent prints, or
14 collecting of trace evidence.

15 Q. All right. And were you working, in your role as a
16 forensic evidence person, on February the 17th, two thousand
17 and six (2006)?

18 A. Yes, I was.

19 Q. And did you receive a call to go out to _____ Road?

20 A. Yes, I did.

21 Q. Tell the jury about that location. What type of area is
22 that?

23 A. _____ Road is off of Old Anderson Mill Road, which is
24 off of Blackstock Road. _____ Road actually, when you go
25 down Old Anderson Mill, it bears off to the left and it

1 circles -- has a curve circling around to the left. It
2 pretty much runs parallel with Interstate I-26.

3 Q. Okay.

4 A. A wooded area, a pond, basically a lot of -- of property,
5 rural property.

6 Q. Okay.

7 (Brief pause while Mr. Willingham retrieves exhibits.)

8 Q. (By Mr. Willingham) I show you what's been marked as
9 State's Exhibit Number 6 and ask if you recognize that.

10 (Exhibit handed to witness.)

11 A. Yes, I do.

12 Q. What is it?

13 A. It's an aerial photograph showing the area in which this
14 incident occurred.

15 (Exhibits handed to witness.)

16 Q. Okay. I show you State's Exhibit Number 7 and State's
17 Exhibit Number 8 and ask if you recognize those.

18 A. Yes, sir, I do.

19 Q. What are they?

20 A. Aerial photographs of the pond and the dirt road of this
21 incident location.

22 Q. Do these pictures accurately reflect how you found the
23 scene or how the crime scene looked?

24 A. The layout of the scene, yes, sir.

25 MR. WILLINGHAM: Okay. Your Honor, at this time, I'd

1 move State's 6, 7, and 8 into evidence.

2 THE COURT: Any objection?

3 MR. RICHEY: None.

4 THE COURT: Without objection, they'll be received into
5 evidence.

6 (Whereupon, State's Exhibit Numbers 6, 7, and 8 were
7 admitted into evidence without objection.)

8 MR. WILLINGHAM: And I beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (State's Number 6 shown on overhead.)

11 Q. (By Mr. Willingham) I'm showing you what's on the screen
12 as State's Exhibit Number 6. It's got labeled on there --
13 well, let me ask you: What's this main road here (indicating)?

14 A. That's Interstate 26.

15 Q. Okay. What is this road here crossing 26?

16 A. Old Anderson Mill Road.

17 Q. Okay. And the road that comes off Anderson Mill Road
18 traveling parallel to 26, and what is that?

19 A. That's Road.

20 Q. Then, up here (indicating) on Anderson Mill Road, there's
21 a road that cuts back to the right and again, parallels 26
22 down to the pond. And what is that road?

23 A. Road.

24 Q. Okay. I show you State's Exhibit Number 8 on the
25 overhead.

1 (State's Number 8 shown on overhead.)

2 Q. What is that?

3 A. That's the pond off of _____ Road.

4 Q. Okay. _____ Road is -- is this what road here
5 (indicating)?

6 A. Twenty-six (26), Interstate 26.

7 Q. All right. _____ Road, is that a paved or a dirt
8 road?

9 A. It is a paved road.

10 Q. This road here (indicating) appears to be a dirt road?

11 A. It is.

12 Q. Where was the car found?

13 A. On the dirt road.

14 Q. How far down?

15 A. Several feet down the road. If you'll see ---

16 Q. Tell me when to stop (indicating).

17 A. Right in there.

18 Q. Right here (indicating)?

19 A. Maybe a little bit back not as far up; right before you
20 get to where you see the ruts in the -- in the mud and the
21 road.

22 Q. Okay. And State's Exhibit Number 7 is a picture from the
23 other direction; is that fair?

24 A. That's correct.

25 (State's Number 7 on overhead.)

1 Q. What was one of the first things that you did when you
2 responded to that scene?

3 A. One of the first things we did was we asked who had
4 approached the car and who had touched the car. When we were
5 informed who all had touched -- who all had walked down the
6 dirt road to the car, we took each one and photographed them
7 and photographed the boots or the shoes that they were wearing
8 at the time. Most were wearing boots.

9 Q. And what's the purpose -- what's the purpose of doing
10 that?

11 A. If shoe impressions are found, on a crime scene, and we
12 either lift them by -- lift them, like we do trace evidence or
13 if we do a casting, that would eliminate them as -- as putting
14 that shoe impression there or being the cause of that shoe
15 impression.

16 Q. Okay. And these pictures that we have seen already,
17 State's Exhibit Numbers 1, 2, 3, 4, and 5, that -- those are
18 all photographs of the scene that were taken either by you or
19 another technician out there that day?

20 (Exhibits shown to witness.)

21 A. That's correct.

22 Q. Okay. Now, once you had interpreted who had approached
23 the car and who had touched the car, what did you do next?

24 A. We basically, once everyone that had initially approached
25 the car was out, crime scene technicians go in. One of the

1 first things that's done is we do what's called a walk
2 through.

3 We walk through and we look for items of evidence that
4 you can see, if it's in plain sight. And we also, at that
5 time, will either start taking digital photographs and we'll
6 video tape the crime scene as we walk through.

7 Q. Okay. And did you do that in this case?

8 A. Yes, it was done.

9 (Brief pause while Mr. Willingham retrieves exhibits.)

10 Q. (By Mr. Willingham) During that walk through, did you
11 find anything that you thought may be evidence in the case?

12 A. Yes, we did.

13 (Brief pause while Mr. Willingham takes exhibits out of
14 paper bags.)

15 Q. (By Mr. Willingham) I show you what's been marked as
16 State's Exhibit Number 10 and ask if you recognize that.

17 (Exhibit handed to witness.)

18 A. Yes, I do.

19 Q. And what is it?

20 A. It's a Timberland boot that was beside the pond.

21 Q. Okay. Is that a right or left footed boot?

22 A. This is a right boot.

23 Q. Okay. Did you prepare a crime scene diagram in this
24 case?

25 A. Yes, I did.

1 Q. And what is the purpose of preparing one of those?

2 A. It documents and shows the locations of evidence found at
3 a crime scene.

4 Q. Okay. Let me show you State's Exhibit Number 9 and ask
5 if you recognize that.

6 (Exhibit handed to witness.)

7 A. Yes, sir, I do.

8 Q. And what is it?

9 A. It's the crime scene diagram that I drew using a computer
10 program.

11 MR. WILLINGHAM: Your Honor, at this time, I move
12 State's Exhibit Number 9 into evidence.

13 MR. RICHEY: We have no objection.

14 THE COURT: Without objection, it will be received as
15 Exhibit 9.

16 (Whereupon, State's Exhibit Number 9 was admitted into
17 evidence without objection.)

18 Q. (By Mr. Willingham) And that boot, the left boot, State's
19 Exhibit ---

20 A. It's the right boot.

21 Q. --- Number 10, that boot was found where?

22 A. May I step down?

23 Q. Sure.

24 (Witness stepped down from the witness stand.)

25 A. That's our Item 6. And it found here in the grass in the

1 brush (indicating).

2 Q. And that was taken into your custody and control?

3 A. And actually Investigator Baird collected those.

4 Q. Okay. I show you State's Exhibit Number 11 and ask if
5 you recognize that?

6 (Witness handed exhibit.)

7 A. Yes, it's the left matching boot or a Timberland boot.

8 Q. And where was it found?

9 A. It was found here (indicating) in the brush and the weeds
10 on the side of the -- beside the pond.

11 Q. All right. And this is where the car was (indicating).
12 How far away were the boots from the car?

13 A. I'd say twenty (20), twenty-five (25) yards, maybe a
14 little bit further.

15 (Brief pause while exhibit is retrieved.)

16 Q. I show you what's been marked as State's Exhibit Number
17 12. And what is that?

18 (Witness handed exhibit.)

19 A. It's a black sweatshirt that was collected -- actually,
20 the black sweatshirt was -- was beside the first Timberland
21 boot.

22 Q. And is that what is noted on your chart by State's
23 Exhibit Number 7?

24 A. Yes, which is actually our evidence item 7.

25 Q. Your evidence number 7? I'm sorry. And these items were

1 collected by whom?

2 A. Investigator Dominick Baird.

3 Q. Were they ever turned over to you for any reason?

4 A. No, they were not.

5 (Brief Pause)

6 THE COURT: Mr. Willingham, we have a pointer you can
7 use if you need it for that diagram.

8 MR. WILLINGHAM: Thank you, Judge.

9 THE COURT: You may proceed.

10 MR. WILLINGHAM: Thank you, Judge.

11 Q. (By Mr. Willingham) Now, the car, the white -- the white
12 car, had blood on it?

13 A. Yes, sir.

14 Q. And you took photographs of that?

15 A. Myself or one of the crime scene investigators, yes.

16 Q. Okay. And was there any type of fingerprints found on
17 the car?

18 A. We only found blood, at the time, on our initial approach
19 to the car. Blood was seen mainly on the driver's side of the
20 vehicle.

21 Taking a real close look, at the driver's side of the
22 vehicle, you could actually see what we refer to in crime
23 scene investigation as ridge detail. And what I mean by ridge
24 detail, your finger tips or your palm prints actually have
25 lines that we refer to as ridges.

1 Those were visible, to the naked eye, but were faint on
2 the driver's door and actually, on top of the car, over the
3 driver's door.

4 Q. So, when you observed that, what did you do?

5 A. We left it as is at the time.

6 Q. Did you later process that?

7 A. Yes. We actually had the vehicle -- before we removed
8 Mr. Hubbard, we had the vehicle. We was going to try to -- we
9 tried to cut our way down the passenger side of the car;
10 however, we were unsuccessful with that because of the
11 thickness of the brush.

12 We had the Spartanburg County roll-back come out and
13 actually pull the car out of the weeds and brush for us. We
14 observed that there was no blood on the passenger's side of
15 the vehicle, so, we got Mr. Hubbard out through that side.

16 And, as soon he was, we secured the car. And it was
17 taken to the Spartanburg County shop and secured within a bay
18 and wrapped in crimes scene tape.

19 And Investigator Baird and I went back the next day and
20 we processed that vehicle with a what's called a dye stain
21 called amino black. And basically what it does is it stains
22 the protein in blood.

23 It could be animal blood, whatever; it stains it black.
24 If that cannot be lifted, like you can a fingerprint, it has
25 to be photographed. And that's what we did with the car.

1 Q. Okay.

2 (Brief Pause)

3 Q. You processed it with that amino black?

4 A. Yes, myself and Investigator Baird did.

5 Q. And what do you do -- so, you can't just lift it like you
6 would a normal fingerprint using tape; is that right?

7 A. That's correct.

8 Q. Because it's a liquid?

9 A. It's a dye stain. It's a ---

10 Q. So, the blood would get lifted?

11 A. Sir?

12 Q. The blood would be lifted?

13 A. Yes.

14 Q. Okay.

15 A. And once it stains, it's not lift-able. So, it has to be
16 photographed. And what I mean by photographed is we do what
17 is called a one-to-one.

18 And basically what we do is we'll put a metric scale down
19 beside the area that we want to photograph and we'll take it
20 not only a digital photograph, but we also use a 35 millimeter
21 photograph, so, we can actually take that photograph and get
22 it to its actual size.

23 Q. Okay. Now, you did not actually prepare any fingerprints
24 in this case, did you?

25 A. No, I did not.

1 Q. That was forwarded to other people to do that; is that
2 correct?

3 A. That's correct.

4 Q. Okay. Now, you took the pictures, or someone with you,
5 took pictures of the victim in the back seat?

6 A. Yes.

7 Q. Were you able to determine at the scene what type of
8 injuries he had received?

9 A. Prior to getting Mr. Hubbard out of the car, we could see
10 what appeared to be at least one gunshot wound to his stomach
11 and one to I believe it was his right forearm.

12 Q. Okay. Did you have the car towed at some point?

13 A. Yes.

14 Q. Before it was towed, was anything collected out of the
15 car?

16 A. Yes. There was actually a cartridge casing collected out
17 of the car and a projectile that was actually collected, a
18 projectile and projectile fragments collected from the
19 driver's seat of the car.

20 Q. Okay. Did you collect those or was that done by
21 Investigator Baird?

22 A. Investigator Baird.

23 Q. All right.

24 (Brief pause while Mr. Willingham retrieves exhibit.)

25 Q. (By Mr. Willingham) I show you State's Exhibit Number 13

1 and ask if you recognize that.

2 (Brief pause while witness examines exhibit.)

3 A. Yes. It's a driver's license a CPM Federal Credit Card.

4 Q. And did you collect -- were those items found before the
5 vehicle was towed?

6 A. Yes, they were.

7 Q. All right. Are those in substantially the same condition
8 as when they were in previously?

9 A. Yes. I saw them, but then, Investigator -- Investigator
10 Baird collected them. So, they are in the same condition as I
11 saw them in.

12 MR. WILLINGHAM: Okay. I move in State's Exhibit Number
13 13 into evidence.

14 MR. RICHEY: No objection.

15 THE COURT: Without objection, it's received into
16 evidence.

17 (Whereupon, State's Exhibit Number 13 was admitted into
18 evidence without objection.)

19 Q. (By Mr. Willingham) After the vehicle was taken away, did
20 you look, again, for any further evidence?

21 A. Yes. We probably actually walked it two more times. We
22 usually try at least one more time. We do, do it one more
23 time, but nine times out of ten, with time restraints, we do
24 it twice.

25 Q. Was any additional evidence found at that time?

1 A. No, sir, not at this scene.

2 Q. So, that's when you took your measurements for your
3 diagram?

4 A. Yes. We actually took measurements for the diagram.

5 Q. All right. When did you go to process the car at the
6 county shop?

7 A. It was on the morning of the 18th, which was the following
8 morning.

9 Q. Okay. During the processing of that car...

10 (Brief pause while Mr. Willingham retrieves exhibit.)

11 (Off-the-Record Discussion)

12 Q. (By Mr. Willingham) I show you what's marked as State's
13 Exhibit Number 14 and ask if you recognize that.

14 A. Yes, it's a container that I actually filled out when I
15 collected this item of evidence.

16 Q. And where did you collect that item from?

17 A. It was from the right front floorboard of the white Ford
18 Probe, South Carolina tag 556-PLU and it was actually -- we
19 found at the Spartanburg County shop.

20 MR. WILLINGHAM: Okay. Your Honor, at this time, I'd
21 move State Exhibit Number 14 into evidence.

22 MR. RICHEY: No objection.

23 THE COURT: Without objection, it is admitted into
24 evidence.

25 (Whereupon, State's Exhibit Number 14 was admitted into

1 evidence without objection.)

2 Q. (By Mr. Willingham) That item was, then, after being
3 collected by you, forwarded to your evidence custodian?

4 A. Sir?

5 Q. After being collected by you, that piece of evidence was
6 forwarded to your evidence custodian?

7 A. Yes. All items that we collected are essentially
8 forwarded to our evidence custodian.

9 Q. And the purpose of that is what?

10 A. Our evidence custodian actually stores all the evidence
11 that we, as crime scene investigators, or -- or a deputy,
12 collects for crimes committed in Spartanburg County.

13 (Brief Pause)

14 Q. What else did you collect from the car?

15 A. On the 18th?

16 Q. Yes, sir.

17 A. Excuse me. We swabbed and lifted blood that was on the
18 top of the car over the driver's door in two locations. We
19 swabbed the driver's door exterior handle for possible DNA.

20 We did the photographs. We photographed the ridge detail
21 that we developed with the amino black. We swabbed blood from
22 the center top area of the vehicle, the cartridge casing which
23 is a FC 9mm cartridge casing.

24 We swabbed suspected blood from the left rear corner of
25 the trunk and we swabbed the steering wheel gear shift and

1 passenger door for possible DNA.

2 Q. I'm going to show you State's Exhibit Number 15. And
3 it's two items, and ask you if you recognize that.

4 (Exhibit shown to witness.)

5 A. Yes, I do.

6 Q. And what is that?

7 A. These were cartridge casings that were actually found on
8 the 21st of February, two days later when we went back to the
9 vehicle to finish processing it.

10 Q. Again, those items were, then, turned over to your
11 evidence custodian?

12 A. Yes, they were.

13 MR. WILLINGHAM: Your Honor, at this time, I'd move
14 State's Exhibit Number 15 into evidence.

15 THE COURT: Any objection?

16 MR. RICHEY: No objection.

17 THE COURT: Without objection, Number 15 is admitted
18 into evidence. You may proceed.

19 (Whereupon, State's Exhibit Number 15 was admitted into
20 evidence without objection.)

21 MR. WILLINGHAM: Thank you.

22 Q. (By Mr. Willingham) During this investigation, and I'm
23 going to refer you to May the 24th of two thousand and six
24 (2006), did you have an opportunity to meet a fellow named
25 Brent Gentry?

1 A. Yes, I did.

2 Q. And were you asked to do anything, as far as collection
3 of evidence, from him?

4 A. Yes, I was. Sergeant Bobo contacted me and asked me if I
5 could go to the Spartanburg County Jail with him and obtain a
6 DNA standard from Mr. Gentry.

7 And Sergeant Bobo and I went there and Mr. Gentry signed
8 a consent to search form. And basically what we do is we take
9 sterile cotton swabs and we swab the inside of your mouth and
10 get what is called a buccal swab for DNA.

11 Q. And did you do that in this case?

12 A. Yes, I did.

13 Q. I show you State's Exhibit Number 16 and ask if you
14 recognize that.

15 (Brief pause while witness examines exhibit.)

16 A. Yes. This is the evidence envelope that I completed when
17 I turned the buccal DNA swab standard in to the evidence
18 custodian.

19 Q. And that's the swab you took from Brent -- do you need to
20 open it? I have a pair of scissors.

21 A. Yes, sir.

22 (Brief pause while witness opens envelope and examines
23 exhibit.)

24 A. Yes, it is. It's marked with my signature.

25 MR. WILLINGHAM: Okay. Your Honor, at this time, I'd

1 move State's Exhibit Number 16 into evidence.

2 THE COURT: Mr. Richey, any objection?

3 MR. RICHEY: One moment, please.

4 THE COURT: Yes, sir.

5 MR. RICHEY: No objection.

6 THE COURT: Without objection it will be received as
7 marked.

8 (Whereupon, State's Exhibit Number 16 was admitted into
9 evidence without objection.)

10 Q. (By Mr. Willingham) Were other fingerprints ever found on
11 the car, other than the ones that were in blood?

12 A. Yes. There was other ridge detail. Once we processed
13 that area of the car with amino black, the remaining part of
14 the car we actually fingerprinted using latent print powder.
15 And ridge detail was lifted from several areas of the car.

16 Q. Okay. And what was done with those fingerprints? How --
17 how were they lifted?

18 A. With latent powder, what we do is we basically, once an
19 area of ridge detail develops that we're going to lift, we use
20 a tape to lift it. And what we're doing is we're transferring
21 it, from where we lifted it from, to what is called a latent
22 backing card, which is a white card and we put it on it.

23 All of those, including the photographs that we took of
24 what we developed with amino black, was turned over to our
25 AFIS (phonetic) examiner, Hugh Murphy (phonetic).

- 1 Q. Okay. The autopsy, did you attend it?
- 2 A. Yes, I did.
- 3 Q. Who performed the autopsy?
- 4 A. Dr. Wrenn.
- 5 Q. Okay. And did Dr. Wrenn recover anything during the
- 6 course of his autopsy?
- 7 A. Yes. He actually recovered several projectiles from the
- 8 body of Mr. Hubbard.
- 9 Q. And those were secured by, again, Dominick Baird?
- 10 A. Yes, they were.
- 11 Q. I believe some were later secured by Rusty Clevenger?
- 12 A. Yes, they were..
- 13 Q. And those were all ultimately turned over to Robert
- 14 Rosenburg?
- 15 A. Yes. They would have been placed into evidence.
- 16 Q. Okay. As far as requesting SLED to perform their
- 17 examinations, is there a form that has to be completed?
- 18 A. Yes. SLED actually has what is called a SLED laboratory
- 19 forensic request form.
- 20 Q. And who completed that request form?
- 21 A. I did.
- 22 Q. So, you took this evidence, that that's been introduced
- 23 and that that is still over here (indicating), and you
- 24 requested that SLED do their examination?
- 25 A. Yes. Usually what we'll do is we'll sit down with the

1 lead investigator, which was Sergeant Bobo in this case, and
2 we'll go over all the items of evidence that we have. And
3 we'll determine what we're going to send to SLED for
4 examination.

5 (Brief pause while Mr. Willingham retrieves exhibit.)

6 Q. I show you what's been marked as State's Exhibit Number
7 17 and you may, again, need to open that and see what you can
8 find.

9 (Brief pause while witness retrieves exhibit from
10 packaging.)

11 A. Yes, it's going to be the red sweat pants that was
12 actually removed from the lake itself.

13 Q. Okay. And that's what I want to ask you about. Are
14 those in substantially the same condition as when you received
15 them? I'm sorry about that.

16 (Exhibits fall.)

17 A. That's okay.

18 (Brief pause while witness examines State's Exhibit
19 Number 17.)

20 A. Yes.

21 MR. WILLINGHAM: Okay. Your Honor, at this time, I move
22 State's Exhibit Number 17.

23 A. I don't see the number.

24 MR. WILLINGHAM: Seventeen (17) into evidence.

25 THE COURT: Any objection, Mr. Richey?

1 MR. RICHEY: None, Your Honor.

2 THE COURT: Without objection, they're received into
3 evidence.

4 (Whereupon, State's Exhibit Number 17 was admitted into
5 evidence without objection.)

6 Q. (By Mr. Willingham) Now, you say those were found in the
7 pond or the lake?

8 A. Yes.

9 Q. And when did you find those?

10 A. I don't recall the day that they were found, on the 28th,
11 February 28th.

12 Q. Okay. On February the 28th, they were found?

13 A. Yes, sir.

14 Q. Okay. How?

15 A. I'm not quite certain on that. One of the investigators
16 told us they would be draining the lake -

17 MR. RICHEY: Well, Judge, I'm going to object. I
18 think ---

19 THE COURT: I'll sustain the objection as to what an
20 investigator may have told him.

21 MR. WILLINGHAM: Okay.

22 Q. (By Mr. Willingham) Was the lake drained?

23 A. Yes, the lake was drained.

24 Q. Okay. And did you go up in a helicopter?

25 A. Yes. I -- prior to actually going into the lake, I went

1 up in our helicopter and took aerial photographs while the
2 lake was being drained.

3 Q. Okay. And, when you were in that helicopter looking down
4 on the lake, did you see anything?

5 A. Yes. There was a red object, in the lake in the water,
6 several feet off the shoreline.

7 Q. Okay. And that is marked by Number 62 on your crime
8 scene diagram?

9 A. Yes, sir, it is.

10 (State's Number 9 shown on overhead.)

11 Q. Right here is the lake or the pond (indicating)?

12 A. Yes, sir, it is.

13 Q. Okay. And were those items recovered?

14 A. Yes, they were.

15 Q. Who recovered them?

16 A. I did.

17 Q. And what did you -- did you send those to SLED?

18 A. Yes, we did.

19 Q. Okay. All right. Now, looking at your crime scene
20 diagram, I see it looks like up here you've got them labeled
21 as "impressions in water," as well as numbers 4 and 5 appear
22 to be "shoe impressions."

23 A. That's correct.

24 Q. Tell the jury about what those are.

25 A. The impressions in the water looked like where somebody

1 just stepped into the shoreline, out a little bit into the
2 water.

3 You can see the outline of the shoe but no what we call
4 shoe pattern or characteristics of the shoe itself in the
5 water. The ones, to the left front of the vehicle, there was
6 actually parts of the shoe pattern there and they were
7 photographed where somebody had stepped into the dirt or mud
8 at one time.

9 Q. Were you able to tie those to anyone?

10 A. No, we were not.

11 MR. WILLINGHAM: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Brief Pause)

14 MR. WILLINGHAM: Judge, that's all I have for this
15 witness at this time. If you would, answer any questions the
16 Defense lawyer has. Thank you.

17 THE COURT: Mr. Richey, your witness.

18 MR. RICHEY: Thank you, Your Honor.

19 CROSS EXAMINATION by MR. RICHEY:

3:29 P.M.

20 Q. Sir, you're -- you're the guy that comes to the scene and
21 you basically look for stuff that -- that the naked eye can't
22 see for the most part?

23 A. For the most part. On some crime scenes, not all.

24 Q. Right. Because see, when people are doing things, they
25 don't understand; they're leaving stuff behind. For example,

1 if I'm standing here, my hair particles could fall off -- or
2 do fall off and they're left behind when I walk off and leave;
3 is that correct?

4 A. That's correct.

5 Q. And, so, what you do is, you go and you look for the
6 stuff that people don't know is happening, true?

7 A. That's true.

8 Q. And -- and oftentimes, that evidence is the more crucial
9 evidence because a person really don't know what -- what
10 they're leaving behind; is that correct?

11 A. Sometimes, yes, sir.

12 Q. And -- and, when you get in a car with someone, what a
13 lot of folks don't realize is that, when you get in the car,
14 you have to open the door, correct?

15 A. That's correct.

16 Q. And that's a fingerprint of the palm and all of that,
17 right?

18 A. Depending on which area of the car.

19 Q. But -- but it could ---

20 A. On certain surfaces, it could be, yes, sir.

21 Q. And that would be something that you would look for?

22 A. That's correct.

23 Q. Okay. Once they're inside the car, when they're sitting
24 in a car, you put your hands on the dash, and that is a
25 fingerprint potentially, correct?

1 A. Potentially, yes, sir.

2 Q. You put your hand on the door and that's a fingerprint
3 potentially?

4 A. Correct.

5 Q. Okay. And, if you sit in the seat, you've got these
6 particles coming off of you that are in the seat that you
7 don't even know are there, correct?

8 A. That's correct.

9 Q. So, oftentimes, you can figure out what's going on, by
10 the existence of information that no one else can see, and
11 that's why you're trained in that area; is that correct?

12 A. That's correct.

13 Q. And, so, when you come to the scene, and when you get to
14 the scene, you have more of an investigative issue; is that
15 correct?

16 A. That's correct.

17 Q. And, in this case, you lifted fingerprints off that car;
18 is that correct?

19 A. Yes, we did.

20 Q. And -- and you put the car in the protein and all of that
21 because you want to make sure you've caught everything, right?

22 A. We try, sir.

23 Q. Right. And you didn't -- you didn't like take a chance
24 that there were going to be latents; you, for lack of a better
25 word, you dropped the car in the protein and the protein

1 lights up, bingo, right?

2 A. That's correct.

3 Q. Okay. And, so -- and, then, after the protein, you did
4 -- then, did it basically by hand, right, the fingerprints?

5 A. Fingerprinting?

6 Q. The latent prints, you tried to lift the latent print off
7 the car?

8 A. The amino black is used in the areas of the blood. The
9 latent prints we did by hand with latent print -- fingerprint
10 powder and -- and brushes.

11 Q. So, you did two tests basically?

12 A. Yes.

13 Q. Okay.

14 A. The areas of the blood were done with the amino black.

15 Q. And -- and -- and really, the sooner you get to the
16 scene, the more likely that this evidence is preserved; isn't
17 that correct?

18 A. That's correct.

19 Q. Especially, with the fingerprint, because, if a person in
20 the car, if they immediately leave the car, and you get there
21 before anyone else contaminates it, there's a better chance
22 that fingerprint, that evidence, will still be there?

23 A. Yes.

24 Q. And -- and what you do is, when you look at a crime
25 scene, you go through and you put all the diagrams and you

1 show where everything is at. You do this kind of thing, right
2 (indicating)?

3 A. Yes, sir.

4 Q. And -- and -- and this kind of thing that you're doing is
5 to make sure that you have -- because your memory is fresh at
6 this time, right?

7 A. Yes, it is.

8 Q. And, so, what you do is, you document that, so, when you
9 come to court like this, you will have something to tell you
10 immediately where everything was at that time?

11 A. That's correct.

12 Q. Okay. And, so, this diagram would be accurate, correct?

13 A. It's an accurate representation. It's not to scale.

14 Q. Okay. And, when you got out there, you said you saw a
15 boot print here and here (indicating), correct?

16 A. I didn't say boot print; I said shoe impression.

17 Q. Okay. What kind of shoe impression was it?

18 A. I'd have to see the photograph, sir.

19 Q. So, you say it wasn't a boot impression?

20 A. I -- I can't say that. I said shoe impression, which, I
21 mean, without looking at the photograph right now, I can't
22 tell you if it's a boot impression or -- or sneaker
23 impression. I don't recall exactly what they looked like at
24 the time.

25 Q. But that's -- that's something that you would be keenly

- 1 aware of, whether it was a shoe or boot, because that would be
2 important to your investigation, correct?
- 3 A. Yes, it would be.
- 4 Q. Okay. And that's something you don't recall right now?
- 5 A. I don't recall the exact pattern. One I think was a
6 sneaker, but I'm not sure on the other one.
- 7 Q. Okay. So, you got a -- one of these is a sneaker and one
8 of these is something else, right?
- 9 A. Correct.
- 10 Q. Okay. These prints, they're in the water, right?
- 11 A. Yes.
- 12 Q. And, so, you go in there and you look in the water to see
13 what kind of prints there are?
- 14 A. No. All you could see was the outline of the water where
15 you stepped. You're not going to leave -- in water, you're
16 not leaving the characteristics of the shoe print there.
- 17 Q. So, you don't know what kind of shoe it was?
- 18 A. No, I do not.
- 19 Q. Okay. Over here (indicating), what is this right here
20 (indicating)?
- 21 A. Give me the item number beside it.
- 22 Q. Eight (8).
- 23 A. Number eight (8) is a boot, a Timberland boot.
- 24 Q. Okay. What is nine -- what is this, number nine (9)?
- 25 A. Number nine (9)? That's a six -- should be six (6) and

1 seven (7).

2 Q. I'm sorry. I'm looking at that (indicating)?

3 A. One is a Timberland boot -- six (6) is a Timberland boot
4 and seven (7) is a black sweatshirt.

5 Q. Okay. All right. And the car was found here
6 (indicating); is that correct?

7 A. That's correct.

8 Q. Okay. And you said from here to here (indicating) is
9 about twenty-five (25) yards?

10 A. That's an estimate.

11 Q. An estimate, so, it could be twenty (20)?

12 A. Yes.

13 Q. Or it could be thirty (30); that's an estimate?

14 A. It's an estimate, yes, sir.

15 Q. So, from where you're sitting at, it would probably be
16 from here (indicating), probably on the other side of that
17 door ---

18 A. No, it wouldn't be that far.

19 Q. Okay. It would be -- well, how far would it be? Would
20 it be to that that door or ---

21 A. It may be from here (indicating) to probably where the
22 front row is sitting, however many yards that is.

23 Q. So, it's -- it's here (indicating) to here; not ---

24 A. Yes. It's -- that was just an estimate. I'm -- I mean,
25 I'm not real good without taking measurements.

- 1 Q. Okay. But, your vision that recalls kind of the distance
2 based on your observation?
- 3 A. From the car to them?
- 4 Q. Yes, to the boots?
- 5 A. Yes.
- 6 Q. Okay. And the boots, is this a grassy area right here
7 (indicating) where it's indented or not?
- 8 A. No. I just took that out where I could put them in -- in
9 the scene, so, you could see what they were.
- 10 Q. So, it's not a grassy area?
- 11 A. Oh, yes, it is a grassy area. You're talking about where
12 the boots ---
- 13 Q. Right here (indicating)?
- 14 A. Oh, I thought you were -- I'm sorry. I thought you was
15 talking about -- yes, it was a grassy area.
- 16 Q. Okay. And -- and did it take -- it didn't take much
17 searching for you to find those boots, correct?
- 18 A. No, it did not.
- 19 Q. And they were pretty much out there in the open?
- 20 A. That's correct.
- 21 Q. Okay. Seven (7), what's seven (7)?
- 22 A. A black sweatshirt.
- 23 Q. And -- and it was, the same fashion, out in the open?
- 24 A. That's correct.
- 25 Q. And -- and under this diagram, you come in -- because you

- 1 come in this way where the car is, right (indicating)?
- 2 A. Yes, that's the dirt road.
- 3 Q. Okay. And there's -- I'll use this pointer here. So,
- 4 we're coming in and we drive this back road this way
- 5 (indicating), correct?
- 6 A. Yes.
- 7 Q. And -- and this, what road is this right here
- 8 (indicating)?
- 9 A. That's Road.
- 10 Q. Okay. So, the car was in here (indicating), right?
- 11 A. That's correct.
- 12 Q. And the boots were here (indicating)?
- 13 A. That's correct.
- 14 Q. So, if a person, who was in the car, wore the boots,
- 15 then, the boots have to get from here to here (indicating),
- 16 correct?
- 17 A. Are you asking me if the person that was driving the car?
- 18 Q. If there was a person that was in this car
- 19 (indicating) ----
- 20 A. Uh-huh (affirmative).
- 21 Q. -- okay, that person is in this car or around this car,
- 22 he would have to get from -- he'd have to get from here
- 23 (indicating) to here, correct, at some point if he's wearing
- 24 this boots?
- 25 A. You would not actually have to physically take them over

- 1 there. You could throw them over there.
- 2 Q. Okay. So, the person, in the car, can take the boots and
- 3 throw them here (indicating) and here (indicating)?
- 4 A. It's a possibility, yes, sir.
- 5 Q. Okay. And -- and the -- the sweatshirt could be thrown
- 6 the same amount of distance?
- 7 A. Well, that depends on if it was wrapped around the boots
- 8 or however, but yes, it could be.
- 9 Q. And all these items were kind of lined straight across,
- 10 right?
- 11 A. In a general straight fashion, yes, sir.
- 12 Q. So, it wouldn't be consistent with -- I mean, you would
- 13 have to be pretty good throw to throw them right there's once
- 14 (indicating) right there twice, right there three times,
- 15 right? That's a pretty good shot from -- from this distance
- 16 from here to right there (indicating)? It would have been a
- 17 pretty accurate throw?
- 18 A. Unless you threw all three at the same time.
- 19 Q. And they all -- okay. If you threw all three, at the
- 20 same time, then, they would all have to be laying evenly to a
- 21 certain degree, correct?
- 22 A. Well, that's -- that would be a speculation.
- 23 Q. Okay. Okay. This footprint here (indicating), okay,
- 24 when you were up in the helicopter looking down and all that,
- 25 was that footprint -- you could actually see the grooves

1 and ---

2 A. No. The footprint was found the first day.

3 Q. Well, let me rephrase that, I don't mean grooves. The

4 --- the shape?

5 A. No.

6 Q. Okay. So, you ---

7 A. The shoe impressions in the mud were found the first day,
8 the 17th.

9 Q. Okay.

10 A. The pants were found on the 28th.

11 Q. So, you couldn't determine what these impressions were?
12 What type of shoe it was?

13 A. No.

14 Q. You couldn't determine whether it was a boot, a dress
15 shoe, anything?

16 A. No, just that a person had stepped in the water at that
17 -- there.

18 Q. All right. And, in fact, if the person who got in the
19 car, was in the car, stepped there (indicating), right, that's
20 in the water, right, mud?

21 A. From the shoreline, yes, sir.

22 Q. Okay.

23 A. And the mud in the water.

24 Q. Okay. Would step out, that's the kind of thing that
25 would leave an impression; is that correct?

1 A. You mean stepping in water and stepping out of the water?

2 Q. If you step out with a wet shoe, when you step on the
3 ground, is that the kind of thing that would show -- would
4 show an impression?

5 A. That's showing someone stepped into the shoreline, what
6 appeared that someone had stepped into the water. When he
7 came back out, we didn't see any around the grassy area and
8 all that out of the water.

9 Q. So, you saw this, what you know is a footprint right here
10 (indicating), in isolation, because there wasn't any around
11 here (indicating), correct?

12 A. Well, all that around there is actually where the grass
13 and weeds have been beat down. So, when you step on that,
14 you're not leaving the impressions that you do when you step
15 into the water.

16 Q. Right. But, on the grass, you can see like any muddy
17 impressions on the grass. Like if I got a -- a muddy foot and
18 I step on the grass, that will leave mud ---

19 A. No, we did not.

20 Q. --- on the grass?

21 A. We did not.

22 Q. Okay. All right. Okay. And, so, you did everything you
23 could to preserve the evidence in this car; is that correct?
24 Everything that you could do?

25 A. Everything that I had the power to do, yes, sir.

1 Q. And you sent that evidence to SLED to be tested; is that
2 correct?

3 A. That's correct.

4 MR. RICHEY: One moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Brief Pause)

7 Q. (By Mr. Richey) Under this -- under this -- the foot
8 traffic there, you -- there were more footprints here
9 (indicating) than this, because people got there and they
10 walked ---

11 A. Yes. We eliminated some because of we knew, from the
12 boot impressions and the type of boots that EMS, our officers,
13 and the fire department was wearing, that some were left
14 there.

15 Q. So, when you cleared it all out, this is what you had
16 left?

17 A. Yes, that's correct.

18 Q. Okay. And you didn't -- you didn't find any type of sock
19 impressions or anything, did you?

20 A. No, we did not.

21 Q. Okay. You didn't find any type of feet impressions at
22 all, did you?

23 A. No, we did not.

24 Q. So, that wouldn't be consistent with someone standing
25 there walking with no shoes on, correct?

- 1 A. It's -- but you also have to understand it was also very
2 hot that -- it was warm that day. If the sun -- by the time
3 we got there, they could have dried and water could have dried
4 and been gone.
- 5 Q. I understand that, but that's not consistent with someone
6 standing there; is that correct?
- 7 A. That's -- that's correct.
- 8 Q. Okay. And, in -- in this scene, this accident actually
9 -- or this incident actually happened on two seventeen (2/17),
10 correct?
- 11 A. That's correct.
- 12 Q. And you all were there that day, right?
- 13 A. Yes, we were.
- 14 Q. Shortly after this supposedly happened, right?
- 15 A. That's correct.
- 16 Q. So, it wasn't the type of time that all this drying could
17 take place, correct?
- 18 A. Well, water can actually dry on pavement fast with the
19 sun beating down on it.
- 20 Q. We're not talking about pavement though, are we?
- 21 A. Are you talking about on the grass?
- 22 Q. On -- on -- right here (indicating), on the grass along
23 this area, dry area, I'm asking you, that is not -- it wasn't
24 days since the scene -- since the incident happened, correct?
- 25 A. No. It was the same day.

1 Q. And it was relative or within two to three hours?

2 A. That's correct.

3 Q. So, the likelihood, of the evidence drying up, is -- is
4 less likely than it would be if it was days later?

5 A. Yes, it is most likely.

6 Q. Okay. This car, when you removed -- when you did the
7 latent fingerprint, on this car where it's got "3-9-10," and
8 all those numbers up there, you didn't actually -- you all
9 actually went in the car, right?

10 A. We only got out of the car while it was there on the
11 road. We only retrieved what we could see at the time. We
12 did not actually go physically into the car searching under
13 the seats and all that once we had it removed and had Mr.
14 Hubbard removed.

15 Q. Okay. So, everything that's in this car you found; found
16 to your naked eye?

17 A. On that day?

18 Q. Yeah, that you could have found with the naked eye?

19 A. Yes.

20 Q. Okay. And did you find any type of project -- projectile
21 or anything in the car?

22 A. Yes. There was one that was actually removed from the
23 driver's seat.

24 Q. Okay. Did you find any anywhere else?

25 A. Not that day.

- 1 Q. Did you find any shell casings anywhere else?
- 2 A. Yes. We found one that day in the right front
- 3 floorboard.
- 4 Q. Okay. When you say right front, the ---
- 5 A. The passenger's side.
- 6 Q. --- passenger's side? Okay.
- 7 A. I apologize.
- 8 Q. Okay. That's fine. And this sweatshirt, you did send it
- 9 to SLED to be tested?
- 10 A. Yes.
- 11 Q. And -- and -- and too, those boots, they're sort of like
- 12 -- they're sort of like a car to some extent. You try to
- 13 determine who has been wearing those boots? That's part of
- 14 the process, isn't it, when you recovered these boots?
- 15 A. Yes. Those -- when those boots were recovered, they were
- 16 actually put in a brown paper bag and sealed that day.
- 17 Q. So -- and that is to preserve all the DNA in the boots?
- 18 A. That's correct.
- 19 Q. And -- and -- and the boots were some -- they're like
- 20 anything else because, when a person wears boots, they leave
- 21 DNA? They could?
- 22 A. They could leave DNA, yes, sir.
- 23 Q. And, if it's multiple people, there could be multiple
- 24 DNA, correct?
- 25 A. Yes, but you'd -- I mean ---

1 Q. Okay.

2 A. -- you're getting into the technology ---

3 Q. Okay.

4 A. --- the technical part that I can't really answer.

5 Q. All right. On this path right here (indicating), these
6 footprints right here (indicating) this footprint -- this
7 street is running this way (indicating), correct?

8 A. Yes. It runs down by the pond. And that is straight,
9 but it actually circles -- the street will go straight, then,
10 it'll start to circle around the pond. It actually goes all
11 the way around the pond.

12 Q. So, how far is the front end from this print
13 (indicating)?

14 A. I'd have to see my measurements. And I don't have those
15 with me.

16 Q. Just -- you were standing there, you tell me, is it from
17 me to you? Is it from here to there (indicating)? I mean,
18 you ---

19 A. It's probably maybe three (3) to four (4) feet.

20 Q. Is the -- is the distance from number five (5) to number
21 seven (7) and eight (8) -- six, seven, and eight, is that
22 distance more than the twenty-five (25) feet that you
23 testified to earlier?

24 A. It would be further away from the car, yes, sir.

25 Q. And, in all this other area that's on this chart, there

1 were no shoe prints, boot -- boot prints found anywhere around
2 here (indicating)?

3 A. No.

4 Q. And -- and -- and no one told you about this scene was
5 being contaminated or anything? You didn't -- they didn't get
6 there and say, "Hey, it's been contaminated"?

7 A. Yes, we knew, when we arrived, that officers had walked
8 -- had been down on -- onto the crime scene.

9 Q. Well, what I mean by contaminated, that the officers told
10 you that they had removed some prints that were there?

11 A. No. No one told me that they removed anything.

12 Q. So, all the prints that were there you basically said
13 eliminate, eliminate, eliminate, and when you got that, then,
14 you said, "I got this print up here, which is five (5)," okay,
15 "this print which is five (5)," and I'm pointing to "5" up
16 here (indicating).

17 And you've got the print four (4), right?

18 A. That's correct.

19 Q. And the impressions in the water?

20 A. Correct.

21 Q. So, when all this -- and five (5), you don't know whether
22 that's a boot print or a tennis shoe print, correct?

23 A. Not at this time I don't, no.

24 Q. And four (4), you don't know whether four (4) is a
25 footprint or a tennis shoe print?

1 A. No, I don't know if it's a boot or a tennis shoe.

2 Q. And -- and -- and the way that you have this scale lined
3 up, on here you can see that's the bottom of a shoe
4 (indicating) and that's the front of the shoe; is that
5 correct?

6 A. Yes. That's -- that's why I said it's not to scale.
7 That's -- that's a computer -- a computer generated crime
8 scene and that's what used for shoe impressions.

9 Q. Right. And -- and the impression of this shoe is that
10 these prints, the front part is actually pointing this way
11 (indicating), correct?

12 A. Again, it's not to scale. The shoe prints are put there.
13 I -- I'd have to see the photograph to tell you exactly which
14 way the shoe impression was in the ground.

15 Q. Okay.

16 A. On the ground.

17 Q. Okay. Do you know the distance between this print and
18 this print (indicating)?

19 A. Not without my measurements I don't, no, I don't know.

20 Q. Were you out there when they were taken?

21 A. Yes. I was out there when they were taken.

22 Q. Was it -- was it from -- from here to the door
23 (indicating) or was it from here ---

24 A. No, it was not that far.

25 Q. How far?

- 1 A. A couple of feet.
- 2 Q. How many?
- 3 A. Maybe a couple of feet, two (2) to three (3) feet.
- 4 Q. Okay. So, three (3) feet. So, this print was three feet
- 5 apart, so, three feet is sort of like three steps? Is that
- 6 how you ---
- 7 A. Well, maybe a little bit further than that. Again ---
- 8 Q. Okay.
- 9 A. --- if I could see the measurements from where we took
- 10 them, I could give you a more accurate. I just don't remember
- 11 right off the top of my head.
- 12 Q. Okay. So, these pants (indicating) right here are -- are
- 13 -- on this diagram are not consistent with a person walking
- 14 like this because of the distance that they're apart?
- 15 A. That's -- that's correct.
- 16 Q. Okay. So, these are two separate prints? There's two
- 17 prints out there?
- 18 A. They're two impressions out there, yes, sir.
- 19 Q. So, these two prints would not be consistent with each
- 20 other, with one person walking, correct?
- 21 A. That's correct.
- 22 Q. Okay. How far is it from the bank to sixty-two (62)?
- 23 A. We did not measure from the bank. We -- we actually used
- 24 two reference points in the roadway and we took our
- 25 measurements from there.

1 Q. Okay. The person -- the person that's wearing these
2 boots or wearing these shoes, socks, boots, or whatever they
3 are, they're unidentified, how far is the distance from four
4 (4) to sixty-two (62)?

5 A. Again, without my measurements, I'm not real sure.

6 Q. Is it close? I mean, like me and you right here?

7 A. No.

8 Q. It's farther or closer?

9 A. Farther.

10 Q. Is it back here (Mr. Richey steps back.)

11 A. Sir, I'm not real sure. I don't recall.

12 Q. So, you don't know whether they're this close or not; you
13 just don't know?

14 A. I don't know. The shoes were collected one day; the
15 pants were collected the next. We don't measure from one --
16 one item of evidence to another.

17 We take two reference points and we do what's called a
18 triangulate -- triangulization (phonetic). And we triangulate
19 everything within that period. We don't -- we don't measure
20 from this item to this item to this item. We use two
21 reference points and we triangulate everything in that
22 fashion.

23 Q. Yeah, but if I'm standing at the lake, okay -- you were
24 standing by the car, right?

25 A. Yes.

1 Q. I mean, you stood by the car, and when you stood by the
2 car, you could see the pond, correct?

3 A. Yes.

4 Q. And you can recall where these were found in the pond,
5 correct?

6 A. I actually don't recall how far I walked out in that
7 water and got those pants that day. I know it was up to about
8 here (indicating).

9 Q. Were you on the bank, the edge?

10 A. When I retrieved the red pants?

11 Q. Yes, sir.

12 A. No. I was out to about -- water was almost under ---
13 underneath my arms.

14 Q. So, did you walk five (5) steps, six (6) steps?

15 A. No, it was more than that.

16 Q. Ten (10)?

17 A. It was probably more than that.

18 Q. Twenty (20)?

19 A. I didn't count them.

20 Q. Okay. So, you were considerably out in the water?

21 A. Yes. I'm up -- I'm out up to my chest level in water.

22 Q. And, so, this is the dirt road (indicating), right?

23 A. Yes.

24 Q. So, when you're out here (indicating) somewhere up in the
25 water, then, this dirt road is not close?

1 A. It's not within -- I mean, it's a pretty good distance.

2 It was a pretty good distance out there.

3 Q. And to the car it's not close, a pretty good distance
4 from that car?

5 A. A favorable distance, yes.

6 Q. I mean, if it's a good distance from here (indicating),
7 inside is going to be a good distance from the car; is that
8 accurate or not?

9 A. That's accurate.

10 Q. Since four (4) is right about there (indicating), it'll
11 be a pretty good distance from four (4) as well, correct?

12 A. Yes, you could say that.

13 Q. And five (5) is up here (indicating), so, it -- it would
14 be a pretty good distance from five (5) ---

15 A. That's correct.

16 Q. --- correct? And, so, the person at four (4) and (5), he
17 really had to have a good arm to toss it that far?

18 A. If that's where they were thrown from.

19 Q. Okay. So, he would really have to have a good arm; is
20 that correct?

21 A. That's correct.

22 MR. RICHEY: Thank you.

23 THE COURT: Redirect?

24 MR. WILLINGHAM: Thank you, Judge.

25 REDIRECT EXAMINATION by MR. WILLINGHAM:

3:54 P.M.

- 1 Q. Investigator, we spent twenty (20) minutes talking about
2 foot prints. Four (4) and five (5) and eleven (11), can you
3 tell me how long four (4) and five (5) were out there?
- 4 A. I have no idea.
- 5 Q. Okay. I mean, this happened on February 17th, two
6 thousand and six (2006)?
- 7 A. That's correct.
- 8 Q. That's when you found them?
- 9 A. That's correct.
- 10 Q. They could have been out there February 16th?
- 11 A. Yes, they could.
- 12 Q. Fifteenth (15th)?
- 13 A. Yes.
- 14 Q. February 1st for that matter?
- 15 A. That's correct.
- 16 Q. So, there's no way to date how long a foot print has been
17 there?
- 18 A. No, there is not.
- 19 Q. All right. So, four (4) and five (5) may not have
20 anything at all to do with this case?
- 21 A. That's correct.
- 22 Q. How about number eleven (11), can you tell me how long
23 number eleven (11) had been there?
- 24 A. I have no idea.
- 25 Q. The same thing?

1 A. That's correct.

2 Q. It could have been there for any number of days?

3 A. That's correct.

4 Q. May be relative to this case, may not be?

5 A. That's correct.

6 Q. So, there's no way you can sit up here and say that
7 somebody had to have a good arm standing from number five (5)
8 when they threw the pants in at sixty-two (62), can you?

9 A. There's no way I can determine that at all.

10 Q. All right. And there's no way you can say that the
11 driver made those foot impressions at number eleven (11), is
12 there?

