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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE..... Petitioner,

v.

STATE OF SOUTH CAROLINA..... Respondent.

APPENDIX
VOLUME VII OF XV

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1 Q: Would come visit with Kevin?

2 A: That's right.

3 Q: All right, sir. I want to ask you a few questions,
4 and then show you this document and ask you to
5 illustrate your testimony for us, but I'll ask you
6 on the afternoon of February the 26th, 1996, if you
7 had the occasion to see Sgt. Kubala in your
8 neighborhood?

9 A: Yes, sir.

10 Q: And without getting a specific time frame, late
11 afternoon, early evening?

12 A: It was early evening, late afternoon, right.

13 Q: Just tell us where you were and what you saw him do.

14 A: I was standing in my driveway, and I seen him pass
15 by.

16 Q: All right. And how far away from you would he have
17 been when he passed by?

18 A: Twenty feet.

19 Q: As far as I am or closer?

20 A: About the distance you are.

21 Q: All right. And how, what was his method of
22 movement? What was he using for transportation?

23 A: His patrol car with lights on top.

24 Q: Were the lights on or off?

25 A: They were off.

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- 1 Q: All right. No flashers or anything?
- 2 A: No flashers.
- 3 Q: All right. And what direction was he headed in?
- 4 A: Towards Taylor Street.
- 5 Q: And were the light conditions at that time clear
- 6 enough that you could see that that officer was Sgt.
- 7 Kubala?
- 8 A: Yes, sir.
- 9 Q: All right. After he passed you, tell us which
- 10 direction he headed in and what you next heard and
- 11 saw.
- 12 A: He was headed towards Taylor Street, and actually I
- 13 was walking out of my driveway towards that way. I
- 14 was going to a neighbor's house, and a few minutes
- 15 later, I heard three shots.
- 16 Q: All right. And how much time do you think passed
- 17 between the time he passed you by and the time you
- 18 heard the shots, if you know?
- 19 A: Two to three minutes. It wasn't long.
- 20 Q: All right. And how many shots did you hear?
- 21 A: Three.
- 22 Q: What did you do then and what did you see next?
- 23 A: Another officer passed and told me go back home, and
- 24 I went back home.
- 25 Q: All right. The other officer passed by you within

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1 how much time after you heard those shots?

2 A: It was just a couple of minutes. It wasn't long
3 cause I didn't move far.

4 Q: After you heard the shots, did you stay where you
5 were, or did you continue to move towards Taylor
6 Street?

7 A: I started walking towards where I was headed to a
8 neighbors, and that's when the law told me to go
9 back home.

10 Q: Was your neighbor in that same direction of 817
11 Taylor Street?

12 A: Yes, sir.

13 Q: So you hadn't reached that direction before a second
14 officer came by, is that correct?

15 A: That's correct.

16 Q: I won't blow these photographs up, but this would be
17 State's Exhibit Number Six. You recognize that?

18 A: Yes, sir.

19 Q: What do you recognize that as being?

20 A: That's Taylor's house. I mean Ms. Griffith's house.

21 Q: All right. And I'm going to keep you in that
22 location, and I'm going to put up this diagram which
23 is State's Exhibit Number Eighty-four. Okay. Are
24 you with me here? The Boulevard?

25 A: Yes, sir.

- 1 Q: And Ridgeway?
- 2 A: Right.
- 3 Q: Taylor. I'd like you to put a rectangle of some
- 4 size and your initials in it as to where you, where
- 5 your home was back in February of '96.
- 6 A: Well, it was somewhere in here. You want me to draw
- 7 the lots out?
- 8 Q: No. I just want you to put your initials by that so
- 9 that the folks know that that's the Bethea home.
- 10 All right. Now with regard to where you've located
- 11 your home, where were you when Sgt. Kubala passed
- 12 you?
- 13 A: My driveway goes right here. I was standing about
- 14 right there.
- 15 Q: All right. And which way did he pass? You don't
- 16 need to mark it, but show, show us with your hand.
- 17 A: Okay. He was headed towards Taylor Street.
- 18 Q: All right. When he passed you by, show us on that
- 19 which direction you were headed in. Where were you
- 20 headed towards?
- 21 A: I was headed towards Taylor Street.
- 22 Q: The neighbor you were going to visit, did that
- 23 neighbor live off Taylor Street?
- 24 A: No. He just, his house was about right there.
- 25 Q: All right. Before you got to that house, you told

1 us you heard something, is that correct?

2 A: That's correct.

3 Q: And that would be what?

4 A: The shots.

5 Q: Three shots?

6 A: Right.

7 Q: Did you stop, or did you continue moving?

8 A: I continued moving cause it was, it didn't sound
9 like a shotgun or anything, so I didn't really pay
10 it a whole lots of maybe somebody was shooting
11 firecrackers or something. I didn't know.

12 Q: All right. Did you get to your neighbor's house
13 before the second officer came by?

14 A: No, sir.

15 Q: All right. After the second officer came by, did
16 you continue towards Taylor Street, or were you
17 stopped?

18 A: I was stopped. He told me to go home.

19 **MR. SALEEBY:** Thank you, Mr. Bethea. Please answer any
20 questions counsel has for you.

21 **THE COURT:** Cross examination?

22 **MR. LITTLEJOHN:** Yes, Your Honor.

23 **MR. BETHEA - CROSS EXAMINATION BY MR. LITTLEJOHN:**

24 Q: Good morning, Mr. Bethea.

25 A: Good morning.

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- 1 Q: Mr. Bethea, I have just a few questions for you.
- 2 What time of day was it that you saw Sgt. Kubala go
- 3 down the road in front of your house?
- 4 A: I really don't know. It was, it was still daylight.
- 5 I mean it wasn't dark.
- 6 Q: Okay. Was it broad daylight, or was it
- 7 A: No, it wasn't broad daylight. It was getting close
- 8 to dark.
- 9 Q: Getting close to dark?
- 10 A: Yes, sir.
- 11 Q: Would you say it was more dark than it was light?
- 12 A: About like it is in this courtroom.
- 13 Q: That can be very dark sometimes.
- 14 A: That's true.
- 15 Q: Mr. Bethea, do you remember what time it was? Did
- 16 you have any indication? Did you look at your watch
- 17 or anything like that?
- 18 A: No, sir. I don't wear a watch. I didn't I
- 19 don't know what time it was.
- 20 Q: All right. You Sgt. Kubala go past you?
- 21 A: That's correct.
- 22 Q: Was he in a marked vehicle?
- 23 A: He was in a police car with lights on it, right.
- 24 Q: Okay. And you slights on right. What do you mean
- 25 by lights?

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1 A: Blue lights on the top. They weren't on.

2 Q: They were not on?

3 A: They were not on.

4 Q: Were you headlights on?

5 A: No, sir.

6 Q: Headlights weren't on?

7 A: I don't think so. I didn't pay it no attention. I,
8 I don't know.

9 Q: Okay. You said shortly after that you heard three
10 shots?

11 A: Right.

12 Q: You didn't think it was a shotgun blast?

13 A: No. It, it was, it wasn't real loud, so I knew it
14 wasn't a shotgun.

15 Q: Shots were not real loud?

16 A: Right.

17 Q: You still heard three shots?

18 A: That's correct.

19 Q: Pretty rapid succession?

20 A: Yeah, kind of, yeah.

21 Q: Quickly one behind another?

22 A: It was a pow pow, pow. Shots like that.

23 Q: All right. And then you didn't go down to Ms.
24 Griffith's house?

25 A: No, I didn't.

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1 Q: You didn't see anybody prior to the shots, or you
2 don't know what events caused the shots to be fired?

3 A: No, sir.

4 MR. LITTLEJOHN: Court's indulgence just a moment?

5 THE COURT: Yes, sir.

6 Q: Mr. Bethea, just one final thing. You say you heard
7 three shots?

8 A: Yes, sir.

9 Q: And you were standing out there on the road?

10 A: Standing right by the road.

11 Q: Did you only hear three shots?

12 A: That's all I heard.

13 Q: You never heard a fourth shot?

14 A: No, sir.

15 Q: Thank you, sir.

16 MR. LITTLEJOHN: No further questions.

17 THE COURT: Re-direct, Mr. Saleeby?

18 MR. SALEEBY: I have none.

19 THE COURT: All right.

20 MR. SALEEBY: I ask if he can be excused. He's got to
21 haul some ...

22 THE COURT: All right. Thank you, Mr. Bethea. You are
23 excused, and thank you for coming.

24 MR. SALEEBY: Your Honor, may be approach a moment?

25 THE COURT: Yes, sir.

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1 (Off the record meeting at the bar)

2 **THE COURT:** All right. Ladies and gentlemen of the
3 jury, the next witness that the state intends to
4 call is Ms. Ruth Griffith. The court has found that
5 Ms. Griffith is physically unable to attend and
6 testify today, and in those circumstances, the law
7 does provide that if there is previous, sworn
8 testimony by a witness then that witness may, that
9 testimony may be presented to you, and there is
10 previous sworn testimony by Ms. Griffith, and so
11 that is going to be presented to you by the state at
12 this time. Ms. Barwick from the solicitor's office
13 is going to read the answers of Ms. Griffith that
14 are __ by the solicitor, and you should treat this
15 testimony just as if Ms. Griffith were here
16 testifying today. All right, Mr. Solicitor.

17 **MR. SALEEBY:** Thank you, Your Honor. Your Honor, before
18 we begin, may we note our objection that we had
19 entered earlier?

20 **THE COURT:** Previous objection is noted, yes, sir.

21 **MR. SALEEBY:** Thank you very much.

22 **THE COURT:** And preserved.

23 (TESTIMONY OF RUTH GRIFFITH, ANSWERS BEING READ BY MR.
24 BARWICK)

25 **MS. GRIFFITH - DIRECT EXAMINATION BY MR. JACKSON:**

1 Q: Ms. Griffith, if you would keep your voice up loud,
2 and I'll ask you some questions. Where do you live?

3 A: 817 Taylor Street.

4 Q: All right. And Mary Ruth McLeod is your daughter?

5 A: Yes, sir.

6 Q: All right. And across Taylor Street, basically from
7 your house across Taylor Street, which would be at
8 the corner of Ridgeway and Taylor, who lives there?

9 A: Mr. Taylor, Landrow Taylor.

10 Q: All right. And Mr. who lives at Mr. Taylor's
11 house with him?

12 A: His wife.

13 Q: Okay. Mr. and Mrs. Taylor live there?

14 A: Yes, sir.

15 Q: All right. I'm going to ask you if you can identify
16 this.

17 A: Yes, sir.

18 Q: What is this?

19 A: My back screen. May washroom, back porch screen
20 door.

21 **MR. JACKSON:** Your Honor, I'd like the record to reflect
22 that she's referring to State's Exhibit fifteen
23 which is the screen door.

24 **THE COURT:** The record will so reflect.

25 Q: Ms. Griffith, you remember the night this occurred

1 on February the 26th, 1996?

2 A: Yes, sir.

3 Q: You got those photographs back. Are they right? We
4 have already marked some photographs into evidence.
5 Can you just look through these and tell us if they
6 show your house?

7 A: My house?

8 Q: Just look through all of them.

9 A: That's my house.

10 Q: Stat's Exhibit Number Fourteen shows the shed behind
11 your house?

12 A: Yes, sir.

13 Q: And Six through Twelve show you house?

14 A: Yes, sir.

15 **MR. JACKSON:** And Your Honor, I'd like the record to
16 reflect we're going to go through Six through Twelve
17 consecutively. Go through the photographs briefly
18 for the jury.

19 **THE COURT:** All right. That will be fine. Proceed.

20 Q: Six, State's Exhibit Seven, State's Exhibit Eight,
21 State's Exhibit Nine, State's Exhibit Ten, State's
22 Exhibit Eleven, and State's Exhibit Twelve. These
23 show your house?

24 A: Yes, sir.

25 Q: All right. I want to show you specifically State's

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1 Exhibit Number Eight. Does show your or does that
2 same screen door we just marked into evidence
3 actually on your washroom side porch?

4 A: Yes, sir.

5 Q: All right. And were you familiar with the condition
6 of that screen door before this incident of February
7 the 26th?

8 A: Yes, sir.

9 Q: And were there any holes or cuts in the screen door
10 before this incident occurred that night?

11 A: No, sir.

12 Q: All right. Now, Ms. Griffith, I want to back up a
13 minute before February the 26th. Do you, did you
14 know Bobby Wayne Stone?

15 A: Yes, sir.

16 Q: All right. And how was it that you knew him?

17 A: He was living and going with my husband's niece.

18 Q: What's your husband's niece's name?

19 A: Michelle Lynch.

20 Q:

21 **THE COURT:** Excuse me, Mr. Jackson. Are you going to
22 use you got some more photographs. Are you
23 going to use here? Do you need this?

24 **MR. JACKSON:** Yeah, there are, there are one or two
25 more.

1 **THE COURT:** Okay. I was just going to move that away,
2 but that's all right. Go ahead.

3 **MR. JACKSON:** We might could move it down a little bit,
4 Your Honor.

5 **THE COURT:** That's all right.

6 **MR. JACKSON:** We'll bring it down this way just a little
7 bit. Is that good?

8 **THE COURT:** That's good. All the witnesses get to see
9 that. All the jurors can see the witness.

10 **Q:** Have you ever gone out with Bobby Stone? With him
11 individually or even in a group?

12 **A:** No, sir.

13 **Q:** Never under any circumstances?

14 **A:** No, sir.

15 **Q:** You have any social relations with him at all?

16 **A:** No, sir.

17 **Q:** Was he at any time welcome at your house?

18 **A:** When he came to pick my niece up, I mean my
19 husband's niece. I mean he came and picked her up
20 and left.

21 **Q:** All right. When was that in relation to this
22 incident? This is a year or more prior to this?

23 **A:** Yeah. Yes, sir.

24 **Q:** Ms. Griffith, was Michelle Lynch staying with you
25 for a short period of time?

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1 A: Yes, sir.

2 Q: And during that short period of time, two or three
3 occasions that did Bobby Stone came over to pick her
4 up to go out on a date?

5 A: He would come and get her to go take her home, but
6 she stayed with me before she lived with him. I
7 mean she lived with him before she come and stayed
8 with me, and she went he would come pick her up
9 and take her back.

10 Q: All right. Now when he came into your house, was it
11 to be a guest with you and socialize with you?

12 A: No, sir.

13 Q: Just to get her and then leave?

14 A: Yes, sir.

15 Q: All right. Now on the afternoon and night of
16 February the 26th, 1996, was Bobby Stone, did he
17 have your consent to come to your house or to enter
18 your house or the porches or any portion of your
19 dwelling?

20 A: No, sir.

21 Q: Are you absolutely certain about that he did not
22 have your consent to do that?

23 A: I'm positive.

24 Q: And did you want him there at all?

25 A: No, sir.

1 Q: All right. Then how did you feel about him at that
2 time?

3 A: I was afraid of him.

4 Q: All right. Now would you tell us what happened that
5 resulted in you and your daughter making the first
6 call to 911 on that I think the call was made
7 at 5:39 p.m.. What had happened some time before
8 5:39?

9 A: He knocked on my back door, and I said, seen it was
10 him, and I didn't open the door.

11 Q: All right. You heard somebody knocking at the back
12 door?

13 A: Yes, sir.

14 Q: And what did you do after you heard the knocking?

15 A: I went to the back door to see who it was?

16 Q: All right. Now when we talk about back doors, let
17 me just be crystal clear. That's the kitchen door?

18 A: That's the kitchen door.

19 Q: All right. This exhibit here, Exhibit Number Eight,
20 you point out on here which one is the back door.

21 A: I call it this one knocking on the first time.

22 Q: All right. Speak up loud. So this is the back one
23 here?

24 A: Uh-huh.

25 Q: It steps closest to the back of the house?

1 A: Into the kitchen.

2 Q: And just so we distinguish things over here where
3 this white porch is with the screen door you talked
4 about, what do you call that door?

5 A: The back door leading into the washroom.

6 Q: All right. So that would be the washroom door where
7 the porch is, and when you're talking about knocking
8 at the back door, talking about where this back
9 porch is here?

10 A: Yeah.

11 Q: All right. Now, so you heard knocking at the back
12 door, and what did you do?

13 A: I went to see who was at the back door.

14 Q: And what, how did you find out who was there?

15 A: I pulled the curtain back, and Bobby Wayne Stone.

16 Q: All right. What did you do when you saw him? How
17 when you say Bobby Wayne Stone, who was that?

18 A: That one sitting right there, but he looks much
19 better.

20 Q: He looks much better now?

21 A: He looks better than he did then.

22 Q: All right. And what did you do when you saw it was
23 him?

24 A: I went back into the room. I saw who it was and
25 told her that Bobby Wayne Stone was at my door

1 telling that what I said.

2 Q: Well, let's see. Did you say you didn't want him
3 there?

4 A: I did not want him there, no.

5 Q: All right. Now what happened after that?

6 A: My daughter got off the phone, I mean opened the
7 door and running out the yard, and he went on the
8 shed, and she asked him where he think he was going.
9 He said I'm going home, and she told him that wasn't
10 the way home and he better get hisself out of my
11 yard, that I wasn't living by myself any more, that
12 she lived there with me, and then, then she followed
13 him into the woods.

14 Q: All right. Now after a while, did you daughter come
15 back in?

16 A: Yes, sir.

17 Q: And what did you and she do when she came back in?

18 A: She told me she was going to call the cops because
19 he had a gun.

20 Q: All right. And did you all do that?

21 A: She did.

22 Q: And what happened as a result of that call?

23 A: Started the ball. Sgt. Kubala came out, and her and
24 Sgt. Kubala went back into the woods looking for
25 him, but he must have been hiding, I guess.

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- 1 Q: They didn't find him?
- 2 A: No, sir.
- 3 Q: All right. What happened after that?
- 4 A: Sgt. Kubala sat up and talked with us a few minutes,
- 5 and he told me that he came back, don't hesitate to
- 6 call him, and that when then my daughter had to go
- 7 over to her daughter, keep her daughter a little
- 8 while. As soon as she it wasn't long after she
- 9 left, he came back in the yard. He came back in my
- 10 back yard, shot a gun in my back yard.
- 11 Q: All right. You heard gun shots in your back yard?
- 12 A: Yes, sir.
- 13 Q: Then what did you do when you heard these shots?
- 14 A: I called Mr. Taylor.
- 15 Q: Now that's Landrow Taylor that lives across the
- 16 street?
- 17 A: Yes, sir.
- 18 Q: And?
- 19 A: He came.
- 20 Q: Tell us about that.
- 21 A: He came running over there. I asked him did he hear
- 22 shots in my back yard, and he said yes, and he come
- 23 running over there, and he called 911 again.
- 24 Q: All right. And so you all had called and reported
- 25 that you had called earlier and the officer had been

1 there, and now you heard shots?

2 A: Yes, sir.

3 Q: All right. Now before the officer got there in
4 response to that call, something else happened?

5 A: He came on, knock. He came on my back porch.

6 Q: All right. Before he was on the back porch, did you
7 hear anything else outside your home?

8 A: Yes. He was my bedroom window and my car was
9 parked there.

10 Q: Now how, what did you hear or see?

11 A: I didn't look. I was scared.

12 Q: All right.

13 A: I knew he had a gun, and he was trying to get my car
14 door open. Then I thought he was cutting the phone
15 line, but thank God he wasn't.

16 Q: Now your telephone lines actually come out of the
17 window of your bedroom window?

18 A: Yes, sir.

19 Q: Would that be on the as you are standing on
20 Taylor Street looking at your house, your bedroom
21 window is on the right side of the house?

22 A: Yes, sir.

23 Q: Is that where you also park your car?

24 A: Yes, sir.

25 Q: Now after you heard the noise in that area, what

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1 happened?

2 A: He went around, he went around the house, went back
3 around the house and came up on the back porch.

4 Q: When you say back porch

5 A: The side porch.

6 Q: All right. Leading to the laundry room.

7 A: Washroom. Leading to the laundry room.

8 Q: All right.

9 A: Washroom.

10 Q: Now did he had your consent to enter onto your back
11 porch there?

12 A: No, sir.

13 Q: Now what happened. How do you that know he was on
14 the back porch back there?

15 A: I could hear him.

16 Q: What was he doing?

17 A: He was trying to get the he had the screen door
18 open, and then he was trying to get I had the
19 door a pane of glass in that, but I broke it
20 out. I locked myself out of the house.

21 Q: All right.

22 A: And he was coming in that.

23 Q: Hold on. Let's go into that a little more. So you
24 come on to that porch through a screen door?

25 A: Yes, sir.

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1 Q: Then there's a wooden door with glass panes in it?

2 A: Yes, sir.

3 Q: And that were going into the heated portion of the
4 house?

5 A: Yes, sir.

6 Q: Which would be the laundry room?

7 A: Yes, sir.

8 Q: All right. And you indicated prior to this incident
9 that you had broken the glass pane out?

10 A: Yes, sir.

11 Q: What was the purpose of doing that?

12 A: I locked my keys in the house. I had locked myself
13 out.

14 Q: All right. What did you do after breaking that
15 glass out as far as repairing the door after you
16 broke your own pane of glass out to get in the
17 house?

18 A: I

19 Q: What's that?

20 A: I nailed a board.

21 Q: So you put a board up there where the glass had been
22 and nailed it in place?

23 A: Yes, sir.

24 Q: All right. Now when you what did you actually
25 hear on that washroom side of the porch area? What

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- 1 were you did you hear about that?
- 2 A: At first it sound like he was doing this, scraping
- 3 something at the bottom of the board, and then he
- 4 was knocking it.
- 5 Q: All right. You heard when you say knocking,
- 6 banging on the door?
- 7 A: Uh-huh.
- 8 Q: On that board?
- 9 A: Yes, sir.
- 10 Q: All right. Now after all of this was over with, did
- 11 you, was there anything different about that board
- 12 than had been earlier?
- 13 A: Yeah. It was just swinging from a nail left.
- 14 Q: So it had been knocked loose?
- 15 A: Yes, sir.
- 16 Q: Would you explain about that board? While you heard
- 17 that noise on your back porch, had the deputy
- 18 you all the call, that was made after you heard
- 19 the shot?
- 20 A: Yes, sir.
- 21 Q: The first, well, the second call. Did you call a
- 22 third time to 911?
- 23 A: Yes, sir.
- 24 Q: That was at what time was it? What was going
- 25 on when you called 911 for the third time?

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1 A: He was coming in. He had the board. It was he
2 was just coming in.

3 Q: And how did you feel hearing that?

4 A: I was, I was frantic. I was scared.

5 Q: Did you have any reason to be afraid of him, Ms.
6 Griffith?

7 A: Yes, sir.

8 Q: All right. Now after calling and telling the
9 dispatch, what did you learn when you called the
10 police in that third call to 911?

11 A: What did I learn?

12 Q: Right.

13 A: She asked me to stay on the phone, and I told her I
14 was standing by the window, and I was afraid, could
15 I hang up, and I hung up.

16 Q: All right. What happened after that?

17 A: He was coming on in. Sgt. Kubala came, and then I,
18 I

19 Q: Where did Sgt. Kubala come to your house? What
20 part?

21 A: Art?

22 Q: Can you identify this photograph?

23 A: Yes, sir.

24 Q: Does that show the location? Excuse me. What does
25 that photograph show?

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- 1 A: It shows the left side of my house where my car is
2 parked.
- 3 Q: All right. And where Sgt. Kubala was? Excuse me.
4 All right.
- 5 A: And where Sgt. Kubala was.
- 6 Q: Knew going to get in trouble. Left and right. If
7 you are standing in Taylor Street looking at your
8 house, which side of the house did you park your car
9 on?
- 10 A: the right.
- 11 Q: Okay. And where do Sgt. Kubala pull up his patrol
12 car in relation to your car?
- 13 A: Right drive.
- 14 Q: Right up next to yours?
- 15 A: Yes, sir.
- 16 Q: And this photograph shows that?
- 17 A: Yes, sir.
- 18 **MR. JACKSON:** Your Honor, if we can, let the record
19 reflect that it's showing photograph sixteen.
- 20 **THE COURT:** All right. The record will so reflect.
- 21 Q: After Deputy Kubala got there, what occurred?
- 22 A: He went around the house to the back side, and then
23 I heard Sgt. Kubala say halt, and then I heard the
24 gun shooting.
- 25 Q: All right. Tell us what you heard.

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1 A: I heard Sgt. Kubala say halt, and then I heard bam,
2 bam, bam. I think it was four. I believe it was
3 four shots.

4 Q: And what happened? What did you do after hearing
5 these shots?

6 A: I stood there for a minute with my hands over my
7 ears. Then Mr. Taylor went out there and run back
8 and told me to call the ambulance, that the deputy
9 was on the ground.

10 Q: All right. Let me back up just a minute. When you
11 and Mr. Taylor were inside your house before the
12 deputy got there, did you or Mr. Taylor say anything
13 to Mr. Stone on the outside?

14 A: Mr. Taylor hollered at him one time.

15 Q: Okay. Going forward then to after the deputy was
16 there and he heard the shots, then what happened?

17 A: I called 911.

18 Q: All right. So that was the fourth call that we have
19 heard, we have heard before?

20 A: Yes, sir.

21 Q: All right. While you were on the phone, what did
22 Mr. Taylor do?

23 A: He came back in the house. Made him come back in
24 the house.

25 Q: So he was in the house when you called 911?

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- 1 A: Yes, sir.
- 2 Q: To report the shots?
- 3 A: Yes, sir.
- 4 Q: So he had gone out then while you were calling?
- 5 A: He went out, but he came back in.
- 6 Q: All right, Ms. Griffith. I think we've got some
- 7 pictures that were taken later on that night that
- 8 showed a porch light on that side porch.
- 9 **MR. JACKSON:** Your Honor, if the record could reflect
- 10 we're showing Exhibit Nine.
- 11 **THE COURT:** All right. Let the record so reflect.
- 12 Q: This is Exhibit Nine. This white area. Is that the
- 13 side washroom screened porch?
- 14 A: Yes, sir.
- 15 Q: It shows a light on there?
- 16 A: Yeah. I cut it on.
- 17 Q: Was that light on at what time did you cut that
- 18 on, and when did you cut it on?
- 19 A: After Sgt. Kubala was shot.
- 20 Q: So when he was shot, that light was not on?
- 21 A: No, sir.
- 22 Q: When you were hearing the noise on that porch, that
- 23 light was not on?
- 24 A: No, sir.
- 25 Q: Was the police car that's shown in the photograph,

1 was Deputy Kubala in that car both times when he
2 came to your house?

3 A: Yes, sir.

4 Q: And was he in what did Officer Kubala look like
5 when you saw him?

6 A: The first time or the second?

7 Q: Well, the first time. That's right. Excuse me.
8 The time you actually talked to him.

9 A: He had a mustache, and he was, he was a real nice
10 looking man, person, and he was a real nice person.

11 Q: I appreciate you saying that. I'm talking about his
12 clothing specifically. How was he dressed?

13 A: In a deputy suit.

14 Q: All right.

15 A: A deputy.

16 Q: Could you

17 A: Tan.

18 Q: Could you

19 A: He had on a tan shirt.

20 Q: What and could you tell that he was a deputy
21 sheriff?

22 A: Yes, sir.

23 Q: Ms. Griffith, after hearing the shots, the other
24 deputies and then an ambulance arrived.

25 A: I didn't understand you.

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1 Q: You indicated a while ago you actually saw Deputy
2 Kubala twice, once when he came after you all called
3 at 5:39 p.m.?

4 A: Yes.

5 Q: Then a second time. When was that second you saw
6 him?

7 A: He was laying on the ground.

8 Q: All right. And where was he laying on the ground?

9 A: Between I had two little steps. He was laying
10 right between them and that.

11 Q: All right. And where did you go to see him in that
12 position?

13 A: At my back, at my kitchen door.

14 Q: All right. And did you ever go on the laundry room
15 porch?

16 A: No, sir.

17 Q: Okay. Did you ever see anything on the laundry room
18 porch?

19 A: No, sir.

20 Q: Did you ever go on to see what's been marked Exhibit
21 Thirteen for identification?

22 A: Oh, yeah, I went.

23 MR. JACKSON: Your Honor, the record can reflect that as
24 State's Exhibit Thirteen.

25 THE COURT: All right. The record will so reflect.

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1 Q: Tell us how you happened to see that.

2 A: When I turned the porch light, one of the deputies,
3 whoever was out there, came in through my house,
4 asked me was there a way out on that little back
5 porch, and he went out that door, and that's when he
6 showed my daughter and me that gun.

7 Q: All right. Had you ever seen that gun there before?

8 A: No, sir.

9 Q: On your porch?

10 MR. JACKSON: Your Honor, that was the State's direct
11 examination.

12 THE COURT: All right. Cross examination, Mr.
13 Littlejohn?

14 MR. LITTLEJOHN: Thank you, Your Honor.

15 MS. GRIFFITH - CROSS EXAMINATION BY MR. LITTLEJOHN:

16 Q: Good afternoon, Ms. Griffith. I believe we have met
17 before?

18 A: Yes, sir.

19 Q: How are you today?

20 A: Nervous.

21 Q: I can understand, Ms. Griffith. Before we begin,
22 let me make sure you and I have an agreement. Okay?

23 A: Okay.

24 Q: If you don't understand any of my questions, please
25 ask me to repeat them because I want to make sure

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- 1 you understand my questions before you answer them.
- 2 I that fair enough?
- 3 A: Yes, sir.
- 4 Q: Okay. Ms. Griffith, Michelle Lynch is your husband,
- 5 your late husband's niece, is that correct?
- 6 A: Yes, sir. Yes.
- 7 Q: Okay. And Michelle lives in Sumter sometimes and
- 8 lives in Belton sometimes?
- 9 A: I don't Greenville. Is Belton in Greenville?
- 10 Q: Belton is not too far away from Greenville,
- 11 somewhere in the Greenville area.
- 12 A: Somewhere.
- 13 Q: And then sometimes she lives in Sumter?
- 14 A: Yes, sir.
- 15 Q: Okay. And on one occasion she lived with you, did
- 16 she not?
- 17 A: Yes, sir.
- 18 Q: Okay. And on one occasion she lived with you, did
- 19 she not?
- 20 A: Yes, sir.
- 21 Q: Stayed with you for a while?
- 22 A: Yes, sir.
- 23 Q: And she was occasionally a visitor at your house
- 24 over the past years, isn't that right?
- 25 A: Yes, sir.

1 Q: As a matter of fact, she liked you, and you all
2 liked each other, didn't you?

3 A: A time.

4 Q: A time? For a long time, right?

5 A: Yeah.

6 Q: Okay. And then and she was living at your
7 house when she was dating Bobby Stone, isn't that
8 right?

9 A: No, sir.

10 Q: Didn't you say Bobby Stone would come over and pick
11 her up to go out on dates?

12 A: That's he came by to pick her up and take her
13 home. That's when she was living with him.

14 Q: All right. So she would be visiting at your house,
15 he'd come over there and pick her up, right?

16 A: Yeah. Yes, sir.

17 Q: Okay. And he'd come right up to your door, would he
18 not?

19 A: Yes, sir, he did.

20 Q: All right. What would he come up to the front
21 door?

22 A: Yes, sir.

23 Q: Okay. And that's the looking at State's
24 Exhibit Number Seven, that would be the door inside
25 the screened porch, right?

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- 1 A: Yes. Yes, sir.
- 2 Q: Correct?
- 3 A: Uh-huh.
- 4 Q: Okay. So he'd come up on the screened porch and
5 come up to your front door, knock on the door, and
6 pick up Michelle?
- 7 A: Yes, sir.
- 8 Q: Okay. Now, Ms. Griffith, Michelle Lynch's mother is
9 Mary Griffith Wilson, correct?
- 10 A: Yes, sir.
- 11 Q: And she is the sister of your late husband, is that
12 correct?
- 13 A: Yes, sir.
- 14 Q: Okay. And you have known her for let's just say
15 many, many years?
- 16 A: Yes, sir.
- 17 Q: Okay. And she lives in Sumter, doesn't she?
- 18 A: Sometimes she lives in Lynchburg with her mother,
19 and sometimes she lives in Sumter.
- 20 Q: Okay. I believe she's taking care of her ill
21 mother, isn't that right?
- 22 A: She was.
- 23 Q: You haven't seen her for a while?
- 24 A: No, I haven't.
- 25 Q: But you all used to be very close, did you not?

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1 A: Yes, sir.

2 Q: And in fact on occasions, for short occasions, she
3 lived with you?

4 A: Yes, sir.

5 Q: At 817 Taylor Street?

6 A: Yes, sir.

7 Q: And you all were very close friends, were you not?

8 A: Yes, sir, we were.

9 Q: You all socialized together?

10 A: Yes, we did.

11 Q: You all would go out to restaurants and different
12 places together?

13 A: Yes, we did.

14 Q: You all would go to the truck stop out on North
15 Fifteen and go dancing, wouldn't you?

16 A: Yes, we did.

17 Q: You all did that a lot, didn't you?

18 A: Yes, we did.

19 Q: And on some of the occasions you went out there
20 dancing, you would be with Mary Griffith Wilson and
21 Michelle and other friends and Bobby Stone?

22 A: No, sir. Not with Bobby Stone.

23 Q: You are telling us Bobby Stone was never there in a
24 social setting with you?

25 A: No. No. Never.

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- 1 Q: All right. And Ms. Griffith, you occasionally go to
2 a place called Griffith's Store, don't you?
3 A: About two years ago, three years ago. Something.
4 Q: Okay. And it's kind of a country store and a little
5 bar-type place?
6 A: Yes, sir.
7 Q: People go there to drink beer.
8 A: And shoot pool.
9 Q: Shoot pool?
10 A: Talk.
11 Q: Play the machines?
12 A: Yes, sir.
13 Q: And you go there and drink beer and play the
14 machines?
15 A: No, I did not play no machines.
16 Q: But you drank beer there?
17 A: Yes, I did.
18 Q: Okay. And on occasion when you were in there
19 drinking beer, Bobby Stone would be in there
20 drinking beer, isn't that right?
21 A: I don't recall him being in there, but he might
22 have. I mean he could have been.
23 Q: You don't recall seeing Bobby Stone in there?
24 A: No, sir.
25 Q: Ms. Griffith, Bobby Stone did some work at your

1 house one time, didn't he?

2 A: He spread a pile of dirt in my driveway.

3 Q: Okay. And he spread that dirt for you with a
4 backhoe, didn't he?

5 A: Yes, he did.

6 Q: Okay. And you paid him that or did it as a favor?

7 A: I believe I paid him \$20.

8 Q: Paid him \$20. Okay. And one time he worked on your
9 septic tank, didn't he?

10 A: No, he did not.

11 Q: You don't recall that?

12 A: No, I do not.

13 Q: All right. In regard to your house, Ms. Griffith,
14 how long have you lived in that house?

15 A: Since '72. Maybe '72.

16 Q: Okay. Some of that time you lived there by
17 yourself?

18 A: Yes, sir.

19 Q: And some of that time, I believe early, you lived
20 there with your husband?

21 A: Yes, sir.

22 Q: Okay. And after he passed away, different people
23 lived at your house with you, did they not?

24 A: Some friends, yeah.

25 Q: Like your daughter lived there for a while?

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- 1 A: Yes, sir.
- 2 Q: And Michelle lived there for a while?
- 3 A: Yes, sir.
- 4 Q: And Mary Griffith Wilson lived there for a while?
- 5 A: Yes, sir.
- 6 Q: Okay. Now you told us about, and I asked you in
- 7 regard to State's Exhibit Number Seven, you have a
- 8 front porch there on your house, don't you?
- 9 A: Yes, I do.
- 10 Q: You sit out there quite a bit?
- 11 A: Sometimes.
- 12 Q: Sometimes? Chairs out there?
- 13 A: Yeah. Yes, sir.
- 14 Q: And people come and go through your front door by
- 15 going through that porch, do they not?
- 16 A: Yes, sir.
- 17 Q: Okay. And then that didn't cause you any problem,
- 18 did it?
- 19 A: No.
- 20 Q: Okay. Now we have heard some discussion concerning
- 21 the side porch. The side porch was a very small
- 22 porch, was it not?
- 23 A: Yes, sir.
- 24 Q: Okay. And I believe your daughter indicated that
- 25 you had occasionally stored wood out there?

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1 A: Yeah.

2 Q: Stored wood out there?

3 A: Uh-huh.

4 Q: I believe there are some paint cans out there on the
5 night that this happened?

6 A: Yes, sir.

7 Q: No chairs or anything of that nature?

8 A: No, sir.

9 Q: Okay. So it was kind of a storage area?

10 A: Yes, sir.

11 Q: Okay. And you explained to us that the door going
12 from that porch into your laundry room was one of
13 these doors that has windowpanes in it?

14 A: Yes, sir.

15 Q: Has six windowpanes at the top half of the door?

16 A: Yes, sir.

17 Q: And you explained to us how on some occasion you
18 would locked yourself out. So you knocked out
19 a pane to get into the house?

20 A: Yes, sir.

21 Q: Okay. So you broke the pane, reached in, turned the
22 knob, opened the door, and went in?

23 A: Yes, sir.

24 Q: Okay. So after that you took a board and put it
25 over there?

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- 1 A: Yes, I did.
- 2 Q: And I believe that board was just a little, thin
- 3 board, wasn't it?
- 4 A: It wasn't very thick.
- 5 Q: Wasn't very thick at all.
- 6 A: Not very. I don't
- 7 Q: Wasn't like a 1 x 6 or a 2 x 4 or anything like
- 8 that. It was a little, thin, kind of piece of wall
- 9 covering or something, wasn't it?
- 10 A: I don't know. I don't know the log. I don't know
- 11 anything about logs, but it was just a board. I
- 12 thought it was a board.
- 13 Q: A little, thin board?
- 14 A: Yeah.
- 15 Q: You nailed it up there yourself?
- 16 A: Yes, sir.
- 17 Q: Okay. And I don't believe there is any deadbolt on
- 18 that door, is there?
- 19 A: No, sir.
- 20 Q: Just a knob like
- 21 A: That's right.
- 22 Q: Okay. Now, Ms. Griffith, on the afternoon of
- 23 February 26, 1996, did you have anything to drink
- 24 that afternoon?
- 25 A: No, sir.

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1 Q: Okay. Had you taken your daughter explained to
2 us that you take various medications for a heard
3 condition.

4 A: Yes, I do.

5 Q: Okay. Were you on those medications on that
6 afternoon?

7 A: Yes, sir.

8 Q: In fact, you're ion them every day?

9 A: Yes, sir.

10 Q: Continuously?

11 A: Yes, sir.

12 Q: Okay. When did your daughter arrive at your house
13 as best you can recall?

14 A: I can't, I can't remember. She got I think she
15 worked on it late. It must have been 4:30.

16 Q: Okay. 4:00 or 4:30?

17 A: But I believe I mean I don't know. I really
18 don't know.

19 Q: At that time what time did she usually get off of
20 work, if you recall?

21 A: 3:00.

22 Q: 3:00 o'clock?

23 A: Uh-huh.

24 Q: You think she was running a little bit later this
25 afternoon?

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- 1 A: Yes, sir.
- 2 Q: Okay. Now when she got there, was there anybody
- 3 else at your house?
- 4 A: No, sir.
- 5 Q: Were you there by yourself?
- 6 A: Yes, sir.
- 7 Q: Now you explained to the jury that at some part of
- 8 the afternoon, Bobby Stone came to your kitchen
- 9 door?
- 10 A: Yes, sir, he did.
- 11 Q: And he knocked on the door?
- 12 A: Yes, he did.
- 13 Q: Okay. And I believe that door also has windowpanes
- 14 in it, doesn't it?
- 15 A: Yes, sir.
- 16 Q: Can you explain to us how you parted the curtain?
- 17 A: Yes, sir.
- 18 Q: And saw Bobby Stone?
- 19 A: Yes, sir.
- 20 Q: Okay. And at that point he was just knocking on
- 21 your door?
- 22 A: Yes.
- 23 Q: Okay. And you didn't open the door at that point?
- 24 A: No, sir.
- 25 Q: You went and told you daughter, Ms. McLeod, that

1 Bobby Stone was at your back door?

2 A: Yes, sir.

3 Q: Okay. And as a result of that, your daughter went
4 to the back door, and Bobby Stone was walking away?

5 A: Yes, sir.

6 Q: Is that what you understood?

7 A: I didn't see him when he started walking away. I
8 seen, went to the door, opened the door, and run
9 him. She was just

10 Q: Okay. After she went out of the door, did you look
11 out to see what was going on?

12 A: Yeah.

13 Q: Okay. Now do you know to your own knowledge at that
14 point whether your daughter knew Bobby Stone?

15 A: She did not know him.

16 Q: She didn't know anything about him?

17 A: She knew he tried to

18 Q: Wait a minute. Did she know him personally?

19 A: No, she did not.

20 Q: Okay. Did she know anything about any prior
21 contacts that you might have had with Bobby Stone?

22 A: She

23 Q: On the afternoon of February 26th?

24 A: I don't understand what you said.

25 Q: Okay. Let me rephrase the question. At the time he

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1 came to your door on February 26th, to your
2 knowledge did your daughter know that he had been to
3 your house, inside your house, before?

4 A: Not that day.

5 Q: Did she know that in fact he had been to your house
6 with Michelle?

7 A: Yes, she had.

8 Q: And had socialized with you?

9 A: He didn't socialize with me.

10 Q: Is it your testimony Bobby Stone and Michelle never
11 came to your house to drink beer?

12 A: They weren't drinking beer. I was that one time.

13 Q: So Bobby and Michelle came in your house, and you
14 were drinking beer on one occasion?

15 A: Yes, I did.

16 Q: Could it have been more than one occasion, Ms.
17 Griffith?

18 A: No, sir.

19 Q: Are you absolutely sure about that?

20 A: I am sure.

21 Q: Okay. Was there ever a time that they came over to
22 your house and had some marijuana?

23 A: I don't think so. No.

24 Q: Are you absolutely sure of that?

25 A: I'm sure.

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1 Q: Okay. You don't recall seeing Michelle with some
2 marijuana at your house?

3 A: Michelle had all kinds of things at my house. I
4 don't know what she had on this particular evening.

5 Q: Well, did you ever see her with marijuana in your
6 house?

7 A: Yes, I did.

8 Q: And did you ever see her smoking marijuana in your
9 house?

10 A: No.

11 Q: Did she and Bobby Stone ever smoke marijuana in your
12 house in your presence?

13 A: I was in the kitchen getting some plastic bags for
14 them to put on their feet so they could get back to
15 the house because they couldn't drive to the house.
16 They had to walk.

17 Q: Uh-huh.

18 A: And they didn't want to get mud on their feet, and
19 I came back in there, and they were it was
20 something about this long. It wasn't I don't
21 know. It was just it wasn't a big cigarette.

22 Q: But from what you understood, it was a small
23 marijuana cigarette?

24 A: It looked just like about that big. I don't know.

25 Q: And Michelle and Bobby were smoking it, weren't

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- 1 they?
- 2 A: Yes, sir. I guess they were.
- 3 Q: Did you try it?
- 4 A: No, I didn't.
- 5 Q: Ms. Griffith, did you want your daughter to know
- 6 that Bobby Stone and Michelle Lynch had ever been in
- 7 your house smoking marijuana?
- 8 A: I didn't, I didn't care if she knew.
- 9 Q: You didn't want her to know, did you?
- 10 A: I didn't care if she knew.
- 11 Q: You didn't care, but you didn't want her to know,
- 12 isn't that a fact? Isn't that a fact?
- 13 A: Well, I really didn't want them smoking it here. I
- 14 didn't want them in there.
- 15 Q: But in fact they did?
- 16 A: I reckon it was, it was just a tiny, little thing.
- 17 Q: Okay. And at the time, you said you were drinking
- 18 beer?
- 19 A: Yeah, I was drinking beer.
- 20 Q: Okay. And you say that it only happened one time?
- 21 A: That's all.
- 22 Q: Could there have been other times when Bobby and
- 23 Michelle were there just drinking beer with you?
- 24 A: No, sir.
- 25 Q: You don't recall any other times?

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1 A: No, sir.

2 Q: Now, Ms. Griffith, on the afternoon of February
3 26th, from what I understood from your testimony,
4 when Bobby came to your door, you saw that it was
5 Bobby knocking at your door, and you immediately
6 went to your daughter, right?

7 A: Yes, sir.

8 Q: You never had any conversation with Bobby Stone?

9 A: No.

10 Q: On that afternoon or any time that day?

11 A: No, I didn't.

12 Q: Okay. And what you told us was that your daughter
13 went outside and that Bobby had walked away from
14 your house?

15 A: Yes, sir.

16 Q: He had walked up under a shed, I believe?

17 A: Yes.

18 Q: Your daughter was telling him, based on what you had
19 told your daughter, that he was not wanted there at
20 your house, isn't that right?

21 A: She knew I didn't want him at my house.

22 Q: And she told him to leave?

23 A: Yes, sir.

24 Q: And he left?

25 A: Yes, he did.

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- 1 Q: And I believe you indicated when you talked to Lt.
2 Martin and the other agents that it appeared to you
3 that Bobby was hyped up on something?
- 4 A: He looked like it.
- 5 Q: He looked like he was hyped up on something?
- 6 A: He didn't look like he looks today.
- 7 Q: Was he wobbling when he walked?
- 8 A: Yes, he was staggering.
- 9 Q: He was what?
- 10 A: He staggered.
- 11 Q: He staggered when he walked. Okay. And you saw him
12 walk out of your yard into the woods, right?
- 13 A: Yes, I did.
- 14 Q: And I believe your daughter had had a conversation
15 with him up under the shed, and at that point did
16 you hear Bobby say I'm going home?
- 17 A: Yes, I did.
- 18 Q: Okay. You heard that? Okay. And he left after
19 that, right?
- 20 A: Yes, he did.
- 21 Q: And to your knowledge, did Bobby know your daughter,
22 Mary McLeod?
- 23 A: I don't think he, I don't think he didn't. I know
24 he didn't.
- 25 Q: You don't think he did?

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1 A: No, I don't.

2 Q: Okay. And Ms. Griffith, of course let me, let
3 me back up a second. You have a pistol in your
4 house, don't you? Don't you own a pistol?

5 A: It's my son's pistol, but I keep it.

6 Q: You keep it. What kind of pistol is it?

7 A: A thirty-two, I believe. I don't

8 Q: Could it be a twenty-two?

9 A: No, it's a thirty-two pistol. I mean it's got

10 Q: Thirty-two?

11 A: I had no bullets in it.

12 Q: But when your daughter ran Bobby Stone off, she
13 didn't have your pistol, did she?

14 A: No, she did not.

15 Q: So she was unarmed?

16 A: That's right.

17 Q: And at that time you didn't see Bobby with any kind
18 of weapon, did you?

19 A: No, I didn't.

20 Q: Now according to you, he walked into the woods, and
21 as I understand your testimony, that was the last
22 time that you saw him that day, right?

23 A: No, he came back shooting in my yard.

24 Q: Did you see him shooting in your yard, or did you
25 hear him?

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- 1 A: I heard it.
- 2 Q: You heard it, but you didn't see it?
- 3 A: I didn't see it.
- 4 Q: Okay. So you didn't see him again after he walked
5 into the woods after your daughter had chased him
6 off of your property?
- 7 A: No, I didn't. I was scared. He had a gun.
- 8 Q: Okay. Now after your daughter chased Bobby off, a
9 few minutes later she called 911, as I understand
10 it.
- 11 A: Yes, sir.
- 12 Q: Okay. And after some length of time, Deputy Kubala
13 came out there?
- 14 A: Yes, sir.
- 15 Q: Right?
- 16 A: Yes, sir.
- 17 Q: And according to the records that have been placed
18 into evidence, it appears that between the time the
19 911 call was made and when Sgt. Kubala got there, it
20 was about twenty-seven minutes. Does that sound
21 correct to you?
- 22 A: Yes, sir.
- 23 Q: Okay.
- 24 A: I reckon.
- 25 Q: All right. So in that twenty-seven minutes, Bobby

1 Stone never came back to your house, did he?

2 A: Not the no, sir.

3 Q: And he never came back and pointed a gun at you, did
4 he?

5 A: No.

6 Q: And he never came back and threatened you, did he?

7 A: He was threatening me when he was coming in. I mean
8 that was a threat, wasn't it?

9 Q: After your daughter chased him off, you didn't see
10 him again that day?

11 A: No, I didn't.

12 Q: Okay. Now after your daughter left and went to her
13 house and left you there by yourself, is that right?

14 A: She went to her ex-husband's house and left me
15 there.

16 Q: And there was nobody there with you at the time?

17 A: No, sir.

18 Q: Okay. Now I believe you indicated to us at that
19 point is when you heard something outside shortly
20 after your daughter left?

21 A: Yes, sir.

22 Q: Okay. And you indicated you heard something at the
23 window, heard something at the car, but you didn't
24 look outside?

25 A: No.

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- 1 Q: Didn't look outside?
- 2 A: No, I didn't.
- 3 Q: Okay. You called Mr. Taylor who lives across the
- 4 street from you?
- 5 A: Yes, sir.
- 6 Q: Actually there's one house directly across the
- 7 street from you, and then he lives in one house
- 8 down, isn't, isn't that right?
- 9 A: In a trailer.
- 10 Q: In a trailer with his wife?
- 11 A: Yes, sir.
- 12 Q: And you called, and his wife was on the phone. Did
- 13 I understand? Or one of the statements said she was
- 14 on the phone. I don't remember whether you had call
- 15 waiting or
- 16 A: I called, and I'm so upset. I talked to him. I
- 17 asked him somebody is shooting in my back yard. Did
- 18 he year somebody shooting in my back yard.
- 19 Q: All right. And as a result of this, he came over?
- 20 A: He said yes, somebody was shooting in my back yard,
- 21 and he came over.
- 22 Q: Okay. Now Mr. Taylor arrives at your house, and at
- 23 that point nobody had called 911, is that correct?
- 24 A: No. Nobody hadn't called.
- 25 Q: You hadn't called. To your knowledge, he hadn't

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1 called?

2 A: No. He called when he got to my house.

3 Q: So he called 911 when he got to your house?

4 A: Yes, sir.

5 Q: Okay. And that was as a result of your hearing the
6 shots out in the back?

7 A: Yes, sir.

8 Q: Okay. Now as I understand it, shortly thereafter,
9 you heard somebody beating or knocking on the door
10 that leads into your laundry room?

11 A: Yes, sir.

12 Q: This is the door that is covered with the thin board
13 where you had broken the pane out?

14 A: Yeah.

15 Q: And let's be crystal clear. That pane was the pane
16 closest to the knob, was it not?

17 A: Yeah. Yes, sir.

18 Q: Okay. Now at that point, a second call went to 911,
19 is that right?

20 A: Yes, sir.

21 Q: Okay. And in that second call you reported this
22 activity, the knocking or beating on the door?

23 A: Yes, sir.

24 Q: Right. Something, and let me get straight on one
25 thing, Ms. Griffith, in your direct testimony when

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1 you Solicitor Kolb was asking you questions

2

3 A: Yes, sir.

4 Q: you said something about you heard a scraping
5 at the bottom of the door.

6 A: Yes, I did.

7 Q: You did?

8 A: Yes.

9 Q: Are you sure about that?

10 A: I'm positive.

11 Q: Did you tell the 911 operator there was a scraping
12 at the bottom of the door?

13 A: No, I didn't.

14 Q: When you were interviewed by Lt. Martin and the SLED
15 agents on two occasions, you never said anything,
16 anything about a scraping at the bottom of the door,
17 did you?

18 A: No, I didn't.

19 Q: Okay. Now after this second call went to 911, I
20 believe you said the knocking or the beating
21 continued, is that right?

22 A: Yes, it did. Yes, sir.

23 Q: Okay. And you and Mr. Taylor got down in a corner
24 in the living room, is that right?

25 A: He was sitting in the chair.

1 Q: He was sitting in a chair in the living room?

2 A: Yes, sir. I was standing up.

3 Q: You were standing up? Okay. And the way the
4 laundry room is situated, actually there you
5 have to go through two doors to get into the laundry
6 room, isn't that correct?

7 A: Yes, sir.

8 Q: Okay. And they are at a ninety degree angle to each
9 other?

10 A: Yes, sir.

11 Q: So you weren't looking at the door that the knocking
12 and the beating was coming from?

13 A: No, sir.

14 Q: You weren't. Okay. Now at that point I believe,
15 based on the information you gave Lt. Martin, Mr.
16 Taylor had your gun?

17 A: Yes, sir.

18 Q: Okay. And he also had a flashlight?

19 A: Yes, sir.

20 Q: Okay. And the knocking continued, but as I
21 understand your testimony, nobody ever came in that
22 door. The door was never opened?

23 A: No, it wasn't, but he would have if Sgt. Kubala
24 hadn't come. His lights and

25 Q: Ma'am, I just asked you a simple question. Please.

1 That door was never opened by whoever was knocking
2 on it?

3 A: No.

4 Q: Okay. And the glass in the other five panes of that
5 door was never broken out by whoever was knocking on
6 it, right?

7 A: Say that again.

8 Q: The five panes of glass that were left in on the, of
9 that back door were never broken out?

10 A: No, they weren't.

11 Q: And you indicated that the board had been put up
12 with a number of nails that you had put up?

13 A: Yes, sir.

14 Q: Right? And it had been displaced in some manner,
15 right?

16 A: He had it all, all except one nail holding, and it
17 was swinging.

18 Q: It was swinging. But nobody ever reached inside and
19 turned the knob and opened that door?

20 A: No, sir.

21 Q: Now, Ms. Griffith, you described for us how Deputy
22 Kubala came up in his patrol car. I believe we have
23 one picture. Ms. Griffith, let me show you what's
24 previously been marked as State's Exhibit Sixteen.
25 You had identified this photograph before the car,

1 right?

2 A: Yes, sir.

3 Q: This appears to be a photograph that was taken on
4 the night of February 26th?

5 A: Yes, sir.

6 Q: And this appears to be Sgt. Kubala's patrol car?

7 A: Yes, sir.

8 Q: Okay. And I believe you can fairly make out the
9 headlights of your car?

10 A: Yes, sir.

11 Q: So as you are looking at your house on Taylor
12 Street, your car is parked on the side of your
13 house, correct?

14 A: Yes, sir.

15 Q: Sgt. Kubala's car is pointing toward the corner of
16 your house, the right, front corner?

17 A: Yes, sir.

18 Q: Now the little porch that we have been talking about
19 is caticorner to that corner, is it not?

20 A: You go around the house.

21 Q: It's on the complete opposite corner of the house?

22 A: Yes, sir.

23 Q: Isn't that right?

24 A: (nods head).

25 MR. LITTLEJOHN: Your Honor, at this point let the

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1 transcript indicate whereupon subject indicated
2 nodding head.

3 **THE COURT:** All right.

4 **Q:** Okay. Ms. Griffith, Solicitor Kolb asked you about
5 the light that was on the small porch on the side.
6 You indicated that the knocking was going on, Sgt.
7 Kubala came up, that light was not on?

8 **A:** No, sir.

9 **Q:** It was not cut on until later after you heard the
10 shots fired, is that right?

11 **A:** That's right.

12 **Q:** All right. And from what you indicated to us, after
13 Sgt. Kubala arrived, the only things you heard were
14 halt and two, three, or four shots fired?

15 **A:** Yes, sir.

16 **Q:** The person who was on your porch, you did not see
17 them leave or which way they went, is that correct?

18 **A:** No, I didn't, no.

19 **MR. LITTLEJOHN:** Those are all the questions I have.

20 **THE COURT:** All right. Re-direct, Mr. Solicitor?

21 **MR. JACKSON:** Thank you, Your Honor.

22 **MS. GRIFFITH - RE-DIRECT EXAMINATION BY MR. KOLB READ BY**

23 **MR. JACKSON:**

24 **Q:** Ms. Griffith, the defense asked you about this time
25 when Michelle Lynch was staying with you.

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1 A: Yes, sir.

2 Q: How long was that before February 26, 1996?

3 A: I believe in '94.

4 Q: '94?

5 A: I believe.

6 Q: All right. And specifically do you recall the date
7 from September 4, 1995? Don't say anything about
8 what happened, but you remember something occurring
9 on September the 4th, 1995?

10 A: Yes, sir.

11 Q: Did you and law enforcement make it crystal clear to
12 Mr. Stone that on that day he was not welcome at
13 your house?

14 A: Yes, sir.

15 Q: And from September the 4th, 1995, until February 26,
16 1995, 1996, had Bobby Wayne Stone been at your house
17 for any reason whatsoever?

18 A: No, sir.

19 Q: Was Michelle Lynch at your house on February the
20 26th, of 1996?

21 A: No, sir.

22 Q: All right. I want to show you State's Exhibit
23 Number Six. What does that show?

24 A: My home.

25 Q: The front of your house as if you are standing on

1 Taylor Street?

2 A: Uh-huh.

3 Q: All right. And to the front left of your house,
4 that's the porch Mr. Littlejohn was talking about,
5 the front porch?

6 A: Yes.

7 Q: That's your front porch?

8 A: Yes, sir.

9 Q: What's this on the front right of your house?

10 A: That's the window in my bedroom.

11 Q: All right. So that's the your bedroom actually
12 is on the front left-hand corner well, facing
13 the house, front right-hand corner to your house?

14 A: Yes.

15 Q: All right. And what's that in the window at the
16 front of your house?

17 A: My air-conditioner.

18 Q: And who owned that air-conditioner?

19 A: My daughter and her husband put it in there for me
20 because my

21 Q: You mentioned that on February the 26th, 1996, the
22 first time Mr. Stone came to your house, what did
23 you tell did you had, prior to that time,
24 had you ever told your daughter that you did not
25 want Bobby Stone around your house?

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1 A: Yes, sir.

2 MR. JACKSON: Thank you, that's all.

3 THE COURT: Re-cross?

4 MS. GRIFFITH - RE-CROSS EXAMINATION BY MR. LITTLEJOHN:

5 Q: Just one thing. As I understood your earlier
6 testimony, that after Michelle Lynch lived at your
7 house is when she moved in with Bobby?

8 A: I really made her leave my house. I think she was
9 staying, but she'd stay about anywhere she can stay.

10 Q: but I believe you indicated after she lived at her
11 house is when Bobby would come get her, take her
12 home to their house, is that right?

13 A: That's right.

14 Q: Thank you, ma'am.

15 THE COURT: Thank you, ma'am. Please step down. All
16 right. Ladies and gentlemen of the jury, you've
17 been in the courtroom now for close to two hours,
18 and it's about appropriate that we take our mid-
19 morning recess at this time, and we're going to do
20 that. I'm going to allow you to go to your jury
21 room and relax a little bit. There will be some
22 refreshments in there if you would like to partake
23 of those, and we're going to take about a ten or
24 fifteen-minute recess and be ready to start back in
25 no more than fifteen minutes, maybe ten. So if you

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1 would, just relax. While you're in the jury room,
2 it is still premature for you to begin any
3 discussions about this case. Don't talk about this
4 case at all. Just relax, and we'll send for you
5 very shortly. Thank you. You may go with Mr.
6 Herring.

7 (Jury out at 10:59 a.m.)

8 **THE COURT:** All right. Counsel, I have 11:00 o'clock.
9 Let's be ready to start back at 11:15.

10 **MR. SALEEBY:** Thank you, Your Honor.

11 **THE COURT:** All right. Thank you.

12 (A short break was taken.)

13 (Jury in at 11:20 a.m.)

14 **THE CLERK:** Your Honor, all the jury and the alternates
15 are present in the court.

16 **THE COURT:** All right. Thank you very much, and good
17 morning again, ladies and gentlemen. We have had
18 our morning recess, and we are now ready to go
19 forward. The state is still presenting the
20 testimony that they wish to present, and the court
21 has been advised that the next testimony they are
22 going to present to you is the testimony of Landrow
23 Taylor.. You have previously heard testimony in this
24 case that Mr. Taylor is now deceased. Once again,
25 our rules provide that in that situation, that if

there is previous, sworn testimony by a witness who is deceased, that that testimony can be presented to the jury, and that is what the state is going to do at this time. I believe that the state is going to call one of the assistant solicitors who will read the answers of Mr. Taylor to the questions that are put by the Solicitor, is that correct?

MR. JACKSON: That's correct, Your Honor. It will be Mr. Jason Corbett.

THE COURT: All right. Mr. Corbett will read the answers of Mr. Taylor. You should assume that this is testimony, sworn testimony, and treat it just like any other testimony that you would in connection with this case. All right.

MR. JACKSON: Thank you, Your Honor

MR. TAYLOR - DIRECT EXAMINATION BY MR. JACKSON:

(ANSWERS OF MR. TAYLOR READ BY MR. CORBETT)

Q: Mr. Taylor, you are a neighbor to Ms. Ruth Griffith?

A: Yes, sir.

Q: All right. And what's your address?

A: 487 Ridgeway.

Q: Ridgeway Street?

A: Yes, sir.

Q: And you live there with who?

A: My wife.

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- 1 Q: All right. And could you tell us on the evening of
2 February 26, 1996, that if you had occasion to go to
3 Ms. Griffith's home?
- 4 A: She called me.
- 5 Q: She called you?
- 6 A: Yes, sir.
- 7 Q: Do you know what time she called you?
- 8 A: 6:47.
- 9 Q: All right. And how did you know it was her when she
10 called?
- 11 A: She told me.
- 12 Q: Okay.
- 13 A: Come over here.
- 14 Q: All right. Now tell us what happened once she
15 called you.
- 16 A: She said shooting back of her house, and told me to
17 go over there and
- 18 Q: Had you heard anything?
- 19 A: Yes, sir. I heard the gun shooting.
- 20 Q: All right. Now what did you do after she called
21 you?
- 22 A: I went over there.
- 23 Q: All right. And when you say you went over there,
24 where did you go, outside her house or inside her
25 house?

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1 A: Inside the house.

2 Q: Inside. Was there anyone else in the house except
3 her?

4 A: Not at that time, no, sir.

5 Q: All right. Now what happened after you go to her
6 house?

7 A: Well, somebody come at her car and

8 Q: Let me ask you this. Before that, did you ever make
9 a telephone call?

10 A: Yes, sir.

11 Q: All right. Tell us about that.

12 A: I called the cop. Told them about, told them about
13 the shooting in back of her house.

14 Q: All right, sir. And after you made that call, what
15 happened?

16 A: Well, I got somebody to come out there to the car,
17 and tried to break in her car. I called again.
18 I called the law again. Told them to come out.
19 Trying to break in her car. They come over there,
20 and they come out there. I don't know what side of
21 the house he went around, and he went around one
22 side, then the other.

23 Q: All right. Let me, pretty quick, did you all
24 before the officer got there, did you hear anything
25 else other than the noise around the car over on

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1 the, her bedroom side of the house?

2 A: No, sir. That was all I heard was that. Just
3 minute or two. People over there trying to beat
4 over the door down.

5 Q: Tried to beat the door down?

6 A: Yes, sir.

7 Q: Which door is that?

8 A: The side door. That the little room.

9 Q: All right. What happened when you all heard that?

10 A: Well, he, he

11 Q: Did you say, did you say anything?

12 A: Yes, sir. I hollered at him.

13 Q: What did you holler?

14 A: I asked him what he was trying to do back there, and
15 about that time the deputy come up.

16 Q: All right. And when you hollered did it stop?

17 A: Well, just a second or two, and he went right back
18 at it.

19 Q: All right. And you say about the time the deputy
20 came up?

21 A: Yes, sir.

22 Q: Where did he pull up?

23 A: Right the left-hand side of her house. I mean
24 he drove up.

25 Q: All right.

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1 A: When he come first driving, he came in the second
2 driveway.

3 Q: When you are standing in Taylor Street looking at
4 her house, from the street looking at her house,
5 which side of the house did he pull up to?

