

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable Deadra Jefferson, Circuit Court Judge S.C. SUPREME COURT

ANTHONY DOMINIQUE WILDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001697

APPENDIX

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ALICIA OLIVE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR - 8 2017

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
FINAL BRIEF OF APPELLANT	994
OPINION (AUGUST 9, 2011)	1010
APPLICATION FOR POST-CONVICTION RELIEF	1011
RETURN	1023
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	1029
ORDER OF DISMISSAL.....	1083
INDICTMENTS.....	1103

Heide Michelle Drake
Direct examination by Mr. Williams

- 1 Q Thank you. Nothing else.
- 2 MR. BROWN: Nothing.
- 3 THE COURT: You may step down. Thank you.
- 4 THE WITNESS: Thank you, sir.
- 5 MR. WILLIAMS: May he be excused, Your Honor?
- 6 THE COURT: He may be.
- 7 (Whereupon, the witness was excused.)
- 8 MR. WILLIAMS: Your Honor, I move to admit --
- 9 THE COURT: Seventy-eight?
- 10 MR. WILLIAMS: Seventy-eight.
- 11 THE COURT: You did.
- 12 MR. WILLIAMS: The state calls Detective Heide Drake.
- 13 HEIDE MICHELLE DRAKE, having
- 14 been first duly sworn, testified as follows:
- 15 DIRECT EXAMINATION BY MR. WILLIAMS
- 16 THE CLERK: Please state your full name, and spell
- 17 your last name.
- 18 THE WITNESS: Heide Michelle Drake. Last name is
- 19 spelled D-R-A-K-E.
- 20 MR. WILLIAMS: May it please the Court, Your Honor.
- 21 THE COURT: Yes.
- 22 Q Ma'am, where do you work?
- 23 A Forest Protection Industries.
- 24 Q What is your job at Forest Protection Industries?
- 25 A I'm a physical security supervisor.

Heide Michelle Drake
Direct examination by Mr. Williams

- 1 Q How long have you worked at Forest Protection?
- 2 A Since March of 2007.
- 3 Q Prior to working at Forest Protection, where did you
- 4 work?
- 5 A Charleston County Sheriff's Office.
- 6 Q What was your rank at the sheriff's office?
- 7 A When I left I was a detective master deputy.
- 8 Q Prior to -- well, let me ask you. What was your last
- 9 assignment or your last duty with the sheriff's office?
- 10 A Prior to leaving I was a detective assigned to the
- 11 criminal investigations division.
- 12 Q And that's a detective?
- 13 A Yes.
- 14 Q How long had you worked as a detective for?
- 15 A In that unit about seven months.
- 16 Q Prior to working that unit, what did you do? Where
- 17 were you working?
- 18 A I was a narcotics investigator.
- 19 Q How long were you a narcotics investigator?
- 20 A Five years.
- 21 Q And in that job as a narcotics investigator, you're
- 22 familiar with drugs, the value of drugs and that kind of
- 23 thing?
- 24 A Absolutely.
- 25 Q You've been involved in undercover work and

Heide Michelle Drake
Direct examination by Mr. Williams

1 transactions, hand-to-hand transactions, or buying and
2 selling of drugs.

3 A Yes, sir.

4 Q As far as the case you're here in court for today, how
5 were you involved or how did you first get involved in the
6 case?

7 A Essentially, it being assigned to the criminal
8 investigations division, any time we have a major crime
9 most detectives are activated if they're, if they're
10 available. And that was the case here. I was called by my
11 supervisor -- at the time it was Sergeant Willaby -- to
12 report to Trident Hospital.

13 Q What did you do at Trident Hospital?

14 A Initially, I met with Deputy Colson who was already
15 there. I was briefed by him as to who the individuals of
16 interest -- well, what individuals of interest were at his
17 location, which he gave me the names of Sterling Spann,
18 Jamie Williams and then later gave me Anthony Wilder.

19 Q And as far as Sterling Spann and Jamie Williams, what
20 did you do with regards to those individuals?

21 A Well --

22 Q Did you say?

23 A Mr. Williams was in surgery at the time of my arrival
24 and at the time of my departure. So I did not see him.
25 Mr. Spann had already passed. Mr. Williams -- so I had no,

Heide Michelle Drake
Direct examination by Mr. Williams

1 no, no contact with him essentially -- Mr. Spann. I
2 collected his clothing. And later Mr. Wilder, had some,
3 some dealings with him.

4 Q When you collected Mr. Spann's clothing was that kept
5 separate from all other items?

6 A Absolutely.

7 Q You would have bagged that individually?

8 A Yes.

9 Q And it would have been kept in a single bag throughout
10 your custody?

11 A Yes.

12 Q Now, you said there was also a Mr. Wilder that was
13 there.

14 A Correct.

15 Q Tell the jury about what you did in regards to
16 Mr. Wilder.

17 A Mr. Wilder came in a few minutes later. I'm not sure
18 of the exact time. He was escorted by Deputy Matt Uther
19 (sic).

20 Once he was, I guess, stabilized, for not knowing
21 appropriate medical terms, I was able to collect his
22 clothing. And his hands were already what we would call
23 bagged, which is essentially to protect any forensic
24 evidence.

25 Q Are you aware of who bagged his hands?

Heide Michelle Drake
Direct examination by Mr. Williams

1 A My understanding was Deputy Uther, but I did not see
2 him do that.

3 Q Is that common for the first officer to try to bag
4 hands, whoever can to bag hands --

5 A Absolutely.

6 Q Are y'all issued any kind of like county bags or
7 special bags to do that with?

8 A No, not necessarily. I mean, occasionally, for
9 instance, well, in criminal investigations we have the
10 opportunity to keep those types of basic paper evidence
11 bags with us in the vehicle, but it's not, not always a
12 luxury.

13 Q You don't always have them at your disposal
14 necessarily?

15 A Right.

16 Q Now, when you say you took suspect Wilder's clothing,
17 how did that happen?

18 A The medical staff of course had to remove them,
19 actually physically remove them from his body. And then I
20 took custody of them and placed them in bags.

21 Q He was under arrest at the time?

22 A Yes.

23 Q And you were essentially there to supervise him,
24 correct?

25 A Correct.

Heide Michelle Drake
Direct examination by Mr. Williams

1 Q You had to make sure he didn't --

2 MR. LOFTON: Your Honor, I'm going to object to the
3 leading.

4 THE COURT: Sustained.

5 Q What is your duties or what is your duty as far as a
6 defendant in custody in that situation?

7 A Well, when a person's in custody, first and foremost
8 is to protect, you know, their life and to prevent them
9 from any harm from another individual that may seek
10 retaliation. Obviously, the other primary function is to
11 prevent their escape or removal, self removal, from the
12 facility.

13 Q You pay close attention?

14 A Absolutely.

15 Q With regard to the clothing, how that did come into
16 your custody, or what did you see happen?

17 A Well, once, he again, once he was situated, the
18 medical staff, again, was able to cut it away from his
19 body. Of course they're professionals, so we allow them to
20 do that versus us. Once the clothing is, is cut away, the
21 clothing is placed in the paper bags.

22 Q And you were there when that happened?

23 A Yes.

24 Q Did you watch this happen?

25 A Yes.

Heide Michelle Drake
Direct examination by Mr. Williams

1 Q What happened with the clothing once it was put in the
2 paper bag?

3 A I was later met by Investigator Roy who also was with
4 the Charleston County Sheriff's Office. And he took
5 custody of those upon his arrival.

6 Q And you had custody of that in between?

7 A Absolutely.

8 Q And it was in your custody personally.

9 A Yes.

10 Q Was it tampered with?

11 A No.

12 Q Was it mixed with anything?

13 A Not at all.

14 Q I'm going to show you what's been marked State's, I
15 believe, Proposed 98. Do you recognize that item as far as
16 its markings and its identification?

17 A I do.

18 Q And that's the clothing you would have taken?

19 A Yes.

20 Q And it would have -- where would you have taken it?
21 Would this have went to another investigator?

22 A Right. It's turned over to the crime scene
23 technicians.

24 Q Why is it turned over to them?

25 A Well, they're the evidence custodians, so they're

Heide Michelle Drake
Direct examination by Mr. Williams

1 responsible for it once -- once they're on the scene,
2 they're responsible for the custody of the evidence.

3 Q Do you recall the particular items that were seized?

4 A If I recall, it was a pair of jeans and a shirt, maybe
5 two shirts.

6 Q Let me ask you. You talked about how everything
7 that's cut is put in a bag. Was there anything that was
8 taken that didn't go into that bag?

9 A Not as I recall.

10 MR. WILLIAMS: Show this to defense counsel, Your
11 Honor.

12 (Pause.)

13 Q Detective, you're familiar with how items are
14 processed at SLED as well?

15 A Somewhat, yes.

16 Q And once items go to SLED for D. N. A., sometimes
17 they'll be cut and things like that. They'll be processed.

18 A Correct.

19 Q So these are the clothes that you would have taken at
20 the time the bag was sealed.

21 A Yes.

22 MR. WILLIAMS: Your Honor, we move to admit State's
23 Proposed 98.

24 MR. BROWN: No objection.

25 MR. DAVIS: No objection.

Heide Michelle Drake
Cross-examination by Mr. Lofton

1 MR. LOFTON: Your Honor, may I voir dire the witness
2 on the collection of clothing?

3 THE COURT: Yes, sir.

4 MR. LOFTON: If the Court please.

5 CROSS-EXAMINATION

6 BY MR. LOFTON

7 Q Detective Drake --

8 A Yes, sir.

9 Q -- I just want to make sure I understand. And I'm
10 directing your attention now to Mr. Wilder. Mr. Wilder was
11 located where at Trident Hospital when you arrived?

12 A Well, he came after my arrival.

13 Q Okay. And where was he taken once he arrived at the
14 hospital?

15 A The emergency room area. If I recall correctly, it
16 was the second room on the right.

17 Q Okay. Was there anyone else in that area?

18 A In the room itself?

19 Q Yeah, in the emergency-room area.

20 A Sure. There was other patients there, yes, sir.

21 Q And the room that he was in, he was in a room by
22 himself?

23 A By himself, yes, sir.

24 Q And you indicated that the medical staff, first of
25 all, they stabilized him.

Heide Michelle Drake
Cross-examination by Mr. Lofton

- 1 A Right.
- 2 Q Because he had been injured.
- 3 A Yes.
- 4 Q Okay. And then you indicated the medical staff
- 5 removed his clothing.
- 6 A Right.
- 7 Q Do you recall who at the medical staff removed his
- 8 clothing?
- 9 A Oh, I'm sorry. No, I don't.
- 10 Q And when the medical staff removed his clothing, what
- 11 did they do with them?
- 12 A Turned it over to me.
- 13 Q Were you present when the clothing was removed?
- 14 A Yes, sir.
- 15 Q You were physically in the room?
- 16 A Yes, sir.
- 17 Q When they removed it did they just hand it to you or
- 18 did they place it in a container?
- 19 A No, no. It was given to me and put into the bag.
- 20 Q What kind of bag was it put into?
- 21 A The paper evidence bag.
- 22 Q Pardon?
- 23 A Paper evidence bag.
- 24 Q This bag that's in court today?
- 25 A The one that's marked with his clothing, yes.

Heide Michelle Drake
Cross-examination by Mr. Lofton

- 1 Q It was actually -- you had a paper evidence bag there?
- 2 A Yes, sir.
- 3 Q Okay. So they, they took your evidence bag, the
- 4 medical staff did, and placed the clothing into it?
- 5 A Correct, yeah. It was a mutual, a joint effort, if
- 6 you will.
- 7 Q Okay. And then once the clothing was placed into the
- 8 bag, what did you do with it?
- 9 A I folded it over to protect it from any other items
- 10 being added to it.
- 11 Q Was it taped, stapled or anything of that nature?
- 12 A I don't recall if I had any of those utensils
- 13 available, no.
- 14 Q Okay. Other than the paper bag, there was no plastic
- 15 bag or anything else the clothes were placed in prior to
- 16 being placed in the paper bag.
- 17 A Not as I recall from Mr. Wilder.
- 18 Q And then you turned that bag over to Investigator Roy.
- 19 A Yes, sir.
- 20 MR. LOFTON: One minute, Your Honor.
- 21 (Pause.)
- 22 Q Now, there's a white bag down in this bag.
- 23 A Okay.
- 24 Q Do you know where that -- when the clothing were put
- 25 in that bag?

Heide Michelle Drake
Redirect examination by Mr. Williams

1 A No, I don't.

2 Q You wouldn't have put them in that bag.

3 A No, sir.

4 Q Okay. Do you know whether or not Investigator Roy
5 placed them in the bag?

6 A I don't know.

7 Q The white bag.

8 A I don't know what he would have done after taking
9 custody of it, no.

10 MR. LOFTON: Bear with us one moment, Your Honor.

11 (Pause.)

12 MR. LOFTON: That's all I have at this time.

13 MR. WILLIAMS: Judge, I'd renew my motion to admit the
14 exhibit.

15 THE COURT: All right. No objection from Mr. Brown;
16 no objection from Mr. Davis.

17 Mr. Lofton?

18 MR. LOFTON: Your Honor, I'm going to object. I don't
19 think the chain has been properly tied together.

20 THE COURT: Well, mark it for identification subject
21 to it being connected up.

22 REDIRECT EXAMINATION

23 BY MR. WILLIAMS

24 Q Detective Drake, you said you were there when the
25 clothes were seized. Was there anything else done with

Heide Michelle Drake
Redirect examination by Mr. Williams

1 Mr. Wilder?

2 A We, I, did a gunshot residue kit on his hands.

3 Q What is a gunshot residue kit?

4 A It's a kit with a specific list of instructions where
5 we collect --

6 Q How do you execute or how do you perform that test?

7 A The packet comes with all of the required instruments
8 that you would need to, to complete the task and a specific
9 list of instructions. So we follow the steps one through
10 whatever it was. And step by step you collect the
11 evidence.

12 MR. WILLIAMS: Let me have this marked.

13 (G. S. R. kit from Anthony Wilder marked State's
14 Exhibit No. 103 for Identification.)

15 Q Ms. Drake, let me show you what's been marked State's
16 Proposed Exhibit 103. Do you recognize that item?

17 A I do.

18 Q What is it?

19 A It's a gunshot residue kit for Anthony Wilder.

20 Q Is that your signature or your name on there?

21 A It has my name on it, yes, sir.

22 Q The one you would have taken?

23 A Yes.

24 MR. WILLIAMS: Show the defense.

25 (Pause.)

Heide Michelle Drake
Redirect examination by Mr. Williams

1 MR. WILLIAMS: I move to admit, Your Honor, State's
2 Proposed 103.

3 THE COURT: Any objection, Mr. Brown?

4 MR. BROWN: None, Your Honor.

5 THE COURT: Mr. Davis?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Mr. Lofton?

8 MR. LOFTON: No, Your Honor.

9 THE COURT: It's admitted.

10 (G. S. R. kit from Anthony Wilder marked State's
11 Exhibit No. 103.)

12 Q After you took the clothing and gave it to Detective
13 Roy and did the gunshot residue kit on suspect Wilder, did
14 you have any other involvement at that time?

15 A I also had the victim Sterling Spann's clothing.

16 Q And what clothing did you take from him?

17 A I don't recall.

18 Q It was whatever would have been taken from the
19 coroner, from the --

20 A Right, right.

21 Q You would have taken that and preserved it the same
22 way?

23 A Same fashion, yes.

24 Q Apart from that, was there any other role you had in
25 the investigation?

Heide Michelle Drake
Redirect examination by Mr. Williams

1 A Providing the medical staff with information to
2 contact us once Mr. Williams was out of surgery. That was
3 essentially my primary functions.

4 Q That was the end of your duties there?

5 A Yes.

6 Q I want to ask you about your time as a narcotics
7 officer. What is the street value of a gram of powder
8 cocaine approximately?

9 A A hundred dollars.

10 Q And crack cocaine?

11 A Same.

12 Q Thank you.

13 MR. WILLIAMS: I don't have any other questions.

14 MR. BROWN: No questions.

15 MR. DAVIS: If I could have a moment.

16 (Pause.)

17 MR. DAVIS: Your Honor, could we approach briefly with
18 the court reporter?

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 MR. DAVIS: Your Honor, for Mr. Gadsden we will not
22 have any questions.

23 MR. LOFTON: If the Court please.

24 THE COURT: Yes, sir.

25

Heide Michelle Drake
Recross-examination by Mr. Lofton

1 RECROSS-EXAMINATION

2 BY MR. LOFTON

3 Q Detective Drake --

4 A Yes, sir.

5 Q -- you've told us about the collection of Mr. Wilder's
6 clothing.

7 Now, if you would, tell me about the collection of
8 Mr. Spann's clothing.

9 A Well, Mr. Spann had already passed, and the order was
10 a little different. We didn't have to worry about him
11 being stabilized. So there was a lot less contact with the
12 medical staff.

13 His clothes were also removed by the staff. And once
14 the corner had done her business, I collected his clothes
15 as well.

16 Q Okay. Now, you weren't present when the medical staff
17 removed his clothing, Mr. Spann's clothing.

18 A When they actually cut it off, no.

19 Q Okay. And so at some point in time some member of the
20 medical staff at Trident delivered his clothing to you?

21 A It was in his room.

22 Q In his room.

23 A Yes, sir.

24 Q Okay. And he'd already been assigned a room at the
25 hospital or --

Heide Michelle Drake
Recross-examination by Mr. Lofton

1 A By the time I arrived, yes.

2 Q So he actually had a room in the hospital.

3 A Well, I mean it's the emergency room. I don't know
4 how they do the actual room assignments there. But he was
5 in a room of his own, yes.

6 Q Okay. That's what I meant. He was in a room in the
7 emergency room.

8 A Yes, sir.

9 Q Okay. And so when you physically obtained custody of
10 his clothes --

11 A Uh-huh.

12 Q -- tell me where you got them from.

13 A From his room, which if you walk into the Trident
14 Emergency Room, it's on the opposite side of the nurses'
15 counter or the nurses' desk.

16 Q Okay. And was anyone else in the room when you
17 retrieved the clothes?

18 A The coroner, I believe, had either -- she had just
19 left or she was still in there.

20 Q Okay. And when you retrieved the clothes, where did
21 you retrieve them from?

22 A His room.

23 Q No. I mean, were they in any kind of container or
24 anything at that time?

25 A I don't recall.

Heide Michelle Drake
Recross-examination by Mr. Lofton

- 1 Q Okay. So what did you do with them once you retrieved
2 them?
- 3 A Placed them in an evidence bag.
- 4 Q Okay. So you had another one of those brown bags?
- 5 A Right.
- 6 Q And you placed them in the bag?
- 7 A Right.
- 8 Q Now, there's been testimony that Mr. Spann had been
9 shot a number of times.
- 10 A I'm not privy to the nature of his injuries.
- 11 Q Okay. Well, did the clothes have blood on them?
- 12 A As I recall.
- 13 Q Pardon?
- 14 A As I recall.
- 15 Q As you recall?
- 16 A Uh-huh.
- 17 Q Were the clothes wet?
- 18 A I don't know.
- 19 Q Pardon me?
- 20 A I don't know.
- 21 Q Whatever, whatever their condition, whatever the
22 condition was that they were in, you remember placing them
23 in one of those brown bags.
- 24 A Yes, sir.
- 25 Q Okay. And that brown bag, what did you do with it?

Heide Michelle Drake
Recross-examination by Mr. Lofton

1 A Once Investigator Roy came to the emergency room, I
2 turned them over to him.

3 Q Okay. And, again, there wasn't any plastic bag or any
4 other bagging or containers in that brown bag. You just
5 placed them in the brown bag.

6 A I don't recall if they were already in it, what type
7 of bag they were already in for the medical staff.

8 Q Okay. But you don't know if they were even in a bag.

9 A No. They were in a bag.

10 Q The medical staff had already placed them in some sort
11 of a bag?

12 A I, I would say I wasn't in there when they did that,
13 but it's safe to assume, I'm sure, that the medical staff
14 did that.

15 Q Maybe I misunderstood. I thought that you went into
16 the room. You didn't recall whether the clothes were in a
17 container or not.

18 A No. I don't remember what type of container. I
19 apologize if I misunderstood your question.

20 Q So you don't know whether they were in a plastic bag
21 or a paper bag or what kind of container they were in.

22 A I know they were in a paper bag after I got in there
23 when I put them in a paper bag.

24 Q But you don't recall what, if any, kind of container
25 the medical staff had placed them in.

Heide Michelle Drake
Recross-examination by Mr. Lofton

- 1 A I'm sorry. I don't.
- 2 Q Okay. And then you remember that you placed them in
- 3 one of the brown bags.
- 4 A Right.
- 5 Q And then, again, you didn't have any way to seal it.
- 6 But you turned that bag over to Detective Roy.
- 7 A Well, essentially folded over as best I can.
- 8 Q Folded over.
- 9 A Right.
- 10 Q And you turned it over to Detective Roy.
- 11 A Investigator Roy, yes.
- 12 Q Investigator Roy.
- 13 A Yes.
- 14 Q Was that the last contact that you had with
- 15 Mr. Spann's clothes?
- 16 A Yes.
- 17 Q And likewise with Mr. Wilder's clothes when you turned
- 18 those over to Investigator Roy?
- 19 A Yes.
- 20 Q That's the last contact you had with those clothes?
- 21 A Yes, sir.
- 22 MR. LOFTON: Bear with me one moment, please.
- 23 (Pause.)
- 24 Q And Mr. Wilder's bag and Mr. Spann's bag, they were
- 25 turned over to Investigator Roy at the same time there at

Heide Michelle Drake
Recross-examination by Mr. Lofton

1 Trident Hospital by you.

2 A Correct.

3 Q And that actual transfer from you to Investigator Roy
4 occurred where?

5 A At the hospital.

6 Q Inside the hospital.

7 A Yeah.

8 MR. LOFTON: That's all I have, Your Honor. Thank
9 you.

10 MR. WILLIAMS: No redirect.

11 THE COURT: You may step down.

12 MR. WILLIAMS: May she be excused, Your Honor?

13 THE COURT: She may be.

14 (Whereupon, the witness was excused.)

15 MR. WILLIAMS: The state calls Investigator Kathy
16 Kjellman.

17 THE COURT: Is this going to be a lengthy witness?

18 MR. WILLIAMS: Probably about half an hour or 45
19 minutes.

20 THE COURT: Okay. Any juror need a break before we go
21 forward with the next witness? Don't be shy.

22 (No response.)

23 MR. WILLIAMS: They may want some coffee, Judge. This
24 may not be that exciting.

25

Kathy Kjellman
Direct examination by Mr. Williams

1 KATHY KJELLMAN, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLIAMS

4 THE CLERK: If you will, state your full name, and
5 spell your last name.

6 THE WITNESS: Investigator Kathy Kjellman,
7 K-J-E-L-L-M-A-N.

8 MR. WILLIAMS: May it please the Court Your Honor.

9 THE COURT: Yes.

10 Q Ma'am, where do you work?

11 A Charleston County Sheriff's Office.

12 Q What do you do for the sheriff's office?

13 A I'm an investigator with the forensic services unit.

14 Q Is that also called crime scene?

15 A Yes.

16 Q And how long worked with the crime scene?

17 A Approximately four years.

18 Q How long have you been in law enforcement?

19 A Probably about seven, I think it is now.

20 Q And what is your duties or what's your job with the
21 crime scene?

22 A Investigating crime scenes, respond to them,
23 collecting evidence, processing evidence.

24 Q Were you involved in an investigation along with other
25 crime scene officers back on August the 31st of 2006?

Kathy Kjellman
Direct examination by Mr. Williams

1 A Yes, sir.

2 Q What was your involvement or how did you get involved?

3 A I first got involved when I responded to an accident
4 scene, I-26 eastbound near Midland Park.

5 Q What did you find when you arrived on that accident
6 scene?

7 A I saw a white Jeep Liberty that was in the tree line
8 that obviously had been involved in an accident. The roof
9 had been cut off by rescue personnel.

10 Q I'm going to show you State's 47, 48, 49, 50, 51 and
11 52 and 53 if you can just look at those individually.

12 (Pause.)

13 Q Just hand those back to me. Does that show the area
14 that night?

15 A Yes, it does.

16 Q As a crime scene officer you take pictures?

17 A Yes, I do.

18 Q Are these pictures you would have taken?

19 A I believe some I took. I think some of those may have
20 come from the North Charleston crime scene.

21 Q North Charleston. Sergeant Hallman (sic) was out
22 there as well?

23 A Sergeant Hallman (sic), and I think it's Corporal
24 Wyatt (sic).

25 Q But these all show that crime scene you were at?

Kathy Kjellman
Direct examination by Mr. Williams

- 1 A Yes, it does.
- 2 MR. WILLIAMS: Show these to defense counsel.
- 3 (Pause.)
- 4 MR. WILLIAMS: Your Honor, I move to admit State's 47,
5 48, 49 and 50 and 51 and 52 and 53.
- 6 MR. BROWN: No objection.
- 7 MR. DAVIS: No objection.
- 8 MR. LOFTON: No objection, Your Honor.
- 9 THE COURT: They are admitted.
- 10 MR. WILLIAMS: Thank you, Your Honor.
- 11 (Photographs marked State's Exhibits Nos. 47, 48, 49,
12 50, 51, 52 and 53.)
- 13 Q I want to start with -- and I need to check for the
14 record. Is -- do we have 42 admitted?
- 15 (Pause.)
- 16 Q I'm going to show you State's 41, 42, 46, 44 and 45.
17 Look at those as well.
- 18 THE COURT: Forty-five and 46 have been admitted.
- 19 MR. WILLIAMS: Thank you, Your Honor.
- 20 Q If you will, just hand me back 45 and 46.
21 Do you recognize those three photographs?
- 22 A Yes. I've seen them before.
- 23 Q And those show that same area?
- 24 A Yes.
- 25 Q Will you hand those back to me?

Kathy Kjellman
Direct examination by Mr. Williams

1 MR. WILLIAMS: Show to defense counsel.

2 (Pause.)

3 MR. WILLIAMS: Your Honor, I move to admit State's 41,
4 42 and 44 as well.

5 MR. BROWN: No objection, Your Honor.

6 MR. DAVIS: No objection, Your Honor.

7 MR. LOFTON: No objection.

8 THE COURT: They are admitted.

9 (Photographs marked State's Exhibits Nos. 41, 42 and
10 44.)

11 Q Starting, Deputy, with State's 42, that was the crime
12 scene you were at?

13 A Yes.

14 Q Is this how it initially appeared that you found?

15 A When I got there I think the Jeep was already righted.

16 Q Had been flipped over?

17 A Yeah.

18 Q And you said the roof had been taken off of it.

19 A Yes.

20 Q Let me show you State's 47. Does that show the way
21 the, the Jeep was when you got out there?

22 A Yes.

23 Q I'm also going to show you State's 49. Is that the
24 same Jeep?

25 A Yes, it is.

Kathy Kjellman
Direct examination by Mr. Williams

1 Q And you said that you had searched the area for items
2 or for evidence. Was there evidence from underneath where
3 that Jeep was?

4 A I know there's other evidence I picked up. If it was
5 underneath, I don't recall.

6 Q All right. And if you just show the jury, if you
7 press up on this there's a lesser pointer.

8 A Okay.

9 Q If you'll just show the jury the general area where
10 you were picking up evidence from.

11 A I believe it was right in this area here where you see
12 all the rest of the debris. Some of it was taken outside
13 of this, the view of this picture.

14 Q I'm going to show you first State's 50. That's that
15 same area --

16 A Yes, it is.

17 Q -- on that? Do you recall what was found in that
18 general area?

19 A I think that was the roll of duct tape.

20 Q Put up State's 48. Is that the same item that was
21 found out there?

22 A Yes, it is.

23 Q You would have collected that item?

24 A Yes. I did.

25 Q Let me show you what's been marked State's Proposed

Kathy Kjellman
Direct examination by Mr. Williams

1 88. Do you recognize that item?

2 A Yes.

3 Q What is it marked as or what does it show that it is?

4 A The tag on here says it's a roll of duct tape from
5 accident scene.

6 Q And that's something you would have initialed or
7 marked or at least entered into evidence?

8 A I may have entered it. I can't always see the front
9 of the bag, whether it's in my handwriting or not.

10 THE COURT: You can open it.

11 MR. WILLIAMS: I think we might need some scissors,
12 Judge. It is hard to find in here.

13 A I need some scissors to get it open.

14 Q Can you see the button?

15 MR. DAVIS: Your Honor, if it please, the clerk has
16 some.

17 Q That's got the item number on the tag that shows this
18 item was received.

19 A Yes.

20 Q So that's the duct tape you would have taken from the
21 crime scene.

22 A Yes, it is.

23 MR. WILLIAMS: Your Honor, I move to admit at this
24 point State's 88. I think it was just marked before.

25 MR. BROWN: No objection.

Kathy Kjellman
Direct examination by Mr. Williams

1 MR. DAVIS: No objection, Your Honor.

2 MR. LOFTON: No objection.

3 THE COURT: It is admitted.

4 (Roll of duct tape marked State's Exhibit No. 88.)

5 Q Detective, Investigator, you found that duct tape
6 there. What else did you find in that, that little area
7 that you searched?

8 A I was also advised of a, I believe it was a black
9 mask.

10 Q Did you find a mask out there?

11 A Yes. It was pointed out to me by somebody else.

12 Q Did you collect that mask?

13 A Yes.

14 Q Now, there were other items that were found on the
15 road. Were you aware of that?

16 A On the roadway itself?

17 Q Yeah, that were given to you.

18 A Yes.

19 Q So what, what items were you also given? You were
20 given items. Who gave you items out there on the scene?

21 A I received some items from Detective Kraus and from
22 Deputy Brinson.

23 Q Deputy, I'm going to show you what's been marked
24 State's Proposed 107, 104, 105 and 106. Just going with
25 them one at a time, 106 has an evidence tag on it.

Kathy Kjellman
Direct examination by Mr. Williams

1 A Okay.

2 Q That's one of the pair of black knit gloves that would
3 have been taken according to your reports and your records
4 from detectives that were out on the scene?

5 A Yes.

6 Q Detective Kraus -- I believe you said.

7 A Yes.

8 Q Let me show you also State's proposed 105. That's
9 also labeled black knit gloves. That's actually No. 1.
10 The other one was No. 2. Those are the same thing you got
11 from Detective Kraus out there?

12 A Yes.

13 Q I'm going to show you State's Proposed 104. That's
14 the black knit mask. That would have been given to you by
15 Detective Kraus as well?

16 A Yes. It is.

17 Q And there's also, I'm going to show you State's 107
18 proposed. Which one is that? What is it?

19 A I am sorry? The other bag.

20 Q They are all there.

21 A One was collected from I-26 near Highway 78 and the
22 other one was collected from the accident scene.

23 Q And the accident scene has your initials on it?

24 MR. DAVIS: Your Honor, I'm going to object to that
25 last comment. I believe that's hearsay. She's reading

Kathy Kjellman
Direct examination by Mr. Williams

1 something from the bag that I don't believe is her personal
2 knowledge.

3 THE COURT: Overruled.

4 Q The one that says it was from the road on, you would
5 have marked these, and this would have been your office
6 that put these marks on it?

7 A Actually that's my handwriting on that bag, yeah.

8 Q So on this one, it says, I know it's kind of covered
9 up but it says, "26 Eastbound at 78, thrown from car."

10 A Yes.

11 Q And that's your marking.

12 A Yes.

13 Q And then that's 104. 107 has a different marking?

14 A Yes.

15 Q And that's your handwriting as well?

16 A No, it's not. This is not. The black is not my
17 handwriting.

18 Q Okay. It's your initial on it?

19 A It was in my initials, yeah.

20 Q Okay. And so you would have -- somebody else would
21 have written this on there and you would have signed off if
22 that's true.

23 A Yes, sir.

24 Q And that was from accident scene, black mark.

25 A Yes.

Kathy Kjellman
Direct examination by Mr. Williams

1 Q So you would have, being the one processing that crime
2 scene, collected all of these masks and items that have
3 been earlier collected either by the detectives or some
4 other crime scene officers that were there.

5 A Yes.

6 MR. WILLIAMS: Show this to defense counsel.

7 (Pause.)

8 Q Investigator Kjellman, you're familiar with how the
9 state law enforcement division, how SLED, processes
10 evidence.

11 A Yes.

12 Q A lot of this packaging is related to it being sent to
13 SLED.

14 A Yes.

15 MR. WILLIAMS: Your Honor, I move to admit State's
16 Proposed 104, 107, 106 and 105.

17 MR. BROWN: No objection.

18 MR. DAVIS: Your Honor, Mr. Gadsden, on behalf of Mr.
19 Gadsden, we have no objection to 107, which I believe is
20 the ones collected actually from the accident scene.

21 Your Honor, as to 104, 105 and 106, I don't believe
22 the collection officer has identified these. And this is
23 the first time they've been identified. So we object to
24 the chain.

25 THE COURT: Well, correct me if I am wrong. But

Kathy Kjellman
Direct examination by Mr. Williams

1 Officer Kraus has testified. He testified he collected
2 those items and turned over to Officer Kjellman.

3 MR. DAVIS: Judge, I don't believe these are
4 identified. He certainly talked about gloves and masks. I
5 don't believe he identified these, and that would be the
6 objection.

7 THE COURT: Okay. Overrule the objection.

8 MR. LOFTON: I have the same objection. I don't
9 believe he has identified those specific items that he
10 turned over.

11 THE COURT: Well, this officer has identified.
12 Overrule the objection.

13 MR. WILLIAMS: Thank you, Your Honor.

14 (Black knit mask marked State's Exhibit No. 104; pair
15 of black knit gloves marked State's Exhibit No. 105; pair
16 of black knit gloves marked State's Exhibit No. 106; black
17 mask marked State's Exhibit No. 107.)

18 Q So you would have picked up the masking tape with all
19 of the items there that were next to the Jeep and taken all
20 the items of evidence that you got from Detective Kraus
21 into evidence and preserved those for later processing?

22 A Yes.

23 Q There was -- was there anybody still in that Jeep when
24 you got out there?

25 A When I got there, no.

Kathy Kjellman
Direct examination by Mr. Williams

1 Q Do you recall there being a gun that was recovered on
2 the scene?

3 A Yes. There was.

4 Q By another deputy?

5 A By somebody else, yes.

6 Q And who, who recovered that gun?

7 A I received a Taurus .38 Special from Deputy Brinson.

8 Q And he gave that to you out there?

9 A Yes.

10 Q You would have taken that and preserved it for
11 evidence?

12 A Yes.

13 Q I'm going to show you State's Exhibit 77. Does that
14 have your evidence number on it that shows that was the gun
15 that was seized?

16 A Yes, it does.

17 Q Was this the Taurus .38 Special that you were given by
18 Deputy Brinson?

19 A Yes, it is.

20 Q You would have preserved that and put it into evidence
21 for processing as well?

22 A Yes, sir.

23 Q Now, there were other items that were seized on that
24 scene. Do you recall finding anything else in that area?

25 A I picked up several items that were thrown from the

Kathy Kjellman
Direct examination by Mr. Williams

- 1 vehicle, mostly paperwork and C. D.'s.
- 2 Q Paperwork and C. D.'s, you said?
- 3 A Yeah.
- 4 Q Those items would have all been collected?
- 5 A Yes.
- 6 Q And all those items are in court if anybody on the
- 7 defense wants to see them?
- 8 A Should be, yes.
- 9 Q As far as the -- do you recall there being any drugs
- 10 found in that area?
- 11 A Yes.
- 12 Q Where were the drugs located?
- 13 A They were located by somebody else in the grass
- 14 outside the vehicle.
- 15 Q I'm going to show you first of all State's 53. I know
- 16 you can't see much in that picture, but I want to direct
- 17 your attention to this. There is an item of debris right
- 18 here.
- 19 A Yes.
- 20 Q And this is the Jeep that was rolled over as well?
- 21 A Yes.
- 22 Q I want to put up State's 52. There is that same item
- 23 of debris in this photo. There is that item right here?
- 24 A Yeah.
- 25 Q I want to show you also State's 54. Is that that same

Kathy Kjellman
Direct examination by Mr. Williams

- 1 item that was located in the grass over there?
- 2 A Yes, yes, it is.
- 3 Q And that was the drugs that were found out there?
- 4 A Yes.
- 5 Q And Deputy Roy, I believe, had taken those to SLED.
- 6 A I believe so. I couldn't say for sure.
- 7 Q Apart from the seizing of those items and
- 8 preservation, what other role did you have out there on
- 9 that crime scene, if any?
- 10 A My main purpose out there was just to photograph the
- 11 scene and collect any evidence from that scene and from
- 12 anybody else that had relevant evidence to give me.
- 13 Q And that was done by you until that scene was complete
- 14 that day?
- 15 A Yes.
- 16 Q Did another detective go out the next day, another
- 17 investigator the next day?
- 18 A Yes.
- 19 Q Who -- Investigator Roy?
- 20 A Yes.
- 21 Q Why do y'all stop at some point and pick up the next
- 22 day?
- 23 A Because there's things we find out afterwards that
- 24 maybe require an extra trip out the next day.
- 25 Q And that was what Investigator Roy did the next

Kathy Kjellman
Direct examination by Mr. Williams

- 1 morning?
- 2 A Yes.
- 3 Q You also went the next day to an autopsy.
- 4 A Yes.
- 5 Q What did -- where did you go, first of all?
- 6 A Where did I go?
- 7 Q Yes.
- 8 A M. U. S. C.
- 9 Q Is that normal for you as a crime scene officer to
- 10 attend autopsies?
- 11 A Yes, it is.
- 12 Q Why do y'all do that?
- 13 A In case there's any evidence, or evidence can be
- 14 collected, and to photograph the victim.
- 15 Q What did you do when you went to the autopsy?
- 16 A At first I photographed the victim, and I observed the
- 17 doctor perform the autopsy.
- 18 Q Did you collect any evidence from the autopsy?
- 19 A Yes, I did.
- 20 Q What did you collect? If you need to refer to your
- 21 report, go ahead.
- 22 A I'm trying to find the chain of custody that came from
- 23 the autopsy. I received some jewelry that was taken from
- 24 the victim.
- 25 Q Well, let me ask you. I'll cut it short. Did you

Kathy Kjellman
Direct examination by Mr. Williams

1 retrieve any kind of projectiles?

2 A Yes, I did.

3 Q Where were the projectiles retrieved from?

4 A From my notes here it says that one was retrieved from
5 the victim's lower back.

6 Q And I believe it says there were x-rays also that
7 showed there was one in the lower back and one in the,
8 looks like maybe the, right lung.

9 A Yeah. It --

10 Q Chest cavity area.

11 A Yes.

12 Q So the two projectiles were taken from the victim
13 while you were at the autopsy.

14 A Yes.

15 Q And those would have been given to you.

16 A Yes.

17 Q And you would have preserved them.

18 A Yes.

19 Q Did you also get a blood sample from victim Spann?

20 A Yes.

21 MR. WILLIAMS: I'm going to have these marked, Your
22 Honor.

23 (Projectiles from Sterling Spann marked State's
24 Exhibit No. 108 for Identification; blood and fingernail
25 scrapings from Sterling Spann marked State's Exhibit No.

Kathy Kjellman
Direct examination by Mr. Williams

1 109 for Identification.)

2 Q Investigator Kjellman, I'm going to hand you what's
3 been marked State's Proposed 108 and 109. Do you recognize
4 those two items?

5 A Yes, I do.

6 Q And 108, can you identify that? Tell me what it is.

7 A That's the projectiles that came from the victim at
8 autopsy.

9 Q And that's got your markings on it, as well as the
10 chain information.

11 A It's not my handwriting, but I believe they did come
12 from that autopsy.

13 Q And the tube of blood, the same thing based on the
14 numbering as well as the identification that you recognize?

15 A Yes, sir.

16 MR. WILLIAMS: Your Honor, please show to defense
17 counsel.

18 Q Investigator Kjellman, I want to ask you a little bit
19 more about 109. It's actually two tubes of blood and
20 fingernail scrapings. You would have taken all of those
21 samples?

22 A Yes.

23 MR. WILLIAMS: Your Honor, I move to admit State's 108
24 and 109.

25 MR. BROWN: No objection.

Kathy Kjellman
Cross-examination by Mr. Davis
Redirect examination by Mr. Williams

1 MR. DAVIS: Judge, just maybe a couple of questions to
2 the officer as to the collection.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MR. DAVIS

6 Q You didn't actually -- did you actually obtain the
7 blood and the fingernail scrapings?

8 A I didn't do it myself, no. The doctor did it while I
9 was there and gave it to me.

10 Q And the same with the projectiles? You didn't
11 actually obtain them from the body.

12 A No. I was there when they found them and when they
13 removed them.

14 Q And a medical personnel would have obtained all of
15 this and then handed it directly to you?

16 A Yes.

17 MR. DAVIS: Thank you, Your Honor. No objection.

18 MR. LOFTON: No objection.

19 THE COURT: They're admitted.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMS

22 Q Looking at these projectiles, this shows one of the
23 projectiles that you recovered, my understanding is,
24 underneath the plastic case there?

25 A Yes.

Kathy Kjellman
Redirect examination by Mr. Williams

1 Q And that's the second item that would have been
2 collected from the victim at the autopsy?

3 A Yes, it is.

4 Q What would you have done with the items after you
5 collected them at the autopsy?

6 A I took them back to the office and secured them.

7 Q Would they have been preserved to be taken to the
8 state law enforcement division later?

9 A Yes.

10 Q As a crime scene investigator, as a crime scene
11 officer, do you transport items to the state law
12 enforcement division?

13 A Yes, I do.

14 Q How does that work?

15 A The day they get taken to SLED they're packaged up and
16 placed in my vehicle and taken to SLED and turned over to a
17 SLED agent.

18 Q Is it necessarily items that you've seized --

19 A No.

20 Q -- or is it just whatever items are going out from the
21 crime scene office that day?

22 A Whatever, yeah, exactly. Whatever happens to go that
23 day.

24 Q And did you take some items to the state law
25 enforcement division in Columbia on March the 21st of 2007?

Kathy Kjellman
Redirect examination by Mr. Williams

- 1 A I couldn't say for sure. I'd have to...
- 2 Q Do you have your report? Go ahead and refer to it.
- 3 A I believe I did take some items up there. I'm not
4 exactly sure what it was.
- 5 Q Let me show you this document and see if this
6 refreshes your recollection.
- 7 A Yes, it does.
- 8 Q Does that document show what you would have taken?
- 9 A Yes.
- 10 Q Do you want to hand that to me? It shows that you
11 took victim Spann's clothing, underwear and socks; suspect
12 Gadsden's pants; and victim Patricia Green's pants and
13 shirt; a black hat and a white shirt from the accident
14 scene; suspect Wilder's clothing, jeans and two black
15 shirts; suspect Wilder's black shoes and white socks, as
16 well as red sneakers and white socks, blue shorts, black
17 shirt. And it shows that you would have taken all of those
18 items. And it's logged in March the 21st of 2007.
- 19 A Yes, sir.
- 20 Q So this record shows what you would have dropped off
21 that day.
- 22 A Yes.
- 23 Q And when it's dropped off you actually -- the process
24 is you sign them in to somebody who works at SLED.
- 25 A Yes.

Kathy Kjellman
Redirect examination by Mr. Williams

1 Q And they assign SLED lab numbers to them, and they
2 then inventory them and then turn in?

3 A Yes.

4 Q Do you recall working with Deputy Mills?

5 A Yes.

6 Q Do you recall supervising him at some point around the
7 time of this crime?

8 A Yeah. I believe he went up to SLED with me while he
9 was still in training.

10 Q And there was a time where he, he signed off on it as
11 a delivering officer, a suspect collection kit on Jamie
12 Williams.

13 A Yes.

14 Q But you would have been with him when that was dropped
15 off?

16 A Yes.

17 Q And so he took that, and that was on October the
18 17th of 2007?

19 A Yes.

20 Q And the only thing he took while you were with him was
21 a suspect kit on Jamie Williams.

22 A Yeah.

23 Q What is a suspect kit?

24 A It will contain blood and everything from the
25 suspect -- hair pullings.

Kathy Kjellman
Cross-examination by Mr. Brown

1 Q And although y'all call them suspect kits, they're on
2 victims and on witnesses as well?

3 A Yes.

4 Q So it's a general term for a kit that's used to draw
5 blood and take care of fibers.

6 A Yeah. It's either a suspect or victim kit.

7 Q So suspect or victim.

8 A Yes.

9 Q Thank you. No further questions.

10 CROSS-EXAMINATION

11 BY MR. BROWN

12 Q Investigator, I've just got a few questions.

13 By the time you got to the accident scene a Jeep had
14 been righted, is that correct?

15 A Yes, sir.

16 Q Okay. And to the left of the Jeep as you were looking
17 from the highway on the driver's side there was a debris
18 field, is that correct?

19 A There was debris pretty much all around the vehicle.

20 Q Okay. But the mask and the duct tape were found right
21 near to the, on the driver's side.

22 A Yes.

23 Q Okay. Is that where the Jeep had been lying before it
24 was righted?

25 A Yes.

Kathy Kjellman
Recross-examination by Mr. Davis

1 Q That's all we have. Thank you.

2 MR. DAVIS: Your Honor, may I have a moment?

3 (Pause.)

4 RECROSS-EXAMINATION

5 BY MR. DAVIS

6 Q Deputy, you were just shown a moment ago an evidence
7 log that you took some items to SLED by the solicitor. He
8 showed you that a moment ago.

9 A Yes, sir.

10 Q And I think you went over several items that you took
11 up there, including victim Spann's clothing. Do you
12 remember that list?

13 A Yes.

14 Q Now, on that list do you recall originally there was a
15 white t-shirt from the driver's seat of the Oldsmobile on
16 the list?

17 A If it's on the list there. I don't have it in front
18 of me.

19 MR. DAVIS: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 Q First of all, is this the same document that the
22 solicitor just showed you a moment ago?

23 A Yes, it is.

24 Q Okay. And about half way down there is a line that
25 says white t-shirt from driver's seat of Oldsmobile,

Kathy Kjellman
Cross-examination by Mr. Lofton

1 correct?

2 A Yes.

3 Q And then that's marked out and over to the side it
4 says already at SLED.

5 A Yes. I believe it had already been transported to
6 SLED. As far as when, I'm not sure.

7 Q Okay. So although it's on this list, you didn't
8 personally take that up there.

9 A Yeah. Anything that's got a checkmark by here has
10 been taken up.

11 Q Okay. And that was everything that you read or the
12 solicitor read and you agreed to earlier.

13 A Yes.

14 Q Okay. And then at the very bottom there's red
15 sneakers, white socks, blue shorts, black shirt, and then
16 it says B. L. K. again. And that's the entirety of the
17 line, correct?

18 A Yes.

19 Q And just above that it says victim Spann.

20 A Yes.

21 Q Okay. No other questions. Thank you.

22 MR. LOFTON: If the Court please.

23 CROSS-EXAMINATION

24 BY MR. LOFTON

25 Q Just a couple of things with reference to the items

Kathy Kjellman
Cross-examination by Mr. Lofton

- 1 that were turned over to you by Detective Kraus.
- 2 A Yes, sir.
- 3 Q Where did he actually turn those items over to you?
- 4 A At the accident scene.
- 5 Q And those were items that he had indicated to you that
- 6 he had retrieved from the roadway?
- 7 A Yes.
- 8 Q And what condition were they in when he turned them
- 9 over to you?
- 10 A Well, as far as condition, were they in one piece?
- 11 Q Well, I mean, did he just hand them to you one at a
- 12 time or did --
- 13 A They were already in bags when he gave them to me.
- 14 Q All of them were in bags.
- 15 A Yes.
- 16 Q Same bag?
- 17 A No, different bags.
- 18 Q Paper bags.
- 19 A I believe it was plastic.
- 20 Q Plastic bags.
- 21 A Yeah.
- 22 Q And I think there were gloves and there were masks.
- 23 A Yeah.
- 24 Q And was each glove and each mask in a separate plastic
- 25 bag?

Kathy Kjellman
Cross-examination by Mr. Lofton

- 1 A Yes, they were.
- 2 Q And were those bags sealed?
- 3 A Excuse me?
- 4 Q Sealed?
- 5 A They were in a paper bag. I mean, obviously, it can't
6 be sealed in a paper bag.
- 7 Q I thought you said they were in a plastic bag.
- 8 A Some items were in plastic, yes.
- 9 Q Some were in plastic and some were in paper?
- 10 A Yes.
- 11 Q Do you recall which was in which?
- 12 A I do not at this point, no.
- 13 Q Does your report reflect?
- 14 A I believe one of the masks was in a plastic bag from
15 what I saw earlier.
- 16 Q Okay. Is that the bag it was in when you received it
17 or was the bag it was placed in later?
- 18 A That's the bag it was in when I received it.
- 19 Q And what about the gloves?
- 20 A I can't recall exactly what kind of bag they were in.
- 21 Q Okay. That's all I have. Thank you.
- 22 MR. WILLIAMS: No redirect, Your Honor.
- 23 THE COURT: You may step down.
- 24 MR. WILLIAMS: May she be excused, Your Honor?
- 25 THE COURT: Yes, she may.

Kathy Kjellman
Cross-examination by Mr. Lofton

1 (Whereupon, the witness was excused.)

2 THE COURT: We'll take a short break before we go
3 further.

4 I'll ask the jury to please go to your jury room.
5 Please don't discuss the case. I'll bring you back in a
6 few minutes.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: Court's in recess for 15 minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: Who is the next witness?

12 MR. WILLIAMS: Your Honor, I have basically several
13 detectives that I intend to call -- Catlett, Perkins.

14 THE COURT: Well, I just didn't know which was next.
15 Catlett is the one?

16 MR. WILLIAMS: Yes. I'll call Catlett next.

17 THE COURT: You can call anybody you want. Have you
18 got them coming in?

19 MR. WILLIAMS: They're all at this point -- I'll bring
20 them in.

21 THE COURT: Are you going to put them all up at the
22 same time?

23 MR. WILLIAMS: I wish I could.

24 THE COURT: Bring the jury in, please.

25 (The following takes place in the presence of the

Denise Schwerin Catlett
Direct examination by Mr. Williams

1 jury.)

2 THE COURT: All right. Mr. Williams.

3 MR. WILLIAMS: Thank you, Your Honor. The state calls
4 Detective Denise Catlett.

5 DENISE SCHWERIN CATLETT,
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. WILLIAMS

8 THE CLERK: If you will, state your full name, and
9 spell your last name.

10 THE WITNESS: Denise Schwerin Catlett, C-A-T-L-E-T-T.

11 THE COURT REPORTER: How do you spell your middle
12 name?

13 THE WITNESS: S-C-H-W-E-R-I-N.

14 Q Ma'am, where do you work?

15 A Charleston County Sheriff's Office.

16 Q What do you do at the sheriff's office?

17 A I'm, I'm assigned to the detective office.

18 Q How long have you worked in law enforcement?

19 A Since May of 1995.

20 Q How long have you been a detective?

21 A Since December of 1998.

22 Q Were you involved in a case or part of working on a
23 case that happened up in Lincolnville back on August the
24 31st of 2006?

25 A Yes, sir, I was.

Denise Schwerin Catlett
Direct examination by Mr. Williams

1 Q What was your role in that investigation?

2 A I'm, I was just the supporting detective. I --

3 Q What do you mean by a supporting detective?

4 A In our office we have like two detectives generally
5 are assigned to a homicide. And then all of the other
6 detectives do the leg work, per se, so the two detectives.

7 In this case it was Detective Stanley. He pulls
8 everything together, and then the rest of us are sent out
9 to get the statements or do the G. S. R. kits, that kind of
10 stuff.

11 Q You would be assisting Detective Stanley.

12 A Correct.

13 Q What did you do to assist Detective Stanley in this
14 case?

15 A In this case I was sent to Trident Hospital, and there
16 I obtained some G. S. R. kits. And then I went back to the
17 fire department and obtained some statements.

18 Q Tell me. You said -- what hospital did you go to?

19 A Trident.

20 Q Who was at Trident Hospital?

21 A What do you mean, who?

22 Q You said you, you executed a G. S. R. kit.

23 A Detective Perkins and I obtained a G. S. R. kit on
24 Jamie Williams. And then I left and came back and got one
25 on Mr. Spann.

Denise Schwerin Catlett
Direct examination by Mr. Williams

- 1 Q Okay. So you were with another detective?
- 2 A Correct.
- 3 Q And that was Detective Perkins.
- 4 A He was new to our office, and so he had never done a
- 5 G. S. R. kit. So he really didn't have a choice. I said
- 6 come on, you're doing this with me and --
- 7 Q Okay. So that was on which person?
- 8 A That was on Jamie Williams.
- 9 Q I'm going to hand you what's been marked State's
- 10 Proposed Exhibit 110. Do you recognize that item?
- 11 A Yes, sir. This is the G. S. R. kit that I completed
- 12 on Jami Williams.
- 13 Q Is that what -- did you do that, or did Detective
- 14 Perkins?
- 15 A No. That is my writing and my name.
- 16 Q Okay. So, so you and he both completed that kit.
- 17 A Right.
- 18 Q And once you -- briefly, will you tell the jury how
- 19 you completed the kit or what you do to perform a G. S. R.
- 20 kit?
- 21 A The kit comes with everything in it, and you open it
- 22 up. It actually has directions. But there's little like
- 23 stamps. And you do the stamps. Then you have like a test
- 24 kit and you pour it on there and you put it in a little
- 25 tube. And then there's a solution that you put on the

Denise Schwerin Catlett
Direct examination by Mr. Williams

1 Q-tips and you actually like swab the hands. And then you
2 put it. And they're all labeled like left and right, front
3 and back. It's pretty self-explanatory.

4 Q And you followed those directions and completed that
5 kit?

6 A I did, yes, sir.

7 Q And that was on Jamie Williams?

8 A Correct.

9 Q And that's a kit that you completed?

10 A Yes, sir, I did.

11 Q And you said there was a second G. S. R. kit you did
12 later?

13 A Right, on Sterling Spann.

14 Q What did you do upon completing those?

15 A I took Detective or Deputy Upir (sic) back to his
16 vehicle which was parked on the side of I-26.

17 Q And that was where the crash was?

18 A Yes, sir.

19 Q And after you took Deputy Upir back to his vehicle,
20 what did you do?

21 A I went back to the hospital. And then that's when I
22 retrieved the G. S. R. kit on Sterling Spann.

23 Q Did you complete that the same way?

24 A I did, yes, sir.

25 Q I show you what's been marked State's Proposed

Denise Schwerin Catlett
Direct examination by Mr. Williams

- 1 Exhibit 111. Do you recognize that?
- 2 A Yes, sir. It's my writing.
- 3 Q Is that the kit that you, I guess, executed or that
- 4 you applied on the victim in the case?
- 5 A It was, yes, sir.
- 6 Q Was he deceased at the time?
- 7 A He was.
- 8 MR. WILLIAMS: Show defense counsel.
- 9 (Pause.)
- 10 MR. WILLIAMS: Your Honor, I move to admit State's
- 11 Proposed 110 and 111.
- 12 MR. BROWN: No objection.
- 13 MR. DAVIS: No objection, Your Honor.
- 14 MR. LOFTON: No objection, Your Honor.
- 15 THE COURT: They are admitted.
- 16 (G. S. R. kit for Jamie Williams marked State's
- 17 Exhibit No. 110; G. S. R. kit for Sterling Spann marked
- 18 State's Exhibit No. 111.)
- 19 Q Detective Catlett, you would have sealed those?
- 20 A Yes, sir. I sealed the red tape on the back of it,
- 21 yes, sir.
- 22 Q Would you have -- how would they have gotten or where
- 23 would they have gone next after you collected and sealed
- 24 them?
- 25 A I gave Sterling Spann's G. S. R. kit to Investigator

Denise Schwerin Catlett
Direct examination by Mr. Williams

1 Owens with the technical service unit or the forensic unit
2 or whatever it's called now and --

3 Q He's a crime scene officer?

4 A Yes, sir. And then I gave -- Detective Perkins
5 actually took possession after we did Jamie Williams. He
6 took his, and he had it in his car. And I was with him
7 when he placed it in his car.

8 Q And you would have then turned that over hopefully to
9 a detective or investigator.

10 A Yes, sir. What he -- I had left at the point. So
11 where it went from after he took it, I don't know.

12 Q You had, after you had dropped off, or I guess after
13 you had taken Mr. Spann's G. S. R. kit, did you do anything
14 else in the case?

15 A After we were done at the hospital Sergeant Willaby
16 requested that I go to the fire department, that there were
17 two firemen present that had assisted with Mr. Williams and
18 with Mr. Spann. And I went there and took statements from
19 them.

20 Q Is that normal as a detective to take statements from
21 what witnesses that are out there?

22 A From whoever, yes, sir.

23 Q So you would have just taken written statements of
24 witnesses.

25 A Correct.

Denise Schwerin Catlett
Cross-examination by Mr. Davis

1 Q And that was your entire involvement?

2 A Yes, sir.

3 Q Thank you. Nothing else.

4 MR. BROWN: No questions.

5 CROSS-EXAMINATION

6 BY MR. DAVIS

7 Q Ms. Carlett, do you have the exact time that you took
8 the G. S. R. sample from Mr. Williams?

9 A It would have been written on the form that would have
10 been put in the envelope. I didn't look in it. I would
11 have to look to see if it's in there, but no, sir.

12 Q And the same would be as to Mr. Spann?

13 A Correct, yes, sir.

14 MR. DAVIS: May I approach the witness, Your Honor?
15 Thank you.

16 A I think he put them on that side.

17 Q I believe that's 110 and 111. I'm going to give these
18 back to you.

19 A Can I open them?

20 Q You may if you need to.

21 A When we fill these out there's a light piece of paper
22 that goes in there with them; and it has the victim's name,
23 where he was at and all of that. I don't -- all of that
24 information would be on here, in there, but they're not in
25 these folders.

Denise Schwerin Catlett
Cross-examination by Mr. Davis

1 Q Can you check? You just opened No. 111, is that
2 correct?

3 A Correct, and this Jamie Williams', and it's not in
4 here either.

5 Q Okay. You don't, you don't right now recall when it
6 was?

7 A Well, Jamie's was right when I got to the hospital.

8 Q Okay.

9 A And I responded around 7:00 p.m.

10 Q Okay.

11 A And then so it was shortly right after that. And then
12 Mr. Spann's would have been later, 8:30 or 9:00 o'clock.

13 Q Because in the interim you had gone up to Lincolnville
14 to take the statements you just talked about?

15 A Yeah. And there was a huge commotion at the hospital.
16 We had to settle all of that down. And I spoke with the
17 family. And there was just a lot of stuff that happened at
18 the hospital during that time.

19 Q When you, when you had returned and actually were able
20 to do the kit, Mr. Spann was already deceased.

21 A He was, yes, sir.

22 Q While in Lincolnville you talked to two firemen?

23 A Yes, sir.

24 Q Okay. You took witness statements from them?

25 A I did.

Denise Schwerin Catlett
Redirect examination by Mr. Williams

1 Q You didn't talk to any of the neighbors?

2 A No, sir.

3 Q You didn't take statements from either Mr. or

4 Mrs. Daniels.

5 A No, sir, not that I recall.

6 Q Either one of the two Mr. Joneses?

7 A Not that I recall.

8 Q You didn't speak to Harold Corley.

9 A No, sir.

10 Q To Yvette Cook.

11 A No, sir.

12 Q So if statements were taken, it would have been

13 another detective that would have done that.

14 A Right.

15 MR. DAVIS: May I have just one moment?

16 (Pause.)

17 Q Thank you. No other questions.

18 A Yes, sir.

19 MR. LOFTON: No questions, Your Honor.

20 MR. WILLIAMS: I have one brief redirect.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MR. WILLIAMS

24 Q Detective Catlett, once those kits are put together,

25 that goes to SLED, right?

James Perkins
Direct examination by Mr. Williams

1 A Correct.

2 Q And if there's tape on there and things that shows,
3 processed not by you.

4 A Right. Well, the back of it is, actually has my
5 initials where I seal it. And then I turn it over. And
6 then the T. S. unit will send it to SLED.

7 Q Okay. And SLED will open it and look at it and test
8 it.

9 A Correct.

10 Q So if that had been opened, and obviously things would
11 have been taken out and put back in?

12 A Absolutely.

13 Q Okay. Thank you. Nothing else.

14 THE COURT: You may step down.

15 MR. WILLIAMS: The state would call Detective Perkins,
16 Your Honor.

17 Your Honor, could she be excused?

18 THE COURT: You may be.

19 (Whereupon, the witness was excused.)

20 JAMES PERKINS, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. WILLIAMS

23 THE CLERK: State your full name, and spell your last
24 name.

25 THE WITNESS: James Perkins, P-E-R-K-I-N-S.

James Perkins
Direct examination by Mr. Williams

- 1 MR. WILLIAMS: May it please the Court, Your Honor.
2 THE COURT: Yes.
3 Q Sir, where do you work?
4 A Charleston County Sheriff's Office in investigations.
5 Q What do you do for the sheriff's office?
6 A I'm an investigator.
7 Q How long have you worked in law enforcement?
8 A About seven years.
9 Q When did you first begin working as an investigator,
10 as a detective?
11 A About the middle of 2006.
12 Q Were you involved in an investigation regarding a
13 murder or a homicide that occurred August the 31st of 2006?
14 A Yes, sir.
15 Q What was your role in that investigation?
16 A I was tasked with going to the hospital, Trident Tech
17 (sic).
18 Q Did you go, did you go along with anybody?
19 A No.
20 Q What did you do at Trident Hospital?
21 A I met with Detective Catlett, and she and I conducted
22 a G. S. R. kit on Jamie Williams.
23 Q And you both conducted that yourselves together?
24 A Yes, sir.
25 Q Let me show you what's been admitted as State's 110.

James Perkins
Direct examination by Mr. Williams

1 Is that the kit that both of you conducted in this case?

2 A Yes, sir.

3 Q Hand that back to me.

4 Once the G. S. R. kit was taken did you have any other
5 role at that point?

6 A Other than that, all I did was collected his clothing,
7 and I took it to the sheriff's office. It was placed in
8 evidence lockers at the sheriff's office.

9 Q That was Jamie Williams' clothing?

10 A Yes, sir.

11 Q So you collected that and took it to the --

12 A Well, I didn't actually collect the clothes. I
13 actually collected after it was already bagged.

14 Q Tell me how that happened.

15 A I don't know; I don't know. When it was given to me,
16 it was already collected.

17 Q Who gave it to you?

18 A Detective Catlett.

19 Q All right. Detective Catlett had Jamie Williams'
20 clothing,--

21 A Yes, sir.

22 Q -- and gave that to you. Is that a yes?

23 A Yes, sir.

24 Q And you took that to the sheriff's office.

25 A Yes, sir.

Scott Rywelski
Direct examination by Mr. Williams

- 1 Q And did you take the G. S. R. kit as well?
- 2 A Yes, sir.
- 3 Q And that was then dropped off at the crime scene
- 4 office?
- 5 A Yes, sir.
- 6 Q And that was with the crime scene officers.
- 7 A Yes, sir.
- 8 Q Thank you.
- 9 MR. WILLIAMS: Nothing else.
- 10 MR. BROWN: No questions.
- 11 MR. DAVIS: Your Honor, could we have just one moment?
- 12 (Pause.)
- 13 MR. DAVIS: No questions, Your Honor. Thank you.
- 14 MR. LOFTON: No questions, Your Honor.
- 15 THE COURT: Step down.
- 16 MR. WILLIAMS: May he be excused, Your Honor?
- 17 THE COURT: He may.
- 18 (Whereupon, the witness was excused.)
- 19 MR. WILLIAMS: The state calls detective Rywelski.
- 20 SCOTT RYWELSKI, having been
- 21 first duly sworn, testified as follows:
- 22 DIRECT EXAMINATION BY MR. WILLIAMS
- 23 THE CLERK: If you will, state your full name, and
- 24 spell your last name.
- 25 THE WITNESS: Scott Rywelski, R-Y-W-E-L-S-K-I.

Scott Rywelski
Direct examination by Mr. Williams

- 1 MR. WILLIAMS: May it please the Court, Your Honor.
2 THE COURT: Yes, sir.
3 Q Sir, where do you work?
4 A The Charleston County Sheriff's Office.
5 Q What do you do for the sheriff's office?
6 A I'm a patrol sergeant.
7 Q How long have you been in law enforcement?
8 A Approximately eight years.
9 Q How long have you been worked as a sergeant?
10 A Two months.
11 Q Did you work as -- did you have a different rank
12 before being promoted to sergeant?
13 A Yes. I was a detective.
14 Q How long were you a detective or investigator for?
15 A Three years.
16 Q Were you an investigator back on August the 31st of
17 2006?
18 A Yes, I was.
19 Q Did you get involved in a shooting or involved in a
20 case that occurred up in Lincolnville on that day?
21 A Yes, I did.
22 Q How did you initially get involved in the case?
23 A I was on my way home after work, and I heard a call go
24 out of shots fired.
25 Q Where were you at when you heard the call go out?

Scott Rywelski
Direct examination by Mr. Williams

- 1 A I was on Highway 78.
- 2 Q What did you do when you heard the call?
- 3 A I just made my way there to see if I could be of any
4 assistance. They had officers en route. There were shots
5 fired with a man down.
- 6 Q What did you find? Where did you respond to?
- 7 A Corner of West Stall and Lincolnville.
- 8 Q What did you find when you got there?
- 9 A E. M. S. and firefighters, Lincolnville Fire
10 Department, one other Charleston County deputy on the
11 scene. And the paramedics and firefighters were working on
12 a black male subject laying on the ground next to a
13 vehicle.
- 14 Q Was he still there on the ground when you got there?
- 15 A Yes, he was.
- 16 Q What was his condition when you arrived?
- 17 A I'm not sure. I didn't approach him or E. M. S.
- 18 Q What did you do? What was your role once you got
19 there?
- 20 A Once I got on the scene I assessed the scene and
21 called the on-duty sergeant for the C. I. D. unit and
22 advised him he needed some more detectives up in that area.
23 And then I assisted Scott Jackson with, Deputy Scott
24 Jackson with, the putting crime-scene tape up around the
25 immediate area.

Scott Rywelski
Direct examination by Mr. Williams

1 Q So you assisted in security at the crime scene, so to
2 speak?

3 A Correct.

4 Q After you did that, what was your role?

5 A I just held crime scene security until the supervisors
6 arrived on the scene and then afterwards obtained witnesses
7 and tried to obtain statements and locate other witnesses.

8 Q Was there a lead detective in the case?

9 A At that time there was not.

10 Q Was there a lead detective eventually assigned?

11 A Yes, there was.

12 Q Who was the lead detective in the case?

13 A Donald Stanley.

14 Q And at the time you were up there, tell the jury how
15 you go about obtaining statements. What's your process?

16 A You just identify and locate any potential witnesses.
17 You ask if they saw anything or heard anything. If they
18 answer yes, we have a statement pad. We sit them down and
19 ask them to fill the top -- their name, their address, some
20 good telephone numbers, contact numbers, and have them just
21 write down what they saw or heard.

