

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

CHRISTOPHER POAGE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001998

APPENDIX

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State of South Carolina

County of York

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Christopher Markeem Poage,

Defendant.

2011-GS-46-2263/2267

August 8 - 9, 2011

Transcript of Record

BEFORE:

The Honorable John C. Hayes, Judge

APPEARANCES:

Walter William Thompson, Esquire
Kevin Brackett, Esquire
Assistant Solicitor for 16th Judicial Circuit
Attorney for the State

Bradford A. Rawlinson, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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PLAINTIFF State of South Carolina
 DEFENDANT Christopher Markeem Poage
 CASE NO. 2011-GS-46-2263/2267
 DATE 8/8/11
 DATE ENDED 8/9/11

ATTORNEY Kevin Brackett, Willie Thompson
 ATTORNEY Brad Rollinson
 JUDGE John C. Hayes
 COURT REPORTER Renee H. Tollison

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
188	Lori Ray	B	F				X
166	Jenny Nguyen	A	F			X	
104	Shelly Henderson	W	F		X		
155	Joyce Miller	W	F			X	
165	Willie Neely	B	M		X		
227	Michael Urso	W	M			X	
221	Alycia Trapp	W	M				X
162	Johnnie Murdock	B	F				X
26	Stephanie Bognas	W	F			X	
177	Tessie Phifer	W	F			X	
102	Arthur Harris	W	M				X
153	Carrie Messer	W	F				X
22	William Blake	B	M		X		
151	Debbie Meeks	W	F				X
167	Stephanie Nichols	B	F				X
247	Sasha Worthy	B	F		X		
8	Susie Anderson	B	F				X
163	Floyd Neal	W	M				X
35	James Burns	W	M		X		
9	Carl Andrews	W	M				
13	Kay Auten	W	F			X	
92	Minnie Goodwin	W	F			X	
37	Carolyn Burris	B	F				X
66	Mary Dereef	B	F				X
Alt #1							
225	Wade Tucker	W	M				X
Alt #2							
129	Jack Kierce	W	M		X		
36	Kelly Burns	W	F				X

1

AUGUST 8, 2011

2

(WHEREUPON, State's Exhibits Number 7 through 106

3

were premarked for identification only.)

4

(WHEREUPON, court convened with all parties present

5

and the following proceedings were had commencing at

6

approximately 12:27 p.m.)

7

THE COURT: I want to ask the members of the

8

jury panel -- you can sit down just a minute. I'm John

9

Hayes along with Judge Alford who you met this morning.

10

I'm assigned to hold a term of criminal court for this

11

week, General Sessions Court, here in York County. I'm

12

from Rock Hill. And along with Judge Alford, I'm one of

13

the two resident judges for the Sixteenth Circuit, York

14

and Union Counties.

15

We're starting our first trial for the week in this

16

courtroom at this time, and I'll call on our Solicitor to

17

tell us what it's about.

18

Mr. Brackett: May it please the Court, Your

19

Honor. The State is prepared to draw a jury in the case

20

of State of South Carolina versus Christopher Markeem

21

Poage. He is charged by indictments 2011-GS-46-2263 and

22

2263A with the charges of murder and possession of a

23

knife during the commission of a violent crime, 2011-2264

24

with criminal conspiracy, 2011-2265 charge of kidnaping,

25

2011-2266 with the charge of armed robbery, 2011-GS-46-

State v. Christopher Markeem Poage 2011-GS-46-2263/2267
Jury Voir Dire

9

1 2267 charged with burglary in the first degree. He is
2 present in the courtroom and represented by counsel, Mr.
3 Brad Rawlinson from the York County Bar. The State will
4 be represented by myself and Deputy Solicitor Willy
5 Thompson.

6 THE COURT: All right. Members of the jury
7 panel, first I ask Mr. Poage to stand. This is Mr.
8 Christopher Poage, and he is charged with the offenses
9 that the Solicitor has outlined to you. And he is
10 represented by Mr. Brad Rawlinson of the Shiller Law Firm
11 of Rock Hill.

12 First, are any of you -- you can sit down, Mr. Poage
13 -- any of you related by blood or marriage or are any of
14 you a close personal friend or acquaintance of Mr. Poage?
15 If so, please stand.

16 (No response)

17 THE COURT: No one stands.

18 Are any of you a close personal friend of Solicitor
19 Brackett, Mr. Thompson or anyone who works for the
20 Sixteenth Circuit Solicitor's Office? If so, please
21 stand.

22 (No response)

23 THE COURT: No one stands.

24 THE COURT: Are any of you represented by or
25 have you in the past been represented by or are you a

1 close personal friend or acquaintance of anyone with the
2 Shiller Law Firm and Mr. Rawlinson? If so, please stand.

3 (No response)

4 THE COURT: No one stands.

5 This alleged incident occurred on July 28, 2008, at
6 [REDACTED] Steele Street in Rock Hill. Have any of you heard
7 anything about this case, know about it from any source
8 whatsoever, or have any of you formed or expressed an
9 opinion about any matter or issue which would be involved
10 in this case? If so, please stand.

11 (No response)

12 THE COURT: No one stands.

13 Were any of you members of the Grand Jury which
14 passed on this indictment at an earlier time? If so,
15 please stand.

16 (No response)

17 THE COURT: No one stands.

18 Having heard the charges, do any of you have any
19 moral, religious or philosophical reasons why you could
20 not be a fair and impartial juror in the trial of these
21 particular charges against Mr. Poage? If so, please
22 stand.

23 (No response)

24 THE COURT: No one stands.

25 Have any of you heard about this case? I think I've

State v. Christopher Markeem Poage 2011-GS-46-2263/2267
Jury Voir Dire

11

1 asked this, but I'm going to ask you again. Any of you
2 heard about this case from any source whatsoever?

3 (No response)

4 THE COURT: No one stands.

5 Have any of you on the jury panel been employed by
6 law enforcement, you or a member of your family been
7 employed by law enforcement at any level whatsoever, or
8 been employed by a prosecuting authority at any level,
9 anything from the Judge Advocate General in the M.P.s to
10 District Attorney to U.S. Marshall to a local sheriff and
11 police and solicitors? If so, please stand.

12 All right. We'll start over here and work our way
13 across. What I'm going to do is I'm going to ask you to
14 give your name and number and to whom you are related or
15 friends of.

16 Yes, ma'am?

17 THE JUROR: My grandmother worked as the person
18 that holds the key for the jail. I don't know how to say
19 that.

20 THE COURT: Jailer, I would guess. I don't
21 know. Your name and number?

22 THE JUROR: Claudia Strenk, juror 216.

23 THE COURT: Would that affect your ability to
24 be fair and impartial?

25 THE JUROR: Essentially, I can't tell.

1 THE COURT: All right. Well, I'll excuse you
2 then if you don't -- I'll let you -- you can sit down.
3 But thank you for being up-front with us. But if you've
4 got some issues, I'm not going to require you to sit.

5 Yes, ma'am, your name and number?

6 THE JUROR: I'm Susan Kirby, juror 131. I work
7 at the Federal Bureau of Investigations in Charlotte.

8 THE COURT: Would that affect your ability to
9 be fair and impartial in the trial of this case? The
10 F.B.I. is not involved.

11 THE JUROR: I'm not sure.

12 THE COURT: Okay. Well, I'll excuse you, too.
13 Just don't leave, but have a seat. Thank you.

14 Are any you members of or contributors to
15 organizations such as Students Against Drunk Drivers,
16 Mothers Against Drunk Drivers, Citizens Against Violence,
17 Fraternal Order of Police, Sheriff's Association or
18 Trooper's Association? If so, please stand.

19 (No response)

20 THE COURT: No one stands.

21 Are any of you aware of any bias or prejudice that
22 you would have as to Mr. Poage, the attorneys or the
23 subject matter of these charges? If so, please stand.

24 (No response)

25 THE COURT: No one stands.

State v. Christopher Markeem Poage 2011-GS-46-2263/2267
Jury Voir Dire

13

1 The next question the answers would be somewhat
2 personal, so I'm not going to ask you to go into great
3 detail or really any detail about why you stand if you
4 do. I will simply ask you your name and number and tell
5 me, as a result of your standing, whether or not you
6 could still be fair and impartial. The question is, have
7 any of your or a member of your family been the victim of
8 a burglary, a murder, assault, or some other violent
9 crime? If so, please stand.

10 All right. And like I say, when you -- I've
11 already excused you, ma'am. So you don't have to stand
12 anymore.

13 We'll work our way across. If you will just tell me
14 your names and numbers. And again, you don't have to
15 tell me why you're standing. I just want to know your
16 names and numbers, and then I'm going to ask whether you
17 can be fair and impartial.

18 Yes, ma'am?

19 THE JUROR: You said ---

20 THE COURT: Name and number.

21 THE JUROR: Robbin Johnson, 251.

22 THE COURT: Okay.

23 Yes, ma'am?

24 THE JUROR: Kristen Ott, 172.

25 THE COURT: All right.

1 Yes, ma'am?

2 THE JUROR: Jacquelyn Picard 178.

3 THE COURT: All right.

4 Yes, ma'am?

5 THE JUROR: Mary Raffensperger, 184.

6 THE COURT: Did you get that?

7 MADAM COURT REPORTER: Yes, sir.

8 THE COURT: Okay. I kind of talked over you,
9 but she got it.

10 THE JUROR: Oh, I'm sorry.

11 THE COURT: That's my fault.

12 Yes, sir?

13 THE JUROR: Michael Bowens, juror number 28.

14 THE COURT: All right.

15 Yes, ma'am?

16 THE JUROR: Lorraine Pagan-Tyler, number 173.

17 THE COURT: Yes, ma'am?

18 THE JUROR: Virginia Williams, 245.

19 THE COURT: Those of you who are standing, if
20 having this life experience would prevent you from being
21 fair and impartial in this trial, please raise your right
22 hand. All right. Let's go back over. Your name again?

23 THE JUROR: Kristen ---

24 THE JUROR: Michael ---

25 THE COURT: Okay. No. The lady that raised

State v. Christopher Markeem Ponge 2011-GS-46-2263/2267
Jury Voir Dire

15

1 her hand in the blue?

2 THE JUROR: Kristen Ott.

3 THE COURT: All right. You'll be excused.

4 Have a seat. Don't leave.

5 All right. Let's go back on this side. Yes, sir,
6 your name again?

7 THE JUROR: Michael Bowens.

8 THE COURT: All right. You'll be excused from
9 this trial. You can have a seat.

10 And you can too, ma'am.

11 Yes, ma'am?

12 THE JUROR: Lorraine Pagan-Tyler, 173.

13 THE COURT: All right. You'll be excused from
14 this trial.

15 Yes, ma'am?

16 THE JUROR: Virginia Williams, 245.

17 THE COURT: All right. You'll be excused from
18 this trial, also.

19 The other two can sit down. But thank you for being
20 up-front with me. That's very important.

21 The following are, I will call them, potential or
22 possible witnesses. I don't know that all of these will
23 testify. I doubt they will, but it's a very long list.
24 So if any of you are related by blood or marriage or if
25 you're a close personal friend or acquaintance of any of

1 these individuals, please let me know by standing.
2 Richard Allman, Antoine Anderson, Jesslyn Anderson, Susan
3 Boler, Maxie Boyd, Harvey Camp, James Campbell, Timothy
4 Campbell, Cazzie Carothers, Deborah Carothers, Jesslyn
5 Carothers, David Chambers, Rufus Cherry, Cassandra
6 Clyburn, Jeff Cornwell of the York County Sheriff's
7 Office, Antwian Davis. And then from the Drug
8 Enforcement Unit, Robert Cashier, Mark Schurig, S-C-H-U-
9 R-I-G. From the Forensic Services Unit, Brian Bagwell,
10 Ray Barnwell, Tim Buchanan, Todd Gardner, John George,
11 Mike Williams. Additionally, not necessarily associated
12 with any of those organizations, Tammy Dixon, Keyova
13 Dunham, Thomas Dunham, Ryan Elder, Gene Evans, Linda
14 Mitchell Hardin Feaster, Corrie Feely, Angela Fewell,
15 Wanda Heath, Mike Henrick, Roy Hinton, Ashley Holloway,
16 Kwantina Hunter, Ernest Floyd Jackson, Jr., Ernest Floyd
17 Jackson, Sr., Jaren Jackson, Jeremy Jackson, Keith Lee
18 Jackson, Lakeisha Jackson, Angela Long Jones, Richie
19 Martin from the detention center, Aaron McCoy, Dorothy
20 McCoy, Jessie McFadden, Jeffery McKee, Dennis McMullen,
21 Marilyn McMullen, Mary Miley, Paul Mobley, Justin Moore,
22 Lynette Morton. From the Medical University of South
23 Carolina, Dr. Nicholas Batalis. Then I guess these
24 others are not associated with any entity. Willie Perry,
25 Kevin Roberts, Steve Robinson, Nicholas Stevenson,

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Jury Voir Dire

17

1 Travonte Tate, Charles Richard Williams III, Tim
2 Williams, Kori Wilson, Alysha Winn. From the Rock Hill
3 Police Department, Jason Dalton, Myra Durham, Bruce
4 Haire, Kathy Harveston, Jonathan Law, Shaun Watson, Jason
5 Zike. From the State Law Enforcement Division, Kenneth
6 Bogan, Selena Kinard, Tracy McKinnon and Jeff Parrott.

7 Any of you related by blood or marriage or close
8 personal friend or acquaintance of any of those
9 individuals? If so, please stand.

10 All right. Yes, ma'am, your name and number?

11 THE JUROR: I'm Lori Ray, number 188. Myra
12 Durham is married to my cousin. We don't have a
13 relationship. I mean, we don't visit or anything, but I
14 do know her.

15 THE COURT: All right. Would that affect your
16 ability to be fair and impartial?

17 THE JUROR: (Shook head side to side in the
18 negative)

19 THE COURT: Okay. She says, no. So you can be
20 seated. Thank you. And I appreciate you letting us
21 know.

22 All right. Anything further from the State?

23 MR. BRACKETT: Nothing further from the State?

24 THE COURT: Anything further from the Defense?

25 MR. RAWLINSON: Nothing further.

1 THE COURT: All right. Do any of you know of
2 any reason whatsoever why you could not or should not
3 serve as a fair and impartial juror of the trial of this
4 particular case? If so, please stand.

5 Okay. Yes, ma'am? You don't need to tell me why,
6 but your name and number?

7 THE JUROR: Well, I think I could be impartial
8 and fair. But my husband was a ministerial recorder in
9 Fort Mill, so I don't know if that makes a difference or
10 not.

11 THE COURT: Okay. And your name?

12 THE JUROR: Minnie Goodwin, 92.

13 THE COURT: All right. Would that affect your
14 ability to be fair and impartial in the trial of this
15 case?

16 THE JUROR: No.

17 THE COURT: Okay. Thank you. I appreciate
18 that.

19 The way we draw juries in this type setting is as
20 follows. Names will be drawn at random. If you hear
21 your name, please come forward and bring with you any
22 personal belongings that you may have such as a
23 pocketbook or anything like that. Stand next -- come
24 forward and stand next to the bailiff who's standing out
25 here in the middle of the floor. Turn and face the table

State v. Christopher Markeem Poage 2011-GS-46-2263/2267
Jury Voir Dire

19

1 where the solicitors are seated, and one of them will say
2 present the juror or excuse the juror. If you hear the
3 words excuse the juror, you can simply return to your
4 seat. If you hear the words, present the juror, please
5 turn and face the table where Mr. Poage and Mr. Rawlinson
6 are seated. Mr. Rawlinson will say either excuse the
7 juror -- again, that means you may return to your seat --
8 or he will say swear the juror, which means you will be
9 shown by the bailiff where to have a seat in the jury
10 box, if you hear the words, swear the juror. Each side
11 has a right to strike, excuse, a certain amount of
12 individuals, the State five, the Defense ten. We will
13 draw two alternates, and on those the State can strike
14 one each and the Defense two each, leaving us twelve
15 jurors and two alternate jurors. So please come forward
16 if you hear your name called.

17 THE CLERK: Number 188, Lori Ray.

18 What say you for the State?

19 MR. BRACKETT: Please present the juror.

20 THE CLERK: Defense?

21 MR. RAWLINSON: Please swear the juror.

22 THE CLERK: You may have a seat in the jury
23 box.

24 Number 166, Jenny Nguyen.

25 What say you for the State?

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. RAWLINSON: Please excuse this juror.

4 THE CLERK: You are excused from this case.

5 Number 104, Shelly Henderson.

6 What say you for the State?

7 MR. BRACKETT: Please excuse the juror.

8 THE CLERK: You are excused from this case.

9 Number 155, Joyce Miller.

10 What say you for the State?

11 MR. BRACKETT: Please present the juror.

12 THE CLERK: Defense?

13 MR. RAWLINSON: Please excuse this juror.

14 THE CLERK: You are excused from this case.

15 Number 165, Willie Neely.

16 What say you for the State?

17 MR. BRACKETT: Please excuse the juror.

18 THE CLERK: You are excused from this case.

19 Number 227, Michael Urso.

20 What say you for the State?

21 MR. THOMPSON: That number once again, Madam

22 Clerk?

23 THE CLERK: 227.

24 MR. BRACKETT: 227. Thank you.

25 THE CLERK: What say you for the State?

State v. Christopher Markeem Poage 2011-GS-46-2263/2267
Jury Voir Dire

21

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. RAWLINSON: Please excuse this juror.

4 THE CLERK: You may be excused from this case.
5 Number 221, Alycia Trapp.

6 What say you for the State?

7 MR. BRACKETT: Please present the juror.

8 THE CLERK: Defense?

9 MR. RAWLINSON: Please swear this juror.

10 THE CLERK: You may have a seat in the jury
11 box.

12 Number 162, Johnnie Murdock.

13 What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 THE CLERK: Defense?

16 MR. RAWLINSON: Please swear this juror.

17 THE CLERK: You may have a seat in the jury
18 box.

19 Number 26, Stephanie Bognas.

20 What say you for the State?

21 MR. BRACKETT: Please present the juror.

22 THE CLERK: Defense?

23 MR. RAWLINSON: Please excuse this juror.

24 THE CLERK: You may be excused.

25 Number 177, Tessie Phifer.

1 What say you for the State?

2 MR. BRACKETT: Please present the juror.

3 THE CLERK: Defense?

4 MR. RAWLINSON: Please excuse this juror.

5 THE CLERK: You are excused from this case.

6 Number 102, Arthur Harris.

7 What say you for the State?

8 MR. BRACKETT: Please present the juror.

9 THE CLERK: Defense?

10 MR. RAWLINSON: Please swear this juror.

11 THE CLERK: You may have a seat in the jury

12 box.

13 Number 153, Carrie Messer.

14 What say you for the State?

15 MR. BRACKETT: Please present the juror.

16 THE CLERK: Defense?

17 MR. RAWLINSON: Please swear the juror.

18 THE CLERK: You may have a seat in the jury

19 box.

20 Number 22, William Blake.

21 What say you for the State?

22 MR. BRACKETT: Please excuse the juror.

23 THE CLERK: You are excused from this case.

24 Number 151, Debbie Meeks.

25 What say you for the State?

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23

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. RAWLINSON: Please swear the juror.

4 THE CLERK: You may have a seat in the jury
5 box.

6 Number 167, Stephanie Nichols.

7 What say you for the State?

8 MR. BRACKETT: Please present the juror.

9 THE CLERK: Defense?

10 MR. RAWLINSON: Please swear the juror.

11 THE CLERK: You may have a seat in the jury
12 box.

13 Number 247, Sasha Worthy.

14 What say you for the State?

15 MR. BRACKETT: Please excuse the juror.

16 THE CLERK: You are excused from this case.

17 Number 8, Susie Anderson.

18 What say you for the State?

19 MR. BRACKETT: Please present the juror.

20 THE CLERK: Defense?

21 MR. RAWLINSON: Please swear this juror.

22 THE CLERK: You may have a seat in the jury
23 box.

24 Number 163, Floyd Neal.

25 What say you for the State?

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. RAWLINSON: Please swear this juror.

4 THE CLERK: You may have a seat in the jury
5 box.

6 Number 35, James Burns.

7 MR. BRACKETT: Number 45?

8 THE CLERK: 35.

9 MR. BRACKETT: 35.

10 THE CLERK: What say you for the State?

11 MR. BRACKETT: Please excuse the juror.

12 THE CLERK: You are excused from this case.

13 Strikes are five and five?

14 MR. BRACKETT: Yes, ma'am. Five and ten.

15 THE COURT: No. Right now you've had five,
16 he's had five.

17 MR. BRACKETT: Oh, I see. Yes, that is true.

18 THE CLERK: Number 9, Carl Andrews.

19 What say you for the State?

20 MR. BRACKETT: Please present the juror.

21 THE CLERK: Defense?

22 MR. RAWLINSON: Please swear the juror.

23 THE CLERK: You may have a seat in the jury
24 box.

25 Number 13, Kay Auten.

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1 What say you for the State?

2 MR. BRACKETT: Please present the juror.

3 THE CLERK: Defense?

4 MR. RAWLINSON: Please excuse this juror.

5 THE CLERK: You are excused from this case.

6 Number 92, Minnie Goodwin.

7 What say you for the State?

8 MR. BRACKETT: Please present the juror.

9 THE CLERK: Defense?

10 MR. RAWLINSON: Please excuse this juror.

11 THE CLERK: You are excused from this case.

12 Number 37, Carolyne Burris.

13 What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 THE CLERK: Defense?

16 MR. RAWLINSON: Please swear the juror.

17 THE CLERK: You may have a seat in the jury

18 box.

19 Number 66, Mary Dereef.

20 What say you for the State?

21 MR. BRACKETT: Please present the juror.

22 THE CLERK: Defense?

23 MR. RAWLINSON: Please swear this juror.

24 THE CLERK: You may have a seat in the jury

25 box.

1 THE COURT: All right. We'll draw the
2 alternates. The first alternate strikes will be one for
3 the State and two for the Defense.

4 THE CLERK: Number 225, Wade Tucker.
5 What say you for the State?

6 MR. BRACKETT: Please present the juror.

7 THE CLERK: Defense?

8 MR. RAWLINSON: Please swear the juror.

9 THE CLERK: You may have a seat in the jury
10 box.

11 Number 129, Jack Kierce.

12 What say you for the State?

13 MR. BRACKETT: Please excuse the juror.

14 THE CLERK: You are excused from this case.
15 Number 36, Kelly Burns.

16 What say you for the State?

17 MR. BRACKETT: Please present the juror.

18 THE CLERK: Defense?

19 MR. RAWLINSON: Please swear this juror.

20 THE CLERK: You may have a seat in the jury
21 box.

22 THE COURT: Anything from the State involving
23 the striking of the panel?

24 MR. BRACKETT: Nothing from the State, Your
25 Honor.

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1 THE COURT: Anything from the Defense?

2 MR. RAWLINSON: Nothing from the Defense, Your
3 Honor.

4 THE COURT: Those of you who were not chosen,
5 I'm going to allow you to leave quietly, please, because
6 I'm going to start working with this panel. Please call
7 back tonight after six.

8 Six or seven?

9 MADAM CLERK: Seven.

10 THE COURT: ... after seven and you'll receive
11 your next instructions. It's very important that you
12 follow those instructions as I'm sure Judge Alford has
13 already outlined for you. So have a pleasant evening and
14 call back tonight after seven.

15 (WHEREUPON, the remaining jury panel exited the
16 courtroom.)

17 THE COURT: Those of you who were chosen, we're
18 not going to swear you in at this time. When you come
19 back from our break for lunch -- we have some legal
20 matters to take up outside of your presence so we're
21 going to do that. And we're going to have a little
22 extended lunch because we've got some work to do. And
23 then we need some time for a little bit of lunch. So
24 it's not quite one, but I'm going to be ask you to be
25 back at three. What you will do is -- the bailiff will

1 show you how to get in and out of the building while
2 you're serving on the panel.

3 And when you come back, the alternates will always
4 sit in those two seats. There is no other assigned
5 seating other than that of the foreman. And Mr. Harris,
6 I'm going to ask you to be the foreman of this jury. And
7 when you come back, you'll sit at this first seat and the
8 two alternates there, and everybody else just sit where
9 you happen to come in.

10 Even though you haven't heard anything much about
11 the case other than what I've told you, you are on the
12 jury even though you haven't been sworn. So you are not
13 to discuss the case among yourselves or try to make up
14 your own mind until we reach the point in the trial where
15 I instruct you to jointly deliberate and return a
16 unanimous verdict. Prior to that time, you're not
17 equipped with the tools you need to make a fair and
18 reasoned decision. So do not discuss the case among
19 yourselves or try to make up your own mind until we reach
20 that point.

21 Do not let anyone discuss this case with you outside
22 the courtroom. If anyone approaches you and tries to
23 discuss this case with you, tell them you cannot as
24 you're serving as a juror. And hopefully, you can report
25 back to me if someone tries to talk to you and who that

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1 person is because I would have to take action against
2 them for having talked to a seated juror.

3 Do not let yourself be exposed to any news coverage.
4 I do not know that there will be any. But do not read
5 anything, listen to anything or watch anything that could
6 remotely deal with this trial. Your verdict must be
7 based solely on the law and the evidence that's developed
8 in this trial.

9 We now have access to the world through the cloud
10 and other electronic means. Do not access any
11 information outside this courtroom about this case.
12 Don't go online, don't ask anybody. I've already told
13 you not to do that. But don't seek any information
14 outside the courtroom on any issues or anything about the
15 case. Don't look up anything about the charges. Don't
16 look up anything about the solicitors. Don't look up
17 anything about Mr. Rawlinson or Mr. Poage or myself.
18 You've got to base your verdict solely on the law and the
19 evidence. So do not do -- it would be a violation of
20 your oath to access any information or do any independent
21 research about anything dealing with this case.

22 So have a pleasant lunch.

23 Anything else before the jury breaks for lunch?

24 MR. BRACKETT: Nothing from the State, Your
25 Honor.

1 MR. RAWLINSON: Nothing from the Defense, Your
2 Honor.

3 THE COURT: All right. Well, have a pleasant
4 lunch and be back at three, and we'll try to start as
5 promptly at that time as we can.

6 (WHEREUPON, the jury exited the courtroom at
7 approximately 12:59 p.m.)

8 THE COURT: All right. I understand we do have
9 some pretrial matters. Anything from the State?

10 MR. BRACKETT: Yes, sir, Your Honor. I believe
11 we have a number of issues that we've worked out that
12 we've agreed to. In terms of trying to shorten the
13 length of the trial, cut down, there's a number of things
14 that we all have agreed to, and I just want to put that
15 on the record at this time.

16 One of them, the victim had received a settlement of
17 three thousand dollars from the City of Rock Hill for a
18 personal injury case that he had filed against the City,
19 and that settlement was on July the 25th. Rather than
20 calling the individuals from the legal department from
21 the City, we've agreed that our lead investigator will
22 just be able to testify that -- basically, it will be
23 hearsay. But they'll give it in a summary fashion, and
24 we'll introduce the documents from the settlement to
25 prove that on the 25th he had received a settlement of

1 three thousand dollars. And this goes to the issue of
2 motive. It was well-known in the community that he had
3 just come into a sum of money. So that was the first.

4 The second is, is that there's no dispute -- this is
5 a situation wherein the Defendant -- where the victim had
6 been murdered some days prior to his body being
7 discovered. This was in the summertime of 2008. The
8 body had decomposed significantly. The Defense has
9 agreed that there won't be any discussion or concern
10 about identity. They're stipulating that the body found
11 at the Steele Street residence was in fact the body of
12 Tommy James Mitchell.

13 There is a stipulation regarding the proceeds of the
14 settlement from the City of Rock Hill was used to
15 purchase a moped, and that's agreed upon. We have a
16 sales receipt. And that earlier in the day, the last
17 time the victim was seen was at the City of Rock Hill.
18 There was a -- he went to the municipal power department
19 and had his power turned back on and paid, I believe it
20 was, about seven hundred dollars to have his power turned
21 back on at his residence there.

22 The other issues, there were a number of items that
23 were swabbed and sent down to SLED for testing on D.N.A.
24 Ultimately, nothing came back that implicated the
25 Defendant in terms of D.N.A. And so instead of calling

1 the D.N.A. expert down to talk about that -- obviously,
2 we'd like to inform the jury that these measures were
3 taken. But rather than having an expert come all the way
4 from Columbia, that would be testified to in a summary
5 fashion by one of the Forensic Service Unit officers that
6 will testify about the collection of the D.N.A. evidence.
7 They packaged and sent it down, and then they'll just
8 give the results in the course of their testimony. I
9 believe that was all agreed upon.

10 MR. RAWLINSON: That was so stipulated, Your
11 Honor.

12 THE COURT: Okay. Thank you.

13 MR. BRACKETT: Another issue that we wanted to
14 address was at the time of his arrest, the Defendant was
15 actually originally arrested on some drug charges. And
16 then ultimately at a later time gave -- in the course of
17 an interview admitted in a statement to law enforcement
18 his involvement in this case. That'll be our contention
19 at trial. At the time, he was cooperating against a
20 second Defendant who is not on trial today, a Mr.
21 Jackson.

22 And at the time of his arrest, he was not originally
23 charged with murder. He was charged with the armed
24 robbery, the burglary, every other charge you have in
25 front of you except the murder. We would make a motion

1 in limine to prevent eliciting any testimony regarding
2 who charged what and the timing of the charges. We
3 submit that that's all irrelevant as to the Defendant's
4 guilt. And it does not raise an actual defense, and it
5 would only cloud the issues because we would have to get
6 into the fact of his cooperation. And that's irrelevant
7 to whether or not he actually was complicit in the murder
8 of Tommy James Mitchell. So that would be a motion we
9 would make. I don't know whether he agreed to that or
10 whether he contests that. We haven't discussed that.

11 MR. RAWLINSON: Your Honor, I would certainly
12 object to that motion. I don't know if we're hearing
13 arguments now or after lunch, but I would certainly
14 object to that motion.

15 THE COURT: All right.

16 MR. BRACKETT: Similarly, he's not on trial for
17 a charge of accessory after the fact of the murder that
18 he was served a warrant for, but that case is not before
19 the Court. And we likewise think it's improper to
20 discuss what he was charged with, but it's not before the
21 Court today. That's irrelevant to any Defense.
22 Satisfying the jury whether he's innocent or guilty, it's
23 irrelevant. We would contend the same.

24 MR. RAWLINSON: Your Honor, I think the two
25 previous issues are coupled. I do not mind stipulating

1 to the fact that he was charged with some crime other
2 than murder at the time. I don't want to stipulate to
3 the fact that I cannot discuss what he was charged with
4 and the fact that what he was charged with is not a
5 murder charge because I think it goes on to the issue of
6 intent. And we -- again, we can discuss those issues. I
7 don't know if we're arguing or just putting on the record
8 what the pretrial motions are.

9 THE COURT: Why don't we go ahead and just put
10 it on the record, and then we'll argue because that would
11 give me a chance to get some thought and look at some
12 things over lunch myself.

13 MR. BRACKETT: Yes, sir. And we would also
14 move to exclude or have notice and be heard on the issue
15 prior to its introduction before the jury of any issue,
16 evidence regarding third-party guilt.

17 THE COURT: All right. And what motions does
18 the Defense have? A *Jackson versus Denno* request?

19 MR. RAWLINSON: That is correct, Your Honor.
20 Also, a motion to allow evidence of third-party guilt
21 under *State v. Holmes* and *State v. Gregory*. A motion --
22 we're also requesting an order from the Court to prevent
23 the Defense [sic] from eliciting any statement or
24 referring to the statement of my client, the Defendant in
25 this matter, his statement as a confession rather than a

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1 statement or an affidavit or otherwise under Rule 403.

2 And that is the extent of the pretrial motions in
3 addition to the State's motions, Your Honor.

4 THE COURT: All right. Well, I'll look at
5 these over lunch. Is there any problem with just calling
6 it a statement as opposed to -- I mean, if he confessed
7 to something in it, you can certainly argue to the jury
8 that in his statement he confessed. But as opposed -- I
9 think the nuance is they don't want it called a
10 confession but rather a statement, but the statement is
11 what the statement is.

12 MR. BRACKETT: Yes, sir. And I don't have a
13 problem with that. My only hesitancy, Your Honor, is
14 that we have a number of officers testifying. And I'm
15 afraid -- I can't -- I'll talk to them and tell them
16 that, but if -- it's ingrained in people. They might
17 accidentally refer to it as a confession. And I'll
18 certainly do my best. And I think that it would be
19 appropriate in argument at the end of the case to
20 characterize it as a confession, and I don't believe that
21 I should be constrained from saying that. And he does
22 admit to being present ---

23 THE COURT: Well, if he admits it, that's a --
24 I think it's a nuance. And I'm not really sure it makes
25 a difference, but I would ask that they refer to it as a

1 statement. But they certainly can -- you can certainly
2 tell the jury what's in the statement. And if he
3 confessed to having done it or implicated himself along
4 with others or whatever, that's certainly -- that's the
5 whole purpose of allowing the statement in if it comes
6 in.

7 All right. Well, we'll break until -- it's about
8 ten after one. Let's break until -- would two give y'all
9 enough time to get something to eat?

10 MR. BRACKETT: Yes, sir.

11 THE COURT: And then that'll get you about an
12 hour to go through *Jackson versus Denno*, and the third-
13 party guilt issue.

14 MR. BRACKETT: Yes, sir.

15 THE COURT: All right. We'll be at ease until
16 two o'clock.

17 MR. BRACKETT: Thank you, Judge.

18 (WHEREUPON, court stood at recess for a lunch
19 break.)

20 THE COURT: Thank you. Take your seats.

21 Excuse me one second. I left my notes.

22 (WHEREUPON, court stood at ease.)

23 THE COURT: Please come to order. Keep your
24 seats.

25 All right. We've got *Jackson versus Denno* and

1 third-party guilt. How do we want to go? Let's do the
2 *Jackson versus Denno* first.

3 MR. THOMPSON: Your Honor, if it please the
4 Court, Your Honor, the first witness the State would call
5 in the *Jackson Denno* hearing is Detective Kathy
6 Harveston.

7 THE COURT: Okay. Come up and be sworn.

8 (WHEREUPON, the witness was duly sworn.)

9 MR. THOMPSON: And before we start this
10 witness, if it please the Court, I'll hand up a copy of
11 the statement that we're going to go over just so the
12 Court can have in their hands while she testifies to it.

13 THE COURT: Thank you.

14 **KATHY HARVESTON,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q. Detective Harveston, will you give your full name
19 for the Court, please?

20 A. Yes. It's Kathy Harveston. I'm a detective with
21 the Rock Hill Police Department.

22 Q. And Detective, how long have you worked with Rock
23 Hill Police Department?

24 A. I've been there since 2002, so right at nine years.

25 Q. All right. And in your duties as detective, how

1 long have you been a detective with the Rock Hill Police
2 Department?

3 A. I've been a detective for six years. And at the
4 time of this case, about four and a half.

5 Q. All right. So in your work as a detective in this
6 case, how did you come to meet the Defendant, Mr.
7 Christopher Poage, in this case?

8 A. I was actually the case agent on this case. I was
9 on call as a detective when the call came out that a body
10 had been found, and I responded to the scene. And so I
11 began doing the investigation from there.

12 Q. All right. And I believe that was August 3rd of
13 2008 that you were called out to the scene?

14 A. That's correct.

15 Q. Now, it was some time later before you actually were
16 able to get information that led you to Mr. Poage; is
17 that correct?

18 A. That's right. It was several months later. It was
19 on into February.

20 Q. Okay. So February of 2009?

21 A. Was when I came into contact with Mr. Poage, yes.

22 Q. Okay. And when you came into contact with Mr.
23 Poage, can you tell me the circumstances of that?

24 A. We had attempted to make contact with him and
25 located him and Ernest Jackson on Chestnut Street. And

1 so we were talking with him at the police department in
2 the office of Lieutenant Dalton.

3 Q. All right. And I think we can say for the purpose
4 of this hearing -- but I believe he had been arrested
5 actually on what -- February ---

6 A. The previous morning. On the 19th.

7 Q. On some unrelated drug charges?

8 A. That's correct.

9 Q. Okay. So he was currently in custody at the Rock
10 Hill Police Department on those unrelated drug charges?

11 A. That's right, yes.

12 Q. And so at what point did you actually have him
13 brought out so that you could attempt to talk to him?

14 A. It was on the afternoon, early afternoon, of
15 February the 20th that we had him brought from the
16 holding area into Lieutenant Dalton's office so that we
17 could interview him. And that was the first time I had
18 actually had face-to-face contact with Mr. Poage.

19 Q. All right. And was Lieutenant Dalton -- obviously,
20 he was there with you at that time?

21 A. Yes, he was.

22 Q. Was he working on the case as well at that point?

23 A. Yes.

24 Q. All right. Was there anyone else with the two of
25 you when the Defendant was brought to Lieutenant Dalton's

1 office?

2 A. Not in that office, no.

3 Q. And where is that office located in the Rock Hill
4 Police Department?

5 A. It's in the center of the Rock Hill Police
6 Department. The detective division is just right in the
7 center of it. Lieutenant Dalton's office would have been
8 in that area, but separated. It's a separate office.

9 Q. Okay. And about how big is that office?

10 A. It's very small. It's like a converted large
11 closet.

12 Q. Okay. And it has a desk in it and some chairs?

13 A. Yes. It has a desk, bookcase, some chairs.

14 Q. All right. Enough chairs for all three of you?

15 A. Yes.

16 Q. Okay. And when they brought the Defendant in, what
17 was the first thing that happened when the Defendant was
18 brought into Detective Dalton's office?

19 A. Just right away, Lieutenant Dalton read him his
20 *Miranda* rights before we even started a conversation.

21 Q. All right. Did he read that off of a card?

22 A. Yes, he did, one that he had in his desk drawer.

23 Q. All right. And is that a card that you copied as
24 part of this case?

25 A. Yes, it is.

1 Q. Okay. And do you have a copy with you?

2 A. I do not. I just have the copy that ---

3 Q. I'm going to show you what's marked State's Exhibit

4 Number 9. I'm sorry, number 105. It's not number 9.

5 Number 105. Ultimately, I believe that's the statement

6 of the Defendant; is that correct?

7 A. That is correct.

8 Q. And does that have a copy of the card that was used

9 that day?

10 A. Yes, sir. It's on the last page.

11 Q. All right. And did you or Lieutenant Dalton read

12 those rights to him at that time?

13 A. Lieutenant Dalton did.

14 Q. And did you observe the entire time that he read

15 those rights?

16 A. Yes, I did.

17 Q. All right. Would you read those rights to us now as

18 Lieutenant Dalton -- as you observed him read that that

19 day?

20 A. Okay. Lieutenant Dalton read straight from this

21 card. And it says, you have the right to remain silent.

22 Anything you say can and will be used against you in a

23 court of law. You have the right to talk to an attorney

24 and have him or her present with you while you're being

25 questioned. If you cannot afford to hire an attorney,

1 one will be appointed to represent you before any
2 questioning if you wish. You can decide at any time to
3 exercise these rights and not answer any questions or
4 make any statements. Do you understand each of these
5 rights I have explained to you? And then having these
6 rights in mind, do you wish to talk to us now?

7 Q. All right. And did Lieutenant Dalton read the
8 entire card to him at that time?

9 A. Yes, sir, he did.

10 Q. And did the Defendant appear to understand those
11 rights?

12 A. Yes, he did.

13 Q. And did he agree to talk with y'all at that time?

14 A. He did.

15 Q. What is it initially that y'all began to talk to him
16 about at that point?

17 A. We initially just began some general questions
18 about, you know, where do you live? Who do you live
19 with? Like, do you work? You know, just general
20 information.

21 Q. All right.

22 A. And then there was some discussion about his current
23 charges.

24 Q. And you're observing the Defendant. Was there any
25 indication that he was under the influence of any drugs

1 or alcohol at the time that you spoke with him?

2 A. No, he did not appear to be under the influence of
3 anything.

4 Q. All right. Did he appear to understand everything
5 that y'all talked about in your conversation?

6 A. Yes, he did.

7 Q. Was he able to carry on a conversation well with you
8 and Lieutenant Dalton?

9 A. Yes, he could.

10 Q. Tell me, how does the conversation then come to the
11 incident with Tommy Mitchell?

12 A. Actually, Lieutenant Dalton just brought it up out
13 of the blue. Just said, tell me what happened at Tommy
14 Mitchell's house.

15 Q. All right. And about how far were you when you were
16 speaking to him at the point that Lieutenant Dalton asked
17 him that question?

18 A. We hadn't been in there very long. It was just like
19 a brief discussion. Like I said, the general information
20 and then some of the information about the case that he
21 was actually there on.

22 Q. All right. The drug case?

23 A. Yes.

24 Q. Okay. And so what, ten to fifteen minutes before?

25 A. At tops, yes.

1 Q. Okay. And when he asked him -- do you recall the
2 exact question he asked him about Tommy Mitchell or as
3 close as you recall?

4 A. As close as I can remember the exact way he worded
5 it was, tell us what happened at Tommy Mitchell's house.

6 Q. All right. And what, if anything, did the Defendant
7 say at that time?

8 A. Well, he immediately dropped his head and started
9 shaking his head. It was like the breath went out of
10 him, and he was kind of mumbling under his breath, like
11 oh, man, oh, man, oh, man. And then just with a little
12 encouragement, he just started telling the story.

13 Q. And tell me what you mean by, a little
14 encouragement?

15 A. Well, Lieutenant Dalton basically was just saying,
16 you know, it's been a while. Isn't it time to like get
17 this off your chest? You know, don't you want to talk
18 about it? It's time.

19 Q. Did Lieutenant Dalton promise him anything at that
20 point in time?

21 A. Nothing.

22 Q. Did you promise him anything?

23 A. No, I did not.

24 Q. Did y'all threaten him in any way?

25 A. No, we did not.

1 Q. Did you do any physical act that might frighten him
2 at that point?

3 A. No, absolutely not.

4 Q. Did you offer him any hope of reward during this
5 time ---

6 A. No, we did not.

7 Q. What was the Defendant's demeanor as he realized
8 that he was being talked to about the victim in this
9 case, Tommy Mitchell?

10 A. Well, he kind of slacked down in his chair, slouched
11 down in his chair, and would cover his face with his
12 hands. And he just kind of kept shaking his head. And
13 then he would just slowly start telling the story and how
14 it came about.

15 Q. And what story did he tell you at that point in
16 time?

17 A. He told us that him and E.J. Jackson -- that E.J.
18 had called him asking to go somewhere with him. And he
19 met him over on Chestnut Street.

20 Q. Is that where E.J. lives?

21 A. That's where E.J. lived at that time, yes.

22 Q. Okay.

23 A. And he met him on Chestnut Street. And according to
24 what Poage said is that he just said, walk with me
25 somewhere. And so they began walking, and they ended up

1 over on Steele Street at a little green house. And he
2 went -- E.J. Jackson went up and knocked on the door.
3 Chris sat down in the chair, and then Jackson went around
4 to the back because they didn't get an answer at the
5 door. And he came through the back door. Chris came in.
6 And at that point in time, that was when he understood it
7 was Short Dog's house, which is another name for Tommy
8 Mitchell.

9 Q. All right. Short Dog was Tommy Mitchell's nickname?

10 A. Yes.

11 Q. Okay.

12 A. That's correct.

13 Q. And so he indicated to you that -- at this point,
14 he's told, I guess by Mr. Jackson, this is Short Dog's
15 house?

16 A. Yes.

17 Q. All right. Now, as he relays this story to you, do
18 you all immediately put it into writing at that point in
19 time?

20 A. No, we don't.

21 Q. Did he relay the whole story to you before you ended
22 up taking him to someplace else or actually beginning to
23 type things on the computer?

24 A. Yes. We just sat there and talked for a good while.

25 Q. All right. And I guess to kind of shorten this up a

1 little bit, did he want to get -- while you were with him
2 or while Detective Dalton or Lieutenant Dalton was with
3 him, did y'all promise him anything at any point?

4 A. No, we never promised him anything.

5 Q. Did he ask for a lawyer at any time?

6 A. He did not.

7 Q. Did he invoke his right to remain silent at any
8 point in time? Did he say, I just don't want to speak
9 anymore?

10 A. No, he did not say that.

11 Q. All right. Can you tell me, during the course of
12 your conversation, what was his demeanor throughout the
13 time that you talked to him before he recounted to get to
14 the point where you were writing it down in a form for
15 him to sign?

16 A. Well, he was very -- he was forthcoming with what he
17 was talking about. But of course, he would stop and he
18 would like shake his head, kind of almost like I can't
19 believe I'm talking about it again. And then, you know,
20 when we got to the part where I was actually typing in
21 this statement, his demeanor changed a little bit, almost
22 like he was tired of it.

23 Q. Okay.

24 A. Yeah.

25 Q. At any point did he show emotion while he was

1 talking to you?

2 A. Yes. There was a couple of times when he would bend
3 his head over and he would raise it back up, you could
4 see that there was some tears.

5 Q. All right. After he had relayed the entire story to
6 you and Detective Dalton or Lieutenant Dalton, what did
7 you do then?

8 A. At that time, I explained to him that we needed to
9 get it down on paper. And so we went across the hall to
10 my office.

11 Q. All right. And did Lieutenant Dalton go with you
12 across the hall?

13 A. I don't recall if he actually went with us over
14 there. He was not in there the entire time that I was
15 taking down his written statement.

16 Q. All right. But he was in there the entire time that
17 he first tells the statement, correct?

18 A. Yes. Yes.

19 Q. Okay. So when you took him over to your office, at
20 that point, once again, was there any point in time
21 during any of the conversation at this point or later or
22 before that he invoked the right to an attorney at that
23 point?

24 A. No, he did not.

25 Q. Or invokes his right to remain silent?

1 A. No, he did not.

2 Q. Okay. Now, tell me, when you get to your office,
3 what is it that you do with him at that point? What is
4 the first thing you do with him when you get him over to
5 your office? And I guess you're going to start typing
6 it. Is it in a computer that you're typing it?

7 A. Yes, it's in a computer. There's a standardized
8 form, which this is a copy of the standardized form which
9 has the rights where they sign on the rights.

10 Q. Okay.

11 A. And I just explained briefly because we had just
12 read him his rights in the other office that, you know,
13 *Miranda* is still -- you're still under *Miranda* here and
14 all that still applies.

15 Q. All right. Did you ask him if he understood that at
16 that time?

17 A. I know that it was clear that he understood. I
18 don't know that I specifically asked him, do you
19 understand what I just said.

20 Q. Right. A second time though, but you didn't ---

21 A. Uh-huh (affirmative). Right.

22 Q. So from the form that we have then in front of us,
23 you didn't necessarily read off the first part, you just
24 advised him he was still under his *Miranda* rights; is
25 that correct?

1 A. That's correct, uh-huh (affirmative).

2 Q. And then the next paragraph, can you tell me about
3 that one?

4 A. Okay. The paragraph where it says, I have read or
5 had read to me? Is that the paragraph you're talking
6 about?

7 Q. Yes.

8 A. That's where you sign and said that I do understand
9 my rights. I understand and I'm willing to make a
10 statement. I don't want an attorney at this time. I
11 know what I'm doing. I know that the person talking with
12 me is a police officer, and I understand what he's
13 talking about.

14 Q. All right. And did you read that to him at that
15 point in time?

16 A. I read that to him. Actually, I didn't read that to
17 him verbatim. We did understand that he was still under
18 *Miranda* and he knew what he was doing and that he was
19 willing to talk because we were getting ready to do his
20 written statement.

21 Q. Okay.

22 A. Then after the statement was taken.

23 Q. All right. And is he sitting in a place where he
24 can actually see the computer screen as well?

25 A. He could see -- I don't know that he could actually

1 read it right from where he was, but he would have been
2 able to see part of the screen, yes.

3 Q. Okay. And then I believe the first part of the
4 statement you take down some personal information from
5 him there; is that correct?

6 A. Yes, yes.

7 Q. All right. And you took that information that's in
8 the first part of the statement and marked that down?

9 A. That is correct.

10 Q. And he indicated that he'd completed eleven years in
11 school; is that correct?

12 A. That's right.

13 Q. And that he can read and write?

14 A. Yes.

15 Q. All right. And in the course that you were with
16 him, did you have any reason not to believe that he
17 couldn't read and write?

18 A. No, I had no reason to believe that he couldn't.

19 Q. All right. Now, discuss with us -- this is the
20 statement that you have in front of us. Is this the
21 statement that ultimately he signed and gave to you?

22 A. Yes, it is.

23 Q. All right. After you completed the statement, did
24 you print it out?

25 A. Yes, sir.

1 Q. Did you go over it with him then at that point?

2 A. Yes. I always like slide it across the table and
3 say, this is the printed out version. But at that time,
4 I say, I want you to read over this carefully. This is
5 your statement. If there's any corrections, any changes,
6 anything that you don't want in that statement body, let
7 me know now, and I will change it now, and we'll tear
8 this one up and print out another one.

9 Q. All right. And did he ask for any changes or want
10 anything to be changed or altered?

11 A. No, he didn't.

12 Q. All right. Did he read the statement at that point
13 in time?

14 A. Yes, sir.

15 Q. And was it obvious to you that he was taking his
16 time to read it?

17 A. Yes.

18 Q. And ultimately, I believe, he signed the statement
19 as well; is that correct?

20 A. Yes, he did.

21 Q. And if you would, Detective Harveston, if you would
22 read the statement for us at this time.

23 A. Okay.

24 Back in the summer, E.J. -- and then I
25 have in parenthesis, Ernest Jackson -- called

1 me and asked me to walk somewhere with him. I
2 met up with him on Chestnut Street. I knocked
3 on the door and he said, you ready? I said,
4 yeah, I guess. And I asked him where we was
5 going. He said, don't worry about it, Cuz,
6 just chill.

7 We started walking and got to this green
8 house that is up behind the old folks home. I
9 sat down on a chair on the porch. E.J. knocked
10 on the door, and nobody answered. He said for
11 me to knock, and he was going around to the
12 back. He got in and he come and opened the
13 front door and let me in. That's when E.J.
14 told me we were at Short Dog's house. That's
15 when I started feeling funny in my stomach.
16 E.J. went in the bedroom and he said, start
17 looking for the money. I didn't know what he
18 was talking about. And he said Short Dog got a
19 big settlement.

20 I walked out the bedroom, and E.J. was
21 shaking the pillow cases, lifting up the
22 mattresses and stuff. I went to the living
23 room and picked up a screwdriver and was
24 sitting there playing with it. He come in and
25 got the screwdriver from me and went to the

1 kitchen and scratched a big one in the
2 refrigerator. I was saying, come on. Let's
3 go. Let's get out of here.

4 About that time, I heard the Spree pull up
5 outside, and he said, hide, hide behind that
6 stereo. I got beside the stereo, and E.J. went
7 to the bedroom. Short Dog came in the back
8 door. He didn't see me, and he walked in his
9 room. He had some grocery bags when he came
10 in, and when he walked in his room, E.J. threw
11 some liquid at him, and he dropped his stuff.
12 He screamed and ran back out the room, and E.J.
13 was running after him. E.J. was saying, get
14 him, Cuz. And I hesitated, and Short Dog
15 almost made it out the kitchen door. Me and
16 E.J. bumped into each other, and E.J. pushed me
17 out of the way. He caught up with Short Dog
18 and grabbed him around the neck. They started
19 scuffling and was on the ground. I was still
20 yelling, come on, let's go, it ain't worth it,
21 over and over.

22 Somehow they ended up back in the bedroom.
23 I went out the back door. I came back in to
24 get E.J. to come on. E.J. said, fuck that. He
25 got to go. He saw my face. I saw Short Dog

1 was on the bedroom floor face down, and E.J.
2 was beating him with a stick. Short Dog
3 started breathing like he was asleep. E.J. had
4 hit him everywhere he could. E.J. threw the
5 stick down, and I grabbed his arm and said,
6 let's go, it ain't worth it. He told me to get
7 Short Dog's arms, and I did. He got a knife
8 from somewhere and started stabbing Short Dog.
9 I couldn't watch it, so I let go and went out
10 the back door.

11 After a little bit, E.J. came out, and he
12 was dangling some keys. They went to the
13 Spree. He had his clothes in a bag and he put
14 them under the seat of the Spree. We got on it
15 and went to E.J.'s dad's house out in the
16 country. We took the Spree across the road to
17 the woods. That's the last time I saw it.

18 We come back to his daddy's house and he
19 burned his clothes, and he told me to burn
20 mine. Then we was walking up the road after
21 that to the store, and E.J. threw the keys
22 away.

23 When we was coming back from the store, a
24 York County Deputy turned around and stopped
25 us. He thought I was D.J. Hinton. Then Tim

1 Williams, E.J.'s cousin, come picked us up from
2 his daddy's house and took us back to Rock
3 Hill. We didn't talk about it on the drive
4 back to Rock Hill.

5 Q. All right. And that is the actual statement. I
6 believe you have in your hand the original that was
7 printed out for him to read that day?

8 A. Yes, it is.

9 Q. And did he sign it at the bottom as the signature of
10 the person giving the statement?

11 A. Yes.

12 Q. And it was dated as well? And can you tell us the
13 date?

14 A. February the 20th, '09.

15 Q. All right. And then there's a final page, I
16 believe, to this statement, a third page. Can you tell
17 us what that is?

18 A. The drawing on the notebook paper?

19 Q. No. The affidavit page before you get to that.

20 A. Okay. Yes, I have that.

21 Q. All right. Would you tell us what that page is?

22 A. This page is what we always read to them after a
23 statement's given. And it says -- it has the person's
24 name, personally appeared before me, Christopher Markeem
25 Poage, who deposes and says, I make this statement of my

1 own free will and accord without reward or hope of
2 reward. I've not been mistreated or threatened in any
3 way. All the above is the truth, the whole truth, and
4 nothing but the truth, so help me God. And then right
5 under that it says, I have read or had read to me the
6 above statement consisting of three pages and have
7 received a copy of this statement. And then his
8 signature's on it, my signature's underneath it, and it's
9 notarized by Lieutenant Dalton.

10 Q. Okay. Now, Lieutenant Dalton wasn't in the room the
11 entire time that this, the written portion was given,
12 correct?

13 A. That's correct. He came back in and only notarized
14 the actual signatures.

15 Q. All right. And this written portion, this written
16 statement, this is basically the exact same thing he told
17 you in Lieutenant Dalton's office; is that correct?

18 A. Yes.

19 Q. Okay. And just a couple of things to clarify. When
20 he mentioned the screwdriver, that E.J. took it from his
21 hand and went and scratched a one on the refrigerator,
22 did he indicate what they were doing at that time, why
23 they were still there after they had looked for money?

24 A. Well, they looked for money and they didn't find
25 any, so they were waiting on Tommy Mitchell to come back.

1 Q. All right. And had he indicated that to you in the
2 interview?

3 A. Yes. When we talked about it, it was like -- and we
4 waited. So if you're waiting, then you're waiting on
5 somebody to come home because you didn't find the money
6 in the first place.

7 Q. Okay. And as well, as you come down the statement
8 when he says that -- when the victim came running out of
9 the bedroom screaming and he dropped the stuff that he'd
10 brought in, the groceries, he said E.J. was saying, get
11 him, Cuz, and I hesitated. And Short Dog almost made it
12 out of the kitchen door. Me and E.J. bumped into each
13 other. Did he describe to you what he meant by that when
14 he was discussing that with you?

15 A. He was still -- he was behind the -- there's a small
16 stereo that's against the wall, and there was a space.
17 So he was there when they came out of the room is the way
18 he described it.

19 Q. All right.

20 A. And as he was yelling and then he hesitated and they
21 bumped in together, they could only have been right there
22 at the door going into the kitchen.

23 Q. Okay. So basically when -- as they were chasing --
24 was he telling you he was chasing ---

25 A. Yes.

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1 Q. --- E.J. at that point when they bumped into each
2 other?

3 A. Yes. He was going after him to keep him from
4 getting out of the house.

5 Q. Detective, once again, during any portion of this,
6 did he ask for an attorney?

7 A. He did not.

8 Q. During any portion of this, did he -- was he
9 promised anything or threatened with anything?

10 A. He was not.

11 Q. Did you even discuss charging him at that point in
12 time?

13 A. We did not discuss charges at all.

14 Q. And during the actual giving of the written
15 statement to you, I believe, was there a time that he did
16 at least mention the word attorney or lawyer at some
17 point?

18 A. Yes. He was -- the time when we got to the part
19 where he's talking about the stabbing portion of the
20 incident, that he laid his head down on the desk and he
21 was kind of shaking his head. And as he came back up
22 from the desk, he was kind of just mumbling to himself.
23 And he said, I probably should have talked to a lawyer.
24 And then he says, does that make somebody seem more
25 guilty, or something of that nature. And I just said,

1 whatever you think.

2 Q. In other words, referring to talking to a lawyer,
3 did that make him seem more guilty?

4 A. That's what I understood, yes.

5 Q. All right. What, if anything, did you tell him at
6 that point?

7 A. I said, well, if that's what you think or if that's
8 the way it makes you feel. And that's all that was said.

9 Q. Okay. Did he ask anything further or mention
10 anything further about a lawyer at that time?

11 A. No.

12 Q. All right. Was he in your presence or Jason Dalton
13 -- and/or Jason Dalton's presence the entire time that he
14 was being questioned from the beginning until the time he
15 signed the statement?

16 A. Yes.

17 Q. Actually, was he in your presence the entire time?

18 A. Yes, he was in my presence the entire time.

19 Q. Okay. Detective, just briefly, without having to go
20 into all the things that matched, was there a certain
21 indicia of reliability that he was at the scene of this
22 crime?

23 A. There was a ---

24 MR. RAWLINSON: Objection, Your Honor.

25 THE COURT: Leading. Rephrase.

1 Is that your objection?

2 MR. RAWLINSON: It is not, Your Honor. I think
3 case law is very specific that this determination should
4 be made without any reference to whether the statement
5 was truthful or reliable or credible in any manner.

6 THE COURT: All right. You don't need to go
7 outside.

8 MR. THOMPSON: That's fine. I won't go
9 outside.

10 Q. Thank you, Detective. Well, there's one other thing
11 before I stop. There is another page, I believe, that
12 you had mentioned, the one with the drawing on it?

13 A. Yes.

14 Q. Can you tell me what that was?

15 A. It looked like a notebook page?

16 Q. Yes.

17 A. That was when Mr. Poage was explaining where they
18 took the moped. There's a small square on the paper that
19 he said was E.J. Jackson's dad's house on Hall Spencer
20 Road. And then he's got the road mark. And then on the
21 other side is just a bunch of circles and scribbles which
22 he said was the woods. And that's where they took the
23 moped.

24 Q. So kind of showing you what he had told you in the
25 statement, in other words?

25 A. It is not in the statement.

1 Q. And why -- did my client say that? Did Christopher
2 Poage say that?

3 A. He said like during the interview part that they
4 waited. After they didn't find the money, that they
5 waited. And then all of a sudden, Tommy Mitchell, they
6 heard the Spree.

7 Q. Okay. So did he say something differently than
8 what's in the statement, is my question?

9 A. Just a little bit more, I guess, than what's exactly
10 in the statement.

11 Q. Okay. And so my question is if he said something
12 more than that's in the statement, why didn't that
13 something more make the statement?

14 A. When we were taking the statement down, he was
15 reiterating to me. And I wrote down what he told me at
16 that time.

17 Q. Okay. So your answer is -- did you take handwritten
18 notes during the first time you were talking with him?

19 A. I took a few.

20 Q. A few?

21 A. Uh-huh (affirmative).

22 Q. A few? And so was this part of your handwritten
23 notes, this extra information?

24 A. Yeah. There was a little blurb there that, just
25 like down on the bottom of the page where I had just

1 written, they waited on -- I think I put T.M. for Tommy
2 Mitchell.

3 Q. And so if it was in your handwritten notes ---

4 A. Uh-huh (affirmative).

5 Q. --- even if he didn't tell you, why didn't you put
6 it in the statement?

7 A. I just didn't do it because we were talking at that
8 time. And that's what he was telling me, so that's what
9 I typed in.

10 Q. So is there anything else that you know of that was
11 in the handwritten notes the first time he told you and
12 then the second time you were talking about this
13 incident?

14 A. There was about how he held his arms. In the
15 handwritten, I think there was -- it was about him
16 holding behind his back. And then in this one, it just
17 says he held his arms.

18 Q. And why is that omitted?

19 A. Same reason.

20 Q. Did you think that's a pretty important detail?

21 A. Sure it is.

22 Q. Okay. And how long did this questioning take?

23 A. Well, all together I think it started about one
24 thirty-five. And so we were just in the discussion mode
25 there for a good while, and then I took his sworn

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1 statement. Ended up about four, a little after four when
2 he signed the statement.

3 Q. Okay. And is it customary -- or before I go there
4 -- you said when you started this conversation, when you
5 started questioning Christopher Poage about this
6 incident, y'all weren't talking about this incident,
7 right? Y'all were talking about what he was brought in
8 for, correct?

9 A. Well, originally, of course, we were getting, like I
10 said, just personal information. Where he lived, address
11 and different things like that. And because he was there
12 on the other charge, then I think he assumed that that's
13 what we were going to talk to him about. So that was
14 brought up, why he was arrested the night before.

15 Q. So there was some conversation about why he was
16 there?

17 A. Some, yes. Uh-huh (affirmative).

18 Q. Did you take any handwritten notes about that?

19 A. I did not.

20 Q. You did not?

21 A. No.

22 Q. Is that memorialized in any statement?

23 A. Not that I know of.

24 Q. So there's a conversation about why he's brought in,
25 and there's additional information that he told you the

1 first time that y'all talked about it, and neither one of
2 those things are in the statement, correct?

3 A. That's correct.

4 Q. Okay. And you said this started about one-thirty
5 and ended about four o'clock or so?

6 A. About four.

7 Q. So we're talking about a few hours. Now, is it
8 customary for your Rock Hill City Police to audio -- have
9 any audio or video for these types of investigations?

10 A. No, it isn't.

11 Q. So y'all never tape or audio these investigations or
12 these interrogations? I'm sorry.

13 A. No, sir.

14 Q. Ever? Okay. And would you say that this is a
15 serious case?

16 A. Yes, sir.

17 Q. Is it customary for you always to type up the
18 statement in the manner that you did?

19 A. Yes, usually that's the way we do it.

20 Q. Do people ever write statements themselves?

21 A. Sometimes. It depends on where you are because
22 you're not always in your office. And so sometimes, yes,
23 it's better just to have someone handwrite a statement.

24 Q. Were paper and pen available to Christopher Poage?

25 A. Certainly.

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1 Q. So he could have wrote his statement?

2 A. He could have.

3 Q. So the decision was made by you not to have him
4 write his statement?

5 A. It's just what we standardly do is type up the
6 statement if we're in the police department.

7 Q. Okay. So I guess I'm having a hard time
8 understanding what's the circumstances for a person
9 writing the statement and what's the circumstances for
10 you taking notes and then typing up the statement loosely
11 based on your notes.

12 A. Okay. The statement was not typed from my notes.
13 The statement was typed from what he was telling me while
14 I was typing.

15 Q. So your testimony is that this statement only
16 encompasses the second half of the interview. So there's
17 nothing in the first half of the interview? When it was
18 you and Detective Dalton and you were handwriting notes,
19 there's nothing in that statement that was said
20 exclusively there because you only typed up what he told
21 you when it was just you and him in the office; is that
22 correct?

23 A. I typed up what he told me when he and I were in the
24 office. Some of the information, of course, is exactly
25 the same.

1 Q. Okay. And so you went over the entire story twice?

2 A. Yes.

3 Q. Okay. Now, as you were typing this statement, did
4 he ask for his mother at any point?

5 A. No, sir.

6 Q. He never asked for his mother?

7 A. No, sir.

8 Q. You're sure about that?

9 A. I don't recall him asking for his mother.

10 Q. Okay. And at any time did you say -- did you
11 mention the electric chair?

12 A. No, sir.

13 Q. Okay. And at any time did you mention -- did you
14 tell him he couldn't see his mother until he signed the
15 statement?

