VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

WILLIAM GREGG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000892

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2007-GS-43-796

State of SC,)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
William Gregg, III)
DEFENDANT)

July 28-30, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., JUDGE; and a jury.

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

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Official Court Reporter

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THE COURT: All right. I understand we have some motions.

MR. HART: That is correct, Your Honor. Your Honor, Chris Hart representing Mr. William Gregg. As you know, before you, Your Honor, you have an indictment with count one of murder, count two, possession of a firearm during a crime of violence, and count three, possession with intent to distribute heroin.

At this moment, Your Honor, we make a motion to sever the charges of count two and count three from the indictment and would respectfully ask the Court to move forward today on count one, which is the murder count.

And specifically, Your Honor, we make our motion based off of several reasons. In reference to count three, one of -- skip that count three, Your Honor. Count three, on or about November 2nd I believe there was a quantity of heroin that was found in a residence which the police believed that Mr. Gregg lived in and they believed that Mr. Gregg possessed.

However, this murder happened on November 1st of 2003, a day before they went and searched the house. It's our position that count one has absolutely nothing to do with count three.

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Specifically, Your Honor, it says under State v Tucker which is 324 SC 155, it's a 1996 case, Your Honor, says criminal charges can be tried together when they arise out of a single chain of circumstances.

In this particular case, Your Honor, there is no single chain of circumstances. Also secondly, Your Honor, State v Tucker, it says where the counts can be proved by the same evidence and they are of the same general nature.

As you can see, Your Honor, it would take a completely different set of facts to prove the drug charges of the heroin as opposed to the murder. None -- neither one of them has nothing to do with the other, Your Honor. In addition, they are not of the same general nature.

Secondly, Your Honor, it says where the offenses charge, separate indictments of the same general nature involved, connected transaction closely related in time, place, and character, the trial Judge has discretionary power to order indictments tried together if the defendant's subsequent rights would not be prejudiced.

We believe, Your Honor, under rule 404B that his rights will be prejudiced, Your Honor. We believe

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that's a violation. We believe there's a lot of evidence that will come in about the drugs that has absolutely nothing to do with this murder.

Now, there is some speculation, Your Honor, which we would also make a motion in limine in the second. The officer was -- speculate that there's some connection about the murder and Mr. Gregg blaming Kevin Franklin for stealing some drugs, Your Honor. That's speculation.

He can't testify -- there will be no testimony that will come before this Court that said Mr. Gregg blamed someone for stealing his drugs, Your Honor. So based off of that, Your Honor, we would respectfully ask -- let me back up before I move forward, Your Honor.

In addition to that, on the drug charge, possession with intent to distribute heroin, Mr. Gregg has never been served with an arrest warrant. He's never been served with a DP indictment. He has no notice of this charge, Your Honor.

So based off of that, Your Honor, we would also respectfully ask that you would sever this charge or either quash the indictment in the alternative.

In reference to count two, Your Honor, again Mr. Gregg has never been served with an arrest warrant.

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He was arrested in New York about -- I think back in 2007. He was extradited down here to Sumter, South Carolina.

When he was extradited, he was served by Detective Turner at the Sumter County Detention Center with a murder warrant only. He was never served with a possession of a firearm during a crime of violence and possession with intent to distribute heroin.

And based off of that, Your Honor, we would respectfully ask the Court to sever these charges.

THE COURT: Okay. Thank you, sir. Mr. Conner?

MR. CONNER: Well, as far as notice is concerned, Your Honor, I notice that the defendant's lawyer has a copy of the indictment. One reason I know because it's got my handwriting on the top where I had written a note on there before I made a copy.

And he -- I gave that to him when he visited my office here about a week and a half ago. It was -- I can't tell you the exact date, but I believe it to have been Thursday the 17th of this month. It was certainly during that week of July the 14th.

And it contains all three counts as set out on the indictment. It is a copy of the indictment that you have at this time.

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The -- what occurred here is -- is this -- there is a chain of events starting with the killing of Kevin Franklin out there in the community located at the -- almost the gates of Shaw Air Force Base.

The -- after -- that happened 11:30 at night, just a few minutes before midnight, and that -- that's when the county got the call was 11:25, I believe.

In any event, they continued through the night based on information given them there at the scene looking for William Gregg if -- William Gregg was identified as the shooter.

And at 8:00 the next morning, Lieutenant Rick Nelson went to William Gregg's home, he was allowed to search there by the consent of the woman that he was living with at that time, Pamela Franklin. She's in court right here today, Your Honor.

And during the course of this search of this home they found two weapons, two -- a shotgun and a rifle and ammunition for the rifle. They also found papers that connected Mr. Gregg with that home.

And in addition to that, they found a sufficient amount of heroin to charge PWID heroin. And all of this was the sequence of events that occurred right

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after the murder had occurred and in an effort to find the defendant.

I have a couple of cases here if you are interested in them in regards to a res gestae, and I could hand those up at this time.

THE COURT: Yes, sir. If you would.

MR. HART: Could we ask what those cases are?

THE COURT: Yes, sir. The State versus Gagum, it's a Court of Appeals case, and 492 Southeast second 822, State versus Franklin Benjamin, it's South Carolina Supreme Court case 549 SC second 258, and State versus Wood, Court of Appeals case 362 South Carolina 520 or 608 Southeast second 435.

Well, how are these drugs a part of this alleged murder? I mean, is it going to be testimony throughout this trial that some -- that drugs played a part in this murder scheme or whatever versus going to the house looking for suspect and finding drugs there?

How is it going to be some kind of scheme or something? You know, is this testimony going to be about some drug deal gone bad or the drugs were the reason or cause for this murder?

MR. CONNER: Well, may it please the Court. I believe Ms. Franklin would testify that the defendant

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had been to -- been out of state, specifically to New York, a few days before and it was -- the purpose of his trip was to get certain merchandise that he was trying to sell, and part of that merchandise was drugs. Is that correct?

MS. FRANKLIN: Yes.

THE COURT: I understand that. But the fact that -- I'm trying to determine whether we have got two potential crimes going on at the same time. One, if there's a drug crime going on, but -- and then the alleged murder.

It's got to be some connection between this drug crime and this murder. Just the fact that illegal drugs were involved and somebody purchased them and they're not connected to this murder, how is that going to lead to some common scheme or plan?

MR. CONNER: There was a break-in at the house and -- on October the 30th, and that was reported by Ms. Franklin at his request where allegedly some of his -- some of these items had been stolen.

And also Captain Turner responded to that call and went there. Of course, he didn't tell Captain Turner that he was missing dope. But she says that -- is that correct, ma'am?

MS. FRANKLIN: Yes, it is.

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MR. CONNER: That she went there to--

MR. HART: Just -- out of no disrespect for Mr. Conner, but if she's going to make any statements, we would ask that she be sworn in.

MR. CONNER: That she -- she says it was her understanding from the conversation with him that dope and other items were missing from the house.

And I -- and then she -- she also would testify, Your Honor, that he called her on the telephone and told -- by him meaning Mr. Gregg called her on the telephone and told her somebody was going to die as a result of what had happened.

THE COURT: Okay.

MR. HART: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. HART: Just briefly, Your Honor. Also have State v Rice, which is a motion to sever case. Your Honor, in State v Rice it talks about offenses which are of the same nature, which these are not, but which do not arise out of the same chain of circumstances and are not proveable by the same evidence may not be properly tried together.

They got to show a completely different set of facts for the drugs as opposed to the murder.

What I'm confused by, Your Honor, is the night

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of the murder, if they believed that Mr. Gregg was the suspect or the person who committed that murder, they didn't need to go get a warrant. They had the exigent circumstances to go to the house immediately and go and search the house.

However, Your Honor, they waited till the very next day, the next morning to get a search warrant and say we're going to go search for this person. They didn't go search for drugs.

They went searching for a person who they thought had committed murder. And during the time that they went searching for this person is when they found the drugs.

Your Honor, it's our position that the drugs have absolutely nothing to do with the murder, Your Honor, and we would respectfully ask the Court to sever this charge.

THE COURT: What -- was a search warrant given by a magistrate?

MR. CONNER: There was no search warrant, Your Honor. The house was searched by consent.

THE COURT: Okay. Was it -- is there going to be any testimony from police officers that this search -- that they went there looking for drugs or that they went there looking for the suspect, the

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defendant in this case?

MR. CONNER: They went there looking for a suspect.

THE COURT: All right. So they didn't have no prior knowledge at that point that they were looking for drugs or had any knowledge that drug activity was involved in this.

MR. CONNER: I don't believe so.

THE COURT: Okay. All right. Anything else as far as the count three is concerned? All right. What about count two on the notice issue? He said, how long did -- when was this indictment handed down and how long has it been since your client--

MR. HART: Your Honor, this indictment came -- the crime happened in 2003.

THE COURT: All right.

MR. HART: The indictment came down four years later in 2007. Right before that, Mr. Gregg was arrested in New York, extradited to Sumter, and while he was in Sumter County Detention Center served with a murder warrant only.

He's never been served with count two, possession of a firearm during a crime of violence, Your Honor, so he's never received -- I understand that the Government is saying that they have given me

a copy of the indictment, but I'm not on trial today, Your Honor.

It's Mr. Gregg that's on trial today. He's never been properly served with an arrest warrant, never signed a warrant, never received anything.

THE COURT: And the question is whether he's ever been served with an indictment.

MR. HART: He's never been served with an indictment. Your Honor, he's never been served with anything concerning count two.

THE COURT: And when were you served with the indictment?

MR. HART: I think Mr. Conner gave me this indictment approximately -- it was on a Friday, so I'm saying approximately a week ago, Your Honor, is when I received this indictment.

THE COURT: Okay. And how long--

MR. HART: Think I came to the office.

THE COURT: How long have you been representing Mr. Gregg in these charges?

MR. HART: Approximately 18 months, Your Honor.

THE COURT: Okay. And when did you file discovery -- you never got an indictment, discovery request, you didn't know what he was charged with until a week ago?

MR. HART: Your Honor, the only thing that I thought Mr. Gregg was charged with was murder. That's it.

THE COURT: You gone to Clerk of Court's Office and looked at the indictment at any time since?

MR. HART: We served -- we served discovery on the State right after I started representing Mr. Gregg. It took some time. And I'm not saying they did it intentionally, but it took some time for them to get the case together because it was so old. It was an old case.

And finally when they got the discovery to me, the indictment was not in the discovery. I never received the discovery. I mean -- I'm sorry. I never received the indictment. I did receive partial discovery.

There is -- Mr. Conner faxed me over something about a week ago that had some additional discovery, and I think this indictment was included in there, I believe.

THE COURT: Okay. But you didn't -- didn't go to the Clerk of Court and get a copy of the indictment?

MR. HART: No, sir, didn't go to the Clerk of Court to get a copy of the indictment. At that time

we was not aware that Mr. Gregg was going to be charged with possession of a firearm during a crime of violence.

THE COURT: Okay. All right. Mr. Conner, what's your position on that?

MR. CONNER: Your Honor, I take the position that -- that we provided this attorney with a copy of the indictment not last week but the week before. And based upon that, I think he's had adequate notice.

And certainly the -- the -- the reason he wasn't given the indictment -- the indictment in the beginning is at the time I made the discovery response, we had not indicted the case.

Now, I -- it just -- he was asking for bond and other -- and discovery materials and all of that, and I was anxious to get it done, so I supplied it. But he has -- he has had adequate notice to proceed to trial, and that's my position.

THE COURT: All right. What about that -- you have known this for a week or two weeks that charge with possession of a weapon during a violent crime is on there, how does that prejudice you in preparation for trial?

MR. HART: Your Honor, because I have been

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preparing for the last 18 months. So at this point in time what I have had to do is take my preparation and put it into rapid fire because of notice on the -- sorry.

THE COURT: But normally unlike, you know, when you're dealing with a murder case and you have been on notice that the victim was ultimately shot that there was a weapon involved in the murder case, so what -- if you had known 18 months ago he had a possession of a weapon during a violent charge versus a week ago, what would you have done differently unlike drugs or some other charges that would take different preparation, what -- and my understanding is that the State doesn't have a weapon? No weapon was ever recovered?

MR. HART: No weapon has been found.

MR. CONNER: The weapon was not recovered.

THE COURT: So it's basically the circumstances that he had to have a weapon.

MR. CONNER: The testimony of witnesses.

MR. HART: That's correct. Even the weapons they found in the house are not connected to this crime.

THE COURT: I understand that. But if you -- if they had a weapon that you didn't know about even

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from the murder charge -- and you may want to have some independent person examine that weapon to determine if they had an expert saying that this was the murder weapon, ask him, well, the deceased weapon -- you may want to have some limited person look at the weapon, confirm it's a match.

But I assume that's not going to be the testimony because they don't have any weapon, therefore there's no State expert that examined this weapon.

So my question to you is how, this notice issue, what would you have done different?

MR. HART: And Your Honor, out of candor, I have to tell you, me, I am personally prepared to go forward on that firearm charge.

THE COURT: Okay.

MR. HART: I have discussed it with Mr. Gregg. However, it was necessary, of course, to make that motion because the proper notice was not there. And to be honest with you, I think we can live with count two. Specifically we're really concerned about count three, Your Honor.

THE COURT: Right. Okay. And I have some concerns about count three that I don't -- and at this point I don't necessarily see a connection that

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comes under the Tucker case and others that's some -- you know, common scheme or, you know, if it's going to be testimony that this whole thing was a drug deal went bad, that drugs may play an important part, but I don't know.

I will read these cases over the lunch break and let y'all know after lunch about that count three.

MR. HART: Yes, sir.

THE COURT: Now, are there any other motions that you want to hear?

MR. HART: There are, Your Honor.

THE COURT: All right.

MR. HART: My second motion, Your Honor, is a -- I think I want to put on the record, Your Honor, if it's necessary for us to have a Neal v Biggers hearing, I would like to have one.

I think on the record we have not heard whether there's been an independent identification other than what's about to take place in this courtroom today, Your Honor.

THE COURT: Right. And what about that, Mr. Conner?

MR. CONNER: Well, there was -- there was not a photographic line-up conducted. Now, the people who were out there, the witnesses indicated to me that

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they know Mr. Gregg and they gave his name that night to the law enforcement agents, and they are prepared to identify him in the courtroom.

THE COURT: Okay. So we don't have any show-up, photographic line-up or real line-up involved in this case to offer any testimony?

MR. CONNER: No.

MR. HART: Okay.

THE COURT: All right.

MR. HART: Your Honor, my next motion is a motion in limine. Specifically, Your Honor, we had a preliminary hearing approximately a year ago, Your Honor, that I know there was some testimony.

And the reason why I'm bringing the motion in limine, Your Honor, is because of specifically under rule 44B and also once you ring that bell, Your Honor, you can't unring it.

And I would like to limit the testimony, specifically the Detective Turner testified about some flight evidence. You know, I asked him how did he have knowledge that Mr. Gregg knew about a warrant.

He specifically talked about Mr. Gregg contacted a lawyer and a lawyer called Mr. Turner and saying, we're going to turn Mr. Gregg in, Your Honor. We

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specifically ask the Court to limit that testimony and not allow -- well, exclude that testimony and not allow him to testify to -- about a conversation under hearsay also that he had with a lawyer about Mr. Gregg turning himself in on that warrant, Your Honor. That's -- I have several here, not too many, but...

THE COURT: Go ahead. Let me hear them all then.

MR. HART: Okay. The second one, Your Honor, is I think the Detective Turner speculated during the preliminary hearing as to why he believed Mr. Gregg was calling the police, was that he speculated that this is what drug dealers do, they get upset when someone steals their drugs.

And we want to make sure that we exclude that testimony about any speculation about how the conduct of drug dealers take place in Sumter County, Your Honor.

Also, Your Honor, I guess my other one was I was going to ask for the exclusion of the drugs that were found in the house, but I think that's pendent off of how you rule on the motion to sever, Your Honor.

THE COURT: Well, if I deny your motion to sever count three, is the way these drugs obtained an issue as far as is there any question about an illegal

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search or any of that issue?

MR. HART: It's possible, Your Honor, because there was no search warrant.

THE COURT: Okay. Well, but -- and you simply object to them coming in whether that--

MR. HART: Because it will be our position, Your Honor, at that time the exigent circumstances have alleviated or they have -- were eliminated at that point in time, Your Honor.

THE COURT: Okay. But you -- but what about the issue of consent? I mean, their -- situation they are claiming it was a consensual search and a search warrant wasn't an issue at all.

MR. HART: That is correct. We aren't sure who the owner of the home is, if they even have the authority to give.

THE COURT: We get to that part, we will deal -- we always have to deal with some -- whether the search is lawful under consent.

MR. HART: Yes, sir.

THE COURT: Okay. What else?

MR. HART: I think -- let's see.

MR. CONNER: May it please the Court. Could I interject something at this point?

THE COURT: Yes.

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MR. CONNER: Even if the drug part of it was not being contested, we're going to want to enter some items that were taken from the home, specifically a bullet that was taken from the wall, and also some papers with his name on it that were taken from the home.

So -- what I'm saying is the entry of the home may be a legal issue that we need to address.

THE COURT: Oh, I got ya. Okay. Outside of the drugs, other evidence that you want to bring in that came from the home; is that right?

MR. CONNER: That's correct.

THE COURT: Okay.

MR. HART: That was my next motion, Your Honor, excluding any evidence that they found, more specifically the bullet which has absolutely nothing to do with this case, can't tie it.

A bullet being found in a wall in a house which is away from the crime scene has nothing -- it's just highly prejudicial, Your Honor, has nothing to do with this crime that took place over a course -- at the appropriate time we will be making that motion, Your Honor.

And I think in addition, Your Honor, there is -- we will be making a motion to suppress any evidence

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of flight.

It says specifically, Your Honor, it says under Beckham -- one second, Your Honor -- State v Beckham which is 334 SC 302, Your Honor, which is a 1999 case.

It says, the critical factor to the admissibility of evidence of flight is relative totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities.

Now, with that, Your Honor, with -- if the detective cannot testify about how -- because the only way he knew that Mr. Gregg had knowledge of the warrant was because he had a conversation with a lawyer about Mr. Gregg turning himself in.

Without that testimony, Your Honor, there is nothing that they can say about Mr. Gregg having knowledge of this warrant, and according to them, fleeing to New York.

So therefore, Your Honor, we would ask that any evidence of flight be excluded from this trial. Under State v Beckcard (sic) we gave the critical factors, Your Honor.

THE COURT: Okay.

MR. HART: And Your Honor, I think that is all

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that I have for motion for exclusions and motion in limines, Your Honor.

THE COURT: Okay. Mr. Conner, you want to respond to these?

MR. CONNER: Your Honor, in regards to -- in regards to flight, I do think flight is relevant in this case in one of our officers talked with the defendant by telephone sometime in the mid-morning of November the second and told him that he was wanted in Sumter and that he needed -- and told him what he was wanted for, and told him that he needed to -- to return to Sumter or turn himself in at the nearest police station or come back and to address these charges, and it was -- that was back in November of 2003, November the second, 2003.

And he was not arrested and could not -- they made efforts to locate him and couldn't -- and he was not arrested until September of 2006 in New York state.

THE COURT: All right. What--

MR. HART: Your Honor, I guess we just at a disadvantage because through discovery we have not been supplied with that information. Even during the prelim -- we have a preliminary hearing, Your Honor, and the detective never testified that there was a

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conversation between Mr. Gregg and an officer about the officer telling Mr. Gregg they had a warrant.

So as we speak, Your Honor, this was the first that we're hearing of this. So I think that's a huge disadvantage and we certainly ask for discovery well over almost two years ago.

So based off of that -- of a violation of rule five, Your Honor, the criminal rules of procedure and Brady, we would ask that that testimony be excluded.

THE COURT: What do you say about that, Mr. Conner?

MR. HART: Caught by surprise.

MR. CONNER: Your Honor, I don't have any report regarding that, but I do have -- well, he's -- yonder -- is he back there -- I have an officer who talked with him, the same officer that went to the home who was looking for him, and he was able to get his cellphone number from Ms. Franklin, and he made a call to him.

And that's when he told the defendant he was wanted on these charges and he needed to return here.

THE COURT: What did the defendant say?

MR. CONNER: The defendant said that he hadn't been in Sumter. And obviously by his actions he didn't comply with what he was told to do.

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MR. HART: And Your Honor, I guess -- that would bring up an issue of Jackson v Deno because those are statements to law enforcement. And again, we're being caught by the elements of surprise, so we didn't have time to prepare for this to be able to do any type of investigation to even try to go and talk to this officer, ask him about the conversation.

We have never seen an advice of rights form. We have never seen -- so that brings up a whole new issue of whether we need to have a Jackson v Deno hearing.

MR. CONNER: That was not a custodial interrogation, Your Honor. That was just a telephone conversation.

THE COURT: Okay. And this -- is it -- did the officer make any notes or anything concerning what the defendant told him?

MR. CONNER: I don't believe he did make any notes in that regard. I don't have any. He -- he did indicate, and I -- on his report he listed the cell number, and...

(Attorneys conferring.)

MR. CONNER: I believe that we gave a copy of the incident reports, both the one at the home and at the scene location to the defense in this case.

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THE COURT: And in those incident reports, does it state the conversation that occurred between the defendant and law enforcement?

MR. HART: It -- it's -- sorry. Go ahead, Mr. Conner. It does not, Your Honor. I'm looking at -- I have a copy of the report. It has everything in there except for the conversation in which Mr. Conner is speaking about.

I see nothing about a statement that was given by William Gregg about -- about the officer telling him that he has a warrant, he needs to turn himself in. I see nothing in that statement, Your Honor. So we would ask that that testimony--

MR. CONNER: This is not a custodial situation, Your Honor. I don't think that the issues that he is bringing up apply in this particular circumstance. It's...

THE COURT: He's -- but he's bringing up a rule five issue. Is -- I mean, Jackson v Deno deals with freely and voluntariness of the statement, and obviously custody would make it an issue in that.

But he's claiming it's a rule five violation in that he was not made aware that his client made a statement. And--

MR. CONNER: Well, it -- I believe under rule

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five -- I don't have a copy of rule five in my hand--

MR. HART: Specifically I have here disclosure in criminal cases, disclosure of evidence by the prosecution. It says, statement of the defendant.

Upon request by the defendant, the prosecutor should permit the defendant to inspect and copy or photograph any relevant or recorded statement made by the defendant, copies there within possession, custody, control of the prosecution, the existence of which is known or by exercise of due diligence.

Here's the issue, Your Honor. This case is five years old. So if the officer knew that he had made this statement now, he knew five years ago, and he also knew when we made the motion for discovery, and it wasn't supplied to us.

THE COURT: It also says under section 8, the last sentence under rule five that's in the control of the prosecution, the existence of which is known or by exercise of due diligence may become known to an attorney for the prosecution the substance of any oral statements which the prosecution intends to offer into evidence and trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecuting agent.

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MR. CONNER: This was not a interrogation. This was just informing him that he had been charged. This is just a statement a policeman made to him. And as a result of that I think you might infer or conclude that he knew that the charges were pending, and his actions speak for themselves, but that's not a -- a response that he made.

THE COURT: But I thought you were going to offer something he told the officer. I mean, my understanding of--

MR. CONNER: Well, we can -- we'd like to -- what we want to proceed on is informing him that he was wanted down here and that he needed to turn himself in.

THE COURT: Okay. And that's different than his response to the officer.

MR. CONNER: Well, I think at this point his response as to where he was or what he was doing or the fact that he hadn't been in Sumter, if they don't want that in, we'll leave that out.

THE COURT: Okay. I'll -- I'm just trying to be sure that I have an understanding of what the -- the motion is and what the evidence would be.

And if -- it's one thing if the police officer called him and informed him that he was -- has

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charges pending, then you've got the next police officer calling him, informing him that, and then whether you're trying to get his response in and question -- getting his response in, whether it comes under rule five and whether it's a violation of rule five by not telling him what the response is.

So even your -- your position even if he -- response doesn't come in, then you have the power or right to act to put the officer on the stand and have the officer testify that he informed the defendant the charges pending against him on the telephone -- or whoever. I assume that will be -- anything else? Any other issue?

MR. HART: Your Honor, I did make the motion about -- I'm not sure if you ruled on whether the evidence comes in about Detective Turner speaking with the lawyer.

THE COURT: How is that -- how is that going to come in under any theory?

MR. CONNER: I don't intend to put that in, Your Honor.

THE COURT: That's hearsay unless the lawyer gets on the stand. I don't know how that would come in.

MR. HART: It came out in the prelim. I just

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wanted to make sure before he rattled off.

THE COURT: Well, that's not one of the exceptions to the hearsay rules that I know of, but I -- unless Mr. Conner knows of an exception. I see Ms. Fant in the back. She usually knows every exception.

MR. HART: So Your Honor, if I'm clear, that the only evidence that they intend to offer as to Mr. Gregg's flight is that an officer informed him that he had an outstanding warrant and that they -- and that's it. That's my understanding. And so my -- I don't have any more motions.

THE COURT: Is that right?

MR. CONNER: He had out -- that he was wanted here in Sumter for murder and that he needed to turn himself in as a result of that.

THE COURT: That he did turn himself in. He -- I mean, I -- he never turned himself in. He was ultimately arrested in New York. Is that the fact?

MR. CONNER: Yes.

MR. HART: That's correct, Your Honor.

THE COURT: You don't have any objection to that is what you're telling me.

MR. HART: That he was arrested?

THE COURT: What he just said. The officer

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contacted him, informed him he was -- had charges pending in Sumter County, and on whatever date that conversation occurred, and then a year or two years later he was arrested in New York. Is that going to be the testimony?

MR. HART: As long as he doesn't get into the reasons why he was arrested up there.

THE COURT: Okay. Now you're...

MR. HART: He was arrested on a different charges. That's why--

THE COURT: Well, and I don't know whether Mr. Conner intends to get into that or not. Having said all of this, you could open the door to any of this by the wrong question on cross. You understand that.

MR. HART: Yes, sir.

THE COURT: Okay. So we've resolved the flight issue now. The only issue that we have got is with consent to search and the bullet and the papers; right?

MR. HART: That is correct, Your Honor.

THE COURT: Okay.

MR. HART: And the sever--

THE COURT: And severance, yeah. So--

MR. CONNER: Your Honor, let me just say this on the bullet is -- Ms. Franklin would testify that the

defendant owned a pistol and the pistol was discharged in the home on one occasion and the bullet lodged in the wall.

She pointed that out to Lieutenant Nelson and he retrieved that bullet. And even though the -- that the -- they made an effort to match the bullet with the bullets that came out of the victim's body, and even though they can't say specifically that it is -- was fired by the same gun, they said that it could have been fired by the same gun.

In other words, it's not inconsistent with the bullets that came from the body.

THE COURT: Okay.

MR. CONNER: And that's why we're interested in this bullet. And I think Mr. Hart has suggested it was completely irrelevant, and I suggest it is not.

THE COURT: Right. And what do you say about that, Mr. Hart?

MR. HART: Well, it's -- it's got to be irrelevant because if the gun was fired before the murder happened, how can that bullet in the wall be connected to the bullet that was inside of--

THE COURT: Simply -- it's simply they're offering it to make the connection that in fact your defendant had access to a handgun. He owned a

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handgun. He had access.

And then they -- in an alleged murder where it was committed by a gun or a handgun, then that seems to be relevant as far as I'm concerned.

I mean, it doesn't necessarily connect that that gun committed the murder, but in fact he had access to a handgun. And I think the State has a right to put that in because it is relevant, you know, that he had access to a gun.

You know, whatever weight the jury wants to give that, but -- and it -- they can't connect that gun or that bullet to the murder scene. It's -- it's at least relevant that he owned it unless you want to stipulate that he had a handgun.

MR. HART: No, sir.

THE COURT: And I didn't think you would. Now, any issues that Ms. Franklin -- is that her name? What was her -- what's the lady over at the house -- are they married?

MR. CONNER: They were living together, Your Honor.

THE COURT: Is there any question she -- that she didn't own that house?

MR. HART: We don't know, Your Honor. We have never been supplied with information, so we don't

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know. We will--

MR. CONNER: She tells me--

THE COURT: Your client knows whether he was living there with her. He knows whether she was living in the house or not.

MR. HART: I'm sorry. Maybe I misunderstood you, whether she was living there or whether she owned the house.

THE COURT: Whether she had -- as long as she's living there, she's got a right to consent to search. You don't question that.

MR. HART: Yes, sir.

THE COURT: It's not like he would know, you know, it's not like she wasn't living there. If you question the fact she was living there, if she had the right to consent to let the police in; right?

MR. HART: Yes, sir. I agree with you on that.

THE COURT: So that consent as far as the bullet is concerned is gone. Your real issue is the drugs, whether it should be severed, and if that indictment -- third count of the indictment doesn't go in, then that search is not an issue as far as you're concerned; right?

MR. HART: Yes, sir. Search for the drugs.

THE COURT: Right. And I quite -- at this point

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I will read these cases, but I don't see how the drugs are necessarily going to be connected in this -- in this.

Now, something may come out in the trial that makes them connected, but it doesn't appear that count three is connected to the count one and two. I'll reserve my ruling till after lunch and give me a chance to read these cases.

MR. HART: Yes, sir.

THE COURT: Anything else before we break for lunch?

MR. HART: Just with respect for your ruling. I do respect your ruling, but at the appropriate time I will make the objections.

THE COURT: Sure. Sure. All right. Then we'll be in recess until 2:30.

(Court was in recess for lunch.)

(Whereupon, State's Exhibits Nos. 1-10 were marked for identification only.)

THE COURT: Okay.

MR. HART: Want to do the ruling?

THE COURT: Give me the other one.

MR. HART: Your Honor, I tried to have as much due diligence as possible and request from the Government any and all statements from witnesses,

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anything that they can supply for me.

This case happened five years ago. We had a prelim where I specifically asked the detective, is there a statement, written statement from Darrell Herriott. His reply was, no.

I specifically asked Mr. Conner, do you have any statements from Darrell Herriott, from -- Kendrick Miller's written statements. His reply was, no.

Now, today is the first time I have seen a statement from Darrell Herriott which was date -- which is strange to me because this is dated November 2nd, 2003.

So what's peculiar about this, Your Honor, is why didn't the Government have notice about the statement five years ago. Why did they have notice about the statement a year ago when we had the prelim?

The investigators are working on this case for five years. Darrell Herriott is the main witness. He should have known the statement was there. And here we are about to start this trial, and this is when they supply me with the statement ten minutes before we are about to start, Your Honor.

I have some serious concerns about that. This is not the discovery process.

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THE COURT: Okay. Is there anything in that statement that's exculpatory?

MR. HART: Your Honor, to be honest with you, I just got the statement. I haven't had a chance to go over it with my client. I haven't had a chance to read it myself. He just gave it to me five minutes ago.

THE COURT: Okay. Mr. Conner, you want to respond to that?

MR. CONNER: Your Honor, it's a statement is -- a little longer than a half a page, handwritten. And it's actually on two, a little bit on the second page, but there's a whole lot of space taken up there where there's no message. I'd be glad to hand up a copy for your inspection.

It's my understanding that according to rule five that we only have to supply the statement of a witness after the witness has testified. We try to get it before the witness testifies to give the lawyer an opportunity to look over it. This is the kind of statement he could read in about two minutes.

THE COURT: Okay.

MR. HART: Your Honor -- I'm sorry. Go ahead.

MR. CONNER: I'd like to correct Chris in one regard, Your Honor. He asked me about Kendrick

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Miller, and we didn't have a statement from Kendrick Miller.

And this is the only statement we have been provided I believe from any of the witnesses other than two people named Williams that I -- that would not be State witnesses that I gave him copies of their statements because I did think they were exculpatory.

THE COURT: All right, sir. Yes, sir.

MR. HART: Your Honor, I would hope this is not a trial by ambush, you know. I would hope that this is not a trial where the Government says, well, he didn't ask for that statement.

It is a continuing duty upon the Government to turn over any and all evidence, Your Honor. It can't say, well, he didn't ask for that one, he only asked for this one.

I served them with a Brady motion and a rule five under the South Carolina Rules of Criminal Procedure, and I had very specific conversations with Detective Turner and I had specific conversations with Mr. Conner about any and all statements, written, audio, recorded, video, please give them to me so I can discuss with my client so we can prepare a defense.

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He comes and gives me this statement five minutes before we are supposed to start trial, Your Honor. That's a concern I have.

THE COURT: But those -- but under the rule five, he's not required to give you copies of his statement till he -- till the person testifies. That's why I asked you if there's anything exculpatory in it. Under Brady, exculpatory issues are different.

But -- and understanding it certainly slows down the trial process when you only get that statement after the person has testified and you have to read it and spend some time before you can conduct your cross-examination, but -- and I'll be glad to look at it and see, but I don't think he violated the rules by the fact he's just given it to you unless there's something under it that violates Brady.

That's why I asked you that. And I understand your frustration, but -- but I think that's the -- it's different than the statement of your client, that he -- you know, understanding rule five, he only has to give you his witnesses statement after they have testified and you can use those statements to cross-examine them.

MR. HART: And I thank you, Your Honor. I do

respect that. I understand that and I agree with you.

However, just out of fundamental fairness, if I ask of a statement -- just tell me, yes, there's a statement but we aren't going to give it to you till the morning of trial or we aren't going to give it to you till ten minutes before trial. Don't go on the record and say, no, there's no statement, you know, from the prosecutor.

Tell me there's a statement but we just won't turn over because we don't have a obligation to do so. That's just fundamental fairness, Your Honor.

THE COURT: I understand. But -- and I understand your frustration. But the Solicitor's even -- his statement to me is that he didn't realize you asked for Herriot, but he gave you somebody else, some other statement.

And whether he misunderstood you or what, I don't know. Now, have you had an opportunity to read the statement?

MR. HART: Yes, I have. If you give me one moment, Your Honor, to go over it with my client.

(Whereupon there was a pause.)

MR. HART: One moment, Your Honor. Your Honor, I just -- we actually reviewed the statement. My

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client's reviewed the statement.

We would just respectfully ask the Court to inquire of the Government is there anything else left out there in discovery that they have not supplied to the defense so we don't get in the middle of trial and I get something that has not been supplied.

We just ask before we go forward, is there any other evidentiary material that has not been supplied to the defense?

THE COURT: What is your response to that, Mr. Conner?

MR. CONNER: There's -- I gave him some records of NCIC reports and three potential witnesses, Your Honor. My -- my contention is not all of them are things that somebody could be impeached by.

But I gave him a record on Kendrick Miller, a NCIC report on Darrell Herriott, and an NCIC report on Pamela Franklin. And you do have those three; right?

MR. HART: Yes, I got them.

MR. CONNER: And my contention is only -- there's -- that there's no impeachable record here for Pamela Franklin. And before she testifies, we'd like to take that up.

And also -- well, my contention is there's no

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impeachable record on all three of them.

THE COURT: Okay. And what's your position, Mr. Hart?

MR. HART: I agree. I have had a chance to review the criminal records that I have been supplied with. And I think the only person I see at this point is Mr. Miller. I don't see anything on Frank -- Pam Franklin and Darrell Herriott.

But I think the Government did not answer the question as to if there's any outstanding discovery or evidentiary material that has not been supplied to the defense at this time.

MR. CONNER: I can answer that better by telling you what I have supplied, what I might not have supplied. You know, as far as I'm aware, I think we have complied with the rule.

THE COURT: And I -- I mean, assuming that -- I don't know anything else to do but to proceed.

I mean, obviously he -- he doesn't know what you have supplied him with, but you -- all documents and tangible evidence that you intend to introduce you have given him a copy of; right?

MR. CONNER: I did. And -- and in fact, I told him if we got some documents here that were taken from the house, Your Honor, that were -- apparently

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bear his name, and we wanted to introduce those. And the -- I invited him to go down to the sheriff's department and look at them if he wanted to.

I had given him some copies of -- of them or partial copies, and he indicated he was not interested in looking at them.

THE COURT: Okay.

MR. CONNER: But they just are any -- if he had -- if we wanted to go by and look at anything else we had, I'd have been glad for him to look at that, too, but we specifically discussed those papers.

THE COURT: And do you have any issue with that?

MR. HART: No, Your Honor. I have been supplied with copies of the papers. I think at the appropriate time I will move for objection for the introduction of those papers because I believe those papers the Government intends to introduce to show that Mr. Gregg lived at that residence to try to prove constructive possession on the drugs.

We don't deny that Mr. Gregg lived there. Nobody said -- we won't have any testimony that he didn't live at that particular residence. And that's the only reason why they intend to offer that is because of the drugs, Your Honor.

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And I think that's pending off of the ruling of your -- of the motion.

THE COURT: Okay. All right. And as far as that motion is concerned, you know, Mr. Conner, how -- in the facts that I have been given at least preliminarily in the record was that this defendant reported a burglary at his residence. The police came and did a report of the burglary.

Supposedly he made a comment to whoever was residing in the residence with him that somebody was going to die as a result of this. And then sometime later a murder was committed and you have a witness that's going to tie him to that murder.

And the next day the police go to the house and have a consent search and find some amount of heroin in the house. Is that right?

MR. CONNER: That -- that's right.

THE COURT: And so -- and my concern is on those facts, I don't see that the drugs in the house comes out of the single chain of circumstances proven by the same evidence that, you know, the full criteria in Tucker.

And under the same general nature, there's -- he hasn't been prejudiced. I mean, it's -- it's -- those drugs may or may not have something to do with

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this murder.

But you know, short of a witness -- now, if a witness testifies that this whole murder was over drugs, that he was in -- that the fact that the drug dealer and he brought the drugs into the house, that somebody broke in and stole those drugs and he went hunting the man who stole those drugs and killed him over those drugs, then that may be a different, you know, chain of circumstances arising out of some single chain of event.

But if that's not the case, I don't think it -- it fits the criteria of Tucker. Simply that he had drugs in his house the next day when -- didn't have anything to do with this murder.

MR. CONNER: Well, it's my understanding that a witness would testify that he alleged that the home was broken into, clothing was taken, DVDs and -- video, also DVDs, and also some drugs that he had gotten on his trip, and that he brought that stuff back there to their residence on
and that he -- after it was stolen, he said that -- that he -- that somebody was going to die.

And then after the -- after the killing, he disappears, and the law -- the police go at his house looking for him. And when they get there, she

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consents and lets them come in and look around, and they did find some drugs there. So apparently all of the drugs were not stolen.

THE COURT: But how does -- how does that connect that same circumstances to this potential murder? I'm -- you know, if there's going to be evidence that the fact that somebody was going to die, how is he going to tie in that the deceased is the one that stole the drugs and that the drugs were -- what's the difference between the drug -- the DVD and the clothes and everything else?

It seems like to me it's just a separate charge. If you were going to try him for the drugs, you -- you know, be a separate situation, and they're not directly tied to this murder based on -- without some speculation and some...

You know, when the witness is telling this story about this crime, unlike a drug deal gone bad in an alley where you have got two people exchanging drugs and one's dissatisfied with either the amount of money or the quantity of the drugs and pulls out a gun and shoots the other one, that's all one chain of events that -- that are obviously logically connected to each other.

In this scenario it may. But the drugs you

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found the next day are removed from the murder. I mean, if the person -- the defendant had killed the victim and taken drugs off of the victim's body at that time and then he was caught with those same drugs or came out of that same -- that's a different story.

But how -- how is the drugs in his house any way connected to this murder other than a potential motive. And you still may have the motive. You just don't have the charge, the third count.

You know, if -- if the State's theory of the motive in this case was over him stealing the drugs, I think that's different than actually the third count.

It's a separate scenario because the proof is -- if you're going to try him on the drugs, you're going to put the police officer up and search the house a day later and found drugs in the house and then through finding papers there, you are trying to connect him to a constructive possession situation, and that's a whole -- you can try -- that's a whole separate situation. It doesn't appear to be directly tied to this murder.

And it just doesn't seem to flow in my understanding of the Tucker criteria unless -- but

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I'm, you know...

MR. CONNER: I have nothing further that I can offer.

THE COURT: Okay. And I don't know how -- if I had heard the whole facts in this case, you know, but I'm kind of ruling in the dark based on what you are telling me the facts are going instead of seeing that that connection is there short of -- now, if the defendant takes the stand, he may open certain doors.

Now, I don't know whether they have another count on the indictment, but the drugs in the house may come in through the defense opening some doors concerning those or denying drugs were ever in that house or whatever else.

But I don't know that the third Count of the indictment is necessarily appropriate at this time. Okay. So I'm -- so at this point we are going to go on count one and two.

MR. CONNER: Okay.

THE COURT: Anything else before we bring the jury in from either side?

MR. CONNER: We have got all of these items marked for evidence or for identification?

(Whereupon, State's Exhibits Nos. 1-15, 17 were marked for identification only.)

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MR. CONNER: May it please the Court. We have had the Court Reporter mark State's Exhibit number one which is the crime scene map. State's Exhibit number two through number 10 which are series of photographs.

State's Exhibit number 11 which were the bullet and bullet fragments from the victim. State's Exhibit number 13 (sic), bullet fragments from the frame of the KIA vehicle that the victim rode in.

State's Exhibit number 13, a bullet removed from the wall of the defendant's home. State's Exhibit number 14, which was a GSR -- do we have anything to introduce on that? Do we have a kit left?

MR. MACKESSY: The remnants of a kit actually.

MR. CONNER: Well, what's left over of the kits. We have that. State's Exhibit number 14. State's Exhibit number 15, a Boston Celtics cap. And I understand there's no objection to the introduction of these items.

MR. HART: That is correct, Your Honor. After reviewing the Government's list, the only objections that we have on behalf of the defense is -- of course you ruled on the severance for the drugs.

But we do have an objection to the papers that were found in Gregg's home in relation to when they

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found the drugs because we believe that's what he intended to offer, the papers to show constructive possession, so we do -- we would have on objection for the papers to be introduced.

MR. CONNER: Well, that's State's Exhibit number 17. I haven't listed that as...

THE COURT: Okay.

MR. CONNER: We continue to offer that, Your Honor, based on the fact that it establishes the defendant did live in the community with this woman who is going to testify as to where the bullet was found.

THE COURT: Okay. And understanding that and it -- and I will rule on that at the appropriate time, and it may be admissible, and you, you know, to establish the fact that he was in the community and lived in this residence or at least had been in this residence.

MR. HART: Yes, sir.

THE COURT: Can -- all right. So -- you have an extra copy of that list, Mr. Conner?

MR. CONNER: I can.

THE COURT: If you don't, I can get one. That way I will have something to know what's in and what's not, and so... everything on this list is in

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without objection?

MR. CONNER: Except State's Exhibit number 17 and 16 -- sixteen. And we have --

THE COURT: Okay.

MR. CONNER: -- sixteen is vacant.

THE COURT: You got an extra copy of this or want me to make an extra copy?

MR. CONNER: I can make you a copy.

THE COURT: I will get my Law Clerk to make one. That way I will give yours back and help you keep up with the evidence. Okay. So those items are in without objection except 16 and 17.

MR. HART: That's correct, Your Honor.

THE COURT: And sixteen probably won't come in unless something changes. And 17 we'll take it up when we get to it. Anything else before we bring the jury in?

MR. HART: I need to go to the restroom real quick, and that won't take 10 seconds.

THE COURT: All right. You hurry while they're filing in here, because... I'm just 40 minutes late.

(Whereupon the jury entered the courtroom.)

(Whereupon, State's Exhibits 1-15 were admitted into evidence.)

THE COURT: Thank you, sir. You may swear the

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jury.

(Whereupon the jury was sworn.)

THE COURT: Ladies and gentlemen, I apologize because I know I'm 45 minutes late getting you out here. You will find out throughout this trial this week -- and you will swear I don't have a watch and have no idea what time it is.

But we have been working this whole time dealing with certain legal matters. And I never know how long it's going to take when I send you out. And so in that -- and it's not going to be the first time this is going to happen. I just apologize ahead of time.

But you're here today in the case of the State versus William Gregg. And he's indicted for murder and possession of a weapon during a violent crime. And this allegedly occurred on November the first of 2003.

And to this indictment he has entered a plea of not guilty. Therefore, it puts the burden upon the State of South Carolina to prove each and every element of this indictment beyond a reasonable doubt.

Your job in this case is simply to find what the true facts are. You're to listen to the evidence that comes into this courtroom. And that evidence

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will come to you through sworn testimony from this witness stand as well as the exhibits that will be introduced into evidence and any stipulations made by the attorneys.

And you're to decide what the true facts are in this case based on that evidence. What the attorneys say is not evidence. It's the evidence, the sworn testimony from the witnesses as well as exhibits that are the true evidence in this case.

And you're to pay close attention. It is important. And that's why we got 12 of you. It's such an important decision to determine what the true facts are.

Our system of justice requires 12 people to make that decision. Because see, none of us are quite as smart as all of us. And if I make a mistake during this trial, then that mistake will be looked at later at another time and another place and can be corrected.

But it's very difficult to correct your mistake because your job is to determine what the facts are. My job is to determine what the law is and tell you what that law is in this case as well as to rule on the evidence that you should hear under our rules, what evidence is admissible and what evidence is not

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admissible.

So I will do my best to be sure that you only hear admissible evidence. And then at the end of the case I will instruct you again on the law. I don't have an opinion on the facts and I can't tell you what the facts are, and you can't tell me what the law is.

You have got to accept the law as I give it to you whether you agree with it or not. But when you do that and you apply the facts that you determine to be true in this case to the law that I give you and reach a verdict that speaks the truth, that's basically your job.

This won't be a very long case, but it's going to probably take a day or two, and it's important that you pay close attention. If at any time -- we will try to work about an hour, hour and a half before we take a break.

But if at any time during the trial you need a break, just raise your hand because it's very important each one of you pay attention. And if you're uncomfortable and you need a break and you can't pay attention, then you need to let me know and we'll take a break, will allow you to go to the jury room, then we'll come back and resume the trial.

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Now also during this trial I'm not going to let you talk about this case among yourselves or to anyone else. And I know many times you're going to say, well, after we hear the first witness and we take a break, you're going to want to go back and discuss what that witness said and what you think the important parts of that testimony are.

The problem with that is you -- if you start doing that and tell your fellow jurors what your opinions are, then later in the trial you're going to want to defend that opinion you had after the first witness.

And so I don't want you to start forming an opinion and expressing those opinions to each other until you have heard all of the evidence in this trial as well as the law that I charge you.

That's why I don't want you to talk about it in the jury room before you hear it all because you shouldn't start making up your mind until you have heard everything.

So that's why I keep telling you don't discuss this case and don't allow anybody to discuss with it you. And every time we take a break, I will tell you that.

But that's the reason for that, because it's

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very important to both the State of South Carolina and this defendant that they receive fair and impartial trials and you decide this case solely on the evidence that comes before you.

Now, the attorneys are going to get up in a few minutes and give you an opening statement, which is simply going to be kind of a roadmap of where they think this case is going.

The State goes first because they have got the burden of proof. And then the defense can give an opening statement. The defense don't have to and -- because the State has the burden of proof, but most of the time the defense attorneys give you an opening statement as to where they think this case is going or not going, after which we will start with the testimony.

And then after you have heard all of the evidence in this case, you will hear the closing arguments of the attorneys. And that in fact is an argument that each one will make to you as to what they think the evidence shows you in this case.

Then I will charge you on the law and you will take that law and go to your jury room and deliberate and reach a verdict that speaks the truth of this case.

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And I will explain to you later in this trial what the elements of the crimes are and what you're to consider. But at this point in the trial what you really need to do is to pay close attention to the attorneys and to the evidence that comes in this courtroom where you will be able to render a true and just verdict in this case. Mr. Solicitor?

MR. CONNER: Okay. May it please the Court.

THE COURT: Yes, sir.

OPENING STATEMENT

MR. CONNER: Ladies and gentlemen of the jury, my name is Harry Conner and I'm an Assistant Solicitor here in Sumter County. William Gregg, as you know by now, is charged with the crime of murder.

This happened quite some time ago back in 2003. And you're going to learn that the Sumter County Sheriff's Office was -- went out from the very first day looking for him based upon testimony of the stories that witnesses told them there at the scene.

They were unable to find him until 2006 when he was located up in New York and brought back here in early 2007 to Sumter County. The -- he was living with a woman by the name of Pamela Franklin here in Sumter County and he had been living with her for about a year.

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In fact, something kind of unusual had happened a day or two before this murder, and that was that -- that Pamela had a baby right here at Tuomey Hospital in Sumter.

And she -- you're going to hear from her. It just so happens that she's the sister of the victim, Kevin Franklin, who was shot. Any way, she went to the hospital and had this baby on the 30th.

And she will tell you that the defendant visited her in the hospital. He was with her when the baby was born and he came back the next day and talked with her.

But something unusual had happened out at their house out in the community. They had had a burglary. And for some reason he calls her and wants her to call the police.

And the police responded. Some of the sheriff's department people went out there to the house where they talked with him and he said that he had had a break-in.

She will tell you that they had been in -- running a booth at the flea market and he had just come back from New York where he was buying stuff up there, like clothing and CDs and things of that sort to sell in his flea market booth. And she

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participated in helping him run that little business.

In any event, on the -- he told her after this burglary occurred that somebody was going to die. Somebody was going to die because they had burglarized his place and took his stuff.

So, on November the first, a Saturday night just before midnight, 11:25 according to the police department call records, 11:25 they got a call that there had been a shooting out in front of Shaw Field, it's near Shaw Gate Pawn Shop.

It's about a block down the street at a place called , where comes into . In that regard I would show you this sketch or diagram. This is here.

The pawn shop is down on this end. This is coming out of the air base on to . This street that comes down here and goes -- intersects right there is -- can everybody see that? Is -- this is , comes out, intersects right here.

Some of these buildings have been removed. But there was a house located here. This overhead map shows the buildings that were in existence at the time this thing happened.

This -- this was a business located right here

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with this green roof. The shooting took place right out here in front of the house where Kevin Franklin and his friend Darrell Herriott -- they were riding in Darrell's vehicle, a little SUV, and they had just pulled away from this house where they had been visiting some women who lived there.

And as they pulled out, they started out to the street. Just about the time they got to the street, Mr. Herriott will tell you that the defendant came from this direction and turned left right -- or turned right off of the but the -- the left side or the driver's side of each vehicle was side by side. The drivers' windows were side by side. Maybe slightly off, but close to side by side.