22 Q And that's a standard procedure, is getting a written
23 statement?

24 A Correct. If they can write it, we have them write it.
25 And if not, we'll write it for them.

Scott Rywelski
Direct examination by Mr. Williams

- 1 Q And I believe you had talked to a Mr. John Jones, Jr.
2 A Yes.
3 Q And took a statement from him.
4 A Correct.
5 Q And went and talked to other witnesses that were
6 available or talked to other detectives about this.
7 A Correct.
8 Q After doing that did you have any other role that
9 night?
10 A No, not that night. I just stayed on the scene until
11 crime scene was finished processing the entire scene. And
12 we roped the scene down and left for the evening.
13 Q Did you go out the next day?
14 A Yes.
15 Q Where did you go the next day?
16 A We did a canvass of I-26 just before the Midland Park
17 overpass where a vehicle crash had occurred shortly after
18 the incident went out.
19 Q Was there a crime scene officer with y'all at that
20 time?
21 A Yes, there was.
22 Q Do you remember who it was?
23 A I believe it was Investigator Roy.
24 Q Did y'all find anything out there?
25 A Yes, we did.

Scott Rywelski
Direct examination by Mr. Williams

1 Q What did you find?

2 A We found a black in color handgun.

3 Q That would have been seized by crime scene officers.

4 A Correct.

5 Q After you had been out to the scene there and
6 basically processed the road did you go anywhere else and
7 do anything?

8 A We went back to Lincolnville, the incident location,
9 and did an article search with one of our K-9 dogs to try
10 to locate any other weapons that may have been around the
11 area.

12 Q How wide out would that search have been?

13 A The corner of the intersection. We primarily went
14 across the street from where the incident took place, down
15 a road where witnesses say they saw a vehicle leave at a
16 high rate of speed after the incident. We mainly worked
17 that area right there.

18 Q And did the dog kinda track out all over that area?

19 A Correct, never really alerted to any, anything that
20 was of interest for us.

21 Q And what, what, what are those dogs trained to alert
22 to?

23 A This particular dog was a bomb dog which is trained to
24 alert to explosives, gunpowder, things of those nature.

25 Q Gun?

Scott Rywelski
Direct examination by Mr. Williams

1 A Yes, it would because of the gunpowder inside of any
2 projectiles, or if the gun had been fired we have residue
3 from gun, gunpowder in it.

4 Q Wasn't just a bullet itself --

5 A Yes.

6 Q -- the K-9, it's unfired cartridge.

7 A Correct.

8 Q Nothing was found out there the next day?

9 A No, sir.

10 Q Do you know approximately what time it was when y'all
11 went out there?

12 A I'm not exactly sure what time it was. I know it was
13 close to mid afternoon, a little bit after.

14 Q Did you also canvass the area trying to look for
15 witnesses?

16 A Correct.

17 Q And y'all talked to whoever you could that was out
18 there?

19 A Exactly.

20 Q And you took a statement from Mr. Leroy Daniels.

21 A Yes.

22 Q And then your next involvement really wasn't until
23 September the 5th.

24 A Correct.

25 Q Now, as a detective you have collected or are familiar

Scott Rywelski
Direct examination by Mr. Williams

- 1 with collecting what we call suspect kits.
- 2 A Yes, sir.
- 3 Q Can you tell the jury what a suspect kit is?
- 4 A It is a kit where we take blood samples, hair samples.
- 5 Used to be saliva samples. They no longer do that -- in
- 6 certain cases. It's used for D. N. A. comparison to get a
- 7 D. N. A. sample from a, a suspect to compare that with D.
- 8 N. A. evidence found on any type of evidence.
- 9 Q So it's sort of a standard of so that if you find
- 10 something somewhere else, you can compare it to a known
- 11 person.
- 12 A Correct.
- 13 Q And did you execute or did you collect any suspect
- 14 kits from the suspects in this case?
- 15 A Two of them, yes.
- 16 Q And which were the two that you did?
- 17 A Mr. Smith and Mr. Wilder.
- 18 Q What is the process of a kit being taken? What
- 19 happens?
- 20 A We first have to get a search warrant signed by a
- 21 judge establishing probable cause or reason to believe
- 22 there's D. N. A. going to be found from the suspect kit.
- 23 Q Y'all got search warrants?
- 24 A We even got two search warrants secured for both
- 25 subjects.

Scott Rywelski
Direct examination by Mr. Williams

1 We would then go to the jail. As long as they're
2 still in jail, we get the nursing staff, show them the
3 search warrants and give them a copy of it. And then the,
4 the inmate at that time it is brought up to the medical
5 facility in a private area where two tubes of whole blood
6 are taken from them. And they take hair samples from their
7 pubic region and their head.

8 Q So what exactly is collected? You said two tubes of
9 blood.

10 A Correct.

11 Q What else?

12 A Pubic hair samples and on the forehead place on their
13 head for head hair, are collected. They're all sealed and
14 put into an envelope.

15 Q And you stand there and watch it happen.

16 A Correct.

17 Q You watch the needles go in the arm and the blood come
18 out.

19 A Yes.

20 Q And watch the hair being pulled?

21 A Yes.

22 Q And then it's given directly to you?

23 A After the suspect kit is sealed, they have to initial.
24 Their seal's put on the blood that it's their blood; their
25 hair samples. It's all put in the envelope and sealed.

Scott Rywelski
Direct examination by Mr. Williams

1 They have to initial saying that it was taken from them.
2 It's sealed, put back in the box. Then we take it and
3 transport it back to our evidence compound because it's got
4 to be refrigerated for the blood.

5 Q And you watched that happen with suspect Smith and
6 suspect Wilder.

7 A Correct.

8 Q And all of that was done in a hospital environment.
9 You watched it happen the way you explained, and then you
10 sealed it.

11 A Correct.

12 MR. DAVIS: Judge, may it please the Court.

13 For the record, the solicitor has just opened up the
14 envelope that he's going to show the witness. Let the
15 record reflect that.

16 MR. WILLIAMS: Your Honor, is it better I mark the
17 actual bags with the subject exhibits?

18 THE COURT: I guess you better do both.

19 MR. WILLIAMS: For that, Your Honor, I'm going to have
20 the bag itself marked, as well as the items inside as A, B
21 and C.

22 THE COURT: Do the bag and then the other exhibits.

23 (Bag marked State's Exhibit No. 112 for
24 Identification; collection kit for defendant Smith marked
25 State's Exhibit No. 112-A for Identification; collection

Scott Rywelski
Direct examination by Mr. Williams

1 kit for defendant Wilder marked State's Exhibit No. 112-B
2 for Identification; collection kit for defendant Gadsden
3 marked State's Exhibit No. 112-C for Identification.)

4 Q Detective, I'm going to hand you what's been marked as
5 State's Proposed 112. And within that are three subitems,
6 State's Exhibits 112-C, 112-B and 112-A. I'm going to ask
7 you if you recognize 112-A and 112-B.

8 A Yes, sir.

9 Q And what are they?

10 A Suspect kits.

11 Q Those are the ones you talked about?

12 A Correct.

13 Q 112-A is from Keive Smith; 112-B is from Anthony
14 Wilder.

15 A Yes.

16 MR. WILLIAMS: Your Honor, I'm going to show these to
17 all defense counsel. Your Honor, show those to defense
18 counsel.

19 (Pause.)

20 Q So 112-A and 112-B are the two kits that you would
21 have taken and sealed them up as you testified to the jury
22 earlier?

23 A Correct.

24 Q What would you or what did you do with these once you
25 had taken the samples?

Scott Rywelski
Direct examination by Mr. Williams

1 A We would have left the jail and taken them straight to
2 the crime lab and entered into evidence so that it could be
3 refrigerated.

4 Q And the packaging indicates that David Owen received
5 those from you on September the 5th.

6 A Correct.

7 MR. WILLIAMS: Your Honor, I'm going to move to
8 introduce 112-B and 112-A.

9 MR. BROWN: No objection.

10 MR. DAVIS: No objection.

11 MR. LOFTON: No objection, Your Honor.

12 THE COURT: They are admitted.

13 (Collection kit for defendant Smith marked State's
14 Exhibit No. 112-A; collection kit for defendant Wilder
15 marked State's Exhibit No. 112-B.)

16 Q Apart from obtaining the, the kits at that point on
17 May the 5th did you do anything, I'm sorry, on
18 September the 5th, did you do anything on September 8th as
19 well?

20 A No. I'm not exactly sure.

21 Q Do you have a copy of your report with you by any
22 chance?

23 A No, I do not.

24 MR. WILLIAMS: Strike that, Your Honor.

25 Q Detective, basically after you had obtained the blood

Scott Rywelski
Cross-examination by Mr. Brown

1 samples did you assist -- assist the detectives in any way
2 other ways?

3 A Would you repeat the question?

4 Q You would have assisted with the detectives in any
5 other way?

6 A Just following up in anything that the lead detective
7 needed done, the assigned task.

8 Q Do you recall, do you recall looking into a telephone
9 call that may have been made to one of the victims?

10 A Yes. I believe we had a search warrant to SunCom for
11 Ms., I think it was, Ms. Green's cell phone.

12 Q So you tried to track down information on people that
13 may have been calling one of the victims?

14 A Correct.

15 Q Thank you. I have nothing else.

16 MR. BROWN: May it please the Court, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BROWN

19 Q Detective, the phone call that you were investigating,
20 or phone calls, was actually a, an anonymous call to
21 Patricia Green, was it not?

22 A I believe so, yes.

23 Q An anonymous call in which Ms. Green --

24 MR. WILLIAMS: Your Honor, I'm going to object on any
25 hearsay with Ms. Green.

Scott Rywelski
Cross-examination by Mr. Brown

1 Q Tell me about the -- strike that. Tell me about the
2 phone call that you investigated.

3 A I'm not exactly positive a hundred percent what it
4 was.

5 Q Okay.

6 MR. BROWN: Mark this for identification, please.

7 (Incident report marked Defendant Smith's Exhibit No.
8 3 for Identification.)

9 Q Let me show you your report and see if this helps
10 refresh your recollection. Would you turn to page two?

11 A Okay.

12 Q Now, what can you tell me about the phone call that
13 you investigated?

14 A I just conducted a -- obtained a search warrant for
15 her phone records to SunCom.

16 Q And what was it -- what is your understanding about
17 the phone call in question?

18 MR. WILLIAMS: I will object to hearsay, Your Honor.

19 THE COURT: Sustained.

20 Q Did you investigate a phone call received by
21 Ms. Green?

22 A Yes.

23 Q Okay. And what was it about that phone call that you
24 investigated?

25 A All I did personally was obtain a search warrant for

Scott Rywelski
Cross-examination by Mr. Davis

1 those records.

2 Q Why did you want the records?

3 A Because an anonymous phone call came in.

4 Q Are you aware of the substance of that phone call?

5 MR. WILLIAMS: Objection to hearsay, Your Honor.

6 MR. DAVIS: Your Honor, may we approach?

7 THE COURT: Yes or no? Are you aware of the substance
8 of the call?

9 THE WITNESS: Yes.

10 THE COURT: The objection is hearsay?

11 MR. WILLIAMS: I'm fine with that answer, Your Honor.

12 THE COURT: I understand.

13 Q Okay. Can you tell us about what your understanding
14 of the substance of that call was?

15 MR. WILLIAMS: I will object to hearsay.

16 THE COURT: Sustained.

17 MR. DAVIS: Judge, may we approach on that matter?

18 THE COURT: Yes.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 MR. BROWN: No further questions.

22 CROSS-EXAMINATION

23 BY MR. DAVIS

24 Q It is sergeant now, right?

25 A Yes, sir.

Scott Rywelski
Cross-examination by Mr. Davis

- 1 Q Congratulations.
- 2 A Thank you.
- 3 Q You responded to the scene in Lincolnville. And I
- 4 believe you said you took some statements, is that right?
- 5 A Correct.
- 6 Q Okay. Anybody on the scene that had that information,
- 7 I think you talked to the jury about you have forms and you
- 8 might have them write it if they can, correct?
- 9 A Correct.
- 10 Q Or you might write it for them, correct?
- 11 A Correct.
- 12 Q And you spoke with some lay witnesses, non-police,
- 13 non-fire department people, correct?
- 14 A Correct.
- 15 Q They were neighbors there of Ms. Green.
- 16 A Correct.
- 17 Q You did not speak with Mr. Harold Corley, did you?
- 18 A That name does not sound familiar.
- 19 Q You didn't receive any evidence from Mr. Harold
- 20 Corley.
- 21 A I do not believe so.
- 22 Q And then you have -- did you still have the copy of
- 23 your report with you?
- 24 A Yes.
- 25 Q Okay. And the report that we were referencing,

Scott Rywelski
Cross-examination by Mr. Davis

1 actually Mr. Brown was referencing there a moment ago, he
2 was asking you about a search warrant you obtained on
3 September 8th of 2006, correct?

4 A I believe so. For the telephone?

5 Q Yes.

6 A Yes.

7 Q Okay. And so that's about a week after the actual
8 incident, right?

9 A Correct.

10 Q Okay. And you con -- you took that step in the
11 investigation based on what was told to you by Ms. Green.

12 A Not directly.

13 Q Okay.

14 A This -- information is not told to us specifically.
15 We may get this information from another detective that was
16 following a lead. That information being given to us, or
17 tasks or things to do, I obtain that information, type a
18 search warrant and go get a judge to sign it.

19 Q So Ms. Green did not contact you directly?

20 A No. She did not.

21 Q Who would have informed you about that information?

22 A I am not a hundred percent sure on who told me about
23 that. It could have been a supervisor or the lead
24 detective. I do not know who told me this.

25 Q I understand you don't recall who. In this case our

Scott Rywelski
Cross-examination by Mr. Davis

- 1 lead detective would have been Detective Stanley?
- 2 A Correct.
- 3 Q And so when you're talking about supervisors, who
- 4 would that have been in this case?
- 5 A Either one of the sergeants or lieutenant or captain.
- 6 Q Can you give names for the jury?
- 7 A At that time it was Sergeant Williams, Sergeant David
- 8 Willaby and Lieutenant Tiddle. And it was Captain Hammett
- 9 at the time, I believe.
- 10 Q And Sergeant Williams was involved in this case.
- 11 A Correct. He was the on-duty, on-call supervisor on
- 12 this incident.
- 13 Q And if you'll note at the bottom of this report, it's
- 14 dated. It's got your name down at the bottom, and your
- 15 badge number, correct?
- 16 A Correct.
- 17 Q And it's dated 9/28/06, correct?
- 18 A Correct.
- 19 Q And the last line of the last page of this 2-page
- 20 report states investigation continued, correct?
- 21 A Correct.
- 22 Q That's all the questions I have. Thank you.
- 23 MR. LOFTON: I have no questions, Your Honor.
- 24 MR. WILLIAMS: One quick follow-up.
- 25

Scott Rywelski
Redirect examination by Mr. Williams

1 REDIRECT EXAMINATION

2 BY MR. WILLIAMS

3 Q Sergeant Rywelski, why do you put the investigation
4 continues at the bottom of the report? What does that
5 mean?

6 A The reason why the investigation continues is I'm not
7 the case agent. I'm not closing this case out. There may
8 be some other leads that need to be followed up on. But as
9 far as my part at the time this supplement was done, I
10 concluded my investigation and my part of this case.

11 Q So all that's, all that's showing -- it's not that
12 you're doing more. It just shows that there's another
13 detective who is making that call.

14 A Correct. There may be several other detectives that
15 still have something that they're still working on, leads
16 and stuff like that. But as of this point with this
17 supplement, my part was done.

18 Q So it doesn't mean that there's more out there to
19 find. It just means other people are working the case and
20 you can't speak for them.

21 A Correct.

22 Q Thank you.

23 MR. DAVIS: If I may, Judge, I would argue that would
24 allow questioning along the lines of Mr. Brown earlier
25 based on the arguments we made at the bench. There are

Diane Turner
Direct examination by Mr. Williams

1 obviously leads that will continue --

2 THE COURT: Are you talking about the hearsay?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: No. Overrule your objection.

5 MR. DAVIS: Thank you, Your Honor.

6 THE COURT: You may step down.

7 MR. WILLIAMS: May he be excused as well, Your Honor?

8 THE COURT: Yes.

9 (Whereupon, the witness was excused.)

10 MR. WILLIAMS: The state calls Detective Diane Turner.

11 DIANE TURNER, having been

12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WILLIAMS

14 THE CLERK: Will you state your full name and spell
15 your last name?

16 THE WITNESS: Diane Turner. Excuse me. Last name is
17 T-U-R-N-E-R.

18 MR. WILLIAMS: May it please the Court, Your Honor.

19 THE COURT: Yes.

20 Q Ma'am, where do you work?

21 A I work for the Charleston County Sheriff's Office.

22 Q What do you do for the sheriff's office?

23 A I'm a detective.

24 Q How long have you been a detective for them?

25 A I've been a detective since 2004.

Diane Turner
Direct examination by Mr. Williams

1 Q How many years of law enforcement did you have before
2 you were promoted to detective?

3 A I had just about two years.

4 Q Were you a -- were you working for the sheriff's
5 office on a case back on August the 31st of 2006?

6 A Yes, I was.

7 Q That was a case up at [REDACTED] in Lincolnville?

8 A Yes, sir.

9 Q How did you get involved with that investigation?

10 A I was called out by my supervisor.

11 Q And were you a lead detective or an assisting
12 detective?

13 A Assisting detective.

14 Q Who was the main case agent in the case?

15 A Detective Stanley.

16 Q He's right here in court today?

17 A Yes, he is.

18 Q When you were called into the case, what was your role
19 or what did you do?

20 A I'm sorry, sir. I didn't hear you.

21 Q What did you do?

22 A I pulled the background information on all of the
23 suspects. I also obtained several search warrants for
24 vehicles, as well as D. N. A.

25 Q Let me back you up.

Diane Turner
Direct examination by Mr. Williams

1 On August the 31st did you respond anywhere?

2 A Yes, sir. I responded to the actual scene.

3 Q Did you assist the detectives on the scene?

4 A Yes, sir, I did. I assisted in taking a witness
5 statement.

6 Q And then you spoke with John Jones, Jr.

7 A Yes, sir.

8 Q Were you working with a deputy? Do you recall Deputy
9 Hallman being with you?

10 A I don't recall him being there, no, sir.

11 Q You weren't going to take any statements from the
12 witnesses. Sometimes you write it in your hand and
13 sometimes they write it?

14 A Usually, the way that I try to do it is have them
15 write their initial statements. And then we do a
16 question-and-answer portion with them where we write the
17 question and they write the statement. Other times they
18 request that we write it for them.

19 Q So you got, you got a written statement from Mr. Jones
20 that evening?

21 A Yes, sir.

22 Q Did you take statements from some of the firefighters
23 as well?

24 A Yes, sir.

25 Q Same manner, took written statements from them?

Diane Turner

Direct examination by Mr. Williams

1 A Yes.

2 Q After you had talked to whoever you had to talk to out
3 there, requested to speak with, you went back to the, back
4 to your headquarters.

5 A Yes, sir, that's correct.

6 Q I believe you said that you obtained search warrants
7 in this case.

8 A Yes.

9 Q What were the search warrants for?

10 A One of the search warrants was for the white Jeep
11 Liberty, the suspect vehicle; one of the search warrants
12 was for the victim's vehicle; and the other search warrants
13 for, were for, D. N. A. for the suspects.

14 Q And that was on suspect Gadsden, suspect Smith and
15 suspect Wilder?

16 A Yes.

17 Q Did you execute any of those?

18 A Yes, sir, I did for Mr. Gadsden.

19 Q When you execute a suspect kit -- what did you do or
20 what was your role in doing that? What happened?

21 A My role is to take the paperwork to the Charleston
22 County Detention Center and have the medical staff, one of
23 their nurses, perform the kit.

24 Q Do you observe that go on?

25 A Yes, I did.

Diane Turner
Direct examination by Mr. Williams

- 1 Q Did you watch it being executed, so to speak?
- 2 A Yes.
- 3 Q What do they do?
- 4 A They draw blood and they take a head-hair sample and a
- 5 pubic-hair sample.
- 6 Q And you watched that happen in this case?
- 7 A Yes.
- 8 Q What happens with the samples once they're taken?
- 9 A It's put into a collection kit and then turned over to
- 10 investi -- to one of the crime scene units.
- 11 Q Is it given to you?
- 12 A I don't remember in this case if I took it or if they
- 13 kept it for crime scene to take.
- 14 Q Let me show you what's been marked State's Proposed
- 15 Exhibit 112-C. Do you recognize that item?
- 16 A Yes, I do. In this case it would have been given to
- 17 me and then turned over to the crime scene.
- 18 Q That's got your signature on there?
- 19 A It does.
- 20 Q It shows that you executed that warrant?
- 21 A Yes, sir.
- 22 Q That was on -- says 9/1/06 11:20 a.m.
- 23 A Yes.
- 24 Q Leo Gadsden.
- 25 A Yes.

Diane Turner
Direct examination by Mr. Williams

1 Q I'm going to show you also the bag that it's in. It's
2 marked 112. That's just a standard SLED evidence bag?

3 A Yes.

4 Q And that's what they transport things to SLED in?

5 A I'm not sure, sir. I don't work in crime scene. I
6 just recognize the collection.

7 Q Okay.

8 MR. WILLIAMS: I'm going to show this to defense
9 counsel, Your Honor.

10 (Pause.)

11 Q So this kit you collected personally you would have
12 put it in this envelope that would have been sent over to
13 the crime scene office to take to SLED.

14 A That's correct.

15 MR. WILLIAMS: Your Honor, I move to admit State's
16 Proposed 112-C.

17 MR. BROWN: No objection.

18 MR. DAVIS: No objection, Your Honor.

19 MR. LOFTON: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (Collection kit for defendant Gadsden marked State's
22 Exhibit No. 112-C.)

23 MR. WILLIAMS: No further questions, Your Honor.

24 MR. BROWN: No questions.

25

Diane Turner
Cross-examination by Mr. Davis

1 CROSS-EXAMINATION

2 BY MR. DAVIS

3 Q You didn't take any statements from a Mr. Harold
4 Corley at Lincolnville?

5 A Not that I'm aware of, sir.

6 Q You did take some statements though, right?

7 A Yes, sir, that's correct. I took two from
8 firefighters, and also from a witness.

9 Q A neighbor of Ms. Green's?

10 A I don't remember what he was at the time. I just
11 remember taking a witness statement from him.

12 Q A layperson, not a law enforcement --

13 A That's correct. He was not public safety or public
14 services.

15 Q And you don't recall that being Harold Corley.

16 A I don't, no, sir.

17 Q Okay. Thank you.

18 MR. DAVIS: No further questions.

19 MR. LOFTON: No questions, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 MR. WILLIAMS: May I approach, Your Honor?

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 THE COURT: All right. Ladies and gentlemen, we're

1 going to recess for lunch.

2 So remember my caution. You still can't discuss the
3 case. No exposure to media coverage. No research. No
4 investigation.

5 Have a good lunch. Please report back to your jury
6 room at 2:00 o'clock, 2:00 o'clock this afternoon.

7 (The following takes place outside the presence of the
8 jury.)

9 MR. WILLIAMS: Your Honor, could we take up scheduling
10 just briefly so the Court knows what I intend to do, and
11 the defense attorneys as well? I'm at, pretty much,
12 Witness 35, and two others, and have a list to go --

13 THE COURT: Wait a minute. Say that again.

14 MR. WILLIAMS: I'm not going to call Nurse Cooper,
15 Frazier, May or Hutto. They've all been eliminated through
16 the collection kits.

17 THE COURT: Okay.

18 MR. WILLIAMS: I still have 27 and 28. I think I've
19 called every other witness prior to that.

20 THE COURT: You have.

21 MR. WILLIAMS: So I have 35 --

22 THE COURT: Well, Deputy Fuller hasn't testified yet.

23 MR. WILLIAMS: I'm not going to call him, Your Honor.

24 THE COURT: Okay.

25 MR. WILLIAMS: We've covered what he would have

1 testified to.

2 THE COURT: All right.

3 MR. WILLIAMS: So I have now 27, 28, then 35 through
4 46.

5 Your Honor, I don't -- I was -- I don't have my SLED
6 witnesses Roberts, Whitler and Clark, Simmons or Gantt
7 until tomorrow morning.

8 This afternoon I intend to present the lead detective,
9 all of the chain witnesses that are left for the D. N. A.
10 sample, as well as the D. N. A. agent, as well as Detective
11 Stanley, so I think we'll be -- it shouldn't take us if we
12 come back at 2:15 --

13 THE COURT: 2:00 o'clock.

14 MR. WILLIAMS: I think we'll probably go until about
15 5:00. I just wanted to let the Court know that I expect to
16 probably wrap up my case in chief tomorrow by this time.

17 THE COURT: Tomorrow by this time?

18 MR. WILLIAMS: Hopefully. Those SLED agents, Your
19 Honor, that I have tomorrow are G. S. R. They're real
20 basic.

21 THE COURT: Well, I understand.

22 MR. WILLIAMS: So I don't think it will --

23 THE COURT: I thought you might be through before
24 then.

25 MR. WILLIAMS: It may be sooner.

1 THE COURT: Okay.

2 MR. WILLIAMS: Your Honor, if we do that and we're
3 getting close tomorrow afternoon --

4 THE COURT: Oh, well, we'll just have to see how that
5 develops.

6 MR. WILLIAMS: All right. Thank you, Your Honor.

7 THE COURT: And that could be. But we'll see. We'll
8 discuss that tomorrow.

9 MR. WILLIAMS: I wanted to let you know where I was.
10 Thank you.

11 THE COURT: All right. Anything else?

12 MR. REDMOND: Your Honor, may I? I had to say
13 something.

14 Tomorrow afternoon -- and I know this has nothing to
15 do with our case. I had one of my close friends die on
16 Saturday night. I'm scheduled to give a eulogy at the
17 service. And Tracy's a good friend of his too. I don't
18 know. Since he was mentioning it, I thought I'd like to
19 mention it.

20 I want to be present at the service. I know we can't
21 stop what we're doing here. But I wanted to let the Court
22 know that. I don't know what impact it might have on, on
23 the scheduling. So I just wanted to mention that, Your
24 Honor.

25 THE COURT: All right. Well, y'all talk about it, and

1 we'll discuss it privately.

2 MR. REDMOND: Thank you, Your Honor.

3 THE COURT: All right. Anything else?

4 MR. WILLIAMS: No, Your Honor.

5 MR. BROWN: No, Your Honor.

6 MR. DAVIS: Yes, Your Honor, briefly.

7 We had approached. I had actually approached during
8 Mr. Brown's cross of Sergeant Rywelski. He had attempted,
9 I think, on a couple of occasions to ask about the
10 substance of the phone call that Ms. Green had received.

11 The state objected. You sustained the objection. I
12 approached in reference to State vs. Green which would
13 allow. My summary of it is it would allow, quote,
14 "Normally hearsay if it shows what the police did in
15 investigation."

16 Further, I ask the Court to consider allowing us to go
17 into this questioning based on that case. The Court denied
18 that and sustained the state's objection.

19 A little later after redirect I made the argument they
20 had by redirect opened the door to allow us based on the
21 same argument to get back into the hearsay. And Your Honor
22 again ruled against me. I just want to get that on the
23 record.

24 THE COURT: Well, I understand. But you wanted to
25 introduce it as a basis for what the police did later, but

1 you didn't ask him what they did later. So what would be
2 the point of it?

3 MR. DAVIS: Well, Judge, my recollection of the
4 testimony is he says the investigation continued. He
5 personally after he got the search warrant for this phone
6 number, he didn't, but other leads were being followed by
7 other detectives.

8 THE COURT: Well, but he can't testify to what they
9 did.

10 MR. DAVIS: I understand that.

11 THE COURT: So whatever the basis is for what somebody
12 else did in a continuing investigation is not relevant if
13 you don't want to know what they did later and you haven't
14 asked that.

15 That would be admissible as to what somebody did
16 later, perhaps, so long as it doesn't interject third-party
17 guilt or just some, some lead they followed that they
18 didn't know. So that's not relevant. And the objection
19 was sustained on appropriate grounds.

20 MR. DAVIS: Thank you, Judge.

21 THE COURT: So it's still sustained.

22 MR. DAVIS: Thank you, Your Honor.

23 One last thing.

24 MR. BROWN: Your Honor, Mr. Davis made a motion this
25 morning for a mistrial based on what was essentially Brady

1 issues. I just want to make sure that we're joined in with
2 that, with that motion.

3 THE COURT: Well, you're not unless you join in.

4 MR. BROWN: Judge, I will join in that motion.

5 THE COURT: All right. Tell me what -- tell me what
6 you have not gotten that you believe you should have gotten
7 that was material to your defense or something they
8 intended to introduce.

9 MR. BROWN: Well, Your Honor, what was discussed this
10 morning was whether or not they are obligated to call a
11 particular witness or not obligated to call a particular
12 witness or whether or not that witness is available for
13 defense counsel to talk to.

14 The question I believe is whether or not there is an
15 obligation under Brady to provide information relating to
16 exculpatory statements made by a witness or exculpatory
17 information provided to the prosecutor regardless of
18 whether or not that information is written down by the
19 prosecutor or the prosecutor has that witness write it
20 down. And I think that's the issue here. I think
21 exculpatory information was provided. That information was
22 not passed on to --

23 THE COURT: And what exculpatory information was
24 provided?

25 MR. BROWN: What was provided was that there were

1 individual --

2 THE COURT: No. What exculpatory information was
3 provided?

4 MR. BROWN: The information that was included, the
5 individuals coming from the back of the house and walking
6 to and getting into the Jeep.

7 This whole case has been about three individuals or
8 two individuals, depending on who you, who you believe, who
9 were in the front yard of this house who shot people.

10 This witness says that the people who got in that Jeep
11 didn't come from the front yard. He says they came from
12 the back of the house. That's exculpatory, and that was
13 not provided to us.

14 THE COURT: But that witness --

15 MR. BROWN: And the three people that are on trial
16 here today were people gotten out of the Jeep.

17 THE COURT: Oh, I understand that. But what I didn't
18 understand -- I'm not sure it makes any difference -- but I
19 didn't understand that that witness had given testimony
20 that said that the men involved came out of the front of
21 the house. That's the first I've heard of that.

22 MR. BROWN: Late last week I spoke with that witness.
23 He told me --

24 THE COURT: Well, I understand that. That's the first
25 I've heard of that, just today, just when you just told me.

1 Nobody mentioned that. Mr. Davis didn't mention that
2 earlier.

3 MR. BROWN: Right. I understand. That's why I'm
4 mentioning it now, Judge.

5 THE COURT: Well, you should have mentioned it at the
6 time the motion -- you made your own motion, mentioned it
7 then, because, see, it's way past the time that that would
8 have been addressed by the Court. I mean, you know when it
9 came in.

10 MR. BROWN: Yeah. Well, again, I'm mentioning it now.

11 THE COURT: Well, I understand that, that part.

12 MR. BROWN: They're still, they're still in their case
13 in chief. Again, the bottom line is the witness -- it does
14 provide exculpatory information, and it was not provided.

15 THE COURT: Well, I may -- that exculpatory point
16 might be over my head, but, nevertheless, I understand what
17 your argument is.

18 MR. BROWN: Information that tends to show these three
19 guys didn't do what they're accused of.

20 THE COURT: In other words, it's exculpatory because
21 apparently a witness has said he saw them at the back of
22 the house instead of the front of the house, or he saw them
23 on the side of the house as opposed to the back of the
24 house? That's what I understood the testimony was.

25 MR. BROWN: He says, he said he saw them on the back

1 of the house. He saw them walk to the white Jeep, get in
2 the white Jeep and drive away.

3 THE COURT: Right.

4 MR. BROWN: So the two people behind the house went to
5 the white Jeep, got in the white Jeep and drove away.
6 They're not the same people apparently who were in front of
7 the house.

8 THE COURT: I don't know.

9 MR. BROWN: Because the three people in the front of
10 the house, all the testimony that we've heard so far was
11 after the shooting was done the three people in front of
12 the house were into, if you will, depending on how you
13 listen to it, and walked across the ditch and around the
14 corner.

15 THE COURT: I understand.

16 Well, obviously you are well familiar with that
17 information. And, as you say, since this case is not
18 concluded, you can use that information for whatever
19 purpose you think it would be necessary to use it for.
20 It's still available. It's still -- I mean, you can
21 present it if you believe it contradicts state's evidence
22 and will be beneficial to your client.

23 So I don't see any prejudice. And whether or not it
24 should have been disclosed or was or was not disclosed, you
25 know what the information is. And I see now that you can

1 use it for your benefit if you wish to, or your client's
2 benefit.

3 I mean, you're not prejudiced in any way, because you
4 can still use that information if you like.

5 MR. BROWN: I understand.

6 THE COURT: Okay. Mr. Davis, have you got to add
7 anything to that?

8 MR. DAVIS: Judge, I just argue the prejudice was in
9 designing the defense, and I was limited somewhat in
10 opening. We had talked. Certainly, we had decided as late
11 as the beginning of our case, and we had certainly talked
12 that my client would likely not testify, and all the
13 testimony was of people being out in front of the house.

14 Had I known ahead of time that we had a witness to
15 talk about people at the back of the house, that could have
16 changed things. I do believe that does make a difference.
17 And that was the basis for my motion for a mistrial.

18 THE COURT: It changes your strategy of him testifying
19 or not testifying?

20 MR. DAVIS: Judge, it might change the strategy. That
21 might change what I would have said in opening, how
22 aggressive I could have been in opening if I knew that
23 there was a witness, if I had known before the start of the
24 trial there's a witness who said there were two black males
25 out back of the house. That's the only witness that says

1 that, and we never knew it, and the state did ahead of
2 time.

3 THE COURT: Well, I understand. But you know it now.
4 So it's not too late to use it if you'd like to use it for
5 your client's benefit.

6 MR. DAVIS: And then we would give up the last
7 argument by having called witnesses.

8 THE COURT: Well, they weren't going to call the
9 witness anyway apparently.

10 MR. DAVIS: I understand that.

11 THE COURT: You can't make them call a witness just so
12 you can get the last argument.

13 MR. DAVIS: I understand, Judge. I understand that.
14 Thank you. Nothing further other than that.

15 THE COURT: Mr. Lofton.

16 MR. LOFTON: I have nothing, Your Honor.

17 THE COURT: Okay. All right. Mr. Williams, do you
18 want to respond to their positions on the discovery issue?

19 MR. WILLIAMS: Your Honor, only to clarify.

20 As I said before, I don't think what the witness said
21 could be characterized as seeing two people coming from the
22 back of the house.

23 When I talked to him he said that initially a lot like
24 a lot of other witnesses have said things, and then said,
25 well, I guess he didn't really come from there, I just saw

1 him at a certain place.

2 What Harold Corley told me is that the young men were
3 even with the house. He couldn't tell if they were in the
4 front or the back. In his statement he says they ran
5 across the street. It doesn't say they got into the Jeep.
6 He did tell me they went and got in the Jeep. And I guess
7 I thought that was in his initial statement. I, I don't
8 see that -- I didn't perceive it as exculpatory.

9 I certainly see it as confused, but, Your Honor, when
10 I go talk to witnesses it's always something more than
11 what's in these statements. And I can't take notes and
12 hand them over to the defense when to me it's consistent
13 with what they're already said.

14 THE COURT: Okay. Well, I'm not perceiving a
15 violation, if there is one, and I'm also not perceiving any
16 prejudice if there is any.

17 So with that, we'll end that discussion. Court is in
18 recess until 2:00 o'clock.

19 (Whereupon, a recess was taken.)

20 THE COURT: Are we ready for the jury?

21 MR. WILLIAMS: Yes, Your Honor.

22 THE COURT: Bring them in.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: All right. Good afternoon, ladies and

Donald Stanley
Direct examination by Mr. Williams

1 gentlemen. We will continue with the state's presentation.

2 Mr. Williams.

3 MR. WILLIAMS: Thank you, Your Honor. The state calls
4 Detective Donald Stanley.

5 DONALD STANLEY, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. WILLIAMS

8 THE CLERK: If you will, please state your full name.

9 And spell your last name.

10 THE WITNESS: Donald Stanley, S-T-A-N-L-E-Y.

11 Q Sir, where do you work?

12 A Charleston County Sheriff's Office.

13 Q What do you do for the sheriff's office?

14 A I'm a detective with the criminal investigations.

15 Q How long have you been with the sheriff's office?

16 A Since 2002.

17 Q How long have you been a detective for?

18 A Including the previous agency, roughly eight years.

19 Q Where did you work prior to working with the county?

20 A North Charleston Police Department.

21 Q How long have you worked at North Charleston?

22 A Since 2004, I'm sorry, 1994.

23 Q What are your total years of law enforcement
24 experience?

25 A Coming up on 14.

Donald Stanley
Direct examination by Mr. Williams

1 Q Were you involved in a case back on August 31st of
2 2006 up in Lincolnville?

3 A Yes, I was.

4 Q How did you get involved in the case?

5 A I was actually on the way in to work. I was working a
6 late shift that day. And I heard the call go out over the
7 radio, a shooting had happened in Lincolnville.

8 Q Can you pull that microphone a little bit closer to
9 you?

10 A Sure.

11 Q You're a detective, correct?

12 A Yes, sir.

13 Q How are detectives assigned to cases?

14 A Well, I'm assigned to persons' crimes for the most
15 part.

16 There are -- well, we have four slots. There's only
17 three of us right now that are assigned to person crimes,
18 which consists of robberies, homicides, suicides, stuff of
19 that nature.

20 Q And were you the lead detective in this case?

21 A Yes, I was.

22 Q How did you end up being the lead detective?

23 A Basically, I was the first one on the scene, I guess
24 you want to say. Not on the scene, per se, at the
25 residence.

Donald Stanley
Direct examination by Mr. Williams

1 Q Who makes the decision about who is going to be a lead
2 detective? Is there a sergeant or a captain?

3 A Typically sergeants.

4 Q And they tell you that you're the lead detective?

5 A Yes.

6 Q And that often happens though when you show up at a
7 scene being the first one there?

8 A Certain circumstances. I mean, some of the other
9 detectives that don't have so much experience, they won't
10 assign them as a lead detective on a homicide.

11 Q So you said you heard the call go out.

12 A Yes, sir.

13 Q What was the call that you heard go out?

14 A I heard over the radio one of the Lincolnville -- I
15 believe it was the fire chief in Lincolnville came over our
16 sheriff's office dispatcher, the channel, and advised that
17 a shooting had occurred in Lincolnville.

18 Q You were here in court when that -- when those
19 transmissions were played?

20 A Yes, sir.

21 Q Were you part of those transmissions?

22 A Yes, sir.

23 Q What were you radioing in or what were you doing?

24 A I was advising the dispatcher that I would take care
25 of notifying our chain of command as far as in the criminal

Donald Stanley
Direct examination by Mr. Williams

1 investigations division, take care of notifying them so we
2 could get more units en route.

3 Q And what did you do as far as going places?

4 A Initially I, I was on I-26 eastbound. So I turned
5 around at Montague and started traveling west bound.
6 Probably about the time I got to Ashley Phosphate Road is
7 when Officer Simpson or Deputy Simpson got behind the
8 vehicle and initiated the pursuit.

9 Q What happened then?

10 A At that time I continued westbound on I-26. We didn't
11 know whether they were going to be getting on the
12 interstate or not, so I just continued westbound. And as
13 they were, actually got on the east past the rest area, I
14 was still traveling westbound. So I had to turn around at
15 College Park.

16 Q Do you see them or hear them going by in either
17 direction?

18 A I saw them going by.

19 Q And what did you do after you saw them going the other
20 way on the freeway?

21 A At that point I was still westbound. So I had to turn
22 around at the ramp because they have the divider in between
23 the lanes of the interstate. So when I turned around,
24 that's when Deputy Simpson was advising they were throwing
25 items out the window.

Donald Stanley
Direct examination by Mr. Williams

1 Q What did you do?

2 A I continued down the interstate. Deputy James was
3 actually in front of me. I didn't have a visual as far as
4 where he was, but I knew he was in front of me. And I
5 radioed to him and told him not to stop for the items that
6 were being thrown out and I would try to pick some up.

7 Q Did you do that?

8 A Yes, I did.

9 Q Did you make it to the scene of the crash before you
10 did that, or was it after?

11 A I actually picked up two different items and --

12 Q Before you got to the crime scene?

13 A That was prior to the crash happening. After I picked
14 up the second item the crashed occurred.

15 Q I see. So the crash hadn't happened when you picked
16 those up.

17 A Correct.

18 Q Did -- you picked those up yourself?

19 A Yes, I did.

20 Q What did you pick up?

21 A I picked up a ski mask, and I believe it was one
22 glove.

23 Q I show you what's been marked State's Proposed 113 and
24 114. Do you recognize those items?

25 A This is the bag that indicates the glove I collected

Donald Stanley
Direct examination by Mr. Williams

1 on I-26 and this is the mask collected on I-26.

2 Q And this actually has, says mask collected by
3 Detective Stanley, I-26 past Highway 78. That's 113. And
4 the other says I-26 east before Highway 78, lane two, glove
5 collected by Detective Stanley?

6 A Yes, sir.

7 Q Did you write that on there?

8 A Actually Deputy Ward wrote that on there when I turned
9 the items over to him.

10 Q So you had them. You had them, gave them to him, and
11 you saw him write that on the bag.

12 A Yes, sir.

13 MR. WILLIAMS: Show to defense, Your Honor.

14 (Pause.)

15 Q I am going to back up a little bit. Where did you
16 pick these up from?

17 A The first item I picked up was a glove, and it was
18 located in Lane No. 1.

19 Q Did you have to run out in the road to get it?

20 A I actually stopped in the road and was leaned out of
21 my vehicle and picked it up.

22 Q So you stopped actually in the freeway itself.

23 A Yes.

24 Q And the next item was where?

25 A The next item was a ski mask, and it was located just

Donald Stanley
Direct examination by Mr. Williams

1 a short distance after Highway 78.

2 Q That was also like in the middle of the road, so to
3 speak?

4 A It was in Lane No. 2, which is the middle lane of the
5 three lanes.

6 Q And how did you pick that up?

7 A Same, same way.

8 Q And you said at some point you, you heard that there
9 was a crash.

10 A Correct.

11 Q Let me ask you this. Did you continue and try to pick
12 up the rest of the items on the road?

13 A That was my intent. When they, when the collision
14 happened, that's when I made a decision just to go ahead
15 and go to the scene. And I monitored the road as I was
16 going to make sure there were no firearms that were thrown
17 out of the vehicle.

18 Q Did you contact someone else to pick up those items?

19 A Yes, I did.

20 Q Who did you assign that to?

21 A I actually had -- I called Deputy or Detective Kraus
22 and told him to be en route up this way, that we had items
23 on the interstate that needed to be, you know, collected.

24 Later I found out when he was en route that the North
25 Charleston Police Department, Sergeant Hallman and I

Donald Stanley
Direct examination by Mr. Williams

1 believe another officer, had photographed and picked up the
2 items and they were turning them over to Detective Kraus.

3 Q So when the radio dispatched about the crash did you
4 proceed to the scene a few miles up the road?

5 A Yes. I went ahead and went to the scene of the
6 collision.

7 Q And what did you find when you got there?

8 A Two of the parties were already removed from the
9 vehicle and one was still remaining in the vehicle. He was
10 pinned in.

11 Q Did you look inside the vehicle at all?

12 A No, I didn't.

13 Q There were a lot of agencies out there, is that
14 correct?

15 A Yes.

16 Q How many, how many different agencies do you believe
17 were involved as far as that were out there that you saw?

18 A I know the North Charleston Police Department, highway
19 patrol, fire, E. M. S. I believe the state transport
20 division was out there.

21 Q Is that something that was organized or was that just
22 people who were in the area once the call went out?

23 A I would say mostly when the calls went out, and the
24 reason being it was due to the weather. We were expecting
25 we may get some, some part of a hurricane that had been

Donald Stanley
Direct examination by Mr. Williams

1 coming through. And there were a lot more officers on the
2 road during that timeframe because of that.

3 Q When you got to the scene of the crash, who was in
4 control of that scene or what happened out there?

5 A They were still removing the other people, I'm sorry,
6 the one individual. They were waiting on rescue to arrive
7 so that they could extricate him from the vehicle. The
8 other two had already been placed in, into two separate
9 police units.

10 I believe I asked one of the crime scene officers with
11 the North Charleston who was present if they would go ahead
12 and place bags on their hands. And we knew that they were
13 going to need to be transported to the hospital. So we
14 were trying to make arrangements to make sure we did have
15 people meet at the hospitals to take custody of them.

16 Q Is that something you routinely do as lead detective?

17 A Yes, sir.

18 Q Did you assign people to the different hospitals?

19 A I actually worked with Sergeant Willaby as far as
20 contacting him and making sure we had all of our bases
21 covered and making sure we had people in the right spots.

22 Q Were detectives dispatched to the different hospitals?

23 A Yes, sir.

24 Q Did you go to one of them?

25 A Yes, sir, I did.

Donald Stanley
Direct examination by Mr. Williams

1 Q What hospital did you go to?

2 A I went so Saint Francis Hospital.

3 Q Who was at Saint Francis?

4 A Mr. Gadsden had been transported to Saint Francis. I
5 went there, along with Detective Kraus. And I don't know
6 if Ms. Green was already there or if it was a short time
7 later she was brought into the emergency room at Saint
8 Francis.

9 Q Did you do anything there as far as collecting
10 evidence? Do you recall?

11 A I didn't actually collect any evidence there. I did,
12 I had Detective Kraus go ahead and do a gunshot residue kit
13 on Mr. Gadsden. And I went and interviewed Ms. Green and
14 obtained a written statement from her.

15 Q What type of shape or what condition was Ms. Green in
16 when you talked to her?

17 A She, of course she, had the injuries to her that they
18 were still treating. She was complaining about having
19 blurred vision. She was coherent and talking. She was
20 very excited about the situation.

21 Q You saw the photos earlier during the trial with her
22 with the tape on her arms and hands and feet.

23 A Yes, I did.

24 Q Is that how she appeared that day?

25 A Yes.

Donald Stanley
Direct examination by Mr. Williams

1 Q Did you get a written statement from her?

2 A Yes, I did.

3 Q And you spoke to her as well?

4 A Yes, sir.

5 Q After you spoke with Victim Green, what did you do?

6 A Bear with me one minute.

7 (Pause.)

8 A I just from memory, I believe we, we ended up leaving
9 the hospital after that, after Mr. Gadsden had been checked
10 out by the hospital staff.

11 If I recall correctly, I believe we transported him
12 back to our office and then later lodged him in the
13 detention center.

14 Q And those were the two suspects, the defendants?

15 A Well, I specifically at that point was dealing with
16 Mr. Gadsden.

17 Q And Mr. Gadsden was transported to your office?

18 A Yes.

19 Q Do you recall if his clothing was collected?

20 A I don't recall whether it was or not. Typically, we
21 do. I don't know. I believe somebody else had transported
22 him to the jail. And in most situations we have when they
23 are lodged into the jail, we have them change out of the
24 clothing, the clothing that they have.

25 Q So you took Mr. Gadsden to basically the jail. He was

Donald Stanley
Direct examination by Mr. Williams

1 under arrest.

2 At that point what was the rest of your involvement in
3 the investigation itself? Did you go out to the scene of
4 the house?

5 A By the time I made it up there it was late in the
6 evening, and the scene had actually already been processed,
7 and they were in the midst of just picking up their, you
8 know, tools and whatnot. I did go to the scene, but all
9 the evidence had already been collected at that point.

10 Q Did you canvass or go to interviews out there that
11 night?

12 A I didn't. Some of the other detectives had already
13 been accomplishing that. But I did not.

14 Q How does that ordinarily work as far as canvassing an
15 area of a scene?

16 A Typically, you'll take as many people as you think
17 you'll need. And you'll just go door to door and talk to
18 people and find out if they observed anything or heard
19 anything.

20 Q Did that happen in this case?

21 A Several of the detectives did go out there. They were
22 actually out there when this incident occurred and the day
23 following. And I talked to some of the people.

24 Q So, so deputies as well were out there?

25 A They were quite a few deputies when this thing

Donald Stanley
Direct examination by Mr. Williams

1 happened.

2 Q Did Deputy Jackson talk to a Mr. Corley?

3 A Yes, sir. He obtained a written statement from him.

4 Q There was a Detective Seals (sic) was out there,
5 Deputy Hyleman (sic) was out there, Turner, Detective
6 Rywelski. There were a lot of detectives out there.

7 A Yes, sir.

8 Q Approximately how many detectives would you say were
9 involved in taking statements from them?

10 A Just to guess, I would say at least seven or eight.

11 Q Approximately how many witnesses were contacted or
12 people were talked to in the course of the investigation
13 around that area to the best of your recollection roughly?

14 A Roughly, I would guess probably ten to 15 witnesses.

15 Q So y'all just basically canvassed like the fire and
16 everybody else out there and got statements as best you
17 could.

18 A Yes, sir.

19 Q Once that was done did you go out the next day when
20 the search was on I-26 for the Bersa .380 that was found?

21 A I wasn't present for that. Actually, at that point
22 because of the way the law is, we have to conduct a bond
23 hearing within 24 hours. And two of the defendants in this
24 case were in separate hospitals. And I actually had
25 transported the, our bond-hearing judge to both hospitals

Donald Stanley
Direct examination by Mr. Williams

- 1 during that timeframe to conduct bond hearings.
- 2 Q So you, you weren't able to go there, but other
- 3 detectives went out.
- 4 A Yes.
- 5 Q That would be the crime scene as well?
- 6 A Yes.
- 7 Q And on September the 7th, I believe the next thing you
- 8 did was you actually met with Jamie Williams.
- 9 A On September the 7th, I think it was.
- 10 Q Yes. Do you recall meeting with him as well?
- 11 A Yes, I do.
- 12 Q Had you obtained, retained, had you obtained a
- 13 statement from him prior to that?
- 14 A No, sir. He, he was in the hospital the whole time.
- 15 He was actually still in the hospital on September the 7th
- 16 when I went.
- 17 Q What was his condition prior to the 7th, September the
- 18 7th, that prevented him from giving a statement?
- 19 A I, I mean, he was I guess what you would classify as
- 20 critical condition. He had had several surgeries. I know
- 21 that.
- 22 Q And then on September the 7th he was able to give
- 23 y'all a statement?
- 24 A Yes, sir.
- 25 Q And you got a written statement from him then?

Donald Stanley
Direct examination by Mr. Williams

1 A Yes, I did.

2 Q And I believe the next day you had gotten -- you were
3 involved in the investigation regarding a .357 that was
4 recovered?

5 A I -- yes, I was.

6 Q That was also along with, I believe, Detective Kraus
7 as well.

8 A Yes, sir. Actually Detective Kraus went and handled
9 obtaining the statement from Mr. Green, Charles Green.

10 Q I want to ask you about how SLED evidence is requested
11 or how y'all go about determining if things should be sent
12 to SLED. That's something that you do at times?

13 A Yes, sir.

14 Q And what do you have to do or what's the process of
15 getting things sent to SLED?

16 A Well, basically, we'll go through a, the list of
17 evidence that we have and figure out what we have and
18 determine what processing we want to have completed. And
19 at that point after we determine that we'll go through. We
20 have a form that we have to fill out that indicates what
21 type of processing and what the item is we want processed.
22 And it's sent to SLED.

23 Q So you basically request items go to SLED.

24 A Yes, sir.

25 Q And then the crime scene takes them out there and does

Donald Stanley
Direct examination by Mr. Williams

1 a comparison?

2 A They actually physically remove the evidence and, and
3 take it to SLED for processing.

4 Q You went through that process making sure you got
5 everything sent out to SLED?

6 A Yes, sir.

7 Q That went well into the middle of November, is that
8 fair to say?

9 A Yes, sir.

10 Q And once everything was sent to SLED, once you had all
11 of the statements put together, is that when you closed out
12 your investigation with warrants served?

13 A Yes, sir.

14 Q I want to ask you about a situation that happened
15 after this once the investigation was closed out.

16 Was there a time where a shell casing was recovered
17 that was actually relevant to this case?

18 A There was a shell casing that was recovered at the
19 scene if that's what you're referring to.

20 Q Okay. So there was a shell casing recovered at the
21 scene on August the 31st.

22 A Yes, sir.

23 Q Was there later a hit on that, what they call IBIS
24 hit, to that casing?

25 A Yes, sir. The City of Charleston had submitted some,

Donald Stanley
Direct examination by Mr. Williams

1 some ammunition or some evidence. And that was a, what
2 they call an IBIS hit. It's integrated ballistics
3 identification system, I believe, is what the acronym
4 stands for.

5 An IBIS hit basically says this shell casing may match
6 that shell casing, may have been fired from the same
7 weapon. It's not a confirmation by any means, but it's,
8 it's basically a tool that they need to look into it
9 further.

10 Q And how are those -- how is something entered into
11 IBIS to begin with?

12 A We actually have a system within our evidence unit,
13 and most of the agencies, local agencies, around bring all
14 firearms and ammunition and projectiles that are fired from
15 firearms to our evidence people and they end up being --

16 Q And is that something that you have like, I want to
17 say, a crime scene specialist that does that?

18 A Yes, sir.

19 Q And there are certain markings that are on a shell
20 casing when it's ejected, at least, that can tell you what
21 kind of gun it's fired from?

22 A Yes.

23 Q And if you take, you compare a casing from one place
24 to another place and see, at least on a microscopic level,
25 if they match.

Donald Stanley
Direct examination by Mr. Williams

- 1 A Correct. That would be completed by SLED.
- 2 Q So if y'all collected a 9mm casing in this case and it
- 3 was entered into the integrated ballistics information
- 4 system and then somebody else found one later that had the
- 5 same marking to it, it would tell you that.
- 6 A Right.
- 7 Q And that happened in this case.
- 8 A Well, it, it gives, I guess you call it a preliminary
- 9 match. It's not a confirmation by any means. Our examiner
- 10 is not qualified to make that determination. So the
- 11 evidence actually has to be sent to SLED.
- 12 Q Okay.
- 13 A And a qualified toolmark examiner has to examine the
- 14 evidence.
- 15 Q So there was a preliminary hit made.
- 16 A Yes, sir.
- 17 Q And that was of the 9mm shell casing?
- 18 A That is my understanding.
- 19 Q Was there ever -- you were in here and heard the
- 20 testimony. And there was testimony from, I believe,
- 21 Ms. Green that there was a 9mm that she was hit with. Was
- 22 there ever any actual physical 9mm gun recovered in this
- 23 case?
- 24 A No, sir.
- 25 Q But there was a clip recovered.

Donald Stanley
Direct examination by Mr. Williams

- 1 A Yes, sir.
- 2 Q What did that clip go to?
- 3 A Bear with me one minute.
- 4 (Pause.)
- 5 A I don't actually have that list with me up here on the
6 stand, sir.
- 7 Q Is it in the, is it in your file?
- 8 A Yes, sir. It's actually in the notebook on the chair.
- 9 (Pause.)
- 10 A Indicates it's a Glock magazine.
- 11 Q Glock 9mm?
- 12 A Yes, sir.
- 13 Q So you recovered part of the Glock 9mm but not the
14 actual item that would have fired -- the gun part that
15 would have fired the bullet.
- 16 A Correct.
- 17 Q And it's the, the magazine doesn't leave the
18 identifying mark on the casing is --
- 19 MR. DAVIS: Your Honor, I'm going to object to this.
20 He lacks personal knowledge, nor is he an expert in
21 firearms.
- 22 THE COURT: Sustained.
- 23 Q In your personal knowledge and your experience as a
24 detective does the casing leave, does the magazine leave a
25 mark on the casing, or is it the gun itself that ejects the

Donald Stanley
Direct examination by Mr. Williams

1 bullet?

2 A It's the gun itself.

3 MR. WILLIAMS: I want to have this marked.

4 (Pants of defendant Gadsden marked State's Exhibit No.
5 115 for Identification.)

6 Q I'm going to show you what's been marked State's
7 Proposed 115. Do you recognize the writing on this bag?

8 A I don't know whose writing it is.

9 Q It indicates that these pants were, says suspect
10 Gadsden, Stanley's pants. Says Stanley on there.

11 A Yes.

12 Q And you were there when, you were there when suspect
13 Gadsden was in the hospital?

14 A Yes, sir.

15 Q Would you have been part of his pants being collected?

16 A I believe I was interviewing Ms. Green at the time if
17 that is when that occurred.

18 Q Okay. And they would have been taken into custody by
19 any crime scene officers that came by.

20 A It would have been Investigator Roy because he's the
21 one that actually came to the hospital.

22 Q Okay.

23 MR. WILLIAMS: I have no further questions of this
24 witness, Your Honor.

25 MR. BROWN: No questions.

Donald Stanley
Cross-examination by Mr. Davis

1 MR. DAVIS: Your Honor, may I have just one moment?

2 (Pause.)

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

4 THE COURT: Yes, sir.

5 MR. DAVIS:

6 CROSS-EXAMINATION

7 BY MR. DAVIS

8 Q All right. Detective Stanley, you took a written
9 statement from Ms. Green at the hospital, correct?

10 A Yes, sir.

11 Q And you've already told the jury that, well, actually
12 you're not sure whether she was there when you arrived or
13 she came after you were there, is that right?

14 A I'm not sure of the sequence, whether I was there
15 ahead of her or not.

16 Q Okay. But at some point you see her in a hospital
17 room there.

18 A Yes, sir.

19 Q And this is the same evening, within hours of when the
20 incident happened.

21 A Yes, sir.

22 Q She still had some tape on her body that was visible.

23 A Yes, sir. Actually Investigator Roy arrived after me
24 and photographed it, and it was visible within the
25 photographs.

Donald Stanley
Cross-examination by Mr. Davis

1 Q I think you indicated eight years you were with one
2 agency, and another eight years as a detective, is that
3 right?

4 A Correct.

5 Q Okay. Well versed in taking statements from any type
6 of witness, whether it be a suspect or an eye witness.
7 You've done that several times over your career.

8 A Yes, sir.

9 Q Hundreds or thousands probably.

10 A I don't know if I would say hundreds of thousands, but
11 that's what --

12 Q No, not. Hundreds or thousands.

13 A Probably, yes, sir.

14 Q Okay. In fact, there's a form that the sheriff's
15 office has which already has lines on it and up at the top
16 has places you can fill in relevant information and then a
17 place to do the narrative, correct?

18 A Correct.

19 Q And you would carry that with you in the course of
20 business.

21 A Yes, sir.

22 Q Okay. And that's the type of form you used to take
23 Ms. Green's statement.

24 A I'll double check, but I'm sure I did, yes, sir.

25 (Pause.)

Donald Stanley
Cross-examination by Mr. Davis

1 A Yes, sir.

2 Q Okay. And while you're at the hospital, so the jury
3 will understand this sequence, my client, Mr. Gadsden, is
4 there to be treated for the wreck that occurred, right?

5 A Yes, sir.

6 Q I believe he's already handcuffed. And his ankles are
7 cuffed as well. Do you recall?

8 A That would be, yes, that would have been what we would
9 have done, yes, sir.

10 Q But despite that fact, you got a thorough, I believe,
11 I believe, certainly multiple-page statement from
12 Ms. Green. Is that accurate? More than one page.

13 A They were in separate areas.

14 Q I'm sorry?

15 A They were in separate areas if that's what you're --

16 Q Right. No. I'm asking how many -- the statement is
17 at least more than one page, correct?

18 A It's four pages.

19 Q Okay. Four pages. And you know that just because a
20 potential suspect is in custody it's very important to get
21 the relevant information from any witnesses.

22 A Correct.

23 Q Correct? And as soon as you possibly can, correct?

24 A Correct.

25 Q And just real quick there. I believe that's one of

Donald Stanley
Cross-examination by Mr. Davis

1 the reasons you mentioned to the jury you went back days
2 later to talk to Jamie Williams, because he wasn't in any
3 position to give a statement that night, correct?

4 A Correct.

5 Q So when you're talking to Ms. Green you certainly would
6 have let her explain what happened to you, correct?

7 A Yes, sir.

8 Q You certainly would have followed that up by specific
9 questions to her based on what she was telling you,
10 correct?

11 A Mostly at the scene I do ask questions. And, yes, I
12 did in this case.

13 Q And that is just based on your experience. Sometimes
14 people if they're trying to relay an event, there may be
15 things based on your experience that you need to ask that
16 they might not reveal to you.

17 A Yes, sir.

18 Q You would have spent as much time as you needed with
19 her to get all the information that she had to give,
20 correct?

21 A As much time as I could.

22 Q I'm sorry?

23 A As much time as I could, yes, sir.

24 Q Fair enough. She didn't at the end of this process
25 ask you to spend some more time, that she had more things

Donald Stanley
Cross-examination by Mr. Davis

1 to tell you.

2 A No, sir.

3 Q You certainly, based on your experience in taking
4 statements of this sort, would have shown the statement to
5 her once it was done, correct?

6 A Yes. She saw the statement.

7 Q And just so the jury understands, in this case I
8 believe, given all the circumstances, you would have
9 listened and written it for her?

10 A I did write it for her, yes.

11 Q Okay. So it would have been important for her to
12 review it to make sure that it contained the gist of what
13 she told you, correct?

14 A Correct.

15 Q And you would have allowed her to review it, correct?

16 A Well, she was having blurred vision and what not. She
17 did actually see it, but I read the statement to her --

18 Q Okay.

19 A -- to make sure that she understood what I had
20 written.

21 Q Okay. So instead of having her read it, you read it
22 to her, correct?

23 A Yes, sir.

24 Q And you would have asked her if there were any
25 corrections that needed to be made.

Donald Stanley
Cross-examination by Mr. Davis

- 1 A Yes, sir.
- 2 Q Any additions that needed to be made.
- 3 A Yes.
- 4 Q Anything that needed to be removed from the statement.
- 5 A Correct.
- 6 Q And then you would have asked her to sign it. And you
- 7 would have given her a copy of it, right?
- 8 A Yes.
- 9 Q She gave two indications as to the number of suspects
- 10 involved in this incident, correct?
- 11 A I don't know about two. I'd have to go back through
- 12 and read the statement.
- 13 Q Okay.
- 14 (Pause.)
- 15 A Yes, she did.
- 16 Q And just so that the jury remembers, I asked. She
- 17 gave the account of two different number of suspects
- 18 involved in this incident. And you've now refreshed your
- 19 memory that that's correct, right?
- 20 A I wouldn't say two different. She -- two times she
- 21 indicated that were, I believe, a total of five people.
- 22 Q Okay. Being the lead detective in this case, we've
- 23 heard about some of your responsibilities both in assigning
- 24 tasks and in tasks you would have done, correct?
- 25 A Right.

Donald Stanley
Cross-examination by Mr. Davis

1 Q And then I guess kind of towards the end of it is a
2 reverse, people report back to you about things as well,
3 correct?

4 A For the most part, yes, sir.

5 Q So you have a pretty general knowledge of this entire
6 investigation, is that accurate?

7 A Yes, sir.

8 Q Okay. You're aware that either on your direction or
9 of their own volition officers took statements from
10 neighbors at the scene in Lincolnville, correct?

11 A Yes, sir.

12 Q You're aware that Yvette Cook gave a written
13 statement.

14 A Yes.

15 Q You're aware that Patricia Green gave a statement to
16 you at the hospital, right?

17 A Yes.

18 Q You took a statement about a week later, is that
19 accurate, with Jamie Williams?

20 A Yes, sir.

21 Q You're aware that a statement was taken from Leroy
22 Daniels.

23 A Yes.

24 Q You're aware a written statement was taken from Eartha
25 Daniels.

Donald Stanley
Cross-examination by Mr. Davis

- 1 A Yes.
- 2 Q A written statement was taken from John Jones, Jr.
- 3 A Yes, sir.
- 4 Q And a written statement was taken from John Jones,
5 Jr., III (sic).
- 6 A Yes, sir.
- 7 Q And a written statement was taken from Harold Corley.
- 8 A Yes, sir.
- 9 Q Detective, if you will give me just one second, that
10 may be all I have.
- 11 (Pause.)
- 12 Q One last issue. I'm just not real clear on direct.
13 The solicitor showed you a bag that purportedly has
14 Mr. Gadsden's clothes. You didn't collect the clothes, is
15 that correct?
- 16 A Not that I recall, sir, no, sir.
- 17 Q You were taking a statement from Ms. Green at the same
18 hospital.
- 19 A Correct.
- 20 Q Thank you, Detective.
- 21 MR. DAVIS: No other questions.
- 22 MR. LOFTON: If the Court please.
- 23 (Chain of custody log marked Defendant Wilder's
24 Exhibit No. 1 for Identification.)
25

Donald Stanley
Cross-examination by Mr. Lofton

1 CROSS-EXAMINATION

2 BY MR. LOFTON

3 Q Detective Stanley, as I understand it, you're the case
4 agent on the case.

5 A Yes, sir.

6 Q And as the case agent, I think Mr. Davis asked you
7 this, but it's your responsibility to gather up all of the
8 evidence and get all the statements and kinda put the file
9 together, correct?

10 A Yes, sir.

11 Q So some day that it will be turned over to the
12 solicitor and presented in court.

13 A Yes, sir.

14 Q Now, you've been here and you've been in the courtroom
15 the whole time because you are the case agent. And you've
16 heard various testimony about clothes being taken at
17 various locations from the individuals involved in the
18 automobile accident.

19 A Yes, sir.

20 Q Are you aware of any clothes being taken from either
21 Mr. Gadsden, Mr. Smith or Mr. Wilder at the jail?

22 A I'm not aware of whether there were or not.

23 Q What clothes would they have had on when they went to
24 the jail if their clothes was taken from them at the
25 various hospitals?

Donald Stanley
Redirect examination by Mr. Williams

1 A They most likely would have either had jail uniforms
2 which would have been brought to them, or they could have
3 had hospital clothing.

4 Q Okay. Let me show you what's been marked as Defendant
5 Wilder's 1 for Identification and ask you if you are
6 familiar with that.

7 A I haven't seen this before but --

8 Q But apparently it indicates that Sergeant Eubanks
9 indicated or received an indication from investigator -- or
10 sent a memo to Investigator NeSmith indicating that the
11 inmates' clothes were taken from them and turned over to
12 the arresting officer once they were in the jail.

13 A I didn't read this. Said they were taken from them
14 and turned over while they were at the jail. It says all
15 the inmates listed above clothing was turned over to the
16 arresting officer for evidence upon being booked into the
17 jail.

18 Q Upon being booked into the jail.

19 A Correct.

20 Q Okay. Thank you.

21 MR. LOFTON: That's all I have.

22 MR. WILLIAMS: Brief followup, Your Honor.

23 REDIRECT EXAMINATION.

24 BY MR. WILLIAMS

25 Q Detective Stanley, in followup to that question, I

Donald Stanley
Redirect examination by Mr. Williams

1 will have that marked for identification.

2 (Chain of custody log marked State's Exhibit No. 116
3 for Identification.)

4 Q Mr. Lofton just showed you what I have now marked as
5 State's, at least for identification, 116. What he showed
6 you was this first page, right?