13 A. No.

14 (Brief Pause)

15 Q. And is it possible, for me to walk around, and not leave
16 shoe impressions?

17 A. Yes, it's very possible.

18 Q. Or foot impressions.

19 A. It's very possible.

20 MR. WILLINGHAM: I have no further questions, Judge.

21 THE COURT: Mr. Richey?

22 MR. RICHEY: A few questions.

23 RECROSS EXAMINATION by MR. RICHEY: 3:55 P.M.

24 Q. So -- so, officer, it is conceivable that these boots,
25 these Timberland boots (retrieves exhibits), were never worn

- 1 by the lake; that is possible, correct?
- 2 A. Were never worn by the lake?
- 3 Q. Yes, they were never worn around this area (indicating);
- 4 is that correct?
- 5 A. That's correct.
- 6 Q. And because there's no print that would match these
- 7 Timberlands, it would be likely if they were not worn?
- 8 A. Well, not necessarily. It depends on where around the
- 9 lake you took them off at.
- 10 Q. Okay. So -- but, let me get it straight. You don't know
- 11 how long these prints were there, right?
- 12 A. No, I have no idea.
- 13 Q. You don't know how long these prints were in the water;
- 14 is that right?
- 15 A. I have no idea.
- 16 Q. So, all of the other prints were from law enforcement
- 17 officers, right?
- 18 A. Law enforcement and EMS and fire department.
- 19 Q. Somebody?
- 20 A. That's correct.
- 21 Q. That you have identified?
- 22 A. Yes.
- 23 Q. Okay. So, it is conceivable that these boots were not --
- 24 because -- because there were footprints out there, correct?
- 25 A. Yes.

1 Q. I mean, the people who walked, the EMS, the cops, the
2 this and that, there were footprints out there, right?

3 A. In the dirt, not around the lake.

4 Q. Right. So, we know somebody was walking out there,
5 correct?

6 A. Yes.

7 Q. Okay. And we have excluded everybody that was walking
8 out there for being in law enforcement, EMS, and that source,
9 right?

10 A. That's correct.

11 Q. We also have excluded these (indicating) Timberland boots
12 because there were no prints that were consistent with these
13 boots being worn out there; isn't that correct?

14 A. I didn't find any, no, sir.

15 Q. So, that would be consistent with -- with these boots not
16 being worn out there, correct?

17 A. It's there. I mean, it's consistent that they were not
18 worn at the time.

19 Q. Okay. And these boots were found over in the grassy
20 area, correct?

21 A. That's correct.

22 Q. Which is not consistent with them being worn in that
23 area, correct?

24 A. I can't say that they were not worn in that area.

25 Q. These boots were thrown in the grass, correct?

- 1 A. As far as I know they were thrown.
- 2 Q. Okay. And, in that grass, there was no print from these
- 3 boots in that grass, right?
- 4 A. You're not going to leave shoe impressions in grass.
- 5 Q. Okay. You explained that. There were no boot prints in
- 6 that grass, correct?
- 7 A. No, there were no boot prints.
- 8 Q. Okay. So, your testimony today would be it would be very
- 9 inconsistent to say that these Timberland boots were worn out
- 10 there in that lake, by or near that lake because there were no
- 11 boot prints, correct?
- 12 A. As far as I know they were not worn. I can't say that
- 13 they were worn or they wasn't -- weren't worn. I didn't find
- 14 any shoe impressions to say that they were.
- 15 Q. But you can say with definite, that law enforcement boots
- 16 that were worn, boot prints that were out there that day and
- 17 they were wearing boots, law enforcement, correct?
- 18 A. Yes. There were law enforcement around the car that were
- 19 leaving some -- some shoe impressions.
- 20 Q. So, you can testify that the ability to make impressions
- 21 was there, correct?
- 22 A. The ability was there.
- 23 Q. Okay. And that the officers made those impressions
- 24 wearing boots?
- 25 A. Some, yes.

1 Q. Okay. The EMS made impressions wearing tennis shoes,
2 correct?

3 A. EMS wears boots as well. Yeah, they left shoe
4 impressions.

5 Q. Okay. All right. So, everybody out there left shoe
6 impressions that you could say with definity, with definity;
7 definity I'm saying you're saying without -- with certainty
8 law enforcement left prints there and EMS left? You can say
9 that definitively?

10 A. Some law enforcement did and some of the EMS; not
11 everyone.

12 Q. But you can say definitively law enforcement left prints
13 there or somebody?

14 A. Yeah, there were some around the car, yes.

15 Q. And there wasn't any guesswork in that, right?

16 A. No. We -- we pretty much all wear the same type of
17 boots.

18 Q. Okay. But you can't say with definity that these boots
19 were worn based off your investigation and observations and in
20 looking at that scene; is that correct?

21 A. No, sir. I did not find any shoe impressions from those
22 boots.

23 Q. So, it would be consistent, with your investigation, that
24 these Timberland boots were not worn there; consistent with
25 your investigation?

1 A. You're asking me if I -- if I'm going to say for sure
2 that they were worn there, I cannot say for certain that those
3 boots were -- were or were not worn there.

4 Q. That's not what I'm asking you. I'm asking you, pursuant
5 to your investigation, okay? You investigated and you saw the
6 footprints, correct?

7 A. That's correct.

8 Q. You saw footprints of law enforcement that were made
9 there, correct?

10 A. Correct.

11 Q. So, you can say with definity, for certain, that law
12 enforcement left footprints from their shoes?

13 A. Yes, some did, yes.

14 Q. And because you have the shoes of the law enforcement
15 person and you have the print, correct?

16 A. That's correct.

17 Q. So, you can say, "You left this print with definity,"
18 right?

19 A. Right.

20 Q. You had these boots, right?

21 (Shows witness exhibit.)

22 A. That's correct.

23 Q. You could not say, with any definity, that this boot
24 (indicating) left a print at the scene?

25 A. No, sir, I cannot.

1 MR. RICHEY: Thank you.

2 THE COURT: Anything further, Mr. Willingham?

3 MR. WILLINGHAM: Very briefly, Judge.

4 REDIRECT EXAMINATION by MR. WILLINGHAM: 4:00 P.M.

5 Q. But they could have? They could have been worn?

6 A. Yes, they could have been.

7 Q. And you said that there were foot impressions by law
8 enforcement?

9 A. Yes, some.

10 Q. If law enforcement stepped over those prints, you
11 wouldn't know it, would you?

12 A. No. If they stepped on those prints, it would have
13 destroyed them.

14 MR. WILLINGHAM: Thank you.

15 THE COURT: Anything further, Mr. Richey?

16 RECROSS EXAMINATION by MR. RICHEY: 4:01 P.M.

17 Q. But you weren't told by any law enforcement that they
18 contaminated -- contaminated that scene by stepping on
19 footprints, were you?

20 A. No.

21 Q. Okay. And that's the kind of stuff that would be real
22 keen that you would have to know? That's the information
23 you're looking for, right?

24 A. That's correct.

25 Q. And that's contamination; wouldn't it be?

1 A. But it also could be contamination not meaning to
2 contaminate it.

3 Q. Right. Not meaning to but it's contamination, correct?

4 A. I -- that's correct.

5 Q. And you can ---

6 A. In an aspect.

7 Q. Okay. And you can look at the print and you can tell
8 there's something wrong with these prints; they've been
9 contaminated, correct?

10 A. It depends on how the officer steps, sir.

11 Q. Well, you can look at the step and see contamination ---

12 A. Yes, you can tell if a foot has slid or whatever, yes.

13 Q. And you can determine what that print would be?

14 A. Well, we're not able to put every shoe print with law
15 enforcement.

16 Q. Okay.

17 A. The ones that we know were there came from law
18 enforcement with the exception of what we have on the diagram.

19 Q. From your investigation and things you've done, you
20 cannot say with probability that these shoes were worn at that
21 scene based on your investigation; is that correct?

22 A. I cannot put anybody wearing those shoes at that scene.

23 MR. RICHEY: Thank you.

24 THE COURT: Sir, you may step down.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 THE COURT: Ladies and gentlemen of the jury, I told you
3 we would take a break about every two hours, or hour and a
4 half to two hours. We're at two hours.

5 I'm going to allow you to retire to the jury room to
6 stretch your legs and refresh yourself. If you happen to be a
7 smoker, a bailiff will accompany you to -- to have a smoke.
8 It should take about ten (10) to fifteen (15) minutes to have
9 our break. And, then, we'll come back and begin again.

10 Again, I'm going to caution you, as I will every time you
11 leave the courtroom, don't begin any discussions concerning
12 this case until you've heard all of the evidence and I charge
13 you concerning the law.

14 You may retire to the jury room. Thank you very much.

15 (The jury exited the courtroom at 4:02 p.m.)

16 THE COURT: Court is in recess for about ten (10) or
17 fifteen (15) minutes. Thank you very much.

18 (Whereupon, an afternoon recess was taken from 4:02 p.m.
19 till 4:26 p.m.)

20 (Whereupon, State's Exhibit Numbers 18 through 57 were
21 marked for identification.)

22 THE COURT: Thank you very much. You can be seated.

23 BAILIFF: Be seated.

24 THE COURT: Mr. Richey, Mr. Willingham approach, please.

25 (Whereupon, a bench conference was had from 4:26 p.m.

1 till 4:27 p.m.)

2 THE COURT: Bring the jury back.

3 (The jury entered the courtroom at 4:27 p.m.)

4 THE COURT: All right. The record should reflect that
5 all jurors have returned to the courtroom. During the break,
6 the attorneys have been working on some evidentiary matters.
7 It took a little longer than I thought it would, but at this
8 time, Mr. Willingham, I think you've reached an agreement on
9 some of the exhibits?

10 MR. WILLINGHAM: Yes, Your Honor. Some of them are
11 already in evidence, but we have gone ahead and premarked
12 Exhibits 1 through 57.

13 THE COURT: Yes, sir.

14 MR. WILLINGHAM: At this time, the State would move
15 those into evidence in the hope to facilitate the process -

16 THE COURT: Mr. Richey, have you had a chance to review
17 those documents?

18 MR. RICHEY: I reviewed them and I have no objection.

19 THE COURT: All right. Without objection, then,
20 Plaintiff's or State's Exhibits 1 through 57 will be admitted
21 into the record.

22 (Whereupon, State's Exhibit Number 1 through 57 were
23 admitted into evidence without objection.)

24 THE COURT: All right, Mr. Willingham. You may call
25 your next witness.

1 MR. WILLINGHAM: Judge, we call Dominick Baird.

2 (Mr. Baird is summoned.)

3 THE COURT: Come forward, sir, and be sworn.

4 (Mr. Baird stepped forward to be sworn.)

5 (Whereupon,

6 DOMINICK BAIRD

7 having been first duly sworn, testified as follows:)

8 THE COURT: Mr. Baird, once you're seated, move close to
9 the microphone and state your full name for the record,
10 please.

11 THE WITNESS: Dominick Baird.

12 THE COURT: Thank you. Your witness, Mr. Willingham.

13 MR. WILLINGHAM: Thank you, Judge.

14 DIRECT EXAMINATION by MR. WILLINGHAM: 4:29 P.M.

15 Q. Tell the jury where you work.

16 A. I work for the Spartanburg County Sheriff's Office in the
17 forensic unit.

18 Q. What do you do for the sheriff?

19 A. I work for the forensics unit.

20 Q. Okay. We've heard from one other forensic investigator.
21 What do you do? What is your role?

22 A. Basically, I respond to crime scenes and analyze -- help
23 analyze them a little bit, collect evidence, and process the
24 scene.

25 Q. Okay. And that's what you did on -- on this case on

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- 1 February 17th, two thousand and six (2006)?
- 2 A. Yes, sir.
- 3 Q. You went out to Road?
- 4 A. Yes, sir.
- 5 Q. Is that in Spartanburg County?
- 6 A. Yes, sir, it is.
- 7 Q. And you began to process that scene?
- 8 A. Yes, sir.
- 9 Q. I show you State's Exhibits 11 and 10, Timberland boots.
- 10 (Exhibits handed to witness.)
- 11 A. Yes, sir.
- 12 Q. You recovered these along with Investigator Hogsed?
- 13 A. Yes, sir, I did.
- 14 Q. All right. Likewise, State's Number 12, the black hooded
- 15 sweatshirt, you recovered that item as well?
- 16 A. Yes, sir, I did.
- 17 Q. Look up on that crime scene diagram, which is already
- 18 introduced as State's Exhibit Number 9. It shows that these
- 19 items were recovered at locations six (6), seven (7), and
- 20 eight (8).
- 21 A. Yes.
- 22 Q. Is that accurate?
- 23 A. Yes, sir.
- 24 Q. Okay. You also attended the autopsy of the victim?
- 25 A. Yes, sir.

1 Q. The victim in this case was who?

2 A. Mr. Hubbard, Jeffrey Hubbard.

3 Q. Jeffrey Hubbard, and you went to that autopsy, and that
4 autopsy was conducted by whom?

5 A. That would be Dr. Wrenn.

6 Q. Okay. And Dr. Wrenn, he's a pathologist at ---

7 A. At Spartanburg ---

8 Q. --- Spartanburg Regional; is that correct?

9 A. Yes, sir.

10 Q. All right. During that autopsy, did you recover
11 anything?

12 A. Yes, sir. I recovered clothing Mr. Hubbard was wearing
13 as well as several projectiles recovered from his body.

14 Q. Okay. I'm going to show you what's been marked as
15 State's Exhibits 21, 22, 23, 24, 25, 26, and 27.

16 (Exhibits handed to witness.)

17 Q. And ask -- ask you what they are.

18 A. These all appear to be the projectiles that were
19 recovered from the body of Mr. Hubbard at the post-partum.

20 Q. So, you recovered those from Dr. Wrenn?

21 A. Yes, sir.

22 Q. All right. Now, after you recovered those items, did --
23 was the autopsy completed or did Dr. Wrenn have somewhere he
24 had to go?

25 A. No, sir, it was -- the autopsy was cancelled for the time

1 being. Dr. Wrenn had a prior engagement, and he restarted
2 later.

3 Q. Okay. And did you go back?

4 A. No, sir, I did not.

5 Q. That would have been attended by Rusty Clevenger?

6 A. Yes, sir.

7 Q. Okay. And, during that autopsy, did you also take a swab
8 or a sample of blood from our victim?

9 A. Yes, sir, I took a blood swab.

10 Q. I show you State's Exhibit 56. Is that the blood swab
11 you took from our victim?

12 (Exhibit handed to witness.)

13 A. Yes, sir.

14 Q. Now, on the 17th -- you had the autopsy on the 18th, back
15 on the 17th when you really had the call -- the car, did you
16 process the car along with Investigator Hogsed?

17 A. Yes, sir. At the scene, we did examine the car.

18 Q. Okay. And were you also involved with him when he
19 processed the car after it was impounded?

20 A. Yes, sir.

21 Q. And were any items recovered at that time?

22 A. Yes, sir. We -- we quickly recovered shell casings and
23 we also developed some latent prints on the vehicle.

24 Q. Okay. Those latent prints, tell this jury how you took
25 those.

- 1 A. We had some prints in blood which were developed or
2 enhanced with what's called amino black. Amino black is --
3 basically works with proteins in the blood and helps enhance
4 the prints. And we also used powder, the plain white powder
5 that we use for normal dusting, and we used those as well.
- 6 Q. Okay. And once those were -- latent prints, latent means
7 it's hidden? You can't see it with the naked eye?
- 8 A. Yes, sir.
- 9 Q. Now, you could see the blood prints?
- 10 A. Yes, sir.
- 11 Q. With the naked eye?
- 12 A. Yes, sir.
- 13 Q. But you can't lift it with tape like you normally do; is
14 that fair?
- 15 A. That's correct. With the amino black you cannot lift it.
16 The amino is just to enhance it.
- 17 Q. So, all you can do with that is photograph it?
- 18 A. Yes, sir.
- 19 Q. And, then, use those photographs to compare it to a known
20 print later on?
- 21 A. Yes, sir.
- 22 Q. All right. The other fingerprints you were able to lift
23 with tape?
- 24 A. Yes, sir.
- 25 Q. Okay. And those would also to be sent to compare?

1 A. Yes, sir.

2 Q. And you were not involved in the actual comparison of an
3 unknown print with a known print, were you?

4 A. No, sir, I wasn't.

5 Q. Somebody else did that?

6 A. That's correct.

7 Q. Okay. All right. Now, back as far as actual items from
8 the car, I'm showing you State's Exhibit 18.

9 (Exhibit handed to witness.)

10 Q. Was that recovered from the car?

11 A. Yes, sir.

12 Q. What is it?

13 A. It's a spent nine (9) millimeter shell casing.

14 Q. All right. Now, when you say a spent shell casing, tell
15 me what that means. I mean, is that ---

16 A. Well, generally, when you're referring to a bullet or
17 something, you got -- you have the front end of it ---

18 Q. Speak up, okay?

19 A. Okay. The front end is going to be the bullet, which is
20 fired, and the shell casing is generally the brass piece
21 that's at the back end where the primer is attached to it and
22 it's ejected from the gun after the gun is fired.

23 When I say "spent shell casing," that's what I'm
24 referring to. The shell casing is generally already been
25 fired.

- 1 Q. The back?
- 2 A. Yes, sir.
- 3 Q. All right. These things that you recovered from Dr.
- 4 Wrenn, the projectiles ---
- 5 A. Yes, sir.
- 6 Q. --- that's the front end?
- 7 A. Yes, sir.
- 8 Q. Okay. That you recovered from where?
- 9 A. This is from the driver's floor board of the vehicle.
- 10 Q. Okay. I'm going to show you State's Exhibit Number 19
- 11 and ask if you recognize that.
- 12 (Exhibit handed to witness.)
- 13 A. Yes, sir.
- 14 Q. What is it?
- 15 A. Fragments of a projectile that were recovered from the
- 16 driver's seat of the vehicle.
- 17 Q. Okay. So, that's part of a -- of a projectile, the front
- 18 end of a bullet?
- 19 A. Yes, sir. Sometimes the bullets will break apart ---
- 20 Q. Okay.
- 21 A. --- or fragment.
- 22 Q. And where was that found?
- 23 A. This is from the driver's seat of the vehicle.
- 24 Q. The driver's seat? State's 20, what is that?
- 25 (Exhibit handed to witness.)

1 A. This is a projectile recovered from the driver's seat.

2 Q. Again, the bullet part, the front part of the -- of the
3 bullet?

4 A. Yes, sir.

5 Q. Okay. The projectile, that was recovered from where?

6 A. This one was from the driver's seat. And, if I remember
7 correctly, this is from the foam we pulled out of the seat.

8 Q. From the ---

9 A. That was inside the seat, we pulled from inside the seat.

10 Q. Okay. And State's 14, what is that and where was it
11 recovered from?

12 (Exhibit handed to witness.)

13 A. This is from the right side front floor board of the
14 vehicle.

15 Q. Now, you secured all those items?

16 A. This one was -- I believe it was recovered by
17 Investigator Hogsed.

18 Q. Who testified previously, but the other items you took it
19 in your custody ---

20 A. Yes.

21 Q. --- and your possession?

22 A. Yes, sir.

23 Q. And that was ultimately forwarded to SLED?

24 A. Yes, sir.

25 Q. All right. For their examination?

1 A. Yes, sir, theirs.

2 Q. All right. Now, did you also take some swabs from the
3 car?

4 A. Yes, sir.

5 Q. What was the purpose of doing that?

6 A. We took swabs of blood that was visible and we also took
7 some -- got DNA swabs to by chance of hopefully catching --
8 getting DNA from the vehicle.

9 Q. All right. I'm going to show you a number of them.

10 (Brief pause while Mr. Willingham retrieves exhibits)

11 Q. Numbers 48 through 55, State's Exhibits 48 through 55,
12 and ask if you recognize those.

13 (Brief pause while witness examines exhibits.)

14 A. Yes, sir. These -- these all appear to be swabs that
15 were taken from the vehicle.

16 Q. Okay. And they were taken from different locations in
17 that vehicle; is that right?

18 A. Yes, sir.

19 Q. Now, each one of them, by that container, you know where
20 in the car it was taken from?

21 A. Yes, sir.

22 Q. And those were taken by you?

23 A. There's a couple here from Investigator Hogsed.

24 Q. Okay.

25 A. Who went back at a later date.

1 Q. Okay. And, then, they were hopefully forwarded to SLED?

2 A. Yes, sir.

3 Q. All right. For their examination?

4 A. Yes, sir.

5 MR. WILLINGHAM: Okay. Investigator, if you would,
6 answer any questions the Defense lawyer has for you.

7 THE WITNESS: Yes, sir.

8 MR. WILLINGHAM: Thank you.

9 THE COURT: Mr. Richey, your witness.

10 MR. RICHEY: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION by MR. RICHEY:

4:39 P.M.

13 Q. Sir, you work along with Officer Hogsed?

14 A. Yes, sir.

15 Q. And you all were pretty much there at the same time?

16 A. Yes, sir.

17 Q. And you all collaborated with each other on what you
18 found? I mean, that's pretty standard, isn't it?

19 A. We work together, yes, sir.

20 Q. All right. And, so, this diagram that you put in -- you
21 were part of the process of putting this diagram together?

22 A. I assisted in taking measurements. And -- but I did not
23 draw the diagram.

24 Q. Right. But the information you assisted -- assisted him
25 in getting the information?

1 A. Yes, sir.

2 Q. You didn't draw it, but, he said, "How far is this," and
3 you told him that kind of stuff, right?

4 A. Yes, sir.

5 Q. And, so, all this is accurate (indicating) to your
6 knowledge; is that correct?

7 A. Yes, sir, it does look correct.

8 Q. And -- and there's -- and a lot of time and effort went
9 into this; is that correct?

10 A. Yes, sir.

11 Q. To make it right, correct?

12 A. Yes, sir.

13 Q. And -- and it was right on the 17th and 18th; is that
14 correct?

15 A. It ---

16 Q. This is right on those dates of what you saw on the 17th
17 and 18th; this diagram is pretty accurate on what you found and
18 what you saw?

19 A. It's an accurate representation of what we saw, yes, sir.

20 Q. And you didn't leave anything out of it, correct?

21 A. No, sir.

22 Q. And everything of -- of importance is on it, correct?

23 A. From the scene, yes, sir.

24 Q. And -- and Officer Hogsed, if something was not there,
25 that you saw, before this diagram would be generated -- when I

1 saw generated, generated in the form that it is now, changes
2 would have been made, correct?

3 A. Yes, if there was something that should have been added,
4 yes, sir, it would be -- be fixed.

5 Q. You got -- you got the diagram, and he said, "Look at
6 that and make sure it's okay," you'd say, Oh, no, something
7 else," you would do that, correct?

8 A. Yes, sir.

9 Q. Okay. And you had an opportunity to do that on this
10 diagram?

11 A. Like I said, I didn't draw the diagram.

12 Q. But you had an opportunity to review it, correct?

13 A. I looked at it, yes, sir.

14 Q. Okay. And based off your review it was accurate?

15 A. Yes, sir.

16 Q. Okay. And, so, you assisted in all the fingerprinting
17 and all -- all that stuff too?

18 A. Yes.

19 Q. Getting the prints and, you know, the finding the boots
20 and all that, you were all into that too?

21 A. Yes, sir.

22 Q. And so, you and Officer Hogsed, you all don't do
23 basically two separate reports; you all just put together,
24 "This is what we found"?

25 A. Yes, sir.

- 1 Q. So, what he would say would be consistent with what you
2 would say?
- 3 A. Yes, sir.
- 4 Q. And -- and -- and your position would not change from
5 his, correct?
- 6 A. That is correct.
- 7 Q. And you know his position, correct?
- 8 A. I should.
- 9 Q. Because you talk to him, right?
- 10 A. Yeah, we worked the scene together.
- 11 Q. And, this is like, you know, any other job in that you
12 work closely with people and you get an understanding and a
13 feel for what they're doing and he gets a good feel for what
14 you do, correct?
- 15 A. That's correct.
- 16 Q. And you all work pretty good together, correct?
- 17 A. Yes, sir.
- 18 Q. It's not anything about he's trying to one up you? You
19 all work pretty good together, correct?
- 20 A. Yes, sir.
- 21 Q. And -- and -- and you feel open -- open with him. If
22 he's wrong, you feel open enough to tell him, "You're not
23 right about this," correct?
- 24 A. That's correct.
- 25 Q. And he's open enough with you to tell you that you're not

- 1 correct, right?
- 2 A. That's correct.
- 3 Q. Because this document and this information has to be
- 4 correct as is humanly possible, right?
- 5 A. That's correct.
- 6 Q. And so, the time and effort that's spent into it?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, you found a projectile underneath the
- 9 driver's side?
- 10 A. Yes, sir.
- 11 Q. And -- and where was the projectile located?
- 12 A. We found a -- a projectile on the floorboard of the
- 13 driver's side floor board.
- 14 Q. Okay. When you say the floorboard ---
- 15 A. I'm sorry, I meant shell casing. We found the projectile
- 16 in the driver's seat.
- 17 Q. Okay. And where was the shell casing found?
- 18 A. There was a shell casing on the floor board.
- 19 Q. Okay. When you say "floor board," I want to make sure I
- 20 understand when you say "floorboard." The floorboard, I look
- 21 at the car and it's got the brakes, the gas, and some of them
- 22 have gear shifts, right?
- 23 A. Yes.
- 24 Q. That's the floorboard?
- 25 A. Yes.

1 Q. Okay. Where exactly was this -- was it found?

2 A. The shell casing or the projectile?

3 Q. The shell casing.

4 A. The shell casing was on the driver's side floorboard.

5 The one we found on the scene was on the driver's side
6 floorboard.

7 Q. Yeah, but, I mean, was it found by the gas, brake, the
8 what?

9 A. The best of my recollection, it was near the center. It
10 was near a CD to that extent. Let me look back at my notes
11 here right quick.

12 Q. Okay.

13 (Brief pause while witness reviews document.)

14 A. It was laying beside a compact disc is about all I can
15 tell you, sir.

16 Q. Okay.

17 A. You'd have to look -- you can look back at the
18 photographs and they would tell you.

19 Q. Okay. And -- and, when you look at a car, you look at
20 the driver's floorboard. In a car the floor board is kind of
21 like (demonstrates) it -- it leans down and the pedals is not
22 -- and the front of the car is not straight down, it's kind of
23 in front of you and the pedals go like underneath? Is that
24 kind of right?

25 A. Yes, sir.

1 Q. And is that how the position of this car was in? Is that
2 how this car was, the pedals was underneath? You did look in
3 the floor board, correct?

4 A. Yes.

5 Q. Okay. And, so, that projectile was down underneath, sort
6 of near the brake or something like that?

7 A. Like I said, I don't recall the exact positioning on the
8 floorboard.

9 Q. But it was ---

10 A. You'd have to look at the photographs and the photographs
11 will tell you exactly. You can see exactly where it was.

12 Q. But it was on the floorboard?

13 A. It was on the floorboard.

14 Q. Okay. And, in that floorboard, when you look at a car,
15 if I'm sitting and driving my car, the steering wheel comes
16 out, right?

17 A. Okay.

18 Q. Is that correct?

19 A. Yes, sir.

20 Q. Was this car like that?

21 A. Yes, sir.

22 Q. Okay. And there's an area, by the steering wheel and the
23 floor back -- the floor board, that is kind of like straight
24 down, correct?

25 A. Okay.

1 Q. I mean, I'm asking you, is that how the car was?

2 A. Uh-huh (affirmative), it's -- it's a normal car.

3 Q. Okay. So, there's an area that's straight, and then,
4 there's an area underneath there that some people have to like
5 stomp to stop the car, right?

6 A. Uh-huh (affirmative).

7 Q. Okay. And this ---

8 A. Okay.

9 Q. And this car was like that, correct?

10 A. Like a normal car, yes, sir.

11 Q. Okay. And the shell casings was found in that underneath
12 part that's like that (demonstrates), right ---

13 A. Like I said, you can look at -

14 Q. --- on the floorboard?

15 A. --- the photographs. I can't tell you exactly where at
16 on the floorboard. I -- I don't recall.

17 Q. Okay.

18 A. I mean, I can -- I don't know how to tell you any other
19 way.

20 Q. Okay. But it was on the floorboard?

21 A. It was on the floorboard.

22 Q. And it was on that stop that's underneath in there,
23 right?

24 A. It was on the floorboard. That's all I can tell you.

25 Q. All right. Okay. Okay. Okay. And -- and -- and the

1 projectile and -- and the casings, that's like the two sides
2 of a bullet, right?

3 A. Projectile means the bullet part that comes -- that's
4 shoots out of the barrel. The shell casing is the part that
5 gets ejected out when the bullet has been shot.

6 Q. And, so, when I -- so, when I shoot a gun, and the bullet
7 comes out, then, the casing comes out, right? Is that what
8 happens?

9 A. If it's an automatic, the shell casing gets ejected. If
10 it's a revolver, it's stays in the cylinder.

11 Q. Oka. So, this is one that came out, right?

12 A. Yes, sir.

13 Q. Okay. Because you found it, right?

14 A. (Witness nods affirmatively.)

15 Q. And those things, when they come out like that, they
16 don't like go like ten (10) feet, do they?

17 A. They -- they do different things. It depends on the gun.
18 It depends on the environment. It depends on a lot of things,
19 you know. They're going to do different things.

20 Q. But they're -- they do come out where the gun is located,
21 correct? They do come out of the gun where the gun is
22 located, correct?

23 A. Are you asking is that where they're laying or what ---

24 Q. No, no. I'm saying, when you're shooting that gun, the
25 front part goes that way (indicating) where it's pointing,

- 1 right?
- 2 A. Uh-huh (affirmative).
- 3 Q. The casing comes out of the gun. If I have the gun right
- 4 here (demonstrates), the casing comes out right here
- 5 (indicating), right?
- 6 A. Yeah, it'll come out ---
- 7 Q. Right.
- 8 A. --- where the bullet is loaded up, yes.
- 9 Q. Right. So, when I shoot that gun, just this part of it
- 10 goes that way, and the -- the casing part goes either up,
- 11 down, or that way, right?
- 12 A. Something like, yes, sir.
- 13 Q. Okay. And, so, if I'm sitting in a car, okay, because
- 14 you don't know where this casing is going to go, do you? You
- 15 -- you don't have any idea? You just shoot it and it goes,
- 16 right?
- 17 A. Yes, sir.
- 18 Q. Okay. So, if I'm sitting in a car and I've got this gun
- 19 right here like in front of me -- in front -- do you follow
- 20 me?
- 21 A. Okay.
- 22 Q. And I shoot this way (demonstrates) for example, correct?
- 23 A. Yeah.
- 24 Q. My projectile will go here (indicating), correct?
- 25 A. Uh-huh (affirmative).

- 1 Q. My shell casing will go -- it could go up and come back
2 down like that (indicating) in theory, correct?
- 3 A. Okay.
- 4 Q. Because it's -- it's inside the car, it can't go out of
5 the car, right? Correct?
- 6 A. It could bounce out; who knows. It depends -- it depends
7 on where you're holding it in the vehicle.
- 8 Q. Okay. If I'm sitting in the driver's seat of the
9 vehicle, and I shoot, if it goes up, it would hit the ceiling,
10 right?
- 11 A. Okay.
- 12 Q. Would you agree with that?
- 13 A. I'll agree.
- 14 Q. And, then, it would go down somewhere, right?
- 15 A. Okay.
- 16 Q. Okay? Or it could go this way (indicating), correct?
- 17 A. They generally go out and up and back.
- 18 Q. So, it could just go this way (indicating), right?
- 19 A. Yeah.
- 20 Q. It could even come out and go this way (indicating),
21 correct, because you don't know, right?
- 22 A. Generally, when they eject, they don't go straight
23 forward, no.
- 24 Q. But you don't know where it would go, right?
- 25 A. They'll bounce around.

1 Q. Okay. So, if I'm sitting in a car, and I'm shooting a
2 gun, then, that projectile could, in fact, land underneath
3 that brake; is that correct?

4 A. The shell casing could.

5 Q. The shell casing could. That's not like -- that -- that
6 that is logical that could happen, correct?

7 A. Well, pretty much anything is possible in a vehicle. It
8 could bounce right.

9 Q. Right. It's not certain, but it's logical, correct?

10 A. It's possible.

11 Q. Okay. All right. And, when you do the investigation and
12 collect evidence in your case, you not only collect evidence
13 of -- of the casing and all of that; you collect other
14 evidence of who fired a gun? Isn't that kind of evidence
15 collected too?

16 A. Are you referring to a gunshot residual kit?

17 Q. Yes.

18 A. Yes, sir.

19 Q. That's collected to?

20 A. Yes, sir.

21 Q. And what that test does, all this forensic stuff, if
22 you're not real technical, you can get caught without really
23 knowing it, correct?

24 A. (No Response)

25 Q. You can have some damaging evidence that you don't

1 realize, correct?

2 A. I'm not exactly sure what you're asking me.

3 Q. Okay. The gunpowder residual test, that is a test to
4 determine whether a gun was fired, correct?

5 A. That's what it's supposed to be, yes.

6 Q. Okay. And that's -- that's a -- that's a tool used, by
7 -- by law enforcement, specifically for that purpose; is that
8 correct?

9 A. That's correct.

10 Q. And -- and that is -- and, so, what that is, is that's to
11 determine whether you, in fact, fired a gun; is that correct?

12 A. That's what we use it for, yes, sir.

13 Q. But, so, if -- if you got to the scene and you said,
14 "Wait a minute, I think Rodney Richey shot him," okay, you
15 would, then, say, "Gun powder" -- "GSR kit," right, Gunshot
16 Residual?

17 A. Yes, sir, GSR.

18 Q. And you would put that on my hands to determine whether I
19 fired a gun; is that correct?

20 A. Yes, sir.

21 Q. And that -- and I don't know, when I fire a gun, there's
22 particles that are left there by the gun because sometimes you
23 can't see them; isn't that correct?

24 A. That is correct.

25 Q. So, that is a sophisticated test; is that correct? A

1 sophisticated test, correct?

2 A. I guess you could say that.

3 Q. So, I, in fact, can fire a gun and walk around and not
4 have any evidence to my eye that I shot a gun; is that
5 correct?

6 A. That is correct.

7 Q. But, when you put that GSR kit on my hands, it's sort of
8 tape thing, right? Is that how it falls off?

9 A. No, sir. There's a -- there's two different things we
10 use. There's one that's got a sticky pad on it.

11 Q. Right.

12 A. And you dab it, on the top part of the hand, as well as
13 the inside of the hand ---

14 Q. Right.

15 A. --- for both hands. And, then, there's also swabs that
16 we take after that. We swab both sides of the hand.

17 Q. So, you're getting the particles down, you know, right?
18 And they're very small particles, correct?

19 A. Yes, sir.

20 Q. And you take those particles and somebody gets in the lab
21 and they get on the microscope and they look at those
22 particles and they can say, "That's gunpowder residual,"
23 correct?

24 A. You'd have to talk to SLED about that. I don't do ---

25 Q. But that's the test -- that's what it tests for, right?

- 1 A. It tests for gunshot residual.
- 2 Q. Okay. All right. So, then, you determine, but not with
3 certainty, but you determine that -- that it's more likely
4 that that person fired a gun, correct?
- 5 A. That's just to help to determine if someone fired a gun,
6 yes, sir. I mean, you would have to talk to SLED about any
7 technicalities with those. All I do is take the test and
8 collect it and send it to SLED.
- 9 Q. But you're familiar with that test?
- 10 A. I'm familiar enough to take the samples and send them to
11 SLED.
- 12 Q. And you're familiar with what the purpose of that test
13 would be?
- 14 A. Yes, sir.
- 15 Q. And you're familiar that, in a shooting case, that is
16 valuable evidence ---
- 17 A. Yes, sir.
- 18 Q. -- of who the shooter is; is that correct?
- 19 A. Exactly.
- 20 Q. And that's a test of necessity, correct?
- 21 A. Yes, sir.
- 22 Q. That's not a test that you do not -- that you just blow
23 off. That is something that's major that has to be done,
24 correct?
- 25 A. That is correct.

1 Q. And, if you had a suspected person, that you believed
2 fired a gun, you -- it would -- it would be derelict in your
3 duty -- I mean, you would not be doing your duty if you did
4 not attempt to have that test; isn't that how major that test
5 is?

6 A. Well, it also depends on other factors, sir.

7 Q. Well, assuming you had access to the person, assuming you
8 could take it, it is a test that you would want every time,
9 correct?

10 A. If the person and the timing is correct, yes, sir.

11 Q. And that would be a big piece of your evidence, correct?

12 A. Yes.

13 Q. And that would be evidence that you would come to court
14 and use or present to determine whether that person shot that
15 gun, right?

16 A. Yes, sir.

17 Q. And it would be a central part, correct?

18 A. It just depends on everything else.

19 Q. It would be a part, right?

20 A. It would -- it should be a part, yes, sir.

21 Q. If you went to the courthouse and you can pick your
22 evidence and choose, you know, whether you have this or that,
23 the gunpowder residual test, being positive for gunshot, it
24 would be up, in the one or two, wouldn't it? It would be high
25 on the rating, wouldn't it?

1 A. I would assume. Like -- like I said, I don't put these
2 cases together. You would have to ask the solicitor about
3 that.

4 Q. But you do, do the test, and that is your job, right?

5 A. Yes, sir.

6 Q. And you do those tests relatively unsupervised, correct?

7 A. Yes, sir.

8 Q. And, so, you have the sophistication and the knowledge
9 and the training and the educational background to determine
10 what tests are -- are important when you investigate a crime
11 scene; is that correct?

12 A. Yes, sir.

13 Q. And, when you go out there, you use the knowledge and
14 sophistication to get the best evidence; is that correct?

15 A. Yes, sir.

16 Q. And, in a shooting, the GSR kit is the best indication of
17 a shooter?

18 (Brief Pause)

19 A. An indication, if that's what you're asking? If you're
20 asking me a question, then, yes.

21 Q. Is it a good indication?

22 A. Yes.

23 Q. Okay. And, so, in this case, do you know whether you did
24 that or not?

25 A. I did a GSR kit on the victim, Mr. Hubbard.

1 Q. Okay. And that was positive he fired a gun, right?

2 A. I have no idea, sir. I never received the results.

3 MR. RICHEY: One moment, Your Honor.

4 (Brief Pause)

5 Q. (By Mr. Richey) And, so, when you got to the scene and
6 you saw Mr. Hubbard in the car, and -- and you're out there
7 doing your investigation, independent investigation, and
8 thorough, correct?

9 A. Yes, sir.

10 Q. Thorough. You determined that a GSR kit needed to be
11 done to determine whether this guy, who is dead in the car,
12 fired a gun; is that correct?

13 A. That's correct.

14 Q. Okay. So, you have some suspicions as to this incident;
15 is that correct?

16 A. I wouldn't say suspicions; I would say this was standard
17 procedure. We do GSR's on the -- if there's a shooting
18 incident, we do GSR's on the victim as well as suspects.

19 Q. Because you want to determine whether the victim is
20 shooting as well as the perpetrator, correct?

21 A. We're trying to find out all the information we can.

22 Q. Right. And, so, you say, "There was a shooting. I want
23 to make sure that this victim is not shooting and this
24 Defendant was shooting." So, you want to make sure both your
25 areas are covered, right?

1 A. We try to cover the whole case, yes, sir.

2 Q. Okay. And, so, in this case, you felt it was of the need
3 to have that done and done timely because there's a time limit
4 on those GSR's kits, isn't it?

5 A. If the victim is alive or a suspect is alive. If the
6 person that's being -- that the testing is being done on, if
7 they're alive, there's a time limit, yes, sir.

8 Q. Okay.

9 A. If they're deceased, there's no time limit.

10 Q. And if they're -- if they're not, for the lack of a
11 better phrase, dead for long, then, you still get in that kind
12 of gray area?

13 A. To the best of my knowledge, from everything I've been
14 taught, it's if the person is deceased, there is no time limit
15 as long as the hands are contained and bagged up. We'll go on
16 and bag the hands, and as long as nothing is getting to them
17 to contaminate them, there's no time limit.

18 Q. And, so, you do that test and you took it to -- to the
19 next person to analyze, correct?

20 A. We sent it to SLED, yes, sir.

21 Q. And you -- and you believe that you done the test
22 properly?

23 A. Yes, sir.

24 Q. And you didn't like foul it up, contaminate it, or any of
25 that stuff?

- 1 A. No, sir.
- 2 Q. So, you took the care that was necessary to do that test
3 and to make sure that the results would be what they would be,
4 correct; is that right?
- 5 A. Whatever SLED determined, yes, sir.
- 6 Q. Okay. And do you believe that the hands was manipulated
7 in any way?
- 8 A. In what sense, sir?
- 9 Q. To do the kit, do you believe the hand was manipulated in
10 any way, the hand, when you done the GSR kit? Did you
11 discover the hand had been washed or manipulated or anything?
- 12 A. It didn't appear to be, no, sir.
- 13 Q. Okay. Did you find the hand was enveloped and the state
14 that the hand would have been at the time that the body was
15 disposed of? Did you believe that it was in the same
16 condition?
- 17 A. To the best of my knowledge, nobody had messed with
18 it ---
- 19 Q. Okay.
- 20 A. --- after we had arrived.
- 21 Q. And -- and nobody told you, in this case, that they
22 contaminated the hand either, correct?
- 23 A. No, sir.
- 24 Q. So -- so, you feel confident in the results from that
25 hand?

- 1 A. Yes, sir.
- 2 Q. Okay. And Officer Hogsed, he was there too when all this
3 was going on, right?
- 4 A. Yes, sir.
- 5 Q. And he didn't raise any concern about the level of
6 competency of the test either, correct?
- 7 A. No, sir.
- 8 Q. And he is familiar with the process as well, correct?
- 9 A. Yes, sir.
- 10 Q. And, if you -- and sometimes, just like any other job,
11 you might miss something, then, you got a good set of eyes to
12 say, "Hey, you missed something," correct?
- 13 A. Good to have another set of eyes there.
- 14 Q. Right, so, that, kind of helps you; kind of checks and
15 balances and it kind of helps to make sure that all the stuff
16 is done right, correct?
- 17 A. Yes, sir.
- 18 Q. And you had his eyes and expertise there as well during
19 all this stuff, correct?
- 20 A. Yes, sir.
- 21 Q. Okay. And, so, he didn't tell you that you done anything
22 that wasn't proper at all, correct?
- 23 A. That is correct.
- 24 Q. And he didn't tell you that this evidence, that is on
25 this sheet that you all generated, he didn't tell you that

1 anything that you put on there, your input, was wrong,
2 correct?

3 A. That is correct.

4 Q. And you were there when all this stuff was being found,
5 correct?

6 A. Everything but the pants. That was collected at a later
7 date.

8 Q. In the water?

9 A. Yes, sir.

10 Q. So, you were there for all of the other stuff?

11 A. Yes, sir.

12 Q. And so, all of the other stuff is accurate to you,
13 correct?

14 A. Yes, sir.

15 Q. Where the -- the footprints and the -- and down here
16 (indicating), all that's accurate to you?

17 A. That's correct, yes, sir.

18 Q. Okay. Let me ask you on what is up there. Do you see
19 number five (5)? Do you see number five (5) up there, that
20 footprint?

21 A. Yes, sir.

22 Q. How far would you say from number five (5) to number
23 eight (8) would be? How far would you say that would be?
24 Would it be ten (10) feet, two (2) feet, three (3) feet, a
25 hundred (100) feet? How far would that be?

- 1 A. Hmmm, I know we took measurements, triangulation
2 measurements, it would probably be best to refer to those.
- 3 Q. Well, let me ---
- 4 A. That should be down there.
- 5 Q. --- ask you, in general terms, if I'm standing right here
6 (indicating), okay, and I'm standing on number five (5), would
7 number eight (8) be to that wall, to the court reporter, or
8 further back?
- 9 A. You're probably looking past the wall to it.
- 10 Q. Past those walls back there (indicating)?
- 11 A. Yeah, probably something similar to that.
- 12 Q. Okay. So, that's about ---
- 13 A. Give or take.
- 14 Q. Yeah. Let's say ---
- 15 A. Like I say, I believe it's got triangulation measurements
16 on there, and those would probably be a little more correct to
17 refer to than ---
- 18 Q. Okay.
- 19 A. --- to my guessmation of something that happened over a
20 year ago.
- 21 Q. Right. But you did -- you do have a feel for that, and
22 you actually were there and you actually seen how far it was,
23 right?
- 24 A. Yes, sir.
- 25 Q. Number four (4) would be a little shorter; is that

1 correct?

2 A. Yes, sir.

3 Q. How far would number nine (9) be from number sixty-two
4 (62), number nine (9) being the car? I'm just going to call
5 it the car standing at the driver's door. I'm just going to
6 call that nine (9).

7 That may not be representative of what nine (9) is, but
8 I'm going to call the front door, for this purpose, of that
9 car, nine (9), okay? What's the distance between nine (9) and
10 sixty-two (62)?

11 A. I wasn't there when those were collected. All I've got
12 to look at is just the diagram there. So...

13 Q. So, you weren't -- okay.

14 A. Right.

15 Q. How far is nine (9) from seven (7)?

16 A. (No Response)

17 Q. And -- and I'll use this diagram to you, me standing here
18 to the wall.

19 A. Hmm, I'm trying to remember how long ago it's been. I'd
20 say it wasn't -- it wasn't real far, maybe to that closer
21 wall, maybe.

22 Q. Okay. Where this lady with the light -- the Carolina
23 color blue on, is that what you're talking about, behind you?
24 To the lady here with the Carolina behind the solicitor, the
25 lady with the Carolina -- I call it Carolina Blue, but ---

- 1 A. Yes, sir.
- 2 Q. Okay. All right.
- 3 A. Maybe to her or a little bit further. I'd say give or
- 4 take.
- 5 Q. Okay. So, it could be as far back as this lady
- 6 (indicating)?
- 7 A. It wasn't real far. I mean, it was close enough you
- 8 could see it no problem.
- 9 Q. Okay. All right. Okay. So, these items, eight (8),
- 10 seven (7), six (6), they are found on -- kind of call them on
- 11 the straight street that runs through there? What street is
- 12 that?
- 13 A. Road.
- 14 Q. Okay. So, these were found close to the straight street,
- 15 correct?
- 16 A. Yes, sir, they were fairly parallel to Westside Road.
- 17 Q. Okay. And they were sitting on the top like in view? I
- 18 mean, they weren't like hid underneath the bushes? They were
- 19 kind of like on top sitting there where you could them?
- 20 A. They were just sitting there, yes, sir.
- 21 Q. Okay. And this road (indicating) -- and this road
- 22 actually runs this way (indicating), correct?
- 23 A. On what way?
- 24 Q. This way (indicating). There's a road right there,
- 25 right?

- 1 A. Yes, sir. There's a road.
- 2 Q. And tracks going this way and that way (indicating),
- 3 right?
- 4 A. Yes, sir. It's like a little frontage road.
- 5 Q. And -- and right there (indicating), there is like a
- 6 grassy area right there right off the road, correct?
- 7 A. Yes, sir, brush and trees, yes, sir.
- 8 Q. Right off the road, right?
- 9 A. Yes, sir.
- 10 Q. And these clothes, the boots and sweater or shirt, they
- 11 were like right off the road, correct? They were just right
- 12 off the area right? They were not -- they were right off the
- 13 road, correct?
- 14 A. Well, they were just a little ways off the road, yes,
- 15 sir. I mean, off into some bushes -- in brush and trees and
- 16 stuff out in there.
- 17 Q. And really the easier access, to where these clothes
- 18 would be, the easier access to that area would be down this
- 19 street versus this street (indicating), correct?
- 20 A. Actually, I found the easiest way was walking along side
- 21 the pond off of the dirt road when we went to collect them due
- 22 to the trees and brush.
- 23 Q. So, this is the street, right?
- 24 A. That's , Road, yes, sir.
- 25 Q. Okay. And this is just right off the street, correct,

1 like that (indicating)?

2 A. Like I said, it's back into some brushes and trees.

3 Q. Okay. But this -- these items were just right off the
4 street and they were readily -- readily visible? They were not
5 hid, correct?

6 A. The items didn't appear to be hidden, no, sir.

7 Q. Okay. So, it wouldn't be consistent -- these items
8 wouldn't be consistent of someone stashing them, would it?

9 A. I couldn't tell you that. I don't know.

10 Q. Okay. It would be consistent that these items were
11 thrown from this way (indicating) instead of this way,
12 correct?

13 A. I couldn't tell you that. I -- I have no idea.

14 Q. Okay. This area right here (indicating), is -- is grass,
15 brush, that kind of stuff, right, right here (indicating)?

16 A. All the way across.

17 Q. Okay. There's pretty thick kind of stuff in there,
18 right?

19 A. Yes, sir.

20 Q. Okay. Right here (indicating); this is the road,
21 correct?

22 A. That's the little dirt road that runs by it, along side
23 and behind the pond, yes, sir.

24 Q. So, if I'm right here (indicating) ---

25 A. Uh-huh (affirmative).

1 Q. --- these items are here (indicating), correct?

2 A. Yes, yes, sir.

3 Q. It's easier for these items -- for me to get these items
4 to here (indicating) from this street right here than this
5 car?

6 A. From -- rather than the vehicle, yes, sir.

7 Q. Okay. So, it would be consistent with the items being
8 taken from here (indicating) to here (indicating), correct?

9 A. Right. I mean, anything is possible. I don't know.
10 Like I said, we got to the items by walking from the side of
11 the pond.

