

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED
JAN 13 2017
S.C. SUPREME COURT

JOEL ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000575

APPENDIX

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1 Q. OKAY. NOW, THE ITEM NUMBERS ON THIS, THEY CORRESPOND TO
2 ITEM NUMBERS ON THIS.

3 A. ON THE FIRST ONE -- I ONLY DID THE SKETCH OF
4

5 Q. RIGHT.

6 A. AND SO ITEMS 1, 9, 10, 12, 14, 15 ARE GOING TO BE HERE.

7 Q. RIGHT. SO ITEM 1 HERE IS ITEM 1 HERE.

8 A. YES.

9 Q. OKAY.

10 A. IF YOU GO TO PAGE 2, PAGE 2 IS GOING TO HAVE THE THINGS
11 THAT I COLLECTED FROM WHICH LISTED HERE ARE
12 ITEMS 17 THROUGH 19, AND THEN ITEMS 20 THROUGH 24 ARE GOING
13 TO BE THE ONES THAT WERE ON THE GROUND FOUND OUTSIDE WHERE
14 THE VEHICLE HAD BEEN TOWED FROM.

15 Q. ALL RIGHT.

16 A. OKAY.

17 Q. NOW, WHEN YOU LOOK AT THIS, B-5 THROUGH B-8 MEANS
18 NOTHING YOU TO; RIGHT?

19 A. ALL THE STUFF HERE, THOSE NUMBERS, THOSE ARE THE ONES
20 ASSIGNED BY THE S.L.E.D. CRIME SCENE LAB, SO---

21 Q. OKAY. NOW, DOES THIS LOOK LIKE SOMETHING FROM THE
22 S.L.E.D. COLUMBIA CRIME SCENE LAB?

23 A. AFTER YOU TURN THINGS IN, THEY'RE GOING TO PRINT OUT A
24 COPY FOR YOU OF THINGS THAT YOU'VE SUBMITTED. THIS IS ALL
25 TYPED OUT.

1 Q. RIGHT. NOW, THESE ARE LIKE ITEM ONE, ITEM TWO, ITEM
2 THREE, BUT THESE ITEM ONE'S AREN'T YOUR ITEM ONE'S.

3 A. NO. THESE ARE S.L.E.D.'S ITEM NUMBERS.

4 Q. RIGHT. SO WHEN YOU GET TO ITEM EIGHT WHICH IS A BULLET,
5 A FIRED BULLET---

6 A. IT SAYS FIVE THROUGH EIGHT.

7 Q. YES.

8 A. THERE'S FIVE THROUGH EIGHT.

9 Q. THERE'S FIVE PROJECTILES HERE.

10 A. YES.

11 Q. RIGHT? JUST LIKE THERE'S FIVE PROJECTILES ON HIS.

12 A. THERE'S FIVE LISTED ON KERMIT SCOTT'S EVIDENCE
13 DESCRIPTION.

14 Q. RIGHT..

15 A. AND THEN 21. ALSO, IT'S MY UNDERSTANDING THE THINGS
16 THAT WERE COLLECTED COULD HAVE ALSO COME FROM THE VEHICLE
17 BECAUSE THEY DID A SEARCH WARRANT ON THE VEHICLE.

18 Q.. UH-HUH.

19 A. IN WHAT HE TURNS IN TO S.L.E.D., UNLESS HE SPECIFICALLY
20 WRITES DOWN THIS CAME FROM THE CAR OR THIS CAME FROM
21 MYERS STREET OR THIS CAME FROM , I COULDN'T
22 TELL YOU THAT. ALL I KNOW IS WHAT HE TURNED IN IT SAYS FIRED
23 BULLETS SLASH PROJECTILES AND THEN MULTIPLE SHELL CASINGS.

24 Q. ALL RIGHT.

25 A. SO IT COULD HAVE COME FROM THE CAR THAT HE WAS DRIVING.

1 I DON'T KNOW.

2 Q. YEAH. SO IT COULD HAVE COME FROM -- EXCUSE ME.

3 A. BUT THAT'S NOT WHAT I COLLECTED.

4 Q. RIGHT. AND---

5 A. AND THEN KERMIT IS NOT HERE, SO HE CAN'T TESTIFY. HE'S
6 IN AFGHANISTAN, SO HE CAN'T TELL YOU WHAT THE OTHER
7 PROJECTILES ARE.

8 Q. RIGHT.

9 A. BUT THEY DID NOT COME FROM THE KITCHEN OF THAT TRAILER.

10 Q. HOW CAN YOU SAY THAT?

11 A. I DIDN'T COLLECT THEM, AND KERMIT SCOTT NEVER ENTERED
12 THAT TRAILER.

13 Q. OKAY.

14 A. HE MET ME OUTSIDE BY WHERE THE SUSPECT'S CAR HAD BEEN
15 PARKED. HE NEVER ENTERED THE CRIME SCENE. HE MET WITH ME
16 OUTSIDE AND THEN LEFT IMMEDIATELY WHEN HE WAS TOLD HE NEEDED
17 TO RESPOND ELSEWHERE IN REFERENCE TO THE SUSPECT BEING
18 LOCATED.

19 Q. DID KERMIT SCOTT EVER GO TO

20 A. I DON'T -- NO, I DON'T RECALL HIM EVER GOING INSIDE
21 AS SOON AS HE CAME, HE MET WITH ME IN THE PARKING LOT
22 OUTSIDE WITH ALL OF OUR -- EXCUSE ME. I'LL PULL THIS DOWN
23 AGAIN. ALL POLICE VEHICLES -- WE WERE ALL PARKED ALONG HERE,
24 AND THE SUSPECT'S VEHICLE, FROM MY RECOLLECTION, WAS PARKED
25 SOMEWHERE UP HERE. KERMIT SCOTT MET ME ALONG THIS CORRIDOR

1 AND WE DISCUSSED WHAT WAS GOING ON, AND WHILE WE WERE
2 STANDING HERE IS WHEN HE GOT THE WORD TO -- I DON'T KNOW IF
3 HE WENT TO THE HOSPITAL FIRST OR IF HE WENT TO WHERE THE
4 SUSPECT WAS FIRST, BUT HE LEFT. HE NEVER, TO MY KNOWLEDGE
5 WENT FURTHER THAN THAT.

6 Q. ALL RIGHT. ALL RIGHT. SO IF THERE IS A PROJECTILE,
7 IT'S NOT THE ONE THAT FELL OUT OF THE BODY BAG; RIGHT?

8 A. I ONLY---

9 Q. THAT'S IT.

10 A. ---COLLECTED THE ONE PROJECTILE FROM THE BODY BAG.

11 Q. EVERY SINGLE OTHER PROJECTILE COLLECTED WAS COLLECTED BY
12 SERGEANT SCOTT.

13 A. IT HAD TO HAVE BEEN OR, NO, THE ONES FROM WERE ALL
14 LISTED AS PROJECTILES, NOT SHELL CASINGS. FROM MY REPORT ON
15 PAGE 2, ITEM NUMBER 16, ABOVE THAT IT SAYS, "REPORTING
16 OFFICER PHOTOGRAPHED MYERS STREET AND COLLECTED THE
17 FOLLOWING ITEMS: ITEM 16, ONE PROJECTILE FROM FLOOR OF FRONT
18 ENTRY DOOR; ITEM 17, ONE PROJECTILE FROM EXTERIOR OF RIGHT
19 FRONT WINDOW; ITEM 18, ONE PROJECTILE FROM EXTERIOR OF FRONT
20 ENTRY DOOR, TOP CENTER; ITEM 19 ONE PROJECTILE FROM FRONT
21 YARD RESIDENCE, LEFT SIDE." THOSE ARE FOUR PROJECTILES PLUS
22 THE ONE THAT I COLLECTED FROM THE BODY BAG. THAT WOULD BE
23 FIVE PROJECTILES.

24 Q. OKAY. SO YOU DID COLLECT FIVE PROJECTILES.

25 A. FOUR FROM THE RESIDENCE OF AND ONE

1 FROM THAT FELL INTO THE BODY BAG AFTER THE
2 VICTIM WAS MOVED.

3 Q. OKAY. ALL RIGHT. SO YOU COLLECTED FOUR AND ONE WHICH
4 IS FIVE.

5 A. UH-HUH.

6 Q. ALL RIGHT. THIS IS SERGEANT SCOTT AND HE COLLECTED FOUR
7 AND ONE; RIGHT?

8 A. THREE. THIS IS THE HANDWRITTEN NOTES THAT KERMIT DID
9 TURN IN TO THE S.L.E.D. EVIDENCE TECHNICIAN. ON WHAT
10 KERMIT'S GOT, HE'S GOT FOUR EACH PROJECTILES, ONE EACH
11 PROJECTILE, WHICH IS MARKED FROM S.L.E.D. ITEMS B-5 THROUGH
12 B-8 AND THEN B-9 FOR THE ONE PROJECTILE. THEN ON DOWN, B-10
13 THROUGH B-18 SAYS NINE EACH SHELL CASINGS, AND THEN 19 SAYS
14 TWO EACH BLOOD KITS WHICH WERE SWABS.

15 COURT REPORTER: I'M SORRY. SAY THAT AGAIN.

16 THE WITNESS: TWO EACH BLOOD KITS, PARENTHESIS SWABS,
17 AND THEN B-20 THROUGH B-21 SAYS TWO EACH NINE MILLIMETER
18 SHELL CASINGS. B-22 IS ONE CLIP, AND THEN B-23 TO B-25 SAYS
19 THREE EACH PROJECTILES FROM AUTOPSY, AND THEN B-26 THROUGH
20 B-35 SAYS TEN EACH NINE MILLIMETER SHELL CASINGS.

21 BY MR. LEDDY:

22 Q. OKAY. SO THIS IS---

23 A. FROM AUTOPSY.

24 Q. RIGHT. THREE FROM THE AUTOPSY.

25 A. I DIDN'T COLLECT THOSE.

1 Q. YOU DIDN'T COLLECT THOSE. AND YOU'RE SAYING THAT THESE
2 ARE NOT THE ONES THAT YOU COLLECTED.

3 A. ALL I CAN TELL YOU IS HERE YOU'VE GOT FOUR PROJECTILES
4 PLUS ONE PROJECTILE WHICH WOULD BE FIVE AND THEN THE THREE
5 DOWN HERE WHICH WOULD COME FROM THE AUTOPSY.

6 Q. RIGHT. AND THAT WOULD BE EIGHT.

7 A. THAT SOUNDS LIKE THAT.

8 Q. OKAY. AND THOSE AREN'T THE ONES THAT YOU COLLECTED.

9 A. SIR, ALL I KNOW IS KERMIT SCOTT TOOK EVIDENCE, AND IF
10 YOU LOOK ON THE EVIDENCE BAGS, THIS ONE HAS IT -- THIS HAS
11 GOT A S.L.E.D. SEAL. IF WE GO THROUGH THE FOUR PROJECTILES
12 AND THE ONE FROM THE BODY BAG, IF THERE IS A S.L.E.D. SEAL,
13 THAT MEANS THAT WAS TAKEN TO S.L.E.D. BY KERMIT SCOTT.

14 Q. ALL RIGHT. SO -- BUT -- IT'S NOT THAT COMPLICATED.
15 THIS IS -- THIS IS FIVE.

16 A. IT'S NOT COMPLICATED TO ME, SIR.

17 Q. RIGHT.

18 A. I'M NOT SURE WHAT ELSE YOU WANT ME TO SAY.

19 Q. OKAY.

20 A. I COLLECTED FOUR FROM AND ONE FROM THE BODY BAG.

21 Q. OKAY.

22 A. AND ACCORDING TO KERMIT SCOTT, HE TURNED IN FOUR PLUS
23 ONE AND THEN THREE FROM THE AUTOPSY.

24 Q. SO THESE WERE THE ONES THAT YOU COLLECTED?

25 A. AS FAR AS I KNOW, SIR, THEY WERE. IF YOU LOOK AT THE

1 EVIDENCE BAG, IT WILL TELL YOU RIGHT THERE.

2 Q. OKAY. WELL, THAT'S WHAT I WAS CONFUSED ABOUT BECAUSE I
3 THOUGHT YOU JUST SAID THAT THAT WASN'T ONE, WHAT YOU
4 COLLECTED.

5 A. I DON'T KNOW WHAT YOU'RE SAYING, SIR. SOUNDS LIKE
6 YOU'RE JUST TRYING TO CONFUSE ME.

7 Q. NO, I PROMISE I'M NOT.

8 A. DOESN'T SOUND THAT WAY TO ME, SIR. I'M SORRY.

9 Q. I'VE GOT JUST A COUPLE MORE QUESTIONS.

10 A. YES, SIR.

11 Q. YOU RECOVERED SEVERAL OF THESE PROJECTILES.

12 A. FOUR.

13 Q. FOUR. AND YOU'VE -- SO YOU WERE ABLE TO GET THOSE.

14 A. THOSE FOUR, YES, I WAS.

15 Q. ALL RIGHT.

16 A. I BELIEVE THE ONE IN THE WINDOW WAS VISIBLE. THE ONE IN
17 THE DOOR I THINK YOU HAD TO USE THE TWEEZERS AND I COULD GET
18 TO IT. THERE WAS ONE ON THE GROUND LIKE WHEN YOU FIRST
19 WALKED IN THE HOUSE, AND THEN THE ONE ON THE OUTSIDE I COULD
20 VISIBLY SEE AND COULD GET TO.

21 Q. OKAY. AND -- BUT YOU DIDN'T -- OTHER THAN THE ONE IN
22 THE BODY, YOU DEFINITELY DID NOT COLLECT---

23 A. NO, I DID NOT.

24 Q. ---ANY FROM THERE.

25 A. THAT'S THE ONLY ONE I COULD RECOVER IS THE ONE THAT WAS

1 IN THE BODY BAG.

2 MR. LEDDY: OKAY. NOTHING FURTHER, YOUR HONOR.

3 THE COURT: REDIRECT?

4 REDIRECT EXAMINATION

5 BY MS. SHIPLEY:

6 Q. JUST ONE QUESTION, YOUR HONOR.

7 A. YES, MA'AM.

8 Q. WHEN YOU GO TO S.L.E.D. AND TURN IN EVIDENCE---

9 A. YES, MA'AM.

10 Q. ---DO YOU HAVE TO FILL OUT A FORM AT ALL AND LIST ALL
11 THE ITEMS OF EVIDENCE YOU'RE TURNING IN FROM THE COLUMBIA
12 POLICE DEPARTMENT?

13 A. YES, YOU DO.

14 Q. AND YOU HAVE TO SEAL IT YOURSELF?

15 A. YES, YOU DO.

16 Q. THEY WON'T ACCEPT IT UNLESS YOU SEAL IT; CORRECT?

17 A. WELL, THE WAY THAT IT'S PACKAGED---

18 Q. RIGHT.

19 A. LIKE IF I'VE ALREADY GOT IT SEALED LIKE THIS AND IT'S
20 STAMPED FROM OUR EVIDENCE PEOPLE, ONCE I TAKE THIS TO
21 S.L.E.D., THEN THEY'LL TAKE IT. SOMETIMES THEY'LL PUT IT
22 LIKE IN A PLASTIC BAG AND HEAT-SEAL IT. SOMETIMES THEY'LL
23 TAKE IT JUST LIKE THIS, PUT THEIR S.L.E.D. EMBLEM ON IT, AND
24 THEN I'LL INITIAL IT AND DATE IT---

25 Q. OKAY.

1 A. ---OR THE PERSON TAKING IT WILL INITIAL AND DATE IT.

2 Q. OKAY.

3 A. AND THEN THEY TAKE IT FROM THERE. AFTER THAT, I NEVER
4 SEE IT AGAIN UNTIL IT'S RETURNED TO THE POLICE DEPARTMENT.

5 Q. ALL RIGHT. AND SO DO YOU SEE A S.L.E.D. LAB NUMBER IN
6 THE BAG THAT THIS -- FIRST OF ALL, ITEM 12, IS THAT FROM THE
7 COLUMBIA POLICE DEPARTMENT EVIDENCE ROOM?

8 A. THAT COULD HAVE BEEN FROM THE EVIDENCE ROOM.

9 Q. OKAY. DO YOU SEE THAT NUMBER LISTED ON THIS COLUMBIA
10 POLICE DEPARTMENT STICKER ON THIS FORM?

11 A. RIGHT HERE, NUMBER 12.

12 Q. OKAY. AND ON THIS BAG DO YOU SEE A S.L.E.D. LAB NUMBER?

13 A. THE S.L.E.D. -- THERE ARE YELLOW STICKERS AND IT STARTS
14 WITH AN L. FOLLOWED BY THE YEAR.

15 Q. WHAT LAB NUMBER IS IT?

16 A. THIS ONE HERE IS L-07-07769.

17 Q. OKAY. AND SO THIS STICKER IS THE S.L.E.D. LAB NUMBER?
18 IS THAT CORRECT?

19 A. YES, IT IS.

20 Q. OKAY. NOW, ON THAT FORM DID YOU -- ARE YOU FAMILIAR
21 WITH THOSE FORMS THAT YOU HAVE TO FILL OUT WHEN YOU TURN
22 EVIDENCE IN TO S.L.E.D.?

23 A. YES. THE FIRST ONES ARE HANDWRITTEN, AND THE ONES THAT
24 YOU RECEIVE BACK COME FROM THE EVIDENCE PERSON AFTER SHE'S
25 ENTERED EVERYTHING IN---

- 1 Q. OKAY.
- 2 A. ---SHE'LL PRINT THIS OUT.
- 3 Q. AND TURN IT IN TO YOU.
- 4 A. AND THEN I TAKE THIS---
- 5 Q. AND DO YOU -- I'M SORRY. I INTERRUPTED. DO YOU SEE
- 6 KERMIT SCOTT'S SIGNATURE ON THERE?
- 7 A. YES, IT IS. IT'S ON THE LAST PAGE SUBMITTED BY AND IT
- 8 WAS RECEIVED BY NIKKI PERRY, THE FORENSIC TECHNICIAN AT
- 9 S.L.E.D.
- 10 Q. OKAY. NOW, SO THAT DOCUMENT -- ALL THOSE ITEMS OF
- 11 EVIDENCE WERE RECEIVED THAT DAY. IS THAT CORRECT?
- 12 A. YES.
- 13 Q. MAY 31ST, 2007.
- 14 A. YES.
- 15 Q. AT 16:04 HOURS?
- 16 A. YES, IT DOES OR 4:04 P.M.
- 17 Q. 4:04 P.M.?
- 18 A. UH-HUH.
- 19 Q. TELL THE JURY JUST SO WE CAN RESOLVE THIS---
- 20 A. OKAY.
- 21 Q. ---HOW MANY PROJECTILES, FIRED BULLETS, DID YOU COLLECT
- 22 FROM INSIDE OF THE TRAILER?
- 23 A. ACTUAL PROJECTILE, NOT THE CASING ITSELF, JUST THE ONE
- 24 INSIDE THE BODY BAG.
- 25 Q. ONE. THAT'S THE ONE THAT FELL OUT OF MR. SMITH'S BODY

1 BAG; CORRECT?

2 A. YES.

3 Q. HOW MANY PROJECTILES DID YOU COLLECT FROM THE RESIDENCE
4 AT ?

5 A. THERE WERE A TOTAL OF FOUR PROJECTILES FROM THAT
6 RESIDENCE.

7 Q. OKAY. ARE YOU FAMILIAR WITH HOW MANY PROJECTILES WERE
8 COLLECTED FROM THE BODY OF MR. SMITH DURING HIS AUTOPSY?

9 A. ACCORDING TO THE EVIDENCE RECEIPT THAT WAS GIVEN TO
10 KERMIT, IT SAYS THAT THERE WERE THREE.

11 Q. THREE?

12 A. FIRED BULLETS DASH PROJECTILES FROM AUTOPSY.

13 Q. OKAY. SO WE ARE TALKING ABOUT THREE FROM THE AUTOPSY.

14 A. UH-HUH.

15 Q. PLUS THE FIVE FROM THE CRIME SCENE.

16 A. UH-HUH.

17 Q. MEANING BOTH HOUSES.

18 A. YES.

19 Q. AND THAT'S A TOTAL OF EIGHT BULLETS; CORRECT?

20 A. YES, MA'AM.

21 Q. MY PEN RAN OUT ON ME. EIGHT. IS THAT CORRECT?

22 A. YES, MA'AM.

23 Q. OKAY. AND S.L.E.D. ASSIGNS THEIR OWN ITEM NUMBERS.

24 A. YES, THEY DO.

25 Q. EVEN THOUGH YOU SAID THIS BULLET RIGHT HERE -- THESE ARE

1 BULLETS OR SHELL CASINGS ONE THROUGH NINE.

2 A. UH-HUH.

3 Q. S.L.E.D. WILL ASSIGN THEIR OWN TOTALLY DIFFERENT NUMBERS
4 TO THESE ITEMS; IS THAT CORRECT?

5 A. YES, THEY DO. WHEN S.L.E.D. DOES THAT, THEY STILL DON'T
6 PUT THEM BACK IN THE ORIGINAL PACKAGE THAT THEY WERE
7 SUBMITTED IN. SO IF I HAVE SOMETHING LISTED AS AN ITEM
8 NUMBER ONE, ITEM NUMBER TWO, THREE, FOUR AND SO ON, S.L.E.D.
9 WILL STILL DO THEIR OWN IDENTIFICATION, BUT IT STILL
10 COINCIDES WITH THE NUMBER THAT I TURNED IN INITIALLY. SO MY
11 ITEM NUMBER FIVE MIGHT BE DIFFERENT FROM THEIRS, BUT IT STILL
12 IS GOING TO BE IN THE SAME PACKAGING AS NUMBER FIVE,
13 COINCIDING WITH WHATEVER NUMBER THEY GAVE IT.

14 Q. OKAY. AND SO JUST AS AN EXAMPLE SO THE JURY
15 UNDERSTANDS, THE NINE SHELL CASINGS -- IS THAT THE PACKAGE
16 WHERE THE NINE SHELL CASINGS WERE COLLECTED FROM THE KITCHEN?

17 A. YES, THEY ARE.

18 Q. IS THAT IN THAT BAG?

19 A. YES.

20 Q. AND DO YOU SEE THE S.L.E.D. LAB NUMBER ON THIS ONE?

21 A. S.L.E.D. OPENED IT HERE.

22 Q. OKAY.

23 A. THEN THEY'VE GOT THE LAB NUMBER WRITTEN HERE.

24 Q. AND THE ITEMS NUMBER THERE? DO YOU SEE ITEM NUMBERS?

25 A. YEAH.

1 Q. DO YOU SEE THE INITIALS D.W.B.?

2 A. YES, I DO.

3 Q. OKAY. WOULD THAT BE THE EXPERT BALLISTICS GUY?

4 A. I BELIEVE SO.

5 Q. ALL RIGHT. SO HE'LL EXPLAIN -- HE'LL EXPLAIN, WHEN HE
6 TESTIFIES, WHICH BULLET MEANS WHICH ONE. OKAY?

7 A. YES, MA'AM.

8 Q. IS THAT CORRECT?

9 A. YES, MA'AM.

10 Q. ALL RIGHT. THANK YOU. I HAVE NO FURTHER QUESTIONS,
11 YOUR HONOR.

12 A. THANK YOU.

13 MR. LEDDY: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THANK YOU.
15 THANK YOU FOR ACCOMMODATING US. MA'AM, YOU CAN STEP DOWN.

16 THE WITNESS: THANK YOU.

17 THE COURT: WE'RE GOING TO TAKE A LUNCH BREAK AT THIS
18 TIME. I'M GOING TO ASK YOU TO REPORT BACK TO YOUR JURY ROOM
19 AT 2:45. I REMIND YOU NOT TO DISCUSS THE CASE.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
21 TO LUNCH AT 1:38 P.M.)

22 THE COURT: OKAY. ARE THERE ANY ISSUES TO BE TAKEN UP
23 BY THE ATTORNEYS AT THIS TIME?

24 MS. SHIPLEY: I'M SORRY, YOUR HONOR?

25 THE COURT: ANY ISSUES TO BE TAKEN UP BY THE ATTORNEYS

1 AT THIS TIME?

2 MS. SHIPLEY: NO, YOUR HONOR.

3 MR. LEDDY: NO, YOUR HONOR.

4 THE COURT: OKAY. WELL, WE'LL RESUME COURT IN A MOMENT.
5 COURT'S IN RECESS.

6 (WHEREUPON, A LUNCH BREAK WAS TAKEN. STATE'S EXHIBITS
7 64 THROUGH 67 WERE MARKED FOR IDENTIFICATION ONLY.)

8 THE COURT: IS THERE ANYTHING ELSE YOU ALL WANT TO TAKE
9 UP WITH THE COURT?

10 MR. LEDDY: NOT RIGHT NOW.

11 MS. SHIPLEY: YOUR HONOR, WE'RE GOING TO GO ALL THE WAY
12 THROUGH THE S.L.E.D. ANALYST, AND THEN WE'RE GOING TO HAVE TO
13 BREAK BECAUSE MY NEXT WITNESS CAN'T BE HERE 'TIL TOMORROW
14 MORNING.

15 THE COURT: THAT'S FINE. THAT'S GREAT.

16 MS. SHIPLEY: AND I FIGURED WE COULD USE THAT TIME TO GO
17 OVER THE TRANSCRIPT OF THE AUDIO.

18 THE COURT: SURE. THAT WOULD BE GREAT.

19 MS. SHIPLEY: BECAUSE I HAVE TO TAKE THAT BEFORE THEY
20 CLOSE.

21 THE COURT: OKAY. ANYTHING I CAN DO TO ASSIST OR MS.
22 PENDERGRASS CAN DO TO ASSIST YOU?

23 MS. SHIPLEY: IT'S ON MY WAY HOME, SO I'LL JUST SAY
24 THEY'RE WAITING FOR ME.

25 THE COURT: OKAY. I'M TALKING ABOUT THE EXHIBIT.

1 MS. SHIPLEY: OH.

2 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN THE
3 COURT, THE ATTORNEYS, AND THE COURT REPORTER REGARDING
4 EVIDENCE.)

5 THE COURT: YOU DON'T PERCEIVE THAT THERE'S AN ACTUAL
6 PIECE OF EVIDENCE MISSING.

7 MS. SHIPLEY: NO.

8 THE COURT: OKAY. THAT'S WHAT I WAS ASKING.

9 MS. SHIPLEY: EVERYTHING THAT I PUT IN THROUGH MS.
10 WILLIAMS IS ON THIS TABLE.

11 THE COURT: PHYSICALLY THERE. THAT'S WHAT I WAS ASKING
12 EARLIER: THAT IT'S PHYSICALLY THERE. IT'S THE NUMBERING
13 WE'RE AFTER.

14 MS. SHIPLEY: YEAH. I THINK WHAT HAPPENED WAS WE
15 LABELED THE PHOTOGRAPH 61, AND THEN SHE -- THE NEXT NUMBER,
16 INSTEAD OF PUTTING 62 SHE PUT 63, AND IT'S HIS TAN JACKET.

17 THE COURT: OKAY.

18 MS. SHIPLEY: SO, I MEAN, IT'S NOTHING THAT WAS ANALYZED
19 OR ANYTHING LIKE THAT.

20 THE COURT: OKAY. WE'LL CORRECT IT ON THE RECORD WITH
21 THE JURORS, TOO, BECAUSE THEY HAVE NOTEPADS.

22 MS. SHIPLEY: OKAY.

23 THE COURT: FOR SOME REASON THAT ANYBODY WROTE THAT
24 DOWN...

25 MS. SHIPLEY: ALL RIGHT. LET THE RECORD REFLECT THAT 62

1 WAS INADVERTENTLY SKIPPED AS AN ITEM NUMBER. THERE IS NO
2 ITEM OF EVIDENCE PERTAINING TO 62.

3 THE COURT: OKAY. SO IF I HEAR YOU ALL CORRECTLY, IT
4 WAS ALWAYS STATED AS 63. IT'S JUST THAT IT WAS MARKED
5 NUMERICALLY ON THERE AS 62?

6 MS. SHIPLEY: YOUR HONOR, SHE SHOULD HAVE LABELED IT AS
7 ITEM NUMBER 62. SHE INADVERTENTLY WROTE 63 AND THEN WE
8 REFERRED TO IT ON THE RECORD AS 63.

9 THE COURT: OKAY. I DID IT THE REVERSE, BUT YES. OKAY.

10 MS. SHIPLEY: SO 62 WAS INADVERTENTLY SKIPPED. THERE IS
11 NO ITEM OF EVIDENCE THAT IS ATTACHED TO THAT NUMBER.

12 THE COURT: AND 62 WAS NEVER REFERRED TO ON THE RECORD.

13 MS. SHIPLEY: NO.

14 THE COURT: OKAY. SO WE DON'T NEED TO DO ANYTHING WITH
15 THE JURY TO CORRECT IT.

16 MS. SHIPLEY: NO.

17 THE COURT: OKAY. ALL RIGHT. JURORS, PLEASE.

18 MS. SHIPLEY: OH, YOUR HONOR, BEFORE -- HEY, SIR, CAN
19 YOU WAIT ONE SECOND? YOUR HONOR, BEFORE WE PROCEED, I DON'T
20 THINK MR. LEDDY AND I PUT THIS ON THE RECORD. THEY'VE ALSO
21 STIPULATED -- THEY'VE STIPULATED TO THE CHAIN OF CUSTODY AS
22 TO THE GUNSHOT RESIDUE KITS PERFORMED ON MR. ROBINSON AND THE
23 VICTIM, MR. SMITH.

24 THE COURT: OKAY. ALL RIGHT. WE'LL MAKE THAT
25 STIPULATION IN FRONT OF THE JURY AS WELL. OKAY. JURORS,

COLLOQUY

517

1 PLEASE.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:00
3 P.M.)

4 THE COURT: THANK YOU, LADIES AND GENTLEMEN OF THE JURY.
5 WE ARE READY TO PROCEED. THE STATE CAN CONTINUE YOUR CASE.

6 MS. SHIPLEY: THANK YOU, YOUR HONOR. THE STATE CALLS
7 OFFICER MICHAEL BAILEY AT THIS TIME.

8 MR. LEDDY: YOUR HONOR, CAN WE APPROACH BRIEFLY?

9 THE COURT: YES, YOU CAN.

10 MR. LEDDY: SORRY ABOUT THIS.

11 THE COURT: THAT'S OKAY.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

13 THE COURT: ONE MOMENT. IF YOU CAN STEP ASIDE.

14 MS. SHIPLEY: COME HERE, OFFICER BAILEY.

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I'VE
16 ALWAYS ASKED YOU THROUGHOUT THE BREAKS TO REMIND YOU NOT TO
17 DISCUSS THE CASE IN ANY SHAPE, FORM, OR FASHION WITH ANYONE.
18 DEFENSE COUNSEL HAS BROUGHT TO MY ATTENTION THAT WHILE THEY
19 WERE AT LUNCH AT HENNESSEY'S SOMEBODY POTENTIALLY IN THIS
20 COURTROOM - WE DON'T KNOW THAT IT'S THE JURORS, BUT I JUST
21 HAVE TO ALWAYS, YOU KNOW, PROCEED WITH CAUTION - JUST MADE
22 SOME STATEMENTS TO THEM ABOUT THE LAST PERSON'S TESTIMONY,
23 JUST BASICALLY THAT THERE WAS CONFUSION AND THAT THAT MATTER
24 GOT CLEARED UP, YOU KNOW, WITH THE LAST TESTIMONY OF THE
25 INVESTIGATOR. WAS THAT ANYONE ON THE JURY? AND ALL THE

1 JURORS ARE INDICATING NO.

2 OKAY. AND JUST TO ADD TO THAT, AS YOU TAKE LUNCH BREAKS
3 OR YOU PROCEED TO ANY TYPE OF BREAK, ALL THE COUNSEL, THEY
4 UNDERSTAND THEIR PROFESSIONAL AND ETHICAL OBLIGATIONS. THEY
5 CANNOT SPEAK TO YOU. DO NOT THINK THAT THEY ARE BEING RUDE,
6 BUT THEY CANNOT TALK TO YOU. SO THEY KNOW THAT. BUT IT'S
7 NOT UNLIKELY THAT SOMETIMES SOMEBODY JUST SAYS A FRIENDLY
8 HELLO OR SOMETHING LIKE THAT, AND THEY JUST WON'T RESPOND
9 BACK. AND SO THEY HAVE THE OBLIGATION TO REPORT THAT TO ME.

10 I DON'T WANT YOU TO FEEL LIKE YOU'RE GOING TO BE
11 INTIMIDATED OR GET IN TROUBLE OR ANYTHING LIKE THAT, BUT
12 EVERYTHING HAS TO BE NOTED FOR THE RECORD SO THAT WE CAN MAKE
13 SURE THAT THERE IS A FAIR AND IMPARTIAL JURY AND THAT THE
14 TRIAL IS CONDUCTED IN A PROPER AND APPROPRIATE WAY. SO I'LL
15 ASK THAT QUESTION AGAIN. DID ANYONE MAKE ANY STATEMENTS TO
16 COUNSEL, EITHER SET OF COUNSEL, AT LUNCH? EVEN A FRIENDLY
17 HELLO, JUST ANYTHING. OKAY. THANK YOU. I THINK THAT'S
18 SUFFICIENT FOR THE COURT.

19 MR. LEDDY: THANK YOU, YOUR HONOR.

20 MICHAEL W. BAILEY, AFTER BEING DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
23 FOR THE RECORD.

24 THE WITNESS: MICHAEL W. BAILEY.
25

DIRECT EXAMINATION

BY MS. SHIPLEY:

Q. OFFICER BAILEY, CAN YOU TELL THE JURY WHERE YOU'RE EMPLOYED?

A. CITY OF COLUMBIA POLICE DEPARTMENT.

Q. HOW LONG HAVE YOU WORKED THERE?

A. TWO AND A HALF YEARS.

Q. AND IS THAT THE EXTENT OF YOUR LAW ENFORCEMENT EXPERIENCE?

A. NO. I DID TWO YEARS IN ORANGEBURG.

Q. OKAY. WITH THE ORANGEBURG SHERIFF'S DEPARTMENT?

A. SOUTH CAROLINA STATE POLICE.

Q. I'M GOING TO GO AHEAD AND BRING YOUR ATTENTION TO FEBRUARY 15TH, 2007. WERE YOU ON DUTY THAT NIGHT?

A. YES, I WAS.

Q. WHAT REGION OF COLUMBIA DO YOU PATROL?

A. CURRENTLY METRO, BUT AT THE TIME OF THIS INCIDENT IT WAS NORTH REGION.

Q. NORTH REGION?

A. YES.

Q. AND DOES THAT INCLUDE THE BLOCK OF NORTH MAIN STREET?

A. THAT'S CORRECT.

Q. DO YOU RECALL WHO WAS TRAINING YOU BACK THEN?

A. OFFICER FISHER.

1 Q. AND WERE YOU BOTH RIDING IN THE SAME VEHICLE?

2 A. WE WERE.

3 Q. OKAY. TELL THE JURY WHAT YOU RECALL HEARING OVER THE
4 RADIO CONCERNING A POSSIBLE SHOOTING AT MYERS STREET.

5 A. ON THE DAY IN QUESTION WE HEARD OVER THE RADIO BROADCAST
6 A 10-75.

7 Q. WHAT'S THAT MEAN?

8 A. PERSON SHOT.

9 Q. OKAY.

10 A. MY PARTNER AND I PROCEEDED TO THE AREA ONLY BECAUSE WE
11 WERE GOING TO LOOK FOR A SUBJECT, THE PERSON WHO HAD
12 COMMITTED THE CRIME.

13 Q. AND DID YOU HEAR A DESCRIPTION OF THE PERPETRATOR OF
14 THAT CRIME?

15 A. THAT'S CORRECT.

16 Q. AND WHAT WAS THAT DESCRIPTION THAT YOU REMEMBER HEARING?

17 A. A LIGHT-SKINNED BLACK MALE WITH A BALD HEAD.

18 Q. OKAY. AND AT THAT POINT TELL THE JURORS WHAT HAPPENED
19 NEXT.

20 A. AFTER THAT -- I MEAN, I BELIEVE AN HOUR OR SO HAD PASSED
21 AFTER THE INITIAL CALL. THEN THE SERGEANT WHO WAS THE
22 SUPERVISOR ON THAT NIGHT HAD GOT UP WITH A PERSON MATCHING
23 THAT DESCRIPTION. WE ARRIVED FOR BACK-UP.

24 Q. HOW LONG DID YOU GUYS -- DID IT TAKE YOU AND OFFICER
25 FISHER TO ARRIVE WHERE THE SUSPECT HAD BEEN DETAINED?

1 A. MOMENTS.

2 Q. OKAY. WERE YOU IN CLOSE PROXIMITY TO WHERE 4800 NORTH
3 MAIN STREET WAS?

4 A. THAT'S CORRECT.

5 Q. OKAY. WHAT HAPPENED WHEN YOU GOT THERE?

6 A. WHEN WE ARRIVED ON THE SCENE, SERGEANT DUTTON WAS
7 ALREADY OUT WITH THE SUBJECT. HE WAS AT THE BACK OF THE CAR.
8 SHE WAS AT HER PASSENGER DOOR. I BELIEVE SHE HAD HIS I.D.,
9 RUNNING HIS I.D. AS POSSIBLE WARRANTS.

10 Q. AND AT THAT POINT DID YOU MAKE CONTACT WITH MR.
11 ROBINSON?

12 A. MY PARTNER AND I MADE CONTACT WITH MR. ROBINSON, YES.

13 Q. OKAY. AND DID YOU INSTRUCT HIM TO DO SOMETHING?

14 A. OFFICER FISHER INSTRUCTED HIM TO LEAN ON THE BACK OF THE
15 CAR AND CROSS HIS FEET, CROSS HIS LEGS.

16 Q. OKAY. AND AT THAT POINT WHAT WAS GOING ON? DID ANYBODY
17 ELSE SHOW UP ON THE SCENE?

18 A. AFTER BEING THERE FOR SEVERAL MINUTES, INVESTIGATOR DOW
19 ARRIVED ON THE SCENE WITH A POSSIBLE WITNESS WHO HAD, IN
20 FACT, POSITIVELY IDENTIFIED THE SUBJECT AS THE SHOOTER.

21 Q. OKAY. AND WAS THIS A PLANNED SHOW-UP IDENTIFICATION OR
22 WHAT WERE THE CIRCUMSTANCES?

23 A. AS FAR AS I KNOW, IT WAS NOT A PLANNED IDENTIFICATION.
24 THE INVESTIGATOR WAS EN ROUTE TO HEADQUARTERS TO GET A
25 STATEMENT FROM THE WITNESS WHEN HE HAPPENED UPON US, MYSELF,

1 OFFICER FISHER AND SERGEANT DUTTON, WHO WERE ON THE SIDE OF
2 THE ROAD WITH THE DEFENDANT.

3 Q. OKAY. AND DID YOU HAVE ANY CONTACT WITH THAT WITNESS
4 THAT WAS WITH---

5 A. ABSOLUTELY NOT.

6 Q. NO?

7 A. NO.

8 Q. AT THAT POINT DID SERGEANT OR, EXCUSE ME, INVESTIGATOR
9 DOW INSTRUCT YOU AND OFFICER FISHER TO DO SOMETHING?

10 A. YES, HE DID.

11 Q. WHAT DID HE INSTRUCT YOU TO DO?

12 A. HE ASKED ME TO 69 THE SUBJECT WHICH MEANS DETAIN HIM---

13 Q. OKAY.

14 A. PUT HIM IN DETENTION.

15 Q. AND DOES THAT MEAN HANDCUFF HIM?

16 A. THAT MEANS HANDCUFF HIM, YES.

17 Q. AT THAT POINT WAS MR. ROBINSON NOT FREE TO LEAVE?

18 A. HE WAS NOT FREE TO LEAVE AFTER THAT.

19 Q. OKAY. AND TELL THE JURORS WHAT ELSE -- AFTER YOU
20 HANDCUFFED MR. ROBINSON, DID YOU SEARCH HIM?

21 A. INITIALLY WE SAT HIM IN THE CAR. WE THOUGHT THAT
22 SERGEANT DUTTON HAD PATTED HIM DOWN, BUT ONCE WE REALIZED SHE
23 HADN'T, WE BROUGHT HIM BACK OUT OF THE CAR AND WE DID PAT HIM
24 DOWN.

25 Q. OKAY. AND PLEASE TELL THE JURY WHAT IT IS -- WHAT SIDE

1 WERE YOU ON OF MR. ROBINSON AND WHAT SIDE WAS FISHER ON?

2 A. OFFICER FISHER WAS ON THE RIGHT SIDE, AND I WAS ON THE
3 LEFT SIDE.

4 Q. OKAY. AND WERE YOU BOTH SEARCHING MR. ROBINSON AT THE
5 SAME TIME?

6 A. EXACTLY. WE WERE BOTH SEARCHING HIM SIMULTANEOUSLY.

7 Q. OKAY. WHAT WAS IT THAT YOU RECOVERED?

8 A. I RECOVERED OUT OF HIS POCKET A MAGAZINE THAT BELONGED
9 TO THE NINE MILLIMETER WEAPON THAT OFFICER FISHER RECOVERED.

10 Q. I'M GOING TO STOP YOU RIGHT THERE. STATE'S NUMBER 51,
11 DOES THAT LOOK LIKE THE GUN AND THE CLIP?

12 A. THAT IS CORRECT.

13 Q. OKAY. ALL RIGHT. THEN WHAT HAPPENED?

14 A. I CONTINUED -- I CONTINUED TO SEARCH THE DEFENDANT AT
15 WHICH TIME I FOUND SEVERAL SETS OF KEYS, I BELIEVE A CELL
16 PHONE. I ALSO FOUND POWDER COCAINE AND A SMALL AMOUNT OF
17 MARIJUANA.

18 Q. ALL RIGHT. I'M GOING TO SHOW YOU STATE'S NUMBER 8. THE
19 ITEMS THAT YOU JUST DESCRIBED, THE SET OF KEYS AND THE POWDER
20 COCAINE, DO YOU SEE THAT IN STATE'S NUMBER 8?

21 A. YES, I DO.

22 Q. OKAY. AND SPECIFICALLY I'M GOING TO SHOW YOU WHAT'S
23 ALREADY BEEN MARKED FOR IDENTIFICATION PURPOSES AS STATE'S
24 NUMBER 50 AND SHOW YOU THE POWDER COCAINE. DO YOU SEE THAT?

25 A. YES, I DO.

1 Q. DOES THAT APPEAR TO BE CONSISTENT WITH THE QUANTITY THAT
2 YOU PULLED OFF OF MR. ROBINSON THAT NIGHT?

3 A. IT DOES.

4 Q. OKAY. AND, IN FACT, IS THERE A LABEL ON THIS CASE WITH
5 THE CASE NUMBER FOR RICHLAND - EXCUSE ME - CASE NUMBER FOR
6 THIS CASE?

7 A. YES, IT DOES.

8 Q. OKAY. AND ON THIS FORM DOES IT HAVE THE SUSPECT'S NAME
9 ON IT?

10 A. IT DOES.

11 Q. AND WHAT NAME DO YOU SEE?

12 A. I SEE JOEL ANTAWAN ROBINSON.

13 Q. ONCE YOU RECOVERED THESE ITEMS OFF OF MR. ROBINSON,
14 WHERE DID YOU PUT THE ITEMS?

15 A. WE PLACED ALL THE ITEMS WE TOOK OUT OF HIS POCKETS ON
16 THE BACK OF THE PATROL CAR.

17 Q. OKAY. AND AT THAT POINT DID ANYONE FROM THE CRIME SCENE
18 UNIT COME TO THE SCENE?

19 A. YES, A SERGEANT FROM I.D. CAME.

20 Q. OKAY. DO YOU REMEMBER WHO THAT WAS?

21 A. HIS NICKNAME WAS KERMIT.

22 Q. OKAY. INVESTIGATOR KERMIT SCOTT?

23 A. YES.

24 Q. ACTUALLY, IT'S HIS REAL NAME.

25 A. OH.

1 Q. NOW, DID YOU OBSERVE -- DID YOU HAND OVER WHAT YOU HAD
2 RECOVERED OFF OF THE DEFENDANT TO SERGEANT SCOTT?

3 A. YES, I DID.

4 Q. OKAY. AND AT THAT POINT DID YOUR ROLE IN THIS CASE END?

5 A. MY ROLE IN THE CASE ENDED, YES.

6 MS. SHIPLEY: OKAY. BEG THE COURT'S INDULGENCE, YOUR
7 HONOR. THANK YOU. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: THANK YOU.

9 MR. LEDDY: I HAVE NO QUESTIONS, YOUR HONOR.

10 THE COURT: OKAY. SIR, YOU CAN STEP DOWN AND BE
11 EXCUSED.

12 THE WITNESS: THANK YOU.

13 MR. ROSE: THE STATE CALLS OFFICER ROSE.

14 WALTER ROSE, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
17 FOR THE RECORD.

18 THE WITNESS: MY NAME IS WALTER ROSE.

19 COURT REPORTER: IS IT ROSE OR ROSS?

20 THE WITNESS: ROSE. R-O-S-E.

21 DIRECT EXAMINATION

22 BY MR. ROSE:

23 Q. OFFICER ROSE, WHERE ARE YOU CURRENTLY EMPLOYED?

24 A. COLUMBIA POLICE DEPARTMENT.

25 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

1 A. I'M ON MY 19TH YEAR.

2 Q. AND WHAT IS YOUR POSITION?

3 A. I WORK IN THE CRIME SCENE UNIT.

4 Q. AND WHAT ARE YOUR DUTIES THAT PERTAIN TO THAT POSITION?

5 A. WE RESPOND TO CRIME SCENES AND WE DOCUMENT, COLLECT, AND
6 ANALYZE EVIDENCE.

7 Q. SPECIFICALLY, HOW IS THAT DIFFERENT THAN PERHAPS THE
8 DUTIES OF A NORMAL C.P.D. OFFICER?

9 A. NORMAL -- NORMAL PATROL, THEY JUST ANSWER CALLS AND
10 HANDLE WHATEVER IS DISPATCHED TO THEM AT THAT TIME.

11 Q. AND WHAT TRAINING AND EDUCATION AND EXPERIENCE HAVE YOU
12 HAD TO HELP YOU CARRY OUT THESE DUTIES?

13 A. THE POLICE ACADEMY FOR THE STATE AND SEVERAL CLASSES
14 OUTSIDE OF THAT THAT'S BEEN AVAILABLE TO US.

15 Q. HAVE YOU EVER TESTIFIED AS AN EXPERT IN THE FIELD OF
16 CRIME SCENE INVESTIGATIONS?

17 A. TWICE.

18 MR. ROSE: TWICE? YOUR HONOR, AT THIS TIME THE STATE
19 WOULD SEEK TO QUALIFY MR. ROSE AS AN EXPERT IN THE FIELD OF
20 CRIME SCENE INVESTIGATIONS.

21 MR. LEDDY: NO OBJECTION, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU. SO QUALIFIED.

23 BY MR. ROSE:

24 Q. OFFICER ROSE, WHAT WAS YOUR INVOLVEMENT IN THIS CASE?

25 A. I EXECUTED A SEARCH WARRANT ON A 2004 FORD TAURUS, FOUR-

1 DOOR, SILVER IN COLOR, AND IT HAD A PAPER TAG ON IT - MICKEY
2 D'S - ON THE 22ND OF FEBRUARY.

3 Q. AND WHAT ARE YOU REFERRING TO?

4 A. THE SEARCH WARRANT.

5 Q. THE SEARCH WARRANT ITSELF? AND WHAT ITEMS WERE YOU
6 LOOKING FOR ON -- WITH THE SEARCH WARRANT?

7 A. ANY EVIDENCE INVOLVED IN THE SHOOTING.

8 Q. AND WHEN AND WHERE WAS THIS DONE? WHEN WAS THE SEARCH
9 WARRANT EXECUTED?

10 A. IT WAS ON FEBRUARY 22ND, '07.

11 Q. AND WHERE WAS IT EXECUTED?

12 A. AT THE POLICE DEPARTMENT AT ONE JUSTICE SQUARE.

13 Q. AND WHEN WAS THE CAR ACTUALLY TOWED FROM THE SCENE?

14 A. IT WAS TOWED ON THE EARLY MORNING OF THE 16TH.

15 Q. AND WHAT ARE YOU REFERRING TO TO GET THAT INFORMATION?

16 A. IT'S A TOW SLIP.

17 Q. IT WAS TOWED AT WHAT TIME ON THE 16TH?

18 A. AT 1:30 A.M.

19 Q. 1:30 A.M. I'M GOING TO SHOW YOU -- FIRST OF ALL, DID
20 YOU FIND ANYTHING WHEN YOU EXECUTED THE SEARCH WARRANT?

21 A. YES.

22 Q. DID YOU FIND ANY EVIDENCE?

23 A. WE DID.

24 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
25 EXHIBIT 45. DO YOU RECOGNIZE THIS?

1 A. YES, SIR.

2 Q. AND WHAT IS THAT?

3 A. IT'S TWO SHELL CASINGS AND A MAGAZINE TO A PISTOL.

4 Q. AND HOW -- THIS IS WHAT YOU FOUND?

5 A. YES, SIR.

6 MR. ROSE: YOUR HONOR, AT THIS TIME -- I'LL SHOW YOU...

7 MR. LEDDY: NO OBJECTION.

8 MR. ROSE: YOUR HONOR, WE'LL MOVE THIS INTO EVIDENCE,
9 STATE'S EXHIBIT 45.

10 THE COURT: OKAY. SO MOVED.

11 (STATE'S EXHIBIT 45 WAS RECEIVED IN EVIDENCE.)

12 BY MR. ROSE:

13 Q. AND DID YOU TAKE ANY PHOTOGRAPHS OF THIS EVIDENCE?

14 A. I DID.

15 Q. AND WHEN DID YOU TAKE THE PHOTOGRAPHS?

16 A. WELL, THAT SAME DAY. PRIOR TO COLLECTING THE EVIDENCE,
17 WE PHOTOGRAPHED THE CAR.

18 Q. I'M GOING TO SHOW YOU SOME PHOTOGRAPHS. THIS WOULD BE
19 STATE'S EXHIBIT 64, 65, 66, AND 67. DO YOU RECOGNIZE THOSE
20 AND, IF SO, COULD YOU PLEASE TELL THE JURY WHAT THEY ARE?

21 A. YES. THESE ARE PHOTOGRAPHS OF THE VEHICLE AND
22 EVERYTHING WE COLLECTED INSIDE.

23 MR. ROSE: LET ME SHOW THESE TO... YOUR HONOR, AT THIS
24 TIME WE'D SEEK TO HAVE STATE'S EXHIBITS 64, 65, 66, AND 67
25 MOVED INTO EVIDENCE.

1 MR. LEDDY: WITHOUT OBJECTION, YOUR HONOR.

2 THE COURT: OKAY. THANK YOU. THEY'RE ADMITTED.

3 (STATE'S EXHIBITS 64 THROUGH 67 WERE RECEIVED IN
4 EVIDENCE.)

5 MR. ROSE: MAY I PUBLISH THESE TO THE JURY, YOUR HONOR?

6 THE COURT: YOU MAY.

7 BY MR. ROSE:

8 Q. OFFICER ROSE, AFTER YOU COLLECTED THIS EVIDENCE, WHAT
9 DID YOU DO WITH IT?

10 A. THAT WAS PLACED IN THE EVIDENCE ROOM.

11 Q. YOU SEALED IT?

12 A. YES, SIR.

13 Q. THEN YOU PLACED IT IN THE EVIDENCE ROOM?

14 A. YES, SIR.

15 Q. BEG THE COURT'S INDULGENCE. OFFICER ROSE, SPECIFICALLY
16 WHERE IN THE CAR DID YOU FIND THESE ITEMS?

17 A. THE MAGAZINE -- THE PISTOL MAGAZINE WAS FOUND ON THE
18 PASSENGER FRONT SEAT SITTING ON THE SEAT, AND THE SHELL
19 CASINGS WERE IN THE DRIVER'S SEAT FACING OUT OF THE WINDOW.
20 IT WAS ON THE -- ON THE LEFT-HAND SIDE PAST THE MIDWAY POINT.
21 IN BETWEEN THE FLOORBOARD WHERE IT GOES OUTSIDE OF THE CAR
22 AND THE HANDLE TO ADJUST THE SEAT, ONE SHELL CASING WAS
23 THERE. THE OTHER ONE WAS ACTUALLY BEHIND THE SEAT BUT ON
24 THAT SAME SIDE.

25 MR. ROSE: OKAY. THANK YOU. NO FURTHER QUESTIONS.

1 MR. LEDDY: NO QUESTIONS, YOUR HONOR.

2 THE COURT: YOU CAN STEP DOWN, SIR, AND BE EXCUSED.

3 THE WITNESS: THANK YOU.

4 MS. SHIPLEY: THE STATE CALLS INVESTIGATOR GLENN ROSS.

5 GLENN R. ROSS, AFTER BEING DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
8 FOR THE RECORD.

9 THE WITNESS: GLENN RICHARD ROSS. R-O-S---

10 DIRECT EXAMINATION

11 BY MS. SHIPLEY:

12 Q. INVESTIGATOR---

13 A. R-O-S-S.

14 Q. SORRY TO INTERRUPT.

15 A. THAT'S FINE.

16 Q. INVESTIGATOR ROSS, CAN YOU TELL THE JURY WHERE YOU WORK
17 NOW?

18 A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

19 Q. AND WHAT DO YOU DO THERE?

20 A. CRIME SCENE INVESTIGATION.

21 Q. AND WERE YOU A CRIME SCENE INVESTIGATOR AT ONE POINT
22 WITH THE COLUMBIA POLICE DEPARTMENT?

23 A. YES, MA'AM, I WAS.

24 Q. AND HOW LONG WERE YOU WITH THE COLUMBIA POLICE
25 DEPARTMENT?

1 A. TWELVE YEARS.

2 Q. OKAY. AND A PART OF YOUR DUTIES AS A CRIME SCENE
3 INVESTIGATOR, COULD YOU PLEASE EXPLAIN THAT TO THIS JURY?

4 A. RESPOND TO CRIME SCENES, COLLECT EVIDENCE, PHOTOGRAPH
5 THE SCENE, DOCUMENT WHAT WE FIND, AND POSSIBLY PROCESS THE
6 EVIDENCE AFTERWARDS IN ORDER TO FIND D.N.A. FINGERPRINTS AND
7 THINGS SUCH AS THAT FOR COURT.

8 Q. AND DO YOU ALSO SOMETIMES ATTEND AUTOPSIES?

9 A. YES, MA'AM.

10 Q. OKAY. I'M GOING TO BRING YOUR ATTENTION TO THE CASE AT
11 HAND, CASE NUMBER 07-5176.

12 A. YES, MA'AM.

13 Q. DO YOU HAVE A REPORT FOR THAT?

14 A. YES, MA'AM. I'LL MAKE REFERENCE TO IT.

15 Q. OKAY. AND THE PURPOSE OF MAKING A REPORT, WHAT IS THAT?
16 WHY DO YOU MAKE REPORTS?

17 A. TO DOCUMENT, AS FAR AS THIS PART OF IT WOULD BE, CHAIN
18 OF CUSTODY, TO SEE WHAT ACTUALLY TAKES PLACE AND DOCUMENT THE
19 AUTOPSY AS FAR AS WHAT THE DOCTOR IS DOING, NOT TO TAKE OVER
20 HIS JOB - HE'S THE DOCTOR - BUT JUST CHAIN OF CUSTODY AND
21 DOCUMENT WHAT TAKES PLACE.

22 Q. OKAY. AND DID YOU PHOTOGRAPH THE AUTOPSY OF MR. THOMAS
23 LEE SMITH?

24 A. YES, MA'AM.

25 Q. OKAY. AND OTHER THAN YOURSELF, WHO WAS THE PATHOLOGIST?

1 A. DR. KESSLER.

2 Q. OKAY. AND WAS ANOTHER -- WHO ELSE WAS PRESENT DURING
3 THE AUTOPSY?

4 A. PHIL PITMAN, CHRISTINE BENSON WITH THE CORONER'S OFFICE,
5 AND INVESTIGATOR DOW.

6 Q. OKAY. WITH THE COLUMBIA POLICE DEPARTMENT?

7 A. YES, MA'AM.

8 Q. AT THAT POINT DURING THE AUTOPSY DID YOU -- OBVIOUSLY
9 YOU PHOTOGRAPHED IT; CORRECT?

10 A. YES, MA'AM.

11 Q. DID YOU OBSERVE DR. KESSLER REMOVE ANYTHING FROM MR.
12 SMITH'S BODY?

13 A. YES, MA'AM.

14 Q. AND WHAT WAS THAT?

15 A. THERE WERE THREE PROJECTILES THAT WERE TAKEN FROM HIS
16 BODY.

17 Q. OKAY. DID YOU OBSERVE WHAT DR. KESSLER DID WITH THOSE
18 PROJECTILES ONCE HE GOT THEM OUT OF HIS BODY?

19 A. HE SET THEM OVER ON ANOTHER EXAMINING TABLE. I BELIEVE
20 I PHOTOGRAPHED THEM, IF I SEEN THE PHOTOGRAPHS. THEY WERE
21 PHOTOGRAPHED SEPARATELY, AND THEN DR. KESSLER PACKAGED THOSE
22 AND I TOOK THEM WITH ME WHEN I LEFT THE AUTOPSY.

23 Q. AND I'M GOING TO SHOW YOU FOUR PHOTOGRAPHS.

24 (STATE'S EXHIBITS 68 THROUGH 71 WERE MARKED FOR
25 IDENTIFICATION ONLY.)

1 BY MS. SHIPLEY:

2 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED 68 THROUGH 71
3 AND ASK YOU IF YOU RECOGNIZE THESE PHOTOGRAPHS.

4 A. YES, MA'AM. THESE WOULD BE THE PROJECTILES THAT WERE
5 TAKEN FROM THE BODY.

6 MS. SHIPLEY: OKAY. AND SPECIFIC -- YOUR HONOR, AT THIS
7 TIME I SEEK TO INTRODUCE 68 THROUGH 71.

8 MR. LEDDY: NO OBJECTION, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU. THEY'RE ADMITTED.

10 (STATE'S EXHIBITS 68 THROUGH 71 WERE RECEIVED IN
11 EVIDENCE.)

12 BY MS. SHIPLEY:

13 Q. SPECIFICALLY AS TO STATE'S NUMBER 71, DO YOU SEE ONE OF
14 THE PROJECTILES HAS A LETTER ABOVE IT---

15 A. YES, MA'AM.

16 Q. ---ABOVE IT? WHAT LETTER IS THAT?

17 A. A.

18 Q. OKAY. ONCE YOU PHOTOGRAPHED THEM, DID YOU OBSERVE WHAT
19 THE DOCTOR DID WITH THEM?

20 A. PUT THEM IN A CANNISTER.

21 Q. OKAY.

22 A. AND THEY SHOULD HAVE BEEN LABELED ALSO.

23 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
24 STATE'S NUMBER 49 FOR IDENTIFICATION PURPOSES AND ASK YOU TO
25 PLEASE OPEN IT AND SEE IF YOU CAN FIND THE THREE ITEMS.

1 A. (THE WITNESS COMPLIES.)

2 Q. WOULD YOU NEED SOME SCISSORS, SIR?

3 A. I THINK I'VE GOT IT.

4 Q. AND BY THE WAY, DO YOU SEE YOUR HANDWRITING ON THAT BAG?

5 A. APPARENTLY IT WAS SPLIT AT THE BOTTOM. ITEMS HAVE

6 FALLEN. OKAY. WE HAVE ITEM A. AND C. AND B. AS FAR AS THE
7 CANNISTER.

8 Q. OKAY.

9 A. THEY HAVE BEEN TAKEN OUT AND PUT INTO A PLASTIC POUCH
10 BAGGY AND I'M SURE S.L.E.D. DID THAT.

11 Q. S.L.E.D.

12 A. UH-HUH.

13 Q. OKAY. AND DO YOU SEE YOUR HANDWRITING ON THE
14 ENVELOPE---

15 A. YES, MA'AM.

16 Q. ---EVIDENCE BAG?

17 A. YES, MA'AM.

18 MS. SHIPLEY: OKAY. YOUR HONOR, AT THIS TIME WE WOULD
19 INTRODUCE STATE'S NUMBER 49 INTO EVIDENCE.

20 MR. LEDDY: NO OBJECTION, YOUR HONOR.

21 THE COURT: THANK YOU.

22 (STATE'S EXHIBIT 49 WAS RECEIVED IN EVIDENCE.)

23 BY MS. SHIPLEY:

24 Q. AND ONCE YOU COLLECTED STATE'S 49, THE THREE

25 PROJECTILES, DID YOU THEN PUT THEM IN THE EVIDENCE ROOM AT

1 THE COLUMBIA POLICE DEPARTMENT?

2 A. I TOOK THEM AND PUT THEM IN THE BLOOD ROOM. WHEN WE --
3 WHEN WE HAVE A SCENE THAT HAS A GREAT AMOUNT OF BLOOD, WE
4 USUALLY TRY TO DRY ITEMS OUT BEFORE WE TAKE THEM AND TURN
5 THEM IN TO THE EVIDENCE ROOM BECAUSE OF BIOHAZARD SITUATIONS.
6 SO I PUT IT IN THE BLOOD ROOM AND I HAD SOME ITEMS SEALED AND
7 OTHERS TO TRY, AND AFTER THE DRYING PERIOD, I TAKE THE ITEMS
8 AND TURN THEM IN TO AN EVIDENCE CAGE BECAUSE I BELIEVE IT WAS
9 IN THE EVENING HOURS THAT I DID IT. LOCKED THE CAGE. WE HAD
10 INDIVIDUAL LOCKS TO PUT IT IN THE CAGE, AND THEN EVIDENCE
11 WOULD HAVE PICKED IT UP LATER IN THE DAY OR THE NEXT MORNING.

12 Q. OKAY. AND OTHER THAN THESE THREE ITEMS, DID YOU ALSO
13 COLLECT SOME OTHER ITEMS FROM THE VICTIM?

14 A. YES, MA'AM.

15 Q. AND WHAT WERE THOSE?

16 A. GUNSHOT RESIDUE KIT AND SEVERAL ITEMS OF CLOTHING.

17 Q. OKAY. AND I'M GOING TO SHOW YOU WHAT'S NOT BEEN MARKED
18 YET.

19 (STATE'S EXHIBIT 72 WAS MARKED FOR IDENTIFICATION ONLY.)

20 BY MS. SHIPLEY:

21 Q. DID YOU PERFORM A GUNSHOT RESIDUE KIT ON THE DECEASED?

22 A. YES, MA'AM, I DID.

23 Q. OKAY. AND WERE YOU AWARE WHETHER OR NOT INVESTIGATOR
24 WILLIAMS HAD ALREADY CONDUCTED A GUNSHOT RESIDUE KIT?

25 A. I WAS NOT MADE AWARE OF THAT INFORMATION.

1 Q. AND SO AS A PRECAUTION YOU DID ANOTHER ONE?

2 A. YEAH. A LOT OF TIMES WE WOULD DO IT ON THE SCENE, BUT
3 IF WE WERE NOT AWARE OF THAT INFORMATION, WE ALWAYS DID IT AT
4 THE AUTOPSY.

5 Q. OKAY. AND WHAT TIME DID YOU COLLECT THAT SAMPLE FROM
6 MR. SMITH?

7 A. 09:41 HOURS IN THE MORNING.

8 Q. ON THE FOLLOWING DAY?

9 A. YES. YES, MA'AM.

10 Q. FEBRUARY 16TH?

11 A. THE DAY OF THE AUTOPSY.

12 Q. FEBRUARY 16TH, 2007?

13 A. YES, MA'AM.

14 MS. SHIPLEY: YOUR HONOR, AT THIS TIME WE WOULD
15 INTRODUCE 72 INTO EVIDENCE.

16 MR. LEDDY: WITHOUT OBJECTION.

17 (STATE'S EXHIBIT 72 WAS RECEIVED IN EVIDENCE.)

18 BY MS. SHIPLEY:

19 Q. DID YOU ALSO COLLECT CLOTHING FROM MR. SMITH?

20 A. YES, MA'AM.

21 Q. AND THOSE WERE OBVIOUSLY BLOODY; IS THAT CORRECT?

22 A. YES, MA'AM.

23 Q. AND IS THAT WHY YOU NEEDED TO DRY THEM IN THE ROOM?

24 A. YES, MA'AM.

25 MS. SHIPLEY: BEG THE COURT'S INDULGENCE. I HAVE NO

1 FURTHER QUESTIONS.

2 CROSS-EXAMINATION

3 BY MR. LEDDY:

4 Q. DID YOU WORK WITH MR. SCOTT ON THIS CASE - KERMIT? DID
5 YOU HAVE ANY INTERACTIONS WITH HIM WITH THIS EVIDENCE?

6 A. THE BEST OF MY KNOWLEDGE, NO, THAT I CAN REMEMBER. I
7 WORKED MY PART OF IT, AND IT WAS THEN TURNED IN TO EVIDENCE.
8 SO I'M NOT AWARE OF REAL INTERACTIONS WITH HIM, NOT AS FAR AS
9 MY DOCUMENTATIONS GOES.

10 MR. LEDDY: OKAY. NOTHING ELSE, YOUR HONOR.

11 THE COURT: OKAY, SIR. YOU CAN STEP DOWN AND BE
12 EXCUSED.

13 MS. SHIPLEY: THE STATE CALLS DONNA MARTIN.

14 DONNA M. MARTIN, AFTER BEING DULY SWORN, TESTIFIED
15 AS FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
17 FOR THE RECORD.

18 THE WITNESS: DONNA M. MARTIN.

19 DIRECT EXAMINATION

20 BY MS. SHIPLEY:

21 Q. GOOD AFTERNOON, MS. MARTIN.

22 A. HELLO.

23 Q. MS. MARTIN, CAN YOU TELL THIS JURY WHERE YOU'RE
24 EMPLOYED?

25 A. I WORK FOR THE CITY OF COLUMBIA POLICE DEPARTMENT IN THE

1 EVIDENCE UNIT.

2 Q. AND WHAT ARE YOUR DUTIES IN THE EVIDENCE UNIT?

3 A. WE INTAKE EVIDENCE, MAINTAIN CHAIN OF CUSTODY, AND WE DO
4 DESTRUCTION.

5 Q. DESTRUCTION OF WHAT?

6 A. OF PROPERTY.

7 Q. OKAY.

8 A. ALL PROPERTY.

9 Q. I'M GOING TO BRING YOUR ATTENTION TO THE CASE AT HAND.
10 DID YOU HAVE AN OPPORTUNITY TO RECEIVE EVIDENCE AS WELL AS
11 RELEASE EVIDENCE IN THIS CASE?

12 A. YES.

13 Q. OKAY. THE DEFENSE HAS GRACIOUSLY STIPULATED TO THE
14 CHAIN OF CUSTODY AS TO THE GUN AND THE BULLETS AND THE G.S.R.
15 KIT. I'M GOING TO FOCUS YOUR ATTENTION TO THE CHAIN OF
16 CUSTODY OF THE DRUGS IN THIS CASE.

17 A. ALL RIGHT.

18 Q. WHAT ITEMS OF EVIDENCE DID YOU RECEIVE AS FAR AS DRUGS,
19 THE CRACK COCAINE AND POWDER COCAINE? AND IF I CAN ASSIST
20 YOU, HERE IS STATE'S 50.

21 A. OKAY. OF COURSE, WE DID GET THE CRACK COCAINE IN AND
22 ALSO SOME MARIJUANA ALSO.

23 Q. OKAY. AND SO THERE WAS POWDER COCAINE AND ALSO CRACK
24 COCAINE?

25 A. YES.

1 Q. ALL RIGHT. AND ON WHAT DAY DID YOU RECEIVE THAT?

2 A. THAT WAS ON 2/16 OF '07.

3 Q. OKAY. AND WHO TURNED IT IN TO EVIDENCE?

4 A. K. SCOTT. SERGEANT K. SCOTT.

5 Q. SERGEANT KERMIT SCOTT?

6 A. YES.

7 Q. ALL RIGHT. AND ARE YOU AWARE OF WHERE SERGEANT SCOTT IS
8 RIGHT NOW?

9 A. YES.

10 Q. IN AFGHANISTAN?

11 A. AFGHANISTAN, YES.

12 Q. AND WHO DID HE TURN IT IN TO AT YOUR UNIT?

13 A. HE TURNED IT IN TO JOANNE LEWIS.

14 Q. ALL RIGHT. TELL THE JURY WHERE JOANNE IS.

15 A. JOANNE HAS PASSED. SHE DIED IN SEPTEMBER.

16 Q. NOW, DID YOU LEARN HOW TO DO YOUR JOB WITH JOANNE?

17 A. YES.

18 Q. AND WAS SHE YOUR SUPERVISOR?

19 A. YES, SHE WAS.

20 Q. AND SO YOU ARE FAMILIAR WITH THE PROCEDURES THAT YOU ARE
21 SUPPOSED TO FOLLOW WHEN YOU ACCEPT EVIDENCE?

22 A. YES.

23 Q. CAN YOU TELL THE JURY WHAT -- HOW A PERSON, AN OFFICER,
24 TURNS IN EVIDENCE?

25 A. IF AN OFFICER TURNS IN EVIDENCE AT THE WINDOW, HOURS OF

1 OPERATION ARE FROM 8 TO 6:30, AND IF WE'RE OPEN, THEY TURN IT
2 IN TO ONE OF US. IT WAS MYSELF, TRACY DIXON, REGINALD
3 STEVENS, AND JOANNE LEWIS. SO -- AND SERGEANT SCOTT TURNED
4 THE DRUGS IN TO JOANNE LEWIS. IN TURN, SHE STAMP-DATES THAT
5 SHE GOT IT FROM SCOTT, RECEIVED IT FROM SERGEANT SCOTT, AND
6 IN TURN, SHE PUTS IT ON THE PROPER DESK WHICH WOULD HAVE BEEN
7 MY DESK, AND I LOG IT IN AND JUST HOLD IT UNTIL TESTING AND
8 THEN HOLD IT FOR COURT.

9 Q. OKAY. AND SO YOU ACTUALLY LOGGED IN STATE'S NUMBER 50?

10 A. I DID NOT. I WAS OUT ON LEAVE AT THE TIME, BUT REGINALD
11 STEVENS LOGGED IT IN.

12 Q. OKAY. TELL THE JURY ABOUT REGINALD STEVENS.

13 A. REGINALD STEVENS PASSED THREE MONTHS AFTER JOANNE LEWIS,
14 IN DECEMBER, SO...

15 Q. SO YOU'RE JUST A TWO-WOMAN UNIT NOW.

16 A. YES. JUST TRACY DIXON AND MYSELF ARE STILL WORKING
17 THERE.

18 Q. NOW, WHEN THE ITEMS OF EVIDENCE ARE LOGGED IN TO
19 EVIDENCE, WHAT ARE THE PROCEDURES THAT THE CUSTODIAN OF
20 EVIDENCE FOLLOWS?

21 A. WE LOG IT IN IN OUR BOOKS, IN OUR SYSTEMS, AND WE PLACE
22 IT IN OUR DRUG AND GUN ROOM UNTIL IT'S READY TO BE TESTED BY
23 OUR CHEMIST, MELISSA HENDRICKS.

24 Q. OKAY. AND IN THIS CASE DID YOU TURN OVER THE ITEM
25 NUMBER 50 TO ANYBODY FOR ANALYSIS OR DID JOANNE LEWIS DO IT?

1 A. JOANNE LEWIS TURNED IT OVER TO MELISSA HENDRICKS, OUR
2 CHEMIST.

3 Q. OKAY. AND ON WHAT DATE DID SHE DO THAT?

4 A. 2/16 OF '07, SO THE SAME DAY RECEIVED IT AND THE SAME
5 DAY MELISSA...

6 Q. I'M GOING TO BRING YOUR ATTENTION TO A DOCUMENT. YOU
7 INDICATED THAT YOU HAVE A DRUG ROOM AND A GUN ROOM? IS THAT
8 CORRECT?

9 A. THEY'RE BOTH ONE AND THE SAME BUT JUST LIKE SEPARATED
10 OFF.

11 Q. AND I'M GOING TO HAND YOU SOME DOCUMENTS AND ASK YOU IF
12 YOU RECOGNIZE THAT.

13 A. YES.

14 Q. AND IS THAT THE CHAIN OF CUSTODY FORM THAT IS FILLED OUT
15 FOR STATE'S NUMBER 50?

16 A. YES.

17 Q. OKAY. AND IT'S THE SAME CASE NUMBER ON THE ENVELOPE AS
18 IT IS ON THE CHAIN OF CUSTODY.

19 A. YES, IT IS, SAME CASE NUMBER AND LAB NUMBER.

20 Q. LAB NUMBER AS WELL?

21 A. UH-HUH.

22 Q. AND ON WHAT DATE DOES IT SAY ON THE SECOND PAGE OF THE
23 CHAIN THAT JOANNE LEWIS TURNED IT OVER TO MELISSA HENDRICKS
24 FOR ANALYSIS?

25 A. IT WOULD BE 2/22 OF '07.

1 Q. OKAY. AND SO AS FAR AS YOUR RECORDS SHOW, THESE ITEMS
2 OF EVIDENCE WERE TURNED IN BY KERMIT SCOTT ON 2/16 OF '07 TO
3 JOANNE LEWIS AT 1:30 P.M.?

4 A. YES.

5 Q. AND IT REMAINED IN THE EVIDENCE ROOM?

6 A. YES.

7 Q. WHO HAS ACCESS TO THE EVIDENCE ROOM?

8 A. IT WOULD BE JOANNE LEWIS, REGINALD STEVENS, TRACY DIXON,
9 AND MYSELF.

10 Q. ANYONE ELSE HAVE ACCESS?

11 A. NO.

12 Q. AND DID THOSE ITEMS APPEAR TO BE TAMPERED WITH IN ANY
13 WAY WHILE THEY WERE IN THE CUSTODY OF THE COLUMBIA POLICE
14 DEPARTMENT?

15 A. NO.

16 Q. AND AT THAT POINT WHEN THEY'RE TURNED OVER TO THE
17 ANALYST, SHE WOULD BE BEST ABLE TO DESCRIBE THE CONDITION OF
18 THE EVIDENCE WHEN SHE RECEIVED IT?

19 A. YES.

20 Q. OKAY. THE REST OF THE ITEMS OF EVIDENCE, NAMELY ITEMS
21 DEALING WITH THE GUNSHOT RESIDUE KITS AND THE BALLISTICS
22 EVIDENCE, THE GUN, ALL THAT WAS SENT TO S.I.E.D. IS THAT
23 CORRECT?

24 A. YES.

25 Q. AND ON WHAT DATE DID YOU TURN THAT OVER TO SERGEANT

1 SCOTT?

2 A. IT WAS ON 5/31/07.

3 MS. SHIPLEY: OKAY. THAT IS ALL I HAVE FOR THIS
4 WITNESS, YOUR HONOR.

5 THE COURT: OKAY.

6 CROSS-EXAMINATION

7 BY MR. LEDDY:

8 Q. VERY BRIEFLY, THIS IS -- THIS IS WHAT YOU'RE REFERRING
9 TO?

10 A. YES. OUR CHAIN OF CUSTODY, YES, SIR.

11 Q. OKAY. AND THAT'S HOW YOU KEEP TRACK OF WHO GOT IT AND
12 WHO THEY GAVE IT TO.

13 A. YES.

14 MR. LEDDY: OKAY. GOOD. I DON'T HAVE ANY FURTHER
15 QUESTIONS, YOUR HONOR. I BELIEVE I HAVE A MATTER OF LAW THAT
16 MIGHT TAKE JUST A MINUTE.

17 THE COURT: OKAY. ALL RIGHT. MADAM, YOU CAN STEP DOWN
18 AND JUST STAY WITH US FOR RIGHT NOW---

19 THE WITNESS: YES.

20 THE COURT: ---UNTIL I EXCUSE YOU.

21 THE WITNESS: NO PROBLEM.

22 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I'M GOING
23 TO ASK YOU TO STEP TO YOUR JURY ROOM SO WE CAN TAKE UP A
24 MATTER OF LAW. I REMIND YOU NOT TO DISCUSS THE CASE. WE'LL
25 BE WITH YOU VERY SHORTLY.

1 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:32
2 P.M.)

3 THE COURT: MR. LEDDY, YOU MAY PROCEED.

4 MR. LEDDY: YOUR HONOR, FIRST OBVIOUSLY ON MY MATTER
5 HERE I MEAN ABSOLUTELY NO DISRESPECT TO MS. LEWIS OR ANYBODY
6 WHO IS NOT WITH US ANYMORE, BUT I THINK THAT IT IS MY DUTY TO
7 BRING TO THE COURT'S ATTENTION RULE 6 FOR CHAIN OF CUSTODY
8 AND RULE 6(B) THAT PROVIDES FOR THE ESTABLISHING OF A CHAIN
9 WITHOUT THE WITNESSES BEING PRESENT IN COURT, THAT YOU CAN
10 USE A SWORN OR CERTIFIED STATEMENT SIGNED BY EACH SUCCESSIVE
11 PERSON. I BELIEVE THAT THE RULES SPECIFY YOU HAVE TO USE THE
12 FORM THAT'S PROVIDED IN THE RULES THEMSELVES WHICH IS FORM C.
13 IN THE APPENDIX OF THE RULES, AND IT DOESN'T APPEAR THAT THIS
14 IS THE FORM THAT WAS USED. IN ORDER TO RAISE THIS OBJECTION,
15 OF COURSE, I HAVE TO GIVE 10 DAYS' NOTICE TO THE SOLICITOR'S
16 OFFICE, BUT THAT IS IN OUR STANDARD RULE 5 MOTION, SO THAT
17 SHOULD BE COMPLIED WITH.

18 THE COURT: ALL RIGHT.

19 MS. SHIPLEY: YOUR HONOR, I TURNED OVER THE DRUG
20 ANALYSIS IN THIS CASE, AND ATTACHED TO IT IS -- ARE THE FORMS
21 THAT MR. LEDDY IS REFERRING TO IN RULE 6. IT'S BEHIND THE
22 ANALYST'S REPORT. THOSE ARE ALL ATTACHED TOGETHER.

23 MR. LEDDY: OH, OKAY.

24 MS. SHIPLEY: AND ALSO, JUST FOR RECORD, YOUR HONOR,
25 UNDER STATE VERSUS TAYLOR AS FAR AS A CHAIN OF CUSTODY

1 BECAUSE THEY ARE CHALLENGING THE CHAIN FOR THE DRUGS, I JUST
2 WANT THE RECORD TO BE CLEAR THAT IF THE PERSON -- AS LONG AS
3 THE PERSONS WHO HANDLED THE ITEMS OF EVIDENCE THAT ARE
4 FUNGIBLE ITEMS ARE IDENTIFIED, THE MANNER IN WHICH THEY WOULD
5 HAVE HANDLED THE EVIDENCE IS DEFINITELY EXPLAINED. THEN IT'S
6 SIMPLY -- IT DOES NOT GO TO ITS ADMISSIBILITY; IT GOES TO ITS
7 WEIGHT. AND SO THEY CAN CHALLENGE THE INTEGRITY OF THE
8 EVIDENCE IN FRONT OF THE JURY. HOWEVER, WE HAVE ESTABLISHED
9 THE IDENTITY OF EVERY SINGLE PERSON THAT HANDLED THE
10 EVIDENCE, AND THOSE FORMS ARE ACTUALLY GOING TO BE COMING IN
11 THROUGH MS. HENDRICKS WHO WILL FINISH EXPLAINING THE
12 INTEGRITY OF THE EVIDENCE AS SHE RECEIVES IT BECAUSE IN HER
13 PRACTICE SHE WON'T ANALYZE IT IF SOMETHING IS WRONG WITH THE
14 PACKAGING. SO WE CAN CLEAR THE RECORD UP BY CALLING HER
15 NEXT.

16 THE COURT: OKAY. AND AT THIS JUNCTURE WE DON'T HAVE A
17 BREAK IN THE CHAIN OTHER THAN THE PERSONS WHO ARE NO LONGER
18 WITH US.

19 MS. SHIPLEY: RIGHT, AND THAT'S NOT EVEN A BREAK, YOUR
20 HONOR. STATE VERSUS TAYLOR INDICATES AS LONG AS THE PEOPLE
21 ARE IDENTIFIABLE THAT THAT'S NOT A MISSING LINK. THAT'S
22 SIMPLY -- IF WE WERE UNABLE TO EXPLAIN, FOR INSTANCE, YOU
23 KNOW, WHO HAD IT FROM THIS TIME TO THAT TIME, THAT WOULD BE A
24 MISSING LINK AND, THEREFORE, YOU WOULD BE REQUIRED TO
25 SUPPRESS THE EVIDENCE. HOWEVER, WE HAVE BEEN ABLE TO

1 ESTABLISH EXACTLY WHO AND, JUST FOR THE RECORD, I WANT IT TO
2 BE CLEAR: WE'VE GOT BAILEY AND FISHER WHO GOT IT OFF OF MR.
3 ROBINSON. THEN THEY BOTH TURNED IT IN TO SERGEANT SCOTT. AT
4 THAT POINT THE MANNER IN WHICH HE WOULD HAVE HANDLED EVIDENCE
5 HAS BEEN EXPLAINED BY GIANNA STINNEY WILLIAMS. SHE
6 PHOTOGRAPHED THE ITEMS AT THE LAB AND THEN INDICATED THAT
7 THAT EVIDENCE WAS THEN TURNED IN TO -- DONNA INDICATED SHE
8 RECEIVED -- HE TURNED EVERYTHING IN ON 2/16/07 AT 1:30 A.M.
9 -- P.M. AND THEN AT THAT POINT---

10 THE COURT: STATE WHO HE IS FOR THE RECORD.

11 MS. SHIPLEY: KERMIT SCOTT. AND THEN IT WENT FROM
12 KERMIT SCOTT TO JOANNE LEWIS WHO IS NO LONGER WITH US, AND AT
13 THAT POINT JOANNE THEN TURNS IT OVER TO MS. HENDRICKS WHO
14 WILL BE ABLE TO TESTIFY AS TO THE INTEGRITY AND THE PACKAGING
15 OF THE CRACK COCAINE AND POWDER COCAINE, AND THEN OBVIOUSLY
16 WE'LL BE ABLE TO COMPLY WITH THE RULE 6, THE FORMS REQUIRED,
17 AND SHE'S GOT THE ORIGINALS WITH HER.