16 A. No, sir, I did not.

17 Q. Okay. Do you remember him being nervous and
18 confused?

19 A. Nervous, yes; confused, no.

20 Q. Okay. Do you remember executing a search warrant on
21 Christopher Poage's residence?

22 A. Yes, sir.

23 Q. Do you remember who was present there?

24 A. No, sir, I don't. I would have to go back and
25 actually look at the search warrant. I think his mother

1 and maybe his sister might have been present. And then I
2 don't know what officers.

3 Q. Okay. At that time in your recollection -- I know
4 you're having a hard time remembering -- do you remember
5 telling them that he was nervous and confused?

6 A. No, sir. But I do remember him being nervous.

7 Q. Do you remember telling his mother and his sister
8 that he was so confused he was having trouble
9 comprehending what you were telling him?

10 A. No, sir, I don't remember that.

11 Q. Do you remember -- do you ever remember telling both
12 his mother and his sister that you had to repeat things
13 several times to get him to comprehend what you were
14 saying?

15 A. Now, I did have to repeat some things. And you
16 know, I would attribute that to nervousness and also, you
17 know, thinking about the whole situation. That wouldn't
18 be uncommon that you would have to repeat something.

19 Q. Okay. But you never used the word confused?

20 A. I'm not saying I never used it. I'm saying I don't
21 recall using the word confused.

22 Q. Well, let's transition. My question is not do you
23 remember telling them that he was confused. Do you
24 remember him being confused as to what was going on?

25 A. I think he was confused about what might be going to

1 happen later, not knowing. I don't know that that would
2 be the appropriate word to use.

3 Q. Okay.

4 A. Nervous, scared maybe.

5 Q. And you said -- just to clear this up. In this
6 second conversation when it was just you and him and
7 Lieutenant Dalton was not in the room, you didn't reread
8 his *Miranda* rights, correct?

9 A. No, I did not.

10 Q. Okay. And at any point in time during this few-hour
11 process, was he left alone?

12 A. He was not.

13 Q. And was there any particular reason why he was never
14 left alone?

15 A. No, not any particular reason. We just went from
16 Lieutenant Dalton's office over to my office. If he was
17 alone at all, it would have just been for me to go to the
18 door if somebody had a question. But I don't recall
19 anybody interrupting us during that time.

20 Q. Okay. And when you typed up the statement ...

21 A. Uh-huh (affirmative).

22 Q. And you gave it to him, I assume, so he could sign
23 it?

24 A. Yes.

25 Q. How long did he take to review this statement?

1 A. Long enough to read over it carefully. I don't
2 know. A couple of minutes, I guess.

3 Q. A couple of minutes? Could you quantify what you
4 mean by a couple of minutes?

5 A. Well, some people read faster than others. So I
6 don't know exactly how long it took him to read and
7 comprehend what was on there, but I would say less than
8 two minutes.

9 Q. Less than two minutes, okay. So in less than two
10 minutes he carefully read a statement that -- whose
11 material was over two and a half hours. That's your
12 testimony?

13 A. Yes. I -- like I said, I'm not sure exactly how
14 long it took him to read this statement. It wasn't a
15 long drawn-out period of time. He didn't have questions
16 during it. He just read through it and he signed it.

17 Q. Okay. And towards the end of this interview, do you
18 remember him asking for his mother again?

19 A. I don't recall him asking for his mother.

20 Q. Okay. And after this statement was signed ...

21 A. Uh-huh (affirmative).

22 Q. ... what happened next? Did you make a request of
23 him to do something else for the police department?

24 A. I think Lieutenant Dalton came back in the room and
25 there was a request made.

1 Q. And what was that request?

2 A. He was asked if he would consider wearing a wire and
3 going to the jail.

4 MR. THOMPSON: Your Honor, we object. That's
5 outside the scope of the Denno hearing.

6 MR. RAWLINSON: Your Honor, I don't think it
7 is. I think the fact that the statement was signed over
8 a longer period of time and the fact that the cops
9 subsequently, directly after this statement was signed,
10 made a request, made another request which the Defendant
11 gave into certainly goes to whether maybe the statement
12 was voluntary as well as this additional request.

13 THE COURT: Well, I don't follow your logic as
14 far as when the door was shut on this statement that
15 another request has something to do with the statement
16 that he'd already given. But this is an in-camera
17 hearing. And so you can make a complete record, I'll
18 allow you to go into it.

19 Q. And do you remember telling the Defendant -- just to
20 clear this up. Do you remember telling the Defendant at
21 any point during the first -- during this initial two and
22 something-hour interview, that he could not see his mom
23 until the statement was signed?

24 A. No, I do not remember telling him that.

25 Q. And after the statement was signed, do you remember

1 telling the Defendant, okay, now that the statement is
2 signed, you can't see your mother until you wear this
3 mike?

4 A. No, I did not tell him that.

5 Q. Okay. But was he sent into the jail?

6 A. I think he was escorted into the jail. Yes, sir.

7 Q. And he agreed to wear the mike, correct?

8 A. That's my understanding, yes, sir.

9 Q. And how long was he in the jail cell talking to
10 Ernest Jackson?

11 A. I don't know. I was not present.

12 Q. Okay. Did you leave the premises at that time?

13 A. No. I was still on the premises, but I wasn't
14 present back in the jail. I was not the officer that did
15 the wire. I was not the one that took him back into the
16 jail or brought him back out.

17 Q. Did you see him after this time?

18 A. No, I don't think so.

19 Q. At the point where you sent him -- requested him to
20 wear a mike, did you view Ernest Jackson as a dangerous
21 person?

22 A. He was a suspect in a murder case.

23 Q. Okay.

24 A. So it depends on where he is at the time, I guess,
25 you would consider him dangerous or not dangerous.

1 Q. And last question. When you served that search
2 warrant on Christopher Poage's house and you said that
3 you remember his mother and his sister being there, do
4 you remember telling Deborah Carothers, his mother, that
5 he was green -- you knew he was green because he kept
6 asking for his mother? Do you remember that?

7 A. No, sir, I don't.

8 Q. Okay.

9 MR. RAWLINSON: No further questions, Your
10 Honor.

11 THE COURT: Redirect?

12 MR. THOMPSON: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q. I believe he was nineteen at the time that he gave
16 this statement; is that correct?

17 A. Yes, sir.

18 Q. And you had mentioned that during the initial
19 interview with Lieutenant Dalton, and then finally the
20 interview immediately -- or I guess transitioning into
21 the interview with you where the written statement was
22 taken, I think you'd said some of it is exactly the same.
23 In fact, is it true that everything that's in this
24 statement he actually said in front of Lieutenant Dalton,
25 too?

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1 A. Yes, that's correct.

2 Q. And the only two things that you mentioned that were
3 different were basically clarification -- well, tell me,
4 is it new information that he was waiting, or is that
5 just -- I mean, was that just described as what he's
6 describing to you?

7 A. It's not new information. It just wasn't worded
8 that way in his statement.

9 Q. Okay. And did you or Lieutenant Dalton at any time
10 threaten the Defendant with something like the electric
11 chair?

12 A. No, sir.

13 Q. Anything at all?

14 A. Didn't threaten him with anything.

15 Q. Did y'all discuss it in any way, any possible
16 punishments the Defendant could received for anything ---

17 A. No, sir. We didn't even discuss charges.

18 Q. All right. Thank you, Detective.

19 MR. THOMPSON: No further questions.

20 THE COURT: Recross?

21 MR. RAWLINSON: Nothing further, Your Honor.

22 THE COURT: You can step down. Thank you.

23 Call your next witness.

24 MR. BRACKETT: The State would call Lieutenant
25 Jason Dalton.

1 THE COURT: If you would, come up and be sworn.

2 JASON DALTON,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. BRACKETT:

6 Q. Sir, would you please state your full name and spell
7 your last for the court reporter?

8 A. Jason Dalton, D-A-L-T-O-N.

9 Q. All right. And where are you employed, sir?

10 A. I am currently retired.

11 Q. Okay. Retired from?

12 A. The Rock Hill Police Department.

13 Q. When did you retire?

14 A. I believe it was May of this year when it was
15 official.

16 Q. Okay. And how long were you with the Rock Hill
17 Police Department?

18 A. It was February of '95 until -- I was involved in
19 law enforcement, sixteen, seventeen years.

20 Q. Very good. What was your last position with the
21 Rock Hill Police Department?

22 A. The last position with the police department was
23 lieutenant over person crimes.

24 Q. All right, sir. And prior to that, what were you
25 doing?

1 A. I spent from 19 -- maybe '96, '97 to 2009 in the
2 drug unit.

3 Q. Were you involved in the investigation of the murder
4 of Tommy James Mitchell?

5 A. No, sir, I was not.

6 Q. All right. Were you called in at some point to
7 assist in an interview of Mr. Christopher Poage?

8 A. I don't know if I was necessarily called in, but I
9 was involved in the initial interview of Mr. Poage.

10 Q. All right. And you were the lieutenant over the ---

11 A. Persons crime.

12 Q. --- persons crime, okay. You just heard Detective
13 Harveston testify. And I'm going to focus exclusively on
14 the issues. I'm not going to a lot -- want to go into
15 all of the details of the statement. But were you
16 present when Mr. Poage first came into the room, into
17 your office?

18 A. Yes. I was one of the ones that brought him back
19 there.

20 Q. Okay. So you went to the jail. He was in on a drug
21 charge, I believe?

22 A. Correct. He was arrested the night before on a drug
23 charge.

24 Q. Okay. And who was he with when he was arrested?

25 A. Ernest Jackson.

1 Q. All right. And so you went to the municipal jail
2 and carried him over to your office?

3 A. Correct. It's just right down the hallway.

4 Q. Very good. And who else was in the room besides you
5 and Mr. Poage?

6 A. Detective Harveston.

7 Q. Anyone else?

8 A. No, sir.

9 Q. From the time you took him from the municipal jail
10 over to your office, did you talk at all about the murder
11 of Tommy James Mitchell?

12 A. No, sir.

13 Q. Did he have any inkling whatsoever, based on
14 anything you told him, that that was going to be the
15 subject of conversation?

16 A. No, sir.

17 Q. When you got into the office, what was your first
18 order of business?

19 A. I think we introduced ourselves. And then I just
20 shortly just got some background information on him, you
21 know, his name, age, you know, where he lived, just basic
22 information.

23 Q. Okay. At any point in time, did anybody read him
24 his *Miranda* rights?

25 A. Yes, I did.

1 Q. Was that before or after you got the background
2 information?

3 A. That was after the background information, I
4 believe.

5 Q. Okay. Do you recall what -- how do you read --
6 typically, what do you use to inform somebody of their
7 rights?

8 A. A *Miranda* rights card, and I read it directly from
9 my card with no deviation.

10 Q. I'm showing you what's been marked as State's
11 Exhibit 105. It's the last page. Take a look at that.
12 It's a photocopy of a card. Do you recognize that card?

13 A. Yes, sir.

14 Q. Okay. Is that the card that you used to read him
15 his rights?

16 A. Yes, it is.

17 Q. And whose handwriting is that on it?

18 A. Mine.

19 Q. All right. Did you read him his rights as they're
20 written on the card?

21 A. Yes, sir.

22 Q. Would you read them into the record for us?

23 A. I stated, you have the right to remain silent.

24 Anything you say can and will be used against you in a
25 court of law. You have the right to talk to an attorney

1 and have him or her present with you while you are being
2 questioned. If you cannot afford to hire an attorney,
3 one will be appointed to represent you before any
4 questioning if you wish. You can decide at any time to
5 exercise these rights and now answer any questions or
6 make any statements. Do you understand each of these
7 rights I have explained to you? Having these rights in
8 mind, do you wish to talk to us now?

9 Q. All right. You asked him, do you understand these
10 rights as I've read them to you. Did he give you any
11 indication?

12 A. He nodded, saying, yeah, that -- he may have -- I
13 don't remember the exact words he used, if it was just,
14 yes, I understand or yes, I want to talk to you. It was
15 right along those lines. But I could tell by his actions
16 he understood the rights.

17 Q. Okay. There's two questions. The first is, do you
18 understand. Did he answer affirmatively?

19 A. Yes.

20 Q. All right. The second question, do you wish to talk
21 to us at this time, how did he answer that?

22 A. He -- I think he said something to the effect like
23 he would.

24 Q. Okay. Now, did you or Detective Harveston say
25 anything to him to induce him to say that he would talk

1 to you? In other words, did you promise him anything in
2 exchange for him talking to you?

3 A. No, sir.

4 Q. Okay. Did you threaten him with any consequences if
5 he failed to talk to you?

6 A. No, sir.

7 Q. Did Detective Harveston?

8 A. No, sir.

9 Q. The entire time you dealt with him that day, did you
10 threaten him in any way, shape or form to get him to
11 cooperate and talk to you?

12 A. No, sir.

13 Q. All right. Did you promise him anything during the
14 entire time you were with him?

15 A. No, sir.

16 Q\$. Now, after you had finished reading him his rights
17 -- you said before that you'd talked to him about his
18 background, you got some basic information from him. Did
19 you detect anything about his demeanor and the way he was
20 behaving that indicated to you that he might have had any
21 kind of mental disturbances or anything?

22 A. No. I believed he was -- fully understood what was
23 going on, knew we were police officers. If I would have
24 felt something different, we wouldn't have continued.

25 Q. Okay. And did you have the impression -- what time

1 of day was this? It was in the daytime?

2 A. It was in the afternoon, early afternoon.

3 Q. And he had been arrested the previous night?

4 A. Correct.

5 Q. So he'd been in jail the entire night?

6 A. I would assume -- yes, I would assume so.

7 Q. All right. Well, that's where you got him from?

8 A. Right. I mean, I got him from the jail. I'm not

9 sure what time at night he got arrested. So he would

10 have been in jail the whole time, yes.

11 Q. Was there anything about his demeanor or his

12 behavior that gave you the idea that maybe he was under

13 the influence of any kind of mind-altering substance, a

14 drug, alcohol, anything like that?

15 A. No, sir.

16 Q. And how long did you say you were in the narcotics

17 unit?

18 A. I think twelve years.

19 Q. Okay. And you've dealt with a lot of people who've

20 been on drugs?

21 A. Yes.

22 Q. Are you pretty familiar with the signs and symptoms

23 of what a person exhibits when they're under the

24 influence of some drug?

25 A. Yes, sir.

1 Q. Anything that caused you to be suspicious of his
2 behavior in that regard?

3 A. No, sir. Like I said, if I would have detected
4 something like that, we wouldn't have continued.

5 Q. Okay. So you began questioning him after he
6 indicated that he wished to speak to you?

7 A. Correct.

8 Q. All right. Would you characterize the way he talked
9 to you -- was it volitional, voluntary? How would you --
10 when you asked him the question about Tommy James
11 Mitchell's murder, how did he react?

12 A. To me, he reacted, you know, almost ashamed,
13 remorseful. I mean, it looked like something he wanted
14 to get off his chest.

15 Q. Okay.

16 A. I mean, I took from the way he -- his demeanor was,
17 you know, that it was something he had been wanting to
18 get off his chest that he actually felt bad about.

19 Q. Okay. So was it -- based on what you observed and
20 saw that day, was his statement to you and Detective
21 Harveston voluntary?

22 A. Completely.

23 Q. Now, you were called in later to Detective
24 Harveston's -- were you there for the majority of the
25 conversation where you were just talking before Detective

- 1 Harveston started typing?
- 2 A. You mean ---
- 3 Q. The question and answer.
- 4 A. The questioning and answering part in the beginning?
- 5 Q. Yes, sir.
- 6 A. I was there the whole time.
- 7 Q. Okay. At any point in time did his demeanor change?
- 8 At any point in time did he say, I want to talk to an
- 9 attorney, I don't think I should talk to you, I want to
- 10 invoke my right to remain silent?
- 11 A. No, sir. If he would have invoked his rights at any
- 12 time, the questioning would have stopped.
- 13 Q. Okay. In fact, have you had that occasion before?
- 14 A. On numerous times.
- 15 Q. And you've stopped?
- 16 A. Correct.
- 17 Q. All right.
- 18 A. Yeah. That would be an inadmissible statement. I
- 19 mean, you know, I don't break the law in policing.
- 20 Q. All right, sir. So at no point in time during that
- 21 initial conversational period did he ever assert his
- 22 right to counsel or his right to remain silent?
- 23 A. No, sir, because if he would have, we would have
- 24 stopped right then.
- 25 Q. All right, sir. Now, at a later time did he move to

1 another room with Detective Harveston?

2 A. Yes. We took him to Detective Harveston's office so
3 she could type up his statement.

4 Q. And were you there for that?

5 A. No, sir.

6 Q. Okay. At some point, did you re-enter -- did you
7 join them?

8 A. Yes, sir. I went in and out a couple of times. I
9 was actually working on -- I believe at that specific
10 time I was also trying to coordinate a search warrant for
11 Hall Spencer Road.

12 Q. Okay. Now, were you -- on the form here, this
13 notary, is that your signature?

14 A. Yes. She had called me in after the statement to
15 notarize the signatures, and that is my notary.

16 Q. Okay. And did you -- well, did you witness Mr.
17 Poage signing this?

18 A. Yes, I witnessed Mr. Poage signing and Detective
19 Harveston on the notary page.

20 Q. All right. And was there anything during that time
21 period -- at any point in time, did he indicate to you
22 that he wanted an attorney or he did not wish to sign or
23 ---

24 A. No, sir.

25 Q. --- he did not want to communicate further with you?

1 A. No, sir.

2 Q. Is the substance of the written statement -- have
3 you had a chance to review that prior to testifying here
4 today?

5 A. Yes, sir.

6 Q. Is the substance of the written statement
7 essentially what he communicated orally to you in your
8 office?

9 A. Yes, sir.

10 Q. All right. Thank you very much, sir. Please answer
11 any questions that counsel for the Defendant may have.

12 CROSS-EXAMINATION

13 BY MR. RAWLINSON:

14 Q. Do you remember Christopher Poage asking for his
15 mother during this interview?

16 A. No, sir.

17 Q. Do you remember mentioning charging my client at any
18 time during this interview?

19 A. No, sir.

20 Q. Do you remember mentioning he could possibly get the
21 electric chair at any time in this interview?

22 A. No, sir.

23 Q. Do you remember him being nervous during the time --
24 during the times you were in the interrogation?

25 A. In the beginning? I mean, I was the one with him

1 ---

2 Q. At any point?

3 A. No, sir, I don't.

4 Q. You don't ever remember him being nervous?

5 A. Not necessary -- I wouldn't classify it as nervous.

6 I mean, I would classify it as he felt guilty, not
7 nervous.

8 Q. Okay.

9 A. I mean, that's just my opinion.

10 Q. Did you ever remember him being confused?

11 A. No, sir.

12 Q. Okay. And you said you were going in and out
13 because you were coordinating a search warrant for the
14 Hall Spencer Road property?

15 A. Yes, sir, I believe that's what I was doing at the
16 specific time.

17 Q. Last question. Were either one of you wearing guns
18 at that time?

19 A. I was probably dressed similar to what I was dress
20 today. So even if I was wearing a gun, it would have
21 been covered. Detective Harveston may have been wearing
22 a gun. It's typical for me when I do interviews that I
23 keep my gun on me.

24 Q. Okay. So there's a likelihood that you were wearing
25 a gun?

1 A. Oh, I mean, without a doubt. I had my gun one
2 hundred percent.

3 Q. Okay.

4 MR. RAWLINSON: No further questions, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. BRACKETT:

8 Q. Did you or Detective Harveston menace him with that
9 weapon or display it in an aggressive fashion or come at
10 him in an aggressive fashion at any point in time?

11 A. No, sir. As her supervisor, I wouldn't have allowed
12 her to do it, and I wouldn't have done it. We did not
13 threaten, menace him, anything. He told us what he told
14 us because he wanted to get it off his chest. It's
15 probably the easiest statement, interview, confession
16 that I've ever gotten from somebody.

17 Q. Thank you, sir.

18 MR. RAWLINSON: Nothing further.

19 THE COURT: You can step down. Thank you.

20 MR. BRACKETT: That would be the State's
21 presentation as to the voluntariness of the statement.

22 THE COURT: Does the Defendant have any
23 witnesses?

24 MR. RAWLINSON: I do, Your Honor.

25 THE COURT: All right.

1 MR. RAWLINSON: I'd first like to call
2 Christopher Poage.

3 THE COURT: All right. Mr. Poage?
4 (WHEREUPON, the witness was duly sworn.)

5 THE COURT: Mr. Poage, before you testify, I
6 want to make sure you understand you have a right to
7 remain silent. You do not have to testify at all in this
8 case or give any statement or provide any information.
9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand you're under
12 oath?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you understand that the court
15 reporter's taking down everything that you say?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay.

18 **CHRISTOPHER POAGE,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. RAWLINSON:

22 Q. All right. Chris, at some point, were you
23 questioned by the police regarding an incident that
24 occurred on or about July the 28th, 2008?

25 A. Yes, sir.

1 Q. Were you originally picked up in connection with
2 that incident that occurred on July 28th, 2008?

3 A. No, sir.

4 Q. How long after you were initially picked up did they
5 begin to question you about this, about this incident?

6 A. The next day.

7 Q. Were you read your rights before you gave that
8 statement?

9 A. Yes, sir.

10 Q. Did you understand your rights?

11 A. Kind of. Not really. I was like nervous.

12 Q. Were you confused at that point?

13 A. Yes, sir.

14 Q. Did you ask the police officer at that point whether
15 it would make you look guilty if you were going to ask
16 for a lawyer?

17 A. Yes, sir.

18 Q. And what was that response?

19 A. It would make me look guilty if I asked for a
20 lawyer.

21 Q. And did that influence you in terms of whether you
22 were going to give a statement?

23 A. Yes, sir.

24 Q. How far did you go in school?

25 A. Eleventh grade.

1 Q. And how old were you at the time of this
2 questioning?

3 A. Nineteen.

4 Q. And what did the officers -- and what did you say to
5 the officers during this interview?

6 A. I told them basically what they wanted to know.

7 Q. And how long, around about, did this interrogation
8 last?

9 A. Two to three hours.

10 Q. Were you given any food or water during this two or
11 three hours?

12 A. Yes, sir.

13 Q. Did you have to ask for it?

14 A. Yes, sir.

15 Q. What did they give you during these three hours?

16 A. A cup of ice water.

17 Q. Did at some point you ask for your mother?

18 A. Yes, sir.

19 Q. How many times you think you asked for your mother?

20 A. Several.

21 Q. And why were you -- well, first, define several. Is
22 it five or ten?

23 A. I'd say more on the lines of ten or more.

24 Q. And why were you asking for your mother?

25 A. Because I was nervous. I wasn't understanding what

1 was going on, and I was wanting her guidance.

2 Q. And did they let you see your mother at this point?

3 A. No, sir.

4 Q. Did they give you any reason why they were not going
5 to let you see your mother at that point?

6 A. Yes, sir.

7 Q. And what was that reason?

8 A. They wouldn't let me see my mother until they got
9 what they wanted out of me.

10 Q. And were you crying at all during this statement?

11 A. Yes, sir.

12 Q. What portion of this statement do you think you were
13 crying?

14 A. From the beginning to the end.

15 Q. Did you have the opportunity to read your statement?

16 A. Yes, sir.

17 Q. Were you given enough of an opportunity to read your
18 statement?

19 A. No, sir.

20 Q. Why don't you think you were given enough
21 opportunity to read your statement?

22 A. Because I was feeling pressured, and they were
23 telling me that I was seeming guilty if I didn't read it
24 or didn't sign it.

25 Q. And why didn't you take more time to read it?

1 A. Because I was wanting to see my mother.

2 Q. And they had told you previously that you couldn't
3 see your mother until you signed the statement, correct?

4 A. Yes, sir.

5 Q. And did you type up this statement?

6 A. No, sir.

7 Q. Who typed it up?

8 A. Detective Harveston.

9 Q. And did she type it up as she was asking you
10 questions?

11 A. No, sir.

12 Q. So when was it typed up?

13 A. After she asked me -- after she handwritten what she
14 asked me down.

15 Q. And you were in the room, correct, when she finally
16 typed it up?

17 A. Yes, sir.

18 Q. Were you ever left alone to read your statement?

19 A. No, sir.

20 Q. How long about do you think you read that statement?

21 Is two minutes or a minute and a half an accurate amount
22 of time that you think you were given to read that ---

23 A. About two or three minutes.

24 Q. Okay. Did you want more time to read your
25 statement?

1 A. Yes, sir.

2 Q. And why didn't you take more time to read your
3 statement?

4 A. Because I was feeling pressured, and I wanted to see
5 my mother.

6 Q. And after signing the statement, what happened next?

7 A. They asked me would I be willing to wear a wire to
8 get Mr. Jackson and try to confess.

9 Q. And did you agree to do it?

10 A. Yes, sir.

11 Q. And why did you agree to do it?

12 A. Because I wanted to see my mother, and they said if
13 I wasn't cooperating I would seem guilty and I would get
14 the electric chair.

15 Q. And so they told you you couldn't see your mother
16 until you signed the statement, correct?

17 A. Yes, sir.

18 Q. And then once you signed the statement, they told
19 you you couldn't see your mother until you went into the
20 jail cell with Ernest Jackson, correct?

21 A. Yes, sir.

22 Q. And when you went to -- well, how long were you in
23 the jail cell with Ernest Jackson?

24 A. About an hour.

25 Q. And then after the hour, were you taken back out of

1 the jail cell?

2 A. Yes, sir.

3 Q. And were you then able to see your mother?

4 A. About fifteen or twenty minutes later.

5 Q. Okay.

6 MR. RAWLINSON: I have nothing further, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. BRACKETT:

10 Q. Good afternoon, Mr. Poage. How are you today?

11 A. I'm fine. How are you?

12 Q. Good. I just have a few questions for you. Do you
13 remember the night you were arrested with Mr. Jackson you
14 were sitting in a car?

15 A. Yes, sir.

16 Q. And that was for -- you guys were sitting back there
17 smoking?

18 A. Yes, sir.

19 Q. You were smoking marijuana?

20 A. Yes, sir.

21 Q. And they arrested you for that?

22 A. No, sir.

23 Q. They arrested you for something?

24 A. Yes, sir.

25 Q. And they took you to the municipal jail?

- 1 A. Yes, sir.
- 2 Q. And what did they arrest you for?
- 3 A. Possession with intent to distribute.
- 4 Q. Okay. And then you were booked into the jail?
- 5 A. Yes, sir.
- 6 Q. And you spent the night?
- 7 A. Yes, sir.
- 8 Q. All right. And what time did they arrest you?
- 9 A. About ten or eleven.
- 10 Q. At night?
- 11 A. Yes, sir.
- 12 Q. All right. And then at some point in time -- you're
- 13 back in the municipal jail the whole time?
- 14 A. Yes, sir.
- 15 Q. At some point in time, Lieutenant Dalton, the
- 16 gentleman over there who just testified before you ---
- 17 A. Yeah.
- 18 Q. --- he came to get you; is that right?
- 19 A. Yes, sir.
- 20 Q. And you were back there. It was about one o'clock
- 21 or one-thirty. You'd just had lunch?
- 22 A. Yes, sir.
- 23 Q. All right. And so he carried you back over to an
- 24 office?
- 25 A. Yes, sir.

1 Q. And sat you down?

2 A. Yes, sir.

3 Q. He was nice to you, wasn't he?

4 A. Yes, sir.

5 Q. He didn't scream at you?

6 A. No, sir.

7 Q. All right. And he didn't yell at you?

8 A. No, sir.

9 Q. He didn't hit you?

10 A. No, sir.

11 Q. Threaten you?

12 A. No, sir.

13 Q. Okay. So you sat down. And then this other lady
14 who's sitting over here in the middle, the first lady who
15 testified, Detective Harveston, she was in the room as
16 well?

17 A. Yes, sir.

18 Q. And she was nice to you?

19 A. Yes, sir.

20 Q. They just wanted to talk to you?

21 A. Yes, sir.

22 Q. Now, you didn't realize at the time, though -- you
23 didn't realize -- you thought you were in jail for the
24 drugs and you didn't know they were going to talk to you
25 about Tommy James Mitchell, did you?

1 A. No, sir.

2 Q. So you thought they were going to talk to you about
3 drugs?

4 A. Yes, sir.

5 Q. Had you known -- before you were arrested the night
6 before, did you know Lieutenant Dalton or had you heard
7 of him?

8 A. No, sir.

9 Q. He was with the narcotics unit. And you never heard
10 of him?

11 A. No, sir.

12 Q. Okay. So -- but in the back of your mind, you're
13 sitting in there. Now, you know you're in jail on drugs.
14 But in the back of your mind, you also know about what
15 happened to Tommy James Mitchell, right?

16 A. Yes, sir.

17 Q. So that was worrying you, wasn't it?

18 A. No, sir.

19 Q. It wasn't eating at you? You weren't worried that
20 maybe they were going to talk to you about that?

21 A. I mean, it had been so long I had kind of really
22 forgot about it. Well, tried to forget about it, yes,
23 sir.

24 Q. You maybe hoped that they weren't going to talk to
25 you about it?

1 A. Yes, sir.

2 Q. But it was in your mind. You can't completely
3 forget about something like that, now, can you?

4 A. Yes, sir.

5 Q. Okay. So when they said, we need to talk to you
6 about Short Dog, Tommy James, did your heart skip a beat?

7 A. Yes, sir.

8 Q. Because you knew what was coming next, didn't you?

9 A. Yes, sir.

10 Q. And you knew what you'd done?

11 A. Yes, sir.

12 Q. And you knew what Ernest Jackson had done?

13 A. Yes, sir.

14 Q. And it wasn't good?

15 A. No, sir.

16 Q. To be sitting in a police department, right?

17 A. Yes, sir.

18 Q. With a detective standing there talking to you about
19 a guy who got murdered in his house, right?

20 A. Yes, sir.

21 Q. That's not a good situation?

22 A. No, sir, you're right.

23 Q. Especially when you were involved with it, right?

24 A. Yes, sir.

25 Q. Okay. So at that point, Detective Dalton --

1 Lieutenant Dalton says you dropped your head and you let
2 it go. Does that sound right?

3 A. Yes, sir.

4 Q. Had it been worrying you?

5 A. Yes, sir.

6 Q. Eating away at you?

7 A. Yes, sir.

8 Q. And did it feel good to let it go?

9 A. Yes, sir, it did.

10 Q. All right. Now, at first when you were just in that
11 little office, they were just talking to you like I'm
12 talking to you now?

13 A. No, sir. They -- I mean, Detective Harveston was
14 writing notes down.

15 Q. Yeah, okay. But I mean, they were talking in the
16 same tone that I'm talking?

17 A. Yes, sir.

18 Q. Just asking you questions, and you're answering
19 them; isn't that right?

20 A. Yes, sir.

21 Q. And you spent about a -- maybe how much, an hour,
22 hour and a half, two hours in that room?

23 A. About a hour and a half, two hours.

24 Q. And then they took you over to Detective Harveston's
25 office?

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1 A. Yes, sir.

2 Q. Okay. And you gave -- you answered some more
3 questions while she typed?

4 A. Yes, sir.

5 Q. And you knew she was talking to -- you knew she was
6 typing down what you were saying, right?

7 A. Yes, sir.

8 Q. I mean, she was taking a statement?

9 A. Yes, sir.

10 Q. Isn't that correct?

11 A. Yes, sir.

12 Q. And before they talked to you in Lieutenant Dalton's
13 office, they read you your rights?

14 Q. Yes, sir.

15 Q. And you said, yes, I'll talk to you?

16 A. Yes, sir.

17 Q. And before you signed that document in Detective
18 Harveston's office, they read you your rights off the
19 page right here. Right there. Before we ask you any
20 questions, you must understand your rights.

21 A. No, sir, they never read me those.

22 Q. Okay. Well, they handed it to you. At some point
23 you must have held it right there because that's your
24 signature, right?

25 A. Yes, sir, I signed it.

1 Q. Okay.

2 A. But she did not read it to me, no, sir.

3 Q. Okay. But Lieutenant Dalton read it to you before?

4 A. Yes, sir, in his office. Yes, sir.

5 Q. That's right. Okay. And that is your signature?

6 A. Yes, sir.

7 Q. And that's your signature?

8 A. Yes, sir.

9 Q. And that's your signature there?

10 A. Yes, sir.

11 Q. On the second page of the statement that ends with
12 the sentence, we didn't talk about it on the drive back
13 to Rock Hill, and signed Christopher Poage, dated
14 February 20th of 2009?

15 A. Yes, sir.

16 Q. And you told them what you knew about the case?

17 A. Yes, sir.

18 Q. You told them what you saw Ernest Jackson do?

19 A. Yes, sir.

20 Q. And you told them what you did?

21 A. Yes, sir.

22 Q. And they put it in that statement?

23 A. Not everything, no, sir. Some of the stuff that I
24 told was misquoted, and some things that I told are not
25 even in that statement.

1 Q. Okay. But the bulk of what you said is in that
2 statement; isn't that right?

3 A. Yes, sir.

4 Q. That you went to the house?

5 A. Yes, sir.

6 Q. And you were in the house when he came home?

7 A. Yes, sir.

8 Q. And he got jumped?

9 A. I didn't jump him, no, sir.

10 Q. No. When Ernest Jackson jumped him?

11 A. Oh, yes, sir.

12 Q. And then you were coming in and out of the house?

13 A. I went out and back in once, yes, sir.

14 Q. Okay. And you were there with your hands on his
15 arms while he's stabbing him in the back?

16 A. No, sir.

17 Q. Okay. Well, at any point when you were with
18 Detective Harveston, did she threaten you?

19 A. No, sir.

20 Q. When you signed that statement, nobody had
21 threatened you at that point, right?

22 A. They told me if I didn't I would seem guilty if I
23 didn't sign it, and it was a possibility that I could get
24 the electric chair.

25 Q. That was a question that you asked them about the

- 1 lawyer, right? How would it look?
- 2 A. Yes, sir, but they kept ---
- 3 Q. She just said, well, whatever you think.
- 4 A. They kept throwing it up in my face, yes, sir.
- 5 Q. Had you talked with anybody between the time you
- 6 were arrested the night before and the time that
- 7 Lieutenant Dalton came to get you from the jail?
- 8 A. Yes, sir.
- 9 Q. Who did you talk to?
- 10 A. My sister and my mother.
- 11 Q. And what was the substance of that conversation?
- 12 A. Nothing really. Don't say nothing.
- 13 Q. Don't say nothing?
- 14 A. Yes, sir.
- 15 Q. Who told you that?
- 16 A. I think my sister.
- 17 Q. Don't say nothing to who?
- 18 A. I mean, nobody. Ask for a lawyer.
- 19 Q. Okay. They told you that before -- so you had a
- 20 chance to talk to your family even before Lieutenant
- 21 Dalton?
- 22 A. They asked me -- they came in and they told me that
- 23 I was going to be questioned, I was being held. And I
- 24 called my mother, and my mother called my sister.
- 25 Q. Like a three-way?

- 1 A. No, sir.
- 2 Q. Okay. Just a conversation between you and your
3 sister?
- 4 A. Yes, sir.
- 5 Q. Is she your older sister?
- 6 A. Yes, sir.
- 7 Q. Pretty smart?
- 8 A. Yes, sir.
- 9 Q. And she told you what?
- 10 A. She told me if they asked anything, I needed to not
11 say nothing.
- 12 Q. But you didn't do that. You did say something?
- 13 A. Yes, sir.
- 14 MR. BRACKETT: Just a minute. I beg the
15 Court's indulgence one second.
- 16 Q. The statement, I asked you a few minutes ago, you
17 said that there were some things that you'd said that
18 weren't in there?
- 19 A. Yes, sir.
- 20 Q. And what was that?
- 21 A. I really don't recall now, it's been so long ago.
- 22 Q. Well, you said there were some things that were
23 misrepresented?
- 24 A. Yes, sir.
- 25 Q. What were those?

1 A. Like the part where the statement say I grabbed Mr.
2 Mitchell's arms. I never said I grabbed. I said I
3 placed a hand because I was threatened by Mr. Jackson.
4 That's what I said. But in the statement it just say I
5 grabbed him.

6 Q. Okay. And what other misrepresentations do you
7 claim there were?

8 A. I really don't recall because I just read my
9 statement a couple of weeks ago.

10 Q. Well, you've -- this happened in 2009 you gave this
11 statement, right?

12 A. Yes, sir.

13 Q. And you've had a lawyer since then?

14 A. Yes, sir.

15 Q. And they've been to visit you many times, you've sat
16 down and talked with them?

17 A. Yes, sir.

18 Q. And you've been preparing for trial, right?

19 A. For the last week, yes, sir. I had a different
20 lawyer.

21 Q. But you had all this material. Didn't your lawyer
22 provide you with a copy of your statement?

23 A. No, sir.

24 Q. The police gave you one.

25 A. It was -- I don't know what happened to it.

1 Q. Okay. Well, from what you've read in the last
2 couple of weeks, you can't remember anything else that's
3 been misrepresented or is incorrect in that statement?

4 A. About the part -- yes, sir. Well, the part with the
5 Spree where it say, we hid the Spree and he told me to
6 burn my clothes and I did. I never said none of that.

7 Q. Okay. But you did tell them about the burning of
8 the clothes, didn't you?

9 A. Yes, sir.

10 Q. And you told them where you burned the clothes?

11 A. I told them where Mr. Jackson burned his clothes,
12 yes, sir.

13 Q. Anything else that was incorrect?

14 A. No, sir, not that I recall.

15 Q. Okay. So the part about you knowing that he'd
16 gotten some money from a settlement is correct?

17 A. No, sir, that is not correct.

18 Q. Okay.

19 A. But I found that out when we walked -- I was
20 following E.J. in the house. I was following him around
21 the house.

22 Q. That's right. But at some point after you entered
23 the house but before Mr. Mitchell came back, you did know
24 that that's why you were there was to rob him?

25 A. No, sir. I didn't know we were there to rob him,

1 no, sir.

2 Q. Well, what did you think you were there to do with
3 the money?

4 A. I mean, I didn't know that -- I didn't know Mr.
5 Jackson's actions at the time. I didn't even know Short
6 Dog. I thought that he was one of his friends or home
7 boy and he owed him some money or something. I really
8 didn't know.

9 Q. So when he said, let's search the house for the
10 money, in a house that you know isn't his money and it
11 belongs to somebody else and that person's not there and
12 you're tossing the house and you see him lifting -- you
13 don't think anything's wrong with that?

14 A. Yes, sir ---

15 MR. RAWLINSON: Your Honor, I object. I was
16 trying to let Mr. Brackett follow along with this line of
17 questioning, but I think this line of questioning at this
18 point is specifically geared to ---

19 THE COURT: Yeah. I think you've gone outside
20 what you need or what I need.

21 MR. BRACKETT: Yes, sir. I have no further
22 questions.

23 REDIRECT EXAMINATION

24 BY MR. RAWLINSON:

25 Q. Did you take the mention -- Detective Harveston's

1 mention of the electric chair as a threat to your
2 liberty?

3 A. Yes, sir.

4 Q. Did you take it as a threat to your life?

5 A. Yes, sir.

6 Q. Did you take the conversation of them charging you
7 with serious crimes as a threat to your liberty?

8 A. Yes, sir.

9 Q. And when you said that they were nice to you, what
10 do you mean? They did, in fact, tell you those things,
11 correct?

12 A. Yes, sir.

13 Q. And you did, in fact, view those things as a threat
14 to your life ---

15 MR. BRACKETT: Objection to the leading.

16 THE COURT: Yeah, those are leading questions.
17 Sustained.

18 MR. RAWLINSON: Excuse me.

19 Q. Did you take those -- did you take the mention of
20 the electric chair and the mention of being charged as a
21 threat?

22 A. Yes, sir.

23 Q. And did you think being threatened in that way was
24 nice?

25 A. Yes, sir.

1 Q You thought being threatened in that way was nice?

2 A. I mean, no, sir, it wasn't nice. But like in the
3 way that they were being nice like, but at the same time
4 threatening.

5 Q. And would you have given the statement at this time
6 -- at that time -- would you have given that statement
7 without those threats?

8 A. No, sir.

9 Q. Would you have given that -- would you have given
10 this statement if they had -- would you have given this
11 statement if you were not concerned after they told you
12 that you would appear guilty for asking for a lawyer?

13 A. No, sir.

14 Q. Did that influence your decision to give this
15 statement?

16 A. Yes, sir.

17 MR. RAWLINSON: I have no further questions,
18 Your Honor.

19 THE COURT: Anything else Mr. Brackett?

20 MR. BRACKETT: No, sir, Your Honor.

21 THE COURT: You can step down and have a seat
22 back at counsel table.

23 Any other witnesses?

24 MR. RAWLINSON: Your Honor, I would call
25 Deborah Carothers.

1 THE COURT: All right. Come up and put your
2 left hand on the Bible and raise your right.

3 **DEBORAH CAROTHERS,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. RAWLINSON:

7 Q. Can you state your name and spell your last name for
8 the court reporter, Ms. Carothers.

9 A. Deborah Carothers, C-A-R-O-T-H-E-R-S.

10 Q. Ms. Carothers, how do you know Christopher Poage?

11 A. He's my son.

12 Q. And were you at [REDACTED] Spruce Street in Rock Hill,
13 South Carolina, when the police executed a search warrant
14 on February the 23rd, 2009?

15 A. Well, that's my address. But actually the day that
16 they -- I wasn't. She -- Detective Harveston called me.
17 I was out. I went and picked my grandson up from
18 daycare. She called and asked me to come home.

19 Q. Okay. But at some point when they were going
20 through your house ---

21 A. Yes, I was there.

22 Q. --- you were present?

23 A. Yes, sir.

24 Q. And this is your residence, correct?

25 A. Yes, sir, it was. Yes, sir.

1 Q. And was anybody else present there from your family?

2 A. My grandson. And my daughter came in during the
3 process.

4 Q. And did you and your daughter have the opportunity
5 to interact with the officers who were executing this.
6 search warrant?

7 A. Yes, sir.

8 Q. And was one of those officers Detective Harveston?

9 A. Yes, sir.

10 Q. And at this time, had you become concerned with the
11 voluntary nature of your son's statement?

12 A. Yes, I had.

13 Q. And did you have the opportunity to interact with
14 Detective Harveston on that issue?

15 A. Yes, I did. We talked -- we had talked prior to
16 that day.

17 Q. And did Detective Harveston make any statements
18 regarding the statement that Chris made?

19 A. Well, she just said that she understood what I was
20 going through. She has a son about Chris' age. And they
21 knew that Chris was green because he kept asking for his
22 mother. That's what she said.

23 Q. And she stated that to you that day?

24 A. Yes, sir, she did.

25 Q. And did this -- did your daughter at some point

1 begin to record this interaction?

2 A. Yes. My daughter began to ask her questions because
3 my daughter know a lot more about this than I do, so ...

4 Q. And did your daughter inform you that she was
5 recording this conversation?

6 A. She's -- yeah. I think it was somebody downstairs
7 asked her was she recording? She said, yes.

8 Q. And she informed the cop, the Detective Harveston,
9 that she was recording this conversation?

10 A. Yes, she did.

11 Q. And did, at that point, you personally hear her say
12 that Chris was confused when he was giving the statement?

13 A. She said that ---

14 THE COURT: She who? Let's don't -- watch your
15 pronouns.

16 Q. Did Detective Harveston state that Christopher Poage
17 was nervous and confused when giving the statement?

18 A. Yes, sir. She said that he was nervous, he was
19 confused and ...

20 Q. Did she say that he had trouble comprehending what
21 was going on?

22 A. Yeah. It was like he was dumb or he didn't know
23 what was going on, yes. That's just the way I took it,
24 okay?

25 Q. And did she say that she had to repeat things

1 several times in order for him to understand what was
2 going on?

3 A. Yes, sir. She said it to us.

4 Q. And this statement -- and this interaction or at
5 least part of this interaction was recorded by your
6 daughter, Jesslyn Anderson?

7 A. My daughter, yes, sir. Yes, sir.

8 MR. RAWLINSON: Nothing further, Your Honor.

9 THE COURT: Mr. Brackett or Mr. Thompson?

10 MR. BRACKETT: I have no questions, Your Honor.

11 THE COURT: You can step down and have a seat
12 back out.

13 THE WITNESS: Yes, sir. Thank you.

14 THE COURT: Yes, ma'am. Thank you for your
15 time.

16 THE WITNESS: Uh-huh (affirmative).

17 MR. RAWLINSON: Your Honor, I would call
18 Jesslyn Anderson to the stand.

19 THE COURT: Ms. Anderson, please come up and be
20 sworn. Put your left hand on the Bible and raise your
21 right.

22 **JESSLYN ANDERSON,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. RAWLINSON:

1 Q. Could you please state your name and spell your last
2 name for the court reporter?

3 A. Jesslyn Anderson, A-N-D-E-R-S-O-N.

4 Q. Ms. Anderson, what's your occupation?

5 A. I'm a registered nurse.

6 Q. And how far did you go in school?

7 A. I have a master's degree.

8 Q. And how do you know Christopher Poage?

9 A. That is my brother, my baby brother.

10 Q. And were you at [REDACTED] Spruce Street when the police
11 executed a search warrant on February 23rd, 2009?

12 A. Yes, sir.

13 Q. And was your mother Deborah Carothers present?

14 A. Yeah. She called me and told me they were either
15 there or on their way. I think someone had called her
16 and told her they were on the way, but I'm not sure. But
17 I did go.

18 Q. And whose residence is this?

19 A. My mom and Chris' at the time.

20 Q. And did you have concerns at that time about your
21 brother's statement not being voluntary?

22 A. Yes. I had spoken to my brother, as Mr. Brackett
23 brought up. And I did tell him at the time I thought it
24 was drug charges, but it really didn't matter to me what
25 charges they were. I just told him that he shouldn't

1 talk to the police without a lawyer. That's just ---

2 Q. Did you -- and during this -- when the search
3 warrant was being executed, did you talk about these
4 concerns with Detective Harveston?

5 A. Yes, because after I found out what was going on, I
6 asked my brother what happened. And he said that the
7 Detective told him that asking for a lawyer would make
8 him seem guilty. So at that time, I was very upset with
9 Detective Harveston, and we did have a conversation about
10 that.

11 Q. Okay. And did you have the opportunity to record
12 this conversation?

13 A. I did record it.

14 Q. And did you tell your mother that you were recording
15 this conversation?

16 A. As well as Detective Harveston, too.

17 Q. And have you forwarded that recording to my office?

18 A. Yes, I did.

19 Q. And have you instructed me to forward that recording
20 to the Solicitor's office?

21 A. Yes.

22 MR. RAWLINSON: Your Honor, at this time, I
23 would like to -- I don't know how to mark it. But there
24 is a digital file of this recording I would like to play.

25 THE COURT: All right. Well, you mark the C.D.

1 MR. RAWLINSON: Your Honor, I had it on a flash
2 drive, and we can mark the flash drive.

3 THE COURT: Okay. That will be ---

4 MR. BRACKETT: We'll prepare some physical way
5 to store it so that she doesn't have turn the flash drive
6 into evidence. We'll get something.

7 THE COURT: Madam Court Reporter, I know that's
8 leaving you hanging a little bit, but we'll get something
9 for you.

10 All right.

11 MR. RAWLINSON: We're about to play the tape,
12 Your Honor.

13 THE COURT: Oh, okay.

14 MR. RAWLINSON: We're trying to get the thing
15 up here. It takes a little bit. It has to play through
16 here, and we're having trouble logging on to the
17 computer.

18 (WHEREUPON, Court's Exhibit Number 1 was played in
19 open court.)

20 Q. After listening to the recording, do you remember if
21 there was some other conversation outside of the bounds
22 of that recording?

23 A. No more than what she said on the recording, that
24 Chris wasn't comprehending, he wasn't understanding, you
25 know, because we did talk a little bit before I started

1 recording her. And something just told me, record this
2 conversation. And that's when I, you know, put it on my
3 phone and started recording it. You know, she was just
4 saying that, you know, they didn't really feel like Chris
5 was the person. They felt like Chris was green, that he
6 didn't really -- because when they asked him he almost
7 broke down immediately, that E.J. wouldn't say anything
8 and he was the person they really was after because he's
9 the one that committed the crime. They just think that
10 my brother was in the wrong place at the wrong time.

11 Q. Do you remember Detective Harveston saying to your
12 mother that we knew he was green because he kept asking
13 for his mother?

14 A. Yes. She said that he kept asking. And she said
15 that they told him that they would get my mother. And
16 she say, and we did. She said, when -- after Chris --
17 well, I didn't know anything about the thing with E.J.
18 until you told us the other day. But she just said after
19 everything was over, we sent someone to pick up your
20 mother and bring her to the station. That's what she
21 told me.

22 Q. And so her thought to you -- her statement to you
23 was that after he signed the statement she would go get
24 his mother?

25 A. Yeah. Well, she said after they got what they

1 wanted from him or after, you know, he done whatever they
2 wanted that he would get my mother. And they sent
3 someone to get her. She saying, we did. We honored
4 that. We sent someone.

5 Q. Okay.

6 MR. RAWLINSON: Nothing further, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BRACKETT:

9 Q. Is it Jesslyn or Jocelyn?

10 A. It's Jesslyn.

11 Q. Jesslyn? How are you today?

12 A. Hey, how you doing? Fine.

13 Q. Just a couple of quick questions. You were
14 recording that conversation with a little handheld or was
15 that a cell phone, or how did you ---

16 A. My cell phone.

17 Q. Your cell phone?

18 A. Uh-huh (affirmative).

19 Q. Okay. And why did you turn it off at that
20 particular time?

21 A. At that particular point in time, if you listen to
22 the conversation she said, we can go back and forth
23 through this all night long. But pretty much basically
24 she was saying they needed to do what they needed to do
25 and proceed with the, I guess, looking for whatever they

1 were looking for.

2 Q. Okay.

3 A. And she told me that I could talk to my lawyer, so
4 pretty much stop talking to her about it because I wasn't
5 getting the answers that I wanted.

6 Q. You had a lawyer then. Was that Harry Collins? Mr.
7 Collins? Was that Harry Collins?

8 A. What had happened was when I found what was really
9 going on, I called Harry Collins that Saturday. And I
10 asked if he could go up there and talk to my brother and
11 represent him, yes.

12 Q. Okay.

13 A. I did not have a lawyer prior to that.

14 Q. How many days was that before this conversation that
15 you recorded?

16 A. That was the same day I had talked to Harry. Harry
17 may have been up there at the time that they were
18 executing the search warrant, although I'm not sure. I
19 had ---

20 Q. Okay. I'm sorry.

21 A. Go ahead.

22 Q. Were you done?

23 A. Yeah. You can go ahead.

24 Q. Was Mr. Collins -- had he already been to see your
25 brother by that point in time?

1 A. I had not talked to Mr. Collins at that point in
2 time.

3 Q. Had you spoken to your brother?

4 A. I had talked to my brother that morning.

5 Q. Okay. So you'd had a chance to communicate about
6 that? You were aware that there had been a statement.

7 Obviously, you're expressing your concerns regarding that
8 statement on that date?

9 A. Yes.

10 Q. Okay.

11 MR. BRACKETT: I have no further questions.

12 MR. RAWLINSON: Nothing further, Your Honor.

13 THE COURT: You can step down. I appreciate
14 your time.

15 THE WITNESS: Uh-huh (affirmative).

16 THE COURT: Call your next witness.

17 MR. RAWLINSON: The Defense has nothing
18 further, Your Honor.

19 THE COURT: Anything else?

20 MR. BRACKETT: No, sir.

21 THE COURT: All right. I'll be glad to hear
22 each of you for just a couple of minutes. I've heard
23 many, many of these. And I've taken pretty good notes,
24 so I know what I need to be looking for and what I need
25 to address. But I'll be glad to -- anything from the

1 State? I mean, anything from the Defense? Just a couple
2 of minutes. Any arguments?

3 MR. RAWLINSON: Yes, Your Honor. If I could, I
4 have some case law that I plan to cite. I have printed
5 this out if the Court would like to accept these.

6 THE COURT: You can hand them up.

7 (WHEREUPON, Mr. Rawlinson handed up documents to the
8 Court.

9 MR. RAWLINSON: Your Honor, as I'm sure you're
10 aware, there is a totality of circumstances test in this
11 case. And I believe this case reads or sounds kind of
12 like what's-what of that case, of that test.

13 Police coercion. My client has testified -- there's
14 been two other people who have testified that the
15 electric chair was mentioned, that he felt coerced. We
16 heard a audio recording of the police officer admitting
17 she at least somewhat gave the hint that getting a lawyer
18 would make my client appear guilty.

19 Length of interrogation. We're talking about three
20 to four hours here.

21 Continuity. My client was never left alone at any
22 point during this interrogation.

23 Location of the interrogation. A small room with
24 two detectives, possibly armed.

25 Defendant's maturity. We're talking about a

1 nineteen-year-old kid at this point.

2 Defendant's age. Again, a nineteen-year-old kid.

3 Defendant's education. We're talking about a person
4 without a high school education.

5 Mental health. My client testified that he was
6 crying the whole time. The audiotape even said -- or
7 Detective Harveston even said that they had to repeat
8 things several times, that he was nervous. I would --
9 although she said that in her testimony that she wouldn't
10 think -- she didn't think he was confused, I certainly
11 think that if he didn't understand what she was saying
12 and she had to repeat it several times, I would think
13 that would be confused.

14 Threats of violence. Threats of violence, I
15 certainly -- my client certainly ---

16 THE COURT: What kind of threats of violence?

17 MR. RAWLINSON: I believe my client took it as
18 a threat of violence that he would possibly get the
19 electric chair. And the last in the totality of
20 circumstances would be promises of leniency. I could --
21 you know, we could take either the electric chair or
22 possibly being charged or not being charged under threats
23 of violence as violence or promises of leniency. But my
24 point would be this case has several of those factors,
25 several of those factors.

1 The State had an opportunity to allay any of these
2 concerns with an audio recording, with a video recording.
3 All we have are essentially, like in a lot of *Jackson v.*
4 *Denno* hearings, we have two sides of the story. My
5 client's saying one thing, them saying one thing. What
6 we do have though, we have an audio recording where the
7 detective in this matter is essentially saying that she
8 intimated to my client that if he invoked his *Miranda*
9 rights he would appear guilty, which goes to both -- and
10 I don't think the State can meet their burden in terms of
11 preponderance of evidence for both of the factors, which
12 is they have to show a voluntary and intelligent waiver
13 of *Miranda*. I don't think that they can show an
14 intelligent waiver of *Miranda* because Detective Harveston
15 even said that he was -- didn't understand what was going
16 on. They had to repeat it several times. I don't think
17 they can show intelligent waiver of *Miranda*, and I don't
18 think that they can show that this statement was
19 voluntary. And the case law is very clear that not only
20 do they have to show an intelligent waiver of *Miranda*,
21 they have to show that the subsequent statement was
22 voluntary.

23 I think with the threats, I think with the electric
24 chair comments, the fact that they said he would appear
25 guilty if he didn't and the fact that he was requesting

1 counsel of his mother -- and while that is not an
2 attorney, South Carolina cases do recognize that for
3 younger people -- and the case that I handed up to the
4 Court is a case involving a juvenile. But they do think
5 that in cases involving younger people, that a request
6 for a parent, a request for guidance, should be treated
7 and analyzed under that totality of the circumstances.

8 So from every angle, this case has concerns. And I
9 do not think that the Solicitor's office can show by a
10 preponderance of evidence because they have the burden of
11 proving it was an intelligent waiver. They have the
12 burden of proving it was a waiver of his *Miranda* rights,
13 and they have the burden of proving that this statement
14 was given voluntarily. I don't think they can meet the
15 burden. I believe the Court should suppress the
16 statement.

17 Thank you, Your Honor.

18 THE COURT: Briefly, Mr. Brackett.

19 MR. BRACKETT: Yes, sir, Your Honor, very
20 briefly. I would cite the *State v. Wannamaker* at 552
21 S.E.2d 284 which quotes *Davis v. United States*. It is
22 the State's burden to show voluntariness and that *Miranda*
23 warnings were properly given and that they were waived by
24 the Defendant before a statement can be administered or
25 before a statement can be taken and admitted as evidence

1 against the Defendant. That request for counsel,
2 however, under -- in *Davis v. United States*, if a suspect
3 makes a reference to an attorney that is ambiguous or
4 equivocal and that a reasonable officer in light of the
5 circumstances would have understood only the suspect
6 might be invoking the right to counsel, our precedents do
7 not require the cessation of questioning. Rather the
8 suspect must unambiguously request counsel. And this is
9 a case where this -- it would be charitable to
10 characterize this reference to an attorney as even
11 equivocal. All he was saying is in his mind, it might
12 make him appear guilty if he doesn't have one.

13 Law enforcement is under an obligation to inform a
14 defendant of their rights and make sure that the
15 defendant understands and waives those rights before
16 taking the statement. Law enforcement is under no
17 obligation to give legal counsel to a defendant and to
18 tell them whether they think it's in his best interest to
19 proceed or how his decision to proceed or not to proceed
20 may be perceived by some outside third party, which is
21 what we have here.

22 Mr. Poage is an emancipated adult at the age of
23 nineteen. Any request for his mother, I don't believe
24 that has any relevance to this situation. He's an adult
25 at nineteen. This isn't like we're talking about a

1 twelve-year-old or a thirteen-year-old child. I believe
2 the cases that Mr. Rawlinson was referring to dealt with
3 kids that were much, much younger, and I don't think that
4 that's appropriate for the situation that we have here.

5 The statement was clearly given after rights, the
6 Defendant, himself, acknowledged. He said it felt good
7 to unburden himself. He told -- he said on the stand
8 that he was informed of his rights, that he wasn't
9 threatened, that, you know, he did agree to talk and
10 those were the things that he said. I believe this is a
11 straightforward case.

12 THE COURT: All right. Well, I find by a
13 preponderance of the evidence that the statement will not
14 be suppressed. I find that prior to giving the statement
15 -- I find this by a preponderance of the evidence. The
16 jury will also have a right to address this under the
17 beyond a reasonable doubt standard. But I find by a
18 preponderance of the evidence that Mr. Poage was properly
19 given his Fifth Amendment rights against voluntary self-
20 incrimination as required by *Miranda v. Arizona*. He was
21 told he had the right to remain silent, that anything he
22 said could and would be used against him in a court of
23 law, that he had the right to talk to a lawyer and would
24 have -- and have the attorney present while he was being
25 questioned. He was told if he could not afford one, one

1 would be appointed to represent him before questioning.
2 If he wished to have an attorney and that if he made a
3 statement or answered questions, he had the right to stop
4 at any time. He was given the *Miranda* rights. He signed
5 a voluntary waiver and gave a statement.

6 I find that there is no indication he was under the
7 influence of any intoxicants. The evidence reflects that
8 he understood what was going on and understood the
9 questions and understood what he was saying. There is no
10 indication of any incapacity of any type. No evidence of
11 any threats or promises. No holding out of any hope of
12 reward.

13 I find that the question about counsel does not rise
14 to a request for counsel. I find there's no coercion.
15 He did not at any time exert his right to remain silent
16 nor request counsel. I find that the statement was
17 freely, voluntarily, knowingly and intelligently given by
18 Mr. Poage after having been warned of his Fifth and Sixth
19 Amendment rights under the United States Constitution and
20 being advised as to these rights as required under
21 *Miranda v. Arizona* and knowingly, intelligently, freely
22 and voluntarily waiving them. And therefore, the motion
23 to suppress is denied.

24 All right. Let's take a short break before we go on
25 to the next matters, and I would like to see counsel just

1 for a minute in chambers.

2 (WHEREUPON, court stood at recess for a short
3 break.)

4 THE COURT: The next matter is the assertion
5 that the Defense wants to raise the third-party guilt
6 issue. I'll be glad to hear counsel.

7 MR. BRACKETT: Yes, sir. I was just notified
8 by Mr. Rawlinson in pretrial discussions that he was
9 possibly going to introduce some evidence that might
10 raise a third-party guilt issue under *Gregory*. And so he
11 indicated that he might, so I made a motion in limine to
12 preclude that without -- obviously once you ring the bell
13 -- I would like to know what the nature of the evidence
14 is and determine whether or not it satisfies the *Gregory*
15 standard prior to reaching that point so that he can --
16 we can decide whether it's appropriate.

17 MR. RAWLINSON: I certainly think that there is
18 -- there's a reasonable -- there's reasonable evidence
19 for the jury to decide that another person committed this
20 crime. I think that the State is relying on a statement
21 wherein another person is said to have committed this
22 crime. Another person is indicted for this murder. I
23 don't -- I do not think under these circumstances the
24 State could preclude us from saying that somebody else
25 did it. The statement which they're relying on said

1 somebody else did it. And there's somebody else who's
2 indicted for murder.

3 Furthermore, because of the forensics in this case,
4 the Prosecution will not be able to show a time of death.
5 Because of the forensics in this case, because they
6 cannot show a time of death, they will not be able to
7 show exactly when this person died. There's several
8 other people that were investigated by the police
9 department in this matter. And because of the forensics
10 in this case not being able to place a direct time of
11 death, there is certainly a reasonable inference that
12 even though my client certainly witnessed, witnessed some
13 bad things occurring, that somebody else didn't come at
14 some later point or some earlier -- well, definitely not
15 a earlier point, but at some later point. So with the
16 fact that somebody else is pointed to in the statement
17 they're relying on, the fact that somebody else has been
18 indicted for this murder and the forensics not being able
19 to point directly to my client or from the other person
20 in the statement for that matter, I would respectfully
21 request that the Court allow me to go into evidence of
22 third-party guilt.

23 MR. BRACKETT: Just real quick. We don't
24 dispute that Mr. Jackson -- it is our contention that Mr.
25 Jackson was involved, but that they combined and

1 conspired to commit the murder. So that -- we will agree
2 that any evidence relevant to Mr. Jackson's involvement
3 is certainly admissible. My concern was he alluded to
4 some other people. The suggestion that it's possible
5 some mystery third individual, not Jackson nor Poage,
6 entered the residence after Jackson and Poage left it,
7 and they are ultimately responsible for the murder. I
8 don't believe that that inference can be raised just -- I
9 don't think that you can just proceed on speculation of
10 what might have happened.

11 There needs to be something more solid under Gregory
12 that links and supports that contention. And so as far
13 as Jackson, we agree. The other people, I think he needs
14 to make a showing that there is under Gregory the -- I
15 have the cases here and I'll find the exact language
16 used.

17 THE COURT: Well, it says Gregory -- evidence
18 offered by the accused as to the commission of the crime
19 by another person must be limited to such facts as are
20 inconsistent with his own guilt and to such facts as to
21 raise a reasonable inference or presumption of his own
22 innocence. Evidence which can have no other effect than
23 to cast a bare suspicion of another -- upon another or
24 raise a conjectural inference as to the commission of a
25 crime by another is not admissible. There must be such

1 proof of connection with it. Before any such testimony
2 can be received, there must be such proof of connection
3 with it such as train of facts and circumstances that
4 tends clearly to point out such other person as the
5 guilty party. Third-party guilt I equate with having a
6 third-party, not a general somebody else may have done
7 it.

8 Go ahead.

9 MR. RAWLINSON: Your Honor, if I could be a
10 little bit more specific. We are not pointing in the
11 air. There are four specific people with whom during the
12 course of this investigation came up. Four specific
13 people who the Defendant had problems with during this
14 time. There's also ample evidence that within this
15 investigation the victim had become a general target.
16 And that that combined with the four people who during
17 the investigation the cops recognized as suspects, did an
18 investigation on those people, did swabs, looked at their
19 shoes, executed search warrants on those specific people
20 -- I certainly think under those circumstances we can go
21 into whether one of those people who were investigated
22 actually committed this crime.

23 THE COURT: Well, I think we'd probably have to
24 have a proffer on each one so I can -- I can't just
25 speculate. I've got to have some evidence. I've got to

1 have some evidence rather than argument. I mean, Mr.
2 Poage's charged with a crime that carries life
3 imprisonment, so I think we need to make sure
4 everything's on the record. So I'll let you call
5 whatever witnesses you want, and then I'll rule on third-
6 party guilt after I hear the witnesses.