And Mr. Herriott will tell you what happened and how within just seconds gunfire started. And as he said, an angel got him out of the vehicle because he didn't know how he got out any other way other than something happened and he was able to get out. As soon as the shooting started, he reacted.

And he jumps out of the passenger's side of the vehicle and runs out here in the bushes until the shooter leaves.

However, Mr. Herriott is also going to tell you that he knew the shooter. He knew him on sight.

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He -- he had been around him before. And he knew that it was Bubba, William Gregg.

And there was another person out there in the yard, and he didn't leave with Kevin Franklin and Darrell Herriott. He stayed there in the yard. And he's going to tell you that it was Bubba, William Gregg.

They knew him. They knew his vehicle. And they knew it was William Gregg, and they told the police that that night. And the police went looking for him. And they -- they went looking for him the next day.

They went to his house. They talked to Ms. Pamela franklin. She showed them around the house. She consented to their search of the house. And you'll hear about some of the items that will -- were retrieved from the house.

And they also got his cellphone number from Ms. Franklin, and they called him and told him that he needed to come back to Sumter and turn himself in to the police.

Well ladies and gentlemen, that was November the second of 2003 about mid-morning that he got that telephone call. And he was arrested in New York in September of 2006. He never came back. He

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disappeared. The baby was just forgotten, I suppose.

In any event, this case is rather ancient, but it's not rather ancient because law enforcement didn't know who was involved in it and didn't pursue it from the very beginning.

Now, you're going to find that you're going to hear other evidence in this case. You're going to hear from a doctor who examined the person of Kevin Franklin and you're going to find that the gun was real close to Kevin Franklin's head when it was shot because the doctor's going to say that he must have held up his hand and was shot through the back of the hand and the bullet went through the hand and into the face or into the head.

And the -- the way she can tell that it was close was what's called stippling, gunpowder burns or little speckles on the skin that indicated to her that the gun was close to what the shooter was shooting at.

And also, he had two wounds in the head. He had a second wound, and there was stippling on his face and -- which is consistent with what the other two witnesses saying about the -- the relative location of these people, the driver's side and the driver's side.

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And when he pulled up there, I think Kevin Franklin thought he was just initiating a conversation. In fact, Mr. Herriott's going to say one of them said to the other one, what's up. And the defendant said, what do you mean, what's up, and then bang, bang, bang, it all started.

And you're going to see that the incident -- some damage to the interior of the vehicle that the victim was in and you can see where the window on the other side of the car was shot out by some of the shots and where there was damage to the headrest over there. In fact, quite frankly, it's a miracle that Darrell Herriott is here with us today.

Ladies and gentlemen, all we would ask for throughout this case is your careful attention to the facts. Thank you.

THE COURT: Mr. Hart?

MR. HART: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

OPENING STATEMENT

MR. HART: Good afternoon, ladies and gentlemen. I know you have been here quite a while this morning. Let me start here and let me say that the wrong person is on trial today, ladies and gentlemen. And

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the wrong person sits at that table. And his name is William Gregg.

It's unfortunate that we are here today because someone was shot and killed. But let me say to you at the very beginning, William Gregg had absolutely nothing to do with this crime. Let me say that to you again. William Gregg had nothing to do with this crime.

Now, I represent Mr. Gregg. Now, as noted by his Honor, Mr. Gregg is presumed innocent. And that presumption of innocence remains with him throughout this trial unless you as jurors return a verdict of guilty.

Now, let me mention -- there's something we don't deny. On November 1st, Kevin Franklin was shot and killed. We don't deny that. It happened. But let me tell you what we do deny. That man, William Gregg, didn't do it. He had absolutely nothing to do with this crime.

And ladies and gentlemen, that's the critical issue here. Did William Gregg shoot and kill Kevin Pringle. That's the issue, ladies and gentlemen. In fact, we expect the evidence to show several things.

We don't believe you will hear any evidence from this witness stand that directly links William Gregg

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to this crime, ladies and gentlemen. We also believe that you will hear that the sheriff's department did not thoroughly investigate this case, that they rushed to judgment on this case.

In fact, we believe you will hear that they relied upon the testimony of people you can't trust one word that comes out of their mouth. But most of all, ladies and gentlemen, you will hear that William Gregg is the wrong person on trial.

And why do we say that? Why do I stand before you right now and say the wrong person is on trial? We believe you will hear evidence that William Gregg was in a different state at the date and the time this crime happened.

But there's more to that. We also believe that the police knew this in 2003. They knew there was evidence out there that he was in a different state at the date and time this crime happened, and they still arrested him, ladies and gentlemen.

Now, we don't expect you to hear any evidence about William Gregg's blood, about his hair, about his clothing, about his fingerprints, about his DNA, absolutely nothing that connects him to this crime, ladies and gentlemen.

But we do expect you to hear that they charged

William Gregg off of several folks who say they saw this crime happen at night. Crime happened at 11:30 in the area of town where there's very little lighting. You can't really see a whole lot out there.

And you will hear testimony -- as you see the pictures that were taken at night, you will see you can't really see what goes on out there.

In addition to that, ladies and gentlemen, you will hear evidence that this particular area of Sumter, that's what goes on out there. You will hear that there is lot of drugs, a lot of shootings, a lot of crime in this particular area, ladies and gentlemen.

Let me stop there and let me remind you about the innocence. The jury -- I'm sorry -- Mr. Government, they have to prove to you, each and every one of you, beyond a reasonable doubt that William Gregg was the one who committed this murder. They have to prove that to you beyond a reasonable doubt.

Reasonable doubt is a very important principal of our law. And it's because it's better to let a innocent person go free than it is to convict someone, ladies and gentlemen, when they haven't

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proved their case.

So what is reasonable doubt? Reasonable doubt is that doubt that causes you to hesitate to act. It's that doubt that you get right here that makes you say something is missing. It's that doubt that makes you say to yourself and you scratch your head and say, wait a minute, something is not right here.

The law requires you to resolve that doubt in favor of William Gregg. We believe you will -- will hear from some witnesses. We ask you to carefully listen to their testimony. Listen very carefully to what they say happened that night and how it happened.

We believe that as this case starts to unravel, you will learn some very interesting things about the people involved in this case. And you will also learn some very interesting things about the roles they played in this case, ladies and gentlemen.

We don't believe that you will hear any witness come in this courtroom, sit in this seat, take this stand and say, I saw with my own eyes William Gregg shoot and kill Kevin Franklin. We don't believe you're going to hear that testimony, ladies and gentlemen.

At the end of this trial you're going to be able

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to boil everything down to one thing. That one thing is, did the Government prove their case to each one of you beyond a reasonable doubt.

Ladies and gentlemen, we ask you to carefully consider all of the evidence, but most importantly consider the lack of evidence. Let me say that to you again.

Consider the lack of evidence because we believe there's stuff missing in this case. There's a tremendous amount of stuff missing in this case, ladies and gentlemen.

We believe that after you have heard all of the testimony, after you have seen all of the evidence, that you will conclude that William Gregg did not commit this crime on November 1st, 2003.

At the end of this trial I will come back before you and I will ask each and every one of you to return a verdict of not guilty.

THE COURT: Okay. Mr. Solicitor, you ready to call your first witness?

MR. HART: Your Honor, we have a -- sequestration...

THE COURT: Okay. Can y'all approach just a minute?

(Whereupon a bench conference was held.)

THE COURT: Solicitor, you ready?

MR. CONNER: We're ready, Your Honor. I'm going to call Darrell Herriott.

THE COURT: All right. If you will come around, Mr. Herriott, place your left hand on this bible and raise your right, please sir.

DARRELL HERRIOTT, after being duly sworn, testified as follows:

MR. CONNER: Your Honor, could we approach?

THE COURT: Yes, sir.

(Whereupon a bench conference was held.)

DIRECT EXAMINATION

BY MR. CONNER:

Q Darrell, tell us where you were born.

A I was born in Sumter, South Carolina.

Q And how long did you live in Sumter?

A I live here till I was eight -- 18, then I left. I moved to Texas. Then I came back here, then I moved to Mississippi to build Navy ships.

Q Who did you work for in Mississippi?

A I worked for North Row Browning and I worked for Chemical Pioneer down in Houston, Texas. Now I drive trucks and I'm a licensed bail bondsman.

Q How long have you been driving trucks?

A For the last three, four years.

Q And what state do you live in now?
A North Carolina.
Q Okay. And were you living in Sumter back in October and September of 2003?
A Yes, sir.
Q And who were you living with at the time?
A My mother, but frequently I was staying with my girlfriend.
Q And what was your girlfriend's name?
A Sara. I always called her Sara Stavis from her previous marriage.
Q And where did she live?
A Right there where the crime happened, right there at -- off . That's -- call it .
Q Where runs --
A Yes, sir.
Q -- into ?
A Yes, sir.
Q Now, on the night that this -- well, let me back up a minute. Do you know William Gregg?
A When this came out, that's when I first known his name, but I always known him as Bubba.
Q Bubba.
A Yes, sir.
Q And how did -- did y'all have any connection? Did

you see him around any?
A Yeah, I seen him around because he had my daughter over there working at the flea market with him across the street and plus he was going with my daughter mother.
Q So -- and that was the Pamela woman?
A Yes. Well, Pamela Franklin, yes.
Q So you had had a daughter by Pamela --
A Yes, sir.
Q -- in some previous time?
A Yes, sir.
Q And about how old was the girl at that time?
A Think Shawn was about -- think she was about 14, 13, 14.
Q And so she -- she was working at the flea market with the defendant --
A Yeah, helping him out.
Q -- William Gregg.
A Yes, sir.
Q Who you knew as Bubba.
A Yes, sir.
Q And he was living at that time with the Pamela woman?
A Yes, sir.
Q Okay. And so you knew what he looked like?
A Yes, sir.
Q And you knew what kind of vehicle he drove.

A Yes, sir.
Q And how about Kevin Franklin, how did you know him?
A He was like a little brother to me.
Q So how long would you say you had known him?
A Twenty years.
Q So on this particular night, where were you just before this shooting occurred?
A I was at Sara house.
Q And who else was at there?
A Me, Punchy -- I call him something. I know him as Punch -- and Sara and everybody was in the house, I guess.
Q Is a -- Punch the fellow called Kendrick Miller?
A Yeah, Kendrick Miller, yes.
Q But you know him as Punch?
A Yeah, that's what I know him as.
Q Now, where was Kendrick and Kevin?
A Kendrick was outside talking to Kevin. They was waiting for me to get dressed on the inside. So Kendrick was outside during the time before I came out the house.
Q And you were inside?
A I was inside the house.
Q And what kind of vehicle were you driving?
A It was a 2000 KIA Sportage.
Q And did it -- who did the vehicle belong to?
A It belongs to me.

Q And did it have a out-of-state license tag?
A Yes, it had Mississippi plates on it.
Q That was from your work down there?
A Yes; sir. Yes, sir.
Q And you say Kendrick and Kevin were on the outside?
A Yes, sir.
Q And somewhere about 11:25 or a little bit before that, did you come out of the house?
A Yes, sir.
Q And what, what happened at that point in time?
A Well, when I came out the house, Kendrick got out. He got out of the truck. And me and Kevin was going to leave. And as we was backing out of the driveway, here comes Bubba come flying around the curve.

I don't know which language y'all want me to use if I can talk -- I feel better if I can talk. Okay. He was coming. He was coming around the curve. I'm like, damn, that's Bubba, he's wide open.

So when he get here, Kevin stopped. Kevin like, man, what's up? He said, man, what the fuck you mean what's up? Excuse my language. And by this time I'm smoking a cigarette. I said, okay, them two talking.

So I turns my head to pluck the cigarette out the window. I turn around, I ain't seen nothing but fire in the truck.

Q Where was the fire coming from?
A Coming from Bubba vehicle.
Q And you mean the gun, the muzzle flash from the gun?
A Yes, sir. Yes, sir. And during that time I don't know. I went in shock. Me personally, I went in shock. I went in shock. It was like an angel -- somebody all of a sudden -- excuse me -- my hand open the door and I fell out the truck and I took off running.

And by that time when I hear the gun stop, I hear Punch screaming, oh, he done -- you know what I mean -- he done shot him, so I come--

MR. HART: Objection, Your Honor.

THE COURT: And what's your basis for the objection?

MR. HART: Hearsay, Your Honor. He's mentioning something that Punch said.

THE WITNESS: Well, whatever--

THE COURT: Hold on just a minute.

THE WITNESS: Okay.

MR. CONNER: Your Honor, we would say it's an excited utterance based upon present sense impression.

THE COURT: Okay. Y'all approach just a minute.

(Whereupon a bench conference was held.)

BY MR. CONNER:

Q And Punch said what?
A Punch said, oh, he done shot him. So by that time I'm running back to the truck. As soon as I get to the truck and see the situation, I goes running to his mother house. Now, this is--
Q Whose mother's house?
A Kevin Franklin mother's house. Now, this--
Q Does she live nearby?
A Yeah, she live not even -- not even a block, you know. And so now I got to go look in this woman eyes who raised me like her son, you know, and tell her this was just happened to her son.

And we came back and, hmm -- I mean, it came back and that's when called the police and everything and...
Q Now, did -- when Bubba pulled up there by Kevin, they were driver's side door to driver's side door; is that right?
A It was not even -- not even 4 feet apart.
Q And you got a good look at the driver?
A Yeah. When he pulled up like that -- when I seen the car pulled up like that, I'm thinking somebody -- I mean, I lean up to see who it was, I'm thinking it ain't nothing.

So that's why, you know what I mean, I told them my cigarette laying on the floor -- put the cigarette out the

window.

Q And do you see the man in court today --

A Yeah.

Q -- who was driving that vehicle that pulled up?

A Yes. How can I ever forget the man try to kill me, too.

Q Point him out to us.

A Right there (indicated.)

MR. CONNER: Your Honor, we'd ask that the record reflect he points to the defendant, William Gregg.

THE COURT: Okay. It so reflects.

BY MR. CONNER:

Q Now, were you also familiar with William Gregg's vehicle?

A Yes.

Q And what kind of vehicle was it?

A It was a Oldsmobile Cutlass Siera then he -- he -- then he got -- well, the vehicle he had -- yeah, I know his vehicles because my daughter be in and out the vehicles with him. So it -- every time I see his vehicle, I look in his vehicle, see if my daughter there.

Q Okay. So he had more than one vehicle?

A Yes.

Q But the one that he was driving that night was what?

A A Oldsmobile Siera.
Q Okay. And I show you here these pictures which are marked State's Exhibit number eight, nine and 10 and ask you to examine them and see if you can identify them.
A Yeah, that's it. That's that car.
Q That's the car that -- which car?
A That's the one that Bubba was driving.
Q And that's the one you had seen him driving around the neighborhood?
A Yes, sir, and that's the one I seen that night.

MR. CONNER: Just look at them and pass them around. (Speaking to jury.)

THE WITNESS: I -- only thing, I'm allowed to ask question or I say something, too?

BY MR. CONNER:
Q You can -- you have to answer the questions we ask you.
A Okay then, okay.
Q How many gunshots did you hear, Darrell?
A I heard two before I got out the truck. And when I was running, I heard some more.
Q Okay. The -- did you have on a hat or a cap?
A Yes, I had a Boston Celtics outfit on.
Q Tell us about that.
A I had a green and white Boston Celtics hat. And I

normally wear my hats in the front, but this particular time I had the hat in the back and...

Q You mean--

A I had it turned backwards. And after everything happened, I goes home or I went to see Sara, one of the two, and either my mother or her break down and started crying and asked me, did you see your hat. I didn't know a bullet went through my hat while it was on my head.

Q Okay. And I show you here this State's Exhibit number 15.

A Yes.

Q Ask if you can identify that.

A This is my hat. I put it on my head. It fit perfect.

Q And where is this so-called bullet?

A Right here. Went through. I put the hat on? And I had the hat on, it sitting right here, and it came through the back part of it.

Q Okay. And it just grazed it?

A Yes, sir.

Q But that wasn't on there before the shooting?

A No, huh-uh. No, sir.

Q Just stick it back in the bag if you would.

A (Complied.)

Q Step down here. Stand kind of to the side so -- you

have to be -- stand so that everybody -- can y'all see all right? How about show us where this house was that Sara was living in.

A It was right here, right there.

Q And what -- kind of what was his building over here?

A Used to be a old neighborhood store when we was kids. They used to be on -- it's a building, an old store, something like that.

Q And tell us where your vehicle was parked over there and Sara--

A My vehicle -- if this the yard, my vehicle was parked right around up in there. And when we backed out, we backed out that way. By time we start easing forward, here come -- Bubba's come sliding -- I don't mean just -- I mean, sliding through, turn the car around, and boom.

When we slowed down, see, they was just like that at an angle, and that's where everything occurred. That's when they had a few words exchanged and shots--

Q Well, tell me what the words were.

A What's up, what the F you mean what's up. And shot in the car.

Q Well, could Kevin have just driven off if he had been expecting any trouble?

A Yes.

MR. HART: Objection, Your Honor. Speculation.

THE COURT: I will allow the question.

THE WITNESS: Yes.

BY MR. CONNER:

Q If he...

A If he had known that intention was, by me knowing him, yeah, he could have droven off, yes.

Q Okay. Have a seat.

A (Complied.)

Q Darrell, let me ask you something. How about Bubba that night versus how he looks today?

A He picked up. He cut up a little bit more. Back then he was sort of chubby-like.

Q Okay.

A So he -- the weight difference ain't too much difference.

Q Did he wear glasses?

A Yeah, he wear glasses.

Q Did he wear them every time you saw him most of the time?

A 98 percent of the time, yes.

Q 98 percent of the time?

A 98 percent of the time.

Q And that night when you saw him down there in that vehicle, did he have on--

A Yeah, he had his glasses on. He had his glasses on.

Q Answer any questions the defendant's lawyer might have for you.

CROSS-EXAMINATION

BY MR. HART:

Q Mr. Herriott, you just testified on direct that you didn't know Punch's real name; did you?

A No, I didn't know his real name.

Q You learned it -- that from the police; right?

A No, I learned that through him.

Q Through Punch?

A Punch, yes.

Q He told you his real -- so when did you find out his real name?

A I don't know, off and on. My memory bad when coming to names back then any way.

Q Okay. Well, you didn't know his real name the night of the shooting; is that right?

A Yes, somebody in the house knew his real name, but I -- yes, somebody probably told me what his real name. That was five years ago.

Q Okay. Well, let's not talk about somebody. Let's talk about you.

A Okay. Let's talk about me.

Q You did not know his real name the night of the shooting; isn't that right?

A No, I didn't.
Q Okay. You learned his real name from the police.
A No, I learned --
Q Isn't that right?
A -- no. I learned his real name about everybody in that house that night. Okay. Five years ago you met somebody you don't hardly see that much and if he tell you a name five years ago, is you going to remember the name?
Q Okay. So you had an association with Punch; isn't that right?
A Not really.
Q So you really did -- but he was in your truck?
A Yes, he was in my truck.
Q So you really don't know Punch, but he was inside of your truck?
A I'm going -- during that time I was dating Punch girlfriend aunt, so yes, we would seeing each other quite a bit, but I never did, you know, hold no conversations like that.
Q Okay. So you don't really hold conversations with people, but you allow them inside of your truck?
A Yes.
Q OKay. Now, you said that you heard Punch make a statement that night.
A Right.

Q When he made the statement, you were inside of the car; isn't that right?

A No, it's not. When he made the statement, I been got out the truck, ran. When the bullet start fire, he ran to the truck. When he ran to the truck, he the one screamed out, you know what I mean, when he was shot at.

By that time I'm coming -- I'm coming back. I'm coming back down the path. And I goes to the truck and look in the truck, and then I leave there and go tell his mother.

Q So is it your testimony that you are saying that once Punch heard the shots, he ran towards the shots?

A No. After the shooting was over.

Q Okay. Well, let's talk about that.

A Okay. Let's talk.

Q You said there were three shots; right?

A That I heard.

Q Okay. Three shots that you heard.

A Okay. Can I ask you a question before we go any further?

Q I'm answering (sic) the questions.

A Okay then.

Q You say you heard three shots.

A Right.

Q Two while you were in the car.

A Right.
Q Okay. The two shots while you were in the car, where was Punch?
A Punch was in the yard somewhere. He ain't never went in the house.
Q Okay. So he was in the yard when you heard the two shots.
A Right.
Q When you heard the third shot, where was Punch?
A Still in the yard.
Q Still in the yard?
A Right.
Q And you're saying when you jumped out --
A Right.
Q -- you heard Punch make a statement.
A After the shooting.
Q After the shooting--
A I don't know -- okay. Now, can I ask a question? Can I ask one question? One question since you asked me a question. Had you ever been in a vehicle in the small confinement and somebody got a gun laying in the vehicle and you don't hear nothing but ringing in your ears?

I mean, after a while, you ain't going to hear nothing. You get where I'm coming from?
Q I absolutely do.

A I understand you're doing your job, but I'm just telling what -- how it went.
Q Okay. Well, let's talk about the ringing in your ears --
A Okay.
Q -- and not being able to hear anything.
A Okay.
Q You heard the ringing in your ears.
A Right.
Q And over the ringing you heard the statement from Punch.
A After all the shooting was over.
Q So when did the ringing in your ears stop?
A I done ran up the path, came out the path, coming back down the path when I hear him.
Q Okay.
A The ringing in my ears is why I'm in this vehicle. You get where I'm coming from?
Q So now your testimony is you'd had ran up the path, came back, and then you heard the statement about Punch?
A No. I heard Punch when he was -- when he made the statement on my way coming back because after the shooting, I went -- I was -- I ain't came back down the path where I live -- while the shooting was going on.
Q Well, let's talk about back in 2003 you talked to the

police; right?
A Yes, I did.
Q You -- in fact, you gave them a statement; didn't you?
A Yes, I did.
Q In your statement, you didn't tell them about that statement from Punch; did you?
A No, I didn't tell them about no statement from Punch.
Q Don't you think that statement is important?
A I mean, I -- because somebody scream out, oh, he shot him? My statement was important because I'm sitting there looking at this. I mean, I ain't got nothing to do with the next person's statement. It's on me. I'm just telling y'all what I said.
Q You never told the police that Punch made a statement that night; did you?
A I don't -- five years ago, do you remember? I mean, you asking me to go five years after I done been traumatized.

For three to four years I don't know where this man is. He done killed my home boy. And every time I turn around, I'm looking around my back wanting to know when this man going to come try to kill me after I done seen him do it and you expect me -- I mean -- to the -- five years ago, bro? Come on.

Q Sure. You said before you got into the truck --
A Okay.
Q -- you were at Sara's house.
A Yes.
Q Were y'all smoking crack that night?
A I don't smoke crack.
Q Okay. Were you dealing crack that night?
A No, I wasn't.
Q Were you smoking weed that night?
A I don't smoke weed.
Q You was getting drunk that night.
A Yes, I was drinking.
Q So -- all right.
A Getting drunk and drinking is a difference. Do you have a social drink sometimes?
Q Now, you were drinking that night.
A I had a drink.
Q Okay. You had one drink?
A Yeah.
Q What were you drinking?
A Five years ago? I really couldn't tell you.
Q You don't remember what you were drinking?
A No.
Q But you only -- did you have the drink inside the house?

A Five years ago, I really couldn't tell you.
Q You can't remember?
A No.
Q Kevin was drinking that night?
A Not when I seen him.
Q You agree that drinking affects your ability to remember stuff and tell what actually happened. You agree with that; right?
A No, I don't, because I don't drink that much to get like that.
Q You don't drink that much?
A No.
Q What I'm showing you has been marked as State's Exhibit number four. Do you recognize this picture right here?
A Yes.
Q That's a picture of the white KIA; isn't it?
A Yes, sir.
Q You see inside that KIA?
A Yes. You see what side it's on; right?
Q It's a beer can in that car.
A Right. And whose side is it on? It's on my side.
Q It means you was actually drinking that night; right?
A One beer. How many beers you see in there? Okay.
Q Now, you didn't give the police a statement the night

of the incident; did you?
A No, I didn't.
Q Let's talk about the lighting. It happened at night; is that right?
A Right.
Q And it was dark outside.
A Yes.
Q Not a whole lot of light outside; was there?
A No, sir.
Q Hard to see outside; isn't it?
A No, it's not.
Q You don't remember whether the headlights were on Kevin car; do you?
A The headlight was on. I turned the headlights off.
Q When did you turn the headlights off?
A When I -- when his feet was on the accelerator and the car was still in drive and his foot was on the brakes and the engine was reared up, then.
Q Okay. So your testimony is that you heard two shots, then after you heard the two shots, you jumped out of the car; right?
A Right.
Q So at what point did you go and turn off the headlights?
A What point did I went and turned off the headlight?

When I came back to the vehicle, after -- no, after I went to his mother house, let him -- the police still wasn't there. So the engine on the vehicle was reared because if his foot move, the vehicle going in the road because it's still in drive.

Q Now, your testimony is that you saw William Gregg pull up.

A Yes, sir.

Q And you had a cigarette.

A Yes, sir.

Q And you turned your head to put your cigarette out.

A Right.

Q So you never saw William Gregg pull that trigger; did you?

A No. You say that -- no. Yes, I seen him pull the trigger. I'm saying, no, you're saying it wrong. What I'm saying, when I turned around and looked -- once he pulled up and I see who it was, I'm thinking there ain't nothing.

Get through smoking my cigarette, pluck the cigarette butt out the window. It ain't nobody going Bubba. You know what I mean, Bubba and Kevin, they -- I called them brother-in-laws, so I mean, it really -- that's what I'm thinking.

Q So when you turned your head to put out the cigarette

is when you heard the shots; is that right?

A When I heard the first shot.

Q All right.

A And when I turn around, I seen the second shot. That's when I got out the truck.

Q So you heard a shot, looked, and then you jumped out the truck.

A Then I panic, basically what I done.

Q Okay. Now, let's talk about after hearing those gunshots. You jumped out the car.

A Yes.

Q And you went and hid.

A Yeah, I ran in the woods.

Q Tell us where you went and hid in the woods.

A If you give me the -- the board, I can show you. It's -- okay. Where that -- where the incident happened at, soon as the vehicle -- where the vehicles were parked, it's a path. It's a path that's directly -- that goes at an angle back in the woods right across the street.

So I mean, you telling me tell you, I mean, I can't show you nothing. I mean...

Q So you went and hid in the woods and then you came back to the car.

A Yeah. I ran in the woods, then I came back to the car.

Q Then you came back.
A Right.
Q You didn't call 911 that night; did you?
A I didn't have a cellphone.
Q You didn't call 911 that night; did you?
A No, I didn't.
Q Your testimony is that you saw someone get shot, and you didn't bother to call 911.
A The people that were standing in the door -- no, I didn't. The people that were standing in the door, they had phones. They called 911. So what I was going to do, go run up in there, ask for a phone and then call 911.
Q When you came back to the car, you left again; didn't you?
A Yes.
Q You didn't wait around for the police; did you?
A No, I didn't.
Q So you had just saw someone get shoot -- shot and killed --
A Right.
Q -- and you didn't bother to wait around for the police.
A Okay. No, I didn't, but I got -- have you ever went through that? Have you ever been traumatized? I mean, traumatized. Say, you saying -- I mean, you doing your

job, but I was traumatized.

Now, going through the experience that I just went -- that I was going through, only thing I want to see is my family. I was traumatized. Yes, I had to go. And still going through it, still traumatized, still to this day.

Q You never returned to wait on the police; did you?

A No, I didn't.

Q In fact, you went back into the woods; isn't that right?

A No, I didn't. I went home. I got a ride home. I went home.

Q You went home?

A I went home.

Q You remember getting -- you remember giving a statement -- where does your mother live?

A --

Q Okay. Do you remember giving a statement back in '03?

A Yes.

Q Do you remember telling the police that you went to your mother's house --

A Yes.

Q -- about two hours after the incident happened?

A Yes. I had to wait on my ride. I caught a ride. I wasn't driving.

Q Well, let's talk about your ride.
A Okay.
Q Your ride was out there waiting on you at the scene?
A No, it wasn't. No, it wasn't. The ride came up. When he walked up, everybody in the neighborhood came -- walked up. And when I seen him, I said, man, look man, I got to go, man, my head ain't right, man, will you give me a ride to my mama house.

Then we walked back to his house and get in his vehicle, then we left.

Q Then you left?
A Then we left.
Q When you went to go hide, were you hiding drugs?
A No, I wasn't.
Q Were you hiding a gun?
A No, I wasn't.
Q Tell us, Darrell, what were you hiding from the police that night?
A I wasn't hiding nothing. I was hiding.
Q Now, let's talk about the very next day.
A Okay.
Q Even the next day you didn't bother to call the police --
A Yes, I did.
Q -- did you?

A Yes, I did. We made a -- we made a date where I can go down there and do a statement. I called them the next day, yes.

Q Excuse me. What I'm showing you has been marked as State's Exhibit 15. This is the hat you were wearing?

A Yes.

Q How far on your head did you have the hat?

A As a matter of fact, the hat fit big, so I don't know. I probably had it sitting up. I -- five years ago. I know it was on my head.

Q You can't remember?

A Yes, I can remember. I had it turned backwards, but I don't know how far down I had my hat.

Q And you say a bullet went through your hat?

A Yes, it glazed, went through. I don't know. I didn't looked at the hat. I mean, if somebody told me I gave it to the police, that was evidence.

(Whereupon, Defendant's Exhibit No. 1 was marked for identification only.)

BY MR. HART:

Q What I have been showing you is Defendant's Exhibit one which has been marked for identification. That car has damage to the front right side; doesn't it?

A Yes.

Q You never told the police you saw a car with damage

to the right side; did you?
A It doesn't matter. I'm sitting there looking at the guy. I don't -- I mean, I'm not a cop. You get where I'm coming from? I'm sorry saying it like that. I seen the person. Somebody shooting, I'd have been -- I'm going to sit here and look, okay, that car got a scratch there, a dent there? Come on.
Q You never told the police you saw a car with damage to the right side; did you?
A No, I didn't.
Q Let's talk about you have a child with Pam.
A Yes, sir.
Q How old is your child?
A She's 18.
Q How many children does Pam have? Do you know?
A No.
Q So you have a child with this lady and you don't know how many children she has?
A No, I don't.
Q You know the father of her children?
A No. Well, a couple of them I do, but I mean, not all. I don't -- you know, I wasn't here.
Q Sure.

MR. HART: I have no further questions, Your Honor.

THE COURT: Okay. Mr. Conner?

REDIRECT EXAMINATION

BY MR. CONNER:

Q Now Darrell, Punch was going with a girl that lived at that house, too; is that right?

A Yes, sir.

Q The same house --

A Yes, sir.

Q -- where Sara lived.

A Yes, sir.

Q The girl -- the woman that you were seeing.

A Yes, sir.

Q And there was some kind of kinship between Sara, the girl that you were going with, and the girl--

A It was -- yeah, it was her niece.

Q Who was whose niece?

A It was Sara niece, the girl that Punch was going with.

Q So that's why he was there.

A Right.

Q And he -- and he and Kevin had just been sitting out there in your truck talking while they were waiting on you; is that right?

A Yes, sir.

Q But Punch didn't go with you when you were shot at?

A Yes, sir. He didn't.
Q He stayed there in the yard.
A Yes, sir.
Q But he just happened to be outside and see some of it happen.
A Yes, sir.
Q Okay. And you did contact Wesley Gardner and give him a statement -- Wesley Gardner who works with the sheriff's department -- and gave him a statement the next day.
A Yes, sir.
Q And even though you didn't go into all the scratches on the vehicle, what did you tell him about the vehicle?
A Yes, sir. No, I didn't go through all the details about the vehicle, but I did contact Gardner the next day.
Q And did you -- did you tell him what color the vehicle was?
A Yes, sir. Yes, I did.
Q What did you tell him?
A I told him it's a white Oldsmobile Siera.
Q And you told him what kind it was.
A Yes. Yes, sir.
Q And you also told him it was William Gregg; didn't you?
A Yes, sir.

Q And the people there at Sara's house, they called the police; didn't they?
A Yes, sir.
Q So it wasn't necessary for you to call 911; was it?
A No, sir.
Q I have nothing further.

THE COURT: All right, sir.

MR. HART: Just one last question, Your Honor.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. HART:

Q The statement that you gave Gardner.
A Yes, sir.
Q You didn't write that statement; did you?
A Let me see the handwriting.
Q That's not your handwriting; is it?
A Nah, it's not my handwriting.

MR. HART: No further questions, Your Honor.

THE COURT: Thank you, sir.

REDIRECT EXAMINATION

BY MR. CONNER:

Q Whose handwriting was it?
A I -- I don't know if I was shook up and I was telling and he wrote it up for me as I was telling, but I signed. It's my signature.

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Q So Mr. Gardner wrote it for you --
A Yes, sir.
Q -- based on -- upon what you told him.
A Yes, sir.
Q And then you signed it?
A Yes, sir.
Q Okay. Thank you.

THE COURT: All right, sir. Thank you. You can step down.

(Witness left the stand.)

THE COURT: Ladies and gentlemen, we will take a 10 minute break, then we will come back and work a little bit longer this afternoon. I remind you, you can't start discussing this case yet. If you will go to the jury room, I will get you back in about 10 minutes.

(Jury left the courtroom at 4:22 pm.)

THE COURT: Anything before I bring the jury in on behalf of the State? Defense?

MR. CONNER: May it please the Court. Just one thing I thought about is we have got two other witnesses that the State's going to be calling. One is Ms. Franklin, Pamela Franklin, and the other one is Kendrick Miller.

And I would like to -- they have had some

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convictions, Your Honor. I'd like to clarify whether we're going to be able to--

THE COURT: I thought we did that before trial, that y'all agreed that there were no convictions on any of the witnesses that was -- that's not true?

MR. HART: No, Your Honor. That's not true.

THE COURT: Okay. I'm sorry then. I might have misunderstood. I thought you all said before the trial that he had given you witnesses and y'all all agreed that they didn't come under the rule.

MR. HART: No, that's not true. I think Ms. Franklin has a conviction.

THE COURT: Of what?

MR. HART: Possession of cocaine in 2007, just last year.

THE COURT: Okay. Do you -- what about that, Mr. Conner?

MR. CONNER: Well, Your Honor, my position on that would be it's a -- it's a simple possession conviction and it's a -- it's after this crime occurred. Of course, I'm not sure that that's the most relevance, but...

THE COURT: Right, because I -- and I had that issue last time. I think it deals with not necessarily the -- it deals with the credibility of

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the witness and not necessarily the facts observed at the time of the crime.

MR. CONNER: That's right.

THE COURT: And so -- but I think it was--

MR. CONNER: It's -- it's a possession offense, and I would submit that it has little to do with her credibility.

THE COURT: Well, I think the test is that it carries more than one year, it's within the 10 year statute, and other -- only other thing is the prejudicial value outweighing the probative value.

And I'm not real sure that that necessarily would in this particular case because I think -- most prosecutors I have, when the shoe is on the other foot and the defendant has that conviction, that they all take the position that's admissible. Do you not take that?

If the defendant was testifying and he had a prior conviction for possession of cocaine, you don't think that's admissible?

MR. CONNER: Well, we are getting ready to get into that because we have Kendrick Miller who has a conviction for a distribution of cocaine or crack and we have the defendant here who also has a similar record for that.

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But I take the position on Ms. Franklin that she is a -- her record is for simple possession and that that would not -- that would be more prejudicial than probative, and I -- somehow or another I had made multiple copies of these records and somehow I have lost her record in the shuffle.

THE COURT: You want to be heard on that, Mr. Hart?

MR. HART: Your Honor, I think it could come in. I think it meets the tests under the rules, Your Honor. It carries a year or more. It's within the 10 year statute. I think you can question her about it.

Part of our defense is that this was at night, it was late, which impaired some of the witnesses to make the identification. And if you're under the influence of drugs and alcohol, that further impairs your ability to recall and identify what happened. So Your Honor, we -- we believe it's relevant.

THE COURT: Okay. And I--

MR. CONNER: Well, she was not out there that night, Your Honor.

THE COURT: I understand. But I don't think -- I mean, it does carry more than a year. It's within the timeframe. And I don't think that it's -- it's

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more prejudicial than probative. I mean...

MR. HART: Your Honor, we're willing to stipulate that if we put Mr. Gregg up and he doesn't talk about any of his convictions, we won't go into any convictions of the witnesses. If he's willing to stipulate to that, that's fine with us.

MR. CONNER: I think every witness is -- rests on a different situation.

THE COURT: Oh, he's asking you to stipulate. He ain't asking me to rule. I mean, I do treat every witness, you know, different. But I don't -- you know, under the same factual scenario, I understand the State's position, but I would -- if the defendant got on the stand with a prior simple possession of cocaine, I wouldn't let it in under the facts in this case because I don't think it's more prejudicial than probative.

So I think her record is going to come in. And if he gets on the stand, if he's got a prior distribution, it's going to, you know, I -- unless something changes, I think it's admissible under the rules as well unless you got a case or something that -- that they say that possession of cocaine shouldn't go.

MR. CONNER: Well, Cheeseboro -- in the

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Cheeseboro, the language is kind of vague, but...

THE COURT: Yeah. As far as -- well, I don't -- I don't think she'll be testifying until tomorrow any way.

THE COURT: Okay. If you want to give me anything else that will...

MR. CONNER: This is just a little quote from Cheeseboro says, narcotic offenses are generally not considered probative for truthfulness. I don't know that I adhere to that opinion.

THE COURT: If you do, you're the first prosecutor that I ever had in here that -- because most of the time they are arguing to me just the opposite, that they want to get every record of the defendant in.

MR. CONNER: Well, I do think there's some law in that regard, and I think that kind of offense that she's charged with and convicted of is a -- certainly it -- if any drug offenses fall in that category, that would be one.

THE COURT: Okay. Well, then we'll -- we'll take that up tomorrow, but I'm not sure you want to set a precedence that -- that any, you know -- if you want to call it Cheeseboro that any drug offense for possession of cocaine is not something that you want

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unless you're going to retire soon and leave the young prosecutors your legacy of Cheeseboro.

MR. CONNER: Let me hand you up Kevin Franklin -- I thought I had three of each one of these things and now I...

MR. HART: Kevin Franklin has no convictions, Your Honor.

THE COURT: Okay.

MR. HART: He has no convictions, so there's nothing to look at on Kevin Franklin.

THE COURT: Do you disagree with that statement?

MR. CONNER: Kevin Franklin was the victim.

THE COURT: Right. But do you have any -- of course, I don't know how...

MR. CONNER: He had a couple of charges but no convictions.

THE COURT: Okay. So that's moot; right?

MR. CONNER: Well, I have gotten my files messed up here. I don't have any more information to give you. Here they are.

THE COURT: Well, let me ask you this. It's 10 minutes to five. How -- do you have a short witness you can put up this afternoon that doesn't have a criminal record that we can get up...

MR. CONNER: I have Lieutenant Nelson here. I

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don't believe he has a criminal record.

THE COURT: All right. So maybe we could put him up and then it would give you over the night to determine about the other records so we can argue them.

MR. CONNER: Well, I found them, the records.

THE COURT: Okay.

MR. CONNER: Well, let's put Lieutenant Nelson up and let the jury go home. And then if you want to hear it, we'll hear it.

THE COURT: All right. That sounds like a good plan. If you will bring me the jury. They had 10 minutes stretched into 33.

(Jury entered the courtroom at 4:52 pm.)

THE COURT: Thank you. Ladies and gentlemen, that 10 minutes turned into 33. I know y'all are going to think I can't tell time. But I had some other legal matters that I needed to deal with in this case that I didn't know about when I sent you out.

But I think we're ready to proceed. And since it's five minutes to five, I have asked the Solicitor to see if he could find a short witness so I could get y'all out of here as quick as we can and then we'll resume in the morning.

All right. Mr. Solicitor?

MR. CONNER: Your Honor, at this time I'd call Lieutenant Rick Nelson.

RICK NELSON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNER:

Q Officer Nelson, where do you work?

A For the Sumter County Sheriff's Office.

Q And how long have you worked for the Sumter County Sheriff's Office?

A A little over 19 years.

Q And what kind of job do you have with them at this time?

A I'm a lieutenant assigned to a patrol shift.

Q And does that mean that you run the shift?

A Yes, sir, it does.

Q And how many men do you have on a shift?

A I have nine under me.

Q Now, prior to becoming a patrol lieutenant, what kind of duties did you have?

A I worked several years as a narcotics officer. I worked several years as a criminal investigator and a juvenile investigator and animal control.

Q And were you a lieutenant in the drug unit at one

time?
A Yes, sir, I was.
Q And on this particular day, November the second, 2008, right after this killing occurred the night before, did you have an occasion to go out to in the community?
A Yes, I did.
Q And tell us what you did when you got there.
A I was dispatched to the location and told that William Gregg was actually at the house and they believed he was in the house. We went to the house. Pam Franklin, who lived in the house with Mr. Gregg, was there, gave us consent to search the house for Mr. Gregg, and we did not find him at the residence.
Q So apparently you had some erroneous information?
A Yes, sir. It was anonymous. We didn't know who called, but we had to follow it up.
Q Now, did Ms. Franklin consent to you searching the home?
A Yes, she did.
Q And while you were there with her consent, did you -- did you find any guns?
A Yes, I did.
Q Tell us about the guns you found.
A We found three guns. One was actually a BB gun. The

other one was a Remington 870 Wingmaster semiautomatic shotgun, 12-gauge. The other one was a Glennfield .22 caliber model 60 rifle, semiautomatic.

Q And did you find some -- some assorted ammunition in the house?

A Yes. The guns were actually found in a car in the yard. The ammunition was found in the house.

Q Now, did you -- let's see -- where is that wad of paper? I show you this collection of papers marked State's Exhibit number 17 and ask you to examine those, please. That must be the wrong number. It's -- okay. Well, State's Exhibit number 17. I'm...

A Yes, sir.

Q Can you identify those?

A Yes, sir. These were some of the papers that were found at the residence that had Mr. Gregg's name--

MR. HART: Objection, Your Honor. At this time we renew our objection.

THE COURT: Okay. I will overrule your objection. I will allow this testimony thus far.

MR. HART: Thank you, Your Honor.

THE WITNESS: These had Mr. Gregg's name on it showing his address as in , the residence we were at, and they were taken to show that he did receive mail at that

residence.

BY MR. CONNER:

Q Okay. Now, did you recover a bullet from the wall of that residence?

A Yes, I did.

Q And what attracted your attention to this particular...

A The conversation that I had with Ms. Franklin, she had showed me where the bullet hole was, and I guess the investigator part of me decided to go ahead and see if we could retrieve it, and we pulled it out of the wall.

It actually went through one wall and was stuck in the wall. Actually fell between the two pieces of paneling or sheetrock behind the refrigerator in the wall.

Q Okay. And if I -- and I show you here State's Exhibit number 13. Now, did you -- what did you do with the bullet you retrieved from the wall?

A It was placed in the evidence locker and turned in as evidence.

Q And it would have been given to your evidence custodian?

A Our evidence custodian would have picked it up at a later date, yes, sir.

Q And that would have been either Cindy Pierson or Ray Mackessy?

A Yes, sir.
Q How -- how do you handle that? Do you drop it in a lockbox or some sort or a locker?
A Yes, sir. We have a locker. It's like a file cabinet with four shifts numbered on it. Each one had a padlock. I myself or one of my sergeants has a key to that locker.

The evidence placed in that -- in that with a evidence card. And a later date either one of the evidence custodians picks it up and transfers it to our evidence room.
Q So they have a key to the lockbox, too, and they --
A Yes, sir.
Q -- they go in behind you and retrieve it the next day when they come on?
A Yes, sir.
Q And did -- was that item there that's marked from the labeling, State's Exhibit number 13, has got your name on it.
A Yeah, it's got my name on it. This -- I'd actually have to look at it. I mean, this is something that it was packaged in later I believe when it was sent to SLED.
Q You want to open it up?
A If that would be all right.
Q Yeah.

A Yes, sir. This would be the bullet that I put -- this is the evidence tag that I filled out, and the date and my initials are across the top of the bag.

Q Okay. Put it back in the bag, if you would.

A (Complied).

Q Now Lieutenant Nelson, did you make a call in an effort to reach the defendant, William Gregg?

A Yes, sir, I did.

Q In regard -- and was that call made while you were there at the home or when?

A No, sir. That was made while I was actually at the crime scene later on that afternoon or actually that early morning. I want to say maybe somewhere before -- between 10 and 11.

Q Somewhere in the middle of the morning?

A Yes, sir. It was after I had already been to the residence.

Q And did you talk with William Gregg?

A Yes, I did.

Q And did you tell him anything in regards to what you were investigating?

A Yes, sir, I did. I advised Mr. Gregg that we were looking for him for the murder, and advised him he needed to go to the nearest police station and turn himself in.

Q Okay. And do you know whether he had followed your

advice?

A Not to my knowledge. He never turned himself in.

Q Okay. I have no further questions of you.

THE COURT: Mr. Hart?

MR. HART: I do have a few questions, Your Honor. We will be real brief here.

CROSS-EXAMINATION

BY MR. HART:

Q Lieutenant, you say you been an investigator for 19 years?

A I've been with the Sheriff's Office for 19 years. Two years with the city police before that.

Q Now, when you do investigate a crime, you fill out reports; right?

A Yes, sir.

Q And you would agree that in your reports it's important to put as many details as possible.

A Yes, sir.

Q Right? Especially important details. Is that right?

A Yes, sir.

Q Okay. Now, you mentioned that you had called William Gregg to tell him that there was a warrant for his arrest; right?

A Yes, sir.

Q Now, you'd agree that's a very important detail to

this particular case.
A Yes, sir.
Q Okay. All right. Sure. And have you had a chance to review your report?
A Yes, sir.
Q Okay. You have it in front of you?
A Yes, sir.
Q Okay. Could you please point out to us where in your report you mentioned that you had a phone conversation with--
A It was not in this report. This report was made earlier that morning and turned in.
Q Okay.
A The investigator that was with me on the scene, it was my opinion, since he asked me to make the phonecall, that he had made that notation.
Q Okay. But you didn't put it in your report.
A No, sir. My report was already done. I do my reports on the scene as I'm there.
Q You'd agree that that's an important detail to put in your report.
A Yes, sir.
Q Okay. But it's not there?
A It's not in this report, no, sir.
Q Okay. All right. Now, and that was five years ago?

A Yes, sir.
Q Okay. So right now, since -- you didn't make a notation of the phone conversation.
A No, sir, I did not.
Q Okay. So right now you're operating strictly off your memory --
A Yes, sir.
Q -- from five years ago.
A Yes, sir.
Q You agree that as human beings, we have tough times remembering things.
A Sometimes, but I'm pretty good with memory.
Q Okay. Can you tell us what you ate for dinner two weeks ago?
A Which night? I usually go out to eat usually at the the restaurant Sambino's on 441. And when I go there, it's usually chicken wings.
Q All right. Now, chicken wings are good. Now, let's talk about going to the house. When you got to the house, actually Pam had asked you to search the house. Is that right?
A Yes, sir, she did.
Q Okay. She asked you -- she initiated, said, please search this house?
A That was after the call for the -- for William. But

when we were getting ready to leave, she did ask me to search.

Q And in fact, she is the one who takes you to where the bullet is in the wall.

A Yes, sir.

Q Is that right? She points it out to you.

A Yes, sir.

Q You don't just randomly find this bullet in the wall.

A No, sir.

Q Okay. All right. Now, you say you recovered some guns from this house.

A From the -- a car in the yard, yes, sir.

Q From that car.

A Yes, sir.

Q None of the guns that you recovered are connected to this incident; are they?

A Not that I know of, no, sir.

Q Okay. You say you recovered some ammunition from...

A Yes, sir.

Q Okay. None of the ammunition is connected to this crime at all.

A I have no knowledge of that, no, sir.

Q Okay. The guns. There's a process where you can take fingerprints off of the gun; is that right?

A Yes, sir.

Q Okay. There's no evidence of William Gregg's fingerprints on that gun; right?
A I don't know what was done with them afterwards. I don't know if they were fingerprinted or not.
Q But as you testify today, you don't have any evidence that William Gregg's fingerprints were on that gun.
A I don't have anything, no, sir.
Q As you testify, you don't have any evidence that William Gregg even owned those guns.
A No, sir, I do not.
Q Okay. The ammunition that you found. You don't have any evidence that that ammunition belonged to William Gregg; do you?
A No, sir.
Q Okay. That bullet from the wall, did we talk about that yet?
A Yes, sir.
Q Okay. You don't have any evidence that that bullet you found from that wall is connected to this crime at all.
A No, sir, I do not.
Q Okay. In fact, you don't know who fired that bullet.
A No, sir, I do not.
Q For all we know--
A All I know is what I was told.

Q Pam Franklin could have fired that bullet; right?
A Very possibly.
Q Okay.

MR. HART: I think that's all I have, Your Honor.

THE COURT: Okay. Anything further from this witness, Mr. Conner?

REDIRECT EXAMINATION

BY MR. CONNER:

Q This packet of papers indicated that the defendant was living there; is that what you--
A Yes, sir. It was mail addressed to him at that residence.
Q I have nothing further.

THE COURT: Thank you, sir. You can step down. Ladies and gentlemen, any objection to me letting the jury go home tonight?

MR. CONNER: No.

THE COURT: All right.

MR. HART: None from the defense, Your Honor.

THE COURT: I didn't know y'all had -- I try to stop every day close to five as I can or 5:30 because I realize y'all do have a life outside this courthouse.

I remind you you can't discuss this case yet. I

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know when you get home, your families are going to want to know what you have been doing all day, but you can't tell them because they're going to have an opinion, and they haven't been here.

When this case is over with, you can tell them anything you want to. But if you will just not discuss it. When you make a decision in this case, you will have complied with your oath.

And don't allow anybody to talk to you about it. And I don't know if it's going to be anything in the newspaper or on TV or anything else, but if it is, you don't need to listen to it.

So if you'll follow those instructions and just come straight back to the the jury room at 9:30 in the morning. And as far as I know right now, we will get started at 9:30. But I don't know what I'll be facing, but I will do my best to get you out just as quick as I can. You have a nice evening.

(Jury left the courtroom at 5:08 pm.)

THE COURT: All right. Anything further before we...

MR. CONNER: Your Honor, I'm going to hand up the NCIC record on Pamela Jones and Kendrick Miller just -- I don't know whether you want to hear anything on them today, whether you just want to look

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them over and let us know in the morning.

