

STATE OF SOUTH CAROLINA

Volume I of II

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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SC SUPREME COURT

HOWARD LEE SIMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002302

APPENDIX

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Pages 1-500

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED JUNE 19, 2008 AND JULY 15-17, 2008	1
APPLICATION FOR POST-CONVICTION RELIEF	467
RETURN	474
<i>PRO SE</i> AMENDMENT TO POST-CONVICTION RELIEF APPLICATION (FILED 9/2/14).....	478
NOTICE OF MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF (FILED 9/11/14).....	492
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 23, 2015	493
POST-CONVICTION RELIEF EXHIBITS.....	548
ORDER OF DISMISSAL	553
INDICTMENTS AND SENTENCING SHEETS.....	561

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #91 (LINEUP PHOTO)**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Howard Lee Sims,) 2008-GS-42-3750; 2007-GS-42-5920
6 Defendant.) June 19, 2008; July 15 - 17, 2008
7) Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

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

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15 ZACK ELLIS, ESQUIRE
16 Attorneys for the State

17 KATHLEEN J. HODGES, ESQUIRE
18 Attorney for the Defendant
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21 Linda D. Moffitt
22 Circuit Court Reporter
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1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	JAY STEADMAN (SW) In-camera	
4	Direct examination by Mr. Barnette	15
5	Cross-examination by Ms. Hodges	21
6	Redirect examination by Mr. Barnette	38
7	JOHN BURGESS (SW) In-camera	
8	Direct examination by Mr. Barnette	42
9	Cross-examination by Ms. Hodges	50
10	Redirect examination by Mr. Barnette	56
11	BELINDA MEADOWS (SW) In-camera	
12	Direct examination by Mr. Barnette	57
13	Cross-examination by Ms. Hodges	63
14	Redirect examination by Mr. Barnette	70
15	ANKIT BASNET (SW) In-camera	
16	Direct examination by Mr. Barnette	71
17	Cross-examination by Ms. Hodges	77
18	DAVID LAMMERS (SW) In-camera	
19	Direct examination by Mr. Barnette	81
20	Cross-examination by Ms. Hodges	88
21	DAVID RAY LAMMERS (SW)	
22	Direct examination by Mr. Barnette	171
23	Cross-examination by Ms. Hodges	190
24	Redirect examination by Mr. Barnette	195
25	Cross-examination by Ms. Hodges	198

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	JULIE ANN COE-JAMES (SW)	
4	Direct examination by Mr. Ellis	199
5	Cross-examination by Ms. Hodges	205
6	FRED DAVID THOMPSON (SW)	
7	Direct examination by Mr. Barnette	209
8	JOHN BURGESS (SW)	
9	Direct examination by Mr. Barnette	217
10	Cross-examination by Ms. Hodges	225
11	Redirect examination by Mr. Barnette	232
12	Recross-examination by Ms. Hodges	238
13	BELINDA MEADOWS (SW)	
14	Direct examination by Mr. Barnette	241
15	Cross-examination by Ms. Hodges	247
16	Redirect examination by Mr. Barnette	251
17	Recross-examination by Ms. Hodges	251
18	Redirect examination by Mr. Barnette	252
19	HENRIETTA MEADOWS (SW)	
20	Direct examination by Mr. Barnette	252
21	Cross-examination by Ms. Hodges	255
22	ANKIT BASNET (SW)	
23	Direct examination by Mr. Barnette	257
24	Cross-examination by Ms. Hodges	261
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	RICKY SPURGEON (SW)	
4	Direct examination by Mr. Barnette	263
5	Cross-examination by Ms. Hodges	265
6	AMY ELIZABETH STEPHENS (SW)	
7	Direct examination by Mr. Barnette	268
8	Cross-examination by Ms. Hodges	271
9	EDGAR VICTOR GUTHRO (SW)	
10	Direct examination by Mr. Barnette	273
11	Cross-examination by Ms. Hodges	297
12	Redirect examination by Mr. Barnette	312
13	COURTNEY WESTPHEL (SW)	
14	Direct examination by Mr. Ellis	312
15	Cross-examination by Ms. Hodges	316
16	RUSSELL PORTER (SW)	
17	Direct examination by Mr. Ellis	317
18	Cross-examination by Ms. Hodges	321
19	DR. JOHN DAVID WREN (SW) In-camera	
20	Direct examination by Ms. Hodges	327
21	DR. JOHN DAVID WREN (SW)	
22	Direct examination by Mr. Barnette	330
23	Cross-examination by Ms. Hodges	338
24	Redirect examination by Mr. Barnette	340
25	Cross-examination by Ms. Hodges	340

INDEX

<u>WITNESSES</u>	<u>PAGE</u>
JANICE BRYSON (SW)	
Direct examination by Mr. Barnette	341
Cross-examination by Ms. Hodges	352
MANUEL JOHN ORTUNO (SW)	
Direct examination by Mr. Barnette	358
Cross-examination by Ms. Hodges	377
Redirect examination by Mr. Barnette	385
Jury qualification	108
Jury sworn	161
Opening statements	167
Closing arguments	401
Jury charge	430
Verdict	459
Sentence	462
Certificate	466

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	SLED packaging	156	
4	S-2	Black Nike tennis shoes	156	234
5	S-2.1	Cutting from defendant's shoe	156	346
6	S-2.2	Cutting from defendant's shoe	156	346
7	S-3	Bluejeans shorts from defendant	156	237
8	S-3.1	Cutting from defendant's bluejeans	156	347
9	S-3.2	Cutting from defendant's bluejeans	156	347
10	S-3.3	Cutting from defendant's bluejeans	156	347
11	S-4	White socks from defendant	156	237
12	S-4.1	Cutting from white sock of defendant	156	349
13	S-5	Shirt from defendant	156	237
14	S-5.1	Swab from shirt	156	350
15	S-5.2	Swab from shirt	156	350
16	S-6	Hardee's cap from defendant	156	237
17	S-6.1	Swabs from cap	156	350
18	S-7	Standard from John Lammers	156	286
19	S-8	Standard from David Lammers	157	361
20	S-9	Swab	157	296
21	S-10	Swab	157	296
22	S-11	Knife	157	284
23	S-11.1	Swab	157	361
24	S-11.2	Swab	157	361
25	S-12	Sword	157	187

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-12.1	Swab	157 361
4	S-12-A	Swab	157 361
5	S-13	Fingernail scrapings	157 286
6	S-14	Flashlight	157 295
7	S-15	Swab	157 296
8	S-16	Swab	157 296
9	S-17	SLED report	157
10	S-18	Photograph	157 177
11	S-19	Photograph	157 177
12	S-20	Photograph	157 177
13	S-21	Photograph	157 177
14	S-22	Photograph	157 276
15	S-23	Photograph	157 181
16	S-24	Photograph	157 181
17	S-25	Photograph	157 181
18	S-26	Photograph	157 181
19	S-27	Photograph	157 181
20	S-28	Photograph	157 276
21	S-29	Photograph	157 181
22	S-30	Photograph	157 181
23	S-31	Photograph	157 276
24	S-32	Photograph	157 276
25	S-33	Photograph	157 181

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-34	Photograph	157	276
4	S-35	Photograph	157	276
5	S-36	Photograph	157	276
6	S-37	Photograph	157	276
7	S-38	Photograph	157	276
8	S-39	Photograph	157	276
9	S-40	Photograph	157	276
10	S-41	Photograph	157	276
11	S-42	Photograph	157	276
12	S-43	Photograph	157	276
13	S-44	Photograph	157	276
14	S-45	Photograph	157	276
15	S-46	Photograph	157	276
16	S-47	Photograph	157	276
17	S-48	Photograph	157	276
18	S-49	Photograph	157	276
19	S-50	Photograph	157	276
20	S-51	Photograph	157	276
21	S-52	Photograph	157	276
22	S-53	Photograph	157	276
23	S-54	Photograph	157	276
24	S-55	Photograph	157	181
25	S-56	Photograph	157	181

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-57	Photograph	157	181
4	S-58	Photograph	157	181
5	S-59	Photograph	157	276
6	S-60	Photograph	157	181
7	S-61	Photograph	157	276
8	S-62	Photograph	157	276
9	S-63	Photograph	157	234
10	S-64	Photograph	157	181
11	S-65	Photograph	157	276
12	S-66	Photograph	157	276
13	S-67	Photograph	157	276
14	S-68	Photograph	157	276
15	S-69	Photograph	157	276
16	S-70	Photograph	157	276
17	S-71	Photograph	157	276
18	S-72	Photograph	157	276
19	S-73	Photograph	157	276
20	S-74	Photograph	157	276
21	S-75	Photograph	157	236
22	S-76	Photograph	157	236
23	S-77	Photograph	157	276
24	S-78	Photograph	157	276
25	S-79	Photograph	157	210

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-80	Photograph	157	258
4	S-81	Photograph	157	332
5	S-81A	Stab-wound chart	157	335
6	S-82	Photograph	157	221
7	S-83	Photograph	157	221
8	S-84	Photograph	157	279
9	S-85	Photograph	157	279
10	S-86	Photograph	157	279
11	S-87	Photograph	157	279
12	S-88	Tube of cortisone	157	314
13	S-89	Toothbrush	157	314
14	S-90	Shaving lotion bottle	157	314
15	S-91	Lineup	196	198
16	S-92	Tube of toothpaste		314
17	S-93	Photograph		279
18	S-94	D. N. A. report	358	363
19	S-95	Supplemental report	358	363
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Crime scene log	208	

1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	C-1	Search warrant	13
4	C-2	Lineup	13
5	C-3	Lineup	13
6	C-4	Lineup	13
7	C-5	Copy of arrest warrant	13
8	C-6	C. D.	74
9	C-7	Internet printout	399
10	C-8	Question from the jury	459

11

12

13

14

15

16

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Motions

1 (Proceedings June 19, 2008)

2 (Search warrant marked Court's Exhibit No. 1; lineup
3 marked Court's Exhibit No. 2; lineup marked Court's Exhibit
4 No. 3; lineup marked Court's Exhibit No. 4; copy of arrest
5 warrant marked Court's Exhibit No. 5.)

6 THE COURT: All right. This is in the matter of the
7 State vs. Howard Lee Sims. These are pretrial motions,
8 defendant's motions.

9 Ms. Hodges.

10 MS. HODGES: Thank you, Your Honor.

11 We do have several motions for the Court to hear this
12 afternoon. The first would be a motion to suppress evidence
13 that was obtained by virtue of a search warrant that was
14 dated June the 1st of 2007 that was obtained by Officer Jay
15 Steadman of the Spartanburg Department of Public Safety.

16 And our objection to that search warrant is that the
17 search warrant was obtained and failed to allege probable
18 cause in violation of the Fourth Amendment to the Federal
19 Constitution, in violation of the South Carolina
20 Constitution, also in violation of South Carolina Code
21 Section 17-13-140.

22 THE COURT: You're saying it fails to establish
23 probable cause on its face?

24 MS. HODGES: Yes, sir.

25 THE COURT: Solicitor, is there any additional

Motions

1 testimony the state wishes to introduce relative to the
2 issue of probable cause contained in the warrant?

3 MR. BARNETTE: I don't think so. Your Honor, I think
4 it was sworn testimony that was given. I think the
5 affidavit speaks for itself in this situation, and I don't
6 think there would be anything to establish that.

7 THE COURT: In other words, there was no other
8 information provided to the magistrate that's not contained
9 in the warrant that was used to base his decision of
10 probable cause.

11 MR. BARNETTE: That's correct, Your Honor.

12 THE COURT: Okay. All right. Ms. Hodge.

13 MS. HODGES: Thank you, Your Honor.

14 Your Honor, in that case we would argue that the search
15 warrant is, violates Mr., because we don't concede it
16 basically shows probable cause. But we'd also argue that
17 there was information that was omitted and/or misrepresented
18 in the search warrant in violation of South Carolina case
19 law, State vs. Missouri and federal case law Franks vs.
20 Delaware.

21 THE COURT: You're asserting that ~~the affidavit is~~
22 ~~false?~~

23 MS. HODGES: There is one particular indication in the
24 affidavit that is false, Your Honor, and that there are
25 omissions in the affidavit that had that been included, and

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 the defense's estimation would actually indicate that the
2 search warrant utterly fails to show probable cause.

3 THE COURT: Okay. Solicitor, do you want to call a
4 witness on that?

5 MR. BARNETTE: Yes, sir. I think we need to call a
6 witness on that. I would like to call Investigator Jay
7 Steadman to the stand, please.

8 Can I have a copy of the Court's Exhibit No. 1, Your
9 Honor?

10 JAY STEADMAN, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q If you would, sir, state your full name for the record,
14 please.

15 A Jay Steadman.

16 Q And where do you work at, sir?

17 A Spartanburg Public Safety.

18 Q And how long have you worked at the Department of
19 Public Safety?

20 A Sixteen years.

21 Q And was you an investigator at the time of this
22 incident back on June the 1st of 2007?

23 A Yes, I was.

24 Q And during the investigation and everything did you all
25 obtain a search warrant concerning the defendant and his

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 clothes at this time?

2 A Yes, we did.

3 Q And let me show you what's been marked as Court's
4 Exhibit No. 1. I believe I have a copy of this. If you
5 would, take a look at that search warrant.

6 A Okay.

7 Q Was that the search warrant you obtained in this case?

8 A It is.

9 Q Initially, when you all brought him in, was he arrested
10 on a different warrant before this?

11 A He was. He was brought in on unrelated charges.

12 Q Okay. And what warrant if I show you Court's Exhibit
13 No. 5...

14 MR. BARNETTE: Can I approach, Your Honor?

15 Q Let me show you what's Court's Exhibit No. 5. Was that
16 the warrant that he was brought in on, sir?

17 A Yes, violation of probation?

18 Q And that warrant was obtained when, May the 18th of
19 2007?

20 A Yes, it was.

21 Q And, obviously, y'all brought him in on this. This
22 other incident occurred on June the 1st of 2007. But he was
23 placed under arrest under the warrant.

24 A Correct. He was under arrest for the warrant for
25 probation violation.

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 Q And he was going to be taken to the jail on that no
2 matter what.

3 A Correct.

4 Q And then on the search warrant did -- when you obtained
5 this, did you receive this information and put this in the
6 affidavit?

7 A Did I? What information?

8 Q On the affidavit concerning the probable cause for
9 the --

10 A Yes. I, I -- this is my affidavit.

11 Q Okay. If you would, tell the Court the events leading
12 up to the time you got the search warrant, sir.

13 A The -- Mr. Sims was being sought for questioning in
14 relations to this case.

15 He also had the outstanding warrant which was going to
16 be the basis for us bringing him in, regardless of whether
17 we talked to him about this case.

18 And when we, when we brought him in, he was asked, you
19 know, if he would talk to us. And he requested an attorney.
20 So we didn't question him about the case.

21 And that's whenever I observed what appeared to be
22 dried blood on his clothes, on his. And I observed his
23 shoes.

24 Q Prior to this was there an incident that occurred on
25 May the 26th?

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 A There was. There was a burglary that occurred on May
2 the 26th at the Lammers' home.

3 Q And was that case investigated or was that looked into?

4 A It was being investigated by Investigator Porter.

5 Q And during this time did -- was there a lineup that was
6 shown on June the 1st after this, after the June the
7 1st incident occurred? Was there a lineup shown to
8 individuals in the neighborhood?

9 A There was. There was a photo lineup shown that
10 included Mr. Sims. And a neighbor of the Lammers picked him
11 out of the lineup.

12 Q And in order to figure out if Mr. Sims was possibly a
13 suspect in this case did you receive information from
14 Officer Edwards?

15 A Yes. Officer Edwards was called to the scene and
16 questioned in reference to the burglary, because she had
17 taken the report on the burglary.

18 Q Did she realize that there was a shoplifting occurred
19 that same day on May the 26th?

20 A She did. She recalled that the same night that she
21 took the burglary report there was a shoplifting call at the
22 Hot Spot on East Henry Street. And the clothing description
23 matched the same as the burglary suspect.

24 Q Did y'all obtain the video from that store?

25 A Yes, we did.

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 Q And did y'all identify who that person was in the
2 video?

3 A Yes. Investigator Burgess identified Mr. Sims from the
4 video.

5 Q And was the lineup shown to the clerk in that case?

6 A Yes, it was.

7 Q And did he positively I. D. the defendant in this case?

8 A Yes. The store clerk did identify Mr. Sims as the
9 shoplifter.

10 Q And then after that was that -- a different lineup with
11 the same people in it, was that taken and shown to a Ms.
12 Meadows in the neighborhood?

13 A Yes. Ms. Meadows is the one, the neighbor of the
14 Lammers.

15 Q And she I. D. 'd Mr. Sims.

16 A That's correct.

17 Q And you observed dry blood on his clothes?

18 A I did.

19 Q And did you put this information into the search
20 warrant?

21 A Yes, I did.

22 Q And when you gave -- you went and talked to Judge
23 Poole.

24 A That's correct.

25 Q And you gave him sworn testimony that this event

Jay Steadman (In-camera)
Direct examination by Mr. Barnette

1 happened.

2 A Yes. He read the warrant. He swore me in and read the
3 warrant and issued the search warrant.

4 Q And the facts that you -- I know they allege there's
5 something wrong. Is there any facts that you left out or
6 anything?

7 A Not that I'm aware of. I can't, I can't think of
8 anything that I left out.

9 Q And was this true to the best of your ability at that
10 time?

11 A It is.

12 Q And the information you had on June the 1st.

13 A That's correct.

14 Q And this is information you passed on to Judge Poole.

15 A That's correct.

16 MR. BARNETTE: One moment, Your Honor, please.

17 (Pause.)

18 Q Was the victim's brother, John Lammers, shown the
19 lineup?

20 A He was.

21 Q And did he identify the defendant in that lineup?

22 A He did.

23 Q And was that also included in your search warrant?

24 A If -- I mean, Mr. Lammers would be a witness because he
25 was present when the altercation occurred. So I would say,

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 yes, he's a witness, and he was shown a lineup.

2 Q Yes, sir. And if you would, please answer any
3 questions the judge or Ms. Hodges may have for you, sir.

4 CROSS-EXAMINATION

5 BY MS. HODGES

6 Q Investigator Steadman, I want to make sure that you and
7 I are using the same search warrant for the purposes of
8 today's hearing.

9 You've got Court's Exhibit No. 1, I guess. Is this
10 Court's Exhibit 1? Oh, okay. The judge has it. This is a
11 copy of the search warrant.

12 MR. BARNETTE: Yeah.

13 Q Okay. What I'm handing you, does that purport to be
14 the same thing that you were just looking at with Deputy
15 Barnette?

16 A Yes. It does.

17 Q Okay. In the -- this search warrant is obtained on, if
18 you look at the first page, says that it's obtained
19 basically if you look at that kind of second paragraph, it
20 starts, "It appearing from the attached affidavit." You're
21 actually asking for the search warrant under the provisions
22 of South Carolina Code of Laws Section 17-13-140, is that
23 correct?

24 A Yes.

25 Q Okay. And if you go a little bit kind of two-thirds of

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 the way down the page, that, "A written inventory of all
2 property that's seized pursuant to the search warrant shall
3 be made to any Spartanburg County magistrate." Is that also
4 correct?

5 A Correct.

6 Q Okay. And, in fact, Judge Poole was the magistrate
7 judge that issued this search warrant on June the 1st of
8 2007.

9 A Correct.

10 Q Do you know what time you got the search warrant from
11 Judge Poole?

12 A No, ma'am.

13 Q Okay. My understanding from looking at the discovery
14 in this case you're not -- you were one of the investigators
15 that was working on this case, but you weren't the actual
16 lead investigator, is that right?

17 A That's correct.

18 Q At what point did you become involved in the case?

19 A From the, from the night, from the moment of the
20 stabbing.

21 Q Okay. So were you on duty at that point, or were you
22 on call?

23 A I was actually working another case involving a
24 criminal sex assault.

25 Q Okay. And so then you just kind of got pulled in from

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 the other case.

2 A Correct.

3 Q Okay. The source of your information in terms of
4 providing the information to Judge Poole, was that coming
5 from your own knowledge or was it coming from talking with
6 other investigators working the case?

7 A Most of it is my knowledge of actually going out and
8 talking to witnesses --

9 Q Okay.

10 A -- with other investigators.

11 Q Did you actually read the incident reports that had
12 been filed regarding the incidents that occurred on May the
13 26th?

14 A No, I didn't.

15 Q What was the basis of your understanding of what
16 happened on -- to be able to include that? Who did you get
17 that information from?

18 A From Officer Edwards.

19 Q Officer Edwards. Okay. The affidavit if you go to
20 your affidavit, Mr. Sims is described as a black male, gives
21 his date of birth and social security number, is that
22 correct?

23 A Correct.

24 Q In the body of the reason that the property being
25 sought is on the subject premises, you indicated that David

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 Lammers found his brother fighting with a black male, is
2 that right?

3 A Correct.

4 Q Did you have any indication at that point as to the
5 description that Mr. David Lammers had given to
6 investigators in this case of a black male?

7 A Not, not from the 1st, not from June the 1st.

8 Q Not from June the 1st. Where did you go to get the
9 search warrant from Judge Poole, or where was Judge Poole
10 when you got the search warrant from him?

11 A I believe he was in the magistrate's office.

12 Q In the magistrate's office?

13 A Yes. At the county courthouse.

14 Q Okay. So he wasn't at the jail at that point, working
15 second shift at the jail?

16 A I can't remember.

17 Q Okay.

18 A I don't remember which location he was at.

19 Q Okay. You didn't include any description that
20 Mr. Lammers gave of the black male, for example, the black
21 male was 6'2", to Judge Poole, did you?

22 A No, I didn't.

23 Q Didn't tell him that the person that he saw was
24 somewhere in the range of 210 to 220 pounds.

25 A No, I didn't.

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 Q Didn't tell Judge Poole that the person that David
2 Lammers saw was wearing either a blue or a light blue
3 pocketed t-shirt, did you?

4 A No, I didn't.

5 Q Did you tell Judge Poole that the person actually that
6 was -- the clothing was being sought from was 159 pounds?

7 A No, I didn't.

8 Q So you just went on the fact that it was just a black
9 male.

10 A The, the fact that I went on was the fact that the
11 description of the person who was given to Officer Edwards
12 fit the description of the subject that was shoplifting, and
13 that that subject had been identified as Howard Lee Sims.

14 Q Okay.

15 A And that we were seeking to obtain the clothing of
16 Howard Lee Sims.

17 Q Okay. So you're trying to get the clothing of a man
18 that's been described as 6'2", 210 to 220 pounds. And
19 Howard Lee Sims is 159 pounds.

20 Would you agree that there's a discrepancy in weight
21 between 159 pounds and 210 pounds in physical description of
22 a person?

23 A But my affidavit does not state that. That's not --

24 Q My question to you, sir, is would you agree that there
25 is a difference between 159 pounds --

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 MR. BARNETTE: Judge, I'm going to object at this
2 time. I don't know what the relevance is of this from the
3 standpoint. I'd like to see her establish the relevance
4 that concerns this.

5 THE COURT: Well, she will. Overruled.
6 Go ahead.

7 Q Is there a difference between 159 pounds and 210 to
8 220 pounds in a physical description of a person?

9 A There is.

10 Q Okay. On the May the 26th incident, you said you did
11 not read the incident report. Is that correct?

12 A That's correct.

13 Q All right. But you took the information from Brandy
14 Edwards.

15 A Correct.

16 Q Did you know that Brandy Edwards was not the person
17 that actually wrote the incident report?

18 A No, I didn't.

19 Q But, in fact, the officer that wrote the incident
20 report is a C. E. Tillotson? Excuse me. C. E. Yeah.
21 Excuse me. I have that somewhere here. Excuse me. Jon
22 Michael Guest.

23 A Officer Guest and Officer Edwards are both, were both,
24 came to the scene that day.

25 Q Uh-huh. And you didn't talk to Officer Guest, just

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 Officer Edwards.

2 A Officer Guest was there, was present. I don't remember
3 talking to him directly. I remember talking to Officer
4 Edwards. And she's the one that connected the burglary
5 suspect's clothing description to the shoplifting clothing
6 description.

7 Q Okay. And to be fair, the burglary suspect's clothing
8 description was a red and white stripe shirt, right?

9 A Correct.

10 Q And bluejean shorts.

11 A Correct.

12 Q All right. It's not a blue pocketed t-shirt.

13 A Correct.

14 Q Okay. And it's not a red and black Hardees t-shirt.

15 A Correct.

16 Q Okay. Did you talk with Investigator Porter about his
17 investigation into the May the 26th incident?

18 A I'm sure we had spoke.

19 Q Did you know that Officer Porter had closed the case on
20 May the 30th because Mr. John Lammers could not describe,
21 identify the person other than the clothing description?

22 A I knew there was issues with the case being closed or
23 not followed up on.

24 Q Okay. Do you know from your own knowledge or from
25 Officer Edwards what time the incident occurred at Mr. John

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 Lammers' home on May the 26th?

2 A Not directly, no.

3 Q If Officer Guest's incident report indicates that the
4 time was 1830, would you disagree with that?

5 A No, I wouldn't.

6 Q Okay. The Texaco incident you allege in your affidavit
7 occurred 30 minutes later, is that correct?

8 A I think it was approximately, approximately.

9 Q Approximately 30 minutes later. Would you be surprised
10 if the incident report for the Texaco incident filed with
11 your department indicates that it was at 2330?

12 A I would agree with that.

13 Q You would agree with that. You would also agree that
14 1830 to 2330 is more like five hours as opposed to 30
15 minutes.

16 A I would.

17 Q Okay. You indicated that a video had been recovered.
18 The video was not actually recovered the night of the
19 shoplifting incident, was it?

20 A It was not.

21 Q In fact, the video was viewed by the officers during
22 the shoplifting incident, and it was determined that an
23 image couldn't be, couldn't be obtained.

24 A Correct, that they couldn't print the image.

25 Q Okay.

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 A But they could view it.

2 Q Well, they didn't make an identification off of the
3 video that night, did they?

4 A No, they didn't.

5 Q In fact, Officer Spivey's incident report says that,
6 "I, Officer Spivey, reviewed the in-store camera and was
7 unable to obtain a clear image from the tape." Isn't that
8 right?

9 A That's correct.

10 Q So the tape was not able to be determined who was the
11 shoplifter on May the 26th.

12 A Not that day.

13 Q Okay.

14 A That officer may not have knew who the subject was.
15 But an officer that did recognize the subject was able to
16 identify him on June the 2nd or whatever, 1st or 2nd or
17 whatever day that was.

18 Q Okay. Well, if he just didn't know who the person was,
19 why would he write in -- I mean, you would agree with me he
20 wrote in was unable to obtain a clear image from the tape.

21 A I can't answer why the officer put unable to obtain a
22 clear image. I'm not that officer. I can't answer that.

23 Q But you would agree with me that that's what that says.

24 A That's correct.

25 MR. BARNETTE: Your Honor, I would object at this

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 point. I mean, we're getting into hearsay and everything
2 else. He doesn't know what the officer says.

3 THE COURT: Sustained.

4 Q In the shoplifting report the person that is actually
5 described as the shoplifter to the police officers is
6 actually not described wearing a red and white stripe shirt.
7 Did you know that?

8 A No, I didn't.

9 Q Did you read the incident report for the shoplifting
10 incident prior to going to Judge Poole?

11 MR. BARNETTE: Your Honor, I'm going to object, object
12 to that as hearsay in this situation. I mean, obviously,
13 she can ask about if he read it or not. But from that
14 standpoint anything he said would be hearsay at this point.

15 THE COURT: Well, I think what she's examining him
16 about is what information he had at the time that he went
17 to get a search warrant. Clearly, the officer can rely on
18 hearsay information to get a search warrant.

19 Overruled.

20 MR. BARNETTE: Yes, sir.

21 Q Did you read the incident report?

22 A No, I did not.

23 Q I hand you a copy of --

24 THE COURT: He says he didn't read that.

25 Q Would you agree that a person wearing a green shirt is

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 different than a person wearing a red and white stripe
2 shirt?

3 A Yes, I would.

4 Q And would you agree that a person wearing a black
5 baseball cap backwards is a distinctive characteristic?

6 A It could be.

7 Q Have you seen the video that was recovered from the
8 shoplifting incident --

9 A I have.

10 Q -- that's identified as Mr. Sims?

11 A I have.

12 Q You don't see Mr. Sims in that shoplifting video
13 wearing a baseball cap backwards, do you?

14 A I don't recall the, the hat.

15 Q Okay. Don't see him in a green shirt.

16 A No.

17 Q In fact, he's wearing a red and white, maybe even
18 black, stripe shirt, is that right?

19 MR. BARNETTE: Your Honor, I'm going to object to
20 this. I mean, we keep talking about an incident report
21 he's never read from that standpoint.