6 A: On the right-hand side, the right-hand driveway.

7 Q: All right. Now did you actually see the deputy's
8 car pull up?

9 A: Yes, sir.

10 Q: What did you do when you saw the deputy's car?

11 A: I motioned him with my light. He moved around
12 there.

13 Q: You had a flashlight?

14 A: I don't remember.

15 Q: All right. You motioned to the deputy?

16 A: I motioned to the deputy. He went around there.

17 Q: You actually saw the deputy get out of his car?

18 A: Yes, sir.

19 Q: All right. And what happened after you saw the
20 deputy get out of his car?

21 A: I went back into the house.

22 Q: All right. And do you know for sure which side of
23 the house the deputy went around?

24 A: No, sir.

25 Q: You just saw him get out of the car?

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- 1 A: Yes, sir.
- 2 Q: All right. And what happened after you went back in
- 3 the house? Let me ask you. Did you actually go out
- 4 of the house to see the deputy?
- 5 A: No, sir. No, sir.
- 6 Q: What did you do?
- 7 A: I'm waiting. I went in the house, and deputy got
- 8 around to the corner.
- 9 Q: No. When you were inside Ms. Griffith's house?
- 10 A: Yes, sir.
- 11 Q: All right. When you saw the deputy's car drive up
- 12
- 13 A: Yes, sir.
- 14 Q: what did you do? Where did you go to see him
- 15 get out of his car?
- 16 A: I stay on the porch.
- 17 Q: You went on the front porch?
- 18 A: Yes, sir.
- 19 Q: All right. And once you saw him get out of his car,
- 20 what did you do?
- 21 A: I went back in the house.
- 22 Q: All right. Then tell us what happened after that.
- 23 A: I don't know what side of the house he went around
- 24 on, and
- 25 Q: You don't know which side he went around on?

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1 A: No, sir. No, sir.

2 Q: All right.

3 A: And when he got around there, I heard him say hold
4 it, and about that time heard one shot, and just a
5 split second, there were three or four more. It was
6 shooting so fast.

7 Q: Tell us what it sounded like.

8 A: Well, I thought both of them shooting to start with.
9 Shooting so fast.

10 Q: All right. Well, just tell us what it sounded like
11 to you.

12 A: Well, pistol.

13 Q: No, I mean can you like bam, you know?

14 A: It was just one shot, and in a split second, there
15 was three or four more just

16 Q: All right, sir. So there was a little pause, a
17 short pause after the small one, and then some more?

18 A: Right. Yes, sir.

19 Q: All right. What did you do after you heard those
20 shots?

21 A: I looked out and seen another deputy pulling in the
22 yard.

23 Q: All right. What did you do then?

24 A: I run out there and told him. I looked back, and I
25 seen the flashlight laying down in the yard, and I

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1 told him about that out there, the deputy down out
2 there, and he run around there, and he told me go
3 back in the house. I went back in the house.

4 Q: All right. What did you tell Ms. Griffith when you
5 got there?

6 A: I told Ms. Griffith she going to the phone at that
7 time. I told her tell her that the deputy down,
8 send an ambulance and all that.

9 Q: Did you actually see the location of where the
10 deputy was down?

11 A: Yes, sir.

12 Q: And could you describe that location? What was his
13 position?

14 A: He went right backward.

15 Q: On his back?

16 A: Yes, sir.

17 Q: What part of the where was he?

18 A: Well, off from the door where laid down, shooting
19 come from.

20 Q: All right, sir. And you say you saw a flashlight at
21 the deputy?

22 A: Yes, sir.

23 Q: And what was the condition of that flashlight?

24 A: Sir?

25 Q: What was the flashlight on or off?

1 A: On.

2 Q: The flashlight was on?

3 A: Yes, sir.

4 Q: And what about the porch light on that side of the

5 house?

6 A: No, sir.

7 Q: It was off?

8 A: Yes, sir.. But the second the deputy, he left the

9 light, headlights on in his car.

10 Q: What's that now?

11 A: That second deputy come up. He left the spotlight.

12 Q: He had his headlights on?

13 A: Yes.

14 Q: To light up the back area there?

15 A: Yes, sir.

16 Q: All right. And was that how you could see the

17 deputy laying back there?

18 A: Yes, sir. Yes, sir.

19 Q: All right. Did an ambulance ever come?

20 A: Yes, sir.

21 Q: What did you do after the ambulance came?

22 A: They told me to hold the light.

23 Q: So you went back outside?

24 A: Yes, sir. And cut the lights to they tried,

25 you know.

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- 1 Q: So ambulance people told you to hold the light for
2 them?
- 3 A: Yes, sir.
- 4 Q: You shined the light for them?
- 5 A: Yes, sir.
- 6 Q: All right. What happened? What did they do to the
7 deputy in the ambulance?
- 8 A: Deputy in the ambulance, and when they got around
9 there, somebody hollering at me, told me get back in
10 the house, and I had a flashlight. I gave them one
11 of them. I laid it by the ambulance. I walked.
- 12 Q: That flashlight was the flashlight that the
13 ambulance people had handed you and asked you to
14 hold?
- 15 A: It was.
- 16 Q: While they worked on the deputy?
- 17 A: That was the deputy's light.
- 18 Q: All right. Did you realize until just recently that
19 that was actually the deputy's flashlight?
- 20 A: I know it was the deputy's flashlight.
- 21 Q: You didn't know it at the time though?
- 22 A: No, sir.
- 23 Q: Okay. After you saw the deputy down there and the
24 other deputy went to him, you went back in the
25 house?

1 A: Yes, sir.

2 Q: Did you hear any other shots after that?

3 A: No, sir, I didn't.

4 **MR. JACKSON:** Answer any questions the defense may have
5 for you, please.

6 **THE COURT:** Cross examination, Mr. Littlejohn?

7 **MR. LITTLEJOHN:** Thank you, Your Honor.

8 **MR. TAYLOR - CROSS EXAMINATION BY MR. LITTLEJOHN:**

9 Q: Good afternoon, Mr. Taylor.

10 A: Hey.

11 Q: Mr. Taylor, I believe you indicated that Ms.
12 Griffith called you at 6:47 p.m. on that date?

13 A: Yes, sir.

14 Q: And how did you know it was 6:47?

15 A: I got one of them little box on my telephone, and it
16 catch all the numbers that anybody call me on the
17 telephone.

18 Q: Caller ID?

19 A: Yes, sir.

20 Q: And it said Ms. Griffith's name on it?

21 A: On the telephone.

22 Q: Just her telephone?

23 A: Yes, sir.

24 Q: Okay. And you knew her telephone number?

25 A: Yes, sir.

- 1 Q: Right? And I believe you indicated at that point
2 she asked you if you had heard some gun shots, heard
3 gun shots?
- 4 A: Yes. Yes, sir.
- 5 Q: And she asked you to call a deputy?
- 6 A: Yes, sir.
- 7 Q: Is that right? Now you didn't call 911 or call a
8 deputy from your house, did you?
- 9 A: No, sir.
- 10 Q: And the reason you didn't was what?
- 11 A: My wife on the phone.
- 12 Q: Your wife was on the phone?
- 13 A: Yes, sir.
- 14 Q: Let me understand this, Mr. Taylor. Your wife was
15 on the phone, but Ms. Griffith called you?
- 16 A: Yes, sir.
- 17 Q: You got call waiting?
- 18 A: No, sir. I told her, I told my wife, you know, talk
19 to here. I go on.
- 20 Q: So your wife was talking with Ms. Griffith or
21 talking with someone else?
- 22 A: Yes, sir. Ms. Griffith. I reckon Ms. Griffith.
23 She the one that phoned.
- 24 Q: All right. I'm just trying to understand how you
25 call 911 if both your wife and Ms. Griffith were

1

2 A: I wait to Mr. Griffith's to call 911.

3 Q: So she got off the phone with your wife so you all
4 could call 911 when you eventually got to Ms.
5 Griffith's house, right?

6 A: Yes, sir.

7 Q: Okay. Now you say you went into Ms. Griffith's
8 house, and you heard something out around in the
9 area of Ms. Griffith's car, is that right?

10 A: Right.

11 Q: You didn't see anybody?

12 A: No, sir.

13 Q: You just heard something?

14 A: Yes, sir.

15 Q: You thought it was suspicious? You thought it was
16 suspicious, right?

17 A: Right.

18 Q: Okay.

19 A: Well, I know somebody out there trying to break in
20 her car.

21 Q: But you didn't see anybody?

22 A: No, sir.

23 Q: You didn't see what they were doing?

24 A: No, sir.

25 Q: You didn't see anything, any damage to Ms.

1 Griffith's car, did you?

2 A: The doorknob on the car shake like that. You know,
3 around it.

4 MR. LITTLEJOHN: Your Honor, the record reflects in
5 response to that question the witness shook head.

6 THE COURT: All right.

7 Q: Did you see any damage to Ms. Griffith's car?

8 A: No, sir.

9 Q: You just heard some noises?

10 A: Yes, sir.

11 Q: And you assume somebody was trying to break in?

12 A: Yes, sir.

13 Q: Now you indicated that you went on the porch, the
14 front porch, and you saw the deputy pull up?

15 A: Yes, sir.

16 Q: Right? And he pulled his car up. As you're on
17 Taylor Street looking at Ms. Griffith's house,
18 pulled up to the right-hand corner, correct?

19 A: Yes, sir.

20 Q: And that is the corner that's opposite of the little
21 porch that opens into the washroom, is it not?

22 A: Opposite, yes, sir.

23 Q: Opposite the house?

24 A: Yes, sir.

25 Q: Caticorner?

1 A: Yes, sir.

2 Q: Now, Mr. Griffith, I believe excuse me. Mr.
3 Taylor, I believe at that point you motioned for the
4 deputy to go around to the side of the house, right?

5 A: Yes, sir.

6 Q: And you motioned with your flashlight?

7 A: I don't remember if I had a flashlight or not.

8 Q: You don't recall whether you had a flashlight or
9 not?

10 A: No, sir.

11 Q: Mr. Taylor, do you recall giving

12 A: I went in the house. I don't know where the deputy
13 went around on the right-hand side or the left-hand
14 side.

15 Q: You don't know which side he went on?

16 A: No, sir.

17 Q: Okay. Now, Mr. Taylor, do you remember giving the
18 statement to SLED?

19 A: Yes, sir.

20 Q: And I believe that was on June 26, 1996?

21 A: You got to talk loud. I can't hear.

22 Q: You're hard of hearing?

23 A: Yes, sir.

24 Q: I'm sorry. I will speak up. You gave Lt. Gary
25 Martin of SLED a statement on June 26, 1996, did you

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1 not?

2 A: Yes, sir.

3 Q: Okay. And do you recall in that statement stating
4 about that time we saw a deputy drive up, I motioned
5 with my flashlight for the deputy to go around to
6 the back of the house?

7 A: I might have had a flashlight. I don't, I don't
8 that been about a year ago. I don't remember
9 whether I had a flashlight or not.

10 Q: So you remember there being a flashlight there, and
11 it might have been yours?

12 A: No, I didn't have that flashlight.

13 Q: You didn't have a flashlight?

14 A: I didn't take no flashlight over there, no, sir.

15 Q: Okay. So this sworn statement that you gave to Lt.
16 Martin then is wrong?

17 A: Well, I motioned for him to go around the house, but
18 I don't know whether I had a flashlight or not.

19 Q: Okay.

20 A: All I know, all that shooting. I can't remember.

21 Q: But this was in June of last year. I mean you'd had
22 time to think about it, hadn't you?

23 A: Yes, sir. But I believe it.

24 Q: So you don't recall?

25 A: I don't remember whether they had a flashlight or

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1 not.

2 Q: Okay. After the deputy went around the house, you
3 went back in the living room with Ms. Griffith?

4 A: Yes, sir.

5 Q: And I believe you all had a pistol?

6 A: Yes, sir.

7 Q: Okay. And you were sitting in the chair?

8 A: No, sir.

9 Q: What were you doing? What was your position in the
10 house with Ms. Griffith?

11 A: Ms. Griffith standing up like the back, the back
12 room back there. You know, trying to hide to keep
13 him from shooting in the window, and

14 Q: She was standing in the bathroom?

15 A: No. I said back there next to the bathroom.

16 Q: Next to the bathroom?

17 A: Yes, sir.

18 Q: Okay. And the bathroom would be next to her
19 bedroom, right?

20 A: No. There's another bedroom in between her bedroom
21 and the bathroom.

22 Q: All right. But it would be, as you come in the
23 front door, be on the right-hand side of the house,
24 wouldn't it?

25 A: The bathroom?

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1 Q: Yes, sir.

2 A: No. Be at the back of it, back of the living room
3 there.

4 Q: Okay. It would be on the opposite side of the house
5 from this little porch that we are talking about?

6 A: Yes, sir.

7 Q: Where the shooting took place?

8 A: Yes, sir.

9 Q: And she was in the corner?

10 A: Yes, sir.

11 Q: Where were you?

12 A: I was back up behind the rocking chair. I
13 hollered at him, told him, asking him what he was
14 trying to do, and he stopped for a second or two,
15 and went right back at it, and about that time the
16 deputy come up.

17 Q: So you were behind the rocking chair?

18 A: Yes, sir.

19 Q: You weren't sitting in an easy chair in the living
20 room? You were behind the rocking chair?

21 A: I don't remember easy chair or what chair. I know
22 it was a big chair.

23 Q: You were behind the chair then?

24 A: Yes, sir.

25 Q: Okay. Now at this point, Mr. Taylor, I believe you

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1 indicated that you heard the deputy say hold it?

2 A: Yes, sir.

3 Q: Okay. He didn't say halt? He said hold it?

4 A: Halt, halt. He said halt or how you call it. At
5 about that time there was one shot, and then just a
6 split second there was three or four more.

7 Q: Okay. So you think there were four shots or five
8 shots?

9 A: I would want to say four, four shots. There was
10 one, then it's a split second, there were three or
11 four more shots.

12 Q: In rapid succession?

13 A: Just like that.

14 Q: Just like that?

15 A: Yeah.

16 Q: Okay. And you're familiar with guns, aren't you,
17 Mr. Taylor?

18 A: Well, I ain't had one in years. I used to hunt all
19 the time.

20 Q: You're a pretty good shot, aren't you?

21 A: No, sir.

22 Q: You're not? Okay. Now, Mr. Taylor, I believe you
23 said that you went to the front of the house and you
24 saw another deputy come up?

25 A: Yes, sir.

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- 1 Q: All right. He came in the other driveway than the
2 one Sgt. Kubala had come in?
3 A: Straight. Yes, sir.
4 Q: Okay. And in coming in that driveway, he came
5 straight forward and stopped, did he not?
6 A: Yes, sir.
7 Q: With his headlights on?
8 A: Yes, sir.
9 Q: And at that point you came out to meet him?
10 A: Yes, sir.
11 Q: And you indicated that you saw what you believed to
12 be a flashlight laying on the ground?
13 A: Yes, sir.
14 Q: Do you recall seeing a walkie talkie laying on the
15 ground?
16 A: Sir?
17 Q: Did you recall seeing a walkie talkie laying on the
18 ground?
19 A: Yes, sir.
20 Q: You did?
21 A: Yes, sir.
22 Q: Okay. And at that point the deputy told you to go
23 back inside?
24 A: Right. Yes, sir.
25 Q: Okay. And with the deputy's headlights burning back

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1 there, it was quite illuminated, wasn't it?

2 A: On that side you could see back there good.

3 Q: You could see back there real good. Okay. And
4 still the porch light was not on?

5 A: Not on.

6 Q: Okay. Now, and you indicated in answering Mr.
7 Kolb's questions that you didn't hear any other
8 shots after that.

9 A: No, sir.

10 Q: Okay. And shortly thereafter, the ambulance came
11 up?

12 A: Yes, sir.

13 Q: And there was a flashlight that came from somewhere,
14 and you helped illuminate?

15 A: That was the deputy's flashlight.

16 Q: Did you pick it up?

17 A: I think one of the ambulance fellows pick it up,
18 hand it to me, told me, told to hold that light for
19 him.

20 Q: Okay. Let me ask you this. Did you see them pick
21 it up?

22 A: I don't recall.

23 Q: All you know is one of the ambulance attendants gave
24 you a flashlight and you held that flashlight?

25 A: Yes, sir.

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1 Q: Okay. I believe that's all I have.

2 **THE COURT:** Re-direct, Mr. Jackson?

3 **MR. TAYLOR - REDIRECT EXAMINATION BY MR. JACKSON:**

4 Q: Mr. Taylor, did you or Ms. Griffith ever fire her
5 gun?

6 A: No, sir.

7 Q: Absolutely certain of that?

8 A: I'm certain of that.

9 Q: Now I heard you say something in response to the
10 defense questioning about scared to shoot through a
11 window. What are you talking about?

12 A: Well, when she had got out, he told her let's shut
13 the bedroom door because by there was a shining
14 right in there where he was. And I said let's get
15 somewhere where he can't see us on the outside.

16 Q: Were you what were you afraid of?

17 A: Afraid of getting shot.

18 Q: You were afraid he would shoot you through the
19 window?

20 A: Yes, sir.

21 Q: Now why were you behind that big chair?

22 A: Well, he was just like broken in that back door
23 there or side door, and I didn't want him to come in
24 there and start shooting me.

25 Q: Were you afraid?

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1 A: Yes, sir.

2 Q: All right. Nothing further.

3 THE COURT: Re-cross, Mr. Littlejohn?

4 MR. LITTLEJOHN: Nothing further, Your Honor.

5 THE COURT: All right. Thank you, Mr. Corbett for
6 reading that testimony of Mr. Taylor. All right.
7 Mr. Solicitor, you may call your next witness.

8 MR. SALEEBY: We call John Prince.

9 THE COURT: All right.

10 THE CLERK: Place your left hand on the Bible. Raise
11 your right hand and state your name, please.

12 MR. JOHN PRINCE: John D. Prince, Jr.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you give this court will be the truth, the
15 whole truth, and nothing but the truth so help you
16 God?

17 MR. PRINCE: I do.

18 THE CLERK: Have a seat up here, please, sir..

19 MR. JOHN D. PRINCE, JR., being duly sworn testifies as
20 follows:

21 MR. PRINCE - DIRECT EXAMINATION BY MR. SALEEBY:

22 THE CLERK: State your full name, and spell your last
23 name for us.

24 MR. PRINCE: John D. Prince, Jr., P-R-I-N-C-E.

25 Q: Mr. Prince, please tell the members of the jury what

- 1 county you live in and how long you've lived here.
- 2 A: I live in Sumter County. I've been here now about
- 3 forty-two years.
- 4 Q: Who do you work with?
- 5 A: I'm employed by the Sumter County sheriff's office.
- 6 I've been a deputy for them in the patrol division
- 7 ten years now.
- 8 Q: All right. And what's your current rank?
- 9 A: My current rank, I'm a lieutenant in patrol.
- 10 Q: And as a lieutenant in patrol, what sort of duties
- 11 or responsibilities do you have?
- 12 A: I am responsible for a shift of ten officers.
- 13 Q: And a shift normally works what part of the day?
- 14 A: We work in twelve-hour shifts 6:00 to 6:00. We
- 15 rotate between days and nights.
- 16 Q: The times and the shifts change over the years, do
- 17 they not?
- 18 A: Yes, they have.
- 19 Q: All right. You started with the sheriff's
- 20 department when?
- 21 A: 1995, January.
- 22 Q: 1995 in January. And were you on duty in February
- 23 of 1996?
- 24 A: Yes, sir.
- 25 Q: What kind of position did you have then?

1 A: At that time I was a senior deputy on a patrol
2 shift.

3 Q: Senior deputy on patrol?

4 A: Yes, sir.

5 Q: And it might seem obvious, but as a patrol deputy,
6 what are your duties and responsibilities?

7 A: I answer calls for service, check property is our
8 main, main duties.

9 Q: Did you know Sgt. Charlie Kubala?

10 A: Yes. He was I was assigned to his shift. He
11 was the sergeant of that shift.

12 Q: And how long had you and he worked on the same
13 shift?

14 A: Maybe a month or so.

15 Q: And which shift was it you were working in February
16 of '96?

17 A: Okay. At that time we had overlapping shifts. We
18 had three shifts that worked. Ours was the evening
19 shift that came out and worked till like 1:00
20 o'clock in the morning. From like 4:00 in the
21 afternoon till 1:00 in the morning.

22 Q: Okay. And on February the 26th of 1996, were you in
23 fact on duty working that afternoon shift?

24 A: Yes, sir.

25 Q: And was Sgt. Kubala on that shift?

1 A: Yes, sir.

2 Q: All right. What type of vehicle were you operating?

3 A: Okay. I was driving a regular Crown Vic. All our,

4 most all our marked cars are white with a brown and

5 gold stripe and a blue light on top of the roof.

6 Q: A marked patrol unit?

7 A: Yes, sir.

8 Q: What about Sgt. Kubala?

9 A: He had the same.

10 Q: And what type of uniform were you wearing that

11 season?

12 A: Okay. At that time I was wearing the same pants,

13 brown pants, but I had a tan shirt on.

14 Q: A tan shirt?

15 A: Yes, sir.

16 Q: All right. And how about Sgt. Kubala?

17 A: The same. Tan.

18 Q: All right, sir. Is a white shirt a seasonal thing

19 or a rank thing?

20 A: It's mostly special functions.

21 Q: All right, sir. What kind of equipment were you

22 operating with at that time, personal equipment?

23 A: Okay. We all of course carry a pistol. We're

24 issued a it's called a mag light flashlight.

25 It has a charger in the car to keep, to keep the

1 battery charged. Everybody was issued a walkie
2 talkie to carry on their side so they could
3 communicate with dispatch.

4 Q: And what type of walkie talkie were you operating
5 with in February of '96?

6 A: A Motorola. It's we have a new radio system
7 now.

8 Q: And what's the difference between what the jury sees
9 you wearing now and the way you were operating in
10 '96?

11 A: Back then we did not have a cordless microphone that
12 you could speak off your shoulder. You actually had
13 to take the walkie talkie off your belt and put it
14 to your mouth to talk.

15 Q: Just show us how that would operate, if you don't
16 mind.

17 A: It's a swivel clip, and you pull it up, and you
18 would have to talk into the speakers, and the talk
19 here button to push is on the side, and then when
20 you finished talking, you would slide it back in the
21 holster and spin it.

22 Q: And now the microphone, the shoulder mike, is a new
23 addition, is that correct?

24 A: Yes, sir, it is.

25 Q: That's not the way you operated in '96?

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1 A: No, sir.

2 Q: I would ask you on that day at approximately 6:54,
3 6:55 p.m. if you received a call to be dispatched to
4 817 Taylor Street?

5 A: Yes, sir, I did.

6 Q: And tell us what was the nature of the call in terms
7 of police code and how you responded.

8 A: It came out as a burglary in progress which is a
9 1073, 1084, which means in progress codes.

10 Q: This was transmitted to you to respond to?

11 A: Yes, sir.

12 Q: What part of the county were you in then?

13 A: I was on the, kind of the southeast side.

14 Q: All right. How far away from Taylor Street
15 approximately?

16 A: Maybe a couple miles.

17 Q: All right, sir. Just in terms of State's Exhibit
18 Number Eight-four, just generally speaking, if this
19 area is north of town and this is Boulevard Road,
20 what part of the county would you have been in?

21 A: I would have been south of that.

22 Q: All right.

23 A: And to the left of Boulevard.

24 Q: All right. As you were responding to that call, did
25 you hear any other transmissions?

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1 A: Yes, sir. I heard Sgt. Kubala sign down 1023, which
2 means he was at the scene.

3 Q: At 817 Taylor?

4 A: 817 Taylor.

5 Q: All right. Did you, did you continue en route to
6 that location?

7 A: Yes, sir.

8 Q: Did you hear any other transmissions?

9 A: Shortly after he arrived, another call came out of
10 1046 vehicle which means a stranded motorist. Could
11 be out of gas, flat tire, mechanical problems.

12 Q: That was a call from dispatch?

13 A: That as a call from dispatch. All calls are usually
14 issued to the sergeant or lieutenant on patrol back
15 then.

16 Q: All right. Did you overhear the transmission from
17 base to Sgt. Kubala and the response of Sgt. Kubala
18 to the base?

19 A: Sgt. Kubala's response was that he was 1006 which
20 means he was busy. Hold, hold the calls.

21 Q: All right. Did you continue en route?

22 A: Yes, sir, I did.

23 Q: And what's the next transmission you overheard, and
24 where did it come from?

25 A: The next transmission was shots had been fired, and

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- 1 I believe they said an officer was down.
- 2 Q: And this transmission came from where?
- 3 A: Dispatch.
- 4 Q: All right. And where were you approximately then?
- 5 A: At that time I was on Red Bay Road.
- 6 Q: After you overheard the transmission from base that
- 7 shots were fired and an officer was down, how long
- 8 was it after that before you arrived at 817 Taylor?
- 9 A: It had to be between one and two minutes max.
- 10 Q: All right, sir. When you arrived, when you pulled
- 11 up there, tell us what you saw and what you did.
- 12 A: Okay. When I pulled up, I pulled up on the opposite
- 13 driveway of Sgt. Kubala's car. Mr. Taylor came
- 14 running out the front porch. He had a gun in his
- 15 hand. I told him to go back inside and don't come
- 16 back out until another officer came up to get him.
- 17 And he went back inside the house, and he told me
- 18 the officer was on the back side by the porch back
- 19 there, and I went back to the porch area.
- 20 Q: All right. And you got out of your vehicle, and
- 21 which way did you move?
- 22 A: To the left-hand side of the house facing the house
- 23 from the roadway.
- 24 Q: Were there any exterior lights on in that area of
- 25 the house?

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1 A: Not that I recall, no, sir.

2 Q: All right. The side porch wasn't lighted?

3 A: I do not recall that being on, no, sir.

4 Q: All right. Tell us what you did, how you approached
5 the rear of the house and what you saw when you did.

6 A: Okay. I approached. As I approached the rear of
7 the house, I saw Sgt. Kubala's body laying on his
8 back. Our flashlights, I don't have one with me,
9 has a little button on it. You can bump it, and it
10 will just turn on for a second, and you can let it
11 back off instead of pushing it all the way down and
12 locking it on. I took a quick glance at the porch,
13 and then I kneeled down beside his body to check him
14 for vital signs to see

15 Q: When you took a quick glance on the porch, did you
16 use your flashlight?

17 A: Yes, I did.

18 Q: Did you see anything on the porch?

19 A: Yes, sir. Right inside the doorway, there was a
20 little shotgun laying up against the wall.

21 Q: All right. After you were assured that there was
22 nobody on the porch, then tell us what you did with
23 Sgt. Kubala.

24 A: I kneeled over Sgt. Kubala's body and tried to check
25 for any vital signs. There was blood coming from

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1 his mouth and his ear, and I thought he might have
2 been trying to breath, so I rolled him over on his
3 side to clear his air passage, and at that
4 particular time I heard another noise coming from
5 the back.

6 Q: From the woods?

7 A: From the woods, and there was also a shed back there
8 behind the house. So I took my light back out and
9 just touched the button one second and lit it up,
10 and didn't see anything, but then I heard another
11 shot. At that time I let his body roll back over.
12 I jumped to the corner of the house to protect
13 myself from wherever the shot came from, and called
14 on the additional radio to responding units that
15 another shot had been fired and they needed to
16 respond to the opposite side of the house, so we had
17 to clear that shed.

18 Q: All right. Continue to tell us what happened after
19 that. Who arrived, and what did you do?

20 A: Okay. Lt. Hobbs I believe was next, and I briefed
21 him on what we had, and then I think the ambulance
22 came up, and they were getting ready to work on him,
23 and they asked me for my flashlight, and I said no.
24 I said you use his, Sgt. Kubala's. It was laying on
25 the ground, it was still on, and other units came to

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1 the other side of the house, and then we went to
2 clear the shed.

3 Q: And how do you go about clearing the shed? Just
4 tell us what you did.

5 A: Okay. We approach from both sides. Just turned our
6 lights on for a second until we got back there and
7 do what they call a quick peek around the corners.
8 Instead of just broadside, just take a quick glance
9 and pull back and see if you see anything. While we
10 cleared the shed, nothing was there, we heard some
11 rustling in the woods directly behind the shed. At
12 that time we drove a couple patrol cars right up to
13 not quite the edge of the wood line, but near, past
14 the shed, and turned the high beams on and lit up
15 the woods to see if we could see anything in that
16 area.

17 Q: And did you see anything?

18 A: No, we did not see anything. We just heard the
19 rustling of the leaves of movement of something back
20 thee.

21 Q: What were your next duties and responsibilities
22 there on the scene?

23 A: We waited for the commander-on-call to come out, and
24 we had, we had put the crime scene tape up and
25 secured the scene at that time.

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- 1 Q: If you would, tell us you said before you
2 the shot rang out and you had to move away from Sgt.
3 Kubala, did you check him for vital signs?
- 4 A: Yes, I did.
- 5 Q: Did you find any?
- 6 A: No, sir.
- 7 Q: You mentioned his flashlight. Where was it
8 where was it flashlight, and was it on or off?
- 9 A: His flashlight was on. He was laying on his back
10 with his arms beside him. His light was in between
11 his arm and his chest. His gun was just off the
12 fingertips of his right hand, and off the tips of
13 his left hand was his walkie talkie.
- 14 Q: Okay. I'm going to ask you to stand up, and I may
15 ask you to put it on a diagram. For the, for the
16 court reporter it's best though you stay right where
17 you are. If you would then, show us again where was
18 his flashlight?
- 19 A: His flashlight was parallel with his body
- 20 Q: On his
- 21 A: laying towards his
- 22 Q: You're showing his right arm?
- 23 A: His right arm laying towards his feet with the light
24 towards his feet.
- 25 Q: All right.

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1 A: The gun was right off his fingertips, and the walkie
2 talkie was just off these fingertips.

3 Q: All right. Walkie talkie off left hand?

4 A: Left hand.

5 Q: And pistol off right hand?

6 A: Right hand.

7 Q: And flashlight

8 A: Right in between where my gun is, parallel.

9 Q: All right. In terms of standard operating procedure
10 in '96, and perhaps today, any significance of the
11 flashlight being on the right arm?

12 A: Well, the reason he would have had to put it on the
13 right arm is

14 MR. LITTLEJOHN: Your Honor, I'm going to have to object
15 to that.

16 Q: I just asked you what your procedure

17 MR. LITTLEJOHN: Speculation.

18 A: I had it

19 THE COURT: Wait just a minute. Wait just a minute, Mr.
20 Saleeby. Let me find out what the objection is.
21 What's your objection, Mr. Littlejohn?

22 MR. LITTLEJOHN: Your Honor, if this witness doesn't
23 know of his own personal knowledge, then this would
24 be speculation on his part.

25 THE COURT: No, sir. I'm going to overrule. He can

1 give standard operating procedure. He can't say
2 what the witness did in this case. I would overrule
3 it then.

4 A: You see I have a flashlight ring here. When we get
5 out at night, sometimes we don't use the light,
6 we'll slide it back in the ring. All right. To use
7 the light, if you have a gun in this hand, you would
8 put the light up under here because you have to
9 answer the radio to take it out. That's the reason
10 you would have the light in this hand and try to
11 clamp it under this shoulder, you really couldn't
12 talk, so if your gun hand was tied up and something
13 happened like that, you would do the light up under
14 your shoulder.

15 Q: All right, sir. I want to show you I'll let
16 you sit down. I'm going to show, put up a
17 photograph here in a minute. I want to show you
18 State's Exhibit Number Thirteen and ask you if you
19 would identify it, Mr. Prince.

20 A: Yes, sir.

21 Q: What piece of equipment would you allow that to be?

22 A: That was the shotgun that was leaning up inside the
23 screened porch.

24 Q: All right, sir. I think we have a photograph, and
25 we can show you that and of the area.

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1 **MR. SALEEBY:** Your Honor, if you'll indulge us just a
2 moment, I'd like to set up a diagram and the
3 photographs and he can show the jury.

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

5 **MR. SALEEBY:** I don't think he will need a microphone.

6 **THE COURT:** I don't think so. I believe that he'll be
7 able to keep his voice up. You do need to keep your
8 voice up when you get away from these microphones,
9 Lt. Prince.

10 **MR. PRINCE:** Yes, sir.

11 **Q:** This is State's Exhibit Number Thirty-one. If you
12 can, could you tell the members of the jury what
13 we're looking at here, Lt. Prince?

14 **A:** Yes, sir. That is the shotgun that you have in your
15 hand. It was located right here in this corner by
16 the door on the side porch, and you can see the
17 doorframe. It was leaning up right there.

18 **Q:** All right. If you would, put the letters SG right
19 in that corner so that we would understand, and put
20 a circle around it. We'll know that stand for
21 shotgun, and how about putting Thirteen underneath
22 that so we'll know what the State exhibit is. Very
23 good. The next photograph I want to show you is
24 State's Exhibit Number Nineteen. Can you tell the
25 members of the jury what we're looking at her, Lt.

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1 Prince?

2 A: That is the side of the side porch, an angled shot
3 from this direction. You can see the steps. The
4 shotgun beside me.

5 Q: All right. If you could show us now where on the
6 photograph where Sgt. Kubala was lying.

7 A: He lying right here. You can see some blood stains.
8 His feet were this way. His body was laying
9 parallel looking towards --- like this.

10 Q: What I would, what I would ask you to do is to just
11 draw a stick figure. This is not to scale. We're
12 going to draw the stick figures, but on the, on the
13 paper here as to his relative, approximate relative
14 location. All right. Now if you could let me
15 use another color. If you could, take this green
16 pen and put a circle and put an F where his
17 flashlight was. All right. If you would, put a
18 circle and put a G in it which as to where no,
19 circle and put a P in it where his pistol was. And
20 another circle with an R in it or a W, I guess,
21 where his walkie talkie was. All right. And you
22 say his flashlight was in fact on?

23 A: Yes, sir.

24 Q: You may resume your seat.

25 MR. SALEEBY: Do you have any questions, counsel?

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1 **THE COURT:** All right. That concludes the direct
2 examination of Mr. Prince, Lt. Prince, and now, Mr.
3 Littlejohn, you may cross examine.

4 **MR. PRINCE - CROSS EXAMINATION BY MR. LITTLEJOHN:**

5
6 **Q:** Lt. Prince, when you came up and you observed the
7 side porch of Ms. Griffith's house

8 **THE COURT:** I'd like you to speak up.

9 **MR. LITTLEJOHN:** Yes, sir.

10 **THE COURT:** The court reporter is sitting behind this
11 panel over here, and she's got to be able to hear
12 what you have to say.

13 **MR. LITTLEJOHN:** Let me stand over here, and perhaps we
14 can do that better, and I don't have a fancy laser
15 beam.

16 **Q:** You observed that this was an elevated porch, did
17 you not?

18 **A:** Yes, sir.

19 **Q:** Okay. And when you came around this way, when you
20 came around this way, you say Deputy Kubala was
21 laying in this general area here?

22 **A:** Yes, sir.

23 **Q:** Okay. Now when you were here, could you see up on
24 that porch?

25 **A:** No, sir.

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1 Q: There's actually an enclosure that runs up somewhere
2 would be over your head?

3 A: Yes, sir.

4 Q: Sgt. Kubala was about a little taller than you?

5 A: Maybe an inch taller than I am.

6 Q: An inch taller than you? You think there was any
7 way Sgt. Kubala could have looked over that
8 partition and seen what was on that porch?

9 A: No, sir.

10 Q: Likewise if someone was on that porch looking the
11 other way, they wouldn't have been able to see
12 either you or Sgt. Kubala?

13 A: Depends on what, what angle.

14 Q: Okay. A short person probably wouldn't?

15 A: I said it depends on your position. If you're in
16 front of the door, you could see the screen door,
17 but from the side

18 Q: From the side. That was my question.

19 A: No, sir.

20 Q: Okay. And obviously the screen door was screen
21 from, from the floor to the, to the top of the door,
22 so someone could see from the back, but from the
23 side, it would be difficult, isn't that right?

24 A: You could not see from the side.

25 Q: Okay. And Lt. Prince, referring to the diagram,

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1 which has previously been marked as State's Exhibit
2 Number Eight-five, and this represents the side
3 porch. Quite frankly this is not to scale, and
4 obviously from the photographs, this side porch is
5 depicted in the photograph as much smaller than
6 what's shown on this diagram, isn't it?

7 A: Yes, sir.

8 Q: Okay. And it's your testimony that the shotgun was
9 located in this corner where you've initialed?

10 A: Yes, sir.

11 Q: All right. When did you notice this shotgun?

12 A: When I peeked around the corner to check the porch
13 and make sure it was clear before I checked on Sgt.
14 Kubala.

15 Q: Okay. All right.

16 **MR. LITTLEJOHN:** That's all I'm going to have with the
17 diagrams and pictures.

18 **THE COURT:** All right. Take just a minute then, and
19 let's move the equipment, please. You want to move
20 this equipment? You may proceed, Mr. Littlejohn.

21 **MR. LITTLEJOHN:** Thank you, Your Honor.

22 Q: Lt. Prince, the shotgun you've identified, are you
23 sure it was in that corner? Could it have been in
24 another corner of the porch?

25 A: No, sir.

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- 1 Q: Okay. All right, sir. Lt. Prince, as I understand
2 it when you were there tending to Sgt. Kubala, you
3 said you heard a noise back behind the house?
- 4 A: In that general direction.
- 5 Q: That would have been back up toward the woods?
- 6 A: The house was like this. This is the side porch.
7 The picture we saw, there was a shed back here, and
8 the woods line was parallel with the back of the
9 house.
- 10 Q: Okay. And the noise that you heard, did it appear
11 to come from the wood line?
- 12 A: From the direction of the back of the house, the
13 shed or the woods. I was not sure.
- 14 Q: All right. Can you describe the noise? Was it like
15 a rustling that you
- 16 A: Just, just a rustling noise. Like you just heard
17 some type of movement.
- 18 Q: All right. Could it have been a person moving
19 through the woods?
- 20 A: It could have been.
- 21 Q: Could it have been a person falling down in the
22 woods?
- 23 A: It could have been an animal. It could have been
24 anything. I just, just heard some type of noise.
- 25 Q: But the noise you heard could have been consistent

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1 with a person falling down in the woods?

2 A: It could have been.

3 Q: Now I believe you said at that point you took your
4 flashlight, and using the momentary button on a mag
5 light, you shined your light back there momentarily?

6 A: Yes.

7 Q: You didn't see anything?

8 A: Did not see a thing.

9 Q: Okay. And at some point shortly after that, you
10 heard what you believed to be a shot?

11 A: Additional shot, yes, sir.

12 Q: Did you hear any bullets impact anywhere where you
13 were?

14 A: I did not.

15 Q: You didn't get hit?

16 A: No, sir.

17 Q: As far as you know, did any objects close to you get
18 hit with a bullet?

19 A: No, sir.

20 Q: Okay. And you said sometime after that you heard
21 another rustling noise?

22 A: That was after the vehicles had been moved to
23 illuminate the woods.

24 Q: Okay. So that would have been, there would have
25 been some passage of time?

- 1 A: Yes, there was a short period of time in between.
- 2 Q: Between the first rustling noise and the second
- 3 rustling noise?
- 4 A: Yes.
- 5 Q: And all those noises were up in the woods?
- 6 A: Correct.
- 7 Q: Just one final thing. Lt. Prince, the flashlight
- 8 was there next to Sgt. Kubala. Whatever happened to
- 9 that flashlight?
- 10 A: I do not know.
- 11 Q: During the course of the investigation is it your
- 12 understanding it disappeared somehow?
- 13 A: Like I said, EMS asked me to use mine. I told them
- 14 there was one laying right there, use that one.
- 15 After that time, I did not see that flashlight
- 16 again.
- 17 Q: Okay.
- 18 MR. LITTLEJOHN: If you will indulge me just a moment,
- 19 Your Honor?
- 20 THE COURT: Yes, sir.
- 21 MR. LITTLEJOHN: That's all I have, Your Honor.
- 22 THE COURT: Re-direct, Mr. Saleeby?
- 23 MR. SALEEBY: I need Lt. Prince to show you something
- 24 here.
- 25 MR. PRINCE - RE-DIRECT EXAMINATION BY MR. SALEEBY:

1 Q: This would be on the State's Exhibit Number Thirty-
2 one. Try to make sure I've got it correct. If
3 that's the shotgun, what is this object to the left?

4 A: Okay. I correct myself then. This is the door to
5 the house. This is the screen door on the opposite
6 side.

7 Q: All right. Which means that

8 A: I drew a picture in the wrong place on the diagram.

9 Q: Well

10 A: After viewing the photo.

11 Q: I understand. The witness stand is always ...
12 All right, sir. Let's see. That's exhibit number
13 what?

14 A: Thirty-one.

15 Q: All right. And after looking at well, that's
16 Thirty-one, and the shotgun was Thirteen, you're
17 saying now that after you looked at this photograph,
18 the shotgun was where?

19 A: It should be on the opposite corner next to the
20 house by the washroom door.

21 Q: Okay. Will you X through that and put a circle
22 there and put it where it needs to be? Thank you
23 very much.

24 MR. SALEEBY: That's all I have, sir.

25 THE COURT: Re-cross, Mr. Littlejohn?

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1 MR. LITTLEJOHN: No thank you.

2 THE COURT: All right. Thank you, Lt. Prince. You may
3 step down.

4 MR. SALEEBY: We would call Eddie Hobbs.

5 THE COURT: All right. Step around, please, Mr. Hobbs.

6 THE CLERK: Place your left hand on the Bible. Raise
7 your right hand and state your name, please.

8 MR. HOBBS: Gene Edward Hobbs, Jr.

9 THE CLERK: Do you solemnly swear or affirm the
10 testimony that you give this court will be the
11 truth, the whole truth, and nothing but the truth so
12 help you God?

13 MR. HOBBS: I do.

14 THE CLERK: Have a seat up here, please, sir.

15 MR. GENE EDWARD HOBBS, JR., being duly sworn testifies as
16 follows:

17 MR. HOBBS - DIRECT EXAMINATION BY MR. SALEEBY:

18 THE CLERK: State your full name, and spell your last
19 name.

20 MR. HOBBS: Gene Edward Hobbs, Jr., H-O-B-B-S.

21 Q: You're Capt. Hobbs now, is that correct?

22 A: Yes, sir. I'm Captain of the patrol division at the
23 Sumter County sheriff's office.

24 Q: How long have you lived in Sumter?

25 A: My father retired, and we moved here in 1977. I

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1 graduated from Sumter High School, and I've been
2 here ever since.

3 Q: Since '77. How long have you been with the Sumter
4 County sheriff's office?

5 A: I got hired late '84, 1984. Been with them twenty
6 years.

7 Q: I will ask you more about this, this later, but how
8 long did you, had you know Sgt. Kubala?

9 A: Charlie Kubala got hired several months after me, so
10 since that time of '85.

11 Q: From '85 until his death in '96, you all worked
12 together?

13 A: Yes, sir. Off and on. Directly on shifts and
14 sometime apart.

15 Q: I would like you to tell us about February 26th of
16 1996. Were you on duty that day?

17 A: Yes. I was a lieutenant at that time. My
18 responsibilities were, besides the deputy duties
19 that Lt. Prince talked of, answering calls, being
20 available, I was also responsible for the five other
21 men that were on my shift.

22 Q: And they would include Sgt. Kubala and John Prince?

23 A: Sgt. Kubala was my second in command. Prince,
24 Deputy Prince at the time, he had just started good
25 on E shift.

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1 Q: And how did you divide responsibilities on the
2 shift? What did you do, what did Sgt. Kubala do,
3 and what did the other people do?

4 A: The main responsibility of a lieutenant and a
5 sergeant is to make sure that the mission of
6 answering the calls and doing service to community
7 happens. We have to carry our load also, but
8 planning, sending deputies in the different areas
9 and districts. When calls, when a bunch of calls
10 come out, we have multiple calls, it's important
11 that we put them in the right order. We send the
12 deputies that fits their talents and skills and make
13 sure they're available and going there.

14 Q: How are what kind of vehicle were you using
15 that evening, and what kind of uniforms you had, if
16 you had one, and what kind of equipment were you
17 carrying?

18 A: The vehicle is a standard patrol vehicle. It's like
19 a uniformed vehicle. It's the Mark with the star on
20 the side with the blue lights on top. It was a Ford
21 LTD. The uniform that I have is much as you see me
22 here today. It's a brown shirt. I haven't, I had,
23 I believe I had, I know I had a tie on in February.
24 The striped pants. We carried a service firearm,
25 handcuffs. I had a W-T, and then a magazine of

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1 extra ammo.

2 Q: Did you overhear radio transmissions relative to 817
3 Taylor Street around 1900, 7:00 p.m. civilian time,
4 on February 26th?

5 A: I, I as a lieutenant, it's very important that
6 I monitor radio and know where everyone's at to the
7 best of my ability. I did hear the first, the call
8 come out of a suspicious person at Taylor Street,
9 and I was monitoring that call and did hear that.

10 Q: All right. And if you what's your, what's your
11 responsibility as a shift lieutenant when you hear a
12 call in terms of getting the right people to the
13 right place?

14 A: At that particular time, the call came out of
15 it was a return call to the same residence. We have
16 that type of call quite often, that first call that
17 came in. I knew Sgt. Kubala was going. I knew that
18 Deputy Prince was backing him up. At that time that
19 seemed to be the proper personnel to be going to
20 that call.

21 Q: All right. You continued to monitor the scene,
22 having to change and how did that change what
23 your directions were?

24 A: Well, it became a burglary in progress. It became a
25 very serious crime in progress. I immediately

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1 diverted and started heading in that direction with
2 blue lights and sirens on. I was, I was going to be
3 behind Deputy Prince, but I was hustling to get to
4 that call just for that change of status in itself.
5 It became a much more serious call, and we take it
6 that serious.

7 Q: All right. As you are changing your plans and you
8 are headed to 817 Taylor, do you overhear other
9 transmissions?

10 A: Yes, sir. I remember them, dispatch calling
11 Charlie. I was listening very closely to that
12 because I thought it would be pertinent information
13 of the call he was on. They gave him a call about
14 assisting a motorist which was very perturbing to me
15 at the time. I heard Sgt. Kubala reply back
16 probably about equally as perturbed as me. I'm
17 busy. And that time I came on the radio, and I told
18 dispatch please, do not bother him. Give all the
19 calls to me, if you have to.

20 Q: And you're still headed to 817 Taylor?

21 A: I was going a pretty fast rate there.

22 Q: All right. Tell us what you hear next.

23 A: I do hear Deputy Prince arrive at the scene. It was
24 pretty quick after that I heard Deputy Prince call
25 officer down. Asked for an ambulance.

1 Q: Officer down?

2 A: Officer down. Since Deputy Prince was talking
3 pretty clearly, I was pretty much going to let him
4 talk and not interrupt on the radio anymore, and I
5 heard him call for an ambulance, and the call became
6 very urgent for my mind, and, and started hurrying
7 there.

8 Q: All right. Did you hear any other transmissions
9 before you actually arrived at the scene?

10 A: There was you drove a when you start
11 driving this particular fast and going what we call
12 code three, but when you're riding an emergency, the
13 focus is not as good. I called two other deputies
14 to the scene that were leaving the jail, a Deputy
15 Winston and a Deputy Horton. I told them to drop
16 everything and head to Taylor Street also. The
17 I heard dispatch ask if Deputy Prince was the one
18 involved. He said no. I head him say that he
19 did at one point the base kept asking him, and
20 I did hear him say one time Sgt. Kubala. Also after
21 that, I was pretty close, and I don't remember any
22 other radio. As I went down Boulevard coming from,
23 heading to Ridgeway, the ambulance was really close
24 on Boulevard coming the opposite direction from
25 town, and I waited there and let the ambulance make

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1 the turn.

2 Q: All right. Tell us what happened as you followed
3 the ambulance down Ridgeway to Taylor and what you
4 did when you arrived on the scene.

5 A: I parked almost right behind Deputy Prince. Even
6 though I let the ambulance go first, they had plenty
7 of equipment they had to get. I made it to Deputy
8 Prince before the ambulance. I got a briefing from
9 Deputy Prince. I did a quick check of Sgt. Kubala
10 myself visually. I knew ambulance was hurrying. We
11 were waiving them. I was. I waived the ambulance
12 on to hurry. I remember the John we had to go
13 ahead and set up on that corner. That's when we
14 heard that first sound, and at this time

15 Q: When was it you heard the first sound?

16 A: The ambulance came in, and they asked, you know, was
17 the scene secure, and I said no, but we're trying to
18 get it there. Work on this man, talking about Sgt.
19 Kubala. I mean it was a natural question for them,
20 but right after that, I moved back to the corner of
21 the house where Sgt. Prince was, and then it was
22 definitely we heard a definite sound.

23 Q: Was the definite sound what kind of sound
24 coming from where?

25 A: To me it was like a thump more than a rustling of

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1 leaves and limbs and stepping on that. The
2 because I'll hear that later, and there was a
3 distance difference between this noise. It was more
4 like a thump for me.

5 Q: More like a what?

6 A: A thump. It was something. That's the best I can
7 describe it on that. We immediately focused on the
8 shed, per trained, and we were trying to come to
9 grips with the situation. So we fall back on our
10 training in this kind of situation. We have to
11 clear that first building before we can move on the
12 other things. That's our first danger point.

13 Q: Did you find anybody or anything?

14 A: No, sir. We, we, we searched it was a very
15 quick, preliminary sweep looking for a person.
16 There was no person found at that shed.

17 Q: All right. After you cleared the shed, then what's
18 the next thing that happened?

19 A: Well, we were re-grouping right there, and everybody
20 was we were kind of quiet. I had directed
21 Deputy Horton to go into the house. At that times,
22 I didn't know the people's names at the residence,
23 but I assigned Deputy Horton to stay with them in
24 case they could be in danger, make them comfort, and
25 go ahead and find out what they know. And I told

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1 him in that order. As soon as I got through
2 talking, there was a distinct crackling of limbs and
3 leaves, very distinct.

4 Q: A distinct crackling of limbs and leaves in what
5 area?

6 A: To the rear of that shed. You have the house, the
7 shed, the wood line, and it was just very clear, and
8 I told Deputy Prince and Deputy Winston that I would
9 stay here at the cover of the shed. I need two cars
10 up here at the wood line. Right where we heard
11 those sounds, and that happened. We put the two
12 cars there. Lit up every light we had onto the wood
13 line.

14 Q: Did you hear just one set of movements?

15 A: No, sir. The movements, they were not a continuous
16 pattern, but the movements were very clear even
17 after we put the lights on the woods. It was like,
18 it was like rustle, limb, stop, and then this
19 happened like two more times. I did a call out to
20 the woods.

21 Q: A call out means?

22 A: A call out is when you identify you know,
23 you're out there, you're saying look, come on out,
24 we're not going to hurt you, surrender, come forward
25 now. At one point I told him this was a very

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1 dangerous thing, and if he came out, I promise
2 everything is going to be okay as far as you being
3 hurt, but you need to come out. I heard a little
4 bit more there, and then it was silent. We, I
5 didn't hear any more noise after that.

6 Q: All right. And after that, nobody responding, what
7 did

8 A: Oh, there was no response at all.

9 Q: what did you do in terms of continuing to
10 develop the area or secure the area?

11 A: Well, I'm sure dispatch had already started making
12 the necessary phone calls, but I did, I did confirm
13 that that they were calling the commander on call,
14 that they were going to you know, the sheriff
15 was going to be notified. In this particular case
16 it was what we would call a real high-crisis case,
17 and we wanted every deputy that was available. Also
18 there was deputies that were out, were volunteering.
19 They were coming, and I was directing a perimeter
20 around the woods. I was familiar with the paths. I
21 have chanced little kids through the paths over the
22 years, and I knew that path ran directly to the
23 Boy's Club, so I concentrated the perimeter on that
24 shot that that would happen. The first group of
25 deputies went to the perimeter, setting up around

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1 the Boy's Club.

2 Q: All right, sir. Did you minister to or do anything
3 else to Sgt. Kubala?

4 A: There was a point where we were calm, we were on the
5 perimeter, and Deputy Winston told me that he had
6 secured Sgt. Kubala's firearm. I said give it to
7 me. He I took it to my trunk, and I was going
8 to secure it in my trunk. At that time I took the
9 magazine out. There was one in the chamber, and all
10 rounds were accounted for in the magazine. It had
11 not been fired. That was checked because of the
12 bullet count and also the smell of the weapon. Even
13 if you fired one round, it's a very distinct smell
14 to it. At that time I secured it in my trunk.

15 Q: This would be State's Exhibit Number Twenty-seven
16 and State's Exhibit Number Twenty-six. Can you tell
17 the members of the jury what we have here?

18 A: This is a Smith and Weston nine millimeter. This
19 was Sgt. Kubala's duty weapon. These are the, the
20 rounds that were in the magazine in the firearm.

21 Q: And how many rounds does it hold?

22 A: We changed weapons, sir.

23 Q: How many does this one hold, or do you remember
24 that?

25 A: Give me a second, please. I'm thinking it's a

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1 fourteen-round, one in the chamber.

2 Q: It had a full magazine?

3 A: It was full.

4 Q: And no indication it had been fired?

5 A: I'll take one just in case. No, sir, it definitely
6 had not been fired.

7 Q: After sending Officer Horton to talk with the
8 residents of the house, were you able to get
9 information and identification and a description?

10 A: If I may, that would be a back track. That happened
11 before I secured the firearm when that information
12 started getting to me.

13 Q: All right.

14 A: Deputy Horton was really relaying information to me.
15 He gave me a possible suspect's name and
16 description. The name was Bobby Wayne Stone, and I
17 got a description, a physical description, and I put
18 that on the radio to the responding deputies as we
19 were sitting at the perimeter. I put that out and
20 told them, and told the rest of the deputies who
21 were, excuse me, were responding that that's all the
22 information we had at that time. This was a
23 possible suspect. Proceed with caution.

24 Q: After you had taken care of those details, were you
25 called to perform another function?

1 A: I went back to the perimeter, and Capt. Alsbrook
2 responded and came to the scene. As we were there,
3 and I do not remember who this deputy was, a deputy
4 already came to me, and I also apologize for losing
5 track of time, but it would seem to be twenty
6 minutes later after we were there, if you all look
7 at it, that, that the TV has already put out that a
8 Sumter County deputy has been killed, and it was
9 already going out on the TV. Almost right after
10 that, the coroner put a message out through the
11 dispatch that somebody needed to come and identify
12 Sgt. Kubala's body.

13 Q: So what did it become your responsibility to do?

14 A: I don't think it was a responsibility. I had to do
15 it. I was his lieutenant, and I left my, the rest
16 of the shift on the perimeter, and I, I went to go
17 and check with the coroner real quick to make it
18 official that it was Sgt. Charlie Kubala, and I knew
19 I had to be hustling to Teresa Kubala, his wife, and
20 I knew that it was important that I got there before
21 the TV or the radio, whatever.

22 Q: So where did you go after you identified Sgt.
23 Kubala?

24 A: I went to Tuomey ER. Went into an ER room. Sgt.
25 Kubala was laying on, on the stretcher. I said a

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1 quick prayer, and then I immediately went, and it
2 was less than it was just that fast as I'm
3 telling you right now because I, I at that time
4 I went very fast to Teresa Kubala's house.

5 Q: And tell us about going to Teresa Kubala's house.
6 And tell us what prior relationship you had had with
7 Charlie and Teresa, and so how you usually, where
8 were you going, and who was going to be there.

9 A: I asked for, I asked for understanding. Some of
10 this is going to sound like a cliché, but that
11 doesn't take away that it's still the truth.
12 There's probably not going to be anybody closer in
13 law enforcement than Charlie Kubala in my life. We
14 started together. We were rookies together. We
15 learned how to be deputy sheriffs together. We
16 worked two years together on, on a shift after we
17 were both hired. We went to the Academy together.
18 We graduated from the Academy together. The shift
19 through our first sergeant together, we, we became
20 pretty close. We were relatively close to the same
21 age. We were certainly the same age as being a
22 deputy sheriff. We were making the same mistakes,
23 learning the same things. It was easy for us to
24 form a bond, especially at the Academy together for
25 nine weeks and, and to become close. The closeness

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1 became to Teresa and my wife, Connie. Teresa
2 Kubala, Charlie's wife, we would have dinners
3 together. We would go out. I'd play golf with
4 Charlie. The, the bond became more than just work
5 related. Not having a brother myself, I can only
6 tell you that's probably I loved him like a brother.
7 And just if you like, if I could just do the little
8 history how we ended up being sergeants again on
9 shifts, that would be that whole background right
10 there. He moved after working together for two
11 years, the rookie years, we stayed very close. He
12 went to traffic. We still worked together. We did
13 cases together. He moved up and became a sergeant
14 in traffic, and we still had the dinners. My wife
15 and Teresa stayed in contact with each other. They
16 got pregnant twice around the same time. They just
17 our children knew each other. At one point
18 Charlie decided that he wanted to law enforcement,
19 and he talked to me about it then, and I supported
20 him. You know, no problem there. He went to
21 I'll let somebody wiser than that talk about that,
22 that other job, but it was a helping kidney dialysis
23 people. He went to that job, and we stayed close.
24 Not as close, but we stayed in contact. Connie and
25 Teresa called each other. There came a point

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1 several years later he came to me again. He was at
2 my doorstep, and he talked to me about if he could
3 come back and be a deputy sheriff. He wanted to
4 come back to work, and what I thought about that. I
5 told him I thought it was super. Incredibly cut in
6 pay which is not surprise, and he talked about that
7 a little bit, but he said that just did not matter.
8 He missed it. There's a, there's a sense of helping
9 people that's important. It was important to me,
10 and it was important to him, and then I encouraged
11 him to come back, and I helped him what little
12 leeway or influence I had, which that might have
13 hurt him, but he, he got rehired. He worked a
14 couple, a year or so on another shift, and he made
15 sergeant again. I had a sergeant I was missing. I
16 didn't have one at the time, so I talked to him and
17 asked him if he thought that was a good idea. He
18 said he thought it was. We went and kind of
19 campaigned for it, and said I think we can make a
20 good team. The captain agreed, and E shift, which
21 had just started at the time because of shift
22 changes, it was a brand-new shift with brand-new
23 people. It's been it was functioning and
24 probably a couple of years then, and he came on
25 board as a sergeant. I was a lieutenant, and you

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1 know, it's bragging, but we, we formed a pretty good
2 shift, and we, we became a close shift, and we
3 worked together real well.

4 Q: Tell us about what happened when you went to
5 Teresa's house.

6 A: I got to we got to I was being driven by
7 the Chief Hall at that time. My car was blocked in
8 at the scene, and he drove me to the hospital and
9 the, and to Teresa's house. I got to the door,
10 knocked on the door of their house, and Teresa said,
11 oh, Eddie. That's because that's not going to be
12 because we were so close, it was no surprise
13 that I stopped by the house with her to steal a
14 glass of tea or use the rest room. But that was,
15 that was no surprise for her there, and I she
16 welcomed me in of course, and she was telling me how
17 she just beeped Charlie. I thought you were Charlie
18 is what she said, and I said, well, and I really
19 didn't have many words at that time. The children
20 were watching TV, Charlie and Alex. They said hi, I
21 said hi back, and I told Teresa let's I'd never
22 been to their bedrooms now, but I told Teresa let's
23 go down the hall. Let's, let's talk down here. We
24 weren't too much into the hall when it's one of
25 those moments where the person already knew what I

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1 was going to say. She was already saying no. She
2 was tears were already flowing pretty freely
3 then. I waited till we were at the end of the bed.
4 She sat at the foot of her bed. I hit her knee, and
5 then I did literally the hardest thing I've ever
6 done in my life, and I told her that Charlie Kubala
7 was dead, and I told her Charlie was dead, and we
8 hugged a little bit, and it's just that was
9 probably just a brief time because we knew we didn't
10 want to leave the kids out there, and then it's just
11 one of those things where we wanted to stay there,
12 but had to go out there, and we, we went and brought
13 the kids in. At that time I, I also I knew an
14 ex-deputy who was also very active in the same
15 church Teresa and, Teresa and Charlie were members
16 of and active with, and I called him to make the
17 calls to the churches. I was, I was really worried
18 about the Kubalas as far as the parents, Mr. and
19 Mrs. Kubala, but I felt really, really drained
20 there, and I touched base with that person, John
21 Wannamaker, to ask him to see who, who they could
22 get to make contact with them.

23 Q: Capt. Hobbs, would you identify this to me?

24 A: That's a picture of my friend and Sgt. Charlie
25 Kubala.

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1 Q: Would you tell us what impact his death has had on
2 the training and the operation of the Sumter County
3 sheriff's department since February of 1996?

4 A: Well, every I'm sure it was department-wide,
5 but of course our shift took it quite serious that
6 we were never going to allow this to happen again.
7 I personally made a promise that I would do
8 everything in my power not to do what I just got
9 through doing that I described to you. One of the
10 things, and we made a lot of changes, but one of the
11 major things that we did is that all new trainees
12 from that point, you have orientation, you visit the
13 different places in the sheriff's office, you come
14 out, and you end up being in patrol. And Capt.
15 Florence done this a lot. I've done it several
16 times. When they end up for the orientation for
17 patrol, we go over the paperwork with just, you
18 know, of course a lot, and at some point we say get
19 in the car, we're going to take you for a ride. So
20 we get in the car, and we'll take the trainee, and
21 we'll go to Taylor Street, and the man knows me real
22 well now that's living there, and he just waves at
23 me, and I walk, we walk to the side of the yard
24 where you saw the diagram, and we, we talk about
25 Charlie Kubala's case, and we talk about what

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1 happened and what lead up to it much what we're
2 doing here now, but we're at the scene, and we tell
3 him the things. Then we say go ahead and get back
4 in the car, and then we go to the grave site. He's
5 buried. Charlie Kubala is buried in Sumter, and we
6 go to the grave site, and we talk about the
7 consequences of this job. That if you're in this
8 job for the wrong reasons, if your heart's not
9 right, if you're not able to give that sacrifice,
10 then maybe you should think about another job.
11 Understand this is real. And that's, that's a
12 training that we do for every trainee since that
13 happened.

14 Q: Thank you, Capt. Hobbs. Please answer any questions
15 counsel may have for you.

16 **THE COURT:** Mr. Littlejohn?

17 **MR. LITTLEJOHN:** Thank you, Your Honor

18 **MR. HOBBS - EXAMINATION BY MR. LITTLEJOHN:**

19 Q: Capt. Hobbs?

20 A: Yes, sir.

21 Q: Do you need a minute?

22 A: I don't think it will get any better than this, sir.

23 Q: Capt. Hobbs, just a few questions. When you arrived
24 at 817 Taylor Street that night, I believe you said
25 you saw Mr. Landrow Taylor?

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- 1 A: He was on the porch as I was riding by. I gave a
2 momentary glance to him and told him to get back in
3 the house, and I know he heard that a lot, but I
4 told him to get back in the house also.
- 5 Q: What was Mr. Taylor doing? Where was he?
- 6 A: He was on the porch. He was kind of I would
7 describe as a shock, you know, situation. He was
8 standing there. I did notice the very long-barreled
9 pistol, and I, you know, I said, sir he was
10 telling me that the other deputies who I could hear
11 now, I told him to go back in the house, and I
12 really didn't spend much time listening to him as I
13 ran by.
- 14 Q: Capt. Hobbs, you said he had a long-barreled pistol
15 in his hand?
- 16 A: Yes, sir.
- 17 Q: Was it a long-barreled pistol, or was it a rifle, a
18 long gun?
- 19 A: I'm telling you what I remember and saw. That was a
20 long-barreled it was a, it was a pistol, and it
21 had a longer barrel than most pistols I'm used to.
- 22 Q: All right. I believe when you testified in 1997 you
23 thought it was a rifle, did you not?
- 24 A: I won't deny that I may have had that confusion, but
25 I thought it was a long-barreled pistol at this

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1 moment.

2 Q: Okay. But he did have a weapon in his hand?

3 A: I do agree with that a hundred percent.

4 Q: No question about that?

5 A: Yes, sir, I do agree with that.

6 Q: Did he have a flashlight?

7 A: I do not remember a flashlight. I think as
8 like I said, I was running very quickly. That did
9 catch my eye, the barrel.

10 Q: Okay.

11 A: And but I don't remember a flashlight. I can't deny
12 it either.

13 Q: I understand. Capt. Hobbs, when you went around the
14 left side of the house, you found Corporal Prince?

15 A: That is correct.

16 Q: Where was he located when you, when you first came
17 around that side of the house?

18 A: When I first came around, Corporal Prince was still
19 at Charlie Kubala's body when I made contact with
20 him there at that moment.