12 Q. Okay.

13 A. It was easier access that way, so, I can't tell you how
14 they got there, if somebody placed them there. I don't -- I
15 don't know if they tossed them or went and placed them or
16 what. I mean, it's all -- all I could do is speculate on
17 that. I couldn't say.

18 Q. Okay. This -- you agree on this diagram that there's no
19 other foot traffic in this diagram other than law enforcement
20 because you had more traffic in here, right, just the shoes
21 from -- from police officers and the EMS? They made some
22 prints in there, correct?

23 A. Yes, sir.

24 Q. And you eliminated their prints because you and Hogsed
25 knew what kind of shoes they had on and all of that, right?

- 1 A. Yes, sir, they were photographed.
- 2 Q. Okay. So, right here (indicating) there's no foot
3 traffic that you found other than law enforcement, correct?
- 4 A. None that I recall. Nothing that we noticed, no, sir.
- 5 Q. Okay. So, because there's no foot traffic here
6 (indicating), that you can recall, then, it would not be
7 consistent, with someone standing there wearing a shoe, other
8 than law enforcement or the shoes that you have marked,
9 correct?
- 10 A. Not necessarily. Because you stand somewhere doesn't
11 necessarily mean you won't leave a shoe print.
- 12 Q. Okay. But you didn't find a shoe print, correct?
- 13 A. No, sir.
- 14 Q. I'm talking about other than law enforcement?
- 15 A. That's correct.
- 16 Q. And that would -- and the ground, the ground was capable
17 of making shoe prints; is that correct?
- 18 A. In -- in some parts, yes, sir.
- 19 Q. Okay. And you didn't find any of them in -- in these
20 parts (indicating), correct?
- 21 A. In those parts, no, sir.
- 22 Q. Okay. So, because you did not find any footprints here
23 (indicating), of anybody other than law enforcement and EMS,
24 would it be probable that no one was standing here
25 (indicating) at the time these clothes were placed there?

1 A. I couldn't tell you, sir. Like I said it's all
2 speculation.

3 Q. But it's not speculation you didn't find any footprints,
4 correct?

5 A. No, we didn't ---

6 Q. That's not speculation?

7 A. --- we didn't find any shoe prints other than law
8 enforcement.

9 Q. So, that's not speculation, correct?

10 A. No, sir. That's ---

11 Q. That's a fact?

12 A. I'm telling you that's what we saw.

13 Q. That's fact?

14 A. Yes, sir.

15 Q. Okay.

16 A. I can't tell you how the clothes got where they did.
17 That's just where we found them.

18 Q. Okay. So, the fact of the matter is you found no prints
19 in here (indicating)? That's a fact, right? That is a fact?

20 A. There were no prints, yes, sir.

21 Q. Okay. All right. So, because you didn't find any prints
22 by four (4), one (1), ten (10), nine (9), and three (3), that
23 area, okay, you would not feel comfortable testifying that
24 there were prints there and that someone was standing there?
25 You could not feel comfortable in making that conclusion; is

1 that correct?

2 A. Say that again.

3 Q. You couldn't -- you would -- you would not feel
4 comfortable in testifying saying that there were prints --
5 footprints there (indicating)? You wouldn't feel comfortable
6 in testifying other than law enforcement and EMS, correct?

7 A. That's all we observed, yes, sir.

8 Q. Okay. So - okay.

9 (Brief Pause)

10 Q. And you were there for all the -- the fingerprints and
11 all that stuff? You were there when that was done?

12 A. When we fingerprinted the car, yes, sir.

13 Q. Yeah. And fingerprinted on the outside of the car and
14 all that?

15 A. Yes, sir.

16 Q. So, when you took a fingerprint, on the passenger's door
17 handle, where was that at? The passenger -- do you remember
18 any fingerprints being lifted from the passenger's door handle
19 or anything?

20 A. I don't recall right off. We'd have to look at the
21 latent prints that were lifted, the cards.

22 Q. Okay. So, would that be reasonable to do?

23 A. What do you mean reasonable to do?

24 Q. I mean, when you do the investigation, would it be
25 reasonable to lift prints off the passenger's car -- off the

1 handle of the passenger's door? Wouldn't that be reasonable
2 to do?

3 A. Yes, sir, it would be reasonable, yes, sir.

4 Q. Because that could tell you who was in the car and not in
5 the car, right?

6 A. Yes, sir.

7 Q. It could if you get a positive match?

8 A. Yes, sir.

9 Q. Okay. And that would be something, when you take it from
10 the scene, you would expect it to be analyzed; is that
11 correct?

12 A. Yes, sir.

13 Q. Because you're not out there wasting your time getting
14 evidence not for it to be analyzed, correct?

15 A. That is correct.

16 Q. And you know that, when you get this evidence, and you
17 send it to SLED, it needs to be done and it needs to be done
18 timely because that's your job, correct?

19 A. Yes, sir.

20 Q. It's sort of like a football game. The guard has to
21 block, so, the running back can run, correct?

22 A. Uh-huh (affirmative).

23 Q. Because, if you don't, you don't score a touchdown,
24 right?

25 A. Right.

1 Q. So -- so, you just do your part to block him, and you
2 hope that the person behind you runs the right way, correct?

3 A. Okay.

4 Q. Okay. And that's what you expect, correct?

5 A. Okay. Yes, sir.

6 Q. Is that "yes" or "no"?

7 A. Yes, sir. I expect people to do their job.

8 MR. RICHEY: Okay. Thank you, sir, no other questions.

9 THE WITNESS: All right, sir.

10 THE COURT: Mr. Willingham?

11 REDIRECT EXAMINATION by MR. WILLINGHAM: 5:11 P.M.

12 Q. All right, let's go back to the -- the beginning.

13 A. Okay.

14 Q. And deal with the casings and the gun.

15 A. Yes, sir.

16 Q. If I shoot a revolver, the casings stay in the gun?

17 A. Yes, sir.

18 Q. If I shoot an automatic or a semi-automatic, the casings
19 eject?

20 A. Yes, sir.

21 Q. The gun throws it out, so, it can get the next bullet
22 ready to shoot?

23 A. Yes, sir.

24 Q. All right. Some guns eject to the right?

25 A. Yes, sir.

- 1 Q. And some guns eject to the left?
- 2 A. Yes, sir.
- 3 Q. And some guns eject straight up?
- 4 A. Yes, sir.
- 5 Q. You cannot tell me, based on where you find a shell
- 6 casing, where a gun was fired, can you?
- 7 A. No, sir.
- 8 Q. Once it goes up, right, or left, it can go anywhere?
- 9 A. That's correct.
- 10 Q. Fair?
- 11 A. Yes, sir.
- 12 Q. It could ricochet off things?
- 13 A. Yes, sir.
- 14 Q. All right. But you did find a projectile in the
- 15 floorboard of the car; is that right?
- 16 A. A shell casing.
- 17 Q. Okay. That's right. I'm sorry, a shell casing.
- 18 A. No problem.
- 19 Q. That's what we've been talking about, I'm sorry. And all
- 20 I've got, Investigator, is a little bitty pictures, but we're
- 21 going to make do with what -- what -- what I got.
- 22 (Whereupon, State's Exhibit Number 58 was marked for
- 23 identification.)
- 24 Q. (By Mr. Willingham) I'm showing you State's Exhibit
- 25 Number 58. Do you recognize those photographs?

1 (Brief pause while witness examines exhibit.)

2 A. Yes, sir, they look like the photos that we took of the
3 shell casing that was on the driver's side floorboard of the
4 vehicle.

5 Q. Okay. So, when you kept saying, "I need to see my
6 picture," "I need to see my photographs," that's what you
7 needed to see?

8 A. Yes, sir.

9 Q. All right. And does that show where it is accurately?

10 A. Yes, sir.

11 MR. WILLINGHAM: Your Honor, I move State's 58 into
12 evidence.

13 THE COURT: Any objection?

14 MR. RICHEY: No objection.

15 THE COURT: Without objection, it's received.

16 (Whereupon, State's Exhibit Number 58 was admitted into
17 evidence without objection.)

18 Q. (By Mr. Willingham) I'll show you on this overhead
19 State's 58, so, you can explain to the jury.

20

21 (Off-the-Record Comments)

22 (State's Number 58 shown on overhead.)

23 Q. Tell the jury what they're seeing.

24 A. That would be a spent shell casing on the floorboard of
25 the driver's side of the vehicle. It's that little mark there

- 1 to the left of the CD ---
- 2 Q. All right.
- 3 A. --- on the ---
- 4 Q. This is the driver's side floorboard (indicating)?
- 5 A. Yes, sir.
- 6 Q. There's the steering wheel and there's the driver's seat
- 7 (indicating)?
- 8 A. Yes, sir.
- 9 Q. That's a CD (indicating)?
- 10 A. Yes, sir.
- 11 Q. The same CD?
- 12 A. Yes, sir.
- 13 Q. The same CD (indicating)?
- 14 A. Yes, sir.
- 15 Q. And that's the casing (indicating)?
- 16 A. That's the casing.
- 17 Q. That's where it was when you found it?
- 18 A. Yes, sir.
- 19 Q. All right. Can you tell me, based on it being located
- 20 there, where the gun that fired it was?
- 21 A. No, sir.
- 22 Q. Okay. No way to do that?
- 23 A. No, sir.
- 24 Q. All right. Now, let's move on to gunshot residual.
- 25 A. Okay.

- 1 Q. Gunshot residual, when you fire a gun, stuff comes out?
- 2 A. Yes, sir.
- 3 Q. A projectile comes out?
- 4 A. Yes, sir.
- 5 Q. And various gases that power that projectile come out as
- 6 well?
- 7 A. Yes, sir.
- 8 Q. If I fire a gun, I may have gunshot residual on me?
- 9 A. You may, yes, sir.
- 10 Q. Okay. If I handle a gun that's been fired, can I get it
- 11 that way?
- 12 A. I would say it's possible.
- 13 Q. All right. If I am near a gun, when it's fired, even
- 14 though somebody else is doing the firing, can I get it on me?
- 15 A. Yes, sir.
- 16 Q. All right. So, just because I have gunshot residual does
- 17 not mean that I fired a gun necessarily, does it?
- 18 A. That is correct.
- 19 Q. There other things that can happen and cause that?
- 20 A. Yes, sir.
- 21 Q. All right. And you said you did one on this victim?
- 22 A. Yes, sir.
- 23 Q. Now, that victim -- because the victim was dead, there
- 24 was no time constraint?
- 25 A. That's correct.

1 Q. All right. You could do it any time?

2 A. That's correct.

3 Q. And the reason for that is those things that are left on
4 your hand, if you're moving around, your body absorbs them; is
5 that right?

6 A. I -- I don't know all the details on that. I just know
7 there's no time restraints.

8 Q. Okay. Are there time restraints on a live person?

9 A. Yes, sir.

10 Q. Why?

11 A. I understand -- I just know there are time restraints as
12 far as ---

13 Q. Okay.

14 A. --- whether it's the body absorbing or the wearing off.
15 I -- I couldn't tell you. I -- I don't know that.

16 Q. That's fine. That's fine. It's not in your area of
17 expertise, and I won't -- I won't the pressure you any more on
18 it. But, what is the time restraint?

19 A. Six (6) hours.

20 Q. All right. So, if someone is not arrested until ten (10)
21 hours later, there ain't no point in doing a test, right?

22 A. Not much, no, sir.

23 Q. Okay. Because they could have fired a gun and not have
24 GSR on them?

25 A. That is possible.

1 (State's Number 9 on overhead.)

2 Q. All right. Footprints, we talked about the footprints.
3 We talked about distances. Any idea how long those had been
4 there?

5 A. I have no idea, sir.

6 Q. There's no way to know, is there?

7 A. No, sir.

8 Q. Despite all your training, education, and background,
9 there's no way to say those footprints were left there on
10 February 17th ---

11 A. I couldn't tell, no, sir.

12 Q. --- versus February 1st?

13 A. I couldn't tell, no, sir.

14 Q. All right. And, if law enforcement is walking in this
15 area (indicating), it's not an unrealistic they may -- they
16 could have walked over a footprint?

17 A. That is possible.

18 Q. And, when you walk on top of a footprint, it's gone; is
19 that fair?

20 A. Generally -- generally, yes, sir.

21 Q. Okay. Now, we talked about measurements, distances from
22 place to place. State's Exhibit Number 9 has -- has these
23 items marked and their locations, right?

24 A. Yes, sir.

25 Q. Also, they have what's called reference point "A" and

1 reference point, "B"?

2 A. Yes, sir.

3 Q. What's that?

4 A. That's set points that we pick our place. Those were
5 nails that were hammered into the roadway.

6 Q. Okay.

7 A. And we use those to triangulate the position of pieces of
8 evidence. And what that does is we'll take a measurement from
9 the first point and measure to each item, and, then, take
10 measurements, from the other point, and measure those items as
11 well. And that way we get a triangulation of where that item
12 is and be able to place it back.

13 Q. Okay.

14 (Brief Pause)

15 Q. From point "B" to number four (4), how far is it?

16 (Brief Pause)

17 A. From "B" to number four (4) would be forty (40) feet.

18 Q. Okay. I want to show you State's Exhibit Number 8.

19 (State's Number 8 shown on overhead.)

20 Q. It's the actual photograph -- aerial photograph of this
21 area. And I'm going to let you point it out.

22 (Laser pointer handed to witness.)

23 Q. In that picture, where was the car when you all found it?

24 A. The car was right in there (indicating).

25 Q. All right. Where were the footprints when you found

- 1 them?
- 2 A. If I remember correctly, they were up in there
- 3 (indicating).
- 4 Q. Okay. And that you say is forty feet (40') from the
- 5 center of Westside Road?
- 6 A. We -- yes, sir, it would be right up in here
- 7 (indicating).
- 8 Q. Okay. Where were the Timberland boots and sweatshirt
- 9 found?
- 10 A. Over in this area (indicating).
- 11 Q. Okay. Were they just lying out on the grass or were they
- 12 in where you're pointing in those bushes and trees and shrubs?
- 13 A. They were amongst the -- there was trees up along there
- 14 (indicating), and then, after the trees, there was some tall
- 15 brush and grass.
- 16 Q. Okay.
- 17 A. So, they were up in that area.
- 18 Q. All right. Can you say that those items got there by
- 19 being -- coming from the — Road?
- 20 A. I can't say for sure, no.
- 21 Q. Can you say they came from the dirt road?
- 22 A. I can't say for sure.
- 23 Q. If a person takes and slings them, there ain't no way you
- 24 would know where it came from, is it?
- 25 A. No, sir. All I can do is speculate. I -- I have no idea

1 which way they came from.

2 Q. All right. From the center of this -- well, there's a
3 reference point -- there's another reference point in the
4 center of this road (indicating), isn't there?

5 A. Yes, sir. It -- up around in here (indicating).

6 Q. From the center of that road to these boots, how far is
7 it?

8 A. From point "A" to the boot farthest to the left was
9 twenty-six foot, seven inches (26'7") and to the boot that was
10 closest to the vehicle would be thirty-three foot (33'). And
11 that's from the -- from the point that was over here
12 (indicating).

13 Q. Okay. So, from -- show me -- show me, you said thirty-
14 three foot (33'); from where to where?

15 A. That point was, according to this diagram, about right in
16 here (indicating).

17 Q. From there to the shoes is thirty-three feet (33')?

18 A. The shoes were up in here, yes, sir.

19 Q. All right. So, it's not laying out here beside the road?

20 A. No, sir, not right beside.

21 Q. Thirty-three foot (33') away?

22 A. Yes, sir.

23 MR. WILLINGHAM: Okay. Thank you. That's all I have,
24 Judge.

25 THE COURT: Mr. Richey, recross?

1 MR. RICHEY: Thank you, Your Honor.

2 RECROSS EXAMINATION by MR. RICHEY:

5:19 P.M.

3 Q. Sir, law enforcement, they're not clumsy, are they? When
4 they come out there, they know what they're doing, correct?

5 A. Yes, sir.

6 Q. They don't go out there and walk all over the place and
7 cover things? I mean, that's -- they don't do that because
8 they know the importance of that scene, correct?

9 A. Yes, sir.

10 Q. And, so, when they go out there, they go out there with
11 care, correct?

12 A. Yes, sir.

13 Q. Okay. So, to say they went out there and -- and did all
14 this to footprints would not be -- would not be of their
15 training and their -- their ability and the proper credit they
16 should get; isn't that correct?

17 A. It definitely wouldn't happen on purpose, no, sir.

18 Q. Right, because these are skilled people, right?

19 A. Yes, sir.

20 Q. And they take pride in what they're doing?

21 A. Yes, sir.

22 Q. Okay. Also, this area that's been explained by the
23 prosecutor (indicating) -- and this is the actual area,
24 correct?

25 A. Yes, sir.

1 Q. This area what -- what's unique about it -- this was
2 February; isn't that correct?

3 A. Yes, sir.

4 Q. And in February, this -- this scene in June would be
5 totally different, correct?

6 A. Yes, sir.

7 Q. Because all of this stuff (indicating) would be grown up
8 and all of that, right?

9 A. Yes, sir.

10 Q. And you see in here (indicating), when you look, from the
11 street, you know, if I'm looking for the street in this area
12 (indicating), you see how that brush is thinned out where I
13 actually can see the lake?

14 A. Yes, sir.

15 Q. Okay. I can see that from the street, correct?

16 A. Yes, sir.

17 Q. Okay. So, this area (indicating) is not really grassy
18 and woody as -- it's actually kind of dead at this point,
19 right?

20 A. There's still trees there and brush and stuff like that,
21 yes, sir.

22 Q. But the brush is dead, correct?

23 A. Yes, sir.

24 Q. It's not in full bloom; is that correct?

25 A. That's correct.

- 1 Q. Okay. And that is why you can see -- up here
- 2 (indicating) you can see the lake by that tree, correct?
- 3 A. Yes, sir.
- 4 Q. And -- and, during the spring time, you can't really see
- 5 through there like that because it's grown up, correct?
- 6 A. I don't know. I haven't gone by there in spring to look.
- 7 Q. But that would have a tendency in spring to grow; is that
- 8 correct?
- 9 A. I would think so, yes, sir.
- 10 Q. Okay. And, so, those clothes and boots that you find
- 11 here (indicating), won't be -- all this stuff up here
- 12 (indicating), where you can see through, that's where those
- 13 clothes and boots are, right?
- 14 A. Well, they were in that area, yes, sir.
- 15 Q. Okay. They were in the area where you can see through
- 16 and see the lake, correct?
- 17 A. Yes, sir.
- 18 Q. Okay. So, to say that these boots were in some grassy
- 19 grown up area would not be accurate because you can see the
- 20 lake through the top, correct?
- 21 A. It's a brushy area.
- 22 Q. Okay.
- 23 A. Like I said, we had trouble taking measurements. To give
- 24 you an idea, of the type of growth, we had a little bit of
- 25 trouble getting some measurements due to the -- the growth

1 there. So, we had to deal with that, so, that's gives you an
2 idea -- if that gives you an idea of the growth that was
3 there.

4 Q. And -- and -- and glass, there was glass and stuff was
5 here, and this protected the projectile and all this shooting
6 out and you don't know how he was shot and all of this stuff?

7 A. Yes, sir.

8 Q. Okay. Isn't what you do -- it's sort of like a little
9 puzzle, right? In and of itself, one -- one piece might not
10 mean that much individually, correct?

11 A. Okay.

12 Q. Because you're putting a puzzle together, right?

13 A. Yes, sir.

14 Q. Okay. So, when you find one piece of evidence in a
15 certain spot, it may lead you to do two or three other things,
16 correct?

17 A. Yes, sir.

18 Q. Okay. So, the existence of that shell and its location
19 required you to take other action, correct?

20 A. Yes, sir.

21 Q. When you can combine the GSR kit, along with that shell
22 being in that location, you put those two together to
23 determine whether a gun was fired or not? You don't -- you
24 put them together in your analysis, correct?

25 A. Well, if you find a shell casing, you got a pretty good

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

HONORABLE ROGER L. COUCH

Case No: 2007-GS-42-625

STATE OF SOUTH CAROLINA,

RESPONDENT,

against

ISAIAH WALKER,

APPELLANT.

RECORD ON APPEAL

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1 idea that a gun was fired.

2 Q. Okay. And, when you, then, also have the person sitting,
3 in the car in the seat, where the shell or the casing was
4 found, below their feet, you come to another conclusion,
5 correct? You come to -- you have a -- that causes you to do
6 certain things, correct?

7 A. What are you getting at?

8 Q. In your mind, there's a probability that person could
9 have fired a gun, correct? Whether you know it or not,
10 there's a possibility, right?

11 A. Yeah, there's a possibility.

12 Q. Right.

13 A. We don't know, we -- that's why we do a gunshot residual
14 kit.

15 Q. Exactly. You -- you say the shell is down here
16 (indicating), and we don't know; go test the hand to see
17 whether a gun was fired, correct?

18 A. Standard procedure.

19 MR. RICHEY: Thank you.

20 THE COURT: Mr. Willingham?

21 MR. WILLINGHAM: No, sir, nothing further.

22 THE COURT: You may step down. And thank you very much.

23 THE WITNESS: Thank you.

24 MR. WILLINGHAM: Judge, we'd ask that he be excused.

25 THE COURT: Any objection?

1 MR. RICHEY: None.

2 THE COURT: Sir, you're excused. Thank you very much
3 for coming.

4 (The witness stepped down from the witness stand and was
5 excused.)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, I told you we would try to stop, as close to five
8 o'clock (5:00) as we could, when a witness is finished. And
9 it's not quite 5:30 at this point in time, so, we're going to
10 break for the evening.

11 I'll give you the same cautions that I gave you when we
12 broke for lunch. Please, do not discuss the case with anyone.
13 You've only heard part of the testimony. Obviously, there's
14 a lot more information to come and we'll charge you concerning
15 the law.

16 Also, again, do not attempt to gather any information
17 outside of the courtroom. Your oath is to decide the case
18 solely upon the evidence that's presented and the law as I
19 give it to you.

20 Should you happen to see, hear, or read any type of media
21 report concerning this case, please, do not complete that
22 report; don't read it. Again, that -- those sources may
23 contain information which is not admissible into evidence and
24 shouldn't be considered by you in reaching a verdict in this
25 case.

1 Again, should anyone attempt to contact you, concerning
2 your participation in this trial during the break, please,
3 report that to the Court upon your return and we'll take the
4 appropriate action.

5 At this time, I'm going to ask you, to return to the jury
6 room, at 9:30 in the morning. We should be in a position to
7 resume the case at that point in time. I hope you have a good
8 evening and you're free to go. Thank you very much.

9 (Whereupon, the jury was excused for the evening and
10 exited the courtroom at 5:26 p.m.)

11 **THE COURT:** All right. Court will be adjourned until
12 9:30 in the morning. The Defendant remains in custody. Thank
13 you very much.

14 (Whereupon, court was adjourned at 5:27 p.m.)

15 (Whereupon, State's Exhibit Numbers 59 and 60 were marked
16 for identification before the trial reconvened.)

17 (Court reconvened on Wednesday, May 30th, 2007, at 9:34
18 a.m.)

19 **BAILIFF:** Court come to order.

20 **THE COURT:** Thank you very much. You can be seated.

21 (The audience in the courtroom sat as requested.)

22 (Off-the-Record Comments)

23 **THE COURT:** All right. Is the State ready, Mr.
24 Willingham?

25 **MR. WILLINGHAM:** Yes, sir, Your Honor.

1 THE COURT: Is the Defense ready, Mr. Richey?

2 MR. RICHEY: Yes, sir.

3 THE COURT: Bring the jury back.

4 (The jury entered the courtroom at 9:36 a.m.)

5 THE COURT: All right. The record should reflect that
6 all jurors have returned to the courtroom. I trust everyone
7 has had a good evening and ready now to begin the trial of the
8 case.

9 When we ended the case yesterday afternoon, the State was
10 in the process of presenting its witnesses. And, at this
11 time, Mr. Willingham, you may call your next witness.

12 MR. WILLINGHAM: Judge, we call Kevin Bobo.

13 THE COURT: Come forward, sir, and be sworn.

14 (Mr. Bobo stepped forward to be sworn.)

15 (Whereupon,

16 SERGEANT KEVIN BOBO

17 having been first duly sworn, testified as follows:)

18 THE COURT: Sir, once you're seated, move as close to
19 the microphone as you can and state your full name.

20 THE WITNESS: Kevin Gregory Bobo.

21 THE COURT: Mr. Willingham, your witness.

22 MR. WILLINGHAM: Thank you, Judge.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION by MR. WILLINGHAM:

9:38 A.M.

25 Q. Mr. Bobo, where do you work?

1 A. The Spartanburg County Sheriff's Office.

2 Q. How long have you been in law enforcement?

3 A. Nineteen and a half (19 ½) years.

4 Q. Okay. And is it fair to say you're the case agent for
5 this case?

6 A. Yes, sir.

7 Q. On February 17th, two thousand and six (2006), did you go
8 to Westside Drive?

9 A. I did.

10 Q. And what did you find?

11 A. There were numerous uniformed patrol officers, on the
12 scene, some ambulance personnel, the litter control officer
13 and also members of the Roebuck Fire Department.

14 Q. I'm showing you a picture, State's Exhibit Number 1,
15 which is the vehicle. Is that how you found it there that
16 day?

17 A. Yes, sir.

18 Q. And it's got a tag on it, "556PLU," did you try to find
19 out who the vehicle was registered to?

20 A. Yes, sir. That came back to the victim, Jeffrey
21 Hubbard's father, Ken Hubbard.

22 Q. And that's Mr. Hubbard here in the courtroom
23 (indicating)?

24 A. Yes, sir.

25 Q. Okay. Describe how the victim was found. Describe --

1 describe how he was.

2 A. The victim was, in the back seat, of this small white
3 Ford Probe. It looked like he was placed in the car, from the
4 passenger side, towards the driver's side. It was like he was
5 sideways in the back seat with his left shoulder resting
6 against the back of the driver's side seat.

7 Q. Okay. So, he wasn't sitting in the back seat with his
8 back up against the back seat?

9 A. No, sir.

10 Q. He was actually turned around with his back up against
11 the driver's seat?

12 A. Correct.

13 Q. Or his shoulder up against the driver's seat?

14 A. Yes, sir.

15 Q. What efforts did you do to begin to find out who our
16 victim was?

17 A. Once we ran the tag on the car, and found out who the car
18 was registered to, I sent two other detectives, Detective
19 William Gary and Detective Jason Bryant to the address in
20 Moore that the tag came back to. And, then, one of our
21 forensic officers handed me a paycheck stub.

22 Q. And where was that paycheck stub from?

23 A. It was from the City of Spartanburg.

24 Q. Who was it issued to?

25 A. Jeffrey Hubbard, the victim.

1 Q. All right. Did you also have access to State's Exhibit
2 Number 13, which is the driver's license and the credit
3 card ---

4 A. At some point ---

5 Q. --- or debit card?

6 A. At some point that day, yes, sir.

7 Q. Okay. Did you also receive a physical description of Mr.
8 Hubbard, what he looked like?

9 A. Once Detective Gary and Bryant got out, at the parents'
10 residence, and spoke to the parents, and got a physical
11 description of the victim from them, I believe I had also
12 talked to a supervisor at the Swim Center.

13 The key thing for me was I believe Jeff's mother told
14 Detective -- Detectives Bryant and Gary that he should have a
15 tattoo on one of his shoulders. And the subject I was looking
16 at in the car had that tattoo.

17 Q. Okay. What was the next step? And forensics come out
18 there and they begin processing the scene and the car; is that
19 correct?

20 A. Yes, sir.

21 Q. Okay. And that's some of the folks we heard from
22 yesterday?

23 A. Yes, sir.

24 Q. What did you do, as far as your next step, in your
25 investigation?

1 A. Also from talking to -- correction -- from the other
2 detectives, talking to the mother, I also found out that she
3 had spoke to him on the phone earlier that day and he told her
4 he was on the way to the bank, found out which bank it was.

5 And I sent Detective Taylor to the CPM Credit Union on
6 East Blackstock Road in an effort to gather information there.

7 Q. Okay. And those records were tracked down by another
8 investigator?

9 A. Correct.

10 Q. Okay. Did you ever make an effort to find out who the
11 victim may have been with that day?

12 A. From talking to one of the supervisors at the Swim ---

13 MR. RICHEY: I'm -- I'm -- I'm going to object to the
14 hearsay, the supervisor telling him.

15 THE COURT: Well, he has not indicated that he is going
16 to quote anyone at this point in time, he just said from
17 talking to, so, I'm going to overrule the objection at this
18 point in time. I will caution the witness, however, that he
19 should not quote anyone who is not a party to this action or
20 unless there is some exception to the hearsay rule. You may
21 proceed.

22 MR. WILLINGHAM: Thank you, Judge.

23 Q. (By Mr. Willingham) Who -- who did you talk to in an
24 effort to find out who Jeffrey Hubbard hung around with, who
25 he was friends with?

1 A. The supervisor I talked with at the Swim Center.

2 Q. Okay.

3 A. That's how I learned that he had called in sick that
4 morning. And I also found out that -- who one of his close
5 friends and associates was at the Swim Center.

6 Q. Okay. After talking, to the friends and associates at
7 the Swim Center, and talking to his parents, who were you
8 looking for?

9 A. Later on that day we had received information, about two
10 subjects that we needed to talk to, one of them being a Chavez
11 Miller and the other being a Isaiah Walker.

12 Q. Okay. And, so, did you -- what did you do in an effort
13 to find Mr. Chavez Miller?

14 A. It was after dark when we left the crime scene that
15 night. We met back at the office, and three investigators
16 went to Roebuck looking for Chavez Miller, while me and two
17 other investigators went to Moore looking for Isaiah Walker.

18 Q. Was Chavez Miller ever found?

19 A. Yes.

20 Q. Where?

21 A. In the Spartanburg County Jail.

22 Q. And he was in jail on drug charges?

23 A. Yes, sir, that the City had charged him with earlier that
24 day.

25 Q. Okay. So, you went to look for Isaiah Walker?

1 A. Yes, sir.

2 Q. The Defendant?

3 A. Yes, sir.

4 Q. Where did you go to look for him?

5 A. To his residence on _____ Road in Moore.

6 Q. Okay.

7 (Brief Pause)

8 Q. And what's the address on _____ ?

9 A. One, eleven (111).

10 Q. How close is that to the scene where Jeffrey Hubbard's
11 body was found?

12 A. Approximately a quarter (1/4) of a mile.

13 MR. WILLINGHAM: I'll get this ready, Your Honor. I
14 have a few more questions if it please the Court.

15 (Brief pause while Mr. Willingham retrieves exhibit and
16 places on overhead.)

17 (State's Number 6 shown on overhead.)

18 Q. I'm showing you on the overhead State's Exhibit Number 6.
19 And it's an aerial photograph we discussed yesterday. Again,
20 this is where the -- the pond where the -- Mr. Hubbard's body
21 was found (indicating).

22 A. Yes, sir.

23 Q. And this is 26 (indicating).

24 A. Yes, sir.

25 Q. And this is -- this is what?

1 A. Road, Mr. Walker's residence.

2 Q. Okay. You said how far away is it?

3 A. I'd say no more than a quarter of a mile.

4 Q. Okay. The easiest way to get from Mr. Walker's house to
5 the pond area would be what?

6 A. From where Mr. Walker lives, on Road, you
7 would go back out Road, and that's Sundial Drive
8 that runs to the right, that goes back toward Anderson Mill
9 Road.

10 You'd come to the stop sign at and Old Anderson
11 Mill and you would cross back over I-26 and go down
12 Road, take a right on Road, off Old Anderson Mill,
13 and follow it around till it starts to parallel -- paralleling
14 with I-26 again until you reach the pond area. Then,
15 Road dead ends on past where the photograph stops.

16 Q. Okay.

17 (Whereupon, State's Exhibit Number 61 is marked for
18 identification.)

19 Q. I'm showing you what's been marked as State's Exhibit 61.
20 Do you recognize that photograph?

21 (Exhibit handed to witness.)

22 A. Yes, sir.

23 Q. What is that?

24 A. That's an aerial photograph of Mr. Walker's residence.

25 MR. WILLINGHAM: Your Honor, at this time I'll move

1 State's 61 into evidence.

2 THE COURT: Any objection?

3 MR. RICHEY: No objection.

4 THE COURT: Without objection it's received as marked.

5 (Whereupon, State's Exhibit Number 61 was admitted into
6 evidence without objection.)

7 (State's Number 61 shown on overhead.)

8 Q. (By Mr. Willingham) So, you and other investigators --
9 who was the other investigator?

10 A. There were two others. It was Detective William Gary and
11 Detective Jason Bryant.

12 Q. Okay. And you all went to this location?

13 A. Yes, sir. Detective Bryant was with me in my car and
14 Detective Gary was following us in his car.

15 Q. About what time did you get there?

16 (Brief Pause)

17 A. It was late. It was around nine (9:00) or ten o'clock
18 (10:00) maybe later than that.

19 Q. It was dark outside?

20 A. Yes, sir.

21 Q. Did you pull into the driveway or park on the side of the
22 road?

23 A. I pulled into the driveway.

24 Q. Okay. And whenever you got out, what happened?

25 A. Detective Bryant slipped on something in the driveway.

1 Q. Were you able to tell -- did you look to see what he
2 slipped on?

3 A. Yes, sir. We all three did.

4 Q. What was it?

5 A. A shell casing.

6 Q. At that point, did you look for other types of evidence?

7 A. Yes, sir.

8 Q. And did you find any evidence?

9 A. Yes, sir.

10 Q. What else did you find?

11 A. We found numerous shell casings and blood in the driveway
12 and also in the grass to the left of the driveway. And, then,
13 in the grassy area in front of the front porch.

14 Q. Okay. And you were -- were you involved in the
15 collection of any of that evidence?

16 A. I was present while it was being collected. I didn't
17 personally collect it.

18 Q. But another officer, with the forensics unit, came out
19 and actually processed that scene?

20 A. Yes, sir, Investigator Rust Holthaus.

21 Q. Rust Holthaus came out and did that?

22 A. Yes, sir.

23 Q. All right. Once you saw the blood and the shell casings,
24 in the driveway, what did you do?

25 A. By that time, the three other investigators who had been

1 to Roebuck looking for Chavez Miller, we notified them by
2 phone of what we had found. Two of them came to where we
3 were, Sergeant Allen Wood and Investigator David Taylor.

4 Detective Reid Lindsey, we informed him by phone of what
5 we had found and he went to the office and prepared a search
6 warrant for that residence.

7 Q. Okay. Did you stay at the scene?

8 A. Yes, sir.

9 Q. Did the Defendant -- who was the next person on the scene
10 besides law enforcement?

11 A. While we were on the scene, waiting on Detective Lindsey
12 to bring us the search warrant back, the Defendant's father,
13 Mr. Floyd Walker, came home.

14 Q. Okay. And did you tell him why you were there?

15 A. Yes, sir.

16 Q. What happened as a result of your conversation with him?

17 A. He notified his wife and his wife -- he -- I can't
18 remember if he actually went and picked his wife up, or she
19 arrived there by some other means.

20 Q. Okay. Did the parents allow you to look inside for the
21 Defendant ---

22 A. Yes, sir.

23 Q. --- Isaiah Walker?

24 A. They gave us a verbal consent to search.

25 Q. And did you go inside?

- 1 A. Yes, we did.
- 2 Q. Did you find the Defendant inside?
- 3 A. No, we did not.
- 4 Q. Did they assist you in trying to locate him?
- 5 A. Very much so, yes, sir.
- 6 Q. Were they successful in trying -- how did they try to
- 7 reach him?
- 8 A. They called his mobile phone numerous times trying to
- 9 reach him.
- 10 Q. And were they successful?
- 11 A. No.
- 12 Q. Okay. When you were looking, for Mr. Walker in his
- 13 house, you didn't find him?
- 14 A. No, sir.
- 15 Q. Did you find anything of interest?
- 16 A. Yes, sir.
- 17 Q. What?
- 18 A. We found a Timberland boot box in his room.
- 19 Q. Now, why was that of interest to you?
- 20 A. Because we had recovered a pair of Timberland boots at
- 21 the scene on the back of the pond.
- 22 Q. Do you remember the size of the boots at the scene?
- 23 A. Ten and a half (10 ½).
- 24 Q. And you say you found a Timberland boot box. Do you
- 25 remember the size of the boots on that box?

1 A. Ten and a half (10 ½).

2 (Whereupon, State's Exhibit Numbers 62 and 63 were marked
3 for identification.)

4 Q. Where were the boot -- sorry -- where were the boots box
5 -- where was the boot box located?

6 A. As you enter his bedroom, in the left front of the house,
7 the box was sitting on the floor on the right-hand side of the
8 wall as you enter his bedroom.

9 Q. Okay. I'm going to show you State's Exhibit Numbers 62
10 and 63 and ask if you recognize those?

11 (Exhibits handed to witness.)

12 A. Yes, sir, this is pictures of the boot box in his room.

13 MR. WILLINGHAM: Okay. Your Honor, at this time, I move
14 62 and 63 into evidence.

15 THE COURT: Any objection?

16 MR. RICHEY: No objection.

17 THE COURT: Without objection, they'll be received as
18 marked.

19 (Whereupon, State's Exhibit Numbers 62 and 63 were
20 admitted into evidence without objection.)

21 Q. (By Mr. Willingham) Once the search warrant arrived,
22 Investigator Holthaus began processing the scene?

23 A. Correct.

24 Q. Okay. Did you receive information of where the Defendant
25 might be located?

1 A. After we had been, at the house for several hours, the
2 Defendant's father, Mr. Walker, came outside and told me he
3 thought he may know where his son is.

4 Q. And did you go anywhere in an effort to look for him?

5 A. Yes, sir. Mr. Walker stated he could show me better than
6 he could tell me.

7 Q. So, you loaded Mr. Walker, the father, up and you all
8 went looking for the Defendant, Isaiah?

9 A. Yes, sir.

10 Q. And where did you go -- or where were you headed? Put
11 it that way.

12 A. We were headed, to the address of a girlfriend, who lives
13 in a neighborhood off of Anderson Mill Road.

14 Q. And what's her name?

15 A. Amanda Pruitt.

16 Q. Okay. And did you make it to Amanda Pruitt's house?

17 A. No.

18 Q. What happened to prevent you from making it to her house?

19 MR. RICHEY: Judge, I'm going to object right here and
20 ask the Court can we come to the sidebar and have a sidebar
21 about this issue that's being raised?

22 THE COURT: Come forward, please.

23 (Whereupon, a bench conference was had with Mr. Richey
24 and Mr. Willingham present.)

25 THE COURT: Ladies and gentlemen of the jury, this is

1 one of those occasions where I need to discuss on the record
2 something with the attorneys. And I told you I'd ask you to
3 step back in the jury room during that process.

4 I'm going to do that at this time. And, again, I'm going
5 to ask you every time you leave the courtroom not to begin
6 your discussions until I have advised you to do so. You may
7 step back to the jury room.

8 (The jury exited the courtroom at 9:55 a.m.)

9 THE COURT: Mr. Richey, you want -- make sure the door
10 is closed. You got a concern about this testimony?

11 MR. RICHEY: Your Honor, I believe that the witness is
12 going to testify that, prior to getting to the girlfriend's
13 house, there was a call that a burglary was in progress and
14 that my client was, in fact, the one that was doing the
15 burglarizing.

16 So, I'll say to the Court I think that's highly
17 prejudicial in the case to allow that type of testimony. One,
18 there was no conviction of the burglary. I think there were
19 no charges even made.

20 So, I think that this information -- the State can get
21 the information that he was stopped that -- as a result of a
22 call, you know, that they saw the Defendant, something other
23 than getting into any charge of burglary.

24 I think that would be highly prejudicial to the Defense
25 and it would inject his character into this case and I don't

1 think there's any -- we've opened the door to any of that.

2 THE COURT: Mr. Willingham?

3 MR. WILLINGHAM: Judge, we're not trying to get his
4 character. I just, for the record, this will show why this
5 officer never made it to Amanda Pruitt's home. On the way
6 there, he did get a call of a burglary in progress and a
7 description of the car.

8 Two other deputies began to pursue that vehicle and asked
9 Investigator Bobo to turn around on the car. And the car led
10 them back to Isaiah Walker's house.

11 I'm not going to get into the fact that Isaiah Walker was
12 the one trying to get into the house or any of the details of
13 any alleged burglary. It just goes to show why he did what he
14 did and where they went.

15 THE COURT: All right. Well, let me be sure I
16 understand. The call that he would have received was simply,
17 from what I've heard, from argument of counsel, would have
18 been that there was a burglary in progress and he gave a
19 description of a vehicle?

20 MR. WILLINGHAM: Yes, sir.

21 THE COURT: Then, what you're saying is that he saw the
22 vehicle in question ---

23 MR. WILLINGHAM: Yes, sir.

24 THE COURT: --- so, he ---

25 MR. WILLINGHAM: He turned around.

1 THE COURT: ---- he turned around and pursued that
2 vehicle?

3 MR. WILLINGHAM: Yes, sir.

4 THE COURT: And it turned out that that vehicle went to
5 the Walker residence and Mr. Walker was inside; is that
6 correct?

7 MR. WILLINGHAM: Yes, sir.

8 THE COURT: All right. Now, is that line of questioning
9 what you're objecting to?

10 MR. RICHEY: If what the Court said is being offered, I
11 have no objection because the Court's line of questioning
12 didn't -- didn't involve a burglary being in progress.

13 The Court's line -- the recitation the Court just gave, I
14 have no objection to that because the word "burglary" was
15 never stated in that recitation.

16 And I believe the State can actually get the information
17 in without saying that there was a burglary in progress
18 because they're going to say the Defendant was in the car;
19 that dah, dah, dah.

20 And I -- I think that's too prejudicial, in light of
21 there's a non-prejudicial way, of getting that information in
22 that recitation without saying a burglary in progress.

23 THE COURT: Any comment, Mr. Willingham?

24 MR. WILLINGHAM: No, sir, other than the Court did know
25 there was a burglary in progress call and that was why they

1 turned around. If -- if the Court believes ---

2 THE COURT: What I'll do is, I would ask that the
3 testimony indicate that there was a pursuit, in progress of a
4 vehicle, a description of the vehicle was given, and he
5 spotted what he thought was the vehicle and pursued it.

6 MR. WILLINGHAM: Okay.

7 THE COURT: I think we'll leave out the fact that there
8 might have been a burglary. Or I don't know what the
9 circumstances were. There may or may not have been a burglary
10 going down, and so, I think to use that phrase would be
11 prejudicial, so, I'll sustain the objection to that extent.

12 But you can -- he can state that he received a call, of a
13 chase that was going on, a car being pursued. He spotted the
14 car and that he, then, joined in the pursuit. And that led
15 him back to that residence.

16 MR. WILLINGHAM: Thank you.

17 MR. RICHEY: Thank you, Your Honor.

18 THE COURT: Bring the jury back.

19 (The bailiff stepped out to summon the jury.)

20 (The jury entered the courtroom at 10:00 a.m.)

21 THE COURT: The record will reflect that all the jurors
22 have returned to the courtroom. Thank you for your patience.
23 I have sustained the objection and you may proceed, Mr.
24 Willingham.

25 MR. WILLINGHAM: Thank you, Judge.

- 1 Q. (By Mr. Willingham) On your way to Amanda Pruitt's house
2 to look for the Defendant, did you receive information about
3 another vehicle?
- 4 A. Yes, sir.
- 5 Q. A vehicle the Defendant may be in?
- 6 A. Correct.
- 7 Q. And what type of vehicle was that?
- 8 A. A light-colored Cadillac.
- 9 Q. Okay. And where was that vehicle when you located it?
10 Where was it supposed to be?
- 11 A. In the Anderson Mill Road area.
- 12 Q. Okay. And, on your way to Ms. Pruitt's house, did you
13 pass that vehicle?
- 14 A. Yes, sir. As soon as me and Mr. Walker turned on Sundial
15 Drive, off of Dove Hill, and got to the first dip, that
16 Cadillac passed us at a high rate of speed.
- 17 Q. Okay. And did you turn around on it?
- 18 A. I did.
- 19 Q. Were other officers involved at that point?
- 20 A. Yes, sir. There was a uniformed officer on the Anderson
21 Mill Road end. There was another uniformed officer coming
22 from Old Anderson Mill Road back towards me at Dove Hill and
23 Sundial.
- 24 Q. Did you notify them that you had just passed that
25 vehicle?

1 A. Yes, sir, I did.

2 Q. And did you attempt to stop that vehicle?

3 A. Yes, sir. Me and the uniformed officer, Andy Daniels,
4 met at the intersection of Dove Hill and Sundial. And, from
5 the direction he came in, from off Old Anderson Mill, the
6 Cadillac did not pass him.

7 So, the only way the Cadillac could have gone was left on
8 Dove Hill. And, when we got to Dove Hill, the Cadillac was
9 backing out of Mr. Walker's driveway.

10 Q. Okay. So, let me borrow that pointer back from you. So,
11 you say you were on Sundial, which is here (indicating)?

12 A. Yes, sir.

13 Q. Another officer was in this area (indicating)?

14 A. Yes, sir, and we --

15 Q. And ---

16 A. I'm sorry.

17 Q. I'm sorry.

18 A. We met at the intersection of Old Anderson Mill and Dove
19 Hill.

20 Q. Which is right here (indicating)?

21 A. Yes, sir.

22 Q. And that officer informed you that no other car had
23 passed him?

24 A. Correct.

25 Q. And you turned around and went back down this a little

- 1 bit looking for him?
- 2 A. Yes, sir.
- 3 Q. And you found him where?
- 4 A. Coming out of the driveway.
- 5 Q. At _____?
- 6 A. Yes, sir.
- 7 Q. He was coming out of that driveway (indicating)?
- 8 A. Yes, sir.
- 9 Q. Now, you had other officers on the scene at _____; is
- 10 that right?
- 11 A. Yes, sir, two of our forensic officers.
- 12 Q. And they were processing the scene?
- 13 A. Yes, sir.
- 14 Q. And this car basically rolled up into it?
- 15 A. Correct.
- 16 Q. Into the scene?
- 17 A. Yes, sir.
- 18 Q. All right. Once -- did you get the car by this time?
- 19 A. Yes, sir. I activated my blue lights when he backed out
- 20 of the driveway and started heading back towards me. And the
- 21 car stopped and me and the uniformed officer called the
- 22 occupants out of the car one by one and I instructed Mr. Floyd
- 23 Walker to stay in my car.
- 24 Q. Okay. Who was in the white Cadillac?
- 25 A. Isaiah Walker was one of the passengers in the back seat.

1 Q. Okay. Who was driving the Cadillac?

2 A. Another black male by the name of Brent Gentry.

3 Q. Okay. Were they searched or patted down for your
4 protection?

5 A. Yes.

6 Q. Okay. Did you ultimately talk to the Defendant, Isaiah
7 Walker?

8 A. Yes, sir. We asked him to come down to the office with
9 us and he agreed and the uniformed officer transported him to
10 the office.

11 Q. Okay. And what time was this? Do you remember?

12 (Brief Pause)

13 A. By the time me and Detective Gary got back to the
14 sheriff's office, from ——— Road, it was early in the
15 morning on Saturday morning.

16 Q. Okay.

17 (Whereupon, State's Exhibit Number 64 was marked for
18 identification.)

19 MR. WILLINGHAM: May we approach?

20 THE COURT: Yes, you may.

21 (Whereupon, a bench conference was had with Mr. Richey
22 and Mr. Willingham present.)

23 THE COURT: Mr. Willingham, you may proceed.

24 MR. WILLINGHAM: Thank you, Judge.

25 Q. (By Mr. Willingham) Did you talk to him back at the

- 1 sheriff's office in the early morning hours?
- 2 A. Yes, sir.
- 3 Q. And it was you and who else?
- 4 A. Detective William Gary.
- 5 Q. Okay. And did you advise him of his rights?
- 6 A. I did.
- 7 Q. And, when I'm talking about his rights, I'm talking about
- 8 his rights under Miranda?
- 9 A. Yes, sir.
- 10 Q. And those rights are you have the right to remain silent?
- 11 A. Yes, sir.
- 12 Q. Anything you say can be used against you in Court?
- 13 A. Correct.
- 14 Q. You got a right to a lawyer?
- 15 A. Yes, sir.
- 16 Q. If you need a lawyer, and you can't afford one, one will
- 17 be appointed for you?
- 18 A. Yes, sir.
- 19 Q. You got a right to stop answering any questions at any
- 20 time?
- 21 A. Correct.
- 22 Q. Did you use anything to assist you in going over those
- 23 rights with the Defendant?
- 24 A. Yes, sir. We filled out a sheriff's office pre-
- 25 interrogation waiver form.

1 Q. And I'm going to show you State's Exhibit Number 64 and
2 ask you what that is.

3 (Exhibit handed to witness.)

4 A. This is the pre-interrogation waiver form we filled out
5 with Mr. Walker. And it's filled out in my handwriting.

6 Q. Okay. And did he appear, to understand his rights, when
7 you advised him?

8 A. Yes, sir.

9 Q. Did he give up or waive those rights and -- and -- in
10 order to talk to you?

11 A. Yes, sir.

12 Q. There's a second section on that form; is that correct,
13 called a waiver of rights?

14 A. Yes, sir.

15 Q. And he actually signed that as well?

16 A. Yes, sir. He signed the first part of the form where it
17 states he understands his rights. And he also signed the
18 second part of the form which states he waives his rights.

19 Q. Okay.

20 A. And his signature was witnessed by Detective Gary.

21 Q. Okay. Did you -- you've been in law enforcement you said
22 for how many years?

23 A. Nineteen and a half (19 ½).

24 Q. Nineteen and a half? During those nineteen and a half
25 (19 ½) years, have you had an opportunity to deal with people

1 that are under the influence of drugs or alcohol?