7 MR. RAWLINSON: Your Honor, I call Detective
8 Harveston.

9 THE COURT: Well, okay. Go ahead. You want me
10 to get the jury in and just let them go until tomorrow
11 morning because it's four o'clock. And by the time we go
12 through this ...

13 MR. BRACKETT: What I had anticipated was going
14 to be done, Your Honor, to expedite things was, he's
15 referring to some specific statements that were taken in
16 a neighborhood canvass done shortly after the crime. He
17 thinks that some of the information contained in that
18 statement is relevant to the issue of creating inference
19 that maybe a third party is responsible. I had proposed
20 that what he do is just take those statements, because
21 that's all he has to go on at this point is the
22 statements themselves, and relay the information from
23 each statement to the Court. And then the Court could
24 say, assuming that individual appeared before me and said
25 exactly what's in that statement, our position is it will

1 not rise to the level under Gregory to justify admission.

2 And that would resolve the issue, I believe.

3 Is that correct, Mr. Rawlinson?

4 MR. RAWLINSON: That's correct. That's
5 correct.

6 THE COURT: Yeah. But the dilemma is he's --
7 I've got to be offered some evidence. I've got to have
8 some evidence to support his position other than just his
9 position.

10 MR. BRACKETT: Yes, sir.

11 THE COURT: And so I just can't -- I'm not sure
12 I can do what you -- I mean, it's timesaving, obviously,
13 for judicial economy. But if you want me first-off --
14 and then we can later do a proffer to go over those
15 statements and have some time to digest them. I mean, I
16 can't just -- I can't make a ruling just on him saying
17 other people -- there was a lapse of time and they looked
18 at other people. That's all I've really heard.

19 MR. BRACKETT: No. I think the statements
20 would be like we spoke with Joe Jackson, and Joe said
21 that he heard some guys -- that the victim owed these
22 other guys some money. That's the kind of thing that --
23 which is what his position would be. I'm saying if Joe
24 was brought into the courtroom and said exactly that, A,
25 it would be hearsay, B, it wouldn't rise to the Gregory

1 standard.

2 THE COURT: Well, I understand that. But I've
3 got to hear it. I mean, I've got to hear what Joe's
4 going to say.

5 MR. BRACKETT: Yes, sir.

6 THE COURT: And I agree we can't do hearsay,
7 and it's going to be hearsay on hearsay and all of those
8 things. So that's why -- and I want this young man, if
9 he's found guilty and is sentenced to a substantial
10 amount of time -- I mean, we need to make sure this
11 record is as clean as a whistle as we can. So he's
12 raised it. We'll -- you know, if it takes a week or two
13 to try the case, we'll take a week or two to try the
14 case. But we're going to have a record.

15 MR. BRACKETT: Yes, sir. And I'll proceed
16 however -- I'm happy -- I was trying to expedite it.
17 That's my suggestion, and I'll defer to Mr. Rawlinson and
18 the Court's ---

19 MR. RAWLINSON: I'll call Detective Harveston,
20 Your Honor.

21 THE COURT: Okay. Detective Harveston. You're
22 still under oath. You don't need to be re-sworn.

23 KATHY HARVESTON,

24 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. RAWLINSON:

2 Q. Detective Harveston, are you -- were you the lead
3 investigator in this case?

4 A. Yes. I was the case agent.

5 Q. And have you had an opportunity to review the entire
6 file in this case?

7 A. Yes, I have.

8 Q. And does that file -- does that file include varying
9 statements that were made by different individuals in
10 this matter?

11 A. Yes.

12 Q. And are you familiar with the different statements
13 within -- have you had a chance to review your file and
14 review these statements?

15 A. I've had a chance to review it, yes.

16 Q. Are you familiar with Bobby Sue Walden's statement?

17 A. I would have to refresh my memory by looking at
18 particularly what Ms. Walden said. There's a lot of
19 statements in there. And actually, I think what you're
20 referring to is the notes from the canvass, the
21 neighborhood canvass.

22 MR. RAWLINSON: May I approach the witness,
23 Your Honor?

24 THE COURT: Yes, sir.

25 Q. Now, Ms. -- Detective Harveston, I've handed you a

1 series of statements that were made as a part of the
2 police officer's file that was forwarded to my office as
3 part of my discovery motion. Do you recognize those
4 statements as statements that were taken during the
5 course of this case?

6 A. Yes. Let me just clarify one thing. There --
7 certain articles in here are actual sworn statements.
8 Other ones are notes taken when officers went out and
9 just interviewed people in the community and they took
10 down notes and brought them back.

11 Q. Okay. Now, during the course of investigation, and
12 relying on those statements I just handed you to refresh
13 your memory, were there other people that became of
14 interest as suspects in this case?

15 A. Of course there were.

16 Q. And how many people were suspects in this case at
17 one time?

18 A. I would have to go back and actually look. From
19 time to time, different information came in. And we
20 would go check it out, and it would end up nowhere.

21 Q. Okay. And during this course of investigation, was
22 the victim -- was the victim in this case -- well, let me
23 back up. During the course of your investigation, did
24 you become aware that many people knew about a settlement
25 that the victim had just received?

1 A. Yes, I did become aware of that.

2 Q. And during the course of this investigation, did you
3 become aware of several people who had animosity toward
4 the victim?

5 A. Animosity? I know of the time or two he got into an
6 altercation with someone.

7 Q. Would you consider -- generally when people get into
8 altercations, would you -- is it your opinion that that
9 is animosity?

10 A. Let me base that on my police experience.

11 Q. Okay.

12 A. Sometimes there's animosity; sometimes it's people
13 that fight, get over it, and they're best friends the
14 next day. So it could have been either one.

15 Q. Were one of the suspects in this matter, Aaron
16 McCoy, also referred to as Ace?

17 A. Yes.

18 Q. And why was he -- why did he become a suspect in
19 this matter?

20 A. He lived nearby in the neighborhood, and we had
21 gotten some information that possibly Tommy Mitchell owed
22 him some money.

23 Q. And in fact, during the course of this investigation
24 did you come across some information that they in fact
25 had an altercation?

1 A. That Aaron and Tommy had an altercation?

2 Q. Correct.

3 A. I remember Paul Mobley and Tommy having an
4 altercation. If you don't mind, let me take a look
5 because ---

6 Q. No problem.

7 A. Is there a particular statement you're referring to?

8 Q. I am trying to flip to it as we speak.

9 A. Okay.

10 Q. The statement I am referring to is Roy Hinton's
11 statement.

12 THE WITNESS: I beg your pardon, Your Honor.
13 There's a good bit of paperwork here.

14 THE COURT: That's fine.

15 A. Just a second. Okay. I see the statement you're
16 talking about. Yes. Roy Hinton said that Ace slapped
17 Mitchell so hard in the face it knocked him off the
18 porch. That was never verified by anybody else.

19 Q. Did y'all follow up that statement with some
20 subsequent police investigation?

21 A. Well, of course, we talked to several different
22 people in the neighborhood. What happened was that Paul
23 Mobley actually came up, and he was the one that got into
24 a physical altercation at Tommy's instead of Ace.

25 Q. And did you verify that?

1 A. Paul Mobley admitted to it.

2 Q. Okay. Has Paul Mobley described his whereabouts to
3 the police on that date?

4 A. On that day?

5 Q. On that day.

6 A. I don't know that he particularly described his
7 whereabouts on that day.

8 Q. Did the police department question him as to what he
9 was doing that day?

10 A. We questioned him to his relationship with Tommy
11 Mitchell, such as when was the last time he saw him. And
12 that was basically it. He's sixteen at the time.

13 Q. Okay. Is there any particular reason why the police
14 department stopped investigating him even though he did
15 not give a alibi?

16 A. There was just nothing else to connect him or anyone
17 else that we interviewed or were looking at to the case.
18 In other words, it just kind of fizzled out. There was
19 nothing else there.

20 Q. And did the police -- did the Rock Hill Police
21 Department also view Willie Perry as a suspect at some
22 point?

23 A. Willie Perry?

24 Q. Correct?

25 A. And what would -- who would have said something

1 about that? Can you direct me?

2 Q. I believe Aaron McCoy referenced this incident.

3 A. Aaron McCoy said something. If you don't mind,
4 whatever page you're looking at, would you tell me which
5 page you're on so I can go a little bit quicker?

6 Q. It's directly between Jeffrey McKee's statement and
7 Harold Roddy. It's probably three-fourths of the way
8 through the packet.

9 A. Do you have a page number on there?

10 Q. I do not.

11 A. Like 141 or something like that? Okay. Hold on.

12 And I'm sorry. Whose statement was it?

13 Q. Aaron McCoy.

14 A. Okay. It was Aaron McCoy's statement. Oh, where it
15 says Mitchell had gotten in a fight on Izzard with Willie
16 Perry over comments made to Bonita McCorkle after
17 Mitchell had gotten the moped.

18 Q. And did the police -- did the police department
19 investigate this incident?

20 A. I don't believe that we found anyone else that
21 verified that there was a fight on Izzard with Willie
22 Perry.

23 Q. Did you ever talk to Willie Perry?

24 A. I did not.

25 Q. Did anybody at the police department talk to Willie

1 Perry?

2 A. If it's not in here, I would assume not.

3 Q. Okay. And this would be towards the very back of
4 your ---

5 A. Okay.

6 Q. --- of the package you're holding in your hand. At
7 some point did Bobbie Sue Walden make a statement?

8 A. Yes.

9 Q. And in that statement, did she inform the police
10 that she saw Mitchell on July the 30th, 2011?

11 A. That's correct. She did say that.

12 Q. And the incident date listed on the indictments that
13 my client is charged with are July 28th, correct?

14 A. That is correct.

15 Q. And so -- but July 30th is after the alleged murder,
16 correct?

17 A. That's correct. And during the neighborhood
18 canvass, there were several different neighbors that we
19 talked to that said I saw him either last Monday or
20 Tuesday or it might have been Wednesday. And so we
21 attached the date to the day that they thought that they
22 saw him last. Were they absolutely certain? I don't
23 know.

24 Q. But there's at least one person that says she saw
25 the victim in this case after July 28th?

1 A. Yes.

2 Q. Okay.

3 MR. RAWLINSON: No further questions, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. BRACKETT:

7 Q. That one day she was saying she saw him at eleven
8 p.m. at night?

9 A. Yes.

10 Q. I'm sorry?

11 A. Correct.

12 Q. Okay. In the yard?

13 A. Yes.

14 MR. BRACKETT: Nothing further.

15 THE COURT: All right. You can step down.

16 Thank you.

17 MR. RAWLINSON: Your Honor, I think it's clear
18 that if the Defense were able to go forward with evidence
19 of third-party guilty, if those people were called,
20 particularly Bobbie Sue Walden who observed -- there's
21 not a hearsay problem there -- who observed that she saw
22 or thought she saw this victim two days after my client
23 was charged with murdering the individual, there's no
24 doubt that the police department or Detective Harveston
25 can testify to the fact that there were at least four

1 other people who had serious doubts or who had serious
2 bad blood with the Defendant.

3 Detective Harveston has also testified that there
4 were some leads that the police department did not follow
5 up. In connection with that, I think it's uncontroverted
6 that the forensics in this matter cannot place a time of
7 death on the Defendant. That, combined with the
8 testimony we heard, I think there's certainly reasonable
9 grounds to think that it's a possibility, a real
10 possibility that somebody else committed this crime.

11 THE COURT: Well, I think there's a difference
12 in arguing to the jury that there's a possibility
13 somebody else committed it as opposed to pointing to a
14 third party. I haven't heard of any third-party that's
15 been pointed to other than, oh, some other dude did it
16 kind of defense. I still don't see that there's any
17 evidence, credible, acceptable evidence to support your
18 client's position on third-party guilt. Now, maybe if
19 these witnesses are called in and I can hear more from
20 them directly. But based on the presentation at this
21 time, I cannot find any evidence that rises to the level
22 required by *Gregory* and *Gay* and *Cope*. *Gregory* -- of
23 course, *Holmes* had a little different issue in that.
24 Evidence offered by accused as commission of a crime by
25 another person must be limited to such facts as are

1 inconsistent with his own guilt. Well, here, we don't
2 have any facts. That's the threshold. So until I hear
3 some facts, I have to rule that the evidence as presented
4 is not going to be allowed as far as a third-party guilt
5 issue.

6 All right. The last issue before we get the jury in
7 has to do with the position that the Defense can argue to
8 the jury or somehow present to the jury the fact that the
9 charges were made at different times. Tell me about
10 that, Mr. Rawlinson.

11 MR. RAWLINSON: I believe this is the State's
12 motion, Your Honor.

13 MR. THOMPSON: I'll give a brief background.
14 Initially, Detective Harveston charged the Defendant
15 Poage with accessory after the fact of murder, with first
16 degree burglary, conspiracy, kidnapping and armed
17 robbery. Those were the initial charges that he faced at
18 that time. Ultimately, when I discussed it with
19 Detective Harveston, she basically had also charged Mr.
20 Jackson with the same thing except did not charge him
21 with accessory of the fact of murder, but rather charged
22 him with murder. The State's position always has been in
23 dealing with the Defense attorneys that have been on this
24 case, and particularly with Mr. Dest and Mr. Faircloth
25 (phonic), I'd always indicated to them that -- during

1 negotiations that when the indictments go to Grand Jury,
2 I would be indicting him for murder because the facts in
3 the case do not meet the accessory after the fact. They
4 meet murder itself because he was present aiding and
5 abetting. And that if you were to work out some deal,
6 then at that point we would not have to charge him with
7 murder. He could go without being charged, but would
8 have to cooperate and testify against the co-defendant.
9 That went on for quite some time during Mr. Dest's
10 representation.

11 And if we're to argue or if the Defense is to argue
12 -- that's as to one part. I guess it's two-pronged. One
13 is we don't want them to mention either the fact of the
14 accessory after the fact because it's not before the jury
15 for consideration. What's before the jury is before the
16 jury. It's the charges before the Court now. And it's a
17 two-pronged approach that I would face, Your Honor, in
18 arguing to the Court that the Defense should not be able
19 to touch base on these things. One is *State v. Congery*,
20 a South Carolina Appeals case here in York County with
21 Judge Alford, 249 S.C. 184 and 569 S.E.2d 320. And in
22 this case, the Defendant was charged with grand larceny
23 and conspiracy -- and I think it was two counts of grand
24 larceny and conspiracy -- and obtaining money or goods
25 under false pretenses. And I believe they acquitted him

1 on that last charge. They convicted on the other
2 charges.

3 For the closing argument, apparently the defense
4 attorney in this case tried to argue that the proper
5 charge or what he may be guilty of is receiving stolen
6 goods or at least began to talk about receiving stolen
7 goods, which was not a charge before the jury. And as we
8 go to the last page in this opinion where it's talking in
9 section three about the Court's limitation of defense
10 counsel's argument to the jury, the Court is very clear
11 that the judge did not err in limiting the defense
12 counsel's closing argument regarding this. And it goes
13 on to say that it's not relevant to the issue at trial,
14 right there in the last paragraph before the conclusion
15 all the way down in that paragraph. Thus, the judge
16 properly limited the scope of defense counsel's closing
17 argument to matters which were relevant to the issues at
18 trial.

19 So in other words, the fact that a receiving stolen
20 goods charge maybe could have been made or was an option
21 for this prosecution, that was not before the jury. It
22 was not -- therefore, it was not relevant.

23 And so that would go both to the facts here, which
24 we have both the murder being indicted later on, but
25 having been promised way early on had the Defendant not

1 worked out a deal. And a situation where the accessory
2 after the fact he was charged with, I always made it
3 clear to the Defense I would never go forward on that
4 case. That was a case that I did not think was
5 appropriate in this particular case. That would be, as
6 they say, the bottom of this or during this, that would
7 be luck -- let's see. The Court puts it much better than
8 I can. Let me find it here. That it opens the door for
9 every criminal defendant to create a quasi lesser-
10 included offense for which they could not be convicted.
11 They can't be convicted of it because it's not before the
12 jury, and the jury should not be considering those things
13 at that point.

14 So I would say, Your Honor, that it is not relevant
15 both for the accessory after the fact and for the timing
16 of the murder charge to be brought forth. And if the
17 Court were to determine that it were relevant, in
18 particular I think as to the murder charge, but as to
19 both, then I think Rule 403 has to come into bearing here
20 because then it's something that would just be overly
21 prejudicial and would actually confuse the jury. It's
22 unfair on the State. We can't really go in and tell the
23 jury, well, here were the plea negotiations. I think
24 that would be improper. But the plea negotiations were
25 he's going to be charged with murder if he does not work

1 out a deal. And that's been going on for just about as
2 long as the case has been pending. So I would have to
3 say that, you know, to try and say that somehow he's
4 maybe being punished or the detective didn't truly think
5 he was guilty of murder, you know, those sorts of things
6 at this time, I think, would be improper and would be
7 confusing to the jury. And the State wouldn't be able to
8 properly reply to those things. So I think that under
9 Rule 403, if the Court were to determine that that was
10 relevant, that the Defense would be prohibited from then
11 arguing it because it would confuse the jury and it would
12 be unfair to the State. And in the balancing test, it
13 would outweigh -- the prejudice would outweigh the
14 probative value.

15 THE COURT: All right.

16 MR. RAWLINSON: Your Honor, I agree that I'm
17 not -- I'll stipulate to the fact that since accessory
18 after the fact is not before the jury, I won't argue it
19 in my closing argument. The problem I have with the
20 State's argument is that intent is probably the biggest
21 issue in this case. And in order for my client to
22 present a complete defense, I certainly think that I
23 should be able to ask the officer in this case who sought
24 the arrest warrants why he was charged with accessory
25 after the fact and not murder. Because the answer to

1 that is she didn't -- I guess at that point she didn't
2 feel he was guilty of murder or she would have charged
3 him that. I think -- I would not argue that he should be
4 convicted of accessory after the fact because it's not
5 before the jury. And frankly, I don't think he's guilty
6 of that either. But I certainly think I should be able
7 to ask that question. That's all our position is. We
8 should be able to ask the question, whether the person
9 who took his statement, whether she believed he had
10 intent to commit murder and whether he was criminally
11 culpable to commit murder after -- directly after him
12 giving that statement. I think that's a fair question,
13 and I think that's completely within the bounds of a
14 reasonable defense.

15 MR. BRACKETT: And Your Honor, I would say that
16 basically Detective Harveston's opinion would be
17 irrelevant to that. If you really want to look at the
18 opinion, she did charge him with first degree burglary
19 with armed robbery and kidnapping and with conspiracy.
20 That's all based on, for the most part, party liability,
21 just as the murder charge would be the hand of one being
22 the hand of all. Therefore, obviously, if he's guilty of
23 the others, he would have to be guilty of the murder as
24 well under the compass liability. Because the Defendant
25 certainly is arguing that he's not guilty of the others

1 as well because he didn't participate. But of course,
2 the State's position is he did. So I think that shows
3 what her obvious thought was towards this deal. I think
4 that, once again, it's just going to become confusing.
5 It's going to be an issue that just -- and it's confusing
6 for no reason. It's not what's before the jury. They
7 shouldn't be considering those things.

8 THE COURT: Well, I'm not going to allow the
9 case to go into it. He's charged -- he's being tried on
10 five indictments. All of them were returned July the
11 21st of this year. So we're going to stick to the
12 charges with which he's charged and not go behind them
13 because this is what the Grand Jury has found and this is
14 what the trial's about.

15 Anything else before we get the jury in?

16 MR. THOMPSON: One other thing, Your Honor, and
17 I believe the Defense would agree with this. On the
18 indictment for the first degree burglary, which is 2011-
19 GS-46-02267, we would ask to amend one thing. And that
20 is in the body of the indictment itself, number one under
21 the -- where it says the Defendant committed one or more
22 of the following acts, number one is he entered or
23 remained in the nighttime. The State would ask to strike
24 that from the indictment, to amend, to strike he entered
25 or remained in the nighttime. And basically it would be,

1 two would become number one where it's alleged that he
2 was armed or became armed with a deadly weapon. Three
3 would become number two where it says he caused physical
4 injury to Tommy James Mitchell who was not a participant
5 in the crime. Four would be number three where it says
6 he used or threatened to use an instrument. And five
7 would become number four where it said he displayed a
8 knife, all of which were in violation of Section § 16-11-
9 311.

10 THE COURT: Any objection?

11 MR. RAWLINSON: No objection to that, Your
12 Honor.

13 THE COURT: Okay.

14 Bring in the jury.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 4:37 p.m.)

17 THE COURT: Now that y'all are comfortably
18 seated, would you stand? And the Clerk will administer
19 the oath.

20 (WHEREUPON, the jury was duly sworn.)

21 THE COURT: Be seated. First, let me apologize
22 for keeping you in there so long. But I told you, I
23 think -- I think I told you before you left that I had
24 some legal matters to take up, and they did take longer
25 than I had anticipated.

1 We're now at the point where we will start into the
2 trial. In a few minutes, you will have an opportunity to
3 hear the attorneys make for you opening statements if
4 they wish. They're not required to, but they may if they
5 wish give you sort of a blueprint or outline of the
6 trial. They will not at this point be trying to convince
7 you of what your verdict should be. That does not come
8 until after you've heard all the evidence and we've
9 reached the end of the trial. Then they can sum up and
10 tell you why they think the facts should lead you to a
11 certain conclusion, applying the law as I charge it.
12 That's not what they're doing now. They're just
13 outlining the trial.

14 To these charges, Mr. Poage has entered a plea of
15 not guilty. His pleas of not guilty to these charges
16 placed on the State the burden of proof. That is, the
17 burden of proving his guilt beyond a reasonable doubt.

18 I have three primary jobs in this case. One is I'm
19 a logistics person. I have to make sure we take breaks,
20 that people can see, that people are speaking loud
21 enough, the mechanical part of the trial.

22 I also rule on questions of admissibility of
23 evidence. Once I have ruled on a question of evidence,
24 it is binding on the witness and on the attorneys and on
25 you as the trial jury. And if a party asks me to excuse

1 you to take up a matter of law or matter of evidence,
2 don't hold that against the attorney. That's just the
3 way our system works.

4 My third job is that I am the sole judge of the law
5 in this case. You must take, accept and apply the law as
6 I charge it. This is true even if you think I charge a
7 law in error or you think the law should be different.
8 Your oath requires you to take, accept and apply the law
9 as I charge it. I am giving you some legal principles
10 now. During the trial I may give you some. And at the
11 end of the trial, I'll give you a concise, comprehensive
12 charge on the law that you are to apply to the facts as
13 you determine them to be in this case.

14 I've already discussed with you not discussing the
15 case, not to let yourself be exposed to news coverage and
16 not to do any independent research.

17 If you can't see or you can't hear, let me know.
18 Cup your ear, give me a voice-raising gesture. I'll try
19 to correct that. It's not right and fair to have these
20 questions to present to you and not let you see and hear
21 what needs to be seen and heard by you as the trial jury.

22 We take breaks about every hour and a half. That, I
23 find, to be a pretty good time to take breaks. So if you
24 need a break -- even though that's the time I sort of
25 find to be a comfort time, if any of you need a break at

1 any time, please just raise your right hand. And no
2 questions asked, we'll take a break. And I extend that
3 to counsel and to Mr. Poage.

4 Now, I told you I'm the sole judge of the law in the
5 case. You are the sole judge of the facts. You're not
6 to infer from anything I say or do at any time in this
7 case as indicating an opinion of mine on the facts. Our
8 law does not allow a trial judge to formulate or express
9 to a jury any opinion on the facts. It's solely your job
10 to examine the evidence, give to the evidence the effect,
11 the value, weight and the truth you believe it should
12 have. In doing this, you may believe one witness as
13 opposed to several, several witnesses as opposed to one.
14 You may believe, all, part or none of the witness'
15 testimony. In analyzing the evidence, use your common
16 sense, your sense of logic, your experiences in life and
17 your sense of reason.

18 As judges of the facts, you must necessarily judge
19 the credibility, that is, the believability, of the
20 witnesses who testify. In assessing believability, you
21 can use those things I've already talked about. You can
22 use the things that you find in your day-to-day life as
23 being indicators to you of a person's truthfulness. And
24 you can use certain evaluators, a witness' demeanor, how
25 they act on the stand. Are they hesitant or

1 straightforward? Is their testimony consistent or
2 inconsistent. Consider the opportunity the witness had
3 to actually know those things about which they testify.
4 And you can consider any bias or prejudice, that is,
5 whether a witness may wish to help or hurt one side or
6 the other. Determine the true facts, apply the law and
7 you'll be in a position to return a verdict that does, in
8 fact, speak the truth.

9 Now I'll turn it over to counsel.

10 MR. BRACKETT: Thank you, Your Honor. May it
11 please the Court.

12 OPENING STATEMENT

13 BY MR. BRACKETT:

14 The hand of one is the hand of all. Remember that
15 as we go through this case. The hand of one is the hand
16 of all. When two people are present at a crime and one
17 is aiding and abetting the other, is present and aiding
18 and abetting, whatever the other person does, both are
19 guilty of. It's called a compass liability.

20 And on July 28th, or right around that time, in
21 2008, unfortunately a compass liability occurred. Two
22 men, this Defendant, Mr. Poage, and Ernest Jackson, his
23 friend, went to the residence on Steele Street of Tommy
24 Mitchell. And Tommy's known to people around as Shorty
25 or Short Dog. Tommy lived alone. Tommy was fifty-six

1 years old. Tommy didn't have a whole lot. His
2 electricity wasn't always on. He'd had it off for quite
3 some time. He was living in July with no electricity and
4 no air in his house on Steele Street.

5 Tommy, as the evidence will show, came into a little
6 bit of money. He had a settlement. It was a settlement
7 from a lawsuit where he was hit by a tree limb in the
8 city, and the City of Rock Hill settled that case with
9 him for three thousand dollars. And just a few days
10 before his death, he got that check. Got three thousand
11 dollars. And now a man who doesn't have a whole lot of
12 means, who cuts other people's yards to make it from day
13 to day, has three thousand dollars. And you'll see
14 through the evidence what he decides to do with it at
15 that point.

16 Well, he takes it and he buys a moped because he's
17 tired of trying to ride around on a bicycle. So now he
18 has a little better means of transportation. Then he
19 takes it and he goes to the electric company and says,
20 hey, I'd like to get my electricity restored. And
21 there's some back pay in that. So that takes up a hunk
22 of it, about seven hundred dollars as you'll see. But he
23 also then starts buying some beer for his friends, starts
24 telling people about, look, I have money. And he was
25 flashing it around a little bit. Unfortunately, that

1 gets back to the Defendants in this case, because that
2 sets the scene for his death.

3 You'll hear that they went to Ernest Jackson's [sic]
4 house one afternoon and they knocked on the door. After
5 knocking on the door and realizing no one was there, one
6 of them goes around back, goes to the back door, lets the
7 other one in the front door. They start searching for
8 money. They start tossing the house money for looking.
9 Where is it? Where's he hiding it? We know he has it in
10 here somewhere. We'll tell you a number of details that
11 go along with that.

12 Unfortunately, when he comes back to his house they
13 haven't found the money, but they're waiting for him. So
14 when Tommy Mitchell comes home, Tommy Mitchell has some
15 groceries because he's still got a little bit of money.
16 But he's surprised when he comes into his house by two
17 men who want his money. And they don't stop at that that
18 day.

19 You'll hear from the testimony from the pathologist
20 that he was brutally beaten. You'll see from the
21 evidence in the house that there's a large kind of two-
22 by-two stick. I call it a stick. It's more like a piece
23 of lumber. But you'll see it. You'll see the stains of
24 blood on the end of it.

25 There's a shovel. Not a large yard shovel, but a

1 heavy sturdy shovel about yay big with a handle and a
2 giant spade on the end of it that's kind of narrow but
3 long. You might use it to maybe dig up bushes or plant
4 things in the yard. That's also sitting there on the bed
5 with that stick or piece of lumber. Tommy Mitchell's
6 blood is on the end of it too.

7 His house is messed up, chairs knocked over in the
8 kitchen, glass broken, the table knocked over. The
9 groceries that he'd brought home laying in the floor in
10 the living room. The groceries, one of which a frozen
11 meal, should have gone in the freezer with his newly
12 restored electricity that was going to happen that day.
13 But it never made it there. It laid on the floor.

14 You'll see that there's a screwdriver that the
15 police find sitting on a sofa there in the living room,
16 wondering which one -- Mr. Poage gives his statement to
17 the police. He tells them that he played with that
18 screwdriver while they sat there after they'd looked for
19 money, that he played with that screwdriver and that
20 Aaron [sic] Jackson took that screwdriver from him and
21 scratched a one into the refrigerator. And you'll see
22 the photograph and hear the testimony of the forensic
23 guys who didn't know if that one had anything to do with
24 anything. But in taking the pictures of the whole house,
25 there it is in the edge of a picture where they showed

1 part of the refrigerator door with a one scratched into
2 it. Something only someone who was there and knew about
3 the crime would have known.

4 You'll find in the bedroom Tommy Mitchell was
5 brutally beaten. And because he wasn't found for a
6 number of days, the heat, the July heat going into
7 August, so that when his body was discovered on August
8 3rd, you'll see the deteriorated mess that was left
9 behind. A man who once had some pride now without any.

10 You'll see a crime scene that's riddled with maggots
11 because of the long time that he spent there in the heat
12 in the room so badly decomposing. And it seemed so bad
13 that the officers couldn't even tell that he had been
14 stabbed as well as beaten at the time that they arrived.
15 It's not until through autopsy that we learn not only is
16 he beaten severely with instruments, but he's stabbed at
17 least thirty times.

18 It's a brutal beating and a brutal murder. And at
19 first, it's a big whodunit. Who were the people
20 involved? How do we find this out? And it becomes very
21 difficult. And you'll hear the testimony from the
22 forensic experts that went in and tried to figure out
23 what can we pull from the scene, what can we find out,
24 what can we look for to deliver someone to justice in
25 this case.

1 Unfortunately, because of the decomposition all
2 throughout the scene, there's not much of anything to
3 recover. Things that you might normally find are
4 destroyed. So there is no forensic link. There's no
5 magic thing to find somebody. So they trudge on. They
6 do what detectives do.

7 Detective Harveston will tell you how she ordered a
8 canvass of the neighborhood where the police went out and
9 talked to everybody in the neighborhood, anyone who knew
10 him. What have you heard? What have you seen? Is there
11 anything that you can give us that can tell us about
12 this? Because all they know at this point is it's a
13 horrible crime scene and this man's been brutally
14 murdered. And his moped is gone, the moped that he
15 bought just a few days before.

16 Ultimately, they follow through leads and look
17 around, and ultimately they get to where they want to
18 talk to Mr. Poage and Mr. Jackson. And on February 20th
19 of 2009, they get that opportunity to talk to Mr. Poage.
20 Detective Harveston and Investigator Dalton with the Rock
21 Hill Police Department ask him into Detective Dalton's
22 office. They sit down and go over his *Miranda* rights
23 with him. He waives those rights and he gives a
24 statement. They'll tell you how when Detective Dalton
25 mentioned the name, so what can you tell us about Tommy

1 Mitchell, I was heading through -- how obviously there
2 was something he had to say, how he felt like he was
3 unburdening himself when he told them what had happened.

4 But now you'll hear from his statement though. And
5 this is where you have to use your own personal knowledge
6 -- because you'll hear a lot from the crime scene -- but
7 your own personal knowledge. As the Judge said, don't
8 leave your common sense at home. Because we're going to
9 show you a number of things from the crime scene that
10 kind of tell you this had to happen. And then we're
11 going to compare it to that statement that he gave to the
12 police. And you'll see through his statement that he
13 knows specific things that only someone there would know.
14 So there's a lot of reliability in this statement. And
15 it goes from the very beginning from saying, it was a
16 little green house. It's a little green house. It goes
17 as far as saying they scratched the one. They scratched
18 the one, and the screwdriver was sitting on the sofa
19 where he said he'd sat down.

20 He goes to tell that he was stabbed. No one knew he
21 was stabbed. The community did not know that. Detective
22 Harveston will tell you the police did not release his
23 cause of death other than it being a homicide because
24 they didn't want anyone to know what it was so that when
25 they came to some spot where they could find someone they

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1 could actually compare to what that person said and
2 figure out that this person's telling them the truth.
3 And they did that in this case. So when he's able to
4 tell them that he's stabbed, that he's beaten with a
5 stick -- when he's able to tell them about the groceries
6 being dropped in the floor. He's able to tell them about
7 the fact that he came in and drove up his moped to the
8 back door. That they left on a moped. That afterwards
9 clothes were burned and then the moped was gotten rid of.

10 And then the kicker in the case, that an officer
11 from the York County Sheriff's Department pulled them
12 over as they walked -- the night that this -- the day
13 that this happened, that afternoon, they walked to the
14 store from Mr. Jackson's father's house. And on their
15 way back from the store, a deputy from York County saw
16 the two young men. And he had a warrant on someone else
17 completely different, a Mr. Hinton. And he thought one
18 of them looked like Mr. Hinton. So he stopped to see if
19 one of them was Mr. Hinton. And he turned on his camera.
20 And you'll see them in the front of the car, these two
21 men together. Detective Harveston didn't even know about
22 that. They would have no reason to search and seizure,
23 York County Sheriff's Department, and pull it over for
24 just questioning at some point in time. But they checked
25 their I.D.s and they let them go because it wasn't Mr.

1 Hinton. But the officer made notes. He kept the video,
2 and he went on his way that day.

3 This man, Mr. Poage, in his statement will tell you
4 they got pulled over. That's what happened. He gives
5 you reliability as to the fact that he was there.

6 But then in using your common sense, you often think
7 about when a child is caught or when a person's caught
8 doing something wrong. Well, first of all, when you ask
9 them about it, if you ever catch a child -- I know it
10 happens with my children -- you say what happened? Lots
11 of time you get a nothing. You know you heard a big
12 bang, you come in the kitchen. Everything's destroyed.
13 There's glass on the floor. What happened? Nothing, you
14 know. But then you'll hear ultimately, yeah, I was
15 there. It happened. It was me and it was Suzie. And
16 Suzie did such and such. And then she did that. And I
17 told her, don't do it. But then she did that.

18 And that's the kind of statement you're going to
19 hear from him because that's the kind of statement when
20 people get in trouble -- in a case like this, that's the
21 type of statement they give. I was there, but I didn't
22 really want anything to do with this. I was there. I
23 didn't even really know why we were there. I was there.
24 I kept telling him, let's go, and he wouldn't go. I
25 walked out of the house. And then I walked back in and I

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1 told him, let's go, and he wouldn't go. I was there.

2 Ladies and gentlemen, the hand of one is the hand of
3 all. No matter how slight your involvement, if you're
4 present and aiding and abetting, whether it's as a
5 lookout, whether it's as a person who helps stop someone
6 from leaving, whether it's a person who helps hold
7 someone down or hold someone while they're being stabbed
8 or beaten or whether you join in with the beating, the
9 hand of one is the hand of all. Everything that Ernest
10 Jackson did under the law, Mr. Poage is guilty of.
11 Everything Mr. Poage did, Ernest Jackson's guilty of.

12 Who you have before you today is Mr. Poage. Let's
13 talk quickly about the charges that he faces today.
14 There are several indictments, the first being murder and
15 possession of a knife during the commission of a violent
16 crime.

17 What is murder? Well, murder is the unlawful
18 killing of another, the intentional killing with malice
19 aforethought. It sounds easy. But then you say, well,
20 what is malice aforethought? Well, the best way to
21 describe it -- you'll hear various definitions of it, one
22 being an evil wicked heart fatally bent on mischief.
23 It's difficult to understand that. I think an easy way
24 to look at what malice is, is meanness. Meanness. Doing
25 something that is unnecessary. When they robbed Ernest

1 Jackson -- or when they robbed Tommy Mitchell, when
2 Ernest Jackson and Mr. Poage did, beating him mercilessly
3 and stabbing him numerous times, that's a meanness. And
4 that's a malice.

5 The possession of a knife during the commission of a
6 violent crime. That is -- it just simply says that
7 murder being a violent crime, if you possess or display a
8 knife during the commission -- I'm sorry. If you display
9 a knife during the commission of a violent crime, you're
10 guilty of possession of that knife during a violent
11 crime.

12 And once again, the hand of one is the hand of all.
13 Whatever the co-defendant does, he's guilty of. Whatever
14 he does, his co-defendant's guilty of. So if one stabs,
15 it's like they're both stabbing.

16 One other thing I would point out, and you may have
17 heard before and wondered exactly what it is. But it's
18 called the Felony Murder Rule. You don't necessarily
19 determine -- that's kind of what -- if you're in law
20 school, that's what they'll tell you it is. It's the
21 Felony Murder Rule. Basically what that is, is if you're
22 in the process of committing a felony, and during that
23 felony -- let's say, for instance in this case, they went
24 in, all they really wanted to do was rob him, but they
25 got carried away because he wouldn't give them the money

1 or he didn't have any more and they thought he did and
2 they went further and further. If you're in the process
3 of committing a crime and the logical consequence of that
4 crime or foreseeable consequence of that crime is that
5 someone will be killed, then you're guilty of the murder
6 because that becomes the malice for which you've
7 committed a crime. And murder requires malice. Well, if
8 you're committing these felonies, that is a form of
9 malice. And it can help you determine if there's malice
10 in the case. But that's the Felony Murder Rule.

11 The second indictment is for criminal conspiracy.
12 And of course, that's just if two or more combine
13 together for a criminal act. And the felony is
14 conspiracy. In this case, it's going to be obvious it
15 was two or more combined for a felony act.

16 And now, that doesn't have to mean that you go ahead
17 of time and you say, hey, this is what we're going to do.
18 This also includes a passive understanding which is
19 simply the way they act. You can see it by their actions
20 that they're acting together in committing the crime.
21 You don't have to have -- talk about it ahead of time.
22 It could be when you go there and then one becomes the
23 lookout and one becomes the person that holds them, and
24 one becomes the one who helps chase him down when he
25 tries to run out of the room.

1 Kidnapping. A lot of people think that kidnapping
2 is you're in the back of a car stuffed in a trunk. That
3 is kidnapping. But it's more than that. It's to
4 unlawfully seized or confine somebody. And in this case,
5 you'll see that they did unlawfully confine him in his
6 own house. The statement from Mr. Poage is going to be
7 that he came in the back door, that he came through the
8 living room -- because Mr. Poage was hiding in there at
9 that point in time -- that he went past him and into the
10 bedroom -- and went into the bedroom. And that's when
11 Mr. Jackson jumped him. And he tried to run, and he
12 screamed and he dropped his groceries.

13 And they ultimately chased him because he almost got
14 out of the kitchen, according to what Mr. Poage told the
15 police. And they actually bumped into each other trying
16 to go after him, Poage and Jackson did, according to Mr.
17 Poage's statement. And Jackson ends up catching him and
18 struggling in there and going all the way back into the
19 bedroom. So they'd moved him. They confined him against
20 his will because obviously he was trying to leave. And
21 they moved him from one area of the house to the other
22 through the living room, back into the bedroom where
23 ultimately he is killed. That's kidnapping.

24 The final indictment, armed robbery. And armed
25 robbery is basically stealing something from someone,

1 something of value and doing it with a threat or
2 intimidation while armed with a deadly weapon. And in
3 this case, you will see that they not only stole his
4 moped on the way out, but obviously whatever money he had
5 with him, pretty much gone because there was only twenty-
6 something cents in his pocket. So whatever cash he had
7 once had is gone.

8 You'll also see that -- the testimony will be that
9 he carried a harmonica around with him all the time in
10 his pocket. He never left without it. And whenever he'd
11 meet up with friends, he played it proficiently. If they
12 had a party, he would play it and they would all dance to
13 it. They'd enjoy it. That was gone. It's not in his
14 house. It's not in his pocket.

15 He also carried a pocketknife. That was gone and
16 it's not in his pocket. As well I believe you'll hear
17 testimony about a cell phone. But those things are gone.
18 They were stolen from him.

19 So during the course of that, he's beaten with a
20 stick, a club, beaten with a shovel and stabbed with a
21 knife repeatedly. So obviously, people are armed -- the
22 Defendants are armed.

23 I know you heard as you were being selected that
24 there was a number of names that were read as possible
25 witnesses. I want to assure you those are simply

1 possible witnesses. The case will not last that long.
2 You will be out by the end of the week. As a matter of
3 fact, you should be out sometime in the middle of the
4 week. But please bear with us because sometimes the
5 process is slow. Sometimes there are things done outside
6 of your presence just as this afternoon. I think you
7 wait in the jury room and go, what are they doing? But
8 it's also a very serious case. And while it won't take
9 long in the grand scheme of things, it's going to take a
10 lot of work on your part to listen, to hear what's being
11 said, to look at this statement, to listen to the
12 officers who testify and the other folks who testify, the
13 forensic people, to look at this crime scene and really
14 see how devastating of a crime this was. And then to
15 look -- and once again, as I said, as you look at
16 everything, I want you to remember the hand of one is the
17 hand of all. And as you look at what one Defendant did
18 and another Defendant acting as his accomplice, remember
19 both are guilty. And I ask that you return a verdict of
20 guilty against Mr. Poage.

21 Thank you.

22 THE COURT: Mr. Rawlinson?

23 OPENING STATEMENT

24 BY MR. RAWLINSON:

25 So let's just get a few things out of the way.

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1 Christopher Poage was there that day. Let's get that out
2 of the way. You're going to hear that several times. We
3 agree.

4 Let's also get out of the way that a horrible,
5 horrible, horrible, horrible, horrible crime happened.
6 This man didn't deserve to be murdered. We also agree
7 with that.

8 Let's also get this out of the way. Because you've
9 heard a number of statements from the Prosecution, and
10 they've said those in unambiguous, concrete terms. The
11 hand of one is not the hand of all in all cases. It's
12 not -- what the South Carolina law says is the mere
13 presence of you being in the presence of a crime, you're
14 not guilty.

15 Now, the Solicitor has said several things when he
16 was talking to you a second ago about their version of
17 the facts. And I'm about to tell you our version. I'm
18 about to tell you our version of the facts also.

19 But before I do, I want you to ask a question.
20 Well, two questions actually. The first is, do I really
21 believe a person is innocent until they're proven guilty.
22 And the second thing I want you to ask yourself is what
23 has the Prosecution given me to prove what they say?
24 They're not going to be able to put a murder weapon in
25 Christopher Poage's hand. They're not going to be able

1 to put -- as a matter of fact, without him telling --
2 trying to tell the police what went on and trying to find
3 this man justice, they wouldn't even be able to place him
4 in the crime scene.

5 Innocent until proven guilty. That harmonica, they
6 didn't find it on us. That wooden stick that was used
7 for this horrible, horrible crime, no fingerprints of
8 Christopher Poage. No D.N.A. of Christopher Poage. No
9 hair on the body of Tommy Mitchell. Innocent until
10 proven guilty. And the mere presence around the crime
11 does not make you guilty of that crime.

12 Now, here's what happened. Christopher Poage was
13 called by somebody who he grew up with. As a matter of
14 fact, he was good friends with -- not necessarily Ernest
15 Jackson, but he was good friends with his younger
16 brother. They played football together. And so when
17 you're good friends with a person's brother, obviously,
18 you know, you hang around their brother too. You're at
19 their house and that type of thing.

20 So Ernest Jackson calls my client and says, hey, I
21 want you to go with me somewhere. Let's just chill out.
22 And you're going to see this in the statement. Let's
23 just chill out. Come with me somewhere. And so they go
24 -- they go to this house. And they knock. They knock on
25 this man's door. And then Ernest Jackson says, oh, it's

1 all good, man, I got it. And he goes around the back and
2 lets him in.

3 Now, Christopher Poage didn't hear a window get
4 busted out. Christopher Poage didn't hear a door being
5 kicked in. Christopher Poage didn't see any burglary
6 tools that was going to be used to burglarize the house.
7 He had no idea what was about to go on, and he had no
8 reason to know. Now, the Prosecution's going to say, of
9 course, he knew. But what are they going to give you?
10 Innocent, until proven guilty.

11 They went in the house and Ernest Jackson started
12 lifting up these mattresses and looking around. And
13 Christopher Poage says, man, let's get out of here. What
14 are you doing? Are they going to tell you that they
15 found fingerprints on that mattress that was lifted up?
16 No. Are they going to tell you they found his
17 fingerprints on the desk or on a knife or anything in the
18 house? No. Innocent until proven guilty.

19 And on their way, him trying to get out of this
20 house, short Dog, Tommy Mitchell shows up. My client is
21 now caught in the midst of a very, very bad situation.
22 And you will see in his statement, they begin to fight.
23 And what does my client do? Does he hit Tommy Mitchell?
24 Does he grab Tommy Mitchell? Does he do anything? No.
25 The Prosecution won't give you anything. I think y'all

1 understand the routine. No, they're not going to give
2 you anything that says that that happened. They're not
3 going to give you any impressions on the skin that match
4 my client. They're going to give you nothing.

5 And as this was happening, Christopher Poage leaves
6 the house. This is a seventeen-year-old kid at this
7 time. A seventeen-year-old kid in a very, very bad
8 situation. And he's trying to figure out what to do.
9 And the Solicitor asked you this a second ago and the
10 Judge asked you this a second ago. Don't leave your
11 common sense at home. He's caught in a very bad
12 situation. He's trying to figure out what to do. This
13 is a guy he grew up with. He doesn't know Tommy
14 Mitchell. He doesn't know about this settlement.

15 Is the Solicitor going to give you anybody that's
16 going to come in here and say, I told Christopher Poage
17 about this settlement? No. Are they going to bring
18 anybody in here that says he had ever been to this house?
19 No. And Christopher -- and so Christopher Poage in a
20 panic in trying to do what's right and trying to -- these
21 thoughts running through his head as a seventeen-year-
22 old, runs back in the house and says, let's go, and is
23 pleading with Ernest Jackson. And while Ernest Jackson
24 is beating this man -- and as a matter of fact, this is
25 in his statement. He grabs Ernest Jackson and said,

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1 let's go. Let's get out of here. He just wants this
2 done with. And they leave.

3 The hand of one is not the hand of all. It's not
4 that simple. Now, the Solicitor's going to make it --
5 try to make it sound that simple. And they can say
6 whatever they want. But you are innocent until proven
7 guilty in this country. And the mere presence around
8 something horrible happening does not make you guilty of
9 murder.

10 Now, the Solicitor in this case has read off the
11 indictments. And you can -- and I agree. You should
12 read those indictments. You should look at those
13 indictments. You ask yourself if they can prove that my
14 client had an evil heart, that he had malice
15 aforethought, that he had an intent to enter in that
16 house and do anything wrong, anything. They're going to
17 say it, and they are going to give you nothing. You are
18 innocent until you are proven guilty.

19 Thank you.

20 THE COURT: All right. Ladies and gentlemen of
21 the jury panel, we're going to stop today before we get
22 into the testimony because it's a little after five.
23 We'll start back at nine-thirty in the morning. The
24 bailiff has already showed you how to get in and out
25 while you're serving as a juror. So keep in mind my

1 admonitions about no research, no discussions, no news
2 input. And we'll see you back at nine-thirty in the
3 morning. Have a pleasant evening.

4 (WHEREUPON, the jury exited the courtroom at
5 approximately 5:10 p.m.)

6 THE COURT: Anything before we stop for today
7 from the Solicitor?

8 MR. BRACKETT: Nothing from the State, Your
9 Honor.

10 THE COURT: Mr. Rawlinson?

11 MR. RAWLINSON: Nothing from the Defense, Your
12 Honor.

13 THE COURT: All right. We'll be at ease until
14 nine-thirty in the morning. Have a pleasant evening.

15 (WHEREUPON, court stood at recess for the day.)

16 **AUGUST 9, 2011**

17 (WHEREUPON, Court's Exhibit Number 1 was marked for
18 identification only.)

19 (WHEREUPON, court convened with all parties present
20 and the following proceedings were had commencing at
21 approximately 9:34 a.m.)

22 THE COURT: Good morning. Thank you. Take
23 your seats.

24 Is the State ready?

25 MR. THOMPSON: The State is ready, Your Honor.

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1 THE COURT: Is the Defense ready?

2 MR. RAWLINSON: We're ready, Your Honor.

3 THE COURT: Anything before the jury comes in?

4 MR. RAWLINSON: Yes, Your Honor. There is some
5 issues concerning some of the pictures that the State
6 wishes to introduce in this case. I believe the pictures
7 -- there are a number of crime scene photos that I have
8 objections to on the grounds that they're duplicative to
9 other photos. They're listed as State's Exhibit 47, 48,
10 49, 50, 55 and 57, all on grounds that they show the same
11 information to the jury. I think, without a doubt,
12 they're certainly gruesome and graphic photographs. And
13 I think the duplicative nature under 403, the prejudice
14 certainly outweighs the probative value.

15 THE COURT: Can you pull some of those out?

16 MR. THOMPSON: Yes, I have ---

17 THE COURT: That looks like a big stack. And I
18 certainly think the State has a right to put in crime
19 scene photos and photos of the victim, but I think
20 there's a -- to a limited extent.

21 MR. THOMPSON: Unfortunately, though, it might
22 be best if you see them in their totality because it's --
23 a lot of the pictures have no gruesome things in them.
24 They're just the scene itself, the areas.

25 THE COURT: Yeah, let's see. What are the

1 numbers you object to?

2 MR. RAWLINSON: Number 47.

3 THE COURT: Okay.

4 MR. RAWLINSON: Number 48.

5 THE COURT: All right.

6 MR. RAWLINSON: Number 49.

7 THE COURT: Okay.

8 MR. RAWLINSON: Number 50.

9 THE COURT: All right.

10 MR. RAWLINSON: Number 55, and number 57.

11 THE COURT: All right.

12 MR. THOMPSON: We have taken out number 48, so
13 it's not going to be something ---

14 THE COURT: Okay.

15 MR. THOMPSON: We can remove that one. That's
16 number 50.

17 (Off record discussion)

18 THE COURT: This is -- I'm looking at 47, and
19 that's a picture of the body of the victim showing a
20 disheveled area. 49 is a different angle, the same basic
21 -- well, I shouldn't say same basic shot, but from a
22 different angle showing the room and the victim. As is
23 50, 55. And then 57 appears to be a little more of a
24 closeup showing what I presume somebody's going to say is
25 the blood stain on the floor, right?

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1 MR. THOMPSON: That's correct.

2 MR. RAWLINSON: That's correct, your honor.

3 THE COURT: All right.

4 MR. RAWLINSON: Yes, Your Honor. I believe
5 these photographs labeled State's Exhibit Number 24,
6 number 23 and 31 essentially show the same information as
7 the exhibits I've objected to.

8 MR. BRACKETT: And I'll be introducing these
9 ones he just referenced, 31, 23, and 24. They show --
10 this is a distant shot. These are footprints. That's
11 what's depicted in here. And this is a closeup shot of
12 above the right leg. This is a closeup shot of below the
13 right leg. So the level of detail available in this
14 picture -- these pictures show more detail than this one.
15 So this is a closeup of what's there. But this is -- I
16 need the broad perspective to know where the footprints
17 were oriented in relation to the body, and I don't think
18 he objects to that.

19 MR. RAWLINSON: I do not object to that.

20 THE COURT: Well, what's the difference? I
21 don't see a significant difference, or maybe there is, in
22 50 and 31. The others, I think, do -- are a little
23 different, but 50 and 31 appear to be a little different,
24 but ...

25 MR. THOMPSON: Yeah, they're not much. The

1 only difference, I think, is really the cones. This
2 would be taken before they really walked through the
3 room. This would be taken after they'd walked through
4 and placed things around. So I don't have any objection
5 to taking one of the photographs out. I can take out
6 number 50, I think, without a problem.

7 THE COURT: I'm going to allow all of them in
8 except for number 50. I do believe they show different
9 -- they show the same but from different angles,
10 different perspectives and different distances. And
11 while the body is in the picture, the body is the body,
12 so to speak. And that it's ---

13 MR. THOMPSON: And I'll point out, Judge, that
14 we stayed away from any of the real closeup pictures of
15 the body so that those depicted in the far field that
16 it's not as gruesome with the maggots and the other kind
17 of ooze that is around. It's much more difficult to see
18 it with those pictures because it's farther back from the
19 body. It's not close up. We had a number of pictures
20 close up, and we're not going to attempt to put any of
21 those in.

22 THE COURT: All right. So 50 -- was it 50
23 that's out?

24 MR. THOMPSON: Yes.

25 THE COURT: Okay.

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1 MR. RAWLINSON: That's correct, Your Honor.

2 THE COURT: Okay. All right. Anything else
3 before we get the jury in?

4 MR. THOMPSON: I don't think so, Judge.

5 MR. RAWLINSON: I think that's all.

6 THE COURT: All right. Do you want to make
7 that a Court's exhibit or just ---

8 MR. THOMPSON: Yes, please, a Court's exhibit.
9 We would go ahead ask that since there's no objection to
10 these pictures if we could enter those into evidence, so
11 it will just be easier to then address the various
12 witnesses with the ---

13 MR. RAWLINSON: I have no problem with that,
14 Your Honor.

15 THE COURT: All right. Reserving his --

16 MR. RAWLINSON: Reserving ---

17 THE COURT: Counsel reserving Defendant's right
18 to those that I ruled in over his objection, reserving
19 his objection, he has consented to the introduction of
20 those photographs numbers ---

21 MR. THOMPSON: That would be -- well, the stack
22 that I have -- Mr. Brackett has a few others. But the
23 stack that I have will be number 34 through number 47
24 because 48 will be out. I will put that as part of the
25 Court's exhibit. Number 48 will not be shown to the

1 jury. And then starting with 49, and then number 50 is
2 out. But then number 55 through number 104 will be in.

3 (WHEREUPON, State's Exhibits Number 34 through 47,
4 49 and 55 through 104 were admitted into evidence,
5 and Court's Exhibits Number 2 and 3, formerly
6 State's Exhibits Number 50 and 48, were marked for
7 identification only.)

8 THE COURT: All right. Anything else before we
9 get the jury in?

10 MR. BRACKETT: Just to alert the Court that
11 prior to calling certain witnesses who may have these
12 pictures displayed during the course of their testimony,
13 I have extended to the family and would give them the
14 opportunity to leave the courtroom, any members that
15 might become upset or emotional over the pictures, the
16 photographs. So if there's a brief delay in between
17 calling the witnesses, I'd just ask for the Court's
18 indulgence for a moment so they can ...

19 THE COURT: All right.

20 Bring in the jury.

21 (WHEREUPON, the jury entered the courtroom at
22 approximately 9:43 a.m.)

23 THE COURT: All right. Call your first
24 witness.

25 MR. THOMPSON: The State would call Steven

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Stephen Robinson - Direct Examination by Mr. Thompson

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1 Robinson. Mr. Robinson, if you'll come forward and be
2 sworn by the Clerk, please.

3 **STEPHEN ROBINSON,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q. Mr. Robinson, can you give your full name for the
8 Court, please?

9 A. Stephen Avery Robinson.

10 Q. And how do you spell Steven? Do you spell it with a
11 V or a P-H?

12 A. P-H.

13 Q. And Avery, A-V-E-R-Y?

14 A. Right.

15 Q. Okay. Mr. Robinson, where do you live?

16 A. ■ Blanche Circle.

17 Q. And that's in Rock Hill?

18 A. Yes, sir.

19 Q. All right. You've been in Rock Hill all your life?

20 A. Yes, sir.

21 Q. Mr. Robinson, do you know Tommy Mitchell?

22 A. Yeah. I knewed (phonic) him through a guy from my
23 job. His name was Tommy Harris.

24 Q. Tommy Harris. You work with Tommy Harris?

25 A. Yeah.

1 Q. And was Tommy Mitchell a friend of yours?

2 A. Yeah. We worked together.

3 Q. Okay. And can you tell me, did you used to see
4 Tommy Mitchell on a regular basis?

5 A. Well, at the time, I moved to Israel Street. And
6 Tommy cut grass in the neighborhood over there. So I
7 seed (phonic) him, you know, I mean, sometime on the
8 weekend, maybe Friday, Saturday. And we'd sit and talk a
9 little bit.

10 Q. All right. So you used to see him on the weekends?

11 A. Yes.

12 Q. Okay. And Mr. Robinson, can you tell me was Tommy
13 known by any nicknames?

14 A. Well, some people called him Short Dog, you know. I
15 just called him Tommy. Yeah.

16 Q. Okay. So you just called him -- you didn't use his
17 nickname, you just called him Tommy?

18 A. Tommy, yeah.

19 Q. All right. Can you tell me, when was the last time
20 you recall having any contact with Tommy Mitchell?

21 A. Well, a week before I found Tommy Mitchell was a
22 Saturday. He had come by my house that Saturday morning
23 around about maybe ten. And me and him had a few talks.
24 He had a moped. And I asked him, I said, Tommy, where
25 you get a new moped at. You know, he said -- well, you

1 got to save your money and get you one. So me and him
2 would sit and -- we'd drink a little bit sometime on
3 Saturday. So I told him, I said, well, ain't it your
4 time to buy beer. So he said, well -- he said, I will be
5 right back. I got to go to the store. Went to the store
6 and got me a beer. And met a lady up the street, bought
7 her a beer. And he used to cut her grass. And so at
8 that point in time, we drunk the beer and Tommy went on.
9 So ...

10 Q. Okay. So he went and bought y'all some beer and
11 y'all drank a beer and then he left at that point?

12 A. Yes.

13 Q. All right. Did you see him again after that?

14 A. That was around about one o'clock that Sunday
15 morning.

16 Q. All right.

17 A. And he was passing through, but he was walking at
18 the time. And he stopped there because I was talking to
19 my son. So him and my son had a conversation.

20 Q. Okay.

21 A. So he went on to -- you know, he went on home from
22 that point on. So I didn't see him no more after that.

23 Q. All right. But nothing unusual at the time you saw
24 him, nothing wrong?

25 A. Nothing.

1 Q. Okay. And the moped at that point, that was
2 something new, right?

3 A. Yeah, that was something new.

4 Q. Okay. And can you tell me then ---

5 THE COURT: Could I -- you said, one a.m. or
6 p.m.?

7 MR. THOMPSON: One a.m., I believe, Judge.

8 THE COURT: He said Sunday morning. I just
9 wanted to make sure.

10 Q. Now, after you saw him that Sunday morning, when was
11 the next time you saw him again?

12 A. That was the week after that. It was Sunday around
13 about maybe eleven. I woke up that Sunday morning. The
14 next week following, that Sunday morning. I woke up and
15 I said -- I said, well, I want to -- the way I felt that
16 morning, I wanted to do some charity work or help
17 somebody out or something. And I don't know. I just --
18 just to myself I just like prayed and asked God. I said,
19 I want to help somebody out today. For some reason, you
20 know -- I mean, when I put my clothes on, I reckon my
21 mind led me that way. You know, I was going to check on
22 a couple other guys that stayed over there by Tommy. And
23 so when I went and checked on them -- and I was talking
24 to one guy about, you know -- I mean, because when I got
25 to their house, they didn't have no lights. And I said

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1 both y'all guys stay together and you mean to tell me
2 y'all can't keep no lights on in the house. So I said,
3 well, I'm going to go down here and check on Tommy. I'll
4 be right back.

5 Q. And did Tommy -- was he able to keep lights on at
6 his place?

7 A. Well, I noticed that he didn't have no lights for a
8 while.

9 Q. Right.

10 A. So you know -- but I had -- recently I had done some
11 cement work with him, with another guy. And I said I'm
12 just going to go down there and check on him because
13 something just told me to go down there and check on him.

14 Q. All right. And so you went to check on Tommy?

15 A. Yeah.

16 Q. What happened when you got to Tommy's house? Do you
17 remember what day it was?

18 A. It was on a Sunday, but I don't remember the date or
19 nothing. It was on a Sunday.

20 Q. Okay. Was it about a week after you'd last seen
21 him?

22 A. A week after I seen him.

23 Q. Okay.

24 A. And so I walked down to Tommy's and walked up his
25 steps. I knocked on the door. And I said like, Tommy

1 bought him a new moped. He's short, you know, and he got
2 high steps. So I say, you know, I don't think he can --
3 that little short joker can't push that heavy moped up
4 the steps and put in the house. So I said, I'll go
5 around the side of the house where he keep his lawnmowers
6 and stuff and check. And no moped. So I said, I don't
7 know. Today's Sunday. I don't think Tommy working
8 today. So I said, let me go back. So I walked back up
9 to the steps and I knocked again on the door. I hollered
10 and called his name. So the door came open. I took a
11 couple of steps in. I knew where his room was because I
12 had been there before.

13 Q. So you didn't have to turn the knob to open the
14 door?

15 A. I didn't have to turn the knob to open the door.

16 Q. Okay. It came open as you were knocking on it?

17 A. Yeah, knocking, you know. So I just pushed the door
18 on in and took a couple of steps and looked in his room,
19 and he was just laying there.

20 Q. And now you motioned over to the left. Is his room
21 over to the left from the front door?

22 A. To the left, yeah.

23 Q. Okay. And so when you opened that door, how far did
24 you go into the house?

25 A. Well, when I opened the door, I took about two

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1 steps. You can take two steps, and the other entrance
2 you could see that his room is right there. You know,
3 the living room on this side, the right side, and his
4 room was right here. You take two steps and that's it.
5 You can see. And when I took the two steps and seen him
6 laying down, I hollered at him. I said, Tommy, you been
7 hanging out last night drinking and going on? I said,
8 get up, Tommy, get up, you know. He wasn't moving. And
9 you know, when I started looking around, you know, I
10 looked again at him. And the way he was laying, you
11 know, I was just saying something ain't right with Tommy.
12 Tommy -- you know what I mean -- I think something wrong.
13 I think this man's dead or something, you know. And I
14 kind of smelled a little odor, so I left out of the
15 house.

16 Q. So you smelled an odor and left out?

17 A. That's right.

18 Q. Did you go any closer to him than the couple steps
19 you took?

20 A. No, no. Just right there at the door entrance and
21 looking at him, you know, telling him to get up.

22 Q. Were you able to tell that something was wrong at
23 that point?

24 A. Yeah. At that point when he didn't move and I
25 hollered maybe three times or twice, you know, telling

1 And I took the phone out of her hand, and I talked to the
2 dispatch. She told me, go back over there and see if you
3 can shake him. I said you stay on the phone. And I
4 walked back up the steps. At that point in time when I
5 swung the door, I couldn't go back in there. So I ran
6 back down the steps, you know, gagging and told them to
7 come and get him, I think he's dead.

8 Q. And did you wait there until the police got there?

9 A. Yes, uh-huh (affirmative).

10 Q. As a matter of fact, when the police got there, did
11 they talk to you about what you had found?

12 A. The detective talked to me, wanted to take me, take
13 me uptown, and they was going to talk to me and wanted me
14 to give my statement about how I found him.

15 Q. And you gave a statement as to how you found him?

16 A. Yes, sir.

17 Q. Did they also take photographs of your shoes while
18 you were there?

19 A. Yes, sir.

20 Q. All right. And I'll show you State's Exhibit Number
21 32. Is this one of the photographs they took of you at
22 the scene?

23 A. Yes, sir.

24 Q. And that was right outside the house, right?

25 A. Right.

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1 Q. And that is your -- what are you showing to the
2 detectives in that picture and to the officers?

3 A. I'm showing the bottom of my shoe.

4 Q. Okay. Thank you, Mr. Stephens [sic]. Please answer
5 any questions the Defense has for you.

6 CROSS-EXAMINATION

7 BY MR. RAWLINSON:

8 Q. Mr. Robinson, I only have a few questions for you.
9 Do you have any -- were you a witness to this crime?

10 A. No, I wasn't a witness. I just found the man.

11 Q. Okay. And so you never saw Christopher Poage hit
12 your friend?

13 A. No. No, sir.

14 Q. Never saw him stab your friend?

15 A. No, sir.

16 Q. And just to be clear, you said the way you viewed
17 Tommy's house, when you come into the bedroom, it's about
18 two steps and then his bedroom is right to the left?