7 A Yes, sir.

8 Q And there's a fax stamp at the bottom that says
9 November 16th. And it says page one, page two, page three,
10 page four, correct?

11 A Yes, sir.

12 Q So that's actually four pages to that same fax.

13 A Yes.

14 Q And the first page says all inmates listed above
15 clothing was turned over to the arresting officer. And
16 then following it it says description, inmate. It says no
17 clothes, no property. No property for all of the three
18 defendants. Take a look at that and make sure that's
19 familiar to you.

20 A That is correct. That's what it says.

21 Q In fact, it's a standard property sheet that's from
22 the jail?

23 A Yes, when they're booked in they indicate what items,
24 clothing, personal property, that they would have with
25 them. And that indicates nothing.

Donald Stanley
Redirect examination by Mr. Williams

- 1 Q This was back on November the 16th of 2006?
- 2 A I didn't read the date, sir. I'm sorry.
- 3 Q I believe it says November the 16th of 2006 on there.
- 4 A Yes, sir.
- 5 Q Is it typical for you to -- well, let me ask you first
- 6 of all. Do you know who investigator Jim NeSmith is?
- 7 A Yes, I do.
- 8 Q Works in my office?
- 9 A Yes.
- 10 Q He's right in court on the front row.
- 11 A Yes, sir.
- 12 Q Is it typical in a case for you to meet, first of all,
- 13 with investigators from the solicitor's office?
- 14 A Yes, it is.
- 15 Q And in this case way back when this happened as early
- 16 as November you sat down with me, with I believe Solicitor
- 17 Hoisington and people in our office to review this case,
- 18 correct?
- 19 A Correct.
- 20 Q And I was one of them and Investigator NeSmith was one
- 21 of them. Is that a yes?
- 22 A Yes, sir.
- 23 Q And you say it's typical, especially in a case like
- 24 this, for our office, our investigators, to work with you
- 25 in making sure all evidence is obtained and taken to SLED

Donald Stanley
Redirect examination by Mr. Williams

1 to be processed early on.

2 A That is, yes, sir, that's typical.

3 Q Something like this for a solicitor or investigator to
4 be checking on evidence, that's typical.

5 A Yes, sir.

6 Q I want to ask you about the -- I want to ask you about
7 what Mr. Davis was asking you. And he had mentioned that
8 Ms. Green had brought up twice in her statement the five
9 suspects --

10 A Yes.

11 Q -- or that five people were in the house. Did you
12 eliminate that or look into that to the extent where you're
13 comfortable eliminating or determining there were only
14 three people involved in this case?

15 A Yes, I did.

16 Q On what basis did you make that determination?

17 A That basis was made on the fact that -- we made that
18 determination and based it on, we had three eye witnesses
19 observed what they indicated in their statements as three
20 suspects leaving the incident location in a white Jeep.

21 The location of the three witnesses were across the
22 street from [REDACTED], which is where Ms. Green lived
23 at. A second witness was on the right side of [REDACTED]
[REDACTED]; and a third was towards the rear and the left side
25 of the residence.

Donald Stanley
Redirect examination by Mr. Williams

1 Also, indications from Ms. Green that she was, that
2 she had seen a total of five suspects in her residence.
3 However she -- at the time she was interviewed she was
4 being treated for a head injury and advised the medical
5 staff that she was having trouble seeing.

6 Q Now, there was also, I think, some talk earlier. You
7 saw Detective Rywelski in here when he testified.

8 A Yes.

9 Q And there was an anonymous call that there was a bunch
10 of objections about. That was about somebody calling and
11 talking to Ms. Green about there were five people.

12 A Yes, yes.

13 Q And y'all looked into all of those leads.

14 A Yes, we did.

15 Q Did subpoenas, did search warrants, did everything to
16 track down this, this theory out there about five people.

17 A Yes, sir.

18 Q And the only place that came back to was Ms. Green.
19 And she testified in court about that as well.

20 A Correct.

21 Q Thank you.

22 MR. WILLIAMS: I have nothing else.

23 MR. BROWN: Nothing else.

24 MR. DAVIS: Your Honor, if I might.

25

Donald Stanley
Recross-examination by Mr. Davis

1 RECROSS-EXAMINATION

2 BY MR. DAVIS

3 Q Along that line of questioning, you were given names
4 by Ms. Green, two names.

5 A Not that I recall.

6 Q Okay. You were not told two specific names by
7 Ms. Green?

8 A Not that I recall, sir, no, sir.

9 Q Okay. You're aware that Mr. Corley indicated that
10 there were two black males near the back door of
11 Ms. Green's residence; not the front, but the back door.

12 A That's not what he provided in his written statement
13 and --

14 Q That's not my question. You're aware of that.

15 A I was aware of that from sitting here in court today.
16 I've actually never spoke to Mr. Corley or had anybody else
17 tell me that information.

18 Q Thank you, Detective.

19 MR. LOFTON: Nothing further.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 MR. WILLIAMS: The state calls Amy Stephens.

23

24

25

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 AMY ELIZABETH STEPHENS, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLIAMS

4 THE CLERK: If you will, state your full name, and
5 spell your last name.

6 THE WITNESS: Amy Elizabeth Stephens, S-T-E-P-H-E-N-S.

7 MR. WILLIAMS: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 Q Ma'am, where do you work?

10 A I work at the South Carolina Law Enforcement Division,
11 which is also known as SLED.

12 Q What do you do at SLED?

13 A I am a forensic technician in the evidence control
14 department.

15 Q What does that mean?

16 A I log in the evidence that comes in from the different
17 agencies in South Carolina for forensic examination.

18 Q What does that mean? Explain that.

19 A We log it in and we seal up -- use pouches in the
20 boxes. We'll stock it in our evidence room and our intake
21 storage where either a technician or an analyst from a
22 different department will come down and pick it up and take
23 it upstairs for their forensic examination.

24 Q So you are sort of behind a desk or you work in
25 intake, or what kind of environment is it?

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 A There's five desks in there. There's three actually
2 technicians in there now. We all have a desk. We all have
3 our own computer. And we also have an evidence room that
4 is locked.

5 Q Do people bring things to you?

6 A They do.

7 Q Who brings things to you?

8 A Officers throughout the state of South Carolina.

9 Q And that's law enforcement officers?

10 A Yes.

11 Q And what type of things do they bring?

12 A Everything.

13 Q Evidence?

14 A Evidence, I mean from blood, urine, clothing.

15 Q And it's being brought to your agency to be processed.

16 A Right.

17 Q Examined, looked at and tested.

18 A Yes.

19 Q And what is your role in that intake process? What do
20 you do?

21 A My job is to enter it into the computer system, which
22 then the computer system assigns each case a lab number,
23 and it also assigns item numbers.

24 We then package it and have the officer, the
25 submitting officer, sign and seal the sealing of the tape

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 that we have on the boxes, and also on the heat-sealed
2 pouches. We put the lab number on each item, and we stock
3 it in our evidence room.

4 Q Is there a sheet that they bring to you that has sort
5 of what they're calling it and then you take it?

6 A Yes. We have what we call a SLED request form that
7 they are supposed to fill out or have to fill out prior to
8 coming to SLED. And that's how we enter the information
9 into our computer system.

10 Q Let me show you several documents. Look at those and
11 then hand them back to me.

12 (Pause.)

13 Q Are those all the typical intake forms you see?

14 A Yes, sir.

15 Q So when the item comes in it has a description and
16 information from the law enforcement agency that they call
17 it. They may call it a shirt; they may call it a pair of
18 pants or whatever.

19 A Yes, sir.

20 Q You take that information and enter the data?

21 A Yes, sir.

22 Q Then you assign it a new SLED number.

23 A Yeah. Well, the computer system assigns it a lab
24 number.

25 Q And then you put that lab number on a piece of paper

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 that they brought to you.

2 A Yes, sir.

3 Q So if somebody brings in a black t-shirt, you type it
4 in. You make sure the computer knows it's there. And then
5 you give it -- the computer says that's number one. You
6 write number one.

7 A Correct.

8 Q And that's how the evidence starts out at SLED.

9 A Correct.

10 Q So you are familiar with how a lab number is assigned
11 to a case?

12 A Our computer system does it.

13 Q And that one lab number then controls all the
14 documents for that.

15 A Right.

16 Q You're here today on L06-12265.

17 A Yes, sir.

18 Q The information that is afterwards entered into the
19 computer as the item is moved through the state law
20 enforcement division, is that then the master number and
21 the master database that's kept for that?

22 A Yes.

23 Q So any information about that item would be entered
24 into that computer by a person with personal knowledge of
25 what was going on.

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 A Yes.

2 Q And that's how y'all keep a chain, so to speak?

3 A Right.

4 Q And what, would you tell the jury, is a chain? I
5 think you're after familiar with it.

6 A A chain of custody is basically a list of everyone who
7 has touched that certain piece of evidence.

8 If you have Item No. 1, it will say my name because I
9 logged it in. The next line will be where that item is
10 put, such as a storage unit. And it just lists everyone's
11 name that has touched that piece of evidence and where the
12 piece of evidence goes to.

13 Q I want to ask you. First of all, there were several
14 dropoffs or deliveries of evidence in this case, is that
15 correct?

16 A Correct.

17 Q Do you have that documentation?

18 A Yes.

19 Q Does it show who the delivering officers were?

20 A On 9/7 of 2006 it was David Owen of the Charleston
21 County Sheriff's Office; on 11/22/06 it was Nancy Peacock
22 of the Charleston County Sheriff's Office; on 3/21/2007 it
23 was Kathy Kjellman of the Charleston County Sheriff's
24 Office; on 10/17/2007 it was James Mills of the Charleston
25 County Sheriff's Office; on 2/13/08 it was David Owen of

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 the Charleston County Sheriff's Office.

2 Q So there were multiple trips in those.

3 A There were a total of five submissions.

4 Q And certainly there were more items at different
5 times.

6 A Right, correct.

7 Q As far as the items that were brought in for testing
8 at SLED, how many total items are you aware of that were
9 brought in?

10 A I believe a total of items were 79.

11 Q And you all keep, like you said, a chain of custody.

12 A Yes, sir. It's formulated after all of the evidence
13 is turned in.

14 Q I'm going to show you.

15 MR. WILLIAMS: Actually, Your Honor, I am going to --
16 need that clip there. Thanks. I am going to have this
17 marked, Your Honor.

18 (Inmate property sheets Marked State's Exhibit No. 116
19 for Identification.)

20 Q Let me show you what's been marked State's Proposed
21 116. Take a look at that. Are you familiar with that
22 document?

23 A Yes, sir. It's a chain of custody from the South
24 Carolina Law Enforcement Division.

25 Q And that's kept in the ordinary course of business?

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 A Yes, sir.

2 Q Maintained by SLED?

3 A Yes, sir.

4 Q And you're part of the one that helps to maintain
5 that?

6 A Yes, sir. It's kept on our computer system under the
7 lab number.

8 Q And the information that is input into that is made by
9 people who have knowledge at the time the information is
10 put in.

11 A Yes, sir.

12 Q Kept in the ordinary course of business?

13 A Yes, sir.

14 MR. WILLIAMS: Your Honor, I'm going to move to admit
15 State's Proposed 116. I think defense counsel has a copy.

16 MR. BROWN: No objection.

17 MR. LOFTON: Your Honor, if this contains the items
18 that have not been introduced into evidence and have only
19 been marked for identification, we would object to it. And
20 I believe it does.

21 THE COURT: Well, that doesn't introduce the items.
22 That's just showing their -- that's just for records
23 showing a receipt of the item.

24 MR. LOFTON: I just don't want to waive anything
25 because once --

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 THE COURT: That's not going to -- that's not going to
2 be the foundation for an item coming in necessarily.

3 MR. LOFTON: All right, sir.

4 THE COURT: It is admitted.

5 (Inmate property sheets marked State's Exhibit No.
6 116.)

7 MR. WILLIAMS: Thank you, Your Honor.

8 Q Ms. Stephens, as we talked about, that's a pretty big
9 stack of papers. How many pages total is the chain of
10 custody in this case?

11 A There are a total of 113 pages.

12 Q And I want to take, just for instance right now, Item
13 No. 1, which says one sealed box containing a shirt
14 described as black t-shirt from Spann victim. It has on
15 there 9/7, David Owen of the Charleston Sheriff's Office,
16 and his signature.

17 A Yes, sir.

18 Q And then the next thing says 10:09, same time,
19 forensic technician, Amy Stephens.

20 A Yes, sir.

21 Q What is that showing?

22 A The first one that you mentioned of 9/7/06 at
23 10:09 a.m. is the submitting officer, which was David Owen
24 H. Owen of the Charleston County Sheriff's Office. And it
25 also has a box that shows his signature showing that he

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 brought it to SLED and he signed for it.

2 The next line is 9/7/06 also at 10:09 a.m. And that's
3 myself actually taking the evidence from him and logging it
4 into our computer system.

5 Q So that's showing he brought it in and you got it from
6 him.

7 A Right, yes, sir.

8 Q You put the information in.

9 A Correct.

10 Q The next entry says 10:12, evidence room. And that
11 says trace evidence, intake storage.

12 A Yes, sir.

13 Q What does that mean?

14 A That means after I entered the information into the
15 case a label printed out that I put on the outside of the
16 envelope or the package that the item is contained in. And
17 I scanned it. Every, every piece of evidence gets a bar
18 code with an item number on it. I scanned it into our
19 trace intake storage, which is in our locked evidence room.

20 Q And then it then says 9/8, forensic scientist, Illa
21 Simmons.

22 A Yes, sir. That means that she picked up that Item No.
23 1 at 11:24 on 9/8/06.

24 Q Is a forensic scientist different than a forensic
25 technician?

Amy Elizabeth Stephens
Direct examination by Mr. Williams

- 1 A Yes.
- 2 Q How are they different?
- 3 A A forensic scientist actually analyzes the evidence.
- 4 A forensic technician, we don't touch the evidence after it
- 5 is sealed up.
- 6 Q So you basically, you're entering the data and then
- 7 delivering it to somebody for testing.
- 8 A Correct.
- 9 Q And Illa Simmons, John Roberts, Lilly Gallman, they
- 10 all actually do the testing once you get it to them.
- 11 A Correct.
- 12 Q So this chain shows the integrity, meaning that you
- 13 took the item, logged it in and then took it to somebody
- 14 else for testing.
- 15 A Correct.
- 16 Q And there are several different types of analysts, as
- 17 you said, at SLED.
- 18 A Yes, sir.
- 19 Q So you may be delivering these to different
- 20 departments.
- 21 A Yes, sir.
- 22 Q But that's what your job is, is to make sure it comes
- 23 in, is logged in and is delivered to the analyst.
- 24 A Actually, our technicians from the other departments
- 25 come down and pick it up from our evidence room. We don't

Amy Elizabeth Stephens
Direct examination by Mr. Williams

- 1 deliver.
- 2 Q I see. So they come to you, right?
- 3 A Right.
- 4 Q I want to ask you about Brook Reed. Do you know her?
- 5 A I do.
- 6 Q What does she do?
- 7 A She is a D. N. A. or she was a D. N. A. technician at
- 8 SLED. She no longer works there.
- 9 Q Where does she work now?
- 10 A At DHEC.
- 11 Q And she does -- does she do the same thing as you or
- 12 something different?
- 13 A She does something different, but I don't know her
- 14 daily responsibilities or anything.
- 15 Q Okay. And in this case you've had a chance, and I
- 16 know you and I met over the lunch hour and went through
- 17 these documents, that exhibit. Have you had a chance to
- 18 review all the pages?
- 19 A Yes, sir.
- 20 Q Did you handle -- let me ask you first of all. You
- 21 said that there were 79 total items.
- 22 A Yes, sir. That were brought in by the Charleston
- 23 County Sheriff's Office.
- 24 Q And you handled all 79 of those.
- 25 A Yes, sir.

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 Q I should say all 78, well, 79 was handled. You did 79
2 too.

3 A Yes, sir.

4 Q All 79 were items that were in your hands, came in.
5 And you would have moved them on to the next person.

6 A Yes, sir.

7 Q And that's something you do every day for every
8 agency.

9 A Yes, sir.

10 Q Without asking about every single one, was there
11 anything special about this case that you remember
12 something being dropped and breaking open or something
13 being compromised?

14 A No, sir.

15 Q And I want to, Ms. Stephens, finally to ask you about
16 a few specific items.

17 A Okay.

18 Q Item No. 3 was a stair-post swab. That was something
19 that you handled. There were no problems with that?

20 A No, sir.

21 Q Item No. 5 was a swab from the living room floor.

22 A Correct.

23 Q You handled that as well. There were no problems with
24 it?

25 A No, sir.

Amy Elizabeth Stephens
Direct examination by Mr. Williams

1 Q The Item No. 15 was a glove found on I-26.

2 A Correct.

3 Q No problems with that coming in, and it went straight
4 to trace evidence, intake storage.

5 A Yes, sir.

6 Q Item No. 25 is also a mask.

7 A Yes, sir.

8 Q And that was -- you handled that. And that went to
9 intake storage as well?

10 A It did.

11 Q And, finally, I want to ask you about Item No. 69.
12 That was a pair of -- let me find it. Indicated that was
13 -- described as suspect Wilder jeans.

14 A Yes, sir.

15 Q I want to ask you about that just briefly and have you
16 explain it to the jury. It also indicates there was 69.2
17 and 69.3, different subitems as a part of that. How does
18 that happen?

19 A Those are created by -- well, these, it indicates,
20 were created by Patti Ruff. She is a forensic technician
21 in the evidence processing department.

22 Q So she likes -- how does she separate things out and
23 how does one pair of pants turn into four items?

24 A You'd have to ask her. I don't know her policies and
25 procedures on how they do that.

Amy Elizabeth Stephens
Cross-examination by Mr. Davis

1 Q She'd be the one to talk about how everything is split
2 up.

3 A Right.

4 Q Thank you. Nothing further.

5 MR. BROWN: No questions.

6 CROSS-EXAMINATION

7 BY MR. DAVIS

8 Q Do you have occasions sometimes when items come in to
9 have to unseal packages? Do you ever unseal packages?

10 A No, sir, I don't.

11 Q Okay. Do you ever have to seal packages up?

12 A We with boxes, we box them up and put our SLED seal
13 tape on it. And then the submitting officer will initial
14 and date on the sealed tape.

15 Q So basically we're talking about for the jury, if you
16 receive a bunch of little items or a bunch of little bags
17 that we see laying out here, you might stuff those into one
18 box, label it as you've already talked about. But as far
19 as sealing it up any more than putting a lot of small items
20 into one big box, you don't do they either.

21 A No, sir.

22 Q Okay. Thank you. No further questions.

23 MR. LOFTON: No questions, Your Honor.

24 THE COURT: Step down.

25 THE WITNESS: Thank you.

Clara Brook Reed
Direct examination by Mr. Williams

1 MR. WILLIAMS: May she be excused, Your Honor?

2 THE COURT: She may.

3 (Whereupon, the witness was excused.)

4 MR. WILLIAMS: The state calls Brook Reed.

5 CLARA BROOK REED, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. WILLIAMS

8 THE CLERK: If you will, state your full name, and
9 spell your last name.

10 THE WITNESS: It's Clara Brook Reed, R-E-E-D.

11 Q Ma'am, where do you work?

12 A I work for DHEC.

13 Q What do you do at DHEC?

14 A I am a chemist.

15 Q Did you used to work at the South Carolina Law
16 Enforcement Division?

17 A I did.

18 Q How long ago did you work at SLED?

19 A About a year and a half ago.

20 Q We had some trouble getting in contact with you to get
21 to court today. I think we maybe finally got ahold of you
22 this morning.

23 A Yes.

24 Q That's why you're wearing jeans?

25 A Yeah. That's why I'm dressed in what I wear to work,

Clara Brook Reed
Direct examination by Mr. Williams

1 so.

2 Q You ordinarily wear -- you don't have to wear a suit
3 but --

4 A Yes.

5 Q That's the cross-up with your message over at DHEC.
6 Thank you for being here. I just want to ask you about
7 what you did when you were at SLED.

8 A Okay.

9 Q What was your job there?

10 A I was a forensic technician in the D. N. A.
11 department.

12 Q What were your duties as a forensic technician?

13 A Forensic technicians have lots of different duties,
14 but one duty, we would transfer evidence. We would, I
15 would order, make up solutions, do anything to help the
16 analysts do.

17 Q Did you transport items from one department to
18 another?

19 A Yes, sir.

20 Q And how would that work? How would you know to do
21 that?

22 A Each day we would go down and pick up the evidence at
23 a log-in which is on the first floor. We get all the
24 evidence that was assigned to the D. N. A., take it up to
25 the D. N. A. department. We would log it in on our

Clara Brook Reed
Direct examination by Mr. Williams

1 computer system and we would assign it to the analyst if it
2 could be assigned.

3 Q Did you only handle D. N. A.?

4 A Yes.

5 Q You didn't handle gunshot residue?

6 A No.

7 Q Didn't handle toolmark or ballistics?

8 A No, sir.

9 Q So it was only on D. N. A. items that you would
10 transport.

11 A Yes, sir.

12 Q And when you got those items, you said you would just
13 transport them to the analyst.

14 A Yes. If they could be assigned, we would transport to
15 evidence.

16 Q And does something get assigned or how can something
17 be assigned or not be assigned?

18 A If it had like a suspect kit with it, and it had other
19 evidence with it, it could be assigned as a case so that we
20 would just pick the next analyst in the sequence and we
21 would assign it to that analyst.

22 Q So when everything that was necessary for the test got
23 there, then you would take it --

24 A Yes.

25 Q -- to the analyst.

Clara Brook Reed
Direct examination by Mr. Williams

- 1 A Yes, sir.
- 2 Q Is Lilly Gallman an analyst?
- 3 A Yes, sir.
- 4 Q And do you know who Patti Ruff is?
- 5 A Yes.
- 6 Q What does she do at SLED?
- 7 A She's, she does processing.
- 8 Q What does processing mean?
- 9 A I'm not real sure because, I mean, I never done it. I
- 10 can't testify to what she does on a daily basis. But they
- 11 take in all of the stuff and they do presumptive testing on
- 12 that.
- 13 Q Do you sometimes take things to Patti Ruff as well or
- 14 do you take them to --
- 15 A I receive. Most of the time we receive things from
- 16 Patti Ruff and take them up.
- 17 Q Okay. Now, I'm going to show you, and I believe it's
- 18 in front of you, State's Exhibit 116. Take a look at that.
- 19 You have a duplicate copy of that with you today?
- 20 A Yes, I do.
- 21 Q You actually sat in my office this afternoon and went
- 22 over what those documents are.
- 23 A Okay. There it is exactly.
- 24 Q That's a hundred and -- 112-page document.
- 25 A Yes, sir.

Clara Brook Reed
Direct examination by Mr. Williams

1 Q And that's what's commonly known as a chain of
2 custody, correct?

3 A Yes, sir.

4 Q Have you reviewed all 112 pages or reviewed that
5 document today?

6 A I looked over it briefly.

7 Q And your name shows up in there.

8 A Yeah. I tried to look wherever my name showed up.

9 Q And where it showed up was where there was D. N. A.
10 evidence?

11 A Yes. That's correct.

12 Q And any time that you would have handled D. N. A.
13 evidence, would you have just basically transported it from
14 one place to another?

15 A In this case, yes, sir.

16 Q I want to take, for example, Item 5 which is on page
17 four, bottom half. And that indicates that essentially --
18 you see it there, Item 5? It says swab described as swab
19 from the living room floor.

20 A Yes. I see it.

21 Q And essentially it starts out with David Owen bringing
22 you that on 9/7.

23 A Uh-huh.

24 Q Then it goes to Amy Stephens.

25 A Yes.

Clara Brook Reed
Direct examination by Mr. Williams

1 Q Then she takes it to the in-take storage.

2 A Yes.

3 Q And then you take it to the D. N. A. refrigeration
4 fourth floor.

5 A Yeah. We would take it to the third floor, which is
6 where the technician room was. We would log it in, assign
7 it to the analyst. Then if it could be assigned, which
8 this case obviously could, I would take it right to the
9 refrigerator on the fourth floor.

10 Q And then the next indication is that Lilly S. Gallman,
11 forensic scientist, would have handled the item.

12 A That's correct.

13 Q And she is the one that actually does the analysis.

14 A Yes, yeah. We would take up the evidence. We
15 wouldn't even open. It would be in a heat-sealed pouch.
16 Most of the time we wouldn't even touch it. We would just
17 transport it.

18 Q And you've reviewed everything in this process that
19 would have had to do with the D. N. A. evidence?

20 A Yes, sir.

21 Q And all of the items except for No. 79 was handled by
22 you.

23 A Yes, sir.

24 Q So all the D. N. A. except for Item 79 was handled by
25 you and if it was for D. N. A. was sent to the D. N. A.

Clara Brook Reed
Direct examination by Mr. Williams

- 1 department.
- 2 A Yes, sir.
- 3 Q I want to ask you about Item 79. That came in on
- 4 October the 17th of '07?
- 5 A Okay.
- 6 Q On page 111.
- 7 A Okay.
- 8 Q Do you see that?
- 9 A Uh-huh.
- 10 Q Were you working there at the time?
- 11 A That is the day I started at DHEC.
- 12 Q And then there's a -- it's indicated that Selena
- 13 Kinard and Sheree Brown would have taken the items to the
- 14 D. N. A. room.
- 15 A That's correct.
- 16 Q They took over your job?
- 17 A Well, she, yeah, Sheree if that -- anybody in the D.
- 18 N. A. department that was a forensic technician, they can
- 19 transport evidence. So, yeah, it looks like Sheree took
- 20 it.
- 21 Q So all the items in this case though that were D. N.
- 22 A. you transferred, transported.
- 23 A Yes, sir.
- 24 Q Except for that one when you didn't work there.
- 25 A That's correct.

Clara Brook Reed
Cross-examination by Mr. Davis

1 Q And the record shows there was a person that took over
2 your job.

3 A Yes. That's correct.

4 Q And that's described as suspect kit on Jamie Williams,
5 No. 79.

6 A Okay, yes, sir.

7 MR. WILLIAMS: I have no further questions, Your
8 Honor.

9 MR. BROWN: No questions.

10 CROSS-EXAMINATION

11 BY MR. DAVIS

12 Q We just heard another SLED agent, Ms. Stephens,
13 testify. Would you ever have had the occasion to unseal
14 items of evidence?

15 A If it was just, if it was not assignable we would
16 unseal it, and we would pour it and preserve the blood.

17 Q Okay. So then in contrary, you would have occasion to
18 seal things up from time to time?

19 A That's correct.

20 Q Okay. Would you also have the occasion like
21 Ms. Stephens to perhaps for storage purposes put many items
22 into one box?

23 A No.

24 Q You would not do that.

25 A No. We would put it back in the original container

Patti Ruff

Direct examination by Mr. Williams

1 that it came in.

2 Q However you got it from, for example, Ms. Stephens.

3 A Yes, uh-huh.

4 Q Okay. Thank you. No other questions.

5 MR. LOFTON: No questions.

6 THE COURT: You may step down.

7 MR. WILLIAMS: May she be excused as well, Your Honor?

8 THE COURT: You may be.

9 (Whereupon, the witness was excused.)

10 MR. WILLIAMS: The state calls Patti Ruff.

11 PATTI RUFF, having been first

12 duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WILLIAMS

14 THE CLERK: Please state your full name, and spell
15 your last name.

16 THE WITNESS: My name is Browning Ruff, R-U-F-F.

17 MR. WILLIAMS: May it please the Court, Your Honor.

18 THE COURT: Yes.

19 Q Ma'am, where do you work?

20 A I'm employed with the South Carolina Law Enforcement
21 Division.

22 Q And what do you do there?

23 A I was a forensic evidence technician until two months
24 ago. I'm now working in the intelligence department.

25 Q When you were working with the forensic evidence

Patti Ruff
Direct examination by Mr. Williams

1 department, what did you do?

2 A I processed evidence for the D. N. A. department. I
3 did presumptive testing and collection of evidence.

4 Q Could you tell the jury what that means?

5 A For example, if an item of clothing had a request for
6 blood or any type of D. N. A., for blood I would do a
7 visual exam, maybe for a rust-colored stain. Then I would
8 do a chemical test on that, which we phenolphthalin.

9 It reacts the hemoglobin and blood. It would turn
10 like a fuchsia type color. That's considered positive.
11 But that means that it's potentially blood. It does not
12 mean that it necessarily is blood.

13 If it was a piece of clothing, I would make a cutting.
14 And then I would send that cutting to the D. N. A.
15 department for further testing.

16 If it was a request for ownership, like maybe some
17 shirt or something would be left at the scene and I was to
18 collect epithelial skin cells, I would just scrape that
19 item down or maybe swab that item and send it to the D. N.
20 A. department for possible D. N. A.

21 Q So how did the items get to you or did they show up in
22 your office or your desk?

23 A I receive a sealed container. It may be a heat-sealed
24 pouch; it may be a box or anything of that nature from
25 either a technician or an analyst.

Patti Ruff
Direct examination by Mr. Williams

1 Q Is there a chain of custody that's kept regarding
2 these items?

3 A Yes, sir. It is.

4 Q And would you input the information or when you pick
5 something up or when it goes somewhere?

6 A That is correct. We keep what he call an electronic
7 chain.

8 Q Is that like the bar code?

9 A Yes, sir. It --

10 Q How is it kept?

11 A Yes, sir. There is a bar code on the evidence.

12 Q And I'm going to hand you just, for instance, State's
13 Proposed what's been marked State's Exhibit 109. Without
14 talking about the actual item itself, do you see one of
15 those bar codes on that item?

16 A Yes. It's this yellow bar code that you see right
17 here.

18 Q Okay. So when you get something or when something is
19 dropped off, instead of having to put into a computer and
20 type it, you just put the bar code up there and it probably
21 makes a beeping sound or something.

22 A Yes. We have what we call a bar-code reader basically
23 and zap it. It's a proper term.

24 Q Now, there's State's Exhibit 116 in front of you
25 there, a stack of papers. Take a look at that. Are you

Patti Ruff

Direct examination by Mr. Williams

1 familiar with that case number and those documents?

2 A Yes, sir, I am.

3 Q I had a copy of it at lunch and we went over it making
4 sure we had copies for everybody. That's the chain of
5 custody in this case?

6 A Yes, sir, it is.

7 Q And you're part of the chain on some of the items in
8 this case.

9 A Yes, sir. That's correct.

10 Q How would you, just for example, something would come
11 to you and you make a decision. And I'm trying to figure
12 out how it is that you get something and then determine
13 what to do with it.

14 A As probably previously testified, we have an evidence
15 control department. They usually will sign a request to
16 these items. We all have access to this computer program
17 that we have. And it'll tell you like exactly if there's a
18 D. N. A. request or if there's a trace request. So they'll
19 decide which department it should go to first. And then
20 you decide according to the request as to what you should
21 do to each item.

22 Q And in this case did you only handle D. N. A. items?

23 A Yes, sir, I did.

24 Q So there's other analysts or people that process
25 things for gunshot residue or toolmarkings. You look for

Patti Ruff
Direct examination by Mr. Williams

1 D. N. A. essentially.

2 A That is correct.

3 Q And you also would have generated a report in this
4 case?

5 A Yes, sir.

6 Q Do you have a copy of that report with you?

7 A Yes, sir, I do.

8 Q And on that report you only have reference to certain
9 items, meaning if there's items that come in for
10 fingerprint processing, you never see those.

11 A That's correct, unless there are samples where it may
12 require an exam for both. Let's say you have a bloody
13 fingerprint. Some -- it may go to my department first or
14 it may go to the other department, depending on what the
15 decision is made as to which is the most probative in the
16 case.

17 Q And we've got some of that in this case.

18 A Okay.

19 Q There's the glove that came in if it was to be tested
20 to gunshot residue and D. N. A., it would go over to
21 gunshot residue first. They would do their test and would
22 then send it to you to look at.

23 A That's correct.

24 Q So it can go up to other departments and then get to
25 you.

Patti Ruff
Direct examination by Mr. Williams

1 A Yes. That is not unusual.

2 Q Do you have your report there with you?

3 A Yes, I do.

4 Q I believe you looked at about maybe 25 or 30 things.

5 A Approximately, yes, sir.

6 Q And I want to, I just want to read through them
7 quickly so that we have an idea.

8 Item 15 was a black glove; Item 16, a black mask; 22,
9 a white driver -- white t-shirt for driver's side, both,
10 the driver's seat of Oldsmobile; 25, a black knit mask; 26,
11 a pair of black knit gloves; No. 27, a pair of black knit
12 gloves, No. 2; 34, a black knit mask; 62 victim Spann's
13 underwear; 63, victim Spann's socks; 64, suspect Gadsden's
14 clothing. And under that there are some subitems.
15 Sixty-six -- 65, victim Patricia Green's tan pants; 66,
16 black shirt; 67, a black cap; 68, white shirt; 69 dark blue
17 jeans belonging to Wilder; 70, black t-shirt belonging to
18 Wilder; 71, long-sleeve black shirt belonging to Wilder;
19 72, black shoes belonging to Wilder; 73, white socks
20 belonging to Wilder; 74, athletic shoes belonging to Smith;
21 75, white socks belonging to Kieve Smith; blue shorts
22 belonging to Kieve Smith is 76; 77, black shirt belonging
23 to Kieve Smith; and, 78, belt belonging to Kieve Smith.
24 Are all the items in your report?
25 A Yes, sir.

Patti Ruff

Direct examination by Mr. Williams

1 Q You did a lot of work in this case?

2 A Yes, sir.

3 Q A major case as far as SLED is concerned or you
4 individually are concerned?

5 A Yes, sir.

6 Q Now, I want to go through some of what your initial
7 findings or your initials decisions would have been on
8 these items.

9 So, for instance, with Items 15 and 16, it says
10 potential evidence collected and sent to the D. N. A.
11 department. But then like on Item 22 it says no
12 examination performed.

13 Then if you look at, for instance, number -- No. 70,
14 black shirt, black t-shirt belonging to Wilder, it says no
15 hair found, no blood detected.

16 Could you tell the jury what the various initial
17 results are that you may find on an item and how those
18 things interplay that you have in your report?

19 A Well, like I said earlier, it depends a lot on what
20 the request is. But if I don't find anything I'll make a
21 note. Like if I did check it for hairs or if I did check
22 it for blood and I didn't, didn't find anything that was
23 positive, then I'll make at a notation that that was
24 negative.

25 If I do find, like if I found a cutting that was

Patti Ruff
Direct examination by Mr. Williams

1 positive for the phenolphthalin, which is the presumptive
2 test for blood, then I would put potential evidence
3 collected and sent to the D. N. A. department.

4 Q And I believe on some of these it's, they say it's No.
5 22, white t-shirt from driver's seat of Oldsmobile, no
6 examination performed; as well as 62, victim Spann's
7 underwear; 63, victim Spann's socks; 65, victim Patricia
8 Green's head hair; 66, victim Patricia Green's black
9 shirt -- those items all say no examination performed. You
10 said that can be based on a request. What do you mean by
11 that?

12 A Well, with a case that the volume of evidence, for
13 example, in this case, lots of times we will go and have
14 conversations with the investigator, which was Investigator
15 NeSmith in this case, and try to go with what's the most
16 probative in the case and not necessarily examine things
17 that may not be of any value in the case.

18 Q So there's, in this case it was Investigator NeSmith
19 who is with the solicitor's office, would have communicated
20 with you that victim Spann's underwear and his socks
21 weren't something that y'all needed to comb through and
22 look for evidence on.

23 A That is correct.

24 Q So some of those items, in parenthesis a white t-shirt
25 inside the Oldsmobile, he would have contacted you and

Patti Ruff
Direct examination by Mr. Williams

1 said, you know, don't worry about that, we don't need you
2 to go through that.

3 A That is correct.

4 Q So those items would have been eliminated through
5 communication, but the other items, for instance, I want to
6 go through those as well.

7 Black t-shirt belonging to Wilder, black shoes
8 belonging to Wilder, white socks belonging to Wilder, white
9 socks belonging to Kieve Smith, those items all said no
10 hair found, no apparent bloodstains, or no apparent
11 bloodstains present. How, how do you make that
12 determination? What's that process?

13 A I guess through conversation we were told to process
14 these evidence for anything of any potential value.

15 Once again, you do a visual exam for hairs, and then
16 you scrape. We work on like a white piece of paper that we
17 have like butcher block paper that we put on a sterile
18 environment.

19 We scrape the item down. Any potential hairs that may
20 fall, we collect those. And we would send them to the D.
21 N. A. department where they would test them for D. N. A.

22 If we don't find any hairs, then I will make a note on
23 the report that there was no hair found.

24 And the same thing with blood. No apparent
25 bloodstains present means there were no stains that even

Patti Ruff
Direct examination by Mr. Williams

1 appeared to be blood, I didn't even do a chemical test on
2 anything.

3 If there's a result that may say no blood detected,
4 that means I did see a stain that was maybe a rust color
5 but the test, the chemical test, was negative.

6 Q I just want to make sure I get clear what you actually
7 look at. If there's like a swab of blood, that doesn't go
8 to you.

9 A If it's just a swab of blood that comes into the
10 laboratory as just a swab of potential blood, it would go
11 straight to the D. N. A. department.

12 Q If there's a tube of blood, you don't see that.

13 A No, sir.

14 Q You don't even worry about situations where you have
15 to take evidence off of something.

16 A That is correct.

17 Q Like clothing, for instance. You talk about --

18 A Right.

19 Q So you certainly don't see all of the items that
20 are -- all 79 items, just the items that require some kind
21 of processing --

22 A Right.

23 Q -- for D. N. A.

24 A Right.

25 Q And then some are eliminated through talking to the

Patti Ruff
Direct examination by Mr. Williams

1 investigating officers or talking to the people submitting,
2 the solicitor in some cases.

3 A That is correct.

4 Q Some of those then you didn't have to work on. And
5 then beyond that once you start looking at items, you can
6 tell if there's nothing there to find. You don't send it
7 to the D. N. A. analyst at that point either.

8 A That is correct.

9 Q Now, you said that -- you give a brief description of
10 your process in looking for these type of fibers or of
11 blood.

12 Can you tell the jury precisely what it is that you
13 do, what your process is in looking for this type of
14 evidence?

15 A For?

16 Q For blood.

17 A For blood?

18 Q Or D. N. A.

19 A For blood I would do what I was talking about earlier,
20 the phenolphthalin test. It's a chemical test that we do
21 if you see a rust-colored stain.

22 You would take a sample of that rust-colored stain.
23 Of course you wouldn't want to use the whole sample. You
24 just take a part of it. You would drop a drop of
25 phenolphthalin, then hydrogen peroxide. Then after that if

Patti Ruff
Direct examination by Mr. Williams

1 it reacts and turns a fuchsia pink color, that means that
2 it's positive for the presumptive test. Once again, that
3 means it's possibly blood.

4 Then you would collect that sample and send it to D.
5 N. A. It may be a cutting or a swab depending on if it
6 were a hard surface or a piece of cloth or whatever.

7 If you're looking for hairs you would do a visual
8 exam. Whatever falls from that item, you would put it in a
9 separate envelope, send it to D. N. A. for further testing.

10 If it's for epithelial skin cells, which we use that
11 quite often for what we call ownership just to maybe,
12 because we're constantly sluffing dead body cells off of us
13 at all times. You cannot see them, so I don't ever really
14 know at the time whether I have the possibility of
15 epithelial cells or not.

16 You scrape them with a, kind of a, curved spatula.
17 You then swab the inside of the spatula. Then you may also
18 focus around the neck area or any area that has friction on
19 your body to pick up any possible, once again, skin cells.
20 And then I would send that to the D. N. A. department for
21 further testing.

22 Q And you did that with several items in this case.

23 A Yes, sir, I did.

24 Q I want to ask you, and I want to do it through an
25 example, about cuttings, what you had mentioned cuttings.

Patti Ruff
Direct examination by Mr. Williams

1 Can you tell the jury briefly what that means?

2 A It's actually a cutting from the item -- like do you
3 want me to talk specific as to this case like, for example,
4 the glove or anything or you --

5 Q Let's use Item No. 69. I believe that's titled dark
6 blue jeans belonging to Wilder.

7 MR. LOFTON: Your Honor, I'm going to object again.

8 THE COURT: Sustained.

9 MR. WILLIAMS: I will lay the foundation.

10 Q Let me show you what's been marked State's Exhibit,
11 Proposed Exhibit, 98. Do you recognize that?

12 THE COURT: While she is looking at it, let me see
13 y'all just a minute.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 THE COURT: All right. Ladies and gentlemen, I have
17 got one matter I'm going to need to address outside of your
18 presence. So I'll ask you to please go to your jury room.
19 Don't discuss the case. I'll bring you back once we have
20 concluded.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: All right. Mr. Lofton, your objection to
24 the admission of or reference to State's Exhibit 98, which
25 is the SLED No. 69 I believe --

Patti Ruff

Direct examination by Mr. Williams

1 MR. LOFTON: That's correct, Your Honor.

2 If the Court pleases, if Your Honor will recall,
3 Investigator Roy has testified that he was directed to go
4 to three hospitals there where the various suspects were
5 located after the crash of the automobile.

6 He went to M. U. S. C.; he went to Saint Francis and
7 he went to Trident Hospital. At M. U. S. C. he took the
8 defendant Smith's clothes.

9 And according to, according to the testimony, Jacobik
10 obtained those clothes or was present in the room when a
11 nurse took the clothes from Mr. Smith and put them in a
12 garbage or plastic type bag and then put them in a brown
13 bag. And Jacobik then turned that brown bag over to
14 Investigator Roy.

15 Subsequently, Mr. Wilder is at Trident hospital, and
16 Detective Drake testified that the medical staff removed
17 Mr. Wilder's clothes, put them in a brown bag. They were
18 not sealed. And she subsequently turned that bag over to
19 Investigator Roy.

20 At that same hospital in that same emergency room but
21 in a separate room the victim, Mr. Spann, had been brought.
22 Detective Roy indicated that Mr. Spann's clothes were in
23 his room.

24 If you recall, Your Honor, she indicated that a room
25 had been assigned to him. She wasn't present when anybody

Patti Ruff

Direct examination by Mr. Williams

1 removed Mr. Spann's clothes. That she went to that room;
2 that the coroner was present in the room; and that she
3 retrieved clothes that she believed to be Mr. Spann's, even
4 though nobody has said these are Mr. Spann's clothes.

5 And maybe they were in some kind of container, or
6 maybe they weren't. She remembers that she put them in a
7 brown bag. And she also turned those over to Roy, along
8 with Mr. Wilder's clothes.

9 Judge, the problem that we've got is -- I understand
10 Your Honor's position from the standpoint of Detective
11 Drake being present when the medical staff at Trident
12 removed Mr. Wilder's clothes. She saw that happen, saw
13 them put them in a bag.

14 What, what happens next, we really don't know, because
15 what does she do with that bag while she retrieves the bag
16 that she believes contains Mr. Spann's clothes? And now we
17 are dealing --

18 THE COURT: You're talking about the bag that
19 Mr. Wilder's clothes was in?

20 MR. LOFTON: Yes, sir.

21 THE COURT: She testified she maintained that in her
22 custody.

23 MR. GROEBER: She's got it in her custody. So then
24 she goes to this room that she says was assigned to Mr.
25 Wilder, I mean Mr. Spann, where she says there are his

Patti Ruff
Direct examination by Mr. Williams

1 clothes, even though nobody has identified those as being
2 Mr. Spann's clothes. Whatever clothes were in that room,
3 she takes. She doesn't remember whether they were in any
4 kind of container or not.

5 THE COURT: Well, she put them in a container.

6 MR. LOFTON: She put them in a brown bag.

7 She then has Mr. Wilder's clothes in a brown bag and
8 Mr. Spann's clothes in a brown bag. At some point she
9 turns those two bags over to Mr. Roy, Investigator Roy.

10 Judge, the problem is that neither one of those bags
11 are sealed in any form or fashion. We do not have any
12 testimony concerning the condition of, for example,
13 Mr. Spann's clothes.

14 Now, if Your Honor will recall and if you believe the
15 testimony we've heard, Mr. Spann bled profusely at the
16 scene. So one would believe that whatever clothes he was
17 wearing or whatever clothes they took off of him at the
18 hospital would have been soaked in blood. That's what one
19 would believe. But there's been no testimony one way or
20 the other.

21 If, in fact, they were soaked in blood and if that
22 blood, in fact, leaked through the bag into Mr. Wilder's
23 bag or onto Mr. Wilder's clothes, then that would account
24 for how Mr. Spann's D. N. A. subsequently appears on
25 Mr. Wilder's clothes.

Patti Ruff
Direct examination by Mr. Williams

1 THE COURT: Well, yeah, if you want to speculate about
2 that. But we've got the bags here. Did you notice any
3 blood on the bags?

4 MR. LOFTON: Well, Judge, I don't believe and I'm not
5 sure those are the bags.

6 THE COURT: Well, they said they were. The witnesses
7 have said they were.

8 MR. LOFTON: Well, we know that Mr. Wilder's bag isn't
9 the bag; or if it is the bag, there's been a additional bag
10 added to it.

11 THE COURT: Well, that's a different issue.

12 I thought you were going to raise that issue based on
13 the cross-examination, that there's something inside of
14 that bag. But the witnesses have established the integrity
15 of the chain except that there is some issue or question
16 about how the white paper got in Mr. Wilder's bag, I
17 believe it was.

18 MR. LOFTON: But there's even more of a serious
19 problem about whether or not the clothes that she claims
20 are Mr. Spann's were, in fact, Mr. Spann's.

21 THE COURT: Well, have those been introduced?

22 MR. WILLIAMS: Your Honor, they haven't been. I
23 think --

24 THE COURT: Are they going to be?

25 MR. WILLIAMS: Well, Your Honor, I want to try to

Patti Ruff
Direct examination by Mr. Williams

1 explain it a little bit and not try to give you a 1-word
2 answer.

3 THE COURT: Well, I'm going to give you a chance to
4 respond to it, but right now I'm trying to organize this in
5 my mind.

6 MR. WILLIAMS: No. Short answer.

7 THE COURT: Okay. All right. So that's out. That's
8 not going to be -- they're not introducing them. Of course
9 you can if you want to, but they're not. They don't intend
10 to. And so they're not trying to establish the integrity
11 of that chain, and I'm, you know, speculating. But the
12 separation of Wilder's and Spann's has been established in
13 my view.

14 MR. LOFTON: The problem is, Judge, is if the D. N.
15 A. -- I understand they're going to use, I'm guessing
16 they're going to use, the blood that they drew from
17 Mr. Spann to say that that's what's on Mr. Wilder's
18 clothes.

19 THE COURT: But that's a different -- that's a
20 different exhibit. That wasn't in the bag.

21 MR. LOFTON: I understand that. But if the Spann bag
22 is contaminated and if that bag, in fact, has contaminated
23 the Wilder bag, then there's a problem because --

24 THE COURT: I don't disagree with that. But, I mean,
25 I can't just, just speculate that they were contaminated,

Patti Ruff
Direct examination by Mr. Williams

1 because there's no indication that they were.

2 MR. LOFTON: But the problem is, Judge, they haven't
3 established a chain on Wilder's clothes and where they came
4 from, I mean Spann's clothes, where they alleged came from,
5 and what they did with them other than put them in a bag.
6 They say they were Spann's clothes. We don't even know if
7 they were.

8 THE COURT: Well, I know. But for the purpose of this
9 argument it doesn't matter. It's like it doesn't exist.
10 We're talking about Wilder's clothes that you're concerned
11 about. And there's no indication that Spann's clothing and
12 Wilder's clothing were intermingled.

13 MR. LOFTON: Well, Judge, we don't know that
14 because --

15 THE COURT: Well, there's no testimony that would
16 indicate they were.

17 MR. LOFTON: There's no testimony that they weren't.

18 THE COURT: Well, Drake's and Roy's testimony
19 indicated they weren't.

20 MR. GROEBER: Detective Drake's testimony is she had
21 Wilder's clothes.

22 THE COURT: Right.

23 MR. LOFTON: She then went and got some clothing she
24 believed to be Spann's.

25 THE COURT: Right.

Patti Ruff

Direct examination by Mr. Williams

1 MR. LOFTON: There's no indication that at that point
2 in time -- if Spann's clothes were wet, that they had blood
3 on them.

4 THE COURT: There's no testimony to that effect.

5 MR. LOFTON: Well, Judge, the point is we don't even
6 know if Spann's clothes were a container when she picked
7 them up.

8 THE COURT: She testified she put them in a container
9 in a separate room from Mr. Wilder.

10 MR. LOFTON: But she had, according to the testimony
11 she had, Mr. Wilder's clothing in her possession at that
12 time.

13 THE COURT: Well, I don't recall which one was first.
14 But she did say they were in separate packages, separate
15 bags.

16 MR. LOFTON: Mr. Wilder was in a room. She testified
17 she took his clothes, or she didn't take it. She watched
18 the medical personnel take his clothes off and drop them
19 into a bag.

20 THE COURT: Well, to tell you the truth, what I do
21 recall and what my notes reflect was that she collected
22 Spann's clothing first. Do you have it different?

23 MR. LOFTON: I think it was Wilder's clothes.

24 THE COURT: Well, I'm not going to argue about it --

25 MR. GROEBER: I'm, I'm pretty sure.

Patti Ruff
Direct examination by Mr. Williams

1 THE COURT: But my notes indicate she collected
2 Spann's first, and then Wilder's. I mean, that was the
3 order of the testimony anyway.

4 MR. LOFTON: But the point is that both of these
5 people were in the emergency room.

6 THE COURT: I agree with that.

7 MR. LOFTON: Okay. And we don't even know who took
8 Spann's clothes and if the clothes, in fact, were Spann's
9 clothes.

10 All we know is that we have Wilder's clothes that were
11 taken and not put in any kind of sealed container, put
12 in -- I'm assuming, again, Roy took, ultimately took,
13 control of them.

14 They were put together. The bags weren't sealed in
15 any form or fashion. And then the bags get to SLED at some
16 point in time or the clothes get to SLED at some point in
17 time.

18 And what they now want to say is that Mr. Spann's
19 blood or D. N. A. is now on Wilder's clothes. And I don't
20 think that they have separated Wilder's clothes from
21 Spann's clothes to the extent that there isn't a
22 possibility, a strong possibility, of contamination.

23 THE COURT: All right. So your objection is to the
24 chain as established or not established in your view at the
25 hospital.

Patti Ruff
Direct examination by Mr. Williams

1 MR. LOFTON: Correct.

2 THE COURT: Not what happened afterwards. It's from
3 the time, from the time that -- in other words, you're not,
4 you're not challenging any chain from the time Roy receives
5 the items until SLED received the items.

6 MR. LOFTON: Well, that's not necessarily true --

7 THE COURT: Okay.

8 MR. LOFTON: -- because when Roy took them, again,
9 they are not in sealed containers.

10 THE COURT: I understand.

11 MR. LOFTON: And there's no testimony that they didn't
12 somehow come in contact with each other to the extent that
13 if those were, in fact, Spann's clothes and they, in fact,
14 had his blood on them, that that's how the blood got on
15 Wilder's clothes.

16 THE COURT: Okay.

17 MR. LOFTON: So we don't think the evidence was
18 preserved from the time it was taken at the hospital by
19 whoever took Spann's, and certainly not by Drake when she
20 took Wilder's and then took Spann's, because they put them
21 in a paper bag. No sealing process at all.

22 THE COURT: Well, she testified they did roll the bag
23 down. It wasn't just left open. In fact, the testimony
24 was it was folded down.

25 MR. LOFTON: She said folded down, that's correct.

Patti Ruff
Direct examination by Mr. Williams

1 THE COURT: That's right. Okay. Any other ground?

2 MR. LOFTON: Just one second.

3 (Pause.)

4 MR. LOFTON: In addition to the, in addition to the
5 contamination and the chain, we would also urge the Court
6 to look at 702 on reliability based on the argument we just
7 made that because of the way they were handled that the
8 evidence is not reliable.

9 THE COURT: Well, I understand your argument there.
10 What I'm saying is there's no, based upon the testimony
11 there's no, indication or no evidence that would indicate
12 that there was a contamination, based on how the evidence
13 was handled.

14 I mean, I know you say, well, what if, you know, they
15 said they said there was a lot of blood and what if it
16 leaked out of the bag onto the other bag since both were in
17 Roy's possession, but the fact of the matter is there's
18 simply no evidence whatsoever to support that theory.

19 And we have the bags here. And while I can't testify,
20 I'm satisfied that if a bag has been covered in blood
21 somebody can look at it and make that determination. And
22 apparently neither you nor the state nor the SLED witnesses
23 nor the police officers or anyone else have determined by
24 looking at the bags whether or not they look to be
25 not-intact or look to have been bled through or whatever.

Patti Ruff
Direct examination by Mr. Williams

1 So unless there's some indication of that, I don't see
2 the lack of integrity as far as the sample.

3 MR. LOFTON: Well, again, Judge, we're not even sure
4 those are the same bags. The reason is because --

5 THE COURT: Well, I'm just going by the testimony.

6 MR. LOFTON: Because the white bag -- we know the
7 white bag wasn't in there.

8 THE COURT: That's a different issue altogether.

9 MR. LOFTON: That's the problem.

10 Then the other problem that we have is we don't know
11 if whoever the medical person was at Trident that took
12 Spann's clothes off of him, assuming somebody took them off
13 and those were, in fact, Spann's clothes -- we don't know
14 if that was the same person that took Wilder's clothes off
15 him and in the process of doing that that's how they became
16 contaminated, because there's been no evidence from any of
17 the medical people at Trident.

18 So if the same person that took Spann's took Wilder's
19 and they used the same rubber gloves, for example, and
20 didn't bother to take them off, then there's also the
21 possibility of condemnation. And there's no evidence. And
22 that goes to the reliability on the 702, because they
23 haven't offered any evidence from anybody as to who took
24 Spann's clothes off him, or other than the medical persons
25 at the hospital who took Wilder's clothes off him.

Patti Ruff
Direct examination by Mr. Williams

1 We think without that the chain is not complete and
2 there's a high probability for contamination and the
3 evidence shouldn't be admitted.

4 THE COURT: Okay. Mr. Williams.

5 MR. WILLIAMS: Thank you, Your Honor.

6 I want to try to clarify as best I can what Mr. Lofton
7 refers to as Spann's clothes. I don't think it's quite as
8 complicated as it may sound.

9 Our crime scene shows there's a shirt and shoes and
10 things laying right there. I think that's pretty much
11 Spann's clothes that were taken off him by E. M. S. He may
12 have had a pair of pants. But the way Heide Drake
13 testified, it was basically whatever was on Sterling Spann
14 was put into this bag and whatever was on Wilder was put
15 into this bag and I gave it to Roy and he took it to the
16 crime scene, and crime scene took it to SLED.

17 Now, there could be a plastic back in there. There
18 could be all kinds of things, because, quite honestly,
19 Detective Drake, the way he testified, you don't look
20 inside the bags and then start moving around in there. She
21 seals it and delivers it.

22 So if the doctors put a white bag in there, that's
23 possible. If they put just a pair of underwear and socks
24 in there, that's what she would have. And I'm not quite
25 sure what -- there's been a lot of talk about the clothes

Patti Ruff
Direct examination by Mr. Williams

1 being bled through and soaked in blood, when I think from
2 just the pictures in this case most of the clothes were at
3 the crime scene. There may have been a pair of pants, I
4 believe, that E. M. S. provided, a witness, that said I
5 think he may have just had his pants on and that those were
6 cut.

7 So, you know, I think most of the clothes were on the
8 scene and not collected in the hospital. And I believe it
9 was probably underwear and socks in looking at our exhibits
10 that were actually taken by Mr. Spann, from Mr. Spann.

11 But most importantly, Your Honor, what we just had
12 testimony on from Ms. Ruff is that they were told not to
13 process Sterling Spann's clothes. So I am certainly not
14 going to get into the clothing of Sterling Spann because,
15 you know, my theory is that of course Mr. Spann's D. N. A.
16 is on his clothes.

17 What I'm worried about is where Mr. Spann's D. N. A.
18 is on other people. So I do need to get that blue, the
19 purple-tube top, the blood that was taken from him at
20 autopsy and from the standard with SLED. But I don't
21 intend to get into his clothing. I'm fairly certain that
22 it wasn't tested at SLED. But even if I wanted to, I don't
23 think I would get into those results. And that's why I
24 haven't been introducing those as exhibits.

25 I think the chain question, Your Honor, is really, is

Patti Ruff
Direct examination by Mr. Williams

1 a question of what's in that bag. And to be honest, Your
2 Honor, I haven't dug into there. I think that most of
3 what's in there is white tissue paper, which is used at
4 SLED, as Ms. Ruff has already testified, when they do
5 scrapings and they look at things.

6 THE COURT: Well, if that's, if that's, if that's not
7 true, that will answer that question, I mean, assuming she
8 can identify it.

9 MR. WILLIAMS: Your Honor, if I can proffer that from
10 the witness at this point.

11 THE COURT: Sir?

12 MR. WILLIAMS: May I just proffer some testimony from
13 the witness?

14 THE COURT: Sure.

15 BY MR. WILLIAMS

16 Q Ms. Ruff, I want to show you what's inside of 98. Do
17 you recognize this white paper?

18 A Yes, sir. It has my initials on the outside.

19 Q Okay. So that's --

20 A That's --

21 Q I'll go ahead and take that.

22 A This, this is the type of paper that we use to process
23 evidence on.

24 Q And it's got your initials on it?

25 A Right.

Patti Ruff
Direct examination by Mr. Williams

- 1 Q It shows that you would have added this paper to the
2 exhibit.
- 3 A Right.
- 4 Q There's nothing else in the bag?
- 5 A No, sir.
- 6 Q And that's so that if items fall off you can make sure
7 it doesn't get lost.
- 8 A Well, and if you ever need to go back, then
9 everything's preserved.
- 10 Q That we're doing today.
- 11 A Like if something fell off, yes, sir.
- 12 Q And you would have taken the cuttings and put those in
13 similar pieces of paper?
- 14 A The cuttings would have been put in an envelope and
15 sealed with my initials.
- 16 Q What these items look like? I'm sorry. Not cuttings.
17 You would have used separate envelopes.
- 18 A That's not, that's not mine.
- 19 Q I'm sorry.
- 20 A I would have put them in envelopes, little gold-coin
21 envelopes, or either a white --
- 22 Q Like this?
- 23 A Like that.
- 24 Q All right. So you had the white paper.
- 25 A Right.

Patti Ruff
Direct examination by Mr. Williams

1 MR. WILLIAMS: Your Honor, that's all that's in here.

2 THE COURT: Okay. Well, that answers any questions
3 for me. I don't think it answers it for Mr. Lofton.

4 MR. WILLIAMS: Sorry?

5 THE COURT: All right. Well, that answers my question
6 since there's no objection to it, or no question about it,
7 that the white paper which appeared to be a bag but is
8 actually a paper that the clothing is wrapped up in inside
9 Exhibit 98 was put there at SLED during testing by this
10 witness. So that explains where that white bag or paper
11 came from.

12 MR. LOFTON: Back to the contamination issue, the
13 reason we think that it is such a strong issue, Judge, is
14 if you'll recall as I started out, and the testimony is,
15 first of all, Investigator Roy got defendant Smith's
16 clothes from M. U. S. C. And then he had Mr. Smith's, Mr.
17 Wilder's and supposedly Mr. Spann's.

18 Well, when the D. N. A. testing was done in Columbia,
19 on Mr. Wilder's pants there's D. N. A. from Mr. Smith and
20 D. N. A. from Mr. Spann and no D. N. A. from Mr. Wilder.

21 My point is, my point is we have Mr. Smith whose
22 clothes were in the trunk of the car or wherever they were
23 with Mr. Wilder's, and we have Mr. Spann's who is in the
24 trunk of the car with Mr. Wilder's.

25 They're all loose in a bag. Now, I know you say they

Patti Ruff
Direct examination by Mr. Williams

1 rolled it down, but it just seems to me, Judge, that it's
2 pretty unusual for the two people whose clothes have been
3 seized on or about the same time as my client's clothes,
4 that their D. N. A. shows up on his clothes.

5 THE COURT: Well, concerning what the source of the D.
6 N. A. is, I mean, if they were rolling around in that car
7 out on I-26, you'd have D. N. A. everywhere. I mean,
8 that's just as good of a theory as yours.

9 MR. LOFTON: There's no D. N. A. of Mr. Wilder's on
10 the clothes.

11 THE COURT: Well.

12 MR. LOFTON: I'm just telling you. I don't think, I
13 don't think, I don't think that they have taken the
14 clothing that were seized at these hospitals and I don't
15 think they've properly linked the chain together in order
16 for it to be admissible.

17 THE COURT: Okay. Well, I'm satisfied now. It
18 appears to me from the testimony now that's been elicited
19 that each of the suspect's clothing was taken separately
20 and independently, were placed into evidence, brown, or
21 brown evidence bags -- while they may not have been sealed
22 with evidence tape, they were rolled down to protect the
23 integrity of the package.

24 There is no indication whatsoever that there was any
25 intermingling or mixture of the items of evidence. They

Patti Ruff

Direct examination by Mr. Williams

1 were kept separately. They were taken into custody at one
2 time or they were in Mr. Roy's custody at one time.

3 He took those to the crime lab or the evidence room of
4 the Charleston County Sheriff's Department where they were
5 maintained in the ordinary course of business. And then
6 each of those bags were taken to the state law enforcement
7 division for testing as far as some of those items are
8 concerned.

9 There is no indication and there's no testimony, and
10 y'all haven't shown me anything that relates, that would
11 indicate that these bags are in any way contaminated or
12 there's blood that leaked through the bags or the bags are
13 anything other than brown bags still intact containing
14 clothing which the state has offered into evidence. And
15 there does not appear to be any other intention of
16 condemnation by the Charleston County Evidence Room or by
17 the state law enforcement division.

18 And so based upon that, I think the integrity of the
19 evidence has been established. The complete chain has been
20 established; and therefore I overrule your objection to
21 Exhibit 98.

22 MR. LOFTON: Thank you, Your Honor.

23 THE COURT: All right. Let's take ten minutes. Let's
24 take ten minutes before we continue.

25 (Whereupon, a recess was taken.)

Patti Ruff
Direct examination by Mr. Williams

1 THE COURT: All right. Any other matters to address
2 before the jury is brought back?

3 MR. WILLIAMS: Not from the state, Your Honor.

4 MR. LOFTON: No, Your Honor.

5 MR. DAVIS: No, Your Honor.

6 THE COURT: Okay. Bring them in, please, sir.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: All right. Mr. Williams.

10 MR. WILLIAMS: Thank you, Your Honor.

11 BY MR. WILLIAMS

12 Q Ms. Ruff, I believe we were at the point where we were
13 talking about Item No., SLED Item No. 69. I believe it was
14 State's Proposed Exhibit 98.

15 I believe when we left off I was asking you to tell me
16 if you recognize, first of all, markings on this bag.

17 A Yes, I do. It has my initials, the case number and
18 the item numbers.

19 Q And it says 69 to 71.

20 A Yes. And that's in my handwriting.

21 Q So those are the item numbers SLED would have assigned
22 to this.

23 A That is correct.

24 Q I'm going to take out what's in Exhibit 98. And
25 there's a piece of white paper on some cloth. Do you

Patti Ruff

Direct examination by Mr. Williams

1 recognize the writing on the bottom of that paper?

2 A Yes, sir. That is my writing and my initials.

3 Q And it says 69.0. So that's Item 69?

4 A That's correct.

5 Q I'm going to take out that item. You said that this
6 white paper is used. You said you put it sometimes to
7 collect things.

8 A Yes, we do. We line our tables with this.

9 Q And there's actually like some dirt in the bottom of
10 this?

11 A Right. If I see some debris, I'll leave it with the
12 clothing at times.

13 Q That's what would have been -- that's to collect that
14 kind of evidence?

15 A That's correct.

16 Q Now, looking at this item, it's obviously all, all cut
17 up, right?

18 A Yes, sir.

19 Q I want you if you can explain to the jury what, first
20 of all, these different -- there's ink writings on there.

21 A Yes, sir.

22 Q What does that indicate or what is that showing?

23 A If there's a circle on the item -- I don't know. I
24 don't know if you can see this because it's dark. But
25 there's a circle. And beside it it has what we have like

Patti Ruff
Direct examination by Mr. Williams

1 an equal sign and P-H-E-N. The equal sign is really our
2 negative sign so that someone couldn't go behind and make
3 that into a positive sign. So we use that to represent
4 negative. It means that this area maybe had the
5 resemblance of possible blood. So I did the phenolphthalin
6 test on it, and it came back negative.

7 Q So when you take something like this, what's the first
8 thing you do, just a visual inspection?

9 A We do a visual inspection, and we also have what we --
10 it's a lighted magnifying glass that's on an arm. We'll
11 scan the item for possible blood spatter, any minute
12 spatter, anything if we don't see any obvious steins. So
13 it's a visual exam at first.

14 Q And then there's -- and then you start checking. Like
15 you said before, you apply and see if there's anything
16 there.

17 A That's correct.

18 Q Now, there's parts in here that are marked with holes.
19 It says like this says 69.4, this says 69.1. What's that
20 from?

21 A Since this was labeled as Item 69, any cutting or any
22 evidence that I collect from there will be a subitem. So,
23 for example, just showing this one place right here, 69.4
24 where there's a hole, that's where I made a cutting. And I
25 assigned it a subitem number.

Patti Ruff

Direct examination by Mr. Williams

1 I collected four samples for possible blood on this
2 item. That will be 69.1 through 69.4. They were put in
3 these gold envelopes like you have.

4 Q I'm going to show these. These say 69.3 and 69.2 and
5 69.1 and 69.4. And it's, looks like, from 71.

6 A Right. We put that, each cutting in that, and put
7 tape and initial on the back. And then I create this
8 heat-sealed pouch that he's holding. And that's what I
9 give the actual D. N. A. analyst.

10 Q I am going to have this marked for identification.

11 (Cuttings from Wilder's clothes marked State's Exhibit
12 No. 117 for Identification.)

13 Q Ms. Ruff, I'm going to show you what's marked Proposed
14 State's 117. Those are the -- it has your name and your
15 sealing officially written on the front.

16 A Yes, sir. That is correct.

17 Q And it says these are the cuttings as you have
18 identified them, 69. And they all have your initials on
19 the back?

20 A That is correct.

21 Q And that's 71.1 and 69.3 and 69.2 and 69.1 and 69.4.

22 A Yes, sir.

23 Q I want to look at 69.1. Is it okay if I open that?

24 A Yes.

25 Q You sealed it. 69.1 looks like it's the -- that's the

Patti Ruff
Direct examination by Mr. Williams

1 cutting that kind of fits the hole that was made in the
2 pants?

3 A That is correct.

4 Q So you would have taken that item and sent it for
5 comparison or being looked at.

6 A That is correct.

7 Q And there's also what looks like in this even smaller
8 holes cut. Do you know what that's from?

9 A That was not in there when I cut it. The D. N. A.
10 analysts, that is their procedure to take a portion of the
11 cuttings that I send that they use for testing.