2 A. Yes, sir, numerous times.

3 Q. Did this Defendant that night appear to be under the
4 influence of either drugs or alcohol?

5 A. No, sir.

6 Q. Did you promise him anything in order to get him to talk
7 to you?

8 A. No, sir.

9 Q. Did you or anyone else threaten him in order -- or coerce
10 him in order to get him to talk to you?

11 A. No, sir.

12 Q. As far as you know, he talked to you of his own free will
13 and accord?

14 A. Yes, sir.

15 Q. Okay. And what did he tell you? What did you ask him?

16 A. With the evidence we had found, in his driveway, you
17 know, we asked him to explain that, to try to alibi himself
18 for that day.

19 Q. Okay. And was he able to give you an explanation or a
20 detailed account of where he had been that day?

21 A. No, sir. We couldn't get the same story straight twice.

22 Q. Where did he tell you he had been that day?

23 (Brief pause while witness reviews document.)

24 A. At first, he said he was at a recreation center in the
25 city playing basketball. Then, he said he went to some class

1 -- classes at some adult alternative learning center.

2 And then, he said something about having to take an exam
3 that day that only took fifteen (15) minutes. And, then, when
4 we asked him about the evidence in his driveway, he said
5 somebody must have put that there in an attempt to frame him.
6 And, at one point, he tried to use a car stop as an alibi.

7 Q. Was he ever able to give you a verifiable account of
8 where he was during the time that this happened?

9 A. Not at all.

10 Q. All right. And you said he told more than one story
11 during about that time frame?

12 A. Correct.

13 Q. Did he ever admit to any involvement in this -- in this
14 crime?

15 A. No.

16 Q. He was, at some point, arrested that evening?

17 A. Correct.

18 Q. When he was arrested, did he have any money on him?

19 A. He had over a thousand dollars (\$1,000) on him.

20 (Brief Pause)

21 Q. As the investigator, you were aware where and when the
22 pants were recovered in the water?

23 A. Yes, sir.

24 Q. And that was done on February 28th, two thousand, six
25 (2006)?

1 A. Correct.

2 Q. And the next day, on February 29th, did you have anything
3 to do with follow-up investigation at the pond?

4 A. Once, in an effort to see the pants in the water from the
5 air, with the assistance of the Roebuck Fire Department and
6 Spartanburg Water System, we had drained the pond to a point.
7 That's what enabled our helicopter and Officer Hogsed to be
8 able to see the pants from the air.

9 Once those pants were retrieved, then, I coordinated with
10 divers, from the South Carolina Department of Natural
11 Resources, to come and dive the pond.

12 Q. Okay. And, once they dived the pond, was any additional
13 evidence recovered from the pond?

14 A. No, sir.

15 MR. WILLINGHAM: All right. If you would, please,
16 answer any questions the Defense lawyer has for you.

17 THE COURT: Mr. Richey, it's your witness.

18 MR. WILLINGHAM: Judge, before I do that, I may have one
19 thing. I'm not sure if I moved State's Exhibit Number 64
20 actually into evidence.

21 THE COURT: Is it in evidence?

22 COURT REPORTER: No.

23 THE COURT: Is there any objection to that being made a
24 part of the record?

25 MR. RICHEY: No.

1 THE COURT: All right. State's Exhibit 64 is received
2 into evidence.

3 (Whereupon, State's Exhibit Number 64 was admitted into
4 evidence without objection.)

5 THE COURT: Now, Mr. Richey, your witness.

6 MR. WILLINGHAM: Thank you, Judge.

7 MR. RICHEY: Thank you, Your Honor.

8 CROSS EXAMINATION by MR. RICHEY: 10:13 A.M.

9 Q. You were there, at the collection of the evidence, in
10 this case? You were there for the collection of evidence in
11 this case?

12 A. At which scene?

13 Q. At -- at the pond and at the house? You was at both
14 places, correct?

15 A. I was at the pond off and on. And I was at the house off
16 and on.

17 Q. Well, you know about the boots, correct?

18 A. Correct.

19 Q. Okay. And you know where the boots were found, correct?

20 A. Correct.

21 Q. And these boots, it's your testimony, would be that they
22 would be consistent with the box; is that correct?

23 A. Correct.

24 Q. Okay. And so -- but you don't know who wore these boots,
25 do you?

1 A. No, sir, I don't know personally, no.

2 Q. Okay. And you sent these boots on to SLED to be tested,
3 correct?

4 A. Correct.

5 Q. Okay. And those tests was to determine who, in fact,
6 could wear these boots? I mean, that would be right ---

7 A. Yes, sir.

8 Q. To make sure that you had a good account of whose foot
9 was in these shoes, correct?

10 A. Correct.

11 Q. Okay. So, in your training, you get the boots and you
12 say, if it match the boots in the house, but still, from your
13 training, you take an extra step to make sure about getting
14 the stuff analyzed, correct?

15 A. Yes, sir.

16 Q. Okay. And -- and you're the lead detective in this case,
17 right?

18 A. Yes, sir.

19 Q. You're kind of like -- you're kind of like the
20 supervisor? I mean, you work, but you have people that assist
21 you?

22 A. I'm the lead investigator. I -- at that time, I still
23 reported to my sergeant.

24 Q. But you're the lead guy in charge basically?

25 A. Yes, sir.

1 Q. Okay. And -- and you're basically like the guy that
2 serves and who orchestrates on it; is that correct?

3 A. I guess you could put it that way, yes.

4 Q. Well, that's probably maybe a bad example, but you're
5 supposed to be guy -- anyway, it's a bad example. And -- and,
6 so, you get evidence in and you assess that evidence to
7 determine what you're going to do next; is that correct?

8 A. Yes, sir.

9 Q. Okay. And, in this case, you've got a -- you were aware
10 there was a positive test for a GSR kit on the victim, right?

11 MR. WILLINGHAM: Objection, Your Honor. That is outside
12 this hearing -- or this witness' expertise.

13 If he wants to talk about tests on gunshot residual, he's
14 more than welcome to call gunshot residual people. I don't
15 think he can back door it through this witness.

16 MR. RICHEY: Well, I'm not asking -- I'm not asking him
17 about the procedure. I'm not asking him the truth of the
18 matter of it. I'm just asking him, as the lead detective,
19 which he's testified that he's got certain information and he
20 used that to continue the investigation.

21 And because of this, he just ---

22 THE COURT: Just one second, Mr. Willingham. Go ahead,
23 Mr. Richey.

24 MR. RICHEY: That he -- and that he has already
25 testified that he's the lead detective. And, when he gets the

1 evidence, as he should ---

2 THE COURT: Well, I understand your position.

3 MR. RICHEY: Okay.

4 THE COURT: Now, Mr. Willingham?

5 MR. WILLINGHAM: Judge, he's asking, for the results of
6 the GSR test, which this witness did not conduct. And that is
7 properly addressed by another witness rather than this one.

8 THE COURT: Well, I think he can ask him, and I'll allow
9 him to ask him, if he was aware of the test results. And, if
10 he used that, in any way, in his investigation and to what
11 extent or how that played into his investigation.

12 So, I'll allow you to proceed in that fashion, Mr.
13 Richey. You may proceed.

14 MR. RICHEY: Thank you.

15 Q. (By Mr. Richey) Were you aware of those results?

16 A. Not immediately, no.

17 Q. During your investigation, did you become aware of the
18 results?

19 A. Yes, sir, but I don't remember when.

20 Q. Okay.

21 A. I'd have to see that form from SLED.

22 Q. And what were those results that you were aware of?

23 A. I'd have to see -

24 MR. WILLINGHAM: That's what I object to, Your Honor, is
25 that he's asking him to basically present the test.

1 THE COURT: I'm going to overrule the objection. He can
2 state what he knew, as part of his investigation, and what he
3 used. And he asked him if he was aware of the results and
4 what the results might have been. And he can ask him how he
5 used that, or if he didn't use it, in his investigation.

6 You may proceed, Mr. Richey.

7 MR. WILLINGHAM: Thank you, Judge.

8 MR. RICHEY: Thank you, Your Honor

9 Q. (By Mr. Richey) What were those results?

10 A. I would have to see the form.

11 Q. So, you don't have those in your notes?

12 A. No, sir. These are just my notes.

13 Q. Okay. So, you have no idea, sitting right now testifying
14 -- your testimony under oath right now, you have no idea of
15 what those results were? That's your testimony?

16 A. I have -- I have an idea, but I ---

17 Q. What's that idea?

18 MR. WILLINGHAM: Judge, he has asked for the -- the
19 test, the report, so, he can truthfully -- truthfully --

20 THE COURT: He's asking him what results he's aware of.
21 That's what is in his mind about that test, and that doesn't
22 -- the test itself will speak for itself ---

23 MR. WILLINGHAM: Yes, sir.

24 THE COURT: --- if it's ever introduced.

25 MR. WILLINGHAM: Yes, sir.

1 THE COURT: But he can state what his knowledge and ask
2 him what his knowledge and belief is in the matter involved in
3 the investigation.

4 MR. WILLINGHAM: Yes, sir.

5 THE COURT: He asked him if he had an idea; he said he
6 had an idea. Then, he could ask him what -- what that idea
7 is. And, then, he can ask him how he used it or if he didn't
8 use it or if he discounted it.

9 I don't know what he did with it, but we're going to find
10 out I got a feeling. Mr. Richey?

11 Q. (By Mr. Richey) Okay. I'm going to ask you, and you're
12 under oath; you understand that?

13 A. Yes, sir. I'm well aware of that.

14 Q. Okay. And under oath I'm going to ask you what were your
15 opinions of the results of that test? Do you have any idea of
16 what the results were?

17 A. I believe, without looking at the form, it stated there
18 was gunshot residual found on Jeff Hubbard's hand.

19 Q. Okay. And -- and you just don't make wild beliefs? You
20 have to have some facts to make that belief; is that correct,
21 about this investigation?

22 A. I don't understand your question, Mr. Richey.

23 Q. When you made -- when you come to a conclusion in a case,
24 that you're investigating, you do that based on sound
25 investigation and information presented to you?

- 1 A. Correct.
- 2 Q. Okay. And, so, that test that was done, it -- it spawned
- 3 -- it spawned other tests; is that correct?
- 4 A. The gunshot residual test?
- 5 Q. Right. Did it?
- 6 A. Not that I'm aware of, no..
- 7 Q. Okay. And, in this case, there was -- there was another
- 8 guy that you said was Chavez Miller ---
- 9 A. Yes, sir.
- 10 Q. --- is that correct? And did you talk to Chavez Miller?
- 11 A. No, I personally did not, not the first night, no, sir.
- 12 Q. Okay. Did you talk to him during the investigation at
- 13 all?
- 14 A. I did.
- 15 Q. Okay. Was he a person of interest in your case at some
- 16 point? At any point, was he a person of -- a person of
- 17 interest in your case?
- 18 A. Yes, initially, yes, sir.
- 19 Q. Okay. And did you -- have you physically seen Chavez
- 20 Miller?
- 21 A. Yes, sir.
- 22 Q. Is he tall, short? I mean ---
- 23 A. I'd say he's average, skinny.
- 24 Q. Is he my height, shorter?
- 25 A. You all would be comparable in height.

- 1 Q. But he's not as old and fat as I am; is that right?
- 2 A. (No Response)
- 3 Q. That's probably -- and he's probably lighter ---
- 4 A. He's skinny than you.
- 5 Q. Okay. No fatter. Just -- and -- and you said that
- 6 Chavez Miller, when you located him, he was in jail, right?
- 7 A. Correct.
- 8 Q. And he was in jail for selling drugs, right?
- 9 A. Yes, sir.
- 10 Q. And that drug that he was in jail for selling, you -- you
- 11 found out that it was, after this killing and stuff, the time
- 12 frame?
- 13 A. Yes, sir. He was arrested -- I'd have to look back, but
- 14 he was arrested, by the city, after we were out with Mr.
- 15 Hubbard in his vehicle.
- 16 Q. And you suspect that drugs were involved in this
- 17 incident; is that correct?
- 18 A. Correct.
- 19 Q. And -- and you suspect that folks -- Mr. Miller you
- 20 suspected he probably sells drugs? In your investigation, you
- 21 would have a good hunch that he did; is that correct?
- 22 A. The only thing I have to base that on is what he got
- 23 arrested for.
- 24 Q. Okay. And you don't dispute that in any way, do you?
- 25 A. On that one day, no.

1 Q. Okay. And on that one day, he was actually found with
2 drugs; are you aware of that?

3 A. Yes, sir.

4 Q. Okay. All right. And that was after this killing,
5 correct?

6 A. Yes, sir.

7 Q. Okay. And -- and -- and there was the other person --
8 you got to Mr. Walker's house, right?

9 A. (Witness nods affirmatively.)

10 Q. Okay. And -- and you testified that you all went out
11 with -- with the daddy. And the parents were pretty
12 cooperative; is that correct?

13 A. Very cooperative.

14 Q. And they weren't trying to like deceive you, you believe,
15 or anything, right?

16 A. No, sir.

17 Q. All right. When you got to the house, and -- and you
18 pulled up and you said that Mr. Walker went out to help you
19 find his son, correct?

20 A. Yes, sir.

21 Q. And, when you all came back, you all seen the car that
22 Mr. Walker was in passing, right? Or you saw it and you got
23 behind it and stopped it at some point; is that correct?

24 A. No, sir, we met head on.

25 Q. Okay. And that car it did like -- it went to the

- 1 Walker's house, correct?
- 2 A. Yes, sir.
- 3 Q. So, it didn't like get on 26 and, you know, go on out.
- 4 It went straight to his house?
- 5 A. Yes, sir.
- 6 Q. Okay. And -- and, in that car, Mr. Walker was you said a
- 7 passenger?
- 8 A. Yes, sir.
- 9 Q. Okay. And the car was driven by whom?
- 10 A. Brent Gentry.
- 11 Q. Okay. And does Mr. Gentry live at -- at this house right
- 12 here (indicating)?
- 13 A. No, sir.
- 14 Q. Does Chavez Miller live in the house?
- 15 A. No, sir.
- 16 Q. Okay. From your investigation, does my client live
- 17 there?
- 18 A. Yes, sir.
- 19 Q. Do his parents live there?
- 20 A. Yes, sir.
- 21 Q. Okay. All right. When you got out to that house, and
- 22 you discovered -- let me get this time frame. You got to the
- 23 house maybe nine (9:00), ten o'clock (10:00) or eleven
- 24 (11:00), you're not -- it was dark, right?
- 25 A. Yes, sir.

1 Q. Okay. It was sometime after this murder had been
2 committed; is that correct?

3 A. Yes, sir. We were out before two o'clock (2:00) on
4 ~~_____~~ Road and this was nine (9:00), ten o'clock (10:00) at
5 night.

6 Q. And -- and this investigation, going to the house, it's
7 -- it's sort of like, you know, when you go to work, you get
8 consumed in your work and you look up and you say, "Oh, God,
9 it's nine o'clock (9:00)," right?

10 Because, when you're out there on the scene, at the pond
11 and you all are going through this, when you get involved with
12 your work, the time kind of goes by fast, doesn't it?

13 A. Yes, sir.

14 Q. And, so, you look up and you said, "Oh, man, it's dark. I
15 -- you know, we got to get home," correct?

16 A. No, sir.

17 Q. Well, it's dark, we need to knock off?

18 A. No, sir.

19 Q. Okay. All right.

20 A. Not on a homicide.

21 Q. Okay. All right. Well, you get there at some point and
22 you say, "Oh, it's dark outside, it's ten o'clock (10:00), I'm
23 going to start looking for these people," correct?

24 A. No, sir. No, sir. Once -- once the scene on ~~_____~~
25 Road was secure, we all met back at the office to compare

1 notes, went and got something to eat, and then, started
2 looking for Mr. Miller and Mr. Walker.

3 Q. Okay. So, that was -- that was late; that was late?

4 That wasn't like at two (2:00) or three o'clock (3:00) in the
5 afternoon; it was like nine (9:00) or ten (10:00)? It was
6 late, correct?

7 A. Yes, sir.

8 Q. Okay. And -- and -- and, at that point, there was nobody
9 -- I mean, the . ----- Road, this house (indicating), was
10 not even in play at that -- what I mean by "play" is that the
11 -- the police officers, you all were not investigating that
12 house at like three o'clock (3:00) in the afternoon, correct?

13 A. No.

14 Q. At five o'clock (5:00) you all were not investigating
15 that house?

16 A. No, sir.

17 Q. So, when I say it wasn't in play, I mean that house was
18 just standing out there at 3:00, 4:00, 5:00, 6:00, 7:00
19 o'clock in -- in the day with no law enforcement involved in
20 -- in the investigation of that house?

21 A. Correct.

22 Q. Okay. The first investigation of that house occurred
23 probably some six (6) to seven (7) hours after this killing,
24 correct?

25 A. Correct.

1 Q. Okay. And that house, for those six (6) or seven (7)
2 hours was accessible to anybody without any law enforcement
3 present; is that correct?

4 A. Yes, sir, as far as I know.

5 Q. Okay. And, so, this particular blood that you found, at
6 this residence, basically it sit there for an extended period
7 of time?

8 A. Yes, sir.

9 Q. And there was no effort at all to -- to -- to remove it,
10 cover it up, to do anything? It would just sit out there in
11 the wide open the whole time; is that correct?

12 A. Yes, sir.

13 Q. Okay. And -- and -- and you would agree that there was
14 enough lapse in time -- in time, if someone had knew the blood
15 was there, they could have done something, made some attempt
16 to remove it; is that correct?

17 A. Yes, sir.

18 Q. And there was no attempt made?

19 A. Not that I'm aware of.

20 Q. Okay. And the -- and the shell casings that were, at the
21 house as well, they were just there apparent too?

22 A. Yes, sir.

23 Q. Okay. And -- and when -- and Mr. Floyd Walker, when he
24 got home, he didn't -- he didn't give the appearance that he
25 knew anything about it; is that correct?

1 A. Correct. He had been home earlier, from a first job to a
2 second job, had come in real quick to take a shower and didn't
3 see any of it.

4 Q. Okay. And, so, he knew nothing of the blood?

5 A. No, sir, not that I know of.

6 Q. The mother is working too, correct? The mother wasn't at
7 the house when you got there?

8 A. No, sir.

9 Q. And Mr. Walker went in and got the mother; is that
10 correct?

11 A. Or somebody brought her there.

12 Q. Okay. And she didn't give you an indication that she
13 knew about any of it?

14 A. Correct.

15 Q. Okay. And -- and, so, the people, who live in the house,
16 who have access to the house, Floyd Walker has -- had -- had no
17 sense that this stuff was there, correct?

18 A. That's what he relayed to me, yes, sir.

19 Q. And your investigation had not revealed anything
20 different from that; is that correct?

21 A. Correct.

22 Q. Okay. So, the Walkers' home -- the Walkers' home up here
23 (indicating), is sitting out here. The Walkers have their
24 son's phone number; is that correct?

25 A. Had his mobile phone number, yes, sir.

- 1 Q. Yeah, so, they have a way of communicating?
- 2 A. If somebody answers on the other end, yes.
- 3 Q. Right. So -- so, there is opportunity, you would think,
- 4 within six hours, to be told that there's blood in their yard?
- 5 That would be op -- now, whether it's done; I'm just saying
- 6 there's an opportunity for that to be done?
- 7 A. By who?
- 8 Q. By my client, the parents, anybody, there's an
- 9 opportunity that they get a call to say that -- that that is
- 10 there?
- 11 A. I suppose.
- 12 Q. Okay.
- 13 A. I mean, that's speculation on my part.
- 14 Q. Okay. Okay. The -- the ---
- 15 (Brief Pause)
- 16 Q. And unfortunately, you -- you investigate a lot of --
- 17 you investigate homicides; is that correct?
- 18 Q. I used to, yes, sir.
- 19 Q. Okay. And unfortunately, these drugs are dangerous; is
- 20 that correct?
- 21 A. Yes, sir.
- 22 Q. And -- and -- and it's to the point that even the drug
- 23 dealers themselves are not safe; isn't that correct?
- 24 A. I think that's a fair statement, yes, sir.
- 25 Q. Okay. Because, in essence, what happens is, you get a

1 whole bunch of people together and they're all armed; is that
2 -- is that correct?

3 A. In some situations, yes, sir.

4 Q. And, so, that's why, when you're doing an investigation,
5 and you suspect drugs, in the investigation, you -- you assume
6 that those will be in play too?

7 A. Yes, sir.

8 Q. And, so, when you're investigating these shootings that
9 you believe that are drug related, that is one of the reasons
10 why you have this -- this GSR kit done, correct?

11 A. If it can be performed, within the time constraints, yes,
12 sir.

13 Q. And, if the person is dead, you have a big old window,
14 correct?

15 A. If the hands are properly secured, yes, sir.

16 Q. Okay. And I'm going to put this -- I'm going to put this
17 drawing up, and I'm going to try to correlate it with some of
18 these other photos.

19 (State's Number 9 Shown on overhead.)

20 Q. (By Mr. Richey) All right. First, I'm going to put up,
21 if I can learn this thing here...

22 (State's Number 7 Shown on overhead.)

23 Q. Okay. All right. I think -- all right. Do you see this
24 photo? You were there -- you were one of the first people on
25 the scene; is that correct? You got there at some point?

1 A. Correct. There were ---

2 Q. When you got -- I'm sorry; go ahead.

3 A. There were numerous people on the scene when I got there.

4 Q. When you got there, was the car still there?

5 A. Yes, sir.

6 Q. Okay. Were the items of clothing, that I've got in my
7 hand, were they there?

8 A. Yes, sir.

9 Q. Okay. And does this -- and looking at this photo, I'm
10 going to now put this one up.

11 (State's Number 8 Shown on overhead.)

12 Q. (By Mr. Richey) Okay. I got this photo up right here.
13 Can you tell me where the car is in relationship to being
14 found on this photo? Do you have that ---

15 A. No, sir, I don't have that pointer.

16 (Off-the-Record Comments)

17 (Brief pause while laser pointer handed to witness.)

18 A. This photo was actually taken the day we recovered the
19 pants out of the pond on the 28th. But the car would have been
20 right in there (indicating), before that rut.

21 Q. Okay. So, that car, the location of that car, is -- is
22 -- is visible to this street right here (indicating)?

23 A. You would have to get to the entrance to the pond before
24 you could see it.

25 Q. Okay. So, if you were driving along this way

1 (indicating), that car would be up here (indicating), right?

2 A. A little bit further back closer to the entrance.

3 Q. Back here (indicating)?

4 A. Right in here (indicating).

5 Q. Oh, okay, back here (indicating)?

6 A. Yes, sir.

7 Q. So, it's right here on this tip?

8 A. Yes, sir.

9 Q. Okay. And, on that tip right there, where you just said,
10 is -- is kind of cleared area to the entrance, correct?

11 A. Yes, sir.

12 Q. So, if I'm driving along here (indicating), then -- and,
13 if I looked till I got to the left of the entrance, I would
14 probably see a car there or the back end of something there?

15 A. Yes, sir.

16 Q. Okay. So, the car was visible from the street pretty
17 much?

18 A. Yes, sir.

19 Q. Okay. The -- the boots that were found, were found up in
20 this area (indicating), right?

21 A. Yes, sir. They were found along the pond bed right in
22 here (indicating).

23 Q. And that's kind of --

24 THE COURT: Mr. Richey, I've got a pointer here that
25 might help you to be able to point to things on there.

1 MR. RICHEY: Because I ain't that tall.

2 THE COURT: Because you're not quite that tall. Me
3 either. There you go, sir.

4 MR. RICHEY: Thank you.

5 (Pointer handed to Mr. Richey.)

6 MR. RICHEY: I didn't get those genes in the family.

7 Q. (By Mr. Richey) Right up here (indicating), somewhere in
8 here is where these shoes were found, right?

9 A. Yes, sir.

10 Q. And you can see the cleared area. What is that right
11 there that you're looking at (indicating)?

12 A. (No Response)

13 Q. Is that the pond right there (indicating)?

14 A. I think so, yes, sir.

15 Q. So -- and the pond is within here (indicating), so, you
16 can actually see through this brush (indicating), right?

17 A. To a degree ---

18 Q. In this picture?

19 A. To a degree, yes, sir.

20 Q. Okay. And, so, those boots were found right over here
21 (indicating), right?

22 A. Yes, sir.

23 Q. Okay. Those boots were not found in a place that -- that
24 they were like hidden; is that correct?

25 A. No, sir.

1 Q. Okay. And the car was not hidden, correct?

2 A. No, sir.

3 Q. The blood at the house was not hidden, correct?

4 A. No, sir.

5 Q. So, when you investigated this scene, you found it very
6 odd that the evidence was just so apparent, correct?

7 A. Yes, sir.

8 Q. And -- and the -- and you would suspect that whoever did
9 this had a very -- no regard at all for the evidence; none at
10 all, right?

11 A. (No Response)

12 Q. They didn't do anything to try to hide it, cover it up,
13 anything, correct?

14 A. Correct.

15 Q. And -- and it would be consistent...

16 (Brief Pause)

17 Q. Let me say this to you: This -- this road right here
18 (indicating), okay, this road right here --

19 A. Yes, sir.

20 Q. --- how far does it go back?

21 A. It goes around the right-hand side of the pond and goes
22 back in here (indicating) into like a circular clearing. And
23 like a lot of people go back there and dump trash ---

24 Q. Right.

25 A. --- and stuff like that.

1 Q. And this is kind of a place kind of like where people go
2 back and do stuff they ain't supposed to do pretty much?

3 A. Once you get past the houses, on that road, and come
4 toward the pond and there's a building, an abandoned building,
5 just past here. Yes, sir, it's a well known place that people
6 go and do drugs, have sex, dump trash, that type of area.

7 Q. All right. So -- so, there -- so, someone who is
8 familiar with this -- this location, right, they know they --
9 you would assume that they would know there are plenty of
10 hiding areas up here in this location?

11 A. If they're familiar with that area, yes, sir.

12 Q. Okay. And -- and a person who is unfamiliar with that
13 area would know -- who is unfamiliar, would not know all this
14 is -- this is back here, correct?

15 A. I guess, yes, sir.

16 Q. Okay. And -- and a person who would be familiar, with
17 this area, would really realize that this area would be a
18 really good place to hide stuff, could it -- wouldn't it? It
19 could be?

20 A. Yes, sir.

21 Q. Okay. Because, if you're investigating this body -- and
22 the gentleman is out here, Sprouse, he's investigating cows
23 getting out here in the road (indicating), right?

24 A. Correct.

25 Q. Okay. So, if -- if this car is placed back towards the

1 back, you've got Sprouse pretty much beat, right? I mean, if
2 Sprouse is out here (indicating) looking for the cows, and the
3 car is back here (indicating), he has a less likely chance of
4 finding it on first blush; is that correct?

5 A. Correct.

6 Q. Okay. Also, these shoes that are located right here
7 (indicating), okay, there is numerous other places in this "V"
8 back here (indicating), all over the place, to hide these
9 things, right?

10 A. Correct.

11 Q. But the person who did this just simply left the stuff
12 there basically to be found, correct?

13 A. Or they panicked; I don't know.

14 Q. Okay. They -- they were not thinking; is that correct?

15 A. (Witness nods affirmatively.)

16 Q. Okay. And, so, your investigation pretty much, in terms
17 of finding this body and these boots and stuff, was made
18 relatively easy?

19 A. Yes, sir.

20 Q. Okay. And the throwing of I'm assuming this -- the shirt
21 in here (indicating), what did you find right in here, do you
22 know? I'll put this back up.

23 A. Yes, sir. The pants were out in here (indicating). I
24 don't know if that's accurate where I'm pointing ---

25 Q. Okay.

1 A. --- but it was pretty much in a direct line from the
2 entrance to the pond.

3 Q. So, this whole scene is kind of right here (indicating)
4 kind of? See how I'm doing that?

5 A. Yes, sir.

6 Q. Right there (indicating)? All right. So, this area
7 (indicating) along here, right, is -- will be pretty much
8 where all the action will take place?

9 A. Yes, sir.

10 Q. Okay. And -- and -- and that would be consistent with
11 someone driving along here (indicating), getting out, and
12 dropping stuff here and the car here; is that correct?

13 A. Are you talking about driving up from the dead end?

14 Q. No, driving ---

15 A. Driving down?

16 Q. --- this road right here (indicating).

17 A. Okay. Yes, sir.

18 Q. Okay. All right.

19 (Brief Pause)

20 Q. And you talked with Mr. Walker ---

21 A. Yeah.

22 Q. --- correct? And Mr. Walker never told you he was
23 involved in this; is that correct?

24 A. Correct.

25 Q. Okay. And you said that -- that Mr. Walker was in some

1 kind of car stop; is that correct? That he said he was in a
2 car stop?

3 A. Yes, sir, that Friday afternoon.

4 Q. Okay. And -- and did you investigate that?

5 A. No, sir. One of our uniformed officers did on that
6 shift.

7 Q. Based off that investigation and your record of the file,
8 was there a stop -- was there a stop made?

9 A. Yes, sir.

10 Q. Okay. All right. And, when you got to the scene of this
11 case, you didn't -- you didn't do anything to compromise this
12 area (indicating)?

13 A. No, sir.

14 Q. Okay. And this car that was found turned to the right
15 right here (indicating), like it was turned kind of that way;
16 is that correct?

17 A. It was right in there (indicating). The passenger side
18 of the car was headed in towards the ditch, which caused the
19 driver's side front wheel to be off the ground.

20 Q. The driver's side front wheel would be right here
21 (indicating)?

22 A. Yes, sir.

23 Q. Okay. All right. And -- and really, it would be an odd
24 kind of location for someone to kind of drive that car there;
25 is that correct?

1 A. Yes, sir.

2 Q. I mean, it's more consistent with someone just getting
3 out and dumping it, right? When I say "dumping it," I mean,
4 letting it go into the woods?

5 A. Yes, sir.

6 Q. Because no reasonable human being would actually take a
7 car and just drive it up in there and, then, jump out? That's
8 not -- that's not reasonable, correct?

9 A. It depends on the circumstances.

10 Q. All right. If someone had did that, their safety would
11 be in danger -- in jeopardy; isn't that correct?

12 A. Yes, sir.

13 Q. So, it wouldn't be a smart move to hurt yourself?

14 A. Correct.

15 Q. Okay. And -- and that would be consistent -- that would
16 be consistent, of the person which you claim wore these boots
17 (indicating), okay?

18 A. Okay.

19 Q. It would be consistent to say this person never got out
20 here (indicating)?

21 A. No, sir, I wouldn't say that.

22 Q. Okay. You -- you do realize that in the investigation
23 there's no definite footprints of these boots?

24 A. Correct.

25 Q. Okay. And, because there's no footprints of these boots,

1 in this area (indicating), okay, that would be consistent with
2 that part of the investigation -- it would be consistent with
3 these boots not being worn in this area (indicating)?

4 A. Unless you took the boots off before you ever got out of
5 the car.

6 Q. Okay. So -- yeah, you took them off, but they were not
7 -- that's consistent with they're not being worn here
8 (indicating). You took off when you got out of the car or you
9 never had them on. You took them off at -- at the Beacon or
10 whatever; it's consistent with them not being worn here
11 (indicating)?

12 A. We didn't find any Timberland boot prints at the scene if
13 that's what you're asking.

14 Q. No, I'm asking you about that being consistent with these
15 boots not being worn here. That's what I'm asking you.

16 The non-existence of footprints there (indicating), of
17 these boots, would that be consistent with these boots not
18 being worn in this area (indicating)?

19 A. No, sir, I don't think you can make that conclusion.

20 Q. If you are investigating a case, and you -- you find --
21 you don't find footprints, at that location, you would not
22 come to court unless they were there, correct?

23 A. Say that again, Mr. Richey.

24 Q. If you were investigating a case, and you investigated
25 the area and you did not find any footprints in that area,

- 1 okay, you would not come to court and say that there were
2 footprints in that area, right?
- 3 A. Correct.
- 4 Q. Okay. All right. So, we're back here (indicating) and
5 no footprints in that area, right?
- 6 A. That match those boots, no, sir.
- 7 Q. Right. So, that would be consistent with those boots not
8 being worn there, correct?
- 9 A. No, sir, I wouldn't agree with that.
- 10 Q. All right. So, your testimony, then, would be -- would
11 be that these boots (indicating), these Timberland boots,
12 would not leave a print?
- 13 A. No, sir, I didn't say that either.
- 14 Q. So, it's not consistent? If these footprints are not
15 there at the scene, of these boots, that's not consistent with
16 these boots not being worn there?
- 17 A. No, sir, because, I mean, like I said you could toss them
18 before you stopped the car. You could throw them out before
19 you got out of the car. So, I can't testify that those boots
20 were never in close proximity to that car or that scene.
- 21 Q. That's not what I'm asking you. And that's -- that's not
22 the question that I'm asking you. I said the boots, in fact,
23 could have been thrown out here (indicating), thrown out there
24 (indicating), remember I said thrown out at the Beacon, okay?
25 They could have been thrown out at any of those places here,

- 1 right?
- 2 A. Yes, sir.
- 3 Q. Okay. Well, my question is, the lack of footprints here
- 4 (indicating), of these boots in here (indicating), will be
- 5 consistent with those boots not being worn in this area; not
- 6 were they tossed out the door here, there, or over here
- 7 (indicating)? It would be consistent with them not being worn
- 8 in this area?
- 9 A. Yes, sir, I -- I suppose.
- 10 Q. Okay. Because we already -- we know that the police
- 11 officers and EMS and those folks, they had on boots ---
- 12 A. Correct.
- 13 Q. --- some of them, right?
- 14 A. Correct.
- 15 Q. And they walked in this area (indicating) right here
- 16 (indicating)?
- 17 A. Yes, sir, in and around the car.
- 18 Q. And we know that they left footprints, right?
- 19 A. Some of them did, yes, sir.
- 20 Q. So, it would be consistent that the ability of a boot to
- 21 make a footprint out there would exist?
- 22 A. Correct.
- 23 Q. Okay. So, that evidence would not be consistent with
- 24 someone standing right here (indicating) with these boots on?
- 25 A. I still don't understand your question, Mr. Richey.

1 Q. Okay. We -- we -- we said the boots -- I'm going to quit
2 walking because I'm going to get tired in a few minutes -- and
3 these boots ---

4 A. Yes, sir.

5 Q. -- okay.

6 (Brief Pause)

7 Q. --- Okay. Okay.

8 (Off-the-Record Comments)

9 Q. This -- we've already said that there was no Timberland
10 boot impressions found in this area (indicating), correct?
11 We've already said that about eight (8) times, correct?

12 A. Yes, sir.

13 Q. Okay. And we said that, because there was a lack of foot
14 impression in this area, that that would be consistent with
15 these boots not being worn in that area, correct?

16 A. The mere absence of prints, yes, but, when you got a
17 victim in a car, who has been shot multiple times, there's
18 blood on the car, and then, there's blood on the boots; to me
19 that says those boots could be connected to that scene.

20 Q. Okay. But that's not what I'm asking you. I'm asking
21 you -- I'm asking you is this area right here (indicating), is
22 that consistent -- because there's no boot impressions -- of
23 those boots being worn in that area? That's -- that's what
24 I'm asking you.

25 A. Yes, sir.

1 Q. Okay.

2 A. The mere absence of prints, you can't say the boots
3 walked in that area.

4 Q. Okay. So, likewise, you cannot say that someone stood in
5 this area with these boots on in that area -- stood in that
6 area with those boots on? You can't say that either because
7 the prints are not there, right?

8 A. Correct.

9 Q. Okay.

10 (Brief Pause)

11 Q. This Gentry fellow that you talked to ---

12 A. Yes, sir.

13 Q. --- he's unfortunately involved with drugs; is that
14 correct? Do you have any idea?

15 A. No, sir. I'd have to go back and look through the whole
16 file.

17 Q. You don't have any ---

18 A. It's my understanding, he was the driver for Mr. Walker
19 that day.

20 Q. Well, that's not what I'm asking you. I'm asking you,
21 based on your investigation, do you know whether this Brent is
22 involved in the drug activity?

23 A. I would have to look at his involvements in our system.
24 I don't have that in front of me.

25 Q. So, you didn't -- when you were out looking for him, you

1 didn't investigate him at all? You just -- you didn't do any
2 investigation into this person that you were looking for?

3 A. No, sir. We did background checks on everybody. What
4 I'm saying is, I don't have it in front of me. He has been
5 charged in the past. I don't remember what he's been charged
6 with.

7 Q. Did -- did your investigation -- through your
8 investigation, do you believe that he's involved in the drug
9 trade?

10 A. Possibly, yes, sir.

11 Q. Okay. Do you believe, based on your investigation, that
12 he is likely to carry a gun?

13 A. No, sir, I can't make that stretch. No, sir.

14 Q. Okay. All right. Did you obtain any information, in
15 your investigation, that -- that this Gentry guy ---

16 (Brief Pause)

17 Q. --- this -- do you think that these folks knew each
18 other?

19 A. Which folks, Mr. Richey?

20 Q. Brent, the Chavez Miller, the -- my client, and the
21 victim, do you think they knew each other?

22 A. Yes, sir.

23 Q. So, this wasn't like a random thing; is that ---

24 A. No, sir.

25 Q. So, as you investigated, all the sudden you're out there

1 and you find a body stuffed down in the trees, right here
2 (indicating), and it was a random thing?

3 A. No, sir. It's not random.

4 Q. Do you know whether the -- the victim in this case ever
5 purchased drugs from Brent Gentry?

6 A. No, sir, I do not.

7 MR. WILLINGHAM: Objection.

8 THE COURT: Go ahead.

9 MR. WILLINGHAM: I'd object. That would be unfair
10 character assassination of a victim who is not here to defend
11 himself unless it's somehow tied to this, which is not -- I
12 have not seen the relevance of yet. I'd object it's not
13 relevant and improper characterization of a victim.

14 THE COURT: Ask the attorneys to approach.

15 (Whereupon, a bench conference was had with Mr. Richey
16 and Mr. Willingham present.)

17 THE COURT: I sustain the objection, and I'm going to
18 strike the question and the response from the record. I'll
19 explain the significance of that to you later on. You may
20 proceed.

21 MR. RICHEY: Thank you, Your Honor.

22 Q. (By Mr. Richey) The victim on this date called into work
23 sick or something; is that correct?

24 A. Yes, sir, early that morning.

25 Q. And -- and he went to the bank and with -- through your

- 1 investigation, withdrew some money?
- 2 A. Yes, sir.
- 3 Q. And how much money was withdrawn?
- 4 A. I think it was approximately four hundred dollars (\$400).
- 5 Q. Okay. Did he get any other money that day?
- 6 A. That day, no. I think he would -- he had withdrawn some
- 7 money the day before.
- 8 Q. And with -- with that money, do you know whether he
- 9 planned on going out of town or anything?
- 10 A. No, sir. I don't know what his intentions were.
- 11 Q. Okay. And this statement, Mr. Walker's statements he
- 12 gave to you, these statements were -- were they recorded?
- 13 A. No, sir. He would not put anything on paper.
- 14 Q. Well, were they -- did you have a tape recorder?
- 15 A. No, sir.
- 16 Q. Okay. And -- and -- and have you ever tape recorded a
- 17 statement?
- 18 A. In unusual circumstances, yes, sir.
- 19 Q. And ---
- 20 A. Normally, the only time I take a recorded statement is if
- 21 I'm taking a statement from a child.
- 22 Q. And have you ever recorded an audio tape for a statement,
- 23 or visual, with a camera?
- 24 A. A video tape?
- 25 Q. Yeah.

- 1 A. No, sir. I personally have never done it.
- 2 Q. The shell casings that were found, okay, can you -- were
- 3 the shell casings found at the house?
- 4 A. In the driveway, yes, sir.
- 5 Q. Okay. Were there any other shell casings found other
- 6 than at the location of the house?
- 7 A. There were some in the -- well, there were some in the
- 8 driveway and some in the yard.
- 9 Q. Were there some -- were there any shell casings found
- 10 here (indicating)?
- 11 A. The only one I know of was in the driver's side
- 12 floorboard of the vehicle.
- 13 Q. So, there was no shell -- there was, based off your
- 14 investigation and your knowledge, there was no apparent shell
- 15 casings here (indicating), correct?
- 16 A. Other than the one in the car. None outside the car.
- 17 Q. Okay. So, that would conclude to say that the shooting
- 18 did not occur here (indicating); is that correct?
- 19 A. Correct.
- 20 Q. Okay. That the shooting occurred you suspect at the
- 21 house?
- 22 A. Correct.
- 23 Q. Okay. And, at the house, there were multiple shell
- 24 casings, correct?
- 25 A. Correct.

1 Q. More than ten (10)?

2 A. Yes, sir. I think that's a fair statement.

3 Q. Okay. And -- and you took those -- well, someone
4 collected the shell casings and took them to SLED, correct?

5 A. Correct.

6 Q. And those shell casings -- do you know why they go to
7 SLED to be tested?

8 A. Well, in addition to trying to match them up to a weapon
9 -- in addition to shell casings, we also had spent
10 projectiles. And what I mean by that is a bullet that had
11 passed through a body that had blood on it. So, we send it to
12 be analyzed for DNA as well.

13 Q. And, so -- well -- and so, what SLED did is they can take
14 a projectile, which is usually, using this pen (demonstrates),
15 it's the front part, right? If I do that, the -- the casing
16 would be the back of the ballpoint pen, right?

17 A. (Witness nods affirmatively.)

18 Q. And so, SLED, they're able to look at this and look at
19 this (indicating) and try to determine whether they match the
20 same gun, correct?

21 A. Correct.

22 Q. Okay. And that's why you sent them down to them?

23 A. Correct.

24 Q. So, when you've got multiple shell casings and -- and --
25 and that type of stuff, you take it to SLED to determine

1 whether there was one gun or one individual that was shooting,
2 correct?

3 A. Correct.

4 Q. That can -- that could -- that could be important to your
5 investigation, correct?

6 A. Yes, sir, if you had recovered a weapon that you can
7 compare the shell casings and the projectiles to.

8 Q. Right. But -- but, in your investigation, it would be
9 important to know whether this projectile and these
10 projectiles and all the casings matched one gun?

11 A. Correct.

12 Q. That would be important?

13 A. Correct.

14 Q. Because that would show that there was only one person
15 that fired, correct?

16 A. I don't think you can make that assumption, no, sir.

17 Q. Well, it would be one gun?

18 A. Correct.

19 Q. Okay. But -- but you also -- but if they -- if the
20 shell casings and projectiles match different guns, in your
21 investigation, it would lead you to believe that it was
22 multiple guns?

23 A. Correct.

24 Q. Not -- it may have been multiple individuals, but it
25 could be multiple guns?

1 A. Correct.

2 Q. And the location of the projectiles and the shell casings
3 and all that, that's important too?

4 A. Correct.

5 Q. Because, when you look at where the shell casings are,
6 then, it kind of gives you an indication of where some of the
7 shooting was coming from, correct?

8 A. No, sir.

9 Q. Okay. If I'm shooting right here (indicating), my
10 projectile probably won't be across the street, correct?

11 A. No.

12 Q. It probably ---

13 A. Well, it depends on what type of weapon you're shooting.

14 Q. Yeah.

15 A. But I'm not a firearms expert, so...

16 Q. All right. In this case, multiple projectiles were in --
17 in the area, in this location?

18 A. In the driveway, in front of the basketball goal, yeah.

19 THE COURT: Those -- those weren't projectiles; those
20 were spent cartridges ---

21 MR. RICHEY: Casings.

22 THE COURT: Right, casings. Excuse me, go ahead.

23 Q. (By Mr. Richey) Chavez Miller has yet to tell you what
24 his -- where he was that day, correct?

25 A. Prior to being arrested?

1 Q. Yeah.

2 (Brief pause while witness reviews document.)

3 A. He refused to put a statement on paper, but he told me he
4 was at a girlfriend's house at Spartan Terrace Apartments
5 (phonetic), where he got arrested.

6 Q. Okay. And -- and we know that arrest at Spartan Terrace
7 occurred after this shooting?

8 A. Correct.

9 Q. Okay. So, before this shooting, he has not told you
10 where he was, correct?

11 A. Vaguely.

12 Q. In terms of size, are -- is he and Mr. Walker about the
13 same size?

14 A. No.

15 Q. Is he taller than Mr. Walker, shorter?

16 A. No, shorter.

17 Q. He's shorter than Mr. Walker? Is he -- is he thin or
18 less fat like he is?

19 A. I would say he's a little bit skinner than Mr. Walker.

20 MR. RICHEY: One moment, Your Honor.

21 THE COURT: Yes, sir.

22 (Brief Pause)

23 Q. (By Mr. Richey) Do -- do you -- do you know whether the
24 -- the victim and Mr. Walker were -- had a -- were friends or
25 not? Do you know that?

1 A. I heard they were recent acquaintances.

2 Q. Okay. Do you know -- did you -- did they ever go places
3 together that you're aware of?

4 A. Ahhh ---

5 Q. Well, let me ask you this way. Let me ask you this
6 question: They knew each other?

7 A. Yes, sir.

8 Q. And they have had contact

9 A. Yes, sir.

10 Q. Prior to this?

11 A. Yes, sir.

12 MR. RICHEY: Thank you, sir.

13 THE COURT: Redirect?

14 MR. WILLINGHAM: Thank you, Judge.

15 REDIRECT EXAMINATION by MR. WILLINGHAM:

11:00 A.M.

16 Q. Very briefly, back to gunshot residual. How quickly does
17 a gunshot residual test have to be done to be useful?

18 A. If the victim is still alive, it has to be within six (6)
19 hours or SLED won't analyze the kit. And you have to make
20 sure the victim has done -- not a victim, but whoever you're
21 going to perform the test on has not done anything to wash
22 their hands.

23 Like we've tried to perform tests on people inside of six
24 (6) hours, and if they're sweating real bad, get any type of
25 moisture on their hands, that will degrade what is on their

- 1 hand.
- 2 Q. And you came in contact with Isaiah Walker first at what
- 3 time?
- 4 A. It was after midnight.
- 5 Q. Okay. So ---
- 6 A. That Saturday morning.
- 7 Q. Arguably ten (10), eleven (11), or twelve (12) hours
- 8 after Jeffrey Hubbard was killed?
- 9 A. Yes, sir.
- 10 Q. So, would there be any point, any use -- well, was a
- 11 gunshot residual test done on Isaiah Walker?
- 12 A. No.
- 13 Q. Why not?
- 14 A. It was outside the six (6) hour window.
- 15 Q. Okay. You spent a lot of time, again, on boots.
- 16 A. Yes, sir.
- 17 Q. Can you tell me those boots were not out there? Were not
- 18 walked in out there?
- 19 A. No, sir, I can't.
- 20 Q. Just because footprints weren't left doesn't mean they
- 21 weren't worn, does it?
- 22 A. No.
- 23 Q. You can't say they were and can't say they weren't?
- 24 A. Correct.
- 25 Q. _____ Road, the Defendant's residence, is that

1 too in Spartanburg County?

2 A. Yes, sir.

3 Q. And we don't leave the county when we cross the
4 interstate, do we?

5 A. No.

6 Q. All right. That's still in Spartanburg County?

7 A. Yes, sir.

8 Q. There was a lot of talk about ballistics and projectiles
9 and casings and being compared. Was a gun ever recovered in
10 the case to be compared with those projectiles or bullets?

11 A. No, sir.

12 MR. WILLINGHAM: Thank you. That's all the questions I
13 have for you.

14 MR. RICHEY: I have a couple.

15 THE COURT: Yes, sir, Mr. Richey.

16 RECROSS EXAMINATION by MR. RICHEY: 11:02 A.M.

17 Q. Now, you testified that you got there at twelve (12:00)
18 at night? It's not nine (9:00) or ten (10:00)? This was
19 twelve (12:00) midnight?

20 A. When we got there was around nine (9:00) or ten (10:00).
21 When I first encountered Mr. Walker, it was after midnight.

22 Q. Okay.

23 A. Your client Mr. Walker, not his father.

24 Q. Okay. So, when you got -- when you got, to the Walker
25 residence, and Mr. Walker's father came up there, that was the

1 time that you all got in the car to go try to find or show you
2 where Mr. Walker would be?

3 A. No, sir. We had been on the scene several hours and our
4 forensic people had been processing the scene when Mr. Walker
5 received a phone call about where his son may be. He and his
6 wife were inside the house while we were processing the
7 driveway and the yard.

8 Q. And did -- did you ask him for his DNA?

9 A. Yes, sir.

10 Q. Did he give it to you?

11 A. Yeah.

12 Q. So, he pretty much complied with what you asked? He gave
13 you a statement and he gave you DNA, correct?

14 A. He gave me a verbal statement and gave me DNA, yes, sir.

15 Q. And -- and -- and he would have a right not to give you
16 that, correct?

17 A. Correct.

18 Q. And -- and he would have a right to try to conceal his
19 identity through the DNA? When you asked for it, he would
20 have a right to say, "I'm not giving it to you," to hinder the
21 investigation?

22 A. Correct.

23 Q. But, he freely gave you that?

24 A. Yes, sir.

25 MR. RICHEY: Okay. Thank you, sir.

1 THE COURT: Anything further?

2 MR. WILLINGHAM: No.

3 THE COURT: Sir, you may step down.

4 (The witness stepped down from the witness stand.)

5 THE COURT: Ladies and gentlemen of the jury, we've been
6 going now for about an hour and a half. It's time to take a
7 break, after this witness has finished, and so, we're going to
8 take about a five to ten minute break.