18 MR. LEDDY: AND I JUST -- I HONESTLY FORGOT THEY USED
19 THOSE FORMS. I THINK THAT THE CHAIN JUST HAS TO BE
20 SUBSTANTIALLY COMPLETE AS TO WHEN IT WAS---

21 THE COURT: YEAH, THAT'S MY UNDERSTANDING OF THE CASES
22 AS WELL.

23 MR. LEDDY: OKAY.

24 THE COURT: I'LL LOOK AT THE CASE ON THE COMPUTER AS
25 WELL.

1 MR. LEDDY: OKAY. SO WE HAVE ONE MORE CHAIN WITNESS
2 BEFORE I RENEW MY PRETRIAL, SO I DON'T FORGET TO DO THAT.

3 MS. SHIPLEY: YES. I'LL BE HAPPY TO CALL HER.

4 THE COURT: OKAY. THE ENTIRE SUPPRESSION. OKAY.

5 MR. LEDDY: OKAY. THANK YOU.

6 THE COURT: THANK YOU. WITNESSES -- EXCUSE ME. THE
7 JURORS, PLEASE. AND THEN IN THAT REGARD, MS. MARTIN - YOU NO
8 LONGER NEED HER?

9 MS. SHIPLEY: THANK YOU, DONNA.

10 THE COURT: OKAY. YOU'RE EXCUSED. THANK YOU.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:38
12 P.M.)

13 THE COURT: OKAY. THANK YOU. YOU CAN CONTINUE WITH
14 YOUR CASE.

15 MS. SHIPLEY: THANK YOU, YOUR HONOR. THE STATE CALLS
16 MELISSA HENDRICKS.

17 MELISSA B. HENDRICKS, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
20 FOR THE RECORD.

21 THE WITNESS: MELISSA BENNETT HENDRICKS.

22 DIRECT EXAMINATION

23 BY MS. SHIPLEY:

24 Q. MS. HENDRICKS, CAN YOU TELL THE JURY WHERE YOU'RE
25 EMPLOYED?

1 A. I'M EMPLOYED BY THE COLUMBIA POLICE DEPARTMENT.

2 Q. AND WHAT IS YOUR JOB THERE?

3 A. I'M THE FORENSIC CHEMIST FOR THE DEPARTMENT.

4 Q. AND WHAT DOES A FORENSIC CHEMIST DO?

5 A. I ANALYZE PILLS, POWDERS, PLANT MATERIAL IN PREPARATION
6 FOR THE POSSIBLE PRESENCE OF ILLICIT PRESCRIPTION OR OVER-
7 THE-COUNTER DRUGS.

8 Q. AND HOW LONG HAVE YOU HAD THAT JOB?

9 A. I'VE BEEN AT THE COLUMBIA POLICE DEPARTMENT FOR ALMOST
10 FIVE YEARS.

11 Q. AND DID YOU HAVE -- TELL THE JURY A LITTLE BIT ABOUT
12 YOUR EDUCATIONAL BACKGROUND, TRAINING, AND EXPERIENCE IN THE
13 FIELD OF DRUG ANALYSIS.

14 A. YES, MA'AM. I HAVE A BACHELOR'S DEGREE FROM THE
15 UNIVERSITY OF SOUTH CAROLINA WITH A MAJOR IN CHEMISTRY. I
16 HAVE TWO YEARS OF GRADUATE STUDY IN THE FIELD OF MEDICINAL
17 CHEMISTRY INCLUDING PHARMACY AND PHARMACOLOGY. I TRAINED AT
18 THE STATE LAW ENFORCEMENT DIVISION WHERE I WAS ALSO A
19 FORENSIC DRUG CHEMIST FOR TWO YEARS. I ALSO TRAINED AT THE
20 STATE LAW ENFORCEMENT DIVISION WHERE I WAS A FORENSIC
21 TOXICOLOGIST FOR NINE YEARS, SO I WAS THERE FOR 11 YEARS.

22 I HAVE TRAINED IN SEVERAL DIFFERENT FORUMS AND
23 DISCIPLINES OF INSTRUMENTATION WHICH I USE. LET'S SEE. I'VE
24 ALSO GONE TO THE CRIMINAL JUSTICE ACADEMY. I'VE BEEN TRAINED
25 BY THE DRUG ENFORCEMENT ADMINISTRATION LABORATORY IN

1 QUANTICO, VIRGINIA. I AM A HAZMAT TECHNICIAN, A W.M.D.
2 HAZMAT TECHNICIAN. I'M ALSO CERTIFIED BY THE D.E.A. AS A
3 CLANDESTINE LABORATORY TECHNICIAN---

4 COURT REPORTER: AS A WHAT?

5 THE WITNESS: CLANDESTINE LABORATORY INVESTIGATING
6 CHEMIST AND TECHNICIAN FOR POSSIBLE CLEAN-UP.
7 BY MS. SHIPLEY:

8 Q. AND HAVE YOU TESTIFIED IN A COURT OF LAW AS AN EXPERT IN
9 THE FIELD OF FORENSIC CHEMISTRY OR DRUG ANALYSIS?

10 A. I'VE TESTIFIED A TOTAL OF 200 -- AT LEAST 250 TIMES IN
11 DRUG CHEMISTRY AND TOXICOLOGY.

12 MS. SHIPLEY: YOUR HONOR, AT THIS TIME WE WOULD ASK THE
13 COURT TO QUALIFY MS. HENDRICKS AS AN EXPERT IN THE FIELD OF
14 FORENSIC CHEMISTRY AND TOXICOLOGY.

15 MR. LEDDY: NO OBJECTION, YOUR HONOR.

16 THE COURT: I FIND HER DULY QUALIFIED.

17 THE WITNESS: THANK YOU.

18 BY MS. SHIPLEY:

19 Q. NOW, I'M GOING TO BRING YOUR ATTENTION TO THE CASE AT
20 HAND. DID YOU HAVE AN OCCASION TO ANALYZE DRUGS RELATED TO
21 CASE NUMBER 07-5176 WITH THE SUBJECT BEING ONE JOEL ANTAWAN
22 ROBINSON?

23 A. YES, MA'AM, I DID.

24 Q. AND CAN YOU TELL THE JURY WHEN IT IS THAT YOU CAME INTO
25 CONTACT WITH THE EVIDENCE?

1 A. I RECEIVED THE EVIDENCE FROM JOANNE LEWIS ON FEBRUARY
2 THE 22ND OF 2007. I RECEIVED THAT EVIDENCE IN A DRUG
3 ANALYSIS BEST PACKAGE. BEST STANDS FOR BEST EVIDENCE
4 SELECTIVE TESTING WHICH IS A SEALED EVIDENCE POUCH
5 SPECIFICALLY DESIGNED TO HANDLE DRUG ANALYSIS.

6 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
7 NUMBER 50 AND ASK YOU IF YOU CAN IDENTIFY THAT, PLEASE.

8 A. YES, MA'AM, I CAN.

9 Q. AND WHAT IS IT?

10 A. THE BAG INSIDE OF THE EVIDENCE IS THE ORIGINAL BEST KIT
11 THAT I RECEIVED ON THIS CASE THAT WAS SEALED BY SERGEANT
12 SCOTT. I OPENED IT, ANALYZED THE EVIDENCE, RESEALED IT IN
13 THIS POUCH WHERE I INITIALED AND DATED IT ON THE INSIDE
14 BEFORE I SEALED IT.

15 Q. OKAY. AND SO WHEN YOU RECEIVED THE POUCH FROM THE
16 EVIDENCE, DID IT APPEAR TO BE TAMPERED WITH IN ANY FORM OR
17 FASHION?

18 A. NO, MA'AM, IT WAS NOT.

19 Q. AND WHAT WOULD HAVE HAPPENED IF YOU FOUND THAT THERE WAS
20 A LITTLE CUT OR SOMETHING IN IT SHOWING IT HAD BEEN TAMPERED
21 WITH? WHAT WOULD YOU HAVE DONE?

22 A. FIRST OF ALL, IF IT JUST LOOKS LIKE SOMEBODY HAS PULLED
23 ON THE RED GUM SEAL AT THE TOP, I MAKE A NOTE OF THAT IN MY
24 NOTES. IF IT HAS ACTUALLY BEEN TAMPERED WITH WHERE IT MAY BE
25 OPENED, I REFUSE TO ANALYZE THE CASE.

1 Q. OKAY. IS THAT BECAUSE THE EVIDENCE IS -- THE INTEGRITY
2 OF THE EVIDENCE IS DIMINISHED?

3 A. THAT'S CORRECT.

4 Q. OKAY. AND SO IN THIS CASE DID YOU FEEL CONFIDENT THAT
5 THE EVIDENCE WAS NOT TAMPERED WITH?

6 A. IT WAS NOT TAMPERED WITH, AND I NOTED IN MY NOTES THAT
7 IT HAD NOT BEEN TAMPERED WITH.

8 Q. OKAY. AND IN THAT BAG, STATE'S NUMBER 50, IS THAT BOTH
9 THE CRACK COCAINE AND THE POWDER COCAINE THAT YOU ANALYZED IN
10 THIS CASE?

11 A. YES, MA'AM, IT IS.

12 MS. SHIPLEY: OKAY. YOUR HONOR, AT THIS TIME THE STATE
13 WOULD SEEK TO INTRODUCE NUMBER 50 INTO EVIDENCE.

14 MR. LEDDY: PREVIOUS OBJECTIONS, YOUR HONOR. JUST MY
15 PREVIOUS OBJECTIONS. JUST RENEW THOSE.

16 THE COURT: OKAY. THANK YOU. THE COURT WILL STAND BY
17 ITS RULING.

18 (STATE'S EXHIBIT 50 WAS RECEIVED IN EVIDENCE.)

19 BY MS. SHIPLEY:

20 Q. STATE'S NUMBER 50, CAN YOU TELL THE JURY HOW IT IS THAT
21 YOU ANALYZE DRUGS? WHAT EXACTLY GOES ON IN YOUR LAB?

22 A. THE FIRST THING I DO IS I LOOK AT THE EVIDENCE THAT'S
23 SUBMITTED. IN THIS CASE IT WAS A ROCK-LIKE SUBSTANCE AND A
24 POWDER SUBSTANCE. I DO A PRELIMINARY COLOR CHANGE TEST WHICH
25 IS VERY SIMILAR TO THE TYPE OF FIELD TEST THAT OFFICERS DO IN

1 THE FIELD, AND IT LOOKS AT A COLOR CHANGE IN CERTAIN TYPES OF
2 CHEMICALS. FOR COCAINE, WHETHER IT'S CRACK OR POWDER, IT'S
3 COBALT THIOCYANATE AND TIN CHLORIDE, AND IF IT TURNS A BLUE
4 COLOR, THEN THAT'S PRESUMPTIVE POSITIVE. FROM THERE I DO A
5 FOURIER TRANSFORM INFRARED---

6 COURT REPORTER: COULD YOU REPEAT THAT?

7 THE WITNESS: F.T.I.R. FOR SHORT IS WHAT IT'S CALLED,
8 ANALYSIS WHICH USES INFRARED LIGHT TO LOOK AT THE ITEMS OF
9 EVIDENCE, AND THEN I DO A GAS CHROMATOGRAPHY MASS
10 SPECTROMETRY ANALYSIS WHICH IS A FINGERPRINT IDENTIFICATION
11 FOR A COMPOUND.

12 BY MS. SHIPLEY:

13 Q. OKAY. AND EXPLAIN TO THE JURORS WHAT YOU DID WITH THESE
14 TWO ITEMS INSIDE OF EVIDENCE NUMBER 50?

15 A. I ANALYZED EACH FIRST FOR THE PRESUMPTIVE COLOR CHANGE
16 TEST. BOTH INDICATED POSITIVE RESULT FOR THE PRESENCE OF
17 COCAINE. I THEN DID THE F.T.I.R. ANALYSIS. ITEM ONE TENDED
18 -- APPEARED TO BE THE COCAINE IN BASE FORM. ITEM TWO TENDED
19 -- SHOWED A RESULT OF COCAINE IN SALT FORM OR POWDER FORM.
20 THEN I CONFIRMED THOSE ANALYSES BY G.C. MASS SPEC AND FOUND
21 THE ROCK SUBSTANCE TO BE COCAINE BASE, ALSO REFERRED TO AS
22 CRACK, AT 0.29 GRAMS, AND THE POWDER SUBSTANCE TO BE COCAINE
23 HYDROCHLORIDE, 0.25 GRAMS.

24 MS. SHIPLEY: OKAY. THANK YOU VERY MUCH, MS. HENDRICKS.

25 MR. LEDDY: I HAVE NO QUESTIONS, YOUR HONOR.

1 THE COURT: OKAY. MA'AM, YOU CAN STEP DOWN AND BE
2 EXCUSED.

3 MR. ROSE: THE STATE CALLS SPECIAL AGENT MICHAEL MOSKAL.

4 MICHAEL MOSKAL, AFTER BEING DULY SWORN, TESTIFIED
5 AS FOLLOWS:

6 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
7 FOR THE RECORD.

8 THE WITNESS: MICHAEL MOSKAL. M-O-S-K-A-L.

9 DIRECT EXAMINATION

10 BY MR. ROSE:

11 Q. AGENT MOSKAL, WHERE ARE YOU EMPLOYED?

12 A. I'M CURRENTLY EMPLOYED BY THE SOUTH CAROLINA LAW
13 ENFORCEMENT DIVISION COMMONLY KNOWN AS S.L.E.D.

14 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED AT S.L.E.D.?

15 A. FOR TWO AND A HALF YEARS.

16 Q. AND WHAT IS YOUR JOB AT S.L.E.D.?

17 A. I'M CURRENTLY ASSIGNED TO THE TRACE EVIDENCE LAB.

18 Q. CAN YOU PLEASE TELL THIS JURY A LITTLE BIT ABOUT YOUR
19 EDUCATIONAL BACKGROUND?

20 A. YES, SIR. I HAVE A BACHELOR'S OF CHEMISTRY OR A
21 BACHELOR'S OF SCIENCE IN CHEMISTRY FROM THE COLLEGE OF
22 CHARLESTON, AND THEN WHEN I WAS EMPLOYED BY S.L.E.D. I WENT
23 THROUGH AN INTENSIVE IN-HOUSE TRAINING FOR OUR TRACE EVIDENCE
24 DEPARTMENT, SPECIFICALLY SO FAR FOR ANALYZING GUNSHOT RESIDUE
25 AND ANALYZING ARSON DEBRIS.

1 Q. AND HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THE FIELD OF
2 FORENSIC TRACE EVIDENCE?

3 A. YES, SIR.

4 Q. MORE SPECIFICALLY GUNSHOT RESIDUE ANALYSIS?

5 A. YES, SIR, I HAVE.

6 Q. AND HOW MANY TIMES?

7 A. SIX TIMES.

8 MR. ROSE: YOUR HONOR, AT THIS TIME WE WOULD OFFER
9 MICHAEL MOSKAL AS AN EXPERT IN THE FIELD OF GUNSHOT RESIDUE
10 ANALYSIS.

11 MR. LEDDY: NO OBJECTION, YOUR HONOR.

12 THE COURT: OKAY. SO QUALIFIED.

13 BY MR. ROSE:

14 Q. AGENT MOSKAL, CAN YOU PLEASE TELL THE JURY WHAT IS
15 GUNSHOT RESIDUE?

16 A. GUNSHOT RESIDUE IS EVERYTHING THAT COMES OUT OF THE
17 OPENING OF A WEAPON WHEN IT'S FIRED. IT'S GOING TO INCLUDE
18 ANY DIRT, DEBRIS, AND GREASES THAT ARE LEFT FROM CLEANING A
19 WEAPON, BUT SPECIFICALLY WHAT WE'RE LOOKING FOR ARE
20 COMPONENTS THAT COME OUT OF THE PRIMER. IT CONTAINS THREE
21 SPECIFIC ELEMENTS: LEAD, BARIUM, AND ANTIMONY. AND WHEN
22 THOSE THREE ELEMENTS COME OUT OF A WEAPON WHEN THEY'RE FIRED,
23 THEY COME OUT AND THEY FUSE TOGETHER AS A SINGLE PARTICLE
24 WITH A ROUND SHAPE. AND THE IMPORTANT THING ABOUT GUNSHOT
25 RESIDUE IS THAT COMING OUT OF A FIRED WEAPON IS THE ONLY

1 PLACE THAT THAT ROUND SHAPE CONTAINING THOSE THREE ELEMENTS
2 IS KNOWN TO EXIST. IT'S A VERY FRAGILE TYPE OF EVIDENCE,
3 MEANING THAT WHEN IT GETS ON YOUR HANDS, WE FIND THAT FOR A
4 PERSON DOING NORMAL CLERICAL TYPE ACTIVITIES IT'S ONLY GOING
5 TO LAST ON THE BODY FOR A PERIOD OF ABOUT SIX HOURS BECAUSE
6 OUR BODY NATURALLY ABSORBS IT AND IT'S ALSO -- EVERY TIME YOU
7 TOUCH SOMETHING IT BEGINS TO DISAPPEAR. IT TRANSFERS WHEN
8 YOU TOUCH MATERIALS. ANY TIME YOU WASH YOUR HANDS, YOU TOUCH
9 YOUR HANDS ON DIFFERENT ITEMS, THOSE ACTIVITIES ARE GOING TO
10 BEGIN TO REMOVE THAT MATERIAL.

11 Q. COULD YOU PLEASE EXPLAIN HOW IT GETS ON A PERSON WHO'S
12 EITHER FIRING A GUN OR BEING SHOT BY A GUN?

13 A. YES, SIR. WHEN A WEAPON IS FIRED, THAT GUNSHOT RESIDUE
14 COMES OUT IN A CLOUD THAT ENCOMPASSES THAT WEAPON, AND IT
15 EXTENDS FOR A COUPLE OF FEET. SO ANYTHING THAT'S IN THAT
16 DIRECT VICINITY WHEN THAT WEAPON IS FIRED IS GOING TO HAVE
17 THAT GUNSHOT RESIDUE DEPOSITED ON IT.

18 Q. AND HOW WOULD GUNSHOT RESIDUE COME OFF AN INDIVIDUAL?

19 A. AGAIN, ANY ACTIVITY THAT'S GOING TO HAVE YOUR HANDS
20 MAKING CONTACT WITH SOMETHING ELSE - RUBBING YOUR PANTS,
21 HANDS IN AND OUT OF POCKETS, OPENING DOORS - THOSE TYPES OF
22 ACTIVITIES ARE GOING TO REMOVE IT. ANY FLUID GOING OVER YOUR
23 HANDS, WHETHER YOU'RE WASHING YOUR HANDS, SWEAT RUNNING
24 ACROSS IT, THOSE TYPES OF ACTIVITIES ARE GOING TO REMOVE THAT
25 GUNSHOT RESIDUE AS WELL AS NATURAL ABSORPTION THAT OUR BODIES

1 DOES WITH GUNSHOT RESIDUE.

2 Q. HYPOTHETICALLY SPEAKING, IF I'M, SAY, RUNNING FOR A
3 PERIOD OF TWO HOURS, I'M SWEATING, AND MAYBE I STOP OFF AT
4 ANOTHER INDIVIDUAL'S PLACE OR WHATNOT, SIT ON THE COUCH, WASH
5 MY HANDS, WHO KNOWS, WOULD THAT AFFECT GUNSHOT RESIDUE?

6 A. YES, SIR. THOSE ACTIVITIES WOULD DIMINISH THE AMOUNT OF
7 GUNSHOT RESIDUE ON YOUR HANDS.

8 Q. DID YOU HAVE OCCASION TO ANALYZE ANY EVIDENCE IN THIS
9 CASE? SPECIFICALLY, IF I SHOW YOU STATE'S EXHIBIT 53 AND
10 STATE'S EXHIBIT 54, DO YOU RECOGNIZE THESE?

11 A. YES, SIR. WHAT I WAS LOOKING FOR IS ON EACH EVIDENCE --
12 EACH CONTAINER OF EVIDENCE I RECEIVE, WHEN I FINISH WITH IT I
13 INITIAL IT AND DATE IT ON THE DAY THAT I SIGN IT, AND SO I
14 SEE MY INITIALS AND DATE ON BOTH OF THESE ITEMS.

15 Q. AND WHAT WERE YOUR FINDINGS AS TO THOSE ITEMS?

16 A. OKAY. I'M NOT QUITE SURE HOW MY ITEM NUMBERS RELATE TO
17 THE STATE'S EXHIBIT, BUT MY ITEM NUMBER TWO IS A G.S.R. KIT
18 FROM JOEL ANTAWAN ROBINSON. OKAY. WHEN A G.S.R. KIT IS
19 COLLECTED, WE TAKE SAMPLES FROM FOUR AREAS: IT'S THE RIGHT
20 PALM, THE RIGHT BACK, THE LEFT PALM, AND THE LEFT BACK. AND
21 SO OUR REPORT INDICATES OUR FINDINGS FOR EACH ONE OF THOSE
22 FOUR AREAS, AND FOR ANTAWAN JOEL ROBINSON ON THE FOUR AREAS
23 THE QUANTITIES OF METALS DETECTED DID NOT INDICATE THE
24 PRESENCE OF GUNSHOT RESIDUE.

25 Q. AND JUST TO CLARIFY UP YOUR TESTIMONY FROM EARLIER,

1 RUNNING, SWEATING, SITTING ON THE COUCH, WASHING YOUR HANDS,
2 THAT CAN AFFECT G.S.R.?

3 A. YES, SIR. ALL OF THOSE CAN DIMINISH THOSE QUANTITIES.

4 Q. DID YOU PERFORM ANY OTHER TESTS ON -- SPECIFICALLY ON
5 THE VICTIM, THOMAS SMITH?

6 A. YES, SIR. THERE WAS A G.S.R. COLLECTED -- COLLECTED
7 FROM THOMAS LEE SMITH.

8 Q. AND WHAT WERE YOUR FINDINGS ON THAT?

9 A. ON THE FOUR AREAS FROM THOMAS LEE SMITH, THE QUANTITIES
10 OF METALS DID NOT INDICATE THE PRESENCE OF GUNSHOT RESIDUE.

11 Q. AND IF YOU'RE DECEASED, HOW DOES THAT AFFECT G.S.R.?

12 A. WHEN THE BODY STOPS BREATHING AND YOU STOP THAT
13 METABOLISM PROCESS, ANYTHING THAT'S ON YOUR HANDS AT THE TIME
14 YOU DIE IS GOING TO STAY THERE UNTIL IT'S REMOVED BY SOME
15 OUTSIDE SOURCE.

16 Q. AND WAS THERE A THIRD G.S.R. KIT THAT YOU DIDN'T
17 ANALYZE?

18 A. YES, SIR, THERE WAS.

19 Q. CAN YOU EXPLAIN THAT FOR THE JURY, PLEASE?

20 A. YES, SIR. THERE WAS A SECOND KIT COLLECTED FROM THOMAS
21 LEE SMITH. IT WAS COLLECTED AFTER -- WELL, IT WAS THE SECOND
22 KIT COLLECTED FROM HIM, AND SO THE WHOLE PROCESS OF
23 COLLECTING A G.S.R. KIT IS GOING TO REMOVE THAT G.S.R. SO
24 ANY SUBSEQUENT KIT COLLECTED IS NOT GOING TO HAVE ANY
25 INFORMATION THERE, AND SO OUR PROTOCOL IS NOT TO ANALYZE ANY

1 KITS COLLECTED AFTER THE INITIAL ONE.

2 Q. THANK YOU. NO FURTHER QUESTIONS.

3 A. YES, SIR.

4 MR. LEDDY: BRIEFLY, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. LEDDY:

7 Q. I DON'T KNOW IF YOU'RE AWARE OF THE BALLISTICS REPORTS
8 IN THIS CASE. ARE YOU?

9 A. NO, SIR, I AM NOT.

10 Q. ALL RIGHT. NOW, YOU SAID THAT THE ONLY PLACE THAT THESE
11 COMPOUNDS CAN COME FROM IN THE COMBINATION THAT WE FIND THEM
12 IN GUNSHOT RESIDUE IS GUNSHOT RESIDUE. RIGHT?

13 A. CORRECT.

14 Q. NOW, IN THIS CASE WE ACTUALLY HAVE A BULLET THAT'S NOT
15 IDENTIFIED AS COMING OUT OF THE DEFENDANT'S GUN. OKAY?

16 A. YES, SIR.

17 Q. AND IT'S THE WRONG CALIBER, AND YOU DIDN'T GET ANY
18 ADDITIONAL G.S.R. TESTS TO LOOK AT, DID YOU?

19 A. NOT WITH THIS CASE, NO, SIR.

20 Q. SO NOBODY ELSE WAS TESTED.

21 A. NOT TO MY KNOWLEDGE.

22 MR. LEDDY: OKAY. THANK YOU. NOTHING FURTHER.

23 THE COURT: OKAY.

24 MR. ROSE: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN AND BE

1 EXCUSED.

2 THE WITNESS: THANK YOU.

3 MS. SHIPLEY: THE STATE CALLS AGENT DAVID BLACK.

4 DAVID W. BLACK, AFTER BEING DULY SWORN, TESTIFIED
5 AS FOLLOWS:

6 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
7 FOR THE RECORD.

8 THE WITNESS: MY NAME IS DAVID WARREN BLACK. THE LAST
9 NAME IS SPELLED B-L-A-C-K.

10 DIRECT EXAMINATION

11 BY MS. SHIPLEY:

12 Q. AGENT BLACK, CAN YOU TELL THIS JURY WHERE YOU'RE
13 EMPLOYED?

14 A. I'M CURRENTLY EMPLOYED WITH THE SOUTH CAROLINA LAW
15 ENFORCEMENT DIVISION BETTER KNOWN AS S.L.E.D.

16 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

17 A. AT S.L.E.D.? I'VE BEEN AT S.L.E.D. OVER 17 YEARS.

18 Q. AND WHAT ARE YOUR DUTIES NOW?

19 A. AS OF MARCH THE 2ND OF THIS YEAR, I AM TRANSITIONING
20 BACK TO THE LATENT PRINT DEPARTMENT. I WAS A FIREARMS
21 EXAMINER ASSIGNED TO THE FIREARMS DEPARTMENT FOR OVER SIX
22 YEARS. FOR 14 YEARS I WAS A LATENT PRINT EXAMINER IN CRIME
23 SCENE INVESTIGATIVE RECONSTRUCTIONS. BECAUSE OF SOME CURRENT
24 REORGANIZATION AND CHANGES AT S.L.E.D., BECAUSE OF MY PRIOR
25 EXPERIENCE WITH LATENT PRINTS, I WAS ASKED BY THE LAB

1 DIRECTOR TO TRANSFER BACK TO THE LATENT PRINT DEPARTMENT TO
2 HELP WITH THE CASELOAD AND TO TRAIN THE NEW EXAMINERS.

3 Q. AND CAN YOU TELL THE JURY HOW LONG -- YOU SAID YOU WERE
4 A FIREARMS -- IN THE FIREARMS DEPARTMENT FOR SIX YEARS?

5 A. OVER SIX YEARS, YES, MA'AM.

6 Q. OKAY. AND TELL THEM A LITTLE BIT ABOUT YOUR EDUCATIONAL
7 BACKGROUND, TRAINING, AND DEALING WITH FIREARMS.

8 A. OKAY. I HAVE AN ASSOCIATE OF ARTS DEGREE IN CRIMINAL
9 JUSTICE FROM FLORENCE-DARLINGTON TECHNICAL COLLEGE IN
10 FLORENCE, SOUTH CAROLINA. I TRANSFERRED TO THE UNIVERSITY OF
11 SOUTH CAROLINA HERE IN COLUMBIA AND GOT MY DEGREE, A BACHELOR
12 OF SCIENCE IN CRIMINAL JUSTICE WITH A MINOR IN SOCIOLOGY. I
13 WORKED AT THE RICHLAND COUNTY SHERIFF'S OFFICE FOR SEVEN
14 YEARS, FOUR YEARS AS A LINE DEPUTY, THREE YEARS IN THEIR
15 FORENSIC LAB. I ALSO HAD 11 YEARS AS A LATENT PRINT EXAMINER
16 CRIME SCENE INVESTIGATOR WITH S.I.E.D.

17 I'M A MEMBER OF THE ASSOCIATION OF FIREARM AND TOOL MARK
18 EXAMINERS KNOWN AS A.F.T.E. I'M ALSO A MEMBER OF THE
19 INTERNATIONAL ASSOCIATION FOR IDENTIFICATION, I.A.I., AND
20 ALSO THE STATE CHAPTER OF THE I.A.I. WITH THE FIREARMS
21 DEPARTMENT, THERE IS AN IN-HOUSE THREE-YEAR TRAINING PERIOD,
22 AND DURING THOSE THREE YEARS A GREAT DEAL OF TIME IS SPENT IN
23 MICROSCOPIC EXAMINATION, ACTUALLY LOOKING AT THE FIRED
24 BULLETS, FIRED CARTRIDGE CASES, AND OTHER AMMUNITION
25 COMPONENTS UNDER THE MICROSCOPE.

1 ALSO, DURING THIS TIME YOU HAVE DIFFERENT LEVELS THAT
2 YOU'RE STUDYING ON VARIOUS ASPECTS OF FIREARMS, AMMUNITION
3 COMPONENTS, AND TOOLS. EACH COMPONENT OF TRAINING IS WRITTEN
4 EXAMINATION, ORAL EXAMINATION, AND PRACTICAL TESTING, AND AT
5 THE END OF THE THREE YEARS OF TRAINING THERE'S A CUMULATIVE
6 TEST THAT INCLUDES WRITTEN TESTS, ORAL TESTS, AND PRACTICAL
7 EXAMS. THERE HAVE BEEN A NUMBER OF SCHOOLS THAT I'VE BEEN
8 TO: ARMORER SCHOOLS FOR SMITH AND WESSON, FOR GLOCK AND
9 HI-POINT. I'VE ALSO ATTENDED OTHER TRAINING SESSIONS THAT
10 HAVE DEALT WITH THE AREAS OF HOW THE GUNS -- HOW THE BARRELS
11 ARE MADE, HOW TOOLS ARE MADE. I'VE BEEN TO DIFFERENT PLANTS
12 AND FACTORIES TO SEE HOW THIS IS DONE, AND I'VE ALSO ATTENDED
13 OTHER DIFFERENT SEMINARS AND TRAINING THROUGHOUT THESE YEARS.

14 Q. YOUR HONOR -- HOW MANY TIMES, I'M SORRY, HAVE YOU
15 TESTIFIED AS AN EXPERT IN THE FIELD OF FIREARMS EXAMINATION?

16 A. IN THE AREA OF FIREARMS IDENTIFICATION IN THE PAST YEAR
17 IN THE STATE COURTS OF SOUTH CAROLINA, I'VE TESTIFIED SIX
18 TIMES.

19 MS. SHIPLEY: YOUR HONOR, AT THIS TIME WE WOULD MOVE TO
20 QUALIFY AGENT BLACK AS AN EXPERT IN THE FIELD OF FIREARMS
21 ANALYSIS.

22 MR. LEDDY: NO OBJECTION, YOUR HONOR.

23 THE COURT: OKAY. SO QUALIFIED.

24 BY MS. SHIPLEY:

25 Q. I'M GOING TO BRING YOUR ATTENTION TO LAB NUMBER

1 L-07-7769. DID YOU RECEIVE SOME EVIDENCE IN THIS CASE TO
2 ANALYZE?

3 A. YES, MA'AM, I DID.

4 Q. OKAY. TELL THIS JURY A LITTLE BIT ABOUT THE ITEMS THAT
5 YOU SPECIFICALLY ANALYZED.

6 A. OKAY. IN THIS PARTICULAR CASE I RECEIVED FROM THE
7 COLUMBIA POLICE DEPARTMENT A HI-POINT PISTOL. I RECEIVED SIX
8 FIRED BULLETS, TWO FIRED BULLET JACKETS, AND 21 FIRED
9 CARTRIDGE CASES.

10 Q. OKAY. I'M GOING TO HAND YOU THE ITEMS OF EVIDENCE THAT
11 YOU ANALYZED IN THIS CASE AND ASK YOU IF YOU CAN IDENTIFY
12 THEM.

13 A. I'M SORRY. DO YOU HAVE A PAIR OF SCISSORS I CAN USE TO
14 OPEN THIS POUCH?

15 Q. SURE.

16 A. THANK YOU.

17 Q. YOU'RE WELCOME.

18 A. (WITNESS CONTINUES TO EXAMINE THE ITEMS.) I'M GOING TO
19 ASK YOU BEFORE I DO IT: MAY I CUT THE TIES TO MAKE SURE THE
20 PISTOL IS SAFE AND UNLOADED?

21 MS. SHIPLEY: SURE. YOUR HONOR, DO YOU MIND IF HE CUTS
22 THE TIE TO MAKE SURE THAT THE GUN IS UNLOADED?

23 THE WITNESS: SAFE AND UNLOADED.

24 THE COURT: OH, ABSOLUTELY.

25 THE WITNESS: THANK YOU, MA'AM.

1 BY MS. SHIPLEY:

2 Q. UNLOADED?

3 A. YES, MA'AM.

4 Q. OKAY.

5 A. YES, MA'AM. STATE'S---

6 Q. YOU HAVE HAD AN OPPORTUNITY?

7 A. YES, MA'AM.

8 Q. AND DID YOU OBSERVE EVERYTHING THAT YOU ANALYZED IN THIS
9 CASE?

10 A. YES, MA'AM.

11 Q. WHAT I'M GOING TO ASK YOU TO DO IS, SO THE JURORS CAN
12 UNDERSTAND WHICH SHELL CASING REFERS TO THIS DIAGRAM, I'M
13 GOING TO NEED YOU TO GO THROUGH, FIRST OF ALL, YOUR ITEM
14 NUMBER ONE. WHAT IS THAT?

15 A. OKAY. MY ITEM NUMBER ONE IS A HI-POINT MODEL C.
16 SEMIAUTOMATIC PISTOL. IT'S NINE MILLIMETER LUGER IN CALIBER.
17 IT HAS A SERIAL NUMBER OF 8-1-0-8-1-7, AND IT WAS RECEIVED
18 WITH AN UNLOADED MAGAZINE.

19 Q. OKAY.

20 A. WHICH IS EXHIBITED HERE IN STATE'S EXHIBIT 51.

21 Q. OKAY. NOW, AS FAR AS THE ACTUAL SHELL CASINGS AND
22 PROJECTILES THAT YOU ANALYZED, YOUR NUMBER FIVE - CAN YOU
23 PLEASE PULL THAT OUT OF THE EVIDENCE AND TELL ME WHAT, IF
24 ANYTHING, YOU SEE ON THE COLUMBIA POLICE DEPARTMENT...

25 A. AS FAR AS WHERE IT WAS LOCATED?

1 Q. YES, SIR. DO YOU SEE ON THE BAG -- JUST TELL ME ON THE
2 BACK -- DO YOU SEE ON THE BACK FOUR PROJECTILES, ?

3 A. OKAY.

4 Q. OKAY. IS THAT WHERE YOUR NUMBER FIVE CAME FROM?

5 A. YES, MA'AM.

6 Q. OKAY. SO THAT'S ONE PROJECTILE FROM THE ADDRESS?

7 A. YES, MA'AM.

8 Q. OKAY. AND WHAT IS YOUR ITEM NUMBER SIX? IS THAT ALSO
9 IN THAT SAME GROUPING OF BALLISTICS?

10 A. YES, MA'AM. ITEM SIX IS A FIRED BULLET JACKET.

11 Q. OKAY. IS THAT DIFFERENT FROM NUMBER -- OKAY. ONE FIRED
12 BULLET JACKET?

13 A. YES.

14 Q. AND IS IT FROM THE SAME LOCATION?

15 A. YES, MA'AM,

16 Q. OKAY. WHAT'S YOUR ITEM NUMBER SEVEN?

17 A. ITEM NUMBER SEVEN IS ANOTHER FIRED BULLET JACKET.

18 Q. OKAY.

19 A. ALSO FROM THE SAME LOCATION,

20 Q. OKAY. AND YOUR NUMBER EIGHT?

21 A. NUMBER EIGHT, WHICH ALSO CAME FROM THE SAME LOCATION, IS
22 ONE FIRED BULLET, AND ALL THIS IS LISTED UNDER STATE'S
23 EXHIBIT 48.

24 Q. OKAY. AND HOLD ON ONE SECOND. THAT'S

25 A. YES, MA'AM.

1 Q. OKAY. ALL RIGHT. THANK YOU, SIR. AND NOW LET'S GO TO
2 YOUR ITEM NUMBER NINE.

3 A. OKAY. ITEM NUMBER NINE WHICH IS A FIRED BULLET...

4 Q. AND DOES IT SAY WHERE IT WAS RECOVERED FROM?

5 A. YES, MA'AM. IT SAYS ON THE ENVELOPE: "FROM BODY BAG IN
6 KITCHEN."

7 Q. OKAY. THEN YOUR NUMBER 10?

8 A. NUMBER 10 IS A FIRED NINE MILLIMETER LUGER CARTRIDGE
9 CASE.

10 Q. OKAY. IS THAT A SHELL CASING?

11 A. YES, MA'AM.

12 Q. OKAY.

13 A. AND IT IS -- IT SAYS HERE, "FROM KITCHEN."

14 Q. OKAY. AND IN THE "FROM KITCHEN," CAN YOU PULL OUT THE
15 ENVELOPES IN THAT ENVELOPE, THE LITTLE CLEAR PLASTIC ONES,
16 AND TELL ME WHICH ONE NUMBER 10 -- WHAT'S IT SAY ON THAT BAG?
17 YOUR NUMBER 10, I NEED TO KNOW THE NUMBER ON THERE.

18 A. OKAY. IT HAS A NUMBER ONE.

19 Q. OKAY. SO THAT'S NUMBER ONE.

20 A. OKAY.

21 Q. IN THE KITCHEN. OKAY.

22 A. OKAY. IF I MAY, THE REMAINING ITEMS WHICH ARE GOING TO
23 BE ITEMS 11 THROUGH 18---

24 Q. OKAY.

25 A. ---ALL OF THESE ARE FIRED NINE MILLIMETER LUGER

1 CARTRIDGE CASES. THEY ARE ALL MARKED IN THE SAME ENVELOPE
2 THAT SAYS "FROM KITCHEN."

3 Q. OKAY. ALL FROM KITCHEN.

4 A. YES, MA'AM.

5 Q. ALL RIGHT. AND THEN?

6 A. AND DO YOU WANT TO KNOW THE NUMBER WITH THESE, TWO
7 THROUGH...

8 Q. SURE. THAT WILL BE GREAT.

9 A. OKAY. ITEM 11 IS A NUMBER TWO. ITEM 12 IS THREE. ITEM
10 13 IS FOUR. ITEM 14 IS FIVE. ITEM 15 IS SIX. ITEM 16 IS
11 SEVEN. ITEM 17 IS EIGHT, AND ITEM 18 IS NINE.

12 Q. OKAY. THANK YOU. THAT WAS...

13 A. AND ALL OF THESE ARE UNDER STATE'S EXHIBIT 46.

14 Q. ALL RIGHT. SO NOW WE'RE AT -- WHAT'S THE NEXT ITEM YOU
15 HAVE ON YOUR LIST?

16 A. THE NEXT ITEM I HAVE WOULD BE ITEM NUMBER 20.

17 Q. OKAY. WHAT IS THAT?

18 A. ITEM 20 IS ALSO A FIRED NINE MILLIMETER LUGER CARTRIDGE
19 CASE.

20 Q. THAT'S A SHELL CASING?

21 A. YES, MA'AM.

22 Q. OKAY. AND DO YOU SEE WHAT...

23 A. IT WAS IN A HEAT-SEALED POUCH.

24 Q. OKAY.

25 A. WITH A MAGAZINE.

1 Q. OKAY.

2 A. IT JUST---

3 Q. JUST TELL ME THE SOLICITOR'S STATE NUMBER ON IT.
4 STATE'S 44?

5 A. STATE'S EXHIBIT 45.

6 Q. DO YOU SEE AN OFFICER'S NAME ON THE BAG?

7 A. INVESTIGATOR REESE.

8 Q. OKAY. AND THEN THE PERSON THAT COLLECTED IT?

9 A. IT APPEARS TO BE INVESTIGATOR---

10 Q. ROSE?

11 A. ---ROSE.

12 Q. OKAY. OKAY.

13 A. ITEM --- I'M SORRY.

14 Q. GO AHEAD.

15 A. ITEM 21 IS ANOTHER FIRED NINE MILLIMETER LUGER CALIBER
16 CARTRIDGE CASE.

17 Q. AND SAME BAG?

18 A. SAME BAG.

19 Q. OKAY.

20 A. AND ALSO IN THE SAME BAG IS AN UNLOADED MAGAZINE.

21 Q. OKAY. ALL RIGHT. AND ITEM 22 IS THE UNLOADED MAGAZINE?

22 A. YES, MA'AM, WITH AN ADDITIONAL UNLOADED MAGAZINE THAT
23 DOES FIT IN THE SUBMITTED HI-POINT PISTOL.

24 Q. OKAY. NOW, ITEM 23, WHAT IS THAT?

25 A. ITEMS 23, 24, AND 25 ARE ALL FIRED BULLETS FOR A TOTAL

1 OF THREE FIRED BULLETS, AND THEY'RE LISTED FROM AUTOPSY.

2 Q. OKAY. AND IS THAT THE EXTENT OF THE ITEMS?

3 A. NO, MA'AM. THERE'S SOME MORE.

4 Q. OKAY.

5 A. ITEMS 26 THROUGH 35 ARE ALL FIRED NINE MILLIMETER LUGER
6 CARTRIDGE CASES THAT ARE UNDER STATE'S EXHIBIT 47, AND IT
7 SAID FROM OUTSIDE.

8 Q. OKAY. IS THAT THE EXTENT OF THE BALLISTICS?

9 A. YES, MA'AM.

10 Q. OKAY. TELL THE JURY: WHEN YOU BEGIN YOUR ANALYSIS OF
11 FIREARMS, WHAT IS THE FIRST THING THAT YOU DO?

12 A. ONCE I RECEIVE THE EVIDENCE, I ACTUALLY GO THROUGH A
13 PROCESS OF DOCUMENTING THE EVIDENCE. THE DOCUMENTATION IS
14 DONE THROUGH DIGITAL PHOTOGRAPHY. ALSO, THERE ARE WORKSHEETS
15 THAT I FILL OUT ON THE ITEMS. WITH THESE WORKSHEETS, I'M
16 PUTTING OUT ANY BIOGRAPHICAL INFORMATION OR INFORMATION THAT
17 DESCRIBES WHAT THE EVIDENCE IS. ONCE I'M COMPLETED WITH THAT
18 AND THROUGH THIS EXAMINATION PROCESS OF LISTING THE
19 BIOGRAPHICAL INFORMATION IN THE CASE OF LIKE FIRED BULLETS,
20 I'M ACTUALLY WEIGHING THE BULLETS OR THE BULLET JACKETS AND
21 MEASURING THEIR BULLET DIAMETER. IT'S THROUGH INFORMATION
22 LIKE THIS THAT I CAN DETERMINE THE CALIBER OF THE BULLETS.

23 IN THE CASE OF THE CARTRIDGE CASES, THERE'S INFORMATION
24 ON THE HEAD STAMP. IF YOU LOOK AT THE BASE OF A FIRED
25 CARTRIDGE CASE - THE FACE IS KNOWN AS THE HEAD - THERE'S

1 INFORMATION ON IT. IN THIS PARTICULAR CASE, THE HEAD STAMP
2 ON ALL THE FIRED NINE MILLIMETER CARTRIDGE CASES WERE LISTED
3 C.B.C. NINE MILLIMETER LUGER. THE C.B.C. IDENTIFIES THE
4 MANUFACTURER OF THE CARTRIDGE CASE, AND THE NINE MILLIMETER
5 LUGER GIVES THE CALIBER.

6 Q. OKAY. AND THEN WHAT, IF ANYTHING, DO YOU DO WITH THE
7 ACTUAL FIREARM? DO YOU DO ANY TESTING ON THE FIREARM ITSELF?

8 A. YES, MA'AM. I ALSO DOCUMENT IT. I ALSO DO FUNCTION
9 CHECKS ON THE PISTOL TO MAKE SURE IT'S FUNCTIONING PROPERLY,
10 THAT THE SAFETIES ARE WORKING, AND THAT IT'S WORKING THE WAY
11 IT WAS DESIGNED BY THE MANUFACTURER. IT WAS.

12 ALSO, I TEST-FIRE THE FIREARM. IN THIS CASE, SINCE I
13 HAD TWO MAGAZINES -- WHEN I ACTUALLY TEST-FIRED THE FIREARM,
14 I USED BOTH MAGAZINES. BOTH MAGAZINES WERE DESIGNED TO FIT
15 IN THIS PARTICULAR MODEL OF PISTOL, AND THEY DID OPERATE
16 PROPERLY IN THIS PISTOL. THE TEST-FIRES WERE DONE IN THE
17 BULLET RECOVERY ROOM AT S.L.E.D.

18 WE HAVE A WATER TANK THAT GOES THE LENGTH OF TWO FLOORS.
19 IN THE WATER TANK WE HAVE A VENTILATION SYSTEM AND
20 OSCILLATING WATER. THE LID IS CLAMPED DOWN. I ACTUALLY FIRE
21 THE PISTOL INTO THE TANK AT 90 DEGREES STRAIGHT IN. WITH
22 OSCILLATING WATER, THIS HELPS PREVENT DAMAGE TO THE FIRED
23 BULLETS. ONCE I FINISH MY TEST-FIRING, I RETRIEVE THOSE
24 BULLETS AND CARTRIDGE CASES FROM THE BULLET RECOVERY ROOM,
25 AND I ACTUALLY START -- AFTER I MARK THEM, AS I MARK THE

1 EVIDENCE WITH THE LAB NUMBER, THE ITEM NUMBER AND MY
2 INITIALS, I ACTUALLY DO MICROSCOPIC COMPARISON WITH THE TEST-
3 FIRES TO THE EVIDENCE.

4 Q. AND WERE YOU ABLE TO COMPARE THE TEST-FIRED BULLETS TO
5 THE EVIDENCE THAT WAS SUBMITTED FOR YOUR ANALYSIS?

6 A. YES, MA'AM. I WAS ABLE TO NOT ONLY COMPARE THE TEST-
7 FIRED BULLETS BUT ALSO THE TEST-FIRED CARTRIDGE CASES TO THE
8 CARTRIDGE CASES THAT WERE SUBMITTED ALSO.

9 Q. OKAY. AND WHEN YOU FIRE A BULLET FROM A GUN, DOES EVERY
10 GUN LEAVE THE SAME MARKINGS ON A BULLET OR HOW IS THE
11 MARKINGS THAT ARE LEFT ON THE SHELL CASING UNIQUE TO THAT
12 GUN?

13 A. OKAY. WHEN THE FIREARM IS MANUFACTURED, WHEN THE
14 BARRELS ARE MADE AND WHEN THE BREECH FACE IS MADE, THE
15 MANUFACTURER GOES THROUGH CERTAIN STEPS TO PRODUCE THE
16 RIFLING THAT IS IN THE BORE OF THE BARREL, THE INTERIOR OF
17 THE BARREL. RIFLING OR SPIRAL GROOVES INSIDE THE BARREL,
18 THESE GROOVES HELP TO PROVIDE STABILITY TO THE BULLET AS IT'S
19 FIRED THROUGH THE BARREL. IT ALSO IS SUPPOSED TO AID IN THE
20 ACCURACY.

21 IF YOU CAN THINK OF A FOOTBALL PLAYER THROWING A
22 FOOTBALL -- AND WHEN THE QUARTERBACK OF THE TEAM, WHEN HE
23 THROWS THE FOOTBALL, YOU NOTICE THAT FOOTBALL HAS A SPIRAL
24 MOTION TO IT. IT HELPS WITH THE STABILITY. THAT'S THE SAME
25 PURPOSE OF RIFLING. RIFLING IS EITHER CUT OR IMPRESSED INTO

1 THE BARREL. THE RAISED PORTION OF RIFLING ARE KNOWN AS
2 LANDS, AND THE DEPRESSED AREAS BETWEEN THE LANDS ARE KNOWN AS
3 GROOVES. WHEN THE RIFLING IS MADE, THE TOOLS THAT MAKE THE
4 RIFLING PUT MARKS ON THE RIFLING, AND EACH TIME THAT TOOL IS
5 USED, IT CHANGES. SO EACH OF THE MARKS THAT ARE WITH THE
6 RIFLING WITH THE LAND AND GROOVES ARE UNIQUE TO THAT
7 PARTICULAR PISTOL.

8 IN THE CASE IN PARTICULAR WITH THE HI-POINT, WHAT MAKES
9 THEIR BREECH SO UNIQUE: WHEN A BULLET IS FIRED FROM THE
10 CARTRIDGE, TWO THINGS ARE HAPPENING. AS THE GASES EXPAND IN
11 THE CARTRIDGE CASE, THE BULLET IS BEING FORCED DOWN THE
12 BARREL, BUT ALSO THAT CARTRIDGE CASE IS BEING FORCED BACK
13 INTO THE BREECH OF THE PISTOL. IN THE AREA KNOWN AS THE
14 BREECH FACE WHICH IS AROUND THE APERTURE OF THE FIRING PIN,
15 IT HAS MARKS, AND WHEN THE CASE HEAD THAT CONTAINS THE PRIMER
16 COMES BACK ON TO THE BREECH, IT PUSHES AGAINST THE BREECH,
17 FORCING THE SLIDE BACK.

18 MR. DEEB, WHO OWNS AND MAKES THE HI-POINT PISTOL, USES A
19 VERY HEAVY GRIT OF SANDPAPER TO CUT INTO THE BREECH FACE OF
20 THESE FIREARMS, AND WITH THAT, THE MARKS THAT ARE ON THE
21 BREECH ARE UNIQUE TO THAT PISTOL BECAUSE EACH TIME HE USES
22 THAT SANDING BELT, IT'S CHANGED FOR EACH PISTOL AS IT GOES
23 THROUGH. HE STARTS WITH A VERY HEAVY GRIT, AND BY THE TIME
24 HE GOES THROUGH MAYBE 10 OR 15 PISTOLS, HE'S CHANGING THE
25 BELT TO WHERE IT'S ACTUALLY A FINE GRIT. SO EACH ONE OF THE

1 PISTOLS HAVE A UNIQUE BREECH FACE AND BREECH FACE MARKS.

2 Q. SO YOU CAN THEN DETERMINE WHICH FIREARM FIRED THAT
3 BULLET OR SHELL CASING.

4 A. THAT IS CORRECT.

5 Q. SORT OF LIKE A FINGERPRINT LEFT BY THE GUN ON TO THE
6 SHELL CASING.

7 A. I PREFER NOT TO USE FINGERPRINTS. I PREFER TO USE
8 SOMETHING LIKE QUESTION DOCUMENTS, AND THE REASON WHY I SAY
9 THAT: QUESTION DOCUMENTS WHICH DEALS WITH SIGNATURES, YOU'LL
10 SIGN YOUR NAME THOUSANDS OF TIMES THROUGHOUT YOUR LIFE. EVEN
11 THOUGH IT MAY BE A LITTLE DIFFERENT EACH TIME YOU SIGN IT,
12 IT'S STILL UNIQUE TO YOU. IT'S YOUR SIGNATURE. IT'S THE
13 SAME WAY WITH A BULLET. IT MAY CHANGE A LITTLE BIT EACH TIME
14 IT'S FIRED, BUT THE MARKS WILL STILL BE PROPORTIONALLY THE
15 SAME.

16 Q. I UNDERSTAND. OKAY. NOW, GOING FROM TESTING THIS
17 FIREARM, FIRE-TESTING IT, DID YOU THEN COMPARE THE FIRED
18 BULLETS FROM -- THE KNOWN FIRED BULLETS TO THE REST OF THE
19 EVIDENCE IN THIS CASE?

20 A. YES, MA'AM. I USE A COMPARISON MICROSCOPE. THE
21 COMPARISON MICROSCOPE HAS AN OPTICAL BRIDGE. IT HAS TWO
22 OCULAR -- TWO EYE PIECES AND TWO STAGES, AND I CAN
23 SIMULTANEOUSLY LOOK AT THE EVIDENCE BULLET OR CARTRIDGE CASE
24 TO THE KNOWN TEST BULLET OR CARTRIDGE CASE. AS I'M LOOKING
25 AT THESE ITEMS, I CAN TURN THEM UNTIL I FIND A SPOT THAT I

1 FEEL LIKE THAT MATCHES. I CAN MARK IT WITH AN ORIENTATION
2 POINT AND THEN CONTINUE MY EXAMINATION PROCESS, AND THROUGH
3 THIS EXAMINATION PROCESS I MAKE A DETERMINATION WHETHER OR
4 NOT IT WAS FIRED BY THE SAME FIREARM BASED ON THE INDIVIDUAL
5 ACCIDENTAL CHARACTERISTICS THAT ARE PRESENT BOTH IN THE
6 EVIDENCE, THE UNKNOWN TO TEST THE KNOWN.

7 Q. OKAY. AND LET'S GO THROUGH THE EVIDENCE THEN AT THIS
8 TIME. WHAT WERE YOUR FINDINGS AS TO ITEM NUMBER FIVE, ONE OF
9 THE PROJECTILES COLLECTED FROM THE ADDRESS?

10 A. ITEM FIVE WAS FIRED BY THE HI-POINT PISTOL, STATE'S
11 EXHIBIT 51.

12 Q. OKAY. SO CAN I REFER TO IT AS A MATCH?

13 A. YES, MA'AM.

14 Q. WHAT ABOUT ITEM NUMBER SIX, ANOTHER FIRED BULLET JACKET
15 FROM ?

16 A. IT WAS ALSO FIRED BY THE SUBMITTED HI-POINT PISTOL.

17 Q. WHAT ABOUT ITEM NUMBER SEVEN, ANOTHER FIRED BULLET
18 JACKET FROM ?

19 A. IT WAS ALSO FIRED BY THE HI-POINT PISTOL.

20 Q. WHAT ABOUT ITEM NUMBER EIGHT, ANOTHER FIRED BULLET FROM
21

22 A. NO, MA'AM, IT WAS NOT FIRED. IT WAS NOT FIRED BY THE
23 HI-POINT PISTOL.

24 Q. OKAY. CAN YOU DATE A FIRED BULLET? CAN YOU TELL WHEN
25 IT WAS FIRED?

1 A. NO, MA'AM.

2 Q. SO YOU HAVE -- YOU WOULD NOT BE ABLE TO LOOK AT THAT
3 ITEM AND SAY ON FEBRUARY 15TH, 2007, THIS ITEM WAS FIRED ON
4 THAT DATE?

5 A. NO, MA'AM, I CANNOT. THERE'S NO WAY I CAN
6 SCIENTIFICALLY DATE ANY OF THIS.

7 Q. NOW, ITEM NUMBER NINE, FIRED BULLETS FROM BODY BAG.

8 A. IT WAS ALSO FIRED BY THE HI-POINT PISTOL.

9 Q. ITEM NUMBER 10, FIRED NINE MILLIMETER SHELL CASING FROM
10 KITCHEN, NUMBER ONE.

11 A. IT WAS FIRED BY THE NINE -- BY THE HI-POINT PISTOL.

12 Q. ITEM 11 THROUGH 18 WHICH IS ON STATE'S EXHIBIT -- OF THE
13 LAYOUT: TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, AND NINE?

14 A. THEY WERE ALL FIRED BY THE HI-POINT PISTOL.

15 Q. ITEM 20 AND 21, THE FIRED NINE MILLIMETER CASING,
16 COLLECTED BY INVESTIGATOR ROSE OF THE VEHICLE?

17 A. THEY WERE ALL FIRED BY THE HI-POINT PISTOL.

18 Q. AND FINALLY ITEMS NUMBER -- WELL, WE'LL SKIP THAT. 26
19 THROUGH 35, THE ONES THAT ARE ALL FIRED BULLETS FROM OUTSIDE,
20 WHICH IS STATE'S NUMBER 47?

21 A. THOSE ARE NOT BULLETS. THOSE ARE CARTRIDGES CASES.

22 Q. EXCUSE ME. CARTRIDGE CASINGS.

23 A. THEY ARE ALSO ALL FIRED BY THE HI-POINT NINE MILLIMETER
24 PISTOL SUBMITTED.

25 Q. AND THEY ALL MATCH?

1 A. YES, MA'AM.

2 Q. AND THAT'S A TOTAL OF TEN CASINGS? IS THAT CORRECT?

3 A. A TOTAL OF 21 FIRED CASINGS WERE SUBMITTED.

4 Q. OH, 21.

5 A. A TOTAL OF 21 WERE SUBMITTED.

6 Q. OKAY.

7 A. ALL 21 WERE FIRED BY THE SUBMITTED NINE MILLIMETER
8 HI-POINT PISTOL.

9 Q. OKAY. COLLECTED FROM BOTH INSIDE -- WELL, YOU WEREN'T
10 THERE. OKAY. AND THEN STATE'S 23, 24, 25, THE BULLETS THAT
11 WERE RECOVERED FROM MR. SMITH'S BODY AT HIS AUTOPSY, TELL THE
12 JURY WHAT YOUR RESULTS WERE.

13 A. THEY WERE ALL FIRED BY THE SUBMITTED HI-POINT NINE
14 MILLIMETER PISTOL.

15 Q. CAN YOU DESCRIBE THE MECHANISM OF A HI-POINT NINE
16 MILLIMETER? WHAT DO YOU HAVE TO DO IN ORDER TO LOAD IT?

17 A. IS IT OKAY IF I PULL IT OUT OF THE BOX AND DEMONSTRATE?

18 Q. YEAH, WITHOUT LOADING IT.

19 A. YES, MA'AM. IT WON'T BE LOADED. JUST SO YOU SEE, IT IS
20 UNLOADED AND THERE'S NO MAGAZINE IN THE WEAPON. OKAY? FOR
21 THE HI-POINT PISTOL TO OPERATE, YOU WOULD TAKE A LOADED
22 MAGAZINE, PLACE IT INTO AND LOCK IT INTO THE MAGAZINE WELL OR
23 THE GRIP OF THE PISTOL. YOU WOULD THEN PULL THE SLIDE ALL
24 THE WAY BACK, RELEASING IT. WHEN THE SLIDE IS RELEASED, A
25 CARTRIDGE, WHICH IS A LIVE ROUND OF AMMUNITION HERE IN THE

1 MAGAZINE, WOULD BE STRIPPED FROM THE TOP OF THE MAGAZINE AND
2 GO INTO THE CHAMBER OF THE BARREL THAT I'M POINTING TO OR
3 ATTEMPTING TO POINT TO.

4 YOU HAVE A LEVER ON THE LEFT-HAND SIDE OF THE FRAME OF
5 THE PISTOL. YOU HAVE A RED DOT THAT'S ON THE SLIDE. IF THE
6 LEVER IS PUSHED UP COVERING THE RED DOT, THE WEAPON WILL NOT
7 FIRE BECAUSE THE SAFETY HAS BEEN ACTIVATED. IF THE LEVER IS
8 PUSHED DOWN AS YOU SEE IT WHERE THE RED DOT IS EXPOSED, THE
9 SAFETY IS OFF AND IT'S READY TO FIRE, AND ALL YOU HAVE TO
10 SIMPLY DO IS PULL THE TRIGGER AND YOU SHOULD HEAR A CLICKING
11 SOUND.

12 WHEN THE TRIGGER RELEASES THE SEER, THE FIRING PIN
13 STRIKES THE PRIMER ON THE BASE OF THE CARTRIDGE. THE PRIMER
14 IGNITES THE GUN POWDER IN THE CARTRIDGE CASE. THE BULLET IS
15 FORCED THROUGH THE BARREL OUT OF THE MUZZLE TO THE TARGET.
16 THE OPPOSITE ACTION OCCURS WHERE THE GASES ARE PUSHING THE
17 FIRED CARTRIDGE CASE NOW BACK AGAINST THE BREECH, FORCING THE
18 SLIDE BACK AND THEN THE MAIN SPRING WILL CATCH IT, FORCING
19 THE SLIDE FORWARD AGAIN, AND AS THE SLIDE GOES FORWARD, IT
20 WILL STRIP ANOTHER LIVE ROUND OFF THE MAGAZINE AND PLACE IT
21 IN A BARREL. AND TO FIRE, YOU HAVE TO PULL THE TRIGGER
22 AGAIN. YOU HAVE TO PULL THE TRIGGER EACH TIME FOR THE WEAPON
23 TO FIRE.

24 IN THIS PARTICULAR CASE, THE FACT THAT THERE WERE 21
25 FIRED CARTRIDGE CASES -- THIS PARTICULAR MAGAZINE WILL HOLD

1 TEN LIVE ROUNDS OR TEN CARTRIDGES. YOU CAN PLACE THE LOADED
2 MAGAZINE IN THE PISTOL, BRING THE SLIDE BACK. THAT WILL
3 PLACE ONE ROUND IN THE CHAMBER. YOU CAN REMOVE THE MAGAZINE,
4 TOP IT OFF WITH ANOTHER CARTRIDGE SO IT WILL ACTUALLY GIVE
5 YOU A TOTAL OF 11 LIVE ROUNDS READY TO FIRE.

6 Q. SO IN ORDER TO GET -- YOU SAID EACH MAGAZINE AND YOU
7 HAVE TWO MAGAZINES; CORRECT?

8 A. YES, MA'AM.

9 Q. ONE HERE AND ONE HERE.

10 A. YES, MA'AM.

11 Q. EACH HOLD TEN BULLETS?

12 A. EACH HOLD TEN CARTRIDGES, YES, MA'AM.

13 Q. OKAY. CARTRIDGES? SO YOU WOULD EXPECT A TOTAL OF 20
14 CARTRIDGES. IS THAT RIGHT?

15 A. PLUS ONE IN THE CHAMBER WOULD GIVE YOU 21.

16 Q. AND IN ORDER TO GET THAT EXTRA ONE, WHAT DO YOU HAVE TO
17 DO AGAIN?

18 A. WELL, TO ACTUALLY GET THE EXTRA -- WELL, TO ANSWER YOUR
19 FIRST QUESTION, TO GET THE 11TH YOU PLACE THE LOADED MAGAZINE
20 IN THE PISTOL. YOU RACK THE SLIDE BACK, LET IT GO. YOU
21 WOULD THEN PLACE THE SAFETY ON. THAT WOULD HAVE LIVE ROUND
22 IN THE CHAMBER. YOU WOULD THEN TAKE OUT YOUR LOADED
23 MAGAZINE, TOP IT OFF WITH ANOTHER CARTRIDGE, AND THAT WOULD
24 GIVE YOU A TOTAL OF TEN AGAIN IN THE MAGAZINE, WITHIN THE
25 CHAMBER GIVES YOU 11. WITH AN ADDITIONAL MAGAZINE OF 10

1 ROUNDS, THAT GIVES YOU A TOTAL OF 21 ROUNDS.

2 Q. AND, AGAIN, TELL THIS JURY HOW MANY TOTAL CASINGS DID
3 YOU MATCH TO THAT GUN AT THIS TIME FROM THIS EVIDENCE?

4 A. THERE WERE 21 FIRED CARTRIDGE CASES SUBMITTED TO ME.
5 ALL 21 WERE FIRED BY THE STATE'S EXHIBIT 51 HI-POINT PISTOL.

6 MS. SHIPLEY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

7 CROSS-EXAMINATION

8 BY MR. LEDDY:

9 Q. MAY I SEE THE EVIDENCE ENVELOPE FOR NUMBER EIGHT,
10 PLEASE?

11 A. YES, SIR. PLEASE BEAR WITH ME.

12 Q. YES, SIR.

13 A. LET ME FIND IT HERE FOR YOU. SIR, FOR YOUR INFORMATION,
14 MY ITEM EIGHT IS GOING TO BE OUT OF STATE'S EXHIBIT 48 FOR
15 YOUR INFORMATION.

16 Q. OKAY. OKAY.

17 A. AND ON HERE IT HAS A NUMBER 19, BUT HERE IS YOUR -- HERE
18 IS ITEM EIGHT.

19 Q. THANK YOU.

20 A. YOU'RE MORE THAN WELCOME.

21 Q. OKAY. NOW, ON DIRECT EXAMINATION YOU TESTIFIED THAT
22 THIS CAME FROM ? IS THAT CORRECT?

23 A. YES, SIR. ACCORDING TO THE BROWN PAPER BAG, ON THE BACK
24 IT'S WRITTEN ON HERE ; YES, SIR.

25 Q. OKAY. NOW, IN YOUR REPORT YOU WROTE -- INDICATED ON

1 EVIDENCE CONTAINERS , DIDN'T YOU? IS THIS YOUR REPORT,
2 SIR?

3 A. LET'S SEE.

4 Q. YOUR HANDWRITTEN VERSION.

5 A. LET ME LOOK AT IT. EXCUSE ME. YES, SIR, I DID. LET
6 ME...

7 Q. OKAY.

8 A. BUT NOW ALSO IF YOU LOOK AT THIS ON THE BAG -- IF YOU
9 LOOK AT THE HANDWRITING ON THE BAG - I'M GOING BY THE BAG AND
10 ON THE ENVELOPE - IT APPEARS ON THIS ENVELOPE TO SAY

11 . THEN ON THIS IT SAYS EITHER OR
12 YOU'RE MORE THAN WELCOME TO LOOK AT IT.

13 Q. OKAY. LET ME ASK YOU: WHICH ONE OF THEM DID YOU GET IT
14 IN? BOTH?

15 A. THEY WERE IN BOTH.

16 Q. WAS THIS INSIDE THIS?

17 A. YES, SIR.

18 Q. ALL RIGHT.

19 A. DID YOU SEE WHAT I'M TALKING ABOUT THERE?

20 Q. YES, SIR.

21 A. AND ALSO -- I'M SORRY.

22 Q. YES, SIR, RIGHT HERE.

23 A. YES, SIR.

24 Q. ALL RIGHT. SO IN YOUR REPORT THEN THIS IS WHAT YOU'RE
25 REFERRING TO.

1 A. WELL, ON MY -- IN MY WORKSHEET, YES, I DO HAVE
2 YES, SIR, ON MY WORKSHEET I DO.

3 Q. ALL RIGHT. SO TO THE BEST OF YOUR KNOWLEDGE, THEN THIS
4 BULLET COULD HAVE COME FROM OR ISN'T THAT RIGHT?

5 A. BASED ON WHAT'S WRITTEN ON THERE, YES, SIR, BUT YOU NEED
6 TO TALK TO THE ONE WHO ACTUALLY COLLECTED IT. I WASN'T AT
7 THE SCENE.

8 Q. YES, SIR. WELL, UNFORTUNATELY HE'S IN AFGHANISTAN. AND
9 THAT BULLET DEFINITELY DOES NOT MATCH THAT HI-POINT, DOES IT?

10 A. NO, SIR, IT DOES NOT.

11 MR. LEDDY: ALL RIGHT. I DON'T HAVE ANYTHING ELSE, YOUR
12 HONOR.

13 MS. SHIPLEY: JUST BRIEFLY.

14 REDIRECT EXAMINATION

15 BY MS. SHIPLEY:

16 Q. I'M GOING TO SHOW YOU THE OFFICIAL S.L.E.D. INVENTORY
17 LIST OF ITEMS RECEIVED.

18 A. YES, MA'AM.

19 Q. OKAY. ON -- TELL THIS JURY THE NUMBER OF FIRED BULLETS
20 THAT YOU -- THE TOTAL NUMBER OF FIRED BULLETS THAT WERE
21 SUBMITTED TO EVIDENCE IN S.L.E.D.

22 A. OKAY. THE TOTAL NUMBER OF FIRED BULLETS WERE FIVE FIRED
23 BULLETS.

24 Q. OKAY. AND ON THE NEXT PAGE -- THAT'S FIVE ON THE FIRST
25 PAGE. ON THE NEXT PAGE HOW MANY?

1 A. NO. WHAT YOU'RE -- THERE'S A DIFFERENCE HERE.

2 Q. OKAY.

3 A. IF YOU'LL LET ME, PLEASE.

4 Q. YES, SIR.

5 A. THERE ARE A TOTAL OF FIVE FIRED BULLETS AND TWO FIRED
6 BULLET JACKETS. THERE'S A DISTINCTION.

7 Q. I SEE.

8 A. AND THAT'S THE REASON WHY I DID THAT. SO YOU HAVE FIVE
9 FIRED BULLETS, TWO FIRED BULLET JACKETS, AND 21 FIRED
10 CARTRIDGE CASES. THAT'S WHAT WAS SUBMITTED TO ME.

11 Q. OKAY. AND ON THAT LIST RIGHT THERE THAT I JUST
12 SUBMITTED TO YOU, DOES IT INDICATE ON THE FIRST PAGE HOW MANY
13 NUMBERS -- HOW MANY NUMBERS OF FIRED BULLETS WERE ON THE
14 FIRST PAGE THAT WERE SUBMITTED BY SERGEANT KERMIT SCOTT?

15 A. OKAY. BY WHAT'S LISTED ON THE EVIDENCE INTAKE FORM---

16 Q. YES, SIR.

17 A. ---YOU HAVE A TOTAL OF ONE, TWO, THREE, FOUR, FIVE.

18 Q. OKAY. AND PLEASE REFER TO PAGE 2 AND TELL THE JURY HOW
19 MANY PROJECTILES ARE THERE.

20 A. ON THE BACK PAGE YOU HAVE A TOTAL OF THREE.

21 Q. FROM THE AUTOPSY?

22 A. YES, MA'AM.

23 Q. OKAY. AND I'M GOING TO BRING YOUR ATTENTION TO YOUR
24 ITEM NUMBER EIGHT. WHERE IS THAT AGAIN?

25 A. ITEM EIGHT IS RIGHT HERE, MA'AM.

1 Q. OKAY. AND CAN YOU TELL THE JURY WHAT BLACK INK MARKER
2 IS ON THAT ITEM? WHAT NUMBER IS SHOWING ON THE -- REMEMBER
3 HOW YOU NUMBERED THE OTHER ONES?

4 A. YES, MA'AM.

5 Q. WHAT NUMBER?

6 A. APPEARS TO BE A NUMBER 19.

7 Q. 19? OKAY. HOLD ON ONE SECOND. I'M GOING TO SHOW
8 YOU -- I NEED TO GET IT MARKED FIRST.

9 (STATE'S EXHIBIT 55-A WAS MARKED FOR IDENTIFICATION
10 ONLY.)

11 BY MS. SHIPLEY:

12 Q. ALL THIS WAS CONTAINED IN THIS BAG; CORRECT?

13 A. YES, MA'AM. ALL OF THESE WERE ALL CONTAINED IN THIS
14 ENVELOPE AND ALSO IN THIS ENVELOPE INSIDE OF THIS BAG.

15 Q. OKAY. DO YOU SEE IN STATE'S 55-A AN ITEM LABELED OR
16 WITH A PLACARD NUMBER 19?

17 A. YES, MA'AM, I DO.

18 Q. OKAY. AND DOES IT -- IS IT INSIDE OR OUTSIDE?

19 A. IT'S OUTSIDE A RESIDENCE.

20 MS. SHIPLEY: OKAY. YOUR HONOR, THIS WAS AMONG 55 WHICH
21 GIANNA STINNEY TESTIFIED TO EARLIER. WE WOULD REQUEST TO
22 SHOW THIS TO THE JURY.

23 THE COURT: OKAY. NO PROBLEM.

24 BY MS. SHIPLEY:

25 Q. AND YOU'RE NOT FAMILIAR WITH WHICH HOUSE ON MYERS STREET

1 IS OR ARE YOU?

2 A. NO, MA'AM. I WASN'T THERE. I WASN'T AT THE SCENE.

3 Q. OKAY. AND ON THIS BAG WHERE ALL OF THIS CAME FROM, WHAT
4 NUMBER APPEARS TO BE PROMINENT ON THERE?

5 A. THE NUMBER THAT APPEARS TO BE PROMINENT IS .

6 Q. OKAY. AND ON ALL THESE BAGS OF EVIDENCE THAT YOU
7 JUST TESTIFIED TO -- NEVER MIND. I THINK I GOT IT. THANK
8 YOU. I HAVE NO FURTHER QUESTIONS.

9 MR. LEDDY: I DON'T HAVE ANYTHING FURTHER, YOUR HONOR.

10 THE COURT: OKAY. YOU CAN STEP DOWN AND BE EXCUSED.

11 THE WITNESS: THANK YOU, MA'AM.

12 MS. SHIPLEY: YOUR HONOR, OUR DOCTORS ARE NOT AVAILABLE
13 'TIL TOMORROW MORNING.

14 THE COURT: THAT'S FINE. IN THE INTERIM, LADIES AND
15 GENTLEMEN OF THE JURY, I'M GOING TO EXCUSE YOU FOR THE
16 EVENING. SO I'LL ASK YOU TO REPORT BACK TO YOUR JURY ROOM AT
17 9:30. I REMIND YOU NOT TO DISCUSS THE CASE. YOU WILL LEAVE
18 ALL OF YOUR NOTES HERE, AND THE BAILIFF WILL TAKE CARE OF
19 THAT.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
21 DAY AT 4:40 P.M.)

22 THE COURT: ARE THERE ANY MATTERS THAT THE PARTIES WOULD
23 LIKE THE COURT TO TAKE UP THIS AFTERNOON?

24 MS. SHIPLEY: JUST WE NEED TO GO THROUGH THAT AUDIO
25 THING.

1 THE COURT: OKAY.

2 MS. SHIPLEY: TRANSCRIPT.

3 THE COURT: THAT'S FINE. THEN I'LL BE HERE, YOU KNOW,
4 EARLY IN THE MORNING AS ALWAYS BEFORE TRIAL, AND WE CAN JUST
5 DISCUSS THAT IN THE MORNING.

6 MS. SHIPLEY: I CAN'T. I HAVE TO GET IT --- THE
7 PRODUCTION PEOPLE. I'M JUST GOING TO NOT PUT IN THE
8 TRANSCRIPT JUST TO SAVE TIME.

9 THE COURT: OKAY.

10 MS. SHIPLEY: BUT WE DO NEED TO REDACT THE AUDIO, THE
11 PLACE THAT I AGREED NEEDS TO BE TAKEN OUT: PAGE 2 OF THE
12 TRANSCRIPT AND PAGE 17. ON PAGE 2 HE TALKS ABOUT HOW HE'S
13 BEEN IN AND OUT JAIL HIS WHOLE LIFE. ON PAGE 17 HE TALKS
14 ABOUT HOW HE PURCHASED DRUGS FROM THAT HOUSE NUMEROUS TIMES.

15 THE COURT: OKAY. I BELIEVE THAT WAS AGREED UPON, BUT
16 DID THE DEFENSE FIND ANYTHING ELSE?

17 MR. LEDDY: WE DON'T WANT TO TAKE OUT THE PART ON PAGE
18 17.

19 MS. SHIPLEY: ALL RIGHT. THEN WE'LL LEAVE IT IN. DO
20 YOU WANT ME TO LEAVE IN THE PART ON PAGE 2?

21 THE COURT: THAT ONE IS STILL GOING BACK AND FORTH TO
22 JAIL.

23 MR. LEDDY: NO.

24 THE COURT: YOU SAID YES OR NO?

25 MR. LEDDY: THE ONE LINE---

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1 MS. SHIPLEY: THAT'S FINE. I DON'T WANT TO PREJUDICE
2 YOUR CLIENT.

3 MR. LEDDY: THAT'S -- I DON'T HAVE ANYTHING ELSE TO ADD
4 TO THAT.

5 THE COURT: BUT DID YOU AGREE OR NOT AGREE ON 2 COMING
6 OUT, PAGE 2?

7 MR. LEDDY: I WOULD RATHER NOT HAVE THE STUFF LIKE 17
8 TAKEN OUT.

9 THE COURT: OKAY. THAT WAS 17, BUT I'M ASKING ABOUT
10 PAGE 2.

11 MR. LEDDY: PAGE 2, I WOULD REQUEST THAT THAT BE
12 REDACTED.

13 THE COURT: OKAY.

14 MS. SHIPLEY: OKAY.

15 THE COURT: ALL RIGHT.

16 MS. SHIPLEY: I'LL GO AHEAD AND TAKE CARE OF THAT.

17 THE COURT: SO EVERYTHING WILL REMAIN IN EXCEPT PAGE 2,
18 THAT COMMENT ABOUT GOING BACK AND FORTH TO JAIL.

19 MS. SHIPLEY: YES, MA'AM.

20 THE COURT: OKAY.

21 MS. SHIPLEY: JUST SO WE'RE ON THE SAME PAGE FOR THE
22 RECORD, THE PORTION IS THE DEFENDANT IS ANSWERING A QUESTION:
23 "BECAUSE I DON'T -- YOU KNOW, I DONE GREW UP A LOT. I HAD TO
24 LEARN THAT COME FROM BEING HARD-HEADED WHEN I WAS YOUNGER
25 GOING BACK AND FORTH TO JAIL, YOU KNOW, AND THAT IS SOMETHING

1 THAT I AIN'T LET GO OF. YOU KNOW WHAT I'M SAYING?" SO THAT
2 IS THE GOING BACK TO -- BACK AND FORTH TO JAIL THAT WE'LL
3 REDACT.

4 THE COURT: OKAY. AND THEN THE DEFENSE AGAIN HAS NO
5 OTHER REDACTIONS REQUESTED OF THE COURT. IS THAT CORRECT?

6 MR. LEDDY: THAT'S CORRECT, MA'AM.

7 THE COURT: OKAY. ALL RIGHT. WELL, THAT WILL MAKE IT
8 EASY. THANK YOU ALL.

9 MS. SHIPLEY: YOUR HONOR, WE'RE GOING TO REST BY LUNCH
10 TOMORROW, FOR SCHEDULING PURPOSES.

11 THE COURT: OKAY.

12 MS. SHIPLEY: WE'LL CLOSE IN THE AFTERNOON UNLESS THE
13 DEFENSE PUTS SOMETHING UP.

14 THE COURT: OKAY.

15 MR. LEDDY: PLAN ON CLOSING IN THE AFTERNOON.

16 THE COURT: OKAY. THAT WILL BE FINE, AND WE'LL BE
17 WORKING ON SOME PROPOSED CHARGES, BUT TO THE EXTENT THAT YOU
18 ALL ARE AWARE OF ANY THAT YOU WANT TO SUBMIT TO THE COURT, IF
19 YOU CAN, AS CLOSE TO THE MORNING, GIVE THOSE TO US AND WE CAN
20 SEE IF WE CAN INCORPORATE THEM IN OR MAYBE WE ALREADY WILL
21 HAVE THEM, BUT THAT WILL SAVE SOME TIME AS WELL.

22 MS. SHIPLEY: YEAH. I DEFINITELY WANT TRANSFERRED
23 INTENT CHARGED, VOLUNTARY INTOXICATION CHARGED.

24 MR. LEDDY: WELL...

25 MS. SHIPLEY: THAT'S ALL I CAN THINK OF.

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1 MR. LEDDY: I WANT VOLUNTARY MANSLAUGHTER CHARGED WHICH
2 I'M SURE WE'LL HAVE A FIGHT ABOUT.

3 MS. SHIPLEY: YEAH, WE'LL HAVE TO DISCUSS THAT.

4 THE COURT: I ANTICIPATED -- I ANTICIPATED THAT ALREADY.
5 OKAY.

6 MS. SHIPLEY: I WON'T CONSENT TO THAT, JUDGE.

7 THE COURT: RIGHT. I KNEW THAT, TOO. ANYTHING ELSE?

8 MR. LEDDY: (SHOOK HEAD FROM SIDE TO SIDE.)

9 THE COURT: AND I'M NOT EXPECTING THAT TO BE FIRM, BUT
10 JUST LET US KNOW AS CLOSE AS YOU CAN IN THE MORNING SO THAT
11 WAY WE CAN HAVE MOST OF THESE PREPARED AND DONE AND HAVE A
12 SMOOTH TRANSITION INTO CLOSING, IF WE GET THERE.

13 MR. LEDDY: I'LL HAVE IT IN THE MORNING.

14 THE COURT: OKAY. THAT'S FINE. YOU ALL HAVE A GOOD
15 EVENING.

16 MS. SHIPLEY: THANK YOU VERY MUCH, YOUR HONOR.

17 THE COURT: COURT'S IN RECESS.

18 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 4:44 P.M.
19 AND RESUMED THE FOLLOWING DAY, MARCH 5, 2009, AS FOLLOWS.
20 STATE'S EXHIBITS 73 THROUGH 84 WERE MARKED FOR IDENTIFICATION
21 ONLY.)

22 THE COURT: GOOD MORNING, EVERYONE.

23 MS. SHIPLEY: GOOD MORNING, YOUR HONOR. THEY'VE GONE TO
24 GET MR. ROBINSON.

25 THE COURT: AND THEN OTHER THAN GETTING MR. ROBINSON, IS

1 THERE ANYTHING THAT THE COURT NEEDS TO TAKE UP TODAY BEFORE
2 WE PROCEED?

3 MS. DAVIS: I KNOW MR. LEDDY HAD THE PROPOSED JURY
4 CHARGES.

5 THE COURT: OKAY. ALL RIGHT.

6 MS. SHIPLEY: YOUR HONOR, I THINK ONCE YOU HEAR THE
7 DEFENDANT'S CONFESSION IT WILL GIVE US A BETTER IDEA OF
8 WHETHER OR NOT VOLUNTARY MANSLAUGHTER---

9 THE COURT: ABSOLUTELY.

10 MS. SHIPLEY: ---SHOULD BE CHARGED.

11 THE COURT: BECAUSE AS I THOUGHT MORE ABOUT THAT, EVEN
12 IF THE DEFENDANT DOESN'T TESTIFY, BECAUSE YOU ALL ARE PUTTING
13 IN HIS STATEMENT, THEN THAT'S NOW EVIDENCE ON THE RECORD, AND
14 IF THERE IS ANY EVIDENCE OF IT, THEN I HAVE TO DO THE LESSER
15 INCLUDED, BUT WE HAVE TO SEE IF THERE'S ANY EVIDENCE OF THAT.

16 MS. DAVIS: YES, MA'AM.

17 MS. SHIPLEY: YES, MA'AM.

18 THE COURT: OKAY.

19 MS. DAVIS: I'M GOING TO GO CHECK ON...

20 THE COURT: MR. LEDDY? AND THEN BE HAPPY---

21 OFFICER: HE'S ON HIS WAY UP.

22 THE COURT: OKAY. GREAT. THANK YOU. WE'LL HAVE A
23 CHANGE OF COURT REPORTERS. WE'RE TRYING TO GET THE OTHER ONE
24 TO COME AT AROUND 12.

25 MS. SHIPLEY: YES, MA'AM.

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1 THE COURT: BUT WE'LL PUSH ON 'TIL AT LEAST 1, YOU KNOW.