19 A. To the left, yeah.

20 Q. Right to the left?

21 A. Yeah.

22 Q. All right. Thank you.

23 THE COURT: Redirect?

24 MR. THOMPSON: No, Your Honor.

25 THE COURT: You can step down and be excused.

1 We appreciate it, Mr. Robinson.

2 THE WITNESS: Thank you, sir.

3 THE COURT: All right. Call your next witness.

4 MR. BRACKETT: The State would call Officer
5 Shaun Watson.

6 **SHAUN WATSON,**

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. BRACKETT:

10 Q. Good morning, Officer Watson. Your name is Shaun,
11 S-H-A-U-N?

12 A. Yes, sir.

13 Q. Watson, W-A-T-S-O-N?

14 A. Yes, sir.

15 Q. All right, sir. Where are you employed?

16 A. The Rock Hill Police Department.

17 Q. And what do you do with the Rock Hill Police
18 Department?

19 A. Currently, I'm assigned to the street crime unit.

20 Q. Okay. And how long have you been a police officer?

21 A. About three and a half years.

22 Q. All right. So you were employed as a police officer
23 back in the summer of 2008?

24 A. That's correct.

25 Q. Okay. Did you get a call in August of 2008, early

1 August, to go to [REDACTED] Steele Street?

2 A. Yes, sir.

3 Q. And you were dispatched there by the dispatcher?

4 A. That's correct.

5 Q. Okay. Were you riding in your own car? Tell us
6 what -- where were you in your ...

7 A. I was currently in training at the time, so I was
8 riding with another officer, Officer Zike.

9 Q. Okay. And so how long had you been with the
10 Department at that point?

11 A. Five months.

12 Q. Okay.

13 A. Less than.

14 Q. There's a period of time where you have to ride with
15 a more experienced police officer?

16 A. That's correct. We have sixteen weeks of training
17 at the Department aside from the Academy.

18 Q. Okay. Now, on that particular day, did you and
19 Officer Zike respond to the Steele Street residence you
20 were dispatched?

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

22 Q. All right. Now, tell us what you saw. Was this
23 daytime or nighttime?

24 A. This was daytime. It was early. We received a call
25 and we arrived at Steele Street that morning.

- 1 Q. All right. What did you do when you arrived there?
- 2 A. When we got out, Mr. Robinson met us in the yard.
- 3 Myself and Officer Zike walked up. We could smell the
- 4 odor. I basically stuck my head in the door, observed
- 5 the victim lying there, obviously had passed away.
- 6 Q. Okay.
- 7 A. At that time, I backed back out, and we set it up to
- 8 make it a crime scene.
- 9 Q. Did Mr. Robinson -- you heard what he testified to.
- 10 Did he basically tell you the same thing at the scene
- 11 that day?
- 12 A. Yes, sir, that's correct.
- 13 Q. And is that what you were dispatched in reference to
- 14 when you first received the call on the radio?
- 15 A. Yes, sir, that's correct.
- 16 Q. Okay. Now, Steele Street is in what city?
- 17 A. It's Rock Hill, South Carolina.
- 18 Q. And what county is that?
- 19 A. In York.
- 20 Q. Okay. Now, how far did you go into the house,
- 21 officer?
- 22 A. Took probably one step inside, enough to step in,
- 23 look to the left where I could see Mr. Mitchell laying.
- 24 Q. Okay. And how long were you in the house at that
- 25 point?

1 A. No more than two seconds.

2 Q. Did you have -- was there any notion in your mind at
3 that particular time as you were observing Mr. Mitchell
4 on the ground in his bedroom that you could have rendered
5 him any aid or assistance?

6 A. No, sir.

7 Q. Was it clear to you he was deceased?

8 A. Yes, sir.

9 Q. Okay. So at that point -- and that's essentially
10 what your job is when you're called out to a house like
11 this, first help anybody that's in there?

12 A. That's correct.

13 Q. Isn't that right?

14 A. Yes, sir.

15 Q. And if you establish that they're beyond help, then
16 your next obligation as an officer is to do what?

17 A. If we can provide it, we can call E.M.S., have them
18 come out and provide further aid. Then it would go from
19 there, possibly call in the coroner.

20 Q. And how about as far in regards to securing the
21 crime scene?

22 A. We secure the entire property. At that point, we
23 call detectives out and have them, you know, start
24 looking to see what happened, try to figure it out.

25 Q. Now, when you say secure the crime scene, tell the

1 jury -- they're not familiar with what that is. What
2 does that process entail?

3 A. When we secure the scene, no one's allowed to go
4 inside obviously. We have a log. We keep who goes in,
5 who comes out, just keeping track of everything. So that
6 way we know what goes on. We basically just control
7 everything that happens at that residence.

8 Q. Okay. And that's to prevent any evidence from
9 accidentally getting tampered with or destroyed?

10 A. That's correct.

11 Q. All right. And so did you and Officer Zike and the
12 other officers who responded from the police department,
13 did you, in fact, properly secure the crime scene?

14 A. Yes, sir, that is correct.

15 Q. All right. And at some point in time, did the
16 forensic services unit respond as well as detectives from
17 the Rock Hill Police Department?

18 A. That's correct, sir.

19 Q. All right. And at that point in time, when the
20 detective arrives on the scene, who is in charge of the
21 investigation at that time?

22 A. The detective would be at that time.

23 Q. Okay. So how long were you at the scene that day?

24 A. Several hours just to protect the crime scene.

25 Q. Okay. And did you use tape and rope the house off

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1 basically and the area around it?

2 A. Yes, sir, we did.

3 Q. And keep the crowd back. Was there a crowd that
4 gathered?

5 A. Yeah. There were a few people walked up. Obviously
6 a lot of people know Tommy. They walked up and just kind
7 of wanted to know what happened.

8 Q. Thank you, sir. Please answer any questions that
9 counsel for Defense may have for you.

10 MR. RAWLINSON: No questions, Your Honor.

11 THE COURT: All right. You can step down and
12 be excused. Appreciate your time. Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Call your next witness.

15 MR. BRACKETT: Thank you. The State would call
16 Mike Williams.

17 **MIKE WILLIAMS,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. BRACKETT:

21 Q. Good morning, sir. Would you please state your full
22 name and spell your last for the court reporter?

23 A. Michael Lee Williams, W-I-L-L-I-A-M-S.

24 Q. All right, sir. And where are you currently
25 employed?

- 1 A. I'm retired.
- 2 Q. Okay. And do you do any work at all right now?
- 3 A. No.
- 4 Q. All right, sir. Where were you employed prior to
5 retirement?
- 6 A. I was employed with the Rock Hill Police Department
7 for twenty-five years.
- 8 Q. Okay. And so you retired from the Rock Hill Police
9 Department?
- 10 A. Yes, I did.
- 11 Q. Very good. What was your last assignment with the
12 Rock Hill Police Department?
- 13 A. For the last sixteen years, I was assigned to the
14 forensic services unit. Which in 2002 we moved our unit
15 out of the city of Rock Hill, and we made a multi-
16 jurisdictional unit which included the sheriff's
17 department in other cities where we processed crime
18 scenes throughout the county as a single unit. I was a
19 field supervisor for that unit.
- 20 Q. And can you give us a little bit about your
21 background, your training and your experience in crime
22 scene investigation?
- 23 A. Yes. In 1980 I went to the Police Academy when I
24 was hired, became a certified law enforcement officer in
25 Columbia. I returned to the Academy after several years

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1 to take advanced classes dealing in fingerprints. I
2 returned to the Academy and took three separate advanced
3 classes dealing in fingerprint identification, latent
4 fingerprint processing and an I.D. technician course. I
5 have attended two separate courses at the University of
6 North Florida at I.P.T.M., which is the Institute of
7 Police Technology and Management, which entailed crime
8 scene processing and buried bodies and surface skeletal
9 remains courses. I've attended courses at the University
10 of Louisville in Kentucky which is the Southern Police
11 Institute for homicide crime scene processing courses.
12 I've attended courses at the Charlotte Police Academy in
13 Charlotte, North Carolina.

14 Q. All right, sir. And in the course of -- and how
15 many years of experience did you have in actual hands-on
16 crime scene investigation and processing?

17 A. Before our crime scene unit was started in 1992, the
18 patrol and the detective division in Rock Hill handled
19 some cases ourselves, so it started in 1980 when I became
20 a law enforcement officer. We actually worked some of
21 our own scenes before starting our unit.

22 Q. All right, sir.

23 A. So twenty, twenty-five years.

24 Q. And how many years did you have focused exclusively
25 on doing nothing but crime scene investigation for the

1 F.S.U. or Rock Hill combined?

2 A. Sixteen years with crime scene processing, solely
3 working crime scenes.

4 Q. Now, have you been qualified as an expert in the
5 area of crime scene investigation?

6 A. Yes. I've been qualified in court as an expert four
7 different times.

8 Q. All right, sir.

9 MR. BRACKETT: Your Honor, at this time, I
10 would tender Mr. Williams as an expert in the area of
11 crime scene investigation.

12 THE COURT: Any voir dire?

13 MR. RAWLINSON: No objection, Your Honor.

14 THE COURT: Okay. I find he's qualified.

15 MR. BRACKETT: Thank you, Your Honor.

16 THE COURT: Members of the jury panel,
17 generally individuals are only able to give -- testify as
18 to facts, something they've seen or heard. It could be
19 taste, touch or smell. But usually it's something
20 somebody's seen or heard, such as an eyewitness.

21 However, where an individual has certain training, skill,
22 education and experience in a certain area, the law
23 allows that person to be qualified as what we call an
24 expert and take facts and from those render an opinion.

25 The example I sometimes use is that of a physician.

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1 This is not a physician. He's an expert in other areas.
2 But if I have a child that's feverish, I can feel they're
3 hot. They may be vomiting. I can see that. They may be
4 shaking -- I can see that -- and having chills. Well, I
5 could come in and testify to all of that, but I could not
6 testify as to what was wrong with the child. However, I
7 could take that child to a physician. And a physician,
8 because of their education, skills, training and
9 knowledge, could take those facts that I have seen and
10 from those reach an opinion. In medicine, we call it a
11 diagnosis. But say the child has the flu or the child
12 has the things going around. But anyway, that's what an
13 expert is allowed to do.

14 Now, expert witnesses are to be judged just along
15 with other witnesses, like I told you yesterday as far as
16 credibility, and we allow experts to testify to assist
17 you. What they testify to is not binding on you. It is
18 allowed into evidence to assist you in reaching whatever
19 determination you unanimously decide.

20 MR. BRACKETT: Thank you, Your Honor.

21 Q. All right. Can you give the jury an overview of
22 what crime scene investigation is, what your job is as a
23 crime scene investigator? What is the function and
24 purpose of a crime scene investigator in a homicide?

25 A. The crime scene unit or investigation unit,

1 basically we go out -- if an officer goes to a scene and
2 he sees that there's evidence to be collected, they don't
3 have the equipment or the supplies to collect evidence.
4 They do have basic skills to fingerprint scenes.
5 Anything beyond that, they would page out to a crime
6 scene investigator. We will respond to anything from
7 larcenies to murders, anything in between that. What we
8 would do is we would go out and we would photograph, make
9 documentation of the scene with photography. We would
10 complete sketches of the scene with measurements to place
11 things back in the scene at a later date.

12 We would also collect any physical evidence
13 including D.N.A., latent fingerprints, weapons. The body
14 would be seized by the coroner. We would secure the body
15 and have them recover the body. But we basically will go
16 out and collect any physical evidence that would link an
17 individual to a case and try to help clear the case with
18 the detective division.

19 Q. All right, sir. So you must be a fan of the show,
20 C.S.I.?

21 A. No.

22 Q. All right. What -- have you seen the show?

23 A. I watched the very first episode, and that was it.

24 Q. Okay. Can you tell us -- does it show us what crime
25 scene investigation is really like?

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1 A. It shows them going to a crime scene, and that's
2 about it. The things that they do on T.V., you cannot do
3 in real life. Ever since that show has aired, almost
4 every scene that I processed after that fact, that was
5 the first thing that came out of the victim's mouth, are
6 y'all going to do it like C.S.I. does it? And we have to
7 explain to them that that's T.V., that's not reality.
8 They can collect evidence and D.N.A. on T.V. and have a
9 result in ten minutes. Well, you can't do that. It's a
10 fictitious show for entertainment.

11 Q. Okay. So in fact hasn't C.S.I. won an award for
12 best science fiction drama on T.V.?

13 A. Yes. Something like Star Trek.

14 Q. Okay.

15 A. I think they won it too.

16 Q. All right, sir. Can you tell me, did you respond
17 to, in early August of 2008, a death scene at Steele
18 Street in the City of Rock Hill ---

19 A. Yes.

20 Q. --- involving 2008 -- August of 2008, involving ---

21 A. Yes, I was paged out to that scene.

22 Q. All right, sir. Can you tell the jury what
23 condition -- let me first show you a couple of
24 photographs. These are exterior shots of the house.

25 State's Exhibit 19 and 20. Do you recognize what those

1 depict?

2 A. State's Exhibit 19, this is a photograph of the
3 exterior of the residence that I responded to. And
4 State's Exhibit 20 is a closeup showing the address of
5 the residence that I responded to. .

6 Q. All right, sir.

7 MR. BRACKETT: I would move 19 and 20 for
8 identification into evidence at this time.

9 MR. RAWLINSON: Without objection.

10 THE COURT: In without objection.

11 (WHEREUPON, State's Exhibits Number 19 and 20 were
12 admitted into evidence.)

13 Q. When you arrived, had the scene been properly
14 secured?

15 A. Yes. Actually, two members of the unit had already
16 responded to that location, and the scene was secured.
17 When I got there, they were already there.

18 Q. All right, sir. When you first walked into the
19 crime scene, what's the first thing that a crime scene
20 investigator does in a situation like that?

21 A. Well, the first thing we do is we check with the
22 officer that's in control of the scene, and they log us
23 in on the crime scene log sheet. That let's us enter the
24 crime scene. The first thing we'd want to do is we want
25 to carefully walk around the outside of the residence and

1 any scene and visually look for any physical evidence
2 that we may find there, anything that is out of place or
3 damaged. Anything like that.

4 Q. Did you do that in this case?

5 A. Yes, we did.

6 Q. All right. After that, what do you do?

7 A. After that, we get together and between ourselves
8 find out how we're going to process the scene. We have
9 one individual start taking photography, at which time
10 the same method would be taken. He would take and do
11 photography. He would go around the outside of the
12 residence and photograph the residence all the way
13 around. We would then advance and make our way up to --
14 we actually made our way up to the front porch on this
15 scene and started photographing the scene. As we moved
16 inward, we would stop and take photographs in different
17 segments of shorter distances to the residence and then
18 into the residence, photograph the entire residence
19 inside.

20 Q. All right. And that's before anybody has a chance
21 to move anything, to document it as you found it?

22 A. Yes.

23 Q. Okay. And then at later points in time, are more
24 photographs taken, detailed photographs?

25 A. Yes. Once we find points of interest or evidence,

1 Q. All right, sir. Now, were you able to locate the
2 body of Mr. Mitchell in the home?

3 A. Yes. Once you entered the residence, there's a
4 small little stoop inside the residence. As soon as you
5 step into that opening inside the front door, you
6 immediately look to the left and there's a bedroom where
7 we noticed a victim lying face down on the floor.

8 Q. Can you tell the jury what condition the body was
9 in?

10 A. The body was in a very bad state of decomp. The
11 entire head area and shoulders area were covered in
12 maggots. You weren't able to see his head. Around his
13 waist, you could see the maggots coming out from
14 underneath the clothing. His arms -- he was very swollen
15 and very -- in a bad state of decomposition.

16 Q. Okay, sir. Is one of your responsibilities -- in
17 terms of documenting the interior of the residence, do
18 you try to do a sketch?

19 A. Yes. We do sketches on homicides and other scenes.
20 But we do a sketch of the residence. We measure the
21 rooms, and then we do a sketch with -- or on that sketch,
22 we also indicate number cones to indicate the items that
23 we found and photographed on the sketch.

24 Q. All right, sir. And I'm showing you what's been
25 marked as State's Exhibit 106. I'm showing you what's

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1 been marked as State's Exhibit 106 for identification.

2 Can you tell me what that document is?

3 A. This is a sketch of -- State's Exhibit 106 is a
4 sketch of the residence on Steele Street.

5 Q. Does that accurately depict -- who created that
6 document?

7 A. I did.

8 Q. Okay, sir. And does it accurately represent the
9 interior of the house as you found it that day and
10 properly diagram the house out in terms of the size of
11 the rooms and the location of various objects in there?

12 A. Yes. The sketch is not to scale, but this is how we
13 found the house that day.

14 Q. All right, sir.

15 MR. BRACKETT: At this time, I would move
16 State's Exhibit 106, which is the computer printed
17 version of the crime scene diagram, into evidence. And I
18 would ask that this larger blowup of that sketch be
19 marked as State's Exhibit 106A and marked for
20 identification and moved into evidence as well.

21 MR. RAWLINSON: No objection, Your Honor.

22 THE COURT: In without objection.

23 (WHEREUPON, State's Exhibit Number 106 was admitted
24 into evidence, and State's Exhibit Number 106A was
25 marked and admitted into evidence.)

1 Q. Okay, sir. Would it assist you in explaining to the
2 jury the processing of this crime scene to refer to this
3 crime scene diagram?

4 A. Yes.

5 Q. Before we get to that ...

6 MR. BRACKETT: I'm sorry. Is that obstructing
7 your view, Your Honor? Is this a good place for this,
8 Your Honor? I don't want to obstruct your view of the
9 jury.

10 THE COURT: That's fine. That's fine.

11 Q. Before we get to that though, let me ask you one
12 other question, Investigator Williams. How difficult is
13 it to process a crime scene like this where obviously the
14 house is in disarray, it's dirty, as you've described,
15 and the body is decomposed, there's insect activity,
16 maggots and so forth? Does that complicate the
17 processing of the crime scene?

18 A. Yes. That would -- once the body had started to
19 decompose, the body -- actually at this location, the
20 floor had body fluid that had leaked away from the body
21 and was covering the entire floor into the hallway. And
22 actually, it actually soaked into the walls. And with
23 that type of scene, you're not able to fingerprint
24 certain things in the residence because the powder would
25 basically just stick right to the fluid and basically

1 turn like a gooey powder. So it definitely hinders some
2 of the processing techniques that you can do.

3 Q. Okay, sir. And if you have a house that's messy, I
4 mean, how do you typically decide which things you're
5 going to fingerprint or swab for D.N.A.?

6 A. Basically on visual examination. If items are
7 contaminated with any other material, if a house is very
8 dirty and dusty, when you fingerprint an object -- if
9 you've ever picked your T.V. up or if you've ever touched
10 something in your house -- it's dusty -- and you take
11 your hand off, you'll see that you leave an outline of
12 your fingers on that item. Well, what you're doing is
13 that when you touch that item, your hand is not leaving a
14 fingerprint, you're picking up the dust. And all you'll
15 have left is just the outline of your fingers. There
16 wouldn't be any ridge detail left of your fingerprints on
17 that object. This house was very dirty as far as not
18 being cleaned. And that's one of the problems that we
19 had with this location was some items may have been
20 touched in this residence by the owner and by anybody
21 else, and they would not leave their prints there.

22 Q. All right, sir. Well, despite the difficulties
23 posed by this crime scene, can you relate to the jury
24 what steps you and the crime scene unit took to process
25 this scene to gather evidence?

1 A. Yes. We -- once we found the items that we were
2 collecting and they were photographed and marked with
3 number cones, those items were recovered, placed in
4 evidence envelopes or evidence bags, secured by myself
5 and then taken to the Rock Hill Police Department and
6 placed into evidence lockers to be secured in the
7 evidence room for later processing or later being sent to
8 SLED, which is the State Law Enforcement Division in
9 Columbia, for processing. Numerous items that we knew we
10 wouldn't be able to get latent fingerprints from, we did
11 swabs for D.N.A. purposes to see if we could recover any
12 D.N.A. from any of those objects.

13 Q. When you say swabs, can you explain to the jury what
14 you're talking about?

15 A. It's a Q-tip swab that is -- we order in group packs
16 of a thousand. They're separately sealed. You have to
17 open up the paper wrapper, remove the swab. We use
18 distilled water. You wet the end of the swab and then
19 you just swab an area where you think there may be D.N.A.
20 Then you have it -- the ones that we use has a plastic
21 container that goes over the swab so when you swab an
22 area, you can push the container up and pop a cap and it
23 encloses the swab inside a sealed area to where we can
24 place it in the evidence bag and then have it transported
25 to the law enforcement center to be placed into evidence.

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1 Q. All right, sir. Now, if you don't mind, would you
2 step off the stand for just a minute and maybe step over
3 to this corner so that you can see this diagram and you
4 don't block any jurors view? And I believe this little
5 pointer here maybe can help you. Let's start in the top
6 right-hand corner of the house there. What's the room
7 there that's depicted on the crime scene diagram, top
8 right-hand corner?

9 A. Up here?

10 Q. Yes, sir.

11 A. This is the living room of the residence. The front
12 door -- this will be the right rear room in the
13 residence.

14 Q. Is that the living room?

15 A. I'm sorry. The kitchen of the area. I'm sorry.

16 Q. What condition was it in?

17 A. There were chairs that were turned over in the
18 kitchen, some broken glass that we found on the floor,
19 some shoe prints on the floor. What appeared to be a
20 struggle or something happened in that room to knock all
21 those chairs over.

22 Q. All right, sir. And did you attempt to recover and
23 swab for D.N.A. or fingerprints items in that ---

24 A. Yes. I actually processed this room with
25 fingerprint powder to try to recover any latent

1 fingerprints that may be found. And on these chairs and
2 items that we found that were disturbed, we took swabs
3 from those chairs for D.N.A. purposes.

4 Q. Okay, sir. How about the glass that was on the
5 ground? Did you attempt to recover anything off the
6 broken glass?

7 A. To my recollection, I believe we collected glass and
8 turned it in to be analyzed. I'd have to look at my
9 notes to see if we swabbed those items or not.

10 Q. Okay. The room directly below that, what room is
11 that?

12 A. This one?

13 Q. Yes, sir.

14 A. This is the living room of the residence. That
15 would be the right front room.

16 Q. And what did you find in there?

17 A. In this room we found some groceries that were on
18 the -- in the living room that had just -- looked like
19 they had been purchased but hadn't been put up. We found
20 a flashlight, screwdriver, a stick behind the door and
21 the camera bag, camera case bag in that room.

22 Q. All right, sir. Now, I'm trying to put the jury in
23 your position. When you're processing a scene like this,
24 do you know what's significant at that point in time,
25 what has meaning, what might have been touched or what

1 might have been sitting there for six months untouched?

2 Do you have any idea?

3 A. Not without a witness.

4 Q. And was there anybody there to tell you?

5 A. No.

6 Q. So in a situation like that, what do you try to do?

7 A. We try to collect everything that we think is

8 possible that would indicate what had happened at this

9 location.

10 Q. Okay, sir. And did you attempt to -- is that what

11 you did in there?

12 A. Yes.

13 Q. You recovered numerous different items?

14 A. Yes.

15 Q. All right, sir. And did you attempt to secure

16 fingerprints and swab areas that you thought might have

17 been touched as well?

18 A. Yes. We processed the entire residence. On the

19 outside of the doors, we processed the door knobs for

20 latent fingerprints with no results or no identifying

21 prints recovered. On the inside of the door knobs, we

22 swabbed those for D.N.A. On the outside we processed the

23 doors and wood frame and all for fingerprints. The only

24 fingerprints that I recovered by processing this house

25 was on this wall in the back hall. As soon as you go out

1 of the kitchen -- as soon as you go out of the kitchen
2 and right around the corner, right here on this wall, I
3 recovered identifiable fingerprints.

4 Q. Okay, sir.

5 A. And that was the only print that we recovered that
6 was identifiable in the residence.

7 Q. All right, sir. How about as you went through and
8 you find these chairs turned over and so forth? Did you
9 document those items photographically as well?

10 A. Yes, we did.

11 Q. Okay. In the bedroom, turning to the bottom left-
12 hand corner where the body is located, can you describe
13 for the jury the processing of that room and what you
14 were able to recover, what items you collected?

15 A. Yes. Once you come in the front door, the little --
16 I call it the stoop area, is this little area here. You
17 make an immediate left. This would be the left front
18 bedroom of the residence. The victim was found lying in
19 this position here face down. The number cones indicate
20 several -- there were things that we found that we
21 thought might be significant to this case, and they are
22 listed over here. I can call the number out and what the
23 item is.

24 Q. If you would, please.

25 A. Starting with item number one would be listed as the

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1 victim. We photographed him with the number cone to
2 indicate that's where we found him. Item number two was
3 a shoe print, a red stain. And we listed it as red
4 stain. It appeared to be blood. But at that time, we
5 listed them as red stains because we don't know if that's
6 blood or not until it's analyzed. Item number three was
7 a paper bag with red stains, and that was at the foot of
8 victim on the ground. Item number four was another shoe
9 print that was found in red stains. Item number five was
10 a -- was here -- was also a shoe print found in red
11 stains. Item number six was a condom wrapper and a
12 cigarette pack that was found on the floor. Item number
13 seven was a condom that was found on the floor in the
14 bedroom. Item number eight at the foot of the bed was a
15 condom in a wrapper. Item number nine was right here on
16 the bed. That was a -- looked like a two-by-two wooden
17 stick with red stains on it. Item number ten, which was
18 found also lying on top of the bed, was a shovel with red
19 stains on the shovel. Item number eleven is found on the
20 bed also. And that was a liquor bottle. Item number
21 twelve was found in the corner, and that was a partial
22 shoe impression on some plastic. Thirteen, that was a
23 shoe impression that was found that was leading from the
24 living room toward the kitchen. That was a shoe
25 impression found in red stains. Item fourteen was in the

1 kitchen, and it was a shoe impression in red stains that
2 was leading in the same direction into the kitchen. Item
3 fifteen was the bed comforter that we found a lot of
4 these items were on, on the bed. Item sixteen, we found
5 outside of the left rear room, was a white shirt. Item
6 seventeen on the dresser indicates that that was the
7 dresser. Item eighteen was found on the living -- on the
8 chair -- or the couch was a screwdriver. Item nineteen
9 on the floor in front of the couch was a flashlight.
10 Twenty -- a minute ago I think I said that was a camera
11 case. I stand corrected. Twenty was a flashlight that
12 was found sitting on, I believe it was, the heater.
13 Twenty-one was found on the night stand in the bedroom,
14 and that was a knife case. And then twenty-two behind
15 the door was the two-by-two stick.

16 Q. All right, sir. The items that are attached to the
17 house, door knobs, wood frames, and those sorts of things
18 that you might want to process for D.N.A., you use the
19 swabs on those because they're part of the house, is that
20 correct?

21 A. Yes.

22 Q. Now, the physical items that are -- like if this pan
23 you suspected that it was part of the crime or might have
24 been touched by a suspect, would you process that at the
25 scene, or how would you deal with it?

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1 A. No. We would actually photograph it, document it
2 and we would collect it and turn it into evidence to be
3 analyzed at a later date. And if it was for D.N.A., it
4 would be transferred from the Rock Hill Police Department
5 to SLED in Columbia.

6 Q. Who does our D.N.A. testing?

7 A. Yes.

8 Q. Yeah. SLED is the agency that handles that in
9 Columbia?

10 A. Yes, sir.

11 Q. All right, sir. Were there numerous items that --
12 like the shovel, the stick, other items, flashlights and
13 so forth, were those items actually sent to SLED for
14 processing?

15 A. Yes. The items that we collected -- mainly, most of
16 all the items we collected were transported to SLED for
17 testing.

18 Q. Okay. And an item like this, just to come back to
19 the question of, you said, swabbing. I'm touching this
20 item and I'm rubbing it on my hand. My hand has sweat
21 and oil on it and so forth, and I put it down there. If
22 you swab that, would you expect to find my D.N.A. on it?

23 A. Yes.

24 Q. Okay. And would you be able to collect a sample
25 large enough to say conclusively that that was my D.N.A.

1 on that pen?

2 A. Yes.

3 Q. Have you, in fact, done that before?

4 A. On another case we actually cleared a case by an ink
5 pen.

6 Q. Pulling D.N.A. just from having held -- having the
7 suspect hold it?

8 A. Yes, sir.

9 Q. Okay. So you're cognizant of that at the time
10 you're processing the scene? So you're looking for that,
11 microscopic amounts? That's the purpose of the swabbing?

12 A. That's correct.

13 Q. Okay. I'm going to show you a series of photographs
14 marked State's Exhibit 27, 28, 29, 30, 25, 26, 24, 23,
15 and 31. I just ask if you would, sir, take a look at
16 those photographs and tell me if you can identify what
17 those photographs depict?

18 A. State's Exhibit 31, this is a photograph ---

19 Q. Without going into the detail, do you recognize
20 what's depicted in the photographs?

21 A. Yes. This is a photograph of the bedroom.

22 Q. Okay. And just look through them all real quick and
23 see if you can answer affirmatively to all of them.

24 A. State's Exhibit 23, yes, I can identify that.

25 State's Exhibit 24, yes. State's Exhibit 26, yes.

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1 Exhibit 25, yes. State's Exhibit 30, yes. State's
2 Exhibit 29, yes. State's Exhibit 28, yes. And State's
3 Exhibit 27, yes.

4 Q. Okay, sir. Do all of those -- are all of those
5 pictures taken from inside the house by the crime scene
6 unit?

7 A. Yes, they were taken by our unit.

8 Q. Do they accurately depict the scene as it was found
9 by you and the other members of the unit, Investigator
10 Barnwell particularly, on the day you processed the house
11 on Steele Street?

12 A. Yes.

13 MR. BRACKETT: Your Honor, I would move those
14 items -- I'll repeat the numbers again and try to get
15 them in order -- State's Exhibit 23, 24, 25, 26, 27, 28,
16 29, 30, and 31 into evidence at this time.

17 MR. RAWLINSON: Without objection.

18 THE COURT: In without objection.

19 (WHEREUPON, State's Exhibits Number 23 through 31
20 were admitted into evidence.)

21 MR. BRACKETT: Now, if you could, Madam Clerk,
22 dim the lights so that the jury can see.

23 Q. That is what's previously been introduced as State's
24 Exhibit 19, the exterior of the house. Does that depict
25 the house as you remember it on Steele Street that day?

1 A. Yes, sir. This photograph was taken by the forensic
2 unit or crime scene unit.

3 MR. BRACKETT: Okay. Now, if you would show
4 State's Exhibit 31.

5 Q. And if you would orient us on that diagram there,
6 sir. Show us where you would be standing to view.

7 A. This photograph would have been taken in this area
8 right here at the door looking into the bedroom which
9 would be the left front room in the residence.

10 Q. Okay. And if you would, just explain to the jury
11 what they're seeing in this photograph here.

12 A. This is a overall photograph of the bedroom where
13 the victim was found lying on the ground. The number
14 cones had been placed there to represent the items that I
15 just explained on the diagram to show you in a photograph
16 of where those items were in that room.

17 MR. BRACKETT: Okay. And State's Exhibit 24.

18 Q. This is a closeup above the right leg of the victim.
19 Can you tell the jury what those cones depict?

20 A. Yes. Cone number four and number five are the shoe
21 impressions that are on the ground or on the floor in the
22 bedroom that we found in red stains. Number eight is the
23 condom and wrapper that was found at the foot of the bed
24 on the floor.

25 Q. Okay.

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1 MR. BRACKETT: And Mr. Thompson, if you would
2 show 25.

3 Q. It's a little bit tough in that it's not as bright.
4 Can you use your pointer and show on that picture where
5 the footprint is?

6 A. Yes. You can actually see a faint outline of the
7 shoe impression on the floor in the bedroom.

8 Q. Okay. Is it just the outline, or can you actually
9 see some of the design on the sole of the shoe?

10 A. On this photograph you can see the outline, but
11 actually a closeup or a closeup shot of that, you can
12 actually see a partial shoe pattern of the sole of the
13 shoe on the floor.

14 MR. BRACKETT: Let's try 26, Mr. Thompson.

15 Q. Okay. Can you show a little bit? That's a little
16 more detailed shot of the actual ---

17 A. The shoe impression. You can see some outline of
18 the shoe in this photograph, a little closer up.

19 Q. Okay. Have you seen that design, that shoe sole
20 design before?

21 A. Yes, I've seen it numerous times.

22 Q. Okay. And have you worked crime scenes where there
23 have been footprints with that same pattern on them?

24 A. Yes.

25 Q. And it's not obviously the same shoe, just the same

1 general design?

2 A. Yes.

3 Q. Same make or model of the shoe. Are you familiar
4 with it, the kind of shoe that leaves that?

5 A. Yes. From other cases that I've worked, we've found
6 that that pattern is similar to the Nike Air Force type
7 tennis shoe.

8 Q. Okay. Is that a very common shoe worn by a lot of
9 people?

10 A. I would say so.

11 Q. And State's Exhibit 23, the cones immediately below
12 the left leg of Mr. Mitchell?

13 A. This photograph would have been taken -- this is the
14 shoe of the victim. And this photograph would have been
15 taken in this direction here looking back toward number
16 two and three. Number three is a paper bag with red
17 stains, and then number two would indicate the partial
18 shoe impression on the floor.

19 Q. Okay. And I believe that day the crime scene unit
20 actually looked at the soles of Mr. Robinson, the first
21 witness. They looked at the soles of Mr. Robinson's
22 shoes?

23 A. Yes, sir. We had information that he was the one
24 that found the victim and had actually went inside the
25 residence, so we photographed his shoes at the scene and

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1 also took a swab, a known D.N.A. swab, from his mouth.

2 Q. Just to compare it to any that you might have found?

3 A. That's correct. A known standard.

4 Q. All right, sir. And I believe that an inspection of
5 his shoes revealed not only a different sole, but also no
6 blood on the shoes? No kind of debris or dirt or
7 anything to indicate that he'd been in the house very
8 far?

9 A. That's correct. It was a totally different shoe
10 impression on the bottom of his shoe.

11 Q. All right, sir. Now, I'm asking you if you would
12 take a look at 28. Do you recognize where that ---

13 A. Yes. This photograph was taken from the living room
14 looking toward the kitchen into the door of the kitchen,
15 and it's indicating the chair that was turned over -- we
16 found turned over in the kitchen. And also number 13,
17 which is a partial shoe impression in red stain leading
18 into the kitchen. And 14 with a shoe impression going in
19 the same direction that was found in that area.

20 Q. Okay, sir. And State's 30 shows a closer shot of
21 13?

22 A. Yeah. This is right inside or between the living
23 room and the kitchen on the sketch. And you can see the
24 outline of a shoe impression that was found leading in
25 that direction into the kitchen.

- 1 Q. And swabs were taken?
- 2 A. Of the impression, yes, sir.
- 3 Q. Of the red substance to determine what it was?
- 4 A. Yes.
- 5 Q. Okay, sir. And then a closeup shot of 14, cone
- 6 number 14, in State's Exhibit 29?
- 7 A. And this one is very faint. But you can see the
- 8 outline of the shoe impression that we found in the
- 9 kitchen on the floor, and we also took a swab from that
- 10 stain of that shoe impression.
- 11 Q. Okay. Now, returning back to State's Exhibit 31,
- 12 can you show where you had -- what are items 9 and 10 and
- 13 11 on the bed?
- 14 A. Items 9, 10, and 11 here on the bed and in the
- 15 photographs here, item 9 was a two-by-two stick that we
- 16 found lying on the bed with red stains on the end of the
- 17 stick. Item 10 was a shovel that we found with red
- 18 stains on the end of the shovel. I call it the end that
- 19 you would put in the dirt, that end of the shovel. And
- 20 then item number 11 was a whiskey bottle or liquor bottle
- 21 that we found lying on the bed.
- 22 Q. Okay, sir. Were all of these items collected by the
- 23 forensic unit?
- 24 A. They were collected by me.
- 25 MR. BRACKETT: I'd ask that this item be marked

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1 as State's Exhibit 1 for identification.

2 (WHEREUPON, State's Exhibit Number 1 was marked for
3 identification only.)

4 Q. Can you take a look at this and tell me what that
5 is?

6 A. Yes, I can.

7 Q. What is the item in there?

8 A. State's Exhibit 1, this is the shovel that I
9 recovered lying on the bed at the residence.

10 Q. And what was done with the shovel after you
11 collected it?

12 A. The shovel was placed in this bag by myself, sealed
13 and then transported to the law enforcement center where
14 it was placed into evidence, and later it was taken to
15 SLED in Columbia for testing.

16 Q. Okay. And what measures, just explain to the jury,
17 do you take to make sure your D.N.A. doesn't get on it?

18 A. Every scene that we work, we place gloves over our
19 hands to do any processing. And during processing a
20 scene, we may change out our gloves numerous times, at
21 which time we would leave the residence, go to a secured
22 area, take our gloves off, put new gloves on and return
23 back into the scene. As far as touching any evidence or
24 even processing for latent fingerprints, we always glove-
25 up.

1 Q. Okay. And you did in this case?

2 A. Yes, sir.

3 Q. You and all the other forensic service unit members?

4 A. Yes.

5 MR. BRACKETT: Your Honor, I would move State's
6 Exhibit 1 into evidence at this time.

7 MR. RAWLINSON: Without objection, Your Honor.

8 THE COURT: In without objection.

9 (WHEREUPON, State's Exhibit Number 1 was admitted
10 into evidence.)

11 MR. BRACKETT: I have another item here which I
12 would ask to be marked as State's Exhibit 2 for
13 identification.

14 (WHEREUPON, State's Exhibit Number 2 was marked for
15 identification only.)

16 Q. I would ask if you would, sir, take a look at
17 State's Exhibit 2 for identification and tell us, if you
18 can, what that item is?

19 A. Yes. State's Exhibit 2, this is a wooden stick with
20 red stains that I found lying on the bed. It's
21 represented in the photographs as cone number 9. This
22 was also collected, placed in this bag by myself, sealed
23 with evidence tape and then transported to the Rock Hill
24 Police Department and placed into evidence. Later it was
25 transported to SLED for analysis, for testing.

1 MR. BRACKETT: Your Honor, at this time, I
2 would move State's Exhibit 2 for identification into
3 evidence.

4 MR. RAWLINSON: Without objection.

5 THE COURT: In without objection.

6 (WHEREUPON, State's Exhibit Number 2 was admitted
7 into evidence.)

8 MR. BRACKETT: Another item, State's Exhibit 3
9 for identification.

10 (WHEREUPON, State's Exhibit Number 3 was marked for
11 identification only.)

12 Q. I'm showing you what's been marked as State's
13 Exhibit 3 for I.D. Can you identify that item?

14 A. This is -- State's Exhibit 3, this is a green
15 handled screwdriver represented in the photograph or on
16 the sketch as cone 18 that I recovered from the couch in
17 the living room of the residence. This was also secured
18 in this envelope and sealed and taken to the Rock Hill
19 Police Department by myself.

20 Q. Okay. Was this just one of many items that you
21 secured that day, flashlights and so forth?

22 A. Yes.

23 Q. Did you know that this would or would not have any
24 significance?

25 A. This was actually collected the following day. And

1 what we did on this case was during the processing of the
2 scene, we were unable to determine any physical injuries
3 to the victim at the time we were there on the 3rd. I
4 requested that Rock Hill Police Department bring out the
5 mobile command post, and which we set it up in front of
6 the residence. Once the body was removed by the coroner
7 and unable to determine his injuries due to the condition
8 of the body, we had the house secured by law enforcement,
9 the Rock Hill Police Department, throughout the night.
10 And later that afternoon when we left, it was still
11 secured by the police department. And we returned the
12 following day.

13 After the autopsy had been performed, we went back
14 to the scene and collected more evidence, and I collected
15 this screwdriver the following day from the residence.

16 Q. What information had you received that caused you to
17 do that?

18 A. Investigator Barnwell with our unit, along with the
19 Deputy Coroner, traveled to Charleston, South Carolina.
20 The body was so decomposed that the pathologist in York
21 County could not do the autopsy. And they transported
22 the body to Charleston. The body was taken to the
23 Charleston Medical University, and there was an autopsy
24 performed there. Investigator Barnwell, once he
25 determined some of the injuries from the pathologist in

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1 Charleston, relayed back to me by telephone that possibly
2 he'd been stabbed and didn't know if it was by
3 screwdriver, knife. At that time, I went back to the
4 residence and found the screwdriver on the couch that we
5 had previously seen the day before that we collected.

6 Q. All right, sir. So when you went back to the house
7 the next day and entered the house to conduct a search,
8 you were armed with new information?

9 A. Yes.

10 Q. Regarding his manner, his cause of death?

11 A. That's correct.

12 Q. What had been done to him? Information you did not
13 have the day before?

14 A. Due to the body condition, we couldn't see any
15 injuries, physical injuries, to the victim the day we
16 were there.

17 Q. Very good. And now you were looking for knives,
18 anything that could be used to stab?

19 A. Yes. The following day, which would be the 4th, I
20 searched the entire residence, the attic, underneath the
21 residence, the trash can up under the residence, for any
22 knives that may have been used. And the only knife found
23 in the residence was a butter knife that I found in the
24 kitchen that was rusty, in bad condition. In the bedroom
25 of the deceased on the night stand, I found a sheath that

1 a knife would have been in that was empty. And I
2 collected the knife sheath from the bedroom.

3 MR. BRACKETT: Your Honor, at this time I'd
4 move State's Exhibit 3 for identification, the
5 screwdriver recovered from the couch, into evidence.

6 MR. RAWLINSON: Without objection.

7 THE COURT: In without objection.

8 (WHEREUPON, State's Exhibit Number 3 was admitted
9 into evidence.)

10 MR. BRACKETT: And I would ask that this
11 package be marked as State's Exhibit 4 for
12 identification.

13 (WHEREUPON, State's Exhibit Number 4 was marked for
14 identification only.)

15 Q. I'm showing you what's been marked as State's
16 Exhibit 4 for identification. Can you take a look at
17 that envelope, sir?

18 A. Yes. Basically, exhibit 4, this is the empty knife
19 case that I found on the night stand in the bedroom
20 indicated by cone number 21. This was collected by
21 myself and sealed and transported to the Rock Hill Police
22 Department and placed into evidence.

23 Q. Okay, sir.

24 MR. BRACKETT: Your Honor, I would move State's
25 Exhibit 4 for I.D. into evidence at this time.

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1 MR. RAWLINSON: No objection, Your Honor.

2 THE COURT: In without objection.

3 MR. BRACKETT: All right. Madam Clerk, I
4 believe if you could hit the lights and Mr. Thompson, the
5 projector as well.

6 Q. Sir, if you would, please take the witness stand.

7 (WHEREUPON, the witness resumed the witness stand.)

8 Q. Now, you've testified a large number of items in the
9 house were swabbed and/or collected and then sent to SLED
10 for processing for D.N.A.?

11 A. That's correct.

12 Q. And I believe in early February, February 2nd or
13 3rd, somewhere around there, a report came back from SLED
14 detailing the results of the D.N.A. testing?

15 A. Yes.

16 Q. Okay. Would you relate to the jury what the results
17 of the D.N.A. testing on all the various swabs and so
18 forth that you had sent down to SLED? Can you tell the
19 jury, basically, what the upshot of the D.N.A. testing
20 was?

21 A. A summary of the SLED analysis that we received from
22 SLED after they tested the items that we sent from this
23 case, the victim's D.N.A. was found on the shovel, the
24 stick, liquor bottle, the knife sheath or knife case, the
25 condom and various other items that we had sent to

- 1 Columbia.
- 2 Q. The victim's D.N.A.?
- 3 A. Yes, belonged to the victim.
- 4 Q. So you wouldn't find it unusual to locate a victim's
- 5 D.N.A. in his own home?
- 6 A. No.
- 7 Q. Okay. And then the testing that was done, you said
- 8 there were swabs taken from the shovel. Was this the red
- 9 substance that tested positive for the victim's D.N.A.
- 10 from the stick and the shovel?
- 11 A. Yes. That was the red stains that were found on the
- 12 stick from the bed and the shovel from the bed. The red
- 13 stains were tested.
- 14 Q. Okay. And likewise, the swabs that were taken from
- 15 the footprints on the floor, the red -- what appeared to
- 16 be bloody footprints throughout the house, was that also
- 17 determined to be the victim's blood, Mr. Mitchell's
- 18 blood?
- 19 A. Yes.
- 20 Q. All right, sir. Did you -- were you able to -- with
- 21 regard to the swabs that were done on the doors or the
- 22 doorknobs and the screwdriver, what were the results?
- 23 A. On those items, they were tested, and an
- 24 insufficient amount of D.N.A. was found on some of these
- 25 items. And what that means is, is there was D.N.A. found

1 on the items, but they could not be matched to anyone as
2 a positive match.

3 Q. Because of the amount of the D.N.A. that was found
4 was too small?

5 A. Yes, sir.

6 Q. Okay. And was any D.N.A. found that was not the
7 victim's in the house?

8 A. Just the amounts that were not identifiable.

9 Q. And where was that? Where was the unidentifiable
10 D.N.A. found? On what item?

11 A. The liquor bottle and the -- I believe the condom
12 had a different D.N.A.

13 Q. Okay. Now, the liquor bottle swab of D.N.A. that
14 was not identifiable to the victim, there was some D.N.A.
15 found from the victim on the liquor bottle; isn't that
16 correct?

17 A. Yes. It was the victim's D.N.A. and an unknown
18 D.N.A.

19 Q. Okay. The primary person's D.N.A. was the victim's?

20 A. Yes.

21 Q. Okay. Now, around the mouth of the bottle as if
22 somebody had taken a drink from it, there was a bit of
23 unknown D.N.A.?

24 A. That's correct.

25 Q. Okay. But did the D.N.A. examiner of SLED have an

1 opinion as to how -- whether or not it would be possible
2 with that amount to make a positive match?

3 A. My understanding is that the D.N.A. sample was not
4 enough to say it was mine, yours or whose it was.

5 Q. All right. So going through the report quickly
6 here, I believe that the report indicated that they found
7 the victim's D.N.A. on the blade of the shovel as well as
8 the handle of the shovel?

9 A. Yes.

10 Q. And they found the victim's D.N.A. on the red
11 stained area of the wooden stick? In other words, the
12 blood on the stick was the victim's?

13 A. Yes.

14 Q. They found the victim's D.N.A. on the swabs from
15 inside the back doorknob?

16 A. Yes.

17 Q. They found -- from one of the kitchen chairs, they
18 found -- rather two of the kitchen chairs, they found the
19 victim's D.N.A. on that?

20 A. Yes.

21 Q. On -- there's a red stain that was swabbed from one
22 of the legs of the chair inside the bedroom. And I
23 believe the red stain on the inside of the chair,
24 including some of the splatter up under the chair, the
25 blood splatter that had come up under the chair, was also

1 the victim's?

2 A. Yes.

3 Q. The victim's D.N.A. was found on the knife case?

4 A. Yes.

5 Q. As well as the legs of the table in his bedroom near
6 where his body was?

7 A. Yes.

8 Q. And the bottom area of the table, the lower part of
9 the table?

10 A. Yes.

11 Q. And the last thing on the D.N.A., I believe the
12 victim's D.N.A. was on the lip of the bottle as well as
13 if he'd been holding this bottle. Just cupped the bottle
14 on the exterior as well as the lip?

15 A. Yes.

16 Q. And that an unknown, but very small, sample was
17 found from the lip of the bottle as if he'd been sharing
18 it with someone?

19 A. Other than the victim, that's correct.

20 Q. Now, turning to the fingerprints, were any
21 fingerprints lifted from the scene?

22 A. The only fingerprints, identifiable prints,
23 recovered from the scene was taken from the back hall
24 toward the back door.

25 Q. Okay, sir. And did they match either of the

1 Defendants, Mr. Jackson or Mr. Poage?

2 A. They did not.

3 Q. How, in your opinion -- you've been processing crime
4 scenes for a long time. How could somebody be inside a
5 residence, have touched as many items as obviously had to
6 be touched, items that were laying on the floor -- chairs
7 were knocked over. Doors had been opened and closed.
8 The shovel, the stick, the screwdriver, various things
9 have been touched throughout the house and you can't
10 locate -- what's your best opinion as to how it could be
11 that all these items are touched, yet no fingerprints nor
12 any type of D.N.A. -- I mean, as little as this on a pen
13 -- can be found anywhere inside the house?

14 A. Well, the party or parties could have been wearing
15 gloves to cover their hands. That would eliminate all
16 D.N.A. and latent fingerprints.

17 Q. Is that fairly common, people wear gloves?

18 A. Yes.

19 MR. BRACKETT: The Court's indulgence one
20 moment.

21 Q. And just to be clear on this, Investigator Williams,
22 you attempted -- everywhere that it was dry and not
23 dusty, did you attempt to locate prints throughout the
24 entire house?

25 A. Yes. We would have actually tried to recover the

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1 shoe impressions, but due to the mixture of the shoe
2 impression and the fluids that were over the impressions,
3 we were unable to actually recover those from the floor.
4 We would have actually tried to do that.

5 Q. Okay. And the absence of fingerprints doesn't mean
6 that somebody wasn't there, does it?

7 A. No, it does not. I could actually touch this and
8 possibly I wouldn't leave it. It depends on the weather,
9 the temperature, your hands, how much perspiration you
10 have, if your hands are covered, if you actually wipe
11 something down after you touch it.

12 Q. All right. And likewise, fingerprints, if somebody
13 -- if I've been in this courtroom many times over the
14 years, my fingerprints could be throughout this courtroom
15 from a year ago or two years ago; is that correct?

16 A. Possibly.

17 Q. Thank you very much, sir. Please answer any
18 questions that Defense counsel may have.

19 CROSS-EXAMINATION

20 BY MR. RAWLINSON:

21 Q. How are you doing, sir?

22 A. Good.

23 Q. Now, I guess to start off, you said you've watched
24 one episode of C.S.I., correct?

25 A. The very first one.

1 Q. Very first one. So you can't testify as to what's
2 on that show?

3 A. Other than the first one I saw with the examples of
4 what they were doing, I just said, this -- I'm not
5 watching this.

6 Q. Are you aware of how long it's been on television?

7 A. Been on for several years. It's a very popular
8 show.

9 Q. Very popular show. And over several years, there
10 would have been literally dozens of episodes, correct?

11 A. Oh, sure.

12 Q. So you can't testify as to whether those other
13 dozens of shows, what they did during those shows was
14 actually realistic, correct?

15 A. Not the show itself, but from victims that --
16 locations I have gone to of asking me to do things that
17 they said they had seen on the show. And I had to
18 explain that that's impossible.

19 Q. But you cannot testify to what happened in those
20 dozens of other shows, correct?

21 A. Oh, no. No, sir.

22 Q. And so you can't testify as to whether they solved
23 crimes using techniques that you could have used in this
24 crime, correct?

25 A. No, sir.

1 Q. Okay. Now, kind of in summary, there's nothing you
2 found in this house that you can connect directly to my
3 client, correct?

4 A. No, sir.

5 Q. And is there anything in this house that you can
6 conclusively say means that two people did this crime?

7 A. No, sir.

8 Q. And you said that -- well, first of all, did you
9 take prints outside of the house?

10 A. Yes. We processed the outside of the residence.

11 Q. And how thoroughly were those -- was that done?

12 A. As we do on any case, process the -- anything that
13 looks the disturbed. The windows in the residence, none
14 of them appeared to be disturbed or broken to where entry
15 would have been made. Those were photographed. The back
16 door was photographed -- or photographed and processed,
17 and then the front door was processed and photographed.
18 Q. And you didn't find any prints on any of the doors,
19 the back door or the outside of the house or anything
20 like that that you could identify or attribute to
21 anybody?

22 A. No, sir.

23 Q. And you mentioned this, but I just want to be clear.
24 Was there any signs of a forced entry in this case?

25 A. No. The back door didn't show any indication of

- 1 forced entry. The front door was -- we actually closed
2 the front door. And you could actually just push on the
3 door, and it would open up with very limited force.
- 4 Q. Okay. And going back to the shoe prints, that's a
5 very common shoe, correct?
- 6 A. Yes, sir.
- 7 Q. And in your experience you've seen these shoes how
8 many times, would you say?
- 9 A. Dozens. I don't have an exact number, but it's just
10 a common shoe.
- 11 Q. A common shoe. And the fact that the interior was
12 poor in this case, you said that contributed to the fact
13 that you couldn't match any of those fingerprints up,
14 correct?
- 15 A. Well, the only print that we recovered that was
16 identifiable, we did make a match on.
- 17 Q. And who was that?
- 18 A. The victim's.
- 19 Q. The victim's? And you said that there was two
20 separate fingerprints, I believe, on that back hallway?
- 21 A. That was the only one that we collected that was
22 identifiable.
- 23 Q. And have you been able to identify that fingerprint?
- 24 A. That was the only one that we did identify.
- 25 Q. Okay. Okay.

1 MR. RAWLINSON: I beg the Court's indulgence
2 for one moment.

3 Q. Last thing. You mentioned that a tee shirt was also
4 found in this residence, a white tee shirt?

5 A. That was found outside the residence to the -- if
6 you stand in front of the residence, it would be to the
7 left side of the residence on the ground.

8 Q. Okay. And was that tested for D.N.A.?

9 A. I don't know if was sent or not.

10 Q. So you don't know if that was ever tested for
11 D.N.A.?

12 A. No.

13 Q. But in any event, it's not connected to Christopher
14 Poage, correct? Scientifically?

15 A. No. No, sir.

16 Q. Okay. Thank you.

17 MR. RAWLINSON: No further questions, Your
18 Honor.

19 MR. BRACKETT: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BRACKETT:

22 Q. The shoe prints reference were -- were those capable
23 of being determined the size of the shoe? Was the
24 quality good enough to do that, or were they just very
25 faint and degraded?

1 A. Well, they were very degraded.

2 Q. Okay. And likewise for the same reason, is it
3 possible to say that shoe left that print in the same
4 manner that you could say this finger left that
5 fingerprint?

6 A. The shoe impressions, in my opinion, were not of
7 enough quality to make an identifying -- if you had
8 another pair of shoes, I don't believe they could have
9 been identified or matched.

10 Q. And forensically there was nothing in the house that
11 linked Ernest Jackson to this crime either, was there?

12 A. No, sir.

13 Q. Thank you very much.

14 MR. BRACKETT: I have no further questions.

15 MR. RAWLINSON: Nothing on recross, Your Honor.

16 THE COURT: All right. You can step down and
17 be excused.

18 Members of the jury panel, we'll take a break at
19 this time.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 11:05 a.m.)

22 THE COURT: We'll be at ease for about ten
23 minutes.

24 (WHEREUPON, court stood at recess for a short break
25 during which Court's Exhibit Number 4 was marked for

1 identification only.)

2 THE COURT: Thank you. Take your seats.

3 Is the State ready?

4 MR. BRACKETT: Yes, sir, Your Honor.

5 THE COURT: Is the Defense ready?

6 MR. RAWLINSON: Yes, Your Honor.

7 THE COURT: Bring in the jury.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 11:27 a.m.

10 THE COURT: Members of the jury panel, I don't
11 mind you having a smoke break. From now on just whenever
12 we take a break, the bailiffs will make arrangements for
13 that. We do that all the time.

14 (WHEREUPON, Court's Exhibit Number 4 was marked for
15 identification only.)

16 THE COURT: All right. Call your next witness.

17 MR. THOMPSON: May it please the Court, Your
18 Honor. The State calls Detective Kathy Harveston.

19 KATHY HARVESTON,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q. Detective Harveston, can you give your full name for
24 the Court, please?

25 A. Yes. It's Kathy Harveston. The last name is

- 1 spelled H-A-R-V-E-S-T-O-N.
- 2 Q. And where do you work?
- 3 A. I work for the Rock Hill Police Department.
- 4 Q. How long have you worked for the Rock Hill Police
- 5 Department?
- 6 A. I have been at the Rock Hill Police Department for
- 7 nine years.
- 8 Q. And what are your duties there at the Rock Hill
- 9 Police Department?
- 10 A. Currently I'm a sergeant with the police department.
- 11 I work in professional standards. At the time of this
- 12 incident, I was a detective. I was assigned to crimes
- 13 against persons unit.
- 14 Q. All right. And how many years were you a detective?
- 15 A. All together six years.
- 16 Q. Now, before you went to the Rock Hill Police
- 17 Department, what did you do before that?
- 18 A. In 1990, I became a law enforcement officer, and I
- 19 worked for the Knoxville Airport Authority in Tennessee.
- 20 I was there for thirteen years. And after September the
- 21 11th, my husband was transferred to South Carolina. And
- 22 so I transferred with him and became employed at the Rock
- 23 Hill Police Department as a patrol officer at that time.
- 24 Q. And you have children as well?
- 25 A. I do. I have four children. Part of them -- or one

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1 of them is still in Tennessee. The other three have
2 moved to South Carolina also, and I have two
3 grandchildren.

4 Q. Okay. And can you tell me, Detective, in working
5 this case, were you assigned as the case agent in this
6 particular case?

7 A. Yes. And actually the way that works, when you are
8 a detective with the Rock Hill Police Department, we
9 rotate on-call schedules so that not one person is
10 responsible for everything that happens after hours. So
11 at this particular time, I was the on-call detective. I
12 had been on call for a week, so actually, I was ending up
13 my week of on-call duty on this Sunday when I got called
14 out to the incident site.

15 Q. And this was a Sunday. What day was it that you
16 were called out?

17 A. It would have been August the 3rd, 2008, and it was
18 on a Sunday morning. I was actually at church service
19 and was called out to the scene for a death
20 investigation.

21 Q. And when you arrived at the scene, what did you
22 discover at that point?

23 A. When I first arrived, patrol had already secured the
24 scene and some notifications had been made. I was
25 informed by the lieutenant that was on scene of the

1 situation that we had, that there was a body in the house
2 that was obviously deceased. And we started making
3 notifications. He had already called for forensic
4 services unit. I made the calls at that time to go ahead
5 and get other detectives out because I knew it was going
6 to take more than just myself.

7 Q. And this was at [REDACTED] Steele Street?

8 A. Yes, it was.

9 Q. And that's in Rock Hill?

10 A. Yes.

11 Q. Okay. And at this point that you're called out,
12 describe again as a detective who's the case agent at
13 this point? What is your responsibility then when you
14 arrive?

15 A. When I first arrive, I have to get an idea of
16 everything that has happened up to the point of my
17 arrival. When I was called, it was approximately ten
18 o'clock. I arrived there about ten twenty, ten twenty-
19 two. So at that time, patrol had already been on the
20 scene for a while. It's my responsibility to see that
21 the scene is secured, that no evidence is removed from
22 the scene, that nothing is taken into the scene that
23 doesn't need to be taken in to collect evidence, to see
24 if there were any witnesses around, if there was anybody
25 I needed to talk to right there. And then of course

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1 immediately I have to go get a search warrant for the
2 residence before F.S.U., forensic services unit, can
3 enter to start processing the scene. So you just start
4 from the beginning and kind of work out, and it expands
5 as you go.

6 Q. All right. And as part of that, did you ask for a
7 canvass of the neighborhood?

8 A. Yes, I did. That was one reason why I contacted my
9 supervisor and said whatever detectives that we have
10 available, let's go ahead and get them out here and start
11 a neighborhood canvass. We knew that we had a crime
12 scene that was already old. It was not a fresh scene.
13 So we were already behind the game, so to speak, at that
14 point. But the first thing that you could do is just
15 start from the crime scene and go out. So a neighborhood
16 canvass is the best way to start that to see who knew the
17 person, what their habits were, who saw him last, who saw
18 people over there. Anything that could be of help to
19 give us some direction to go.

20 Q. All right. And as part of that, did you try to find
21 out when the last time people saw him?

22 A. Yes. Of course, we asked everybody that we talked
23 to, when was the last time you remembered seeing him. We
24 got several different answers. Of course, if it's not
25 some instant that stands out in your mind, you may not be

1 able to easily recall when you saw someone last unless
2 you all were doing something particular. Or like I said,
3 like a birthday party or something like that. So we did
4 get several different answers about when different
5 neighbors had seen him come or go.

6 Q. Okay. And as part of your investigation then, did
7 you try to find something concrete to nail that down,
8 when the last time it was that Tommy Mitchell was
9 actually seen?

10 A. Yes, we did. We started looking into some different
11 things because someone had -- well, family members had
12 given us information that he had gotten a settlement and
13 that he had gone to get his power turned back on in his
14 house. It'd been off for a long time. So one of the
15 ways we verified that, of course, was to go in to
16 utilities and pull up information there for that address
17 to see when the power was on and when it got turned back
18 on if he had, in fact, done that. And so we were able to
19 get that information from the utility department. That
20 was one way.

21 Q. All right. And you had mentioned a settlement. Did
22 you actually get copies of the settlement itself?

23 A. Yes, I did. He had been involved in kind of a
24 freakish little accident where a tree limb had fell on
25 him while he was riding his bicycle. And so there was a

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1 settlement given to him by the City of Rock Hill for that
2 incident. And it was for three thousand dollars. And I
3 was able to get a copy of the actual settlement papers
4 and a copy of the check where they had disbursed that to
5 him.

6 Q. All right.

7 MR. THOMPSON: Madam Court Reporter, if you
8 could mark this, please.

9 (WHEREUPON, State's Exhibit Number 107 was marked
10 for identification only.)

11 Q. If you can look at this State's Exhibit 107 and tell
12 me what that is?

13 A. This is actually a copy of the receipt and release
14 of claim for the settlement that I was talking about
15 given to Tommy Mitchell by the Housing Development
16 Corporation of Rock Hill in the amount of three thousand
17 dollars.

18 Q. All right. And when is that signed by Tommy
19 Mitchell?

20 A. It is signed by Tommy Mitchell on July the 25th,
21 2008.

22 Q. Okay. And can you tell me as well, what is the
23 other portion with that on the third page?

24 A. The third page is a copy of the check that was
25 written to Tommy Mitchell by the Housing Corporation of

1 Rock Hill in the amount of three thousand dollars dated
2 July the 25th, 2008.

3 Q. All right. And so that was the date that was issued
4 to him?

5 A. Yes, sir.

6 MR. THOMPSON: Your Honor, I ask to enter this
7 into evidence at this time.

8 MR. RAWLINSON: Without objection.

9 THE COURT: Without objection, in without
10 objection.

11 (WHEREUPON, State's Exhibit Number 107 was admitted
12 into evidence.)

13 Q. Now, Detective, you had also mentioned -- in looking
14 into things, you had mentioned something about the
15 utilities. Can you tell me a little bit about what you
16 did to find out about when he tried to have his utilities
17 turned on.

18 A. There's a program in the City of Rock Hill, a
19 computer service called Kayanta (phonic), and they use
20 that to open up utility services. When you pay your
21 utility bill, it's documented in that. So I have access
22 to that through my computer, so I can go on my computer
23 and actually look that up for that address. That's what
24 I did initially. But there's other information that
25 doesn't come up just for some people. In other words,

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1 you would have to go back to the utilities department and
2 actually talk to a clerk over there because they have
3 some other information that's attached to a record. This
4 would just show -- it would be kind of like looking at a
5 bank statement but not looking at the checks as they've
6 cleared, that kind of thing. So I had the initial
7 documentation to look at, but I did have to go to
8 utilities and ask them to pull up a little bit more
9 information. And there's some notes attached to what
10 they do over there.

11 Q. All right. And were you able to determine through
12 that what day it was that he went to try and have his
13 utilities turned on?

14 A. According to that information, he came to the
15 utilities department on July the 28th, which would have
16 been on Monday. And it was around twelve, twelve-
17 fifteen, on that Monday that he first made contact with a
18 clerk to start the process to get his utilities turned
19 back on.

20 Q. All right. And did he pay for his utilities to be
21 turned on that day?

22 A. He did.

23 Q. How much did he pay?

24 A. I'm sorry. It was about seven hundred dollars was
25 what he paid at that time to get his utilities turned

1 back on.

2 Q. All right. So far you've been able to determine
3 that on the 25th he received a settlement of three
4 thousand dollars?

5 A. That's correct.

6 Q. And on the 28th around noon or so he made contact
7 with the utilities department to try and turn on his
8 utilities?

9 A. Yes.

10 Q. And he paid seven hundred dollars to do so?

11 A. That's correct.

12 Q. Okay. Now, if you would, tell me what, if anything,
13 else did you try and do as far as confirm if there's
14 anything he did with the money at this point in time?