THE COURT: And y'alls position is that they have impeachable records or not?

MR. HART: It is my position that they do, Your Honor.

THE COURT: Okay. And what part of them? I see it -- Well, tell me what part you think is impeachable.

MR. HART: On which one, Your Honor?

THE COURT: Miller.

MR. HART: On Miller, Your Honor, let's see -- Miller, Your Honor, he has a burglary conviction, 1993.

THE COURT: All right. But that's past the 10 years.

MR. CONNER: That's over.

MR. HART: That's fine.

MR. CONNER: In fact, he tells me, Your Honor, he was not convicted of burglary, that he was convicted of possession of stolen property.

THE COURT: But that's still outside the statutory...

MR. CONNER: The 10 years.

MR. HART: Your Honor, we believe that what is impeachable is on page two of three which is the

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marijuana possession -- I'm sorry -- manufacturing, possession of drugs. He was conviction -- PWID marijuana 2-2, 2-27-1997.

THE COURT: Now, how is that within the 10 years? It is 2008 now; isn't it?

MR. HART: Guess we are just right outside of that. Think he has one 2001 which is possession of crack cocaine with intent to distribute.

THE COURT: Right. He got one year for. And that is within the timeframe. What's the State's position on that?

MR. CONNER: The 2001 offense?

THE COURT: Yes, sir. That's the only one that I see on here that's within the timeframe.

MR. CONNER: And I have...

MR. HART: Your Honor, this is a first for me, hear the State say -- when I...

THE COURT: I had never had a Solicitor before argue to me that that wasn't admissible, but...

MR. CONNER: Well, they always rule that way for the defendant, so I thought I'd try it.

THE COURT: I understand something -- some judges take the position -- and maybe I'm -- I know Judge James and I have gotten into this discussion. He sees these things a whole lot different than I do.

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MR. CONNER: I would--

THE COURT: I think any criminal conviction within the 10 years goes to the credibility as far as I am concerned. If it's within -- dealing with dishonesty or something that carries more than a year, I have always -- I always took that position. I still think that's true.

But I certainly -- I could be wrong. And I will research it overnight if that's what you want to argue to me. You may change my opinion forever. I'm not sure you want to, but you might.

MR. HART: Again, Your Honor, I'm going to go on the same lines. If he'll stipulate to we putting Mr. Gregg on the stand and he not asking him about his criminal record, we're more than happy not to ask those witnesses about their criminal record.

THE COURT: Well, and it appears to me on this Pamela Jones that the 2007 possession of cocaine is the only thing that's within the timeframe. So she's got a possession of crack. I assume it's crack. It doesn't say--

MR. CONNER: Says possession of cocaine.

THE COURT: Right. But they both carry the same thing. And then the 2001 on Mr. Miller. At this point I think they're probably -- the probative value

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outweighs the prejudicial, but I certainly will give you overnight to research it.

And if y'all want to continue this argument in the morning, ask me to reconsider that, we will, but I think they come in. Anything else?

MR. CONNER: I have nothing further at this point.

THE COURT: All right. We'll be in recess until 9:30 in the morning.

(Whereupon this case was in recess for evening.)

***** July 29, 2009 *****

(Off-the-record discussion was held.)

THE COURT: All right. Anything before we bring the jury in?

MR. HART: We would just renew our motion to sequester any witnesses in here, Your Honor.

THE COURT: Okay. We got any witnesses in here, Mr. Solicitor, we need to sequester?

MR. CONNER: I don't believe so, Your Honor. Only -- we got Ray Mackessy and Cindy Pierson. They're just evidence custodians. They were not -- the only two witnesses we have had that were sequestered is -- under my understanding was Darrell Herriott, Kendrick Miller, and Chester Stavis and a Sabrina Holloway, and we don't -- Sabrina Holloway

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has not been here at all.

Chester Stavis was here yesterday, but I haven't seen him this morning. Kendrick Miller and Darrell Herriott -- now, Darrell has already testified, so I would assume it's all right for him to come back in the courtroom.

THE COURT: I don't know of any reason...

MR. CONNER: And Kendrick Miller has not arrived yet. Now, he might arrive any minute. He had a childcare problem this morning and he notified my office that he would be a little bit late. I'll be looking for him in case he comes in.

THE COURT: Okay. All right. So are we ready for the jury then? You do have a witness, we can bring the jury in here and put a witness on the stand; right?

MR. CONNER: I do.

THE COURT: All right. If you will get me the jury.

(Jury entered the courtroom at 9:48 am.)

THE COURT: Mr. Solicitor, you may call your next witness.

MR. CONNER: I'm going to call Captain James Turner with the Sumter County Sheriff's Department, Your Honor.

JAMES TURNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNER:

Q Captain Turner, where do you work?

A Sumter County Sheriff's Office.

Q And how long have you worked with the Sumter County Sheriff's Office?

A Eighteen years.

Q And what kind of -- what's your primary duty at this time?

A I'm the commander of the criminal investigations division.

Q And are those -- what does the criminal investigations division do?

A We primarily handle all investigations of crimes that occur in Sumter County.

Q And tell us something about your experience with the sheriff's department, what kind of jobs have you had.

A Patrol officer, then I moved over in -- around 1992 into traffic division. In 1995 I went to criminal investigation division, and primarily investigated violent crimes, went into extensive training in forensic crime scene investigation.

At the time only forensic person we had was Sergeant

Mackessy. I was his back-up for many years up until around 2004 which we incorporated and got a team together. We actually have a forensic crime scene team which handles our crime scene investigation stuff.

Q Now, how many detectives do you have working for you?

A At present have 14 and just ten.

Q Now, at the time of this offense back in November, November the 1st of 2003, what were your duties on that occasion?

A I was the sergeant. I was the sergeant of investigations and I was doing crime scene and I was supervisor over the investigators that had primarily handled the north and west side of the county as far as any kind of investigation, burglaries, sexual assaults, anything. Was four investigators working for me.

Q And did you respond to this shooting on the night of November 1st, 2003?

A I did.

Q About what time did you arrive there?

A I broke -- I arrived 11:55 pm.

Q And what time did y'all get a call in regards to the crime?

A I believe the initial officers received a call around 11:25, 11:30.

Q And was some of them on-site when you got there?

A They were.

Q And now tell us where it happened and what you did when you got there.

A Upon my arrival, I -- I talked to the first responding officers and got a basic layout of what they knew at the time, and which at the time the only thing I found was a white KIA Sportage parked -- well, it was in a position near the highway, off of 10, 15 feet from the highway with the driver's side door open.

The -- I was told that the victim had already been transported by EMS to Tuomey Hospital for medical care.

I spoke with one witness and got the details of what he saw, and at that time determined what approach as far as forensically what I'm looking for as far as any evidence may be out there to be recovered.

Determined the only thing that I could find was a vehicle itself, received for me -- by me to photograph it in place. The vehicle, we could move it. We -- normally what we do is we photograph a vehicle and tow it to an evidence room or evidence storage building at public works where it's locked up, and we go back at a later time when we got more light and we can set up and do the processing of the vehicle.

So I done a 360 walk-around and photographed the vehicle in place. The vehicle was then towed. After it

was towed, I checked a -- judging by the angles of -- from where the shots come from, I checked -- there's a building, a -- old Cousar's Grocery is what it is -- see if there's any possibility any bullets might have hit that building that I might can recover on the ground.

Also was looking for any shell casings. And if I find one, kind of helps me determine possibly what kind of weapon we are looking for. And find what shell casings we -- just my experience tells me possibly looking for a revolver unless -- unless the gun was fired from actually inside the vehicle and the shell casings went into the vehicle.

That's the only other possibility. You wouldn't find any shell casings using an automatic.

Q So you wouldn't find shell casings if you used a revolver?

A No, sir.

Q And you didn't find any?

A No, sir.

Q Now, who did you talk with there at the scene?

A I spoke with Mr. Miller.

Q And as a result of your conversation with Kendrick -- that was Kendrick Miller?

A Yes, sir.

Q And as a result of your conversation with him, who

did y'all begin to look for?

A William Gregg also known as Bubba Gregg. We immediately put out a bolo for him that -- the vehicle information was a white Oldsmobile. We do -- through NCIC, which is a National Crime Information Computer, we can do scans on vehicles.

So what we did -- were doing at that time is we had his information as far as height, weight, and particulars on him. We looking for a vehicle that might be owned by him.

At that night we were unable to find a vehicle per say registered to him, but we knew it was a white Oldsmobile product.

A little while later, a few minutes after I arrived, Lieutenant Wesley Gardner arrived, and when I spoke, told him about the vehicle, about the vehicle we was looking for, he -- he passed a vehicle said he -- it was a high rate of speed that fit the description north on 441.

So then we modified a bolo. We put a bolo out possibly headed north on 441, notified Lee County and the counties that this vehicle may be going into to try to apprehend the person.

Q Okay. What is a bolo?

A APB, all points bulletin. You know, it's just what a -- what happens is a dispatcher types in a message and

the message is automatically sent to all agencies in South Carolina.

You can also advise them to send it to like North Carolina, Georgia. You can go nationwide for whatever, you know, if that's the purpose you need it for.

Q Bolo means be on the lookout for?

A That's right, be on the lookout for. It's just notifying other agencies that you have had a crime and you got a suspect and, you know, being aware of what's happened.

Q Now, the -- I would refer you here to this exhibit, State's Exhibit number one, and ask you to step down here if you would. Let me give you this pointer.

A (Complied).

Q Let me just put this up on the table. Now, I want you to show us where the vehicle was when you got there.

A You notice -- you barely see the vehicle, white line here. The vehicle approximately 10-foot from this direction from that white line, 10 or 15-foot.

Q And which direction was -- this is the vehicle that Kevin Franklin was riding in?

A That's correct.

Q Is that correct?

A The white KIA Sportage.

Q And it was headed in which direction?

A Headed out.
Q Headed out on to ?
A Headed out
Q Okay. And you referred to some business that had been previously operated out there in the area. Where is that?
A That's -- used to be call Calvins Grocery, and at one time this was Gold Mine Pawn Shop on -- both of these businesses have closed. This business been closed since early nineties, and it's not been re-opened.

This business was opened -- well, Gold Mine Pawn Shop closed around 1998 and then another smaller business, variety little store opened up, then they also closed. It's been closed a good part of 2000 --2000, end of 2000.
Q And where did you talk with Kendrick Miller?
A Right back here:
Q Out there in that area?
A Yes, sir. He came -- he was actually -- when I -- I drove up, I parked over here, he came up, you know, he -- he was told that -- he was identified to me as a witness, and he came -- I asked him to come -- the officers to bring him up to me, got the basic information, what he saw happen, and started my crime scene from there.
Q Okay. Have a seat.
A (Complied.)

(Person entered courtroom, then exited the courtroom.)

BY MR. CONNER:

Q I show you these three photographs and ask you to examine them. Can you identify those?

A Yes, sir. These are pictures I took.

Q And you took them that night?

A Yes, sir. It's showing the KIA Sportage as I found it.

Q And specifically as to each -- referring to the numbers on the back starting with the lowest number, which I believe to be two, what does -- what view of the vehicle does that show?

A Photograph number two, which is this picture, shows the driver's side of the vehicle, driver's side door open, and you can also see on the ground a few feet away it's some remnants of some packaging of EMS where they were I guess taking care of the patient.

Q Okay. And the patient was taken where?

A Tuomey Hospital.

Q And that was Kevin Franklin?

A Yes, sir.

Q And he died there?

A Yes, sir.

Q The -- how about photograph number three?

A Photograph number three shows the rear and the passenger side of the vehicle and shows the passenger rear side door window had been busted or shot out and fragments of glass on the ground.

Also shows the relationship of the vehicle to the fog line which is the white line on the highway.

Q Okay. And number four.

A Number four is just a close-up of the driver's side showing the -- I guess the blood from the victim and the driver's front seat and the passenger's front seat.

Q Okay. Now, Captain Turner, did -- you say that night y'all initiated an effort to find William Gregg?

A Uh-huh. Yes, sir.

Q And how -- how long before you found William Gregg? What -- when was he arrested?

A 2007. I believe right at in August of 2007 -- correction -- August of 2006 I believe is when he was actually arrested.

Q And where was he arrested?

A White Plains, New York, or Albany, New York, I think is where he was at.

Q And you sent people up there to get him?

A We did eventually. There was a process that had to be done that took several months to get it done. Yes, sir. We -- we sent people to get him and bring him back.

Q Now, prior to this shooting on the night of November the first, 2003, did you have an occasion to go to William Gregg's home?

A I did.

Q Tell us about how that came about.

A Well, during this week when all this occurred, I was the on-call investigator, and I was working afternoon -- afternoon -- Thursday afternoon, which would have been I believe October the 30th, I responded out to William Gregg's residence house off of -- don't remember the name of the road -- , , and -- to a burglary call.

Mr. Gregg was there and there were some other people there, but he was -- somebody had went in by forcing the back door, went in his residence. And when he -- according to what was told the officers, stole some items of clothing. I believe around two thousand dollars worth of clothing.

I processed for fingerprint, didn't find none. And a neighbor, nextdoor neighbor, related to me--

MR. HART: Objection. Objection, Your Honor.

THE COURT: What grounds?

MR. HART: Hearsay evidence.

THE COURT: Okay. And--

MR. CONNER: Well, just--

THE COURT: I sustain that objection unless, you know, I...

BY MR. CONNER:

Q Did you talk with William Gregg there?

A I did.

Q And about what time of day were you there?

A When I first got there, it was -- it was still light. But when I left, it had -- it was dusk-dark. It was getting dark.

Q And that was October the 30th of 2003?

A Yes.

Q On a Thursday?

A Thursday afternoon.

Q And that would have been about two days before the shooting took place?

A Yes, sir.

Q And this man seated right over here by his lawyer, William Gregg, he's the one you talked to?

A Yes, sir.

Q And he said that his house had been broken into.

A Yes, sir.

Q And you -- what did you do while you were there other than talk with him?

A I -- I asked -- the officer actually talked to him. I talked to him some, but our responsibility there was to

process, try and obtain any evidence like fingerprints or possibly suspect might have cut himself, and then I spanned out, then talked to the neighbors to try to develop any suspects.

Q Okay. And the -- no -- you have never arrested anybody for breaking into his home; have you?

A No, sir.

Q Okay.

A We had -- I received information on -- that four individuals in a white vehicle was seen in the area that afternoon, but never developed who they were and did not obtain any evidence that night that would lead us to a suspect.

Q Now, on Sunday, the second of November, did you follow up on the investigation that you initiated the night before on this killing?

A Sunday morning -- I done two things Sunday morning. One is when -- at that time we try to send the officer to the autopsy that was at the scene to try -- or at least -- at that time we didn't have the digital capability. Now we do.

We can actually send pictures of crime scenes to the pathologist. So it was -- it was better for us to be able to tell the pathologist what we found, you know, how the vehicle were positioned, the possible angles.

And that helps him or helps the person doing the autopsy understand if the person was sitting up in the vehicle, laying down, how the bullet should have struck. In this case how the bullet should have struck.

So around -- when I left the scene that night, I spoke with the Coroner and got a time for the autopsy which was 10:30 on Sunday morning. I then went back out there the next morning in the daylight to make sure, do another scene search to make sure there wasn't something that was walked over or stepped on the night before or -- or just, you know, missed.

Just done a secondary scene search, officer checking the building again for bullet holes or bullets or anything that -- any evidence.

I left there and went to Newberry, South Carolina, where the autopsy was performed.

Q I assume you didn't find any cartridges on the ground or anything out there that morning when you went back in the daylight.

A No, sir.

Q And you went to the autopsy at Newberry?

A I did.

Q That's where the body was sent?

A Yes, sir.

Q And it was the body of Kevin Franklin?

A It was.

Q And were you present when the GSR swabs were made of the victim's hands?

A I'd have to look at the packaging. I may have done him at the hospital. I'd have to look at the packaging to see if I'm the one that done it or if -- done one of two ways. Sometimes I do it and will do it at the hospital or it's actually done at -- during the autopsy.

Q What's the purpose of GSR?

A Gunshot residue.

Q Yeah.

A GSR can tell you a couple things. One, it can tell you if a person was actually holding -- I mean, if they actually held a gun. What we do is we swab to use first -- first thing we do is it's got four round cylinders that has a sticky magnetic-type tip and its used primarily to pick up metals off your hands when you dab it, which is like this, it's dry.

The second one -- second thing we do is we have swabs, like Q-tips, half Q-tips, and we use Nitric Acid, pour it on there, and it just picks up any remnants of powder residue off the hands.

And you completely swab of hands, do -- do it in portions like the back of the hand and the palm of the hand. What it tells you is if -- it can tell you whether

a person may have held a gun.

And when I mean by that is a person picks up -- if a gun has been shot, a person picks the gun up, you -- you would expect to find powder residue in the hand, just in the hand.

If a person fires a gun, then you expect to find powder residue on both sides of the hand. And it's going to -- if he's fired in his right hand, it's going to be on his right hand or versus his left hand.

If a person say threw his hands up, you know, like this, and he shot, how -- you expect to find powder when you shoot fine powder if it's close enough on the palms of the hands or the back of the hands.

It just indicate -- kind of indicates to you the position of the hands and stuff and whether or not a person fired a -- a gun.

We -- since this time we have actually been able to do GSR gunshot residue. What they were doing in this -- we were unaware of would it work, but experimenting with what a police officer in forensics do, we discover things.

We are able to actually swab the outside of cars now. And if somebody fires a gun out of a car, we can actually swab the outside of the car and get GSR on the outside of a vehicle.

Q So on this particular occasion what you did was

swab -- or what the doctor did was swab the hands, either you or the doctor swabbed--

A Me or the doctor.

Q I show you this card here and ask you if that is relevant.

A It appears the doctor done this.

Q Said -- but that would have been done while you were there observing?

A Yes.

Q Is that right?

A Yes, sir, this--

Q And the GSR kit was then given to you?

A Yes, sir. I signed -- actually it's a whole list of evidence, but that was would -- that's part of the evidence that I signed for and brought back with me.

Q So you took -- took the GSR kit. After she swabbed the hands, you took the GSR kit and brought it back to Sumter?

A I did.

Q And that would have been turned in to Mrs. Pierson who is seated back here?

A Whoever -- yes, that's who it was turned into.

Q Okay. Now, did the doctor also give you bullets from the body?

A He did. Actually I need another -- it's another form

that I got from Newberry that I need to get out of my book to -- tells me exactly what evidence was turned over to me.

Q This book?

A Yes, sir. All right. This form shows that I signed for two brown vials which contained bullets or bullet fragments and also signed for five red stopper plastic vials with swabs, which is the GSR. So the doctor did remove the bullets and also done the GSR.

Q And did the doctor also give you samples of various different body fluids to include blood, urine, and occular fluid?

A They do. They did.

Q And you brought all of that back to Sumter with you?

A I did.

Q And turned it in to Mrs. Pierson?

A I did.

Q Okay.

MR. CONNER: Your Honor, at this time we would request permission to publish these three photographs. And Mr. Greenan will help us in setting up the equipment.

THE COURT: Okay. And what numbers are these photographs?

MR. CONNER: These are photographs number two,

three -- two, three and four.

THE COURT: Okay. They are already in evidence.

MR. CONNER: That's correct. In fact... Can y'all see that down there on that far end? Might ought to turn it just a 1ittle bit.

THE COURT: If y'all are getting any glare and we need to cut some of these lights off, we can. Please let me know because I can't see it from here. This courtroom is small and so we've kind of got all close and personal.

BY MR. CONNER:

Q Can you see it, Captain Turner?

A Yes, sir.

Q Okay. This is State's Exhibit number two. Now, I ask you to tell us about that picture.

A That's showing the driver's side of the white KIA Sportage with the door open. That's just how I found that vehicle when I arrived on the scene.

Q And the -- the bag there on the ground, or what appears to be a piece of plastic, what is that?

A Some kind of packaging for EMS. It's possibly the package for the ambule bag or something, but it's something to do with EMS.

Q So it really has nothing to do with --

A Has nothing to do with --

Q -- the crime?
A -- no, sir.
Q Other than it's...
A It was brought in and left after the fact.
Q I show you next State's Exhibit number three.
A That's the -- actually the rear in the passenger's side of the vehicle, and if you -- you can see the passenger rear door window is missing and the broken glass on the ground.

Also shows that -- if you look, there's a white line in front of the vehicle. That's the fog line of Highway 378 or . It shows the relationship of the -- the vehicle to the highway.

Q And the debris on the ground there beside that rear door is what?
A That's glass.
Q And that window was broken; is that right?
A Yes, sir.
Q And I show you next State's Exhibit number four.
A That's just a -- actually a view of the driver's side of the vehicle showing the driver's side seat where the victim was at. And if you look in the bottom left hand corner, that is the -- the sill of the window, which I'm just looking through the window into the car of the open door.

Q Okay.

MR. CONNER: I have no further questions of him at this time, Your Honor.

THE COURT: All right, sir. Mr. Hart?

CROSS-EXAMINATION

BY MR. HART:

Q Can everyone see this? Can you see? Detective Turner, just real quickly, you were just shown State's Exhibit number two; correct?

A Two, three, four. That's...

Q Three?

A Yes.

Q Four; correct?

A Uh-huh.

Q Now, that area out there -- this crime happened at night; right?

A Yes.

Q And it was real dark outside; is that right?

A It wasn't so dark you couldn't see your feet when you're walking, but it's dark. I mean...

Q But it's--

A It's -- ambient light. What I'm saying about ambient light, there's light -- when different light -- night lights. On across the road there's a large flea market right across the road that's lit up pretty good, so that

light actually comes across the road. I mean, you could see stuff on the ground while you're walking.

Q Well, that's very important to this case about the lighting, so let's -- can you point out where the flea market is.

A Right over here.

Q Okay. So the crime happened about right here?

A Uh-huh.

Q And the flea market is over here?

A Yes, sir.

Q So you're saying that light from the flea market is able to reflect over here?

A Yes, sir.

Q That's your testimony?

A Somewhat, yes.

Q Somewhat. Well--

A I mean, it's lights. You know, it's very strong night lights up out there because of the break-ins they have, so it's -- it's not a regular night light. It's a -- electrician term, it's probably 1500 watt actually directional lighting.

Big square light. You can see it actually points a -- different directions. And there's other night lights in that general area.

Q Okay. Because that's important about the person's

ability to see. Now, let me show you State's Exhibit number three. And I think the jurors have had a chance to see State's Exhibit number three.

If you look at State's Exhibit number three, that -- when you see that KIA, that's the flash from your camera?

A That's right.

Q Is that correct?

A That's right.

Q Now, right across from State's Exhibit number three is a police vehicle.

A That's right.

Q See it? Right?

A Uh-huh.

Q You could barely see that police vehicle; is that correct?

A You see the flash hitting it.

Q But you can barely see that vehicle.

A You got to understand about flash photography. The flash photography on a camera is actually as powerful as sunlight, and it will actually dry any other light. I don't -- I didn't take no pictures that night without a flash to show you just what kind of lighting conditions was out there.

But you could see good enough to walk around without a flashlight. I mean, I am not saying that it's like in

this courtroom. I'm saying that you could see if there's something on the ground, you could see it on the ground and know to step around it.

Q And I understand that and I understand that, Detective Turner. What I'm saying is that if you look at that patrol vehicle, it's dark in this area where the patrol vehicle is; is that correct?

A I -- I would say. So -- I mean, it's dark.

Q Okay. So you don't see any light from the flea market reflecting in that direction; do you?

A I see -- you can't say that, sir, because you talking about flash photography, you talking about I'm focusing on taking a picture of the vehicle. So my focus -- you're focus a camera -- if I'm focusing on you here, everything behind that vehicle is fuzzy, it -- because I can only focus on one thing at a time.

The lens only allows me to focus on one thing at a time. So what happens is, if I take a picture, you standing in front of me right now where I can see you clearly, everything in this courtroom is fuzzy and actually looks darker.

So you can't say by this picture that it's black dark like it looks because it's just the way the camera takes pictures.

Q So you -- you wouldn't agree that this picture is

consistent with it being 11:30 at night? You're saying that this picture is not consistent--

A I'm telling you standing out there 11:30 at night, if I wanted to, without any photography, there is light that I can see good enough to walk around without a flashlight and notice something on the ground.

Very -- being that it's going to be some lights from various locations, the flea market, night lights are in the area. And I didn't -- you know, I haven't been out there to actually tell you that, but I live -- you know, I have been on the base.

I have lived in this community all my life. So I have been back and forth through there. There is -- there is light sufficient enough to -- if I wanted to walk on the side of the road and I could see a person -- I could see a uniform a hundred feet in front of me walking on the side of the road just by lights in the area.

Q Yes, sir. And I understand that and I respect you saying that you can see as you walk. But this case is about someone identifying somebody. And this car -- how many feet you would say that car is -- the patrol car is away from the KIA approximately?

A Well, the highway -- highway lane is 14 feet, so that's a double-laned highway, that car is parked in the middle of the road, so it would be at least probably

38 feet.
Q Okay. And you just agree that in this particular photograph it's difficult to see that patrol vehicle. You would agree with that?
A Well, there again, it's about -- it's flash -- the light from the flash is bouncing off the vehicle.
Q Okay. Sure.
A But I don't have a picture of it with no flash to tell you how difficult -- whether or not you can see the outline.
Q Yeah. Exhibit number 2. You would agree that that photograph is consistent with it being 11:30 at night. You would agree with that.
A It's -- I took it. I actually took them around midnight.
Q And you agree that the car directly behind that KIA, it is difficult to see that car, to identify it. You would agree with that?
A Actually that car has got a headlight on it from another vehicle. You talking about this vehicle right behind it?
Q The car directly behind it. You would agree that it's difficult to identify that vehicle in State's Exhibit number two. You would agree with that?
A Yes, sir. One thing about that car, that's

Lieutenant Gardner's car, and that's a dark gray vehicle.

Q Well, I understand--

A I'm telling you what--

Q You would agree that it's difficult to see the vehicle behind the white KIA. You would agree with that at 11:30 at night?

A Yes.

Q Sure. Do one thing for me. You said that you have been investigating cases for how many years?

A Since 1995.

Q And you are a supervisor?

A I am.

Q And you're a supervisor which means that you're over all other investigations; right? Is that correct?

A Yes, sir.

Q So the buck stops with you; correct?

A Yes, sir.

Q Okay. Which means you have to check off and audit everybody else's investigations.

A Um--

Q Well, for this case.

A This case, I was a sergeant at this time. There was a lieutenant and a captain above me.

Q But for this case, you are the lead investigator.

A I'm the one that put the case together.

Q Okay. So if you put the case together, that means you're in charge of this investigation?
A I would say so, yeah.
Q Okay. Do for us real quickly -- would you go up and circle how you think you investigated this case for us? Would you circle?
A I'm -- no, sir, because you -- I don't have any facts out there of what occurred. You want a -- I think what -- the information we had, I would say it was a good investigation.

MR. CONNER: Your Honor, this is a -- this is a -- is asking for an opinion as opposed to some factual matter that took place. I have got no problem with him asking anything about what he did and all of that, but this is an opinion question.

THE COURT: Okay. Mr. Hart, you want to be heard?

MR. HART: Yeah. I think under the rules of evidence, Your Honor, opinion is allowed. I'm asking him not to opine on someone else. I'm asking him to opine on how he felt he investigated the case. I think nobody knows better than him how he investigated this case. I asked him to rate it.

THE COURT: All right. I'll allow that point.

BY MR. HART:

Q So we have excellent, good, average, poor, and failure. And you think that you did a good job investigating this case.

A With the information I had to work with, yes, sir.

Q Okay. Sure. No problem. All right. Now, this is a murder case; right?

A Yes.

Q Very serious crime.

A Yes, sir.

Q Okay. This type of crime requires a lot of attention.

A Yes, sir.

Q A lot of energy.

A Yes, sir.

Q Okay. Requires a lot -- very close attention to detail. You would agree with that?

A Yes, sir.

Q Okay. In a murder case, it's important to know what took place before the crime happened; right?

A To what extent?

Q What took place -- what were the people doing before the crime took place.

A I had that information what they were doing just prior to the crime.

Q Okay. Sure. I'm asking -- that's important to know;

you would agree?
A Yes, sir.
Q Okay. When you investigate a case of this nature, you try to gather as much information as possible; is that right?
A I don't know where you're going with this.
MR. CONNER: Your Honor, I object to this hypothetical approach to this case. I have got -- like I said before, I have got no problem with him asking specific questions in regards to the case, but we're just rambling about talking about general approaches.
THE COURT: Well, the question was how -- I think he asked him is you try to get as much information as you can. On its face that's a proper question. I think he can answer that.
BY MR. HART:
Q You would agree that when you investigate a murder case, you try to beat -- do a very thorough job.
A With the information I have --
Q Okay.
A -- available to me, yes.
Q Okay. Sure. Now, in this particular area of town -- you showed it on the map where it is -- this area is known for drug activity; is that right?

A No, sir. Actually you talk about stuff that happened in the nineties when it was actually called Will John Estates, it was -- we got -- it's got a new set of owners, and I can't really tell you last time we had -- had anything out there.

As far as Will Johns and and stuff, was -- actually used to be a junkyard. It's closed. And Will Johns, most of the tenants that's in there now, the new owner is very particular and doesn't tolerate that stuff.

Q Okay. Sure. Now, when you respond to a crime scene, the first thing you want to do is you want to secure that area; is that right?

A No, sir. When I respond to -- the officers have it secured already.

Q Okay. Well, let's just talk in -- when you -- when the police respond to an area -- I'm not trying to give you any trick questions. I'm just asking. When the police respond to a crime scene, you want to secure the area.

A Let me -- probably better than answer this way. When we respond to a incident, okay, the officers want to, you know, first thing is to -- to care of the victim, identify, you know, secure the scene, identify any witnesses.

Then there's further notification as far as investigating, you know, if this -- depending on the crime, investigators are called out, and that's where I came in.

Q Okay. Now, when you respond to a scene, there's something that you carry they call incident reports; right?

A No, sir. I don't -- the officers at the scene carry incident reports.

Q Well, you carry detective reports, so investigative reports.

A I carry a pad and make notes on it.

Q You carry a pad and make notes on it. All right. That's fine. All right. In your notes, you try to document as much information as possible. For instance, when you went to this case, you tried to write as much information as possible; right?

A Whatever was available to me, yes.

Q Okay.

A Who I talked to and -- and, you know, what I did.

Q Now, how many officers responded to the scene that night?

A I cannot answer that.

Q You are the lead detective and you can't tell us how many officers responded to the scene?

A No, sir. When I got there, there was one officer standing at the vehicle and another officer -- different locations. But being on the scene, I can't tell you who was, you know, up the road and across the road and, you know, I don't know. I can't tell you that.

Q Okay. Do you know the names of the officers who responded that night?

A Sergeant Terrance Colclough was the one -- the supervisor in charge, and that's who I spoke to initially.

Q So it's your testimony that you only know about the name of one officer who responded that night?

A The officer I spoke to when I arrived on the scene, Sergeant Terrance Colclough who was standing at the vehicle. I asked him what happened. He told me what happened.

He pointed out Mr. Miller to me. It was nearby. I spoke with Mr. Miller. Based on what Mr. Miller told me, the bolo had already been started on Mr. Gregg that we were looking for him committing this murder.

I then went processing the scene, is there any evidence out there that I need to -- to take care of. That was my next concern is collecting evidence. I collected evidence for whatever there was.

At that point in time there was nothing else to do because I did not know about the other witness. That came

about later on. I left that scene. I had the vehicle towed, secured. I went to the hospital to check on Mr. Franklin.

My next step is to get with the Coroner. The officers on the scene -- the officer I spoke to who was guarding the scene, who was guarding the vehicle, is Terrance Colclough.

Q Okay.

A What the other officers were down the road doing across the road, you know, going out to looking for Mr. Gregg, they are not on the scene. The only person on the scene is Sergeant Terrance Colclough.

The way we do crime scenes is we -- is the crime is the scene. Everybody that's working that night is not on the scene.

Q Yes, sir. I -- I understand all of that, what you just said. But what we are talking about right now are the number of officers that responded. Give us an approximate value -- approximate number of the number of officers who were there while you were there. It was more than -- you could say it was more than one; right?

A There's one other investigator and at least four other officers.

Q Okay. So that's a total of five people.

A Six with myself.

Q Six people. But five -- if you take yourself out, it's five people?
A Uh-huh.
Q Okay. Give us the names of those five officers.
A I can't. Other than Lieutenant Wesley Gardner and Sergeant Terrance Colclough, I cannot, because they were not directly involved with the scene.
Q Now, you would agree that as the lead detective for this case involving William Gregg --
A Uh-huh.
Q -- it's important for you to fill out some type of investigative report for this.
A I don't follow what you're saying.
Q Okay. Well -- okay. You -- you have to do -- you should do an investigative report for a murder case; is that right?
A Normally do, yes.
Q Okay. Please show us today the report that you have for this case.
A I don't have one.
Q So it is your testimony that this case happened over five years ago and you never completed a report for this case.
A I didn't see where it was necessary, sir, because it's multiple reports in this case that's going to be

testified by other people.

Q You would agree that--

MR. CONNER: Your Honor -- let me see -- okay. I -- I have no objection.

BY MR. HART:

Q You'd agree that you can't remember every single detail about this case.

A Mr. Hart, I explained to you and I explained to the jury, I responded that night to do the crime scene. Okay. And I went to Newberry Pathologist -- I mean, I went to Newberry for the autopsy.

Other than my taking the pictures that night, the only other thing I did in this case -- Lieutenant Gardner was the ball. He took statements. Those were written, okay. Those statements were written. They have already been talked about.

Other people done other things in this case, and those reports are in here. Sergeant Mackessy processed the vehicle. I didn't process the vehicle. Sergeant Mackessy, he had the original, what he did, okay.

The only other thing I did on this was I went -- once I got this information together, I went -- went to the Judge and obtained a warrant, and I followed up trying to get Mr. Gregg.

But other people and their reports are in your file.

You have that. Me writing a report telling you what other people done when their reports are in here, you know, that's -- that's really irrelevant.

I mean, all I'm going to do is tell you that Mr. Gardner went and talked to this person and he's got up -- he got a statement from that person. So you know Mr. Garner went and talked to him.

You know Sergeant Mackessy went and processed the vehicle because his report is in there, that he went out to public works, he processed the vehicle, and what he did.

All I did was I put the information together. Writing up a report that's repetitive is, you know, and I don't -- I don't always do that. But based on the information I had, it's all there.

Q So back to my question about remembering details.

A Yes, sir.

Q You would agree that you can't remember all the details from this case.

A I remember what I did on this case because my part of this case, what I did that night out there on that scene is very simple. I mean, it's no -- it's documented in pictures.

There was nothing for me to do out there as far as I didn't dig through the dirt because there's no evidence

for me to find. I didn't find any evidence, Mr. Clark (sic), out there other than the vehicle. What we do with the vehicle is we tow it to a secured site to process later. That was done.

And then I do a secondary search that night to make sure there's nothing else -- nothing else out there. I spoke with one person, Kendrick Miller, which he has been identified. And the information he gave me is what he saw, which he'll testify to that.

Q So the answer to the question is, yes, you can remember the details about this case, or no, you can remember--

A I can remember what I did.

Q Okay. Now, you arrived on the scene at what time?

A There's a picture which is not in evidence, but it's a picture says 11:55. When I arrive on the scene on my -- it's a photo ID, that's the time I arrived on there. That's the time I got there, 11:55 that night.

Q All right. You arrived at -- you're testifying from your memory that you arrived at--

A No, sir. I got a picture, sir. If Mr. Conner will give me my pictures up here, I will show it to you.

Q Well, that's an important detail. Remember we just talked about the details?

A I'm telling you how I remember it because I got a

picture of it.
Q Okay. So what time was it that you arrived?
A 11:55.
Q 11:55. What time did you leave?
A Approximately 1:00.
Q Okay. Now, when this crime happened, some people had called 911; right?
A Yes, sir.
Q Okay. And you'd agree that those 911 tapes, they have very valuable information on them; right?
A I do agree.
Q Okay. Now, they have who made the call; is that right?
A Uh-huh.
Q Probably has a description of the suspect; right?
A Uh-huh.
Q What the suspect was wearing?
A Um... sometimes.
Q Okay. What the suspect was driving?
A Sometimes that information is given.
Q In fact, the 911 tape can lead you to further evidence; right? Sometimes that can happen?
A Yes.
Q Okay. You don't know if Darrell Herriott called 911; do you?

A No. Mr. Miller made the call.
Q Tell us, when have you listened to the 911 tapes?
A I have not listened to the 911 tapes.
Q So we have a murder case here. You are the lead investigator. And you -- five years have gone by. You have never listened to the 911 tapes.
A No, sir. The person that made the call identified themselves as Mr. Kendrick Miller. I spoke to Mr. Kendrick Miller that night. I don't know what other information you would want.

He told us who he said he saw do the shooting. I don't know where listening to a 911 tape would give you any more information than what you've already got talking to -- about the person.
Q So what Kendrick Miller says is the gospel. That's the truth?
A He's a witness.
Q Okay. But I'm asking you, you never verified what Kendrick Miller told you from the 911 tape. You never verified on the--
A I verified it when I talked to him.
Q Okay.
A Mr. Miller said that, you know, that Mr. Gregg drove up beside the vehicle. The evidence show that -- shows that it's -- a vehicle pulls up beside them. The

direction of the shots coming in from the driver's side window go out the passenger's side, rear passenger's side, indicating to me that whoever fired the shots, they pulled right up beside him and fired in his vehicle.

And then there's spin marks -- and there's photographs of that which are not into evidence -- but there are photographs a car spun off, went around the vehicle, and headed -- went back out on .

Q Detective Turner, you have never verified --

A I did not listen to the 911 tape.

Q -- Kendrick Miller's version of this crime from the 911 tapes. You never verified that; did you?

A I talked to Mr. Miller, sir. That's verification. That's verification. I can't -- I talked to Mr. Miller. Ladies and gentlemen of the jury, I spoke to Mr. Miller and Mr. Miller told me what he saw that night out there on the scene.

Q You would agree you should have listened to those tapes; right?

A No, sir. We don't always listen to the tapes. We may listen to them if there's -- trying to determine who made calls if there's multiple calls coming in, but it was clear who made this call. That name was given to us -- was given to the officers. The officer spoke to Mr. Miller, identified Mr. Miller who in turn turned him

over to me, told me who he was.
Q You never found a gun that night?
A No, sir.
Q Okay. As of today's date as we speak, there's never been a gun found?
A No, sir.
Q Okay. As of today's date, there is no gun linking William Gregg to this crime; is it?
A No, sir.
Q Let's talk about identifying witnesses. You heard that -- the Solicitor say in opening statement that William Gregg had made a statement to Pam; right?
A Yeah, I heard that.
Q Okay. Well, let's -- let's talk about that. You don't have any evidence that William Gregg said he was going to kill Kevin Franklin. You don't have any evidence of that; do you?
A Not -- not that I took, no, sir.
Q Okay. No evidence that William Gregg said, somebody's going to die. There's no evidence of that; is it?
A I -- I have not been told that.
Q Okay. And I spell going to g-o-n-n-a for brevity reasons. We talked about the lighting and that it was dark outside; right?

A Uh-huh.
Q It's possible who you identified as the witness didn't get a good look at what happened. That's possible; right?
A Yes, sir.
Q Okay. Sometimes people mistake about identification. They make mistakes about that; is that right?
A Yes, sir.
Q One of the ways to make sure that a person is not mistaken about an identification is to show them a photo line-up; is that right?
A But he was -- photo line-ups -- we show photo line-ups if person don't know the name, but there was -- Mr. Miller told me William Gregg. He wasn't mistaken that night.

We do show line-ups if there is a possible, you know, I don't know who it was, I have seen him in the store before or something or on robbery cases, you know, we got an idea who it is and they don't know the name of it, then we do photo line-ups. But in this case he said he knew who it was.

Q And you took his word for it?
A Yes, sir, he was a witness.
Q Okay. Tell us the date and time that you got Kendrick Miller to verify his story.

A I didn't interview Kendrick Miller. Lieutenant Wesley Gardner interviewed Kendrick Miller.
Q You have never talked to Kendrick Miller?
A I -- yes, I have talked to Kendrick Miller.
Q All right. So you talked to Kendrick Miller?
A Yes.
Q Okay. Tell us the date and time you asked him to verify his story with a photo line-up of William Gregg.
A He said he knew William Gregg.
Q You never asked him, are you sure this is the person you saw? You never asked him that; right?
A No, he -- he repeatedly told me it was William Gregg, Bubba as he calls him.
Q Okay. You never verified it?
A I know you as Chris Hart. I don't need to verify that. Don't have to show me a line-up of Chris Hart.
Q It was dark that night; right?
A It's dark. It was 12:00 at night, sir.
Q Okay.
A When this happened about 11:30.
Q Now, the -- there was also some identification of a white car.
A Yes.
Q And you had the chance to see this white car.
A I saw it once we got back, yes, sir.

Q The car didn't have any fancy rims on it.
A Huh-uh, no, sir.
Q Didn't have a fancy paint job on it.
A No, sir.
Q Just looks like a regular old white Cutlass.
A I don't believe it's a Cutlass. I believe it's another -- a Calais or something liking that.
Q Just--
A It's a white Oldsmobile product.
Q Regular old white. There was nothing that really stands out about this white -- this white car?
A No, sir.
Q Can you tell us the date and time that you had Kendrick Miller verify that the pictures you took of the white car is the same car he saw that night?
A No, sir, I can't tell you that.
Q Never--
A I didn't do it. No, sir.
Q And you are the lead investigator; right?
A Yes, sir.
Q Is that fair? That's accurate?
A Yes, sir.
Q You never had him verify it was the same car.
A Yes, sir.
Q Okay.

A Because he said he knew it was Bubba Gregg, William Gregg, and he was driving a white car, you know, and he's always seen him driving the car.
Q Okay. Over the past five years, you never had that--
A No, sir, huh-uh. No reason for it to go back over the same information he already knew.
Q Okay. Now, one of the best ways to make sure we don't forget stuff especially from witnesses is to take a written statement from them; right?
A Yes, sir.
Q Okay.
A Well, it depends on what it is. Now, if it's no more than a two or three lines of information, if it's just information, probably not.
Q But what Kendrick Miller has to say about this case is extremely important; is that right?
A I would think so.
Q Every detail he has about this case is very important; is that right?
A The details he has are important.
Q About how he saw the person? Is that right?
A I don't follow you.
Q About how close he was to that person. That's important to know what Kendrick Miller has to say about how close he was to that person, right, to the shooter?

A I still don't follow you.
Q Okay.
A I mean, I can just go by what Mr. Miller told me that night. He wasn't in -- he wasn't as close proximity to Mr. Herriott -- which I was unaware of Mr. Herriott -- but he -- he identified -- he said Bubba, which we all know Bubba as Bubba Gregg. He said, Bubba pulls up in the white car -- want me to tell them what he said or--
Q No, we are not -- he can testify.
A That's right.
Q What I want to know from you, if you would answer the question for us, is that it's important to know how close Kendrick Miller was to the shooter. That's important; is that--
A All right. Mr. Miller, the only thing he tell me is he saw the vehicle.

MR. HART: Objection, Your Honor. I'm not asking what he said. I'm just asking him one question.

THE COURT: And he -- and you need to answer the question the best of your ability. You can answer it. If you can answer it, then explain it.

BY MR. HART:
Q It's important to know how close Kendrick Miller was to the shooter. That's important--

A Mr. Miller did not tell me, I was standing here, which would tell me how far the car was from him. All he could say is he was in the yard and he saw what he saw.
Q He saw what he saw.
A I'm -- well, I can't tell you what he told me he saw, so he -- he told me what he saw. You asked me that question, but you won't let me answer it, sir.

MR. CONNER: Your Honor, I ask that he be allowed to explain his answer.

THE COURT: I understand that. But the question was, is it important to know how close he was. He hasn't answered that question yet. That's a yes or no answer. He hasn't said yes or no yet.

THE WITNESS: No, I can't answer it because Mr. Miller couldn't answer it.

BY MR. HART:
Q And you'd agree that is important to this case here?
A I agree it's important if he could tell me I was standing here or I was standing there, but he can't tell me that or couldn't tell me that, still can't tell me that.
Q All right. Yes, sir. I understand. One of the best ways to find out is to take a written statement from him; is that correct?
A Sir, I -- if you take a written statement, you got

the man standing beside you where it happened with the vehicle sitting there, where were you at, Mr. Miller? Sir, I don't know.

All I can tell you is the car pulled in here, I turned around and he started shooting, and I took off running. You know, that's basically what he told me, other than identifying his car and Mr. Gregg.

Q You never took a written statement from Kendrick Miller?

A No, sir, I did not.

Q In '03. You never took one in '04.

A No, sir.

Q In '05.

A I had a verbal conversation with Mr. Miller.

Q Is now--

A Verbal conversations is just as good as written statements especially in this case since there was only just a couple of items he could tell me, that it was William Gregg's car, it was Bubba, he thought it was Bubba, and shots were fired.

Q So for the past five years --

A No, sir.

Q -- you have never taken a statement. Thank you. And you would agree that Kendrick Miller is one of the -- probably the main witness, one of the main witnesses. You

would agree with that?
A Mr. Miller was in the truck, yes.
Q Mr. Miller was in the truck?
A I mean -- I'm sorry. I've gotten confused. I was thinking about the other -- Mr. Miller is a witness.
Q You would agree that he's a main witness.
A Well, he's one of only two eye witnesses, yes.
Q Is it fair to put that Mr. Miller is a main witness?
A Yes, sir.
Q Let's talk about the other witness, Darrell Herriott. You -- Darrell Herriott, according to your investigation, jumped out of the car.
A Yes.
Q Okay. And he went and hid in the woods as we heard yesterday.
A Yes, sir.
Q Okay. You don't know how long he was hiding in the woods; do you?
A No, sir.
Q Okay. You don't know if he got rid of something while he was in the woods.
A No, sir.
Q Okay. Now, he later came back to the crime scene; right?
A Um...

Q He came -- go ahead. I'm sorry.
A According to him he did.
Q Okay. And then he says he leaves again?
A Uh-huh.
Q You never got a chance to talk to Darrell that day.
A Not that night, no, sir.
Q Okay. You don't know if Darrell was high that night.
A No, sir.
Q Okay. Some point in time you interviewed Darrell; is that right?
A Lieutenant Gardner did.
Q You have never talked to Darrell Herriott?
A Lieutenant Gardner interviewed him and took a written statement from him.
Q Okay. But let's talk about you, Detective Turner. Did you ever talk to Darrell Herriott?
A Lieutenant Gardner, who was my supervisor, interviewed him. He gathered the information, passed it on to me. I read the statement. I mean, I read the statement of what he provided to us along with the other information we had.

And we proceeded forward. I was not going to re-interview him when he'd already been interviewed and provided a written statement.

Q So that's a, yes, you talked to Darrell Herriott?

A No, sir, I have not talked to --
Q You never --
A -- Darrell Herriott.
Q -- you never talked to Darrell Herriott?
A Other than I talked to him on the phone a couple of months ago, but no.
Q Thank you. It's fair to say that you have never talked to Darrell about this case.

MR. CONNER: Your Honor, I'd request that he put up there that Lieutenant Wesley Gardner, the supervisor of this man, also took a written statement.

THE COURT: And I understand that. He -- he's asked the question. He can put up whatever answer that -- you know, you have a right to put up whatever you want to, but I'm not going to limit him. As long as he's putting up what this man is testifying to, he can write it down.

BY MR. HART:
Q And I want to be fair and accurate. Is it fair to put that you never took a statement from Darrell Herriott? Is that fair?
A No, sir, I did not.
Q Now, you heard yesterday that Darrell Herriott had been drinking. He admitted that he had been drinking;

right?
A That's what he said.
Q Okay. You would agree that if a person is intoxicated or had been drinking, that affects their ability to recall what happened.
A Yes.
Q Okay. Drinking affects your ability to drive. Is that right?
A Yes, sir.
Q It affects your ability to see; is that correct?
A Yes.
Q Affects your ability to even speak. You'd agree with that.
A Yes.
Q Okay. So if Darrell was drunk that night, you would agree that that could have affected his ability to see what happened that night?
A If Darrell was drunk, it's possible, yes.
Q Okay. Now, you have had a chance to review the toxicology report for Kevin Franklin; is that right?
A I looked at it.
Q You looked at -- do -- do you know what's in it?
A I have it. I can tell you what's in it. For who now? For Kevin?
Q Well, tell us how many toxicology reports were done.

A Oh, I don't -- the name -- the only toxicology report --

MR. CONNER: Your Honor--

A -- Kevin--

THE COURT: Yes, sir.

MR. CONNER: Well, I don't know where this is going, but the toxicologist is here.

THE COURT: I understand. Are you objecting to him testifying to the report?

MR. CONNER: Well, I'm objecting to him talking -- testifying to hearsay information when we have got--

THE COURT: Okay. Sustained.

BY MR. HART:

Q Have you had a chance to review the toxicology report?

A On who?

Q Okay. Well, how many reports were done?

A I have one.

Q You have one report?

A On the victim, yes.

Q Okay. So there's only one report out there; right?

A Yes.

Q Okay. Have you had a chance to review that one report?

A Yes.
Q You know what's in that report?
A I got it right here.
Q Okay. Detective Turner, do you know what's in that report without having to look at it?
A No, sir.
Q So you would agree that you can't testify about this case strictly from your memory. You need notes; right?
A The toxicology report, sir, is not something I would be testifying to any way. Other than going to a piece of paper that was provided to me by SLED, I wouldn't --
Q Okay.
A -- know the results. I'm not the chemist who done the toxicology.
Q Okay. That's fine. Let's talk about Pam Franklin. Are you aware of the relationship between Darrell Herriott and Pam Franklin? Do you know anything about that relationship?
A Relationship I know about was discovered a couple of months ago which was I believe they have a child in common.
Q Okay. Don't you think that's a very important part of this case, the relationship between Pam and Darrell?
A I don't see why. I mean, I don't understand... they got a child together.

Q Do you think it's important to know the relationship between Pam Franklin and Darrell Herriott? Do you think that's important?

A Probably so if there was a -- if the situation was over, you know, if it was over the child or what. Mr. Franklin -- Ms. Franklin and Mr. Gregg were together at the time.