22 MS. HODGES: I've asked him about the video that he
23 just viewed, Judge.

24 THE COURT: I thought she was talking about the video.

25 MR. BARNETTE: Okay. I thought she was going back to

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 the incident report. I apologize.

2 Q So the video that you've seen shows somebody wearing a
3 red shirt with white, and possibly black or navy blue or
4 something, stripe in it, right?

5 A Correct.

6 Q Okay. You included in your affidavit an incident that
7 occurred at the Lammers' home on May the 29th of 2007 -- I
8 believe it's on the second page -- regarding someone that
9 breaks into the house and steals a 25-inch television and
10 the Phillips 4-head D. V. D. V. C. R.

11 A Correct.

12 Q Okay. Did you give any additional testimony to Judge
13 Poole at the time that you got your search warrant after he
14 swore you in and before he signed the search warrant?

15 A Not that I recall, no.

16 Q Okay. So you did not tell Judge Poole that from that
17 incident on May the 29th of 2007 that nobody had been
18 identified as a suspect, is that correct?

19 A No.

20 Q Okay. You indicated that it's John Lammers that said
21 that it was the second time in three days that the home had
22 been broken into.

23 A Correct, referring to the -- a neighbor that I spoke to
24 that Mr. Lammers had told that to.

25 Q Which Mr. Lammers had told that to?

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 A John Lammers.

2 Q John Lammers. John Lammers had told a neighbor that
3 this was the second time the house had been broken into?

4 A Correct. He had complained to a neighbor that this was
5 the second time that the house had been broken into.

6 Q And that complaint to that neighbor, was that made on
7 May the 29th or, or some other time?

8 A I'm not sure when that -- I'm not sure when John
9 Lammers had the conversation with the neighbor.

10 Q Okay. Well, did you get that directly from the
11 neighbor?

12 A Yes.

13 Q When did you have that conversation with the neighbor?

14 A I believe that was on June the 1st.

15 Q But you don't know when the neighbor and Mr. John
16 Lammers had had that conversation.

17 A No, I don't.

18 Q All right. Did you know that it was actually David
19 Lammers that had reported the incident on May the 29th of
20 2007?

21 A No, I didn't.

22 Q Okay. So were you operating under the assumption that
23 it was John Lammers that had made both reports, both May the
24 26th and May the 29th?

25 A I was just -- after talking to the neighbor, he had

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 told me that Mr. Lammers had told him, was complaining about
2 this being the second time his house had been broken into.

3 Q Okay. Now, Mr. Barnette asked you specifically did you
4 include the fact that David Lammers had identified Mr. Sims
5 from a lineup, did you include that in your search warrant.

6 A Not the name David Lammers but just that witnesses had
7 identified him.

8 Q Witnesses had identified him. Did you tell Judge Poole
9 at that point that Mr. David Lammers had said that he was
10 only 50 percent sure about the person that he identified
11 from the lineup?

12 A I'm not sure if I -- I'm not sure if I told him that.

13 Q But to your recollection you did not give Judge Poole
14 any additional testimony other than what was written in the
15 search warrant.

16 A Correct.

17 Q And the fact that Mr. David Lammers was only 50 percent
18 sure is not included in your search warrant.

19 A Correct. But his name's not listed as being one of the
20 people that gave that.

21 Q Okay. Well, you do indicate that on the very bottom
22 line of the first page of your affidavit, that Mr. Sims was
23 picked out of lineups by the store clerk and a neighbor of
24 John Lammers, correct?

25 A Correct.

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 Q You don't mention any other witnesses picking anybody
2 else out from any other lineup for any other reason, do
3 you --

4 A Correct.

5 Q -- in your affidavit?

6 A No, I don't.

7 Q So David Lammers or any other witnesses to the stabbing
8 that occurs on June the 1st is not included in your
9 affidavit, is that correct?

10 A Correct.

11 Q Okay. You indicate that the red and white stripe shirt
12 had not been found. You didn't include the fact that this
13 light blue pocketed t-shirt had not been found either, did
14 you?

15 A I'm sorry? Say that again.

16 Q You indicate in the -- referring to your search
17 warrant -- that the red and white stripe shirt has not been
18 found.

19 A Correct.

20 Q But you do not put in the search warrant that the light
21 blue pocketed t-shirt that the person stabbing John Lammers
22 was wearing, you didn't include any mention of whether that
23 shirt had been found or not in your search warrant, did you?

24 A No, I didn't.

25 Q Okay. Other than a description of the person wearing a

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 red and white stripe shirt and bluejean shorts and being a
2 black male, being seen in the vicinity either in John
3 Lammers' house or in the vicinity of John Lammers' house on
4 May the 26th of 2007, there was no other forensic evidence
5 like fingerprints, anything like that, that places Howard
6 Lee Sims, identified as Howard Lee Sims, in John Lammers'
7 house on May the 26th, is there?

8 A None other, none other than a neighbor seeing a black
9 male on a small bicycle.

10 Q Right.

11 A But she could not identify him out of the lineup.

12 Q Okay. So, and Ms. Meadows identifies him on June the
13 1st. But basically other than Ms. Meadows identifying him
14 from a lineup and saying this is the person she saw in the
15 vicinity of the home, and then Mr. John Lammers' description
16 to people on May the 26th, there's no other, any other
17 physical, forensic, any other type of evidence that places
18 Howard Lee Sims in the home on May the 26th, is there?

19 A No.

20 Q All right. Did you indicate that to the judge, that
21 there was no other evidence other than just the photographic
22 lineup?

23 A No.

24 Q Okay. No proof or no indication from any of the
25 neighbors that were interviewed on May the 26th or from the

Jay Steadman (In-camera)
Cross-examination by Ms. Hodges

1 neighbor that did the lineup on June the 1st that Howard Lee
2 Sims had a knife in his possession on May the 26th, is
3 there?

4 A No.

5 Q Mr. John Lammers indicates that the person has a, has a
6 knife, but nobody else was in Mr. Lammers' home at the time
7 other than Mr. Lammers and the person that was breaking into
8 his home.

9 A Correct.

10 Q Okay. When Mr. Sims was arrested was he in possession
11 of a knife?

12 A I wasn't present --

13 Q Okay.

14 A -- at the scene when he was arrested.

15 Q Okay. The return was made by Investigator Guthro, is
16 that correct?

17 A Yes. It is.

18 Q Okay. And do you recognize the signature of the judge
19 on the bottom line?

20 A I do not.

21 Q All right. So you wouldn't -- would you agree with me
22 that that signature of that judge on the bottom line of the
23 return is not the same signature of the issuing judge for
24 the search warrant itself?

25 A Correct.

Jay Steadman (In-camera)
Redirect examination by Mr. Barnette

1 Q Okay. And we know that the judge who issued the search ()
2 warrant is Judge, former magistrate, John Poole.

3 A Correct.

4 Q Okay.

5 MS. HODGES: Your Honor, I believe those are all the
6 questions I have for Investigator Steadman at this time if
7 the Court will bear with me just one moment and let me
8 check with my client.

9 (Pause.)

10 MS. HODGES: Thank you, Your Honor. That's all I
11 have.

12 MR. BARNETTE: A couple of questions, Your Honor, on
13 redirect.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q But there was evidence to show -- was there evidence
17 showing that he had been there prior to June the 1st through
18 the lineups and things?

19 A Through the lineups, yes, that he was in that
20 neighborhood, yes.

21 Q And the dry blood and everything, was that sent to
22 SLED? Was those clothes gathered and evidence sent to SLED?

23 A From the search warrant?

24 Q Yes.

25 A Yes.

Jay Steadman (In-camera)
Redirect examination by Mr. Barnette

1 Q And was there a SLED report that you turned back --

2 MS. HODGES: Your Honor, I'd object to that. That's
3 outside the scope of this motion.

4 THE COURT: What we're trying to determine here is if
5 there was probable cause for the warrant.

6 MR. BARNETTE: Okay. I'll withdraw the question then,
7 Your Honor.

8 Q And the video was reviewed June the 1st, is that right,
9 at the Texaco station?

10 A I believe, I believe it was June the 1st that it was
11 recovered and reviewed.

12 Q And John Burgess saw that video tape.

13 A That's correct.

14 Q And did he know the individual in that video tape?

15 A He did. He readily identified Mr. Sims.

16 Q And you've seen that video since then.

17 A I have.

18 Q And was he wearing a cap in that video?

19 A I can't recall if, if he was.

20 Q Was he wearing the white socks?

21 A Yes, he was.

22 Q Was he wearing the black shoes?

23 A He was.

24 Q Was he wearing the bluejean shorts?

25 A He was.

Jay Steadman (In-camera)
Redirect examination by Mr. Barnette

1 Q Was those the same items that it appeared that he was
2 wearing the day you saw him after he was picked up on the
3 probation warrant?

4 A Yes. The shoes and the shorts appeared to be the same
5 as in the video that I saw.

6 Q And those items had -- you saw dry blood on them.

7 A That's correct.

8 Q And that was one of the reasons for your search
9 warrant.

10 A That is correct.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q Thank you.

14 MS. HODGES: Nothing on recross, Your Honor.

15 THE COURT: You may step down.

16 Any other witnesses?

17 MR. BARNETTE: No, Your Honor, not concerning the
18 search. I can call things to verify what was in the search
19 warrant and things like that, but I think they've been
20 testified to by Investigator Steadman.

21 THE COURT: Okay. Does the defense wish to present
22 any additional evidence?

23 MS. HODGES: No, sir.

24 THE COURT: All right. I'll take that issue under
25 advisement.

1 What's the next motion?

2 MS. HODGES: Your Honor, the next motion will be --

3 THE COURT: Is there any objection to me having a copy
4 of that warrant?

5 MR. BARNETTE: No, sir. I marked it as Court's
6 Exhibit 5, so.

7 THE COURT: I've got --

8 MR. BARNETTE: I mean, of this search warrant? No,
9 sir.

10 THE COURT: No. Thank you. Okay.

11 MS. HODGES: Your Honor, our next motion is going to
12 be regarding the photo lineup. And under Neil vs. Biggers
13 we would argue that the photo lineup is unduly suggestive
14 and that any identification that was made from that lineup
15 by the witnesses during the course of the investigation in
16 this case, that those identifications are tainted as a
17 result of the suggestive lineup.

18 THE COURT: Okay. I've got two. Excuse me. I've got
19 three exhibits that appear to contain the lineups. Are
20 they all the same lineup?

21 MS. HODGES: My understanding is that they are all the
22 same lineup, Your Honor.

23 THE COURT: Okay.

24 MS. HODGES: It's just that they're showing three
25 different people.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 THE COURT: Three different people. Okay. All right.

2 MR. BARNETTE: Your Honor, I'd like to call

3 Investigator Burgess to the stand, please.

4 May I approach also, Your Honor, for this?

5 JOHN BURGESS, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q If you would, sir, state your full name for the record.

9 A It's John Burgess.

10 Q And where do you work at, sir?

11 A City of Spartanburg.

12 Q And what's your position there, sir?

13 A Investigator, public safety.

14 Q And how long have you been there, sir?

15 A Five and a half years.

16 Q Back on June the 1st of 2007 was you working in that
17 position?

18 A They had called me. Yes, I was working.

19 Q And was you called involving this incident involving
20 Howard Sims in the murder of John Lammers?

21 A I was called, yes.

22 Q In that case did Officer Brandy Edwards come to the
23 scene also?

24 A She did.

25 Q And did you obtain information concerning this incident

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 from her?

2 A I did.

3 Q If you would, tell the Court about that.

4 A Sure. We learned that a report was taken on May the
5 26th of 2007 in reference to a burglary. She gave us the
6 physical description of him, the clothing description, how
7 he left. He had left on a bicycle.

8 We also got some more information that later on that
9 evening at Henry Street, at 100 West Henry Street, a
10 shoplifting had occurred. And it was the same physical
11 description. It was a larceny of beer, same physical
12 description. And the subject left on the bicycle too.

13 Q And did you go view the tape at the Texaco station?

14 A I did.

15 Q And did you know the individual that was on the video?

16 A I did.

17 Q Who was it?

18 A Howard Lee Sims.

19 Q And did that clothing description match the description
20 that y'all had?

21 A Yes.

22 Q And did he have the black shoes?

23 A He did.

24 Q Did he have the white socks?

25 A He did.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 Q Did he have the bluejean shorts?

2 A He did.

3 Q Did he have the baseball cap?

4 A I believe. I'd have to go look at the pictures again,
5 but I think he did have a baseball cap on.

6 Q And based off that did you do some photo lineups, sir?

7 A I did.

8 Q Okay. Did you show one to the clerk at the Texaco
9 station?

10 A I did.

11 Q And during the shoplifting did he chase after the
12 individual?

13 A According -- I spoke to him. And there was a, a
14 struggle inside. I don't know, I don't know if he told me
15 he chased after him or not. But I know there was some type
16 of struggle inside.

17 Q And did you get the CAD report concerning this, what
18 was reported that day on May the 26th?

19 A I did prior to the, to the photo lineups done.

20 Q And what information did you obtain from the CAD
21 report?

22 A Sure. The call came in at 11:24. It was a larceny
23 just occurred at 100 West Henry Street, larceny of beer,
24 struggle with the clerk, black male on a bicycle, red and
25 white stripe shirt and no direction of travel.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 Q Was he on a bicycle?

2 A He was.

3 MR. BARNETTE: Your Honor, may I approach the bench?

4 Q Let me show you what's been marked as Court's Exhibit
5 No. 2. Who was the clerk that was at that Texaco station
6 that night?

7 A The last name is Basnet, and the first name is
8 A-N-K-I-T.

9 Q And did you show him this photo lineup?

10 A I did on June the 1st of 2007 at 2:30 p.m.

11 Q And how did you generate this lineup?

12 A This is a computerized standard photo lineup that we
13 had, the mug shop. You simply put the subject's name in
14 that you want a photo lineup. Then the computerate -- the
15 computer generates other people similar to height, weight,
16 goatees, mustache, things of that nature. And it, and it
17 makes the photo lineup for you.

18 Q Okay. So you set the pictures or set in any way, this
19 lineup, yourself?

20 A You have that option. But I don't believe so on this
21 one. It's just a similar. Things were happening so quick,
22 so it's just a similar, similar pictures for that height and
23 weight and stuff.

24 Q So you didn't set it. It was the computer that set
25 this.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 A That's correct.

2 Q Looking at -- and you showed this to the clerk. Did
3 you make any suggestion? Did you point at anybody and tell
4 him that the person that did the shoplifting is in this
5 lineup or anything like that?

6 A No.

7 Q Did you just merely let him look at it and see if he
8 knew anybody in the lineup?

9 A That's correct?

10 Q Did he look at it?

11 A He did.

12 Q And did he pick someone out?

13 A He picked out the No. 4 subject, which is the bottom
14 left-hand person. It goes in order. One, two, three, four,
15 five, six.

16 Q And did he circle that individual?

17 A He circled it and put the date and time when he made
18 the identification.

19 Q And who is that person he circled?

20 A He circled Howard Lee Sims.

21 Q Later on did you talk to a Belinda Meadows?

22 A I did.

23 Q And was she the neighbor that saw the individual on May
24 the 26th?

25 A That's correct.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 Q And did you show her, obviously not the same lineup,
2 but the same type of lineup?

3 A Yes.

4 Q And is that Court's Exhibit No. 4?

5 A That's correct.

6 Q Okay. And did she identify the person's clothing, as
7 well as him riding a bicycle that day? Or if you would,
8 tell the Court what, what you found out about May the 26th,
9 what she saw.

10 A Sure. I spoke to, spoke to the witness who lived at
11 118 Quail Drive, which is Belinda Meadows, and showed her a
12 photo lineup.

13 She studied for a short period of time and picked out
14 the bottom-left person. Again, she picked out the No. 4
15 subject.

16 Ms. Meadows stated that the subject was carrying a box
17 under his arm riding a bike. Subject left towards church
18 directly behind John Lammers' house. Subject rode his bike
19 through the church parking lot into the woods. And the path
20 that leads from the church is Lucerne Drive. So she was,
21 after that she was, shown the, shown the photo lineup.

22 Q And did you make any suggestions to her?

23 A No.

24 Q Did you point at anything or say the person that you
25 may have saw that day was in this lineup?

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 A No.

2 Q And when she looked at it did she pick out a person?

3 A She did without any hesitation.

4 Q Okay. And did she circle that individual?

5 A She did, and also signed her name and the date and the
6 time.

7 Q And who was the individual she identified?

8 A She identified Howard Lee Sims.

9 Q Did you also show a lineup to David Lammers?

10 A I did.

11 Q The brother of the victim, was the witness in the
12 house.

13 A I did.

14 Q And in talking to him did you show him this lineup?

15 A I did.

16 Q And did you make any suggestions to him?

17 A I did not.

18 Q Had he give you a description of what the defendant was
19 wearing that night?

20 A He did that night, yes.

21 Q And what was that description?

22 A I was the first one that interviewed him. David told
23 me the suspect was a black male 6'1", 6'2", 200 to
24 215 pounds, short haircut, bulging eyes, wearing a blue or
25 light-pocked t-shirt. Subject was not wearing gloves.

John Burgess (In-camera)
Direct examination by Mr. Barnette

1 That's it.

2 Q Okay. And when you showed him the lineup, did you
3 point at anybody or suggest the person he saw that night was
4 in this lineup?

5 A No.

6 Q Did he pick somebody out?

7 A He did.

8 Q And did he circle that individual?

9 A He did.

10 Q Did he sign and date and time that?

11 A He signed the date and time at 3:00 p.m. on June the
12 1st of '07.

13 Q And that was that lineup. Court's Exhibit No. 3 is
14 that lineup.

15 A Yes.

16 Q And any of these times did you make any suggestions to
17 him or anything about the individuals in these lineups?

18 A No, simply present them the photo lineup and let them
19 make their own determination if the suspect is in there.

20 Q With Mr. Lammers, did you ask if he was sure that was
21 the individual?

22 A I did.

23 Q And how sure did he say?

24 A He said 50 percent sure.

25 Q But did y'all talk to him and question him about if

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 that was the person or not?

2 A Yeah. When I showed him the photo lineup he, Mr.
3 David, David Lammers, said it's not the top three, which is
4 one, two, three; it's not No. 4 or No. 5. And he pointed to
5 No. -- excuse me -- it's not five or six, but he pointed to
6 No. 4. So he circled the picture. And then I asked him how
7 sure he was of that.

8 Q And was he sure enough to circle on the side?

9 A He was.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions Ms. Hodges or the judge may
13 have for you, sir.

14 A Okay. Thank you.

15 CROSS-EXAMINATION

16 BY MS. HODGES

17 Q Did you show the lineups to Ms. Meadows, Mr. Basnet and
18 Mr. Lammers in color?

19 A These right here. These are the originals.

20 Q Okay. So these are the originals.

21 A Yes.

22 Q So these are the ones that you actually showed to each
23 individual witness.

24 A Yes.

25 Q Okay. And they all purport to be essentially one

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 lineup, three identical copies of, of the one lineup, is
2 that right?

3 A That's correct.

4 Q Okay. And Mr. Sims is the only individual in the
5 lineup that is wearing a different colored t-shirt than the
6 other five, is that correct?

7 A That's correct.

8 Q So Mr. Sims in the No. 4 position is wearing a gray
9 t-shirt. And each of the other individuals are wearing
10 white t-shirts.

11 A That's correct.

12 Q Okay. The height and weight that you -- you say you
13 plug in obviously race; gender, male, female; black or
14 white. And you also plug in height and weight.

15 A And birthdays.

16 Q Birthdates.

17 A Yes.

18 Q Okay. So you try and get somebody similar aged,
19 similar stature, and similar kind of just the obvious, the
20 physical characteristics, male versus female, black versus
21 white.

22 A Yeah. You, you could plug in height and weight.

23 Q Uh-huh.

24 A But I don't use that, that program. I just use the
25 name and date of birth.

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 Q So just name and date of birth.

2 A Uh-huh.

3 Q So you didn't plug in anything in terms of trying to
4 get a height or weight from, from somebody?

5 A No.

6 Q Okay. Do you plug in Mr. Sims basically as he's your
7 person that, that, that you're identifying and you want them
8 to find five other similar photos to him?

9 A That's correct.

10 Q Okay. So you already basically had his picture in your
11 computer. And then you say this is Howard Lee Sims, please
12 find me five other people that are around the same birthdate
13 and that are black males.

14 A That's correct.

15 Q Okay. And does the computer generate the lineup in
16 that format in the six -- I mean, does it actually basically
17 spit out and say, you know, here, Investigator Burgess, here
18 are your six people and this is the order the computer gives
19 them to you in?

20 A Yes. I mean, it's a -- when it pulls it up, it's six
21 people.

22 Q Uh-huh.

23 A And you can, you can, if, if somebody's obviously way
24 overweight or something, you want to change that picture to
25 that. You have that option.

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 Q Okay.

2 A But so I guess to answer your question, you can, you
3 can modify it a little bit if it's something obvious, light
4 skin, black male, dark skin, something like that.

5 Q Right.

6 A But, yes, it pulls it up as, as pictures.

7 Q Okay. And did you, for lack of a better word, kind of
8 cull anybody out or eliminate anybody and ask it to find you
9 another picture to substitute?

10 A I don't know if I did.

11 Q Okay. Is there any way of kind of going back and
12 recreating what you did? I mean, does the program, does the
13 computer, kind of save in its memory banks for a sufficient
14 period of time or anything like that?

15 A It would only save this actual photo lineup. It
16 wouldn't save.

17 Q Okay. So whatever it actually, is printed out as the
18 lineup, is what it saves as being. So it doesn't save any
19 of the preliminaries.

20 A No. That's correct.

21 Q All right. What specifically do you remember saying to
22 Mr. Basnet in showing him the photo lineup?

23 A I can probably -- it's not written down, but I probably
24 just, I spoke to -- let's see. I spoke to Basnet in
25 reference to, excuse me, in reference to the filing of the

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 shoplifting. I showed him a photo lineup. He picked out
2 the bottom-left subject, which is the No. 4 subject. He did
3 this without any hesitation. He circled, circled the
4 picture, and signed his name and put the time and date on
5 it. That's what's in the supplement. I'm sure I asked him.

6 Q So, you know, and if you don't remember, you don't
7 remember, but it sounds to me like you don't remember what
8 specifically what you said to him in terms of here's the
9 lineup of the potential individuals or here's a lineup of
10 the suspect, or, I mean, you don't remember what you said to
11 him.

12 A That, that's correct.

13 Q Okay. Did you review the incident report from -- that
14 was taken the night of the shoplifting incident at the
15 Texaco station?

16 A I believe I did, and I got the CAD report too because
17 there were some discrepancies.

18 Q There is a discrepancy between the CAD report and the
19 incident report.

20 A That's correct.

21 Q In fact, the CAD report tells us it's a red-and-a-
22 white-stripe-shirt person. The incident report tells us
23 it's a person in a green shirt person with a baseball cap on
24 backwards.

25 A That's correct.

John Burgess (In-camera)
Cross-examination by Ms. Hodges

1 Q All right. Did -- and then you say that the thing you
2 remember seeing is a baseball cap on Mr. Sims in the video.
3 The video doesn't show him in a green shirt, does it?

4 A I think he's in -- well, I don't know. I don't know.
5 I'd have to go back and look at the video again.

6 Q Okay. So you don't know whether -- and it doesn't show
7 him with his baseball cap on backwards, does it?

8 A If I remember correct, he's got it forward.

9 Q Okay. Like you're supposed to wear them.

10 A Yeah.

11 Q Okay. Mr. David Lammers when he looks at, looked at
12 the lineup, he specifically says I can tell you it's not
13 one, two and three and I can tell you it's not five and six.
14 Does he actually call them by numbers?

15 A No. He, what he, does is he says it's not these three
16 and it's not this one or this one. We go by numbers one,
17 two, four, five, six. So he says it's not these three and
18 it's not these two.

19 Q And so, and just so the record is clear since we're not
20 on video, when we say it's not these three, he says it's
21 not. And he goes through as we understand one, two, three,
22 photographs one, two, three. And he says and it's not
23 photograph five and six.

24 A That's correct.

25 Q And then did you tell him, you know, that they're --

John Burgess (In-camera)
Redirect examination by Mr. Barnette

1 that the suspect was in the lineup?

2 A It don't say that.

3 Q Do you remember what you said to Mr. Lammers?

4 A I just simply present any victim or witness of it with
5 the photo lineup. I never tell them that the suspect's in
6 there.

7 I can't tell you exactly what I told him. But simply
8 just we went to his house in Union, I think it was, and just
9 simply said if the suspect's in here, can you I. D.,
10 identify him. And he looked at the photo lineup.

11 Q Okay. And so he identified No. 4, the only person
12 wearing a gray t-shirt.

13 A That's correct.

14 Q Thank you. That's all I have.

15 MR. BARNETTE: Just one or two on followup, Your
16 Honor.

17 REDIRECT EXAMINATION

18 BY MR. BARNETTE

19 Q When you made this lineup did you intentionally pick
20 this one person with the gray shirt and five white shirts?

21 A No, I did not.

22 Q Did you suggest anything showed in these lineups to any
23 of the three photos?

24 A Never.

25 Q I know you said you don't remember what was said in the

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 one or whatever. But do you remember, would you remember,
2 suggesting anybody in the lineup?

3 A Never would say that.

4 Q Would you ever say that you point showing that this is
5 the individual in the lineup?

6 A I'm sorry?

7 Q Would you point to an individual in the lineup showing
8 that to them?

9 A No, never.

10 Q Okay. Would you just merely show them? Is that your
11 procedure?

12 A Yes.

13 Q Thank you.

14 THE COURT: Step down.

15 MR. BARNETTE: Your Honor, I would like to call
16 Ms. Meadows to the stand.

17 BELINDA MEADOWS, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q Ms. Meadows, if you would, state your full name for the
21 record, please.

22 A Belinda Meadows.

23 Q Where do you live at, ma'am, or where, where, where
24 does your mother live at?

25 A 118 Quail Drive.

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 Q Where do you live at, ma'am?

2 A 107 Carolina Drive.

3 Q Back on May the 26th of 2007 was you at your mother's
4 house?

5 A Yes.

6 Q And what was y'all doing down there, ma'am?

7 A We was sitting in the living room talking. The
8 children was outside.

9 Q And what happened while the children was outside?

10 A They came running in the house, and we asked them what
11 was wrong. And they said there was a guy coming down the
12 street --

13 MS. HODGES: Objection to hearsay, Your Honor.

14 THE COURT: Overruled.

15 Q Please continue, ma'am.

16 A -- on a bicycle. It was a strange, they said it was a
17 strange, person that they had never seen in the
18 neighborhood. So when they came in, I got up and I walked
19 over to the door. And I saw him coming down the street on a
20 bicycle.

21 Q And do you see that individual in court today?

22 A Yes.

23 Q Who is it?

24 A It's over there.

25 Q And tell us --

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 THE COURT: Can we narrow that down for the record?

2 MR. BARNETTE: Yes, sir.

3 Q Who is the individual? Can you describe the individual
4 that you're identifying in court, ma'am?

5 A When you say identify --

6 Q What does he look -- is he in court today?

7 A Yes. He sitting there.

8 Q And what is he wearing, ma'am?

9 A He's wearing an orange jumpsuit.

10 Q Is he the gentleman sitting at the table beside the
11 lady?

12 A Yes.

13 Q And what did he do after you saw him go by the house?

14 A He went by the house. He went, he went down. I don't
15 know if he turned the curve or went in the parking lot. I
16 don't know where he went at that point.

17 So when the children was in the house, they wanted to
18 go back outside. So I stood in the door. When they went
19 outside, I was still standing in the door.

20 So we -- my mama got up. She came over to the door.
21 So we went out on the porch because the kids was still
22 frightened that they had saw a strange man.

23 So by that time when we went out on the porch, he came
24 across the church parking lot. He came.

25 There was some boxes that was across the street at

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 another neighbor's house. He went over there and got a box.
2 And he went back behind the church. What he got from back
3 there, I don't know. But he was on that bicycle.

4 He went across the church parking lot, and Mr. Lammers
5 was on his cell phone talking. He was yelling. And my
6 niece went over in the parking lot where he was standing.
7 She was trying to find out what was going on.

8 And he went up the back of the -- it's kind of like on
9 a slant of the parking lot. There's a pass that runs back
10 through the woods. If you didn't live in that neighborhood,
11 you wouldn't know that that pass was back there. My mom has
12 lived there for almost 30 years, or 30 years. And nobody
13 would ever know that that pass is back there.