12 Q So you would have taken these jeans, looked for what
13 might be possible blood, tested it. If it came back
14 positive, cut it and just sent the cutting to the analyst?

15 A That's correct.

16 Q So once this little, little piece is put inside,
17 that's all that goes to the analyst. These pants once
18 they're all cut up stayed with you, for lack of a better
19 term, but with SLED but not the analyst.

20 A That is correct.

21 Q And then the analyst takes even a smaller cutting for
22 testing.

23 A That's correct.

24 Q And that's how these pants and these cuttings were
25 created.

Patti Ruff

Direct examination by Mr. Williams

1 A Yes, sir.

2 Q The other item that's in there looks like it's two
3 black shirts that were also in there.

4 A Yes, sir.

5 Q Same process would have been used for those?

6 A That's correct.

7 MR. WILLIAMS: Your Honor, I'm going to move to admit
8 State's 98 and 117. I'm going to bring them over there,
9 Your Honor. I think they've seen them.

10 (Pause.)

11 MR. WILLIAMS: Your Honor, I move their admission.

12 THE COURT: Mr. Brown, object?

13 MR. BROWN: None, Your Honor.

14 MR. DAVIS: No, Your Honor.

15 MR. LOFTON: Subject to my objection, Your Honor.

16 THE COURT: Yes. They are admitted over Wilder's
17 objection.

18 (Clothing of Anthony Wilder marked State's Exhibit No.
19 98; cutting from Anthony Wilder's clothes marked State's
20 Exhibit No. 117.)

21 Q Again, that was SLED Nos. 69, 70, 71 and cuttings from
22 those items.

23 A Yes, sir.

24 Q Okay. So we're talking about several -- talking about
25 the items that you would have done the cuttings from, there

Patti Ruff
Direct examination by Mr. Williams

- 1 were several different items that you did that with.
- 2 A Yes, sir.
- 3 Q I want to go through the list and not necessarily get
4 into each one but at least talk about them. There was a
5 black glove. Potential evidence was collected and sent to
6 the D. N. A. department. That was your Item No. 15.
- 7 A Yes, sir.
- 8 Q I'm going to show you State's Proposed 114. And that
9 has your initials on it and says 15.0 for Item 15.
- 10 A Yes, sir. It does.
- 11 Q Item 16 was a black knit mask. I hand you State's
12 Proposed 113. That as well has 16.0 and your initials on
13 it.
- 14 A Yes, sir.
- 15 Q So you would have processed that as well.
- 16 A Yes, sir.
- 17 Q Now, both of those items, potential evidence was
18 collected and sent to the D. N. A. department.
- 19 A Yes, sir. It was.
- 20 Q On Item 25, was a black knit mask. I show you State's
21 Proposed 104. Take a look at that. Do you see any of your
22 markings on it?
- 23 A It has the white paper on the inside with my initials
24 and the case number.
- 25 Q So this is your Item 25, and there was potential

Patti Ruff

Direct examination by Mr. Williams

1 evidence collected off this mask?

2 A Yes, sir, there was.

3 Q That is Item 25. Item 26 was a pair of black knit
4 gloves, State's 105. That has your item No. 26 and your
5 initials on it.

6 A Yes, sir. It does.

7 Q And put along with that -- if somebody else had -- if
8 G. S. R. had been done, that would also be a label from
9 SLED?

10 A That's another department that you --

11 Q Okay. And John Roberts is in that department?

12 A Yes, sir, he is.

13 Q So Item 26 is State's 105. That was the pair of black
14 knit gloves that you would have said you would have found
15 something on and then sent for evidence processing?

16 A Yes, sir.

17 Q Item 27, State's 106, that would have been sent for
18 processing as well. It's a pair of black knit gloves.

19 A Yes, sir.

20 Q Item State's 107 indicates a black knit mask, a black
21 mask, that's got your initials as Item 34.

22 A Yes, sir.

23 Q That was also potential evidence collected and sent
24 for D. N. A.

25 A Yes, sir.

Patti Ruff
Direct examination by Mr. Williams

1 Q Item -- there were some items, as you said, that had
2 no examination performed, as well as some that you just
3 didn't find anything.

4 I want to ask you about -- we already went through
5 Item 69, the dark jeans and the black t-shirt and the
6 long-sleeve shirt. That was 69, 70 and 71. Those we've
7 already talked about, correct?

8 A Yes, sir.

9 Q And then 72 and 73 were shoes belonging to Wilder and
10 socks that you found on those.

11 A That is correct.

12 Q You had an item that was Item No. 76. That was a pair
13 of -- I'll say 76, 77 and 78 were items belonging to Keive
14 Smith. Actually 74 and 75, 76, 77 and 78 were all items
15 belonging to Keive Smith.

16 A Yes.

17 Q Looking at what's been marked as States 80-A, that
18 says 74.0. Is that your -- issued another shoe?

19 A Yes.

20 Q And that's your initials as well?

21 A Yes, sir, it is.

22 Q It looks like even within these shoes there's marks.
23 You have 74.5, 74.1, things like that.

24 A Yes, sir. I collected five samples.

25 Q So you broke that up into five different samples, the

Patti Ruff

Direct examination by Mr. Williams

1 shoes themselves.

2 A Yes, sir.

3 Q Did you swab those then?

4 A I did. When it's a hard surface like that it's hard
5 to actually cut it, and it's easy to absorb on the swab.

6 Q And this is 76.4. It's got the Spann shorts. The
7 main, the main shorts are 76, and then you would have taken
8 cuttings from that as well?

9 A Yes, sir. I made a note that I made -- if it's
10 numerous areas that are bloody or possible blood, we'll
11 take a representative sample, which I took from four
12 samples, which there's other samples left.

13 Q And coming out of the bag, there's a bunch of white
14 paper that looks like it's preserved. It says Smith's
15 clothing. That was all items that you looked at?

16 A That is correct.

17 Q The items inside of this bag, there's a sock, a couple
18 of shirts it looks like. Those are all items that you
19 would have processed?

20 A Yes, sir, within that bag.

21 Q And there were swabs done on that. That's different
22 than a cutting?

23 A Yes, it is.

24 Q And those swabs would have been sent over to the
25 forensic for forensic testing as well.

Patti Ruff
Direct examination by Mr. Williams

1 A That's correct. The only thing different would be the
2 fact that it was a swab. It still would be put into the
3 gold envelope.

4 Q So all of those items we just looked at that I put to
5 the side, those are all items that you processed looking
6 for blood. And if blood was found or something that was D.
7 N. A., you would have sent it to Ms. Gallman or to a
8 forensic scientist to test?

9 A Yes, sir.

10 Q And some of those things would have been swabs and
11 some of them would have been cuttings.

12 A Yes, sir.

13 MR. WILLIAMS: Your Honor, I don't know if it's better
14 for me to carry all of these over if you want. We move to
15 admit all the items she just testified to.

16 THE COURT: Just tell us what the numbers are again.

17 MR. WILLIAMS: State's 80, 107, 106, 104.

18 THE COURT: Now, 104, five, six and seven have already
19 been admitted.

20 MR. WILLIAMS: 113 and 114.

21 THE COURT: We've got 80 and 113 and 114.

22 MR. WILLIAMS: Yes, Your Honor.

23 MR. LOFTON: Just tell what they are again, Your
24 Honor.

25 THE COURT: Well, 80, 113 and 114. He offered 104,

Patti Ruff

Direct examination by Mr. Williams

1 105, 106 and 107, but they've already been admitted.

2 MR. WILLIAMS: Your Honor, move to admit 80, 114 and
3 113.

4 THE COURT: Any objection?

5 MR. DAVIS: No, Your Honor.

6 MR. BROWN: None, Your Honor.

7 MR. DAVIS: No, Your Honor.

8 MR. LOFTON: None, Your Honor.

9 THE COURT: Tell me again what 113 and 114 are.

10 MR. WILLIAMS: Your Honor, those are -- 114 is the
11 glove collected by Detective Stanley, SLED No. 15.

12 THE COURT: That's all right. 113?

13 MR. WILLIAMS: 113 was a mask, SLED No. 16.

14 THE COURT: Okay.

15 MR. BROWN: I'm sorry? So that again.

16 MR. WILLIAMS: SLED No. 116 is State's 113.

17 THE COURT: They're admitted.

18 (Clothing previously marked State's Exhibit No. 80;
19 mask marked State's Exhibit No. 113; glove marked State's
20 Exhibit No. 114.)

21 Q Ms. Ruff, you got a chance to look at that whole
22 chain-of-custody sheet?

23 A Yes, sir, I have.

24 Q That covers all the work you did in this case. All
25 the little cuttings, it's all detailed and documented

Patti Ruff
Cross-examination by Mr. Lofton

1 there?

2 A Yes, sir, it is.

3 Q And it shows where they went to next.

4 A Yes, sir.

5 Q Was the D. N. A. analyst in this case Lilly Gallman?

6 A Yes, sir, it is.

7 Q And she's the one that would have gotten all of those
8 items from you and tested them.

9 A That's correct.

10 MR. WILLIAMS: No further questions, Your Honor.

11 Thank you.

12 MR. BROWN: No questions.

13 MR. DAVIS: No questions, Your Honor.

14 MR. LOFTON: Just one moment.

15 (Pause.)

16 MR. LOFTON: May it please the Court. Subject to my
17 objection.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. LOFTON

21 Q When you were talking a moment ago, Ms. Ruff, about
22 the cuttings that you had made from certain items, did you
23 do any scrapings from those items, or just cuttings?

24 A I did do scrapings from the gloves and the ski mask,
25 the mask.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Q Those are the only items you did scrapings from?

2 A Yes, sir.

3 Q Thank you. That's all I have.

4 MR. WILLIAMS: Can she be excused, Your Honor?

5 THE COURT: Yes.

6 You may step down. Thank you.

7 (Whereupon, the witness was excused.)

8 MR. WILLIAMS: The state calls Lilly Gallman.

9 LILLY SMALLS GALLMAN, having

10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. WILLIAMS

12 THE CLERK: If you would, state your full name, and
13 spell your last name.

14 THE WITNESS: My name is Lilly Smalls Gallman.
15 Gallman is spelled G-A-L-L-M-A-N.

16 Q Ma'am, where do you work?

17 A For the South Carolina Law Enforcement Division.

18 Q Are you feeling okay today?

19 A I am a little hoarse. That's all.

20 Q Your voice is hoarse?

21 A Yes.

22 Q I'll try to get closer to you so if you don't -- where
23 do you work?

24 A South Carolina Law Enforcement Division.

25 Q What do you do at SLED?

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 A I'm a forensic D. N. A. analyst.
- 2 Q How long have you worked at SLED?
- 3 A Since January of 1990, so 18 years.
- 4 Q How long have you been a forensic D. N. A. analysis --
- 5 analyst? I'm sorry.
- 6 A Since that time, 18 years.
- 7 Q Do you have any special training and special
- 8 background that qualifies you for that position?
- 9 A I have a degree in biology from the University of
- 10 South Carolina.
- 11 Once I received my degree I worked in the area of
- 12 genetics utilizing a lot of the techniques that I used as a
- 13 forensic D. N. A. analyst.
- 14 I have also attended F. B. I. D. N. A. typing schools
- 15 for D. N. A., the beginners and the advanced. And I've
- 16 also taken advanced genetic courses and statistics courses,
- 17 all to enable me to do a better job as a forensic D. N. A.
- 18 analyst.
- 19 Q You've testified in court as an expert in forensic
- 20 science or the D. N. A. analyst.
- 21 A Yes, I have.
- 22 Q You've been qualified in this county, and certainly I
- 23 think had cases with me as an expert before.
- 24 A Yes, I have.
- 25 Q Other circuits as well throughout the state as an

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 expert.

2 A Yes.

3 MR. WILLIAMS: Your Honor, I'd move to qualify
4 Ms. Gallman as an expert in D. N. A. analysis and forensic
5 science.

6 MR. BROWN: No objection.

7 MR. DAVIS: No objection, Your Honor.

8 MR. LOFTON: No objection, Your Honor.

9 THE COURT: She is to qualified.

10 Q Ms. Gallman, let me just start with just sort of
11 telling the jury what D. N. A. is and how you approach it
12 as a forensic scientist.

13 A D. N. A. stands for deoxyribonucleic acid. D. N. A.
14 is considered to be the blueprint of the body.

15 Everyone's D. N. A. is unique except for identical
16 twins, because you know they come from the same egg. All
17 of your D. N. A. in your body is the same. So what I mean
18 is that your D. N. A. that's found in your blood, in your
19 skin, all over your body is the same.

20 Since everyone's D. N. A. is unique, we're able to
21 develop what's called a D. N. A. profile from evidence and
22 from a standard, be it blood or saliva, and compare it to
23 determine whether there's a match or there's not a match
24 between the evidence and the standard.

25 Q And how do you go about doing this? What's the

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 process for testing for D. N. A.?

2 A Like in this case when you have a homicide case, it's
3 mainly dealing with blood. And sometimes for
4 identification purposes the cuttings may be taken from
5 evidence to look for skin cells. That evidence, the
6 cuttings, are placed in -- a small portion is placed in a
7 tube. And a solution is added to that tube to extract the
8 cells and make the -- separate the cells from that
9 particular item.

10 Also, in that solution is a particular solvent that
11 will break open the cell and release the D. N. A. into
12 that, that soup. And that's what I use to carry through
13 the process to develop a D. N. A. profile.

14 Q Now, when you do a D. N. A. analysis, what do you
15 compare? Do you have known samples versus unknown? How
16 does that work?

17 A Yes. We receive evidence that I develop a D. N. A.
18 profile from. And that evidence -- the D. N. A. profile
19 from that evidence is then compared to a standard from, be
20 it the victim or a subject in a particular case.

21 Q How do these items get to you as an analyst at SLED?

22 A I -- there are many avenues by which I get them, but
23 mainly from evidence processing where the evidence is --
24 the sample is cut, cut away from the main portion of the
25 evidence. And then also I receive them through my box in

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 the refrigerator which is D. N. A. R.

2 Q Let me show you what's been admitted as State's
3 Exhibit 116, that stack of papers next to you. Do you
4 recognize those papers?

5 A Yes. This is a copy of the chain of custody for this
6 particular case.

7 Q And the chain of custody shows the progression of a
8 piece of evidence through SLED.

9 A Yes. Once it's brought into SLED and it goes into the
10 log-in department, a computer chain is began there, and it
11 follows all the way to me.

12 Q And you're a part of that chain, so to speak?

13 A Yes, I am.

14 Q And you would be reflected in that chain as the items
15 that you tested.

16 A Yes.

17 Q And you got a whole bunch of items in this case,
18 right?

19 A Yes, I did.

20 Q A lot of work?

21 A Yes.

22 Q As far as cases like those, this is one of the bigger
23 cases you've seen in given years?

24 A One of them, yes.

25 Q And there's -- in this case you generated a report.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 A Yes, I did.

2 Q And that was a 15-page report?

3 A Yes, it is.

4 Q And the way that report starts is it starts with a
5 serology analysis.

6 A Yes.

7 Q And it goes through for pages, through the first five
8 pages. Actually the first five pages talk about items that
9 were submitted and then what the results of the
10 serology-analysis examination was.

11 A Yes.

12 Q What is the serology analysis?

13 A In the area of serology we would -- we test for
14 certain body fluids. In this particular case I was testing
15 for the presence of blood.

16 Q And sometimes in that process are there distinctions
17 that are made based on that serology analysis?

18 A Yes. Sometimes when I receive evidence and it's only
19 a small quantity there, I will not test for the presence of
20 blood and just take it straight to D. N. A.

21 Q So some things that look like -- there was stuff on
22 Item 16.3.2, which I believe was a hair that was taken off
23 a mask. It said not suitable for S. T. R. D. N. A.
24 analysis. What does that mean?

25 A That means that that particular hair did not have a

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 root on it. The test we utilize in our lab is S. T. R. D.
2 N. A. analysis and required the hair to have a root.

3 Q And that was looking at like 60 -- I'm sorry, No. 21,
4 fingernail scrapings, Sterling Spann, says one else has
5 performed. Why would that be given that's listed right
6 after a blood standard?

7 A Yes. That's his fingernail scrapings. There was no
8 indication that they needed to be tested at the time.

9 Q So there's some things that you have that you just
10 don't perform analysis on because either you can't find
11 something or because it's not necessary based on
12 duplication or request?

13 A That's correct.

14 Q For instance, on 64.4.1, .2, .3, 67.1, 68.1, there are
15 several items that say no analysis performed. Is it
16 sometimes you just can't see something?

17 A That's correct.

18 Q So there's a lot of reasons why of all of these items
19 submitted there's just nothing detectable that you can't
20 submit them for further D. N. A. testing.

21 A That's correct.

22 Q Of the items that could be analyzed, you still had a
23 pretty big list, fair to say?

24 A Yes.

25 Q I believe that's page six through page ten of your

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 report with a page and a half of that being items analyzed
2 and then about a page or two and a half pages of results.

3 I want to ask you, first of all, about the number of
4 items that you, in fact, did test. Do you have that report
5 with you?

6 A Yes, I do.

7 Q And that's essentially you had several different blood
8 standards.

9 A Yes, I did.

10 Q And they were from a Leo Gadsden, Keive Smith, Anthony
11 Wilder, Sterling Spann and Jamie Williams.

12 A That's correct.

13 Q What are exactly standards for? What's the purpose of
14 getting those standards? You have them listed separately
15 in your report.

16 A This is just the order of the report. But when we
17 receive the -- if I do not have standards and I just have
18 the evidence, I have nothing to compare it to. There's no
19 way to tell you who, who committed the crime, or whose D.
20 N. A. it is. So I need standards in order to be able to do
21 that.

22 Q Let me show you what's been marked State's Proposed --
23 I believe 112 is just the packaging. Does that have your
24 initials on it?

25 A Yes, it does.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Q This is a standard SLED bag?

2 A Yes, it is.

3 Q And y'all seal this up when you send something back --

4 A Yes.

5 Q -- to use in court, for instance. And inside of 112
6 is 112-A, 112-B, 112-C. Are these the items that would
7 have been collected or used by you at SLED?

8 A Yes, they are.

9 Q And I think that they have little numbers on them,
10 different places, that show that they were used or looked
11 at.

12 A Yes.

13 Q That, for instance?

14 A Yes.

15 Q Okay. So these are, these three are Leo Gadsden,
16 Anthony Wilder and Keive Smith's standards?

17 A That's correct.

18 Q And there would have been a separate standard for both
19 Mr. Williams.

20 I'm going to show you what's been marked State's 109,
21 a separate standard for Mr. Spann.

22 A Yes.

23 Q The 109 is the Spann sample.

24 MR. WILLIAMS: I'll have this parked marked as well.

25 (Suspect collection kit of Jamie Williams marked

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 State's Exhibit No. 118 for Identification.)

2 Q I am going to show you State's Proposed 118. That's
3 got your initials on it as well.

4 A Yes, it does.

5 Q And that was the suspect kit on Jamie Williams.

6 A Yes.

7 Q So you've got five different people to make
8 identifications from -- Williams, Spann, Gadsden, Wilder
9 and Smith?

10 A That's correct.

11 Q And then do you obtain something from those known
12 standards, a profile?

13 A Yes, I do. I --

14 Q And what is the process? Go ahead.

15 A I developed a D. N. A. profile from those standards.
16 They were will black standards. So before I do anything to
17 them to develop a D. N. A. profile the blood is placed on
18 white, a sterile white, paper to dry to preserve the D. N.
19 A. sample. And then a portion of that is cut and taken
20 through the same process as with the evidence.

21 Q So that's -- when you've got a tube of blood, that's a
22 good thing to use when you get these kits.

23 A Yes.

24 Q And so you would have taken those and developed what
25 you call a profile?

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 A Yes.
- 2 Q And that's how the D. N. A. reads.
- 3 A Yes.
- 4 Q Now, you would have also then taken other items and
5 compared them to that item, is that fair to say?
- 6 A That's correct.
- 7 Q Known items. You didn't have a blood standard in this
8 case from a Patricia Green, did you?
- 9 A No, I did not.
- 10 Q I want to go through, first of all, Item No., SLED
11 Item No. 3. That was a swab from a stair post.
- 12 A Yes.
- 13 Q Swab Item No. 5 is a swab from the living room floor.
14 And in your analysis I'm looking at -- I believe it's in
15 your report. Did you come up with an analysis based on, in
16 the first line of your results, those two items, No. 3 and
17 No. 5?
- 18 A Yes, I did.
- 19 Q And what did you find about the swab from the stair
20 post and the swab from the living room floor?
- 21 A That the D. N. A. profile developed from Item 3 and 5
22 are from an unidentified female individual.
- 23 Q But three and five are the same, for the same
24 individuals.
- 25 A Yes, they are.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Q Same D. N. A.

2 A They're from the same person.

3 Q I'm going to hand you State's 99 and 100. I believe
4 those are both marked on there, three and five, with your
5 initials.

6 A Yes.

7 Q And that shows these are Items 3 and 5.

8 A Yes.

9 Q Now, when you do D. N. A. analysis do you get
10 different types of results? And I think we were just
11 talking about one that could be considered a match.

12 A Yes.

13 Q What is a match? What does that mean?

14 A That means that the D. N. A. profile developed from a
15 piece of evidence matches a particular standard.

16 Q And is there probabilities that are, that are assigned
17 to that?

18 A Yes. Once we have established the fact that there is
19 a match between the evidence and the standard, then we are
20 required to apply certain statistics to that particular D.
21 N. A. profile.

22 Q So when you have a one to one, that's pretty straight
23 forward. If this is a match, that matches.

24 I want to ask you about something a little bit more
25 difficult or a little bit more sophisticated. Could you

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 tell the jury what a mixed sample is?

2 A A mixed sample is when I develop a D. N. A. profile
3 from a certain item, there is one more than one person
4 there. There are at least two people in that mixture. So
5 you can see the profile from two people in there.

6 Q And although you can see two different profiles, can
7 you always distinguish or make a match from those profiles?

8 A No, not every time. If there is more D. N. A. coming
9 from one person than from another, I can determine that
10 there is a major contributor to that mixture. But if
11 they're even in the amount of contribution that's being
12 made, then basically all I can say is that there's a
13 mixture and that certain people cannot be excluded from
14 that mixture.

15 Q So tell me about exclusion and inclusion without there
16 being a match, at least relative to mixed samples or
17 multiple contributors.

18 A When we have a mixture and there's at least two people
19 in that mixture, we compare the D. N. A. profile from a
20 standard that's given us to see if that person can be
21 included in that mixture. So we look at 16 different sites
22 on the chromosome, and we go through each one of those
23 sites on the chromosome to see if that person is possibly
24 there.

25 Q And sometimes -- I want to -- let me back up.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 You said that if there's more of one sample than
2 another. What do you mean by that? If there's five
3 percent more, ten percent more is there a relative amount,
4 or is it just something you get a result on?

5 A What I mean is that if -- take, for instance, that I'm
6 contributing, both of us are contributing, blood to the
7 sample but more of the blood belongs to me. Then I would
8 turn out to be the major contributor to this particular
9 sample. And you would be able to pick my profile out from
10 that, that sample, even though it's a mixture.

11 Q Is there a set amount of how much more of your blood
12 would be necessary in order to tell? I mean, twice as much
13 as mine or three times as much as mine or just a little bit
14 more?

15 A It could just be a little bit more. It doesn't have
16 to be a great amount more.

17 Q But sometimes when there's a mixture you just can't
18 determine necessarily whose blood it is. There's no match.
19 But how do you exclude somebody or include somebody?

20 A I walk through each different site on the chromosome
21 checking to see if that person's profile is present at
22 those sites. And if it's not, then it's an exclusion. If
23 the person is there, then I'd say that they cannot be
24 excluded from that mixture.

25 Q So you just can't tell. You can tell if it's not

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 somebody.

2 A That's correct.

3 Q So if you had a D. N. A. sample that showed somebody
4 had brown eyes, you could tell it wouldn't be me because I
5 have blue eyes.

6 A That's correct.

7 Q But however if you had four brown-eyed people you
8 still wouldn't know which one it is. You'd just say they
9 can't be excluded.

10 A That's correct.

11 Q You can tell who it is -- but you can't always tell
12 who it is based on D. N. A.

13 A Yes.

14 Q Going through your report, you came up with a lot of
15 mixed samples. Fair to say?

16 A Yes.

17 Q Multiple contributors?

18 A Yes.

19 Q That takes a lot of work to get through, a lot of work
20 on your part.

21 A Yes, quite a bit of time.

22 Q Going back to the No. 3 and No. 5, the first result
23 you had was that the item, the D. N. A. obtained from item
24 15.4, which was a cutting from a glove, you had on there it
25 was a mixture of two individuals.

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 A Of at least two individuals, yes.
- 2 Q Were you able to get a major contributor on that and
- 3 identify it?
- 4 A Yes, I was.
- 5 Q And could you get a minor contributor?
- 6 A Yes.
- 7 Q The major contributor, Item 15.4, were you able to tie
- 8 that to any standard?
- 9 A No, I was not because that also was from an unknown
- 10 female individual.
- 11 Q But you were able to tie 15.4 to other samples.
- 12 A That's correct.
- 13 Q And what other samples did 15.4 match?
- 14 A Three and five.
- 15 Q So the blood that's on 15.4, which is described as the
- 16 cutting from a glove --
- 17 A Yes.
- 18 Q The blood that was on that cutting from that glove was
- 19 the same blood that came from the stair post and the same
- 20 blood that came from the living room.
- 21 A Yes. The major contributor to that mixture on Item
- 22 15.4 was the same person as in Item Nos. 3 and 5.
- 23 Q And that was a female.
- 24 A Yes.
- 25 Q So although we don't know who that person is, we do

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 know other places their blood was at.
- 2 A That's correct.
- 3 Q And 15.4 was actually a cutting off of a mask. Is
- 4 that what it says?
- 5 A 15.4 says cutting from glove.
- 6 Q I'm sorry. From glove. I'm going to show you what's
- 7 marked State's 114. That's actually Item 15.0.
- 8 A Yes. I didn't ever receive the actual item.
- 9 Q Okay, so.
- 10 A It was processed.
- 11 Q So you would have just had the cuttings from that.
- 12 A That's correct.
- 13 Q And what happens with the cuttings?
- 14 A Once they come to me?
- 15 Q Yes.
- 16 A Once they're in my custody they remain with me until I
- 17 return them to the agency.
- 18 Q Okay. Do you do anything with them once you're done?
- 19 A I just repackaged them and then returned them.
- 20 Q Okay. So the cutting off that glove came back as the
- 21 same as off the swabs, what your report showed.
- 22 A Yes.
- 23 Q There were other items, looks like two and 12, swabs
- 24 from the driveway, swab from fire station. Those came back
- 25 to a Jamie Williams?

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 A That's correct.

2 Q I want to ask you when you come up with that
3 probability or the matching probability. How is that
4 expressed?

5 A It's, well, like do you want to read from my report?

6 Q Yeah. For example, in the second part of your results
7 it says two and 12 match Jamie Williams. And then you gave
8 a probability of I think what you called randomly selecting
9 unrelated individuals.

10 A Having a D. N. A. profile matching these items.

11 Q That's how you expressed matches, right? It's not --
12 you can't express D. N. A. matches in terms of this is the
13 person, it's only probability of there being other people
14 with that same exact combination.

15 A No. By law we can do that.

16 Q Right. But you give a probability.

17 A Yes.

18 Q What was the probability, for instance, of the items
19 two and 12 matching the Jamie Williams standard that there
20 would be somebody else with that same D. N. A., I guess?

21 A Approximately one in 760 trillion.

22 Q Do you know how many zeroes are on a trillion, nine or
23 ten?

24 A Yes, nine.

25 Q A bunch of them.

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 A Nine.
- 2 Q I want to talk about Item No. 69.1. I believe that
3 was off of -- we had Item No. 4, which was a swab of dirt
4 in the front yard.
- 5 A Yes.
- 6 Q And you said that there were two individuals on that
7 and the D. N. A. profile developed from the major
8 contributor and also from Item 69.1. So Item No. 4 and
9 Item No. 69.1 are the -- has the same D. N. A. profile,
10 correct?
- 11 A That's correct.
- 12 Q And 69.1 we have as a cutting from jeans.
- 13 A That's correct.
- 14 Q And Ms. Ruff would have taken those cuttings off of
15 those jeans?
- 16 A Yes, she would have.
- 17 Q And I believe 69.1 was also Item 69, is reflected
18 otherwise as being suspect Wilder's jeans other places in
19 the chain.
- 20 A I believe so, yes.
- 21 Q I will see on exhibit -- page 95. It says Item 69 in
22 your chain is one sealed box containing pants described as
23 suspect Wilder's jeans on page 95.
- 24 A Yes.
- 25 Q So 69 and .1 and .2 are all cuttings from suspect

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Wilder's jeans. And you're -- you found that the D. N. A.
2 profile that was taken off 69.1, Wilder's jeans, as well as
3 the D. N. A. that was found in the front yard, I'm sorry,
4 swab from her front yard came back to Sterling Spann.

5 A That's correct.

6 Q How? What was the probability of somebody else having
7 that same D. N. A. profile as Sterling Spann off of those
8 of those jeans?

9 A One in 300 quanti -- quanti --

10 Q Quintillion Q-U-I-N-T-I-L-L-I-O-N?

11 A Yes.

12 Q You had a couple of other items that were mixtures
13 that you couldn't exclude people or exclude -- you had
14 positive contributors that couldn't exclude 15.2, 16.1.

15 A Yes, I did.

16 Q And you had several items -- 69.4, 74.1, 74.2. 69.4
17 was another cutting from those same jeans. 69.1 would be
18 the same thing, right?

19 A Yes.

20 Q And one of the cuttings actually had a D. N. A. that
21 came back to Keive Smith.

22 A That's correct.

23 Q So those same jeans also had some blood from Keive
24 Smith on them.

25 A Yes, they did.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Q They were also 74.1, two, five, and 76. There were
2 several items there that will be, were labeled as Keive
3 Smith's clothing that came back with his D. N. A. on them.

4 A That's correct.

5 Q And 25.1 was a mixture. And part of that 25.1 also
6 came back to Keive Smith, is that correct?

7 A That's correct.

8 Q And 25 was a miscellaneous black knit mask.

9 A Yes.

10 Q So part of the D. N. A. on that black mask came back
11 to Keive Smith.

12 A Yes, it did.

13 Q And 74.3 was a major contributor, again, Keive Smith.
14 That was one of those items, I believe, were is clothing.

15 A Yes.

16 Q Item 71 was Mr. Wilder's clothing, I believe. Maybe
17 69, 70 and 71 all came back to him.

18 A Yes.

19 Q And you found on Item 71 Anthony Wilder's D. N. A.
20 again.

21 A Yes.

22 Q I want to go back to 69.1. That was the only, that
23 was his one sample off those jeans that had Sterling Spann,
24 correct?

25 A Yes.

Lilly Smalls Gallman
Direct examination by Mr. Williams

- 1 Q But you also had other items that belonged to
2 defendant Wilder or suspect Wilder that also had his D. N.
3 A. alone on it, correct?
4 A That is correct, yes.
5 Q I believe that Item 25.2 was another one of the masks,
6 cutting from a mask.
7 A Yes, it was.
8 Q That also had a partial D. N. A. profile with a major
9 contributor being Anthony Wilder.
10 A That's correct.
11 Q I believe Item 33 -- 33 was a heat-sealed pouch with a
12 swab from the gearshift of the Jeep Liberty.
13 A Yes.
14 Q So that was just a swab that would have come straight
15 to you, no cutting or anything like that.
16 A That's correct.
17 Q And I believe that item also matched Anthony Wilder.
18 A Yes.
19 Q Now, some of your lines say matched Anthony Wilder and
20 some give probabilities. Is there a reason why those
21 probabilities don't get listed?
22 A We give the stats for the complete D. N. A. profile
23 and not just the partial profile.
24 Q So --
25 A When if we have a partial profile, we say it also

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 matches.

2 Q But you just don't give stats for it?

3 A We do not generate the stats for it. We can, but we
4 do not.

5 Q Okay. Item 61 was an unidentified male. 16.2 was a
6 mixture that you couldn't include or exclude certain
7 people. So there was no match on that.

8 A 16.2 was a mixture.

9 Q Right.

10 A So that Lee, Leo Gadsden and unidentified male from
11 Item 61 cannot be excluded, possible contributors to this
12 mixture.

13 Q So you couldn't make any matches on that. You just
14 couldn't exclude a certain individual.

15 A That's correct.

16 Q You had an Item 26. That was some kind of a black
17 knit glove.

18 A Yes.

19 Q And you found on their mixtures. You couldn't exclude
20 certain individuals or not exclude certain individuals --

21 A That's correct. I could not.

22 Q -- as possible contributors.

23 A Yes. That's true.

24 Q And Item No. 27 which was, again, that was cut up into
25 pieces of the pair of black knit gloves off 27. You had a

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 mixture of several individuals, and you couldn't exclude
2 individuals as contributors. But you didn't have a match
3 off of it.

4 A I had that Mr. Gadsden, Spann, Mr. Wilder and
5 Mr. Smith and Mr. Williams are excluded as contributors to
6 these mixtures.

7 Q So everybody on there was excluded.

8 A That's correct.

9 Q And you had Item 32 was a mixture of unidentified
10 individuals.

11 A Yes.

12 Q And 32 was the swab off the wheel of the Jeep Liberty.

13 A Yes.

14 Q Item 78.1, I should say Item 78, was a belt from Keive
15 Smith. You got D. N. A. off that came that back to
16 Mr. Smith.

17 A That's correct.

18 Q So his D. N. A. was on his clothing, so to speak.
19 77 -- one and two were mixtures of two individuals where
20 you couldn't exclude or include certain people?

21 A I could not exclude Keive Smith as being the
22 contributor to this mixture, but I could exclude Gadsden,
23 Wilder, Spann and Williams.

24 Q Item 24 was swabs from a Bersa handgun. I believe
25 there were several of them submitted, about eight.

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 Twenty-four was swabs, 24, one, two, three, four, five,
2 six, seven, and eight were all swabs that were submitted,
3 and you could not even obtain D. N. A. off some of those
4 swabs. That was 24.3, four, five and seven?

5 A That's correct.

6 Q And as well Item 26.3 and .5, which was items,
7 cuttings from the gloves. There was a -- you found D. N.
8 A., but it was insufficient for testing?

9 A That's correct.

10 Q What does that mean?

11 A That means that there was not enough D. N. A. there to
12 go into the next step to develop a D. N. A. profile.

13 Q And you had a couple of other items, 15.3 and 27.6.
14 15.3 was --

15 A Cutting from the glove.

16 Q Cutting from the glove. And 27 I think we've talked
17 about a little bit earlier, had several cuttings off of it
18 or several swabs off gloves. On there you put human D. N.
19 A. was extracted. What does that mean?

20 A That means after I extracted the D. N. A. I stopped at
21 that step.

22 Q Why would you stop?

23 A Because I had quite a few items, cuttings from the
24 same piece of evidence.

25 Q So when you've already got the stuff on other things,

Lilly Smalls Gallman
Direct examination by Mr. Williams

1 you stop taking it off there.

2 A Yes.

3 Q And there were several items of blood on Item No. 23,
4 which I believe were the swabs again. Swabs from four
5 shell casings and no D. N. A. profile was developed.

6 A That's correct.

7 Q Which means there was no D. N. A. there.

8 A I was not able to develop a profile, was not enough
9 there to develop a profile.

10 Q And 23.1 was another one of those. You said there was
11 no S. T. R. D. N. A. profile which -- is that different
12 than a regular D. N. A. profile?

13 A Yes. On 23.1 besides looking at 16 areas on the
14 chromosomes, we also have the sex chromosome to determine
15 if the person is a male or female. And on Item 23.1 I was
16 able to develop a sex chromosome which was the X for a
17 female.

18 Q And I want to go through and talk about a whole bunch
19 of things we talked about. That covers the report,
20 correct?

21 A Yes.

22 Q I want to go through a couple of them just to make
23 sure I'm clear on them.

24 SLED Item 3, SLED Item 5 and Item 15.4, which was a
25 cutting off the glove, all three of those came back to the

Lilly Smalls Gallman
Cross-examination by Mr. Brown

1 same female.

2 A That is correct.

3 Q And on Item 25, which was a mask, there are 25.1 and
4 25.2.

5 MR. LOFTON: Your Honor, I'm going to object. All of
6 this has been asked and answered.

7 THE COURT: Well, quite frankly, I can't remember it
8 all, but let's don't cover it again for sure.

9 MR. WILLIAMS: I haven't covered it all yet, Judge.

10 THE COURT: Well, we don't need to cover any of it
11 again. She's already testified to it.

12 MR. WILLIAMS: That's fine, Your Honor.

13 Q You covered all of it in your report for all the items
14 that we've talked about?

15 A Yes.

16 MR. WILLIAMS: I have no further questions, Your
17 Honor.

18 Q Thank you, Ms. Gallman.

19 MR. BROWN: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. BROWN

23 Q Ms. Gallman, you only analyze the samples that you're
24 provided with, correct?

25 A That's correct.

Lilly Smalls Gallman
Cross-examination by Mr. Davis

1 Q And what you're telling us is through your analysis
2 you can tell us whether or not, you can sometimes tell us
3 whether or not, someone's D. N. A. is present on that
4 sample.

5 A If the sample is a single donor or if there's a major
6 contributor to a mixture, I can tell you whether that
7 person is actually matching the sample. But if it's a
8 mixture where you have even D. N. A. from the contributors,
9 then I can include or exclude a person from that mixture.

10 Q Okay. And when you, when you receive a sample, and
11 when you receive a sample that you determine contains D. N.
12 A., you can't say how and when that D. N. A. sample got on
13 a particular item you're analyzing, correct?

14 A No, I cannot.

15 Q That's all I have. Thank you.

16 CROSS-EXAMINATION

17 BY MR. DAVIS

18 Q A few background questions. You talked awhile ago.
19 You used these huge numbers when you gave the jury
20 probabilities, the quintillion and trillion, right?

21 A That's correct.

22 Q Of that you can tell the jury that it's -- odds are
23 one in whatever. Those are huge numbers. That's when
24 you're able to look at all 16 points of analysis on D. N.
25 A. Is that accurate?

Lilly Smalls Gallman
Cross-examination by Mr. Davis

- 1 A Yes.
- 2 Q Okay. And that never happened as to my client, Leo
- 3 Gadsden. You were never able to test anything where you
- 4 got the entire spectrum so you could give a probability.
- 5 A Your client's name again? I'm sorry.
- 6 Q That's all right. Leo Gadsden.
- 7 A Gadsden. Okay.
- 8 (Pause.)
- 9 A I could on Item 64.1.1.
- 10 Q And I'm sorry. That's his own clothing, right?
- 11 A Yes.
- 12 Q Okay. I apologize. On his own clothes you were able
- 13 to see the full spectrum of what you look at to test, and
- 14 it would match up to a probability, correct?
- 15 A That's correct.
- 16 Q Okay. And even then, so the jury understands, like
- 17 you said, when you're talking about identical twins being,
- 18 having exactly the same D. N. A., that would be if you look
- 19 at the entirety of the D. N. A. And you're only looking at
- 20 16 spots, right?
- 21 A No. Identical twins do have the same D. N. A.
- 22 Q Correct. But when you were doing the comparison,
- 23 you're not looking at the entire length of the D. N. A.
- 24 You're looking at a segment that's 16 spots long. Is that
- 25 fair enough? When you do your testing --

Lilly Smalls Gallman
Cross-examination by Mr. Davis

1 A Yes.

2 Q -- you're looking at 16 spots only.

3 A I'm looking at 16 different areas on the chromosomes.

4 Q Okay. Fair enough. But there's more than 16 areas on
5 the chromosomes.

6 A That is true.

7 Q Okay. Then on the rest of this we've talked about
8 mixtures and stuff. I think you talked about the term
9 matches, right?

10 A Yes.

11 Q Okay. So the jury will understand, a match is not the
12 same as seeing enough to give that probability number,
13 correct? It's less than that. It's less conclusive than
14 that.

15 A I don't understand your question.

16 Q Okay. If you -- it would not be unusual to be able to
17 get D. N. A. from the back of my shirt collar here.

18 A That is correct.

19 Q Is that fair enough?

20 A Yes.

21 Q I've worn it all day. I'm sweating. I'm moving
22 around. There are dead skin cells. All of that can
23 contribute, right?

24 A That's correct.

25 Q And D. N. A. is found in every cell of the body except

Lilly Smalls Gallman
Cross-examination by Mr. Davis

- 1 what, red blood, red blood cells, right?
- 2 A That's correct.
- 3 Q Okay. So if you were to take my shirt and get a
4 collection from the collar, you'd probably see enough of it
5 to be able to tell this jury one in some big number it's
6 mine, right?
- 7 A That's correct.
- 8 Q Okay. If I were to spill something but then wipe it
9 or smear it or someone else in some way damaged that sample
10 or there was a mixture like you talked earlier -- okay, and
11 we had several mixtures in this situation, right?
- 12 A Yes.
- 13 Q When there's a mixture what you test is not as clear
14 as it would be from my shirt because you've got a mixture.
15 You've got other samples in there. Is that fair enough?
- 16 A Well, that depends on the sample whether there's a
17 major or minor contributor. If there's a major contributor
18 and all the 16 areas on the D. N. A. show up, then it's the
19 same as looking at the back of your shirt.
- 20 Q Fair enough. But then you would give us that
21 probability in numbers. You wouldn't say just excluded or
22 included, right?
- 23 A The first thing I would determine is whether there is
24 a match or not, which is separate from the stat. Once you
25 determine you have a match, then the stat is generated

Lilly Smalls Gallman
Cross-examination by Mr. Davis

1 based on that particular profile.

2 Q Okay. And so the best you can say on items that we
3 talked earlier about my client is that he cannot be
4 excluded. And I'm talking about 16.1 and 16.2 primarily.
5 16.1 and 16.2, mix of two people, you can't exclude my
6 client.

7 A 16.1 and 16.2?

8 Q Yes, ma'am.

9 A Yes. I did not apply a stat to that, those items.

10 Q I am sorry, ma'am?

11 A I'm sorry. I did not give a statistical value for
12 those items.

13 Q Lastly, you were notified when you got the standards,
14 the names of the people on the standards.

15 A Yes. When I receive the standards, the names are on
16 them.

17 Q Because you're going to have to identify them later if
18 there's any match later, right?

19 A That's correct.

20 Q Were you told when you received those -- you knew who
21 the potential -- the alleged victims and the potential
22 alleged suspects were, right?

23 A To be honest with you, I didn't check.

24 Q Okay.

25 MR. DAVIS: Your Honor, may I approach the witness?

Lilly Smalls Gallman
Cross-examination by Mr. Davis

- 1 Q Or actually, ma'am, you have your --
2 A Report.
3 Q -- report in front of you.
4 A Yes, I do.
5 Q Can I reference the first page?
6 A Yes.
7 Q On the top right. Actually the top left, it has
8 Detective Stanley from the Charleston County Sheriff's
9 Office, correct?
10 A Yes.
11 Q And just over to the right it would have D. N. A.
12 analysis, a date, March the 5th of '08, correct?
13 A Yes.
14 Q And is that when your report was printed out?
15 A Yes.
16 Q Okay. Below that the SLED lab number. So you track
17 everything, right?
18 A That's correct.
19 Q And then going down there's some S's and some V's --
20 A That's correct.
21 Q -- in some brackets, right?
22 A Yes.
23 Q You're familiar that the S's would be suspects here,
24 correct?
25 A Yes.

Lilly Smalls Gallman
Cross-examination by Mr. Davis

1 Q And V's would be victims, right?

2 A Yes.

3 Q Okay. None of any of the V's in any of your testing
4 ever matched up with Leo Gadsden. None of the V's, none of
5 the victims, which it would include Patricia Green,
6 Sterling Spann and Jamie Williams. You never got anything
7 of theirs on anything of Leo Gadsden's, right?

8 A Oh, on any of his clothing? That's what you mean?

9 Q Right.

10 A I don't believe so.

11 Q I would like for you to take a second and look if you
12 can. I am hoping you can give us a definite answer on
13 that.

14 A No. I don't see anywhere where their D. N. A. was.
15 The only thing is that I can't exclude him from the mask.
16 That's all.

17 Q Okay. Just one second.

18 (Pause.)

19 Q There is two cuttings from one mask you can't tell the
20 jury is not him, right? But, again, 16.1 and 16.2.

21 A Yes. Items 16.1 and 16.2 are mixtures, and I cannot
22 exclude him from those mixtures.

23 Q And the only other matches with my client deal with
24 his clothing, 64, and several different cuttings which was
25 shorts, shirt. You had that to compare. And, big

Lilly Smalls Gallman
Cross-examination by Mr. Lofton

1 surprise, his D. N. A. is on his clothing, right?

2 A That's correct. I didn't know until after I had
3 processed them.

4 Q I understand. Thank you, Agent. No other questions.

5 MR. LOFTON: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. LOFTON

8 Q With reference to Items 69.1 and 69.4, you've
9 indicated that your records reflect based on what somebody
10 else told you that those were cuttings from jeans allegedly
11 belonging to Mr. Wilder, correct?

12 A Yes.

13 Q Okay. And on 69.1 and 69.4 there is no D. N. A. for
14 Mr. Wilder on either of those two cuttings, is there?

15 A 69.4 and --

16 Q 69.1.

17 A Excuse me. It's quite a long report.

18 (Pause.)

19 A That's correct, I believe.

20 Q I'm sorry?

21 A That's correct.

22 Q That's correct. So on those two cuttings that were
23 identified by someone to you as being Mr. Wilder's jeans,
24 his D. N. A. is not there.

25 A No. On 69.1 there was a Sterling Spann; and then on

Lilly Smalls Gallman
Cross-examination by Mr. Lofton

1 69.4, Keive Smith.

2 Q No Mr. Wilder.

3 A Not on those particular cuttings.

4 Q Thank you so much.

5 MR. LOFTON: That's all I have, Your Honor. Thank
6 you.

7 THE COURT: Okay.

8 MR. WILLIAMS: Your Honor, I do want to make sure that
9 those prior exhibits -- I don't have any further questions
10 for her.

11 I just want to move to admit State's 99; 100; 112-A, B
12 and C; 118; 109; and I believe 113. And all the others
13 have already been admitted, Your Honor. And I will move --

14 THE COURT: Give us those numbers again. Let me be
15 sure.

16 MR. WILLIAMS: 112-A, B and C.

17 THE COURT: 112-A and C are in.

18 MR. WILLIAMS: 112 is actually in? I thought 112 --

19 THE COURT: 112-A and C are in.

20 MR. WILLIAMS: It's actually 112. That doesn't have a
21 letter. That did not, with the bag itself.

22 THE COURT: Well, yeah. That was marked too, wasn't
23 it?

24 MR. WILLIAMS: It was marked. I thought it was not
25 admitted.

Lilly Smalls Gallman
Cross-examination by Mr. Lofton

1 THE COURT: I thought it was, the purpose being so I
2 would know where those A, B and C came from.

3 MR. DAVIS: No objection.

4 MR. WILLIAMS: 109, 100.

5 THE COURT: Wait a minute. 109?

6 MR. WILLIAMS: Ninety-nine.

7 THE COURT: Ninety-nine. And what else?

8 MR. WILLIAMS: One hundred.

9 THE COURT: One hundred.

10 MR. DAVIS: Judge, I have those already in.

11 MR. WILLIAMS: 118 and 109.

12 MR. DAVIS: I have 109 already in, Your Honor.

13 THE COURT: Okay. Any others?

14 MR. WILLIAMS: That's all I'm assuming right now.

15 THE COURT: All right. Any objection to those?

16 MR. DAVIS: None maybe.

17 (Pause.)

18 MR. DAVIS: No objection, Your Honor.

19 THE COURT: Okay.

20 (Victim's blood and fingernail scrapings marked
21 State's Exhibit No. 109; bag marked State's Exhibit No.
22 112; suspect collection kit for Jamie Williams marked
23 State's Exhibit No. 118.)

24 MR. WILLIAMS: I have no further questions of the
25 witness, Your Honor.

Lilly Smalls Gallman
Cross-examination by Mr. Lofton

1 THE COURT: You may step down. Thank you.

2 MR. WILLIAMS: Can she be excused, Your Honor?

3 THE COURT: She may be.

4 (Whereupon, the witness was excused.)

5 THE COURT: All right. Ladies and gentlemen, we're
6 going to recess for the afternoon.

7 Keep in mind you're still not to discuss the case.
8 Don't allow yourselves to be exposed to any type of media
9 coverage; don't conduct any research on any issue that has
10 arisen during the course of the trial.

11 Have a good evening. We'll see you at 9:15, 9:15 in
12 the morning.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: What was 118?

16 MR. WILLIAMS: Jamie Williams' suspect kit, Your
17 Honor, the sample.

18 THE COURT: Okay. And what was 99?

19 MR. WILLIAMS: Ninety-nine, did you say, Your Honor?

20 THE COURT: Ninety-nine.

21 MR. WILLIAMS: I believe that was one of the swabs.

22 MR. DAVIS: Swabs from the floor, Your Honor.

23 THE COURT: From the living room?

24 MR. DAVIS: Yes, sir.

25 THE COURT: Yeah, yeah, that's it. It's 99.

1 Okay. Anything else you need to address before we go?

2 MR. WILLIAMS: Your Honor, did you want to meet with
3 the attorneys to discuss scheduling for tomorrow?

4 THE COURT: To discuss what?

5 MR. WILLIAMS: Scheduling.

6 THE COURT: Okay. Yeah, we can. Sure. All right.

7 Y'all meet me in the back.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: All right. Court is in recess until 9:15.

10 END OF PROCEEDINGS MAY 7, 2008

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Drew Grannison Wolfe
Direct examination by Mr. Williams

1 (Proceedings May 8, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Good morning. Any matters we
5 need to address before the jury is brought in?

6 MR. WILLIAMS: Not by the state, Your Honor.

7 MR. BROWN: None, Your Honor.

8 MR. DAVIS: No, Your Honor.

9 MR. LOFTON: None, Your Honor.

10 THE COURT: Okay. Bring them in, please.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Good morning, ladies and gentlemen.

14 We are still in the midst of the state's case. So we
15 are going to continue with that presentation this morning.

16 Mr. Williams.

17 MR. WILLIAMS: Thank you, Your Honor. May it please
18 the Court. The state calls Drew Wolf.

19 DREW GRANNISON WOLFE, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. WILLIAMS

22 THE CLERK: If you will speak, into this mic. And
23 state your full name, and spell your last name.

24 THE WITNESS: Drew Grannison Wolfe. Last name's
25 W-O-L-F-E.

Drew Grannison Wolfe
Direct examination by Mr. Williams

1 THE COURT REPORTER: Excuse me. How do you spell your
2 middle name?

3 THE WITNESS: G-R-A-N-N-I-S-O-N.

4 Q Sir, where do you work?

5 A I work for Avis Budget Group.

6 Q What do you do for Avis? You said Avis Budget Group?

7 A Uh-huh.

8 Q What do you do there?

9 A I'm a shift manager.

10 Q Do you have access to your office's accounting system
11 and all of the documents in that system?

12 A We have access to some. After they're postdated, so
13 far we have to get them from our home office in Virginia
14 Beach.

15 Q You were subpoenaed to be here in court today?

16 A Yes, sir.

17 Q What was that regarding?

18 A It was regarding Anthony Wilder and a vehicle that he
19 rented.

20 Q Is there a record of that vehicle he rented with your
21 company?

22 A Yes, sir.

23 Q Is that kept in the ordinary course of business?

24 A We actually had to get it from Virginia Beach. We
25 could --

Drew Grannison Wolfe
Direct examination by Mr. Williams

1 Q And the record in Virginia Beach is kept in the
2 ordinary course of business?

3 A Yes.

4 Q It's maintained by people with knowledge of the
5 records?

6 A Yes, sir.

7 Q And you were sent here by your company as a
8 representative of the office.

9 A Yes, sir.

10 Q Now, you say there was a, a record of the rental.
11 What does that record indicate?

12 A It indicates that he actually picked the vehicle up on
13 the 11th of August. And it was supposed to be returned the
14 8th of September. We actually got the vehicle back the 1st
15 of September.

16 Q What was the vehicle that was rented?

17 A It was a white Jeep Liberty.

18 Q Does that indicate anything else apart from just the
19 white Jeep Liberty?

20 A Yes, sir. It had Florida, Florida license plates. It
21 was Florida plates, U217CQ.

22 Q And the Mr. Wilder that rented it, does it indicate
23 his address that he gave?

24 A The address that would have been on his license was
25 [REDACTED] Round Street, North Charleston, South Carolina 29406.

Drew Grannison Wolfe
Direct examination by Mr. Williams

1 Q He would have paid for the vehicle as well when he
2 picked it up?

3 A Yes, sir.

4 (Final billing marked State's Exhibit No. 119 for
5 Identification.)

6 Q Mr. Wolfe, I'm going to show a copy of what, or I'm
7 going to show you what's been marked State's Proposed
8 Exhibit 119.

9 A Okay.

10 Q Is that familiar to you?

11 A Yes, sir.

12 Q That's the same document you brought into court today?

13 A It is.

14 Q And that's a certified copy?

15 A Uh-huh.

16 Q And that shows the information you just spoke of,
17 Mr. Wilder renting the vehicle?

18 A Yes, sir.

19 MR. WILLIAMS: Show to defense counsel.

20 (Pause.)

21 MR. WILLIAMS: Your Honor, I move to admit State's
22 Proposed 119.

23 MR. BROWN: No objection.

24 MR. DAVIS: No objection, Your Honor.

25 MR. LOFTON: No objection, Your Honor.

Ila Simmons
Direct examination by Mr. Williams

1 THE COURT: It is admitted.

2 (Final billing marked State's Exhibit No. 119.)

3 Q Thanks.

4 MR. WILLIAMS: We have no further questions, Your
5 Honor.

6 MR. BROWN: No questions.

7 MR. DAVIS: None, Your Honor.

8 MR. LOFTON: No questions, Your Honor.

9 THE COURT: You may step down. You may also be
10 excused.

11 (Whereupon, the witness was excused.)

12 MR. WILLIAMS: The state calls Ila Simmons.

13 ILA SIMMONS, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. WILLIAMS

16 THE CLERK: If you will, state your full name, and
17 spell your last name.

18 THE WITNESS: My name is Ila Simmons. My last name is
19 spelled S-I-M-M-O-N-S.

20 Q Ma'am, where do you work?

21 A I work at the South Carolina Law Enforcement Division,
22 also known as SLED.

23 Q What do you do at SLED?

24 A I'm in the forensics laboratory and the trace evidence
25 department.

Ila Simmons

Direct examination by Mr. Williams

1 Q What do you do in the trace evidence department?

2 A We analyze gunshot residue, gunpowder residues. We
3 perform fiber comparisons, paint comparisons. We analyze
4 duct tape, glass and arson residues.

5 Q As a forensic scientist have you ever testified as an
6 expert before?

7 A Yes, I have.

8 Q Approximately how many times would you say you have
9 been qualified as an expert?

10 A Over a hundred times.

11 Q In courts in this circuit and actually this county as
12 well?

13 A Yes, sir.

14 Q And that's as a forensic scientist?

15 A Yes, sir, a forensic scientist in trace evidence.

16 Q In trace evidence.

17 A Yes, sir.

18 MR. WILLIAMS: Your Honor, I move to admit Ms. Simmons
19 as a scientist, an expert in the forensic science.

20 MR. BROWN: No objection.

21 MR. DAVIS: Clearly, she is qualified.

22 MR. LOFTON: No objection.

23 THE COURT: She is so qualified.

24 Q Ma'am, I want to ask you about the case you're in here
25 for today. You received a subpoena to come in?

Ila Simmons
Direct examination by Mr. Williams

1 A Yes, sir.

2 Q And you performed some tests on the case that you're
3 here for today?

4 A Yes, sir.

5 Q And that was on L06-12265?

6 A Yes, sir.

7 Q What was your role in this case?

8 A I was asked to analyze some duct tape samples.

9 Q In general, how do you go about analyzing duct tape
10 samples? What's the process?

11 A We generally have a standard which is a known sample.
12 It's collected from a certain area that's known. And then
13 we usually have unknown samples that are collected from
14 another area.

15 What we do first is we look at the duct tape to see if
16 there's a possibility of a fracture match. If we have a
17 roll of duct tape and we have a piece of duct tape, we look
18 at the ends of the roll, the last tear, and the ends of the
19 piece of duct tape to see if there's a fracture match.

20 In this case it wasn't possible because of the way
21 that the ends were damaged on the unknown pieces of duct
22 tape. So we didn't analyze that portion of the duct tape.
23 But we also perform ten separate tests on each piece of
24 duct tape and compare it back to the known piece of duct
25 tape. We also run the same tests on that piece of duct

Ila Simmons

Direct examination by Mr. Williams

1 tape.

2 Q When you say ten separate tests, what kind of tests
3 are you talking about?

4 A We do both physical, as well as instrumental tests on
5 the duct tape.

6 We begin by measuring the width of the duct tape. We
7 would take -- if we were just looking at the roll, we'd
8 take a piece of the roll and measure it along the width,
9 along the colored backing.

10 Then we would analyze for the color of the backing to
11 see if it was silver, more silver-blue, more gray.

12 We analyze the total thickness of the duct tape. We
13 would stand it on its end and take a very small caliper and
14 measure the thickness.

15 We would remove all the adhesive and the fibers from
16 the back of the duct tape and measure just the silver
17 backing itself.

18 We would then analyze the backing, the silver part, to
19 see what material it was made of, what sort of plastic or
20 polymers.

21 Then we look at fibers on the duct tape. If you've
22 ever looked at a piece of duct tape you see that a lot of
23 times the fibers are woven together like this and having
24 fibers running long ways and the short direction of the
25 piece of tape. We analyze the fibers going longways and we

Ila Simmons
Direct examination by Mr. Williams

1 analyze the fibers in the short direction and determine
2 what type fibers, what type of fibers those are.

3 And we, we also do a, a, just a physical match to see
4 if they look general, generally the same, the weave pattern
5 is the same, the fibers look like they're woven the same
6 and wrapped the same.

7 Q What were you supplied with in this case?

8 A I was given, I was given five unknown samples and then
9 a roll of duct tape that was submitted as a standard.

10 Q And those were assigned item numbers through your
11 department or through SLED?

12 A Yes, sir.

13 Q Those were Items 37, 38, 39, 40, 59 and 60?

14 A Yes, sir.

15 Q Ma'am, when you actually look at items do you put any
16 kind of markings on the, on the packaging?

17 A Yes, sir, I do.

18 Q What kind of markings do you put on?

19 A I put my initials; I put the lab number. Every time a
20 case is brought into the SLED laboratory it's given its own
21 lab number. Each item is given an item number, and that's
22 put on there.

23 Q And let me show you. I want to show you State's
24 Proposed 84, 88, 87, 85 and 86. There are five separate
25 bags.. Do you recognize the markings on those?

Ila Simmons
Direct examination by Mr. Williams

- 1 A Yes, sir. These are my initials, the lab number and
2 the item numbers for each placed on there.
- 3 Q Those are the items that you handled.
- 4 A Yes, sir.
- 5 Q And they're taped up --
- 6 A Yes, sir.
- 7 Q -- with your initials and sealed?
- 8 A Yes, sir.
- 9 Q It looks like January the 3rd of '07.
- 10 A Yes.
- 11 Q You stated earlier in your testimony that there's a
12 sample that you use or you compare one -- several items to
13 one item.
- 14 A Yes, sir.
- 15 Q Which was the item that you used as the standard in
16 this case to compare others to?
- 17 A This item, 59. It's a roll of duct tape.
- 18 MR. WILLIAMS: Your Honor, I'm going to move at this
19 point to admit State's 88, 87, 86, 85 and 84.
- 20 MR. BROWN: No objection.
- 21 MR. DAVIS: It's already in, Your Honor.
- 22 MR. WILLIAMS: I'm not sure. I'm not sure it's all
23 in. If it isn't, I would move at this time.
- 24 THE COURT: They are admitted.
- 25 (Exhibits previously entered.)

Ila Simmons
Direct examination by Mr. Williams

1 Q You said that Item 59, which is State's 88, was a
2 standard.

3 A Yes, sir.

4 Q If you could, just tell the jury what, what those
5 items are.

6 A Yes. This is the original roll of duct tape that I
7 received, and these are just pieces that I removed from the
8 duct tape to do my analysis on. These are pieces that were
9 left over. Some of the fibers were consumed in the
10 analysis. And these are the end portions of the duct tape
11 that I saved just in case a fracture match would've been
12 possible with the unknown samples.

13 Q And you would have taken this roll and compared it to
14 the other items, the other pieces?

15 A Yes, sir. That's what I did.

16 Q State's 87. Is this the piece that you would have
17 used, or is that a cutting from it?

18 A That's a small cutting from, from it.

19 Q This would have been the item that you would have
20 taken that cutting from to compare?

21 A Yes, sir.

22 Q It's got your writing on there as well?

23 A Yes, sir.

24 Q We've got State's 84. I believe that's the actual
25 piece you would have analyzed with a cutting from it.

Ila Simmons

Direct examination by Mr. Williams

1 A Yes, sir.

2 Q A comparison.

3 A Yes, sir. That's correct.

4 Q State's 86. Looks like it's a folded-over piece.

5 A Yes.

6 Q And it was also -- I can see a couple of cuttings that
7 you would have taken.

8 A Yes.

9 Q Finally No. 85. This is basically just more of the
10 same, duct tape with a sample.

11 A Yes.

12 Q Are those all the items that you would have analyzed
13 and then compared them, the several samples to the known
14 roll?

15 A Yes, sir.

16 Q Ma'am, based on your analysis and based on your
17 experience, what findings did you make with regard to those
18 items?

19 A We determined that the unknown duct tapes, all the
20 samples, are the same in physical and chemical
21 characteristics, the ten-tests that I mentioned before.
22 And the duct-tape standard can be considered as a possible
23 source.

24 Q And so basically with all of those tests you went
25 through they were the same.

Ila Simmons
Cross-examination by Mr. Brown

1 A Yes.

2 Q Thank you.

3 MR. WILLIAMS: Nothing else of this witness, Your
4 Honor.

5 MR. BROWN: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. BROWN

8 Q Agent Simmons, is it fair to say that the physical and
9 chemical characteristics of the pieces of duct tape match
10 that of the roll? Is that what you're telling us?

11 A Yes, sir.

12 Q Same kind of duct tape.

13 A Yes, sir.

14 Q Okay. But you can't definitively match those pieces
15 to that roll, can you?

16 A No, sir. I cannot do a fraction match.

17 Q In fact, the duct tape samples, the pieces, they were
18 somehow damaged by the way it was packaged to send to SLED,
19 is that correct?

20 A Yes, sir, the ends. The ends were damaged so that
21 they couldn't be -- couldn't have a fracture match
22 performed.

23 Q Okay. So those people who collected and packaged and
24 sent to SLED the duct tape packaged the evidence in such a
25 way that it ultimately damaged it, is that correct?

Ila Simmons

Cross-examination by Mr. Davis

Redirect examination by Mr. Williams

1 A Unfortunately, with duct tape it's so sticky that even
2 if you were to try and package it as carefully as possible,
3 the ends roll up on each other. So it's very hard to
4 package duct tape in a way that it doesn't stick to itself.

5 Q But for whatever reason, that's correct, isn't it?

6 A Yes, sir. I could not do a fracture match on these
7 samples.

8 MR. BROWN: I don't have anything further.

9 CROSS-EXAMINATION

10 BY MR. DAVIS

11 Q You weren't submitted any other rolls of duct tape to
12 test?

13 A No, sir. I was not.

14 Q Thank you.

15 MR. LOFTON: No questions, Your Honor.

16 THE COURT: You may step down.

17 MR. WILLIAMS: May I do a quick followup, Your Honor?

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MR. WILLIAMS

21 Q I want to make sure I understand about the fracture
22 match. You couldn't do one or it wasn't a match and you
23 could do one?

24 A On the ends of the tape, the way the ends were kind of
25 lapped over each other, and that could have been the way

Ila Simmons
Redirect examination by Mr. Williams

1 that the tape had been administered originally, like if it
2 had been used that way and someone had cut it off, that
3 then there was no way they could have packaged it so that
4 it wasn't stuck together.

5 Q So you don't know if it was packaged wrong. It may
6 have been that way at the time.

7 A Yes, sir, exactly. It was just when I received it, it
8 wasn't in a condition that I could do a fracture match.

9 Q So you just couldn't make a comparison. It's not that
10 you could compare it and it didn't match. It's that you
11 could not compare it.

12 A That's correct. It wasn't suitable for a comparison
13 even to try and analyze.

14 Q All right. Thank you.

15 MR. BROWN: Nothing else.

16 MR. DAVIS: No, Your Honor.

17 THE COURT: You may step down. Thank you.

18 MR. WILLIAMS: Your Honor, the state calls Eddie
19 Porter.

20 THE COURT: Who is the witness?

21 MR. WILLIAMS: Eddie Porter. He is here on behalf of
22 Bruce Gantt, Your Honor.

23

24

25

Edward Porter
Direct examination by Mr. Williams

1 EDWARD PORTER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILLIAMS

4 THE CLERK: Please state your full name, and spell
5 your last name.

6 THE WITNESS: Edward Porter, P-O-R-T-E-R.

7 Q Sir, where do you work?

8 A The South Carolina Law Enforcement Division, commonly
9 referred to as SLED.

10 Q What do you do at SLED?

11 A I'm a special agent assigned to the latent print crime
12 scene unit in which we process evidence submitted to the
13 laboratory by local agencies for fingerprint evidence and
14 conduct fingerprint comparisons.

15 Q Did you know Bruce Gantt?

16 A Yes, I did.

17 Q How did you know him?

18 A For the eight years he was one of my crime scene
19 partners and actually my office roommate.

20 Q Has he since deceased?

21 A July the 4th of '07, yes, sir.

22 Q And he did the same paperwork that you do?

23 A That's correct.

24 Q Have you testified in cases to his reports now that
25 he's no longer with us?

Edward Porter
Direct examination by Mr. Williams

1 A Not as of yet, no, sir.

2 Q But you're capable of looking at his reports, although
3 you didn't do the testing, and testify to what his report
4 would have said?

5 A The way we handled cases at SLED, every case that is
6 submitted to the laboratory is one hundred percent peer
7 reviewed. So every report that comes through SLED has to
8 have a second examiner review the case for technical
9 findings and also facts.

10 And in this particular case I was the secondary
11 examiner that signed a report or looked at his evidence and
12 signed the evidence and followed through with the report.
13 So it was actually peer review by myself.

14 Q And the case that he had handled back when he was
15 still working at SLED and still with us was L06-12265?

16 A That's correct.

17 Q What was -- he was basically provided with seven
18 items. I should take that back. Eight items. Print cards
19 and latent prints that were taken.

20 A Seven items.

21 Q And then there was a subitem as well?

22 A Yes, sir, a subitem which was also an actual item.

23 Q Okay. I want to get right to the results. There
24 was -- all of his results were basically either no
25 identification or insufficient value for identification.