And prior to this there was no -- no, you know, his child and Darrell's child was 14 years old at the time or 13 years old, and for 13 years there's no other record of anything.

There's no -- there's nothing ever been discovered that there was a problem between Mr. Willy Gregg and Mr. Darrell Herriott.

Q Detective -- seriously, I'm not trying to ask you any trick questions. I'm just asking -- do you think it's important to know about the relationship between Pam Franklin and Darrell Herriott for this case. That's all I'm asking you.

A I don't know how to answer that, sir.

Q Okay. You had a chance to interview Pam?

A No, sir.

Q Okay. You're the lead investigator. You have never talked to Pam Franklin?

A I have talked to Pam Franklin. I have talked to her

on November the fourth.

Q So you did interview Pam Franklin?

A I went to her house. Actually we received information that Mr. Gregg was at the house, and I went to the house on November the fourth. She was actually there and let us into the house.

But, you know, we searched the house. And the only other thing I talked to her about -- she was not at the scene that night, so she was not a eye witness, so -- and I was unaware of any statements of -- being made about somebody being killed over the burglary.

Q My question is -- I'm just asking you some simple questions here, detective. Did you ever get a chance to interview Pam about this case? That's all I'm asking you.

A Myself and Mr. Conner interviewed Pam about this case.

Q So you personally talked to her about this case.

A I'm sitting in the room with her.

Q Right. Now, can you show us a copy of the written statement that you took from Pam about this case?

A I didn't take no written statement from Pam because she was providing information to Mr. Conner.

Q Is that fair, no written statement from Pam Franklin? That's fair?

A She being interviewed by Mr. Conner in my presence.

Q I'm just -- I want to make--
A Both asked questions.
Q What I--
A I didn't take a written statement because she's being interviewed by Mr. Conner.
Q So that's fair. That's a fair statement?
A That's fair.
Q Okay. You don't know if Pam had been drinking that night or if she was high that night?
A No, sir. Pam, I -- I don't even know if Pam was out there that night.
Q Okay. Do you know if Pam had an ax to grind against William? Do you have any information about that?
A No, sir.
Q Do you know if they had a rocky relationship? Do you have any information about that?
A No, sir.
Q Do you know if Pam was angry and upset with William when this happened? Do you know anything about that?
A No, sir.
Q Now, you'd agree the crime happened on -- make sure everybody can see -- the crime happened on November 1st, 2003. Is that correct?
A That's right.
Q Okay. Days before this, Pam Franklin delivered a

baby; is that right?
A My understanding -- I think it was either -- I want to say it was that Thursday, the same day I went out to the house.
Q Okay. Because this is an important detail to this case. Can you tell us the exact date Pam Franklin had her baby?
A No, sir.
Q You can't tell us?
A I can't tell you because I don't have the medical records.
Q And you had the chance to talk to Pam; right?
A Yes, sir, I had a chance to talk to Pam.
Q Do you even know what relationship the baby plays to this case? Do you have any information on what the relationship the baby has to this case?
A Per her conversation, it's his child.
Q That's all you know.
A Yes, sir. I don't know what else there is -- I don't know anything else there is to know about. It's his child.
Q Okay. So you don't know if William Franklin was at the hospital the date she had the baby? Do you know that?
A No, I don't.
Q You don't know?

A Huh-uh.
Q And this is important. That's why I'm writing this because it's very important. That's fair? That's accurate? I just want to make sure it's accurate. Don't know if William was at the hospital when baby was born. That's fair? What I'm saying is, that's fair what I wrote? That's accurate?
A If you want me to tell what she told me, then I answer your question--
Q Asking what I wrote, is that accurate?
A Do I know? Because I wasn't there. No, sir, I don't know --
Q Okay. That's all I'm asking.
A -- whether she was there or not.
Q That's all I'm asking, sir. That's all I'm asking. For this case, you would agree it is extremely important to know if that man was at the hospital when Pam delivered that baby.
A I would say so.
Q Extremely important; isn't it?
A Yes.
Q If he was at the hospital, that means he was in Sumter, South Carolina, at the time the baby was born.
A That's right.
Q If he was at the hospital, you'd agree -- you have

been to Tuomey.
A Uh-huh.
Q They have security cameras around, surveillance cameras around that hospital; don't they?
A Yes, sir.
Q If William Gregg was at the hospital when Pam delivered that baby, it's possible he would be on surveillance camera at that hospital on that date.
A It's possible.
Q Tell us the date and time you checked the security tape or video from the hospital to see if William Gregg was there when the baby was born.
A I did not.
Q Never checked it?
A Never knew anything about it until just recently.
Q Never knew anything about it?
A No, sir.
Q Also, you'd agree that if William Gregg was in the delivery room at the time Pam delivered that baby, other people saw him such as the doctor who delivered the baby; is that right?
A That's right.
Q Kendrick Miller. You talked about Kendrick. Kendrick Miller had identified some other witnesses; is that correct?

A Not to me that night, no, sir.

Q He identified that the...

(Mr. Hart was conferring with Solicitor.)

MR. CONNER: I don't have a copy of it. Got to have a copy.

BY MR. HART:

Q You learned through your investigation that Kendrick Miller said he was walking away from the scene when the shots happened; is that correct?

A You want me to answer what he told me? Because it's the same thing I tried to answer earlier and you wouldn't let me answer it.

MR. CONNER: Your Honor, I'd ask that he be allowed to testify as to what the man told him if he is being asked what he told him.

MR. HART: I asked him, Your Honor.

THE COURT: It's all right. I mean, you asked him what he told him?

MR. HART: I asked him, did Kendrick Miller let you know that he was walking away from the scene when the shots happened.

THE WITNESS: Yes.

BY MR. HART:

Q Okay. He also told you that he walked away to where other family members were; is that correct?

A He was going back to the residence, yes.
Q Okay. You remember testifying at a prelim on July 10th, 2007?
A Uh-huh.
Q I was there?
A Uh-huh.
Q William Gregg was there?
A Uh-huh.
Q There was a Judge there?
A Uh-huh.
Q We had a Court Reporter there?
A Uh-huh.
Q You were sworn in to tell the truth?
A Uh-huh.
Q Turn to page 12 for me of that prelim.
A (Complied.)
Q Line four. You see your testimony?
A Uh-huh.
Q Tell us, what does it say?
A Want this line four or you want the whole paragraph?
Q Line four.
A Kendrick Miller, he saw it was, but he was -- he...
Q Keep going.
A It was family members.
Q It says, he also saw it, but it was family members,

some more family members of Mr. Franklin just up the road; right?
A That's right.
Q So those other family members, it's possible they could have seen or heard what happened that night; is that right?
A I believe he did hear the gunshots, but nobody identified to me that night when I was out there talking to -- you know, when I talked to different ones that said I saw anything else but Kendrick Miller.
Q Can you tell us the name of those people who were out there? Can you tell us those names?
A No, sir.
Q You don't know the names of the other people who were out there?
A Sir, you're saying out there. You're talking about the people that -- the family members that were at the Miller house up the road?
Q Okay. Well, go back to your testimony that you had on July 10th, 2007, which was approximately a year ago. It says, it was family members, some more family members of Mr. Franklin were at the residence just up the road.
A Uh-huh.
Q Is that right? And it also says, and it was dark. That's your testimony?

A Up the road it is dark, sir.
Q So that means there were other people in that area. Is that correct?
A Mr. Kendrick told me at the house he was at there was other people at that house. Nobody was outside. There was -- I think it was Kevin's mother and them were at another residence a little further up the road of .

Some of them, you know, only said they heard three or four shots, five shots. Didn't see anything. Didn't see a car. You know, Mr. Miller is the only one that said, I saw a car, it was Bubba, and this is what he did.
Q Detective Turner, I'm just asking you some real simple questions here. Kendrick Miller identified that there were some other people; is that correct? Would you agree?
A Not by name to me.
Q Okay. You never asked him about those other people. Did you ever ask Kendrick Miller about those other people? That's just a simple question.
A Yes, sir.
Q I'm sorry?
A Yes, sir.
Q You did.
A Who were they?

Q Tell us the name of those people.
A I can't tell you that.
Q You can't -- you never interviewed those people to see if they saw or heard what happened that night.
A Yes, sir. When I talked to Kendrick Miller and the vehicle was gone, I went back around. There was a lot of people there -- not people, there were several people there. Did you see anything? No, sir, I didn't see anything. Did you see anything?

And I believe his mother, because she was crying when I did -- the mother and some other like nieces and stuff were there, but they lived in a position that you couldn't even see where this happened at when Ms. Thomas was at, they not live there, they lived further up the road, further back away.

Q Can you see from here?
A Yes, sir.
Q The crime happened here; right?
A Yes, sir.
Q That's a house right there; is that correct?
A That's where Mr. Miller and them were located at.
Q Okay.

(Whereupon, Defense Exhibit No. 2 was marked for identification only.)

BY MR. HART:

Q Showing you what has been marked as Defendant's Exhibit number two. You'd agree that that is a picture?

MR. CONNER: Is this picture -- is this for identification or is this--

MR. HART: Identification purposes only.

BY MR. HART:

Q You'd agree that that is a -- the front picture of this house.

A No, sir, I do not.

Q You don't agree with that?

A No. That picture is taken here. This is -- building right here is Shaw Gate Pawn Shop. You taking a picture of this house, not this house.

Q Shaw Gate is here.

A Yes, sir.

Q When you look directly straight across, that's the front of that house; is that right?

A No, sir. That's Mr. -- that's the Shaw -- that's this house.

Q Shaw Gate Pawn is here?

A No, sir. That's the front of this building. That's the corner right there. The house you're looking at is this house right here.

Q If you -- that's the structure right here, and this house is right there?

A No, sir. That's this trailer right here. What you see here is a -- is a trailer that's used to ship a container on a ship is sitting right here. And what you are seeing is that right there is right here.
Q Okay. That's fine. Let's say it's the house there. Do -- you want to say it's the house, then let's say it's the house there. Tell us the date and time you knocked on that door to see if those people saw or heard what happened.
A No, I didn't talk to them.
Q Never went to that house?
A No, sir.
Q And that house was right there where the crime happened.
A Yes, sir.
Q Now, you have William Gregg's neighbor or house listed as -- what's his address? Do you know the address that he has listed?
A I believe it's .
Q Okay. And that was his address as listed the night of the crime; is that correct?
A I believe so.
Q Okay. You don't know if William Gregg was in the house when this crime happened; do you?
A His house?

Q Yes, sir.
A No, sir, other than the officer went around there and the white car wasn't there we was looking for, and you know, they knocked on the door and wasn't nobody there.
Q You never bothered to go down there?
A We sent other officers there.
Q In this case there are no fingerprints linking William Gregg to this crime; is there?
A No, sir.
Q There is no clothing belonging to William Gregg found at the scene; is it?
A No, sir.
Q No personal items belonging to William Gregg at the scene?
A No, sir.
Q There is no DNA of William Gregg at the scene; is there?
A No, sir.
Q No hair, no skin?
A No, sir.
Q No clothing, no fibers?
A No, sir.
Q Now, you heard yesterday there was testimony that William Gregg sped around the -- whoever the suspect was, sped around the corner. There were tire marks out there;

right?
A There was what looks to be spin marks.
Q Okay. Now, there is a process by where you can take a picture of those spin marks.
A I did take pictures of those spin marks.
Q Did you ever take the time to verify to see if they were the same tire impressions that match this vehicle?
A It's spin marks, sir. The dirt is turned up. There's nothing to identify with anything.
Q So it was in the dirt?
A Well, I mean, it's -- it's -- it's pavement slab, but it's got dirt on top of it. You can't see nothing but a black mark. It's nothing that -- you can't identify tread marks or tread from those spin marks. It's not identifiable, sir.

The spin marks -- I mean, it shows me the picture -- give me the picture and I will show it to you. It's a black mark on the pave -- on the asphalt with dirt on it.
Q Let's talk about you and -- did you travel to North Carolina to pick up the car?
A I did not.
Q Okay. Have you seen the car since it's -- since you got it in custody?
A Yes, sir.
Q You have interviewed it?

A Interviewed it? I have looked.
Q Processed it.
A I did not process it, no, sir. Sergeant Mackessy processed it.
Q But you have seen it?
A Yes, sir.
Q There were personal items inside that car.
A Yes, sir.
Q Didn't look like the personal items were being -- trying to be concealed at all? They were scattered all over the place.
A Yes, sir.
Q Now, you -- you -- are you aware that William Gregg was born and raised in New York?
A I believe so.
Q Okay. Are you aware that he has family in New York?
A I believe so.
Q Were you --
A Yes.
Q -- aware that he has -- he had a wife in New York at the time this crime happened?
A I think so.
Q Okay. You was aware that he has kids in New York?
A I believe I do or did.
Q You aware that William Gregg traveled back and forth

between New York quite frequently?
A Yes, sir.
Q You was aware that William Gregg had a girlfriend in Garner, North Carolina?
A Yes, sir, afterwards. A female friend, yes, sir.
Q You was aware of this --
A Uh-huh.
Q -- at the time, right? Okay. Let's talk about real briefly -- you have a copy of your search warrant that you served on the house?
A Never served -- served it.
Q But you have a copy of it.
A Uh-huh.
Q You reviewed it.
A Yes.
Q Okay. You went and got a search warrant for November 4th of 2003; is that correct?
A That's right.
Q And this also is extremely important. The crime happened on this date, on Saturday November 1st; is that right?
A Yes, sir.
Q You got your search warrant on November 4th; is that correct?
A I did.

Q The reason you got the search warrant was because you received a call; is that correct?

A That's right.

Q Who did you receive the call from?

A It was anonymous.

Q Anonymous call?

A That's right.

Q In your search warrant, you had to give reasons for getting a search warrant; is that right?

A I believe so.

Q Okay.

MR. CONNER: Your Honor, the -- of course, the reasons would be from an anonymous caller. And that -- that's hearsay information.

MR. HART: Not in this one, Your Honor. This is not anonymous.

THE COURT: Okay. I mean, are you -- maybe y'all need to -- hang on just a minute. Y'all need to approach then because are you objecting -- you're objecting to hearsay?

MR. CONNER: I'm objecting to any hearsay information. We have had a lot of that already.

THE COURT: Okay. So I -- y'all approach a minute. I don't know...

(Whereupon a bench conference was held.)

BY MR. HART:

Q Detective Turner, you have a copy of your search warrant; don't you?

A I do.

Q You have a copy of your affidavit; right?

A Yes, sir.

Q Okay. All right. Now, actually in your affidavit you didn't state that the call was anonymous. Look at the reason--

A It come from another deputy.

Q But look at your affidavit.

A I saw it. I know what it says.

Q Actually the call came from Richland County Sheriff's Department.

A Joseph Davis, a deputy. Used to be a deputy in Sumter County.

Q Richland County Sheriff's Department has nothing to to with this case.

A No, sir.

Q Tell the jury who made the call to Richland County Sheriff's Department in your affidavit.

A According to what Joe Davis says, suspect's girlfriend.

Q The suspect. And who is the suspect in this case?

A William Gregg.

Q And who is the suspect -- who is William Gregg's girlfriend at the time?

A Pam Franklin.

Q So that means Pam Franklin called Richland County Sheriff's Department on that date, on November 4th.

A Right. Let me clarify something. Joseph Davis lives in Sumter County. At the time he worked for Richland County. He was actually a Sumter County deputy who went to Richland County.

I don't know -- you know, he may have prior contact with them. All I know is he called us and said she said he was at the -- he's possibly at the house.

Q Pam Franklin made a report that on November 4th --

A That's right.

Q -- William Gregg was at the house with her.

A That's right.

Q You went to the house?

A Not with her. That -- that he was possibly at the house.

Q You--

THE COURT: Hold on just a minute.

(Whereupon there was a pause).

MR. HART: I just have a few more questions and we will be done.

THE COURT: Okay.

BY MR. HART:

Q Yes, sir. On your affidavit there's also a consent form. Flip over to the next page. There's a consent form; right?

A Yes, sir.

Q That consent form has Pam Franklin's name on it; is that right?

A Yes, sir.

Q It also has Pam Franklin's signature on it; is that right?

A It does.

Q So she gave you consent on November 4th to come and search the house for William Gregg.

A She did.

Q When you got there, did you go and search the house?

A All right. Explain to you how this happened. We get the call. I didn't know where Pam Franklin was at. I got a search warrant in case he was in the house, it would allow us to go in the house and get him out.

Upon our -- after arrival at the house with the search warrant, Ms. Franklin was there. Ms. Franklin drives up and she said, you know, it's no problem with us searching. I got her to sign a consent to search. The search warrant was no longer necessary.

She met us there and allowed us to search. And if

you read the consent to search, it says -- if I can read this -- I'm allowed to search the premises for William Gregg, the third. This consent remains in effect until Gregg is apprehended, and that may -- and may be conducted any time the sheriff's office deems.

Basically meaning that we get a call and he's there, then we're liable to go in there and look.

Q When you looked in that house, William Gregg wasn't in there; was he?

A No, sir, he was not.

Q Okay. Over the past five years your investigation has rested on Kendrick Miller and Darrell Herriott; is that correct?

A Yes, sir.

Q Right after this crime occurred, you learned that William Gregg was in a different state at the time and date of this murder; is that right?

A No, I didn't learn he was in a different state. I knew he fled to a different state because I have got a -- when I got back from the autopsy, I was told that he -- well, I was told he was in another state that Sunday.

Q So are you telling us you never had information that William Gregg was in a different state at the time and date on November 1st? Is that your testimony?

A No, sir, not -- at the time this murder happened,

that was -- I had -- I did not have that information. Two weeks later when the car was discovered in Garner, North Carolina, then we had an indication, and then there was a statement given at that time--

MR. CONNER: Your Honor, I object to any kind of hearsay statement from somebody's located somewhere else, and I -- I would like to have an opportunity to hear that outside the presence of the jury or at side bar.

THE COURT: Okay. Let's have it at side bar.

(Whereupon a bench conference was held.)

THE COURT: I sustain the State's objection.

BY MR. HART:

Q Let's talk about briefly, real quickly, you have been involved in many trials other than this one.

A Uh-huh.

Q And you know a case of this magnitude takes a lot of preparation; is that right?

A Yes.

Q Okay. Now, you'd especially, like the weeks before the trial, you really have got to tie up the loose ends; is that right?

A Yes, sir.

Q Okay. You just got back from vacation; is this right?

A Took a week off.
Q Okay. Tell us where you went on vacation.
MR. CONNER: Your Honor, that's irrelevant to this case.
THE COURT: Well--
MR. CONNER: Where he vacationed and where he went and all of that is a...
THE COURT: I assume where he went is irrelevant unless you can tell me.
BY MR. HART:
Q You -- okay. I'm sorry.
THE COURT: Where he went doesn't have anything to do with it.
BY MR. HART:
Q You were on vacation.
A Yes, sir.
Q Before you went on vacation, you knew this case was scheduled for trial.
A Me and Mr. Conner had many conversations about this case.
Q Before you went on vacation, you knew you had not filed a report in this case.
A Yes, sir, I knew that.
Q Okay. Before you went on vacation, you knew you had not taken any statements from witnesses in this case?

A As I told you before, other people took statements, sir. I had the statements.

Q Now, the Government, the prosecutor asked you about a written report for this case; isn't that right?

A Yes, sir, I believe he did.

Q And you told him you didn't have one; is that right?

A I told him I didn't have one.

Q And you told him you should have done one for this case; isn't that right?

A No, I don't believe I told him that.

Q Okay. Detective Turner, that...

MR. HART: No further questions, Your Honor.

THE COURT: Okay. Mr. Conner, do you have anything?

MR. CONNER: May it please the Court. We would move this item here into evidence at this time.

THE COURT: What says the defendant?

MR. HART: No objections, Your Honor.

THE COURT: What item number is that, ma'am?

(Whereupon, State's Exhibit 18 was admitted into evidence.)

REDIRECT EXAMINATION

BY MR. CONNER:

Q Officer Turner, the -- there were several questions from the defense attorney here in regards to when a baby

was born. Did you go and -- following up on that, I would ask you, what day was it that you went out to the house of William Gregg and on the -- to respond to the burglary complaint?

A October 30th.

Q October 30th. And did you talk with him on that day?

A I did. He was there.

Q He was there. And what time of day was it?

A I think I probably got there -- I know it was late in the afternoon because I -- I was there probably a good 45 minutes and it was dusk dark. It was just after -- I mean, you would have to turn your headlights on, but it was dusty dark. You could still see to walk around the yard. It's like gray dark.

I don't know -- follow what I'm saying? It's sundown, but it ain't dark dark. It was lights out there, and I think he had a night -- there was a night light in his yard.

Q So you got there in the late afternoon right after dark?

A Yes, sir.

Q And that was on this day.

A That's right.

Q The 30th?

A Uh-huh.

Q And the man that you saw out there that day was this fellow in the white shirt seated by Mr. Hart?
A Yes, except he was wearing glasses. He wore glasses.
Q He wore glasses?
A Yes, sir.
Q And that was before the robbery happened on Saturday -- I mean, not the robbery, the shooting happened on Saturday night?
A Yes, sir.
Q Now, did the doctor provide you with an autopsy report?
A They did.
Q And did Sergeant Coclough do an incident report out there at the scene that night or became part of your department's records?
A He did.
Q And did Lieutenant Nelson do a report when he went to the home Sunday morning, the second of November?
A He did.
Q And did each one of the SLED agents who examined any evidence that was submitted to them--

MR. HART: Objection, Your Honor. I don't think I went -- objection, Your Honor. This is out of the scope of cross-examination. I didn't ask him anything about their reports. I asked him about his

reports.

MR. CONNER: Your Honor, our position is that the absence of reports is -- seems to be an issue here, and I'm just wanting to -- to correct the impression that might have been given that there were no reports.

THE COURT: And you did go into the reports in great detail, so I'm going to allow him to answer it.

MR. HART: Yes, sir.

BY MR. CONNER:

Q And Lieutenant Gardner, your supervisor, took a statement from Darrell Herriott; is that correct?

A He did.

Q And he took that on Sunday, the second?

A I believe so.

Q And I show you this and ask if you can identify it.

A Yes, sir. It's an ID shot for the -- we take this, this picture before we start taking pictures of the crime scene. And then it just identifies the case number, the date and time, location.

In this case the victim's name, what kind of incident it is, and who took -- who took the pictures, which it's got my name. This is my handwriting.

Q So that's the -- the record that shows that you were out there that night at 11:55 taking pictures?

A Yes, sir.
Q And even though it's not in a report, it's recorded?
A Yes, sir.

MR. CONNER: Your Honor, we'd offer it into evidence.

THE COURT: What says the defense?

MR. HART: No objection, Your Honor.

THE COURT: Okay. State's Exhibit 19 in without objection.

(Whereupon, State's Exhibit 19 was admitted into evidence.)

BY MR. CONNER:
Q And I show you these two photographs and ask if you can examine them.
A Yes. These -- one is a spin mark on the pavement. It's pavement, but it's got dirt on top of it. This is spin mark, black mark made by a tire.

And the other one is a -- is actually the only tire impression or tire impression that I could -- I find that possibly could be linked to Mr -- to the suspect's vehicle in this case.
Q And where were they taken?
A At the scene out there at
Q Okay. And the -- from the marks that you saw on the ground there in the pavement, did you -- could you make

any conclusion as to where the suspect's vehicle went after the shooting?

A Based on the marks, it appeared that he -- he spun off in the driver's side. Way you can tell that is because when the tire spins, the dirt's going to get a pile from the direction that it's going to -- if it spin this way, it's going to be a little pile behind it.

But any way, and it spins, appears to go around, and you just see the scuffle. And then it actually -- there's another, gets back on the gas and goes out into the highway. Looks like he just went around the vehicle.

Q And so it looked like the suspect's vehicle circled the victim's vehicle and headed back out into the highway?

A That's what it looks like.

MR. CONNER: Your Honor, we'd offer these into into evidence also.

THE COURT: What says the defense?

MR. HART: I have not seen those. I have seen them. No objections, Your Honor.

THE COURT: Okay. State's Exhibits 20 and 21 are in without objection.

(Whereupon, State's Exhibits 20, 21 were admitted into evidence.)

MR. CONNER: I have no further questions of him at this time.

MR. HART: I do have a follow-up on what he just introduced. Just two questions, Your Honor.

THE COURT: All right. Well, you can't go past that. The only way out of -- this thing will go on forever.

MR. HART: It will be two questions.

THE COURT: I'm forty-five minutes late giving the jury a break, but I'm going to explain it to them in just a second.

RECROSS-EXAMINATION

BY MR. HART:

Q That tire impression there, you never tried to match it up to William Gregg's car; did you?

A I did. It doesn't match his tires. He has a different set of tires than that. The tires on his car don't make that tread pattern.

Q Don't match this; does it?

A No, sir.

Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Okay. You can step down.

(Witness left the stand.)

THE COURT: Ladies and gentlemen, we are going to break for lunch now and come back at two. I'm losing my Court Reporter. She has to leave by 12.

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And so -- and I have another one coming in from Columbia who won't get here till two.

So this is going to work out. We are just going to break for lunch between 12 and two. And I remind you, you can't discuss this case yet. Don't allow anybody to discuss it with you.

You have a nice lunch. And if you will come back to the jury room at two, I'll get you out just as quick as I can understanding she's coming from Columbia and she might be late.

And y'all know by now you can't rely on my clock. I'll do my best to get you out as quick as I can. You have a nice lunch.

(Jury left the courtroom at 11:51 am.)

THE COURT: Anything before we break for lunch?

MR. CONNER: I have nothing.

MR. HART: Nothing from the defense, Your Honor.

THE COURT: Okay. Then we'll be in recess until 2:00.

(Court was in recess for lunch.)

(Court Reporter switch. Bonnie Kelly took remainder of 7-29-08.)

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THE COURT: I talked with Family Court. She left there about 20 or 30 minutes ago and she said

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she would be here in the next five or 10 minutes.

And what I was first asking is it looks like that -- talking to defense counsel, the possibility of this case getting to the jury today. Any specific charges that either side wants?

MR. CONNER: I don't...

THE COURT: And I was going to charge, you know, the standard charge and the reasonable doubt, criminal intent, expert testimony, direct and circumstantial evidence, murder, possession of a weapon during a violent crime. Anything else?

MR. CONNER: Don't know of anything else.

MR. HART: Yes, Your Honor, from the defense. On behalf of Mr. Gregg, we do have specific charges that we would ask to request.

Specifically, Your Honor, we intend to call a witness who will be able to provide an -- a place other than the crime scene for Mr. Gregg at the date and time that the crime occurred.

We have given the proper notice of the -- to the Government about an alibi. We would request that an alibi charge be given once that evidence has been presented.

In addition, Your Honor, as you know, this is an eye witness case, identification. And we would ask

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for a eye witness charge, the reliability in general charge.

THE COURT: Wait a minute. Identification and what in general?

MR. HART: The eye witnesses, eye witness testimony and just reliability in general.

THE COURT: Okay. And I have that in my identification charge. I think it is pretty covered. And if you'll -- all right. And so you want alibi and identification.

MR. HART: Yes, sir.

THE COURT: And murder and possession of a weapon during a violent crime.

MR. HART: Yes, sir.

THE COURT: Okay. All right. Now, do you want the Court to review and understand -- that your client's right to testify?

MR. HART: Yes, Your Honor. If you could advise him. Before you advise him, Your Honor, I have -- we have talked over the past 18 months about his right to testify as a defendant in this case and that that's his right.

I can't take it away from him. The Court can't take it away. The Government prosecutor can't take it away. That's solely his decision of whether to

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testify, Your Honor. And if the Court could advise him on the record.

THE COURT: All right. Mr. Gregg, if you would, please sir, stand up.

THE DEFENDANT: Yes.

WILLIAM GREGG, after being duly sworn, testified as follows:

THE COURT: Okay. And you understand we're about to reach this point -- you can put your hand down -- the point in the trial where you have the right to put up evidence if you want to.

You're not required to do so, but the State has the burden of proving this case beyond a reasonable doubt. But you also have the right to testify if you want to do it.

You also have a right not to testify. And if you choose not to testify, I will instruct the jury that that is a constitutional right you have and that they cannot consider that against you in any way, that they can't even discuss in the jury room the fact that you did not testify.

But if you do decide to testify, then you'll be treated like any other witness. You will be subject to cross-examination by the State. And if you have a prior record that qualifies under the statute or

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under the rules, then they can impeach you on that record.

And this is your constitutional right and your decision is ultimately yours. You certainly can take the advice or listen to the advice of your attorney, but it's ultimately going to be your decision whether you want to testify or not testify.

And you certainly -- have you had an opportunity to talk to your lawyer about these rights?

THE DEFENDANT: Yes, I have, sir.

THE COURT: And you don't have to make that decision right now. I mean, certainly when we get to that point in the trial, you know, you can converse and decide whichever way you think is the best trial strategy.

THE DEFENDANT: I have pretty much decided I don't want to testify.

THE COURT: Okay. And you just have a right to testify, I need for you to understand that right. And then -- and I will instruct the jury that if you don't testify, that they can't consider that in any way in determining guilt and innocence in this case. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Have you got any questions you want

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to ask me about your rights as far as testifying is concerned?

THE DEFENDANT: No, I don't.

THE COURT: Okay. All right, sir. Well...

THE DEFENDANT: Dealing with the Fifth Amendment; right?

THE COURT: Yes, sir.

THE DEFENDANT: All right.

THE COURT: Under the Fifth Amendment you have a right to remain silent.

THE DEFENDANT: That's right.

THE COURT: And so -- and the State has the burden of proving you guilty beyond a reasonable doubt. And you're not required to put up any evidence or to prove anything.

And so and I will instruct the jury that you have that right and that they can't consider that against you at all if you choose not to testify. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right, sir. Thank you. Okay. and I understand the juror is here. Is there -- anything before I bring them in?

MR. CONNER: The juror is here?

THE COURT: Yes, sir. Is the State ready to go?

MR. CONNER: We're ready.

THE COURT: Okay. Anything before I bring the jury in from behalf of the defense?

MR. HART: No, sir.

THE COURT: All right. Bring us the jury.

(Whereupon, Defendant's Exhibits Nos. 6, 7 were marked for identification only.)

(Jury entered the courtroom at 10:47 am.)

THE COURT: Thank you, ladies and gentlemen. I notice all of you must be Presbyterian because you all sit in the same seat. We are ready to proceed. Mr. Solicitor, you may call your next witness.

MR. CONNER: I'd call Terrance Colclough, Your Honor.

TERRANCE COLCLOUGH, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNER:

Q Terrance, where do you work?

A Sumter County Sheriff Office.

Q And how long have you worked for the Sumter County Sheriff?

A Thirteen years.

Q And what's your responsibility with the Sumter County Sheriff's Office?

A I work for the patrol division as a shift supervisor.
Q And you are a lieutenant; is that correct?
A Yes, I am.
Q And were you working back in 2003?
A Yes. I was on the patrol division as a shift sergeant.
Q And did you have a -- in that regard, on November the first, 2003, shortly after 11:00 at night, did you get a call in relation to the case we're trying here today?
A Yes, I did. I was dispatched to a -- a shooter -- a shooting on Highway 76 West near Shaw Air Force Base.
Q And what time did the call come in?
A The call came out approximately at 2325 hundred hours, so -- which places close to about 11:25.
Q And what -- how long was it before you got there?
A It took approximately about five minutes for me to get there. I was just coming off of Highway 76 and
.
Q And when you got there, tell us what you learned.
A When I arrived to the scene, I spotted one vehicle and with the apparent victim inside of the vehicle inside the driver's side seat with an apparent gunshot wound to the -- the head.
Q Now, I would show you here this exhibit which is State's Exhibit number one and ask you to step down here

and kind of stand over there to the side and use this pointer and show us where you saw the vehicle.

A The vehicles was parked approximately right here in this area, which would be the pawn shop, and the vehicle was parked here facing outward on to Highway 76.

Q Facing toward Highway 76?

A Yes, sir.

Q Okay.

A In -- in this area right here is now called which is now marked.

Q Okay.

A And this area right here, this area is known as .

Q Just have a seat back there if you would.

A (Complied).

Q Now, at the time you got there, it was only the one person in the vehicle; is that right?

A Yes, it was.

Q He had been shot in the head.

A Yes, he was.

Q Now, did you talk with anybody there about what had happened?

A Yes. Just when I arrived, another subject came from the residence which was nearby, actually right adjacent to where the vehicle was parked at, and that was the subject

by the name of Mr. Miller, Kendrick Miller.

And Kendrick -- Kendrick Miller therefore gave me a eye witness statement of what he saw.

Q Okay. And did he tell you who did the shooting?

MR. HART: Objection, Your Honor, on the hearsay evidence. I don't believe he's allowed to testify to what Kendrick Miller said.

MR. CONNER: Mr. Miller has been here and testified, Your Honor, has been cross-examined, and this officer is going to say nothing different, but I think they contest the reliability of Mr. Miller's report.

THE COURT: What...

MR. HART: I think also, Your Honor, I don't think the rules allow for him to use an officer to bolster the testimony of another witness.

THE COURT: Well, I'll sustain the objection. Technically it is hearsay and it doesn't fit under one of the exceptions that I know of.

BY MR. CONNER:

Q Was Mr. Miller upset and excited?

A Yes, he was. He was on -- actually traumatized that he just witnessed a violent event.

Q And would you say that the information he gave to you was an excited response to what had just happened?

A Oh, yes, it was.

MR. CONNER: Your Honor, I would submit under those circumstances that it is an excited utterance and they're contesting the reliability of his information.

THE COURT: Okay. I'm--

MR. CONNER: And he's been cross-examined -- the witness himself has been cross-examined.

THE COURT: I would--

MR. HART: May I respond, Your Honor?

THE COURT: Yes.

MR. HART: I think the jury has heard the testimony from Kendrick Miller. I think what now he's trying to do is back-door the information and bolster that testimony to say that, you know, another person has heard it.

Your Honor, we already heard the statement. You know it was an excited utterance. I think right now he's just trying to bolster the testimony of Kendrick Miller through this officer.

THE COURT: I understand, and I will overrule your objection on this. I think it does come under the excited utterance exception and I don't think he's trying to bolster his testimony. You can proceed.

MR. HART: Thank you, Your Honor.

BY MR. CONNER:

Q Did he tell you who did the shooting?

A Yes, he did. He shouted out that prior to my arrival, that the victim was talking to a subject by the name of William Gregg, which therefore, some kind of altercation, he heard shots fired, and that Mr. Gregg had already fled the scene.

Q Okay. And did he tell you how many shots he heard?

A Yes, sir. He told me he heard approximately between four to five shots, could be more, could be less.

Q And did -- did he tell you what -- anything about the car that William Gregg was driving?

A Yes, sir. He gave me a description of the vehicle as being an older model white in color Cutlass.

Q Cutlass Oldsmobile?

A Yes, sir.

Q Okay. Now, while you were there, did other officers arrive?

A Yes, sir. What I did was when I arrived to the scene, discovered the victim, and then after I got the information from Mr. Miller, I therefore went on the call according to the sheriff's office procedures, went on and call the investigation unit, and therefore Investigator Turner, Investigator Gardner...

Q Now, speaking of Mr. Gardner, is that him in this peach shirt here?
A Yes, it is.
Q Okay.
A And some other investigators also came, Investigator Holcombe, and of course I bolo'd the deputies that were under my command in reference to giving the information in reference to the car description and the suspect description of what just happened.
Q So that information went out on the air?
A Yes, it did.
Q And that -- that's what you called a bolo?
A Yes, sir, be on the lookout.
Q Be on the lookout. And that bolo was for William Gregg and a white Cutlass Oldsmobile?
A Yes, it was. And we didn't have any concrete information in reference to the tag at the time.
Q Now, later that night did you go to -- did you go to William Gregg's home?
A Yes, sir. What we did was the patrol division and where I worked, we allowed the investigators to go ahead and handle the scene and process the scene, and therefore some of the members from the patrol division went along to the house after we discovered the physical address of where Mr. Gregg lived and went to the residence on

to search for Mr. Gregg.

Q And did you find him there?

A No, sir.

Q And how -- how about the dead fellow's sister, Kevin Franklin's sister, did she come out there that night?

A Yes, she did. She was also at the scene when I arrived shortly after -- I was speaking to Mr. Miller -- and we made contact with her, and then therefore while we was at the residence, she also arrived at the residence to retrieve some clothing and I believe something along those for the children.

Q So she came to the -- your location shortly after you arrived there?

A Yes, she did.

Q That was at -- at the scene of the shooting.

A Yes.

Q And then -- then after y'all went to the house, she came over there?

A Yes, she did.

Q Now, did the emergency vehicle come while you were there, the EMS? Did they haul Franklin to the hospital?

A He was -- Mr. Franklin was still inside the vehicle when the emergency vehicle -- when actually EMS arrived. And they haven't tooken (sic) him out of the vehicle since -- prior to me leaving this incident.

Q Okay. Answer any questions the defense lawyer might have for you, please.

A Yes, sir.

MR. CONNER: May it please the court. Can we approach?

THE COURT: Yes, sir.

(Whereupon a bench conference was held.)

CROSS-EXAMINATION

BY MR. HART:

Q You're a sergeant with the sheriff's department?

A I was a sergeant then.

Q You were -- but you say you served in a supervisor's role at the time?

A Yes, I was.

Q Supervisor's role now?

A Yes, I am.

Q Okay. Numerous years of experience?

A Yes, sir.

Q Okay. You would agree that this -- when you responded, this was a murder scene when you responded, somebody had been shot and killed.

A He was still living at the time.

Q He was still living when you responded?

A Yes, sir.

Q Okay. Now, you'd agree that murder, this type of

crime requires a lot of energy, a lot of time put into the case.

A From my knowledge.

Q Okay. Lot of detailed information that you have got to put into a case such as this one.

A My job only is limited to the patrol division and -- as going forth into investigations, that's not my spectrum.

Q Okay. So you don't know how much attention you have to put into investigating this kind of crime?

A Only through basic knowledge, just I'm sure it does.

Q Okay. Well, let's talk about basic knowledge. From your basic knowledge as a -- you have been on the force 13 years?

A Yes, I have.

Q Been on the force 13 years, you would say that this type of crime requires a lot of effort and energy.

A Yes, it does.

Q Okay. This type of crime, you've got to get a lot of details to make sure people know what they're talking about; right?

A Certainly.

Q Okay. Now, when you responded, you responded with an incident report; is that correct?

A Yes, sir.

Q And you filled out an incident report; right?
A Yes, I did.
Q Okay. Tell us, what time did you get to the scene?
A I got to the scene at 2330.
Q 2330?
A Uh-huh.
Q Okay. Which is -- that's military time, but -- which is 11...
A 11:30.
Q In layman terms, would that be 11:30?
A 11:30.
Q Okay. Tell -- you'd agree that as the responding officer, you played a very important role in this case?
A Yes, sir.
Q Spell your last name for me.
A C-o-l-c-l-o-u-g-h.
Q And pronounce that for us.
A It's Coclough.
Q Coclough?
A Uh-huh.
Q Okay. You say you responded what time?
A At 11:30. The call was dispatched at 11:25.
Q You got there at 11:30; right?
A Yes.
Q What time did you leave?

A I left the scene at approximately -- according to the dispatch time at 12:10.
Q 12:10. So 11:30 pm, you responded. You left 12:10 am; correct?
A That's correct.
Q Would it be accurate -- you would say that's about a span of 40 minutes?
A Yes, sir.
Q Okay. So you -- no one gets to the scene before you do; right?
A No one does.
Q Okay. Before I step down, I want you to look at that and make sure that's accurate. That's...
A Yes, that's correct.
Q So as the first person on the scene, you have to advise everybody what you saw.
A Exactly.
Q Okay. You never found a weapon that night.
A Oh, no, I didn't.
Q And as we speak today, there is no weapon that you found that connects William Gregg to this crime.
A Not from my knowledge.
Q Okay. You say you also identified some witnesses; correct?
A Yes, I did.

Q And you talked to Kendrick Miller.
A Kendrick Miller.
Q Okay. Did you ever take a statement from Kendrick Miller?
A Just verbally, just base -- basic questions. I allowed the written statement in reference to the investigators.
Q You left that up to them?
A Yes, when they arrived to the scene.
Q Now, let's talk -- did you have a conversation with the -- now, let's -- which investigator are you talking about?
A The investigators all pretty much arrived at the scene simultaneously. I called out the investigator. Of course, there were Gardner, Holcombe, and Turner.
Q Okay. The investigators. Which investigator did you talk to about the information you received from Kendrick?
A Turner.
Q Turner, which is right here.
A Yes.
Q Did you and Turner talk anything about taking Kendrick's version down in writing? Did y'all discuss anything about that?
A No, that was out of my spectrum.
Q So you never -- what -- but you told Turner what

Kendrick told you.

A Exactly.

Q Okay. You'd agree that one of the best ways to record or remember what Kendrick said is to write it down; right?

A It all depends on what's available on this -- on the scene at the time.

Q You carry incidents -- you carry notepads.

A Yes.

Q You'd agree that somebody out there had a notepad.

A Possibly, yes.

Q Okay. All right. Have you seen a statement from Kendrick in this case?

A No, I haven't.

Q Okay. You also -- are you in investigations now? Do you do any investigations at all?

A No, just preliminary investigations.

Q But you have basic knowledge of investigations, just...

A Something, yes.

Q At the sheriff's department, do y'all have audio equipment available where you can record -- like you see this tape player -- where you can record a person's statement on tape?

A Uh-huh, yes.

Q Y'all have that available?
A I'm not quite sure what investigations has, but I know what patrol has. Yeah.
Q Okay. But you have that available where you could record his statement on a tape.
A Yes, the patrol division does.
Q Okay. At the sheriff's department, do y'all have video equipment available where you could videotape a person's statement to see what they're saying to verify it?
A At that time in 2003 was limited.
Q Okay. Well, when you say limited, did y'all have video equipment or y'all didn't have...
A The only video equipment that I have knowledge of was video equipment that was placed inside the patrol vehicles.
Q Okay. But at the station you don't know if y'all had any?
A Not to my knowledge.
Q Okay. Now, look at your incident report. Do you see the incident report?
A Yes.
Q There is a place on your incident report where you can talk about or verify whether anybody was using drugs or alcohol; right?

A Yes.
Q You don't know if Kendrick Miller was using drugs that night.
A No.
Q You don't know if he had been drinking that night.
A No.
Q Whether Kendrick Miller was drinking or using drugs that night, that's a very important fact for this case; wouldn't you agree?
A Yeah, would hold some bearing.
Q Because if he was high or drunk, that could affect his ability to see what happened that night. Would you agree with that?
A That's correct.
Q Okay. Would you agree with us that you never asked him whether he had been drinking or whether he had been high that night?
A I never asked him.
Q You never asked him. And on your report there's nothing about Kendrick, whether he was high or drunk; right?
A No.
Q Okay. 911 call. Do you know who made the 911 call that night?
A No, I don't.

Q You're the first officer on the scene and you're not sure who called 911?
A No.
Q Wouldn't you agree that as the responding officer, it's important to know who called 911 for you to come to the scene?
A Well, actually calls come in through our central dispatch, and we have numerous amount of calls that are called in anonymously. The call came in as -- someone had called in reference to the shots fired and a person has been shot at an intersection.
Q Now, this case is approximately five years old; right?
A Yes, sir.
Q And you did fill out a report.
A Yes, sir.
Q Didn't do a supplemental report.
A No.
Q Okay. You think it's -- do you think it's important for you as the first officer to discover who was the person who called 911?
A My job is just take the preliminary investigations on the scene, first responding officer, and then it's up to the investigations to go ahead and find out the details of the case.

Q Sure. That's fine. So you're -- you're saying after your 40 minutes on the scene, you're done. I'm just -- I'm asking.
A No, sir. It's just a -- after my 40 minutes on the scene, the scene investigation's therefore turned over to the investigators, and I therefore went out along with the other area deputies to search for the suspect.
Q Okay. Well, within those 40 minutes did you ever try to find out or investigate who called 911 so you can relay that information to the lead detective?
A No, sir.
Q Okay. You say you traveled down to
; right?
A Yes, sir.
Q When you got there, there was no evidence linking William Gregg to this crime; right?
A None to my knowledge.
Q Okay. Can you tell us who Darrell Herriott is?
A No, sir, I have no idea.
Q You don't know who Darrell Herriott is?
A Huh-uh.
Q Okay. So you have never met Darrell Herriott?
A No, I haven't.
Q Never had a conversation with anybody about Darrell Herriott?

A Only from the attorneys, possible Darrell Herriott possibly was a person that was also inside the vehicle with -- with the victim.

Q When you talked to Kendrick Miller, he never told you about Darrell Herriott; did he?

A At the time, Mr. Miller was there very excited, nervous. He made a notion in reference to somebody else at the time.

Q Okay. So I understand him being nervous and excited, but he never mentioned Darrell Herriott to you; did he?

A Not to me as -- as the first responding officer.

Q Okay. If Darrell Herriott was in that car, wouldn't you agree that's important to this case?

A Possibly could, yes.

Q If Kendrick Miller saw Darrell Herriott, don't you think that's an important fact to know?

A Possibly.

Q You say possibly?

A Possibly.

Q Possibly yes, it is, or possibly no?

A Possibly yes, it is.

Q Possibly yes. Okay. You don't know if Darrell Herriott left the scene.

A Just from my knowledge in reference to talking with the attorneys that -- understanding that he was inside the

vehicle at the scene.
Q Okay. You did fill out a report that day; right?
A Yes, I did.
Q Do you have your report in front of you?
A Yes, I do.
Q Is that the first page of your report?
A Yes, it is.
Q Okay. Is that the second page of your report?
A Yes, it is.
Q Is that the third page of your report?
A Yes. Not from what I have, but...
Q Well, it's -- is your name on the bottom of that report right there?
A Yes, it's the first -- that's another portion of the second page which was re -- re-typed in reference to handwriting. So those two pages are the same.
Q So -- okay. So there is no third page?
A No third.
Q No third page. Okay. And you said the second page of your report. Tell us about the second page of your report.
A The second page of the report still has a handwriting version of the same original report.
Q So the second page is just really the handwritten version of the first page.

A It's a continuation --
Q Okay.
A -- of that.
Q I guess what I'm trying to tie down here is, how many pages total to your report?
A Two.
Q Two pages. I want you to look at that and tell us if that's fair and accurate, that as the first responding officer, you spent 40 minutes on the scene; right? You never found a weapon linking William Gregg to this crime.
A Correct.
Q You don't know who called 911.
A Correct.
Q You don't know Darrell Herriott.
A Correct.
Q And for this murder case, you filled out a two page report.
A Correct.
Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Okay. Mr. Conner?

REDIRECT EXAMINATION

BY MR. CONNER:

Q Now, when you talked to Kendrick Miller, did he appear to be drunk?

A No, he wasn't.
Q And if he had been falling down drunk or something, you probably would have made a note of that, I believe.
A Exactly.
Q And where is -- you got a stapler? Now, when you prepare a report, Terrance, is it usually a handwritten report?
A Yes, it is, usually handwritten report.
Q And I show you this and ask you if that's your handwritten report.
A Yes, it is.

MR. CONNER: Your Honor, we would offer this report consisting of two pages which he says he prepared into evidence at this time.

MR. HART: Objection, Your Honor.

THE COURT: You object?

MR. HART: Yes, sir.

THE COURT: Okay. Y'all come around here a minute.

(Whereupon a bench conference was held.)

MR. CONNER: I will have it marked for identification at this time, Your Honor.

(Whereupon, State's Exhibit No. 24 was marked for identification only.)

BY MR. CONNER:

Q Now, in that report, lieutenant, did you list the name of the person that was given to you by Kendrick Miller?

A Yes, I did.

Q And did you -- and whose name did you list?

MR. HART: Objection, Your Honor. That's -- that's the same thing.

THE COURT: The -- I will allow the question.

BY MR. CONNER:

Q And what name did you list?

A William Gregg.

Q And you listed him as being the shooter?

A The suspect, yes, sir.

Q And you -- and you -- had you described the car?

A Yes, I did.

Q And how did you describe the car?

A Described the vehicle as being a older model white in color Cutlass.

Q And that's the information given to you by the witness, Mr. Miller?

A Yes, it was.

MR. CONNER: I have nothing further of him, Your Honor.

THE COURT: Okay. All right, sir. You can step down. Thank you.

(Witness left the stand.)

MR. CONNER: We'd like to have Lieutenant Coclough excused, Your Honor. He worked last night.

THE COURT: Any objection?

MR. HART: No objections, Your Honor.

THE COURT: You can be excused. Thank you, sir.

MR. CONNER: At this time I'd call Pamela Franklin Jones.

PAMELA FRANKLIN JONES, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CONNER:

Q Pamela, where were you born?

A Sumter, South Carolina.

Q And have you lived here most of your life?

A Yes, I have.

Q And what relation were you to the fellow that was killed in this case, Kevin Franklin?

A That's my brother.

Q And was he older than you or younger than you?

A Baby brother.

Q Baby brother?

A Yes.

Q About how old would he be if he was still living?

A Twenty-three.

Q Twenty-three?
A I mean 33.
Q Thirty-three?
A I'm sorry. Thirty-three.
Q So he's been dead about five years.
A Yes, sir.
Q So that would make him about 28 when he died?
A Yes, sir.
Q Now, at -- at the time this occurred, where were you living?
A
Q And who did you live there with?
A William Gregg.
Q And how long had you lived there with William Gregg?
A About a year.
Q And do you see William Gregg in the courtroom --
A Yes, I do.
Q -- today? Could you point him out for us, please.
A Right there (indicated.)
Q The gentleman with the white shirt on?
A Yes, he is.

MR. CONNER: Your Honor, we'd ask that the record reflect that she identifies the defendant.

THE COURT: Okay. The record shall so reflect.

BY MR. CONNER:

Q Now, where was Kevin living at the time?
A with my mother.
Q And where was that in relationship to where this killing--
A It's right behind that where he got murdered. He got murdered less than a mile from my mother's front door.
Q So your mother lived back up in the Pawn Shop --
A Yes.
Q -- behind the Pawn Shop area.
A Yes, sir.
Q And he had been living there with her?
A Yes, sir.
Q Was he married?
A No, sir.
Q Now, tell me, did I ask you how long you had lived with William?
A Yes, sir.
Q How long was it?
A About a year.
Q And now, did you have a baby sometime near in -- within a few days of when this happened?
A Yes, sir. I had -- me and William had a child born on October the 30th, 2003.
Q And where did you have that baby delivered?
A Tuomey Hospital.