2 MS. SHIPLEY: YES, MA'AM. I THINK WE'LL BE DONE BY THEN
3 AT THE RATE WE'RE GOING.

4 THE COURT: OKAY. GOOD.

5 (PAUSE IN PROCEEDINGS.)

6 MR. LEDDY: GOOD MORNING, YOUR HONOR. I'M SORRY I'M
7 LATE. OUR PRINTER WAS HAVING TROUBLES, SO I APOLOGIZE.

8 THE COURT: OKAY. THANK YOU. MS. DAVIS INDICATED THAT
9 YOU MIGHT HAVE SOME PROPOSED CHARGES THAT YOU WOULD LIKE THE
10 COURT TO CONSIDER?

11 MR. LEDDY: YES, MA'AM.

12 THE COURT: OKAY. BE HAPPY TO SEE THOSE AND, OF COURSE,
13 PROVIDE A COPY TO THE STATE.

14 MR. LEDDY: I SUPPOSE I SHOULD FILE THE ORIGINAL WITH
15 THE CLERK FOR A COURT'S EXHIBIT?

16 THE COURT: THAT'S CORRECT.

17 MR. LEDDY: DO I GIVE THIS TO YOU? I BASICALLY DIDN'T
18 DO ANYTHING THAT I KNEW YOU WERE GOING TO GIVE ANYWAY.

19 THE COURT: SURE.

20 MR. LEDDY: LIKE REASONABLE DOUBT AND THINGS LIKE THAT.

21 THE COURT: OKAY. ALL RIGHT. SO WE'LL CONSIDER THESE,
22 IF IT'S HELPFUL. AND THEN AT THE APPROPRIATE TIME, THE
23 PROPOSED ONES THAT THE COURT WOULD DO, WE WOULD GIVE YOU ALL
24 THAT AS A COURT'S EXHIBIT AS WELL SO THAT IT'S CLEAR AS TO
25 WHAT WE'RE TALKING ABOUT ONCE WE GET TO THE CHARGE

1 CONFERENCE.

2 MR. LEDDY: YES, YOUR HONOR.

3 THE COURT: OKAY.

4 MR. LEDDY: AND, OF COURSE, I THINK WE'LL HAVE TO HAVE
5 AN ARGUMENT ABOUT IT.

6 THE COURT: OH, ABSOLUTELY.

7 MR. LEDDY: WE CAN DO THAT WHENEVER.

8 THE COURT: BEFORE YOU CAME IN, MS. SHIPLEY DID INDICATE
9 THAT REALLY THE AUDIOTAPE, BEING THAT IT'S A STATEMENT OF THE
10 DEFENDANT AND IT IS EVIDENCE, THAT'S GOING TO BE A LOT OF THE
11 CONSIDERATION I BELIEVE IN TERMS OF WHETHER OR NOT YOU CAN
12 GET YOUR VOLUNTARY MANSLAUGHTER CHARGE IN ANYWAY BECAUSE BY
13 THEM PUTTING IN THAT STATEMENT, IT NOW BECOMES EVIDENCE, AND
14 THE LEGAL AUTHORITY SAYS FOR A LESSER INCLUDED OFFENSE, IF
15 THERE'S ANY EVIDENCE... IT DOESN'T MATTER CREDIBLE OR NOT.
16 THAT'S THE JURY'S PROVINCE. THEN I HAVE TO ALLOW THE CHARGE
17 IN. SO WE'RE LOOKING FOR ANY EVIDENCE.

18 MR. LEDDY: YES, YOUR HONOR.

19 THE COURT: OKAY.

20 MS. SHIPLEY: THANK YOU, YOUR HONOR. YOUR HONOR, WHILE
21 WE'RE WAITING ON MR. ROBINSON, I PLAN ON CALLING FIRST DR.
22 MORRISON, THEN DR. KESSLER, AND THERE'S SOME EXHIBITS THAT I
23 NEED TO INTRODUCE THROUGH DR. KESSLER. SOME OF THEM ARE
24 AUTOPSY PHOTOGRAPHS. IF WE COULD JUST GO AHEAD AND TAKE
25 THOSE UP RIGHT NOW SO WE SAVE TIME.

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1 THE COURT: ABSOLUTELY. THAT WOULD BE GREAT.

2 MR. LEDDY: LET ME CHECK ON MY CLIENT.

3 (PAUSE IN PROCEEDINGS.)

4 MS. SHIPLEY: YOUR HONOR, THERE WERE THREE EXHIBITS THAT
5 I THOUGHT I HAD INTRODUCED INTO EVIDENCE THAT I RECALL THAT
6 THE DEFENSE DID NOT OBJECT TO. ONE WAS STATE'S NUMBER 2
7 WHICH IS THE AFFIDAVIT OF LEVERN SMITH.

8 MR. LEDDY: THAT'S RIGHT.

9 MS. SHIPLEY: AND THEN STATE'S 60 AND 61, THE VICTIM'S
10 WALLET AND THE MONEY IN HIS WALLET. WE HAD INVESTIGATOR
11 WILLIAMS TESTIFY ABOUT THE CONTENTS OF THESE PHOTOS, AND
12 APPARENTLY THEY WERE NOT MOVED INTO EVIDENCE. SO I WOULD ASK
13 THAT WE BE ALLOWED TO DO SO AT THIS TIME.

14 THE COURT: OKAY. ANY OBJECTION?

15 MR. LEDDY: NO, YOUR HONOR.

16 THE COURT: OKAY.

17 MS. SHIPLEY: THANK YOU, YOUR HONOR.

18 THE COURT: THEY'RE SO ADMITTED.

19 (COURT'S EXHIBIT 3 WAS MARKED FOR IDENTIFICATION ONLY.
20 STATE'S EXHIBITS 2, 60 AND 61 WERE RECEIVED IN EVIDENCE. MR.
21 ROBINSON IS BROUGHT INTO THE COURTROOM NOW.)

22 MS. SHIPLEY: ANY OBJECTIONS?

23 MR. LEDDY: NO.

24 (AN OFF-THE-RECORD DISCUSSION TOOK PLACE BETWEEN THE
25 ATTORNEYS.)

1 MS. SHIPLEY: YOUR HONOR, I BELIEVE THAT THE DEFENSE HAS
2 NO OBJECTIONS TO THE FOLLOWING EXHIBIT NUMBERS: 76, 77, 74,
3 73, 75, 79, 80, 78, 81, AND THOSE ARE PHOTOGRAPHS OF THE
4 AUTOPSY, AND 81 IS A STYROFOAM HEAD THAT DR. KESSLER NEEDS TO
5 DEMONSTRATE THE TRAJECTORY OF THE BULLET TO THE VICTIM'S
6 CHEEK. THEN ALSO THE DEFENSE HAS NO OBJECTION TO STATE'S 82,
7 83, WHICH ARE TWO DIAGRAMS FROM DR. KESSLER'S AUTOPSY REPORT,
8 AND LASTLY 84 WHICH IS A CALENDAR OF THE MONTH OF FEBRUARY OF
9 2007 THAT WE INTEND ON USING WITH INVESTIGATOR REESE.

10 THE COURT: OKAY.

11 MS. SHIPLEY: AT THIS TIME, YOUR HONOR, WE WOULD MOVE
12 THEM INTO EVIDENCE.

13 THE COURT: WELL, YOU WOULD NEED---

14 MR. LEDDY: YOU NEED TO DO IT---

15 THE COURT: THROUGH THE WITNESS.

16 MS. SHIPLEY: DO YOU WANT ME TO WAIT UNTIL THE WITNESS?
17 OKAY.

18 THE COURT: YEAH. OKAY. THANK YOU ALL FOR GOING OVER
19 THAT. THAT MAKES IT A LOT EASIER.

20 MR. LEDDY: YOUR HONOR, CAN I HAVE JUST A MINUTE TO GO
21 GET THE AUTOPSY REPORT? I NEGLECTED TO BRING IT.

22 THE COURT: SURE.

23 MS. SHIPLEY: I HAVE AN EXTRA COPY IF YOU NEED IT TO
24 SAVE YOU TIME.

25 MR. LEDDY: OKAY.

1 MS. SHIPLEY: CAN YOU GIVE HIM YOUR AUTOPSY REPORT?

2 MR. ROSE: SURE.

3 THE COURT: ARE THE PARTIES READY TO PROCEED?

4 MS. SHIPLEY: YES, MA'AM.

5 THE COURT: DEFENSE READY TO PROCEED?

6 MR. LEDDY: WE'RE READY, YOUR HONOR.

7 THE COURT: OKAY. JURORS, PLEASE.

8 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:57
9 A.M.)

10 THE COURT: THANK YOU. THE STATE, YOU MAY PROCEED WITH
11 YOUR CASE.

12 MS. SHIPLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
13 COURT? THE STATE CALLS DR. JAMES MORRISON TO THE STAND.

14 DR. JAMES E. MORRISON, AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
17 FOR THE RECORD.

18 THE WITNESS: MY FULL NAME IS JAMES EDWARD MORRISON.
19 M-O-R-R-I-S-O-N.

20 DIRECT EXAMINATION

21 BY MS. SHIPLEY:

22 Q. GOOD MORNING, DR. MORRISON.

23 A. GOOD MORNING.

24 Q. DR. MORRISON, CAN YOU TELL THIS JURY WHERE YOU'RE
25 EMPLOYED?

1 A. I'M EMPLOYED FOR U.S.C. SURGERY, AND I WORK OUT AT
2 PALMETTO HEALTH RICHLAND WHICH IS THE ONLY LEVEL ONE TRAUMA
3 CENTER IN THE MIDLANDS, AND I WORK FULL-TIME DOING TRAUMA AND
4 SURGICAL CRITICAL CARE.

5 Q. AND HOW LONG HAVE YOU BEEN WORKING THERE?

6 A. I'VE BEEN AT PALMETTO HEALTH RICHLAND FOR THE PAST SIX
7 YEARS. I'VE BEEN OUT OF TRAINING FOR OVER TEN YEARS.

8 Q. AND CAN YOU TELL THIS JURY A LITTLE BIT ABOUT YOUR
9 EDUCATIONAL BACKGROUND AND YOUR TRAINING AND EXPERIENCE IN
10 THE FIELD OF TRAUMA AND CRITICAL CARE?

11 A. YES, MA'AM. TO BECOME A TRAUMA SURGEON, YOU FIRST NEED
12 TO COMPLETE COLLEGE. AFTER YOU COMPLETE COLLEGE, YOU
13 COMPLETE FOUR YEARS OF MEDICAL SCHOOL. AFTER MEDICAL SCHOOL,
14 I COMPLETED A SIX-YEAR GENERAL SURGERY RESIDENCY, SO I'M A
15 BOARD CERTIFIED GENERAL SURGEON. AFTER THAT SIX YEARS OF
16 SURGERY, I DID AN ADDITIONAL YEAR IN SURGICAL CRITICAL CARE
17 AND TRAUMA. SO I AM NOW QUALIFIED TO WORK BOTH IN THE
18 INTENSIVE CARE UNIT, IN THE OPERATING ROOM, IN THE EMERGENCY
19 ROOM, AND IN A GENERAL FLOOR OF THE HOSPITAL TAKING CARE OF
20 PATIENTS WHO HAVE BEEN TRAUMATICALLY INJURED, EITHER RUN
21 OVER, SHOT, STABBED OR SOMEHOW HURT.

22 Q. AND IN YOUR EXPERIENCE, CAN YOU ESTIMATE HOW MANY CASES
23 OF GUNSHOT WOUND VICTIMS YOU HAVE TREATED?

24 A. IT WOULD BE IN THE THOUSANDS. I CAN'T GIVE YOU A
25 NUMBER.

1 Q. AND, DOCTOR, HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT
2 IN A COURT OF LAW IN ANY STATE IN THE FIELD OF GENERAL
3 SURGERY AND TRAUMA AND CRITICAL CARE?

4 A. YES, MA'AM, IN MULTIPLE STATES---

5 Q. AND APPROXIMATELY HOW MANY TIMES?

6 A. OVER TEN. I'VE LOST TRACK.

7 Q. THANK YOU, DOCTOR. AT THIS TIME, YOUR HONOR, WE WOULD
8 MOVE TO QUALIFY DR. MORRISON AS AN EXPERT IN THE FIELD OF
9 GENERAL SURGERY AND TRAUMA AND CRITICAL CARE.

10 MR. LEDDY: WE HAVE NO OBJECTION, YOUR HONOR.

11 THE COURT: OKAY. SO QUALIFIED.

12 BY MS. SHIPLEY:

13 Q. DR. MORRISON, DID YOU HAVE AN OCCASION TO TREAT A
14 PATIENT BY THE NAME OF EDWINA BROWN ON FEBRUARY 15TH, 2007?

15 A. I ACTUALLY SAW HER THE FOLLOWING DAY ON THE 16TH BUT,
16 YES, MA'AM, I DID TREAT HER.

17 Q. CAN YOU TELL THIS JURY A LITTLE BIT ABOUT WHAT HER CHIEF
18 COMPLAINT WAS?

19 A. SHE HAD SUSTAINED GUNSHOT WOUNDS BOTH TO HER HAND AND TO
20 HER BUTTOCK AND WAS ADMITTED TO OUR HOSPITAL FOR TREATMENT OF
21 THOSE INJURIES.

22 Q. AND TELL THIS JURY A LITTLE BIT ABOUT WHAT YOU NOTED ON
23 THE INJURY TO HER HAND.

24 A. SHE HAD A THROUGH-AND-THROUGH INJURY IN THE PALM OF HER
25 HAND. THE X-RAYS SHOWED THAT SHE FRACTURED BOTH HER FOURTH

1 AND HER FIFTH METACARPAL BONE. SO I'M GOING TO HOLD MY HAND
2 UP. YOUR HAND -- KIND OF THE PLACE WHERE YOU KIND OF FEEL
3 TENDONS GOING IN THE BACK OF YOUR HAND ARE YOUR METACARPAL
4 BONES. THE FOURTH AND FIFTH WOULD BE YOUR RING FINGER AND
5 THE ONE NEXT TO IT. THE FOURTH ONE WAS FAIRLY SHATTERED.
6 THE FIFTH WAS BUSTED FROM THE GUNSHOT WOUND. AND A THROUGH-
7 AND-THROUGH WOUND SIMPLY MEANS THAT THERE WAS A HOLE GOING
8 THROUGH AND THROUGH, SO A BULLET WENT THROUGH AND LEFT A
9 PASSAGE, A TUNNEL, THROUGH HER HAND WHERE IT INJURED THE
10 BONES. AND I'M GRASPING AGAIN BY MY FOURTH AND FIFTH WHERE
11 THE BULLET WOULD HAVE PASSED THROUGH HER HAND.

12 Q. AND, DOCTOR, WOULD IT BE CONSISTENT FOR A PATIENT WHO
13 HAS SUFFERED SUCH AN INJURY TO SUFFER SOMEWHAT OF AN
14 ARTHRITIS OR PROBLEMS WITH THOSE TWO FINGERS, BENDING THEM?

15 A. YES, MA'AM. SHE HAD -- ONE OF THE BONES WAS FAIRLY
16 COMMINUTED, SO SHATTERED WOULD BE A MORE SIMPLISTIC TERM FOR
17 THAT, AND THEN NERVES RUN WITH THE BONES. THE BONES SCAR.
18 AFTER THAT, THEY HEAL AND YOU GET ARTHRITIC AFTER THE BONE IS
19 SHATTERED THAT BADLY.

20 Q. IN YOUR EXPERIENCE IN TREATING GUNSHOT WOUND VICTIMS FOR
21 ALL THESE YEARS, THE INJURY TO HER HAND, IS THAT CONSISTENT
22 WITH A DEFENSIVE WOUND?

23 MR. LEDDY: OBJECTION. NOT QUALIFIED TO MAKE THAT
24 DETERMINATION ANY MORE THAN ANYBODY ELSE, AND BEING A TRAUMA
25 SURGEON DOESN'T MEAN HE CAN DETERMINE WHETHER OR NOT SOMEBODY

1 WAS ACTING DEFENSIVELY, YOUR HONOR. I OBJECT.

2 THE COURT: OKAY. YOU JUST WANT TO RESPOND?

3 MS. SHIPLEY: YES, MA'AM, YOUR HONOR. HE'S BEEN
4 QUALIFIED AS AN EXPERT IN THE FIELD OF GUNSHOT WOUND VICTIMS.
5 HE SAID HE HAS TREATED OVER -- HE CAN'T EVEN COUNT HOW MANY
6 AND HE IS QUALIFIED TO TESTIFY ABOUT WHETHER OR NOT SOMETHING
7 IS A DEFENSIVE WOUND OR NOT.

8 THE COURT: LET ME DO THIS. RESERVE THE RULING. LAY A
9 LITTLE MORE FOUNDATION ON THAT ISSUE WITH HIM.

10 MS. SHIPLEY: YES. THANK YOU, YOUR HONOR.

11 BY MS. SHIPLEY:

12 Q. DR. MORRISON, IN YOUR EXPERIENCE AS TREATING PATIENTS OF
13 GUNSHOT WOUNDS IN YOUR -- IN THE EMERGENCY ROOM, ARE YOU ABLE
14 TO DIFFERENTIATE BETWEEN WOUNDS THAT ARE SELF-INFLICTED?

15 A. SOMETIMES YOU CAN, YES.

16 Q. OKAY. WHAT ABOUT WOUNDS THAT ARE NOT DEFENSIVE IN
17 NATURE?

18 A. AGAIN, SOMETIMES YOU CAN. IT DEPENDS ON THE WOUND.

19 Q. AND COULD YOU EXPLAIN FOR THIS JURY THE DISTINCTION
20 BETWEEN A NON-DEFENSIVE WOUND AND A DEFENSIVE WOUND?

21 A. GENERALLY WHEN PEOPLE TALK ABOUT DEFENSIVE WOUNDS, THE
22 THOUGHT IS THAT YOU'RE DEFENDING YOURSELF, SO YOU PUT YOUR
23 HANDS UP TO PROTECT YOURSELF AND THAT THE WOUNDS YOU SUSTAIN
24 ARE BECAUSE YOUR HANDS ARE UP TRYING TO PROTECT YOURSELF. IN
25 THIS CASE I CAN'T SAY FOR SURE HOW THAT WOUND WAS SUSTAINED.

1 I CAN SAY SHE HAS A THROUGH-AND-THROUGH WOUND TO HER HAND.
2 WHETHER SHE HAD HER HAND UP PROTECTING HER FACE, WHETHER SHE
3 HAD HER HAND UP COVERING HER FACE OR WHETHER HER HAND WAS
4 SIMPLY UP BECAUSE SHE WAS SCARED AND SCREAMING OR SOMETHING
5 OF THAT SORT, I CAN'T SAY. ALL I CAN SAY IS A BULLET WENT
6 THROUGH AND THROUGH HER HAND.

7 Q. OKAY. THANK YOU. FAIR ENOUGH, DOCTOR.

8 MR. LEDDY: YOUR HONOR, I THINK THAT SHOULD BE ENOUGH TO
9 SUSTAIN THE OBJECTION.

10 MS. SHIPLEY: I'M NOT GOING TO FURTHER INQUIRE.

11 THE COURT: YEAH, BECAUSE HE ALREADY SAID HE COULDN'T,
12 SO THANK YOU.

13 MR. LEDDY: ALL RIGHT.

14 BY MS. SHIPLEY:

15 Q. DOCTOR, BEFORE I CONTINUE WITH THE TREATMENT OF HER NEXT
16 INJURY, COULD YOU TELL THIS JURY WHAT HER -- WHEN YOU MEET
17 WITH A PATIENT OR ANY PATIENT IS BROUGHT TO THE EMERGENCY
18 ROOM, ARE THEY ASKED HOW THE INJURIES WERE INFLICTED?

19 A. YES. WE ALWAYS GET WHAT WE CONSIDER -- WHAT WE CALL
20 SUBJECTIVE DATA. OUR SUBJECT IS OUR PATIENT; IT'S THE PERSON
21 THAT WE'RE DEALING WITH. AND EVEN WHEN YOU GO TO THE
22 DOCTOR'S OFFICE JUST FOR A SORE THROAT, YOUR DOCTOR ASKS YOU
23 WHAT'S WRONG. THAT IS SUBJECTIVE DATA. IT'S WHAT YOU TELL
24 YOUR DOCTOR, AND WE TAKE THAT ON FACE VALUE. SO SHE WOULD
25 HAVE BEEN INTERVIEWED BY AN EMERGENCY PHYSICIAN, BY A TRAUMA

1 SURGEON, POSSIBLY BY A SOCIAL WORKER. MULTIPLE PEOPLE WOULD
2 HAVE ASKED HER WHAT HAPPENED THAT BROUGHT HER TO THE HOSPITAL
3 THAT DAY, AND SHE WOULD HAVE TOLD HER VERSION OR HER HISTORY
4 OF WHAT HAPPENED TO HER, WHAT BROUGHT HER TO THE HOSPITAL
5 THAT DAY.

6 Q. AND HAVE YOU HAD A CHANCE TO REVIEW HER ENTIRE MEDICAL
7 CHART?

8 A. YES, I HAVE.

9 Q. COULD YOU TELL THIS JURY WHAT HISTORY SHE PROVIDED AS TO
10 WHAT HAPPENED TO HER THAT BROUGHT HER TO THE HOSPITAL WITH
11 TWO GUNSHOT WOUNDS?

12 A. THE HISTORY I READ IS THAT SHE WAS WITH A FRIEND, THAT
13 SOMEONE CAME IN AND SHOT THAT FRIEND, AND IN THE PROCESS SHE
14 WAS SHOT AS WELL.

15 Q. OKAY. AND DID SHE REFER TO THIS -- DID SHE EVER GIVE
16 INFORMATION AS TO THE IDENTITY OF THE PERSON THAT SHOT HER
17 FRIEND?

18 A. THE ONE REFERENCE I SAW STATES THAT SHE DID NOT KNOW THE
19 IDENTITY OF THE SHOOTER.

20 Q. OKAY. AND DID SHE INDICATE TO ANYBODY THAT THIS WAS HER
21 BOYFRIEND?

22 A. THERE MAY BE A SINGLE REFERENCE TO A BOYFRIEND, BUT
23 THERE ARE DIFFERENT REFERENCES IN DIFFERENT HISTORIES.

24 Q. AND, IN FACT, IN THE ENTIRE MEDICAL CHART SHE REFERS TO
25 THE PERSON THAT WAS KILLED---

1 MR. LEDDY: OBJECTION. IT'S LEADING.

2 MS. SHIPLEY: LET ME REPHRASE THE QUESTION, YOUR HONOR.
3 I DIDN'T MEAN TO DO THAT.

4 BY MS. SHIPLEY:

5 Q. DOCTOR, WHEN REVIEWING THE CHART, DID YOU FIND DIFFERENT
6 WAYS IN WHICH SHE REFERRED TO THE PERSON THAT WAS SHOT?

7 A. YES. MOST COMMONLY HE WAS REFERRED TO AS HER FRIEND.

8 Q. OKAY. NOW, DOCTOR, WAS THIS PATIENT IN PAIN?

9 A. YES.

10 Q. AND AS A RESULT OF BEING IN PAIN, WAS ANY MEDICATION
11 ADMINISTERED TO HER?

12 A. SHE WAS GIVEN MORPHINE FOR PAIN.

13 Q. AND DESCRIBE FOR THE JURY THE IMPACT MORPHINE HAS ON A
14 PATIENT.

15 A. MORPHINE IS A NARCOTIC, SO ITS PRIMARY PURPOSE IS TO
16 TAKE YOUR PAIN AWAY, BUT IT CAN ALSO MAKE YOU SLEEPY, DROWSY,
17 GROGGY.

18 Q. AND IN YOUR EXPERIENCE IN DEALING WITH THIS PATIENT, DO
19 YOU RECALL HER Demeanor?

20 A. AGAIN, I SAW HER THE FOLLOWING DAY, NOT WHEN SHE'D
21 GOTTEN HER IMMEDIATE DOSE OF MORPHINE.

22 Q. FAIR ENOUGH. NOW, DOCTOR, WHEN A PERSON IS GROGGY AND
23 HAS THE EFFECTS OF MORPHINE, COULD THAT AFFECT A PERSON'S
24 ABILITY TO THINK AND SPEAK?

25 A. YES.

1 Q. WAS SHE ALSO GIVEN A TETANUS SHOT?

2 A. YES, MA'AM.

3 Q. AND DID SHE VOLUNTEER INFORMATION THAT SHE INGESTED
4 COCAINE THAT NIGHT?

5 A. THAT WAS LISTED IN HER HISTORY.

6 Q. AND WHAT ABOUT ALCOHOL?

7 A. ALCOHOL WAS FOUND ON HER TOXICOLOGY SCREEN, VERY LOW
8 AMOUNT.

9 Q. AND HOW MUCH WAS IT?

10 A. OUR NUMBER IS 90. LEGAL CUT-OFF IS 80, SO SHE WAS ONLY
11 10 POINTS HIGHER. IT WAS NOT A SKY-HIGH AMOUNT.

12 Q. OKAY. AND POSITIVE FOR MARIJUANA AND TOBACCO?

13 A. ON URINE SCREEN, YES, MA'AM.

14 Q. OKAY.

15 A. TOBACCO WAS NOT TESTED. THAT WAS BY HER HISTORY.

16 Q. SHE VOLUNTEERED THAT? OKAY. NOW, I'M GOING TO GO AHEAD
17 AND BRING YOUR ATTENTION, FIRST OF ALL, TO THE FIRST INJURY
18 THAT YOU JUST TESTIFIED TO TO HER HAND. STATE'S 42, DOES
19 THAT ACCURATELY DEPICT THE TREATMENT SHE RECEIVED FOR THE
20 INJURY TO HER LEFT HAND?

21 A. YES, MA'AM. THE BONES NEEDED TIME TO HEAL, AND THE
22 SWELLING NEEDED TIME TO GET BETTER. SO I'VE BEEN SHOWN A
23 PICTURE OF A SINGLE HAND HELD UP IN THE AIR. IT IS SPLINTED,
24 SO BASICALLY IT HAS SOME GAUZE, SOME DRESSING, AND AN ACE
25 WRAPPED AROUND IT TO KEEP THE WOUND PROTECTED, AND THEN SHE

1 WAS TO FOLLOW UP WITH A DR. WATFORD, W-A-T-F-O-R-D, LATER FOR
2 FURTHER CARE OF HER FRACTURES.

3 Q. AND, DOCTOR, WOULD THIS INJURY IN AND OF ITSELF BE A
4 FATAL INJURY?

5 A. NO, MA'AM.

6 Q. OKAY. NOW I'M GOING TO SHOW YOU WHAT'S BEEN ALREADY
7 ADMITTED INTO EVIDENCE, STATE'S 43. DO YOU RECOGNIZE THIS
8 PHOTOGRAPH, DOCTOR?

9 A. YES, MA'AM.

10 Q. AND WHAT IS IT, DOCTOR?

11 A. IT IS A WOMAN'S BACKSIDE, IF I CAN USE THAT TERM. THERE
12 IS A BLOODSTAINED PIECE OF GAUZE OVER ONE BULLET WOUND. YOU
13 CAN ACTUALLY SEE THE EDGE OF A SECOND WOUND IN THE OPPOSITE
14 BUTTOCK CHEEK.

15 Q. OKAY. AND SO WERE THE DOCTORS AND YOURSELF ABLE TO
16 DETERMINE THE TRAJECTORY OF THE BULLET THAT INFLECTED THAT
17 INJURY?

18 A. YES, MA'AM. WHEN YOU LOOK AT BULLET HOLES AND BULLETS,
19 YOU NEED TO HAVE AN EVEN NUMBER. IF YOU GET ONE THROUGH-AND-
20 THROUGH SHOT -- IF YOU'VE GOT TWO HOLES, NO BULLETS, IT SHOWS
21 AN EVEN NUMBER. IF YOU GET SHOT ONCE AND KEEP THE BULLET IN,
22 YOU'VE GOT ONE HOLE, ONE BULLET. ONE AND ONE MAKES TWO, EVEN
23 NUMBER. SHE HAD THREE HOLES AND A RETAINED BULLET. SO WE
24 TRACKED THE BULLET THROUGH AND THROUGH ONE BUTTOCK, MAKING
25 TWO HOLES, ENTERING THE NEXT BUTTOCK CHEEK, AND THEN

1 RETAINING THE BULLET FARTHER IN HER BODY.

2 Q. OKAY. AND DO YOU RECALL WHICH BUTTOCK CHEEK IT ENTERED
3 INTO?

4 A. NO, MA'AM, NOT IMMEDIATELY. I CAN PULL IT OUT OF MY
5 NOTES RIGHT HERE IF YOU WISH, BUT I BELIEVE---

6 Q. I'LL SAVE YOU THE TROUBLE, DOCTOR.

7 A. IN THE LEFT BUTTOCK CHEEK.

8 Q. OKAY. SO THE BULLET WOULD HAVE ENTERED AND, CORRECT ME
9 IF I'M WRONG - I'LL USE THIS DOWEL - THROUGH THE LEFT BUTTOCK
10 CHEEK THROUGH AND THROUGH AND THEN THROUGH THE RIGHT CHEEK,
11 AND THEN DID YOU SAY WHETHER OR NOT THE BULLET EXITED?

12 A. THE BULLET DID NOT EXIT. IT WAS RETAINED IN HER BODY.

13 Q. OKAY. AND SO SHE WOULD THEN TO THIS DAY STILL HAVE THAT
14 BULLET IN HER BODY.

15 A. UNLESS SOMEBODY HAS REMOVED IT IN THE INTERIM, YES,
16 MA'AM.

17 Q. OKAY. NOW, DOCTOR, IN YOUR EXPERT OPINION WOULD THAT
18 INJURY BE A FATAL INJURY?

19 A. AS THE INJURY OCCURRED, NO, IT WAS NOT.

20 Q. OKAY. WHAT IF THE PERSON WOULD HAVE BEEN POSITIONED IN
21 A DIFFERENT MANNER WHEN THE SHOT WAS FIRED?

22 A. THAT ALWAYS BECOMES THE WHAT IF'S. SHE WAS SHOT
23 BASICALLY IN AN AREA WE CALL THE PELVIS, SO IT'S KIND OF YOUR
24 LOWER HIP AREA, AND THERE WERE MULTIPLE VITAL STRUCTURES
25 THERE. IF SHE HAD BEEN ROTATED SLIGHTLY, THAT COULD HAVE

1 GONE INTO HER BY BELLY AND INJURED THE INTESTINE. SHE COULD
2 HAVE INJURED HER COLON AND NEEDED TO HAVE A PIECE OF
3 INTESTINE BROUGHT OUT THROUGH HER SKIN PERMANENTLY -- WELL,
4 NOT PERMANENTLY BUT FOR SIX MONTHS WHILE SHE HEALED.

5 IF SHE HAD BEEN ROTATED DIFFERENTLY, SHE COULD HAVE HIT
6 A MAJOR BLOOD VESSEL AND BLED TO DEATH FROM THAT AND EVEN IN
7 THE NEWS YOU POSSIBLY HEARD ABOUT TEN MONTHS AGO ABOUT A
8 FOOTBALL PLAYER BEING SHOT JUST IN THE LEG AND DYING AND
9 BLEEDING TO DEATH. SO THERE ARE MULTIPLE VITAL STRUCTURES
10 THERE. SHE IS FORTUNATE THAT THE PATH THE BULLET TOOK
11 INJURED ONLY SKIN, MUSCLE, AND FAT AND NOT VITAL STRUCTURES.

12 Q. AND WHAT IF THAT INJURY WOULD HAVE LEFT -- BEEN LEFT
13 UNATTENDED? DO YOUR RECORDS REFLECT WHETHER OR NOT -- THE
14 QUANTITY OF BLOOD SHE WAS LOSING FROM THIS INJURY?

15 A. SHE LOST SOME BLOOD. I DON'T THINK SHE WOULD HAVE BLED
16 TO DEATH FROM IT, BUT SHE CERTAINLY DID LOSE BLOOD.

17 Q. AND WHAT IF SHE HAD GONE UNTREATED?

18 A. RISK FOR INFECTION, RISK FOR FURTHER BLEEDING. SHE MAY
19 HAVE BEEN ANEMIC.

20 Q. AND DO YOUR RECORDS REFLECT THAT CONTACT WAS MADE WITH
21 THIS PATIENT BY LAW ENFORCEMENT AT THE HOSPITAL?

22 A. I DO NOT RECALL.

23 Q. OKAY. IF I CAN JUST SHOW YOU A DOCUMENT TO REFRESH YOUR
24 MEMORY.

25 MR. LEDDY: YOUR HONOR, IF THIS ISN'T HIS DOCUMENT, IT

1 WON'T BE REFRESHING HIS MEMORY.

2 MS. SHIPLEY: YOUR HONOR, IT'S A MEDICAL RECORD. IT'S
3 HIS RECORDS.

4 THE WITNESS: YES.

5 THE COURT: OKAY. AND THAT THESE WOULD BE DOCUMENTS
6 THAT HE RELIED ON IN TERMS OF USING---

7 MS. SHIPLEY: LET ME LAY THE FOUNDATION.

8 THE COURT: OKAY.

9 BY MS. SHIPLEY:

10 Q. DOCTOR, YOU TESTIFIED EARLIER THAT YOU HAD REVIEWED THIS
11 PATIENT'S ENTIRE CHART. IS THAT CORRECT?

12 A. YES, MA'AM.

13 Q. AND AS A PHYSICIAN AT PALMETTO RICHLAND MEMORIAL
14 HOSPITAL, DO YOU HAVE ACCESS TO THESE RECORDS?

15 A. YES. THIS RECORD HAS ACTUALLY BEEN DONE BY MY SOCIAL
16 WORKER, DEBORAH FLOYD.

17 Q. OKAY. BEFORE YOU CONTINUE, I HAVE TO LAY THE FOUNDATION
18 BEFORE YOU CAN TESTIFY TO THAT DOCUMENT. AND AS PART OF YOUR
19 ORDINARY COURSE AND DUTIES AT THE HOSPITAL AS A PHYSICIAN, DO
20 YOU RELY ON THESE DOCUMENTS?

21 A. YES, I DO.

22 MS. SHIPLEY: YOUR HONOR, I THINK I'VE LAID THE
23 FOUNDATION.

24 MR. LEDDY: THANK YOU, YOUR HONOR.

25 THE COURT: OKAY.

1 BY MS. SHIPLEY:

2 Q. ALL RIGHT. PLEASE PROCEED WITH WHAT YOU WERE DESCRIBING
3 IN THAT DOCUMENT.

4 A. YES. THE DOCUMENT YOU HANDED ME IS A PRINT-OUT OF THE
5 INTERVENTION PERFORMED BY A WOMAN BY THE NAME OF DEBORAH,
6 D-E-B-O-R-A-H, MIDDLE INITIAL T., LAST NAME FLOYD. MS. FLOYD
7 IS MY SOCIAL WORKER, AND IT'S HER JOB TO SEE OUR PATIENTS AND
8 MAKE SURE THAT THEY ARE CARED FOR IN TERMS OF THEIR SOCIALS,
9 OTHER SPIRITUAL NEEDS AND HOME PLANNING, AND AS PART OF HER
10 DOCUMENTATION SHE NOTES THAT THE PATIENT WAS SEEN BY THE
11 POLICE.

12 MS. SHIPLEY: OKAY. THANK YOU VERY MUCH FOR YOUR TIME,
13 DR. MORRISON. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

14 CROSS-EXAMINATION

15 BY MR. LEDDY:

16 Q. GOOD MORNING, DOCTOR.

17 A. GOOD MORNING.

18 Q. I JUST HAVE A FEW QUESTIONS FOR YOU. FIRST OF ALL, NOW
19 YOU TESTIFIED THAT IT WAS A THROUGH-AND-THROUGH WOUND BUT --
20 RIGHT?

21 A. YES, SIR.

22 Q. OKAY. BUT THE WAY YOU WERE DESCRIBING IT, YOU DON'T
23 KNOW WHICH SIDE OF THE HAND IT ENTERED ON; RIGHT?

24 A. I WAS NOT THERE TO SEE IT ENTER, NO. THERE ARE -- THERE
25 ARE FINDINGS OCCASIONALLY IN WOUNDS THAT WILL TELL YOU WHICH

1 IS THE ENTRY OR WHAT IS THE EXIT. I HAVE NO DOCUMENTATION IN
2 MY CHART TO GIVE ME THAT CLUE OR DIRECTION. SO ALL I CAN SAY
3 IS THAT SHE HAS TWO WOUNDS IN HER HAND, ONE ON THE FRONT AND
4 ONE ON THE BACK, AND I CANNOT SAY WHICH IS ENTRY NOR WHICH IS
5 EXIT.

6 Q. ALL RIGHT. NOW, WHEN YOUR PATIENT TESTIFIED, SHE
7 TESTIFIED THAT SHE ACTUALLY HAD HER HAND LIKE THIS. AND YOU
8 SAID IT WAS A THROUGH-AND-THROUGH WOUND; RIGHT?

9 A. CORRECT.

10 Q. OKAY. AND NOW BEFORE YOU WENT TO MEDICAL SCHOOL, YOU
11 HAD TO TAKE A LOT OF SCIENCE CLASSES.

12 A. CORRECT.

13 Q. ALL RIGHT. AND YOU KNOW THAT OBJECTS IN MOTION TEND TO
14 STAY IN MOTION; RIGHT?

15 A. YES, SIR.

16 Q. OKAY. THAT'S WHY IT'S A THROUGH-AND-THROUGH BECAUSE IT
17 WENT THROUGH, AND IT WOULD HAVE STILL BEEN TRAVELING AT A
18 SIGNIFICANT VELOCITY WHEN IT LEFT HER HAND, WOULDN'T IT?

19 A. ASSUMING, YES, SIR.

20 Q. OKAY. NOW, IF INDEED SHE HAD BEEN LIKE THIS, IT WOULD
21 HAVE HIT HER IN THE HEAD, WOULDN'T IT?

22 A. AGAIN, IT WOULD DEPEND ON THE TRAJECTORY OF THE BULLET.
23 I CAN HOLD MY HAND FIVE DIFFERENT WAYS AND SHOW YOU WHERE IT
24 MAY SKIM PAST, SKIM CLOSE, SKIM NEAR. SHE DID NOT HAVE A
25 WOUND ON HER HEAD. SHE DID HAVE TWO WOUNDS IN HER HAND.

1 THAT'S WHAT I CAN TESTIFY TO.

2 Q. OKAY. GREAT. NOW, ALSO THE STATE MENTIONED THAT SHE
3 REFERRED TO THE PERSON WHO WAS KILLED AS HER BOYFRIEND.
4 ISN'T THAT RIGHT?

5 A. THERE ARE SEVERAL REFERENCES TO HIM. SHE WAS
6 INTERVIEWED MULTIPLE TIMES. NOW, WHETHER SHE SAID FRIEND,
7 BOYFRIEND, WHETHER THE PERSON HEARING HER HEARD FRIEND OR
8 BOYFRIEND, I CAN ONLY TELL YOU WHAT IS WRITTEN IN THE CHART.
9 MOSTLY IT IS WRITTEN FRIEND. ONCE, I BELIEVE, IT IS WRITTEN
10 BOYFRIEND.

11 Q. ALL RIGHT. AND, LASTLY, DURING THE INTERVENTION I
12 BELIEVE SHE TOLD YOUR STAFF THAT SHE DIDN'T FEEL THAT SHE HAD
13 ANY KIND OF PROBLEM WITH SUBSTANCE ABUSE; RIGHT?

14 A. YES, SIR.

15 MR. LEDDY: OKAY. THANK YOU.

16 MS. SHIPLEY: NO FURTHER QUESTIONS, YOUR HONOR.

17 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED. THANK YOU
18 FOR COMING.

19 THE WITNESS: THANK YOU.

20 MS. SHIPLEY: THE STATE CALLS DR. STANTON KESSLER.

21 DR. STANTON C. KESSLER, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
24 FOR THE RECORD.

25 THE WITNESS: MY NAME IS STANTON COLEMAN KESSLER.

DIRECT EXAMINATION

BY MS. SHIPLEY:

Q. GOOD MORNING, DR. KESSLER.

A. GOOD MORNING.

Q. DR. KESSLER, CAN YOU TELL THIS JURY A LITTLE BIT ABOUT WHAT YOUR FIELD OF EXPERTISE IS?

A. I'M A FORENSIC PATHOLOGIST.

Q. WHAT DOES THAT MEAN?

A. IT MEANS THAT I'VE GONE -- IT'S A FIELD OF MEDICINE WHICH STUDIES SUDDEN AND UNEXPECTED DEATH, AND TO BE A FORENSIC PATHOLOGIST YOU HAVE TO GO TO MEDICAL SCHOOL. I DID, THE UNIVERSITY OF MARYLAND, AFTER FINISHING TRAINING IN UNDERGRAD SCHOOL AT THE UNIVERSITY OF MARYLAND, AND I DID AN INTERNSHIP IN CALIFORNIA, ROTATING INTERNSHIP, AND THEN I TRAINED MOSTLY IN MIAMI TO BECOME A FORENSIC PATHOLOGIST. I TRAINED IN NEW JERSEY WHERE I GOT TRAINING IN PATHOLOGY. I TRAINED IN DENVER. I GOT OTHER TRAINING IN PATHOLOGY. AND I WORKED AT THE DADE COUNTY MEDICAL EXAMINER'S OFFICE IN MIAMI, FLORIDA, TO STUDY FORENSIC CASES FOR YEARS, AND I SPENT TWO YEARS THERE, AND THEN I GOT MY BOARDS IN FORENSIC MEDICINE IN ANATOMIC PATHOLOGY, AND I HAVE BEEN RE-BOARDED. I STARTED MY BOARDS IN '87. I RE-BOARDED THREE YEARS AGO NOW IN PATHOLOGY, AND I'VE BEEN A MEDICAL EXAMINER MOST OF MY ADULT LIFE. I SPENT 15 YEARS AS THE ASSOCIATE CHIEF, THE ACTING CHIEF, AND I RAN THE STATE OF MASSACHUSETTS, AND I HAD A

1 TRAINING PROGRAM OUT OF HARVARD MEDICAL SCHOOL WHERE WE
2 TRAINED PEOPLE IN FORENSIC MEDICINE.

3 Q. AND CAN YOU TELL THE JURY WHAT FORENSIC PATHOLOGY IS?

4 A. IT'S A SUBSPECIALTY OF PATHOLOGY WHICH IS THE STUDY OF
5 DISEASE AND ILLNESS, INFECTIONS DISEASE, CANCER, BIRTH
6 DEFECTS, WHAT HAVE YOU. FORENSIC MEDICINE IS THE STUDY OF
7 SUDDEN AND UNEXPECTED DEATH, POISONING DEATHS, ACCIDENTAL
8 DEATHS, HOMICIDES, SUICIDES, ANY KIND OF TRAUMA, AND IN
9 GENERAL WE WILL AUTOPSY ANYONE THAT DIES SUDDEN AND
10 UNEXPECTEDLY FOR AN UNKNOWN CAUSE TO SEE IF THERE'S FOUL PLAY
11 AND/OR A PUBLIC HEALTH THREAT: AN INFECTIOUS DISEASE, BAD
12 WATER, WHAT HAVE YOU.

13 IN MY CAREER I'VE DONE ABOUT 12,000 CASES, AND HALF OF
14 THOSE I DID WITH MY FELLOWS AND RESIDENTS UP NORTH, AND THEN
15 I CAME BACK HERE AND WORKED FOR THE MEDICAL EXAMINER'S
16 OFFICE, WORKED FOR PALMETTO RICHLAND HOSPITAL, AND RECENTLY
17 WAS THE ACTING CHIEF MEDICAL EXAMINER FOR THE STATE OF
18 ALASKA. SO I'VE BEEN DOING THIS SINCE '77.

19 Q. DR. KESSLER, HAVE YOU EVER TESTIFIED OR BEEN QUALIFIED
20 AS AN EXPERT IN A COURT OF LAW IN THE FIELD OF FORENSIC
21 PATHOLOGY?

22 A. YES.

23 Q. AND APPROXIMATELY HOW MANY TIMES?

24 A. IT'S BEEN ABOUT 300 TIMES.

25 MS. SHIPLEY: YOUR HONOR, AT THIS TIME WE WOULD ASK DR.

1 KESSLER BE QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC
2 PATHOLOGY.

3 MR. LEDDY: NO OBJECTION, YOUR HONOR.

4 THE COURT: THANK YOU. SO QUALIFIED.

5 MS. SHIPLEY: THANK YOU, YOUR HONOR.

6 BY MS. SHIPLEY:

7 Q. DR. KESSLER, WHEN YOU FIRST WALK INTO THE AUTOPSY ROOM
8 TO CONDUCT YOUR AUTOPSY WITH ANY PATIENT, WHAT IS THE FIRST
9 THING THAT YOU DO?

10 A. THE FIRST THING I DO IS I GET A HISTORY IF I CAN. THE
11 SECOND THING I DO IS I GET A CASE NUMBER, NAME. I RUN IT
12 THROUGH OUR INDEX FILES - I WAS AT PALMETTO RICHLAND - TO SEE
13 IF THERE'S ANY OLD HISTORY THAT WOULD BE ESSENTIAL FOR ME,
14 AND THEN I LOOK AT THE BODY AND THE BODY USUALLY COMES IN IN
15 A BAG, ESPECIALLY HOMICIDES. THE HANDS MAY BE WRAPPED TO
16 PROTECT EVIDENCE. AND WE LOOK EXTERNALLY AT A CLOTHED BODY
17 TO SEE IF THERE'S ANY EVIDENCE OF ANYTHING ON THE BODY THAT
18 WILL HELP US DETERMINE THE CAUSE OR MANNER OF DEATH WHICH IS
19 WHAT STARTED THE WHOLE THING OFF, WHY SOMEBODY DIED, AND
20 ANYTHING OF A FORENSIC ISSUE, MAYBE A FINGERPRINT, MAYBE SOME
21 MATERIAL THAT'S TRANSFERRED TO THE BODY, YOU KNOW, AS YOU
22 SEE, IF YOU ALL WATCH "C.S.I.", THAT TYPE OF MATERIAL. SO WE
23 SPEND A LONG TIME LOOKING AT THE BODY, PHOTOGRAPHING IT,
24 RECORDING THE CLOTHING, RECORDING ANYTHING ABNORMAL, AND ONCE
25 THAT'S DONE AND ONCE ALL THAT MATERIAL IS TAKEN - IT MAY TAKE

1 A WHILE TO DO THAT - WE REMOVE THE CLOTHING AND WE LOOK AT
2 THE BODY SURFACES TO SEE IF THERE'S ANY EVIDENCE OF FOUL PLAY
3 OR TRAUMA.

4 IN THIS INSTANCE THERE WAS FIVE GUNSHOT WOUNDS, TWO OF
5 WHICH WERE NON-LETHAL, ONE TO THE BASE OF THE HAND OR THE
6 WRIST ON THE LEFT, ONE TO THE BACK REGION, AND THREE THAT
7 COULD HAVE BEEN LETHAL, ONE TO THE CHEEK, IN AND OF
8 THEMSELVES WERE LETHAL ACTUALLY, AND TWO TO THE SHOULDER
9 REGION IN THE BACK THAT PIERCED COORDINATES. AND ONCE WE DO
10 THAT, WE PHOTOGRAPH THE WOUNDS. WE ARBITRARILY GIVE THEM
11 LABELS A., B., C., D. IT DOESN'T HAVE ANYTHING TO DO WITH
12 THE ORDER IN WHICH THEY WERE DONE BECAUSE WE CAN'T DETERMINE
13 THAT USUALLY. BUT WE PHOTOGRAPH IT AND THEN WE'LL DISSECT
14 OUT WOUND TRACKS.

15 WE OPEN THE BODY CAVITIES UP. WE LOOK TO SEE IF THERE
16 ARE ANY ABNORMALITIES OF ANY OF THE ORGANS, ANY BLOOD, ANY
17 TEARING, ANY PROJECTILES, AND ONCE WE DO ALL THIS, WE MAY
18 TAKE SPECIMENS OF SAMPLES OF DIFFERENT ORGANS. USUALLY WE
19 TAKE THIS: LUNG, LIVER, HEART, KIDNEY, BRAIN. WE SEND THEM
20 OFF FOR HISTOLOGY. WE'LL TAKE SPECIMENS FOR TOXICOLOGY,
21 USUALLY BLOOD, BECAUSE THAT'S THE STANDARD, AND ONCE ALL
22 THAT'S DONE, WE COME UP WITH A BASIC CAUSE OR MANNER OF DEATH
23 AND DICTATE IT AND THEN REVISE IT OVER THE NEXT FEW DAYS IF
24 THINGS ARE ABNORMAL AND THEN FILL OUT A PRELIMINARY CAUSE OR
25 MANNER OF DEATH FOR THE CORONER, WHO WE WORK FOR, TO FILL OUT

1 A DEATH CERTIFICATE.

2 Q. AND WOULD THAT BE CORONER GARY WATTS HERE IN RICHLAND
3 COUNTY?

4 A. YES, MA'AM.

5 Q. DR. KESSLER, IN THIS CASE SPECIFICALLY DID YOU PERFORM
6 AN AUTOPSY ON A VICTIM BY THE NAME OF THOMAS LEE SMITH?

7 A. YES.

8 Q. AND CAN YOU TELL THIS JURY WHAT DATE YOU DID THAT?

9 A. HE PASSED ON THE 15TH OF FEBRUARY, 2007, ALMOST
10 MIDNIGHT, I THINK AROUND 11:30, AND WE PERFORMED THE AUTOPSY
11 OR I PERFORMED THE AUTOPSY THE NEXT DAY ON 2/16/07 AT ABOUT
12 10 A.M.

13 Q. AND, DR. KESSLER, HOW OLD WAS MR. SMITH?

14 A. HE WAS 45.

15 Q. AND WERE YOU ABLE TO GET A HISTORY OF -- A POSSIBLE
16 HISTORY OF WHAT HAPPENED TO HIM?

17 A. I HAD A MINIMAL HISTORY. HE WAS A 45-YEAR-OLD GENTLEMAN
18 WHO WAS IN AN ARGUMENT. HE WAS SHOT MULTIPLE TIMES, FOUND
19 DEAD AT THE SCENE, AND THIS WAS GIVEN TO ME, THE HISTORY, BY
20 THE CORONER'S OFFICE WHO INVESTIGATED IT ALONG WITH THE
21 POLICE.

22 Q. OKAY. AND WHEN YOU FIRST BEGAN TO PERFORM YOUR
23 EXAMINATION EXTERNALLY OF MR. SMITH'S BODY, COULD YOU TELL
24 THIS JURY WHAT, IF ANYTHING, YOU NOTED IMMEDIATELY UPON
25 LOOKING AT HIM?

1 A. WELL, IN JUST A GENERAL DESCRIPTION, HE WAS THIN. HE
2 WAS AFRICAN AMERICAN. HE WAS 65 INCHES, ABOUT FIVE FEET
3 FIVE. HE WAS 170 POUNDS. HE HAD TIGHTLY CURLED BLACK HAIR;
4 IT WAS ABOUT A HALF INCH. BROWN EYES. LARGE GUNSHOT WOUND
5 IN THE RIGHT FACE. NO TEETH. BLOOD WAS SEEN IN HIS MOUTH.
6 BLOOD WAS SEEN ON HIS CHEEKS. EARS WERE UNREMARKABLE. THE
7 NECK, CHEST, BREAST, ABDOMEN WERE UNREMARKABLE, BUT THERE --
8 THE UPPER EXTREMITIES WERE THIN BUT WELL MUSCULARIZED.

9 HIS NAILS WERE SHORT. NAIL BEDS WERE PALE, VERY PALE.
10 THERE WAS A GUNSHOT WOUND THROUGH AND THROUGH THE SURFACE OF
11 THE LEFT WRIST IN THE FOREARM AT THE BASE OF THE HAND IN THE
12 HAND REGION. GENITALIA WERE UNREMARKABLE. HE DIDN'T HAVE
13 ANY REAL EVIDENCE OF ANY OTHER CHANGE EXCEPT FOR SOME SKIN
14 CHANGES ON HIS RIGHT LEG WHICH PROBABLY WERE CONSISTENT WITH
15 AN OLD BURN. THERE WAS A DONOR GRAFT SITE ON THE POSTERIOR
16 RIGHT THIGH. IT SHOWED THAT HE HAD A SKIN GRAFT SOME TIME IN
17 THE PAST.

18 IN THE BACK THERE WERE THREE WOUNDS NEAR THE LEFT
19 SHOULDER, AND WE LOOKED AT THOSE MORE CAREFULLY. THERE WAS
20 AN ENTRY WOUND AND EXIT WOUND ON HIS RIGHT FLANK WHICH IS THE
21 LOWER BACK ON THE RIGHT SIDE. THERE WAS ANOTHER GUNSHOT
22 WOUND THERE. AND THEN I WENT AHEAD TO DESCRIBE THE WOUNDS
23 MORE FULLY. HE WAS DRESSED IN A NAVY BLUE NEW YORK CITY BALL
24 CAP, WHITE HIGH TENNIS SHOES, THERMAL SOCKS, DIRTY WHITE
25 PANTS WITH PAINT ON THEM, GRAY JOCKEY SHORTS, BLACK BELT, OLD

1 NAVY WHITE TEE SHIRT, GRAY TEE SHIRT, AND A WHITE TEE SHIRT
2 WITH THE NAME SHANDON GROUP ON IT. AND THEN HE HAD A LONG
3 BLUE PLAID FLANNEL SHIRT ON AND A GREEN PLAID INSULATED THICK
4 OVER-SHIRT.

5 ON THE THIRD FINGER OF THE LEFT HAND WAS A YELLOW
6 WEDDING RING AND ALSO A YELLOW RING WITH MULTIPLE SMALL CLEAR
7 STONES. ON THE RIGHT THIRD FINGER OF THE -- OF THE RIGHT
8 HAND IS A YELLOW RING WITH A RED STONE. ON THE LEFT WRIST
9 WAS A WATCH WITH A BLACK LEATHER BAND. THESE WERE TAKEN INTO
10 POLICE CUSTODY. ALL THE SHIRTS WERE EXAMINED IN DETAIL.
11 GUNSHOT WOUNDS WERE SEEN THROUGH THESE SHIRTS AND THERE WERE
12 SEVERAL SHIRTS, AND THEY ALL CORRESPONDED TO THE WOUNDS WE
13 SAW ON THE BODY. THESE WERE SENT TO THE LAB FOR EVIDENCE
14 EVALUATION.

15 Q. AND THEY WERE TURNED OVER TO THE COLUMBIA POLICE
16 DEPARTMENT?

17 A. CORRECT. WE HAD -- I THINK THE POLICE THAT WERE THERE
18 WAS GLENN -- THE POLICEMAN THAT WAS THERE WAS GLENN ROSS THAT
19 WAS THERE FROM THE POLICE DEPARTMENT.

20 Q. OKAY.

21 A. AND ALSO A NOEL DOW WHO WAS AN INVESTIGATOR FOR THE CITY
22 OF COLUMBIA.

23 Q. OKAY. AND WHEN YOU PREPARED TO EXAMINE THE ACTUAL
24 GUNSHOT WOUNDS ON MR. SMITH'S BODY, DID YOU PREPARE DIAGRAMS?

25 A. YES.

1 Q. AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
2 NUMBER 82 AND 83. DO YOU RECOGNIZE THESE DIAGRAMS?

3 A. YES.

4 Q. AND DID YOU PREPARE THESE DURING THE AUTOPSY OF MR.
5 SMITH?

6 A. YES. THESE ARE BLOW-UPS OF THE DIAGRAMS THAT I PREPARED
7 PERSONALLY DURING THE AUTOPSY.

8 MS. SHIPLEY: THANK YOU. YOUR HONOR, AT THIS TIME WE
9 WOULD MOVE 82 AND 83 INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. LEDDY: NO, YOUR HONOR.

12 THE COURT: OKAY.

13 (STATE'S EXHIBITS 82 AND 83 WERE RECEIVED IN EVIDENCE.)

14 MS. SHIPLEY: YOUR HONOR, MAY THE WITNESS STEP DOWN?

15 THE COURT: YES, HE MAY.

16 BY MS. SHIPLEY:

17 Q. DR. KESSLER, I'M GOING TO HAVE YOU STAND OVER HERE SO
18 THAT YOU CAN FACE THE COURT REPORTER. ALL RIGHT. ON STATE'S
19 82, DOCTOR, CAN YOU PLEASE TELL THE JURORS WHERE IT IS YOU
20 DOCUMENTED THE WOUNDS TO MR. SMITH'S BODY?

21 A. YES. AS I SAID, ARBITRARILY WE JUST TOOK LETTERS A.,
22 B., C., AND D. SOME OF THESE MAY BE ENTRANCE WOUNDS; SOME
23 MAY BE EXIT WOUNDS. THAT'S WHAT WE DETERMINE IN OUR AUTOPSY.
24 SO AS YOU CAN SEE FROM THIS, HERE'S A WOUND HERE, A. THAT'S
25 IN THE CHEEK ON THE RIGHT SIDE. HERE IS A WOUND HERE, B.,

1 WHICH IS SORT OF CLOSE TO THE SECOND WOUND, C., THIRD WOUND
2 ACTUALLY, AND THAT'S ON THE BACK OF THE LEFT SHOULDER REGION,
3 AND HERE'S THE WOUND D. IT'S OVER THE RIGHT SHOULDER REGION.

4 IF WE GO DOWN HERE, THERE'S A WOUND E. CORRECTLY RIGHT
5 HERE, AND THAT'S IN THE FLANK OR THE LEFT -- OR THE RIGHT
6 LOWER BACK ACTUALLY IN THE RIGHT SIDE, AND THERE'S A WOUND AT
7 THE BASE OF THE HAND THERE ON THE WRIST CALLED F. AND YOU
8 CAN SEE I DIAGRAMMED -- ALSO, HERE'S HIS BURN SCAR HERE AND
9 HERE, AND THERE IS THAT DONOR SITE WE TALKED ABOUT. SO
10 EVERYTHING IS REALLY PUT IN HERE: ANY BLOOD IN THE MOUTH,
11 BROWN EYES, HOW LONG HIS HAIR IS, ET CETERA, NAILS PALE, WHAT
12 HAVE YOU. SO EVERYTHING IS ON THIS DIAGRAM FOR ME TO THEN
13 MAKE MY FURTHER DIAGRAM, IF I NEED TO, AND DICTATE THE
14 AUTOPSY.

15 Q. AND, DOCTOR, DID YOU HAVE AN INVESTIGATOR WITH THE
16 COLUMBIA POLICE DEPARTMENT PHOTOGRAPH THESE INJURY SITES?

17 A. YES.

18 Q. I'M GOING TO SHOW YOU SOME PHOTOGRAPHS AND ASK YOU IF
19 YOU RECOGNIZE THEM: STATE'S 78, 76, 77, 74, 73, 75, 79, AND
20 80. I'LL HOLD THAT FOR YOU, DOCTOR.

21 A. THANK YOU. (THE WITNESS LOOKS AT THE PHOTOGRAPHS.) I
22 RECOGNIZE THESE PHOTOS. I DIRECTED THE POLICE TO TAKE THEM.

23 Q. THANK YOU, DOCTOR. YOUR HONOR, AT THIS TIME WE WOULD
24 INTRODUCE THE PHOTOGRAPHS THAT I JUST CITED INTO EVIDENCE.

25 MR. LEDDY: NO OBJECTION, YOUR HONOR.

1 THE COURT: THANK YOU.

2 (STATE'S EXHIBITS 73 THROUGH 80 WERE RECEIVED IN
3 EVIDENCE.)

4 BY MS. SHIPLEY:

5 Q. OKAY. BEGINNING WITH STATE'S NUMBER 78, DOCTOR, CAN YOU
6 SHOW THE JURY WHAT THAT IS?

7 A. THIS IS A CLOSE-UP OF WOUND A. IT'S A LARGE WOUND, A
8 GAPING WOUND. IT'S AN ENTRANCE GUNSHOT WOUND, AND IT'S ON
9 THE CHEEK ON THE RIGHT SIDE. THIS WOUND IS A COMPLEX WOUND
10 BECAUSE WHEN YOU THINK OF BULLETS FIRING AT DIFFERENT SOLID
11 OBJECTS, WHEN THEY HIT A SOLID OBJECT THEY CAN SCATTER LIKE
12 PINBALLS OR LIKE BILLIARDS. SO THE BULLET IS GOING IN THIS
13 WAY INTO HIS CHEEK, AND IT STRIKES HIS MANDIBLE WHICH IS
14 RIGHT HERE. IT GOES IN THE BACK OF THE THROAT. IT'S GOING
15 DOWNWARD. IT GOES THROUGH THE ESOPHAGUS. REMEMBER I SAID
16 HIS MOUTH HAD BLOOD IN IT. AND THEN IT GOES BACK THROUGH THE
17 SOFT AREA, AND THERE'S VERTEBRA RIGHT HERE, THE FIRST AND
18 SECOND CERVICAL VERTEBRA.

19 THOSE ARE BIG DISKS OF BONE, ALMOST LIKE HOCKEY PUCKS,
20 ON TOP OF ONE ANOTHER, AND THE SPINAL CORD, WHICH CONTROLS
21 ALL OUR MOVEMENTS, GOES FROM THE BASE OF THE BRAIN DOWN THESE
22 DISKS. WE HAVE SEVEN IN THE CERVICAL OR NECK REGION, TWELVE
23 IN THE THORACIC, FIVE IN THE LUMBAR OR LOWER SPINE AND THEN
24 THE SACRUM, BUT THESE ARE THE UPPER DISKS. SO WHEN IT HITS
25 THESE DISKS, IT SPLATTERS THE BULLET AND SOME PIECE -- AND

1 BONE SPLATTERS. REALIZE IT'S GOING IN THIS DIRECTION.

2 THE BULLET SPLATTERS A PIECE OF BONE THAT GOES SHOOTING
3 OUT THE BACK OF THE NECK, AND WE CALL THAT WOUND D. HOW DO I
4 KNOW THAT? BECAUSE I DISSECTED THAT OUT AND WE ACTUALLY HAVE
5 AN X-RAY THAT SHOWS SOME OF THE BULLET FRAGMENTS AND IT
6 ACTUALLY STAYS WHERE THIS BONE IS IN THESE UPPER CERVICAL
7 REGIONS. SO WE HAVE BULLET FRAGMENTS. SOME ARE STILL
8 REMAINING IN THE BONE THAT WE NEVER COULD GET OUT, AND SOME
9 OF THE REST OF THE BULLET TRAVELS IN THAT DIRECTION BASICALLY
10 FROM RIGHT TO LEFT AND GOES UNDER THE SKIN, AND WE FOUND IT
11 IN THE SHOULDER REGION ON THE -- ON THE RIGHT -- LEFT SIDE.

12 SO IT'S GOING FROM RIGHT TO LEFT, DOWNWARD, HITS THE
13 VERTEBRA, SPLATTERS. A PIECE OF BONE COMES OUT THE BACK OF
14 THE NECK. SOME OF THE BULLET REMAINS IN THE VERTEBRA, AND
15 THEN IT KEEPS GOING UNDER THE SHOULDER, AND THAT'S WHERE IT
16 WAS FOUND. WE TOOK THAT OUT AND MARKED IT AND PUT IT IN
17 EVIDENCE.

18 Q. OKAY. AND, DOCTOR, I'M GOING TO SHOW YOU 76 AND 77.
19 YOU WERE DESCRIBING WHERE THE BONE CAME OUT OF MR. SMITH'S
20 BACK AS D.?

21 A. YES.

22 Q. WOULD YOU SHOW THE JURORS WHERE ON THAT PHOTOGRAPH THAT
23 IS LOCATED?

24 A. HERE IT IS ON THE DIAGRAM AND HERE IT IS HERE, AND YOU
25 CAN SEE THESE ARE OTHER BULLET WOUNDS WE CALL D. AND C., AND

1 YOU NOTICE ON THE BULLET WOUNDS THEY HAVE A SYMMETRICAL
2 ROUNDED MARGIN, ELLIPTICAL MARGIN, AND THIS WOUND IS VERY
3 DIFFERENT LOOKING, BUT THAT'S FROM THE PIECE OF BONE THAT'S
4 SHOOTING OUT THE BACK OF THE NECK. THAT OFTEN HAPPENS SO...

5 Q. AND THE NEXT PHOTOGRAPH I BELIEVE HAS YOUR LABELS ON IT?

6 A. YEAH. I THINK I CAN SHOW IT HERE. YOU CAN SEE THIS
7 LITTLE RISE HERE. THAT'S WHERE THE BULLET WAS FOUND UNDER
8 THE SKIN, THE REST OF THE BULLET.

9 Q. AND YOU DOCUMENTED THE BULLET FROM THE CHEEK THAT
10 TRAVELED THROUGH HIS SPINAL CORD---

11 A. UH-HUH.

12 Q. AS BULLET A.?

13 A. YES.

14 Q. AND I'M GOING TO SHOW YOU A DIAGRAM OR ACTUALLY IS THAT
15 THE BULLET THAT YOU RECOVERED FROM HIS BODY?

16 A. YES.

17 Q. A.?

18 A. THIS IS THE LITTLE CUP I PUT IT IN. I PUT A. IN A CUP,
19 AND I MARKED THE BASE OF THE BULLET WITH AN X., AND IT'S HARD
20 TO SEE THAT NOW, BUT I PUT THIS INTO CUSTODY. I GAVE IT TO
21 ROSS AT THE AUTOPSY, AND HE PACKAGED IT FROM THERE AND TOOK
22 IT.

23 Q. AND WAS THIS RELATIVELY IN THE SAME CONDITION AS YOU
24 PULLED IT OUT OF THE LEFT SHOULDER OF MR. SMITH'S BODY?

25 A. YES.

1 Q. AND AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY, IS
2 THAT -- DOES THAT SURPRISE YOU HOW DAMAGED THIS PROJECTILE
3 IS?

4 A. NO, BECAUSE IT HITS THE BONE AND FRAGMENTS AND THESE
5 BULLETS ARE MEANT TO DO THAT. THEY'RE -- THEY'RE -- THEY
6 WILL MUSHROOM AT TIMES, OFTEN.

7 Q. THANK YOU, DOCTOR. NOW, YOU WERE DESCRIBING THAT D. WAS
8 THE EXIT WHERE THE BONE CAME OUT FROM MR. SMITH'S UPPER BACK.

9 A. YES.

10 Q. IS THAT CORRECT?

11 A. YES.

12 Q. ALL RIGHT. B. AND C., ALL RIGHT, WHAT ARE THOSE?

13 A. THOSE ARE ENTRY GUNSHOT WOUNDS. AND, AGAIN, IF YOU LOOK
14 AT THESE, YOU CAN SEE HOW DIFFERENT THEY LOOK FROM THE EXIT
15 WOUND. WELL, TO ME THEY DO. YOU'D HAVE TO BE TRAINED, BUT
16 THEY'RE A LITTLE BIT DIFFERENT LOOKING. AND THOSE WOUNDS ARE
17 SO CLOSE TOGETHER -- THEY GO INTO THE BODY, BOTH B. AND C.,
18 AND THEY HAVE A PATH THAT FORMS A BIG HEMORRHAGIC SPACE
19 BECAUSE IT TEARS A LOT OF TISSUE, AND I CAN'T DETERMINE ONCE
20 IT GOES INTO THE BODY WHICH IS A. AND WHICH IS B. AND WHICH
21 IS C, SO I CONSIDER THOSE PATHS MIXED. BUT THEY GO INTO THE
22 BACK OF THE NECK. THEY HIT THE FIFTH CERVICAL REGION AND
23 VERTEBRA; THEY FRAGMENT THAT. ONE GOES THROUGH THE LUNG ON
24 THE RIGHT SIDE INTO THE LUNG SPACE, MAKING ABOUT A QUART OF
25 BLOOD IN THAT SPACE TO A HALF A QUART OF BLOOD, AND THEN GOES

1 DOWN THROUGH THE DIAPHRAGM AND THEN IS FOUND IN THE LIVER
2 REGION. THAT ACTUALLY GOES INTO THE LIVER.

3 IT WAS INTERESTING THAT -- THE LIVER IS A VERY BLOODY
4 ORGAN. THERE WAS VERY LITTLE BLOOD AROUND THE LIVER, EVEN
5 THOUGH IT WAS PENETRATED. NOW, THE LUNG -- THERE'S A LOT OF
6 LUNG SPACE, HAD A LOT OF BLOOD IN IT, BUT THE LIVER ITSELF
7 HAD VERY LITTLE BLEEDING AROUND IT.

8 Q. WHAT DOES THAT TELL YOU, DOCTOR?

9 A. THAT THE PERSON WAS EITHER DYING AT THAT TIME OR ALREADY
10 DEAD WHEN HE RECEIVED THAT, WHICH MORE THAN LIKELY HE WAS
11 DYING. THERE'S NOT A LOT OF BLOOD FLOW. HE'S PROBABLY GOING
12 THROUGH SHOCK BECAUSE WHEN IT GOES THROUGH THE LUNG --
13 THERE'S MAJOR VESSELS IN THERE, REALLY BIG VESSELS ABOUT THE
14 SIZE -- TWICE THE SIZE OF YOUR THUMB, AND YOU'RE CUTTING ALL
15 THESE VESSELS IN THE LUNGS. IT'S VERY BLOODY, AND THE BLOOD
16 -- THE SPACE IS FILLING UP WITH A LOT OF BLOOD.

17 ON THE OPPOSITE SIDE, IT GOES THROUGH RIBS AND POSTERIOR
18 BACK REGION. IT GOES INTO THE LEFT CHEST CAVITY. IT GOES
19 THROUGH THE LUNG ON THE LEFT SIDE. NOW, REALIZE I DON'T KNOW
20 WHICH BULLET THIS IS. THIS IS EITHER C. OR B. OR C. OR D. OR
21 C., BUT THAT BULLET, ONE OF THOSE TWO, THEN GOES THROUGH THAT
22 LUNG PRODUCING ABOUT A HALF A QUART OF BLOOD IN THIS CAVITY
23 AND THEN GOES INTO THE SUBCUTANEOUS TISSUE AT THE BACK OF THE
24 ABDOMEN AND IS FOUND IN THIS REGION. SO IT BURROWS IN IT.

25 IT'S VERY POWERFUL BULLETS THAT ARE GOING DOWNWARD.

1 THEY'RE GOING -- ONE IS GOING A LITTLE BIT TO THE RIGHT. ONE
2 IS GOING MOSTLY TO THE LEFT, AND THEY'RE GOING DOWNWARD FROM
3 THE BACK TO THE FRONT. IN AND OF THEMSELVES, EITHER THE
4 FIRST BULLET IS A LETHAL BULLET -- AND THESE BULLETS IN AND
5 OF THEMSELVES WOULD BE LETHAL TO KILL YOU.

6 Q. AND, AGAIN, THE FACT THAT YOU'VE LABELED THESE GUNSHOT
7 WOUNDS AS A., B., AND C., YOU'RE NOT SAYING THAT THAT'S THE
8 ORDER IN WHICH---

9 A. NO.

10 Q. ---MR. SMITH WAS SHOT.

11 A. NO. WE JUST HAVE TO -- IT WOULD BE MORE CONFUSING IF I
12 LABELED THEM ONE, TWO, AND THREE. YOU HAVE TO GIVE THEM A
13 LABEL JUST SO WE CAN GO BACK AND LOOK AT THEM SO WE CAN
14 DETERMINE WHICH WAS WHICH AND THEN WE FOLLOW THE PATH
15 THROUGH.

16 Q. DOCTOR, I'M GOING TO HAND OVER TO YOU WHAT'S BEEN MARKED
17 INTO EVIDENCE 70 AND -- 79 AND 80. YOU WERE DESCRIBING THE
18 TRAJECTORY OF THE BULLETS INSIDE OF HIS BODY. DO YOU SEE
19 THOSE BULLETS ON THOSE X-RAYS?

20 A. YES.

21 Q. AND CAN YOU PLEASE SHOW THE JURY?

22 A. THIS IS THE NECK REGION, AND THAT'S WAY UP IN THE
23 CERVICAL -- HIGH CERVICAL NECK, AND YOU CAN SEE THESE -- DO
24 YOU HAVE A LITTLE PEN OR SOMETHING?

25 Q. HOW ABOUT THIS? IS THAT GOOD?

1 A. THANK YOU. YOU CAN SEE THESE LITTLE OPAQUE REGIONS
2 HERE, AND THOSE -- THEY LOOK LIKE FILLINGS ACTUALLY. THOSE
3 ARE FRAGMENTS OF BULLET A. AS IT WENT IN HERE, SHATTERED THE
4 BONE THERE, AND THIS VERTEBRA -- THESE ARE THE VERTEBRA GOING
5 UP AND DOWN. IF YOU LOOK AT THIS LATER, YOU WILL SEE THAT
6 THOSE VERTICAL BODIES ARE VERY NICE AND CLEAN AND OUTLINED,
7 AND THIS VERTEBRA HERE IS ALL MESSED UP. IT LOOKS LIKE
8 SOMEBODY STEPPED ON IT, AND THAT'S WHAT SHOT THE PIECE OF
9 BONE OUT THE BACK.

10 NOW, THIS IS THE LEFT SIDE OF THE BODY, AND YOU CAN SEE
11 THAT'S IN SORT OF THE POSTERIOR REGION OF THE ABDOMEN, AND
12 THAT'S WITH ONE OF THOSE BULLETS, EITHER B. OR C., THAT WENT
13 THROUGH THE LUNG SPACE, INTO THE LUNG SPACES, AND IS FOUND
14 THERE. NOW, IF WE GO ON, THIS IS THE OTHER SIDE OF THE BODY.
15 NOW, THESE BULLETS HAVE A CORE AND A JACKET. OKAY? IT'S
16 JUST LIKE WE WEAR JACKETS. SO IT'S LITERALLY A PIECE OF
17 LEAD, LIKE THIS PIECE OF LEAD, THAT'S WRAPPED IN COPPER OR
18 COPPER-COLORED METAL, AND THAT'S DONE TO GIVE IT MORE
19 VELOCITY, MORE SPREADING POWER, MORE MUSHROOMING POWER, AND
20 EVERY BULLET IS A LITTLE DIFFERENT.

21 THIS IS A COPPER-JACKETED BULLET, AND SOMETIMES, AS WE
22 SAW IN THE BULLET WE SHOWED YOU, THE JACKET AND THE CORE WILL
23 COME APART, AND THAT'S WHAT'S HAPPENED HERE. YOU CAN SEE
24 THAT THIS IS THE RIGHT SPACE, THE LUNG SPACE. THIS IS THE
25 MIDDLE OF THE LUNG AND THERE'S -- AND THAT LOOKS LIKE THE

1 JACKET OF THE BULLET, THE OUTER COPPER-COLORED MATERIAL,
2 RIGHT IN HERE. AND THAT'S SORT OF THE MIDDLE OF THE LUNG,
3 AND THIS IS THE DIAPHRAGM, AND THERE'S ANOTHER BULLET RIGHT
4 IN THE LIVER. THAT'S THE LIVER HERE. AND IF YOU NOTICE IN
5 THIS REGION AGAIN, YOU HAVE NICE, CLEAN VERTEBRA, AND UP IN
6 HERE THE FIFTH VERTEBRA IS ALL FRAGMENTED FROM THOSE BULLETS
7 GOING INTO IT.

8 SO WE HAD ONE BULLET GOING THROUGH THE LEFT LUNG SPACE,
9 ONE BULLET GOING THROUGH THE RIGHT LUNG SPACE, COMING APART.
10 REALIZE, THE OTHER BULLETS DIDN'T COME APART. SO SOMETIMES
11 THEY COME APART; SOMETIMES THEY DON'T. OBVIOUSLY WHEN THEY
12 COME APART, NOW YOU HAVE TWO PROJECTILES THAT ARE REALLY VERY
13 DESTRUCTIVE. SO THESE ARE THE GUNSHOT WOUNDS.

14 Q. DOCTOR, I'M GOING TO SHOW YOU WHAT'S ALREADY IN
15 EVIDENCE, STATE'S 71. DID YOU HAVE THE INVESTIGATOR
16 PHOTOGRAPH THE BULLETS AS YOU REMOVED THEM?

17 A. YES. THIS IS THE BULLET NOW -- THIS IS THE -- A. AND B.
18 AND C. ARE RIGHT HERE. REALIZE, WE DON'T KNOW WHERE THESE
19 WENT BECAUSE ONE OF THEM WENT THROUGH THE RIGHT LUNG SPACE,
20 ONE THROUGH THE LEFT. THIS IS THE ONE I GOT OUT OF THAT
21 FLANK REGION ON THE LEFT SIDE, AND YOU CAN SEE FROM THE
22 X-RAYS IT WAS PRETTY MUCH AN INTACT BULLET.

23 Q. AND IS THIS IT RIGHT HERE, DOCTOR?

24 A. YES, IT IS.

25 Q. THE INTACT BULLET?

1 A. YES. THAT'S WHAT IT LOOKS LIKE BEFORE IT SPLITS.

2 Q. OKAY. YOU DON'T KNOW IF THIS IS THE BULLET THAT IS B.
3 OR C.

4 A. NO, BUT IT'S -- I KNOW WHERE I FOUND IT AND I KNOW WHERE
5 THESE THINGS ARE. IT'S ALMOST NEXT TO ONE ANOTHER. THIS IS
6 THE BULLET THAT WAS -- YOU CAN SEE HOW THIS DIDN'T MUSHROOM
7 BUT THIS ONE DID AND THIS HAS THE CORE IN IT AND THAT'S THE
8 ONE THAT WENT THROUGH AND HIT THE VERTEBRA AND GOT DEFORMED.
9 THIS BULLET GOES THROUGH RIBS IN THE BACK. THIS IS THAT
10 OTHER BULLET THAT GOES THROUGH THE LUNG. REMEMBER I SAID IT
11 SEPARATED. THIS IS THE PIECE THAT WAS FOUND IN THE MIDDLE OF
12 THE LUNG, AND THIS IS THE PIECE THAT WAS FOUND, WENT THROUGH
13 THE DIAPHRAGM, AND IT WAS IN THE LIVER. SO, AGAIN, THREE
14 DIFFERENT TYPES OF BULLETS, ALL THE SAME GUN, ALL THE SAME
15 BULLET. THE WAY THEY LOOK WHEN THEY GO THROUGH THE BODY---

16 COURT REPORTER: I'M SORRY. CAN YOU REPEAT THE LAST
17 SENTENCE?

18 THE WITNESS: THE WAY THEY LOOK WHEN THEY GO THROUGH THE
19 BODY ARE DIFFERENT, BUT THESE ALL START OUT THE SAME WAY.

20 BY MS. SHIPLEY:

21 Q. DOCTOR, I'M GOING TO SHOW YOU WHAT IS B., THIS BULLET
22 RIGHT HERE IN THE CENTER. IS THAT HOW YOU RECOVERED IT FROM
23 MR. SMITH'S BODY?

24 A. CORRECT. THIS WAS FOUND IN THE LUNG SPACE, THE COPPER-
25 COLORED ONE, AND THE LEAD GRAY CORE WAS FOUND IN THE MIDDLE

1 OF THE LIVER. SO YOU CAN SEE THE TWO PIECES HERE.

2 Q. AND, DOCTOR, WHEN IT HITS A RIB BONE, CAN THAT CAUSE A
3 BULLET TO SEPARATE?

4 A. YES.

5 Q. AND SO A., THE ONE TO THE RIGHT CHEEK, A., AND THEN B.
6 AND C., GUNSHOT WOUNDS TO THE BACK, ALL ARE LETHAL IN AND OF
7 THEMSELVES?

8 A. YES, MA'AM.

9 Q. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 73 AND IF
10 YOU COULD JUST EXPLAIN TO THE JURY WHERE THAT GUNSHOT WOUND
11 IS.

12 A. THIS IS ACTUALLY ON THE BACK ON THE LOWER RIGHT SIDE.

13 Q. DOCTOR, IF YOU COULD STEP BACK SO THE JURORS ON THE
14 RIGHT SIDE CAN SEE.

15 A. CAN YOU SEE THAT? AND HERE'S THE ENTRANCE WOUND;
16 THERE'S THE EXIT WOUND. ACTUALLY, BECAUSE IT'S CURVING
17 AROUND THE BODY, EVEN THOUGH THIS IS ON THE RIGHT SIDE, THIS
18 IS -- THIS IS GOING SORT OF IN AN UP -- IN A LEFTWARD
19 DIRECTION. BECAUSE IT'S GOING IN THAT DIRECTION -- HERE IS
20 THE RIGHT SIDE OF THE BODY. THIS BASICALLY IS A GUNSHOT
21 WOUND WHICH IS WOUND E., TUNNELS THROUGH THE FAT, DOESN'T GO
22 ANY DEEPER, DOESN'T GO INTO THE BODY CAVITY. IN AND OF
23 ITSELF, YOU COULD EASILY SURVIVE THIS WOUND. IT DOESN'T HIT
24 NERVES OR MAJOR VESSELS, BUT IT IS A GUNSHOT WOUND AND WE
25 CALL THAT E. NEVER FOUND THE PROJECTILE. AS YOU CAN SEE, IT

1 GOES OUT AND GOES SOMEWHERE ELSE.

2 Q. AND I'M GOING TO SHOW YOU STATE'S 74 AND EXPLAIN HOW DO
3 YOU KNOW WHICH ONE IS THE ENTRANCE WOUND AND EXIT WOUND.

4 A. IT HAS AN ABRADED MARGIN AND IT'S ELLIPTICAL AND YOU CAN
5 ACTUALLY SEE THE DIRECTION, TO WHERE THE OTHER ACTUALLY IS
6 DRIED AND IRREGULAR, AND WE JUST TRAINED IN DOING THOUSANDS
7 OF GUNSHOT WOUNDS AND WE LEARNED WHAT ENTRY AND EXIT WOUNDS
8 ARE, AND THIS IS AN ENTRY AND THIS IS EXIT.