14 So as he was going through the church parking lot he
15 got right there at the beginning of the pass, and he stopped
16 and he looked back to see if anybody was out there watching
17 him.

18 And that's when Mr. Lammers was standing there in the
19 parking lot with his cell phone. And we were standing on
20 the porch.

21 Q Was that John Lammers, the person that stayed at that
22 house?

23 A Well, I don't know the ones by their names because I, I
24 knew their mother more than I knew them, because my mama
25 used to see her and give her a ride from the grocery store,

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 or home. But I didn't know too much about them. But I knew
2 that was where he had come from because he came from that
3 direction.

4 Q And did you get a good look at his face and everything
5 as he drove in front of your house or in front of your mom's
6 house?

7 A Well, when he came down the street on the bicycle I got
8 a good look at his face, his description, what he had on.

9 Q And of course you was alert to that because --

10 A Because of the children, uh-huh.

11 Q And later on, and your mother was with you too, I
12 believe.

13 A Yes.

14 Q And later on did Investigator Burgess come to you to
15 show you a lineup?

16 A Yes. He showed me, showed me, several pictures.

17 Q Okay. And was this the several pictures she, he showed
18 you on Court's Exhibit No. 4?

19 A Yes. This is what he showed me, uh-huh.

20 Q Did he suggest anything to you or told you to point
21 anybody out?

22 A No, no.

23 Q Did he, did he just merely show you and ask you if you
24 recognized anybody?

25 A He asked me if I thought if I saw some pictures, if I

Belinda Meadows (In-camera)
Direct examination by Mr. Barnette

1 think that I could pick him out if I saw some pictures. And
2 I said sure. And I picked him out.

3 Q But he didn't tell you that person --

4 A He didn't tell me that's who he was at the time that I,
5 I picked him out. I told him, I said, I looked at the
6 picture. And I said I think this is the one right here that
7 I saw here on this corner. And they told me to circle it
8 and write my name beside it, and the time.

9 Q Did they suggest that's the person you should pick out
10 or anything like that?

11 A No, no. They didn't suggest anything.

12 Q Is that the person that you saw that day?

13 A Yes.

14 Q And is that the person you circled?

15 A Yes.

16 Q And you signed and dated it and timed it.

17 A Yes, uh-huh.

18 Q Did -- what was you mostly looking, at the faces in
19 these pictures or anything?

20 A Yes. What made me pick him out, I remember his nose.

21 Q Uh-huh.

22 A That is what stood out on him at the time that I saw
23 him, was his nose.

24 Q Did the shirts or anything have anything to do with it,
25 or was you looking at the facial --

Belinda Meadows (In-camera)
Cross-examination by Ms. Hodges

1 A The shirt that he had on is not what's on this, this
2 lineup here. He had on a red shirt that had a lot of
3 multicolors in it, and some kind of design. I don't know
4 exactly what it was. But I think he had on some bluejeans.
5 And the bicycle was like maybe a teal green or a light color
6 green with a white stripe. And I think it was a girl's
7 bicycle. So, yeah.

8 Q But just merely because his shirt may be different, did
9 you pay any attention to that?

10 A No, no. I wasn't paying any attention to what they had
11 on in this picture. I was focusing on his facial feature.

12 Q Thank you, ma'am. Please answer any questions
13 Ms. Hodge or the judge may have for you.

14 CROSS-EXAMINATION

15 BY MS. HODGES

16 Q Ms. Meadows, say, for example, that you're, where
17 you're, sitting is where you, the front porch of your home,
18 your mother's home --

19 A Uh-huh.

20 Q -- where in relationship to where you're sitting would
21 Mr. Lammers' home have been?

22 A My mom stays on the corner.

23 Q Okay.

24 A She's the last house on that corner.

25 Q Corner of Quail and --

1 A Quail and Carlton Court.

2 Q Okay.

3 A When you turn that corner if you look to the right of
4 her yard, there's Ms. Dianne's house. And on the other side
5 of Ms. Dianne's house there is the Lammers' house.

6 Q Okay. And is that across the -- when you say you turn
7 the corner --

8 A You have to turn the corner. You have to cross the
9 street, but it is in eye vision.

10 Q Okay. So, so if you're in the front, in the, the
11 street, the front porch where you were standing, would it be
12 if you turn the corner, be coming around the corner this way
13 as heading out this door from the courtroom?

14 A It would be to the right.

15 Q Okay. So then you're actually -- and Ms. Dianne's
16 house is that on the, basically across the street.

17 A Yes.

18 Q Okay. So you've got Ms. Dianne's house almost
19 immediately across the street at the corner.

20 A Yes.

21 Q And then kind of heading back towards this way would be
22 Mr. Lammers' house.

23 A The Lammers' house is on the other side.

24 Q Okay. Which other side, to the right or to the left of
25 Ms. Dianne's house?

Belinda Meadows (In-camera)
Cross-examination by Ms. Hodges

- 1 A Well, it all depends on how you're facing.
- 2 Q Okay. But I'm saying, say this is Dianne's house right
- 3 here.
- 4 A Uh-huh.
- 5 Q You've told us that this is Dianne's house.
- 6 A Uh-huh.
- 7 Q Is Mr. Lammers' house this table here in front of the
- 8 court reporter stand or is it more towards the door of the
- 9 courtroom, this back door?
- 10 A It's on the, it's on the side.
- 11 Q So it's more --
- 12 A It's on the side.
- 13 Q So it would be like, it would be like where the judge
- 14 is sitting.
- 15 A Yes. It's on the side.
- 16 Q Okay. All right. How far in terms of distance would
- 17 you say it is from where you were standing to Mr. Lammers'
- 18 house? Is it as far as from where you're sitting to the
- 19 back of the courtroom, or to the front of the courtroom
- 20 rather?
- 21 A I would say so.
- 22 Q Okay.
- 23 A You can see it.
- 24 Q Is it any farther than that?
- 25 A I don't think so.

Belinda Meadows (In-camera)
Cross-examination by Ms. Hodges

1 Q Okay. Now, the church and the path that, that, that
2 you're seeing somebody on, where is that in relationship to
3 Mr. Lammers' house?

4 A That's in the back of the Lammers' house.

5 Q So kinda, so if where the judge is sitting, and having
6 the judge facing us here, is kind of the front of the
7 Lammers' house, it's going to be on the back side of the
8 house.

9 A It's going to be on the back side of the parking lot.
10 That's on the back side of the Lammers' house.

11 Q Okay. And this person riding the bicycle, was he
12 riding the bicycle on the street that kinda goes up, you
13 know, at the corner there between your mom and -- or was he
14 actually riding back kind of behind the yard and behind the
15 Lammers' house?

16 A Well, when, when I saw him --

17 Q Uh-huh.

18 A -- when he came down the street, he was in the street.

19 Q Okay. And which direction on the street was he coming
20 from?

21 A When I saw him he came down Quail.

22 Q Okay. Coming down Quail this way?

23 A Down Quail.

24 Q Or coming, and so passing in front of you?

25 A Passing in front of me. He came down Quail.

Belinda Meadows (In-camera)
Cross-examination by Ms. Hodges

- 1 Q Okay.
- 2 A Now, when he got to that, I don't know where he went.
- 3 Q Okay. So then you see him a second time after you come
- 4 back out again.
- 5 A Uh-huh.
- 6 Q Okay. And where is it you see him the second time?
- 7 A The second time he came up the street. He went to some
- 8 boxes that -- across the street, there's a house in front of
- 9 my mom's. And then there's another house.
- 10 Q Across the street. So he came back up. He was on
- 11 Quail Street again.
- 12 A Quail Drive, yes.
- 13 Q Quail Drive. I'm sorry.
- 14 A There's a house that faces my mom, and there's a house
- 15 next to it.
- 16 Q Okay.
- 17 A The people there had put some boxes, some things, out
- 18 on the side of the road.
- 19 Q Okay.
- 20 A And he went up there and he got a box.
- 21 Q Okay.
- 22 A He went back down. He went behind the church.
- 23 Q Okay.
- 24 A And there's, I know there's, a dumpster back there.
- 25 Q Okay.

1 A So what when he went --

2 Q You don't know what he was doing.

3 A So what he did when went back there, I don't know what
4 he did. But when he came out he went across the parking
5 lot. And he had something up under his arm.

6 Q Okay. You don't know what he had under his arm.

7 A Don't know what he had up under his arm, but it was a
8 box.

9 Q Okay. When Investigator Burgess came to your house to
10 show you the pictures, I want to make sure that I understand
11 to the best of your recollection what it is he said to you.
12 What I heard you say was, "If I showed you some pictures, do
13 you think you could pick that man out?"

14 A Yes.

15 Q Okay, okay. And then when you looked at the
16 photographs, you told him that you thought that was the one.

17 A Yes.

18 Q Okay. And it was his nose that you remembered.

19 A Yes.

20 Q What is it about his nose that you particularly
21 remember?

22 A It's, it's long here.

23 Q Okay.

24 A It's made different. I mean, it's long.

25 Q So it's long. Basically, kind of from the forehead to

Belinda Meadows (In-camera)
Cross-examination by Ms. Hodges

1 the tip of the nose, it's longer.

2 A Yes.

3 Q Okay. Anybody in those photographs have long noses?

4 A Several of them do have long noses, uh-huh.

5 Q Okay, okay. And then there are a couple that, that
6 like this was guy right next to the one that you picked,
7 he's kinda got a shorter bumpier nose, right?

8 A Yes, but his face is fatter. So I knew that was not
9 him.

10 Q Okay, okay. And then based on the only other thing
11 that you remembered about him then, would have been what
12 his --

13 A Well, his --

14 Q Other than his nose, his clothing and the girl's bike
15 that he was riding.

16 A Yes.

17 Q Okay. You never saw him in Mr. Lammers' house or
18 coming out of Mr. Lammers' house.

19 A No. I didn't.

20 Q Thank you Ms. Meadows. That's all I have.

21 MR. BARNETTE: Just one question on followup, Your
22 Honor.

23

24

25

Belinda Meadows (In-camera)
Redirect examination by Mr. Barnette

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q When Mr. Lammers was on the phone, did the police
4 shortly come after that?

5 A I think they -- it took them a while to get there, but
6 they came.

7 Q And did you see them come to his house or to talk to
8 him?

9 A They, they were there, uh-huh.

10 Q Thank you, ma'am.

11 THE COURT: And let me ask you.

12 What did you remember about his clothes? What did you
13 notice about his clothes?

14 THE WITNESS: He had on a red shirt. It had some
15 multicolors in it. It's some kind of design. It wasn't a
16 polo type shirt. It was a shirt. It had a collar on it, a
17 cotton shirt. It had a collar on it.

18 THE COURT: Is that all you noticed?

19 THE WITNESS: It had, it had several colors. It, it
20 wasn't a stripe shirt. It had a lot of colors in it.

21 THE COURT: Did you just notice the shirt?

22 THE WITNESS: It was a button-down front shirt, short
23 sleeve.

24 THE COURT: Did you notice any other clothing?

25 THE WITNESS: He had on some denim. I want to say it

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 was some bluejeans.

2 THE COURT: Anything else?

3 THE WITNESS: I don't know what, I don't know. He had
4 on some tennis shoes, but I can't recall what color that
5 they were. But I think they were a dark color.

6 THE COURT: Anything else?

7 THE WITNESS: No. I think.

8 THE COURT: Okay. Anything else?

9 MR. BARNETTE: Nothing else, Your Honor.

10 MS. HODGES: No, sir.

11 THE COURT: Okay. Step down. Thank you.

12 MR. BARNETTE: We would ask this witness be excused.

13 MS. HODGES: No objection.

14 THE COURT: She may be.

15 (Whereupon, the witness was excused.)

16 MR. BARNETTE: Your Honor, I would like to Mr.

17 Mr. Basnet to the stand.

18 ANKIT BASNET, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BARNETTE

21 Q If you would, sir, state your full name for the record.

22 A Yes, sir.

23 Q Could you state your name for the record, please?

24 Could you tell us your name, sir?

25 A My name is Ankit Basnet.

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 Q Mr. Basnet --

2 THE COURT: Let's spell both first and last names,
3 please.

4 THE WITNESS: A-N-K-I-T B-A-S-N-E-T.

5 Q And what state do you live in right now, sir?

6 A Massachusetts, Springfield.

7 Q If you would talk, up a little bit louder so she can
8 hear. Okay?

9 A All right.

10 Q And you back on June -- May the 26th of 2007, where did
11 you live at then, sir?

12 A With my uncle at Boiling Springs.

13 Q And did he own a Texaco station here in town?

14 A Yes, sir.

15 Q Was it the one across from the post office on West
16 Henry Street?

17 A Yes, sir.

18 Q And what did you do at that Texaco station, sir?

19 A He called me to help him because he just owned the
20 place. So I came here to help him. My --

21 Q Okay. If you would, repeat that answer, and talk loud
22 enough and clear enough so she can hear you.

23 A He called from, from the Massachusetts to help him
24 because that's, that's, that's his first business. That's
25 why I came here, to help him for his business.

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 Q Did you work as a clerk in the store?

2 A Yes, sir.

3 Q And was you working on the night of May 26th of 2007?

4 A Yes, sir.

5 Q And that night did you see an individual shoplift?

6 A Yes, sir, I do.

7 Q And do you see that individual in the courtroom today?

8 A Yes, sir.

9 Q And is, can you describe where, can you say where he is
10 right now and show where he is?

11 A He is, he is with the orange t-shirt and pants, I
12 guess.

13 Q Is he the gentleman sitting beside the lady at the
14 table?

15 A Yes, sir.

16 Q That night when he came in, if you would, tell the
17 Court what happened that night when he came in the store.

18 A That night I was taking care of my customer. And the
19 guy who is sitting over there, he came, he came. And he
20 look at me first. He came just by my side. And he look at
21 me first.

22 And then he went to the cooler. And I noticed that the
23 guy, I know that he, he was going to do something in my
24 sights. So, so, so I was, I was looking at him. So he grab
25 a case of Budweiser. It was a 24-case of Budweiser.

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 And he look at me. And he went, he went outside. And
2 I ran. I ran and chase him. And he swing that Budweiser in
3 front of my face. So and then he, he told me that I don't
4 care. I said, okay, I'll call the 9-1-1. And that's
5 whenever I came inside the store. I call 9-1-1. And they
6 came after like ten minutes.

7 Q Was he, did he ride off on a bicycle?

8 A Yes, sir, he do. It was a lady's bicycle. I don't
9 remember the color. It was green or something like that,
10 because it was dark. Therefore, I don't remember.

11 Q And was he wearing a ball cap, a baseball cap?

12 A Yes, sir, he was. He was wearing a cap. It was front.
13 And then he was wearing a t-shirt, red t-shirt, with a white
14 stripe and blue shorts and, and shoes, black shoes.

15 Q Black shoes he was wearing.

16 A Yes, sir.

17 Q And did, was there a video taken in the store?

18 A Yes, sir.

19 Q And was that video later viewed by the police?

20 A Yes, sir.

21 Q And have you seen that video?

22 A Yes, sir.

23 (C. D. marked Court's Exhibit No. 6.)

24 Q Let me show you what's been marked Court's Exhibit No.

25 6. Is this a copy of the video from the store from the

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 shoplifting?

2 A Yes, sir.

3 Q Okay. And does this, and you've seen this video.

4 A Yes, sir, I do.

5 Q Does this fairly represent what you saw that night?

6 A Yes, sir.

7 MR. BARNETTE: Your Honor, I'd just like to enter it
8 as Court's Exhibit No. 6 just for the purposes of this
9 hearing and that it be reviewed.

10 THE COURT: Okay.

11 MR. BARNETTE: We can show it now or let the Court
12 review it at its own time.

13 THE COURT: Okay. We'll review it later unless you
14 need to show it to him now.

15 MR. BARNETTE: I don't think for purposes of this
16 hearing, Your Honor. It may be relevant for the next
17 hearing. But for this part, motion, I don't think it is.

18 Q Later on did Investigator Burgess come to see you, sir,
19 this gentleman right here?

20 A Yes, sir. That gentleman with another gentleman.
21 There was two of them, I guess.

22 Q And did they show you some pictures?

23 A They showed me these pictures. And they, they told me
24 to point out the person whom you saw. So I pointed at this
25 man, and I circled it. And I, I wrote down my name and

Ankit Basnet (In-camera)
Direct examination by Mr. Barnette

1 time and date.

2 Q Okay. Did they suggest anything to you or say, you
3 know, this is the person or anything like that?

4 A No, sir; no, sir; no, sir.

5 Q Did they just merely show you the lineup?

6 A Yes, sir.

7 Q Okay. And did you pick the person that you saw that
8 day?

9 A Yes, sir.

10 Q And did they suggest in any way that person was this
11 person or was in here or anything like that?

12 A No, sir, no.

13 Q So the person that you circled and signed your name and
14 dated to was the person that you saw that day.

15 A Yes, sir.

16 Q Did you look at the faces of these individuals, or did
17 the clothing have anything to do that they're wearing in the
18 pictures?

19 A I don't have to look at it, because I knew this guy who
20 assaulted (sic) my when I was working. So when I look at
21 the picture, I pointed this guy without any hesitation.

22 Q So that was definitely the person. And it was based
23 off his face.

24 A Yes, sir.

25 Q It wasn't based off the clothes that's in this picture,

Ankit Basnet (In-camera)
Cross-examination by Ms. Hodges

1 the t-shirts or anything like that.

2 A No, sir, no.

3 MR. BARNETTE: One moment, Your Honor, please.

4 (Pause.)

5 Q Please answer any questions Ms. Hodges or Judge Cole
6 would have for you, sir.

7 CROSS-EXAMINATION

8 BY MS. HODGES

9 Q It is Basnet, is that the correct pronunciation?

10 A Yes, ma'am.

11 Q Mr. Basnet, you actually spoke to some police officers
12 the night that you called in the shoplifting, right?

13 A Yes, ma'am.

14 Q And you would agree with me that the night that you
15 called in the shoplifting your memory of that event was much
16 fresher in your mind than it would be a couple of days later
17 or even a year or so later, is that right?

18 A Yes, ma'am.

19 Q Okay. Do you remember giving a description to the
20 police officers about what the person was wearing that
21 night?

22 A I don't remember. I guess I do.

23 Q Okay. Do you remember telling the police officers that
24 the person that had the Bud light was the person that was
25 wearing a green shirt?

Ankit Basnet (In-camera)
Cross-examination by Ms. Hodges

1 A Budweiser, no.

2 Q Huh? I'm sorry.

3 A No, no, no. I didn't say the green shirt.

4 Q You did not say green-shirt.

5 A No, ma'am.

6 Q And you didn't say a baseball cap, black baseball cap
7 worn backwards.

8 A No, ma'am.

9 Q All right. Do you have any explanation as -- I mean,
10 if the officer wrote that down in the report, a green shirt
11 and a black baseball cap, is there anybody else that was
12 there?

13 A No, ma'am.

14 Q So the only person they would have been getting a
15 description from would have been you.

16 A Yes, ma'am.

17 Q Okay. Did the police officers take the video tape that
18 night of the, of the shoplifting?

19 A That night, no. I called the police officer. They
20 came there. And he, he watched the video tape first. And
21 then he came tomorrow, tomorrow, that day. And then, and
22 then they took the video tape.

23 Q Okay. So the night that you called it in, because it
24 was around almost midnight when you called it when it
25 happened, right?

Ankit Basnet (In-camera)
Cross-examination by Ms. Hodges

1 A Not at midnight. I don't remember the time. But it
2 should be like between 7:00 to 9:00 p.m.

3 Q Between 7:00 and 9:00 p.m.

4 A Yes, ma'am.

5 Q How many shoplifting incidents occurred at that store
6 that night?

7 A Just, just one.

8 Q Just one.

9 A Yes, ma'am.

10 Q Do you have an explanation as to why the police would
11 write down that it happened at 11:30 that night?

12 A No.

13 Q No. So are you sure that it happened between 7:00 and
14 9:00, or could it have happened at 11:30?

15 A I don't remember the time.

16 Q Okay, okay. And if you don't remember, just tell us
17 you don't remember.

18 So the police officer came, but he did not take the
19 video tape that when he, the first time, just after it
20 happened when they first reported to the store to take your,
21 your description, the police officer did not take a video
22 tape that day.

23 A He watched the video tape. He didn't.

24 Q He watched it, but he didn't, didn't get a copy of it
25 or anything.

Ankit Basnet (In-camera)
Cross-examination by Ms. Hodges

1 A No, ma'am.

2 Q Okay. But he did watch it to try and see who it was.

3 A Yes, ma'am.

4 Q Okay. And then when did they come and get a copy of
5 the video tape from you?

6 A I don't remember. Maybe tomorrow or that night. I
7 don't remember that.

8 Q Okay. So you think it might have been the next day,
9 but you're not sure.

10 A Not sure.

11 Q Okay. And you don't have any explanation as to why if
12 you saw somebody in a red shirt, why the officer would write
13 in a green shirt.

14 MR. BARNETTE: Your Honor, I would object at this
15 time. Asked and answered.

16 THE COURT: Sustained.

17 Q Thank you, Mr. Preston.

18 MS. HODGES: That's all I have, Your Honor.

19 MR. BARNETTE: No further questions, Your Honor.

20 THE COURT: You may step down.

21 MR. BARNETTE: I would like to call Mr. Lammers to the
22 stand, Your Honor.

23

24

25

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 DAVID LAMMERS', having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q Mr. Lammers, if you would state your full name for the
5 record, please.

6 A David Ray Lammers.

7 Q And where do you work at, sir?

8 A Right now I'm a civil service employee for military
9 sealift command up in Virginia Beach, Virginia.

10 Q And where are you stationed at, sir?

11 A I'm stationed out of the West Coast. The West Coast
12 branch office is San Diego, California, at the submarine
13 base.

14 Q So you can be assigned anywhere in the Pacific area,
15 the Pacific ocean.

16 A Yes. That's correct.

17 Q Back on June the 1st of 2007 was you staying with your
18 brother here in Spartanburg?

19 A Yes, I was.

20 Q Okay. And during -- were you staying with him that
21 night? If you would tell the Court what happened.

22 A Well, it was -- I recall I had been up watching a,
23 watching a movie. And I got up to go to bed. And I made
24 sure the front door was locked. And I went in the kitchen
25 and made sure the kitchen door was locked and the windows

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 were down.

2 And I turned on, I made sure the back porch light was
3 on. And I looked out the back door. And I noticed that
4 the, that the stepladder, and I think it's about 6 feet
5 tall, was on the, was on the right-hand side of the back of
6 the house.

7 And then I left. I left the kitchen. I walked in
8 there. I remember I looked in the back bedroom where my
9 brother was, and he was on the computer. And the television
10 was on.

11 And then I left. I didn't say. I don't recall if I
12 said anything to him or not. Okay. So I shut the door. I
13 went in my room. And I locked the door. And I went to
14 sleep.

15 And the next thing I know, I heard him. I woke up, and
16 I heard him calling my name. And he sounded real frantic.
17 And I got up. And I didn't know what to expect when I went
18 in there. And I knew there was a samurai sword of mine that
19 was in the closet, you know, in front of the bed. And I
20 grabbed that samurai sword and opened my door.

21 I went into the little hallway that's between my room
22 and his. And I opened the door and I looked in there. And
23 I seen my brother fighting with this guy, and he was on the
24 floor and this guy was on top of him.

25 And I dropped the sword. I ran over there and I

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 grabbed this guy and I pulled him off my brother. I said go
2 call 9-1-1. And I'm wrestling around with this guy. And
3 we're sort of falling everywhere.

4 We're on the floor. As I was trying to get up, I'm
5 holding this guy by his wrist, and, you know, and I fell
6 back. Excuse me. I don't recall if I fell back or if he
7 pushed me back or what. But I fall back on the bed. And I
8 look up. And this guy tells me, says, if you don't let me
9 go, I'm going to shoot you. I couldn't tell if he had a gun
10 or not, or what. And I could --

11 Q Let me stop you there for a second, sir. Do you see
12 the person in the courtroom today?

13 A Yes, I do.

14 Q Can you tell me where he's at?

15 A He's sitting over there next to the defense attorney.

16 Q Is he the man that's sitting at the table there?

17 A Yes, he is. He's wearing the orange prison coveralls.

18 Q If you would, continue, sir.

19 A Yeah. Well, I could hear my brother. Keep in mind
20 when I grabbed, pulled this guy off my brother and I told
21 him to call 9-1-1, my brother ran out of the room.

22 And, and I could hear my brother. He's in the kitchen
23 on the phone. I could hear him talking to somebody. He
24 keeps saying something about he can't breathe or something
25 like that. I don't recall his exact words.

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 And I'm starting to lose my grip on this guy anyway.
2 And it's obvious my brother needs help. So I let go of the
3 guy. And I start chasing after him. And I stopped and
4 picked up the samurai sword real quick. And I went running
5 out of my brother's room, and ran down the hallway.

6 As I got into the living room I turned and I went into
7 the kitchen. There's my brother. He's laying there on the
8 floor in front of the stove with the phone in his hand
9 talking to the 9-1-1 operator.

10 And I go running out the back door real quick. I look
11 around, and I don't see nobody. It's obvious I've got to
12 stay with my brother. I turned around, and I looked.

13 And I run over there and I get the phone away from him.
14 And I started talking to the 9-1-1 operator on the phone. I
15 says where is that ambulance, I need it. And they say,
16 well, it's on the way. I said, well, you know. I don't
17 remember all my exact words. But I said it's, you know,
18 it's not doing me good, I need it here now.

19 I mean, here's my brother. He's laying on the floor in
20 front of me all covered with blood. And I don't know if you
21 ever saw the move "Carrie" or not where Sissy Spacek has got
22 blood all over her. Well, he looks like this. And it's a
23 hell of a lot worse because this is real.

24 And the 9-1-1 operator says, well, try to control the
25 bleeding. And there was a dishcloth or something there. I

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 forget exactly. And I started trying to use it to control
2 the bleeding. But, I mean, there's just so much blood, I
3 don't know where -- I can't tell any exact one spot that
4 it's coming from.

5 And the phone had one of the really long cords on it.
6 And if I recall correctly, I told the 9-1-1 operator. I
7 said I'm going to go in the living room and get the cordless
8 phone.

9 So I go in the living room. I get the cordless phone.
10 And I start talking to the 9-1-1 operator. And I keep
11 telling her, I said I need that ambulance, my brother needs
12 it. And they said, well, it's on the way. And I believe
13 that's the time they asked me if the intruder was still in
14 the house. And I said, I said, no, he's not.

15 And I kept insisting I needed the ambulance. And I
16 said my brother is hurt. They said try to control the
17 bleeding. And I said, well, it's just too much. I said I
18 don't know where all it's coming from.

19 Q Let me stop you there for a second, sir, going back.
20 After that I know that -- did the ambulance arrive and
21 everything after that?

22 A Yes. The ambulance and the police both arrived.

23 Q And did the police later talk to you about this case?

24 A Yes.

25 Q And did they show you a photo lineup in this case?

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 A Yes, they did.

2 Q Okay. Let me show you what's been marked as Court's
3 Exhibit No. 3. Was this the lineup they showed you, sir?

4 A Yes, it is; yes, it is.

5 Q And when they showed you that lineup was Investigator
6 Burgess one of the officers that showed you that lineup?

7 A If I recall correctly, yes, he was.

8 Q And did he suggest anybody in the picture? Did he
9 point anybody you should pick out or anything like that?

10 A No, he didn't.

11 Q Did he just merely show you the lineup to see if you
12 recognized anybody in the lineup?

13 A If I recall correctly, yes, he did.

14 Q What happened once they handed the lineup to you, sir?
15 What did you do?

16 A Well, No. 4 there, the one that I circled and signed,
17 that struck me as he was the, the man that I fought with in
18 the house.

19 Q And did you circle that individual?

20 A Yes, I did.

21 Q And did you sign and date that?

22 A Yes, I did.

23 Q Now, did they ask you later are you sure that's the
24 individual? And what did you say, sir?

25 A I said I was 50 percent sure.

David Lammers (In-camera)
Direct examination by Mr. Barnette

1 Q Why did you say that?

2 A Well, it had been a few hours since it happened. I
3 mean, it wasn't an immediate thing that they showed me the
4 lineup. It was a few hours later at my sister's house.
5 And, you know, details of what happened was, you know,
6 needless to say, starting to slip.

7 Q But did you immediately pick this person out?

8 A Almost immediately if I recall correctly, yes.

9 Q And was that the individual? Is that the individual
10 you saw that night?

11 A Yes, he is.

12 Q Did any of the clothing -- did you look at his face,
13 the faces of these individuals? Did you look at any of the
14 t-shirts or anything? Did that draw any attention to you?