Q Now, prior to the baby coming, had he gone anywhere?
A Yes, he did. He had went to New York with his friends to a funeral.
Q And did the -- was -- did he -- what caused him to return from New York and how -- was he there for the baby?
A Yes. He came back the night before I -- we -- before I went in to have the baby.
Q So what day did he come back?
A The 29th.
Q The 29th of...
A October.
Q October?
A Yes, sir.
Q Okay. Put this up here. So on the 29th of October of 2003 he was back in Sumter for the...
A Yes.
Q Now, on October the 30th, the baby was born; is that right?
A Yes.
Q Now, who took you to the hospital when -- the day the baby was born on?
A Bubba, William Gregg.
Q And about what time of day was the baby born?
A It was -- she was born in the morning, like nine, 9:30.

Q And was -- was William Gregg present when the baby was born?
A Yes. He had cut her umbilical cord. Yes, he was present.
Q Now, when he made this trip to New York just prior to the baby being born there, did he also purchase some goods there?
A Yes, he had -- we had a shop where he sell purses and shoes and clothes, CDs, movies.
Q Where was this sales point?
A At the local flea market on 378,
Q And did y'all -- did you assist him in doing that?
A Yes, I did.
Q And how long had he been running this booth at the flea market?
A A few months.
Q Now, on this trip to New York, did he bring back some stuff for the flea market, the business?
A Yes, he did.
Q How do you know that?
A Because when I came home, he was standing on the porch and putting -- he was putting the bags inside the house when I arrived home.
Q And that was on the 29th?
A Yes, it was.

Q And y'all went to the hospital early the next morning?

A Yes, sir. I was supposed to report to the hospital at 6:30 am, which in he -- he took me there.

Q Now, after the baby was born, did he come back to the hospital?

A He stayed there during the time for a period of time until they changed me into a regular room and cleaned the baby up, and then he left and went home to retrieve some things to bring back to me. He did came back to the hospital.

Q And did something out of the ordinary happen at your home that day --

A Yes.

Q -- or was something reported?

A Yes, sir, it did. After he left and went back, he called me and told me that our house was broken into and I needed to call the police.

Q That you needed to call the police.

A Yes, sir.

Q And you were laying in a hospital bed.

A Yes, sir.

Q And did you call the police?

A Yes, I did.

Q And did you report to them that the house had been

broken into?
A Yes, I did.
Q And did he come back to the hospital that day?
A Not that day. The next day he did.
Q And that would have been October the 31st --
A Yes.
Q -- he came back to the hospital --
A Yes.
Q -- and visited you.
A Visit me and the baby, yes.
Q Did anybody come with him?
A Yes, he did had a person with him.
Q Did you know who the other person was?
A It was a guy. No.
Q And about what time of day was that he -- that -- there the second time?
A It was after lunch time because he brought some pizza for lunch for us.
Q And that was on the 31st?
A Yes, it was.
Q Now, when were you -- when were you discharged with the baby?
A November the first.
Q So that would have been on Saturday, I believe.
A Yes.

Q Is that right?
A Yes.
Q So you got out of the hospital on Saturday. Now, were you -- did he come pick you up from the hospital?
A No, he didn't.
Q Were you expecting him to come?
A Yes, I was.
Q Did you have any conversation with him about coming to get you?
A Yes. He was supposed to come and bring the baby car seat.
Q And did he do that?
A No, he didn't.
Q What did you do as an alternative in order to get home?
A I had to call another family member to come and bring me and the baby car seat and take me and my baby home.
Q And now, that person that took you, where did -- where did they take you?
A To my mother's house.
Q To your mother's house.
A Yes, sir.
Q And then what did you do?
A Well, when I arrived to my mother's house, my brother was there, my mother, and my other kids. I left the baby

there. Well, I proceed to call Mr. Williams to see if he would answer the phone, and he didn't, so I left the baby there and got my cousin to take me to my house to retrieve some things out.

Q Got your cousin? Your cousin is the one that hauled you home to start with?

A Yes, sir.

Q And that cousin also took you to your...

A My residence on .

Q And you didn't see William?

A No, I didn't. I just retrieved some -- I got the baby bassinet and a few clothes and took a car and left.

Q There were other cars there?

A Yes.

Q How many cars did y'all have?

A Four.

Q Were they in your name or his name or...

A His name.

Q What kind of cars did you have?

A We had the white Cutlass, Chevy -- a blue Chevy Caprice, a Honda Accord, and a red Saturn Sun.

Q A red car?

A Yes.

Q And all these cars belonged to William Gregg?

A Yes.

Q Now, which one did he most often drive?
A He would drive the Cutlass when I wasn't driving it.
Q I show you here these photographs, State's Exhibit numbers nine, number eight, and number 10, and ask you to examine those if you would.
A Yes. This is the car.
Q And what makes you say that's the car?
A Because we had a dent next to the tire on both sides of the door.
Q Now, did you have any conversation with him in regards to the burglary that happened at your home?
A Yes. He had called me at the hospital and he was upset about the burglary. He was tired of people taking things away from him. And he said that something had to happen about it this time.
Q Did he say that he was going to do anything?
A Yes.
Q What did he say?
A He said somebody had to die.
Q Somebody had to die?
A Yes.
Q Did he say who had to die?
A No, he did not. I don't think at that time he knew hisself who.
Q But he said somebody had to die.

A Yes, he did.
Q Did he own a gun?
A Yes, several.
Q Several guns?
A Uh-huh.
Q Did he own a pistol?
A Yes, we had a 38 revolver.
Q And at one point in time was that 38 revolver fired in the home?
A During the argument between me and him one night, it was discharged in the home.
Q And did a bullet go in the wall?
A Yes, it did.
Q And when Lieutenant Nelson came there, did you -- that early morning Sunday morning, did you let him in and show him around and let him look?
A Yes. Yes, I did.
Q And did you show him where this bullet went in the wall?
A Yes, I did.
Q And did he retrieve that bullet?
A Yes, he did.
Q And you say it -- that the pistol was a 38 revolver?
A Yes, it was.
Q Now, did -- were you expecting him on November the

first, 2003, to pick you up?

A Yes, I did.

Q Did you have any conversation that day about bringing anything home -- to him about asking him to bring something?

A I called him on November the first. I finally got an answer. He finally answered the phone. And I told him that they sent me from the hospital, but they only sent me with four bottles of milk, and he said he was going to come and bring the baby some milk.

Q Did he ever show up?

A Yes. Yes, sir, he did some, but I didn't see him.

Q What do you mean he -- he showed up?

A He showed up during the time my brother was being murdered--

MR. HART: Objection, Your Honor.

THE COURT: Sustained.

BY MR. CONNER:

Q Did he bring you the milk?

A No, he did not.

Q Now, you consented to the search by all these officers that came there requesting an opportunity to look in the house for him; is that correct?

A Yes.

Q And Lieutenant Nelson also retrieved a packet of

letters or correspondence that had his name on it; is that right?

A Yes.

Q Now, after he was brought back here to Sumter to the jail, did you go and talk with him?

A Yes, I did.

Q And where did -- were you by yourself?

A Yes. I went to visit him at jail for my own peace of mind and my daughter's.

Q He--

A I went to see why -- what happened.

Q And tell us about the conversation with him.

A The conversation didn't went much by what happened. All I got was, I'm sorry.

Q Well, did he -- did he ask if you were there on -- on behalf of somebody else?

A Yes, but I -- nobody sent me there. I went there for myself.

Q What did he ask you?

A Was I there -- did the police sent me.

Q And what did you tell him?

A No.

Q And what did he tell you about the incident?

A He just told me he was sorry.

Q Now, this business that y'all were running at the

flea market, did you leave the merchandise out there in the business?

A He did. He left all the merchandise. I went and retrieved it out of the business.

Q So when he -- when he left here in 2003, he left everything --

A Everything.

Q -- left four automobiles, he left -- or left three automobiles in any event, and he -- he left his merchandise in the flea market?

A Yes.

Q Did you see -- ever see him yourself after the -- after your brother was killed until you saw him at the jail here?

A No.

Q Answer any questions the defense lawyer might have for you.

CROSS-EXAMINATION

BY MR. HART:

Q Is -- it's Mrs. Jones now?

A It's been Mrs. Jones for three years.

Q Okay. All right.

A Thank you, sir.

Q Yes, ma'am. Mrs. Jones --

A Yes.

Q -- you didn't witness the shooting.
A No, I did not.
Q Okay. So actually you don't know what --
A No.
Q -- you don't know what took place that night.
A No.
Q Okay. The info that you have about this case is only what other people told you; right?
A Yes.
Q Okay. You lived out there, ?
A No, I live at .
Q Oh, I -- but to get to , you have to go -- passed through--
A No, I don't go past to get there.
Q You familiar with ?
A Yes, I am.
Q Okay. You did respond out to .
A Yes.
Q You responded. Okay. That night you came out there.
A Yes.
Q It was about 11:30 at night.
A I left my children there.
Q Okay.
A At my mom's house. My mom lived there. Of course I'm going to my mother's house, if it 12:00 at night.

Q But if it's --
A Yes.
Q -- was 11:30?
A Uh-huh.
Q Okay. It was dark that night?
A Yes.
Q Okay. It's not a whole lot of lights out there; right?
A It's light enough you could see.
Q Okay. But it's not a--
A No, it's not really bright, no, but lights.
Q You remember talking to the police back in 2003?
A Yes.
Q Okay. And you told them what you knew about the case. Just your limited knowledge, you told them that?
A Yes.
Q Okay. They didn't take a written statement from you; right?
A No.
Q Okay. Over the past five years, they haven't taken a statement from you?
A No.
Q That particular night had you been drinking or getting high or anything?
A No.

Q Okay.
A I did had pain pills that I was on from the hospital.
Q Pain pills. Okay. But you -- you do drink; right?
A Occasionally. You drink, too; don't you? I mean, we got to drink to survive. You didn't say specific what drink it what--
Q I'm just -- but you have drinks; right?
A Yes.
Q Okay. And you get high; right?
A What you mean?
Q You get high--

THE COURT: Yes, sir.

JUROR: I just -- need you to speak up a little bit, please.

MR. HART: Speak up a little bit? Yes, sir.

BY MR. HART:
Q You do get high.
A With the Holy Spirit, yes.
Q Okay. But you get -- you get high with drugs; right?
A No. Occasionally I have had a problem with drugs, but I get high on the Holy Spirit right now.
Q Okay.
A Okay?
Q Well, within the past year --
A Uh-huh.

Q -- you have used drugs; right?
A No.
Q Within the past year you have sold drugs?
A No.
Q Okay. Your social security number is ; is that correct?
A .
Q --
A .
Q That's your social security number?
A That's my social security number.
Q Okay. Do you want me to put Franklin Jones or...
A No, you can put the e-l-a and put then Jones. It's P-a-m-e-l-a and then Jones.
Q Okay. Your social security number is what?
A You giving it to the whole courtroom? You allowed to give it to the whole courtroom, my social security number to use?

MR. CONNER: Your Honor, I --

THE WITNESS: I object to that.

MR. CONNER: -- I don't think that's necessary.

MR. HART: We won't write it down. That's fine. I respect that.

BY MR. HART:
Q I respect that.

A Okay.
Q But your social security number is what you just told me; right?
A Yes, that's it.
Q You would agree that on March 5th, 2007 you were convicted of possession of cocaine?
A Yes, I went through a roadblock and had alcohol in my car, but I have -- I had alcohol in my car. Also I was drinking. I went to jail for DUI. In the back of his police car he found a package of cocaine, and I got charged with it, yes.
Q So the cocaine they found wasn't yours?
A It was mine because I was charged with it. I got charged with it. I took that charge up. I did a year probation and I'm free from that. So what more you want? You can't make me use it. Because it was in my possession, that didn't make me use it.
Q But you would agree within the last year--
A Yes, within the last year I got convicted of it. No, I wasn't -- it was two years ago. But I just got convicted of it last year and I done already did that year of probation.
Q Yes, ma'am.
A Okay. That ain't going to make me no liar. Yes, I did. Uh-huh.

Q Okay. Back in 2003, you were pregnant with William Gregg's baby; right?
A Yes.
Q Okay. Say the baby was born on October 30th?
A Yes.
Q At nine am?
A Yes.
Q About nine am?
A Yes.
Q Okay. The date the baby was born, you said William was there with you?
A Yes, he was.
Q Okay. Now, you never told the police that William showed up to the hospital; did you?
A They never asked me did William show up to the hospital. My brother dead and my man gone. I don't care about the police. I want to know what's going on in my life that I got to be crushed like this.
Q So did you ever tell the police that William showed up at the hospital?
A That was two days before the murder. What that got to do with him at the hospital and baby then?
Q So--
A What was I trying to say establish then?
Q So the answer is yes?

A No, they didn't ask me.
Q You never told them.
A No.
Q Okay. You never told the police that on October 30th, William cut the cord; did you? You never told them that?
A Not then.
Q Okay. Today is the first time you have ever told anyone?
A No.
Q You told it last week?
A Probably about a month or two months ago.
Q So two months ago?
A Yes.
Q That's very important. Two months ago is when you told anybody that William was in the hospital. Look at that. Tell me if that's fair and accurate. Two months ago is the first time you told William was at the hospital; right?
A Told anyone like who? Because everybody else -- my family and friends, everybody else had knew. He was calling them from the hospital. So told who, cops?
Q Yeah, the police.
A Okay, yeah, my personal, yes.
Q Okay.

A Yes.
Q All right. Okay. You never told the police back in '03 that William had brought you some pizza to the hospital. You never mentioned that.
A No, I didn't thought I would be mentioning it today either.
Q Okay. You never told the police that he came back to see you on October 31st? You never told them that?
A No.
Q Today is the first time you have ever told that story?
A No.
Q So when did you tell the -- you didn't tell the police that in 2004; did you?
A No.
Q 2005?
A No. I don't think they had him in 2004 and 2005 to even...
Q I understand. But we want to know when you told the police.
A I just told you when I told the police, two months ago. You wrote it down.
Q Okay. So but -- about him not showing up on the 31st.
A Not what?

Q You told the prosecutor--
A Not showing up on the first. He showed up on the 31st.
Q Well, let me slow down for you here.
A Okay.
Q You testified a few minutes ago that William never -- that he came back on October 31st. Do you remember telling me that?
A Yes.
Q Okay.
A He did.
Q When is the first time you told the police that William came back?
A The first time when they asked me two months ago.
Q So they just asked you that question --
A Yes.
Q -- two months ago. All right. And you were in the hospital on the 31st; right?
A Yes.
Q Okay. You and William, y'all fussed and argued; right?
A Sometime.
Q Okay. You knew that even though you had his baby, William was seeing other women also; right?
A William had already had five or six kids already.

That didn't make a difference. He took care of me.

Q Okay.

A Despite the other women. They probably got them, but he took care of me and he was with me.

Q You knew he had a girlfriend in North Carolina?

A No, I did not.

Q You didn't? You knew he had a wife and kids in New York?

A I knew he had two baby mothers in New York.

Q Okay. You knew that he traveled to New York?

A And I traveled with him.

Q Okay. You knew -- you traveled with him to New York?

A To New York.

Q Okay. You knew about Lilian that lived in New York?

A No, I didn't know nothing about Lilian.

Q You don't know Lilian that lives in New York?

A Huh-uh.

Q But you knew he had kids up there.

A Yeah.

Q Okay. You mentioned a few minutes ago on direct that William told you somebody had to die. Is that your statement?

A Yes.

Q You never told the police about that statement; right?

A No.
Q You never told them about that?
A Huh-uh.
Q So today in this courtroom when you testified on direct is the very first time you have ever told anybody that; right?
A No.
Q Okay. Well, when is first time you told anybody William made that statement to you?
A Told anybody like who? You saying anybody. I have talked to my family.
Q I'm--
A Told them. You mean -- you saying--
Q I'm sorry. Let me be much clearer. I apologize to you.
A Yes.
Q When is the first time you ever told the police that William made that statement to you?
A The same time I gave them the statement. Told them about two months ago.
Q Two months ago is the very first time?
A Uh-huh, yes.
Q Okay. Now, your brother kevin, was he working during this time?
A He was a truck driver.

Q He was a truck driver?
A Yes.
Q Was Kevin involved in drugs at all?
A No, he was a truck driver.
Q Did he -- to your knowledge did he use marijuana?
A I didn't see him using it.
Q He never -- okay. Now, that white KIA, you have seen the white KIA?
A Yes.
Q That KIA didn't belong to Kevin; right?
A No, it did not.
Q It belonged to Darrell Herriott.
A Yes.
Q You don't know why Kevin was driving Darrell's truck that night.
A No, I don't.
Q Okay. You and Darrell have a child together; right?
A Yes.
Q Okay. Darrell is the father of your oldest child.
A Yes.
Q Okay. Tell us how many children you have.
A I have eight kids with one in my marriage.
Q You say eight?
A Uh-huh.
Q Okay. What are the ages of your children?

A From 19, 18, 17, 15, 13, 11, 10, and three.
Q Say somebody is five? You have a five year old?
A No... five, yeah.
Q You do have a five year old?
A Uh-huh.
Q So 10 then five; right?
A Uh-huh.
Q And you have a three year old?
A Uh-huh.
Q Eight.
A You add one on?
Q One, two, three, four, five, six, seven, eight.
A Thirteen and ten -- I mean the three year old. You have 13.
Q So you don't have a 13 year old?
A No.
Q All right. Let's take that one out. Darrell is the daddy right here; right?
A Why you want to put my kids' daddy names on the board for and put my kids in here? I have a child by William, too.
Q Okay. Who is the father -- who is the daddy of the 18--

MR. CONNER: Your Honor, I object to that. I think if -- it's irrelevant.

THE COURT: Hold on just a minute. How is this relevant at all?

THE WITNESS: Exactly.

THE COURT: Hold on a minute. I mean, it's relevant as far as what witnesses testify. But as far as the other children, how is that relevant?

THE WITNESS: He bashing -- bashing my--

THE COURT: Hang on a minute.

MR. HART: Your Honor, we want to show how William Gregg is connected to this family.

THE COURT: I understand that. But if you -- any connection to William Gregg has in this may be relevant.

MR. HART: We will move on. No problem. No problem. Thank you.

BY MR. HART:

Q Do you remember an investigator named Russell Dean from my office calling you?

A No. He never called me.

Q Nobody from my office never called you?

A No. But somebody from your office been calling my mother's house.

Q Okay. Did they ask to speak to you?

A Yes, but I don't live there.

Q Okay. You talked about some bullets or a bullet that

was inside the house; right?
A Yes.
Q And you remember calling the police to tell them that bullet was there?
A No, I did not call the police to tell them the bullet was there.
Q Okay. How did the police get there to find the bullet?
A They came to my house looking for Mr. William Gregg after the murder.
Q Okay.
A And they could get anything they want out of there then.
Q And that was on November the second?
A Exactly.
Q Okay. When they arrived, you asked them to search the house; right?
A No. When I arrove (sic) in my yard, the polices came up surrounding my car. I had my kids and stuff in there trying to get them someplace safe --
Q Okay.
A -- and away from this.
Q Well, when the police arrived, they didn't know about that bullet in the wall; did they?
A No, they did not know about that bullet in the wall.

Yes, I did told them. If anything could help them find my brother murderer, you right, I told them to get that bullet out that wall. I certainly did.

Q Yes, ma'am. Okay.

A Anything to help catch my brother murderer, I did it, yes.

Q Okay. Now, you say the bullet came from an argument between you and William, and he fired the bullet.

A He did not fire the bullet. I did not tell you that. I said we was arguing and the bullet went off. I did not tell you that he fired the bullet. I didn't say who fired the bullet. I didn't say the gun was fired at all. It just went off. I didn't say nobody point to fire. I said it went off.

Q Your testimony to the Government just a few minutes ago--

A And I said William pulled the gun and fired the bullet. I did not say that.

Q You -- you didn't tell--

A I told them that the gun went off. I didn't tell him he had it or I had it. I did not tell Mr. Turner that just now who had the gun and it went off. I just said it went off.

Q Well, we need to find out how the bullet got in the wall. That's very important. You--

A How it got in the wall? The wall -- because the gun discharged.
Q Okay. Who had the gun?
A I grabbed it.
Q So you grabbed the gun?
A Yeah.
Q The gun went off when you--
A I grabbed it to move it because we was arguing. I knew he had the gun. Yeah, I grabbed it to move it --
Q Okay.
A -- and it went off.
Q So is it fair to say that the bullet fired -- the gun fired when you had it in your possession. Is that fair to say?
A Yes.
Q Is that fair?
A Yes, that's fair.
Q Okay. What date was it that the bullet was fired into the wall?
A It was -- I don't know. It wasn't during this time.
Q So the crime happened November 1st, 2003; right?
A Uh-huh. And this probably happened when we first moved in our place.
Q Okay. Let's look at this here. Can everybody see? The crime happened on November 1st; right?

A Uh-huh.
Q Anywhere in there--
A No.
Q So it had -- the bullet was fired into the wall...
A Months.
Q Months? Let's -- when you say months, let's tie that down to which month approximately.
A I can't tie that down to which month.
Q Was it approximately six months ago?
A No.
Q Six months before the crime happened?
A Could have been.
Q More than six months?
A It could have been more than six months before the crime happened.
Q Could have been up to a year?
A No, because it ain't been a year.
Q Okay. So between zero and six months is when the bullet was fired?
A Yes.
Q Okay. Can you tell us the date and time you called the police to tell them that the bullet was fired into the wall after you fired it?
A I didn't call and tell them, and I didn't fire. The gun discharge. I went to get the gun to move it, and it

went off. It didn't -- if I wanted to fire it, I'd have fired it in him. Me and him was arguing. I didn't do that.

I picked it up to move it to prevent anybody to -- from getting hurt, and it went off.

Q Okay. Can you tell us the date you called the police?

A I didn't call the police on that.

Q You never--

A It wasn't nothing for me to call the police for.

Q You never -- but when they got there on November the second, you led them straight to the bullet; right?

A Yes. If he was the one who murdered my brother, maybe that could have helped. Yes, I led them to that bullet.

Q Now, let's talk about November -- just have a few more questions for you. Not many.

A Okay.

Q On November the fourth, 2003 which was -- that would be here. You remember the police coming to the house?

A Yes.

Q And you remember how they got to the house -- or let me -- do you remember how they got to the house? You remember calling the police?

A No, I didn't call the police. I wanted to go back to

retrieve -- after this murder happened, me and my child had to literally move out of the house. We couldn't stay in there no more.

So I had to go back and forth getting other stuff for a newborn baby. I had -- my whole life was in the house. William whole life was in this house.

Q You remember -- you don't -- you didn't call the police?

A No, I didn't call the police. I saw a officer at the store and asked them could they come and search my house for me to make sure that I could go in the house and get stuff and be safe.

Q Okay. So you just saw an officer --

A Yes.

Q -- at the store.

A Yes.

Q Okay.

A And asked them could they follow me and search my house so I could be safe.

Q Okay. You remember telling that officer that William Gregg was at the house?

A No, I didn't tell him William Greggs was at the house. I told him someone told me that they saw him walking through a path coming from behind the house, and could they search it for me before I go in there.

Q Okay. And when the police got there, William wasn't there--
A No, he was not there.
Q Okay. Just last few questions here. You say you had the baby on October 30th at 9:30 am; right?
A Yes.
Q And you say that you got out and William -- you say William was there on October 31st with you?
A Yes.
Q Okay. So somebody -- the doctor had to see William.
A Yes, he saw him.
Q Okay.
A Mid-wives, everybody saw him there.
Q Everybody saw William there?
A Yes.
Q Okay. You have seen some cameras at the hospital?
A Cameras there, too.
Q So all of that should be able to capture William on tape; right?
A It should.
Q Okay. Now, you said you got out on November 1st, out of the hospital; right?
A Yes.
Q Okay. And you say -- what time did you call William on November 1st?

A I was calling him all morning. He didn't answer. But after 11 and 12 after lunch time, they was like releasing me and the baby, so I just called a family member to pick me up.

Q Okay.

A I didn't call him any more until about late, about -- late in the afternoon, might be around five or six. I called him from my mother house and he answered the phone.

Q So at 6:00 on November 1st...

A Probably around that time.

Q So -- so you say around 6 pm, November 1st, you called -- you called for some milk; right? That's what you said.

A Yes.

Q And you talked to him?

A Yes.

Q But William was not at the house at that time?

A No, he was not.

Q You also mentioned there was a conversation -- after this incident you went to the jail to visit William.

A Yes.

Q You say you had a conversation with William; right?

A Yes.

Q And he told you that he was sorry.

A Yes.

Q Now, you would agree that if he had actually made that statement, that's very important to this case; right?
A Yes, it is.
Q Okay. Do you remember when you--
A You know why I didn't went to the police with that statement? Because I didn't went to visit William for the police. I went to visit William for me and my child's sake.
Q Now, you said -- you said you want to make sure you have the right person who murdered your brother; right?
A Uh-huh.
Q Okay. Now, if William actually told you he was sorry, that's a very important statement; is that right?
A Yes, it is.
Q Okay. What date did you go to the jail and William made that statement to you?
A I don't know what date I went.
Q You don't know? Okay. Was it last year?
A Yeah.
Q It was sometime last year?
A Yeah.
Q Did you ever tell the police last year that William told you he was sorry?
A No, because I didn't went there for the police. I went there for my own safe (sic).

Q Mrs. Jones, isn't it true today was the first time you have ever made that statement?
A No, it isn't.
Q It's not the first time?
A No.
Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Anything further, Mr. Conner?

REDIRECT EXAMINATION

BY MR. CONNER:

Q Well, in regards to this -- what you described as a .38 caliber revolver --
A Yes.
Q -- Pamela, where was that at the time you grabbed it and tried to move it?
A Underneath the pillow in the bed.
Q That was the bed that the two of y'all shared?
A Yes, it was.
Q And where was he?
A In the living room.
Q Now, this .38 caliber revolver, was it in the home when the police got there --
A No, it wasn't.
Q -- the morning of November the second, 2003?
A No, it wasn't.

Q Okay. Did -- what was his habit in regard--

MR. HART: Objection, Your Honor.

BY MR. CONNER:

Q To -- to the revolver?

MR. HART: Objection.

THE COURT: Hold on.

THE WITNESS: He would carry it--

THE COURT: Hold on just a minute.

MR. HART: That's a violation of rule against having a routine. He can't testify. That hasn't been established. She can't testify to that, Your Honor.

THE COURT: You -- all right. Y'all approach a minute.

(Whereupon a bench conference was held.)

BY MR. CONNER:

Q Now Pamela, was this revolver, did it stay in the house all the time or did the defendant take it with him?

A It went everywhere we went when we traveled.

Q And who kept the gun, you or him?

A He did.

Q And did he leave home without it?

A No.

Q Even in the -- if he was going in a local visit somewhere?

A Still wouldn't leave it.

Q Kept it all the time?

A Yes.

MR. HART: Your Honor, I think she went into some matters that I would have a few questions on.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. HART:

Q You just mentioned that this gun was -- you said a gun was in the bedroom under the pillow?

A Yes.

Q And you say William was in the living room?

A Yes.

Q And earlier you testified that you moved the gun to get it out of the way?

A To -- that's where he kept it at. When he was in the house, he kept it in the house under the pillow. We getting ready to go to bed. We was getting ready to go to bed. And we was arguing, so I moved it from under there and it discharged.

Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Thank you, ma'am. You can step down.

THE WITNESS: Thank you.

(Witness left the stand.)

THE COURT: Mr. Solicitor? Scheduling-wise...

MR. CONNER: Judge, I think that's -- that's it on our behalf. We would rest.

THE COURT: Okay. Now ladies and gentlemen, it's a good time to take a break, so we're going to take about a 15 minute break and let me see where we stand with the lawyers and I will get you back out and determine whether we are going to hear any more testimony or go to lunch. I will remind you, don't discuss this case yet.

(Jury left the courtroom at 12:16 pm.)

THE COURT: All right. My understanding the State rests; is that correct?

MR. CONNER: That's correct.

MR. HART: Thank you, Your Honor. At this time on behalf of Mr. Gregg, the defense, Your Honor, we would move for a directed verdict, Your Honor.

While we know the Court on a motion for directed verdict is concerned with the existence of evidence and not necessarily the weight, we don't believe in reference to count number one, which is the murder count, that there has been any evidence that Mr. Gregg has committed this murder, Your Honor.

There's been no gun, no physical evidence,

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nothing linking him to this crime, Your Honor. And based off of that, Your Honor, we would respectfully ask that the Court at this time enter a directed verdict on behalf of Mr. Gregg for the count one of murder.

In addition to that, Your Honor, we also make a motion for directed verdict on count two which is possession of a firearm during the commission of a violent crime.

As you heard repeatedly, I have asked every witness, is there a gun, did you find a gun, is there any weapon linking William Gregg to this crime. Everybody has come back, no. There's no gun. Never found a gun.

We have never had -- even the fragments, the bullets that we found, we cannot link to William Gregg. Your Honor, definitely on count two we would ask the Court to enter a verdict of a directed verdict.

There has been no evidence of him possessing a gun on November 1st, 2003, Your Honor.

THE COURT: All right. As far as count one, I respectfully deny your motion. I think there's -- there is an existence of evidence in this record as the two eye witnesses that testified that they saw

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the defendant there at the scene, and one saw him discharge the weapon.

As far as count two is concerned, I think that there's at least an existence of circumstantial evidence based on the facts in this case that there's testimony this victim died as a result of a gunshot wound and that one of the witnesses testified that -- two witnesses testified your client drove up in an automobile. One saw him with the gun. The other one heard the shots and saw him leave.

So I think under the circumstantial evidence, the -- there is sufficient evidence to send this to the jury, so I deny your motion.

MR. HART: Yes, ma'am. Yes, sir. I'm sorry. Thank you, Your Honor.

THE COURT: Okay. Anything else now from a scheduling standpoint? Do y'all want to -- do you --

MR. HART: I have two very short witnesses, Your Honor. I would ask that we take a lunch break and come back and wrap up.

THE COURT: Can we get them in in 30 minutes and take a lunch break at one or -- and then do the charge and argument after lunch or do you want to try to break...

MR. HART: I would rather take a break if -- if

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that's okay with the Court.

MR. CONNER: I would -- if they are here, I'd suggest we go ahead. I might have some reply, and I would -- that would give me the lunch hour to get the witnesses.

THE COURT: Okay. Well, let's -- I will bring them back out at 12:30 and let's go to one. And if you finish your witnesses by one, fine. If you don't, we'll break and come back at 2:30. I will give the jury 10 minutes.

We'll start back at 12:30 and go to one, and then we'll break and have them come back at two or 2:30.

MR. HART: Yes, sir.

THE COURT: Okay. We'll be in recess until 12:30.

(Whereupon a recess was had.)

THE COURT: Anything before we bring in the jury? Okay. Bring us the jury.

(Jury entered the courtroom at 12:33 pm.)

THE COURT: Okay.

MR. HART: Thank you, Your Honor. At this time the defense would call Lillian Koeiman.

THE COURT: Come around, please ma'am.

LILLIAN KOEIMAN, after being duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HART:

Q Is it okay if I...

A K-o-e-i-m-a-n.

Q Is it okay if I call you Lilly?

A Yes.

Q Okay. Could you tell -- how old are you?

A I'm 49 years old.

Q Forty-nine. Could you tell us where you work?

A Supervisor for Department of Social Services in New York City.

Q Okay. How long have you been a supervisor?

A Past three years.

Q Three years?

A Yes.

Q Okay.

A I was employed with them for six years.

Q Okay.

A Became a supervisor three years ago.

Q Tell us what you do there at the Department of Social Services, just a general description of your job.

A Okay. I'm an on-site supervisor. At the moment I work for an organization, a contacting agency for HRA, which is for Human Resources, which is New York City's

Department of Welfare.

Q Okay.

A At this point I work with different populations, people with disabilities, handicaps, substance abuse.

Q Okay. And you're living in New York; right?

A Yes.

Q Okay. How long have you lived in New York?

A I have been in New York all my life.

Q So you were born and raised in New York?

A Yes.

Q Okay. Have you ever lived anywhere else?

A I lived in Virginia.

Q Uh-huh.

A I went to Virginia State University for about six years to get a bachelor's degree.

Q You have your bachelor's degree?

A Yes, I do.

Q In what subject?

A Business education, office management. I was a teacher for three years, too.

Q You also were a teacher?

A Yes.

Q Where did you teach?

A In Brooklyn, Brooklyn Training Institute. I taught adult education. I taught computers, data entry, and

basic and intermediate typing.
Q Okay. Did you travel from New York to come down here?
A Yes, sir.
Q You did?
A Yes.
Q Okay. How -- do you know William Gregg?
A Yes, I do.
Q Can you tell us how you know him?
A I met William Gregg approximately 15 years ago at which time we entered into a relationship. I had two children by a previous marriage, which now one will be 19 in two weeks. The other one is 17. He entered my life, we started a--
Q Stop right there. Stop. I don't mean to cut you off, but stop right there. Is any of William's kids in the courtroom today?
A Well, nah, I didn't think his son should be here. His son was here Monday.
Q Okay.
A I did bring his son here. His son is at a relative's house at this moment.
Q Anybody else of William's family, are they here today in the courtroom?
A Yes. His stepdaughter that he raised from -- since

she was three.
Q Where is she at?
A Shakeelee (phonetic), my oldest daughter.
Q When you -- where are you pointing to?
A To the young lady in the white shirt.
Q Okay. Anybody else here in William's family?
A His mother is in the courtroom.
Q Okay. Could you point his mother out, please?
A His mother is -- I call her Nanny. She is the plaid shirt on or design shirt.
Q Okay. Where do they live?
A They live in Yonkers -- they live in Yonkers, New York.
Q Okay.
A And me and my daughter live in Manhattan.
Q Okay. So William has family in New York?
A Yes.
Q Okay. Do you know about William -- do you know if William has any other girlfriends?
A William's a -- no, not at the moment. Yes, he has had girlfriends. Yes, he has.
Q Okay. Well, let's -- I'm sorry. Let me be much clearer here. Let's go back to 2003. Were you aware that William had other girlfriends?
A Yes.

Q Okay. Were you aware of a girlfriend in North Carolina?
A Yes.
Q Were you aware of a girlfriend here in Sumter, South Carolina?
A Yes.
Q Do you know who that girlfriend was in Sumter?
A Yes.
Q Okay. Can you tell us the name of the girl, his girlfriend here in Sumter?
A Her name is Pamela Franklin.
Q Have you ever had a conversation with Pam?
A Yes.
Q Okay. And Pam has had a conversation with you?
A Yes.
Q Okay. Were you -- do you know if they had any kids together?
A Yes.
Q Okay. How did you know this?
A Because Pamela Franklin called me on my phone in New York City and told me that she was so worried, she didn't know me and Bubba was still going together, but that she was pregnant.
Q Okay. Let me ask you, is it strange for William to travel back and forth between New York and South Carolina?

A No, it isn't.
Q Were there any times that William was in New York and he left you to go to South Carolina?
A Yes. Yes.
Q Would he just pick up and leave?
A Yes.
Q When he left, did he leave his belongings in North Carolina -- I mean, I'm sorry -- in New York?
A Yes.
Q What clothes--
A His belongings are still at my house. The cable bill is still in my name -- in his name, and that's always been at my house.
Q So it's not strange for William just to pick up and leave?
A No.
Q Is it strange for William to pick up and leave and you not hear from him?
A No.
Q Okay. That's just...
A That's just William.
Q That's just William. Okay. Now, were you ever aware of a time that William has been in South Carolina and came back to New York?
A Yes.

Q Okay. For an extended period of time?
A Yes.
Q Before this happened?
A Yes.
Q Before 2003?
A Yes. Yes.
Q That's nothing new?
A No.
Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Okay.

MR. CONNER: I have no questions.

THE COURT: I'm sorry. I couldn't hear you.

MR. CONNER: I have no questions of her.

THE COURT: Thank you, ma'am. You can step down.

(Witness left the stand.)

THE COURT: You may call your next witness.

MR. HART: Your Honor, at this time the defense would call Mrs. Sherill Williams.

SHERRILL WILLIAMS, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HART:

Q Ms. Williams, where are you living now?

A Raleigh, North Carolina.
Q All right. Okay. How long have you been living in Raleigh?
A Six years.
Q Where were you born and raised?
A Yonkers, New York.
Q Where were you living back in 2003?
A Raleigh, North Carolina.
Q Is Garner -- where is Garner, North Carolina?
A Right next to Raleigh. It's like the next town over.
Q Okay.
A Oh, I was living in Garner, North Carolina, 2003.
Q How far is Garner from Raleigh?
A They border eachother.
Q They are right there by eachother?
A Yes.
Q Okay. Do you know William Gregg?
A Yes, I do.
Q How long have you been knowing him?
A About 28 years. Since we were little kids.
Q You say 28?
A Twenty-eight.
Q What kind of relationship did you have with William back in 2003?
A Just friends.

Q Any point in time you and William have any other thing more than a friendship?
A In '89 we did.
Q In 1989?
A Yes.
Q Okay. Back in 2003, did you know William had other girlfriends?
A Yes.
Q Okay. Did you know of a Pam Franklin?
A Yes.
Q Okay. Did you know that Pam was pregnant with William's child back in 2003?
A Yes.
Q Did you have any information if the relationship was good or bad?

MR. CONNER: Your Honor, I object to that. That would be hearsay.

THE COURT: Sustained.

BY MR. HART:
Q Did you ever have a conversation with William back in 2003?
A Yes.
Q Did you have a conversation with William about him not being at the hospital when the baby was born?
A Yes.

Q Did you know if William had any family in New York or not?
A Yes.
Q Okay. Did you know where he was born?
A Yes.
Q You said y'all been knowing each other 28 years, so y'all knew each other in New York?
A Yes.
Q Okay. Are you aware -- I guess let me ask, is it strange for William to go from -- well, let me -- did you know William was living in Sumter back in 2003?
A Yes.
Q Did you know it -- was it strange for him to be going back and forth between Sumter and New York?
A No.
Q Okay. Would he ever stop in North Carolina on his way to New York?
A Yes.
Q Tell us about that.
A On several occasions he would come in -- and he would call me and tell me he was going to New York, if I wanted to ride up with him. So he would come pick me up and we would go to New York. He would -- we would visit for maybe a week or two. He'd pick me back up from my mother's house and we'd come back down South.

Q Okay. And you say a week or two. Was it strange for William to either go to New York or go to South Carolina for an extended period of time?
A No.
Q Okay. Now, let's go back to 2003 here. Do you remember the date -- did you see William back in 2003?
A Yes, I did.
Q Do you remember seeing William around October, November of 2003?
A Yes.
Q Do you know the date that William came to your house in 2003?
A Halloween.
Q Okay. So October 31st --
A Yes.
Q -- is here. That's when William got to your house?
A Yes.
Q Okay. So is it fair to say that on October 31st, William arrived in North Carolina --
A Yes.
Q -- at your house? Now, that was five years ago; wouldn't you agree?
A Yes, it is.
Q How are you so sure he got there on the 31st?
A Halloween is my mother's birthday.

Q Halloween is your mother's birthday?
A Yes.
Q Okay. How do you spell your first name?
A 2 Rs.
Q R?
A 2 Rs.
Q Williams?
A Yes.
Q William arrives in North Carolina October 31st, 2003. Is that fair?
A Yes.
Q Okay. Do you know the date that William -- oh, okay. You said -- how are you so sure?
A Because the kids was trick-or-treating.

MR. CONNER: May it please the Court. I -- I would object to him writing down the testimony of his witnesses. I mean, what difference is that and introducing a statement that -- the ladies and gentlemen, they can hear what the witness says.

THE COURT: I will overrule your objection. He's been doing this since the whole trial began. He hasn't -- at least used this demonstrative evidence in court.

BY MR. HART:
Q Did you say earlier that was your mother's birthday?

A Yes, it is.
Q Is that a significant event in your life, your mother's birthday?
A Yes.
Q Do you know how old she turned back in 2003?
A Yes.
Q How old was she?
A Fifty-one.
Q Okay. Now, did you give the police a statement back in 2003?
A Yes, I did.
Q Okay. Was it in writing?
A Yes, it was.
Q Did you tell the truth in the statement?
A Yes, I did.
Q Did you sign the statement?
A Yes, I did.
Q I'm going to show you what has been marked as Defense Exhibit number seven. Do you recognize that document?
A Yes, I do.
Q Okay. Is -- you recognize that document. What's the date on that document?
A It is November...
Q That's the date of the document? What's the date that the police came and took your statement?

A They came and took my statement November -- let me see.
Q Look at the--
A Oh, here.
Q What's the date on the statement that you gave?
A Guess that's December.
Q Okay. December what?
A Second.
Q Of what year?
A 2003.
Q Okay. So you gave a statement to the police December 2nd, 2003.
A Yes.
Q Okay. Do you remember the date that William left your house?
A It was Wednesday. I know it was Wednesday. The fourth I believe. I think.
Q Wednesday...
A The fourth of November.
Q Okay. Look at the calendar to make sure. Okay. You say William arrived on the 31st?
A Uh-huh.
Q What date did he leave your house?
A Wednesday, November 5th.
Q Right here?

A Yes.
Q Okay. So William was in your presence between October 31st and November 5th.
A Yes.
Q So on November 1st, was William in your presence?
A Yes, he was.
Q And where was that?
A Raleigh -- well, Garner, North Carolina.
Q Okay. Now, the police came to your house. Do you remember the -- do you remember them coming to your house --
A Yes.
Q -- and taking a statement. Did you have a car at that time?
A Yes, I did.
Q Did William bring you that car?
A Yes, he did.
Q Okay. Do you know if William had other cars?
A He had another -- I forgot the kind of car, but it was a blue -- I think it's Caprice.
Q Okay.
A Might have been or -- I know he had another car at his aunt's house.
Q Okay. When William brought you this car, did he ever ask you to hide this car?

A No.
Q Okay. Did he ever ask you to take anything out of the car and hide it?
A No.
Q Okay. When the police arrived to come and talk to you, where was the car parked?
A Sitting in front of my house.
Q Okay. In front of -- describe to us your house back in 2003.
A I stayed in an apartment complex. I lived on the second floor. But parking is right -- soon as you pull up, you could walk upstairs into my apartment complex.
Q So other neighbors could see the car out in the parking lot.
A Yes.
Q Okay. The car was parked along with all the other cars?
A With the rest of the vehicles of people who lived in that apartment complex.
Q It wasn't in a garage somewhere.
A No.
Q Didn't have a cover over it.
A No.
Q Okay. Now, when you received the car, did it have any personal belongings inside?

A I never -- well, I didn't really check the trunk. No, not really. I mean, I -- maybe a shirt or -- but not a whole bunch of stuff.
Q Did it look like the car had been cleaned out when they brought it to you?
A No.
Q Okay. Now, one last question I've got to ask you. You have looked at that. You see the name of the officer on that?
A Yes.
Q What's the name of that officer?
A Lieutenant Gardner.
Q Okay. So he's the one who took your statement?
A Yes, he did.
Q Is he from the Sumter County Sheriff's Department?
A Yes, he is.
Q Okay. Now, did you get a subpoena from the Government to come in here today?
A No, I didn't.
Q Did you talk to them?
A Yes, I did.
Q When?
A It was... last week, Thursday. No, last week Tuesday.
Q You talked to them last week Tuesday?

A Yes, I did.
Q Did they ask you about William's presence during the time this crime happened?
A Yes, he did.
Q Did you tell them the truth?
A Yes, I did.
Q Okay. After you had told them your version, did they ask you to come and tell your version today?
A No, he didn't.
Q Okay. When you had this conversation with them last week, did you tell them the same thing you told them back in 2003?
A Yes, I did.
Q Today, as you tell us this, is it the same thing you told them back in 2003?
A Yes, it is.
Q Okay. So this is not the first time that you have told them William Gregg was with you when this crime--
A No, it's not.
Q Okay.

MR. HART: No further questions, Your Honor.

THE COURT: Okay. Mr. Conner?

CROSS-EXAMINATION

BY MR. CONNER:

Q Ms. Williams, did you live with the defendant,

William Gregg, at any time in the past?
A Yes, I have.
Q And that was you say in 1989?
A Actually it was nine -- '91.
Q I thought you said 1989.
A We dated in '89.
Q You--
A We dated from '89 to '95.
Q Then you moved in with him in 1991?
A Yes.
Q And was that here in Sumter or was that somewhere else?
A In Yonkers, New York.
Q And the whole time you lived with him was in Yonkers, New York?
A Yes.
Q Was he instrumental in having you move down to Garner, North Carolina?
A No.
Q But that's where you were living in 2003?
A Yes.
Q And that's a little suburb of Raleigh?
A Yes.
Q And did you have any children by him?
A No.

Q Now, how did you get to Sumter today?
A I been here. I got -- took the Greyhound.
Q Now, how far is it from Sumter to Garner, North Carolina?
A About three hour drive.
Q About a three hour drive?
A Uh-huh.
Q So somebody could leave Sumter, and if they were in a hurry, they might get there in a little less than three hours; is that right?
A Not sure. I usually take it, it's a three hour drive.
Q And the -- now, tell me about what you knew about the baby coming.
A I have had conversation. He told me he was having another baby.
Q And did -- when the baby came, where was he?
A Might have been here. I'm not too sure.
Q He wasn't with you?
A No.
Q Are you sure?
A Yes.
Q How do you know?
A Because he came to my house on the 31st.
Q How do you know when the baby came, he tell you or

his lawyer tell you?
A No, he told me the baby was born.
Q He told you that the baby was born?
A Yes.
Q And did he tell you he was at the hospital when the baby was born?
A No, he didn't get into details.
Q So he could be in Garner, North Carolina at 3:00 in the afternoon, and it's six, 6:00 in the afternoon he could be in Sumter; is that right?
MR. HART: Objection. He's asking her to speculate about this.
THE COURT: I think it's a proper question. Go ahead.
BY MR. CONNER:
Q Do you live with anyone else?
A Right now?
Q Yeah.
A No.
Q Now, you say on the -- let's see the date -- on the fifth, he left your house. Fifth of November?
A Yes. Yes.
Q Wednesday. That's not what you told the police in the little statement you gave them; is it?
A Yes, it was.

Q Ask you, right here doesn't it say that, he stayed at my residence until November the third, 2003.
A Oh, okay. I'm figuring it was Wednesday. Might make -- should have been the fifth.
Q Instead of the third, it was the fifth.
A Yes.
Q So you made a mistake on that.
A Yes.
Q So you changed your mind?
A Oh, I didn't change my mind. I know it was the fifth because on the sixth--
Q This statement is inaccurate; isn't it?
A Maybe that one mistake.
Q And you don't know exactly what time he got to your place; do you?
A On which date?
Q On any date.
A Yes, I do.
Q What time of day did he get to your house on -- on whenever he came?
A It was in the evening, at night actually.
Q What time of night?
A Late. Not late, but like 11, 10:30, 11:00.
Q It could have been one or 2:00 in the morning just as easy as it could have been 11:00; couldn't it?

A No, I would have known because I got to work at 6:00 in the morning.
Q And where do you work?
A At that time I was working at the Laurels (phonetic) --
Q What--
A -- right next door to my apartment complex, a nursing home.
Q What kind of business is that?
A Nursing home.
Q And what kind of hours did you have there?
A Six to two. And my days off was Mondays and Thursdays.
Q So you worked on Saturday?
A Every other weekend.
Q And you could have been working Saturday, November the first; couldn't you?
A I was off. It be my weekend off.
Q And what hours -- what kind of hours did you work?
A Six in the morning till two in the afternoon.
Q But you don't know exactly what time he got there; do you?
A Yes.
Q And you don't know whether he was there all day the next day either; do you?

A Yes, I do.
Q You do?
A Yes.
Q What did y'all do?
A Went to my aunt's house.
Q And what's her name?
A Goldie Jacobs.
Q And where does she live?
A In Raleigh.
Q And who else was at Goldie Jacobs' house?
A Her children.
Q Now, when he left there, you say he left you a vehicle.
A Yes, he did.
Q He just gave it to you?
A He knew I didn't have a vehicle at the time.
Q And he said, this is yours, you can have it?
A He knew before he came that I didn't have a vehicle.
Q He just said to you, this is yours, you can have it?
A When he was coming, he was bringing me a vehicle.
Q That -- he brought you that white Chevrolet --
A Yes.
Q -- I mean that white Oldsmobile Cutlass.
A Yes, he did.
Q And he said, this is yours, you can have it?

A Yes, he did.
Q And you were surprised when the police showed up and re-claimed it?
A No, I wasn't surprised. They didn't show up and re-claim it. I let them know that the car was sitting outside.
Q But they -- the police came and got it.
A Yes.
Q But you thought he was giving it to you?
A Yes. The police officer told me that they had --
Q Okay.
A -- to take the vehicle, so I turned the keys over to the police officer.
Q But you thought it was yours, that he had given it to you.
A Yes.
Q Now, the truth of the matter is he told you when he left it that he would come back or he would have sent somebody to get it; didn't he?
A No, he didn't.
Q Well, let me show you this. This is the statement --
A Uh-huh.
Q -- that you gave to the police. He also left me the car and said someone could come and get it. So you knew it wasn't yours; didn't you?

A No. I knew it was mine.
Q You knew it was yours?
A Yes.
Q Well, why did he tell you that someone would come and get it?
A Mmm... that I don't know.
Q Uh-huh. There's a lot of things that you don't remember, but you just don't want to talk about them; do you?
A Excuse me? I don't understand what you're asking.
Q You've got your story planned out that you and William planned out, and you are going to tell it no matter what.
A I didn't plan any story.
Q But you -- you didn't expect that that was your car. You just expected -- you were hiding it for him for a few days until he had somebody come get it. And the police got there before the pickup man got there; didn't it?
A I was driving the vehicle around.
Q Uh-huh. Do you have a driver's license?
A Yes, I did at that time.
Q You don't have one now?
A No, I don't.
Q What kind of driver's license is it, New York or --
A New York.