15 A. Family members had told us that he had bought a
16 moped with his settlement, and that was also some
17 information that we'd gathered from some of the neighbors
18 that we had talked to. They had seen the moped come and
19 go. So we attempted to locate information on the moped
20 because it was missing from the home when we arrived for
21 the incident. We were told that he'd possibly bought it
22 from a place called U.S.A. Customs, which is on the end
23 of White Street. It's on the corner of White Street and
24 Main. And we went down there and we attempted to find
25 the serial number of the moped from the owner, and they

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1 did not document that sort of thing. They only gave like
2 little handwritten receipts because it wasn't financed.
3 He paid cash for it. They gave a receipt that just said
4 what size moped it was and how much he paid for it. And
5 so we were able to determine that he bought a moped on
6 July 26th, 2008, which was a Saturday.

7 Q. All right. And did you actually get the receipt
8 itself? And where was the receipt that you recovered?

9 A. There was this receipt recovered in Tommy Mitchell's
10 clothing during autopsy that was from U.S.A. Customs for
11 the moped.

12 Q. Okay. So on his body during autopsy he had the
13 receipt for a moped on him?

14 A. That is correct.

15 Q. Were you able to photocopy that receipt?

16 A. Yes. We photocopied the receipt, and it was placed
17 into evidence.

18 MR. THOMPSON: Madam Court Reporter, if you
19 could number that for me, please, number 108.

20 (WHEREUPON, State's Exhibit Number 108 was marked
21 for identification only.)

22 Q. State's Exhibit 108, is that the copy of the receipt
23 that was recovered from the victim?

24 A. Yes, it is.

25 MR. THOMPSON: Your Honor, I believe it's

1 without objection that I'd enter this into evidence at
2 this time.

3 MR. RAWLINSON: No objection, Your Honor.

4 THE COURT: In without objection.

5 (WHEREUPON, State's Exhibit number 108 was admitted
6 into evidence.)

7 Q. Detective Harveston, can you tell us what the
8 receipt says?

9 A. At the upper top of the receipt, it's receipt number
10 6284, and it is dated for July the 26th, 2008. And under
11 the description it says, 50 C.C. moped. And out from
12 that it says, the amount was nine hundred dollars. And
13 then there's Tommy Mitchell written on there. It looks
14 like a U.S.A. Custom stamp, like a business stamp. It's
15 stamped right in the middle of it. And then down on the
16 bottom, of course, the total was nine hundred dollars.

17 Q. All right. Is that an especially clear copy of it?

18 A. No, it is not.

19 Q. And why is that?

20 A. It's stained. It's stained, and it's also -- this
21 copy is ---

22 Q. The actual receipt is stained?

23 A. Yes.

24 Q. Okay. So that's as good as a photocopy as you're
25 going to get of that receipt, in other words?

1 A. Yes. Also, this photocopy, the receipt is encased
2 in plastic, which they would have done when they removed
3 it at autopsy. And so this is a photocopy of the receipt
4 that's stained that's inside the plastic.

5 Q. All right. And now, the 26th of July when he
6 purchased that, would that have been a Saturday?

7 A. That was a Saturday, yes.

8 Q. Okay. Now, did you also, during your investigation,
9 determine anything about the victim as far as his size
10 and weight, his height and weight?

11 A. Yes. Tommy Mitchell was five foot three, and his
12 last weight that was recorded was about a hundred and
13 thirty pounds. So roughly about my size, a little less.

14 Q. All right. And how old was he?

15 A. He was fifty-six years old.

16 Q. Were you able to determine if he lived alone?

17 A. It was known that he lived alone. At one time he
18 had a roommate, but the roommate had been gone for
19 several months.

20 Q. Okay. And so at this point of your investigation --
21 I guess it's in the beginning -- from what you can really
22 tell, the last time someone sees -- that you can document
23 someone sees Tommy Mitchell is when?

24 A. That would have been on Monday the 28th when he was
25 at the utilities department.

1 Q. All right. Now, if you would, tell me, is there
2 anything about Tommy Mitchell that you learned as far as
3 from his family and relatives or friends as far as things
4 that he would normally have on his person at any given
5 time?

6 A. Well, yes. Actually, from his family and also from
7 several neighbors and some acquaintances, he was always
8 known to carry a harmonica. And it's my understanding
9 that he played it very well. And whenever people would
10 get together for a little gathering, he'd pull out the
11 harmonica and play and they would dance or sing along
12 with whatever he was playing.

13 Q. Is there anything else that you looked for that
14 possibly might be something that he would have on him?

15 A. Well, he carried a pocketknife. He also had a cell
16 phone. At one time he had a certain type of cell phone,
17 and then that one was disconnected, and then he had just
18 gotten a new one.

19 Q. All right. And can you tell me from the view of the
20 crime scene itself and from looking through the victim's
21 belongings at autopsy, were any of these items ever
22 recovered?

23 A. None of the items were recovered, the cell phone,
24 harmonica or the knife.

25 Q. All right. Now, at this point at the beginning of

1 the case, is this a case that you're just kind of stumped
2 as to who might have done this?

3 A. Absolutely. We didn't have a single clue. The
4 family didn't know of anybody that would want to harm
5 him. It was well known that he had come into a
6 settlement, but there was nothing specific at the
7 beginning to even look toward.

8 Q. What was the weather like at this time, July and
9 August?

10 A. Oh, it was very hot. It was -- I don't know. I
11 think the temperatures were in the upper '90s, much like
12 the weather we're having now. I do remember the day that
13 I arrived on the scene, it was not raining. It was sunny
14 and it was hot.

15 Q. Did you go to the autopsy with the forensic person,
16 Ray Barnwell?

17 A. No, I did not go to the autopsy.

18 Q. Now, did you learn the results of the autopsy right
19 after it was performed?

20 A. Yes, I did.

21 Q. All right. Did you receive contact from the
22 forensics unit at that point as to what happened?

23 A. Yes. I know that Ray Barnwell called Investigator
24 Williams to give him just a little heads-up of some
25 preliminary things that they had found at autopsy so that

1 he could go back to the crime scene and look for some
2 other things. And then, of course, I was just told word
3 of mouth. And then later on, I actually got the official
4 copy of the autopsy report.

5 Q. All right. So then is that the first time that you
6 learned that a knife was also involved in this crime?

7 A. Yes, it was.

8 Q. Now, as far as the Rock Hill Police Department and
9 the media coming to try and find information about this,
10 what, if anything, did the Rock Hill Police Department
11 release about the information that was found at the
12 scene?

13 A. The only thing that we released to the media or
14 really to anyone else was that there was a homicide at
15 that scene, or the death had been ruled a homicide. That
16 was the only thing that we released. And we basically
17 were asking for information.

18 Q. And so basically you released no photographs of the
19 scene?

20 A. No, absolutely not.

21 Q. And even to the victim's family, did you provide
22 detailed information as to what had happened in the crime
23 scene?

24 A. We did not provide detailed information.

25 Q. All right. And why is that?

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1 A. Well, there's certain things that you basically
2 don't want to let out of the bag because if and when you
3 find the people that or the person responsible, they're
4 going to know details about the crime that nobody else
5 should know. So therefore, you don't want that
6 information out because you don't want it talked about in
7 the community or in the family or to anyone else.

8 Q. All right. And can you tell me did you ultimately
9 receive a lead that led you to Mr. Poage?

10 A. Yes, actually we did. We received a phone call that
11 said that Christopher ---

12 Q. Without going into the details of the phone call ---

13 A. Okay.

14 Q. --- it indicted that someone you should investigate
15 is possibly Christopher Poage?

16 A. Yes, yes.

17 Q. And did it indicate anyone else at that point?

18 A. Ernest Jackson.

19 Q. And Ernest Jackson?

20 A. Uh-huh (affirmative).

21 Q. All right. And so at this point, based on the phone
22 call, did you then try to contact or ultimately get in
23 touch with the Defendant Christopher Poage?

24 A. Yes, we did. Uh-huh (affirmative).

25 Q. And can you tell me when the police had their first

1 contact with Christopher Poage, where was he?

2 A. He was at Ernest Jackson's house where he was
3 staying at the time at [REDACTED] Chestnut Street in Rock Hill.

4 Q. Where Ernest Jackson was staying at the time,
5 correct?

6 A. Yes. Uh-huh (affirmative).

7 Q. On Chestnut Street?

8 A. That's correct. Uh-huh (affirmative).

9 Q. And was he actually in the residence with him?

10 A. No. At the time he was located, they were in a car
11 at the residence.

12 Q. All right. And were there other people in the car
13 as well?

14 A. Yes. Ernest Jackson's younger brother, Jaren. And
15 then there was another individual by the name of Charles.

16 Q. Okay. Now, ultimately were you able to take Mr.
17 Poage back to the police station to talk to him?

18 A. Yes, we did.

19 Q. Okay. And when you were going to talk to him, did
20 he have any idea that you were going to ask him about
21 Tommy Mitchell?

22 A. No. He did not have any idea. In fact, he asked if
23 we were narcotics officers.

24 Q. Okay. And you said we. Who was with you when you
25 talked to Mr. Poage?

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1 A. Lieutenant Jason Dalton was with me at that time.

2 Q. All right. He's also with the Rock Hill Police
3 Department?

4 A. Yes, he is. He was my supervisor.

5 Q. All right. And so was he assisting you then in
6 interviewing Mr. Poage?

7 A. Yes, he was.

8 Q. Did anyone else interview with you and ---

9 A. No. It was just me and Lieutenant Dalton.

10 Q. All right. Now, where was it that you interviewed
11 Christopher Poage?

12 A. We interviewed Christopher Poage in Lieutenant
13 Dalton's office there in the detective division at the
14 police department.

15 Q. All right. And when you interviewed him there, can
16 you tell me what office were you in, in the detective
17 division?

18 A. What office?

19 Q. Yes.

20 A. It was in Lieutenant Dalton's Office. Which to kind
21 of describe it, detective division is located in the
22 center of the police department, and Lieutenant Dalton's
23 office is just in one of the corners of that building.

24 Q. All right. And in that office is there enough room
25 for all three of you to sit down and have a conversation?

- 1 A. Yes, there is enough room.
- 2 Q. All right. How many chairs were in there?
- 3 A. Three.
- 4 Q. Y'all each had a chair?
- 5 A. We each had a chair.
- 6 Q. What else is in the office?
- 7 A. Lieutenant Dalton's desk, a bookcase and, I think, a
- 8 small credenza.
- 9 Q. Now, I notice, Detective, that you're not in a
- 10 uniform. Were either you or Detective Dalton in a
- 11 uniform at that time?
- 12 A. No. We did not normally wear a uniform. Once you
- 13 become a detective, you're in plain clothes. The only
- 14 time you would wear a uniform is if you were on special
- 15 assignment.
- 16 Q. But you had identified yourself as police officers?
- 17 A. Yes.
- 18 Q. Okay. And he had agreed to come and talk to you; is
- 19 that correct?
- 20 A. Yes.
- 21 Q. Now, when you sat down with him initially, what type
- 22 of information did you ask him or tell him?
- 23 A. Well, initially -- of course, we read him his
- 24 *Miranda* rights or Lieutenant Dalton read his *Miranda*
- 25 rights at the very beginning.

1 (WHEREUPON, State's Exhibit Number 5 was marked for
2 identification only.)

3 Q. I show you what's marked as State's Exhibit Number
4 5. This is State's Exhibit Number 5. And contained in
5 State's Exhibit Number 5, can you tell me, is the rights
6 card that Lieutenant Dalton read off of in that?

7 A. Yes, sir, on the last page.

8 Q. Okay. And if you would, read that *Miranda* card just
9 as Lieutenant Dalton did that day to Mr. Poage?

10 A. Okay. You have the right to remain silent.
11 Anything you say can and will be used against you in a
12 court of law. You have the right to talk to an attorney
13 and have him or her present with you while you are being
14 questioned. If you cannot afford to hire an attorney,
15 one will be appointed to represent you before any
16 questioning if you wish. You can decide at any time to
17 exercise these rights and not answer any questions or
18 make any statements. Do you understand each of these
19 rights I have explained to you? Having these rights in
20 mind, do you wish to talk to us now?

21 Q. And did he indicate that he understood those rights?

22 A. Yes, he did indicate that.

23 Q. And did he agree to talk to you at that point?

24 A. He did agree to talk to us at that point.

25 Q. At any point during the time that you spoke with him

1 or you were with him, did he ask for an attorney?

2 A. He never asked for an attorney.

3 Q. At any point did he ask not to speak to you anymore?

4 A. He never said that he wanted to stop talking or
5 asked not to speak.

6 Q. Did you threaten him or did Lieutenant Dalton or
7 anyone else in your presence threaten him in any way?

8 A. Absolutely not. I have never threatened anyone I've
9 talked to.

10 Q. Did you give him any promises or hope of reward for
11 him talking to you that day?

12 A. No, sir.

13 Q. Did Lieutenant Dalton?

14 A. No.

15 Q. Did anyone else in your presence?

16 A. No one in my presence ever promised him anything.

17 Q. Did he leave your presence in the time that he was
18 being talked to by you and Lieutenant Dalton?

19 A. No, he did not. We were in Lieutenant Dalton's
20 office. A little bit later we were in my office, but I
21 was always present even though Lieutenant Dalton was not
22 present the entire time.

23 Q. Okay. And did you all discuss any possible charges
24 or punishment or anything like that with him?

25 A. We didn't discuss any charges with him at that time.

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- 1 Q. Okay. Now, when you first began to talk to him,
2 what type of information is -- after you have the *Miranda*
3 rights read to him, what type of information is it that
4 you asked him about initially?
- 5 A. Well, initially, in any interview process, you
6 always ask name, address, contact information, who the
7 person might live with. Just some general kind of get-
8 to-know-you kind of questions. So those were asked at
9 first.
- 10 Q. All right. And did you get some personal
11 information from him as well?
- 12 A. Yes, we did.
- 13 Q. Did you get his date of birth?
- 14 A. Got his date of birth, his address. I think we got
15 his telephone number, his girlfriend's name.
- 16 Q. All right. What was his date of birth?
- 17 A. I would have to look.
- 18 Q. All right. I believe if you look at State's Exhibit
19 105.
- 20 A. He gave us his date of birth as [REDACTED].
- 21 Q. '89?
- 22 A. 1989, yes.
- 23 Q. Okay. And so on July the 28th of 2008, how old
24 would that have made him?
- 25 A. He would have been a little over eighteen years old,

- 1 about eighteen and a half years old.
- 2 Q. Okay. Not seventeen but eighteen?
- 3 A. That's correct.
- 4 Q. All right. And the time that you talked to him,
- 5 what day is this that you're talking to him?
- 6 A. It's February the 19th, 2009.
- 7 Q. So in February of 2009, some seven months after the
- 8 incident, right around that?
- 9 A. That's right, about seven months.
- 10 Q. And how old was he then?
- 11 A. He would have been nineteen at that time.
- 12 Q. And if you look back there at exhibit 105 and check
- 13 the date again, was that the 19th of February?
- 14 A. Well, the interview was actually on the 20th. I
- 15 think we came in contact with him on the 19th.
- 16 Q. Okay. I see. And so as you start to talk to him,
- 17 did you also ask him how many years he had completed at
- 18 that time?
- 19 A. Yes, we did. That's part of the normal process when
- 20 you're interviewing somebody. And he said eleven years.
- 21 Q. Eleven years?
- 22 A. Uh-huh (affirmative).
- 23 Q. And did he say that he could read at that time as
- 24 well?
- 25 A. Yes, he said he could read and write.

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1 Q. And during the course of speaking with him and
2 dealing with him, was it obvious that he could read?

3 A. Yes. There was no question about that.

4 Q. Did he have any problem communicating with you
5 whatsoever?

6 A. No, he did not.

7 Q. Did he appear to be under the influence of any
8 alcohol or drugs or anything else of that nature?

9 A. No. No, he didn't.

10 Q. Did he have any problem at all whatsoever in
11 communicating with you and Lieutenant Dalton?

12 A. No, sir, he didn't.

13 Q. Now, at this point when you initially are talking to
14 him, did you just come out right away and ask him about
15 Tommy Mitchell?

16 A. Well, no, not right away. We were just having a
17 general conversation with him. He had some questions
18 about some other issues that were unrelated to what we
19 wanted to talk to him about, and so we discussed those
20 briefly with him before anything was ever said about
21 Tommy Mitchell.

22 Q. And how was the subject of Tommy Mitchell brought
23 up?

24 A. Well, Lieutenant Dalton just asked, tell us what
25 happened at Tommy Mitchell's house. And when he asked

1 that, Christopher Poage's whole demeanor changed. He
2 just dropped his head, started breathing heavy, and
3 started shaking his head. And Lieutenant Dalton just
4 encouraged him. And that is the word I use. That
5 totally describes what he did. He said, isn't it time
6 that you talk about what happened at Tommy Mitchell's
7 house? And then he began to start telling us the story.

8 Q. All right. Did he look sincere in telling you the
9 story at that time?

10 A. Yes, he did.

11 Q. Is this something that you could tell had been
12 weighing on him at that point?

13 A. Absolutely. Because like I said, his whole demeanor
14 changed when Tommy Mitchell's name came up. He actually
15 slumped down in the chair just like his breath had just
16 come out of him. And when that happened, his head stayed
17 down quite a bit. He didn't want to really look up and
18 talk to us at that time, and you could tell that it was
19 -- it was really weighing on him heavy.

20 Q. Did it take a long time of telling him it's -- you
21 know, it's time to talk about it, in order for him to
22 talk? Or did he pretty much just start talking?

23 A. It didn't take a long time. Like I said, he did
24 need to be encouraged a little bit because you could tell
25 he was distressed about the situation. And the only

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1 thing that was really said to him was, isn't it time,
2 isn't it time to get this off of your chest? We can tell
3 that it's weighing heavy. Let's go ahead and talk about
4 it. And then that was about it. And then he started
5 talking.

6 Q. Had there been any threats made at that point?

7 A. Absolutely not, no.

8 Q. Any promises or hope of reward for him?

9 A. Nothing at all, nothing.

10 Q. Now, as he started discussing this, did you ever
11 tell him any of the details that were discovered in your
12 investigation and with the forensic unit and that sort of
13 thing? Did you tell him any intimate details?

14 A. No. That would be totally inappropriate that I
15 would share information with him that I already had.

16 This was his time to talk and tell us what he knew about
17 the situation, so we didn't share anything with him.

18 Q. So the things that he told you, he would have had to
19 have known outside of what you and Lieutenant Dalton
20 knew?

21 A. That is correct.

22 Q. So if you would, tell me how that discussion went
23 then as you sat there and talked to him and Lieutenant
24 Dalton -- you and Lieutenant Dalton spoke to him in
25 Lieutenant Dalton's office?

1 A. He began to tell us that back in the summer -- and
2 he couldn't remember exactly what day -- that his friend
3 -- he calls him E.J. It's Ernest Jackson, but he calls
4 him E.J. -- had given him a call and wanted him to walk
5 somewhere with him. So he met E.J. over on Chestnut
6 Street and they began to walk. And he said they -- he
7 asked what was up, what was going on. And he said E.J.
8 told him, you know, don't worry about it. Just walk with
9 me.

10 So they go to -- he describes a little green house.
11 It's over behind the old folks home, is what he called
12 it. And he said they go up to the house and E.J. knocks
13 on the door. Nothing happened, so he sat down in a chair
14 on the front porch. And E.J. went around to the back of
15 the house, and then in just a second or two come through,
16 let him in the front door. And once they go in, he says
17 that E.J. tells him that it's Short Dog's house and that
18 Short Dog had come into some money, had gotten a
19 settlement. And he said he started feeling kind of funny
20 in his stomach and they started -- E.J. said to look for
21 the money. Need to look for the money. So Chris says
22 that E.J. goes into the bedroom and he starts like to
23 pull a mattress up, shaking pillow cases, looking for the
24 money. And then he says he goes into the living room.
25 Q. And he being Mr. Poage?

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1 A. Mr. Poage.

2 Q. Okay.

3 A. That he goes into the living room himself. He's
4 kind of looking around, and then he sits down on the
5 couch. Now, this, of course, is what he's telling us.
6 Okay? He sits down on the couch. There was a green
7 screwdriver there. He starts playing with the green
8 screwdriver. Then E.J. comes out of the bedroom and
9 grabs the green screwdriver from him, goes into the
10 kitchen, marks a one, scratches a one in the refrigerator
11 on the kitchen door. And then they wait.

12 And about that time, they hear the Spree pull up,
13 which a Spree is a moped. And they hear the Spree pull
14 up. And then he says that Tommy Mitchell comes in the
15 back door of the house. And when they hear the Spree
16 pull up, E.J. tells him to hide. So E.J. goes back in
17 the bedroom and Tommy Mitchell -- I mean, Chris Poage
18 hides over next to -- there's a stereo on the wall ---

19 Q. All right.

20 A. --- in a cabinet by the wall. And there's a small
21 space between that stereo cabinet and the corner of the
22 wall. So he says that he hides. Chris hides in that
23 space. Tommy comes into the house, comes through the
24 kitchen, starts into the bedroom. And as he enters the
25 bedroom, Chris says that E.J. throws something on him,

1 some type of liquid on him. Tommy screams. He has
2 groceries in his hands. He drops them in the floor of
3 the living room. And he's headed out toward the kitchen.
4 E.J. chasing after him. E.J. tells Chris, get him.
5 Chris says he hesitates for a second, but then goes after
6 him and him and E.J. bump into each other. And then
7 Tommy makes it through to the kitchen door and E.J.'s
8 able to grab Tommy. He says they're in there fighting,
9 scuffling around. Somehow they end up back in the
10 bedroom. And he goes outside and ---

11 THE COURT: When you say he, let's make sure.
12 You're using pronouns that'll confuse us.

13 A. I'm sorry. Chris. Yeah. Yes. Chris goes outside.

14 Q. That's Chris Poage?

15 A. That's Chris Poage. And he goes outside and then he
16 comes back inside to get E.J. He says he's trying to
17 tell him to come on and he said E.J. is beating him with
18 a stick, but Tommy Mitchell is laying face-down on the
19 floor in the bedroom. And so he tries to get -- he says
20 he tries to get E.J. to come on. He grabs his arm and
21 E.J. says -- he says basically -- well, I've got it in
22 quotes. He says, fuck that. He saw my face. He's got
23 to go. And at that time he told -- E.J. told Chris Poage
24 to hold Tommy Mitchell's arms. Chris said that he did.
25 E.J. started stabbing Tommy Mitchell. And Chris said at

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1 that time he couldn't stand it anymore, so he ran back
2 out the door. And when he went back out the door, a few
3 minutes later E.J. comes out. He has his clothes in a
4 plastic bag, and he has keys that he's dangling. And he
5 said the keys were to the moped.

6 They put the clothes in the seat of the moped, they
7 leave the scene and take the moped down to E.J. Jackson's
8 house on Hall Spencer Road. That's his father's house on
9 Hall Spencer Road. When they get down there, they hide
10 the moped in the woods across the street from E.J.
11 Jackson's dad's house. And Chris says that E.J. tells
12 him, we've got to burn the clothes. So he burned his
13 clothes and Chris' clothes in the back yard of E.J.'s
14 dad's house. And then they left walking. They changed
15 clothes there. They left walking.

16 They went up the road, up Hall Spencer Road, to a
17 store, up there to get something to drink. And as
18 they're walking, a deputy from the York County Sheriff's
19 Department turns around on them and stops them because he
20 thinks that one of them is D.J. Hinton, which is a person
21 that he had a warrant for. So he stops them and he does
22 what is called a field interview, and that's recorded.
23 We didn't know that at that time.

24 Q. So you had no idea that York Sheriff's Department
25 had pulled these two over?

1 A. No idea. No idea. Not until Chris Poage says that.

2 Q. And so did you actually go back and confirm that?

3 A. I did go back and confirm that. There was the
4 printed documentation where the deputy had stopped them
5 and also where he had videoed them with his in-car
6 camera.

7 Q. And when was it that the deputy had stopped them?

8 A. It was around a little after four p.m. on Monday,
9 July the 28th, 2008.

10 Q. So July the 28th, the same day that he'd been around
11 noon at the Rock Hill utilities to turn his power on?

12 A. That's correct. The same day.

13 Q. Okay. Now, after Christopher Poage had relayed this
14 information to you and Lieutenant Dalton, can you tell me
15 at that point what did y'all do?

16 A. At that point -- and this is normal procedure when
17 you interview someone. Then there's the time when you
18 actually take the sworn statement and you document it on
19 paper. So at that time, I escorted Christopher Poage to
20 my office, which is just across the hall, and he was
21 explained that now we're going to get this down on paper.
22 And so I was the one who actually typed up the statement
23 that he made in the computer while he's talking to me and
24 telling me what to put in the statement.

25 Q. Okay. So basically now you've gone to your office

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1 and he is telling you the story knowing that at this
2 point you are going to record the story in the form of a
3 written statement?

4 A. Yes. That's correct.

5 Q. Okay. And as he sat there with you at that point,
6 what, if anything, did you tell him before you started
7 with the written portion of the statement?

8 A. I reminded him that his *Miranda* rights were still in
9 effect, even though they were, you know, just read by
10 Jason Dalton when we began the investigation, that this
11 was still a part of that. And told him that I wanted to
12 document what his story was and that I wanted him to tell
13 me in his own words and I would type it into the
14 computer.

15 Q. And did he agree to do that at that point in time?

16 A. Yes, he did.

17 Q. All right. And is there a certain form that you
18 follow when trying to take the written statement?

19 A. Yes. We have like a format that's already in our
20 computer that has the *Miranda* rights. It also has the
21 waiver of the rights on there. Then it has the personal
22 information of the person that you're interviewing. All
23 that comes before the actual statement part, and then you
24 begin the statement.

25 Q. All right. And did you go over anything else with

1 him before you actually started typing in what he was
2 telling you?

3 A. Oh, just reminded him of, you know, his *Miranda* and
4 that if at any time he wanted to stop talking, he could.
5 Any time he requested an attorney, he could. All that's
6 still part of the *Miranda*.

7 Q. All right. And can you tell me, did he then again
8 relate to you what had happened?

9 A. Yes, he did. He related basically the same story.

10 Q. So the same information that he had just told you
11 and Lieutenant Dalton, he told you again once you were
12 ---

13 A. Yes. There was nothing new in there.

14 Q. Now, when you write down the statement, is it -- are
15 you paraphrasing what you said? Or how do you do the
16 statement?

17 A. No. At that time -- at that time, I'm typing in
18 what he's telling me. Okay. So it's not paraphrasing.
19 I'm not adding to it or taking away from it. I just type
20 what he says.

21 Q. And now, I guess, how proficient are you as a
22 typist? Do you have to stop him every once in a while
23 and say hold on and let me do this?

24 A. Absolutely. I can type okay, but I am definitely
25 not a clerical expert.

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1 Q. All right. And do you at times read things back to
2 him as you're typing?

3 A. Certainly, yes, sir.

4 Q. And during this course, did you also read things
5 back to him as you were typing them?

6 A. I'm sure I did when I would stop and say, okay, this
7 is where I'm at. Now tell me what happened right after
8 that.

9 Q. Okay. And did he then willingly talk to you during
10 that portion of time?

11 A. Yes, he did.

12 Q. At any time during the time that he was giving his
13 written statement, did you promise him anything or offer
14 him any hope of reward?

15 A. Never promised Christopher Poage anything or offered
16 him any kind of reward.

17 Q. Threatened in any way?

18 A. No, absolutely not.

19 Q. All right. And can you tell me, did he at any point
20 ask for an attorney during the time that he was giving a
21 written statement?

22 A. No, he never asked for an attorney.

23 Q. Did he ever say anything about an attorney during
24 that period of time?

25 A. He did make one statement. While I was typing up

1 his statement, about half-way through when we got to the
2 more physical part of what was going on at the incident,
3 I remember that he put his head down on the table and he
4 was kind of shaking his head again. And then he -- when
5 he raised back up, he kind of mumbled under his breath
6 and said, maybe I should have talked to a lawyer. And
7 then he asked me, does it make you look more guilty if
8 you talk to a lawyer.

9 Q. And what did you say to him?

10 A. I said, if that's what you think, you know.

11 Q. And was anything else said at that point?

12 A. That was it. I went right back to doing his
13 statement.

14 Q. And did he continue to talk to you at that time?

15 A. Yes, he did.

16 Q. And did he say anything else about an attorney at
17 that time?

18 A. No, he did not.

19 Q. And can you tell me, during the course of the
20 statement, you said as the statement became more violent,
21 do you remember specifically what area you're talking
22 about?

23 A. The part where the stabbing -- when he started
24 talking about the stabbing of Tommy Mitchell, that was
25 the part where he put his head down on the table again.

1 Q. But at this point, he had already told you about the
2 stabbing in the other room with Lieutenant Dalton,
3 correct?

4 A. Yes.

5 Q. Okay. Now, ultimately, you finished the written
6 statement with him at that point; is that correct?

7 A. That's correct.

8 Q. And upon finishing his statement, did you then type
9 it out for him or print it out for him to read it and see
10 it?

11 A. Yes. I have a printer actually right there in my
12 office, so I just went ahead and printed it out. And
13 then I would have shown it to him.

14 Q. All right. And when you showed it to him, are there
15 places for him to sign on the statement?

16 A. Yes, there's several different places for him to
17 sign.

18 Q. And where's the first place you would have him sign?

19 A. The first place that a person would sign would be
20 after the *Miranda*. It's actually printed on this
21 statement sheet also. And so there's a place for a
22 witness and for the person that the *Miranda* was read to
23 to sign.

24 Q. All right. And did he sign waiving his *Miranda*
25 rights on that paper?

1 A. Yes. That's the second portion, that you understand
2 and

3 Q. Okay. And as you're looking -- I guess, let me --
4 you said the second portion. Let's go back to the first
5 portion for just a moment. That's the one I want to talk
6 about. That actually has the *Miranda* rights in it again;
7 is that correct?

8 A. Yes. It's the total *Miranda* rights. Yes, sir.

9 Q. All right. And when you gave that to him in the
10 printed form, how was that relayed to him for him to sign
11 at that point?

12 A. It was -- I would slide the paper over and I would
13 actually show him and say, here on the top is your
14 *Miranda* rights that we read to you previously. And then
15 they would sign there.

16 Q. And did he sign his there?

17 A. Yes.

18 Q. And did you witness the signature?

19 A. I did.

20 Q. Okay. And then what's the second portion there?

21 A. The second portion is the statement that talks about
22 that you understand what *Miranda* rights are and that you
23 have not requested an attorney at that time and that you
24 can stop talking anytime you want to.

25 Q. And how did you present that to him?

1 A. I showed it to him and I think I actually read that
2 one to him at that time.

3 Q. Okay. And did he sign that as well?

4 A. Yes, he did.

5 Q. And did you sign as a witness at that point?

6 A. I did.

7 Q. And now, the statement itself, how is it that you
8 tell him as far as the statement? Do you read it to him
9 or do you ask him to read it?

10 A. I always ask, do you want me to read it to you or do
11 you want to read it yourself. And he had the copy, so he
12 began to read it himself. And I told him to make sure
13 that he read the entire thing, and that if there were any
14 changes, any corrections, some way that something was
15 phrased that he didn't like, any additions, subtractions,
16 anything to tell me, that I would correct that, and the
17 statement I just printed out, we'd tear that up, we'd
18 redo it, and then we would present it to him then.

19 Q. Did you rush him along to read that?

20 A. No, I did not. No.

21 Q. Did you wait until he said he was done reading it to
22 ---

23 A. Absolutely, yes.

24 Q. And after he finished reading it, did he ask you to
25 change it in any way or make any comment about it being

- 1 right or wrong?
- 2 A. He didn't ask me to change anything on this
- 3 statement.
- 4 Q. Okay. Did he ask to add anything in?
- 5 A. No, he did not.
- 6 Q. Subtract anything?
- 7 A. No.
- 8 Q. All right. And is there a spot for him to sign on
- 9 the statement as well?
- 10 A. Yes, there is.
- 11 Q. And did he sign there?
- 12 A. Yes. It's at the very end of the statement.
- 13 Q. And that's his signature over the signature of
- 14 person giving statement?
- 15 A. Yes. And then there's a date beside it.
- 16 Q. All right. What is the date?
- 17 A. February the 20th, 2009.
- 18 Q. All right. And then the final portion of the
- 19 written statement, can you tell us what that is?
- 20 A. The final portion is what we call a notary page. So
- 21 a statement is always notarized. And what it says is, I
- 22 make this statement of my own free will and accord
- 23 without reward or hope of reward. I've not been
- 24 mistreated or threatened in any way. All the above is
- 25 the truth, the whole truth and nothing but the truth, so

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1 help me, God. And then right underneath that it says, I
2 have read or had read to me the above statement
3 consisting of -- and on this particular one, it says
4 three pages because there's three total pages.

5 Q. Because the affidavit's the third page?

6 A. The affidavit's the third page, yes.

7 Q. Okay. And it also says, and I have received a copy
8 of the statement.

9 A. And have received a copy, yes.

10 Q. All right. And does he sign that affidavit as well?

11 A. Yes. He signs that, I sign that. And Lieutenant
12 Dalton is also a notary, and he witnessed our signatures.

13 Q. Now, Lieutenant Dalton witnessed the signatures, but
14 was he in there the entire time during the second portion
15 of the interview while it was in your office?

16 A. No, he was not.

17 Q. And can you tell me, this affidavit page, is this
18 something you read to the Defendant?

19 A. I don't remember for sure if I actually read it out
20 loud to him. I usually do if I can see that they're not
21 reading it themselves. In fact, I would say, yes, I did
22 do it out loud because I like to make sure that they know
23 what that statement says.

24 Q. Okay. But he would have had time to have read it
25 himself before signing as well?

1 A. Yes. That's a very important paper right there, so
2 we always make sure that they understand that one.

3 Q. Detective, has this statement been altered or
4 changed in any way since you took it on the 20th of
5 February of 2009?

6 A. No, absolutely not.

7 Q. As well, did he actually write anything else down
8 that day in your presence?

9 A. Yes. When he was describing where they hid the
10 moped in the woods across from E.J. Jackson's dad's
11 house, he -- I said, well, kind of tell me a little bit
12 about that because I wasn't familiar with that area at
13 all. And I had a notepad there, just a regular lined
14 notepad. And he just drew a little diagram on there to
15 show me where the house was and where the woods was close
16 to the house.

17 Q. All right. So that little diagram was drawn by him?

18 A. Yes.

19 Q. Describing where the moped was placed?

20 A. Yes.

21 Q. Okay. And I guess in the woods across the street?

22 A. Across the street.

23 MR. THOMPSON: Your Honor, I'd ask at this
24 moment to place into evidence State's Exhibit Number 105.

25 MR. RAWLINSON: Objection on 403 grounds of

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1 Jackson v. Denno, Your Honor.

2 THE COURT: All right. I'm going to allow it
3 into evidence.

4 Members of the jury panel, I'm going to admit over
5 objection the statement. And at the end of the trial,
6 I'll instruct you that even though it's in evidence, it
7 is for you to determine whether or not to give it any
8 weight or whatever weight you believe it should have. I
9 will tell you that you have to determine that it was
10 given freely, voluntarily, knowingly, and intelligently
11 by Mr. Poage before you could consider it. And if you
12 determine to consider it, you consider it to whatever
13 extent you deem appropriate even though I have allowed it
14 into evidence.

15 All right.

16 (WHEREUPON, State's Exhibit Number 105 was admitted
17 into evidence.

18 Q. Detective, if you would, if you would read the body
19 of the statement to us. Publish that to the jury,
20 please.

21 A. Back in the summer, E.J. -- and I put -- I did put
22 in parenthesis, Ernest Jackson, so we could be
23 clear who E.J. was -- called me and asked me to
24 walk somewhere with him. I met up with him on
25 Chestnut Street. I knocked on the door and he

1 said, you ready? I said, yeah, I guess. And I
2 asked him where we was going. He said, don't
3 worry about it, Cuz. Just chill.

4 We started walking and got to this green
5 house that is up behind the old folks home. I
6 sat down on a chair on the porch. E.J. knocked
7 on the door and nobody answered. He said for
8 me to knock and he was going around to the
9 back. He got in and he come and opened the
10 front door and let me in. That's when E.J.
11 told me we're at Short Dog's house. That's
12 when I started feeling funny in my stomach.

13 E.J. went in the bedroom and he said,
14 start looking for the money. I didn't know
15 what he was talking about. And he said, Short
16 Dog got a big settlement. I walked out the
17 bedroom and E.J. was shaking the pillow cases,
18 lifting up the mattresses and stuff. I went to
19 the living room and picked up a screwdriver and
20 was sitting there playing with it.

21 He come in and got the screwdriver from me
22 and went to the kitchen and scratched a big one
23 in the refrigerator. I was saying, come on.
24 Let's go. Let's get out of here. About that
25 time, I heard the Spree pull up outside, and he

1 said, hide. Hide behind that stereo. I got
2 behind the stereo, and E.J. went to the
3 bedroom.

4 Short Dog come in the back door. He
5 didn't see me, and he walked in his room. He
6 had some grocery bags when he come in. And
7 when he walked in his room, E.J. threw some
8 liquid at him and he dropped his -- that stuff.
9 He screamed and ran back out the room, and E.J.
10 was running after him. E.J. was saying, get
11 him, Cuz. And I hesitated, and Short Dog
12 almost made it out the kitchen door. Me and
13 E.J. bumped into each other, and E.J. pushed me
14 out of the way. He caught up with Short Dog
15 and grabbed him around the neck. They started
16 scuffling and was on the ground. I was still
17 yelling, come on, let's go, it ain't worth it,
18 over and over.

19 Somehow they ended up back in the bedroom.
20 I went out the back door. I come back in to
21 get E.J. to come on. E.J. said, fuck that. He
22 got to go. He saw my face. I saw Short Dog
23 was on the bedroom floor face down, and E.J.
24 was beating him with a stick. Short Dog
25 started breathing like he was asleep. E.J. had

1 hit him everywhere, everywhere he could. E.J.
2 threw the stick down, and I grabbed his arm and
3 said, let's go, it ain't worth it. He told me
4 to get Short Dog's arms, and I did. He got a
5 knife from somewhere and started stabbing Short
6 Dog. I couldn't watch it, so I let go and went
7 out the back door.

8 After a little bit, E.J. came out, and he
9 was dangling some keys. They went to the
10 Spree. He had his clothes in a bag, and he put
11 them under the seat of the Spree. We got on it
12 and went to E.J.'s dad's house out in the
13 country. He took the Spree across the roads --
14 we took the Spree across the road to the woods.
15 That's the last time I saw it. We come back to
16 his daddy's house, and he burnt his clothes,
17 and he told me to burn mine. Then we was
18 walking up the road after that to the store.
19 and E.J. threw the keys away.

20 When we was coming back from the store, a
21 York County deputy turned around and stopped
22 us. He thought I was D.J. Hinton. Then Tim
23 Williams, E.J.'s cousin, come picked us up from
24 his daddy's house and took us back to Rock
25 Hill. We didn't talk about it on the drive

1 back to Rock Hill.

2 Q. All right: And it's signed by Christopher Poage
3 after that?

4 A. Yes. It's signed by Christopher Poage dated
5 2/20/09.

6 Q. And again, Detective, is this something you're
7 paraphrasing for him or is this something that he's
8 giving you, the words he's giving you?

9 A. These are the words he's giving me.

10 Q. Did he ever tell you in either of the interviews
11 where Lieutenant Dalton's present or when you were with
12 him by yourself about any threats being made to him by
13 E.J.?

14 A. No. He never said E.J. threatened him.

15 Q. Okay. Now, in looking through this, Detective, to
16 clear up just a couple of things, when he mentioned that
17 E.J. took the screwdriver from him and scratched the one
18 into the refrig., what, if anything, did he indicate to
19 you that they were doing at that time?

20 A. He said that they -- they were looking for the
21 money. And then obviously when they didn't find the
22 money, then they were waiting. And you would assume from
23 that point that they were waiting on Tommy Mitchell to
24 come back home since they didn't find the money in the
25 house.

1 Q. All right. Did he ever tell you ultimately whether
2 any money was found or not?

3 A. He never said whether any money was found or not.

4 Q. Did he say whether he'd taken anything off of Tommy
5 Mitchell?

6 A. No.

7 Q. I guess other than the keys to the Spree and the
8 Spree itself?

9 A. Correct.

10 Q. And I guess -- we're calling it a Spree. It's like
11 a moped. Is that ---

12 A. Yeah. The actual name is like a MotoFino moped, but
13 the common term is moped or Spree.

14 Q. Okay. And as a detective, do you then look at the
15 statement and see where the statement corresponds or
16 correlates with the actual forensic evidence at the crime
17 scene that you have?

18 A. Absolutely. That's one way that you connect good
19 information.

20 Q. All right. And in doing that in this case, did you
21 look to see what things that Christopher Poage had told
22 you that matched with what you know to be absolutely true
23 in the crime scene?

24 A. Yes.

25 Q. All right. And if you would, Detective, we can

1 start out -- and I'll show you State's Exhibits Number 19
2 and 34.

3 MR. THOMPSON: I believe it's already in
4 evidence.

5 Q. All right. If we can go to State's Exhibit Number
6 19 or -- yes, number 19. And if you would, look at the
7 statement and tell me where in the statement -- what are
8 the first things that he tells you about this that rang
9 true to you?

10 A. In his statement he said, we started walking and got
11 to this green house that's up behind the old folks home.

12 Q. Okay. And whose house is this in State's Exhibit
13 19?

14 A. This is Tommy Mitchell's house at [REDACTED] Steele Street.

15 Q. And it's green?

16 A. It's light green, yes.

17 Q. All right. And as well, they say -- you mention
18 behind an old folks home. Is this actually behind an old
19 folks home?

20 A. Yes. If y'all are familiar, there's a mill area
21 that was reconverted or converted into an older folks
22 home, and it's right across the street.

23 Q. Okay. What's the next portion in the statement that
24 sticks out to you?

25 A. He said he sat down in a chair on a porch.

1 Q. All right. And looking at the porch -- and this is
2 State's Exhibit 19. But also if we look at State's
3 Exhibit Number 34, there's chairs on either side of the
4 front door on the front porch?

5 A. Yes..

6 Q. Okay. Now, go through his statement a little
7 farther and tell us what is the next portion of it that
8 sticks out to you?

9 A. He says that he was told that he was in Short Dog's
10 house and that E.J. told him that Short Dog had gotten a
11 big settlement.

12 Q. All right. Now, what sticks out to you about Short
13 Dog, the name Short Dog? What, if anything, sticks out
14 to you?

15 A. Well, I would assume that Short Dog would mean a
16 short person because I don't think that you would
17 nickname someone that was very tall Short Dog.

18 Q. So whose nickname is this, I guess ---

19 A. That is Tommy Mitchell's nickname.

20 Q. That's Tommy Mitchell's nickname?

21 A. Yes.

22 Q. Okay. And then he mentions what again, the big
23 settlement?

24 A. The big settlement, yes.

25 Q. All right. And you've already shown that you have

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1 the settlement papers for ---

2 A. Right, the three-thousand-dollar settlement from the
3 City.

4 Q. Okay. What's the next thing that sticks out to you
5 as something that was true at the crime scene?

6 A. Poage talks about E.J. shaking pillow cases and
7 lifting up the mattresses and stuff in the bedroom.

8 Q. Before I go to that ...

9 MR. THOMPSON: An exhibit I'm going to ask the
10 Defense to take a look.

11 Q. State's Exhibit 51. And from this photograph, what
12 are you able to tell related to the statement?

13 A. Well, from that photograph you can see the mattress
14 is not on the bed exactly as it's supposed to. It's kind
15 of canted to the side a little bit. And also, the bottom
16 of the bedspread is pulled up on the corner.

17 Q. All right. So similar to as if someone had lifted
18 it?

19 A. Yes.

20 Q. Okay. Now, what is the next portion of the
21 statement that you saw that it matched into the crime
22 scene?

23 A. Christopher Poage said he went to the living room
24 and he picked up a screwdriver and he was sitting there
25 playing it.

1 Q. All right. And if you'll go to State's Exhibit 88,
2 I believe. And in that photograph, can we see what was
3 described by Christopher Poage at that point?

4 A. Yes. That's a couch that was in the living room
5 area, and you can see the green screwdriver right there
6 kind of between the two couch cushions.

7 Q. All right. It is numbered there?

8 A. It's numbered 18.

9 Q. So this green screwdriver, number 18, is lying there
10 on the sofa, and that is kind of what he's telling us
11 here in the statement; is that correct?

12 A. That's correct.

13 Q. All right. And as you go through the statement,
14 what would be the next portion that stuck out to you?

15 A. He stated that E.J. came and took the screwdriver
16 from him and scratched a one in the refrigerator door
17 that was in the kitchen.

18 Q. If you'd go to State's Exhibit Number 93, please?
19 And is that the front of the refrigerator, I believe?

20 A. That is the front of the refrigerator.

21 Q. All right.

22 A. That is something that we did not even notice when
23 we first were looking at the crime scene photographs.

24 And then when Christopher Poage mentioned that there was
25 a one there, we went back and looked at pictures that

1 were taken the day that forensics took them when they
2 very first arrived. And there's the one in the
3 refrigerator door which verified what he said in his
4 statement.

5 Q. All right. And what is the next thing that stuck
6 out to you?

7 A. Where -- about hearing the Spree pull up and he hid
8 beside the stereo. He said that E.J. told him to hide
9 behind the stereo, but he actually said, I got beside the
10 stereo.

11 Q. All right. So ...

12 MR. THOMPSON: Exhibit Number 87, please.

13 Q. And this is the room here. Let me see. It's a
14 little difficult seeing that particular slide where it's
15 projected. But if you could with the pointer point out
16 where this -- orient us in the living room as to where
17 the stereo is.

18 A. The stereo is right here. There's a small table.
19 The stereo is sitting on top of it, and then there's
20 space right here between the stereo and the wall where
21 the corner hits.

22 Q. All right. And in orienting us to this living room,
23 I think I see number 18. Can you point out what that is?

24 A. 18 is right here, and you can see the tip of the
25 green screwdriver.

1 Q. Okay.

2 A. And of course, this would be coming in from the
3 little stoop area ---

4 Q. Okay.

5 A. --- where you come in from the front door. This
6 door back here would be going toward the kitchen.

7 Q. All right. So the kitchen, as we saw towards the
8 back of the house. So if he's coming in to the back, he
9 would be coming in that way?

10 A. He would be coming in this way, and then this would
11 be the path toward the bedroom.

12 Q. All right. So where he was behind the stereo, it
13 would have been difficult for someone to see him right
14 away?

15 A. Yeah, especially if you were just walking in, you
16 wouldn't necessarily turn in that direction.

17 Q. And once again, at this point in time, any lights
18 that we had on in the house? Were there any lights that
19 were available at that point necessarily?

20 A. When we arrived on the scene, there were no lights
21 on. He had gotten the power turned on, but the lights
22 themselves were not on.

23 Q. Okay. Okay. All right. Detective, what is the
24 next part that sticks or points out to you?

25 A. When he talks -- when Christopher Poage talks about

1 the grocery bags that Tommy Mitchell had in his hand when
2 he walked into the room and that E.J. threw some liquid
3 on him and he dropped the bags.

4 Q. All right. And can you show us, I think, on this
5 slide as well. Are there groceries in this photograph?

6 A. Yes. You can see -- this is laundry detergent. And
7 if you look, you can see the top of it's kind of dented
8 in as if it has been dropped. Also, this is a package of
9 Ramen Noodles. On top of that is a Banquet frozen
10 dinner. And then over here on this side is a loaf of
11 bread. But there's no bag there that the groceries were
12 in.

13 Q. All right. But the groceries seem to be dropped in
14 the middle of the floor?

15 A. Right. That is correct.

16 Q. All right. And what is the next part in the
17 statement that sticks out to you?

18 A. Well, the part where he said E.J. threw some liquid
19 on Tommy when he entered the bedroom.

20 Q. All right. And is that something y'all had any idea
21 about at that point?

22 A. No, not all. Didn't have any idea about that.

23 Q. What, if any, liquids were recovered in the bedroom?

24 A. In the bedroom there was a liquor bottle that was
25 recovered from the top of the bed. There was a container

1 of bleach in there, and then there was a water bottle.

2 Q. Okay. Now, the bleach, do you recall where that was
3 located on the floor?

4 A. I believe it was sitting by the -- I think it's
5 called a dresser -- by the dresser that would be nearer
6 to the doorway of the bedroom, sitting on the floor there
7 in the corner.

8 Q. All right. And so there were liquid items that
9 could have been used in the bedroom?

10 A. Yes, there were some. Uh-huh (affirmative).

11 Q. What is the next part that pops out to you?

12 A. Well, they started scuffling. He said that -- where
13 he was talking about that Tommy Mitchell ran and E.J. ran
14 and then he -- E.J. yelled at him to stop him, and he
15 hesitated and they bumped. But then E.J. and Tommy ended
16 up in the kitchen, and they started scuffling.

17 Q. And they bumped, that's E.J. and ---

18 A. E.J. and Christopher Poage.

19 Q. --- Christopher Poage bumped into each other?

20 A. Yes.

21 Q. Okay. And ultimately, as he said, E.J. caught up
22 with Tommy Mitchell in the kitchen?

23 A. That's right.

24 Q. All right. And is that where he said the scuffle
25 took place?

1 A. Yes. He said they were scuffling in the kitchen.

2 Q. All right.

3 MR. THOMPSON: If we could go to Exhibit Number
4 96.

5 Q. Unfortunately, that's not showing up very well. Let
6 me -- I know you're familiar with it, Detective. If you
7 can describe kind of what's in this photograph.

8 A. Well, I don't know if you can see this very well.
9 This is a chair that's been turned over. You can see the
10 top or the back of the chair right there. And then this
11 is the chair cushion, and the legs go this way. There's
12 a table here. There's some broken glass in here. I
13 can't actually tell you where it is exactly from this
14 picture. Maybe we have a little better one.

15 Q. Let's go to Exhibit Number 97 and see if that shows
16 us any better. All right.

17 A. That's a little better. You can see the top of the
18 table has been moved off of the table legs. This chair
19 is also knocked over. This is part of that other chair
20 that we were looking at, and then there's some broken
21 glass on the floor.

22 Q. Okay. And State's Exhibit Number 98 is ---

23 A. It's just another picture, shows another chair
24 that's turned over here. This chair, of course, is
25 pushed back in the corner.

1 Q. Okay. And so did there appear to be a scuffle in
2 the kitchen?

3 A. Yes. I wouldn't think that this would be a normal
4 way that your kitchen would be set up.

5 Q. All right. And once again, was any of this released
6 to the public prior to this?

7 A. None of it was released.

8 Q. What is the next thing that stuck out to you in the
9 statement?

10 A. Well, he says that somehow they ended up back in the
11 bedroom, and then he saw Short Dog lying face down in the
12 bedroom floor.

13 Q. All right. And I believe that's how he was found;
14 is that correct?

15 A. That is correct.

16 Q. In the bedroom face down?

17 A. Yes.

18 Q. What was the next part that stuck out?

19 A. He said that E.J. was beating him with a stick at
20 that time, and that goes along with the stick that we
21 found in the bedroom on top of the bed.

22 Q. All right. And Detective, I believe that stick's
23 already been placed into evidence.

24 A. Yes.

25 MR. THOMPSON: If we could turn on the lights

1 just for a moment.

2 Q. There's really only one thing that we're going to
3 look back at again. Detective, if you could, would you
4 open up the bag with the stick in it? Do you need for me
5 to assist in getting it open?

6 A. (Complied)

7 Q. All right. And that's the stick that was found on
8 the bed, I believe?

9 A. Yes, that is.

10 Q. Okay. And he was telling you he was beating him all
11 over with a wooden stick?

12 A. Yes, that's correct.

13 Q. And once again, had anybody told or released to the
14 public that that had been something that was used in the
15 crime?

16 A. No, this was never released to the public.

17 Q. Thank you. You can put it back. Thank you.

18 Now, did the Defendant ever mention the shovel to
19 you?

20 A. No, he never mentioned the shovel at all.

21 Q. Okay. And did you introduce that to him at all?
22 You can go ahead and have a seat again.

23 (WHEREUPON, the witness resumed the witness stand.)

24 A. No. Like you asked me before, I don't give
25 information; I'm gaining information. So I never told

1 him about the shovel.

2 Q. So you never asked him about the shovel itself,
3 correct?

4 A. No, I did not.

5 Q. Now, looking back then -- we just finished talking
6 about the stick. What is the next thing that he talked
7 to you about?

8 A. He talked about E.J. getting a knife from somewhere
9 and started stabbing Short Dog.

10 Q. All right.

11 A. But he didn't say where.

12 Q. This is State's Exhibit Number 4 already in
13 evidence. If you could open that for us. I don't
14 believe it's taped anymore. Is that the knife case that
15 was recovered?

16 A. Yes. It's an empty knife case recovered from the
17 top of the night stand in the bedroom.

18 Q. And Detective, would you like to show this to the
19 jury as well?

20 A. Yes, thank you.

21 Q. If you'll bring that down and show it the jury,
22 please.

23 A. Uh-huh (affirmative).

24 (WHEREUPON, the witness stepped down from the
25 witness stand.)

1 Q. All right. Thank you. And that was the knife case
2 that the forensic unit testified earlier to that they'd
3 recovered the second day after it was discovered,
4 correct?

5 A. Yes. That's correct.

6 Q. And within the statement, what is the next part that
7 pops out to you?

8 A. He said that E.J. came out of the house and was
9 dangling some keys.

10 Q. All right.

11 A. And that those keys fit the Spree or the moped.

12 Q. All right. And were those keys ever recovered?

13 A. No, they were not recovered.

14 Q. And was the moped ever recovered?

15 A. The moped was never recovered.

16 Q. Had y'all released the fact that the people who had
17 killed Tommy Mitchell likely had stolen his moped?

18 A. No, we had not released that fact.

19 Q. All right. What's the next part that sticks out to
20 you?

21 A. When E.J. came out, he was carrying his clothes in a
22 bag and put them under the seat of the Spree.

23 Q. And when he says he was carrying the clothes in a
24 bag, why does that stick out to you?

25 A. Because of the groceries that were found in the

1 living room that had been dropped, and there was no
2 grocery bags.

3 Q. All right. Would you go back to State's Exhibit
4 Number 87, please?

5 MR. THOMPSON: Just a moment, Madam Clerk.

6 Q. And as you had pointed out before, those in the
7 center of the floor are the groceries?

8 A. Uh-huh (affirmative). These right here in the
9 center of the living room floor.

10 Q. All right. And no bag?

11 A. No bag.

12 Q. Thank you. You can have a seat again.

13 (WHEREUPON, the witness resumed the witness stand.)

14 MR. THOMPSON: And if you'd turn back on the
15 lights. Thank you.

16 Q. What, if anything, else popped out to you as
17 corroboration to the statement?

18 A. He told us that when they went to E.J.'s daddy's
19 house that E.J. said to burn the clothes. Said burned
20 his clothes, and he told me to burn mine. And so
21 therefore, we got a search warrant for E.J.'s father's
22 house, and we discovered two burn piles in the back yard
23 of his father's house.

24 Q. Two burn piles in the back yard of the house that he
25 had told you about?

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1 A. That's correct.

2 Q. And what is the next part then that stands out to
3 you?

4 A. The next part was the part where he talked about the
5 York County Deputy stopping them as they were going up to
6 the store to get something from the store. And so I
7 followed up on that and was able to obtain the
8 information from the deputy about the stop. We didn't
9 know anything about that before he told us that day.

10 Q. So those are just things that you notice in
11 corroboration from this statement to the crime scene; is
12 that correct?

13 A. That's correct.

14 Q. And as a detective, what, if anything, does that
15 tell you regarding this Defendant's involvement in this
16 case?

17 A. That tells you that Christopher Poage had
18 information that only a person that would have been
19 involved in the crime would have.

20 Q. Thank you, Detective. That's all. Thank you,
21 Detective. Nothing further. Please answer any questions
22 the Defense has for you.

23 THE COURT: I think before we get into cross
24 we'll break for lunch because it's a quarter to one.

25 And so we'll break until two o'clock. Y'all have a

1 pleasant lunch and we'll see you back at two o'clock.

2 (WHEREUPON, the jury exited the courtroom at
3 approximately 12:46 p.m.)

4 THE COURT: Detective, of course, you know you
5 can't discuss your testimony with anyone over lunch since
6 you're subject to cross-examination?

7 THE WITNESS: Yes, sir.

8 THE COURT: So we'll be at ease until two
9 o'clock.

10 (WHEREUPON, court stood at recess for a lunch
11 break.)

12 THE COURT: We'll get the witness back up on
13 the stand and get the jury in.

14 You are still under oath.

15 THE BAILIFF: Are you ready?

16 THE COURT: Yeah. Bring in the jury.

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 2:04 p.m.)

19 THE COURT: All right. Mr. Rawlinson?

20 CROSS-EXAMINATION

21 BY MR. RAWLINSON:

22 Q. Detective Harveston, I guess as we start, I will
23 promise you that I'm not going to ask you any questions
24 about whether Christopher Poage was there, okay?

25 A. Okay.

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1 Q. Okay. All right. Now, you testified earlier before
2 we took a lunch break that you were stumped when you
3 looked at the crime scene?

4 A. At the very beginning, we didn't have any clues.

5 Q. Any clues? And would you say that that frustrated
6 you?

7 A. Well, of course. When you -- that's your job is to
8 determine what happened. And we didn't have a whole lot
9 to go on.

10 Q. Okay. And now, was this interrogation videotaped?

11 A. No, sir. We don't videotape our -- and it was an
12 interview, and it was not videotaped. We don't do that
13 at the Rock Hill Police Department.

14 Q. And there's no audio?

15 A. No, sir, there's no audio.

16 Q. Do you know if other police departments around this
17 area have audio or video?

18 A. Some do and some don't.

19 Q. Is there any particular reason that Rock Hill City
20 Police don't videotape or audio these things?

21 A. Not that I know of. It's just not something that
22 we've ever done.

23 Q. Have you ever had a circumstance arise where a
24 Defendant says one thing or a person being interviewed
25 said one thing, and then you say another thing? Has that

1 ever come up?

2 A. Of course, it has.

3 Q. Of course, it has. And the police department has
4 made the decision to let those circumstances continue to
5 come up and not audiotape or videotape; is that correct?

6 A. It's just not our policy that we video and
7 audiotape.

8 Q. Okay. And have you conducted -- well, I'm sorry.
9 Would you say that this case is a serious case?

10 A. Yes, it's a very serious case.

11 Q. And would you say the purpose of your interview is
12 to get as accurate and detailed a statement as possible?

13 A. Yes, that would be the purpose.

14 Q. Okay. All right. So are you trained to elicit
15 these specific details from a person?

16 A. I have been to training before on how to interview,
17 yes.

18 Q. Okay. Now, looking at the statement -- I think you
19 have it up there. It's been placed into evidence. You
20 said that there was a conversation that occurred before
21 this statement; is that correct?

22 A. That's correct. As I described earlier, initially,
23 right after we read Christopher Poage his rights, then we
24 talked about some other things that were not related to
25 the case. Then we started asking questions about the

1 specific case. And so there was a conversation that
2 ensued before the written statement was taken.

3 Q. Is there any notes or anything from that
4 conversation?

5 A. There's a few notes that I took during that
6 conversation, yes.

7 Q. Okay. And it didn't make the statement?

8 A. No, sir. This was Christopher Poage's words to me
9 at the time of the statement ---

10 Q. Okay.

11 A. --- that he directly told me after that.

12 Q. Okay. But at any -- in any event, his words to you
13 at that time, at that time are not encompassed in this
14 statement at all, so they're missing?

15 A. They're the same information except maybe something
16 a little different that he might have said in
17 conversation that he did not reiterate when he actually
18 gave me his sworn statement.

19 Q. Okay. Now, you said -- I think it was your
20 testimony that he knew the exact date. You said, I think
21 your testimony was he remembered it was the summer and he
22 referenced the exact date. Was that your testimony?

23 A. I think my testimony said that he remembered it was
24 back in the summer. He didn't know the exact date.

25 Q. Okay. So he didn't know the exact date?

1 A. That's correct.

2 Q. All right. Now, I think your testimony -- and I'm
3 glad you have your statement in front of you. But your
4 testimony when you were -- before the statement was
5 admitted into evidence and you were recounting what he
6 told you that day, you said that they waited for Mitchell
7 after Ernest Jackson had left the bedroom. Is that
8 correct?

9 A. That's correct. That's in some notes that I took
10 during our initial conversation where he said to me that
11 they waited.

12 Q. Oh, okay. Now, so there's notes. You took notes?

13 A. Yes, sir. We just said that I took a few notes
14 during the interview.

15 Q. Okay. Okay. But the statement doesn't say they
16 waited?

17 A. No, because he didn't state that to me at the time
18 that I was typing the statement.

19 Q. Okay. Okay. Now, so there's notes that you took
20 that are also not in this statement?

21 A. Correct.

22 Q. Correct?

23 A. Yes.

24 Q. Okay. Now, going back to the beginning of the
25 statement. I think it's in that first -- in the very

1 first sentence of the paragraph after the personal
2 information. You said you put in -- you put in Ernest
3 Jackson in parenthesis?

4 A. Yes, I did.

5 Q. And that's not noted anywhere in the statement that
6 you placed that in there, right?

7 A. That's right.

8 Q. That's right? And so that's not my client's words,
9 correct?

10 A. He said E.J. and then Ernest Jackson. I clarified
11 that it was Ernest Jackson because we'd been talking
12 about him ever since back in the other statement. Yes, I
13 inserted that in parenthesis to show that that was Ernest
14 Jackson.

15 Q. So I guess my question to you is, you inserted that.
16 When he was giving you this statement ---

17 A. Yes, I did.

18 Q. --- he did not say, E.J., parenthesis, Ernest
19 Jackson, parenthesis, correct?

20 A. No, sir, he did not say that.

21 Q. Okay. I didn't think so.

22 Now, moving along in the statement, we can just take
23 this and kind of -- we can try to make a time line out of
24 it all. The statement says he sat down on a chair on the
25 porch. Now, is the porch -- where does the porch face?

- 1 Does it face the street? Does it face other houses?
- 2 Which way does it face?
- 3 A. The porch is on the front of the house, and it faces
- 4 Steele Street. So it would be facing the back of what he
- 5 referred to as the old folks home.
- 6 Q. Got you. Got you. And then is there a street
- 7 between there? It faces Steele Street, right?
- 8 A. Yes. Steele Street intersects with High Street
- 9 which runs down the side of Tommy Mitchell's house. So
- 10 his house is right on the corner of Steele and High
- 11 Street.
- 12 Q. Oh, right on the corner. So now we're talking about
- 13 High Street and Steele Street?
- 14 A. That's correct.
- 15 Q. Okay. You've been a detective a long time, right?
- 16 A. A while, yes.
- 17 Q. I think it was 1990?
- 18 A. I've not been a detective since 1990. I've been a
- 19 ---
- 20 Q. Or a police officer involved in law enforcement.
- 21 A. That's correct, yes.
- 22 Q. And you've seen a number of cases, correct?
- 23 A. Yes, I've seen a few.
- 24 Q. A number of cases. Have you ever been involved in
- 25 any case where a person intends to rob a house and hangs

1 out on the porch before he does it?

2 A. I can't really say that specifically. But every
3 single case I've ever been involved with is different,
4 and it has something new and unusual about it.

5 Q. And you would certainly -- you would certainly find
6 that unusual, correct?

7 A. Depends on the motivation at that moment, why they
8 would be sitting on the porch or not sitting on the
9 porch.

10 Q. So your testimony is that you find -- you do not
11 find it unusual that a person would sit on the porch of a
12 house that they're about to rob in view of two -- on the
13 corner of two streets? You don't find that unusual
14 whatsoever?

15 A. Only if they were trying to display that nothing's
16 going on, that everything's ordinary.

17 Q. Do you have any information that that's what was
18 going on?

19 A. No. That would just be what I would think of, you
20 know, from your question.

21 Q. As a matter of fact, from the crime scene and your
22 investigation, you have no reason to believe Christopher
23 Poage had any intent to go in that house and do anything;
24 isn't that correct?