9 Q. AND, DOCTOR, SO ON 73 THIS WOULD BE THE ENTRY AND THAT
10 WOULD BE THE EXIT?

11 A. THAT IS CORRECT.

12 Q. AND SO THAT WOULD BE THE LOWER RIGHT BACK OF THE VICTIM?

13 A. YES.

14 Q. THANK YOU, DOCTOR. AND, LASTLY, ON YOUR DIAGRAM CAN YOU
15 SHOW THE JURORS INJURY NUMBER F. OR LETTER F.?

16 A. YES.

17 Q. AND HERE IS STATE'S NUMBER 75.

18 A. OKAY. I SAID THAT THE -- YOU CAN SEE -- NOW, REALIZE
19 THERE'S A LITTLE FRAGMENT HERE OF SOME MATERIAL THAT'S COME
20 OUT THAT STRUCK THE HAND, AND HERE'S THE BULLET PATHWAY.
21 IT'S ACTUALLY CALLED THE BASE OF THE HAND OR THE WRIST
22 REGION, AND THE BULLET IS COMING ACROSS FROM -- IF THIS IS MY
23 HAND, IT'S COMING HERE AND GOING ACROSS. SO IT'S IN THE
24 WRIST. IT DOESN'T HIT THE BONE. VERY SUPERFICIAL. IT GOES
25 IN, COMES OUT. AGAIN, ENTRY WOUND. THIS IS A TYPICAL EXIT

1 WOUND, AND THIS I WOULD CONSIDER TO BE A DEFENSIVE WOUND.

2 NOW, I DON'T KNOW IF IT'S GOING FROM RIGHT TO LEFT OR
3 LEFT TO RIGHT BECAUSE IT COULD GO LIKE THIS OR IT COULD GO
4 LIKE THAT AND THE HAND MOVES. SO IT'S JUST A WOUND OF THE
5 LOWER-HAND-WRIST REGION. THERE'S A LITTLE BIT, AS I SAID,
6 FRAGMENTED. YOU CAN SEE IT IN THE HAND.

7 Q. AND WHEN YOU SAY DEFENSIVE WOUND, CAN YOU PLEASE EXPLAIN
8 THAT TO THE JURY?

9 A. YES. IN FORENSIC MEDICINE WE TALK ABOUT WOUNDS THAT ARE
10 DEFENSIVE VERSUS NON-DEFENSIVE WOUNDS. IF SOMEONE IS ALERT
11 AND CONSCIOUS, THEN THEY USUALLY PUT THEIR ARMS UP TO WARD
12 OFF BLOWS. THAT COULD BE GUNSHOT WOUNDS, STAB WOUNDS,
13 BASEBALL BAT, AND WHEN THESE BLOWS HIT A PERSON AS THEY'RE
14 PROTECTING, IT'S A NATURAL RESPONSE TO PROTECT YOUR FACE AND
15 YOUR VITAL STRUCTURES. THEN WE CALL THOSE DEFENSIVE WOUNDS.

16 NOW, THAT COULD BE ANYWHERE IN THE FOREARM, ELBOW, OR
17 THE SIDE ANY TIME, ANY WAY YOU CAN THINK OF PUTTING SOMETHING
18 UP IN FRONT OF YOUR FACE. THOSE ARE CONSIDERED DEFENSIVE
19 WOUNDS, AND I'VE SEEN THOUSANDS OF THOSE IN MY CAREER VERSUS
20 REGULAR -- THE WOUNDS HERE OBVIOUSLY BEYOND THIS ARE NOT
21 DEFENSIVE WOUNDS. SO THE WOUNDS IN THE INNER PORTIONS OF THE
22 HANDS ARE USUALLY FELT TO BE DEFENSIVE WOUNDS. IS IT A
23 HUNDRED PERCENT? NO, BUT IT'S A GOOD MORE THAN -- IT'S
24 PROBABLY 75 TO 85 PERCENT DEFENSIVE WOUNDS.

25 Q. DOCTOR, ONCE YOU COLLECTED THE BULLETS, DID YOU PUT THEM

1 IN THESE CANNISTERS?

2 A. YES. I LABELED THE CANNISTERS A., B., AND C., AND I
3 GAVE THEM TO ROSS WHO WAS AT THE AUTOPSY WHO THEN PACKAGED
4 THEM FURTHER FOR EVIDENCE IN THE CHAIN OF CUSTODY.

5 Q. OKAY. NOW, YOU ALSO PREPARED A SEPARATE DIAGRAM. IS
6 THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND STATE'S NUMBER 83 WHICH IS ALREADY IN EVIDENCE, CAN
9 YOU DESCRIBE FOR THE JURORS WHAT IT IS YOU'RE TRYING TO
10 DEPICT IN THIS DIAGRAM?

11 A. I JUST LIKE TO SHOW FROM A DIFFERENT SIDE SO YOU CAN GET
12 AN IDEA OF THE BODY IN THE THREE-DIMENSIONAL SPACE WHERE
13 THESE TRAJECTORIES ARE. SO THE LINES ARE THE TRAJECTORIES.
14 HERE'S A. AND YOU CAN SEE THE LINE WHERE IT HITS THE
15 VERTEBRA, AND THEN THERE'S A PIECE OF IT THAT GOES OUT HERE.
16 YOU CAN SEE A LITTLE PIECE SHOOTING OUT. AND THEN IF YOU
17 LOOK AT IT THIS WAY, THERE'S A LITTLE PIECE HERE THAT'S WHERE
18 WE FOUND IT AND YOU SEE IT'S COMING IN THIS DIRECTION AND IT
19 GOES OVER THE SHOULDER. AND HERE IS B. AND C. AND YOU CAN
20 SEE HOW CLOSE THEY ARE TOGETHER, AND THEY'RE COMING IN -- AND
21 AS I SAID, I DON'T KNOW -- ONE GOES HERE; ONE GOES THERE.
22 THEY SPLIT EACH OTHER. THEY GO---

23 Q. THEY CRISSCROSS?

24 A. THEY CRISSCROSS. THIS BIG WOUND TRACT IN HERE IS THE
25 WOUND E. IT'S COMING UPWARD FROM BELOW. AND THIS IS F. AND

1 IT'S EITHER GOING IN THIS DIRECTION OR THIS DIRECTION. I
2 THINK MORE THAN LIKELY IT'S GOING THIS WAY, BUT AGAIN WE CAN
3 TWIST THAT HAND EITHER WAY. SO THOSE ARE THE WOUNDS, AND IN
4 AND OF THEMSELVES THE REST OF THE AUTOPSY, EXCEPT FOR THE
5 BULLET PATHWAYS THROUGH THE BODY, SHOWED NO GROSS
6 ABNORMALITIES IN THE BODY THAT WERE LIFE-THREATENING OR EVEN
7 VERY COMPLEX TO TALK ABOUT.

8 Q. AND, DOCTOR, AS PART OF PERFORMING AN AUTOPSY, DO YOU
9 ALSO REQUEST TOXICOLOGY ON YOUR PATIENTS?

10 A. YES.

11 Q. AND IN THIS CASE DID YOU DO THAT?

12 A. YES.

13 Q. AND I'M GOING TO SAVE YOU TIME. I'LL LET YOU LOOK AT
14 THE COPY YOU PROVIDED ME. TELL THE JURY ABOUT THE TOXICOLOGY
15 REPORT ON MR. SMITH.

16 A. OKAY. WE TOOK BLOOD FOR TOXICOLOGY. HE HAS A BLOOD
17 ALCOHOL OF 131, AND WE HAVE A DRUG HYDRALAZINE WHICH IS 60
18 NANOGRAMS, BLOOD COCAINE OF 300 NANOGRAMS, AND COCAINE
19 BYPRODUCTS, BENZOYLECGONINE, AND SOMETHING CALLED
20 COCAETHYLENE. SO HE HAS ALL THESE SUBSTANCES IN HIS BLOOD.

21 Q. AND, DOCTOR, IN FACT, IN YOUR -- IN YOUR ANATOMICAL
22 DIAGNOSIS, DID YOU NOTE ANY DAMAGE TO MR. SMITH'S LIVER?

23 A. HE HAD SOME CIRRHOSIS OF THE LIVER. AGAIN, NOT GOING TO
24 KILL HIM NOW, BUT IT WAS THERE, SHOWED HE HAD A PROBLEM,
25 EITHER INFECTION OR NUTRITIONAL PROBLEM, THAT CAUSED THIS

1 CIRRHOSIS.

2 Q. OR DRINKING?

3 A. COULD BE FROM NUTRITION OR DRINKING.

4 Q. DID THE FACT THAT HE HAD CIRRHOSIS OF THE LIVER, DID
5 THAT HAVE ANYTHING TO DO WITH CONTRIBUTING TO HIS DEATH?

6 A. NO, IT WOULDN'T KILL HIM FOR MANY YEARS.

7 Q. OKAY. AND ALSO, DOCTOR, YOU INDICATED THAT THE BLOOD
8 ALCOHOL WAS POINT -- YOU SAID HOW MANY? 131?

9 A. YEAH.

10 Q. OKAY. AND EVERYBODY'S MORE FAMILIAR WITH SORT OF THE
11 D.U.I. LAWS?

12 A. RIGHT.

13 Q. .08 IS THE LEGAL LIMIT?

14 A. RIGHT.

15 Q. DESCRIBE FOR THE JURY WHAT THIS IS.

16 A. WELL, IF WE THINK OF 80 BEING THE LEGAL LIMIT IN EASIER
17 TERMS, THIS IS 131.

18 Q. OKAY.

19 A. SO 131 IS---

20 Q. HOLD ON ONE SECOND SO WE CAN GET THAT PHONE OFF.

21 A. .02 IS A RISE. YOU GET A 20 RISE FOR EVERY DRINK. SO
22 THIS IS ABOUT FOUR, FOUR AND A HALF DRINKS.

23 Q. FOUR AND A HALF BEERS?

24 A. BEERS OR SMALL WINES OR MIXED DRINKS, SMALL MIXED
25 DRINKS.

1 Q. AND FROM THE POSITIVE COCAINE IN HIS SYSTEM, CAN YOU
2 TELL WHAT QUANTITY HE HAD INGESTED?

3 A. YOU REALLY CAN'T. YOU CAN SAY IT WAS IN HIS SYSTEM.
4 IT'S NOT ALL BROKEN DOWN, SO IT'S BEEN IN HIS SYSTEM FOR
5 AWHILE. SOME OF IT HAS BROKEN DOWN.

6 Q. AND DO YOU KNOW HOW LONG THE SHELF LIFE OF COCAINE LASTS
7 IN A PERSON?

8 A. WELL, IN A PERSON IT METABOLIZES EVERY 20 MINUTES AT
9 BEST. AT POSTMORTEM THOUGH IT BREAKS DOWN, TOO, SO... IT'S
10 RELATIVELY RECENT, BUT THE REALITY -- HAVING BEEN A
11 PSYCHIATRIST IN THE MILITARY, YOU CAN LOOK AT SOMEBODY AND --
12 COCAINE LEVELS AND HOW THEY ACT AND REACT, THEY'RE TOTALLY
13 UNIQUE TO EVERY SINGLE PERSON, AND YOU MAY NOT KNOW HOW --
14 SOME PEOPLE ACTUALLY GET SEDATED FROM IT. SO WHO KNOWS
15 WHAT'S GOING TO HAPPEN? UNLESS YOU WERE THERE TO WATCH THE
16 PERSON, YOU CAN'T SAY WHAT EFFECT IT WOULD HAVE.

17 Q. OKAY. THANK YOU, DOCTOR. DOCTOR, I'M GOING TO POST A
18 COUPLE OF HYPOTHETICALS TO YOU. OKAY?

19 A. YES.

20 Q. NOW, THE TRAJECTORY OF THE BULLETS TO MR. SMITH'S UPPER
21 BACK, NAMELY B. AND C. ON HIS LEFT BACK -- I'M GOING TO ASK
22 YOU TO STEP DOWN ONE MORE TIME.

23 A. SURE.

24 Q. I'M SORRY.

25 A. THAT'S OKAY.

1 Q. COULD THOSE INJURIES BE INFLICTED IF THE VICTIM WAS IN A
2 FASHION LIKE SO?

3 A. YES. AS YOU CAN SEE, I CAN SHOOT DOWNWARD AND THAT
4 WOULD BE THE TRAJECTORY VERY EASILY.

5 Q. AND THE TRAJECTORY THAT -- YOU FOUND THE BULLETS IN THE
6 CAVITY OF MR. SMITH'S BODY. IS THAT CORRECT?

7 A. YES.

8 Q. IS THAT CONSISTENT WITH A POSTURE OF THIS WHEN THE
9 VICTIM WAS SHOT?

10 A. YES. YOU CAN SEE I CAN AIM THIS WAY OR AIM THIS WAY.
11 JUST BASICALLY THEY'RE PROBABLY VERY CLOSE TO ONE ANOTHER IN
12 TERMS OF WHEN THEY WERE SHOT.

13 Q. OKAY. AND THE INJURY TO HIS WRIST, YOU DON'T KNOW IF IT
14 WAS LIKE SO OR SO?

15 A. WELL, I COULD HAVE SHOT THIS. YOU COULD MOVE YOUR ARM
16 THIS WAY OR THIS WAY, AND IN ANY WHICH WAY I CAN SHOOT. SO
17 IT'S UP. IT'S IN FRONT OF -- PROBABLY IN FRONT OF THE FACE.
18 IT'S PROBABLY NOT NEAR THE BODY OR IT WOULD HAVE ENTERED THE
19 BODY AND KEPT GOING ON, BUT IT'S MORE LIKELY LIKE THIS OR
20 LIKE THIS, ANYWHERE IN THAT VICINITY.

21 Q. OKAY. AND YOU INDICATED THAT WOUND E. TO HIS LOWER
22 RIGHT BACK...

23 A. YES.

24 Q. YOU SAID IT WAS FROM THIS AREA DOWN TO UP?

25 A. YES.

1 Q. IS THAT CONSISTENT WITH AN INJURY LIKE SO?

2 A. YES, HE COULD HAVE BEEN SHOT---

3 Q. GIVING THE SHOOTER NEVER MOVED AROUND THE VICTIM?

4 A. YES.

5 Q. AND SO IS THAT A CONSISTENT WOUND?

6 A. YES, IT IS.

7 Q. AND LASTLY, DOCTOR, IF THE -- DID YOU -- DID YOU WANT ME
8 TO PROVIDE YOU WITH A MOLD OF THE HEAD TO DEMONSTRATE---

9 A. YES.

10 Q. ---THE WOUND A.?

11 A. YES.

12 Q. AND I'M GOING TO ASK YOU TO SHOW THE JURORS THE
13 TRAJECTORY THAT YOU FOUND IN MR. SMITH'S HEAD IN STATE'S
14 NUMBER 81. BY THE WAY, I HAVE TO ENTER IT INTO EVIDENCE
15 FIRST. YOUR HONOR, AT THIS TIME WE MOVE 81 INTO EVIDENCE.

16 MR. LEDDY: NO OBJECTION.

17 THE COURT: THANK YOU.

18 (STATE'S EXHIBIT 81 WAS RECEIVED IN EVIDENCE.)

19 THE WITNESS: ALL RIGHT. THE WOUND GOES THROUGH THE
20 CHEEK AND HITS THE MANDIBLE, GOES TO THE BACK OF THE THROAT.
21 IT'S PROBABLY A LITTLE MORE OF AN ANGLE BUT THE BACK OF THE
22 THROAT AND IT HITS THE CERVICAL VERTEBRA, AND WHEN IT DOES IT
23 SPLATTERS. SOME OF THE BULLET, AS YOU SAW IN X-RAY, WAS LEFT
24 IN THERE. A PIECE COMES OUT THE BACK AND IT'S -- SOME OF IT
25 NOW IS DIVERTED IN THIS DIRECTION. IT'S FOUND IN HERE IN THE

1 SUBCUTANEOUS SKIN OF THE SHOULDER ON THE LEFT SIDE. COMPLEX
2 WOUND, BUT IF YOU THINK ABOUT IT, IT'S AN EASY WOUND AND THIS
3 IS WHAT HAPPENS.

4 BY MS. SHIPLEY:

5 Q. DOCTOR, I'M GOING TO POSE ANOTHER HYPOTHETICAL TO YOU,
6 AND IF I COULD JUST GRAB THAT DIAGRAM BEHIND YOU. IF THE
7 VICTIM IS FOUND LAYING DOWN ON THE FLOOR AT THE CRIME SCENE
8 IN THAT GENERAL POSITION, IF YOU NOTE THE BODY ON STATE'S
9 NUMBER 5---

10 A. UH-HUH.

11 Q. COULD YOU DESCRIBE FOR THE JURY IF HE WERE -- LET'S
12 PRETEND THIS IS THE FLOOR OR I'LL DO IT RIGHT HERE SO YOU
13 HAVE ROOM TO MOVE. TELL THE JURY THE TRAJECTORY -- WHERE THE
14 FIREARM WOULD HAVE BEEN TO CAUSE THIS INJURY.

15 A. WELL, THIS WOULD BE YOUR MUZZLE HERE AND THE GUN WOULD
16 BE LIKE THIS. REALIZE THAT THE END OF THE MUZZLE IS THE
17 TRAJECTORY MARK HERE. SO IT WOULD BE COMING IN THIS
18 DIRECTION, AND THE BULLET WOULD COME THIS WAY FROM THE
19 FIREARM INTO THE BODY.

20 Q. AND WERE YOU ABLE TO DETERMINE WHETHER OR NOT MR. SMITH
21 WAS ALIVE WHEN THIS SHOT WAS FIRED?

22 A. NO, BUT IT'S A VERY LETHAL WOUND BECAUSE WHEN IT HITS
23 THE CERVICAL VERTEBRA, IT SPLATTERS BOTH OF THEM. AND IN
24 DOING THAT, THE SPINAL CORD IS UNDER THERE AND IT'S VERY HIGH
25 UP IN THE BODY. SO YOU'RE GOING TO BE IMMEDIATELY PARALYZED,

1 YOUR ABILITY TO BREATHE, AND YOU'RE GOING TO BE IMMEDIATELY
2 PARALYZED FROM THERE DOWN. SO YOU'LL HAVE NO ABILITY -- YOU
3 WOULD BE LIKE DEAD WEIGHT LITERALLY. IF YOU'RE NOT DEAD,
4 YOU'LL APPEAR DEAD BECAUSE EVERYTHING IS OUT OF COMMISSION,
5 SOMETHING THEY CALL SPINAL SHOCK TO THE -- EVEN JUST WHERE
6 YOU HIT THE VERTEBRA WITHOUT GOING THROUGH THE CORD, THE
7 SPINAL CORD JUST TURNS OFF. IT'S SUCH A DELICATE STRUCTURE.
8 THAT'S WHY IT'S IN THE MIDDLE OF ALL THIS HEAVY BONE.

9 YOUR SPINAL CANAL -- IF YOU EVER EAT CHICKEN AND PULL
10 APART THE BACKBONE, YOU CAN SEE THAT CANAL BONE, AND THAT
11 CANAL RUNS OUR WHOLE BODY. EVERY NERVE IN OUR BODY, EVERY
12 SENSATION, EVERY MOVE IN OUR BODY COMES THROUGH THE SPINAL
13 CORD AND GOES TO THE BRAIN, AND THAT'S DISRUPTED. SO HE'S
14 GOING TO LOOK DEAD FROM THIS.

15 Q. AND COULD GUNSHOT WOUNDS B. AND C. DISABLE HIM?

16 A. YES, BECAUSE THEY'RE LOWER DOWN THAN THE THORACIC
17 VERTEBRA. IT'S NOT AS HIGH UP, BUT THEY CAN DO BAD DAMAGE.

18 Q. AND SO IN YOUR EXPERT OPINION, WOULD IT BE CONSISTENT --
19 IF MR. SMITH HAD BEEN SHOT B. AND C. BEFORE A., WOULD HE HAVE
20 DROPPED? IS IT POSSIBLE THAT HE WOULD HAVE DROPPED TO THE
21 FLOOR?

22 MR. LEDDY: YOUR HONOR, OBJECTION. HOW MUCH SPECULATION
23 ARE WE GOING TO DO HERE?

24 THE WITNESS: YES.

25 MS. SHIPLEY: YOUR HONOR, HE'S AN EXPERT WITNESS IN THE

1 FIELD OF FORENSIC PSYCHIATRY. I'M PERMITTED UNDER THE RULES
2 TO ASK HIM HYPOTHETICAL QUESTIONS.

3 MR. LEDDY: BUT THEY HAVE TO BE WITHIN, YOU KNOW, SOME
4 SORT OF REASON. I'M JUST OBJECTING.

5 THE COURT: OKAY. OVERRULED.

6 MS. SHIPLEY: THANK YOU, YOUR HONOR. I'M BASING -- AND
7 FOR THE RECORD, I AM BASING MY QUESTIONS ON TESTIMONY ON THE
8 RECORD. THANK YOU, YOUR HONOR.

9 BY MS. SHIPLEY:

10 Q. AND SO IF B. AND C. HAD OCCURRED FIRST, WOULD THAT HAVE
11 DISABLED -- COULD THAT POTENTIALLY HAVE DISABLED THE VICTIM
12 TO COLLAPSE ON TO THE FLOOR?

13 A. YES. AT LEAST THE LOWER HALF OF THE BODY WOULD NOT BE
14 MOVING BECAUSE -- THE UPPER HALF OF THE BODY, THE NERVES COME
15 OFF UP HERE AND THEY GO TO THE ARMS, WHAT HAVE YOU, BUT THE
16 LOWER HALF OF THE BODY WOULD START EVERYWHERE ELSE AND YOU'RE
17 RIGHT IN YOUR MIDCHEST REGION. SO HE WOULD HAVE BEEN
18 DISABLED FROM THAT.

19 Q. THANK YOU, DOCTOR. BEG THE COURT'S INDULGENCE, YOUR
20 HONOR. THANK YOU. PLEASE HAVE A SEAT, DR. KESSLER. AS A
21 RESULT OF THE AUTOPSY THAT YOU PERFORMED ON MR. SMITH, DID
22 YOU REACH A CONCLUSION OR AN OPINION TO A REASONABLE DEGREE
23 OF MEDICAL CERTAINTY AS TO HIS CAUSE OF DEATH?

24 A. YES.

25 Q. AND WHAT WAS THAT?

1 A. I THINK HE DIED FROM MULTIPLE GUNSHOT WOUNDS PERFORATING
2 THE MANDIBLE, ESOPHAGUS, LUNGS, LIVER, SPINAL CORD, AND
3 DIAPHRAGM.

4 MS. SHIPLEY: THANK YOU, DOCTOR. NO FURTHER QUESTIONS.

5 CROSS-EXAMINATION

6 BY MR. LEDDY:

7 Q. GOOD MORNING, DOCTOR.

8 A. GOOD MORNING.

9 Q. I HAVE GOT A FEW QUESTIONS FOR YOU. FIRST OF ALL, IN
10 YOUR NOTES -- YOUR CLINICAL HISTORY IS PROVIDED TO YOU BY LAW
11 ENFORCEMENT. IS THAT CORRECT?

12 A. CORONER.

13 Q. I'M SORRY?

14 A. CORONER'S OFFICE.

15 Q. THE CORONER'S OFFICE.

16 A. CORRECT.

17 Q. OKAY. AND THEY WERE WORKING IN CONJUNCTION WITH LAW
18 ENFORCEMENT.

19 A. THEY WORK INDEPENDENTLY ON THEIR OWN.

20 Q. OKAY. WELL, THEY SAY THAT THERE WAS AN ARGUMENT IN THIS
21 CASE.

22 A. THEY SAID THAT.

23 Q. YES.

24 A. YES.

25 Q. YOU DIDN'T JUST COME UP WITH THAT.

1 A. I DON'T KNOW IF IT WAS TRUE. THEY SAID THAT. THEY TOLD
2 ME THAT.

3 Q. THAT'S WHAT THEY TOLD YOU.

4 A. CORRECT.

5 Q. ALL RIGHT. AND THAT WAS ON THE DAY THAT THIS HAPPENED.

6 A. WELL, THAT WAS PRIOR TO BEING SHOT.

7 Q. RIGHT. NOW, THE STATE TOLD US AND SOME WITNESSES HAVE
8 TOLD US THAT MY CLIENT, AFTER MR. SMITH WAS ON THE GROUND,
9 PUMPED TWO MORE BULLETS INTO HIS HEAD. HOW MANY BULLET HOLES
10 ARE IN THIS MAN'S HEAD?

11 A. THERE'S ONE IN HIS HEAD.

12 Q. YES.

13 A. THAT DOESN'T MEAN THAT PUMPING TWO IN HIS HEAD MEANT
14 THAT BOTH OF THEM WENT INTO HIS HEAD.

15 Q. YES, SIR.

16 A. BUT AT LEAST ONE POSSIBLY DID.

17 Q. ONE BULLET WENT IN HIS HEAD THEN.

18 A. YES.

19 Q. OKAY. NOW, HAVE YOU -- YOU SAID THAT YOU'VE TESTIFIED
20 300 TIMES, SO I KNOW YOU'VE DONE MANY MORE AUTOPSIES THAN
21 THAT.

22 A. CORRECT.

23 Q. OKAY. AND YOU ALSO TESTIFIED THAT THESE BULLETS ARE
24 DESIGNED TO DO WHAT THEY DO WHICH IS INFLICT TERRIBLE DAMAGE.

25 A. THAT IS CORRECT.

1 Q. ALL RIGHT. YOU, I WOULD HAVE TO ASSUME, HAVE DONE
2 AUTOPSIES ON PEOPLE WHO DIED AS A GUNSHOT WOUND AS A RESULT
3 OF AN ACCIDENT.

4 A. CORRECT.

5 Q. AND WHEN YOU DID THAT AUTOPSY, DID YOU FIND WOUNDS THAT
6 WERE ANY LESS DEVASTATING?

7 A. YOU MEAN ACCIDENT? SUICIDE? WHAT DO YOU MEAN?

8 Q. ACCIDENT. SUICIDE.

9 A. I HAVE DONE VERY FEW IN ACCIDENTS.

10 Q. YOU HAVE DONE THEM.

11 A. I THINK THEY WERE EITHER SUICIDES OR HOMICIDES. THERE
12 ARE VERY FEW -- THERE MAY BE ONE OR TWO IN ABOUT 12,000
13 AUTOPSIES---

14 Q. OKAY.

15 A. ---ON ACCIDENTAL SHOOTINGS. I DON'T KNOW WHAT AN
16 ACCIDENTAL SHOOTING IS. YOU COULD POSSIBLY EXPLAIN THAT MORE
17 TO ME FOR A GOOD DEFINITION.

18 Q. WELL, IT REALLY DOESN'T MATTER WHETHER IT'S AN ACCIDENT
19 OR A SUICIDE. OKAY?

20 A. TO ME IT DOES.

21 Q. FOR THE TERMS OF MY QUESTION IT DOESN'T THOUGH.

22 A. WELL, I DON'T KNOW.

23 Q. OKAY.

24 A. I DON'T KNOW WHAT YOUR QUESTION IS.

25 Q. WELL, MY QUESTION IS THIS: THESE WOUNDS ARE NO

1 DIFFERENT IN TERMS OF HOW HORRIBLE THEY ARE BECAUSE OF WHY
2 THESE BULLETS ARE FIRED, ARE THEY?

3 A. COULD YOU REPHRASE THAT, PLEASE?

4 Q. SURE. THIS BULLET, REGARDLESS OF WHY IT WAS FIRED, DID
5 WHAT IT WAS DESIGNED TO DO.

6 A. THE BULLET KILLED HIM.

7 Q. YES.

8 A. YES.

9 Q. AND WHETHER OR NOT THAT BULLET WAS FIRED IN MALICE OR
10 NOT, IT'S GOING TO DO JUST WHAT THAT BULLET DOES.

11 MS. SHIPLEY: OBJECTION, YOUR HONOR. HE'S INJECTING
12 LEGAL TERMS AND DEFINITIONS INTO HIS QUESTION.

13 MR. LEDDY: I'M GOING TO---

14 THE COURT: I WILL---

15 MR. LEDDY: ---WHAT THE LIMITATIONS OF WHAT HE CAN---

16 THE COURT: RIGHT. I'LL OVERRULE IT TO THE EXTENT THE
17 DOCTOR CAN TESTIFY ABOUT IT WITHIN HIS KNOWLEDGE AND
18 EDUCATION. THEN HE CAN QUALIFY HIS ANSWER.

19 MR. LEDDY: RIGHT.

20 BY MR. LEDDY:

21 Q. THE SIMPLEST WAY IS: YOU CAN'T LOOK AT A BULLET WOUND,
22 NO MATTER HOW HORRIBLE IT IS, AND SAY WHY IT WAS CAUSED.

23 A. ALL BULLET WOUNDS TO THE BODY TO ME ARE HORRIBLE. I
24 NEVER KNOW WHY THEY'RE CAUSED.

25 Q. OKAY. THAT'S ALL I'M GETTING AT. NOW, YOU SAID THAT ON

1 DIRECT EXAMINATION THAT YOU GUYS USE ONE MEASURE OF ALCOHOL
2 AND IT'S NOT THE ONE THAT WE USE WHEN WE GET BOOKED FOR
3 D.U.I. RIGHT? IT'S B.A.C. IT'S NANOGRAMS PER DECILITER OR
4 SOMETHING.

5 A. WELL, IT'S ACTUALLY IN MILLIGRAMS PERCENT, BUT IT'S THE
6 SAME THING. IT'S A CONVERSION. YOU JUST HAVE TO CONVERT IT.
7 80 MILLIGRAMS OR 180 -- I MEAN -- I MEAN, 80 MILLIGRAMS PER
8 -- I HAVE TO LOOK AT THE NUMBERS AGAIN, BUT IT'S -- THE
9 FACTOR IS 80 AND YOU USE .08.

10 Q. RIGHT.

11 A. YOU HAVE A .08. THAT'S IN PERCENT, AND THE OTHER IS
12 SOMETHING ELSE WE USE.

13 Q. RIGHT. AND YOU TESTIFIED THAT PER DRINK, PER BEER, PER
14 FIVE OUNCES OF WINE, YOU GET ABOUT 20 POINTS ON YOUR SCALE.

15 A. 20 OR .02.

16 Q. 20 OR .02.

17 A. YEAH, WHATEVER -- BECAUSE THE LEGAL LIMIT IS .08.

18 Q. UH-HUH.

19 A. OR 80. SO WHICHEVER SCALE YOU USE, IT'S THE SAME. YOU
20 JUST MOVE THE DECIMAL POINT.

21 Q. YOU TESTIFIED IT WAS ABOUT 20 PER DRINK; RIGHT?

22 A. 20 PER DRINK OR .02.

23 Q. IN THIS CASE YOU FOUND 130.

24 A. 131, YEAH.

25 Q. NOW, YOU TESTIFIED THAT WOULD BE ABOUT FOUR DRINKS.

1 A. FOUR AND A HALF DRINKS MAYBE.

2 Q. WELL, ISN'T 20 TIMES FOUR 80?

3 A. SO 80 TIMES -- SO IT'S MORE THAN THAT ACTUALLY. YOU'RE
4 RIGHT. YOU'RE RIGHT. IT'S MORE.

5 Q. SO IT WOULD BE ABOUT SIX AND A HALF, WOULDN'T IT?

6 A. ABOUT SIX, SIX AND A HALF DRINKS, YEAH.

7 Q. OKAY. NOW, YOU TESTIFIED ON DIRECT THAT IT TAKES ABOUT
8 20 MINUTES FOR COCAINE TO METABOLIZE IN THE SYSTEM?

9 A. IT CAN.

10 Q. OKAY. AND IN YOUR TOXICOLOGY REPORT YOU SAID THAT YOU
11 FOUND COCAINE IN THE BLOOD.

12 A. THAT IS CORRECT.

13 Q. WHICH MEANS THAT IT HAD NOT BEEN METABOLIZED. IS THAT
14 RIGHT?

15 A. THAT'S CORRECT.

16 Q. OKAY. SO THAT COCAINE WOULD HAD TO HAVE BEEN
17 INGESTED---

18 A. YES.

19 Q. ---RECENTLY.

20 A. WELL, YES.

21 Q. ABSOLUTELY. OKAY. NOW, REGARDING THE WOUNDS, I HAVE A
22 FEW QUESTIONS FOR YOU. THE SOLICITOR DID A LITTLE
23 DEMONSTRATION ON BODY POSITIONS. OKAY? NOW, IT'S THE
24 STATE'S THEORY THAT THIS WAS DONE IN AN EXECUTION BASICALLY.
25 OKAY? AND YOU TESTIFIED THAT IT WOULD HAVE BEEN CONSISTENT

1 WITH THE GUN BEING HELD UP, AND MS. SHIPLEY WAS DOWN HERE
2 GRABBING YOU; RIGHT?

3 A. CORRECT.

4 Q. OKAY. NOW, YOU SAID THAT THAT WOULD HAVE BEEN
5 CONSISTENT.

6 A. CONSISTENT WITH ANY POSITION WHERE THE GUN IS ABOVE THE
7 SHOULDER SHOOTING IN.

8 Q. NOW---

9 A. SO THERE ARE LOTS OF DIFFERENT POSITIONS IT COULD BE.

10 Q. RIGHT. NOW, WHAT'S INTERESTING TO ME ABOUT WHERE THESE
11 BULLET WOUNDS ARE IS THAT EVERY SINGLE ONE OF THEM IS EITHER
12 IN THE BACK; RIGHT? HE HAS TWO IN HIS BACK AND ONE IN HIS
13 FLANK.

14 A. ONE IN HIS FLANK, TWO IN HIS BACK.

15 Q. BUT HE HAS FIVE WOUNDS; RIGHT?

16 A. SO TWO ARE IN THE BACK, ONE IN THE FRONT, ONE IN THE
17 SIDE, ONE IN THE -- TWO IN THE FRONT. THIS IS THE FRONT.

18 Q. HE DOESN'T HAVE ANY WOUNDS IN HIS CHEST, DOES HE?

19 A. THEY'RE ALL INTERNAL IN THE CHEST.

20 Q. HE DOESN'T HAVE ANY BULLET HOLES GOING INTO HIS CHEST.

21 A. THERE'S NOT A BULLET HOLE IN THE CHEST, BUT THERE ARE
22 WOUNDS TO THE CHEST.

23 Q. THERE'S NO BULLET HOLES GOING INTO HIS STOMACH.

24 A. NO.

25 Q. NO BULLET HOLES GOING INTO THE FRONT OF HIS LEGS.

1 A. NO.

2 MR. LEDDY: ALL RIGHT. THANK YOU. I HAVE NO FURTHER
3 QUESTIONS.

4 MS. SHIPLEY: MAY IT PLEASE THE COURT?

5 THE COURT: YES, YOU MAY.

6 REDIRECT EXAMINATION

7 BY MS. SHIPLEY:

8 Q. DR. KESSLER, MR. LEDDY JUST ASKED YOU ON CROSS-
9 EXAMINATION WHETHER OR NOT IN YOUR OPINION THESE INJURIES
10 THAT WERE INFLICTED ON MR. SMITH WERE AN ACCIDENT?

11 MR. LEDDY: OBJECTION. THAT IS NOT WHAT I ASKED, YOUR
12 HONOR. IF SHE'S GOING TO REDIRECT HIM, THEN SHE NEEDS TO SAY
13 WHAT I ASKED HIM. I ASKED HIM IF HE HAD DONE THEM ON
14 ACCIDENTS.

15 THE COURT: CORRECT.

16 BY MS. SHIPLEY:

17 Q. ALL RIGHT. HAVE YOU DONE AUTOPSIES IN ACCIDENTAL
18 SHOOTINGS?

19 A. I REALLY -- AGAIN, I DON'T THINK SHOOTINGS ARE
20 ACCIDENTAL. THERE'S USUALLY SOME DEGREE OF THOUGHT PROCESS,
21 SOME DEGREE OF INTENT, AND OCCASIONALLY I HAD A CHILD HIT A
22 BULLET WITH A HAMMER AND IT WENT OFF AND THAT WENT INTO -- I
23 WOULD CONSIDER THAT AN ACCIDENT. I HAD SOME PEOPLE THROW
24 BULLETS INTO A FIRE. THEY WENT OFF AND ONE PERSON GOT SHOT,
25 BUT IN GENERAL PEOPLE AREN'T SHOT ACCIDENTALLY. THERE'S

1 USUALLY AN INTENT TO SHOOT SOMEONE.

2 Q. AND QUICK QUESTION: FIVE SHOTS TO MR. SMITH'S BODY, IS
3 THAT CONSISTENT OR INCONSISTENT WITH AN ACCIDENTAL SHOOTING?

4 A. THAT WOULD BE TOTALLY INCONSISTENT WITH AN ACCIDENT.

5 Q. IN FACT, THE WOUNDS THAT YOU FOUND ON MR. SMITH'S BODY,
6 DID YOU SEE ANY EVIDENCE OF STIPPLING?

7 A. NONE.

8 Q. TELL THE JURY WHAT STIPPLING IS.

9 A. EVERY GUN, HANDGUN, WILL SHOOT A BULLET OUT. NOW, THE
10 POWDER, THE GUN POWDER MATERIAL, IT'S ACTUALLY NITRATED
11 CELLULOUS OR PLASTIC, BUT IT'S MIXED WITH GRAPHITE SO IT
12 LOOKS BLACK. THAT'S WHAT PROPELS THE BULLET. IT'S THE
13 PRIMER THAT HITS AND THAT EXPLODES AND CAUSES THE CARTRIDGE
14 TO GO OFF. THERE ARE ABOUT MAYBE A THOUSAND OF THESE LITTLE
15 GRAINS THAT BURN. THEY'RE NOT A HUNDRED PERCENT EFFICIENT.
16 SOME OF THESE GRAINS DON'T BURN TOTALLY AND THEY COME OUT OF
17 THE END OF THE MUZZLE, AND ANYTHING IN THE WAY OF THE MUZZLE
18 IT WILL DEPOSIT ON AND IT WILL PRODUCE LITTLE BLACK STIPPLED
19 MARKS LIKE YOU TOOK A PEN AND HIT A PEN ON PAPER AND GOT
20 THESE LITTLE STIPPLED MARKS. MOST GUNS -- 95, 97 PERCENT OF
21 HANDGUNS DON'T PRODUCE STIPPLING BEYOND TEN INCHES, EIGHT TO
22 TEN INCHES TO BE SAFE. AND SO THESE WOUNDS DON'T SHOW ANY
23 EVIDENCE OF STIPPLING WHICH MAKES ME THINK THEY'RE GREATER
24 THAN EIGHT TO TEN INCHES. SO THAT'S JUST -- THAT'S JUST THAT
25 SIMPLE.

1 Q. AND LASTLY OR ACTUALLY SECOND TO LAST, DOCTOR, MR. LEDDY
2 WAS ASKING YOU ABOUT THE INJURIES TO MR. SMITH'S BACK? IS
3 THAT CORRECT?

4 A. YES.

5 Q. AND I WANTED TO BRING -- AGAIN ASK YOU ABOUT STATE'S OR
6 WOUND E. TO HIS FLANK.

7 A. YES.

8 Q. STATE'S NUMBER 73.

9 A. CORRECT.

10 Q. WOULD THAT INJURY BE CONSISTENT WITH MR. SMITH HAVING
11 HIS BACK TURNED FROM THE BARREL OF THE GUN AND IT SHOOTING
12 HIM FROM AN UPWARD OR FROM THIS AREA ON THE BACK UPWARD OUT
13 OF HIS SIDE FLANK?

14 A. THAT'S CORRECT. THE BULLET WOULD GO INTO HIM FROM
15 BELOW. THE MUZZLE OR THE GUN WOULD HAVE BEEN SHOT TOWARDS --
16 HE COULD HAVE BEEN LYING DOWN. HE COULD HAVE BEEN BENDING
17 OVER, BUT HE'S NOT GOING TO BE ERECT UNLESS THE OTHER PERSON
18 IS ON THE FLOOR SHOOTING UP. IT'S GOT TO BE IN AN UPWARD
19 DIRECTION.

20 Q. AND HIS POSTURE WOULD HAVE BEEN CONSISTENT WITH BEING
21 TURNED AWAY FROM THE BARREL OF THE GUN?

22 A. THAT'S CORRECT.

23 Q. AND WOULD THAT BE CONSISTENT WITH RETREATING?

24 A. I WOULD THINK SO.

25 MR. LEDDY: OBJECTION. IT DOESN'T EXCLUDE IT AND IT'S

1 INAPPROPRIATE FOR HIS AREA OF EXPERTISE. IT'S NOT WHAT HE'S
2 AN EXPERT IN, YOUR HONOR.

3 MS. SHIPLEY: YOUR HONOR, HE'S A FORENSIC PATHOLOGIST.
4 THAT'S PRECISELY WHAT HIS OPINION EXPERTISE IS IN.

5 MR. LEDDY: HE'S NOT AN EXPERT IN RETREATING OR HOW IT
6 HAPPENED. HE SAID THERE COULD BE ANY NUMBER OF THINGS.
7 SHE'S TRYING TO MAKE HIM SAY WHAT SHE WANTS, BUT THAT'S NOT
8 THE POINT OF REDIRECT, YOUR HONOR.

9 THE COURT: MY CONCERN IS THE LEGAL DEFINITION OF
10 RETREAT WITH RESPECT TO THE EXPERT. IF YOU WOULD FURTHER ASK
11 THE QUESTION MORE IN LAY TERMS.

12 MS. SHIPLEY: YES, MA'AM.

13 BY MS. SHIPLEY:

14 Q. I THINK THE QUESTION I ASKED BEFORE THE RETREATING
15 QUESTION: I ASKED YOU WOULD IT BE -- WOULD MR. SMITH'S BODY
16 HAVE BEEN TURNED AWAY FROM THE BARREL OF THE GUN WHEN WOUND
17 E. STRUCK HIM?

18 A. CORRECT. HE'S TURNED AWAY WHICH IS AN EITHER SUBMISSION
19 OR AN ANIMAL BEHAVIOR. IT'S A SUBMISSION, BUT IT'S A NON-
20 THREATENING POSITION. HE'S TURNED AWAY FROM THE PERSON WHICH
21 IS CONSISTENT WITH A NON-THREATENING POSITION. COULD BE
22 WALKING AWAY. COULD BE JUST TURNED THE OTHER WAY.

23 Q. DOCTOR, LASTLY, YOU WERE ASKED ABOUT THE NUMBER OF
24 INJURIES THAT MR. SMITH RECEIVED TO HIS HEAD AREA.

25 A. CORRECT.

1 Q. WITNESSES TESTIFIED THAT THE DEFENDANT RETURNED AND SHOT
2 MR. SMITH TWICE IN THE HEAD?

3 A. CORRECT.

4 Q. WHAT DOES IT LEAD YOU TO BELIEVE, THE FACT THAT HE ONLY
5 RECEIVED ONE GUNSHOT WOUND TO HIS HEAD?

6 A. WITNESSES ARE EITHER CORRECT -- INCORRECT -- COULD HAVE
7 BEEN A REVERBERATION FROM THE GUN THAT WENT OFF. THEY MAY
8 HAVE HEARD TWO OR ANOTHER SHOT COULD HAVE BEEN FIRED THAT
9 TOTALLY MISSED HIM.

10 Q. SO HE COULD HAVE MISSED.

11 A. YES.

12 MS. SHIPLEY: THANK YOU. NO FURTHER QUESTIONS, DOCTOR.

13 MR. LEDDY: JUST BRIEFLY, YOUR HONOR.

14 RECROSS EXAMINATION

15 BY MR. LEDDY:

16 Q. YOU SAID -- BEFORE MS. SHIPLEY WAS ABLE TO CORRAL YOUR
17 TESTIMONY IN THE WAY SHE WANTED YOU TO GO, YOU SAID HE COULD
18 HAVE BEEN GOING DOWN AT THE TIME WHEN HE GOT THIS WOUND HERE?

19 A. HE COULD HAVE BEEN WALKING AWAY, RUNNING AWAY.

20 Q. YOU SAID---

21 A. HE WAS TURNED AWAY FROM THE SHOOTER.

22 Q. YOU SAID HE COULD HAVE BEEN GOING DOWN.

23 A. COULD HAVE BEEN FALLING DOWN.

24 Q. YES.

25 A. HE COULD HAVE BEEN BENT OVER.

1 Q. AND I NEGLECTED TO BRING IT UP, BUT IT'S BEEN

2 REPRESENTED THAT THIS WOUND OCCURRED WHILE THIS HEAD WAS IN
3 THIS POSITION.

4 A. WELL, IT COULD HAVE BEEN THAT WAY OR HE COULD HAVE BEEN
5 STANDING AND HE COULD HAVE BEEN ABOVE HIM AND SHOOTING DOWN
6 AT HIM.

7 Q. RIGHT. SO WE---

8 A. WE HAVE NO IDEA WHICH CAME FIRST.

9 Q. WE DON'T KNOW.

10 A. NO, BUT I THINK ONE OF THE SHOTS TO THE LIVER SHOWED ME
11 THAT WAS ONE OF THE FINAL SHOTS BECAUSE THERE'S NO BLOOD
12 AROUND THE TRAJECTORY IN THE LIVER. SO HE STOPPED BLEEDING
13 OR HE'S IN SHOCK THEN.

14 MR. LEDDY: OKAY. THANK YOU.

15 THE COURT: OKAY. THANK YOU, SIR. YOU CAN STEP DOWN
16 AND BE EXCUSED. THIS WOULD BE A GOOD TIME FOR THE JURY TO
17 TAKE A BREAK. I'M GOING TO GIVE YOU AN ASSIGNMENT ON THIS
18 BREAK. I'M GOING TO ASK FOR YOU ALL TO SELECT A FOREPERSON.
19 THIS PERSON WILL BE THE ONE WHO GUIDES THE DELIBERATIONS.
20 NONE OF YOU HAS MORE OF A VOTE THAN ANY OF THE OTHER ONES,
21 BUT IT JUST WOULD BE THE PERSON WHO GUIDES THE DELIBERATIONS
22 IN TERMS OF ASKING YOU ALL YOUR OPINIONS AND THINGS AS YOU
23 GET INTO THE JURY ROOM.

24 YOU WILL ALSO BE RESPONSIBLE FOR FILLING OUT THE ACTUAL
25 VERDICT FORM WHICH THE COURT WILL EXPLAIN TO YOU AT THE

1 APPROPRIATE TIME. SO JUST GO BACK AND SELECT AMONGST
2 YOURSELVES, BUT THEN I STILL REMIND YOU NOT TO DISCUSS THE
3 CASE IN ANY SHAPE, FORM, OR FASHION. WE'LL BE WITH YOU AFTER
4 AWHILE.

5 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
6 11:10 A.M.)

7 THE COURT: IS THERE ANYTHING THAT THE PARTIES WISH TO
8 TAKE UP AT THIS TIME?

9 MS. SHIPLEY: NO, YOUR HONOR.

10 MR. LEDDY: NO, YOUR HONOR.

11 THE COURT: OKAY. WE'LL BE IN RECESS FOR A MOMENT.

12 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

13 THE COURT: THANK YOU. ARE THE PARTIES READY TO
14 PROCEED?

15 MS. SHIPLEY: YES. WE JUST NEED MR. ROBINSON. YOUR
16 HONOR, IF WE CAN GO ON THE RECORD REAL BRIEFLY. MR. LEDDY
17 AND I HAVE JUST REVIEWED THE AUDIOTAPE OF MR. ROBINSON'S
18 CONFESSION TO INVESTIGATOR REESE, AND WE HAVE VERIFIED THAT
19 THE PRODUCTION COMPANY DID REDACT THE PORTION THAT BOTH
20 PARTIES INDICATED WE WOULD REDACT.

21 THE COURT: WONDERFUL. THANK YOU.

22 (MR. ROBINSON IS BROUGHT INTO THE COURTROOM NOW.)

23 THE COURT: OKAY. JURORS, PLEASE.

24 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
25 11:29 A.M.)

1 THE COURT: THANK YOU, MS. SHANNON OUTEN, JUROR NUMBER
2 193, FOR ACCEPTING RESPONSIBILITY OF FOREPERSON.

3 MR. ROSE: THE STATE CALLS OFFICER BRIAN CARROLL.

4 BRIAN CARROLL, AFTER BEING DULY SWORN, TESTIFIED AS
5 FOLLOWS:

6 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
7 FOR THE RECORD.

8 THE WITNESS: BRIAN CARROLL.

9 DIRECT EXAMINATION

10 BY MR. ROSE:

11 Q. OFFICER CARROLL, WHERE ARE YOU EMPLOYED?

12 A. CITY OF COLUMBIA POLICE DEPARTMENT.

13 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

14 A. JUST LESS THAN THREE YEARS.

15 Q. AND WHAT IS YOUR POSITION?

16 A. PATROLMAN.

17 Q. AND JUST TO GET TO IT, WHAT WAS YOUR INVOLVEMENT ON THE
18 NIGHT OF FEBRUARY 15TH, 2007, WITH THIS CASE?

19 A. I TRANSPORTED THE DEFENDANT FROM NORTH MAIN TO
20 HEADQUARTERS DOWNTOWN ON JUSTICE SQUARE.

21 Q. AND WHAT, IF ANYTHING, HAPPENED AT HEADQUARTERS THAT
22 NIGHT ONCE YOU ARRIVED?

23 A. WE WERE WAITING FOR THE INVESTIGATOR. WE WERE IN A
24 ROOM. THE DEFENDANT WAS SITTING IN A CHAIR. I WAS STANDING
25 A COUPLE OF FEET FROM HIM. WE CASUALLY WERE TALKING. HE

1 ASKED SOMETHING TO THE EFFECT OF: HOW LONG HAVE I BEEN DOING
2 THIS? I STATED THAT I WORKED FOR ST. MATTHEWS FOR FOUR YEARS
3 PREVIOUS. HE STATED HE HAD FAMILY IN ST. MATTHEWS AND THE
4 FAMILY -- WHICH I KNEW THE SON AND FATHER, AND I ADVISED THAT
5 THE FATHER HAD PASSED AWAY. HE SAID, "YEAH, HE DID." I
6 REALLY DIDN'T KNOW THE FAMILY THAT HE KNEW. WE JUST HAD
7 SMALL TALK FROM THERE. HE MADE SOME COMMENT ALONG THE WAY
8 THAT THE VICTIM HAD DISRESPECTED HIM SEVERAL TIMES. AND WE
9 WERE JUST WAITING ON THE INVESTIGATOR TO GET THERE AT THE
10 TIME.

11 Q. AND JUST TO BE CLEAR, DID YOU ASK HIM ANY QUESTIONS AS
12 PERTAINS TO THIS CASE?

13 A. NO, I DID NOT.

14 Q. AND WHAT DID HE SAY TO YOU?

15 A. THAT THE VICTIM HAD DISRESPECTED HIM SEVERAL TIMES.

16 Q. AND, OFFICER, DID YOU ALSO SIT IN ON AN INTERVIEW WITH
17 THE DEFENDANT AND INVESTIGATOR REESE?

18 A. YES, I DID.

19 Q. AND DID YOU WITNESS THE DEFENDANT BEING GIVEN HIS RIGHTS
20 BY INVESTIGATOR REESE?

21 A. YES, I DID.

22 Q. AND DID THE DEFENDANT WAIVE THOSE RIGHTS AND AGREE TO
23 GIVE A STATEMENT TO INVESTIGATOR REESE?

24 A. YES, HE DID.

25 Q. IN FACT, WAS THIS INTERVIEW ON AUDIOTAPE?

1 A. YES, IT WAS.

2 Q. AND WHO WAS PRESENT?

3 A. MYSELF, INVESTIGATOR REESE, AND SERGEANT WHITE.

4 Q. AND HOW LONG DID YOU STAY FOR THIS INTERVIEW?

5 A. ABOUT 10, MAYBE 15 MINUTES.

6 Q. AND HOW WOULD YOU DESCRIBE INVESTIGATOR REESE? WAS HE
7 POLITE TO THE DEFENDANT? CORDIAL?

8 A. HE WAS POLITE, COURTEOUS TO HIM.

9 MR. ROSE: NO FURTHER QUESTIONS.

10 CROSS-EXAMINATION

11 BY MR. LEDDY:

12 Q. OFFICER, DO YOU RECALL TESTIFYING IN THIS CASE PRIOR TO
13 US PICKING A JURY?

14 A. YES, SIR.

15 Q. OKAY. DO YOU RECALL IN THAT TESTIMONY THAT YOU SAID
16 THAT THE DEFENDANT TOLD YOU THAT MR. SMITH HAD DISRESPECTED
17 HIM?

18 A. YES, THE VICTIM.

19 Q. NOW, YOU DIDN'T SAY AT THAT TIME SEVERAL TIMES, DID YOU?

20 A. I DON'T REMEMBER.

21 Q. AND HAVE YOU HAD MEETINGS WITH THE SOLICITORS BETWEEN
22 THEN AND NOW?

23 A. YES, TODAY.

24 Q. OKAY. AND NOW YOUR TESTIMONY IS THAT HE DISRESPECTED
25 HIM SEVERAL TIMES.

1 A. THAT'S WHAT I REMEMBER OF IT; YES, SIR.

2 MR. LEDDY: OKAY. THANK YOU. NO FURTHER QUESTIONS.

3 MR. ROSE: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: OKAY. THANK YOU. YOU CAN STEP DOWN AND BE
5 EXCUSED.

6 MS. SHIPLEY: MAY IT PLEASE THE COURT, YOUR HONOR?

7 THE COURT: YES.

8 MS. SHIPLEY: THE STATE CALLS INVESTIGATOR KEVIN REESE
9 TO THE STAND.

10 KEVIN REESE, AFTER BEING DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
13 FOR THE RECORD.

14 THE WITNESS: MY NAME IS KEVIN REESE.

15 DIRECT EXAMINATION

16 BY MS. SHIPLEY:

17 Q. INVESTIGATOR REESE, CAN YOU TELL THIS JURY WHERE IT IS
18 YOU'RE EMPLOYED?

19 A. CITY OF COLUMBIA POLICE DEPARTMENT.

20 Q. HOW LONG HAVE YOU WORKED THERE?

21 A. THIS IS MY SECOND TIME AROUND. I STARTED IN '80, LEFT
22 IN '85, CAME BACK IN '91. I'VE BEEN THERE SINCE THEN.

23 Q. AND WHAT ARE -- WHAT IS YOUR CURRENT TITLE THERE?

24 A. I AM A CRIMINAL INVESTIGATOR. I'M ASSIGNED TO THE V-CAP
25 UNIT WHICH IS---

1 COURT REPORTER: I'M SORRY. CAN YOU PULL UP TO THE
2 MICROPHONE?

3 THE WITNESS: VIOLENT CRIMES AGAINST PERSONS. YES,
4 MA'AM. SORRY. MY JOB IS TO INVESTIGATE VIOLENT CRIMES AND
5 HOMICIDES.

6 BY MS. SHIPLEY:

7 Q. AND, AGAIN, HOW LONG HAVE YOU BEEN INVESTIGATING
8 HOMICIDES AND VIOLENT CRIMES?

9 A. TEN YEARS.

10 Q. AND IS MURDER A VIOLENT CRIME?

11 A. ABSOLUTELY.

12 Q. AND ASSAULT AND BATTERY WITH INTENT TO KILL?

13 A. YES, IT IS.

14 Q. ARE THOSE THE TYPE OF CASES THAT YOU TYPICALLY
15 INVESTIGATE?

16 A. THAT'S RIGHT.

17 Q. CAN YOU TELL THE JURY HOW IT IS THAT YOU GET INVOLVED IN
18 AN INVESTIGATION?

19 A. THAT'S MY JOB. I'M THE LEAD INVESTIGATOR ON HOMICIDES,
20 AND TYPICALLY IF A VIOLENT CRIME OR, IN THIS CASE, A HOMICIDE
21 IS COMMITTED OR DETECTED, THEN MY OFFICE WOULD CALL ME OR
22 ANOTHER LEAD INVESTIGATOR OUT---

23 Q. AND---

24 A. ---TO RESPOND TO THE SCENE.

25 Q. AND ARE YOU AND OTHER INVESTIGATORS SORT OF ON CALL? IS

1 THAT HOW IT WORKS? NOW, IN THIS CASE -- I'M SORRY. GO
2 AHEAD.

3 A. UNLESS WE'RE ON DUTY, WE NORMALLY WORK FROM 9 TO 5, BUT
4 IT'S NOT UNCOMMON FOR US TO BE AT HOME RESTING AND 4 OR 5:00
5 IN THE MORNING WE'LL GET A CALL OUT BECAUSE OF A HOMICIDE.
6 IT'S NOT UNCOMMON AT ALL.

7 Q. OKAY. NOW, IN THIS CASE CAN YOU TELL THE JURY WHEN IT
8 WAS THAT YOU BECAME INVOLVED AS THE LEAD INVESTIGATOR?

9 A. I WAS AT HOME ON THE NIGHT OF THIS INCIDENT. I BELIEVE
10 ABOUT 9:00 OR SO I RECEIVED A CALL.

11 Q. LET ME STOP YOU RIGHT THERE. HAVE YOU HAD AN
12 OPPORTUNITY TO REVIEW STATE'S NUMBER 84?

13 A. I DO NOW, YES.

14 Q. YES. AND WHAT IS THIS A DIAGRAM OF?

15 A. IT IS THE MONTH OF FEBRUARY OF 2007.

16 Q. OKAY. AND WHAT IS THE DATE OF OUR INCIDENT?

17 A. FEBRUARY 15TH, 2007.

18 Q. AND WHAT DAY DID OUR -- WHAT DAY OF THE WEEK DID THAT
19 FALL ON?

20 A. THAT WOULD HAVE BEEN A THURSDAY.

21 MS. SHIPLEY: YOUR HONOR, WE'D SEEK TO INTRODUCE 84 INTO
22 EVIDENCE, PLEASE.

23 MR. LEDDY: NO OBJECTION.

24 THE COURT: THANK YOU.

25 (STATE'S EXHIBIT 84 WAS RECEIVED IN EVIDENCE.)

1 BY MS. SHIPLEY:

2 Q. AND SO FEBRUARY 15TH IS THE DATE OF OUR CASE? IS THAT
3 CORRECT?

4 A. YES, MA'AM.

5 Q. NOW, TELL THE JURY -- YOU INDICATED YOU WERE CALLED AT
6 HOME BECAUSE IT WAS AFTER HOURS; CORRECT?

7 A. RIGHT.

8 Q. WHAT TIME DID YOU RECEIVE A CALL TO COME TO THE SCENE?

9 A. LET ME CHECK MY NOTES HERE. I RECEIVED A CALL AT ABOUT
10 10:00 AT NIGHT, 10:00 P.M.

11 Q. AND WHERE DID THEY INDICATE TO YOU THAT THE INCIDENT HAD
12 HAPPENED?

13 A. I WAS ASKED TO RESPOND TO WHICH IS IN
14 THE CITY OF COLUMBIA.

15 Q. OKAY. AND WHAT TIME DID YOU GET THERE?

16 A. I GOT THERE WITHIN 45 MINUTES, ABOUT 10:45 P.M.

17 Q. AND WHEN YOU FIRST GOT THERE, TELL THE JURY WHAT YOU
18 REMEMBER OBSERVING.

19 A. WHEN I GOT THERE -- THE AREA IS CALLED THE HOLE. I
20 THINK IN MY YEARS OF BEING WITH THE COLUMBIA P.D. I'VE ONLY
21 BEEN DOWN IN THE HOLE ONE OR TWO TIMES. QUITE FRANKLY, I
22 DIDN'T EVEN REMEMBER IT OR HOW TO GET THERE. I HAD TO GET
23 DIRECTIONS THERE. BUT YOU GO DOWN THIS ROAD TO GET INTO THE
24 HOLE. THERE'S ONLY ONE WAY IN AND ONE WAY OUT WITH A
25 VEHICLE. MOST PEOPLE GO IN AND THEY'RE ON FOOT. THERE'S A

1 PATH THROUGH THE WOODS IN THE BACK OF THE HOLE.

2 WHEN I -- WHEN I GOT THERE, I HAD TO PARK MY CAR SORT OF
3 DOWN THE ROAD AWAY FROM THE CRIME SCENE BECAUSE THERE WERE SO
4 MANY POLICE CARS AND OTHER VEHICLES THERE. RIGHT AT THE
5 ENTRY POINT INTO THE HOLE PER SE WAS -- IT HAD ALREADY BEEN
6 CORDED OFF WITH CRIME SCENE TAPE, AND THE AREA WAS FULL OF
7 PEOPLE, RESIDENTS. SPECTATORS HAD COME OUT BECAUSE OF BLUE
8 LIGHTS AND SIRENS. POLICE CARS AND JUST A LOT OF PEOPLE IN
9 GENERAL...

10 Q. AND SO IN STATE'S NUMBER 4, THE AREA THAT YOU OBSERVED
11 CORDED OFF, COULD YOU SORT OF -- LET ME PUT THIS DOWN SO I
12 CAN... USING THIS POINTER, TELL THE JURORS WHERE YOU
13 REMEMBER SEEING THE CRIME SCENE TAPE CORDING OFF THE SCENE.
14 JUST TO ORIENT YOU, THIS IS AMES AND THEN THIS IS MYERS GOING
15 INTO THE HOLE.

16 A. OKAY. I CAME IN OFF OF AMES. OF COURSE, I CAME INTO
17 MYERS STREET THERE, AND I HAD TO PARK DOWN HERE SOMEWHERE.
18 BUT AS I GOT TO THIS AREA RIGHT HERE, THAT WOULD HAVE BEEN
19 CORDED OFF WITH THE YELLOW TAPE. I'M NOT SURE WHETHER THE
20 TAPE WAS TIED TO A TREE OR WHAT IT WAS TIED TO, BUT IT
21 DEFINITELY WAS CORDED OFF. ANYBODY OUT THERE WOULD HAVE
22 KNOWN THAT WAS A NO-ENTRY ZONE. YOU COULDN'T GET IN THERE
23 UNLESS YOU WERE AUTHORIZED TO.

24 Q. AND SO, INVESTIGATOR REESE, WHEN YOU INDICATED EARLIER
25 IN YOUR TESTIMONY THAT THERE WERE A LOT OF SPECTATORS, PEOPLE

1 CURIOUS BECAUSE OF SIRENS AND BLUE LIGHTS, WERE THEY IN THE
2 CRIME SCENE OR OUTSIDE OF THE CRIME SCENE?

3 A. EVERYBODY WAS OUTSIDE OF THE CRIME SCENE, BUT THERE WAS
4 SOME TRAILERS OVER HERE AND UP THERE AND I THINK THOSE BOTH
5 WERE PRETTY MUCH ON THEIR PORCHES. I REALLY DIDN'T PAY TOO
6 MUCH TO ATTENTION TO THEM AT THAT POINT.

7 Q. NOW, DESCRIBE -- DID YOU SEE ANY VEHICLES PARKED ALONG
8 THE WAY WHEN YOU APPROACHED THE CRIME SCENE?

9 A. I SAW A GRAY/SILVER FOUR-DOOR FORD.

10 Q. A TAURUS?

11 A. UH-HUH.

12 Q. AND AT THAT POINT DID YOU CONSIDER THAT VEHICLE TO BE
13 PART OF THE CRIME SCENE?

14 A. I WAS TOLD THAT, RIGHT.

15 Q. OKAY. SO YOU WERE BRIEFED BY OFFICERS ON THE SCENE?

16 A. I WAS BRIEFED.

17 Q. OKAY. AT THAT POINT DID YOU GO INTO THE TRAILER AT
18 ?

19 A. AFTER I DID A BRIEF INSPECTION ON THAT VEHICLE THAT WAS
20 OUT THERE, I DID GO TO THE OTHER CRIME SCENE. IN A CRIME
21 SCENE, YOU CAN HAVE A LARGE CRIME SCENE AND THEN WITHIN THAT
22 CRIME SCENE YOU CAN HAVE ALL -- YOU CAN HAVE POCKETS OF CRIME
23 SCENES. SO IN THIS CASE I INITIALLY TREATED THE VEHICLE AS
24 IT WAS A CRIME SCENE, THE AREA INSIDE WITHIN THAT TAPE AS A
25 CRIME SCENE, AND THEN TO MOVE ON TO THE TRAILER WHERE THE

1 DECEASED, THE VICTIM, WAS WAS ANOTHER CRIME SCENE.

2 Q. OKAY. AND SO THE TRAILER -- SO THE JURORS ARE CLEAR,
3 THE TRAILER WHERE MR. SMITH'S BODY WAS FOUND, IS THAT
4 ?

5 A. THAT'S CORRECT.

6 Q. OKAY. ARE YOU FAMILIAR WITH THE ADDRESS OF FREDDIE
7 SMITH?

8 A. I WASN'T THEN; I AM NOW. I BELIEVE THAT'S

9 Q. OKAY. AND SO YOU INDICATED IN THIS CASE WE HAD
10 DIFFERENT CRIME SCENES, ONE INVOLVING THE TRAILER, ONE
11 INVOLVING MS. FREDDIE SMITH'S HOUSE, AND THEN ONE INVOLVING
12 THE CAR THAT WAS PARKED IN THIS GENERAL VICINITY?

13 A. THAT'S RIGHT. THOSE WOULD HAVE BEEN POINTS OF INTEREST
14 IN TERMS OF A CRIME SCENE.

15 Q. NOW, ONCE YOU WERE BRIEFED BY EVERYBODY, TELL THE JURORS
16 WHAT YOU OBSERVED WHEN YOU ENTERED THE TRAILER.

17 A. ALL RIGHT. I WENT TO THE TRAILER. I WENT TO THE
18 TRAILER WITH SERGEANT CHRIS WHITE OF THE GANG TASK FORCE.
19 NORMALLY ON HOMICIDES LIKE THIS WHEN WE DON'T -- THIS IS WHAT
20 WE GENERALLY -- IN MY OFFICE GENERALLY WOULD CALL A
21 WHO-DONE-IT. WHO-DONE-ITS ARE MY SPECIALTIES. WHO-DONE-ITS
22 ARE HOMICIDES THAT THERE'S NO SUSPECT READILY ON THE SCENE
23 WHEN WE GET THERE. WE DON'T KNOW WHAT WENT ON, WHO DID IT,
24 OR WHATEVER.

25 THERE ARE HOMICIDES THAT WE'VE GONE ON, AND THE

1 PERPETRATOR WAS JUST SITTING THERE WAITING FOR THE POLICE AND
2 THEY'LL ADMIT, "OKAY. YOU GOT ME. I'M THE ONE." THAT
3 WASN'T THE CASE HERE. SO CHRIS WHITE OF THE GANG TASK FORCE,
4 ALSO AGENTS FROM NARCOTICS UNITS WERE OUT THERE. GANG TASK
5 FORCE WERE OUT THERE. THIS IS OBVIOUSLY A VERY IMPORTANT
6 CRIME THAT OCCURRED HERE, SO WE BRING AS MANY FOLK AS WE CAN,
7 ALTHOUGH THERE'S ONE PERSON TO TAKE CHARGE AND HE DICTATES TO
8 EVERYBODY ELSE WHAT IT IS THAT HE NEEDS FOR THEM TO DO.

9 CHRIS WHITE WENT INTO THE CRIME SCENE WITH ME PRIMARILY
10 BECAUSE I DON'T LIKE GOING TO CRIME SCENES BY MYSELF. I LIKE
11 TO HAVE A WITNESS JUST IN CASE SOMETHING HAPPENS OR IF WE SEE
12 SOMETHING. ALWAYS LATER ON THERE COULD BE SOMEBODY THAT
13 SAID: YES, WE SAW THIS OR, YES, THIS HAPPENED.

14 Q. AND SO AT THAT POINT DID YOU GO INSIDE THE TRAILER AT

15 ?

16 A. I DID.

17 Q. AND WHO DID YOU OBSERVE INSIDE AT THAT POINT?

18 A. ONCE I GOT INSIDE, GIANNA WILLIAMS, THE CRIME SCENE
19 PERSON FROM S.L.E.D. WHO WAS WITH MY DEPARTMENT AT THAT TIME
20 WHO SPOKE YESTERDAY, WAS THERE AND ALSO OFFICER -- I'LL TELL
21 YOU HIS NAME IN JUST A SECOND.

22 Q. WAS IT OFFICER WALKER?

23 A. THAT'S RIGHT. OFFICER WALKER. GIANNA WAS DOING HER
24 DUTIES INVESTIGATING THE CRIME SCENE, AND OFFICER WALKER WAS
25 MERELY ASSISTING HER IN DOING WHATEVER SHE ASKED HIM TO DO.

1 Q. OKAY. AND DID YOU ENTER THE KITCHEN AREA OF THE
2 TRAILER?

3 A. I DID.

4 Q. AND TELL THE JURORS WHAT YOU OBSERVED.

5 A. WHEN I GOT INTO THE KITCHEN, I OBSERVED THE BODY -- THE
6 LIFELESS BODY OF A BLACK MALE. HE WAS LAYING ON THE KITCHEN
7 FLOOR. HIS BODY WAS UP AGAINST -- THERE WAS A STOVE IN
8 THERE. HIS BODY WAS UP AGAINST THAT STOVE. IT WAS -- THE
9 SCENE WAS PRETTY BLOODY, AND FROM MY EXPERIENCE -- I KNOW
10 TRAUMA WOUNDS, GUNSHOT WOUNDS OR EVEN STAB WOUNDS WHEN I SEE
11 THEM. AND ALREADY BASED ON THE INFORMATION THAT I HAD
12 OBTAINED EVEN BEFORE GETTING TO THAT CRIME SCENE, I HAD MADE
13 THE DETERMINATION THAT THE WOUNDS THAT I SAW ON THIS
14 GENTLEMAN'S BODY WERE, IN FACT, GUNSHOT WOUNDS.

15 Q. AND WHAT POSITION WAS MR. SMITH'S BODY IN ON THE FLOOR?

16 A. HE WAS -- HE WAS LYING ON HIS BACK FACE UP.

17 Q. FACE UP?

18 A. UH-HUH.

19 Q. DID YOU OBSERVE ANY OTHER BLOOD TRAILS IN THE HOUSE OR
20 ANYTHING OF OTHER INTEREST?

21 A. I DID. THERE WAS BLOOD TRAILS THAT LEAD FROM THE
22 KITCHEN DOWN THE HALLWAY INTO -- THERE WAS A LAST BEDROOM
23 THERE AND WE FOLLOWED THAT BLOOD TRAIL INTO THAT BEDROOM, AND
24 ALSO THERE WAS A CLOSET DOOR THAT WAS AJAR, AND IN LOOKING
25 INTO THAT CLOSET THERE WAS A TOWEL THAT WAS IN THAT CLOSET.

1 THAT TOWEL HAD BLOOD DROPS ON IT, AND THERE WAS SOME OTHER
2 ITEMS - CLOTHING, WHAT HAVE YOU - THAT ALSO HAD BLOOD DROPS.

3 Q. AND SO AT THAT POINT, ONCE YOU GOT AN IDEA OF WHAT YOUR
4 CRIME SCENE LOOKED LIKE, DID YOU MAKE CONTACT WITH WITNESSES
5 THAT REMAINED ON THE SCENE?

6 A. RIGHT. SOME OF THE OFFICERS OR THE OTHER
7 INVESTIGATORS -- AT THIS POINT THEIR JOB IS TO -- THEY'RE TO
8 INUNDATE ME WITH INFORMATION. I NEED TO KNOW EVERYTHING
9 THAT'S GOING ON AND, IN FACT, THEY DID AND THEY WOULD TELL ME
10 ABOUT THIS WITNESS OR THAT WITNESS AND THEY HAD SOME
11 INFORMATION THAT THEY HAD ALREADY GARNISHED, AND THEN I WOULD
12 TRY TO LOCATE THAT WITNESS AND GO FROM THERE.

13 Q. OKAY. WERE YOU ABLE TO GATHER ANY INFORMATION AS TO
14 WHERE THE SUSPECT POSSIBLY COULD BE LOCATED?

15 A. I DID. I RECEIVED INFORMATION THAT THE POSSIBLE
16 PERPETRATOR -- I HAVE IN MY NOTES THEY POSSIBLY LIVED IN ROOM
17 110 AT THE CORONET MOTEL ON MAIN STREET. WELL, I ALREADY
18 KNEW WHERE THE CORONET MOTEL IS ON MAIN STREET, SO THAT WAS
19 NO PROBLEM.

20 Q. AND WHAT ABOUT ANY INFORMATION GIVEN TO YOU AS A
21 POSSIBLE NAME OF THE SUSPECT?

22 A. THEY GAVE THE NAME OF -- A POSSIBLE NAME AS SPOKE OR
23 SPOOK.

24 Q. AND IS THAT -- CAN YOU SPELL THAT FOR THE COURT
25 REPORTER, PLEASE?

1 A. I WROTE IN MY NOTES S-P-O-K-E.

2 Q. AND WERE YOU ABLE TO THEN -- AS A RESULT OF GETTING
3 INFORMATION ABOUT THE CORONET MOTEL, DID YOU THEN RESPOND TO
4 THE CORONET MOTEL?

5 A. RIGHT. FROM -- FROM THE GENERAL CRIME SCENE ON THE
6 OUTSIDE, I REQUESTED A COUPLE OF OTHER INVESTIGATORS MEET ME
7 - IN THIS CASE I THINK DEAN ALLEN AND A COUPLE OF UNIFORMED
8 OFFICERS - TO MEET ME OVER THERE AT THE CORONET MOTEL SO WE
9 COULD CHECK ON ROOM 110. THAT'S WHAT WE DID.

10 I LEFT THAT CRIME SCENE, ASKED SERGEANT MATHERS WHO WAS
11 OF THE V-CAP UNIT TO TAKE CHARGE OF THAT CRIME SCENE. AT
12 THIS TIME MY ROLE ESSENTIALLY BECOMES TO IDENTIFY ANY
13 PERSONS, ANY PERSONS OF INTEREST, EVEN TO THE POINT WHERE
14 THAT PERSON OF INTEREST IS DEVELOPED INTO A SUSPECT AND ACT
15 ACCORDINGLY, AND THAT'S WHAT WE WERE DOING AT THIS POINT.

16 Q. AND WHEN YOU GOT TO THE CORONET MOTEL, DID YOU MAKE
17 CONTACT WITH THE MANAGER TO DETERMINE WHETHER THEY HAD AN
18 OCCUPANT OF ROOM 110?

19 A. YES, WE DID.

20 Q. AND WERE YOU ABLE TO CONFIRM THE IDENTITY OF THE PERSON
21 WHO HAD RENTED THAT ROOM?

22 A. RIGHT. THE MANAGEMENT OF THE HOTEL SHOWED ME A DRIVER'S
23 LICENSE AND SAID THAT THIS WAS THE PERSON THAT IS CURRENTLY
24 RENTING THAT ROOM. THAT DRIVER'S LICENSE WAS TO JOEL ANTAWAN
25 ROBINSON.

1 Q. WHEN YOU WERE AT THE CORONET MOTEL, DID YOU HAPPEN TO
2 HEAR ANY RADIO TRANSMISSIONS FROM OTHER OFFICERS IN THE
3 VICINITY?

4 A. I DID. AROUND ABOUT THE SAME TIME THIS WAS GOING ON
5 THAT WE WERE INTERVIEWING THE MANAGEMENT AT THE HOTEL, THERE
6 WAS A RADIO TRANSMISSION THAT CAME ACROSS, AND IT WAS FROM
7 SERGEANT DUTTON. SHE WAS SOMEWHERE ON MAIN STREET. I THINK
8 AT THE TIME SHE PUT IT OUT THAT SHE WAS AT -- SHE HAD SPOTTED
9 A SUBJECT THAT -- THE GENERAL DESCRIPTION HAD ALREADY BEEN
10 PUT OUT AT SOME POINT PRIOR TO US GETTING TO THE HOTEL, BUT
11 SHE HAD SPOTTED A SUBJECT MATCHING THAT GENERAL DESCRIPTION
12 AND SHE SAID IT WAS THE 4700 BLOCK OF MAIN STREET, IN THAT
13 AREA, BUT HE WAS WALKING. HE WASN'T RUNNING AND HE WASN'T
14 STANDING STILL. HE WAS JUST WALKING.

15 I THINK SHE HAD STOPPED HIM IN THE BLOCK OF MAIN
16 STREET RIGHT IN FRONT OF -- THERE'S A GAS STATION THERE, I
17 THINK HEYWARD AND SONS RIGHT ACROSS FROM COLUMBIA COLLEGE, IF
18 YOU'RE FAMILIAR WITH THAT AREA. AND THIS WAS HAPPENING AT
19 THE SAME TIME -- THE INFORMATION -- THE DESCRIPTION AND THE
20 TRANSMISSION CAME ACROSS AT THE SAME TIME THAT THE MANAGEMENT
21 OF THE HOTEL HAD GIVEN ME THE DRIVER'S LICENSE OF MR.
22 ROBINSON.

23 Q. AND WHEN YOU LOOKED AT THE DRIVER'S LICENSE, WAS IT A
24 PHOTOCOPY?

25 A. YES, IT WAS A PHOTOCOPY.

1 Q. OKAY. AND WERE YOU ABLE TO DETERMINE THE PHOTOGRAPH ON
2 THAT DRIVER'S LICENSE, WHETHER IT FIT THE DESCRIPTION ALREADY
3 BROADCAST ON THE RADIO?

4 A. YES, I DID. IN FACT, I EVEN ASKED HER OVER THE RADIO
5 WHAT WAS THE SUBJECT'S NAME.

6 Q. OKAY. WERE YOU ABLE TO DETERMINE WHETHER OR NOT THE
7 PERSON IN DUTTON'S CUSTODY WAS, IN FACT, THE SAME MAN THAT
8 HAD RENTED THE ROOM 110?

9 A. YES, I DID, WHEN I WENT TO THAT AREA WHERE THEY HAD HAD
10 HIM STOPPED.

11 Q. OKAY. I'M GOING TO SHOW YOU A PHOTOGRAPH REAL QUICKLY.
12 YOUR HONOR, BEG THE COURT'S INDULGENCE.

13 THE COURT: CERTAINLY.

14 BY MS. SHIPLEY:

15 Q. I'M HAVING DIFFICULTY LOCATING THE ACTUAL DRIVER'S
16 LICENSE, SO I'M GOING TO SHOW YOU STATE'S NUMBER 8. DO YOU
17 SEE A DRIVER'S LICENSE IN STATE'S NUMBER 8?

18 A. I DO.

19 Q. AND WHOSE DRIVER'S LICENSE IS THAT?

20 A. IT IS THE DRIVER'S LICENSE OF JOEL ROBINSON.

21 Q. AND DOES THAT LOOK SIMILAR TO THE PHOTOCOPIED VERSION
22 THAT YOU WERE SHOWN BY THE HOTEL MANAGEMENT?

23 A. YES, IT DOES.

24 Q. AND I THINK IT'S TOO SMALL FOR YOU TO BE ABLE TO READ
25 DETAILS ON THAT COPY, SO LET ME TRY TO LOCATE IT. HERE IT

1 IS. STATE'S NUMBER 57, CAN YOU TELL THE JURY THE DEFENDANT'S
2 HEIGHT AND WEIGHT AND AGE?

3 A. AT THE TIME THE AGE WAS 34. THE DATE OF BIRTH IS
4 THE HEIGHT IS 5'10" ON THE DRIVER'S LICENSE AND
5 THE WEIGHT IS 220 POUNDS.

6 Q. 220 POUNDS?

7 A. THAT'S RIGHT.

8 Q. NOW, AS A RESULT OF LEARNING THAT OFFICERS HAVE YOUR
9 SUSPECT IN CUSTODY ON MAIN STREET, WHAT DID YOU DO NEXT?

10 A. I INSTRUCTED INVESTIGATOR DEAN ALLEN TO REMAIN AT THE
11 SCENE ALONG WITH THE UNIFORMED OFFICERS.

12 Q. TO REMAIN AT THE CORONET MOTEL?

13 A. AT THE CORONET MOTEL.

14 Q. OKAY.

15 A. AND THE REASON FOR THAT IS THAT I KNEW AT SOME POINT WE
16 WERE GOING TO REQUIRE A SEARCH WARRANT, DIDN'T NEED EVERYBODY
17 GOING TO THAT ROOM FOR WHATEVER REASONS, AND I LEFT THAT
18 SCENE AND I WENT TO THE BLOCK OF MAIN STREET. WHEN I
19 GOT THERE -- AND I KNEW WHERE I WAS GOING OBVIOUSLY, BUT WHEN
20 I GOT THERE, THERE WERE SEVERAL POLICE CARS OUT, THREE I
21 THINK, AND SEVERAL OFFICERS, ABOUT FIVE OR SO POLICE OFFICERS
22 STANDING OUT.

23 Q. AND WHEN YOU GOT THERE, BY THE TIME YOU GOT TO THE
24 BLOCK OF MAIN STREET, WAS INVESTIGATOR DOW STILL THERE OR HAD
25 HE ALREADY GONE?

1 A. NO, HE WAS GONE. HE WASN'T THERE.

2 Q. OKAY. AND WAS IT YOU THAT INSTRUCTED INVESTIGATOR DOW
3 TO TAKE JEFF SMITH TO HEADQUARTERS TO GET A STATEMENT?

4 A. YEAH, THAT WAS DONE BACK AT THE -- THE ORIGINAL CRIME
5 SCENE.

6 Q. OKAY.

7 A. THE LARGE CRIME SCENE.

8 Q. SO WHEN YOU FIRST GOT TO THE CRIME SCENE OVER HERE, IS
9 THAT WHEN YOU INSTRUCTED INVESTIGATOR DOW TO SEND HIM TO
10 HEADQUARTERS WITH SMITH?

11 A. THAT'S RIGHT.

12 Q. ALL RIGHT. WERE YOU BRIEFED WHEN YOU GOT TO THE
13 BLOCK OF MAIN STREET WHETHER OR NOT ANY IDENTIFICATION HAD
14 BEEN MADE OF THE SUSPECT IN CUSTODY?

15 A. YEAH, I WAS.

16 Q. AND WHAT WAS THAT?

17 A. GOING BY THE DRIVER'S LICENSE, THEY KNEW THAT THAT WAS,
18 IN FACT -- THAT THE GENTLEMAN'S NAME WAS JOEL ROBINSON.

19 Q. AND WERE YOU INFORMED WHETHER OR NOT THE WITNESS THAT
20 WAS WITH MR. DOW HAD IDENTIFIED THIS INDIVIDUAL AS THE
21 SHOOTER?

22 A. THEY DID TELL ME THAT ALSO.

23 Q. TELL THE JURY WHAT HAPPENED WHEN YOU FIRST GOT TO
24 MAIN STREET.

25 A. WHEN I ARRIVED AT THE SCENE, I GOT OUT OF MY CAR. MR.

1 ROBINSON WAS IN THE BACK SEAT OF THE POLICE CAR. OBVIOUSLY
2 HE HAD HANDCUFFS ON HIM. I NOTICED THAT HIS HANDCUFFS WERE
3 BEHIND HIS BACK, BUT HE WAS VERY BELLIGERENT AND VIOLENT. HE
4 WAS CURSING AND SCREAMING, BUT EVERYTHING HE WAS SAYING I
5 COULD NOT UNDERSTAND.