Q -- North Carolina?
A New York.
Q Do you work now?
A Yes, I do.
Q Where do you work?
A At a nursing home. The Hopes of Carolina.
Q And you work the same hours every day?
A I work weekends.
Q Just weekends?
A Yes.
Q What time do you usually go to bed at night?
A It depends.
Q Depends on what?
A If I'm tired or not.
Q Uh-huh. What time do you go to work?
A I work from nine until 8:30. Nine in the morning until 8:30 in the evening.

MR. CONNER: I have nothing further of her, Your Honor.

MR. HART: I do.

REDIRECT EXAMINATION

BY MR. HART:

Q You gave this statement back in 2003; right?
A Yes.
Q And that was five years ago?

A Yes.
Q Do you remember every single detail from five years ago?
A No.
Q If you had a chance to look at your statement, would that have helped you out?
A Oh, of course.
Q When he was asking you those questions, you didn't have your statement in front of you?
A No.
Q Okay. You are certain that on November 1st -- or sorry -- on October 31st, he was there?
A Definitely.
Q That was your mother's birthday?
A Yes.
Q You are certain that on November 1st he was with you?
A Yes.
Q The -- he dropped a car off during that time, October 31st; right?
A Yes.
Q How -- did the police contact you?
A Yes.
Q Okay. And you gave this statement on December the second.
A Yes.

Q It's probably about a month later.
A Yes.
Q And you had been driving this car around during that whole time?
A Every day.

MR. HART: No further questions, Your Honor.

THE COURT: Okay. You can step down.

(Witness left the stand.)

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen, we're going to take a lunch break. I'm not going to ask for another witness because I'm hungry.

So if you'll be back at 2:30 in the jury room, I'll get you back out as quick as I can. And I remind you, you can't discuss this case. Don't allow anybody to discuss it with you over lunch, and I will see you at 2:30.

(Jury left the courtroom at 1:08 pm.)

THE COURT: All right. Anything before we break for lunch?

MR. HART: The defense rests, Your Honor, but I do -- at this time I would like to renew my motion based on both counts, count one and count two.

I think we have had testimony -- that there's no evidence of -- linking Mr. Gregg to this crime, that

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he was not there the date the crime happened, Your Honor.

And based off of that, we would respectfully ask that the Court enter a directed verdict at this time for count one and count two of the indictment.

THE COURT: Okay. And I respectfully deny your motion. I think there's sufficient evidence in this record that the jury can reach a verdict. It's the existence of what evidence and not the weight of it. And the jury can determine whatever weight they want to give it. But your motion is denied.

MR. HART: Yes, sir.

THE COURT: Now, from a scheduling standpoint, Mr. Conner, do you know whether you're going to offer reply testimony or...

MR. CONNER: I don't have any.

THE COURT: Okay. So when we get back at 2:30, we're going to close, argue, and charge?

MR. CONNER: We'll be ready.

THE COURT: Okay. Court be in recess until 2:30.

(Whereupon Court was in recess for lunch.)

THE COURT: All right. Anything before I bring the jury in?

MR. CONNER: I don't have anything else.

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THE COURT: All right. I have a proposed verdict form if y'all want to look at it before or you can do it afterward. It's just... if it suits, if you want to wait till after... here's what I probably will do.

After y'alls closing arguments, I will send the jury back to the jury room for a few minutes to select a foreperson, then I will bring them back out and charge them. So you can look at it then, too. We'll have a little break, but...

MR. HART: On behalf of the defense, Your Honor, we have had an opportunity to review the form. There are no objections to the form, Your Honor.

THE COURT: Okay. All right. Then is the State going to open and close?

MR. CONNER: We would just -- we'd waive the opening, Your Honor.

THE COURT: Okay. So is the defense ready to proceed?

MR. HART: Yes, sir.

THE COURT: All right. If you'll bring us the jury, please sir.

(Jury entered the courtroom at 2:32 pm.)

THE COURT: Ladies and gentlemen, you have heard all the evidence you're going to hear in this case.

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Now it's time for the closing arguments of the attorneys and then I will charge you on the law.

So if you'll pay close attention to the attorneys, they will begin their closing arguments. Mr. Hart?

MR. HART: Thank you, Your Honor. If it would persuade (sic) the Court...

CLOSING STATEMENT

MR. HART: Good afternoon, ladies and gentlemen. I know we have been here for three days now. It's been three long days. But as you know, I'm Chris Hart and I represent William Gregg.

But tell you a little something about me. My mother, she used to work two or three jobs, so we would always go to my grandmother's house on the weekends and during the summertime.

Well, my grandmother, she -- no formal education. Really she couldn't read or write. But she had some wisdom that you couldn't match. And there was something that my grandmother always told us growing up.

She says, always tell the truth. And she says, tell the truth because if you tell the truth, you don't have to worry about making up other stuff to cover up the lie that you told the first time.

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Just -- just always be honest. Just be straight up with people and tell the truth.

You have heard many things from this stand, ladies and gentlemen, especially from two witnesses, Darrell Herriott, Kendrick Miller.

When you go to the jury room, you will be to decide whether they were telling the truth, or as my grandmother would say, whether they had to continue to make up stuff to cover up that very first lie they told, whether they made stuff up as they went on.

When we first met, I told you that this case is about the wrong person on trial. Here we have the Government saying that on November 1st, William Gregg shot and killed Kevin Franklin.

And ladies and gentlemen, that's the critical issue in this entire case. On November 1st, did William Gregg shoot and kill Kevin Franklin.

Well, what happened? What did we hear from the stand? We heard out on that Kevin Franklin was coming out, he saw a car, some folks, Darrell Herriott and Kendrick Miller, saw a car coming in.

Well, that's fine. They make that statement. But under the circumstances -- and let's talk about that real quickly -- under the circumstances. If we

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could take that for face value, that would be great because, see, that's what the police did. They just took it for face value.

You heard the officers say it. Kendrick say he did it? Yeah. I don't need to fill out a report because Kendrick said he did it, so nothing else I need to do. Kendrick said he did it, well, he did it.

Said it happened around here in this area right here. And I believe Detective Turner said it happened closer to the interstate, 378. I remember him mentioning the fog line here. The house is right here.

If you remember, Kendrick said he was on the porch on his way in. It was 11:30 at night and it was dark. The story that Kendrick told was the very first time he told that story in here. The very first time that he verified his story, ladies and gentlemen.

So that's why I say under the circumstances. In a perfect world that would have been great just to take his word for it, that he said William Gregg did it. Then, well, I guess he did it.

What did Darrell Herriott say? Darrell said he was in the car, he turned his head to put out his

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cigarette, and he heard some shots and he jumped out the car.

But you know why Darrell is so important? Why you can't believe his testimony? Darrell is hiding something. We don't know what he's hiding. Why did Darrell leave the scene that night?

Why did he come back to the car and leave again never to come back? If he actually saw what happened, why didn't he call 911? That's the appropriate thing to do. You call 911, say, hey, I just witnessed a crime. So you call.

Now, based on the evidence, we ask you to return a verdict of not guilty. Based on the testimony that you have heard, we ask you to return a verdict of not guilty.

We do not believe the Government has proven their case to you beyond a reasonable doubt. And they have to prove their case to you beyond a reasonable doubt.

We believe that William Gregg is innocent. And here's why, ladies and gentlemen. Number one, we have someone who one month after the crime happened said to the police, Sumter County Sheriff's Department, William Gregg was with me in my home on November first, 2003.

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They knew that. The police knew that in '03. They knew it in '04. They knew it in '05. They knew it in '06. They knew it in '07. As we sit here today, they had that information. They had that information.

In fact, Lieutenant Gardner went to North Carolina to take the information. As you have heard from Ms. Williams -- what did she say? She said, look, I just talked to these people about a week ago. They asked me what did I say in 2003. I said the same thing in '03 that I said a week ago that I said today.

So I said, well, did they ask you to come and tell your story? She says, no, they didn't ask me to come. But here's something strange that I ask you to consider and think about.

If Lieutenant Gardner took that information in '03 and he's part of this case and he is a member of the sheriff's department, why didn't he sit in this seat? Why didn't he come and tell us, I talked to this lady in '03, she told me William Gregg was with her.

That puzzles me. That makes you say, a member of their own police force, of their own sheriff's department, they refuse to bring him in to give the

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evidence that he has. Something is wrong there. Something is missing, ladies and gentlemen.

What about Nelson? Do you remember Nelson came in, Deputy Nelson, Officer Nelson? He was the one that took the bullet from the house. You remember he had a -- he said, well, I called William Gregg, I told him that he had a warrant out for his arrest. This was back in '03.

So I said, well, that's fine. Did you do a statement? Did you do a police report? Yes, I did a report. Do you think it's important that you told him he had a warrant for his arrest? Yeah, that was important. Did you put it in your report that you told him that? No, I didn't -- I didn't put that in my report.

Well, that's the most important part. Now, I told him he had a warrant. But for some reason it's not in the report. Something is wrong. Something is missing.

Let's talk about the SLED agents. Simmons, SLED Agent Simmons. She came in. She was very honest. She was very up-front. She said she analyzed the evidence that they sent to her. I think she did a great job.

She agreed that the incident happened in '03.

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She received -- she received the evidence in '07, and that's when she processed it. It looks like it's about four days between the date of receipt and the date that it's processed.

But what's wrong with this picture, ladies and gentlemen? If you do a thorough job investigating a case, if you are the lead detective in a murder case, why would you wait four years to send the evidence to be processed? Why would you wait four years? What took so long?

He had the evidence in '03, November. Why did they wait for four years to send evidence? And they wait four years and then they come before you and say, look, we want you to find him guilty. Don't worry about this, this has nothing to do with nothing.

It doesn't mean anything that we wait four years, but find him guilty. Because that's what they're going to ask you, find him guilty, ladies and gentlemen.

Let's talk about the other agent. That was Simmons. Whitler (sic) was important because he said they sent the evidence in twice. You know why he's important? Because the first time they sent that evidence in, guess what, it came back no connection

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to William Gregg, none.

Second time they said, well, let's try again, maybe we can find something again. They sent it in again. Guess what, ladies and gentlemen. No connection to William Gregg. Nothing.

Let's talk about Pam Franklin and how important she is to this case. I'm sorry. Let's talk about Pamela Jones. Excuse me. Pamela Jones. She gave some extremely -- see, without Pam, there's no motive because right now I'm wondering, well, what was the reason for -- they say that he shot and killed him. What's the reason.

Well, they bring Pam in to try to establish that. Say, well, there was a burglary. Now, take a careful look to what she said. Listen, she says she's in the hospital having a baby, and William Gregg says -- calls her while -- he's at the house, according to her, the house that was burglarized -- and he calls her at the hospital to say, you need to call the police.

Well, isn't he at the house? Doesn't it make sense for him to call? Why wouldn't he call? Doesn't make any sense. Because the police, they responded. He was there when they responded.

You heard the officer say, well, I talked to

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William Gregg when I went to respond to the burglary. I'm just closing. It just -- it doesn't make sense. It doesn't make any.

So she made some very important statements to this case. She says that William Gregg was at the hospital. And that's so important because it establishes the date and time that he was here in South Carolina, Sumter, South Carolina.

So she knew that in 2003. She never told the police William Gregg was at the hospital. We heard Detective Turner say, I ain't never -- I didn't know anything about a -- and he's the lead detective. He said, I know nothing about a baby.

That's important to this case. He said, I don't know anything about a baby. When is the first time you told the police about William being at the hospital? Crime happened in 2003. Two months ago.

She says he was at the hospital. Because see, if he was at the hospital, if you do a thorough job investigating a crime, I -- we know they got surveillance cameras.

If you go to a hospital and you say, give me the surveillance cameras -- because they can subpoena them -- give me the surveillance cameras from November -- from the date she was in the hospital to

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see if William Gregg was there. That's one way of finding out.

The second way of finding out is she said he cut the cord. Now, that's important because if he's in the delivery room, he cuts the cord, the doctor's there. So they can bring the doctor in to say, well, you know what, that's the man that sits at that table that cut the cord. That's him.

There's no evidence to that, ladies and gentlemen. There's nothing. Because this statement is so significant, she just gives it two months ago. Right when we're going to trial that statement just pops up.

That was five years ago. That was the time to tell the police if it's true so they can do an investigation. Well, in this particular case, I don't know if they would have done an investigation, though. I don't know that.

But -- but let's say in a perfect world, all things perfect, that's the time to tell the police so they can do an investigation, so they can pull the tape, so they can subpoena the witnesses.

Police just ask if William returned to the hospital. She just told them two months ago. The statement that she made that William said, somebody's

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going to die, two months ago.

Now, if any statement is important, that's probably one of the most important statements you can make if he says, somebody is going to die. That's extremely important. She never tells anyone until two months ago as they're preparing for trial.

But you know what? Let me tell you what else he told. He told me -- he said, somebody's going to die. How did that just pop up?

The gun fired into wall. The police come to the house to search the house. The way they get to the house, she asks them to come, and she leads them to some random bullet in the wall.

And then once we start to question her -- first of all, when she was testifying for the Government she says, William and I was in an argument and he fired the gun into the wall.

Then we begin to question her, she said, well, I don't know, um, the gun just went off or -- then she changed up. She says, well, I moved the gun so it would be out of the way.

Then she says, well, then the gun -- I had possession. You remember what my grandmother said? If you tell one lie, you have got to keep telling more to cover up that first lie you told because

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you've got to try to get that story.

It's like taking a square and fitting it into a circle. It just doesn't go. But if you tell the truth the first time, you don't have anything to worry about no matter how somebody tries to rattle you. Doesn't matter.

So she says on November 1st, which is the night the crime happened, she says, I called William all day long, tried to reach him, couldn't reach him. She says, I finally reached him about 6 pm.

Now, this is about five hours before the crime occurred. Excuse me. She says, I called him, told him, we need some milk. That's an important statement because this is the date the crime happened.

Well, when did you tell the police about this important statement? Never told the police. You tell one, you got to keep telling another to try to cover up that first one over and over.

Sergeant -- and please forgive me if I mispronounce it -- looks like Colclough, Sergeant Colclough. Next to the lead detective, he's the most important person in this case. And you know why? He's the first one on the scene.

So he's there to secure the scene. He sees

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anything and everything before anybody else gets there. And as the responding officer, it's his job to advise and inform everybody else about what he saw when he got there.

But let's look at this. Tell you why this is a little odd here. I'm not saying he's not telling the truth. I think -- I think he's telling the truth, that he's being honest -- but why we have reasonable doubt in this case so much.

Because he's the responding officer, it's his job to tell everybody else about what he saw when he got there, and he spends 40 minutes at a murder scene. Forty.

We just had lunch, and lunch was an hour. We took an hour for lunch. And you talking about a murder crime and he spends 40 minutes to investigate. And then he said, so, within those 40 minutes -- remember he says, I went down to the house and see if he was down there.

So he responded, secured the scene, went down to the house to see if William Gregg was there, did all of this in 40 minutes. And I believe he did it in 40 minutes.

But what it says about 40 minutes is that it was a rushed (sic) to judgment. It was a rushed job.

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Forty minutes at a crime.

Ladies and gentlemen, this is not like somebody walks into a convenience store and steals a pack of beer or steals a bag of potato chips where you just go and say, well, okay. This is a murder scene. And he spends 40 minutes?

So what else is important about the very first person who responds? You have -- he doesn't know who called 911. So he's just responding. He doesn't know who to talk to.

And it's not like the 40 minutes he spent there he tried to find out, well, let me find out who called 911 so I can match it up and verify and get their story and their version of what happened.

He just responds and says, oh, you saw what happened? Come here, let me talk to you. You saw what happened? Well, come here, let me talk to you.

No verification. Forty minutes. Here's what's important about Darrell Herriott on this. He said he talked to Kendrick Miller. Kendrick never told him about Darrell Herriott.

We've got a case that's five years old. The responding officer never -- he says he doesn't know Darrell Herriott.

And Darrell Herriott is the main witness because

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he's supposed to be in the car and you got the very first officer said, who is Darrell Herriott, I don't know who Darrell Herriott is.

Out of the 40 minutes at a murder scene, ladies and gentlemen, we got a two page report. Two pages. Two pages for a murder. Two. That's all we got.

Because remember, we're going to get to Turner. He's the lead investigator. He doesn't have a report at all. And we're going to talk about that. Two pages, ladies and gentlemen.

While we're here, let's talk about Kendrick. What does Kendrick say? Two weeks ago my investigator calls Kendrick, as he testified. He testified he talked to my investigator at my office.

This crime happened five years ago, and two weeks -- he admits he says -- it was a sky grey Buicka (sic) Cutlass. That was just two weeks ago. Just two weeks. He was unsure.

Then I said, well, you never told me, investigator, white. He said, right. Remember now, I asked each one of them, is this accurate and fair of what you just testified? He said, I have never told your investigator a white car. That was two weeks ago.

Something is wrong here, ladies and gentlemen.

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Something is seriously wrong. Tell you why Mackessy is important. Mackessy is important because -- did you get the sense while the officers were testifying, it was a little, this here going on?

Well, that ain't my job. I'm the first officer. It goes to investigator. Investigator says, well, it's four or five other officers out there, so they did a report, I'm not going to do a report. The crime scene investigators, that ain't my job, that's other officer.

Did you get a -- it was -- nobody want to accept responsibility? So what does Mackessy say? He says -- now remember, he said, myself, Detective Turner, we are the two people who process the evidence, which means they are the main people.

This guy is a crime scene investigator, which means he can get forensics, he can get DNA, he can get blood, he can get hair, he can get skin. He can get all these forensics and process it to say, I processed what I got from the crime scene and I link it to the person on trial. And we asked him, do you have any evidence?

Ladies and gentlemen, when you go to the jury room, you will have an opportunity to review all of this evidence here. I want you to look at it now

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because it's important because Mackessy helped process that stuff.

Now, I tell you why all of that evidence is important. He's the crime scene investigator with years and years of experience, and he processed it all. He looked at it.

Mackessy. What in here links William Gregg to this crime? Nothing. What about this bullet? Does it link William Gregg to this crime? No. Anything -- what does William Gregg have to do with any of this? Nothing. But Kendrick said he did it, so he did it.

There's nothing up here that links William Gregg to this crime, ladies and gentlemen. But what does he say? Mackessy said, I never responded to the crime scene. Okay. Let's -- let's give him that the first night because you got Turner out there. So you got one or the other.

But some point in time when you start to look at all this stuff, if you don't match it up to what happened at the crime scene, if you never go out there, how do you piece stuff together? You can't piece -- you are just looking at stuff.

Say, well, did you ever go? No. You are the crime scene investigator in a murder case? You never

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go to the crime scene to try to match whatever you have to the crime scene? He says, I never saw a picture of tire markings.

Now, he can take the tires off the car that he has and try to match them up to the pictures. But you know what he says? He says markings on State Exhibit number one -- and you'll be able to look at this in the evidence room -- this -- they never showed it to me.

You got two people, Turner, Mackessy involved and responsible for this right here. And he says he never showed it to me, never told me about it. This is a murder crime, ladies and gentlemen. And the main processing guy never saw it.

So where -- asked him, did you ever analyze the tires to say -- because if they would have analyzed the tires, they could have taken these markings and said, you know what, the tires that we -- the car that we got out of North Carolina, they match the tires in this picture.

So when I asked him, is there any evidence linking William Gregg to this crime scene, he -- he would have said or could have said if he would have tested it, well, yeah.

We looked at the tires on the car we got from

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North Carolina and we examined the markings in this picture and the other pictures they have and it matches that car. We don't have it, ladies and gentlemen, it's not there.

What did Sherrill Williams say? Sherrill says, William Gregg arrives in North Carolina. Sherrill says, William Gregg arrives in North Carolina October 31st, which is here. That's what she says.

She told that story in 2003. She told it two weeks ago when she talked to the police and the Government, and she told it here to you, ladies and gentlemen.

She said -- I said, well, how are you so sure that he arrived there? She says, well, you know, that's my mother's birthday. If you don't remember anything, you remember your mama's birthday, at least you better remember your mama's birthday and you better have her a present, especially 51 years.

She's been blessed to live 51 years, you better do something for your mama. That's how she remembered it. That's a milestone in her mother's life. She remembers that.

So what else does she say? She says, well -- she said he arrived October 31st. When does he leave? Around November 5th, November 6th. I think

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the Government talked to her. It wasn't that date. It was that day.

Say -- well, I asked her, said, well, are you testifying from your memory? See -- if you got your statement, can you remember? Because in the statement it's clear.

But what we wanted to tie -- whether he left on the fourth, the fifth, the sixth, the seventh, the third, it doesn't matter what date he left down here. Say, are you sure that on November 1st he was at your house? Are you sure? She says, I'm sure. I'm positive.

Try to speed it up, ladies and gentlemen. I know it's a little warm in here. Detective Turner, tell us how you rate yourself for this investigation. You are the lead person in this case; right? Yes. Tell us how you rate yourself for this investigation.

We have choices of excellent, good, average, poor, and failure. We really could take all of this off and stop right here because you know why? If you going to take somebody's life and freedom away from them, you had better have done an excellent job.

If you're asking people to say, look, I want you to convict this man here and send him to jail, you better had done an excellent job, not a good job. An

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excellent job. He went straight to good.

As you know, ladies and gentlemen, at the end of the -- by the end of his testimony -- and we're going to come back to this -- Detective Turner, how many officers responded to the scene? I don't know.

Detective Turner, tell us the names of the officers who responded to the scene. Well, let me back up here a second. See, you're the lead detective, so the buck stops with you.

And that means as the lead -- at my law firm, when something goes wrong, the buck stops at me. I can't say, well, that was my paralegal's fault. It stops with me.

Somebody has to take responsibility for their action, especially when you serve in a supervisor's role. In a supervisor role, you got to audit, check, cross-check everybody else's work.

So Detective Turner, give us the names of the officers who respond to the scene so we can verify whether you checked and cross-checked their work. I don't know their names.

Detective Turner, this is a murder case. Can you show us your report for the murder case -- this is a murder case. This is not somebody stole a bag of chips out the store. This is a murder case. Can

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you show us your report for the murder case? I don't have one.

Don't you think it was necessary to complete -- now, this is the one that got me. Don't you think it was necessary to complete a report? No. It would be repetitious.

Kendrick told me he did it. So guess what, he done it. He already told me he knew who it was and he saw who did it. I don't need to complete a report.

Do you remember him saying that? Why would I complete a report? For what? He already told me he did it, he knew who it was. He saw -- he's been seeing him all -- for the longest. I don't need to do a report.

Based on info Turner has, it's all there from what he received because he talked to Kendrick and he talked to Darrell, two people who you can't believe one word that comes out of their mouth.

He said, based on information, Turner has it all. So okay, let's -- let's cut him some slack. Let's cut him some slack.

Detective Turner, you are the lead detective. Do you know who called 911? Did you listen to the tape? No, never listened to the tapes. Five years,

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the lead Turner -- the -- the lead detective never listened to the 911 tapes to verify what did -- the person Kendrick says he called 911, so let's go with that.

We ain't got nothing else to go with, so let's go with that. Kendrick says, I called 911. Did he ever verify -- listen to the tapes to verify what Kendrick said on that 911 tape? Never listened to the tape.

Now remember, Pam says there was a statement made by William Gregg that somebody is going to die. Detective, do you have a statement from William Gregg saying he was going to kill somebody? Have not been told -- said he was going to kill somebody. Statement never made. Guess I don't need too much.

So he says -- he says, did you ever verify that Kendrick Miller -- did you ever verify -- have him verify that it was the same car that he saw that night? Did you bring him in and say, Mr. Miller, you told me that you saw a white car that night.

I want you to look at this car in this picture and tell me, is this the same car you saw that night as the lead detective from -- and he took the word of Kendrick Miller. He says, I never had him verify it.

Kendrick, is this the first time you have ever

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identified this car other than what you said that night? In this courtroom, that was the first time in five years he's ever identified this car as the car he saw that night.

So we say, detective, did you take some statements from him like a written statement so the jury can see what he said? Did you take it so we can memorialize it and make a record of it so we'll know exactly what he says? Main witness, no written statements. Kendrick said he did it, he did it.

Next main witness. What -- Darrell Herriott. Did you take a statement from Darrell so we can verify and make sure he's not mistaken about what he saw at 11:30 at night when it was dark? Did you take a statement from him? No, never took a statement from Darrell.

Well, Pam got a lot to say about William. She has a lot to say about how William was involved in this. Because she didn't see anything, but she got some -- she got some beliefs about that he's involved.

Well, let's look at Pam's statement. As the lead detective, detective, did you take a statement of Pam? No. Well, do you know the date she had the baby? I ain't know nothing about a baby. No one

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ever told me nothing about a baby. Do you know if William was at the hospital? No.

The last one, ladies and gentlemen, is the most important thing. Because see, in any given situation, we have all had life experiences where one person says one thing, another person says something else.

So the role of the police is to do an independent investigation so you can verify who is telling the truth. Is it this person telling the truth or is it this person telling the truth?

But we don't have anything to go off of. What makes one side better? Nothing. We don't have anything. So over the past years, Detective Turner, what has your case rested on?

And remember, we asked him -- want to make sure before you leave, is everything up here fair and accurate? He says over -- out of all of this, ladies and gentlemen, we got all this evidence here -- over the past five years my case has rested on Kendrick Miller, Darrell Herriott, two people who you can't believe a word comes out of their mouth.

You remember Kendrick saying, well, I don't do drugs or I don't sell drugs. Well Kendrick, don't you have a conviction for drugs? Well, I was in the

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car with somebody and they had the drugs, so -- well, what is true?

Well Pam, you used drugs or you sell drugs. No, I don't do any more. Don't you have a conviction for drugs? Oh, wait... yeah.

Shortly, ladies and gentlemen, you will hear from the Judge, his Honor, and he will instruct you on the law. And the law is what each of you took an oath at the beginning to impose.

He will instruct you on murder. He will instruct you on possession of a firearm during the commission of a violent crime. He's also going to instruct you on what we call alibi.

An alibi is when somebody says that person was in a different place at the date and time that the crime happened. He's also going to instruct you on eye witness testimony and what it takes to really figure out if that person was mistaken, if they were lying, if -- whatever happened, especially at 11:30 at night and it's dark. He's going to instruct you on those issues, ladies and gentlemen.

Next he is going to instruct you on reasonable doubt. This is the burden of proof that the Government has to cross over before you can return a verdict of guilty.

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Reasonable doubt is a doubt that causes you to hesitate to act. It's a doubt that you say to yourself, wait a minute, got a murder case, and out of five years, you never filled out a report?

It's that doubt that you get here, you say, something is not right here, something -- something is missing here.

It's that doubt that makes you say, it's -- well, you know when you scratch your head and you say something -- something is not right, something is missing? That's reasonable doubt, ladies and gentlemen.

Reasonable doubt is when you do what they call an investigation and you find no gun, no fingerprints, no DNA, no clothing, no nothing.

When you have those doubts, ladies and gentlemen, it means that William can go home because the law requires you to resolve those doubts in favor of William Gregg because it means the Government did not meet their burden of proving him guilty beyond a reasonable doubt.

Now, I know it's been long. It's been a long afternoon. It's now 3:30. It's hot. I'm a hot-natured person, especially with this suit on. But we want to thank you for the attention that you

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have given to this case because it means a lot.

Somebody has told you when to get up, when to come sit back down, when you can eat, how long you can eat, when you can go to the restroom.

But jury service is one of the highest forms of public service that you can perform. And here's why. Because actually it's one of the most God-like services that you'll ever do because you're asking -- you're being asked to pass judgment on a fellow human being. That's why it's so important.

You remember during qualifications and the Judge talked about that Dear Abby letter that the juror wrote in to Dear Abby to say how much jury service was important. That's why it's important, ladies and gentlemen.

Now, I will go on to try many other cases. The Government, they will prosecute many other cases. His Honor, the Judge, he will preside over many other cases. But William Gregg? This is it for him. This is his only day in court.

After today he can't come back and say, give me another shot. This is it for him, ladies and gentlemen.

That's why we ask you as jurors to return a verdict where you can say to yourself you know you

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made the right decision.

The President of the United States, the Government, county council person, city council person, today they can't do nothing for William Gregg. Can't call them.

Can't call the county council person and say, help William out. Today each of you are the most powerful people in William Gregg's life today.

In closing, ladies and gentlemen, ask yourself, what has the Government proven to you beyond a reasonable doubt? Nothing. And that's why we ask you to return a verdict of not guilty.

Ladies and gentlemen, your verdict will depend upon what you have heard from the stand and what you have before you.

Remember at the beginning of this trial I stood before you and I said to you, I'm going to return back and stand before you and ask you to return a verdict of not guilty?

Here I am. I ask that when each of you retire to the jury room, you will have choices on how to cast your verdict.

And what I'm asking you, ladies and gentlemen, based off the evidence you have heard, that each of you return a verdict of not guilty.

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THE COURT: Mr. Solicitor?

MR. CONNER: Could we take five minutes?

THE COURT: All right, sir. Ladies and gentlemen, we'll take a five minute break. You can go to the jury room and you can't discuss this case yet. I'll get you back out just as quick as I can.

Wait a minute. While -- while you're out, let me get you to do one more favor for me. We might take 10. I need you to select a foreperson. And I was going to do it at the end of the arguments, but that way I can go right into the charge.

I don't know any of you. You know -- you have spent the last three days together so you've gotten to know each other somewhat. And I found out that juries do a whole lot better when you select your own foreperson than when I do.

And that foreperson is simply to preside over the deliberation and write the verdict down. They have no more power or vote than anyone else. They just -- somebody's got to preside over the deliberation.

So out of the original 12, I need you to -- the the alternates can't serve as a foreperson. Out of the original 12, I need you to select a foreperson.

When we come back after the break, if you'll let

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me know who that foreperson is, then we won't have to break again and I can go into the charge and give you the law. So we'll be back in about 10 minutes.

(Jury left the courtroom at 3:26 pm.)

(Whereupon a recess was taken.)

(Whereupon the jury entered the courtroom.)

THE COURT: Y'all selected a foreperson? I assume that's you, sir? Okay. If you'll now pay attention to the State, Mr. Conner.

CLOSING STATEMENT

MR. CONNER: Let's see here. Okay. Ladies and gentlemen, I want to thank you for the attention. At this time at a jury trial I feel like a second preacher coming up on a Sunday morning.

And worse than that, according to the defense lawyer here, I'm the Government, so I have to apologize. The -- I don't mind being -- I've never been called the Government before. That's a -- a new one for me.

I don't mind being called the people's lawyer or somebody who is here representing victims like the Franklins back there. They deserve representation. And a member of their family has died, and this is a serious matter.

You know, the law enforcement agents made an

effort here to find ballistics information and other information that would lead to resolving this crime. Quite frankly, most of what they find -- found is -- only indicates that they tried. It doesn't indicate that they found the answer.

But essentially what we have here is three factual witnesses, two who were eye witnesses, and the -- and Ms. Franklin, Pamela Franklin, based upon her knowledge of the defendant and her involvement with him, the things that she had to say that indicated that he did it.

The only thing they have, I submit to you, is this woman right here, Sherrill Williams saying that she was -- that he was in North Carolina when this thing happened and Darrell Herriott and Kendrick Miller saying he was out there at when it happened.

And the -- one thing I'd like to remind you about Ms. Miller is she said that he left her house on the fifth. Now, let's -- let's see. There's a -- there's a document here. This is the State's Exhibit number 18 which was kindly prepared by the defense in this case that kind of gives us a map.

And this is what Mr. Hart wrote when she said it. He left on the fifth. However, she had given

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the law enforcement authorities a statement, and I read that to her, that indicates that he stayed at my residence until November the third, 2003.

Then that's different. And the reason it's so significantly different is it's two days off. And the thing about it is it's only three hours, according to her story, three hours from here to where she lived in Garner, North Carolina, three hours one way.

So the time that she gives is important. Now, she was given the information she gave about a month after this thing happened. She was giving it in December of 2003 when the crime occurred on November the first, 2003.

But what she says is important is -- she's relying on that today, but -- but she's off. She's off by two days. And if she's off by three hours, that's enough time for him to go from Sumter to Garner, North Carolina, make an appearance up there, and she gets up there and says, well, he was up here.

Obviously she's either mistaken or she's telling it to suit herself, to suit him. I don't know which, but she -- I submit that there's evidence that she is off. She's off on her time. She's off by two days and when he left there.

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And another thing. I think she makes it sound like oh, he just gave me this car. He knew I needed a car. He brought it to me. But that's not what she said in her statement.

She said, he also left me the car and said someone would come and get it. He expected to get it back, in other words. It wasn't some -- that he -- just a gift to her.

The -- and I'd ask you this. Why would somebody just go about leaving automobiles? Why would he leave that automobile up there and go to New York? I tell you why he left it.

It's because it was hot. And he knew those two guys that were out there knew him and they could say that he was driving that car. He wanted that car to disappear.

And another thing, he just left property down here out there at that flea market. He left his business. He just left it. People don't just walk away from money, and money and things, property that they own without some reason.

He had a reason for leaving. He wanted to make himself scarce because he knew that he was wanted down here for murder.

And as the officers told you, it was late 2006

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before they ever got up with him, and they got -- they got him out of New York. So he leaves a baby and a baby's mama in Sumter, he leaves his flea market business with his property in it, he leaves three automobiles in his yard, he just leaves because he knows he's done wrong. He wants to hide.

The -- let's talk about what Pamela said. She was in the hospital and had this baby, and I -- quite frankly, Mr. Hart makes a big thing out of when she told him that she had the baby and this, that, and the other, but there's absolutely no reason for her to lie about having a baby two days before this crime happened.

That it -- it just doesn't make rhyme or reason to me. There's no -- no incentive to lie about what happened two days before this thing happened. The only thing -- and it does put him in Sumter, the fact that he was there at the hospital when the baby was delivered.

But we knew he was in Sumter any way because this man right here, Turner, Captain Turner, went out there. They got the burglary complaint. She called the law enforcement and says, we have had a break-in out at our house out in , will you go out there and investigate it.

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He went to the home and he talked with William Gregg right over there that day. So we don't have to know whether there was a camera at the hospital that took a picture of him.

We know he was here on October the 30th. And I submit to you that the witnesses put him here on November the first. I don't doubt that he didn't go to North Carolina after it was all over with because he -- he wanted to disappear. And we know the car was up there, so he had to get up there some way and likely he -- he went in that car.

The -- she said that he was here on the 31st. That was the day before, the day before November the first. November the first, that's the day that the shooting occurred. That's when the man was killed.

That's when she got out of the hospital. And she said he never showed up that day. He didn't come. He promised to bring milk. She needed milk for the baby. He didn't come.

The -- now, one other thing she said is that -- talked about this bullet in the wall. And the -- the items we submitted to SLED, for example, I think Officer Whitler, the SLED firearms man, did have something of interest to say in that regard.

My recollection of the testimony -- and the

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testimony is on record, ladies and gentlemen. If there's any argument about what was said, it can be reproduced for you.

But it -- he said that he initially processed the item -- some of the items from this case, not all of them. But back in -- now, that's not on the board I don't believe.

He said he processed this stuff in March of 2004 because they had the stuff back then or some of the stuff, and it -- the -- the items from the body were taken to SLED to be analyzed, and he turned out his initial report back in March of 2004.

Now, he did -- there's -- some of it was resubmitted later on. And in 2008 he turned out another report, and that's where he examined this round that came from the house.

And that is in one of these envelopes here, it's -- I believe it's this one, State's Exhibit number 13. This is the item taken out of the wall out there at her house.

And she indicated that he owned that .38 caliber pistol, that he kept it with him all the time, and this bullet was one that was discharged from that weapon.

And the reason it was submitted was to see if

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the bullet matched the bullets that came out of the body. Unfortunately, the agent was not able to make that connection because these bullets get mangled from -- from hitting things, and sometimes you just don't get a good sample or something that you can work with.

However, he did say that this was a .38 caliber bullet. And he also said that the bullets that he examined, which are -- they're also in one of these envelopes -- this one right here, State's Exhibit number 11, fragments from the victim, that these were consistent with being fired by either a -- a 38, a 357 or a 9-millimeter, and he couldn't exclude any one of the three.

In other words, they -- what his report says is that it could be the same, but he can't say with specificity that it is the same. And unfortunately we didn't recover a gun.

You know, we don't have any DNA. We don't have any fingerprints. How can we have gotten DNA? You can't get blood and you can't get saliva or you can't get any body fluid from a guy who rides up in a vehicle, sticks his gun in another man's face and shoots him twice and goes to North Carolina.

He doesn't throw the gun down there on the -- on

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the ground so you can recover it, you can match up fingerprints off of it. And he doesn't give you a blood sample to show that he was there or anything. He -- he just didn't leave us anything. He left. They looked, but there wasn't anything to be gotten. If they had, it would have been analyzed.

One thing I think is interesting, too, about Pamela's testimony, ladies and gentlemen, is when she said, I went to the jail to see him because I -- just for my own personal satisfaction.

The police didn't send me down there, they didn't pay me to go down there and talk with him, they didn't ask me to go down and talk with him. I just went down there because I wanted -- for myself and for my daughter. That's what she says.

And what does she say he said? What he said is most interesting. He says, I'm sorry. Now, you know what? If he didn't do it, he would have said, I didn't do it.

He wouldn't have said, I'm sorry, but he would -- if he said, I'm -- I didn't do it, he would have said, I'm sorry that he's dead, but I didn't do it. That's what he would have said. But he said -- he just said, I'm sorry.

Now, I know there's nobody else there listening

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to him, that the police didn't have her bugged and put a microphone on her and all that. Perhaps that would have been nice if she had have gone to the police and got bugged in advance. I guess we'd have had some other kind of legal problem then.

But in any event, he just -- he just threw away everything that he had in Sumter. He threw away his property, his cars, his flea market business, his woman, his baby, everything and just vamooshed (sic).

What does that mean to you? He didn't want to take responsibility for what he had done because he knew he had done wrong. That's what it means.

You know, this fellow Darrell Herriott, he's the worst liar I have ever seen according to Mr. Hart. Oh, he's a terrible fellow. He just worked for some contractor down in Mississippi, some kind of defense contractor, and he's been working up there in North Carolina for Bart Milling for three years driving a truck. If he was so unreliable, they'd have fired him a long time ago.

And he -- the reason he was out there that night, he was visiting this woman friend of his, Sara Thomas, and he -- he was riding -- they were riding in his vehicle.

And he said he knew William Gregg. I -- he knew

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him well because he had a child by Pamela, too, Darrell Herriott did. I believe he said he was 14 years old, apparently she'd be about 19 by now, and that she was working at this flea market business and he had been out there to visit this child.

And he had seen William Gregg. He knew William Gregg. He knew what kind of vehicle he rode. And he sat right there in that vehicle right over there no further than the back row of the jury any way from me, and there he sat, and here sat William Gregg with his specs on, looking at him and he -- he rolled up there.

He thought -- he said, I thought it was just like two brother-in-laws going to have a few words, and one said to the other, what's up, and Bubba -- this one here, Gregg -- he said, what do you mean, what's up, and he threw in a few other vulgarities, and he shot -- started shooting.

And he said, I saw the flash from the gun and I rolled out the door and only an angel saved me. That's what he said.

Does that seem so unreasonable that you wouldn't know the fellow who was doing the shooting? Seems plenty reasonable to me. They knew from the get-go. Kendrick Miller knew and Darrell Herriott knew, and

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they told the law enforcement that.

And it -- over here somewhere in this -- all these notes that Mr. Hart compiled is something about no statement from Darrell Herriott. He said he gave a statement to Wesley Gardner.

And this lady back here, Ms -- the woman from North Carolina, she gave a statement from Wesley Gardner -- to Wesley Gardner. Wesley Gardner worked this case. He was Turner's supervisor at the time.

And Darrell told him that it was a white Cutlass and it was William Gregg, and he gave it to him in a written statement. There's nothing magic about written statements. Sometimes they are nice, sometimes they are not.

And they are better if somebody is going to change their story. If you're going to stick with the same story, you don't have to worry about having a written statement. But if you're going to change the story, you need some way to impeach them. These people hadn't changed their story.

Kendrick Miller knew William Gregg, and he had been identified. And as Officer Terrance Colclough said -- let's see if we can find him here. Oh, this -- this is -- Mr. Hart is really grasping for straws. This is one. This was a straw right here.

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Forty minutes on the scene. He was there. That's what he was there, 40 minutes. And he said one thing that I submit to you is incorrect, is that he -- Mr. Hart said that that included the time he went to the house. That's not what I understood him to say.

He was there at the scene for some 40 minutes and then he turned the scene over to the investigators, Captain Turner, Wesley Gardner -- I believe he said Major Mets was there, and Holcombe, Danny Holcombe. There were more people there.

And he left the scene at that time and went down to the address looking for William Gregg. He's -- he writes down here, no weapon. Sure, William Gregg didn't throw a gun out there on the ground for everybody to find. And he didn't find any weapon.

He said he talked with Kendrick Miller right there on the scene. And what is more specific, he did a report. I believe -- oh, it's a two page report. But I tell you one thing that's on that two pages per his testimony is it was a older model white Cutlass.

And the man name -- is doing the shooting was that fellow right yonder, William Gregg. And he put

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a bolo, be on the lookout. That's what that stands for -- for William Gregg, older model white Cutlass, Olds Cutlass.

I can't -- I'm not going to try to chase every rabbit here and respond to every one of these little things that are written down here. I could rely on you and your common sense to deal with them.

But don't have a report for a murder case. You know, we had an autopsy report. We had an autopsy person here, Dr. Ross. We had a firearms report. We had the firearms man, Mr. Whitler here.

Don't have a report, but we have a report of the toxicology where the -- they examined Kevin Franklin's blood. You know, if that -- unfortunately sometimes we don't get to get everybody's blood.

We didn't get a sample of William's blood because he was back in North Carolina or headed to North Carolina after it was all over with. But poor Kevin Franklin, he couldn't move, so we got his blood and sent it up there to SLED.

And one thing I thought was interesting in it, that there's no alcohol in it. There was no cocaine. There was no opiates, no barbiturates, no nothing except he said he had used marijuana some time in the past, that it could have been three to six -- it had

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to have been three to six hours I believe is what the chemist testified, and it could have been longer.

He said he would not have been effected by the use of it at this time. And the way he could tell is it metabolizes in the body and it's in different chemical stages. And at the stage it was in, it wouldn't have affected his ability to operate an automobile or to do whatever people want to do. You know, he wasn't physically adversely effected by it.

I don't condone the use of marijuana. Marijuana -- my generation didn't -- was not involved with marijuana. But if we shot every young man who might have used marijuana at some time in the past in Sumter County, there would be a lot of dead people, I tell you that.

It just doesn't justify -- it doesn't justify using it and it doesn't justify killing people either. And it wasn't at the -- it didn't adversely affect Franklin's behavior according to what the chemist said, it would not have.

One of the most damaging things I think from the defendant's standpoint or one of the things I think you might weigh in your decision is the fact that he fled.

Rick Nelson, the patrol lieutenant who testified

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here yesterday, testified that he called him on the telephone, that he got his cellphone number and he made contact with him and he told him, you're wanted for murder in Sumter County, you need the turn yourself in to the nearest law enforcement agent. He didn't want to face the music. He didn't face it until now.

Now, Captain Turner could have turned out a report in this case. But you know, this law enforcement business is a team effort. There's a lot of people on the team.

There's Lieutenant Colclough, there's Mackessy, there's -- and incidentally, I believe Mr. Mackessy testified, and I'm sure the defense lawyer has got a copy of his statement, his report.

He did a report. And Captain Turner's report was read. We have an autopsy report and it says doesn't -- so he was just quoting. And we have a firearms report on certain items and it shows so and so.

And people just summarized what all these other people had done. It would have summarized what the team done. It would have been a summary report. But it doesn't mean, ladies and gentlemen, that things weren't done that needed to be done.

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And statements were taken. The -- by primarily by a Lieutenant Gardner at the time, Wesley Gardner.

Ladies and gentlemen, I want to thank you for your attention. You know, Kevin Franklin was a young man. He was only about 28 years old. He wasn't a -- he was kind of like Darrell Herriott.

He was a truck driver. He was taking care of business, living there with his mama, providing income for the family.

The autopsy shows that he was shot twice. He was shot through his left hand into the side of his head. The bullet entered his head, then entered the back of his hand first, which if you park yourself in the driver's seat of a vehicle, if somebody threw something up at you like that, what's your natural instinct?

Would be to bring your hand up to kind of hopefully protect yourself. Of course. It wasn't any real protection. But I mean, it's just instinct. It's -- and he brought his hand up and he was shot through the hand, and the bullet entered his head.

And the -- the second bullet -- or I don't know whether if -- it could have been the first bullet, one bullet hit him in the nose and one bullet hit him in the head.

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Both bullets actually went into his head, and according to Dr. Ross' testimony would have been instrumental to him dying. He had no alcohol in his system, no cocaine, no barbiturates, no opiates, no diazepine, nothing. He was clean as a whistle.

I submit to you that it was an unjustified killing. It's not like two people duking it out and one pulls out something and strikes and in heat of passion. This is not a heat of passion case.

This is a deliberate killing. He had to have thought about what he was doing in advance. I don't know that he knew that he was going to meet Kevin right there at that spot, but I submit to you he was out there looking for him.

And I -- I submit that one reason for that is he thought Kevin had something to do with whoever broke in his home. I don't know that for a fact, but I -- it just it's -- it's something kind of unexplainable about a killing.

Ladies and gentlemen, I thank you for your attention and I submit to you that your verdict should be guilty. Thank you.

JURY CHARGE

THE COURT: Now ladies and gentlemen, you have heard the evidence in this case and the arguments of

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both the State and the defense. Now I will explain to you the law that will apply in this case.

And under our Constitution and code of laws of this state, you the jury are the only ones who can find the facts in this case. I am not permitted to indicate to you how I might feel about the facts in this case. The law does not permit that. The law doesn't allow me to have an opinion in the facts.

So if I have done anything throughout this trial that may indicate that I have an opinion, you're to disregard that because you're to decide this case solely on the evidence that comes in this courtroom because you and only you are the sole sources of the facts in this case.

And the same constitution and same law that makes you the finders of the fact makes me the finder of the law. So if you have an idea of what you think the law is or what you think the law ought to be and it differs from what I now tell you the law is, under your oath you're obligated to set aside your thoughts on what the law should be and take the law exactly as I give it to you and apply it in this case.

The fact that this defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence

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of guilt in this case.

Nor does it create any presumption of inference of guilt. The indictment is simply the formal, written instrument that contains the charges made against this defendant and serves as the formal document simply to bring these -- case to court.

To this indictment the defendant has entered a plea of not guilty. And that plea casts the burden upon the State of South Carolina to find him -- to prove him guilty beyond a reasonable doubt.

A person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent. And I instruct you and emphasize to you the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberation or in any way in your consideration as to the question of guilt or innocence of this defendant. It cannot be considered by you -- considered by you in any manner whatsoever.

The defendant has a constitutional right to remain silent. And the assertion of this right must not be considered by you in your deliberations. You can -- I repeat that under your oath you're to draw no conclusions whatsoever from the fact that this defendant in this case did not testify.

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The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof as I have stated to you is upon the State of South Carolina. This defendant is not required to prove himself innocent.

It is an important rule of law in this country that a defendant in a criminal trial will always be presumed innocent of the crime for which he is charged and indicted unless and until his guilt has been proven to you by evidence that satisfies you the jury of his guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial constitutional right to which every defendant is entitled.

The presumption of innocence accompanies a defendant from the time of his charge, throughout the trial, and until you reach a verdict based on the evidence that satisfies you of his guilt beyond a reasonable doubt.

Now, a reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth in this case to hesitate to act.

Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a

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reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of a defendant's guilt.

There are very few things in this world which we know with absolute certainty. In a criminal case, the law does not require proof to overcome every possible doubt.

If based on your consideration of the evidence, you are firmly convinced of the defendant's guilt, then you're to find him guilty. On the other hand, if you think there's a possibility that he is not guilty, you must give him the benefit of that doubt and find him not guilty.

In determining the facts in a case, you must necessarily pass upon the credibility, which simply means believability of the witness and the value or weight to be given to their testimony.

You alone must decide the force and effect and weight to be given to their testimony. In making these decisions, there are many things that you may consider and take into consideration such as the appearance and manner of the witness on the stand,

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sometimes referred to as the demeanor of the witness.

Was it forthright or hesitant. Was the witness's testimony consistent or did it contain certain discrepancies. What was the ability of the witness to know the facts about which he or she testified?

Did the witness have a cause or reason to be biased and prejudiced in favor of his or her testimony? Was the testimony of a witness corroborated or made stronger by other testimony and evidence or was it made weaker or impeached by other testimony and evidence.

Now, the rules of evidence ordinarily do not permit a witness to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses.

A witness who by education and experience has become an expert in some art, science, profession, or calling may state an opinion as to the relevant and material matters in which the witness claims to be an expert and may also state reasons for that opinion.

You should consider any expert opinion received in evidence in this case like any other evidence. Give it the weight you think it deserves.

If you decide the opinion of an expert is not

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based on sufficient education and experience, or if you -- if you conclude that the reasons given in support of that opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion in its entirety.

An expert witness's testimony is to be given no greater weight than any other witness simply because that witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

Now, as jurors you have a right to believe a small portion of a witness's testimony and disregard the larger or vice versa. You may believe all of a witness's testimony or none. You may believe the testimony of a single witness or that -- against that of many or the other way around.

Now, there are two types of evidence which are generally presented during a trial. That's direct and circumstantial evidence.

Direct evidence is testimony of a person who asserts or claims to have actual knowledge of a fact such as an eye witness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

I will give you an example. If I go to bed one

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December night and I look out my front door and it's snow all over my front yard, lawn, and no footprints or anything in that snow.

I wake up the next morning, look out my front door and it's a set of footprints leading from the sidewalk to my front door and back.

I did not see anybody come to my door in the middle of the night. But I can assume by circumstances that some -- while I was asleep, somebody left the sidewalk, walked to my front door, turned around and went back because there's a set of tracks in the snow.

If I had seen the person come to my front door, that was direct evidence. But the -- but the fact that I didn't see them but there are circumstances there to show that somebody did, that's circumstantial evidence.

The law makes absolutely no distinction between the weight or value to be given either to direct or circumstantial evidence. Nor is it a greater degree of certainty required of circumstantial evidence than that of direct evidence.