25 A. From the crime scene and the investigation?

1 Q. Correct?

2 A. No. I believe that he did have intent to go in
3 there.

4 Q. You don't have any evidence to back that up, do you?

5 A. Physical evidence, no, sir.

6 Q. Okay. Now, we'll go into some inconsistencies. But
7 in this statement he said several -- he definitely told
8 you that he had no idea what was going on before he went
9 to that house, right?

10 A. Yes. He did tell me that.

11 Q. Okay. And throughout this statement, throughout
12 this statement -- I won't reference an exact number. But
13 throughout the statement he says, let's go, get out of
14 here or come on, let's go, or let's go, it ain't worth
15 it, a number of times; isn't that correct?

16 A. That's correct. But he did not leave.

17 Q. And he also stated in this statement that he had no
18 idea what either -- he also stated that he did not know
19 this was Short Dog's house; is that correct?

20 A. That's correct. He said he didn't know it was Short
21 Dog's house until he got inside and E.J. told him it was
22 Short Dog's house.

23 Q. And he also did not know until he got inside that
24 house that Ernest Jackson had any intention to do
25 anything? Isn't that what he told you?

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1 A. That's what he told me.

2 Q. All right. Okay. And again, you don't have any
3 evidence to say -- you don't have any physical evidence
4 to say otherwise?

5 A. No, I don't have any physical evidence to say
6 otherwise.

7 Q. So it's just what you believe?

8 A. It's what I believe based on my experience, yes.

9 Q. Okay. Okay. Now, going back to your testimony,
10 because I want to clear some things up -- and I think you
11 cleared this up actually. But your testimony earlier
12 said that he hid behind the stereo. That's not what the
13 statement says, is it?

14 A. No, the statement says that he -- hold on a second.
15 He said, E.J. said, hide behind the stereo. But what
16 Christopher Poage stated to me was, I got beside the
17 stereo. It was physically impossible to hide behind the
18 stereo unless you moved it.

19 Q. At any point, at any point -- well, physically
20 impossible. Could a midget hide behind the stereo?

21 A. Not unless you move the stereo.

22 Q. Okay. Okay. Now, is the -- it is your assertion
23 that my client -- well, let me back up. At any point did
24 he say he hid beside the stereo or he hid behind the
25 stereo?

- 1 A. He said, I got beside the stereo.
- 2 Q. Okay. So at no point did he use the word hide?
- 3 A. He did not.
- 4 Q. I just wanted to make that clear. And this -- and
- 5 your testimony earlier, again, before the statement was
- 6 read into evidence, you said that they burned their
- 7 clothes. That's not what the statement said, does it?
- 8 A. The statement says -- let me find the exact spot.
- 9 Q. It's about ---
- 10 A. Yes. I found it.
- 11 Q. Okay.
- 12 A. The statement said he had his clothes in a bag --
- 13 and he had just finished talking about E.J. He had his
- 14 clothes in a bag, and he put them under the seat of the
- 15 Spree. We got on it and went to E.J.'s dad's house out
- 16 in the country. We took the Spree across the road to the
- 17 woods.
- 18 Q. Uh-huh (affirmative).
- 19 A. That's the last time I saw it. We come back to his
- 20 daddy's house, and he burned his clothes and he told me
- 21 to burn mine.
- 22 Q. Right. So he didn't say he burned his clothes.
- 23 A. He did not say ---
- 24 Q. That's the question I asked.
- 25 A. Correct. He did not say he burnt his clothes.

1 Q. Okay.

2 A. He said E.J. told him to burn his clothes.

3 Q. Right. So that -- your testimony in that he told
4 you that they both burnt their clothes is incorrect;
5 isn't that true?

6 A. I guess that statement would be incorrect. He did
7 not exactly say that he physically burnt his own clothes.

8 Q. Is that another thing you just believe?

9 A. Yes, I believe that.

10 Q. Okay. Now, you've been involved in law enforcement
11 a number of years.

12 A. Yes, sir.

13 Q. The things I'm asking you that seem to be some
14 things that are unclear, at least to me, are things it
15 would seem like you would ask the question, why didn't
16 you follow up -- why didn't you follow up and say, well,
17 did you burn your clothes? Is there any particular
18 reason you didn't ask that question?

19 A. At this particular time, we had been talking to him
20 for a good while. You could tell that he was getting
21 tired. And so instead of pushing the issue, I allowed
22 him to give his statements in his own words and finished
23 up there.

24 Q. Okay. But at the beginning of this conversation,
25 you said your goal as a detective at that point was to

1 have a accurate and full statement, correct?

2 A. Yes, sir.

3 Q. So now are you saying your actions at that point,
4 because you thought he was tired, you no longer had that
5 goal?

6 A. No. There get's -- there becomes a point when
7 you're talking to someone that you can see that they
8 don't want to talk anymore and they start slowing down in
9 what they're saying and how they answer questions. And
10 so there comes a point in time when you decide it's time
11 to stop and get on with it.

12 Q. My question is ---

13 A. Uh-huh (affirmative).

14 Q. --- at that point, did you still have the goal of
15 having a accurate and full statement?

16 A. I always have that goal. And at that point, I
17 actually thought that I had covered everything that
18 needed to be covered.

19 Q. At that point?

20 A. Yes.

21 Q. But then you realize now there's some things that
22 weren't covered in that statement?

23 A. There are always things. When you go back and look
24 and you review your case folder and you review statements
25 and you review conversations that you had, there are

1 always things that you wish that you had asked. It's

2 like crossing the Ts and dotting the Is.

3 Q. Okay. Okay.

4 A. Yes.

5 Q. And so you make mistakes in a lot of your cases?

6 A. There's always something I can learn to do better

7 from every case I do.

8 Q. Okay. Do you normally -- do you normally forget to

9 follow up on what you say are important details?

10 A. I can't say that I normally forget.

11 Q. But it happens often?

12 A. Occasionally things will happen that slip through

13 the cracks and that you wish that you had asked.

14 Q. Do you wish that you would have asked that question?

15 A. Well, of course, I do.

16 Q. And do you think that may have been some important

17 information?

18 A. Yes, I do.

19 Q. Okay. And if you look maybe mid-way through this

20 second, through this second page, Christopher Poage said

21 that he, referring to Ernest Jackson, got a knife from

22 somewhere and started stabbing Short Dog.

23 A. Yes, that's correct.

24 Q. Did he ever say he had the knife?

25 A. Did Christopher ever say he had that knife?

1 Q. Did Christopher Poage ever say that Christopher
2 Poage had a knife?

3 A. No, Christopher Poage did not say he had a knife.

4 Q. Did Christopher Poage ever say that he had a stick?

5 A. Christopher Poage did not say that.

6 Q. Did Christopher Poage ever say he had a shovel?

7 A. He did not say he had a shovel.

8 Q. Did Christopher Poage -- do you have any evidence to
9 tell this jury or show this jury that he ever did have a
10 knife, he ever did have a stick, he ever did have a
11 shovel?

12 A. Well, as the jury's already heard, there was no
13 D.N.A. evidence to connect anyone to that except the
14 victim.

15 Q. If you could answer the question?

16 A. No.

17 Q. Thank you. Now, during this interview, how small is
18 this interview room?

19 A. Sir, it's not an interview room. It was at actually
20 Lieutenant Dalton's office.

21 Q. Okay.

22 A. So it's not an interview room.

23 Q. Do y'all have interview rooms, interrogation rooms?

24 A. Yes, we do. We have two.

25 Q. Well, why wasn't he in an interview room or

1 interrogation room if that's what they're for?

2 A. It's very possible at that time that those rooms
3 could have been in use by someone else and we just chose
4 to use an office, which we do that also. We use offices
5 or where there's privacy.

6 Q. You don't remember that?

7 A. I'm sorry?

8 Q. Do you remember if there were other interviews going
9 on in other rooms?

10 A. No. But I would think that we chose to go to
11 Lieutenant Dalton's office because there is a little bit
12 more room in there than there is in the actual interview
13 rooms.

14 Q. Okay. My question is, do you remember if there was
15 anybody else in those interview rooms?

16 A. I don't know if there was anyone else in the other
17 interview rooms.

18 Q. Okay. And I know that you said that y'all were
19 dressed in plain clothes.

20 A. Yes, sir.

21 Q. Did either one of you have a weapon?

22 A. I'm sure both of us had our weapons and badges on.
23 That's normal.

24 Q. Okay.

25 A. Uh-huh (affirmative).

1 Q. And at some point during this interview process, did
2 my client ask for his mother?

3 A. I do not remember him asking for his mother.

4 Q. You don't remember him asking for his mother time
5 and time again?

6 A. No, I don't.

7 Q. And are those -- go back to the statement for a
8 second. Are there instances where a client or a person
9 being interviewed or a potential defendant, are they
10 allowed to write their own statement?

11 A. Of course they're allowed to. It's not anything
12 that we say, no, you can't write your statement. We
13 normally type them up if we are in the police department
14 where we have access to a computer system. For one
15 thing, it's more legible to do that. But there are
16 occasions when people have handwritten their statements.
17 Most of the time, that's out in the field when you're
18 gathering information.

19 Q. Do you think it would have been a more accurate
20 depiction of what Christopher Poage told you that day if
21 he had written his own statement?

22 A. I can't really say because I have no idea what he
23 would have written.

24 Q. Now, do you remember at any point Christopher Poage
25 being nervous?

1 A. I would say nervous. He was shedding tears at some
2 point like he was getting the weight of the world off of
3 his shoulders.

4 Q. Is that last statement one of the things you
5 believe?

6 A. That's what I believe by his physical appearance and
7 how he reacted to questions.

8 Q. Okay. So you would say he was remorseful for what
9 happened?

10 A. He seemed to be, yes.

11 Q. Okay. And during this -- how long do you think he
12 was crying during this interview?

13 A. Well, you said crying. I remember him having tears.
14 I don't actually remember him crying.

15 Q. I'm sorry. That wasn't the distinction I was trying
16 to make.

17 A. I understand.

18 Q. So how long had did he have tears in his eyes?

19 A. It was from time to time throughout the interview.

20 Q. Okay. So most of the interview?

21 A. I don't know if it would be most, but there was
22 quite a few tears shed during the course of the time that
23 we were talking to him.

24 Q. And how long did this interview last?

25 A. Well, from start to finish, we started a little bit

1 before two o'clock, I believe, and we finished -- his
2 statement was actually signed and dated, timed at a
3 little after four p.m.

4 Q. So somewhere in a range of two, two and a half
5 hours?

6 A. Yes, that's right.

7 Q. At any point during those two and a half hours, was
8 he left alone?

9 A. He was not.

10 Q. And of those two and a half hours or two hours and
11 some change, this is the statement we have, this half-
12 page if it was on one page or so, statement out of two
13 hours of interview?

14 A. This is the statement that came from his mouth, yes,
15 when I was typing it in.

16 Q. And do you remember telling my client that he could
17 not see his -- he could not see his mother until he
18 signed a statement?

19 A. No, sir. I never told him he couldn't see his
20 mother until he signed the statement.

21 Q. Okay. And you also testified earlier -- I want to
22 clear it up for my own benefit. You testified earlier
23 that you have never threatened anybody?

24 A. I said I have never threatened anybody in an
25 interview.

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1 Q. And nobody's been threatened in your presence?

2 A. Not in this case.

3 Q. No, no, no. In your police career, in your law
4 enforcement career?

5 A. I have seen it done before, yes.

6 Q. And were you one of the people who threatened
7 somebody in the past?

8 A. Absolutely not. That is not the way I work, and I
9 don't even tolerate that sort of behavior. If it happens
10 in my presence, then I will say something about it.

11 Q. And so over the course of your career, you've never
12 -- and you've admitted to sometimes having mistakes in
13 details. But over the course of your career, you've
14 never lost your temper or said something that could be
15 construed as a threat? Is that your testimony?

16 A. I have never -- I can't say I've never lost my
17 temper, but I have never threatened an individual that I
18 was interviewing, no.

19 Q. Do you remember discussing potential charges with my
20 client?

21 A. I did not discuss potential charges with Christopher
22 Poage.

23 Q. Do you remember discussing potential punishment with
24 my client?

25 A. I did not discuss any punishment, any potential.

1 Q. So you don't remember -- you don't remember
2 referencing the electric chair to him?

3 A. I did not reference the electric chair to him.

4 Q. After this statement was signed ...

5 A. Uh-huh (affirmative).

6 Q. ... do you remember making another request of
7 Christopher Poage?

8 A. I didn't make another request of Christopher Poage.

9 Q. Who made that request?

10 A. I believe that was Lieutenant Dalton.

11 Q. Okay. Do you remember what that request was?

12 MR. THOMPSON: Objection, Your Honor. Your
13 Honor, we have a matter of law to take up.

14 THE COURT: I'll let you go to the jury room.
15 I'll let you go to the jury room while I take up this
16 matter of law.

17 (WHEREUPON, the jury exited the courtroom at
18 approximately 2:26 p.m.)

19 THE COURT: All right. Yes, sir. Objection?

20 MR. THOMPSON: Yes, sir. I believe he's going
21 into the fact that ultimately he was asked to wear a wire
22 to go into the jail cell with Mr. Jackson. I don't think
23 that's relevant at this particular time. I think it
24 would be prejudicial. We'd like the Court to consider
25 that before he goes into it.

1 THE COURT: Let me let -- make a proffer on
2 what you intend to offer. I think you've already done it
3 earlier, but go ahead so we'll have it on the record.

4 IN-CAMERA EXAMINATION

5 BY MR. RAWLINSON:

6 Q. Detective Harveston, do you remember telling my
7 client that he could not see his mother until he signed
8 the statement?

9 A. No, I did not tell him that.

10 Q. And do you also remember telling him he could not
11 see his mother until after he went into a jail cell and
12 wore a mike to elicit testimony from Ernest Jackson?

13 A. I most definitely did not tell him that.

14 Q. But at some point a request was made for him to go
15 into that jail cell and see Ernest Jackson?

16 A. That's correct.

17 Q. And he did not see his mother until after he went
18 and wore that mike in that jail cell; is that correct?

19 A. As far as I know, yes, that's correct.

20 MR. RAWLINSON: Your Honor, I believe our
21 argument is that this is -- that this request by the
22 police department shows a pattern of coercion that goes
23 to the -- that relates back to the statement. They were
24 using -- they were using the request from his mother or
25 the promise of reward or the hope of reward of seeing his

1 mother not only to induce the statement, but as further
2 evidence of that, they used that hope of reward in order
3 to get him -- and continue to do -- to be involved with
4 the police. Now, I can certainly wait until my client is
5 called and recall Detective Harveston. But I think under
6 these circumstances, I certainly think it's relevant.

7 THE COURT: Well, I'm going to sustain the
8 objection. I don't think it's relevant because it's post
9 giving of the statement. Also, she denies that she ever
10 -- I know your client's position is that he asked for his
11 mother and they kept saying, you've got to do this and
12 you've got to do that. But I think it's highly
13 prejudicial to interject that through this witness who
14 says it didn't happen. So I sustain the objection.

15 MR. RAWLINSON: Thank you, Your Honor.

16 THE COURT: Bring in the jury.

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 2:34 p.m.)

19 THE COURT: All right. You may proceed.

20 DIRECT EXAMINATION

21 CONTINUED BY MR. RAWLINSON:

22 Q. Detective Harveston, do you remember executing a
23 search warrant at my client's home?

24 A. Yes, I sure do.

25 Q. Do you remember who was present when you executed

1 that search warrant?

2 A. His mother was present. His sister came over, and
3 then I was with Lieutenant Belk and another officer, a
4 female officer, I believe Officer Gander.

5 Q. Okay. Do you remember telling Christopher Poage's
6 sister that he was having -- do you remember telling
7 Christopher Poage's sister that during the interview he
8 was having trouble understanding what you were telling
9 him?

10 A. I remember telling her that we had to repeat some of
11 our questions several times, which would be normal in
12 interview circumstances, especially if someone's nervous
13 or upset.

14 Q. You do remember telling her that?

15 A. Uh-huh (affirmative). Yes.

16 Q. Do you also remember telling her that he was having
17 trouble comprehending what was going on?

18 A. I don't know that I used the word comprehending
19 going on. I know that he had several questions about
20 when he was going to get out, when he was going to be
21 able to go home. And we did have to repeat several
22 times, you know. He thought he was getting out the next
23 day.

24 Q. And that comment about the attorney, can you
25 describe in detail what your response was when

1 Christopher Poage mentioned that he was concerned about
2 looking guilty if he didn't give you a statement?

3 A. Oh, you're talking about back when I was taking his
4 statement from him?

5 Q. I am. I am.

6 A. And he put his head down on the table, and then he
7 was kind of shaking his head. And when he sat back up,
8 he kind of mumbled to himself, I should have talked to an
9 attorney -- or not an attorney. I should have talked to
10 a lawyer. Maybe I should have talked to a lawyer. And
11 then he said, does it make you look guilty if you talk to
12 a lawyer. And I said, you know, if that's what you
13 think. And that was the only conversation we had about
14 that.

15 Q. That was the only conversation?

16 A. Yes, sir.

17 Q. Do you remember -- and just so we're clear --
18 because I only have a few more questions for you.

19 A. Okay.

20 Q. If you would just answer the questions I ask and not
21 give me a lot of background that I didn't ask, I would
22 appreciate it.

23 A. Okay.

24 Q. Do you remember having a conversation about that,
25 that particular conversation you just referenced with

1 Jesslyn Anderson, my client's sister, when you were
2 executing the search warrant?

3 A. Yes, I do.

4 Q. And did you indicate to her at that time that you
5 did, in fact, tell her that it would make him look guilty
6 if he didn't get an attorney?

7 A. No, I did not tell her that it would make him look
8 if he got an attorney.

9 Q. Okay. And going back to the statement again, if you
10 would look at the top of the second page of that
11 statement.

12 A. Okay.

13 Q. I think your testimony earlier -- and I just want to
14 clear it up. I think your testimony earlier was that he
15 told you he hesitated and then he went after them -- or
16 he hesitated and then he went after him, referring to
17 Christopher Poage, and then him and E.J. bumped into each
18 other. But that's not what the statement says, is it?

19 A. Okay. Let me find the spot that you're talking
20 about. Okay. What's -- you're asking me directly what's
21 written in the statement?

22 Q. Yeah. Doesn't the statement say, E.J. was saying,
23 get him, Cuz. And I hesitated and Short Dog almost made
24 it out of the kitchen door. Me and E.J. bumped into each
25 other, and E.J. pushed me out of the way. He caught up

1 with Short Dog and grabbed him around the neck.

2 A. Yes. That's what the statement says.

3 Q. So at no point did the words, I went after him, come
4 out of his mouth, correct?

5 A. Not in this statement.

6 Q. Not in this statement. But did he tell you earlier?

7 A. No. But if he's moving and they run into each
8 other, apparently he is going after Short Dog also.

9 Q. Is, I was moving, in the statement either?

10 A. He couldn't have been beside the stereo and bumped
11 into E.J. at the same time if he had not moved from the
12 stereo to at least where E.J. and Short Dog was.

13 Q. Detective Harveston, I'm just asking you what's in
14 the statement?

15 A. It doesn't say that in the statement.

16 Q. I know it's another thing you believe. I know that.
17 I know that.

18 And lastly, you said -- or one of the last things.
19 You said in the statement that -- and I quote -- I wrote
20 it down.

21 A. Okay.

22 Q. That it was information that only a person involved
23 in the crime would have known. Now, that's not
24 completely true, is it?

25 A. I think that's true. What do you mean, other than

1 ---

2 Q. Well, let me give you an example. If one --
3 somebody in this courtroom stabbed another person in this
4 courtroom and then did something very unique and we all
5 left, we would all know what that unique thing was. But
6 that don't mean we're involved in the crime; isn't that
7 correct?

8 A. I understand what you're saying there, that you
9 witnessed it.

10 Q. So what you really mean is that's only something
11 somebody would know if they witnessed a crime?

12 A. From the beginning to the end of this statement ---

13 Q. I just want you to answer my question.

14 A. --- there are things that he knows that only a
15 person who would have been there would have known.

16 Q. Thank you. And I said I wouldn't ask any more
17 questions about that, so I'm done.

18 A. Okay.

19 Q. Thank you.

20 THE COURT: Call your next -- I'm sorry.

21 Redirect?

22 MR. THOMPSON: Yes, Your Honor, just briefly.

23 REDIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q. Detective Harveston, I believe it's State's Exhibit

1 87 that you referred to earlier in your testimony. You
2 were talking about the location of the stereo in the
3 room. Is that it?

4 A. Yes, that's it.

5 MR. THOMPSON: Your Honor, I'd ask to be able
6 to publish this to the jury at this time.

7 THE COURT: Okay.

8 Q. Now, Detective, if you would, step down, please.

9 (WHEREUPON, the witness stepped down from the
10 witness stand.)

11 Q. And show -- as the jury looks that so we can look at
12 the crime scene diagram that's already been placed into
13 evidence, can you show on the diagram where the stereo
14 is?

15 A. The stereo would be located right here. If you look
16 at the picture, you can tell the distance here is a
17 little shorter actually.

18 Q. Right.

19 A. And this will be one of the stereo speakers. You
20 can see it in the picture on the side of the wall.

21 Q. But enough room for someone to get beside that
22 stereo and be unnoticed?

23 A. Yes, between the stereo and the stereo speaker.

24 Q. All right. And what you were referring to about
25 your opinion them bumping into each other is you can't be

1 standing here, someone come out of the bedroom and
2 through this door and be bumped into; is that correct?

3 A. That's correct. You would have to move from here.
4 They would have had to come over here to the corner. So
5 if they're moving from here to here, as in his statement,
6 and he bumped into E.J. as they were moving toward the
7 kitchen, then he would have had to move from this spot
8 this direction.

9 Q. Okay. And as you mentioned, you said -- he told you
10 he hesitated, correct?

11 A. Yes.

12 Q. Okay. But he didn't say he didn't go?

13 A. That's correct.

14 Q. Now, he's asked you how many crimes that you know of
15 that start out with someone sitting on the front porch.

16 Let me ask you this along those same lines. How many
17 home invasions in your investigative history start out
18 with someone coming up and knocking on the door?

19 A. Well, absolutely, a lot of them do. That's the way
20 it starts, and then it goes from there.

21 Q. And as you said, to look like nothing's happening?

22 A. Yeah, to look like everything's normal.

23 Q. Once again, when it was time for you to actually
24 write the statement down for him, did you write what your
25 words were or did you write what his words were?

1 A. I wrote what his words were, not mine.

2 Q. And you talked about his demeanor. Did his demeanor
3 change at all from the time that you all initially
4 interviewed him in Lieutenant's Dalton's office to the
5 time that he was ultimately in your office giving the
6 written statement?

7 A. He just seemed to be more tired. Not really changed
8 except that, you know, the whole time he was just -- he
9 seemed to be relieved that he was talking about it. And
10 then, of course, while you're talking about it -- some of
11 the statement is somewhat different from, you know, what
12 he's saying. That's his exact words at that particular
13 time.

14 Q. But different in what way? Different in less
15 information given to you than when you were in Lieutenant
16 Dalton's office or different in that he gives a
17 completely different story?

18 A. No, it's not a different story. There's no new
19 information in this statement. There's no new
20 information, just some of the details exactly are not --
21 he doesn't restate them the same way.

22 Q. He just wasn't as detailed when he was talking to
23 you on the ---

24 A. That's correct.

25 Q. --- actual written portion of the statement?

1 A. Yes.

2 Q. Now, he also asked you if you had threatened him
3 with thoughts of the electric chair, things like that.
4 Did you ever threaten him with that?

5 A. I've never threatened anyone with the electric
6 chair. That's not even something that would be in my
7 vocabulary to do. In fact, we don't even do that in this
8 state.

9 Q. And Lieutenant Dalton, did he do that in your
10 presence?

11 A. Not in my presence, no.

12 Q. Did anyone else do that?

13 A. No one else did that in my presence.

14 Q. And the Defendant was with you in your presence the
15 entire time of his statement; is that not correct?

16 A. That is correct, yes.

17 Q. And is one of the reasons that you had him in your
18 presence the entire time to prevent claims that something
19 like this, that somehow he was threatened?

20 A. Well, it's always important that if you're the lead
21 investigator and you're interviewing somebody that you're
22 present the entire time. And so I would not have left
23 him.

24 Q. All right. Thank you.

25 MR. THOMPSON: No more questions.

1 THE COURT: Recross?

2 RECROSS EXAMINATION

3 BY MR. RAWLINSON:

4 Q. Just a few questions, Detective. First is that,
5 define for you beside.

6 A. Beside?

7 Q. Uh-huh (affirmative).

8 A. I can say that I am beside this wall. It's next to
9 me.

10 Q. Uh-huh (affirmative). Are you also beside the wall
11 behind you?

12 A. I would describe it as being behind me, but if I
13 turned to the side, it would be beside me.

14 Q. Okay. Are you also beside the doors that open up
15 and let you around. If you swivelled around in the
16 chair, would you be beside it?

17 A. Yes.

18 Q. Okay. So -- and I know we're lacking details in
19 this statement, but is there any detail in the statement
20 that said that Christopher Poage was beside the stereo in
21 the exact place that you're pointing to him?

22 A. There's no detail in the statement that would say
23 that.

24 Q. So there's about three other places he could have
25 been beside. He could be beside the front, beside on the

1 side you say he's beside, and beside on the other side of
2 the side?

3 A. I guess it depends on what you think the word beside
4 means.

5 Q. Okay. And that's open to interpretation?

6 A. Obviously.

7 Q. Now, do we have any -- do you have any information
8 at all that the reason that Christopher Poage says he
9 knocked was because he was trying to make it seem to
10 somebody else on the street like nothing was going on.

11 A. No, Christopher Poage didn't say that he knocked
12 either.

13 Q. In fact, that's not in the statement, is it?

14 A. No.

15 Q. And he never told you that, did he?

16 A. No, he did not.

17 Q. And you don't have any information that he had any
18 intent to make or to do anything illegal when he went in
19 that house, do you?

20 A. No, I don't.

21 Q. And you said that there's several things that you
22 mentioned are different in this statement or not quite as
23 detailed in this statement from what he told you earlier.
24 And you've also said that the reason you were there the
25 whole time with my client is because you don't want

1 things like threats and those type of things to come up.
2 Isn't one of the best ways to get rid of those problems
3 is to have a video recording or audio recording of the
4 interview?

5 A. That would not be my decision to do that.

6 Q. Okay. Can you buy -- can you go to C.V.S. and buy a
7 tape recorder?

8 A. Yes, you can.

9 Q. Would you get fired for that?

10 A. No, I don't believe so.

11 Q. I didn't think so.

12 MR. RAWLINSON: Nothing further, Your Honor.

13 THE COURT: All right. You can step down.

14 Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Appreciate your time. Call your
17 next witness.

18 MR. BRACKETT: The State would call Dr.
19 Nicholas Batalis. Doctor, if you would, please step up
20 to the lady in front of the computer monitor. She'll
21 swear you in.

22 **NICHOLAS IKE BATALIS, M.D.,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. BRACKETT:

1 Q. Sir, would you please state your full name and spell
2 your last for the court reporter?

3 A. My name is Nicholas Ike Batalis, B-A-T-A-L-I-S.

4 Q. And where are you employed, sir?

5 A. I'm employed at the Medical University of South
6 Carolina down in Charleston.

7 Q. Okay. And what do you do for the Medical University
8 of South Carolina?

9 A. I'm employed there as an assistant professor in the
10 pathology department. My primary role is a forensic
11 pathologist.

12 Q. Okay, sir. What kind of training and background do
13 you have to be -- what do you have to do to become a
14 forensic pathologist?

15 A. So after completing my undergraduate degree back in
16 Indiana, I went to four years of medical school at
17 Indiana University. After completing that, I then moved
18 down to M.U.S.C. to do general training in anatomic and
19 clinical pathology. So a general pathologist is one who
20 would read out a biopsy to tell if you have cancer or not
21 or maybe help interpret a laboratory test if you get your
22 blood drawn. So a pathologist can -- we're the study of
23 disease.

24 So I did four years of training to become board
25 certified as a general pathologist, then went on to do an

1 additional year of training, a fellowship in Dallas,
2 Texas, specifically in forensic pathology. And forensic
3 pathology is a sub-specialty of pathology that deals with
4 determining the cause and manner of death which is, you
5 know, how people die. And then through the course of all
6 of that, completed three different examinations to be
7 board certified.

8 Q. So you are a board certified forensic pathologist
9 now?

10 A. Yes, board certified in anatomic, clinical and
11 forensic pathology.

12 Q. And how long have you been a forensic pathologist,
13 actually practicing?

14 A. I've been practicing for just over three years now.

15 Q. Have you been certified in a court of law as an
16 expert in the field of forensic pathology?

17 A. I have both in the State of Texas and here in South
18 Carolina.

19 MR. BRACKETT: Your Honor, at this time, I
20 would tender Dr. Batalis as an expert in the area of
21 forensic pathology.

22 MR. RAWLINSON: No objection, Your Honor.

23 THE COURT: All right. I find he is qualified.

24 Q. Okay. Now, can you -- in the course of describing
25 your background and training, you went through it

1 briefly. But just can you give the jury a little bit
2 more idea -- I want to make sure they understand --
3 exactly what is a forensic pathologist and what do you
4 do?

5 A. So again, a forensic pathologist, our main duty is
6 to determine the cause and manner of death which may
7 involve both deaths due to violence or just natural
8 disease, somebody having a heart attack. So in the
9 course of a normal day what would happen, a coroner would
10 request that we perform an autopsy. So they would send
11 the body to M.U.S.C. We would then bring them upstairs
12 in our autopsy suite, take photographs of the body as we
13 receive it, then clean the body, document any clothing.
14 And then we do what we call the external exam. And so
15 basically the external exam is looking at the body from
16 head to toe for identifying features, eye color, hair
17 color, tattoos, and also any evidence of trauma.

18 After we complete that external exam, we then do the
19 internal exam where we open the body and then do a
20 surgical type examination of the internal organs, again,
21 to look for any natural disease or trauma that could have
22 led to the person's death.

23 At the completion of that, we then dictate a report
24 which details our findings.

25 Q. All right, sir. Were you called upon by the coroner

1 Q. Okay. How does the fact that -- advanced
2 decomposition and bug activity, how would that complicate
3 your job as a forensic pathologist?

4 A. There's certainly a range of decomposition. If
5 somebody's just been dead for, let's say, a day or so,
6 maybe the color of the skin may just become slightly
7 altered. However, in this case it was very -- and so the
8 other end of decomposition would be complete
9 skeletonization where there's no soft tissues left at all
10 and just a skeleton. In this case, we were pretty much
11 in the midline of that. So there were certain areas of
12 the body -- much of the right side of the body and much
13 of the tissue around the neck and face were absent due to
14 the decomposition and the bug activity.

15 Q. Okay. Would it assist you in describing your
16 external observations of the body as you discuss the
17 performance of the autopsy and so forth and discuss your
18 findings with the jury? Would it assist you to have some
19 photographs of the ...

20 A. Yes. It might make it easier for them to
21 understand.

22 Q. Okay.

23 MR. BRACKETT: Your Honor, prior to taking the
24 stand, I worked with Dr. Batalis with -- there are two
25 photographs from the autopsy to help demonstrate some of

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1 the issues related to this, and I don't believe there was
2 any objection to the photographs.

3 MR. RAWLINSON: Your Honor, at this time, I
4 would voice an objection under 403.

5 THE COURT: All right. Let me let the jury go
6 to the jury room just for a minute.

7 (WHEREUPON, the jury exited the courtroom at
8 approximately 2:56 p.m.)

9 MR. BRACKETT: I have the two photographs, Your
10 Honor.

11 THE COURT: Yeah. I need to see them, please.

12 MR. BRACKETT: They are State's 17 and 18. And
13 I think there were probably twenty-five or thirty
14 photographs. I went through them carefully. There were
15 a number of the body before it was cleaned up in various
16 stages. There were some that -- most of them are much
17 more gruesome. I can show you the rest.

18 THE COURT: I just want to see what he's
19 objecting to.

20 MR. BRACKETT: I'm sorry?

21 THE COURT: I just want to see the one's he's
22 objecting to.

23 MR. BRACKETT: Those are the only two that we
24 intend to introduce.

25 THE COURT: May I see them?

1 MR. RAWLINSON: Your Honor, I would object
2 under Rule 403. As you know, even if the photographs are
3 relevant, that this Court can exclude them on the grounds
4 that their prejudicial value outweighs the probative
5 value. I certainly think that the pathologist that's
6 called by the State can talk about -- can use his report
7 to demonstrate the types of issues. But as the
8 pathologist, I believe, is going to testify, he cannot
9 testify as to angles. He cannot testify as to much of
10 what's on those pictures actually represent, actually
11 represent an actual injury or decomposition. So I think
12 under those -- I think under those circumstances, I think
13 that those photographs of the autopsy, especially seen in
14 the light of having already viewed the body at the crime
15 scene is more prejudicial than probative in this case.

16 THE COURT: Well, I overrule the objection. I
17 find the probative value is not outweighed by any
18 prejudicial concerns. Anytime you have photographs of
19 decedents, they are not pretty. And these -- the witness
20 has testified they would help him. I'm going to allow
21 them.

22 MR. BRACKETT: Thank you, Your Honor.

23 THE COURT: All right. Bring the jury back in.

24 (WHEREUPON, the jury entered the courtroom at
25 approximately 3:00 p.m.)

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1 THE COURT: All right. You may proceed.

2 MR. BRACKETT: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 CONTINUED BY MR. BRACKETT:

5 Q. Dr. Batalis, I'm showing you what's been marked as
6 State's Exhibit 17 and 18 for identification. And I'd
7 ask if you would just examine those photos and tell me if
8 you recognize what they depict?

9 A. Yes, I recognize -- these are copies of photos which
10 I took during the course of the autopsy.

11 Q. All right. And they would assist you in describing
12 the nature of the injuries and so forth to the jury?
13 They would help you testify?

14 A. Yes, they would.

15 Q. All right, sir.

16 MR. BRACKETT: Your Honor, I'd move 17 and 18
17 into evidence at this time.

18 THE COURT: Over objection, they're in.

19 MR. BRACKETT: Thank you.

20 (WHEREUPON, State's Exhibit Number 17 and 18 were
21 admitted into evidence.)

22 Q. Now, Dr. Batalis, if you wouldn't mind stepping down
23 from there. If you have your report with you, you can
24 bring it down with you.

25 (WHEREUPON, the witness stepped down from the

1 witness stand.)

2 Q. What I would like you to do is using me -- I'll
3 stand here in front of the jury -- would you show the
4 jury where the various injuries were on Mr. Mitchell's
5 body?

6 A. Sure.

7 Q. I'll take my jacket off to help you.

8 A. So the injuries on Mr. Mitchell ---

9 Q. Do you want to show the front first or the back?

10 A. All of the injuries were located on the back side
11 for the most part. Essentially the decedent, Mr.
12 Mitchell, had at least thirty stab wounds. Again, I say
13 at least thirty because there were areas of tissue loss
14 that I couldn't tell what happened in those areas. But
15 thirty stab wounds that we know for sure are stab wounds.

16 There were four located on the back of the head in
17 the upper part of the neck, just left of midline.
18 There's one stab wound located on the back of the left
19 arm. Then there was a large cluster of stab wounds on
20 the lower left side of the back where there were sixteen
21 different stab wounds that were traveling from back to
22 front in that direction. All the stab wounds were
23 traveling from back to front, including the one on the
24 back of the arm. The ones on the back of the neck were,
25 again, traveling from back to front and also a little bit

1 downward.

2 There's one last group of stab wounds on the lower
3 right side of the back where there were nine more stab
4 wounds in this lower quadrant. And again, all of these
5 are traveling from back to front.

6 Q. All right. And can you tell from the angle, from
7 the incisions, which way, using my back -- which way were
8 the incisions going on the body? In other words, were
9 the ones on the neck going from side to side, or were the
10 incisions from top to bottom?

11 A. They were all traveling from back to front. And
12 again, the ones in the back of the neck a little bit
13 downward. But everything the direction was pretty much
14 moving from your back to your front.

15 Q. Okay. If -- I guess what I'm saying is, was the
16 incision like downward or lateral or horizontal?

17 A. They varied. Some were vertical, some were
18 horizontal, some were -- so they were at different
19 angles.

20 Q. Okay. And what was the total number of stab wounds?

21 A. So thirty stab wounds. Thirty definitive stab
22 wounds on the neck, back and left arm.

23 Q. All right, sir.

24 A. In addition to those stab wounds, there was some
25 blunt force injuries. A blunt force injury is when

1 you're struck by an object that doesn't have a sharp
2 edge. In this case, we had two lacerations or tears of
3 the issue on the top of the head above where the stab
4 wounds were. And then also on the outside of the left
5 arm. That bone underneath there is called your ulnar.
6 And so that bone was fractured. And there was, again,
7 another tear overlying that fracture on the left arm
8 there.

9 Q. Where was that in relation to the stab wounds on the
10 left arm that you mentioned earlier?

11 A. The stab wound was higher up near the elbow, and the
12 fracture is lower down, about halfway towards the wrist.

13 Q. Have you seen fractures of the ulnar before?

14 A. Yes.

15 Q. And what exactly -- what does that typically come
16 from?

17 A. You can get them in different situations. We can
18 see them in car accidents and that sort of thing. In a
19 blunt force situation, it could be from a defensive type
20 position. Any injuries kind of on the hands, wrist, that
21 area, could be from a defensive position.

22 Q. Okay. Could it be warding off a blow?

23 A. It could be.

24 Q. Okay.

25 A. And then the last injuries that we noted was that

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1 Mr. Mitchell had six different rib fractures. So this
2 would be on the -- kind of the lateral, the side aspect.
3 On the right side, it was the fifth and ninth rib. And
4 on the left side, the fourth and then the eighth through
5 tenth. So two ribs on the right side were fractured, and
6 four ribs on the left side were fractured. And again,
7 these were all definitive injuries and not due to any
8 decomposition.

9 Q. Is a rib fracture typically from force being applied
10 specifically to the area of the break? Or what are the
11 possible ways that a rib can be broken?

12 A. It can be. It could be from direct impact. If I
13 was to strike you right now, you could fracture right
14 there. Also, though, we call it the rib cage. So again,
15 your ribs are connected to the back and then also to the
16 front of your sternum, and so they form a circle. So if
17 you put enough pressure anywhere on that circle, you
18 could get a fracture. So if the decedent was face down
19 and was pressed -- there was pressure pushed to the back,
20 you could actually get fractures off to the side as that
21 rib cage is compressed. Same thing if he was on his back
22 and there was pressure on the front of the chest, you
23 could also get fractures off to the side.

24 Q. And describe the condition of the body -- how did
25 the condition of the body from decomposition affect your

1 ability to determine the total number of injuries?

2 A. So an area from approximately right here kind of
3 wrapping around this whole right side of the body to
4 right about kind of the line where the armpit is, all of
5 this tissue was missing. So the skin, the muscle down to
6 the -- you could actually see the ribs and the internal
7 organs. So essentially, I can't tell if there were any
8 additional injuries in that area there. Additionally,
9 within the neck there were large areas there. Pretty
10 much the whole front of the neck and then most of the
11 front of the face was the same.

12 Q. And does State's Exhibit, the photographs, did you
13 bring those with you?

14 A. I did.

15 MR. BRACKETT: I'd ask Mr. Thompson if he could
16 call up State's Exhibit 17.

17 Q. What are we seeing here?

18 MR. BRACKETT: Mary, do you have the pointer?

19 Q. If you can use this pointer. And be careful the
20 jury behind you, they might not be able to see some
21 things.

22 A. In this picture, the decedent, Mr. Mitchell, is
23 laying face down on the table. So his head would be
24 here, and his feet would be down here. So this is the
25 right arm. And then, again, you can see basically this

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1 whole area right here is an area of decomposition. And
2 again, underneath it you can see the ribs. So again,
3 there's a big area of tissue loss that I can't tell what
4 happened there because the tissue's not there. And then
5 what we're seeing here in these areas, this the cluster
6 of the nine stab wounds that are on the right side of the
7 back.

8 Q. So where the decomposition has stripped the skin
9 away and exposed the ribs, it's possible he could have
10 had a stab wound there and you just couldn't say?

11 A. Right. If there was a stab wound, it didn't strike
12 the ribs. But certainly, there's enough room between
13 there that a knife could pass through without leaving any
14 evidence.

15 Q. Likewise, if he had been stabbed or forcefully poked
16 with a shove tip such that it broke the ribs, you also
17 couldn't say because the skin would not reveal the
18 injury?

19 A. Right. We do know on the right side that he did
20 have the two rib fractures.

21 Q. And on the other side, the decomposition is the
22 same. On the left side there's decomposition through the
23 rib cage area?

24 A. No. The left side was actually intact. So the
25 biggest area was on the right side of the chest and then

1 the neck area.

2 Q. Okay. So would it be difficult or impossible for
3 you to describe any possible injuries to the neck and the
4 front face area because it decomposed completely?

5 A. Correct.

6 Q. Okay. And State's Exhibit 18.

7 A. So State's Exhibit 18, again, is a picture of the
8 decedent face down. In this picture his head is located
9 towards the left side of the field. His legs would be
10 down here. And what we're showing here is, again, this
11 cluster of sixteen stab wounds that were on the left side
12 of the back. So again, you can see the skin here is
13 completely intact with the various stab wounds spread
14 throughout.

15 Q. All right. How did the state of decomposition of
16 the body -- how did that inhibit your ability to do --
17 wait. Before I do that, was that the extent of the
18 injuries to the external that you could discover?

19 A. Yes.

20 Q. All right. How did the condition of the body, the
21 decomposition, affect your ability to determine whether
22 there was injuries internally?

23 A. Because of the large area of tissue loss,
24 essentially with these stab wounds, we probed through
25 them to see how deep they go. We pass a probe in there

1 to see how deep the probe passes. And say it went two
2 inches deep or four inches deep. With these on both
3 sides of the back, we know that they went at least to
4 four inches deep. But again, because of the
5 decompositional changes inside the abdominal, the chest
6 cavity, it's open, some fluids could have leaked out and
7 more could have leaked out. So it became tough to tell.

8 Additionally, there were defects in the heart and in
9 the liver that could have corresponded with stab wounds.
10 But again, they had bug activity associated with them, so
11 I can't say for sure whether the defect in the heart was
12 from a stab wound or just because of the bugs that came
13 afterward.

14 Q. All right. Was it possible for you, for some of the
15 stab wounds, for you to determine the approximate depths
16 of the wounds?

17 A. Yes.

18 Q. What was your determination in that regard?

19 A. So the ones on the neck it was not possible because,
20 again, they came through the back of the neck, and the
21 whole front of the neck, again, was absent. So I don't
22 know whether that went an inch deep or all the way
23 through. The ones on the back, both the left side of the
24 back and the right of the back, they were at least four
25 inches deep. The stab wound on the back of the left arm

1 near the elbow went two inches deep.

2 Q. All right.

3 MR. BRACKETT: I think that's all I have. If
4 you can go back to 50.

5 Q. And you can retake your seat. Thank you.

6 (WHEREUPON, the witness resumed the witness stand.)

7 Q. I'm showing you what's been marked as State's
8 Exhibit 4 in evidence. And I'd ask you, if you would, to
9 take a look at that knife sheath. Obviously, it's a
10 sheath with no knife in it. But can you say from the
11 wounds that you observed and the depth of them, would the
12 knife that had been contained, assuming that the blade
13 started here, the handle goes right up to there and then
14 the blade fills this portion, would that blade and the
15 length of that blade be consistent with the wounds that
16 you observed?

17 A. It could be, yes. As far as the depth goes, the
18 depth that we measure doesn't always exactly correspond
19 to the length of the knife. So again, I said these went
20 at least four inches deep. There could be a knife that
21 had a four-inch blade. It could also be a longer blade
22 that was only inserted four inches or even a shorter
23 blade if it's pressed into the body could go four inches
24 deep. But certainly this would be one of those. A knife
25 fitting this sheath could certainly have caused the

1 wounds.

2 Q. Did you find any wound trajectories that were seven,
3 eight inches long that would not have been possible with
4 that knife?

5 A. No.

6 Q. So there was nothing longer than that knife could
7 have been -- than that knife is?

8 A. No. Again, on the neck I can't say exactly how deep
9 those went because of the tissue loss.

10 Q. Okay. Okay. So you were able to count a total of
11 thirty stab wounds all together?

12 A. Yes.

13 Q. And there may have been more, but you couldn't find
14 them because of decomp.?

15 A. Exactly.

16 Q. Okay, sir. Did you -- were there still a fair
17 amount of -- was there still a fair amount of insect
18 activity present on the body when it came to you?

19 A. Yes, there was abundant activity.

20 Q. All right. And you have to clean that off in order
21 to get to -- where do they usually attract to, the
22 insects?

23 A. The insects will attract -- they don't feed as well
24 on the outside of the skin. They want to get inside. So
25 typical areas, they'll go towards the mouth, eyes,

1 anywhere there's some mucosae or soft tissue surfaces
2 there. And additionally, along that same line, any areas
3 of injury. So if somebody -- I've seen cases, people
4 have been shot. Again, there'll be abundant activity in
5 that area because the gunshot in that case has penetrated
6 the body exposing the blood which gives the bugs a way to
7 get inside. So areas of trauma or previously exposed
8 areas.

9 Q. Based on your examination of Mr. Mitchell's body,
10 were you able to determine a cause of death?

11 A. I was.

12 Q. And what was that?

13 A. My cause of death in this case was homicidal
14 violence including multiple stab wounds and blunt force
15 injuries. And essentially that's kind of an all-
16 inclusive statement in this case. With the blunt force
17 injuries to the back of the head and the rib fractures,
18 those certainly could have caused enough injury to lead
19 to his death. Certainly, the thirty stab wounds, even if
20 they just went into tissue and didn't strike the organs,
21 there could be enough bleeding from that. And then
22 again, also, the first part being homicidal violence,
23 because we're missing all the tissue on the neck, for all
24 I know, they also could have been strangled. We did x-
25 rays to rule out gunshot wounds. But again, if he was

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1 shot through the area of tissue loss, I can't say for
2 sure. So homicidal violence with at least blunt force
3 injuries and multiple stab wounds.

4 Q. All right. And you can't say which -- what
5 specifically or what combination of these violent
6 injuries inflicted on Mr. Mitchell may ultimately have
7 been the cause of his death? Any number of them could
8 have been?

9 A. I can't give the specific mechanism in this case.

10 Q. Did you come to a classification as to manner of
11 death?

12 A. I did. The manner of death in this case was
13 homicide.

14 Q. All right, sir. And did you issue a report that
15 contained all of your findings and bases as well as the
16 documentation supporting it?

17 A. I did. And I have a notarized copy here.

18 MR. BRACKETT: I would ask that this be marked
19 as State's Exhibit 5 and move it into evidence at this
20 time.

21 THE COURT: Any objection?

22 MR. RAWLINSON: No objection, Your Honor.

23 THE COURT: In without objection.

24 (WHEREUPON, State's Exhibit Number 5 was admitted
25 into evidence.)

1 MR. BRACKETT: One moment.

2 Q. Did you obtain any personal effects from the body?

3 A. Yes. Could I ---

4 Q. Yes, sir.

5 A. --- get that copy back? Yes. When we received the
6 body, it was wearing a multi-colored shirt, a black belt,
7 black jeans, and black shoes. So we recovered that.
8 Personal effects included twenty-nine cents in change,
9 some sort of a personal paper and then a receipt for a
10 moped that was dated July 26, 2008. And all of this was
11 obtained at the autopsy and then transferred to Officer
12 Barnwell at the end of the autopsy.

13 Q. Thank you very much, Dr. Batalis. Please answer any
14 questions counsel for the Defendant may have.

15 CROSS-EXAMINATION

16 BY MR. RAWLINSON:

17 Q. Good afternoon, Doctor.

18 A. Good afternoon.

19 Q. Can you substantiate a time of death?

20 A. In this case, it's hard to pin down an exact hour,
21 even a day. You know, this time of year that extensive
22 decomposition, you could get it as soon as -- possibly
23 even one day, but two days to approximately a week or
24 two. That's really about as narrow as we could get it
25 down.

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1 Q. And from your -- well, from your examination, is
2 there any evidence to connect Christopher Poage to this
3 murder?

4 A. No. I don't know who Mr. Poage is.

5 Q. Okay. And is there any evidence in your report to
6 suggest that these injuries were definitely caused by two
7 people?

8 A. No.

9 Q. Is there any evidence as a part of your report that
10 the victim was held down as he sustained these injuries?

11 A. No. Because of the decomposition, again, if
12 somebody with no decomposition was simply held down
13 gently, we may not see anything. But certainly, there
14 was no evidence of being bound or anything that would
15 leave a permanent mark.

16 Q. Thank you.

17 THE COURT: Redirect?

18 MR. BRACKETT: Nothing further, and I ask that
19 this witness be excused.

20 THE COURT: All right. We appreciate your
21 time. You can be excused.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you. Call your next witness.

24 MR. BRACKETT: The State would call Lieutenant
25 Jason Dalton.

1 THE COURT: Come up and be sworn, please.

2 **JASON DALTON,**

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. BRACKETT:

6 Q. Sir, would you please state your full name and spell
7 your last for the court reporter?

8 A. Jason Dalton, D-A-L-T-O-N.

9 Q. All right, sir. And how old are you, Mr. Dalton?

10 A. I'm forty.

11 Q. All right. And what do you do for a living?

12 A. Currently, I'm retired from the police department.

13 Q. Okay. And which police department are you ---

14 A. I medically retired from the Rock Hill Police
15 Department in May of this year.

16 Q. All right. And what was the -- you said it was a
17 medical retirement?

18 A. Yes, sir.

19 Q. Okay. Do you mind telling us?

20 A. Just constant debilitating migraines that my
21 neurologist deemed was due to work stress.

22 Q. All right, sir. How long were you with the police
23 department?

24 A. I worked with Mecklenburg County Sheriff's

25 Department from '94 to '95, and I was with the Rock Hill

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1 Police Department from February of '95 until May of this
2 year.

3 Q. Okay, sir. And what do you do now?

4 A. I'm a stay-at-home dad.

5 Q. All right. Are you married?

6 A. Yes, sir.

7 Q. And how many kids do you have?

8 A. I have one son.

9 Q. All right. Were you employed with the Rock Hill
10 Police Department back in 2008 then?

11 A. Yes, sir. I was a lieutenant over the Rock Hill
12 side of the York County Multi Jurisdictional Drug
13 Enforcement Unit.

14 Q. Okay. And then in late 2008, did you take another
15 position?

16 A. The end of 2008 beginning of 2009, I was transferred
17 as a lieutenant that supervised the person crimes and
18 street crimes of the Rock Hill Police Department.

19 Q. Okay. The Crimes Against Persons Division of the
20 detective department, the detective division, would that
21 be the section of the detectives unit that focuses on
22 crimes like assault crimes, murder, sexual assaults and
23 that sort of thing?

24 A. Yes, sir.

25 Q. All right. So you supervised that department?

1 A. Yes, sir.

2 Q. All right. And that was the beginning of 2009?

3 A. I may have started in December of 2008, near the
4 end, but I think officially it was January 1 of 2009.

5 Q. In any event, you were certainly in that position in
6 February of 2009?

7 A. Yes, sir.

8 Q. All right. Did you have occasion in February of
9 2009, I believe it was the 19th, to assist in a interview
10 of the Defendant in this case, Mr. Christopher Poage?

11 A. Yes, sir.

12 Q. All right. And who all was involved in that
13 interview?

14 A. Myself and Detective Harveston.

15 Q. Okay. And where did the interview take place?

16 A. The interview took place in my office, inside the
17 police department, inside the detective division.

18 Q. Okay. And who else was involved, if anybody, at any
19 point in time during the interview from start to finish?

20 A. Myself and Detective Harveston.

21 Q. And nobody else was involved?

22 A. No other police officer.

23 Q. What happened when you first came into the interview
24 room and sat down to talk to Mr. Poage? What was the
25 first thing you did?

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1 A. Advised Mr. Poage of his *Miranda* rights.

2 Q. And how did you do that?

3 A. From a card that I had at the time.

4 Q. I'm showing you what's been marked as State's
5 Exhibit 105, the last page of that. Do you recognize
6 that?

7 A. This is a photocopy of my suspect rights *Miranda*
8 warning card that I had at the time.

9 Q. Okay. And did you read the rights to Mr. Poage off
10 that card ---

11 A. Yes, sir.

12 Q. --- as they're written there?

13 A. Yes, sir.

14 Q. All right. And did you make a note of that fact on
15 that photocopy?

16 A. Yes, sir. I wrote at the top, rights read by
17 Lieutenant J. Dalton in the presence of Detective K.
18 Harveston.

19 Q. Okay. Is that typical for you to do that, to read
20 it off the card and then photocopy the card and make that
21 note to put in the file?

22 A. Yes. It was something that we started while I was
23 in the drug unit.

24 Q. All right, sir. After you read the rights to Mr.
25 Poage, what did you ask him?

- 1 A. I asked him what he knew about Tommy Mitchell.
- 2 Q. Well, do you think he understood the rights that you
- 3 read to him?
- 4 A. Oh, yes. I believe he understood the rights I read
- 5 to him.
- 6 Q. Okay. And did you ask him if he wished to speak to
- 7 you?
- 8 A. Yes.
- 9 Q. What did he say?
- 10 A. Yes, he spoke to us.
- 11 Q. All right. And you -- how did you start the
- 12 conversation? After you'd taken care of reading him his
- 13 rights and so forth, how did you start the conversation?
- 14 A. In the beginning I just asked him biographical
- 15 information. You know, full name, where he lived,
- 16 possibly his date of birth, height and weight, you know,
- 17 schooling. Just normal conversation.
- 18 Q. Okay. And how -- what was his demeanor during that
- 19 part of the interview?
- 20 A. He was fine.
- 21 Q. And did he appear to understand you?
- 22 A. Yes.
- 23 Q. Did he appear to be conversing freely and
- 24 voluntarily?
- 25 A. Yes. At any time when we were talking with him, if

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1 I would have thought something different, we would have
2 stopped the interview.

3 Q. Okay. So he appeared rational and aware of where he
4 was and who you were and what was going?

5 A. Yes. I was wearing a badge and gun. And I think we
6 even in the beginning introduced ourselves as police
7 officers. You know, I think I told him, you know, I was
8 Lieutenant Jason Dalton, this is Detective Harveston.

9 Q. Okay.

10 A. So he definitely knew who we were.

11 Q. After you asked your initial questions, how did you
12 lead into the discussion of the murder of Tommy Mitchell?

13 A. I just asked him point-blank, you know, what he knew
14 or his involvement with the death of Tommy Mitchell.

15 Q. And had Tommy Mitchell's name come up at all prior
16 to you asking that question?

17 A. No, sir.

18 Q. So he had no idea that you were going to inquire
19 along those lines?

20 A. No, sir, I wouldn't think he would.

21 Q. All right. How did your question -- how did he
22 react to your question?

23 A. He put his head down. I mean, you could tell that
24 he knew something. You know, at first when he was
25 talking to us, he was sitting up, you know, conversing.

1 But as soon as I mentioned that, you know, he put his
2 head down. You could see that something was really
3 weighing on him.

4 Q. And tell us what happened after that?

5 A. And then, you know, I made something -- a comment to
6 the effect of, you know, it's been a long time. You need
7 to go ahead and tell us what you know. And that's when
8 he went into the events that took place with Tommy
9 Mitchell.

10 Q. Okay. And at any point in time, was it necessary
11 for you to -- or did you -- at any point in time, was it
12 necessary for you to coax him or prod him along into
13 saying something? Did you have to do anything like that?

14 A. No, sir.

15 Q. Did you or Detective Harveston at any point in time
16 say anything that could be remotely construed as
17 threatening?

18 A. No, sir.

19 Q. Did you say anything that could be construed as a
20 promise or assurance of leniency?

21 A. No, sir.

22 Q. Did you tell him that he would receive some harsh or
23 terrible punishment if he didn't cooperate?

24 A. No, sir.

25 Q. Okay. Now, how long were you involved in the

1 interview process? How long did that take place? How
2 long in your office?

3 A. I'm not sure. I would say it was under an hour.

4 And that's just my best estimate. After he gave his oral
5 version of the events in my office, myself and Detective
6 Harveston took him over to her office so she could take a
7 typed statement from him.

8 Q. At any point in time during that conversation, did
9 he indicate a lack willingness to speak? Did he indicate
10 that he wanted to stop talking?

11 A. No, sir. If he would have, we would have.

12 Q. And what was his general demeanor during the entire
13 time of the interview?

14 A. He -- I mean, he had tears in his eyes. I don't
15 know if any -- I ever saw any actually come out of his
16 eyes. But you know, if you're talking to someone,
17 whether it's anybody, and you can tell if they're sad or
18 feel bad about something and they have the tears that are
19 welling up in their eyes, but they're just not to the
20 point to where they come down their face, that's pretty
21 much how he was when he was talking with us.

22 Q. Okay. Did he appear -- throughout the entire time
23 you were interviewing him, did he appear to understand
24 what you were asking him, what Detective Harveston would
25 ask him?

1 A. Yes, sir.

2 Q. At any point did you have pause to wonder if maybe
3 he doesn't comprehend what's going on here?

4 A. No, sir. You know, pretty much during that
5 interview with myself and Detective Harveston, I let him
6 do the talking. You know, I didn't --- it's not like --
7 we didn't have to pull or, you know, question a whole lot
8 about what he was saying. You know, and someone who is
9 -- in my opinion, someone in his position who I felt was
10 telling us events, felt bad about it, it's best to let
11 them talk on their own. There's no need to try to, you
12 know, push them or, you know, force anything out of them.
13 You know, you get the story from them how they're going
14 to say it.

15 Q. Okay. And you were in the courtroom for Detective
16 Harveston's testimony?

17 A. Yes, sir.

18 Q. And did you hear her recitation of what she
19 recollected during the oral interview before she started
20 typing, just when you and she were talking?

21 A. Yes, sir.

22 Q. And was there anything you would say was different
23 that you can recollect or in addition to?

24 A. No, sir.

25 Q. Did he acknowledge to you too that he -- at some

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1 point he was aware of what was going on, that -- what Mr.
2 Jackson's intentions were?

3 A. Yes.

4 Q. And did he acknowledge that he, in fact, he was a
5 hands-on participant in the assault on ---

6 A. Yes, sir, he did.

7 Q. Thank you very much, Mr. Dalton. Please answer any
8 questions that Defense counsel may have for you.

9 CROSS-EXAMINATION

10 BY MR. RAWLINSON:

11 Q. Detective Dalton, do you remember Christopher Poage
12 asking for his mother during this interview?

13 A. No, sir. He did not ask for his mother.

14 Q. Do you remember whether or not he was nervous?

15 A. Again, I take it not as nervousness but as of he was
16 telling something that he felt bad about, felt guilty
17 about, and was remorseful and wanted to get it off his
18 chest.

19 Q. Do you remember him being confused at any point?

20 A. No, sir. Again, at any time if I would have thought
21 that he didn't understand what was going on or he was
22 confused or anything, we would have stopped our
23 interview.

24 Q. Okay. Were you or Detective Harveston wearing a
25 firearm during this interview?

1 A. Yes, sir. I know one hundred percent I had on my
2 gun and badge. I don't recall if Detective Harveston had
3 her gun on, but I know she had her badge on.

4 Q. And you don't remember any -- discussing with
5 Christopher Poage any potential charges?

6 A. No, sir.

7 Q. And you don't remember any mention of the electric
8 chair?

9 A. There was never a mention of the electric chair.
10 I've never said that in my life to anybody that I've
11 talked to.

12 Q. Okay. And you said you were about -- you were in
13 there for roughly -- I believe Detective Harveston said
14 this was about a two-, two-and-half-hour process. You
15 were in there for roughly an hour?

16 A. I said the oral part of talking to Mr. Poage in our
17 office, my rough estimate was about an hour. Could have
18 been less, could have been a little more.

19 Q. But roughly half?

20 A. Well, it's hard for me to judge roughly half. I
21 mean ---

22 Q. All right. Let's make it easy. Were you in the
23 interrogation the entire time with Detective Harveston?

24 A. I was present during the time that he gave his first
25 oral statement of his involvement in the death of Tommy

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1 Mitchell. I was not present when he gave his oral
2 statement to Detective Harveston and she typed it.

3 Q. Okay. So during that time Detective Harveston could
4 have made a threat or displayed her firearm or done
5 anything and you wouldn't have known about it, correct?

6 A. In my opinion, what I know of Detective Harveston,
7 that's not something she would do.

8 Q. I just want you to answer the question. I just want
9 you to answer the question. Is it possible or would you
10 have known if Detective Harveston, during the period
11 where you wasn't in there, displayed a firearm or made a
12 threat?

13 A. I believe I would have known, yes, sir.

14 Q. How?

15 A. I would hope the Defendant would have said something
16 to me.

17 Q. But would you have seen it?

18 A. No, I wouldn't have seen it.

19 Q. Thank you. You said you worked in Charlotte,
20 Mecklenburg for a while?

21 A. My first of my policing career, I worked with the
22 Charlotte, Mecklenburg County Sheriff's Department. Part
23 of that time I was a detention officer. The last part of
24 that time, I was a sworn deputy. So yes, sir.

25 Q. In Charlotte, Mecklenburg, do you know if they ever

1 videotape or use audiotapes for their interviews?

2 A. I know the Charlotte, Mecklenburg Police Department
3 does, yes, sir.

4 Q. Okay. Is it your opinion that that's a better
5 process than the Rock Hill City Police, having worked in
6 both of those?

7 A. Again, I didn't work for the Charlotte, Mecklenburg
8 Police Department.

9 Q. Okay.

10 A. I don't think -- because we don't have audio or
11 video of what Mr. Poage told us, that doesn't diminish or
12 make what was typed down and what ---

13 Q. Sir ...

14 MR. BRACKETT: Objection.

15 A. --- we're saying that's false.

16 Q. Sir ...

17 MR. BRACKETT: I think he's entitled to answer.
18 Let him explain his answer.

19 THE COURT: Yeah. Let him finish his answer.

20 A. No, sir. I don't think one is better than the
21 other.

22 Q. Okay. And you said that you started -- and excuse
23 me if this is a confusing question. But you were
24 referencing, I think, the fact that you wrote, J. Dalton
25 read in presence of K. Harveston, on that *Miranda* card

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1 that's in evidence. And you said y'all started this back
2 in 2009?

3 A. No, sir, that's not what I said.

4 Q. Okay. What did you say?

5 A. I said this type of process is something we started
6 in the drug unit, just photocopying your *Miranda* card and
7 writing what I wrote on top. At the time, I don't think
8 the detective division did that or even does that.

9 Q. Okay. And why ---

10 A. It's just something I did from my training and
11 experience in the narcotics unit.

12 Q. And did you think that that's a useful tactic?

13 A. A tactic?

14 Q. Or a useful something to do?

15 A. We found -- that way you always know who read the
16 rights and who was in the presence, so that way there's
17 never any confusion because in the drug unit we had --
18 you know, we may have had twenty officers working a case
19 at one time, so we wanted to be sure and have an accurate
20 record of who read *Miranda* in the presence of another
21 officer.

22 Q. Okay. And do you know -- do you have any knowledge,
23 any particular knowledge why the detective unit wouldn't
24 use the same type of procedure?

25 A. Well, they do in effect based on you have a notary

1 page and they have a rights page that's attached with
2 their statement. So really what I did is overkill.

3 Q. Okay. During the period -- and not roughly half,
4 but you weren't in there the entire time. During the
5 period that you were in there, did you hear Christopher
6 Poage say that he stabbed anybody?

7 A. No, sir.

8 Q. Did you hear Christopher Poage say he hit anybody
9 with a stick?

10 A. No, sir.

11 Q. Did you hear Christopher Poage saying that he knew
12 that a burglary was going to occur when he went to that
13 house?