9 As always, I'm going to tell you not to begin any
10 discussions until such time as I've advised you to do so. You
11 may retire to the jury room. Thank you very much.

12 (The jury exited the courtroom at 11:04 a.m.)

13 THE COURT: All right. Court will be in recess for
14 about ten (10) minutes. The Defendant remains in custody.

15 (Whereupon, a recess was taken from 11:05 a.m. till 11:16
16 a.m.)

17 (Whereupon, State's Exhibit Numbers 65 through 70 were
18 marked for identification.)

19 THE COURT: All right. Is the State ready?

20 MR. WILLINGHAM: Yes, sir.

21 THE COURT: Is the Defense ready?

22 MR. RICHEY: Yes, sir.

23 THE COURT: Bring the jury back.

24 (The bailiff stepped out to summon the jury.)

25 (The jury entered the courtroom at 11:18 a.m.)

1 THE COURT: All right. The record will reflect that all
2 jurors have returned to the courtroom. You may call your next
3 witness, Mr. Willingham.

4 MR. WILLINGHAM: Judge, we call Russell Holthaus.

5 (Mr. Holthaus is summoned.)

6 THE COURT: Sir, come forward and be sworn, please.

7 (Mr. Holthaus steps forward to be sworn.)

8 (Whereupon,

9 RUSSELL HOLTHAUS

10 having been first duly sworn, testified as follows:)

11 THE COURT: And, once you've had a seat and gotten close
12 to the microphone, state your full name for us, please.

13 THE WITNESS: Russell Gerrard Holthaus (phonetic).

14 THE COURT: Mr. Willingham, it's your witness.

15 MR. WILLINGHAM: Thank you, Judge.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION by MR. WILLINGHAM: 11:19 A.M.

18 Q. Mr. Holthaus, you have on a uniform from Greer PD?

19 A. Yes, sir.

20 Q. How long have you been with Greer?

21 A. Twenty-two (22) years.

22 Q. Is that how long you've been in law enforcement?

23 A. Yes, sir.

24 Q. And you work, as part of the forensic team, in
25 Spartanburg County?

1 A. Yes, I do.

2 Q. And that is basically a group of forensic officers, from
3 the county and outlying agencies of law enforcement, together
4 for forensic services?

5 A. Yes, sir.

6 Q. And you're a part of that team and you were part of that
7 team on February 17th, two thousand, six (2006)?

8 A. Yes, sir.

9 Q. And you were helping the county investigate a homicide;
10 is that correct?

11 A. Yes, sir, I was.

12 Q. Okay. And what were you -- what, if anywhere -- where,
13 if anywhere, were you asked to process?

14 A. I was asked to go to Road.

15 Q. Okay. And do you recall what time you got there?

16 A. Around 10:30 p.m.

17 Q. Okay. And, as a crime -- is it fair to say you're a
18 crime scene analyst or forensic technician? How would you
19 describe your job duty and title?

20 A. I respond to scenes. I would photograph, collect, and
21 analyze the scene and collect evidence as it pertains to the
22 -- the scene itself. Anything that's directed, by
23 investigators that they feel is necessary to pick up, along
24 with my own experience, and anything named that would have
25 been named in a search warrant.

1 Q. Okay. And, before you processed 1 _____ 1 Road, did
2 you have a search warrant?

3 A. Yes. They brought a search warrant to the scene.

4 Q. Okay. And, once the search warrant was obtained -- well,
5 let me put this up.

6 (State's Number 6 was shown on overhead.)

7 Q. Just to make sure we're all on the same page, I'm showing
8 you an aerial shot, State's Exhibit Number 6. It's been
9 testified to before, but this is I-26 (indicating) and this is
10 _____ 1 Road (indicating). Is that the house that you
11 processed?

12 A. Yes, it is.

13 Q. Okay. When you were processing that scene, did you take
14 photographs?

15 A. Yes, I did.

16 Q. Did you take measurements?

17 A. Yes, I did.

18 Q. As a result of those photographs and measurements, did
19 you make a diagram?

20 A. Yes, I did.

21 (Whereupon, State's Exhibit Number 71 was marked for
22 identification.)

23 Q. I show you State's Exhibit Number 71 and ask if you
24 recognize that?

25 A. Yes, I do.

1 Q. What is it?

2 A. That's the diagram that I drew of Road of
3 the crime scene as it pertained to how I collected evidence.

4 Q. Okay. And you've marked on there where you collected
5 different items you recovered?

6 A. Correct.

7 MR. WILLINGHAM: Okay. Your Honor, at this time, I'd
8 move State's Exhibit 71 into evidence.

9 MR. RICHEY: No objection.

10 THE COURT: Without objection, it will be received as
11 marked.

12 (Whereupon, State's Exhibit Number 71 was admitted into
13 evidence without objection.)

14 Q. (By Mr. Willingham) What different types of evidence did
15 you recover from that scene?

16 A. A nine (9) millimeter Luger shell casings; spent or
17 discharged projectiles, three (3) of them; a cigarette butt;
18 an opened Newport package of cigarettes; a grey hair comb; six
19 (6) additional nine (9) millimeter Luger casings; and five (5)
20 swabs of what was believed to be blood areas.

21 Q. Okay. I'm going to show you on the overhead your State's
22 Exhibit Number 71.

23 (State's Number 71 shown on overhead.)

24 MR. WILLINGHAM: I'll take this, and then, I'll give it
25 back.

- 1 (Mr. Willingham picks up pointer.)
- 2 Q. What is this right here (indicating)?
- 3 A. That's the house.
- 4 Q. And what is this (indicating)?
- 5 A. That's the garage.
- 6 Q. And these are the doors to the garage (indicating)?
- 7 A. Yes, sir.
- 8 Q. What is that (indicating)?
- 9 A. A basketball goal.
- 10 Q. What is this (indicating)?
- 11 A. The front walkway to the front door.
- 12 Q. And this would be the driveway (indicating)?
- 13 A. Yes, sir.
- 14 Q. Obviously, a tree (indicating)?
- 15 A. Yes, sir.
- 16 Q. A fence (indicating)?
- 17 A. Yes, sir.
- 18 Q. A mailbox (indicating)?
- 19 A. Yes, sir.
- 20 Q. And this is  Road ----
- 21 A. Right.
- 22 Q. --- at the top of the picture; is that correct?
- 23 A. Correct.
- 24 Q. Okay. Now, I'm going to give you the pointer. I'm going
- 25 to show you State's Exhibit Number 33.

1 (State's Number 33 handed to witness.)

2 Q. (By Mr. Willingham) What is it?

3 A. That is spent bullet or discharged projectile and it is
4 labeled as "F" from the driveway of ~~_____~~.

5 Q. Show us on that diagram where it's -- it was found.

6 (State's Number 71 shown on overhead.)

7 A. At the driveway (indicating).

8 Q. It corresponds right there in the middle of the driveway?

9 A. Correct.

10 Q. All right. State's 32.

11 (State's Number 32 handed to witness.)

12 Q. What is it?

13 A. That is labeled, "B" which would be a shell casing, a 9-
14 millimeter Luger, and it was also collected in a grass area of
15 ~~_____~~ Road.

16 Q. Show us on the diagram.

17 A. "B" is right in here (indicating).

18 Q. All right. Now, what's the difference between State's 33
19 and 32.

20 A. Okay. Thirty-three (33) is the actual bullet that has
21 come out of the weapon and it's laying in the -- in the
22 driveway. The State's evidence on the "B" is a casing in
23 which the bullet would have came out of ---

24 Q. Okay.

25 A. --- and discharged and, then, it would have been ejected

- 1 by a semi-automatic weapon.
- 2 Q. Okay. State's 41 is another 9 millimeter -- nine (9)
- 3 millimeter Luger casing?
- 4 A. Correct.
- 5 Q. And you've got it marked as item number ---
- 6 A. "R."
- 7 Q. --- "R," which is where?
- 8 A. I believe it's down in this area (indicating).
- 9 Q. Okay. State's 40, the same thing; you got it marked "Q"?
- 10 A. "Q."
- 11 Q. State's 38, the same thing, and you've got it marked with
- 12 "O"; is that correct?
- 13 A. That's correct.
- 14 Q. And State's 35, the same thing, and you've got it marked
- 15 with "H"?
- 16 A. Correct.
- 17 Q. State's 34 -- well, withdraw that. State's 31, the same
- 18 thing, and you've got it marked with an "A", correct?
- 19 A. Correct.
- 20 Q. State's 39, the same thing, and you've got it marked with
- 21 a "P," correct?
- 22 A. Correct.
- 23 Q. State's 37, the same thing, and you got it marked with a
- 24 "N"?
- 25 A. Correct.

1 Q. Okay. And those initials that I've referred to, "P,"
2 "A," "N," "Q," "O," "H," those are all the same corresponding
3 letters in the diagram, right?

4 A. That's correct.

5 Q. And that shows you where on that -- in that yard those
6 various items were recovered?

7 A. Correct.

8 Q. Okay. Now, State's Exhibit 34, what is that?

9 (State's Number 34 handed to witness.)

10 A. That is marked as letter "G." It's also a spent or a
11 discharged projectile in the driveway of ~~_____~~ Road.

12 Q. So, that's different than the casings we found? That's
13 actually a projectile?

14 A. Correct.

15 Q. The same thing with State's Exhibit Number twenty -- I'm
16 sorry, 36. That looks like your letter, "J"; is that correct?

17 A. Correct.

18 Q. And that's another projectile?

19 A. Correct.

20 Q. Show me where that one is.

21 A. "J" should be right about there (indicating).

22 Q. Okay. All right. Now, while you were processing this
23 scene, did anything unusual happen?

24 A. Yes. A white Cadillac, with a dark top, came down ~~_____~~
25 ~~_____~~ Road from this direction (indicating) and backed up into

1 the driveway backing down towards my crime scene.

2 I was in the driveway, standing in the driveway. I had a
3 -- an unmarked patrol car parked at an angle down this
4 driveway to light it up with headlights. At that time, we --
5 myself and a reserve officer, who was with me assisting me,
6 stopped the vehicle.

7 It pulled out, backed onto _____ Road. At that time,
8 we stopped all parties that were involved in that vehicle and,
9 with it being a homicide scene, we felt it necessary to detain
10 everyone in the vehicle until assistance arrived.

11 Q. And did that assistance come fairly quickly?

12 A. Yeah, yes, it did. The investigators and patrol officers
13 returned to the scene because they had been called away to
14 investigate the location of possibly the gentlemen that lived
15 at this residence.

16 Q. Okay. When they arrived back, they took custody of those
17 folks?

18 A. They did.

19 Q. You weren't involved with that?

20 A. No, sir.

21 Q. Okay. You went -- after that was all taken care of, you
22 went back to processing the scene?

23 A. That's correct.

24 Q. Okay. I show you State's Exhibit Number B -- I'm sorry,
25 State's Exhibit 42, which you have labeled as "B." Do you

1 recognize that?

2 A. Yes, sir.

3 Q. I'm going to slide State's Exhibit Number 71 up, so, you
4 can see it. And "B" is here in the corner of the driveway?

5 A. Correct. And it was in the double yellow lines, just in
6 the middle on the roadway.

7 Q. So, that was out in the middle of the road?

8 A. That's correct.

9 Q. That was separate from all the other casings?

10 A. That's correct.

11 Q. Okay. And what type of casing is this?

12 A. It is also a 9-millimeter Luger.

13 Q. Okay. Did -- in addition to the casings, the
14 projectiles, and the other items, did you also take swabs?

15 A. That's correct.

16 Q. What's the purpose of taking swabs?

17 A. To determine the -- what the liquid is, the source of the
18 liquid, and the type of the liquid and splatter.

19 MR. WILLINGHAM: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Brief Pause)

22 Q. (By Mr. Willingham) I show you what's been previously
23 introduced as State's Exhibits 43, 44, 45, 46, and 47.

24 (Exhibits shown to witness.)

25 Q. Do you recognize those?

- 1 (Brief pause while witness examines exhibits.)
- 2 A. Yeah, those are the swabs that were collected.
- 3 Q. Okay. Can you show the jury, on your diagram, where
- 4 those swabs were taken from?
- 5 (Brief pause while witness examines exhibit.)
- 6 A. Okay. "C," marker "C" is 31.
- 7 Q. Okay.
- 8 A. Thirty-two (32) is "D," right here (indicating).
- 9 Q. Okay.
- 10 A. "E" is 33, which would be right here (indicating).
- 11 Q. Okay.
- 12 A. "I," which is in the middle over here (indicating).
- 13 Q. Okay.
- 14 A. And, then, "LL" is next to the "L" right here
- 15 (indicating).
- 16 Q. Okay.
- 17 A. Which the cigar -- I believe the cigarette pack was
- 18 picked up.
- 19 Q. Okay. And those items were all recovered and ultimately
- 20 sent to SLED?
- 21 A. Yes, sir.
- 22 Q. As was the bullets?
- 23 A. That's correct.
- 24 (Brief Pause)
- 25 Q. You did not actually analyze any of this evidence?

1 A. No, I did not.

2 Q. You just collect it and pass it on to the next person in
3 the chain and it ultimately ends up at SLED?

4 A. That's correct.

5 MR. WILLINGHAM: Okay. If you would, answer any
6 questions the Defense lawyer may have. Thank you.

7 THE COURT: Mr. Richey, your witness.

8 MR. RICHEY: Thank you, Your Honor.

9 CROSS EXAMINATION by MR. RICHEY: 11:34 A.M.

10 Q. Sir, when you got to the scene around 10:30, the scene
11 was pretty much preserved; is that correct?

12 A. Yes.

13 Q. There had been no contamination or you believe anyone
14 tried to alter the scene; is that correct?

15 A. That's correct.

16 Q. Okay. And, so, it was pretty wide open when you got
17 there?

18 A. Correct.

19 Q. Okay. And -- and that car that backs up into the
20 driveway, those folks didn't do anything to contaminate that
21 scene? They didn't get out of the car and try to do anything;
22 is that correct?

23 A. They started to get out of the car, in the driveway, and
24 we ordered them back into the car and to pull out to the
25 street. And, then, they stopped out there and we had them

- 1 exit the vehicle.
- 2 Q. So, they did what you asked them to do?
- 3 A. Yes, they did.
- 4 Q. Okay. I'm just going to ask you to identify some of
- 5 these things for me again. What is "A"?
- 6 A. "A" is a nine-millimeter Luger casing.
- 7 Q. Okay. And what is "B"?
- 8 A. A nine-millimeter luger casing.
- 9 Q. Okay. What is "R"?
- 10 A. A nine-millimeter luger casing.
- 11 Q. What is "Q"?
- 12 A. A nine-millimeter luger casing.
- 13 Q. And what is "M"?
- 14 A. "M" is a grey hair comb.
- 15 Q. Okay. What is "N"?
- 16 A. "N" was a nine-millimeter luger casing.
- 17 Q. What about "P" and "O"?
- 18 A. Both are nine-millimeter Luger casings.
- 19 Q. Okay. So, these casings, in this diagram, are actually
- 20 like grouped together; is that correct?
- 21 A. They're fairly close, yes, sir.
- 22 Q. Okay. And you didn't find any casings here (indicating),
- 23 nothing here (indicating)?
- 24 A. No, sir.
- 25 Q. And nothing here (indicating)?

- 1 A. No, sir.
- 2 Q. Down here (indicating)?
- 3 A. No, sir.
- 4 Q. And none up here (indicating)?
- 5 A. No, sir.
- 6 Q. So, these groupings of the casings would be consistent
- 7 with where firing that took place?
- 8 A. Where -- in relation to where the firing took place,
- 9 correct.
- 10 Q. So -- so, these would be groups and sets of firings? I'm
- 11 not saying who, when, or what, but they would be groups that
- 12 you believed would be groups of firing?
- 13 A. In relationship with that and the blood splatter, yes,
- 14 sir.
- 15 Q. Okay. And all this evidence that you collected, you sent
- 16 this to -- off to be tested? You gave it to somebody and they
- 17 do what they do with it, right?
- 18 A. I turned it into the evidence room, yes, sir.
- 19 Q. Okay. Did -- did you do any other crime scene
- 20 investigation? Did you go to the pond and in that area?
- 21 A. No, sir.
- 22 Q. Okay. All right. If -- if you are driving -- if you're
- 23 driving down ~~somebody's~~ Road -- let me put this picture up,
- 24 this one for you.
- 25 (State's Number 61 shown on overhead.)

- 1 Q. Okay. That's the house (indicating), right?
- 2 A. Yes, sir.
- 3 Q. Okay. And -- and this is where all the casings
- 4 (indicating) and stuff were found, right, on the driveway?
- 5 A. In the driveway and in the front yard close to the
- 6 driveway, yes, sir.
- 7 Q. Okay. And they were found in this area (indicating)
- 8 right here kind of, right?
- 9 A. Close to the tree, yes, sir.
- 10 Q. Okay. And from that road -- from that -- that actual
- 11 driveway actually leads to that road, correct?
- 12 A. It connects to the road, yes, sir.
- 13 Q. Okay. And, so, if you're riding along here (indicating),
- 14 and you looked, you would notice -- if it's daylight, would
- 15 you -- you would notice the blood and the shell casings and
- 16 all that if you're looking?
- 17 A. I don't know, if you're riding down the road, in a car.
- 18 Q. But that -- if you're -- if you're standing in the road
- 19 right there (indicating), and you looked in that -- in that
- 20 driveway and the yard, it would be apparent that something
- 21 took place there, correct?
- 22 A. But you could -- yeah, you could observe something took
- 23 place, yes, sir.
- 24 Q. Okay. So, your speed of what you're driving will
- 25 determine whether you can see whether anything took place or

1 not; is that correct?

2 A. Yes, I would say so, yes, sir.

3 Q. Okay. And, so, if someone is walking down there, they
4 could see all this stuff in the yard?

5 A. I believe if they stopped and looked, yes.

6 Q. Okay. Because if they're walking here (indicating), if
7 they're walking -- if they're walking casually up here
8 (indicating), because there's really no sidewalk, so, you have
9 to kind of walk in the grass if you walked on that street,
10 right?

11 A. Either side, yes, sir.

12 Q. But, you walk on the side of the house, you would have to
13 be in the grass right here (indicating) where this fence is,
14 correct?

15 A. Yes, sir.

16 Q. So, you would only -- so, when you're walking down the
17 road, you're right there -- you're almost right there where
18 the blood was found and the shell casings? If you're walking
19 along, the blood is apparent, correct?

20 A. It could be, yes, sir.

21 Q. Okay. All right. And these shell casings, in this
22 driveway, this -- this -- it's really -- there's nothing real
23 sophisticated to pick them up, right? I mean, they're shell
24 casings and I can pick them up; is that correct?

25 A. Well, yeah, but I use care when I pick them up.

1 Q. No, I -- you use care? Okay. But, I'm saying, if -- if
2 -- if I was going to go -- if I was there that day, and I got
3 there before you, right, would it be hard for me to simply to
4 bend down, pick up the shell casings, and put them in my
5 pocket?

6 A. That's possible.

7 Q. Okay. Is it hard?

8 A. No, sir.

9 Q. So, it would take me five (5) minutes max to pick up all
10 these casings, right?

11 A. Yes, sir.

12 Q. I mean, I'm not using any care at all; I'm not using
13 care. I'm not doing an investigation. I'm not doing
14 anything; I'm simply out there picking up these casings.
15 Would five (5) minutes be a long time to pick up these
16 casings?

17 A. No, sir.

18 Q. Okay. So, it would be relatively easy for me to remove
19 the casings?

20 A. Yes, sir.

21 Q. Okay. In terms of the blood, it's -- it's there obvious,
22 right? It's not -- it's obviously there?

23 A. In the spaces it was, yes, sir.

24 Q. Okay. And there are some actions that I could take,
25 within seven (7) or eight (8) hours, to attempt to remove

1 that, correct?

2 A. Yes.

3 Q. And -- and you being an expert, you can -- you can figure
4 out that I was out there trying to do something, correct?

5 A. (No Response)

6 Q. I mean, if you got out there and, in that area where the
7 blood was, was burned, it was burned, would that raise
8 suspicion to you?

9 A. Yes, sir.

10 Q. Okay. So, if I went out there and burned it, you would
11 notice that I was trying to contaminate that scene, correct?

12 A. Correct.

13 Q. Okay. But, -- and -- and that would take five (5)
14 minutes or would it take ten (10), the area that we're talking
15 about?

16 A. In the grass it would take five (5) or ten (10) minutes.

17 Q. So, to clean this whole thing up, you're talking fifteen
18 (15) minutes max?

19 A. Correct.

20 MR. RICHEY: Okay. Thank you.

21 MR. WILLINGHAM: Nothing else for this witness, Judge.

22 THE COURT: All right, sir, you may step down.

23 (The witness stepped down from the witness stand.)

24 MR. WILLINGHAM: Your Honor, we'd call Rusty Clevenger.

25 THE COURT: Mr. Clevenger, please.

1 (Mr. Clevenger is summoned.)

2 MR. WILLINGHAM: Judge, we'd ask that Officer Holthaus
3 be excused.

4 THE COURT: Any objection?

5 MR. RICHEY: No objection.

6 THE COURT: Sir, you can -- you're free to go. Thank
7 you ---

8 THE WITNESS: thank you.

9 THE COURT: --- very much.

10 (Whereupon, the witness was excused.)

11 THE COURT: Mr. Clevenger, come forward and be sworn.

12 (Mr. Clevenger stepped forward to be sworn.)

13 (Whereupon,

14 **RUSTY CLEVINGER**

15 having been first duly sworn, testified as follows:)

16 THE COURT: Sir, once you've had a seat, move close to
17 the microphone and state your full name for the record,
18 please.

19 THE WITNESS: My name is Charles Russell Clevenger,
20 better known as Rusty.

21 THE COURT: All right. Mr. Willingham, your witness.

22 MR. WILLINGHAM: Thank you.

23 DIRECT EXAMINATION by MR. WILLINGHAM: 11:42 A.M.

24 Q. Rusty, where do you work?

25 A. The Seventh Circuit Solicitor's Office.

1 Q. How long have you been in the solicitor's office?

2 A. Almost eleven (11) years.

3 Q. How long have you been in law enforcement?

4 A. Almost twenty-two (22) years.

5 Q. You had a limited role or limited involvement in this
6 case; is that correct?

7 A. Yes, sir.

8 Q. You -- for the solicitor, you are kind of the director of
9 the -- forensic coordinator, the coordinator of the forensics
10 unit?

11 A. That's correct.

12 Q. Where, if I understand correctly, and you correct me if
13 I'm wrong, there is an effort by the sheriff and outlying law
14 enforcement agencies to try to coordinate and have a central
15 forensics unit team?

16 A. That's correct.

17 Q. And you coordinate the actions of that team?

18 A. I do.

19 Q. Okay. As -- in your role as that forensics coordinator,
20 did you attend the autopsy of Jeffrey Hubbard?

21 A. I did.

22 Q. And that was on February the 18th of two thousand and six
23 (2006)?

24 A. Yes, sir.

25 Q. There were other investigators there as well; is that

- 1 correct?
- 2 A. That's correct.
- 3 Q. I believe Investigator Hogsed was there?
- 4 A. Yes, sir.
- 5 Q. Investigator Baird was there?
- 6 A. Yes, sir.
- 7 Q. And you were there. And Dr. Wrenn did the autopsy?
- 8 A. That's correct.
- 9 Q. Was the autopsy completed all at one time?
- 10 A. I'm sorry?
- 11 Q. Was the autopsy completed all at one time from start to
- 12 finish?
- 13 A. Well, no, sir. There was a -- a brief of time where he
- 14 had to take a break. I believe he had to go to a meeting or
- 15 something. And, in that time, Investigator Hogsed and Baird
- 16 left and I remained.
- 17 Q. Okay. Investigator Hogsed and Baird, they collected a
- 18 number of projectiles, from the victim's body from Dr. Wrenn,
- 19 while you were there; is that correct?
- 20 A. That is correct.
- 21 Q. And, after they left, Dr. Wrenn came back and completed
- 22 the autopsy?
- 23 A. That's correct.
- 24 Q. And collected additional items from Jeffrey Hubbard's
- 25 body?

1 A. Yes, sir.

2 Q. And he turned those over to you?

3 A. That is correct.

4 (Mr. Willingham retrieves exhibits.)

5 Q. I show you what's been marked as State's Exhibits 28, 29,
6 and 30. These are actually already in evidence. Are those
7 the projectiles that you recovered from Dr. Wrenn from the
8 body of Jeffrey Hubbard?

9 (Brief pause while witness examines exhibits.)

10 A. Yes, sir, it is.

11 Q. Okay. And you turned those in to evidence?

12 A. That's correct.

13 Q. All right. You didn't perform any analysis or do
14 anything to those?

15 A. No, sir, I did not.

16 Q. Okay. All right. I show you what's been marked as
17 State's Exhibit 65, 66, 67, 68, and 69. I'll show you 65
18 first and ask if you recognize that?

19 A. Yes, sir, I do.

20 Q. And what are those?

21 A. These are copies -- or correction -- these are the
22 original palm prints and fingerprints that I took to Captain
23 Kellet (phonetic) over in Greenville.

24 Q. Whose prints are those?

25 (Brief pause while witness examines exhibit.)

1 A. I'll get my glasses on here. They're getting small in my
2 old age.

3 (Brief Pause)

4 A. Isaiah Frederick Walker.

5 MR. WILLINGHAM: Your Honor, at this time, I'd move
6 State's Exhibit Number 65 into evidence.

7 THE COURT: Any objection?

8 MR. RICHEY: No objection.

9 THE COURT: Without objection, it'll be admitted into
10 evidence.

11 (Whereupon, State's Exhibit Number 65 was admitted into
12 evidence without objection.)

13 Q. (By Mr. Willingham) Now, in addition to his fingerprints
14 and palm fingerprints, did you take anybody else's
15 fingerprints to Captain Kellet?

16 A. I did. There were a number of individuals that would
17 have had something to do with the crime scene that we wanted
18 to make sure we had everyone's fingerprints. So, we took
19 everything that we had over there for her to look at.

20 Q. And those are called, for lack of a better word,
21 elimination prints?

22 A. Correct.

23 Q. Did you take or have a set of the victim's fingerprints?

24 A. I did.

25 Q. Did you have a set of Brent Gentry's fingerprints?

1 A. I would have to look at it to make sure, but yes, sir,
2 I'm -- there were a -- a litany of people that were there
3 present at the crime scene that day with EMS to fire fighters
4 to our own crime scene people.

5 Q. Okay. Chavez Miller, is that a set of fingerprints that
6 you took?

7 A. It's quite possible, yes, sir.

8 Q. Okay. And you took law enforcement and fire fighters and
9 EMS?

10 A. Yes, sir, anybody that would have had anything to do with
11 the crime scene, we tried to -- to at least get an elimination
12 print.

13 Q. And you also take fingerprints that had been lifted by
14 other members of the forensics team?

15 A. I did.

16 Q. I'm showing you State's Exhibits 66, 67, 68 and 69. Are
17 those the other fingerprints that you took to Captain Kellet
18 in Greenville?

19 (Brief pause while witness examines exhibits.)

20 A. Yes, sir, they are.

21 MR. WILLINGHAM: Your Honor, at this time, I'd move
22 Exhibits 66, 67, 68 and 69 into evidence.

23 MR. RICHEY: No objection.

24 THE COURT: Without objection, they'll be received into
25 evidence as marked.

1 (Whereupon, State's Exhibit Numbers 66, 67, 68, and 69
2 were admitted into evidence without objection.)

3 Q. (By Mr. Willingham) Those individual cards indicate where
4 -- well, what's on those cards?

5 A. Basically, they're identification tags on here by Captain
6 Kellet. And ---

7 Q. Okay. But those are fingerprint cards, right?

8 A. Yes, sir.

9 Q. And those, at the time that you had them, were unknown
10 prints?

11 A. Correct.

12 Q. Okay. And you have known prints, such as these and
13 others, that you know who they belong to?

14 A. Exactly.

15 Q. At the time, you didn't know who those prints belonged
16 to?

17 A. No, sir.

18 Q. Is that fair?

19 A. That's correct.

20 Q. All right. And noted, on the back of each of those
21 fingerprint cards, is a notation of where those fingerprints
22 were recovered from?

23 A. Yes, sir.

24 Q. Can you tell me where the -- the item number by number
25 tell me where they were recovered from?

1 A. Item 69 would have been from the left rear quarter panel
2 of the vehicle. And there's a -- a small drawing on the back
3 of the card also. There's a big square where it had been
4 recovered from.

5 Q. Okay.

6 A. Item 68 was from the exterior driver's door window of the
7 white Probe. Item 67 would have been from the right exterior
8 door above the lock. That would have been of the white Ford
9 Probe. And number 66 would have been from the right exterior
10 door above the lock also of the white Ford Probe.

11 Q. Thank you. I'm showing you State's Exhibit Number 70 and
12 ask if you recognize that.

13 A. I do.

14 Q. What is it?

15 A. It's a cylindaler container that we put negatives in,
16 when we shoot thirty-five millimeter prints or photos, and
17 that's how it's -- it's kept in there.

18 Q. Okay. And those are negatives of the prints that were
19 developed in amino black?

20 A. That's correct.

21 Q. And those are the prints that were testified earlier were
22 fingerprints that were found in blood?

23 A. Yes, sir.

24 Q. Did you take those prints to Captain Kellet?

25 A. I did.

1 MR. WILLINGHAM: Your Honor, at this time, I'd move
2 State's Exhibit Number 70 into evidence.

3 MR. RICHEY: No objection.

4 THE COURT: Without objection, it will be received into
5 evidence as marked.

6 (Whereupon, State's Number 70 was admitted into evidence
7 without objection.)

8 Q. (By Mr. Willingham) You didn't actually perform any
9 analysis on these items either, did you?

10 A. No, sir.

11 Q. What was the purpose of taking them to Captain Kellet?

12 A. She is, for a better -- for lack of a better word, renown
13 expert in this region in fingerprint analysis. And I wanted
14 her to have a -- an evaluation of them and be able to see if
15 she could tell me who -- who the prints belonged to.

16 Q. Okay. And Captain Kellet is here to testify; is that
17 correct?

18 A. Yes, sir.

19 MR. WILLINGHAM: All right. If you would, answer any
20 questions the Defense lawyer has.

21 THE WITNESS: Yes, sir.

22 THE COURT: Mr. Richey, your witness.

23 MR. RICHEY: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS EXAMINATION by MR. RICHEY:

11:52 A.M.

1 Q. These prints are really not elimination prints. They
2 are just part of the investigation; is that correct?

3 A. Which prints are we speaking about?

4 Q. The fingerprints that you did call elimination prints,
5 the term that you used, those prints are not in the
6 investigation; is that correct?

7 A. No, sir.

8 Q. It's just a part of the investigation, correct?

9 A. Yes, sir.

10 Q. Okay. The investigation still continues to move on; is
11 that correct?

12 A. Yes, sir.

13 Q. Okay. And this -- and the fingerprints are like any
14 other piece of evidence, they're used -- they're used in a
15 combination of ways; is that correct? They're not used as
16 outcome determining?

17 A. Fingerprints are -- I mean, nobody has the same
18 fingerprint. Nobody has ever been -- you know, it's never
19 been proven that everybody has got the same fingerprint, so, I
20 believe it's extremely definitive.

21 Q. Okay. Well, the -- the -- the lack of fingerprints would
22 not eliminate someone from being investigated; is that
23 correct?

24 A. That's correct.

25 Q. Okay. So -- so, the -- the non-appearance of

1 fingerprints would not conclude that that person didn't have
2 anything to do with the crime? That's not conclusive,
3 correct?

4 A. No, sir. I would imagine.

5 Q. Okay. And, in fact, the investigation would go on to
6 another stage; is that correct?

7 A. Well, we're -- in an investigation, there are several
8 integral parts. You have the forensic portion. You have the
9 interview portion. There -- there are a number of ways, you
10 know, you go about an -- an investigation. And we're -- we're
11 just speaking about the forensic part.

12 Q. Right. And -- and sometimes these -- these fingerprints,
13 sometimes it depends upon when the print was there to
14 determine -- to determine whether someone is eliminated,
15 correct?

16 A. When the print was put there; is that what you're saying?

17 Q. Yeah, if the print -- or if the print is there, correct?

18 A. It's -- it's quite possible.

19 Q. Okay. And you hadn't done anything to contaminate this
20 at all that you're aware, or not intentionally, correct?

21 A. I wouldn't have contaminate that at all, no, sir.

22 Q. Okay. And you did give these to -- to Officer Kellet?

23 A. Captain Kellet, yes, sir.

24 Q. Okay. And -- and Ms. Kellet had all the fingerprints
25 that you all had to -- to analyze? These prints, there's not

1 any that didn't get analyzed; is that correct?

2 A. That's correct.

3 Q. So, every fingerprint that was collected, that you all
4 had, about this scene is here? There no more of them out
5 there ---

6 A. That I'm aware of -- that I'm aware of, yes, sir.

7 Q. Are you aware of anybody taking any other prints?

8 A. No, sir.

9 Q. And this -- was this your job?

10 A. To deliver the fingerprints, yes, sir.

11 Q. And -- and you done that job to the best of your ability?

12 A. Yes, sir.

13 MR. RICHEY: Okay. Thank you, sir.

14 THE COURT: Mr. Willingham, anything on redirect?

15 MR. WILLINGHAM: Just -- just briefly.

16 REDIRECT EXAMINATION by MR. WILLINGHAM:

11:53 A.M.

17 Q. Mr. Clevenger, do you remember how many prints that you
18 took to Captain Kellet?

19 A. No, sir, I do not.

20 Q. I asked you about one, two, three, four -- I asked you
21 about four of them. Could you have taken more to her?

22 A. Yes, sir.

23 Q. These are the only four that I asked you about though?

24 A. That's correct.

25 Q. But you may have taken other prints to her?

1 A. Yes, sir.

2 Q. All right. That's ---

3 A. And the ones -- I mean, we're speaking about ones she was
4 able to analyze. Many ---

5 Q. That she was able to identify?

6 A. That's correct.

7 Q. But there are other prints that -- and, again, it may be
8 better directed to her, but there were other prints that she
9 could not identify; is that correct?

10 A. That's correct.

11 Q. Okay. All right. I just wanted to make sure that was
12 clear.

13 A. Yes, sir.

14 MR. WILLINGHAM: Thank you.

15 MR. RICHEY: Just briefly.

16 RECROSS EXAMINATION by MR. RICHEY:

11:56 A.M.

17 Q. So, let me get this straight. When I asked you are these
18 all the prints that you took to her, they're not?

19 A. No, I took all prints to have them looked at. Some of
20 the prints that were lifted, if I remember correctly from this
21 case, were smudges. You know, not all prints that we get from
22 crime scenes are legible where you're able to make them out,
23 you know, and testify about in court.

24 Q. That's not what -- the question I have for you is this,
25 these fingerprints that you have, are these all the prints

1 that you took to Officer Kellet to examine or are there more?
2 Is this it? Is this it? I'll -- I'll give them to you and
3 I'll let you look ---

4 A. That's what she analyzed, yes, sir.

5 (Mr. Richey retrieves exhibits.)

6 Q. That's not the question I asked you. The question I
7 asked you is are those all the prints that you took to her?
8 I'm not asking whether she did anything with them; I'm asking
9 you are those all the prints, okay? Are all the prints that
10 you took her to be -- to be -- to be examined?

11 A. That I recall, yes, sir.

12 Q. So, there could be more out there?

13 A. There may be prints that are illegible.

14 Q. And those illegible prints, did you take those to her?

15 A. Anything that was readable, I would have taken to her,
16 yes, sir.

17 Q. So, there -- there could be other prints out there that
18 you did not take -- that you took to you that were illegible?

19 A. I believe what we're doing is splitting hairs. A print
20 is something that I would consider to have at least several
21 points to make an identification.

22 Q. Okay.

23 A. Okay. So, I want to make sure the jury understands,
24 there are times that I could put my hand on something and
25 smear it and it be illegible. And that is what technically we

1 call a smear, okay? The only thing that I consider a print
2 would be what would be legible and would be something
3 identifiable for court.

4 Q. So, what you did was you looked at the print, and you
5 made the determination of what was legible and not legible; is
6 that correct because you didn't take the legible -- the ones
7 that you couldn't read to her because you made that
8 determination prior to taking them to her altogether?

9 A. Sir, I can't recall exactly what would have -- would have
10 been at that point. In other words, I would have taken her
11 anything that would have been readable, yes, sir.

12 Q. Whether it's legible or illegible?

13 A. Legible.

14 Q. Okay. So, the ones that are not legible, you don't take
15 those?

16 A. No, sir.

17 Q. Okay. So, you go through them and you determine what is
18 legible and not legible and you send those to her, right?

19 A. That's correct.

20 Q. And -- and she is a renown expert and she might be in a
21 better position to determine what's legible and what's not
22 legible than you, correct?

23 A. No, sir.

24 Q. Does she have more expertise than you?

25 A. She does, yes, sir.

1 Q. Is she renown or known?

2 A. She is.

3 Q. In this area?

4 A. That's correct.

5 Q. Do you believe that she is a better -- she's better
6 suited to determine what's legible in a fingerprint than you?

7 A. Yes, sir. Yes, sir.

8 Q. So, would you think the better course of conduct, to be
9 on the safe side, is to send them to the person with the
10 expertise, the training, and the knowledge to have them
11 excluded? Wouldn't that be the proper procedure?

12 A. No, sir.

13 Q. It would not?

14 A. No, sir.

15 Q. It would be proper to have someone who is not trained,
16 who is not sophisticated as her to do it?

17 A. You didn't ask me what my training was, sir.

18 Q. No, I'm just asking a question.

19 A. No, I have -- I have basic ident -- I have skills in
20 identifying fingerprints.

21 Q. All right.

22 A. I have bene trained in that area.

23 Q. All right. Let me to ask you this ---

24 A. Okay.

25 Q. --- is Officer Kellet, is she someone you would trust?

- 1 A. She is.
- 2 Q. Is she -- is she -- is her expertise extensive?
- 3 A. It is.
- 4 Q. Would she be in a position to say whether a fingerprint
- 5 is legible or illegible?
- 6 A. She would.
- 7 Q. Would she bring with her the renowned notoriety that you
- 8 say with her in your estimation?
- 9 A. Uh-huh (affirmative).
- 10 Q. Would she be the best person that you would use to
- 11 determine what a fingerprint is?
- 12 A. Sir, if I thought it was that case, I would have taken
- 13 everything. What I'm trying to tell the jury is I made a
- 14 determination, on what was taken over there, based on my
- 15 training. If it's a smudge, there's no use in me taking it to
- 16 her because there's nothing for her to identify.
- 17 Q. Okay. So, you're saying that she could not identify
- 18 whether it was a smudge or not?
- 19 A. Yes, sir.
- 20 Q. She couldn't do that?
- 21 A. That's what I'm saying.
- 22 Q. Okay. Your hand is touching this, right (demonstrates)?
- 23 A. Yes, sir, uh-huh (affirmative).
- 24 Q. You leave your print here?
- 25 A. Under ideal circumstances, yes, sir, possibly.

- 1 Q. If your hand does this (demonstrates), is that a smudge?
- 2 A. It would depend on how it looks when I lifted it.
- 3 Q. Okay. But ---
- 4 A. Chances are, yes, sir, it would be.
- 5 Q. Okay. To determine whether it's a smudge or not, you
- 6 basically know the hand, correct?
- 7 A. Yes, sir.
- 8 Q. Okay. And -- and a smudge -- a smudge means that you
- 9 can't read the hand, correct?
- 10 A. A smudge would mean you could not read the ridge detail
- 11 in the prints.
- 12 Q. Okay. All right. So, when you look at that print and
- 13 you read it to determine whether you can see the ridge detail,
- 14 correct?
- 15 A. That's correct.
- 16 Q. Okay. When Officer Kellet looks at it, she looks at the
- 17 -- the fingerprint to determine what's the ridge pattern,
- 18 correct?
- 19 A. That's correct.
- 20 Q. And, when she determines what the ridge pattern is, she
- 21 has the sophistication, the knowledge, and the expertise more
- 22 so than you, correct?
- 23 A. She has more extensive experience in it, yes, sir.
- 24 Q. And you took that away by not presenting it to her,
- 25 correct?

1 A. No, sir, I did not take anything away from her.

2 MR. RICHEY: Thank you, sir.

3 THE WITNESS: You're welcome.

4 THE COURT: Anything further?

5 MR. WILLINGHAM: No, sir, Your Honor.

6 THE COURT: You may step down. Thank you very much.

7 (The witness stepped down from the witness stand.)

8 MR. WILLINGHAM: Your Honor, we call Robert Talanges.

9 (Mr. Talanges is summoned.)

10 BAILIFF: What's the last name?

11 MR. WILLINGHAM: Talanges.

12 (Mr. Talanges stepped forward to be sworn.)

13 (Whereupon,

14 ROBERT TALANGES

15 having been first duly sworn, testified as follows:)

16 THE COURT: Have a seat, sir, move as close to the
17 microphone as you can. And, once you've done that, state your
18 name for the record.

19 THE WITNESS: Robert Charles Talanges.

20 THE COURT: Thank you, sir. Mr. Willingham, you may
21 proceed.

22 MR. WILLINGHAM: Thank you, Judge.

23 DIRECT EXAMINATION by MR. WILLINGHAM: 12:02 P.M.

24 Q. It's obvious from your uniform, you work for the sheriff
25 department?

- 1 A. That's correct.
- 2 Q. What do you do for them?
- 3 A. I work for the ID section.
- 4 Q. Okay. And that's also known as part of the forensic
- 5 unit?
- 6 A. That's correct, it is the forensic unit.
- 7 Q. Okay. How long have you been in law enforcement?
- 8 A. Approximately eighteen (18) plus years.
- 9 Q. Okay. And you've been involved in both forensics at the
- 10 County and with Public Safety?
- 11 A. That's correct.
- 12 Q. All right. You really had a very limited role in this
- 13 investigation; is that fair?
- 14 A. Yes, sir.
- 15 Q. Okay. You took an oral swab from Isaiah Walker; is that
- 16 correct?
- 17 A. Yes, sir, I did.
- 18 Q. And you did that on February the 18th, two thousand, six
- 19 (2006)?
- 20 A. Yes, sir, at the request of Detective -- Investigator
- 21 Bobo.
- 22 Q. And that was at 4:17 in the morning?
- 23 A. Yes, sir.
- 24 Q. And what was the purpose of taking the oral swab?
- 25 A. They were looking for a DNA standard from Mr. Walker.

- 1 Q. And did he agree to give that to you?
- 2 A. Yes, he did.
- 3 Q. And that is what is in State's Exhibit Number 57.
- 4 (Exhibit handed to witness.)
- 5 (Brief pause while witness examines exhibit.)
- 6 A. Yes, it is. It's the box.
- 7 Q. All right. It's what?
- 8 A. That's the box that I ---
- 9 Q. Okay. And the swab is inside ---
- 10 A. Yes, sir.
- 11 Q. --- is that right? All right. How -- how did you take
- 12 this swab?
- 13 A. Well, we -- we have sterile Q-Tips that are in packages.
- 14 We open a package, of course, and on both of inside your mouth
- 15 you have glands actually that excrete your saliva. And we
- 16 basically go towards the gland and -- and absorb it with the
- 17 Q-Tip.
- 18 Q. And that's known as -- you put it as an oral swab, but
- 19 some people also call that a bocal (phonetic) swab or a buccal
- 20 swab?
- 21 A. Yes, sir.
- 22 Q. Okay. What's the correct terminology?
- 23 A. Buccal.
- 24 Q. Buccal? And he cooperated with that and gave that to
- 25 you?

1 A. Yes, he did.

2 MR. WILLINGHAM: I have no other questions. Thank you.

3 MR. RICHEY: Just a couple.

4 THE COURT: Mr. Richey?

5 CROSS EXAMINATION by MR. RICHEY:

12:04 P.M.

6 Q. He didn't present any resistance in doing that?

7 A. No, sir.

8 Q. And -- and basically it was a simple matter?

9 A. Yes, it is.

10 Q. And -- and he could have raised opposition to doing that;
11 is that correct?

12 A. Yes, he could have.

13 Q. And, at that point, you would have to take some other
14 direction to get a sample, correct?

15 A. Yes, sir.

16 Q. But -- but he didn't raise any of that?

17 A. No, sir.

18 MR. RICHEY: Okay. Thank you.

19 THE COURT: Anything further, Mr. Willingham?

20 MR. WILLINGHAM: No, sir, Your Honor. Thank you.

21 THE COURT: Sir, you may step down. Thank you very
22 much.

23 (The witness stepped down from the witness stand.)

24 MR. WILLINGHAM: Your Honor, we'd call Dan Defreese.

25 THE COURT: Mr. Defeese.

1 (Mr. Defreese is summoned and stepped forward to be
2 sworn.)

3 (Whereupon,

4 DAN DEFREESE

5 having been first duly sworn, testified as follows:)

6 THE COURT: Have a seat in the witness stand, please,
7 sir, move as close to the microphone as you can and state your
8 full name for the record, please.

9 THE WITNESS: My name is Frank Dan DeFreese. It's D-e
10 capital F-r-e-e-s-e.

11 THE COURT: Mr. Willingham, it's your witness.

12 MR. WILLINGHAM: Thank you, Judge. I'm going to beg the
13 Court's indulgence for just one second.

14 THE COURT: Yes, sir.

15 MR. WILLINGHAM: I have to get all these together for
16 Agent DeFreese's testimony.

17 THE COURT: Yes, sir.

18 (Brief pause while Mr. Willingham retrieves exhibits.)

19 MR. WILLINGHAM: Thank you for the indulgence, Judge.

20 THE COURT: Yes, sir. You may proceed.

21 DIRECT EXAMINATION by MR. WILLINGHAM: 12:05 P.M.

22 Q. Tell the jury who you are.

23 A. I am Frank Dan DeFreese.

24 Q. You work where?

25 A. I work, for the South Carolina Law Enforcement Division,

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1 in the laboratory in Columbia.

2 Q. And what -- and that's also known as SLED, right?

3 A. Yes.

4 Q. What do you do for SLED?

5 A. I'm assigned to the firearm and tool mark department
6 within the laboratory. And I analyze firearm and tool mark
7 evidence and report on my results and testify in court.

8 Q. Okay. And how long have you been doing this?

9 A. For forty (40) years.

10 Q. What type of background, training, education and
11 experience do you have that would allow you to do your job?

12 A. Well, I'm a graduate of the University of South Carolina
13 in Columbia, but my principal training, in the field of
14 firearm and tool mark identification, occurred at SLED.

15 I was hired in 1967 and I began a course of instruction
16 that lasted about two and a half (2 ½) years. I studied the
17 techniques of firearm and tool mark identification from
18 Lieutenant Millard Cate (phonetic), who established the SLED
19 laboratory when SLED itself was established in 1947.

20 I also studied with Lieutenant Carl Stokes (phonetic),
21 who was an examiner at that time as well. And, after a period
22 of approximately two and a half (2 ½) years of studying
23 directly from them and working cases under their supervision,
24 I began accepting cases for analysis on my own, which I've
25 been doing since 1969.

1 I've testified in courts throughout this state and in
2 federal court and in courts in other states.

3 MR. WILLINGHAM: Your Honor, at this time, we'd offer
4 Agent DeFreese as an expert capable of rendering an opinion in
5 the area of firearm and tool mark identification.

6 THE COURT: Any objection?

7 MR. RICHEY: None.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, just let me take a moment and explain to you what --
10 what we're doing at this point in time. Without objection,
11 I'm going to certify that this witness is an expert within the
12 area that he's being offered.

13 What that means is, under the rules of our evidence,
14 generally witnesses are not allowed to give their opinions
15 concerning matters. They testify concerning facts or matters
16 that are directly within their knowledge and -- however, an
17 exception to that general rule is made for a witness who is
18 designated as an expert witness.

19 That's a witness who, because of their technical
20 expertise or education or skills, has the ability to have
21 expertise within a certain science or professional or calling.
22 This witness has been offered as an expert in the field of
23 examining firearms and tool marks and things of that nature
24 concerning metal objects. And, therefore, he will be allowed
25 to give his opinion, within the area of his expertise, and

1 also be allowed to state the reasons for that opinion.

2 When I charge you concerning the law, at the close of the
3 trial, I will give you more advice or more instructions as to
4 how you can consider or receive the testimony of an expert.
5 But, at this point in time, this witness has been qualified as
6 an expert within those areas and he will be allowed to give an
7 opinion within that area of expertise and state the reasons
8 for it.

9 You may proceed, Mr. Willingham.

10 MR. WILLINGHAM: Thank you.

11 Q. (By Mr. Willingham) What is your job as a firearms and
12 tool mark identification expert? What do you do?
13 What -- what is your role?

14 A. Principally, we are asked to identify ammunition
15 components back to the firearms in which they were fired where
16 that is possible.

17 Q. And how --- how is that possible? How do you prepare
18 those items?

19 A. The principal things that we get for analysis are bullets
20 and cartridge cases. In some cases, there's also wides
21 (phonetic) and shot pellets where shotguns are involved, but
22 in the case of bullets, for instance, the bullet, as it's
23 being expelled from a firearm, comes into contact, with the
24 interior surface of the barrel, what we call the bore
25 (phonetic).

1 And in a rifle firearm, such as a rifle or pistol or
2 revolver, there's a series of spiral and grooves inside the
3 barrel that grip the bullet and cause the bullet to spin as a
4 result of its being propelled out of the bore.