15 A No. It was -- no. It was the faces.

16 Q And just for the Court's information, the samurai sword
17 that you talked about, is that a real sword or is that an
18 ornament?

19 A No. It's just an ornament. It wouldn't cut hot
20 butter.

21 MR. BARNETTE: One moment, Your Honor, please.

22 (Pause.)

23 Q Please answer any questions that Ms. Hodges may have
24 for you or the judge may have for you, sir.

25

David Lammers (In-camera)
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q My Lammers, my understanding is that you were able to
4 talk with the police very soon after they took your bother
5 to the hospital.

6 A Yes.

7 Q And it was there at the police department, is that
8 correct?

9 A Yes.

10 Q And my understanding of the description that you gave
11 to the police officers at the time is that the person was
12 approximately 6'2" in height and that he was somewhere
13 between -- and your statements actually vary at different
14 times, but basically somewhere between 200 and 220 pounds,
15 is that correct?

16 A If I recall correctly, yes.

17 Q Because, in fact, you told the officers that you were
18 about 195 pounds and that he was bigger than you.

19 A I think so, yes.

20 Q Okay. And, in fact, you were able to tell them that he
21 had on a pocketed type t-shirt and that it was either blue
22 or light blue in color, is that right?

23 A Yes.

24 Q Okay. And the -- when Investigator Burgess showed you
25 the lineup you were able to tell him.

David Lammers (In-camera)
Cross-examination by Ms. Hodges

1 MS. HODGES: If I may approach the witness, Your
2 Honor.

3 Q In fact, you were able to tell him. Which one was the
4 one that -- this is yours. Okay. You were able to tell him
5 that you knew it wasn't one, two or three, or basically
6 wasn't any one of these three. And you also told him it
7 wasn't either one of these two, right?

8 A That is correct.

9 Q Okay. And that you were 50 percent sure that it was
10 this one.

11 A Yes.

12 Q Okay. Do you remember specifically what the
13 investigators asked you when they, when they showed you the
14 lineup, what they said to you in showing you the lineup?

15 A No, I don't.

16 Q Okay.

17 MS. HODGES: Your Honor, in terms of this hearing,
18 those are all the questions I have for Mr. Lammers. Thank
19 you.

20 THE COURT: Okay. You may step down.

21 MR. BARNETTE: Your Honor, that would be the state's
22 showing on this motion.

23 THE COURT: Okay. Ms. Hodge.

24 MS. HODGES: Your Honor, we don't have any testimony
25 to present in addition for the Court.

1 THE COURT: Okay. Well, based upon the testimony I've
2 heard, I do not find that the identification of the
3 defendant by any of the witnesses who have testified and
4 made an in-court identification was based upon any
5 impermissibly suggestive -- excuse me -- impermissibly
6 suggestive procedure. And, in fact, the procedure employed
7 by the use of a lineup was ~~not suggestive at all~~.

8 So the witnesses will be permitted to make an in-court
9 identification of the defendant.

10 MS. HODGES: Thank you, Your Honor.

11 THE COURT: Okay.

12 MS. HODGES: Your Honor, as to our motions in limine,
13 the first one would be that we would actually move to
14 preclude any testimony regarding the burglary that occurred
15 at the Lammers' residence on May the 26th of 2007.

16 Any description that's -- that would be able to be
17 proffered in terms of the person that was actually inside
18 Mr. John Lammers' home at this point would be based on
19 hearsay. Basically, all it's going to be would be Mr. John
20 Lammers' description of the person that was in the home.

21 And, in fact, Mr. Lammers was further not able to
22 identify the person that entered his home when he was asked
23 later, and therefore and the case actually had been closed.

24 We also, so, number one, we don't think there should be
25 any description in terms of who he sees in this home that I

Motion

1 think should be allowed to come in because it violates the
2 hearsay provisions.

3 Secondly, I think that it's irrelevant to the
4 determination of any of the issues that occurred in the
5 June the 1st stabbing and were irrelevant and more
6 prejudicial than probative and, quiet frankly, based on some
7 of the testimony we heard today in terms of the differences
8 of the clothing description, now we have a fact, testimony
9 that the shirt is not striped, that it is not a polo shirt,
10 that it is a button-down cotton shirt with a collar in a
11 pattern that would definitely be misleading to the jury,
12 because it does not match the description that was given to
13 the police on 5/26 or what's seen in the Texaco video.

14 MR. BARNETTE: Your Honor, I think it definitely goes
15 to the identify.

16 I mean, you've got an individual that's been I. D.'d in
17 that neighborhood that was in the location. Mr. Lammers
18 runs out of his house afterwards with the phone to report
19 obviously a burglary that was, had occurred there.

20 We have a witness that saw this individual. He's
21 riding that bicycle as described, a woman's bicycle. I
22 think both of them said green or teal in there.

23 I think the Court specifically asked Ms. Meadows what
24 he was wearing, and she said bluejeans, dark shoes, a shirt.
25 She describes him and also I. D.'s him out of a lineup.

1 The same lineup was shown to the clerk at the Texaco
2 station. He does the description, and it's very similar to
3 her description. There's also a video. I have not shown it
4 to the Court, but it is in as a court's exhibit, for part of
5 it that shows his bluejeans, his black shoes, his white
6 socks, his cap that he is wearing. That person is I. D.'d
7 as Howard Sims. He's shown the lineup. He I. D.'s that
8 individual. Later on Mr. Lammers also --

9 THE COURT: You say he I. D.'d. Who, who are we
10 talking about?

11 MR. BARNETTE: The clerk at the Texaco.

12 THE COURT: Oh, well, as I understand it she's --
13 you're asking to exclude --

14 MS. HODGES: My motion in limine --

15 THE COURT: -- the identification by John Lammers.

16 MS. HODGES: Yes, sir. I'm putting any testimony that
17 John Lammers identifies any person being in his home in a
18 red and white stripe shirt as hearsay.

19 MR. BARNETTE: No, no. Well, I guess --

20 MS. HODGES: And it's irrelevant to this, to the
21 charge that my client is on trial for.

22 MR. BARNETTE: It's just his --

23 THE COURT: Wait a minute. We've got to take turns
24 here. Now, let's do this one at a time.

25 MR. BARNETTE: I'm sorry, Your Honor.

Motion

1 THE COURT: All right. I understand you're moving to
2 exclude any identification made by John Lammers, the
3 deceased.

4 MS. HODGES: As to the deceased as to the person that
5 was in his home on May the 26th.

6 THE COURT: May the 26th. Okay.

7 MR. BARNETTE: I'm sorry, Your Honor. I thought we
8 was talking about the incident. I wasn't thinking --

9 THE COURT: We're talking about the May the
10 26th burglary and identification by Mr. John Lammers.

11 MR. BARNETTE: Okay. Your Honor, first, I don't think
12 there was ever identification. I think it's a
13 description --

14 THE COURT: Well, you're not intending to introduce
15 any identification by Mr. Lammers, John Lammers?

16 MR. BARNETTE: John Lammers. It would just be the
17 description that he gave, what clothes he was wearing and
18 so forth.

19 THE COURT: Well, that's what she's moving to
20 suppress. That's what I need to address.

21 MR. BARNETTE: Okay. Your Honor, I don't think that
22 would be hearsay in this case. It's not offered for the
23 truth of the matter. It's offered for the reason why the
24 police was called to the scene and so forth in that
25 situation.

1 THE COURT: So you don't intend to use it for the
2 purpose of identifying the defendant?

3 MR. BARNETTE: Well, I'd like to use it for
4 identification in this situation. It does go to the
5 identity.

6 THE COURT: Well, it would go to prove the truth of
7 the matter asserted.

8 MR. BARNETTE: Yes, sir.

9 THE COURT: So is there some exception or reason why
10 it shouldn't be allowed?

11 MR. BARNETTE: No, sir, other than, other than showing
12 why the police came to the scene afterwards and did a
13 police report concerning that.

14 THE COURT: Well, I think that's unnecessary to show
15 why the police showed up. I mean, they can testify they
16 were conducting an investigation.

17 The issue is simply whether or not Mr. Lammers'
18 description can be introduced. Now, and of course
19 Ms. Hodges says it's hearsay. So is there some exception?

20 MR. BARNETTE: Not that I know of, Your Honor, in this
21 situation.

22 MS. HODGES: Your Honor --

23 THE COURT: All right. Then that description will be
24 excluded.

25 MS. HODGES: And my motion actually goes a little bit

Motion

1 further, Your Honor, in the fact that there's not to be any
2 reference to the fact that there was a burglary or
3 break-in, because that too also is based solely on the --
4 would have been based solely on the testimony of Mr. John
5 Lammers because nobody else is able to say that they saw
6 anybody in the home of Mr. Lammers.

7 THE COURT: Well, is that relevant in this case?

8 MR. BARNETTE: What's that, Your Honor?

9 THE COURT: Is the burglary relevant in this case?

10 MR. BARNETTE: Yes. Well, I think that Mr. Lammers
11 calling the police and why there was a response to it
12 concerning the situation, I think it is, Your Honor,
13 because it goes to identify, the prior crime does, because
14 another thing, and I could put up additional testimony
15 about this, but there was a knife that was found at the
16 scene on June the 1st. That knife was missing after the
17 May the 26th thing. That was Mr. David Lammers' that was
18 taken. That knife was gone and was later found in the
19 house with blood on it. It was used in the stabbing of the
20 victim in this case.

21 MS. HODGES: Your Honor --

22 THE COURT: Tell me that again. I missed that
23 somewhere.

24 MR. BARNETTE: Well, it had not. I could put the, the
25 evidence up, Your Honor, but there was a knife. It didn't

Motion

1 come up in any of the previous motions. But there was a
2 knife that was found at the scene.

3 THE COURT: There was a knife found at the scene on
4 June the 1st?

5 MR. BARNETTE: June the 1st.

6 THE COURT: All right.

7 MR. BARNETTE: That is in this case David Lammers'
8 knife that was missing after the incident on May the 26th.

9 THE COURT: All right. In other words, David Lammers
10 will testify he had a knife in the residence on May the
11 26th that was taken in the burglary.

12 MR. BARNETTE: Yes, sir; yes, sir.

13 THE COURT: And it was missing until it reappeared on
14 June the 1st during this incident?

15 MR. BARNETTE: Yes, sir.

16 THE COURT: Well, if that's the case, Ms. Hodges, that
17 evidence, that testimony tends to prove the identity of the
18 defendant as the assailant on the June the 1st incident.

19 MR. BARNETTE: Your Honor, I can put Mr. Lammers up to
20 put that evidence in. That's what the state would show.

21 MS. HODGES: This is all new to me, Your Honor.
22 That's not included in any of the discovery that's been
23 provided to me in terms of --

24 THE COURT: All right. Well, then y'all need to
25 discuss that, and we'll address that later on.

Motion

1 MS. HODGES: Yes, sir.

2 Your Honor, a second motion in limine is dealing with
3 the shoplifting charge.

4 We would object obviously to any testimony regarding
5 the fact that, because Mr. Sims was charged with shoplifting
6 as a result of the incident. He was -- but we would
7 actually object to the actual shoplifting charge being, due
8 to the fact that he was charged with it.

9 You know, we would also object to any testimony
10 identifying him as the person doing the shoplifting because
11 there is a great discrepancy as to the person who actually
12 is identified in terms of the description. And we feel that
13 that's, you know, that simply is not relevant to a murder
14 charge for which he is on trial at this point.

15 MR. BARNETTE: Your Honor, I think it's very relevant.
16 It goes to identify from that standpoint in this case. And
17 if I remember right, Mr. Basnet's description is right. He
18 disagrees with what the police wrote in the police report.
19 And obviously the video tape comes in or the video tape has
20 been entered as a court's exhibit.

21 It shows the items that was described that he was
22 wearing in this situation and still had on the same clothing
23 for the cap, the pants, the socks and the shoes that was
24 seen by Investigator Steadman at a later time and described
25 in that case.

1 So it definitely goes to identity. And I think it
2 should be relevant from that standpoint.

3 MS. HODGES: Your Honor, we'd argue they may be
4 similar clothing, but, I mean, there's no proof that it's
5 the same identical clothing.

6 MR. BARNETTE: Your Honor, I would disagree, and I'll
7 be glad to show the video to you on there, especially the
8 bluejeans. They are very distinct on how they look and how
9 they look on the video and how they looked when -- we also
10 have them here also.

11 THE COURT: All right. Well, I'll look at the video
12 and then I'll rule on that issue.

13 MS. HODGES: Your Honor, we would object to -- the
14 third motion in limine would be that we would ask the Court
15 to preclude any testimony regarding the fact that Mr. Sims
16 was arrested on any other warrants in front of the jury.

17 We think that that's irrelevant. It's improper under
18 Rule 404 and it's unfairly prejudicial under Rule 403. He
19 was actually arrested on several warrants in addition to
20 violation of probation warrants served on him on his actual
21 arrest.

22 MR. BARNETTE: We agree, Your Honor.

23 THE COURT: All right. Y'all are in agreement.

24 MS. HODGES: Your Honor, while I am sure that the
25 solicitor would instruct all of his witnesses, and then

Motion

1 this was in a hearing in the presence of the Court only, we
2 would just ask that, to make sure that everybody is on the
3 same page in terms of not mentioning the fact, number one,
4 regarding the fact that those photographic lineups came out
5 of a mug shot program; and, number two, that Mr. Sims
6 requested an attorney after he was arrested and Mirandized.

7 THE COURT: Mr. Barnette.

8 MR. BARNETTE: I agree, Your Honor.

9 Basically, we'll be testifying if the lineups become an
10 issue in the case. We are not planning to introduce those
11 or whatever. But if they do become an issue, we're not
12 going to mention where they came from or anything like that.

13 And the second thing, obviously, we're not going to
14 mention that he asked for an attorney. That was just for
15 the purposes of this hearing.

16 THE COURT: Okay.

17 MS. HODGES: I know that Mr. Barnette has already
18 agreed to this, but it is mentioned in the affidavit for
19 the search warrant. And, again, there's not going to be
20 any testimony regarding the May 29th incident where the T.
21 V. was stolen, since there was nobody ever identifies the
22 suspect.

23 MR. BARNETTE: We agree, Your Honor, the second
24 incident, the May the 29th incident, we're not going to
25 mention.

Motion

1 THE COURT: Okay.

2 MR. BARNETTE: There's no evidence to connect her
3 client to the incident.

4 MS. HODGES: There were several other incident reports
5 that were taken by the city police department in and during
6 the month of May that involved Mr. Sims.

7 Unless, you know, something in defense's testimony
8 would open the door to some of those, we would ask that
9 obviously those issues and things also not come in.

10 I mean, they were provided to us in discovery, I think,
11 just as the police department's always thorough in providing
12 everything that they've ever had on somebody but...

13 MR. BARNETTE: I agree at this time, Your Honor,
14 there's no relevance of any of those things at this point
15 unless the door is opened or something when it comes up for
16 trial.

17 THE COURT: Okay. Y'all are in agreement.

18 MS. HODGES: Your Honor, I don't know if the solicitor
19 is planning on doing this.

20 There was some mention of a Lexington County
21 investigator that came over to help in processing the crime
22 scene dealing -- he's apparently an expert in blood spatter.
23 I don't know if they're planning to call him as a witness.
24 If they are, we don't have any discovery about anything or
25 any indication as to what, if anything, he would be

Motion

1 testifying to.

2 MR. BARNETTE: At this point we're not planning to
3 call him, Your Honor.

4 MS. HODGES: All right.

5 MR. BARNETTE: If I change, I'll be sure to tell
6 Ms. Hodges.

7 MS. HODGES: And Mr. Guthro hasn't done anything on
8 the blood spatter analysis, some sort of reporting or
9 anything like that.

10 There was some mention in the discovery regarding the
11 shoes that Mr. Sims was wearing. Obviously, depending on
12 how the Court rules on our motion to suppress, this issue
13 may or may not be relevant.

14 But there was some, some statements provided in
15 discovery regarding the fact that in looking at the bottom
16 of the shoes and seeing Mr. Sims walking, that an
17 investigator was able to determine that that shoe print was
18 either similar to or matched -- or I don't know exactly how
19 it was written in the discovery -- but basically they
20 thought that it made a positive identification in comparison
21 to a shoe print left in the Lammers' home.

22 SLED has analyzed that. It has come back as being not
23 conclusive. We would ask that there not be any testimony
24 regarding the similarity of the shoe prints by anyone other
25 than, you know, an actual expert qualified to testify about

1 that.

2 MR. BARNETTE: Your Honor, I think I can show the
3 jury, obviously, that shoe print in the picture and,
4 obviously, argue it's similar.

5 I can't say it's conclusively that shoe, no. But I
6 think it can be similar, the way it's shown, and let the
7 jury make that determination based off that.

8 MS. HODGES: My motion goes more to, Your Honor, the
9 fact that the investigator who is not an expert in
10 shoe-print analysis wrote in a report that the shoe print
11 matched a similar shoe print, you know, basically a
12 favorable comparison.

13 My objection is to any sort of law enforcement
14 personnel testifying as to the similarity between the shoe
15 print on the bottom of the shoe and evidence found at the
16 scene.

17 THE COURT: Well, are there photographs of some print
18 found at the scene?

19 MR. BARNETTE: Yes, sir, there is.

20 THE COURT: The shoes themselves?

21 MR. BARNETTE: Yes, sir.

22 THE COURT: Well, does it take an expert to identify
23 the print looks like a shoe bottom?

24 MR. BARNETTE: No, sir. And I don't plan -- and there
25 was sent to SLED and there was found no conclusion. But I

Motion

1 still think you can show as evidence obviously and let the
2 jury make that determination.

3 THE COURT: In other words, nobody is going to testify
4 that that print was made by his shoe.

5 MR. BARNETTE: That's correct.

6 THE COURT: The only testimony would be that they went
7 to the scene and they saw a print and it's similar to that
8 which is made by the shoes that he had in his possession.

9 MR. BARNETTE: Yes, sir.

10 THE COURT: Well, I don't think that takes an expert
11 to do that, Ms. Hodges.

12 MS. HODGES: Well, I mean --

13 THE COURT: I can do that or you can do that.

14 MS. HODGES: Well, Judge, apparently the expert at
15 SLED couldn't do that. The expert said --

16 THE COURT: He can't, he can't say that print was made
17 by that shoe. But, I mean, what I'm saying is he's not
18 going to testify as an expert that that print was made by
19 that shoe. I assume that somebody will simply testify that
20 here's a print that was found on the scene and here's his
21 shoe. And the jury can look at it and make their own
22 comparison and conclusion.

23 MS. HODGES: And if the jury wants to make their own
24 comparison and conclusion, obviously that's in their
25 province. I'm just objecting to somebody else being able

1 to say, you know, that they thought it was similar or, you
2 know, when an expert can't even say that, you know, make
3 any sort of definitive conclusion.

4 THE COURT: Well, I guess it depends on what the
5 expert is being called upon to testify to.

6 If an expert is being called upon to testify did this
7 shoe make this print, then that perhaps requires some expert
8 testimony, because you have to do calculations and
9 measurements and whatever.

10 But all I'm saying is if you, if you have a print
11 that's left at a scene that is the same pattern as on the
12 bottom of a shoe, you might need an expert to testify that
13 print was made by the shoe. But you don't need an expert to
14 say that print looks like the bottom of that shoe. I mean,
15 anybody with common sense can look at it, assuming it's
16 clear. So that will likely be permitted.

17 Now, there won't be any -- as I understand it, there's
18 not going to be any expert testimony to say the print was
19 made by the shoe. If there's a print that looks like the
20 shoe, the jury doesn't need expert testimony to help them
21 make that determination that it's similar. And I assume
22 nobody can say with certainty unless there's some
23 calculation made or matched up.

24 I mean, you know, let's just say that there's a, let's
25 say that there's a print left on the floor in the dust or

Motion

1 dirt or whatever it might be. The defendant has a pair of
2 tennis shoes that has the same pattern. Well, you know,
3 Nike might have made 10,000 tennis shoes with the same
4 pattern.

5 So clearly I don't think without some expertise
6 somebody can testify that his shoe made that print. I'm not
7 sure that any expert can testify to that even with
8 expertise. But somebody can certainly say that it appears
9 to be similar. That's a circumstance that the jury can take
10 into consideration. So I don't think that requires expert
11 testimony.

12 So I'll have to see the print and I'll have to see the
13 shoe. But that's likely admissible evidence.

14 MS. HODGES: Yes, sir.

15 Your Honor, I believe those are all the motions in
16 limine that we have at this point to raise with the Court
17 prior to trial.

18 THE COURT: Okay. All right. Well, I've got to
19 address the issue of the search warrant, which I will
20 shortly.

21 MS. HODGES: Your Honor, would the Court -- would it
22 be of some help to the Court if we briefed issues?

23 THE COURT: If you'd like to.

24 MS. HODGES: All right. Thank you.

25 THE COURT: I'll be happy for you to. Do you need

Motion

1 some time to do that?

2 MS. HODGES: I'll get something to the Court probably
3 by Tuesday of next week.

4 THE COURT: Okay. That will be fine.

5 MS. HODGES: Your Honor, and then I guess the other
6 question becomes timing for the actual trial in the case.

7 My understanding is of course the next general sessions
8 term is the week of August the 4th. That is a week where I
9 think the Court has probably got obligations Thursday and
10 Friday of that week. According to the defense calendar, the
11 judicial department does.

12 THE COURT: Well, how long is this case going to take?

13 MS. HODGES: I think this case can probably be tried
14 in two or two and a half days at the most.

15 We've done a majority of any motions that -- the Court
16 has heard everything unless my combing through the file
17 brings something else up. But I don't think there's
18 anything else there that I'm going to be able to bring up
19 that is going to take me a great deal of time.

20 MR. BARNETTE: Your Honor, the only other option, and
21 I know we talked about this, is I noticed that you have
22 civil court June the 14th, no, no, July the 14th and July
23 the 28th. And I just need to check with the civil
24 coordinator and with Your Honor to see if that's a
25 possibility.

Motion

1 THE COURT: All right. Yeah, well, we'll check. If
2 the case could be tried July the 14th or July the 28th --

3 MS. HODGES: I'm available. I will be ready for
4 either of those weeks.

5 THE COURT: Okay. Well, we'll try to check that
6 schedule as soon as possible to determine if either of
7 those weeks might be available. Okay. We'll try to do
8 that this week or the first of next week.

9 MR. BARNETTE: Thank you, Your Honor.

10 MS. HODGES: Thank you, Your Honor.

11 THE COURT: All right. If nothing further, court is
12 in recess.

13 END OF PROCEEDINGS JUNE 18, 2008
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Jury qualification

1 (Proceedings July 15, 2008)

2 THE COURT: All right. This is the State vs. Howard
3 Lee Sims. As indicated yesterday, I have -- that's all
4 right. We'll do it afterwards.

5 Bring them on in.

6 (The following takes place in the presence of the jury
7 venire.)

8 THE COURT: Good morning, ladies and gentlemen of the
9 jury panel.

10 We are ready to begin with jury selection in the first
11 case that's going to require some of your participation.
12 And the title of the case is the State vs. Howard Lee Sims.

13 Mr. Sims has been accused by the state through the
14 prosecutor with having committed two separate and distinct
15 offenses, although they are alleged to have arisen out of
16 one particular event or course of events which the state
17 alleges occurred on or about June the 1st of 2007.

18 And by way of two documents referred to as indictments,
19 the state has charged the defendant, Howard Lee Sims, with
20 having committed the crimes of burglary in the first degree
21 and with the crime of murder.

22 The allegations that are contained in each of those
23 indictments allege that Mr. Sims did here in Spartanburg
24 County on or about June the 1st of 2007, did wilfully and
25 intentionally enter a dwelling that belonged to David

Jury qualification

1 Lammers and John Wayne Lammers which was located at
2 here in the city of Spartanburg, that he
3 entered that dwelling without consent of the owners or
4 persons in possession, and that he entered that dwelling
5 with the intent to commit some crime therein.

6 They also allege that on or about June the 1st of 2007
7 Mr. Sims did wilfully and with malice aforethought kill one
8 John Wayne Lammers by stabbing him with a knife and that he
9 died as a proximate result of those wounds.

10 Now, as to those allegations and as to each of those
11 indictments and the charge contained therein the defendant
12 has entered a plea of not guilty.

13 That plea of not guilty therefore places upon the state
14 the burden of proving the allegations that are set forth in
15 each indictment, the burden of proving each of the essential
16 elements that constitute the crimes that are alleged in each
17 of those indictments; and therefore the burden is upon the
18 state to establish the defendant's guilt to the satisfaction
19 of 12 jurors beyond a reasonable doubt before any verdict of
20 guilty could be returned as it relates to either of the
21 indictments. And therefore we're going to be selecting
22 probably 14 of you. There'll be 12 primary jurors and two
23 alternate jurors.

24 And by way of your participation you're going to be
25 called upon to listen to the testimony that's introduced

Jury qualification

1 during the trial of the case, to consider any other evidence ()
2 that might be introduced during the trial. And at the
3 trial's conclusion I'll instruct you on the law.

4 The jury will go back into a jury room. You will
5 deliberate. You will carefully examine all the evidence.
6 From that evidence you will decide what you believe to be
7 the true facts as they relate to these allegations.

8 After deciding those facts, you'll then apply the law
9 that I will have provided you. And you will determine
10 whether or not the defendant has been proven guilty of
11 either or both of these charges beyond a reasonable doubt.

12 If the defendant has been proven guilty of a charge
13 beyond a reasonable doubt, then your verdict would be
14 guilty. If the defendant has not been proven beyond a
15 reasonable doubt to be guilty of a particular charge, then
16 in that event your verdict would be not guilty as to that
17 particular indictment. So as I've stated, we're going to
18 select 14 of you to participate in the trial of the case.

19 Now, before we begin with that jury selection I've got
20 a number of questions that I'm going to be asking you as a
21 group. And the purpose of asking these questions is to
22 determine whether or not there is some reason why any one of
23 you jurors should not be selected to participate in the
24 trial of this particular case.

25 In other words, do you have some reason why you believe

Jury qualification

1 you could not be fair and impartial as a juror seated in
2 this particular case. And so as these questions are asked
3 of you should you need to respond to them, I'll ask that you
4 please stand. And I will address those matters with you
5 individually in the event that should become necessary.

6 Now, first of all, as I told you, the defendant in this
7 case, that is the person who has been accused of having
8 committed these crimes, is Howard Lee Sims.

9 Mr. Sims, if you will, please, just Mr. Sims, if you
10 will, please, stand and face the jury panel.

11 (Whereupon, the defendant stood.)

12 THE COURT: All right. Thank you. Be seated.

13 Seated with Mr. Sims at the defense table is Kathleen
14 Hodges, his lawyer. She will be assisting him in the trial
15 of this case.

16 (Whereupon, Ms. Hodges stood.)

17 THE COURT: In this case, as I've told you, the person
18 who is alleged to have been the victim of the murder is
19 John Wayne Lammers.

20 The persons who are alleged to have been the victims of
21 the burglary in the first degree are David Lammers and John
22 Wayne Lammers.

23 I'll ask if David Lammers will please stand and face
24 the jury panel.

25 (Whereupon, David Lammers stood.)

Jury qualification

1 THE COURT: John Wayne Lammers was a brother of David
2 Lammers. And so if you know David Lammers, you may have
3 known John Wayne Lammers.

4 Thank you. Be seated.

5 In this case the state is being represented by Barry
6 Barnette who is a deputy solicitor for the 7th Judicial
7 Circuit and Zack Ellis who is an assistant circuit solicitor
8 for the 7th Judicial Circuit.

9 Now, in addition to the defendant and to Mr. David
10 Lammers, I'm going recite a list of other potential
11 witnesses in the case. The purpose of the recitation of
12 this list is to find out if any juror knows any of the
13 potential witnesses in the case. Of course that's going to
14 include the defendant and Mr. David Lammers.

15 So as I recite a list of these witnesses, I'm going to
16 ask if you know any person who has been identified for your
17 benefit. That includes the lawyers in the case. I'm going
18 to ask that you please stand so that we can address what
19 your connection is with that person and whether or not it
20 would have any affect upon your ability to be fair and
21 impartial in the case.

22 Other potential witnesses would include Ed Guthro of
23 the Spartanburg Public Safety Department; Officer J. P. Coe
24 with the Spartanburg Public Safety Department.

25 Let me just say that the rest of these until I tell you

Jury qualification

1 otherwise are with the Spartanburg Public Safety Department.