14 A. He didn't come out and say that.

15 Q. That's what my question is. Did you hear him say
16 that?

17 A. Not in those words.

18 Q. Okay. Did you hear him say that he had anything to
19 do -- or did you hear him say he took anything from the
20 house? A harmonica? A screwdriver? Anything?

21 A. No, sir.

22 Q. And just to be clear, you did not hear him say he
23 had any intent for any of this to happen?

24 A. No, sir.

25 Q. And do you have -- and during the -- I know that you

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1 were not fully involved. But do you have any evidence
2 that he had an intent for this to happen?

3 A. To me, that's a tricky question. Because after
4 talking to him and getting a statement from him, his
5 actions involved in that crime to a point showed intent.

6 Q. And that's -- but you don't have any physical
7 evidence?

8 A. I mean, we have his statement.

9 Q. And his statement said he didn't stab anybody,
10 correct?

11 A. Correct.

12 Q. And his statement said he didn't have an intent to
13 have anything happen; is that correct? Is that correct?

14 A. Can you repeat that?

15 Q. His statement said he never intended for any of this
16 to happen; isn't that correct?

17 A. I don't know if it says it that way.

18 Q. Did his statement say that he had knowledge about
19 what was going to occur when he went in the house?

20 A. Not at the initial point when he entered the house,
21 no.

22 Q. Did his statement say he hit anybody with a stick?

23 A. No, sir.

24 Q. And so anything else is just something you believe;
25 isn't that correct?

1 A. No. I'm going by what is on the statement.

2 Q. And the statement said he didn't stab anybody; isn't
3 that correct?

4 A. Correct.

5 Q. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BRACKETT:

8 Q. How do you tell what somebody intended to do after
9 the fact?

10 A. Based on their future actions.

11 Q. Based on what they did?

12 A. Correct.

13 Q. Did his statement say that he held down Mr.
14 Mitchell's arms?

15 A. Yes, it did.

16 Q. Could you infer from his statement that he ran after
17 Mr. Mitchell when Mr. Mitchell attempted to flee his own
18 home being chased by Mr. Jackson?

19 A. Yes, sir.

20 Q. And could you also from the statement conclude that
21 he was aware when Mr. Jackson started searching for the
22 money and telling him to search that now he wasn't just a
23 visitor in the house, but he was a participant in a
24 burglary?

25 A. Correct. And also during those events he had ample

1 opportunity to leave the scene.

2 Q. And did he?

3 A. No, he did not.

4 Q. So if you were going to conclude what somebody
5 intended to do, would it be safe to conclude that the
6 Defendant intended to participate in the crime that
7 resulted in Mr. Poage's [sic] death?

8 A. Definitely to me.

9 Q. How many statements did you take in your sixteen
10 years of law enforcement?

11 A. I've either taken or probably been a part of
12 hundreds.

13 Q. Is it unusual for defendants to minimize their own
14 involvement in a crime?

15 A. No. I mean, actually it's common.

16 Q. Now, you were asked if you were armed at the time of
17 the interview. When you were a police officer, were you
18 armed pretty much all the time?

19 A. Yes, sir. The only time I took my weapon off was
20 when I would go back into the jail. Other than that, I
21 kept my gun on when I talked to everybody.

22 Q. Okay. And how did you used to dress?

23 A. At the time of this incident, I was -- Monday
24 through Thursday you wear a shirt and tie, dress pants,
25 similar to how I'm dressed now. I may or may not have

1 wore a dress coat. On Fridays, the detective division
2 had a dress-down day to where we would wear like a polo
3 shirt, some type of khaki pants. When I was in
4 narcotics, I wore plain clothes. Just normal everyday
5 clothes.

6 Q. So you may have had a jacket on?

7 A. I would have to look back. Depending on the day of
8 the week ...

9 Q. Okay. Well, past that, did you ever pull your gun
10 out and menace anybody with it during the taking of any
11 interview, this one or any other one?

12 A. No. No, sir. Never would I do that nor have I ever
13 done that.

14 Q. Stand there and pull your jacket back and pat the
15 gun ---

16 A. No, sir.

17 Q. --- and look at him in a scary fashion?

18 A. No, sir.

19 Q. Thank you very much, Mr. Dalton.

20 THE COURT: Recross?

21 MR. RAWLINSON: Real quick question.

22 THE COURT: Yes, sir.

23 RECROSS EXAMINATION

24 BY MR. RAWLINSON:

25 Q. Mr. Brackett just asked you did he tell you that he

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1 held down the victim's arms? And you said yes. Can you
2 find that in the statement, please? I think it's in
3 evidence. I'd love for you to point that out. Held
4 down? And just so you remember, is the phrase, held
5 down, in the statement?

6 A. As I'm reading the statement it states, he told me
7 to get Short Dog's arms, and I did. So ...

8 Q. Again, just answer my question. Did Christopher
9 Poage tell you or Detective Harveston that he held down
10 Short Dog's arms?

11 A. During the oral part of our interview, he used the
12 word held or grabbed. I'm not a hundred percent sure
13 which one.

14 Q. So now I'm confused even more. You just -- Mr.
15 Brackett just asked you did he help hold down the arms,
16 did he tell you he hold down the arms, and you were very
17 quick to answer yes.

18 A. I mean, hold, grab. There's really not that big of
19 a difference.

20 Q. Are there any other words that mean hold or grab?
21 Can you describe to the jury some more words that are the
22 same to you? Clutch?

23 A. Clutch. Could possibly use grab or held. Your
24 earlier example, beside. I'm beside this wall. I'm
25 beside these doors.

1 Q. If I grab Mr. Brackett's arm ---

2 A. You're holding his arm.

3 Q. Does that mean I'm holding him down?

4 A. It means you're holding his arm.

5 Q. We're talking about the difference between a grab,
6 so says the statement, and held down. You seem to think
7 they're the same thing; is that correct?

8 A. To me, grabbing someone's arm and holding their arm
9 is the same thing, yes, sir.

10 Q. You answered the question for Mr. Brackett, and you
11 said that Christopher Poage held down the victim. And
12 you answered yes.

13 A. Okay.

14 Q. And I'm asking you to explain to the jury why you
15 think grab and hold down is the same thing?

16 A. In my opinion, grabbing and holding someone arm's
17 the same thing. I mean, that's all I can tell you.

18 Q. Thank you.

19 A. Thank you.

20 THE COURT: All right. You can step down.

21 Thank you.

22 We'll take our afternoon break. And if any of you
23 wish to smoke, the bailiffs will help you -- they won't
24 help you smoke, but they'll help you get out to do that.
25 All right. We'll be at ease for a few minutes.

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1 (WHEREUPON, the jury exited the courtroom at
2 approximately 3:46 p.m.)

3 MR. BRACKETT: I ask that Mr. Dalton be
4 excused.

5 THE COURT: Yes.

6 (WHEREUPON, court stood at recess for a short
7 break.)

8 THE COURT: Thank you. Take your seats.
9 Is the State ready?

10 MR. THOMPSON: The State's ready, Your Honor.

11 THE COURT: Bring in the jury.

12 MR. THOMPSON: And I believe the photographs
13 that I will be using with this witness have already been
14 placed into evidence. I just want to show them to the
15 Defense real quick.

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 4:04 p.m.)

18 THE COURT: All right. Call your next witness.

19 MR. THOMPSON: May it please the Court, Your
20 Honor. The State calls Investigator Ray Barnwell.

21 **RAYMOND MARTIN BARNWELL,**

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q. Investigator Barnwell, can you give your full name

- 1 for the Court, please?
- 2 A. Raymond Martin Barnwell.
- 3 Q. And where do you work?
- 4 A. York County Sheriff's Office in the forensic
- 5 services unit.
- 6 Q. And how long have you been with the forensic
- 7 services unit?
- 8 A. Since the beginning of '06.
- 9 Q. Okay. And can you tell me how long have you been a
- 10 law enforcement officer?
- 11 A. Twenty years.
- 12 Q. Okay. Did you have an opportunity to -- are you a
- 13 member of the forensic services unit, I believe is what
- 14 you're saying, at the Sheriff's Department?
- 15 A. Yes, I am.
- 16 Q. Okay. And did you have an opportunity to help in
- 17 going through this crime scene where Tommy Mitchell was
- 18 found killed?
- 19 A. Yes. I assisted Mike Williams who, at the time, was
- 20 field supervisor. And he has now since retired. And
- 21 I've actually taken his place as field supervisor now.
- 22 Q. All right. And can you ---
- 23 A. But I assisted him and Todd Gardner with this death
- 24 investigation.
- 25 Q. All right. Did you take the photographs in the

1 crime scene?

2 A. Yes, I did.

3 Q. All right. And can you describe for me the process
4 that you use to go through and take photographs at a
5 crime scene?

6 A. Well, first of all, we always come up to the scene.
7 We take initial photographs. You want to document the
8 scene one hundred percent as much as you can, so you do
9 not -- before you disturb anything. And what I mean by
10 disturb anything would be when you walk into somewhere,
11 you take something with you. And when you walk out, you
12 leave something. It might be a footprint. It might be a
13 partial footprint. It might be a fingerprint. It might
14 be D.N.A. Also, when you leave, for instance, there
15 might have been a hair on one of those chairs that the
16 jury sat on, and now it's on your clothes when you walk
17 out. So you might take something with you.

18 One of the things we try to do very first and
19 foremost is document the scene as we see it with the
20 naked eye. That's what the photographs are designed to
21 do, is to be able to see that scene one hundred percent
22 over again before any of us walk through it. There is a
23 picture that shows the same scene twice in this. It's
24 after we've walked through it several times. And because
25 of the condition of the house and the bugs, you can

1 actually see the difference in the two scenes where we've
2 walked through the house several times.

3 Q. And is part of trying to keep the scene clean -- I
4 think we heard Investigator Williams talk about wearing
5 gloves. But do you also wear anything to cover your
6 feet?

7 A. Yeah. We wear surgical style booties. They just
8 fit over your feet. Try to keep the -- and we change
9 those if you go outside, and we change them if we come
10 back. But because of the condition of the house and the
11 bugs, maggots that were in there, they get on your feet,
12 the actual liquid that was all over the floors.

13 MR. THOMPSON: Your Honor, at this time, I
14 believe through stipulation of the Defense, we're going
15 to offer Investigator Barnwell in as an expert in
16 forensic crime scene processing.

17 THE COURT: Any voir dire?

18 MR. RAWLINSON: None, Your Honor.

19 THE COURT: I find he's qualified.

20 Q. Investigator Barnwell, if you would, I'm going to
21 ask if you would walk us through some of the photographs
22 that you took of this particular location. And I know
23 you've seen the photographs already. Are there more than
24 these photographs that you took?

25 A. Well, there's a little joke in the unit that I take

1 more photographs than anybody. I overkill a good bit on
2 the photographs. I take probably -- on this scene -- I
3 do not know, but I'm sure it was well over a thousand
4 pictures I took in this scene. I try to take one picture
5 of a chair in five different ways.

6 Q. So it's safe to say that this stack of photos is
7 paired down considerably?

8 A. Oh, that stack of printed, now, you would be -- have
9 to add at least, you know, six or seven times that.

10 Q. All right. If you would, would you go to State's
11 Exhibit Number 19. And if you would, if you could step
12 down and use the pointer.

13 (WHEREUPON, the witness stepped down from the
14 witness stand.)

15 A. Upon arrival, we'll get a search warrant. And we
16 always try to take the pictures of the actual scene on
17 the outside. We'll go all the way around the house. For
18 instance, this is from the one side over here. I'd also
19 take one from the other side. If this is the house, this
20 whole area here, I will take one from this corner showing
21 this direction. I will take one going this direction,
22 this direction, this direction here, all the way around
23 the house doing the same thing. So that one house, which
24 would be there, I will probably take twenty or thirty
25 pictures of just that.

1 Q. All right. If you'd go to State's Exhibit Number
2 20.

3 MR. THOMPSON: Exhibit number 20.

4 Q. All right. And that just depicts, I believe, the
5 number on the Steele Street address?

6 A. That was just showing that there was a number on the
7 mailbox, and there was actually a number on the house,
8 showing that the -- and there was mail in the mailbox.

9 Q. All right. And State's Exhibit 34. This would be
10 from a little different angle from the front of the house
11 as you described?

12 A. As I was stating earlier, I just take different
13 pictures from different areas just so -- because from one
14 area, you could not see the trash can, from the area
15 before. But this area, you can and even more so.

16 Q. All right, sir.

17 A. So that's why I will take pictures from all
18 different angles.

19 Q. All right. State's Exhibit 35. Where is this on
20 the residence?

21 A. That's taken down the front porch. It looks --
22 because of the angle, it makes the porch look a little
23 bit longer. But it also shows the whole porch in this
24 area being changed where the bushes were not showing in
25 the front.

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1 Q. Because in the front it was hard to see the whole

2 porch because the bushes were in the way?

3 A. Correct.

4 Q. Okay.

5 MR. THOMPSON: Now, State's Exhibit Number 36,
6 please.

7 Q. Now, on this one, this is also that same side of the
8 porch?

9 A. That is from where I just took the picture. Backed
10 up a little bit, took a farther back picture showing the
11 trash can and that area where I said earlier you couldn't
12 see the trash can before.

13 Q. Right.

14 A. As I say, I try to -- like a piece of a puzzle or a
15 piece of a pie. That's a piece of a pie from the whole
16 thing.

17 Q. Okay. All right. And now, this particular trash
18 can, did you actually -- and I believe Investigator
19 Williams talked about it. But you actually processed
20 some of the things around this trash can?

21 A. Yes, it was processed. As I recall, yes, it was.

22 Q. Processed in what way?

23 A. I'm pretty sure it was photographed, and then it was
24 dusted for fingerprints.

25 Q. All right. And unfortunately was anything gained

1 from ---

2 A. No, it was not.

3 Q. Anything -- get any fingerprints off any of the
4 stuff in it?

5 A. No.

6 Q. No? State's Exhibit 37. Where is this on the
7 house?

8 A. This is actually looking from the back. It would be
9 the left corner, this being the front of the house. It
10 would be looking from where your hand is back towards the
11 front door, the front door being in the middle. I'm
12 actually looking at the back door, which is on this side
13 of the house.

14 Q. All right. And a big kind of R.V. we see up on the
15 right just past the house, is that something the crime
16 scene unit uses at times?

17 A. Yes. That's -- well, that's Rock Hill's command,
18 mobile command center. And it's used for big scenes,
19 anything from large scenes like this that we might have
20 to stage because of the temperature it was. It was an
21 August day, very hot. So we could go in there and get
22 out of the elements a little bit, think about what we're
23 doing, go back and talk, go back in and do some more
24 work.

25 Q. And State's Exhibit Number 38. Can you tell us the

1 angle of this?

2 A. That is the other corner of the house. Another way
3 to put it is we call the front of the house the Alpha
4 side, the Bravo side, this side being the Charlie side
5 and this short side being the Delta side. That would be
6 the Charlie and Delta side which would be this side over
7 here. This is the front of the house.

8 Q. Is that the back door of the house on the Charlie
9 side?

10 A. Yes, right there.

11 Q. And going down to -- I draw your attention to the
12 front door on State's Exhibit 39. Is this how you found
13 it when you arrived?

14 A. Yes. When I arrived, the scene was secured off
15 through the road officers that were on the scene. They
16 made a log of everybody going in and out of it. And then
17 once a search warrant was obtained, pictures started to
18 be taken. And then we started to go to the front door.

19 Q. And this is kind of a little foyer right inside the
20 front door, that picture of the floor; is that correct?

21 A. Yes. You probably take one or maybe two steps. It
22 might be two foot, actual measured two foot. And then
23 you take a left or look to the left, you would see the
24 victim.

25 Q. Okay. And then a closeup of that shot, and that's

1 State's Exhibit Number 40. Can you tell us what that is
2 on the floor there?

3 A. That's the doorframe there. And because it goes
4 through a -- the digital picture up on the screen, it's
5 not a good picture. A printed picture is better. Those
6 are actual bug larvae or maggots.

7 Q. All right. And they're actually covering most of
8 that floor; is that correct?

9 A. Yes. They are alive and moving.

10 Q. And is that how much of the scene was on that side
11 of the house?

12 A. I'm sorry. What?

13 Q. Is that how much of the scene was on that side of
14 the house?

15 A. Every -- actually, there was maggots all in the
16 house, all over the place. From every room -- I mean,
17 every room had them.

18 Q. Okay. State's Exhibit Number 41. And as part of
19 your job, did you examine the front door itself?

20 A. We examined the front door. There was three hinges
21 on the front door. Two of them, the top and the bottom
22 were not connected to the actual frame. They were
23 connected to the door. The middle hinge was connected.
24 The front door appeared, by my experience, was already
25 damaged from prior instance. Does not appear to be

1 damaged here.

2 Q. Okay.

3 A. And it appears that a stick or possibly a shovel was
4 shoved right here in this area in a tile to hold the
5 front door shut.

6 Q. Okay. And was there a stick near the front door?

7 A. Yes.

8 Q. In this picture, can you see it? I know it's a
9 little difficult because these don't show up as easy as
10 they do on ---

11 A. I think it's -- if I recall, there was a stick right
12 in this area here.

13 Q. Okay.

14 A. Can I -- do you have the picture?

15 Q. Sure. Sure. Here's the actual photograph.

16 A. Yes, that's the stick behind the door. It was like
17 a two-by-two stick.

18 Q. All right. Now, you saw the other stick that was
19 recovered, correct?

20 A. Yes.

21 Q. Are they the same type of stick?

22 A. Yes, they're the same type.

23 Q. Okay.

24 MR. RAWLINSON: We'll go to State's Exhibit

25 Number 42.

1 Q. That's just the strike plate, I suppose, on that
2 door?

3 A. Yeah, it's the strike plate on the front door.
4 Here's the outside of the house, the green siding. It's
5 just the strike plate.. I was trying to document with
6 pictures showing that the damage to the door was not done
7 at that time.

8 Q. All right. Now, did y'all test the door to see if
9 it opened without being able to lock it?

10 A. It did open and close even if the door handle was
11 locked.

12 Q. Okay.

13 A. Or held where it would not turn. It would still
14 open. It didn't have to be. To keep it closed -- and
15 I'm going to have to rephrase that. To keep it closed
16 from someone pushing on it, it would have had to have
17 been wedged from right where I said the shovel or stick
18 or something was holding it.

19 Q. Okay.

20 A. I mean, you could move a chair in front of it. It
21 would not have -- it would have stayed closed if no
22 pressure was put against it. If pressure was even pushed
23 just a little bit, it would have moved.

24 Q. Okay.

25 A. For instance, pressure being something like that

1 (demonstrating). But it would have stayed like this
2 being just shut.

3 Q. All right. And State's Exhibit 44, we'll go through
4 this quickly because you have already discussed this a
5 little. That's the bottom of the door where the hinge is
6 not connected?

7 A. Correct.

8 Q. Okay. And State's Exhibit Number 45, the middle
9 hinge?

10 A. That's the middle hinge where it's connected.
11 Here's the door and here's the frame.

12 Q. All right. And Number 46, the top hinge?

13 A. And the hinge is actually on the door itself. And
14 on the frame, it is not connected.

15 Q. All right. Now, you said as you step into the house
16 if you went a couple of feet in the house, if you looked
17 to the right, you would see the bedroom. I show you
18 State's Exhibit Number 47.

19 A. One quick thing on this here.

20 Q. I'm sorry.

21 A. The reason we're saying this could not have
22 happened, none of the mechanisms, the screws, the nails,
23 any of that part was not there. So if it would have been
24 damaged during that time, during the time of entry, those
25 would have fell down. And they were not there, not next

1 to the door frame.

2 Q. All right.

3 A. So that would not have been there. I mean, it would
4 have been there if it would have been damaged at the
5 time. That's one reason is the ---

6 Q. We'll now move into the bedroom. State's Exhibit
7 Number 47, can you tell me in this photograph what we're
8 viewing at this point?

9 A. It's very difficult with the actual screen here.
10 But you walk one step into the door and you take a left.
11 The victim is laying face down here. Left foot, right
12 foot, bed in this area here, dresser and chair -- or
13 excuse me. It would be more like an armoire or a chest
14 of drawers in this area, the dresser with a mirror here.
15 And different items on the floor. Here appears to be
16 some possible shoe prints in this area. And then here's
17 the wall. Also shows -- you can see in the actual
18 photograph that the fluids that were coming out of the
19 body were actually being soaked up in the sheetrock
20 itself.

21 Q. So that darkest part of the blue part of the wall
22 there at the bottom ---

23 A. Right in here.

24 Q. --- is that actually absorbed fluids of some sort?

25 A. That's absorbed fluids from the body and the

1 different fluids that were possibly on the floor.

2 Q. And were there also maggots over that area?

3 A. Yes. There were maggots crawling up on the wall.

4 If it was regular fluids, water, maggots would not have
5 been climbing up on it. Gasoline, water, Clorox, maggots
6 would not climb up because they're eating the enzymes and
7 the actual fluid, the stuff out of the -- the body fluids
8 itself.

9 Q. Now, you had mentioned Clorox. Do you see the
10 bottle there?

11 A. Yes, right here.

12 Q. Is that where that was located when you came in?

13 A. Yes.

14 Q. And that appears to be ---

15 A. Well, these pictures here are what I call virgin
16 pictures. You walk in, you see it, that's what I snap.

17 Q. All right.

18 A. Okay? No one's been in there that I know of. Maybe
19 the, you know, first responder had been right inside the
20 door. That's what I saw when I first got there.

21 Q. All right. Then State's Exhibit Number 31. You had
22 said the other one was a virgin picture. This one
23 actually has some numbers in it that are placed ---

24 A. We would have had to -- and what I meant by earlier
25 walking around and making -- tracking through the actual

1 scene, I would have had to walk over and look on top of
2 this item, walk over there and actually put this cone
3 here, put this cone in these places, moved around in the
4 scene. So you want to take that before you actually walk
5 through because I have to reach over there and do it.
6 Even though I have on booties, and even though I have on
7 gloves, that's one thing that you take that virgin
8 picture before you step into it even further.

9 Q. So for this crime scene, there are photographs that
10 are taken right when you get in there, and then there's
11 photographs after the cones have been placed?

12 A. Correct. And we -- as I say, I overkill with
13 pictures. I take more than I ever need.

14 Q. All right. As we look around farther to the right
15 of the room -- if we go to State's Exhibit Number 81 --
16 and is that view to the right side of the room as you go
17 in?

18 A. This would be as I stepped -- after taking that
19 first initial picture going to the right, taking another
20 initial picture to the right of the room where the victim
21 was found, before stepping there and placing that cone in
22 here, before cones were placed on the bed, this is seen,
23 that wall, and that would be the right foot of the
24 victim.

25 Q. Okay. And I'll give you this one, too, State's

1 Exhibit Number 21. And I'm going to hand you this
2 photograph as well so you can really see the details on
3 it.

4 A. Being the bed. The chair is turned over here.
5 Night stand was open. We talked about a sheath earlier
6 where the doctor talked about it possibly -- he held the
7 sheath and said it could have possibly been that. I know
8 we've talked about it several times in there. The sheath
9 was on the bedside table here. Just the sheath that
10 covers the knife on the -- the knife blade to keep from
11 getting cut.

12 Q. And that's how y'all found it on that night stand
13 there?

14 A. Yes. It was just like this. This is a virgin
15 picture of it before we go moving anything else.

16 Q. All right. State's Exhibit Number 49. Now, if
17 could you describe what we're doing in State's Exhibit
18 49?

19 A. In here is the -- as I said, the virgin picture
20 before we move anything, before we start placing items.
21 There was -- there appeared to be a struggle that
22 happened in this area. There is blood and trauma that
23 happened in this area of the field, and this chair is a
24 very big part of the crime. It has some initial evidence
25 on it that was intended. This dresser here or armoire,

1 wood, and then the body is here. And it's face down and
2 with larvae all over it.

3 Q. Okay. State's Exhibit Number 51. Concentrating now
4 on the bed itself -- and we're getting a little closer --
5 were these items on the bed as you were photographing?

6 THE COURT: Can't see. He's standing, blocking
7 the view.

8 THE WITNESS: Oh, I'm sorry.

9 THE COURT: I'm sorry. I'm sorry I didn't
10 catch it earlier.

11 A. I'm very sorry. Here being the front of the bed or
12 the foot of the bed. This corner here the head of the
13 bed. The actual victim's down here at the foot. Night
14 stand we talked about here. The bed itself possibly had
15 been flipped over a little bit. It could not have been
16 flipped over and those items stay on top of it. When
17 we're talking about tossing the bed ---

18 Q. Right.

19 A. --- looking underneath the mattress, it could not
20 have happened. Those items would not have stayed on
21 there if he'd lifted the mattress.

22 Q. All right.

23 A. There's a shovel, a stick and a liquor bottle.

24 Q. And we'll get up closer.

25 MR. THOMPSON: Go to State's Exhibit 52.

1 Q. And is that how the shovel was lying on the stick?

2 A. That's exactly how it was before it was even --
3 before cones was added or anything. That is a virgin
4 picture of it.

5 Q. And to the top of that picture on the bedspread,
6 what did those appear to be when you were ---

7 A. This right here are red stains or blood stains and
8 on the shovel here and on the stick.

9 Q. Okay. State's Exhibit 53. That's a little closer
10 of the stick and the handle of the shovel?

11 A. One of the things as we try to do to orientate
12 ourselves so -- if you look at this picture, you see that
13 the shovel is laying on top of the stick, which is laying
14 on top of the bedspread and how the condition is of each
15 item. But as you saw before, it shows the bed view.
16 That way you can see that I'm standing here, and then I'm
17 getting a little closer, and then I get a little closer.
18 That way you can see exactly what I'm seeing as I move in
19 to it. And that's why we take pictures that way.

20 MR. THOMPSON: And State's Exhibit 54.

21 Q. All right. Now that -- the end of the shovel?

22 A. That's the end of the shovel. There appeared to be
23 possible latent impressions of trying to grab the end of
24 the shovel right here and here. We collected that shovel
25 for processing. And due to the condition of the actual

1 item and what it was on and the case, we decided not to
2 process it ourselves. We decided to send it to SLED and
3 have them process it.

4 Q. All right. And I think Investigator Williams has
5 already testified to that?

6 A. Yes.

7 Q. Is it correct? That that was the victim's D.N.A. on
8 the end of that; is that correct?

9 A. Yes.

10 Q. Okay. State's Exhibit Number 55. Now, you had
11 mentioned this chair. We're going to get to that in a
12 minute. Let me ask if you can concentrate for us on the
13 armoire type of dresser there on the side that you had
14 mentioned earlier. What, if anything, did you see
15 indicating any part of the struggle that could have
16 occurred from that armoire?

17 A. Well, by my experience and training, what we
18 determined was that the actual scene or one of the major
19 blows from blunt trauma was done in this area. Being the
20 blood here, the markings being from either a stick or the
21 shovel itself. Actually, if you look on this side, there
22 is a -- I don't know -- a nice little wooden design for
23 -- I'm trying to see one. There's not one in here. But
24 it would be a wooden design on the front of it, and
25 that's missing here, you can see from the actual stain.

1 Q. All right. And if we go ---

2 A. And right across there, you see a big chip right
3 here? That is the actual tip of the shovel where it was
4 jammed toward it.

5 Q. Okay. And we're going to get into that with some
6 closeup photographs.

7 MR. THOMPSON: If we can go to State's Exhibit
8 Number 56.

9 Q. You talked about the emblem -- and I know it's a
10 little difficult in that photograph. But here's the
11 actual one if you need it to look to show us -- did you
12 find the emblem on the floor anywhere?

13 A. The emblem being right here is part of it. It was
14 in several pieces. And if I recall, just thinking, I
15 know there was a part near the dresser. I ---

16 Q. It's difficult to see in those pictures.

17 A. It's difficult to see in those pictures and this
18 picture here because of the lighting. The room was a
19 very -- as you can see, the walls are very dark. There
20 was not any light in the room. I understand he just had
21 power, but he didn't have any light in the room. He
22 didn't have any light bulbs in the actual sockets itself,
23 or they were not working.

24 Q. Okay.

25 A. So we were working on flashlights initially. You do

1 not want to take in -- initially you don't want to move
2 the blinds because you don't want anybody to move the
3 actual -- damage some blood stain or anything to that.
4 So you don't want to open the windows and open the
5 blinds. You don't want to do that. You don't want to
6 bring in any outside light because you might damage
7 something. We were really trying to find out exactly --
8 and collect as much evidence as we can.

9 Q. State's Exhibit Number 57. This is a little closer
10 up, I think, right in front of that armoire or dresser.
11 Can you describe for me what that stain is on the floor?

12 A. Right here's your -- it's coagulating blood.

13 THE COURT: Keep in mind they can't see through
14 you.

15 A. Coagulating blood right here, which means a large
16 pool of blood that was there from the victim. We did
17 swab it, and it did come back through testing.

18 Q. As a crime scene investigator, what, if anything,
19 does it tell you when there's a large pool of blood in
20 one spot?

21 A. There was -- that's where a lot of the actual -- a
22 striking occurred or the victim laid on the ground or
23 laid in the area where the actual blood was coming out of
24 them.

25 Q. So for a period of time, they would have had to have

1 been there to have placed that much blood there?

2 A. Correct. Also, there's splatter here and on the
3 chair here.

4 Q. All right. And on that drawer you were just
5 showing us, the front of drawer, is that broken down off
6 the dresser?

7 A. Yes, it is. It was damaged from up above.

8 MR. THOMPSON: We'll go to the next photograph,
9 State's Exhibit 58.

10 Q. And these markings, is that the drawer just above
11 the one we just saw with the blood on it?

12 A. Yes. You can see actually part of the chair still.
13 It was not determined if that was actually a stick or
14 part of the shelving, but it was pretty fresh. We did
15 realize on some of them had some actual spatter from the
16 ---

17 Q. And is there blood spatter on the outside of this
18 drawer?

19 A. Yes. Right here and here.

20 Q. And this was the second drawer open on the floor; is
21 that correct?

22 A. Yes.

23 Q. So it's also broken down?

24 A. Yes.

25 Q. And it appears from being struck that it broke down;

1 is that correct?

2 A. Correct.

3 Q. Okay. Let's go to State's Exhibit Number 59. And
4 if you could look at that as well. Is that the door from
5 the armoire that had, at one time, the emblem on it that
6 was knocked off?

7 A. Yes. And there's more markings here. And there are
8 -- there's some blood marks here and here.

9 Q. All right. And are there chips taken out of it as
10 well?

11 A. Yes. There's a mark here and right across here.

12 Q. Okay. And as you go over all the way to where the
13 other drawer of the cabinet is -- I think you can see
14 just the edge of it -- is there anything that stood out
15 to you there?

16 A. Are you talking about here?

17 Q. Yes, right there. Yes.

18 A. There is a good chip off the other door itself from
19 where it was a little open and hit.

20 Q. All right. And I'll show you State's Exhibit Number
21 60. And in that picture, are there also indications of
22 it being struck by a stick or shovel?

23 A. Yes. More so a shovel in this area here which made
24 the actual emblem come apart and fly into pieces which is
25 here.

1 Q. Now, in your estimation, can you tell me in your
2 experience, the making of those marks, would it have been
3 caused by the shovel being thrust forward or by it being
4 struck down?

5 A. Well, that is definitely thrust forward, down, would
6 have come down, and you would have -- to make this mark
7 you would have had a drag mark coming straight that way.
8 So it would have came as a spearing motion.

9 Q. Okay. And in State's Exhibit 59 ...

10 MR. THOMPSON: If we could go back to that,
11 please, briefly.

12 Q. ... are those the downward marks you're referring
13 to?

14 A. Those are the downward marks that I was talking
15 about. This is not a -- it's more of a swinging down.
16 And then the other is more of a spear.

17 Q. Okay. State's Exhibit Number 61. All right. This
18 is, I believe, the top of that armoire in the corner?

19 A. Yeah. It's just, as I say, trying to get all the
20 different pictures. Talk a lot about getting the
21 fingerprints and a lot of different dust -- Investigator
22 Williams talked about it -- that shows the condition of
23 the dust and the different items on top of the actual way
24 how dusty it is.

25 Q. All right. But is there also, I believe on that top

1 corner, a breaking of the wood as well?

2 A. Yes, right here at this corner right here.

3 Q. Do you know -- did that appear to have been struck?

4 A. Yes.

5 Q. And going back to or going now to State's Exhibit
6 Number 62, you had mentioned that this chair right next
7 to that large blood stain on the floor next to the
8 armoire piqued your interest or that was an interesting
9 or important part of this case. Can you start describing
10 to me now what stood out to you about that chair at this
11 point in time?

12 A. Well, taking the pictures originally, I came in and
13 saw it. And it was very interesting to me because this
14 is a smear as of somebody dragging their hands down it.

15 Q. As opposed to a splash?

16 A. It is not a spatter or a splat there. And then more
17 investigation of the chair showed a little bit more. And
18 there are some pictures. And I'm not sure exactly what
19 you have.

20 Q. All right. We'll go to the other pictures in just a
21 moment. If you could tell me though, the smear on these
22 front legs of this chair, did they go all the way around
23 the legs?

24 A. Yes. It went all the way around. It appears to me
25 he was down on ground, reached up, tried to get up and

1 slid back down.

2 Q. I think if you'll look in this picture, it's going
3 to be the right side of the front of the chair on the
4 top. Does that have anything on it?

5 A. Right there?

6 Q. Yes.

7 A. Yes. That's a blood smear also.

8 Q. Okay. Would that be consistent with someone
9 reaching up?

10 A. Yes.

11 Q. To try and grab and then sliding down.

12 A. Trying to get back up.

13 Q. Okay. Now, ultimately what did you do with that
14 chair to try and investigate it or look at it a little
15 further?

16 A. Due to the lighting situation, as I talked about it,
17 we tried to take it outside.

18 Q. All right.

19 A. Basically, we took it out on the front porch so we
20 could get a better view of it, so we could really --
21 don't have to look at it with a flashlight.

22 Q. All right.

23 A. Use natural light, and you get the best light from
24 natural light.

25 Q. State's Exhibit Number 53 -- or 63. I'm sorry. 63,

- 1 is that the chair out on the porch now?
- 2 A. Yeah. We took it outside to get the natural light.
- 3 It's a better -- so we didn't have to use the flashlight.
- 4 You can see here there's a mark here. There is blood
- 5 spatter here and the actual smearing of the front ---
- 6 Q. On the legs?
- 7 A. --- the front two legs.
- 8 Q. All right. And State's Exhibit 64?
- 9 A. That's just a closeup view of it showing the smears
- 10 as it goes down. And the reason showing that it actually
- 11 wasn't a -- thrown up there because you wouldn't have it
- 12 all the way around, the smearing down.
- 13 Q. And 65?
- 14 A. The opposite leg with blood spatter in these areas
- 15 here.
- 16 Q. And look at State's Exhibit 66.
- 17 A. That's actually underneath -- this is the front leg
- 18 on the -- as you were just looking at it, the left.
- 19 These are the back two legs. You can see here the
- 20 spatter here as if the person was down. But even more
- 21 so, the person had to be actually down on the ground or
- 22 the spatter would have to have been from down here to
- 23 spatter up underneath the chair. So this was a serious
- 24 beating. It was not just a little ...
- 25 Q. So in your opinion, where that large puddle of blood

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1 was, would the person be laying around that spot when he
2 was struck on the floor to cause that?

3 A. Yes, he would have been in that spot. He would have
4 had probably blood -- he would have had blood pooling on
5 his wounds itself when they was hit and it spattered up.

6 Q. So this doesn't come necessarily -- this doesn't
7 come from an initial wound; this comes after you've been
8 wounded?

9 A. Yeah. This is actually a second, more like a third
10 or fourth wound.

11 Q. Okay. And State's Exhibit 67, I believe that's just
12 a little closer up under the chair; is that correct?

13 A. A little closer underneath the back left leg.

14 Q. All right. And then if you look at State's Exhibit
15 68, I believe this is the back leg that's closer to the
16 armoire; is that correct?

17 A. Yes, it is. And there's some right here. Right
18 there.

19 Q. And I believe you also took a number of photos of
20 the back of the chair and the base of it. And we'll go
21 through those rather quickly because I know they're in
22 pieces so we can see what's on them. But State's Exhibit
23 69?

24 A. Yeah. That's the actual seat here, the back of the
25 chair. This would have been towards the armoire.

1 Q. And there's blood splatter on that as well?

2 A. Yes.

3 Q. And State's Exhibit 70?

4 A. Same thing. This is just a higher up on it. The
5 marks in here, you can actually see it here. And these
6 would have been -- could have been either cast off, which
7 would have been as he swung and actually came off the
8 tool itself or actually come down and spatter off the
9 victim.

10 Q. Okay. And State's Exhibit 71?

11 A. Marking here indicating this is the area we're
12 talking about in this area here. There's lots of them.
13 Lots of little tiny marks of blood everywhere.

14 Q. All right. And y'all put that on there ---

15 A. Yes.

16 Q. --- basically as a reference?

17 A. Yeah, just as a reference point.

18 Q. All right. State's Exhibit 72?

19 A. Same thing here. You see it right here. Because of
20 the condition of the chair itself, as you can see, this
21 dark area over here is dirt. It's not -- that's not a
22 smear of blood.

23 Q. Okay.

24 A. That would be a dirty area back up top here. So
25 what we -- that was the reason for that marking there, to

1 show that this is the area we're talking about. We
2 swabbed those areas and surface.

3 Q. All right. State's Exhibit 73?

4 A. For instance there, we'd take the picture and then
5 we'd swab it after the picture because we want it
6 originally like that.

7 Q. And 74?

8 A. That's the back side on the left.

9 Q. All right. And 75?

10 A. And marks on the seat.

11 Q. And y'all made the circle mark?

12 A. Yes.

13 Q. That's just indicating where some of the blood is,
14 correct?

15 A. Yes.

16 Q. And 76?

17 A. Fabric impressions here and blood there. Fabric
18 impressions being a transfer from blood that's on a
19 fabric to another surface.

20 Q. All right. Did you also try to indicate back inside
21 the residence where there was blood on the wall?

22 A. Yes. Behind the chair there was some blood.

23 Q. And I'll show you State's Exhibit 77. If you could
24 -- it's a little hard unless you can have ---

25 A. Right in here you can see where there was some -- I

1 know there was one circle there.

2 Q. Because the walls are painted a dark blue and it
3 makes it difficult to see?

4 A. Yeah, it's kind of hard on here. You can barely see
5 one little circle right in this area right in here above
6 the chair, and then there were circles here. And there's
7 also some circles right down in there.

8 Q. Okay. And State's Exhibit 78?

9 A. Those are where the plastic was covering the sheets
10 from earlier -- I mean, excuse me. The plastic was
11 covering the windows used as insulation probably during
12 the cold winter. And those are actually marks on blood
13 spatter too.

14 Q. So you have circles you've drawn on the plastic as
15 well?

16 A. Yeah. We even drew a circle on that little -- right
17 here. Those are -- usually when we make circles like
18 that, those are just indicators where we took a swab from
19 to get blood markings in case -- because during the
20 incident, you do not know if the victim fought back. If
21 he did, is one of these where he hit the guy and the
22 actual blood from the victim -- excuse me -- the suspect
23 that did the beating came off of him, if he busted his
24 mouth when he was fighting him back if he was to fight
25 back?

1 Q. All right.

2 A. So that's why you take different samples of all
3 these little places here, hopefully getting a suspect
4 blood sample. And that's one of the things we do.

5 Q. State's Exhibit 79? I believe that's on top of that
6 armoire; is that correct?

7 A. That's on top of it, but I'm not sure what's on top
8 of it.

9 Q. Well, I'll show you the actual photograph. It's a
10 little easier to see.

11 A. It's just on top of it. Shows the actual marks in
12 the back here and the actual dirt. I showed you a better
13 picture of the actual dirt and stuff that was on top of
14 it.

15 Q. Okay. State's Exhibit Number 80?

16 A. Part of the wall. And actually this is the armoire.
17 The bed would be in this area here. And this is more
18 blood spatter in that area.

19 Q. Okay. Can you tell us what the -- what's on the
20 wall inside the -- the clothing and it looks like
21 newspaper?

22 A. Originally -- there was a hole in the wall there.
23 We think it was a furnace, we think at one time, when it
24 was piped out. But there's a hole in the wall there and
25 a tee shirt and some newspapers stuffed in there for like

1 insulation.

2 Q. All right. So that appeared to be there by Mr.

3 Mitchell, correct?

4 A. Yes.

5 Q Now, let's start looking back as we go towards the

6 living room, going back into that little foyer area in

7 State's Exhibit 82. And I believe this is at the front

8 door; is that right?

9 A. Yeah, there's the front door. And I talked about

10 the shovel mark or stick mark to pry the door. The

11 victim would be lying in here. Fireplace, hearth. And

12 this is actually what I would call the foyer.

13 Q. Okay.

14 A. There's some blood, a good bit, on this door right

15 in this area here.

16 Q. All right. And then State's Exhibit 83? And that

17 was the blood you had just pointed out to us, correct, in

18 that foyer area?

19 A. Yes.

20 Q. Now, tell us what impressions you have from that

21 blood?

22 A. What appeared to me is the actual -- by my training

23 and experience, the actual -- a large strike happened in

24 this area. And it would have been a -- some damage was

25 done to the victim, and the blood came from there.

1 Q. Because that's more than just dots of blood?

2 A. That's more than just dots. Well, he would have had
3 to have been bleeding pretty good in there to leave that.
4 I mean, that's a big spot. It starts here and goes all
5 the way down.

6 Q. All right. Now, going back into the living room,
7 State's Exhibit 84. You talked about the fireplace. Is
8 that a part of it there?

9 A. Yes.

10 Q. And on the left, that would be where we just came
11 from where the blood stain was?

12 A. Yes, right over here.

13 Q. Okay.

14 MR. THOMPSON: And go to State's Exhibit Number
15 85.

16 A. Okay. You really cannot -- this picture here --
17 could I see the picture, please?

18 Q. Sure.

19 A. Concentrating more in this area here -- as I say,
20 usually I take pictures as we go around, all the way
21 around the room as I would be taking. Concentrating more
22 here, you see the kitchen and where there was damage to
23 the kitchen area. Or not damage to the kitchen, the
24 actual -- some kind of struggle or something in the
25 kitchen.

1 Q. All right. And there on the right near the corner,
2 what was that in the residence?

3 A. This right here's a flashlight. There's one here.
4 There's also one on the other side of the room.

5 Q. All right. And those were tested as well?

6 A. Yes.

7 Q. With no result?

8 A. Well, I think we collected in the neighborhood of
9 about -- I could look at the paperwork. But it's
10 somewhere fifty-nine, sixty items inside the house
11 initially. And then after I left to go to the autopsy,
12 Investigator Williams actually collected a few more.

13 Q. Let's look at State's Exhibit Number 86. That's a
14 little better shot in the corner there. Can you tell me
15 what's in that corner?

16 A. You can actually see here the -- where we talked
17 about a green screwdriver, the bread, the floor itself.
18 And the stereo comes up pretty high here. And there's a
19 little area in here. A speaker comes out and then into
20 the kitchen area here.

21 Q. Okay. Okay.

22 A. Actually -- I'm not sure exactly what picture. But
23 this shows the actual virgin pictures of how the floor
24 was and where the bread was in that area. A little bit
25 later I do know the bread's actually pushed over in case

1 we needed to use -- in case we needed to process it. We
2 pushed it out of the way because we were walking in that
3 area a good bit.

4 Q. Okay. Let's go to the next one, State's Exhibit 87.
5 And I think that's just when the cones were sat down in
6 that area?

7 A. Yeah, that's actually -- it does show right there
8 where I pushed the bread more towards that little table.
9 The cone with the screwdriver, a flashlight, another cone
10 back here where the flashlight is.

11 Q. And that's the view standing in the doorway that
12 leads into the living room?

13 A. That's the actual edge of the hearth here. The
14 blood spatter we was just talking about. There's the
15 front door right in this area.

16 Q. All right. Now, I have a question for you. We can
17 refer just quickly to the map here of the scene. We're
18 looking in the living room now at the upper right-hand
19 corner of this map.

20 A. The living room is right here.

21 Q. I'm sorry -- let me get to the living room. Let me
22 get to the right spot. The lower right-hand corner of
23 this map, we're looking at the living room here. If
24 someone was standing in front of or on either side of
25 this stereo, and as we see in the pictures that we have

1 just seen up there, would they be able to see into the
2 bedroom? Did you actually ---

3 A. Well, first let me show you what we have in this
4 picture. That white chair is this item right here.

5 Okay? So everybody knows where we're looking at now.

6 Okay? That white chair right there is that chair right

7 there. The speaker, stereo. So that way everybody knows

8 where we are talking about. So if you're saying if I'm

9 standing anywhere around in this area. Is that your

10 question?

11 Q. Correct.

12 A. Okay. What was your question?

13 Q. Could you see into the bedroom?

14 A. I could see basically somewhere down in that area
15 right through there.

16 Q. So to about that far door jamb of the bedroom is
17 where you could see?

18 A. Yes. Otherwise, it would be hid by that corner
19 right there. So you're somewhere in that area there.

20 You'd have to come all the way out here to be seeing into
21 the bedroom. So if you're here, you'd be anywhere -- the
22 more you come around on this side towards the kitchen,

23 the more you couldn't see. So you would come around --

24 you'd have to be in front of or back over in the corner

25 to even get a glimpse of the door.

1 Q. All right. Okay.

2 MR. THOMPSON: If we could then go to State's
3 Exhibit Number 88. All right. Try State's Exhibit
4 Number 89. That's what I have listed as 88.

5 Q. I think this is actually State's Exhibit 88 although
6 on the screen it's going to say 89. Is that -- you had
7 mentioned a second flashlight. Is that the other
8 flashlight you found?

9 A. Yes. The bread, the items over here. This is the
10 second flashlight.

11 Q. All right.

12 A. And the screwdriver on the love seat, the couch.

13 Q. And both of those items were tested, correct?

14 A. Yes.

15 Q. Bringing you back -- not bringing you back. State's
16 Exhibit Number 90 which is -- that's actually listed as
17 State's Exhibit 89 on this. If you would, tell me what
18 your impression was with the articles of food that are
19 there in front of you and the laundry detergent.

20 A. Well, it would be hard to carry the laundry
21 detergent and these items here without a grocery bag.
22 Was unsure why the grocery bags were not there. Didn't
23 never -- never knew during the actual processing of the
24 scene why they wasn't. This is actually ---

25 Q. Did they appear to be out of place to you there?

1 A. Yes. The actual -- this is a refrigerated or frozen
2 dinner right here not in a refrigerator or frozen. It's
3 actually a frozen dinner. And the damage to the top of
4 the jug here appeared to be how it dropped, and unknown
5 why it was ...

6 Q. And State's Exhibit 91 which I -- or 90 -- yeah,
7 that's correct. You're going to have it listed as 91.
8 It's actually State's Exhibit 90. I want you to look at
9 that. That is -- next to the food, what is that on the
10 floor?

11 A. Okay. Those are bug larvae, fly larvae or maggots
12 on a shoe impression that was there in the floor. As I
13 said, we had them all over the place in the house. And
14 they're just eating the actual fluids from the actual
15 blood itself.

16 Q. Okay. And State's Exhibit 91, which I believe you
17 have as 92 there. Is that also still in the living room?

18 A. Yes.

19 Q. And is that the sofa near the -- on the front side
20 of the house?

21 A. This is actually the front door here. This is the
22 sofa. We were just looking towards the -- can we back up
23 one second there, please?

24 Q. Sure.

25 A. There's the fan. We've been talking about the love

1 seat. And there's a fan here. Now, this is the -- this
2 is actually the front, Alpha side of the house on the
3 inside of it.

4 Q. Okay. And then let's go look at some of the kitchen
5 photos -- I believe you have it as 93 -- State's Exhibit
6 92. And you had taken some photographs. I believe this
7 is of the refrigerator; is that correct?

8 A. Well, just like the inside of the house or the
9 outside of the house, I take pictures of every single
10 item as I go along so I could actually put it out and do
11 a panoramic view of it. Same thing here. This is -- I
12 was taking a picture of different things so I could get
13 it all. That's not particularly so I can get one
14 particular item. I want everything pictured.

15 Q. And if we could look, I believe there's a blowup of
16 that on State's Exhibit 93. And can you tell me what
17 that is on the refrigerator?

18 A. That is a number one that was carved in there. At
19 the time of the picture, it didn't really mean anything.
20 It was just -- I was documenting everything.

21 Q. Okay. And so you didn't know if that was of value
22 or not?

23 A. I didn't know if it was of any value or not. If
24 you'll go back one picture, that's the actual original
25 picture where you see it right here. And I was just --

1 it's hard to see this area on the overhead here. But I
2 was just documenting the whole scene.

3 Q. Okay. So State's Exhibit Number 94, which I believe
4 you have as 95, that's, I believe, another part of the
5 kitchen there next to the refrigerator?

6 A. Yes. It's just -- you've seen the top half of the
7 same picture. So I took the front half, the top half,
8 and now I'm taking the bottom half.

9 Q. All right. And is that a chair knocked over in that
10 room?

11 A. Yes.

12 Q. All right. And State's -- go to the next slide up
13 which is actually State's Exhibit 95.

14 A. Now, this is me standing back over towards the
15 refrigerator looking back towards the kitchen. Around
16 this corner here would be the living room where the
17 stereo is in that corner. There's actually the fan. You
18 can see the edge of the fan right in that area.

19 Q. Okay.

20 A. So now I'm in the kitchen.

21 Q. If you would go to the next slide up, which is 96.
22 I think you have it as 97.

23 A. Another picture here, same thing. The chair laid
24 down. All these are, as I say, virgin pictures because
25 we was trying to document the whole scene, trying to make

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1 sure we get everything. If we see anything that's funny,
2 I will start taking more pictures even closer to it.

3 Q. And the next one is 97, which I believe is 98 in the
4 slides.

5 A. Obviously, experience shows and pretty much anybody
6 could see there was some kind of -- something that hit
7 this table and knocked the glass table off. This is
8 actually -- this part of the table here is supposed to
9 sit here and here. Chairs turned over. This is leaned
10 back against the wall. There was some kind of scuffle in
11 this area.

12 Q. All right. Go to the next slide which is State's
13 98.

14 A. Same picture here just showing that the actual chair
15 was on the ground in this area.

16 Q. Let's go to the next picture up which would be, I
17 believe, 99. And this, I believe, now is going into some
18 of the other rooms in the house. Did you look in the
19 bathroom obviously when you took the photographs?

20 A. When we do it, we scale -- excuse me, not scale. We
21 diagram the house, but not to scale because we're not
22 architects. So we don't do it one hundred percent to
23 scale. But we go in and we diagram the whole house just
24 like we did here. And we go in and take pictures of all
25 of it.

1 Q. All right. Now, was there anything of note within
2 the bathroom that you could tell? Had it been ---

3 A. No.

4 Q. All right. Let's go then to the next slide, State's
5 Exhibit 100. And that -- can you tell me what room is
6 that?

7 A. It's just a back bedroom or a back room of the back
8 corner of the house, the Bravo Charlie side back in here
9 on the diagram down here. And the floor is right in
10 here. This is all the stuff you see in this area here.

11 Q. Is that kind of a storage room in the back where he
12 had ---

13 A. I would guess it's a storage room because that's a
14 fairly -- that's a new piece of sheetrock. It has not
15 been hung. It doesn't have any nail holes in it. It's
16 like -- and there's paint back in here and different
17 kinds of construction-type debris.

18 Q. Okay. Wood and planks and things like that?

19 A. Yes.

20 Q. Okay. And next State's Exhibit 101. Where is this
21 in the residence?

22 A. This is actually going out the back door which we
23 feel was the most used door due to it could be secured
24 compared to the other doors.

25 Q. All right. So the back door could be locked?

1 A. Yes.

2 Q. And the front door could not?

3 A. Correct.

4 Q. Okay. And looking at this photograph, orient us to
5 which side of the photograph the kitchen door is on and
6 which side is the ---

7 A. The kitchen door is here.

8 Q. Okay.

9 A. The storage door or storage room that we just looked
10 at is in this area.

11 Q. All right. And State's Exhibit 102. And that -- I
12 believe this is the back door?

13 A. That's the back door where it could be secured. But
14 we looked at the actual mechanism, and it was not damaged
15 and it was not locked.

16 Q. All right. And 103?

17 A. Same thing here.

18 Q. And 104?

19 A. And that's showing that it will shut and lock
20 because we did actually test it.

21 Q. But now, as you said, it was unlocked when you
22 actually arrived on the scene?

23 A. When we arrived on scene and looked at it, it was
24 unlocked.

25 Q. All right. Thank you. I believe that's all the

1 photographs I'm going to have you look at at this point.

2 (WHEREUPON, the witness resumed the witness stand.)

3 Q. Can you tell me the weapons that were used in this
4 particular crime as far as the shovel and the piece of
5 lumber? Do you have an opinion as to where those came
6 from?

7 A. Well, with the items that's in the house and the
8 items that were the markings in the house and also the
9 D.N.A. that were found, from testing them, we believe
10 that they were items from inside the house itself.

11 Q. Okay.

12 A. The stick matches one of the others. It does have
13 the victim's D.N.A. on it. The shovel, same thing. We
14 feel that the shovel was probably used -- you see that
15 big mark at the front door? It was probably used to pry
16 -- to hold the door shut at the front.

17 Q. Can you tell me, after you finished with all the
18 photographs, did you, were you involved in going to the
19 autopsy and that type of thing the next day?

20 A. Yes.

21 Q. And did you go down to, I guess it was, Charleston
22 for the autopsy?

23 A. Yes, I did.

24 Q. And were you present throughout the autopsy?

25 A. Yes. I was actually in the whole time.

1 Q. And during the autopsy, what was collected from the
2 victim at that time during the autopsy?

3 A. His clothing, shoes, a receipt, teeth -- I'd have to
4 actually -- I can look it up exactly every -- the exactly
5 ---

6 Q. All right. You're going to have to look it up? Can
7 you tell me, after you learned about the one carved into
8 the fridge from the Defendant's statement -- I guess that
9 would be in February of '09, is that correct, I think you
10 learned of that?

11 A. Yes.

12 Q. Did you go back and try and actually find the fridge
13 again?

14 A. I did not.

15 Q. But someone within the unit went back?

16 A. I cannot advise that. I don't have any knowledge of
17 that.

18 Q. Okay.

19 A. I'm sorry.

20 Q. That's all right. All right. Other than the
21 photographing, the large amount of photographing that you
22 did at the scene, did you do anything else right there at
23 the scene at that time?

24 A. We dusted for fingerprints on different items. We
25 collected swabs. We -- I went down. I collected

1 fingerprints, actually fingerprinted the actual victim,
2 came back and ran his fingerprints on AFIS. Made a hit
3 on him so, we could identify him one hundred percent.
4 Q. Okay. So the way you actually identified the victim
5 was through his fingerprints?
6 A. Yes.
7 Q. Is that because of the decomposition of the body?
8 A. Yes.
9 Q. All right.
10 A. There was no way to make a hundred percent I.D.
11 except for that.
12 Q. All right. Thank you, Investigator Barnwell. I
13 appreciate it. Please answer any questions the Defense
14 has for you.

15 CROSS-EXAMINATION

16 BY MR. RAWLINSON:

17 Q. I'm actually going to put this up. If you could
18 step down with me for a second.
19 (WHEREUPON, the witness stepped down from the
20 witness stand.)
21 Q. All right. So if -- this is the bedroom, correct?
22 A. Yes, sir.
23 Q. That's the bedroom. And this is that white chair
24 that you identified in one of those State's exhibits?
25 A. This item right here.

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1 Q. And this is the stereo, correct?

2 A. Yes. This is the other speaker.

3 Q. Okay. So speaker, speaker?

4 A. Yes, sir.

5 Q. That's correct?

6 A. Right. Speaker on this side, stereo, and then the
7 speaker.

8 Q. Okay. If a person ran out of the bedroom and a
9 scuffle ensued and the scuffle initially -- or the
10 scuffle eventually went back into the bedroom, would a
11 person standing around this area be able to see that
12 scuffle happen and go back into the bedroom?

13 A. Yes.

14 Q. Thank you.

15 A. As I stated.

16 Q. Yeah. Thank you.

17 (WHEREUPON, the witness resumed the witness stand.)

18 Q. Now, you stated there were no signs of forced entry,
19 correct?

20 A. Correct. Not any new forced entry.

21 Q. New forced entry?

22 A. Right.

23 Q. And is there anything that you found from your
24 photographs, from the D.N.A. swabs, from the autopsy that
25 you witnessed that directly links to Christopher Poage?

1 A. No.

2 Q. And is there any evidence you found from the D.N.A.
3 swabs or from the photographs or from the autopsy or from
4 any other investigation in this case that indicates that
5 two people did this crime together?

6 A. There's no evidence. But by my experience ...

7 Q. But there is no evidence to say that two people did
8 this crime together? No D.N.A. evidence, no physical
9 evidence that you could point to?

10 A. Correct.

11 Q. Thank you.

12 MR. THOMPSON: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q. You mentioned by your experience. Can you explain
16 what you mean by that as far as ---

17 A. Well, by twenty years of policing and numerous
18 years, since '06 full-time forensics -- but even before
19 that, I was part-time forensics and worked numerous
20 assaults and homicides -- by the condition ---

21 MR. RAWLINSON: Your Honor, I would object. I
22 believe this witness was qualified as an expert in crime
23 scene processing, if I remember correctly. He's now
24 attempting to give an opinion on crime scene
25 investigation.

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1 MR. THOMPSON: Following up a question from the
2 Defense, Your Honor.

3 THE COURT: All right. Restate the question.

4 MR. THOMPSON: Well, I asked -- I believe based
5 on what he said, he said from his experience. I believe
6 your question was, was there any forensic evidence that
7 linked Mr. Poage or if it had two people involved. And
8 he said from his experience, yes. But straight forensics
9 ---

10 THE COURT: Let me let the jury go to the jury
11 room just a minute. We'll straighten -- try to
12 straighten this out.

13 (WHEREUPON, the jury exited the courtroom at
14 approximately 5:09 p.m.)

15 THE COURT: All right. Ask the question again.

16 IN-CAMERA EXAMINATION

17 BY MR. THOMPSON:

18 Q. All right. From your experience is there anything
19 that indicates that two people were involved?

20 THE COURT: I'm going to let him answer right
21 now so we'll see where we are.

22 A. By my experience through twenty years of policing,
23 since '06 being full-time crime scene and years before
24 working part-time crime scene, by my experience of
25 working those scenes, numerous homicides and assaults, I

1 feel that this crime and in the area it was committed was
2 done by more than one person.

3 THE COURT: And your objection is?

4 MR. RAWLINSON: My objection is that he's been
5 qualified as a expert in crime scene processing. There
6 was an expert that was qualified earlier for crime scene
7 investigation. I think that that expert can certainly
8 give an opinion as to whether there was two people
9 involved in this crime. That expert said that there was
10 no evidence involved in the crime. He certainly can
11 state whether there was any physical evidence that he
12 photographed that tended to indicate. But in terms of
13 making an opinion as to the totality, I think I'm
14 entitled to some voir dire as to whether he should be
15 qualified as an expert as to investigation to render an
16 opinion on the likelihood that two people were involved
17 in addition to just the photographs that he took.

18 THE COURT: All right. And this is in response
19 to which question? The one about ---

20 MR. RAWLINSON: His experience or his opinion.

21 THE COURT: No, no, no.

22 MR. RAWLINSON: I'm sorry.

23 THE COURT: I'm asking Mr. Thompson. This is
24 in response to the question by Mr. Rawlinson.

25 MR. THOMPSON: Mr. Rawlinson, he asked him, you

1 know, if there was any forensic evidence that would show
2 that two people were involved. And I think he was trying
3 to answer that by saying in his experience, and then he
4 was interrupted because he does have an opinion on that
5 in his experience regarding the forensic evidence and
6 what he sees it as.

7 THE COURT: Well, here's where we are. He
8 asked him if there was any forensic evidence, and he said
9 no. So that's the only question you could respond to
10 because that was the only question asked on cross.

11 MR. THOMPSON: Well, he tried to answer a
12 question ---

13 THE COURT: No, I'm not worried about his
14 answer. I'm not worried about his answer because you can
15 only -- you can only respond to his -- the questions.

16 MR. THOMPSON: That's correct. He did. And as
17 Mr. Brackett just reminded me, he said initially is there
18 any evidence that two people did it? And then he turned
19 around and said any evidence forensically because he
20 started to answer in his opinion, and then he interrupted
21 him and said, you know, basically is there any forensic
22 evidence that two people did it?

23 THE COURT: All right. Let's do this. Let's
24 go back and -- I hate to ask the court reporter to do
25 this. But see if you can find the exact question because

1 I think this is very important.

2 MADAM COURT REPORTER: Is it at the end of the
3 cross?

4 THE COURT: No. Well ...

5 THE WITNESS: It was his last question to me.

6 MADAM COURT REPORTER: Okay.

7 (WHEREUPON, a portion of the cross examination of
8 the witness was replayed in-camera.)

9 MR. RAWLINSON: Your Honor, I think I was
10 directly referring to the forensics in the case, the
11 photographs, D.N.A. swabs. It was mentioned several
12 times.

13 MR. THOMPSON: And you said, is there any other
14 evidence. Any other evidence and, you know, any
15 investigation. It was pretty broad. And he started to
16 say, no, but from my experience. And he said, no. And
17 then he narrowed it down to forensics.

18 THE COURT: Well, but he said, by
19 investigation, so I think it's inherent to stick to this
20 witness' investigation and not go outside his
21 investigation. I think you did open the door for him
22 because you said, any investigation. That's pretty
23 broad. But I think it might be some third party's
24 investigation. So let's go ahead and let Mr. Thompson
25 ask the question and see what the answer is. But I think

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1 it's confined to the investigation by Mr. Barnwell.

2 MR. THOMPSON: Yes, sir.

3 IN-CAMERA EXAMINATION

4 CONTINUED BY MR. THOMPSON:

5 Q. Confining it to your investigation, Investigator
6 Barnwell, is there anything that indicated to you ---

7 THE WITNESS: Since the jury's not in here, I
8 need to ask one question.

9 THE COURT: No, you don't get to ask them. I'm
10 sorry.

11 THE WITNESS: Well, I'll ask you, Judge.

12 THE COURT: Well, you can't ask anybody.

13 THE WITNESS: Okay. I'm sorry.

14 THE COURT: That's not the way it works.

15 THE WITNESS: Okay.

16 THE COURT: You're not -- this isn't your first
17 rodeo.

18 THE WITNESS: Yes, sir.

19 Q. So was there any indication through the evidence
20 that you saw and observed and photographed that indicated
21 that two people could be involved in this?

22 A. From my experience?

23 Q. Yes, through your experience.

24 A. The condition of the house and the manner the victim
25 was in, yes, two people would be involved. Two or more

1 people could be involved.

2 Q. All right. And what indications did you have of
3 that?

4 A. From the way the condition of the chair where the
5 victim was put down, he was -- my experience is he was
6 rolled over or moved. Possibly robbed in that area. And
7 that's the way normally the victims are moved and they're
8 attempting to be collecting an item off of them.

9 Q. All right. And I would ask did the blood stain have
10 anything with -- the large blood stain that was discussed
11 for a while in front of the armoire, did that have
12 anything ---

13 THE COURT: Now, that's a leading question. I
14 mean, he didn't object. But that's a leading question in
15 my opinion.

16 MR. THOMPSON: All right. All right. Judge,
17 I'm thinking I'm not going to even ask the question. I
18 think I'll just withdraw it. We'll clear this whole
19 thing up ---

20 THE COURT: All right. Okay. The question's
21 withdrawn. All right. So we'll get the jury back in.
22 Do you have any more redirect?

23 MR. THOMPSON: Let me consider that just a
24 second, Judge.

25 THE COURT: All right. Let's just be getting

1 the jury on in because ...

2 MR. THOMPSON: I don't have any further
3 questions, Judge.

4 THE COURT: All right. Well, help me while the
5 jury's out -- they're coming in -- but piece it back
6 together. Did you ask anything before you got to that?