21 Q: Okay. And you said shortly after that you heard a
22 noise back in the woods back behind the shed?

23 A: That is correct.

24 Q: And I believe you described that noise as a thump?

25 A: Yes, sir.

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- 1 Q: Do you know what caused that noise?
- 2 A: No, sir.
- 3 Q: You didn't see someone or some thing cause that
- 4 noise?
- 5 A: I'd have to agree with that. I did not see the
- 6 source of the noise.
- 7 Q: Okay. Could that was that noise consistent
- 8 with someone falling down in the woods?
- 9 A: I had a little time to think of that question, but I
- 10 would it could have been. I could say it
- 11 consistent, but you would imagine falling down being
- 12 a longer noise. Mine was like a quick noise.
- 13 Q: All right. Now you didn't hear a shot?
- 14 A: No, sir. It was reported to me, but I did not hear
- 15 it.
- 16 Q: You didn't hear a shot that night at all?
- 17 A: No, sir, I did not.
- 18 Q: And I believe later on you said you heard other
- 19 movement up in the woods back behind the shed?
- 20 A: After the clearing of the shed, that's when we heard
- 21 definitely rustling of leaves and limbs, and those
- 22 were longer also. Longer noises.
- 23 Q: And you described to the jury how you hailed whoever
- 24 you thought was back there?
- 25 A: Yes, sir, I did.

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1 Q: That you had a number of deputies there?
2 A: I did tell him there was a lot of deputies.
3 Q: Told him to come out?
4 A: Yes, sir.
5 Q: You all were armed?
6 A: Well, yes, sir, we were on duty.
7 Q: Okay. And whoever was back there didn't have good
8 enough sense to come out, did they?
9 A: Well, I will say that that part's true, but the
10 message was true and honorable.
11 Q: But no one came out?
12 A: No, sir.
13 Q: Now Capt. Hobbs, let me ask you one thing. After
14 the events of that night, there was filled out a
15 county incident report concerning this matter.
16 A: Yes, sir.
17 Q: And I believe you filled that out?
18 A: That was a chaotic time, but that's no excuse, but
19 here's the reason why I answer this question this
20 way. A Deputy Horton started that report. The top
21 part of that you'll see is in a different
22 handwriting. Deputy Horton started. He was called
23 away to go with the SLED agents back to the scene.
24 This is many hours after, but the report was on his
25 desk. He was having trouble writing it. I said go

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1 with the SLED agents, I'll, and was going to write a
2 very Readers Digest report, and the rest of the
3 handwriting is mine on the narrative.

4 Q: Well, let's tell the jury what we're talking about.

5 A: Okay, sir.

6 Q: It's a special report. It says attempted burglary.
7 There's a section that says forced entry, and that
8 on this report is checked no, is that correct?

9 A: Yes, sir. On the incident report he's speaking of,
10 every event we have to write a report of, of a
11 criminal action, and that's called the incident
12 report. On the report Deputy Horton had started
13 writing this report, and I believe he wrote burglary
14 not completed. Is that correct? Do we have a copy
15 of the report?

16 Q: I can show it to you.

17 A: Yes, sir.

18 Q: What is forced entry an indication of?

19 A: Okay. As you can see, he did fill out the top part
20 of the report. Deputy Horton did write attempted
21 burglary. Complete, no. Forced entry, no. I had
22 to take full responsibility for that mistake also
23 because it's my duty to also read it and look for
24 those mistakes.

25 Q: Okay. And forced

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1 A: I do say that's a mistake.

2 Q: Forced entry in regard to your typical incident
3 report would mean where a door was beaten open or
4 kicked open or a window was smashed or something of
5 that nature?

6 A: Yes, sir. Speaking generally, you have a case it
7 says burglary, and then there's two other blocks.
8 One says completed yes or no. If the act is
9 completed, in this case let's say larceny, if the
10 person actually steals the thing and gets away, the
11 answer is yes. If you have a forced entry involved
12 in that, whether something was broken into or not,
13 to make the larceny, that's a yes or no, and then
14 you would mark what's appropriate there also.

15 Q: But forced entry, would it not refer to a forcible
16 breaking of a door or a window or some other part of
17 a house in order to gain entry?

18 A: Normally you would think that, but in our training,
19 when they train us on legals, there's also a thing
20 called the plane. Whether you break the plane of
21 the house. Does the hand go through the window. Do
22 you, do you go through the door, and that's supposed
23 to be considered forceful entry also. That's where
24 Deputy Horton made his mistake at.

25 Q: It's supposed to be

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1 A: I, I agree that is marked there, but I also agree
2 that it's a mistake that I didn't check.

3 Q: All right, sir.

4 MR. LITTLEJOHN: That's all I have, Your Honor.

5 MR. SALEEBY: I have no re-direct. You may come down.

6 MR. HOBBS: Thank you.

7 MR. SALEEBY: We're ready to call our next witness.

8 THE COURT: Yes, sir.

9 MR. SALEEBY: Mr. Powell, come around, please, sir.

10 THE CLERK: Place your left hand on the Bible. Raise
11 your right hand and state your name, please.

12 MR. POWELL: Fred Powell.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you give this court will be the truth, the
15 whole truth, and nothing but the truth so help you
16 God?

17 MR. POWELL: I do.

18 THE CLERK: Have a seat up here, please, sir. State
19 your full name, and spell your last name, please.

20 MR. POWELL: Fred R. Powell, Jr., P-O-W-E-L-L.

21 MR. FRED R. POWELL, JR., being duly sworn testifies as
22 follows:

23 MR. POWELL - DIRECT EXAMINATION BY MR. SALEEBY:

24 Q: Mr. Powell, where do you live, sir?

25 A: I live in Columbia, South Carolina.

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1 Q: And how long have you lived there?

2 A: For approximately eighteen and a half years.

3 Q: Who do you work with there?

4 A: I'm employed by the State Law Enforcement Division.

5 Q: How long have you worked with SLED?

6 A: For over eighteen and a half years.

7 Q: What type of work? What's your assignment in SLED?

8 A: Right now my assignment is I'm the lieutenant over
9 the operations of the SWAT team as well as the
10 bloodhound tracking team of SLED.

11 Q: SWAT team and bloodhound tracking team?

12 A: Yes, sir.

13 Q: All right. And how many of your years at SLED have
14 you been doing that?

15 A: For eighteen and a half years.

16 Q: All right, sir. And you're in charge of it?

17 A: Yes, sir.

18 Q: I know it sounds odd, but would you please tell the
19 members of the jury what your duties or
20 responsibilities are in terms of the SWAT team and
21 the bloodhound tracking?

22 A: My duties for the SWAT team is to conduct training.
23 At least once a month we have a forty-man, part-time
24 SWAT team. If a call comes in anywhere in the state
25 and we're requested by another agency, whether it be

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1 state, local, or county, then, then we would respond
2 there and assist them. As far as the bloodhound
3 tracking team, I've been in charge of that unit for
4 a while as well, and what we do, we have a six-man
5 team that is full-time, and what they do is we're,
6 we assist federal, state, and local law enforcement
7 agencies as well throughout the State of South
8 Carolina in the apprehension of all types of
9 criminals as well as missing persons.

10 Q: On the evening of February the 26th, 1996, were you
11 asked to assist and respond to Sumter County?

12 A: Yes, sir, I was.

13 Q: All right. And would you tell us if you mobilized
14 the team and what that team consisted of and where
15 you came to?

16 A: What we did is we received a call from headquarters.
17 Our bloodhound tracking team, other members of the
18 SLED SWAT team as well as the SLED helicopter was
19 requested by the Sumter County sheriff's department
20 to assist in apprehension of a suspect that had been
21 involved in a police officer shooting. What we do
22 is we have to go to headquarters, load our
23 bloodhounds up as well as any other gear that we
24 would need to take and respond to that location.
25 Once we get on the scene, then we of course get

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1 briefed, and it goes from there.

2 Q: So you responded with some bloodhound handlers and
3 some SWAT trackers or SWAT people to Sumter?

4 A: Yes, sir. That's correct.

5 Q: Did you in fact at 817 Taylor Street?

6 A: Yes, sir, we did.

7 Q: Were you briefed by the sheriff's department?

8 A: Yes, sir, we were. They, they advised us that the
9 police officer that had been involved in the
10 shooting had passed from his wounds. Also that the
11 suspect that was involved in the shooting was
12 believed to be on foot and still armed and had
13 possibly run into the woods behind the location.

14 Q: All right. And did you get a name and a description
15 of the suspect?

16 A: We did. They said the possible subject may be Bobby
17 Wayne Stone and that the subject was still armed.
18 They gave us a physical description as well as a
19 possible clothing description that the subject may
20 have had on.

21 Q: In addition to your SWAT team and your bloodhounds,
22 did you have any other equipment assisting you in
23 this search?

24 A: We had we also had the SLED helicopter equipped
25 with a flare system. That's called a forward-

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1 looking infrared.

2 Q: All right. It sounds like one of those military
3 acronyms. A flare?

4 A: Yes, sir.

5 Q: And you had a helicopter that had what kind of
6 capacity?

7 A: It's a flare system, and what they can do is it
8 picks up on body heat. They have a little screen
9 inside the helicopter, and it's almost like a video
10 camera, big, video camera. It can zoom in, zoom
11 out, and what it does, it picks up on body heat. If
12 they spot someone or something, and they can
13 sometimes make out animals whether it be a deer, a
14 dog, a cat, even a bird sometimes. It's pretty
15 strong in how it can pick up. It can also, you
16 know, you can also view a person as well.

17 Q: Does this helicopter have any other special
18 equipment on it?

19 A: It's also got a bright spotlight called the night
20 sun, and it's extremely bright. If they locate
21 something with the flare, a lot of times what
22 they'll do is they may have to direct us in. If
23 we're running a trail and they spot someone ahead of
24 us, we may choose to break trail and go to their
25 location, if the description, if everything matches

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1 up. So what they'll do is turn on the spotlight to
2 light it up just so they can not only identify
3 what's down there, but also to help direct us to
4 their location.

5 Q: Once you got the information, that information, did
6 you put the, put the bloodhounds and the SWAT team
7 in the helicopter in the operation?

8 A: Yes, sir. We did.

9 Q: And how were you, how were you dressed and equipped
10 to carry out this function?

11 A: We have a, we have a specific uniform. We wear
12 green BDUs or green pants and also green BDU top.
13 We also have a bulletproof vest, a shoulder harness
14 that has a holster for a weapon, a light kit on it
15 as well as three extra magazines, a handcuff pouch,
16 and also a radio pouch.

17 Q: What type of area did your tracking take you
18 through?

19 A: The area was from my understanding, the area
20 behind the incident location was going to be a
21 cutout, which they had came in and timbered trees at
22 some point in time. We had a lot of undergrowth and
23 trees about fifteen feet high, briars and vines and
24 that type of vegetation.

25 Q: All right. This is State's Exhibit Number Eight-

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1 four. It's a not-to-scale diagram, but I will just
2 show you this diagram. This is 817 Taylor Street.
3 These wavy lines would represent woods. Is this the
4 area that you're referring to?

5 A: Yes, sir. I believe that it was back in this
6 general area here where we struck the trail.

7 Q: All right. Now other than that, you didn't have any
8 particular familiarity with this part of Sumter, did
9 you?

10 A: No, sir. I'd never been there before.

11 Q: As you were striking the trail, did you communicate
12 with the helicopter?

13 A: We did, and when I say strike the trail, that means
14 that our bloodhound has picked up on the track.
15 They, they identify that by barking. We went a
16 short distance, found footprints, as well as a hat
17 which we believed belonged to the subject. The
18 helicopter at that time while we were starting out
19 was flying, were flying in a kind of a big pattern.
20 They really don't know where to look yet because we
21 haven't honed down where the trail is, so they're
22 just generally searching with the flare system to
23 see if they can pick up anything.

24 Q: And as you're going about this, do you get
25 communication from them, and as a result, do you

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1 change your course of action?

2 A: Yes, sir, we do. We have a very close working
3 relationship with the helicopter. We've done it
4 quite a few times. Virtually ever manhunt that we
5 go on, the helicopter is there with us, so it's very
6 good for use of the flare as well as keeping someone
7 possibly pinned down. They're afraid to move
8 because they think they'll be seen. So, excuse me,
9 at that time we crossed the fence behind the
10 residence into this cut-down area. Like I said it
11 was pretty thick. It was grown over with a lot of
12 vegetation. The helicopter was flying off, way back
13 off to I guess straight ahead of our location. We
14 made a ninety-degree turn at that point, and when we
15 did, we called the helicopter back to us so they
16 could fly off our nose, we call it, and what that is
17 is flying in the direction of travel that the
18 suspect is, is traveling in instead of checking way
19 over to the right or left or whatever. So we
20 continued to follow this trail down. We also had
21 footprints where the subject had appeared to spend
22 some time. We had tracks on top of tracks. We
23 walked around, and just looked like he had spent,
24 had to spend a fair amount of time to put down that
25 many tracks on the ground. The helicopter continued

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1 to fly ahead of us and to try to eliminate the area.
2 They went approximately a mile up ahead cause there
3 was a fair amount of time, approximately an hour and
4 a half to two hours time span from the subject
5 being, from the situation happening and then us
6 getting there, we had to respond, so there's always
7 a chance that they can break perimeter, so we have
8 the helicopter start close but work it out quick so
9 they can make sure that the suspect doesn't get
10 outside the perimeter. At that time we made another
11 ninety-degree turn to our left, and when we did, we
12 called the helicopter back to us again, and the
13 helicopter once again flew off our nose and
14 continued in the direction of travel that the
15 suspect was, was traveling in.

16 Q: Did the helicopter communicate back to you a
17 sighting?

18 A: They did shortly after. We, we traveled through
19 we trailed the subject through another small
20 wood line into an open field where we had footprints
21 in the field that were, the footprints were similar
22 to the tracks we had back at the scene, and shortly
23 after the helicopter notified us that they had
24 spotted someone on the ground. They were
25 approximately two hundred yards in front of us.

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1 Q: As a result, where did you go and what did you do?

2 A: At that point we decided that there's always a
3 decision, well, do we run the trail out or do we go
4 ahead and break trail and go to their location.
5 Being the severity of the call, severity of the
6 suspect that was on the loose, we felt like the best
7 thing to do was to break trail, move to the location
8 where the helicopter was, and try to take the
9 suspect in custody as soon as possible. The
10 helicopter lit the suspect up. They verified the
11 clothing description. It was similar to the
12 clothing description that was given out by the
13 county. Also so what we did then was we, we entered
14 into another wood line where they were hovering over
15 the top of. This wood line was extremely thick. It
16 was much thicker than anywhere we had gone yet.
17 There were a lot of vines and blown-over trees and
18 stuff evidently from the past storms. We crossed a
19 couple of large canals in there, large ditches. You
20 know, probably ten feet wide at least. They were
21 pretty deep. It was only about two hundred yards,
22 but it was tough to negotiate this area just because
23 of the type of terrain, and it was extremely
24 difficult to traverse. At that point we had some of
25 our SWAT team members from the perimeter which was

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1 close to the road, I don't have the little drawing,
2 but they came in from the other side, met up with us
3 to try to assist us. People started getting kind of
4 spread out because it was such rough going, so we
5 had approximately two other guys and me by the time
6 we had made it up to the helicopter and to the
7 subject that was lying on the ground.

8 Q: All right. When you came in proximity of the
9 subject, just tell us what you did then.

10 A: At that time, like I said, the helicopter had a
11 light on. We had our lights on as well. We asked
12

13 Q: You had what kind of lighting with you?

14 A: We have a, it's a sure-fire light that goes on our
15 I was carrying an MP-5 long gun, and that's a
16 HEK forty-caliber gun. It's an assault rifle. It's
17 basically about this long. The other two officers
18 that were with me also had a rifle as well, and I
19 believe they had M-16s.

20 Q: And these got lights on them?

21 A: They had lights on them. The sure-fire lights are
22 small lights that are attached to the gun itself.
23 We have a little touch pad on the side that you can
24 touch the pad, and it will light the you know,
25 the light will light up. So at that point we

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1 trained our weapons on the subject who was lying on
2 the ground on his back. His hands were down by his
3 side. There were a couple logs in there that he was
4 relatively close to that were kind of in a V
5 formation. His feet was facing toward us as he was
6 lying down. There was no response. Even when the
7 helicopter flew over him and hovered over him for
8 fifteen to twenty minutes for us to get to the
9 location, the suspect never moved. So there as
10 speculation whether or not the suspect was even, was
11 incapacitated or possibly had been deceased or
12 whatever. We just didn't know. At that time we, we
13 kept the light on the, on the subject. Asked the
14 helicopter to pull off because it's extremely
15 difficult to communicate with a subject as well as
16 ourselves when the helicopter is overhead. It's
17 extremely loud, so we had them pull off so we could
18 communicate, and at that time we instructed the
19 subject to elevate and clear his hands.

20 Q: How far is the subject from you at this time?

21 A: Approximately from me to the television set over
22 there.

23 Q: You were this far away from him?

24 A: Yes, sir.

25 Q: And there are how many people with you?

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- 1 A: Two other guys. Two other officers.
- 2 Q: And you all have these sure lights on the weapons
- 3 focused on him?
- 4 A: Yes, sir. We all have long guns.
- 5 Q: All right. Go ahead and tell us what happens then.
- 6 A: At that point we moved in on the subject,
- 7 identifying ourselves as police officers. Said this
- 8 is state police, you're under arrest, clear and
- 9 elevate your hands. At no point did the subject
- 10 comply with anything we said. Saw him move around a
- 11 little bit one time, kind of look our way, but he
- 12 just wouldn't comply. He wouldn't clear his hands.
- 13 His hands were down by his side, and he was lying on
- 14 his back which can be a very dangerous position for
- 15 someone to be in. At that time we, we continued to
- 16 slowly and tactically move in, challenging the
- 17 subject for him to adhere to our commands. He never
- 18 would. So at that point sooner or later you're
- 19 going to have to get down and handcuff the guy. I
- 20 mean it's just how it is. It was a dangerous
- 21 situation, but that's what, that's what the next
- 22 step was going to have to be since we had no
- 23 compliance out of him. We moved in. I was the lead
- 24 officer. I put my foot onto the subject's chest.
- 25 Could still see his hands by his side. Put my foot

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1 on his chest to pin him to the ground long enough so
2 one of the officers behind me could secure their
3 gun, their long gun, so they could retrieve their
4 cuffs and actually get down and handcuff the
5 subject. At that time when I put my foot on his
6 chest, he started wiggling, trying to get, trying to
7 break free. I continued to try to hold him. The
8 officer got down there shortly after, and when he
9 did, I backed off, and we still covered the subject.
10 He began and continued to resist arrest. The
11 officer was able to roll the subject over towards
12 his stomach cause that's where it's policy for
13 us to cuff someone behind their back. At that time
14 he finally got his shoulder up a bit, and we saw the
15 gun that was lying up underneath his, his left side
16 in close proximity to his hand. So at that point
17 we, we had a couple more officers coming up that had
18 made it up by that time. The subject was moved away
19 from the weapon so we could secure the weapon as
20 well as the subject. The subject was still
21 resisting. We got him handcuffed. We did a pat-
22 down as best we could to make sure he had no other
23 weapons on him. One of our officers stood by on the
24 weapon to make sure the weapon was not touched or
25 moved until we could have the forensic crime scene

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1 come in there and photograph it.

2 Q: Was that

3 A: Yes, sir.

4 Q: Go ahead.

5 A: I'm sorry.

6 Q: I was going to ask you if Ira Parnell was one of the

7 members of the SWAT team that arrived on the scene

8 where you apprehended the suspect.

9 A: Yes, sir. I think he was, and we had, we had quite

10 a few officers out there, and it's, you know, it's

11 been, it's been a while back. It's hard to remember

12 exactly who, but yes, sir, I think he was.

13 Q: And can you identify Bobby Wayne Stone as being the

14 person you secured that day?

15 A: Yes, sir, I can. I can.

16 Q: Is he in the courtroom?

17 A: Yes, sir, he is.

18 Q: And will you point him out for the court and jury?

19 A: Yes, sir. The white shirt sitting over there. I'm

20 sorry. I'm just going to as we tried to get

21 the subject out of the woods, he locked up, wouldn't

22 walk. Basically two officers had to carry him out

23 of the woods. It was heavily vined. It was tough

24 getting him out just because, you know, when you get

25 somebody that don't want to go, it can be difficult

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1 to move them anywhere, so the officers were able to
2 move him out of the woods and put him into a police
3 transport vehicle at that time.

4 Q: I want to show you State's Exhibit Number Fifty.
5 Ask you if you can identify that photograph.

6 A: Yes, sir. That appears to be the weapon that was
7 underneath him, Mr. Stone.

8 Q: All right. If you would, stand up now, and you
9 referred to him being sitting or lying on the ground
10 on his back, and you had to turn him over. When you
11 turned him over, if you would, just tell us the
12 approximate location of this weapon in proximity to
13 his body.

14 A: I can't remember whether it was turned with the butt
15 out or in because I don't remember, but it was right
16 in this area right here.

17 Q: You're showing the left, left rear, left hip?

18 A: Up in, up in this region, yes, sir. Kind around
19 where the waistline would be in this area, and then
20 once he was rolled over, the gun was right there.

21 Q: I'm also going to show you a photograph that I'll
22 pass around later, State's Exhibit Number Forty.

23 Can you tell the members of the jury what that is?

24 A: Yes, sir. That appears to be the weapon and also
25 the old log that was, that he was laying beside.

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1 Q: And once you moved him, you left the weapon where it
2 was so it could be secured by the forensic team?

3 A: Absolutely, yes, sir.

4 Q: Thank you. Please answer any questions counsel has
5 for you.

6 **THE COURT:** Cross examination?

7 **MR. POWELL - CROSS EXAMINATION BY MR. LITTLEJOHN:**

8 Q: Good morning, Agent Powell. Agent Powell, you told
9 us how when you began on this track you said you saw
10 a number of footprints out there?

11 A: Yes, sir.

12 Q: And those were on the same track as the bloodhounds
13 were following?

14 A: Yes, sir.

15 Q: It appear to you to be the footprints of the person
16 you were following?

17 A: Yes, sir. Normal policy for us is when we apprehend
18 someone, we look at their shoes at the time. I mean
19 it's not a forensic match, but we do it all the
20 time. We look at their shoes and see if it compares
21 with what we've had on the trail.

22 Q: Appear to be the same shoes?

23 A: Yes, sir.

24 Q: And you said these footprints were what kind of
25 pattern were they in?

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1 A: It's, it's been so long, I don't have, I don't
2 remember the pattern right now, sir.

3 Q: Random pattern?

4 A: It's I couldn't tell you.

5 Q: I took it from your testimony it wasn't a straight
6 line then?

7 A: I, I don't know.

8 Q: Didn't you say there were a number of footprints
9 that indicated he was wandering around?

10 A: Yes, sir. Well, there were a number of footprints
11 that were it wasn't, it wasn't a lot of
12 different footprints. It was one type of footprint
13 that was all in this area. And they were, like I
14 said, where the subject had spent time.

15 Q: Okay. So I guess my impression was it was not a
16 straight line that someone was just walking down a
17 path. Obviously the footprints indicated the person
18 was milling around at some point?

19 A: Milling around, yes, sir.

20 Q: Okay.

21 A: That's what it appeared.

22 Q: Walking around in circles perhaps?

23 A: Well, I'm not going to sit here and try to tell you
24 I know what he was thinking, but, but a lot of times
25 when you get, when a manhunt is going on, people are

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1 trying to figure out which way they're going to go
2 from my experience. They're trying to decide what
3 they're going to do. They know there's a perimeter
4 set up. There's a helicopter.

5 **MR. LITTLEJOHN:** Your Honor, excuse me. I don't mean to
6 interrupt him. I think he's gone beyond the scope
7 of my question.

8 **THE COURT:** All right. Yes. Just try to listen to his
9 questions and to answer them as best you can. You
10 do have the right of course to explain your answers.

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

12 Q: These footprints you saw, they weren't in
13 necessarily a straight line?

14 A: No, sir.

15 Q: Major Powell, did you see any beer cans out there?

16 A: No, sir, I didn't.

17 Q: You didn't see any?

18 A: No, sir.

19 Q: Didn't see any marijuana joints or anything of that
20 nature?

21 A: It was heavily wooded.

22 Q: And it was dark?

23 A: Right.

24 Q: Could have been there, and you wouldn't have seen
25 it?

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1 A: No, sir.

2 Q: Okay. Major Powell, you told us how if when you all
3 got to the location where the subject was, who you
4 have identified as Bobby Wayne Stone

5 A: Yes, sir.

6 Q: you said you came up on him with two other
7 agent?

8 A: Yes, sir.

9 Q: You all were all three armed obviously?

10 A: That's correct.

11 Q: And it was your understanding the subject or Bobby
12 Wayne Stone had not moved for some period of time?

13 A: That's, that's what

14 Q: The time you arrived?

15 A: That's what the helicopter had relayed to us, yes,
16 sir.

17 Q: And I believe you said that you all were concerned
18 that the subject you were looking for might be
19 deceased because he had been still so long?

20 A: That's what the helicopter pilots put out. I
21 instructed my guys to of course we never assume
22 anything until we get there.

23 Q: Okay. But you found that unusual, did you not?

24 A: Well, not necessarily I didn't.

25 Q: You didn't find it unusual that the subject would

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1 not move with a helicopter hovering overhead?

2 A: No, sir. Based on the situation, I wasn't
3 surprised.

4 Q: You didn't find it unusual the subject wouldn't move
5 when three armed SLED agents came up?

6 A: He, he moved some.

7 Q: Moved some.

8 A: He looked in our direction, but the point I'm trying
9 to make is that it's not a surprise to me.
10 Sometimes people will try to suck you in to
11 something, a track, a ruse, and a mess.

12 Q: You're speculating.

13 MR. LITTLEJOHN: Your Honor, I wish to strike that.

14 THE COURT: No, sir. I think he's answering the
15 question as best he can. You asked him if it was
16 surprising, and he's telling you why it was not.

17 A: It was a very dangerous situation. We have caught
18 people before that were laying in that same
19 position, and I've had people shoot at me from that
20 same position.

21 Q: Okay. You didn't get shot this night, did you?

22 A: No, sir, I didn't.

23 Q: You saw Bobby Wayne Stone's hands, didn't you?

24 A: Yes, sir, I did.

25 Q: And he didn't, he didn't shoot at you?

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1 A: Well, his hands were close down by his side. I
2 could not see underneath his hands. I could see the
3 top of his hands.

4 Q: Agent Powell, did he shoot at you?

5 A: No, sir, he didn't shoot at you.

6 Q: He didn't go for the gun, did he?

7 A: He didn't. The gun was right there in the proximity
8 of his hand though.

9 Q: He didn't go for the gun, did he?

10 A: No, sir.

11 Q: If he had, you would have shot him, wouldn't you?

12 A: Yes, sir.

13 Q: Now, Agent Powell, you said when you all rolled him
14 over, that's when you saw the gun?

15 A: Yes, sir, very close.

16 Q: Smell the odor of alcohol about him?

17 A: I don't, I really don't recall.

18 Q: You don't recall smelling alcohol?

19 A: No, sir, I don't.

20 Q: Did you notice whether his eyes were bloodshot?

21 A: No, sir, I really didn't. My job is going and make
22 apprehension, get him out, and I didn't, I didn't
23 look at his condition as far as he seemed like
24 he was okay. He was resisting arrest. Obviously he
25 had plenty of fight in him, so at that point in

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1 time, we just handcuffed him and tried to get him
2 out of there. Obviously he didn't have a problem
3 that I could tell.

4 Q: So you didn't notice whether he was drunk or not?

5 A: No, sir. No, sir, I didn't notice.

6 MR. LITTLEJOHN: If you'll indulge me just a moment?

7 THE COURT: Yes, sir.

8 MR. LITTLEJOHN: That's all I have, Your Honor.

9 THE COURT: Re-direct?

10 MR. SALEEBY: I have no re-direct. You may come down.

11 I call Dana Wingate to the stand. I don't think, I
12 don't think he'll be lengthy. Mr. Wingate, come up
13 and be sworn, please.

14 THE CLERK: State your name, please.

15 MR. WINGATE: Dana Wingate.

16 THE CLERK: Do you solemnly swear or affirm the
17 testimony you give this court to be the truth, the
18 whole truth, and nothing but the truth so help you
19 God?

20 MR. WINGATE: I do.

21 THE CLERK: Have a seat up here, please. State your
22 full name and spell your last name, please.

23 MR. WINGATE: Dana Wingate, W-I-N-G-A-T-E.

24 MR. DANA WINGATE., being duly sworn testifies as follows:

25 MR. WINGATE - DIRECT EXAMINATION BY MR. SALEEBY:

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- 1 Q: Mr. Wingate, where do you live?
- 2 A: I live in Sumter.
- 3 Q: How long have you lived here?
- 4 A: Approximately twenty-two years.
- 5 Q: Who do you work with?
- 6 A: Presently I'm with Lee County sheriff's office.
- 7 Q: And what kind of job, work do you do for them?
- 8 A: I'm a criminal, domestic violence investigator.
- 9 Q: How long have you been doing that?
- 10 A: Approximately two years.
- 11 Q: And prior to that were you employed by the Sumter
- 12 County sheriff's department?
- 13 A: I was with Sumter for twelve and a half years as a
- 14 criminal investigator and also juvenile
- 15 investigator.
- 16 Q: Were you employed by the sheriff's department in
- 17 February of 1996, particularly February 26th?
- 18 A: Yes, I was.
- 19 Q: And what were, what job were you holding at that
- 20 point in time?
- 21 A: I was a senior investigator with the juvenile
- 22 division here with investigations.
- 23 Q: At approximately 7:00 p.m. on that evening, were you
- 24 on duty or off duty?
- 25 A: I was off duty.

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1 Q: Were you summoned in?

2 A: I had heard that one of our officers had been hurt.
3 I called dispatch, and they informed me what
4 happened, and I got dressed and left.

5 Q: All right. Where did you respond to?

6 A: We responded out to the area where the incident
7 happened just to set up a perimeter.

8 Q: And did you have any other responsibilities other
9 than that in the area?

10 A: No, sir. Just, just set up the perimeter and watch
11 for any activity.

12 Q: Did you later have the occasion to come to the Law
13 Enforcement Center across the street?

14 A: After I heard on the radio that they had apprehended
15 someone, they asked one of the investigators or
16 asked for an investigator to come out to the office
17 to open up our investigation office. I was the
18 closest one, so I headed to the office and opened it
19 up for them.

20 Q: All right. When you opened it up, did you have the
21 occasion to see the defendant, Mr. Stone?

22 A: Yes. I was there for approximately fifteen, twenty
23 minutes. I'd set a chair in the outer part of our
24 office, which is an open common area with the
25 offices set around it, and I set a chair there and

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1 sat there and waited until they brought Mr. Stone
2 in.

3 Q: Would you identify Mr. Stone for the court and the
4 jury?

5 A: Yes. He's the gentleman over sitting next to Mr.
6 Babb.

7 Q: All right. Of course he was dressed differently on
8 that evening, wasn't he?

9 A: Yes, sir.

10 Q: All right. Tell us what happened when he came into
11 your presence.

12 A: When he came into the office, we, they had him sit
13 in the chair, and I sat at the secretary's chair or
14 desk which is at the main entrance of the outer
15 office and just sat there.

16 Q: And your job was to do what?

17 A: Basically to watch Mr. Stone and watch anyone coming
18 in and out of the area.

19 Q: And anything out of the ordinary happen between Mr.
20 Stone and anybody else?

21 A: No, sir.

22 Q: All right. At a later point in time did some SLED
23 agents arrive?

24 A: Yes. There was two SLED agents came in wanted to do
25 a gunshot residue test on his hands. They wanted to

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1 go to a smaller office. I opened up my office which
2 is down the hall from the main investigation office
3 to let them use that office to do their gunshot
4 residue tests.

5 Q: All right. And we'll have those people here, but
6 just briefly when you're talking about a gunshot
7 residue test, they were going to do tests, do what
8 to try to test for what?

9 A: It's, it's a swabbing technique that you use the
10 back of the hand and the palm of the hand, and it
11 picks up any gunpowder or gunpowder residue in, on
12 their hands.

13 Q: So you test people's hands?

14 A: Yes.

15 Q: Now where were his hands as he was sitting in the
16 office there.

17 A: He was handcuffed behind his back. His jacket was I
18 believe, if I remember right, off his shoulders. It
19 had fallen off the back of his shoulders.

20 Q: So you moved him to another office, is that right?

21 A: Right. We took him into our outer office, our
22 juvenile office, and there was two SLED agents and
23 Chief Stewart.

24 Q: All right. Did you assist them in any way in
25 getting ready to do this test?

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1 A: Right. They like the SLED agent said earlier,
2 they handcuff them behind their back. I assisted
3 them. They uncuffed the left wrist, and I took the
4 handcuff and moved them around to his right just to
5 extend his arm out so that they could start doing
6 their tests.

7 Q: And as you were there dealing with him, tell us what
8 you saw.

9 A: Well, while I took his arm and moved it around
10 behind his back, I noticed something in his right,
11 lower well, it would be the same as this pocket
12 of my jacket, and I reached in, and there was a I'm
13 guess approximately about a four to six-inch folded
14 knife in his pocket.

15 Q: What did you do with the knife?

16 A: I, I held on to it and turned him over to the SLED
17 agents for them to do their gunshot residue test,
18 and I took the knife over to investigation office to
19 fill out a tag on it.

20 Q: I'm going to show you two items and ask you if you
21 can identify them. First would be State's Exhibit
22 Number Fifty-six.

23 A: That's the jacket he was wearing that night.

24 Q: And next would be State's Exhibit Number Sixty.

25 A: This is the knife I took out of the coat pocket. It

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1 was folded like this.

2 Q: Thank you. Please answer any questions counsel has.

3 **THE COURT:** Cross examine, Mr. Littlejohn?

4 **MR. LITTLEJOHN:** Thank you, Your Honor.

5 **MR. WINGATE - CROSS EXAMINATION BY MR. LITTLEJOHN:**

6 Q: Good morning, Mr. Wingate.

7 A: Good morning.

8 Q: Mr. Wingate, just a few questions. When what
9 time did you get to the Law Enforcement Center that
10 night or that early morning?

11 A: I have no idea. It was late in the evening or early
12 in the morning. I really don't know. I didn't look
13 at my watch.

14 Q: Okay. Do you know how long it had been since Bobby
15 Wayne Stone had been arrested?

16 A: I'm guessing maybe fifteen, twenty minutes. Maybe
17 thirty. Just a rough guess.

18 Q: But he'd been transported? Excuse me.

19 A: He had already been put in a vehicle, and that's
20 when they asked for an investigator to open up the
21 office, and I headed straight to the office and took
22 probably about five to seven minutes to get to the
23 office, and I sat there maybe fifteen minutes....

24 Q: Okay.

25 A: Just a rough guess.

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1 Q: He had been under arrest for some time? Twenty
2 minutes, thirty minutes, something like that?

3 A: Yes, sir.

4 Q: And when you saw him, he was at the Law Enforcement
5 Center there in the Investigative Division?

6 A: The SLED agents brought him in there into the
7 office, yes.

8 Q: Did you get a good look at him?

9 A: Relatively good, I guess.

10 Q: Okay. What was, what was Bobby Wayne Stone's
11 condition?

12 A: He appeared to me tired. and that's about it. He
13 didn't say anything. I didn't ask him anything, and
14 he just sat there.

15 Q: Okay. Did he appear to be scratched up?

16 A: I don't remember.

17 Q: Beat up, anything like that?

18 A: Not to my recollection, no.

19 Q: Did you see a big bruise on his chest?

20 A: He had his clothes on. I didn't see anything.

21 Q: You didn't see it. Okay.

22 A: No, sir.

23 Q: Did he appear the have the odor of alcohol about
24 him?

25 A: I didn't get that close until we went into the

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1 juvenile office, and I don't remember it registering
2 with me.

3 Q: You don't recall it?

4 A: I don't recall it.

5 Q: Now how long was it that Bobby Wayne Stone was
6 sitting there in the Investigative Division before
7 you found this knife?

8 A: He was sitting in the outer office approximately
9 ten, fifteen minutes. Rough guess. I really don't
10 know as far as time. I wasn't watching the time.

11 Q: Okay.

12 A: And then when we took him back to the juvenile
13 office is when they unhandcuffed his left wrist, and
14 I moved his arm around to his right, and that's when
15 I saw the knife.

16 Q: Okay. The knife was in his pocket?

17 A: Yes. In his coat pocket.

18 Q: Side coat pocket?

19 A: Right. The other side.

20 Q: On the right side?

21 A: Yes, sir.

22 Q: Okay. And you said his coat had come off his
23 shoulders somewhere?

24 A: Well, when he was sitting in the chair, he was
25 moving around, and the jacket would come off

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1 something like that. It started riding down his
2 back, and then he'd just move around, and that was
3 about it.

4 Q: Okay. And he had his handcuffs

5 A: Handcuffs in the rear, yes.

6 Q: In the rear?

7 A: Yes.

8 Q: He could have gotten in that pocket, couldn't he?

9 A: I guess he could have.

10 Q: Okay. And the knife was closed, and I'm referring
11 to State's Exhibit Number Sixty?

12 A: That's correct.

13 Q: You never saw him try and go for this knife?

14 A: I never noticed it, no.

15 Q: You never saw him try and do anything with this
16 knife?

17 A: No.

18 MR. LITTLEJOHN: That's all I have, Your Honor.

19 THE COURT: Anything further?

20 MR. SALEEBY: I have nothing in response.

21 THE COURT: All right. Thank you, Mr. Wingate. You
22 want him excused?

23 MR. SALEEBY: Yes, sir.

24 THE COURT: Any objection, Mr. Littlejohn?

25 MR. LITTLEJOHN: No, Your Honor.

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1 **THE COURT:** All right. You are excused. Thank you for
2 coming. All right. Ladies and gentlemen of the
3 jury, we have reached about 1:15 in the afternoon,
4 and we have made a decision earlier this week in
5 order to save time and move the case along that we
6 were going to bring lunch in for the jury rather
7 than have you go out to lunch because we do lose so
8 much time when we do that, so your lunch is here,
9 and I'm going to let you go to your jury room and
10 relax for a little while. Don't talk about this
11 case. We'll take at least thirty minute, so you
12 don't need to rush. I'm not trying to rush you in
13 any means. Just take your time and enjoy your lunch
14 and take at least thirty minutes. It may be closer
15 to forty or forty-five, but in any event, when
16 everybody, all court personnel can get their lunch
17 and you have completed your lunch, we will
18 reconvene, but that does save us some time because
19 usually if we have to send the jury out for lunch,
20 we're talking about an hour and a half before we can
21 get started back, so take your time. Do not discuss
22 this case. Just talk about anything that you would
23 like to talk about, and enjoy your lunch, and we'll
24 start back in about thirty or forty-five minutes.
25 Thank you. You may go with the bailiff.

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1 (Jury out at 1:15 p.m.)

2 **THE COURT:** All right. We'll take at least thirty
3 minutes, counsel. Get a sandwich or get a little
4 lunch. If you don't get back here right at the
5 thirty minutes, I'm not going to put anybody in
6 jail. I understand how that is, but I would like to
7 start in no more than forty-five minutes which would
8 be 2:00 o'clock, so if we get started a little bit
9 before that, that would be fine, but no later than
10 two. Thank you very much.

11 **MR. SALEEBY:** Thank you, Your Honor.

12 **THE BAILIFF:** Order in the court. All rise, please.

13 **THE COURT:** All right. Counsel, thank you very much for
14 working with us and being back here. Mr. Saleeby
15 had mentioned to me as he came up the hall, Mr.
16 Littlejohn, that they wanted to get into the
17 statement, the witness with the statement, and he
18 was indicating he proposed giving the jury a copy of
19 it to read along. Is there any objection to that?

20 **MR. LITTLEJOHN:** Your Honor, if we're doing it just like
21 a transcript. He's going to hand it out, read the
22 statement and then pick them back up?

23 **MR. SALEEBY:** Absolutely.

24 **THE COURT:** They will not go in the jury room with it.

25 **MR. LITTLEJOHN:** I understand.

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1 **MR. SALEEBY:** I think the original would go, would it
2 not? It would be in evidence.

3 **THE COURT:** Is it in evidence?

4 **MR. SALEEBY:** Yes, sir.

5 **THE COURT:** Okay. All right. Well, if it's in
6 evidence, it would go in.

7 **MR. SALEEBY:** There's, there's a Miranda waiver form, a
8 handwritten diagram of sorts, and the statement
9 itself that were admitted as I think One, Two, and
10 Three in the previous trial. There was a Three-A in
11 the previous trial that they're probably more
12 familiar with than I am because they deleted
13 references to being on probation and things like
14 that, and then in the second, in the penalty phase,
15 the statement with those things involved

16 **THE COURT:** Well, I think what Mr. Littlejohn's concern
17 is that they don't keep the statements, don't take
18 them to the hotel with them. I mean

19 **MR. SALEEBY:** Absolutely not, sir.

20 **THE COURT:** things that are in evidence will go in
21 just like they do otherwise.

22 **MR. LITTLEJOHN:** I understand.

23 **MR. SALEEBY:** Absolutely not.

24 **THE COURT:** Okay. All right. Bring the jury in,
25 please.

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(Jury in at 2:07 p.m.)

THE COURT: Let the record reflect the defense counsel is present, the defendant, Mr. Stone, is present with all of his counsel. The jury is returning to the courtroom.

MR. SALEEBY: Judge, did you get that extra set of copies made?

THE COURT: Graham is making it right now.

MR. SALEEBY: All right, sir.

THE COURT: He'll be back in just a minute. As soon as he gets it made, he'll be back in.

THE CLERK: Your Honor, all the jurors and alternates are present in the courtroom.

THE COURT: All right. Thank you very much, ladies and gentlemen, and I hope you enjoyed your lunch and got a little break, and we'll be ready to resume in just a minute, but before we do that, just so I know who most of you are, I think, but I want to make sure that I can put the name and the face together of every juror, so I'm going to ask Mr. Herring to just call the roll of the jury, and if you will, just raise your hand so that I can identify each of you and make sure that I've got the right person identified and know who the names and the faces are. Mr. Herring, would you do that for me, please?

1 **MR. HERRING:** Your Honor, somebody's got my paper.

2 **THE COURT:** All right. I have them, so I'll just ask
3 you. Mr. Copeland.

4 **MR. COPELAND:** Here.

5 **THE COURT:** All right, sir. Ms. Blanchette? All right.
6 Thank you. Mr. Burgess? Steven Maple? Mr. Maple,
7 thank you. Vincent Sims? All right, Mr. Simms.
8 Sharon Golden? All right. Ms. McLean? All right.
9 Ms. Benjamin? All right. Mr. Slater? All right.
10 And Ms. Dowd? All right. Ms. Sanders? And Ms.
11 Harris? Okay. Good. Thank you very much. Now I
12 know who everybody is. Thank you very much. All
13 right. We're ready to proceed. You may call your
14 first witness.

15 **MR. SALEEBY:** We're ready to proceed, Your Honor. We
16 call Perry Herod.

17 **THE COURT:** All right. Raise your right hand, please,
18 sir. Do you swear that the evidence you shall give
19 in this matter shall be the truth, the whole truth,
20 and nothing but the truth so help you God?

21 **MR. HEROD:** Yes, sir, I do.

22 **THE COURT:** All right. Have a seat, please, Mr. Herod.

23 **MR. SALEEBY:** May be proceed, Your Honor?.

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

25 **MR. PERRY AUSTIN HEROD,** being duly sworn testifies as

1 follows:

2 MR. HEROD - DIRECT EXAMINATION BY MR. SALEEBY:

3 Q: Please tell us your name, sir.

4 A: Perry Austin Herod.

5 Q: Mr. Herod, tell the members of the jury where you
6 live and how long you've lived here.

7 A: I live in Sumter, South Carolina, and I've lived
8 here almost thirty years.

9 Q: You have family herein Sumter?

10 A: Yes, I do, immediate family.

11 Q: And who would that consist of?

12 A: My wife and children.

13 Q: All right, sir. Who do you work with now?

14 A: I now work with the Sumter Police department.

15 Q: And how long have you worked with the Sumter Police
16 Department?

17 A: At this point two and a half years.

18 Q: All right. And we'll talk about the previous point,
19 another point in time, but what's your job
20 description or your job and your functions?

21 A: I'm the major of operations for the police
22 department. I'm second in command.

23 Q: Second in command?

24 A: Yes, sir.

25 Q: Now you said this time you've been for two and a

1 half years. You previously worked with the Sumter
2 Police Department?

3 A: Yes, sir, I did.

4 Q: When was that?

5 A: I started in 1975 and worked there until 1988.

6 Q: Thirteen years?

7 A: Yes, sir.

8 Q: And you made a change in 1988?

9 A: Yes, sir, I did. I went with the State Law
10 Enforcement Division, SLED.

11 Q: And you worked for SLED from when until when?

12 A: I worked there from 1988, and retired from SLED in
13 2002.

14 Q: And then went back to work with the police
15 department?

16 A: Yes, sir. I left that job to take this job.

17 Q: All right, sir. When you were working with the
18 State Law Enforcement Division, where were you
19 assigned and particularly in 1996?

20 A: I lived in Sumter. I was assigned to the Pee Dee
21 region. That would include twelve counties, Sumter
22 being one of those counties.

23 Q: And what would your responsibility be as an agent to
24 assist local law enforcement in that twelve-county
25 area?

1 A: Yes, sir. I was a criminal investigator. I was
2 also a lieutenant with SLED. I was one of the
3 supervisors within the region.

4 Q: You were you supervised other agents?

5 A: Yes, sir, I did.

6 Q: February 26, 1996, were you working with SLED, were
7 you a supervisor, and were you here in the Pee Dee
8 region?

9 A: Yes, sir, I was.

10 Q: Tell us how you came to be contacted with regard to
11 the events surrounding Sgt. Kubala's death.

12 A: On February 26th I was at home, and I received a
13 call from Law Enforcement Center. One of the
14 dispatchers informed me that a Sumter County deputy
15 had been shot and killed.

16 Q: As a result of that, what did you do?

17 A: I left my house. I responded to 817 Taylor Street.

18 Q: Did you summon assistance from SLED?

19 A: Yes, sir. When they called me, the dispatcher said
20 that the sheriff's department was requesting the
21 SLED helicopter. I tried to get in contact by radio
22 with the county supervisor. Once I got to the
23 scene, I had called for the helicopter, the tracking
24 team, and also a SWAT team.

25 Q: And in addition to asking for help coming from

1 Columbia from another location, did you assist in
2 any way on the scene yourself?

3 A: Yes. Part of my responsibility, I was the sled
4 supervisor on the scene, so I was to help coordinate
5 with the local agency. SLED is an assisting agency,
6 so once we get on the scene, then we make sure we
7 get with the police department, the sheriff's
8 department, the highway patrol, whatever agency is
9 there and insure that we take care of whatever we
10 need to take care.

11 Q: Were you, did you remain at 817 Taylor until such
12 time as you received notification that Mr. Stone had
13 been arrested?

14 A: Yes, I did.

15 Q: All right. After he was arrested, tell us where you
16 went and what you did.

17 A: When the call came in that he had been captured out
18 in the woods, he was going to be taken to the Law
19 Enforcement Center, so at that time I left Taylor
20 Street and went to the Law Enforcement Center.

21 Q: And the Law Enforcement Center would be right across
22 the street from the courthouse?

23 A: Yes, sir.

24 Q: And that's where the police department and sheriff's
25 department are located?

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1 A: Yes, sir.

2 Q: Where and when did you first come in contact with
3 Mr. Stone?

4 A: I first came in contact with Bobby Wayne Stone they
5 were bringing him out of the van on the west side of
6 the building, and they were taking him inside the
7 sheriff's department.

8 Q: Did you ask any questions of him at that point in
9 time?

10 A: No, sir, did not ask any questions at that time.

11 Q: Did he make any statement to you or the officers in
12 your presence?

13 A: He did make a statement as he was going inside. He
14 said you all are getting off on this.

15 Q: You had no response to that?

16 A: No, sir.

17 Q: Tell, tell, tell us where you all went and what you
18 did.

19 A: At that time he was taken inside the Law Enforcement
20 Center. The Law Enforcement Center, the bottom
21 floor is the city police department. The upstairs
22 is the sheriff's department. He was taken upstairs
23 into the county investigative unit.

24 Q: When you got up into that area, what did you do
25 then?

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1 A: Well, there was several forensics matters were being
2 taken care of with him. There was a meeting with,
3 later on with Chief Robert Stewart of SLED and
4 Sheriff Mims, myself, Capt. Paul Gasque of SLED, and
5 Joe Gallimore, and we discussed the interview and it
6 was determined that myself, along with Joe
7 Gallimore, who was with the sheriff's department,
8 would conduct the interview.

9 Q: All right. We want to make sure that we've got
10 these people identified. You worked with SLED?

11 A: Yes, sir.

12 Q: And you indicated that two other people from SLED
13 were at least present if not participating, and they
14 would be who?

15 A: The people that would participate in the interview
16 would be myself and Joe Gallimore who worked for the
17 sheriff's department at that time.

18 Q: All right. And your supervisors from SLED were also
19 there?

20 A: Yes, during that meeting.

21 Q: And that would have been who?

22 A: Chief Robert Stewart and Capt. Paul Gasque.

23 Q: So they determined that you and Mr. Gallimore were
24 the two people that would interview Mr. Stone?

25 A: Yes, sir.

1 Q: All right. Tell the members of the jury how you
2 went about doing that.

3 A: The interview was to take place in Joe Gallimore's
4 office. It's as you first come in the county
5 investigative unit. Once we took Bobby Wayne Stone
6 into the office, the first thing we would do would
7 be sit him down and advise him of his rights, his
8 Miranda warnings.

9 Q: And did you use any device to assist you in doing
10 that?

11 A: Yes. Investigator Gallimore had a form that we
12 used.

13 Q: All right. I'm showing State's Exhibit Number One.
14 I'll show it to you now. We'll put it on the screen
15 later, but I'll ask you if you can identify that.

16 A: Yes, sir. That's the form.

17 Q: All right. Now what use was made of this form
18 before speaking with Mr. Stone?

19 A: This form was read to him by Investigator Gallimore.

20 Q: In your presence?

21 A: In my presence, yes, sir.

22 Q: All right.

23 A: The date was placed at the top and the time. It has
24 0155. It's 1:55 in the morning. 2/27/96.

25 Q: All right. And would you go ahead and read the

1 contents of that form?

2 A: When we go to question somebody, we advise them of
3 these rights, and on this form number one is "That I
4 have a right to remain silent." Number two, "That
5 anything I say may be used in court against me."
6 Number three, "That I am entitled to talk to a
7 lawyer now and have him/her present now or at any
8 time during the questioning." Number four, "That I
9 cannot, that if I cannot afford a lawyer, one will
10 be appointed for me without cost by the court."
11 Number five, "That if I decide to answer any
12 questions now, that I may stop the questioning any
13 time I so choose or ask to speak with a lawyer at
14 any time during the questioning." Number six, "That
15 I understand each of these rights, and I'm willing
16 to answer questions at this time without having a
17 lawyer present."

18 Q: And after that was done, tell us what happened.

19 A: After this was done, we asked Bobby Wayne Stone if
20 he understood his rights. We asked him if he could
21 read and right, and he stated he could. We asked
22 him the highest grade that he had gone through in
23 school. He said the eleventh grade. He was given
24 the form then. He looked at it, and then he signed
25 his name here on the bottom. Bobby Wayne Stone. He

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1 put the time and the date, and then Investigator
2 Gallimore witnessed his signature, and I also
3 witnessed it.

4 Q: Did he speak with you after that?

5 A: Yes, sir, he did.

6 Q: During this time, from the time he came into your
7 presence throughout the interview and any statement
8 that he gave, did he appear to understand what you
9 were communicating to him?

10 A: Yes, sir, he did.

11 Q: Were you and Mr. Gallimore able to understand him?

12 A: Yes, sir, we were.

13 Q: Did he appear to be under the influence of alcohol
14 or drugs that impaired his ability so he couldn't
15 perform?

16 A: I smelled some type alcohol beverage on him, but he
17 was not under the influence. He was not
18 intoxicated.

19 Q: Was he ever promised anything by you or Mr.
20 Gallimore to speak?

21 A: No, sir.

22 Q: Was he ever threatened by you or Mr. Gallimore?

23 A: No, sir.

24 Q: Was, did you ever tell him what answers you wanted
25 him to give?

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1 A: No, sir.

2 Q: Tell us how you went about talking to him,
3 interviewing him.

4 A: Well, when we began, we asked him, we said if you
5 would, just tell us what you've done since you got
6 up yesterday morning. When we started talking to
7 him, it was the 27th, so we said if you would, just
8 tell us what you did from the time you got up on the
9 26th until you were captured.

10 Q: All right. And then how did you go ahead, and how
11 did the interview progress?

12 A: He started telling us what he'd done. He said he got
13 up that morning. He had smoked some marijuana.
14 Then he had gone and gotten some beer. I believe a
15 twelve-pack of beer. Then he had gone to Ward's old
16 store on Boulevard Road where he met a black male
17 named David, he did not know his last name, and that
18 David had a couple of guns he wanted to sell, a
19 chrome-plated shotgun and a twenty-two target
20 pistol. He got with David. They went out in the
21 woods. They, they shot the guns a number of times,
22 and later he was going to Ruth Griffith's house.
23 When he got there, there was a woman that ran him
24 off, told him to leave. He said he went back out in
25 the woods. Then later he came back to the house.

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1 He had the pistol. He had the shotgun with him. He
2 was on the back porch. He was banging on the door.
3 He heard a male's voice yell at him. He turned
4 around, and the gun fired. The gun fired one time.
5 After it fired, he ran into the woods.

6 Q: Now how long did you conduct the interview, and how
7 did you go about continuing to follow up with
8 questions?

9 A: We once he told that story, then we would ask
10 questions, and we would get him to tell the story
11 again, and this went on for approximately two hours,
12 and at that point it seemed like the story was not
13 changing, so we decided then to go ahead and do a
14 written statement.

15 Q: Was this two hours from beginning to end like 120
16 minutes, or were there any other breaks or
17 activities in there?

18 A: No, sir. He was allowed to he went to the
19 bathroom. He drank coffee. He freely smoked
20 cigarettes. He drank a coke at one point. It was
21 not a continuous questioning session.

22 Q: After you said the story ceased to change, how did
23 you go about taking a written statement?

24 A: Well, we asked Mr. Stone, said we would like to get
25 a statement from you, and what we decided to do

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1 would be ask him a question. When we asked that
2 question, we would write it on the paper as a
3 question, and then when he gave his answer, we would
4 write the answer on there verbatim. Question and
5 answer.

6 Q: All right.. And you did the question-and-answer
7 process?

8 A: Yes, sir.

9 Q: All right. After you had completed that, what did
10 you do? After you had completed asking him all the
11 questions you wanted to ask him.

12 A: After we had written all the questions on the form,
13 then we wrote all the answer. Joe Gallimore had
14 done the writing, and since he had done the writing,
15 I went back, and I read each question and answer to
16 him again.

17 Q: To who?

18 A: To Bobby Wayne Stone.

19 Q: All right.

20 A: And then after I had read the questions and answers
21 to him, Joe Gallimore took the form and went through
22 each question, and after each question, there was a
23 spot that we had him initial. Each question, each
24 answer. Then we had him initial each page, and then
25 once we completed it, and he could have made any

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1 changes that he wanted to, then we had him sign the
2 statement. I witnessed the statement. Investigator
3 Gallimore witnessed it, and SLED agent Gary Martin
4 was a notary public. He notarized it.

5 Q: After he was through making his statements, did he
6 make any oral statement to you?

7 A: Yes, he did. A couple times during the questioning,
8 after he would tell us what happened, he said I know
9 no one will believe this story.

10 Q: During the course of the examination, was he ever
11 asked to show you what he had done or the route he
12 had taken during this process?

13 A: Yes, sir. After we first questioned him, Joe
14 Gallimore drew a sketch of the area, this being
15 Taylor Street, this being 817 Taylor Street, and we
16 asked him if he would show us where he went after he
17 had fired the pistol, and we gave him a red ink pen,
18 and he drew the side porch, and that once he fired
19 the shot, that he had run behind the house, and the
20 red line indicates where he had gone into the woods.

21 Q: All right. And we'll put that on the screen as
22 well. That's State's Exhibit Number Two. This is
23 State's Exhibit Number Three. Can you tell the
24 members of the jury what that is?

25 A: This is the question-and-answer statement of Bobby

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1 Wayne Stone. One additional thing. After he marked
2 this in the red ink, he signed it in red, and then I
3 witnessed it, and Investigator Gallimore also
4 witnessed it.

5 **MR. SALEEBY:** Your Honor, we would like to put these
6 forms on the television.

7 **THE COURT:** That will be fine.

8 **MR. LITTLEJOHN:** Your Honor, could I see them? Approach
9 the bench?

10 **THE COURT:** Yes, sir. Come up.

11 (Off the record meeting at the bar)

12 Q: I want you to stand down here in front of the
13 television. I want you to speak up so the jurors
14 can hear you. This would be State's Exhibit Number
15 One. Tell the members of the jury what was on here.

16 A: This is the rights form that we use to advised Bobby
17 Wayne Stone of his rights.

18 Q: All right. You've read it into the record. What do
19 we have up here in the top right written in,
20 handwritten in?

21 A: 0155. That is the time, 1:55 a.m., and 2/27/96,
22 that's the date.

23 Q: All right. On the right-hand side, whose signature
24 is this?

25 A: That is Bobby Wayne Stone's signature with the time

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1 that he signed the form and also the date.

2 Q: And whose signature is here?

3 A: That is Investigator Joe Gallimore's signature.

4 Q: And here?

5 A: That is my signature.

6 Q: All right. Next thing we're going to put up is
7 State's Exhibit Number Two. Tell us what we're
8 looking at here, State's Exhibit Number Two, please
9 Mr. Herod.

10 A: That is a diagram that Investigator Gallimore drew
11 of the area. This is Taylor Street, and this would
12 be 817 Taylor Street.

13 Q: All right. And I see we have two different colors
14 on there. I want you to explain that again for us.

15 A: Joe Gallimore drew the drawings in black, and Bobby
16 Wayne Stone was given a red ink pen and asked to
17 draw on the diagram where he ran at when he fired
18 the shots.

19 Q: All right. And just show us what that is, please.

20 A: Bobby Wayne Stone took the red pen and this is the
21 side porch, and this is where he indicated that he
22 ran behind the house, and in red is where he ran
23 back into the woods off of Taylor Street.

24 Q: All right. Fine. You may take the stand, please.
25 We can move the television set.

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1 **MR. SALEEBY:** Your Honor, at this time we propose to
2 publish the statement, and to aid the jury in
3 following it, we propose to have a copy of it for
4 them to read along as Mr. Herod is reading.

5 **THE COURT:** All right. It is already admitted into
6 evidence as State's Exhibit Number Three, and that
7 original exhibit will go back all of these
8 original exhibits will go with you to the jury room,
9 but the state is going to give you a copy now just
10 so that you can follow along with Mr. Herod as the
11 statement is read. Those statements will be
12 collected from you as soon as Mr. Herod or as soon
13 as Mr. Herod's testimony is completed.

14 **MR. SALEEBY:** If you would, hand those out to the jury.

15 **THE COURT:** If you would, hand out one of those to each
16 juror, and we'll collect them back after Mr. Herod
17 is off the stand. All right. Thank you, Mr.
18 Saleeby. Please proceed.

19 **Q:** All right, Mr. Herod. We're talking about State's
20 Exhibit Number Three. I'm going to ask you to read
21 this, and so the jury will be reading along with
22 you. I want you to read this into the record, and
23 I'll ask you before I do, are we looking at an exact
24 copy of the State's Exhibit, and is this in fact the
25 document that you took from Bobby Wayne Stone on

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1 that evening?

2 A: Yes, sir, it is.

3 Q: And I have not asked you this. Would you please
4 identify that Bobby Wayne Stone for the jury.

5 A: I see him sitting at the table with the white shirt
6 and the glasses on.

7 Q: Please proceed, sir.

8 A: On this form at the top of it, it says statement.
9 Time, 0410. Date, 2/27/96. Place, Criminal
10 Investigations Division Office, Sumter County
11 Sheriff's Department, 107 East Hampton Avenue,
12 Sumter, South Carolina. "I, Bobby Wayne Stone, 247-
13 31-1905," that's social security number, "WM," is
14 white male, "9/1965," that's date of birth, "having
15 been advised of my rights under the Fifth Amendment
16 to the Constitution as to compulsory self-
17 incrimination, my right of counsel, and my right of
18 trial, and knowing that anything I say may be used
19 against me in a court of law, and knowing that I do
20 not have to make any statement at all, do hereby
21 volunteer the following to SA," that's special
22 agent, "Perry Herod, SLED, and Investigator Joe
23 Gallimore, Sumter County Sheriff's Department, who
24 have identified themselves as law enforcement
25 officers. 1Q," That would be first questions.

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1 "Bobby, earlier we advised you of your rights, and
2 you agreed to answer our questions without speaking
3 to a lawyer and without having a lawyer here, is
4 that correct?" Answer. "Yes." Second questions.
5 "Since here, have we allowed you to sit, smoke
6 cigarettes, drink coffee, and use the bathroom?"
7 Answer. "Yes, if it's okay, I'll fix me another cup
8 while we're talking." Question number three.
9 "Please tell me what all happened yesterday, Monday,
10 February 26, 1996." Answer. "Around 8:00 or 9:00
11 a.m., I was at the Ward store on Boulevard Road in
12 Sumter getting some cigarettes. While at Ward's I
13 met David, a tall, heavy-set, black male. His hair
14 is cut kind of short. David offered to sell me
15 three guns, a 410 shotgun, a 22 pistol, and 22
16 rifle. I don't really know him. I've just seen him
17 around a lot. We agreed to meet on Commander, a
18 dirt road off of Boulevard Road at 1:00 o'clock in
19 the afternoon. Before meeting David on Commander, I
20 had my sister drive me by Parton's Store where I
21 bought a half case, twelve, twelve-ounce cans of
22 Budweiser beer. Then my sister drove me over to
23 Commander and dropped me off. David was about
24 thirty minutes late. He drove up in a little, black
25 car. I think it was a Toyota. He had a black and

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1 silver 410 shotgun and 22 pistol, the kind that
2 takes a clip, the same pistol I had with me when I
3 was arrested. He only brought those two guns and
4 the shells for both. About ten for the shotgun and
5 two boxes of 22 shells. I don't know how many were
6 in a box though. We walked around in the woods
7 shooting birds and things for a couple of hours and
8 drinking beer, too. There should be some empty
9 shells out there. We agreed on a price of \$100 for
10 both guns. Anyway, around 4:00 o'clock in the
11 afternoon, we were over near Ruth's house in the
12 woods behind her house, and I decided to go say hi
13 to Ruth. She's a white woman about sixty to sixty-
14 five. Her maiden name is Griffith. We're old
15 drinking buddies. We'd gone out and got drunk
16 together a few times. David stayed in the woods
17 shooting the guns. He had both of them. As I
18 walked out of the woods and up to Ruth's house from
19 the back, some girl, white, about twenty-five to
20 thirty, heavysset with dark hair came from around the
21 side of the house and started raising cain at me
22 hollering for me to get off the property and
23 whatever else. I really didn't pay that much
24 attention to her. I just turned around and walked
25 back into the woods. I went back to David and paid

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1 him \$100 cash for the guns. He gave me the guns,
2 and he left. I stayed in the woods shooting the
3 guns and finished the last couple of beers out of my
4 twelve-pack. About dark I went back to Ruth's
5 house. I went up on that little screen-in side
6 porch. I think it's got two or three steps. Once I
7 got up on the screened inside porch, I started
8 beating on the door that leads into the house. The
9 door broke. Then I heard a man's voice calling at
10 me from somewhere outside the house. I had the
11 pistol in my right hand. I had set the shotgun down
12 on the porch leaning up against the corner next to
13 the door, I think. I turned all the way around to
14 the right so I was facing the screen door. The
15 porch was dark. There wasn't any lights on. As I
16 turned on the porch, the gun went off, and I ran,
17 and here we are." Fourth question. "Bobby, where
18 do you work?" Answer. "I'm a self-employed
19 mechanic." Number five. "Besides the twelve .
20 twelve-ounce cans of Budweiser that you got at
21 Parton's Store, did you have any other alcohol to
22 drink on Monday?" Answer. "No, sir." Questions
23 Six. "And you drank those twelve beers over a six-
24 hour period from about 1:00 to 7:00?" Answer.
25 "Yes." Questions seven. Question nine. "Did you

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1 use any marijuana, cocaine, or any other drugs
2 yesterday?" Answer. "I smoked a joint early Monday
3 morning around 10:00 o'clock or so." Question ten.
4 "Were you taking any prescription medications,
5 prescription medicines yesterday?" Answer. "No,
6 sir.," Question eleven. "What did you eat for
7 breakfast on Monday?" Answer. "Nothing, and I
8 didn't eat lunch either." Question twelve. "Where
9 did David steal the guns from?"