Edward Porter
Direct examination by Mr. Williams

1 A That's correct.

2 Q What does that essentially mean?

3 A That if -- these are actual latent fingerprint cards
4 which was taken from a crime scene. And there was ridge
5 detail on there. However, there was not enough ridge
6 detail to make an identification towards one particular
7 person.

8 So there could have been some kind of detail on there.
9 But we would not be able to say within certainty that this
10 person touched this particular item or not. Therefore it's
11 deemed no value for identification and we could not match
12 it with one particular individual.

13 Q And when you get fingerprints, there is varying
14 quality for an attempt to make identification. Is that
15 fair to say?

16 A Yes, sir. That's correct.

17 Q Can you explain to the jury what degree of quality you
18 need or how there can be different degrees of quality?

19 A Well, first of all, fingerprinting is not like it is
20 on T. V. or the movies. You don't always leave a
21 fingerprint.

22 There are several different reasons why. It's a
23 random chance. The condition of one person's hands, if
24 they're too, if they're sweating too much, they might leave
25 too much sweat and not any fingerprints. Or if their hands

Edward Porter
Direct examination by Mr. Williams

1 are dry, you won't leave any fingerprints. And like
2 construction workers that have hard hands where they've
3 been working a lot with their hands, they have calluses.
4 Therefore they're not likely, as likely, to leave
5 fingerprints as someone else.

6 So all of those factors play into why you don't leave
7 a fingerprint. I could touch this desk all day long. Like
8 I said, it'd be a random chance if I left something or not.
9 That's just the way it is. It's not like T. V.

10 In order to find something of quality we're looking at
11 the relationship of how many different ridges, friction
12 ridges, there are such as ending ridge, bifurcation or a
13 dot. There's three different types of friction ridges on
14 your hands.

15 So you're looking at all of those in computation to
16 everything in trying to make identification. So each print
17 is individually identified. And you just have to take each
18 print in account with each other.

19 Q Is it unusual in your experience to receive prints
20 that aren't sufficient, meaning that they don't have enough
21 detail or they're not full enough to make an
22 identification?

23 A Yes, sir.

24 Q It's not unusual?

25 A It is not unusual, that's correct.

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 MR. WILLIAMS: I have nothing else of the witness,
2 Your Honor. Thank you.

3 MR. BROWN: No questions.

4 MR. DAVIS: No questions, Your Honor.

5 MR. LOFTON: No questions, Your Honor.

6 THE COURT: You may step down. Thank you.

7 MR. WILLIAMS: The state calls John Roberts.
8 Your Honor, can he be excused?

9 THE COURT: He sure can.

10 (Whereupon, the witness was excused.)

11 JOHN GRAY DODD ROBERTS, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WILLIAMS

14 THE CLERK: Please state your full name, and spell
15 your last name.

16 THE WITNESS: My name is John Gray Dodd Roberts,
17 R-O-B-E-R-T-S.

18 Q Sir, where do you work?

19 A I work for the South Carolina Law Enforcement
20 Division, also known as SLED.

21 Q What do you do at SLED?

22 A Work in the trace evidence department, the forensics
23 unit.

24 Q What do you do in the trace evidence department?

25 A Trace evidence is the analysis of evidence that is

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 generally smaller than you can see with your naked eye. We
2 do paint, fibers, glass, gunshot residue. We do
3 bullet-hole analysis where we measure the distance from the
4 muzzle of a weapon to the target; duct tape; bank dye
5 packs. We also do ignitable liquids for arson cases.

6 Q And you're here today on a series of gunshot residue
7 tests that you analyzed?

8 A Yes, sir.

9 Q Can you tell this jury what gunshot residue is?

10 A Gunshot residue is the collection of particles that
11 are ejected out of the muzzle or any other opening in a
12 firearm when it's fired. When a firearm is fired the
13 primer of that bullet explodes and ignites the main powder
14 charge inside the bullet. That primer is composed of
15 chemicals that we can detect, mainly lead, barium and
16 antimony.

17 When those particles are ejected from the firearm they
18 settle on items that are close to the firearm, for
19 instance, somebody's hands, whoever is doing the shooting,
20 maybe somebody that's close to the weapon down range or
21 somebody that's off to the side but still within a certain
22 area.

23 Q What is primer? You said there's primer inside the
24 gun.

25 A The primer is the small silver cap in the middle of

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 the back of the bullet. When it goes off it sets off the
2 main powder charge which forces the bullet down the muzzle.

3 Q And you said that some of those particles, some of
4 those items, in there, is that what you see? Is it the
5 primer or is it the actual powder itself, the gunpowder?

6 A We have a test for gunpowder. We generally do it on
7 clothes. But we what we're looking for on somebody's hands
8 is the primer residue -- the lead, barium and antimony from
9 that primer.

10 Q And that's what you did in this case, is you tested
11 for that primer, that gunshot residue.

12 A Yes, sir. I did.

13 Q Can you tell the jury how you generally go about doing
14 that test, what you do?

15 A Yes. We give out gunshot residue kits to agencies all
16 over the state. Gunshot residue kits are composed of two
17 types of sampling media. The first is a set of particle
18 lifts. There's four particle lifts. A particle lift is an
19 aluminum -- aluminum stud with double-sided carbon tape on
20 it.

21 What they do is they take the suspected shooter's
22 hands and they put them both palm up like this, and they'll
23 take the right hand first and they'll go to the stub
24 labeled right palm. And you apply it by dabbing the sticky
25 onto their palms. And that pulls the gunshot residue

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 particles off their palms.

2 Repeat it with the right back. There's a separate
3 lift for the right back. And then you do left palm and
4 left back.

5 After the particle lifts are done they do the swabs.
6 The swabs are just cotton swabs. They're wetted with
7 nitric acid, a weak solution of nitric acid, and then
8 applied in a wiping motion to the same four areas -- right
9 palm, right back, left palm, left back. Those, that kit,
10 is sealed up and then sent to us where we do the analysis
11 on it.

12 Q Is that what's commonly referred to as a G. S. R. kit?

13 A Yes, sir.

14 Q Now, there's other ways. You also test items as well,
15 if somebody sends you a glove like you saw in this case.

16 A Yes, sir.

17 Q How do you go about testing an item that's sent to you
18 not in a kit?

19 A Well, in this case I opened up the sealed containers
20 that had the gloves in them, and I made sure that there was
21 gloves in them. I check to see if they're right-handed or
22 left-handed because sometimes we get two right or two left.

23 And then I do the gloves the same way that I would do
24 somebody's hands. I apply one lift to the right palm. I
25 flip the glove over. I'll do one for the right back. I'll

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 take the next glove, and I'll do one for the left palm and
2 then one for the left back, basically the same way that I
3 would do somebody's hands.

4 Q And you did that in case with several items.

5 A Yes, sir.

6 Q Well, let me ask you about the integrity of G. S. R.,
7 how long it can or it's expected to last on a person. Do
8 you have any knowledge about that?

9 A Yes, sir.

10 Q Could you tell the jury how that works?

11 A Yes, sir. Our protocol for testing on a live person
12 is six hours. After six hours we've found that G. S. R.
13 has disappeared and we don't find it in measurable amounts.

14 On a dead person because they're not breathing and
15 they're not moving around and they're not able to wipe it
16 off by themselves, we don't have a time limit.

17 For clothing it's the same way. As long as it's not
18 washed, as long as the clothing is not washed, the gunshot
19 residue should stay on it.

20 Q But G. S. R. can be, you said it can be, wiped off or
21 it can be washed off.

22 A Yes, sir. It's, it's fairly easy to remove off
23 somebody's hands. All you need to do is just wash it off
24 with a little water, wipe it off with a cloth, stick your
25 hands in your pockets. Anything like that will remove it.

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 Q So if it's not necessarily --

2 MR. WILLIAMS: Well, strike that, Your Honor. Strike
3 that question.

4 Q How would, how would it work if somebody had gloves on
5 and they were firing a gun? Would you still get residue
6 through the gloves?

7 A You can depending on the material that the glove is
8 made out of. If it's a really loosely weaved material,
9 say, the brown garden gloves, if you've got somebody with
10 really big hands and really little gloves, they can stretch
11 that material out and it can go through the material.

12 I wouldn't expect a whole lot to go through the
13 material, but it's possible that it could go through the
14 material.

15 Q And you also said that you can tell if anybody was
16 either being shot at in close proximity to a gun, shooting
17 a gun or handling a gun. Are there various levels that
18 have anything to do with that?

19 A Yes, sir. In general, based on the levels that we get
20 from the swabs we can tell if somebody is, say, for
21 instance, standing up in front of the gun like this with
22 their hands up. Ninety percent of that primer residue goes
23 out the muzzle of that firearm. So all of that or most of
24 that will be deposited on their palms.

25 When we run those swabs that come off the palms we get

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 huge amounts of lead found on the palms versus someone
2 who's just been shooting a gun where it's minimal amounts,
3 because the only way that your palms are exposed to
4 shooting a weapon is when you grab ahold of it.

5 There's a minimal amount of that primer residue
6 already on the butt of the firearm, so you're going to get
7 some of that on your palms, whereas if you're standing
8 right in front of it and you get sprayed with it like a
9 water hose, you're going to have thousands and thousands of
10 counts of lead on your palms.

11 Q In this case you were -- you had nine items submitted.

12 A I had a bunch.

13 Q Well, within each item sometimes you'll have multiple
14 subitems like you were talking about if there's swabs on
15 the hands. That'll be one item unless you break it down to
16 four, because there may be four different tests.

17 A Yes, yeah. The gunpowder residue kits, we break them
18 down into four subitems like, for instance, Item 13 will be
19 broken down into 13.1, .2, .3 and .4.

20 Q I want to go through, first of all, the G. S. R. kits
21 that were submitted to you.

22 A Okay.

23 Q Item 13 was a G. S. R. kit from Sterling Spann.

24 A Yes, sir.

25 Q I believe you had four different samples or swabs from

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 that.

2 A Yes, sir.

3 Q What were your findings from Sterling Spann?

4 A The results for all four areas -- right palm, right
5 back, left palm, left back -- read that the quantities of
6 metals detected did not indicate the presence of gunshot
7 residue with --

8 Q So there was no presence of gunshot residue?

9 A It means that the levels that may have been there were
10 below our threshold levels for a positive for gunshot
11 residue.

12 Q Okay. And then you had Item No. 28, which is labeled
13 one G. S. R. kit from Jamie Williams.

14 A Yes, sir.

15 Q What were your findings on Item 28?

16 A For the right palm, right back and left back the
17 results were the same as the previous G. S. R. kit. The
18 quantities of metals detected did not indicate the presence
19 of gunshot residue. For the left palm I found gunshot
20 residue.

21 Q And is that -- do you have any opinion as to the
22 levels of that to determine distance or anything like that?

23 A If you can give me a second I can look at the levels.

24 (Pause.)

25 A The level of lead on the swabs was just over the

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 amount that I needed to call it positive for lead. And in
2 this case I had to take the particle lift and look for the
3 particles themselves. And that's why the result reads that
4 I found gunshot residue, because that's what happened. I
5 found gunshot residue.

6 Q So it was a small amount?

7 A It was a small, a small amount of lead found, yes,
8 sir.

9 Q And can you get that lead from, for instance, if you
10 were shot and you had it on a wound, from touching a wound?

11 A You could.

12 Q And I want to -- I neglected to do something earlier.
13 You've qualified, you testified as an expert before --

14 A Yes, sir.

15 Q -- in the field of forensic science?

16 A Trace evidence, yes, sir.

17 Q Trace evidence, gunshot residue kits.

18 A Yes, sir.

19 MR. WILLIAMS: Your Honor, I move to qualify him. I
20 forgot to do that.

21 MR. BROWN: No objection.

22 MR. DAVIS: No objection, Your Honor.

23 MR. LOFTON: No objection.

24 THE COURT: He is so qualified.

25 Q Going on to the next kit, you had one G. S. R. kit

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 from Keive Milik Smith. That was Item 29.

2 A Yes, sir.

3 Q What did you find on that kit?

4 A On this kit all four -- all four particle lifts had to
5 be run. So my results read for the right back, the left
6 back, right palm and right back and left back, excuse me,
7 that I found round lead particles. Round lead particles
8 are one of the components of gunshot residue. For the left
9 palm I did not find any gunshot residue.

10 Q So you found particles that were a component of
11 gunshot residue.

12 A Yes, sir.

13 Q I'm going to ask you about Item 30. That's a G. S. R.
14 kit on Anthony Wilder.

15 A Yes, sir.

16 Q What were your findings on that item?

17 A For the right back and the left back I found that the
18 quantities of metals detected did not indicate the presence
19 of gunshot residue; for the left palm I found that no
20 gunshot residue was found; and for the right palm my
21 results were inconclusive.

22 Q So there's nothing in there that would indicate
23 gunshot residue or anything.

24 A No, sir. The inconclusive is I found something on one
25 instrument and couldn't confirm it on another instrument.

John Gray Dodd Roberts
Direct examination by Mr. Williams

1 I didn't have enough to call it a positive, but I had too
2 much to not call it a negative. So it's inconclusive.

3 Q Okay. And Item 31 was a G. S. R. kit from Leo
4 Gadsden. What were your findings on Item 31?

5 A On Item 31 I found all four areas, the quantities of
6 metals detected did not indicate the presence of gunshot
7 residue.

8 Q And those were all the kits you were provided -- one
9 for Anthony Wilder, one for Leo Gadsden and one for Keive
10 Smith, one for Sterling Spann and one for Jamie Williams.

11 A Yes, sir.

12 Q As far as the items go that you talked about, you also
13 were provided Item 15 which was a black knit glove.

14 A Yes, sir.

15 Q What did you find on Item 15, the black knit glove?

16 A I found gunshot residue on that glove.

17 Q And Item 26 was one pair of black knit gloves. What
18 did you find on the pair of gloves?

19 A I found gunshot residue on those gloves.

20 Q And Item 27 was one pair of black knit gloves. What
21 did you find on those?

22 A I found round lead particles on those gloves.

23 Q And those are -- the round lead particles are a
24 component of gunshot residue?

25 A Yes, sir.

John Gray Dodd Roberts
Cross-examination by Mr. Davis

1 Q So all the gloves you looked at either had gunshot
2 residue or round lead particles that are part of gunshot
3 residue.

4 A Yes, sir.

5 MR. WILLIAMS: No other questions, Your Honor. Thank
6 you.

7 MR. BROWN: No questions.

8 CROSS-EXAMINATION

9 BY MR. DAVIS

10 Q Agent Roberts, I believe you said there's generally
11 three chemicals found in gunshot residue, is that right?

12 A There's three chemicals that we look for, yes, sir.

13 Q Okay. Lead, barium and antimony?

14 A Antimony, yes, sir.

15 Q Okay. And you just talked about on some of these you
16 were only able to find some lead particles, which are one
17 of the three, correct?

18 A Yes, sir.

19 Q It's -- and so that's why the results were stated in
20 that way rather than saying positive for gunshot residue.
21 Since you only got one of the three, you listed it that
22 way, is that accurate?

23 A Gunshot residue when we look for the particles
24 themselves, we look for round particles that contain all
25 three components. The particles that just are round and

John Gray Dodd Roberts
Cross-examination by Mr. Davis

1 have lead in them, it's not -- it could be from gunshot
2 residue.

3 Q Correct. Those are, those are naturally occurring
4 elements.

5 A Yes, sir.

6 Q Okay. So there are other things that barium, antimony
7 and lead are in other than gunshot residue.

8 A Yes, sir.

9 Q Okay. Is it also fair to say because of the design of
10 a revolver versus a semiautomatic pistol you're likely to
11 see more gunshot residue come out of a revolver being fired
12 than a semiautomatic pistol?

13 A In general, yes.

14 Q Okay. And I'm holding State's 78, which is a chrome
15 revolver, correct?

16 A Yes, sir.

17 Q And so the jury will understand, because there is
18 spacing between the cylinder, which is actually lifted down
19 on this revolver as you see it today, correct --

20 A Yes, sir.

21 Q So there's spacing in front and behind that, right?

22 A Yes, sir.

23 Q And then of course out the end of the barrel is where
24 the projectile is fired, correct?

25 A Yes, sir.

John Gray Dodd Roberts
Cross-examination by Mr. Davis

1 Q So there's more space for gunshot residue to come out
2 of the revolver.

3 A Yes, sir.

4 Q And then I'm also holding State's 79 which is some
5 type of a semiautomatic pistol, correct?

6 A Yes, sir.

7 Q And in that it's more enclosed. Is that an accurate
8 way to say it?

9 A Yes, sir.

10 Q And there's only a small slot on the slide where the
11 shell casing is ejected, correct?

12 A Yes, sir.

13 Q And-or the end of the barrel, again, where the
14 projectile comes out.

15 A Yes, sir.

16 Q Okay. So it's not uncommon if you were testing -- if
17 I fired each of those weapons, you're going to find higher
18 levels when I fired the revolver than the semiautomatic
19 weapon likely.

20 A In general, yes, sir.

21 Q And then, finally, specifically as to my client,
22 Mr. Leo Gadsden, no gunshot residue found on any of the
23 four locations of either hand, correct?

24 A That's correct, yes, sir.

25 Q Thank you, Agent.

Jill Clark

Direct examination by Mr. Williams

1 MR. DAVIS: No other questions.

2 MR. LOFTON: No questions, Your Honor.

3 MR. WILLIAMS: May he be excused, Your Honor?

4 THE COURT: You may step down. You may also be
5 excused. Thank you.

6 (Whereupon, the witness was excused.)

7 MR. WILLIAMS: The state calls Jill Clark.

8 JILL CLARK, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. WILLIAMS

11 THE CLERK: State your full name, and spell your last
12 name.

13 THE WITNESS: Jill Clark, C-L-A-R-K.

14 Q Ma'am, where do you work?

15 A I work for the South Carolina Law Enforcement Division
16 and I'm assigned to the drug analysis department.

17 Q What do you do in the drug analysis department?

18 A My primary duty is to analyze controlled substances
19 for the state.

20 Q How long have you been doing that?

21 A Since December of 1999.

22 Q You've testified as an expert before --

23 A Yes, I have.

24 Q -- in courtrooms in this circuit and this county?

25 A Yes, I have.

Jill Clark
Direct examination by Mr. Williams

1 MR. WILLIAMS: Your Honor, I'm going to move to have
2 Ms. Clark qualified as an expert in chemical analysis.

3 MR. BROWN: No objection.

4 MR. DAVIS: No objection, Your Honor.

5 MR. LOFTON: No objection.

6 THE COURT: She is so qualified.

7 Q Ms. Clark, what is it that you do when you analyze
8 substances for the presence of a controlled substance?

9 A Normally I would do a chemical test and then I would
10 do some sort of instrumentation confirmatory test.

11 Q And you were subpoenaed into court today on Case No.,
12 I believe it's, looks like your lab number, L06-13025?

13 A Yes.

14 Q What did do in that case or in this case?

15 A Well, in this case I had three different items to
16 analyze. The first item was 13 bags of powder substance.
17 So each bag was chemically tested. And then I also did a
18 gas chromatography/mass spectroscopy test for that one.

19 Item 2 was a rock substance, and, again, I did a keep
20 chemical test. And I did gas chromatography/mass
21 spectroscopy and a physical test for that item.

22 And then Item 3 were some tablets. And I did a
23 chemical test and, again, a gas chromatography and mass
24 spectroscopy.

25 Q Do you have your chain of custody form in this case?

Jill Clark

Direct examination by Mr. Williams

1 A Yes, I do.

2 Q Those items were delivered to you by Investigator
3 Brent Roy of the sheriff's office in Charleston County?

4 A He brought the drugs to SLED, but I actually received
5 them from Colonda Williams from our log-in area. They
6 receive all the evidence.

7 Q And that's part of your standard chain of custody?

8 A Yes, it is.

9 Q Let me show you what's been marked State's Proposed
10 Exhibit 102. Do you recognize that item?

11 A Yes, I do. These are the drugs I tested for this
12 case.

13 Q And you would have marked those. And is that your
14 initials on it?

15 A Yes. On the date I received the evidence I put okay,
16 the date and my initials to show that I checked the bag to
17 make sure that it hadn't been tampered with.

18 Q You just hand that back to me.

19 MR. WILLIAMS: Showing defense counsel, Your Honor.

20 (Pause.)

21 MR. WILLIAMS: Your Honor, I move the admission of
22 State's Proposed 102.

23 MR. BROWN: No objection.

24 MR. DAVIS: No objection, Your Honor.

25 MR. LOFTON: No objection, Your Honor.

Jill Clark
Direct examination by Mr. Williams

- 1 THE COURT: It's admitted.
2 (Drugs marked State's Exhibit No. 102.)
3 Q Ms. Clark, you wrote a report on this, correct?
4 A Yes, I did.
5 Q And how were the items submitted to you, in what form?
6 A Well, Item 1 ess 13 plastic bags that contained powder
7 substance; Item 2 two was rock substance; and Item 3 were
8 some pink tablets.
9 Q And you would have combined those 13 bags to one bag
10 to weigh?
11 A Well, I test each one individually chemically. And
12 then if they all tested the same and looked the same, I
13 take a sample from each to combine to do the confirmatory
14 test. And I may have repackaged those also. I would need
15 to look at that.
16 Q Take a look at it. And there's also a bunch of little
17 bags in there, looks like the original packaging.
18 A Yes. You've got the little bags that were
19 individually tested, and I have all those labeled and
20 initialed. And then I also have powders repackaged, the
21 rock substance repackaged and the tablets repackaged from
22 the original bags that they were in.
23 Q And you had three items that were submitted to you?
24 A Yes.
25 Q First was the 13 plastic bags containing a powder

Jill Clark

Direct examination by Mr. Williams

1 substance.

2 A That's correct.

3 Q What was -- first of all, what was that substance?

4 A Cocaine was found with a combined weight of
5 13.49 grams, which converts to 208.17 grains. And it's a
6 C-2 controlled substance.

7 Q That's 13.49 grams of powder cocaine?

8 A Yes. That's correct.

9 Q And Item No. 2 was a rock substance. What did you
10 find with that?

11 A That was cocaine base, which is crack found,
12 1.39 grams, which converts to 21.45 grains. And it's a C-2
13 controlled substance.

14 Q And Item 3 was pink tablets.

15 A Yes.

16 Q What did you find with Item 3?

17 A The tablets were 3,4-methylenedioxymethamphetamine,
18 which is M. D. A. or called Ecstasy, or Ecstasy found three
19 tablets. That was three whole tablets, and there was one
20 partial tablet. And it was a C-1 controlled substance.

21 Q So all the items in that bag, it's 13.49 grams of
22 powder cocaine, 1.39 grams of crack, and it looks like
23 three one partial tabs of Ecstasy.

24 A Yes. That's correct.

25 Q Thank you.

Kenneth H. Whitler
Direct examination by Mr. Williams

1 MR. WILLIAMS: Nothing else of this witness, Your
2 Honor.

3 MR. BROWN: No questions.

4 MR. DAVIS: No questions, Your Honor.

5 MR. LOFTON: No questions, Your Honor.

6 THE COURT: Thank you. You may step down.

7 MR. WILLIAMS: May she be excused as well, Your Honor?

8 THE COURT: She may be.

9 (Whereupon, the witness was excused.)

10 MR. WILLIAMS: Thank you, Your Honor. The state calls
11 Kenneth Whitler.

12 KENNETH H. WHITLER, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. WILLIAMS

15 THE CLERK: State your full name, and spell your last
16 name.

17 THE WITNESS: My name is Kenneth H. Whitler, and the
18 last name is spelled W-H-I-T-L-E-R.

19 Q Sir, where do you work?

20 A I work for the South Carolina Law Enforcement Division
21 that's also known as SLED in the forensic services
22 laboratory.

23 Q What do you do in the forensic services laboratory?

24 A I am a firearms-toolmark examiner.

25 Q What experience do you have that makes you an expert

Kenneth H. Whitler
Direct examination by Mr. Williams

1 in that area?

2 A Well, you can't get a degree in firearms
3 identification. You have to learn it from qualified
4 examiners.

5 When I was employed by the F. B. I. Laboratory I went
6 through their training program and became qualified as a
7 firearms examiner. It was approximately a 2-year training
8 period, after which you're given a series of tests that if
9 you complete, then you're certified by the F. B. I. to
10 conduct examinations for them.

11 I was certified in 1991 as a firearms toolmark
12 examiner for the F. B. I. laboratory. In 1997 I retired
13 and came to work for SLED doing basically the same job,
14 firearms identification.

15 Q You've testified as an expert before?

16 A Yes, sir, I have.

17 Q In this courtroom and in this circuit?

18 A Yes, I have.

19 Q Approximately how many times would you say you've
20 testified as an expert?

21 A It's getting pretty close to 200 times in various
22 state, federal and territorial courts.

23 Q And that's in firearms identification? Is that
24 generally the area of your expertise?

25 A Yes, sir.

Kenneth H. Whitler
Direct examination by Mr. Williams

1 MR. WILLIAMS: Your Honor, I'll move to have Agent
2 Whitler qualified as an expert in firearms identification.

3 MR. BROWN: No objection.

4 MR. DAVIS: No objection.

5 MR. LOFTON: No objection, Your Honor.

6 THE COURT: He is so qualified.

7 Q Agent Whitler, I want to ask you, first of all, about
8 what you received in this case. You received several items
9 under Lab No. L06-12265.

10 A That's correct.

11 Q And it was one fired 9mm Luger caliber cartridge case
12 with a 9mm casing.

13 A That's correct.

14 Q One fired bullet, a Taurus .38 Special revolver, six
15 fired .38 Special caliber cartridge casings, a Bersa .380
16 auto caliber pistol, seven unfired .380 auto caliber
17 cartridges, two fired bullets, a fired bullet jacket, a
18 fired bullet core, a 9mm magazine with nine unfired
19 Winchester 9mm cartridges, a Smith and Wesson .357 and six
20 fired .357 cartridges are several items you received.

21 A That's correct.

22 Q Three of those were handguns.

23 A That's correct.

24 Q There was a .380, a .357 and a .38 Special.

25 A That's correct.

Kenneth H. Whittler
Direct examination by Mr. Williams

1 Q Are there any markings that you place on the items
2 when they go to SLED?

3 A Yes, sir. I engrave on the barrels of the pistols and
4 on the slides. And also on revolvers I put it on the top
5 strap on the inside of the gun.

6 Q I'm going to hand you what's been marked State's
7 Exhibit 77, State's 79, State's 78. Would you look at
8 those and see if those have your markings on them?

9 A Yes, sir. They all have my markings on them.

10 Q Those are the guns that you would have examined.

11 A That's correct.

12 Q And would you have examined them for functionability
13 to see if they worked?

14 A That's part of our normal processes, is we will test
15 fire them and see if they function normally.

16 Q Did you do that in this case?

17 A Yes, sir.

18 Q They all functioned?

19 A That's correct.

20 Q I want to show you what's been marked State's
21 Exhibit 90. Do you recognize this item as well? You can
22 open that if you need to.

23 A Yes, sir. I have seen this before.

24 Q And is that a 9mm magazine?

25 A Yes, a Glock brand 9mm magazine.

Kenneth H. Whitler
Direct examination by Mr. Williams

1 Q And that contained nine unfired Winchester caliber
2 cartridges?

3 A When I received it, yes, it contained nine unfired
4 cartridges.

5 Q And you were also provided, I believe it was Item No.
6 1, a fired 9mm cartridge as well. Again, over here. I'm
7 sorry. It's marked States 81-B. Do you recognize that
8 item as well?

9 A Yes.

10 Q And that's the --

11 A It's a fired 9mm cartridge case.

12 Q And that was one you examined as well?

13 A That's correct.

14 Q I want to ask you first of all about how casings in
15 a semiautomatic -- well, let me ask you first of all about
16 that, Item No. 35. You examined that item?

17 A Yes.

18 Q And what did you find when you examined that item?

19 A I found it had marks of value for identification with
20 a specific firearm. It also had class characteristics that
21 were consistent with it having been fired in either a Glock
22 or an early model Smith and Wesson Sigma model pistol.
23 They have distinctive firing pin impression -- firing pins
24 which leave a distinct impression on the cartridge case.

25 Q So it could have been fired by a Glock or an early

Kenneth H. Whittler
Direct examination by Mr. Williams

1 model Smith and Wesson Signa 9mm.

2 A Yes, or there would be a slight possibility of some
3 new pistol that come out. But at the present time those
4 are the only two we are aware of with that kind of firing
5 pin impression.

6 Q And there's also a clip to a Glock that was recovered.
7 That's a Glock 9mm clip as well.

8 A That was the one you just showed me, this one. This
9 is designed for a Glock 9mm pistol.

10 Q And what happens when a Glock 9mm, or for that matter
11 any semiautomatic weapon, is fired? And you can use that
12 .380 to demonstrate if it will help.

13 A It will be a little difficult, but with a pistol the
14 ammunition supply is placed in something called the
15 magazine. You put your cartridges in here. And then you
16 insert it in the grip of the firearm. And so if you can
17 visualize, it's sticking up into the gun somewhere like
18 this.

19 When the slide, which is this part, comes to the rear,
20 it compresses a spring that's inside around the barrel.
21 And when you let the slide go forward, as it goes forward
22 it takes the top cartridge out of the magazine and inserts
23 it in the chamber area, which is the back of the barrel.
24 This is the barrel right here. And it extends up to right
25 about here.

Kenneth H. Whitler
Direct examination by Mr. Williams

1 So the cartridges as the slide goes forward is put
2 into the chamber and in line with the barrel of the
3 firearm.

4 You pull the trigger. The bullet starts down the
5 barrel. And at the same time, because of the gas pressure
6 being built up, the slide starts to the rear. And as it
7 goes to the rear, it does two things.

8 It takes the fired cartridge case and pulls it out of
9 the chamber on the back of the barrel. And as it gets to a
10 certain point, it throws it out through the ejection port,
11 this hole in the side of the pistol. It throws the empty
12 or the fired cartridge case out.

13 The slide continues all the way to the rear. And then
14 when it stops the spring pressure takes over and brings the
15 slide forward again. And at this point it picks up a new
16 cartridge and reinserts it in the chamber of the firearm
17 and you're ready to pull the trigger again.

18 And this will continue until you run out of ammunition
19 or either you stop pulling the trigger.

20 Q I want to ask you about clips themselves and how they
21 are -- how they come out of the gun. You just showed how
22 that clip came out. Is there a button on there that gets
23 pressed?

24 A Yes. On this one the magazine release is up here on
25 this side of the pistol. They put them in various places,

Kenneth H. Whitler
Direct examination by Mr. Williams

1 but some have them on the butt of the firearm and some have
2 them on the sides.

3 Q Do you know where they are on Glock 9mm's?

4 A On a Glock it's on the left side.

5 Q So it's up on the side of the gun.

6 A Yes.

7 Q Does it take a lot of pressure generally to release
8 that clip, just a pressing of the button?

9 A It doesn't take a lot of pressure. Obviously, they
10 design them that you just can't accidentally touch them and
11 they fall out. That would be impractical. But with a
12 certain amount of pressure they will pop out.

13 Q I want to ask you about how a round can be initially
14 chambered. You talked about when a gun is actually being
15 fired a round will automatically enter the chamber.

16 How does it work for that first shot so that if we
17 took that clip and filled it with the appropriate
18 ammunition and put in it the bottom of the gun, how would
19 the first round get into the chamber?

20 A Well, you basically have two ways. The proper method
21 is to load your magazine, insert it into the pistol, pull
22 the slide to the rear, or in some cases you'll already have
23 the slide to the rear. And let the slide go forward, and
24 it loads the pistol for you. That's the preferred way.
25 It's easier on the gun in the long run.

Kenneth H. Whitler
Direct examination by Mr. Williams

1 The other way that some people do it is they'll just
2 throw a round in the chamber, wiggle the gun a little bit
3 and let it fall in and then shut, slam the slide on it.
4 That's hard on your extractors, but it will work. And then
5 you put your magazine in it.

6 Q So if you were to just take a full clip and load it in
7 the bottom, chamber a round, that would take a round out of
8 the clip and put it in the chamber.

9 A Yeah.

10 Q And it would stay there until fired.

11 A That's correct.

12 Q The 9mm clip you found in this case, what was the
13 capacity for that clip?

14 A The capacity for it was ten rounds, ten cartridges.

15 Q How many rounds were found in that clip?

16 A Nine.

17 Q So there were nine rounds in a 10-round chamber or in
18 a 10-round clip.

19 A That's correct.

20 Q You also had one fired shell casing submitted to you.

21 A That's correct.

22 Q I want to ask you about the fired bullets that you
23 received in this case. I believe you received one fired
24 bullet, one fired bullet jacket, one fired bullet core and
25 two other fired bullets.

Kenneth H. Whittler
Direct examination by Mr. Williams

1 A That's correct.

2 Q So it was a total of three fired bullets, a jacket and
3 a core?

4 A That's correct.

5 Q Could you explain to the jury what a jacket or a core
6 is?

7 A The bullet is -- that I examined were copper-jacketed
8 bullets, means they had a layer of copper surrounding a
9 lead core.

10 When you fire these kind of bullets, when they hit
11 things, sometimes the jacket will peel off, or if it's
12 damaged to a certain extent the jacket will just peel off
13 or blow off the jacket. And you're left with just the
14 core, which is the inner part of the bullet.

15 The core has no marks of value on it for
16 identification purposes, because as the bullet goes down
17 the barrel the copper jacket is in contact with the barrel.

18 So once the bullet gets out of the barrel and hits
19 something and the jacket falls off for whatever reason, the
20 jacket has all the information about the gun that you can
21 use for an identification. The core has none. So that's
22 basically what you have, is a lead core with a copper
23 jacket around it.

24 It's preferred for use in pistols because the jacket
25 is harder and you're less likely to have malfunctions of a

Kenneth H. Whitler
Direct examination by Mr. Williams

1 semiautomatic pistol. If you had a lead bullet, you can
2 fire lead bullets in pistols, but you're more prone to
3 beating problems or functioning problems. But it can be
4 done.

5 But that's basically what a core is. It's the inside
6 of a jacketed bullet.

7 Q Now, you were submitted then with the three fired
8 bullets, the core and the jacket. Did you compare those to
9 each there?

10 A Yes, sir.

11 Q And what do you do when you compare them? Or I could
12 say what are you looking for.

13 A What you're looking for, first of all, is bullets
14 are -- if a bullet is fired from a firearm it has what is
15 known as class characteristics.

16 The barrel of a firearm is rifled with a certain
17 number of land and grooves, or grooves, to make it simpler.

18 And there is no magic number. Some manufactures like
19 five, some like four, some want six, some have eight. But
20 they have different numbers and they also have different
21 directions. You basically can have a right twist, which
22 means the bullet is going to turn to the right, or it can
23 go to the left.

24 So, first of all, when you have bullets or questioned
25 bullets you want to make sure that they all have the same

Kenneth H. Whitler
Direct examination by Mr. Williams

1 class characteristics, meaning that if I have one bullet
2 that has -- like in this case, they had five grooves on
3 them with a right-hand twist.

4 The first thing I want to make sure is that all the
5 other bullets have the same direction and twist and the
6 same number of lands or land and grooves. In this case
7 they did. Those are called class characteristics.

8 Like I said, these bullets had five grooves with right
9 twist. That means if I had a pistol or a firearm with a
10 barrel that had six grooves with right twist, they could
11 have been fired by that gun. So you could eliminate a
12 strictland (sic) class characteristics.

13 If you have all the same class characteristics, then
14 what you have to look for are the individual marks which
15 are in the land and groove impressions on the bullets
16 themselves.

17 Now, these are the marks that are created when the
18 firearm is made through the manufacturing processes. Every
19 firearm generally has different marks because they're
20 finished with different tools. They have -- as they're
21 shot or used or cleaned, they pick up different marks. So
22 that's what marks the barrel unique.

23 So that's what we're looking for, is those individual
24 unique marks on a particular bullet. Unfortunately, it's
25 not like you see on television and every bullet is

Kenneth H. Whitler
Direct examination by Mr. Williams

1 identifiable to every other bullet or identifiable to every
2 gun, because some guns mark extremely well and some guns
3 don't mark that well at all.

4 So basically we have three conclusions we can come up
5 with, is that the bullet was fired by a particular gun, it
6 wasn't fired by a particular gun or it could have been
7 fired by it, meaning that the class characteristics are
8 right but there's not enough agreement of the individual
9 marks to allow me to say it was fired by that gun and not
10 something else, with another gun with similar rifling
11 characteristics.

12 So in this case I compared all of the bullets and the
13 jacket to each other and determined that they all had the
14 same class characteristics, same widths, but they didn't
15 have sufficient agreement of the individual marks.

16 So my conclusion at that point is they could have been
17 fired by the same gun or by similar guns with -- by guns
18 with different -- excuse me. They were either fired by the
19 same firearm barrel, or they were fired by a different
20 firearm barrel that had similar rifling, or they could have
21 been fired by different barrels with similar rifling.

22 Q So we're talking right now just comparing the bullets
23 or the projectiles to each other. And that's the three
24 fired rounds, the jacket and then the one core.

25 A Yeah. The core wasn't compared. It was just

Kenneth H. Whitler
Direct examination by Mr. Williams

1 consistent with being a core from a .38 caliber bullet,
2 but, again, it has no marks of value that you can use for
3 identification purposes.

4 Q So they, they could have, could have been fired from
5 the same gun.

6 A Yes, they could have been fired by the same gun or
7 another gun with similar rifling characteristics. Or in
8 this case since we had three bullets and a jacket, we could
9 have had four guns with similar rifling characteristics
10 firing.

11 Q Now, tell the jury if you can about your comparison of
12 the fired bullets and fired cartridges -- I should say the
13 projectiles -- to the guns that you were submitted, or
14 given those three you have there.

15 A They were -- I compared these bullets to test-fired
16 bullets from the two revolvers and the Bersa. And they
17 were not fired by the Bersa because they have -- which is
18 this semiautomatic pistol because of the differences in
19 class characteristics. The rifling is different in this
20 barrel than what is on the barrel, what's on the fired
21 bullet.

22 Q So not fired by the .380?

23 A Not fired by this one.

24 Now, these two revolvers have similar rifling
25 characteristics. They're different brands, but they have

Kenneth H. Whitler
Direct examination by Mr. Williams

1 the same number. They both have barrels with right twists
2 and five lands and grooves. So either one of these guns,
3 or both of them, could have fired the bullets. But there
4 just weren't enough marks left on the bullets that were
5 identifiable to the test bullets that I got from these guns
6 and made my comparison.

7 Q So the one gun, I believe in your left hand, is a .357
8 and the other is a .38 Special.

9 A That's correct.

10 Q Were they different? Can they fire like you had
11 submitted which were .38 caliber cartridges?

12 A .38 Special cartridges can be fired in firearms
13 chambered for .357 magnum caliber cartridges. The
14 difference between a .38 Special cartridge and a .357 is
15 basically the magnum cartridge case is slightly longer.
16 That's to prevent it from being chambered in a firearm
17 chambered for .38 Specials.

18 The working pressure on a magnum is much higher than a
19 .38 Special, so obviously you don't want to be putting a
20 high-powered load in a gun that's not designed for it. So
21 they make the cartridge case longer, and-but you can shoot
22 .38 Specials in .357 Magnum revolvers or firearms. And a
23 lot of people do them because it's for practice. If you
24 try to shoot magnums all the time, it's hard on the gun.
25 And the shooter probably won't like it much better either

Kenneth H. Whitler
Direct examination by Mr. Williams

1 after a while.

2 Q That is not --

3 A They have a lot of recoil to them. And so people --
4 it's not unusual to find people shooting .38 Specials in
5 .357's.

6 Now, on the other hand, you can't put a -- if the gun
7 is designed properly and somebody hasn't done some kitchen
8 gunsmithing on the revolver, you can't chamber a .357
9 Magnum cartridge in a firearm chambered for .38 Specials.

10 Q So either one of those two guns could have fired. I
11 know you couldn't match it to a gun, but could have fired
12 the fired projectiles that we found that you had submitted
13 to you.

14 A That's correct.

15 Q I want to ask you about the .38 Special that was
16 submitted to you. I believe that's the one you have there.
17 It also had some casings with it, or I should say you had
18 six fired shell casings. It's Items 42 through 47
19 submitted to you as well.

20 A That's correct.

21 Q What did you do with those six fired shell casings?

22 A I microscopically compared those to test cartridge
23 cases fired by the revolver, and I was able to determine
24 that those cartridge cases were fired by that gun.

25 Q How do you make that determination?

Kenneth H. Whitler
Direct examination by Mr. Williams

1 A Basically, the same way as you do bullets. When the
2 firearm is being made there are manufacturing marks that
3 are left. You compare those microscopic marks -- excuse
4 me.

5 When the cartridge case or the cartridge is fired,
6 like I said, there's a lot of pressure built up. The
7 cartridge case is basically pushed back against the breech
8 face of the firearm. And whatever marks are in that breech
9 face are impressed into the soft part of the cartridge
10 case. And, again, if we find sufficient agreement of those
11 marks, then we're able to say that cartridge case was fired
12 by that gun.

13 In this case there were sufficient marks. They
14 agreed. I was able to so those cartridge cases were fired
15 by that revolver.

16 Q You talked briefly about how a fired shell casing is
17 ejected from a gun port on a semiautomatic weapon. How is
18 that different from a revolver such as you had in this
19 case?

20 A On a revolver, the revolver is named a revolver
21 basically because it has this part here called the
22 cylinder. This is where you put your ammunition or your
23 cartridges. It acts just like the magazine does in a
24 pistol except the cartridges are in a circle.

25 I can't close it all the way, but what you do is you

Kenneth H. Whitler
Direct examination by Mr. Williams

1 put your cartridges in the cylinder. You close the
2 cylinder when that -- when it's fully shut, the cylinder --
3 you can look through. And when you have a cartridge in it,
4 the cartridge or the cylinder will be in line with the
5 barrel.

6 And as you pull the trigger the cylinder rotates. And
7 as it rotates, it brings the next cartridge in line with
8 the barrel. So when you bring it in line, the hammer comes
9 to the rear. At a certain point it falls forward. It sets
10 off the cartridge. The bullet goes out the barrel. And
11 the cartridge case though stays in the cylinder. You pull
12 the trigger again and it rotates and shoots until you've
13 expended all your ammunition.

14 Now, the way you unload it is you have to open the
15 cylinder, pull the cylinder release, pull the cylinder out
16 like it is here. And then this is called an ejector rod.
17 You just push the ejector rod, and it pushes the fired
18 cartridge cases out of the cylinder. And then you reload,
19 close the cylinder, and you're ready to shoot again.

20 If you don't open it up and remove the cartridge
21 cases, then you can keep pulling the trigger, but you'll
22 get clicks instead of bangs because you'll be shooing --
23 you'll be putting a fired cartridge case in line with the
24 barrel instead of an unfired cartridge.

25 Q And those casings would basically remain inside?

Kenneth H. Whitler
Cross-examination by Mr. Davis

1 A Until you open it up and take them out.

2 Q So they'd be manually removed.

3 A Uh-huh.

4 Q No further questions. Thank you.

5 MR. BROWN: No questions.

6 CROSS-EXAMINATION

7 BY MR. DAVIS

8 Q Agent, you never received a Glock 9mm pistol for any
9 type of comparison in this case, did you?

10 A No, sir, I didn't.

11 Q But in the 9mm clip that you got, it's your expert
12 opinion that that is a, for a, Glock 9mm pistol?

13 A Yes. It's marked on it Glock.

14 Q Okay. And the bullets that were in there, I think
15 there were nine rounds in that clip, is that right?

16 A Yes, that's correct.

17 Q And those were Winchester bullets?

18 A Yes.

19 Q And that's a brand name.

20 A That's a brand name, yes.

21 Q All right. Let's talk about the revolvers for just a
22 second. One is a .357, one is a .38, correct?

23 A That's correct.

24 Q Both of them are chrome revolvers with brown wooden
25 handles, correct?

Kenneth H. Whitler
Cross-examination by Mr. Davis

- 1 A Well, they're stainless steel but --
- 2 Q Okay. If someone looked at them, they might describe
- 3 them as chrome.
- 4 A They could be mistaken for crome, yes.
- 5 Q Okay. And I think you've already said that you cannot
- 6 say if either one of those revolvers fired the jacket or
- 7 three bullets that you were sent.
- 8 A That's correct. They had similar -- they could have
- 9 been fired by it or another gun with similar rifling
- 10 characteristics.
- 11 Q And that's when you're talking about the five grooves .
- 12 with the right-hand twist.
- 13 A That's correct.
- 14 Q Both of those weapons have the five grooves with
- 15 right-hand twist.
- 16 A That's correct.
- 17 Q And you also indicated that while we're talking about
- 18 two different numbers, being a .38 or a .357, a .38 -- let
- 19 me get this correct. You can put .38 shells into a .357.
- 20 A That's correct.
- 21 Q Not the other way around.
- 22 A Not unless somebody has done something.
- 23 Q Not unless it has been modified in some way.
- 24 A Yes.
- 25 Q Okay.

Kenneth H. Whitler
Cross-examination by Mr. Lofton

1 MR. DAVIS: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 Q All right. You received. And this is State's 77,
4 which is the Taurus revolver.

5 A Yes.

6 Q When you first received that it was slightly damaged
7 in the sense you had to lubricate it to get it to fire,
8 correct?

9 A That's correct.

10 Q Agent, thank you. No other questions.

11 MR. LOFTON: May we have just one minute, Your Honor?

12 (Pause.)

13 MR. LOFTON: If the Court please.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. LOFTON

17 Q Agent Whitler, with reference to Item 39, I'm sorry,
18 35, the fired 9mm Luger caliber cartridge case --

19 A That's correct.

20 Q -- and that's State's Exhibit No. 81-B, in your report
21 you indicated that that particular cartridge was entered
22 into the SLED -- is it IBIS?

23 A That is correct.

24 Q IBIS database.

25 A Yes.

Kenneth H. Whitler
Cross-examination by Mr. Lofton

1 Q And if you would, tell the ladies and gentlemen of the
2 jury what the IBIS database is.

3 A The IBIS database is basically a computer system that
4 is designed to compare or to allow you to enter fired
5 bullets and cartridge cases where it will be compared
6 against other cartridge cases and bullets that are
7 submitted and entered into the system.

8 Q And -- I'm sorry. Go ahead.

9 A And basically it scans against the database to see if
10 it can come up with a list of possibilities of was this
11 cartridge case fired by the same gun that fired these other
12 cartridge cases.

13 You can also submit test fired bullets and cartridge
14 cases. So in some instances you'll have what they call a
15 hit where it says this looks like this bullet may have been
16 fired by this particular firearm.

17 And what happens if that occurs, then you have to get
18 an examiner to get the evidence together. It's not made
19 from the IBIS database itself. You actually have to get
20 the evidence back and do a microscopic comparison before
21 you're able to say it either was or wasn't fired by that
22 particular item.

23 Q Okay. And in this particular case with reference to
24 that particular cartridge case, the reason that you said
25 that you're going to enter it was because no weapon had

Kenneth H. Whitler
Cross-examination by Mr. Lofton

1 been recovered that you could identify as having fired that
2 particular round, correct?

3 A It's our policy that all cartridge cases and -- well,
4 certain calibers. There are certain calibers that are not
5 entered. But if they're of the right caliber, the bullets
6 and cartridge cases are entered if there is no gun
7 submitted. That part is correct.

8 We also, if we have a gun submitted but it's not
9 identified to that particular cartridge case or bullet,
10 then we also have to submit the bullet or cartridge case if
11 it's in good enough condition. Sometimes the bullets are
12 too damaged and they're not submitted. But if they are in
13 good condition we do -- we normally put them in. It's our
14 standard procedure.

15 Q But in this case there was no gun submitted that you
16 had compared with that particular cartridge case.

17 A No, sir. If a gun had been submitted and I was able
18 to identify the cartridge case to that gun, then we
19 wouldn't have submitted the cartridge case. We would have
20 submitted test-fired cartridge cases from the actual
21 firearm.

22 Q And when you submit an item like State's Exhibit 81,
23 you send it back to the agency that sent it to you, for
24 example --

25 A That's correct.

Kenneth H. Whitler
Cross-examination by Mr. Lofton

1 Q -- the sheriff's department in this case. You ask
2 them to maintain it for a period of time, do you not?

3 A That's correct.

4 Q And what is your reason for your request that they
5 maintain the case for a period of time?

6 A The reason is, like I said before, if you do get a
7 hit, you have to have that cartridge case returned so that
8 you can microscopically compare it against whatever it hit
9 against.

10 We don't -- the comparison is not made on the
11 computer. I think people sometimes watch television and
12 they get the impression that the computer will say there's
13 a hit, and so therefore that bullet or cartridge case was
14 fired by that particular gun.

15 That just -- what it does is give you a list of
16 possibilities. You screen them. If it looks on the screen
17 that it looks close, then you have the evidence resubmitted
18 and you microscopically compare them.

19 And the reason we ask people to hold onto the evidence
20 is that it wouldn't do much good to have a hit and then
21 they've destroyed the evidence or the evidence has been --
22 is not available, because then we don't have anything to
23 verify it against.

24 Q And with reference to your Item 35, State's
25 Exhibit 81-B, SLED subsequently requested that that item be

Kenneth H. Whitler
Cross-examination by Mr. Lofton

1 returned from the sheriff's department here in Charleston
2 County for further examination, did it not?

3 A I think there was a subsequent -- I'm not sure why it
4 was sent back. But there was a supplemental examination on
5 that cartridge case.

6 Q And you're aware that there was an identification made
7 that that cartridge matched another cartridge that had been
8 fired subsequent to this alleged crime.

9 A That's correct.

10 MR. LOFTON: May I have just one minute?

11 (Pause.)

12 Q Thank you.

13 MR. LOFTON: That's all I have, Your Honor.

14 MR. WILLIAMS: No redirect, Your Honor.

15 THE COURT: You may step down. Thank you.

16 MR. WILLIAMS: Your Honor, may we approach?

17 THE COURT: Yes.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Ladies and gentlemen, we're going to take
21 a short break. So I'll ask you to please go to your jury
22 room.

23 Don't talk about the case. We'll bring you back in
24 just a few minutes.

25 (The following takes place outside the presence of the

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 jury.)

2 THE COURT: Court's in recess for 15 minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Bring the jury in, please,
5 sir.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: All right. Mr. Williams.

9 MR. WILLIAMS: Thank you, Your Honor.

10 The state calls Dr. Erin Presnell.

11 DR. SUSAN ERIN PRESNELL,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WILLIAMS

14 THE CLERK: Please state your full name, and spell
15 your last name.

16 THE WITNESS: My name is Susan Erin Presnell. It's
17 P-R-E-S-N-E-L-L.

18 MR. WILLIAMS: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 Q Ma'am, where do you work?

21 A I work for the Medical University of South Carolina.

22 Q You're actually working today?

23 A Yes. Excuse my attire.

24 Q What you wear for you job to come down here.

25 A Yes, sir.

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 Q What do you do at the medical University?

2 A I'm a forensic pathologist. I do forensic autopsies.

3 Q And what is a forensic autopsy?

4 A Well, forensic autopsies are part of forensic
5 pathology. And everyone is kinda getting familiar with
6 forensic pathology these days with T. V. shows and all.

7 But, but forensic pathology is actually a subspecialty
8 of the broader field of pathology. Pathology is the study
9 of disease. So like if you go to the doctor and you get,
10 say, a skin biopsy or, or, or with a women a pap smear,
11 that tissue or anything that's taken from a doctor or a
12 pathologist, they normally get it and diagnose, you know,
13 what's wrong, a disease or an infection or something like
14 that.

15 Forensic pathology is a subspecialty of that field
16 where not only are we looking for anything, any disease
17 processes, but we're also looking at any trauma. And we do
18 that through a procedure called the autopsy, which is the
19 postmortem exam. And ultimately we're trying to determine
20 a cause of death and also to interpret what the different
21 injuries or diseases mean.

22 Q You've testified as an expert before.

23 A Yes.

24 Q That's in the field of forensic pathology?

25 A Yes, sir.

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 Q In the courtrooms in this county and this circuit?

2 A Yes.

3 MR. WILLIAMS: Your Honor, I move to admit
4 Dr. Presnell as an expert in forensic pathology.

5 MR. BROWN: No objection.

6 MR. DAVIS: No objection, Your Honor.

7 MR. LOFTON: No objection, Your Honor.

8 THE COURT: She is so qualified.

9 MR. WILLIAMS: Thank you, Your Honor.

10 Q Doctor, when you say you perform autopsies, how do you
11 go about performing an autopsy in general?

12 A In general, in South Carolina we're a coroner state.

13 So what'll happen is when there's a death a coroner will
14 respond to the death, and they'll decide if that person
15 needs an autopsy or not. And if so, then they decide
16 whether they would like to send that person to the autopsy.

17 In Charleston County they send the cases to us at M.
18 U. S. C. And when they arrive, we usually start in the
19 mornings, and you do the autopsy.

20 Basically, the autopsy consists of documenting all the
21 external findings, you know, diagrams through photographs.
22 And then we examine all the internal organs. This includes
23 the brain as well. And all of our autopsies are complete
24 autopsies. So we look at everything. We don't just stop
25 when we get to a certain, a certain finding.

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 We also collect samples for toxicology testing. We
2 would look for drugs and alcohol, which we'll send off to a
3 laboratory to get, to get tested for.

4 Anyhow, all of this, all of these things that we do
5 are culminated into the autopsy report and ultimately
6 declare a cause and manner of death.

7 Q Now, you report today, you testify to an autopsy you
8 performed.

9 A Yes.

10 Q Who was the subject you performed the autopsy on?

11 A Mr. Sterling Spann.

12 Q What day was that autopsy performed?

13 A September the 1st of 2006.

14 Q You would have done all of those things we talked
15 about, evaluated and made those determinations?

16 A Yes, sir.

17 Q How did you begin the process of the autopsy in this
18 case? Is there an external examination?

19 A Right. This autopsy, with the way we perform all of
20 our cases where we do an external exam, followed by an
21 internal exam, and additional studies including the
22 toxicology. I'm also when a gunshot wound, such as in this
23 case, we do x-rays to help us locate and retrieve the
24 bullets. And that's what we did on him.

25 Q Did you take a height-and-weight measurement?

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 A Yes, yes, we did. Mr. Spann weighed approximately
2 240 pounds and was 72.5 inches in length, which is six
3 feet, six and a half, no not six and a half. Six feet and
4 a half inch.

5 Q And you also would -- you said you made a diagram to
6 show the injuries in the case.

7 A Right. We do diagram partially to assist us in
8 dictating this later and partially to illustrate in cases
9 like this to locations of injuries and all.

10 MR. WILLIAMS: I'd like to have this marked.

11 (Diagram marked State's Exhibit No. 120 for
12 Identification.)

13 Q Doctor, let me show you what's been marked State's
14 Proposed Exhibit 120. Do you recognize that item?

15 A This is a copy of the diagram that I did at the time
16 of autopsy.

17 Q And that shows the notes you would have taken then?

18 A Yes.

19 MR. WILLIAMS: I believe defense counsel has seen
20 this, Your Honor. I move to admit State's Proposed 120.

21 MR. BROWN: No objection.

22 MR. DAVIS: No objection, Your Honor.

23 MR. LOFTON: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (Diagram marked State's Exhibit No. 120.)

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 Q Doctor, I believe you testified that you primarily
2 look for evidence of injury when you do the autopsy.

3 A Right. Well, we're, we're looking for everything, any
4 medical intervention, any injuries, any disease processes.

5 Q In examining Mr. Spann for evidence of injuries, what
6 did you find?

7 A Mr. Spann had three gunshot wounds and, and he also
8 had a laceration, slash, abrasion. And what I can do is
9 basically just go through each of the injuries. And that
10 might make it kind of a little more familiar.

11 All right. The diagram up on the board up there is
12 kind of difficult to read because of the smallness of the,
13 the writing. But I will try to point this out for you.

14 Q Can you go to the top half of the diagram?

15 A Yeah. That will be good, and enlarge it. There's a
16 lot of markings on there because, again, I'm making
17 notations of everything.

18 But the gunshot wounds we labeled. And we labeled
19 them A, B, C. The first and the -- not the first gunshot
20 wound, but A, which this isn't in the order that -- this is
21 not in order that they actually, you know, came into the
22 body. It's just arbitrary which wound. How come I
23 can't --

24 Q Are you pressing up on it?

25 A Yeah. There we go.

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 Okay. This circle right here is gunshot wound A.
2 There's also going to be one on the side of his hip which
3 is on the other diagram I'll show you. So that's one on
4 the side of the hip. That's two. And then there's one
5 that goes -- this is labeled D. It goes in the back of the
6 arm and comes out the front inside of the arm. And that's
7 a third gunshot wound.

8 The gunshot wound that is through the arm actually
9 goes through the bone and fractures the bone that's on the
10 pinkie side of your, the inside of your arm, and, and
11 access, like I said, on the inside front of the arm.

12 Q Let's start with the one that I believe you have
13 labeled A that was in the side. Where did that enter?

14 A Okay. So A, right there on the side, the left side,
15 of the chest.

16 It actually went in through or in between the ribs.
17 And it's heading in an upward direction. It goes through
18 the stomach, through the liver, up into the chest cavity
19 through the right side of the heart up to the top of the,
20 the right lung and out into the chest cavity where we got
21 the first bullet. That's the first bullet that we
22 recovered.

23 Q That projectile would have been recovered from the
24 body?

25 A Right. That projectile was recovered from the right

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 chest cavity. That injury in particular caused bleeding
2 into the chest. There was about one and a half liters of
3 blood in the right-chest cavity. This would be from the
4 bullet going through the heart and the lungs, etc. There's
5 also some blood in the abdomen too, but not nearly as much
6 there.

7 Q Go to the second page. You said there was an injury
8 to the flank as well.

9 A Yes. Well, kind of the hip, slash, buttocks. You can
10 see that circled right there. Labeled. That's labeled B.
11 That's also headed in the upward direction. It goes into
12 the -- it did skim through the skeletal muscle and in --
13 but it doesn't actually enter into the body cavities. It's
14 actually the, to the, soft tissues of the back. And we
15 also got that bullet out from the back tissue.

16 Q And the gunshot wound injury to the forearm, could you
17 tell the jury where that would have entered and where that
18 would have exited?

19 A Like I was pointing out before, the gunshot wound to
20 the forearm enters the back of the left forearm and exits
21 the -- on the front side, inside of the left arm.

22 Q Now, when you take a look and when you study the entry
23 wounds that you saw here in any case, you sometimes -- are
24 you able to determine whether a wound's a reentry wound?

25 A Well, sometimes -- well, what we're pointing out here

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 is that potentially instead of having three separate
2 gunshot wounds, he actually, in fact, had two with just two
3 gunshots wounds with one going into the left forearm and
4 exiting and then reentering the body.

5 Sometimes a gunshot wound will line up really well
6 and, and be consistent with a reentry gunshot wound,
7 especially like, say, if a gunshot wound is in the armpit
8 area and they're really hard for somebody to get shot like
9 that unless their arm is straight up.

10 So the question is is this a reentry gunshot wound or
11 it's one of those gunshot wounds, one to the chest or the
12 one of the buttock area, reentry. They could have been. I
13 can't tell for sure. So it could have been two gunshot
14 wounds. It may have been three.

15 Q The injury to -- were there any injuries that you
16 noted to the head or the scalp?

17 A Yes. Mr. Spann also had an injury to the top of his
18 head. It was kind of a -- we labeled that C at this point
19 because we weren't sure if it was a grazed gunshot wound or
20 not.

21 But just for definition, a laceration is what happens
22 when skin splits when it's hit with some type of blunt
23 object, so if something with force hits it and causes it to
24 split.

25 In a grazed wound you have a bullet that's basically

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 causing the skin to split as well. Mr. Spann had just
2 kinda took a bullet to the left at the hairline. This
3 laceration, slash, graze that was about an inch long. That
4 could -- I can doublecheck on there with fragments in the
5 gunshot wound there. So I can't differentiate that
6 definitely, but this is a graze wound with another gunshot
7 wound or another gunshot. Or if that's actually some type
8 of blunt trauma caused by a blunt object.

9 Q That could be a grazed wound and it could be from
10 being hit with something.

11 A Exactly.

12 Q Do you try to make a determination based on what you
13 find of a range when you have gunshots involved?

14 A The forensic pathologist can try to do a general
15 range. What we do is either called a gunshot wound, a
16 contact, a close range, or a distant gunshot wound.

17 A contact gunshot wound is obviously when the muscles
18 are up against the skin. And in those cases what we would
19 see is a regular soot, maybe even a muzzle imprint.

20 Close range occurs when, as the muscle starts to move
21 away from the skin, not only does soot come out and not
22 only does the bullet come out at the end of the barrel, but
23 also little gunpowder particles from, from, from the actual
24 cartridge involved. And those little particles will
25 actually strike the skin and cause tiny scratches all the

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 way around a gunshot wound. It's called stippling. That
2 is the definition that defines a close-range gunshot wound
3 where the gun's close enough that gunpowder particles
4 actually occurs that's stippling effect around a gunshot
5 wound on entry.

6 Then as the gun gets further away neither that soot
7 nor the gunpowder particles reach the skin, and all you
8 have got is the hole. You don't have any soot deposition;
9 you don't have a range that it travels, anything else
10 associated with that. And that's a distant gunshot wound.

11 The, the distances, you know, to be more definitive,
12 you would want to try to test fire the weapon to see, you
13 know, how far away it would be before that, the gunpowder
14 particles, did reach the skin to try to narrow down how far
15 is close range for a certain gun. You have to test fire
16 that weapon.

17 But in general for most handguns by the time you're a
18 yard to a yard and a half away that stippling and/or those
19 gunpowder particles and that soot will not reach your skin.
20 And anything beyond that is considered a distant gunshot
21 wound.

22 Q Is that beyond 3 feet?

23 A Three, three or three and a half, yes.

24 Q How would the colored clothing affect that?

25 A Well, you know, the appearance on the skin is because

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 of what's reaching the skin from the gun.

2 If you put some kind of intermediate target like, say,
3 a car window or a door or maybe even clothing in between
4 the gun and the skin, then you may not actually have those,
5 those particles or the soot that might have been there
6 reaching the skin.

7 In this case his gunshot wounds had no soot around
8 them, had no stippling or gunpowder around them. So they
9 would originally, or not originally, but we would classify
10 them as a distant gunshot wound, something beyond 3 or 3
11 and a half feet.

12 However we didn't have the opportunity to see his
13 clothing. So that not being able to see his clothing and
14 look at that to see if there was any particles of gunpowder
15 on them or soot on them made us go ahead and call it, you
16 know, indeterminate or we couldn't tell what the range of
17 fire was in this case.

18 Q You had explained to the jury in words what the
19 trajectory of the bullet was where the two that entered
20 went.

21 Are you able to do that for a demonstration? Can you
22 demonstrate to the jury what that bullet trajectory was in
23 this case?

24 A Yes.

25 Q Do you want to come down here?

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 A Can I leave?

2 Q Yeah. I will volunteer.

3 A Okay.

4 (Whereupon, the witness left the stand.)

5 Q There was one shot to the left chest.

6 A Yes. There's a shot to the left chest. Like I said,
7 it was headed upwards. It's headed about 40 degrees upward
8 and about 20 degrees backwards. So it's about -- it
9 ultimately is going in this direction.

10 Q And you don't form opinions as to where a person is
11 at. You just assume they're standing straight up.

12 A Yes. When we, when we estimate trajectory of a
13 gunshot through the body, we do it with a person standing
14 in and in antiposition, palms forward like that, so we
15 don't, we don't know how they were actually standing at the
16 scene. Most people don't stand like that. So when they
17 say trajectory, it's really showing you the direction of
18 the bullet through the body. And as long as you keep that
19 direction you can position the person however you want to
20 and it'll tell you from where the bullet is coming from.

21 Q So if a person were shot in this direction and they
22 were laying down, it would be more up.

23 A Right. If the, if the person, if Mr. Spann had been
24 laying on the floor, then the direction would have been
25 coming from up above.

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 Q And the second shot was in the hip?

2 A In the, in the buttocks-hip area. We have it going 30
3 degrees up and about ten degrees back. So not quite as
4 angulated but still in the same direction, up and back.

5 Q And how was the shot through the arm?

6 A The shot through the arm in the antiposition. So most
7 people don't stand with their all palms forward. But it's
8 going slightly up and medial. But let me just double
9 check. Going slightly up and from back to the front and a
10 little bit towards the inside.

11 Remember, it was going on the -- I'm sorry. Going on
12 the back of the middle kind of between the middle to the
13 back of the arm and coming out the inside of the front
14 inside arm.

15 Q And that would obviously move with the person as well?

16 A Exactly.

17 Q You can go back up. Thank you.

18 (Whereupon, the witness returned to the stand.)

19 Q When you perform an autopsy you come up with a manner
20 and cause of death, or a manner and means.

21 A Yes.

22 Q What did you determine in this case?

23 A We -- like I said, cause of death was a gunshot wound
24 to the chest, that contributing to his death were the two
25 other gunshot wounds, one to the arm and to the hip. And

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 that his manner of death, it was a homicide.

2 Q When you say a homicide, do y'all have certain terms
3 that you use, or categories?

4 A Yes. Homicide means that he was killed my somebody
5 else.

6 Q And when you say that the gunshot wound caused his
7 death, the one shot, how would that injury result in death?

8 A Remember when we were talking about where the bullet
9 went through, it goes through the heart. It went through
10 the heart, which is probably the most significant thing.
11 Also, into the lungs, liver and stomach, but the heart
12 being the organ that's going to pump the blood around to
13 your body and keep yourself alive, that kind of hole in it,
14 the blood comes out of the heart and basically you
15 exsanguinate or you bleed to death.

16 Q How soon after that injury would you have expected
17 death or the onset of death?

18 A Well, we do know that if you completely occlude the
19 carotid arteries, which are the arteries taking blood to
20 your brain, if you complete occlude both of those that you
21 would be expected to lose consciousness in ten to 15
22 seconds.

23 Again, you know, if your heart's or if you're not
24 getting blood to your brain or oxygen to your brain, you
25 know, with C. P. R. they recommend that, you know, it

Dr. Susan Erin Presnell
Direct examination by Mr. Williams

1 happen within four minutes before brain death.

2 He could have lived for a while. It probably was not
3 longer than a couple of minutes because he has, again, has
4 a hole in his heart.

5 Q And you also have testified there was a toxicology
6 screen that would have been performed.

7 A Yes. We did a screening on the urine and testing on
8 the blood, and they were negative for drugs and alcohol.

9 Q So he didn't have any drugs or any alcohol in his
10 system.

11 A No, sir.

12 MR. WILLIAMS: No further questions, Your Honor.

13 MR. BROWN: No questions.

14 MR. DAVIS: No questions, Your Honor.

15 MR. LOFTON: No questions, Your Honor.

16 THE COURT: Thank you. You may step down.

17 MR. WILLIAMS: May she be excused, Your Honor?

18 THE COURT: She may be.

19 (Whereupon, the witness was excused.)

20 MR. WILLIAMS: Your Honor, I do want -- I don't have
21 any further witnesses. But before the state rests I do
22 want to move into evidence all other items that have been
23 marked and testified to.