7 MR. THOMPSON: I don't believe so.

8 THE COURT: Okay. So there won't be any
9 recross. You can go ahead and step down. Do you have an
10 objection to Mr. Barnwell going ahead and stepping down
11 and then you can call your next witness?

12 MR. THOMPSON: No, Your Honor.

13 THE COURT: Thank you for your time. We
14 appreciate it.

15 THE WITNESS: Thank you, sir. May I be
16 excused?

17 THE COURT: Yes, sir.

18 How many more witnesses does the State have?

19 MR. BRACKETT: Two, Your Honor. And they
20 should be relatively short. I'm sorry. Three. And they
21 should be relatively short.

22 THE COURT: Relative is a relative word, isn't
23 it?

24 (WHEREUPON, the jury entered the courtroom at
25 approximately 5:20 p.m.)

1 THE COURT: All right. The State withdrew the
2 question they were asking. And that ended it for Mr.
3 Barnwell, so he is now off the stand and they can call
4 their next witness.

5 MR. BRACKETT: The State would call
6 Investigator John George.

7 **JOHN GEORGE,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. BRACKETT:

11 Q. Sir, would you please state your full name for the
12 jury and spell your last?

13 A. John Robert George, G-E-O-R-G-E.

14 Q. All right. And where are you employed, sir?

15 A. I'm employed with the Rock Hill Police Department.

16 Q. Okay. And what do you do for the Rock Hill Police
17 Department?

18 A. Currently, I'm assigned to the York County Multi
19 Jurisdictional Forensics Unit as a forensics
20 investigator.

21 Q. Okay. So you work with Mr. Barnwell who just
22 testified?

23 A. Correct.

24 Q. And before he retired, Mr. Williams who testified
25 earlier in the case?

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1 A. Yes, sir.

2 Q. All right, sir. So did you have some involvement in
3 this case as far as processing the crime scene or
4 processing the scene?

5 A. Yes. Some burn piles in February.

6 Q. All right, sir. Now, that was not the house on
7 Steele Street that Mr. Barnwell testified to, was it?

8 A. Negative.

9 Q. All right. Where were you asked to go, and what
10 were you asked to do?

11 A. It was February 20th of '09. I was asked to come to
12 ■■■ Hall Spencer Road in reference to some burn piles
13 that needed to be gone through to try to find any
14 evidence.

15 Q. Okay. And was there also a warrant being served to
16 search the home there?

17 A. Yes, there was.

18 Q. Okay. And was that the home of Mr. Ernest Jackson?

19 A. I believe so.

20 Q. Senior?

21 A. Senior, yes.

22 Q. Yes. But his son lived with him there sometimes?

23 A. Yes, sir.

24 Q. All right. I'm showing you what's been marked as
25 State's Exhibit 7, 9, 10, 11, 12, 13, 14, 15, and 16.

1 And I just ask if -- first of all, is this a picture
2 taken from some documents inside the house ---

3 A. Yes, it is.

4 Q. --- establishing who lives at that location?

5 A. Yes, it is.

6 Q. Okay. Now, take a look at the rest of those
7 photographs, if you would, sir, and see if you can
8 identify what's depicted in there?

9 A. Do you want me to identify each one as I'm going
10 through or just ---

11 Q. No. If you could just go ahead and identify them
12 all as a group that you know what they depict.

13 A. Yes. Those would be the burn piles on Hall Spencer
14 Road and also evidence that was collected from them.

15 Q. All right, sir. And do they accurately depict the
16 burn piles that you processed as well as the evidence
17 that you collected as you saw them that day and as you
18 recovered the evidence?

19 A. Yes, they do.

20 MR. BRACKETT: All right. At this time, Your
21 Honor, I would move State's 7, 9, 10, 11, 12, 13, 14, 15,
22 and 16 into evidence.

23 MR. RAWLINSON: No objection, Your Honor.

24 THE COURT: In without objection.

25 (WHEREUPON, State's Exhibit Numbers 7, 9, 10, 11,

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1 12, 13, 14, 15, and 16 were admitted into evidence.)

2 MR. BRACKETT: I'd ask that these be marked as
3 State's Exhibits.

4 (WHEREUPON State's Exhibits Number 109, 110, and
5 111 were marked for identification only.)

6 Q. All right. I'm showing you what's been marked as
7 State's Exhibit 109, 110, and 111. And I'd ask if you'd
8 just examine the contents of those two bags in the
9 envelope, if you would, sir. You don't have to take the
10 contents out of the envelopes.

11 A. I'll try not to. It would be various items
12 collected from the two burn piles on Hall Spencer Road
13 the night of the 20th and 21st of February.

14 Q. Okay. All right, sir. Who sent you out to Hall
15 Spencer Road, [REDACTED] Hall Spencer Road?

16 A. I was called out by Ken Ballenger from the Rock Hill
17 Police Department.

18 Q. All right. And you were instructed to do what once
19 you got there?

20 A. I was instructed to search each one of the burn
21 piles for any clothing material, any knives, any metals,
22 to try to find any evidence in reference to the murder
23 that had occurred.

24 Q. All right, sir.

25 MR. BRACKETT: Mr. Thompson, if you would,

1 State's Exhibit 9. And if you could dim the lights for
2 me.

3 Q. Investigator George, if you could just step down for
4 one minute.

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

7 Q. I'm going to show you what's been marked as State's
8 Exhibit 9. Actually, I'm going to hand you 9, 10, 11 and
9 12. You can hold all three of those.

10 A. Okay.

11 Q. Let's start with State's 9. Can you explain to the
12 jury what's depicted in that photograph?

13 A. That would be the back yard of [REDACTED] Hall Spencer
14 Road. That would be one of the burn piles. I believe
15 it's what I considered burn pile number one. I labeled
16 them one and two so I would be able to keep my evidence
17 straight.

18 Q. Is this the burn pile here?

19 A. Yes, sir.

20 Q. Okay, sir. And moving on to 10?

21 A. That would be what I would consider burn pile number
22 two. Which if you're at the back of the residence, if
23 you're looking out, one was on your left-hand side and
24 two was on your right-hand side.

25 Q. And number 11?

1 A. That would be a closeup of the burn pile number one
2 on the left-hand side.

3 Q. And number 12?

4 A. And that would be a closeup of burn pile number two
5 on the right-hand side.

6 Q. All right. How did you process these -- what do you
7 do when you get asked to go and look at a burn pile?

8 A. Basically we looked at the burn piles. There was
9 two other investigators out there with me. And we looked
10 at them to see if there was any type of evidence or any
11 evidentiary value of anything on top of the burn piles
12 before we actually started. I actually collected some
13 buttons and some fabric off of this burn pile that was on
14 top.

15 Then what we did, we got a big sifter out. And we
16 have to go down and dig layer by layer. We just take one
17 scoop of dirt at a time and by hand sift it through this
18 big grated -- it's almost like screen with two-by-fours.
19 And gradually any items that we found that were of any
20 value, metals, fabric, buttons, anything like that, we
21 would keep and put them into an evidence bag.

22 Q. All right, sir. And so were both burn piles
23 processed in the same fashion?

24 A. Yes.

25 Q. How long did it take you to process both burn piles?

1 A. We started around seven-thirty and I believe left
2 about one-thirty a.m. .

3 Q. Okay. So through the night?

4 A. Yes.

5 Q. Okay. At the end of your sifting and digging, had
6 you recovered some items?

7 A. Yes. Quite a bit of metal items and some belt
8 buckles, some fabric material. A few other pieces of
9 metal that we couldn't identify.

10 Q. Okay.

11 MR. BRACKETT: Mr. Thompson, if you would,
12 number 13.

13 Q. State's Exhibit -- I'm going to hand you State's
14 Exhibit 13, 14, 15, and 16 so as we go through those --
15 can you describe to the jury what is depicted in State's
16 Exhibit 13?

17 A. Yeah. That would have -- these items would have
18 came out of the first burn pile. You have belt buckles,
19 some change, just various pieces of metal and fabric.

20 Q. Okay, sir. And number 14?

21 A. Let me see. That came out of burn pile number two.
22 That is some buttons that look like they came off of
23 jeans. Also, two rivets that look like they came out of
24 when jeans are riveted together and also a piece of jean
25 fabric.

1 Q. Okay. And State's Exhibit 15?

2 A. That would be some buttons. Also, I believe that's
3 tin foil, and there was some fabric material also that
4 was melted almost. Those buttons are more of a
5 decorative kind. They kind of look almost like a shell-
6 type consistency to them.

7 Q. Okay. How fragile are those buttons?

8 A. Those are real fragile. In fact, most of them are
9 completely broken up in the evidence bag now.

10 Q. Okay. In the course of lifting them out of the burn
11 pile, did that cause them to fall apart?

12 A. Yes. Some of them would break up a little bit, but
13 we were able to get -- that's about the best condition
14 that they're in right there when -- before we removed
15 them.

16 Q. And State's Exhibit 16?

17 A. Just a little bit better picture of some of the
18 other ones that were collected out of that burn pile
19 number two. Before we even started sifting, these were
20 actually on top of the burn pile.

21 Q. All right. And what did you do with the items that
22 you collected from the burn pile?

23 A. What I did, since it was about two o'clock in the
24 morning, I took all the items that we had recovered. We
25 separated them into each of the burn piles. We did

1 different evidence bags for each burn pile. So we had
2 evidence bag one for burn pile number one and evidence
3 bag two for burn pile number two. Took them back,
4 secured them at the Rock Hill Police Department in one of
5 the evidence lockers. And then on Monday got them back
6 out, laid them all out and photographed them like you saw
7 in the pictures.

8 Q. And so the photographs where they're on like a sheet
9 was actually taken back at the police department?

10 A. Yes. I believe it was on the 23rd, which was the
11 Monday. When we originally were out there, it was on
12 Friday and Saturday. And at two o'clock in the morning,
13 it was better just to secure them so I could come back
14 and do it on Monday.

15 Q. All right, sir. That's all I have for the screen.
16 You can take a seat. Don't forget your water.

17 (WHEREUPON, the witness resumed the witness stand.)

18 Q. Okay. Now, State's Exhibit 109, 110, and 111, the
19 two bags and the envelope that I showed to you and had
20 marked for identification, what do they contain?

21 A. Exhibit 109 is the button and fabric we collected
22 off of the top of burn pile number two, the ones that had
23 the decorative buttons in it.

24 Q. Okay. State's Exhibit 110?

25 A. It has some burned fabric in it, forty pieces of

1 miscellaneous metals, five rivets, two zippers, three
2 belt buckles, a dime, eighteen pennies, and five smaller
3 pieces of material or metal. And that was collected out
4 of the first burn pile.

5 Q. All right, sir.

6 A. And then State's Exhibit 111 is four buttons, and
7 they had inscribed on them Delf, D-E-L-F. Also, two
8 screws and one piece of jean material and some burnt
9 fabric. And that was collected out of burn pile number
10 two.

11 Q. All right, sir. The condition of the items that are
12 in there, obviously you couldn't take all the ash and
13 soot and all the debris out of there. So it's kind of
14 messy, is it not?

15 A. Yes, sir.

16 Q. All right. So to get it all out and lay it out now
17 would make a big ---

18 A. Yes. You should put some craft paper down if you're
19 going to do that.

20 Q. Okay. All right, sir. But basically everything
21 that is in those bags was depicted in the photographs
22 that we admitted, State's Exhibits 13, 14, 15, and 16.
23 Those are photographs of everything that's in the bags?

24 A. Yes, sir.

25 Q. Okay, sir.

1 MR. BRACKETT: I would move State's 109, 110
2 and 111 into evidence at this time:

3 MR. RAWLINSON: No objection.

4 THE COURT: In without objection.

5 (WHEREUPON, State's Exhibit Numbers 109, 110, and
6 111 were admitted into evidence.)

7 Q. All right, sir. Thank you very much. Please answer
8 any questions counsel for Mr. Poage may have for you.

9 CROSS-EXAMINATION

10 BY MR. RAWLINSON:

11 Q. Out of all of that evidence in those burn piles,
12 were you able to connect any of it to Christopher Poage?

13 A. Not that I know of, no, sir.

14 Q. Okay. And this -- are you aware that this alleged
15 -- the incident date of this is around about June 29th,
16 2011. Are you -- the alleged incident date?

17 A. Which incident? When I was out there?

18 Q. No. Let me ask this. Let me ask it another way.

19 A. Okay.

20 Q. When did you execute this search warrant?

21 A. On the Hall Spencer residence?

22 Q. On the Hall Spencer residence.

23 A. It would have been on February 20th, 2009.

24 Q. And that's about, what, seven months after July
25 29th, correct?

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1 A. Correct.

2 Q. And how many burn sites were located on this
3 property?

4 A. Two that I located.

5 Q. And was there any way for you to tell whether the
6 burn sites were used more than one time?

7 A. From what I saw out there, they were probably used
8 several times.

9 Q. And there's nothing in either of the burn piles that
10 you can connect to Christopher Poage?

11 A. Not that I can, no, sir.

12 Q. Okay.

13 MR. RAWLINSON: No further questions.

14 MR. BRACKETT: Nothing on redirect.

15 THE COURT: You can step down and be excused.

16 We appreciate your time. Thank you.

17 Call your next witness.

18 MR. BRACKETT: The State would call Lieutenant
19 Jeff Cornwell to the stand.

20 THE COURT: Just stop right there and the Clerk
21 will give you an oath.

22 **JEFFREY CORNWELL,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. BRACKETT:

- 1 Q. Sir, would you please state your full name and spell
2 your last for the court reporter?
- 3 A. Jeffrey Neely Cornwell, C-O-R-N-W-E-L-L.
- 4 Q. And sir, where are you employed?
- 5 A. With the York County Sheriff's Office.
- 6 Q. And what do you do for the York County Sheriff's
7 Office?
- 8 A. I'm the District Commander of the Fort Mill
9 District.
- 10 Q. Okay. So you're a shift lieutenant?
- 11 A. I'm in charge of the Fort Mill District.
- 12 Q. Oh.
- 13 A. It's an equivalent position to what used to be a
14 shift lieutenant before we reorganized.
- 15 Q. I've got you. That section of York County is under
16 your supervision?
- 17 A. Yes. Yes.
- 18 Q. All right. Back in 2008, July of 2008, what were
19 you doing?
- 20 A. I was a patrol sergeant assigned to Rock Hill.
- 21 Q. Okay. And as a patrol sergeant, what are your
22 responsibilities?
- 23 A. I'm responsible for supervising the deputies that
24 are on the road in that district and also, of course, for
25 patrol myself, a working supervisor.

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1 Q. You would actually go out on patrol; you weren't
2 like a desk sergeant sitting back at the office?

3 A. No.

4 Q. You were out in the car driving around too?

5 A. No. I was out answering calls and on the street
6 too.

7 Q. All right, sir. And turning your attention
8 specifically to July of 2008, July 28th of 2008, in the
9 late afternoon around four o'clock, were you on patrol in
10 the Hall Spencer Road area of York County?

11 A. Yes, I was.

12 Q. Okay. And at that time, had you received something
13 from the criminal intelligence unit over at the Sheriff's
14 office to be on the lookout for an individual?

15 A. Yes. They send out flyers frequently of people that
16 we're looking for that are wanted that include usually
17 photographs and a basic description of the person. And I
18 had one that had just come in, I think, that day or maybe
19 a day before or so.

20 Q. So this is basically just an alert to let you know
21 that there's a warrant out for an individual ---

22 A. Right.

23 Q. --- and if you see him, please ---

24 A. Right.

25 Q. --- we're looking for him?

1 A. Yeah.

2 Q. Okay.

3 MR. BRACKETT: I ask that this be marked as
4 State's Exhibit 6.

5 (WHEREUPON, State's Exhibit 6 was marked for
6 identification only.)

7 Q. I'm asking you, sir, if you recognize the flyer that
8 I'm showing you now?

9 A. Yes, sir. This is the one that I had that day that
10 I was on the lookout for.

11 Q. Okay, sir. Now, did you happen to -- on July the
12 28th, specifically you were in possession of that and
13 you'd just received it and you're looking for the fellow
14 there. What's the name of the fellow that you're looking
15 for?

16 A. Danny James Hinton, D.J. Hinton.

17 Q. D.J.

18 A. Yeah. It came in over email. So ---

19 Q. And you have that in your car?

20 A. Yes.

21 Q. So it pops up and you could see his picture and what
22 he's wanted for?

23 A. Yes.

24 Q. All right. Now, about four o'clock in the afternoon
25 on Hall Spencer Road, did you see somebody who fit that

1 description?

2 A. Yes. I saw a gentleman walking down the street from
3 what used to be the Big Quick Mart store walking down
4 toward the trailer park on Hall Spencer Road.

5 Q. Okay. Was he alone?

6 A. There was two individuals walking together.

7 Q. All right. And one of them fit that description?

8 A. One of them fit the description.

9 Q. Okay. Is it common to see somebody that might fit
10 the description?

11 A. Sometimes. In driving down the road, these
12 particular guys were walking away from me at the time, so
13 I didn't particularly get a good look at their face. So
14 I drove down the road past them to take a second look to
15 see if it might be the person I was looking for.

16 Q. Okay. And what did you do then?

17 A. Well, I thought -- after taking a second look at the
18 person, I felt like, yes, this could possibly be Mr.
19 Hinton that I'm looking for. So I turned in to the
20 trailer park and actually brought the email back up on my
21 computer so I could take another look at the photograph.
22 And then after looking at the photograph again, I felt
23 like, yeah, this might be the guy. So I turned back out
24 of the trailer park. And I'd already started my video
25 camera rolling and approached the guys and got out with

1 them and talked to them for a little while on the side of
2 Hall Spencer Road.

3 Q. All right, sir. And have you -- did you keep a copy
4 of the videotape that showed that encounter?

5 A. Yes.

6 Q. All right. Now, where is the video camera located
7 in your car?

8 A. Well, the camera itself is mounted on the dash just
9 above the passenger seat ---

10 Q. Okay.

11 A. --- towards the center of the car. And the
12 recording device is located in the trunk. It recorded to
13 a tape.

14 Q. So it films through the front windshield out over
15 the hood of the car ---

16 A. Yes.

17 Q. --- towards the front of the vehicle?

18 A. Yes.

19 Q. All right. And did you have occasion to need to
20 retrieve that some months later at the request of the
21 Rock Hill Police Department?

22 A. Yes. I had gotten a call from them quite a time
23 later asking -- inquired if I still had the tape, which I
24 still had in my possession.

25 Q. And did you provide a copy of that encounter to the

1 Rock Hill Police Department?

2 A. I did.

3 Q. Okay. And in addition to that, did you also do what
4 they call a field interview?

5 A. Yes.

6 Q. Or field notes related to that interview?

7 A. Yeah. We generally fill out field interviews
8 anytime we stop someone that may appear suspicious or,
9 you know, we want to record the encounter with them as to
10 where they were, when they were, you know, when we talk
11 to them and what the circumstances were. It's a tool to
12 use later on in case something comes up in the area.

13 Q. I see. Now, in this particular instance, did you
14 fill out a field interview?

15 A. Yes, I did.

16 Q. Okay. And who were the individuals that were
17 stopped on the side of the road out there?

18 A. One of them was a Mr. Poage, and the other one, I
19 believe, was Mr. Thompson. Thomason or Thompson?

20 Q. Jackson?

21 A. Jackson, I'm sorry.

22 Q. Ernest Jackson?

23 A. Jackson. His dad -- Ernest Jackson, I believe, was
24 -- his dad lives down the street there.

25 Q. Okay. Now, did you have occasion recently to review

1 that videotape?

2 A. I did.

3 Q. And does that accurately portray what happened on
4 the side of the road there?

5 A. Yes. I mean, it's an electronic record of pretty
6 much what happened.

7 Q. All right, sir.

8 MR. BRACKETT: Mr. Rawlinson, I have the video
9 on the computer, and this is just the case. But I'll
10 have this marked.

11 MR. RAWLINSON: Okay.

12 MR. BRACKETT: That's the D.V.D. which is
13 currently in the player at our table. This is the
14 container for it. I ask that this be marked as State's
15 Exhibit 112.

16 THE COURT: Any objection?

17 MR. RAWLINSON: No objection, Your Honor.

18 THE COURT: Without objection.

19 MR. BRACKETT: Entered into evidence.

20 (WHEREUPON, State's Exhibit Number 112 was marked
21 and admitted into evidence.)

22 Q. All right, sir. And so this accurately portrays
23 what happened on the side of the road that day?

24 A. Yes.

25 Q. All right.

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1 MR. BRACKETT: Your Honor, I'd ask to publish
2 State's 112 to the jury at this time.

3 THE COURT: Okay.

4 (WHEREUPON, State's Exhibit Number 112 was played in
5 open court before the jury.)

6 Q. All right. The sound was kind of muddy. I was
7 trying to fix it. Can you give us the substance of what
8 the conversation was?

9 A. It just -- I don't know why it's so muddled on
10 there. It's actually pretty clear on the actual disk. I
11 think probably the sound system here or something. But
12 the gist of the conversation was I asked them for
13 identification. The gentleman in the lighter colored
14 shirt, he tells me that he's, I think, Ernest Jackson and
15 that his dad lives down the street and provides me I.D.
16 I ask the other guy for his I.D. and he tells his last --
17 he's Christopher Poage. I copy down his information. I
18 tell them I'm looking for somebody. I have a wanted
19 flyer for them. They walk back to the car. I open the
20 car door and show them the picture on the computer screen
21 in the car. And they immediately say, oh, that's D.J.
22 Hinton. That's D.J. Hinton. And you know, real emphatic
23 that, you know, that's D.J. And I called dispatch on the
24 radio to verify warrants. There was no warrants on
25 either one of them. I cut them loose.

1 Q. Okay. Was it a pretty cordial encounter?

2 A. Pretty cordial, very quick.

3 Q. All right.

4 MR. BRACKETT: I would ask that this be marked
5 as State's 113.

6 (WHEREUPON, State's Exhibit Number 113 was marked
7 for identification only.)

8 Q. I show you a copy of what's been marked as State's
9 Exhibit 113. Can you tell us what that is?

10 A. These are the F.I. cards that I filled out on each
11 of the individuals with their name, date of birth,
12 address, I.D. numbers and a brief clothing description
13 and the reason why they were stopped.

14 Q. Okay.

15 MR. BRACKETT: I would move State's 113 into
16 evidence.

17 MR. RAWLINSON: No objection, Your Honor.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit Number 113 was admitted
20 into evidence.)

21 Q. Thank you very much, Lieutenant Cornwell. Please
22 answer any questions that Mr. Rawlinson may have for you.

23 CROSS-EXAMINATION

24 BY MR. RAWLINSON:

25 Q. Is Christopher Poage D.J. Hinton?

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1 A. Is Christopher Poage D.J. Hinton?

2 Q. Yes.

3 A. No.

4 Q. Did you see him do anything illegal?

5 A. Did I see him do -- Mr. Poage?

6 Q. Correct.

7 A. No. The day I saw him, they were walking down Hall
8 Spencer Road, the two of them together, not doing
9 anything illegal.

10 MR. RAWLINSON: No further questions, Your
11 Honor.

12 THE COURT: All right. You can step down and
13 be excused. We appreciate your time.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next witness.

16 MR. BRACKETT: The State would call Linda
17 Feaster.

18 **LINDA FEASTER,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. BRACKETT:

22 Q. Ms. Feaster, could you give your full name for the
23 Court, please?

24 A. Linda Mitchell Feaster.

25 Q. If you could speak up a little bit.

- 1 A. Linda Mitchell Feaster.
- 2 Q. All right. And how do you spell your name?
- 3 A. F-E-A-S-T-E-R.
- 4 Q. All right. And Ms. Feaster, can you tell me, do you
- 5 live here in York County?
- 6 A. Yes, I do.
- 7 Q. How long have you lived in York County?
- 8 A. All my life.
- 9 Q. All your life? You live in Rock Hill?
- 10 A. Yes.
- 11 Q. Can you tell me, how do you know Tommy Mitchell?
- 12 A. He's my brother.
- 13 Q. And so you've known Tommy Mitchell all your life;
- 14 isn't that right?
- 15 A. Yes.
- 16 Q. If you could tell me just a little bit about Tommy
- 17 Mitchell. Specifically if you could tell me before he
- 18 died, what were some of the things that he might carry
- 19 with him whenever he went somewhere?
- 20 A. He always had his cell phone, his pocketknife, his
- 21 wallet and his harmonica.
- 22 Q. Would he play that harmonica for people?
- 23 A. Yes, he did. He was like anybody gather around,
- 24 he'll play all day if you listen to him.
- 25 Q. Was he good at it?

1 A. Very good.

2 Q. People liked to listen to it?

3 A. They loved listening to it.

4 Q. Did you like to listen to it?

5 A. Yes, I did.

6 Q. Did he play it for the family a lot?

7 A. Yes, he did.

8 Q. Did you used to spend a lot of time with Tommy?

9 A. Yes, I did, especially on Sundays. If you never saw
10 him during the week, he'd always show up for dinner on
11 Sunday.

12 Q. Okay. And where would y'all have dinner?

13 A. At my mom's house.

14 Q. And can you tell me, did Tommy have any nicknames he
15 went by?

16 A. Some people called him Short Dog. And there was
17 another one I can't remember right now. But it was
18 another one. He was called by two.

19 Q. Okay. What did you call him by?

20 A. I called him Tommy.

21 Q. And you've seen the house at Steele Street. Is that
22 the house where Tommy lived?

23 A. Yes, it is.

24 Q. How long had he been living there?

25 A. Tommy had lived there for some years.

1 Q. And at the time unfortunately of his death, had he
2 been living alone there at that time?

3 A. Yes, he was alone.

4 Q. Can you tell me, when was the last time that you saw
5 your brother, Tommy?

6 A. The Sunday before we found him there, before he was
7 found dead. He was at the house for dinner that Sunday.

8 Q. Okay. And did you get a chance to talk to him at
9 that Sunday dinner?

10 A. Yes, because he was always cutting up with me on
11 Sunday and doing stuff around at the house. But that's
12 one of the Sunday's he did the same thing.

13 Q. And did he pull out his harmonica during that time?

14 A. He had played it earlier. While I was in the house
15 cooking, he was outside playing it in the yard.

16 Q. Okay. And were you aware of the settlement that
17 Tommy had gotten?

18 A. Yes, I was.

19 Q. And when he had received that settlement, did he
20 tell you -- I would suppose he told you all about it?

21 A. Yes. He told us and everybody else.

22 Q. What did he do when he got that settlement?

23 A. Well, when he got the settlement, the first thing I
24 knew he did was he bought the moped. Then he brought my
25 mom some money and gave my aunt some money. And he told

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1 me, I'll see you later. So ...

2 Q. All right. So he bought the moped. He had bought
3 that, I guess, right before you saw him on Sunday; is
4 that right?

5 A. Yes.

6 Q. Did he tell you that he was going to turn his power
7 on?

8 A. Yes, he said he was going to get his power turned on
9 that Monday.

10 Q. All right. And did you happen to see him the day he
11 went to have his power turned on or you just kind of know
12 that ---

13 A. No, I didn't see him that day.

14 Q. So the next time that you would have heard or known
15 of Tommy was when the police discovered him?

16 A. Yes.

17 Q. Do you know -- did Tommy ever hang out at either --
18 with any of Mr. Poage's or Mr. Jackson's family to your
19 knowledge?

20 A. I think he had visited Mr. Poage's mom's house a
21 couple of times.

22 Q. Mr. Poage's mother's house?

23 A. (Affirmative nod)

24 Q. So you think he had been there a couple of times
25 according to what you understood?

1 A. Yes.

2 Q. Thank you.

3 MR. BRACKETT: No further questions.

4 MR. RAWLINSON: No questions, Your Honor.

5 THE COURT: You can step down. We appreciate
6 your time. You can be excused if you wish.

7 MR. BRACKETT: Your Honor, this might be a good
8 time to break.

9 THE COURT: All right. We'll stop for the day
10 and start back at ten in the morning. It's a little
11 later than we started today. But Renee, our court
12 reporter for yesterday and today, for some reason they're
13 switching her to Anderson where she's from and sending a
14 reporter from Newberry to be here tomorrow. So I'm --
15 it's a two-hour trip, so I'm giving her a little extra
16 time to get here. So we'll be back at ten and we'll plan
17 to start as promptly at ten as we can. Keep in mind what
18 I've told you about what not to do, and we'll see you at
19 ten in the morning.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 5:58 p.m.)

22 THE COURT: How many more witnesses does the
23 State have?

24 MR. BRACKETT: Your Honor, I would have rested
25 right then, but I just wanted to confirm that all the

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1 evidence we've marked for identification, that everything
2 was in. And I don't anticipate that there will be any
3 more. But before formally resting, I just wanted to make
4 sure of that.

5 THE COURT: All right. Well, why don't I take
6 this opportunity -- I don't want to hold everybody up --
7 but I've gotten my first crack at my charge so you can
8 look at that overnight. And I appreciate you making a
9 copy. But why don't I go ahead and talk to Mr. Poage
10 about his Constitutional rights since it looks like we
11 may be starting into ...

12 Mr. Poage, can you hear me?

13 THE DEFENDANT: Yes, sir.

14 MR. RAWLINSON: Stand up.

15 THE COURT: We've apparently about reached the
16 point in the trial where the State is resting. That is,
17 the State is telling us they're -- there's one little
18 minor thing they want to do. They've presented all their
19 evidence. They haven't completely said that, but it
20 looks like that's where they are. So tomorrow we will
21 move, not right off the bat, but shortly thereafter, into
22 whatever case you wish to present. That is, you have a
23 right to call witnesses to testify on your behalf. But
24 you don't have to. You are presumed innocent of the
25 charge against you. The State has to prove your guilt

1 beyond a reasonable doubt. You do not have to prove your
2 innocence, so you don't have to present any evidence.
3 You can present evidence and you can testify or you can
4 remain silent. If you testify, you will be placed on the
5 stand and you'll be under oath just like you were
6 yesterday and you'll be asked questions by your attorney
7 and then cross-examined by the Solicitor.

8 Any impeachable offenses?

9 MR. THOMPSON: No, Your Honor.

10 THE COURT: So they would have a right to
11 cross-examine you. If you exercise your right to remain
12 silent, I will remind the jury that you are presumed
13 innocent. You do not have to prove your innocence. The
14 State must prove your guilt beyond a reasonable doubt.
15 And I will tell the jury that they cannot in any fashion
16 use against you your exercise of your Constitutional
17 right to remain silent. I will tell them they cannot
18 hold that against you. They cannot factor that into
19 their deliberations. They cannot discuss it, and they
20 cannot use it in their own minds in determining what
21 verdict should be rendered. That is, they cannot use it
22 against you in any way whatsoever. Do you understand all
23 of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you explained that to him, Mr.

1 Rawlinson?

2 MR. RAWLINSON: I have, Your Honor.

3 THE COURT: Do you believe he understands it?

4 MR. RAWLINSON: Yes, sir.

5 THE COURT: Mr. Poage, do you have any
6 questions about any of that?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Well, it's your
9 decision to make. It's not your attorney's or your
10 family's. And of course, it's not mine or the
11 Solicitor's. It's your decision as to whether to present
12 and whether to testify or not. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Thank you. Well, we'll
15 see y'all at ten in the morning.

16 MR. RAWLINSON: Your Honor?

17 THE COURT: Yes, sir.

18 MR. RAWLINSON: In the interest of time, since
19 it does appear that the State is going to rest first
20 thing, if the attorneys, in the interest of time, could
21 be here at nine-thirty to go ahead and decide the
22 directed verdict motions.

23 THE COURT: Well, the court reporter will be --
24 the only reason I'm starting at ten. Now, we could be
25 here a little earlier. Why don't y'all try to be here at

1 nine-thirty and we can be looking at the charges and have
2 your requests to charge.

3 MR. BRACKETT: All right. That's good.

4 THE COURT: So let's do get together at nine-
5 thirty. That will be a good use of our time.

6 MR. RAWLINSON: Thank you, Your Honor.

7 MR. BRACKETT: And while we still have the
8 court reporter who's worked with us through the whole
9 trial, if we could go through the exhibits and in case
10 there's a conflict -- I don't anticipate it. But I think
11 everything should be in order. And we can agree that ---

12 THE COURT: Renee, thank you. I hate to hold
13 you up a little bit more, but -- all right.

14 Thank y'all we will see you at nine-thirty. We'll
15 have the jury back at ten-thirty. At ten o'clock. Ten
16 o'clock.

17 MR. RAWLINSON: Thank you, Your Honor.

18 (WHEREUPON, court stood at recess for the day.)

19 (WHEREUPON, Court's Exhibit Number 5, formerly
20 State's Exhibit Number 8, Court's Exhibit Number 6,
21 formerly State's Exhibit Number 22, and Court's
22 Exhibit Number 7, formerly State's Exhibit Number
23 33, were marked for identification only.)

24

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Renee H. Tollison, Official Court
4 Reporter for the Sixteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for York County, South Carolina, on
10 the 8th and 9th days of August 2011.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

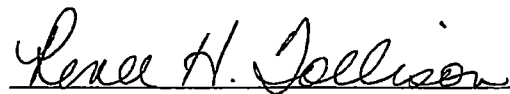
13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 December 14, 2011

16

17

18



Circuit Court Reporter

State of South Carolina	)	
	)	Court of General Sessions
County of York	)	2011-GS-46-2263, 2263A,
		2011-GS-46-2264-2267

State of South Carolina	)	
vs.	)	Transcript of Record
	)	
Christopher Markeem Poage	)	
DEFENDANT	)	<u>PARTIAL TRANSCRIPT</u>

August 10, 2011
York, South Carolina

B E F O R E:

Honorable John Hayes, Judge.

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

Kevin Brackett, Solicitor
Willy Thompson, Assistant Solicitor
Attorneys for the State

Brad Rawlinson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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

(IC) - Denotes In Camera

(DW) - Denotes Defense Witness

(SW) - Denotes State's Witness

6	<u>(DW) Cathy Harveston</u>	
7	Direct examination by Mr. Rawlinson:	8
8	Cross-examination by Mr. Thompson:	9
9	Redirect examination by Mr. Rawlinson:	10
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14	Jury Charge	53
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1

EXHIBITS

2

State's

3

NO.DESCRIPTIONIDEVPAGE#

4

21

Photo - Bedroom

X

4

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32

Photo - Robinson Shoe Sole

X

4

6

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Photo - Bedroom

X

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Photo - Bedroom

X

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Photo - Bedroom

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Court's

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8

Request to Charge

X

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Jury Note

X

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Jury Note

X

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Jury Note

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Jury Note

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Jury Note

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Jury Note

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Jury Note

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Jury Note

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Jury Note

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25

1 THE COURT: We are back on the record. Does the
2 State have anything before we get to the next stage of the
3 trial?

4 MR. BRACKETT: Yes sir, Your Honor. At the inclusion
5 of the evening yesterday the attorney for the defendant
6 and myself met with the court reporter and reviewed the
7 evidence that had been admitted and out of an abundance of
8 caution, if it hasn't been done already we would move
9 State's 21, 32, 54, 52 and 53. That is 21, 32, 54, 53, 52
10 and 51 into evidence at this time.

11 THE COURT: Any objection?

12 MR. RAWLINSON: No objection, Your Honor.

13 THE COURT: Without objection.

14 (Whereupon, State's Exhibit Nos 21, 32, 51, 52, 53,
15 54 were admitted into evidence).

16 MR. BRACKETT: With the admission of these
17 photographs the State rests. When the jury comes in I
18 will just rest again formally in front of the jury.

19 THE COURT: Anything else from the State?

20 MR. BRACKETT: That would be all from the State.

21 THE COURT: The State is resting, at least when the
22 jury returns. Are there any motions?

23 MR. RAWLINSON: Your Honor, I would like to make a
24 motion for a directed verdict under State versus Pinkney
25 and State versus Morgan. State versus Pinkney, which I

1 will provide a copy for the State. The State versus
2 Pinkney requires evidence of the defendant entered the
3 dwelling without consent and with the intent of committing
4 a crime within the dwelling. That goes to the burglary
5 charge. I think it also connects to the felony murder
6 inference. I don't think there has been any evidence in
7 this case that my client had any intent for anything to
8 happen. The State hasn't provided a witness that said
9 that this crime was committed by two people. They have
10 not provided an expert saying that the evidence intends to
11 establish that this crime was committed by two people.
12 The statement for which the State is relying on to
13 corroborate any of this, to corroborate the evidence says
14 that he didn't do anything. I don't think that there is
15 any evidence other than my client was merely present at
16 the scene of this crime. Under State versus Poindexter
17 the State must present evidence which reasonably tends to
18 prove my client's guilt or give evidence which reasonably,
19 from which the defendant's guilt can be fairly or
20 logically induced. Again, the State has not provided any
21 forensic evidence linking my client to any wrongdoing.
22 The State has not provided any expert testimony that the
23 evidence, that the forensic evidence in this case tended
24 to, tended to implicate my client in any of the wrongdoing
25 that occurred, again, that my client was not merely

1 present at the scene of this crime. So under those two
2 cases I would respectfully make a motion for a directed
3 verdict.

4 THE COURT: The State?

5 MR. BRACKETT: Just briefly, Your Honor. I believe
6 the statement itself is enough evidence for all the
7 charges, it implicates him clearly. And in regards to his
8 motion under Pinkney, even if the jury were to find that
9 he did not know what was going to happen before he went
10 in, initially his statement, it is clear he left and came
11 back in at least twice after the crime, after his
12 codefendant, after tossing the house and assaulting the
13 victim in this case. So I think there is ample evidence
14 to support all the charges.

15 THE COURT: I deny the motion for directed verdict.
16 I find that there is direct evidence and substantial
17 circumstantial evidence which the jury could determine
18 that Mr. Poage is guilty of these various charges.

19 Are we ready for the jury?

20 MR. RAWLINSON: Your Honor, if I can have five
21 minutes to discuss a matter with my client.

22 THE COURT: Yes, that will be fine. I am not sure we
23 have got all the jury here yet. We will take five
24 minutes.

25 (Whereupon, a short break was taken.)

1 THE COURT: Mr. Poage and counsel are present. We
2 are back on the record. First, the State has handed up a
3 redacted copy of the burglary first degree that we had
4 without objection. I had dropped the words out, the
5 following act, number one, entered in the nighttime. And
6 then we numbered the other allegation regarding burglary
7 first degree. The amended, let's call it, copy just
8 corrects that and makes a clean copy. Mr. Rawlinson,
9 without objection?

10 MR. RAWLINSON: Without objection.

11 THE COURT: We will make sure that the original, the
12 clerk will make sure the original is signed. We have had
13 a charge conference and I think we are squared away on
14 that. I have made a Court's exhibit a couple of charges
15 that Mr. Rawlinson handed up that I am not going to
16 charge. And anything else on the charge?

17 (Whereupon, Court's Exhibit 8 was marked for
18 identification only.)

19 MR. BRACKETT: Nothing from the State.

20 MR. RAWLINSON: Nothing from the defense, Your Honor.

21 THE COURT: All right. And is the State ready?

22 MR. BRACKETT: The State is ready, Your Honor.

23 THE COURT: Is the defense ready?

24 MR. RAWLINSON: The defense is ready.

25 THE COURT: Bring the jury.

1 (Whereupon, the jury came into open court at
2 approximately 10:00 a.m.)

3 THE COURT: Good morning. I know when you look at
4 the clock you think I just had class in kindergarten. I
5 really did, we started at about 9:30 doing some things
6 that we had to do outside of your presence where we
7 wouldn't be sending you in and out and in out. We still
8 have to do that some. But we have been working since 9:30
9 and we are now in the position to move forward.

10 MR. BRACKETT: Yes sir, Your Honor, at this time the
11 State would rest.

12 THE COURT: The State is now telling us that they
13 have presented their case. They have presented their
14 witnesses and their exhibits that they intend to present.
15 Under certain circumstances they would have the right to
16 present reply testimony at a later time. But for all
17 intent and purposes they have presented their case and now
18 the defense has a right but no obligation to present their
19 witnesses and exhibits.

20 MR. RAWLINSON: We call Cathy Harveston.

21 THE COURT: Please come forward. You are still under
22 oath for purposes of this trial.

23 DIRECT EXAMINATION

24 By Mr. Rawlinson:

25 Q Detective Harveston, was Ernest Jackson also charged

1 with this murder?

2 A Yes, he was. He was charged with the charges, the
3 same ones.

4 Q And is that charge still pending?

5 A Yes sir, it is.

6 Q No further questions.

7 CROSS-EXAMINATION

8 By Mr. Thompson:

9 Q Detective Harveston, you had mentioned in your
10 testimony yesterday that initially in the case there were
11 really no leads, you didn't know quite who you were
12 looking for. Is that correct?

13 A That is correct. That is why we started with the
14 community canvas.

15 Q In your experience as a detective in looking for the
16 crime scene, the community canvas and that sort of thing
17 that you do, isn't it true you felt that you were looking
18 for more than one person?

19 A That is true. We all talked about it and based on
20 the evidence that was at the house, the manner of how much
21 disarray was in the house, how much scuffling, there was
22 three weapons that we figured out that was the shovel.
23 There was the stick and then of course after the autopsy
24 it became apparent that there was knife wounds. All of
25 that indicated to us that we were probably looking for

1 more than one person. That would have been a lot of
2 things for one person to have done on their own.

3 Q One other thing we want to ask you about, Detective.
4 You testified a good number of times that you have taken
5 statements from defendants, correct?

6 A Yes, many times.

7 Q Now isn't it true that in your experience as a
8 detective and the statements that you take from defendants
9 that generally they minimize their culpability?

10 MR. RAWLINSON: Objection, Your Honor.

11 THE COURT: I sustain the objection.

12 Q Thank you.

13 MR. RAWLINSON: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 By Mr. Rawlinson:

16 Q Detective Harveston, is this testimony that there
17 were, well, let me back up. Is there any actual physical
18 evidence that the record links two people to this crime?

19 A Not actual physical evidence, it is our opinion.

20 Q So this is another thing that you just believe?

21 A From experience, yes sir.

22 Q Thank you. No further questions.

23 THE COURT: You can step down.

24 MR. RAWLINSON: The defense rest, Your Honor.

25 THE COURT: Anything in reply?

1 MR. BRACKETT: No reply, Your Honor.

2 THE COURT: I told you we were working so we wouldn't
3 have to send you in and out but we do have to send you out
4 at this point because we have to take up some more
5 matters. And you are probably sitting there saying why
6 didn't they do that while we were out. It is like a
7 sports event, there are certain things that can't be done,
8 you have a first quarter, second quarter, third quarter,
9 forth quarter. And there are certain things you can't do
10 until other things have been done. So we have reached one
11 of those points where we must let you go out while I take
12 up some matters that we couldn't take up earlier. This
13 will not be a real long break but if any of you want to
14 smoke go ahead and do that now because when we come back
15 you will hear the closing arguments of the attorneys and
16 my charge on the law. Depending on how long those
17 arguments are we may take another break before I do my
18 charge. But we are in that last quarter so if you want to
19 take a little break, have you a smoke break now go ahead
20 and do that and we will get started back as promptly as we
21 can.

22 (Whereupon, the jury was excused from open court.)

23 THE COURT: Anything from the State?

24 MR. BRACKETT: No, sir.

25 THE COURT: Mr. Rawlinson?

1 MR. RAWLINSON: Not from the defense, Your Honor.

2 THE COURT: All right. I will give each about ten
3 minutes. How long do you think the State's argument will
4 be? Well, let me back up a minute. The State will open
5 and close?

6 MR. BRACKETT: The State will waive opening.

7 THE COURT: About how long, 45 minutes or so?

8 MR. BRACKETT: A half hour, Your Honor, maybe a
9 little extra.

10 MR. RAWLINSON: I will be about 30 or 40 minutes.

11 THE COURT: I will give you about ten minutes to get
12 your thoughts in line and let the jury have their break
13 and we will start back.

14 MR. BRACKETT: Can I have a break in between the
15 defense closing and mine?

16 THE COURT: I will give you five minutes, just remind
17 me.

18 (Whereupon, a short break was taken.)

19 THE COURT: Is the State ready?

20 MR. BRACKETT: The State is ready.

21 THE COURT: Mr. Rawlinson.

22 MR. RAWLINSON: Your Honor, I would just like to
23 renew my directed verdict motion before the closing
24 arguments are made.

25 THE COURT: All right. So you are just on the same

1 grounds. You are moving at this time.

2 MR. RAWLINSON: Yes, sir.

3 THE COURT: The motion is denied. Again, I think
4 there is direct and substantial circumstance of evidence
5 that this jury could make a determination guilty of one or
6 more of these charges. Bring in the jury.

7 (Whereupon, the jury came into open court at
8 approximately 10:45 a.m.)

9 THE COURT: Members of the jury, you are now going to
10 get closing arguments of the attorneys. The attorneys
11 will be summing up and telling you why your verdict should
12 be a certain verdict. They may during their arguments
13 mention legal principles. They know what I am going to
14 charge. But if for some inadvertent and unintentional
15 reason they make a statement to a legal principle and you
16 don't hear it from me then it doesn't apply because I am
17 the sole Judge of the law. I don't think that would
18 happen but I am the sole Judge of the law. And you are
19 not to consider their statements as evidence, they are not
20 witnesses, they are advocates. That includes throughout
21 the whole trial, of course the opening statements and the
22 closing statements. Their statements are not evidence,
23 they are simply articulating arguing their position and
24 their contention of their clients. So keep that in mind
25 and if they misstate some fact or some statement you

1 remember what the witnesses said. Mr. Rawlinson.

2 MR. RAWLINSON: If I have done anything during the
3 course of this trial which has angered or offended you
4 hold it against me, don't hold it against my client.
5 Winston Churchill once said that jury service is the most
6 patriotic service that one can render to their country in
7 times of peace. I know this country is at war right now.
8 But needless to say your job you have, the job that y'all
9 all are going to do in moments is very, very important.
10 Now the State has the burden of proving Mr. Poage guilty
11 beyond a reasonable doubt. Now, what is reasonable doubt.
12 Reasonable doubt is the type of doubt that makes you
13 hesitate to act. They have to leave you firmly convinced
14 that Christopher Poage did every single one of the
15 elements of every single one of the crimes he has been
16 charged with. What have they proven to you over the
17 course of this trial. Well, they have proved much of what
18 I said at the beginning when I opened this case. They
19 have proven exactly what I thought that they would prove.
20 They have proved that we were there, we admit that. They
21 have proved that we are a witness to a very horrible,
22 horrible, horrible crime. Now, they have given you a lot,
23 they have given you two lawyers, they have given you a ton
24 of witnesses, they have given you shovels, they have given
25 you pictures, they have given you slide shows, they have

1 given you other pieces of evidence, burn articles, but
2 nothing else. What have they given you to prove
3 Christopher Poage is guilty beyond a reasonable doubt.
4 Their own witnesses came in this courtroom, I didn't call
5 them, they called them. Their own witnesses came in this
6 courtroom and said that there is no blame to any
7 wrongdoing to Christopher Poage, not a single shred of
8 evidence. They also said or didn't say, didn't hear one
9 of their witnesses say, in their expert opinion that they,
10 there is some physical piece of evidence that ties
11 Christopher Poage to this crime. And what are these
12 crimes and I will put up the indictments here. He was
13 charged with burglary in the first degree. What do they
14 have to do to prove burglary in the first degree. They
15 have to prove that Christopher Poage was armed or became
16 armed with a deadly weapon, he caused physical injury to
17 Tommy James Mitchell, he used or threatened the use of a
18 dangerous instrument and he displayed the knife. They
19 have also charged him with armed robbery. And armed
20 robbery they have to, they have to convince you beyond a
21 reasonable doubt, the type of doubt that makes you
22 hesitate to act, the type of doubt overcoming that doubt
23 leaving you firmly convinced that Christopher Poage's
24 guilt, that he stole a scooter and or other personal
25 property from Tommy James Mitchell by means of force or

1 intimidation while armed with a deadly weapon. They
2 charged him with kidnapping. Again they have to prove
3 what I am about to say beyond a reasonable doubt. They
4 have to prove that he unlawfully seized, confined,
5 inveigled, decoyed, kidnapped, abducted or carried away
6 Tommy Mitchell. They have also charged him with criminal
7 conspiracy. And they charged him that he willfully,
8 knowingly, feloniously, united, combined, conspired,
9 confederated or agreed or had the tacit understanding with
10 Ernest Floyd Jackson, II for the purpose of committing
11 those crimes that I just read. They also charged him with
12 murder. And they want you to believe that my client
13 feloniously, willfully and with malice aforethought killed
14 Tommy Mitchell by means of stabbing said victim multiple
15 times and or by blunt force trauma. Now we all know that
16 they can't prove that. So they have come to you knowing
17 that they can't prove it. And they say well, it was the
18 hand of one is the hand of all. That is why you should
19 convict Christopher Poage. We can't prove anything but we
20 want you to believe he did it. We want to show you some
21 pictures and call a bunch of witnesses and show you a
22 bunch of exhibits and hopefully you will believe that
23 Christopher Poage did something even though none of our
24 witnesses directly said he did it. They want you to
25 believe it. But they have to prove it beyond a reasonable

1 doubt. The type of doubt that doesn't make you hesitate
2 to act, the type of doubt that leaves you firmly convinced
3 that he did anything wrong. Why would he have known that
4 he did anything wrong. Have they proved that Christopher
5 Poage knew what was going to happen in that house. Have
6 they called a single witness here that said he knew about
7 that. Have they called a single witness that said Ernest
8 Jackson told him what was going to happen before they went
9 into the house? Have they called a single witness that
10 said he held a murder weapon. Have they called a single
11 witness saying he used a murder weapon. Not one, they
12 want you to believe. They have proved nothing much less
13 proved it beyond a reasonable doubt. Now, I don't know
14 what to make of the statement frankly and I don't think
15 that the police officers know either. There are at least
16 three versions of that statement. You have got the
17 statement that y'all are going to be able to read, there
18 is the statement from the Investigator's notes and then
19 there is a statement that she testified to that she
20 remembered that I am still confused as to whether that
21 testimony was the same as her notes which was different
22 than the statement. I do know this though. I do know
23 that this was a very young kid, not old enough to drink
24 yet, being questioned by two officers with guns,
25 sequestered alone for over two hours, given roughly two

1 minutes to look over his statement while he was crying, I
2 do know that. I do know, also know that Christopher Poage
3 is the only reason we are here, the only reason we know
4 who actually killed Tommy James Mitchell is Christopher
5 Poage. And where is he, where is Ernest Jackson, he is
6 not on trial today. This victim deserves justice, he
7 deserves justice and he deserves justice so much that the
8 type of justice he gets should not be misplaced justice.
9 The person who killed him deserves to be in jail, also
10 deserves to be in jail. The State has proved nothing.
11 They want you to believe that Christopher Poage is guilty.
12 Not one of their witnesses has said he held a weapon. Not
13 one of their witnesses has said there is any forensic
14 evidence saying that two people committed this crime.
15 They want you to believe. I believe in something too. I
16 believe in this country that they are innocent until you
17 prove them guilty, that is what I believe and they have
18 proved nothing. I ask you go into that jury room, look at
19 all of this evidence, look at all the pictures and you ask
20 yourself what have they proved beyond a reasonable doubt.
21 You ask what they want you to believe and then you ask
22 yourself what do you believe. It is I believe in this, he
23 is innocent until you prove him guilty. Thank you.

24 THE COURT: Do you need a break?

25 MR. BRACKETT: Yes sir, I just need to arrange some

1 of the physical evidence.

2 THE COURT: Let's take a break.

3 (Whereupon, the jury was excused from open court for
4 a break.)

5 THE COURT: Is the State ready? Solicitor, are you
6 ready?

7 MR. BRACKETT: While we are on the record, Your
8 Honor, in light of one statement made by Mr. Rawlinson
9 during his closing I would just ask the Court to consider
10 instructing the jury that the fact that Mr. Jackson is not
11 on trial is not an issue for them to consider. There are
12 many legal reasons why that is the case but the fact that
13 Mr. Jackson here is not any evidence whatsoever of Mr.
14 Poage's guilt or innocence. I don't like to object during
15 counsel's argument but that one statement concerned me
16 because I don't believe it is appropriate for them.

17 THE COURT: Why don't you draw up what you think is
18 the appropriate charge and we will look at it during a
19 break. Bring the jury.

20 (Whereupon, the jury came into open court at
21 approximately 11:10 a.m.)

22 MR. BRACKETT: May it please the Court. [REDACTED] Steele
23 Street was the residence of Tommy Mitchell. That was his
24 home, that was his castle, his home was there. He had the
25 same rights inside his home that the richest man in this

1 country inside of his mansion. He had the right to walk
2 in his house carrying his groceries and expect that there
3 weren't going to be two people laying in wait for him
4 inside of that house, would grab him, drag him around his
5 own home, beat him down and kill him in his bedroom over a
6 piece of money. Those are Tommy Mitchell's rights, those
7 were his rights because he is dead now, he doesn't have a
8 home, he can't go to the store and buy groceries, he can't
9 go and visit his mama or his family. His rights are gone
10 all except for one, he still has one right. One right
11 that not even death can cheat a man from. Tommy Mitchell
12 has the right to justice too. Tommy Mitchell has a right
13 to justice and to expect that people will be held
14 accountable for coming into your home and they beat you
15 down and they drag you around and they take your money and
16 they take your possessions and they leave you lying on the
17 floor in a puddle of your own blood and you are found by
18 your friend a week later covered with maggots. Your
19 family can't even come and give you a proper burial. He
20 has a right to justice, he has rights too. Now, Mr.
21 Rawlinson stood here a few minutes ago and he said, he
22 said, what evidence have they given you, there is no
23 evidence, there is nothing that they have given you that
24 proves my client is guilty, nothing that they have given
25 you that proves my client is guilty. Ladies and

1 gentlemen, this is State's exhibit number 105, this is the
2 original statement that was taken by Detective Harveston
3 at the Rock Hill Police Department on February 20th of
4 2009. This statement that you heard read into the record.
5 The statement that I now hold before you and you will have
6 with you back in the jury room for you to consider what is
7 the right thing to do in this case. And on this statement
8 you will see that all of Mr. Poage's constitutional rights
9 are described in the top paragraph. He signed saying I
10 understand those rights. He signs here saying I want to
11 waive those rights and I want to talk to you. Everything
12 that was read to you was written and on the next page.
13 And I have read this statement and signed Christopher
14 Poage in the defendant's handwriting on this piece of
15 paper, State's exhibit 105. Ladies and gentlemen, all I
16 am asking you to do is believe with your own eyes. You
17 don't have to believe any of these witnesses, you only
18 have to believe with your own eyes. This piece of paper
19 convicts Mr. Poage of all of these charges. And not under
20 the hand of one is the hand of all theory. There is just
21 two possible ways you can find him guilty. This convicts
22 him as an active participant in the murder of Tommy
23 Mitchell. This document signed by the defendant indicates
24 he confessed to laying his hands on Tommy Mitchell as he
25 laid on the floor of his bedroom holding his arms while

1 Ernest Jackson drove a knife ultimately thirty times into
2 Tommy Mitchell's body. That is not somebody who is guilty
3 under the hand of one is the hand of all because
4 Christopher Poage's own hands were on Tommy Mitchell's
5 body. He is guilty of murder himself in his own words.
6 He asked what evidence we have. I ask what more evidence
7 do you need, what more could I present to you. Who would
8 sign such a statement if it wasn't true. Who would say
9 they did these things, who. Nobody but a man who was
10 guilty.

11 Now let's go through the evidence in this case. I
12 want to go through it briefly with you because this is the
13 main body of the evidence. Let's go through here and see
14 what we have got. This is what we all seem to agree upon.
15 Tommy Mitchell was murdered, I don't think there is any
16 dispute about that. He was robbed at the time of this
17 murder. His house was burglarized, he was kidnapped,
18 moved around his house, there is blood in different spots,
19 evidence of a struggle in one room, blood outside of his
20 bedroom, more blood inside of his bedroom. He was
21 brutally assaulted, nobody disputes that. Christopher
22 Poage admits, his attorney stood here and told you that he
23 was at the house at the time, he was there and Ernest
24 Jackson was there too. This is what we agreed on. So
25 what is it that you have to decide. Either Christopher

1 Poage is guilty because he is an actual participant in the
2 crime, he participated in it and he is guilty as a
3 principle first is what that is called in the law. His
4 hands were actually involved, he had blood on his hands
5 literally. Or even if you find that that wasn't the case
6 you could still find him guilty under the hand of one is
7 the hand of all, even if you assume that he stood lookout.
8 That is what the hand of one is the hand of all. It is
9 for somebody who wasn't actually participating in the
10 murder for example but had a job, maybe he was the driver
11 in a bank robbery and he stayed outside the bank but
12 somebody in the bank gets shot. The guy who is the driver
13 is just as guilty as the shooter because if he hadn't
14 agreed to be the driver and wait outside with the car
15 engine running maybe the guy would never had gone in the
16 bank in the first place. That is why that law exists and
17 I will talk about that more in a minute. You could still
18 find him guilty under the hand of one is the hand of all
19 if that is what you believe. So there is two ways he
20 could be guilty of these charges, either he actively
21 participated in the actual crime itself or he was present
22 aiding and abetting but not actually hands on. Or the
23 defense theory, that poor Christopher Poage just wondered
24 through this blood bath, this carnage, this horrible,
25 horrible crime and he didn't really know what was going

1 on. He didn't have anything to do with it, he just kind
2 of stood there, merely present. Now, what is the law. He
3 participated in the killing, he is just as guilty as his
4 hands are, his hands are bloody, he is guilty as a
5 participant, he is guilty of murder, armed robbery,
6 burglary, kidnapping, all of these charges. That is
7 pretty straightforward. People understand. The hand of
8 one is the hand of all is a little bit different and I
9 want to spend a couple of minutes talking to you about
10 that, it is an old and respected principle of law, it has
11 been around for years and years. As a matter of fact,
12 there is a famous case that I use as an example to
13 illustrate exactly how the hand of one is the hand of all
14 applies and it occurred right here in York County about
15 100 years ago in Clover, South Carolina, just up the road
16 here. Six or seven guys decided they were going to rob a
17 bank in Clover, right at the turn of the century. And
18 they decided what they would do is they were going to go
19 and create a diversion at the far end of town away from
20 where the bank was. So one of the guy's job was to go and
21 set a fire at a barn that was owned by a farmer. And all
22 of the men in the town, everybody would come running when
23 somebody's house caught fire back in those days. You
24 didn't have a fire department to run out, they didn't have
25 fire engines, they set up like brigades and called a lot

1 of manpower to try to put the fire out. They knew that
2 would create a big diversion, everybody would go to the
3 fire. Meanwhile, while the fire was being set the other
4 coconspirators would be waiting outside the bank and ready
5 to move in. Now the question became was the guy who set
6 the fire at the barn guilty of bank robbery. He had been
7 at the bank earlier when they cased the place, he was an
8 active participant, he was constructively present at the
9 bank but there was more than one crime scene, the crime
10 involved a diversion just as much as going into the bank.
11 So the barn was a part of the crime scene too. And
12 ultimately what they said was even though that guy never
13 stepped foot in the bank the day of the robbery he is just
14 as guilty of bank robbery as the half dozen guys that did
15 go into the bank and take the money. I use that to kind
16 of illustrate, each person has their job in the hand of
17 one is the hand of all, each person has their job and if
18 each person is doing their job then they unite and combine
19 for this common criminal purpose. They are present,
20 aiding and abetting anything that happens as a reasonable
21 and probable consequence of the crime that they are
22 setting out to commit, each person is guilty of it as if
23 they had done that crime themselves. So a man had rushed
24 in because a child had fallen asleep in the hay loft in
25 the barn and he woke up to the smoke and the fire and

1 started screaming and some of the men downstairs heard it
2 and they rushed into the barn to try to save the child.
3 And a beam came down and struck the man on the head
4 killing him. Even though the guys who went into the bank
5 were never at the barn they are guilty in the death of the
6 child in the barn and the guy who rushed in to save him
7 just as much as the guy who struck the match. Each person
8 is responsible for what the other people do. That is what
9 the hand of one is the hand of all stands for. Each
10 person is as guilty as the one who struck the fatal blow.

11 Now contrast, this is the defense's position, mere
12 presence at the scene of the crime without more is
13 insufficient to convict, that a person has to have
14 criminal intent. In other words, if you did not actively
15 engage, you did not participate, you did nothing to
16 further it, all you did was stand there. So you are
17 standing in the bank and a bunch of people come rushing in
18 to rob it, they grab the money and rush out, of course you
19 are not guilty. You weren't participating, you weren't
20 aiding the bank robbery, you did nothing to help
21 facilitate the bank robbery. To hold that person guilty
22 would be ridiculous. A person who is merely present at
23 the scene of a crime cannot be guilty and I wouldn't want
24 you to convict somebody who was merely present. The
25 question is is Christopher Poage merely present or was he

1 actively engaged in the conspiracy either hands on or
2 participating, doing his job and guilty of the hand of one
3 is the hand of all theory. How do we know what somebody
4 intended to do. Well, by what they actually did. How
5 else can you ever know and that is what Mr. Rawlinson
6 asked. They didn't prove what his intention was. Well,
7 you can't cut somebody's brain open and pick through it
8 and find out what their intentions were. The only way
9 anybody ever knows what somebody intends to do is by
10 looking at what they did. What evidence do we have of
11 that. State's exhibit 105 is the most significant piece
12 of evidence. He told us what he did. And from that you
13 infer what his intentions were. The evidence at the crime
14 scene also can tell you what somebody intended to do. You
15 can look at evidence. You don't just look at in an
16 isolated fashion, you take the evidence and you can draw
17 deductions from the evidence and I will talk about that in
18 a little bit when I talk about the shovel, the stick and
19 the knife. And finally you can also tell what was going
20 on in somebody's head and what was going on in somebody's
21 heart by what they did do just as much as what they didn't
22 do, what they should have done matters too. What they
23 didn't do is important.

24 Let's take a look at the statement in more detail.
25 Miranda warnings were given not one time but twice. He

1 was told once by Jason Dalton at the beginning. He read
2 this off a card and it is the last page of State's exhibit
3 105 where he read you have the right to remain silent.
4 Everybody is familiar with that language. So that was
5 done at the very beginning. And you need to understand,
6 if the case is not clear, I think it is but just in case
7 there is two interviews done. Mr. Rawlinson said well it
8 would be the oral statement under notes and the written
9 statement we don't know if everything is the same. If
10 everything was identical I would be a little bit worried.
11 Obviously when people say a story and they tell you
12 something they are always going to leave something out one
13 time but they forget and then the next time they may add
14 something and forget something that they said the first
15 time. You never tell the same story exactly the same
16 twice. So what we are talking about first is the oral
17 review. They just sat him down and talked to him. You
18 heard Detective Harveston over here and Jason Dalton who
19 is now retired from the police force and came back to
20 testify. You heard them talk about, they just ask him and
21 it was just as if he wasn't expecting but it was if he
22 just sat and waited for the question. Tell us about Tommy
23 Mitchell's death. There is an old story by a great
24 American writer called Edger Allan Poe. It is about a guy
25 who killed somebody and buries him under the floorboards

1 of his house. And you could hear the heart of the victim
2 beating under the floor. And the police comes to his
3 house one day just to talk to him about nothing, just
4 stopping by to say hello to see how he is doing. And he,
5 because he has got a guilty conscious, he is thinking
6 about the person under the floorboard. He is thinking
7 about they can hear him and he thinks is his heart really
8 beating or is it loud in this room, like he is still alive
9 under there and these police officers can hear his heart
10 beating. And they are just talking about the weather and
11 sports and all of a sudden he just can't bear it, he
12 explodes under his guilt like Christopher Poage did when
13 he was questioned. He was brought to the police
14 department, he was brought in and sat and when you
15 participate in something like, you are sitting there and
16 you are waiting and waiting and you know that they are
17 going to ask you about it. Then there it is and he just
18 went, oh, they know and they let it out. He had been
19 carrying it for seven months, six months, waiting for the
20 knock on the door. He knew. They asked him questions,
21 are you sure. So he told them the truth. That was an
22 oral interview. They were just talking to him,
23 conversation, just to get him to tell them what happened.
24 After they got the information from him they took him back
25 to Detective Harveston's office and she went through the