10 **MR. SALEEBY:** May we approach the bench for a moment?

11 **THE COURT:** Yes.

12 (Off the record meeting at the bar)

13 **THE COURT:** All right. Let's rather than just sit while
14 we __. There's a little problem in me deciding
15 matters of law. Ladies and gentlemen of the jury,
16 let me ask you to go to the jury room. Leave those
17 on your seats. Do not take them back with you.
18 Just leave them right there on your seats, and when
19 you can come back again, you can pick them back up,
20 so at this time do not, do not take them with you,
21 and don't discuss this case.

22 (Jury out at 2:42 p.m.)

23 **THE COURT:** All right. Return them to the courtroom,
24 please.

25 (Jury in at 2:45 p.m.)

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1 **THE COURT:** All of them are the same, ladies and
2 gentlemen, so it really doesn't matter where you
3 sit, and I know every chair should have one of the
4 copies of the statement.

5 **THE CLERK:** Your Honor, the jury is in.

6 **THE COURT:** All right. Thank you very much. All right,
7 ladies and gentlemen, we have resolved this legal
8 issue, and we're ready to go forward. Mr. Saleeby.

9 **MR. SALEEBY:** Mr. Herod, just back up a question or so,
10 and then proceed.

11
12 **MR. HEROD:** Yes, sir. I believe I was on question
13 twelve.

14 A: "Where did David steal the guns from?" Answer. "I
15 don't know. There's a lot of criminal activity goes
16 on around that store there. You pull up in a car,
17 they'll run out trying to sell you crack cocaine."
18 Questions thirteen. "So you knew that for only \$100
19 you had to be buying stolen guns?" Answer. "I knew
20 the guns had to be hot or stole. For that price
21 something's got to be wrong." Question fourteen.
22 "Bobby, you are a multi-convicted felon. You knew
23 that you are not allowed to own a firearm of any
24 kind. What were you doing buying these stolen guns
25 from David?" Answer. "I bought the shotgun because

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1 I like to hunt, and I bought the pistol because with
2 the long barrel, it was so accurate." Question
3 fifteen. So you were a pretty good shot with that
4 pistol?" Answer. "No, I bought it because it was
5 accurate. Yesterday was the first time I ever shot
6 a pistol." Questions sixteen. "Nonetheless, the
7 law says you can't own a gun." Answer. "I know
8 that, and I wish like hell I'd never went and bought
9 then." Questions seventeen. "This girl threw you
10 off that property. Why did you go back?" Answer.
11 "I didn't know she lived there." Question eighteen.
12 "The first time you went to Ruth's house at 4:00
13 o'clock, how many different doors did you knock on?"
14 Answer. "I didn't get to knock on any door. The
15 girl came out raising cain before I got to the
16 house." Question nineteen. "The second time you
17 went to Ruth's about 7:00 o'clock, how many doors
18 did you knock on?" Answer. "Just the one on the
19 side porch." Question twenty. "What did you say or
20 yell as you broke in that side door?" Answer. "I
21 didn't say anything. I was just beating on the
22 door, and nobody answered me. Then somebody started
23 yelling at me from the outside the house, and I
24 turned, and the pistol went off." Questions twenty-
25 one. "Why did you break in the door?" Answer. "I

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1 was just beating on it, and it broke. Maybe I hit
2 it too hard." Question twenty-two. "Were you
3 beating on a door of a house you'd been run off from
4 three hours ago?" Answer. "I went back to talk to
5 Ruth." Question twenty-three. "After having been
6 run off the property three hours before?" Answer.
7 "I didn't know the girl lived there." Question
8 twenty-four. "So why did you go back? To raise
9 some cain with the mouthy girl that ran you off
10 three hours before?" Answer. "No." Question
11 twenty-five. "When you fired the gun on the porch,
12 what were you shooting at?" Answer. "I just turned
13 from the house door, and the gun went off on the
14 porch, and I ran." Question twenty-six. "How many
15 times did you shoot at that deputy you killed?"
16 Answer. "I didn't think the gun went off but once,
17 and I never saw no deputy." Question twenty-seven.
18 "Are you saying you never saw any deputies or any
19 sheriff's cars in that yard?" Answer. "I never saw
20 no cops or any cop cars." Question twenty-eight.
21 "Why did you shot at that second deputy as he was
22 trying to help his wounded partner while you were
23 running away?" Answer. "I did not... I never saw
24 anybody." Question twenty-nine. "Did you fire
25 another shot after you ran off that screened-in

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1 porch?" Answer. "No, sir, I did not." Question
2 thirty. "After you left the porch, did the pistol
3 ever go off again?" Answer. "No, sir." Question
4 thirty-one. "You recall hiding near the edge of the
5 woods, the area was surrounded by fifty cop cars,
6 the bloodhounds and a SWAT team were chasing you
7 through the woods, and the helicopter was hovering
8 over you. What did you think was going on?"

9 Answer. "I didn't know." Question thirty-two.

10 "How do you think the deputy got shot?" Answer. "I
11 don't know." Question thirty-three. "With all this
12 police activity going on, why didn't you just walk
13 out of the woods with your hands up?" Answer. "I
14 didn't think about it." Question thirty-four.

15 "Bobby, I've written this out, our questions as Qs
16 and yours answer As verbatim. We're going to read
17 it to you. Then you have to read it yourself and
18 initial after each question and answer on the lines
19 I drew for it, and sign each page. Okay?" Answer.
20 "Okay." And at the top of that page is question
21 thirty five. "After you ran off Ruth's porch, you
22 ran around through the woods in the dark like on the
23 diagram you did and signed." Answer. "Yes, sir."
24 Question thirty-six. "What about the deputy's
25 flashlight that he shown on you while you were on

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1 Ruth's porch?" Answer.. "Nobody shined no
2 flashlight on me. I never saw nobody or no
3 flashlight, no, sir." I, Bobby Wayne Stone, have
4 read this eight-page statement. I have initialed
5 after each question and each answer and signed each
6 page. I swear under oath that this statement is
7 true and correct to the best of my knowledge,
8 recollections and beliefs so help me God. Signed by
9 Bobby Wayne Stone, witnessed by investigator Joe
10 Galimore, SLED agent Perry Herod, sworn and
11 subscribed to before me this 27th day of February
12 1996, Gary L. Martin, Notary Public for South
13 Carolina. My commission expires 8/19/2004.

14 Q: Mr. Herod would this be Gary Martin?

15 A: Yes, sir, it is.

16 Q: All right. And did you and the other law
17 enforcement agencies make diligent effort to try to
18 location this person David?

19 A: Yes, sir, we did.

20 Q: And did you locate any David?

21 A: Not to my knowledge, no, sir.

22 Q: All right. Thank you, sir. Please answer any
23 questions counsel has for you.

24 **THE COURT:** Mr. Littlejohn?

25 **MR. LITTLEJOHN:** Thank you, Your Honor.

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MR. HEROD - EXAMINATION BY MR. LITTLEJOHN:

Q: Good afternoon, Mr. Herod.

A: Good afternoon.

Q: Mr. Herod, you described to the jury when you initially got the call concerning Deputy Kubala being shot?

A: Yes, sir.

Q: Do you remember what time that was?

A: I don't recall. It was sometime before 8:00 o'clock.

Q: Okay. And you recall that, as best it could be pieced together, the shooting occurred right around 7:00 o'clock?

A: Some few minuets after 7:00.

Q: A few minutes after 7:00 p.m.?

A: Yes, sir.

Q: Then you were called to the Sumter County Law Enforcement Center to meet with other officers, your supervisor, and to interview Bobby Wayne Stone?

A: Well, after he was captured in the woods, he was being taken up there, so we, we went there to determine what the next step was.

Q: Okay. And then ended up you and Investigator Gallimore were the interviewing officers?

A: Yes, sir.

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1 Q: Okay. Now when you began the interview, is the
2 first thing you did you instructed Bobby Wayne about
3 the Miranda Rights, is that right?

4 A: Yes, sir.

5 Q: And those are the warnings that were upon the screen
6 that are contained in State's Exhibit Number One?

7 A: Yes, sir.

8 Q: And I believe if you do you have those
9 documents in front of you?

10 A: No, sir, I don't have.

11 Q: Let me show you a copy. That would indicate that
12 this document was executed at 1:55 a.m.?

13 A: Yes, sir.

14 Q: And that's on February 27th, 1996?

15 A: Yes, sir.

16 Q: Okay. That would have been approximately, give or
17 take a few minutes, seven hours after the shooting,
18 is that right?

19 A: Yes, sir.

20 Q: Now at that time, you had an opportunity to observe
21 Bobby Wayne Stone, did you not?

22 A: Yes, sir, I did..

23 Q: Okay. What was his physical appearance?

24 A: He was rough looking.

25 Q: Rough looking?

1 A: Yes, sir.

2 Q: He had scratches on him?

3 A: He had some, some scratches. I believe there was
4 some blood on the left side of his face and the
5 right side of his face, and there was a, a bruise on
6 his chest.

7 Q: Okay. And I believe that was from Agent Powell's
8 foot? .

9 A: Yes, sir.

10 Q: Did you detect an odor of alcohol about him at that
11 time?

12 A: Yes, sir. I smelled some type alcohol beverage on
13 him.

14 Q: Okay. At that time did he appear to be under the
15 influence?

16 A: No, sir, he did not.

17 Q: Did he appear to be slightly under the influence
18 perhaps?

19 A: No, sir. He appeared tired, but you know, based on
20 my experience, I did not think he was under the
21 influence.

22 Q: Okay. But you did smell alcoholic beverages on his
23 person?

24 A: Yes, sir.

25 Q: All right. Did you do any kind of sobriety test?

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1 A: No, sir.

2 Q: Was a blood sample taken or urine sample taken to
3 see what his BA level was?

4 A: No, sir, not that I know of.

5 Q: Now you told him what his rights were as a person
6 who was under arrest as contained in State's Exhibit
7 Number One, correct?

8 A: Yes, sir.

9 Q: You advised him of those rights?

10 A: Yes, we did.

11 Q: And he agreed to waive his rights and speak with
12 you?

13 A: Yes, sir, he did.

14 Q: And you told him he didn't have to talk to you?

15 A: That's correct.

16 Q: You told him he could have a lawyer present?

17 A: That's correct.

18 Q: You told him he could stop answering questions at
19 any time?

20 A: That's correct.

21 Q: And he agreed to talk to you nevertheless?

22 A: Yes, sir, he did.

23 Q: Okay. And so then you began what apparently was a
24 pretty lengthy process of interviewing him about the
25 events of the preceding day, is that right?

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1 A: Yes, sir.

2 Q: And he told you what you have written in here in
3 State's Exhibit Three, the long statement?

4 A: He told us his side of the story.

5 Q: Okay. And he told you what happened from that
6 morning until the time he had been arrested, did he
7 not?

8 A: Yes, sir.

9 Q: And he had been told at any time he could stop
10 talking to you?

11 A: Yes, sir.

12 Q: He could have asked for a lawyer at any time?

13 A: He could have.

14 Q: But he kept on talking to you?

15 A: He kept talking.

16 Q: Okay. And you all took some time. I believe this
17 statement, State's Exhibit Number Three, has a time
18 on it of 4:10 a.m., is that right?

19 A: Yes, sir.

20 Q: Okay. So he from the time that you gave him
21 the Miranda Warnings at 1:55 until 4:10 a.m. when
22 this was finally completed, he'd been talking to you
23 the whole time, hadn't he?

24 A: Not the whole time. It was not a continuous
25 interview.

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1 Q: Uh-huh.

2 A: It would be that we would ask him what happened, and
3 he would talk to us, and then when he finished, then
4 we would ask him some questions, and we would say,
5 well, tell us what happened again, and then he would
6 go through it and maybe add a few more details.

7 Q: Okay. Let me rephrase my question. During that
8 period of time, he never refused to talk to you?

9 A: He never refused to talk to us.

10 Q: Okay. And he told you what his side of what
11 happened was?

12 A: He answered our questions.

13 Q: Okay. And he said he didn't think that you were
14 going to believe him?

15 A: He said that several times. He said I don't, he
16 said I don't think anybody will believe the story.

17 Q: Okay. And this was after he had been arrested by
18 the SLED agents and handcuffed, put in the van,
19 brought to the Law Enforcement Center?

20 A: Yes, sir.

21 Q: And I would imagine emotions were running pretty
22 high that night among the law enforcement community?

23 A: Oh, yes, sir, they were.

24 **MR. LITTLEJOHN:** If you would indulge me just a moment,
25 Your Honor?

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

2 **Q:** Mr. Herod, just one final thing. During the course
3 of the evening, do you recall Bobby Wayne Stone
4 telling you that he had fallen in the woods?

5 **A:** I remember him saying that he tripped in the woods,
6 yes.

7 **Q:** Tripped over a log and fell in the woods?

8 **A:** Yes.

9 **MR. LITTLEJOHN:** That's all I have.

10 **THE COURT:** Re-direct?

11 **MR. SALEEBY:** We don't have any re-direct. You can come
12 down, sir.

13 **THE COURT:** All right. Mr. Herod, thank you very much.
14 You may step down.

15 **MR. SALEEBY:** We would call Joe Sexton to the stand.

16 **THE COURT:** All right. Dr. Sexton, come around, please.

17
18 **THE CLERK:** Do you solemnly swear or affirm the
19 testimony that you give this court will be the
20 truth, the whole truth, and nothing but the truth so
21 help you God?

22 **MR. HOBBS:** I do.

23 **THE CLERK:** Have a seat up here, please, sir..

24 **MR. DANIEL BETHEA,** being duly sworn testifies as follows:

25 **MR. BETHEA - DIRECT EXAMINATION BY MR. SALEEBY:**

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1 **THE CLERK:** State your full name, and spell your last
2 name.
3 **MR. BETHEA:** Daniel Mark Bethea, B-E-T-H-E-A.
4 **THE CLERK:** Put your left hand on the Bible, raise your
5 right hand, and state your name, please, sir.
6 **DR. SEXTON:** Dr. Joel Steven Sexton.
7 **THE CLERK:** Do you solemnly swear or affirm the
8 testimony that you give this court will be the
9 truth, the whole truth, and nothing but the truth so
10 help you God?
11 **DR. SEXTON:** I do
12 **THE CLERK:** Have a seat up here, please, sir.
13 **DR. JOEL STEVEN SEXTON,** being duly sworn testifies as
14 follows:
15 **DR. SEXTON - DIRECT EXAMINATION BY MR. SALEEBY:**
16 **THE COURT:** Mr. Saleeby, before you start that, ladies
17 and gentlemen of the jury, I'm going to ask if all
18 of you would take those statements and pass them
19 down to your left to the end, and Mr. Saleeby will
20 collect them down at that end.
21 **THE COURT:** State your full name, and spell your last
22 name, please, sir.
23 **DR. SEXTON:** **DR. SEXTON:** Dr. Joel Steven Sexton, and
24 that's S-E-X-T-O-N.
25 **Q:** Dr. Sexton, please tell us where you live.

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1 A: In Newberry, South Carolina.

2 Q: How long have you lived there?

3 A: Since 1983.

4 Q: And what type of business or profession are you in
5 there?

6 A: I'm a physician with specialization in pathology and
7 sub-specialization in forensic pathology.

8 Q: I would like you to tell the members of the jury
9 what your background and training is as a medical
10 doctor, and then let's talk about pathology, and
11 then let's talk about forensic pathology.

12 A: I graduated from the University of Virginia in
13 Charlottesville, and then was a line officer in the
14 Navy for three years cause I was on a Naval
15 scholarship. Then I attended the then Medical
16 College of South Carolina receiving a master's in
17 chemistry. I later went on to the Medical
18 University of South Carolina which is the same
19 school, but it became a university, graduating in
20 1968 with an MD degree and becoming licensed to
21 practice in this state. And then further study in
22 the field of pathology at the Medical University,
23 and in 1972 became nationally board certified in
24 anatomic pathology, clinical pathology, and forensic
25 pathology. Then I became a faculty member at the

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1 Medical University and was in charge of the forensic
2 pathology section of the department of pathology and
3 was a consulting forensic pathology for all forty-
4 six of the country coroners of the state. We did
5 approximately 600 cases a year at that time from
6 various counties across the state, either myself or
7 someone in my department, and so I reviewed all
8 those cases. And then in 1983 then I moved to
9 Newberry to become the director of pathology at the
10 Newberry County Memorial Hospital where we do
11 surgical pathology, and in addition, a consulting
12 pathologist for approximately thirty of the county
13 coroners in the upper part of the state, when we do
14 about 850 cases a year currently.

15 **MR. SALEEBY:** Your Honor, we would submit to the court
16 that Dr. Sexton be well qualified to testify as in
17 his specialty of forensic pathology.

18 **THE COURT:** Voir dire with regard to qualifications, Mr.
19 Littlejohn?

20 **MR. LITTLEJOHN:** No, Your Honor. We accept Dr. Sexton's
21

22 **THE COURT:** All right. Qualify Dr. Sexton as an expert
23 in the field of forensic pathology. Ladies and
24 gentlemen of the jury, let me tell you what that
25 means. Ordinarily a witness who is not testifying

1 as an expert is limited in their testimony to those
2 things that are within the perception of the
3 witness, that is within one of the five senses.
4 They can hear, see, touch, smell, one of those type
5 things, and they are normally not allowed to give
6 opinions. However, a witness, well, if scientific,
7 technical, or other specialized knowledge will
8 assist the trier of fact, and that's you in this
9 case, to understand the evidence or to determine a
10 fact in issue, a witness qualified as an expert by
11 knowledge, skill, experience, training, or education
12 may testify in the form of an opinion. So basically
13 the difference between a non-expert witness and an
14 expert witness is that an expert witness is allowed
15 to give an opinion whereas a non-expert witness is
16 not. You may proceed.

17 **MR. SALEEBY:** Thank you, sir.

18 **Q:** Dr. Sexton, if you could help us in using layman's
19 terms as much as possible, first tell the members of
20 the jury what the field of pathology entails.

21 **A:** A pathologist, as I mentioned, is a physician, but
22 we do not, as pathologists, treat patients or
23 examine patients. We examine the tissue removed
24 from patients if surgery is performed to look at it
25 under a microscope and determine whether cancer is

1 present or some other condition and advise the
2 physician who's treating that patient, usually a
3 surgeon, as to what we found so they can best treat
4 the individual patient. Pathologists also supervise
5 the laboratory where urine, blood, spinal fluids,
6 and other fluids are examined through
7 instrumentation. The technologists that do these
8 tests we guarantee by supervising the technologist
9 and having quality control measures that the tests
10 are accurate, and then we help interpret those tests
11 for your physicians. Those are the fields of
12 anatomic pathology and clinical pathology. In
13 addition, in anatomic pathology, we examine people
14 dying in the hospital setting to learn more about
15 their particular illness and disease and why it
16 caused their death and why it caused certain
17 symptoms that they may have had to help the family
18 understand more about what happened and the
19 physician understand better how to treat that
20 condition in the future. Forensic pathologists have
21 the same training, but have additional training in
22 recognizing various types of trauma on the body or
23 other conditions that might cause sudden or
24 unexpected death so as to be able to interpret it
25 correctly to determine not only the cause of death,

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1 but the circumstances surrounding the death.

2 There's how did the person receive the particular
3 injury. Were they shot in the back or shot in the
4 front. Were they stabbed or were they cut with some
5 other type of instrument. Were they standing when
6 they were hit by a vehicle or were they lying in the
7 road unconscious or maybe dead from another vehicle
8 striking them, so these are all areas that forensic
9 pathologists have specialized training in and are
10 able to interpret and give opinions on.

11 Q: I would like you to tell us generically, and then
12 I'll ask you specifically, but generically how you
13 go about performing an autopsy on the body a
14 deceased person.

15 A: We ask that the body be brought just as it's found
16 once it's pronounced dead, and we examine the
17 external surface taking photographs and doing charts
18 and tables to know what we saw there so we can refer
19 back to it later. Then we unclothe the body looking
20 for any evidence or injuries, and then we re-
21 photograph the body once we've cleaned up the areas
22 or in some cases photograph it before we clean it up
23 because there's evidence there. Then we do a
24 complete internal examination collecting fluids and
25 other specimens that can be analyzed by the

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1 toxicology laboratory as well as examining tissue
2 under the microscope when needed to evaluate any
3 sort of illness or disease. We then prepare a
4 written report as well as a verbal report to the
5 coroner who is the person that requests us to do the
6 autopsies.

7 Q: On February the 27th of 1996, did you have the
8 occasion to conduct an autopsy on the body of
9 Charlie Kubala?

10 A: Yes, I did.

11 Q: During the conduct of that autopsy, was a SLED agent
12 by the name of LaRosa present?

13 A: Yes, he was present.

14 Q: Did he during the course of or after examination
15 collect certain things and transmit them to SLED?

16 A: He did. After we finished the autopsy, all of the
17 evidentiary material, the various fluids that we had
18 collected, that bullets that we had collected, the
19 procedure he had done on the hands which was to
20 check for residue when he had.

21 Q: Is that a gunshot residue test?

22 A: That's correct.

23 Q: He did that? You didn't do that?

24 A: That's correct. He did that. So we didn't have to
25 transfer that, but all the other evidence that was

1 there, including the external clothing, was
2 transferred to Paul DeRosa of SLED.

3 Q: All right. And I would ask you how Sgt. Kubala was
4 dressed when he came to you?

5 A: At the time we saw him, he had already been worked
6 on initially, and he only had on white jockey
7 undershorts and his bulletproof vest. His shirt and
8 t-shirt came with him, but were not on him at the
9 time.

10 Q: And his vest would have covered what part of his
11 body, if you recall?

12 A: A vest normally covers, and in his case covered the
13 chest and abdomen as well as the back. It does not
14 cover, and his did not cover, the neck area or the
15 axillary areas, your armpits on each side.

16 Q: How many wounds did you observe when you examined
17 him externally?

18 A: There were two wounds, two gunshot wounds present.

19 Q: And did you designate the wounds so you could
20 testify about them later? How did you do that?

21 A: I did. We normally number them from the top of the
22 body towards the feet on the front, and then on the
23 back, if there's some on the back. In this case
24 there were two, so the one in the right ear area was
25 labeled number one. The one in the right neck was

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1 labeled number two arbitrarily, not to indicate the
2 sequence in which they were fired, just arbitrarily
3 so we could identify them.

4 Q: Did you measure his height or his length and his
5 weight?

6 A: I did. We measured his length which generally
7 corresponds well with height, although it doesn't
8 include shoes obviously, the thickness of shoes, and
9 his length was 5' 8". We estimated his weight at 190
10 pounds.

11 Q: You designated two gunshot wounds. Did you see any
12 other signs of external trauma?

13 A: There were a few scrapes on his lower right leg in
14 my recollection. Right. The anterior aspect of the
15 right lower leg were some scrapes.

16 Q: All right. I'd like you to talk about the gunshot
17 wound that you designated number one, the one to the
18 right ear.

19 A: The one to the right ear first passed through the
20 little curved part of your ear that's here on the
21 inner aspect of the ear. It passed through that
22 going downward and then entered the ear itself. It
23 then passed out under the ear hitting what we call
24 the mastoid process which is the part of the head
25 right behind your ear, and then started separating.

1 In other words, it made a groove in the mastoid
2 process with some of the bullet staying there. Some
3 separated and went down and hit the body here on the
4 right side of the neck. So it's going down slightly
5 to the rear, slightly to the left.

6 Q: And could you tell us whether or not this bullet
7 would have been incapacitating and/or fatal?

8 A: It could have been both. In my opinion it would
9 have at least been incapacitating for two reasons.
10 As I mentioned, it made a groove in the part of the
11 skull here at the base of the skull. Anybody that
12 follows boxing, it's where the rabbit punches are
13 illegal because you get hit in the back of the head,
14 it's right next to the medulla which is the part of
15 the brain that keeps your heart and lungs going, and
16 with enough force there, it can kill you just from
17 the impact. The other is the fact that it hit the
18 fourth (inaudible) body which is in the neck, and
19 the impact on that area can cause spinal shock which
20 means trauma to the spinal cord, and therefore,
21 cessation of heartbeat and respiration.

22 Q: Did you find any gun power around this wound?

23 A: Did not. When a gun is fired and they test it at
24 SLED at various distances, it's apparent that not
25 only the bullet comes out, if you're ever seen a gun

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1 fired at night, flames come out. Soot comes out.
2 that billows out for about eight or ten inches, and
3 powder grains will sometimes travel up to two feet
4 in the case of a small caliber gun like this which
5 was a 22 caliber, and each of these can cause
6 changes on the skin. If the gun's right against the
7 skin, the flames can actually burn the skin. If
8 it's a little further away, the soot can cause a
9 deposit of soot there that can be wiped away as well
10 as powder grains penetrate the skin and cause a
11 tattoo that requires surgery to remove. None of
12 this was present indicating either something was
13 between the decedent and the gun when it was fired,
14 or it was greater than at least a foot and a half to
15 two feet between the ear and the muzzle of the gun.

16 Q: And beyond, beyond what you're saying is beyond
17 eighteen inches to two feet, you have no idea what
18 distance it was, is that correct?

19 A: Yes, that's correct.

20 Q: Tell us about the second gunshot wound.

21 A: The second wound was below the first. It was on the
22 bottom of the neck. On the right side in the front
23 in where the bullet actually penetrated. There was
24 a graze that was on the top of the shoulder and a
25 bruise on the side of the neck indicating that the

1 shoulder was up against the neck when the bullet
2 came through, so it grazed the top of the shoulder
3 before it entered the neck here. It also bruised or
4 just barely grazed the neck, so his shoulder was up
5 like this at the time that bullet came through. It
6 went through the upper part of the neck striking
7 what we call the carotid artery which is the main
8 artery to your brain on the right side. It passed
9 on through behind the aorta and hit the left lung
10 and then passed out and was found in the back here
11 high on the left side, so it's passing downward to
12 the left and to the rear through the carotid artery
13 and the left lung, and it caused bleeding in to the
14 left chest. Approximately a quart and a cup full of
15 blood, what we refer to as 1,250 CCs of blood. A
16 quart's about a thousand which is about the same as
17 a liter, and 250 is about what you have in a cup, so
18 it was, it was about two and a half pints of blood.

19 Q: Would this wound have been fatal?

20 A: It could have because there could have been bleeding
21 externally since it went through the carotid artery
22 which is close to the surface. The reason I say it
23 could have is it generally takes thirty percent of
24 your blood loss acutely for you to bleed to death,
25 and that's generally about 1,500 CCs, so it's

1 slightly less than that, but yes, in my opinion it
2 was indeed a fatal wound.

3 Q: All right. I will ask you if what your opinion is
4 as to the cause of death of Sgt. Kubala.

5 A: In my opinion it was the two gunshot wounds. As I
6 mentioned, the impact on the skull by itself would
7 have been enough and could have been fatal. I
8 cannot say yes or no in that regard because some
9 people do survive gunshot wounds to the head, but it
10 certainly was in an area where it was likely to have
11 been fatal as well as the one that passed through
12 his chest caused enough bleeding, in my opinion, it
13 also was fatal, so I'm saying the two wounds
14 together certainly would have been the cause of
15 death.

16 Q: Would these two wounds have been fairly immediately
17 incapacitating, loss of motor function?

18 A: Not the one in the neck because that's a matter of
19 blood loss, and it takes a matter of minutes. The
20 one to the head in my opinion would have most likely
21 rendered him unconscious immediately, and he
22 probably would not have survived either from the
23 gunshot wound of the chest causing enough bleeding
24 or the impact of the wound on the head by itself.

25 Q: Did you recover a projectile from gunshot wound

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1 number one, the shot to the ear?

2 A: Yes, I did.

3 Q: Now I'm going to show you, and did you also collect
4 a projectile from the wound to the neck that passed
5 through the carotid artery?

6 A: Yes, I did.

7 Q: I'm going to show you two exhibits, State's Number
8 Seventeen and Eighteen and ask you if you can
9 identify them.

10 A: This is a vial that has my initials on it. It's
11 Exhibit Number Eighteen. Inside are three portions
12 of lead bullet. All three have copper-colored
13 electroplating on the surface, and they match the
14 photographs that I took of both sides of the bullet
15 at the time of autopsy.

16 Q: And this is State's Exhibit Number?

17 A: That's the gunshot wound to the head.

18 Q: Number Eighteen, and this is what you recovered from
19 Sgt. Kubala's head?

20 A: Yes, that's correct.

21 Q: If you would, now go to State's Exhibit Eighteen.
22 I'm sorry. That was Eighteen.

23 A: That was Eighteen.

24 Q: Seventeen.

25 A: State's Exhibit Seventeen also is labeled

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1 appropriately and has my initials on it. The bullet
2 is a 22 long rifle bullet that has electroplating on
3 the surface, a copper color on the surface. It
4 matches the details on the photographs that I took
5 which are blown up that show the deformity that
6 occurred as it went into the head, I'm sorry, as it
7 went into the chest. I passed through a rib as it
8 exited the chest, and that's what caused some of the
9 deformity on it.

10 Q: And where did you retrieve this projectile from?

11 A: It was in the left back between the shoulder blade
12 and the skin.

13 Q: Dr. Sexton, if you can, if you'll just stay right
14 where you are, if you could use me to demonstrate
15 the relative proximity of the weapon to the wounds
16 on Sgt. Kubala and show the path they followed.

17 A: The path was from the right to the left, so Sgt.
18 Kubala would have had to have had his right side
19 facing the gun, so approximately the way you are
20 there, maybe slightly facing quite more of that way,
21 and as far as the one on the side of his head, he
22 would probably have to be bent forward some because,
23 unless the person was on a higher level, because the
24 bullet's passing down.

25 Q: Would the weapon have been on the higher level?

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1 A: The weapon would have been on a higher level. In
2 other words, it would have if I can stand up a
3 moment?

4 Q: Please do.

5 A: It would pass downward in this fashion entering here
6 and going on down and stopping right about there, so
7 the gun is somewhere in this direction, above and to
8 the right, or Sgt. Kubala was bent further forward
9 so that the either way, the gun has to be at
10 this angle. The bullet is coming down at this
11 angle, and that's the ...

12 Q: What about the second shot?

13 A: The second shot goes in the neck is similar
14 downward, but it's going more toward the left side
15 of Sgt. Kubala, so it's more like this, and again,
16 with his head turned toward the shoulder, his
17 shoulder would have lifted up so it actually touches
18 both before it enters.

19 Q: These would be above and to the right?

20 A: Above and to the right. Both would be above.

21 Q: All right. I'm going to ask you, if you can, to use
22 this diagram to give us something that the State,
23 after you've gone, to show us the path of these
24 bullets. Dr. Sexton, this is State's Exhibit number
25 Eighty-six, and can you use it to indicate the two

1 gunshot wounds?

2 A: Yes. Number one enters here on the ear, first going
3 through the head to the tracheas, and then on into
4 the ear, and then passes downward in this fashion,
5 and a portion of it hits the spine right about
6 there. Another portion stops here. There was a
7 little tiny piece in between, so the path is
8 downward, slightly to the rear, and slightly to the
9 left having entered the right ear, and this is yes,
10 definitely number one according to the diagram.
11 Like I say, it's an arbitrary designation.

12 Q: And it

13 A: It enters the ear and passes downward in this
14 fashion.

15 Q: And I realize this is one-dimensional, but you
16 indicated when you used me, that the weapon was
17 somewhere up and above?

18 A: That's correct. Coming down this way.

19 Q: All right.

20 A: And the head can be moved, but in this case it could
21 be moved a lot and still pass downward because the
22 path continues on for a distance. If you bend the
23 head too far forward, it's not going to get where it
24 did, but certainly you can bend your head and allow
25 that path that's coming downward here, If you bend

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1 your head like this, a person doesn't have to be as
2 high above the deceased when he was shot. Here on
3 this diagram it goes through an edge of his ear,
4 enters the ear, passes downward and a portion of it
5 lodges here behind the ear. Another portion hits
6 the spine at this point. And then ... slightly to
7 the left downward, slightly to the rear, and that is
8 number one.

9 Q: Why don't we use the blue pen to do number two, or
10 another color would make it easier.

11 A: All right. This second wound enters here on the
12 neck at approximately this point, having grazed the
13 top of the shoulder and having bruised the neck up
14 here indicating that they were like this so that
15 they were touching each other or nearly touching at
16 the time the bullet went in. The bullet passes to
17 the rear and ends up right about here, so it passes
18 in this fashion going through the top of the lung
19 and the carotid, the carotid artery is right in this
20 location. The lung is in this location of meeting
21 in here and ending up here behind the scapula which
22 we referred to as the shoulder blade. This is GSW
23 Number Two. On this drawing you see the same thing.
24 It enters here. There was bruising here and some
25 scraping of skin there. Ends up about at this

1 location behind the shoulder blade. Again, this is
2 GSW Number Two.

3 Q: All right. So this projectile that you recovered
4 which was which Exhibit, Seventeen or Eighteen? I
5 think it was Seventeen?

6 A: It's Exhibit number Seventeen. Number two is
7 Seventeen.

8 Q: Would you put a circle on this and put seventeen in
9 it?

10 A: And this other one

11 Q: Thank you, sir. You can be seated.

12 MR. SALEEBY: Your Honor, I believe this was already
13 admitted prior to the Doctor

14 THE COURT: Yes, sir. It has been admitted, I believe,
15 I don't remember the number, but you might just put
16 it on the record.

17 MR. SALEEBY: State's Exhibit Number Eight-six.

18 THE COURT: All right.

19 MR. SALEEBY: Thank you, Dr. Sexton, and please answer
20 any questions counsel may have for you.

21 THE COURT: All right. Cross examination, Mr.
22 Littlejohn or Mr. Babb?

23 DR. SEXTON - CROSS EXAMINATION BY MR. LITTLEJOHN:

24 Q: Good afternoon, Dr. Sexton.

25 A: Good afternoon.

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1 Q: Very briefly, sir. Using State's Exhibit Number
2 Eight-six, and my question is very brief. The
3 bullet represented by your S-17 there, was that
4 bullet pretty much intact?

5 A: At least one side of it was fairly well intact. I'm
6 not sure it was intact enough to make a comparison
7 because I don't do that, but there were visible ends
8 and grooves on that side. The other side was very
9 badly damaged.

10 Q: My question was it split up?

11 A: No, it was, it was an intact bullet. I see what
12 you're saying.

13 Q: It was an intact bullet.

14 A: The one in the head, it split in three parts. The
15 one in the chest appeared to be all of the bullet.
16 There may be a tiny bit missing, but it was nearly
17 all the bullet.

18 Q: But that indicates that it did not, it did not hit
19 anything that would cause it to split up?

20 A: Correct. It did go through a rib, and that's why it
21 was damaged on one side, but it did not split into
22 pieces or anything.

23 Q: Very good. Thank you, Dr. Sexton.

24 A: You're welcome.

25 MR. SALEEBY: Your Honor, we have no more questions. We

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1 would ask if he could be excused.

2 **THE COURT:** Any objection?

3 **MR. LITTLEJOHN:** No objection.

4 **THE COURT:** All right. You are excused, Dr. Sexton.

5 Thank you for coming.

6 **DR. SEXTON:** Thank you, Your Honor.

7 **MR. SALEEBY:** Ray Mackessy.

8 **THE CLERK:** Place your left hand on the Bible. Raise
9 your right hand and state your name, please.

10 **MR. MACKESSY:** Raymond Mackessy.

11 **THE CLERK:** Do you solemnly swear or affirm the
12 testimony you give this court is the truth, the
13 whole truth, and nothing but the truth so help you
14 God?

15 **MR. MACKESSY:** I do.

16 **THE CLERK:** Have a seat.

17 **MR. RAYMOND MACKESSY,** being duly sworn testifies as
18 follows:

19 **MR. MACKESSY - DIRECT EXAMINATION BY MR. SALEEBY:**

20 **THE CLERK:** State your full name and spell your last
21 name.

22 **MR. MACKESSY:** Raymond Mackessey, M-A-C-K-E-S-S-Y.

23 **Q:** Mr. Mackessy, where do you live?

24 **A:** I live in Dalzell, South Carolina

25 **Q:** How long have you lived in Sumter County?

1 A: Nineteen years. A little over nineteen years.

2 Q: Who do you work with?

3 A: Sumter County Sheriff's Department.

4 Q: How long?

5 A: Nineteen years.

6 Q: What type of work do you do for the sheriff's
7 department?

8 A: I'm a crime scene investigator.

9 Q: How long have you been doing that?

10 A: I took over the crime scene work when I came into
11 investigations on a sort of part-time basis. I was
12 working cases also, so that was in 1987. In 1991 I
13 more or less took over full time crime scene
14 processing for the sheriff's department.

15 Q: So you've been doing this for fifteen years,
16 fourteen years?

17 A: For the sheriff's department here. I was, I have
18 prior law enforcement experience.

19 Q: Go ahead and tell us about that.

20 A: Okay. I was prior to moving to South Carolina,
21 I was with the Baltimore Police Department for
22 fifteen years. The latter part of that time I
23 received training in crime scene processing, latent
24 print development, photography, and I did the crime
25 scene processing for Baltimore Police Department in

1 the last three years that I was with Baltimore.

2 Q: Three years in Baltimore and what, fourteen years
3 full time here?

4 A: In crime scene processing, yes.

5 Q: Crime scene processing. Tell us other than what you
6 do on the job, tell us what kind of training you had
7 in crime scene processing.

8 A: In crime scene processing, the training in
9 Baltimore, like I say, was provided by the Baltimore
10 Police Department and the FBI where I received
11 latent print development training, photography,
12 crime scene processing training with them. After
13 moving here and joining the sheriff's department in
14 Sumter, I've received training from the Criminal
15 Justice Academy, the State Law Enforcement Division,
16 and the FBI.

17 MR. SALEEBY: Your Honor, we would submit that Mr.
18 Mackessy would be qualified to testify as an expert
19 in the field of crime scene processing.

20 THE COURT: Voir dire with regard to qualifications, Mr.
21 Littlejohn?

22 MR. LITTLEJOHN: No, Your Honor.

23 THE COURT: All right. The court will qualify Mr.
24 Mackessy as an expert in the field of crime scene
25 investigation. You will recall again, ladies and

gentlemen, that when a witness has been qualified by the court as an expert in a certain field, a witness may give testimony regarding his opinion based on his facts and the things that he has come to know about the particular matter he's testifying about. Mr. Saleeby.

Q: Mr. Mackessy, would it be fair to say that you were doing this long before it became popularized on TV?

A: Yes, sir.

Q: And could you tell us what you do or what crime scene processing means in the real world as opposed to the TV world?

A: Crime scene processing basically is, is telling a story. You do the documentation through photography, sketching, measuring and sketching, collection of evidence, the processing of evidence either at the scene or at another location, but basically it's, it's trying to put together a picture of what a crime scene looked like at the time I was there, at the time the crime occurred or shortly after.

Q: On February the 26th of 1996, did you respond to 817 Taylor?

A: Yes, sir.

Q: All right. I would like you to walk us through us

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1 and talk us through us in terms of what you did
2 before we actually have you show us the things that
3 you did. Okay?

4 A: Yes, sir.

5 Q: So tell us what you did when you got on the scene.

6 A: I was notified somewhere around 7:30 at my
7 residence to respond to Taylor Street. When I
8 arrived at the scene, which was probably around 8:00
9 o'clock, I got there, and the scene was secured by
10 officers that were there prior to my arrival. I was
11 told not to start processing because the wooded area
12 behind the residence had not been secured yet, that
13 the suspect was still at large. I did go around to
14 the left side of the house where the porch was
15 located and briefly looked at evidence that was
16 laying there to get an idea what I was going to be
17 facing when I started the crime scene processing.
18 After that, I just stood by at the scene until I was
19 notified the area was clear, and then I began my
20 processing. What that entailed was the marking of
21 evidence at the scene, photographing that evidence,
22 then measuring and sketching where that evidence was
23 located, then collecting that evidence and taking it
24 to the evidence room much later on that night.

25 Q: As you were approaching the side of the house where

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1 the shooting had occurred, did you hear anything?

2 A: Yes, sir. I heard a walkie talkie. I heard the
3 dispatching talking and units responding. Had a
4 muffled sound to it, but I, I heard that, that
5 noise. In fact, I thought the walkie talkie was
6 behind me. I turned and looked and didn't see
7 anybody back there. I looked forward, and there was
8 a walkie talkie on the ground with the speaker face
9 down on the ground.

10 Q: And where was that in proximity to the side porch?

11 A: It was approximately ten feet away from that side
12 porch.

13 Q: What, if anything, did you do on the side porch?

14 A: On the side porch when I initially examined the side
15 porch to see what evidence was located there, and
16 then I marked that evidence with, with numbered
17 markers or, or cones with numbers on them.

18 Q: What did you find on the porch?

19 A: In the corner of the porch as you come up the step
20 and you walk onto the porch, on the lefthand corner
21 I found what's called a snake-charmer 410 shotgun.
22 It's a single-shot shotgun, breech type.

23 Q: What else did you find on the porch?

24 A: I found three fired 22-caliber cartridge casings on
25 the porch.

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- 1 Q: Did you mark all these items and photograph?
- 2 A: Yes, I did, sir.
- 3 Q: Did you collect at a later point in time State's
- 4 Exhibit Number Fifteen, the screen door?
- 5 A: Yes, sir, I did.
- 6 Q: All right. I'll be showing that to you later. Did
- 7 you observe items in the yard that you marked and
- 8 photographed?
- 9 A: Yes, sir. I observed a walkie talkie, as I
- 10 previously described with the speaker face down on
- 11 the ground. Near there was a pair of handcuffs, and
- 12 also a small area of blood in the grass.
- 13 Q: That was marked and photographed?
- 14 A: Yes, sir, it was.
- 15 Q: All right. Did you seize the screen door at some
- 16 time?
- 17 A: Yes, sir. Later on I seized the screen door.
- 18 Q: Did you measure the porch area and make sketches?
- 19 A: Yes, sir. I sketched the evidence that was on the
- 20 porch.
- 21 Q: Have you had occasion since that day to take
- 22 additional measurements and more sketches?
- 23 A: Yes, sir. Follow-up investigation, yes, sir, I took
- 24 additional measurements.
- 25 Q: Were you called upon to gather evidence at any site

1 away from 817 Taylor?

2 A: Yes, sir. A wooded area. I can't say how far. I
3 really don't know. It was a wooded area to the
4 north of the Taylor Street residence.

5 Q: And where did you what was it close to and what
6 did you do there?

7 A: It was close. It was close to the Boy's Club. Now
8 this was after, if that's what you're referring to.
9 Days after.

10 Q: Yes, I was.

11 A: It's like two days later. We recovered some, 22-
12 caliber cartridge casings, some beer cans in that
13 area that had bullet holes in the beer cans.

14 Q: Were you in the area that you see the 22 pistol?

15 A: Yes, sir. After I'd finished processing the scene
16 there at Taylor Street, I was asked to go stand by
17 with another SLED agent behind the Boy's Club which
18 is located on Belk Street, a wooded area behind the
19 Boy's Club, and I stood by the weapon with a SLED
20 agent until SLED crime scene could come and pick it
21 up.

22 Q: You did that that same evening?

23 A: That same evening, yes, sit.

24 Q: And it was a later day that you did what? That you
25 went back in the wooded area?

- 1 A: Thee was two days later we went back in the wooded
2 area. SLED agent, Gary Martin, called me and asked
3 me to come photograph and collect some beer cans
4 and, and I believe a 22-caliber, a fired 22-caliber
5 cartridge casing that was found in the wooded area.
- 6 Q: What did you do with the items that you collected on
7 the scene?
- 8 A: The 22-caliber cartridge casings found on the porch
9 were turned over to SLED agent, Tom Darnell at the
10 law enforcement center, and the other evidence was
11 placed in the evidence room and later taken to SLED
12 for analysis.
- 13 Q: All right, sir. Mr. Mackessy, I'm going to ask you
14 to step down here, and I'll ask you to speak up so
15 the court reporter can hear you. This is State's
16 Exhibit Number Eight-four. Do you recognize this?
- 17 A: Yes, sir. It's a sketch that I drew.
- 18 Q: It's a not-to-scale diagram?
- 19 A: No, it was not to scale.
- 20 Q: All right. Does this represent 817 Taylor Street?
- 21 A: Yes, sir.
- 22 Q: All right. And what would this represent?
- 23 A: That is the Boy's Club located on Belk Street.
- 24 Q: All right. And tell us the approximate location
25 that you went to on this same evening to retrieve

1 this 22-caliber weapon.

2 A: The 22-caliber weapon was found in the wooded area
3 right here.

4 Q: This is State's Exhibit Number Fifty. I'd like you
5 to put an S-50 and a circle around it to indicate.
6 All right, sir. Now we understand that this is a
7 sketch that is not to scale, and these, this item,
8 if these drawings represent woods, is that correct?

9 A: That's correct.

10 Q: All right. Now outside of 817 Taylor Street, you
11 indicated on another occasion you went and collected
12 and photographed some beer cans and things like
13 that?

14 A: Yes, sir.

15 Q: Where was that be?

16 A: That would be this area right here.

17 Q: Did you collect anything other than that there?

18 A: No, sir. There was a, other than the beer cans and
19 the 22 shell, it was a piece of plastic that is used
20 with a six-pack. I believe there was an orange
21 label on the six-pack of a dollar figure, a six-pack
22 of beer let's say you marked with prices.

23 Q: To your knowledge, there was no fingerprints or
24 other evidentiary value found on these cans, is that
25 correct?

- 1 A: That's correct.
- 2 Q: So just for introductory purposes, I'll show you a
- 3 series of photographs which will be 41-46 and just
- 4 ask you to tell the members of the jury what that
- 5 is.
- 6 A: These photographs are of the beer cans and the beer
- 7 cans location in the wooded area that I referred to.
- 8 Q: All right. And what would State's Exhibit Number
- 9 40-70 be?
- 10 A: 40-70 is a fired 22-caliber cartridge casing found
- 11 in that same area.
- 12 Q: All right. These would be S-41-47 photographs. If
- 13 you would, just put that so the jury will be able to
- 14 identify it.
- 15 Q: All right. That's good. If we could, get the
- 16 television in line, please? This is State's Exhibit
- 17 Number Forty. It's a photograph. Do you recognize
- 18 that?
- 19 A: Yes, sir.
- 20 Q: Can you tell us what that is?
- 21 A: That's a 22-caliber pistol found next to the wall of
- 22 the Boy's Club which I've marked as State's Fifty.
- 23 That is the, that is the weapon that the defendant
- 24 had when he was arrested. The same location.
- 25 Q: And your job is to do what with regard to that

1 weapon?

2 A: Stand by the weapon until the SLED crime scene
3 arrived to take the weapon.

4 Q: And did that in fact happen?

5 A: Yes, it did.

6 Q: All right. I think this is State's Exhibit Number
7 forty-nine. Can you tell us what that is?

8 A: That is the photograph made the camera I was using
9 at the time, and it shows the entrance to the wooded
10 area behind the Boy's Club going back about seventy
11 feet back is where that 22-caliber was located.

12 Q: Back in there?

13 A: Yes, sir.

14 Q: All right. And somewhere between that and the Boy's
15 Club right outside the woods?

16 A: Yes, sir. I'm parked right over against the wooded
17 area.

18 Q: You collected some items off the porch.

19 A: Yes, sir.

20 Q: And you collected the screen door?

21 A: Yes, sir.

22 Q: I'll start with State's Exhibit Twenty-nine and then
23 Thirty. That's State's Exhibit Number Twenty-nine,
24 Mr. Mackessy. Tell the members of the jury what it
25 is.

- 1 A: A photograph I took of this screen door on the
2 porch.
- 3 Q: Does the door appear as the State's photo oriented
4 the same way as the photograph is oriented?
- 5 A: Yes, sir.
- 6 Q: What's this yellow thing right here?
- 7 A: That's a scale tape that I have next to the screen.
- 8 Q: And show us the cut, please.
- 9 A: This is the cut, and the tape is placed right along
10 here.
- 11 Q: Was this the screen door that lead on to what's been
12 called the side porch?
- 13 A: Yes, sir.
- 14 Q: All right. And you have a closer up photograph of
15 that. Just tell us what we're looking at there.
- 16 A: It's a photograph I took. It's a closeup view of
17 the cut in the screen here. It's a scale ...
- 18 Q: You seized this door?
- 19 A: Yes, sir, I did.
- 20 Q: You took the door?
- 21 A: Yes, sir.
- 22 Q: All right. Now at the time you seized it, was this
23 square cut out of it?
- 24 A: No, sir.
- 25 Q: Was this cut out of it?

1 A: No, sir.

2 Q: What was there that you cut out of?

3 A: What was there are three holes, very small holes.

4 Q: Did you cut it out to take it?

5 A: No, sir, I didn't.

6 Q: Cause that door ...

7 A: Yes, it was.

8 Q: All right. You identified and collected some items
9 on the porch?

10 A: Yes, sir.

11 Q: What are we looking at there, State's Exhibit Number
12 Thirty-five?

13 A: State's Exhibit Thirty-five.

14 Q: Yes, sir.

15 A: State's Exhibit Thirty-five shows the crime scene
16 cones. They're marking the evidence I found from
17 eight being the snake charmer shotgun here in the
18 corner, number ten, that's number eleven back there,
19 number nine are the fired 22-caliber shells.

20 Q: All right. Those don't correspond with the
21 evidence, do they? The eight, nine, and ten except
22 it's an arbitrary designation?

23 A: Yes, sir.

24 Q: These are fired 22-caliber shells?

25 A: Yes, sir.

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1 Q: Would you take a look at these?

2 A: Yes, sir.

3 Q: All right. Tell the members of the jury what those
4 are.

5 A: State's Exhibit Fifty-three a 22-caliber cartridge
6 casing. That was number nine on the floor of the
7 porch. State's Exhibit Fifty-four are 22-caliber
8 cartridge casing that is designated as number ten in
9 the photograph. State's Exhibit Fifty-five is a 22-
10 caliber cartridge casing designated number eleven in
11 the corner of the porch.

12 Q: If you could, take the pen that I've given you and
13 put these exhibit numbers on this sketch in the
14 approximate location that you found them. We
15 realize it's not to scale. All right. And under
16 nine put S-53. And under number ten put 54. Now
17 under eleven put 55. Okay. Now you found one more
18 22 cartridge. Is that correct it's State's 52?

19 A: Yes, sir.

20 Q: That wasn't found on the porch, was it?

21 A: No, sir, it wasn't.

22 Q: Where was that found?

23 A: That was lodged in the chamber of the 22-caliber
24 pistol.

25 Q: State's Exhibit Number Thirty-one.

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1 A: State's Exhibit Thirty-one, a photograph I took. It
2 was a picture of the shotgun.

3 Q: And is it indicated now on our diagram Number Eight-
4 five and being in this corner?

5 A: Yes, sir.

6 Q: If you would, turn and face the jury and tell them
7 what condition this weapon was in when you seized
8 it.

9 A: When I found this weapon, it was loaded with a live,
10 410-gage shotgun round in the barrel. The hammer of
11 the weapon was back, and there were two, live 410-
12 gage shotgun shells in the bottom of the barrel.

13 Q: It was loaded and cocked?

14 A: Yes, sir, it was.

15 Q: And the two ...

16 A: Yes, sir.

17 Q: The State's Exhibit Number Fifty, the 22 pistol that
18 you stood over until SLED collected it?

19 A: Yes, sir, it is.

20 Q: Now you also observed some items in the yard, and
21 you put cones on them and photographed them, did you
22 not?

23 A: Yes, sir.

24 Q: State's Exhibit Number Twenty.

25 A: State's Exhibit Number Twenty is a photograph that I

1 took marking the walkie talkie near the steps on the
2 side.

3 Q: Number Twenty-one?

4 A: Twenty-one is basically the same photograph. It
5 looks like a closer view.

6 Q: All right. Let's go to Twenty-five. And maybe you
7 could zoom in just on the ...

8 A: Twenty-five is a

9 Q: Let me move this a little bit. I've got you in
10 front of the jury. Come this way if you could get
11 in there. Tell us what we're looking at there Mr.
12 Mackessy.

13 A: Closer toward the place of the evidence that I found
14 on the ground and the porch steps. It shows number
15 six, the handcuffs, number five is the walkie
16 talkie, number seven is the blood area.

17 Q: Walkie talkie, handcuffs, and blood area, is that
18 correct?

19 A: Yes, sir.

20 Q: And how did that correspond to where we've got a
21 stick figure here on Diagram Number Eight-five?

22 A: It's basically in the same area as the stick figure
23 here.

24 Q: And that's which exhibit?

25 A: Twenty-five.

1 Q: If you would, just put a circle and put S-25 there.
2 Let's look at a closer up of number five, and tell
3 us what that is.

4 A: Number five is the walkie talkie. You'll notice
5 that it's face down with the speaker towards the
6 ground. That's just how I found it.

7 Q: But you were able to hear it some distance away?

8 A: Yes, sir, I could hear it.

9 Q: And State's Exhibit Number Twenty-three?

10 A: State's Exhibit Number Twenty-three is the handcuffs
11 marked with cone number six as I found it.

12 Q: All right, sir. Let's make sure we don't have any
13 need or any of the other markers. Mr. Mackessey,
14 was a shotgun shell recovered by you or somebody
15 else at a later point in time?

16 A: By someone else.

17 Q: All right. We can move the television. You may
18 need to refer to the diagram. I'm going to ask you
19 about some measurements. And while they're doing
20 that, I'll ask you if the items we talked about
21 collected were turned over to SLED.

22 A: The casings were turned over to SLED. The handcuffs
23 and walkie talkie were placed in the evidence room
24 by the sheriff's department.

25 Q: And did you transmit these that Officer Darnell with

- 1 SLED ...
- 2 A: The 22-caliber cartridge case that was on the porch
- 3 to Agent Darnell.
- 4 Q: All right. I want to ask you now about the side
- 5 porch, if you made some measurements of that, sir.
- 6 A: Yes, sir.
- 7 Q: Could you tell us, and we'll, we realize this is not
- 8 to scale and we have the photographs, could you tell
- 9 us the length and the width and the breadth of it?
- 10 A: Four foot by four foot.
- 11 Q: Would you mind marking that? Were you able to
- 12 measure the distance from the ground to the top or
- 13 to the floor? From the ground to the floor.
- 14 A: Forty-five inches.
- 15 Q: All right. If you can, find a way to mark that.
- 16 Could you tell us how high the plyboard was on the
- 17 floor up before it hit the screen?
- 18 A: Four foot.
- 19 Q: All right. You probably have to put height down
- 20 here, four foot. Did you measure from the screen
- 21 out in this area as to the location of, of where
- 22 Sgt. Kubala was?
- 23 A: Yes, sir, twenty-six inches, something like that.
- 24 Q: Twenty-five and a half to six?
- 25 A: Well, from the corner, from the corner of the step

1 to the area where I located these items we came
2 across and the, that was five foot, eight inches.

3 Q: 5.8 from here to where?

4 A: To here. To this area here where these items were
5 found.

6 Q: All right. Well, if you could, just do an arrow
7 there and an arrow there and show that it's five
8 feet eight inches. All right. Let's take this down
9 a second. Maybe we can translate this a little bit
10 more. If you would tell us, measure the jury box
11 and tell us how that compares, just give us, since
12 we don't have it here, how it will compare to 4 x 4.

13 A: Approximately that's four feet.

14 Q: Four feet?

15 A: Four feet from this protrusion there to the edge of
16 the jury box is almost ...

17 Q: From here to there?

18 A: Yes.

19 **THE COURT:** Just for clarification, that's from the jury
20 box to the witness box.

21 **MR. SALEEBY:** Witness box. Excuse me, sir.

22 Q: All right. If you would, you say it was thirty-six
23 inches from the ground to the floor of the porch?

24 A: Thirty-five inches.

25 Q: Thirty-five.

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- 1 A: From the ground to the floor of the porch.
- 2 Q: And from the floor to the top, from the floor to the
- 3 top of the plyboard would be what?
- 4 A: That would be four foot.
- 5 Q: Four foot? Where would that be on this?
- 6 A: This is you just come across. This is thirty-
- 7 six here.
- 8 Q: Is that thirty-six?
- 9 A: That's
- 10 Q: But is that thirty-six? That's what we're trying to
- 11 figure out.
- 12 A: This is thirty-six on the floor.
- 13 Q: I want you to know this is 35.5.
- 14 A: Thirty-five from the ground is what we got measured.
- 15 Over here.
- 16 Q: All right. And then we need to go up another four
- 17 feet.
- 18 A: Yes, sir.
- 19 Q: Is that four feet?
- 20 A: Yes, sir.
- 21 Q: All right. Thanks. So that porch compared to this
- 22 jury box is a little bit smaller?
- 23 A: Yes, sir.
- 24 Q: And that porch, I mean jury box, witness box, that
- 25 porch compared to the witness box is higher?

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1 A: Yes, sir.

2 Q: You may be seated. State's Exhibit Number Fifteen
3 in comparison to that porch would sit something like
4 this at about this height, if that being the full?

5 A: Yes, sir. That would be about correct.

6 Q: State's Exhibit Number Fifty-seven. What do we have
7 there?

8 A: State's Exhibit Fifty-seven is the cut-out portion
9 of the screen that bears the three holes that I saw.

10 Q: And we will try, we will try to put those on the
11 screen. Thank you, sir. Please answer any
12 questions counsel has.

13 **THE COURT:** Mr. Babb, Mr. Littlejohn?

14 **MR. MACKESSEY - CROSS EXAMINATION BY MR. LITTLEJOHN:**

15 **MR. LITTLEJOHN:** Your Honor, I don't believe we have any
16 questions.

17 **THE COURT:** All right. Mr. Mackessy, thank you very
18 much. You may step down.

19 **MR. MACKESSEY:** Thank you, Your Honor.

20 **THE COURT:** All right. Ladies and gentlemen of the
21 jury, you've been in the courtroom now for about two
22 hours, and I think it's appropriate that we take our
23 afternoon break. We try not to run much over two
24 hours, so we are going to take about a I would say
25 twelve or thirteen-minute break at this time, and

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1 we'll be ready to start back at 4:20. You may go to
2 the jury room, relax, have a little refreshments.
3 Again, don't discuss the case among yourselves, and
4 just relax and we'll send for you very shortly.
5 Thank you very much.

6 (Jury out at 4:07 p.m.)

7 **THE COURT:** All right, counsel, let's be at ease for a
8 few minutes and be ready to start back at 4:20,
9 please. Thank you.

10 (There was a break in the hearing from 4:07 p.m. to 4:24
11 p.m.)

12 **THE COURT:** All right. Counsel, back on the record, and
13 let's come to order, please, with regard to the
14 State v. Bobby Wayne Stone. Let the record reflect
15 that the State is present and represented by Mr.
16 Saleeby and Mr. Jackson. The defendant, Mr. Stone,
17 is present in the courtroom with his lawyers, Mr.
18 Babb and Mr. Littlejohn. Ready to proceed?
19 Anything before we bring the jury in, Mr. Saleeby?

20 **MR. SALEEBY:** Yes, sir. We are.

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

23 **MR. LITTLEJOHN:** No, Your Honor.

24 **THE COURT:** All right. Bring the jury in, please.

25 (Jury in at 4:25 p.m.)

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1 **THE COURT:** Mr. Simms, don't get too far back there.

2 I'm going to make you the foreman of this jury of
3 you'll take the foreman's seat for me right here.

4 **THE CLERK:** Your Honor, the jury and the alternates are
5 present in the courtroom.

6 **THE COURT:** All right. Thank you very much, and we are
7 ready to proceed. Ladies and gentlemen, you see
8 that I have named Mr. Simms as the foreman of this
9 jury, so he will always sit in this first seat on
10 the front row here and which the alternates will
11 always sit where they are seated. The rest of the
12 seats, you can sit in any seats in the jury box, and
13 we are ready to proceed. All right, Mr. Saleeby?

14 **MR. SALEEBY:** We will call Tom Darnell to the stand.

15 **THE COURT:** Mr. Darnell, come around, please.

16 **THE CLERK:** Place your left hand on the Bible. Raise
17 your right hand and state your name, please.

18 **MR. DARNELL:** Thomas Edward Darnell.

19 **THE CLERK:** Do you solemnly swear or affirm the
20 testimony you give this court shall be the truth,
21 the whole truth, and nothing but the truth so help
22 you God?

23 **MR. DARNELL:** I do.

24 **THE CLERK:** Have a seat up here, please, sir.

25 **MR. THOMAS EDWARD DARNELL,** being duly sworn testifies as

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1 follows:

2 MR. DARNELL - DIRECT EXAMINATION BY MR. SALEEBY:

3 THE CLERK: State your full name and spell your last
4 name.

5 MR. DARNELL: My full name is Thomas Edward Darnell,
6 spelling D-A-R-N-E-L-L.

7 Q: Mr. Darnell, where do you live?

8 A: I live in Chapin, South Carolina.

9 Q: How long have you lived in the Columbia area?

10 A: About, about twenty years.

11 Q: Who do you work with?

12 A: I currently work for the State Law Enforcement
13 Division, more commonly referred to as SLED.

14 Q: How long have you worked for SLED?

15 A: Since April of 1990.

16 Q: So you got about a twenty-five anniversary coming
17 around.

18 A: That's correct, sir.

19 Q: You have worked in more than one division?

20 A: I have.

21 Q: What divisions have you worked in?

22 A: When I started at SLED, I, I was the, the crime
23 scene investigator in the latent print crime scene
24 at SLED headquarters. Recently as this past
25 November, I transferred into a different department

referred to as the vehicle crimes unit.

Q: Please give us the benefit of your training and your actual performance of work in the area of crime scene processing and latent print identification.

A: Yes, sir.

Q: To begin with, I received a bachelor of science degree in criminal justice from the University of South Carolina. I began my law enforcement career in '82 with the Richland County sheriff's office in Columbia, South Carolina. I started working at SLED in 1990. During that time I've taken and successfully completed numerous courses in the area of fingerprint development, fingerprint comparison, crime scene processing, crime scene photography. I was trained at SLED headquarters through an in-house training program. I also received some of my training at the State Criminal Justice Academy there in Columbia, and I've also been to the Federal Bureau of Investigations Academy in Quantico, Virginia.

MR. SALEEBY: Your Honor, we would submit that he would be more than qualified to testify in either latent print identification or crime scene processing.

THE COURT: All right. You want to qualify him in both fields?

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

2 **THE COURT:** Any objection, Mr. Babb?

3 **MR. BABB:** No objection.

4 **THE COURT:** All right. Mr. Darnell will be qualified in
5 the field of fingerprint analysis and crime scene
6 investigation. All right. And ladies and gentlemen
7 of the jury, you'll recall of course what that
8 means, an expert witness, that he is allowed to give
9 an opinion based upon the work that he has done and
10 the matters that he has reviewed in this case. All
11 right, Mr. Saleeby.

12 **Q:** All right. Mr. Darnell, February the 26th, 1996,
13 were you active with SLED on that day?

14 **A:** Yes, I was.

15 **Q:** And did you have the occasion to respond in Sumter
16 to 817 Taylor Street?

17 **A:** I did, yes, sir.

18 **Q:** And please tell us how you got that call and how you
19 responded.

20 **A:** I received a call about midnight on actually it
21 would have been the 26th, I believe, when I got the
22 call. I got the call from my regional captain, at
23 the time was Capt. Paul Gasque. I received a call
24 directly from Capt. Gasque. I was asked to respond
25 to Sumter County sheriff's or respond to Sumter

1 County for the purpose of assisting the Sumter
2 County sheriff's office in any way that I could in
3 reference to a death investigation.