24 I don't think -- the state has 115 or 116, I believe,
25 the patient, and I believe No. 30 is not going to be

1 admitted. But I believe all other items I would move to
2 admit apart from 115 and 116 and 30.

3 THE COURT: All right. I've got some legal matters
4 I'll need to address with the lawyers. It should take just
5 a few minutes.

6 So I'll ask you to please go back to your jury room,
7 and I'll bring you back shortly.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Mr. Williams, what was 115?

11 MR. WILLIAMS: 115 was defendant Gadsden's clothing.
12 I don't believe we laid a foundation for that.

13 THE COURT: That was Mr. Gadsden's?

14 MR. WILLIAMS: Clothing.

15 THE COURT: Clothing.

16 MR. WILLIAMS: I believe the parts that were testified
17 to as far as Mr. Davis -- as far as the D. N. A. results,
18 and we have pictures of it, but we don't know who seized
19 it. And I don't think we laid a foundation for it.

20 THE COURT: 115 is not in. 116 I've got as having
21 been admitted.

22 MR. DAVIS: We have it as already admitted.

23 THE COURT: What?

24 MR. DAVIS: We have it as already admitted.

25 MR. WILLIAMS: I thought that was just for

1 identification.

2 THE COURT: Well, you offered it because Mr. Lofton
3 said he wasn't going to waive any objection to his client's
4 pants coming in based on the admission of that exhibit. So
5 I admitted it --

6 MR. WILLIAMS: Oh, I'm sorry.

7 THE COURT: -- without waiving his objection.

8 And No. 30 was what?

9 MR. WILLIAMS: No. 30 is the photograph. I don't
10 think we ever got the foundation on it. So 116 is a -- I
11 don't have that as a chain. I have that as the --
12 Mr. Lofton had marked the same item. Mr. Lofton had used
13 this initially as a defense exhibit, and then I followed up
14 with this.

15 THE COURT: Well, 116 is the SLED --

16 MR. WILLIAMS: I think we've got two 116's.

17 THE COURT: Oh, well. The one that was admitted is
18 the SLED.

19 MR. WILLIAMS: This is the one that we don't have.
20 That's why I was confused, Your Honor.

21 This I had said on the record was marked only for
22 identification, follow up to what he had done. Mr. Lofton
23 had talked about the first page and had the detective read
24 it, and he said he had never seen it before. I didn't show
25 that to the court.

1 THE COURT: That was the jail records.

2 MR. WILLIAMS: Right.

3 THE COURT: Yeah. That was not in.

4 MR. DAVIS: Can we just change that number so there's
5 no confusion?

6 THE COURT: There's nothing to change. That's not in.

7 MR. DAVIS: Okay.

8 THE COURT: Make it a court's exhibit without any
9 objection.

10 Okay. All right. Are we clear now on -- do y'all
11 need to look through the exhibits to be certain? But I
12 have 120 were marked and --

13 MR. WILLIAMS: I guess I'm wondering, Your Honor, if
14 there's any objection to any of this stuff. I know Mr.
15 Gadsden's pants --

16 MR. DAVIS: Judge, if I may, I'm trying to keep track.
17 Thirty I understand -- 30 is the first one in sequence
18 that the state does not seek to introduce.

19 THE COURT: That's the photograph. I don't have that,
20 so I don't know about that.

21 MR. DAVIS: The next number in sequence that I don't
22 have anything for is No. 38. I'm not sure the state is
23 seeking to introduce it. I don't know what it is.

24 THE COURT: I've got 37 and 39. I don't see 38. It
25 may have been marked but it was never offered.

1 MR. WILLIAMS: That's why I was trying to move them
2 all in.

3 THE COURT: I don't have it.

4 MR. WILLIAMS: Your Honor, it's a duplicative photo.
5 I will keep 38 out. It doesn't matter.

6 THE COURT: Okay. Give that to the court reporter.

7 MR. DAVIS: Judge, the next in sequence I would have
8 missing is 73 and 74. I'm not sure what it is and if the
9 state seeks to introduce it.

10 MR. WILLIAMS: Those are the diagrams. I think those
11 are probably duplicative as well. I won't offer those. I
12 think 75 is already in.

13 THE COURT: Seventy-five is in; 73 and 74 are out.

14 MR. DAVIS: Judge, the next I would have would be 76.

15 MR. WILLIAMS: That's the duplicative diagram too,
16 Judge.

17 THE COURT: Give that to the court reporter.

18 MR. DAVIS: Next one, Judge, I have missing is, or we
19 don't have accounted for, is 89.

20 THE COURT: I've got 88 and 90 in. I don't have 89.

21 MR. WILLIAMS: Eighty-nine is the round, I believe, to
22 the -- rounds from the Bersa magazine from the chamber.

23 I think those were covered, Your Honor, by Deputy
24 Owen, as well as the officer that seized that gun, Roy.
25 But they were taken and processed but just -- I never

1 offered them at that point.

2 THE COURT: So are you offering them?

3 MR. WILLIAMS: Yes, Your Honor.

4 THE COURT: You do wish to offer them?

5 MR. WILLIAMS: Yes, Your Honor.

6 THE COURT: Any objection?

7 MR. DAVIS: Not from Mr. Gadsden, Your Honor.

8 MR. BROWN: No, Your Honor.

9 MR. LOFTON: No, Your Honor.

10 THE COURT: All right. Eighty-nine is admitted.

11 (Bullets marked State's Exhibit No. 89.)

12 MR. DAVIS: Judge, then I would have 91 which I show
13 is .357 bullets.

14 MR. WILLIAMS: Your Honor, I believe that same
15 foundation was made by -- I think Mr. Greer said part of
16 that.

17 THE COURT: I have 91 as in. Those are rounds from
18 the .357.

19 MR. WILLIAMS: Yes, six rounds.

20 MR. DAVIS: All right. I apologize. Yes. And then
21 92 would be Mr. Gadsden's G. S. R.

22 MR. WILLIAMS: I believe that was testified to by
23 Detective Kraus. I would move for that to be admitted as
24 well. I think I just failed to move when he was there.
25 The results came in through the SLED agent.

1 THE COURT: What number is that?
2 MR. DAVIS: Ninety-two.
3 THE COURT: Well, is there any objection to it coming
4 in?
5 MR. DAVIS: Not from Mr. Gadsden, Your Honor.
6 MR. BROWN: No, Your Honor.
7 MR. LOFTON: No, Your Honor.
8 THE COURT: Okay. Ninety-two. And whose G. S. R. kit
9 was that?
10 MR. DAVIS: Mr. Gadsden.
11 (G. S. R. kit of Leo Gadsden marked State's Exhibit
12 No. 92.)
13 MR. DAVIS: And then, Judge, I have No. 103 which
14 would be, was marked as Wilder's G. S. R. And I may be
15 wrong on that. I was showing it not admitted.
16 MR. WILLIAMS: If it hasn't been admitted, Your Honor,
17 I'd move for its admission.
18 THE COURT: Well, now, I've got it in.
19 MR. DAVIS: Okay. I apologize, Judge.
20 THE COURT: Any objection to it?
21 MR. LOFTON: No, Your Honor.
22 THE COURT: No objection.
23 (Exhibit previously admitted.)
24 MR. WILLIAMS: I think that covers everything, Judge.
25 115 was, as we already said, wouldn't be admitted.

1 THE COURT: You say 115 is not admitted?

2 MR. WILLIAMS: Yes, sir. I don't think we admitted
3 it.

4 THE COURT: Okay. Not admitted.

5 Okay. With that having been accomplished, is the
6 state going to rest?

7 MR. WILLIAMS: I do intend to rest, Your Honor.

8 THE COURT: All right. Let me ask the defense
9 counsel.

10 Have each of you discussed with your clients their
11 right to testify and not testify and call other witnesses
12 and not call other witnesses?

13 MR. BROWN: I have, Your Honor.

14 MR. DAVIS: Yes, Your Honor.

15 MR. LOFTON: Yes, Your Honor.

16 THE COURT: And, Mr. Brown, what does Mr. Smith wish
17 to do?

18 MR. BROWN: We're not going to put up any witnesses,
19 Your Honor, including himself.

20 THE COURT: All right. Mr. Davis, what is Mr. Gadsden
21 going to do?

22 MR. DAVIS: He does not wish to testify and we would
23 have no other witnesses.

24 THE COURT: Mr. Lofton, what is Mr. Wilder going to
25 do?

1 MR. LOFTON: Same, Your Honor. He does not intend to
2 testify and we do not intend to call any witnesses.

3 THE COURT: Okay. Let me address with each of you
4 then those rights.

5 Mr. Smith and Mr. Gadsden and Mr. Wilder, I'm going to
6 address these questions to each one of you. You'll have to
7 respond individually.

8 But have -- and I'll begin with Mr. Smith, and I'll go
9 to Mr. Gadsden, and then Mr. Wilder.

10 Have each of you discussed with your lawyers your
11 absolute right to remain silent during the course of this
12 trial, as well as your right to testify if you wish to?

13 Mr. Smith.

14 DEFENDANT SMITH: Yes, sir.

15 THE COURT: Mr. Gadsden.

16 DEFENDANT GADSDEN: Yes, sir.

17 THE COURT: Mr. Wilder.

18 DEFENDANT WILDER: Yes, sir.

19 THE COURT: Do each of you understand that you have an
20 absolute right to remain silent, that nobody can make you
21 take the witness stand and testify during the trial of this
22 case?

23 Nobody can require that you make any statement, nor
24 can they require that you answer any questions as they
25 relate to these charges. You have an absolute right to

1 remain silent.

2 At the same time, if you wish to testify, if you wish
3 to provide this jury with any other testimony or evidence
4 in the case, now is the only opportunity that you will have
5 to do that.

6 In other words, you can't wait until after the jury
7 has reached a verdict in the case and if it doesn't go to
8 suit you, you can't change your mind and say, well, I need
9 to tell the jury something about the case or something
10 about my involvement or lack of involvement or
11 circumstances relating to it. You have to make a decision
12 about whether or not you'll testify. You have to make that
13 decision now.

14 Do each of you understand that you have an absolute
15 right to remain silent, as well as you have a right to
16 testify and that only you can make that decision?

17 Mr. Smith.

18 DEFENDANT SMITH: Yes, sir.

19 THE COURT: Mr. Gadsden.

20 DEFENDANT GADSDEN: Yes, sir.

21 THE COURT: Mr. Wilder.

22 DEFENDANT WILDER: Yes, sir.

23 THE COURT: And have each of you made a decision about
24 whether or not you'll testify?

25 Mr. Smith.

1 DEFENDANT SMITH: Yes, sir.

2 THE COURT: Mr. Gadsden.

3 DEFENDANT GADSDEN: Yes, sir.

4 THE COURT: Mr. Wilder.

5 DEFENDANT WILDER: Yes, sir.

6 THE COURT: Do you understand that if you choose not
7 to testify I'm going to tell the jury they can't hold that
8 against you? They can't consider it in any way. They
9 can't permit it to enter into their deliberations or in
10 their determination as to whether or not your guilt has
11 been proven beyond a reasonable doubt.

12 And, at the same time, if you elect to testify you'll
13 have to answer not only the questions that are asked of you
14 by your own lawyer, but you'll have to answer questions
15 that are asked of you by the prosecutor to the extent that
16 they are relevant, even if the responses might tend to
17 prove you guilty of some crime the state claims you
18 committed.

19 Do you understand those additional considerations,
20 Mr. Smith?

21 DEFENDANT SMITH: Yes, sir.

22 THE COURT: Mr. Gadsden.

23 DEFENDANT GADSDEN: Yes, sir.

24 THE COURT: Mr. Wilder.

25 DEFENDANT WILDER: Yes, sir.

1 THE COURT: Do any of you need to discuss further with
2 your lawyers your right to testify or not?

3 DEFENDANT SMITH: No, sir.

4 DEFENDANT GADSDEN: No, sir.

5 DEFENDANT WILDER: No, sir.

6 THE COURT: Mr. Smith, what is your decision?

7 DEFENDANT SMITH: Choose not to testify.

8 THE COURT: Do you understand that it's your decision
9 to make? Nobody can make it for you. You have to live
10 with the decision that you make.

11 DEFENDANT SMITH: Yes, sir.

12 THE COURT: Has anybody forced you into that decision?

13 DEFENDANT SMITH: No, sir.

14 THE COURT: Anybody pressured you into it?

15 DEFENDANT SMITH: No, sir.

16 THE COURT: Is that a decision that you made of your
17 own free will and accord?

18 DEFENDANT SMITH: Yes, sir.

19 THE COURT: Nobody has suggested that's what you ought
20 to do?

21 DEFENDANT SMITH: No, sir.

22 THE COURT: You made it on your own.

23 DEFENDANT SMITH: Yes, sir.

24 THE COURT: You're satisfied with it?

25 DEFENDANT SMITH: Yes, sir.

1 THE COURT: Mr. Gadsden, have you made a decision?
2 DEFENDANT GADSDEN: Yes, sir.
3 THE COURT: What's yours?
4 DEFENDANT GADSDEN: I ain't testifying.
5 THE COURT: You what?
6 DEFENDANT GADSDEN: I ain't testifying.
7 THE COURT: You ain't testifying?
8 DEFENDANT GADSDEN: Yes, sir.
9 THE COURT: Is that a decision that you made of your
10 own free will and accord?
11 DEFENDANT GADSDEN: Yes, sir.
12 THE COURT: Did anybody force you into it?
13 DEFENDANT GADSDEN: No, sir.
14 THE COURT: Anybody pressure you into it?
15 DEFENDANT GADSDEN: No, sir.
16 THE COURT: Have you had time to reflect upon it?
17 DEFENDANT GADSDEN: Yes, sir.
18 THE COURT: And that's your decision?
19 DEFENDANT GADSDEN: Yes, sir.
20 THE COURT: You're satisfied with it?
21 DEFENDANT GADSDEN: Yes, sir.
22 THE COURT: Did anybody tell you that's a decision you
23 ought to make?
24 DEFENDANT GADSDEN: No, sir.
25 THE COURT: You made it on your own?

1 DEFENDANT GADSDEN: Yes, sir.

2 THE COURT: All right. Mr. Wilder, what's your
3 decision?

4 DEFENDANT WILDER: Not, no, sir.

5 THE COURT: And is that a decision that you made of
6 your own free will and accord?

7 DEFENDANT WILDER: Yes, sir.

8 THE COURT: Did anybody force you into it?

9 DEFENDANT WILDER: No, sir.

10 THE COURT: Pressure you into it?

11 DEFENDANT WILDER: No, sir.

12 THE COURT: Suggest to you that's what you ought to
13 do?

14 DEFENDANT WILDER: No, sir.

15 THE COURT: Is that a decision that you're satisfied
16 with?

17 DEFENDANT WILDER: Yes, sir.

18 THE COURT: And you made it yourself.

19 DEFENDANT WILDER: Yes, sir.

20 THE COURT: All right. Now, Mr. Smith, do you have
21 any other witnesses or other evidence you want your lawyers
22 to present during the trial of this case?

23 DEFENDANT SMITH: No, sir.

24 THE COURT: Mr. Gadsden, do you have any other
25 witnesses or other evidence you want your lawyers to

1 present during the trial of this case?

2 DEFENDANT GADSDEN: No, sir.

3 THE COURT: Mr. Wilder, do you have any other
4 witnesses or other evidence you want your lawyers to
5 present during the trial of this case?

6 DEFENDANT WILDER: No, sir.

7 THE COURT: Okay. All right. Now, I understand that
8 there are some people that are intending to attend or
9 participate in a funeral this afternoon. Is that still --
10 what's the schedule for that, 2:00 o'clock?

11 MR. REDMOND: Your Honor, it's scheduled for
12 2:00 o'clock.

13 THE COURT: And you think you can be back by when?

14 MR. REDMOND: Your Honor, I just can't imagine it
15 lasting more than 45 minutes. I think I can be back by
16 3:15 or 3:30 at the latest.

17 THE COURT: Okay. Well, do you think it will be safe
18 to say 3:15?

19 MR. REDMOND: I'll be here, Your Honor.

20 THE COURT: Well, I mean, you know --

21 MR. REDMOND: I'm sure that will allow me enough time.

22 THE COURT: Okay. All right. Any other matters we
23 need to address before I bring the jury back and excuse
24 them for lunch?

25 MR. WILLIAMS: Your Honor, I do want to determine the

Motion

1 order of closings.

2 I submit to the Court that Mr. Lofton had an exhibit
3 that was marked. Although he didn't formally admit the
4 document, he did admit it through the testimony of
5 Detective Stanley. It was read to the jury. It was a
6 published document.

7 I believe that would constitute offering evidence by
8 the defense. And as the Court, I am sure is aware, if one
9 codefendant offers evidence the state gets the right to
10 argue last after those defense arguments.

11 THE COURT: No question about that. If one offers
12 evidence or introduces evidence, they all lose the right to
13 final argument.

14 Mr. Lofton, I'll let you address that.

15 MR. LOFTON: Your Honor, I didn't introduce it. I
16 marked it for identification. There wasn't any objection
17 to my questions. The document was never introduced. We
18 didn't offer any evidence. We get the final argument.

19 THE COURT: Okay. It wasn't introduced.

20 All right. Anything else?

21 MR. WILLIAMS: Not by the state, Your Honor.

22 MR. BROWN: Your Honor, at this point I'd like to move
23 for a directed verdict of acquittal.

24 I do not believe that the state has met its burden of
25 proof with regard to Keive Smith. They have provided no

Motion

1 testimony by anyone that puts him at this crime scene.

2 The best they can do is put him in the white Jeep some
3 miles away from the crime scene. And, again, I'd move for
4 a directed verdict at the closing.

5 THE COURT: All right. Mr. Williams.

6 MR. WILLIAMS: I'll address that, Your Honor. I
7 believe the issues alone tied them to the crime scene.

8 THE COURT: All right. Motion is denied.

9 Mr. Davis, any motions on behalf of Mr. Gadsden?

10 MR. DAVIS: Yes, Your Honor. Of course I would join
11 in.

12 I would make a motion at this time for a directed
13 verdict. We would argue that the evidence presented as to
14 my client, Leo Gadsden, merely raises a suspicion. It's
15 not enough evidence to submit the case to the jury. We
16 would ask that you intervene and direct a verdict on his
17 behalf as to the charges.

18 THE COURT: Mr. Williams.

19 MR. WILLIAMS: Your Honor, I believe he was identified
20 by two witnesses. That's how.

21 THE COURT: All right. There is sufficient evidence.

22 Motion for a directed verdict is denied.

23 MR. DAVIS: Your Honor, if I may, at this time point I
24 would of course renew all previous evidentiary motions, and
25 I would also renew my previous motion for a mistrial.

Motion

1 THE COURT: All right. Those are denied.

2 MR. DAVIS: Thank you, Your Honor.

3 MR. BROWN: And I would join in with that.

4 THE COURT: Okay.

5 MR. LOFTON: I would also renew my motions,

6 particularly with reference to the contamination issue and

7 the chain of custody. And I would also move for a directed

8 verdict.

9 THE COURT: All right. Those motions are denied.

10 Any others to address?

11 MR. BROWN: Nothing, Your Honor.

12 MR. WILLIAMS: Not by the state, Your Honor.

13 THE COURT: Okay. Bring the jury back, please, sir.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: All right. Mr. Williams, anything further
17 on behalf of the state?

18 MR. WILLIAMS: No, Your Honor. The state rests at
19 this time.

20 THE COURT: All right. Ladies and gentlemen, that is
21 all of the testimony or other evidence to be offered by the
22 state.

23 So we'll now proceed with any additional evidence to
24 be offered by any defendant.

25 Mr. Brown.

1 MR. BROWN: Your Honor, we have no additional
2 evidence.

3 THE COURT: All right. Mr. Davis.

4 MR. DAVIS: We rest, Your Honor.

5 THE COURT: Mr. Lofton.

6 MR. LOFTON: We rest, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, that is
8 all of the testimony and evidence to be offered in the
9 trial of this case.

10 What remains to be done your the lawyers' final
11 summations, after which I'll instruct you on the law. And
12 then you'll begin with your deliberations in the case.

13 We're not going to be able to do that right now. For
14 one thing, it's about lunchtime. But another thing, there
15 was a death. There's a funeral this afternoon at or about
16 lunchtime that one or more of the persons involved in this
17 case and in and around the courthouse wish to attend and/or
18 participate in. And that funeral is at 2:00 o'clock. They
19 should -- it should be over by 3:00 or 3:15 or so.

20 So what we're going to do is we're going to excuse you
21 now for lunch. And you'll be asked to report back to your
22 jury room at 3:15, at 3:15 this afternoon, at which time we
23 will begin with the lawyers' final summations.

24 Okay. So you are excused until 3:15. Keep in mind
25 you still can't discuss the case. Don't conduct any

1 research or do our own investigation. Don't permit
2 yourselves to be exposed to any type of media coverage that
3 might relate to the case.

4 Do have a good lunch, and please report back to your
5 jury room by 3:15 this afternoon.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Now, while we're here, what
9 about instruction requests? Does the state have any?

10 MR. WILLIAMS: Just the hand-of-one instruction, Your
11 Honor. I believe -- on aiding and abetting.

12 THE COURT: Any objection to that from any defendant?

13 MR. BROWN: None, Your Honor.

14 MR. DAVIS: No, Your Honor.

15 MR. LOFTON: No.

16 THE COURT: Okay. Any others?

17 MR. WILLIAMS: Just of course the standard
18 instructions on the charges.

19 THE COURT: All right. Mr. Brown, have you got any
20 particular instructions you want to address?

21 MR. BROWN: None, Your Honor. Just what you would
22 ordinarily use.

23 THE COURT: Okay. Mr. Davis.

24 MR. DAVIS: Judge, I believe we talked previously
25 yesterday. Mere presence we want to request. I think you

1 were going to include that anyway.

2 THE COURT: Okay. Mr. Lofton.

3 MR. LOFTON: Your Honor, we'd ask -- these were
4 supposed to have been e-mailed over to Rodney's office, and
5 they may be downstairs.

6 But we would request a charge on prior inconsistent
7 statement, an identification charge and a mere-presence
8 charge, and of course the right of the defendant not to
9 testify. And I think those will probably all be in your
10 standard charge anyway.

11 THE COURT: Well, maybe or maybe not. I don't know
12 that I have a prior-inconsistent-statement instruction,
13 certainly not off the top of my head. If you've got one,
14 I'll be happy to consider it.

15 MR. DAVIS: Judge, I can print that in a matter of
16 minutes and bring it back to Your Honor.

17 THE COURT: Okay. That's fine. Okay.

18 MR. LOFTON: Or I can e-mail it to your law clerk.

19 THE COURT: Well, either way.

20 MR. LOFTON: Whichever way you prefer.

21 THE COURT: I don't care. You can e-mail me if you
22 want to e-mail me.

23 MR. LOFTON: I don't have your e-mail address.

24 THE COURT: All right.

25 MR. WILLIAMS: Your Honor, do you have a standard

1 third-party-guilt instruction that you provide, or is that
2 something you don't instruct on?

3 THE COURT: Well, no, I don't. But there's no
4 evidence of third-party guilt in this case.

5 MR. WILLIAMS: I just wanted to make sure. I'll
6 object if it comes up.

7 THE COURT: It's not going to come up. Did it come
8 up? Anybody planning on arguing third-party guilt
9 inappropriately?

10 Mr. Brown.

11 MR. BROWN: No, Your Honor.

12 THE COURT: Mr. Davis.

13 MR. DAVIS: No appropriate, Your Honor, no. I don't
14 intend to offer any other person in this case. I'm not
15 going to point to any other person. Certainly, it's our
16 position that we get to argue to that jury. They've got to
17 be convinced that Leo isn't guilty.

18 THE COURT: Well, clearly, you get to argue that the
19 evidence in this case does not establish that your client
20 is guilty of anything.

21 But, at the same time, you don't get to try to develop
22 a theory of who it might have been or who else did it,
23 whether you know their name or not.

24 MR. BROWN: Your Honor, I'm not planning on arguing
25 that somebody in particular did it. I plan on arguing that

1 somebody else did it, but no one in particular.

2 THE COURT: Who did it?

3 MR. BROWN: Somebody else. If our people didn't do
4 it, somebody else must have.

5 THE COURT: You're just going to argue that the
6 evidence doesn't support your client being the person.

7 MR. BROWN: We didn't do it.

8 THE COURT: Okay.

9 MR. LOFTON: Judge, that's here.

10 THE COURT: Okay. All right. Anything else?

11 MR. WILLIAMS: Not by the state, Your Honor.

12 MR. BROWN: No, Your Honor.

13 THE COURT: All right. Court is in recess until 3:15.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Are we ready for the jury?

16 MR. WILLIAMS: Yes, Your Honor.

17 MR. BROWN: Yes, Your Honor.

18 MR. DAVIS: Yes, sir.

19 THE COURT: Bring them in, please.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 As you know, when we recessed for lunch all the
24 evidence has been received. So what remains to be done are
25 the lawyers' final summations, after which I'll instruct

Closing arguments

1 you on the law, and then you will begin with your
2 deliberations in the case.

3 We might not get all of that done this afternoon, but
4 we'll go as far as we can. But right now you're going to
5 be hearing from the lawyers. We'll begin with the
6 solicitor and then followed by each of the defense
7 attorneys.

8 Mr. Williams.

9 MR. WILLIAMS: Thank you, Your Honor. May it please
10 the Court. Counsel.

11 This has been a case about violence and about violence
12 without boundry, about three defendants working together
13 who stop at nothing.

14 We've heard three and a half days of evidence in this
15 case, and at this point we know what these three defendants
16 each did.

17 This defendant is Anthony Wilder. At the time of this
18 crime he looked different than he does today. He's the one
19 that had the dreadlocks, the short, stocky one.

20 This defendant is the one that was waiting out on the
21 road before the burglary. He's the one that kicked that
22 door in and beat Ms. Green with that 9mm pistol. He's the
23 one that took that pistol and shoved it in her mouth and
24 made her throw up.

25 He's the one that told someone else to go get the duct

Closing arguments

1 tape. He's the one that taped her up and left her there
2 inside that house on the floor bleeding from the beating
3 he'd given her.

4 He's the one that left the house third as the two
5 others rushed out, and he's the one that was up at the car,
6 the short, stocky one, pulling Sterling Spann out of the
7 Oldsmobile. He's the one that was leaning on top of
8 Sterling Spann and holding him on the ground as Sterling
9 Spann was executed.

10 This defendant is Leo Gadsden. He also looked
11 different on the day of trial. He's the taller one with
12 the dreadlocks. He is the one that came in right after
13 Wilder. He's the one that came in and went around back to
14 the kitchen looking for things.

15 He's the one that was told to go get the duct tape and
16 left the house and came back with it so that Mr. Wilder,
17 defendant Wilder, could tape up Ms. Green.

18 He's the one that had that silver, shiny gun, that
19 went out the door with the guy that came from upstairs.
20 He's the one that took that gun and shot Sterling Spann
21 twice inside the car and turned to his left and shot Jamie
22 Williams four more times until that gun was clicked and
23 there were no bullets left. He's the one. He's the one
24 that stayed there as Sterling Spann was pulled out of his
25 car and executed.

Closing arguments

1 This defendant is Keive Smith. He looked different
2 then too. He didn't have dreadlocks, although he does now.
3 He was the one that had shorter hair.

4 He was the one that ran upstairs and rummaged through
5 that area while the other two codefendants were busy taping
6 up Ms. Green and looking out that window.

7 He's the one that went outside at about the same time
8 as defendant Gadsden. And after defendant Gadsden got done
9 shooting Jamie Williams on the ground, he's the one that
10 chased after him.

11 He's the one that had those red shoes on that John
12 Jones, III, saw chasing after Kieve Smith (sic) when the
13 others ran out of bullets. When Gadsden ran out of bullets
14 and said go after him, he's the one that went after Jamie
15 Williams after he was shot. And he's the one that came
16 back and as Sterling Spann was pulled out of his car and
17 shot on the ground, he was right there working along with
18 these two others.

19 He's the one whose shoe you see in that photograph
20 inside the crashed Jeep, the one that was trapped, the one
21 whose arm got broke. He's the one whose red shoe you see
22 in that Jeep picture right next to the gun that was used in
23 these murders.

24 We've had three and a half days of testimony that has
25 shown us what those three did. Now, y'all have sat here

Closing arguments

1 and listened to it all.

2 There's been 120 maybe exhibits, I believe about 40
3 witnesses. I'm certainly not going to go through all of
4 it. I'll tell you right now I understand a lot of that
5 testimony was slow going. A lot of it is just, quite
6 simply, boring. But all of it's important. I'm not going
7 to go through each piece of evidence.

8 What I do want to do now is go through the evidence
9 that tells us what these three did and the evidence that
10 you really need to convict all three of these defendants of
11 the crimes they're charged with.

12 What we had in this case are different charges. But,
13 you know, what's interesting about the charges in this
14 case, I don't think you're going to hear anybody dispute
15 that these crimes occurred. Nobody's going to say, you
16 know what, nobody broke into the house, you know what,
17 nobody was shoot.

18 This isn't really a case about what happened. I don't
19 think you'll hear anybody argue that there was a murder
20 committed, there was a burglary committed, there was an
21 assault and battery with intent to kill committed and there
22 were two kidnappings committed. So I'm not going to sit
23 here and talk about what the crimes are.

24 They happened. The only question was these defendants
25 committed those crimes. And I think to a lesser extent not

Closing arguments

1 so much whether they committed them but what their roles
2 were in committing these crimes.

3 No question. He have a burglary, a kidnapping,
4 assault and battery with intent to kill, another kidnapping
5 on Sterling Spann being dragged from the car, and then of
6 course the murder of Sterling Spann.

7 So I want to clear up so I don't waste a bunch of time
8 talking about what those charges are. I don't think
9 there's any dispute these crimes happened. The only
10 question is who did it and what were their roles. And I
11 submit to you there's no real question about that either.

12 This case, as important as it is, is not difficult,
13 and that's because the evidence quite simply is
14 overwhelming.

15 We've had two types of evidence in this case. We've
16 heard physical evidence presented; we've heard testimonial
17 evidence presented.

18 Physical evidence is quite simply items that are found
19 out there, and physical evidence is important in any case.
20 It's important in almost anything you see in life, because
21 it doesn't have memories. It doesn't think about things;
22 it doesn't have friends; it doesn't have biases; it doesn't
23 have emotion.

24 Physical evidence is all over this case, and I want to
25 go through what some of that physical evidence is. And

Closing arguments

1 we've also had plenty of testimony and I'll address that
2 after I've talked about the physical evidence.

3 What do I mean by physical evidence? Let's talk about
4 the house. We've got blood, physical evidence, living room
5 floor, the stair post. We have a house that's been
6 rummaged through. You don't need a witness to tell you
7 somebody burglered that house. There's dresser drawers
8 overturned and rooms ransacked. Somebody was in there
9 looking for something in a hurry and didn't care much about
10 leaving a mess.

11 Damage to the front door. Is there any question in
12 this case that somebody kicked that door in? It's cracked
13 along the side. Moldings are popped off. They had a dead
14 bolt that was busted wide open.

15 The necklace is at the door. Somebody clearly was
16 grabbed there. Something happened there. All of this is
17 physical evidence. A picture is all you need to know these
18 things. You didn't need a witness, somebody to hand that
19 picture out. We know all these things without testimony.

20 That back door had been pushed out. And I want to
21 mention something about that back door. You noticed in
22 those pictures in the back those blinds are closed. Of
23 course those blinds are closed if somebody's rummaging
24 through that house.

25 They're not going to take the time to open up that

Closing arguments

1 door and blankly go through it. If they're looking for
2 something, that door gets pushed opened. It didn't have
3 any resistance whatsoever. The screen door got pushed out,
4 a sign of burglary. The tape in the kitchen and the blue
5 latex on one of the pieces of tape was testified to you it
6 was one of the exhibits.

7 What do you find in the yard? Victim Spann's
8 property. That may seem obvious; that may seem simple.
9 But you know what you know when you see a pair of shoes, a
10 shirt, a driver's license, the contents of a pocket. You
11 know without any testimony just seeing that picture
12 precisely the spot where Sterling Spann was killed. And
13 you know that based on those pictures.

14 The bullet trajectory, the projectile, the marks in
15 the concrete. Physical evidence. You know where somebody
16 was standing when they shot.

17 The 9mm casing, more evidence. That shows where a gun
18 was fired from. The location of that casing, the proximity
19 to everything else, and you've got a casing next to a dead
20 body. That tells you a lot.

21 The Oldsmobile, the blood inside the car dripping.
22 What does that tell us without a single witness? Somebody
23 got hurt inside that car. A lot of blood was coming from
24 inside the Oldsmobile. They shot through the window. They
25 shot from the environment outside the car.

Closing arguments

1 The jacket fragments, the core. We know the bullets
2 were being fired from the outside to the inside of the
3 vehicle.

4 That 9mm clip with nine rounds in it and one missing,
5 that tells us there was a gun inside that car, and the gun
6 that apparently had one bullet loaded into it before the
7 clip fell out. All of these things, physical evidence based
8 on what was picked up at the crime scene.

9 The Jeep. We know based on records, a document, that
10 one of the defendants rented that vehicle. It was his car.
11 It was found two miles from a shooting. And that's
12 important to the timing in this case. The physical
13 location of the Jeep is important when you think about the
14 timing and what we know about this case.

15 A high-speed chase over a long distance. That's
16 important. That's physical evidence on video. And that
17 means something. All of these things mean something. And
18 I'll get to that. But I think it's common sense. You
19 don't go speeding down the freeway at 100 miles an hour
20 with four police after you unless there's something going
21 on.

22 And that chase itself. Three masks thrown from that
23 vehicle. The reason it's important, the number, the masks
24 in this case, y'all have had a chance to look at them.
25 Three is important because obviously we've got one for each

Closing arguments

1 of the defendants.

2 But look at these masks when you go back there.
3 They're all the same. Physical evidence. Three people,
4 same masks, all cut the same, three people working together
5 just based on the physical evidence.

6 The gloves are much the same. Take a look at those.
7 You are going to find five of them. Same material. Looks
8 like they were all bought together, all the same, all look
9 the same, and all the same material. And there is one
10 missing.

11 Well, you know what? It's kind of impressive that the
12 officers found as much evidence on the freeway as they did.
13 Remember Detective Stanley said I had to lean out my door
14 and pick up the items off the road.

15 Well, the fact that a car may have picked one of those
16 up in its grill or one of those may have gotten caught in
17 the wheel well or gone somewhere off that road shouldn't be
18 a surprise. Three masks and five gloves, all the same,
19 matching each other.

20 And what do we find on that? What physical evidence
21 comes off those items? The D. N. A. on the masks come back
22 to one of these defendants, and the D. N. A. off of the
23 glove comes back to the same blood that was found in the
24 house. And the blood inside the house of course was
25 Patricia Green's.

Closing arguments

1 So what does the physical evidence tell us? Why would
2 we have all of these masks the same and these gloves the
3 same? But they have got the victim's blood on it.
4 Physical evidence tells us those gloves were at that crime
5 scene. G. S. R. is all over all of those gloves.

6 Not only are those gloves at that crime scene inside
7 the house where Ms. Green's blood is, but they were firing
8 guns, which is what we also know was going on at that crime
9 scene based on the casings and all the blood we found from
10 the injuries.

11 The crash scene. What did we find at the crash scene?
12 Of course a .38 Special with six empty rounds. Physical
13 evidence. The gun that was used in the shootings. Second
14 gun, a black .380, two guns in the car running down the
15 road throwing masks and gloves.

16 And finally what else do we find? Three masks and six
17 gloves and these three defendants.

18 Other physical evidence, and I'll tell y'all. This is
19 a list. You could probably go on for eight of these
20 slides.

21 I want to point out to y'all what I think is
22 important. And I don't think you can understate the
23 physical descriptions and the look of these defendants when
24 you consider the evidence you have.

25 And you know what's important though is Mr. Wilder.

Closing arguments

1 You'll see if you watch that video back there when you saw
2 he was taken out of the car. He was short and stocky.
3 Time and time again we hear that description. But
4 physically he's short and stocky. He had dreads or braids
5 at the time. You saw that in the photo from the hospital.

6 Time and time again that's the description.

7 Wearing dark blue pants. Time and time again that's a
8 description. Remember Ms. Green. He had dark denim.
9 Sounds like the color of my suit, dark blue.

10 And, more importantly, his pants have Spann's blood on
11 them. We know Spann is bleeding. We know he's being
12 pulled out of the car. These defendants pull him out. And
13 as he does that the blood gets on his pants. And the
14 police find it.

15 Defendant Gadsden. He's taller and thinner, and that
16 was what Ms. Green talked about, it was a short stocky guy
17 and a taller thinner guy with dreads.

18 We have two taller guys, one with dreads and one that
19 doesn't. The one with dreads, Mr. Gadsden.

20 Defendant Smith. He's the taller one. He doesn't
21 have braids and doesn't have the dreads. He's the one,
22 physical evidence, a picture, is sitting right next to that
23 .38 trapped in the car.

24 He's wearing the red shoes that are seen running
25 across the yard chasing down Jamie Williams. His D. N. A.

Closing arguments

1 is on the items being thrown out the window of the car, the
2 gloves that were used with G. S. R. all over them.

3 And, finally, the injuries I think are important.
4 Ms. Green had injuries to her, her head, hit on the head.
5 Her mouth, her arms, her legs were all taped up. We saw
6 the physical evidence of that. And I'll talk about why
7 that's important, but certainly when she tells you
8 something happened, we know it's true because we see the
9 injuries.

10 Now, Sterling Spann is important too. If you remember
11 what Dr. Presnell said this morning about the injuries he
12 had, the bullet trajectory in his side. I think that's
13 important, and I'll talk about it more. But if you think
14 about Jamie Williams' version, he says Sterling was leaning
15 over trying to get away and he got shot.

16 I'll argue to you later we know there's some truth in
17 that because we know the physical evidence matches it, when
18 Jamie Williams of course says he got shot four times, and
19 we know he had those four injuries to him.

20 All of this is physical evidence. I tell you it's
21 probably an exhaustive list. There's physical evidence all
22 over this case. But what does it tell us?

23 What do we know just from that physical evidence
24 without having to judge the credibility of one single
25 witness? What does that physical evidence tell us? No

Closing arguments

1 question there's a burglary. Just from the way that door
2 is and where those items are found, somebody broke into
3 that house and used force to break the door down and
4 grabbed somebody at that front door where those necklaces
5 are found, rummaged through that place.

6 What did they take? Well, I'll tell you there are
7 probably some questions in this case. We know there's a
8 bunch of drugs. Heide Drake told us that cocaine sells for
9 about a hundred dollars a gram. And about thirteen or
10 fourteen hundred dollars worth of drugs were found inside
11 that car. Maybe that's what they're looking for.

12 We know from Ms. Green that her kids had a lot of
13 money, settlement. Maybe they were looking for money.
14 That we don't know. We can't tell what they were looking
15 for, but we do know that somebody broke into that house and
16 they were looking for something from the physical evidence,
17 not even hearing from Ms. Green.

18 If Ms. Green had never testified we'd still know a
19 struggle happened in that doorway, that somebody ransacked
20 that house and kicked in the door. We know somebody was
21 hurt. If Ms. Green had never testified, we'd still have
22 her blood there on the floor.

23 The shooting. What we know just on that physical
24 evidence alone, that someone got shot in the driveway based
25 on the blood. We know based on that trajectory where that

Closing arguments

1 shooter was standing. Remember that, that bright line that
2 was put out there by the crime scene officers. We know
3 where the shooter was because we know where the bullet hit
4 the ground and then hit the garage.

5 We know someone got shot in the car. There's a bullet
6 hole at the window edge. And, more importantly, there's a
7 bunch of blood inside that car dripping down on that white
8 t-shirt next to the door.

9 We know someone lost that clip, and we know someone
10 fired a 9mm casing, fired a shot outside there, and, more
11 or less, where that happened. We know that all of this
12 happened in a small area. It's not like a casing was found
13 75 feet away. It's not like blood was found 7 feet.

14 The fire department where Jamie Williams fell, all
15 right there -- the injuries, the blood and the evidence.
16 And that tells us something. That tells us it happened
17 fast. It happened all there. And as we've heard through
18 testimony, in a matter of seconds. We know that from the
19 physical evidence as well. It's all right there contained
20 with within maybe a 10-foot radius.

21 Who was involved? Well, the D. N. A. on Wilder's
22 pants tells us he was involved. He's got Sterling Spann's
23 blood on his pants. He's a part of it.

24 The gloves in the car were involved. There was D. N.
25 A. found on those as well. Ms. Green's blood. The gloves

Closing arguments

1 were also used in the shooting. The G. S. R. is all over
2 them. And you had that blood, that G. S. R. And whose
3 blood it is? Those gloves were involved in that shooting.
4 Keive Smith is all over those too.

5 Three people in the car breaks it down very easily.
6 If you want to know who was involved, those three masks,
7 those five gloves. You've got three people found in the
8 car running from the police in a high-speed chase. And,
9 again, this is all on physical evidence, items that were
10 found at the scene.

11 You're probably going to hear a lot of talk from the
12 defense attorneys in their closings about people's
13 perception and ability to remember. I haven't said a thing
14 yet that has anything to do with anybody's ability to
15 remember.

16 I'll submit to you at this point the testimony in this
17 case is reliable in itself. I'll submit to you later that
18 it's reliable because the physical evidence corroborates
19 it.

20 But what was the testimony in this case? Probably
21 about four or five critical witnesses. Ms. Green, Patricia
22 Ann Green, is far in a way the most important testimonial
23 witness in this case because she tells us what happens
24 inside that house.

25 She identified two people. She says I saw them. She

Closing arguments

1 saw Smith, saw Gadsden. Take that back. I think she said
2 she saw Wilder and Gadsden. Wrong on my part.

3 What's important about that is when she says she saw
4 Mr. Wilder and that she saw Mr. Gadsden, what didn't she
5 say? She did not say that she could identify the third
6 person.

7 And there was some questions about, well, you saw it
8 in the newspaper. Well, don't you think that if she saw
9 them in the newspaper and that was the reason for the I. D.
10 she would have identified all of them?

11 She didn't do that. She identified the two that were
12 right there with her the whole time. One who was out front
13 with his mask pulled up that she saw as she was at the
14 window and the second one whose mask was loose on his face.
15 And even though the hairstyles have changed, even though
16 she saw a third one in the paper, she identified the two
17 she saw that day. And the third one, she said, was
18 upstairs that she never saw. She can't identify him. She
19 didn't see him. And that's important.

20 I want you to think about that when you start talking
21 about Ms. Green. And I don't want to overemphasize it, but
22 I truly believe that she has come in here and said I saw
23 the newspaper. She was honest about that. And she said
24 those are the two people she saw out there. She wasn't
25 influenced by that newspaper or any T. V. shows.

Closing arguments

1 The other thing about her testimony, and you're going
2 to hear something about this, I suspect, in the defense
3 argument, although in her statement she said five people
4 she thought came in, think about how she accounts for them,
5 what she says.

6 She says one person went upstairs, one was with me
7 hitting me and binding me with the tape and the other went
8 out and came back in. She says she thinks she saw several
9 come in. When you ask her about where people were, she
10 accounts strictly the entire time for three people.

11 And she said I've been beat up, I've been hurt, I've
12 been hit in the face, blood was coming down my face and I
13 did the best I could when those detectives came and talked
14 to me. So she really testified that three people had been
15 inside her house.

16 What she says next is also very interesting in terms
17 of timing because she says the guy from upstairs who she
18 didn't see, who we know is Keive Smith, as well as the
19 taller guy with braids that was standing on the sofa, both
20 go out at about the same time. And as soon as they go out
21 she hears gunshots go off. And then she says right after
22 those gunshots the third person who was a short stockier
23 person with braids, Mr. Wilder, defendant Wilder, goes out
24 immediately after.

25 Jamie Williams picks it up from right there. And what

Closing arguments

1 does he say? A taller guy who was Leo Gadsden came out the
2 door with a silver gun and hit me on the head with it. He
3 identified that gun as this 380, sorry, .38 Special.

4 And what's interesting about this .38 Special is that
5 he said in his statement I thought it was a .357. Now,
6 obviously, he's no expert on guns because he said it's a
7 .357. And do we have a .357 in this case? He says it was
8 this one. They both look similar. He identified this gun
9 despite not knowing what the make or model is.

10 And, interestingly enough, this gun he says was fired
11 twice at Sterling Spann, which would take two rounds out of
12 the chamber, and then four times at him, all four shots
13 hitting him. And then he says it started to click. And we
14 know this gun was found with six empty chambers, or I
15 should say six shell casings that were fired.

16 The physical evidence tells us he was right about this
17 gun. This is the one that Leo Gadsden walked out of the
18 house with and started firing. And that's what Jamie
19 Williams told us. He, like Ms. Green, identified defendant
20 Leo Gadsden.

21 What about Smith? What about Wilder? He said he saw
22 it in the newspaper, but he didn't come in and say he seen
23 the other two guys that were in there. He wasn't
24 influenced by any newspaper article or any kind of T. V.
25 show. If he had been, he very easily could have said,

Closing arguments

1 yeah, those are the guys.

2 What did he do? He identified the one person he saw,
3 the one that was right up on him with that gun hitting him
4 and shooting him.

5 He was shot four times. He told us where he was at.
6 And, importantly, he told us where the shots came from.
7 And of course we know when he said that he was telling the
8 truth. Why? Because that little string that was shown to
9 us by the crime scene says the exact same spot he testified
10 to is the exact same spot where string leads to.

11 Now, I could see if Jamie Williams had said, you know,
12 the shooter was standing on the other side of the car,
13 there'd be some problems. But you know what? Everything
14 he said fits the physical evidence perfectly. And of
15 course he ran off and was chased by who we know the guy in
16 the red shoes was, Keive Smith.

17 Mr. Daniels is important because he really tells us
18 what happens in that front yard. He and Mr. Jones are very
19 similar in this statement.

20 He comes out and he sees two men pulling another
21 person out of the car and just shooting him there on the
22 ground. He says the man on the ground said please don't
23 shoot me no more as he was being pulled out of the car.

24 That's important. We know it's true. We know
25 Sterling Spann was shoot inside the car. There was a

Closing arguments

1 bullet inside. And we know he was shot once possibly on
2 the ground but had three gunshot wounds, and at least two
3 based on what the autopsy showed. Sterling Spann had been
4 shot in the car and begged not to be shot again, and these
5 defendants shot him anyway.

6 Maybe even important than that he says the shorter,
7 stocky one was the one kneeling on him and holding him on
8 the ground, and there is only one short stockier guy in
9 this case. Anthony is a, Anthony Wilder is a, short,
10 stocky one who was holding him on the ground. He's also
11 the one who had Mr. Spann's blood on his pants. The taller
12 one he says shot him. All of them that were there.

13 Well, if you, if you take that into account with
14 somebody later who says the man in the red shoes, Keive
15 Smith, is chasing after Jamie Williams, that only leaves
16 one person to be firing that shot. Again, that's Mr.
17 Gadsden.

18 And I'll talk a little bit about that, about who fired
19 the shot and how some of that, there are a couple of
20 different accounts. That was his, the crux of his
21 testimony, the taller one of the three that was standing
22 there shot.

23 And, finally, he had a statement where he said I saw
24 three people leave there. He said in court he saw two. He
25 saw two or three people leaving that scene as he went back

Closing arguments

1 into his house to put on his clothes to get back out there
2 and see if that was his grandchild that had been killed.

3 He saw the Jeep leaving. You know, his description as
4 a lot of witnesses. Their description is of a white
5 Jeep-like vehicle. Like a lot of people in this case, you
6 know, they may not know how to describe it, but they know
7 it when they see it. And that's what he said. And I don't
8 know if it was, was a Jeep-like white vehicle. When I see
9 the picture, that's it.

10 John Jones, III, was the younger one of the father and
11 son. And really he had one critical piece of evidence, the
12 one thing he remembered more than anything, this pair of
13 red shoes. And I submit to you these are hard to miss.

14 This is -- you're going to go out and commit a crime
15 this isn't the smartest thing to be wearing. But I'll tell
16 you. You're going to see these shoes from 300 yards. If
17 you see somebody running by with a gun, you'd probably see
18 the gun. You'd probably see these red shoes. I believe he
19 said they were red Nikes. And, sure enough, red Nikes with
20 the silver on the side. The pictures shows these inside
21 the car next to the, the .38 Special being worn by Kieve
22 Smith.

23 Finally, John Jones, Jr. I think there's a lot that
24 he said that's important. One thing I want to focus on.
25 He saw the man running along the house shooting. He saw a

Closing arguments

1 man trying to get into the car.

2 And, you know, when he looked over there he saw the
3 point where Sterling had already been pulled out of the car
4 and was trying to hold on, trying to stay in the car. So
5 of course it looked to him like he was trying to get in the
6 car.

7 We all know he was in there earlier because the
8 blood's in there. But he picks it up right when he's
9 trying to stay in the car. And he says they were all out
10 there and he was shot on the ground.

11 The most important thing though that he says is three
12 men walked away. Three men. Says one came from the front
13 area of the house and the other two that were holding him
14 all walked off together.

15 What he said about that is he had a little wall
16 between one window and the front porch. And he says they
17 were all walking, taking their time about it, taking their
18 own sweet time. And I asked him, I said, did you, were
19 they still in the front yard when you got to the front
20 porch. He told me, yeah, it wasn't but a second. They
21 were taking their time.

22 John Jones, Jr. had the perfect vantage point to see
23 all three of these defendants walking together, staying
24 together. And it was these three the entire time that were
25 there.

Closing arguments

1 He says they are walking. They go across. I lose
2 sight for a second. When I look out again, the same three
3 are still walking. They go around the corner for a split
4 second. He says within, he says ten seconds, the white
5 Jeep pulled out. And he could describe that Jeep as he did
6 in court.

7 All of this testimony tells us a lot about what
8 happened, along with the physical evidence. But what I
9 want to point out is that the physical evidence does what
10 is called corroborate the testimonial evidence.

11 And that's important because generally when somebody
12 says something that's not accurate we can test that and
13 find out if it is accurate like with the example with Jamie
14 Williams. If he said he'd been shot somewhere else in the
15 yard, well, it would seem awfully strange that that string
16 would line up in a different place. But the physical
17 evidence in this case tells us that the witnesses are
18 credible, that they're telling the truth.

19 I want to use Patricia Green as an example. But, you
20 know, she tells us the door was kicked in forcefully right
21 up against her. And the door is damaged. Can you imagine
22 if she said, you know, somebody kicked in the door and
23 there was no damage to that door to show it?

24 She says she was beat while in that door in the house
25 right at the steps and in the front. Can you imagine if

Closing arguments

1 there were no signs of any struggle in there and she said
2 she had been hit with a pistol?

3 That's not the case. Her jewelry is on the floor.
4 There's injury to her head. There's blood on the ground.
5 She claims, says, she was bound with tape. Can you imagine
6 if she said that and we didn't have that tape evidence? We
7 do.

8 We know she's telling the truth because she had the
9 tape marks on her wrists and on her mouth and the tape
10 inside the room.

11 She said her house was robbed. Can you imagine a case
12 where somebody says my house was robbed and yet there was
13 no evidence? Well, she says it. And what do we find?
14 Items upstairs are a mess. The door in the back is pushed
15 out.

16 She says one man was shorter and two were taller. Can
17 you imagine if that Jeep had two short guys and one tall
18 guy or three tall guys? She says one's shorter, two are
19 taller.

20 What do we find? A short, stocky guy with the dreads,
21 a taller guy with dreads and a third taller person. This
22 is simply an example, but the physical evidence tells us
23 that Ms. Green is being truthful. And it also corroborates
24 just about everything else in this case.

25 John Jones, III, says there's a pair of bright red

Closing arguments

1 Nikes. Can you imagine if nobody in that car had red shoes
2 on? What do we find? These red shoes.

3 Of course he's telling the truth. These come out of
4 the car miles away after a high-speed chase. When he tells
5 you there was somebody there with red shoes chasing him, we
6 know he's telling the truth because he was corroborated by
7 the physical evidence.

8 A silver revolver did the shooting. Do you remember
9 when Jamie said that, a silver revolver? Well, guess what
10 gun ends up without any kind of bullets live to be fired
11 and a bunch of casings. A silver revolver.

12 These things are being given independent of any
13 investigation. The police show up over at the house and
14 start interviewing people, and John Jones, Jr. says red
15 shoes. He doesn't know what they found. Jamie Williams
16 says silver revolver. He doesn't know what they found.
17 Can you imagine if there was no silver revolver in there?

18 Shot. Jamie Williams tell us they shot Spann in the
19 car and I was shot in the driveway. What do we find? The
20 exact same physical evidence in the exact same position
21 that Jamie described, leaning over to the right, clutching
22 at his chest when he's shot.

23 If that bullet had been somewhere else and hit
24 somebody in the leg in a different direction, that would be
25 very suspect, what Jamie said. But you know what? It fits

Closing arguments

1 the physical evidence perfectly.

2 The trajectory shows the bullet that hit him coming
3 right from where he said Gadsden was at, and the bullet
4 that hit Sterling Spann in the side from the exact same
5 spot as well.

6 Short, stocky guy. Several people said this. What do
7 we find? The short, stocky guy. And they say he's on top
8 of Spann. What do we find to corroborate that? Some blood
9 on his pants. The relative sizes, the D. N. A. So, again,
10 if there had been three tall people, that would be a
11 problem. But every description fits these three
12 defendants.

13 Finally, this white Jeep. Can you imagine if somebody
14 said I saw, you know, a red Camaro leaving there or I saw a
15 blue pickup? That's where he says I saw a white Jeep.

16 Well, what kind of car ends up fleeing the police? A
17 white Jeep Liberty. And it's not just a white Jeep
18 Liberty. A white Jeep Liberty in a high-speed chase with
19 masks flying out the window and gloves flying out the
20 window and guns inside of it.

21 I say all of this, and this is a short list, because
22 this evidence tells us that the witnesses are being
23 truthful. You can believe them because of their demeanor;
24 you can believe them because they come off as believable,
25 they come off as candid. But you almost have to believe

Closing arguments

1 them because the physical evidence tells us they were
2 telling the truth.

3 All of the evidence in this case, everything we've
4 seen, all these items, all point to the same group of
5 people, these defendants.

6 And it's interesting how evidence works, because in
7 these cases, in this case, it all points to them. It is
8 overwhelming. Everything points to these defendants.
9 They're running from the police. They've been identified
10 by two different people, Patricia Green, Jamie Williams.
11 There's a pair of red shoes. They're identified from the
12 crime scene.

13 The D. N. A. It's on the masks; it's on the pants;
14 it's on the gloves. They're throwing these items out of a
15 car at a high-speed chase that had gunshot residue all over
16 them. There's guns found in their car once they crash.
17 They fit the physical descriptions that are given by the
18 people that see it happen. And they have just the right
19 number of masks and gloves to match the number of people
20 inside the car. All of this evidence, every piece, points
21 to these three defendants.

22 Now, I talked a little bit in my opening statement
23 about how the law says if you're involved you're all
24 equally guilty. And certainly we can distinguish between
25 the roles of these codefendants in this case.

Closing arguments

1 They all certainly did different things. They all had
2 a different role to play. But absolutely no question that
3 they were all acting together.

4 And a lot of it let's you hide behind one another. If
5 you're the one chasing him while somebody else shoots
6 someone else, or you're the one holding him down when
7 somebody else pulls a trigger, if you're involved in a
8 burglary and you all bring guns and wear masks and somebody
9 gets killed, you're still responsible for it.

10 The law says if you join together within another to
11 accomplish an illegal purpose, you're criminally
12 responsible for everything that results as a natural
13 consequence of the acts done in carrying out that plan.

14 You go to rob a house and bring guns and somebody gets
15 killed, the law doesn't give you that protection. You
16 don't get to say, hey, I just went to rob the place and
17 somebody else went off and killed someone.

18 The natural and probable consequence of a burglary
19 when you bring a gun is a murder. You don't get to act
20 surprised and you don't get to come in and hide behind that
21 when it happens. And that's really why, although these
22 defendants all have different roles, they are all equally
23 responsible for each and every crime charged.

24 The way the presentations in criminal cases work is
25 that I don't have a chance to come back and speak to you

Closing arguments

1 again. This is my last chance to argue.

2 All the defense lawyers will have a chance to come up
3 and speak, and I can't tell you for sure what they're going
4 to say. But we've all heard what the testimony has been.
5 And I may suggest to you some things that I think they're
6 going to say, but they might not. And, again, they might.

7 And often I refer to this kind of situation as the
8 octopus defense. It kind of comes from a, I think it's
9 20,000 or 18,000 to see Jewelsburg. When Jewelsburg
10 describes the octopus he says, you know, the octopus has no
11 natural defense mechanism. It doesn't have any claws,
12 doesn't have any teeth, doesn't have any talents to defend
13 itself. But the octopus does have those in the exact. And
14 what it does when it's in danger is to point at exact to
15 confuse, to obscure.

16 And in this case what we have heard a lot of in the
17 questions, at least, not what you're going to hear in
18 closing, is what I refer to as the octopus approach. And
19 that approach is to obscure the evidence by looking at
20 irrelevant and obscure, the fact that what we have,
21 unnecessary details.

22 The defense is going to try to obscure really what the
23 evidence in this case is through the use of what I'll say
24 is steering details, unnecessary details. And we've heard
25 some of that. Whatever the distractions, we've already

Closing arguments

1 heard some of.

2 That back door was pushed out. The back door was
3 pushed out, what does that mean? The house was ransacked.
4 Somebody ran out the back door.

5 Does that make these three defendants any less guilty
6 who are in the front yard executing someone? The back door
7 is pushed out in the middle of a robbery where drawers are
8 overturned upstairs. And we know somebody ran in the back
9 of the house. The curtains are closed. The back door was
10 pushed out is nothing more than a distraction.

11 Somebody else is more guilty than my client. You're
12 going to hear that one I just bet. That's the one where,
13 you know, the guy that has the D. N. A. on his pants, we
14 know he did it.

15 But what does the law say? The law says the hand of
16 one is the hand of all. Certainly they all had different
17 roles. And some of those roles are certainly worse than
18 others. When you start hearing the-other-guy-did-it kind
19 of thing, think about whether they're all still guilty
20 under the law. And I submit to you that although they had
21 different roles, they're all equally involved in this
22 crime.

23 The gun that was laying across the street, that .357,
24 that gun was found across the street. Does that present a
25 problem? No. Could it have been used in this case?

Closing arguments

1 Maybe. Do we know that it was? We have no idea. It was
2 found a couple of days later. We know a dog had tracked
3 out there. We know that it might fire .38 bullets.

4 And there might have been a whole bunch of guns out
5 there. I'll submit to you there was a 9mm out there. That
6 .357 could have been used, found by Mr. Greer, that kid
7 really got it and put different ammo in it. We don't know
8 for sure. We're not sure if that .357 was used. It was
9 brought in. It's here for y'all to look at.

10 But it doesn't make any difference about what these
11 three defendants did. They might have tossed that gun on
12 the way. They may not have. It seems strange to me that a
13 .357, especially one like that, a nice gun, is setting in a
14 ditch somewhere. But, at the same time, that's a
15 distraction. We don't know if that gun was used. We don't
16 know if it was thrown away. We don't know if somebody else
17 lost it later.

18 When the defense starts talking about it ask yourself
19 does that mean anything in this case. Of course it does.
20 It's a distraction.

21 The D. N. A. You're going to hear somebody talking
22 probably about, well, D. N. A., you know, just could be
23 here, could be there, could come from anywhere.

24 D. N. A. is solid, reliable physical evidence. You
25 heard the testimony. You don't get Sterling Spann's blood

Closing arguments

1 on your pants unless you were out there with him.

2 The glove box was open. You heard a lot about that
3 one. This isn't a self-defense case.

4 The simple reality is it would have been wonderful if
5 Sterling Spann had had a gun that day. Because you know
6 what? He would have been a hero. He would have saved
7 Patricia Green from being beat and robbed, and he would
8 have saved Sterling -- he would have saved Jamie Williams
9 from getting shot, and he would have saved himself from
10 being murdered. The glove box was open.

11 Sterling Spann weighed 240 pounds. He was dragged out
12 of the car. Do you think he went easy? Do you think he
13 went easy with Anthony Wilder trying to pull him out, the
14 short, stocky guy? Of course there was a fight in there.
15 There's enough of a fight that he had a gun and to make a
16 9mm clip fall out the bottom of it. There's enough of a
17 fight that Sterling Spann got probably knocked in the head
18 with that gun and was bleeding all over that car. The
19 glove box was open.

20 First of all, even if Sterling Spann had a gun, what
21 does that make a difference about? Does that make it okay
22 to execute him in the front yard? Of course it didn't.

23 And on top of that there's no evidence there was
24 anything in that glove box. That's a distraction. That
25 glove box being open means nothing.

Closing arguments

1 Ms. Green had her own personal problems. She sat up
2 here and got yelled at. Do you think she has problems?
3 Her problems had nothing to do with drugs.

4 I submit to you her biggest problem, these guys came
5 in her house, beat her over the head with a pistol and tied
6 her up and killed somebody in her front yard and shot
7 somebody else. Do you want to know what the problem is?
8 These three defendants in here, not that she used drugs
9 before.

10 The same thing with Jamie Williams. Oh, yeah, he in
11 the past had been in trouble and got convicted of messing
12 with drugs. And he told you that.

13 What does that have to do with anything? An attack on
14 his character. That means nothing. His problem? He got
15 shot four times by Leo Gadsden in the driveway of
16 Ms. Green's house. That's his real problem.

17 Did any of these distractions do anything to the
18 evidence in this case? Do any of these things -- I submit
19 to you listen to everything that they say in their closing.
20 Does any of it have to do with the identifications in this
21 case.

22 The high-speed chase, they're going to explain that.
23 These three guys going 110 miles an hour, a hundred miles
24 an hour down the freeway, throwing masks and gloves out the
25 window, talk about the glove box all you want. You can't

Closing arguments

1 explain that away.

2 The guns are in the car. Suppose maybe Ms. Green's
3 background had something to do with that. Of course it
4 doesn't. The D. N. A. on the items and the pants, explain
5 that away.

6 And finally these red shoes. Good luck trying to
7 explain that one.

8 Now, certainly, as I had mentioned earlier, there is
9 some questions in this case that we do not have answers
10 for. That .357 is a good example. Who was it that pulled
11 that trigger while Sterling Spann was on the ground in the
12 front yard? I'll give it to any one of these three.

13 There are certain things we don't know. The law
14 doesn't require you to know things beyond all doubt. There
15 are some people that know what happened out there beyond
16 all doubt. It's Jamie Williams and Patricia Green. They
17 testified.

18 And I submit to you if y'all did know everything that
19 happened out there you'd be up here as a witness, not as
20 you're jurors. When the judge asked y'all questions at the
21 start, if you know anything about this case to make sure
22 you're not witnesses, make sure you can be jurors.

23 The burden of proof is not beyond all doubt. It's a
24 doubt. A reasonable doubt is a doubt -- I'm sorry. Proof
25 beyond a reasonable doubt is proof which leaves you firmly

Closing arguments

1 convinced of the defendant's guilt.

2 The question about are you convinced beyond a
3 reasonable doubt means are you firmly convinced, firmly
4 convinced of these defendants' guilt.

5 I also, I'd like to show this slide because I, when I,
6 first saw this, I looked at it. And I don't think I know
7 now who this president is behind that gray spot. I don't.
8 I can't remember now who it is. Roosevelt. But looking at
9 it you may not know who that president is. You may have no
10 idea when he was president, what he did, when he served.

11 But when you see that even without that president's
12 face you certainly have no doubt, no reasonable doubt, that
13 it's still not right for him. And the purpose of that
14 slide is to show you can be firmly convinced about
15 something that happened without knowing all the details.

16 You can be firmly convinced of these defendants' guilt
17 without knowing what role that .357 played. You can be
18 firmly convinced about their guilt without knowing which
19 one of them is the one that fired that shot that Sterling
20 Spann laying on the ground.

21 You can have no reasonable doubt about this, even
22 though you can't see all of it. You can't have no
23 reasonable doubt about these defendants' guilt even though
24 we may not be able to answer every single question.

25 So what happened in this case? Three and a half days

Closing arguments

1 of evidence. I submit to you it's pretty clear. All three
2 of these defendants came up with a plan to rob this house.
3 It might have been for those drugs; it might have been for
4 money. But they had three masks that looked the same.
5 They all had gloves. They all had guns.

6 And those things are brought from somewhere. They had
7 Mr. Wilder's car. And that's preparation. That's a plan.
8 They're going to do something. They're going to conceal
9 their face and bring guns and wear gloves. And they had a
10 plan and they were prepared. And they were up there casing
11 that area driving up and down the street as Yvette Cook
12 told you that. That white Jeep was out there driving
13 around watching the house making sure the coast was clear.

14 Defendant Wilder went up there first. He was out on
15 the street and had his mask rolled up if people wanted to
16 think something was going on.

17 And those dogs next to Ms. Green's house started
18 barking. And she heard the dogs and got up from the bed
19 and went to a window. And she looked out and she saw Mr.
20 Wilder out there in the front yard.

21 And she said then she heard the dogs barking louder.
22 That's when Mr. Wilder's walking up to her front door. So
23 she says I'm going to go down and see what's going on with
24 dogs and see what this is about.

25 She almost gets to the front door, and that door is

Closing arguments

1 busted open. Defendant Wilder kicks that door open and is
2 on top of her in a flash. He's got a 9mm handgun and he's
3 beating her on the head with it. He grabbed her by the
4 shirt and pops off those necklaces and they fall there
5 right by the door.

6 Defendant Smith runs upstairs and starts going through
7 the rooms looking for things.

8 Defendant Gadsden checks downstairs. He runs around
9 by the back. He checks outside that porch door and pushes
10 on that door and knocks that screen down and comes back
11 around and hasn't found anything downstairs.

12 At that point defendant Wilder is still hitting
13 Ms. Green with a gun and has now brought her over to the
14 living room and has got her on the ground where you see
15 that pool of blood in the photo. And he tells defendant
16 Gadsden go get some tape, we need to tape her up.

17 Gadsden runs out, goes to the car, gets some tape and
18 comes back. And they go about taping her up. As they're
19 doing that defendant Gadsden becomes a lookout man. He
20 stands up on the sofa and he's looking out the shades.

21 Defendant Smith is still upstairs. Defendant Wilder
22 has still got Ms. Green on the ground demanding to know
23 where things are she doesn't know about.'

24 Well, at the same time Jamie Williams and Sterling
25 Spann pull up. And as they pull up defendant Gadsden

Closing arguments

1 realizes this is a problem, two guys are getting out of the
2 car. And he says somebody's here, somebody's here.

3 Defendant Wilder yells to defendant Smith get down
4 here, get down here, and they get down there. And Smith
5 and Gadsden go out the door just about the same time.