5 This is done to impart stability to the bullet, which is
6 usually conical in shape, much in the same way that a
7 quarterback puts a spin on a football to keep it from tumbling
8 end over end. It's there to improve the accuracy of the
9 bullet.

10 But we also find, from analyzing fired bullets, that the
11 signature, of that particular bore, that barrel, is placed on
12 bullets fired in that barrel; that the microscopic tool marks
13 which are present, as a result of the manufacturer of the
14 barrel or from use or abuse of the barrel, once it's
15 manufactured, are imparted on each and every bullet that's
16 fired down that barrel.

17 And where a bullet is recovered in sufficiently undamaged
18 condition, we can find the marks that are left on the bullet
19 by the barrel and we can identify those marks with other
20 bullets that are fired by that barrel, so, that if we have a
21 recovered firearm, we can fire ammunition like the bullet in
22 question, so, that we have bullets that we know of gun fire.
23 Then, we can match the test bullets to a -- to an evidence
24 bullet.

25 Where we don't have a recovered firearm, we can attempt

1 to compare the markings that are present on two different
2 fired bullets to determine whether they were fired by the same
3 gun or by different guns.

4 Q. And, in this particular case, there was no gun ever
5 recovered or submitted to you for analysis; is that correct?

6 A. That's correct.

7 Q. But you did have casings and projectiles submitted; is
8 that correct?

9 A. That's true.

10 Q. If you would, tell the jury the difference between
11 casings and the actual projectile.

12 A. A round of ammunition consists of a number of components.
13 The projectile, in the case of pistol ammunition, which is
14 what we're dealing with in this case, is a bullet. It's one
15 solid object. It's not multiple objects as it is in a
16 shotgun.

17 That bullet is loaded into a cartridge case, which is a
18 cylindrical or cup-like structure that has, in one portion of
19 it, it receives the propellant powder. In the back end of the
20 cartridge case, is what we call the cartridge case head, it
21 has a primer.

22 A primer has a percussion sensitive chemical compound in
23 it which will explode when it's struck smartly, which it's
24 struck smartly by the firing pin of the gun in which the
25 cartridge is fired.

1 When the firing pin contacts the primer, the primer
2 detonates and the flash from that primer causes the powder,
3 within the cartridge case, to burn very, very rapidly. It
4 seems to -- to us to be an explosion, but it's a very rapid
5 combustion.

6 It builds pressure inside the cartridge case. When the
7 cartridge case is confined within a firearm, so, that the
8 cartridge case can't burst, that pressure builds to a point
9 where it causes the bullet to be propelled out of the
10 cartridge case, down the bore, and out of the gun.

11 That high pressure, within the cartridge case, is seeking
12 to equalize and the path, with the least resistance, is to
13 cause the bullet to be expelled from the gun.

14 At that point, the bullet is being marked by the gun
15 barrel. While there is high pressure, within the cartridge
16 case, it's being pressed against the side walls of the
17 chamber, the barrel of the gun. It's also being pressed very,
18 very hard against the breech (phonetic) face.

19 The breech face is that portion of the gun that holds the
20 cartridge in the gun. The firing pin that hit the primer, any
21 imperfections that might have been on it are being transferred
22 to the -- to the back of the cartridge case on the primer.

23 So, we have the impressions that can be caused by the
24 firing pin and impressions that can be caused by the breech
25 space or imperfections left on the breech face that are

1 embossed on the cartridge case. We can have impressions that
2 are left on the cartridge case by the chamber.

3 In some firearms, for instance, in semi-automatic fire
4 arms and fully automatic firearms, you can also have marks
5 that are caused by a structure such as the extractor, which is
6 a part of a gun that's used to pull the cartridge case out of
7 the -- the chamber after firing, or where it's struck by
8 another structure called the ejector, which is a portion of
9 the gun that causes the cartridge case to be propelled out of
10 the gun.

11 So, there are a number of things within a gun that can
12 mark both the cartridge case and the bullet. And where we can
13 find these markings and these markings are unique and
14 repeatable, we can conclude that a particular cartridge case
15 was fired, in a particular gun, or that a particular bullet
16 was fired in a particular gun. Or lacking the gun, we can see
17 if many different cartridge cases or many different bullets
18 were fired by the same gun or by more than one gun.

19 Q. Okay. And did you receive a number of bullets or
20 projectiles that had been recovered from the body of our
21 victim?

22 A. I did.

23 Q. Do you remember how many?

24 (Brief pause while witness reviews document.)

25 A. I received fourteen (14) bullets or bullet jacket

1 fragments. I'm not sure how many of that fourteen (14) were
2 actually recovered from the body of the victim without
3 inspecting my notes thoroughly, but I ---

4 Q. Well, let me see if I can help you with that. I'm going
5 to show you State's Exhibit Number 29, which is SLED item 13.

6 (Exhibit handed to witness.)

7 A. Yes, sir.

8 Q. State's 30, SLED number 14.

9 (Exhibit handed to witness.)

10 Q. SLED -- State's 28, SLED number 12.

11 (Exhibit handed to witness.)

12 Q. State's 26, SLED number 10.

13 (Exhibit handed to witness.)

14 Q. State's 22, SLED number 6.

15 (Exhibit handed to witness.)

16 Q. State's 27, SLED 11.

17 (Exhibit handed to witness.)

18 Q. State's 23, SLED 7.

19 (Exhibit handed to witness.)

20 Q. State's 25, SLED 9.

21 (Exhibit handed to witness.)

22 Q. State's number 4, SLED 8.

23 (Exhibit handed to witness.)

24 Q. And State's 21, SLED number 5.

25 (Exhibit handed to witness.)

1 Q. Are those all items that you received in this case?

2 A. Yes.

3 Q. And do those indicate on the packaging that they were
4 from the victim, Jeffrey Hubbard?

5 A. Yes, they do.

6 Q. Okay. Did you do any type of analysis on those items?

7 A. I did.

8 Q. What type? What did you do?

9 A. I did a microscopic comparison, of each of the items with
10 each other, to determine whether or not they were all fired by
11 the same gun.

12 Q. And were you able, based upon your examination and
13 experience, to come to a conclusion?

14 A. Yes, I was.

15 Q. And what was that conclusion?

16 A. That they were all fired by the same gun with the
17 exception of item. Item 11 I think consists of two objects.
18 Item 11 I believe consists of a -- a fired bullet jacket
19 fragment and a fired bullet core fragment.

20 These -- these -- all of these bullet specimens involve a
21 jacketed bullet, which is made by a -- it has a copper outer
22 portion and a lead inner portion.

23 The lead core portion of the bullet never actually comes
24 into contact, with the rifling of the firearm, so, it's not
25 possible to identify a piece of lead core as having been fired

1 by a particular firearm.

2 But the -- so, the lead core portion of -- of my item 11
3 or State's Exhibit Number 27, I can't really say, but the
4 bullet jacket portion of it I can say was fired by the same
5 gun that fired all of the rest of them.

6 Q. Okay. So, of the one, two, three, four, five, six,
7 seven, eight, nine, ten bullets taken from the body ---

8 A. Let me confirm this.

9 Q. Okay.

10 (Brief pause while witness examines documents.)

11 A. That is correct, sir.

12 Q. Of the ten (10) bullets, they were all fired from one
13 gun?

14 A. Correct.

15 Q. We don't know which gun?

16 A. Right.

17 Q. Can you tell me what caliber type gun?

18 A. These bullets were most consistent with bullets loaded
19 into a nine-millimeter Luger caliber cartridge.

20 Q. Okay.

21 A. In fact, the majority of them are a kind of bullet that's
22 made, by the Federal Ammunition Company, known as a Federal
23 hyber-shock (phonetic). And the best of those specimen were
24 consistent with one hundred and forty-seven (147) grain
25 Federal Hyber-shot. It's a form of jacketed hollow point

1 bullet.

2 Q. I'm going to show you State's Exhibit Number 26 -- I'm
3 sorry, 36, SLED's number 20. That's labeled as a spent round
4 from the driveway. Did you receive that item?

5 A. I did.

6 Q. Okay. And you did perform any analysis on it?

7 A. Yes, sir, I did.

8 Q. As a result of that analysis, what was your conclusion?

9 A. That it was also fired by the same gun that fired the
10 previous exhibits.

11 Q. Okay. So, the bullets from the body were fired by the
12 same gun that left that bullet at the driveway?

13 A. Correct.

14 Q. I'm showing you State's Exhibit Number 20, SLED number 3,
15 which is a projectile, the bullet part, recovered from the
16 driver's seat of the car. Did you receive that to be
17 analyzed?

18 A. I did.

19 Q. And, as a result of your analysis, did you have -- reach
20 a conclusion?

21 A. I did.

22 Q. And what was it?

23 A. That item 3 was -- was also fired by the same gun that
24 fired the other items.

25 Q. Likewise, State's Exhibits 34 and 33, SLED's numbers 17

- 1 and 18, these are other spent bullets found at ~~1 Road~~ 1 Road.
- 2 Did you receive those?
- 3 A. Yes, sir, I did.
- 4 Q. And analyzed them?
- 5 A. I did.
- 6 Q. And what was your opinion?
- 7 A. That they also were fired by the same gun, through the
- 8 same gun barrel as the other bullets were fired.
- 9 Q. Okay. The last one I'll ask -- well, so, all of these
- 10 (indicating) were fired by one gun?
- 11 A. Correct.
- 12 Q. State's Number 19, which says "projectile fragment," and
- 13 it's SLED's number 2. Did you receive it?
- 14 A. I did.
- 15 Q. And were you able to reach an opinion as to what gun
- 16 fired that?
- 17 A. No, sir, I was not.
- 18 Q. Why not?
- 19 A. These were also bullet core fragments. These were parts
- 20 of the bullet that never came into contact with the gun barrel
- 21 that fired them. So, there was -- there were no markings upon
- 22 which to base an identification.
- 23 They -- they're -- they're pieces of bullets, but I can't
- 24 really say that they were fired, by the same gun, that fired
- 25 the other identifiable bullets.

1 Q. Are those I believe all the projectiles that you received
2 from the victim?

3 A. I believe they are.

4 Q. Okay. You also received a number of casings?

5 A. I did.

6 Q. You received a number of casings from a white Ford Probe.
7 I show you State's Exhibit Number 15, 14, and 18. These are
8 from the car, SLED's 48, 49, 4 and 1.

9 (Brief pause while witness examines exhibits.)

10 A. Yes, sir.

11 Q. Did you perform any analysis on those items?

12 A. I did.

13 Q. Is it the same type of analysis with casings as with
14 projectiles?

15 A. It's done in the same way. It's done using the same
16 microscopic techniques. It's done on a comparison microscope
17 that permits us to view two objects, at the same time, and
18 manipulate the markings on those objects, with respect to the
19 other objects, so, that we can bring them into a side-by-side
20 comparison.

21 I'm looking, at a different kind of mark, because in this
22 case, I'm looking at an impression, whereas on the bullets I
23 was looking at a striation, which is a scratch.

24 But they're -- they're certainly worthy and identifiable
25 tool marks. And I found the same unique identifying marks on

1 all four of those cartridge cases from which I concluded that
2 the same gun fired all four of them.

3 Q. So, all the ones in the car were fired by a -- by a
4 single gun?

5 A. They were.

6 Q. You also recovered or was submitted to you a number of
7 casings found at Road; is that correct?

8 A. That's correct.

9 Q. I show you a number of exhibits: State's Number 42, your
10 26; 38, which is your 22; 35, which is your 19; 41, which is
11 your 25; 39, which is your 33; 32, which is your 16; 40, which
12 is your 24; and 21, which is your -- I'm sorry, 37, which is
13 your 21; and 31, which is your 15.

14 Did you receive those items?

15 A. I did.

16 Q. And did you -- those are all shell casings from the
17 driveway. Did you perform any analysis on them?

18 A. I did. I compared them with each other and with the
19 other four fired cartridge cases.

20 Q. And were you able to reach any conclusions?

21 A. Yes, sir.

22 Q. And what was that?

23 A. My conclusion was that, with the exception of my item 21,
24 State's Exhibit Number 37, all of these and the other four
25 cartridge cases were all fired by the same firearm. And

1 they're all nine millimeter Luger caliber cartridge cases.

2 State's Exhibit 37, my exhibit 21, was not fired by that
3 same gun. This cartridge case was fired by another gun.

4 Q. Okay. And did you notice anything different -- well, let
5 me do this: All of these (indicating) were fired by the same
6 weapon -- gun as the ones from the car?

7 A. Correct.

8 Q. Okay. Did you notice anything different about that
9 casing than these other ones?

10 A. I did.

11 Q. What did you notice?

12 A. While it's the same caliber, it was a different brand of
13 ammunition. And, if I may, this cartridge case (indicating),
14 when I received it, was -- was this darkened tarnished color.

15 And, when I received it on the inside, it was filled with
16 like grass clippings. This cartridge case -- or the
17 appearance of this cartridge case was consistent with its
18 having weathered extensively, whereas the other cartridge
19 cases were clean and bright and relatively new looking.

20 Q. Okay. And I -- I've -- I've opened for demonstration
21 State's Exhibits Number -- State's Exhibit 41, number 25,
22 which we'll just keep that one aside. And describe to the
23 jury what you're talking about this exhibit.

24 A. Well, this cartridge case is -- is undamaged. It has
25 been processed for latent fingerprints, which accounts for

1 some of the blackening -- blackened color. That's black
2 fingerprint powder.

3 But it does -- it's not tarnished. It did not have grass
4 clippings and debris in it when I received it.

5 Q. Okay. All right. Thanks.

6 (Brief Pause)

7 MR. WILLINGHAM: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. WILLINGHAM: Thank you for being here. Please,
10 answer any questions the Defense lawyer may have for you.

11 THE COURT: Mr. Richey, it's your witness.

12 MR. RICHEY: Thank you, Your Honor.

13 CROSS EXAMINATION by MR. RICHEY:

12:31 P.M.

14 Q. Now, you analyzed -- basically this gun, gun analyzation
15 or however you say it, is really the best way to figure out
16 what gun fired the other gun. And I think you like take the
17 gun, and actually fire it into water or something, if you have
18 the gun. And that is the best way to determine what gun shot
19 what, what -- what bullet, correct?

20 A. Yes. When a gun is submitted, when -- when we have a
21 case that involves a gun, or they want to know did this gun
22 fire these bullets or cartridge cases, the only way we can do
23 it is by test firing the gun because we -- we don't compare
24 the marks that are actually on the gun with the marks on the
25 bullets. We have to get the marks on one bullet or one

1 cartridge case to compare with another.

2 Q. And, so, that is the best way of doing it, correct? That
3 would be the ideal way, to have the gun? To have the gun and
4 the bullets?

5 A. Right. All -- all of those things being equal, we would
6 love to have the gun.

7 Q. Okay. And, when you start saying the same gun, you mean
8 the same type of gun; is that correct?

9 A. No, I mean the same individual firearm.

10 Q. Okay. You did a report in this case, correct?

11 A. I did.

12 Q. Do you have that report with you?

13 A. I do.

14 Q. Can you pull it out ---

15 A. Sure.

16 Q. --- and let's look at it?

17 (Brief pause while the witness retrieves document.)

18 Q. (By Mr. Richey) And -- and, before we get there,
19 regardless of looks and appearance, Item 21 was not fired by
20 Item 4, 15, 6, 19, 22, or 23, 24, or 26? You are positive
21 that is the case?

22 A. Absolutely.

23 Q. Okay. So, that is a sign that a separate, individual gun
24 fired 21 than the other ones?

25 A. That's correct.

1 Q. So, there would have be two separate guns firing at that
2 location? I'm not talking about time, but based on your --
3 your report and your opinion, 21 would be a separate gun than
4 the other ones, correct?

5 A. Correct. I -- I can't speak, as to the location where
6 the cartridge was actually fired, but item 21 was fired by one
7 gun and all the other nine-millimeter cartridge casings we're
8 talking about was fired by another gun.

9 Q. So, at some point, at that residence, I'm not saying
10 time, whatever, location, it would be safe to say that two
11 separate guns were fired at some point?

12 A. Correct. Two guns had to be fired in order to produce
13 the specimens we've got. But they didn't have to be fired
14 there, but two different guns fired.

15 Q. Okay. And now, on page 1, when you talk about your
16 report, you say that items 1, 4, 15, 16, 19, 22, 23, 24, and
17 25, 48, and 49 were all ---

18 A. And 26 -- 25, 26, 48, and 49.

19 Q. Okay. All those items were examined and compared to each
20 other; is that correct?

21 A. They were compared with each other and they were also
22 compared with item 21.

23 Q. Okay. And all these were consistent in being fired by
24 the same gun?

25 A. Yes, sir. All of them -- all of those you -- you

1 mentioned, my item 4, 15, 16, 19, 22, 23, 24, 25, 26, 48, and
2 49 were fired by one firearm.

3 Q. Okay. And ---

4 A. And item 21 was fired by another firearm.

5 Q. And -- and you work with SLED; is that South Carolina Law
6 Enforcement? Is that correct?

7 A. That's correct.

8 Q. And that's your primary function is to help law
9 enforcement investigators; is that correct?

10 A. It is.

11 Q. Okay. And, in your capacity, that's what -- you're more
12 -- in your capacity, your agency is -- I withdraw that.

13 Okay. So, when you're examining all of this stuff, on
14 your report, you examine it all at the same time? I mean,
15 within a day or two? It was all done pretty much at the same
16 time, and they were all compared; is that correct?

17 A. Well, I had all the specimens available to me to look at
18 all at the same time. They didn't -- they weren't submitted
19 at different times.

20 Q. And, so, in your report, you write down what all matched,
21 correct?

22 A. Basically.

23 Q. Okay.

24 A. When I can find that.

25 Q. Okay. All right. So, you determined that these numbers

1 that we read out; 1, 4, 15, 23 -- and I'm paraphrasing -- they
2 all matched the same gun basically?

3 A. Right. All but one cartridge case was fired by one gun.

4 Q. Okay. Then, you flip over to item 3 and you found that
5 in item 3 that there's -- from -- in item 3, 5, 6, 7, 8, 9,
6 10, 11, 12, 13, 14, 17, and 20, they were consistent with
7 being fired by the same firearm?

8 A. Correct.

9 Q. Okay.

10 A. And, of course, I found out that item 11 jacket -- item
11 11 was the jacket and the core, I could identify the jacket,
12 but not the core.

13 Q. Okay. So, you got a whole bunch of numbers we're talking
14 about from ---

15 (Off-the-Record Comments)

16 Q. (By Mr. Richey) Okay. Let's see if that's going to be
17 clear.

18 (Piece of paper on overhead.)

19 Q. Yeah, okay. All right. On this report, you say -- let's
20 see how my writing shows up. Okay. You say that 1 -- 1-4
21 (14), 15, 16, 19, 22, 23, 24, 25, 26, 48, and 49, that's your
22 item 1 on your results, right?

23 A. Right. That's my -- that's -- the first part of my
24 results under my item 1.

25 Q. Okay. And -- and you said that, under this item 1, that

- 1 all these were fired by the same gun; is that correct?
- 2 A. That's correct.
- 3 Q. Okay. Then, you have 21 counted and a long range right
- 4 here, correct?
- 5 A. Correct.
- 6 Q. He wasn't -- "he" I've got a name for him -- the bullet
- 7 wasn't fired by these others, correct?
- 8 A. Twenty-one (21) is a cartridge case.
- 9 Q. Right. It wasn't ---
- 10 A. All of these that you've just put up are fired cartridge
- 11 cases.
- 12 Q. Okay.
- 13 A. And item 21 was not fired by the gun that fired the other
- 14 cartridge casings.
- 15 Q. Okay. All right. Okay. We move over to three (3),
- 16 okay, and we've got 3, 5, 6, 7, 8, 9, 10, 11, 12 ---
- 17 A. That's -- 11 is the jacket.
- 18 Q. Okay.
- 19 A. The jacket portion of item 11.
- 20 Q. We'll put "jacket."
- 21 A. Yeah.
- 22 Q. Twelve (12), 13, 14, 17, 18 and 20. Okay? All of those
- 23 are consistent with each other, correct?
- 24 A. All those are bullets, fired bullets, or bullet jacket
- 25 fragments and all of them were fired by the same gun.

1 Q. But they are not consistent with item 1?

2 A. Well, they could be. I can't identify the bullet with
3 the cartridge cases without the gun. If the correct gun had
4 been submitted, and I could have identified the cartridge case
5 back to the gun that fired it, or the bullet back to the gun
6 that fired it.

7 I could say that they were all fired by one gun. And
8 there's no reason why they couldn't have all been fired by one
9 gun. But -- but, since I don't have the gun, I have to admit
10 the possibility that all of those were fired by one gun and
11 all the cartridge cases were fired by another gun except for
12 item 21, which was fired by its own gun.

13 Q. So, you're saying that -- that -- and it would be in
14 essence what that says is there could be two guns out there
15 firing, correct?

16 A. Theoretically, there could be two guns.

17 Q. Okay.

18 A. In order to believe that, it means that all of the
19 bullets had to be fired by one gun and somebody had to go
20 police up all of the cartridge cases from those bullets and
21 vice versa.

22 Q. Okay.

23 A. Somewhere else all of the bullets were policed up by
24 somebody and we've got cartridge cases from two different
25 guns.

- 1 Q. Right. But ---
- 2 A. I can't look at it and say that didn't happen.
- 3 Q. Right. So, someone would have to go out there and
- 4 basically pick them up and police that after, right?
- 5 A. Right.
- 6 Q. Okay.
- 7 A. And, then, somebody else would have to come, with a
- 8 second gun, and shoot an equivalent number of whatever the
- 9 other component was.
- 10 Q. Right. So, they would have to go out there and alter the
- 11 scene in a way to -- to make this all happen?
- 12 A. Correct.
- 13 Q. Okay. All right.
- 14 A. If there's two guns that are responsible for the majority
- 15 of the cartridge cases and the bullets.
- 16 Q. Right. If they're -- if they're responsible for the
- 17 majority of the bullets, correct? If they're responsible for
- 18 the majority of them?
- 19 A. No. All of the bullet and bullet jacket fragments that
- 20 are identifiable were all fired by one gun barrel.
- 21 Q. Okay.
- 22 A. The -- the only thing we've got the second gun involved
- 23 with is item 21, which is a fired cartridge case that was
- 24 fired by a gun that's known to be different than the gun that
- 25 fired the other cartridge cases.

1 Q. Okay. Well, let's turn over to item 49, okay? I'm on
2 your last page.

3 A. Yes.

4 Q. Where you say that items 3, 5 -- I'm going to -- all the
5 way up to -- all these up to 20, these items right here
6 (indicating), right?

7 A. But those are the bullets.

8 Q. Right. They could be fired, but not limited to -- what
9 are all these names down here? What is that?

10 A. Those are names of different makes of firearms that --
11 when I was explaining about the markings on bullets before,
12 different manufacturers use different standards within their
13 gun barrels.

14 They use different numbers of grooves and different
15 widths of grooves. Well, a corresponding part to a groove is
16 a land. A groove is the lowered section in a barrel; a land
17 is the raised section.

18 We have a file of land and groove data, from different
19 manufacturers, so, that we know about what to expect from guns
20 made, by different manufacturers, in terms of land width,
21 groove width, the number of lands and grooves and their
22 direction of twist because obviously, to put a spin on the
23 bullet, you have to either twist it to the right hand or to
24 the left.

25 By looking at the bullet and bullet jacket fragments that

1 had land and groove impressions on them, I took a dimension.

2 MR. RICHEY: Judge, I'm going to object to this as being
3 non-responsive to the question. I asked this witness what
4 were these names down the list that he's done and the witness
5 has not responded.

6 THE COURT: Well, I'm going to overrule that objection.
7 He's explaining what those things mean and why he felt like
8 that might have been important. I'll allow him to continue to
9 explain his answer.

10 A. With my land and groove dimensions, I consulted the
11 database that we have at SLED, and the names that he was
12 asking about come from that database. Within a range of
13 certainty above and below my dimensions, I come up with a list
14 of forty (40) some odd names of possible firearms that I know
15 have land and groove dimensions that are the same or pretty
16 close as the land and groove dimensions that I found on the
17 fired bullet specimens.

18 I do that as an investigative aid, so, that the people
19 working on the case know what brands of guns to be looking
20 for, what caliber of gun to be looking for in their attempt to
21 find the gun or guns that fired these specimens.

22 Q. Right. To find a gun that fired this specimen, that's
23 what you did, right? Is that correct?

24 A. (No Response)

25 Q. Let me ask you this question: Down here, when you say

1 that this gun has -- there's a gun and it's sort of like
2 hundred of different makes to it, correct? And these are
3 different makes of the gun that you have listed down here
4 (indicating)?

5 A. They're either different makes or different origins or
6 different trade names ---

7 Q. But ---

8 A. --- under which firearms are sold.

9 Q. But they are separate guns; is that correct? They will
10 be separate guns? They're not all the same; they're separate,
11 correct?

12 A. Some of them will be essentially the same gun that maybe
13 sold under a different trade name, but most of them will be
14 different.

15 Q. Okay. So, they will be different guns. Okay. And you
16 found that these items (indicating), correct, could have came
17 from forty-five (45) different guns; is that correct?

18 A. Theoretically, yes, sir. Now, let me -- let me inject
19 one thing here. Some of the guns I have listed, when you're
20 looking at the cartridge cases, such as item 49, the cartridge
21 cases -- all the cartridge cases we're dealing with here that
22 match each other, everything except item 21, have a -- a class
23 characteristic wherein the -- a portion of the breech face is
24 actually sheered slightly as a result, of the barrel of the
25 pistol in which they're fired, dropping during the unlocking

1 process.

2 Without going into a great long description, it's a -- we
3 call it breech face sheer. A number of the firearms that I
4 have listed, on this possible list of firearms as a
5 characteristic, would not do that because they don't operate
6 that way.

7 They are either straight blow back or they lock up in a
8 different manner, so, that there is no breech face sheer
9 induced to it.

10 So, if we look at -- if we're thinking about cartridge
11 cases, there wouldn't be quite forty-four (44) brands of
12 different firearms that could have fired the cartridge cases.

13 Q. Well ---

14 A. When we're looking at the bullets, there could be as many
15 as however many are on this list.

16 Q. So, what you're saying on forty-five (45) -- the forty-
17 five (45) you just listed, right? Your testimony now is some
18 of those would not be attributable to these numbers
19 (indicating)? So, you wouldn't give this to the investigator,
20 correct?

21 A. What I have listed has to do with the bullet data, the
22 data that -- that deals with these makes of firearms comes
23 straight off the land and groove dimensions of the bullets. I
24 don't generally give a list of possible firearms for cartridge
25 cases because they're not that specific.

1 But, when you were talking about our bullets; you know,
2 our bullets would be the -- the lower list. Any of those
3 bullet or bullet jacket fragments could have been fired by any
4 of the firearms listed, any of the makes or -- of firearms
5 listed in the report.

6 Q. Right.

7 A. The cartridge cases would be a slightly smaller list if I
8 were to analyze them.

9 Q. So, that list that could have fired those guns is forty-
10 five (45) long; is that correct? Forty-five (45) long?

11 A. I didn't -- I didn't count them. There are forty-some
12 odd, between forty (40) and fifty (50).

13 Q. Okay. And, between forty and fifty (50) guns, of
14 different makes and -- different makes and names, could have
15 fired these shots, correct?

16 A. Correct. But, now, only one gun fired them.

17 Q. Right.

18 A. But one gun probably, from among these makes that I have
19 listed, did it.

20 Q. But you do not know which make of the forty-five (45)
21 fired these shots?

22 A. No, sir, I don't.

23 (Brief Pause)

24 Q. Okay. You -- you've got, under item 3, is all those are
25 matching the same gun, the bottom list, correct?

1 A. Correct. My results, if I might, under my report -- most
2 of my results are under item 1 and item 3. I kind of
3 consolidated them for easy reading.

4 And yeah, item 3 and the -- the ones accompanying it were
5 all -- all fired by the same gun and all fired by the gun
6 barrel.

7 Q. Okay. What are these on top (indicating)? What are
8 those items on top?

9 A. Those are fired cartridge cases.

10 Q. Okay. What are these on the bottom (indicating)?

11 A. Those are fired bullets or bullet jacket fragments.

12 Q. Okay. When you do -- you -- you look at the bullet and
13 the case, correct? That's makes the component of the bullet,
14 the basic components? You got a projectile and you got a
15 casing, correct?

16 A. Correct.

17 Q. Okay. So, those casings and those projectiles, okay,
18 they have characteristics similar when they come from the same
19 type of bullet, correct?

20 A. Yes. If they're the same caliber and the same brand and
21 type ammunition they'll be -- be ---

22 Q. Right.

23 A. --- be largely similar.

24 Q. So, when you do your analysis, you look at this casing
25 (indicating), you look at this bullet, you put them together

1 to determine whether you believe the same gun fired them,
2 correct?

3 A. No, no, I don't do that. That was -- there's a little
4 confusion there. I can only compare bullets or bullet
5 fragments with other bullets or other bullet fragments because
6 the barrel is what marks bullets.

7 I can only compare cartridge cases with other cartridge
8 cases. I don't compare a cartridge case with a bullet.

9 Q. Well, let me ask you this: If you had a projectile,
10 okay?

11 A. Yes.

12 Q. And you had a casing in one hand -- in the other hand,
13 okay?

14 A. Right.

15 Q. Could you determine whether they're from the same bullet?
16 Are they the same piece?

17 A. I could determine, for instance, if the bullet was a
18 right diameter to go in that cartridge casing, but I can't
19 match the bullet to the cartridge case. I can match the
20 bullet to the gun. And I can match the bullet to another
21 bullet.

22 And I can match the cartridge case to another cartridge
23 case and the cartridge case to the gun. But, without the gun
24 that fired these, I can't say that the same gun that fired all
25 the bullets fired all the cartridge cases. And I can't

1 associate any particular bullet with any other particular
2 cartridge case.

3 Q. So, you're saying, and your opinion is that you -- you
4 determined you could not -- you can't say that the same bullet
5 fired the -- the projectile fired the casing? That's correct?
6 That's a correct statement?

7 A. Without the -- without the gun. If we had the gun, I
8 could say it, but lacking the gun, I can't say the bullets
9 were fired by the same gun that fired the cartridge cases.

10 Q. So -- so, these two items right here (indicating) could
11 be from different guns, correct?

12 A. They could be.

13 Q. So, there could have been two guns firing at the same
14 time?

15 A. There could be as many as three because item 21 was fired
16 by another.

17 Q. But, so ---

18 A. If you -- if you believe that somebody got all the
19 bullets and all the cartridge cases from the second gun
20 policed up.

21 Q. No, I'm -- leaving what you said, and your testimony is
22 that multiple guns that fired these cases and projectiles,
23 correct?

24 A. I can't say that they weren't fired by two different
25 guns.

1 Q. And that would be consistent with your -- with your
2 investigation, with your training, and with your skills?

3 A. Correct. Unless we've got the particular firearm, we
4 can't say that the bullets and the cartridge cases came from
5 the same gun.

6 Q. And this list on the last -- the last page, the list of
7 names are the names that can be attributable to items -- item
8 3 -- that second list, right?

9 A. Correct. That's -- the list of possible firearms is
10 derived from the specifications of the bullets.

11 Q. Right. So, you -- these (indicating) could be fired from
12 forty-five (45) different guns, right?

13 A. However many, yes, sir.

14 Q. Okay. So -- so, multiple guns being fired, at that
15 location, that would be something that would be consistent
16 with what your testimony has been, correct?

17 A. Not necessarily. There's no reason why all of the
18 specimens, except item 21, could not have been fired by one
19 gun and only one gun.

20 Because I don't have the gun, I can't say that they
21 weren't fired, by two different guns, because I don't have the
22 one gun that I can associate the bulk of the cartridge cases
23 and the bullet and bullet jacket fragments with, I can't say.

24 Q. So, it's not farfetched to say more than one gun was
25 fired?

1 A. Exactly.

2 Q. Thank you, sir.

3 A. But, also, it could have been fired by only one gun.

4 MR. RICHEY: Thank you, sir.

5 THE COURT: Redirect?

6 MR. WILLINGHAM: Very briefly.

7 THE COURT: Yes, sir.

8 MR. WILLINGHAM: Because I don't want to beat a dead
9 horse, Judge.

10 REDIRECT EXAMINATION by MR. WILLINGHAM: 12:54 P.M.

11 Q. But you list forty-five (45) different brands?

12 A. Yes, sir.

13 Q. Okay. I'm going to pick one out, a High Point (phonetic)
14 firearm.

15 A. Yes, sir.

16 Q. Okay. A High Point firearm could have fired all of these
17 projectiles?

18 A. Possibly, yes, sir.

19 Q. By the same token, I'm going to pick out another name,
20 Barretta (phonetic), a Barretta nine-millimeter could have
21 possibly fired all these projectiles?

22 A. Possibly, yes.

23 Q. Without the gun, you don't know?

24 A. Correct.

25 Q. But I don't have a Barretta firing part of them and a

1 High Point firing another part of them?

2 A. Not with regard to the bullets and bullet jacket
3 fragments, no.

4 Q. Whatever fired it ----

5 A. One gun fired them all.

6 Q. The same thing for the casings, whatever that one gun is,
7 whatever brand it is, one gun fired them all?

8 A. Except for item 21.

9 MR. WILLINGHAM: Right. Thank you, sir.

10 THE COURT: Recross?

11 MR. RICHEY: No questions.

12 THE COURT: Sir, you may step down. Thank you very
13 much.

14 (The witness stepped down from the witness stand.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, at this point in time -- I assume you'd like for him to
17 be excused; is that right?

18 MR. WILLINGHAM: Please, Judge.

19 THE COURT: Any objection?

20 MR. RICHEY: Oh, no.

21 THE COURT: Sir, you're excused.

22 THE WITNESS: Thank you very much.

23 THE COURT: Thank you very much for coming today.

24 (Whereupon, the witness was excused.)

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, we have now reached a point where we're going to break
2 for lunch. The same admonition I've given you earlier; don't
3 gather any information concerning this case from any other
4 source; read, listen to, or watch any news reports.

5 Do not discuss the case with anyone, including your
6 fellow jurors, and don't allow anyone to talk to you about the
7 case. And, if someone attempts to do that, let me know and
8 report it upon your return.

9 I'm going to ask that you be back in your jury room at
10 2:30 this afternoon. We should be in a position to continue
11 the testimony at that point in time.

12 At this point in time, you're free to go to lunch. Thank
13 you very much. 2:30, the jury room.

14 **(The jury exited the courtroom at 12:56 p.m.)**

15 **THE COURT:** All right. Court is in recess for lunch
16 until 2:30. The Defendant remains in custody. Thank you very
17 much.

18 **MR. RICHEY:** Thank you, Your Honor.

19 **(Whereupon, a lunch recess was taken from 12:57 p.m. till**
20 **2:30 p.m.)**

21 **THE COURT:** All right. Is the State ready?

22 **MR. WILLINGHAM:** The State is ready, Your Honor.

23 **THE COURT:** Is the Defense ready?

24 **MR. RICHEY:** Yes, sir, we are.

25 **THE COURT:** Bring the jury back.

1 (The bailiff steps out to summon the jury.)

2 (The jury entered the courtroom at 2:33 p.m.)

3 THE COURT: All right. The record will reflect that all
4 jurors have returned to the courtroom. I trust everyone has
5 had a good lunch and ready to begin this afternoon's
6 testimony.

7 When we broke for the -- for the lunch break, the State
8 was still in the process of presenting its testimony in the
9 case. And, at this time, you may call your next witness.

10 MR. WILLINGHAM: Thank you, Judge. I call John Roberts.

11 (Mr. Roberts is summoned.)

12 THE COURT: Sir, come forward and be sworn.

13 (Mr. Roberts stepped forward to be sworn.)

14 (Whereupon,

15 AGENT JOHN ROBERTS

16 having been first duly sworn, testified as follows:)

17 THE COURT: Once you've had a seat, sir, move as close
18 to the microphone as you can and state your full name.

19 THE WITNESS: My name is John Grey Dodd Roberts.

20 THE COURT: Your witness, Mr. Willingham.

21 DIRECT EXAMINATION by MR. WILLINGHAM:

2:24 P.M.

22 Q. Mr. Roberts, where do you work?

23 A. I'm employed at the State Law Enforcement Division, also
24 known as SLED, in the trace evidence department.

25 Q. How long have you been at SLED?

1 A. I've been at SLED it will be three (3) years in February.

2 Q. And you say you're in the trace evidence department.

3 What -- what does -- does that department do?

4 A. At SLED, our trace evidence department does paint, fiber,
5 glass, gunshot residual bullet hole analysis, fire debris,
6 explosives, duct tape and bank dye analysis.

7 Usually, we get comparison standards sent in. We examine
8 those standards and compare them with any unknowns that are
9 also sent in to see if they match, to see if they're close, to
10 see if they're chemically similar.

11 Q. Okay. Does part of that department deal with gun --
12 gunshot residual kits?

13 A. Yes, sir. The vast majority of our analysis is gunshot
14 residual.

15 Q. What type of education, training, or other experience do
16 you have that allows you to do your job?

17 A. I have a Bachelor's of Science in Chemistry from Texas
18 A&M, Corpus Christi. After I graduated, I moved to South
19 Carolina. I obtained employment with SLED and embarked on a
20 journey of training.

21 My lieutenant trained me himself. He's been at SLED for
22 over twenty (20) years, been doing gunshot residual for not
23 quite that long.

24 I was tasked under him to do his casework, to assist him
25 in his casework, to learn how to receive evidence, to make

1 sure that it's properly packaged, to document such packaging.

2 I was trained on how to prep the samples for analysis,
3 how to run the instruments that do the analysis and how to
4 interpret the data that came off those instruments.

5 After about six (6) months of that, I was given a mock
6 court, which consisted of all my peers grilling me to make
7 sure that I knew what I was talking about. And I was released
8 to do my own casework, which I, then, did for another year.
9 So, for approximately a year and a half, I did nothing but
10 gunshot residual.

11 Q. And have you ever testified in court in this state
12 before ---

13 A. Yes, sir, I have.

14 Q. --- in the area of gunshot residual?

15 A. Yes, sir, I have.

16 MR. WILLINGHAM: Your Honor, at this time, I'd offer
17 Agent Roberts as an expert in the area of gunshot residual.

18 THE COURT: Any objection?

19 MR. RICHEY: None, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, without
21 objection I'm going to designate this witness as an expert
22 within the field of gunshot residual.

23 As I stated before, he'll now be allowed to give his
24 opinions in that field and state his reasons for those
25 opinions. You may proceed.

1 MR. WILLINGHAM: Thank you.

2 Q. (By Mr. Willingham) What is gunshot residual?

3 A. Gunshot residual is the particles that come out of a
4 weapon when it's fired. The analysis of gunshot residual
5 consists of looking for three primary components of the primer
6 of the cartridge.

7 A cartridge is composed of several different things. The
8 primer is the small silver cap in the butt of the cartridge.
9 It's the thing that makes the pistol go "boom."

10 It consists mainly of barium, antimony, and lead. These
11 are all metals that are found in there.

12 When the primer explodes, these metals combine. They
13 vaporize and they eject out of the pistol or the rifle or the
14 shotgun, whatever firearm is being used, in a vapor cloud.

15 This cloud rapidly cools and condenses and settles on
16 anything, in the immediate vicinity of that weapon, most
17 normally the hands, which is what we test. We test the right
18 palm, the right back, the left palm and the left back with a
19 gunshot residual kit.

20 These metals, in certain quantities, can tell us whether
21 a person has fired a weapon, been in the vicinity of a weapon
22 when it's fired, or simply handled a weapon or just not
23 handled a weapon at all.

24 Q. Okay. How do you do -- how do you conduct a gunshot
25 residual kit on a person?

1 A. Well, a gunshot residual kit consists of two main
2 components. There are particles lifts and cotton swabs. The
3 particle lifts are dime-sized disks with double sided carbon
4 sticky tape on them that is applied to the hands to remove the
5 particle themselves off the hands.

6 Like I said, we have one for the right palm, one for the
7 right back; one for the left palm and one for the left back.

8 After the disks are applied, the officer takes a cotton
9 swab, drips it with nitric acid, in a very dilute solu --
10 solution of acid, and runs a cotton swab over those same
11 areas; right palm, right back, left palm, left back.

12 So, in total, you have eight (8) samples per gunshot
13 residual kit. The swabs are run first. They're run on an
14 instrument that measules -- measures the amount of metals in
15 those cotton swabs.

16 Like I said, from those -- the amounts of those metals,
17 we can generally tell whether somebody has fired a weapon,
18 been in the vicinity of a weapon when it's fired, or simply
19 just handled a weapon.

20 If the threshold -- thresholds meet a certain criteria,
21 we must take particle lifts to a microscope. Underneath the
22 microscope, we look for the round particles themselves.

23 Particles that contain lead, barium, and antimony, in a
24 round shape, are unique to gunshot residual. They don't come
25 from anything else.

1 (Brief Pause)

2 Q. How long do these particles stay on a person's hands?

3 A. Our threshold for testing is six (6) hours. If we
4 receive a kit that's six (6) hours and five (5) minutes, we
5 don't run it.

6 The most -- the longest time we have ever seen particles
7 stay on somebody's hands is eight (8) hours. But that's
8 extremely rare. In fact, six (6) hours is extremely rare for
9 somebody to have measureable amounts of gunshot residual on
10 their hands.

11 Q. And why is that?

12 A. For a living person, your body is constantly absorbing
13 material. These materials can be absorbed. While your heart
14 is beating, your body is absorbing this material.

15 So, six (6) hours is about the maximum time that it takes
16 for the body to absorb the materials off your hands.

17 Q. Okay. Could other things cause materials to be -- be
18 eliminated?

19 A. Yes. These -- they're fairly fragile. If you've ever
20 baked, made cookies, you dust your hands with flour. And you
21 just run a little bit of water over it, and the flour
22 disappears, at least where the water goes.

23 Now, imagine if you rubbed your hands underneath the
24 water; it all goes. That's what this material is like. If
25 you run your hands under water, if you stick your hands in

1 your pockets, you rub your hands on a doorknob, anything, this
2 material can be transported off your hands and onto whatever
3 object you've touched.

4 Q. And you said a couple of times, but I want to make sure:
5 If you find gunshot residual, on a person's hands, that means
6 they either fired a weapon, correct?

7 A. Fired a weapon ---

8 Q. Or...?

9 A. Been in the vicinity of a weapon when it's fired.

10 Q. Been around a weapon when it was fired or handled a
11 weapon?

12 A. Yes, sir. Depending on where we find it on their --
13 their hands, we get an indication of one of those three things
14 happening.

15 Q. Okay. Did you perform an analysis, on a gunshot residual
16 kit, on our victim Jeffrey Hubbard?

17 A. Yes, I did.

18 Q. And, as a result of your examination, were you able to
19 reach any conclusion concerning the presence or absence of
20 gunshot residual?

21 A. I found metals associated with gunshot residual on the
22 back of his right hand. I did not find anything on his right
23 palm nor on his left palm nor his left back.

24 Q. Okay. And can you tell me, as a result of that, that he
25 fired a weapon?

1 A. I can say it's possible that he fired a weapon.

2 Q. Can you say that he could have been around a weapon?

3 A. It's more likely that he was around a weapon when it was
4 fired rather than firing one.

5 Q. And why would you say that?

6 A. There was nothing on his palms. If he had had measurable
7 amounts of metals on his palms, that's an ind -- indication
8 that he may have fired -- of handled a weapon.

9 Along with the measurable amounts of metals, on the back
10 of his hand, it's an indication of someone firing a weapon,
11 especially a hand gun, because, when this material comes out,
12 it comes out and it lands on the areas of your hand that are
13 exposed to the weapon; for instance, the back of your hand
14 when you're firing a gun.

15 The metals come out the ejector port on a semi-automatic
16 and settle on the backs of your hands. They come out of the
17 cylinder gap on a revolver and they settle on the back of your
18 hand.

19 Even if you're shooting two handed, it'll settle on the
20 back of your left hand if you're right handed, and the back of
21 your right hand.

22 The metal also stays -- the metals also stay present on
23 the firearm, so, when you pick it up, that metal will get
24 transferred onto your palms.

25 Q. So, that was my next question is, can you say it's

1 possible or impossible to handle a weapon that is fired?

2 A. It's possible that he handled a weapon, but there wasn't
3 enough for us to call a positive on his palms.

4 Q. Okay. So, of the three (3) possibilities, all three (3)
5 are possible; is that correct?

6 A. Yes, sir.

7 Q. Of the three possibilities, which is the most likely?

8 A. It's mostly likely that he was in the vicinity of the
9 weapon when it was fired.

10 Q. Okay. Now -- and I'm going to put in a little bit of
11 laymen's terms, a little bit different terms, a little bit
12 maybe my terms and you tell me if I'm wrong.

13 A. Okay.

14 Q. I shoot a gun ---

15 A. Yes, sir.

16 Q. --- the -- the gunshot residual, the gases come out of
17 that gun?

18 A. Yes, sir.

19 Q. And they settle on whatever is nearby?

20 A. Yes, sir.

21 Q. So, if I fire it, I get it on me?

22 A. Yes, sir.

23 Q. If I'm near it, when it's fired ---

24 A. Yes.

25 Q. --- it's fired and I'm close to -- to the gun, to that

1 cloud of smoke, I can get it on me?

2 A. Yes, sir.

3 Q. And, then, if I touch it or carry it, that can get it on
4 me?

5 A. Yes, sir.

6 (Brief Pause)

7 MR. WILLINGHAM: Thank you. If you would, answer any
8 questions the Defense lawyer may have.

9 THE COURT: Mr. Richey, it's your witness.

10 MR. RICHEY: Thank you, Your Honor.

11 CROSS EXAMINATION by MR. RICHEY:

2:44 P.M.

12 Q. Mr. -- Mr. Roberts ---

13 A. Yes, sir?

14 Q. --- so, you're saying that your responsibility in this
15 case was essentially useless, I mean, due to the nature of
16 this case because we all knew the guy had gun -- gun wounds to
17 him, so, we knew he had been around gun powder, right?

18 A. I didn't know.

19 Q. Okay. So, well, I'm saying to you, if -- if that's the
20 -- the emphasis of it, then, they don't need you for that,
21 correct?

22 A. I don't choose who picks me to do the analysis. They
23 asked me to do it, and I do it.

24 Q. I know you don't choose, but I'm saying, if you're trying
25 to find out whether he was around a gun and around gun powder

- 1 only, okay, the wounds in his body would show that, correct?
- 2 A. The wounds in his body would show he was hit with
- 3 bullets, yes.
- 4 Q. And that he was around gun powder; is that correct?
- 5 A. It depends on how close he was to the gun when it was
- 6 fired.
- 7 Q. Okay. So, you're saying that he can be shot and all
- 8 these particles come up, and -- and he would not have residual
- 9 on him?
- 10 A. No. What I'm saying is he has to be fairly close to the
- 11 weapon to get the particles on his body. If you shoot him
- 12 from thirty (30) yards away, he's not going to have anything
- 13 on his hands. He might have some lead from the bullet itself.
- 14 Q. But, none on his body, his person?
- 15 A. I don't check his person, sir.
- 16 Q. Okay. And I understand that. Would it be safe to say,
- 17 if he was shot, he would have gun powder residual on -- he
- 18 would have residual from a bullet, particles, from the gun if
- 19 he was shot? Would that ---
- 20 A. It's safe to say that he would have lead from the bullet
- 21 on his body, yes, sir.
- 22 Q. Okay. All right. So, you don't need to make that
- 23 determination? They don't need you for that, correct?
- 24 A. You would have to ask them.
- 25 Q. No.

1 A. I just do what I'm told.

2 Q. Okay.

3 A. I come here and ---

4 Q. Well, that evidence -- okay. They could have figured
5 that out for themselves without you, correct?

6 A. They could figure out that he was shot by themselves,
7 yes, sir.

8 Q. Okay. All right. And, so, what you deal with is whether
9 a person fired a gun? That's where you come in, right?

10 A. Generally, they ask us to determine whether someone has
11 fired a gun, yes, sir.

12 Q. And that's specifically what your expertise is? Your
13 expertise isn't, you know, whether he's got powder fragments
14 on him; your expertise is they send you and basically tell
15 you, "Did this person fire a gun, yes or no"?

16 A. Basically, yes, sir.

17 Q. Okay. So, all the other stuff about round it, this and
18 that, they don't ask you to determine that, do they?

19 A. No, sir.

20 Q. They ask you, "Did this person fire a gun; do this test,"
21 correct?

22 A. Generally, yes, sir.

23 Q. Right. And you come back and you -- you come to court
24 and testify the majority of the time that they -- that person
25 shot someone or shot a gun, correct?

1 A. No.

2 Q. Fired a gun?

3 A. No.

4 Q. On R -- GSR kit?

5 A. I say that it's generally indicative of them firing a
6 weapon.

7 Q. Okay. It's generally indicative of them firing; that's
8 what you say, right?

9 A. Yes, sir.

10 Q. And that is what your testimony, as an expert, is all the
11 time, correct?

12 A. If the level so indicated, then, yes.

13 Q. Right. But you don't come to court and talk about he was
14 in the vicinity? That's not the purpose of you in this case,
15 correct?

16 A. Sometimes it is.

17 Q. Okay. But your job is to determine whether he has fired
18 a gun, right, and you did your job, correct?

19 A. That's part of it, yes, sir.

20 Q. Okay. All right. And, so, that GSR kit came back -- you
21 would say it would be a positive response?

22 A. He was positive for metals associated with gunshot
23 residual on the back of his right hand.

24 Q. Okay. And -- and you said the left hand didn't have any
25 particles on it, right?

1 A. It didn't have any metals, no, sir -- well, it had some,
2 but not enough for us to call positive.

3 Q. Okay. And -- and, so -- okay, so, this hand (indicating)
4 had it and it's my right hand. And this hand (indicating)
5 didn't have it, and it's my left hand (demonstrates)?