2 That's Officer Coe?

3 MR. BARNETTE: Yes, sir.

4 THE COURT: All right. Officer Michael Longshore;

5 Investigator John Burgess; Officer Brandy Edwards;

6 Investigator Jay Steadman; Investigator Reginald Spurgeon;

7 Officer Reese; Officer Westphel.

8 Officer Reese, let me ask you if you'll come up here,
9 please. You can't sit with the jury panel.

10 THE OFFICER: I didn't want to leave my evidence
11 unattended. Can I sit over here?

12 THE COURT: Oh, sure. Yeah. You can sit over there
13 next to the bailiff. You just can't sit with the jury.

14 Officer Westphel with the Public Safety Department;
15 David Reeves; Lou Jones; Investigator David Hearst;
16 Investigator Russell Porter; Officer James; Officer Spivey;
17 Sergeant James Thompson; Yvonne Cox.

18 We also have Randall Williams, a resident of
19 Spartanburg; Belinda Meadows and Heritta Meadows, residents
20 of Spartanburg. We have Ankit Basnet, a resident of Boston,
21 Massachusetts; Amy Stephens with the South Carolina Law
22 Enforcement Division; Janice Bryson and John Ortuno, also
23 with the state law enforcement division; John David Wren, a
24 pathologist with Spartanburg Regional Medical Center; and
25 Freddie Thompson with the emergency communications or 9-1-1.

Jury qualification

1 Also Joseph Burton, a resident of Spartanburg; Officer
2 Mabry with the Spartanburg Public Safety Department; Officer
3 Guest with the Spartanburg Public Safety Department; Stephen
4 Lully with the Spartanburg County Coroner's Office; Tracy
5 McKinnon with the state law enforcement division; and Jeff
6 Parrot with the state law enforcement division.

7 Are there any other potential witnesses on behalf of
8 the state?

9 MR. BARNETTE: Your Honor, James Thompson should have
10 been James Sutton or Tinker Sutton.

11 THE COURT: All right. Instead of James Thompson, it
12 should be James Sutton with the Spartanburg Public Safety
13 Department.

14 Any other witnesses on behalf of the state?

15 MR. BARNETTE: No, sir.

16 THE COURT: The defense?

17 MS. HODGES: No, sir.

18 THE COURT: All right. Does any member of the jury
19 panel have any connection with any witness or lawyer in the
20 case? Do you know them; have you met them; do you have any
21 connection, personal, social or business or professional?
22 If so, I'll ask that you please stand.

23 All right. Is everybody standing that needs to respond
24 to the question?

25 All right. Now, those who are standing, I'll start on

Jury qualification

1 the front row to my right, and I'll work across the room. I
2 need, if you will, please give me your name and your juror
3 number. And then tell me what person you have a connection
4 with and what that connection is.

5 Yes, ma'am.

6 JUROR NO. 40: Kelly Cannon. I'm No. 40. And I have
7 met a few of the -- I think Stephen Lully, maybe
8 Mr. Porter. I work at Spartanburg Photo Center. I've seen
9 them there.

10 THE COURT: You work at where?

11 JUROR NO. 40: Spartan Photo Center.

12 THE COURT: Okay. And so you just met them through
13 that, your employment there?

14 JUROR NO. 40: Yes, yes.

15 THE COURT: Is there anything about those connections
16 that would have any impact upon your decision in this case?
17 Could you be fair and impartial to both sides?

18 JUROR NO. 40: Yes.

19 THE COURT: All right. Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 63: Vicki Graham, Juror No. 63. Is James
22 Sutton, Tinker Sutton?

23 THE COURT: He is.

24 JUROR NO. 63: Okay. I went to school with him,
25 junior high and high school and college.

Jury qualification

1 THE COURT: Okay. Would that have any bearing upon
2 your decision in this case?

3 JUROR NO. 63: No, sir.

4 THE COURT: All right. Thank you. Be seated.

5 JUROR NO. 90: Ann Johnston, Juror No. 90. I know
6 David Wren through his wife.

7 THE COURT: And would that have any impact upon your
8 decision?

9 JUROR NO. 90: No. Just thought I better mention it.

10 THE COURT: I know. You say it would not have any
11 impact?

12 JUROR NO. 90: It would not.

13 THE COURT: Okay. Thank you.

14 Yes, sir.

15 JUROR NO. 54: David Forrester, No. 54. Met the
16 leading prosecutor-attorney a couple of times.

17 THE COURT: And would that have any bearing upon your
18 decision in the case?

19 JUROR NO. 54: No.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 171: Ellen Wetmore, No. 171. I know
23 Mr. Thompson with 9-1-1. I taught his children.

24 THE COURT: And would that have any bearing upon your
25 decision in the case?

Jury qualification

1 JUROR NO. 171: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 182: Laura White, No. 182. And I know
5 Mr. Ellis from prosecution, just an acquaintance.

6 THE COURT: You know who?

7 JUROR NO. 182: Mr. Ellis.

8 THE COURT: Okay. Would that have any bearing upon
9 your decision?

10 JUROR NO. 182: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 13: Cortilla Benson, No. 13. I work for
14 the city of Spartanburg.

15 THE COURT: In what capacity?

16 JUROR NO. 13: I work in the procurement office.

17 THE COURT: All right. And would that have any
18 bearing upon your decision in the case?

19 JUROR NO. 13: No.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 143: Miranda Rowe, 143. I work with
23 Mr. Porter's wife at Duvo's Extensions (sic).

24 THE COURT: All right. Would that have any bearing
25 upon your decision?

Jury qualification

1 JUROR NO. 143: No.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 29: Susan Calvert, No. 29. I work at
5 Wofford Campus Safety. I know a lot of the officers.

6 THE COURT: Would those connections have any bearing
7 upon your decision?

8 JUROR NO. 29: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 69: Alfred Harmon, Juror 69. I worked with
12 Dr. David Wren back in the mid 1980's at Spartanburg
13 Regional Medical Center.

14 THE COURT: In what capacity?

15 JUROR NO. 69: I worked in the pathology department as
16 an assistant while I was in college.

17 THE COURT: And would that have any bearing upon your
18 decision in this case?

19 JUROR NO. 69: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 39: Debbie Cooley, No. 39. I worked for
23 Spartanburg County Magistrate Court for 12 years, and part
24 of that time was with Mr. Barry Barnette.

25 THE COURT: And would that have any bearing upon your

Jury qualification

1 decision in this case?

2 JUROR NO. 39: No.

3 THE COURT: Thank you. Be seated.

4 Yes, sir.

5 JUROR NO. 133: My name is Finley Pollard. I'm Juror
6 No. 133. I worked at the Spartanburg County Jail. I had a
7 lot of dealings with the defendant, and I know almost all
8 of these officers.

9 THE COURT: All right. Would any of those facts or
10 connections have any bearing upon your decision?

11 JUROR NO. 133: No, sir.

12 THE COURT: Thank you. Be seated.

13 JUROR NO. 115: Kenneth Morrow, 115. I worked for
14 Spartanburg Public Safety for 28 years, and I know some of
15 the officers and Freddie Thompson. I worked with the fire
16 division, not law enforcement.

17 THE COURT: All right. Would any of those connections
18 have any bearing upon your decision?

19 JUROR NO. 115: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, sir.

22 JUROR NO. 27: David Calloway, Juror No. 27. I knew
23 Michael Longshore growing up.

24 THE COURT: And would that have any bearing upon your
25 decision?

Jury qualification

1 JUROR NO. 27: No.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 53: Laura Ford, Juror 53. Professionally.
5 Somewhat acquainted with Dr. Wren by way of the hospital.

6 THE COURT: And would that have any bearing upon your
7 decision?

8 JUROR NO. 53: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 80: David Hoppes. I'm a teacher. And I
12 may have had dealings with the students and maybe relatives
13 of the students. I feel kind of nervous about some of the
14 information I may know.

15 THE COURT: Okay. What's your number?

16 JUROR NO. 80: Eighty.

17 THE COURT: Eighty?

18 JUROR NO. 80: Yes, sir.

19 THE COURT: Do you think any connection you might have
20 would have any bearing upon your decision in the case?

21 JUROR NO. 80: Yes, sir, I do.

22 THE COURT: All right. We'll excuse you from service.
23 That's Juror No. 80.

24 You can go if you'd like. You'll just need to call
25 back. Call back to the number that you have on your juror

Jury qualification

1 information pamphlet. Call that number after 6:00 o'clock
2 this evening to receive further reporting information.

3 Okay. Thank you.

4 Anyone else have any connection or know any person who
5 has been identified this morning for your benefit or any
6 members of their respective families? If so, please stand.

7 (No response.)

8 THE COURT: All right. Now, as I told you, this is an
9 event which the state alleges occurred on Carlton Avenue
10 here in the city of Spartanburg on or about June the 1st of
11 2007 at the residence of John Wayne Lammers and David
12 Lammers.

13 Is there any member of the jury panel who believes that
14 you have seen, heard or read anything that might relate to
15 this particular case?

16 In other words, do you think you have obtained some
17 information about this case from any source, whether it be
18 media coverage, television, radio or newspaper, whether it
19 be just discussions by individuals who had some knowledge or
20 perhaps had some knowledge of the case.

21 I just need to know if any juror has been exposed to
22 any information about the case prior to me introducing you
23 to it this morning. If so, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel or

Jury qualification

1 any member of your immediate family -- and I'm going to
2 define an immediate family member as a parent or a spouse
3 or a child or a sibling -- a parent, a spouse, a child or a
4 sibling.

5 I need to know if you or any members of your immediate
6 family as I just defined it have ever been the victim of or
7 have ever been accused of perpetrating or being the victim
8 of a violent crime.

9 And violent crimes would include those such as murder,
10 manslaughter, armed robbery, burglary, kidnapping, rape,
11 criminal sexual conduct, criminal domestic violence of a
12 high and aggravated nature or any other similar type of an
13 offense which could be characterized as a violent offense.

14 I need to know if you or any members of your immediate
15 family have ever been the victim of such an offense or have
16 ever been accused of having committed such an offense. If
17 that's the case, I would ask that you please stand.

18 All right. Now, those who are standing, you can answer
19 the question from where you are standing, or if you'd prefer
20 not to answer it there, you may feel free to come down here
21 and discuss it with me here at the bench. But I need the
22 information one way or another.

23 If you prefer to tell it to me here at the bench, I'll
24 ask you to come down here right now. Just come with the
25 bailiff. And if you don't mind relating the information

Jury qualification

1 from where you are, just stand where you are.

2 THE BAILIFF: No. 14, Your Honor.

3 JUROR NO. 42: Forty-two.

4 THE BAILIFF: Forty-two.

5 (Bench conference held off the record with the juror.)

6 THE BAILIFF: No. 155, Your Honor.

7 (Bench conference held off the record with the juror.)

8 THE BAILIFF: No. 90.

9 (Bench conference held off the record with the juror.)

10 THE BAILIFF: No. 66.

11 (Bench conference held off the record with the juror.)

12 THE BAILIFF: No. 110, Your Honor.

13 (Bench conference held off the record with the juror.)

14 THE COURT: Juror 110 is excused.

15 THE BAILIFF: No. 20, Your Honor.

16 (Bench conference held off the record with the juror.)

17 THE BAILIFF: No. 53, Your Honor.

18 (Bench conference held off the record with the juror.)

19 THE BAILIFF: No. 67.

20 (Bench conference held off the record with the juror.)

21 THE COURT: All right. Anybody else wish to come down
22 here? Okay. I have got two others standing.

23 Yes, ma'am.

24 JUROR NO. 113: I am Juror 113. I had a sister that
25 was a victim of domestic violence.

Jury qualification

1 THE COURT: And would that have any bearing upon your
2 decision in this case?

3 JUROR NO. 113: It might.

4 THE COURT: You think it might.

5 JUROR NO. 113: Yeah.

6 THE COURT: Okay. We'll excuse you from service in
7 the case. You can leave if you'd like. Just call back
8 after 6:00 tonight to receive further reporting
9 information.

10 Okay. Yes, sir.

11 JUROR NO. 22: Juror No. 22. I was a victim of a
12 drive-by shooting.

13 THE COURT: And would that have any bearing upon your
14 decision in this case?

15 JUROR NO. 22: No, sir.

16 THE COURT: You could be fair to both sides?

17 JUROR NO. 22: Yes, sir.

18 THE COURT: Okay. Thank you. Be seated.

19 Is there any member of the jury panel who is connected
20 by blood or marriage to any law enforcement officer? And I
21 also need to know if you are now or have ever been employed
22 as a law enforcement officer and whether or not you are
23 connected by blood or marriage to any person who has been or
24 is now employed as a law enforcement officer. So any
25 connection with law enforcement by blood or marriage, now or

Jury qualification

1 previously. If so, please stand.

2 All right. I'm going to start over here to my right.
3 I'll work to my left. Give me your name and your juror
4 number. Tell me what connection you have.

5 JUROR NO. 140: Dorothy Rice is my name, Juror 140.
6 My son, James Rice, were an officer, police officer. He's
7 working at the city now.

8 THE COURT: Spartanburg city?

9 JUROR NO. 140: Yes, sir.

10 THE COURT: And his last name is Rice.

11 JUROR NO. 140: Rice.

12 THE COURT: All right. Would that have any bearing
13 upon your decision?

14 JUROR NO. 140: No, sir.

15 THE COURT: Thank you. Be seated.

16 Yes, sir.

17 JUROR NO. 135: Richard Praytor, Juror No. 135. My
18 dad used to be a state trooper.

19 THE COURT: Would that have any bearing upon your
20 decision?

21 JUROR NO. 135: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 29: Susan Calvert, No. 29. My son is a
25 state trooper.

Jury qualification

1 THE COURT: Would have that have any bearing upon your ()
2 decision?

3 JUROR NO. 135: No, sir.

4 THE COURT: What's your son's name?

5 JUROR NO. 135: Danny -- Danny Calvert.

6 THE COURT: Okay. Thank you.

7 Yes, sir.

8 JUROR NO. 69: Alfred Harmon, Juror 69. My
9 brother-in-law is a volunteer policeman with the Inman
10 Police Department.

11 THE COURT: And would that have any bearing upon your
12 decision?

13 JUROR NO. 69: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 155: Amanda Sosbee, Juror No. 155. My
17 brother-in-law is a retired highway patrolman.

18 THE COURT: And would that have any bearing upon your
19 decision?

20 JUROR NO. 155: No.

21 THE COURT: Thank you. Be seated.

22 Yes, sir, front row.

23 JUROR NO. 62: Juror No. 62, Dwayne Gosnell. My wife
24 was a Spartanburg city police officer.

25 THE COURT: And her name was that?

Jury qualification

1 JUROR NO. 62: Tina Gosnell.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NO. 62: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 183: 183, Kim Hunter. My husband retired
8 from the department of corrections. My brother-in-law is a
9 state trooper.

10 THE COURT: In Spartanburg?

11 JUROR NO. 183: Yes, sir.

12 THE COURT: And his name is what?

13 JUROR NO. 183: Dwayne Stone.

14 THE COURT: Would that have any bearing upon your
15 decision?

16 JUROR NO. 183: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 66: Juror No. 66. My name is Todd Griffin.
20 My stepfather has been a state constable for a good many
21 years.

22 THE COURT: All right. And would that have any
23 bearing upon your decision?

24 JUROR NO. 66: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 16: Mary Bishop, Juror No. 16. My uncle
3 was a retired magistrate judge.

4 THE COURT: Would that have any bearing upon your
5 decision?

6 JUROR NO. 16: No, sir.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 75: I'm Madolyn Heller, Juror No. 75. My
10 brother-in-law is a retired state trooper from Kentucky.

11 THE COURT: And would that have any bearing upon your
12 decision?

13 JUROR NO. 75: It would not.

14 THE COURT: Thank you. Be seated.

15 Is there any member of the jury panel who belongs to or
16 provides money to or time or any other type of volunteer
17 services to any organization which might be characterized as
18 a law enforcement support or victims' rights or support type
19 of organizations?

20 They might include Mothers Against Drunk Drivers,
21 Citizens Against Violent Crime, the safe homes network,
22 South Carolina Law Enforcement Officers Association,
23 Fraternal Order of Police, troopers association or any other
24 similar type of organization.

25 Do you belong to such organizations and/or do you

Jury qualification

1 contribute time or money to any such organizations? If so,
2 please stand.

3 (No response.)

4 THE COURT: Nobody.

5 Does any member of the jury panel know any person
6 employed within the 7th Circuit Solicitor's Office and/or
7 the Spartanburg County Public Defender's Office? If so,
8 please stand.

9 Yes, ma'am.

10 JUROR NO. 16: Mary Bishop, Juror 16. I know Pam
11 Green that works for Judge Couch.

12 THE COURT: Okay. Thank you, ma'am. Be seated.

13 Yes, ma'am.

14 JUROR NO. 39: Debbie Cooley, 39. I know Mr.
15 Barnette. And several officers I remember are up there
16 employed in the solicitor's office now, and maybe some past
17 magistrate judges are in the public defender's office.

18 THE COURT: Would it have any bearing upon your
19 decision?

20 JUROR NO. 39: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 12: My daughter works for -- I'm Juror No.
24 12. My daughter works for SADAC.

25 THE COURT: She works for who?

1 JUROR NO. 12: SADAC.

2 THE COURT: Okay. Thank you. Be seated.

3 Yes, sir.

4 JUROR NO. 133: I'm Juror No. 133. I know a lot of
5 the attorneys and public defenders.

6 THE COURT: Okay. Thank you. Be seated.

7 Yes, sir.

8 JUROR NO. 54: I know Trey Gowdy.

9 THE COURT: What was your number again?

10 JUROR NO. 54: Fifty-four.

11 THE COURT: All right. Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 28: Heather Calvert, No. 28. I know Pat
14 Fridy in the clerk of court's office.

15 THE COURT: Okay. Thank you. Be seated.

16 JUROR NO. 34: My name is Michael Chewing, Juror No.
17 34. And I'm an acquaintance with Brandon Delaney. I'm not
18 sure which office he's in.

19 THE COURT: Okay. Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 29: Susan Calvert, No. 29. Trey Gowdy. I
22 know him.

23 THE COURT: Okay. Thank you. Be seated.

24 I've told you a little bit about what the case is
25 about. That of course is not intended to be a full

Jury qualification

1 recitation of the facts that might be developed during the
2 course of the trial. But I wanted to give you a basic
3 understanding as to what this case is about because I need
4 to find out if there's anything about the nature of the case
5 itself, that is what the allegations are, what the charges
6 are -- is there anything about the nature of the case itself
7 that would prevent any juror from being able to be fair and
8 impartial if you were selected as a juror in the case? If
9 so, please stand.

10 (No response.)

11 THE COURT: Has any member of the panel already made
12 up your mind or formed an opinion as to what you think the
13 ultimate outcome ought to be based upon what you've heard
14 up until this point or based upon any other consideration?

15 I need to know if any juror has already made up your
16 mind as to the ultimate decision. If so, please stand.

17 (No response.)

18 THE COURT: Does any juror have any reason whatsoever
19 why you believe you could not be fair and impartial if you
20 were selected as a juror in the case? If so, please stand.

21 (No response.)

22 THE COURT: Any other questions requested by the
23 state?

24 MR. BARNETTE: May I approach the bench for one
25 second, Your Honor?

1 THE COURT: Yes.

2 (Bench conference held off the record.)

3 THE COURT: Any other questions requested by the
4 state?

5 MR. BARNETTE: No, sir.

6 THE COURT: By the defendant?

7 MS. HODGES: No, sir. Thank you.

8 THE COURT: All right. We're going to select a jury,
9 and the way that'll be done is that your names will be
10 called.

11 They'll be selected randomly by computer. As your name
12 is called you'll be asked to come forward. If you're
13 towards the wall, you can come around the desks where the
14 lawyers are seated. If you're towards the middle aisle,
15 just come down the middle aisle and take a position out here
16 in the middle of the floor about two paces past where the
17 desks are. Turn and face your fellow jurors.

18 Each side has an opportunity to have you excused from
19 service in the case or to have you seated for service in the
20 case.

21 If either side asks that you be excused from service in
22 the case, you'll simply go back and have a seat where you are
23 now. If both agree to have you seated for service in the
24 case, you'll be having a seat over here in the jury box to
25 your right and to my left. And as I say, we'll select 12

Jury qualification

1 primary jurors and two alternate jurors.

2 So please simply come forward as your name is called.
3 And you'll be instructed if you are to be seated for service
4 in the case or excused from service in the case.

5 (Pause.)

6 THE COURT: We are having a little problem with the
7 computer. We used to pick jurors. Your name was in a jury
8 drum and they'd reach in there and pull one out. It was a
9 real simple concept. It worked very good. We now have
10 computers to do everything. So we have to shut down half
11 the time. But she can read the list. So she's going to
12 call your names out. We don't prepare a list at the
13 present.

14 (Whereupon, a jury was impanelled.)

15 THE COURT: Those jurors who have been selected, I
16 will ask you to please go with a bailiff to a jury room. I
17 will bring you back in just a few minutes to begin with the
18 trial.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Are there any matters that need to be
22 addressed regarding jury selection by the state?

23 MR. BARNETTE: None from the state, Your Honor.

24 THE COURT: By the defense?

25 MS. HODGES: Your Honor, may we approach on one

1 matter?

2 THE COURT: Okay.

3 (Bench conference held off the record.)

4 THE COURT: Anything to be addressed regarding jury
5 selection?

6 MS. HODGES: ~~Nothing from the defense~~, Your Honor.

7 (Whereupon, the remaining members of the jury venire
8 were excused.)

9 THE COURT: All right. It appears that the defendant
10 was directly indicted in Indictment 2008-3750 for the crime
11 of burglary in the first degree.

12 Ms. Hodges, does the defendant wish to be arraigned on
13 that charge or does he waive arraignment?

14 MS. HODGES: Your Honor, my understanding from talking
15 to Mr. Sims is that he would waive arraignment.

16 THE COURT: You've been aware of the charge. You have
17 a copy of the indictment.

18 MS. HODGES: Yes, sir.

19 THE COURT: Okay.

20 MS. HODGES: And I have discussed the indictment with
21 Mr. Sims, and the elements of that charge.

22 THE COURT: Okay. The record shall also reflect that
23 I have considered the defendant's motion to suppress
24 evidence which the defense contends was obtained as a
25 result of an unlawful search pursuant to a warrant issued

Motions

1 by a magistrate. That motion for suppression is denied.

2 Any other matters we need to address before the jury is
3 sworn?

4 MR. BARNETTE: Two more, Your Honor, and one, one I
5 forgot about. We should have mentioned earlier or
6 whatever.

7 There was a motion made by the defense. There was a
8 prior incident, a burglary, that occurred beforehand. The
9 Court I think took it under advisement.

10 This situation where the defendant -- we have a witness
11 that saw a description that fits the defendant from a prior
12 event on May the 26th.

13 There was a knife that was taken from the brother in
14 this case, Mr. Lammers' knife. That was found back at the
15 scene in the bedroom where his brother was first stabbed.
16 And that was the connection between.

17 I know the Court took that under advisement. I just
18 bring it to the Court's attention about any kind of ruling
19 obviously before we start the trial.

20 THE COURT: Well, let me be sure I recall that.

21 The issue is the state intends to introduce evidence
22 that a knife was stolen during a burglary that occurred
23 prior to June the 1st of 2007. The knife was missing. And
24 the knife was in the residence on June the 1st of 2007 at
25 the time that Mr. Lammers was stabbed and killed.

Motions

1 MR. BARNETTE: That's correct.

2 There's other evidence. We have eye witnesses that saw
3 the prior event, saw the defendant, allegedly saw the
4 defendant, a description fitting him.

5 A bicycle he was riding was a girls' bicycle where he
6 rode it out and had something under his arm, went and got a
7 box in front of them and drove back in front of them, went
8 beside the church, did something with what items he had with
9 him and went off behind the church through a path, which a
10 line goes through there.

11 And right after that the victim in that case ran out
12 and was on his phone, obviously making a phone call. The
13 police came there afterwards.

14 THE COURT: Well, I guess -- I mean, are you intending
15 to prove that he committed a burglary? I mean, is that --

16 MR. BARNETTE: No, sir. That was not, that's not
17 intended that he --

18 THE COURT: I understand. You're just introducing
19 evidence that people saw him in the vicinity of the
20 residence prior to this incident occurring --

21 MR. BARNETTE: Yes, sir.

22 THE COURT: -- and that a house was broken into.
23 Mr. Lammers would testify his residence was broken into and
24 a knife was taken.

25 The knife was, at least through circumstantial

Motions

1 evidence -- you intend to put it in the possession of the
2 defendant on June the 1st of 2007.

3 MR. BARNETTE: I intend. It was found in the bedroom,
4 obviously, with the victim's blood on it and so forth.

5 THE COURT: Right.

6 MR. BARNETTE: It was found at the scene. We have a
7 picture of where the knife was found.

8 THE COURT: Well, I guess that's what I'm having a
9 little bit of confusion about.

10 You're not intending to try to prove that he committed
11 a burglary.

12 MR. BARNETTE: No, sir. We're just going to show that
13 he was in the vicinity. And obviously once that break-in
14 was done, there was a knife that was missing.

15 THE COURT: All right.

16 MR. BARNETTE: And we don't have to add that.
17 Obviously, the main thing we're looking for is obviously he
18 was in the vicinity on May the 26th when this first event
19 occurred.

20 THE COURT: Say that again.

21 MR. BARNETTE: He was in the vicinity essentially.

22 THE COURT: Right. Well, I mean, that's, whether --
23 well, what I'm saying is that's relevant whether a burglary
24 was committed or not.

25 I am not -- maybe I don't recall exactly what the

Motions

1 exclusion was based upon, but if you're not trying --

2 MR. BARNETTE: Well, there was no exclusion. We had
3 brought that motion up in front of the Court in pretrial
4 motions.

5 THE COURT: To prevent what?

6 MR. BARNETTE: Well, I'll let Ms. Hodges tell you. I
7 just wanted to make sure to clarify before we started the
8 trial on that.

9 MS. HODGES: Your Honor, we had originally made a
10 motion to preclude any testimony regarding the burglary
11 that was alleged to have occurred at the Lammers' residence
12 on May the 26th of 2007, because the only testimony
13 regarding somebody being inside that residence would be
14 hearsay because the only testimony that was available to
15 the police at the time was the testimony, was the statement
16 of Mr. John Lammers, the deceased in this case. And he
17 gave a description of a black wearing a red and white
18 stripe shirt being inside the residence.

19 THE COURT: Well, now, I understand that's not going
20 to be offered. Is that true?

21 MR. BARNETTE: That was one of the things we wanted to
22 make sure was clarified, Judge, before we went into
23 openings, obviously.

24 Obviously, we're going to introduce that we saw --
25 obviously, a burglary occurred. This individual was there.

Motions

1 They said he came out and had a -- the witnesses in the
2 neighborhood saw this. There's two ladies that saw and
3 knows.

4 THE COURT: They can identify the defendant --

5 MR. BARNETTE: Yes, sir, they --

6 THE COURT: -- coming from the residence?

7 MS. HODGES: No, sir.

8 MR. BARNETTE: Not from the residence, no, sir. No,
9 sir. They saw him come back up with a bicycle and
10 something in his hand and got a box and went back.

11 They later saw the victim run out with a phone. And
12 obviously the police came there. But, no, they were not,
13 they did not see him run out of the residence.

14 THE COURT: Well, that's the reason I asked earlier.

15 As I understood it, you're not intending to try to
16 prove that he committed a burglary. In other words,
17 you're -- there may be some inference that can be drawn from
18 that, but you're simply wanting to introduce testimony of
19 his presence in the vicinity of this residence.

20 You also want to introduce evidence that a knife had
21 previously been stolen from the residence. Whether it was
22 by this defendant or someone else, you don't even know, but
23 that it was stolen from the residence and it was found to be
24 in the possession of the person presumably who killed
25 Mr. Lammers on June the 1st of 2007.

1 He died as a result of a stabbing. And then, as I
2 understand it, there was blood found on the defendant's
3 clothing which matched the decedent's blood, so.

4 MR. BARNETTE: There was -- where it comes, where it
5 comes is kind of tricky, Your Honor, in this case. What
6 happened was they had the burglary.

7 They had a second incident which we're not going to
8 mention because there's no, no evidence one way or the other
9 on May the 29th. And then we have June the 1st.

10 They called the officers that was involved in the
11 original burglary that occurred on May the 26th and they
12 said this is the description we got from Mr. Lammers'
13 brother. And they said, well, this is a description that
14 matches a shoplifting that occurred over at the Texaco
15 station on West Main, as well as, you know, the description
16 that they got on the break-in.

17 And then of course they went on. They got the eye
18 witness, the Meadows, the folks that saw him on May the
19 26th.

20 Then they went over on May the -- the same day at a
21 later time, went over to the Texaco station and got the D.
22 V. D. showing what clothes he was wearing at that time. And
23 he was I. D. by the store clerk in that case.