4 Q: All right. Approximately what do you recall that
5 you arrived here in Sumter at 817 Taylor?

6 A: I arrived here about 1:00 a.m. on the 27th, on that
7 morning.

8 Q: By the time you arrived at 1:00 a.m. on the 27th,
9 was there any processing for you to do?

10 A: No, sir. Actually when, when I arrived, the scene
11 had basically already been processed by the Sumter
12 County sheriff's office, that being Sgt. Ray Maxey.

13 Q: Were you asked to see if you could do any additional
14 tests on the premises?

15 A: Yes, sir. As a matter of fact, I, I was asked to
16 look at two windows on the, if you were facing the
17 home, two windows on the right side of the home. I
18 was asked to look at those two windows, and I did, I
19 did in fact dust those two windows for the purpose
20 of trying to obtain any fingerprints on those
21 windows.

22 Q: Were you able to find any latents that you could
23 use?

24 A: No, sir. I, I was not able to find any.

25 Q: Did you take any photographs of the scene?

- 1 A: I did.
- 2 Q: I'm going to show you State's Exhibits Six, Seven,
3 Eight, Nine, Ten, Eleven, Twelve, and Nineteen, ask
4 you if you can identify those.
- 5 A: Yes, I can.
- 6 Q: How can you identify them?
- 7 A: Each of these photographs have at the bottom has a
8 perforated SLED lab number which was placed there by
9 our photography department.
- 10 Q: And that's how we would be able to distinguish the
11 SLED photographs from other photographs?
- 12 A: Yes, sir. That's correct.
- 13 Q: Does one of these in fact show you in the effort of
14 trying to locate and see if you can find prints?
- 15 A: It does.
- 16 Q: Which one would that be.
- 17 A: In State's Eleven actually has me in the photograph.
- 18 Q: Which one are you?
- 19 A: I'm the individual wearing the green top and the
20 green bottom.
- 21 Q: That's State's Exhibit Number Eleven. I assume
22 that's a photograph that somebody else took of you?
- 23 A: Yes, sir.
- 24 Q: All right. And what about State's Exhibit Number
25 Twelve? Are you in that as well?

1 A: State's Twelve, yes, sir, it does appear that I'm in
2 this photograph as well. Just a different angle.

3 Q: So at 817 Taylor, you did take some photographs, and
4 you did attempt to see if you could find any prints,
5 which you couldn't?

6 A: That's correct.

7 Q: What else were you asked to call? Were you asked to
8 do anything away from 817 Taylor?

9 A: Yes, sir, I was.

10 Q: And tell where that was and what you did.

11 A: Okay, sir. I was asked to respond to the Sumter
12 County sheriff's office where at that time an
13 individual by the name of Bobby Wayne Stone was, was
14 present. I was asked to perform a gunshot residue
15 collection kit on Mr. Stone's hands.

16 Q: All right. Now stop right there and tell us what a
17 gunshot residue test is.

18 A: A GSR test or a gunshot residue test is, is a test
19 which our trace department at SLED, the SLED
20 laboratory, based upon the evidence that I would
21 collect for that department, they would be able to
22 analyze that evidence for the presence of any, any
23 metal particles that might be present on, on a
24 person's hands. The primary reason for collecting
25 that type of evidence from an individual's hands is

1 to determine if an individual might have fired a
2 weapon or if an individual may have handled a weapon
3 at some point. The evidence was collected by me and
4 transported back to SLED headquarters and ultimately
5 transferred into our trace department at SLED
6 headquarters.

7 Q: So somebody in the trace department conducted the
8 test at SLED?

9 A: That's correct.

10 Q: And that somebody would be Jeff Hollifield who's
11 here today?

12 A: Yes, sir, it would be.

13 Q: You did not test? You just collected?

14 A: That's correct.

15 Q: And you collected something from Bobby Wayne Stone?

16 A: I did, yes, sir.

17 Q: This gentleman sitting over here in the white shirt?

18 A: Yes, sir.

19 Q: And where did you collect it from?

20 A: It was the the test was actually done at the
21 Sumter County sheriff's office.

22 Q: And how did you go about collecting it?

23 A: The test has there are two ways of doing this
24 test, and, and I was trained in, you know, the
25 proper way to collect this evidence as part of my

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1 crime scene training. Basically you have a little
2 what we call stubbies. It's a little, round piece
3 of plastic. It has an adhesive side to it. The
4 adhesive side is simply made or forced to come in
5 contact with the backs of the hands as well as the
6 palms of the hands, and then once you do the backs
7 of say for example I would do the back of my
8 left hand. Then I would seal that, that plastic cap
9 up, and then I would use a totally new cap for the
10 palms of the hand, and I would cap it up. I would
11 do the same thing for the right hand, and then once
12 I finished that, I would have some swabs as well
13 that I would swab the hands, and those swabs would
14 be placed into a plastic container. Once all this
15 is done and once I've made the proper documentation
16 that I needed to make on the, on the forms that I
17 have, these stubbies and these swabs are placed into
18 a sealed envelope and then transported back to SLED.

19 Q: And did you in fact conduct the test as you have
20 told as conducted, and did you seal your evidence to
21 take back to SLED?

22 A: I did, yes, sir.

23 Q: Did you collect a weapon during the course of your
24 presence here?

25 A: Yes, I did.

1 Q: Tell us about that.

2 A: I was, I was asked to respond to a wooded location.

3 I'm not that familiar with the address, but I was

4 asked to respond to a wooded location where I was

5 told that the, that an individual had been taken

6 into custody there and that, and that there was a

7 weapon that had been recovered and was on the

8 ground, and I was asked to come and just simply

9 collect that, that item or that, that pistol. When

10 I arrived there, the weapon was on the ground. I

11 took photographs of it, and there were actually two

12 officers that were standing near the weapon to

13 secure it, that being Sgt. Mackessy and a SLED

14 agent.

15 Q: Sgt. Mackessy who just testified?

16 A: That's correct, yes, sir.

17 Q: I think Sgt. Mackessy testified about the State's

18 Exhibit Number Forty. Is that one of the

19 photographs you took?

20 A: Yes, sir, it is.

21 Q: And what's that show us?

22 A: This just shows the 22 pistol that was recovered

23 that day and that was marked, and it's in the center

24 of the photograph near where my thumb is located.

25 Q: And this is State's Exhibit Number Forty-eight.

1 What is that?

2 A: State's Forty-eight is also a photograph of which I
3 took, and it appears to have a black cigarette
4 lighter where my thumb is located.

5 Q: And finally I believe Mr. Mackessy testified about
6 the State's Exhibit Forty-nine. What is that?

7 A: State's Forty-nine is, is the wooded area which I
8 responded to that evening or early that morning, and
9 as you can see, Sgt. Mackessy's crime scene vehicle
10 is also there.

11 Q: This is State's Exhibit Number Fifty, Mr. Darnell.
12 Do you recognize that?

13 A: yes, I do.

14 Q: What do you recognize it as being?

15 A: This is the high standard 22 long rifle pistol that
16 I collected that morning.

17 Q: And it's in the woods on the ground?

18 A: Yes, sir. It was in the woods near a, near a fallen
19 tree, and was, was visible. It was in plain view.

20 Q: What can you tell us about the condition of the
21 weapon? Did you do any checks on the condition of
22 it?

23 A: The pistol was, was properly secured and taken back
24 to SLED headquarters for the, for the purpose of
25 processing for fingerprints. Once I got back to the

1 laboratory, I, I removed the magazine from within
2 the, the pistol. The magazine contained several
3 unfired cartridges or unfired bullets, and also
4 within the chamber of the pistol was a fired
5 cartridge casing that had not ejected from the
6 pistol. It was still present in the, in the gun.

7 Q: All right. This is State's Exhibit Number Fifty-
8 one. Could you tell the members of the jury what
9 that is?

10 A: State's Fifty-one is the magazine which I removed
11 from the pistol, and it has a total of five unfired
12 projectile or unfired bullets.

13 Q: This magazine, what's the capacity of the bullets I
14 this magazine?

15 A: I'm, I'm not real sure, but I know it, it would
16 probably contain more than what I found in there.

17 Q: All right. So you took the magazine out and you
18 found five rounds in the magazine, live rounds?

19 A: Yes, sir. I found a total of five in, in the
20 magazine.

21 Q: State's Exhibit Fifty-two. What is that?

22 A: State's Fifty-two is the fired casing or the fired
23 shell casing that was removed from the chamber.
24 This casing was actually removed by me at the
25 laboratory. It was, it was in the pistol. It was

1 taken back to SLED in the, in the condition that it
2 was when I found or when I was asked to collect it,
3 and this casing was removed from that pistol by me
4 and packaged properly.

5 Q: And why did you do that? Why did you remove these
6 things?

7 A: I removed all of these or the casings, the magazine,
8 the unfired. I removed all those items because I
9 wanted to process those for fingerprints.

10 Q: All right. Now when you said this was in the
11 chamber and not ejected, explain to the members of
12 the jury what you were talking about.

13 A: Basically what, what that tells me is that the
14 pistol had been fired at some point, and normally
15 when you fire a semi-automatic pistol, the casing
16 would automatically eject from the, from the pistol.
17 In this case in my opinion it appeared that that did
18 not happen and that the casing remained inside the
19 pistol.

20 Q: All right. And can you show us on this pistol where
21 it would have ejected, where you found it?

22 A: It

23 Q: Step down in front of the jury. Make sure you don't
24 fall.

25 A: It would have come out from this area here where my

1 finger shows, and it did not, like I said, it was,
2 it was still inside the pistol once I opened it up.
3 It didn't eject.

4 Q: Open that up again. When this weapon fires, the
5 casing comes out of here?

6 A: Yes, sir.

7 Q: And goes someplace else?

8 A: Yes.

9 Q: And when you opened it up, State's Exhibit Fifty-two
10 was still in there?

11 A: That's correct.

12 Q: All right. I understand. Now you tried or you did
13 process this to see if you could find any latent
14 prints, didn't you?

15 A: I did, yes, sir.

16 Q: Did you find any?

17 A: I did not.

18 Q: Did they take you further items, beer cans,
19 cigarette lighters, to try to see if you could lift
20 any latents?

21 A: Yes, sir. I, I received a number of items from Sgt.
22 Mackessy for that purpose.

23 Q: Were you able to find anything that could help you
24 identify anybody, any latent lifts sufficient to
25 identify anybody?

1 A: No, sir. I, I could not.

2 Q: All right, sir. The items you received from
3 Mackessy or that you secured yourself, what did you
4 do with them?

5 A: The items that I received from Sgt. Mackessy, once
6 I, once I processed those for, for fingerprints,
7 they, all of the firearms evidence was, was packaged
8 up and transferred into the firearms department at
9 SLED.

10 Q: So once you were through with the prints, the things
11 that you didn't have anymore went someplace else?

12 A: That's correct. Yes, sir.

13 Q: And the gunshot residue stuff went where?

14 A: The gunshot residue kit went to our trace department
15 at SLED.

16 Q: Please answer any questions counsel has for you.

17 **THE COURT:** Mr. Babb?

18 **MR. BABB:** Thank you, Your Honor.

19 **MR. DARNELL - CROSS EXAMINATION BY MR. BABB:**

20 Q: Good afternoon, Mr. Darnell.

21 A: How are you, sir?

22 Q: Fine. Thank you very much. You processed prints at
23 the scene in the Taylor Street residence?

24 A: Just on the, the two windows on the right side of
25 the home.

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- 1 Q: Was that that night, or was it the following day?
2 Was it
- 3 A: It, it was actually done that, that, that same
4 morning that I was, when I had initially responded.
5 It was done that same morning.
- 6 Q: So it would be the 27th?
- 7 A: Yes, sir. The 27th of February.
- 8 Q: And these were the you processed two windows at
9 Ms. Griffith's bedrooms, I believe?
- 10 A: I'm not sure what the windows went to. I was, I was
11 just asked to process those, and so I did.
- 12 Q: If you're facing the house, it would be the window
13 on the right?
- 14 A: Yes, sir.
- 15 Q: And the window beside the car?
- 16 A: There were right. There were a total of two
17 windows on the right side of the home.
- 18 Q: Okay. And there were no prints there?
- 19 A: No, sir.
- 20 Q: There was no evidence of any attempted break in
21 there?
- 22 A: Not that I could find, no, sir.
- 23 Q: Okay. You looked at the car as well, did you not?
- 24 A: The car was, was nearby, and I, I did just a visual,
25 visual search or a visual search of the, of the

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1 exterior of the vehicle, and nothing appeared to be
2 of any significance there.

3 Q: Okay. By nothing of any significance, you mean
4 there was no sign of any attempted break in?

5 A: No, sir. None that I could find.

6 Q: All right, sir. So at those windows or the car, no
7 evidence of any force, attempted force entry or a
8 forced entry, correct?

9 A: That, that would be correct, yes, sir.

10 Q: Okay. Now this screen, did you, did you attempt to
11 lift any prints from it?

12 A: No, sir.

13 Q: Not this handle?

14 A: No, sir. I, I did not.

15 Q: Or this area? What about up here where the latch
16 is? Did you attempt any prints to lift them there?

17 A: No, sir. I, I did not.

18 Q: What about the facing on the outside of the house?

19 A: I, I did not, no, sir.

20 Q: Okay. On the inside?

21 A: No, sir. And I, I did not because of the fact that
22 the scene had already been processed by Sumter
23 County sheriff's office, and evidence had already
24 been collected from the scene, and so I was there
25 to, I was asked to process the two windows and which.

1 I did.

2 Q: Are you saying someone else processed this door?

3 A: I, I if it was, I had no knowledge of that.

4 Q: So to your knowledge, no one processed that door?

5 A: I don't know if anyone did or didn't. I just know
6 that, that I didn't process it.

7 Q: SLED didn't do an examination on any prints from
8 that door?

9 A: I did not, no, sir. I did not.

10 Q: Well, do you know if SLED did any?

11 A: Of any?

12 Q: From that door. Any prints from that door.

13 A: I since, since I was the, I was the case agent
14 that was, that was, that responded to that scene, if
15 anyone had of processed that door from SLED, it
16 would have been me, and I did not process that door
17 for any prints.

18 Q: Okay. That's what I was trying to ask. Now the
19 door on the inside of the side porch, did you
20 process that door?

21 A: No, sir. I did not do anything to the door of the
22 home.

23 Q: Okay. Did you process the board, the board that was
24 over the, the glass that had been previously knocked
25 and the board that was put there by Ms. Griffith?

1 A: No, sir.

2 Q: Did anyone process that board?

3 A: I don't know what was processed at that scene
4 because here again, it had already been done.
5 Things had already been done when I got there. So
6 what may have been done prior to me getting there,
7 I, I don't know. I do not know.

8 Q: But did anyone tell you don't worry about the door,
9 we've processed it?

10 A: If, if they did, I, I don't recall a statement like
11 that. I just know that I, I, I was made aware that
12 Sumter County had processed the scene prior to my
13 arrival, and so I, I left it at that, and I was
14 there to assist Sumter County in any way that I
15 could, and I was, and I was asked to process those,
16 those two windows of which I did process.

17 Q: Okay. Major Darnell, if the door, the inside door
18 with the panes of glass with the board on it, had
19 been process and any prints had been lifted, you're
20 the person at SLED that would have gone to, correct?

21 A: Most, most probably, yes, sir. Most probably so.

22 Q: Would those prints have been any different than any
23 prints off of this door in terms of who they would
24 have gone to?

25 A: Well, any, any evidence that was brought in by

1 Sumter County to SLED headquarters would have, would
2 have come to me if it were fingerprint evidence,
3 yes, sir.

4 Q: All right. That was my question.

5 A: Yes, sir.

6 Q: Now you examined this firearm, and there was a what
7 I call a round shell casing in the chamber

8 A: That's correct.

9 Q: that had not been ejected?

10 A: Yes, sir.

11 Q: So it was either fired by this gun, or it was put in
12 after it had been fired somewhere else, correct? Is
13 there any other possibility that you would know of?

14 A: You know, I don't know. I would you know, my
15 opinion would be that once the weapon was fired, if
16 the shell casing did not eject from the pistol, that
17 would be the reason that I would think or how it,
18 how it got there.

19 Q: All right. That would be the only way unless
20 someone else put it in, correct? If it's fired from
21 that gun, it did not eject?

22 A: It, it was, it was in the chamber, and it would have
23 once the gun was fired, you know, my opinion is
24 it did not eject. How it got there, I, I don't
25 know, but I can only assume that once it was fired,

1 it did not eject from the pistol.

2 Q: Do you have any knowledge of how that malfunction
3 occurred?

4 A: No, sir.

5 Q: Okay. You were able to extract it?

6 A: Yes, sir.

7 Q: Was there any great difficulty in extracting it?

8 A: Not that I recall.

9 Q: I mean it wasn't jammed or anything to your
10 knowledge like that?

11 A: I don't recall there being any difficulty as far as
12 having it removed. In, in cases if I did have
13 difficulty, I would have called the firearms
14 department to come assist me, and I have no notes
15 that would indicate that that was the case.

16 Q: So the best of your recollection in your notes is it
17 was a normal casing you were able to extract?

18 A: It, it, it was a 22 casing. It appeared to be a
19 normal casing that I did remove from the gun.

20 Q: It wasn't a 22 short? Isn't this gun a 22 long
21 rifle. That's the ammunition you would use?

22 A: I believe it is, yes, sir.

23 Q: And it wasn't a 22 short shell casing that you
24 extracted?

25 A: It was a 22 casing was all I, was all I knew about.

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- 1 Q: You don't know the difference between a 22 short and
2 a 22 long rifle casing?
- 3 A: Yes, sir.
- 4 Q: Was it a 22 short?
- 5 A: I let, let me say that, that I'm here
6 testifying about fingerprint evidence, and, and, and
7 I'm not a firearms expert, but I will say that, that
8 it was, that casing was removed from that pistol.
9 Whether or not it was a 22 long or a 22 short at
10 that time was not something that I was really
11 concerned with. My notes only indicate that it was
12 a 22 casing that was removed from that pistol.
- 13 Q: The casing is in evidence, is it not? Didn't you
14 just look at it?
- 15 A: Yes, sir.
- 16 Q: Well, is there any great distinction between it and
17 the other casings that were found?
- 18 A: They all appear to be the same size.
- 19 Q: And the 22 short would be shorter, wouldn't it?
- 20 A: Yes, sir, I'm going to have to say that.
- 21 Q: Thank you. Now you also collected the GSR kit or
22 you collected the GSR evidence off of Bobby Wayne
23 Stone. That's gunshot residue, correct?
- 24 A: Yes, sir.
- 25 Q: You were the one that processed that?

1 A: Yes, sir.

2 Q: Collected it from him?

3 A: That's correct.

4 Q: Where was that done?

5 A: It was done in the Sumter County sheriff's office.
6 I don't recall exactly what, what specific room or
7 anything, but it was at the Sumter County sheriff's
8 office.

9 Q: Okay. And Mr. Darnell, that was done before you
10 went to the house and processed the windows and
11 those sorts of things?

12 A: Actually, I, I believe that was done prior to me
13 going to, to the residence. That was done about
14 1:20 in the morning at the Sumter County sheriff's
15 office, and I had arrived at the, at Sumter County
16 around 1:00 a.m., so I would have to say that that
17 was done first.

18 Q: Okay. And Mr. Stone was seated in the chair,
19 handcuffed in the back, is that correct?

20 A: I can't really recall if he was handcuffed or not.
21 I, I truly can't recall.

22 Q: Okay. Do you recall Dana Wingate assisting you in
23 taking the cuffs off where Mr. Stone's hands could
24 be brought around to the front?

25 A: I don't I, I have no indication as to who

1 assisted me. I just know that the, that Mr. Stone's
2 hands had to be unhandcuffed to be, to be placed in
3 front to allow me to do what I had to do. I don't
4 know who I don't recall who was there assisting
5 me doing that.

6 Q: Okay. Mr. Stone cooperated?

7 A: Yes, sir, he did, he did.

8 Q: He didn't refuse to allow you to do this?

9 A: I don't, I don't recall him refusing. You know,
10 typically whenever I take, do this type of test, I
11 always like to explain to them what I'm doing just
12 so they'll know what I'm doing and they'll know that
13 it's not something that's going to hurt them, and as
14 best I recall, he, he cooperated.

15 Q: He didn't say I insist to have my lawyer present for
16 you to do this?

17 A: not that I recall, no, sir.

18 Q: So is the best of your recollection, he fully
19 complied and cooperated with you?

20 A: With, with me he did, yes, sir, and as far as taking
21 this test, this type of evidence from his hands, he,
22 he cooperated with me.

23 MR. BABB: Court's indulgence. Nothing further from
24 this witness.

25 THE COURT: Anything on re-direct?

1 **MR. SALEEBY:** No, sir. We have no more question. Ask
2 if he could be excused.

3 **THE COURT:** Any objection, Mr. Babb?

4 **MR. BABB:** No, Your Honor.

5 **THE COURT:** All right. Thank you, Mr. Darnell. You are
6 excused. Thank you for coming.

7 **MR. SALEEBY:** Jeff Hollifield, come around, please.

8 **THE CLERK:** Place your left hand on the Bible. Raise
9 your right hand and state your name, please.

10 **MR. HOLLIFIELD:** My name is Jeffrey Morris Hollifield.

11 **THE CLERK:** Do you solemnly swear or affirm the
12 testimony you give this court shall be the truth,
13 the whole truth, and nothing but the truth so help
14 you God?

15 **MR. HOLLIFIELD:** I do.

16 **THE CLERK:** Have a seat up here, please.

17 **MR. JEFFREY MORRIS HOLLIFIELD,** being duly sworn, testifies
18 as follows:

19 **MR. HOLLIFIELD - DIRECT EXAMINATION BY MR. SALEEBY:**

20 **THE CLERK:** State your full name and spell your last
21 name, please.

22 **MR. HOLLIFIELD:** My name is Jeffrey Morris Hollifield,
23 H-O-L-L-I-F-I-E-L-D.

24 **Q:** Mr. Hollifield, where do you live?

25 **A:** I live in Greenville, South Carolina.

1 Q: How long have you lived there?

2 A: Eight years.

3 Q: And what kind of business do you run there?

4 A: Currently own and operate Micro Analytical which is
5 a private forensic's lab, and I also teach chemistry
6 and forensic science part time at Greenville
7 Technical College.

8 Q: In 1996, were you working with SLED?

9 A: I was.

10 Q: And in what department?

11 A: At that time I was working in a trace evidence
12 department.

13 Q: All right. I'd like you to give the members of the
14 jury the benefit of your background, your education,
15 and your experience in what we call trace analysis.

16 A: I have a bachelor's degree in chemistry from Furman
17 University, a master's in chemistry, also from
18 Furman University. I have a master's in chemical
19 microscopy from Macrone Research Institute in
20 Chicago. I worked at SLED for ten years. Seven of
21 those years I worked in the trace evidence
22 department, and that was after I completed training
23 at the Criminal Justice Academy for law enforcement
24 training. While I as there, I attended several
25 specialty schools in the area of trace evidence

1 which included a course at the FBI Academy in
2 Quantico and also a school with the, a homicide
3 school with New York State police.

4 **MR. SALEEBY:** Your Honor, we would submit that he would
5 be well qualified to testify in the area of trace
6 analysis.

7 **MR. LITTLEJOHN:** He's qualified.

8 **THE COURT:** All right. I find that the witness is
9 qualified in the field of tracer analysis, and
10 again, ladies and gentlemen, as an expert witness,
11 he is allowed to give an opinion. Mr. Saleeby.

12 **Q:** All right. Mr. Hollifield, the first thing I'd like
13 you to do is explain in layman's terms, as best you
14 can, what we're talking about when we're talking
15 about the trace department and trace analysis.

16 **A:** Right. In the trace department at SLED, the
17 analysts look at what's called trace evidence which
18 is simply small pieces of evidence that are most
19 easily examined microscopically. This would include
20 things like textile fibers, hairs, insulation, soil,
21 explosive residues, fibers, and it also includes
22 gunshot residue particles which are small particles
23 that are ejected from a weapon when a weapon is
24 discharged.

25 **Q:** All right. Tell us about that because we've heard

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1 Mr. Darnell talking about collecting a gunshot
2 residue kit, and I believe we heard Dr. Sexton say
3 that a SLED agent collected gunshot residue, did a
4 gunshot residue test on Sgt. Kubala. Tell us what a
5 gunshot residue test is.

6 A: When, when a weapon is fired or discharged, an
7 enormous amount of soot, smoke, and tiny particles
8 which are called gun primer particles or gun powder
9 particles are ejected or emitted from the weapon.
10 Those are then going to deposit on the hands of a
11 shooter or anything that is either touching the
12 weapon or in close proximity of the weapon, they're
13 going to be deposited onto those items. In the
14 trace evidence lab, we look at, at samples that are
15 collected from individual's hands or items of
16 clothing or any other object that's in close
17 proximity of the weapon when it was fired to look
18 for and detect and quantify the primer particles and
19 powder particles and soot particles that are
20 deposited there. The purpose of that is to
21 determine whether or not an individual fired a
22 weapon or maybe handled a weapon or was not
23 associated with a weapon based on the presence or
24 absence of certain metals that are in gun primer and
25 gun powder particles.

1 Q: What particles, what particles of elements would you
2 look to be present if someone had fired a gun?

3 A: The most prevalent or the most common metals or
4 elements that are in gun primer particles are lead,
5 barium, and antimony. They are three heavy metals,
6 and so the test itself is a test for the presence of
7 metals.

8 Q: If you find all three of those together, what's it
9 mean to you?

10 A: Each of those individually can come from a number of
11 sources, but if, if all three of those metals are
12 found on the same item or from the same source, that
13 is, and if they're found in elevated or high levels,
14 then that's indicative of having come from gunshot
15 residue or gun primer residue.

16 Q: All right. And you said you could also tell or
17 might be able to tell from this test whether
18 somebody merely handled the weapon as opposed to
19 discharging the weapon. Tell us about that.

20 A: Another thing that's significant about the test is
21 that the samples when they're collected are
22 collected from each of the four areas of the hands.
23 The right palm, the back of the right hand, the left
24 palm, and the back of the left hand, so four
25 separate samples are submitted. It's significant as

1 to whether metal particles are found on the palms
2 versus the, versus the backs of the hands. If
3 they're found simply on the palms of the hands and
4 not the backs, that would be more indicative of
5 someone handling a, a dirty weapon or a weapon
6 that's been previously fired, whereas if they're
7 found on both the palm and the back of the hand,
8 that would indicate that someone had actually fired
9 a weapon.

10 Q: This may be a bad example, but I've been handling
11 this a good bit today. Is there any likelihood that
12 there would be any lead on my hand or palm?

13 A: There very well could be, yes, sir.

14 Q: Did you receive a gunshot residue test done at the
15 autopsy by SLED and on the hands of Sgt. Kubala?

16 A: Yes, sir, I did. That, that kit, gunshot residue
17 kit, was collected by Paul LaRosa, a SLED agent, and
18 he submitted the one from the victim from the
19 autopsy.

20 Q: And did you test it, and what did you find?

21 A: In that particular kit, which was from the victim, I
22 did not find, I did not find the presence of all
23 three metals on any of the four areas. What I did
24 find was an elevated level of just lead on the palm
25 of the right hand.

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1 Q: And what does that mean to you? What is that
2 consistent with?

3 A: It's, it's not, it's not definitively indicative of
4 gun primer residue because of the absence of the
5 other two metals, but it could have come from gun,
6 gun primer residue. Lead is going to be more
7 prevalent than the barium and the antimony, but it
8 was just on the palm of the hand, so if it, if it
9 did indeed come from gun primer residue, it would
10 most likely be from handling or touching a weapon as
11 opposed to firing it because of the low levels, the
12 absence of two metals, and it's only on the back and
13 not the back.

14 Q: So if your handling the weapon, even one that hasn't
15 been fired, you can wind up with lead in the hand
16 you're handling it?

17 A: Sure.

18 Q: Now, did you get a gun shot residue kit on the
19 defendant Bobby Wayne Stone?

20 A: Yes, sir, I did. That's the kit that was collected
21 by Agent Darnell.

22 Q: Did you also have the occasion to examine State's
23 Exhibit Number Fifty-six and findings that would
24 come from Mr. Stone?

25 A: Yes, sir, I did. I actually did the examination on

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1 this at a later time, but this, this code I can
2 identify by my initials and the item number which I
3 marked in the collar of the coat, and I examined it
4 for lead residue.

5 Q: Tell us what you find just as to the coat.

6 A: Items of clothes, of garments, textile garments,
7 shirts, pants, coats, those can be tested for gun
8 power residue as well, but it's a, a different type
9 of test. The way we test clothing is to spray a
10 chemical on the clothing, and if there's gun power
11 residue or lead residue on the clothing, the
12 chemical will indicate that.

13 Q: And what did you find when you tested that coat?

14 A: On the coat, I sprayed the chemical on the coat for
15 lead residue, and I did get a positive test for lead
16 around the left cuff area or wrist area on the left
17 sleeve.

18 Q: This are?

19 A: Yes, sir. On the left sleeve on the cuff area right
20 near here the, where the wrist would be or lower
21 forearm, that did test positive for lead residue.
22 The other, the other cuff and the rest of the jacket
23 tested negative for lead.

24 Q: All right. Tell us, please, what you found with
25 regard to the gunshot residue kit that Agent Darnell

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1 testified that he did on the hands of Bobby Wayne
2 Stone.

3 A: The kit that came from ... I found the presence of
4 all three metals, lead, barium, and antimony on, on
5 two areas of the hands. I found all three metals
6 present on the right palm and on the back of the
7 right hand. I found elevated lead only on the left
8 palm and the back of the left hand. So in other
9 words, the right hand was positive for gunshot
10 residue, and it was on both the palm and the back of
11 the hand which would indicate the firing of a weapon
12 as opposed to just handling. The left hand was
13 positive only for lead, but it was both on the palm
14 and the back.

15 Q: So that test was consistent with the firing of a
16 weapon with the right hand?

17 A: It would be, yes, sir.

18 Q: Thank you. Please answer any questions counsel may
19 have.

20 **THE COURT:** Mr. Babb?

21 **MR. BABB:** Thank you, Your Honor.

22 **MR. HOLLIFIELD - EXAMINATION BY MR. BABB:**

23 Q: Good afternoon, Mr. Hollifield.

24 A: Afternoon.

25 Q: I believe you know my co-counsel, Mr. Littlefield?

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- 1 A: I, I do, yes, sir.
- 2 Q: Now you are an expert in trace analysis, correct?
- 3 A: That would be right.
- 4 Q: And as Mr. Saleeby had been going through, when a
- 5 weapon is fired, there's like a cloud let's call it
- 6 of
- 7 A: Right.
- 8 Q: that comes out, and it generally contains three
- 9 elements that you're looking for?
- 10 A: Yes, sir.
- 11 Q: And those three were lead, barium, and?
- 12 A: Antimony.
- 13 Q: Antimony.
- 14 A: A-N-T-I-M-O-N-Y.
- 15 Q: Okay. Lead, barium, and antimony though, they occur
- 16 naturally in the environment, is that correct?
- 17 A: That's correct.
- 18 Q: So if I've not handled a weapon but hadn't washed my
- 19 hands recently, there is a fairly high degree of
- 20 probability that you'd find one or more of those
- 21 elements on my hands, correct?
- 22 A: Those, those elements individually occur in consumer
- 23 products and many things that are in the everyday
- 24 environment, yes. The difference is they would be
- 25 present probably only as a single element or in

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1 extremely low levels as opposed to having been
2 associated with the weapon.

3 Q: What I'm getting at, Mr. Hollifield, if I understand
4 the science of it, and you may have to help me some
5 with that, but in order for you to as an expert in
6 trace analysis to say that it is your opinion to a
7 reasonable degree of trace analysis certainty that
8 someone has fired a weapon, there has to be all
9 three present and at an elevated level?

10 A: That's those are the criteria, yes.

11 Q: All three must be present. That's the lead, the
12 barium, and the antimony?

13 A: Right. All three must be present, and they must all
14 three be present in elevated levels.

15 Q: So finding lead on a palm or the back of a hand or
16 on a coat sleeve or on a screen itself does not
17 enable you to conclude as an expert to a reasonable
18 degree of trace analysis certainty that that is
19 gunshot residue?

20 A: If, if you only have lead and not the other two
21 elements, then there you don't know for certain
22 that it came from gunshot residue or gun primer
23 residue. However, on the, on the screen or a
24 garment, if you do a, a test powder pattern, the
25 shape of the lead cloud or lead residue could be or

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1 would be indicative of having come from a weapon or
2 some sort of explosive device, but that's only from
3 the shape of the, of the residue. Just but from the
4 lead residue itself, that in and of itself would not
5 be specifically definitive for gun primer residue.
6 You do have to have all three metals present.

7 Q: Okay. Now when a weapon fires, is most of these
8 gases and particles expelled out the front end of
9 the barrel of that weapon?

10 A: Yes, sir. The majority of, of what comes out of the
11 weapon does come out the end of the barrel, but some
12 is going to come out in any other opening, whether
13 it be around the trigger, around the magazine in a
14 semi-automatic or automatic weapon, or around the
15 cylinder in a revolver, any opening.

16 Q: And that's how you get it on the hands?

17 A: Right. The yeah, what comes out those openings
18 and what comes out the end of the barrel is going to
19 just engulf the, the whole weapon, so it's all
20 around it.

21 Q: Now if you're let me see how to phrase this.
22 If you're, if a weapon is pointed at a textile or
23 some open product or screen or something like that,
24 how far out do those gases expel? How close does it
25 have to be to pick up those elements?

1 A: It's, it's going to vary depending on the caliber of
2 the weapon and ammunition, but the tearing
3 there's several things to look for. The tearing of
4 the garment or burning a hole in the garment will
5 typically only occur when the weapon's in contact
6 with the garment. Soot is going to be deposited if
7 it's just a few inches away. A stippling, which is
8 one of the things that Dr. Sexton mentioned which is
9 where the burned gun powder actually imbeds itself
10 beneath the skin of an individual, that stippling
11 will occur up to maybe a foot or two, and then you
12 have gun powder particles, the fine gun primer, gun
13 powder particles from the ammunition that are
14 deposited at further distance, and that varies. It
15 would be up to around two, possibly three feet with
16 a small caliber weapon. It could be as much as four
17 or five feet with a larger caliber weapon or a
18 shotgun, and at six feet you may still get a few
19 powder particles deposited, but they won't be in any
20 particular pattern. They'll be random, random
21 particles.

22 Q: Now with a larger weapon, is it the bore or the
23 powder behind?

24 A: Both. The longer the bore and, and the, the larger
25 the caliber.

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- 1 Q: So if we were talking in the 22 world, then a 22
2 long rifle would project further than a 22 short or
3 a 22 long?
- 4 A: I, I would agree with that. With 22 calibers in
5 general, I would estimate two to three feet probably
6 at the most. Beyond, beyond three feet, I wouldn't
7 expect to see any deposition of gun powder much at
8 all.
- 9 Q: And again, if there's only the presence of lead,
10 then as an expert, you cannot say that that was
11 gunshot?
- 12 A: Can't, cannot definitively say that that is from
13 gunshot residue in the absence of the other, other
14 two metals.
- 15 Q: So you couldn't testify that to a reasonable degree
16 of trace analysis certainty, which is your field,
17 that it is gunshot residue if only lead is found?
- 18 A: That would, that would be correct, but on the
19 suspect's, subject's hands in this case, all three
20 metals were found in elevated levels, so that I'm
21 confident was gunshot residue.
- 22 Q: With the right hand?
- 23 A: With the right hand, yes, sir.
- 24 Q: Left hand you can't say?
- 25 A: Cannot definitively say that the lead was from gun

1 primer residue. Just that lead was present in
2 elevated levels.

3 Q: And the same with Officer Kubala?

4 A: Yes, sir. That's correct.

5 Q: You can say he, you can say he didn't fire, but you
6 can't say whether he handled or not?

7 A: Not definitively, no.

8 Q: Well, you can't testify as an expert that in your
9 opinion to a reasonable degree of trace analysis
10 certainty that he did, can you?

11 A: I can only testify that, that there was an elevated
12 lead only on the palm of the right hand. That's it.

13 Q: But you can't draw conclusions that that meant he
14 handled a weapon?

15 A: Not without speculation, no, sir.

16 MR. BABB: Court's indulgence?

17 THE COURT:

18 MR. BABB: Nothing further, Your Honor.

19 THE COURT: Re-direct?

20 MR. SALEEBY: None, sir. I'd ask if he can be excused.

21 THE COURT: All right, Mr. Hollifield, you may step
22 down. Any objection to his being excused, Mr. Babb?

23 MR. BABB: Yes, Your Honor, that would be fine.

24 THE COURT: All right. You are excused. Thank you for
25 coming.

1 MR. SALEEBY: John Barron, come around, please.

2 THE COURT: All right, Mr. Barron, come around, please.

3 THE CLERK: Place your left hand on the Bible. Raise
4 your right hand and state your name, please.

5 MR. BARRON: John C. Barron.

6 THE CLERK: Do you solemnly swear or affirm the
7 testimony you give this court shall be the truth,
8 the whole truth, and nothing but the truth so help
9 you God?

10 MR. BARRON: Yes, I do.

11 THE CLERK: Have a seat up here. Watch your step.

12 MR. JOHN C. BARRON, being duly sworn testifies as
13 follows:

14 MR. BARRON - DIRECT EXAMINATION BY MR. SALEEBY:

15 THE CLERK: State your full name and spell your last
16 name.

17 MR. BARRON: My name is John Caswell Barron, B-A-R-R-O-
18 N.

19 Q: Mr. Barron, where do you live?

20 A: I live in Lexington County.

21 Q: Where do you work?

22 A: Richland County Sheriff's Department.

23 Q: What kind of work do you do there?

24 A: I, along with another individual, am setting up the
25 DNA trace evidence laboratory for Richland County.

VOLUME THREE OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

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1 Q: How long have you worked in the forensic part of the
2 Richland County sheriff's operation?

3 A: It will be a year in March.

4 Q: Now before that, where did you work?

5 A: South Carolina Law Enforcement Division, otherwise
6 known as SLED.

7 Q: How many years did you work at SLED, sir?

8 A: Twenty-seven.

9 Q: And what division of SLED did you work in?

10 A: I worked in several different divisions. I worked
11 in basic serology for ten years and trace evidence
12 department for eleven years and the DNA department
13 for six years.

14 Q: I want to talk with you about trace evidence. Were
15 you working in that department in February and
16 after February of 1996?

17 A: Yes. I was working at the department from 1988
18 through 1999.

19 Q: Eleven years. '88 through '99?

20 A: Correct.

21 Q: You need to tell us, please, sir, the benefit of
22 your education and training in trace analysis.

23 A: Yes, sir. I have a bachelor of science degree in
24 microbiology from Clemson University. I have a
25 biology and chemistry background. In the trace

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1 department I received numerous specified training
2 classes in various aspects of trace analysis
3 including hairs and fibers and gunshot residue as
4 well as completing the in-house training program
5 offered by the supervisor of the trace department.
6 I testified in trace evidence on numerous occasions
7 and can qualify in the State of South Carolina.

8 **MR. SALEEBY:** Your Honor, we would submit that he would
9 be well qualified to testify in the area of trace
10 analysis.

11 **MR. LITTLEJOHN:** He's qualified.

12 **THE COURT:** All right. We'll find him as a qualified
13 expert in the field of trace analysis. Again,
14 ladies and gentlemen, remember what I told you about
15 expert witnesses and their right and authority to
16 give an opinion.

17 **Q:** Mr. Barron, in as much as Mr. Hollifield has just
18 testified about trace analysis, I will ask you to
19 explain that area of expertise again, but I would
20 ask you if in the course of your duties at SLED if
21 you received intact State's Exhibit Number Fifteen
22 and screened it?

23 **A:** Yes, I did. Mr. Hollifield left SLED prior to
24 analyzing this part of this case, and I inherited
25 it.

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1 Q: Okay. So this case stated with Mr. Hollifield, but
2 this particular item of evidence came after he was
3 gone?

4 A: That's correct. Or at least it came into my
5 possession not analyzed, and so I had to do it.

6 Q: All right. And what were you asked to do with
7 regard to this?

8 A: I was asked to examine three small holes in the mid
9 section of that screen door to possibly determine if
10 they could be associated with a bullet passing
11 through them, to examine them, you know, through the
12 microscope to see if physical characteristics and
13 possibly develop any type of chemical associated
14 with gunshot residue around those holes.

15 Q: I'm going to show you State's Exhibit Number Fifty-
16 seven and ask you if you can identify that and tell
17 the members of the jury what it is.

18 A: Yes. This is the section of the screen door that
19 contained these three small holes that I was
20 requested to examine to see if they are consistent
21 with bullet holes.

22 Q: You cut that out?

23 A: Yes, I did.

24 Q: Show the members of the jury.

25 A: This section here in the mid portion of the screen

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1 door.

2 Q: The rectangular portion underneath the handle?

3 A: Correct.

4 Q: All right. Now please tell the members of the jury
5 what State's Exhibit Number Fifty-eight is.

6 A: State's Exhibit Fifty-eight is, is also a
7 rectangular piece cut out, and this contained holes
8 that were made by test firing, known 22-caliber
9 bullets through the screen door, and it came out of
10 the upper portion of the screen door.

11 Q: This?

12 A: Correct.

13 Q: And who actually did the test firing?

14 A: Agent Ira Parnell who's our firearms examiner at
15 SLED.

16 Q: And you had him do the firing because that's his
17 specialty?

18 A: That's correct.

19 Q: And you did the trace analysis because that's our
20 specialty?

21 A: That's correct.

22 Q: And to your knowledge, he used the weapon that had
23 been collected in this case?

24 A: Best of my knowledge, he did, yes.

25 Q: All right. You didn't actually handle the weapon,

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1 you just asked him to use it?

2 A: Correct.

3 Q: All right. Did you have to run more than one test
4 on this door?

5 A: Well, I had never actually tested a screen door
6 before, and I don't think I've tested one since,
7 either.

8 Q: So how did you go about testing this one?

9 A: So I tried to test for particular matter or look for
10 particles that could be associated with gunshot
11 residue. Particles when they come out of the end of
12 the barrel, as Mr. Hollifield testified, there is a
13 lot of material that comes out, and many of those
14 metals are in certain shapes. They, because of the
15 heat and the pressure, these metals are vaporized,
16 and as they condense, as they cool off, they tend to
17 form circles like a raindrop is condensed water that
18 is, you know, circular or oval in shape, and so I
19 attempted to visualize by an electron microscope any
20 of these particles to see if they were present. I
21 did not find any. That type of test is designed,
22 you know, for clothing where these particles would
23 embed in the clothing, and therefore, we could see
24 them a lot better, but I imagine on a screen door,
25 the chances are less likely that you would have a

1 lot of these round particles adhering to that, to
2 that type of material especially in a vertical
3 position.

4 Q: So did you run a second series, a second couple of
5 tests?

6 A: Well, as former Agent Hollifield testified, there is
7 a, a chemical that we can spray to see it reacts
8 specifically with lead, and lead is such a great
9 volume and is vaporized in such a fine mist that
10 perhaps some lead was somehow impregnated in there
11 and I just didn't pick it up with the other tests
12 when it actually looks for the round lead particles,
13 but there could still be a fine lead mist that could
14 still be impregnated in the screen. I did that test
15 by getting white paper and adhering it behind the
16 holes and then spraying the chemical, and then the
17 chemical would mix with any lead and hopefully would
18 visualize the color of the, that would react with
19 the lead, and a purple color, pink purplish color,
20 would appear on the white paper and would become
21 easily visible rather than the dark screen door, and
22 upon doing that test, I was able to obtain a
23 positive lead result.

24 Q: And you're talking the lead result was from the
25 smaller piece?

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1 A: Yes. The

2 Q: I'm sorry. From Item Number Fifty-seven?

3 A: From Item Fifty-seven, the piece that I cut out of
4 the center of the screen door did show a positive
5 test for lead vapor around those holes.

6 Q: All right. Did you examine these holes any other
7 way?

8 A: Well, I examined them microscopically just for the
9 shape, the effects of, of a bullet going through
10 them, and with the known test firings with known
11 bullets of the same caliber going through them, then
12 I, I examined them that way and found that they were
13 consistent with one another. I couldn't find any
14 significant differences in them, and therefore, in
15 my opinion, you know, those, those holes could as
16 well been formed by small caliber bullets as, as the
17 known section that we knew we fired 22-caliber
18 bullets through.

19 Q: After you did the test trial on State's Exhibit
20 Number Fifty-eight, did you test it for the lead
21 cloud?

22 A: Yes. Uh-huh. Of course the lead cloud is going to
23 be determined by the distance you're away from it.

24 Q: Right.

25 A: Of course if you get too far away from it, you're

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1 not going to be able to detect it, but I did do the
2 same test on, on both sections and was able to
3 determine that they were similar, and so my
4 conclusion would be that it is certainly consistent
5 with the fact that a bullet could have been fired
6 through that screen door.

7 Q: Through State's Exhibit Number Fifty-seven?

8 A: Correct.

9 Q: The holes in Fifty-eight microscopically compared to
10 the holes in Fifty-seven?

11 A: They were indistinguishable, yes.

12 Q: And the lead cloud around Fifty-eight compared with
13 the lead, was comparable to the lead cloud around
14 Fifty-seven?

15 A: Well, the results were similar enough to where, you
16 know, I could say that, that it is consistent with
17 the gunshot residue or lead from a gunshot and the
18 passage of a bullet through those holes in the
19 center section of the screen door.

20 Q: And they were you said microscopically
21 indistinguishable?

22 A: Yes. They were certainly consistent with one
23 another.

24 Q: These things are hard to see. I'm going to ask if
25 you'll open these envelopes while Mr. Green is

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1 bringing the television up here, and we'll see if we
2 can blow those up to the point where they will be
3 more visible.

4 A: 30.1 would probably be the, the original.

5 Q: The original is what?

6 A: 30.1

7 Q: Okay. Let's make sure we've got this correct.

8 Fifty-seven is the original, it's rectangular, and
9 Fifty-eight is the one with the SLED labels on it,
10 and it's square. Step down here for me and tell us
11 about that, please, sir. This is Fifty-seven, and
12 this is Fifty-eight.

13 Q: All right. What are we looking at there, sir?

14 A: This is the that one?

15 Q: Yes.

16 A: This is the tall section of the screen door cutting
17 out of, I cut out the center section. It was
18 unknown ...

19 Q: And if you would, there are three of them, just show
20 them to us.

21 A: It's in here and here.

22 Q: All right. Do that agin. All right. Just show,
23 show us the hole, if you would on the television.

24 A: This is a hole here, and here.

25 Q: All right. Number Fifty-eight please. These were

1 the test. I see some labels here.

2 A: Yes.

3 Q: All right. (Inaudible).

4 A: Here.

5 **THE COURT:** Keep your voices up.

6 A: Okay. Just simply pointing out the holes. I mean
7 we can't get all four of them on the screen with
8 that magnification.

9 Q: And you examined this on TV but under a microscope,
10 and I assume you blow it up bigger?

11 A: Well, we have various types of microscopes, and what
12 I would use is what we call a stereo microscope. It
13 would magnify these holes anywhere from 10X to 3X.

14 Q: Thank you Mr. Barron. Please have a seat and answer
15 any questions counsel has for you.

16 **THE COURT:** All right. If you'll wait just a minute.

17 Mr. Babb do you need the TV, Mr. Babb?

18 **MR. BABB:** No, Your Honor.

19 **THE COURT:** All right. Now Mr. Green you can move the
20 TV.

21 **THE COURT:** All right. Mr. Babb?

22 **MR. BABB:** Thank you, Your Honor.

23 **MR. BARRON - CROSS EXAMINATION BY MR. BABB:**

24 Q: Good afternoon, Mr. Barron.

25 A: Good afternoon.

1 Q: When you went to work for SLED, Mr. Hollifield was
2 there?

3 A: Actually I went to work for SLED before Mr.
4 Hollifield.

5 Q: Before he did?

6 A: Yes.

7 Q: Okay. But you worked with him?

8 A: I did. We were both simultaneously working in the
9 trace department for a number of years. He left
10 prior to my departure, and

11 Q: Now you are telling this jury that on the screen,
12 because there was some lead there in the lower one
13 with the three holes, that you're testifying as an
14 expert witness that to a reasonable degree of trace
15 element analysis you know that was gunshot residue?

16 A: I am testifying that it is certainly consist with
17 the test results of a known fired bullet and
18 certainly could be, but as Mr. Hollifield testified,
19 not all the elements are there to definitively
20 identify it as gunshot residue.

21 Q: And the same with regard to the holes?

22 A: Correct.

23 MR. BABB: Nothing further for this witness, Your Honor.

24 THE COURT: All right. Mr. Barron, you may step down.

25 Would you like to have this witness excused?

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1 MR. SALEEBY: I would, sir.

2 THE COURT: All right. Any objection to his being
3 excused, Mr. Babb?

4 MR. BABB: Yes, sir.

5 THE COURT: All right. You are excused. Thank you for
6 coming. All right, Mr. Saleeby.

7 MR. SALEEBY: We would call Ira Parnell to the stand.

8 THE COURT: All right. Mr. Parnell, come around,
9 please.

10 THE CLERK: Place your left hand on the Bible. Raise
11 your right hand and state your name, please.

12 MR. PARNELL: Ira Byrd Parnell, Jr.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you give this court shall be the truth,
15 the whole truth, and nothing but the truth so help
16 you God?

17 MR. PARNELL: I do, sir.

18 THE CLERK: Have a seat up here, please.

19 MR. IRA BYRD PARNELL, JR., being duly sworn testifies as
20 follows:

21 MR. PARNELL - DIRECT EXAMINATION BY MR. SALEEBY:

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

24 MR. PARNELL: My name is Ira Byrd Parnell, Jr., P-A-R-N-
25 -E-L-L.

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1 Q: All right. Mr. Parnell, where were you born and
2 raised?

3 A: Sumter, South Carolina.

4 Q: What school did you go to? High school.

5 A: Well, I went to Maywood High School, and then I
6 graduated from Thomas Sumter Academy.

7 Q: I won't ask you when that was.

8 A: Thank you.

9 Q: Where do you work now?

10 A: I'm employed by SLED, State Law Enforcement
11 Division.

12 Q: How long have you been working there?

13 A: Almost thirty-three years.

14 Q: Do you work in any particular area of SLED?

15 A: Yes, sir. I am the supervisor of the firearm and
16 tool mark identification laboratory at SLED
17 headquarters in Columbia.

18 Q: You been doing firearms work for thirty-three years?

19 A: Thirty-two years.

20 Q: Thirty-two years. I'd like you to give us your
21 benefit of your education and your experience in
22 firearms identification.

23 A: I graduated from the University of South Carolina
24 with a degree in the area of criminal justice.
25 During the latter part of my college career, I was

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1 also employed at SLED. I received training from
2 three court-qualified firearm and tool mark
3 examiners. While there, completed an intensive two-
4 year internship program under these examiners by
5 observing what they were doing, assisting them with
6 examinations, test firing weapons, and preparing
7 cases for their examination. I did many thousands
8 of individual comparisons during that time. Since
9 completing my internship program, I graduated from
10 the FBI National Academy, our state academy, and
11 have attended numerous courses and classes provided
12 by the FBI National Academy at Quantico, Virginia,
13 specializing in firearms identification techniques.
14 I'm a member of the Association of Firearm and Tool
15 Mark Examiners which meet once a year for a week-
16 long seminar, and we discuss the latest developments
17 in firearm and tool mark identification. I've been
18 accepted as an expert witness in federal district
19 court, North Carolina state court and South Carolina
20 courts over eight hundred times.

21 **MR. SALEEBY:** Your Honor, we would submit he would be
22 well qualified to testify in the area of firearms
23 identification.

24 **THE COURT:** All right. Mr. Littlejohn?

25 **MR. LITTLEJOHN:** We believe he's qualified, Your Honor.

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1 **THE COURT:** All right. We'll qualify him as an expert
2 in the field of firearms and tool mark
3 identification. Again, as an expert witness, Mr.
4 Parnell will be allowed to give an opinion.

5 **Q:** Mr. Parnell, I'm going to ask you item by item, if I
6 might, about your receipt of certain items at SLED,
7 and ask you to tell us what the items are and
8 perhaps their operation. I'm going to start with
9 State's Exhibit Number Twenty-seven, this Smith &
10 Wesson, and State's Exhibit Number Twenty-six, the
11 bullets. The is generally the item being carried by
12 Sgt. Kubala. I'll ask you to tell us what it is,
13 how it works, what condition you found it in.

14 **A:** State's Exhibit Twenty-six of course if sixteen
15 unfired cartridges. State's Exhibit Twenty-seven is
16 a Smith & Wesson model 5946 semi-automatic pistol
17 with the magazine.

18 **Q:** All right. We'll be talking more about semi-
19 automatic, but there's some people may know and some
20 people may not, so just tell us what the semi-
21 automatic is.

22 **A:** A semi-automatic firearm fires one time with each
23 pull of the trigger. The weapon itself extracts
24 when the slide goes to the rear, in this case it's
25 locked because there's no cartridges in it. When

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1 the slide goes to the rear, the extractor pulls the
2 firing cartridge case out of the barrel, out of the
3 chamber area and expels it from the firearm, and
4 when it goes back forward, it picks up an unfired
5 cartridge from the top of the magazine, and this
6 happens one time with each pull of the trigger. In
7 other words, when you pull the trigger, that's all
8 that happens until you release the trigger and it
9 resets. In this case, I would have to re-cock it.
10 But basically a semi-automatic fires one time with
11 each pull of the trigger, extracts and ejects the
12 cartridge case, and reloads a fresh cartridge into
13 the barrel ready to be shot.

14 Q: What condition was that weapon in when you received
15 it?

16 A: It was fully loaded with sixteen rounds, fifteen-
17 round maximum capacity of the, of the magazine with
18 one in the barrel.

19 Q: And what would that indicate to you as to whether or
20 not it had not been fired?

21 A: It had not been fired. It was completely and fully
22 loaded.

23 Q: The next weapon I show you, State's Exhibit Number
24 Thirteen. I'd like you to tell the members of the
25 jury what we're looking at there.

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1 A: State's Exhibit Thirteen is, is what is called a
2 snake charmer. It's designed as a short-barrel 410-
3 gage firearm to shoot snakes with. It's designed as
4 a survival gun. It's a single-shot firearm, and
5 it's manually operated. You have to manually load
6 one into the barrel, close it down, pull the hammer
7 back, be sure the safety is off.

8 Q: Show me the safety. Where is the safety?

9 A: The safety is on the side here. It's a rotating
10 safety. I mean you could hear it click at that
11 point. When the safety is on, there's a block that
12 is engaged that prevents the hammer from hitting the
13 firing pin which in turn will not let it fire cause
14 it won't push forward. When the safety is off, the
15 hammer goes forward and hits the firing pin, and
16 therefore, will fire the one in the barrel.

17 Q: I believe when that weapon Sgt. Mackessy
18 recovered that weapon and delivered it to you and he
19 told us about the condition when he, he recovered
20 it, but what condition was it in when it got to you?

21 A: When I received it, it was unloaded, but the safety
22 was off.

23 Q: All right. I will ask you if you were one of the
24 people that had the occasion to respond to 817
25 Taylor Street on February 26, 1996?

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- 1 A: Yes, sir, I was.
- 2 Q: Was that as a crime scene, or is that part of the
- 3 SWAT operation?
- 4 A: It was part of a tactical unit sent to assist the
- 5 sheriff's department.
- 6 Q: All right. I will ask you if you were one of the
- 7 people in the woods trying to locate Mr. Bobby Wayne
- 8 Stone?
- 9 A: Yes, sir, I was.
- 10 Q: And I'll ask you if in the course of that operation
- 11 this shell right here, State's Exhibit Number Sixty-
- 12 two, was found?
- 13 A: Yes, sir, it was.
- 14 Q: Other than somewhere in the woods, can you tell us
- 15 any more specifically than that?
- 16 A: It was a few hundred yards north of 817 Taylor. I
- 17 can show you where, but I can't exactly describe it.
- 18 It was north away from the back of the residence.
- 19 Q: All right. Did you compare that shotgun shell with
- 20 that 410 shotgun?
- 21 A: Yes, sir, I did.
- 22 Q: And how could you compare the shell with the
- 23 shotgun?
- 24 A: Ladies and gentlemen, when a firearm such as State's
- 25 Exhibit Thirteen, in this case this 410 single-shot,

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1 is manufactured, there are a number of areas on the
2 inside in the internal workings of the gun that
3 acquire individual markings on them by the machining
4 that is actually used to make the gun. Now these
5 marks are, are random. They're unique, and they're
6 unintentional by the manufacturer. It's just like
7 your scissors get dull, ladies, when you cut cloth,
8 or you gentlemen's pocket knives get dull when you
9 whittle. The tools that make a firearm break down
10 just microscopically on the edge, the cutting edge.
11 Microscopically I can see these defects, and when a
12 firearm such as State's Exhibit Thirteen is fired,
13 when that happens, when the hammer goes forward, the
14 firing pin strikes the primer, the primer causes the
15 powder to explode, and recoil happens. When that
16 recoil happens, the imprint of those imperfections
17 left inside this gun are put on the back end of a
18 cartridge case that is fired in that gun.
19 Microscopically I can tell that the individual marks
20 left on, on this fired shell casing, State's Exhibit
21 Number Sixty-two, are microscopically the same as
22 those that were on test fires that I shot in State's
23 Exhibit Thirteen, and that State's Exhibit Sixty-two
24 was fired by State's Exhibit Thirteen. This shotgun
25 and no other gun.

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- 1 Q: Show you some other items and ask you if you came
2 into receipt of them while you were at SLED. I'll
3 ask you the questions, the detail of the questions
4 later, but I want you to identify them before we
5 move on. State's Exhibit Number Fifty.
- 6 A: Yes, sir. State's Exhibit Fifty is the highest
7 standard supermatic citation model, 22 semi-
8 automatic pistol. It bears my case number, specimen
9 number, and initials, and I did examine this weapon.
- 10 Q: All right. I'll ask you more about that later.
11 State's Exhibit Fifty-one.
- 12 A: State's Exhibit Fifty-one is a magazine that fits
13 and functions and is designed to be used in State's
14 Exhibit Fifty, this 22-caliber pistol along with
15 five unfired cartridges. Both of these items, both
16 the magazine and the unfired cartridges were
17 received along with State's Exhibit Fifty.
- 18 Q: These were received from Mr. Darnell after he'd done
19 the print process?
- 20 A: Yes, sir, that's correct.
- 21 Q: State's Exhibits Fifty-three, Fifty-four, and Fifty-
22 five. Police Sgt. Mackessy testified that these
23 were the shells he collected on the porch.
- 24 A: Yes, sir. State's Exhibits Fifty-three, Fifty-four,
25 and Fifty-five are three fired 22-caliber cartridge

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1 cases. They each bear my case number, specimen
2 number, and initials, and I have examined these
3 items.

4 Q: All right. State's Exhibit Number Fifty-two. Mr.
5 Darnell testified he (inaudible) change with the
6 weapon prior to testing for prints.

7 A: It's also a 22-caliber fired cartridge case. It
8 also bears my case number, specimen number, and
9 initials, and that's State's Exhibit Fifty-two.

10 Q: This would be State's Exhibit Sixty-one. I think
11 identified as a spent 22 cartridge found in the area
12 north of Taylor Street.

13 A: Yes, sir. State's Exhibit Sixty-one is also a 22
14 fired cartridge case, and it also bears my case
15 number, specimen number, and initials, and I have
16 examined this item.

17 Q: State's Exhibit Seventeen and State's Exhibit
18 Eighteen, these being testified to by Dr. Sexton as
19 being projectiles that were removed from the body of
20 Charlie Kubala.

21 A: State's Exhibit Seventeen is a fired 22-caliber
22 projectile or bullet, and I've examined it. State's
23 Exhibit Eighteen are three bullet fragments
24 consistent with 22-caliber bullet fragments, and I
25 have examined these.

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- 1 Q: All right, sir. And the last thing that I will show
2 you would be State's Exhibit Fifty-eight, and Mr.
3 Barron testified to that he compared it to the
4 cutout of the screen door.
- 5 A: Yes, sir. This is a section of screen from the
6 screen door standing against the wall that I fired
- 7 Q: All right.
- 8 A: It contains four holes. I cut the holes or cut the
9 squares out for him.
- 10 Q: What weapon did you use?
- 11 A: Used State's Exhibit Fifty, this 22-caliber semi-
12 automatic pistol.
- 13 Q: And what type of ammunition did you use?
- 14 A: Ammunition that was the same caliber brand and type
15 as those received with State's Exhibit Fifty-one,
16 the magazine.
- 17 Q: All right. I want to start with State's Exhibit
18 Number Fifty. You can remain seated, if you need.
19 If you need to step down, you can. I would like you
20 to tell the members of the jury what type of weapon
21 that is you're holding there.
- 22 A: State's Exhibit Fifty is, as I stated earlier, a 22
23 semi-automatic pistol. It's a high standard brand,
24 and it is a target model.
- 25 Q: When you say high standard brand, what do you mean?

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1 A: It's like a Remington or a Winchester.

2 Q: That's a brand?

3 A: It's, it's a manufacturer, a brand name.

4 Q: And I should have asked you this before. Were you
5 present when Mr. Stone was arrested, and were you
6 present and observed where that weapon was?

7 A: Yes, sir, I was.

8 Q: Tell us how that happened.

9 A: After several hours of searching, the helicopter
10 located Mr. Stone lying between two logs, and to his
11 lefthand side, State's Exhibit Fifty was under the
12 log maybe a foot from his hand, from his left hand.

13 Q: You were how close and how far behind Fred Powell
14 when he actually started the arrest process?

15 A: Seconds. Maybe ten seconds. Five seconds at the
16 most.

17 Q: All right. Now I'm going to ask you then to
18 continue to describe. Tell us about that weapon.
19 What's it used for, and how does it operate?

20 A: As I said, State's Exhibit Fifty is a target model
21 pistol. It has a compensator no the front. You can
22 tell that by the cutout on the top up here which
23 allows gasses to shot out the top as it's fired.
24 That is to control recoil. The two devices
25 underneath the barrel are on an actual tract that is

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1 designed for these barrel weights to be placed here.
2 It's there to add balance or weight to the gun.
3 Trigger pull is approximately one and a half pounds
4 which is light. It's not unsafe light, but it's
5 very light, and it's designed to be shot at a target
6 to, to produce a small group of, of bullet holes.
7 Made for compensation shooting.

8 Q: That's a compensation shooting type pistol?

9 A: Yes, sir.

10 Q: And meant to be accurate?

11 A: Yes.

12 Q: All right, sir. Now is it described as a semi-
13 automatic?

14 A: Semi-automatic, yes, sir.

15 Q: All right. Tell us what that means. Tell us how
16 that weapon ejects rounds.

17 A: It means that each time you pull the trigger, one
18 cartridge will be fired, and Mr. Darnell was showing
19 earlier how the slide comes to the rear. When you
20 pull the trigger and a cartridge is fired, the force
21 of the explosion of that cartridge forces the slide
22 to the rear in that fashion. The extractor, which
23 is a small protuberance sticking out the front of
24 the bolt right here, has got a hole in the back end
25 of the cartridge case, and when it reaches a certain

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1 point in its travel, the ejector, which is a
2 separate piece of the internal workings of the gun,
3 actually is stationary. When the slide is coming to
4 the rear under the force of recoil, the extractor's
5 got a hold of the cartridge case. The ejector hits
6 it and kicks it out of the gun, and on its forward
7 carry, it picks up an unfired cartridge off the top
8 of the magazine, loads it in the barrel, and the
9 next time the trigger is pulled, the same cycle
10 happens over again until it's empty.