6 SO I WENT TO THE DOOR. I OPENED THE DOOR. THIS WAS
7 DONE IN AN EFFORT TO CALM HIM DOWN. WHEN I OPENED THE DOOR,
8 I INTRODUCED MYSELF TO HIM SO THERE WAS NO QUESTION TO -- AS
9 IF HE KNEW WHO I WAS. I TOLD HIM I WAS AN INVESTIGATOR WITH
10 THE POLICE DEPARTMENT.

11 I THINK I ASKED HIM HIS NAME. HE TOLD ME HIS NAME WAS
12 JOEL ROBINSON. AND THERE WERE SOME ITEMS ON THE BACK OF ONE
13 OF THE PATROL CARS, THE CAR THAT HE WAS SITTING IN, AND AMONG
14 THOSE ITEMS WERE TWO PACKS OF CIGARETTES. I KNEW THAT THOSE
15 ITEMS WOULD HAVE BEEN HIS. OTHERWISE, THEY WOULD NOT HAVE
16 BEEN ON THE BACK OF THE PATROL CAR AMONGST THE OTHER ITEMS.

17 I ASKED HIM WERE THE CIGARETTES HIS, AND HE SAID, "YES."
18 I ASKED HIM IF HE WANTED TO SMOKE ONE AND, OF COURSE, HE
19 SAID, "YES." AT THAT POINT I ASKED HIM TO STEP OUT OF THE
20 CAR. I HELPED HIM OUT OF CAR, BROUGHT HIM BACK TO THE RIGHT
21 SIDE REAR OF THE CAR.

22 I LIT THE CIGARETTE. I TOOK IT OUT -- I DON'T SMOKE.
23 SO I TOOK THE CIGARETTE OUT AND I THOUGHT I HAD THIS RIGHT.
24 I PUT IT IN HIS MOUTH AND LIT THE CIGARETTE FOR HIM. HE
25 PUFFED. I PULLED IT OUT OF HIS MOUTH. HE BLEW, PUT IT BACK

1 IN: HE'D PUFF AGAIN. YOU KNOW, THAT'S THAT SCENARIO.

2 Q. SHOWING YOU STATE'S 8, ARE THOSE THE ITEMS THAT YOU
3 RECALL SEEING ON THE BACK OF THE PATROL CAR WHERE MR.
4 ROBINSON WAS SITUATED?

5 A. YES.

6 Q. INVESTIGATOR REESE, AT THAT POINT DID SMOKING THE
7 CIGARETTE CALM HIM DOWN?

8 A. I THINK IT DID, YEAH.

9 Q. WELL, WAS HE BELLIGERENT ANYMORE?

10 A. NO. I MEAN, HE CALMED DOWN. I WOULD ASSUME THAT'S WHAT
11 IT DONE.

12 Q. OKAY. NOW, WHILE YOU WERE STANDING WITH MR. ROBINSON
13 WHILE HE'S SMOKING HIS CIGARETTE, DO YOU RECALL AN OCCASION
14 WHERE YOU HEAR OFFICER FISHER BEGIN TO MIRANDIZE HIM, GIVE
15 HIM HIS MIRANDA RIGHTS?

16 A. RIGHT. AT SOME POINT I HAD TURNED AROUND TO STEP AWAY
17 TO CHECK ON SOMETHING ELSE, PERHAPS TALK WITH ANOTHER
18 OFFICER, AND ALL OF A SUDDEN I HEARD OFFICER FISHER SAYING,
19 "WAIT A MINUTE. LET ME READ YOU YOUR RIGHTS FIRST." THAT
20 DREW MY ATTENTION. SO I STOPPED WHAT I WAS DOING AND
21 DIRECTED MY ATTENTION TO OFFICER FISHER.

22 Q. AND DID OFFICER FISHER INDICATE TO YOU WHAT THE
23 DEFENDANT HAD SAID TO HIM?

24 A. HE TOLD ME THAT MR. ROBINSON HAD SAID---

25 MR. LEDDY: YOUR HONOR, WE RENEW OUR PREVIOUS OBJECTION.

1 THE COURT: THE COURT STANDS BY ITS RULING.

2 BY MS. SHIPLEY:

3 Q. PLEASE PROCEED. WHAT DID FISHER REPORT THE DEFENDANT
4 TOLD HIM?

5 A. I THINK HE SAID, "I SHOT HIM. HE'S DEAD."

6 Q. OKAY. ONCE FISHER TOLD YOU THAT THE DEFENDANT HAD SAID
7 THAT TO HIM, WHAT DID YOU INSTRUCT FISHER TO DO?

8 A. I INSTRUCTED OFFICER FISHER NOT TO TALK TO HIM ANYMORE,
9 THAT IT WASN'T HIS JOB.

10 Q. AND WHY IS IT AS THE LEAD INVESTIGATOR DO YOU WANT TO
11 TAKE CHARGE OF YOUR INVESTIGATION?

12 A. WELL, ALL LEAD INVESTIGATORS HAVE THEIR OWN STYLE AND,
13 YOU KNOW, THIS IS REAL LIFE. THIS ISN'T COPS AND ROBBERS
14 SHOWS THAT YOU SEE ON T.V. YOU HAVE TO DO EVERYTHING EXACTLY
15 RIGHT, AND I STOPPED OFFICER FISHER BECAUSE I WANTED TO MAKE
16 SURE IT WAS DONE EXACTLY RIGHT. NOTHING COULD HAVE BEEN DONE
17 THAT NIGHT TO IMPEDE HIS CONSTITUTIONAL RIGHTS, MR. ROBINSON,
18 AND THAT'S WHY I STOPPED HIM. COULD NOT HAVE BEEN ANY
19 MISTAKE MADE.

20 Q. OKAY. AT THAT POINT DID YOU INSTRUCT OFFICER CARROLL TO
21 TAKE MR. ROBINSON TO HEADQUARTERS SO YOU COULD TALK TO HIM
22 YOURSELF?

23 A. I TOLD MR. ROBINSON AT SOME POINT I WANTED TO TALK WITH
24 HIM ABOUT SOME THINGS. HE AGREED. I ASKED OFFICER CARROLL
25 TO TRANSPORT HIM DOWN TO MY OFFICE AT WHICH TIME HE DID.

1 Q. AND SO DID OFFICER CARROLL LEAVE A FEW MINUTES BEFORE
2 YOU DID?

3 A. YES, HE DID.

4 Q. AT THAT POINT WHEN YOU GOT TO HEADQUARTERS, TELL THE
5 JURY EXACTLY WHAT HAPPENED. AS SOON AS YOU ENTERED THE
6 INVESTIGATION ROOM, THE INTERVIEW ROOM, WHAT HAPPENED NEXT?

7 A. WELL, BASICALLY I SAT DOWN AND STARTED -- IT WASN'T ANY
8 SMALL TALK. IT WAS RIGHT STRAIGHT TO BUSINESS. I STARTED
9 TALKING TO HIM ABOUT THE PROCEDURE THAT I WAS GOING TO FOLLOW
10 IN INTERVIEWING HIM, AND I THOUGHT HE HAD ALREADY AGREED TO
11 BE INTERVIEWED.

12 Q. AND CAN YOU PLEASE DESCRIBE FOR THIS JURY THE PROCEDURE
13 THAT YOU FOLLOW -- DO YOU FOLLOW THE SAME PROCEDURE WITH
14 EVERY SUSPECT YOU INTERVIEW?

15 A. IT VARIES. SOMETIMES I MAY REMEMBER TO DO IT EXACTLY
16 THIS WAY; SOMETIMES I DON'T. BUT DEFINITELY ON HOMICIDES AS
17 OPPOSED TO, YOU KNOW, OTHER VIOLENT CRIMES, YOU KNOW, I TRY
18 TO GO THROUGH THESE STEPS.

19 Q. AND TELL THE JURORS THE STEPS THAT YOU FOLLOWED IN
20 INTERVIEWING MR. ROBINSON.

21 A. OKAY. ONCE I GOT THERE, I ADVISED MR. ROBINSON OF HIS
22 RIGHTS, HIS MIRANDA RIGHTS, AND AT THAT TIME HE INDICATED HE
23 UNDERSTOOD THOSE RIGHTS. WHEN I SAY I ADVISED HIM OF HIS
24 RIGHTS, WE HAVE A STANDARDIZED RIGHTS FORM THAT WE GENERALLY
25 READ OFF TO THE INDIVIDUALS THAT WE'RE TALKING TO, AND YOU

1 ALWAYS WANT TO DO THAT BECAUSE YOU NEVER WANT TO GO BY
2 MEMORY. THAT COULD COME BACK TO HAUNT YOU SOMETIMES.
3 ANOTHER REASON YOU WANT TO DO THAT IS BECAUSE IT GIVES HIM
4 THE OPPORTUNITY TO SIGN OFF, INITIAL, OR EITHER CHECK OFF
5 EVERY TIME I -- EACH LINE THAT I READ IN TERMS OF HIS RIGHTS
6 SO THAT I WOULD KNOW THAT HE UNDERSTOOD WHAT I'M TALKING
7 ABOUT.

8 Q. AND I'M GOING TO STOP YOU RIGHT THERE. I'M GOING TO
9 SHOW YOU THE FORM THAT YOU WERE DESCRIBING, STATE'S NUMBER 6
10 FOR IDENTIFICATION PURPOSES ONLY.

11 A. ALL RIGHT.

12 Q. CAN YOU PLEASE TELL THE JURY IF YOU RECOGNIZE THAT
13 DOCUMENT?

14 A. THIS IS THE WAIVER OF RIGHTS FORM THAT MY DEPARTMENT
15 USES.

16 Q. OKAY. AND IS THAT THE FORM THAT YOU USED WITH MR.
17 ROBINSON?

18 A. YES, IT IS.

19 MS. SHIPLEY: YOUR HONOR, AT THIS TIME WE WOULD
20 INTRODUCE STATE'S NUMBER 6 INTO EVIDENCE.

21 MR. LEDDY: WITHOUT OBJECTION, YOUR HONOR.

22 THE COURT: OKAY.

23 (STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)

24 BY MS. SHIPLEY:

25 Q. NOW, INVESTIGATOR REESE, GO OVER THAT FORM IN THE EXACT

1 MANNER THAT YOU WENT OVER IT WITH MR. ROBINSON ON -- WHAT
2 TIME WAS IT?

3 A. THE WAIVER OF RIGHTS FORM WAS READ TO HIM AT 12:47 A.M.

4 Q. A.M.? AND ON WHAT DAY?

5 A. ON FEBRUARY THE 16TH, 2007.

6 Q. OKAY.

7 A. AND, OF COURSE, WE ARE AT NUMBER ONE JUSTICE SQUARE.

8 Q. ALL RIGHT. SO THE TIME OF THE INCIDENT IS 9:40 P.M.;
9 CORRECT?

10 A. RIGHT.

11 Q. ALL RIGHT. AND THEN 12:47 YOU INDICATED YOU MIRANDIZED
12 HIM?

13 A. THAT'S RIGHT.

14 Q. ALL RIGHT. TELL THE JURY EXACTLY HOW YOU WENT OVER THAT
15 FORM WITH MR. ROBINSON.

16 A. OKAY. I FIRST THOUGHT -- I NEVER DEVIATED FROM THIS
17 FORM. I ADVISED HIM THAT THIS IS A RIGHTS FORM. I EXPLAINED
18 TO HIM HOW I'M GOING TO DO THIS, THAT FOR EVERY LINE I READ
19 I'M GOING TO GET HIM TO INITIAL IT SO THAT I KNOW HE
20 UNDERSTANDS THAT. I EVEN DRAW THE LINE FOR HIM TO PUT HIS
21 INITIALS ON, AND THEN I START READING THE FORM TO HIM AND IT
22 BEGINS WITH -- AFTER THE DATE AND TIME, OF COURSE. IT'S,
23 "BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR
24 RIGHTS." THAT SHOULD BE CLEAR-CUT TO YOU RIGHT THERE THE
25 REASON WHY WE'RE READING THIS TO YOU.

1 THE FIRST RIGHT IS: YOU HAVE THE RIGHT TO REMAIN
2 SILENT, AND WHEN I -- WHEN I READ THIS TO YOU -- TO MR.
3 ROBINSON, THE LINES ARE ALREADY DRAWN. I GET HIM TO INITIAL
4 IT. TO ME, BY HIM INITIALING THE LINE IS A CLEAR INDICATION,
5 BECAUSE I'VE ALREADY EXPLAINED IT TO HIM, THAT YOU UNDERSTAND
6 WHAT IT IS I JUST SAID TO YOU. THE NEXT LINE IS: ANYTHING
7 YOU SAY CAN BE USED AGAINST YOU IN COURT. I READ THAT TO
8 HIM. HE INITIALED IT.

9 NEXT ONE, NEXT LINE: YOU HAVE THE RIGHT TO TALK TO A
10 LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE
11 HIM WITH YOU DURING QUESTIONING. HE INDICATED HE UNDERSTOOD
12 THAT. HE INITIALED THE LINE. IF YOU CANNOT AFFORD A LAWYER,
13 ONE WILL BE APPOINTED TO YOU BEFORE ANY QUESTIONING IF YOU
14 WISH. HE INDICATED HE UNDERSTOOD THAT. HE SIGNED OFF ON THE
15 LINE.

16 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
17 PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING
18 QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP
19 ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK TO A LAWYER.
20 HE INDICATED HE UNDERSTOOD THAT ALSO. HE INITIALED THE LINE.

21 THERE'S A BOTTOM HALF, A LAST PARAGRAPH AT THE BOTTOM OF
22 THIS SHEET, AND IT CLEARLY STATES: WAIVER OF RIGHTS. I
23 THINK IN THIS CASE I HAD HIM TO READ THE RIGHTS AND I BELIEVE
24 I DID BECAUSE THERE'S NO -- NO -- I DIDN'T DRAW A LINE HERE
25 AND HE DID NOT HAVE TO INITIAL IT, AND THAT LINE -- THAT

1 PARAGRAPH SAYS: "I HAVE READ THIS STATEMENT OF MY RIGHTS AND
2 I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A
3 STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT
4 THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO
5 PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE OR
6 COERCION OF ANY KIND HAS BEEN USED AGAINST ME."

7 AT THIS POINT I WOULD SIGN OFF ON IT AS BEING A WITNESS.
8 SERGEANT CHRIS WHITE SIGNED OFF ON THE SECOND LINE AS BEING A
9 WITNESS AND WE -- I PUT THE TIME ON IT, 12:47, AND THEN MR.
10 ROBINSON WAS THEN GIVEN THE OPPORTUNITY TO SIGN OFF ALSO THAT
11 -- MEANING I UNDERSTOOD EVERYTHING YOU SAID, REESE, AND I'M
12 READY TO TALK TO YOU, AND HE SIGNED HIS SIGNATURE THERE.

13 Q. OKAY. NOW, HAD YOU MIRANDIZED HIM BEFORE YOU STARTED --
14 DID YOU TAPE THIS CONVERSATION WITH MR. ROBINSON?

15 A. YES, I DID.

16 Q. OKAY. AND DID YOU APPRISE MR. ROBINSON OF THE FORMAT
17 YOU WERE GOING TO FOLLOW AS FAR AS AN ORAL STATEMENT AND A
18 WRITTEN STATEMENT?

19 A. I DID.

20 Q. AND DESCRIBE THAT FOR THIS JURY.

21 A. IT'S ALWAYS BEST -- NOT ALL INVESTIGATORS DO IT THIS
22 WAY, BUT IN MY OPINION IT'S ALWAYS BEST TO HAVE A RECORDING,
23 ESPECIALLY OF AN INCIDENT OF THIS MAGNITUDE. SO WHAT I DID
24 WAS I -- IN MR. ROBINSON'S CASE I TRIED TO EXPLAIN TO HIM
25 EVERYTHING THAT WAS GOING ON BECAUSE I WANTED TO MAKE SURE HE

1 UNDERSTOOD IT.

2 AFTER I READ HIM HIS RIGHTS, I EXPLAINED TO HIM WHAT THE
3 INTERVIEW PROCEDURE WAS GOING TO BE WAS THAT I WOULD BE
4 RECORDING HIS STATEMENT, AND THE REASONS I TOLD HIM THAT I
5 WOULD BE RECORDING THE STATEMENT IS SO SOMEWHERE DOWN THE
6 ROAD WHEN WE GET TO THIS POINT HERE THERE CAN BE NO MISTAKE.
7 THERE CAN BE NO DISCREPANCIES ABOUT WHAT HE TOLD ME AND ABOUT
8 WHAT I SAID TO HIM AND ABOUT WHAT HAPPENED IN THE INTERVIEW
9 ROOM.

10 I TOLD HIM ALSO THAT AFTER -- THAT DURING THE RECORDING
11 I WOULD BE MAKING NOTES OF WHAT HE SAID TO ME, WHAT WE'RE
12 TALKING ABOUT. I ALSO INDICATED TO HIM THAT ONCE THAT PART
13 OF THE INTERVIEW WAS OVER, I WOULD GO THROUGH A QUESTION-AND-
14 ANSWER PERIOD WHICH MEANS I WOULD TAKE THE STANDARDIZED
15 STATEMENT FORM. I WOULD ASK HIM QUESTIONS BASED ON WHAT HE
16 HAS ALREADY TOLD ME. I WOULD PUT THEM IN QUESTIONS.

17 I ALSO TOLD HIM THAT I WOULD GET HIM TO -- REQUEST THAT
18 HE WRITE HIS VERSION OUT IN HIS OWN HANDWRITING ABOUT WHAT
19 HAPPENED. NOT EVERYBODY WANTS TO DO THAT. SOME PEOPLE
20 SIMPLY CAN'T READ AND WRITE, AND SOME PEOPLE JUST DON'T WANT
21 TO DO IT FOR WHATEVER REASONS.

22 IN THIS CASE HE WROTE OUT HIS VERSION OF WHAT HAPPENED,
23 AND THEN AFTER HE FINISHED WRITING, DOCUMENTING HIS
24 STATEMENT, I WENT THROUGH THE QUESTION-AND-ANSWER PERIOD. I
25 ASKED QUESTIONS. I WROTE THE QUESTIONS DOWN AS I ASKED HIM,

1 AND HIS ANSWERS THAT HE GAVE ME, I WROTE THOSE ANSWERS DOWN
2 ALSO.

3 AFTER THAT PERIOD WAS OVER, HE WAS SWORN IN. I'M A
4 NOTARY. HE WAS SWORN IN. I THINK HE WAS EITHER SWORN IN BY
5 ME - I'D HAVE TO LOOK AT IT - OR SERGEANT MIKE. BUT AFTER
6 THE STATEMENT -- THE DOCUMENTED STATEMENT WAS TAKEN, HE WAS
7 SWORN IN AND HE SIGNED OFF ON IT.

8 Q. OKAY. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
9 AUDIO STATEMENT OF MR. ROBINSON?

10 A. I DID.

11 Q. AND DOES THAT ACCURATELY DEPICT THE CONVERSATION THAT
12 YOU HAD WITH HIM BEGINNING AT 12:47 A.M. ON FEBRUARY 16TH,
13 2007?

14 A. YES.

15 (STATE'S EXHIBIT 85 WAS MARKED FOR IDENTIFICATION ONLY.)

16 MS. SHIPLEY: YOUR HONOR, AT THIS TIME -- OH, I'M SORRY.
17 YOUR HONOR, AT THIS TIME THE STATE SEEKS TO INTRODUCE 85 INTO
18 EVIDENCE.

19 MR. LEDDY: THIS BEING THE RECORDING, NO OBJECTION, YOUR
20 HONOR.

21 THE COURT: OKAY. THANK YOU.

22 MS. SHIPLEY: YOUR HONOR, MAY I PUBLISH THE RECORDING TO
23 THE JURY?

24 THE COURT: YES, YOU MAY.

25 (STATE'S EXHIBIT 85 WAS RECEIVED IN EVIDENCE. STATE'S

1 EXHIBIT 85 BEGINS TO BE PLAYED FOR THE JURY.)

2 MS. SHIPLEY: BEG THE COURT'S INDULGENCE. TECHNICAL
3 DIFFICULTIES.

4 THE COURT: OKAY.

5 MS. SHIPLEY: YOUR HONOR, COULD WE HAVE A BRIEF RECESS
6 SO I CAN FIND OUT WHAT'S GOING ON WITH THIS?

7 THE COURT: CERTAINLY.

8 MS. SHIPLEY: THANK YOU.

9 THE COURT: LADIES AND GENTLEMEN, I'LL EXCUSE YOU TO GO
10 TO YOUR JURY ROOM. YOU'LL BE THERE FOR A BRIEF MOMENT. I
11 REMIND YOU NOT TO DISCUSS THE CASE.

12 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
13 12:19 P.M.)

14 MS. SHIPLEY: YOUR HONOR, THE C.D. THAT'S IN HERE, IT'S
15 VERY TACKY. I DON'T KNOW WHAT THEY SPRAYED ON IT, AND I
16 THINK THAT'S WHAT'S CAUSING PROBLEMS. WE HAVE ALREADY
17 SKIPPED THE PART THAT WE REDACTED. IF IT'S OKAY WITH THE
18 COURT, CAN I JUST PLAY THE REST OF THE AUDIO FROM THE KNOWN
19 COPY THAT I KNOW WORKS?

20 THE COURT: YES.

21 MS. SHIPLEY: WE'LL PUT THE ONLY ONE REDACTED INTO
22 EVIDENCE.

23 THE COURT: YEAH, THAT WILL BE FINE BECAUSE THE PAGE 17
24 REDACTION WE AGREED DIDN'T NEED TO BE---

25 MS. SHIPLEY: EXACTLY. LET ME JUST KIND OF FIX THIS

1 INTO POSITION, YOUR HONOR. IT'S VERY TACKY. I THINK IT'S
2 STICKING TO THE C.D. PLAYER.

3 MR. LEDDY: SHOULD BE RIGHT AFTER FIVE MINUTES.

4 MS. SHIPLEY: FIVE MINUTES.

5 MR. LEDDY: YEAH.

6 MS. SHIPLEY: I DON'T HAVE A TIMER ON THIS ONE.

7 MR. LEDDY: OH, YOU DON'T?

8 (PAUSE IN PROCEEDINGS.)

9 MS. SHIPLEY: ALL RIGHT, YOUR HONOR. WE'RE READY.

10 THE COURT: JURORS, PLEASE.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
12 12:24 P.M.)

13 THE COURT: OKAY.

14 MS. SHIPLEY: MAY I PROCEED, YOUR HONOR?

15 THE COURT: YES, YOU MAY.

16 MS. SHIPLEY: THANK YOU.

17 (WHEREUPON, STATE'S EXHIBIT 85 CONTINUES TO BE PLAYED
18 FOR THE JURY.)

19 BY MS. SHIPLEY:

20 Q. YOU INDICATED THAT IT WAS 1:44 A.M. WHEN YOU FINISHED
21 THAT INTERVIEW?

22 A. YES, MA'AM.

23 Q. AND DURING THE INTERVIEW YOU TOOK NOTES. IS THAT
24 CORRECT?

25 A. THAT'S RIGHT.

1 Q. AND THAT WAS MARKED BY THE PAUSES DURING THE INTERVIEW?

2 A. RIGHT.

3 Q. CAN YOU TELL THE JURY WHETHER OR NOT YOU ALLOWED MR.
4 ROBINSON TO THEN, AFTER THIS ORAL INTERVIEW, PUT SOMETHING
5 DOWN IN WRITING?

6 A. I DID.

7 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
8 EXHIBIT NUMBER 7 AND ASK YOU IF YOU RECOGNIZE THIS DOCUMENT.

9 A. YES, I DO. IT IS THE STATEMENT, THE DOCUMENTED
10 STATEMENT, HANDWRITTEN STATEMENT.

11 Q. AND THE FIRST PAGE -- DESCRIBE FOR THE JURY WHO WROTE
12 THE FIRST PAGE.

13 A. ON THE FIRST PAGE I FILLED OUT THE TOP INFORMATION HERE.
14 MR. ROBINSON WOULD HAVE WRITTEN -- I ALSO WROTE THE QUESTION,
15 AND MR. ROBINSON WOULD HAVE WROTE THE REST. THAT'S HIS
16 HANDWRITING THERE.

17 Q. OKAY. AND BEFORE WE PUBLISH IT TO THE JURY, CAN YOU
18 TELL THE JURORS HOW MANY PAGES LONG THE WRITTEN STATEMENT IS?

19 A. THE WRITTEN STATEMENT IS FIVE PAGES LONG.

20 Q. AND SO PAGE 1 IS HIS HANDWRITING. PAGE 2 THROUGH 5 IS
21 WHOSE HANDWRITING?

22 A. THAT WOULD BE MY HANDWRITING.

23 Q. WHAT IS THE FORMAT OF THOSE PAGES?

24 A. TWO THROUGH FIVE?

25 Q. YES.

1 A. THAT'S THE QUESTION-AND-ANSWER SECTION OF THE STATEMENT.

2 Q. AND DID YOU ALLOW MR. ROBINSON TO REVIEW THAT STATEMENT
3 AND SIGN IT?

4 A. YES, I DID.

5 Q. AND I NOTICE THAT THERE'S YELLOW COPIES BEHIND THERE ON
6 THE SHEETS? CAN YOU TELL THE JURORS IF THERE WAS AN
7 ADDITIONAL SHEET ATTACHED AS WELL?

8 A. THE ADDITIONAL SHEET WOULD HAVE BEEN PINK IN COLOR, AND
9 GENERALLY THESE TWO SHEETS HERE ARE BASICALLY FOR OUR
10 RECORDS. THE PINK COPIES ARE GIVEN TO THE DEFENDANT, AND IN
11 HIS CASE IT WAS.

12 Q. OKAY.

13 A. SO HE HAD A COPY OF HIS STATEMENT.

14 Q. AND BEFORE YOU HAD MR. ROBINSON SIGN IT, DID YOU GIVE
15 HIM AN OPPORTUNITY TO REVIEW THE STATEMENT AND MAKE ANY
16 CORRECTIONS OR ADDITIONS TO IT?

17 A. I EITHER READ -- HE ALREADY KNEW WHAT HE WROTE, SO I
18 EITHER READ THE PAGES THAT I WROTE OR HAD HIM READ. I DON'T
19 REMEMBER IT EITHER WAY. IT WOULD HAVE GONE ONE OF THOSE
20 WAYS. HE SIGNED OFF ON IT.

21 Q. OKAY. AND DID YOU HAVE A NOTARY PRESENT DURING THIS
22 INTERVIEW?

23 A. YES. AS I SAID EARLIER, I AM A NOTARY, BUT IN THIS CASE
24 I FOUND IT PRUDENT THAT SERGEANT WHITE WOULD HAVE NOTARIZED
25 THIS, WHICH I DID.

1 MS. SHIPLEY: OKAY. YOUR HONOR, AT THIS TIME THE STATE
2 WOULD SEEK TO INTRODUCE STATE'S NUMBER 7 INTO EVIDENCE.

3 MR. LEDDY: NOTE PREVIOUS OBJECTIONS.

4 THE COURT: THE COURT STANDS BY ITS PRIOR RULING.

5 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE.)

6 MS. SHIPLEY: YOUR HONOR, MAY INVESTIGATOR REESE PUBLISH
7 THIS TO THE JURY?

8 THE COURT: YES, YOU MAY.

9 MS. SHIPLEY: INVESTIGATOR REESE, BEGINNING WITH THE
10 VERY TOP OF PAGE 1, CAN YOU TELL THE JURORS WHAT TIME IT WAS
11 THAT MR. ROBINSON BEGAN WRITING HIS STATEMENT IN HIS OWN
12 HANDWRITING?

13 THE COURT: OKAY. MS. SHIPLEY, ONE MOMENT. PLEASE
14 APPROACH, COUNSEL.

15 MS. SHIPLEY: YES, MA'AM.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY, DUE TO
18 SOME SCHEDULING CHANGES AND THINGS, WE'RE GOING TO ALLOW THIS
19 TO BE THE LUNCH BREAK. I'M GOING TO ALLOW YOU ALL TO BREAK
20 UNTIL 1:15 -- EXCUSE ME, 2:15. THANK YOU. I REMIND YOU NOT
21 TO DISCUSS THIS CASE IN ANY SHAPE, FORM, OR FASHION.

22 I KNOW THAT I HAD LUNCH ORDERED FOR YOU. WE CAN NEVER
23 TELL HOW TRIALS GO. YOU DO NOT TO HAVE TO BE CONFINED TO
24 THAT ROOM. YOU CAN TAKE THE LUNCH WITH YOUR OR YOU CAN STAY
25 AROUND HERE AND DO AS YOU PLEASE, BUT JUST REPORT BACK TO

1 YOUR JURY ROOM AT 2:15. THANK YOU.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
3 TO LUNCH AT 1:21 P.M.)

4 THE COURT: OKAY. WE'LL JUST SEE YOU ALL THEN. WE'LL
5 HAVE A LUNCH RECESS AT THIS TIME.

6 MS. SHIPLEY: YOUR HONOR, JUST BEFORE WE PART, I MADE A
7 COPY OF THE C.D. THAT'S REDACTED. I'M JUST GOING TO REVIEW
8 IT AND MAKE SURE AND WE'LL PUT THAT IN EVIDENCE.

9 THE COURT: OKAY.

10 MR. LEDDY: 2:15.

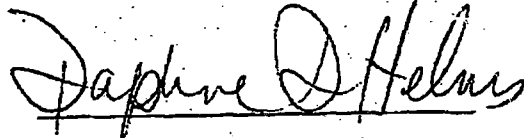
11 THE COURT: YEAH, THAT'S FINE. IF THE ATTORNEYS WOULD
12 JUST STICK AROUND FOR A SECONDS TO HELP HER IF SHE NEEDS TO
13 TRANSFER THE EVIDENCE OVER TO THE NEXT COURT REPORTER.

14 (STATE'S EXHIBITS 47, 48, 55, AND 55-A WERE RECEIVED IN
15 EVIDENCE. WHEREUPON, THE REMAINDER OF THE TRIAL WAS TAKEN
16 DOWN BY COURT REPORTER DEBBIE MCCURDY.)
17
18
19
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21
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23
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25

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 3RD THROUGH 5TH OF MARCH, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JULY 31, 2009

A handwritten signature in cursive script, reading "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

DAPHNE D. HELMS, COURT REPORTER

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

07-GS-40-2038-2040

09-GS-40-1345, 1346

4 State of South Carolina,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Joel Antawan Robinson,)

8 Defendant.)

9
10 March 5, 2009

Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE J. MICHELLE CHILDS, JUDGE; and a jury.

15
16
17 A P P E A R A N C E S:

18 VANESSA C. SHIPLEY, ASSISTANT SOLICITOR
Attorney for the Plaintiff

19
20 T. MICAH LEDDY, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

21
22
23 DEBORAH M. MCCURDY, RPR
24 Official Court Reporter
25

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1 MARCH 5, 2009

2 THE COURT: Anything the parties need to take
3 up before we get started?

4 MS. SHIPLEY: No, ma'am.

5 MR. LEDDY: No, ma'am.

6 MS. SHIPLEY: Investigator Reese, if you will
7 take the stand. I left the statement there.

8 (Witness returns to witness stand.)

9 (WHEREUPON, the jury came into open
10 court at approximately 2 p.m.)

11 THE BAILIFF: The jury is all present, Your
12 Honor.

13 THE COURT: The State can proceed.

14 KEVIN E. REESE,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION CONTINUES:

17 BY MS. SHIPLEY:

18 Q Investigator Reese, we left off prior to the lunch
19 break, you were just about to explain to the jury
20 what time it was that Mr. Robinson began writing the
21 statement on the first page.

22 A He began writing the statement at 2:00 o'clock.

23 Q 2:00 o'clock in the morning?

24 A 2:00 o'clock a.m.

25 Q So that is shortly right after the oral statement?

1 A Approximately about.

2 Q Okay. Now, during this time when you were
3 interviewing Mr. Robinson, did you ever deprive him
4 of the right to use the bathroom? Did he ever ask
5 for water, did you deny him water, food, et cetera?
6 Did you deny him any necessities?

7 A No.

8 Q Did he ever request any of that?

9 A No, he didn't.

10 Q And during this interview, did you ever coerce him
11 into giving a statement? Did you ever pull out your
12 gun and stick it to the side of his head and tell
13 him, you better give me a confession?

14 A No.

15 Q Was he cooperative with you?

16 A He was very cooperative.

17 Q And, in fact, the tone in the audio, is that how the
18 whole interview proceeded?

19 A Yes, that is right. As a matter of fact, this is
20 one of the easiest interviews I ever had.

21 Q And did you ever threaten him to give a statement?

22 A No, I didn't.

23 Q Did you ever make any promises of rewards or
24 promises of leniency should he give you a statement?

25 A No, I didn't.

1 Q Okay. Now, go ahead -- and the State's Number Seven
2 is now in evidence, so please publish it to the jury
3 at this time. And read it verbatim.

4 A Okay. At the top I wrote -- that is my writing
5 there -- I wrote the statement at 02:00 o'clock a.m.
6 The statement was written on February 16th, 2007.
7 The time I put on the statement is -- I generally
8 put the time the whole interview started, which is
9 12:47 a.m. on this. At Number One Justice Square.
10 Joel Robinson is the person I'm interviewing. His
11 birthday, . I put age at the time is 38.
12 Address,
13 , which is what he gave me. 786-1440, he
14 gave me for a phone number.

15 I am giving the statement concerning the
16 shooting at to K. E. Reese -- that
17 is me -- and Chris White who identified themselves
18 as investigators.

19 The question was: Tell me what happened at the
20 trailer tonight. I wrote all that.

21 He wrote this part. He says: I went to the
22 trailer off Ames Road to buy drugs and got into a
23 confrontation with Short Dog and I left. The next
24 time I went in the hole Short Dog was in the parking
25 lot with the gun and we had some more words. And I

1 left the hole.

2 The next morning people were coming telling me
3 to be careful because Short Dog was looking for me
4 and was telling people that he was going to kill me.

5 That night I went to the trailer to try to
6 discuss the situation. When I drew down on Short
7 Dog, he charged me and tried to grab the gun I had.
8 I took the safety off and shot him.

9 As I was leaving, somebody shot at me from the
10 first house on the left. I returned fire.

11 That was the gist of his statement that he
12 wrote.

13 Q Okay. So that was written in Mr. Robinson's own
14 handwriting, is that correct?

15 A That's right.

16 Q All right. Please proceed with the rest of the
17 statement.

18 A That was his statement. I then proceeded with a
19 question and answer period.

20 Question: Do you know the man you shot?

21 His answer was: I don't know his real name,
22 only by Short Dog.

23 Question: How do you know Short Dog?

24 Answer: He is an older man. I don't really
25 know him, I just see him in the trailer.

1 Question: What was your confrontation with
2 Short Dog about?

3 His answer was: I felt like he was picking on
4 me for a fight for some reason.

5 Question: Did you shoot Short Dog?

6 His answer was: Yes.

7 Question: What kind of gun did you use?

8 His answer was: A 9 millimeter.

9 Question: Where is that gun now?

10 His answer was: The police took it off me
11 tonight.

12 Question: Do you know how many times you shot
13 him?

14 His answer was: No, sir. I had a full clip
15 and shot it off. The gun holds ten bullets.

16 Question: What was your intentions when you
17 shot Short Dog?

18 And his answer was: It was really unclear
19 because I really had felt threatened.

20 Question: Did Short Dog have a gun on him
21 tonight?

22 He said: I don't know, I'm not sure.

23 Question: Did you see a gun?

24 His answer was: No, sir.

25 Question: How many other people were inside

1 the house?

2 His answer was: At least four.

3 Question: Did any one of those people have a
4 gun?

5 His answer was: No, sir.

6 Question: Did either one of those people
7 attack you?

8 He said: No, sir.

9 Question: Did you go to the trailer looking
10 for Short Dog?

11 His answer was: Yes, sir.

12 What were you going to do when you saw Short
13 Dog?

14 His answer was: Address the situation we were
15 going through and find out why.

16 Question: Did you and Short Dog have a
17 conversation before the shooting?

18 He said: No, sir.

19 Did Short Dog have any kind of weapons?

20 He said: Not that I seen.

21 Question: How long have you had the 9
22 millimeter handgun that you used?

23 His answer was: I bought it three days ago.

24 Question: Did you buy it after your first
25 confrontation with Short Dog?

1 And he said: Yes, sir.

2 Question: What was your reason for buying the
3 gun?

4 His answer was: I felt like I needed it.

5 Question: Why did you need a gun?

6 His answer was: Because I knew he -- which
7 means Short Dog -- probably had one.

8 Question: Does Short Dog live in that trailer?

9 His answer was: I don't know.

10 Question: Do you have reason to believe he
11 lives anywhere else other than that, anywhere else
12 but the trailer?

13 His answer was: I don't think he stayed there.
14 I never seen him there before. I always heard
15 people calling his name. And then I seen him, he
16 was an old man -- I'm sorry -- I seen he was an old
17 man. After we had the confrontation my guard was
18 up. I went back to that trailer to take care of
19 what I needed to take care of. Before that I had
20 bought the gun off the street for \$100.

21 Question: Tell me what happened the moment you
22 got inside the trailer.

23 He said: I walked in behind two people and
24 pushed them out of the way. I pointed the gun at
25 Short Dog, he grabbed the gun. I snatched it away

1 from him. I snatched it away from him and wrapped
2 my hands up in his clothes because I was trying to
3 push him off of me.

4 He went on to say that: He was pushing me back
5 towards the wall. I got the gun up in the air but
6 pointed it down at him. I had him off at arm's
7 length. I fired some shots. I saw that the bullets
8 was hitting him, but the bullets were not affecting
9 him. He was hit several times, but he was still
10 tousling. He fell back. He fell, but he wasn't
11 dead.

12 He went on to say that: He was still
13 breathing. Blood bubbles was coming out of his
14 mouth. He was twitching. I walked on past him and
15 shot him two more times. This time I shot him in
16 the head.

17 He said: I think the gun was empty then
18 because it was empty when I got back to the car.

19 The last question was: Is there anything else
20 you want to say about this incident?

21 He said: I hate it happened because it didn't
22 make sense.

23 And that was the end of the statement.

24 Q Going back to the oral statement, do you recall him
25 telling you about how he had been to the hole and

1 that the first incident with Short Dog happened on
2 that previous Friday, the last Friday?

3 A Right.

4 Q Okay. And so if the incident happened
5 February 15th, that would put us to February 9th, is
6 that correct? Let me put this so you can read it.
7 Is the 9th of February, the Friday preceding the
8 murder?

9 A That's right.

10 Q So that is the first incident?

11 A That's right.

12 Q And tell the jury again, what did he say happened
13 during the first incident?

14 A I have to go back to my notes.

15 (Pause.)

16 Q Well, let me ask you this. In the first incident,
17 did he indicate whether or not any physical fight
18 occurred?

19 A He said Friday before the shooting he went to the
20 hole during 2:00 to 4:00 o'clock about to get some
21 crack and ecstasy pills. While he was there he got
22 into a confrontation with the person he shot
23 tonight, that this person was trying to pick a fight
24 with him. And added a lot of people in the trailer
25 saw him trying to pick a fight.

1 Q Okay, I'm going to stop you there. The first
2 incident he is saying that Mr. Smith was trying to
3 pick a fight with him?

4 A That's right.

5 Q All right. Then do you recall what he said
6 concerning the next day how he went back to the hole
7 and sees Mr. Smith again? And that would be the
8 second incident, correct?

9 A That's right. He said the next day, Saturday, he
10 went to the trailer after dark around 6:00 o'clock
11 p.m. and the victim who he called Short Dog was
12 leaning up against the house in the dark.

13 He said he thought he saw a gun in Short Dog's
14 hand, at which time he took his gun out.

15 Robinson said that Short Dog had a .40 caliber
16 or a 9 millimeter.

17 He stated that he himself had a 9 millimeter
18 gun in his pocket. He and Short Dog exchanged words
19 but nothing happened.

20 And then he went on to say he never bought the
21 drugs from Short Dog. It was unclear at that time
22 whether he was talking about that night or ever.

23 Q So the second incident he indicated he sees Short
24 Dog with a gun. And do you recall in his oral
25 statement whether he indicated whether Mr. Smith

1 ever pointed that gun to him? Towards him?

2 A No, he didn't. He didn't. He said that he didn't.
3 No, he did not know that he did.

4 Q And then again he admits that on the 10th of
5 February, that next Saturday, the second incident,
6 he himself had a gun, is that correct?

7 A That's right.

8 Q And what kind of weapon did he say he had at the
9 second incident?

10 A A 9 millimeter.

11 Q 9 millimeter. Then in your statement right here,
12 what date in this written statement did he tell you
13 that he had purchased a gun?

14 A I asked him how long has he had the 9 millimeter
15 handgun that he used. He said, I bought it three
16 days ago.

17 Q Three days ago. So this is happening basically at
18 the nighttime of the 15th into the 16th. So going
19 back one, two, three, that would put him purchasing
20 the gun either the 12th or the 13th, is that
21 correct?

22 A That's right.

23 Q Yet in his oral statement he says he already had the
24 gun on the 10th?

25 A Right.

1 Q Now, after you got the written statement from him,
2 did that conclude your involvement in this case
3 besides having to come to trial?

4 A That would have been it, right.

5 Q And he was just -- at that point the interview
6 concluded?

7 A Interviewed concluded.

8 Q All right. Let me -- did Robinson appear to be
9 under the influence at all during this interview?

10 A No. If I would have detected any of that, he would
11 not have been interviewed. That is my practice.

12 Q And when you were asking him questions, were his
13 answers responsive to your questions?

14 A Absolutely.

15 Q In fact, if you didn't understand or misstated
16 something, would you allow him to correct you?

17 A He did correct me a couple of times on some matters
18 that I didn't understand clearly. He corrected me.

19 For instance, at one point in the interview I
20 wasn't too clear on the name that he was giving. I
21 thought he was saying Short Dark, D-A-R-K. I
22 clarified that by asking him a question. He said
23 Short Dog, D-O-G, Dog.

24 Q So he corrected you?

25 A He knew exactly what he was doing, right.

1 Q Now, after the interview of Mr. Robinson, did you
2 participate in the execution of a search warrant at
3 his hotel room at the Room 110?

4 A No, I wasn't there. I asked one of the
5 investigators to do that.

6 Q That's right, you participated in the execution of
7 the search warrant of his car?

8 A That's right.

9 Q And Investigator Rose, who already testified, you
10 were present during that time?

11 A I was.

12 Q Okay. Then after that, did you follow up on
13 Mr. Robinson's claim that someone had shot at him
14 first after he had already killed Mr. Smith? He
15 indicated in his statement that he was pulling out
16 talking to somebody and noticed someone had a gun on
17 the front porch. Do you recall whether or not you
18 went to follow up on that investigation?

19 A I did try to follow up on that.

20 Q And were your -- were you able to confirm who it
21 could have been that fired a shot at him?

22 A There was a person of interest, but never any
23 confirmation on that.

24 Q Okay. And did you interview people about who it
25 could have been?

1 A I did.

2 Q And did the name Steve Goings show up?

3 A Yes, it did.

4 Q Were you able to get enough evidence to charge
5 Mr. Goings with shooting at Mr. Robinson?

6 A No, I wasn't.

7 Q In fact, did you ever charge Mr. Robinson for
8 shooting back at that house, :?

9 A No, I did not.

10 Q So that is not even an issue, is it?

11 A No, it is not.

12 MS. SHIPLEY: Beg the Court's indulgence, Your
13 Honor.

14 (Pause.)

15 Q The person who you met with from 12:47 until 2:00 in
16 the morning plus the statement, do you see him in
17 the courtroom today?

18 A Yes, I do.

19 Q Can you please point him out to this jury?

20 A He is sitting at the Defendant's table with the blue
21 shirt on, dark suit.

22 MS. SHIPLEY: Your Honor, let the record
23 reflect he has identified Joel Robinson.

24 THE COURT: The record shall so reflect.

25 MS. SHIPLEY: Thank you. No further questions,

1 Your Honor.

2 THE COURT: Okay.

3 MR. LEDDY: Beg the Court's indulgence for one
4 second.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MR. LEDDY:

8 Q On your handwritten notes it indicates that the
9 Defendant told you on the prior occasion when he had
10 words with Mr. Smith that Mr. Smith had been armed,
11 right? Said he had a 40 or 9 millimeter, right?

12 A Right.

13 Q And the Solicitor said he never pointed it at him.
14 Do you recall in the oral statement, that the jury
15 can listen to as many times as they like, that he
16 made it a point to show Joel that he had a gun.
17 According to Joel, he said, hey. Do you remember
18 that?

19 A Do I remember that Mr. Robinson made it a point that
20 Mr. --

21 Q Yes.

22 A -- that the victim made it a point to show him that
23 he had a handgun?

24 Q Yes.

25 A Are you asking me do I remember it in the recording?

1 Q Yes.

2 A I'd have to hear it again. Probably so. I don't
3 know.

4 Q All right. Now, he told you that he went inside the
5 house, inside the trailer, right?

6 A Uh-huh.

7 Q And said that he pushed two people out of the way?

8 A Yes, sir.

9 Q All right. And at that moment, he told you he had
10 his gun pointed at Mr. Smith, right?

11 A Right.

12 Q And obviously that is not legal, right? We don't
13 allow that? It is called pointing and presenting,
14 isn't it?

15 A No, that is not legal, absolutely not.

16 Q Okay, great. And at that moment, though, the safety
17 was on? That is what he told you, right?

18 A He told me he took the safety off. I assume that it
19 was on if he had to take it off.

20 Q There you go. Exactly. Now, you've heard -- you
21 were here for everybody's testimony, so you heard
22 everybody say that there was a tousel?

23 A Right.

24 Q And that Mr. Robinson was able to get the gun away
25 from Mr. Smith. That is what everybody said?

1 A That everybody was able to get the gun away?

2 Q Mr. Robinson was. That he pulled his hand up,
3 right? You saw Jeff and Leverne, everybody testify
4 to this, that the gun was up in the air?

5 A Right.

6 Q Now, you said that your specialty is whodunit cases?

7 A I like a good whodunit case.

8 Q You like a good whodunit. Are you familiar with the
9 TV show, 48 Hours?

10 A Uh-huh.

11 Q Not CBS News Magazine. I think it is called The
12 First 48, actually.

13 A Right.

14 Q I don't know if you watch it because it is probably
15 like being at work. But I've seen several episodes,
16 and it almost always is a whodunit case, at first
17 anyway, these murder cases, isn't it?

18 A Not necessarily.

19 Q Oh, well, you did testify that sometimes people are
20 just waiting for you and say, yes, I did it?

21 A Right. I'm not clear on what you are getting at.

22 Q Now, in this case it was a whodunit case, but not
23 for very long?

24 A Right, not for very long.

25 Q And for this jury it is not a whodunit case?

1 A Initially it was a whodunit case in the sense that
2 when I got on the scene, I got nothing. No suspect
3 standing around to say, Reese, I did it. So that is
4 why it is a whodunit case.

5 The whodunit case can change at an instant.
6 All I got to do is develop a person of interest and
7 then it changes from a whodunit to, okay, possibly I
8 got somebody who did this. That is what happened
9 here.

10 Q Right. And even though it didn't take very long, a
11 lot of people there were people there who did know
12 this person, they knew exactly who to tell him.
13 Ms. Mobley, for instance, she was there. You talked
14 to her, right?

15 A Shonda Moffett, I believe that is who it was.

16 Q And I think she gave you a description, but she
17 didn't tell you who it was?

18 A Right.

19 Q Somebody told you 110 Coronet?

20 A Right.

21 Q But they didn't say Joel?

22 A Well, you know, since you bring that up, counsel,
23 I'm going to explain that to the jury.

24 A lot of times when you are dealing with
25 situations like this where people in the community

1 are afraid, they are not going to be so forthcoming
2 while everybody is out there listening to what they
3 have to say, tell the police. It happens all the
4 time. So eventually we'll get around to getting
5 that information, whether they call us on the phone,
6 whether they do a Crime Stoppers tip, or whether
7 they have some sort of relationship with the
8 investigator, whether they know us on the street and
9 know our background. And that would have been what
10 happened here.

11 Q So people will be not forthcoming with the people
12 that are around at that time?

13 A Not immediately, no. That has always been my
14 experience.

15 Q Right. So in this case, then, and I think in your
16 notes one of your theories was people were afraid to
17 cooperate?

18 A Right.

19 Q And that would mean they are afraid of the people
20 who live in the hole?

21 A I can't tell you who they would have been afraid of,
22 but --

23 Q Those are the people in earshot, right?

24 A I sensed that -- well, they could have been afraid
25 of Mr. Robinson as far as I know.

1 Q Yes.

2 A I just sensed that there was some fear and
3 apprehensions on their part.

4 Q Now, when you took the statement from Mr. Robinson,
5 that was -- you obviously read him his rights, and
6 that is exactly what you are supposed to do, you
7 didn't want to jeopardize the integrity of the
8 investigation.

9 A Right.

10 Q And you read his rights and he waived his rights and
11 gave you a statement?

12 A Right.

13 Q You said he was forthcoming, which according to your
14 training is not a sign of somebody telling you the
15 truth?

16 A He was forthcoming, but, again, that is not
17 meaning -- that doesn't mean that he is going to be
18 forthcoming throughout the process. You could tell
19 the truth here and the truth here, a lie here, lie
20 here, truth here, truth, lie, truth, lie.

21 Q I think you said it was the easiest interview you
22 have done?

23 A You got to know what kind of crime they have done to
24 know what their statement meant.

25 Q And that takes me back to The First 48. They have

1 to coax a confession out of most of these guys.

2 A Well, I don't -- you bring The First 48 up and you
3 bring all these other CSI things up. I don't watch
4 these programs because I live and breathe this
5 stuff. So those programs doesn't mean anything to
6 me.

7 Q Right.

8 A So you cannot relate that to what I do.

9 Q Okay.

10 A Or even this case.

11 Q I was just using as an illustration. You said
12 yourself it was just a very easy interview, he was
13 very cooperative?

14 A I said it was one of the easiest interviews I have
15 done, in terms of his cooperation, I mean, yes.

16 Q Now, Mr. Robinson told you he felt threatened,
17 right?

18 A Yes, sir.

19 Q Okay. And some of the officers, I cross-examined
20 them and asked them about whether drugs and guns are
21 associated with one another. And did you see that
22 testimony?

23 A Uh-huh.

24 Q And I think at best that officer was kind of
25 evasive. I mean, he didn't say they do go together,

1 right?

2 A I wouldn't say that either, not in every situation.
3 You may have drugs and no guns. You could have guns
4 and no drugs.

5 Q Okay. So if you were as an officer going to go
6 somewhere that is known to be a drug area, drug
7 house, you wouldn't necessarily be afraid there
8 would be guns there?

9 A I would be apprehensive of it, yes.

10 Q Sure. And --

11 A I'd be apprehensive if I went on a criminal domestic
12 violence call also.

13 Q Right.

14 A That doesn't really mean anything.

15 Q Well, it means something I think because what you
16 are saying is that there are situations where you --
17 that you wouldn't be afraid there would be guns and
18 drugs, there just might be guns.

19 For instance, if you just had college students
20 suspected of using marijuana, would you expect them
21 to have 9 millimeters and 40's in the house?

22 A I wouldn't take it lightly, no, I wouldn't.

23 Q But you wouldn't suspect it, though, would you?

24 A Generally no, huh-uh.

25 Q All right. Well, that's all I'm saying. Now, in

1 this case one of the people that responded was a
2 Gang Task Force member?

3 A Right.

4 Q All right. And that is because of where this
5 happened, right? It is a drug area?

6 A It could be that reason. It could be also because
7 it was the Chief of Police then was Dean Crisp, and
8 that pretty much was his policy, you know. He
9 called Narcotics out, he called the Gang Unit out.
10 He was the man. He would do what he wanted to do.

11 Q Right. So you think Chief Crisp, if this had been a
12 call to Shandon, would have had the Gang Task Force
13 go out?

14 A You'd probably have to ask Chief Crisp that.

15 Q Right. I think that that is pretty obvious. Now,
16 the Defendant told you that after all this happened
17 that he went here and he went there.

18 A Uh-huh.

19 Q And he said when he went to his hotel room he didn't
20 go in because there were already people from the
21 hole there, right?

22 A Right.

23 Q Okay. And he also told you he really didn't have
24 any plan, he didn't know where he was going?

25 A Right.

1 Q Now, the Solicitor laid out some stuff in linear
2 time to try and draw a series of events. I just
3 want to go over that, and that will be it.

4 (Mr. Leddy puts a chart on an easel.)

5 Q All right, now, this is something that was provided
6 me in discovery, and I'd like you to have a look at
7 it, if you would.

8 Does that look like a sales receipt for a gun?

9 A Yes, best I can make it out. It is not too clear.
10 Best Pawn Shop, 9 millimeter Ruger. Uh-huh.

11 Q Now, this was all gathered from your interview,
12 right?

13 A Right.

14 Q And on here it says, purchased gun on the 12th,
15 doesn't it?

16 A She's got between the 12th and the 13th.

17 Q All right. What does that sheet say?

18 A It looks like the 14th. I really can't make that
19 out. It is not that clear.

20 Q All right.

21 A I'll take your word for it.

22 Q You will?

23 A No, not really.

24 Q This written statement was made, you said after the
25 oral one that we all listened to?

1 A Right.

2 Q Right. And in this written statement, at the very
3 end says -- it goes into the stuff about that Mr.
4 Rose brought up in opening statement about shooting
5 him while he was dying. But I didn't hear that in
6 the oral, did you?

7 A Could I -- I don't have the statement in my hand.

8 Q This is the part I'm talking about.

9 A Okay. I'm sorry, say that again what you asked me.

10 Q This whole part. And you read this to the jury?

11 A Uh-huh.

12 Q All right, this part right here. Can you start
13 reading just right here?

14 A Right here?

15 Q Yes.

16 A "He was hit several times but he was still
17 breathing, but he wasn't dead."

18 Is that it? Go on?

19 Q Yes. Do you recall that in the oral?

20 A No, that is not in the oral because that right
21 there, when you are doing the questioning, one of
22 the biggest reasons you do a question and answer is
23 obviously to catch what you missed during the taped
24 portion of it. And that is what happened here.

25 If he didn't tell me that part during the oral

1 but told me during the documented part, you know,
2 that is on him, that is not on me. That is not
3 something I elicit. He solicited -- he told me
4 that.

5 Q All right.

6 (Mr. Leddy puts the easel away.)

7 Q And just finally, on that, on this calendar, do you
8 recall on the oral statement that he actually told
9 you that he had gotten his days twisted up?

10 A I remember that part.

11 Q Okay. So that is two reasons to take this with a
12 grain of salt, isn't it?

13 A Not necessarily. That one might be a reason for you
14 to take it as a grain of salt.

15 Q Right. Okay.

16 MR. LEDDY: No further questions.

17 THE COURT: Any redirect?

18 MS. SHIPLEY: Very briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. SHIPLEY:

21 Q Mr. Leddy asked you on cross-examination about
22 whether or not any -- whether or not Mr. Smith was
23 able to get the gun away from Mr. Robinson during
24 the struggle. Do you recall that question?

25 A Yes.

1 Q Did you hear any testimony so far in this case that
2 Mr. Smith got the gun away from Mr. Robinson?

3 A No, I didn't hear testimony and nobody told me
4 during the investigation that Mr. Smith ever got a
5 gun from Mr. Robinson.

6 Q And also you were asked about this case being a
7 whodunit.

8 A Right.

9 Q And the witnesses being scared to be forthcoming.

10 A Right.

11 Q Sir, tell this jury again how long it took to
12 apprehend Mr. Robinson.

13 A Just a couple of hours, actually. It was a fluke,
14 you know. It wasn't by design, that's for sure.

15 Q And so at the time officers are meeting with the
16 witnesses at , Mr. Robinson is at
17 large, isn't that true?

18 A That's right.

19 Q Now, you were asked also on cross-examination
20 regarding how forthright Mr. Robinson was with you
21 in his statement.

22 A Right.

23 Q Oral statement and written statement, is that right?

24 A Right.

25 Q Was he being truthful with you when he told you that

1 he drove to the hole alone?

2 A No, he wasn't.

3 Q So there are parts of his statement that are true
4 and some that aren't?

5 A Right.

6 Q Who is the only person that claims that the safety
7 was on?

8 A Mr. Robinson.

9 Q Now, going back to the calendar, isn't it true that
10 he told you in the oral statement that he had a gun
11 on him on that Saturday?

12 A That's right, he did.

13 Q And then on Sunday at, I believe in the statement,
14 6:00 a.m. he says someone came to his motel room at
15 the Coronet to warn him that Mr. Smith was looking
16 for him. Do you recall that?

17 A On Sunday morning, right.

18 Q And he told you 6:00 a.m., isn't that true?

19 A I'd have to recheck that.

20 Q It is in the oral portion.

21 A Okay.

22 Q Tell me if you can find it.

23 (Pause.)

24 Q Do you recall that coming from his oral statement?

25 A Right, I do.

1 Q And you asked him, well, who told you that?

2 A Right.

3 Q Was he able to provide you a name of whoever was
4 warning him about Mr. Smith looking for him?

5 A He did not provide me with one, no.

6 Q So he is able to tell you that at 6:00 a.m. on the
7 nose someone is warning him on Sunday that Mr. Smith
8 is looking for him, correct?

9 A Right.

10 Q And then he says he's got his days twisted?

11 A Right.

12 Q Also on cross-examination Mr. Leddy asked you
13 concerning the fact that this is a drug house and
14 that drugs -- if there is drugs, there has got to be
15 guns present.

16 A (Nods affirmatively.)

17 Q Did you and your -- as lead investigator, do you
18 know of any other firearm that was collected in this
19 case involving ?

20 A No, no other gun was collected.

21 Q And, in fact, in the oral statement, do you recall a
22 portion of Mr. Robinson's statement when he went
23 that Saturday to the hole, the second incident?

24 A Right.

25 Q And he saw Mr. Smith with a gun?

- 1 A Right.
- 2 Q Did he have his gun on him or where did he have to
3 go get his gun from?
- 4 A Who?
- 5 Q Mr. Robinson?
- 6 A No, he had his gun on him.
- 7 Q Did he indicate whether he had his gun in his car?
- 8 A He had his gun on him.
- 9 Q On him?
- 10 A On his person.
- 11 Q And then lastly, you were also asked concerning the
12 fact that he was just simply wandering the streets
13 with no plans to go anywhere.
- 14 A Right.
- 15 Q Well, did he remain on the scene to tell you his
16 side of the story right after this happened?
- 17 A Absolutely not.
- 18 Q In fact, what did he do after the shooting?
- 19 A He fled the scene. He actually made every effort to
20 stay gone. He didn't want to be found.
- 21 Q And do you recall him indicating that he went to an
22 apartment?
- 23 A Right. He went to an apartment at Gaylord
24 Apartments, which is off of Main Street, North Main
25 Street area.

1 Q Is that within walking distance from Myers Street?

2 A You could walk it, right.

3 Q And what was his purpose of going to that apartment?

4 A According to him, he went there to get some more
5 bullets.

6 Q And how many bullets did he get from that apartment?

7 A He said he got 20.

8 Q And did he still have his gun on him walking around
9 the streets of Columbia?

10 A Yes, he did.

11 Q Thank you very much.

12 MR. LEDDY: I just have a couple of questions,
13 Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. LEDDY:

16 Q First of all, he told you that he got shot at,
17 right?

18 A Right.

19 Q And then didn't have the decency to hang around to
20 tell you his side of the story, right?

21 A Are you asking me if he told me he had the decency
22 or --

23 Q No, I'm using lawyer talk. But what I'm saying is,
24 would anybody in their right mind stay somewhere
25 they just got shot at?

1 A Well, if you are going to ask me that, then the
2 answer I would pose to you is that there are
3 telephone booths in the area. If he went to the
4 hotel up there, management could have called. If
5 he -- the point is, if he really wanted to contact
6 the police, he could have done it.

7 Q All right. And the Solicitor would like to have us
8 believe that he was running. When Sergeant Dutton
9 approached him on the street, he said, can I talk to
10 you? He said, sure, right?

11 A I guess. I wasn't there when that happened.

12 Q Right. But you have read the statements, though, so
13 you know -- and you heard --

14 A He didn't put up a fight about it.

15 Q Right. She didn't pat him down, he had a gun on
16 her?

17 A Right.

18 Q He didn't pull the gun out and point it at her?
19 Didn't run?

20 A Right.

21 Q All right. And then I really, I wasn't going to
22 bring this out. This is the one case where I can
23 imagine drugs and guns not going together is one
24 that has been famous here, and it is the Michael
25 Phelps case. Are you familiar with this?

1 A Michael Phelps?

2 Q Yes?

3 A Yes.

4 Q Are you familiar with the bong case?

5 A With Michael Phelps' case?

6 Q Yes. Were you aware they served a search warrant on
7 that case? It is all over the internet, I mean --

8 MS. SHIPLEY: Your Honor, what is the relevance
9 of Michael Phelps to this trial?

10 MR. LEDDY: It is the connection between drugs
11 and guns, Your Honor. The State denied it over and
12 over. I think I have a right to get into it. It is
13 my last question, by the way.

14 THE COURT: Okay. I'll allow a little leeway.

15 MR. LEDDY: All right.

16 Q So this was a search warrant that was served on some
17 college kids that were supposedly smoking weed with
18 Michael Phelps. Can you read that highlighted
19 portion, please?

20 MS. SHIPLEY: Whose article is this, Your
21 Honor? What is that?

22 MR. LEDDY: It is a search warrant from
23 Richland County.

24 MS. SHIPLEY: This is Columbia Police
25 Department, Your Honor. They are separate agencies.

1 THE COURT: Exactly.

2 BY MR. LEDDY:

3 Q All right. Well --

4 THE COURT: Thank you.

5 Q -- I guess that drugs and guns don't go together.

6 MR. LEDDY: No further questions, Your Honor.

7 THE COURT: Okay. Anything further?

8 FURTHER REDIRECT EXAMINATION

9 BY MS. SHIPLEY:

10 Q Do you recall in the oral portion of Mr. Robinson's
11 statement him indicating that he saw police officers
12 riding by him?

13 A Yes, particularly one on Prescott or Colonial Drive.

14 Q Do you also recall him indicating he left when he
15 heard sirens?

16 MR. LEDDY: Your Honor, I have to object. I
17 don't know that there is any re-redirect.

18 THE COURT: It is in the Court's discretion.

19 MR. LEDDY: Yes, ma'am. Well, I object.

20 THE COURT: Okay. But I overrule you.

21 MR. LEDDY: Thank you.

22 THE COURT: And you would have a chance to
23 re-recross based on what she is re-redirecting.

24 MR. LEDDY: All right.

25 MS. SHIPLEY: And I would like the record to

1 reflect I'm in the scope of his re --

2 THE COURT: Absolutely.

3 MR. LEDDY: Correct.

4 BY MS. SHIPLEY:

5 Q Concerning his fleeing the scene, do you recall him
6 also indicating that he heard sirens?

7 A Yes.

8 Q He saw police officers leave, driving by him?

9 A Right.

10 Q Do you recall the question about him stating that,
11 in his oral statement, that he was cruising the
12 neighborhood -- I'm paraphrasing --

13 A Uh-huh.

14 Q -- looking at the neighborhood checking it out to
15 see what the traffic was like police-wise?

16 A Right.

17 Q And that he had to escape the net?

18 A Right.

19 Q Escape the net?

20 A Right.

21 MS. SHIPLEY: Thank you. No further questions,
22 Your Honor.

23 THE COURT: Anything further?

24 MR. LEDDY: No, Your Honor.

25 THE COURT: Sir, you can step down.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness steps down.)

3 THE COURT: All right.

4 MS. SHIPLEY: Your Honor, at this time the
5 State of South Carolina rests its case.

6 THE COURT: Okay. Ladies and gentlemen of the
7 jury, as you have heard Ms. Shipley indicate, the
8 State rests its case. That means that the State has
9 concluded with the evidence that they intend to
10 present.

11 It is at this time that the Court must send you
12 to your jury room so that I can go over legal issues
13 with the attorneys between the State's case and any
14 case the Defendant may wish to put up.

15 So I'll need to make those rulings outside of
16 the presence of your hearing. I remind you not to
17 discuss the case.

18 (WHEREUPON, the jury retires to the
19 jury room at 3:06 p.m.)

20 THE COURT: Are there any issues that the
21 parties would like the Court to entertain at this
22 time?

23 MR. LEDDY: Your Honor, I just move for a
24 directed verdict of not guilty on the charge of
25 murder on all five charges. In the light most

1 favorable to the State, they have not met their
2 burden.

3 THE COURT: State, do you wish to respond?

4 MS. SHIPLEY: If the Court deems it necessary.

5 THE COURT: I don't. Motion denied.

6 All right. At this time I would like to advise
7 the Defendant of his rights..

8 Sir, if you would please stand.

9 (Defendant stands.)

10 THE COURT: I'm going to go ahead and have him
11 sworn in for purposes of my advising him of his
12 rights, Madam Clerk.

13 THE CLERK: Raise your right hand.

14 (Defendant complies.)

15 THE CLERK: Do you solemnly swear or affirm the
16 testimony you are about to give will be the truth,
17 the whole truth, and nothing but the truth, so help
18 you God?

19 THE DEFENDANT: I do.

20 THE COURT: Okay, Mr. Robinson, you have been
21 here throughout this trial.. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And at this time, as I have
24 indicated to the jury all along, the State has the
25 burden of proving this case beyond a reasonable

1 doubt.

2 THE DEFENDANT: (Nods affirmatively.)

3 THE COURT: You, as the Defendant, do not have
4 to present any evidence in this case. That burden
5 remains solely with the State and at the time that
6 the jury would deliberate they will be reminded that
7 the State has the burden of proof throughout the
8 trial and they cannot consider the fact that you do
9 not put up a case or if you choose not to even
10 testify against you or in any way in their
11 deliberations as they go into the jury room. Do you
12 understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: That is to protect you with respect
15 to your Fifth Amendment right to self-incrimination.
16 Do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Now, that right is solely your
19 right. Your attorneys can assist you in any
20 advisement of that right in terms of any pros and
21 cons, and what have you, with respect to your
22 testifying, but at the end of the day it is your
23 right and the Court will have to hear you respond to
24 how you wish to exercise that right. Do you
25 understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. Do you feel like you've had
3 enough time to speak with your attorney about this
4 matter?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. And then before I ask you
7 about how you wish to exercise that right, I just
8 want to tell you a little bit about some of the
9 things that you'll need to consider with respect to
10 testifying.

11 Particularly if you decided to testify, you
12 would be subject to the same rules of
13 cross-examination and impeachment as any other
14 witness was about this trial. Do you understand
15 that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I don't know what your prior
18 record, or if you even have a record, is, but to the
19 extent that you do have one, that would be fair game
20 as long as it is a legal reason to present that
21 record to you on the stand. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And if they can think of any other
24 reason in terms of bias, other reasons to impeach
25 your credibility, which means your believability, on

1 the stand, as long as those reasons and methods are
2 proper, the State would have the right to do that,
3 just like the Defense had the right to do that with
4 any of the State's witnesses. Do you understand
5 that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. But, again, it is solely
8 your right to testify. We would of course expect
9 you to be truthful in any of your answers, but this
10 decision must be made freely, voluntarily and
11 intelligently.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you feel in any way that you are
14 being pressured to testify or not testify in any
15 regard?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Okay. And then your attorneys have
18 spoken to you about some of things I'm talking to
19 you about?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you understood your attorneys'
22 conversations and discussions with you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you feel like you've had enough
25 time to actually discuss the matter with them and

1 ask any questions of them?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And have they been responsive to
4 any of the considerations that you wanted to make?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you need any more time with them
7 now to make this decision?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And do you feel like you understand
10 all the questions that I'm asking you?

11 THE DEFENDANT: Yes, ma'am, I do.

12 THE COURT: And do you understand everything I
13 have stated to you insofar as your right is
14 concerned?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And I am speaking for with respect
17 to your right to testify, which that is your
18 decision, but it is also your decision in working
19 with your attorneys about any strategy about putting
20 up any evidence. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Let me caution you about that. If
23 you put up any evidence in the case, when we get to
24 closing arguments, the State has the ability because
25 of their burden of proof to speak to the jury first.

1 Then your attorneys have an opportunity to respond.

2 If you put up any evidence, the State then gets
3 to reply to whatever the Defense, your attorneys,
4 have put up to the jury.

5 If you do not, then they get the chance to
6 speak to the jury last.

7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And have you discussed some of
10 those things with your attorney?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Do you need to ask me
13 anything else to better understand your rights?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Okay. Are you ready to make that
16 decision?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. What is your decision?
19 Attorneys, let me defer to you. Is there anything
20 else that you need to explain to your client?

21 (Pause.)

22 MR. LEDDY: Nothing else.

23 THE COURT: Sir, I now ask you, do you wish to
24 waive your right to proceed in this case and
25 testify?

1 THE DEFENDANT: Yes, ma'am. I do waive my
2 right to proceed and testify.

3 THE COURT: So you want to testify?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: I think I should -- you do not want
6 to testify, okay. And as I indicated, that will be
7 part of the instructions to the jury when they
8 deliberate, okay?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Defense, anything
11 further at this time?

12 MR. LEDDY: Your Honor, I just want to address
13 this exhibit, the calendar. I talked about it with
14 Ms. Shipley before she admitted it, and I don't know
15 why it didn't occur to me that she was going to
16 write on it. And while we were doing -- and, I
17 mean, not so much that she was going to write on it,
18 but I don't know why it didn't occur to me that I
19 should probably wait until it is written up before
20 it is admitted. And I don't know exactly how to
21 address that. But I think that -- I think I need to
22 take a look at it and decide -- I mean, I may not be
23 able to object to it at this point, but, if not,
24 then I may have made a mistake there by going ahead
25 and agreeing to it without objection admitting

1 something that is going to be altered. I mean, I
2 just started to think if we were to write on other
3 Court's Exhibits it would seem pretty unusual, and I
4 don't know why it didn't occur to me, but it didn't.

5 And I don't know, how would you like to address
6 that? I mean, I know you want it to go in as is.

7 MS. SHIPLEY: Well, Your Honor, it corroborates
8 their client's own version of the facts. I'm simply
9 writing what transpired in his oral statement as a
10 timeline for the jurors to understand he is
11 indicating that on that previous Friday what
12 happened. That was the first incident. On that
13 following Saturday and then Sunday. So that simply
14 is the timeline.

15 THE COURT: Coming from the Defendant's
16 statement?

17 MS. SHIPLEY: Yes, ma'am. And it is basically
18 an exhibit that would aid the jurors as to the
19 timeline.

20 MR. LEDDY: And actually, you know, the
21 timeline kind of became an issue during examination
22 and cross-examination with the receipt for the gun
23 contradicting what they had put on there.

24 THE COURT: So I believe that you would have
25 had an opportunity during Investigator Reese's

1 examination too to, on your own, start altering the
2 calendar with your own writings to suggest that
3 there is a different timeline.

4 MR. LEDDY: Right.

5 THE COURT: If you wanted to do it that way.
6 But, I mean, you try to do as best you could through
7 the testimony as well. So you had your choice
8 probably of altering it that way, but you also ably
9 cross-examined him on it to give the jury some other
10 suggestions.

11 MR. LEDDY: Yep, and I definitely think that I
12 got to cross-examine him as much as I wanted to on
13 that, on the calendar. I just wanted to state that
14 I think that that was a mistake on my part to agree
15 to put something in evidence that is going to be
16 altered before it is. I have never had that happen.

17 THE COURT: You say that is going to be altered
18 before it is?

19 MR. LEDDY: Well, putting it into evidence
20 before it is altered. Do you see what I mean? Like
21 not objecting to it being admitted as a piece of
22 evidence.

23 THE COURT: In other words --

24 MR. LEDDY: And then we are going to alter it.

25 THE COURT: I see what you are saying. In

1 other words, it went in -- at the time it went in as
2 an exhibit it was just the calendar?

3 MR. LEDDY: That's right.

4 THE COURT: And then later on it got altered
5 after the testimony?

6 MR. LEDDY: Right. And Ms. Shipley did not
7 tell me, I'm not going to alter it. I mean, it was
8 my full understanding she wasn't. It was just my
9 failure to do that, to realize that, would be an
10 issue. And I don't know why, but, you know, it just
11 didn't pop into my head. But I think it is
12 important to just put on the record and say that I
13 don't know exactly whether or how I should or could
14 object to it. I don't recall ever reading anything
15 about an issue like this, Your Honor.

16 THE COURT: Parties approach, please.

17 (WHEREUPON, a bench conference was
18 held.)

19 THE COURT: Okay, with the side bar discussion
20 with the attorneys, my understanding is that
21 Ms. Shipley will get a plain calendar because that
22 is the way in which the exhibit went into evidence
23 when it was entered.

24 Then of course either party has the right to
25 use the calendar as demonstrative evidence in terms

1 of the closing, or what have you, but that is not
2 actual evidence that will go in because you put it
3 in as a clean calendar.

4 Anything else at this time?

5 MS. SHIPLEY: Jury instructions?

6 THE COURT: Right. I was going to see if the
7 Defendant is going to put up a case at all.

8 MR. LEDDY: We're not going to put anything up.
9 We need to renew our prior objections and motions at
10 this time. We'll do that.

11 THE COURT: Can you officially rest on the
12 record now?

13 MR. LEDDY: Yes, the Defense rests.

14 THE COURT: And then of course we will do it
15 when the jury comes back, but instead of sending
16 them back out, just go ahead and know that you have
17 rested. I will allow you to officially do it then,
18 but we will go ahead and discuss jury charges.

19 MR. LEDDY: Thank you.

20 THE COURT: Okay. The Defense earlier gave me,
21 which has been marked as a Court's Exhibit, their
22 proposed jury instructions. The Court also
23 indicated that it would give you all some proposed
24 jury instructions. And then we will mark this as an
25 exhibit so that we would know what we are referring

1 to on the record.

2 (WHEREUPON, proposed jury charges
3 were marked as Court's Exhibit 4.)

4 (Pause.)

5 THE COURT: The Court's proposed charges are
6 giving you the case as charged. It did indicate --
7 and when I say as charged, that includes what the
8 State proposed in as well, and then we can have
9 discussions about other charges that the Defense
10 wants. In other words, we are presenting the
11 proposed charges with how the State believes they
12 can prove their case, and then we can go to whether
13 or not the Defense should proceed on other issues,
14 like lesser included offenses, but right now these
15 are as the State would propose.

16 MR. LEDDY: This is my copy?

17 THE COURT: Yes.

18 MS. SHIPLEY: And, Your Honor, this that you
19 are handing me now, does that also have evidence of
20 flight, by any chance?

21 THE COURT: We were just talking about that.
22 So we need to pull that off.

23 MS. SHIPLEY: Thank you very much.

24 THE COURT: Because I didn't hear that. We had
25 these done before that last bit of testimony.

1 MS. SHIPLEY: Yes, ma'am.

2 THE COURT: Okay. Thank you.

3 Okay, you all take a moment to review those and
4 discuss anything the Defense wants. Let's start
5 with anything you all have.

6 (Pause.)

7 MS. SHIPLEY: I have had a chance to review.
8 We'll just discuss evidence of flight. And I'm
9 happy with your charge.

10 THE COURT: Thank you. Okay, Defense, let's
11 just talk about the Court's proposed charges if
12 there is anything that you would take out or amend
13 on these before we decide to add.

14 MR. LEDDY: Your Honor, are these from your --
15 I'm not sure where some of these charges come from.
16 Some of them cite cases, some of them don't.

17 THE COURT: Right. Some of them are just
18 standard jury charges that the judges use.

19 MR. LEDDY: Right. As far as for -- well, for
20 the transfer of intent, I would request that the
21 Defense's version be used. I think it is more -- I
22 just think it is more illustrative.

23 THE COURT: Okay, that is Court Exhibit Number
24 Three.

25 MR. LEDDY: And it is on Page Five.

1 THE COURT: Okay. Let me just review that.

2 (Pause.)

3 THE COURT: I don't have a problem with
4 Defendant's Requested One, but I would just take out
5 "or manslaughter" in there right now until there has
6 been a decision on that.

7 MR. LEDDY: All right.

8 THE COURT: Are you okay with that, State?

9 MS. SHIPLEY: Beg the Court's indulgence, Your
10 Honor.

11 THE COURT: Sure.

12 (Pause.)

13 MS. SHIPLEY: Your Honor, I would just ask that
14 you charge the basic transferred intent that all
15 other judges in the state use. I'm familiar, I have
16 seen this one before, it is clear, it is concise. I
17 think that the one proposed by the Defense is a
18 little confusing.

19 THE COURT: What is it that you are trying to
20 gain from here? I will tell you that even on the
21 ones that the State -- the judges use on some of
22 these proposed charges, particularly in this case I
23 tried to cut some of it down just because it is a
24 lengthy amount of charges. And so I just say that,
25 you know, with respect to this charge just to try to

1 make it a little more concise.

2 MR. LEDDY: Well, here is my concern, Your
3 Honor. Say, for instance, I manage to do exactly
4 what I set out to do, he gets convicted of
5 manslaughter, and then at the same time he gets
6 convicted of ABIK. That would be a completely
7 illogical result because in order to be convicted of
8 ABIK there has to be a finding of malice on the part
9 of the assault on Mr. Smith. Otherwise, there is no
10 malice to transfer to Ms. Brown -- Ms. Evans.

11 So I have recently -- the last trial I was in,
12 they found our client guilty of burglary but not
13 guilty of associated petit larceny. No idea how
14 they did that. But it is just inconsistent. It is
15 an inconsistent verdict that I'm trying to avoid.

16 THE COURT: Okay. Let me look at it again with
17 that light.

18 MR. LEDDY: I think that transferred intent
19 is -- I think a lot of this is hard for people on a
20 jury to understand, especially when you read it out
21 to them for the amount of time it takes. And I
22 understand wanting to keep it as short as possible,
23 but transferred intent is a particularly difficult
24 legal doctrine, even the Courts have trouble
25 applying it, so -- consistently anyway -- so I think

1 that as much information as you could give them by
2 illustration is, you know, the more information the
3 better, I think.

4 (Pause.)

5 THE COURT: I'm sorry, Ms. Shipley?

6 MS. SHIPLEY: Your Honor, the charge you have
7 to assault and battery with intent to kill clearly
8 states that they must find malice as to Ms. Edwina
9 Brown. And so any concern they have is resolved
10 right there. They cannot convict him for shooting
11 Ms. Brown unless they find malice.

12 THE COURT: Towards Mr. Smith, you mean?

13 MS. SHIPLEY: Well, no, he's charged with
14 assault and battery with intent to kill Ms. Brown.
15 They still have to find malice in order to convict
16 him of that. I think this is just going to confuse
17 everybody.

18 THE COURT: Go ahead.

19 MR. LEDDY: Well, you know, the thing is, if
20 they come back with an illogical verdict, then in
21 this state that is going to be upheld because some
22 time ago they decided they were not going to reverse
23 a jury's verdict just because it didn't make any
24 sense. And so now we're stuck with that. And I
25 don't think it is confusing to them to tell them

1 that they have to find malice on the part of one in
2 order for it to be transferred. In other words,
3 they have to actually find it first.

4 THE COURT: Right.

5 MR. LEDDY: Before it can ever be transferred.
6 And if they don't, then there is a lesser included
7 offense. But for my client, it is a difference of
8 10 or 20 years. So it is highly prejudicial to him.
9 And I don't think unduly confusing.

10 (Pause.)

11 MS. SHIPLEY: Well, then I guess, Your Honor,
12 we should figure out if we are going to charge
13 voluntary manslaughter, or any lesser included in
14 this case.

15 THE COURT: Okay, let's go there first, and
16 then we will come back to this.

17 MR. LEDDY: Your Honor, if I can approach? I
18 have a case which I think makes it impossible to
19 distinguish from this one, which I think is
20 impossible to distinguish from this one, which
21 requires the Court to charge voluntary manslaughter
22 in this case. The case is State versus Lowry,
23 L-O-W-R-Y, 315 S.C. 396. It is from 1993.

24 The gist of this case, Your Honor, is that two
25 guys were in an argument outside of a store, they

1 bumped their chests, and such. One guy pulls a gun
2 out and points it at the other guy and pulls the
3 trigger, but there is no bullet in the chamber. The
4 other guy who got pointed the gun -- who had the gun
5 pointed at him goes into the store. The other guy
6 loads his gun, tests it out on a sign, goes into the
7 store, points it at the guy again and said, let's
8 take it outside.

9 And the guy says, what, am I just going to let
10 you shoot me? And then he charges the guy with the
11 gun.

12 The guy with the gun shoots him in the chest.
13 He falls. The guy with the gun cusses him, walks
14 over and shoots him in the head.

15 He was convicted of murder. The trial judge
16 refused to charge voluntary manslaughter. And the
17 Court reversed it.

18 THE COURT: In your case, though, that you are
19 referring to, State v. Lowry, you've got a scenario
20 of a lot of events occurring right then.

21 If I heard the testimony and evidence
22 correctly, the confrontational statements and all
23 were made some days prior to, but at the moment and
24 instance of the acts which we are here about today,
25 particularly the murder and the incident in the

1 trailer in the kitchen, there is no evidence of an
2 argument right then.

3 In fact, the Defendant's statement indicated,
4 the written statement, I believe, indicated no
5 conversation occurred at that time, and that the
6 Defendant admittedly held a gun, actually went in
7 with a gun, pushed the other two people down, held a
8 gun, and then that is when the victim went towards
9 him.

10 So I don't have, in my opinion, right here the
11 scenario of events occurring right prior to the
12 actual pulling of the trigger, so to speak.

13 MR. LEDDY: Yes, ma'am. Well, let me address
14 that this way. The Courts have in cases that have
15 considered Lowry and the cases that have
16 distinguished it is because there was no overt
17 attempt or completed assault on the Defendant, not
18 because there weren't any words. Words alone,
19 however opprobrious, is the term they use --

20 THE COURT: Correct.

21 MR. LEDDY: -- if you use a deadly weapon
22 cannot suffice to mitigate the offense of
23 manslaughter. But there is no such rule that you
24 have to have words and an overt action.

25 In this case, the evidence could be believed by

1 the jury that there simply was no time between him
2 going into the house and the decedent charging him.
3 And that is sufficient legal provocation, if
4 believed by the jury, the charging alone, the
5 assault. And it was the assault, not the words,
6 that makes the difference.

7 THE COURT: Well, help me out with the line of
8 cases that talks about when you have a victim, for
9 example, of an armed robbery or any other assault of
10 sort that they are acting in response to the
11 situation, that that has been found not to be
12 sufficient to issue a charge of voluntary
13 manslaughter.