You should weigh all of the evidence in this case. And after weighing all of the evidence, if you're not convinced of the defendant's guilt beyond

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a reasonable doubt, you must find him not guilty.

Now, criminal intent is a necessary element of each crime and must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty.

There is no way medical science can dissect a person's brain and determine what he or she had in mind. So the law states criminal intent may be inferred from the circumstances shown to have existed both before and after the fact.

This is how you the jury make a determination of whether or not the element requiring intent was present. Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime.

Criminal intent is a mental state of conscious wrongdoing. So it is up to you, the jury, to determine what the defendant intended to do based on circumstances shown to have existed.

I tell you that the State must prove criminal intent beyond a reasonable doubt just like the State must prove every element beyond a reasonable doubt.

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Now, an issue in this case is the identification of the defendant as the person who committed the crime. The State has the burden of proving identity beyond a reasonable doubt.

You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict the defendant.

Identification testimony is an expression of or belief or impression by a witness. You must determine the accuracy of the identification of the defendant.

You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the defendant at the time of the offense.

This will be effected by things like how long or how short of a time was available, how far or how close the witness was, the lighting conditions, and whether the witness has a chance to see or know the person in the past.

Once again I instruct you that the burden of proof lies upon the State to prove the identity of each -- of the defendant beyond a reasonable doubt.

Okay. The defendant is charged with the crime

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of murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

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

Malice aforethought does not require that malice exist for any particular period of time before the act is committed. But malice must exist in the mind of the defendant just before and at the time of the act as -- that was committed.

Therefore, there must be a combination of previous ill intent and the act. Malice aforethought must be expressed -- may be expressed or inferred. These terms, expressed and inferred, does not mean different kinds of malice but merely the manner in which the malice may be shown to exist, that is either by direct evidence or by the inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished.

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For example, lying in wait for a person or any other act in preparation going on to show that the deed was within the defendant's mind would be expressed malice.

Malice may be inferred from the conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether the instrument has been used as a deadly weapon depends upon the facts and circumstances that existed in this case.

The following are examples of instruments which may be deadly weapons. A pistol, a shotgun, a knife a dirk, a dagger, a rifle, a slingshot, metal knuckles, a razor, gasoline, fire bomb, Molotov cocktail, lighter fluid. A gun may be a deadly weapon even if it is not operating.

Now, the defendant is also charged with possession of a weapon during the commission or attempted -- commit a violent crime.

The State must prove beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm

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during the commission of the violent crime.

A firearm means a machine gun, an automatic rifle, a revolver, a pistol, or any weapon which will or is designed to or may be readily converted to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime.

And I instruct you under our law, the crime of murder is a violent crime in South Carolina.

Now, the defendant has raised the defense of alibi. In order to establish an alibi, it must be shown that the defendant was at another specified place at the time the crime was committed and that it was therefore impossible for the defendant to have been at the scene of the crime.

Mere denial of the presence at the scene of a crime does not constitute an alibi. There is no burden on the defendant to prove an alibi.

The burden is on the State to prove beyond a reasonable doubt that the defendant was actually present at the scene of the crime, actively participated in it, and was not somewhere else.

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In other words, the State has the burden of disproving the defendant's alibi defense.

Now ladies and gentlemen, you are not partisans or advocates for the State of South Carolina. You are not here to reward your friends or punish your enemies. Obviously that system of justice would not be tolerated.

You have been selected by both the State and this defendant to be fair and impartial jurors. It is your duty then through your joint deliberations to determine the true facts in this case.

And once you have made that determination, you apply the law that I am now giving to you and reach a verdict that speaks the truth. And when you have accomplished this responsibility, you will have satisfied your oath as jurors to -- to this court and discharged your duties thereunder.

Now, I'm going to instruct you as to the verdict form. If the State has failed to prove the guilt of the defendant beyond a reasonable doubt, your verdict will be two words, not guilty.

If the State has proved the guilt of the defendant beyond a reasonable doubt, your word -- your verdict will be one word, guilty.

The verdict that you render in this case must be

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the verdict of each and every juror. It must be a unanimous verdict. All 12 of you must agree on the verdict.

And once you do agree on the verdict, that will authorize the foreman to check the appropriate spaces on this verdict form and sign his name and date it.

Now, I have had my Law Clerk type up the verdict form, and it's simply the caption of the case, and it says jury verdict. We the jury unanimously find the defendant, William Gregg, the third, guilty of murder or not guilty of murder.

And number two is, we the jury unanimously find the defendant, William Gregg, the third, guilty of possession of a weapon during a violent crime or not guilty of possession of a weapon during a violent crime.

You will check the appropriate box once you have a verdict, sign your name and date it, and knock on the door, and we will bring you back out and receive your verdict.

I instruct you, if you find the defendant not guilty of number one, which is murder, then you are not to go to number two because he can't be guilty of possession of a weapon during a violent crime unless you find him guilty of a violent crime.

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So you won't go to number two if you find him not guilty. If you find him guilty on the count of murder, then you are to go to number two and determine whether the State has proved beyond a reasonable doubt that he possessed a weapon during the commission of a violent crime, and then make your decision on the second.

You understand that if it's not guilty on murder, then you -- then you're not to go to two. If you find him guilty on murder, then you -- then you're to consider is the second verdict as to whether he's guilty of possession of a weapon during a violent crime.

Now, the law requires me to consult with the attorneys to be sure I haven't left anything out. If I have, I will bring you back out and re-charge you on that.

If I have not, then I will send this verdict form along with the evidence into the jury room. And once you receive the evidence and this verdict form, you're to begin your deliberation.

Now, while you're deliberating this case, if any of you have to be excused, you have to go to the restroom or whatever, then you must stop your deliberations till that person returns. You can only

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talk about this case when all 12 of you are present.

So if somebody needs a break, just stop, come back, resume your deliberations till you reach a verdict. And when you have, knock on the door and we'll bring you back out and receive your verdict.

Now, if you have any questions, you need to write them down on a piece of paper and submit them to the bailiff and he'll bring them to me. I can tell you right now, I can't answer questions of fact.

If you have a question about facts in this case or testimony, I can -- you have heard the testimony. Now, you may hear part of it again, but I can't add anything to the testimony.

Now, I can answer questions of law, but I won't be able to answer questions of fact. And so, you know, if you have a misunderstanding of what the law is or you want to me to read to you some element again, I can do that, but I can't -- I can't answer questions of fact.

So if you'll go to the jury room. I'll discuss it with the attorneys and either I will send the evidence in and that means you can start or I will bring you back out.

Now, my two alternates, y'all need -- everybody looks healthy, right? Y'all are going to make it

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though the day with me? So my two alternates, if you'll stay with me because I won't need y'all to go in the jury room. It looks like everyone in here is going to make it.

(Jury left the courtroom at 4:29 pm.)

THE COURT: Are there any exceptions, additions, or deletions on behalf of the State?

MR. CONNER: I have nothing.

THE COURT: On behalf of the defense?

MR. HART: Nothing from the defense, Your Honor.

THE COURT: All right. Gentlemen, if y'all will get together with the Court Reporter, be sure y'all agree on the evidence that's been introduced, and we'll get that as well as the verdict form to the jury.

(Alternates dismissed.)

(Jury began deliberations at 4:34 pm.)

(Whereupon a recess was held.)

THE COURT: Okay. I understand we have got a verdict. Ladies and gentlemen, I understand that this is an emotional case for both sides, but if you don't think you can control yourself -- nobody knows what that verdict is going to be, but if you don't think you can control yourself when the verdict is read, I need you to leave now. All right. Get us

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the jury.

(Jury entered the courtroom at 6:26 pm.)

VERDICT

THE COURT: Mr. Foreman, I understand y'all have reached a verdict?

FOREMAN: We have, Your Honor.

THE COURT: Is it a unanimous verdict?

FOREMAN: Yes.

THE COURT: All right. If you would pass it up, please sir.

(Bailiff approached the foreman and then approached the Court.)

THE COURT: All right, sir. You may publish the verdict.

BAILIFF: For the State of South Carolina and County of Sumter, in the Court of General Sessions, docket number 2007-GS-43-796, State of South Carolina versus William Gregg, the third, as to count one, we the jury unanimously find the defendant, William Gregg, the third, guilty of murder.

(Whereupon there was an outburst from the audience in the courtroom.)

THE COURT: All right. Y'all got to leave. I told y'all y'all had to be able to control yourself, now. You need to leave.

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BAILIFF: As to count two, we the jury unanimously find the defendant, William Gregg, the third, guilty of possession of a firearm during the commission of or attempt to commit a violent crime. Signed by the foreperson, James L Brock, dated July the 30th of '08.

Ladies and gentlemen of the jury, if this is your verdict, so say ye all by raising your right hand please. Thank you.

THE COURT: All right. Anything from the State before I dismiss the jury?

MR. CONNER: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MR. HART: Yes, Your Honor. We would ask that you poll the jury, Your Honor.

THE COURT: All right. Mr. Bailiff, can you poll the jury for me?

BAILIFF: Yes, sir. Ladies and gentlemen, when your name is called, please stand and answer my questions, please.

Juror number 92, Phleisha Lewis, is this your verdict and still your verdict?

JUROR: Yes, sir.

BAILIFF: Thank you. You may be seated. Robert Braun, is this your verdict and still your verdict?

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JUROR: Yes.

BAILIFF: Thank you. Alexander Friday, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you, sir. Donna Davis, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you. Linda Fowler, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you. David Still, is this your verdict and still your verdict?

JUROR: Yes, it is.

BAILIFF: Thank you, sir. Mary Barbee, is this your verdict and still your verdict?

JUROR: Yes, sir.

BAILIFF: Thank you. Elizabeth Ray, is this your verdict and still your verdict?

JUROR: Yes, sir.

BAILIFF: Thank you. James Brock, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you. Robertha Gibson, is this your verdict and still your verdict?

JUROR: Yes, sir.

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BAILIFF: Thank you. Diane Mitchum -- not Mitchum --

JUROR: Mitchiner.

BAILIFF: -- Mitchiner, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you. Patricia Burrell -- Burrell, is this your verdict and still your verdict?

JUROR: Yes.

BAILIFF: Thank you. Your Honor, the jury has been polled and the verdict stands.

THE COURT: Thank you, sir. Ladies and gentlemen, I want to thank you for serving in this case. The rest of the jury panel has to report back in the morning at 9:30.

Y'all -- I had worked y'all hard this week, so if you don't want to come back, you don't have to. You're welcome to if you want to. They tell me we are going to draw another jury in the morning and start this process over with.

But I have kept you here late tonight. And so if you want to be excused, you don't have to come back. If you enjoyed it and want to come back, then we'd love to have you, and we'll start this process over at 9:30 in the morning.

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I have instructed you throughout this case you can't discuss it with anybody. Now you can talk about it with anybody you want to. You can go home and tell your family about it. You can talk to anybody you want to. You do not have to talk to anybody.

If somebody approaches you and you don't want to talk about it, just simply tell them you don't want to discuss your verdict. But you're free to do what you please about it.

I have enjoyed serving with you this week. If you don't come back tomorrow, if I run into you in the grocery store or somewhere, come up to me and introduce yourself and remind me where we met.

But you have done a good job for the citizens of Sumter County. I appreciate it. You will realize what a great service you did when you get that pay check.

It won't anywhere come close to covering what you did. But if we paid you what you were worth, we couldn't afford the taxes. But any way, you have a nice evening, and thank you.

(Jury left the courtroom at 6:32 pm.)

THE COURT: All right. As far as sentencing, do you want to do that now or in the morning?

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MR. HART: I am at the liberty of the prosecution.

THE COURT: I can do it.

MR. CONNER: I'm ready to go.

THE COURT: Are you ready, Mr. Hart?

MR. HART: Yes, sir, we're ready.

THE COURT: Okay. Keep you from having to come back tomorrow. Solicitor, you have a sentencing sheet?

MR. CONNER: I haven't filled in all the numbers here.

THE COURT: Okay. I can do the bottom part. You can fill the CDR code in. But we can -- I can do that after which we give it to the Clerk's Office. All right. Is there anything else the State wants to tell me?

SENTENCING

MR. CONNER: Your Honor, he does have a prior record for distribution. Let me see if I can... distribution of crack cocaine first offense. That happened here in Sumter County back in 2001. He got a five year sentence.

THE COURT: Okay.

MR. CONNER: He has some old record from New York apparently for -- for narcotics offenses. Says

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narcotics third, convicted upon plea of guilty, two years to six years. Criminal sale of a controlled substance third offense. That was back in '93. And the other -- both of them were in '93.

THE COURT: All right. I need another plea sheet. I just have the one on murder. I have got another crime to deal with.

MR. CONNER: I don't believe I have the sheets. I think they are in the...

THE COURT: Okay.

MR. CONNER: Maybe somebody from the Clerk's Office can walk with him... it's in...

THE COURT: And if it's just the paperwork, I need to give them -- while I'm doing that, anything that you want to tell me?

MR. CONNER: Maybe I better go.

THE COURT: Go ahead. Do you have any problem with them telling me--

MR. CONNER: No, I don't have any problem with it.

THE COURT: All right, sir. Mr. Hart?

MR. HART: Well, Your Honor, we have been in this case for three days. You have heard the record from Mr. Gregg. All the facts have been established in this case, Your Honor.

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He's here with his family. They have traveled all the way from New York to be here with him, Your Honor. He has lived in New York at times. He also has a residence here in Sumter, South Carolina.

The jury has spoken, Your Honor. And as you know, and as I have advised Mr. Gregg, the statute for murder carries at least 30 years all the way up to life.

And Your Honor, with that, Mr. Gregg is now 41 years old. We would respectfully ask that the Court impose a sentence of 30 years. For him at this age, Your Honor, 30 years is a life sentence by my calculation. He'll be approximately 70 years old at that time, Your Honor.

And we ask that you would run the sentence with the possession of a firearm during a violent crime, run that concurrent with that sentence, Your Honor. But we would respectfully ask the Court to impose a sentence of 30 years.

THE COURT: All right, sir. All right. The Sentence of the Court is the defendant is committed to the State Department of Corrections for a term of -- this is on murder, indictment 2007-GS-43-796, sentenced to the State Department of Corrections for a term of 35 years.

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Possession of a weapon during a violent crime, the sentence is five years, and that's to run concurrent.

MR. HART: Thank you, Your Honor.

THE COURT: Good luck to you.

(End of requested transcript of record.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Kathleen Richardson, RPR, CRR, Official Court Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the thirtieth day of July, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 27, 2009



KATHLEEN RICHARDSON, RPR, CRR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER) 2007-GS-43-0796

STATE OF SOUTH CAROLINA,

PLAINTIFF,

VS.

WILLIAM GREGG,

DEFENDANT.

EXCERPT OF
TRANSCRIPT OF RECORD

JULY 29, 2008
SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JUDGE

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

HARRY CONNER, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

CHRISTOPHER HART, ESQUIRE
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID
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(EXCERPT OF TRIAL)

(On the record at 2:18 p.m.)

THE COURT: As far as the witness issue is concerned, I -- my understanding, he was subpoenaed by the State. The State wants to be relieved of that subpoena at this time; is that -- is that correct?

MR. CONNER: That's correct, Your Honor.

THE COURT: Okay. Then -- then I find the State has the right to be relieved from that subpoena. Now obviously, if defense counsel wants to subpoena, you have that option. Right?

MR. HART: Yes, sir.

THE COURT: Okay. But he's released at this point from the State's subpoena. So, the State is under no further obligation from it, and it's up to you however you want to proceed on that.

MR. HART: Yes, sir.

THE COURT: Okay. Anything before we bring the jury in?

(No audible response from either counselor.)

THE COURT: From either side? Anything?

MR. HART: Nothing from us, Your Honor.

THE COURT: All right. Bring us the jury.

MR. CONNER: Nothing from the State.

(The jury enters the courtroom at 2:20 p.m.)

BAILIFF: Your Honor, we have all the jurors and alternate present in the courtroom.

THE COURT: Thank you, sir. Mr. Solicitor, you may call your next witness.

(Sotto voce discussion between Mr. Conner and Mr. Hart.)

MR. CONNER: May it please the Court?

THE COURT: Yes, sir.

MR. CONNER: I understand that the defendant, or the defense counsel, will stipulate that all the evidence that was submitted to the SLED laboratories were taken to the SLED laboratories from the Sumter -- I believe it's the Sumter County Sheriff's Office evidence room by Ms. Cindy Pearson. And there would be no question in regards to the chain of evidence on that.

THE COURT: Is that correct, Mr. Hart?

MR. HART: That's correct, Your Honor.

THE COURT: Okay. The stipulation is in the record and the chain of evidence is stipulated to.

MR. CONNER: And at this time, Your Honor, I'd call Ray Mackessy, with the Sumter County Sheriff's Office.

THE COURT: All right.

RAY MACKESSY, having been first duly sworn and seated, testifies as follows:

DIRECTION EXAMINATION BY MR. CONNER:

Q Would you state your full name and spell your last for

me for the record?

A Raymond A. Mackessy, M-a-c-k-e-s-s-y.

Q Now, Mr. Mackessy, where are you employed?

A Sumter County Sheriff's Office.

Q And how long have you worked with the Sumter County Sheriff?

A Twenty-two and a half years.

Q And before working for the Sumter County Sheriff, did you work for some other police agency in the United States?

A Yes, sir. The Baltimore Police Department for 15 years.

Q And then you came to Sumter?

A Yes, sir.

Q The -- what -- what do you do with the Sumter County Sheriff at this time?

A I am the supervisor of the Crime Scene Investigation Unit.

Q And tell us what that involves.

A The Crime Scene Investigation Unit processes all crime scenes that we are required to do so. That means taking photographs, collecting evidence, conducting other types of forensic analysis if needed.

Q Now, that doesn't mean that you do it all yourself. You rely on other people to do some of it; is that correct?

A Yes, sir. We -- we have -- besides myself, we have

two other people now assigned to that unit. If there was anything out of our capabilities, we would request SLED to come into Sumter with their crime scene unit.

COURT REPORTER: I'm sorry. Would you say that one more time, the last part?

A If we were required to -- if we had something to process that was above our capabilities, we would ask SLED to come in.

Q Now, I want to show you some photographs.

(Mr. Conner looks through photographs.)

MR. CONNER: There's a picture missing here. I think this is it.

(Sotto voce discussion between Mr. Conner and his assistant.)

(Sotto voce discussion between Mr. Conner and Mr. Hart.)

MR. CONNER: Your Honor, we would ask that these two photographs be marked as State's Exhibit No. --

COURT REPORTER: Twenty-two.

MR. CONNER: Twenty-two and 23.

THE COURT: Okay.

COURT REPORTER: For ID or into evidence?

MR. CONNER: Into evidence. I understand there's no objection.

THE COURT: Is that correct?

MR. HART: No objection from the defense, Your Honor.

THE COURT: All right. State's Exhibit 22 and 23 are in without objection.

(State's Exhibits No. 22 and 23, photographs, marked and admitted into evidence.)

Q Now, first of all, Mr. Mackessy, I'm going to show you State's Exhibit No. 5, 6, and 7, as well as State's Exhibit No. 23 and 24, and ask you if you can identify these pictures.

A Yes, sir.

Q And what are they pictures of?

A They're pictures that I took on the 4th of November, 2003, of the victim's vehicle at the evidence processing facility at Public Works.

Q And that was of the victim's vehicle, the vehicle that the guy that was killed was riding in; is that correct?

A Yes, sir.

Q Now, I show you these three photographs and ask you if you can identify them.

A Yes, sir.

Q What are they pictures of?

A These are pictures of the Oldsmobile Cutlass belonging to -- or alleged to be driven by the defendant on the night of the incident. These pictures were taken at the evidence processing facility at Public Works by me.

Q And now -- now, this vehicle that's -- that you're

identifying now, as shown in these pictures, you say -- you believe that to be the defendant's vehicle?

A Yes, sir.

Q And it -- where was it acquired? Where did you -- where did you get it from?

A I went to Garner -- I think it was Garner, North Carolina -- to pick up the vehicle on December 2nd of 2003.

Q And where was it located when you got it?

A It was located at the Garner Police Department impound lot.

Q So it was at a police department impound in Garner, North Carolina?

A Yes, sir.

Q And that's in the vicinity of what city?

A I don't know where Garner is in North Carolina.

Q Well, you went there, didn't you?

A I went to Garner, North Carolina.

Q Okay.

A But now, what part -- I can't remember what part of North Carolina that was.

Q Was it near Raleigh?

A I -- I don't ---

Q You can't say?

A I can't say. I don't remember.

Q Okay. And that -- when was it that you went to

Garner, North Carolina, and got this automobile?

A December 3rd, 2003. I'm sorry, December 2nd of 2003.

MR. CONNER: Your Honor, we would ask permission to publish these photographs at this time.

THE COURT: Okay.

MR. HART: No objections, Your Honor.

(Photographs are shown to the jury.)

Q Now, Mr. Mackessy, first I show you what's labeled State's Exhibit No. 5, and ask you to tell us what we're looking at.

A May I come down from the stand?

Q Yes.

THE COURT: Yes, sir. Just be sure you keep your voice up for the court reporter, please.

A That is a photograph of the victim's vehicle, showing the front passenger area, and particularly the driver's seat.

Q And where is the driver's seat?

A Right here (indicates.)

Q That's the one with blood on it?

A Yes, sir.

Q Now, next I show you State's Exhibit No. 6, and ask you if you could identify that.

A State's Exhibit No. 6 is also inside the victim's vehicle. It shows a trajectory rod, showing bullet

trajectory in the headrest of the front right passenger seat, which is here (indicates.)

Q Show us.

A (Complies.)

Q And those rods were -- were inserted by you?

A Yes, sir.

Q And -- but that's where -- why did you insert the rods there?

A To show the bullet path and -- once it entered the vehicle.

Q And that was on the passenger's headrest; is that correct?

A That's correct.

Q And I show you next State's Exhibit No. 24.

A That is a photograph of the front passenger seat headrest inside the victim's vehicle, with the trajectory rods. The photograph was taken straight-on, instead of at an angle, and it shows the trajectory rod coming in and coming out towards the rear right window.

Q And I show you next State's Exhibit No. 23.

A Again, this is the -- another view of the headrest on the front right passenger seat in the victim's vehicle. This is taken from the window that's broken -- broken out, the right rear window that was shattered by the bullet. It shows the trajectory coming from the driver's window.

And we have two exit points here. I believe that one of these points was a fragment; when it hit something inside, it fragmented, and it came out in two pieces.

Q You mean the bullet fragmented?

A The bullet fragmented and then exited the headrest.

Q So that's why you have two exit holes?

A Yes.

Q How can you tell the difference between what's an exit hole and an entrance hole, Ray?

A Normally, it's -- it's difficult to do, but a lot of times on a -- on an entry hole, you have a much cleaner hole coming in.

From the outside holes, you have where material is being spread out more. The bullet's pushing ahead and -- and spreading that fabric out.

Q So what -- what you're saying is that the entrance was on the front side of the headrest, and the exit was on the -- on this side ---

A On the rear of the headrest and the right side of the headrest.

Q And that -- again, that would have caused the back window to be broken out?

A In my opinion, yes.

Q And I show you next State's Exhibit No. 7.

A State's Exhibit 7 is a Polaroid photograph of the

bullet fragment; it's called "copper jacketing." That is the copper jacketing that surrounds the bullet. That was found in the right rear window frame. That's the window that was broken out. This piece was found in that rubber insulation area of the right rear window frame.

Q Now, if a firearm is discharged, do you normally get these copper fragments that are part -- that are part of the bullet?

A Yes, sir. Once -- once the -- the bullet comes out of the weapon and strikes a surface, this copper jacketing is going to break away. So you'll get -- you'll get pieces and fragments and things of that nature.

Q So the copper jacket would not go several hundred yards. It would just go for a short distance and be found a short distance from the gun?

A It would be as far as the target that it hits. It would be -- it could be contact. It could be several hundred feet away if it hit something. Long as it -- it doesn't hit anything, it's just going to continue. But once it hits, then it's going to fragment.

Q Okay.

A Come apart.

MR. CONNER: Have a seat. Okay. Answer any questions Mr. Hart might have for you.

CROSS-EXAMINATION BY MR. HART:

Q Mr. Mackessy, you did respond to the scene that night, right?

A No, sir. I didn't go to the scene.

Q You didn't go to the scene at all?

A No, sir.

Q Okay. When you do respond to a scene, you would agree that you try to get as much information as possible, when you respond to a scene.

A I -- when I'm processing the scene, I -- I get as much information from the deputies or witnesses that are there as such that -- that -- about what went on so I can determine how I'm going to process it.

Q And you try to gather as much detail as possible; is that correct?

A I try to.

Q Okay. Now, you have reports that you fill out. Like you filled out a report for this -- for this case?

A Yes, sir.

Q You -- you -- it's -- it's best, especially a murder case, to do a report.

A I do a report on every crime scene that I go to.

Q Okay. So you always do a report?

A Yes, sir.

Q Okay. And for a case of this magnitude, you'd agree it's -- it's good to do a report for a case -- a murder

case.
A So far as my job, yes, it is. You're going to have to document it.
Q You're familiar with DNA evidence, right?
A Yes, sir.
Q DNA evidence is -- that is a great way to identify a suspect; would you agree?
A Yes, sir. It's not as good as fingerprints, but it's -- it's a reliable one.
Q It's very reliable, and a matter of fact, it's a good way and a reliable way to connect a person to a crime. You would agree?
A Yes, sir.
Q Okay. So far in this case as we speak today, there is no DNA evidence linking William Gregg to this crime, is it?
A No, sir.
Q No blood?
A No, sir.
Q No hair?
A No DNA evidence.
Q No DNA evidence, nothing.
A That I'm aware of, no.
Q Okay. Now, you mentioned about fingerprints. You've had extensive experience in taking fingerprints, right?
A Yes, sir.

Q Each person in this particular room here has their own very identical or, I guess, specific fingerprints.
A Yes, sir.
Q Yours are not like mine.
A Correct.
Q Mine are not like yours.
A Right.
Q William Gregg's is not like yours.
A Right.
Q You have no fingerprint evidence linking William Gregg to this crime at all.
A No, sir.
Q Okay. You agree that when a suspect flees a case, or flees a -- a crime scene, a great way to track that suspect is through K-9 dogs; is that correct?
A Well, that's not my expertise, but K-9 dogs are used on occasion when a -- a person escapes on foot.
Q Okay. No K-9 dogs ever tracked William Gregg's scent, to your knowledge.
A To my knowledge, I wasn't at the scene.
Q Okay. You have experience in tire tracks, maybe taking photographs of tire tracks?
A Taken photographs of them, yes.
Q You have experience in taking the cast of the -- the dirt?

A Yes, sir.
Q Okay. You've had a chance to look at -- let me show you what has been marked as State's Exhibit No. 8 and then State's Exhibit No. 9 and State's Exhibit No. 10. That is -- and also let me show you State's -- well, this is Defendant's Exhibit No. 1. We're going to come back to No. 1; hold onto that one.
But the -- the three photographs I just gave you, that's the white car that you processed, right?
A Yes, sir.
Q Now, that car has tires on it, correct?
A Yes, sir.
Q And do you have any knowledge of where this crime took place?
A I did from the incident report as to where it took place.
Q You're familiar that this crime took place on a dirt road?
A I wasn't aware of the dirt road. I -- I knew of the address looking on the incident report.
Q So you -- you're the crime scene investigator; you never been out to the scene at all?
A I've been out to that area many times, but I -- I didn't know the particular exact location of where it occurred. I knew the general location.

Q And I understand that you've been out there several times, but let's talk specifically for this particular case here. Have you ever gone out to the scene to take a look at the scene, how it looks?

A No, sir.

Q Never been out there?

A No, sir.

Q You spell your name M-a-c-k ...

A ... e-s-s-y.

Q ... e-s-s-y. And you are the crime scene investigator, correct?

A Yes, sir.

Q And it's your job to go and collect evidence, correct?

A Yes, sir.

Q I want you to look at this and tell me is that a fair and accurate -- is it fair to say that in this case, you had never been to the crime scene?

A No, sir. It was already processed then.

COURT REPORTER: I'm sorry. I'm sorry. You need to -- --

A Well, no. It was already processed. I didn't go to the crime scene -- as far as I knew.

Q So even after, later on -- well, I just -- is it fair to say that you've never been to the crime scene?

A I've never been to the crime scene.

Q Okay. All right. We were looking at those tire tracks. Matter of fact, let me show you what has -- what has been marked as State's Exhibit No. 20. Have you had a chance to look at the tires on that white car that you processed? Did you ever analyze the tires?

A No, sir. I wasn't requested to, and I wasn't aware of these photographs at the time I went out there. But looking at this photograph, I would -- I would see no distinguishing marks within that tread design there within that tread.

Q But you said -- so this is the first time you've ever seen this photograph?

A Yes, sir.

Q Okay. So is it fair to say that you've never seen this picture right here? It's fair to say?

A I'm seeing it for the first time today.

Q I want you to look at that and tell me if that's accurate. You have never seen the picture of the tire markings on State Exhibit No. 20. Is that fair and accurate?

A Yes, sir.

Q Okay. Okay. And you are the person processing the evidence in this case, correct?

A Processing these two vehicles. I didn't do the scene.

Q I understand that, but -- okay. Well, let me ask you,

is there another crime scene investigator for this case?

A Yes, sir. Captain Turner was -- was my backup during this time period.

Q Who's Captain Turner?

A Captain Turner seated at the table there (indicates.)

Q This is Captain Turner?

A Yes, sir.

Q So for this case, he's responsible for processing evidence, correct?

A He's responsible for going to the crime scene and processing the crime scene on this particular case.

Q Okay. That's fine. Well, I guess what I'm trying to get at is who's all responsible for processing and analyzing the evidence for this case? Give me the names.

A That would be Captain Turner and myself.

Q Just the two of you.

A Just the two of us.

Q Okay. So Captain Turner never showed you this picture?

A I've never seen that photograph until today.

Q Okay. You would agree that this is an important part of this case?

A It -- it could be, if that was the defendant's vehicle.

Q Okay. Do you have an analysis where you looked at --

looked at the -- the tires on this car? Did you ever analyze the tires on this car?

A No, sir.

Q In the -- all the pictures are the same, so we're just going to say State's Exhibit No. -- that's the car, right?

A Yes, sir.

Q State's Exhibit No. 10.

A Yes, sir.

Q That's the white car. And you never analyzed the tires on this -- on this car, correct?

A There was nothing to compare it to, so that's why I didn't analyze it.

Q You just never received anything.

A Never received anything to match up to this tire.

Q No one ever requested that of you?

A No, sir.

Q Okay. Let's look at -- I'm going to show you what's been marked as Defendant's Exhibit No. 1. Take a look at that.

A Yes, sir.

Q You recognize that photograph?

A Yes, sir. I took that photograph.

Q Now, in that picture, there are no fancy rims on that car, is it?

A Hard to tell, but it doesn't appear to be from what I

can see.

Q Well, you -- you've seen these guys with the ---

A Spinning wheels.

Q --- spinning wheels and the real shiny wheels on the car. And when you ride by, they stand out.

A Yes, sir.

Q They catch a lot of attention.

A Yes, sir.

Q On this particular car in that picture, you don't see any fancy wheels or shiny wheels on that car.

A There'd be nothing that I could see would stand out.

Q Nothing that ---

A Not like spinners and some of these other ---

Q Right.

A --- things we said.

Q Doesn't have a fancy paint job on that car.

A No, sir.

Q Okay. Just looks like a regular old white car.

A Yeah.

Q Except for it has some damage on it, right?

A Yes, sir.

Q In fact, that damage is -- in that picture, that damage is quite noticeable. Wouldn't you agree?

A Yes, sir. I don't know when it was put there, but that's noticeable damage to me.

Q When you analyzed the car, the damage was there.

A Yes, sir.

Q Okay. And the damage was to the right --

MR. CONNER: Your Honor, he's publishing this thing to the jury, and he's never admitted it into evidence. It's marked for identification, I believe.

THE COURT: What number is that?

MR. HART: I -- I'll step back, Your Honor. He could be right. This is Defendant's Exhibit No. 1. I thought it was a -- a State Exhibit.

THE COURT: Okay.

MR. HART: At this time, Your Honor, I ask that it be published to -- moved into evidence.

THE COURT: What says the State?

MR. CONNER: I have no objection to it.

THE COURT: Okay. Then Defense Exhibit 1 is in evidence without objection.

(Defense Exhibit No. 1, photograph of vehicle, admitted into evidence.)

Q Okay. All right. Showing you Defendant Exhibit No. 1. You -- you had a chance to look at this, right?

A Yes, sir.

Q This white car has noticeable damage to the right front bumper; is that right? Do you see it?

A Yes, sir.

Q Okay. Now, to your knowledge, no one has identified a white car with damage to the right front bumper. You hadn't received that information of that, have you?

A No, sir. I haven't. No, sir.

Q Now, how long have you been doing crime scene investigation?

A Probably about -- about 21 years.

Q About 21 years.

A I would say about 21 years.

Q You've seen where guys commit crimes and try to conceal the car. This -- sometimes they try to burn the car up, right?

A Yes, sir.

Q This car wasn't burned up when you found it, was it?

A No, sir.

Q Didn't look like -- no new paint job on the car.

A No, sir.

Q Okay. Now, do you have your report before you?

A Yes, sir.

Q You got listed -- pick number -- picture number seven.

A Is that of the defendant's vehicle? I haven't --

Q The white -- the white car. Picture number seven.

A Yes, sir.

Q Now, picture number seven are pictures of items in the trunk of that car; is that correct?

A That's correct.
Q Okay. When you opened the trunk, the items -- they were not concealed, were they?
A They were just laying there, to my best -- I don't -- I have a photograph and I don't see it. But to my recollection, they were just -- like you would see normal items in a trunk --
Q Just scattered ---
A -- scattered about.
Q Just scattered about.
If I show you a copy, would you agree that that's picture number seven? That's a fair representation of the picture you took?
A Well, without seeing the original, I -- if I could see the original, I could tell you.
(Sotto voce discussion between Mr. Hart and the court reporter.)
(Marked Defendant's Exhibit No. 3, photograph, for identification.)
Q This is -- I'm showing you what's been marked as Defendant's Exhibit No. 3. That's the picture of the trunk, correct? Of the white car?
A Yes, sir.
Q And there are items in the car?
A Yes, sir.

Q Those items aren't concealed?
A No, sir.
Q They're just laying out in the car.
A That's correct.
MR. HART: Your Honor, we ask that this be moved into evidence at this time.
THE COURT: What says the State?
MR. CONNER: I have no objection, Your Honor.
THE COURT: Okay. Defendant's Exhibit No. 3 is entered without objection.
(Defendant's Exhibit No. 3, photograph, admitted into evidence.)
Q Now, when you surveyed that car -- processed that car -- you didn't find a gun in the trunk, did you?
A No, sir.
Q You didn't find any evidence linking William Gregg to this crime at all?
A No, sir.
Q Okay. Now, go to your report and picture number 10 -- that you have listed as picture number 10.
A Yes, sir.
Q That's the front seat area, right?
A That's correct.
Q It didn't look like the front seat area had been vacuumed out, did it? From the -- from the picture?

A I don't have the picture ---
Q You don't have the picture ---
A --- in front of me. This is five years ago, Mr. Hart.
Q It's hard to remember stuff from five years ago, especially when you don't take notes, right?
Show you what's been marked as Defendant's Exhibit No. 4.
MR. HART: Your Honor, we ask that this be published -- moved into evidence.
THE COURT: What says the Defense -- I mean, State?
MR. CONNER: I have no objection to any pictures that Mr. Mackessy's taken, Your Honor.
THE COURT: Okay. Then Defense Exhibit No. 4 is in without objection.
(Defense Exhibit No. 4, photograph, admitted into evidence.)
MR. HART: And Defense Exhibit No. 5.
THE COURT: And No. 5 is what?
MR. MACKESSY: No. 5 is the rear seating area in defendant's vehicle.
Q Now, that front seat area, it doesn't look like it's been cleaned out at all, has it?
A At the time I saw the vehicle, no. I mean it ---
Q Okay.
A --- was still dirty on the floor.

Q Didn't look like it'd been vacuumed at all.
A No, sir.
Q You didn't find anything in that front seat area linking William Gregg to this crime, did you?
A No, sir.
Q Okay. Look at the second picture; that's the backseat area.
A Yes, sir.
Q In that backseat area -- you didn't -- it doesn't look -- you still see items, personal belongings in the backseat, correct?
A Correct.
Q Didn't look like they were concealed.
A No, sir.
Q Didn't look like somebody was hiding something.
A No, sir.
Q No evidence linking William Gregg to ths crime in the backseat, correct?
A Correct.

(Defense Exhibit No. 5, photograph, admitted into evidence without objection.)

MR. HART: No further questions, Your Honor.

THE COURT: Okay. Any further questions from the State?

MR. CONNER: I have no further questions of him, Your

Honor. I'd ask that he come down, and that he also be excused, if ---

THE COURT: Okay.

MR. CONNER: --- possible.

THE COURT: Any objection to him being excused?

MR. HART: No objections, Your Honor.

THE COURT: All right.

MR. CONNER: Your Honor, at this time, I'm going to call Dustin Smith.

THE COURT: All right. You can come around, Mr. Smith. Place your left hand on that Bible and raise your right.

DUSTIN SMITH, being first duly sworn, testified as follows:

CLERK OF COURT: State your full name and spell your last name for the record.

MR. SMITH: My name is Dustin Wilson Smith, S-m-i-t-h.

COURT REPORTER: Would you spell your first name for me, please, too?

MR. SMITH: D-u-s-t-i-n.

DIRECT EXAMINATION BY MR. CONNER:

Q Mr. Smith, where are you employed?

A I work for the South Carolina Law Enforcement Division.

Q What do you do at the South Carolina Enforcement

Division?

A I am the team leader in -- in -- over death investigation in the toxicology department.

Q And how long have you been working for SLED?

A Approximately 10 years.

Q And what kind of education do you have?

A I have a Bachelor's of Science and Biology with a minor in chemistry from the College of Charleston.

Q And did you have any kind of on-the-job training when you came to SLED?

A I -- we have had extensive blood alcohol and drug training in regards to testing, and pharmacology of alcohol and drugs. The training lasted approximately one year, at which time we were given competency tests in both blood alcohol analysis and interpretation, and drug analysis and interpretation. And we were given both a -- I'm sorry -- a competency test over all of the toxicology, as well as taking regular proficiency tests, which I passed all of.

MR. HART: Your Honor, we'll stipulate to his qualifications.

THE COURT: Okay.

MR. CONNER: Your Honor, we'd have him declared, then, an expert in the area of toxicology.

MR. HART: No objections, Your Honor.

THE COURT: Okay. Then I declare he is an expert in

the field of toxicology.

DIRECT EXAMINATION BY MR. CONNER:

Q Now, Dustin, did you receive blood samples from the Sumter County Sheriff's Office in regards to the case we are trying here? The -- the victim's name was Kevin Franklin, and the samples were submitted, I believe, in November of 2003.

A Yes. I did receive blood, as well as several other biological specimens in this particular case.

Q What other kind of body fluids did you receive?

A I received two grey-top and one container of blood, one container of urine, one container of gastric, one red-top tube of bile, one red-top tube of ocular, and a sample of brain and liver.

Q And did you -- starting with the blood, did you conduct any testing for ethanol or drinking alcohol, in other words?

A Yes, sir, I did. I actually tested the blood and urine and ocular for ethanol and -- as well as acetol, isopropanol, and methanol. And all three of the blood, urine, and ocular were all negative for all the volatiles we tested for.

Q And this was the blood from the victim, the guy that was killed; is that correct?

A That's correct; from Kevin Franklin.

Q And did you also do other tests on the -- on the blood?

A Yes, I did. Typically, for a case of this type, a homicide where additional drugs are suspected, we run a panel of drug screens.

In 2003, that panel consisted of barbiturates, which includes migraine and anti-seizure medications; benzodiazepines, which includes common drugs such as Valium and Xanax; cocaine and cocaine metabolite; opiates, which includes drugs such as morphine, hydrocodone, oxycodone; as well as cannabinoids, which are the primary constituents of marijuana.

Q And so he was -- he was negative for ethanol?

A That's correct.

Q He -- how about barbiturates or barbiturates?

A It was negative for those.

Q And how about cocaine? And cocaine metabolites?

A It was negative for those as well.

Q And opiates?

A It was negative for the class of opiates.

Q And -- and opiates, would that include heroine?

A It would. Heroine is very quickly metabolized by the body into morphine. And this screen screens specifically for morphine. So yes, this screen -- this negative screen would include heroine. He screened negative for heroine.

Q So he was negative for all of these drugs and negative for alcohol?

A That's correct.

Q Now, how about THC?

A He did screen positive for cannabinoids. And again, those are the primary constituents of marijuana. And the -- the drugs that we look for -- we actually look for tetrahydrocannabinol, better known as THC, and its -- and its metabolites: hydroxytetrahydrocannabinol, and carboxytetrahydrocannabinol.

I did find some of the carboxytetrahydrocannabinol, 9.8 micrograms per liter. And I guess I should explain the process of -- of -- of metabolism and -- and how we would get to this carboxytetrahydrocannabinol.

The primary drug in marijuana is THC, or tetrahydrocannabinol. As soon as you ingest that drug or any other drug into your body, your body wants to change that drug or metabolize it into a form that it can more regularly or easily dispose of, so it can get back -- your body can get back to its -- its normal way of being to your homeostasis.

So tetrahydrocannabinol is very quickly metabolized into hydroxytetrahydrocannabinol, and then from there very quickly metabolized into carboxytetrahydrocannabinol, which can stay in your system for some time.

So, I found 9.8 micrograms per liter of carboxytetrahydrocannabinol, which is the end product metabolite; which is the state where your body then can more easily remove it from your system.

Q And what would that tell us about the effect on the person?

A Okay. Well, the fact that we did not find any of the parent -- what we call "parent tetrahydrocannabinol" -- which is the actual drug that we're concerned with in marijuana -- that indicates that it had been at least three hours -- three to six hours since the individual actually ingested the marijuana. And the fact that we don't see any of the parent marijuana -- or parent tetrahydrocannabinol in the blood, indicates that they were not still under the effect of the drug, at least at the time of death.

So this amount of tetrahydrocannabinol, depending on the frequency of use and the dosage taken, could actually be in the blood for -- for some time -- up to 24 to 36 hours -- again depending on dose and on the frequency of use. So the fact that we have 9.8 micrograms per liter of tetrahydrocannabinol -- the carboxytetrahydrocannabinol -- which, again, is the end product metabolite -- just indicates that they had been exposed -- they had used marijuana sometime in the previous day to day and a half, but were not under the direct effect of the drug at the

time of death.

MR. CONNER: Answer any questions the defense lawyer might have for you.

MR. SMITH: All right.

CROSS-EXAMINATION BY MR. HART:

Q I just have a few questions. You -- you did say that it's possible that it could have been within three to six hours. That is a possibility.

A No. I said it's not possible.

Q Oh. You said it's not possible.

A Right. Because if -- if it had been within three to six hours, we would have seen the parent tetrahydrocannabinol. Because like I said, in the whole metabolism process, the tetrahydrocannabinol is metabolized very quickly. Within half an hour or so, it starts to metabolize into the hydroxytetrahydrocannabinol, and then on into the carboxytetrahydrocannabinol, which is what I found.

So, the fact that I didn't see any of the parent tetrahydrocannabinol indicates to me that it had been three to six hours since the exposure to the drug.

Q Okay. Let me ask you: If someone had smoked or ingested marijuana within those three to six hours, you're familiar with the effects it has on the body, right?

A Yes, sir.

Q And you would agree that it would -- or it possibly could -- affect your ability to see?

A It can affect your ability to see. Marijuana has a unique ability to cause difficulty in -- in time -- in your -- in your perception of time and space. You have a difficult time keeping track of time, and also you have a difficult time measuring distances. So it certainly can have some effect on your vision.

MR. HART: No further questions, Your Honor.

RE-DIRECT EXAMINATION BY MR. CONNER:

Q But your conclusion in this case is he wouldn't have been under the influence of it to the point that it would have affected his physical abilities; is that correct?

A My conclusion is that he was not under the effect of it at the time of death. That's correct.

Q Thank you..

THE COURT: Thank you, sir. You may step down.

MR. CONNER: I'm going to call Ms. Simmons, Ila Simmons, at this time.

(Sotto voce discussion between counsel.)

MR. CONNER: Yes. We -- we'd like to have Mr. Smith released, Your Honor.

THE COURT: Any objections?

MR. HART: No objections, Your Honor.

ILA SIMMONS, being first duly

sworn, testified as follows:

CLERK OF COURT: Please state and spell your full name for the record, please.

MS. SIMMONS: Full name is Ila Simmons. My first name is spelled I-l-a. My last name is spelled S-i-m-m-o-n-s.

DIRECT EXAMINATION BY MR. CONNER:

Q Ms. Simmons, where do you work?

A I work at the South Carolina Law Enforcement Division, also known as "SLED."

Q And what's your job there?

A I work in the forensics laboratory, trace evidence department.

Q And what -- what does the trace evidence department do?

A We encompass several areas of forensics. We perform gunshot residue analysis, gunpowder analysis; we perform glass comparisons, fiber comparisons, paint comparisons. And we also analyze arson residues and explosives.

Q And in this case, did you receive some gunshot residue kits from the Sumter County Sheriff's Office?

A Yes. I received one.

Q Now, tell us about your education.

A I have a Bachelor of Science degree in chemistry. After completing my Bachelor's of Science degree, I went to work at SLED, where I underwent an in-house training

program that took three years to complete.

During that in-house training, I worked with a qualified, court-certified trace evidence examiner, who taught me how to collect trace evidence, process trace evidence, analyze the evidence using the instrumentation we have in the laboratory.

I took written, oral, and practical examinations and passed them all in all these different areas.

Q And how long have you been doing this kind of work?

A Almost nine years.

Q And have you testified ---

MR. HART: We stipulate, Your Honor.

THE COURT: Finish the stipulation that -- of her educational background, as well as she's an expert in the field of trace evidence.

MR. HART: No objection, Your Honor.

THE COURT: Fine.

MR. CONNER: Thank you.

DIRECT EXAMINATION BY MR. CONNER:

Q Now, I show you State's Exhibit No. 14. I think I've got some scissors here if you need them.

A Thank you. I may be able to get it open without scissors; I'm not sure. Yes, sir.

Q Is that the gunshot residue kit you received?

A Yes, sir, it is. It is marked with our laboratory

identification number that all cases get when they come into the laboratory. Also, item number, every piece of evidence that's brought in is given its own item number, as well as my initials, and the date that the kit was opened to be processed.

Q And the kit, I believe, was taken from the -- the testimony's been that it was taken from the defendant at the autopsy on his hands.

A It was taken from -- it's labeled as being taken from Kevin Franklin at autopsy. Yes, sir.

Q And what was the results of your test work?

A A standard gunshot residue kit is taken from the hands of someone who is expected of having fired a weapon or been in the vicinity of a weapon when it's fired.

A sample is taken from the right palm; a sample's taken from the back of the right hand; a sample's taken from the left palm and the back of the left hand. These are four separate samples.

We did not find the metals that are associated with gunshot residue on the right palm. We didn't find them on the back of the right hand, or on the back of the left hand. However, on the left palm, we found metals that can be associated with gunshot residue present.

Q And that means that his hand was in the presence of gun -- gunshot -- a gunshot ---

A That ---

Q --- close enough to the gun that it would have collected some of the material.

A Yes, sir. That is one possibility. Another possibility, when it is just found on the palm of the hand, it can be associated with having touched something that had gunshot residue on it. Like if someone were to handle a weapon -- not fire a weapon, but just handle the weapon and get the gunshot residue on their palm.

Q Now, if this gunshot residue -- is it easily removed, or what --

A Yes, sir. Gunshot residue is easily removed. It has a consistency of flour or salt, so if you get it on your hands and you wash your hands, you're going to remove the gunshot residue. If you begin to sweat, or if you get blood on your hands, or handle something with condensation on it and moisture, it would be removed from your hands.

Q And could other people -- like emergency medical people or -- or medical people at the hospital, just in handling the person, accidentally remove some of the materials?

A Yes, sir. If someone were to make contact with the areas that had gunshot residue on them, it can be removed in that way.

Q But in any event, we can conclude that his left hand,

in some manner, was exposed to gunshot residue?

A Yes, sir. The metals that make up gunshot residue, yes.

Q Now, did you also have an opportunity to examine this hat, which is marked as -- we got so many numbers on here -- State's Exhibit No. 15? At this time, did you examine that hat?

A Yes, sir. It is also marked with my initials, the laboratory number, the item number, and the date that it was analyzed.

Q Okay. And what was your conclusion in regard to gunshot residue on the hat?

A There was a hole present in the hat, and what I was requested to do was see if it was consistent with a hole can be caused by a lead projectile coming from a gun or a bullet. So, I tested the area around this hole for the presence of lead -- which is what many bullets are composed of -- and I did not find lead around that hole. So, I could not definitively say that it came from a bullet or lead projectile.

Q Okay. Would a copper-jacketed bullet leave any residue on the hat?

A If a bullet has a copper jacket over it -- which means it conceals the lead portion of the bullet -- then there would be no lead white on the hat, therefore it would not

have tested positive in -- in this test, it wouldn't -- I would not have been able to detect the lead, if there were lead present.

Q Now, if -- if the -- if the person wearing the hat were 4/5/6 feet away from the gun, would any gunshot residue be on the hat?

A No, sir. It should not have gone that -- gunshot residue should not have traveled that far.

Q So gunshot residue doesn't travel very far?

A No, sir. With most handguns, which are smaller guns that aren't rifles, it usually only goes about five feet with the largest caliber handgun.

Q But what you were looking for specifically on the hat was some indication of lead having hit the hat?

A Yes, sir.

MR. CONNER: I have nothing further.

THE COURT: Any questions?

MR. HART: Yes, Your Honor.

CROSS-EXAMINATION BY MR. HART:

Q I just have just a few questions for you, Ms. Simmons. You -- you have your report in front of you?

A Yes, sir. I do.

Q You do? Okay. What's the date that this crime happened that you have listed?

A I have an incident date listed as 11/1 of 2003.