24 THE COURT: Well, I understand. But I thought -- now,
25 maybe I misunderstand it. But I thought you weren't

Motions

1 intending to prove that shoplifting either, you were
2 intending to show the video. And of course the defendant
3 through testimony or cross-examination of witnesses might
4 open a door that would lead to the admission of evidence of
5 a shoplifting, because, as I understood it, there wasn't an
6 issue about who was on that video. Is that true?

7 MS. HODGES: Mr. Sims is seen on the video. That's
8 correct, Your Honor.

9 THE COURT: That's what I'm saying. So the
10 admission -- you know, the fact that he's committing a
11 shoplifting is really not relevant to this case, as I
12 understand it.

13 MR. BARNETTE: I understand. I just wanted to be
14 careful because obviously asking the clerk questions and
15 things like that, the reason why he chased him afterwards,
16 he saw him take the beer outside, out to his bicycle, and
17 ran away.

18 THE COURT: Well, I understand. But I thought the
19 purpose of that testimony was to get in the video to show
20 that Mr. Sims was in the store that day and how he was
21 dressed.

22 So whether he stole anything's not relevant to this
23 case unless he contends or asserts or through
24 cross-examination tries to establish that that's not him on
25 the video. Then, obviously, the clerk would say, well, that

Motions

1 being correct, I had personal contact with him because I
2 chased him out of the store when he stole beer.

3 MR. BARNETTE: Okay. So --

4 THE COURT: I mean, it may, it may, it may be made
5 relevant, but I thought we were -- I thought y'all were in
6 agreement that that, the fact of a shoplifting, was not
7 going to be introduced, just the fact that he was in the
8 store and the video tape was obtained and it showed him in
9 that store wearing whatever he was wearing.

10 MR. BARNETTE: Just to make sure, we can call a
11 witness to show where he was in those areas obviously, I.
12 D.'ing him or whatever from that standpoint, but not
13 mention what it was about.

14 THE COURT: Well, am I mistaken? I thought you told
15 me you didn't intend to introduce evidence of a
16 shoplifting.

17 MR. BARNETTE: No, sir. The shoplifting I don't have
18 a problem with. The burglary may be a little bit more
19 confusing.

20 THE COURT: Well, I'm talking about the shoplifting
21 right now.

22 MR. BARNETTE: No, sir. We won't enter that into
23 evidence unless it becomes relevant.

24 THE COURT: Okay. Well, unless a door is opened.

25 Okay. All right. Now, with respect to the prior

Motions

1 burglary which occurred on May the 26th.

2 MR. BARNETTE: Yes, sir.

3 THE COURT: I understood that you weren't really
4 trying to prove this defendant committed that burglary but
5 to show that he was in -- the witnesses were going to
6 testify that they saw him in the vicinity of that
7 neighborhood and that residence.

8 Well, so remind me. Are you trying to prove he
9 committed that burglary, or not?

10 MR. BARNETTE: No, sir. We are not.

11 THE COURT: All right. Okay. Well, then I'm not sure
12 I understand what the issue is.

13 MS. HODGES: My Objection, Your Honor, is to any
14 testimony that's trying to place the, the, the knife that
15 is found in Mr. John Lammers' bedroom as being part of a, a
16 burglary or something, being stolen from that home
17 previously, and the implication being made that because he,
18 because Mr. Sims, was in the area, the implication being
19 made that that knife was stolen and he was in the area and
20 therefore he must have stolen that knife that, you know,
21 they then claim was, you know, found during the course of
22 the murder and the burglary first that he's actually on
23 trial for.

24 Obviously, there's no -- we have no problem with people
25 testifying to evidence that's found on scene. That's

1 obviously part of their investigation and part of their
2 case.

3 The concern I have is any testimony that's going to try
4 and by inference or implication imply that Mr. Sims was the
5 one that committed that burglary on May the 26th and stole
6 that knife that was then used supposedly several days later.

7 MR. BARNETTE: See, the problem we have got, Your
8 Honor, is obviously a burglary occurred. He was in the
9 vicinity there. The victim comes out.

10 I cannot, obviously I can't, bring up the testimony the
11 victim said because he's not here. But the thing is a
12 burglary did occur. The knife was missing at that point,
13 then was found later at the scene on June the 1st. It was
14 found in the bedroom.

15 THE COURT: Well, I mean, what is, what is the purpose
16 of that testimony if it's not prove to he committed the
17 burglary?

18 MR. BARNETTE: Well, I can -- it can show he committed
19 the burglary. I mean, it's circumstantial evidence.

20 THE COURT: I know. But I thought you said you
21 weren't trying to prove that he committed that burglary.

22 MR. BANNISTER: Well, I'd like to be able to prove
23 that, but I don't know if the Court's going to let me do
24 that.

25 THE COURT: Well, it's a little bit different than the

Motions

1 usual circumstance.

2 You know, sometimes you, you prove a burglary of a, of
3 an unconnected residence by showing that the defendant is in
4 possession of an object -- gun, knife, whatever it might
5 be -- that was stolen from some other residence and it's
6 used in the commission of a different crime in a different
7 place. And so you're trying to establish how he had
8 possession of something and where it came from.

9 In this case the knife came from the Lammers'
10 residence. So, you know, proving that it was stolen
11 previously and brought back doesn't really prove anything in
12 this case.

13 Now, I mean, in other words, if it had never been taken
14 and it was still used, under the state's theory, in the
15 commission of this murder.

16 So I take it then that you are simply, in other words,
17 you are wanting to prove that he committed a prior burglary
18 as opposed to it just being sort of an incidental
19 inferential thing from proof of other relevant information.
20 You are trying to prove that burglary.

21 MR. BARNETTE: I think it's the only way to make
22 sense, because when you go to circumstantial evidence on
23 that, I mean, you've got -- obviously, he, he drove to, he
24 drove to the area. He did not see him go in the house, the
25 victim, the eye witness did not. Saw him --

1 THE COURT: I mean, all of that can be testified to
2 anyway, that these people saw him in the residence, saw him
3 near the residence.

4 MR. BARNETTE: Near the residence, yes, sir. And then
5 when he comes back out, then the victim comes out on a
6 telephone and the police shortly comes out after that. And
7 the police later, that's how they connected Mr. Sims to
8 this crime, is through the description and so forth they
9 obtained from both Lammers.

10 THE COURT: Well, I understand that David Lammers who
11 is a witness in this case, he doesn't know anything about
12 that burglary.

13 MR. BARNETTE: No, sir.

14 THE COURT: John Lammers is the one that relayed the
15 information to the police about a burglary.

16 MR. BARNETTE: Yes, sir. He was not present.

17 THE COURT: So David Lammers doesn't know anything
18 about the burglary, I mean, other than what he learned from
19 somebody else.

20 MR. BARNETTE: Yes, sir, other than what he learned
21 from his brother.

22 THE COURT: And you're contend -- so he can't testify
23 about it. And your -- and you stated that you understand
24 John Wayne Lammers' statements can't be used to prove a
25 burglary. So how would you establish that a burglary

Motions

1 occurred?

2 MR. BARNETTE: Well, I mean --

3 THE COURT: I mean, who is going to testify that
4 somebody broke in without consent intending to commit a
5 crime?

6 MR. BARNETTE: The only thing that Mr. Lammers'
7 brother can testify to is the items were taken. Obviously,
8 there's a D. V. D. player and a satellite receiver that was
9 taken when he got back. But he wasn't present for the
10 burglary. He can't testify about that.

11 THE COURT: Well, I understand that. But, I mean,
12 well, you're saying he's aware that somebody -- I mean, he
13 has personal information that somebody came in the house
14 without consent and took items that belonged to them?

15 MR. BARNETTE: No, sir. He's got -- that they were
16 missing once he got back. And they bought -- they
17 obviously bought new, a new satellite receiver, as well as
18 a D. V. D. player.

19 THE COURT: Well, of course I don't know what all the
20 evidence is. But, I mean, if, I mean if, you can't prove
21 that a burglary even occurred, then why would you want to
22 introduce that evidence? I mean, aren't we just asking
23 for --

24 MR. BARNETTE: Yes, sir.

25 THE COURT: -- trouble?

1 MR. BARNETTE: Well, we'll see. We'll see how it
2 develops.

3 THE COURT: I mean, I'm not saying it might not become
4 relevant based upon examination, cross-examination, and the
5 like but --

6 MR. BARNETTE: Yes, sir. We'll just keep it. We'll
7 see what happens. Obviously, I'm still going to call a
8 witness to show that he was in the neighborhood on May the
9 26th, at the Texaco on May the 26th.

10 THE COURT: Well, sure. I mean, that's just evidence
11 of his presence in the, in the vicinity or in the
12 neighborhood. That's not, I mean, that's not
13 objectionable.

14 MR. BARNETTE: Yes, sir.

15 THE COURT: Or not reasonably so.

16 MR. BARNETTE: Your Honor, the only other thing too
17 was we were going to make a third-party-guilt motion. I
18 know we was back in chambers talking briefly, and
19 Ms. Hodges says she doesn't have any third-party guilt.
20 But I just make that motion for the record.

21 MS. HODGES: We don't at this point have any evidence
22 regarding third-party guilt, Your Honor. Should something
23 become relevant for us to produce to the Court, we'll
24 produce it at that time. But at this point we don't have
25 any thirty-party-guilt evidence to present.

Motions

1 THE COURT: All right. Well, in the event that the
2 state perceives some appropriate admission of evidence
3 relating to that prior burglary, we'll need to address that
4 outside the presence of the jury in the context that the
5 evidence is to be received at the time it's -- you intend
6 to offer if you do intend to offer it.

7 Okay. All right. Any other matters we need to address
8 before the jury is brought in?

9 MS. HODGES: Not from the defense, Your Honor.

10 MR. BARNETTE: Your Honor, there is one or two items I
11 need to get marked real quick that --

12 THE COURT: Okay.

13 MR. BARNETTE: -- we may be identifying or showing the
14 Court.

15 THE COURT: All right. Let me address one thing.

16 I have my notes from, I have my notes from the previous
17 hearing where the defense made some motion to exclude
18 certain items. And I have made a note that the parties had
19 agreed to exclude the 5/29/08 break-in. And y'all did agree
20 to that. What you're referring to today is the 5/26 event.

21 MR. BARNETTE: Yes, sir.

22 THE COURT: Okay. Well, that's why I was a little bit
23 confused. I thought y'all had agreed to exclude that
24 evidence.

25 The 5/26, as I understand it, your position is,

Motions

1 solicitor, that you can't establish by competent evidence a
2 burglary occurred.

3 MR. BARNETTE: No, sir. The only witness that was
4 there was the victim.

5 THE COURT: All right.

6 MR. BARNETTE: And to be honest with the Court, I'd
7 love to tell you I could from that standpoint, but that's
8 the only -- I can show that he was there in that area, that
9 he took an item, that he left. The victim comes out
10 calling the police. The police come there. He gives them
11 a description which later matches the same description.

12 THE COURT: Well, I understand. Of course those go to
13 the fact that he's in the vicinity. And those descriptions
14 are perfectly admissible.

15 What I'm addressing is whether you can prove that a
16 burglary occurred on 5/26. And as I understand it, what
17 you're telling me, you can't prove a burglary occurred.

18 MR. BARNETTE: Not at this point, no, sir.

19 THE COURT: I mean, as a practical matter, you know
20 something's missing because Mr. David Lammers has told you.
21 But that's all based on hearsay from some other source.

22 MR. BARNETTE: Yes, sir.

23 THE COURT: So do you have any other method or means
24 or evidence that you could establish a prior burglary?

25 MR. BARNETTE: The only connection that we've got,

Motions

1 Your Honor, to be honest with you, of the prior burglary is
2 the circumstantial evidence of the knife.

3 The knife was later on, was found. Mr. Lammers'
4 brother, that he uses a paper, letter to open up the mail.
5 It was missing afterwards. Later on it appeared on June the
6 1st, and it was found at the murder scene.

7 THE COURT: Well, that certainly would be competent
8 evidence, circumstantial evidence, that could establish
9 that Mr. Sims was the person who committed a burglary. But
10 my point is you first have to prove that there was a
11 burglary before you can attempt to prove who committed the
12 burglary.

13 MR. BARNETTE: Yes, sir.

14 THE COURT: In other words, you say, well, a knife was
15 taken and he was in possession of it, therefore he
16 committed the burglary. But you've first got to prove that
17 a knife was taken in the burglary and then prove that he
18 was in possession of it, which would inferentially and
19 circumstantially prove that he committed that burglary.

20 But first there's got to be a burglary instead of just
21 an unexplained possession of a knife that belonged to the
22 Lammers, because in this case Mr. Sims is not at some other
23 location. He's in Mr. Lammers' house. The knife belonged
24 to the Lammers. I assume Mr. David Lammers can identify it.

25 MR. BARNETTE: Yes, sir.

Motions

1 THE COURT: But it was house in that house. Whether
2 it was before, or taken and brought back, it's his knife in
3 his house. So that's the difficulty I'm seeing, is if it
4 were taken from another residence, you know, somebody could
5 perhaps testify that there's no reason he should be in
6 possession of it. But in this case if he took it on June
7 the 1st and used it as a murder weapon, he would be in
8 possession of it --

9 MR. BARNETTE: Yes, sir.

10 THE COURT: -- assuming it's the Lammers' knife.
11 So, in any event, before you attempt to introduce any
12 evidence that a May 26th incident constituted a burglary,
13 we'll have to address it outside the presence of the jury if
14 you intend to introduce or offer such evidence.

15 MR. BARNETTE: The reason I brought it up, I know in
16 opening and my first witness it's going to be a
17 possibility. I just had to make sure. And he's present,
18 so he's heard our discussions here, so just to make sure
19 with him that we've --

20 THE COURT: Well, I'm just saying if you have
21 competent evidence to establish a burglary, it might be
22 relevant. But if you don't, you can't, I mean you can't,
23 call someone just to testify as to knowledge they obtained
24 from some source that there was a burglary occurring, I
25 mean.

Motions

1 MR. BARNETTE: If I can ask this question, obviously,
2 he can testify that when he came back on May the 26th there
3 was two items missing, the D. V. D. player and the -- and
4 not to make any reference to the defendant or whatever from
5 that standpoint.

6 THE COURT: Well, perhaps not. But what do you mean
7 missing? I mean, in other words, Mr. -- you're talking
8 about David Lammers. He's going to suggest, he's going to
9 say, that on May the 26th he went to the residence and that
10 there were two things that used to be there that weren't
11 there?

12 MR. BARNETTE: Yes, sir.

13 THE COURT: And when was the last time he saw them?

14 MR. BARNETTE: Before he went to the movies that
15 night.

16 THE COURT: Okay. So, well, I mean is he going to say
17 that somebody, that he had, those items were in the
18 residence when he left to go to the movies and when he came
19 back they were gone and somebody must have come in and
20 taken them? Did he report a burglary?

21 MR. BARNETTE: No, sir. His brother did.

22 THE COURT: Well, I mean, does his brother know any
23 more about it than he does?

24 MR. BARNETTE: He doesn't, but his brother. I
25 understand, Your Honor. I mean, it's just --

Motions

1 THE COURT: Well, I'm saying does Mr. David Lammers,
2 does he know, did he know just as much about a burglary
3 having been committed as his brother did? Was his brother
4 present when the burglary occurred?

5 DAVID LAMMERS: Yes, sir. My brother was.

6 THE COURT: Oh, okay. Well, I think it's, I, that's a
7 little speculative. I think that's going to have to, to be
8 kept out unless it's made otherwise relevant.

9 MR. BARNETTE: Yes, sir. I understand. Thank you,
10 Your Honor.

11 THE COURT: Okay. All right.

12 MS. HODGES: Your Honor, there was one issue, and we
13 can either take a break first, or my client just raised
14 concern that there was something either taken into or taken
15 out of the box. And I just need to know what it was --
16 just now when it was being marked.

17 THE COURT: I don't know. The state, I mean, they're
18 just marking their evidence. I don't know what difference
19 it makes. Do you want to look at what's being marked?

20 MS. HODGES: I think, I think there was some swabs
21 perhaps were taken from the box that the knife was in. I
22 mean, I think Officer Reeves is the one that did it.

23 THE COURT: Well, I thought you were up here with the
24 solicitor when y'all were doing that.

25 MR. BARNETTE: He says there was some swabs that was

Motions

1 in the box, State's Exhibit No. 11 and 12 -- 12 one and
2 two, Your Honor, that's going to be marked. We can mark
3 those right now if we need to. It's our evidence. We've
4 maintained the chain on it.

5 MS. HODGES: I just needed to know what it was, Judge.
6 Thank you. We're good.

7 THE COURT: Well, I'm not sure I understand.

8 You've not seen? I mean, they've got a whole box of
9 evidence over there.

10 MS. HODGES: I have seen all the evidence, Judge --

11 THE COURT: All right.

12 MS. HODGES: -- that was available for me to see when
13 it was not at SLED and available. There was some of that
14 evidence that was at SLED when I went to the evidence room.

15 My client is concerned that he saw something put into
16 the box and taken out of the box just now when it was
17 getting marked.

18 THE COURT: Well, that's because they're opening
19 things to mark evidence. So there's going to be a lot of
20 opening and closing boxes and packages.

21 MS. HODGES: Yes, sir.

22 THE COURT: But anything that's being introduced or
23 not introduced, you'll have to agree with it or object to
24 it. So there won't be anything coming in that you haven't
25 agreed to or that the Court hasn't ruled upon.

1 MS. HODGES: Yes, sir. Thank you.

2 THE COURT: All right. We'll take ten minutes.

3 (Whereupon, a recess was taken.)

4 (SLED packaging marked State's Exhibit No. 1 for
5 Identification; black Nike tennis shoes marked State's
6 Exhibit No. 2 for Identification; cutting from defendant's
7 shoe marked State's Exhibit No. 2.1 for Identification;
8 cutting from defendant's shoe marked State's Exhibit No. 2.2
9 for Identification; bluejeans shorts from defendant marked
10 State's Exhibit No. 3 for Identification; cutting from
11 defendant's bluejeans marked State's Exhibit No. 3.1 for
12 Identification; cutting from defendant's bluejeans marked
13 State's Exhibit No. 3.2 for Identification; cutting from
14 defendant's bluejeans marked State's Exhibit No. 3.3 for
15 Identification; white socks from defendant marked State's
16 Exhibit No. 4 for Identification; cutting from white sock of
17 defendant marked State's Exhibit No. 4.1 for Identification;
18 shirt from defendant marked State's Exhibit No. 5 for
19 Identification; swab from shirt marked State's Exhibit No.
20 5.1 for Identification; swab from shirt marked State's
21 Exhibit No. 5.2 for Identification; Hardee's cap from
22 defendant marked State's Exhibit No. 6 for Identification;
23 swabs from cap marked State's Exhibit No. 6.1 for
24 Identification; standard from John Lammers marked State's
25 Exhibit No. 7 for Identification; standard from David

1 Lammers marked State's Exhibit No. 8 for Identification;
2 swab marked State's Exhibit No. 9 for Identification; swab
3 marked State's Exhibit No. 10 for Identification; knife
4 marked State's Exhibit No. 11 for Identification; swab
5 marked State's Exhibit No. 11.1 for Identification; swab
6 marked State's Exhibit No. 11.2 for Identification; sword
7 marked State's Exhibit No. 12 for Identification; swab
8 marked State's Exhibit No. 12.1 for Identification; swab
9 marked State's Exhibit No. 12-A for Identification;
10 fingernail scrapings marked State's Exhibit No. 13 for
11 Identification; flashlight marked State's Exhibit No. 14 for
12 Identification; swab marked State's Exhibit No. 15 for
13 Identification; swab marked State's Exhibit No. 16 for
14 Identification; SLED report marked State's Exhibit No. 17
15 for Identification; photographs marked State's Exhibit No.
16 18 through 78 for Identification; C. D. marked State's
17 Exhibit No. 79 for Identification; D. V. D. marked State's
18 Exhibit No. 80 for Identification; Diagram marked State's
19 Exhibit No. 81 for Identification; map marked State's
20 Exhibit No. 82 for Identification; photograph marked State's
21 Exhibit No. 83 for Identification; photographs marked
22 State's Exhibits Nos. 84 through 87 for Identification; tube
23 of cortisone marked State's Exhibit No. 88 for
24 Identification; toothbrush marked State's Exhibit No. 89 for
25 Identification; shaving lotion bottle marked State's Exhibit

1 No. 90 for Identification.)

2 THE COURT: All right. Any other matters we need to
3 address before the jury is brought in?

4 MR. BARNETTE: Nothing from the state, Your Honor.

5 MS. HODGES: Nothing from the defense, Your Honor.

6 THE COURT: Okay. Bring them in. Ask Mr. Welchel,
7 Dewey Whelchel, to take the foreperson's seat, Juror 170.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Ladies and gentlemen, thank
11 you for your patience.

12 We are ready to begin with the trial of the case for
13 which you were selected.

14 And, Mr. Welchel, I'm going to ask you to serve as the
15 foreperson of the jury. And as the foreperson you'll have
16 three specific duties that none of the other jurors will
17 have.

18 Number one, you'll be asked to serve as the
19 spokesperson for the jury. And so if during the trial
20 something arises that needs to be brought to my attention,
21 you or a fellow juror has any difficulty or problem or
22 question, if you'll let the bailiff know, he'll let me know.
23 I'll address that issue or answer that question.

24 Secondly, you'll be called upon to preside over jury
25 deliberations in the jury room when that time comes. That

1 of course won't be until after all of the evidence has been
2 received and I've instructed you on the law that's
3 applicable in the case. But when the time does come for
4 jury deliberations you're going to be asked to preside over
5 that process in the jury room simply to ensure that those
6 deliberations are carried out in some orderly fashion.

7 And, thirdly, you will be called upon to actually write
8 the verdicts or the decisions of the jury. And you'll do
9 that on a verdict form that I'll provide you at the trial's
10 conclusion on which you will indicate the jury's unanimous
11 decision as it relates to each of the separate indictments.

12 Now, the foreperson has those specific duties that I
13 have just indicated. That doesn't mean that he is any more
14 important than any of you other jurors, because the decision
15 of a jury panel is the unanimous consensus opinion of all 12
16 jurors. And so all of you are going to have an equal say
17 and an equal vote in what the ultimate decisions in this
18 case are to be.

19 Someone simply has to be delegated those
20 responsibilities that I have just indicated, and I have
21 delegated those to Mr. Welchel in appointing him as the
22 foreperson. But all of you jurors are equally important so
23 far as the ultimate decisions in this case are concerned,
24 because, as I've stated, the verdicts have to be unanimous.
25 All 12 of you must be in agreement.

1 Now, Ms. Huitt and Mr. Turner, each of you have been
2 selected as alternate jurors. And your function is to take
3 the place of one or more of the original 12 jurors in the
4 event one or more of these jurors are unable to continue to
5 serve during the trial of the case.

6 And if one or two are called away because of an illness
7 or an emergency or some other reason that prevents them from
8 continuing to serve, then one or both of you would be called
9 upon to take those jurors' places. In that event one or
10 both of you would become the 12th juror. And in that event
11 you would participate throughout the entire trial, including
12 the jury deliberations.

13 If however when the time comes for jury deliberations
14 the original 12 are able to participate, your service as
15 alternates would end, because the verdict of a jury panel is
16 the consensus opinion of 12 jurors. But no more than 12 are
17 permitted to engage in that deliberation process.

18 But it is important that each of you pay just as
19 careful attention as we ask of all of the jurors in this
20 case because it does occur from time to time for one reason
21 or another one or more of the original jurors may be able
22 unable to continue. In that event one or both of you would
23 be called upon to replace those.

24 So we do appreciate your participation as alternate
25 jurors, just as we appreciate the participation of each of

Jury sworn

1 you jurors who have been selected for the purpose of
2 deciding the verdicts in this particular case.

3 You may swear the panel.

4 (Whereupon, the jury was duly sworn.)

5 THE COURT: All right. Ladies and gentlemen, as you
6 know, you've been selected to decide the verdicts in the
7 case of the State vs. Howard Lee Sims.

8 As you have also previously been told, Mr. Sims has
9 been accused by the state through the prosecutor's office
10 with having committed two separate and distinct offenses
11 which the state alleges arose out of one particular event or
12 course of events which they allege occurred back on June the
13 1st of 2007.

14 They allege two separate charges, and so there are two
15 separate and distinct indictments. One charges the
16 defendant with the crime of burglary in the first degree;
17 the other indictment charges the defendant with the crime of
18 murder.

19 The indictments will be in the jury room, Mr. Foreman,
20 because it is on the back of each of those indictments that
21 you are going to be indicating the jury's unanimous decision
22 as it relates to that particular charge.

23 But other than serving as the verdict forms, the
24 indictments serve no purpose so far as you jurors are
25 concerned.

1 The indictments are not evidence in the case. They're
2 not proof of anything. They're simply the means by which a
3 person is formally accused of a crime. And it puts that
4 person on notice as to what crime the state claims they have
5 committed. But it is not in any way evidence of or proof of
6 the claim that is alleged in the respective indictments.

7 Now, as you know, as to each of those indictments and
8 the charges contained therein the defendant has entered a
9 plea of not guilty. And, as I told you, that plea of not
10 guilty places upon state the burden of proving the
11 allegations that they have set forth in each of those
12 indictments, the burden of proving each of the essential
13 elements that make up the crimes of burglary in the first
14 degree and of murder; and therefore the burden is upon the
15 state to establish the defendant's guilt to the satisfaction
16 of you 12 jurors beyond a reasonable doubt before any
17 verdict of guilty could be returned as to either of the
18 indictments.

19 Every person who is accused of the commission of a
20 crime under the law is always presumed innocent of that
21 charge. And that presumption of innocence remains with any
22 defendant, as it does with this defendant, from the time
23 that he is placed under arrest and throughout the course of
24 the criminal process and even throughout the course of the
25 actual trial in the case.

1 That presumption of innocence will be with Mr. Sims
2 even as you go back into your jury room to begin with your
3 deliberations in this case at the trial's conclusion. And
4 that presumption of innocence will be with him in that jury
5 room, and it'll be with him forever unless you 12 jurors
6 unanimously determine that he is no longer entitled to that
7 presumption of innocence.

8 That is after you've carefully examined all the
9 evidence in the case, and from that evidence you've decided
10 the facts, and after deciding the facts you've applied the
11 law that I will have provided you, if you 12 jurors
12 unanimously determine beyond a reasonable doubt that his
13 guilt has been proven as it relates to a particular charge,
14 then he would no longer be entitled to the presumption of
15 innocence as it relates to that charge. But it's only if,
16 unless and until you are satisfied of his guilt beyond a
17 reasonable doubt that he would no longer be entitled to that
18 presumption of innocence as it relates to that particular
19 indictment.

20 Now, the way the trial will proceed is that in a moment
21 the lawyers are going to address you in what are called
22 opening statements. There are two occasions in the trial of
23 a case where lawyers are permitted to personally address the
24 jury. And that is at the beginning of the trial before any
25 evidence has been introduced and then again at the

1 conclusion of the after all of the evidence has been
2 received.

3 Keep in mind however that the evidence comes in between
4 the opening and the closing statements of the lawyers. And
5 so what the lawyers tell you in their statements, whether it
6 in the opening statements or the closing statements, is not
7 evidence upon which you will base your decision.

8 That's because the lawyers aren't witnesses to
9 anything. They're not going to be telling you anything
10 about this case that they know of their own personal
11 knowledge or information, because if they had personal
12 information they'd be witnesses. They wouldn't be the
13 lawyers in the case.

14 They're also not going to be testifying under oath and
15 not going to be subjected to direct and cross-examination as
16 each witness will be who is called to testify during the
17 case. So what the lawyers tell you in their statements is
18 not to be construed by you as evidence in this case upon
19 which you will base a decision, because it is not evidence
20 and you cannot consider it as such.

21 Now, after the opening statements are received the
22 state will begin with its presentation of evidence. The
23 state has the burden of proof. The state has brought these
24 charges, and so the state has the obligation to establish to
25 your satisfaction beyond a reasonable doubt that the

1 defendant has committed each of the crimes they claim that
2 he has committed. And so they have a burden to bear in the
3 case. Therefore they will go forward first in their
4 presentation of evidence because they have to prove the
5 defendant's guilt.

6 Once they have concluded, a defendant in a criminal
7 trial has the same opportunity to present evidence by way of
8 testimony or otherwise. But a defendant is under no
9 obligation to present evidence, because the defendant does
10 not have the burden of proving that he's not guilty. The
11 state has the burden of proving that he is guilty.