14 MR. LEDDY: If I could have just a second, Your
15 Honor.

16 The Courts are extremely -- they err on the
17 side of charging voluntary manslaughter in the
18 extreme. And one example of that is, and I don't
19 know --

20 THE COURT: And I'm aware of that because what
21 I don't want to happen -- that's why I really want
22 to have a careful discussion about this -- is the
23 fact that if I were to, if I'm saying this right, it
24 is either charge it or not charge it, and then if it
25 were to go up on appeal but he was only convicted of

1 the voluntary manslaughter and I were wrong, then
2 we'd only be able to have that as a charge in the
3 later trial. And that is what I don't want to
4 happen, you know, in terms of us making the wrong
5 decision on this issue.

6 MR. LEDDY: Well, I think it is much more
7 likely --

8 THE COURT: Because I don't think that you
9 disagree that murder should be a charge in this
10 trial?

11 MR. LEDDY: Yes. Yes.

12 THE COURT: Okay.

13 MR. LEDDY: There is probable cause, there is
14 enough --

15 THE COURT: Okay. That's fine.

16 MR. LEDDY: -- question to send it to the jury
17 of whether or not there is --

18 THE COURT: But what I'm saying is that I
19 cannot err on the -- we've got to really think this
20 through for all parties' sake because nobody would
21 want to retry the case.

22 MR. LEDDY: Your Honor, I'll just -- I think
23 that the best case to demonstrate how far the Courts
24 have gone to --

25 THE COURT: Uh-huh.

1 MR. LEDDY: -- in favor of charging it, when
2 there is any evidence whatsoever --

3 THE COURT: Definitely, any evidence.

4 MR. LEDDY: Right.

5 THE COURT: So we need to get there?

6 MR. LEDDY: And I think that the evidence is
7 that --

8 THE COURT: Evidence.

9 MR. LEDDY: Argument or not, the evidence is
10 that there was a struggle between the decedent and
11 my client that was -- and it is up to the jury to
12 decide whether or not that person, Mr. Smith, I'm
13 sorry, charged my client, which led to -- which
14 escalated the event from pointing and presenting or
15 assault, however you want to say it, to something
16 that was charged as murder. And that is the
17 mitigating factor. That is what the jury has to --
18 needs to have the choice for, is because if they
19 find that that is mitigating, that he didn't go
20 there with the intent to kill him, then I don't
21 think they will find malice. But if they are given
22 a choice between murder and not guilty, we know what
23 the result is going to be. But in this case, State
24 versus Knoten, K-N-O-T-E-N, in this case the
25 Defendant gave three contradictory versions of

1 events.

2 And in the second version of his story, however
3 unbelievable, the Court said if the jury had
4 believed it, however farfetched, that there would
5 have necessitated a voluntary manslaughter charge.
6 And they reversed his murder conviction.

7 THE COURT: Because there is evidence, and
8 evidence is testimony and it is not for the Court to
9 make any decisions on credibility, that is always
10 left in the jury's province.

11 So direct me back to the specific evidence that
12 you are relying on that indicates there is sudden
13 heat of passion and sufficient legal provocation.

14 MR. LEDDY: And what I would say is the
15 sufficient legal provocation has to -- the only
16 thing that it can be is that the wrestling between
17 Mr. Smith and my client -- and it was, according to
18 the testimony of my client on that tape, that
19 when --

20 THE COURT: You are talking about the night of
21 the event, not prior to, we are talking about at the
22 moment?

23 MR. LEDDY: We're talking about, right, before
24 the shooting.

25 THE COURT: The 15th?

1 MR. LEDDY: The day of the shooting. The
2 moment that he's in there.

3 THE COURT: Okay.

4 MR. LEDDY: He does not --

5 THE COURT: Because my point is, you would
6 agree with me that all of those events leading up to
7 it are more for reference in terms of the background
8 and circumstances between the gentlemen as opposed
9 to --

10 MR. LEDDY: Well, previous difficulties I think
11 are appropriate to consider, Your Honor.

12 THE COURT: But at the time of the event is
13 where we are concerned for the voluntary
14 manslaughter charge. I mean, that could give some
15 history as to what is leading up to it.

16 MR. LEDDY: Right.

17 MS. SHIPLEY: But that alone doesn't give us
18 rise because there is too much time in between.

19 MR. LEDDY: Well, I understand that.

20 THE COURT: Okay.

21 MR. LEDDY: My point is that -- and the trouble
22 is that this was such a fast --

23 THE COURT: Okay, that's fine.

24 MR. LEDDY: This will take us three days to
25 talk about, but this --

1 THE COURT: Okay, that's fine.

2 MR. LEDDY: -- took probably ten seconds, if
3 that, to transpire.

4 THE COURT: That's fine. I guess what I'm just
5 trying to say, are we agreeing that we are not going
6 back to that Friday or Saturday before indicating
7 that those issues gave him sufficient heat of
8 passion or sufficient legal provocation to do it on
9 that moment right then?

10 MR. LEDDY: Yes. I don't think that I'll have
11 any success arguing that he didn't have time to cool
12 off.

13 THE COURT: Okay, great. Thank you.

14 MR. LEDDY: Right.

15 THE COURT: Let's bring ourselves to the
16 evening of, and that is the evidence I'm looking for
17 that is on the record --

18 MR. LEDDY: Yes.

19 THE COURT: -- with respect to this issue.

20 MR. LEDDY: Well, the evidence that is on the
21 record is that he, according to his version of
22 events, which means according to the evidence, if
23 believed, on the record from my client, means that
24 he went there --

25 THE COURT: Meaning the statements that have

1 been entered by the Defense?

2 MR. LEDDY: Yes.

3 THE COURT: I mean, entered by the State but
4 about the Defendant?

5 MR. LEDDY: Is that he went there to confront
6 him, by not to kill him, and that he didn't kill him
7 until he felt his feet come off the floor when
8 Mr. Smith was attempting to take him down. And that
9 would be in the jury -- it would be up to the jury
10 to decide if that is sufficient legal provocation
11 given the charge, but I think it is enough to give
12 them the charge.

13 Because if you are in a -- taking all the
14 circumstances in consideration -- if you are in a
15 house with all -- with the guy's friends -- and
16 whether or not the police in this case want to say
17 it, drugs and guns are ubiquitous, they go
18 together -- you go there. And we're not going to
19 ask him to be set free or exonerated, but if you go
20 there and all of a sudden your feet are coming off
21 the ground and you have come with a gun, yes, you
22 are in the wrong, and he's going to be convicted of
23 something. But that is the type of situation that
24 would cause a reasonable person to lose control of
25 their faculties. It is not the type of situation

1 that you would put yourself in if you indeed went
2 there with malice aforethought with the intent to
3 kill when you came in the door.

4 So if there is malice, it didn't exist then,
5 according to that version of the events. And,
6 therefore, it is appropriate to send it to the jury
7 that he didn't decide to kill, he didn't
8 intentionally kill until he was being almost taken
9 down and would have been in a position of getting
10 hurt or killed himself at that point.

11 Now, whether or not that would have been
12 something that we would have been here about or not
13 I don't think is relevant. It matters that he had a
14 reason to lose control of his ability to think
15 through the situation coolly.

16 THE COURT: You are talking about the charge --

17 MR. LEDDY: And he fired --

18 THE COURT: You are talking about the charge --

19 MR. LEDDY: Yes. Yes.

20 THE COURT: -- where the victim actually
21 touched his person?

22 MR. LEDDY: Yes.

23 THE COURT: Okay. And then earlier you
24 mentioned something with respect to a struggle. Put
25 that in context.

1 MR. LEDDY: And -- well, and I would say that
2 there were two witnesses that said they did not see
3 any weapon until the struggle was happening. And
4 that the jury, however unlikely it would be that
5 they would find that there wasn't one and it wasn't
6 out, it is possible, and therefore it necessitates a
7 charge because that would show that until -- that
8 would show there wasn't an assault until they were
9 physically engaged. And that would be a situation
10 where it would undoubtedly require a charge. And
11 that is on the record.

12 Now, is that what the jury is going to think?
13 Probably not. But that is not the standard,
14 obviously. And if there is any evidence that they
15 could come to that conclusion, then the charge has
16 to be given.

17 THE COURT: I don't doubt that last statement.
18 I mean, the Court has to see if there is any
19 evidence.

20 MR. LEDDY: Yes.

21 THE COURT: And that is what we are dealing
22 with at this juncture.

23 Okay, I will allow the State to respond and
24 then you can give me your other remarks.

25 MS. SHIPLEY: And I apologize, Mr. Leddy, I

1 forgot to make a copy of this case for you, but it
2 is State versus Cole, and it actually cites your
3 case, State versus Lowry. And it is cited at 525
4 S.E.2d 511. Your Honor, I'm sorry, I just didn't
5 think to make a copy.

6 MR. LEDDY: I've got one.

7 MS. SHIPLEY: The cite again, 525 S.E.2d 511.
8 And it was decided in 1999. In that case, Your
9 Honor, the Supreme Court found that the trial judge
10 did not commit any error by refusing to charge the
11 jury on the law of voluntary manslaughter.

12 And I'm going to have to read you the facts
13 because there are a lot of players, so if you'll
14 indulge me, Your Honor.

15 THE COURT: Sure.

16 MS. SHIPLEY: This happened on Christmas Eve of
17 '96. The Appellant, who is the Defendant, was with
18 his brother, Scott Cole, and his friend, Jason Best
19 and Jay McKown. They were together at the
20 Defendant's apartment between 9:00 and 10:00 that
21 evening. A person named Paul Pennington and the
22 victim, Bobby Spencer, arrived, followed closely by
23 three young women. Pennington and the victim asked
24 to borrow money from the Defendant and he refused.

25 With no apparent provocation, Pennington

1 attacked the friend, Best, struck him several times
2 around his head, and then jerked his gold chain off
3 his neck. At that point the Defendant intervened
4 and he and Pennington fought briefly.

5 While -- during that fight, the victim then
6 breaks up the fight between the Defendant and
7 Pennington. Pennington continued to behave
8 hostilely, and the Defendant and Pennington fought a
9 second time.

10 At that time, the victim told the Defendant he
11 was going to thug him if he did not stop fighting
12 Pennington. At that point the fight ended and
13 Pennington and victim started to leave.

14 As soon as they went out the door, Pennington
15 spoke threateningly to Appellant's brother and
16 promised to return. Pennington also intentionally
17 overturned Appellant's stereo on the way out.

18 When Pennington and the victim went out the
19 front door, Appellant went out the back door to his
20 mother's apartment next door where he retrieved his
21 gun, a semi-automatic rifle. The gun was already
22 loaded with a clip.

23 Appellant then went out of his mother's front
24 door. Standing in the front yard, the Appellant
25 claimed he heard shots being fired. Appellant fired

1 his gun killing the victim. Appellant said he fired
2 towards the ground, but the cause of the victim's
3 death was determined to be a gunshot wound to the
4 chest.

5 By all accounts -- and this is important -- the
6 shooting occurred three to five minutes after
7 Pennington and the victim left Appellant's
8 apartment. He fired the gun, Appellant said,
9 because "I was scared they might come back. I was
10 scared they might come in my house and kill me and
11 my brothers, or maybe not kill, just hurt us,
12 whatever. I didn't know what to do. I was scared."

13 Appellant testified that he did not intend to
14 shoot the victim, he was just scared and wanted to
15 frighten Pennington and the victim away.

16 Appellant re-entered the apartment and said
17 something to the effect of, "I think I shot Bobby."
18 Appellant appeared to be scared and in shock.

19 When the police arrived in response to a
20 neighbor's call reporting gunshots, the friends
21 denied knowing anything about a shooting, but
22 Appellant insisted on making a police report about
23 the incident with Pennington. The police left
24 without realizing that the victim was dead on the
25 ground outside.

1 After the police left, the Appellant drug the
2 victim's body, face down, to an embankment. He
3 moved him towards the light so he could determine
4 whether he was still alive. One witness claimed he
5 tried to get him to help move the body and pick up
6 shells off the ground. One of the men left, later
7 reported the shooting to an uncle, who was a deputy.
8 And in that case the Appellant left -- the Appellant
9 hid from the police for about a week.

10 Your Honor, he was convicted of murder in that
11 case and sentenced to life. The issue before the
12 Supreme Court was did the trial judge err in
13 refusing to charge voluntary manslaughter.

14 To warrant the Court's eliminating the offense
15 of manslaughter, it should very clearly appear that
16 there is no evidence whatsoever tending to reduce
17 the crime from murder to manslaughter.

18 And then it cites the fact that: Both heat of
19 passion and sufficient legal provocation must exist
20 at the very time the fatal blow is struck, at the
21 time of the killing.

22 Your Honor, in this case we have had five days
23 from that Saturday go by. There was a cooling off
24 period. We get to the night of the incident. It is
25 the Defendant in his own words telling Investigator

1 Reese that he went into that trailer with his gun
2 drawn, fully loaded, to confront the victim about
3 what had transpired five days earlier. That is the
4 evidence on the record.

5 Now, whether or not Leverne Smith or Jeff Smith
6 had a vantage point to see the gun, they testified
7 they didn't see it until the struggle when it was up
8 and the Defendant started shooting, but I think what
9 is interesting is Ms. Edwina Brown, who was by the
10 stove, had a good look at it, and obviously our --
11 Mr. Smith had a good look at it.

12 And, in fact, in the Defendant's own words: He
13 saw me draw down on him. And he charged at me.

14 That is the only reason the victim charged at
15 that man, because he came into that trailer
16 following two people, pushed them out of the way,
17 with his gun already drawn. He admits he walked up
18 on the victim with the gun drawn.

19 So, Your Honor, right then and there, he is the
20 aggressor. Right then and there, the victim was not
21 expecting them. Right then and there, the victim is
22 unarmed. There is no time for any argument or
23 fight, any time for any sort of heat of passion to
24 arise. The victim is merely seeing a gun in the
25 hand of a man charging him in the kitchen, and he

1 takes a defensive reaction to that.

2 When a person is acting in self-defense, when a
3 person is exercising their legal right, as Mr. Smith
4 was doing that night, that is never sufficient legal
5 provocation, Your Honor.

6 So right then and there, the State would submit
7 there is no evidence of sufficient legal
8 provocation, period.

9 The fact that Mr. Smith was trying to defend
10 himself -- and even Edwina Brown indicated he never
11 got the gun away from him, it was too late. And so
12 I submit, right then and there you should not charge
13 voluntary manslaughter because that element has not
14 been satisfied. There is no evidence of sufficient
15 legal provocation.

16 On the other hand, heat of passion, there is no
17 heat of passion in this case, Your Honor. None
18 whatsoever. No words were exchanged. This was done
19 so spontaneously there was no time for Mr. Smith to
20 do anything but to react to a man charging him with
21 a gun. And so I would submit to the Court, there is
22 simply no evidence of either element in order for
23 you to charge the law of voluntary manslaughter.

24 MR. LEDDY: All right --

25 MS. SHIPLEY: Let me just finish one last

1 thing, Mr. Leddy. You cannot reward somebody for
2 going and starting something like this and
3 escalating the situation to this extent and allow
4 the person who is armed with a loaded gun, 9
5 millimeter that had 11 clips in it, to go up to an
6 unarmed man who is not expecting him, who is
7 visiting his cousin in his cousin's home. And he
8 basically ambushed the victim, Your Honor.

9 And in order for you to charge the law of
10 voluntary manslaughter for that man's actions that
11 night is rewarding him, Your Honor. There is no
12 evidence that the victim was expecting him, prepared
13 for this encounter whatsoever.

14 THE COURT: Okay.

15 MR. LEDDY: And, Your Honor, I think that
16 spontaneity argues in favor of heat of passion, not
17 against it. Something happening very quickly is
18 what heat of passion means. Heat of passion has to
19 do with, once I have been sufficiently legally
20 provoked, do I have time to cool off.

21 THE COURT: Okay, but tell me what your legal
22 provocation is because you have somebody pointing a
23 gun at the victim and he, from all accounts, it
24 looks like in the Defendant's own words, the victim
25 is responding to that act.

1 MR. LEDDY: That is exactly what the guy did in
2 State versus Lowry. And he got shot in the chest,
3 and when he was down the guy walked over and cussed
4 him and shot him in the head. He got -- refused to
5 charge voluntary manslaughter. He got his case
6 reversed.

7 In the case the Solicitor cited, State versus
8 Cole, it cites to Lowry only because of the general
9 rule that you should review the charge only if there
10 is absolutely no evidence.

11 That case is most usually cited for the
12 proposition that three to five minutes is sufficient
13 cooling off time to negate any sort of heat of
14 passion. And also sufficient legal provocation in
15 that case was people pushing each other and a guy
16 knocking over a stereo. The guy goes and gets a
17 gun, brings it back.

18 If my client had gone into the house and had
19 words and walked back out to his car and got a gun,
20 that would be much more akin to Cole than this case.
21 I don't see how Cole has any bearing whatsoever.

22 So as far as whether or not that was sufficient
23 legal provocation in terms of Mr. Smith charging my
24 client, whether or not that is sufficient in terms
25 of -- to disprove malice beyond a reasonable doubt

1 is perfectly acceptable for the jury, but I think
2 that there is enough evidence in the words of my
3 client and the words of the witnesses that it
4 dictates that the charge must be given.

5 And if the Court is worried that a voluntary
6 conviction would be reversed, sent back to do
7 another trial without a voluntary charge, I have
8 never seen that, but this whole stack of cases on my
9 table is the opposite.

10 MS. SHIPLEY: Your Honor, in State versus Cole,
11 the reason why I think it is indicative, it cites
12 State v. Lowry indicating that in that case menacing
13 words and the actions by the victim in that case
14 constituted legal provocation.

15 So even though words alone are never sufficient
16 legal provocation, the victim in Lowry also had
17 actions towards and against the Defendant in that
18 case that warranted the charge.

19 In this case there is no conduct on behalf of
20 Mr. Smith that provokes the Defendant to shoot and
21 kill him.

22 In Lowry it was the Defendant -- or, excuse me,
23 the victim was the one that approached the Defendant
24 in that case.

25 MR. LEDDY: And that is what happened in this

1 case.

2 MS. SHIPLEY: This case is opposite. It
3 doesn't apply. It is opposite. This man is the one
4 that confronts the victim, who is not expecting him.

5 Also, the --

6 THE COURT: That still doesn't help me with the
7 fact, Mr. Leddy, that in the factual content that
8 the decedent approached the group and began berating
9 Lowry.

10 MR. LEDDY: That was one person's version of
11 the events. It didn't have anything to do with why.
12 And that was well before also. So the final result
13 that led to the killing was a guy pointing a gun at
14 another guy and when the guy charges at the guy with
15 a gun he shoots him in the chest and in the head.
16 And I don't know how you can distinguish that case
17 from this one.

18 THE COURT: You have also got Lowry aiming the
19 pistol at the decedent and pulled the trigger, but
20 the pistol was unloaded. So there is an event
21 occurring there as well.

22 MR. LEDDY: A menacing event on behalf of the
23 Defendant.

24 MS. SHIPLEY: Decedent.

25 THE COURT: Decedent.

1 MS. SHIPLEY: The person that got killed.

2 THE COURT: Aimed the pistol at the decedent,
3 pulled the trigger and the pistol happened to be
4 unloaded. So, again, there is some action
5 occurring.

6 MR. LEDDY: Yes, that is the Defendant pulling
7 the trigger.

8 MS. SHIPLEY: The decedent is the one that did
9 that.

10 MR. LEDDY: Lowry aimed the pistol at the
11 decedent and pulled the trigger but the pistol
12 wasn't loaded. Lowry is the Defendant. That is why
13 it is State versus Lowry.

14 MS. SHIPLEY: It says the decedent was the one
15 that approached the group and began berating Lowry.
16 The two men began arguing and bumping chests. No
17 blows were exchanged. Lowry aimed the pistol at the
18 decedent and pulled the trigger. It was unloaded.
19 One of Lowry's companions broke up the fight. The
20 decedent went to the grocery store. Shortly
21 thereafter, Lowry loaded a clip of ammunition into
22 his pistol, fired a single shot into the sign
23 located nearby and followed decedent into the store.
24 The two men began arguing and shouting at each other
25 again.

1 The facts were disputed. According to State's
2 witnesses, Lowry challenged decedent to take it
3 outside, which decedent replied, man, I'm unarmed.
4 Do you expect me to walk outside and let you kill
5 me? To show that he had no weapon, the decedent
6 spread his arms away from his body.

7 Conversely, Lowry's witnesses testified that
8 the decedent belittled Lowry by telling him, you
9 think you are a big man because you got a gun.

10 None of this exists in our case. No taunting.
11 And words alone are never sufficient.

12 MR. LEDDY: Exactly. It wouldn't matter. The
13 words alone don't matter. It is the charging
14 that -- is what leads to the reversal.

15 THE COURT: Well, furthermore, in the
16 discussion of the Lowry case, it says: Here there
17 is testimony, which if believed, tends to show that
18 the decedent and Lowry were in a heated argument and
19 that the decedent was about to initiate a physical
20 encounter when the shooting occurred.

21 And so I'm just gathering from these other
22 cases that we've got something going on, because
23 sudden heat and passion, you've got the objective,
24 you know, the whole voluntary manslaughter charge
25 has the objective and objective test -- subjective,

1 excuse me, and objective test.. Subjective in the
2 sense that you look at the heat of passion, the
3 ragingness, you know, of what is going on. And then
4 you go to the objective side to say, what would an
5 ordinary man do under the circumstances. If it is
6 something, you know, based on what the actual
7 actions and encounters are at that time. And so --

8 MR. LEDDY: If Your Honor is concerned with the
9 fact that they had an ongoing argument at the time
10 of the physical assault with intent -- is that the
11 concern, that --

12 THE COURT: Well, there is a cooling off
13 period. And I have even gotten you to admit that
14 those actions, while they serve as background, right
15 then and there were not occurring. In other words,
16 they had the tousling or the confrontation or each
17 one brandishing their gun, that kind of thing
18 happened before. But on the night of the death,
19 when they go into the trailer, the Defendant's own
20 statement is that: I pushed people aside. I walked
21 through. I had my gun in the air as I went into the
22 kitchen. Decedent sees me.

23 Then he is responding, essentially. And then
24 it is over.

25 MR. LEDDY: That's right. And I just don't

1 see, if words alone are not sufficient, you have to
2 have an action..

3 THE COURT: You need the provocation.

4 MR. LEDDY: Right.

5 THE COURT: But the provocation you are
6 referring to is in response to the gun being up.
7 And there is a lot of cases that indicate
8 essentially if you are the victim of a robbery or a
9 kidnap victim and you see somebody reaching for
10 their gun, that that is not sufficient to say that
11 there is a voluntary manslaughter charge or
12 sufficient for the provocation.

13 MR. LEDDY: Yes. But this isn't a robbery,
14 Your Honor.

15 THE COURT: But I just make it akin to that.
16 If somebody is approaching you with a gun, then that
17 is your response when you are going towards them, so
18 to speak. And then they get shot.

19 MR. LEDDY: The very fact the decedent in this
20 case sprang, by all accounts, out of his chair so
21 quickly, immediately upon seeing him, what --

22 THE COURT: With a gun in the air.

23 MR. LEDDY: What could you draw from that other
24 than the fact that they had a beef between the two
25 of them?

1 THE COURT: But we're -- I understand what you
2 are saying, but I'm talking about at this time.

3 MR. LEDDY: Yes, ma'am, at that time.

4 THE COURT: That the event is occurring, not
5 that it had occurred.

6 MR. LEDDY: Right. And I think it was
7 occurring.

8 THE COURT: It is occurring now that it gives
9 rise to the heat of passion and suddenness of a
10 response to this action.

11 MR. LEDDY: Yes. And I think that it was. I
12 don't think that, since words aren't sufficient, I
13 don't think they are necessary. If an action is
14 what is required, then an action is here. I mean,
15 as soon as they lock eyes they are coming together,
16 Your Honor.

17 THE COURT: But we don't have anything that is
18 coming from the victim. We don't have him seeing
19 the gun and then all of a sudden drawing his own gun
20 or, you know, doing something to incite your client.

21 MR. LEDDY: And neither did we in Lowry.

22 THE COURT: No, I wouldn't agree with that
23 based on there being very specific testimony in that
24 case about how those events occurred.

25 MR. LEDDY: At the time that he charged the

1 Defendant in Lowry, there was some testimony that he
2 said --

3 THE COURT: But I guess, let's say -- I mean,
4 there might be a few minutes that went by for the
5 whole encounter to occur. And I think Lowry has
6 more than just this instantaneous moment that we
7 have here.

8 We obviously are not going to go back to three
9 to five days that happened prior to that, but I
10 think the surrounding seven, ten minutes of events,
11 yes, the Court can consider all of that. If there
12 was something going on that lasted for a period of
13 ten, 15 minutes or so, all of that would be relevant
14 to get us to that point. So I'm not talking
15 instantaneous meaning that it can only be right that
16 second. I'm talking about the surrounding events
17 once he is in the trailer what went on between the
18 two gentlemen. And all we have is your client
19 walking in, pushing around a couple of people to get
20 there, with a gun in the air. And then a response
21 by the victim of seeing that gun.

22 MR. LEDDY: And then according to his testimony
23 was to charge him, which is exactly what --

24 THE COURT: Upon seeing the gun in the air, I
25 think is what Ms. Shipley is saying. But let me

1 let her --

2 MS. SHIPLEY: Yes, ma'am. I also just want to
3 correct the facts as stated by the Court, he has
4 actually pointed the gun. He in his own words said,
5 "I drew down on him."

6 THE COURT: Yes, that is what I meant. Well,
7 in the air.

8 MS. SHIPLEY: Not just that he has pointed it
9 up, he drew down on the victim.

10 THE COURT: Right. Right. You are correct.

11 MS. SHIPLEY: And the testimony from himself,
12 well, his statement to the police and the statement
13 by Edwina Brown is that the victim simply was
14 reacting to him pointing a gun at him. And when a
15 person is simply acting in self-defense to prevent
16 from being shot, that is never, ever legal --
17 sufficient legal provocation when one is exercising
18 a legal right. And so I would request the Court not
19 to charge voluntary manslaughter. There is no
20 evidence of heat of passion. There is no evidence
21 of sufficient legal provocation.

22 THE COURT: All right. Anything? Further
23 remarks, Mr. Leddy?

24 MR. LEDDY: Yes, Your Honor. I mean, as far as
25 heat of passion goes, there is undoubtedly heat of

1 passion if there is sufficient legal provocation.
2 This whole thing only took ten seconds. Heat of
3 passion has to do with whether or not there was a
4 cooling off. So the issue isn't heat of passion.

5 THE COURT: Well, you have to have both.

6 MR. LEDDY: You do. But if you have sufficient
7 legal provocation that would allow you to -- that
8 would cause a reasonable person to lose control of
9 their faculties and to commit uncontrolled violence
10 and you do that right after you are provoked, that
11 is what heat of passion is. Heat of passion has to
12 do with whether or not you have time to cool off.
13 That is why you have to have both.

14 My client's statement says he didn't go there
15 to kill him, that he went there to confront him.
16 And then it escalated when they had a physical
17 altercation.

18 And I don't see -- I don't think that it should
19 be required that some word be uttered by somebody.

20 THE COURT: And I'm not suggesting that.

21 MR. LEDDY: Well --

22 THE COURT: I'm not suggesting that. I'm just
23 saying that we don't have that, but then we also
24 don't have a particular physical altercation by the
25 victim.

1 MR. LEDDY: According to his statement we do,
2 Your Honor.

3 THE COURT: His statement says, the victim came
4 at me after the gun. That is what I mean. We don't
5 have any testimony that indicates that there was a
6 fight that broke out or, you know, just something
7 more than a response to a gun drawn down on a
8 person.

9 MR. LEDDY: And, Your Honor, like I said, I
10 just -- I see the exact same scenario play out in
11 Lowry.

12 THE COURT: I'm going to look at this case a
13 little closer, but go ahead.

14 MS. SHIPLEY: I have nothing else to add. I
15 mean, there is just simply -- if we can't -- there
16 are no facts to support voluntary manslaughter, Your
17 Honor.

18 (Pause.)

19 THE COURT: The Court has listened to the
20 arguments of counsel, and I will not be charging
21 voluntary manslaughter.

22 MS. SHIPLEY: Thank you, Your Honor.

23 MR. LEDDY: Thank you, Your Honor.

24 THE COURT: Now let's move on to, or go back to
25 transferred intent.

1 MS. SHIPLEY: Your Honor, now the issue is
2 moot. They either find malice or not.

3 THE COURT: Okay. All right. Anything
4 further? I will add in the evidence of flight. You
5 all can --

6 MR. LEDDY: Your Honor, I object to flight.
7 There is no evidence of flight.

8 THE COURT: Well, let me let y'all look at it.
9 I apologize. I have to read it myself.

10 MS. SHIPLEY: Yes, ma'am.

11 MR. LEDDY: And there is no evidence of
12 requiring a voluntary intoxication charge. The
13 investigator said he wasn't intoxicated or he
14 wouldn't have interviewed him.

15 MS. SHIPLEY: I'll pull it from my file, Your
16 Honor. That's fine.

17 THE COURT: Okay. We can solve that then.

18 MR. LEDDY: As far as the deadly weapon and
19 malice charge, I think everybody knows a pistol or a
20 handgun is a deadly weapon. I don't think that is
21 necessary.

22 THE COURT: Okay. I think that is pretty
23 standard in our charges, and I'll leave that.
24 Anything further?

25 Okay, you all can have a few moments' break to

1 set up.

2 MS. SHIPLEY: Your Honor, can I look at the
3 evidence of flight?

4 THE COURT: I thought you said you pulled it.

5 MS. SHIPLEY: Oh, no, I was pulling the
6 involuntary -- the voluntary intoxication. I was
7 pulling that.

8 THE COURT: I apologize.

9 MS. SHIPLEY: I am still requesting evidence of
10 flight. And I think they are opposing it. And if I
11 can just explain why it is relevant.

12 THE COURT: Counsel, as I'm looking up various
13 cases related to flight, the Courts are allowing
14 evidence of flight in for use of generating any
15 inferences about the Defendant's knowledge and
16 intent with respect to his guilt. But a lot of the
17 Courts have indicated that it is error to actually
18 charge the jury on flight because that is a
19 circumstantial evidence piece. And then you are
20 unduly influencing that particular piece of
21 evidence.

22 MR. LEDDY: I thought the rule was that the
23 judge should just refrain from discussing it at all.

24 THE COURT: Right.

25 MS. SHIPLEY: Okay. Your Honor, just for the

1 record, I have replaced the calendar for
2 February 2007 with a blank one, but I intend on
3 using the marked one for my closing.

4 THE COURT: Okay.

5 MS. SHIPLEY: So that would have been State's
6 84.

7 (WHEREUPON, State's Exhibit 84 was replaced
8 with a clean copy.)

9 MR. LEDDY: Your Honor, I'd like to go forward
10 with closing arguments today, but I'd like the
11 jury --

12 THE COURT: Yes, I thought that is what we were
13 doing.

14 MR. LEDDY: Yes. But I would ask that the jury
15 be charged and then asked to deliberate in the
16 morning rather than have them here late.

17 THE COURT: I don't know how long they will be
18 here. I'm not suggesting one way or the other,
19 but --

20 MS. SHIPLEY: Why don't we ask them?

21 MR. LEDDY: Well --

22 MS. DAVIS: But at this point, Your Honor, it
23 is 4:15, and we figure an hour, 5:15, 6:15 --

24 THE COURT: Oh, for the closing. I see what
25 you're saying. Right.

1 MS. DAVIS: And before they get the case it
2 will be 6:30 or 7:00 o'clock.

3 THE COURT: Right.

4 MR. LEDDY: I would like to argue today,
5 though.

6 THE COURT: Okay. Well, y'all both want to
7 argue today?

8 MS. SHIPLEY: I'm ready.

9 THE COURT: Okay. And then -- we'll cross that
10 bridge later when I speak with the jurors, because
11 some of them may also have some after hours issues
12 and all of that, and I want them to give full and
13 fair attention to this case to both sides.

14 Okay.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Bailiffs, I am going to state that
17 for purposes of closing argument being the very
18 serious nature of the case, the courtroom needs to
19 be secured. So if anybody wants to come in for the
20 closing, then they will need to remain throughout
21 the closing arguments.

22 THE BAILIFF: Do you want us to lock the door?

23 THE COURT: Yes. I'm saying that so Solicitors
24 and Public Defenders who intend to watch the
25 argument, you might be locked in here for about an

1 hour and 15 minutes.

2 I will allow you to break between, you know,
3 let anybody leave between arguments, but I just
4 don't want any disturbance to the jurors.

5 Ms. Pendergrass, check in the hall. We're
6 about to proceed.

7 I will allow people to leave between arguments,
8 but not during anyone's argument.

9 Are the parties ready to proceed?

10 MS. SHIPLEY: Yes, ma'am.

11 THE COURT: Okay. Jurors, please.

12 (WHEREUPON, the jury came into open
13 court at approximately 4:25 p.m.)

14 THE BAILIFF: The jury is all present, Your
15 Honor.

16 THE COURT: Thank you, ladies and gentlemen of
17 the jury, for accommodating us.

18 Before you actually proceeded to your jury
19 room, the State rested. I will now turn the
20 attention to the Defense with respect to its case.

21 MR. LEDDY: Your Honor, the Defense rests.

22 THE COURT: Okay. And the Defense, you
23 indicated before you renewed all prior motions?

24 MR. LEDDY: Renew all prior motions and
25 objections.

1 THE COURT: Okay. And the Court will remain
2 with its ruling.

3 State, you can proceed with closing arguments.

4 MS. SHIPLEY: Thank you very much, Your Honor.

5 Mr. Rose. Investigator Reese. Mr. Leddy.

6 Ms. Davis.

7 CLOSING STATEMENT

8 MS. SHIPLEY: Good afternoon, ladies and
9 gentlemen.

10 THE JURY: Good afternoon.

11 MS. SHIPLEY: Joel Robinson is a cold-blooded
12 murderer. He hunted Thomas Lee Smith, Short Dog,
13 down.

14 In his oral statement that you will be allowed
15 to take with you in that jury room and play as often
16 as you want, no one is going to rush you to
17 deliberate, remember what he says.

18 "I went through the -- back to the hole and I
19 passed through, I float through, but I didn't stop."

20 This is after that previous Friday where the
21 initial altercation occurred where no blows were
22 thrown, no physical fight occurred, mere words. He
23 was disrespected.

24 If you disrespect Joel Robinson, watch out,
25 ladies and gentlemen, because he is going to hunt

1 you down until he finds you. He is going to come by
2 your cousin's house at 9:00 a.m. the same day,
3 1:00 p.m. that afternoon, and he is not going to
4 stop until he finds you. Because he disrespected
5 him.

6 And when he finds you, he is going to ambush
7 you. Ambush you. He is going to have a loaded 9
8 millimeter pistol with an extra clip or an extra
9 bullet, 11, just in case he doesn't get the job
10 done.

11 And when he sees you, he is going to catch you
12 off-guard when you are not expecting him. And he is
13 going to fire that gun at will with reckless
14 disregard for the safety of anybody else in that
15 room, including Edwina Brown. And he is going to
16 fire and fire and fire until he can't fire it
17 anymore. Because he was disrespected.

18 Ladies and gentlemen, the law in South
19 Carolina, when you disrespect somebody, that doesn't
20 give them the right to hunt you down like a dog and
21 kill you in cold blood.

22 MR. LEDDY: Objection. That is appealing to
23 the passion and prejudice of the jury.

24 MS. SHIPLEY: It is legal argument -- it is
25 closing argument, Your Honor.

1 THE COURT: You can give all inferences. And
2 what counsel states is not evidence. You will
3 recall the evidence. Go ahead.

4 MS. SHIPLEY: You have no right to take
5 someone's life because they disrespected you.

6 The last question Investigator Reese asked
7 Mr. Robinson: Well, did you have to go over there?
8 Couldn't you have talked to him somewhere else and
9 not brought a gun?

10 And his answer was: Yes.

11 And then in his written statement: It was
12 senseless.

13 It was senseless. You may disagree with the
14 lifestyle of Thomas Lee Smith, but that is not who
15 is on trial today, Joel Robinson is. And the way
16 Mr. Smith led his life doesn't entitle anyone to
17 take his life.

18 I'm going to begin with talking a little bit
19 about the law in this case that applies to this
20 case.

21 As you heard from the beginning, the Defendant
22 is charged with murder, with assault and battery
23 with intent to kill, possession of a firearm during
24 the commission of a violent crime, and then two
25 counts of drugs, possession of cocaine and powder

1 cocaine -- or powder cocaine and crack cocaine.

2 First of all, beginning with murder. In South
3 Carolina we only have one charge of murder. There
4 is no degrees like in New York City where they have
5 second and third, first. We only have one charge.

6 When you take someone's life without just cause
7 or legal excuse, murder is defined in our statute as
8 the unlawful killing of any person with malice
9 aforethought, either express or implied or inferred.

10 Expressed malice is when a person uses words
11 like, I don't like you, I'm going to kill you,
12 points a gun, and pulls a trigger. That is
13 expressing ill-will towards your victim.

14 But sometimes, ladies and gentlemen, killers
15 don't say anything before they kill their victim.
16 They don't give them a chance to speak before they
17 kill the victim.

18 The way the law defines express malice, it is
19 when a person by word of mouth expresses hatred or
20 ill-will for another and where the State proves
21 beyond a reasonable doubt that the Defendant was
22 making preparation before the event to accomplish
23 the event. Malice may arise even though there is no
24 express or direct evidence of an intent to kill.

25 Malice may also be inferred if it is proved by

1 a reasonable doubt -- beyond a reasonable doubt that
2 there was a willful, deliberate and intentional
3 doing of an unlawful act without just cause or
4 excuse.

5 What does inferred malice mean? Inferred
6 malice means basically anything you decide. The
7 actions and the circumstances surrounding the
8 killing of Mr. Smith. For instance, walking in and
9 ambushing him with a loaded gun. You may infer
10 malice with the use of a deadly weapon in the State
11 of South Carolina under our laws.

12 Malice is also defined as a legal term, a term
13 of art. In its popular sense, the term malice
14 conveys a meaning of hatred, ill-will or hostility
15 towards another. Malice is a term of importing
16 wickedness, excluding just cause or excuse, meaning
17 self-defense, something like that. It is something
18 that springs from wickedness, from depravity, from a
19 heart devoid of social duty and fatally bent on
20 mischief.

21 Malice may be inferred from the willful,
22 deliberate and intentional doing of an unlawful act
23 without just cause or excuse or from the use of a
24 deadly weapon, such as a 9 millimeter handgun fully
25 loaded.

1 Now, you have heard evidence in this case that
2 in order for 11 bullets to be put into that 9
3 millimeter, Special Agent Black told you what you
4 have to do in order to get an extra bullet in the
5 round. You've got to first of all load the
6 magazine. You've got to slide the slide to get the
7 bullet to go into the chamber. Then you've got to
8 remove the magazine. You've got to insert another
9 bullet into that magazine and then put the magazine
10 back in there. He also demonstrated to you how
11 simple it is to put the little safety off and on.
12 Okay?

13 Something was said to you earlier in this case
14 in opening statement that he didn't go in there to
15 kill anybody because he had the safety on.

16 Well, ladies and gentlemen, he went in there
17 with a fully loaded 9 millimeter pistol that all it
18 takes is a click of a little finger in order to get
19 it to kill somebody.

20 Malice does not need to exist for a long period
21 of time. We don't have to prove premeditated murder
22 in South Carolina. Malice can be -- it has to be
23 aforethought. The moment the trigger is pulled.
24 That is sufficient. But in this case, we have some
25 planning and preparing to kill Mr. Smith. We have

1 him going and looking for him at 9:00 o'clock in the
2 morning. Then again at 1:00 p.m. And then he shows
3 back up at 9:40.

4 Now, in the opening statement by Ms. Davis, she
5 indicated, well, it wasn't Mr. Robinson's idea to go
6 to the hole, it was Shonda Moffett's.

7 Well, guess what? She went to Freddy's house.
8 She -- it was her idea to go to Freddy's house.
9 Guess whose idea it was to cross where he parked to
10 go to the trailer? Who walked there by himself?
11 Mr. Robinson.

12 Malice need not exist for any appreciable
13 period of time before the commission -- there should
14 be a "c" there, my apologies -- of the act. Indeed,
15 it may be conceived at the very moment the fatal
16 blow is struck.

17 We have evidence in this case that this firearm
18 was fired at least nine times in that kitchen. You
19 heard from Investigator Williams how she recovered
20 nine shell casings in the kitchen. I'm about to go
21 into the evidence in further detail.

22 I submit to you, ladies and gentlemen, that is
23 nine specific pieces of evidence that proved malice
24 in this case.

25 You might have been wondering why on earth, if

1 the Defendant is going to kill Mr. Smith and he is
2 not intending to harm Edwina -- because you heard on
3 the audio, he was surprised to hear Edwina got
4 shot -- well, in South Carolina, when you go into a
5 room full of people and you start firing at will and
6 you strike somebody by mistake, you are just as
7 guilty for shooting them. Doesn't that make sense?
8 It is common sense.

9 In the law in South Carolina, it is called
10 transferred intent. A Defendant may be found guilty
11 of assault and battery with intent to kill in case
12 of the batterer's mistaken aim under the doctrine of
13 transferred intent.

14 In the classic case, the Defendant intends to
15 kill or seriously injure one person but misses that
16 person and mistakenly kills or injures another
17 person. Although the Defendant did not act with
18 malice towards the unintended victim, the
19 Defendant's criminal intent to injure the intended
20 victim is then transferred to the unintended victim.

21 A simple way to put it: I want to kill A, but
22 I miss, shoot -- miss A and hit B, and B ends up
23 dying. I'm guilty of murder. Even though my intent
24 was for A, it is switched over and transferred to B.
25 If B dies I'm guilty of murder. That is the law of

1 transferred intent.

2 And the law concerning the charge pertaining to
3 Edwina is assault and battery with intent to kill,
4 which is an unlawful act -- clearly, shooting
5 someone -- with violent physical injury to the
6 person of another with malice aforethought, again,
7 express or implied or inferred.

8 The elements are the same except -- for murder
9 except that the person survives. So there you have
10 to have malice as to both Mr. Smith and to
11 Ms. Brown.

12 But like I said earlier, there is eight to nine
13 pieces of evidence to show malice that was
14 exhibited. Every time he pulled that trigger there
15 is evidence of malice, ladies and gentlemen. You
16 can infer malice from pulling the trigger, nine
17 separate times.

18 And when he has got malice towards Mr. Smith
19 and mistakenly hits Edwina, that intent is
20 transferred and malice is therefore transferred to
21 Edwina's charge. Okay? So it is for Mr. Smith to
22 Edwina.

23 The third charge for which the Defendant is on
24 trial is use of firearm during the commission of a
25 violent crime.

1 It is unlawful for a person to possess a
2 firearm or visibly display what appears to be a
3 firearm during the commission of a violent crime.
4 Pretty basic law.

5 And just so you know, murder and assault and
6 battery with intent to kill are both violent crimes
7 in the State of South Carolina.

8 He is also charged with possession of crack
9 cocaine and cocaine. Basically, it is very simple.
10 When you possess an illegal substance, such as crack
11 cocaine, and it is on your person, and in this case,
12 top pocket, and you tell the officer, I've got some
13 crack in my pocket, and they find it, well, you are
14 in possession of crack cocaine. And we established
15 the chain of custody, that this indeed in State's
16 Number 50 is the crack cocaine, tested positive,
17 weighing .25 -- correct me if I'm wrong on the
18 weight, but it was weighed and confirmed to be crack
19 cocaine by Melissa Hendricks, the chemist that has
20 testified 200 times.

21 Possession of cocaine. Again, illegal to
22 possess cocaine. You heard from Melissa Hendricks
23 that that is powder cocaine. She analyzed it, she
24 explained all the tests she had to go through to get
25 to her result, and she weighed it. This is cocaine.

1 That is the crack, that is the cocaine. When you
2 possess it, you're guilty. And that is the cocaine
3 that was found by Mr. -- Officer Bailey.

4 Now, each and every element of the crimes that
5 I just went through, the State has to prove each and
6 every element beyond a reasonable doubt.

7 I want to explain to you what reasonable doubt
8 is, and basically it is what you determine it is to
9 be.

10 You may have a doubt that the sun is going to
11 rise tomorrow. Well, that would be an unreasonable
12 doubt. Reasonable doubt as defined in our books is
13 proof -- beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's
15 guilt. And there are very few things in this world
16 that we know with absolute certainty.

17 And in criminal cases the law does not require
18 proof that overcomes every possible doubt. Don't
19 even have to be absolutely certain, ladies and
20 gentlemen. We're not required to go there. We
21 don't have to provide proof that overcomes every
22 possible doubt. But if based upon your
23 consideration of the evidence you are firmly
24 convinced that the Defendant is guilty of the crime
25 or crimes charged, you must find the Defendant

1 guilty of the crime charged and find him guilty.

2 If, on the other hand, if you think there is a
3 real possibility that he is not guilty, you must
4 give him the benefit of the doubt and find him not
5 guilty.

6 And how do we do that? How do you prove
7 somebody guilty beyond a reasonable doubt? Well, we
8 do it with exhibits. We do it with, for instance,
9 from the drug charges, we do it with establishing
10 the chain of custody so that you can bank on the
11 integrity of this evidence. We put up a witness to
12 say what it is who is an expert in that field. That
13 is how you prove it, ladies and gentlemen, through
14 the exhibits and the testimony of witnesses.

15 There is different kinds of evidence, ladies
16 and gentlemen. There is direct evidence and
17 circumstantial evidence. Basically, direct evidence
18 and circumstantial evidence were presented in this
19 case.

20 Direct evidence is the testimony of a person
21 who asserts or claims to have actual knowledge of a
22 fact, such as an eyewitness. So basically direct
23 evidence is when a person sees, what they smell,
24 what they taste, what they hear and what they feel
25 all through their senses.

1 So when Edwina told you that, I saw that man
2 come in with that gun, point it at Mr. Smith, and
3 that Mr. Smith simply reacted to him and was
4 defending himself and that he didn't even have a
5 chance to defend himself and that the Defendant
6 started shooting and that I got shot and I felt -- I
7 didn't feel my butt get shot, but I felt my hand get
8 shot, that is direct evidence, ladies and gentlemen.

9 Circumstantial evidence is a proof of a chain
10 of facts and circumstances indicating the existence
11 of a fact. The law makes absolutely no distinction
12 between the weight or value to be given to either
13 direct or circumstantial evidence, nor is a greater
14 degree of certainty required of circumstantial
15 evidence than that of direct.

16 You should weigh all the evidence in the case.
17 After weighing all of the evidence, if you are not
18 convinced of the guilt of the Defendant beyond a
19 reasonable doubt, you must find the Defendant not
20 guilty.

21 If, on the other hand, you are convinced of the
22 Defendant's guilt beyond a reasonable doubt, then
23 you must find him guilty.

24 An example of circumstantial evidence, you are
25 in your bed, you are watching the news, the weather

1 channel comes on and they say it is going to snow --
2 well, Monday it didn't, but sometimes they're right
3 about the predictions and their forecasts -- and you
4 don't see it snow, you go to bed. The next morning
5 you wake up and there is snow on the ground.

6 Well, ladies and gentlemen, there is no direct
7 evidence. You have no direct knowledge of that
8 happening because you were asleep. But when you
9 wake up, you see the snow on the ground, well, it is
10 reasonable for you to conclude that it snowed.

11 DNA evidence, by the way, is circumstantial
12 evidence. So is ballistic evidence. When you hear
13 about all of these shell casings and bullets and
14 jackets matching the gun that the Defendant was in
15 possession of on the night of February 15th, 2007,
16 that is circumstantial evidence, ladies and
17 gentlemen.

18 Now, that is tangible evidence. You heard a
19 lot of testimony in this case. Judge Childs told
20 you at the beginning of this case that she is the
21 judge of the law. She is the expert in the law. So
22 you have to take the law as she charges it to you.
23 You can't disagree with it. You have to accept it.
24 That was your oath at the beginning of this case.

25 On the other hand, you might as well wear the

1 exact same black robe as Judge Childs right now, the
2 12 of you, because you are the judges of the facts.
3 You decide what happened in that trailer at
4 on February 15th, 2007.

5 You are the judges of the facts. And how do
6 you figure out what happened? Well, you have to
7 judge the credibility of the witnesses. This isn't
8 some sort of test. You do it every single day of
9 your lives. If you have children, your kids might
10 tell you a little white lie and you can call them on
11 it. Your colleagues might do it to you when they
12 tell you they met a deadline and they didn't. You
13 use that common sense every single day of your
14 lives.

15 But ask yourself, in a criminal -- in any case,
16 when you have a witness on the witness stand, did
17 you observe the demeanor of the witness when they
18 were on there?

19 For instance, Edwina Brown crying on the
20 witness stand remembering, recollecting what
21 happened that night.

22 Was the witness forthright or hesitant? Were
23 they willing to answer questions freely? Was the
24 testimony of the witness consistent?

25 For instance, when you hear Leverne Smith, Jeff

1 Smith, and Edwina tell you that the man shot the
2 victim four or five times, several times, and he
3 leaves the trailer, and then he comes back and does
4 it two more times, that is consistent, ladies and
5 gentlemen.

6 Was the testimony of the witness corroborated?
7 With Edwina, remember all that blood everywhere?
8 She was able to recount that it was hers because,
9 remember, she thought that it was over. She thought
10 it was over until she hears more shots outside. And
11 she is at the front door. And that is how that
12 blood gets on the -- by the front door of the
13 trailer. But then she hears more shots and gets
14 scared and runs to the back of the trailer and hides
15 in the closet. And that is how her blood gets back
16 there. So the photographs and exhibits, the
17 physical evidence, corroborates her. It is showing
18 she is telling the truth.

19 Did the witness have reason to be biased or
20 prejudiced in this case? You heard from Mr. Smith,
21 Leverne Smith and Jeff Smith, they didn't know that
22 man until that day. There was no bad blood between
23 them. In fact, Edwina said, I like the guy. I have
24 known him for over a year. And I have never seen
25 him act like that crazy before, with that raging

1 bull look before. So they are not bias or
2 prejudiced against this man. They were simply
3 witnesses that saw that man take Thomas Lee Smith's
4 life without any reason or justification.

5 When you have several witnesses to one
6 incident, for instance, you're at an intersection of
7 a street downtown Columbia, you have a person on
8 each corner of that intersection and a car accident
9 happens. I bet you every single person standing on
10 each corner is going to recollect and remember
11 things differently. People perceive things
12 differently.

13 And that is why it makes the testimony of
14 Leverne Smith, Jeff Smith and Edwina Brown more
15 credible, because their stories aren't perfect. If
16 they were perfectly aligned and consistent, then you
17 should question it. But the gist, the bones, the
18 skeleton of the story is the same.

19 When you are asking yourselves about the
20 identification that Leverne Smith and Jeff Smith
21 made of that man -- well, it is not really an issue,
22 he admits he did it, but let's just go over it so
23 you are convinced and confirmed that this is the man
24 that did it.

25 Did those people such as Jeff Smith and Leverne

1 Smith have an opportunity to view Mr. Robinson when
2 he came into the kitchen? Well, you heard from
3 Jeff, he saw him twice earlier that day.

4 Were they paying attention while their cousin
5 was getting brutally murdered?

6 Were their descriptions of him accurate? Light
7 skinned, black male, bald, little taller than
8 Leverne. Leverne is 5'8". He was a couple of
9 inches taller than me. Guess what? He is 5'10" The
10 Defendant is 5'10". It is on his driver's license.
11 And he weighs 220 pounds. And this man was
12 disrespected by this man, who goes by Short, because
13 he is short. He is 5'5" and weighs 142 pounds.

14 Gee, I wonder if there was a way to resolve
15 this confrontation without bringing a gun to the
16 fight.

17 The level of certainty demonstrated by the
18 witnesses. Remember Investigator Dow? He had no
19 clue that they had apprehended the suspect in this
20 case. The next thing he knows, the guy who he is
21 giving a ride to to headquarters to give a statement
22 goes, I think that's him, I think that's him. To
23 make sure, he pulls around and before he even has a
24 chance to put it in park, the man is telling him,
25 that's him, that's him. That is pretty certain.

1 And lo and behold, the very person he said that
2 is him happens to have the murder weapon on him.
3 Pretty certain. Pretty accurate.

4 And then as to Mr. Smith, you heard how he was
5 able to immediately identify the bottom left
6 photograph when presented by law enforcement.

7 And you heard from Mr. Montgomery, Investigator
8 Montgomery, how he immediately pointed to him. And
9 there was no hesitation.

10 And I asked him, any doubt in your mind that's
11 him? No doubt.

12 And, again, the length of time between the
13 actual crime and then the time that they see the
14 Defendant either in a photograph or in person, it
15 was less than two and a half hours they each
16 testified. It is fresh in their mind.

17 You heard from several witnesses in this case,
18 ladies and gentlemen. And I find it extremely
19 interesting how Edwina, her version of the facts,
20 her recollection, her perception is pretty much
21 exactly like Mr. Robinson's.

22 Remember, she is the one that tells you, I saw
23 him walk in and push somebody out of the way. We
24 let somebody else in. We just said, come in.
25 Someone knocked on the door. We said, come in.

1 And how does that go consistent with
2 Mr. Robinson? He is telling you that, yes, they
3 were letting somebody else in and so I came in
4 behind them. That is consistent, ladies and
5 gentlemen.

6 And then he goes from there, well, she says as
7 soon as he walks in the room, in the kitchen, he has
8 got his gun drawn, pointed at Short Dog.

9 And there you have the Defendant in his own
10 statement saying, I drew down on Short Dog. He saw
11 the gun and came at me. He charged at me.

12 Well, ladies and gentlemen, when someone points
13 a gun at you, you are allowed to charge at them to
14 protect your life. That is called self-defense.
15 You are allowed to protect yourself.

16 You heard how he then shoots, according to each
17 of the witnesses, it varies from three to four to
18 five shots at this point, and then he leaves. And
19 he goes outside. And Edwina even makes it to the
20 living room to hide by the TV where there is more
21 blood. And then he comes back in.

22 And remember -- how credible is this? She is
23 remembering the foot steps, the way it sounds when
24 he comes backs into the trailer. She can remember
25 that. That is detailed. And how she heard him come

1 back in and fire two more shots.

2 But Leverne didn't move. He panicked, he froze
3 like a deer in headlights and watched the man shoot
4 two more times towards Short Dog's head.

5 Consistent? Because Short Dog is on his back
6 facing this direction. So if you are going to come
7 back and shoot someone when they are laying on the
8 floor, well, you are not going to shoot them on the
9 other side of the face because the cabinet is in
10 your way or the counter is in your way. You are
11 going to shoot them and the trajectory is going to
12 follow exactly what Dr. Kessler told you. But he
13 doesn't get a break simply because he missed the
14 second shot.

15 You also then heard at that point he leaves.
16 And, ladies and gentlemen, there was some confusion
17 during the testimony and I wanted to go through it
18 really quickly. This is Mr. Smith. There are shell
19 casings around Mr. Smith.

20 In this photograph, which is State's 20 that
21 you can review, there is one there, right there,
22 there is one there, there is -- so that is one, two,
23 three, four, five, six -- I'm not doing it in
24 order -- seven, eight, nine. Nine shell casings,
25 all collected by Investigator Williams.

1 And according to the ballistics expert, see
2 those items right here? That is from the kitchen.
3 And all these. Eleven through 18 are from the
4 kitchen. They all match the gun fired by
5 Mr. Robinson. Okay?

6 So there is a total of nine shell casings, one
7 two, three, four, five, six, seven, eight, nine.
8 They all match. Every single bullet from that
9 kitchen matches his gun -- or shell casing, my
10 apologies.

11 So let's account for the bullets. Well, we
12 know five of them struck Mr. Smith. That is five.
13 Two of them struck Edwina. So that is seven. One
14 of them struck the stove. That is eight. And
15 remember that projectile that fell out of the body
16 bag? That is nine. We have -- we can account for
17 every single shell casing.

18 There are the ones that hit Edwina. That is
19 the two. Here are the five that hit Mr. Smith.

20 Now, at that point that is nine bullets, right,
21 ladies and gentlemen? And this is how we can prove
22 that he had 11 bullets in his gun, because we have
23 accounted for nine already, right? Well, he leaves
24 and in his statement he claims that he had to reload
25 because he was out of bullets. Well, hold up, how

1 come there is two shell casings in your car right
2 there? Ten. Eleven.

3 And then remember Gianna Stinney Williams
4 telling you that when she went and looked by the
5 car, the driver's side of that car, she found ten
6 shell casings.

7 So he had two more bullets left when he fired
8 back at the house, reloaded yet another clip,
9 because he is fully loaded, I mean, he's got clips
10 everywhere. He's got a clip in his gun, he's got a
11 clip in his glove box, he's got a clip at some
12 girl's house that he doesn't want to tell us, or at
13 least he's got random 20 bullets. So he's fully
14 loaded. He's got ammunition everywhere, stashed all
15 over Columbia. Ten right there.

16 Now, you heard Gianna Williams tell you, Kermit
17 Scott did not touch a single piece of evidence from
18 the crime scene, because remember he got called to

19 whatever block of Main Street. He never made
20 it past here, okay? So don't get confused. It is
21 very simple. Very simple. One projectile was found
22 that came out of the body bag. Four projectiles or
23 jackets, whatever you want to call them, fired
24 bullets, were found at the house across the street.
25 There were nine shell casings in the trailer. There

1 were two found in his car by Investigator Rose.
2 That is 11. And an additional ten shell casings
3 found where the Defendant's car was parked by his
4 driver's side door. Okay? We have accounted for
5 everything. Investigator or Sergeant Scott did not
6 touch any of the evidence or collect any of the
7 evidence from the crime scene. There was no
8 confusion. All he did was take it from the evidence
9 room at the Columbia Police Department to SLED.

10 And I asked Agent Black, tell this jury how
11 many fired bullets were admitted into your SLED lab
12 signed in by Sergeant Scott.

13 And he told you, there was five projectiles
14 from the crime scene, three projectiles from the
15 autopsy. And those are the ones Dr. Kessler told
16 you about already.

17 After the Defendant is done firing 21 rounds,
18 thankfully only two people got hurt. It could have
19 been all 21 rounds striking somebody.

20 Evidence of flight. He flees. Evidence of
21 flight is evidence of guilt, ladies and gentlemen.
22 If he was claiming that this man was charging at
23 him, which he had every right to do under our laws,
24 stick around. Well, the Defense is going to argue,
25 well --

1 MR. LEDDY: Your Honor, if you are not going to
2 charge it, then it is inappropriate.

3 MS. SHIPLEY: I'm still allowed to argue it
4 under the rules.

5 MR. LEDDY: She can argue this?

6 THE COURT: She can allow inferences as to
7 guilt. It won't be a charge in terms of being the
8 law.

9 MR. LEDDY: Okay. It will be over my
10 objection.

11 THE COURT: Okay.

12 MR. LEDDY: Thank you.

13 MS. SHIPLEY: And you are not going to hear
14 Judge Childs -- everything that I'm telling you
15 about the law Judge Childs is going to go over it,
16 but I have to explain it to you so I can fit the
17 elements and the facts together to explain our
18 theory of the case, but anything Judge Childs -- if
19 I say anything that differs from her, she is the
20 expert. And I'm not trying to mislead you. She
21 knows the law better than I do, okay? I am allowed
22 to argue evidence of flight. She is not going to
23 instruct it to you because the rules prohibit it,
24 but I'm allowed to argue it, and it is law in this
25 state.

1 In fact, in the State of South Carolina versus
2 Thompson, which was decided back in 1982, flight
3 from prosecution is admissible as guilt or in South
4 Carolina versus Torrence back in 1991, evidence of
5 flight is admissible to show guilt, knowledge,
6 intent and that the Defendant sought to avoid
7 apprehension.

8 So I bring this to your attention because if he
9 didn't do anything wrong, then -- I understand
10 you're getting shot at. Well, you go to your
11 friend's house and instead of asking her to call the
12 police, man, I just -- I had to kill somebody.
13 Well, you are actually just asking for 20 more
14 bullets to wreak more havoc in this community. And
15 you tell the police that, yes, when I ran away a cop
16 car drove by me. I heard sirens. I had to run.
17 And everyone was telling me just to leave, just go.

18 And then what happens? He has to scan the
19 neighborhood to make sure that there is no traffic,
20 referring to police activity.

21 This man is trying to hide. And when you are
22 trying to hide, you are guilty.

23 I went into some questions with Investigator
24 Reese about the voluntariness of his confusion. Any
25 time a Defendant who is charged with a crime gives a

1 statement, they must be Mirandized. They must be
2 given their rights.

3 And you heard Investigator Reese go over this
4 form. And you'll be allowed to review it in the
5 jury room. But there was no doubt that this man
6 waived his rights and agreed to talk to the police.
7 And if nothing is more evident of that, it is the
8 calm conversation that Mr. Robinson was having with
9 Investigator Reese during the one hour oral
10 interview.

11 But you still have to -- in order to -- before
12 you can even consider the statement, you have to
13 make sure it is voluntary. These are the things.
14 Did he make the statement? Was the Defendant warned
15 of his constitutional rights? Did the Defendant
16 knowingly and intelligently waive his constitutional
17 rights? And was the statement given voluntarily?

18 And that is why I had to ask those silly
19 questions to Investigator Reese, you didn't put a
20 gun to his head to make him talk, did you? That is
21 coercion. So I had to ask that. I have to cover it
22 for the record.

23 I also had to ask him, you didn't deprive him
24 of any, you know, basic necessities like the
25 bathroom and food and water?

1 You heard from Investigator Reese. The
2 interview was relatively short. It started at 12:47
3 and ended at 2:00. Pretty short for a homicide.

4 But what did the Defendant say, ladies and
5 gentlemen? If this isn't evidence of malice. He
6 claims that he felt threatened. What did he tell
7 Officer Carroll? He disrespected me. He didn't
8 say, I felt threatened, he was threatening to kill
9 me. He said, he disrespected me. Whether he said
10 it once or several times, it doesn't matter. He is
11 just saying, he disrespected me.

12 Then he told Officer Fisher, I shot him. He's
13 dead. And I'm going to get to his oral statement
14 when he is explaining what he meant by that, what I
15 was being sought for, I did it, what I was being
16 sought for.

17 Evidence of malice, right here. This is what
18 sets Mr. Robinson off to go and kill somebody in
19 cold blood.

20 He was trying to pick me into a fight or
21 something.

22 Man, growing up my brothers picked fights with
23 me all the time.

24 Yes, sir, I had a 9 -- talking about that
25 Saturday. He already had a nine, a 9 millimeter.

1 Did Short Dog point his gun at you too? It
2 says Short Dark, but it meant Dog.

3 No, sir, he didn't even raise it. This is
4 talking about Saturday. He didn't even raise it.

5 Now, we are just taking his word for it that
6 Short Dog had a gun that day. There is no evidence
7 other than the Defendant claiming that. But let's
8 give him the benefit of the doubt. He is even
9 telling you, he never raised it at me.

10 He apparently just said, hey, and that is
11 enough to disrespect the man.

12 And I wasn't just going to stop going down
13 there because this new -- and got problems with me
14 that I ain't never done nothing to him.

15 Yes, you ain't fixing to run me from around
16 this way, man. You're new around here. This is all
17 in his oral statement. You are new around here.

18 Yes, he had done already -- yes, he had already
19 done it to himself really. That one act right there
20 on Saturday, the 10th of February, according to that
21 man, Mr. Smith had already done it to himself. He
22 was a dead man.

23 What do you mean by that?

24 Because he had done drew down on me.

25 Saturday he drew down on you. And you said you

1 never bought anything from him?

2 No, sir. I don't even know him, you know what
3 I'm saying.

4 This is a person he barely knows and he is
5 getting all upset like this over being disrespected
6 by someone he barely knows. Enough to make him load
7 a gun and go kill the man.

8 Somebody came by my room at 6:00 o'clock and
9 told me that they had heard him talking about what
10 he was fixing to try to find me and do this, that
11 and the other.

12 Well, this, that and the other doesn't
13 necessarily kill you. What is this, that and the
14 other? It sounds like you are making it up as you
15 go along.

16 And he remembers 6:00 o'clock perfectly that
17 Sunday. You know, it is 6:00 o'clock Sunday. But
18 he can't remember what time he went over that night.

19 Investigator Reese had to remind him, you sure
20 you went there at 12:30, because it is, you know,
21 only 1:00 o'clock and you have been with me for the
22 last hour.

23 And I will submit to you nobody tipped him off
24 that the victim was hunting him down or trying to
25 kill him or spreading word, rumors that he was

1 looking for him. He is making that up. And he
2 certainly won't tell us if anybody did do it who so
3 we could verify it.

4 Who came in your room, do you know?

5 I don't want to get them involved in it.

6 And then he even admits, I went through there
7 off and on all week. All week, off and on. But I
8 didn't stop. Why? Because Short Dog wasn't there,
9 you know what I'm saying, I just floated through. I
10 can't remember exactly what time, a couple of hours
11 ago. This is going to what time he got to the crime
12 scene that night.

13 But you went over there tonight. How did you
14 get over there?

15 I drove.

16 Were you with anybody?

17 Nope.

18 Yes, Shonda Moffett rode with you.

19 That's a lie.

20 What did you drive over there?

21 A Taurus.

22 Were you with anybody?

23 No.

24 Joel, what was your reason for going over
25 there tonight?

1 To see him. Hunting Mr. Smith down.

2 So you went to see him about y'all's
3 confrontation?

4 Yeah.

5 You had your 9 millimeter with you? Is that
6 the gun officers pulled off of you when they stopped
7 you?

8 Yes, sir.

9 When they open the door to let two people in, I
10 went in behind them. He is hiding. Ambushing
11 Mr. Smith.

12 I drew down on him. He charged me and grabbed
13 me. I took the safety off. I walked up on him. He
14 is admitting that he went up with a loaded gun to an
15 unarmed defenseless man who was not expecting him.
16 In fact, just told you, when I said, Red was looking
17 for you earlier today, he had no clue who he was
18 talking about. This was an ambush.

19 Well, I had it out when I went in the trailer.
20 He had it out even before he walked in the trailer.
21 I had it out already when I went in there.

22 Did you see -- did he see that you had a gun?

23 Yeah, that is why he charged me. Yeah. And
24 you have a right to charge somebody when they're
25 pointing a loaded gun at you. That is self-defense.

1 Did he have a gun? Did he pull a gun out on
2 you or anything like that?

3 No, sir. Admits the man was unarmed. I didn't
4 see a gun. So I was able to hold him with one arm
5 and knock the safety off. That was a typo, it
6 should be arm.

7 This man is two inches taller than him, several
8 pounds heavier than him. He has got him off by the
9 arm, pulled off at arm's length when he goes bam
10 bam, bam bam. He has got this whole man's body at
11 arm's length with one arm. That is a strong guy.

12 Did he have a gun -- okay. Did you shoot all
13 ten rounds?

14 Yes, sir. I know I shot all of them.

15 Oh, okay. So he was actually on the floor when
16 you left out?

17 Yes, sir. Because I pulled up on the side of
18 the house, the first house by there on the side. So
19 I backed out. And he was talking about parking next
20 to .. So I backed out.

21 Everybody all nervous, you know. Of course
22 they are nervous, they just heard nine rounds go off
23 in the trailer. You know what I'm saying. And he
24 was like, what happened, the person on the porch,
25 what happened, what did you do? And I wasn't really

1 saying nothing, you know. He shot at me, he shot
2 one time, you know what I'm saying. And that is
3 talking about the guy on the porch. And I guess he
4 thought I was going, you know, to speed off or
5 something, you know what I'm saying, but I leaned
6 down in the seat, popped open the glove box open and
7 popped it in, you know what I'm saying. They was
8 just like, go. Talking about the people from the
9 . They were saying go, leave.

10 How many times?

11 Ten.

12 Okay. Now you unloaded the clip. This time
13 two?

14 Yes, sir. I mean, this man doesn't quit. The
15 car didn't start. I left and ran out to Prescott
16 and started walking. I went down to somebody's
17 house that I knew and asked whether I could have
18 some more bullets, to go get some more bullets.

19 What do you need more bullets for? Mr. Smith
20 is dead. You know he is dead. You are telling the
21 police he is dead. What is there to be afraid of
22 now, if you are so afraid?

23 And did they have some?

24 They was mine. I had them all there. Again,
25 stashing his ammunition around town.

1 So you rested there?

2 Yes, because I had to catch my breath.

3 Evidence of flight. He ran away from the scene.

4 Okay. All right. No problem. I'm trying to
5 verify what you say. Yes, sir. Because you want me
6 to believe everything you are telling me.

7 Well, I told you I did it. I did it.

8 Well, yeah, you told me that.

9 Well, you know -- and this is, by the way, in
10 bold is Investigator Reese and not in bold is the
11 Defendant -- well, you know, I guess I have to serve
12 the consequences. That is the Defendant's own
13 words.

14 Yeah, you told me that, when Investigator Reese
15 is saying, yeah, you told me you did it.

16 The Defendant's own words: Well, you know, I
17 guess I have to serve the consequences. I walked
18 around the neighborhood and seen how the traffic was
19 around there police-wise. I lied to them. I
20 grabbed 20, meaning bullets. I was just like, I had
21 told him just, you know, I did it, referring to
22 Fisher. You know what I'm saying, I mean.

23 And when you told the officer you did it, what
24 did you mean by it?

25 What I was picked up for, suspect of, you know,

1 why I was up for, for murder. I did it.

2 But you know what you were saying I did?

3 Yeah, I ain't saying I was delusional or
4 nothing. Clear minded. Saying I did it. I was
5 just trying to remember, I think I was just telling
6 him that I did it. And then you walked up. That is
7 corroborating Investigator Reese. That is exactly
8 how it went down.

9 Did anybody else in the house have a gun and
10 start shooting?

11 No, sir, I ain't heard -- I ain't hear no other
12 shots in the trailer.

13 You just tried to shoot Short Dog?

14 Yes, sir.

15 Do you know if anybody else in the trailer got
16 shot?

17 Do I know? No, sir. But I know how I was
18 aiming. You know, but when I went in the trailer
19 and cut around the two people and drew on down on
20 him, he grabbed at the gun. I snatched the gun so
21 he was trying to grab before I took the safety off.
22 You know, all of my shots were aimed down, though.

23 Well, about -- could you have talked to him
24 some other place and not have gone to the trailer
25 with a gun?

In their opening statement to you, they kept arguing that it was either Short Dog or Joel Robinson. You are not going to hear anything about

1 the law of self-defense in this case from Judge
2 Childs because the law of self-defense does not
3 apply to this case.

4 They are going to -- then they are going to
5 argue that there was no malice, that he didn't
6 intend to go in there to shoot anybody because the
7 safety was on.

8 Just remember how easy -- I'm not going to do
9 it on the gun, but it is a matter of putting your
10 finger on it. That man made a conscientious effort
11 to load 11 bullets into his gun.

12 The victim -- and I'm just assuming what they
13 are going to say, they may not say it at all, I
14 don't have a crystal ball -- the victim assumed the
15 risk for visiting his cousin in a trailer that sells
16 drugs. And basically when you -- you assume the
17 risk when you hang out in a house that sells drugs.

18 Well, there is no law, ladies and gentlemen --
19 in civil law there is, if you are doing something
20 like on a roller coaster and you stand up and you
21 get hurt, you assume the risk if you weren't
22 following the rules of the roller coaster. That
23 doesn't apply in criminal law. Judge Childs is not
24 going to say anything about a victim assuming the
25 risk because of a lifestyle they choose to live.

1 That is not the case in criminal cases. There is no
2 law of assumption of risk in criminal law.

3 Then they are going to probably talk about how
4 every time there is drugs there has got to be guns.
5 You heard from Gianna Stinney Williams, not one
6 other weapon was recovered from this residence. You
7 heard from Investigator Dow, not one weapon was
8 recovered from Jeff Smith. And you heard from
9 Officer Walker, not one weapon was recovered from
10 Leverne Smith.

11 They are trying to come up with a reason, an
12 explanation as to why it is okay for their client to
13 go to this house with a gun.

14 But he is the only one that had a gun on
15 February 15th, 2007. And he is the only one that
16 shot it 21 times in the hole.

17 Also, and this is a really bad neighborhood,
18 ladies and gentlemen, and so when it is a bad
19 neighborhood people use nicknames. Well, I'm sorry,
20 Mr. Robinson has a nickname. He goes by Sco or
21 Scope.

22 Murder is murder. Whether it happens in the
23 hole, whether it happens in Shandon, it is murder.

24 The Defendant told you in his own words that he
25 is going to have to serve the consequences.

1 I ask you, ladies and gentlemen, to hold him
2 responsible for the killing of Mr. Smith and the
3 shooting of Edwina Brown. Hold him responsible for
4 bringing a gun loaded and committing violent crimes,
5 for possessing that gun and for possessing the
6 drugs. And bring justice to the family of
7 Mr. Smith.

8 Thank you.

9 CLOSING STATEMENT

10 MR. LEDDY: Don't worry, I'm not going to be
11 near that long, we'll be out of here.

12 A lot of my friends, dear friends, people that
13 have known me for a very long time, they ask me
14 still, how do I do my job, why do you do what you
15 do, as if I have some sort of affinity for people
16 engaged in criminal activity, like I like it, you
17 know, as if when I'm a victim of a crime it doesn't
18 irritate me.

19 You know, I had a lawnmower stolen out of my
20 garage while my wife was at home. She works out of
21 the house. I'm still irritated about that
22 lawnmower. And if they caught the guy that got my
23 lawnmower, I'd be sitting right over there where
24 that family is. I understand why they are here.

25 When I talk about criminal activity in this

1 house, I don't bring it up to malign the memory of
2 this man, I don't bring it up to insult his family.
3 I do it because of the same reason, because I know
4 the State is going to make use of it, if you look at
5 the indictments that were brought against my client
6 and you see when they were charged and when they
7 were brought, you will see that originally they
8 charged him with three offenses that we're really
9 here about. They brought murder, they brought
10 assault and battery with intent to kill, and they
11 brought possession of a firearm during a violent
12 crime. Then on the eve of trial, they decide to
13 bring two simple possession of drug charges.

14 And I'll leave it to you. Even though I know
15 you are not lawyers, you don't need to be to figure
16 out whether or not it makes any difference to the
17 rest of his life whether you -- when you come back
18 guilty on those drug charges. They are completely
19 irrelevant except to smear him because it is easier
20 to sit in judgment of somebody that you think is a
21 bad person than somebody who you think isn't.

22 Now, when you took your oath to be a juror, you
23 stepped out of the court of public opinion. You
24 stepped into the court of law. And I don't know
25 why, by the way, they make you take that oath three

1 times, but the first time you took it, sometime
2 before that you might have been sitting at your
3 house and watching the news or reading your paper
4 over your cup of coffee in the morning. I like to
5 watch The Daily Show in the morning with my coffee.
6 And you might have seen the story. They are all too
7 common on our newscasts, of somebody arrested for a
8 violent crime.

9 And if you are like most people in the world,
10 you thought, well, I'm glad they caught the guy, I'm
11 glad he is in jail. Usually they end the story with
12 being held without bond at Alvin S. Glenn Detention
13 Center. And I think it makes everybody feel good to
14 know that.

15 What you did is very human and very natural and
16 it is exactly the reaction that most people would
17 have, but what you did was assume that that person
18 was guilty as charged, that they caught the right
19 person.

20 And I don't bring it up because this is a
21 whodunit case, it is not. What I bring it up for is
22 because that is predisposition. That is prejudice.
23 And that is the opposite of the presumption of
24 innocence. That is opposite of your oath.

25 And it is not just an oath on an unlawful

1 . killing, and it is not just an oath on who did the
2 killing, it is an oath on every single element in
3 that crime. And one of the elements is malice. And
4 you heard a lot about malice.

5 I think one of the things about lawyers is
6 somebody will say, well, what does malice mean. And
7 you get a few lawyers together over 100 years and
8 they'll come up with five pages of what malice
9 means.

10 You know, when I first heard the word malice, I
11 don't know how old I was, but it didn't strike me as
12 a particularly difficult concept to grasp. But the
13 more I hear about it, the more difficult it becomes.
14 I think that is just one of the things that lawyers
15 do is they tend to mush stuff up when it is not
16 necessary.

17 But what it means in fancy language is somebody
18 with a depraved spirit, somebody with a malignant
19 heart bent on mischief. And that is what the State
20 wants you to think in this case is that he went in
21 that house with a malignant heart bent on mischief,
22 bent on killing, that he went there to kill. And he
23 hunted him down and executed him, is what their
24 story is.

25 Now, I want to talk to you about why malice is

1 the only thing that really matters. Ninety-five
2 percent of what you heard is pretty much something
3 you heard ten times. You heard it from his mouth.
4 You heard it from every witness that came in. Came
5 in the house with a gun, blah, blah, blah. You can
6 probably recite it.

7 But it reminds me of one of my very favorite
8 movies, Apollo 13. I don't know if you have ever
9 seen it, but if you haven't seen it, you need to
10 watch it. It is an excellent movie.

11 But in the movie there is -- it is going to the
12 moon -- a spaceship going to the moon. And while it
13 is going to the moon, they have an electrical
14 malfunction, an explosion on the spaceship.

15 And then it flashes to a scene in this big room
16 full of stereotypically the smartest people in the
17 world, rocket scientists. And probably a hundred
18 rocket scientists sitting there.

19 And every one of them is yelling over the other
20 one about: We need to work on heat shield. We need
21 to work on bringing them back directly. How are we
22 going to get these guys back. And they are all
23 yelling over each other. And there is one lone guy
24 who gets the point that power is everything. And he
25 stands up and he quiets everybody. Without power,

1 none of the other stuff that you are talking about
2 even matters. If we don't have everything shut off
3 to save the power then these guys are going to die
4 and it doesn't matter whether you bring the ship
5 back or not.

6 In this case, malice is everything. Was there
7 malice in this case? That is for you to decide.

8 And I want to just point out a few reasons why
9 that I -- why I think the evidence doesn't show
10 malice.

11 The first thing is, when Joel, my client, and
12 his story, which hasn't ever changed, he went there
13 to confront this guy. That is exactly what he told
14 me, he went there to confront the guy, not to kill
15 him. He killed him, but he didn't go there to kill
16 him.

17 When he went in that house, he had the element
18 of surprise. They used the word ambush. Well, that
19 is what an ambush is, it is setting up the element
20 of surprise.

21 And what did he do, this person who the State
22 would have you believe was orches -- was fulfilling
23 an orchestrated ambush. He walked across the room
24 with a gun with a safety on and proceeded to engage
25 in a physical struggle with this man.

1 Now, you don't go in somewhere to shoot
2 somebody and keep the safety on. I don't know how
3 much of the news you watch or if you ever follow
4 anything about NFL, but there is a guy in the NFL
5 named Plaxico Burress who apparently doesn't put the
6 safety on to go to the bar and get a drink.

7 That is not malice. Did it escalate?
8 Absolutely. He didn't go in there to kill that guy.

9 They say that he went there because he had been
10 disrespected him, and when you disrespected Joel
11 Robinson you get shot because he is going to prove
12 to you that he is a tougher guy.

13 Well, that is like somebody making fun of you
14 because you are afraid of heights and to prove them
15 wrong you go jump off the Empire State Building.
16 You might have proved your point, but what good did
17 it do you? I don't think that that theory makes any
18 sense.

19 I think that there was undoubtedly bad blood
20 between these guys. I don't know what the story is
21 behind it. I don't know. But the State says that
22 the number of shots indicates there is malice
23 because a malicious and evil person shoots more.

24 I keep a gun for defense. And I think it holds
25 13 or 14 bullets. I don't know because I have never

1 counted them. But if I ever had to use it, I think
2 that you probably would find every single shell
3 casing on the floor in my house because I'm not
4 taking it with me. Does that mean I'm malicious or
5 evil? Does that mean that I'm in the heat of the
6 moment? How fast -- how long do you think it takes
7 to squeeze that trigger ten times? And who shoots
8 more? An assassin or executioner? Snipers say one
9 shot one kill, that is their motto. Who shoots
10 more. Somebody who is a calm and cold-blooded
11 murderer or somebody who is in the heat of the
12 moment, somebody who is panicked?

13 Now, my cross with the ballistics guy was
14 awkward, probably made everybody uncomfortable, but
15 the point I was trying to make was the bullet does
16 what the bullet does, regardless of why you shoot
17 it. If ever the day were to come, and I hope it
18 never does, that I ever had to use my gun in the
19 house to defend myself, then that is going to just
20 demolish whoever the bullets hit. That is what they
21 are designed to do. That doesn't tell you anything
22 about what is going on in my head at the moment when
23 those bullets slide out of that barrel.

24 Those pictures evoke emotion. They are
25 designed -- they are useful for that.

1 Now, does this also sound like a planned out
2 killing? I'm going to -- I went over there with a
3 plan. I'm going to go in there and kill this guy,
4 you know. This guy disrespected me. And just as
5 soon as somebody comes over and asks me for a ride
6 I'm going to get him.

7 Who told you he was over there three times
8 waiting for him? It was Jeff. Jeff is one of the
9 most delightful witnesses I have ever watched. He
10 was absolutely entertaining. I think you could put
11 him on a radio show and get top ratings. He is
12 naturally hilarious, naturally likeable. He also
13 would have you believe that he has never seen
14 anybody using drugs in the house except for him. He
15 would also have you believe that he comes up with
16 nicknames for people, like Red, because they're
17 light-skinned. I have never heard that. I thought
18 it was an Irish thing. And then refers to them,
19 when you address them as somebody else, you would
20 have no idea what he is talking about. So as much
21 as I like the guy, I don't know how credible he is.
22 And as far as him not having bias, I have a bias
23 towards whoever stole my lawnmower. How do you
24 think he feels about my client who killed his loved
25 one? Not bias.

1 Now, I'm almost done. I know you are glad.
2 When I was studying for the bar exam, I got a book.
3 I got a bunch of books. One of the books I got was
4 a real condensed version of all the rules that they
5 may or may not test us on.

6 Throughout the book there are these little test
7 tips, little blurbs. Like we talked to somebody who
8 took the test last week and they tested on this.
9 This is how to get the answer right. I flip through
10 it from time to time and I happened to come across
11 one the other day, it says -- I couldn't believe it,
12 right when I was getting ready for this -- it says:
13 Homicide cases are by their very nature emotional.
14 By their very nature. Do not let yourself be led
15 astray by fact patterns which indicate some sort of
16 bad character on the part of the Defendant or some
17 other aggravating circumstance that tugs at your
18 heart strings, because if you do you are going to
19 give the wrong answer and you are not going to get
20 to come do this.