11 Q: Now when Mr. Darnell gave the weapon to you one
12 more question. Does that weapon have a safety?

13 A: Yes, sir, it does. It's on the side.

14 Q: Would you mind stepping down and showing the jury.

15 MR. PARNELL: If it please the court, Your Honor?

16 THE COURT: Yes, sir.

17 A: The safety is right here on the side. It's in a
18 position where you cannot

19 THE COURT: Keep your voice up, Mr. Parnell. The court
20 reporter has got to hear you.

21 MR. PARNELL: Yes, Your Honor.

22 A: It's designed to be operated with your right thumb
23 in this case. You push it down. When it's in the
24 up position, it will not fire. It mashes the safety
25 down with the right thumb after you've cocked it and

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1 loaded it, and it won't fire.

2 Q: What do you have to do to make that weapon fire one
3 bullet?

4 A: The most common way is to load cartridges into the
5 magazine such as State's Exhibit Fifty-one. This
6 magazine will hold ten cartridges at its maximum
7 capacity.

8 Q: How many were in the cartridge when it came to you?

9 A: The magazine had five in it when, when Tom brought
10 it over. You introduce the magazine into the
11 magazine well. Just simply pull the slide back and
12 release it. It picks up an unfired cartridge. Take
13 the safety off, and pull the trigger.

14 Q: That would fire one shot?

15 A: One shot.

16 Q: All right. What if I wanted to fire a second shot?

17 A: You'd have to pull the trigger two times.

18 Q: What if I wanted to fire a third shot?

19 A: Pull the trigger three times. One pull for each
20 fired shot.

21 Q: You examined this gun. What kind of condition was
22 it in?

23 A: It was in, in operating condition, although during
24 testing, I discovered that it was very dirty or
25 fouled by having been shot a lot and not being

1 cleaned, which made the, the slide very slow to
2 operate. In other words, there was so much fouling
3 involved when during test firing on at least one
4 occasion, I had to assist the slide to, to push it
5 forward to make it shoot.

6 Q: Mr. Darnell testified when he examined for prints
7 that before he did, he drew from the chamber State's
8 Exhibit Number Fifty-two. What does that indicate
9 to you as the ...

10 A: It's very likely that either something interfered
11 with the operation of the slide, or due to its dirty
12 condition, it just didn't completely cycle and
13 reload itself.

14 Q: If you, if the weapon, that weapon right there fails
15 to eject a fired cartridge casing, then what impact
16 does that have on your ability to continue firing
17 that weapon?

18 A: You'll not be able to fire it again until you clear
19 the fired cartridge case from the chamber which
20 means manually removing it, or if it's stuck, then
21 you have to hold the slide back and, and physically
22 pick the fired cartridge case out.

23 Q: Did you in testing it find that it discharged by
24 itself?

25 A: No, sir. I found it be in proper operating order

1 other than just being dirty.

2 Q: Did you find anything about it that would indicate
3 that it was fired automatically? In other words,
4 one pull of the trigger would fire more than one
5 round?

6 A: No, sir, I did not find any, any malfunction like
7 that when I was testing it.

8 Q: Did you find in testing it that it would just go off
9 by itself?

10 A: No, sir. I found that it required at least one and
11 a half plus pounds of pressure on the trigger to
12 make it fire.

13 Q: And what type of ammunition did it fire?

14 A: Could you repeat the question, please?

15 Q: What of ammunition did it have in it?

16 A: 22 long rifle caliber.

17 Q: Which means what?

18 A: There are basically three common types or calibers
19 of 22-rim fire ammunition. 22 long, I mean 22 long
20 rifle which is the biggest of the three, which is
21 what we have in State's Exhibit Fifty-one. We have
22 22 long which is a smaller bullet, but the same size
23 cartridge case, and the 22 short which has the same
24 size bullet as the 22 long, but a shorter cartridge
25 case which is less powerful. In other words, a 22

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1 short is the least powerful, the 22 long is the next
2 powerful, or most powerful, and the 22 long rifle is
3 the most powerful of the three common 22 rim fires.

4 Q: And that's what we had here?

5 A: Yes, sir.

6 Q: Did you test the pistol itself against these
7 cartridge casings? When I'm talking about the
8 casings, I'll refer first of all Fifty-three, Fifty-
9 four, and Fifty-five, which Mister, Sgt. Mackessy's
10 report, Fifty-two, which Mr. Darnell took out of the
11 chamber, and Sixty-one, which was found in the
12 woods.

13 A: Yes, sir, I did.

14 Q: How were you able to compare something as small as
15 that cartridge casing with that weapon?

16 A: As I described with the 410 single shot, when a
17 firearm is made, there are very varied and numerous
18 tooling processes and operations that have to occur.
19 A lot of these have to do with the formation of the
20 bolt, the bolt face, which is the area right around
21 where the firing pin comes out, and when this weapon
22 is fired and recoil happens, the imprint of the
23 firing pin as well as the area around the firing pin
24 is impressed into the back of the cartridge case.
25 Now these marks, you can't see them with your, with

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1 your naked eye. By using a microscope, they can be
2 viewed and compared. I testified that State's
3 Exhibit Fifty, using the same type of ammunition,
4 the same caliber, and microscopically compared the
5 test that I fired in State's Exhibit Fifty to be
6 sure that this gun was marking each cartridge case
7 that it fired in the same way. I concluded that
8 these tests were consistent with each other. In
9 other words I could microscopically say that each
10 test that I fired looked the same. I then compared
11 my test microscopically with State's Exhibits Fifty-
12 three, Fifty-four, and Fifty-five, the three
13 cartridge cases recovered by Sgt. Mackessy off the
14 back porch on Taylor Street. I found them to be
15 microscopically consistent and that the three fired
16 cartridge cases, State's Exhibits Fifty-three,
17 Fifty-four, and Fifty-five were all fired by this
18 firearm, State's Exhibit Fifteen, by no other gun.

19 Q: What about the casing that was recovered inside the
20 chamber?

21 A: Likewise it was, it was also fired by State's
22 Exhibit Fifty.

23 Q: It wasn't fired by another weapon, could it have
24 been?

25 A: No, sir.

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1 Q: And what about State's Exhibit Number Sixty-one?

2 A: State's Exhibit Sixty-one, reportedly found in the
3 wooded area near the house, was also fired by
4 State's Exhibit Fifty and no other firearm.

5 Q: Did you examine the projectiles that Dr. Sexton
6 removed from Charlie Kubala with this weapon?

7 A: Yes, sir, I did.

8 Q: How were you able to compare these projectiles to
9 that weapon?

10 A: Ladies and gentlemen, the same type of tool marks
11 that are left on other surfaces of firearms as they
12 are made are left inside of the gun barrel which
13 make this gun barrel unique and different from any
14 other gun barrel that's ever made. By test firing
15 State's Exhibit Fifty into a tank full of water, I
16 can recover test bullets that have not been altered
17 by coming into contact with anything else. The
18 water slows the bullet down slowly, and it drops to
19 the bottom of my test tank. I pull those up in a
20 small cup. I microscopically compare the test that
21 I know were fired in State's Exhibit Fifty with each
22 other, and I observe whether or not the markings
23 left on these tests are the same between each other.
24 I then compared the microscopic marks left on
25 State's Exhibit Seventeen and Eighteen, the two

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1 bullets removed from Deputy Kubala, and based on the
2 microscopic comparisons of my tests with State's
3 Exhibit Seventeen and Eighteen, I was able to
4 conclude that these two bullets removed from Deputy
5 Kubala's body were both fired by State's Exhibit
6 Fifty, this pistol and no other firearm.

7 Q: I would now like you just to take a second and look
8 at the television, and perhaps we will be able to
9 enlarge these to the point that you'll be able to
10 step down in front of the jury and show us some of
11 the features.

12 **MR. PARNELL:** Will it please the Court, Your Honor?

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

14 Q: We will first be dealing with the weapons, the
15 bullets, the projectiles that were in tact which is
16 State's Exhibit Number Seventeen which I believe
17 that Dr. Sexton testified was the bullet that
18 entered the next and was recovered from the rear of
19 the body.

20 **MR. SALEEBY:** If you could, keep on going. Shift it a
21 little. All right. Can you get it bigger? Get it
22 any bigger? All right.

23 Q: Show us what you can show there.

24 A: Ladies and gentlemen, when a bullet is fired, the
25 individual, unique, random imperfections that I have

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1 been talking about that are inside of that gun
2 barrel when that barrel was made, are impressed in
3 the outer surface of every bullet that comes down
4 the barrel. What you see from where you're sitting
5 looks just like lines, and that's what they are, but
6 microscopically they appear in here. The lines that
7 you see on this, States Exhibit Seventeen, are the
8 same as those that I found in the test that I fired
9 from the State's Exhibit by microscopically
10 comparing the two at the same time. In other words,
11 under the microscope I could tell it was a ... for
12 me to say that this bullet, State's Exhibit
13 Seventeen, was fired from State's Exhibit Fifty,
14 this pistol.

15 Q: All right. Now next turn to State's Exhibit Number
16 Eighteen, and these are the fragments Dr. Sexton
17 testified, Dr. Sexton said was the shot to the ear.

18 A: Is there ...

19 Q: Yes. Yes, there is.

20 A: Ladies and gentlemen, what you're, what you're
21 looking at is Exhibit Nineteen. It is consistent
22 with being the one bullet that's broken into three
23 pieces. They're very small when you look at them in
24 your hand. They look a lot bigger here, and they
25 look a lot bigger under a microscope. And this

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1 small fragment up here, Exhibit Eighteen, the
2 smallest fragment in here was a part of the bullet
3 that came from an area that didn't contact inside of
4 the barrel, so there are no markings on that small
5 fragment to identify, but on both of the other two
6 fragments from State's Exhibit Eighteen, this is the
7 base section here. You can see the circular part of
8 the base here. Both the base section and this
9 section on the side both contain sufficient
10 individual markings on the rim that microscopically
11 I could conclude that it was fired from State's
12 Exhibit Fifty, this pistol and no other firearm.

13 Q: Thank you, sir. Please take a seat. Just ask you
14 one more time is there any way for that weapon to
15 fire one round other than one bullet at a time?

16 A: I found no evidence of that during my testing. I
17 found no malfunction to cause anything other than a
18 proper operation.

19 Q: Thank you, sir. Please answer any questions counsel
20 has.

21 **THE COURT:** Cross examination, Mr. Littlejohn?

22 **MR. LITTLEJOHN:** Thank you, Your Honor.

23 **MR. PARNELL - CROSS EXAMINATION BY MR. LITTLEJOHN:**

24 Q: Good evening, Ira.

25 A: Good afternoon, sir.

1 Q: You said on that night when you were with Special
2 Agent Powell and you all were pursuing the suspect,
3 you said you found Bobby Wayne Stone next to a log
4 or between two logs?

5 A: Yes, sir.

6 Q: And you said that State's Exhibit Number Fifty, the
7 pistol, was found under a log, under one of the
8 logs?

9 A: Yes, sir. Just, just up and to the left of his
10 shoulder, as I recall.

11 Q: Okay. So it was up above his shoulder?

12 A: Just almost even with his shoulder. Just, just
13 maybe a foot away.

14 Q: Okay. He didn't have his hand on the weapon?

15 A: No, sir.

16 Q: Okay. Now Mr. Parnell, according to State's Exhibit
17 Number Fifty, you said this was a target pistol?

18 A: Yes, sir.

19 Q: It's designed for competition shooting?

20 A: That's correct.

21 Q: Shooting in matches?

22 A: Yes, sir.

23 Q: And you said there was weight in here to make it
24 more stable?

25 A: Yes, sir.

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- 1 Q: And it has I believe an exhaust port up here?
- 2 A: That's correct.
- 3 Q: Which is also to make it more stable?
- 4 A: Yes, sir. To control recoil.
- 5 Q: Okay. And the trigger pull on this weapon you
- 6 described as a pound and a half?
- 7 A: Just slightly above a pound and a half. Maybe a
- 8 pound and eight, a little over eight ounces, so it's
- 9 right at a pound and a half, yes, sir.
- 10 Q: That would be a very light trigger pull compared to
- 11 most weapons?
- 12 A: It's light, yes, sir.
- 13 Q: Okay. And that's so, designed so that it would be
- 14 more accurate, is that right?
- 15 A: Correct.
- 16 Q: The harder the trigger pull, the more exertion you
- 17 have to give it and you're likely to pull it one way
- 18 or another?
- 19 A: That's correct.
- 20 Q: With a light trigger pull, then it's much easier for
- 21 the weapon to fire without your finger pulling the
- 22 weapon to one side or another?
- 23 A: That's correct.
- 24 Q: And I believe you agreed with me at one point that
- 25 gun will fire in a blink of an eye?

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1 A: Yes, sir.

2 Q: Mr. Parnell, let me ask you. The bullets that came
3 according to State's Exhibit Number Seventeen,
4 I believe you said you compared that bullet with
5 State's Exhibit Fifty?

6 A: Yes, sir.

7 Q: Is that bullet consistent with a 22 long?

8 A: Let me check my weight notes just for a second,
9 please, sir. It's actually consistent with a 22
10 long rifle weight class.

11 Q: And that's what that gun is designed to fire?

12 A: That's correct. Yes, sir.

13 Q: Okay. And I believe if you tried to, if someone
14 didn't know what they were doing and tried to fire a
15 22 long in there as opposed to a 22 long rifle, that
16 gun would probably jam, would it not?

17 A: In the condition it was when I received it, probably
18 so, yes, sir.

19 Q: Okay. And if you had a fired cartridge because the
20 cartridge of a 22 long and the cartridge of a 22
21 long rifle are the same, there would be no way to
22 tell?

23 A: The cartridge case, yes, sir.

24 Q: There's be no way to tell whether it was a 22 long
25 that jammed it or not?

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1 A: You couldn't tell. That's correct.

2 Q: You also indicated that there were a couple of
3 things that could cause that weapon to jam, and one
4 I believe you indicated was interference with the
5 slide?

6 A: Yes, sir.

7 Q: If the gun was dropped or was fired as it was
8 impacting another object, could that cause that
9 slide to interfere and cause that cartridge to jam
10 in there?

11 A: It's possible.

12 Q: If someone fell while the had it and it went off?

13 A: That's possible, yes, sir.

14 Q: It could jam, couldn't it?

15 A: Uh-huh.

16 Q: Was that a yes?

17 A: Yes. Excuse me.

18 MR. LITTLEJOHN: Your Honor, those are all the questions
19 I have. Thank you Agent Parnell.

20 THE COURT: Re-direct?

21 MR. SALEEBY: None, sir.

22 THE COURT: All right.

23 MR. SALEEBY: May he be excused?

24 THE COURT: Make sure that the court reporter gets the
25 exhibits back, Mr. Parnell. Counsel, pick them up,

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1 please. You like to have this witness excused, Mr.
2 Saleeby?

3 **MR. SALEEBY:** Yes, sir.

4 **MR. LITTLEJOHN:** Okay.

5 **THE COURT:** All right. You are excused. Thank you for
6 coming.

7 **MR. PARNELL:** Thank you.

8 **THE COURT:** All right, ladies and gentlemen. You've
9 been here for eight or nine hours and have been
10 working very hard. It's been a long day for
11 everybody, and I think this is a good time to
12 adjourn for the evening, and we are going to recess
13 now until tomorrow morning. I would again tell you
14 that it's still improper for you to talk about this
15 case. Tonight when you can go back to your hotel
16 and you're having dinner, I'm sure by now you've
17 probably gotten some things in common that you can
18 talk about. If you will, do that. You can talk
19 about anything but this case. I'm going to turn you
20 back over to the detail and let allow them to take
21 you to the hotel and then to dinner, and then we
22 will reconvene in the morning at 9:00 o'clock and
23 get back into the testimony of the case at that
24 time. I hope that everybody finds their
25 accommodations comfortable tonight, and if you have

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1 any special needs, let the agents know, and if there
2 is anything that we can do, we will try to
3 accommodate you in any way that would be reasonably
4 possible, but there are certain things we just can't
5 do, but other than that, thank you, and I will see
6 you in the morning at 9:00 o'clock. Have a pleasant
7 evening.

8 (Jury excused at 6:09 p.m.)

9 **THE COURT:** All right. Mr. Littlejohn and Mr. Babb,
10 what I would like to do now and go ahead and get it
11 on the record so we won't have to send the jury out
12 and do it tomorrow, and it might save us just a few
13 minutes plus the fact that it will give you an
14 opportunity to talk with your client about these
15 matters before he has to make a decision after the
16 court has had a chance to advise him, but I'd like
17 for him to come around and maybe advise him on the
18 record of the Fifth Amendment.

19 **MR. BABB:** Yes, sir.

20 **THE COURT:** Mr. Stone, if you'll just come right up to
21 the rail, please. Mr. Stone, you may be called as a
22 witness to testify on your own behalf. I now advise
23 you that you have the right to invoke the
24 protections given you by the Fifth Amendment to the
25 Constitution of the United States in a similar

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1 counterpart provision of the Constitution in the
2 State of South Carolina. The Fifth Amendment to the
3 Constitution of United States provides in part that
4 no person shall be compelled in any criminal case to
5 be a witness against himself. This provision of
6 constitutional law means that you cannot be
7 compelled or required to testify in this case. This
8 is a right and privilege which the law extends to
9 you. It is a personal privilege, and no one can
10 waive this right except you. You have a right not
11 to testify, but you also have a right to testify.
12 The court will grant you the right to consult with
13 your lawyers before you make a decision, and if you
14 elect not to testify, your failure to testify cannot
15 be used by the state as an inference in this matter,
16 and your failure to testify cannot be considered by
17 the jury in its deliberations. If you elect to
18 testify and waive the privileges, I will advise you
19 that you would assume the role of a witness in this
20 case, and you would then give up your constitutional
21 privilege against self-incrimination and you would
22 be subject to the same rules that govern any other
23 witness in this case. Now I further advise you that
24 if you do elect to take the witness stand and
25 testify, that this decision on your part must be

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1 made freely, voluntarily, intelligently, and with
2 the knowledge and the protections given you by the
3 Constitution and with knowledge of the consequences
4 if you're alleging to testify. I'm not going to
5 require an answer from you at this time. It's not
6 even appropriate because the state has not even
7 completed their case, but I just want to make sure
8 that, that I explain these to you on the record and
9 give you an opportunity to think about them and also
10 to consult with your lawyer, lawyers about this
11 before you are required to make a decision. Have
12 you understood what I have asked you or told you
13 about the constitutional rights?

14 **MR. STONE:** Yes, sir.

15 **THE COURT:** Is there anything that I can do to clarify
16 those matters?

17 **MR. STONE:** I understand them perfectly.

18 **THE COURT:** All right, sir. All right. Fine. I just
19 wanted to make sure that you understood, and we'll
20 actually get the waiver later on if that is
21 appropriate at that time. Thank you very much.

22 **MR. LITTLEJOHN:** Thank you, Your Honor.

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

24 **THE COURT:** All right. Mr. Jackson anything before we
25 recess for the evening?

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1 **MR. JACKSON:** That's all we have, Your Honor. Thank
2 you.

3 **THE COURT:** Anything from the defense?

4 **MR. LITTLEJOHN:** No, Your Honor

5 **THE COURT:** All right. We'll be in recess until 9:00
6 o'clock tomorrow morning, same time with all the
7 parties and the jury and everything else. We'll see
8 everybody tomorrow morning at 9:00 o'clock. Have a
9 pleasant evening.

10 **MR. LITTLEJOHN:** Thank you, Your Honor

11 **THE BAILIFF:** Order in the court. All rise, please.

12 **THE COURT:** Thank you. And to Mr. Stone, good morning
13 to you as well. Before we get started, one
14 administrative matter. It has come to my attention
15 that there has been some resistance, if not outright
16 defiance, of the instructions and things that the
17 bailiffs have asked certain people to do, and I want
18 everyone to know that the bailiffs are acting on my
19 instructions, and I expect that the instructions of
20 the bailiff to be followed to the letter, and that
21 if they're not followed, then that is in contempt of
22 this court. I'm addressing this, and I will say not
23 from counsel, it hasn't come from any counsel, any
24 sources of counsel, but witnesses and spectators and
25 people of that nature have not always obeyed the

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1 instructions that the bailiffs have given, and they
2 are in charge and doing what I tell them to do, and
3 I expect everyone to follow their instructions. All
4 right. Anything before we bring the jury in? Mr.
5 Jackson?

6 **MR. JACKSON:** Got the exhibits. I believe we're fine,
7 Your Honor.

8 **THE COURT:** All right. Anything from the defense before
9 we bring the jury in, Mr. Saleeby?

10 **MR. SALEEBY:** No, Your Honor.

11 **THE COURT:** All right. Bring the jury in, please.

12 (Jury in at 9:08 a.m.)

13 **THE COURT:** One other thing while we're working on that,
14 too, is also the area behind the back, back
15 courtroom back here is for officers of the court and
16 court personnel only. That means that witnesses and
17 spectators and nobody should be coming into this
18 area at the back of the courtroom in this back hall
19 back here. That is court personnel and officers of
20 the court only.

21 **THE CLERK:** Your Honor, all the jurors and the
22 alternates are present in the courtroom.

23 **THE COURT:** All right. Good morning, ladies and
24 gentlemen, and thank you very much for your patience
25 in being here, and I have talked to the officer in

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1 charge of the detail of the jury about dinner last
2 night. I understand it was not entirely
3 satisfactory. We did not know at the time that the
4 administrative responsibilities were being
5 administrative arrangements were being made for the
6 jury, but Kathy is going to review this plan more
7 closely, so that was as much news to us as it is to
8 you, and I apologize if it was not entirely
9 satisfactory, and I do appreciate your understanding
10 about that situation, and that will not be the
11 situation tonight. Okay? And we are ready to go
12 forward at this time. The state is still in the
13 process of presenting their testimony to you. Mr.
14 Jackson, you may call your first witness.

15 **MR. JACKSON:** Thank you, Your Honor. May it please the
16 court, Ms. Peggy Kubala, please come around.

17 **THE CLERK:** Place your left hand on the Bible. Raise
18 your right hand and state your name, please.

19 **MS. KUBALA:** Peggy A. Kubala.

20 **THE CLERK:** Do you solemnly swear or affirm the
21 testimony you give this court shall be the truth,
22 the whole truth, and nothing but the truth so help
23 you God?

24 **MS. KUBALA:** Yes, sir.

25 **THE CLERK:** Have a seat up here, please, ma'am.

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1 MS. PEGGY A. KUBALA, being duly sworn testifies as
2 follows:

3 MS. KUBALA - DIRECT EXAMINATION BY MR. JACKSON:

4 THE CLERK: State your full name and spell your last
5 name, please, ma'am.

6 MS. KUBALA: Peggy A. Kubala, K-U-B-A-L-A.

7 Q: Ms. Kubala, can you tell us, unless you're kind of
8 sensitive, how young are you?

9 A: Sixty-seven.

10 Q: And are you married, ma'am?

11 A: Yes, ma'am. Yes, sir.

12 Q: To whom are you married?

13 A: Fred Kubala.

14 Q: How many years have you and Mr. Fred Kubala been
15 married?

16 A: Forty-five.

17 Q: Where do you live right now?

18 A: Sumter County.

19 Q: And where in Sumter thereabouts?

20 A: 102 Lindley Avenue.

21 Q: Where were you prior to coming to Sumter?

22 A: Germany.

23 Q: And what were you doing in Germany?

24 A: My husband was in the Air Force, and we were
25 stationed at Ramstein.

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1 Q: And were you later stationed and moved to Sumter?

2 A: Yes, sir.

3 Q: When did you all come to Sumter?

4 A: 1979. It was in August of 1979.

5 Q: Ms. Kubala, are you employed?

6 A: Yes, sir, I am.

7 Q: And would you tell the folks on the jury what it is
8 that you do?

9 A: I was twenty-two years at the YMCA as aquatics
10 director. I retired, and for the last three years I
11 have been the director of the City of Sumter Aquatic
12 Center.

13 Q: Any idea children over the years you have dealt
14 with?

15 A: Many.

16 Q: Many.

17 A: I think I figured it up as like 2,000 a year.

18 Q: 2,000 a year?

19 A: A year.

20 Q: Did you and Mr. Fred Kubala or your family, how many
21 children did you have?

22 A: We had eight.

23 Q: Can you tell us who they are and approximately how
24 old they are?

25 A: Vickie is forty-nine. Jerri is forty-six. Jerri

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1 Ann Hollard. Tammy Kubala is forty-four. Patty is
2 forty-three, Charlie would have been forty-two in
3 October, Johnny is thirty-eight, and Kevin is
4 thirty-six, and Amy is thirty-one.

5 Q: So how many is that altogether?

6 A: Eight.

7 Q: And out of those eight, how many are still with us
8 today?

9 A: Seven.

10 Q: Ms. Kubala, as a son, tell the folks on the jury a
11 little bit about, about your son, Charlie, when he
12 was coming up.

13 Q: Charlie was born in Reno, and they used to tease me
14 about him being born on a crap table, but he was
15 born in Reno, Nevada, on October 5, 1963. When he
16 was three years old, his dad went to Vietnam, and at
17 that time he told me, he said, I came back from
18 leaving him at the airport just a minute. And
19 he said I've got to be the big boy now, don't I, and
20 I said yeah. So then after we left Vietnam, after
21 Fred came back from Vietnam, we went to Montana, and
22 then from there we went to well, Montana was
23 before Vietnam, but after we went to, he went to
24 Vietnam, we went to Texas, and in Texas Charlie went
25 to school there, started school there. Then we went

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1 to Okinawa, and in Okinawa he was in scouts, and he
2 played football, and he played baseball. And then
3 from Okinawa we went to Florida where he played
4 football and, and also was in scouts, and then we
5 went to Germany. In Germany he was in scouts. He
6 did a lot of work with the chapel. He enjoyed being
7 with the youth group. He was in the chapel there.
8 And then we moved here, and when we moved here, I, I
9 got a job at the WMCA, and he helped me there,
10 helped me teach swimming. In fact the first year we
11 were here, we taught swimming in our backyard, and
12 he was my other instructor, lifeguard, and he took
13 lifeguarding, and then he became an instructor in
14 lifeguarding, and that's when he met Teresa was
15 while we were teaching lifeguarding on night. He
16 used to also be my security. I had some kids night
17 out at the Y, and he used to come and help with
18 those.

19 Q: When he was in Sumter, how old was he when you all
20 moved to Sumter?

21 A: Fifteen.

22 Q: Fifteen. And where did he go to high school?

23 A: He went to Sumter High.

24 Q: When he was at Sumter High he played sports?

25 A: No, he didn't.

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1 Q: What was his involvement in extra curricular
2 activities and things of that nature?

3 A: He mainly helped me out at the Y. He taught
4 swimming, he taught lifeguarding and that type of
5 thing at the Y.

6 Q: Some folks after their sons get married kind of lose
7 their son. Was that the situation?

8 A: That was not true here. He married a wonderful
9 girl, Teresa, and they were around our house all the
10 time. In fact, Charlie used to come around all the
11 time, and he was the big brother. Even though he
12 was number five, he was the big brother for all four
13 sisters, five sisters.

14 Q: Ms. Kubala, I need to draw your attention to
15 February 26, 1996. Do you remember where you were
16 when you found out Charlie had been shot?

17 A: Yes, I do.

18 Q: And would you tell us where you were and what you
19 were doing?

20 A: I was at the YMCA. I had just finished a
21 lifeguarding class, and the kids were, I was just
22 sitting there talking to them about what they did
23 and how they made out on their tests and everything
24 when I got the phone call from my husband that said
25 Charlie had been shot and that he would meet me at

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1 Teresa's.

2 Q: Did you know at that time if he was still or if he
3 had died?

4 A: No, I did not.

5 Q: And from the Y what did you do?

6 A: I drove very quickly to Teresa's house.

7 Q: And when you got to Teresa's house, what did you
8 find?

9 A: I found several people there, and I asked somebody,
10 I said where's my son, and I think it was Eddie that
11 said, Ms. Kubala, he's dead, and so I went in and
12 saw Teresa then.

13 Q: Is there anything else that happened that particular
14 evening?

15 A: No. We had several people come by, and we waited
16 until they found Bobby Stone.

17 Q: After that night, was there a later time when you
18 were taken over to 817 Taylor Street where Charlie
19 was murdered?

20 A: Yes, we were. I don't remember exactly when, but it
21 was a couple, either the next day or a couple of
22 days later, we went over there, and we went to the
23 scene, and I remember seeing the porch and, and Gary
24 Metts took us to the area that Charlie had been the
25 first time and then when he came back the second

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1 time.

2 Q: Who went over there with you?

3 A: It was actually Fred. I think it was the whole
4 family and the Barrets.

5 Q: And the Barrets would be who?

6 A: Teresa's parents. We're very close to them, so we
7 do quite a bit together.

8 Q: Ms. Kubala, how about tell the folks in the jury
9 what kind of effect this has had on you and your
10 family.

11 A: Well, you know, when you lose a mother, that's very
12 hard, but to lose a child that's a part of you

13 Q: Take your time.

14 A: And there's always a void or a hole there in your
15 family. I cannot go past a police car without
16 looking inside, and I can't pass, and I pass the
17 Law Enforcement Center quite a bit cause since I
18 have to go the City Hall, and I look every time to
19 see if he's out there. And I don't think, I don't
20 think a day goes by that I don't think about him,
21 and some days I talk quite a bit about it. I always
22 think about him every time I bake a loaf of bread
23 because he loved homemade bread, and he was very, he
24 had uncanny way of coming by and always getting the
25 first piece no matter when, and our peanut butter

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1 and jelly supply has, shall I say it has not
2 diminished. He loved peanut butter and jelly and
3 homemade bread, and, and so we have quite a bit of
4 that around now. We didn't used to.

5 Q: Ms. Kubala, today being not the anniversary of
6 Charlie's death, but the anniversary of Charlie's
7 life, what effect is all of this having on you?

8 A: Well, since it's not a Sunday and since it's not a
9 weekday, we don't have mass at our church, but
10 generally I usually go to mass on the day that, on
11 that day, and then I usually stop by the cemetery.
12 Today I didn't go to mass cause we didn't have one,
13 but I probably will go by the cemetery today.

14 Q: Thank you, Ms. Kubala. Please answer any questions
15 the defense counsel has for you.

16 **THE COURT:** Mr. Littlejohn?

17 **MR. JACKSON:** We have no questions for Ms. Kubala.

18 **THE COURT:** Ms. Kubala. Thank you. You may step down.

19 All right, Mr. Jackson, you may call your next
20 witness.

21 **MR. JACKSON:** Thank you, Your Honor. We call Mr. Fred
22 Kubala, Your Honor .

23 **THE COURT:** Mr. Kubala, come around, please.

24 **THE CLERK:** Place your left hand on the Bible. Raise
25 your right hand and state your name, please.

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1 **MR. KUBALA:** Fred Kubala.

2 **THE CLERK:** Do you solemnly swear or affirm the
3 testimony you give this court shall be the truth,
4 the whole truth, and nothing but the truth so help
5 you God?

6 **MR. KUBALA:** I do.

7 **THE CLERK:** Have a seat up here, please.

8 **MR. FERDINAND J. KUBALA,** being duly sworn testifies as
9 follows:

10 **MR. KUBALA - DIRECT EXAMINATION BY MR. JACKSON:**

11 **THE CLERK:** State your full name and spell your last
12 name.

13 **MR. KUBALA:** Okay. Full name is Ferdinand J. Kubala, K-
14 U-B-A-L-A. I go by Fred.

15 Q: Mr. Kubala, I asked your wife how young she was.
16 I'll ask you how long are you in the tooth?

17 A: I'm kind of getting along at seventy years old.

18 Q: Seventy years old. And you're originally from
19 where, sir?

20 A: Originally from Texas.

21 Q: Do you recall when you and Ms. Peggy were married?

22 A: Yes, sir.

23 Q: And when was that?

24 A: That was in January 29, 1960.

25 Q: And what were you doing at the time?

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1 A: I was in the Air Force.

2 Q: How long were you in the Air Force?

3 A: Twenty-eight years.

4 Q: What rank did you attain?

5 A: Lt. Colonel.

6 Q: And when did you retire?

7 A: 1984. End of November 1984.

8 Q: Is the Air Force what brought you to Sumter?

9 A: Yes.

10 Q: And when you came to Sumter, I believe that was in
11 '79?

12 A: Yes.

13 Q: When you came to Sumter, did you have all eight
14 children there, or were some grown when you all got
15 to Sumter?

16 A: Some had already left the nest. I think our two
17 oldest daughters were scattered out already.

18 Q: Do you remember what year Charlie was born?

19 A: Pardon?

20 Q: Do you remember what year Charlie was born?

21 A: Charlie was born in 1963.

22 Q: And how old would he have been when you all came to
23 Sumter?

24 A: Probably fifteen.

25 Q: All right, sir. What interests as a young man did

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1 Charlie have?

2 A: He was kind of interested in most anything that was
3 mechanical that ran either on batteries or made
4 noise, and we worked with model airplanes, model
5 cars, and a little bit of woodworking, and I think
6 when we were in Okinawa, we did a little bit of
7 lapidary work, branding stones and polishing them.

8 Q: What kind of hobbies did he have?

9 A: Probably taking apart anything that he could get his
10 hands on in the house. His mother used to just kind
11 of cringe when he was seen walking through the house
12 with a pair of pliers and a screwdriver, but he had
13 varied interests.

14 Q: Did he earn a nickname because of that?

15 A: Well, after he got a little older, he was called Mr.
16 Fix It because he finally learned how to put things
17 back together.

18 Q: Did you all have a boat or did you all play sports
19 together back in those days?

20 A: Yes. When we we had a boat when we were
21 stationed in Texas, and he wasn't quite old enough
22 to do any water skiing, I don't think, but when I
23 came back, we used to water ski every Sunday. It
24 was kind of a ritual, and we did some fishing as
25 well as oyster bed, oysters. He used to love that.

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1 Kind of an interesting side story, the neighbors
2 across the street, the fellow was about his age, and
3 they were going out getting oysters out of the
4 International Canal there, and he comes running into
5 the house and asked his mother that he has to have
6 some crackers and ketchup cause they're going to
7 have an oyster feed. Well, the first one, the first
8 raw oyster the buys popped in their mouth, that
9 stopped his, quenched his appetite for oysters.

10 Q: When you all got the Sumter, you retired from the
11 Air Force. What business did you go into, Mr.
12 Kubala?

13 A: Well, for a year I didn't. I kind of loafed around,
14 but then I ended up working for Electrolux as a
15 service manager.

16 Q: And is that what you're doing now?

17 A: No. I took it over as my own business. I went
18 there, went to work for them in 1985 and took it
19 over as my own business in 1988.

20 Q: And if you will, tell the folks what kind of
21 business that is and where you operate your
22 business.

23 A: Okay, if it's not going to be considered an
24 advertisements, but anyway, I have it's called Fred
25 Vacuums. I'm on Highway 521 now. I repair vacuum

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1 cleaners, all makes and models, and then try to sell
2 the Electrolux vacuum cleaner.

3 Q: Was Charlie helpful in your Electrolux business?

4 A: Yes. Charlie worked on dialysis machines part time,
5 and he used the same facilities to work in it. We
6 were originally on Broad Street across from Starvin'
7 Marvin, and the facility was too limited for his
8 needs for the dialysis machine, so we moved out on
9 Highway 521 into a larger building.

10 Q: The dialysis machine, correct me if I'm wrong,
11 Charlie first began at the sheriff's department?

12 A: Yes.

13 Q: And then later worked with dialysis machines?

14 A: Yes. He was, he was working with the sheriff's
15 department, and I don't know the exact, remember
16 exactly how, but he got involved in helping with
17 dialysis machines.

18 Q: All right. Let me we're going to bring a TV
19 around just a minute. While it's being set up, what
20 was the purpose of the dialysis machine?

21 A: Well, dialysis machines, these are used by people
22 who have problems with their kidneys, their blood.
23 They need to cleanse their blood, and the dialysis
24 machines, people get on the machine, and they're on
25 it, what, forty-five minutes to an hour and a half

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1 depending, and what it does is circulates and
2 cleanses the blood which the kidneys cannot do. It
3 replaces the kidneys.

4 **MR. JACKSON:** Your Honor, if I could have permission for
5 Mr. Kubala step down for just a moment?

6 **THE COURT:** Yes, sir, Mr. Kubala, but be sure and keep
7 your voice up so that everybody can hear you
8 including the court reporter.

9 **MR. KUBALA:** I should be able to do that.

10 **Q:** These are state's Exhibit Seven-five and Seventy-
11 six. Tell us about these machines he was working
12 with.

13 **A:** Okay. These, these are machines that you three
14 machines are standing sitting back here have now
15 become obsolete. They use one computerized now, or
16 as a matter of fact, those machines are probably
17 still sitting there because they were there for
18 repair. Charlie had just gotten them in, and of
19 course after ... I didn't know enough about them.
20 Didn't know enough about them to repair them, and
21 they didn't have anyone to send down from Anderson.
22 The company he worked for was. And some of the
23 bottles you see in front were some of the chemicals
24 that are used in conjunction with that, and that is
25 the back of the shop.

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1 Q: Back in the back of the shop?

2 A: Yes.

3 Q: And the next photograph?

4 A: This is just a piece of plywood leaning against it.
5 What he had done, we needed more storage area. As
6 you can see, there are some more machines, and then
7 he had built a loft above where we could put
8 additional supplies in, and then he had just
9 completed that I think the weekend before that week
10 before he was killed.

11 Q: All right, sir. Step back up, sir. Mr. Kubala,
12 leading up to the time of Charlie's murder, tell the
13 folks what kind of man your son had become.

14 A: Well, he'd become a good citizen. He wasn't
15 perfect, he wasn't an angel, but at the same time he
16 was very open with people. He used to help me in
17 the shop, and he would greet the customers as if
18 they were friends, and he would take care of them
19 for me. Matter of fact, if a customer brought in a
20 machine and needed it in a hurry, he used to tell
21 them they might want to take it somewhere else,
22 that I was a little bit slow, jokingly, but the
23 thing was he was very civic minded. He was really
24 interested in the City of Sumter, and he was also
25 very dedicated to his family as well as the

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1 community. When he was on the sheriff's department,
2 he used to drop by the house quite frequently, and I
3 can think of one instance. Christmas Eve we usually
4 open Christmas presents on Christmas Eve, and he
5 happened to be on duty, and he came by the house,
6 and he was a little sharp with his mother, so I went
7 to ask him what the problem was I get upset
8 when people, when good things happen. But anyway,
9 he made the comment, he said it was something at
10 work, and I said what happened. He said well, I've
11 had to been, I've been to these people's house twice
12 or three times. He said the father is drunk and so
13 he's kind of messing up Christmas for them. Now my
14 comment to him was, well, you know, you could take
15 the guy and lock him up and that will take care of.
16 He says, no, that won't, Dad. I've just got to
17 compose myself. He says he's messing it up for
18 them. If I lock the fellow up, he said I'll ruin
19 Christmas for them.

20 Q: And that was the kind of compassion and
21 consideration he had?

22 A: Yes, and since that, since that time, I've had a
23 number of customers who have told me that their
24 children or in dealings with him that they always
25 found that he was the type that would talk to them

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1 and would try to resolve situations before they
2 became necessary for any further action.

3 Q: So would you say he was a peace officer?

4 A: Pardon?

5 Q: Would you say he was a peace officer?

6 A: Yes, I would say that. Probably learned it from
7 when he was young. His mother didn't testify to
8 this, but if he got in trouble when he was young,
9 first thing he'd say, Mother, let me tell you about
10 it. Let me, let me talk to you. He was good at
11 that, and he would like to talk with his if
12 there was an incident transpired, I understand he
13 liked to talk with the people rather than dictate
14 and write reports.

15 Q: Mr. Kubala, On February the 26th of 1996, do you
16 remember what you were doing when you found out
17 something was badly wrong?

18 A: I was at the I had gotten home, and I don't
19 recall what I was doing, but I do recall that Chief
20 Hall, the phone rang, and Chief Hall was at the
21 other end telling me that Charlie had been shot, so
22 immediately I turned and called the wife at the Y,
23 and I don't remember if I called the daughter who
24 lives here in Sumter or not. I think I did, and she
25 said she'd notify the others, and then proceeded to

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1 Charlie and Teresa's house, and on the way, he had
2 told me that he was shot and please meet, for me to
3 meet him at Teresa and Charlie's house. I said,
4 well, okay, and on the way there, it kind of dawned
5 on me that if he had been, if he was still alive,
6 they probably wanted us at the hospital, so I
7 assumed at that point that he had probably been
8 killed.

9 Q: And when you got to the house, what did you find?

10 A: When I got to the house, there were a number of
11 people there. Chief Hall, a lot of the deputies,
12 Chaplain Clanton and a few, a few people that we
13 knew. Quite a reception there, and of course Eddie
14 Hobbs was one of the first ones there.

15 Q: Mr. Kubala, what kind of effect has this had on your
16 or your business or the plans that you and Charlie
17 may have had?

18 A: Well, if anyone has been to my shop, it sort of
19 looks like it's a junkyard rather than a vacuum
20 cleaner repair place. Without Charlie there, don't
21 seem to have time during the day to go off anywhere
22 without closing the place, and usually when he was
23 around, I could do things, but he would come along
24 and say, Dad, we need to do this, we need to do
25 that, you know. Get rid of this piece of junk and

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1 clean this place up, and, and repair is the same
2 thing.

3 Q: Did you have plans for him getting the business from
4 you?

5 A: Yes. We had he knew the fellow that we were
6 into the building from. It was Mr. Smith who used
7 to have an appliance place there, and the plans were
8 that Charlie was going to buy the building, and he
9 had talked to Mr. Smith about it, and then after he,
10 he was killed, Mr. Smith and I had an agreement that
11 I would buy the building from him, and before we got
12 that done, he passed away, and then Ms. Smith
13 inherited the building, but in the meantime there
14 was some other things that came up, and I never did
15 buy the building. Purpose was we were going to buy
16 the building, and Charlie figured after he retired
17 from the police department, that that, or sheriff's
18 department, that would be a place where he could
19 have a business also.

20 Q: Let me ask you just one more question going back to
21 February the 26th of 1996. Do you remember Sheriff
22 Mims coming to Teresa's house that night?

23 A: Yes, he came. He was out of town, so he came a bit
24 later after everyone was there.

25 Q: And when he got there, how did you greet him?

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1 A: Well, when he got there, we of course shook hands
2 and greeted each other for the evening, and I think
3 the only thing Sheriff Mims was able to say was I'm
4 sorry, and my response to him was he, he died doing
5 what he loved.

6 Q: Thank you. If you would, answer any questions the
7 defense counsel has.

8 THE COURT: Mr. Littlejohn?

9 MR. LITTLEJOHN: We have no questions for Mr. Kubala,
10 Your Honor.

11 THE COURT: Thank you, Mr. Kubala. You may step down.

12 MR. KUBALA: All right.

13 THE COURT: All right. Mr. Jackson, you may call your
14 next witness.

15 MR. JACKSON: Thank you, Your Honor. The next witness
16 is in a room outside the courtroom, and we'll bring
17 him down.

18 THE COURT: That would be fine.

19 MR. JACKSON: Your Honor, the state calls Mr. Kevin
20 Kubala.

21 THE COURT: All right, Mr. Kubala. Come up, please.

22 THE CLERK: Place your left hand on the Bible. Raise
23 your right hand and state your name, please.

24 MR. KUBALA: Kevin M. Kubala.

25 THE CLERK: Do you solemnly swear or affirm the

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1 testimony you give this court shall be the truth,
2 the whole truth, and nothing but the truth so help
3 you God?

4 **MR. KUBALA:** Yes, sir.

5 **THE CLERK:** Have a seat up here, please..

6 **MR. KEVIN M. KUBALA** , being duly sworn testifies as
7 follows:

8 **MR. KUBALA - DIRECT EXAMINATION BY MR. JACKSON:**

9 **THE CLERK:** State your full name and spell your last
10 name, please, sir.

11 **MR. KUBALA:** Kevin Miller Kubala, K-U-B-A-L-A.

12 **Q:** Kevin, where do you live now?

13 **A:** I live in Easley, South Carolina.

14 **Q:** And what are you doing in Easley?

15 **A:** I work for a company called Advanced Automation out
16 of Greenville.

17 **Q:** How long you been up there?

18 **A:** Since '97. Since June of '97.

19 **Q:** You're one of Charlie's brothers, correct?

20 **A:** Yes. I'm the youngest.

21 **Q:** And where do you fall in the line up? There's
22 eight. Where do you fall in the line up?

23 **A:** I'm number seven.

24 **Q:** You're number seven. How much older was Charlie
25 than you?

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1 A: He was six years older than me.

2 Q: And how close were you to Charlie when you were
3 growing up?

4 A: We shared a lot of the same interests. We went
5 hunting and fishing, water skiing, motorcycle
6 riding, whatever together.

7 Q: Did he spend time with you?

8 A: Yes. He was my father worked a lot, and he was
9 one of them that taught me how to ride a bicycle.
10 He taught me how to ride a motorcycle when we got a
11 little older. I don't remember if he was the one
12 that taught me how to drive a car, but I think he
13 was.

14 Q: And what kind of brother was he to your other
15 sisters and your other brothers?

16 A: He was the one they called when they needed help.
17 If something was wrong at their house, he came over
18 to fix it for the ones in town. He was the big
19 brother they could call even though he wasn't the
20 big brother.

21 Q: And what kind of influence did he have on your life?

22 A: Pretty big influence. I don't know how to answer
23 that.

24 Q: In any particular way?

25 A: He because he was a police officer, he kept me

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1 from going the wrong way.

2 Q: So he was a deputy when you were in high school?

3 A: Yes, he was.

4 Q: Did he keep a watchful eye out for you?

5 A: Yeah. Sort of.

6 Q: Did you put him to task any?

7 A: Yes, I did.

8 Q: How old were you when Charlie was murdered?

9 A: I was twenty-six years old.

10 Q: And at the time, what were the physical similarities
11 that you and your brother shared?

12 A: We looked a lot alike even though there was so many
13 years between us. We hung around the local gas
14 station tow-truck service. The people that they
15 towed for actually thought we were the same person
16 for a long time because they never saw us at the
17 same time. So from a distance, as far as he is from
18 me, we looked identical.

19 Q: And what did Charlie's, Charlie's death, what kind
20 of effects did that have in your life?

21 A: Constant reminder. You know, when I look in the
22 mirror. Everybody in town would call me by his name
23 by mistake or ask me about it, and eventually it's
24 kind of a small part of the reason I moved to Easley
25 was to get away from everything around here.

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1 Q: I've heard that he was often called Opie as a
2 nickname.

3 A: Yes.

4 Q: And any part of that now affecting your life?

5 A: Yeah. I got Opie, Jr., sometimes.

6 Q: And how has it affected your brothers and sisters?

7 A: Pretty much the same way.

8 Q: Are any of them still here in the Sumter area?

9 A: Yes. My older sister is still here in the Sumter
10 area.

11 Q: But the other folks have moved out?

12 A: They, they've all moved away. They were all moved
13 away at the time, too.

14 Q: You still get together for family gatherings?

15 A: Yes.

16 Q: And he's not there?

17 A: And he's not there.

18 Q: If you'd answer any questions the defense counsel
19 has for you.

20 **THE COURT:** Mr. Littlejohn?

21 **MR. LITTLEJOHN:** We have no questions for Mr. Kubala.

22 **THE COURT:** All right. Thank you, Mr. Kubala. You may
23 step down.

24 **MR. JACKSON:** Your Honor, the next witness is in the
25 other room as well.

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1 **THE COURT:** That's fine.

2 **MR. JACKSON:** Your Honor, the state calls Ms. Teresa
3 Kubala-Hanvey

4 **THE COURT:** All right.

5 **THE CLERK:** State your name, please.

6 **MS. KUBALA-HANVEY:** Teresa B. Kubala Hanvey.

7 **THE CLERK:** Do you solemnly swear or affirm the
8 testimony you give this court shall be the truth,
9 the whole truth, and nothing but the truth so help
10 you God?

11 **MS. KUBALA-HANVEY:** I do.

12 **THE CLERK:** Have a seat up here, please, ma'am.

13 **MS. TERESA B. KUBALA-HANVEY,** being duly sworn testifies
14 as follows:

15 **MS. KUBALA-HANVEY - DIRECT EXAMINATION BY MR. JACKSON:**

16 **THE CLERK:** State your full name and spell your last
17 name for us.

18 **MS. URSO:** Teresa B. Kubala Hanvey, K-U-B-A-L-A-Hanvey,
19 H-A-N-V-E-Y.

20 **Q:** Teresa, you are Charlie Kubala widow, is that
21 correct?

22 **A:** That's correct.

23 **Q:** And where do you live now?

24 **A:** Anderson, South Carolina.

25 **Q:** How long have you been in Anderson?

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1 A: Eight years. In April it will be eight years.

2 Q: And have you remarried?

3 A: Yes, I have.

4 Q: And is your husband here today?

5 A: Yes, he is.

6 Q: Okay. How long have you all been married?

7 A: We've been married three and a half years.

8 Q: Teresa, where did you grow up?

9 A: In Manning, South Carolina.

10 Q: Where did you go to high school?

11 A: In Manning High.

12 Q: And your parents were who?

13 A: Eddie and Shirley Barrett.

14 Q: What were they doing, what business were they in
15 when you were growing up?

16 A: My daddy was a golf pro, and they both ran the
17 Springs Country Club here in Sumter.

18 Q: Here in Sumter. All right. Let's talk about you
19 and Charlie. Tell us when you met Charlie.

20 A: I met Charlie December of '82.

21 Q: And how did you meet Charlie?

22 A: A friend of mine was getting ready to go back into
23 the Army, he had been on leave, and I wanted to see
24 him before he left, and so I went to his mother's
25 house, and she told me that they had left he,

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1 her car was broke, so he was over at a friend's
2 house. His dad and a friend of his was fixing the
3 car for her, so she said we'll call over there and
4 you can go see him. So it happened to be Charlie's
5 mom and dad's house, and so I went over there, and
6 that's when I first met Charlie. And then in
7 January of '83 I had to renew my life saving, so
8 when I went to take my course, he was teaching his,
9 the class, and his momma was the one that was in
10 charge, and he was help teaching the class, so we
11 started talking, and then he asked me out, and then
12 we started dating.

13 Q: What was your first date?

14 A: We went to I was supposed to go with a friend
15 of mine, and he told me if she didn't call me to go,
16 then he'd call and see, and if she didn't go, I'd, I
17 told him I'd go out with him, so we went. She
18 couldn't go, thank goodness, and so we decided
19 I was waiting for him to call, and I told him I
20 could go, so we went to Rascals was our first date.
21 We went out dancing cause I like to dance, and I
22 told him then, I said I don't drink, so he said
23 okay, that's fine, so we went, went out and danced,
24 and he took me back home, and from then on, we
25 started seeing each other.

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10 charge, and he was help teaching the class, so we
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22 told him then, I said I don't drink, so he said
23 okay, that's fine, so we went, went out and danced,
24 and he took me back home, and from then on, we
25 started seeing each other.

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1 Q: How quickly did it develop into something serious?

2 A: Very fast. The first time I saw him, I knew there
3 was something there, and three months after we
4 started dating, he proposed to me.

5 Q: And when was that?

6 A: It was May the 11th.

7 Q: And tell us about that.

8 A: He got down everybody had he proposed to
9 me at my parent's house. He had gotten down on one
10 knee and was fiddling in his sock, and I was like
11 what is he doing, and he pulled out a ring and
12 proposed to me, and he told me on the there he got
13 pulled for speeding, and he said that the police
14 officer said what are you in such a hurry for, and
15 he said well, I'm going to go propose to my
16 girlfriend today. He say well, I'm going to let you
17 go cause you're going to be in a lot of trouble
18 anyway, so.

19 Q: When were you all married?

20 A: We were married in August of that year, '83, so we
21 knew each other six months.

22 Q: And how old were you when you all got married?

23 A: I was twenty and he was nineteen.

24 Q: All right. Did you later have children?

25 A: Yes, we did.

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1 Q: And their names?

2 A: Charles Benedict Kubala, Jr., and Alexandria Suzanne
3 Kubala, which we call her Alex.

4 Q: And Charles Benedict Kubala, Jr., would be known as
5 little Charlie?

6 A: Right. At that time.

7 Q: At that time. Okay. How old are they now?

8 A: Charlie is nineteen, and Alex is fourteen.

9 Q: Are they are in the courtroom?

10 A: My son is, but my daughter had a hard time with it
11 Thursday during the opening statement, and we had to
12 take her out, and she said she couldn't it right
13 now. She might come back for the end, but right now
14 she said she can't do it.

15 **MR. JACKSON:** Your Honor, would it be okay for little
16 Charlie to stand up at this time?

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

18 Q: Teresa, what were some things that you and little
19 Charlie and Alex and Charlie Kubala, what were some
20 things that you all did as a family?

21 A: We liked to go camping. That was our favorite thing
22 to do, to go camping, and we did sleep in a tent,
23 but we all had, we loved to do that and go hiking,
24 and of course Alex was little, so about half the
25 time we had to end up carrying here, taking turns,

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1 but we liked to have cookouts and invite family and
2 friends over. We did that a lot, and we would go to
3 the beach some, and then his sister, Patty, that
4 lives in Georgia, we were real close to them. They
5 got married around the same time that Charlie and I
6 did, and their kids were close to the same age as
7 ours, and we'd go up to Georgia to visit them a lot
8 and do things with them.

9 Q: Teresa, tell us, if you know, did Charlie like his
10 career in law enforcement?

11 A: Yes, he did. I think it was in his blood. He
12 enjoyed law enforcement. He loved working with
13 people. Charlie had such a good attitude in life.
14 He was full of energy. He loved life. He loved
15 working with kids, too, especially teenagers and
16 making sure that they were headed in the right path,
17 and he never met a stranger. He was, I was always
18 jealous of him cause I said I wish I could be more
19 like you, that outgoing, and he kind of helped me
20 cause we kind of grew up together, I would say,
21 since we were so young when we got married. He, he
22 helped me cause I was very shy, which people if they
23 met me now would say that's hard to believe, but he
24 helped me kind of come out of that shell and have
25 more confidence in myself.

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1 Q: What was his ultimate dream as a law enforcement
2 officer?

3 A: He always wanted to be sheriff, and I told him,
4 well, that's fine, but I said I don't know if I
5 could be a sheriff's wife and get up in front of
6 people and talk and all that stuff cause I, I get
7 very nervous, but he said, oh, you can do it, but he
8 always wanted to be sheriff, talked about that in
9 the future.

10 Q: And what was, what was it like being the wife of a
11 deputy sheriff?

12 A: Very odd hours. At that time they had first and
13 second and third shift. When he was on second shift
14 was the time we really didn't get to see him cause
15 that, he'd go in the afternoon and not get home
16 until the middle of the night, so we wouldn't get to
17 see him when he was on that, that very often unless
18 he stopped by like to go to the bathroom or
19 something if he was in, on that side of town working
20 or something, and when he was on night shift, it was
21 okay, but if it was on the weekends, we would, I
22 would like take the kids off so he could sleep
23 during the day so they wouldn't make a lot of noise
24 and things like that.

25 MR. JACKSON: Your Honor, at this time I'm going to

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1 bring the TV over.

2 **THE COURT:** Yes, it would be. You going to have her
3 step down, Mr. Jackson?

4 **MR. JACKSON:** Yes, sir.

5 **THE COURT:** Let me just be sure to remind you to keep
6 your voice up because everybody's still got to hear
7 you, and you're away from the microphone and that
8 recorder, and everybody has to hear you, so you need
9 to keep your voice up.

10 **MS. KUBALA-HANVEY:** Yes, sir.

11 **Q:** State's Exhibit Number Seventy-three. Tell the
12 folks on the jury what this is and when this picture
13 was taken and what you all were doing.

14 **A:** This picture was taken when we went with the
15 Explorer group. It was the law enforcement
16 Explorers. Teenagers that were interested in law
17 enforcement, and he had the Explorers group, and
18 they needed, since they had girls also, they needed
19 some chaperones that were females, so I volunteered
20 to help chaperone and take these groups, but we went
21 camping, and we did take our kids along with us
22 which I think a lot of them wanted it because they
23 probably got children, too, but we had a real good
24 time, and the kids were really very good. The
25 teenagers that were there were very good children.

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1 Q: Can you point out the top left and top right. Who's
2 that in the white shirt?

3 A: In the white shirt is Gary Metts.

4 Q: And who's that on the left-hand side with a hat on
5 and a mustache?

6 A: That's Charlie.

7 Q: All right. State's Exhibit Number Seventy-four.
8 All right. Tell us about that picture.

9 A: That picture was when we were camping also. This
10 picture is also when we were just figuring what to
11 put on the stone. I let my kids decide about that,
12 and we decided to put that last camping picture on
13 the stone. It's engraved in the marble stone cause
14 I always wanted that's the kids were that
15 young, and I wanted it how it was. Showed me that
16 that was our life now.

17 Q: And State's Exhibit Seventy-seven? What is that?

18 A: That's the picture when we got married. As you see,
19 we both were pretty young. That's Charlie's brother
20 beside him, and then family in the background.

21 Q: State's Exhibit well, let me ask you this.
22 Where did you all get married?

23 A: In the United Methodist Church

24 Q: State's Exhibit Number Seventy-eight?

25 A: That's little Charlie's baptism.

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1 Q: Where were you all living in the time?

2 A: St. Jude's.

3 Q: State's Exhibit Seventy-nine.

4 A: This is Alex's, the last birthday party that Charlie
5 was there for. That was in October of '95. That's
6 me on the left, and Charlie is over there with the
7 little children where the pinata is. That year we
8 invited all of Charlie's shift from work. There was
9 a lot of the guys on his shift who all had kids that
10 were around the same age, so it worked out real
11 good, and all our family, my side and Charlie's side
12 were both there and some good friends of ours.

13 Q: State's Exhibit Eighty.

14 A: That one was also when we were, went camping. We
15 went hiking.

16 Q: State's Exhibit Eighty-one.

17 A: That's Alex's baptism. Most of the family and some
18 good friends.

19 Q: State's Exhibit Eighty-two.

20 A: That's little Charlie's first birthday, and this was
21 ... Charlie had, was not quite a year, a year on the
22 police force yet, and that year his great
23 grandmother from Texas was there for first birthday.

24 Q: And State's Exhibit Eighty-three.

25 A: This is our last family picture that we had taken

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1 that we sent out for Christmas.

2 Q: Okay. Thank you, Teresa. Teresa, I want to draw
3 attention to February 26, 1996. Do you recall what
4 day of the week that was?

5 A: It was a Monday.

6 Q: Were you working then?

7 A: Yes, sir, I was.

8 Q: And where were you working?

9 A: Santee Cooper Works.

10 Q: And what hours did you work for Santee Cooper?

11 A: From 8:00 to 5:00.

12 Q: Were your hours at that time in sync with the hours
13 that Charlie was working?

14 A: No, they weren't.

15 Q: And what shift was he working then?

16 A: He was on, getting, he was just starting that day on
17 second shift.

18 Q: And I believe you said that was, that was the time
19 when you all saw him the least?

20 A: Right.

21 Q: And second shift usually ran from approximately when
22 to when?

23 A: Back then second shift probably ran for about four
24 or five days, I think before they had any days off.

25 Q: Okay. And he went on sometime in the afternoon?

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1 A: Right.

2 Q: And got off?

3 A: In the middle of the night, 2:00, 3:00, somewhere up
4 in there.

5 Q: Okay. At that time how old was little Charlie?

6 A: Little Charlie was ten, and Alex was five.

7 Q: If you would, talk the jury through that last
8 morning, what you all did when he left the house.

9 A: Okay. I woke up that morning, and Charlie was still
10 in bed, and I got the kids ready to go, and I went
11 in there and gave Charlie a kiss good-bye and told
12 him I love you, and so I got the kids in the car,
13 took Alex by Moris Daycare first. Then took little
14 Charlie to Kingsberry. Then I went to work and got
15 off at 5:00. During that time, I hadn't spoke to
16 Charlie. A lot of times when we're at work, we
17 don't call each other unless it's an emergency or we
18 really have to tell each other something that's
19 going on, and so I got off at 5:00, picked up
20 Charlie from Kingsberry after-school program, then
21 went by and picked up Alex from Morris Daycare.
22 Then I went home and cooked supper and got the kids
23 to get their baths and showers and get ready for
24 that night to go to bed. Then I went outside to
25 take care of our dogs that we had at that time, and

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1 I saw something in the yard which looked to me like
2 a snake. So I went inside, and I paged Charlie to
3 see if I could go shoot it if it was, and so of
4 course he doesn't call right back all the time, and
5 I was used to that, but during that time his sister,
6 Vickie, had called. I can't remember where she was
7 living. I don't know if she was in California. I
8 can't remember, but she called, and she had told me
9 how she had met this guy. Charlie worked for Serve
10 All which works on dialysis machines, and she told
11 me that she had met somebody that knew Ted which was
12 Charlie's employer from Serve All and that, you
13 know, that was just a weird coincidence that she had
14 run into somebody that, that we knew, and so I told
15 her I'd tell Charlie about it and get, get him to
16 call her, you know, when he could. So we talked for
17 a little while, and the Nanny was on, and I was
18 folding clothes. The kids were still up cause they
19 usually didn't go to bed until 9:00, and I, we
20 started watching the Nanny, and I was folding
21 clothes, and my son, Charlie, said momma, shouldn't
22 Daddy had called us back by now, and I said, no, you
23 know, if he's on a call, he just can't drop it.
24 He'll call us whenever he can. So it didn't worry
25 me cause I was so used to that, and so we saw

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1 headlights, so I said that's probably your dad now.
2 So then the front doorbell rang, and I went and
3 answered it, and I saw it was Eddie Hobbs, and I
4 started cutting up with him cause we're all real
5 close, and he didn't cut up back with me, and I saw
6 another police officer behind him, and when I saw
7 that, I knew that it wasn't good what he needed to
8 tell me, and he tried to get me' he said we need
9 to go somewhere in private and talk, and I kept
10 saying no. I said I know what you're going to tell
11 me, and I don't want to hear it, and he said we
12 really need to go talk. So we went back to my
13 bedroom, and I just remember him telling me, you
14 know, that Charlie had been shot and that he
15 well, it kind of went blank after that. I do
16 remember him saying what do you want me to do, and I
17 said I need you to call my parents and Charlie's mom
18 and dad and, and, and he said well, I need the
19 numbers. Well, of course I couldn't think of the
20 phone numbers, so I told him where to go find them,
21 and he said we need, you want me to bring in the
22 kids, and I said, yes, so I told the kids, and of
23 course they, they broke down. Alex kind of
24 understood being five. She kind of understood, but
25 didn't understand, and she asked questions like will

1 I get a new daddy. She asked my daddy won't get to
2 be a granddaddy. I think one reason why she said
3 that about the grandfather thing is because my kids
4 are real close to both grandparents. They both,
5 both sides spend a lot of time, and we all have.
6 Every since they were little, they spent a lot of
7 time with both sides of the grandparents, and I
8 guess that's what she thought about, how close she
9 was to her grandparents and that her children won't
10 have that with her dad, and so we had a Chow at that
11 time that we called Goshee, and evidently he knew
12 something was up. Well, he had the one police
13 officer cornered growling at him, so I told Charlie,
14 I said go get Goshee and take him out, so we did,
15 and then from then, people just started showing up.
16 Very supportive, and it was very hard for me, and at
17 that time I never heard of concerns of the police
18 officers, but they had heard about it. They were
19 having a conference at that time, and that's, people
20 that have lost somebody in the line of duty is a
21 support group for them, and they send somebody that
22 day to come down and talk to me, you know, and gave
23 me a card that whenever I needed somebody to talk
24 to, that, you know, to call them. Everybody in the
25 law enforcement was wonderful, and they helped us

1 through a lot and took care of us.

2 Q: Teresa, let me, let me ask you. What all types of
3 effects has it had on Alex?

4 A: I think Alex has been the worst. Every since this
5 happened, I've had her in counseling in and out a
6 lot. She's been on depression medicine. She's also
7 ADHD, which is gets from me. She, she's had a
8 harder time. She was very jealous of Charlie,
9 little Charlie, for a long time because she said
10 that he got to know her dad longer than she did.
11 Right now she, she's always asked a lot of questions
12 about her dad, you know, and I'm open with her. We
13 talk and discuss it any time my kids want to discuss
14 anything about their dad, and sometime it will just
15 come up when we're talking about something, you
16 know, and Charlie might remember something. I might
17 remember something cause she doesn't have a lot of
18 remembers I guess being so young. She doesn't have
19 a whole bunch of memories of him, but I think she's
20 had the worst time with this.