6 And the first one that's on Jamie Williams is Gadsden.
7 He's got the silver revolver, the .38 Special. And he
8 smacks Jamie Williams over the head and knocks him back a
9 few feet. Leo Gadsden looks to his left. And what does he
10 see there? He sees Sterling Spann putting the car in gear.
11 And now he's got a problem. Now he's got a witness who is
12 about to leave.

13 So what do you do when you're doing a burglary and
14 there's a witness about to leave? He stops him. And they
15 brought a guns for a reason. And he does stop him. He
16 shoots him twice. Gadsden is putting it in -- I'm sorry.
17 Mr. Spann is putting the car in gear. Gadsden stops him
18 and shoots him twice right there inside the car.

19 Jamie Williams has a split second to try to get away.
20 As attention is diverted to Mr. Spann, Jamie manages to get
21 up to the front of the car. But he's in such a hurry his
22 feet come out from under him and he slips on the ground.
23 And Gadsden is no more than half a step away. You look at
24 those pictures. He fires into the car and turns and fires
25 four times at Jamie. Probably thinks Jamie's dead.

Closing arguments

1 The gun runs out, clicking, no bullets left. Jamie
2 jumps back up. He's got no bullets left. He tells Smith
3 go get him.

4 Inside defendant Wilder is still there with Ms. Green
5 inside the house. He's inside. He hears gunshots, so he
6 gets out there.

7 At this point in time five, six rounds have been gone
8 off. Neighbors start hearing it. Mr. Jones goes to his
9 window. Younger Mr. Jones goes to his window as well.

10 Mr. Daniels across the street gets up off his bed and
11 goes to the front porch. And it's at that point in time
12 that Keive Smith after being told by Gadsden to go get him
13 goes after Jamie Williams. He kept those red shoes on.
14 And Mr. Jones, III, the younger Mr. Jones, sees Smith
15 running after Jamie Williams. He can't catch him. He's
16 gone past those dog pens. He stops and comes back.

17 At that same time Mr. Daniels and the other Mr. Jones
18 are looking out the window. Mr. Wilder has come out the
19 door. Gadsden doesn't have any bullets left.

20 Sterling Spann is inside the car. And now he's got to
21 get Spann out of the car, and he's got his hands full. He
22 goes in there and Spann's bleeding. He's got blood all
23 over him. Maybe he hits him with a gun. It's hard to be
24 sure.

25 But he's definitely bleeding. And as he's bleeding

Closing arguments

1 and as Wilder's wrestling with him, he's trying to pull him
2 out of the car. And he gets that blood on his pants.

3 And at some point he looses that clip to the 9mm.
4 Now, that 9mm is ready to go. It's already been slid back.
5 There's a round in the chamber.

6 So when that clip falls out it's only got nine bullets
7 in it, but it's a 10-round clip. There's still a round in
8 that chamber and still a round that can be fired.

9 They pull Sterling Spann out of the car. He begs for
10 his life. And all three of these defendants are right
11 there, and they won't give him that. They take from him,
12 they take from his family his life as he begs. They shoot
13 him on the ground for nothing other than their shower and
14 reign of violence in that front yard.

15 Once he's been shot and there's no bullets left in
16 that 9mm and the clip fell out, that casing's right there,
17 what do they do? They get up as casual as if nothing
18 happened and walk back across the street and get in the
19 Jeep and leave.

20 But you know what happens? Mr. Wilder is trying to
21 shoot that 9mm, I suspect. But he lost the clip dragging
22 Mr. Spann out of the car. And now he realizes, you know
23 what, there ain't no clip in this gun any more. It stopped
24 firing.

25 And so as they're driving he realizes there's evidence

Closing arguments

1 back on the scene, and I suspect that 9mm, we don't know
2 for sure. It's one of those questions. That 9mm somewhere
3 between the time they left that scene and where they were
4 seen by Officer Simpson, because we know one thing about
5 these defendants, if they want to get rid of something,
6 they toss it out the window.

7 They toss a 9mm. And something else happens,
8 something else that they probably didn't expect. And
9 that's Officer Simpson. If there's one thing in this case
10 that has been a posture I'm proud of it's that video. You
11 see an officer doing the job he's supposed to do. He stays
12 calm; he stays collected. He gets the job done.

13 And what happens? We know that Deputy Jackson is over
14 at the fire station. The gunshots go off, and he says
15 within about a minute, a minute and a half, two minutes
16 he's got a description called out.

17 And what does Deputy Simpson tell us? He's about a
18 mile to two miles, a minute and a half or two minutes
19 driving time, from a place where the shootings happened.

20 And we see the video. We hear the calls. He says,
21 confirmed that's a white Jeep-looking vehicle. Yes, that's
22 it. What does he do? Turns on it right behind them.

23 And then we know what happened. These defendants are
24 all inside the car and they say, okay, we've got a patrol
25 car behind us, what do we do, take off. They are on the

Closing arguments

1 freeway.

2 I think they probably realized pretty quickly we can
3 outrun this, this Charger, he's right on us. And if you
4 look at the way Deputy Simpson conducted that chase, it's
5 probably exceptional for law enforcement. He keeps a
6 distance, keeps a lane clear and doesn't endanger people on
7 the road and doesn't get right on them to make them drive
8 recklessly. He keeps a safe distance. He uses his radio.

9 These defendants are probably realizing, you know
10 what, a radio is a lot faster than a car. But on that
11 video you see patrol cars coming down and blocking off the
12 freeway on-ramps to keep traffic flowing safe.

13 So they realize their number is just about up, and
14 they start tossing the evidence out the window. And they
15 realize these three masks, these gloves don't look good.
16 So they toss all that stuff out the window.

17 And finally the police do catch up with them. The
18 stop sticks are rolled out. They try to swerve around
19 those stop sticks and spin around and catch the front end
20 of a Ford, I think a 150-F, and as we saw in that video,
21 shoot off the road to the side of a ditch. And all the
22 evidence is found right then. They got caught redhanded
23 with their guns and their masks flying out the window of
24 the car.

25 The reason they're all equally guilty -- put it up

Closing arguments

1 again -- that they all have different roles in that
2 process. They all went in for a burglary. They're all
3 just as guilty under the law.

4 The judge will tell you. A lot of times it's referred
5 to as aiding and abetting. What it means is if you play a
6 role in a crime and the natural consequence of that crime
7 happens, other crime occurred carrying that out, shooting
8 someone during a burglary and shooting somebody that rolls
9 up during a burglary, you're just as responsible as
10 everybody else.

11 What happened in this case is nothing short of
12 horrific, nothing short of a nightmare, as Ms. Green said.
13 These three men beat a woman over the head with a pistol,
14 robbed her house, shot Jamie Williams and executed a man as
15 he begged for his life in her front yard.

16 Y'all took an oath in this case at the start, raised
17 your right hand, and you swore to return a true and a just
18 verdict.

19 In this case the truth is simple. The evidence is
20 overwhelming. The truth is this case is about violence.
21 It's about the violence of these three men working together
22 who would stop at nothing.

23 In our system everybody has the right to a fair trial.
24 I'd have it no other way, and I don't think many people
25 would. It's the best system in the world. But you know

Closing arguments

1 what? They've had their day in court they're entitled to.
2 They've had their due process. They've gotten their day in
3 court.

4 They would stop at nothing. But you know what? In
5 this courtroom, in that jury room is where it stops. Just
6 as they're entitled to their day in court, the State of
7 South Carolina that I represent, the victims in this case,
8 are entitled to a verdict.

9 And I submit to you if you fulfill that oath, if you
10 find the truth in this case, there's only one verdict,
11 guilty for robbing Patricia Green's house, guilty for
12 kidnapping her and tying her up, guilty for shooting Jamie
13 Williams, guilty for dragging Sterling Spann out of that
14 car, and finally guilty for shooting Sterling Spann and
15 taking the one thing from him that he begged for, his life.

16 I ask you to fulfill the oath you took in this case,
17 that you judge this case based on this evidence, that you
18 find these three defendants guilty of all of the charges in
19 this case.

20 THE COURT: Do any one or more jurors need to take a
21 short break before we continue with the final summations by
22 defense counsel?

23 (No response.)

24 THE COURT: Nobody?

25 Okay. Mr. Brown.

Closing arguments

1 MR. BROWN: May it please the Court. Counsel.

2 Good afternoon, ladies and gentlemen. I want to start
3 by thanking you all for your time and your attention this
4 week. I know it's difficult sometimes to put your lives
5 aside and the other things you've got going on and to come
6 down here and serve jury duty. Again, I appreciate your
7 time and your attention, and I know that we all do.

8 Now, this is my opportunity to comment on the evidence
9 that you, that has been provided to you this week, the
10 physical evidence as well as the testimony.

11 Now, I'm going to comment on that evidence and then
12 you're going to hear the other defense counsel comment on
13 the evidence. And after that the judge is going to charge
14 you, which means he's going to explain to you exactly what
15 the law is as it relates to this particular case.

16 One of the things he's going to tell you is that the
17 prosecution, the state of South Carolina, if you will, does
18 have an obligation to prove, and to prove to each and every
19 one of you, beyond a reasonable doubt that these three
20 defendants, and in particular I'm here for Keive Smith, are
21 guilty of what they are accused of doing. Again, they have
22 to prove it beyond a reasonable doubt.

23 Now, what I want to do is I want to talk about some
24 areas of reasonable doubt. And I think there are many
25 areas of reasonable doubt in this case. Excuse me.

Closing arguments

1 And I want to start with talking about the testimony
2 that you heard from the people who were present that day in
3 Lincolnville. And in particular I want to start with
4 Patricia Green.

5 Patricia Green. It was her house that was invaded.
6 She's the one that spent the most time with the people that
7 did this.

8 And what does she say? Initially, and you heard that
9 she provided a statement that same day. What did she say
10 in her statement? She said five people came into her
11 house, not three but five. She was specific about it.

12 She said one person came in first, the short one, and
13 then four other people came in. She was even more
14 specific. She said two stayed downstairs and three went
15 upstairs. Again, she was very specific.

16 Now, when she testified here in court she didn't
17 testify as to five here. She testified as to three. And I
18 asked her. I said you said then it was five and now you're
19 saying it was three, why the change. And what was her
20 response? Must have been three, they only caught three. I
21 don't believe her testimony is credible. Again, five
22 versus three, that's a big difference.

23 What else does she talk about? Well, she said that
24 the first person that came in had blue medical gloves.
25 Where are the blue medical gloves? We've got a small piece

Closing arguments

1 of the glove. We don't have any blue medical gloves here.

2 Interestingly enough, I think there were blue medical
3 gloves involved here. Remember Nancy Peacock or
4 Investigator Peacock. She said that the county first
5 responders such as herself, they're issued blue medical
6 gloves. And we don't have any blue medical gloves here.

7 Patricia Green said the other people that came in had
8 beige gloves. We don't have beige gloves here. Where are
9 the beige gloves?

10 Remember Officer Simpson said when he was in this
11 chase everything that came out of the window, he said, was
12 black. Patricia Green also said that the first guy that
13 came in had a 9mm with a clip. We don't have a 9mm gun or
14 clip here.

15 Now, there's a clip, and I'll talk about the clip in a
16 few minutes. But where's the gun? They've got these other
17 three guns. We don't have a 9mm gun present.

18 Now, let's talk about what Ms. Green says happened.
19 She said that she was beaten about the head with the gun.
20 She said she was beaten to the point that her blood was
21 flowing. She said the blood was splattered on the walls.

22 I don't think there is any doubt. There was a lot of
23 blood. The blood was all over. But if someone beats her,
24 beats another person with a gun in the head to the point
25 where the blood is flowing, then you get blood all over

Closing arguments

1 that gun. Where is the blood on the gun? The guns were
2 submitted for processing to SLED. They were submitted for
3 trace evidence and D. N. A. evidence. You didn't have any
4 blood on the guns or on any gun.

5 She also said that the gun was placed in her mouth,
6 placed in her mouth to the point where she gagged and
7 vomited. We don't have a gun here with saliva or vomit on
8 it. Three guns have been provided for you. They have all
9 been processed. None of those guns back up that story.

10 Now, if you remember some of the photographs, and the
11 solicitor talked about it, for example, you've got a
12 photograph of the front door. And you can see the dead
13 bolt. She had her door locked. I think it's clear that
14 she was security conscious.

15 The photographs also show that by the time the police
16 got there the back door is wide open and the screen is
17 kicked out. There was no testimony provided to you about
18 anybody going to the back door and about anybody looking
19 out the back door.

20 If you're burglarizing a house you're not going to go
21 burglarizing the back yard. You're not going to open the
22 door and kick the screen out. I submit to you that the
23 door was opened and the screen was out because somebody
24 went out that door.

25 You heard the testimony of the other witnesses talk

Closing arguments

1 about what happened in the front yard. You also heard
2 Detective Stanley say that he's now aware that a neighbor
3 said he saw two people in the back or on the side of the
4 house. That is inconsistent with what Ms. Green says and
5 it's inconsistent with what the other witnesses say.

6 Look at the pictures. You're going to be provided
7 with all of that stuff. Look at the pictures of the
8 upstairs bedrooms. Look at the damage done to those rooms.
9 This all happened in a short period of time. Do you think
10 for a minute that all of that was done by one person?

11 In addition, the Smith and Wesson .357, it was found
12 across from the left side of the house across the street.
13 Mr. Jones, Mr. Daniels, Mr. Williams and Patricia Green all
14 put the people, two or three, depending on who you're
15 believing, in the front of the house. All of the other
16 neighbors put two people on the side. Two people came from
17 the back.

18 Why is all of this important? This is important
19 because it shows the prosecution has got the story wrong.
20 They don't even have the number of people involved here
21 right. If they got that right, wrong, what else do they
22 have wrong?

23 Now, they said that this was a rumor. It's not a
24 rumor. It's not a rumor of five people. The victim,
25 Patricia Green, said five people came into my house, two

Closing arguments

1 people stayed downstairs with me and three went upstairs.
2 You heard Eartha Daniels say I heard there was five. And,
3 again, the prosecution has got it wrong. If they've got
4 that wrong, what else do they have wrong?

5 Now, let's talk about Jamie Williams for a second.
6 And I'm not saying these people are lying, and I'm not
7 saying these people -- I'm just saying that their stories
8 are not credible and I don't believe that their memory is
9 credible.

10 Jamie Williams. He got on the witness stand and told
11 you three people came out and three people were involved in
12 this shooting. We talked to him about his statement that
13 was given a week after the event occurred.

14 I think common sense will tell you that his memory
15 will be better a week after than it is nearly two years
16 later. Again, on the stand he said there were three people
17 involved. In his statement he said two. He was asked how
18 many people did you see. I only saw two. We went over
19 that. It's inconsistent and it's just not credible.

20 You've heard a lot about three masks. Jamie Williams
21 actually said the tall, thin guy had on a white scarf, a
22 white bandana. We don't have a white scarf and we don't
23 have a white bandana. There wasn't one at the crime scene;
24 there wasn't one on I-26; and there wasn't one at the crash
25 scene.

Closing arguments

1 Finally, Jamie Williams actually said that there was a
2 black revolver, not a silver revolver. We don't have a
3 black revolver.

4 What do all of these things add up to? They add up to
5 reasonable doubt, ladies and gentlemen. That testimony is
6 just not credible.

7 Now, you also heard from Leroy Daniels and John Jones,
8 Jr. Leroy Daniels. Remember he's really focused on this.
9 He thinks this is going to be his grandson in the front
10 yard.

11 What does he say? He says two people in the front
12 yard. He had a clear line of sight. Two people in the
13 front yard with Mr. Spann. John Jones, Jr. says he saw
14 three people in the front yard. They're inconsistent.
15 They're not credible.

16 Now, let's talk a little bit more about John Jones,
17 Jr. What did he tell you on the witness stand? He said he
18 went to the living room window and looked out. He saw, the
19 first guy rode by, and he saw another guy behind him with a
20 gun. The second guy actually stopped and shot at the first
21 guy.

22 But on cross-examination we went back through his
23 statement that was provided that day when everything was
24 fresh. He didn't say anything about seeing somebody
25 chasing the first guy. All he said was I looked out the

Closing arguments

1 living room window and I saw a young man run by. That's
2 all he said. Nothing about seeing somebody chasing him,
3 nothing about seeing somebody shooting at him. And, again,
4 it's just not credible.

5 Jones went on to say, and this is Mr. Jones, Jr., that
6 he went to the front-room window and he looked out and he
7 saw three men shoot Mr. Spann once. In his original
8 statement he said that there were three shots. Again, the
9 story has changed. Again, it's not credible. And I think
10 it's reasonable doubt.

11 His son, John Jones, III. John Jones, III, is the one
12 that said, yeah, I saw the red shoes. Let's talk about the
13 red shoes for a second.

14 First on -- he said I saw the red shoes. But on
15 cross-examination he admitted that he could not see the
16 person that was running between the houses. He couldn't
17 see the lower part of them. All he could see was the upper
18 part of them because the dog pens were in the way.

19 He admitted to that. I asked him. I said you
20 couldn't see the lower part, all you could see was the
21 upper part of the body. Yes, that's all I could see.

22 And, again, the red shoes. The prosecutor and I agree
23 on one thing, and we agree that these are visible. Anybody
24 looking at somebody dressed all in black with a pair of red
25 shoes on like that, those shoes are going to scream at you.

Closing arguments

1 That's the first thing you're going to see.

2 Other than John Jones, III, nobody talks about red
3 shoes. Mr. Daniels talked about dressed in black. He
4 hasn't seen any red shoes. Mr. Jones, Jr. He doesn't see
5 any red shoes. And Patricia Green, she doesn't see any red
6 shoes.

7 If you recall when she looked out the window she even
8 testified that the shorter guy that she saw had on black
9 shoes. But does she say anything at all about the red
10 shoes? No.

11 Again, the only person who talks about red shoes is
12 John Jones, III. And he later admitted that he couldn't
13 see the lower half of the individual he was looking at.

14 Again, none of these witnesses are credible because
15 their story is all over the place. Once you change your
16 story it's difficult to know what's true and what's not
17 true.

18 For example, Ms. Green says that she recognizes
19 Anthony Wilder and Leo Gadsden from being at her house that
20 day. That's not credible. She doesn't even know how many
21 people were there. She said five, and now she says three.
22 But she's sure she saw Wilder and Gadsden.

23 She also said she had blood in her eyes. Detective
24 Stanley said that he had to write her statement for her
25 because her eyes were blurry. But the prosecutor, excuse

Closing arguments

1 me, the prosecutor wants you to buy her testimony that she
2 identifies Mr. Wilder and Mr. Gadsden as true. I submit to
3 you it's not credible.

4 Again, these folks, their stories, are all over the
5 board. You heard testimony to the fact that this was all
6 over the news and all over the papers for days after this
7 event occurred, it occurred.

8 I would submit to you these folks aren't identifying
9 who they saw at the scene that day. These folks are
10 identifying who and what they saw on T. V.

11 Remember Ms. Green said when I asked her why did you
12 go from five to three, had to be, that's all they caught.
13 They're believing everything that the prosecution has told
14 them.

15 Now, let's talk about the crime scene process.
16 Remember you saw the pictures of the front door with all of
17 those flags and all the placards with the numbers.

18 The bottom line is the crime scene people went over
19 that area with a fine tooth comb and used metal detectors
20 and so forth.

21 I asked Inspector Owens, said did you have any time
22 constraints. No. So you used all the time you needed to
23 process that scene. Yes. And you didn't stop processing
24 that scene until you were convinced that you had gotten
25 everything there was to get. That's correct was his

Closing arguments

1 answer.

2 And let's look at what they found. They found a 9mm
3 shell casing. And the prosecutor is, was telling you how
4 important that was just a few moments ago.

5 We don't have a 9mm gun, but we've got a 9mm shell
6 casing. Interestingly enough before I forget, that 9mm
7 shell casing is the same one that you heard was tied to a
8 later shooting in the city of Charleston.

9 So that gun was later used. These guys were arrested
10 that day, and they've been in jail since. That gun was
11 later used somewhere in the city of Charleston. And the
12 shell casing that came out of that gun was matched to the
13 one here.

14 How could that happen? Quite simply. One of the
15 people who did this is still out there and they're still
16 using that gun.

17 Now, they found the clip in Mr. Spann's car. The clip
18 doesn't match the shell casing, first. It's got Winchester
19 shells in it. The shell casing they found is a Luger. It
20 doesn't match.

21 Again, it's reasonable doubt. And that was found in
22 the same car that Mr. Williams just got out of. One thing
23 that's admitted here is Mr. Williams was at Ms. Green's
24 house that day to conclude a drug deal. He was there to
25 get the rest of his money that she owed him from buying

Closing arguments

1 crack cocaine.

2 I've got to tell you. In all the time I've been doing
3 this, this is the first time I've ever heard a prosecutor
4 say, hey, that gun or that clip that you found in the drug
5 dealer's car can't be his. Interestingly enough, that's
6 the story.

7 Again, the clip and the shell casing, they don't
8 match. There is not a 9mm gun here. Also it's interesting
9 that the prosecutor, his theory behind this is that the
10 clip was somehow inadvertently ejected into Mr. Spann's car
11 while Mr. Spann was being dragged out.

12 What did you hear from the experts that they put up?
13 Investigator Owen said he ain't ever seen that happen. The
14 agent from SLED, the firearms agent, Whitler, I believe he
15 said that a Glock 9mm is designed so that you can't
16 accidentally eject the clip. That theory doesn't work.
17 The prosecution is wrong about that, and they're wrong
18 about other things as well.

19 They provide to you a Bersa .380. That's a
20 semiautomatic. One of the things that you heard about
21 semiautomatics is when you pull the trigger the projectile
22 leaves the barrel, the shell casing leaves the port and
23 another shell is put into the barrel.

24 They provided you this Bersa .380 that they say was
25 used in the, at the scene. Where's the shell casing from a

Closing arguments

1 Bersa .380? They went over that crime scene with a
2 fine-tooth comb. It wasn't there.

3 Now, let's talk about the D. N. A. for a second. The
4 prosecutor just told you Keive Smith's D. N. A. was all
5 over those gloves. Nobody testified that Keive Smith's D.
6 N. A. was on any of those gloves. Not one person from this
7 witness stand said that, because it is not.

8 But let's talk about the rest of the D. N. A. One
9 thing that we do agree with the prosecution on is there was
10 a lot of blood, a lot of blood.

11 You heard Patricia Green say that the blood was
12 flowing out of her head, it was splattered on the walls.
13 You saw the pictures of Mr. Spann's car. Remember the
14 picture of that white t-shirt in there? It was covered
15 with blood. There was blood everywhere.

16 I submit to you that anyone who was beating Patricia
17 Green in the head to the point where blood splattered on
18 the walls, she's got blood flowing from her head, is going
19 to have blood all over himself.

20 I submit to you that anyone who was dragging Mr. Spann
21 out of his car, who is a big guy, and as the prosecutor
22 said, that's not an easy task. There's going to be a fight
23 on your hands. He said there was blood everywhere. You're
24 going to get a lot of blood on you.

25 These defendants didn't have a lot of blood on them.

Closing arguments

1 There was one small spot, and you're going to be provided
2 with the cutting and the pants. One small spot on a pair
3 of pants and one small spot on a glove. It makes no sense.
4 Again, the one thing we all agree on was there was blood
5 everywhere.

6 Now, let's talk about those small spots for a second.
7 They say that Anthony Wilder had a small spot of
8 Mr. Spann's blood on his pants.

9 Interestingly enough, after this event, after what
10 happened at the crime scene and after the car crash, people
11 went to the hospitals all over. People went to Saint
12 Francis; people went to M. U. S. C.; people went to
13 Trident.

14 The two people who were at Trident, Mr. Spann and
15 Mr. Wilder, they're the ones that had the transfer of
16 blood. That's not a coincidence.

17 When you come in to serve this jury duty one of the
18 things you bring with you is you bring with you your common
19 knowledge and you bring with you your common sense.

20 You heard that the ambulance when it took off was
21 actually headed downtown, and they diverted to Trident
22 because Mr. Spann was going down hill.

23 When they got to Trident Hospital, that's a code blue,
24 that somebody is dying, everything is dropped and everybody
25 focuses on saving that life. And that's what they did.

Closing arguments

1 You heard one of the officers talk about it was a lot
2 of commotion there. That's not a stretch to think about
3 emergency room workers, nurses, doctors, technicians,
4 everybody running here, running there, doing whatever they
5 can to try to save that life.

6 What you didn't hear was whether or not any of those
7 people who worked on Mr. Spann worked on Mr. Wilder as
8 well. They both happened to be at the same hospital.
9 Again, having some type of transfer of fluid or something
10 like that in a hospital is not anything.

11 I think we've all heard or probably we've all had some
12 friend or someone we know that has been in the hospital and
13 come out with a staff infection or something like that.
14 Any time you have something like that there is a transfer
15 from one person to another. It's not that unusual.

16 Again, I think the fact that Mr. Wilder and Mr. Spann
17 were at the same hospital emergency room and fulfilled
18 doesn't shock me that there may be a spot of blood there.

19 And I'll also say this to you. In going back to the
20 fact that there was blood all over that crime scene and
21 blood all over the car and blood all over Mr. Spann, again,
22 I think our common sense says you're going to get more than
23 that little spot on you if you're dragging this guy out of
24 the car.

25 And when that doesn't make sense you have to look at

Closing arguments

1 alternatives. And I think a clear alternative is, again,
2 it's not a surprise that the two people who were in that
3 emergency room at the same time could have a transfer of
4 blood. In any event, it's reasonable doubt.

5 Now, what about the glove? They said the glove had
6 Ms. Green's blood on it, in essence. Again, if somebody is
7 beating her on the head with a gun wearing that glove,
8 there's going to be blood all over, not just a small spot.

9 Think about this. That glove that they say has a spot
10 of blood on it is the same blood that was picked up off the
11 road by Detective Stanley.

12 Where did Detective Stanley go that day? The
13 hospital, the crash scene, to the crime scene. He was at
14 the crime scene. He had the glove with him.

15 There's blood everywhere. It's not a stretch to
16 imagine Detective Stanley being at the crime scene and
17 somehow getting some blood on this glove. All you've got
18 to do is touch something. Blood is everywhere. It's all
19 over the car; it's in the front yard; it's at the front
20 door; it's on the walls; it's on the carpet. It's
21 everywhere.

22 I think it's more of a coincidence that that's the
23 glove that was found by the person who was at the scene at
24 the crash site picking up stuff on the road. In any event,
25 there's ample opportunity for cross contamination, and I

Closing arguments

1 think there is clearly reasonable doubt.

2 Let's talk about the gunshot residue for a second with
3 regard to Keive Smith, in particular. First, they did not
4 find gunshot residue on Keive Smith. They found lead
5 components, excuse me, lead particles, which the expert
6 said was a component of gunshot residue.

7 In particular, like he said, lead particles which
8 could be from G. S. R., could be from G. S. R. That
9 statement brings with it inherent reasonable doubt. It
10 could be G. S. R. It could just as simply be something
11 else.

12 I want to also tell you that, interestingly enough,
13 there was ample opportunity for cross-contamination on the
14 G. S. R. too.

15 What did you see at the crash site? You saw that car
16 had a violent crash. The car was on its side. The windows
17 were blown out. You had police officers all over that car,
18 inside that car dragging these guys out of the car,
19 handcuffing them, those kinds of things.

20 What did all of those responders have in common? They
21 all had guns. They all worked with guns. What we didn't
22 hear about was whether or not anybody else had been
23 shooting guns that day, whether or not any of these
24 officers were at the gun range. We don't know. But we
25 know that these folks were in close contact with each

Closing arguments

1 other, and we do know that such contact can transfer things
2 like G. S. R.

3 Again, Keive Smith didn't have G. S. R. He had lead
4 particles. But we know that. How do we know that?
5 Because the expert talked about it. Remember he talked
6 about how when you put your hand in the pocket that could
7 wipe it off? Well, if something wipes it off, that
8 substance that's being wiped off is transferred to the
9 other.

10 And, by the way, Keive Smith, these lead particles,
11 you heard from Officer Jacobik that when he got to the
12 hospital, M. U. S. C., Keive Smith's hand was bagged with a
13 Chick-Fil-A bag, a Chick-Fil-A bag.

14 He didn't know where this bag came from. He didn't
15 know who had it before. He didn't know where they got it.
16 He didn't know who put it on Keive Smith's hand. He didn't
17 know what had been in that bag before it was placed on his
18 hand. I think that in and of itself is reasonable doubt.
19 Generally, I think there's a lot of reasonable doubt with
20 regard to the G. S. R.

21 Finally, the big question on your mind I'm sure is why
22 are these guys running. If they didn't do anything, why
23 did they run? Well, they did do something.

24 The reason why they ran is simple, because they had
25 drugs in the car. You heard. They had powder cocaine;

Closing arguments

1 they had crack cocaine; they had liquor; they had a gun;
2 they had a radio that belonged in somebody else's car.

3 They're not angles. They didn't shoot these people
4 and they didn't invade this home, but they're not angles.
5 That's why they ran.

6 I want to tell you also that if you'll watch the
7 pursuit tape, watch the pursuit tape carefully, Officer
8 Simpson is going down Lincolnville Road. You can watch the
9 cars go by.

10 He passed a white Jeep-like vehicle. At that point he
11 had no particular reason to notice that vehicle. I think
12 he had no particular reason to notice that vehicle.

13 After he had passed he heard that the description, the
14 description that came across the radio -- watch the tape.
15 He didn't immediately turn around. He kept going down the
16 road. Why? Because he was confirming what he thought he
17 had heard.

18 He went a good ways down the road, a good ways. Okay.
19 It took him a while before he turned around. And he was
20 moving. He was going fast. Again, watch the tape.

21 At some point he turned around and he went back up
22 Lincolnville Road. He went out to the main highway and
23 went past the intersection and had a little trouble getting
24 past there because people at the light were going in front
25 of him. And he turned left.

Closing arguments

1 It wasn't until he got on the main highway that he
2 again saw a white Jeep-like vehicle. We don't know that
3 that's the same vehicle; we don't know that that's the same
4 vehicle.

5 It's funny. My daughter -- I have a 16-year-old
6 daughter. She's so hot try to get a Jeep Cherokee. We
7 can't ride down the road without her saying, oh, there's
8 one, oh, there's one and driving me crazy. Those vehicles
9 are not unlike this Jeep vehicle.

10 It's not the only one on the road. Look at the tape.
11 There's a long time between the fact of the first car that
12 came by and when they picked up the Jeep Liberty that these
13 folks were in.

14 Now, we heard a lot about the white Jeep-like vehicle.
15 We heard from Yvette Cook. She paid particular attention
16 to this car. Why? She was driving slow. And,
17 incidentally, she never saw the car stop. She never saw
18 anybody in the car. And you heard Officer Simpson. But
19 she paid close attention to it.

20 The other witnesses, they said three guys went around
21 the corner and they left in a white Jeep-like vehicle.
22 What they didn't say, and these guys were looking at these
23 cars. These were vehicles that had their full attention.

24 What did you hear no one say? That this Jeep had
25 Florida tags. Maybe no one knows it had Florida tags, but

Closing arguments

1 I submit to you that if you're looking at that car, and
2 look at the picture. It's clear as a bell that you're
3 going to notice that they're not South Carolina tags on
4 there. Not one single person said anything about the Jeep
5 we saw or the Jeep-like vehicle we saw had Florida tags or
6 had some tags other than South Carolina.

7 Now, I think that all of these things add up to a
8 reasonable doubt. And I think that when you folks go back
9 to the jury room and you start to deliberate, you look at
10 the physical evidence and you start thinking about what the
11 testimony was, and you think about the inconsistencies, and
12 you think about, again, just all the testimony in general,
13 I think you'll also see that there is ample reasonable
14 doubt here in this case.

15 And then you see that you have no choice but to vote
16 to acquit Keive Smith, and I am confident that you will.
17 Thank y'all for listening.

18 THE COURT: Any juror need to take a break now? Yes.
19 Okay. Let me ask you to go to your jury room. Don't
20 talk about the case.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: We will be in recess for 15 minutes.

24 (Whereupon, a recess was taken.)

25 THE COURT: All right. Bring the jury in, please.

Closing arguments

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Mr. Davis.

4 MR. DAVIS: Thank you, Your Honor.

5 I represent Leo Gadsden. While all three defendants
6 have been tried at the same time by the state, I want to
7 speak a little bit for my client.

8 Now, the other defense attorneys and I have discussed
9 some about this case, but we've in no way planned
10 everything out. So I may go over a few things that you're
11 already familiar with.

12 I appreciate your patience as I do that, but it's
13 important that I talk to you about Leo's case.

14 I warned you in the opening that things weren't as
15 clear as the state suggested and it's their burden to prove
16 those things to you, to tie up loose ends. And there are
17 some things here that are clear. Certainly Ms. Green,
18 Mr. Williams were beat up and shot; and, tragically,
19 Mr. Spann was shot and killed.

20 But there are several things that are not clear. And
21 you should have to or you should have answers to those
22 before you make a decision on this. They're not just
23 distractions, despite what the state says. They're
24 important, because it's not clear that it will affect your
25 decision on a verdict. You should want to know who did it,

Closing arguments

1 how many people did it.

2 And, now, the judge will tell you later about the law.

3 And he'll allow you what he should about witnesses. You

4 can believe parts or all of witnesses' statements. So

5 there are parts you can say that's accurate, that's

6 believable, that's credible, but other things just aren't.

7 And that's human nature, and the law allows for that.

8 Now, we have that tragic incident in Lincolnville.

9 The state from that, we have the chase and the wreck which
10 you've seen the video of.

11 Now, that is clear. Mr. Gadsden was in that vehicle
12 that wrecked. He was the person taken out the back window
13 of that vehicle. He was a passenger in the back seat. He
14 is not charged with any traffic violations, nor was he
15 charged with drugs. He wasn't driving.

16 Now, the state wants you to jump to the conclusion
17 that the Jeep that wrecked, the one that got on 26 from
18 College Park Road, must have been the Jeep from
19 Lincolnville.

20 That's an assumption you should not jump to. There's
21 too many holes. I told in opening they gloss over some
22 things and jump to conclusions here. They shouldn't jump
23 over things and they shouldn't selectively pick evidence
24 and ignore the fact that five guys were talked about
25 committing this crime but there's only three when the Jeep

Closing arguments

1 wrecks.

2 Call all the neighbors that saw what happened except
3 for Harold Corley who sees two people either at the back
4 door or to the side, back side of the residence. Ignore
5 that there's a 99mm out here being shot in our community
6 still in circulation, ignore completely this third weapon,
7 a Bersa, that's found at the crime scene.

8 Things like that are not just distractions. They're
9 loose ends that don't have answers and should concern you.
10 And, frankly, I get a chance to talk to you about some of
11 those facts that are not so clear-cut and talk to you about
12 what the state calls distractions.

13 What I mostly want to focus on is that first
14 assumption that the wrecked vehicle that Leo was in must be
15 the same vehicle in Lincolnville. No one sees in
16 Lincolnville any of the folks get into the Jeep.

17 Now, some people say it's a truck, some people say
18 it's a Cherokee. Some people see it driving up and down
19 multiple times, the road, turning around. Some only see it
20 once, or just parts of it.

21 Mr. Brown said no one talks about the tag. That's
22 fine. Give us Florida if that's what you saw.

23 No one knows which way it went, because you heard the
24 recordings, all of which looks in many directions. They
25 don't know which way it went. It's not the same Jeep.

Closing arguments

1 It's not. And the state must convince you beyond a
2 reasonable doubt that it is.

3 Once for almost two minutes and once for about a
4 minute; once for almost two minutes and once for about a
5 minute. You get to confirm that.

6 All of this evidence that has been admitted is at your
7 disposal. All you have to do if you need to is ask the
8 judge for access to it. Now, it'll be back there with you.

9 For example, playing of the video. If you want to
10 play it, all you have to do is ask for it. Once for two
11 minutes, and once for another minute. That's how many
12 times and how long Deputy Jackson was not viewing the
13 vehicle he first saw in Lincolnville.

14 Before he turns around he has to confirm that it was
15 being looked for. He did that. But it's almost two
16 minutes later that he spots a white Jeep-like vehicle
17 turning left.

18 Again, watch the video if you want. Is that the same
19 one, or is the one that went by him, did it turn into one
20 of the developments we see on Lincolnville Road? Did it go
21 straight down Lincolnville Road? He loses it for two
22 minutes.

23 Remember there's another car comes behind him, Deputy
24 James. Deputy James had not already turned around. Don't
25 you think with all of these chatter, and listen to the

Closing arguments

1 recordings. Jackson passes, and then here comes James.
2 You'll hear them talk about, hey, I think they're looking
3 for a white Jeep-like vehicle and we just passed one. It
4 went by Officer Jackson and it should be going by Officer
5 James on Lincolnville if it's the same one that's turning.
6 Should have. Or, as I said, did it turn into one of the
7 other developments; did it say in Lincolnville?

8 At any rate, he ultimately does get behind a vehicle
9 generally matching the description. Watch the tape. Loses
10 it for another minute down College Park Road. And he was
11 so busy remember he had to hit his lights and siren while
12 the vehicle crossed the intersection. He wasn't letting --
13 listen for another minute down College Park Road. Is it
14 the same one that ultimately he catches up to turning
15 slowly onto I-26?

16 Watch the video. The Jeep is in the right lane behind
17 another vehicle slowly turning on I-26. Once on 26 with
18 lights and siren and a cruiser, a Charger, behind the
19 vehicle, yes, it does take off on this high-speed chase.

20 Also, I'm going to reiterate, but I think that
21 Mr. Brown talked about reasons for the chase. What's found
22 at the scene when it wrecks?

23 The assumption about this vehicle that wrecks being
24 the same one up in Lincolnville affects everything else.
25 It just does. It affects everything else.

Closing arguments

1 And the simplest way to prove that is as Mr. Brown
2 said, reminded you, when Ms. Green was questioned by the
3 state, by the state, only according to the best of my best
4 recollection, only three, meaning suspects, because only
5 three were caught.

6 No. Only three were in the wreck at the Jeep on I-26.
7 And because of that in court on Monday she gets quizzed.
8 I'm with Mr. Brown. Two years passed. Never shown any
9 suspect photos, never shown any photo lineups. Sees my
10 client on T. V. already charged.

11 Please understand there is no evidence, none, no
12 evidence from any of the witnesses as to heights and
13 weights of any of the defendants at the time two years ago.

14 We hear a lot about tall and skinny ones, stocky one,
15 6'4" and 5'7". That's speculation by Ms. Green. There's
16 no testimony to their heights and weights two years ago.
17 It's just, it's unknown, it's unknown.

18 Now, but she's going to say, yeah, I recognize them.
19 Which one of the three? Who is she going to point to in
20 the courtroom? She's not going to point to me. She is not
21 a reliable identification because it was biased by the
22 arrest and it was biased by the media coverage.

23 How many people was it? You're not asked to decide
24 that question, but the fact that it remains unanswered
25 should be a concern to you. The lead detective knew that

Closing arguments

1 Harold Corley saw two men near the rear of the residence.
2 All the neighbors, of all the neighbors Mr. Corley is the
3 only one that the state didn't present at trial. That
4 should concern you.

5 We know that a 9-mm Glock clip is found at the scene
6 without the pistol. That's unusual. That should concern
7 you. Police are aware that that pistol is out here in
8 circulation being used in other crimes. That should
9 concern you.

10 Briefly, Mr. Williams is in a similar situation. He's
11 confused about who did this and how many did it.

12 Now, Ms. Green and Mr. Williams want to get it right.
13 They want the people that did this to be caught and
14 prosecuted and probably punished. They want to get it
15 right. But he's confused. He just is. He immediately
16 identifies a particular weapon and identifies Leo.

17 Now, let me just talk to you about how that can't be
18 reliable. It just can't be. He wants it to be, but it
19 can't be. Very quickly about both of those
20 identifications.

21 He's told you he saw newspaper footage after Leo was
22 already arrested and accused in this. He also told that
23 you that he met with the state and he reviewed his
24 testimony. He saw these exits beforehand.

25 Now, here's how he is supposed to have identified Leo.

Closing arguments

1 When this happens to him, he told you that the man that was
2 coming at him had a white scarf around his face. That begs
3 two questions. Where's the white scarf and how can you
4 identify someone with a white scarf around his face?

5 Also, he said that it covered his mouth and you could
6 only see his hair. Also, he said that the person had on
7 blue jeans and a black hoody.

8 This is one of the several items you'll have back with
9 you. It's Item 68. This is Leo in the hospital, arrested.
10 And you can see cuffs on his hands and his ankles.

11 When he was arrested out of that Jeep that's what he
12 was wearing. No blue jeans, no black hoody, no white
13 scarf. He couldn't see who it was. He didn't know. And I
14 hate that, but it doesn't mean that he's allowed to come in
15 here and pick Leo when he can't identify who it was.

16 Just for a second about the hair, you know, dreads are
17 not unique. They're not necessarily uncommon for
18 African-American men to have them. It's also not uncommon
19 for African-American men to change their hairstyles. It's
20 already been talked about.

21 Clearly, if the scarf is covering his face and he had
22 on a hoody, that he had on blue jeans, no, oh, but he had
23 dreads. Well, if that's how they've identified him, by
24 having blue jeans or dreads, they can't be possible either,
25 because years later, two years later, now he doesn't have

Closing arguments

1 them. It's just not reliable.

2 Again, Mr. Williams, unfortunately, was never shown a
3 photo lineup, was never shown any suspect photos. Two
4 years later he comes in when he's out of jail. And two
5 years later, coincidentally, of the two silver revolvers,
6 he picks out the one that the state argues is the one
7 that's used.

8 Let me tell you why that's unreliable. Remember some
9 of the testimony about the firearm experts. They mark them
10 so that they'll be able to tell which is which. They mark
11 them. Even though they have them in their hands, they mark
12 them with initials and whatnot to make sure they get the
13 right silver revolver. I don't actually believe he was
14 even shown any other options.

15 Now, the last little bit I need to talk to you about.
16 Ms. Green, Mr. Williams wanted to get it right. These are
17 the three people that the state has accused of this crime
18 up in Lincolnville. They want to get it right. They
19 want these folks that have been arrested to be convicted.

20 We have unbiased witnesses, thankfully, the SLED
21 agents, all right, up in Columbia, right, testing the stuff
22 up in Columbia? Nothing that SLED has, primarily I'm
23 talking D. N. A., gunshot residue, even touches Leo.

24 I asked do you know who the alleged suspect and the
25 alleged victims are? Indeed, we know names, but we don't

Closing arguments

1 know these folks because they're in Columbia doing the
2 testing.

3 There is nothing, no D. N. A. from Ms. Green on Leo,
4 no D. N. A. from Mr. Williams on Leo, nor Mr. Spann on Leo.
5 No gunshot residue on his hands.

6 Now, maybe he threw a mask out of the vehicle, maybe.
7 That's the best they can tell you. SLED, maybe he did.

8 Very quickly there, very quickly there. When you look
9 at these masks, a big portion was cut out by the SLED
10 agents. All right. So they're not the way they were when
11 they were recovered. Please remember that. And it'll show
12 up. I think one of the agents talked about the white line
13 and they draw where they made cuttings. They are not in
14 the exact same condition today as they were then.

15 The other SLED agent talks about the weapons. We know
16 that the 9mm Glock is still in circulation. We know that
17 Ms. Green thought one had a revolver and all the other
18 pistols were nines.

19 The SLED agent cannot say that the bullets from
20 Mr. Spann that were on the scene were fired from that
21 revolver or that revolver. He can't say that. He said
22 they could be fired from either of them. He said there
23 could have been four different weapons out there.

24 Here's the problem. The state has a story and they're
25 sticking to it despite the fact that there are these other

Closing arguments

1 issues. Either one of those revolvers, revolvers or
2 another similar pistol, could have fired all of the bullets
3 that will be with you except for the nine shell casings.

4 Now, just because Ms. Green and Mr. Williams are not
5 reliable doesn't mean they're not victims of this crime.
6 That's not the question. It's whether Leo is guilty of
7 participating.

8 Just because Mr. Williams sold crack cocaine and
9 Ms. Green used crack cocaine doesn't justify anything bad
10 happening to them. It does not condemn them, but you must
11 consider that when you evaluate how accurate they are in
12 what they told you.

13 They want the people that did it to them caught.
14 Mr. Williams wants the people that killed Mr. Spann caught
15 and punished. But from early on they know three people
16 wrecked in a white Jeep. We got three folks. And that
17 affected everything. In fact, a little more specifically,
18 Ms. Green was at the hospital with Detective Stanley, and
19 she knows that Leo's been arrested already.

20 She gets to, commits herself right then, it wasn't
21 five, it was three. Later she sees three on T. V. Only
22 three suspects because only three were caught.

23 She also met with the solicitors to discuss the
24 testimony and review the exhibits that people talked with
25 y'all.

Closing arguments

1 If Leo is guilty of anything, it's what's out at the
2 crash scene. He's riding in the back seat, and when it
3 crashed cell phones and C. D.'s and car stereo and drugs
4 and a gun were found.

5 Selling drugs? Maybe. Possessing drugs? Maybe.
6 Weapon, stealing stuff, stealing C. D.'s or phones or car
7 stereos? Maybe.

8 That's not before you today. That's the choice of the
9 state. That's not before you today. But it sure does
10 explain why items would have been there -- gloves, masks --
11 why the driver who sped off, why all of those items would
12 have been there.

13 Leo did not do what the state is claiming today in
14 trial, he didn't do. The state's scenario is a guess at
15 best. It's a guess.

16 Leo was not in Lincolnville. He did not commit these
17 crimes and the state cannot prove it. Thank you.

18 THE COURT: Mr. Lofton.

19 MR. LOFTON: If the Court please.

20 Ladies and gentlemen, the good news is I'm the last
21 lawyer you'll have to listen to today. And, believe me, I
22 feel your pain because I've been here the whole time and
23 listened to all of the lawyers talk also.

24 I would be remiss if I didn't begin by thanking you
25 for your presence here this week as I did at the outset. I

Closing arguments

1 explained to you that we couldn't function if you weren't
2 here. And because you've been patient and you've been kind
3 enough to come, even though it is an obligation and a duty
4 that you have as a citizen of this great country, we are
5 very much appreciative of the time you've given us and to
6 the attention that you've given to the case.

7 The one thing that I hope that I will be able to do is
8 not plow back through all of the fields that you've had
9 plowed before you this afternoon.

10 I represent, along with my daughter, Anthony Wilder.
11 He is our client, and my focus this afternoon will be
12 totally on him, because, as you have been told throughout,
13 each individual defendant, even though we are being tried
14 with others, is entitled to your individual consideration
15 on each individual charge with which a particular defendant
16 is accused of.

17 And so with that in mind, I want to talk to you just a
18 little bit about Anthony and about his case.

19 Remember at the outset that the judge told you that
20 when Anthony Wilder came into this courtroom he was
21 presumed to be innocent of all of these charges.

22 The judge told you that that presumption remained with
23 him throughout the entire trial of the case. And that
24 presumption remains with him as we all are in this
25 courtroom this afternoon at ten minutes till 6:00.

Closing arguments

1 The only way that that presumption can be removed is
2 if when you retire to the jury room you each individually
3 find that the state has met its burden of proof and they
4 have proved Anthony Wilder guilty of the charges that are
5 before you.

6 They must prove him guilty beyond a reasonable doubt.
7 And if they fail to meet that burden, you don't get to
8 speculate, you don't get to guess, you don't get to
9 surmise, you don't say, well, maybe just because it all
10 looks so bad he's got to be guilty.

11 You don't get to do that, because you took an oath
12 when you came into this courtroom, and you told the lawyers
13 and you told the judge if the state fails, if the state
14 fails to meet the burden, I don't get to speculate, I don't
15 get to guess, I don't get to surmise, I must under the oath
16 that I took return a verdict of not guilty. Because, you
17 see, as you've been told and you'll be told again when the
18 judge explains the law to you, a defendant accused of a
19 crime in this country does not have to prove anything.. He
20 doesn't have any burden.

21 Mr. Wilder as he sits in this courtroom this afternoon
22 has no burden. The burden is on the state. It was on the
23 state at the beginning, and it's on the state at the end.
24 And if they failed, they failed to meet the burden, then
25 you must acquit.

Closing arguments

1 Now, I want to talk to you, as I said, about
2 Mr. Wilder, because the state, the state paints a picture
3 for you, and I wrote down Mr. Williams' closing. He said
4 Mr. Wilder was short, stocky, on the road, kicked the door
5 in, beat Ms. Green with a 9mm, told someone to get some
6 duct tape, taped her up. She's bleeding. Third one out.
7 He's the third man out of the house. Wilder was pulling
8 Spann out of the car. Wilder was holding him down on the
9 ground while he was being killed.

10 Well, that all sounds real good. But has the state
11 proven that beyond a reasonable doubt? And I submit to you
12 they haven't. And here's the reason they haven't.

13 First of all, Ms. Green says she saw him out of a
14 window. Now, the picture that I put up that had the tree
15 in front of it, I didn't go looking for that picture. That
16 wasn't my picture. That was the state's picture.

17 When they asked Ms. Green where she saw Mr. Wilder and
18 how she saw Mr. Wilder, that was the picture they put up.
19 And it had all the bushes and all the limbs from that tree
20 in front of that window. But she came into this courtroom
21 and she said I saw this guy across the street that didn't
22 have his mask on and then the same guy that didn't have his
23 mask on across the street, he came and kicked my door in
24 and he hit me in the head with a 9-mm pistol and I'm
25 bleeding.

Closing arguments

1 Well, here is the problem with that identification.
2 She never called the police and said I have now seen the
3 individual on television that was standing across the
4 street from my house just before this home invasion and I
5 now know and I can identify the individual that kicked my
6 door in, came in, had a 9mm pistol and hit me in the head.

7 Well, Ms. Green how many times did you see Mr. Wilder
8 on television, even though you didn't bother to call the
9 police? Well, I only saw him one time, but it ran on the
10 news for a week. Well, how do you know it ran on the news
11 for a week if you only saw him one time? And, oh, by the
12 way, I saw his picture in the paper too.

13 Well, you see, here is the problem with all of that.
14 And the state makes a big deal out of all of this D. N. A.
15 evidence and all of this blood.

16 Well, if you believe the state, Anthony Wilder is over
17 there whacking this lady in the head with a pistol, a 9mm
18 pistol, and she's bleeding because they've got blood on the
19 living room floor. They've got blood on the staircase.
20 There's blood everywhere if you believe the testimony.

21 And yet when Anthony Wilder is arrested he doesn't
22 have any blood that matches Ms. Green on him. So if he's
23 whacking her in the head and she's bleeding and he's
24 standing over her, he's even now according to her taping
25 her up.

Closing arguments

1 Even though she gave a statement the same day of the
2 incident, she indicated that another guy came in, some guy
3 that was 6'4", and he was the guy that taped her up.

4 And then you have Mr. Wilder supposedly with this 9mm
5 pistol running out of the house grabbing Sterling Spann who
6 is in the car, whacking him in the head, whacking, doing
7 something, because when he's doing all of that this clip
8 falls out of this 9mm pistol.

9 And, low and behold, there's one bullet in it, so
10 let's just shoot him with that one. I know where the clip
11 is. Let's leave. I'll put the gun away.

12 The only problem with that theory is we know that a
13 9mm shell casing was found at the scene, and we know that
14 subsequently recently in the city of Charleston there was
15 another shooting. And guess what? The 9mm shell casing at
16 the scene matches the 9mm shell casing from the recent
17 shooting.

18 So you've got to believe now Anthony Wilder who throws
19 the gun into the river, throws it into the bushes, and now
20 there's some other shooter that's recovered it, found the
21 gun, and now he's out, shooting other people.

22 Is it credible? Is it believable that Anthony Wilder
23 was the individual standing on the street kicking in
24 Ms. Green's door, beating her in the head, taping her up
25 and there's not one piece of evidence to put any of

Closing arguments

1 Ms. Green's D. N. A. on Anthony Wilder's clothes, person?

2 No evidence.

3 And then the state says, well, but, look, we've got
4 Sterling Spann's blood on Anthony Wilder's pants so we know
5 that Anthony Wilder is the guy that was over there dragging
6 Sterling Spann out of the car while he's bleeding because
7 he's been shot and he's begging for his life.

8 Well, here is the problem with the D. N. A. in this
9 case. First of all, the pants that they claim belonged to
10 Mr. Wilder, guess what? They don't have his D. N. A. on
11 it.

12 He supposedly has had these pants on all day long.
13 He's beat a lady in the head with a gun while he's got
14 these pants on. He's pulled a guy out of a car while he's
15 participated in a killing while he's got these pants on.
16 He's in an automobile accident while he's got these pants
17 on. And, low and behold, there ain't no D. N. A. on the
18 pants that belong to him.

19 Do you think those are Anthony Wilder's pants? Well,
20 I submit to you we don't know. And here's the reason we
21 don't know.

22 First of all, I understand there was a lot of
23 confusion that night. They've got people shot; they've got
24 people in a car accident. They've got people everywhere
25 going to all different hospitals.

Closing arguments

1 And here is what happens. We've got one guy at M. U.
2 S. C. We've got two at Trident, Mr. Wilder and Mr. Spann.
3 Mr. Spann is dying, so they have to take him to Trident.
4 Mr. Wilder is already there because he's been in an
5 accident.

6 Well, you remember from the videos and you remember
7 from the testimony we were on an alert for a hurricane.
8 And you remember all the water that you saw on the roads
9 during the high-speed chases. The roads were covered with
10 water.

11 Now, is it credible, is it believable that Mr. Spann,
12 Mr. Wilder and the other individuals when their clothes are
13 taken, and all of the testimony is they were put in paper
14 bags, paper bags, they weren't sealed paper bags, just
15 paper bags. Is it credible, is it believable that those
16 are the paper bags that that wet clothing was put in? I
17 submit to you it is not.

18 And from the standpoint of Mr. Spann and Mr. Wilder's
19 clothes, well, here's what we know. Mr. Wilder's clothes
20 were taken off by a medical person at Trident Hospital. We
21 don't hear from that medical person. That medical person
22 didn't come into court and testify.

23 Mr. Spann's clothes are taken off by, we assume, a
24 medical person, but we don't know because he didn't hear
25 from that medical person.

Closing arguments

1 But what we do know is that the officer that collected
2 Mr. Wilder's clothes went into another room in the
3 emergency room where somebody had said Mr. Spann's clothes
4 are in that room, and she went in and she found some
5 clothes and she put them in a paper bag. And then she
6 takes the two paper bags.

7 These clothes have got to be wet, I respectfully
8 submit to you. These people have been out in the rain.
9 And these clothes, as well as the clothes from M. U. S. C.,
10 are all turned over to Investigator Roy in paper bags. And
11 Investigator Roy takes the paper bags, and I respectfully
12 submit to you, throws them in the trunk of the car, throws
13 them in the back seat, whatever you do with them, and then
14 if you recall he goes back out to the crime scene.

15 Now, I submit to you that if, in fact, Mr. Spann's D.
16 N. A. are on Mr. Wilder's pants, that, first of all, are
17 these Mr. Wilder's pants that Mr. Spann's D. N. A. is
18 supposedly found on? We don't know, I submit, because we
19 haven't heard from anyone that took Mr. Wilder's clothes
20 off of him.

21 We never heard from anyone that took Mr. Spann's
22 clothes off of him. So we don't know. But even if they
23 were, once they were wet and once the bags were soggy and
24 once they got contaminated, who is there to say that
25 Mr. Wilder's clothes didn't come in contact with

Closing arguments

1 Mr. Spann's clothes and that's how the D. N. A. got on
2 Mr. Wilder's clothes? Because if you remember, Mr. Smith's
3 D. N. A. was also on Mr. Wilder's clothes. And Mr. Smith
4 was the individual that was at M. U. S. C. All wet paper
5 bags with wet clothes in them. All commingled, all
6 contaminated.

7 And last but not least you'll recall the testimony
8 concerning gunshot residue. Anthony Wilder, no gunshot
9 residue.

10 Then again most important of all that IBIS, the
11 program that SLED has in place so when they retrieve a
12 shell casing from a scene and don't receive a gun and they
13 want to be able to match that shell casing with a gun at a
14 later date if a gun is used in another crime.

15 The shell casing found at Ms. Green's house in her
16 yard, the 9mm, the gun that Anthony Wilder is supposed to
17 be whacking her in the head with has now been matched with
18 another 9mm shell casing used in another shooting in the
19 city of Charleston just recently while Anthony Wilder has
20 been in jail.

21 Ladies and gentlemen, thank you so very much for your
22 attention. Thank you for your patience.

23 And I would respectfully submit to you that the
24 government, the state, has failed to meet its burden of
25 proof. And under the oath that you took because they have

Closing arguments

1 failed to meet their burden of proof, it is your duty and
2 your obligation to return a verdict of not guilty on
3 Mr. Anthony Wilder. Thank you.

4 THE COURT: All right. Ladies and gentlemen, that's
5 as far as we are going to get today, so we're going to
6 recess.

7 We'll conclude in the morning at 9:15. At that time
8 I'll instruct you on the law that's applicable after which
9 you will begin with your deliberations.

10 So keep in mind during the overnight recess still no
11 discussions with anyone in any fashion whatsoever. No
12 research, investigation or exposure to any type of media
13 coverage.

14 Do have a good evening. Please report to your jury
15 room at 9:15 in the morning. Have a good evening.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Court is in recess until 9:15.

19 END OF PROCEEDINGS MAY 8, 2008
20
21
22
23
24
25

Jury charge

1 (Proceedings May 9, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Are we ready for the jury?

5 MR. WILLIAMS: Yes, sir, Your Honor.

6 THE COURT: Okay. Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 As you know, all of the evidence is in. You have
11 heard the final summations of the lawyers; and therefore it
12 now becomes my duty and obligation to instruct you on the
13 law that's applicable in the case. And then you'll be
14 asked to go back and begin with your deliberations.
15 Through that process you're going to be called upon to
16 examine the evidence, decide the facts, apply the law and
17 arrive at a fair and just decision in the case.

18 It is your exclusive duty to determine what the facts
19 are. And you do through your own common-sense examination
20 and evaluation of all of the testimony and the other
21 evidence received during the trial of this case.

22 You 12 jurors alone will decide what weight, value and
23 effect to give to any particular testimony or other
24 evidence in the case. Your sole objective is to simply
25 reach the truth in the matter. And by doing that you will

Jury charge

1 have fulfilled your obligations as jurors, and that is to
2 give both the state and each defendant a fair and impartial
3 trial.

4 Now, as you know, in this case the state through the
5 solicitor has charged three separate defendants with five
6 separate and distinct offenses.

7 Now, each of those offenses are alleged to have arisen
8 out of one particular event or course of events which the
9 state alleges occurred back on or about August the 31st of
10 2006.

11 However, there are three separate defendants. There
12 are five separate charges as it relates to each of those
13 separate defendants; and therefore you're going to be
14 called upon to consider each defendant separately and each
15 charge separately.

16 As I told you at the beginning of this trial, you will
17 be called upon to reach separate verdicts on each of the
18 separate charges and each of the separate defendants.

19 Those verdicts may be the same; they may be different.
20 That will depend upon your determination of fact and then
21 your application of the law as I will have provided it to
22 you.

23 But in this case, as you know, the three defendants
24 are Keive Milik Smith, Leo Corderrel Gadsden and Anthony
25 Dominique Wilder. And each of the defendants are charged

Jury charge

1 with five separate and distinct offenses.

2 They are each charged with the crime of burglary in
3 the first degree, the state alleging by way of the
4 indictment -- those are the documents that I referred to
5 even prior to your selection as jurors so that you'd
6 understand what the case is about -- but one of the
7 indictments charges each defendant with the crime of
8 burglary occurring on August the 31st of 2006.

9 That indictment alleges that each of the defendants
10 did alone or while acting with others enter a dwelling that
11 belonged to Patricia Green located on Stall Road in
12 Charleston County; that each of the defendants entered that
13 dwelling without consent and with the intent to commit a
14 crime therein. And it's alleged further that they were
15 armed with a firearm.

16 Each of the defendants is also charged with the crime
17 of kidnapping. Now, there are two separate indictments
18 alleging each defendant -- with alleging each defendant has
19 committed the crime of kidnapping.

20 Those indictments allege that each defendant did alone
21 or while acting with others, did unlawfully seize, confine,
22 inveigle, decoy, kidnap, abduct or carry away Patricia
23 Green; and a separate indictment alleges Sterling Spann;
24 and each indictment alleges without authority of law.

25 Another indictment charges each of the defendants with

Jury charge

1 the crime of murder, those indictments alleging that each
2 defendant did with malice aforethought alone or while
3 acting with others kill and murder Sterling Spann by
4 shooting him and that he did die as a proximate result of
5 that gunshot wound.

6 And each of the defendants is also charged with the
7 crime of assault and battery with intent to kill, and each
8 defendant is accused of having committed that crime alone
9 or while acting with others, and that each did with malice
10 aforethought commit an unlawful act of a violent nature
11 upon one Jamie Williams by shooting him, alleging that to
12 be a violation of the law.

13 Now, those are the charges that are brought against
14 each of the defendants. And as to those charges each of
15 the defendants has entered a plea of not guilty. And, as I
16 told you, that plea of not guilty therefore places upon the
17 state the burden of proving the allegations that are set
18 forth in each indictment, the burden of proving each of the
19 essential elements that makes up the crimes that are set
20 forth in each of those indictments; and therefore the
21 burden is upon the state to establish a defendant's guilt
22 of any crime beyond a reasonable doubt before a verdict of
23 guilty could be returned.

24 Now, the burden is never upon a defendant or a person
25 accused of a crime to prove that they are not guilty or to

Jury charge

1 prove that they are innocent because in some cases that
2 might not be possible. The burden is always upon the state
3 because they bring the charge, they bring the accusation
4 against another, to establish that person's guilt beyond a
5 reasonable doubt.

6 You are instructed that it is a vital, important and
7 cardinal rule of law that every defendant in a criminal
8 trial, and it does not matter how serious that offense
9 might be, any person accused of a crime is always presumed
10 innocent of that charge.

11 That presumption of innocence remains with every
12 defendant, as it does with these defendants, from the time
13 that they are placed under arrest, throughout the course of
14 the criminal process and even throughout the course of the
15 actual trial in the case.

16 And, as I told you, that presumption of innocence will
17 be with each of these defendants even as you go back to
18 begin with your deliberations in this case. And that
19 presumption of innocence will be with each defendant in
20 that jury room, and it will be there forever unless you 12
21 jurors determine that they are no longer entitled to that
22 presumption of innocence.

23 That is after you have carefully considered all of the
24 evidence in the case, and from that evidence you've decided
25 the facts, and after deciding those facts you have applied

Jury charge

1 the law, and if you determine that a particular defendant
2 has been proven guilty of some particular crime beyond a
3 reasonable doubt, then that defendant would no longer be
4 entitled to that presumption of innocence as it relates to
5 that particular charge. But it's only if, unless and until
6 you are satisfied of a defendant's guilt beyond a
7 reasonable doubt that he would no longer be entitled to
8 that presumption of innocence.

9 Now, while the state does have the burden of proving a
10 defendant's guilt beyond a reasonable doubt, that doesn't
11 mean that the state has to prove a defendant's guilt beyond
12 all doubt or beyond any possible doubt. But it does
13 require the state to prove a defendant's guilt to your
14 satisfaction beyond a reasonable doubt.

15 The term reasonable doubt should be given its plain
16 and ordinary meaning. A reasonable doubt is the kind of
17 doubt that would cause a reason person to hesitate to act
18 upon the information provided.

19 A defendant in a criminal trial is entitled to any
20 reasonable doubt that arises from the evidence or lack of
21 evidence in a case. And if upon any factual issue
22 essential to a finding of a verdict of guilty you have some
23 reasonable doubt as to how that issue should be resolved,
24 it would be your duty to resolve that reasonable doubt in
25 favor of the defendant.

Jury charge

1 And therefore if upon your consideration of the whole
2 case you have a reasonable doubt as to a particular
3 defendant's guilt, as well as to a particular charge, then
4 you must resolve that doubt in his favor and to return a
5 verdict of not guilty.

6 And, on the other hand, after you've considered all
7 the evidence in the case and decided the facts and applied
8 the law, if you have no reasonable doubt as to a
9 defendant's guilt as it relates to a particular charge,
10 then of course it would be your corresponding duty to
11 convict the defendant or find him guilty of any crime that
12 you are satisfied has been proven beyond a reasonable
13 doubt.

14 Now, the same law that provides that you are the
15 judges of the facts also provides that I am the judge of
16 the law. And that simply means nobody's going to tell you
17 how to arrive at your determination of fact in this case.
18 You do that, as I have stated, through the exercise of good
19 judgment and common sense conscientiously applied to the
20 testimony and the evidence in the case.

21 You must however under your oath as a juror accept the
22 law as I provide it to you as being the law that is
23 applicable in this particular case. In other words, you're
24 not to concern yourself with what you thought the law was
25 before you came to serve as a juror this week or what you

Jury charge

1 think the law ought to be.

2 Under your oath you must simply accept the law as I
3 provide it to you as being the law that is applicable in
4 this particular case. And then you simply take that law
5 and you apply it to the facts as you 12 jurors determine
6 those facts to be based upon your own common sense
7 examination and evaluation of all of the testimony and the
8 other evidence received during the trial.

9 Now, because you are the sole judges of the facts in
10 this case you are therefore necessarily the sole judges of
11 the credibility, that is the believability, of each witness
12 that has testified during the trial of this case.

13 You 12 jurors alone will decide what weight, value and
14 effect to give to any particular witness' testimony, or
15 even a portion of that testimony. And therefore there are
16 a number of factors which you should consider in arriving
17 at your assessment as to a particular witness' credibility
18 and believability. And I'm going to list those factors for
19 you.

20 You may consider the demeanor of the witness, that is
21 how the witness appeared to you when the witness testified
22 from the witness stand. Was the witness straightforward in
23 responding to questions, or was the witness hesitant or
24 evasive in responding to questions that were asked of that
25 particular witness.

Jury charge

1 Simply put, did the witness appear to you to be
2 telling the truth and to have knowledge of the facts to
3 which that witness has testified.

4 You may also consider whether or not the testimony of
5 a witness is consistent or inconsistent with that witness'
6 own testimony provided here in court.

7 You may also consider whether or not a witness'
8 testimony provided here in court is consistent or
9 inconsistent with other statements that have been made by
10 that witness, whether they be in-court or out-of-court
11 statements.

12 You may also consider whether or not the testimony of
13 a witness is consistent, or is it inconsistent with other
14 witnesses' testimony or other evidence received during the
15 trial of the case.

16 You may also consider how the witness came to know the
17 facts to which that witness has testified. That is what
18 was that particular witness' opportunity and ability to
19 perceive the existence of those facts to which that witness
20 has testified by having previously used his or her senses,
21 and then what is that witness' ability to be able to come
22 into court and to accurately recollect to you as to what
23 they have previously seen or heard, or felt for that
24 matter.

25 You may also consider any bias or prejudice or

Jury charge

1 interest that a witness might have in the case. In other
2 words, do you find some reason that a particular witness
3 would come into court and would testify one way or another
4 to help or to hurt one side or the other?