6 A. Yes, sir.

7 Q. Okay. So, but all of these -- but both sides of my body
8 were subject to the gun powder, right?

9 A. Depending on where the gun was, yes, sir.

10 Q. Okay. So, to have the residual close to you, I guess you
11 have to be close to the gun; is that correct?

12 A. Yes, sir.

13 Q. So, if I'm sitting here, in the car, and the residual is
14 here (indicating), I have to be on my right hand because, when
15 I'm sitting in a car, you know, if I'm driving the car, I'm
16 sitting like right here (indicating). This is the -- the
17 driver's door and this is the console, right?

18 A. Yes, sir.

19 Q. So, if the gun powder residual is on my right hand, it
20 has to be close to me, correct?

21 A. Yes, sir.

22 Q. You would assume that that gun powder would come from
23 somewhere here (indicating) since my left doesn't have it?

24 A. It would generally, yes, sir, come -- you could assume
25 that it came from the right side.

- 1 Q. Okay. And, if I'm sitting in a car and I'm driving, the
2 right hand would be my dominant hand, correct?
- 3 A. If you're right handed, yes, sir.
- 4 Q. Okay. When you're driving a car, and you're driving, and
5 got in the shoulder, you don't do like this (demonstrates) and
6 drinking, right?
- 7 A. No, sir, but that doesn't have anything to do with
8 dominance. That's just convenience.
- 9 Q. Right, convenience. So, when you're driving a car, you
10 don't take the shoulder and drink like this, right?
- 11 A. No, sir.
- 12 Q. If you're going to grab for something, you don't like
13 grab your consolé like this (demonstrates), right?
- 14 A. No, sir.
- 15 Q. You -- you -- even if you're left hand for convenience
16 you grab this way (demonstrates), right?
- 17 A. Yes, sir.
- 18 Q. So, if you're going to do something, and you're in that
19 car, and fire a gun and you're going to shoot it, you're
20 probably would do that (demonstrates), right?
- 21 A. If I'm right handed.
- 22 Q. Okay. So, I'd do like this (demonstrates) then, like
23 that?
- 24 A. I'm not sure what you're asking me.
- 25 Q. Okay. For convenience -- for convenience, the right

1 hand is used, correct?

2 A. If you're right handed, yes, sir.

3 Q. And it would be the fastest approach too, right?

4 A. If it was me, and I was shooting out of a car right
5 handed, yes, sir.

6 MR. RICHEY: Thank you.

7 THE COURT: Any other questions?

8 MR. WILLINGHAM: Very briefly.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION by MR. WILLINGHAM

2:50 P.M.

11 Q. And I think you covered this, but you said it had to be
12 in close proximity?

13 A. Yes, sir.

14 Q. If I'm thirty (30) paces away, I'm not going to have GSR
15 on me?

16 A. You're too far.

17 Q. How far does GSR travel?

18 A. Five (5) to six (6) feet.

19 Q. Okay. So, I'm within five to six foot range if I'm near
20 it when a weapon goes off?

21 A. Yes, sir.

22 Q. Okay. And, if I fire a weapon, and you look at my hands,
23 with the naked eye, can you see GSR?

24 A. If you fired it once generally not.

25 Q. Okay.

1 A. If you fired it several hundred times, like a couple of
2 hundred times, you could see it.

3 Q. Okay. All right. And just because someone is shot does
4 not mean they have gunshot residual on them?

5 A. Because someone is shot, has been shot?

6 Q. Let's say I'm shot ---

7 A. Yes, sir.

8 Q. --- you can't say I'm going to have gunshot residual on
9 me?

10 A. The majority of our victims actually do have gunshot
11 residual on them because the majority of shootings happen
12 within five (5) to six (6) feet.

13 MR. WILLINGHAM: Okay. Nothing further.

14 THE COURT: Recross?

15 MR. RICHEY: Just a couple of questions.

16 RECROSS EXAMINATION by MR. RICHEY:

2:51 P.M.

17 Q. So, gunshot residual explodes, right? It goes up in the
18 air?

19 A. It goes out in a bloom, in a cloud.

20 Q. Okay. A cloud?

21 A. Yes, sir.

22 Q. And -- and that cloud is restricted by what's -- what is
23 around, correct?

24 A. Correct.

25 Q. So, if I'm sitting in this room and I shoot, that cloud

1 is going to be a lot more area to travel; isn't that correct?

2 A. Compared to...?

3 Q. Just compared to a car.

4 A. If you shot it inside the car, it would be constricted by
5 the -- the dimensions of the car, yes, sir.

6 MR. RICHEY: Okay. Thank you, sir.

7 THE COURT: Anything further?

8 MR. WILLINGHAM: No, sir. Thank you.

9 THE COURT: Sir, you may step down. I assume you wish
10 to have this witness excused?

11 MR. WILLINGHAM: Please, Judge.

12 THE COURT: Any objection?

13 MR. RICHEY: No objection.

14 THE COURT: Sir, you're free to go. Thank you very much
15 for coming today.

16 (Whereupon, the witness stepped down from the witness
17 stand and was excused.)

18 THE COURT: The State may call its next witness.

19 MR. WILLINGHAM: We call Bruce Gantt.

20 (The bailiff steps out to summon the witness.)

21 THE COURT: Sir, come forward and be sworn over here.

22 (Mr. Gantt stepped forward to be sworn.)

23 (Whereupon,

24 BRUCE GANTT

25 having been first duly sworn, testified as follows:)

1 THE COURT: Sir, have a seat, move close to the
2 microphone, and state your full name for the record.

3 THE WITNESS: My name is Bruce Gantt, G-a-n-t-t.

4 MR. WILLINGHAM: Judge, I'm going to beg the Court's
5 indulgence, again, while I ---

6 THE COURT: Yes, Mr. Willingham.

7 MR. WILLINGHAM: --- locate the evidence.

8 THE COURT: That's fine.

9 (Brief Pause)

10 MR. WILLINGHAM: Thank you.

11 THE COURT: Yes, sir. You -- it's your witness.

12 MR. WILLINGHAM: Yes, sir.

13 DIRECT EXAMINATION by MR. WILLINGHAM

2:52 P.M.

14 Q. Bruce Gantt, where are you employed?

15 A. I work for the South Carolina Law Enforcement Division as
16 a special agent assigned to the latent print crime scene unit.
17 And my employer is commonly referred as SLED.

18 Q. Okay. I need you to speak up just a little bit, so, all
19 these jurors can hear you in the back, okay?

20 A. Okay.

21 Q. How long have you been with SLED?

22 A. Just over eight (8) years.

23 Q. And what do you do for them?

24 A. The majority of my duties involve responding to crime
25 scenes, at the request of the local police departments and

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1 sheriff's offices.

2 When I'm not actively investigating a crime scene, we are
3 out processing evidence submitted through the door in an
4 attempt to develop latent prints.

5 Q. And that's how you were involved in this case?

6 A. Yes.

7 Q. What type of education, training, or experience do you
8 have that allows you to do your job concerning latent prints?

9 A. I graduated from USC in 1983 with a four-year degree in
10 criminal justice. I've been a police officer for almost
11 twenty-three (23) years.

12 Of that time, the last fourteen (14), I've been
13 extensively in processing evidence for latent prints, working
14 crime scenes, doing latent prints examination comparisons.

15 Q. Have you testified in court before as an expert in the
16 area of latent prints ---

17 A. Yes.

18 Q. --- location or identification?

19 A. Yes.

20 MR. WILLINGHAM: Your Honor, at this time, I would move
21 to have Bruce Gantt qualified as an expert, to render an
22 opinion, in the area of latent fingerprint identification.

23 MR. RICHEY: No objection.

24 THE COURT: Without objection, the witness will be so
25 qualified. I've explained that process to you. You may

1 proceed.

2 Q. (By Mr. Willingham) Can you tell me what a latent print
3 is?

4 A. The term, "latent," refers to that which is hidden or
5 unseen. A latent fingerprint impression is a fingerprint
6 basically that's transferred from the -- the surface of what's
7 called friction skin (phonetic) onto a -- a surface.

8 Friction skin is different than skin found on the rest of
9 our bodies in that it's rough or corrugated with consistent
10 raised portions called ridges.

11 These ridges are what aid the hand or the foot's ability
12 to grasp by increasing friction, thus the term, "friction
13 skin."

14 Because the impression is invisible, it requires the
15 application of contrasting fingerprint powders or other
16 chemicals to develop the impression, so, it can be seen and
17 then, properly collected.

18 Q. And how do you make a latent print visible?

19 A. There's several techniques. It may be as simple as using
20 contrasting fingerprint powder --- drops documents -- excuse
21 me -- by lightly dusting the surface to draw out the
22 impressions.

23 Or it could be another technique by using chemicals to
24 make certain particles of the print react to the chemical and
25 it assists in developing the print as well.

1 Q. Okay. What -- let me ask you this: I'm holding this
2 pen, have been for the past few days. If I give this pen to
3 you and you carry it around and held it, if I give this pen to
4 you and say, "Analyze that," can you guarantee you're going to
5 find my fingerprints on it?

6 A. No, sir.

7 Q. Why not? You seen me holding it, why can't you guarantee
8 my prints are going to be on it?

9 A. Contrary to many popular beliefs that's derived, from
10 television and movies, just because somebody touches an -- an
11 object or an item or surface doesn't necessarily mean they'll
12 leave an impression.

13 The transfer of that impression is a chance or random
14 event and depends on a variety of factors, to include the
15 condition of a person's hands, the type of surface that was
16 touched, and the environment it was -- the deposition was made
17 in. So, any one of those factors could determine whether or
18 not that an actual print was transferred.

19 Q. And, likewise, if I put my thumb down on the jury box
20 (demonstrates), can you guarantee you'll find a print there
21 either?

22 A. Not until it's processed, no, sir, I wouldn't know.

23 Q. Okay. Now, did you receive items in this case to
24 analyze?

25 A. Yes.

1 Q. I'm going to show you a series of cartridge cases,
2 State's Exhibit 31, which is your 15; 32, your 16; 35 is your
3 19; 37 is your 21; State's 38 is your 22; State's 39, your 23;
4 State's 40 is your 24; State's 41 is your 25; and finally,
5 State's 42 is your 26.

6 These are all labeled as shell casings from 111 Dove
7 Road; is that correct?

8 (Brief pause while witness examines exhibits.)

9 A. Yes, sir.

10 Q. And did you receive these items to analyze?

11 A. Yes, sir.

12 Q. And what was your purpose for looking at those casings?

13 A. I was asked to an -- conduct an examination of -- of this
14 evidence in an attempt to raise or try to draw fingerprints
15 from the items.

16 Q. And what did you do in an effort to try to raise
17 fingerprints from those items?

18 A. I did what we call a first a visual exam. I looked at
19 the item under oblique lighting. Sometimes that'll highlight
20 any impression that may or may not be there.

21 Secondly, after the -- the visual examination, these
22 items were placed in a humid chamber and an application of
23 cyanoacrylate or super glue is heated up within that chamber.

24 The fumes that are created, when the glue is heated,
25 bonds with any kind of latent print residual on the surface,

1 if it's there. And then, after the super glue fuming is done,
2 we do -- or I did another visual exam to see if any ridge
3 detail was developed.

4 And, as a final step, I process it with black powder in
5 an attempt to further develop any ridge detail.

6 Q. Okay. And you did that in this case?

7 A. Yes.

8 Q. Were you able to develop any ridge detail on these
9 casings?

10 A. No.

11 Q. Why not?

12 A. As I stated before, the surface area of the item
13 examined, the condition of the environment for which the
14 deposition was made, all these factors have bearing into
15 whether prints are -- are left. The majority of which is the
16 condition of the person's hands.

17 People that tend to perspire or have sweaty palms are
18 more apt to leave a fingerprint than if we're dried skin.

19 Q. I'm showing you State's Exhibit Number 15, which is
20 SLED's 48 and 49, which are two other shell casings that were
21 located in the vehicle. Did you also analyze them for prints?

22 A. Yes, sir. They were all included with the other items.

23 Q. Okay. And did you find any?

24 A. There were no ridge detail developed on any of the items.

25 Q. Okay. So, you looked and couldn't find any?

1 A. That's correct.

2 Q. Now, what is a fingerprint made by? I mean, I know it's
3 made by the ridge of your finger, but what -- what's left
4 behind when I touch a surface?

5 A. Ninety-nine (99) percent of it is perspiration.

6 Q. Okay.

7 A. The others are fats, lipids, amino acids, and other
8 residual found on the -- on the skin.

9 Q. Could the firing of a bullet cause that perspiration to
10 evaporate?

11 A. Yes.

12 Q. Could that be also an explanation -- a further
13 explanation of why there were no prints on those casings?

14 A. Yes, sir.

15 MR. WILLINGHAM: All right. If you would, answer any
16 questions the Defense lawyer has. Thank you.

17 THE COURT: Mr. Richey, your witness.

18 MR. RICHEY: Thank you, Judge.

19 CROSS EXAMINATION by MR. RICHEY:

3:02 P.M.

20 Q. Sir, you've got a report there, correct?

21 A. Yes, sir.

22 Q. Okay. And this report outlines all the things that you
23 tested; is that correct?

24 A. Yes, sir.

25 Q. Did you test any other items for fingerprints at all?

1 A. No, sir.

2 Q. Did you test any items and decline to test them for
3 fingerprints?

4 A. When I received the evidence, it was packaged. There
5 were other pieces of evidence, such as projectiles from --
6 from ammunition cartridges, and these items did not have a
7 latent request on them. They had a firearms request.

8 So, I took the items that had the latent request,
9 processed those items, re-packaged them and sent all the items
10 forward to firearms following my examination.

11 Q. So, that -- this fingerprinting is your expertise,
12 correct?

13 A. Yes.

14 Q. And -- and do you believe that you were in a better
15 position to determine whether a fingerprint is valid than
16 someone who does not -- does not have the resources and the
17 training that you have?

18 A. Say that again, sir.

19 Q. Essentially, if -- if I'm out in the field and I get
20 different things that I perceive that are fingerprints, okay,
21 if I'm an officer, would it more prudent to send them to you
22 to test than to determine whether they're of any value or not?
23 Would it be the best procedure to send them to you because
24 that is your job, correct?

25 A. We do that, at the request of local police departments,

1 if they -- or sheriff offices. If they have personnel
2 qualified to do it, then, I don't have any problem with them
3 doing that.

4 Q. Okay. But do you -- but isn't this your field of
5 expertise?

6 A. Yes, sir.

7 MR. RICHEY: Okay. All right. Thank you, sir.

8 THE COURT: Redirect?

9 MR. WILLINGHAM: Thank you, just briefly.

10 REDIRECT EXAMINATION by MR. WILLINGHAM:

3:04 P.M.

11 Q. SLED is in Columbia?

12 A. That's correct.

13 Q. And that's where those items and the ballistic items were
14 located?

15 A. That's where they were sent, yes, sir.

16 Q. And you retrieved them? I mean, you didn't come to
17 Spartanburg and get those items to test?

18 A. No, sir.

19 Q. But you retrieved them from the evidence storage locker
20 at SLED?

21 A. Yes, sir.

22 MR. WILLINGHAM: Okay. All right. Thank you.

23 MR. RICHEY: No questions.

24 THE COURT: You may step down, sir. I -- Mr.

25 Willingham, do you wish to have the witness excused?

1 MR. WILLINGHAM: Please, Judge.

2 THE COURT: Any objection?

3 MR. RICHEY: None.

4 THE COURT: You're free to go. Thank you, sir.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand and was excused.)

8 THE COURT: Mr. Willingham, you may call your next
9 witness.

10 MR. WILLINGHAM: We call Patti Ruff.

11 (Ms. Ruff was summoned.)

12 THE COURT: Ma'am, please come forward and be sworn.

13 (Ms. Ruff stepped forward to be sworn.)

14 (Whereupon,

15 PATTI RUFF

16 having been first duly sworn, testified as follows:)

17 THE COURT: Ma'am, once you're seated, move as close to
18 the microphone as possible and state your full name for the
19 record, please.

20 THE WITNESS: My name is Patti Browning Ruff, R-u-f-f.

21 THE COURT: Mr. Willingham, it's your witness.

22 MR. WILLINGHAM: Thank you, Judge. I'm going to beg
23 your indulgence one more time.

24 THE COURT: Yes, sir.

25 (Brief pause while Mr. Willingham retrieves exhibits.)

1 DIRECT EXAMINATION by MR. WILLINGHAM:

3:06 P.M.

2 Q. Tell us who you are.

3 A. My name is Patti Browing Ruff.

4 Q. And you work at SLED?

5 A. Yes, I do.

6 Q. And what department do you work in?

7 A. I work in the evidence processing department.

8 Q. And what is that department? What does that department
9 do?

10 A. I am a forensic evidence technician, and I am responsible
11 for the collection of DNA evidence off of certain samples.
12 We're responsible for the collection of body fluid, hairs, and
13 fibers.

14 We do presumptive testing. The presumptive testing is
15 used for body fluids. For example, in this case, it would be
16 for blood; means that it's a possibility that it's blood, does
17 not necessarily mean that it is blood. We collect those
18 samples and then, they're sent to the DNA department.

19 Another thing we do is we collect for things such as
20 epithelial skin cells. Sometimes we use that as to say maybe
21 -- where somebody might have touched something or worn
22 something for ownership cases or anything like that. We'll
23 spray the item down, cut -- or cut samples or swab it.

24 And those samples, there's no presumptive testing. We
25 just pretty much do that in the blind because they're so --

1 epithelial cells are so small that you cannot see them with
2 the naked eye.

3 We would collect those samples and, then, we would send
4 them to the DNA department where they would do further testing
5 or the comparison.

6 Q. Okay. And what type of training and education do you
7 have that allows you to do your job?

8 A. I have an associate degree from USC, but I have processed
9 -- been processing for approximately sixteen (16) years. I
10 was trained by DNA analysts who process and were qualified as
11 experts in the courtroom.

12 I've observed at the FBI crime lab. I've processed
13 several thousand cases. I've testified over sixty (60) times.
14 I've attended numerous workshops and seminars regarding the
15 collection of evidence and the preservation of evidence.

16 MR. WILLINGHAM: Your Honor, at this time, we would
17 offer Agent Ruff (phonetic "Rough") ---

18 THE WITNESS: Ruff.

19 MR. WILLINGHAM: Ruff -- I'm sorry -- Ruff as an expert
20 in the area of evidence processing.

21 MR. RICHEY: No objection.

22 THE COURT: All right. Without objection, she'll be
23 qualified as an expert within that area. You may proceed.

24 Q. (By Mr. Willingham) Agent Ruff, did you receive any
25 evidence to be processed in this matter?

1 A. Yes, sir, I did.

2 (Brief pause while Mr. Willingham retrieves exhibits.)

3 Q. I'm going to show you what's already been introduced as
4 State's Exhibit Number 10 and ask if you recognize that?

5 (Witness examines exhibit.)

6 A. Yes. I can recognize this item. This is my item number
7 27 and my initials are on the bag.

8 Q. Okay. When you received that item, what did you do in
9 order to process it?

10 A. First, I did a visual exam and looked for reddish-brown
11 stains that could be possibly blood. If it's numerous stains,
12 sometimes we'll just collect a representative sample and send
13 one or two. If they need more samples, they will notify us
14 and we'll collect more.

15 In this case, I collected a swab from the inside of the
16 Timberland boot for possible epithelial skin cells. Like I
17 say, it wouldn't be anything that you could see; it's just
18 kind of a routine procedure that we use when you want to
19 possibly put -- find DNA on -- with skin cells.

20 I found a swab on the outside of the boot. Right here
21 it's 27.2. I collected a sample from here for possible blood.
22 It was positive for presumptive testing.

23 Once, again, that means that it's a possibility that it
24 is blood. It doesn't necessarily mean that my test concludes
25 that it's blood. I collected another swab from the inside of

1 the boot, at a later date, and I also collected hair from the
2 boot.

3 Q. Okay.

4 (Whereupon, State's Exhibit Number 72 was marked for
5 identification.)

6 (Off-the-Record Comments)

7 Q. (By Mr. Willingham) I show you what's been marked now as
8 State's Exhibit Number 72, four different items and ask if you
9 recognize those items?

10 (Brief pause while witness examines exhibit.)

11 A. Yes, I do. These are the samples that I collected.

12 Q. Twenty-seven point one (27.1) is the first one on there.

13 And you said that was skin cells from the boot?

14 A. That is correct.

15 Q. Twenty-seven point two (27.2) you said was blood from the
16 boot?

17 A. Possible blood, yes.

18 Q. Okay. Twenty-seven point three (27.3) I believe you said
19 was the hair?

20 A. That's correct, possible hair.

21 Q. Possible hair and twenty-seven point four (27.4) is --
22 are more skin cells?

23 A. That's correct.

24 Q. All right. So, you basically took what's in item 71
25 [sic] off of State's Exhibit 10?

1 A. That's correct.

2 Q. Okay. And you forwarded those all to who?

3 A. To Jennifer Clayton in the DNA department.

4 MR. WILLINGHAM: Okay. Your Honor, at this time, I'd
5 move State's Exhibit Number 72 into evidence.

6 MR. RICHEY: No objection.

7 THE COURT: Without objection it'll be received as
8 marked.

9 (Whereupon, State's Exhibit Number 72 was admitted into
10 evidence without objection.)

11 Q. (By Mr. Willingham) State's Exhibit Number 11 ---

12 (Mr. Willingham retrieves State's Number 11 out of bag.)

13 Q. --- did you receive that item for analysis?

14 A. Yes, sir, I did.

15 Q. That's your number 29?

16 A. That is my number 29.

17 Q. Okay. And what type of analysis did you perform on that
18 boot?

19 A. Once, again, I looked for possible blood. I collected a
20 representative sample that was tested positive for my
21 presumptive test, sent a sample to the DNA department.

22 I also got a swab from the inside of -- it was two swabs
23 from the inside of the boot and possible hair from the boot.

24 Q. Okay.

25 (Whereupon, State's Exhibit Number 73 was marked for

1 identification.)

2 Q. (By Mr. Willingham) Likewise, I show you State's Exhibit
3 Number 73, which is four (4) items, and ask if you recognize
4 those?

5 (Brief pause while witness examines exhibit.)

6 A. Yes, sir, I do.

7 Q. And what are they?

8 A. Twenty-nine point one (29.1) is a swab that I collected,
9 from the inside of the boot, for possible epithelial skin
10 cells. Twenty-nine point two (29.2) is a swab that I
11 collected from the boot for possible blood.

12 And twenty-nine point three (29.3) was possible hair from
13 the boot. And twenty-nine point four (29.4) was a swab for
14 possible skin cells from inside of the boot.

15 Q. Okay. And what did you do with those items once they
16 were recovered?

17 A. They were transferred to Jennifer Clayton (phonetic) in
18 the DNA department.

19 Q. So, all four of those items, again, came off of that left
20 boot?

21 A. Yes, sir, that is correct.

22 (Brief pause while Mr. Willingham retrieves exhibit.)

23 Q. State's Exhibit Number 12 ---

24 (Mr. Willingham retrieves State's Number 12.)

25 Q. --- a black hooded sweatshirt.

1 A. Yes, sir.

2 Q. Did you receive this item?

3 A. Yes, sir, I did. And I made several cuttings from the
4 neck area. As you can see, we try to -- to get areas that
5 maybe there was some friction between the body and the actual
6 sweatshirt. So, I collected cuttings from the neck and I
7 collected the wrist cuff of the sweatshirt. You can see my
8 markings on the sweatshirt.

9 Q. And this is SLED's item 28?

10 A. That's correct.

11 Q. Twenty-eight (28)? Okay.

12 A. Just, also, on -- on the wristband there was possible
13 blood on the wristband.

14 Q. Okay. And did you collect evidence from that item?

15 A. Yes, sir.

16 (Mr. Willingham retrieves exhibits and shows them to Mr.
17 Richey.)

18 (Off-the-Record Discussion)

19 (Whereupon, State's Exhibit Numbers 74 through 79 were
20 marked for identification.)

21 MR. WILLINGHAM: Your Honor, at this time, I'd move
22 State's Exhibit 73, which is the processing evidence collected
23 off the left boot, into evidence.

24 MR. RICHEY: No objection.

25 THE COURT: Without objection, it'll be admitted.

1 (Whereupon, State's Exhibit Number 73 was admitted into
2 evidence without objection.)

3 Q. (By Mr. Willingham) I'm showing you State's Exhibit
4 Number 74 and ask if you recognize that?

5 A. Yes, I do. This is my item 28.1. It's a cutting, from
6 the back of the neck of the sweatshirt, for possible
7 epithelial skin cells.

8 Q. I show you State's 75. Tell me what that is?

9 A. My item 28.2. It is a cutting from the left wristband
10 for possible blood and epithelial skin cells.

11 Q. I show you State's 76. Please, tell the jury what that
12 is.

13 A. This is my item 28.3. It is a cutting for possible blood
14 and epithelial skin cells.

15 Q. I show you State's 77 and ask if you recognize that.

16 (Brief pause while witness examines exhibit.)

17 A. Twenty-eight point five (28.5) is a cutting for possible
18 epithelial skin cells.

19 Q. Likewise, State's 78?

20 A. It's twenty-eight point six (28.6), a cutting for
21 possible epithelial skin cells.

22 Q. And likewise -- likewise, finally, State's Exhibit 79?

23 A. Okay. And that's my twenty-eight point seven (28.7) and
24 it is a swab for possible epithelial skin cells.

25 Q. And you collected all these items off this sweatshirt?

1 A. Yes, I did.

2 Q. And moved them and provided them to the DNA department?

3 A. That is correct.

4 MR. WILLINGHAM: Your Honor, at this time, I move
5 State's 74, 75, 76, 77, 78, and 79 into evidence.

6 THE COURT: Any objection?

7 MR. RICHEY: None.

8 THE COURT: Without objection, they'll be received as
9 marked.

10 (Whereupon, State's Exhibit Numbers 74 through 79 were
11 admitted into evidence without objection.)

12 Q. (By Mr. Willingham) Did you perform any additional
13 analysis on these items?

14 A. No, sir, I did not.

15 Q. And that would have been done by agents at SLED?

16 A. That is correct.

17 Q. Would Agent Clayton actually have the physical boots and
18 sweatshirt with her or would she have used your evidence you
19 processed?

20 A. She would have used my evidence. What I did is I seal
21 that evidence in a heat-sealed pouch. And, so, she received a
22 sealed container that was initialed and dated by me. And she
23 -- that's how she received it. So, she did not actually see
24 the items.

25 MR. WILLINGHAM: Okay. Thank you very much. Please,

1 answer any questions the Defense lawyer has.

2 THE COURT: Mr. Richey, it's your witness.

3 MR. RICHEY: Thank you, Your Honor.

4 CROSS EXAMINATION by MR. RICHEY:

3:21 P.M.

5 Q. Ma'am, this -- I'll put this up here.

6 (Mr. Richey retrieves boot.)

7 Q. This boot, it doesn't really talk, does it?

8 A. No, it does not.

9 Q. But really, from the forensic evidence standpoint, it has
10 a lot to say potentially, correct?

11 A. Correct.

12 Q. Okay. And -- and, so, it's of value. It may not talk to
13 you, but when you dig inside of it, there's information that
14 it relays to you, correct?

15 A. There's a possibility.

16 Q. Right. But it -- and, in this case, it happened, right?
17 There was information you were able to use in this case,
18 correct?

19 A. To be honest with you, some of the samples, as far as I
20 guess epithelial skin cells, I don't see with the naked eye.
21 There is a procedure that I use, so, I sometimes do not know
22 if it's successful once it gets to the DNA evidence.

23 So, I go through the process of collecting evidence, but
24 I'm not always sure of exactly what the conclusion is.

25 Q. I'm not asking conclusion ---

1 A. Uh-huh (affirmative).

2 Q. --- I'm just saying, in this case, when you did it, you
3 got something, right? You got ---

4 A. I collected samples.

5 Q. Right. And you got it to send off, right?

6 A. That is correct.

7 Q. So, this boot actually told you something, gave you
8 something, correct?

9 A. Correct.

10 Q. Okay. And -- and -- and the thing about trace evidence
11 is to label -- well, under this case, for instance, what they
12 don't really understand, when they put their foot in that
13 shoe, they're going to leave a record of them actually wearing
14 that shoe?

15 A. There's always a possibility, yes, sir.

16 Q. Right. That's why you go get the skin cells because the
17 skin cells will have your DNA in it, right?

18 A. That's right.

19 Q. And that will tell you whether you were in the shoe,
20 correct?

21 A. That's correct.

22 Q. Okay. And, so -- so, what you do is you go in here and
23 you've got all these fancy ways and you cut this stuff out and
24 you all figure out the DNA, right?

25 A. I collect it.

1 Q. You collect it. And -- and -- and this is -- this shoe
2 was-- is -- didn't raise any suspicions when you got it?

3 A. Other than the fact was a shoe that had brownish red
4 stains that were positive for possible blood.

5 Q. This shirt (indicating) didn't raise any other suspicions
6 to you?

7 A. Other than there was some blood stains on the shirt.

8 Q. Well, essentially, you -- if -- if this stuff is washed,
9 does that affect your analysis?

10 A. It all depends on -- on how thoroughly it's washed and
11 what was used to wash it with.

12 Q. Say it was washed thoroughly with the most -- the best
13 stuff you could wash it with, would that affect it?

14 A. There's a possibility.

15 Q. Okay. All right. But you don't believe that was done in
16 this case?

17 A. As far as the blood is concerned, my tests came out
18 positive, so...

19 Q. Yeah. As far as -- as far as this item is concerned,
20 okay, you didn't have any reason to believe that this shirt ws
21 washed?

22 A. With common sense, it appears to have been worn. I mean,
23 it doesn't -- it had some debris on it. So...

24 Q. Well, that's what I asked you. I'm asking you -- and I'm
25 not -- I'm asking you, was this -- when you got it, did it

1 appear to be -- this had been washed?

2 A. It's hard for me to say. It -- it -- it was a shirt that
3 was given to me to look at for blood and possible hair and to
4 collect epithelial skin cells.

5 Whether it had been washed or not, I would have gone
6 through the same procedure no matter what.

7 Q. But, that washing affects your analysis, correct?

8 A. Could and could not depending on -- on the level of what
9 was used to wash it.

10 Q. But you had to know whether it was washed or not ---

11 A. No, I -- I wouldn't know.

12 Q. Well, can I finish the question?

13 A. Okay.

14 Q. Okay. If the washing would affect the analysis, correct?

15 A. There's a possibility.

16 Q. It could? There's a possibility, then, you would have to
17 determine whether it was washed or not washed?

18 A. Not at my level of collection, no.

19 Q. Okay. But, at your level of collection, you didn't say
20 there was Tide or any kind of particles like that that came
21 off of this (indicating)?

22 A. It wouldn't have mattered to me if I saw Tide on it. I
23 would still do the same procedure I did.

24 Q. That's not what I'm asking you. I'm asking you, it would
25 matter if you found Tide on this, correct?

- 1 A. It would matter to me if I got a positive phenolphthalein
2 test, which is a presumptive for blood.
- 3 Q. Okay.
- 4 A. But, if I saw Tide on there, it would not matter to me.
- 5 Q. You wouldn't tell anybody? You would just say, "There's
6 Tide on there," and be done with it?
- 7 A. I might make a little note on my worksheet that there
8 appeared to be some dried dish detergent -- clothes detergent
9 on there.
- 10 Q. But that wouldn't be anything of any significance you'd
11 pass on or anything, right?
- 12 A. I make -- I make very thorough notes. I would have made
13 a note. If I notice anything unusual about a shirt or
14 anything or shoes or anything, I would make a note.
- 15 Q. But, why would you say washing affects it if you don't
16 care?
- 17 A. Well, I don't necessarily -- on every item that I
18 process, I don't make note this looks washed or it doesn't
19 look washed. That's not a routine policy that we do.
- 20 Q. Okay.
- 21 A. We treat each item the same. My job is not to draw a
22 conclusion as far as whether it's been washed or not. My --
23 my job is to draw a conclusion as to whether there's any
24 possible hairs, blood, semen in some cases, or epithelial skin
25 cells.

1 And I collect it and then, send it to the DNA department,
2 and they're the ones that actually do the analysis.

3 Q. Okay. And -- and it would raise some suspicion with you
4 if this shoe had a substance that appeared to be washed down
5 prior to getting it? Would that raise a flag to you if you
6 saw this shoe appeared that it was washed or something on its
7 outside covering and inside covering? Would that raise a
8 suspicions to you?

9 A. In the past, I have made notes where I've received an
10 item where maybe the stains looked diluted.

11 Q. Okay. All right. So -- so, that would be the washing,
12 correct?

13 A. It could possibly be or running in the rain or running
14 through a pond.

15 Q. Right.

16 A. It could be numerous things. That's beyond my realm of
17 expertise.

18 Q. Right. Because you don't ---

19 A. I don't know what happens to -- I do not know what
20 happens to a item before I receive it.

21 Q. Correct. You just -- you just get what you get?

22 A. Right.

23 Q. And you just do with what you got?

24 A. Right.

25 Q. And it looks like it's been washed out, you say, "I don't

- 1 know who did it or what happened, but it looks like that ---
- 2 A. Exactly.
- 3 Q. --- correct?
- 4 A. I'll make a note it appears to be diluted or something.
- 5 Q. And if it has got Tide in it, you just say, "Hey, it's
- 6 got Tide in it," and go on about your business, right?
- 7 A. Right.
- 8 Q. In this case, you did not write any notes down that these
- 9 shoes or this shirt had been altered in any way from your
- 10 observation? You did not come to that conclusion?
- 11 A. That's correct.
- 12 Q. So, the conclusion you came to was the -- the skin cells
- 13 in here, okay -- in here were not altered or anything to your
- 14 knowledge?
- 15 A. To my knowledge.
- 16 Q. Okay. And that the information in this shoe, I'm talking
- 17 about your level -- at your level -- could be credible?
- 18 A. That's correct.
- 19 Q. Okay. Also ---
- 20 (Mr. Richey retrieves exhibit.)
- 21 Q. Also, this sweatshirt (indicating) ---
- 22 A. Uh-huh (affirmative).
- 23 Q. --- this appears to be worn and not washed, common sense
- 24 again, right?
- 25 A. Well, I have to say this, with today's styles, you buy

1 things that look worn and not washed. So, it's impossible for
2 me to really draw that conclusion at all, I mean...

3 Q. So, you can't tell ---

4 A. So, I just -- like I said, I'm just going to routinely
5 look for blood, hairs, epithelial skin cells, and that's it.

6 Q. Okay. Now, you -- you're not looking at this with your
7 naked eye, are you?

8 A. Usually, with black I'll put it under a lighted
9 magnifying glass.

10 Q. So -- so, this is not something where you go to -- where
11 you go to the Wal-Mart and pick out a pair of jeans that look
12 like they've been worn and take them off the shelf? This
13 ain't -- you actually put this under intense observation,
14 correct?

15 A. That's correct.

16 Q. Okay. So, under that intense observation, you can
17 determine, by the particles in here, whether Tide or something
18 is in it, correct, if it's left there? If it's left there?

19 A. If there is a ---

20 Q. Okay.

21 A. --- obvious powder stain, there's a possibility. I'm --
22 once, again, I'm not an expert on detergent.

23 Q. But you -- but you didn't find any of that?

24 A. No.

25 Q. You didn't make any notes of that?

- 1 A. Right.
- 2 Q. Okay. Are these all the objects that you had to test?
- 3 A. That's correct.
- 4 Q. Okay. So, this is all that was sent to you, correct?
- 5 A. That's correct.
- 6 Q. Okay. And what your job is, is you're trying to see what
- 7 kind of particles are on -- basically on -- on it, right?
- 8 A. Stains and ---
- 9 Q. Right.
- 10 A. --- things like that.
- 11 Q. You know, the stuff that we don't see, you see it,
- 12 correct, in your lab?
- 13 A. Yeah, a DNA analysts would see it more than I would
- 14 because a lot of things I do select, I don't normally see
- 15 either with the naked eye. I go through a procedure.
- 16 Q. Right. That's what I said.
- 17 A. Uh-huh (affirmative).
- 18 Q. You get it and -- and, because you're in the lab or
- 19 whatever you're at, you see stuff that we don't see, correct?
- 20 A. There's a possibility, yes.
- 21 Q. Okay. And -- and -- and that is what your job is?
- 22 A. Correct.
- 23 Q. So, you're only as good as what you get, right?
- 24 (Brief Pause)
- 25 A. My samples that I collect I guess are only as good as

1 what I've been submitted.

2 Q. Right. If you don't get any -- any information, it ain't
3 any good to you, correct?

4 A. Right.

5 Q. Okay. And -- and -- and this information is what is on
6 clothing, correct?

7 A. That's correct.

8 Q. Okay.

9 (Brief Pause)

10 Q. And oftentimes -- oftentimes, when you're near a person,
11 you -- you don't know that you're dropping these hair -- hair
12 samples off on them and all this stuff, correct?

13 A. That's correct.

14 Q. Okay. And, so, if someone is in close proximity to
15 another person, you can examine those clothes and may find
16 some DNA from that person on the other person, correct?

17 A. It takes a little bit of friction in order to -- to lose
18 epithelial skin cells. They're not just like floating in the
19 air like -- like from me to you or you standing beside me.

20 There has to be a little bit more contact than that.

21 Q. With all due respect, what if I grabbed you and tried to
22 pick you up and I pulled you and put you in this area
23 (indicating), is that the type of friction you're talking?

24 A. There's a possibility from your hand there could be. Of
25 course, your clothes you're not going to have any epithelial

1 skin cells necessarily, enough that -- that would matter, but
2 there's a possibility with your hands, yes.

3 Q. There's a possibility that I could get my DNA on you?
4 Whatever is on my clothing could go on your clothes, correct?
5 If I got you and pulled you with me and I'm putting you over
6 here, whatever is on your clothes could be -- could be on my
7 clothes?

8 A. As far as the quantity of how much epithelial skin cells
9 that you need to determine would be more of a question for the
10 DNA analyst, not for me.

11 Q. Okay.

12 A. Because, like I say, I don't see epithelial skin cells,
13 so, I can't tell you exactly how much that person was touched
14 or what they did in order for me to do what I do.

15 Q. That's not what I'm asking.

16 A. So, it's -- it's beyond my realm of expertise as far as
17 to say what do you need to do to me to leave epithelial skin
18 cells on me.

19 Q. But your expertise is, in fact, you take what's on the
20 clothing off to examine, correct?

21 A. That's correct.

22 Q. And that item will be from people's hair or some source,
23 correct?

24 A. That is correct.

25 Q. And whether it's friction, whether it's just standing

1 there, whether it's borrowing clothes ---

2 A. Uh-huh (affirmative).

3 Q. --- that's what you do, correct?

4 A. That is correct.

5 Q. Okay. And -- and -- and you're only as good as the --
6 the material that you get, correct?

7 A. That's correct.

8 Q. Okay. I'm going to show you this picture, which is
9 State's Exhibit Number 5, okay?

10 (State's number 5 handed to witness.)

11 Q. And -- and that appears to be picture of a gentleman in
12 the car that's been shot, correct?

13 A. Correct.

14 Q. Okay. Were you ever given -- do you recognize the shirt
15 that he's wearing?

16 A. No, sir, I do not.

17 Q. Were you ever given that shirt to analyze?

18 A. No, sir, I was not.

19 Q. Okay. That would be in your realm of expertise, correct?

20 A. To do...?

21 Q. To take a cutting out of a shirt and see what's on it?

22 A. If that shirt was submitted and a request was for blood,
23 yes, sir, I would have.

24 Q. But it would be within your realm of capability, correct?

25 A. To make a sample collect, yeah.

- 1 Q. Okay. And based, on your training and your expertise, do
2 you believe that there would be anything found on this shirt?
- 3 A. I would say that's a possibility there's blood.
- 4 Q. And anything else?
- 5 A. I cannot tell from that photo.
- 6 (Brief pause while Mr. Richey retrieves exhibit.)
- 7 Q. On the --- let me put this boot back, so, I have a few
8 more for you. Because I'm looking at this boot, and I'll
9 refer to it as a talking boot, the boot key, the outside, as
10 well as the inside, provides information to you, correct?
- 11 A. It can, that's -- yes, sir.
- 12 Q. Okay. And, so, you examined both the inside and the
13 outside?
- 14 A. That's correct.
- 15 Q. Okay. And -- and, when you find something in there, I
16 don't care whether it's light, blue, da, da, da, you take and
17 send that on to the next guy?
- 18 A. That's correct.
- 19 Q. Okay. All right. On the outside of this shoe -- did you
20 examine the outside of this shoe?
- 21 A. Uh-huh (affirmative).
- 22 Q. Was that "yes" or "no"?
- 23 A. I'm sorry, yes.
- 24 Q. Okay. All right. And, in examining the outside of this
25 shoe, did you find any type of hair follicles or any DNA

1 evidence outside of this shoe?

2 A. The hair -- what I do with a boot is usually I get a
3 spatula and I just turn the boot upside down and took the
4 spatula inside and all the hair that falls on the -- the paper
5 is the hair that I collect.

6 Q. So, you turned it up ---

7 A. So ---

8 Q. You turned it up like this (demonstrates)?

9 A. Right. And when a boot -- when something is submitted
10 like that, I cannot honestly tell you, if the hair is from the
11 inside or the outside because it's been in a bag. It's been
12 transported.

13 You don't know, in transport, whether -- you know, if the
14 hair is on the outside when I get it, does not necessarily
15 mean that it wasn't on the inside of the boot before it got to
16 me.

17 Q. But none of it fell out of the shoe?

18 A. I'll just say what I do is reach in and scrape the boot
19 down, and the hairs that fall from the boot are the hairs that
20 I collect.

21 Q. So, you don't believe that any of these hairs were lost
22 in the transportation of it, correct? You don't believe that,
23 do you?

24 A. I -- I don't know. I mean, I -- I can't answer that.

25 Q. Okay. But the hair you got you believe that they were on

1 the boot or inside this boot?

2 A. That is correct.

3 MR. RICHEY: Okay. Thank you, ma'am.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION by MR. WILLINGHAM:

3:35 P.M.

6 Q. And likewise, on the other boot, you couldn't say it was
7 from both the inside and the outside?

8 A. That is correct.

9 MR. WILLINGHAM: Okay. Thank you. I have no further
10 questions for this witness, Your Honor.

11 THE COURT: Anything further?

12 MR. RICHEY: No, Your Honor.

13 THE COURT: All right, ma'am, you may step down. Do you
14 wish to excuse this witness?

15 MR. WILLINGHAM: Please, Judge.

16 THE COURT: Any objection?

17 MR. RICHEY: None.

18 THE COURT: Ma'am, you're free to go. Thank you very
19 much for coming today.

20 (Whereupon, the witness stepped down from the witness
21 stand and was excused.)

22 THE COURT: Mr. Willingham, the State may call its next
23 witness.

24 MR. WILLINGHAM: We call Captain Kellet.

25 (Ms. Kellet was summoned.)

1 THE COURT: Ma'am, come forward and be sworn.

2 (Ms. Kellet stepped forward to be sworn.)

3 (Whereupon,

4 CAPTAIN JACKIE KELLET

5 having been first duly sworn, testified as follows:)

6 THE COURT: Ma'am, have a seat, move as close to the
7 microphone as possible, and state your full name, please.

8 THE WITNESS: Jackie F. Kellet.

9 THE COURT: Mr. Willingham, it's your witness.

10 MR. WILLINGHAM: Thank you, Judge.

11 DIRECT EXAMINATION by MR. WILLINGHAM: 3:37 P.M.

12 Q. Captain Kellet, where do you work?

13 A. I'm employed, by the Greenville County Department of
14 Public Safety, Forensic Division.

15 Q. And what do you do for them?

16 A. I am the captain of the forensic division. My main areas
17 of responsibility are the management and supervision of the
18 crime laboratory, the crime scene section, the latent print
19 and the identification section. I'm also the lead latent
20 print examiner for Greenville County.

21 Q. How long have you been in law enforcement?

22 A. I've been in law enforcement, been a certified police
23 officer, for the last twenty-nine (29) years. And the last
24 twenty-five (25) of those years, I have been employed by
25 Greenville County.

1 Q. What type of initial education and training and
2 background do you have that would allow you to do your job as
3 a latent fingerprint examiner?

4 A. I have completed forty (40) hours of basic fingerprint
5 training; also, completed eighty (80) hours of advanced
6 fingerprint training from the FBI academy.

7 I've completed a one hundred and twenty (120) hour block
8 of training, in administrative advance latent fingerprint
9 training, at the FBI academy in Quantico, Virginia.

10 And I've completed a two-week school in Tucson, Arizona
11 known as "Card Pack," (phonetic) which is combined advanced
12 ridgeology, Demystifying Palm Prints and Comparison
13 Techniques. And what it does is explore and teach you more
14 into the depth of palm print identification.

15 In addition to that, we have ongoing training every year
16 in our department and annual proficiency testing as a latent
17 print examiner.

18 Q. Have you ever testified before as an expert in the area
19 of latent print identification?

20 A. Yes, I have. I've been qualified, as an expert witness,
21 in latent prints examination and comparison in local, state,
22 and federal court.

23 MR. WILLINGHAM: Your Honor, at this time, I'd offer
24 Captain Kellet as an expert in the area of latent fingerprint
25 identification.

1 THE COURT: Any objection?

2 MR. RICHEY: None.

3 THE COURT: All right. The witness will be qualified as
4 an expert within that area. You may proceed.

5 MR. WILLINGHAM: Thank you.

6 Q. (By Mr. Willingham) The jury may know already, but for my
7 benefit, if you would, tell us what a latent fingerprint is.

8 A. A latent fingerprint, the word "latent," means "hidden."
9 Normally, when someone touches something, sometimes they'll
10 leave a print behind and sometimes they don't.

11 But, when they touch something, you usually can't see the
12 print that's left behind by the naked eye. So, a latent print
13 is an unknown identified hidden print that you cannot see, and
14 it has to be developed, so, that you can see it, through
15 either the use of fingerprint powders, chemicals, super glue
16 fuming.

17 There are various processes that you can use to be able
18 to enhance this print and make it visible to the human eye.

19 Q. If I were to touch a surface, such as this jury box, how
20 would you go about determining whether or not I left a
21 fingerprint?

22 A. Well, the first thing I would do would be, on a surface
23 like this, I would use just basic fingerprint powder. And
24 it's basically a -- a graphite based powder.

25 And you take your fingerprint brush, dip it in the

1 powder, brush it across the area where you suspect that a
2 fingerprint might be, and should a print be developed, you
3 would be able to see it.

4 You would, then, take fingerprint tape, which is usually
5 really wide Scotch Tape. You put it down on that surface,
6 where you see the latent. You rub it really good with your
7 fingernail, so, that it sticks.

8 Then, you lift up the latent print and you transfer it to
9 a white card. That way the card contrasts. You got black
10 powder against a white card, so, that you can see that
11 fingerprint pattern.

12 You, then, label that card, with all the information
13 about the case; where you developed it from, date and time,
14 and your initials, things like that.

15 Q. And I'm going to show you, just for demonstrative
16 purposes, State's Exhibit Number 67. Is that such a latent
17 lift as you described?

18 (Exhibit handed to witness.)

19 A. Yes, it is. This is what we call a -- a latent
20 fingerprint. This is a latent fingerprint card and this is
21 the latent print on this side where you see the -- the tape.

22 Q. And it's not latent anymore; it's not hidden any more
23 because it's been ---

24 A. Identified.

25 Q. --- with -- with powder?

1 A. That's correct.

2 Q. Okay. Now, if I were to process a scene and find a
3 fingerprint in blood, would you lift it in the same manner?

4 A. No, you would not.

5 Q. How would you process that type print?

6 A. Normally, if you have a print in blood, there's a
7 chemical called amino black. And it reacts to the proteins in
8 the blood.

9 You take the chemical and you can either -- it's a liquid
10 form. You can either use a pump bottle and spray it onto that
11 surface, or you can pour the chemical on there.

12 That chemical is going to work just like the fingerprint
13 powder does when it sticks to the oils of your hand. It's
14 going to cling to the proteins in that blood and it's going to
15 make that impression appear, so, that you can see it.

16 I would, then, photograph that. I -- we try to lift with
17 tape and amino black print, but you normally cannot do that.
18 You have to photograph it by camera.

19 Q. Okay. Did -- in this case, did you receive both latent
20 lifts and photographs, pictures of -- or fingerprints ---

21 A. Yes, I did.

22 Q. --- or a palm print? Did you -- it's probably obvious,
23 the difference between a fingerprint and a palm print is the
24 fingers on -- fingerprints on the fingers and palms on the
25 palm?

1 A. Correct.

2 Q. What do you call a footprint?

3 A. A footprint.

4 Q. Footprint? Okay. All right. Like I say, it's obvious.

5 You received such evidence in this case?

6 A. Yes, I did.

7 Q. Now, your purpose of -- of -- in this case, was not to

8 try to develop any hidden prints; is that fair?

9 A. No, sir, that's correct. These prints were already
10 developed and submitted to me for comparison purposes.

11 Q. Now, what do you compare it to?

12 A. Known prints that are provided, of a possible suspect, or
13 victim or elimination prints.

14 Q. Okay. And let's talk about that a little bit. If I --

15 you don't see me do this, but let's say I touched this bar

16 (demonstrates) and somebody lifts that print.