12 And so a defendant in a criminal trial doesn't have to
13 testify, doesn't have to call any witnesses, doesn't have to
14 produce any evidence, because in many cases it would not be
15 possible for a person to prove that they are not guilty or
16 to prove that they are innocent. And so there is no
17 obligation on the part of the defendant to present evidence.
18 But a defendant is afforded an opportunity to present
19 evidence should he or she wish to do so.

20 After all of the evidence has been received and you've
21 heard the final summations from the lawyers, I will then
22 instruct you fully on the law that's applicable to the cases
23 of murder in the first -- murder and burglary in the first
24 degree, as well as to criminal cases in general. I will
25 instruct you fully as to the law that you are to apply in

1 the case, after which you'll go back and begin with your
2 deliberations. Through that process and the exercise of
3 good judgment and common sense you will simply be called
4 upon to carefully evaluate all of the evidence, examine all
5 of that evidence.

6 After a careful examination and evaluation you'll
7 decide what you believe to be the true facts as they relate
8 to these particular allegations. Once you decide those
9 facts, you'll then apply the law that I will have provided
10 you. And you will determine whether or not the defendant's
11 guilt has been proven beyond a reasonable doubt.

12 If it has, then your verdict would be guilty as to that
13 particular charge. If it has not, then your verdict would
14 be not guilty as to that particular charge.

15 Now, all that we're going to ask for you to do is to
16 pay careful attention throughout the course of the trial. I
17 don't imagine the trial is going to take an unduly length of
18 time to conclude. But, nevertheless, there will be a number
19 of witnesses that will testify. And one of your
20 prerogatives, as I've stated, is to assess the credibility
21 of witness testimony.

22 So it's important that you give every witness the same
23 degree of attention as they testify so that when you go back
24 to begin your deliberations you'll be in a proper position
25 to be able to fairly evaluate and assess the credibility of

Opening statements

1 witness testimony not just based upon that witness'
2 testimony but in light of all of the testimony and all of
3 the evidence that has been received during the trial of the
4 case.

5 It's also important that you keep an open mind
6 throughout the course of the trial. In other words, you're
7 not to begin making up your minds or formulating your
8 opinions as to what you think the ultimate decisions in this
9 case ought to be until all of the evidence has been
10 received, until I have instructed you on the law and until
11 you have been asked to begin with your deliberation in the
12 case. That is the process that is designed for you 12
13 jurors to arrive at a fair and just decision in the case.

14 So I do want to thank you in advance for your
15 participation, as well as for your careful attention
16 throughout the course of the trial. I would ask that you
17 please give the lawyers your attention now as they give you
18 their opening statements.

19 Mr. Ellis.

20 MR. ELLIS: Thank you, Your Honor. May it please the
21 Court.

22 It was a quiet summer evening just like many others at
23 203 Carlton Drive where the Lammers family had made their
24 home for a number of years. It's a small neighborhood just
25 south of downtown Spartanburg, a quiet night, warm night.

Opening statements

1 All seemed well.

2 The Lammers brothers, John and David, lived in that
3 house. It was decided not long before to go their separate
4 ways into their bedrooms, call it an evening and get ready
5 for the next day.

6 Not long after that, just after midnight, on June the
7 1st of 2007 the peace and tranquillity of that quiet
8 neighborhood was shattered by the screams of pain and horror
9 of John Wayne Lammers.

10 David Lammers, his brother, woke up hearing his brother
11 calling for his help, calling his name. He rushed out of
12 his room and bolted next door into his brother's room and
13 saw what might be the most terrifying sight many people
14 would ever see, a stranger standing in his house in his
15 brother's room over the fallen body of his brother Johnny
16 attacking, stabbing repeatedly.

17 David would do what any brother would do. He rushed to
18 his big brother's aid. He fought this man. He wrestled
19 this attacker in his brother's bedroom in their home trying
20 to give his brother Johnny a chance, just a chance to get
21 away, a chance to get help, a chance to live.

22 Help did eventually come, but it was too late. The
23 attacker had escaped and John Wayne Lammers was lying
24 helplessly on his kitchen floor in his home dying.

25 A home. That's something that we're all told about and

Opening statements

1 have a certain feeling about growing up. The home is a safe
2 place. It's a pure place; it's a refuge; it is a haven.
3 But just after midnight on June the 1st of 2007 it wasn't
4 for John Wayne Lammers. He died in his home that night.

5 Ladies and gentlemen, you're going to hear a great deal
6 of testimony to be presented with a lot of evidence to
7 consider during the course of this trial.

8 You're going to hear from witnesses at the scene,
9 officers, investigators. Forensic specialists will be
10 presenting different kinds of evidence, testimony, exhibits,
11 various things for you to consider and look at and hear.

12 You will hear how the investigators considered this
13 evidence and how they weighed it. And as they gathered this
14 evidence it all pointed to just one conclusion, that the man
15 who broke into the Lammers' home that night and who murdered
16 John Lammers is this man, the defendant, Howard Lee Sims.

17 As Judge Cole just told you, this trial will take some
18 time, hopefully not too long. But it's going to be very
19 important, as he said, to pay close and careful attention to
20 everything you're going to hear.

21 There will be a lot of evidence to consider. And it'll
22 be very important, as he said, to use your good judgment and
23 your common sense in evaluating the evidence and weighing it
24 and determining what happened that night, what the truth is.

25 I submit to you that using your good judgment and your

Opening statements

1 common sense in this process at the end of this trial after
2 you've seen all the evidence and you've heard all of the
3 testimony you will agree there's only one conclusion, that
4 this man, Howard Lee Sims, broke into the Lammers' residence
5 and killed John Lammers. Thank you.

6 THE COURT: Ms. Hodges.

7 MS. HODGES: Thank you, Your Honor. May it please the
8 Court.

9 Ladies and gentlemen, this is Howard Lee Sims, and he
10 is an innocent man. He came into this courtroom today an
11 innocent man, and he will leave out of this courtroom today
12 an innocent man.

13 As Judge Cole told you, he will remain an innocent man
14 not guilty of any crime unless and until the state has
15 proved their case to you beyond a reasonable doubt.

16 Now, you may hear testimony about how the officers in
17 this case and the investigators in this case weighed and
18 considered the evidence. And that's all fine and good. But
19 the real question is, is how are you going to weigh the
20 evidence, because as the fact-finders in this case you
21 ultimately are going to be people that are determining what
22 the truth is in this case, because the word verdict simply
23 means to speak the truth.

24 And the truth is that with all the evidence that you
25 may see, with all the pictures that you see, with all the

Opening statements

1 testimony that you hear, you're still not going to hear the
2 most critical evidence that's going to require you to
3 convict Howard Lee Sims, because the state can't prove to
4 you beyond a reasonable doubt, we submit, that he committed
5 this crime or these crimes.

6 There is no doubt and no dispute that Mr. John Lammers
7 was stabbed to death in his home on June the 1st of 2007.
8 There's no dispute about that.

9 The dispute is whether the state is able to prove to
10 you that Howard Lee Sims did it, because they're going to
11 bring to you evidence that requires you to make inferences,
12 to make suppositions, to speculate.

13 You're going to hear testimony that this is a
14 invariable blood bath in this home. But what you're not
15 going to see is you're not going to see the evidence that
16 supports that, that connects the crime to Mr. Sims. That's
17 ultimately the state's burden and the state's
18 responsibility.

19 What you're here to determine is whether they're able
20 to connect the crimes that occurred to Mr. Sims. And it's
21 that disconnect, ladies and gentlemen, that's going to be
22 your sworn duty at the end of this case to find Mr. Sims not
23 guilty. And that's what we're going to ask you to do, is to
24 find him not guilty and hold the state to their burden and
25 make the evidence speak the truth. Thank you.

David Ray Lammers
Direct examination by Mr. Barnette

1 THE COURT: Mr. Barnette.

2 MR. BARNETTE: Thank you, Your Honor. I would like to
3 call David Lammers to the stand, please.

4 ~~DAVID BRAY LAMMERS~~, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q Mr. Lammers, if you would, give your full name for the
8 record, please.

9 A David Ray Lammers.

10 Q Just scoot back a little bit.

11 A I'm sorry.

12 Q We like it loud but not that loud, I don't think.

13 Sir, what kind of work do you do?

14 A I work for the military seal of command. I'm an
15 electrician in the merchant marine.

16 Q And where are you based out of, sir?

17 A San Diego, California.

18 Q And where do you work at, throughout the Pacific Ocean
19 area?

20 A I can be called to work anywhere in the world wherever
21 there's an ocean.

22 Q Yes, sir. And do you and your brother own a house here
23 in Spartanburg?

24 A Yes, we do.

25 Q And would you come back and visit him periodically

David Ray Lammers
Direct examination by Mr. Barnette

1 through the year?

2 A Sure, yes.

3 Q How many times a year would you come back to
4 Spartanburg?

5 A Usually about two or three times a year.

6 Q Was that y'all's family home?

7 A Yes. That was our family home for 33 years.

8 Q And that's 203 Carlton Drive here in Spartanburg?

9 A Yes, it was.

10 Q And did your brother live in that house while you was
11 gone on duty?

12 A Yes, he did.

13 Q Going back to June the 1st of 2007, the evening before,
14 could you tell the jury what y'all did?

15 A Well, I was getting ready to go to bed for the night.

16 And I got up and made sure the front door was locked. I
17 walked in the kitchen. I made sure the kitchen door was
18 locked. And I made sure the kitchen windows was shut. And
19 I turned on the back porch light.

20 And then I walked out of the kitchen and walked down
21 the hallway. I walked into my brother's bedroom. I looked
22 there. And I seen he was, he was on the computer. And I
23 shut the door, and then I went to bed. I went into my
24 bedroom and went to bed.

25 And I'm not sure how long I was asleep or not, but

David Ray Lammers
Direct examination by Mr. Barnette

1 suddenly I woke up. And I could hear my brother calling my
2 name. And it sounded like there was some kind of ruckus in
3 his bedroom.

4 And I got up and I grabbed this samurai sword out of
5 the closet. And I left my bedroom. And my brother's
6 bedroom is right next to mine. And I ran in there. And I,
7 I seen my brother fighting with this guy, and this guy was
8 over him. And my brother was holding him by his wrist.

9 And I ran over there and I grabbed this guy, and I
10 pulled him off my brother. I told my brother go call 9-1-1.
11 And I'm wrestling around with this guy.

12 And my brother, he runs out of the room. My brother
13 runs out of the room, you know. And he goes in the kitchen
14 to call 9-1-1. And I'm wrestling around with this guy, and
15 I'm not, you know -- I think I wrestled around with him for
16 like two or three minutes.

17 And I'm not sure if he pushed me back on my brother's
18 bed or if I fell back on my brother's bed or not. But I was
19 holding. I fell back on my brother's bed, and I was holding
20 him by his wrist. And I couldn't, I was, you know, I was
21 holding him as best I could. And he said, well, I've got a
22 gun, if you don't let me go I'm going to kill you.

23 And I could hear my brother in the kitchen talking on
24 the phone to 9-1-1. And it sounded to me like he was in
25 real trouble.

David Ray Lammers
Direct examination by Mr. Barnette

1 And I didn't know, you know, if this guy had a gun or
2 not. And what I did was I let him go and I started chasing
3 after this guy. This guy ran out of the house through the
4 kitchen door.

5 And I got to the kitchen, and I could see my brother on
6 the floor on the telephone, talking on the telephone to the
7 9-1-1 operator. And he was just covered with blood from
8 head to toe. And there was blood all over the floor.

9 And I got the phone from him. I started talking to the
10 9-1-1 operator. And if I recall correctly, at that time the
11 9-1-1 operator asked me --

12 MS. HODGES: Objection to hearsay, Your Honor.

13 THE COURT: Overruled.

14 Q Continue on, sir, if you would.

15 A Okay. I took the phone. I was talking to the 9-1-1
16 operator. And I -- it's got a really long cord on it.

17 And I went out the back door, and I was looking around
18 to see if I could see this guy, and I couldn't. It was
19 dark.

20 And I told the 9-1-1 operator, I said I need an
21 ambulance, my brother's hurt. And they said, well, it's on
22 the way. I said, well, it's not here yet, I need it. And
23 they kept telling me to try to stop the bleeding. And I
24 told them, I says I can't. You know, there's just too much
25 blood, I can't tell where he's bleeding from or anything

David Ray Lammers
Direct examination by Mr. Barnette

1 and --

2 Q Did, did the ambulance and the police eventually
3 arrive?

4 A Yes, they did; yes, they did and --

5 Q When, when you was wrestling with the individual back
6 in the bedroom, how close was y'all to each other?

7 A I'd say about -- we was really close. I mean,
8 sometimes we was just right next to each other, and
9 sometimes we was like maybe a foot or so away.

10 Q Was y'all face to face?

11 A Yes.

12 Q And was there a light in the bedroom?

13 A Yes, there was.

14 Q What was the light source?

15 A It was the big-screen television was on, and my
16 brother's computer monitor was on.

17 Q And could you see this individual?

18 A Yes, I could.

19 Q Do you see him here today?

20 A Yes, I do.

21 Q Where do you see him, sir?

22 A He's sitting over there next to his attorneys wearing
23 the khaki pants and the blue shirt.

24 MR. BARNETTE: Your Honor, let the record reflect ~~he's~~
25 ~~identified the defendant.~~

David Ray Lammers
Direct examination by Mr. Barnette

- 1 THE COURT: It shall.
- 2 Q This is the man that attacked your brother that night?
- 3 A Yes. He is.
- 4 Q And he's the man that you were wrestling with that
- 5 night.
- 6 A Yes, he is.
- 7 Q Let me show you some pictures. Let me show you what's
- 8 been marked as State's Exhibits 18, 19, 20 and 21, sir.
- 9 MS. HODGES: May I see those?
- 10 MR. BARNETTE: Yes.
- 11 Q Those pictures -- I will let you look at them real
- 12 quick, sir. Do those pictures fairly represent what you --
- 13 what y'all's house looked like in the area that, that next
- 14 morning?
- 15 A Yes, it does.
- 16 MR. BARNETTE: Your Honor, I'd like to enter these
- 17 into evidence at this time.
- 18 MS. HODGES: No objection, Your Honor.
- 19 THE COURT: What numbers are they?
- 20 MR. BARNETTE: Eighteen, 19, 20 and 21, Your Honor.
- 21 THE COURT: Okay. They're admitted.
- 22 (Photographs marked State's Exhibits Nos. 18, 19, 20
- 23 and 21.)
- 24 MR. BARNETTE: May I publish them to the jury, Your
- 25 Honor?

David Ray Lammers
Direct examination by Mr. Barnette

1 THE COURT: You may.

2 Q This house where y'all lived at 203 Carlton Drive, is
3 it in the city of Spartanburg?

4 A Yes, it is.

5 Q Which is in Spartanburg County.

6 A Excuse me?

7 Q It's in Spartanburg County too, is that right?

8 A Yes.

9 Q And when this occurred, it was nighttime?

10 A Yes, it was.

11 Q Did y'all own a little ladder, a stepladder?

12 A Yes, we did.

13 Q Is this a picture of y'all's house at 203 Carlton
14 Drive, sir?

15 A Yes, it is.

16 Q Is this the front of the house?

17 A Yes, it is.

18 Q Let me show you what's been marked as State's Exhibit
19 No. 19 entered into evidence. Could you tell the jury what
20 this is, sir?

21 A That's a picture of the back of our house.

22 Q Now, looking back here, can you tell us what that is,
23 sir?

24 A Do you mean the ladder?

25 Q Yes, sir.

David Ray Lammers
Direct examination by Mr. Barnette

1 A Yes. That's our ladder.

2 Q And where was it located when y'all went to bed that
3 night?

4 A It was on the other side of the house next to the ramp,
5 over on the same side where the air conditioner is.

6 Q So it was actually on this side over in here.

7 A Yes, it was.

8 Q So it wasn't here when y'all went to bed that night.

9 A No, it wasn't.

10 Q How do you know that, sir?

11 A Because I saw it on the opposite side because -- I saw
12 it because I turned the back porch light on.

13 Q And this window, what window does that go to, sir?

14 A The back bathroom where my brother's bedroom is.

15 Q So is that bathroom attached to your brother's bedroom?

16 A Yes, it is. There's a door there.

17 Q Had you checked that window?

18 A I don't recall if I did or not, but I know the window
19 was left open because it was hot outside.

20 Q And why do y'all leave the windows open?

21 A It was hot outside.

22 Q Y'all have -- was the air conditioning units working or
23 anything at that time?

24 A I don't think the air conditioner in my brother's room
25 was working, no.

David Ray Lammers
Direct examination by Mr. Barnette

1 Q That window was left open probably because of letting
2 air in --

3 MS. HODGES: Objection. Speculation, Your Honor.

4 THE COURT: Sustained.

5 Q Let me show you this one, State's Exhibit No. 20.

6 Could you tell the jury what this is, sir?

7 A That's a picture of the window going to the bathroom in
8 my brother's bedroom.

9 Q State's Exhibit No. 21, what is that, sir?

10 A That's the back door to my house.

11 Q And where was the ladder in relationship when you went
12 to bed that night?

13 A It was over close to the air conditioner.

14 Q So it was on the other side of the ramp.

15 A Yes, it was.

16 Q Afterwards, did you see the kitchen and everything
17 after your brother was taken by E. M. S.?

18 A Yes, I did.

19 Q Let me show you what's been marked as State's Exhibits
20 23, 24. I'll let you look at those there, sir, if you want
21 to look at it -- 25, 26, 27, 29, 30, 33. And let me show
22 you also State's Exhibits 55, 56, 57, 58, 60 and 64. Take
23 your time, sir. Do those pictures fairly represent what you
24 saw?

25 A Yes, they do.

David Ray Lammers
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like to move these into
2 evidence at this time.

3 MS. HODGES: No objection, Your Honor.

4 THE COURT: All right. Exhibits 23, 24, 25, 26, 27,
5 29, 30, 33, 55, 56, 57, 58, 60 and 64 are admitted without
6 objection.

7 (Photographs marked State's Exhibits Nos. 23, 24, 25,
8 26, 27, 29, 30, 33, 55, 56, 57, 58, 60 and 64.)

9 MR. BARNETTE: Thank you, Your Honor. May I publish
10 them to the jury at this time?

11 THE COURT: You may.

12 Q Starting with State's Exhibit No. 23, is this the
13 kitchen area where your brother was found later after you
14 came back out?

15 A Yes.

16 Q Was this the rag that you tried to use to help him
17 with?

18 A I believe so, yes.

19 Q Okay. Is this door the back door going out on the
20 ramp?

21 A Yes, it is.

22 Q What direction was y'all's bedroom coming from?

23 A Well, you see the wall right there. You would have to
24 walk -- right there is where the living room starts. And
25 you just walk straight back. And you'll be, walk past the

David Ray Lammers
Direct examination by Mr. Barnette

1 front bathroom. And you'll get to both mine and my
2 brother's bedrooms.

3 Q Let me show you what's been marked as State's
4 Exhibit 24. Is this just another picture? Is this just
5 another, from a different angle, a picture of the same area?

6 A Yes, it is.

7 Q Is this also your living room or the kitchen table, or
8 living room table?

9 A Yes. It's the kitchen table.

10 Q Okay. Showing you State's Exhibit 25, what is that,
11 sir?

12 A That is the kitchen floor and the telephone.

13 Q Is this the telephone that your brother tried or called
14 9-1-1 on?

15 A Yes, it is.

16 Q And is that the phone you later got on?

17 A Yes, it is.

18 Q And showing you State's Exhibit No. 26, can you tell
19 the jury what that is, sir?

20 A That's the kitchen. It was on the floor there where
21 all the blood is that my brother was laying. That's the
22 stove right there. And the blue thing, if I recall
23 correctly, is the bowl where he used to feed the cats.

24 Q And is that also a towel that you were trying to use
25 there too?

David Ray Lammers
Direct examination by Mr. Barnette

1 A Yes, the, the white one.

2 Q And the sword that you talked about, had you laid it on
3 the kitchen table?

4 A Yes.

5 Q Is that sword we are talking about, is it more of a --
6 is it a real sword?

7 MS. HODGES: Objection to leading, Your Honor.

8 MR. BARNETTE: I'll rephrase the question.

9 THE COURT: Okay.

10 Q Tell us about the sword, sir.

11 A Well, it's a -- I bought it over, when I was over in
12 Japan. It's just an ornament. It's not a real sword. It
13 wouldn't cut hot butter.

14 Q Did you ever use that sword?

15 A No.

16 Q State's Exhibit 27, is this just blood in the area on
17 the floor, as well as on the stove?

18 A Yes, it is.

19 Q State's Exhibit No. 29, is that just a picture of where
20 the sword was in the kitchen?

21 A Yes, it is.

22 Q State's Exhibit No. 30, can you tell the jury what this
23 is, sir?

24 A That's my brother's bed.

25 Q Okay. And where is his computer located? You may want

David Ray Lammers
Direct examination by Mr. Barnette

1 to step down here. If you would, just step down here so you
2 can show them on the picture.

3 (Whereupon, the witness left the stand.)

4 Q Just use my pen for a pointer on the picture where the
5 computer was.

6 A Right here.

7 Q And is that where he was sitting at when you went to
8 bed?

9 A Yes, it was.

10 Q Stay there, sir. State's Exhibit 33, what is this a
11 picture of, sir?

12 A That is a picture of the window in my brother's
13 bathroom.

14 Q Did he used to keep items on the frame or on the -- I
15 don't know exactly what you would call that, that area
16 there.

17 A The little ledge?

18 Q Yes.

19 A I think he did, yes, sir.

20 Q And State's Exhibit 55, can you tell the jury what this
21 is, sir?

22 A That's a picture of my brother's bedroom.

23 Q Okay. And where does that room lead off to?

24 A Well, if you go out, go out through here, here is the
25 closet where we kept the dryer. If you go out this way, it

David Ray Lammers
Direct examination by Mr. Barnette

1 leads to the hallway which goes to the rest of the house.

2 You go through there. That's the, my brother's bathroom.

3 Q Is that bathroom connected onto that room?

4 A Yes, it is.

5 Q It's not connected to any other room in the house?

6 A No, it's not.

7 Q And where is that window that we looked at located at
8 in that bathroom you see in that picture?

9 A It looks like it's about right there, it's right there
10 as you go in the door on the left.

11 Q And State's Exhibit 56?

12 THE COURT: Mr. Lammers, let me ask you not to turn
13 your back to the court reporter. She can't hear you if
14 you've got your back to her. Okay?

15 THE WITNESS: Yes, sir.

16 Q Just come right here if you would, sir, and kinda face
17 that way so everybody can hear you.

18 Tell us what this picture is here, sir, State's
19 Exhibit 56.

20 A That's a picture of my brother's bathroom. There's the
21 mirror and there's the window.

22 Q Show you State's Exhibit 57, is that just another
23 picture of the window?

24 A Yes, it is.

25 Q And did he keep items on the frame, on that screen?

David Ray Lammers
Direct examination by Mr. Barnette

1 A If I recall correctly, yes, he did.

2 Q And then showing you State's Exhibit 58, tell us which
3 direction this picture is going into the bedroom.

4 A That's the, that's the door going to my brother's
5 bedroom.

6 Q Okay. And where is the T. V. located at?

7 A Right here. That's the flat screen T. V.

8 Q Is this the box that it came in?

9 A Yes, it is.

10 Q Showing you State's Exhibit No. 60, can you tell us
11 what that is, sir?

12 A That's another picture of my brother's bedroom.

13 Q Okay. And showing you State's Exhibit 64, what is that
14 a picture of, sir?

15 A That's a picture of the floor in my brother's bedroom.
16 This is the door to the closet where we kept the dryer.
17 Right there is a picture of a knife.

18 Q And whose knife was that, sir?

19 A That's my knife. That was my knife.

20 Q And what was it used -- what did you used to use it
21 for?

22 A I used to carry it around in my -- I used to use it on
23 the job to cut wire and electrical tape and that sort of
24 thing. And I used it for a letter opener too.

25 Q So when you was at the house, what was you using it

David Ray Lammers
Direct examination by Mr. Barnette

1 for? What purpose was you using it for at the house?

2 A When it was in the house when I was at the house I used
3 to just leave it in the living room to use as a letter
4 opener for my mail.

5 Q So it was left in the living room.

6 A Yes.

7 Q And did -- just have a seat.

8 (Whereupon, the witness returned to the stand.)

9 Q Did you know where the knife was on that day?

10 A On the day of this break-in, no, I didn't.

11 Q So you don't know where it was located in the house.

12 A No, I don't.

13 Q Also talking about the sword itself, if you would, sir,
14 just take a look at it. Is this the sword that we are
15 talking about?

16 A Yes, it is.

17 MR. BARNETTE: Your Honor, I'd like to enter this into
18 evidence at this time.

19 MS. HODGES: No objection, Your Honor.

20 THE COURT: What number is it?

21 MR. BARNETTE: It will be No. 12, Your Honor. I have
22 that as a swab underneath. We will put that the sword
23 itself.

24 THE COURT: It's admitted.

25 (Sword marked State's Exhibit No. 12.)

David Ray Lammers
Direct examination by Mr. Barnette

1 Q If you would, go ahead and pull that up, sir, and just
2 show them how sharp the knife is -- not the knife, the sword
3 is.

4 (Whereupon, the witness demonstrated.)

5 A It's not sharp at all. It is not sharp at all.

6 Q If you would, just put it back in the box, sir, if you
7 would.

8 Now, why did you grab this sword before you went in the
9 room?

10 A Well, I didn't know what was going on in there. It
11 sounded like there was some kind of a ruckus. And I knew it
12 was there. So I just, I guess I just, sort of instinctively
13 grabbed it to maybe use it as a club if I needed something.

14 Q Was you able to use it?

15 A No, I wasn't.

16 Q When you ran out of the room with him did you -- had
17 you dropped it in the room at some point?

18 A Yes. When I, when I ran over there to get the, that
19 guy off my brother, I dropped it. And I pulled him off my
20 brother. And when I went chasing after the guy when he ran
21 out of my brother's bedroom, I picked it up again. And I
22 carried it in the kitchen. When I got the phone from my
23 brother I put it on the kitchen table.

24 Q Now, when you was helping your brother, how many
25 times -- or tell the jury what he looked like when you --

David Ray Lammers
Direct examination by Mr. Barnette

1 A Well, he was, he was just totally covered in blood from
2 the head to toe, and the floor around him was, was just a
3 total puddle of blood.

4 He, he -- I don't know if he ever seen the movie
5 "Carrie" or not with Sissy Spacek where she's been to the
6 prom and she's got blood all over her. Well, he looked like
7 that, but it was a lot worse because this was real.

8 Q And did you try to stop the bleeding?

9 A Yes, I did, but it wasn't doing no good. I couldn't
10 even tell where it was coming from there was so much.

11 Q And is there any question in your mind that you see the
12 person in here today that did this to your brother?

13 A No, there's no question in my mind.

14 Q And where is he located again, sir?

15 A He's sitting over there next to his attorney. He's
16 wearing the khaki pants and a blue shirt.

17 MS. HODGES: Your Honor, we renew our objections.

18 THE COURT: Overruled.

19 MR. BARNETTE: One moment, Your Honor, please.

20 (Pause.)

21 Q Please answer any questions Ms. Hodges may have for
22 you, sir. Thank you.

23 A Thank you.

24

25

David Ray Lammers
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q Mr. Lammers, you had an opportunity to talk with the
4 investigators that evening that this occurred, or I guess
5 actually the early morning hours. You went and talked to
6 the investigators at the police department, is that right?

7 A Yes, I did.

8 Q And at that time you gave a description of the person
9 that you saw in your home to the investigators, is that
10 right?

11 A If I recall correctly, yes.

12 Q And in that description you described the person that
13 attacked your brother as being 6' to 6'1", somewhere between
14 210 to 220 pounds, is that correct?

15 A If I recall correctly, yes.

16 Q Okay. And, in fact, you told the investigators that
17 you were about 195 pounds or so and that this person was
18 bigger than you were, is that right?

19 A If I recall correctly, yes.

20 Q And you were actually -- and when you say wrestle and
21 grabbed him, I mean, we're talking, you actually had your
22 hands on his wrists holding him, right?

23 A Yes.

24 Q Okay. So you had a pretty good estimation as to what
25 you had a hold of. Is that fair to say?

David Ray Lammers
Cross-examination by Ms. Hodges

1 A I suppose, yes.

2 Q Okay. And you had an opportunity to make an
3 identification later on that day, isn't that right?

4 A Yes.

5 Q And, in fact, at that point you told the investigators
6 that you were only 50 percent sure that it was Mr. Sims,
7 isn't that right?

8 A Yes.

9 Q Okay. And that was when it was, I mean, literally
10 fresh in your memory. I mean, you had just lived through
11 this event that day.