21 Q: Can you tell us about little Charlie? What is he
22 doing now?

23 A: Little Charlie's in Clemson. This is his first year
24 in Clemson. He went to T. L. Hanna last year.
25 Graduated. If you all never, if you all seen the

1 movie Radio, that's where they go to school, and
2 last year he graduated in May. It was very hard for
3 me. Of course I'm the kind of person I don't show
4 things out, try not to anyway. I do it in my
5 private time, but I had a hard time with, with that
6 that Charlie wasn't here to see him. Charlie's the
7 kind that does not show a lot of emotion, so I don't
8 know how he feels on the inside, and he doesn't talk
9 much about his feelings which concerns me, but, but
10 everybody deals in death all different ways.

11 Q: There are some positive effects?

12 A: Yes.

13 Q: And what is helping little Charlie get to college?

14 A: He did get the scholarship. He's the first one to
15 get the scholarship from the Charles Kubala Memorial
16 Golf Scholarship. He got that this year which has
17 helped out a lot. We appreciate it very much. I
18 never knew how much. I knew it was expensive, but
19 until we got into it, I didn't know how expensive it
20 was, and Charlie graduated with honors, so I'm so
21 glad that he's able to go to college, and that helps
22 us out tremendously.

23 Q: Teresa, tell us, if you will, about the effects on
24 you, and maybe you should talk about short-term and
25 immediate effects and things that happened to you

1 first.

2 Q: Okay. I've had a lot of different emotions. Like I
3 said, a lot of times I hide things a lot. Right
4 after Charlie died, I had a bad habit of going out
5 to the grave every day. My kids got to the point
6 where they said Momma, we don't want to go, so I
7 started making myself go when they weren't with me.
8 After the first trial, I decided I needed to get
9 away, and so I took the kids, and I Charlie
10 worked for Serve All, so I knew Anderson pretty
11 well, and I liked, liked it up there, so I decided
12 we'd move. I thought my parents were going to kill
13 me, but we decided we'd, we'd move. I wanted to get
14 away and my kids to be brought up as normal as they
15 could without a father, but just not to be around
16 memories all the time. I mean we, there's not a day
17 that doesn't go by that I don't think of Charlie,
18 but I think one thing is not going to the grave all
19 the time. I think I kind of needed to get away from
20 that. I was going too much. And I've had my share
21 of counseling also on and off and been on depression
22 medicine also. Then we moved, and we've been in
23 Anderson for eight, it will be eight years in April.
24 My kids were involved in soccer and stuff, and
25 that's where I met my husband now. That's when Mike

1 and I really started talking then, and we just
2 continued like being friends. Like he'd call me on
3 the phone, and we would talk a lot, and so I knew
4 things were getting serious because I started having
5 feelings for him, and I started having a lot of
6 problems with that. So I had to start going back to
7 counseling because I felt like I was cheating on
8 Charlie, and that part was very hard, and but I knew
9 I didn't want to grow old by myself, and my kids
10 needed that father figure, so Mike and I started
11 dating, and then it became serious, and about I
12 guess two and a half years later, he proposed to me,
13 and we ended up getting married.

14 Q: Teresa, how long from the time that Charlie was
15 murdered till you married Mike?

16 A: It was five years.

17 Q: And since then is there anything significant in your
18 life that you'd like to tell the jury about?

19 A: Yes. I'm ashamed of it, but I'll tell them.
20 February the 11th, 2003, I woke up very depressed.
21 They had called and told me that they were going to
22 retry this case over again, that the supreme court
23 had overturned it, and they called. They ended up
24 having to, leaving a message. We had gone away. It
25 was our first anniversary, Mike and I'd first

1 anniversary, and we had gone and taken the kids to
2 the beach, and we got back on that first
3 anniversary, that was on my answering machine, and
4 so I had that to deal with, and my husband, Mike,
5 now he was working for UPS and got hurt on the job,
6 and he was going through workman's comp and stuff,
7 and we were trying to sell his house because we had
8 two house payments when we got married, and the UPS
9 wouldn't take, take him back, so he lost his job and
10 had to find another job, and everything just blew
11 up. So that morning I got up, and Mike was still
12 asleep.

13 **MR. LITTLEJOHN:** Your Honor, excuse me. May be approach
14 the bench?

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

16 (Off the record meeting at the bar)

17 **THE COURT:** I will allow the defense to put the matters
18 on the record at a later time.

19 **Q:** Teresa, let me just ask you, ask you directly, the
20 things that you went through with Charlie and the
21 things after, if you'll go ahead and tell us as a
22 result of all of that, what happened that particular
23 day?

24 **A:** I decided I couldn't take any more, so I took the
25 bottle of Tylenol PM and decided I was just going to

1 end my life. Well, after I'd taken them, my
2 thoughts said what am I doing? This was stupid..
3 I've got two kids and a husband, so Mike woke up by
4 this time, and I told him what I had done, and of
5 course he got angry with me for doing it, which I
6 don't blame him because it was stupid. I was, they
7 took me to the hospital, and of course they had to,
8 to put me in ICU. I couldn't tell you what went on
9 because I blacked out after I got to the hospital.
10 They said I was up, but I didn't know what I was
11 doing or saying, but they had to, I had to drink
12 this stuff to get it all out of my stomach, or they
13 were going to pump my stomach. After that I put
14 myself into going to they have a unit there for
15 people that have done that kind of stuff, so I went
16 up there, signed myself in, and I stayed there for
17 about three days which was an eye-opener. I saw I
18 don't have any many problems as I thought I did, as
19 other people do. You always find people that are in
20 worse shape than you are, but

21 Q: Teresa, let me, let me stop you right there and ask
22 you a question. Badge Number 113. Where is that
23 badge?

24 A: That's at my house.

25 Q: And whose badge is that?

1 A: That was Charlie's badge.

2 Q: And what are some other things you have.

3 A: Yes, his flag and the metals that I have gotten.
4 It's in a case.

5 Q: Teresa, if you will, answer any questions the
6 defense counsel has for you.

7 A: Okay.

8 **THE COURT:** Any questions, Mr. Littlejohn?

9 **MR. LITTLEJOHN:** We have no questions for Ms. Kubala-
10 Hanvey.

11 **THE COURT:** All right. Thank you, Ms. Kubala-Hanvey.
12 You may step down.

13 **MR. JACKSON:** Your Honor, next we would ask Major Gary
14 Metts to the stand.

15 **THE COURT:** All right.

16 **THE CLERK:** Place your left hand on the Bible. Raise
17 your right hand and state your name, please.

18 **MR. METTS:** Gary Metts.

19 **THE CLERK:** Do you solemnly swear or affirm the
20 testimony you give this court shall be the truth,
21 the whole truth, and nothing but the truth so help
22 you God?

23 **MR. METTS:** I do.

24 **THE CLERK:** Have a seat over here, please, sir.

25 **MR. GARY ALLEN METTS,** being duly sworn testifies as

1 follows:

2 MR. METTS - DIRECT EXAMINATION BY MR. SALEEBY:

3 **THE CLERK:** State your full name and spell your last
4 name, please.

5 **MR. METTS:** Gary Allen Metts, M-E-T-T-S.

6 Q: Major Metts, where do you work?

7 A: At the sheriff's office.

8 Q: And are you married?

9 A: Yes, sir.

10 Q: How long have you been in Sumter?

11 A: About twenty years.

12 Q: And when did you do prior to working at the
13 sheriff's department?

14 A: I was in the military as a police officer.

15 Q: How long did you do that?

16 A: For eight years.

17 Q: Working in the sheriff's department now, what rank
18 have you obtained?

19 A: I'm the major.

20 Q: And what position?

21 A: Major of administration under the sheriff.

22 Q: Briefly what has been your career path to bring you
23 to the position of major?

24 A: Like I said, I started my career in the military as
25 a police officer. Worked as a canine officer.

1 Worked there eight years, and decided to get out and
2 make Sumter my home. Got a job at the sheriff's
3 office and started as a deputy on patrol. Worked
4 about two years. Got a chance to go into another
5 program called DARE, and it was in the school. I
6 took a chance to go into that, and worked as a
7 school resource officer in that area and advanced up
8 to the rank of lieutenant. I continued my education
9 at that time. Got my master's degree, and shortly
10 thereafter in 2000, the sheriff asked me if I would
11 become the major at that time. Well, I had to
12 become captain, and he put me in the position where
13 I currently hold today as the major of
14 administration.

15 Q: Back in February 1996, what rank did you have then?

16 A: Lieutenant.

17 Q: And what position did you hold?

18 A: I was still in the DARE program.

19 Q: You were working with Sgt. Charlie Kubala at that
20 time?

21 A: We were. Charlie was still on the road as a patrol
22 officer, but I had taken on a volunteer role in what
23 Teresa has referred to as the Explorer program. The
24 Explorer program for you that don't know, is a
25 program designed for young kids fourteen to twenty

1 years old to get involved in law enforcement, learn
2 a little bit about what we do, and it's a way that
3 we can kind of show the community a little bit about
4 what we do in law enforcement, and especially kids
5 who are interested in that field, and hopefully one
6 day put them in a uniform and put them to work with
7 us if that's what they so desire to do, and I had
8 gotten involved, pretty involved in it. Capt. Hobbs
9 was over the program before me, and he got pretty
10 involved in it, and then the things had kind of died
11 down, so I picked it up and decided I was going to
12 run with it, but I couldn't do it by myself. I knew
13 I couldn't do it by myself, so Charlie grabbed hold
14 and said hey, man, I want to help you, and it was
15 all volunteer after work. We met in the, in the
16 sheriff's office, and we'd go to the classroom and
17 spend a lot of time with these kids, and I formed a
18 real good friendship with Charlie at that time. He
19 was like my brother. He was my best friend, and we,
20 we got real close and started doing a lot of things
21 and venturing out to field trips and camping with
22 Teresa and them, and we started doing a lot of
23 different things with the kids and getting real
24 involved.

25 Q: Let me draw your attention directly to February 26,

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1 1996. What were you doing when you found out that a
2 Sumter County sheriff's officer had been shot?

3 A: I was at home with my wife, and watching the news.

4 Q: And what did you see on the news?

5 A: A deputy had been shot.

6 Q: Your wife was with you?

7 A: Yes, sir.

8 Q: And what did you do?

9 A: My first instinct was to call the sheriff's
10 department and find out who got shot. They didn't
11 tell a name. Thank you. They didn't tell a name.
12 They just said that somebody had been shot, so I
13 called the deputy, I called the dispatch to find out
14 what was going on, and she informed that Charlie had
15 been shot. She didn't say whether he was, had died
16 or not. I hung up the phone and said it's time to
17 go to work. My instincts took over. I grabbed my
18 badge and gun, and I didn't change clothes. I just
19 stayed in the clothes I had on. Put my bulletproof
20 vest on and jumped in the car, and I think at that
21 time I just kind of went into a zone. I didn't
22 realize I couldn't put myself together. I
23 drove around Sumter. I knew where it was. I knew
24 where I was supposed to go, but I kind of drove
25 around in circles. I went toward the hospital. I

1 drove around a couple other roads. I finally made
2 it to the, to the scene, and then when I got there,
3 some officers told me he'd been shot and killed, and
4 I got myself together at that time, and I guess I
5 was, I was in another world. Like I said, my
6 instincts took over, and they were setting up
7 roadblocks. I was assigned to a roadblock. We
8 started checking cars. At that time, we'd been
9 there maybe an hour or so, and I heard that they had
10 surrounded Mr. Stone. We, they had captured him
11 back by the Boys and Girls club which I was right
12 next to that area, so I took off and went back to
13 that area. As they were bringing Mr. Stone out, I
14 saw him face to face, and at that time I got back in
15 my car and realized I wanted to go over to Teresa's
16 house, and by the time I got there, it was a grand
17 confusion at the house by that time. There was
18 quite a bit of people at the house, and I don't
19 remember talking to anybody else, but going into the
20 house and seeing Teresa, that's when it all kind of
21 unfolded on me.

22 Q: And what did you do?

23 A: Just embraced her. I didn't know what else to do.
24 Didn't know what else to say.

25 Q: Were you able to assist in the Kubala funeral a week

1 after his death?

2 A: Like I said, me, me and Charlie, we felt like we
3 were brothers, you know. Teresa was in tough times,
4 and Capt. Hobbs was helping a lot and some other
5 people, and for the next week or two I just kind of
6 stayed at the house as much as she needed me to and
7 did anything and everything whether it was cutting
8 the grass or help with the kids, and did a lot of
9 things just around the house just to keep things
10 going, and the sheriff and me kept communications
11 with the sheriff's department with anything that was
12 going on with the sheriff's department that I could
13 talk to them about, and

14 Q: Did you do anything about the funeral?

15 A: Teresa, Teresa had a lot of trouble trying to figure
16 out what she was going to do for funeral
17 arrangements, and there was a lot of people telling
18 her a lot of things, and she asked my opinion on a
19 few items. She had a lot of help, and one of the
20 main things she wanted to know from me is would I be
21 a pallbearer, and number two would I get his uniform
22 ready.

23 Q: What do you mean get his uniform ready?

24 A: She wanted to bury him in his police uniform. We
25 picked out a uniform out of his closet, and I went

1 to the office and got his collar brass, his name
2 tag, stuff like that, but when I got it, it had
3 blood on it, so I had to come home and clean it. I
4 got it all ready, and when I got it ready, I took it
5 to the funeral home for her. Then, then the next
6 day or so, I don't remember how many days after that
7 was, maybe a day or two, we had the funeral, and it
8 was tough. I was one of the pallbearers along with
9 Capt. Hobbs, and we went to the Exhibition Center.
10 They had to have it at the Exhibition Center there
11 was so many people.

12 Q: Let me ask you Major Metts, from a personal
13 standpoint, what effects has the death of Charlie
14 Kubala had on you personally?

15 A: It's tough. I had a friend before, real close
16 friend, and he passed away. Charlie was my second
17 best friend. I'm not too good on having best
18 friends anymore. It's tough. Especially in my
19 field.

20 Q: Do you have anything that you carry around in your
21 car to remind you of Charlie?

22 A: The beeper that Charlie wore that night, the beeper
23 that Teresa told me about, they talked about. The
24 one that he called that night. I carry it in the
25 visor of my car. Always said I was going to throw

1 it away, but I've never been able to.

2 Q: And that's the call that never got returned? As far
3 as career and law enforcement, you mentioned the
4 Explorer group. Tell us what happened to the
5 Explorer group after Charlie's death.

6 A: I couldn't go back. I had too many memories of
7 stuff, so I just got out of it. It collapsed. For
8 the next couple of years, we had several people off
9 and on that took the post and just didn't care and
10 didn't take the initiative to work with the kids
11 like me and Charlie had done and Eddie had done till
12 just recently. In the last maybe two or three
13 years, we got a good guy on our hands now that's
14 taken the post and brought it back up. He's doing a
15 good job with it.

16 Q: Many of the kids that you all had when you all ran
17 the Explorer group, did any of them come back like
18 you?

19 A: Oh, we've had several of them. That's what made me
20 feel good. You know, we got several of the kids
21 that were fourteen or twenty years old who are now
22 deputies with me, serving with me, side by side.

23 Q: How about professional training with the sheriff's
24 department?

25 A: There has been some positive things. Right before

1 Charlie's death, he was working hard on a policy
2 book. We had a policy book in place, but it was
3 real, real vague, and Charlie put a lot of hard time
4 and working overtime and trying to help make it a
5 lot better, and it needed to be changed, and he was
6 spending nights and days up there doing it, and
7 after Charlie's death, they dedicated the policy
8 book to him.

9 Q: Can you tell us about the Charlie Kubala golf
10 tournament?

11 A: Oh, that, that's the best thing that ever happened.
12 If you live in Sumter, you've heard about the
13 Charlie Kubala golf tournament. It's one of the
14 biggest golf tournaments in Sumter, and we've got a
15 lot of hard-working people putting a lot of effort
16 in it. Larry Florence is one. He helped out with
17 that a lot. It raises money, and it's, it's helped
18 little Charlie go to college.

19 Q: And that's what it's intended for?

20 A: That's what it's intended to do, and if somebody is
21 offed, mother or father should fall in the line of
22 duty, it will help their children go to school.

23 Q: Major Metts, let me show you what is State's Exhibit
24 Number Seventy-two. Tell us what this is.

25 A: It's special Olympics torch run, and that's Charlie

1 helping out. It's always like Charlie was just one
2 of the people that always helped out no matter what
3 it was, and he took the time out to run and be a
4 part of it.

5 Q: And this is an article that was in the newspaper?

6 A: Yes, sir. And that's just the kind of guy that
7 Charlie Kubala was. Oh, yes, sir, he was very
8 involved in every aspect of the sheriff's department
9 on and off duty.

10 Q: Major Metts, what became of Badge Number 113 of the
11 Sumter County sheriff's department?

12 A: The badge was given to Teresa after Charlie's death.

13 Q: And the number?

14 A: They retired it, and each officer is given a call
15 number during their, while they work, and it's
16 usually assigned to you for a long time, and at the
17 time of Charlie's death, his number was 113, and
18 since then, no other officer has had his number.

19 Q: Some time after the funeral, did you have an
20 opportunity to take Teresa and little Charlie and
21 some others over at 817 Taylor Street.

22 A: Yes, sir.

23 Q: Tell the jury about that.

24 A: Shortly after Charlie's death, I think the first
25 thing I took his mom and dad and the Barretts and

1 some of the brothers and sisters. They wanted to go
2 see where everything had taken place. They hadn't
3 been there yet, and I talked to the sheriff, and he
4 told me, yeah, to take them over there. That will
5 be, that will be all right, and I took them to the,
6 to the scene and showed them where everything had
7 happened, and I think a day or two later, Teresa had
8 finally got up the nerve to want to do it, too, and
9 she wanted to take the kids, and she wanted to see
10 Ms. Griffin, Ms. Griffith. I think she wanted to go
11 by and say, you know, hey, Ms. Griffin and let her
12 know it wasn't her fault what had happened to
13 Charlie, and we went by and saw Ms. Griffin and me
14 and Charlie, and little Charlie at that time was
15 only ten, Alex was five, and I left Teresa in the
16 house with Alex. I went outside and took little
17 Charlie around the side of the house. We talked for
18 a good little bit about his daddy, about what
19 happened. Little Charlie looked up at me. He asked
20 me if was his daddy brave. I told him he was the
21 bravest man I've ever known.

22 Q: Thank you, Major Metts. Please answer any questions
23 the defense counsel may have for you.

24 **THE COURT:** Mr. Littlejohn?

25 **MR. LITTLEJOHN:** We have no questions for Major Metts.

1 **THE COURT:** All right. Thank you, sir. You may step
2 down.

3 **MR. JACKSON:** Your Honor, at this time the state rests.

4 **THE COURT:** All right. Thank you, sir, Mr. Jackson.

5 All right. Ladies and gentlemen, you have heard the
6 solicitor announce that the state has rested their
7 case. There are certain matters of law which I have
8 to take up with the attorneys, and we need to attend
9 to those matters, and so I'm going to ask you to go
10 to your jury room, relax for a little bit. Again,
11 even though the state has rested, it would still be
12 premature for you to begin your discussion and
13 deliberations about this matter, so please, do not
14 discuss this matter in any way among yourselves, but
15 relax for a little while while we take care of these
16 matters of law, and then we'll be ready to proceed.

17 Thank you. You may go with Mr. Herring.

18 (Jury out at 10:33 p.m.)

19 **THE COURT:** Are there any matters of law which the
20 defense would like to put on the record at this
21 time, sir?

22 **MR. LITTLEJOHN:** Yes, Your Honor. The first thing I
23 think I should take up during the testimony of Ms.
24 Kubala-Hanvey, we asked to approach the bench prior
25 to a certain portion of her testimony, and the court

1 allowed her to testify about an attempted suicide
2 that she experienced in I believe the year 2003.

3 **THE COURT:** Yes.

4 **MR. LITTLEJOHN:** Your Honor, we objected to that. It
5 was apparent from her testimony that the causation
6 factor there was not what had happened seven years
7 earlier, but the fact that the legal proceeding was
8 about to occur again. Your Honor, do you think the
9 break in time, I mean the period from 1996 to 2003
10 certainly lessens the direct effect that she would
11 otherwise be allowed to testify about. We think the
12 fact that she was able to testify about this
13 attempted suicide was extremely prejudicial to the
14 defendant and that that testimony should have been
15 excluded.

16 **THE COURT:** All right. My view of it, and I thank you
17 for that, Mr. Littlejohn, and it timely, your
18 objection was timely made, and I did overrule the
19 objection. In my view it was partially related to
20 the situation of Mr. Kubala, Sgt. Kubala, and I
21 think he is the appropriately the victim in fact of
22 testimony. Granted it was not the only thing, but I
23 think she did, that she did relate it to her
24 relationship with her husband as a part of what lead
25 up to that particular suicide, and so I think that

1 it was relevant, and for that reason I did overrule
2 it, but your objection is noted.

3 **MR. LITTLEJOHN:** Thank you, Your Honor. Your Honor, at
4 this time this is kind of a strange procedural class
5 that we find ourselves in, but I would move for a
6 directed verdict on the two aggravated circumstances
7 which are before the court. First, that the murder
8 was committed during the commission of burglary.
9 Your Honor, it would be our position that there is
10 insufficient evidence to go forward on that
11 particular aggravated circumstance based on the fact
12 that there was no break in into the enclosed portion
13 of the house. The testimony at this point is that
14 he was looking at in a light most favorable to the
15 state. Mr. Stone had gone onto the porch. There
16 was no breaking of the interior door going into the
17 house. It was merely at night.

18 **THE COURT:** All right. If I recall the supreme court
19 decision on this, it has made the decision that
20 breaking into an enclosed porch, as this one was,
21 and as this case the supreme court decision, that
22 the supreme court decided that that was a porch.
23 Let me look at the decision. I've got it right
24 here. I believe that it is the law of that case.
25 That part was not reversed by the supreme court, and

1 then the supreme court decision in the State v.
2 Stone, which I'm sure everybody, all the parties and
3 all the counsel are real familiar with the 567
4 Southeastern and 244, the Supreme Court said a fully
5 enclosed screen porch was a dwelling within the
6 meaning of a burglary statute, and I think there is
7 evidence of breaking into that porch by the cutting
8 of the screen, and that that would meet the
9 requirements of burglary in any degree which is all
10 that was necessary, so I would respectfully deny the
11 motion for a directed verdict on the aggravating
12 circumstances.

13 **MR. LITTLEJOHN:** Your Honor, secondly we would move for
14 a directed verdict on the grounds of the second
15 aggravating circumstance, mainly that the murder was
16 committed on a police officer during or because of
17 the performance of his official duties. Your Honor,
18 it would be our position that the state has failed
19 to prove knowledge on the part of the defendant that
20 the person who was murdered was a law enforcement
21 officer during or because of the performance of his
22 duties.

23 **THE COURT:** Does it require knowledge on the part of the
24 defendant?

25 **MR. LITTLEJOHN:** Your Honor, it doesn't state

1 knowledge, we would think that that would due to the
2 seriousness of this situation, that there would have
3 to be some showing of knowledge by the state before
4 that aggravated circumstance could go forward.

5 **THE COURT:** All right. I disagree. I think that the
6 statute provides that it is an aggravated
7 circumstance if the officer was killed in, during
8 the commission of his official duties, and I think
9 there can be little question in this case that he
10 was performing his official duties at the time of
11 his death. I would respectfully deny that motion as
12 well.

13 **MR. LITTLEJOHN:** I believe that's all we have, Your
14 Honor.

15 **THE COURT:** All right. Let me ask you, Mr. Littlejohn,
16 just procedurally is it still, is the defense ready
17 at this time to make any position as far as Mr.
18 Stone and his Fifty Amendment Rights and concern, or
19 do you want to hold off on that until a little bit
20 later.

21 **MR. LITTLEJOHN:** Your Honor, if you'll give me one
22 minute, I can take care of that. Your Honor, at
23 this time I am prepared to say that Mr. Stone does
24 not want to take the witness stand. He would like
25 to discuss with us the option of his making a

1 statement to the jury at the conclusion.

2 **THE COURT:** All right. And I certainly understand that,
3 and of course that's a separate issue, but he does
4 have that right whether he takes the stand or not.

5 **MR. LITTLEJOHN:** Yes, sir.

6 **THE COURT:** But as I'm sure you're aware, Mr. Littlejohn
7 and Mr. Babb, that cannot be unsworn testimony. He
8 can testify, I mean he can argue to the jury, but he
9 can't give what would be unsworn testimony about the
10 matter, so you have to keep that in mind.

11 **MR. LITTLEJOHN:** Yes, sir. He understands, sir.

12 **THE COURT:** Okay. All right. Mr. Stone, let me just
13 make sure that you understand. You stand right
14 there in place and make sure that you do understand
15 what we're talking about. Yesterday you recall I
16 explained to you your Fifty Amendment Rights, and
17 that is your right that you could not be required to
18 testify in this matter, but you also had the right
19 to testify, and you indicated to me yesterday that
20 you understood your constitutional rights as I
21 explained to you, is that correct?

22 **MR. STONE:** Yes, sir.

23 **THE COURT:** And I assume also that you've had a chance
24 to discuss this matter with your attorney, is that
25 correct?

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1 MR. STONE: Yes, sir.

2 THE COURT: And do you understand what both they and I
3 have explained to you about your Fifth Amendment
4 Rights and the right to testify or not testify?

5 MR. STONE: Yes, sir.

6 THE COURT: And are there any questions that you would
7 like to ask me about your rights to testify?

8 MR. STONE: No, sir.

9 THE COURT: Okay. And Mr. Littlejohn has indicated to
10 me that you have made a decision as far as your, as
11 testifying in this case, is that correct?

12 MR. STONE: That's correct.

13 THE COURT: And what is that decision?

14 MR. STONE: I will not be testifying.

15 THE COURT: All right, sir. Now is that decision on
16 your part freely and voluntarily made?

17 MR. STONE: Absolutely.

18 THE COURT: And you know all the consequences of that
19 decision, is that correct?

20 MR. STONE: Absolutely.

21 THE COURT: All right. Thank you, sir. The court find
22 then for the record that the defendant having been
23 fully advised of his rights under the Fifth
24 Amendment of the Constitution and the counterpart
25 provision of the Constitution of the State of South

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1 Carolina has made a free, voluntary, intelligent,
2 and knowing decision not to testify in this case.
3 All right. Thank you. You may be seated. All
4 right, Mr. Littlejohn, you had indicated that it is
5 probably about time for taking a recess anyhow that
6 you had indicated to your witnesses and so forth
7 that you all would be ready about 11:00 o'clock, and
8 it's about twenty minutes till, so we should take
9 that twenty minutes to recess at this time and be
10 ready to go forward about 11:00 o'clock if that
11 suits you.

12 **MR. LITTLEJOHN:** Thank you.

13 **THE COURT:** All right. Anything from the state before
14 we take a recess?

15 **MR. JACKSON:** Nothing from the state, Your Honor.

16 **THE COURT:** All right. Well be in recess. Be prepared
17 to begin at 11:00 o'clock. Thank you.

18 (There was a break in the hearing from 10:42 a.m. to
19 11:00 a.m.)

20 **THE BAILIFF:** Order in the court. All rise, please.

21 **THE COURT:** Thank you. Be seated. All right, Mr.
22 Littlejohn. Any matters that we need to put on the
23 record before the defense goes forward?

24 **MR. LITTLEJOHN:** No. I'll defer to Mr. Babb.

25 **THE COURT:** All right. Mr. Babb?

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1 **MR. BABB:** Your Honor, we do have a few. Your Honor, we
2 obtained a certified, true copy of Ms. Mary Etta
3 Wilson's certificate of death. We would offer that
4 I believe without objection.

5 **THE COURT:** No objection?

6 **MR. JACKSON:** No objection, Your Honor.

7 **THE COURT:** All right. Offered as a is it a
8 defense exhibit or cross exhibit or something that
9 needs to go to the jury? What's the purpose of it?

10 **MR. BABB:** We will also in light of that move to have
11 the prior testimony of Ms. Wilson read and presented
12 to the jury.

13 **THE COURT:** All right. So this could actually be
14 introduced as a court's exhibit, and then your
15 contention is to publish a portion of her
16 transcript, a portion of the transcript, is that
17 correct?

18 **MR. BABB:** The entire transcript.

19 **THE COURT:** The entire. Well, I mean a portion of the
20 transcript either with her testimony?

21 **MR. BABB:** Of her testimony, that's correct.

22 **THE COURT:** Okay. This will be marked as Court's
23 Exhibit and made a part of the record.

24 **(Court's Exhibit Number One was introduced into**
25 **evidence.)**

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1 **THE COURT:** And so her testimony, this is Mary Etta
2 Wilson?

3 **MR. BABB:** Yes, sir. We'll be moving under Rule Eight.

4 **THE COURT:** All right. I think we've already dealt with
5 that one time in this case already.

6 **MR. BABB:** We have, sir.

7 **THE COURT:** Be offered under 804-A-4. Any objection to
8 presenting her testimony through the transcript, Mr.
9 Jackson?

10 **MR. JACKSON:** No objection, Your Honor.

11 **THE COURT:** All right. It will be so ordered. It is
12 admissible under 804-A-4, and again I will advise
13 the jury that she is deceased and under our rules,
14 her sworn testimony could be presented and the jury
15 should treat it as if she would be testifying.

16 **MR. BABB:** Your Honor, just a little cleanup matter on
17 that. We're running copies of that right now, and
18 we'll have that back up here before it's time to
19 read it, and she actually testified in the guilt
20 phase and the penalty phase, and I'm not sure if
21 we're going to read both of them or all the defense
22 stuff at one time and all the state.

23 **THE COURT:** Okay.

24 **MR. BABB:** Just one after the other.

25 **THE COURT:** Yeah. Just read one, and then well,

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1 let's just go straight through it. It's the easiest
2 way to do it, but we won't distinguish it as being
3 in two separate phases. In other words, when you
4 present it, Mr. Babb, you'll ask questions, and you
5 going to have somebody read the answers?

6 **MR. BABB:** Yes, sir.

7 **THE COURT:** Okay. And then the cross examination. Then
8 we get to the end of that and go right on into it
9 with him asking the questions in the guilt phase.
10 We won't act like there was any break.

11 **MR. BABB:** Very good.

12 **THE COURT:** It can go right straight through.

13 **MR. BABB:** Very good. Thank you. Your Honor, I'd
14 submit a document which is the affidavit of Ruth
15 Griffith that the court has a copy of already. This
16 is the original. I submit that to be marked for
17 identification purposes.

18 **THE COURT:** All right. It will be marked as a defense
19 exhibit for ID only, and I guess we might as well go
20 ahead and get the position on the record. Your
21 intention would be to offer it into evidence, is
22 that correct?

23 **MR. BABB:** That is correct, Your Honor.

24 **THE COURT:** All right. And go ahead, Mr. Jackson.

25 **MR. JACKSON:** Your Honor, I would, I would object

1 wholeheartedly. First of all, I thought it was
2 already moved on the other state's ...

3 **THE COURT:** Well, it may have been in limine, but it has
4 to, you have to have a contemporaneous objection at
5 the time that it's offered, and he's offering it
6 now, so.

7 **MR. JACKSON:** Your Honor, I would object to it going
8 down just four things that are on there. Number
9 one, "My name is Ruth Griffith. I'm the victim of
10 Bobby Wayne Stone's crimes. It was my home that
11 Bobby was attempting to break into back in '96 when
12 the policeman officer was shot." We've already put
13 Ruth Griffith's testimony and read it into the
14 record. I don't think that would be necessary. The
15 second sentence is "I testified at Bobby's trial,
16 but due to emphysema, a heart condition, and other
17 problems, I'm unable to do so again." We brought a
18 doctor in to establish that, and the court ruled
19 that the testimony could come in in the transcript.
20 Number three is her opinion on the death penalty. I
21 don't know of any law at all that allows that in.

22 **THE COURT:** I think there's a case that specifically
23 disallows it.

24 **MR. JACKSON:** Yes, sir. And of course number four
25 really doesn't say anything, and I'm not aware of

1 any rule of evidence that allows an affidavit to
2 come in in federal court.

3 **THE COURT:** All right. Do you want to respond to that?

4 **MR. BABB:** Yes, sir, Your Honor, I would. Our position
5 would be that under due process there's a difference
6 of a victim of crime saying I want death and a
7 victim of a crime saying they want mercy or they
8 want a life sentence for the individual that
9 perpetrated that. We submit that that is in fact a
10 mitigating circumstance. It is not a statutory
11 mitigating circumstance, but it is a mitigating
12 circumstance. If a victim wishes death for a
13 defendant, that is not a statutory aggravating
14 circumstance, and therefore, is not admissible. I
15 concede the South Carolina rules don't provide a
16 particular section for this, but Your Honor, the
17 federal rules of evidence recognize that if
18 statements remain under conditions that insure their
19 accuracy, here we have an affidavit that's sworn to,
20 they do allow submission of such documents. It
21 would be our position that the South Carolina rules
22 of evidence can't take precedent over the
23 constitutional due process right of my client to
24 have the jury know that Ms. Ruth Griffith, whom the
25 state is maintaining was the victim of the burglary

1 that they're trying to prove as statutory
2 aggravating circumstance for purposes of getting a
3 death sentence, does not want a death sentence in
4 this case.

5 **THE COURT:** I understand, but let me ask you this case,
6 Mr. Babb. Let's assume the shoe were on the other
7 foot, and let's assume that, that Ms. Griffith was
8 either ill to provide before she testified the first
9 time, but had given an affidavit to the state
10 concerning the facts and circumstances of this
11 matter.

12 **MR. BABB:** That would be irrelevant. It would not be a
13 statutory aggravating circumstance.

14 **THE COURT:** No, sir. It would be in violation of the
15 witnesses confrontation rights because he wouldn't
16 have the right to cross examine, but doesn't it say
17 that the same right to cross examine about the facts
18 contained in this affidavit as they would have if
19 you appeared here, if any defense witness

20 **MR. BABB:** Your Honor

21 **THE COURT:** has the right to cross examination.

22 And they don't have the right to cross examine her
23 on those statements made in that affidavit.

24 **MR. BABB:** All they had to do to have her here was not
25 oppose us asking that she be here. The state has

1 put itself in that position. They argued that she
2 was unavailable and got the court to agree with
3 them.

4 **THE COURT:** Absolutely, but that wasn't their putting me
5 in there. They weren't putting theirselves in that
6 position. That was Ms. Griffith's situation.

7 **MR. BABB:** Your Honor, with all due respect, Ms.
8 Griffith did not appear in this court, did not
9 testify, did not present any no evidence was
10 presented by her.

11 **THE COURT:** Have you subpoenaed her?

12 **MR. BABB:** No, sir. We have an affidavit from here.

13 **THE COURT:** I understand. Okay. I don't know of any
14 rule of evidence, first of all, that in our law,
15 from the South Carolina law, that permits the
16 introduction of an affidavit if it's not here. The
17 other side has the right to cross examination, and
18 so I don't know of any rule of evidence in our state
19 under the South Carolina Rules of Evidence that
20 would permit that, and also I'm not sure that the
21 evidence that's being offered by that affidavit ...
22 that at least some attempt would have been made if
23 you wanted sworn testimony with the right to
24 preserve the right of the State's right to cross
25 exam, the Court would have obtained a motion to take

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1 her deposition where there would be that right of
2 confrontation if she could not appear in court, so I
3 don't believe that there is any rule that will
4 permit the introduction or the admission of the
5 affidavit into evidence, so the court's ruling is
6 going to be that it is not admissible.

7 **MR. BABB:** Your Honor, at this time then we would move
8 one, that the court issue a subpoena for Ms.
9 Griffith's attendance here, or in the alternative
10 that we be permitted to conduct a deposition of her
11 this evening.

12 **THE COURT:** Both of those motions are denied. First of
13 all, we had an earlier hearing in which her doctor
14 appeared and testified that she was physically
15 unable to appear, and the second is that at this
16 stage of the proceeding, it's far too far down the
17 line. There's been plenty of opportunity. This
18 case has been on the docket now for several months.
19 Everybody knew when it was going to be tried. You
20 knew at least last week that Ms. Griffith, the
21 court's ruling regarding her unavailability and a
22 timely motion could have been made at that point, so
23 again, respectfully the court would deny those
24 motions as well, Mr. Babb.

25 **MR. BABB:** Your Honor, with all due respect and simply

1 for the purpose of the record, the court ruled that
2 she was unavailable for purposes of the state's
3 testimony. We provided the state a copy of this
4 affidavit at a hearing we had on Friday, on the
5 Friday before we started.

6 **THE COURT:** February the 11th, I think it was we had
7 that hearing.

8 **MR. BABB:** I believe that it was. Yes, sir. Thank you,
9 Your Honor. But from our perspective, the court
10 never ruled specifically on that issue.

11 **THE COURT:** I

12 **MR. BABB:** Of course if I'm wrong, the record

13 **THE COURT:** I think I, I think I had indicated. I may
14 not have specifically ruled, but I know I was
15 familiar with the affidavit, and I don't know
16 whether it was specifically offered into evidence,
17 but my, my thinking then, and I think I conveyed it
18 at the time, that I knew of no rule that would make
19 it admissible at that time, and I thought that's
20 what I did, but in any event, I, both of your
21 gentlemen are good lawyers and know the rules of
22 evidence probably better than I do, and I just know
23 of no rule that would make that affidavit
24 admissible.

25 **MR. BABB:** Yes, sir, Your Honor. One

1 **THE COURT:** All right. This is what I was talking
2 about, and just for the record, State v. Matthews,
3 which I'm sure you gentlemen are familiar with, "...
4 where a capital defendant is prohibited from
5 regularly eliciting the opinion of family members or
6 other death penalty phase witnesses about the
7 appropriate penalty. Such questions go to multiple
8 issues to be decided by the jury, life in prison
9 versus death penalty, and a properly reserved
10 determination by the jury." What's what I was
11 talking about. I'm not sure that the contents of
12 the affidavit even would be admissible even if Ms.
13 Griffith was here under State v. Matthews, and I
14 just don't think that it would be admissible even
15 if, even if she were here.

16 **MR. BABB:** Thank you, Your Honor, and I appreciate the
17 court's courtesy, and these cases are hard on
18 everyone.

19 **THE COURT:** I understand.

20 **MR. BABB:** I do appreciate in particular your courtesy.
21 What ID number was the Ruth Griffith statement
22 given? It's one, so that would be the Ruth Griffith
23 affidavit is then Defendant's One for ID only
24 purposes?

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

1. **MR. BABB:** Your Honor, I'd hand up another document for
2 ID purposes only. Your Honor, for the record, what
3 we're handing up is the U.S. Naval Observatory
4 maintains data on sunrise, sunset, sun transit, the
5 beginning of twilight and the end of twilight. In
6 fact, if you go to the National Weather Service to
7 look for those days, they send you over to the U.S.
8 Naval Observatory.

9 **THE COURT:** Let me see if I can short-circuit this just
10 a little, Mr. Babb. I think maybe I can. Is there
11 any reason the court cannot take judicial notice of
12 the sun and moon data for that day in question, Mr.
13 Jackson?

14 **MR. JACKSON:** Your Honor, I would like to object to it.
15 I know what they intend to do is argue that's when
16 it's light and that's when it's dark, and, and I
17 if they're going to do that, I need, they need
18 to bring somebody in here to say that.

19 **THE COURT:** No, sir, I don't think so. I believe that
20 the rules provide, and I'll look at it right now,
21 but I think my recollection is that that is one of
22 the things the court can take judicial notice of
23 under the rules of evidence, but I'll check that and
24 make sure,

25 **MR. BABB:** Your Honor, I believe that's Rule 201B.

1 **THE COURT:** I think that is the appropriate rule that
2 deals with that, and I'll hear from you any further,
3 Mr. Jackson, but I think that weather data
4 concerning the rising or the sunset and sunrise is
5 what friend, Professor Dreher, who taught me
6 evidence in law school, said it's one of the matters
7 in which the court can take judicial notice of.

8 **MR. JACKSON:** In light of the court's ruling, Your
9 Honor, can we limit it to the first page which
10 actually has the, the times in it and not all these
11 explanations about rise, set?

12 **THE COURT:** Yes, sir. I agree with that. I don't know
13 that the, the dissertation as to what it is and what
14 light would be available and what twilight is and
15 all that, I'm not sure that's a matter for judicial
16 notice. I think it's the factual data regarding the
17 time of the sunset and the sunrise and sunset, but
18 I'm not sure that this narrative defining terms
19 would be appropriate without, without live
20 testimony, Mr. Babb. What say you to that?

21 **MR. BABB:** Court's indulgence, please. Your Honor, we
22 have no problem with that.

23 **THE COURT:** All right.

24 **MR. BABB:** I simply attached let me say I attached
25 that for the purpose if there was any questions, the

1 court and the state would have the U.S. Naval
2 Observatory definitions.

3 **THE COURT:** All right. I'm going to have marked Court's
4 Two, the first page which gives the times, and the
5 court will take judicial notice of that, but the
6 rise, set, and twilight definitions are not going to
7 be part of the Court's Number Two. Do you want hose
8 made a part of the record as a, as a tender, or do
9 you

10 **MR. BABB:** Your Honor, if we can, just for clarification
11 in case of any reason we may need to know what we're
12 talking about.

13 **THE COURT:** All right. These will be, these will be
14 Defense Number Two for ID.

15 **MR. JACKSON:** All right. And Your Honor, in addition, I
16 would like, at least for my own clarity, some guides
17 from the court as to whether or not they're going to
18 be able to take this and say that at such and such
19 time it was light outside. I think the ruling is
20 going to be these, these times were moon rise, moon
21 set, moon rise, moon transit, so be it, but not that
22 they're going to take this and argue this says it's
23 light outside.

24 **THE COURT:** They can, they can't argue in that it
25 doesn't say that.

1 **MR. JACKSON:** Yes, sir. I mean I just want to

2 **THE COURT:** But they can certainly argue, they can
3 certainly argue that it's always light after the sun
4 sets, or you know, that's something that everybody
5 knows. The sun sets at a certain time, there's
6 still some light left, and that's an argument. They
7 can't say that says that.

8 **MR. JACKSON:** Very good.

9 **THE COURT:** But that is just a judicial notice that that
10 is what time the sun rose and what time the sun
11 sets, and they can argue reasonable inferences from
12 that document.

13 **MR. JACKSON:** Yes, sir. Thank you, Your Honor.

14 **THE COURT:** All right.

15 **MR. BABB:** Thank you, Your Honor.

16 **THE COURT:** All right. Is that all, Mr. Babb? Anything
17 else we need to approach?

18 **MR. BABB:** Your Honor, we are having some difficulty
19 locating the defendant's exhibits from the prior
20 trial.

21 **THE COURT:** I'm sure I have no idea where they are.
22 What did you do, check with the clerk's office, or
23 what's the status?

24 **MR. LITTLEJOHN:** Your Honor, we check the, I checked the
25 box that the court reporter has there that has all

1 the exhibits in it. I did not see the defense
2 exhibit.

3 **MADAM COURT REPORTER:** I had nothing from the defense.
4 I'm sorry. I just have the state's.

5 **THE COURT:** She just has the state's. She had nothing
6 from the defense.

7 **MR. LITTLEJOHN:** Perhaps we can check with Lillie and
8 get them over the lunch break.

9 **THE COURT:** Okay.

10 **MR. LITTLEJOHN:** That will fine.

11 **THE COURT:** Yeah. Check. The clerk's office won't be
12 open, so you may need to make a call and get
13 somebody up here for you.

14 **THE CLERK:** Lillie's up there.

15 **MR. LITTLEJOHN:** Lillie was up there.

16 **THE COURT:** Okay. All right. Fine. Thank you.

17 **MR. BABB:** Your Honor, we I'm sorry.

18 **THE COURT:** That all?

19 **MR. BABB:** Yes, sir.

20 **THE COURT:** All right. Ready for the jury, Mr.
21 Littlejohn and Mr. Babb?

22 **MR. LITTLEJOHN:** Yes, Your Honor.

23 **THE COURT:** All right. Mr. Saleeby, Mr. Jackson, ready
24 for the jury?

25 **MR. JACKSON:** Yes, sir.

1 **THE COURT:** All right. Bring the jury in, please.

2 **(Jury in at 11:29 a.m.)**

3 **BAILIFF:** Your Honor, all the jurors and alternates are
4 present in the courtroom.

5 **THE COURT:** All right. Thank you, Ladies and gentlemen.
6 Thank you for your patience. We have dealt with a
7 number of legal issues that we had to get taken care
8 of, and we are now ready to go forward. You have
9 heard the testimony from the State that you will
10 hear at this time, and they have rested, and now the
11 defense has the right to present any testimony or
12 evidence to you that they wish to present. Mr.
13 Babb, you may call your first witness.

14 **MR. BABB:** Thank you, Your Honor. May it please the
15 Court, we would call Ms. Teanne Oehler.

16 **(Witness is sworn)**

17 **TEANNE OEHLER,** being duly sworn, testifies as follows:

18 **MS. OEHLER - DIRECT EXAMINATION BY MR. BABB:**

19 Q: Ms. Oehler, where are you employed?

20 A: I'm self-employed in Myrtle Beach, South Carolina.

21 Q: And how are you employed, in what field?

22 A: I'm a clinical social worker.

23 Q: Do you have any sub-specialties or specialties as a
24 clinical social worker?

25 A: Yes, sir. I work with individuals and with families

1 working with children and adults, and I also provide
2 evaluations. I work with conducting home studies
3 for adoptions, and I work on geriatric assessments
4 working with retirees who have health problems who
5 want to stay in their home.

6 Q: Please tell us about your educational background.

7 A: After graduating from Myrtle Beach High School, I
8 attended the University of North Carolina at
9 Greensboro where I earned a BS in Social Work. I
10 worked for several years in a nursing home setting,
11 and then I earned my master's at the University of
12 North Carolina at Chapel Hill. It's a Master's of
13 Social Work in Healthcare and Medical Services.
14 Post graduate training included as part of my
15 education was two years in a medical setting in
16 Savannah, Georgia. I sat for my national exam,
17 which is one of my certifications from the Academy
18 of Certified Social Workers, and I'm a licensed
19 independent social worker in South Carolina.

20 Q: Have you ever testified as an expert witness in the
21 courts in this state before?

22 A: Yes, sir. I have.

23 MR. BABB: Your Honor, we would submit Ms. Oehler as
24 qualified as an expert social worker.

25 THE COURT: Voir Dire as to what her qualification is?

1 **MR. SALEEBY:** No, sir. We'll stipulate that she's a
2 social worker.

3 **THE COURT:** All right. The Court would identify Ms.
4 Oehler as an expert in the field of clinical social
5 work. And again, Ladies and gentlemen, you will
6 recall that whenever the Court certifies a witness
7 as an expert, that person may be allowed to give an
8 opinion, whereas a non-expert witness is not allowed
9 to give an opinion. You may proceed, Mr. Babb.

10 **Q:** Ms. Oehler, would you please tell the jury what a
11 clinical social work is and what they do?

12 **A:** A social worker is an individual who is
13 professionally educated and trained to work with
14 individuals and families in conducting assessments
15 or evaluations of people and providing counseling
16 and making recommendations in terms of treatment
17 plans for counseling. Clinical social workers work
18 in a variety of settings. They may work in
19 independent practice, like I do. They may work in
20 hospitals. They may work in schools. They make
21 work in the judicial system.

22 **Q:** Please tell us what a social assessment or
23 psychological evaluation is, please, excuse me, a
24 psycho-social evaluation.

25 **A:** A psycho-social evaluation is one of the tools that

1 clinical social workers to evaluate an individual.
2 We look at what a person's social history is, their
3 family history, their personal history. We look at
4 their mental status in terms of their ability to be
5 alert and to participate in an interview. We look
6 at their family structure, who's in the family, what
7 those relationships in the family are like.
8 Different from psychologist. We look at individuals
9 within the family system or that is within their
10 situation, within their family, within their
11 community, within their church.

12 Q: And how are those assessments or evaluations
13 generally used?

14 A: They may be used in, for counseling. They may also
15 be used in a medical setting or mental health
16 setting or judicial setting to be able to evaluate
17 an individual and recommend a treatment plan to work
18 with that individual. It is the most reliable tool
19 that clinical social workers use. It's our first
20 step to begin to assess an individual and to begin
21 to look at their history.

22 Q: Now, in putting these assessments together, you use
23 sources of information. What types of information
24 do you gather?

25 A: We interview the individual. We interview family

1 members. We interview other people who may be
2 available who may know the individual or be aware of
3 them and their life. We review records. Among some
4 of the records, we may review may be a person's
5 medical records. We may review their military
6 record. We may review school records, a judicial
7 record, health care, any type of record that's
8 available to be reviewed in terms of institutions
9 that they had been involved in in their life.

10 Q: And do you, are you asked to make any findings once
11 you gather this information you're talking about?

12 A: Often we are asked to state how this is significant
13 in terms of this person's life or in terms of their
14 behavior.

15 Q: Now, have you conducted such an evaluation on Bobby
16 Wayne Stone?

17 A: Yes, I have.

18 Q: Could you tell us about that? Let's start with his
19 personal history.

20 A: Actually, I've conducted this interview two times,
21 once in the, prior to the earlier trial, and then
22 again prior to this trial, when I looked at his
23 personal history.

24 Q: And what did you find with regard to Bobby Wayne
25 Stone?

1 A: When I looked at his personal history, I looked at
2 some of his childhood and some of his, some of his
3 history in terms of his family. I looked at him in
4 terms of his relationships. I looked at the alcohol
5 and drug history, which started between the ages of
6 eleven and fourteen, about eleven years old for his
7 alcohol use, about fourteen years old for his
8 marijuana use. I looked at the history of his
9 emotional problems, his history of depression or
10 some anxiety as a result of some child abuse that he
11 experienced as a young child. I looked at how he
12 developed his coping skills for dealing with life,
13 and I observed that his coping skills for dealing
14 with life were poor. He had very poor life skills
15 for dealing with different areas of life.

16 Q: Were there events in his background that were
17 significant to note?

18 A: Yes.

19 Q: Are that you deemed significant?

20 A: Yes, there are. As a young child, he lived with his
21 mother and father and his siblings, and it seems
22 that the family was marked by some issues of poverty
23 and depravation. It was just a poor family. They
24 lived in the country. Both parents worked. It
25 seems that the family was happy without any

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1 significant problems in his early years, with the
2 exception that the family is poor and there is a
3 history of alcoholism in his family both on his
4 father and his mother's side of the family. In his
5 early years, he lived in Poston for a few years.
6 One of the significant things that happened then is
7 he and his father and his uncle and some of his
8 cousins had gone fishing and his uncle had a heart
9 attack in the boat and fell out of the boat, and the
10 others were on shore, and he watched his uncle
11 drown. They were unable to rescue him, and this was
12 a significant crisis in his life at an early age
13 that he had difficulty with. After living in Poston
14 for several years, the family moved to Sumter to be
15 closer to his mother's side of the family. There
16 was a neighbor, Wesley Miles, who was involved with
17 Mr. Stone's mother, and when the family, when the
18 Stone family moved to Sumter, Mr. Miles and his
19 family moved to Sumter as well, and moved right next
20 door to them. This was a significant, of
21 significant importance, not only in his early life
22 but through his growing up years.

23 Q: You mentioned his mother's behavior. How did that
24 impact him? What was your assessment of that?

25 A: His mother, according to him and from what other

children or other children in the family said, his mother loved him. She worked very long hours and was not there during the day, but she also had an affair with Wesley Miles, and this was something that was significant through his early years. His father was still married to his mother and in and out of the home, and there was conflict between his father and Wesley Miles because of this relationship that Mr. Stone's mother had with Mr. Miles.

Q: Why is that significant?

A: It's significant because instead of having the role model of his father as an example for him, he had two different strong male figures in his life, but Mr. Miles was the stronger male role figure. Mr. Miles was abusive to his own wife. By all accounts not physically abusive to Mr. Stone's mother, but he was physically abusive to Mr. Stone when he was a child, once beating him so badly that he was taken to the emergency room, and the police were called, and there was a charge for his abusing Mr. Stone. He was about eight or nine years old at the time. But later, Mr. Stone's mother dropped the charges and didn't pursue that charge.

Q: And the significance of this on a developing child?

A: A significant crisis in terms of his developmental

1 years, that he was a child young and he was exposed
2 to the abuse from his mother's boyfriend. Not only
3 at that time I mentioned when he was eight years
4 old, but through the years, Mr. Miles had an alcohol
5 problem as well and was frequently in and out of the
6 home. I met him briefly at one time when I went to
7 the home to conduct an interview with the brother
8 and the sisters of Mr. Stone. Mr. Miles walked in.
9 I introduced myself to him and asked if he would
10 like to talk with me. I actually said I would like
11 to talk with him, and he stayed very briefly and
12 walked back out. But I noticed when he came in that
13 the family members that I was talking to became very
14 quiet. Later, a family member shared with me that
15 there was a feeling of fear from him when he came
16 about. He was an authority figure, but a negative
17 influence on the children because of his abusing Mr.
18 Stone and also his alcoholism and his intimidating
19 behavior and attempting to make sexually harassing
20 moves towards Mr. Stone's sisters.

21 Q: And you mentioned Wesley Miles' alcoholism, and I
22 believe you mentioned Mr. Stone's father also drank
23 quite a bit?

24 A: Yes, he did.

25 Q: What significance would that have in terms of Mr.

1 Stone as a young man?

2 A: That he grew up in a household where there was
3 significant alcohol abuse.

4 Q: Did you make an assessment of the family's
5 psychiatric history?

6 A: Yes, I did. I looked at, I looked to see if there
7 was a history of mental illness in the family.
8 There was a significant history of depression among
9 family members. One aunt had a history of
10 schizophrenia. That's on his father's side of the
11 family. And there is a history of depression among
12 other family members. His sisters, one sister in
13 particular, has a history of depression and has been
14 in out-patient, as well as in-patient psychiatric
15 care off and on through the years.

16 Q: And what is the, why is the family psychiatric
17 history itself a significant factor?

18 A: It describes a family life where it was one crisis
19 after another, and a home life that was not
20 emotionally secure or not a calm place because of
21 history of depression that was severe. Family
22 members weren't able to carry out their roles in the
23 family because they were frequently disrupted by the
24 hospitalizations and the psychiatric
25 hospitalizations. There was not a stable, there

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1 were not stable relationships in this family in
2 terms of being able to provide guidance for the
3 children because of the history of depression in
4 this family.

5 Q: Who was rearing the four children?

6 A: There were actually three or four different adults
7 who were involved in rearing the children. When
8 they lived down in Poston, South Carolina, there
9 were, there was an aunt who, actually two aunts, who
10 were involved in helping with the children, and Mr.
11 Stone's parents were actively involved in rearing
12 the children. After the move to Sumter, Mr. Miles
13 was in Poston as well, and so he was involved with
14 being in and out. I would not say that he providing
15 good parenting skills, but he was involved in and
16 out as an authority figure. Mr. Miles was also
17 involved in being in and out of the household
18 frequently when the children were growing up in
19 Sumter. There was a grandmother and a grandfather
20 down the road and an uncle down the road, which were
21 Mrs. Stone's side of the family, and the children
22 would go to her to have meals or to spend the night
23 or to be there off and on. And then, of course,
24 Mrs. Stone, his mother was there as a parenting
25 figure. She was working long hours during the day,

frequently leaving the children alone during the day. She and her husband were separated off and on after she moved to Sumter, and he was in and out of the house. The children recounted that there were times that, when Mr. Miles would come over and he would be drinking, that he would take a gun and fire into the woods, and the children would climb out the windows of the house and they would either go hide in a ditch all night or run and hide in the woods when he was out drinking and you know, shooting in the woods.

Q: What was Bobby's home life like before he went to Sumter?

A: Before he went to Sumter, a fairly stable home life with both parents in the home, but his mother was working long hours. They didn't have much money. He recounts having a tin tub in the front yard that his father built for them that they used to take a hot bath in, but that they also played in at times. The real significant thing again that happened in his childhood prior to the move to Sumter was watching his uncle drown. But it seems that after the move to Sumter that violence and exposure to violence in the home escalated, as well as he began to have problems with school. Of course, when he

1 was in Poston, he was pretty much pre-school.

2 Q: What's of significance there? Could you explain
3 that to us?

4 A: Clearly, this is a family that did not have a
5 routine or structure in the family with a set time
6 to have meals or to be involved in activities. It
7 seems that there were really no significant after-
8 school activities for the children or significant
9 recreational activities at home. The children
10 weren't involved in Scouting or were not involved in
11 the church growing up. They weren't involved in
12 some other areas that might have provided some
13 positive role models for them. Just a lot of, a lot
14 of instability, emotional instability in their home
15 life because of the exposure to violence, the
16 alcoholism, the drug use.

17 Q: Now, Mr. Oehler, I understand that in making your
18 evaluations that you also use a tool known as a
19 genia-gram.

20 A: Yes, I do.

21 Q: Could you tell us what it is and how it's important?

22 A: A genia-gram is similar to a family tree. I draw
23 one of those or when you look at one of those, they
24 have squares and circles on them. Circles are for
25 women, females. Squares are for men. If the person

1 is living, the square or the circle is just plain.
2 If there's a cross in the middle of it, that means
3 that the person is deceased. In the earlier trial,
4 I demonstrated with a genia-gram and one of the
5 things that I did is I color coded it, and I used
6 the color brown for depression, and I colored the
7 different circles for each family member who had a
8 history of depression or anxiety or the aunt who had
9 the history of schizophrenia. I used, I believe
10 that I used the color red for alcoholism, and I went
11 through and I colored squares or circles where there
12 was an individual in the family who had a history of
13 alcohol or drug use.

14 Q: You used all your colors on this genia-gram for the
15 Stone family?

16 A: I used, I believe I used three colors. I believe
17 that I used a green color, too for family members
18 where there was not any history of dysfunction or a
19 family member perhaps who did not have a history of
20 mental illness or drug use.

21 Q: Did you reproduce that for this trial?

22 A: No, sir. I did not.

23 Q: Now, what is the significance, what significance did
24 you find on the genia-gram?

25 A: It's significant because one of the things it did is

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1 that it gave a clear picture of looking at this
2 family. That there's not just one family member who
3 had difficulty in terms of judicial involvement or
4 in terms of a history or depression or exposure to
5 violence or problems in school, but it showed that
6 for several generations on either side of the
7 family, there's a significant history of alcoholism,
8 of drug use, of problems with school, problems with
9 employment. In this family, there's frequent
10 changing of jobs, if people are employed. There's
11 just not, very few family members have significant
12 stable employment with staying either with the same
13 employer or staying consistently employed.

14 Q: These type of illnesses, mental illness, alcoholism,
15 even child abuse or child molesting, how do those
16 things translate on parenting skills?

17 A: It has a very significant effect on parenting skills
18 because it's difficult with those issues in a family
19 for there to be a stable parent, who is a firm,
20 solid, positive role model for a child. In this
21 family, it appears that the mother, Mrs. Stone, was
22 a positive role model in terms of her work ethic,
23 but because she worked long hours to help pay bills,
24 to financially take care of things, when there was
25 not a stable income coming in from Mr. Stone, she

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1 was not there to provide the nurturing and the care
2 for her children. There was not adequate
3 supervision for these children during the day, and
4 then because of her relationship with Mr. Miles,
5 there were not nights where the children had, you
6 know, a good sleep prior to the next day. One of
7 the significant things I noted from a teacher's note
8 in educational records is that Mr. Stone, as a young
9 child, frequently fell asleep in school and was
10 unable to concentrate. This goes back to again the
11 parents being able to provide a clear structure with
12 a set routine for the children in terms of a
13 positive role model.

14 Q: Would this type of structure in a family's home,
15 what life skills did that translate into? What life
16 skills would Bobby have learned from his parents?

17 A: In essence, he would have learned very poor life
18 skills and poor structure, because the behavior in
19 the family might have been, a parent might tell a
20 child you need to get an education, you need to get
21 a job, you need to stay in school, you need to stay,
22 you need to obey the law, but these were not
23 necessarily values in this family. There was a
24 value from Mrs. Stone where she worked long hours,
25 but the example of family members spoke more

1 strongly than did perhaps what, you know, a parent
2 said to him in terms of the role models. That if
3 you're having difficulty coping with things, just go
4 have something to drink or use some drugs or that
5 perhaps he found a quicker way to make money was
6 instead of working consistently was to perhaps steal
7 or to break and enter or to take somebody's
8 automobile or to buy or sell pot, but the role
9 models weren't there so that his coping skills or
10 his life skills were very poor as a result of poor
11 parenting.

12 Q: How would it affect say his judgment, decision
13 making, you know, his reasoning?

14 A: Well, the parenting not only affects his ability to
15 reason and to judge, but he also has a history of a
16 learning disability. He didn't have too much
17 difficulty in school until about sixth grade, and at
18 that point, it became very evident through his
19 academic records. He was in resource class, but he
20 didn't have the ability, according to these school
21 records, to pay attention, to concentrate, to focus
22 on information and to be able to internalize that to
23 move forward with a plan. So in terms of his being
24 able to learn, he didn't have the role models there
25 in the family. He didn't have the role models, and

1 when he had role models perhaps in the school, there
2 were a couple of teachers, one in particular I
3 remember reading about, who had a significant impact
4 on him, but he didn't pick up that role model from
5 school.

6 Q: So you mentioned his home life affected his
7 education, his school.

8 A: His home life definitely affected his school
9 performance. He was, in his early years, he was in
10 school every day. I thought ... he was on time and
11 he was there, but as he began to get about twelve
12 years old, he began to have several absences. He,
13 more than several. He had numerous absences after
14 the age of about twelve, which is about the time
15 that he got involved with two or three friends, got
16 into trouble with the law, and had difficulties in
17 school with again paying attention and was in
18 resource class, and he dropped out of high school in
19 the tenth grade.

20 Q: But he did have some friends. How did he get along
21 with them? What were his relationships like with
22 his friends?

23 A: He had consistent relationships with his male
24 friends. When he would work at different jobs as a
25 young adult, he had friends who were involved with

1 him with his work, but more often than not, these
2 were friends that he got into trouble with.

3 Q: You mentioned he got into trouble with the law.
4 What were those convictions?

5 A: Well, when he was about twelve years old, he stole
6 an automobile. Then he had some convictions for
7 breaking and entering. Later on, he had some
8 convictions for breaking into either stores or
9 warehouses and stealing equipment or tools or things
10 that he used. He worked as a mechanic, and it
11 appears that some of the things he stole were
12 automotive type things or things of that nature.

13 Q: How old was he when he first got in trouble with the
14 law?

15 A: Twelve years old. That's the first documented
16 incident. That doesn't mean that he wasn't in
17 trouble prior to that and maybe had a warning, but
18 that's the first documented incident that I read.

19 Q: How was that handled, these offenses when he was
20 young?

21 A: He paid fines, and then had it as a matter of being
22 on his record, and I believe later in his teen years
23 when he was arrested, he served time for some of
24 those offenses and certainly as a young adult in his
25 twenties, he served time for different offenses.

1 Q: Was he working? Where did he live during this
2 period?

3 A: He was working off and on. He was pretty much still
4 living with the family, with his mother and with his
5 siblings. At one point when he was about sixteen or
6 seventeen years old, he got into trouble. He broke
7 the law. I don't remember specifically what
8 happened. But one of the relatives in Sumter called
9 his aunt in Poston and so she came to visit, and she
10 offered him the opportunity to come to Poston and
11 move in with her and to get a job down there, but
12 she related that he didn't come. And one of the
13 things that other family members said is that he
14 remembered when she asked him to come, but he was
15 worried about Mr. Miles and his intimidation of the
16 girls and his sexual harassment, and he felt like he
17 needed to stay in Sumter to protect his sisters.

18 Q: Anything that you can tell us about his employment
19 history or have we covered that?

20 A: Well, you know, just to recap that, he just had real
21 difficulty holding one job. He frequently changed
22 jobs, and that goes not only to his attention span,
23 but that may also have been because of his getting
24 in trouble with breaking the law that he was not
25 able to keep a job, so he changed jobs frequently.

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1 Q: Is that of significance, his employment history?