17 If you didn't see me leave that print, would you know

18 whose print that is?

19 A. No, I would not.

20 Q. That would be an unknown?

21 A. That is correct.

22 Q. Okay. And you had several unknown prints submitted to
23 you?

24 A. Yes, I did.

25 Q. I think Rusty Clevenger with my office brought those to

1 you?

2 A. That's correct.

3 Q. How many unknown prints did he bring to you?

4 A. I think he brought a total of sixteen (16) latent lifts
5 over to my office to look at.

6 Q. Sixteen (16) unknowns?

7 A. Yes, sir, that's correct.

8 Q. Okay. And, then, what you do is you take those unknowns
9 and you compare them to known prints?

10 A. That's correct.

11 Q. Okay. And I'm showing you State's Exhibit Number 65, and
12 this -- for demonstrative purposes, this is an example of a
13 known print; is that correct?

14 (State's Number 65 handed to witness.)

15 A. That is correct.

16 Q. Okay. And that -- and those prints belong to the
17 Defendant, Isaiah Walker?

18 A. That's correct.

19 Q. Okay. And you know these are his prints based on how you
20 received them?

21 A. Yes, sir, that's correct.

22 Q. All right. Did you receive any other known prints?

23 A. Yes, I did.

24 Q. Whose other prints did you receive?

25 A. Submitted, along with the suspect's prints, were

1 elimination prints, from various forensic personnel, crime
2 scene personnel, EMS personnel, sheriff's office investigative
3 personnel, as well as the victim.

4 Q. Was one set of prints sent to you the prints of Jeffrey
5 Hubbard, the victim?

6 A. Yes, it was.

7 Q. Was one of the sets of prints sent to you the prints of
8 Chavez Miller?

9 A. That's correct.

10 Q. Was one set of prints sent to you the prints of Brent
11 Gentry?

12 A. Yes, they were.

13 Q. Was one set of prints sent to you the prints of Julian
14 Zack (phonetic)?

15 A. Yes, it was.

16 Q. Rusty Clevenger's prints were sent to you?

17 A. Yes, sir.

18 Q. David Hogsed's prints were sent to you?

19 A. Yes, sir.

20 Q. Dominick Beard's prints -- Baird's prints were sent to
21 you?

22 A. Yes, sir.

23 Q. Larry Sprouse?

24 A. Yes, sir.

25 Q. Brian Harvey (phonetic)?

- 1 A. Yes, sir.
- 2 Q. All these people that have been involved in this case,
3 they sent their prints to you as well?
- 4 A. That's correct.
- 5 Q. And you say you called those elimination prints?
- 6 A. That's correct.
- 7 Q. Why?
- 8 A. Because, when investigators are at a scene, sometimes
9 they have to handle or they come into contact with the
10 evidence or a scene location. So, sometimes they don't mean
11 to, but they leave their prints behind just in the fact of
12 processing the case.
- 13 So, in order to eliminate those and rule them out, we
14 obtain elimination prints from these people. And, then, I
15 look at the latent prints against the elimination prints
16 provided and see if I can obtain a match.
- 17 Q. Okay.
- 18 A. That way I don't waste my time trying to -- to match
19 those.
- 20 Q. Okay. So, let me ask you this: You have unknown prints
21 and you have known prints?
- 22 A. That's correct.
- 23 Q. What -- so, you compare them to see if they match. What
24 are you looking for?
- 25 A. Well, when you look at -- at latent fingerprints and palm

1 prints, they're all unique. No two people have the same.
2 prints ever.

3 You can have -- there's three different pattern types.
4 You can have loops, whirls, and arches. You can have all
5 loops. You can have all whirls; you can have a combination of
6 all three.

7 But every individual person is going to have a different
8 print on their -- each finger. Palm prints are just as unique
9 as fingerprints. No one has the same palm prints.

10 So, what I look for, if I have that latent print in front
11 of me, I first try to determine is that a finger? Was it made
12 by a finger? Was it made by a second or third digit? Or was
13 it made by a portion of the palm?

14 Once I determine what I'm looking for, then, I look for a
15 pattern types. Is it a loop? Is it a whirl? Is it an arch?

16 Once I find that out, then, I start looking at all the
17 known prints that I have. If I have a -- a whirl latent
18 print, an unidentified whirl, I'm going to look for everybody
19 that has a whirl on their fingerprint card.

20 Then, I'm going to look for just individual points of
21 identification that are going to make that print unique. Once
22 I start with that, I see I have a whirl here, a whirl here --
23 here's a ridge ending, and that's where the ridge just comes
24 up and stops.

25 It doesn't flow anywhere else; dead end, nowhere to go.

1 Two ridges come together and make a bifurcation. I'm going to
2 look for those in each pattern, the -- the known print and the
3 latent print.

4 Once I start finding those, and they're all in the same
5 exact location, then, I'm going to see if I can have enough to
6 positively identify that person as having made that latent
7 print or that palm print.

8 Q. And how many points of similarity or -- or points of
9 matching maybe the better word, do you have to have for you to
10 say that's a positive identification?

11 A. There are no magic number of points that you must have to
12 make an identification. A lot of agencies have established
13 policies where we want ten (10) points. We want twelve (12)
14 points.

15 In Greenville County, I like to have at least twelve (12)
16 points of identification. And that's not to say that, if
17 someone only had nine (9) that I wouldn't call it. It's going
18 to depend on the uniqueness of that pattern.

19 Maybe there's something weird about it. The person has
20 got a scar running through their finger. But, once I
21 determine that I've got a match, and I'm confident that it's
22 that person, my match, with the verification that I make, it's
23 going to be looked at by another latent print examiner.

24 We always conduct peer review. The examiner makes a
25 match, another latent examiner is given these same known

1 prints, the same latent prints to see, if indeed, that is a
2 match and will verify that match.

3 Q. Okay. Let's talk about the fingerprints in particular.
4 I'm showing you what's already into evidence as State's
5 Exhibit Number 67. This appears to be a fingerprint lifted,
6 from the right exterior door, above the lock of a white Ford
7 Probe. Did you receive that item?

8 (Exhibit handed to witness.)

9 A. Yes, I did.

10 Q. Did you analyze that item?

11 A. Yes, I did.

12 Q. Did you compare that item to your known fingerprints?

13 A. Yes, I did.

14 Q. And, based upon your examination, of the unknown print
15 and the knowns that you had, were you able to determine whose
16 fingerprint that was?

17 A. Yes. Based upon my comparison, this latent is identified
18 as being made by the number five (5), which is the right
19 little finger of the victim.

20 Q. Okay. Jeffrey Hubbard?

21 A. Yes, sir, that's correct.

22 Q. All right. Likewise, State's Number 68 is off the white
23 Ford Probe. It says it's from the exterior driver's door
24 window. Did you receive that print?

25 (Exhibit handed to witness.)

1 A. Yes, sir, I did.

2 Q. And were you able to identify it?

3 A. Yes. This latent is identified as being made by the
4 number three (3), which is the right middle finger of the
5 victim.

6 Q. Okay. Finally, State's Exhibit Number 66, which says
7 it's off the white Probe, right exterior door above the lock.
8 Did you receive that item?

9 (Exhibit handed to witness.)

10 A. Yes, sir, I did.

11 Q. And did you compare it with the knowns?

12 A. Yes, sir, I did.

13 Q. Were you able to tell and determine whose print that is?

14 A. Yes. I identified this latent print as having been made
15 by, again, the number three finger, which is the right middle
16 finger, of the victim.

17 Q. Okay. I'm showing you State's Exhibit Number 69, which
18 appears to be from the white Ford Probe, the left rear quarter
19 panel -- below something.

20 (Exhibit handed to witness.)

21 A. Searing (phonetic).

22 Q. Okay. Did you receive that item?

23 A. Yes, sir, I did.

24 Q. And did you compare it to the known prints?

25 A. Yes, sir, I did.

1 Q. And were you able to determine whose print that belonged
2 to?

3 A. Yes. This latent print was made by the number three,
4 which is the right middle finger, of Julian T. Sapp
5 (phonetic), who was identified to me as being a paramedic on
6 the scene.

7 Q. Okay. I'm showing you finally State's Exhibit Number 7.
8 It's already into evidence, and ask do you recognize that?

9 (Exhibit handed to witness.)

10 A. Yes, sir, I do.

11 Q. And what is it?

12 A. This is a cardboard tube holder that contains a set of
13 negatives that were taken of some latent prints that were
14 developed in amino black, the chemical that I talked about
15 that develops prints in blood.

16 These negatives were taken of the prints that were
17 developed on this white Ford Probe.

18 Q. Okay. And were you able to perform a comparison on those
19 prints with your known prints?

20 A. Yes, sir, I was.

21 Q. And, based upon your examination, do you have an opinion
22 as to whose prints those are?

23 A. Yes, sir, I do.

24 Q. Whose prints are they?

25 A. The prints in blood were made by the right palm, the

1 inter-digital area, which is the top area right up underneath
2 the bottom of your fingers, made by the right palm of Mr.
3 Isaiah Walker.

4 Q. The Defendant in this case?

5 A. Yes, sir, that's correct.

6 Q. Did you prepare any charts to assist the jury in
7 understanding how you made that comparison?

8 A. Yes, sir, I have.

9 Q. Do you have those with you?

10 (Brief pause while witness retrieves document.)

11 (Off-the-Record Comments)

12 (Whereupon, State's Exhibit Number 80 was marked for
13 identification.)

14 Q. (By Mr. Willingham) I'm showing you State's Exhibit
15 Number 80. This is the chart you prepared?

16 A. Yes, sir, it is.

17 Q. This will assist you in explaining your testimony to the
18 jury?

19 A. Yes, sir.

20 Q. Does that accurately reflect the known and unknown
21 prints ---

22 A. Yes, sir.

23 Q. --- that we've talked about?

24 A. Yes, sir, it does.

25 MR. WILLINGHAM: Your Honor, at this time, I move

1 State's Exhibit Number 80 into evidence.

2 THE COURT: Any objection?

3 MR. RICHEY: No objection.

4 THE COURT: Without objection, it'll be received into
5 evidence as marked.

6 (Whereupon, State's Exhibit Number 80 was admitted into
7 evidence without objection.)

8 Q. (By Mr. Willingham) I'll stand over here, if you want to
9 step down, unless you want to.

10 (The witness stepped down from the witness stand.)

11 Q. Explain to the jury what -- okay, explain to the jury
12 what -- what -- what they're seeing.

13 A. Okay.

14 THE COURT: Can everyone on the jury see this?

15 (Responses of 'yes, sir,' heard.)

16 THE COURT: All right. Thank you.

17 A. As I said before, the latent print is the unidentified
18 print from the crime scene. This is from the roll of
19 negatives. So, this is a photographic image of the latent
20 that was developed using amino black. And the print was
21 developed in blood.

22 The ink print on this side (indicating) is just a
23 photographic enlargement, of the area of the palm, which,
24 again, is the right palm inter-digital (phonetic).

25 It's right up underneath the number four and number five

1 finger of the hand. And this is just an enlargement of the
2 known rolled palmprint of Mr. Walker.

3 And the first thing you do, when you're starting to make
4 an identification, I can see this large looping pattern here
5 (indicating), in both the latent print and the inked print.

6 And I can tell, from looking at the -- the large majority
7 of the ridges, you can see where this curves up under here
8 (indicating), that's going to be -- I can tell that this is
9 going to -- that's what makes me see that's a piece of a palm
10 print.

11 So, I begin with point number one, which is a
12 bifurcation, and it's where the two ridges come together and
13 they join and they turn into one ridge. Once I find that,
14 almost in the core of this loop, I'm going to count over five
15 ridges to my left, one, two, three, four, five, which is point
16 number two, which, again, is another bifurcation. It's where
17 two ridges come together and stop and they turn into one
18 ridge.

19 If you go straight up and slightly to your left, where
20 number two corresponds here (indicating) straight up and
21 slightly to your left is point number three, which is an
22 ending ridge. The ridge just comes up and stops, runs out of
23 space; no where else to go.

24 If you count over from there, one, two, three, four,
25 five, you've got point number four. And I just continue on in

1 -- in this manner.

2 I've got eight (8) points of identification marked on
3 here with -- drawn out with the numbers, but I've also got
4 three (3) other points which makes a total of thir -- of
5 fourteen (14) [sic] that are marked that I just don't have a
6 line drawn to because it's hundreds of charts and it looks
7 messy.

8 So, I just continue on in this manner until I determine
9 that this latent print was made by the known print of Mr.
10 Walker. And it's been verified by a second latent print
11 examiner in my office.

12 (Witness returns to the witness stand.)

13 (Brief Pause)

14 MR. WILLINGHAM: Captain Kellet, I appreciate you being
15 here. If you would, answer any question the Defense may have.

16 THE COURT: Mr. Richey, your witness.

17 MR. RICHEY: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION by MR. RICHEY:

3:58 P.M.

20 Q. How are you doing?

21 A. I'm good. How are you?

22 Q. I'm doing good. We've been doing this a long time.

23 A. Yes, we have.

24 Q. This is cross examination, so, let me start out by asking
25 you, when you get these fingerprints, you get them from law

1 enforcement; is that correct?

2 A. That's correct.

3 Q. And you don't have -- you don't have any say so of what
4 you get; you just accept what you get, correct?

5 A. That's correct.

6 Q. Okay. And you do your analysis I believe it's sort of
7 set up where you sit in a room -- a room like this and you've
8 got a little thing in the eye that you look at. And I might
9 not be describing all of that right, but ---

10 A. It's a -- it's a magnifier. It's a magnifying glass.
11 And I sit at my desk and do that, yes.

12 Q. Okay. And -- and you -- you do that to determine all
13 these points you're talking about, correct?

14 A. That's correct.

15 Q. Okay. In analyzing these prints, in analyzing these
16 prints, you do not analyze them in the blind, do you?

17 A. What do you mean by that?

18 Q. Meaning, I don't know whose is what; I just start picking
19 them up and doing them. I mean, you read them -- you read
20 these cards when you get them. I mean, you know what you've
21 got when you get them?

22 A. That's correct.

23 Q. Right. So, this is not the situation where you would
24 just sit down and you take a whole bunch of fingerprints and
25 you say, "I'm going to start matching, and whatever matches,

1 matches," correct?

2 A. Well, that would probably be impossible to do because I'm
3 going to figure I've got -- if I take a set of latent prints
4 and I just start trying to look at tons of cards, I may be
5 doing that for years and years and years.

6 But, if I have known suspects or known eliminations
7 provided to me, that cuts down my search time and allows me to
8 concentrate on these known prints.

9 If I didn't get a match, from any of those provided to
10 me, then, I could possibly use a computer system to search
11 those latents.

12 Q. Well, you got all of these prints, didn't you, and
13 they're unknown. Are you telling me, that without knowing the
14 identity, you could not match these prints?

15 A. No, that's not what I said.

16 Q. Okay. Because they all have been identified ---

17 A. That's correct.

18 Q. Okay. If you sit down and you don't know -- if you're
19 sitting down and you are given these prints (indicating),
20 okay, but you're given these prints, without the names on
21 them, okay? Without the names on them, you're just given --
22 these are just given to you (indicating), okay?

23 Then, you would sit down and you're telling me that you
24 could not match these fingerprints?

25 A. No, that's -- that's not -- if that's what you were

1 implying, that's not correct.

2 Q. Okay. So, you could do that?

3 A. Well, if you've got the names on them, that's -- that's
4 great. But, if I -- if I don't have the names on them, that's
5 not going to stop me from matching who they are. I'm not
6 going to know who that person is because the name is not typed
7 on that card.

8 Q. Right. So, you could match them without knowing the
9 names?

10 A. Well, yes.

11 Q. Okay.

12 A. The name has nothing to do with whether I get a match or
13 not.

14 (Brief Pause)

15 Q. And, when you got these prints, you basically sit down
16 and you evaluate what the prints were and who they were from
17 and what -- and what the overall investigation was, correct?

18 A. The only thing that I look at are the quality of the
19 latent prints, the comparability of the latent prints, if
20 there are enough points on those latent prints for analysis
21 and comparison.

22 Q. Okay.

23 A. That's -- that's my job.

24 Q. Okay. And, in this case, you actually, on your diagram
25 -- and I'm going to ask this: Would the substance on your

1 hands -- could the substance on your hand affect your
2 fingerprint?

3 A. Yes.

4 Q. Okay. And that substance, on your hand, that can affect
5 your fingerprint, if it's a thick, gooey substance, it can
6 affect your print, correct, because it has a chance to get
7 down in the crevices, correct?

8 A. That's correct.

9 Q. Okay. So, if I am doing the lifts, of a bloody
10 fingerprint and the blood is on my hands, that will affect my
11 print; is that correct?

12 A. If you were doing the lift, and you had blood on your
13 hands, yes, it would. But I would not think that a crime
14 scene technician would have blood on his hands lifting a -- a
15 bloody print.

16 Q. Okay. You -- if I -- my finger is -- and you correct me
17 -- my finger, if something is on my finger affects the print,
18 correct?

19 A. Could possibly; not always, not all the time.

20 Q. But could?

21 A. Could.

22 Q. And that's something you would have to know and take into
23 consideration?

24 A. Would I have to be told that you had a gooey substance on
25 your hand?

1 Q. You would want to know that there's a substance on my
2 hand that could affect your fingerprinting, correct?

3 A. Yes, sir.

4 Q. Okay. All right. If you're told that, you're told that
5 because it can affect the analysis, correct?

6 A. It's not going to change the fact that the ridges are
7 theirs.

8 Q. No, no, that's not what I asked you. That's not what I
9 asked you. I'm asking you, does it affect the analysis?

10 (Brief Pause)

11 A. Depending upon how much interference you have, it could.

12 Q. Okay. So, if the hand is clean, that is the best
13 scenario of testing, correct, a clean hand?

14 A. A clean hand and a clean surface.

15 Q. Okay. That right there is my best predictability,
16 correct?

17 A. It is if you're a type of person that leaves latent
18 prints.

19 Q. Okay. All right. Okay. When you add a substance, to
20 the hand, what you do is sort of like I got a sheet of paper
21 here; it's sort of like that, it's something in the middle.
22 Now, whether how -- this paper is thick (indicating), I grant
23 you that, but it has a substance in the middle, correct?

24 A. Yes, sir.

25 Q. Okay. All right. That substance, in the middle, no

1 matter how thick or thin it is, it can affect the reading,
2 correct?

3 A. It's not going to -- if -- if I'm confident that it's
4 that person, and I've made an identification, it's not going
5 to affect my analysis, Mr. Richey.

6 Q. And your mind is made up?

7 A. I'm confident in my examination and comparison.

8 Q. If you think it's that person, if you think it's that
9 person, and you do not know anything about the crime and you
10 think it's that person, you're -- your analysis is over,
11 correct?

12 A. Mr. Richey, I was told in advance that this print was
13 developed in blood.

14 Q. When ---

15 A. So, therefore, I had that information available to me
16 that the print was made in blood. Blood is going to adhere to
17 the ridges of the skin just like it does -- like ink, like you
18 take ink and transfer it to a card.

19 Q. When you think it's that guy, your analysis is over,
20 correct?

21 A. That is correct.

22 Q. And your mind will not be changed, correct?

23 A. No, sir, it will not.

24 Q. And, so, you knew this was a murder case that included
25 Isaiah Walker, correct?

1 A. Yes, sir, I did.

2 Q. And, when you determined that it was Isaiah Walker, your
3 analysis, you shut it down, correct?

4 A. No, sir. I examined every single latent print that was
5 provided to me to every known inked print of every person that
6 was submitted.

7 I didn't sit there and say, "I'm looking for Isaiah
8 Walker and Isaiah Walker only." I sat there and objectively
9 looked, at every single latent print, against every known
10 inked print. I was able to identify the victim's prints, a
11 paramedic's prints, as well as Mr. Walker.

12 Q. Wouldn't -- wouldn't you believe -- would -- would you
13 agree that the more credible way to identify these prints is
14 without knowing a name, where the prints came from?

15 Don't you think that would be the most credible way to
16 it's sort of a like a test?

17 A. No, Mr. Richey, I don't think that at all.

18 Q. It's sort of a like a test; if you have the answer -- if
19 you have the answer ---

20 A. I wasn't given the answer.

21 Q. No, that's not what I'm -- that's not what I'm saying.
22 I'm getting to --

23 A. Yes -- yes, sir, it is.

24 Q. Okay. I'll rephrase it, then. That's not what I'm
25 saying, okay? All right. If, in fact, you do not know the

1 pieces, to the puzzle prior to starting, okay, does that make
2 the puzzle a little bit more difficult?

3 A. Sure it does.

4 Q. Okay. And -- and, then, when you anal -- when you
5 analyze fingerprints, it is a puzzle, correct?

6 A. Yes, sir, it is.

7 Q. And this puzzle was made easier by the names, correct?

8 A. No, sir, it was not.

9 MR. RICHEY: Thank you,

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION by MR. WILLINGHAM: 4:08 P.M.

12 Q. Just to follow up on that, when you got the Defendant's
13 prints off of State's Exhibit Number 70, did you quit?

14 A. No, sir, I didn't.

15 Q. Say, "I'm done."

16 A. No, sir, I did not.

17 Q. You went on and you looked at the other prints and you
18 found the victim's prints and you found EMS prints?

19 A. Yes, sir, I did. I spent hours on this case.

20 Q. And the fact that blood, or some other gooey, sticky
21 substance is on your hands, is that going to make it better,
22 worse, or do you know, depending on what substance it is, as
23 far as finding them?

24 A. If it were black tar and it got all down in your hand,
25 that may make it very difficult to see here, but you've got

1 blood adhering to ridges when this person, Mr. Walker, touched
2 that car.

3 Q. Is the blood going to morph David Hogsed's fingerprints
4 into looking like Isaiah Walker's prints?

5 A. No, sir, it's not.

6 MR. WILLINGHAM: Okay. Nothing further. Thank you.

7 THE COURT: Mr. Richey?

8 RECROSS EXAMINATION by MR. RICHEY:

4:09 P.M.

9 Q. Officer, we know that there's another step that you could
10 have taken, correct?

11 A. What would that be?

12 Q. Is -- have you heard of the AFIS (phonetic) database?

13 A. Yes, sir.

14 Q. Okay. And is that a database of fingerprints that's kept
15 by law enforcement nationwide?

16 MR. WILLINGHAM: Your Honor, I'm going to object as this
17 is not proper recross examination.

18 THE COURT: I sustain the objection.

19 MR. WILLINGHAM: Thank you.

20 MR. RICHEY: Your Honor, if I may be heard.

21 THE COURT: I'll let you be heard.

22 MR. RICHEY: Okay. Can we come up there instead of ---

23 THE COURT: Come forward.

24 MR. RICHEY: Okay.

25 (Whereupon, a bench conference was had with Mr. Richey

1 and Mr. Willingham present.)

2 THE COURT: I sustain the objection.

3 Q. (By Mr. Richey) Okay. All you did was the latent
4 examination, correct?

5 A. Yes, sir, that's correct.

6 Q. So, you didn't use any other sources?

7 A. No, sir, I did not.

8 Q. And there's other sources out there?

9 THE COURT: I'll sustain the objection.

10 MR. WILLINGHAM: Objection, Your Honor.

11 A. I didn't ---

12 THE COURT: And I strike that question and instruct you
13 not to ask that one.

14 MR. RICHEY: Thank you, Your Honor.

15 THE COURT: You may step down, ma'am. Do you wish for
16 her to be released?

17 MR. WILLINGHAM: Please, Judge.

18 (The witness stepped down from the witness stand and was
19 excused.)

20 THE COURT: Step forward, attorneys, please.

21 (Whereupon, a bench conference was had.)

22 THE COURT: Ladies and gentlemen of the jury, the next
23 witness is another expert witness and will not be available
24 till the first thing in the morning. So, we're going to break
25 for the evening at this time.

1 The same instructions I've given you each time I have
2 broke in this case; don't discuss the case with anyone. Do
3 not seek any information outside of the courtroom. Do not
4 allow anyone to talk to you concerning this matter.

5 And in the morning, I'll ask that you report back to the
6 jury room at little bit earlier. We're going to start at nine
7 o'clock (9:00) in the morning and see if we can get on a
8 little bit -- a little further in the case tomorrow.

9 So, starting at nine o'clock (9:00); be back in the jury
10 room at that time. Again, I hope you have a good evening and
11 we'll see you then. You're free to go.

12 (The jury exited the courtroom at 4:11 p.m.)

13 THE COURT: All right. Court is in recess until nine
14 o'clock (9:00) in the morning. The Defendant remains in
15 custody. Thank you very much.

16 (Whereupon, court was adjourned at 4:12 p.m. and
17 reconvened on Thursday, May 31, 2007, at 9:00 a.m.)

18 THE COURT: Mr. Richey, would you approach, please?

19 MR. RICHEY: Yes, sir.

20 THE COURT: Ma'am, if you would like come too, you may.

21 (A bench conference was had with Ms. Holsbeck, Mr.

22 Richey, and Mr. Willingham present.)

23 (Off-the-Record Comments)

24 (Brief Pause)

25 THE COURT: Ready?

1 MR. WILLINGHAM: Yes, sir.

2 MR. RICHEY: Yes, sir.

3 THE COURT: Okay. All right. Let's bring the jury
4 back.

5 MR. WILLINGHAM: Judge I want to let you know, when the
6 jury comes in, these phone records that we talked about
7 earlier, I'm going to just move in, in front of the jury.

8 THE COURT: Okay.

9 MR. RICHEY: Judge, that's our -- I agree with that.
10 I'm -- I just remembered, the -- the bank teller that was here
11 the end of yesterday ---

12 THE COURT: Uh-huh (affirmative).

13 MR. RICHEY: --- is that the witness you intend to call?

14 MR. WILLINGHAM: Not next, but, I mean -

15

16 MR. RICHEY: All right.

17 MR. WILLINGHAM: --- she'll - she'll be here shortly. I
18 mean, she's here if you want to address that issue.

19 MR. RICHEY: Okay. Well, I don't know if the Court
20 wants to do it ---

21 THE COURT: Well, let's put that on the record.
22 Yesterday afternoon I was informed by the State that a
23 witness, who was a bank teller; is that correct?

24 MR. WILLINGHAM: Kathy Bader, yes, sir.

25 THE COURT: Okay. Had come into the courtroom unknown

1 to the prosecution and had had a seat during the testimony of
2 one of the SLED experts. Who was testifying?

3 MR. WILLINGHAM: I think it was Captain Kellet.

4 THE COURT: Okay.

5 MR. WILLINGHAM: And I'm not sure how long she was here.
6 That's -- it was right after her testimony that I found out.

7 THE COURT: All right. At that time, I indicated to the
8 Defense that, that would have been in violation of my
9 sequestration order.

10 If they wish to interview that particular witness, in the
11 setting, to determine whether or not that witness -- witness'
12 testimony might have been affected, by something that was
13 heard in the courtroom, I will allow the Defense to do so.

14 Have you had an opportunity to discuss that, Mr. Richey?

15 MR. RICHEY: Yes, Your Honor, and I think out of an
16 abundance of caution, we wanted to figure out whether it did
17 or didn't.

18 THE COURT: Okay.

19 MR. RICHEY: I don't think it would be extensive thing
20 to do.

21 THE COURT: All right. At an appropriate time, and
22 before that witness is presented -- do you want to take that
23 up now? Is she present now?

24 MR. WILLINGHAM: She's present now.

25 THE COURT: All right. Let's get her in here and let's

1 take that -- that up right now.

2 (Bailiff steps out to summon Ms. Bader.)

3 THE COURT: Ma'am, if you'll come forward to my left and
4 be sworn, please.

5 (Ms. Bader stepped forward to be sworn.)

6 (Whereupon,

7 KATHY BADER

8 having been first duly sworn, testified as follows:)

9 THE COURT: All right. What I'm going to do is, I'll
10 allow the State to question her concerning her presence and
11 what she may have heard. And, then, I'll allow you cross
12 examination rights.

13 MR. RICHEY: Yes, sir.

14 THE COURT: All right. You may proceed.

15 DIRECT EXAMINATION by MR. WILLINGHAM:

9:08 A.M.

16 Q. You're Kathy Bader?

17 A. Yes, sir.

18 Q. And you're one of the witnesses in this case?

19 A. Yes, sir.

20 Q. And you work at CPM Federal Credit Union?

21 A. Yes, sir.

22 Q. And you are scheduled to testify in this case about
23 things that happened at the bank?

24 A. Yes, sir.

25 Q. All right. You came to court yesterday in response to a

1 call from one of my investigators?

2 A. Yes, sir.

3 Q. What time did you get here?

4 A. At 1:30.

5 Q. Okay. So, you came in at 1:30. Did you come directly
6 into the courtroom?

7 A. Yes, sir.

8 Q. All right. Do you remember whose testimony you heard
9 yesterday?

10 A. There were four people yesterday in regards to it was
11 just the -- the gunshot residual and the fingerprint and then,
12 the evidence.

13 Q. Okay. So, you heard fingerprint testimony and gunshot
14 residual testimony. Does that, in any way, affect what you're
15 here to testify about?

16 A. No, sir.

17 Q. Has that clouded your judgement or clouded your answers
18 for what you're here for?

19 A. No, sir.

20 Q. You're here simply to testify to a transaction that you
21 had, with the victim in this case, Jeffrey Hubbard?

22 A. Yes, sir.

23 Q. Can you testify to that transaction, the time and the
24 amount?

25 A. Yes, sir.

1 Q. And that's all you're here to do?

2 A. Yes, sir, that's all I'm here to do.

3 MR. WILLINGHAM: All right.

4 THE COURT: All right, Mr. Richey, you may cross
5 examination.

6 MR. RICHEY: No questions.

7 THE COURT: All right. Ma'am, you may step down. Thank
8 you very much. I'll ask you to step outside the courtroom.

9 THE WITNESS: Thank you.

10 (The witness stepped down from the witness stand and
11 exited the courtroom as requested by the Court.)

12 THE COURT: All right. Any arguments you wish to offer,
13 Mr. Richey?

14 MR. RICHEY: We have no opposition.

15 THE COURT: Okay. I'm going to allow her to testify.
16 It would be my finding that the testimony that she was exposed
17 to would, in no way, affect the testimony that she intends to
18 offer.

19 However, if during the presentation of her testimony, it
20 appears that that is not the case, I'll take the appropriate
21 action at that point in time.

22 All right, anything further before we begin with the jury
23 today from the State?

24 MR. WILLINGHAM: No, sir.

25 THE COURT: Anything from the Defense?

1 MR. RICHEY: Nothing, Your Honor.

2 THE COURT: All right. Bring the jury back.

3 (The bailiff stepped out to summon the jury.)

4 (The jury entered the courtroom at 9:12 a.m.)

5 THE COURT: The record will reflect that all jurors have
6 returned to the courtroom. I trust everyone had a good
7 evening and that you're ready to begin with this trial again.

8 As previously, when we rested, the State was in the
9 process of presenting its evidence. Mr. Willingham, you may
10 call your next witness.

11 MR. WILLINGHAM: Thank you, Judge. Before I do that,
12 Judge, I would like at this time, in front of the jury, I had
13 marked State's Exhibit Number 59, which are phone records
14 belonging to the phone that was used by the Defendant, Isaiah
15 Walker, as well as State's Exhibit Number 60, which are phone
16 records belonging to the phone that was used by Jeffrey
17 Hubbard.

18 At these time -- at this time, I'd like to move those in
19 -- into evidence.

20 THE COURT: Is that during -- what period of time?

21 MR. WILLINGHAM: This is on February 17th of two thousand
22 and six (2006).

23 THE COURT: All right. Any objection?

24 MR. RICHEY: None.

25 THE COURT: Without objection, they'll be received into

1 evidence as marked.

2 (Whereupon, State's Exhibit Number 59 and 60 were
3 admitted into evidence without objection.)

4 THE COURT: Mr. Willingham?

5 MR. WILLINGHAM: Your Honor, at this time, I would call
6 Jennifer Clayton.

7 (Ms. Clayton is summoned.)

8 (Ms. Clayton stepped forward to be sworn.)

9 (Whereupon,

10 JENNIFER CLAYTON

11 having been first duly sworn, testified as follows:)

12 THE COURT: Ma'am, have a seat and move as close to the
13 microphone as possible. And, please, state your name for the
14 record.

15 THE WITNESS: Jennifer Lynn Clayton, C-l-a-y-t-o-n.

16 THE COURT: Mr. Willingham, it's your witness.

17 MR. WILLINGHAM: Thank you, Judge.

18 DIRECT EXAMINATION by MR. WILLINGHAM:

9:13 A.M.

19 Q. Where do you work?

20 A. I'm currently employed with the South Carolina Law
21 Enforcement Division, also known as SLED.

22 Q. And what do you do for SLED?

23 A. I'm currently a forensic DNA analyst with the DNA
24 department.

25 Q. And how long have you been with SLED?

1 A. I've been with SLED for almost five (5) years, two of
2 those years was as a forensic technician. The remaining were
3 as an DNA analyst.

4 Q. And what type of training, education, and experience do
5 you have to allow you to do your job?

6 A. I earned a Bachelor's of Science in Biology from UNC at
7 Chapel Hill. I've also taken classes at NC State and USC that
8 included courses in -- course work in genetic, molecular
9 biology, biochemistry, and statistics.

10 I completed a five-month internship with the North
11 Carolina State Bureau of Investigation Molecular Genetics
12 Department. I've worked two years as a forensic technician
13 with SLED.

14 And, then, after hiring on, as a DNA analyst, I completed
15 a one-year training program under a qualified analyst. And I
16 did course -- case work under his supervision before I was
17 allowed to work my cases on my own.

18 Q. Have you ever testified before as an expert ---

19 A. Yes, I have.

20 Q. --- in the field of DNA analysis?

21 A. Sorry, yes, I have.

22 MR. WILLINGHAM: All right. Your Honor, at this time,
23 I'd offer Agent Clayton as an expert in the area of DNA
24 analysis.

25 THE COURT: Any objection?

1 MR. RICHEY: No objection.

2 THE COURT: Without objection, she'll be so qualified.

3 You may proceed.

4 Q. (By Mr. Willingham) Agent Clayton, you're going to have
5 to educate me on what DNA is.

6 A. Okay. DNA is basically a large chemical that's found in
7 almost every cell in the body with the exception of red blood
8 cells.

9 It's often called the blueprint to life because it
10 determines, you know, that we have a heart and we have lungs,
11 we have blue eyes, how tall we are, brown eyes, whatever.

12 And, so, we get half of our DNA from our mom and half our
13 DNA from our dad. And most of our DNA is the same, but there
14 are parts that are not the same. And this is the part that's
15 useful to us.

16 We can look at certain locations that don't code for --
17 the locations that we choose to look at don't code for eye
18 color or hair color or anything like that. And we get
19 basically what's a -- a set of numbers, a DNA profile.

20 And, with the exception of identical twins, these
21 profiles are going to be unique because our DNA is unique.
22 And, so, no two people are going to have exactly the same DNA
23 profile with the exception of identical twins.

24 Q. And, so, everybody has -- except for twins, has unique
25 DNA. How do yo go about finding DNA say on a particular item?

1 A. Okay.

2 Q. And developing it -- I guess developing a DNA profile,
3 so, that it can be used.

4 A. Okay. The first thing we have to do is extract the DNA,
5 which just means we get it out of whatever material it's on,
6 whether it's a swab or a piece of clothing or chewing gum or
7 wherever it is.

8 We break open the cells and then, we separate it, so, we
9 have just the DNA. And we get rid of anything else like --
10 that might be part of the cell; we're not interested in that.

11 And, then, we make a lot of copies of the DNA, and then,
12 we're able to run those copies on an instrument that will give
13 us results, these -- the set of numbers that I was telling you
14 about earlier that's called a DNA profile.

15 Q. And, then, once you develop a DNA profile, off of an
16 item, then, you compare it to a known DNA profile; is that
17 correct?

18 A. That's correct. We either get a blood standard or
19 sometimes a buccal swab, which is just cells from inside the
20 cheek. And we use the same method to separate the DNA. And
21 then, we get a DNA profile from the standard, and we know
22 specifically who it's from.

23 And, so, then, we can match the profile from the evidence
24 of -- with the profile from the standard and determine if
25 they're a match or not.

1 Q. So, I -- I may be making it -- I'm sure I'm making it a
2 lot simpler than it is. But, this jury is familiar with
3 fingerprints, from -- from testimony we had yesterday.

4 And we had an expert testify that they have a -- a known
5 print, an unknown print, and they look for matches.

6 A. That's ---

7 Q. Similar to what you do, you have a -- have an unknown
8 sample and you have a known sample and you look for matches?

9 A. That's correct basically.

10 Q. Okay. And did you do that in this case? Was evidence
11 submitted in this case?

12 A. Yes, it was.

13 Q. All right. I'm going to show you what's been previously
14 introduced as State's Exhibit Number 72. And these appear to
15 be samples taken off of a right Timberland boot. Did you
16 receive those items?

17 (Exhibit handed to witness.)

18 A. Yes, I did. And I can identify these items because my
19 initials are in the corner of each envelope.

20 Q. Okay. Now, did you also receive a standard or a sample
21 of the victim's DNA, Jeffrey Hubbard?

22 A. Jeffrey Hubbard? Yes, I did. That's correct.

23 Q. Okay. Did you also receive a standard of the Defendant
24 Isaiah Walker's DNA?

25 A. Yes, I did.

1 Q. And did you also receive a standard of Brent Gentry's
2 DNA?

3 A. Yes, I did.

4 Q. Okay. So, Jeffrey Hubbard, Isaiah Walker, and Brent
5 Gentry were your known DNA standards?

6 A. That's correct.

7 Q. Okay. Now, when you looked at and analyzed State's
8 Exhibit Number seven -- 72 ---

9 A. Okay.

10 Q. --- were you able to develop a DNA profile?

11 (Brief pause while witness reviews document.)

12 A. Okay. I worked some of these up separately. I worked up
13 27 and twenty -- 27.1 and -- our SLED number 27.1 and SLED
14 number 27.4 ---

15 Q. And what are they?

16 A. --- together, which is -- it's labeled as "skin cells
17 from the right boot." Both -- both envelopes are labeled as
18 skin cells from the right boot.

19 And, then, I worked up 27.2, which -- which is a swab
20 from the right boot. And 27.3 was a hair from the right
21 Timberland boot, but it was determined to be insufficient for
22 SCR (phonetic) analysis.

23 Q. Okay. And the reason the hair -- hair is not always good
24 sample for DNA, is it?

25 A. That's correct. It depends on the type of DNA you want

1 to do. We do something called short tan and repeat STR DNA
2 (phonetic) analysis, and you need a certain amount of tissue
3 for that. And usually the hairs that are acceptable have a
4 root on them and have a certain amount of tissue around that
5 root.

6 And, if there's not enough tissue, then, we declare it
7 insufficient for analysis. You can, then, do a mitochondrial
8 (phonetic) on it if you choose, but that's not something we do
9 in our lab.

10 Q. Okay. Were you able to develop a profile off 27.1 and
11 27.4?

12 A. Yes, I was.

13 Q. And that was from the inside of the right boot?

14 (Witness reviews document.)

15 A. Let's see, that's correct.

16 Q. And whose DNA is -- well, did the DNA match anyone?

17 A. Yes. The DNA profile that was developed from combined
18 items 27.1 and 27.4, that's the swab from the inside of the
19 right -- right boot, was actually a mixture.

20 And what a mixture is -- is that sometimes more than one
21 person will contribute DNA to a sample. You can think of it
22 -- and sometimes we can come up with a major contributor and a
23 minor contributor.

24 And you can think of it kind of like people putting
25 marbles in a jar. One person might put red marbles, ten (10)

1 red marbles in a jar and one person might put a hundred (100)
2 blue marbles in a jar.

3 And you can see both marbles, but there's obviously --
4 it's much easier to pick out the blue marbles. And that was
5 the case here with the DNA with more than one person
6 contributed DNA, but one person contributed the majority of
7 the DNA.

8 Q. Who contributed the majority of the DNA on the inside
9 that boot?

10 A. The DNA, of the major contributor of these items, matches
11 Isaiah Walker. And the probability of randomly selecting an
12 unrelated individual having a DNA profile matching the major
13 contributor to these items is approximately one in six hundred
14 trillion.

15 Q. One in six hundred trillion. So, you feel comfortable,
16 based on your experience and based upon the statistics to say
17 that that's his DNA inside that boot?

18 A. I -- I feel comfortable saying that, yes.

19 Q. Okay.

20 A. And in my expert opinion too.

21 Q. What?

22 A. In my expert opinion it matches. It is Isaiah Walker,
23 yes.

24 Q. Okay. Now, you said there was a mixture. And you
25 excluded Jeffrey Hubbard as being a contributor?

1 A. That's correct.

2 Q. How about Brent Gentry?

3 (Brief pause while witness examines document.)

4 A. Okay. Brent Gentry -- Gentry was excluded as a possible
5 contributor, to any of the DNA evidence, that I have tested in
6 this case.

7 Q. Okay. So, let's go ahead and get that -- that out. I
8 don't have to ask you about him anymore. Anything you
9 analyzed did not match Brent Gentry?

10 A. That's correct.

11 Q. Okay. Now, 27.2, which is on the outside of that right
12 boot, did you -- were you able to develop a DNA profile on
13 that?

14 A. Yes, I was.

15 Q. And do you have an opinion as to whose DNA it is?

16 A. Yes. The DNA profile developed from item 27.2 matches
17 Jeffrey Hubbard.

18 Q. Okay.

19 A. And the probability of randomly selecting an unrelated
20 individual having an DNA profile matching these items -- I
21 tested several other items, but this particular item is
22 approximately one in eight hundred trillion -- eight hundred
23 and twenty trillion.

24 Q. So, one in eight hundred and twenty trillion? So, that's
25 -- you're comfortable saying that's our victim's DNA on the

1 outside of this boot?

2 A. That's correct.

3 (Brief Pause)

4 Q. We'll move along to State's Exhibit Number 73. And these
5 are already introduced and those are samples off the left --
6 off the other boot.

7 A. Okay.

8 Q. Did you receive those to analyze?

9 A. I did. And, again, my initials are in the corner of the
10 envelope.

11 Q. And, again, those are four different type of standards I
12 guess; is that correct?

13 A. Well, four different types ---

14 Q. Or four different evidence ---

15 A. ---- of evidence samples, correct.

16 Q. Okay. Now, on 29.1 and 29.4, which -- which are your
17 SLED numbers, what are those samples?

18 A. Okay. Twenty-nine point one (29.1) and 29.4 were swabs
19 from inside the left Timberland boot.

20 Q. Okay. And were you able to develop a DNA profile from
21 the inside of that boot?

22 A. Okay.

23 (Brief pause while witness examines document.)

24 A. Yes, I was.

25 Q. Do you have an opinion, based upon your analysis, as to

1 whose DNA was in that boot?

2 A. Again, I obtained a mixture from inside of the boot.

3 And, again, Isiah Walker was matched as the major contributor.

4 Q. Again, one in the same number, one in ---

5 A. One in six hundred trillion, correct.

6 Q. All right. From the outside of the boot, you received a
7 sample. Were you able to develop an DNA profile from it?

8 A. I did.

9 Q. It's 29.2 I think.

10 A. Twenty-nine point two (29.2)? Okay. Let's see, no, no
11 DNA profile was developed from item 29.2.

12 Q. Any idea why?

13 A. There's a number of reasons. It's possible that there
14 just -- it's possible, of course, that there wasn't DNA
15 present. It's also possible that there was only a very small
16 amount of DNA present.

17 And it's also possible that it was degraded somehow from
18 bacteria or sunlight and the environment. So, I can't say
19 exactly why no DNA profile was developed. I can only say that
20 one was not.

21 (Brief pause while Mr. Willingham retrieves exhibits.)

22 Q. Let me show you what's been previously introduced as
23 State's Exhibit -- State's Exhibits 77, 78, 79, 74, and 76.
24 These are all apparently samples from a black hooded
25 sweatshirt. Did you receive those items?

1 (Exhibits handed to witness.)

2 A. Yes, I did. And, again, they have my initials in the
3 corner of the envelope.

4 Q. I want you to look at your numbers 28.1, 28.5 and 28.6.

5 A. Okay.

6 Q. Where are those samples from?

7 A. They are from the sweatshirt. Let's see, 28.1, 28.5 --
8 they're all cuttings from the back of the neck of the
9 sweatshirt.

10 Q. Okay. And were you able to develop a DNA profile on
11 those items?

12 (Brief pause while witness reviews document.)

13 A. Yes, I was.

14 Q. And do you have an opinion as to whose DNA was found on
15 those items?

16 A. Okay. Again, a DNA -- the DNA found on the item was a
17 mixture. The partial DNA profile developed, from the major
18 contributor of these items, also matched Isaiah Walker. And
19 Jeffrey Hubbard cannot be excluded as a possible contributor
20 to this mixture.

21 Q. So, it matches the Defendant, Isaiah Walker?

22 A. That's correct.

23 Q. And some of it could have been left by our victim?

24 A. That's possible. That possibility cannot be eliminated.

25 Q. Okay. But you can't say for sure?

- 1 A. No.
- 2 Q. Okay. All right. Look at your item 28.2.
- 3 A. Okay.
- 4 (Brief pause while witness examines document.)
- 5 A. Okay, 28.2.
- 6 Q. And tell the jury where that sample came from.
- 7 A. Okay. Item 28.2 is from the left wristband of the
- 8 sweatshirt.
- 9 Q. And were you able to develop DNA on that?
- 10 A. Yes, I was.
- 11 Q. Whose DNA?
- 12 A. That DNA profile matched Jeffrey Hubbard.
- 13 Q. All right. The victim's DNA was on the left wristband?
- 14 A. Correct.
- 15 Q. I'm going to ask you to look at 28.3, your 28.3.
- 16 A. Okay.
- 17 Q. And tell the jury where that sample is from.
- 18 A. Twenty-eight point three (28.3) was from the right
- 19 wristband of the sweatshirt.
- 20 Q. And were you able to develop a profile?
- 21 A. Yes, I was.
- 22 Q. And were you able to match it?
- 23 A. Yeah. Again, that was a mixture and this time all I was
- 24 able to say was that -- is that Jeffrey Hubbard and Isaiah
- 25 Walker cannot be excluded as contributors to that mixture.

1 Q. You can't match that; is that right?

2 A. That's correct. That's ---

3 Q. Not enough -- not enough points of matching or similarity
4 to say?

5 A. Right. You can run a stat and say how likely it is that
6 someone can contribute to it, but it's not strong enough to
7 match and say, "Yes, it's definitely this person," or "it's
8 definitely that person."

9 Q. And finally on the sweatshirt, I want you to look at your
10 SLED number 28.7.

11 A. Okay.

12 (Brief pause while witness examines document.)

13 A. That was a swab from the sweatshirt.

14 Q. Right. Were you able to develop a DNA profile from that?

15 A. Yes.

16 Q. And were you able to tell whose DNA that was?

17 A. That was a mixture also, and the major contributor
18 matched Isaiah Walker.

19 Q. Can you give me a number on that one?

20 A. Yes, it was, again, one in six hundred trillion.

21 Q. All right.

22 (Brief Pause)

23 MR. WILLINGHAM: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Off-the-Record Discussion)

1 Q. (By Mr. Willingham) I'm going to show you what's
2 previously introduced as State's Exhibit 43. This appears to
3 be a swab taken from Road. Do you recognize that?

4 (Exhibit handed to witness.)

5 A. Yes, I do. Again, my initials are written on the box.

6 Q. And were you able to develop a DNA profile?

7 A. Let's see.

8 (Brief pause while witness reviews document.)

9 A. Okay. Yes, that was SLED item number 31 and the DNA
10 profile developed from that item matched Jeffrey Hubbard.

11 Q. What probability?

12 A. Approximately one in eight hundred and twenty trillion.

13 Q. State's Exhibit Number 44, which is another sample from
14 Dove Hill Road, another swab. Did you receive that?

15 A. Yes, I did. Again, it has my initials on it. And that
16 was -- a partial DNA profile was developed from that item, and
17 it also matches Jeffrey Hubbard.

18 Q. And, finally, State's Exhibit 46, which is another swab
19 from 1 Road. Did you analyze it?

20 A. Yes, I did.

21 Q. Did you reach any conclusion?

22 A. Yes. Again, a partial DNA profile was developed and it
23 matched Jeffrey Hubbard.

24 (Brief Pause)

25 Q. All right. Now, you received additional evidence in this

1 case to analyze?

2 A. That's correct.

3 Q. I -- I think we requested that you look at some of the
4 shell casings?

5 A. That's correct.

6 Q. To see if you could get anything off of them?

7 A. That's correct.

8 Q. And did you look at the shell casings in this case?

9 A. I did. I looked ---

10 Q. How many did you look at?

11 A. I looked at four, two -- four total. And I actually
12 swabbed the items and, then, analyzed the swabs.

13 There was -- I swabbed a cartridge casing from the driver
14 floor of a car. And, then, I also swabbed a -- what's labeled
15 as "FC Nine-millimeter casing from right floor of Probe."

16 And those two were combined for analysis because there
17 tends to be very little DNA on a shell casing. And they both
18 came from the same location. So, I felt that was my best
19 chance to get a profile.

20 And, then, I also ran a swab from a nine-millimeter Luger
21 casing from driveway or yard of ----- . I actually ran
22 two of those, and they were SLED items 15.1 and 16.1.

23 And, again, because they were shell casings and they came
24 from the same location, I combined the items to attempt to get
25 a DNA profile.