Q Tell me that again.
A I have the incident date that's listed on our paperwork as November 1st of 2003.
Q What's the date you processed the evidence?
A The date that I processed the GSR kit?
Q Yes, ma'am.
A Okay. That would be 8/27 of 2007.
Q August --
A Twenty-seventh of 2007.
Q So you agree between November 1st and 2007, that's four years.
A Yes, sir, approximately.
Q Tell us when you received the evidence in this case.
A Okay. I received the gunshot residue kit on August 23rd of 2007.
Q So, the incident happened November 1st, 2003, and you received it August 23rd, 2007. So, the date you received it is also four years.
A Yes, sir.
Q Now, if you would have received the evidence, let's say, a week or a month after the incident, you'd have processed it, right?
A Yes, sir.
Q But you didn't have anything to process in 2003?
A No, sir. Nothing was sent in at that time for me to

process.

Q And you didn't have anything to process in 2004?

A No, sir.

Q 2005?

A No, sir.

Q 2006?

A No, sir.

Q You didn't receive the evidence from the sheriff's department in Sumter until four years later?

A That's correct.

MR. HART: No further questions, Your Honor.

THE COURT: Anything further from the State?

(Sotto voce discussion between Mr. Conner and Capt. Turner.)

MR. CONNER: Just one minute, please.

THE COURT: Yes, sir.

MR. CONNER: I have nothing further relevant, Your Honor.

THE COURT: Okay. Any reason she can't be excused?

MR. CONNER: I would ask that she be excused.

MR. HART: No objections from Defense, Your Honor.

THE COURT: Let's -- all right. We'll take 10 or 15 minutes, I hope. But I remind you, don't discuss this case yet. And I may get you out in 10 or 15 minutes, and it may be an hour. I don't know. But I'm going to try to do it

in 10 or 15 minutes.

(Jury exits the courtroom at 3:23 p.m.)

THE COURT: All right. We'll take about 10 minutes.

(Off the record at 3:23 p.m.)

(On the record at 3:42 p.m.)

THE COURT: All right. Anything before we bring the jury in?

MR. CONNER: Nothing, Your Honor.

THE COURT: Okay.

MR. HART: Nothing for the Defense, Your Honor.

THE COURT: All right. If you'll get us the jury, please, sir.

(The jury enters the courtroom at 3:43 p.m.)

BAILIFF: Your Honor, we have all the jurors present in the courtroom.

THE COURT: Thank you, sir.

Mr. Solicitor, you may call your next witness.

MR. CONNER: I call Dr. Janice Ross, Your Honor.

DR. JANICE ROSS, being first duly sworn, testifies as follows:

CLERK OF COURT: Please state and spell your full name for the record, please.

DR. ROSS: Janice Edwards Ross. Janice, J-a-n-i-c-e; Edwards, E-d-w-a-r-d-s; Ross, R-o-s-s.

DIRECT EXAMINATION BY MR. CONNER:

Q Dr. Ross, where do you work?

A In Newberry, South Carolina, for Newberry Pathology Associates.

Q And what do y'all do there?

A We do hospital pathology and -- and we also do autopsies for coroners -- do forensic autopsies.

Q And how long have you been doing this kind of work?

A About 32 years.

Q And tell us something about your educational background.

A I got a bachelor's degree from the University of South Carolina, and my M.D. from Upstate Medical Center in Syracuse, New York. I then did training in pathology, which is the study of disease.

A pathologist looks at tissue that comes out of you from surgery, and also blood work to identify tumors or infections, that kind of thing. We also learn how to do an autopsy.

And in forensic pathology, we use our medical knowledge on legal matters, such as homicides, suicides, accidents, rapes, with those things pertinent to the legal realm.

Q And have -- have you testified in South Carolina courts before?

A Yes.

Q Concerning matters of forensic pathology?

A Yes.

MR. CONNER: Your Honor, we would submit she's a qualified forensic pathologist, and would ask that she be recognized as such.

THE COURT: What says the --

MR. HART: No objections from the Defense, Your Honor.

THE COURT: The Court so finds she's an expert in the field of forensic pathology.

Q Now, back on November the 2nd, 2003, did the Sumter County authorities bring the body of Kevin Franklin to you for examination?

A Yes.

Q Could you tell us about what you observed about it when you got him?

A Yes. We had found that he had one sleeve of a t-shirt and another shirt on him, but the rest of the clothes had been taken off of him.

Externally, we do a thorough examination. We found there were two bullet wounds in the head and one wound in the left hand. No other injuries.

Q Okay. And tell us -- tell us about the wounds. What did you observe about them?

A The wounds went through the left hand and it matched the fact that the bullet twisted a little bit and then re-

entered this --, the left forehead, and -- because the left forehead wound -- entrance wound -- was a little bit -- it wasn't perfectly round like an entrance hole usually is.

There was a second wound that -- that went into, actually, the tip of his nose backwards.

Q And did you notice anything around these various different wounds?

A It's what we call "stippling." I think when a -- when a bullet comes out of the gun, there's also some burning powder that will hit the skin if it's close enough, and leave little marks of -- burning marks. They're called "stippling."

Q And where did you find this stippling in regards to the hand?

A On the back of the hand.

Q The back of the left hand?

A Yes.

Q And was there any on the side of his head, where you say you -- you believe the bullet re-entered the head?

A Some, slightly. Yes.

Q And ---

A And there was some around the wound that went through the nose.

Q And do -- do you have any opinion as to how close the gun barrel might have to be for this stippling to be left

on the body?

A It's going to depend on the gun, the length of the barrel, the type of the ammunition, several factors; but it would be within a few inches.

Q So it would be a -- a close-range gunshot?

A Yes.

Q And what -- what caused his death then?

A These two bullets both went through the brain, and they were found inside the -- the brain tissue. It lacerates the brain and causes unconsciousness and then death within a few minutes.

Q Okay. Now, did you give to this officer here, James Turner, certain samples that you took there at autopsy?

A Yes. He signed for the clothing. He also signed for all the toxicology, all the -- the blood and the samples that we took for toxicology. He signed for the gunshot residue kit and for the bullets themselves, bullet fragments.

Q Tell us about the gunshot residue kit. What is that for and what do you do to do that test?

A We swab the hands, front and back, and -- to sample for evidence of a metal that comes out with the smoke or the bullet.

Q In doing the autopsy, do you examine just the gunshot wounds, or do you examine the whole body?

A We examine the whole body and the internal organs individually to see if there's any natural diseases or other infections or something going on in the body.

Q And did you find anything else that would have caused his death, other than these gunshot wounds?

A His heart was slightly enlarged, but that's not necessarily the cause of death. No.

MR. CONNER: Answer any questions the defense lawyer might have for you, please, ma'am.

MR. HART: Your Honor, we have no questions for this witness.

THE COURT: Okay. Any objection to the doctor being excused?

MR. CONNER: We would ask that she be excused.

THE COURT: Any problems?

MR. HART: No objections from the Defense, Your Honor.

MR. CONNER: Your Honor -- Your Honor, at this time, we would call Kenneth Whitler.

THE COURT: Okay.

KENNETH WHITLER, being first duly sworn, testified as follows:

CLERK OF COURT: Please state your name fully for the record, please.

MR. WHITLER: My name is Kenneth H. Whitler, and that's spelled W-h-i-t-l-e-r.

DIRECT EXAMINATION BY MR. CONNER:

Q Okay. Mr. Whitler, where you -- where are you employed?

A I am employed by the South Carolina Law Enforcement Division, that's also known as "SLED." I'm in the forensics services division in the firearms department.

Q And how long have you been working for SLED?

A Since 1997.

Q And prior to joining SLED, what kind of work did you do?

A Prior to that, I was with the FBI for 22 years. I retired in '97 and came to work for SLED at that time.

Q And what kind of work did you do for the FBI?

A I did several things. I was a field agent, also a firearms instructor. Then the last -- from 1990 until '97, I was a firearms tool-mark examiner in the laboratory division.

Q So those last years, you were doing somewhat similar work.

A Yes, sir. I'm doing exactly the same thing for SLED as I did ---

Q Did with the FBI.

A --- with the FBI.

Q Now, after you went to work with SLED, did you get any particular training or were you already trained?

A I underwent the training period, a course for -- was trained in the FBI laboratory. There's no school you go to to get a degree in firearms identification. You have to learn it from other qualified examiners.

And it's -- and the FBI is approximately a two-year training period where you shoot a lot of guns, test bullets and cartridge cases, and do studying. And you work with the trained examiners on real cases until after approximately two years, or when they feel that you have learned sufficiently, then they give you a series of three tests.

I successfully completed those tests and I was certified by the FBI laboratory to be a firearms examiner for their laboratory division.

Q And have you testified in -- in State courts, and perhaps even Federal courts, in regards to firearms matters?

A I've testified in approximately 200 State, Federal and Territorial Courts since 1991.

MR. CONNER: Your Honor, we would submit that he's a qualified firearms examiner.

MR. HART: No objections, Your Honor.

THE COURT: Okay. Find that he's an expert firearms examiner.

DIRECT EXAMINATION BY MR. CONNER:

Q Now, I show you, first of all, State's Exhibit No. 11. I've got a pair of scissors, if you like.

Okay. Did you receive that -- that package of those items?

A Yes, I did.

Q And was it indicated that -- that they were a fired bullet and jacket fragments from the victim's body?

A I just got that they were fired bullet jackets and lead fragments and a bullet jacket and a lead bullet core.

Q Okay. And did -- did you examine them?

A Yes, I did.

Q And tell us about the examination procedure. Do you -- do you just use your naked eye or do you use any kind of tools or how do you do that?

A Well, most of the work is done with microscopes. The actual comparisons has to be done with a microscope, because what we are doing is looking for the microscopic marks on each item to see if they match up with the other items.

In this case, they had -- there was no firearm submitted. So, what I had was to compare the bullet jacket fragments, which had rifling impressions on them. And the rifling impressions are put on the bullet jacket as the bullet goes down the barrel. And I compared those bullet jacket fragments with each other to see if they had the

same marks on them.

One of the containers -- they came in two plastic containers. One container had two bullet jacket fragments -- one which was a large fragment, one which was a very tiny fragment -- and they also had five lead fragments with them.

Now, the lead fragments are -- come usually from the bullet core. The bullet -- ejected bullet has a lead bullet core, and it's covered with a copper jacket. Now, as the bullet goes down the barrel, it's the copper jacket that gets the impressions put on it. The core never touches the barrel.

So if you had bullet core fragments, they're really -- there's no marks on them that you could use for any identification.

The other container had one bullet jacket in it, and also a core, the actual -- the inside of the bullet. Again, the core would have no marks of value on it, but the jacket did.

So, what I did was compare the two bullet jacket fragments from the first container with the bullet jacket from the second container. And I was able to conclude that the larger bullet jacket fragment from the first container and the bullet jacket from the second container were fired by the same firearm.

This smaller fragment from the first container was too small and didn't have enough marks to enable me to say that it was fired by the same gun, but it could have been fired by it. It had the same rifling characteristics.

Q And as a result of your examination of that, did you make any conclusion as to potential firearms that could have been fired?

A Based on the examination of these items, it was consistent with being bullets that are loaded in .38 specials, .357's and some nine millimeter cartridges.

Q Now, I also would show you State's Exhibit No. 13, and I'll ask you to examine that.

A Yes, sir. I conducted an examination of this.

Q Okay. And that's a -- fragments from the rear door of this -- one of the SUV's in this case. And what was your -- did you compare that to anything, and what was your conclusion?

A I compared this -- this is a fired bullet. It was compared microscopically to the ---

Q I think -- I beg your pardon. I got -- I've got myself mixed up. I believe that -- that's No. 12 and this is No. 13.

A Okay. This is a fired bullet jacket fragment. And I microscopically compared it to the previously mentioned bullet jacket fragments that I looked at before. And

again, while the rifling on this little jacket fragment is similar to the rifling that is on the other two -- on the other fragments, they aren't sufficient enough to agree with the -- the individual marks on that, for me to say that they were all fired by the same gun.

So this bullet jacket fragment and these bullet jacket fragments and bullet jacket could have been fired by the same gun, or another gun of similar rifling characteristics.

Q Okay. Now, getting back again to State's Exhibit No. 13, the marking on this is it was a fired bullet from the walls of suspect's residence. That's the -- it's a marking on the packaging.

A Yes, sir. I -- I did examine this, and it's a fired bullet. And I also microscopically compared this to the other fragments; and determined that, again, the rifling was similar, but there's not enough agreement of the individual marks to allow me to say that they were all fired by the same gun.

So while this could have been fired by the -- this bullet and the other fragments could have been fired by the same gun, or they could have been fired by a different gun with similar rifling characteristics.

Q Okay.

MR. CONNER: May it please the Court, at this time, if

we just -- this is State's Exhibit No. 13. But could we put this packet in there, put a new label on it to kind of reduce the confusion?

Okay. So, this -- this item that I hold in my left hand came out of this envelope, which is marked State's Exhibit No. 13. What I would like to -- propose to do is do away with the -- the outer packaging and just mark this as ---

THE COURT: No. State's Exhibit No. 13.

MR. CONNER: Right.

THE COURT: Okay. Any objection from the Defense?

MR. HART: I'm just curious as to why. I don't -- I don't -- I mean, I --

MR. CONNER: Well, just to reduce the confusion. And another thing -- next thing you know, we get it down in the box and it comes out of the package and nobody knows where it came from.

MR. HART: I -- I would object, Your Honor. I would like to leave it in its original form.

THE COURT: All right. I propose that you put it -- put another sticker on it individually, and we'll call it "13A." And then that way, if it gets lost, we know it goes to 13. Any objection to that?

MR. HART: No objections, Your Honor.

THE COURT: So we can put a sticker on that and call

it "13A," which means it goes in 13.

(Marked State's Exhibit No. 13A, inside package of State's Exhibit No. 13.)

MR. CONNER: Now -- now, this one's already been handled that way, and I would also -- this is State's Exhibit No. 11. I would propose -- this came out of this envelope, which is marked State's Exhibit No. 11, and I would propose to mark this 11A. Okay?

THE COURT: And we don't have any other thing that -- we don't have A, B, or C. It's just one item came out of there.

MR. CONNER: This item.

THE COURT: Okay.

MR. HART: No objections, Your Honor.

(Marked State's Exhibit No. 11A, inside package of State's Exhibit No. 11.)

MR. CONNER: I have nothing further.

MR. HART: I have just a few questions.

THE COURT: That was 11 and 13? Okay.

CROSS-EXAMINATION BY MR. HART:

Q You talked a lot about -- out of all of this stuff, Have you had a chance to examine State's Exhibit 11A, correct?

A Yes.

Q State's Exhibit No. 13? State's Exhibit No. 12?

State's Exhibit No. 11? You've had the opportunity to analyze all of that?

A That's correct.

Q Out of all of that you analyzed, you don't have any evidence linking William Gregg to this crime with that right there?

A I've noted what -- what's under a microscope. The bullets don't tell you who was holding the gun.

Q But there's no evidence from your analysis linking him to this crime at all?

A No.

Q Let's look at your report. You have both -- you have all your reports with you?

A Yes, sir.

Q Let's look at -- how is it easier for you? To go by the SLED lab number or by the incident -- by this number -- -

A Just show me yours and my case number.

Q Okay.

A Okay.

Q You have that one in front of you?

A Yes.

Q Yes. Is that the one? Okay. And how do you spell your last name?

A W-h-i-t-l-e-r.

Q The incident date that you have on your report, let's go ahead and identity them. They say it's SLED log "L" as in Larry, 03 ---

A Dash.

Q Dash 13148. Do you have that?

A That's correct.

Q What's the incident date that you have listed on there?

A 11/1/2003.

Q So that would be November 1, 2003?

A That's correct.

Q What date did you receive the evidence for that report?

A I don't know when I received it, but I worked it on March the 19th of '08.

Q So you would say that's when you processed it. Is it --

A Yeah. That's when I actually did the examination.

Q So -- so you processed it on what date?

A On March the 19th of -- of 2008.

Q 2008. So March the 19th was what? Maybe three or four months ago?

A Yes.

Q Now, let's talk about the incident date and the date you process it. You don't recall receiving this evidence

in 2003?

A Yes. Well, there was -- that's -- that's a supplemental report. The original report is dated March 16th of 2004.

Q For -- for this -- for this particular ---

A Two -- two of those items.

Q Well, let's talk strictly about the one you identified by "L03 ---

A Well, you're bringing up the -- it wasn't four years before I looked at these items.

Q No. I understand; I understand. I'm just trying to figure out the date you received it. That's all I'm trying to figure out. 'What -- the date you received this evidence for this particular case here; for what we're identifying right now.

A That's in our -- we have a computer system that tracks that properly. I don't keep that.

Q But we do know that the incident -- the incident date is November 1st, right?

A That's what we were told.

Q Okay.

A I have no independent knowledge of that.

Q And the process date is March 19th, 2008?

A That's correct.

Q And you would agree that's a span of roughly five

years?

A Yes, sir.

Q Okay. All right. That was SLED log L03-13148. Let's look real quickly at L0718768. And we're going to list this one as "number 2." Do you have it?

A Yes.

Q Okay. What is the date that you processed L07-18768? What's the date that you processed that?

A On March 19th, 2008.

Q Make sure we're looking at the same one. This is the one I'm looking at. Yeah, that one.

You still say it's March 21st? I mean March 19th. Do you have March 19th?

A Yes. It was also all done together. The -- this was resubmitted in evidence.

Q Okay. So the process date was March?

A Yes. When I compared the items in the second case with the first case, the date -- I did them all at the same time.

Q So you're saying -- give me that date again.

A March 19th, 2008.

Q 2008. Okay. And we agree, again, in this case the incident date was November 1st, 2003, right?

A That's correct.

Q Do you agree on No. 2 this is a span of five years?

A It's a span of five years, but the evidence had been previously examined in 2004.

Q I'm just -- yes, sir. I understand. I'm just saying -- I'm just ---

A Let's don't leave a mis-impression here that we didn't look at the evidence for four years. That's not the case.

Q Yes, sir. But you would agree that that's -- that's a five-year span?

A That's correct.

Q Thank you.

MR. HART: No further questions, Your Honor.

THE COURT: Anything further from the State?

RE-DIRECT EXAMINATION BY MR. CONNER:

Q So, you initially turned out a report back in March of 2004, in regards to the first two items that you submitted; is that correct?

A That's correct. I originally worked this case in March of '04 and did a report then on items -- the first two items, which were two fired bullet jacket fragments and five lead fragments, and then one bullet jacket and one lead bullet core.

Then in 2008, the Sumter Sheriff's Office resubmitted -- or submitted an additional bullet jacket fragment and a lead fragment under this case number -- of the '03 case. And then also under the second case, they submitted a

bullet. And that is why there's a difference in time.

Q Okay. Thank you.

MR. CONNER: I've got no further questions, Your Honor.

THE COURT: Any reason he can't be excused?

MR. CONNER: None from us.

MR. HART: None from the Defense, Your Honor.

THE COURT: Thank you, sir.

You ready to call your next witness, Mr. Solicitor?

MR. CONNER: Your Honor, could you give me five minutes?

THE COURT: Okay.

MR. CONNER: I've got a witness in the courtroom, and I've got one that was sequestered -- is in my office. I need to make a decision here.

THE COURT: Okay.

MR. CONNER: And another thing, he had -- the other witness may not be instantly available. He has some transportation that he had to work out with his sister.

THE COURT: All right. So this five minutes you need, is this one that we need to all sit and wait on you, or do you want me to send the jury to the jury room?

MR. CONNER: Well, I will send them down there. And let me go down and see what his situation is.

THE COURT: Okay. Ladies and gentlemen, if you'll go

in the jury room, I'll get you back out. Now, I'm not promising you in five minutes. I can't. But I promise you it will be before five o'clock.

Please don't discuss this case.

(The jury exits the courtroom at 4:16 p.m.)

THE COURT: All right. If you'll just come get me when you're ready.

MR. CONNER: I'll be back.

THE COURT: And if you're not back in 30 minutes, I'm going to come get you.

(Off the record at 4:17 p.m.)

(On the record at 4:29 p.m.)

THE COURT: Anything before we bring the jury?

(No audible response.)

THE COURT: You ready?

MR. CONNER: Ready.

THE COURT: Bring in the jury.

(The jury enters the courtroom at 4:29 p.m.)

BAILIFF: Your Honor, all the jurors are back in the courtroom.

THE COURT: Okay. Mr. Solicitor, you may call your next witness.

MR. CONNER: Your Honor, I call Kendrick Miller.

THE COURT: All right. Mr. Miller, if you'll come down and be sworn.

KENDRICK MILLER, being first duly sworn, testifies as follows:

BAILIFF: Please state and spell your full name for us, please.

MR. MILLER: Kendrick Miller; K-e-n-d-r-i-c-k M-i-l-l-e-r.

DIRECT EXAMINATION BY MR. CONNER:

Q Kendrick, where do you live?

A [redacted].

Q And how long have you lived in Sumter County?

A All my life.

Q And who -- who do you live with out at [redacted]?

A My mother.

Q And what street does she live on?

A [redacted].

Q Is that the same street that the defendant Bubba Gregg lived on?

A Yes.

Q And how long have you known Bubba Gregg?

A I -- I know him from Cherryville -- outside Cherryville in '97, 8 -- '97/'98, somewhere up in there.

Q So, you've known him for a good while?

A Yeah.

Q And you -- if you saw him, you would know him? In other words, it wasn't like a stranger to you?

A Yeah.
Q Now, how about Kevin Franklin? Did you know him?
A Yeah. I've known Kevin since I was about 15 years old.
Q And how about Darrell Herriott? Did you know him?
A Not long, about eight months.
Q Well, how did you -- how did you meet Darrell Herriott?
A Through women. My -- my girlfriend aunt, he was talking to her at the time.
Q So, tell me where you -- where were you living when this shooting took place back in November, 2003?
A At the house, right across from where the shooting was.
Q And who did you live with there?
A Sarah Thomas and my -- my lady.
Q And what kin was your girlfriend to Sarah Thomas?
A Her niece.
Q And how long had you been living there?
A About 10 months.
Q And now, Darrell, was he talking to one of the women that lived there?
A Yeah.
Q Who was he talking to?
A Sarah, my girl's aunt.

Q Now, on the night that this shooting took place, you were present; is that correct?
A Yeah.
Q And before it happened, what were you doing?
A Just chilling in the yard.
Q Well, "chilling." What do you mean by "chilling"?
A Just hanging out in the yard.
Q And who were you hanging out in the yard with?
A Me and my girl and her cousins.
Q How about Kevin?
A He came up a little later on that night. And I came back outside and sit out there with them.
Q And he was sitting outside with who?
A With Kevin at the time, but Darrell was in the house with one of the girls.
Q So Darrell was inside the house? And you and Kevin were --
A Sitting in the truck --
Q Sitting ---
A -- smoking cigarettes.
Q Sitting in the truck. That was Darrell's truck; is that right?
A Yeah.
Q If I showed you a picture, could you recognize the -- the truck?

A Yeah.
Q Do you recognize -- this is State's Exhibit No. 2 and State's Exhibit No. 3. Is that the -- the vehicle y'all were sitting in?
A Yes, sir.
Q And y'all were just sitting there talking?
A Yes.
Q And Darrell was inside?
COURT REPORTER: Is that a "yes"?
A Yeah.
Q Now, some time a little after 11 o'clock, what -- did Darrell come out?
A Yeah. He came out. I was -- I was going to get a ride with them. So I told them I wasn't going to ride with them no more, because I was going to stay here with my woman.
So they -- they proceeded to pull out. I stood in the yard as they pulled out.
Q And who was driving?
A Kevin.
Q And where was Darrell seated?
A On the passenger side.
Q In the front seat, on the passenger side?
A In the front seat.
Q And it was -- it was Darrell's vehicle though, wasn't

it?

A Yeah.

Q That was your understanding?

A Yeah.

Q And this is a picture of it?

A Yeah.

Q Now, tell us what happened out there.

A Well, when they was pulling out, backing out the yard going up to the main highway -- 76 -- I was going into the house. And soon as I stepped on the steps, another car pulled up. Within a matter of seconds, gunshots fired.

So, I jumped off the step to hide behind a tree. As I was hiding behind the tree, a couple shots fired and he stopped. And the vehicle -- the little Cutlass -- came through. As he creeped [sic], like, going around the car -- Kevin and Darrell's car -- I kind of -- I hid. And the way he went that way, I went the other way so he couldn't see my face. So ---

Q Could you see his face?

A Yeah. Yeah.

Q And who did you see?

A I saw the man right there, Bubba.

Q You knew him?

A Yeah.

Q And at the time, did he wear glasses?

A Yeah.
Q And did he have glasses on?
A Yeah.
Q And was there anybody else in the vehicle with Bubba?
A No.
Q There was only one person in there?
A Yeah.
Q And it was Bubba?
A Yeah.
Q And you're sure that it was Bubba?
A Yeah.
Q And did the -- did the police come and talk with you after the shooting occurred?
A Yeah.
Q And did you tell them it was Bubba?
A Yeah.
Q Now, how -- tell me what happened when all this shooting was going on. What did Darrell do?
A Well, I couldn't really see what Darrell -- I was too busy getting down myself. After he pulled around the car and went on up the street, I went and looked in the car, and I saw Kevin shot up.

Darrell was gone. He went running somewhere, I guess. And I started screaming, "call 9-1-1, call 9-1-1." And Darrell heard me screaming. He came out from behind this

little old store in a path like.

Q That's a old store that's right across the street from the house?

A Yeah.

Q And he came from behind that?

A Yeah.

Q Tell us what happened.

A What happened when?

Q When he came out from behind the store.

A Oh. When he came out from behind the store, I said, "Darrell, that's Bubba, right? That's Pam boyfriend who did that, right?"

He said, "Yeah. That's him, right; that's him."

So me and Darrell, we went back to the car. Kevin foot was stuck on the accelerator, so me and Darrell and a couple other fellows, we took his foot off the gas pedal turned the car lights off. And then we started calling the police then.

Q The motor was still running on the car?

A Yeah.

Q Now, do -- do you see the man that you call "Bubba Gregg" in court today?

A Yeah.

Q Where is he?

A He's right there.

Q The guy with the white shirt on?

A Yeah.

MR. CONNER: Your Honor, we'd ask that the record reflect he points to the defendant Bubba Gregg, also known as William Gregg.

THE COURT: The record shall so reflect.

Q You didn't know him as William Gregg; you knew him as Bubba Gregg?

A Yeah.

Q And you -- did you get a -- a good look at him?

A Good enough to know who he was, and knowing the car.

Q And you were behind a tree in the yard?

A Yeah.

Q And tell us about the car.

A It was -- I had a car just like it. And I been seeing the car on my mom's road, you know? I matched the car. By me knowing the car and knowing how he look. I see him in the car all the time.

Q And did you know that Darrell's -- the -- the woman that he was living with was -- had had a baby by Darrell some years before?

A Yeah.

Q And I show you this right here. This is State's Exhibit No. 9, and ask you to examine that. Does that look familiar to you?

A Yeah.

Q What does it look like?

A The car he was driving.

Q I'll leave it right there.

And did you talk with Captain Turner here when he got there, and tell him everything you knew about this thing?

A Yeah.

(Sotto voce discussion between Mr. Conner and Capt. Turner.)

Q Did -- were -- were there any other people in the yard when the shooting took place, other than you and -- other than you?

A No. I was just out there. Well, some guys was coming up as they heard me screaming from out the trailer park, but they -- they didn't catch nothing but the tail end of it.

Q They came up after it happened?

A Yeah.

Q And how about the people in the house now? There was Sarah Thomas and who else was in the house?

A I think it was one of her kids and my girl and one of her kids.

Q So your girl had a child, too?

A Yeah.

Q So, there were two children and -- and two grown

women?
A Yeah.
Q But they didn't see this thing happen?
A No.
Q And you say you just -- you started screaming when you saw that -- saw Kevin in there shot?
A Yeah.
Q Let me ask you something: Do they call you by a nickname?
A Sometime.
Q What do they call you?
A "Punch."
Q Punch?
Kendrick, back in 2001, were you convicted of possession with intent to distribute crack cocaine?
A Yeah.
Q And how much time did you get in jail?
A Six months.
Q You -- you got a year.
A I got a year, but I did six months.
Q You served and satisfied it by serving six months?
A Yes, sir.
Q On the occasion that this thing happened, were you using any drugs?
A No, sir.

Q Was anybody else there using any drugs?

A No, sir.

Q Were you -- did you have anything to drink?

A No. Not me.

MR. CONNER: I have nothing further.

THE COURT: All right.

MR. HART: Thank you, Your Honor. Just briefly.

CROSS-EXAMINATION BY MR. HART:

Q Mr. Miller, tell us, how old are you?

A Thirty.

Q Thirty years old? Tell us where you work.

A I'm not employed right now.

Q You're unemployed? Tell us the last time you worked.

A February, 2007.

Q So you're 30 years old, last time you worked was 2007, and you still live at home with your mother?

A Yeah, as of now.

Q Tell us how long you've been at home with your mama.

A I just recently moved back home. I was out on my own.

Q Okay. How long you been back home with your mama.

A Since April this year.

Q April.

Now, today you are under a subpoena to be here, right?

A Yeah.

Q You didn't have a choice but to come, right?

A Yeah.
Q You didn't voluntarily come?
A Yeah.
Q You volunteered with a subpoena?
A Yeah.
Q When they served you, you didn't have a choice but to be here.
A What do you mean?
Q They served --
A Yeah. They served me a subpoena.
Q They served you a subpoena. When they served you the subpoena, that means you -- you got to show up, right?
A Yeah.
Q Okay. You remember an investigator from my office calling your number?
A From your office?
Q Yes.
A Yeah.
Q Okay. Did you talk to him?
A About a few questions.
Q Okay. You remember giving him your social security number?
A Yes.
Q Okay. You remember giving him your date of birth over the phone?

A Yeah.

Q Okay. You remember him asking you what happened that night?

A Yeah.

Q Okay. You remember telling him that you saw a gray Buick?

A I said -- I said a Buick or a Cutlass Sierra.

Q You remember ---

A That's what I said.

Q You remember saying it was a gray Buick?

A I said a "sky gray."

Q "Sky gray"?

A Yeah.

Q Okay.

(Mr. Hart sets up chart and writes on it.)

Q Did I spell it right?

A Yeah.

Q Okay. That phone -- that conversation took place two weeks ago?

A Uh-huh.

Q So I'm going to say two weeks ago. You said "sky gray," right?

A Uh-huh.

COURT REPORTER: Is that a "yes"?

A Yeah.

Q I don't know if that' going to be an "a" or -- or a "e." Sky gray Buick, right?

A Uh-huh.

Q Okay.

MR. CONNER: I believe he said "Buick or a Cutlass."

MR. HART: Okay. Sure.

Q In that phone conversation, you didn't say "white," right? You never told him "white," right?

A No.

Q Okay. I want you to look at that. Would you -- you say that's a fair representation?

A What I told you? Yeah. Yeah. It's fair and accurate.

Q Okay. You also remember telling that you said you were on the way to the club? You remember saying that?

A I said, "My old lady was on the way to the club." That's what I said.

Q You were not on the way to the club?

A No. I said I was about to get dropped off somewhere else.

Q Okay. Well, you were -- you were walking.

A What?

Q You were walking that night. You were out walking.

A No. I was in my yard.

Q You was in the yard. Okay. When you say you were

"out chilling," you were not out in the yard chilling by yourself; is that right?

A Yeah.

Q You were chilling with some other people in the yard.

A In and out. We in and out of the house all day.

Q So y'all in and out the house?

A With my family.

Q Okay. But I'm just asking you. You just testified that you were out in the yard --

A Yeah.

Q -- chilling.

A Chilling.

Q You were not by yourself.

A No. Not all the time.

Q You were with other people.

A Yeah.

Q Give us an approximate number. Was it at least one other person?

A It's so many times I'm on -- on the porch by myself. Are you talking at the time of the shooting or what? Or all day?

Q Let's -- let's talk about -- let's say 10 minutes before the shooting.

A Ten minutes before the shooting, I was in the house.

Q Ten minutes before the shooting, you was at the house

-- you was in the house.

A I came out. I came out when they pulled up.

Q Okay. You came out by yourself?

A Yeah.

Q And then you were just ---

A Shaking hands -- what's up -- what's going on?

Q You were shaking whose hands?

A Kevin and Darrell.

Q When they pulled up?

A Yeah.

Q And then they get in the car, they leave.

A Not after that.

Q Okay.

A We sit in the yard waiting on Darrell to do what he got to do.

Q Which is -- well, let's -- let's -- what does Darrell got to do what he got to do?

A He came to see a woman.

Q So what was Darrell doing?

A I -- I'm outside. He in there with a woman.

Q You don't know what Darrell was doing inside?

A No.

Q Okay. Now, you sure while you were chilling you were not getting high?

A No.

Q You -- is it your testimony you don't get high?

A No. I don't get high.

Q You don't smoke marijuana?

A No.

Q You don't smoke crack?

A No.

Q Okay. You deal crack?

A No.

MR. CONNER: Your Honor, I object to him getting or asking questions regarding his record. We -- we have abided by your ruling in -- in -- in the 2001 incident, and he's admitted it.

THE COURT: Okay. So --

MR. HART: I'm not sure what the objection is, Your Honor. I think I can cross-examine him on he has a record for crack cocaine. I think I could cross-examine him on his record of crack cocaine.

THE COURT: And so -- but you're cross-examining him based upon my prior ruling, is what you're telling me.

MR. HART: Absolutely.

THE COURT: Okay. Go ahead.

MR. HART: Okay.

CROSS-EXAMINATION BY MR. HART:

Q So your testimony is that you don't deal crack cocaine?

A I have been convicted of possession.
Q Well --
A In 2001.
Q You've been convicted of possession of crack cocaine.
A Possession with intent to distribute.
Q So, if you don't deal and you have crack on you, do you smoke it?
A No, I don't smoke it. And I wasn't the only one in on that case.
Q But this -- this is important, because if you have crack cocaine on you, you're doing something. You either smoke it or you deal it.
A You said "on me." It wasn't in my pockets or nothing. It was in the vehicle I was riding in.
Q So you didn't have crack cocaine on you?
A Not in my pockets.
Q So, you got a conviction for something you did not do?
A I have a conviction for being in the presence of crack cocaine.
Q Okay. So, you pled guilty to something you were not guilty of.
A That was in the plea bargain.
Q But the question is: Did you plead guilty?
A Yeah.
Q So, you pled guilty?

A Yeah.

Q Now, during that guilty plea, do you remember the judge asking you, "Are you guilty of the charge that you're accused of?" Do you remember him asking you that?

A Yeah.

Q And you remember telling that judge, "Yes, I'm guilty"?

A Yeah.

Q So, were you guilty or were you ---

MR. CONNER: Your Honor, I object to all of this.

THE COURT: Sustained. You can't go into the facts of another case. You can address his record, but you can't go into facts of another case.

MR. HART: Well, Your Honor, I -- I guess what I'm asking is he has testified that -- I'm going into his credibility now, that he's telling the truth. He said he pled guilty to something that he's not guilty of.

THE COURT: That's not what he said. You know, he said he pled guilty because it was in the car. He was in the presence of it.

MR. HART: I'll move on, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION BY MR. HART:

Q Now, did you talk to the police that night in '03?

A Yeah.

Q You told them everything you knew?
A Yeah.
Q The police did not take a written statement from you, did they?
A No.
Q So right now, you're testifying from your memory?
A Yeah.
Q Okay. The next day, they didn't ask you to give a statement?
A No.
Q Over the past five years, you've never given a written statement to the police?
A No.
Q Okay. This happened at about 11:30 at night?
A You could say that.
Q When the shooting occurred, you could say that you were real excited?
A Scared.
Q You saying you were scared?
A Scared to death.
Q Scared for your life? A lot of anxiety.
A (No audible response.)
Q Okay. It was dark outside, right?
A Yeah.
Q Okay. There's not a whole lot of light out there in

that area, is it, at night?
A Not in the road, but my yard was lighted up.
Q But the shooting didn't occur in your yard, did it?
A No, it didn't occur in my yard.
Q Well, let's -- let's talk about where it happened. And you were in your yard at the time it happened.
A Yeah.
Q You were in the yard at the time of the shooting.
A Uh-huh.
COURT REPORTER: That's a "yes"?
A Yeah.
Q I'm going to sit down for a minute, if you don't mind. Your yard is ---
A Right here (indicates.)
Q Right there in the middle, right?
A Yeah.
Q The shooting occurred right down here, right?
A Uh-huh.
Q There's not a whole lot of light in that area, is it?
A Right.
Q It's hard to see what happens down in that area, right?
A Right.
Q Which is why you thought it was a gray Buick or Cutlass, correct?

MR. CONNER: Your Honor, this -- this gentleman on the back has raised his hand.

THE COURT: Yes, sir.

MR. HART: Oh. I'm sorry.

JUROR: We can't see around you.

MR. HART: I'm sorry.

THE COURT: You need to stand back where the jury can see.

MR. HART: Okay.

CROSS-EXAMINATION BY MR. HART:

Q Your yard is here.

A Uh-huh.

Q The crime happened around this area, right?

A Yeah.

Q There's not a whole lot of light down here; is that right?

A Right.

Q You can't really see a whole lot down there, right?

A Right.

Q Which is why you said it looked like a sky gray Buick or Cutlass, correct?

A No.

Q Okay.

A Because I didn't see him who he was down there. I seen who he was,when he passed me up here (indicates)

pulling around the car.

Q Okay. So, you never saw the shooting actually take place down there.

A I heard gunshot and I got down.

Q Okay. I understand. That -- that's fine. You heard the shots, but you never saw the shooting take place down -- you never saw ---

A I saw him pull up door-to-door like this to they car. I kept going up steps, the gunshot popped, I dropped.

Q So, as you go up the steps, you were able to see all of this that takes place down here where it's not well lit.

A Actually, we were right at the road. We was not exactly right there. We were at the entrance on 76. That's almost in the highway right where you pointing at. His foot was still on the gas. We would have rolled right in the highway if we was that far out there.

Q So, you're saying he wasn't down here.

A Not that far down there that you're pointing at.

Q You never saw a gun that night, right?

A No.

Q Okay. You only heard the shots, right?

A Yeah.

Q Okay. Now, did you call 9-1-1?

A Yeah.

Q Okay. Now, this white car here. On direct, you

identified this as the car you saw that night, right?
A Uh-huh.
Q You said you were able to see way inside the car, right?
A Yeah.
Q And you were able to see this after you ducked down?
A When I ducked down and got up when the gunshot stopped, he drove right by me and looked over at me.
Q You didn't tell the police that he looked over at you, right?
A I told the police I know who it was.
Q But you never told the police he looked over at you?
A I can't remember.
Q Today is the first time you've ever made that statement; is that right?
A Could be.
Q Okay. I'm showing you what's been marked as Defendant Exhibit No. 1. You see some damage to the front right bumper of that car?
A Yeah.
Q Okay. You never told the police you could identify a white car with damage to the front right bumper?
A No.
Q You never saw that damage, right?
A I wasn't looking for no damage on no car.

Q Okay. Now, it happened in '03. The police have never asked you to -- after the shooting took place, the police have never asked you to verify that this is the car you saw that night, correct?

A Say that again, now.

Q It happened November 1st, 2003.

A Uh-huh.

Q The next day, they never asked you to verify that this is the car you saw that night?

A No. Not the next day.

Q Okay. In '04, they never asked you to verify that this is the car?

A No.

Q '05?

A I just told them it was a Cutlass on the night it happened.

Q I understand. Well, listen. Over the past five years, the police have never come to you and said, "Mr. Miller, can you verify that this is the car you saw that night?"

A No.

Q So, today as we speak, this is the very first time that you have said, "This is the car I saw that night"; is that right?

A Yeah.

Q Okay. Let's talk about the neighborhood out there where you live. Lot of stuff goes on out there, right?

A Not at that place. Not at that area right there, that neighborhood right there.

Q So, people just out chilling and not nothing going on?

A That road goes up to a junkyard called "... Ain't nothing back there.

Q I understand, but stuff goes on out there from time to time.

A People who live out there, I mean, I guess they sit in their yard, yeah.

Q Ask you about Mr. Gregg and you pointed him out?

A Yeah.

Q The police have never showed you a picture of William Gregg to verify that that's the person you saw that night?

A No.

Q So, in the past five years, they have never said, "Mr. Miller, look at this picture of William Gregg. We want you to verify that this is the guy you saw that night." They have never done that?

A No.

Q Over the past five years, today is the very first time you've said, "This is the guy I saw."

A Yeah.

MR. HART: No further questions, Your Honor.

THE COURT: Okay. Anything further from the State?

RE-DIRECT EXAMINATION BY MR. CONNER:

Q If you would, step down here, Kendrick; hold that pointer, and stand to the side so that you won't block any view of the ladies and gentlemen.

Now, show me the house you were living in.

A Right here. (Indicates.)

COURT REPORTER: Can't hear -- you need to speak up, Mr. Miller, please.

A Right here.

Q He points to a house at the corner of and , for the record.

And directly across the street from the house is a green-topped building; is that right?

A Yeah.

Q Point to that.

A (Complies.)

Q And was that business in operation back in 2003, when you were living there?

A No.

Q And is -- is that building that you -- point to it again, the green-topped building.

A (Complies.)

Q Is that the building that Darrell Herriott came from behind?

A Yeah.
Q Now, you say the -- after the shooting occurred, show us the path that the defendant took in leaving there.
A It goes right there, back up in there. (Indicates.)
Q No. I'm not talking about that. I'm talking about -- -
A Oh. Oh.
Q --- Mr. Gregg, which way he drove. Now, where were you located when you saw him?
A Leaning on that tree right there. (Indicates.)
Q You were -- there's a tree along in there?
A Yeah. That big tree right there. (Indicates.)
Q And you were behind the tree?
A Yeah.
Q And did -- did he pull far enough down that -- that you saw him?
A Oh, yeah, yeah. He made a loop around the car.
Q He made a loop around which car?
A Kevin and Darrell.
Q So he circled around.
A Yeah.
Q And when he was circling around, you had a chance to see him; is that right?
A Yeah.
Q And you -- you saw him and identified him, this man

over here as Bubba Gregg?

A Yeah.

Q You probably didn't even know his name was William, did you?

A No.

Q Okay. I've got nothing further. Have a seat.

MR. CONNER: Let me examine my notes. I have nothing further, Your Honor.

THE COURT: Okay. You can step down.

Any reason we can't quit for the day, Mr. Conner?

MR. CONNER: I -- I haven't -- no. No reason, Your Honor.

THE COURT: Okay. Ladies and gentlemen, I try to get you out of here as close to five as I can. We'll stop for the day. I'll remind you, you can't discuss this case when you get home yet. You can't -- I don't think anything is going to be on TV, but if it is, you can't watch it, you can't read about it in the paper. And hopefully, we'll be able to finish this case tomorrow and I'll be able to give it to you.

But you have a nice evening and I'll see you back at 9:30 in the morning. Come straight to the jury room.

(The jury exits the courtroom at 5:05 p.m.)

THE COURT: All right. Anything we need to deal with before we leave today?

MR. CONNER: I have nothing that we need to deal with, Your Honor.

THE COURT: All right.

MR. CONNER: What time did you tell them we would start?

THE COURT: Nine-thirty.

MR. CONNER: Nine-thirty. Okay.

THE COURT: All right. We'll see y'all at 9:30 in the morning.

(Off the record at 5:06 p.m.)

(Back on the record at 5:06 p.m.)

THE COURT: I had one of the jurors that just notified me she has a Family Court hearing tomorrow morning at ten o'clock in Manning.

COURT REPORTER: In Manning? Manning?

THE COURT: In Manning. And that she informed Judge King -- somehow that never got to me -- that she had this issue. He said he would mark it out and take care of it. Of course, he qualified the general panel. I didn't know anything about it. So, this is the third time it's been continued.

Now, I have one of two options. The problem is I found this out at five minutes after five, and I can't get in touch with anybody at -- in the Family Court at this point.

Now, our other option is to put the alternate in place, or -- or we leave her in place and have her miss the Family Court hearing; or stop this trial until she gets back from the Family Court hearing.

What's the State's position? We do have two alternates. I understand we got two alternates. But that's kind of where I am. Any objection to me --

MR. CONNER: Judge, I've got no objection to you exercising whatever your good judgment tells you to do, but I -- I guess the question is over there.

THE COURT: All right. What's your position, Mr. Hart?

MR. HART: Your Honor, my -- just from experience, Your Honor, I would ask that she not be taken off the panel. I know it's late, or maybe if we can call the Court first thing in the morning, at nine.

In my experience, Your Honor, I like to use alternates in extreme circumstances: death, sickness.

I -- I would propose, Your Honor -- I would respectfully ask that His Honor would ask for her case to be continued; or in the alternative, we wait until she gets back. I'm willing to wait, Your Honor.

THE COURT: All right. Give me a minute. Let me go see if I can resolve it some other way, and I'll -- and I'll make a decision one way or the other.

MR. HART: Yes, sir.

(Off the record briefly.)

THE COURT: I am going to be in Family Court in Manning at nine o'clock in the morning to see if I can't get whatever Family Court Judge there to put this case -- I looked at the letter; it's scheduled for 10:30 -- see if they will handle it at nine o'clock, because it's been a third time it's been continued. The other side is coming from Virginia.

It -- you know, it's just a major problem. And she -- she informed Judge King of this, she said Monday. And because we split duties and he -- you know, and whatever lack of communication, didn't get to me. I didn't have any idea she was on this jury. We even had his schedule. If I'd have known it before I let the jury go, we would have fixed it and even if he couldn't start his case until 12, but anyway.

MR. HART: I'm glad you mentioned that, Your Honor, because I was just talking with the government, and they say they have one -- maybe one witness left. And we could have waited; we still can wait. I don't know ---

THE COURT: Well, I'm going to try to resolve her problem. I'm going to go by the Family Court first thing in the morning. I couldn't get anybody. Everybody was gone. See if I can't get in to see whatever judge is

there. See if he will give me some professional courtesy and move that case to the top. If I can -- where and then I can get her - even if he would bifurcate. David Weeks is the lawyer. He said, "I don't know if I can up with my client."

I said, "David, maybe if we can bifurcate this testimony and have her testimony. You'd be there and cross-examine her. And then, if you have to wait for your client to get there. But I'd like to get her up and down, and get her back over here as close to 9:30 as possible.

I'll be back at about 9:30, and if she's here, we'll start. If not, I'll bring the jury in and tell them. And as soon as she gets here, we'll -- we'll continue. Okay?

MR. HART: Yes, sir. Sounds good.

THE COURT: I checked the statute, and it doesn't -- that doesn't necessarily qualify as one of the criteria of a statute that I can put an alternate in place. If I could have, I would have. At least without -- at least be the statute without some Appellate Court. And I hate for this thing to get turned over because of that issue.

But anyway, I'll see y'all as close to 9:30 as I can get here.

MR. HART: Yes, sir.

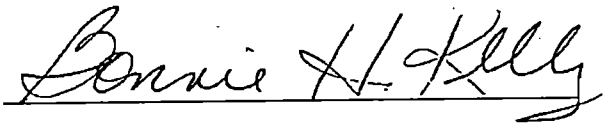
(Off the record at 5:31 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE EXCERPT OF THE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 29TH DAY OF JULY, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



BONNIE H. KELLY,

COURT REPORTER

COLUMBIA, SOUTH CAROLINA

JUNE 3, 2009

MW/3

STATE OF SOUTH CAROLINA)
) In the Court of Common Pleas
County of Bishopville)

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CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL 08-CP-43-2479
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

William Gregg 274507)
Full name and prison number, if any, of applicant.)

v.)

Attorney General, State)
Name of Respondent)
of South Carolina)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Lee Correctional Inst. 990 Wisacky Hwy S.C. 29010

2. Name and location of Court which imposed sentence Sumter Co. Court of General Sessions.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2007-GS-43-0796
   (b) _____
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) Murder July 29, 2008 (35 years)
   (b) _____
   (c) _____

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? NO

_____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) My notice of appeal was inadertently filed Past 10 days.

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of Counsel.

(b) ~~Ineffective assistance of Appellate Counsel.~~

(c) Denial of Due Process and fair trial.

Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Failed to investigate Case

(b)

(c)

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

~~NO~~ Yes

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. ~~N/A~~ habeas corpus hearing

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. ~~N/A~~ Supreme court: State of New York

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? ~~No~~ Yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. ~~N/A~~ habeas corpus hearing

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. ~~N/A~~ habeas corpus hearing

ii. _____

iii. _____

15. If any ground set forth in (9) 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) N/A

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? (✓)

(c) your sentencing? (✓)

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

_____

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Christopher R. Hart, P.A., Columbia SC 29201

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. At Trial -n- Sentencing

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Vacate Judgment and Conviction
Reverse and remand Conviction for new trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF Bishopville)

I, William Gregg III, 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.

William Gregg III

Sworn to and subscribed before me
This 21 day of Oct, 2008

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, William Gregg III, 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 or 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 proceeding or give security therefor.

William Gregg III
Applicant

Sworn to and subscribed before me
This 21 day of Oct, 2008.

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS
William Gregg, #274507, Applicant, v. State of South Carolina, Respondent.	2008-CP-43-2479 **RETURN** (Appointment of Counsel Requested)

In response to the post-conviction relief application filed on October 27, 2008,[1] the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the October 2007 term of the Sumter County Grand Jury for (1) Murder, (2) Possession of a Firearm During Crime of Violence, and (3) Possession with Intent to Distribute Heroin (2007-GS-43-0796). Christopher Hart, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., on July 28-30, 2008. Applicant was found guilty of Murder and Possession of a Firearm During Crime of Violence.[2] Applicant was sentenced to thirty-five (35) years imprisonment for Murder and a concurrent term of five (5) years imprisonment for Possession of a Firearm During Crime of Violence. Applicant did not appeal his conviction and sentence.

For the purpose of this Return, the Respondent incorporates the transcript, the Clerk of Court

[1] The application was received by Respondent on December 23, 2008.
[2] As a result of a pre-trial motion by the defense, the charge of Possession with Intent to Distribute Heroin was not

records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. "Failed to investigate case."
2. "Denial of due process and fair trial."
3. "Prosecutorial misconduct."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

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tried during this trial.

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, 104 S. Ct. 2052. 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 two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges denial of due process of law and prosecutorial misconduct. However, the Applicant fails to set forth with specificity the grounds upon which these violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50