21 Well, I hope that I prepared you so that you
22 will not allow your decision whatever it is to be
23 rendered based on your emotion.

24 And the State told you we only have one murder
25 in this state. That's right. We don't have murder

1 first, second, third, and all of that. So it
2 wouldn't be much in the way of negotiations on an
3 episode of Law and Order in South Carolina. But is
4 this murder? Is this the same -- assumption of the
5 risk, does it not matter? Does it not matter for
6 malice? Can I be engaged in an enterprise that is a
7 blight on society and make money off of it and the
8 same standards apply? That is a question for you.
9 Does that matter for malice?

10 And, you know, during the State's closing
11 argument it just felt like the choice and your role
12 in all this would be taken away as though there was
13 some inkling that you wouldn't want to convict my
14 client, but yet you have to.

15 And the reason that you have that choice goes
16 back to one of the first jury decisions that gave
17 the jury the power that it has. It was in a time in
18 England when the king could go to the Court and say:
19 I want a conviction.

20 And they would have a jury trial, and the jury
21 would come back conviction, because, if not, they'd
22 be in trouble themselves.

23 And they had the jury come back and they said,
24 what is your verdict?

25 And they said, not guilty.

1 And they said, I guess you don't understand,
2 the king wants a conviction.

3 They sent them back in the jury room for a few
4 days and three or four times coming out and said,
5 what is your verdict?

6 They said, not guilty.

7 They said, well, when will it be guilty?

8 And they stood up and they said, never.

9 We look to those jurors and our country and our
10 system not to render a verdict just because the
11 State says you have to.

12 THE COURT: Thank you. I just want to get some
13 guidance from the parties and the jury. At this
14 moment of the trial is when the Court would actually
15 charge you on the law and then allow you all to
16 render your decision.

17 We've had some discussion prior to this moment
18 that the lateness of the hour that we could also
19 have the option of charging you on the law in the
20 morning and then letting you deliberate at that
21 time. I have no idea how long you all, you know,
22 will deliberate. You can start now and then if you
23 don't complete it you can go in the morning, but,
24 you know, at the same time request that we do it in
25 the morning when we are fresh.

1 MR. LEDDY: Your Honor, I would like to
2 withdraw that request. It will be fine with the
3 Defense if we went forward tonight.

4 MS. SHIPLEY: I'll leave it in the Court's
5 discretion.

6 THE COURT: All right.

7 JURY CHARGE

8 THE COURT: Ladies and gentlemen, please listen
9 to me carefully. Now, Ms. Foreperson, and members
10 of the jury, you have heard the evidence and the
11 arguments of both parties. I will now explain to
12 you the law which applies to this action.

13 The Defendant, Joel Robinson, is charged with
14 murder, assault and battery with intent to kill, use
15 of a firearm during the commission of a violent
16 crime, possession of crack cocaine, and possession
17 of cocaine.

18 The indictments charge the Defendant with these
19 offenses. I remind you that the fact that the
20 Defendant was arrested, charged and indicted in this
21 case is not evidence in this case and cannot be
22 considered by you as evidence of guilt in this case,
23 nor does it create any presumption or inference of
24 guilt. This document is simply the formal written
25 instrument which contains the charges made against

1 the Defendant. It is the formal document by which
2 the case is brought into this court.

3 I remind you that during this trial you and I
4 have certain duties to perform. As the trial judge
5 it is my responsibility to preside over the trial of
6 this case, and I have a duty to rule on the
7 admissibility of the evidence offered during the
8 trial.

9 You are to consider only the competent evidence
10 before you. If there was any testimony ordered
11 stricken from the record in this case during the
12 trial, you must disregard that testimony. You are
13 to consider only the testimony which has been
14 presented from the witness stand, any exhibits which
15 have been made a part of the record in this case,
16 and any stipulations of the counsel.

17 I have the additional duty to charge you with
18 the law applicable to this case. As the presiding
19 judge, I am the sole judge of the law of this case,
20 and it is your duty as jurors to accept and apply
21 the law as I now state it to you.

22 If you already have an idea as to what the law
23 is or what the law ought to be and it does not agree
24 with what I now tell you the law is, you must
25 abandon this idea because you are sworn to accept

1 and apply the law exactly as I state it to you.

2 In every case tried before a jury, the jury
3 becomes the sole and exclusive judge of the facts in
4 a case. A trial judge cannot intimate, state,
5 comment on or make any statement to a trial jury
6 about the facts in a case.

7 Since you, the jury, are the sole judge of the
8 facts in this case, you are not to infer from what I
9 have said during the progress of this trial in
10 ruling upon admissibility of evidence or otherwise
11 or anything that I say now during the course of this
12 instruction to you that I have any opinion about the
13 facts in this case. The law does not allow me to
14 have an opinion about the facts in this case. This
15 is a matter solely for you, the jury, to determine.

16 As jurors, it is your duty to determine the
17 effect, value, weight and truth of the evidence
18 presented during this trial.

19 The Defendant is charged with murder. The
20 State must prove beyond a reasonable doubt that the
21 Defendant killed another person with malice
22 aforethought.

23 Malice is hatred, ill-will or hostility towards
24 another person. It is the intentional doing of a
25 wrongful act with just cause or excuse and with the

1 intent to inflict an injury or under circumstances
2 that the law will infer an evil intent.

3 Malice aforethought does not require that
4 malice exists for any particular time before the act
5 is committed, but malice must exist in the mind of
6 the Defendant just before and at the time the act is
7 committed.

8 Therefore, there must be a combination of the
9 previous evil intent and the act. Malice
10 aforethought may be expressed or implied. These
11 terms, expressed -- excuse me, expressed or
12 inferred -- these terms, expressed and inferred, do
13 not mean different kinds of malice, but merely the
14 manner in which malice may be shown to exist.

15 Specifically, malice may be shown either by
16 direct evidence or by inference from the facts and
17 circumstances which are proved. Express malice is
18 shown when a person speaks words which express
19 hatred or ill-will for another or when the person
20 prepared beforehand to do the act which was later
21 accomplished.

22 For example, lying in wait for a person or any
23 other acts of preparation going to show that the
24 deed was within the Defendant's mind would be
25 express malice.

1 Malice may be inferred from conduct showing a
2 total disregard for human life. Inferred malice may
3 also arise when the deed is done with a deadly
4 weapon. A deadly weapon is any article, instrument
5 or substance which is likely to cause death or great
6 bodily harm.

7 Whether an instrument has been used as a deadly
8 weapon depends on the facts and circumstances of
9 each case. A pistol or handgun may be a deadly
10 weapon.

11 The Defendant has been charged with assault and
12 battery with intent to kill. In order to prove
13 assault and battery with intent to kill, the State
14 must prove beyond a reasonable doubt that the
15 Defendant committed an unlawful act of a violent
16 nature to the person of another with malice
17 aforethought.

18 An assault occurs when a person unlawfully
19 attempts or offers to commit a violent injury on
20 another person and had the present ability to
21 complete the attempted injury.

22 An assault is the intentional creation of a
23 reasonable fear of immediate bodily harm. It is not
24 necessary that the attempted injury or harm actually
25 take place.

1 For example, if I walk up to you and when we
2 are within arm's reach I draw back to hit you, that
3 is an assault.

4 A battery is the unlawful touching of another
5 person by a person who has committed the assault.
6 An unlawful touching can be caused by part of the
7 accused's body or by any object that the accused
8 puts in motion. A battery is the completion of the
9 assault by using or applying force to another
10 person, however slight, in a rude, angry or
11 resentful manner without legal justification for
12 doing so.

13 Using my earlier example, if I carry through
14 the assault by hitting you, that action is a
15 battery.

16 In defining malice for the offense of assault
17 and battery with intent to kill, you are to use the
18 same definition that was provided for the crime of
19 murder.

20 If the Defendant with malice aforethought
21 attempts to kill another person but by mistake
22 injures or kills a different person, the Defendant
23 still has the intent to kill. The intent to kill is
24 merely transferred from the original person the
25 Defendant attempted to kill to the actual person

1 killed or injured.

2 The Defendant would be guilty of assault and
3 battery with intent to kill just as if the intent
4 had resulted in the death or injury of the person
5 the Defendant attempted to kill.

6 The Defendant is charged with possession of a
7 weapon during the commission of or attempt to commit
8 a violent crime. The State must prove beyond a
9 reasonable doubt that the Defendant was in
10 possession of a firearm or visibly displayed what
11 appeared to be a firearm during the commission of a
12 violent crime. A firearm may be a pistol or a
13 handgun.

14 In order to find the Defendant guilty of
15 possession of a weapon during the commission of a
16 violent crime you must first find the Defendant
17 guilty of either committing a violent crime or
18 attempting to commit a violent crime. Murder and
19 assault and battery with intent to kill are violent
20 crimes under South Carolina law.

21 The Defendant is charged with one count of
22 possession of crack cocaine and one count of
23 possession of cocaine. The State must prove beyond
24 a reasonable doubt that the Defendant knowingly or
25 intentionally possessed these drugs. These are two

1 separate and distinct charges.

2 For purposes of the possession of crack cocaine
3 charge, the State must prove beyond a reasonable
4 doubt that the substance possessed was crack
5 cocaine.

6 As to the possession of cocaine charge, the
7 State must prove beyond a reasonable doubt that the
8 substance was cocaine.

9 Knowingly means with knowledge, conscientiously
10 not accidentally. Intentionally means willfully or
11 intending the result which actually occurs. Intent
12 may be shown by acts and conduct of the Defendant
13 and other circumstances from which you may naturally
14 and reasonably infer intent.

15 To prove possession, the State must prove
16 beyond a reasonable doubt that the Defendant had
17 both the power and the intent to control the
18 disposition or use of the crack cocaine. Possession
19 may be either actual or constructive.

20 Actual possession means that the crack or the
21 cocaine was in the actual physical custody of the
22 Defendant.

23 Constructive possession means that the
24 Defendant had dominion and control or the right to
25 exercise dominion and control over either the crack

1 cocaine or the cocaine itself or the property on
2 which the crack cocaine and cocaine was found.

3 The Defendant has pled not guilty to these
4 indictments, and that plea puts the burden on the
5 State to prove the Defendant guilty.

6 A person charged with committing a criminal
7 offense in South Carolina is never required to prove
8 himself innocent. No matter how grave or serious
9 may be the offense with which he is charged, the
10 Defendant is presumed to be innocent unless and
11 until the State has established guilt beyond a
12 reasonable doubt.

13 This presumption of innocence is legal proof of
14 innocence and does not end when you begin your
15 deliberations, but it accompanies the Defendant
16 throughout the trial until you reach a verdict of
17 guilt based on evidence satisfying you beyond a
18 reasonable doubt.

19 This presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the
21 Defendant that remains with the Defendant until it
22 has been stripped from the Defendant by evidence
23 satisfying you of the Defendant's guilt beyond a
24 reasonable doubt.

25 The presumption of innocence is a substantial

1 right to which every Defendant is entitled unless
2 you the jury are satisfied from the evidence of the
3 Defendant's guilt beyond a reasonable doubt.

4 The State has the burden of proving the
5 Defendant guilty beyond a reasonable doubt. The
6 State is required to prove every element of the
7 charged offenses by evidence which satisfies each of
8 you of the guilt of the Defendant beyond a
9 reasonable doubt. The Defendant is not required to
10 prove his innocence. The burden of proving the
11 Defendant guilty beyond a reasonable doubt always
12 remains on the State of South Carolina.

13 Some of you may have served as jurors in civil
14 cases where you were told that it is only necessary
15 to prove that a fact is more likely true than not
16 true, such as the greater weight or preponderance of
17 the evidence.

18 In criminal cases the State's proof must be
19 more powerful than that. It must be beyond a
20 reasonable doubt. A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to
22 hesitate to act. The term reasonable doubt should
23 be given its plain and ordinary meaning.

24 There are very few things in this world that we
25 know with absolutely certainty. And in criminal

1 cases the law does not require proof that overcomes
2 every possible doubt.

3 If based on your consideration of the evidence
4 you are firmly convinced that the Defendant is
5 guilty of the crimes charged, you must find him
6 guilty.

7 If, on the other hand, you conclude there is a
8 real possibility that he is not guilty, you must
9 give the Defendant the benefit of the doubt and find
10 the Defendant not guilty.

11 There are two types of evidence generally
12 presented during a trial: Direct evidence and
13 circumstantial evidence.

14 Direct evidence is the testimony of a person
15 who asserts or claims to have actual knowledge of a
16 fact, such as an eyewitness. It is evidence that
17 immediately establishes the main fact to be proved.

18 Circumstantial evidence is proof of the chain
19 of facts and circumstances indicating the existence
20 of a fact. It is based on inference and not on
21 personal knowledge or observation.

22 The law makes absolutely no distinction between
23 the weight or value to be given to either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than

1 of direct evidence.

2 You should weigh all the evidence in the case.
3 After weighing all the evidence, if you are not
4 convinced of the guilt of the Defendant beyond a
5 reasonable doubt, you must find the Defendant not
6 guilty.

7 Necessarily, you must determine the credibility
8 of witnesses who have testified in this case.
9 Credibility simply means believability. It becomes
10 your duty as jurors to analyze and to evaluate the
11 evidence and determine which evidence convinces you
12 of its truth.

13 In determining the credibility of witnesses who
14 have testified in this case, you may believe one
15 witness over several witnesses or several witnesses
16 over one witness. You may believe only a part of
17 the testimony of a witness and reject the remaining
18 part of the testimony of that same witness. You may
19 believe the testimony of a witness in its entirety
20 or reject the testimony of a witness in its
21 entirety. You may consider whether any witness has
22 exhibited to you any interest, bias, prejudice or
23 other motive in this case.

24 You may also consider the appearance and manner
25 of a witness on the witness stand. Normally,

1 witnesses are limited to testifying about facts
2 within their knowledge and are not allowed to give
3 opinions. An exception exists for certain witnesses
4 who by their training, education or experience are
5 considered experts in a particular field. They may
6 give their opinions in their field based upon facts
7 of a matter and their conclusion. These opinions
8 constitute evidence to be considered by you in
9 connection with all of the other testimony and
10 evidence in this case. You may consider the
11 expert's opinion just as you do all other evidence
12 in this case. It is for the jury to give it such
13 weight as you in your experience and discretion may
14 determine. You must weigh such evidence and accept
15 or reject it in the same manner that you treat all
16 other evidence in this case.

17 If you decide that the opinion of an expert
18 witness is not based on sufficient education and
19 experience, or if you conclude that the reasons
20 given in support of the opinion are not sound, or
21 that the opinion is outweighed by other evidence,
22 you may disregard the opinion entirely.

23 An expert witness's testimony is to be given no
24 greater weight than that of other expert witnesses
25 simply because the witness is an expert.

1 Further, you are not required to accept an
2 expert's opinion even though it is not contradicted.

3 An issue in this case is the identification of
4 the Defendant as the person who committed the crimes
5 charged. The State has the burden of proving
6 identity beyond a reasonable doubt. You must be
7 satisfied beyond a reasonable doubt of the accuracy
8 of the identification of the Defendant before you
9 may convict the Defendant.

10 Identification testimony is an expression of
11 belief or impression by a witness. You must
12 consider the believability of each identification
13 witness in the same way as any other witness.

14 You may consider whether the witness had an
15 adequate opportunity to observe the offender at the
16 time of the offense. This would be affected by
17 things like how long or short a time was available,
18 how far or close the witness was, the lighting
19 conditions, and whether the witness had the chance
20 to see or know the person in the past.

21 Once again I instruct you, the burden of proof
22 on the State extends to every element of the crimes
23 charged, and this specifically includes the burden
24 of proving beyond a reasonable doubt the identity of
25 the Defendant as the person who committed the crime.

1 If after examining the testimony you have a
2 reasonable doubt as to the accuracy of the
3 identification, you must find the Defendant not
4 guilty.

5 A statement alleged to have been made by the
6 Defendant has been admitted into evidence in this
7 case. While the Court has determined that the
8 statement is admissible, I instruct you that you
9 make the ultimate decision of whether or not the
10 Defendant made the statement.

11 If the Defendant did make the statement, you
12 must determine whether the statement was made by the
13 Defendant voluntarily and of his own free will.
14 This means that the statement was not caused by
15 pressure, force, fear, threats, coercion or
16 intimidation, or by hope or a promise of leniency or
17 a reward of any kind.

18 In determining whether the statement was
19 voluntary, you should consider both the
20 characteristics of the Defendant and the details of
21 the questioning.

22 Some of the factors that you must consider are
23 the age of a Defendant, the Defendant's education or
24 lack of education, the Defendant's mental ability or
25 capacity, the Defendant's IQ or intelligence, the

1 Defendant's background and environment, the place
2 and length of detention, the nature of the
3 questioning, and the advice or lack thereof to the
4 Defendant of his constitutional rights, including
5 but not limited to, the right to remain silent, that
6 any statement could be used against him in a court
7 of law, the right to have a lawyer present, that if
8 he couldn't afford a lawyer, a lawyer would be
9 appointed to represent him without any cost and that
10 he could stop making a statement at any time.

11 You must carefully consider all of the
12 surrounding circumstances before you give any weight
13 to an alleged statement.

14 The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was
16 voluntary.

17 If you determine it was, you may give the
18 statement any further consideration that you deem
19 proper. You must decide what weight, if any, should
20 be given to the alleged statement. If you determine
21 the alleged statement was not the free and
22 voluntarily statement of the Defendant, you should
23 not consider the statement at all.

24 The Defendant in this case has not testified.
25 This is his constitutional right. It is not a

1 circumstance you can take into consideration or even
2 allow to enter into your discussion in the jury
3 room.

4 Under the Constitution of South Carolina and
5 the United States Constitution, it is the
6 Defendant's constitutional right not to testify.
7 The burden of proof is upon the State of South
8 Carolina to establish his guilt by competent
9 evidence beyond a reasonable doubt.

10 The fact the Defendant did not take the witness
11 stand and testify in his own behalf does not create
12 any inference against him. The jury must not permit
13 that fact to weigh in the slightest degree against
14 this Defendant, nor should this fact enter into
15 discussions or deliberations of the jury in any
16 manner.

17 And, finally, your verdict cannot be based on
18 sympathy, passion, prejudice, emotion, or any other
19 consideration not evidenced in this case. It is
20 mandated that your verdict be unanimous. That means
21 that every juror must agree on the jury verdict.
22 There cannot be any split or divided vote in any
23 form or fashion such as 11 to one, ten to two, or
24 nine to three. Each of you must agree. Please do
25 not sign the verdict form until every single juror

1 agrees.

2 And now my comments are directed to the
3 foreperson. You will have with you the verdict form
4 in the jury room. And on the verdict form the
5 questions will be outlined and laid out with respect
6 to the actual charges as indicated in this
7 particular case.

8 Each of the charges will give you the option of
9 stating guilty or not guilty. You will answer each
10 of those questions, and then at the conclusion of
11 your deliberations and after having decided the
12 Defendant's guilt or innocence on each charge, you
13 will sign the juror form and also date it.

14 Now, on the form it does say guilty or not
15 guilty. Just because guilty comes first, that is no
16 indication by the Court in terms of any opinion. As
17 I indicated in my charge, I can't have an opinion.
18 G comes before N, that is the simple reason why it
19 is on the form in that regard.

20 At this time do the parties anticipate any
21 exception to the jury charges?

22 MR. LEDDY: No, Your Honor.

23 MS. SHIPLEY: No, Your Honor.

24 THE COURT: Okay. I'm going to ask that you go
25 to your jury room. I remind you not to discuss the

1 case just yet. We need to make sure that all of
2 this evidence comes into the room with you, as well
3 as the verdict form. At that point you can then
4 begin your deliberations.

5 Since everybody was able to make it through the
6 trial, I'm going to release the alternate at this
7 time. I do thank you for your service. You are
8 welcome to stand around and wait around for
9 deliberations if you so choose, but you absolutely
10 cannot participate in the deliberations at this
11 time.

12 JUROR DENNY: May I ask a question? We have
13 one of the jurors who cannot attend and is excused
14 for tomorrow. If deliberations carry over till
15 tomorrow morning, how do we treat that?

16 THE COURT: Good question. One of the jurors
17 in this panel is excused?

18 JUROR DENNY: That's correct.

19 THE COURT: Oh, that's correct. Well, then I
20 need to replace that juror now just to take that
21 chance. Any objection by counsel?

22 MS. SHIPLEY: No, Your Honor.

23 MR. LEDDY: No, Your Honor.

24 THE COURT: Okay, let's do that now. So I am
25 going to have juror -- thank you for asking the

1 question -- state your number, juror name and
2 number.

3 JUROR DENNY: Sixty-five, Howard Denny.

4 THE COURT: Okay. Will replace --

5 THE CLERK: 284, Wanda Whaley.

6 THE COURT: Okay. Thank you so much for your
7 time and attention to this matter. So you will step
8 into her place for purposes of deliberation. I
9 appreciate that, you reminding me of that. Thank
10 you.

11 So at this time I'm going to ask you all to
12 step into your jury room and we will be with you
13 shortly with all of the evidence.

14 And at this time you can begin your
15 deliberations.

16 (WHEREUPON, the jury retires to the
17 jury room at 5:55 p.m.)

18 MR. LEDDY: Are we still on the record? I just
19 want to make sure that I didn't -- I did not intend
20 to give up my previous argument in our jury charges
21 when I didn't make any exceptions to the charges.

22 THE COURT: Okay.

23 MR. LEDDY: As to the ones you did give as
24 given, no objection to that, but I still have my
25 objection to not charging what you didn't charge.

1 THE COURT: Okay. That's fine. And the Court
2 stands by its ruling.

3 MR. LEDDY: I just didn't want to --

4 THE COURT: Absolutely. Absolutely. If you
5 all would review the verdict form and then I can go
6 back, and then of course check the evidence.

7 (Pause.)

8 (WHEREUPON, the jury was instructed to begin
9 deliberations at 6:08 p.m.)

10 (Break.)

11 THE COURT: I received a note from the jury:
12 Could we please have the definition of malice.

13 My suggestion, instead of calling them back in,
14 the murder charge has the definition of malice in
15 it, if you all would refer to your charges. I can
16 cut out the first portion of it that says the
17 Defendant is charged with murder, the State must
18 prove beyond a reasonable doubt, or I can just give
19 the whole entire jury instruction of murder, because
20 the malice charge is within the murder charge, and
21 just let them read it.

22 MR. LEDDY: I appreciate your asking, Your
23 Honor. Sending anything like that back to them in
24 writing is in your discretion, according to the rule
25 that I'm aware of.

1 THE COURT: Right. I just thought it might be
2 easier than bringing them all out.

3 MR. LEDDY: Yes, ma'am. I don't have any
4 problem with sending them something that is written
5 down.

6 MS. SHIPLEY: No objection from the State.

7 THE COURT: Okay, that is how we will do it. I
8 am taking out the murder jury charge and sending in
9 just that charge, because I have to be confined to
10 what they ask me, and nothing more.

11 MR. LEDDY: Yes, ma'am.

12 THE COURT: Okay. And we will make that a part
13 of the record.

14 (WHEREUPON, the Court's Exhibit No. 6
15 was marked for identification only.)

16 (Break.)

17 THE COURT: I am informed the jury has reached
18 a verdict. Are you ready to receive the verdict?

19 MS. SHIPLEY: Yes, ma'am.

20 MR. LEDDY: Yes, ma'am. We need our client.

21 (Defendant returns to courtroom.)

22 THE COURT: Are you ready to proceed?

23 MS. SHIPLEY: Yes, Your Honor.

24 MR. LEDDY: Yes, Your Honor.

25 THE COURT: Jurors, please.

1 MS. SHIPLEY: Your Honor, would you make --

2 THE COURT: Absolutely. Ladies and gentlemen
3 in the courtroom, prior to receiving the verdict,
4 you know, we are sorry for the loss in this case,
5 but there is no doubt that nothing that this jury
6 resolves today will do anything about that loss.
7 There can be no outburst in any regards in whatever
8 the jury states is the verdict, because that shall
9 be the verdict.

10 (WHEREUPON, the jury came into open
11 court at approximately 7:18 p.m.)

12 THE BAILIFF: The jury is all present, Your
13 Honor.

14 THE COURT: Madam Foreperson, have you and your
15 fellow jurors reached a verdict?

16 THE FOREPERSON: Yes, Your Honor.

17 THE COURT: Would you please hand that verdict
18 to the bailiff who shall hand it to the clerk.

19 (Court reviews verdict form.)

20 THE COURT: Madam Clerk, I ask you to publish
21 the verdict.

22 THE CLERK: Indictment Number -- The State of
23 South Carolina versus Joel Robinson, Indictment
24 Numbers 2007-GS-40-2040, which is an indictment for
25 murder; Indictment Number 2007-GS-40-2038, which is

1 an indictment for use of a firearm during the
2 commission of a violent crime; Indictment Number
3 2007-GS-40-2039, which is the indictment for assault
4 and battery with intent to kill; Indictment Number
5 2009-GS-40-1346, which is an indictment for
6 possession of cocaine; Indictment Number
7 2009-GS-40-1345, which is an indictment for
8 possession of crack.

9 As to the charge of murder: We, the jury,
10 unanimously find the Defendant guilty.

11 As to the charge of assault and battery with
12 intent to kill: We, the jury, unanimously find the
13 Defendant guilty.

14 As to to charge of possession of a firearm
15 during the commission of a violent crime: We, the
16 jury, unanimously find the Defendant guilty.

17 As to the charge of possession of cocaine: We,
18 the jury, unanimously find the Defendant guilty.

19 As to the charge of possession of crack
20 cocaine: We, the jury, unanimously find the
21 Defendant guilty.

22 This is signed: Foreperson, Shannon Outen.
23 March 5, 2009.

24 Madam Foreperson, are these your verdicts and
25 the verdicts of the entire jury?

1 THE FOREPERSON: Yes, ma'am.

2 MR. LEDDY: Poll the jury, please, Your Honor.

3 THE COURT: Madam Clerk, if you will do so.

4 MS. SHIPLEY: 284 was dismissed.

5 THE CLERK: Ladies and gentlemen of the jury,
6 I'm going to ask you two questions regarding your
7 verdict. If you'll answer yes or no to both the
8 questions.

9 Shannon Outen, were these your verdicts?

10 JUROR OUTEN: Yes, ma'am.

11 THE CLERK: Are they still your verdicts?

12 JUROR OUTEN: Yes, ma'am.

13 THE CLERK: Jeroy Carroll, were these your
14 verdicts?

15 JUROR CARROLL: Yes, ma'am.

16 THE CLERK: Are they still your verdict?

17 JUROR CARROLL: Yes.

18 THE CLERK: Kimberly McMahan, were these your
19 verdicts?

20 JUROR McMAHAN: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR McMAHAN: Yes.

23 THE CLERK: Leroy Byrd, were these your
24 verdicts?

25 JUROR BYRD: Yes.

1 THE CLERK: Are they still your verdicts? .

2 JUROR BYRD: Yes.

3 THE CLERK: Scott Krause, were these your
4 verdicts?

5 JUROR KRAUSE: Yes, ma'am.

6 THE CLERK: Are they still your verdict?

7 JUROR KRAUSE: Yes, ma'am.

8 THE CLERK: Timothy Dempsey, were these your
9 verdicts?

10 JUROR DEMPSEY: Yes, ma'am.

11 THE CLERK: Are they still your verdicts? .

12 JUROR DEMPSEY: Yes, ma'am.

13 THE CLERK: Linda Jenkins, were these your
14 verdicts?

15 JUROR JENKINS: Yes.

16 THE CLERK: Are they still your verdicts?

17 JUROR JENKINS: Yes.

18 THE CLERK: Michelle Trapp, were these your
19 verdicts?

20 JUROR TRAPP: Yes, ma'am.

21 THE CLERK: Are they still your verdicts?

22 JUROR TRAPP: Yes, ma'am.

23 THE CLERK: Stanley Nascedka, were these your
24 verdicts?

25 JUROR NASCEDKA: Yes, sir.

1 THE CLERK: Are they still your verdicts?

2 JUROR MASCEDKA: Yes.

3 THE CLERK: Mark Riffle, were these your
4 verdicts?

5 JUROR RIFFLE: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR RIFFLE: Yes.

8 THE CLERK: Patrick Layden, were these your
9 verdicts?

10 JUROR LAYDEN: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR LAYDEN: Yes.

13 THE CLERK: Howard Denny, were these your
14 verdicts?

15 JUROR DENNY: Yes, ma'am.

16 THE CLERK: Are they still your verdicts?

17 JUROR DENNY: Yes, ma'am.

18 THE CLERK: The jury has been polled, Your
19 Honor.

20 THE COURT: Thank you. Okay. Ladies and
21 gentlemen of the jury, thank you for your service.

22 I know it has been a long week, but we really
23 appreciate your time and attention to this matter.

24 As I indicated at the outset of the case, all
25 of these matters are very serious because they

1 affect people's lives and liberties.

2 I believe that you have really paid attention.
3 You've been very thorough. You've been very
4 accommodating to the witnesses and the parties as we
5 needed to conclude the case.

6 You are free to leave for your service. The
7 bailiff will let you know whether or not there is
8 any more trials this week. I doubt it. But you
9 just have to check with them.

10 Sometimes in a case people will try to contact
11 you after the fact because nobody ever knows how a
12 jury makes up their mind because we're not in that
13 room, you know, so as not to invade your province.
14 That is totally up to you as to whether or not you
15 wish to speak to anybody.

16 The attorneys, I will submit to you, are very
17 professional and ethical, so I don't believe that
18 any of them would intend to harass you in any
19 regard, but, again, it is totally up to you.

20 To the extent that you believe that someone has
21 tried to harass you, just record it to the Clerk's
22 Office and we can handle it appropriately here.

23 Thank you again for your time and service. I
24 wish you well and safe returns home this evening.

25 Thank you. The deputies will be available to

1 escort you all to your cars as well.

2 (WHEREUPON, the jury is excused.)

3 THE COURT: Is there anything from the parties
4 with respect to the jury verdict?

5 MS. SHIPLEY: Not from the State, Your Honor.

6 MR. LEDDY: Your Honor, I would just move for a
7 new trial and renew all motions and objections.

8 THE COURT: Okay. Any additional grounds for
9 the new trial other than the prior reference?

10 MR. LEDDY: On my prior objections and motions,
11 Your Honor.

12 THE COURT: The Court stands by its ruling.
13 Motions denied.

14 We will proceed to sentencing as soon as the
15 sheets are filled out, Mr. Leddy.

16 (Pause.)

17 THE COURT: Are you ready to proceed with
18 sentencing?

19 MS. SHIPLEY: May it please the Court? You've
20 heard the facts in this case. You have heard about
21 the maliciousness of the Defendant's actions on the
22 night of February 15th, 2007. This case in my ten
23 years just reeks of malice, Your Honor. Just the
24 total overkill of Mr. Smith in this case. He had
25 already been shot and was no longer moving when the

1 Defendant returns and shoots at him again while he
2 is on the ground.

3 And so I think that the facts speak for
4 themselves as far as the maliciousness in this case.
5 The fact that he had such reckless disregard for
6 everybody else's safety as well, meaning Edwina, and
7 thankfully nobody else got hurt that night.

8 The fact that this happened where it did I
9 think doesn't have anything to do with how the law
10 and sentence should be applied, whether it is in a
11 drug dealing house or on a street in Shandon, like I
12 told the jury, the law should apply equally to
13 everybody for their actions and they should pay the
14 consequences for their actions.

15 Your Honor, the Defendant does have a prior
16 criminal history. 1991, possession of a sawed-off
17 shotgun, carrying a pistol unlawfully, and another
18 second count of possession of a sawed-off shotgun.
19 Those are all from 1992 convictions. 1992,
20 possession of crack. He then in '94 was revoked
21 from parole for the previous sentence of the
22 possession of crack. Then there is a DUS from '95.
23 He got revoked again for the possession of the
24 stolen firearm and got one year concurrent in 1995.
25 1997, he was convicted of strong armed robbery,

1 unlawful carrying of a weapon. In 2001, sale of --
2 possession of a stolen pistol, possession by a -- of
3 a stolen pistol again. Well, one was obliterated --
4 possession of a firearm by a convicted felon and
5 possession of a firearm with obliterated serial
6 number. That is from '01, Your Honor. And got five
7 years for both of those gun charges. And it turns
8 out that that sentence for the common law robbery,
9 strong armed robbery, got revoked five years on
10 probation in 2001. And that was run concurrent with
11 the possession of a pistol by a convicted felon and
12 possession of obliterated serial number.

13 Your Honor, that appears to be the extent of
14 Mr. Robinson's record. Clearly he has been a menace
15 to our society with guns. He's violent. And we
16 would respectfully request that you sentence him to
17 the maximum.

18 Angela Smith, the victim's wife, would like to
19 address the Court at the appropriate time, and also
20 Corey Smith, who is the victim's son.

21 THE COURT: I'm happy to hear from both of
22 them.

23 MS. SHIPLEY: Ms. Smith, Corey, come on down
24 here. State your name for the record.

25 MS. SMITH: Angela Smith. I just wanted the

1 Court to know how this has affected my life. I'm a
2 widow. I'm alone. My friend is gone. My companion
3 is gone. My children granddaddy is gone. They ask
4 about him all the time: I miss my granddad. And I
5 have to deal with that and listen to that for the
6 rest of my life.

7 And I'm also afraid, because someone came, that
8 same night someone came knocking on my door, and I
9 didn't open the door. I don't know who that could
10 have been. So I'm afraid for my life too.

11 MR. SMITH: My name is Corey Smith. I'm Thomas
12 Lee Smith's son.

13 Ever since this incident occurred, my life
14 hasn't been the same. Even those that love me and
15 loved my daddy, I have to witness them break down
16 and cry on and off over these two years. And after
17 this they still want to break down and cry. It hurt
18 me to see my family hurt, and at the same time I'm
19 hurting inside. My three little kids ain't got to
20 know their granddaddy. So I feel he should receive
21 the same thing he took, and that was a life. So I
22 think he should receive life.

23 MS. SHIPLEY: I just want to thank Investigator
24 Kevin Reese for an excellent investigation in this
25 case. And that is all from the State.

1 THE COURT: Thank you. Defense?

2 MR. LEDDY: Thank you, Your Honor. May it
3 please the Court? Your Honor, it has been a
4 privilege and an honor to try this case in front of
5 you this week. I really mean that. And it has been
6 to do a trial with Ms. Shipley and Mr. Rose. It has
7 been a privilege and honor to represent my client,
8 Mr. Robinson.

9 I can't tell you how sorry I am to have ever
10 met him because the only reason is because of this
11 case, Your Honor. But he is so different than what
12 you saw in this case. I really can't tell you how
13 hard it is for me to put the two together. But it
14 has been my privilege to represent him and my
15 privilege to do so with Ms. Davis.

16 And I just want to tell the people who were
17 here to watch, the family of the deceased, that I
18 never -- if I ever offended anybody, or I think it
19 is probably natural to not like me if you are a
20 member of them, but I never intended to offend
21 anybody, and I am very sorry for their loss. And if
22 I did say anything that they took to be untoward
23 during the course of this representing Mr. Robinson,
24 then I apologize for that. Sometimes in this job it
25 is impossible to avoid coming across callous or

1 insensitive, or whatever.

2 But I know that Mr. Robinson has told me on
3 many occasions that he feels bad for everyone,
4 Mr. Smith's family, that they had to endure this.
5 But I don't think I have anything else to say, Your
6 Honor.

7 THE COURT: Mr. Robinson, is there anything
8 that you would like to say to the Court?

9 THE DEFENDANT: I am remorseful about what
10 happened, but I didn't have a choice. Growing up in
11 my neighborhood and in my environment, things like
12 this happen. And when he threatened me with a gun,
13 I felt like my life was threatened. And I took it
14 from there basically. When I went to approach him
15 about the situation, he came at me. It escalated.
16 And I had to do it. I didn't have no choice.

17 How we grew up and how it is in that
18 neighborhood, his family understand how things are.
19 Just like I just apologized to them, I hate I put
20 them through the situation and everything and I hate
21 that he is gone, but either way, it would either
22 have been me deceased and him sitting there or this
23 situation right here.

24 The reason that I felt so threatened by the
25 situation is because of the size of his family and

1 because of the activities of his family. I don't
2 have no large family. So when I feel like my family
3 is threatened, I take it serious. And my
4 grandmother stays in that neighborhood. And for him
5 to threaten me like that and for me to see him with
6 a gun, I took it serious. Because when somebody
7 make a threat like that in this neighborhood, you
8 don't take it lightly.

9 But I again say that I hate that this situation
10 happened and that we couldn't come to agreement. I
11 don't want anyone to think that I'm not affected by
12 taking someone's life, because I am, but I had no
13 choice. That's all I have to say.

14 THE COURT: Anything else on behalf of any of
15 the parties?

16 MS. SHIPLEY: No, ma'am, Your Honor.

17 THE COURT: Let me say on behalf of the Court
18 that I believe that the State as well as the Defense
19 did an outstanding job in the case. The State
20 really put together a good case and the jury has
21 spoken.

22 To the family I apologize for your loss, but
23 there is nothing that I can say that will actually
24 heal that, but I hope that you feel like justice was
25 rendered today.

1 As to you, Mr. Robinson, your attorney has done
2 an outstanding job in representing you. But, again,
3 the jury has spoken with respect to this event. And
4 the Court heard all of the testimony and evidence.
5 And it is now my authority to pronounce sentence at
6 this time.

7 I will give you credit for the time you have
8 served and your counsel can let me know what that
9 is.

10 MR. LEDDY: Just over two years.

11 MS. SHIPLEY: Your Honor, 2/15/07 is the date
12 he was arrested.

13 MR. LEDDY: Over two years.

14 THE COURT: I will run these sentences
15 concurrent. For the crimes of possession of crack
16 cocaine, that will be a time served sentence, as
17 well as the possession of cocaine sentence will be a
18 time served sentence.

19 For the use of firearm during the commission of
20 a violent crime, five years.

21 For the assault and battery with intent to
22 kill, 20 years.

23 And for murder, you will be sentenced to the
24 State Department of Corrections for life
25 imprisonment.

1 Is there any other business?

2 MS. SHIPLEY: Your Honor, I hate to belabor the
3 point, just so that the sentence is proper, my
4 understanding is use of a firearm has to be run
5 consecutive. I'm mistaken, I apologize. But when I
6 was preparing the board for -- I don't want anything
7 to affect the sentence.

8 THE COURT: Well, the way we looked at it was
9 the service of a five year sentence is mandatory
10 unless a longer mandatory minimum term of
11 imprisonment is provided by law for the violent
12 crime.

13 MS. SHIPLEY: Thank you, Your Honor. I just
14 wanted to -- I misread the law. My apologies.

15 THE COURT: That's okay.

16 MS. SHIPLEY: Okay. Thank you, Your Honor.

17 THE COURT: Okay. That should conclude this
18 matter.

19 (WHEREUPON, the trial was concluded.)

20

21 (END OF REQUESTED TRANSCRIPT)

22

23

24

25

1
2
3
4 CERTIFICATE OF REPORTER

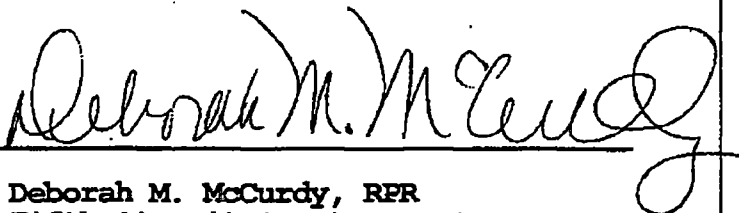
5 STATE OF SOUTH CAROLINA)

6 COUNTY OF RICHLAND)

7
8 I, Deborah M. McCurdy, Official Court Reporter for
9 the fifth Judicial Circuit of the State of South
10 Carolina, do hereby certify that the foregoing is a true,
11 accurate and partial Transcript of Record of the
12 proceedings had and evidence introduced in the trial of
13 the captioned case, relative to appeal, in the Court of
14 General Sessions for Richland County, South Carolina, on
15 the 5TH day of May, 2009.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.

18
19
20 July 10, 2009

21 
22

23 Deborah M. McCurdy, RFR
24 Fifth Circuit Court Reporter
25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)Joel Antwan Robinson #251879)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013C P400 7260

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence S.C. Court of General Sessions / Richland County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder/1st ABIK/20 yrs use of Firearm during Comm. Violent Crime / 5yr
2007-GS 40-2040, 2007-GS 40-2039, 2007-GS 40-2038 All Charges Concurrent
 - (b) 2009-GS 40-1346 - Poss. Cocaine - 2nd Offense / Time Served
 - (c) 2009-GS 40-1345 - Poss. Crack Cocaine - 2nd Offense / Time Served
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Date upon sentencing is Murder/1st ABIK/20 yrs use of Firearm during Comm. Violent Crime / 5yr
3-5-09 + 2007-GS 40-2040, 2007-GS 40-2039, 2007-GS 40-2038 All Sentences Concurrent
 - (b) Date of sentencing 2009-GS 40-1346 - Poss. Cocaine - 2nd Offense / Time Served
3-5-09

Revised 3/2003

- (c) ^{Date of Sentencing} 3-5-2009 2009-G-540-1345 - Poss Crack Cocaine 2nd Offense / Time Served
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. S.C. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. South Carolina Court of Appeals / denied petition for Rehearing May 25, 2012
- ii. S.C. Supreme Court / denied writ of certiorari August 8, 2013
- iii. _____
- (c) the date of each such result:
- i. S.C. Court of Appeals / May 25, 2012
- ii. S.C. Supreme Court / August 8, 2013
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 2012-UP-202 (S.C. Ct. App. Filed 3/21/2012)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) U.S.C.A. Const. Amend. 6 violation effective counsel
- (b) Failure to charge the jury with Voluntary man-slaughter
- (c) U.S.C.A. Const. Amend. 6 - Violation / Appellate Lawyer
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Appellate Counsel failed to properly conduct pre-trial investigation
- (b) Trial Judge erred in ruling that I was not entitled to Voluntary man-slaughter jury charge.
- (c) Appellate Counsel fail to represent My effectively and showed prejudice.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Failure to charge the Jury with Voluntary man-slaughter
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. S.C. Court of Appeals
- ii. S.C. Supreme Court
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) ineffective assistance of counsel / Appellate counsel failed to raise issue.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. T. Micah Laddy 2008 Lincoln Street, Columbia SC 29201
South Carolina Commission on Indigent Defense
- ii. LaVelle Canter DuBant 1330 Lady St. Suite 401 Columbia SC 29201
- iii. Joseph E. Savitz, III 1330 Lady St. Suite 401 Columbia S.C. 29201
- (b) the proceedings at which each such attorney represented you:
- i. trial
- ii. Appeals and Supreme Courts
- iii. Appeals Court
19. State clearly the relief you seek in filing this application:
Sentence relief
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joel A. Robinson 251879

SWORN to and subscribed before me this 4th
day of September, 2013.

Penny G. Minter (L.S.)
Notary Public

My Commission Expires: Feb 28, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joel Antwan Robinson 251879
Applicant

SWORN or affirmed to and subscribed before me this
6th day of December, 2013.

Penny U. Mota
Notary Public

My Commission Expires: Feb 28, 2018

874

Jeanette W. McBride
Clerk of Court Richland County
P.O. Box 2766
Columbia, SC. 29202-2766

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Joel Robinson, #251879,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-7560

RETURN

Respondent, making its Return to the Application for post-conviction relief filed December 16, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the June 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-2040), Use of a Firearm During the Commission of a Violent Crime (2007-GS-40-2038), and Assault and Battery with Intent to Kill (2007-GS-40-2039), as well as during the February 2009 term of the Richland County Grand Jury for Possession of Crack Cocaine – Second Offense (2009-GS-40-1345) and Possession of Cocaine – Second Offense (2009-GS-40-1346). Applicant was represented by T. Micah Leddy, Esquire. On March 3-5, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs, where he was convicted as indicted. Judge Childs sentenced Applicant to life imprisonment for Murder, twenty years for Assault and Battery with Intent to Kill, five years for Use of a Firearm during the Commission of a Violent Crime, and time served for Possession of Cocaine – Second Offense and possession of Crack Cocaine – Second Offense. All sentences were to be served concurrently.

Applicant filed a notice of appeal and an appeal was perfected on his behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by unpublished order filed March 21, 2012. A subsequent Petition for Rehearing was denied. Applicant then petitioned the South Carolina Supreme Court for certiorari, which was denied by the Court on August 8, 2013. The Remittitur was issued on August 15, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully based on allegations of:

1. Ineffective assistance of trial counsel;

"Counsel failed to properly conduct pre-trial investigation."

2. Failure to charge the jury with voluntary manslaughter; and

"Trial judge erred in ruling that I was not intitled [sic] to voluntary manslaughter."

3. Ineffective assistance of appellate counsel.

"Appeal counsel fail to represent my effectively and showed prejudice."

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50.

All amendments should be made well in advance of an evidentiary hearing by counsel of record.
Rule 11, SCRCP.

III.

Applicant has alleged ineffective assistance of counsel as his ground for relief. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant has also alleged that the trial court erred in refusing to charge the jury on the lesser included offense of voluntary manslaughter. This allegation raises a direct appeal issue that is procedurally based by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Applicant also alleges ineffective assistance of appellate counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

VI.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
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March 26, 2014.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF COLUMBIA

CIRCUIT COURT
2013-CP-40-07560

3
4
5 JOEL ROBINSON,
Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 Post-Conviction Relief Hearing

11 Heard on August 25, 2015

12 Columbia, South Carolina

13
14
15 BEFORE:

16 THE HONORABLE TANYA A. GEE

17
18 APPEARANCES:

19 Counsel on Behalf of the Applicant:
Tara D. Shurling, Esq.

20
21 Counsel on Behalf of the Respondent, State of SC:
J. Clayton Mitchell, Esq.

22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29803-5232

EXHIBIT INDEX

(NO EXHIBITS INTRODUCED/IDENTIFIED.)

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1 ON TUESDAY, AUGUST 25, 2016 AT 2:05 p.m.:

2 MR. MITCHELL: Your Honor, if it please the
3 Court.

4 This is Joel Robinson versus State of South
5 Carolina, 2013-CP-40-7560. Mr. Robinson was
6 indicted in June of 2007 for murder, use of a
7 firearm during the commission of a violent crime,
8 and assault and battery with intent to kill. And
9 then indicted again in February of 2009 for
10 possession of crack cocaine, two counts of that,
11 second offense.

12 He was represented on those charges by
13 Micah Leddy and Jennifer Davis. He proceed to
14 trial March 3rd through March 5th, 2009, before
15 Judge Childs where he was convicted as indicted.
16 He was sentenced to life imprisonment on murder,
17 20 years on the ABWIK, five for the firearm
18 charge. They were all to run concurrently.

19 There was a notice of appeal in this case.
20 The issue was whether he was entitled to receive
21 a charge on voluntary manslaughter. The Court of
22 Appeals deemed that he was not and affirmed his
23 conviction.

24 Mr. Robinson filed this application for
25 post-conviction relief on December 16, 2013,

1 where he has raised various aspects of
2 ineffective assistance of counsel. What we're
3 proceeding on today -- actually I'll let
4 Ms. Shurling articulate the allegations. She's a
5 little more familiar with them than I.

6 I note for the record Mr. Robinson is
7 present. And I'll turn it over to Mrs. Shurling
8 at this time.

9 THE COURT: What about the attorneys, the
10 witnesses?

11 MR. MITCHELL: Ms. Davis is here. I'm not
12 sure where Mr. Leddy is.

13 THE COURT: All right. Well, there he is.
14 We were just asking about you and you walked in
15 just on time.

16 MR. LEDDY: Very good.

17 THE COURT: Excellent.

18 MR. LEDDY: Thank you. Should I take the
19 stand?

20 THE COURT: Not yet.

21 MR. MITCHELL: Do Jennifer first since
22 she's not feeling well.

23 MR. LEDDY: Oh, yeah.

24 THE COURT: Ms. Shurling.

25 MR. SHURLING: Thank you, Your Honor.

JENNIFER DAVIS - DIRECT BY SHURLING

1 At this time the Applicant would call
2 Jennifer Davis. Your Honor, with leave of the
3 Court I will summarize the issues that I
4 presently intend to pursue after we get through
5 with Ms. Davis's testimony. I want to try to get
6 her out of here.

7 THE COURT: All right. Thank you. We'll
8 do that.

9 JENNIFER DAVIS, having been duly sworn, was
10 examined and testified as follows:

11 THE BAILIFF: Have a seat. State your name
12 and spell it for me, please.

13 THE WITNESS: Jennifer Davis.

14 DIRECT EXAMINATION.

15 BY MS. SHURLING:

16 Q. Ms. Davis, by whom are you currently employed?

17 A. Richland County Public Defenders Office.

18 Q. And were you employed by the public defenders
19 office back in March 2009 when this case was tried?

20 A. Yes.

21 Q. How long had you been practicing law in March of
22 2009?

23 A. About two and a half years, I think.

24 Q. Okay. And prior to your becoming involved in the
25 case, was there another attorney other than Micah Leddy

JENNIFER DAVIS - DIRECT BY SHURLING

1 that had also had this file before you?

2 A. I think Ms. Kristy Grafton had it initially and
3 then it went to Mr. Leddy, I believe. I'm not sure.

4 Q. Okay. And with regard to the way the public
5 defenders office handles case, isn't it true that when a
6 murder case goes to trial as a matter of policy you
7 generally have at least a couple of lawyers on board for
8 trial, sometimes three?

9 A. Yeah, yes. Usually we have the first chair who
10 that's their case primarily and then they usually choose
11 a second seat, a second person that's going to be on the
12 case with them.

13 Q. And at what point were you brought on board as part
14 of the defense team?

15 A. I do not remember exactly. I want to say it was
16 probably a few weeks out from trial if I remember
17 correctly. But I don't believe I had a whole lot of
18 conversations with Mr. Robinson leading up to trial.

19 Q. Had you visited with him out at Alvin S. Glenn at
20 all?

21 A. I don't recall. I remember meeting with him. I
22 assume it was down at the detention center.

23 Q. Okay. Were you involved in any plea negotiations
24 in this case?

25 A. Not really. By the time I was involved in the case

JENNIFER DAVIS - DIRECT BY SHURLING

1 I believe there had been an offer but it had been revoked
2 or had expired by the time I got involved. I think we
3 tried talking to Ms. Shipley again at some point the week
4 before trial, but the offer was not on the table.

5 Q. And do you today recall what the offer that had
6 been on the table was for?

7 A. If memory serves me correct -- I couldn't find any
8 notes about this, but I thought that there had been an
9 offer of 30 for murder.

10 Q. Okay. And Mr. Robinson had declined to accept
11 that?

12 A. That was my understanding. Again, when I became
13 involved it was a trial and that's what we were getting
14 ready for.

15 Q. And a few weeks out from trial when you became
16 involved, did I understand you to say that there were
17 some renewed discussion with Vanessa Shipley about
18 perhaps reinstating that offer?

19 A. I don't know exactly what conversations took place
20 with Mr. Leddy and Ms. Shipley, but I recall at least one
21 conversation I had with her the week prior, trying to get
22 her to put the offer back on the table or try to get the
23 offer of 30 for murder.

24 Q. And was there any interest on the part of the State
25 for doing so?

JENNIFER DAVIS - DIRECT BY SHURLING

1 A. No.

2 Q. Okay. Were you involved at any point, regardless
3 of where the conversations took place, in discussions
4 with Mr. Robinson about the legal standards involved for
5 getting a judge to allow a jury to consider the lesser-
6 included offense of voluntary manslaughter in a homicide
7 case?

8 A. Not a great deal on that that I can recall. I
9 think a majority of those conversations took place
10 between Mr. Robinson and Mr. Leddy.

11 Q. And that you were involved in personally, were
12 there any discussions with Mr. Robinson concerning the
13 legal standards that would have to be met in order to
14 convince a presiding judge that you were entitled to a
15 jury charge on, say, self-defense?

16 A. Not that I recall. What I recall when I got
17 involved is the defense at trial or what we were shooting
18 for at trial was voluntary manslaughter. I wasn't ever
19 aware of a real attempt of getting a self-defense at
20 trial.

21 Q. Okay. And was there any discussion between you and
22 co-counsel that you can recall about a plan B as it were
23 if you were not to succeed in getting a voluntary
24 manslaughter instruction?

25 A. Not that I recall.

JENNIFER DAVIS - DIRECT BY SHURLING

1 Q. Okay. Was there a witness list that was provided
2 to the defense in advance of the beginning of the trial
3 on March 3rd, 2009?

4 A. I'm sure we would have gotten one that day from the
5 State.

6 Q. Pardon?

7 A. I'm sure we would have gotten one from the State
8 the day the trial started.

9 Q. Okay. And, so it would not have been until that
10 late date that you would have known with any certainty
11 who the State was planning to call or even potentially
12 call as witnesses?

13 A. Not with any certainty other than, you know, our
14 best guess once we're going through the discovery who we
15 assume they're calling but, no, we hadn't seen a witness
16 list prior to that that I recall.

17 Q. Do you have any recollection of either yourself or
18 Mr. Leddy interviewing, for example, any of the law
19 enforcement officers involved in this case yourself prior
20 to trial?

21 A. I certainly did not. I'm not sure about anybody
22 else or prior to my involvement. I believe that there
23 was an investigator on the case prior to me getting on
24 it, Frank Hemming, but I don't know that he spoke to law
25 enforcement.

JENNIFER DAVIS - DIRECT BY SHURLING

1 Q. Okay. When did you become aware that officer,
2 well, actually Sergeant Dutton was not going to be an
3 available witness at the trial in March of 2009?

4 A. I don't recall specifically other than it would
5 have been once the trial started.

6 Q. Okay. Was there a motion for a continuance made in
7 this case?

8 A. I actually don't recall. I don't think so but I
9 don't -- I didn't -- I don't believe so.

10 Q. Once it was discovered during the proceedings, I
11 believe during the Jackson versus Denno and the Neal
12 versus Biggers hearing, that Sergeant Dutton, who was the
13 officer who had first stopped and detained your client,
14 was not going to be brought to court by the State, did
15 you consider at that point or have discussions with your
16 co-counsel the possibility of asking for a recess to
17 enable you to investigate bringing her to court yourself?

18 A. Not that I recall.

19 Q. And between the time that the State finished
20 putting up their case -- and the decision was made
21 sometime prior to that that if the defendant didn't
22 testify you weren't going to put anything up, right?

23 A. Correct.

24 Q. Did you discuss at that point the potential value
25 in finding and securing Sergeant Deluth as a witness for

JENNIFER DAVIS - DIRECT BY SHURLING

1 the defense?

2 A. Sergeant Deluth?

3 Q. Excuse me. Dutton. I keep saying Deluth. I
4 apologize.

5 A. Again, I'm not 100 percent. I don't recall seeing
6 that in the notes from back in 2009. I don't remember
7 that.

8 Q. Okay. Well, and more importantly, way before that,
9 before the Jackson v. Denno and Neal versus Biggers
10 rulings were even made --

11 A. Uh huh.

12 Q. -- was there any discussion that you can recall of
13 asking that the trial be brought to a halt at least long
14 enough, overnight, for you to try to locate her?

15 A. I don't believe so.

16 Q. Okay. Now, the State argued that they should be
17 allowed to introduce under a business records exception
18 the written incident report that had been prepared by
19 Sergeant Dutton contemporaneous or fairly contemporaneous
20 with the stop, correct?

21 A. I don't remember that exactly.

22 Q. Okay.

23 A. Sorry.

24 Q. Do you recall any discussion concerning any motions
25 that you might should be pursuing in terms of keeping the

JENNIFER DAVIS - DIRECT BY SHURLING

1 State from delving into evidence discovered subsequent to
2 that stop based on their failure to use Dutton as a
3 witness?

4 A. I don't believe so.

5 Q. Okay. There was evidence, was there not, that when
6 Mr. Robinson was stopped he was stopped by an officer
7 that supposedly stopped him because he met the
8 description of someone involved with a shooting that was
9 being broadcast, correct?

10 A. Right.

11 Q. Okay. And what was that description; can you
12 recall?

13 A. I do not remember off the top of my head. I tried
14 to go back through and look at general notes.

15 Q. Well if I tell you that the record reflects that
16 the description given was of a bald, light-skinned man,
17 does that sound accurate?

18 A. Yes.

19 Q. Did you at any point consider arguing that stopping
20 someone that met such a broad generic description was
21 insufficient to legally sustain a stop?

22 A. Not that I recall.

23 Q. Okay. Do you recall during the Jackson versus
24 Denno portion, I believe, of the hearing further
25 reference being made to Sergeant Dutton's report saying

JENNIFER DAVIS - DIRECT BY SHURLING

1 that she had called in to ask if there was any report
2 concerning the clothing that was worn by the suspect? Do
3 you remember that?

4 A. Vaguely. Just in rereading, kind of summarizing
5 the transcript.

6 Q. And do you recall her specifically entering in her
7 report that she was told at that time something to the
8 effect of a tan jacket?

9 A. That sounds right.

10 Q. And did you consider arguing at trial that
11 interestingly none of the witness statements that had
12 been provided to you contained any description of the
13 assailant having on a tan jacket?

14 A. Not that I recall.

15 Q. Okay. Again at the time your client was stopped
16 there was evidence the drugs were found on him, correct?

17 A. Right.

18 Q. Okay. Did you consider pursuing an argument that
19 his statement might have been deprived of its voluntary
20 and knowing nature by the fact that he was impaired on
21 illicit drugs at the time he was interviewed by the
22 police?

23 A. I don't recall that specifically but my
24 understanding still is if it's voluntary intoxication
25 that wouldn't have gotten us very far in terms of his

JENNIFER DAVIS - DIRECT BY SHURLING

1 statement.

2 Q. Well, voluntary intoxication would not serve as a
3 defense to the offense, correct?

4 A. Correct.

5 Q. But if he were intoxicated to a degree that he
6 could not enter into a knowing, voluntary and intelligent
7 waiver, that's a different analysis, isn't it?

8 A. Sure.

9 Q. And y'all did not produce Mr. Robinson as a witness
10 during the Jackson v. Denno proceeding, did you?

11 A. Not that I recall. No, ma'am.

12 Q. Okay. Had you discussed with him or had it been
13 discussed with him in your presence whether or not he was
14 in fact using the drugs that were found on him at the
15 time he was interviewed by the police?

16 A. I do not recall that specifically of whether or not
17 that conversation took place or what his answer was
18 regarding that.

19 Q. And, was there any discussion about whether or not
20 Mr. Robinson should be used as a witness in the Jackson
21 versus Denno proceeding?

22 A. I'm sure we would have discussed it. I don't
23 remember the specifics off the top of my head. If we had
24 thought that was necessary we surely would have put him
25 up.

JENNIFER DAVIS - DIRECT BY SHURLING

1 Q. And I apologize. We're going at this backwards.

2 A. I understand.

3 Q. We normally would call you at the end --

4 A. I understand.

5 Q. -- to make sure that your recollection is
6 consistent with lead counsel, but we're trying to get you
7 out of here. So I'm sorry to belabor some of these
8 points.

9 A. I understand.

10 Q. With regard to whether or not -- the answer to this
11 next one is pretty much a given, given your former answer
12 but I have to ask it anyway. Do you recall any
13 discussion with Mr. Robinson in which he was told that he
14 could testify during the Jackson v. Denno proceeding
15 without it counting as presenting evidence that would
16 deprive him of the final argument?

17 A. I don't recall that specifically but that would be,
18 that could have -- I mean, that's a conversation that
19 could have taken place.

20 Q. So, but you agree that's true?

21 A. Right. Absolutely.

22 Q. That he could testify on the limited subject matter
23 of the Jackson v. Denno proceeding and address matters
24 relevant to whether his statement was knowingly,
25 voluntarily, intelligently entered without waiving the

JENNIFER DAVIS - DIRECT BY SHURLING

1 final argument to the jury?

2 A. Correct.

3 Q. Okay. And you have no recollection of that being
4 discussed with him?

5 A. Not specifically, no.

6 Q. Or do you recall any discussions with him at which
7 he was told that the parameters of what the State could
8 ask him in the context of such a hearing would be
9 narrower than if he just got up on the stand during the
10 trial?

11 A. Not that I recall. Again, I'm not saying none of
12 these conversations took place. I just don't have a
13 specific memory myself.

14 Q. That's okay. I'm just trying to cover what you as
15 second seat were aware of and were not aware of.

16 A. Sure.

17 Q. At some point a motion was made on the record to
18 narrow your objection to the in court and pretrial
19 identification of Mr. Smith, Mr. Jeffrey Dean Smith,
20 based on the fact that Sergeant Dutton was not present in
21 the courtroom. Do you recall that?

22 A. Again, just from reviewing the transcript.

23 Q. Okay. If you want to look at page 83 lines 11
24 through 19.

25 A. I'm sorry. That's what I was asking you this

JENNIFER DAVIS - DIRECT BY SHURLING

1 morning if I needed to bring that up here.

2 Q. I'll actually just hand -- (document handed to
3 witness).

4 A. Yeah. This is Mr. Leddy's argument regarding that
5 issue.

6 Q. Right. Okay.

7 Again, you have no recollection of any discussion
8 of moving to suppress everything that followed the stop
9 itself based on the failure of the State to establish the
10 legality of the initial stop?

11 A. I don't recall that.

12 Q. Okay.

13 A. No.

14 Q. Now the record does reflect that there was an
15 actual objection with regard to the identification
16 testimony from Jeffrey Dean Smith, the fact that it was
17 arguably tainted by this planned show-up, correct?

18 A. Right.

19 Q. Okay. Were you surprised that that issue was not
20 argued by appellate counsel on appeal?

21 A. I read the appellate, after it was -- the decision
22 after the fact when we received all of this stuff,
23 but...

24 Q. Okay. Were there any other issues that you can
25 think of that you remembered feeling strong about during

JENNIFER DAVIS - DIRECT BY SHURLING

1 the trial itself that you were surprised were not
2 perfected as appellate issues?

3 A. Not that I recall. I recall, I mean, I remember
4 mostly the voluntary manslaughter charge that Mr. Leddy
5 argued that issue to the judge. I knew that would be a
6 main part of what the appeal was going to be on, but I
7 can't think of anything else more specific off the top of
8 my head.

9 Q. Okay. On page 85, once again this is Mr. Leddy
10 speaking, not you, but I have to ask your knowledge of
11 this.

12 A. Sure.

13 Q. On page 85 you find at lines four and five
14 Mr. Leddy saying, what?

15 A. States: I would ask Your Honor not to consider it
16 and ask that you rule on that issue.

17 Q. Do you know what issue we were talking about at
18 that point? I'm somewhat confused by the record. What
19 issue was the defense asking for a ruling on at that
20 juncture?

21 A. I believe this is in pretrial.

22 Q. Uh-huh.

23 A. In the Jackson-Denno.

24 Q. It is --

25 A. I'm not --

JENNIFER DAVIS - DIRECT BY SHURLING

1 Q. I'll leave that for Mr. Leddy. I just wondered if
2 you specifically knew.

3 When you approached Vanessa Shipley about whether
4 or not the State would put the offer back on the table,
5 at that point --

6 A. Uh-huh.

7 Q. -- had Mr. Robinson told you that he was willing to
8 accept it?

9 A. Not that I recall. I just remember after going
10 through all the evidence, wanting to go back to the State
11 to see if we could get something on the table.

12 Q. Okay. So you did not want to initiate further
13 discussions with your client about taking the offer
14 unless you were certain it was still available?

15 A. Right. I mean, I believe that once I got involved
16 in the case, I remember I had a conversation on the
17 second floor up on the stairs. I ran into her --

18 Q. I understand.

19 A. -- and had that conversation.

20 Q. I just want to make clear. He had not at that
21 point said, you know, I'll take that 30 now. It wasn't
22 that kind of a situation.

23 A. I don't believe so. Again, when I got involved the
24 offer -- my understanding from Mr. Leddy is the offer had
25 existed, that they had communicated that but he did not

JENNIFER DAVIS - CROSS BY MITCHELL

1 want to take that at that point. And then we proceeded
2 on to trial.

3 And then when I had that conversation with
4 Ms. Shipley it was clear that she was not going to put
5 that offer back on the table.

6 Q. Okay.

7 Your Honor, that would be all I would have at this
8 point. I'm sure the State has their own questions.

9 THE COURT: All right. Mr. Mitchell.

10 CROSS-EXAMINATION

11 BY MR. MITCHELL:

12 Q. Good afternoon, Ms. Davis.

13 A. Good afternoon.

14 Q. The defense in the case was that he didn't have
15 requisite malice. Is that about what you recall?

16 A. I think going into the trial the defense was trying
17 to get voluntary manslaughter on the table in the hopes
18 of getting a lesser included.

19 Q. So that's kind of the best case scenario at that
20 point?

21 A. Right.

22 Q. How would you describe the evidence against
23 Mr. Robinson? I mean, the State had a pretty strong
24 case; is that right?

25 A. There were -- there was several witnesses and there

JENNIFER DAVIS - CROSS BY MITCHELL

1 were, unfortunately, statements made by Mr. Robinson that
2 were difficult to overcome.

3 Q. He was identified by multiple people who witnessed,
4 who were eyewitnesses to the murder?

5 A. Right.

6 Q. Okay. Do you recall much about this Officer Dutton
7 not being present pretrial when this issue came up? Do
8 you recall a lot of those discussions?

9 A. I don't really. I apologize for that. I remember,
10 you know, in looking back over the transcript that he
11 {sic} wasn't there and I remember Mr. Leddy I believe was
12 arguing that issue in terms of whether he was required to
13 be there or not but beyond that I don't remember it in
14 great detail.

15 Q. So this came up when the Biggers hearing was going
16 on and also a bit when the Denno hearing was going on.
17 So y'all were challenging the identification and his
18 statements pretrial, correct?

19 A. Right.

20 Q. And those were unsuccessful but they were argued,
21 right?

22 A. Right.

23 Q. So you don't recall if you had discussions
24 specifically with Mr. Robinson over what voluntary
25 manslaughter entailed or the elements, at least advice

JENNIFER DAVIS - CROSS BY MITCHELL

1 concerning that charge?

2 A. I mean, I'm sure there -- like I said, specifically
3 I got involved in this later than I would normally
4 probably in most cases. Now anyway. But I just don't
5 remember specifically what I would have said to
6 Mr. Robinson about that or what detail we talked about
7 it.

8 Q. The strategy behind trying to keep out Jeff Smith's
9 ID was to try to prove that it was a show-up ID. The
10 officers kind of couched it as just a random, like, pass
11 by but then you all kind argued that it was a show-up ID
12 and that's what the purpose was the entire time.

13 Does that match with what your recollection is of
14 that?

15 A. From what I can remember, yeah, I think it was just
16 making the argument that a show-up ID in and of itself is
17 generally more suggestive than if they did a line up and
18 for that reason they should not let it in. And I think
19 that -- I think they made it sound maybe more accidental
20 in terms of how the process came up.

21 Q. Well, it's kind of like he was just driving Jeff
22 Smith to the station where they would go get a statement
23 and he just randomly stopped on the side of the road
24 where the defendant happened to be. And it was y'all's
25 position that it was a planned show-up ID and it should

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1 be viewed under that scrutiny. Is that about right?

2 A. Right.

3 Q. I think those were some of the arguments that you
4 actually did make. Do you recall that?

5 A. Right.

6 Q. Now back to Mr. -- or Mrs. Dutton. I can't quite
7 remember -- Dutton's absence, so that -- you also kind of
8 argued that the search would have been a -- it was not
9 probable cause for the stop, to stop Mr. Robinson walking
10 down the road. And that any evidence collected
11 thereafter should be excluded including the search of his
12 jacket which -- well, they found the weapon used in the
13 crime and then his statements further.

14 Is that -- was that part of the strategy? Trying
15 to keep that stuff out from, you know, since it was fruit
16 of the poisonous tree?

17 A. I honestly don't remember the details of that. I
18 think Mr. Leddy argued that issue at trial.

19 MS. SHURLING: Your Honor, I hate to interrupt.
20 Could I have a page reference to that argument, please?

21 THE COURT: Do you have a page reference,
22 Mr. Mitchell?

23 MR. MITCHELL: To exactly?

24 THE COURT: To whether they argued that
25 there was no probable cause to stop the defendant

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1 and that all the rest was fruit of the poisonous
2 tree.

3 MR. MITCHELL: I think that starts on --
4 well, I think it's probably better handled with
5 Mr. Leddy but the page reference I would start at
6 would be, I think -- let's see. So Ms. Shipley,
7 the solicitor, goes through on page 81, she reads
8 the officer's statement.

9 There was some back and forth on whether
10 that was proper. And I think this is all
11 Mr. Leddy. I think this is probably better for
12 him. But then it's brought up again on, I think
13 145. But I think 81 is where they find out where
14 Mr. Dutton, or Ms. Dutton.

15 THE COURT: Yeah. That's the pretrial
16 where they sort of argued back and forth whether
17 the judge should consider the statement from
18 Dutton but she's not there.

19 MR. MITCHELL: Right. And I think 145 is
20 where this started to kind of flesh this thing
21 out to argue under the sixth amendment, a bit of
22 Crawford, a bit of search and seizure.

23 THE COURT: He's talking about an unlawful
24 stop. If the first stop was unlawful then
25 everything that is found pursuant to it was fruit

1 of the poisonous tree. Okay. That's on 145.

2 MR. MITCHELL: That's all my questions.

3 Thank you.

4 THE COURT: Thank you. Any redirect?

5 REDIRECT EXAMINATION

6 BY MS. SHURLING:

7 Q. Do you recall at any point the defense making a
8 motion to suppress any evidence that followed an illegal
9 stop of Mr. Robinson?

10 A. Again, I don't remember in terms of the beginning
11 when we went through our pretrial list if that was a
12 specific motion that came up. But, like I said, I think
13 Mr. Leddy argued that issue as it arose or he handled
14 that issue in general at trial.

15 Q. And if I might draw your attention to page 144
16 where we were just looking. Mr. Leddy says, I guess
17 we're going to have to subpoena Sergeant Dutton, Your
18 Honor. Do you recall that?

19 A. I recall it in the record, yes.

20 Q. Do you know why you didn't do it?

21 A. I do not.

22 MS. SHURLING: Nothing further from this
23 witness.

24 THE COURT: All right. You may step down.

25 And you may leave, too, if you'd like to leave

1 but you're welcome to stay.

2 THE WITNESS: Thank you.

3 MS. SHURLING: Your Honor, I would ask -- I
4 apologize. I certainly didn't mean to interrupt
5 the bench.

6 Are you going to be in the courthouse for a
7 little while or are you leaving?

8 THE WITNESS: I'm probably leaving.

9 THE COURT: Do you think you might need to
10 recall her?

11 MS. SHURLING: I don't anticipate there
12 being a need for that. However, after
13 Mr. Robinson's testimony and Mr. Leddy's
14 testimony if any issue remains unresolved it
15 would have to be addressed by her testimony.

16 I'm willing to agree, if the State is, that
17 we could handle it by telephone deposition or
18 some other manner so that she doesn't have to
19 stick around. I just can't swear to the fact
20 that I won't need follow-up.

21 THE COURT: All right. Well, I don't think
22 we anticipate any follow-up need, Ms. Davis. You
23 are welcome to go ahead and go. If I need to
24 hold the record open for any reason I will do
25 that. But since we're not anticipating that to

1 be a problem, I know you're not feeling well,
2 there's no reason for you to stick around.

3 THE WITNESS: Thank you.

4 MS. SHURLING: Thank you. In the very
5 unlikely event that were to even become an issue
6 we've got another most of the week of court. We
7 could even try to do it later in the week or
8 something.

9 THE COURT: Absolutely. Thank you.

10 MS. SHURLING: Your Honor, at this point I
11 would call the Applicant, Mr. Robinson, to the
12 stand.

13 THE COURT: All right.

14 And, Ms. Shurling, before you start
15 questioning him, I know you said there were some
16 issues that you wanted to use that Mr. Mitchell
17 had allowed you to amend and that's to be done
18 orally. I'm happy to go ahead and swear him in,
19 have him sit, and then you can go into it.

20 MS. SHURLING: Certainly.

21 JOEL ROBINSON, having been duly sworn, was
22 examined and testified as follows:

23 THE COURT: All right. Ms. Shurling, if
24 you could just summarize for me the issues that
25 are being raised in this PCR.

1 MS. SHURLING: Certainly, Your Honor.

2 I would argue, first, that trial counsel
3 was ineffective for failing to make a motion to
4 suppress the Applicant's statement and any other
5 evidence flowing from his stop by Sergeant Dutton
6 on the ground that the State failed -- by failing
7 to call Sergeant Dutton, failed to meet its
8 burden of proof with regard to the fact that
9 there in fact existed probable cause for the
10 stop.

11 I would further argue that defense counsel
12 was ineffective for failing to explore whether or
13 not the Applicant was under the influence of
14 illegal drugs at the time he was questioned by
15 law enforcement and gave statements, and whether
16 or not his impairment was such that it deprived
17 his ability to make a knowing, voluntary and
18 intelligent waiver of his rights pursuant to
19 Miranda. And we argue, of course, that counsel
20 was ineffective for failing to explore that
21 angle.

22 While I recognize that eventually on page
23 144 and 145 there's some general discussion about
24 the search and the stop being the fruit of the
25 poisonous tree, exploitation of an unlawful stop

1 is -- the verbiage on 145, lines three through
2 five, that at that point -- actually it's lines
3 three through six. At that point we're well into
4 the jury trial.

5 And it would be our position, Your Honor,
6 that once they discovered that Sergeant Dutton
7 was not available as a witness that it would have
8 been incumbent upon the defense to make a proper
9 motion to suppress any evidence flowing from that
10 stop based on the State's failure to produce a
11 critical witness to establish the legality of the
12 stop based on sufficient probable cause.

13 Additionally, Your Honor, we would argue
14 that once it was discovered that the State did
15 not have Sergeant Dutton present that an argument
16 should have been made that they should not be
17 allowed to introduce her reports under the guise
18 of an exception under the business records
19 doctrine where the State had in fact not
20 established that she was an unavailable witness.

21 If you read the record all the State says
22 is that she doesn't work at the city anymore.
23 They make no reference to any efforts that were
24 made to locate her, any efforts to determine if
25 anybody at the city knew what job she took after

1 she left the employment of Columbia City Police
2 Department. Nothing.

3 THE COURT: Can you give me the page
4 reference for that argument from the State
5 regarding her report and the unavailability, and
6 the business record?

7 MS. SHURLING: Yes, ma'am. That's
8 generally being argued from about page 78
9 through -- I think I've got my pages right,
10 pardon me, 78 and going through -- actually it
11 starts earlier, Your Honor. I'm sorry.

12 THE COURT: That's okay.

13 MS. SHURLING: This general argument begins
14 on 73 and goes over, continues still being pretty
15 hotly debated up through page 84 line 11.

16 THE COURT: Okay.

17 MS. SHURLING: And there are some further
18 discussions thereafter. I believe actually a
19 little bit on 85 as well, Your Honor.

20 THE COURT: Any additional?

21 MS. SHURLING: Yes, Your Honor.

22 THE COURT: Sure.

23 MS. SHURLING: Yes, Your Honor.

24 Once the defense discovered that Sergeant
25 Dutton was not being called by the State as a

1 witness, we would submit that defense counsel was
2 ineffective for neglecting to request that the
3 Court allow the defense a brief recess in order
4 to take appropriate measures to try to locate and
5 interview Sergeant Dutton and bring her to court
6 as a witness potentially for the defense.

7 Toward that end we would note that there
8 are parts of the statement that came in that are
9 even arguably somewhat favorable to the position
10 that was being taken by the defense, that being
11 that the show-up was planned and not inadvertent
12 as was being claimed by the prosecution. And
13 toward that end the State may predictably argue
14 that the reports, incidents reports entered by
15 this officer were actually advantageous to the
16 defense.

17 That analysis overlooks the fact that had
18 the argument been made that they could not meet
19 basic probable cause for the initial stop, then
20 we never would have gotten into any discussion
21 about anything that happened after that including
22 the show-up.

23 And that if she were there, if you lost on
24 the probable cause argument you would still have
25 the opportunity to flesh out certain matters.

1 For example, the fact that they read on the
2 record -- and I'm sorry, my flag fell off. I can
3 get Your Honor the cite later, but they read into
4 the record a portion of her statement where she
5 said something to the effect of that she had
6 called in to ask if there had been any
7 description of the clothing, and that they said
8 something about a tan jacket. If you recall that
9 in the argument.

10 And of course defense counsel had she been
11 there would have been in the position to cross-
12 examine her about the fact that the witness
13 statements themselves and indeed their trial
14 testimony that I can recall -- and I may have
15 missed it. If I did, I apologize. But I don't
16 recall any of the witnesses referencing
17 Mr. Robinson having on a tan jacket.

18 And those, so those are the types of things
19 that could have been explored with Sergeant
20 Dutton if she had been there as a witness.

21 I would also note, Your Honor, that the
22 defense had ample opportunity once they
23 discovered that the State was not going to
24 present this witness, the defense had every
25 opportunity as Vanessa Shipley very swiftly

1 argued that the defense had the same subpoena
2 power that she did. And indeed on page 144, I
3 believe it is, Mr. Leddy says, it looks like
4 we're going to have to, you know, subpoena this
5 officer.

6 So, one of our allegations would be that
7 certainly given that gaping hole in the State's
8 case that defense counsel was ineffective for
9 neglecting to subpoena that officer and bring her
10 to court, or at a sheer minimum to have at least
11 taken the opportunity overnight or at a recess to
12 interview her and determine whether she was a
13 potential necessary witness for the defense.

14 I think probably the most significant
15 issue, one of the most significant issues, Your
16 Honor, would be the failure of defense counsel to
17 exercise due diligence in the plea negotiation
18 process.

19 And in making that argument I would note
20 that it's really a two-edge sword and generally
21 only one side of it gets argued. It's our
22 position, number one, that defense counsel may
23 not have exercised due diligence in attempting to
24 get the best possible deal for his client. But
25 on the other side, the argument that the defense

1 would also make is that defense counsel had not
2 spent adequate time explaining to his client,
3 advising his client concerning the legal
4 standards that one must meet in order to convince
5 a circuit court judge to even allow a jury to
6 hear a lesser-included offense. Voluntary
7 manslaughter in this case.

8 That those standards and what was required
9 in terms of proof in order to even be eligible to
10 get that jury instruction were not adequately
11 explained to Mr. Robinson. And the failure of
12 counsel to be certain that his client fully
13 understood that legal standard resulted in the
14 client not accepting the deal that he otherwise
15 would have.

16 Additionally, it is clear from discussion
17 that it also, although it didn't ultimately
18 become an issue at trial, that the client had a
19 firmly-held belief that he was in some manner
20 defending himself. And part of that belief that,
21 that passionate belief that his actions were
22 justified is part of what interfered with the
23 client making a rational choice about a plea
24 offer that had been made.

25 And so it's our position that, likewise,

1 defense counsel did not spend adequate time
2 thoroughly explaining to Mr. Robinson the legal
3 standard for what has to be established, what
4 factors have to be present, what factors can't be
5 present if you want to get a jury instruction on
6 self-defense or to have any prayer of having
7 self-defense even on the table.

8 The record is clear. On page -- I'm sorry,
9 I marked it. I'll find it. But at some point
10 defense counsel makes clear that their whole case
11 was all about, from the beginning, getting
12 voluntary manslaughter. So, our alternate
13 theory -- I mean, our additional allegation would
14 be that defense counsel did not have any plan B.
15 And that they -- a -- an experienced public
16 defender who knows the law with regard to
17 voluntary manslaughter would have or should have
18 known that there was a high degree of probability
19 that they would not get a voluntary manslaughter
20 charge.

21 And that the record indicates there was
22 essentially no plan B for how to try to defend
23 against the allegations raised by the State once
24 Judge Childs declined to give the requested
25 charge on voluntary manslaughter.

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1 I believe that's it, Your Honor, unless of
2 course under the sensitive case, I believe it is,
3 unless the testimony here today gives rise to
4 something that would develop further
5 allegations.

6 I believe that's it.

7 THE COURT: Okay. Thank you. You may now
8 question your witness.

9 MS. SHURLING: Thank you.

10 DIRECT EXAMINATION

11 BY MS. SHURLING:

12 Q. Mr. Robinson, I'm going to speak slowly. I'm going
13 to ask you to speak up. Okay?

14 A. Yes, ma'am.

15 Q. Okay. You can be a little soft spoken. You're a
16 big guy, but you speak softly.

17 A. Yes, ma'am.

18 Q. The nice lady beside you in that pretty turquoise
19 jacket has got to write down every word you say. Okay?

20 A. Yes, ma'am.

21 Q. And it won't do us any good for you to say
22 something if the other lady behind the bench with the
23 black robe on, if Her Honor can't understand you, can't
24 hear you, this is pointless. Okay?

25 A. Yes, ma'am.

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1 Q. I know you think I'm preaching at you but I've had
2 to remind you of that time and again so let's be
3 careful. All right? All right.

4 Have I spent a good bit of time talking with you
5 about your case?

6 A. Yes, ma'am.

7 Q. And when I first went to see you did we go over the
8 events of the night of this shooting and the days leading
9 up to it carefully?

10 A. Yes, ma'am.

11 Q. And did I discuss with you what I thought I
12 perceived as your belief that you were defending
13 yourself?

14 A. Yes, ma'am.

15 Q. And did I talk to you about the difference between
16 kind of a street-sense notion of defending yourself
17 versus what the law looks at as self-defense?

18 A. Yes, ma'am.

19 Q. Broke it down for you, didn't I?

20 A. Yes, ma'am.

21 Q. Did we talk about all the elements that you have to
22 establish in order for the law to say that it's proper
23 for a judge to even let a jury consider self-defense?

24 A. Yes, ma'am.

25 Q. Okay. And then we talked about voluntary

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1 manslaughter, didn't we?

2 A. Yes, ma'am.

3 Q. And what did I tell you about voluntary
4 manslaughter?

5 A. You told me that I had to have some kind of a
6 provocation. I couldn't go to approach the problem like
7 I did.

8 Q. Okay. That's good. That's a start.

9 Did we also discuss the fact that the thing that
10 provoked you, whatever it was, had to be more than just
11 words?

12 A. Yes, ma'am.

13 Q. And did we discuss the fact that the thing that
14 provoked you to the point of it being sufficient legal
15 provocation had to happen close enough to when you did
16 the thing you did to be able to argue legally that one
17 followed the other? In other words, that your actions
18 were the direct consequence of that rage or that
19 passion. We talked about that, didn't we?