5 You may consider any interest that a witness might
6 have in the outcome of this case if you determine that a
7 witness does have such an interest and you find that that
8 interest would bear upon that particular witness'
9 credibility.

10 And you may also consider whether or not the testimony
11 of a witness was strengthened, or was it weakened by other
12 testimony or other evidence received during the trial of
13 the case.

14 Now, you as the finders of the fact and as you as the
15 judges of the credibility of each witness that has
16 testified are permitted to believe as much or as little of
17 what a witness has testified to as you deem is appropriate;
18 and therefore you may believe everything that a witness
19 testified to, you may choose to believe none of it. You
20 may believe one portion of a witness' testimony and reject
21 some other portion of that same witness' testimony.

22 And in a given case you could believe one witness as
23 opposed to several, or several as opposed to one. But
24 whatever your good judgment and common sense tells you is
25 the most believable and credible testimony is the testimony

Jury charge

1 you should accept. And you should reject any testimony or
2 other evidence that you find not to be credible or
3 believable.

4 Again, your sole objective is to simply reach the
5 truth in the matter, and by doing that you will have
6 fulfilled your obligations as jurors, and that is, as I've
7 stated, simply to give both sides and all parties a fair
8 and impartial trial in the case.

9 Now, while there are various forms of evidence such as
10 testimony, photographs, documents, charts, maps and other
11 types of physical exhibits, there are really only two types
12 of evidence. Either or both of those types of evidence may
13 be used to prove any fact in issue. The two types of
14 evidence are direct evidence and circumstantial evidence.

15 Now, direct evidence is the testimony of a person who
16 testifies from actual knowledge of the fact. It is
17 testimony by a person who has perceived the existence of
18 some fact by means of his or her senses, and then they come
19 into court and they testify as to what they have previously
20 seen or heard, or felt for that matter.

21 Circumstantial evidence, on the other hand, is the
22 proof of some other fact or set of facts which taken either
23 singly or collectively may prove the existence of some fact
24 in question as a necessary consequence, that is through an
25 inference.

Jury charge

1 And an inference is simply a deduction of fact that
2 may logically and reasonably be drawn from the proof of
3 some other fact or set of facts. In other words, it's not
4 a fact proven by the direct testimony of a witness based
5 upon their personal perception, but it is a conclusion
6 which might reasonably be drawn from the proof of other
7 facts.

8 In other words, you may infer that a particular event
9 occurred or that a particular fact exists based upon the
10 proof of sufficient factual circumstances which would
11 reasonably warrant your arriving at that conclusion.

12 Now, the law however makes absolutely no distinction
13 between the weight or the value to be given to direct
14 evidence as opposed to circumstantial evidence, nor is a
15 greater degree of certainty required of circumstantial
16 evidence as opposed to direct evidence.

17 Whatever the type of evidence used to prove any fact
18 in issue, you should consider all of the evidence presented
19 during the trial of this case. And after carefully
20 considering and weighing all of that evidence in your
21 minds, if you are not convinced of the guilt of a defendant
22 as it relates to a particular charge beyond a reasonable
23 doubt, then you must resolve that doubt in his favor and
24 return a verdict of not guilty.

25 Now, in this case, as you know, each of the defendants

Jury charge

1 is charged with five separate and distinct offenses. Those
2 charges are burglary, kidnapping, murder, and assault and
3 battery with intent to kill.

4 I'm now going to instruct you on the law as it relates
5 to each of those separate and distinct charges. And I've
6 got to take them in some order. Do not place any
7 importance or significance on the order that I provide them
8 to you.

9 I've got to start somewhere, so I'm just starting
10 where I feel like I ought to start. But when you go back
11 to deliberate you can deliberate the case in any order that
12 you want to. So pay no attention to the order in which I
13 give them to you.

14 The first charge that I'm going to refer to is the
15 charge of burglary in the first degree.

16 Burglary in the first degree is a statutory offense.
17 We have what are called statutory offenses and common law
18 offenses. Statutory offenses are those which the
19 legislature has enacted and precluded by way of a statute.

20 In other words, they define what a criminal offense
21 is, and they set forth what the elements are in the
22 statute. And anybody who is found to have violated the
23 statute, that is engaged in conduct in violation of that
24 statute, then it subjects the person to some type of
25 punishment or penalty where they are found to be guilty of

Jury charge

1 a violation of that statute.

2 Please understand however that the jury is never to be
3 concerned with punishment. If there's any punishment to be
4 imposed for a particular charge, then the Court will make
5 that determination.

6 Your sole duty and obligation is to determine whether
7 or not a defendant has been proven guilty of a crime beyond
8 a reasonable doubt without regard to any consideration as
9 to the consequences of that decision. And certainly you're
10 not to consider any possibility of punishment.

11 Now, back to burglary in the first degree, burglary in
12 the first degree is set forth in a code section. That's a
13 section of law. And it's 16-11-311.

14 That section provides that a person is guilty of
15 burglary in the first degree if a person enters a dwelling
16 without consent and with the intent to commit a crime
17 therein. That's burglary.

18 In order for it to be burglary in the first degree
19 there's got to be some additional factor, and these are
20 those additional factors. One or more of these has to be
21 established. All could be; more than one could be. That's
22 not necessary. But at least one must be established before
23 a burglary would be a burglary in the first degree.

24 So, again, burglary is entering a dwelling without
25 consent and with the intent to commit a crime therein and

Jury charge

1 one of these additional factors being present: The
2 defendant is armed with a deadly weapon or another
3 participant in the crime is armed with a deadly weapon; the
4 defendant causes physical injury to a person who is not a
5 participant in the crime; a defendant uses or threatens the
6 use of a dangerous instrument or displays what is or
7 appears to be a firearm, or the entering or the remaining
8 occurs in the nighttime.

9 Now, based upon the foregoing statute, before you
10 could return a verdict of guilty as to the crime of
11 burglary in the first degree as to any defendant it would
12 be necessary that the evidence in this case has proven
13 beyond a reasonable doubt the following four essential
14 elements: One, that a defendant entered a dwelling.

15 Entry is an indispensable element in the crime of
16 burglary and entry is the act of going into the dwelling.
17 It is not necessary that actual force be used, although
18 evidence may establish that force was used. But it's not
19 necessary that force be used to accomplish the entry, nor
20 does any door, window or other barrier have to be opened,
21 removed or broken in order to effect an entry.

22 So it must be an entry and it must be into a dwelling.
23 And a dwelling is defined as a building or a structure
24 which is used or normally used for sleeping, living or
25 lodging by any person.

Jury charge

1 So that's the first element. There's got to be an
2 entry into a dwelling.

3 Secondly, it must be without consent. Entering
4 without consent means to enter a dwelling without the
5 consent of the owner or person otherwise in lawful
6 possession of the premises.

7 Thirdly, there has to be an entry of a dwelling
8 without consent and with the intent to commit a crime in
9 the dwelling. There must be an intent to commit a crime,
10 whether or not the crime was actually committed,
11 accomplished or completed.

12 The mere entering of a dwelling however without an
13 intent to commit a crime does not constitute the crime of
14 burglary. It is only when there is an entering of a
15 dwelling without consent accompanied with an intent to
16 commit a crime therein that the crime of burglary is
17 complete. And a crime of any grade or severity is
18 sufficient to satisfy this particular element of the crime
19 of burglary.

20 Further, it is essential that the intent to commit a
21 crime exist at the time of entry into the dwelling. It is
22 not sufficient that the intent is formed after the entry
23 has been accomplished.

24 And, on the other hand, where the intent to commit
25 exists, intent to commit a crime exists, at the time of the

Jury charge

1 entering of the dwelling, it is no defense to a charge of
2 burglary that the intent was later abandoned after entry.

3 So the entry of a dwelling without consent and with
4 the intent to commit a crime therein completes the crime of
5 burglary. And, as I've stated, in order for it to be a
6 burglary in the first degree one additional factor must be
7 established, and that is it must be established that when
8 in effecting entry or while in the dwelling or in immediate
9 flight therefrom the defendant or another participant in
10 the crime was armed with a deadly weapon or caused physical
11 injury to a person who is not a participant in the crime or
12 used or threatened the use of a dangerous instrument or
13 displayed what appeared to be a firearm.

14 All right. That's the law as it relates to the crime
15 of burglary in the first degree.

16 The next offense that I'll describe for you is that of
17 kidnapping.

18 Kidnapping is also a statutory offense, and that
19 offense is set forth in 16-3-910 of the Code of Laws. And
20 that section of law provides that whosoever shall
21 unlawfully seize, confine, inveigle, decoy, kidnap, abduct
22 or carry away any other person by any means whatsoever
23 without authority of law is guilty of the crime of
24 kidnapping.

25 Therefore in order for a defendant to be found guilty

Jury charge

1 of violating this particular statute it would be necessary
2 that the state has proven to your satisfaction beyond a
3 reasonable doubt each of the essential elements of the
4 crime of kidnapping.

5 The essential elements of the crime of kidnapping as
6 provided for in the statute include, one, that a defendant
7 did seize or confine or inveigle or decoy or kidnap or
8 abduct or carry away another person by some means or
9 method; and, secondly, that one or more of those acts was
10 done without authority of law.

11 Now, within the meaning of the terms in that statute
12 the term seize means to take hold of suddenly and forcibly.
13 The term confine means to imprison or to restrain or to
14 restrict a person's freedom in some significant way. And
15 the term without authority of law simply means that the
16 conduct engaged in was not permitted, sanctioned, condoned,
17 allowed or justified under the law.

18 Now, in order for a defendant to be found guilty of a
19 violation of this particular statute the state need not
20 prove each of the terms -- seize, confine, inveigle, decoy,
21 kidnap, abduct or carry away.

22 Proof of any one of those prohibited acts is
23 sufficient so long as it was done without the authority of
24 law and without consent of the person who is alleged to
25 have been kidnapped.

Jury charge

1 Now, while the state must prove the crime of
2 kidnapping beyond a reasonable doubt as I have defined that
3 term for you, it is not necessary that the state prove any
4 motive for the conduct, nor is it necessary that any demand
5 for money or other ransom be made.

6 The next indictments that I will refer to are the
7 indictments alleging each of the defendants with the
8 crime -- alleging each have committed the crime of murder.

9 Murder is also a statutory offense. That's set forth
10 in 16-3-10. And that statute provides the definition for
11 murder. And it states murder is the killing of any person
12 with malice aforethought either expressed or implied.

13 Now, in order for you to find any defendant guilty of
14 the crime of murder it would be necessary that the evidence
15 in this case establishes to your satisfaction beyond a
16 reasonable doubt that a defendant or an accomplice -- and
17 the definition of an accomplice will be explained to you
18 later on in this instruction -- but it must be shown that
19 the defendant or an accomplice did commit some act or acts
20 which proximately caused the death of the decedent, in this
21 case Sterling Spann, and that that killing was done with
22 malice aforethought. Malice aforethought is an essential
23 element of the crime of murder.

24 Now, the crimes of murder and assault and battery with
25 intent to kill -- and I'm going to instruct you on assault

Jury charge

1 and battery with intent to kill next. But the crimes of
2 murder and assault and battery with intent to kill each
3 require that the state prove malice aforethought.

4 So I'm instructing you on the term malice aforethought
5 as it relates to the crime of murder, but that same
6 definition applies to the crime of assault and battery with
7 intent to kill.

8 In fact, the only real difference between the two is
9 that in the case of murder someone dies and in the case of
10 assault and battery with intent to kill they survive. But
11 the element of malice aforethought is an essential element
12 of both the crime of murder and the crime of assault and
13 battery with intent to kill. So this definition is
14 applicable to both offenses.

15 Malice is a term connoting an ill will and having an
16 intent to do harm. It is a technical term importing
17 wickedness and excluding just cause or legal excuse. It is
18 something which springs from depravity, from a heart devoid
19 of social duty and fatally bent on mischief.

20 Malice may be likewise defined as a state of mind
21 which indicates a formed purpose and design to do a
22 wrongful act under circumstances that exclude any legal
23 right to commit that act.

24 The words expressed or implied malice do not mean
25 different kinds of malice but merely the manner in which

Jury charge

1 malice may be shown to have existed, that is to say either
2 by direct evidence or by circumstantial evidence proving
3 the existence of malice.

4 Now, malice may be expressed as where there is an
5 expressed threat to kill or a lying in wait or where the
6 circumstances show directly that an intent to kill was
7 entertained by the killer.

8 Malice may be inferred, though no expressed intent to
9 kill is proven by direct evidence in the case, where the
10 facts and circumstances which have been proven by the
11 evidence in this case satisfy you beyond a reasonable doubt
12 that malice was present in the mind of the killer at the
13 time that any killing took place.

14 The existence of malice may be inferred from
15 circumstances shown to have existed at the time of the
16 event. And you are permitted to infer the existence of
17 malice from proof of an unlawful and an intentional killing
18 of another person without justification or legal excuse, or
19 an attempted killing of another person.

20 You may infer the existence of malice from proof of a
21 wrongful intent to injure another person through the
22 infliction of serious bodily harm indicative of a wicked or
23 depraved spirit.

24 You are permitted to infer the existence of malice
25 from proof of the intentional use of a deadly weapon in the

Jury charge

1 infliction of injury or death.

2 You are permitted to infer the existence of malice
3 from proof of the intentional commission of an act which is
4 inherently dangerous to human life.

5 You are permitted to infer the existence of malice
6 from proof of the intentional killing or attempted killing
7 of another or the intentional commission of criminal acts
8 resulting in the death of another person during the
9 commission of a felony, a felony which is dangerous to
10 human life or where the circumstances of that crime create
11 a substantial foreseeable risk to human life.

12 When the law refers to the commission of a felony it's
13 referring to crimes such as, for example, burglary in the
14 first degree, armed robbery or any similar type of an
15 offense.

16 You're also permitted to infer the existence of malice
17 from proof of the commission of a reckless or reckless acts
18 which is inherently dangerous to human life and which is
19 done so recklessly as to manifest a depravity of mind
20 signifying an extreme disregard for or an extreme
21 indifference to human lie.

22 Now, malice as an essential element of the crime of
23 murder, as well as assault and battery with intent to kill,
24 does not necessarily mean an actual or a specific intent to
25 take human life, but rather what it means is a state of

Jury charge

1 mind signifying a general malignant recklessness and
2 extreme disregard for or extreme indifference to human
3 life.

4 Now, even if the facts proven are sufficient to give
5 rise to an inference of malice, such an inference would
6 simply be an evidentiary fact to be taken into
7 consideration by you jurors along with all the other
8 evidence in the case. And you may give such inferences
9 such weight, if any, that you determine they should
10 receive, if any.

11 Simply stated, you are permitted to infer the
12 existence of malice from the proof of any one or more of
13 those circumstances that I have just described, as well as
14 from any other evidence in the case reasonably tending to
15 prove that fact. But you are in no way required to do so.

16 The state is required to prove malice just as it must
17 prove any other essential element of the offense charged,
18 and it is for you 12 jurors to determine whether or not the
19 evidence in this case establishes malice beyond a
20 reasonable doubt. And you determine that fact based upon
21 your consideration of all of the evidence introduced in the
22 case and any reasonable inferences that might be drawn from
23 that evidence.

24 As I've stated, the element that must be proven is
25 malice aforethought. And not only must the state prove

Jury charge

1 malice, but it must prove that it was malice aforethought.
2 However, the law does not require that malice must exist
3 for any appreciable length of time before the commission of
4 an act proximately causing the death of another or which
5 likely could have caused the death of another. Indeed, it
6 may be conceived at the very moment that a fatal act is
7 committed.

8 It is sufficient in the law so long as the state has
9 proven beyond a reasonable doubt both the existence of
10 malice and the commission of an act or acts by a defendant
11 which proximately caused the fatal result in the case of
12 murder.

13 And while the state must prove beyond a reasonable
14 doubt that a killing occurred accompanied by malice
15 aforethought in order to establish the crime of murder, it
16 is not necessary that the state prove any motive for such a
17 killing, although there may be evidence relating to that
18 fact introduced during the trial of the case.

19 And the final offense which I will instruct you as to
20 is that of assault and battery with intent to kill. So
21 that you will understand the term assault and battery with
22 intent to kill, I've got to define for you the term assault
23 and the term battery, and then assault and battery with
24 intent to kill.

25 An assault is defined as the unlawful attempt to do

Jury charge

1 violence or injury to the person of another where there is
2 the present ability to complete that attempt by way of a
3 battery. And a battery is the unlawful and intentional
4 touching or striking of the person of another by the person
5 committing the assault or by some object put in motion by
6 that person, that is it is the completion of an act doing
7 violence or injury to the person of another.

8 A battery may be further defined as the carrying into
9 effect of an assault by using or applying force to the
10 person of another, however slight, in a rude, angry or
11 resentful manner without just cause or legal excuse.

12 An assault and battery with intent to kill is defined
13 as an unlawful act of a violent nature towards the person
14 of another, the natural tendency of which is to cause death
15 or result in serious bodily harm, and that unlawful act or
16 acts is accompanied with malice aforethought either
17 expressed or implied. And, as I've stated, the term malice
18 aforethought is the same for assault and battery with
19 intent to kill as it is -- and as it has been defined for
20 you in relation to the crime of murder.

21 And as I've stated with respect to the crime of
22 murder, malice as an essential element of the crime of
23 assault and battery with intent to kill does not
24 necessarily mean an actual or a specific intent to take
25 human life but rather a state of mind signifying a general

Jury charge

1 malignant recklessness and an extreme disregard for or an
2 extreme indifference to human life.

3 Now, with regard to each of the offenses that have
4 been set forth, again, each of the defendants, you are
5 instructed that one who is charged with the commission of a
6 crime may be convicted as the principal or as an
7 accomplice.

8 An accomplice is one who knowingly and voluntarily and
9 with a common intent with the principal offender unites
10 with the principal offender in the commission of a crime.
11 An accomplice is often referred to as an aider or an
12 abetter.

13 Now, in this case the state alleges that each of the
14 defendants is guilty of the crimes of burglary in the first
15 degree, kidnapping, murder and assault and battery with
16 intent to kill as either a principal or as an accomplice.

17 The law provides that where two or more people act
18 together with a common intent and where they act together
19 with a common purpose and where they combine, they
20 conspire, plan or otherwise agree to the commission of a
21 crime, each person who is present to aid, abet, assist or
22 otherwise participate in the commission of that crime is
23 equally guilty of any crime accomplished thereby.

24 A person who joins with another or with others to
25 accomplish an illegal purpose is held to be criminally

Jury charge

1 responsible for everything done by any other person which
2 occurs as a natural or probable consequence of the acts
3 done pursuant to and in furtherance of the common plan and
4 purpose.

5 Therefore where two or more persons are acting
6 together and they are aiding, abetting, assisting and
7 participating with each other in the commission of a crime,
8 the acts of one become the acts of all. The hand of one
9 becomes the hand of all. And all are equally guilty of any
10 crime accomplished thereby.

11 In order to be an accomplice in the commission of a
12 crime one must be present at the scene of that crime with
13 the intention of aiding, abetting, assisting or
14 participating in the commission of that crime, and the
15 crime has to be completed.

16 Prior knowledge by a defendant that some other person
17 is intending to commit a crime without more is not
18 sufficient to make that person guilty of the crime of which
19 he may be shown to have had knowledge.

20 And, likewise, the mere presence of a defendant at the
21 scene of a crime or in close proximity thereto even with
22 knowledge that another is intending to commit a crime is
23 not sufficient standing alone to prove the defendant guilty
24 of the crime as an accomplice.

25 In order for a defendant to be found guilty of a crime

Jury charge

1 under the legal theory of aiding and abetting it must be
2 proven beyond a reasonable doubt that that defendant was
3 actually present at the scene of the crime with the
4 intentions of aiding, abetting, assisting or participating
5 in the common plan or scheme which culminated in the
6 commission of that particular crime.

7 Now, under a theory of accomplice liability, aiding
8 and abetting, two or more persons may be guilty of an
9 unlawful homicide even though only one person actually
10 commits the act which is directly responsible for the death
11 of another.

12 The law provides that when two or more persons
13 combine, conspire or otherwise agree to the commission of a
14 felony, for example a burglary in the first degree or an
15 armed robbery or any similar type of an offense, and in the
16 commission of criminal acts done in furtherance of that
17 particular crime an unlawful homicide is committed by one
18 of the participants which is a natural or probable
19 consequence of those acts done in furtherance of the common
20 plan, all who are present and participating in the criminal
21 acts are equally as responsible as the one who actually
22 commits the fatal act directly.

23 Now, the common purpose may not have been to kill
24 anyone at all. But if during the commission of a felony as
25 I've described an unlawful homicide is committed by one or

Jury charge

1 more of the participants which is a natural or probable
2 consequence of the acts done in furtherance of the common
3 plan, each person who is present and who is aiding,
4 abetting, assisting or participating in the common design
5 are equally guilty of any unlawful homicide committed by
6 the direct acts of one or more of the other participants.
7 As I've stated, under the law the hand of one is the hand
8 of all, the act of one is the act of all.

9 Now, criminal intent is also a necessary element of
10 any crime that has to be proven beyond a reasonable doubt
11 or there must be a common design or intent to commit a
12 crime, and the crime must have been committed pursuant
13 thereto with a defendant aiding, abetting and assisting by
14 some overt act.

15 Now, the term intent means the state of a person's
16 mind which directs his actions towards a specific object or
17 goal. Intent would include those consequences which
18 represent the very purpose for which an act is done, as
19 well as those consequences which are known to be
20 substantially certain to result, whether actually intended
21 or not.

22 A criminal intent is a state of mind that operates
23 jointly with an act in the commission of a crime. Criminal
24 intent is a mental state of conscious wrongdoing in
25 contrast to the commission of an act which is the result of

Jury charge

1 an accident, inadvertence or mistake. And the intent of a
2 person may be proven by the acts, declarations, as well as
3 conduct, of a defendant, as well as any other circumstances
4 which are established by the evidence in the case from
5 which you might naturally and reasonably infer such intent.

6 Now, as I have previously stated, the state has the
7 burden of proving every essential element of a crime
8 alleged against any defendant beyond a reasonable doubt.
9 And therefore in this case not only must the state prove
10 beyond a reasonable doubt that the crimes of burglary in
11 first degree, of kidnapping, of murder, and assault and
12 battery with intent to kill were committed by someone or
13 some ones, but the state must further prove beyond a
14 reasonable doubt that it was, in fact, the defendant named
15 in a particular indictment who was the perpetrator of that
16 crime and not someone else.

17 So if, after a careful consideration and an
18 examination of all of the evidence presented during the
19 trial of this case relating to the issue of the
20 identification of a particular defendant as the perpetrator
21 of a particular crime proven to have been committed by
22 someone, should you have a reasonable doubt as to the
23 accuracy of the identification of a particular defendant as
24 the perpetrator of that particular crime, then you must
25 resolve that reasonable doubt in favor of that particular

Jury charge

1 defendant and return a verdict of not guilty.

2 Now, ladies and gentlemen, you are instructed, and I
3 emphasize to you, that the fact that a defendant does not
4 take the witness stand and testify during the trial of a
5 criminal case is not a factor which may be considered by
6 you 12 jurors as you go back to deliberate.

7 You may not permit that fact to weigh in the slightest
8 degree against a defendant. You may not consider that in
9 any way. You may not allow it to affect your decision in
10 any way.

11 As I've told you, the burden is upon the state to
12 prove a defendant's guilt beyond a reasonable doubt. The
13 state has that burden of proof.

14 A defendant has no burden to prove anything and in
15 many cases could not prove his or her innocence. And
16 therefore the fact that a defendant does not testify during
17 the trial of a criminal case is not something which you may
18 consider in any fashion whatsoever, nor may you even
19 discuss that fact while you are engaged in those
20 deliberations.

21 Now, I think that covers the law. I've got a couple
22 of other things to address with you.

23 As you go back to begin your deliberations, during the
24 course of your deliberations there may come a time where
25 you've got some question about the evidence in the case or

Jury charge

1 what a witness testified to or if there's some other piece
2 of evidence that might be available.

3 Now that you're going back to begin your deliberations
4 no additional evidence may be received. So if you don't
5 have it when you go back into the jury room, you can't have
6 it even if it exists, or whether it does or does not exist
7 wouldn't make any difference. You can't have any
8 additional evidence now that you're going back to
9 deliberate. So if you don't have it, don't ask for it.
10 You can't have it.

11 If during your deliberations you ever have a question
12 about the testimony of a witness and you think that that
13 question can be answered by having testimony replayed, I
14 can bring you back into the courtroom to have a witness'
15 testimony replayed in whole or in part.

16 I do not have transcripts. I can't send you back a
17 transcript of a witness' testimony. But if you desire to
18 have a witness' testimony replayed in whole or in part, you
19 send word to me by way of the bailiff and I'll bring you
20 back to accomplish that particular purpose.

21 During your deliberations there may come a time you
22 have a question about the law that's applicable. I try to
23 explain it as clear as I can, but sometimes you might have
24 a question about it.

25 If you have an issue or a question about the law

Jury charge

1 that's applicable, I can always answer those questions. So
2 if anybody has a question about the law, send word by way
3 of the bailiff. I'll bring you back to the courtroom.
4 I'll provide you with any additional explanation or
5 clarification or reinstruct you on any principle of law if
6 you need that assistance. So just let me know.

7 So I cannot answer questions that relate to the issues
8 of fact or the evidence. You can have testimony replayed
9 in whole or in part if you need to. And I will and am able
10 to answer questions about the law that's applicable.

11 I don't know if we have any smokers on the jury. But
12 if we do, you can't smoke in the jury room. But if you get
13 to a point where you've just got to have a cigarette, you
14 let the bailiff know. They'll take you outside to
15 accomplish that purpose.

16 But you are instructed that deliberations must stop if
17 any juror is absent for any authorized purpose. And
18 deliberations may only resume when all 12 jurors are
19 present so that all may participate.

20 Also, I don't know how long it's going to take you to
21 deliberate. It might be a shorter period of time, might be
22 a longer period of time. That'll depend upon your careful
23 review of all of the evidence and your discussions and
24 deliberations and the application of the law.

25 I will tell you if you get to a point where you want

Jury charge

1 something to eat or want something to drink, you let the
2 bailiff know. They'll provide that for you. If it gets to
3 what you consider to be lunchtime and you want to order
4 lunch, you let the bailiff know. We'll have the clerk come
5 and take your lunch order.

6 I don't know if that's going to be necessary or not.
7 You don't either. We'll just have to wait and see how that
8 develops.

9 But, in any event, at any time if you need something,
10 Madam Forelady, if you'll let the bailiff know, he'll let
11 know. And I'll try to address any issue that might arise
12 during the course of your deliberations.

13 I think that covers everything. I hope so. If it
14 doesn't -- I've got to address some matters with the
15 lawyers before you can actually begin deliberations. It
16 should take only a few moments.

17 If I do not need to bring you back for any reason I'll
18 simply send word by of the bailiff that you may begin your
19 deliberations. In that event the bailiff will bring to the
20 jury room all of the exhibits which have been introduced
21 during the trial.

22 And to you, Madam Forelady, he will also bring the
23 indictments which will serve as the verdict forms.

24 Now, as you know, there are three defendants. There
25 are five indictments relating to each defendant. I'm going

Jury charge

1 to have those clipped together for you. As you know, you
2 can take them in any order that you want to. That's up to
3 you. But you're called upon to reach a verdict as to each
4 separate defendant and each separate charge.

5 Now, with respect to each of the separate indictments,
6 you have two possible verdict forms.

7 If the state has proven that defendant guilty of that
8 particular charge beyond a reasonable doubt, then the
9 verdict form would be guilty.

10 If the state has failed to prove that defendant guilty
11 of a particular charge beyond a reasonable doubt, then the
12 verdict form would be not guilty.

13 So the two verdict forms with respect to each
14 indictment, guilty or not guilty.

15 And, Madam Forelady, you will notice on the back of
16 each indictment in the lower left-hand corner there's a
17 word verdict. And it's beneath that word verdict that
18 you're going to be asked to indicate the jury's unanimous
19 decision. And any decision that's reached with respect to
20 any indictment has to be unanimous. All 12 have to be in
21 agreement.

22 So once that decision has been reached, Madam
23 Forelady, you indicate it in the space provided and sign
24 your name as the foreperson and place the appropriate date
25 on each of the separate indictments.

Jury charge

1 Okay. I think that covers it.

2 Now, the 12 primary jurors are going to be going with
3 the bailiff to a jury room. As I say, don't begin
4 deliberations until I send you word to do so. If I need to
5 bring you back, I will. If I don't, the bailiff will tell
6 you to go ahead and begin. And he'll bring the exhibits.

7 The three alternate jurors, I'm going to ask you to go
8 with a bailiff. You'll go to a separate location. You're
9 still not to discuss the case. I need you in the event
10 somebody gets sick or something happens during
11 deliberations. Then one or more of you might be called
12 upon to take that person's place.

13 So I still need for you to remain with us, but you
14 can't deliberate the case and you can't discuss the case
15 because you're not participating in those jury
16 deliberations yet. So you'll be kept separately. But if
17 you need anything, again, you let the bailiff know. And
18 they'll assist you with any food, drink or the like.

19 Now, we'll order lunch all at one time if we get to
20 that point. So, but we're not going to do it individually.

21 With respect to the videos, I'll have to determine if
22 we can send something back for you to play it yourself in
23 the jury room or whether we'll have to bring you back into
24 the courtroom.

25 But understand if you want -- you've got to make a

Jury charge

1 decision based on the evidence. So if you want to look at
2 videos, you can look at them as many times as you want to
3 if that'll help you. So don't be shy about that if you
4 need to look at them.

5 I guess what I'm saying is if you take them back there
6 with you, you know, I won't be involved in that. But if I
7 don't have the means for you to review those videos in the
8 jury room and I have to bring you back to the courtroom to
9 look at it, just understand that -- don't be shy about
10 asking to look at it more than once. You can look at it as
11 many times as you want to.

12 Okay. All right. I'll ask you please to retire to
13 your jury room. But do not begin deliberations until I
14 send you word to do so.

15 (Whereupon, the jury retired to deliberate at
16 10:18 a.m.)

17 THE COURT: Are there any exceptions taken to the
18 instruction or requests for additions to the instruction by
19 the state?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: By the defendant Smith?

22 MR. BROWN: None, Your Honor.

23 THE COURT: By the defendant Gadsden.

24 MR. DAVIS: No, Your Honor.

25 THE COURT: By the defendant Wilder?

1 MR. LOFTON: No, Your Honor.

2 THE COURT: Let me ask y'all to verify the existence
3 of each of the exhibits if you've not already done so
4 before they go back.

5 (Pause.)

6 THE COURT: All right. Are all of the exhibits
7 accounted for? All the exhibits are accounted for?

8 MR. WILLIAMS: Yes, Your Honor. We went through all
9 of them. They're all there. The ones that are marked are
10 all, I believe.

11 THE COURT: Okay. Take them back and ask the jury to
12 begin deliberations and notify us when they have concluded.

13 MR. DAVIS: Judge, we are including a box of gloves in
14 case the jurors wish to handle any items. No objection by
15 defendant Gadsden to the evidence.

16 (Whereupon, the exhibits were submitted to the jury at
17 10:34 a.m. for deliberations.)

18 (Whereupon, a recess was taken.)

19 THE COURT: The jury wants to rehear some testimony.
20 So we are going to bring them back for that purpose.

21 All right. Bring the jury in, please, sir.

22 (Whereupon, the jury returned to the courtroom at
23 12:17 p.m.)

24 THE COURT: All right. Ladies and gentlemen, I
25 understand that you wish to have replayed the testimony of

1 Lilly Gallman. And so the court reporter has located that
2 testimony.

3 It will begin at the very beginning, and she'll play
4 it straight through if you want to hear it all. But if you
5 only want to hear some portion of it and not all of it,
6 you'll just have to tell me when to stop.

7 Okay. Otherwise it will be played all the way
8 through. All right.

9 (Whereupon, a portion of the testimony of Lilly
10 Gallman was replayed for the jury.)

11 THE COURT: Is that it?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: Okay. Please return to your jury room and
14 continue with your deliberations.

15 (The following is the last question and answer
16 replayed for the jury.)

17 "Q So although we don't know who that
18 person is, we do know other places their blood
19 was at?

20 "A That's correct."

21 (Whereupon, the jury retired to deliberate at
22 12:40 p.m.)

23 THE COURT: We will continue to be at ease while the
24 jury is deliberating.

25 (Whereupon, a recess was taken.)

Verdicts

1 (Questions from the jury marked Court's Exhibits Nos.
2 2 and 3.)

3 (Whereupon, a recess was taken.)

4 THE COURT: I am told the jury has reached a verdict.
5 Are we ready to receive it?

6 MR. WILLIAMS: The state is ready, Your Honor.

7 MR. BROWN: Yes, Your Honor.

8 MR. DAVIS: Yes, Your Honor.

9 MR. LOFTON: Yes, sir, Your Honor.

10 THE COURT: Okay. Bring them in, please.

11 (Whereupon, the jury returned to the courtroom at
12 1:16 p.m.)

13 THE COURT: Madam forelady, have you and your fellow
14 jurors reached a unanimous decision as to each of the
15 separate indictments?

16 THE FOREPERSON: Yes, we have.

17 THE COURT: And have you indicated those decisions on
18 the back of the indictments as requested?

19 THE FOREPERSON: Yes.

20 THE COURT: Did you sign your name as the foreperson?

21 THE FOREPERSON: Yes.

22 THE COURT: And date it today's date?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: All right. If you will, please hand those
25 verdict forms up by way of the bailiff.

Verdicts

1 All right. You may publish the verdicts.

2 THE CLERK: Yes, Your Honor.

3 In the matter of the State vs. Keive Milik Smith, as
4 to Indictment No. 2008-GS-10-2396, indictment for burglary
5 first degree, the verdict of the jury is guilty. Signed
6 Rena Brown, foreperson of the jury, on 9 May 2008.

7 Ladies and gentlemen of the jury, if this was your
8 verdict, please raise your right hand.

9 (Whereupon, all jurors responded in the affirmative.)

10 THE CLERK: Thank you.

11 All 12 jurors responded by raising their right hand.

12 In the matter of the State vs. Keive Milik Smith, Case
13 No. 2008-GS-10-2397, indictment for kidnapping, the verdict
14 of the jury is guilty.

15 Signed Rena Brown, foreperson of the jury, on 9 May
16 2008.

17 Ladies and gentlemen of the jury, if this was your
18 verdict, please raise your right hand.

19 (Whereupon, all jurors responded in the affirmative.)

20 THE CLERK: Thank you. All 12 jurors raised their
21 right hands.

22 In the matter of the State vs. Keive Milik Smith, Case
23 No. 2008-GS-10-2399, indictment for kidnapping, verdict of
24 the jury is guilty.

25 Signed Rena Brown, foreperson of the jury, on 9 May

Verdicts

1 2008.

2 Ladies and gentlemen of the jury, if this was your
3 verdict, please raise your right hand.

4 (Whereupon, all jurors responded in the affirmative.)

5 THE CLERK: Thank you. All 12 jurors raised their
6 right hand.

7 In the matter of the State vs. Keive Milik Smith, Case
8 No. 2008-GS-10-2395, indictment for murder, the verdict of
9 the jury is guilty.

10 Signed Rena Brown, foreperson of the jury, on 9 May
11 2008.

12 Ladies and gentlemen of the jury, if this was your
13 verdict, please raise your right hand.

14 (Whereupon, all jurors responded in the affirmative.)

15 THE CLERK: Thank you. All 12 jurors raised their
16 right hands.

17 In the matter of the State vs. Keive Milik Smith, Case
18 No. 2008-GS-10-2398, indictment for assault and battery
19 with intent to kill, the verdict of the jury is guilty.

20 Signed Rena Brown, foreperson of the jury, on 9 May
21 2008.

22 Ladies and gentlemen of the jury, if this was your
23 verdict, please raise your right hand.

24 (Whereupon, all jurors responded in the affirmative.)

25 THE CLERK: Thank you. All 12 jurors raised their

Verdicts

1 right hand.

2 In the matter of the State vs. Leo Corderrel Gadsden,
3 Case No. 2008-GS-10-2407, indictment for burglary first
4 degree, verdict of the jury is guilty.

5 Signed Rena Brown, foreperson of the jury, on 9 May
6 2008.

7 Ladies and gentlemen of the jury, if this was your
8 verdict, please raise your right hand.

9 (Whereupon, all jurors responded in the affirmative.)

10 THE CLERK: Thank you. All 12 jurors raised their
11 right hand.

12 In the matter the State vs. Leo Gadsden,
13 2008-GS-10-2409, indictment for kidnapping, verdict of the
14 jury is guilty.

15 Signed Rena Brown, foreperson of the jury, on 9 May
16 2008.

17 Ladies and gentlemen of the jury, if this was your
18 verdict, please raise your right hand.

19 (Whereupon, all jurors responded in the affirmative.)

20 THE CLERK: Thank you. All 12 members of the jury
21 raised their right hands.

22 In the case of the State vs. Leo Gadsden, Case No.
23 2008-GS-10-2406, indictment for kidnapping, verdict of the
24 jury is guilty.

25 Signed Rena Brown, foreperson of the jury, on 9 May

Verdicts

1 2008.

2 Ladies and gentlemen of the jury, if this was your
3 verdict, please raise your right hand.

4 (Whereupon, all jurors responded in the affirmative.)

5 THE CLERK: Thank you. All 12 members of the jury
6 raised their right hands.

7 In the case of the State vs. Leo Gadsden, Case No.
8 2008-GS-10-2405, indictment for murder, verdict of the jury
9 is guilty.

10 Signed Rena Brown, foreperson of the jury, on 9 May
11 2008.

12 Ladies and gentlemen of the jury, if this was your
13 verdict please raise your right hand.

14 (Whereupon, all jurors responded in the affirmative.)

15 THE CLERK: Thank you. All 12 members of the jury
16 raised their right hand.

17 In the matter of the State vs. Leo Gadsden, Case No.
18 2008-GS-10-2408, indictment for assault and battery with
19 intent to kill, verdict of the jury is guilty.

20 Signed Rena Brown, foreperson of the jury, on 9 May
21 2008.

22 Ladies and gentlemen of the jury, if this was your
23 verdict, please raise your right hand.

24 (Whereupon, all jurors responded in the affirmative.)

25 THE CLERK: Thank you. All 12 members of the jury

Verdicts

1 raised their right hands.

2 In the matter of the State vs. Anthony Dominique
3 Wilder, Case No. 2008-GS-10-2385, indictment for burglary
4 first degree, the verdict of the jury is guilty.

5 Signed Rena Brown on 9 May 2008.

6 Ladies and gentlemen of the jury, if this was your
7 verdict, please raise your right hand.

8 (Whereupon, all jurors responded in the affirmative.)

9 THE CLERK: Thank you. All 12 members of the jury
10 raised their right hand.

11 In the matter of the State vs. Anthony Wilder, Case
12 No. 2008-GS-10-2384, indictment for kidnapping, verdict of
13 the jury is guilty.

14 Signed Rena Brown on 9 May 2008.

15 Ladies and gentlemen of the jury, if this was your
16 verdict, please raise your right hand.

17 (Whereupon, all jurors responded in the affirmative.)

18 THE CLERK: Thank you. All 12 members of the jury
19 raised their right hand.

20 In the matter of the State vs. Anthony Wilder, Case
21 No. 2008-GS-10-2390, indictment for kidnapping, verdict of
22 the jury is guilty.

23 Signed Rena Brown, foreperson of the jury, on 9 May,
24 2008.

25 Ladies and gentlemen of the jury, if this was your

Verdicts

1 verdict, please raise your right hand.

2 (Whereupon, all jurors responded in the affirmative.)

3 THE CLERK: Thank you. All 12 members of the jury
4 raised their right hand.

5 In the matter of the State vs. Anthony Wilder, Case
6 No. 2008-GS-10-2383, indictment for murder, the verdict of
7 the jury is guilty.

8 Signed Rena Brown, foreperson of the jury, on 9 May
9 2008.

10 Ladies and gentlemen of the jury, if this was your
11 verdict, please raise your right hand.

12 (Whereupon, all jurors responded in the affirmative.)

13 THE CLERK: Thank you. All 12 members of the jury
14 raised their right hands.

15 In the matter of the State vs. Anthony Wilder, Case
16 No. 2008-GS-10-2386, indictment for assault and battery
17 with intent to kill, verdict of the jury is guilty.

18 Signed Rena Brown, foreperson of the jury, on 9 May,
19 2008.

20 Ladies and gentlemen of the jury, if this was your
21 verdict, please raise your right hand.

22 (Whereupon, all jurors responded in the affirmative.)

23 THE CLERK: Thank you. All 12 members of the jury
24 raised their right hand.

25 THE COURT: Does any defendant wish to have the jury

Verdicts

1 polled?

2 MR. BROWN: No, Your Honor.

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: All right. Poll the jury, please, sir.

5 THE CLERK: Yes, Your Honor.

6 Ladies and gentlemen of the jury, what we're going to
7 do now is called polling of the jury.

8 When I call your name if you'll please just raise your
9 hand, I'll acknowledge you. And then I'll ask you two
10 questions -- were those your verdicts and are they still
11 your verdicts. Please answer back to me verbally.

12 Juror Rena Brown, just raise your hand. That's fine.
13 Were those your verdicts?

14 THE JUROR: Yes.

15 THE CLERK: Are they still your verdicts?

16 THE JUROR: Yes, sir.

17 THE CLERK: Thank you.

18 THE COURT: Please do the jurors by number too.

19 THE CLERK: Okay. Juror No. 11, were those your
20 verdicts?

21 THE JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Thank you.

25 Juror No. 43, were those your verdicts?

Verdicts

1 THE JUROR: Yes.
2 THE CLERK: Are they still your verdicts?
3 THE JUROR: Yes.
4 THE CLERK: Thank you.
5 THE COURT: Do the number and the name.
6 THE CLERK: Oh, okay.
7 Juror No. 44, Aubrey Carpenter, were those your
8 verdicts?
9 THE JUROR: Yes.
10 THE CLERK: Are they still your verdicts?
11 THE JUROR: Yes.
12 THE CLERK: Thank you.
13 Juror No. 135, Thomas Johnson, were those your
14 verdicts?
15 THE JUROR: Yes, sir.
16 THE CLERK: Are there still your verdicts?
17 THE JUROR: Yes, sir.
18 THE CLERK: Thank you.
19 Juror 149, Kathleen Laboard, are those your verdicts?
20 THE JUROR: Yes.
21 THE CLERK: Are they still your verdicts?
22 THE JUROR: Yes.
23 THE CLERK: Thank you.
24 Juror 197, William Nelms, were those your verdicts?
25 THE JUROR: Yes, sir.

Verdicts

1 THE CLERK: Are they still your verdicts?
2 THE JUROR: Yes, sir.
3 THE CLERK: Thank you.
4 Juror 297, Sharon Wood, were those your verdicts?
5 THE JUROR: Yes.
6 THE CLERK: Are they still your verdicts?
7 THE JUROR: Yes.
8 THE CLERK: Thank you.
9 Juror 307, Joseph Condon, were those your verdicts?
10 THE JUROR: Yes, sir.
11 THE CLERK: Are they still your verdicts?
12 THE JUROR: Yes.
13 THE CLERK: Thank you.
14 Juror 316, Amy Hall. Were those your verdicts?
15 THE JUROR: Yes, sir.
16 THE CLERK: Are they still your verdicts?
17 THE JUROR: Yes, sir.
18 THE CLERK: Juror 322, James Mattern, were those your
19 verdicts?
20 THE JUROR: Yes, sir.
21 THE CLERK: Are they still your verdicts?
22 THE JUROR: Yes, sir.
23 THE CLERK: Thank you.
24 Juror No. 336, Steven Vanderweide, were those your
25 verdicts?

Verdicts

1 THE JUROR: Yes, sir.

2 THE CLERK: Are they still your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Was there any juror whose name I did not
5 call, or number?

6 (No response.)

7 THE CLERK: Your Honor, the jury has been polled and
8 the verdicts stand.

9 THE COURT: All right. Any other matters we need to
10 address with the jury present?

11 MR. WILLIAMS: Not from the state, Your Honor.

12 MR. BROWN: None, Your Honor.

13 MR. DAVIS: No, Your Honor.

14 MR. LOFTON: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, that's
16 going to conclude your service for the trial and for the
17 week.

18 I do want to take this opportunity to sincerely thank
19 you for your participation as jurors this week. I hope
20 that your experience has been an educational and a
21 beneficial experience for you, and I do sincerely hope that
22 it has not posed too much of a hardship or inconvenience on
23 you.

24 But you are excused for the balance of the week. You
25 will be paid for your service this week. Your pay voucher

Verdicts

1 will be mailed to you at the address that's set forth on
2 your juror summons unless you have provided a different
3 address to the clerk's office.

4 So if the address on your summons is not your correct
5 address and you have not provided the clerk of court with a
6 different address, you be sure you do that before you leave
7 so that you'll be certain to receive your pay voucher.

8 Now, I know that each of you have also ordered lunch.
9 And lunch should be here shortly. And I don't want to have
10 to eat all of those lunches. So if you don't mind staying
11 with us for as long as it takes for those lunches to get
12 here, you can take them with you if you want to. You can
13 stay and eat or you can take them wherever you want to and
14 eat. But please wait and take your lunches with you so
15 that I don't have to carry them back to Spartanburg with
16 me.

17 Okay. Thank you again for your participation. You
18 are excused. And, as I say, as soon as you get your
19 lunches, you can take those with you if you'd like, or
20 stay.

21 And if anybody would like to have an escort to the
22 garage or to your car, if you'll let the deputies know,
23 they'll make those arrangements for you.

24 Okay. Thank you again for your participation.

25 (Whereupon, the trial jury was excused.)

Motion

1 THE COURT: All right. Any other matters to address
2 prior to the imposition of sentence?

3 MR. WILLIAMS: No, Your Honor.

4 MR. BROWN: No, Your Honor.

5 MR. DAVIS: Your Honor, we would renew the motion for
6 a directed verdict and renew all previous motions made
7 throughout the trial.

8 THE COURT: All right. Those are denied.

9 MR. DAVIS: I'm sorry. I make a motion to set aside
10 this and make a motion for a new trial.

11 THE COURT: All right. Motion for a new trial is
12 denied.

13 MR. DAVIS: Thank you.

14 MR. LOFTON: I will also join in those motions, Your
15 Honor.

16 THE COURT: All right. And those are all denied.

17 MR. BROWN: I'll also join in, Your Honor.

18 THE COURT: Okay. Those are denied.

19 Sentencing sheets available?

20 MR. WILLIAMS: Yeah. Do you want them signed by
21 defense counsel or just hand them up?

22 THE COURT: Let them have them.

23 (Pause.)

24 THE COURT: All right. Anything further on behalf of
25 the state?

Sentences

1 MR. WILLIAMS: With regarding to sentencing, Your
2 Honor?

3 THE COURT: Yes, sir.

4 MR. WILLIAMS: Your Honor, I do want to give,
5 obviously, the victims a chance to speak. I believe
6 several folks are here that would like to.

7 I would like to say before that, Your Honor, does Your
8 Honor want to do the criminal records in the case.

9 THE COURT: Yeah. I'm going to hear everything. You
10 can do it in whatever order you want to.

11 MR. WILLIAMS: Your Honor, I'll read out the criminal
12 records.

13 Mr. Gadsden has a C. D. V. first in 2003; and I
14 believe it's a juvenile possession with intent to
15 distribute cocaine, as well as a proximity; a 2005
16 trespassing; a 2006 trespassing.

17 Mr. Smith has a 2003 disorderly conduct, resisting
18 arrest and trespassing; 2004, false information to police
19 officer; and a 2005 possession with intent to distribute
20 crack cocaine and a proximity.

21 Mr. Wilder has a 2002 simple assault and battery;
22 2003, unlawful possession, unlawful carrying of a pistol,
23 illegal possession of a pistol; a simple assault;
24 possession with intent to distribute cocaine, two counts;
25 and two counts of possession with intent to distribute

Sentences

1 cocaine in proximity to school; 2004, failure to comply
2 with an officer; and, 2005, driving under suspended third.

3 Your Honor, as far as commenting on sentencing,
4 obviously the indictments in this case on the murder
5 charge, as well as the burg first, both punishable by life
6 in prison.

7 Your Honor, on behalf of the state, and I'm sure
8 probably on behalf of the victims, I'm going to ask for
9 maximum sentences on all of the charges.

10 Obviously, life on the murder and the burg first. And
11 I'd ask the Court to run those sentences consecutive as
12 well.

13 Your Honor, certainly you've heard the facts of the
14 case. It's about as horrible of a set of circumstances as
15 you'll ever see. And I think, although there may have been
16 some questions about the involvement relative to each
17 other, they all certainly were involved in this murder.
18 It's essentially an execution.

19 Your Honor, I do want to give Detective Stanley a
20 chance to speak. And I do want to thank the Charleston
21 County Sheriff's Office for putting this case together.

22 Obviously, we present the case in court, but it's the
23 work they do at the front end that makes it possible, and
24 particularly Detective Stanley has been involved in this
25 case since the day it began and has been with our office

Sentences

1 discussing it.

2 And I also want to thank Deputy Simpson who is not
3 here, but I believe, and the early exceptional police work
4 that he showed along with Detective Stanley making the case
5 to make this possible.

6 THE COURT: Okay. Who would like to be heard from?

7 MR. WILLIAMS: Your Honor, Ms. Green I believe would
8 like to speak.

9 PATRICIA GREEN: My name is Patricia Green and I would
10 like to see justice served with the maximum terms that he
11 can go, because my whole life has been turned around.

12 Since the time it happened I've stayed locked up in my
13 house. I don't have a social life any more. I don't
14 communicate with people like I used to or anything.

15 My whole life has been turned around, like I say,
16 since this thing happened. And I would like to see justice
17 served.

18 THE COURT: All right. Thank you, Ms. Green. I wish
19 you the best.

20 Anyone else?

21 DIANE SPANN: My name is Diane Spann, and I'm
22 Sterling's mother.

23 I would just like to say a lot of folks stand on my
24 boy named Sterling. And there are a few things I want to
25 say about Sterling.

Sentences

1 Sterling was my youngest child. And Sterling was a
2 very mild-mannered person and got along with everybody,
3 everybody. I mean everybody he came into contact with, he
4 got along with them.

5 And Sterling spent most of his time at home. He never
6 roamed the streets that much. He finished high school. He
7 did everything he was supposed to do in life.

8 And he was accepted for college and everything. He
9 was on his way to going to college in January when these
10 guys shot him down.

11 And since Sterling died our life hasn't been the same.
12 I lost my job as a case manger for the federal half-way
13 house. I have lost everything, because emotionally I can't
14 counsel anybody right now. And I really have lost a lot
15 since Sterling died. And I hope these guys get the maximum
16 sentence that they can get.

17 THE COURT: All right. Thank you, Ms. Spann.

18 Anyone else?

19 MR. WILLIAMS: Your Honor, I know that Jamie Williams
20 is here. He is one of the victims as well. And I believe
21 Mr. Spann's sister. I don't believe they would like to
22 speak. Thank you, Your Honor. That's all the state has.

23 THE COURT: All right. Mr. Brown, I'll hear from you
24 and Mr. Smith.

25 MR. BROWN: Yes, Your Honor.

Sentences

1 Keive is only 22 years old, Your Honor. And I think
2 often when we're young we think we're bullet proof and we
3 don't always act in the way that we would act later in life
4 when we had an opportunity to mature.

5 Again, Keive is only 22 years old. I think he should
6 have an opportunity to do some good things in his life and
7 turn his life around. And I would ask for the Court to
8 have mercy upon him.

9 Keive has also got some family here. Keive's family,
10 do you want to stand and speak? Do you want to say
11 something on behalf of Keive?

12 DEFENDANT SMITH'S MOTHER: Yes.

13 THE COURT: Ma'am, let me ask you if you will, you're
14 going to have to speak a little bit louder, or you can come
15 closer, but I can't hear you.

16 DEFENDANT SMITH'S MOTHER: I would like to apologize
17 to the victims for any pain and suffering that they had as
18 a result of what happened.

19 I also would like to ask the judge, please, that
20 you're going to have mercy on my son and the other boys.
21 And my son, he has a child that's three years old.

22 And I wish that the judge will consider having mercy
23 on him so he can change his life. I do believe that he
24 will turn his life around, because he has so far, and have
25 faith in God.

Sentences

1 And I know we can't bring back the boy, but the boy
2 has turned his life around and his belief in God. That
3 along with the giving the family some confidence to know
4 that when he does come out he will be a different person
5 and the circle will continue and he will be a better
6 prophet then.

7 THE COURT: All right. Thank you.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: Mr. Smith, anything you want to tell me
10 before I impose sentence?

11 DEFENDANT SMITH: No, sir.

12 THE COURT: All right. Mr. Davis, I'll hear from you
13 an Mr. Gadsden.

14 MR. DAVIS: Thank you very much, Your Honor. Your
15 Honor, may it please the Court.

16 First of all, Judge, certainly as you understand,
17 there'll be matters I will have to handle after sentencing.
18 For that reason, I've discussed it with Leo. He
19 respectfully is not going to address the Court. I would
20 hope no on in court would offense with that. That is
21 mostly with discussions with counsel he made that decision.

22 Judge, I respectfully understand the verdict of the
23 jury. Of course we have spent the whole week fighting
24 these charges vigorously.

25 I would like to speak briefly about Leo. You heard

Sentences

1 his minor, small record, some of which when he was a minor.

2 He was 19 years old when arrested on this. He has
3 been incarcerated at the Charleston County Jail since then.
4 We would certainly ask for credit for the time he served.
5 I have that as 617 days if you'll simply just indicate the
6 credit for time served.

7 Judge, what I can tell you in meeting with him, he was
8 born and raised here. He went up to the 12th grade in high
9 school, did have some minor problems as a juvenile,
10 attempted to get back into high school. That was difficult
11 for him.

12 Judge, early on when I took over representation of
13 this case we did have him evaluated out of an abundance of
14 caution. I've seen nothing in my representation of him
15 that indicates any issues, nor did the doctor find any
16 issues of competency. He has been nothing but respectful,
17 quiet, mild mannered.

18 Again, I understand the jury's verdict, but I have
19 seen nothing in my relationship with him that would come
20 close to the events that transpired in Lincolnville almost
21 two years ago.

22 He was working, Judge, at the time of his arrest,
23 working at a car wash with his uncle.

24 He is single. He does not have any children.

25 Judge, he has had family here off and on throughout

Sentences

1 this week, most notably his sister Merriam. She could not
2 be here today. She is gainfully employed and has been here
3 as best she can. And his father is still in the area, as
4 well as other family members.

5 Again, I would ask the Court not to look unfavorably
6 on the fact that they could not be here today when this
7 trial concluded.

8 Judge, we've all understood the serious nature of
9 these charges and the potential punishment. I respectfully
10 request, Judge, that there's a mandatory 30 years on the
11 murder conviction.

12 My client is now 21 years old. He will be
13 incarcerated longer than he's been alive. That would
14 certainly be just punishment, we would argue, for all
15 parties interested.

16 He would be quite old if and when released if he
17 survived that sentence. And certainly part of a sentence
18 is punishment and part of it hopefully will be
19 rehabilitation as well.

20 So, Judge, we would respectfully ask you consider the
21 minimum on the murder conviction and to run the rest of the
22 sentences concurrent with that at 30 years. Thank you very
23 much.

24 THE COURT: All right. Mr. Gadsden, have you got
25 anything you want to tell me in addition to what your

Sentences

1 lawyer has told me?

2 DEFENDANT GADSDEN: No, sir.

3 THE COURT: All right. Mr. Lofton, I'll hear from you
4 and Mr. Wilder.

5 MR. LOFTON: If the Court please.

6 Mr. Wilder's mother and father are here, and they've
7 been here all week. And I asked them if they had anything
8 to say, and they indicated they do not wish to speak.

9 THE COURT: All right.

10 MR. LOFTON: Your Honor, again, I, as with Mr. Davis,
11 understand the severity of these crimes. And we too
12 request that the Court give us credit for the time he's
13 currently served incarcerated two years since the event,
14 approximately.

15 And we would also ask whatever sentence you impose
16 that it run concurrent.

17 THE COURT: I noticed none of the defendants have
18 signed the sentencing sheet. Is that by design or they
19 were not asked?

20 MR. DAVIS: Judge, Mr. Gadsden was not asked. That
21 was by design on my part. If you would require that, so be
22 it. But I certainly signed.

23 THE COURT: Well, if they don't want to sign it,
24 that's okay.

25 All right. On Indictment 2008-2395, the State vs.

Sentences

1 Keive Smith, that's an indictment for murder, wherein you
2 have been found guilty by a jury of that offense, the
3 Sentence of the Court is you, Keive Smith, be confined to
4 the South Carolina Department of Corrections for the period
5 of your natural life.

6 Indictment 2008-2396, an indictment for burglary in
7 the first degree, also against Keive Smith, wherein you
8 have been found guilty by a jury, the Sentence of the Court
9 is you be confined to the South Carolina Department of
10 Corrections for the period of your natural life.

11 That sentence is consecutive to that sentence imposed
12 previously.

13 Indictment 2008-2398, an indictment for assault and
14 battery with intent to kill, also against Keive Smith,
15 wherein you have been found guilty by a jury of that
16 offense, the Sentence of the Court is you be confined to
17 the South Carolina Department of Corrections for a period
18 of 20 years.

19 That sentence is consecutive to any other sentence
20 imposed previously.

21 Indictment 2008-2397, an indictment for kidnapping,
22 the State vs. Keive Smith, you having been found guilty by
23 a jury, the Sentence of the Court is you, Keive Smith, be
24 confined to the South Carolina Department of Corrections
25 for a period of 30 years.

Sentences

1 That sentence is concurrent to any other sentence
2 imposed.

3 And Indictment 2008-2399, also an indictment for
4 kidnapping, no sentence is imposed on that indictment
5 because the defendant has been sentenced as in the case for
6 murder under 16-3-20.

7 Next indictments are those involving Mr. Gadsden.

8 Indictment 2008-2405, an indictment for murder,
9 wherein you have been found guilty by a jury of that
10 offense, the Sentence of the Court is you, Leo Corderrel
11 Gadsden, be confined to the South Carolina Department of
12 Corrections for the period of your natural life.

13 Indictment 2008-2407, an indictment for burglary in
14 the first degree, wherein Mr. Gadsden has been found guilty
15 by a jury of that offense, the Sentence of the Court is
16 you, Leo Gadsden, be confined to the South Carolina
17 Department of Corrections for the period of your natural
18 life.

19 That sentence is consecutive to the previous sentence
20 imposed.

21 Indictment 2008-2408, an indictment for assault and
22 battery with intent to kill, wherein you have been found
23 guilty by the jury of that offense, the Sentence of the
24 Court is you, Leo Gadsden, be confined to the South
25 Carolina Department of Corrections for a period of 20

Sentences

1 years.

2 That sentence is consecutive to any other sentence
3 previously imposed.

4 Indictment 2008-2406, an indictment for kidnapping,
5 wherein you have been found guilty by a jury of that
6 offense, the Sentence of the Court is you, Leo Gadsden, be
7 confined to the South Carolina Department of Corrections
8 for a period of 30 years.

9 That sentence is concurrent to any sentence previously
10 imposed.

11 And Indictment 2008-2409, the State vs. Leo Gadsden
12 for kidnapping, wherein you have been found guilty by a
13 jury of that offense, no sentence is imposed because the
14 defendant has been sentenced as in the case for murder on a
15 previous indictment.

16 The final indictments in the State vs. Anthony Wilder,
17 Indictment 2008-2383, an indictment for murder, wherein you
18 have been found guilty by a jury of that offense, the
19 Sentence of the Court is you, Anthony Wilder, be confined
20 to the South Carolina Department of Corrections for the
21 period of your natural life.

22 Indictment 2008-2385, an indictment for burglary in
23 the first degree, wherein you have been found guilty by the
24 jury, the Sentence of the Court is you, Anthony Wilder, be
25 confined to the South Carolina Department of Corrections

Sentences

1 for the period of your natural life.

2 That sentence is consecutive to the sentence
3 previously imposed.

4 Indictment 2008-2386, an indictment for assault and
5 battery with intent to kill, wherein you have been found
6 guilty by a jury of that offense, the Sentence of the Court
7 is you, Anthony Wilder, be confined to the South Carolina
8 Department of Corrections for a period of 20 years.

9 That sentence is consecutive to any other sentence
10 previously imposed.

11 Indictment 2008-2384, an indictment for kidnapping,
12 wherein you have been found guilty by a jury of that
13 offense, the Sentence of the Court is you, Anthony Wilder,
14 you are to be confined to the South Carolina Department of
15 Corrections for a period of 30 years.

16 That sentence is concurrent to any other sentence
17 previously imposed.

18 And Indictment 2008-2390, State vs. Anthony Wilder,
19 indictment for kidnapping, wherein you have been found
20 guilty by a jury for that offense, no sentence is imposed
21 because the defendant has been sentenced as in the case for
22 murder under 16-3-20 on a previous indictment.

23 All right. Do each of you understand the sentences?
24 Each -- Mr. Smith, Mr. Gadsden, Mr. Wilder -- each of you
25 have a right to appeal the decisions of the jury and the

Sentences

1 sentences imposed by the Court. You must file any notice
2 of your intentions to appeal those decisions within ten
3 days of today's date.

4 END OF REQUESTED TRANSCRIPT OF RECORD
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

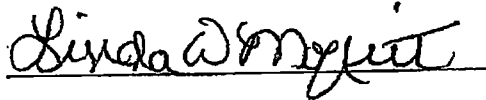
Sentences

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 5th, 6th, 7th, 8th and 9th days of May 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 6, 2008



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY D. WILDER,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Acting Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF ISSUE ON APPEAL..... 3

STATEMENT OF THE CASE 4

ARGUMENT..... 5

CONCLUSION..... 13

TABLE OF AUTHORITIES

Cases

<u>Oregon v. Lyons</u> , 124 Or.App. 598, 863 S.E.2d 1302 (1993).....	12
<u>Payton v. Kears</u> e, 329 S.C. 51, 495 S.E.2d 205 (1998)	11
<u>Raino v. Goodyear Tire and Rubber Company</u> , 309 S.C. 255, 422 S.E.2d 98 (1992).....	12
<u>State v. Cribb</u> , 310 S.C. 518, 426 S.E.2d 306 (1992)	11
<u>State v. Ford</u> , 301 S.C. 485, 392 S.E.2d 781 (1990)	11
<u>State v. Ramsey</u> , 345 S.C. 607, 550 S.E.2d 294 (2001).....	11, 12
<u>State v. Sweet</u> , 374 S.C. 1, 647 S.E.2d 202 (2007).....	11
<u>State v. Council</u> , 335 S.C. 1, 515 S.E.2d 508 (1999)	11

Rules

Rule 702, SCRE	11, 12

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to exclude DNA evidence regarding appellant's pants, State's Exhibit 98, since the chain of custody and the sloppy handling of the evidence showed an extremely strong chance the DNA evidence was contaminated, and therefore that it was unreliable pursuant to Rule 702, SCRE?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury -- along with Keive Milik Smith and Leo Corderrel Gadsden -- for the offenses of murder, two counts of kidnapping, burglary in the first degree and assault and battery with intent to kill (ABIK). All counts arose from a single incident. R. 862-877.

Their joint cases were called to trial on May 2008 before the Honorable J. Derham Cole and a jury. Nathan Stuart Williams and Julie Cardillo were the solicitors.

Lionel S. Lofton and V. Lynn Lofton represented appellant. W. Tracy Brown and Mark Andrew Redmond represented co-defendant Smith. Rodney Duane Davis and Cody Groebar represented co-defendant Gadsden. R. 1.

At the conclusion of the trial on May 9, 2008 the jury found all three defendants guilty on each count. R. 836, l. 3 -- 837, l. 14. Judge Cole sentenced each co-defendant to life imprisonment for murder, life imprisonment for burglary in the first degree, twenty years imprisonment for ABIK and thirty years imprisonment for kidnapping. R. 857, l. 1 -- 860, l. 22. However, Judge Cole correctly did not sentence appellant for kidnapping since he had sentenced him for murder. R. 860, ll. 18 -- 22.

This appeal follows.

ARGUMENT

The court erred by allowing the state to introduce DNA evidence regarding appellant's pants, State's Exhibit 98, and the attendant evidence regarding those pants since the extraordinarily sloppy manner of collection of the blood evidence made it totally unreliable given the great possibility it was contaminated with the decedent's blood. The evidence should have been excluded pursuant to Rule 702, SCRE because it was totally unreliable, and obviously extraordinarily prejudicial. Further, there is not a rational reason to exclude blood alcohol or drug evidence based on sloppy incompetent gathering and handing of that evidence and treating DNA blood evidence as almost solely a "weight" issue to argue to the jury.

Relevant Facts

Patricia N. Green testified that her two adult children had received large settlements from a lawsuit against South Carolina Electric and Gas for an accident that occurred when they were children. They each maintained large trust funds. The import of Green's testimony was that people in Lincolnton, South Carolina -- where they lived -- knew of the trust funds and their regular access to money. R. 20, l. 2 – 21, l. 19.

Ms. Green had a drug habit. Her drug dealer was Jamie Williams. She owed Williams ten dollars for an earlier purchase of crack cocaine. Williams later testified Green telephoned him and told him to come by her house on the afternoon of August 31, 2006 to collect the ten dollars. R. 21, l. 18 – 22, l. 9; R. 52 l. 9 – 53, l. 7.

Green testified that she was taking a nap that afternoon when she heard "the dogs barking in the yard." She looked out the window and saw a man "pacing back and forth with a black hat on . . ." Green thought it was her grandson or one of her relatives outside,

thought nothing of it, and she tried to go back to sleep. However the dogs barking became much more aggressive, she came to the conclusion a stranger was involved, and she went downstairs to investigate. Before she got to the front door to investigate "he [one of the three to five would be robbers] kicked the door in." R. 21, l. 20 – 22, l. 25.

Green identified appellant as the "stocky" man wearing the "Marvin Gay hat" that first entered her house that day. R. 25, l. 9 – 26, l. 20. However, as seen below, there were problems with Green's seeming certainty at trial about what occurred, and the identify of those involved.

Green admitted she told the police in her statement following the incident that five men entered her house that day. "Three people went upstairs and two was downstairs with me. The blood was still coming. That why I kept trying to wipe my eyes, the blood out of my eyes." Green said she changed her mind to there only being three men involved because that is all who were arrested. R. 58, ll. 3 – 5; R. 66, ll. 4-12.

Green denied on cross-examination that she only identified appellant because his photograph had been on the television all week following the incident and also because his picture was in the newspaper as a suspect in this case. R. 75, l. 18 – 76, l. 9. Green also acknowledged that she originally told defense counsel for a co-defendant that "the mask would fall down" allowing her to identify the men. R. 59, ll. 4- 7. Green also denied on cross examination that she could not even see the man across the street whom she later claimed was appellant because there was tree in front of her window. Green said the pictures introduced by the solicitor did not fairly represent the view from her window. R. 71, l. 6 – 74, l. 1.