2 A: That he had difficulty keeping stable, consistent
3 work. Remember, he's also a tenth grade dropout, so
4 he probably doesn't have stable income, didn't have
5 stable income at that point in time because of his
6 inability to keep a job and to stay with it.

7 Q: Are there any other findings you made with regard to
8 social history or is that your assessment?

9 A: No, I think that I've covered the high points.

10 Q: And you conducted a mental status exam with him?

11 A: Yes, I did.

12 Q: Does that play any part in your findings or any
13 conclusions?

14 A: Yes. He was cooperative in talking to me. He was
15 alert both times that I interviewed him. He had a
16 very difficult time with dates and with sequence of
17 when things happened or the years that they
18 happened, so I used other records to find what those
19 dates were. He appeared to have been very accident
20 prone during his growing up years with frequent
21 injuries, which he would say were accidents, but
22 that's what is documented in the emergency room
23 reports or later on when he was working as a
24 mechanic when a radiator fell on his head. There
25 seemed to be a significant history of these

1 accidents happening to him during the years. I
2 wondered because of the radiator falling on his head
3 or some of the injuries that he had when he was
4 younger if there was any history of a head injury,
5 but I did not see any medical documentation that
6 stated that.

7 Q: Explain to us, let me back up a second, explain what
8 the mental status evaluation is.

9 A: In our profession, one of the things that we would
10 look to is if the person was cooperative and able to
11 participate in the psycho-social evaluation by
12 answering questions and giving a history. I also
13 ask questions about do you know what's today's date,
14 what's the month, what's the year, or who's the
15 current president. But I also look at what a
16 person's emotional status is, if they're able to
17 participate in it, if they have a history of
18 depression or anxiety or a history of confusion, if
19 they're not able to participate. But as I said, he
20 was able to contribute to information in it with the
21 exception of he was very poor on his sequence of
22 events. He could remember different events in his
23 life, but he couldn't remember the sequence in which
24 it happened or was he able to remember the dates
25 that things happened. And some of that may be also

1 attributable to that alcohol abuse, that history of
2 alcohol abuse and drug use.

3 Q: And did you make findings regarding Bobby Wayne
4 Stone with your evaluation, mental status
5 evaluation?

6 A: Yes, I did. I looked at the history of his exposure
7 to violence, his being a victim of child abuse, his
8 history of alcoholism, his drug use, his inability
9 to keep a job, his involvement with breaking the law
10 at an early age, and his history of consistently
11 being in and out of trouble with breaking the law,
12 along with his significant family background of
13 mental illness and abuse, and those were
14 contributing factors to looking at how he is at the
15 point that he is today.

16 Q: Any other findings regarding his mental status or
17 his social ability that you need to tell us about?

18 A: No, sir.

19 Q: Now, Ms. Oehler, a lot of people have had hard
20 lives. Grew up hard and you know, it's no bed of
21 roses for many people, but they make it. They don't
22 get into trouble. What do you see is the difference
23 with Bobby Wayne Stone?

24 A: The crisis in his life and the abuse that he
25 experienced, the history of alcoholism, the lack of

1 positive parenting or positive role models and his
2 own alcohol and drug use, his difficulty with
3 education because of his difficulty with learning in
4 school, and a lack of consistent positive role
5 models outside his family were all contributing
6 factors to what made up his personality and his
7 behavior.

8 Q: Did it impact his judgment?

9 A: Absolutely.

10 Q: And his decision making?

11 A: Yes, it did.

12 MR. BABB: Please answer any questions Mr. Saleeby has.

13 THE COURT: Mr. Saleeby?

14 MS. OEHLER - CROSS EXAMINATION BY MR. SALEEBY:

15 Q: Ms. Oehler, am I pronouncing your name correctly?

16 A: Yes, sir.

17 Q: My name is Dudley Saleeby. I'll be asking you a few
18 questions. If you need to stop, have a drink of
19 water at any time, you go right ahead, okay?

20 A: Thank you.

21 Q: Now, you are a social worker, is that correct?

22 A: Yes, sir.

23 Q: You are not a psychologist?

24 A: No, sir. I am not.

25 Q: You are not a psychiatrist?

1 A: No, sir.

2 Q: You spend most of your time dealing with assessments
3 of children for adoption?

4 A: No, sir. I spend the majority of my time assessing
5 adults and diagnosing and working with mental health
6 patients.

7 Q: Assessing adults, you said geriatric adults, I
8 believe?

9 A: Well, actually that is a portion of my practice, but
10 the majority of my practice is, are people who are
11 between the ages of approximately eighteen and
12 fifty-five or sixty who are referred by psychiatrist
13 or referred by medical physicians, who I evaluate
14 and treat for mental health treatment. But I also
15 evaluate people in forensic evaluations, also in the
16 last fifteen years have conducted geriatric
17 assessments and provide geriatric care management,
18 and I also conduct home studies for people who want
19 to adopt.

20 Q: How many assessments have you done for people facing
21 murder charges?

22 A: At one point, I counted and it was like thirty.

23 Q: Over thirty?

24 A: But that's ... but are you asking for the defense or
25 are you asking for the solicitor?

1 Q: I just asked total.

2 A: Oh, total for defense and solicitor, I would say
3 approximately forty to forty-five through the years.

4 Q: And the thirty figure would be for whom?

5 A: For the defense.

6 Q: I understand. And you interviewed Mr. Stone a
7 couple of times, correct?

8 A: Yes, sir. I did.

9 Q: And when you talked with him, he was incarcerated?

10 A: Yes, sir, both times.

11 Q: And he was very well of the fact that he was facing
12 serious charges?

13 A: Absolutely.

14 Q: Did you find him depressed?

15 A: Yes, sir. Yes, sir. I did.

16 Q: Did you find him concerned about his well being, his
17 future?

18 A: Yes, sir. I did.

19 Q: Did you find him feeling sorry for himself?

20 A: I don't remember thinking that he felt sorry for
21 himself. I remember his providing information to
22 answer my questions. His view of himself at both
23 points was that he was depressed.

24 Q: And that would be natural, would it not?

25 A: Very appropriate to the circumstance.

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1 Q: And it would be appropriate for somebody in that
2 circumstance to want to tell you things that they
3 thought would be to their advantage, would it not?

4 A: Yes, sir. That's correct.

5 Q: And it would be also appropriate for somebody to
6 tell you things that would excuse or justify what
7 they've been charged with doing, is that correct?

8 A: They would give information regarding their
9 background history, yes, sir.

10 Q: But just to carry that stuff, if I'm in a pickle,
11 and you're there working for my lawyers, I want you
12 to know everything that I think will help me, right?

13 A: Yes, sir. You'll tell me everything that you can
14 remember.

15 Q: And I'll tell ... and you may or may not know
16 whether I'm telling it to you straight, will you?

17 A: No, sir. I wouldn't know unless I go to other
18 sources to verify what you told me.

19 Q: Okay. Well, let's talk about other sources. The
20 other sources would be members of my family, members
21 of Mr. Stone's family?

22 A: Yes, sir. It would be other members of your family,
23 if I were able to talk to your school teachers, if I
24 were able to talk to your doctor, if I was able to
25 review your medical history or your military

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1 history, your school records.

2 Q: All right. Well, we'll talk about the records, but
3 let's start with family and friends first. You talk
4 to family and friends, correct?

5 A: Yes, sir.

6 Q: They were aware of his circumstances, were they not?

7 A: Yes, sir.

8 Q: They knew he was and is in jail?

9 A: Yes, sir.

10 Q: They knew he was facing serious charges?

11 A: Yes, sir.

12 Q: They love him?

13 A: Yes, sir.

14 Q: And they would want to help him?

15 A: Yes, sir.

16 Q: And so it wouldn't be unusual for them to tell you
17 things that would be, either put him in the best
18 possible light or to give him reasons for doing what
19 he did, correct?

20 A: His relatives told me that they loved him, yes, sir
21 and they did give information.

22 Q: All right. And then you talked to some external
23 sources?

24 A: Yes, sir.

25 Q: Did you talk to any teachers?

1 A: No, sir. And I talked to more external sources the
2 first time that I did this evaluation, because it
3 seems the more other people were available at that
4 time. I was not able to find one or two of the
5 people this time that I had interviewed before.

6 Q: All right. Did you talk to any teachers?

7 A: No, sir. I did not.

8 Q: Did you talk to any medical doctors?

9 A: No, sir. But I reviewed the medical record.

10 Q: All right. But you didn't talk ...

11 A: Medical records, excuse me.

12 Q: Did you talk to anybody who had done a psychological
13 examination on him?

14 A: No, sir.

15 Q: Did you talk to anybody who had done a ...

16 A: No, I have to ... I'm sorry, may I go back?

17 Q: Of course you may.

18 A: I'm sorry. I told you that I didn't, but I actually
19 did. Wait, let me see what his name is. Hold on
20 just a minute, please.

21 Q: Yes, ma'am.

22 A: A Dr. Harold Morgan.

23 Q: You talked to someone who had done a psychiatric
24 exam?

25 A: You know, I can't remember if Dr. Morgan is a

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1 psychiatrist or if he is a psychologist.

2 Q: You don't remember now?

3 A: I don't remember his credentials. I know that he
4 evaluated him, and that I spoke with him.

5 Q: You found no military record?

6 A: No, sir. I did not.

7 Q: Did you talk to any employers?

8 A: No, sir.

9 Q: Did you get any work records?

10 A: Yes, sir. I did.

11 Q: Where did you get the work records from?

12 A: From the defense attorneys.

13 Q: All right. But you didn't talk to any of the people
14 who had employed him?

15 A: No, sir. I did not.

16 Q: Did you go to the Employment Security Commission and
17 see if there was a record there?

18 A: No, sir. I did not.

19 Q: With regard to other members of the family and
20 records of psychiatric treatment, did you talk to
21 their doctors?

22 A: No, sir. I reviewed their psychiatric records.

23 Q: And you have psychiatric records from the other
24 members of the family?

25 A: Yes, sir, on several of them.

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1 Q: How many?

2 A: Two of the sisters.

3 Q: Anybody else?

4 A: No, sir.

5 Q: Do you have a medical, do you have a court record of
6 abuse filed with the sheriff's department or the
7 city police?

8 A: No, sir. And there's no record filed with the
9 Department of Social Services in Sumter County
10 either.

11 Q: So there's an allegation of abuse, but there's no
12 documentation?

13 A: That's correct.

14 Q: There's allegation of sexual harassment, but there's
15 no documentation?

16 A: The only documentation of that was in the
17 psychiatric record of the sister.

18 Q: All right. But that documentation, there was no
19 documentation outside to any agency that would be
20 responsible for counseling, for aid and for
21 prosecuting ever received such a report?

22 A: Well, the counseling was done through the Mental
23 Health Center, and that was the documentation that I
24 reviewed, but there was not documentation from law
25 enforcement regarding an abuse referral.

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1 Q: And this would have been one report one time?

2 A: I beg your pardon?

3 Q: You're talking about one report on one person on one
4 occasion?

5 A: No, sir, numerous occasions of abuse.

6 Q: Allegations by one person?

7 A: By two sisters, but I only have the documentation on
8 one.

9 Q: So there's no documentation on the other one?

10 A: No, sir, not that I have.

11 Q: And none of this was ever reported simultaneously
12 with when it was suppose to happen?

13 A: Do you mean to law enforcement or Department of
14 Social Services reported?

15 Q: That's correct.

16 A: I don't have a record of those from the Department
17 of Social Services or law enforcement.

18 Q: No paperwork?

19 A: No, sir.

20 Q: All right. And one of the individuals suppose to be
21 involved in this is a Mr. Miles, and he was suppose
22 to be the perpetrator of some of these things. It
23 would be important to talk with him and get his side
24 of the story, would it not?

25 A: Yes, sir. I met him on the first trial, prior to

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1 the first trial and spoke to him briefly, but he
2 walked away from me and wouldn't talk to me, and
3 he's deceased now.

4 Q: Did he not deny these allegations to you?

5 A: He didn't stay with me in the conversation long
6 enough to deny. He came in. I introduced myself.
7 I asked if he would be willing to talk with me, and
8 I stated what I was there for, and he turned and
9 walked out.

10 Q: Wouldn't it have been appropriate to find out if one
11 person's being charged with doing all these things,
12 or allegedly so, to get the story from that person
13 or from another source other than somebody who's kin
14 to the Defendant and trying to help the Defendant?

15 A: Yes, sir, if anyone had been willing to talk. An
16 aunt of the family also shared information about
17 knowing about the sexual harassment toward Mr.
18 Stone's two sisters, and that was another source,
19 but again, that's a family member.

20 Q: And no report was ever filed by her?

21 A: No, sir. I did not see a report.

22 Q: All right. Now, if I understand, this family grew
23 up poor in the Poston part of Florence County?

24 A: Yes, sir.

25 Q: That wouldn't be unusual in the Poston part of

1 Florence County, would it?

2 A: No, sir. I don't believe so.

3 Q: I wouldn't think so either. I'm from Florence
4 County. Would it be unusual for there not to be a
5 lot of employment over in the Postal part of
6 Florence County, would there?

7 A: Well, at that time, both parents were employed
8 because his mother was a housekeeper and she took
9 care of people who were sick, but it's not what you
10 would call employment in the public sector. That
11 was employment working for someone as a housekeeper
12 and taking care of sick people, and his father
13 worked in that area, but it's my understanding those
14 were odd jobs, not consistent of stable employment
15 that would have any significant income to support a
16 growing family.

17 Q: Did you get a death certificate to certify how his
18 uncle died in Florence County?

19 A: No, sir. I did not.

20 Q: That would probably be the most accurate independent
21 source you could bring us, wouldn't it?

22 A: It would be a resource to look at that death
23 certificate.

24 Q: You got some medical records relating to injuries
25 and other medical records you could not find?

1 A: There was a history. I do have medical records from
2 Tuomey Hospital, numerous ones for injuries,
3 treatments in the emergency room. I requested
4 medical records from McLeod Regional, but I've never
5 received any.

6 Q: You don't have any medical records to show us that
7 indicated that Bobby Wayne Stone suffered some sort
8 of head trauma which has impacted his psychological
9 make-up, do you?

10 A: No, sir. I do not have that record.

11 Q: There are none of those, are there?

12 A: Not to my knowledge. I did not review any records
13 that had that documentation.

14 Q: This man has no documented history of mental
15 illness?

16 A: The evaluation that the State Hospital did
17 documented a depression and anxiety. That was at
18 the point he was evaluated prior to the first trial.

19 Q: So he was depressed and anxious because he was in
20 jail facing the death penalty?

21 A: Yes, sir.

22 Q: Any other prior history of major mental illness?

23 A: Not that I have documentation for.

24 Q: Any prior history of psychosis?

25 A: Not that I have any documentation. There's no

1 mental health record prior to that time for Mr.
2 Stone.

3 Q: No prior history of neurosis?

4 A: No, sir. There's no prior medical health, mental
5 health record prior to that time of that diagnosis.

6 Q: No prior history of mental retardation?

7 **MR. BABB:** Your Honor, she ... he's asked now four or
8 five times about mental illness.

9 **THE COURT:** No, sir. He's asking specific ones. This
10 is cross-examination. I will allow him to proceed.

11 Q: I'll repeat that. No prior documentation of mental
12 retardation?

13 A: No, sir. And I examined both the academic record
14 through the school districts that he attended, as
15 well as the evaluation that was conducted at the
16 State Hospital, and there's no documentation of
17 mental retardation.

18 Q: You have found that he has what we call an anti-
19 social personality?

20 A: Yes, sir.

21 Q: He does have a problem with authority figures?

22 A: Yes, sir. He does.

23 Q: You've documented since perhaps the age of twelve
24 he's been violating the law?

25 A: Yes, sir.

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1 Q: And he has been punished in different ways and types
2 and manners since age twelve, is that correct?

3 A: That's correct.

4 Q: And I believe you said that he had, according to
5 your records, he had stolen some items, mostly tools
6 that he could use at work?

7 A: He stole a car when he was twelve.

8 Q: All right. I'm going to show you documents that you
9 may have or may not have. These are State's
10 exhibits, and I will refer to them specifically and
11 give you a chance to look at them. Bear with me.

12 All right. This is State's Exhibit Number Sixty-
13 Three, and we're talking about larceny here. Can
14 you tell us, can you read here what items he stole?

15 A: Yes, sir. Good described as thirty gallons of
16 gasoline, two padlocks, eight cases of beer, two
17 calculators and sunglasses.

18 Q: Eight cases of beer, right? That wouldn't have
19 anything to do with working on a car, would it?

20 A: No, sir.

21 Q: Okay. Or the sunglasses?

22 A: No, sir.

23 Q: State's Exhibit Number Sixty-Four, what are the
24 items taken here?

25 A: Described as follows, \$150 and change from game

1 machines, four cartons cigarettes and twenty-one
2 mini bottles valued at a total of \$212.

3 Q: No equipment there. State's Exhibit Number Sixty-
4 Five?

5 A: Described as follows, one lawn mower, one hydraulic
6 jack, one gold Cross pen set, excuse me, and other
7 assorted items valued at a total of approximately
8 \$250.

9 Q: State's Exhibit Number Sixty-Six?

10 A: Goods described as follows, one am/fm cassette deck
11 and two speakers.

12 Q: State's Exhibit Number Sixty-Seven?

13 A: Goods described as follows, one radar detector, one
14 CB radio and two diesel fuel filters.

15 Q: I won't have you go through all of them. These are
16 in evidence. But wouldn't it be fair to say that
17 based on what you've got there, that he was not just
18 breaking in to buy tools, to get tools so he could
19 earn a living?

20 A: That's correct. That's what your records indicate.
21 There were other items.

22 Q: He was breaking in and stealing whatever could be
23 turned into money?

24 A: Yes, sir. Well, except for the exclusion of the
25 beer. I don't know if he was going to sell that or

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1 drink it because he's an alcoholic.

2 Q: Yes, ma'am. Now, you've read these records. When
3 he got arrested as a juvenile, the Family Court
4 provided services to him, did they not?

5 A: Yes, sir.

6 Q: All right. When he got arrested in 1985 and he was
7 sentenced as a youthful offender, the Department of
8 Probation and Parole Services offered him
9 supervisory services, did they not?

10 A: Yes, sir. And they followed-up with him. He was
11 employed during that time.

12 Q: When he got in more trouble in 1987, he actually
13 served time and then got out and was supervised
14 again?

15 A: Yes, sir. I believe that he served time that time
16 from 1987 to 1993, if I'm not mistaken.

17 Q: And yet, after all that intervention and all that
18 punishment, he persisted in violating the law, is
19 that correct?

20 A: That's correct.

21 **MR. SALEEBY:** Thank you, Ma'am. Please answer any
22 questions that counsel has.

23 **THE COURT:** Redirect, Mr. Babb?

24 **MR. BABB:** Court's indulgence. Let me take a look at
25 these.

1 MS. OEHLER - REDIRECT EXAMINATION BY MR. BABB:

2 Q: Ms. Oehler, would you take a look at State's Exhibit
3 Sixty-Nine and could you tell us who was the, where
4 the break-in indicates that it occurred?

5 A: In 1985, the personal goods of Connor Mobile Home
6 Sales.

7 Q: And State's Exhibit Seventy, what building is he
8 accused of entering?

9 A: Action Blasting.

10 Q: State's Seventy-One, would you tell us where that
11 larceny occurred?

12 A: Central Corporation.

13 MR. BABB: Court's indulgence. Nothing further, Your
14 Honor.

15 MR. SALEEBY: None.

16 THE COURT: All right. Thank you, Ms. Oehler. You may
17 step down.

18 MR. BABB: May this witness be excused, Your Honor?

19 MR. SALEEBY: No objection.

20 THE COURT: Yes, ma'am. You are excused. Thank you
21 for coming. All right. Counsel, you may call your
22 next witness.

23 MR. BABB: Your Honor, may be approach?

24 THE COURT: Yes, sir.

25 (Bench conference)

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1 **THE COURT:** All right. Ladies and gentlemen, there is a
2 matter that we now need to take up, and I need to
3 ask you to leave the room for a short time. Please
4 go to the jury room. Please do not discuss this
5 matter among yourselves. It's still premature for
6 you to begin any discussions. Just relax, and we'll
7 send for you very shortly. Thank you very much.

8 (Jury out at 12:29 p.m.)

9 **THE COURT:** All right. Ready to proceed, Mr.
10 Littlejohn?

11 **MR. LITTLEJOHN:** Yes, Your Honor.

12 **THE COURT:** All right. Bring the jury in, please.

13 (Jury in at 12:45 p.m.)

14 **BAILIFF:** Your Honor, all the jurors and alternates are
15 present in the courtroom.

16 **THE COURT:** All right. Thank you very much and thank
17 you for your patience, Ladies and gentlemen, and we
18 are now ready to proceed. You may call your next
19 witness.

20 **MR. LITTLEJOHN:** Thank you, Your Honor. We call Melinda
21 Parrott.

22 (Witness is sworn)

23 **MELINDA PARROTT,** being duly sworn, testifies as follows:

24 **MS. PARROTT - DIRECT EXAMINATION BY MR. BABB:**

25 **Q:** Ms. Parrott, how are you related to Bobby Wayne

1 Stone?

2 A: He's my big brother. My oldest brother, put it that
3 way.

4 Q: And how many children are there in the family?

5 A: There are four of us.

6 Q: And how much older than you is Bobby?

7 A: I'm older than Bobby.

8 Q: I'm sorry. You're older than Bobby. How much older
9 are you than Bobby?

10 A: Two years.

11 Q: And y'all started life out in Poston?

12 A: Yes, sir.

13 Q: And later came to Sumter?

14 A: Yes, sir.

15 Q: How was it growing up? Were you affluent? How
16 would you describe it?

17 A: I don't know. I don't know what to say.

18 Q: You grew up pretty hard, did you not?

19 A: Yes, we did.

20 Q: Did y'all have neighbors back then?

21 A: No, not close neighbors, no. We kind of lived in a
22 little house off like in the woods.

23 Q: You recall Wesley Miles?

24 A: Yes.

25 Q: He a neighbor of yours?

- 1 A: Yes.
- 2 Q: Was he ever over at your house?
- 3 A: All the time.
- 4 Q: Did he knock and ask permission to come in?
- 5 A: No, he walked in just like he owned, he lived there.
- 6 Q: Did he live at your home while y'all were children?
- 7 A: Not when we lived in Poston, no.
- 8 Q: How about in Sumter?
- 9 A: Off and on, yes, sir, through our life.
- 10 Q: Pardon me?
- 11 A: Yes, sir. Off and on all through our life.
- 12 Q: Wesley Miles?
- 13 A: Yes, sir.
- 14 Q: Where was his wife?
- 15 A: Next door at her house.
- 16 Q: What was Mr. Miles' relationship to your family,
- 17 particularly your mother?
- 18 A: He was my mamma's boyfriend.
- 19 Q: Did he ever attempt to molest you or the girls in
- 20 the family?
- 21 A: Yeah, but we just kind of all hung around together.
- 22 Wouldn't go off by ourselves or nothing so he
- 23 couldn't catch us nowhere by ourselves.
- 24 Q: Did that ever occur in front of Bobby?
- 25 A: Yes. He did it a lot. Tried to catch us off by

1 ourselves.

2 Q: Did it appear to upset Bobby?

3 A: Yes.

4 Q: Bobby ever confront Wesley Miles?

5 A: Didn't do no good.

6 Q: Did they ever have an altercation? By that I mean
7 was there any sort of fight between Bobby and
8 Wesley?

9 A: Yeah. They got in a couple fights before for him
10 trying to mess with us or push us around or
11 something. He was always bossing us.

12 Q: Did Wesley ever hurt Bobby?

13 A: Yeah. He beat him with a belt one time real bad.

14 Q: You say real bad. Could you tell us what you mean
15 by real bad?

16 A: I mean beat him bad. Bad enough he went to the
17 emergency room.

18 Q: Your father is no longer living, is he?

19 A: No, sir. He was killed.

20 Q: Did his death cause you problems?

21 A: Yes, sir.

22 Q: What can you tell us about his death?

23 **MR. SALEEBY:** Your Honor, unless she was an eyewitness
24 to it, we would object to hearsay.

25 **THE COURT:** All right. Rephrase it, please.

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1 Q: What was it about your father's death that caused
2 you problems?

3 MR. SALEEBY: Your Honor, that again is the same
4 question a different way.

5 THE COURT: Well, I'm going to give her a little bit of
6 leeway. We won't go far. Go ahead, Mr. Babb. I'll
7 allow the answer to that question.

8 Q: What circumstances about your father's death caused
9 you problems?

10 A: The way he was killed.

11 Q: How do you believe that was?

12 MR. SALEEBY: Objection.

13 THE COURT: Overruled. Go ahead.

14 A: Sir?

15 THE COURT: You may answer.

16 A: He had, him and a couple of my cousins, Gene Miles
17 and his son, went on a fishing trip, and they was
18 locked up in the camper. They had locked the camper
19 door they was riding in with a key because it come
20 open. They was locked up in the camper, and they
21 went and got a boat from his brother's house, and
22 Gene, after they got the boat and stuff and they got
23 back in, Gene left ...

24 THE COURT: I think your objection is well taken at this
25 point. The issue is not the effect on her. I think

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1 the issue has got to be the effect on the Defendant.
2 in this case, if she has any knowledge there, and I
3 think if he was there or something, that would be
4 the issue, but not the effect on her.

5 **MR. BABB:** May I state our position on the record?

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

7 **MR. BABB:** I'm asking what is her understanding of the
8 facts about her father's death. Not whether they're
9 true or not. What she, as a family member,
10 understood ...

11 **THE COURT:** But the objection is on the basis of
12 hearsay. Why wouldn't that be hearsay unless she
13 was there?

14 **MR. BABB:** Because I'm not asking what someone else told
15 her. I'm asking simply what ...

16 **THE COURT:** Her understanding, that's the same thing.

17 **MR. BABB:** I'm asking simply what her belief, her
18 understanding, what facts was she aware of.

19 **THE COURT:** But the only way that she could be aware of
20 those facts would be if somebody's told her, so I
21 ... come on up a minute, counsel.

22 (Bench conference)

23 **THE COURT:** Ladies and gentlemen of the jury, I do have
24 some legal matters that I need to take up concerning
25 this, and in addition to that, I have just been

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1 advised that lunch is here, and so while it's hot, I
2 think it's time to eat. So I am going to allow you
3 to go to your jury room now and go ahead and enjoy
4 your lunch while we resolve these legal matters.
5 And don't talk about this case over lunch. It's
6 still premature for you to have any discussions
7 about the case or any of the witnesses or any of the
8 testimony or anything at this point. Again, devolve
9 yourself of this matter for a while, and we'll start
10 back this afternoon, and we will have resolved this.
11 But go ahead and enjoy your lunch. Thank you.

12 (Jury out at 12:56 p.m.)

13 **THE COURT:** All right. I'm going to let you proffer the
14 testimony in the absence of the jury so that I can
15 listen to it, and then I will then know from there
16 what I have to do.

17 **Q:** Ms. Parrott, would you please tell the court what
18 information you received about your father's death?
19 What is your understanding of the facts and
20 circumstances surrounding his death that caused you
21 problems?

22 **A:** Well, like I said, they went fishing, was going
23 fishing. They was drunk, and my daddy got throwed
24 out the camper or fell out the camper or something.
25 Anyway, the door come open and he went out, and the

1 car behind him killed him.

2 Q: Is it your understanding that door was basically
3 locked?

4 A: It had to stay locked. It wouldn't stay shut if it
5 wasn't locked.

6 Q: Who do you understand had the key to that lock?

7 A: Wesley Miles.

8 Q: To your knowledge, did Bobby have the same
9 understanding?

10 A: Yes.

11 Q: Did that appear to you to have impacted him?

12 A: Yes. That was our daddy.

13 Q: How did it impact him?

14 A: It hurt.

15 Q: Cause you problems?

16 A: Yes.

17 Q: Cause Bobby problems?

18 A: Yes. He may not have stayed with us, but we loved
19 him.

20 **MR. BABB:** Your Honor, that would be our proffer.

21 **THE COURT:** All right. Thank you, Ms. Parrott. You may
22 step down. Counsel, I'm going to do a little
23 research of this over the lunch recess. We'll rule
24 on it later. It's a few minutes to 2:00. Let's
25 plan to take an hour, and I will reconvene at ... I

mean to 1:00, I'm sorry. It's about two or three minutes to 1:00, and I will be ready to reconvene at 2:00 o'clock, and we'll be ready to start at that time. Get your lunch. And I'll also be ready to rule on this particular evidence at that time. Thank you. Reconvene at 2:00 o'clock.

(Lunch break from 12:59 p.m. to 2:00 p.m.)

THE COURT: Please be seated. All right. Let's go back on the record with the matter of The State v. Bobby Wayne Stone. Let the record reflect that Mr. Saleeby and Mr. Jackson on behalf of the State are present. Mr. Babb and Mr. Littlejohn and Mr. Stone are present in the courtroom. Before we took the lunch recess, the issue that was before the Court was the proposed testimony of Ms. Melinda Parrott. The Court has done some research over the recess, taking into account the proffered testimony, the witness was asked what was her understanding of how her father had died, and the testimony was objected to as being hearsay. The Court finds that this, as far as this witness is concerned, it is not hearsay under 801(c), which provides that hearsay is a statement other than one made by the person testifying at trial or hearing offered in evidence to prove to the truth of the matter. That witness

1 is not hearsay because it was not offered to prove
2 the truth of the matter asserted as to Ms. Parrott
3 to show how that had affected her. Having met that
4 analysis, then I had to go to the next question, and
5 that is whether it is relevant to any of the issues
6 here, and it is not relevant to ... how it affected
7 her is not relevant under 402, because that is not
8 relevant to any of the issues before this Court with
9 what the effect of that was on her, so the Court's
10 ruling would be while she can testify to that under
11 801(c), she cannot testify to how that would affect
12 her because it's not relevant under 401 and Rule
13 402. Then the questions becomes what was Bobby's
14 understanding, and I think that is clearly hearsay.
15 That no one can testify as to what his understanding
16 is except him. It's not something that she would be
17 able to. It does not fall under 803-19. 803-19
18 only deals with the facts of a certain instance,
19 including death, as an exception to the hearsay rule
20 and not the facts and circumstances concerning the
21 death. I think 803-19 was designed to allow
22 limitation concerning personal family history such
23 as a birth, an adoption or marriage, but that is by
24 limitation only and not as to the facts and
25 circumstances surrounding that particular fact, and

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1 I don't think that would be admissible. So I don't
2 believe that she can be asked what is Bobby's
3 understanding of that death, because that is just
4 hearsay, and I don't think there's any basis also
5 under 701 and 702. So that would be the Court's
6 ruling with regard to those issues.

7 **MR. BABB:** Your Honor, a couple of things. First of
8 all, of course, they shared a common father.

9 **THE COURT:** Sir?

10 **MR. BABB:** They shared a common father.

11 **THE COURT:** No question about that.

12 **MR. BABB:** Her father is also Mr. Stone's father. What
13 we're attempting to do is show circumstances that
14 had transpired in Mr. Stone's life that affect he
15 and his family, and his family's interactions and
16 we're offering that for the jury to understand the
17 circumstances he has been in, his whole family's
18 been in, and the interactions that they've had, and
19 how that process makes him a unique individual. It
20 is our position that the family's views and what
21 they understanding about the circumstances, how it
22 impacted his immediate family members, and may have
23 impacted him, are relevant, and it is a mitigating
24 factor we're entitled to present to the jury, and
25 that to prevent us to proceed denies my client's

1 rights of due process.

2 **THE COURT:** Aren't you taking the position that you have
3 the right to prove mitigating circumstances, but the
4 Rules of Evidence don't apply?

5 **MR. BABB:** Well, Your Honor, I'm saying that the Rules
6 of Evidence would take precedence over his due
7 process rights, yes, sir.

8 **THE COURT:** All of this that you want to present, all
9 that you want to prove as to the effect on him can
10 be testified to by him. I just don't think you can
11 do it indirectly.

12 **MR. BABB:** Your Honor, I'm just trying to put on the
13 record that we object to it on ...

14 **THE COURT:** I understand.

15 **MR. BABB:** ... the grounds of due process. It's denying
16 him his rights to due process to have the jury to
17 fully and fairly consider mitigating circumstances
18 that impact on him and his life, and it impacts him
19 by me not being able to solicit this information.
20 It's also a denial of his right to seek assistance
21 of counsel.

22 **THE COURT:** I understand the position, Mr. Babb and I
23 respect that, and I think that I understand exactly
24 what he has a right to prove, and I don't say that
25 he does not have a right to prove the points that

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1 you are raising. I just don't think he's got the
2 right to prove the points through Ms. Parrott.

3 **MR. BABB:** Well, then Your Honor, I would ask Ms.
4 Parrott what her understanding was and if she ever
5 relayed that to Mr. Stone.

6 **THE COURT:** All right. You going any further than that?
7 That going to be the last question?

8 **MR. BABB:** No, sir. There will be additional questions,
9 but they may be on other subjects.

10 **THE COURT:** I mean on that subject. I'm just trying to
11 find out what I've got to anticipate, what's going
12 to happen. I told you that to some length as to
13 what her understanding is or whether she related
14 that to Mr. Stone, then where do we go from there?

15 **MR. BABB:** Well, I would in all likelihood ask her if it
16 appeared to upset Bobby and influence him.

17 **THE COURT:** And what's the basis for that admission?

18 **MR. BABB:** It's a statement she made to Mr. Stone.

19 **THE COURT:** Correct.

20 **MR. BABB:** Then it would be her observations of his
21 reaction hearing this.

22 **THE COURT:** What about that, Mr. Saleeby? What can she
23 testify under the hearsay, not the hearsay exactly,
24 but the fact that it's not hearsay under 801(c) as
25 to what her understanding, and then ask whether or

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1 not she communicated that understanding to Mr.
2 Stone?

3 **MR. SALEEBY:** Your Honor, I see it as being the same
4 sort of an end run of diversion. What we've got
5 here is a series of events involving her father's
6 tragic death, which took place at a time and place
7 and event that she had nothing to do with. Whatever
8 was communicated to her by the people who were
9 there, would have been hearsay. Whatever perception
10 she had as to it occurring another way would be
11 hearsay, and then for her to say my perception is it
12 upset me and I shared my perception with my brother
13 and it upset him is ...

14 **THE COURT:** I tend to agree with you.

15 **MR. SALEEBY:** That's what I'm seeing here.

16 **THE COURT:** I tend to agree. I think I'm going to have
17 to rule that she cannot, she can't testify as to her
18 understanding ... she could testify to her
19 understanding as to its effect on her, because it
20 would not be hearsay, but to allow her to testify as
21 to what her understanding is and that she conveyed
22 that understanding to him is just compounding the
23 situation. It just doesn't make good evidentiary
24 sense to me. I understand your position, Mr. Babb,
25 and I'll allow you to put anything else on the

1 record you want to, but I just do not feel that it
2 is admissible having studied Collins on this over
3 the lunch recess, as well as some other things. I
4 just don't see how that is admissible. You can get
5 that same testimony and that same evidence before
6 this jury through the Defendant, but I just don't
7 see how you can get it in through her.

8 **MR. BABB:** All right, sir. Am I protected when I said
9 my next questions would be ...

10 **THE COURT:** Yes. All of your questions are protected,
11 and I think the record is covered on that.

12 **MR. BABB:** Thank you. I appreciate the Court's
13 patience.

14 **THE COURT:** All right. Do you want Ms. Parrott back on
15 the stand?

16 **MR. BABB:** Yes, please.

17 **THE COURT:** Okay. Ms. Parrott, come back around,
18 please. All right. Bring the jury in, please.

19 (Jury in at 2:16 p.m.)

20 **THE COURT:** All right.

21 **BAILIFF:** Your Honor, all jurors and alternates are
22 present in the courtroom.

23 **THE COURT:** Thank you very much, and thank you, Ladies
24 and gentlemen. I hope everybody liked pizza. If
25 you didn't, you're in trouble. But be that as it

1 may, we are ready to proceed at this time. All
2 right. Mr. Babb?

3 **MR. BABB:** If it please the Court, Your Honor.

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

5 **MS. PARROTT - CONTINUED DIRECT EXAMINATION BY MR. BABB:**

6 Q: Ms. Parrott, we've now had the lunch break, so let
7 me back you up just a little bit here. You've
8 testified that you are Bobby's older sister?

9 A: Yes.

10 Q: And how many other children are there in the family?

11 A: Three.

12 Q: All right. And who are they? You?

13 A: Me, Bobby Stone, Tammy Windham and Jerry Stone.

14 Q: Okay. So there's four in the family?

15 A: Yes.

16 Q: And who is the youngest?

17 A: Jerry.

18 Q: Okay. Now, Jerry is the youngest child in the
19 family?

20 A: Yes.

21 Q: And he has learning disabilities?

22 A: No.

23 Q: Was he not in resource classes in school or do you
24 not know?

25 A: I don't know.

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- 1 Q: And is your mother and father alive?
- 2 A: Deceased.
- 3 Q: Both?
- 4 A: Yes, sir.
- 5 Q: And y'all initially were living in Poston, is that
- 6 correct?
- 7 A: Yes, sir, when we were small.
- 8 Q: There's two year's difference between you and Bobby?
- 9 A: Yes, sir.
- 10 Q: All right. And y'all were a relatively poor family?
- 11 A: Yes, sir.
- 12 Q: Did you, you didn't have a lot of nice things
- 13 growing up or did you?
- 14 A: No, sir.
- 15 Q: And your mother's health, how was that?
- 16 A: It was, she had a lot of health problems, but she
- 17 done the best she could for us.
- 18 Q: All right. Had she ever been burned or anything
- 19 like that?
- 20 A: Yeah. She was burned when she was a child, third
- 21 degree burn all the way up the back up here and
- 22 bottom of her legs.
- 23 Q: Did that cause her any sort of health problems?
- 24 A: Some, yes, sir.
- 25 Q: Did she have to have a number of operations when

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1 y'all were coming along?

2 A: She had quite a few, yes, sir. She had to have
3 skinned grafted off her body for her legs.

4 Q: Did that impact on her ability to work for an income
5 for the family?

6 A: Sometimes, yes, sir.

7 Q: Well, now your father, he drank, did he not?

8 A: Yes, sir.

9 Q: And he drank to excess, did he not?

10 MR. SALEEBY: Your Honor, I would ask him not to lead
11 his witness. I think she's perfectly capable of
12 relating these things?

13 THE COURT: Yes. Let's don't lead her.

14 Q: Did your father drink?

15 A: Yes, sir.

16 Q: How much?

17 A: About every day.

18 Q: How much would he drink?

19 A: About twelve, eighteen pack, something like that.

20 Q: Would that be beer?

21 A: Yeah.

22 Q: Did he drink any liquor?

23 A: Sometimes, but not as much as he did the beer.

24 Q: Did your father work?

25 A: Yes, sir.

HEARING

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- 1 Q: All the time, or was that a hit and miss?
- 2 A: Different times, off and on, yes, sir.
- 3 Q: Who helped support the children?
- 4 A: My mother.
- 5 Q: Would she bring home food? Was she the primary one
- 6 who would bring home food?
- 7 A: Yeah. She'd bring home food, and when she couldn't
- 8 or we didn't have nothing to eat, we'd go out and
- 9 get something. Go to a neighbor's house and get us
- 10 some chicken or something to look.
- 11 Q: You say she would go to the neighbor's house and get
- 12 a chicken or something?
- 13 A: No, Bobby Wayne would.
- 14 Q: Bobby Wayne would?
- 15 A: (Nods head affirmatively).
- 16 **THE COURT:** Answer out, please, ma'am. Can't take a
- 17 nod. Need a yes or a no.
- 18 A: Oh, I'm sorry. Yes, sir.
- 19 Q: To your knowledge, did he obtain that chicken with
- 20 the permission of your neighbors?
- 21 A: No.
- 22 Q: Did he steal the chickens?
- 23 A: Yes, he did.
- 24 Q: To your knowledge, did your mother know that he was
- 25 stealing chickens?

- 1 A: I'm not sure.
- 2 Q: Your dad's money, when he had money, what did he do
- 3 with it?
- 4 A: Well, my daddy didn't live with us that much.
- 5 Q: Do you know what he did with his money?
- 6 A: No, I don't.
- 7 Q: How did y'all survive?
- 8 A: My mamma worked cleaning houses and taking care of
- 9 other people. Me and ... well, I worked in the
- 10 factory when I got of age to work in the factory and
- 11 helped out.
- 12 Q: Did you guys have a lot of supervision? In other
- 13 words, the children, was your mamma always there
- 14 with you or were there times when y'all didn't have
- 15 supervision?
- 16 A: She was there with us when she wasn't working, but
- 17 when she was working, it was just me and Wayne and
- 18 the children.
- 19 Q: Did y'all receive a lot of instructions about what's
- 20 right and what's wrong, what you should do and
- 21 shouldn't do?
- 22 A: No.
- 23 Q: Ms. Parrott, did your mom try, to your belief, as
- 24 hard she could?
- 25 A: Yes, she did.

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1 Q: Do you believe she did what she could do to the best
2 of her abilities?

3 A: I sure do.

4 Q: Did Wesley Miles do anything positive for you guys?

5 A: No.

6 Q: Would you say he was a very bad influence?

7 MR. SALEEBY: Your Honor, I really wish he would quit
8 leading.

9 THE COURT: Yes, sir. I do believe that's a leading
10 question. I'll let you ask her the question another
11 way. You may ask the question again.

12 Q: Was he a good influence or bad influence on the
13 family?

14 A: He was a bad influence. Wesley was a violent
15 person.

16 MR. BABB: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BABB: No further questions, Your Honor. Ms.
19 Parrott, please answer any questions Mr. Saleeby may
20 wish to ask.

21 THE COURT: Cross-examination, Mr. Saleeby?

22 MS. PARROTT - CROSS EXAMINATION BY MR. SALEEBY:

23 Q: Ms. Parrott, you grew up in the Poston part of
24 Florence County, and you were a Stone?

25 A: Yes, I was.

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1 Q: How far south of Hanna did you grow up?

2 A: Huh?

3 Q: Hanna, you know, the Hanna, Pamplico area? Poston
4 being close to that?

5 A: I don't know how far it was.

6 Q: All right. How far were you from Pamplico?

7 A: I don't know where Pamplico is now.

8 Q: Ma'am? Has it moved?

9 A: I said I don't know where it's at now. I haven't
10 been to Pamplico.

11 Q: How old were you when you left?

12 A: Left where?

13 Q: Poston?

14 A: About six, I think.

15 Q: About six?

16 A: I was young when I moved up here. I had just
17 started school.

18 Q: Okay. I'm just trying to figure ...

19 A: First grade, I think.

20 Q: Ma'am?

21 A: In the first grade.

22 Q: All right. So you were six years old ...

23 A: Somewhere in there.

24 Q: ... when you left Poston, is that right?

25 A: Somewhere about there, yes, sir.

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1 Q: All right. And your brother was two years younger
2 than you?

3 A: Yes, he was.

4 Q: So that would have made him four?

5 A: Something like that, yes, sir.

6 Q: And how far away was your closest neighbor?

7 A: I don't know. A couple a blocks.

8 Q: Couple of miles?

9 A: Couple of blocks.

10 Q: Couple of blocks. Did y'all live out in the country
11 on a farm or did you live in some sort of built-up
12 community?

13 A: No. We just lived out in like a little wooded area
14 with a house.

15 Q: Okay. And your mother worked on a regular basis?

16 A: When she could, yes, sir.

17 Q: All right. And then she came home, took care of the
18 family?

19 A: Yes, sir.

20 Q: All right. Anything that's happened between you and
21 Wesley Miles or between Wesley Miles and Bobby Wayne
22 Stone has never been reported to any police officer,
23 has it?

24 A: I don't think so.

25 Q: Or to any Department of Social Services, has it?

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1 A: I don't think so, no, sir.

2 Q: All right. Okay. February the 26th of 1996, y'all
3 swere living over on Ravenel Street, weren't you?

4 A: Yes, sir.

5 Q: 711 Ravenel?

6 A: Yes, sir, when they rezoned it.

7 MR. SALEEBY: State's Exhibit #84.

8 Q: Y'all lived off of the boulevard?

9 A: Yes, sir.

10 Q: Ravenel is at the end of the street between Belk and
11 Flinton?

12 A: Yes, sir.

13 Q: And the Boy's Club is kind of what a quarter mile
14 behind where y'all lived?

15 A: It's right behind our house, yeah.

16 Q: Okay. And Taylor Street would have been south of
17 y'all heading out of town?

18 A: I don't know.

19 Q: All right. There was a path through the woods,
20 wasn't it, that led between where y'all lived and
21 over to Taylor Street?

22 A: Yeah. There's paths all through the woods area, all
23 over that neighborhood.

24 Q: You were familiar with them?

25 A: Yes, I was.

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- 1 Q: And your brother was familiar with them?
- 2 A: Yes, he was.
- 3 Q: And on February 26th, about the middle part of the
- 4 day, you took him to a grocery store, right?
- 5 A: No, I did not.
- 6 Q: You didn't?
- 7 A: No.
- 8 Q: You didn't take him to buy a couple of six packs of
- 9 beer?
- 10 A: Not to the grocery store, no, sir. I did not.
- 11 Q: Oh, what store did you take him to?
- 12 A: Pardon's.
- 13 Q: Pardon's?
- 14 A: The store down on the edge of Redbank.
- 15 Q: Little convenience store?
- 16 A: Yes.
- 17 Q: Did you leave him there?
- 18 A: No, I didn't.
- 19 Q: Where did you take him from there?
- 20 A: To Commander dirt road.
- 21 Q: Commander dirt road. Did he meet anybody there?
- 22 A: No.
- 23 Q: Just let him out?
- 24 A: Yes, sir.
- 25 Q: This is out in the ... I'm not familiar with

HEARING

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1 Commander Road. Is it out in the middle of the
2 country?

3 A: Yeah. It's a little back road that goes up in some
4 woods and stuff.

5 Q: You took him to the back roads and let him out?

6 A: Yes.

7 Q: How far out of town was that?

8 A: Wasn't out of town.

9 Q: It was in town?

10 A: Right down from the store and right down from where
11 we lived, in between them.

12 Q: Within a mile?

13 A: About a mile, mile and a half, I reckon. I don't
14 know. I ain't sure.

15 Q: He bought a couple of six packs of beer?

16 A: Yes, he did.

17 Q: Then you took him to Commander Road?

18 A: Yes, I did.

19 Q: And you say that's a wooded area?

20 A: Yes, sir.

21 Q: And you let him out?

22 A: Yes, sir.

23 Q: And the last time you saw him, he was standing by
24 the side of the road in this wooded area with nobody
25 else around?

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- 1 A: Yes, sir.
- 2 MR. SALEEBY: Thank you, ma'am.
- 3 THE COURT: Is that everything, Mr. Saleeby?
- 4 MR. SALEEBY: Yes, sir.
- 5 THE COURT: All right. Redirect?
- 6 MR. BABB: No, Your Honor.
- 7 THE COURT: All right. Thank you, Ms. Parrott. You may
- 8 step down.
- 9 MR. BABB: May she be excused, Your Honor?
- 10 MR. SALEEBY: No objection.
- 11 THE COURT: All right. You are excused. Thank you for
- 12 coming.
- 13 MR. BABB: Court's indulgence.
- 14 THE COURT: Yes, sir.
- 15 MR. BABB: Your Honor, we call Ms. Bernice Perry.
- 16 (Witness is sworn)
- 17 ELIZABETH BERNICE PERRY, being duly sworn, testifies as
- 18 follows:
- 19 MS. PERRY - DIRECT EXAMINATION BY MR. BABB:
- 20 Q: Ms. Perry?
- 21 A: Yes, sir.
- 22 Q: Are you a bit nervous?
- 23 A: A lot.
- 24 Q: Is that what your reluctance in coming up here was
- 25 about?

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- 1 A: Right.
- 2 Q: You're just scared?
- 3 A: So-to-speak, yes.
- 4 Q: No one's going to yell at you. You understand that?
- 5 A: I understand.
- 6 Q: Please tell us your full name.
- 7 A: Elizabeth Bernice Perry.
- 8 Q: And where do you live?
- 9 A: Hemingway, South Carolina.
- 10 Q: And where do you work?
- 11 A: Wal-Mart.
- 12 Q: And how are you employed at Wal-Mart?
- 13 A: Yes. I've been there for twenty-three, twenty-four
- 14 years.
- 15 Q: And what do you do there?
- 16 A: Now, department manager.
- 17 Q: And how are you related, if at all, to Bobby Stone?
- 18 A: I am Bobby Stone's aunt.
- 19 Q: Okay. And were you related to his, by blood to his
- 20 mother or his father?
- 21 A: His father.
- 22 Q: Tell us a bit about you and your family's childhood.
- 23 A: My family's childhood, we, you know, had a normal,
- 24 happy childhood. We wasn't rich people. We were
- 25 sharecroppers, but we had good parents, you know,

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1 strict parents, but we were raised, you know, what I
2 think is the best of the best.

3 Q: And where were y'all raised?

4 A: We were raised mostly around Poston.

5 Q: And what did your folks do for a living again?

6 A: We were sharecroppers.

7 Q: Okay. Explain to the jury what a sharecropper is.

8 A: Okay.

9 Q: Most know, but it's kind of ...

10 A: We did not own our farm. We farmed another man's
11 land, and I'm not real familiar with, but you know,
12 we raised tobacco, corn and at the end of the year,
13 we would sell the products, and we would get so much
14 money for, you know, our work and the landowner
15 would have so much of it for his.

16 Q: Did your father drink?

17 A: Very little. Maybe once a month, he would, you
18 know, have a half a pint or you know, a pint of
19 liquor. When he bought it, he came home with it.
20 He drank it at home. He didn't drink and drive, and
21 that was the extent, you know, of his drinking.

22 Q: Well, when he would bring home a pint, was that
23 basically a week or would he consume it that
24 evening?

25 A: No. Most of the time, it would be a weekend.

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1 Because when you're a sharecropper, you farm. It's
2 not 9:00 to 5:00, five days a week, you know. It
3 would be kind of like once a month, you know, maybe
4 the weekend, you know, when we were putting in
5 tobacco or this, that and the other.

6 Q: So your dad drank whiskey, correct?

7 A: Yeah.

8 Q: And you had a brother?

9 A: I've got three brothers.

10 Q: One was Bobby Wayne Stone's father, right?

11 A: Yes, the one that we call Bobby.

12 Q: He drank, did he not?

13 A: When he was young, he didn't, to my knowledge, other
14 than I guess if he drank, it was like a beer or
15 whatever. And he got married in his twenties. He
16 met Maybelle, and they seemed to have, you know, a
17 good family relationship. I mean happy and
18 everything, but later in life, he did start
19 drinking.

20 Q: Okay. Did the, how did the family, how was the
21 family relationship going at the point he started
22 drinking?

23 A: It was, the children were small, and he was working
24 with Wilson Tree Company, and this, Eugene Miles
25 also worked with the tree company at that point, and

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1 he, you know, just started drinking weekends. Then
2 they at some point, I don't know exactly when, they
3 moved to Sumter to be with Maybelle's family up
4 here. Eugene also moved to Sumter, and I do not
5 know how long, maybe a year or whatever, but his
6 home split up, and he drank even worse and worse to
7 the place he couldn't hold a job.

8 Q: Did you ...

9 A: And you know, I talked to him, and he told me he
10 loved Maybelle..

11 **MR. SALEEBY:** I object to any hearsay.

12 **THE COURT:** You can't testify as to what somebody told
13 you. That's what we lawyers call hearsay. You
14 wouldn't have any way of knowing that, but you can't
15 testify to that, okay?

16 Q: Do you ...

17 **THE COURT:** Objection sustained.

18 Q: ... any knowledge of why his drinking increased?

19 A: He told me ...

20 **MR. SALEEBY:** Objection.

21 **THE COURT:** You can't testify as to ...

22 A: Oh, okay.

23 Q: I'm just asking if you have any knowledge.

24 A: Well, Eugene was drinking with him and just the
25 flirtation that I seen, you know, between Maybelle

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1 and Eugene, I feel like that was what was causing
2 him more and more problems.

3 Q: Now, Maybelle is who?

4 A: His wife.

5 Q: Whose wife?

6 A: Bobby, my brother Bobby's wife, Bobby Wayne's daddy.

7 Q: So you personally observed flirtations between
8 Eugene Miles and Maybelle, Bobby Wayne Stone's
9 mother?

10 A: Yes.

11 Q: Where did ... did Mr. Miles live in Sumter?

12 A: Yes, sir. When they moved to Sumter, and I came up,
13 Eugene was living right next door, just a small area
14 between the two homes.

15 Q: That's here in Sumter?

16 A: That's here in Sumter.

17 Q: Okay. When your brother, Maybelle, Bobby Wayne
18 Stone and the children lived in Poston, do you know
19 where Eugene Miles lived then?

20 A: I'm not sure, but he lived somewhere in the area,
21 but to say exactly where in Poston, I just know they
22 worked with Wilson Tree Company together.

23 Q: Let me qualify that. I'm not asking where he lived.
24 Did Eugene Miles live in Poston?

25 A: Yeah, as far as I know.

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1 Q: So when ... did Eugene Miles move to Sumter when the
2 Stones moved to Sumter?

3 A: Right, correct.

4 Q: Now, Ms. Perry, do you have any family members in
5 law enforcement?

6 A: My son-in-law is a policeman, who is with Francis
7 Marion College. He's now military police serving in
8 Iraq. And he wanted to pursue a career in the
9 Highway Patrol, which he got his calling last month,
10 but he's in Iraq, so we had to call and let them
11 know he would not be able to answer the call.

12 Q: Ms. Perry, I show you three photographs that are
13 identified at this point as Defendant's Exhibits
14 Five, Six and Seven. Do you recognize those?

15 A: Yes, sir. This is pictures that I remember I took.9

16 Q: Hold on just a second. Do you recognize those?

17 A: Yes, sir.

18 MR. BABB: Your Honor, I would move these into evidence
19 at this time?

20 MR. SALEEBY: No objection, sir.

21 THE COURT: All right. Admitted into evidence as
22 Defendant's Five, Six and Seven. Admitted into
23 evidence without objection.

24 Q: Would you please take a look at Defendant's Exhibit
25 Five and tell the Ladies and gentlemen of the jury

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1 what that depicts?

2 A: This picture is a picture of Bobby Wayne and Linda
3 as small children.

4 Q: And would you please, ma'am, take a look at
5 Defendant's Exhibit Six?

6 A: Six is a picture of Linda and Bobby Wayne as small
7 children.

8 Q: And would you take a look at Defendant's Exhibit
9 Seven?

10 A: This is a picture of my brother Bobby and Tammy, his
11 daughter.

12 **MR. BABB:** Court's indulgence.

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

14 Q: When did Bobby Wayne Stone's father, your brother
15 Bobby, die?

16 A: '87, November of '87.

17 Q: Okay. And when did his mother pass?

18 A: Best I can remember, it was like June of '93 maybe,
19 but I'm not real definite, you know, June, July,
20 August, you know, sometime in those months..

21 Q: He lost both of his parents by 1996?

22 A: Yes.

23 Q: Do you recall their ages?

24 A: I really don't.

25 Q: Well, how old are you? How old would your brother

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1 be now?

2 A: I do not know, but I'll be fifty-four.

3 Q: You'll be fifty-four.

4 A: In July.

5 Q: Was your brother older or younger than you?

6 A: He's our oldest brother.

7 Q: Okay. How much older than you was he?

8 A: Let's see. He was ten years older than I am.

9 Q: So he would have been sixty-four had he lived?

10 A: No, he would be older than that.

11 Q: How old would he be had he lived?

12 A: Sixty-four maybe ... probably be in his seventies,
13 guessing.

14 Q: And he's been dead now for?

15 A: '87.

16 Q: Since 1987.

17 A: November of '87.

18 MR. BABB: All right. Please answer any questions Mr.
19 Saleeby may have for you.

20 MR. SALEEBY: I have no questions. Thank you so much,
21 ma'am.

22 THE COURT: Thank you, Ms. Perry. You may step down.

23 MR. BABB: Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. BABB: Your Honor, I call Linda Parrott.

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(Witness is sworn)

LINDA DENISE PARROTT, being duly sworn, testifies as follows:

MS. PARROTT - DIRECT EXAMINATION BY MR. BABB:

Q: Ms. Parrott, how are you related to Bobby Wayne Stone?

A: He's my uncle.

Q: He's your uncle?

A: Uh-huh (affirmative response).

Q: Your mother is Melinda Parrott?

A: Yes, sir.

Q: And how old are you?

A: Twenty-three.

Q: How close are you to Bobby?

A: As close as I can be.

Q: Before he was incarcerated, were you around him a good bit?

A: Yes, sir, all my life.

Q: And do you continue to have a relationship with him?

A: Yes, sir. I go see him every chance I can.

Q: How often do you get to see him?

A: Right now, I only get to see him once a month.

Q: And where do you go to see him?

A: To Lieber Correctional.

Q: Where is that?

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- 1 A: In Ridgeville, South Carolina.
- 2 Q: Is that on the way to Charleston?
- 3 A: Yes, sir.
- 4 Q: A few miles from North Charleston?
- 5 A: Yes, sir.
- 6 Q: And you go every time there's a visit you can go?
- 7 A: Yes, sir.
- 8 Q: What kind of uncle has Bobby been to you?
- 9 A: He's been a great uncle to me. I mean whenever he
- 10 was around and we were able to do anything, I was
- 11 always around him growing up, so we would always be
- 12 playing around or joking around. I mean I was
- 13 always around him playing in the yard with him when
- 14 he was home and being a niece being irritating.
- 15 Q: And how old were you when he was incarcerated on
- 16 these charges?
- 17 A: I was fourteen.
- 18 Q: And you continue to see him?
- 19 A: Yes, sir.
- 20 Q: Do you love your uncle?
- 21 A: Very much.
- 22 Q: Do you think he loves you?
- 23 A: Oh, yes.
- 24 MR. BABB: Please answer any questions Mr. Saleeby may
- 25 have.

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1 **THE COURT:** Mr. Jackson?

2 **MR. JACKSON:** Your Honor, I have no questions of this
3 witness.

4 **THE COURT:** All right. Thank you, Ms. Parrott. You may
5 step down.

6 **MR. BABB:** Court's indulgence for just a moment.

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

8 **MR. LITTLEJOHN:** Your Honor, at this time, we would
9 propose to publish the testimony of Mary Jean
10 Wilson.

11 **THE COURT:** All right. Ladies and gentlemen, you will
12 recall that earlier in this trial, the testimony of
13 a couple witnesses was published because it's
14 permitted under our rules. The State and the
15 defense in this case proposes to do the same thing.
16 This is the testimony of a witness who had
17 previously testified in this matter, and we do
18 permit that her testimony can be presented by
19 publication of that prior testimony, and that's what
20 the defense is offering at this time, and you should
21 treat this testimony as if the witness were here
22 testifying, and it is her sworn testimony just like
23 the other witnesses whose testimony was presented in
24 this fashion.

25 **MR. LITTLEJOHN:** Thank you, Your Honor. We would ask

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1 Paige Tarr to read the answers on behalf of Ms.
2 Wilson.

3 **THE COURT:** All right. Come up, please.

4 **(Testimony of Mary Jean Wilson read into the record)**

5 **(Questions read by Mr. Littlejohn)**

6 **(Answers read by Ms. Tarr)**

7 Q: Good afternoon, Ms. Wilson. Ms. Wilson, will you
8 tell us where you live, please, ma'am?

9 A: I live at 1410 Mooningham Road in Lynchburg.

10 **MR. LITTLEJOHN:** Let me get you to speak right in that
11 microphone so everyone can hear you. Let me ask you
12 to pull that microphone to you so everybody can hear
13 you.

14 Q: Ms. Wilson, are you employed?

15 A: Yes, sir.

16 Q: What is your employment?

17 A: I work Yellow Cab.

18 Q: That's here in Sumter?

19 A: Yes, sir.

20 Q: What are, what do you do at Yellow Cab?

21 A: I drive and dispatch.

22 Q: Okay. How long have you been doing that?

23 A: Almost twenty-one years.

24 Q: All right. Ms. Wilson, are you acquainted with
25 Bobby Stone?

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1 A: Yes, sir.

2 Q: Have you known his family for some time?

3 A: Yes, sir. I have.

4 Q: Would you tell us how you got to know Bobby Stone's
5 family?

6 A: Well, my daughter and his children went to school
7 together.

8 Q: What is your daughter's name?

9 A: Michelle Lynch.

10 Q: Okay. Did you ever live in the same neighborhood as
11 Bobby and his family?

12 A: Yes, sir.

13 Q: Where was that neighborhood?

14 A: At 713 Ravenel Street.

15 Q: Okay. And where is Ravenel Street?

16 A: Runs off the Boulevard and off Belk Street behind
17 First Baptist Church.

18 Q: Okay. How close is that to Ruth Griffith's
19 residence?

20 A: Approximately three or four blocks.

21 Q: Three or four blocks?

22 A: Uh-huh (affirmative response).

23 Q: All right. Now, you indicated that you moved to
24 Ravenel Street. Do you recall when that was?

25 A: It's been about seventeen years ago.

1 Q: Okay. How old was Bobby Stone at that time?

2 A: He was less than ten years old when I first met
3 Bobby Wayne.

4 Q: Okay. And your daughter Michelle and Bobby are
5 approximately the same age?

6 A: I think she is a couple of years older than he is.

7 Q: Okay. Were they childhood friends?

8 A: Yes, sir.

9 Q: Okay. Did you see Michelle, your daughter and Bobby
10 grow up together?

11 A: Yes, sir. I did.

12 Q: Okay. And I believe Bobby has a sister?

13 A: Melinda.

14 Q: Melinda?

15 A: Uh-huh (affirmative response).

16 Q: And you know Melinda?

17 A: Uh-huh (affirmative response).

18 Q: Okay. Now, Ms. Wilson, do you know Ruth Griffith?

19 A: That's my sister-in-law, yes, sir.

20 Q: Okay. Would you explain to the jury what your
21 relationship is, how y'all are sister-in-laws?

22 A: She was married to my oldest brother before he
23 passed away.

24 Q: Okay. When did they get married?

25 A: In 1949 or 1950. I can't remember the exact year.

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1 Q: All right. Did you meet her at that time?

2 A: Yes, sir. I was

3 Q: Okay. Now, have you been friends with Ruth Griffith
4 over the years?

5 A: Yes, sir. We lived in the same house most of that
6 time.

7 Q: Okay. What house is that?

8 A: When her and my brother got married, they lived in
9 the house with me and my mother and my other
10 brothers.

11 Q: Okay. How long did that go on?

12 A: '51, '52, somewhere around there.

13 Q: All right. Do you recall when Ms. Griffith moved to
14 1817 Taylor Street?

15 A: Yes, sir. I do, because I went over there and
16 helped her clean the house.

17 Q: All right. About when was that?

18 A: Been about twenty-four, twenty-five years ago.

19 Q: Okay.

20 A: Somewhere in that neighborhood.

21 Q: 1971 or so?

22 A: Yes, sir.

23 Q: Okay. Now, did your daughter Michelle ever live
24 with Ruth Griffith?

25 A: Yes, sir. She did.

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1 Q: And do you recall when that was and for how long
2 that was?

3 A: It was right after Hurricane Hugo, I do know that,
4 six or seven years ago.

5 Q: Right after Hugo?

6 A: Yes, sir.

7 Q: And Hugo was in September of 1989, I think we all
8 know.

9 A: Uh-huh (affirmative response).

10 Q: Okay. Now, what was the relationship after Michelle
11 moved in with Ruth? What was the relationship
12 between Bobby and Michelle?

13 A: They were friends.

14 Q: Okay. Were they boyfriend and girlfriend friends?

15 A: Later on they were, but not at that time, I don't
16 believe.

17 Q: Okay. Now, did your daughter Michelle ever have
18 occasion to live with Ruth Griffith?

19 A: Yes, sir.

20 Q: Okay. Do you know whether Bobby would ever go see
21 Michelle at Ms. Griffith's house?

22 A: Yes, sir. Bobby and his sister went down there.

23 Q: Okay. Was that more or less a frequently ... what
24 sort of basis? How often would they do that?

25 A: Two or three times a month, four times a month.

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