20 A. Yes, ma'am.

21 MS. SHURLING: And, Your Honor, I'm leading
22 just a little bit. I told Respondent I would
23 need to do this. If I overstep my bounds, I'm
24 sure Clay will let me know.

25 Q. But it's your position that this all started two

JOEL ROBINSON - DIRECT BY SHURLING

1 days before the shooting, correct?

2 A. Yes, ma'am.

3 Q. And you had in fact had an altercation with Short
4 Dog, the victim, at the residence where he and other
5 people sold drugs, right?

6 A. Yes, ma'am.

7 Q. And you left?

8 A. Right.

9 Q. When's the next time you saw him?

10 A. The next time I saw him was the next day. I took
11 somebody else down there. Well, actually Stephen
12 Goings. I took him down there. He rode down there with
13 me.

14 And when I pulled in I seen him leaning up against
15 the wall. The area where we was in didn't have nothing
16 but one light in the center. So it had dark spots. So
17 when I parked up beside the house -- when I pulled up
18 beside the house I looked over against the wall. He was
19 leaning up against the wall. And I looked down at his
20 hand and I just seen, you know, a long pistol.

21 So, I got out.

22 Q. Okay. Now, let's go back for a minute. You said a
23 pistol and you did your hands like that (indicating).

24 A. Yeah. It was long. I actually seen the gun
25 before. It wasn't his gun. It was somebody else's gun.

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1 Q. Okay. What kind of gun was it?

2 A. A .50 caliber, a High Point, one of the old ones, a
3 .50 caliber.

4 Q. Bigger than a .357?

5 A. Yes, ma'am.

6 Q. Okay. I just wanted to make sure you weren't
7 telling us a fish story when you put your hands out
8 there. You saw that big a gun that he had?

9 A. Yes, ma'am.

10 Q. Okay. Did you talk to him at that time?

11 A. I told him, I told him not, you know what I'm
12 saying, to approach me with that gun. You know, at that
13 particular time I was armed also. And my hand was on, on
14 the gun in my pocket.

15 Q. Okay.

16 A. You know, and I just, I was giving a warning, don't
17 approach me with that gun.

18 Q. Did you have words with him about the subject of
19 your original altercation the previous day?

20 A. No, ma'am. Just, like, I -- we went over and over
21 again. I don't know why he had a problem with me. I've
22 never done anything to him. This neighborhood that this
23 happened at I grew up there, I went to school. I've
24 never had no problem with him.

25 Q. Okay. So let's -- so you have an argument with him

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1 the day before?

2 A. Yes, ma'am.

3 Q. And after that argument you see him the next day,
4 he's armed, you're armed. You basically say, you stay
5 away from me, I'm staying away from you or words to that
6 effect, right?

7 A. Yes, ma'am.

8 Q. What happened next?

9 A. He -- Stephen Goings got between us. And he told
10 Short he was, like, man go ahead, man, the man's not
11 bothering you. Go ahead. So he walked, but as he was
12 walking he was steady saying little things. But my main
13 concern was him not raising that gun at me and no, no
14 motion. So he went on in the trailer. We went on into
15 the house where we was going.

16 Q. Okay. And, with regard to Short Dog, what is the
17 next -- lawyers love the word relevant. What is the next
18 thing that happened that had to do with your beef with
19 Short Dog?

20 A. At this particular time I had a room at the Corner
21 Motel which is on North Main which is right up the street
22 from where the incident happened and people were coming to
23 the room. They kept telling me, man, watch out. He's
24 speaking about what he's going to do and that he's going
25 to get you the next time that he see you. You know, they

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1 just kept coming.

2 And, it really just kept -- I kept processing. I
3 kept going over in my mind what to do about the
4 situation.

5 Q. Okay. Let me interrupt you there. When you say
6 people kept coming, can you give us an estimate? How
7 many people told you that Short Dog was saying he was
8 going to get you?

9 MR. MITCHELL: Objection. Calls for
10 hearsay.

11 MS. SHURLING: I didn't ask -- okay.

12 Q. How many individuals relayed information to you
13 concerning Short Dog?

14 MR. MITCHELL: Objection. Calls for
15 hearsay.

16 MS. SHURLING: I'm not asking for the
17 content of their statements. I'm asking how many
18 people approached him concerning that topic.

19 THE COURT: But you're asking -- I agree.
20 Sustained. Try to ask it in a different way.
21 How many people did he see that night.

22 BY MS. SHURLING:

23 Q. How many people -- well, actually it was the
24 following morning, correct?

25 A. Yes, ma'am.

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1 Q. How many people did you see that morning?

2 A. I saw at least five people.

3 Q. Okay. At that point did you become afraid?

4 A. Yes, ma'am. Cautious.

5 Q. Okay. Well, when did you go from cautious to

6 feeling the need to go confront Short Dog?

7 A. Like I told you, I was under the influence of

8 drugs. And I just, I couldn't -- it's, like, I almost

9 let it go. And I couldn't figure out what I needed to do

10 about, about the situation.

11 I decided not to go back down there, okay. Now

12 this is a day before the incident. The next day the same

13 person that I took down there the previous times called

14 me and asked me to take them back down there. I told him

15 I didn't want to go. He -- I allowed him to persuade me

16 to take him down there. And when I got down there I

17 just, it was, like, I'm going to go and talk to him about

18 the situation while I'm down here.

19 Q. Let me stop you for a moment. You have

20 acknowledged that you were doing drugs?

21 A. Yes, ma'am.

22 Q. Can you share with us what drugs were doing?

23 A. Ecstasy pills, powder cocaine, and crack, alcohol.

24 Q. And how do those drugs affect you?

25 A. Well, the ecstasy pills make you -- it's, like, a

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1 euphoric feeling, you know what I'm saying. It either
2 makes you happy, intensify the fun that you're having or
3 it's going to intensify your temper.

4 Q. Okay. And powder cocaine?

5 A. It's just an amp, just an amp.

6 Q. Jacks you up?

7 A. Yes, ma'am.

8 Q. Does it make you hyper?

9 A. Yes, ma'am. Fidgety.

10 Q. What was the third drug?

11 A. Crack.

12 Q. Okay. Crack is just a different form of cocaine?

13 A. Right.

14 Q. Do any of those drugs have a tendency to make you
15 feel paranoid?

16 A. Yes, ma'am.

17 Q. A long story short that Her Honor will already know
18 from reading the transcript is you go in the residence
19 and you carry a gun with you when you go.

20 A. Yes, ma'am.

21 Q. Now why did you carry a gun with you?

22 A. Because I already -- the last time that I seen him
23 he had a gun. The other residents, the people that live
24 around there carry guns. They all family or in some kind
25 of way tied in with each other. I knew going down there

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1 and talking to him by myself I was going to be basically
2 be by myself. But, I made the wrong decision in deciding
3 to go try to talk to him.

4 Q. Okay. Now, Mr. Robinson, to be fair, you're
5 talking about all them toting guns, you were carrying one
6 as well, correct?

7 A. Yes, ma'am.

8 Q. All right. And you decided to go talk to him,
9 what, man to man, what's your beef with me, let's work
10 this out?

11 A. Yes, ma'am. Trying to, to come to an understanding
12 of what was going on because I really didn't know what
13 the problem was.

14 Q. Okay.

15 A. You know what I'm saying. And my grandmother lives
16 in this -- well, lived in this neighborhood. She's
17 passed now, but lived in this neighborhood. My man thing
18 that was, was bothering me was I'm in the yard cutting
19 the grass or raking her yard or doing anything around the
20 yard that she has me doing and somebody riding by
21 shooting at me and hitting one of my kids or somebody, my
22 grand mama, my uncle or somebody in the house. That was
23 what was going through my mind.

24 Q. So your concern was that you weren't going to feel
25 safe until you worked it out with this guy?

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1 A. Yes, ma'am.

2 Q. All right. That's essentially the same story you
3 told me every time we've met, right?

4 A. Yes, ma'am.

5 Q. Now, isn't it true that I explained to you that
6 even though you might think it just isn't fair, it isn't
7 right, it isn't whatever, that legally if you go to the
8 trouble you're not without fault in bringing about the
9 difficulty, right?

10 A. Yes.

11 Q. You understand that now, right?

12 A. Yes, ma'am.

13 Q. Okay. And, that when you walked in somebody else's
14 house with a gun on you that was out and visible that it
15 was going to make it impossible for you to argue that you
16 were defending yourself because he lunged at you?

17 A. Yes, ma'am.

18 Q. That the law was going to say that when he lunged
19 at you he had every right to do so because you were in
20 his house with-- you had come in his house with a gun
21 out, right?

22 A. Yes, ma'am.

23 Q. You understand that now, don't you?

24 A. Yes, ma'am.

25 Q. Okay. We've also spent a lot of time discussing

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1 sudden heat of passion, sufficient legal provocation,
2 right?

3 A. Yes, ma'am.

4 Q. All these things that built up in your mind over
5 this three-day period of time, you and I discussed the
6 fact that the law would call that what?

7 A. Premeditated.

8 Q. And, well, remember an expression we called about a
9 cooling-off period?

10 A. A cooling off. Yes, ma'am.

11 Q. This was not a situation where you killed him
12 suddenly in the midst of an altercation with him in which
13 you were angry over some action that would be sufficient
14 legal provocation.

15 A. Yes, ma'am.

16 Q. Back when your case was not going to trial yet but
17 going to be soon and your lawyers were talking with you
18 about a plea bargain, what is the only plea bargain you
19 recall them ever bringing to you?

20 A. Thirty years day for day for murder.

21 Q. Okay. And it was your understanding that the
22 sentence, the possible sentence for murder was 30 to
23 what?

24 A. To life.

25 Q. To life?

JOEL ROBINSON - DIRECT BY SHURLING

1 A. Yes, ma'am.

2 Q. And you understood -- you just said the magic
3 words. Day for day. You understood that any sentence
4 you got for murder was going to be day for day?

5 A. Yes, ma'am.

6 Q. Versus if you could get voluntary manslaughter it
7 would not be, right?

8 A. Yes, ma'am.

9 Q. Did you understand the legal principles of self-
10 defense and the lesser-included offense of voluntary
11 manslaughter back then the way you do now after all your
12 meetings with me?

13 A. No, ma'am. No, ma'am.

14 Q. If you had understood what the legal hurdles would
15 be to standing any prayer's chance of succeeding on an
16 argument of self-defense or voluntary manslaughter, if
17 you had understood that then the way you understand it
18 now, would you have taken that deal for 30 years for
19 murder?

20 A. Yes, ma'am.

21 Q. And don't get me wrong, nobody wants to go to
22 prison for 30 years. But if you had known what you were
23 really up against, would you have taken that deal?

24 A. Yes, ma'am.

25 Q. No question in your mind?

JOEL ROBINSON - DIRECT BY SHURLING

1 A. No question.

2 Q. Was there any discussion between your attorneys and
3 you about the drugs you were taking at the time you were
4 arrested?

5 A. Yes, ma'am. Just like you said, initially Kristy
6 Grafton was my lawyer. And we did discuss everything
7 that had taken place and the drugs that I had used. And
8 I do know that she had documented everything and, I
9 guess, you know, put it in my file.

10 Q. Well, let me ask you this. When you were arrested,
11 how long after that did you first get a lawyer?

12 A. I was in the county when I got a lawyer.

13 Q. Okay.

14 A. So.

15 Q. How long had you been there before you first saw a
16 lawyer?

17 A. I know it was at least a month.

18 Q. Okay.

19 A. At least a month. I don't want to say the wrong
20 time.

21 Q. Well, and in that month had anybody taken a blood
22 sample from you?

23 A. No, ma'am.

24 Q. Was your hair about as short then as it is now?

25 A. Yeah. Maybe, maybe, maybe not as short because not

JOEL ROBINSON - DIRECT BY SHURLING

1 being able to shave.

2 Q. Okay. But -- and I'm not trying to be mean here,
3 but your hair wasn't at any point during that time period
4 long enough for them to get a hair test, was it? Did you
5 have any length to your hair?

6 A. No -- not -- no.

7 Q. Okay. Was there ever any discussion between you
8 and your defense attorneys about trying to get some kind
9 of test done to show what kind of drugs you'd been using?

10 A. No, ma'am.

11 Q. But you told your defense lawyers?

12 A. Yes. Well, I told Kristy. I did tell Kristy.

13 Q. Okay. And did you tell -- at a later date in your
14 discussions with Mr. Micah Leddy, did you tell him about
15 the drugs you were taking?

16 A. I can't recall. I'm pretty sure that I did because
17 I did go into detail about what happened, the situation
18 and everything, just like I did with her, when he first
19 took on the case.

20 Q. And did you ever have any discussions with him
21 about the possibility of trying to keep your statement
22 out based on a claim that you were so impaired by the use
23 of drugs that you could not --

24 A. No, ma'am. We never discussed, we never discussed
25 that.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Okay. At the time you were interviewed by the
2 police, were you under the influence of these
3 medications, these drugs?

4 A. Yes, ma'am.

5 Q. Okay. Now, you wrote a statement for law
6 enforcement, didn't you?

7 A. Yes, ma'am.

8 Q. A short one. In your own handwriting?

9 A. Yes, ma'am.

10 Q. Right. And thereafter they recorded a long
11 statement, question-and-answer session with you, right?

12 A. Yes, ma'am.

13 Q. Okay. Did you feel like you knew what you were
14 doing when you were answering those questions?

15 A. No, ma'am, because I didn't even know that I had
16 shot Ms. Brown until, until he told me. I hadn't even
17 realized that I had shot.

18 Q. A moment's indulgence, Your Honor. Something's
19 gotten shifted out of my folder. One second.

20 (Pause.)

21 After your little short statement that you wrote
22 and you had this long question-and-answer session with
23 the detective that was taking your statement; do you
24 recall that?

25 A. Yes, ma'am.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Were you ever asked to read a transcript of that
2 question-and-answer session that had been made by the
3 State?

4 A. No, ma'am.

5 Q. Have you ever even seen this?

6 A. No, ma'am.

7 Q. Okay. Then it goes without saying, but I need to
8 ask just so the record is clear, throughout this there
9 are little handwritten notations. Is that your
10 handwriting?

11 A. No, ma'am.

12 Q. Okay. So you're not the one that listened to the
13 audiotape and went back and edited this. That's not your
14 handwriting?

15 A. No, ma'am.

16 Q. And you never saw this before?

17 A. No, ma'am.

18 Q. Okay. Can I ask you to identify this?

19 A. Yes, ma'am.

20 Q. Is that your statement?

21 A. Yes, ma'am.

22 Q. Okay. It looks like at least, you know, a good
23 five pages of it are in question-and-answer format then,
24 right?

25 A. Yes, ma'am.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Okay. And at some point they stopped and just did
2 a recording?

3 A. No, ma'am.

4 Q. Is that right?

5 A. No, ma'am. The recording was going on the whole
6 time.

7 Q. Okay. So you don't know why the transcript of the
8 recording is 17 pages single-spaced typed, and your
9 statement is five pages handwritten?

10 A. No, ma'am..

11 Q. Okay. When you were stopped by -- I'm going to get
12 her name right if it kills me -- Dutton, Sergeant Dutton,
13 why did she tell you she was stopping you?

14 MR. MITCHELL: Objection. Hearsay.

15 THE COURT: Sustained.

16 BY MS. SHURLING:

17 Q. When you were stopped on the night of your arrest,
18 were you told why you were being detained?

19 A. No, ma'am.

20 Q. You were given no explanation?

21 A. Not initially.

22 Q. Not initially. Okay. Was there a time while you
23 were stopped on the side of the road before you got to
24 the police department that you became aware that someone
25 was being driven by and looking at you?

JOEL ROBINSON - DIRECT BY SHURLING

1 A. I caught a glimpse as the car was passing and he
2 was sitting in the window and he was pointing.

3 Q. Okay.

4 A. I didn't know, I didn't know who it was or anything
5 of that nature. But I did see somebody ride by and I
6 seen somebody in the back pointing.

7 Q. Okay. Had you already been arrested before that or
8 were you arrested after that?

9 A. That, that was -- they were getting me, patting me
10 down and stuff to put me in the car. I was standing
11 outside. I was standing up outside the car.

12 Q. Okay.

13 A. So actually they had pulled me back out of Sergeant
14 Dutton's car because she put me in the car. I still had
15 the pistol in my pocket when she put me in the car. She
16 immediately put me in the car and then when the other
17 officers came they took me back out and conducted a
18 search and found the gun. And while I was standing there
19 I did see somebody pointing, you know, when they rode by.

20 Q. Okay. And at what point in that scenario were you
21 told you're under arrest?

22 A. Really after that, after that, after that they
23 patted me down and I did say to the officer that I
24 shot -- to the officer that was -- not Ms. Dutton but the
25 officer that found the gun, I did tell him that I shot

JOEL ROBINSON - DIRECT BY SHURLING

1 him.

2 Q. Okay. So you didn't volunteer that little piece of
3 information when you were just initially stopped by
4 Sergeant Dutton?

5 A. No, ma'am.

6 Q. It wasn't until after you'd been detained for a
7 while?

8 A. Yes, ma'am.

9 Q. Not until after you had seen them, somebody driving
10 by pointing you out?

11 A. (No audible response.)

12 Q. Okay.

13 Your Honor, I believe that the remainder of the
14 issues that I have raised are actually legal in nature
15 and do not require any further testimony from the
16 Applicant.

17 I just would reiterate that, the last thing --
18 that, had you had a full understanding of the law as it
19 relates to voluntary manslaughter and/or self-defense,
20 let's say, and -- would you have accepted the State's
21 offer of a 30-year sentence for murder?

22 A. Yes, ma'am.

23 MS. SHURLING: Please answer truthfully any
24 questions Respondent's counsel asks you, please.

25 THE APPLICANT: Yes, ma'am.

JOEL ROBINSON - DIRECT BY SHURLING

1 MS. SHURLING: Your Honor, before he
2 starts, I apologize. There was one question that
3 I neglected to ask. I'll be happy to just do it
4 on reply if counsel doesn't mind.

5 THE COURT: Why don't you go ahead and ask
6 it just in case counsel wants to address it
7 himself.

8 MS. SHURLING: Sure. I apologize,
9 Mr. Mitchell.

10 BY MS. SHURLING:

11 Q. Do you remember the first part of the trial when
12 they were doing the pretrial motion hearings?

13 A. Yes, ma'am.

14 Q. Okay. Did you have any discussions with your
15 lawyers about the fact that you could testify during
16 those hearings and it not mess up your right to not
17 testify during the main trial?

18 A. No, ma'am.

19 Q. Did you have any discussion with them about the
20 fact that if you testified during those hearings it
21 wouldn't affect your ability to claim the right to the
22 last argument to the jury if you ultimately decided not
23 to introduce any other evidence?

24 A. No, ma'am.

25 Q. If you had known that, would you have wanted to

JOEL ROBINSON - DIRECT BY SHURLING

1 testify during the hearing on your statement?

2 A. Yes, ma'am.

3 MS. SHURLING: Thank you. All right. I
4 apologize, Your Honor.

5 THE COURT: That's all right. Please
6 answer any questions from Mr. Mitchell.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q. All right. Mr. Robinson, good afternoon.

10 A. Good afternoon.

11 Q. Let's see here. So, I mean, you still kind of --
12 you still agree with the statements that you gave to the
13 investigators when you were arrested. You don't deny the
14 shooting or any of that, right?

15 A. No, sir. I agree with it.

16 Q. Now when you, when you -- the first statement you
17 gave when it was to one of the officers when you were
18 just about to be arrested when you said, you know, yeah,
19 I shot him, I did it. I mean, your testimony today was
20 that you were on drugs at that point?

21 A. Yes, sir.

22 Q. So, you still understood what was going on. I
23 mean, you knew you were being stopped by police, right?

24 A. Yeah. I knew I was being stopped by the police.

25 Q. And you knew what this was regarding?

JOEL ROBINSON - DIRECT BY SHURLING

1 A. Yeah.

2 Q. I mean, you knew you had the gun on you from the
3 murder, right?

4 A. Yeah.

5 Q. So, you know, you just kind of blurted that out
6 too. It wasn't -- you weren't having discussions about
7 the case. He wasn't asking you questions about --

8 A. No, sir.

9 Q. -- where you were before --

10 A. No, sir.

11 Q. -- or anything like that?

12 A. No, sir.

13 Q. And this was the officer that, I think he knew some
14 of your relatives or something like that; is that right?

15 A. No. That's not him.

16 Q. That's a different one?

17 A. Reese? Reese?

18 Q. That's right. That's right.

19 So you understood that you were being arrested
20 likely for this murder and that they were going to find
21 that gun in your pocket at that point, right?

22 A. Yes, sir.

23 Q. Now you testified about the plea offer. You had a
24 plea for 30 years, right?

25 A. Yes, sir.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. And you rejected that pretrial, right?

2 And then the State said, well, we're going to go forward
3 with the trial since you don't want to plead guilty to
4 the offer, right?

5 A. Right.

6 Q. Now, Mr. Leddy, he discussed with you what your
7 defenses would be at the trial?

8 A. Yeah. We discussed what the defenses was going to
9 be.

10 Q. Did you talk about -- you talked a little bit about
11 voluntary as opposed to murder?

12 A. Right.

13 Q. And you knew you were kind of shooting for the
14 voluntary?

15 A. Right.

16 Q. And that was because you didn't have the requisite
17 malice. I know there's a lot in the transcript about
18 malice, right?

19 A. Right.

20 Q. So you were kind of shooting for a voluntary
21 conviction to show that, you know, there were some other
22 things going on and you just rammed in, going into this
23 trailer, right?

24 A. That was the whole thing.

25 Q. And you had some prior altercations with this guy

JOEL ROBINSON - DIRECT BY SHURLING

1 and you felt like if you didn't do something, something
2 was going to happen to you?

3 A. Yes, sir.

4 Q. And you were pretty consistent over that, right?

5 A. Yes, sir.

6 Q. So, I mean, that was the theory. And that's what
7 you told Mr. Leddy going into trial and that's how you
8 framed the defense of the case; is that right?

9 A. Yeah.

10 Q. Is that about right?

11 A. Yes, sir.

12 Q. Did you talk about self-defense at all?

13 A. Not, not really self-defense. It was working on
14 the voluntary.

15 Q. The voluntary. Okay.

16 Now, he discussed with you that the problems in
17 maybe getting a voluntary conviction as opposed to murder
18 since you walked in there with a gun in your hand. Did
19 you discuss that a little bit?

20 A. No. We didn't discuss the reasons why that would
21 be hard for me to get that.

22 Q. Okay. But you were aware that's what you were
23 trying for, you just weren't real aware of how likely it
24 would be to get it?

25 A. Yes, sir.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Okay. I think you talked about sufficient
2 provocation and passion. Was that discussed with -- did
3 Mr. Leddy discuss that with you?

4 A. It seemed like I recall talking about the heat of
5 passion.

6 Q. Okay. And then there was the argument made you
7 went in there with the safety on, you weren't in there to
8 just come out shooting right away, right?

9 A. Right.

10 Q. Your story -- your statements were he charged you
11 and you felt like, you know, you were in trouble at that
12 point so you had to shoot him, right?

13 A. Right. Actually her first because we were already
14 struggling over the gun, and I didn't start shooting
15 until she reached, you know what I'm saying, for the gun.

16 Q. Now when you were stopped initially, was it Officer
17 Dutton and then two other officers; is that correct?

18 A. No.

19 Q. Well, it was eventually two other officers, right?

20 A. Right.

21 Q. Dutton was the first one there?

22 A. Yes, sir.

23 Q. The two other guys pretty close behind her; is that
24 right? It wasn't 20 minutes or anything.

25 A. No, it wasn't no 20 minutes or anything like that.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Do you think it was less than five?

2 A. Well, I'd say at least, at least 10 minutes
3 though. Because she -- when she stopped me she got out
4 and she was, like, place your hands on the car. And I
5 did. And she handcuffed me and put me in the car. I was
6 sitting there for, you know, I don't know how long but
7 I'd say about 10 minutes before the other officers came.

8 Q. She never patted you down since she never found
9 that gun, right?

10 A. No, sir.

11 MR. MITCHELL: One moment, Your Honor.

12 (Pause.)

13 MR. MITCHELL: All right. No further
14 questions. Thank you.

15 THE COURT: All right. Any redirect?

16 REDIRECT EXAMINATION

17 BY MS. SHURLING:

18 Q. Follow up on a couple of things the State asked.

19 Based on your discussions with your defense
20 counsel, did you understand that the jury would not
21 automatically get to even hear about voluntary
22 manslaughter?

23 A. No, ma'am.

24 Q. Did you understand that before voluntary
25 manslaughter could ever even become a possibility at your

JOEL ROBINSON - DIRECT BY SHURLING

1 trial that the judge would have to rule that you had,
2 that evidence had been presented at the trial that
3 justified such an instruction?

4 A. No, ma'am.

5 Q. So is it fair to say that when you went into your
6 trial you thought the jury was automatically going to
7 consider voluntary manslaughter and it was just a
8 question of whether or not you could make them believe
9 that's what happened?

10 A. Yes, ma'am.

11 Q. So you didn't understand that there was a, kind of
12 a --

13 A. Hearing before a hearing.

14 Q. -- bridge you had to cross first?

15 A. Yes, ma'am.

16 Q. That the judge had to even, had to first say
17 whether or not you got to even ask the jury to consider
18 voluntary?

19 A. Yes, ma'am.

20 Q. If you had known that prior to rejecting the
21 State's plea offer, would that have made a difference?

22 A. Yes, ma'am. That would have made a huge
23 difference.

24 Q. Okay. And would that coupled with the level of
25 knowledge that you have after discussions with me, again,

JOEL ROBINSON - DIRECT BY SHURLING

1 would that have changed your position on accepting the
2 plea offer that was made to you?

3 A. Yes, ma'am.

4 Q. And would you have taken that offer had you
5 understood that?

6 A. Yes, ma'am.

7 Q. And, once again, you were stopped by Officer
8 Dutton?

9 A. Yes, ma'am.

10 Q. Sergeant Dutton. I don't mean to sound
11 disrespectful. I just forget everybody's rank. I'm
12 sorry.

13 And you were handcuffed and put in her patrol car?

14 A. Yes, ma'am.

15 Q. And as of the time you were handcuffed and put in
16 the patrol car, you did not -- you knew what had happened
17 earlier, there's no question about that. But you didn't
18 have any idea why she was stopping you, handcuffing you
19 and putting you in the patrol car?

20 A. No, ma'am.

21 Q. Okay. Now, we talked about the anxiety level that
22 came into play as a result of the drugs you were on and
23 that might have affected you later giving a statement
24 with law enforcement.

25 A. Yes, ma'am.

JOEL ROBINSON - DIRECT BY SHURLING

1 Q. Was that also playing on your mind when you were
2 sitting in the back of that patrol car?

3 A. Yes, ma'am.

4 Q. Okay. And at the time she cuffed you and put you
5 in the patrol car, you still had a gun in your pocket?

6 A. Yes, ma'am.

7 Q. Did that make you think she knew anything about the
8 homicide?

9 A. No, ma'am.

10 Q. Okay. And when's the first time you were given
11 your Miranda warnings?

12 A. After they came back and took me back out the car,
13 I was kind of distraught, and I did make the statement,
14 the comment, I was, like, I shot him, you know what I'm
15 saying. And the officer was, like, what did you say.
16 And that's when I was, like, trying to just say -- I was
17 distraught. So when he said, what did you say, that's
18 when Investigator Reese came up and told me not to say
19 anything else and he read me my Miranda rights.

20 Q. Okay. Isn't it true that the first officer tried
21 to read you your Miranda warnings at the scene and
22 Investigator Reese stopped him?

23 A. Yes, ma'am.

24 Q. And did not subsequently read your rights to you in
25 full until you got to the station, right?

1 A. Yes, ma'am.

2 MS. SHURLING: No further questions.

3 THE COURT: All right. You may step down.

4 And we have been going for about an hour
5 and a half so we're going to take a short break.
6 We'll take about a 10-minute break and then we'll
7 get back on the record.

8 (Break taken at 3:29 p.m. At 3:43 p.m.,
9 the hearing continued:)

10 MS. SHURLING: Your Honor, I believe that
11 will be all the witnesses for the Applicant
12 assuming as I believe I'm correct in saying that
13 the State will then be calling Mr. Leddy; is that
14 correct?

15 THE COURT: Okay.

16 MS. SHURLING: Thank you.

17 THE COURT: Very good. Mr. Mitchell.

18 MR. MITCHELL: Your Honor, the State calls
19 Micah Leddy.

20 MICAH LEDDY, having been duly sworn, was
21 examined and testified as follows:

22 THE BAILIFF: State your name spell it for
23 me, please.

24 THE WITNESS: M-I-C-A-H L-E-D-D-Y.
25

MICAH LEDDY - DIRECT BY MITCHELL

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. Good afternoon, Mr. Leddy.

A. Hello.

Q. Thanks for being with us today. Where do you currently practice law?

A. Self-employed out of the Leddy Law Firm.

Q. What was your experience before you were in private practice?

A. I was a Richland County Public Defender.

Q. Is that how you became involved in Mr. Robinson's case?

A. Yes.

Q. How long were you at the public defenders office?

A. About two and a half years.

Q. So you were appointed to represent Mr. Robinson around, what, 2008, I guess?

A. The end of 2008 I think.

Q. In your initial meetings with him, did you discuss the charges that he had pending against him? Did you discuss what, I guess, the elements of those charges, what the State would have to prove?

A. Yes.

Q. Did those discussions entail anything about voluntary manslaughter?

MICAH LEDDY - DIRECT BY MITCHELL

1 A. Yes.

2 Q. Can you elaborate a little bit? Was he advised
3 that there was a chance he could get voluntary
4 manslaughter convictions? Was he advised --

5 A. Well, I would say that I don't have, I don't
6 personally recall a lot about this case being that it was
7 six years ago. But what I do remember is that our
8 defense was hoping to get the lesser-included offense of
9 voluntary manslaughter on the basis of the jury finding
10 no malice which would also have helped us on the assault
11 and battery with intent to kill and gotten, hopefully, a
12 lesser-included offense on that charge as well.

13 As I recall he was charged with murder and assault
14 and battery with intent to kill.

15 Q. Did y'all discuss self-defense at all?

16 A. I don't remember thinking that we could get a
17 straight self-defense. I think that I had done research
18 into the possibility of raising an imperfect self-
19 defense. I know that I did research into that when I was
20 a public defender.

21 So, I don't know if I, if I discussed it with him.
22 And I don't specifically recall having done so. But,
23 again, that would have been an effort to negate the
24 malice element so that we could try to get the lesser-
25 included offense.

MICAH LEDDY - DIRECT BY MITCHELL

1 But that defense is not recognized in South
2 Carolina. And my recollection was that it had not been
3 explicitly rejected but that just that, I think the
4 courts have said that they don't recognize it in dicta
5 but I could be wrong about that because I haven't had to
6 look at that in a long time.

7 Q. One of his allegations was that he wasn't properly
8 advised on the plea offer of 30 years to murder. Do you
9 recall -- well, how did your plea negotiations go? Were
10 you trying to talk them down at all? Was there any
11 movement back and forth on that?

12 A. I just remember the solicitor, Ms. Vanessa Shipley
13 just saying no, no voluntary manslaughter, he can plead
14 to murder, no plea offers.

15 That's all I remember. I take Joel's word that we
16 talked about an offer for 30. But I don't even remember
17 that being an offer.

18 Kristy Grafton had this case before me and she may
19 have actually had more plea negotiation discussions than
20 I did. From my memory, I always remembered this case
21 being a case that we were going to trial. But I cannot
22 say that I don't, that we did not have that discussion
23 because I just don't remember. But any offers would have
24 been relayed.

25 Q. In preparing the case and keeping Mr. Robinson

MICAH LEDDY - DIRECT BY MITCHELL

1 advised of what's going on, the strategies and
2 everything, did you relay to him what you thought the
3 chance of getting a voluntary conviction as opposed to a
4 murder?

5 A. Well, looking back over my argument, there was a
6 case that I argued to the Court that to this day I don't
7 see how that is the law. I don't think it's been
8 reversed. I was surprised that it's the law. I think
9 it's Saxon. I'm not sure. But it seems
10 indistinguishable to me that -- so I thought that there,
11 you know, we made the best effort that we could to get
12 that instruction at least.

13 And, I don't think -- from my recollection the
14 State's argument against it was more about legal
15 provocation, him not being able to show adequate legal
16 provocation. And that I think the Court may have seized
17 on the difference in the case that I cited being one
18 sequence of events in a short period of time whereas
19 Mr. Robinson's difficulty with this other guy happening
20 over the course of several days.

21 So, but I don't think that it was ever stated that
22 it was a better-than-even chance that we were going to
23 get that or anything like that. I thought that it was
24 going to be an uphill battle.

25 But since the standard is so low of any evidence

MICAH LEDDY - DIRECT BY MITCHELL

1 from which a jury could convict on a lesser offense, and
2 because it seems more likely that a Court would be
3 reversed for failing to give an instruction or failing to
4 offer a lesser than not, I thought that we could possibly
5 get the lesser-included offense charged.

6 Q. And that was argued to Judge Childs?

7 A. Yes.

8 Q. A pretty lengthy argument on that; is that right?

9 A. That's right.

10 Q. I mean, and that was the big issue because we need
11 this voluntary charge because that's part of our case,
12 not malice for murder but, you know, maybe rises to the
13 level of a voluntary. Is that about right?

14 A. Yes.

15 Q. Okay. Did Mr. Robinson ever talk to you about
16 pleading guilty? Was he set on going to trial?

17 A. No, I don't think that he was dead set on going to
18 trial for its own sake. I'm sure if we had a favorable
19 enough offer, there was some offer he would have taken.
20 I don't remember what that may have been. And, I would
21 certainly prefer if he were not doing life.

22 Q. Were you surprised at the severity of the sentence?

23 A. Yes, because I, I have always believed what Joel
24 said today which was that he had a very real fear that
25 this guy was going to hurt him and that somebody that was

MICAH LEDDY - DIRECT BY MITCHELL

1 close to him could have been hurt also. I don't doubt
2 that. And I never did, you know.

3 When Joel went to confront this guy his first
4 instinct was to attack an armed man. I don't have any
5 doubt that the guy had the capacity to do harm to Joel.
6 So it wasn't like he hurt somebody who was completely
7 innocent and posed no threat to him. So, given that
8 there were options other than life without parole, I was
9 surprised that he didn't get a lesser sentence.

10 Q. All right. So I'm fixing to go on to the pretrial
11 stuff. He challenged the show-up lineup, right?

12 A. Right. The guy came by.

13 Q. So it would have been Jeff Smith was in the car
14 with one of the investigators and they were driving to, I
15 guess, to take his statement. And they pull off and see
16 Mr. Robinson, happens to be Mr. Robinson. It was kind of
17 your theory that it was, you know, a preconceived show-up
18 lineup, right?

19 A. Right.

20 Q. I mean, the State argued, no, it was by chance they
21 just happened to go by and circled around and the witness
22 is set up. Well, that's the guy. Is that what you
23 recall?

24 A. Yeah. That they had said the guys happened to be
25 going by and said, that's the guy that shot him. I think

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1 he said, my uncle or something like that.

2 Q. And, this is kind of taken out of order because
3 there was some witnesses that weren't there. I mean, the
4 jury is voir dired in the middle of all of this actually.

5 So, you raised the Neal v. Biggers issues on all
6 the witnesses that ID'd him; is that right?

7 A. I don't remember. I guess so.

8 Q. Okay.

9 A. I don't know why I wouldn't.

10 Q. And you also raised the issue of a, a Jackson v.
11 Denno issue of voluntariness?

12 A. Right.

13 Q. So in the middle of all of that you come to find
14 out that this, I don't know, Officer Smith -- Dutton is
15 not going to testify. Is that something you learned that
16 day, the first day of trial?

17 A. Yes. I never imagined that they wouldn't have her
18 there to testify.

19 Q. So you expected her to be there and you expected to
20 be able to cross-examine her on her initial report,
21 right?

22 A. Yes.

23 Q. Now, you kind of -- I'll point you to, I guess,
24 page 81 where Ms. Shipley -- may I approach, Your Honor?

25 THE COURT: You may.

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1 BY MR. MITCHELL:

2 Q. I think on page 81 is where Ms. Shipley starts kind
3 of reading off the statement and is arguing that the
4 identifications were not suggestive and then she tries to
5 support that with Officer Dutton's report or just notes.
6 I don't quite remember which one it was.

7 Is that what's reflected there?

8 A. Yes.

9 Q. And that's -- so that was the first time you found
10 out she was not going to be available to testify?

11 A. Yeah. I guess so.

12 Q. Okay.

13 A. It's pretty apparent to me reading back that I was
14 pretty amazed that they didn't have that witness there.

15 Q. And I point you to one, I think 144 and 145. It
16 kind of comes up again. I think this is where you start
17 to make somewhat of an argument on the fruit of the
18 poisonous tree, that if the stop was not legal than any
19 evidence from the stop should be suppressed. You kind of
20 blend that in with the Biggers argument?

21 A. Yes.

22 Q. Okay. And then -- so there's a ruling there on, I
23 guess, the Jackson-Denno on 144.

24 A. Okay.

25 Q. And then I think the jury's voir dired after that.

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1 So then there's a ruling on page 199 on the Biggers
2 issue; is that right?

3 A. Which page?

4 Q. I think 199.

5 A. Okay.

6 Q. Okay. And is that where Judge Childs finds the
7 identification admissible?

8 A. Yeah.

9 Q. Okay. Now, what was your argument -- okay. Then
10 page 200. What are you arguing there? At the bottom of
11 200 -- bottom of 199.

12 A. That Dutton's statement should be excluded under
13 sixth amendment confrontation, under Crawford. Her
14 reason for stopping him. And I was arguing that those
15 statements in her report were testimonial so subject to
16 Crawford. And so that's what it looks like I was arguing
17 there.

18 Q. Okay. Do you recall how that kind of went? I
19 mean, you find out she wasn't there and then you tried to
20 put together an argument to try to suppress certain parts
21 of the State's case. So you first tried to suppress the
22 identification from the witness who was in the vehicle
23 driving by?

24 A. Uh-huh.

25 Q. Right?

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1 A. Yes.

2 Q. Okay. And then you try to suppress anything from
3 the stop because it was an illegal stop?

4 A. Right.

5 Q. And that's -- you believe you raised that?

6 A. Yes.

7 Q. I believe Judge Childs denied that on 203.

8 A. Where does the Court rule on it? Uh. Oh.

9 Q. I was thinking 203 but maybe not.

10 A. I don't think it's on that page. They swear a
11 witness in right after that. Oh. I think they swear the
12 witness in to talk about that issue, but I don't
13 remember. I know that I didn't win that argument.

14 Q. Okay.

15 MS. SHURLING: I'm sorry. Could you repeat
16 that last answer?

17 THE WITNESS: I know that I did not win
18 that argument to exclude the -- that would have
19 excluded his gun and drugs.

20 BY MR. MITCHELL:

21 Q. Right. And then his statement would have been part
22 of that, too, right, because without the stop they
23 wouldn't have had the statement?

24 A. Right.

25 MR. MITCHELL: And, Your Honor, I'd like --

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1 212.

2 THE WITNESS: And I was talking about
3 whether or not Crawford would apply in pretrial
4 motion. I think that had come up in some CDV
5 case that I had, and -- that we hadn't addressed
6 that in South Carolina but some court said it did
7 and some court said it didn't.

8 BY MR. MITCHELL:

9 Q. There was some back and forth about whether hearsay
10 was admissible during the pretrial hearing for the
11 Court's consideration. Do you recall any of that?

12 A. I don't really remember focusing too much on the
13 hearsay aspect of her statement other than the
14 constitutional hearsay aspect of it. And that would have
15 been because it's just better to raise a constitutional
16 issue. So.

17 Q. Now, there were other officers who arrived who also
18 issued reports; is that right?

19 A. Oh, I'm sure.

20 Q. Okay. I'll move on from that.

21 A. All right.

22 Q. You had an investigator on the case; do you recall
23 that?

24 A. It sounds like we had Frank on this case.

25 Q. Do you recall any of his reports or findings having

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1 to do with the case?

2 A. I don't.

3 Q. Okay. If they had been favorable, would you have
4 utilized them?

5 A. Yes.

6 Q. Had Mr. Robinson told you that he had been using
7 drugs leading up to this incident?

8 A. Yes.

9 Q. Did that -- did you consider trying to exclude his
10 statement based on the fact that he may have been
11 intoxicated when he gave that statement?

12 A. I don't remember considering that. I do --
13 thinking back on it, I don't remember him saying that he
14 was using any drugs that would have made me think that he
15 would be impaired in terms of his ability to understand
16 what he was doing.

17 He didn't tell me he was drunk. He didn't tell me
18 he was using hallucinogens, from what I remember him
19 saying, telling me that he had a cocaine addition. So
20 even if I had thought that he had been using drugs, if
21 they were those drugs then I probably -- and based on
22 what I remember hearing in his statement which I think
23 there was a recording that was close to his arrest but
24 I'm not sure if it was. But I don't remember him
25 sounding intoxicated. But I don't remember talking about

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1 that with him.

2 Q. So you didn't have any indication that he was
3 intoxicated when he had given these couple of statements?

4 A. Right. I don't remember it being an issue that he
5 may have been impaired and not been able to give a
6 voluntary statement.

7 Q. Now he did not testify in the Jackson v. Denno.
8 Did you have any -- what was your thought process behind
9 that in not calling him?

10 A. I don't recall.

11 Q. Would the State have been able to use any of those
12 statements against him if he was thinking about
13 testifying?

14 A. Not to the jury.

15 MR. MITCHELL: All right. No further
16 questions. Please answer anything Ms. Shurling
17 has for you.

18 CROSS-EXAMINATION

19 BY MS. SHURLING:

20 Q. Mr. Leddy, would it be fair to say that the
21 discovery materials pretty much made it clear that the
22 crime scene was a drug den of sorts?

23 A. Yes.

24 Q. And that the deceased was a drug dealer?

25 A. Yes.

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1 Q. And pretty much everybody hanging out there was
2 either a user or a dealer as well?

3 A. Yes.

4 Q. And your client was arrested with drugs in his
5 possession?

6 A. Yes.

7 Q. And, the facts of the case indicated that he had
8 gone in a place where there were many people --

9 A. Yes.

10 Q. -- in his own words known to be armed?

11 A. Yes.

12 Q. And had this altercation with this individual?

13 A. Right.

14 Q. Okay. Wouldn't those facts alone give rise to
15 concern on your part that on the evening in question he
16 was acting under significant influence of substances?

17 A. Like I said, I did not think that -- it never
18 occurred to me to think that he was impaired. I knew
19 that he used drugs and he told me he had used drugs.

20 I guess I don't know from firsthand experience what
21 a lot of crack cocaine will do in terms of making me
22 understand what's going on. And, I may have an incorrect
23 understanding of whether or not it makes you unable to
24 understand that you're giving a statement to the police.

25 Q. I understand. Let me ask you this. Back around

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1 page 81, somewhere in there, you make the reference to
2 the fact that you were becoming agitated about the fact
3 that Sergeant Dutton wasn't there. And you make some
4 passing reference to the fact of, you know, if the stop's
5 bad then everything from there is a problem or something
6 like that.

7 And I understand that you made those general
8 statements on the record. But at some point you say that
9 you're proceeding on your motion to suppress the
10 identification that arose from the individual that saw
11 the show-up, correct?

12 A. I guess. Okay.

13 Q. Okay. What -- if the record that, it reflects
14 that.

15 A. Right.

16 Q. Okay. And I guess my question is just by what I
17 think are some great arguments, but, can you show us in
18 the record anywhere where you specifically said that it
19 was the defendant's position that the stop was illegal,
20 that it was not predicated on sufficient probable cause,
21 and that everything that flowed therefrom would therefore
22 be the fruit of the poisonous tree? Did you make a
23 motion to suppress everything that followed the stop
24 based on an argument of lack of sufficient probable
25 cause?

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1 A. I don't remember if I did. I saw a couple places
2 in here where I asked for a ruling. And I know that I
3 was making that argument but whether or not I said this
4 is my official motion. I don't think I said that but I
5 think that --

6 Q. Okay.

7 A. -- I think it was clear what I was asking the Court
8 to do but maybe it's not. I don't know. I'll have to
9 look in the record.

10 Q. And I'm certainly not trying to argue with you,
11 but, you will agree that the thrust of the argument in
12 the pretrial motion hearing was that law enforcement had
13 planned this show-up, that it was not coincidental, that
14 it was a planned show-up?

15 A. Yeah.

16 Q. And there was at least one portion of Sergeant
17 Dutton's report that kind of backed you up because it
18 said she was waiting for Investigator Dow to show-up with
19 a witness?

20 A. Okay.

21 Q. Correct?

22 A. I don't remember but that sounds good.

23 Q. And in the trust of the argument, you were making
24 the argument that that show-up was unconstitutionally
25 suggestive and that the actual identification should be

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1 suppressed in court as tainted by the out-of-court
2 suggestive ID.

3 Do you recall all of that?

4 A. Right.

5 Q. And, I guess, going back again. My question
6 specifically becomes: Do you know at what point in this
7 record you argued specifically whether or not Sergeant
8 Dutton had sufficient probable cause to stop your client
9 to begin with?

10 A. No.

11 Q. Okay. If Sergeant -- you make Crawford arguments
12 in terms of the right to confront your accusers, right?

13 A. Yes.

14 Q. Correct?

15 A. Yes.

16 Q. And presumably that was in reference to the
17 portions of her statement that were read, her incident
18 report that were read during the pretrial motion hearing
19 when she was not there to be cross-examined?

20 A. Right.

21 Q. Correct?

22 A. Yes.

23 Q. But did you anywhere during this colloquy argue
24 that she was not available for you, that her reports as
25 quoted did not sufficiently address probable cause and

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1 that she was not there to be cross-examined on probable
2 cause, therefore in the absence of testimony from the
3 person who stopped him and detained him, the State could
4 not and had not met their burden of proof? Did you -- is
5 there anywhere -- I'm not being sarcastic. If I've
6 missed it, I want to know. But, are you aware of
7 anywhere where you argued that?

8 A. I think I was just -- I don't know. I don't know
9 if I did. I know that we were talking -- I was objecting
10 to them reading her report and things on it. And that I
11 asked the Court -- I think he asked Ms. Davis what I was
12 asking about when I said I would ask that you not
13 consider it and asked for a ruling. I think what I was
14 talking about was not to consider her statement and to
15 rule on the issue of whether or not they established
16 probable cause for the stop.

17 So I think, I think I did, but I am not as familiar
18 with this record as you are. So, I don't know.

19 Q. Okay. Will you agree that it -- during pretrial
20 motions, the lines sort of became blurred between Neal
21 versus Biggers and what was Neal versus Biggers on the
22 suggestive nature of pretrial identification procedures
23 and what went to the Jackson v. Denno issue of the
24 admissibility of his statement?

25 A. Yeah. It seems like it, from looking back at it.

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1 Q. Okay. And in arguing Crawford for the proposition
2 that she was not there, do you recall Vanessa Shipley
3 saying they've got subpoena power?

4 A. Yeah.

5 Q. Did you consider at that juncture and I certainly
6 understand that Michelle Childs is a very learned
7 jurist -- I'm not suggesting you needed to teach her the
8 law -- but did you consider making a record for the
9 argument that, Your Honor, once I raise a challenge to
10 the legality of the stop the burden of proof is on the
11 State to prove that the stop was supported by probable
12 cause, they don't have the witness here to do it?

13 A. Yeah. I think -- I thought that that -- I think
14 that's what I argued.

15 Q. Okay. And what about their simple assertion that
16 Sergeant Dutton didn't work for the city police
17 department anymore. Did you consider arguing that that
18 certainly was not an adequate showing of unavailability
19 of a witness?

20 A. Yeah. I think I argued that a lot though, that I
21 couldn't believe that they didn't have her there.

22 Q. I understand.

23 A. When they said they weren't going to call her, I
24 couldn't believe it.

25 Q. And I grant you, there's a place in the record and,

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1 I'm sorry, I don't have the exact page reference but the
2 record will reflect where you were saying, people come
3 and go, people quit working for the city. That's not a
4 reason for them not to have her here. Okay.

5 But did you at any point consider arguing that the
6 defendant's sixth amendment rights outweighed any
7 ministerial right under the rules to present a business
8 record particularly when the State had not demonstrated
9 for the Court that the witness was actually unavailable
10 in the legal sense of the word? They had not
11 demonstrated that they had exercised due diligence in
12 determining her whereabouts, for example, arguing that
13 they had put nothing on the record to document the fact
14 that they made every reasonable effort to find her as a
15 witness to speak for herself as opposed to asking the
16 Court to allow these records in.

17 A. I think I -- what I said was that at some point I
18 said, I don't think it matters how much it inconveniences
19 anybody that she needs to be there. I don't even think I
20 gave them that much -- I didn't even think about saying
21 that they hadn't shown unavailability because I didn't
22 think unavailable, there was such a thing as being too
23 unavailable to come and testify in a murder trial as to
24 why you stopped the person and in a stop that ultimately
25 uncovered the murder weapon.

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1 Q. I understand.

2 A. Yeah.

3 Q. But my point being if there was an argument that
4 there was an evidentiary judgment call to be made by the
5 bench concerning whether or not the State should be
6 allowed to rely on business records as opposed to
7 presenting live testimony, did you -- and I know you made
8 general arguments about it. I'm not disputing that for a
9 moment. But did you consider arguing that they had done
10 no more than give lip service to the fact that this
11 person wasn't there because she just didn't work for the
12 city any more, that they had not even tried to present
13 any claim that they had tried to locate her or tried to
14 present her as a witness?

15 A. I do not see anywhere that I argued that.

16 Q. Okay. Now, when Vanessa Shipley snapped back at
17 you that he's got the same subpoena power I do --
18 remember that, or they had?

19 A. Well, I remember it now that I read it again. Yes.

20 Q. Okay. At that juncture, would that not have been
21 the appropriate place for you to have argued that the
22 standard in that situation was such that once you
23 challenged the legality of the situation the burden of
24 proof is on the State to prove that it was in fact a
25 lawful stop supported by sufficient probable cause?

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1 A. I don't remember. And I don't know if I argued
2 that.

3 Q. Okay. Do you agree with me that that's an accurate
4 principle of the law?

5 A. I do believe that the State has the burden of
6 establishing that they have probable cause for a stop and
7 an arrest.

8 Q. And so the State's suggestion that somehow it was
9 up to you to find her and get her there to prove their
10 case for them was an incorrect argument under the proper
11 standard of law to be applied by the bench, right?

12 A. I think so.

13 Q. Okay. I remember you're saying that you remember
14 some kind of general discussions about self-defense or
15 generally looking at self-defense but not necessarily
16 discussing it with your client; is that accurate?

17 A. I don't personally remember talking about it with
18 Joel. I would have -- I would think that I would have
19 thought that self-defense would be difficult to show
20 because you have to be without fault in bringing on the
21 difficulty.

22 Q. Well, let me ask you this. In your discussions
23 with Mr. Robinson though, is it fair to say that his
24 characterization of the events that night included the
25 personal belief that he was acting to defend himself?

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1 A. Yes.

2 Q. So, whether or not legally you thought it fit or
3 not, it was clear your client thought he was defending
4 himself, right?

5 A. Yeah. I agree with that.

6 Q. Now you talked about the Jackson case or whatever
7 but it was actually Lowery.

8 A. Lowery.

9 Q. State versus, a '93 Lowery case?

10 A. Lowery. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Now in your discussions with Judge Childs she says
14 to you, well -- on legal provocation. On page 62 she
15 says, yeah, but in your case too much time had passed
16 between the events of the previous days. And you said,
17 well, I understand that. Correct?

18 A. If that's what I said.

19 Q. Do you remember that? Okay. So you knew going
20 into this or at least you indicated to the judge that you
21 understood --

22 THE COURT: What page is that,
23 Ms. Shurling?

24 MS. SHURLING: Sixty-two. Your Honor, the
25 transcript's squirrely. The -- two different

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1 court reporters took it. It would be on 62 on
2 the little one. I apologize.

3 THE COURT: Yeah.

4 MS. SHURLING: I hate it when they do
5 that. My apologies.

6 THE COURT: I was looking at the other 62.
7 Go ahead.

8 BY MS. SHURLING:

9 Q. You indicated to Judge Childs that you understood
10 that the passage of time between the events from the
11 previous days and the shooting was such that you had a
12 problem with any kind of legal -- sudden heat of passion
13 carrying over from previous days to that night, right?

14 A. Well I understood that that's what she was saying.

15 Q. Okay.

16 A. Yes. I don't know that from -- I don't personally
17 remember this, these exact words that are on this paper,
18 right, but I remember arguing this and the judge
19 distinguishing that case on this basis.

20 But in that case there was a break in the events
21 long enough for the person to arm themselves and then
22 confront the person they ended up killing again. To me
23 it's, whether it's a couple of minutes or a day, I didn't
24 think would be -- well, I didn't think it was
25 insurmountable. I thought we should still get the jury

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1 charge but.

2 Q. So you believed under at least the analysis of the
3 Lowery decision that even though it had been at least a
4 day between when these supposed threats were reported to
5 your client that there would be enough temporal proximity
6 to sustain a finding to say that he had, he was legally
7 provoked by that and sustain that level of provocation
8 through the following evening when he shot the man?

9 A. No. It was -- the provocation that I argued was
10 when this guy saw Joel and charged him, that that was --
11 and gradual. And was trying to, I'm sure, get Joel's
12 gun, that that was adequate legal provocation.

13 Q. Okay. Let me stop you right there. Let's take --
14 let's take it baby steps.

15 So you were not in disagreement with Judge Childs
16 that whatever disagreements had taken place between Short
17 Dog and your client the previous days, that was not the
18 basis for your argument of sufficient legal provocation.
19 Your argument for sufficient legal provocation was the
20 fact that once your client entered that residence and was
21 walking in the general direction of Short Dog, Short Dog
22 lunged at him?

23 A. Right. I think so.

24 Q. And that was your sufficient legal provocation?

25 A. I think so, yes.

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1 Q. Okay. Isn't it a fact that your client and all of
2 the witnesses all agreed that your client walked in the
3 door with a gun that was visible?

4 A. Yeah.

5 Q. And didn't you therefore know that it was
6 inevitable that the State's position would be that the
7 man had a right to lunge to protect himself when he sees
8 a, quote, intruder with a gun in his home?

9 A. That's exactly what happened in State v. Lowery.
10 And the trial court refused TO give the jury instruction
11 and it was reversed. So I don't know how I would have
12 drawn the distinction between the two.

13 Q. Okay. And in Lowery the events all happened within
14 a very short period of time, with only movements of
15 respite in between the altercation and the shooting,
16 right?

17 A. I don't know for sure but it seems like it was, it
18 was closer in time than Mr. Robinson's case for sure. It
19 could have been minutes. It could have been an hour. I
20 don't know but it was a lot closer in time.

21 Q. Well, I wasn't trying to go through all of this
22 just as some kind of law school of exercise. Your
23 testimony even here today, you said earlier, and I
24 appreciated your candor, that to this day you believe
25 that your client -- I mean, pardon me, that the facts of

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1 your client's case justified a voluntary manslaughter
2 instruction.

3 A. Yes.

4 Q. And you believed going into this trial that you
5 were more likely than not going to get a manslaughter,
6 voluntary manslaughter instruction; is that accurate?

7 A. No. I don't know how much I would have pegged our
8 odds at it, but I thought maybe we would should have.
9 But I can't say as to what I thought our chances were.

10 Q. Okay.

11 A. I remember being very deflated when we didn't get
12 it, so I think that I was quite hopeful that we would.

13 Q. Okay. Well, let me ask you this. When you were
14 discussing your strategy for the trial with your client,
15 did you share with him your strategy to pursue a verdict
16 of a lesser-included offense as opposed to murder?

17 A. Yes.

18 Q. And you told him that your goal was going to be to
19 get the jury to find him guilty of voluntary manslaughter
20 which carried only up to 30 years and was not day for
21 day, correct?

22 A. Right.

23 Q. Did you at any time tell Joel Robinson that
24 voluntary manslaughter would never even get to the jury,
25 would never even be on the jury's plate unless the judge

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1 decided that you had met, in terms of the evidence
2 adduced at trial, the legal standard to justify the jury
3 being given that jury instruction?

4 A. I don't remember for sure. I know that it wasn't
5 -- I think that we must have talked about it though, and
6 it's because -- the reason I say this is because after we
7 didn't get the voluntary instruction, Ms. Shipley made
8 her closing argument. And while we were waiting for her
9 to finish, I remember Joel saying that he didn't even
10 know why I would bother to make a closing argument since
11 we didn't get the voluntary instruction.

12 So he, I think he had an understanding of how
13 important that was.

14 Q. Well --

15 A. And at what point we discussed it, I don't know.

16 Q. Okay.

17 A. I don't know if we ever discussed it when there was
18 a plea offer on the table. And I don't know -- I don't
19 know if I ever gave him a percentage odds that we would
20 get a voluntary instruction because I can't think of what
21 I would say if somebody asked me that today.

22 I would have the benefit of having gone through
23 this case now but, I just don't know other than to say
24 that I am sure that he understood the importance of
25 getting that instruction.

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1 Q. Well, let me back up. My initial question is:
2 Before the trial, before he's heard anything in the
3 courtroom, you're telling him our strategy is going to be
4 for the jury to convict you, our goal is not to get you
5 acquitted but for the jury to find you guilty of
6 voluntary manslaughter, not murder?

7 A. Yes.

8 Q. And you told him all the advantages to voluntary
9 versus murder, right?

10 A. Yeah.

11 Q. In terms of sentencing?

12 A. Yes.

13 Q. But my question is: Do you here today have an
14 actual recollection of ever telling him that the jury
15 considering voluntary manslaughter was not a given, that
16 the lesser -- the jury having the opportunity to consider
17 a lesser-included offense was not automatic, that the
18 judge might or might not even ever let the jury hear
19 about voluntary manslaughter as an option.

20 A. I think we talked about that.

21 Q. You think, but you don't know for sure?

22 A. I don't remember any specific conversations.

23 Q. Okay. Now, you indicated a moment ago that the
24 reason you feel like that is that because after the judge
25 refused the voluntary manslaughter instruction he made

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1 the comment that he didn't know why you were even
2 bothering giving the closing argument since you didn't
3 get voluntary manslaughter, right?

4 A. Yes.

5 Q. Well, let's backtrack for a second. You never told
6 him his only hope was for this jury to find him guilty of
7 voluntary manslaughter not murder, right? Basically.

8 A. That was our goal was for him to get a voluntary.

9 Q. Okay. And --

10 A. But once we didn't have that option the only hope
11 was to get them to find no malice which would be, the
12 only option they would have is murder and not guilty, and
13 ABWIK and not guilty.

14 So that's what we argued. It's a lot easier to get
15 a jury to find if there are doubts, you know, to split
16 the baby.

17 Q. Well, and if -- and at that the juncture if the
18 jury were going to find simply no malice then they would
19 be letting a man who admitted shooting someone five times
20 walk out the door, right?

21 A. Yes. I think that's what Joel recognized when he
22 told me that.

23 Q. And that's why he said that?

24 A. Yes.

25 Q. Or at least you would think that would be why he

MICAH LEDDY - CROSS BY SHURLING

1 said that, right?

2 A. Yeah.

3 Q. Okay. Now, when he said that he had just sat
4 through, and I didn't count them but about 12 pages in
5 the record of rather lengthy and heated discussion
6 between you and the bench and Solicitor Shipley about
7 whether or not you should be entitled to a jury
8 instruction on voluntary manslaughter, right?

9 A. Yes.

10 Q. And at the end of all of that when the judge says,
11 I'm sorry, I'm just not doing it, I'm not going to charge
12 it. At that point whether he understood it before trial
13 or not, it would have been real obvious that the jury
14 wasn't going to even hear about voluntary manslaughter,
15 right?

16 A. I guess.

17 Q. The judge says, I am not going to charge them on
18 voluntary manslaughter, correct?

19 A. I don't know exactly what words she said but, yeah,
20 I think that he should know that.

21 Q. And I swear, I'm not trying to beat you up but, I
22 mean, he's already been told pretrial our goal is to get
23 you convicted of voluntary manslaughter. And, he hears
24 after about 12 pages, and that's an estimate, of
25 discussion that the judge says she's not going to charge

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1 voluntary manslaughter. And it's then and only then that
2 he says what you recall him saying about I don't even
3 know why you bother with closing argument now, right?

4 A. Yes.

5 Q. Okay. So would you agree that that comment at that
6 juncture is not necessarily illustrative of him having
7 understood that process before the trial?

8 A. You could draw that conclusion, I guess.

9 Q. Okay. You said you don't have any independent
10 recollection of a 30-year offer for murder?

11 A. Right.

12 Q. Do you recall Jennifer Davis testifying this
13 morning? Were you in the courtroom?

14 A. Yes.

15 Q. Do you recall her saying that she went back to
16 Vanessa Shipley to see if she could get the offer back on
17 the table?

18 A. Yes.

19 Q. Okay. And at the time Jennifer Davis was on the
20 team -- Ms. Grafton I believe it is, Kristy?

21 A. Yeah.

22 Q. -- wasn't even on your defense team anymore, was
23 she?

24 A. I don't remember if she was second chair for Kristy
25 before I got on the case or not. But I'm not saying that

MICAH LEDDY - CROSS BY SHURLING

1 we didn't have a 30-year offer. I'm saying I don't
2 remember us having a 30-year offer. We very well could
3 have. And if Joel says that we did, I have no reason to
4 disbelieve him.

5 Q. And if Ms. Jennifer Davis testified that she only
6 got on the case right there just a few weeks before the
7 jury trial at which point you were the only lawyer, then
8 her knowledge of what would have been on the table
9 presumably would have come from discussions with you?

10 A. I don't know. I guess.

11 Q. Okay. Are you aware of any documentation in the
12 file, any writing about such an offer?

13 A. No.

14 Q. Have you reviewed the file?

15 A. No, not in a while. I think the first time when we
16 got notice for this I looked at it, but it's been changed
17 a couple of times. So I used to take good notes though
18 so it's probably in there. But I don't have a personal
19 recollection of the offer but I may have just remembered
20 the trial mostly. I don't know.

21 But I know I watched Ms. Davis testify. No reason
22 to disbelieve her. And I have no reason to disbelieve
23 Mr. Robinson about an offer. I just remember that we
24 didn't have one before the trial.

25 Q. I understand and -- pardon me. What did you just

MICAH LEDDY - CROSS BY SHURLING

1 say?

2 A. We just didn't have one before the trial.

3 Q. Immediately before the trial?

4 A. Yeah. Right. Immediately before the trial, yeah.

5 Q. But you don't disagree that Ms. Davis's testimony
6 went to getting an offer put back on the table as opposed
7 to just begging for a first-time offer?

8 A. Right.

9 Q. Okay. So, we know from her testimony that there
10 had been an offer?

11 A. Yes.

12 Q. Okay.

13 MS. SHURLING: Moment's indulgence, Your
14 Honor. Let me review my notes real quickly.

15 (Pause.)

16 Q. Once it became clear that the State was not going
17 to introduce Sergeant Dutton, did you make any effort to
18 contact her yourself?

19 A. No.

20 Q. And talk to her?

21 A. No.

22 Q. Would that not have been prudent in light of the
23 developments in the case?

24 A. I don't think that it would have changed anything
25 to have gone and gotten Sergeant Dutton, wherever she may

MICAH LEDDY - CROSS BY SHURLING

1 be, and put her on the stand. I think it was useful to
2 try and exclude all of the evidence that could be entered
3 through her testimony but only for that day. And if they
4 had gone and gotten her, I don't have very much doubt as
5 to how that testimony would go and come out.

6 So I don't think it would have been very good -- if
7 they had told me a week before we're not planning on
8 calling her, I probably would have just said okay and
9 then raised a stink about it once we got to court.

10 Because putting her on the stand probably -- I don't
11 think that just because she doesn't work there anymore
12 she would say I didn't have enough probable cause to stop
13 him.

14 Q. Okay. Except that you don't really know under what
15 circumstances she left the city.

16 A. That's true. She may have left under terrible
17 circumstances.

18 Q. Okay. But in any event the point I'm trying to
19 make is that her not being there as a witness that day
20 when the State had every opportunity or at least they had
21 not demonstrated anything to the contrary --

22 A. Yes.

23 Q. -- to have her there, presented you with a one-time
24 opportunity to argue that they had not met their burden
25 of proof.

MICAH LEDDY - CROSS BY SHURLING

1 A. Yes.

2 Q. Okay.

3 MS. SHURLING: A moment's indulgence.

4 (Pause.)

5 Q. One last thing. The Applicant has raised a claim
6 of ineffective assistance of appellate counsel for
7 failing to brief the question of whether or not your
8 motion, whatever it was, should have been granted in the
9 light of the absence of Sergeant Dutton from the
10 courtroom.

11 Is that an issue that you would have thought should
12 have been raised on appeal?

13 A. Yes.

14 Q. And were you surprised to find that it had not been
15 briefed by appellate counsel?

16 A. I was surprised when I read the opinion it was
17 really short. And if they didn't brief that issue then,
18 yes, I think that that witness should have been there.

19 MS. SHURLING: Nothing further, Your Honor.

20 THE COURT: All right. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Mitchell.

23 MR. MITCHELL: Nothing on redirect.

24 THE COURT: I'd like to ask a couple
25 questions please, Mr. Leddy.

EXAMINATION BY THE COURT

1 THE WITNESS: All right.

2 EXAMINATION

3 BY THE COURT:

4 Q. When did you begin representing Mr. Robinson? Had
5 you been with him from the start?

6 A. No.

7 Q. Okay. When did you start representing him?

8 A. It wasn't but a few months before this trial
9 because I had only -- I was only in the public defenders
10 office for about two and a half years starting in
11 November of '07 -- of '06.

12 Q. Okay.

13 A. So --

14 Q. So having other murder trials --

15 A. -- he was the first, first chair murder trail for
16 me.

17 Q. Had any second chair murder trials?

18 A. I had done one previous, yes.

19 Q. And when you were assigned to the case were you
20 second chair to Ms. Grafton? I think she's Ms. Goldberg
21 now but Ms. Grafton?

22 A. That's correct. I think I may have been. I don't
23 know for sure if I was second chair or if I just took the
24 case over. That's what I'm not sure about is if
25 Ms. Davis was second chair and I just took the case over,

EXAMINATION BY THE COURT

1 but that would seem unusual because Ms. Davis and I
2 started on the same day. So if she would have been
3 second chair I think she would have taken the case over
4 but when Ms. Grafton left the office I think she handed
5 the case off to me. So I think I was second chair but
6 I'm not sure if I met Joel until Kristy told him that she
7 wasn't going to be his lawyer anymore.

8 Q. Okay. And why don't you have the file today?

9 A. Ms. Davis had it earlier. She brought it up from
10 the public defenders office and so I apologize but when
11 she left I think she took it with her.

12 MS. SHURLING: Your Honor, if I might as an
13 officer of the Court, I can tell you that I went
14 to the public defenders office last week and went
15 through that file.

16 They were gracious enough to give me a
17 conference room table and a great big box and I
18 went through it and, granted, it was a voluminous
19 amount. It contained a voluminous amount of
20 documentation but I did not see any documentation
21 about a plea offer.

22 That -- but, again, I certainly can't swear
23 that there wasn't one somewhere in that box but I
24 did look through the box carefully and I didn't
25 see anything in writing although I will tell you

EXAMINATION BY THE COURT

1 based on my experience despite what our courts
2 have said in Thrift and other cases to this day
3 sometimes it's like pulling teeth to get offers
4 in writing. So it would not surprise me at all
5 for there are to have been an offer thrown out
6 that never got reduced to writing. If -- that
7 still happens even today on occasion, so, I would
8 not rely on that.

9 But, I did not see anything in writing in
10 the file concerning that offer.

11 THE COURT: Okay.

12 Q. And just to make sure that I understand your
13 testimony, Mr. Leddy. You say that you don't remember
14 there ever being a plea offer. That's it, you just don't
15 remember?

16 A. When --

17 Q. Or you're not sure?

18 A. When I first spoke to Ms. Davis about the case and
19 she told me that she remembered us having a plea offer, I
20 didn't personally have a recollection of it but I
21 wouldn't doubt that there was one. There usually is.

22 Q. Do you have any recollection of whether you ever
23 weighed the pros and cons of accepting the plea offer
24 with Mr. Robinson? And I mean that specifically with the
25 issue he raises with regard to voluntariness.

EXAMINATION BY THE COURT

1 A. I don't.

2 Q. You just don't recall.

3 A. I -- my -- I don't and I don't think -- I don't
4 think that I found that Lowery case until right before
5 trial. So I don't think that we would have had -- I
6 would -- if I had to bet on it, I would bet that we
7 didn't have a discussion on how likely we were to get the
8 voluntary because I didn't formulate that argument until,
9 I think, right before trial --

10 Q. Uh-huh.

11 A. -- when we were without an offer and that was our
12 best option.

13 Q. Sure. And I don't mean where you gave him this is
14 your chance of getting a voluntary manslaughter. I
15 wonder if you talked to him at that juncture about how it
16 worked. About, we're hoping for voluntary manslaughter,
17 this is how it works, we would have to ask the judge to
18 charge it. Would you --

19 A. I think I had that conversation. And I don't, I'm
20 sure I would have talked about the judge doesn't have to
21 give it to us but, you know, I have this case it seems
22 very analogous to me. I think I had that conversation.
23 I don't remember talking to him about any plea offers.

24 Q. Right. So that makes it difficult.

25 A. I can't tell you whether we weighed that likelihood

MICAH LEDDY - FURTHER CROSS BY SHURLING

1 of a voluntary charge versus whether he should take a
2 murder charge plea. I can't tell you whether or not we
3 did that.

4 Q. Is that something that you would have made notes
5 about in the file?

6 A. Possibly. And --

7 THE COURT: Okay. Thank you very much.
8 You can step down.

9 MS. SHURLING: Your Honor, may I ask a
10 couple quick follow-ups.

11 THE COURT: Sure.

FURTHER CROSS-EXAMINATION

12 BY MS. SHURLING:

13 Q. In light of Her Honor's questions. Did I
14 understand you earlier, though, that you think you would
15 have discussed the process with him, you believed that's
16 something you would have discussed with him? But you
17 said earlier that the reason you thought that was because
18 of his comments after the discussions on the record with
19 Judge Childs, after her denying the jury charge on
20 voluntary manslaughter, as you were approaching closing
21 arguments he made the comment that I don't know why --
22 I'm paraphrasing but.

23 A. Right.

24 Q. -- I don't know why you're even bothering with
25

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1 closing arguments since we didn't get the voluntary
2 manslaughter charge.

3 You testified earlier in some form that the reason
4 you believed you may have or likely had some kind of
5 discussion with him was based on that comment that he
6 made about closing arguments; isn't that true?

7 A. That's one reason, yeah.

8 Q. Okay. And we went over the fact that that comment
9 was made after lengthy discussions in his presence with
10 Judge Childs about whether or not she was going to allow
11 the jury to hear about voluntary manslaughter, right?

12 A. Yes.

13 Q. So if he wasn't clear on it before the trial he
14 certainly was clear on it by the time she said I'm not
15 going to give that instruction or should have been?

16 A. He would have had a lot to draw that conclusion
17 from, yeah.

18 Q. Okay. And so, my question is if you here today
19 can't swear to the Court that you did tell him it's not
20 automatic, the jury's not just automatically going to
21 have murder as a choice and voluntary manslaughter as a
22 choice. It's going to be up to the judge. You don't
23 know for a fact you did that.

24 And his comment that he made before closing
25 arguments could, it's fair to infer, have come from the

MICAH LEDDY - FURTHER CROSS BY SHURLING

1 lengthy discussion he witnessed with Judge Childs about
2 whether or not a jury charge on voluntary manslaughter
3 was going to be given, correct?

4 A. I guess -- yeah, he could infer that. I just don't
5 remember if we had that conversation, I would think that
6 we did so my testimony is I think that we did but I don't
7 remember having it --

8 Q. Okay.

9 A. -- specifically.

10 Q. And lastly. Jennifer Davis was second seat, right?

11 A. Yes.

12 Q. And the two of you were working on preparing this
13 case for trial together?

14 A. Yes.

15 Q. Is it likely that she as second seat would have
16 gone to Vanessa Shipley to ask for an offer to be put
17 back on the table without your knowledge?

18 A. She may have just bumped into her off the
19 elevator. I don't know. I think that's one of the times
20 I remember asking Vanessa about it.

21 Q. Okay.

22 A. So --

23 Q. If I understood your testimony --

24 A. -- she may have, she may have -- I wouldn't have
25 thought she was going over my head to go ask her. I

1 wouldn't have minded if she asked her everyday.

2 Q. Okay. And, just a little bit ago you said that
3 getting ready for this hearing you had discussed this
4 case with Jennifer Davis and that she reminded that you,
5 well, we had that offer?

6 A. Yes.

7 Q. Okay. So, at least according to your testimony
8 prior to this hearing Jennifer Davis was refreshing your
9 recollection about the fact that there had been an offer
10 on the table, correct?

11 A. Yes.

12 MS. SHURLING: No further questions.

13 THE COURT: Okay. Thank you. You can step
14 down.

15 You may be excused. Is there any objection
16 to him being excused?

17 MS. SHURLING: None at all.

18 THE COURT: I'm going to make a ruling
19 actually fairly shortly, Mr. Leddy, and you might
20 want to stick around for it.

21 MR. LEDDY: Okay.

22 THE COURT: Just because I think there may
23 be some follow-up testimony we might need. Okay?
24 But we should be wrapping up shortly. Do you
25 need to be somewhere?

1 MR. LEDDY: No.

2 THE COURT: If you'll just actually stay in
3 the courtroom for a bit, I would appreciate
4 that.

5 Mr. Mitchell, anything else for the State?

6 MR. MITCHELL: No further witnesses.

7 THE COURT: Okay. All right.

8 I don't want to steal anybody's thunder
9 from making closing statements but I think at
10 this point I don't think there's anything that
11 y'all could say that I would be ready to rule on
12 without having some additional information from a
13 couple of things.

14 One, I would like Mr. Leddy to have an
15 opportunity to review this file and let me know
16 whether there's any notes on a plea offer in this
17 case.

18 I would also want to hold this record open
19 because I believe that we need to hear from
20 Kristy Goldberg because the issue that I'm
21 struggling with in this case is whether
22 Mr. Robinson had effective assistance of counsel
23 when he was told about a plea offer.

24 I think there's plenty of case law that
25 says defendants are entitled to counsel when they

1 are given a plea offer.

2 And, based on the testimony that I've
3 heard, I have Jennifer Davis testifying that
4 there was a plea offer as far as she knows
5 although it occurred before she was assigned to
6 the case. Mr. Leddy was very frank and up front
7 with the Court to say that he doesn't remember a
8 plea offer. He just doesn't have any
9 recollection of that but he doesn't doubt
10 Mr. Robinson's testimony when Mr. Robinson states
11 that there was a plea offer.

12 Mr. Robinson also states that nobody
13 explained to him when he was considering the plea
14 offer the possible consequence that if he went
15 forward with trial the defense that they were
16 planning to raise of voluntary manslaughter might
17 not even be something that was on the table.

18 I think that Mr. Robinson was clear that a
19 jury might not accept voluntary manslaughter as
20 an option. I think he was clear that he could
21 possibly face a life sentence but according to
22 him he was not clear that, clear of the chances
23 he was going to have for the jury to even make
24 that consideration of that lesser-included
25 offense which ultimately was determined by Judge

1 Childs as not being a lesser-included offense
2 that could be charged under the facts of this
3 case.

4 However, we've got this missing person,
5 Ms. Goldberg, who had been Mr. Robinson's
6 attorney. And she may have had the conversation
7 with Mr. Robinson. Perhaps it was she who
8 received the offer from the State and talked to
9 Mr. Robinson.

10 And I don't know that she's available this
11 week. She was here yesterday in court but I
12 think she was going on vacation.

13 MR. MITCHELL: She's not available the rest
14 of the week. She's out of town.

15 THE COURT: Okay. Ms. Shurling, would you
16 have any objection to her -- there being some
17 sort of a telephone deposition for Ms. Goldberg?

18 MS. SHURLING: Is that Kristy Grafton?

19 THE COURT: It is. I'm sorry. Yes,
20 ma'am. Ms. Grafton has married and she's now
21 Ms. Goldberg. Same person.

22 MS. SHURLING: I assumed it was, Your
23 Honor.

24 THE COURT: Yes.

25 MS. SHURLING: I would just for purposes of

JOEL ROBINSON - DIRECT BY SHURLING

1 clarification of the record based on what has
2 been testified to since then, ask to recall
3 Mr. Robinson to quickly put one thing on the
4 record.

5 THE COURT: Sure. Absolutely.

6 MS. SHURLING: I would also as an officer
7 of the Court say that the subject matter that
8 we're about to address was known to me earlier.
9 However, I did not believe -- I did not have
10 reason to believe that there would be any dispute
11 about when the plea offer was advanced is the
12 reason I had not asked him about that previously.

13 THE COURT: About who told him about the
14 plea offer.

15 MS. SHURLING: Correct.

16 THE COURT: Okay.

17 JOEL ROBINSON, having been duly sworn, was
18 examined and testified further as follows:

19 DIRECT EXAMINATION

20 BY MS. SHURLING:

21 Q. Mr. Robinson?

22 A. Yes, ma'am.

23 Q. When you previously discussed the plea offer with
24 me, isn't it a fact that you told me that it was
25 Mr. Leddy who originally came to you and told you that

JOEL ROBINSON - DIRECT BY SHURLING

1 the State, that he tried the best he could do, the only
2 thing they were willing to do was if you pled to murder
3 they would give you 30 years?

4 A. Yes, ma'am.

5 Q. And that he explained that that was the minimum for
6 murder?

7 A. Yes, ma'am.

8 Q. And that's where you got your knowledge of the day
9 for day, right?

10 A. Yes, ma'am.

11 Q. At that time he explained to you that, now, 30 for
12 murder is day for day?

13 A. Yes, ma'am.

14 Q. And that any -- if you went to trial and were
15 convicted of murder any sentence you got would be day for
16 day?

17 A. Yes, ma'am.

18 Q. So there's no question in your mind that when the
19 offer was first advanced, first -- you were told about
20 it, you were told about it by Mr. Leddy?

21 A. Yes, ma'am.

22 Q. Okay. Now did anybody ever, else discuss that plea
23 offer with you?

24 A. Yes, ma'am. Right before trial Ms. Davis came and
25 spoke to me right, the week before we went to trial. And

JOEL ROBINSON - CROSS BY MITCHELL

1 she said that if they was to do anything it was not going
2 to be no less than 30 years for murder day for day.

3 Q. Okay. So, she indicated to you then that she had
4 knowledge of that offer for the murder for 30 years?

5 A. Yes, ma'am.

6 Q. And that that was the best they were going to do?

7 A. Yes, ma'am.

8 Q. Okay. And, again, if they were going to do
9 anything, being the operative word, words, correct?

10 A. Yes, ma'am.

11 Q. She did not represent to you at that time that the
12 offer was still on the table?

13 A. No, ma'am.

14 Q. But it was just that if she could get them to do
15 anything it would probably be to go back to that original
16 offer?

17 A. Yes, ma'am.

18 Q. Okay. And that was the offer that you had already
19 discussed with Mr. Leddy?

20 A. Yes, ma'am.

21 MS. SHURLING: Thank you. No further
22 questions.

23 THE COURT: Mr. Mitchell?
24
25

CROSS-EXAMINATION

JOEL ROBINSON - CROSS BY MITCHELL

1 BY MR. MITCHELL:

2 Q. All right. Mr. Robinson, you turned the offer down
3 though, right?

4 A. (Nods head.) Yeah, I didn't --

5 Q. So you didn't accept the offer. You told your
6 lawyer to reject the offer, you wanted to go to trial,
7 correct?

8 A. Right.

9 Q. And you knew what was going to happen, that if you
10 rejected the offer you were going to go to trial on the
11 case; is that right?

12 A. Right. Well, it was either take the offer or a
13 trial. So.

14 Q. Okay. And you said I don't want to take the
15 minimum because I got a chance of getting the minimum
16 even if I get convicted. Was that a part of your
17 thinking?

18 A. Yeah. Yes, sir.

19 Q. There was never any offer for voluntary or anything
20 like that, was there?

21 A. No, sir.

22 Q. Okay. And you testified that you were advised as
23 to what voluntary manslaughter was; isn't that right?

24 A. Yes.

25 Q. So you knew what voluntary manslaughter was,

JOEL ROBINSON - CROSS BY MITCHELL

1 correct?

2 A. Yes, sir.

3 Q. So you knew that was part of what the trial was
4 going to be about, and you knew there was a chance you
5 might not get a voluntary charge; is that right?

6 A. No, I didn't. I didn't understand the format of
7 how the trial was going to go. I didn't know that the
8 judge was going to have to decide whether or not the jury
9 was going to be able to even listen to it in that aspect
10 of --

11 Q. But that didn't have anything to do with you
12 rejecting the offer, though, right?

13 A. No.

14 Q. You rejected the offer because you didn't want to
15 serve 30 years, right?

16 A. No. The best chance -- or to my understanding, the
17 best chance that I had was the voluntary, voluntary
18 manslaughter. That's -- that was the best chance that I
19 had if I got that.

20 Q. That was your best chance. And that's -- the
21 reason you declined the offer, rejected the offer is
22 because you didn't want to take the 30 years then, right,
23 you wanted to take your chances at trial, correct?

24 A. Right.

25 Q. You wanted to take your chance that you had a

JOEL ROBINSON - CROSS BY MITCHELL

1 chance to get this voluntary, right?

2 A. Yes.

3 Q. And you knew that had no guarantee?

4 A. Right.

5 Q. And you knew you still could be convicted to murder
6 and sentenced to life, right?

7 MS. SHURLING: I have to object, Your
8 Honor. That's not what he testified to.

9 THE COURT: I'll let you clear it up --

10 MS. SHURLING: Thank you.

11 THE COURT: -- by reply testimony, but you
12 can go ahead, Mr. Mitchell.

13 BY MR. MITCHELL

14 Q. So -- I'm sorry. I lost my train of thought.

15 But you understood by rejecting the offer -- well,
16 you rejected the offer to take your chances at trial,
17 right, hoping that you would get possibly a voluntary
18 charge, right?

19 A. Right.

20 Q. Okay. Now, you also knew going to trial that you
21 could be sentenced to life, right, or you could be
22 convicted of murder, worst case scenario?

23 A. I knew that I could be convicted of murder.

24 Q. Right. Best case scenario acquitted of everything,
25 right?