12 A Yes.

13 Q Was there any way other than going through the kitchen
14 to get out of your home by the person that attacked your
15 brother?

16 A Is there any? What do you mean by that?

17 Q Well, that's a good question. That was a pretty
18 inarticulate question.

19 A Well, the only way he could have got out was through
20 the back door, because when I ran into the kitchen to see
21 about my brother the back door was open.

22 Q Okay.

23 A That's the only way he could have got out. The door in
24 the living room was closed.

25 Q Looking at what's been previously marked as State's 23,

David Ray Lammers
Cross-examination by Ms. Hodges

1 are you able to see that from where you are?

2 A Yes.

3 Q Okay. So my understanding is, is that the person, both
4 your brother -- obviously, your brother was here.

5 A Yes.

6 Q And when you went running, the person you actually saw
7 go out the back door, is that correct?

8 A No, I didn't actually see him go out the back door. I
9 saw the back door open.

10 Q Okay.

11 A And that's the only way he could have gotten out.

12 Q Only way he could have gotten out. Because there's
13 another to the house, the front door. But he didn't go out
14 that door.

15 A No. It was closed.

16 Q And wasn't there actually something blocking the front
17 door?

18 A I think the, the loveseat might have been pushed over a
19 little bit.

20 Q Okay. So at this point basically the only sort of
21 doorways or exits that we know about are either the window
22 that was in your brother's bathroom or this door here, the
23 kitchen door, or the back door.

24 A Yes.

25 Q Okay. And you, in fact, went out that back door to see

David Ray Lammers
Cross-examination by Ms. Hodges

1 if you saw anybody as you were on the phone with 9-1-1,
2 isn't that right?

3 A Yes.

4 Q How, how soon after you kind of came into the kitchen
5 would you say you went out the back door looking for
6 somebody?

7 A I went looking out the back door to see if I could see
8 anything, yes.

9 Q How soon? I mean, did you talk to 9-1-1 first?

10 A Well, I stopped and I picked up the phone. And if I
11 recall correctly, I talked to 9-1-1. But as I was talking
12 to them, I was still going out the back door.

13 Q Okay. So you were kind of doing that all sort of at
14 the same time.

15 A Yes.

16 Q Okay. And you said that your brother kept the window
17 open in the bathroom because the air conditioner, as far as
18 you remember the air conditioner, wasn't working in his
19 bath, in his bedroom.

20 A If I recall correctly, yes.

21 Q And your home doesn't have central air conditioning,
22 right?

23 A No, it doesn't.

24 Q Putting back up on the screen State's No. 33, is that a
25 picture of your brother's bathroom window, right?

David Ray Lammers
Cross-examination by Ms. Hodges

1 A Yes.

2 Q And this window, is it basically, does the window just
3 raise up, just the bottom portion?

4 A Yes. That's the screen you see there.

5 Q Okay. So that's the screen that's up, as well as
6 basically it's just the bottom portion, just basically
7 pushes up, is that correct?

8 A Yes. But as you can see, the screen is down.

9 Q Right. So the screen's actually down. We're making a
10 record of this. I mean, the jury can obviously see. But, I
11 mean, would you describe this being, the screen being half
12 way down, a quarter of the way down?

13 A It looks to me like it's all the way down.

14 Q All the way down. Okay. So the screen is actually all
15 the way down blocking the window.

16 A Yes.

17 Q Okay. And you had locked the kitchen door before going
18 to bed that evening, is that correct?

19 A Yes.

20 Q And do you have any recollection as to how long it had
21 been since you kind of locked up the house going to sleep
22 before you hear your brother calling for you?

23 A I think it might have been like an hour and a half or
24 two hours. I don't recall exactly.

25 Q Okay. And do you remember telling the investigators

David Ray Lammers
Redirect examination by Mr. Barnette

1 that it was dark in your brother's room, that basically the
2 only light you had in there was from the T. V. and the
3 computer monitor?

4 A Yes.

5 MS. HODGES: Beg the Court's indulgence for just a
6 minute.

7 (Pause.)

8 Q Thank you, sir. That's all I have.

9 MR. BARNETTE: Just a couple on followup, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BARNETTE

12 Q Ms. Hodges asked you about the screen in the window.
13 How easy was that to open or close?

14 A Very easy.

15 Q And when you opened it, what would happen a lot of
16 times?

17 A Well, if you didn't, if you didn't push it up just
18 right, it would always fall back down.

19 Q So it was easy to open back and forth.

20 A Yes.

21 Q You gave a description to the police, is that right?

22 A Yes.

23 Q And you gave a description of the clothing he was
24 wearing also.

25 A Yes.

1 Q And they used that -- well, let me rephrase that
2 question.

3 And the ladder they're discussing about was underneath
4 your brother's bathroom window. Was that ladder there when
5 you went to bed that night?

6 A No, it wasn't. It was on the opposite side of the ramp
7 where the air conditioner is.

8 Q All right.

9 (Lineup marked State's Exhibit No. 91 for
10 Identification.)

11 Q Was you shown a lineup, Mr. Lammers?

12 A Yes, I was.

13 Q Let me show you what's been marked at State's Exhibit
14 91. Is this a copy of the lineup that you were shown?

15 A Yes, it is.

16 Q And when you was shown that lineup, was you shown that
17 lineup by Investigator John Burgess?

18 MS. HODGES: Your Honor, we renew our objection to
19 this line of questioning.

20 THE COURT: Well, let me see y'all just a minute.

21 (Bench conference held off the record.)

22 THE COURT: Overrule the objection.

23 Q Okay. On this lineup -- Investigator John Burgess
24 showed you the lineup, is that correct?

25 A Yes, he did.

David Ray Lammers
Redirect examination by Mr. Barnette

1 Q In this lineup did he suggest anything to you?

2 A No, he didn't.

3 Q Did he point anybody out to you?

4 A No, he didn't.

5 Q Did he say that the person that they was looking for
6 was in this picture?

7 A No, he didn't.

8 Q When he showed you the lineup, who did you pick, sir?

9 A The one I circled, and I signed his, signed my name.
10 And he's the name guy sitting right over there.

11 Q Is, how long did you take to pick that person out?

12 A Not very long at all. I went right to it.

13 Q And later on did he ask you how sure you was and you
14 said 50 percent? Why did you say that?

15 A Well, it's not a very good picture to begin with.
16 That's why, one of the reasons.

17 Q And is it better seeing somebody in person?

18 A Oh, much better.

19 Q And do you see that person in the courtroom today?

20 A Yes. He's sitting right over there wearing the khaki
21 pants and the blue shirt next to his attorney.

22 MR. BARNETTE: Your Honor, I'd like to move State's
23 Exhibit 91 into evidence at this time.

24 MS. HODGES: Your Honor, we renew our objections.

25 THE COURT: All right. It's admitted.

David Ray Lammers
Cross-examination by Ms. Hodges

1 (Lineup marked State's Exhibit No. 91.)

2 MR. BARNETTE: May I publish it to the jury, Your
3 Honor?

4 THE COURT: You may.

5 Q And, sir, is this your signature?

6 A Yes, it is.

7 Q And did you circle that?

8 A Yes, I did.

9 Q Was that the person that you saw that day, I mean, that
10 evening in your bedroom?

11 A Yes, it is.

12 MR. BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 Q When you look at the event, what was one of the things
15 that you remember about him?

16 A The eyes. They just seemed to bulge out at you.

17 Q Is that one of the features you remember?

18 A Yes.

19 Q Thank you, sir. Please answer any questions Ms. Hodge
20 may have for you.

21 CROSS-EXAMINATION

22 BY MS. HODGES

23 Q Is that lineup -- because you told the investigators
24 you are only 50 percent sure that that was the person that
25 was, that you saw in your home that night, is that correct?

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 A Yes.

2 Q Okay. The clothing description that you gave to the
3 investigators, that was when he was wearing a blue-pocketed
4 t-shirt, isn't that correct?

5 A Yes.

6 Q And of course he didn't have on any gloves.

7 A No, not that I recall, no.

8 Q Okay. And how far is it from your brother's room to
9 down, to the, to the kitchen door?

10 A I would say maybe 20 or 25 feet.

11 Q Okay. And your rooms are right next, are actually side
12 by side to each other.

13 A Yes.

14 Q Okay.

15 MS. HODGES: That's all I have.

16 MR. BARNETTE: No further questions of the witness,

17 Your Honor.

18 THE COURT: You may step down.

19 MR. ELLIS: Your Honor, the state calls Officer Julie
20 Coe.

21 JULIE ANN COE-JAMES, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. ELLIS

24 Q Please introduce yourself to the jury.

25 A I'm Julie Ann Coe-James.

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 Q Where are you employed?

2 A Spartanburg Public Safety Department.

3 Q How long have you been there?

4 A Twelve years.

5 Q And what are some of your basic roles or functions with
6 the public safety department?

7 A I've worked patrol, and now I am currently in
8 investigations.

9 Q Were you on duty on the night of June the 1st of 2007?

10 A Yes, I was.

11 Q And did you get a call sometime roughly around midnight
12 or a little after in reference to 203 Carlton Drive?

13 A Yes, I did. It was about 12:43 in the morning.

14 Q And what was that call for?

15 A Originally, it came out as an assault call. But while
16 in route we were notified that it was a stabbing.

17 Q What time did you arrive there?

18 A 12:47 a.m.

19 Q And 203 Carlton Drive, is that in Spartanburg County?

20 A Yes, it is.

21 Q And once you arrived there, what did you see?

22 A When myself and my partner pulled up we were met in the
23 front yard by Mr. David Lammers. And he had on shorts and
24 flip-flops and no shirt on. And he had blood on him. He
25 flagged us down. He said come around to the back. My

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 partner and I went to the back of the residence, went up the
2 ramp and went into the back room.

3 At that time that's where I saw John Lammers lying on
4 the floor with nothing but shorts on covered from head to
5 toe in blood. And there was blood all over the floor.

6 Q And you said went around to the back door and up the
7 ramp.

8 A Yes, sir.

9 Q What room is that that you were going into?

10 A Into the kitchen.

11 Q Where in the kitchen was John Lammers?

12 A Basically, right over by the stove. There was a phone
13 that was on the floor, and that's where he was.

14 Q You said there was blood basically everywhere.

15 A Everywhere.

16 Q What did you do at that point?

17 A At that point I tried to talk to John Lammers. He just
18 kept rolling around on the floor. He wasn't very coherent,
19 you know. He kept telling me that he was hot and he was
20 having problems breathing. At that point I just wanted him
21 to be still, and he wouldn't.

22 Q Was there anybody else there, or who arrived
23 afterwards?

24 A E. M. S. arrived shortly after we did. Officer
25 Longshore took David Lammers outside to speak with him while

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 E. M. S. and I attempted to render aid.

2 Q How successful were you?

3 A We weren't successful. As we were working on him, his
4 body became limp. He became unresponsive. His eyes were
5 open, and it didn't appear that he was breathing any more.

6 Q At that point what did you do?

7 A We loaded him up on the stretcher, E. M. S. and I did.
8 And then we got him into the ambulance. And he was rushed
9 to the hospital.

10 Q Once you got John Lammers into the ambulance, who did
11 you talk to next or what did you do next?

12 A I spoke with David Lammers briefly and asked him if he
13 could kinda tell us what had happened that night.

14 Q And what did you learn from that?

15 A He stated that he had been --

16 MS. HODGES: Objection to hearsay, Your Honor.

17 THE COURT: Overruled.

18 Q Continue.

19 A Okay. He stated that he had been in his bedroom asleep
20 and he was woken up by the sounds of his brother screaming.
21 He then grabbed a samurai sword and sort of ran into his
22 brother's room. He saw his brother struggling with a black
23 male. He described the male to me as being 6'2", short
24 hair, clean shaven, wearing a blue-pocket t-shirt.

25 He then began to struggle with him. When the black

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 male told him that he had a gun, he let him go. And the
2 black male escaped.

3 Q At some point did you also enter the house beyond the
4 kitchen? Did you go farther into the house?

5 A Yes, I did. We did a -- we went through the house just
6 to make sure that there was nobody else in the house.

7 When we went into John Lammers' bedroom, at that point
8 we found a small silver pocketknife, fold-out knife. It was
9 on the floor in his bedroom. And there was blood all over
10 the bedroom.

11 Q Was there blood just in one part of the bedroom, or was
12 it all over the place?

13 A All over. It was on the bed, the floor and everywhere.

14 Q And could you describe the knife for me a little bit?

15 A It was like a pocketknife. It was silver in color. It
16 was just a fold-out. And it had blood on it.

17 Q You said it was on the floor. Whereabouts on the floor
18 in relation to the rest of the room?

19 A Up against the wall. Like as soon as you go into the
20 room, right there.

21 Q There was no one else inside the house at that time?

22 A No, sir.

23 Q And after you found the knife and secured the area,
24 what did you do?

25 A At that time I notified my supervisor exactly what we

Julie Ann Coe-James
Direct examination by Mr. Ellis

1 had and went ahead and secured the scene, put up the crime
2 scene tape and started our crime scene log and made sure
3 that nobody entered the residence.

4 Q And at any point other than Mr. Lammers, your partner
5 and E. M. S., during this initial stage did you see anyone
6 else around the house?

7 A No, sir.

8 Q You said you set the crime scene tape up and secured
9 the house.

10 A Yes.

11 Q Did you ever see anyone else go inside the house or
12 enter the house or disturb anything at all?

13 A No. Once we set that tape up we are not allowed to let
14 anyone in.

15 Q And for how long did you stay on the scene?

16 A I want to say I left somewhere between 7:00 and 7:30
17 that morning when the next shift came in and relieved me.

18 MR. ELLIS: Beg the Court's indulgence, Your Honor.

19 (Pause.)

20 Q Again, I believe you said that you received the call
21 approximately 12:43 a.m., is that right?

22 A Yes, sir.

23 Q And you got there at 12:47.

24 A Yes, sir.

25 Q That was all nighttime then, is that correct?

Julie Ann Coe-James
Cross-examination by Ms. Hodges

1 A Yes.

2 Q So it was dark outside.

3 A Uh-huh.

4 Q And 203 Carlton Drive, I believe you said it's in
5 Spartanburg County. Is that also in the city of
6 Spartanburg?

7 A Yes, it is.

8 Q Thank you. Please answer any questions Ms. Hodges may
9 have.

10 CROSS-EXAMINATION

11 BY MS. HODGES

12 Q Officer, you go by Coe-James, is that correct?

13 A Yes, ma'am.

14 Q Officer Coe-James, my understanding is you did an
15 initial incident report in this case, is that right?

16 A Yes, ma'am.

17 Q Have you had an opportunity to review your incident
18 report?

19 A Yes, ma'am.

20 Q Do you remember what time you wrote as your departure
21 time?

22 A 4:00 o'clock.

23 Q Okay. But you just testified that you actually were
24 there until 7:00 or 7:30.

25 A The departure time is the time that you finish the

Julie Ann Coe-James
Cross-examination by Ms. Hodges

1 report, not the actual time that you left the scene.

2 Q Okay. So you actually did your report that evening.

3 A While on the scene.

4 Q While on the scene while it was fresh in your memory,
5 is that right? It was fresh in your memory at that time?

6 A Yes, ma'am.

7 Q Okay. And so the description that you just told us of
8 the person being 6'2", wearing a blue pocket-type t-shirt,
9 clean-shaven, that was basically within hours of that being
10 told to you by Mr. David Lammers.

11 A Yes, ma'am.

12 Q You had indicated that nobody else had gone into the
13 crime scene. I mean, at some point the investigators
14 entered the crime scene, right?

15 A Yes, ma'am.

16 Q And do you recall, did they have some sort of search
17 warrant or something to enter the crime scene with?

18 A That I don't know.

19 Q Okay. What were you doing in terms of, of securing the
20 crime, in terms of kind of keeping watch over the crime
21 scene? Tell the jury. I know what you're doing. But tell
22 the jury what you were doing.

23 A Basically, once we put up the crime scene tape, we
24 start a crime scene log, which is a piece of paper that we
25 put everybody who goes in and out of there. We put the

Julie Ann Coe-James
Cross-examination by Ms. Hodges

1 officers that initially responded, E. M. S. and people like
2 that on there.

3 Basically, my function at that time is just to make
4 sure that nobody non-law enforcement enters that scene. And
5 the only time you can enter that scene is if you actually
6 have business to conduct within it. So nobody from the
7 public can go in there.

8 Q Do you all actually log every, every time a law
9 enforcement officer goes in and out of the scene?

10 A Yes, ma'am.

11 Q So basically your crime scene log is, is, should be an
12 accurate reflection of, of everybody that goes in and out of
13 that crime scene.

14 A Yes, ma'am.

15 Q Okay. I'm going to ask if you recognize this.

16 A Yes, I do.

17 Q And what is that?

18 A That's the crime scene log.

19 Q All right. And is that the crime scene log that you
20 created?

21 A Yes, ma'am.

22 Q And is that your handwriting in terms of each of the
23 officers and the times they're going in and out?

24 A Not all of it is my handwriting, no.

25 Q Okay. And what point -- is a majority of it your

1 handwriting?

2 A Yes. All of this is not, and some of the out times are
3 not.

4 Q Okay. Because you actually left around 7:30 that
5 morning, 7:00 or 7:30, whenever the other shift came.

6 A Yeah.

7 Q Okay. But you essentially were making sure that
8 everybody that was in the crime scene, you knew who was
9 there, what time they were coming and what time they were
10 leaving.

11 A Yes, ma'am.

12 Q Okay.

13 MS. HODGES: Could I just mark this as Defense 1 for
14 identification purposes at this point?

15 (Crime scene log marked Defendant's Exhibit No. 1 for
16 Identification.)

17 Q After leaving the scene that morning did you have any
18 other contact with the case, this particular case, in terms
19 of the investigation?

20 A Later on. I don't remember what time or anything. I
21 worked third shift. So when I got off that morning I went
22 home and went to bed. And they woke me up. I don't know
23 what time. And I went back and spoke with the investigators
24 on the scene that were in the command post.

25 Q Okay. And that was just in the course of their

Fred David Thompson
Direct examination by Mr. Barnette

1 investigation to be able to talk to you --

2 A Yes, ma'am.

3 Q -- about what you saw, what you heard, what you did.

4 A Yes, ma'am.

5 Q Okay. That's all I have. Thank you.

6 MR. ELLIS: Nothing further, Your Honor. We would ask
7 this witness be excused, please.

8 THE COURT: You may step down.

9 MS. HODGES: No objection, Your Honor.

10 (Whereupon, the witness was excused.)

11 MR. BARNETTE: Your Honor, may we approach?

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

14 MR. BARNETTE: Your Honor, the state would like to
15 call Freddie Thompson to the stand, please.

16 FRED DAVID THOMPSON, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q Sir, if you would, give us your full name, please.

20 A Fred David Thompson.

21 Q And where do you live? I mean, where do you work at,
22 sir?

23 A Spartanburg County Communications, 9-1-1 Department.

24 Q And what is your duties there, sir?

25 A I have varied responsibilities, one being of which

Fred David Thompson
Direct examination by Mr. Barnette

1 being custodian of records.

2 Q And are you in charge of the 9-1-1 calls, keeping
3 records of those calls?

4 A Yes, sir.

5 Q Let me show you what's been marked as State's Exhibit
6 79. Is this a copy of the 9-1-1 call that came from 203
7 Carlton Drive on June the 1st of 2007?

8 A Yes, sir.

9 MR. BARNETTE: Your Honor, at this time I'd like to
10 enter this C. D. into evidence, at this time.

11 MS. HODGES: Your Honor, just subject to our motions
12 in limine. I just renew that in regards to this tape.

13 THE COURT: Well, let me see you just a minute.

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

16 THE COURT: Overrule any objection.

17 (C. D. marked State's Exhibit No. 79.)

18 MR. BARNETTE: Your Honor, I would like to publish it
19 at this time to the jury.

20 (Whereupon, the C. D. was played for the jury.)

21 Q Mr. Thompson, was that the 9-1-1 call received from
22 that address?

23 A Yes, sir.

24 Q And that's the way y'all's records reflect that.

25 A Yes, sir.

1 Q Thank you, sir.

2 MS. HODGES: I have no questions for Mr. Thompson,
3 Your Honor.

4 THE COURT: Okay. You may step down.

5 MR. BARNETTE: We ask for the witness to be excused,
6 Your Honor.

7 MS. HODGES: No objection.

8 THE COURT: He may be.

9 (Whereupon, the witness was excused.)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, as I told you yesterday, you may recall, that I have
12 a funeral to attend this afternoon. It's out of town.

13 So we're going recess now for the day. We will resume
14 in the morning beginning at 9:30 with the continuation and
15 the presentation of evidence.

16 Keep in mind that during the afternoon and overnight
17 recess you're not permitted to discuss this case with any
18 person whatsoever in any fashion whatsoever. So when you go
19 home or back to work or wherever you're going, you can't
20 discuss this case and your service on it with any person
21 whatsoever. Do not permit them to discuss it with you.

22 You also can't permit yourselves to be exposed to any
23 type of media coverage that might relate to the case. You
24 can't conduct your own research or do your own investigation
25 through libraries or internet or anything else about

1 anything that relates to this case.

2 Your decisions in the case have to be based strictly
3 upon what you see and hear during the trial. You're not to
4 be influenced by any outside information or extraneous
5 information from other sources. So do not discuss the case.
6 Don't permit anyone to discuss it with you. Don't conduct
7 any research; don't do your own investigation; don't permit
8 yourselves to be exposed to any type of media coverage of
9 the case or any other person's discussion about the case.

10 Okay. Do have a good afternoon and evening. And we'll
11 see you in the morning at 9:30. Please report back to your
12 jury room at 9:30 in the morning. Have a good afternoon.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: All right. Any matters to be addressed
16 before we recess?

17 MR. BARNETTE: None from the state, Your Honor.

18 MS. HODGES: None from the defense, Your Honor.

19 THE COURT: Court is in recess until 9:30 in the
20 morning.

21 END OF PROCEEDINGS JULY 15, 2008

22

23

24

25

1 (Proceedings July 16, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Have the record reflect that
5 this morning one of the jurors, No. 47, apparently could
6 not grasp or understand the instruction for reporting this
7 morning at 9:30.

8 The clerk has been in contact with him, but he didn't
9 understand that he was to be here this morning. So he's not
10 made those arrangements.

11 So in accordance with 14-7-1340, I have asked the clerk
12 to prepare a slip of paper with each of the alternate jurors
13 names and to draw one of the names from a cup. And she's
14 done so. And the name that was drawn is Juror No. 164. So
15 Juror 164 will be taking the place of Juror 47.

16 Any objection to that?

17 MR. BARNETTE: None from the state, Your Honor.

18 MS. HODGES: None from the defense, Your Honor.

19 THE COURT: Okay. Bring the jury in, please.

20 MS. HODGES: Your Honor, before we bring the jury, my
21 understanding is that there was a -- I know I saw this
22 morning myself on Fox News a report.

23 My understanding from talking to somebody else in the
24 courthouse is that there was an article in the
25 Herald-Journal this morning. I know the cameras are here

1 this morning.

2 The Fox News report reported that Mr. Sims had been,
3 had broken into the victim's home on numerous occasions
4 prior to the incident which is on trial.

5 THE COURT: On numerous occasions?

6 MS. HODGES: That's what the Fox News reported this
7 morning, Your Honor.

8 THE COURT: I wonder where they got that information.

9 MS. HODGES: I have no idea, Your Honor.

10 THE COURT: Interesting, because it certainly wasn't
11 in court.

12 MS. HODGES: Right.

13 THE COURT: Okay.

14 MS. HODGES: And my concern is, I know the jury was
15 instructed and admonished not to view any media coverage.
16 I would just ask the Court to ensure that they haven't done
17 that this morning.

18 THE COURT: Okay. I will.

19 All right. Bring the jury in, please.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Let me ask you to please move all the way
23 to the end. Are you on the end?

24 THE BAILIFF: It's broken.

25 THE COURT: Okay. Don't sit there.

1 Good morning, ladies and gentlemen. During the
2 overnight recess one of your fellow jurors apparently
3 misunderstood the instruction to report this morning, and he
4 called the 1-800 number to get instructions. And of course
5 that was for the balance of the panel, and they were told
6 not to report today. Of course you were to report as you
7 have. He apparently thought he didn't have to report. I am
8 not sure why he didn't understand the instruction, but,
9 anyway, he didn't.

10 So as a result we have selected one of the alternate
11 jurors to take his place. And that will be Mr. Turner,
12 Richard Turner. You will be now the 12th juror. Let me ask
13 if you will swap places with Ms. Huitt.

14 And so, Ms. Huitt, you're now the alternate juror.
15 And, as you can see, you might very well be called upon to
16 serve during the course of this trial. I'm not sure. We'll
17 see.

18 So, Mr. Turner, you're now the 12th juror, and you will
19 participate fully throughout the trial, including the jury
20 deliberations.

21 Also, during the overnight recess I understand that
22 there was some item that appeared on television, perhaps
23 also an article in the newspaper about the case. And as I
24 told you, you're not to be exposed to that type of coverage.

25 Was anybody exposed to any type of media coverage that

1 related to the trial, whether it be by television, radio,
2 newspaper or any other fashion?

3 (No response.)

4 THE COURT: All right. All the jurors have indicated
5 they were not exposed to any type of media coverage.

6 And, again, let me impression upon you it's important
7 that you not permit yourselves to be exposed to media
8 coverage, because, as I say, your decision has to be based
9 upon what you see and hear during the trial of the case.
10 And you're not to be influenced by any outside
11 consideration.

12 I myself didn't see the television item that I am told
13 was on T. V. But if what I was told appeared on television,
14 some of that information was absolutely totally incorrect.
15 And I don't know where they got the information because they
16 weren't in court yesterday. And that information was wrong.

17 And, see, if you'd been exposed to it or you'd seen it,
18 you might have been influenced by it. That's why you cannot
19 permit yourselves to be exposed to any type of media
20 coverage, because it might very well be inaccurate
21 information. And if what was told to me is correct, that
22 was inaccurate information about the case.

23 And, as I say, I don't know how you can sit in court
24 and get different information than what you're receiving.
25 But that particular station was not in court. And so I

John Burgess
Direct examination by Mr. Barnette

1 don't know where they got the information. But it was
2 wrong. And that's all the more reason I say why you have to
3 base your decision strictly upon what you see and what you
4 hear during the trial of this case. You're not to allow
5 yourselves to be influenced by any outside consideration.

6 Okay. With that, we'll continue with the state's
7 presentation of evidence.

8 Mr. Barnette.

9 MR. BARNETTE: May it please the Court, Your Honor.
10 I'd like to call John Burgess to the stand, please.

11 JOHN BURGESS, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 Q If you would, sir, please give your full name for the
15 record, please.

16 A John Burgess.

17 Q And where do you work at, sir?

18 A I work for the city of Spartanburg Public Safety
19 Department.

20 Q And how long have you worked for them, sir?

21 A Eleven and a half years.

22 Q And what's your present position with them, sir?

23 A Investigator with the criminal investigation division.

24 Q And back on June the 1st of 2007, was that your
25 position there?

John Burgess
Direct examination by Mr. Barnette

1 A It was.

2 Q And was you called in to investigate the death of John
3 Lammers?

4 A I was.

5 Q And in that investigation and so forth is canvassing
6 the neighborhood one of the things that y'all do?

7 A Yes.

8 Q When you arrived at the scene and everything -- and of
9 course we've already heard the scene described in detail
10 here -- when you canvass an area, tell the jury what that's
11 about.

12 A Canvassing the neighborhood is you simply go out and
13 you speak to neighbors, possible witnesses, anybody that has
14 information that's relevant to the crime.

15 Q And did you do that in this case?

16 A I did.

17 Q And did you run into a Ms. Meadows?

18 A I did.

19 Q If you would, tell the jury what happened when you met
20 Ms. Meadows. First, where she lived in relationship.

21 A Yeah. Ms. Meadows lives at 118 Quail Drive which is --
22 I'm sorry. That's where I went to. I think her mother
23 actually lives at 118 Quail Drive. So she was there at her
24 mother's house. I went there and spoke to her in reference
25 to the incident that took place. She informed me that she

John Burgess
Direct examination by Mr. Barnette

1 had seen a --

2 MS. HODGES: Objection to hearsay, Your Honor.

3 THE COURT: Sustained.

4 Q Did you speak to Belinda Meadows?

5 A I did.

6 Q Based off that information did you create a photo
7 lineup?

8 A I did.

9 Q And in that photo lineup who was the person that she
10 identified?

11 A She identified the defendant, Mr. Howard Sims.

12 MS. HODGES: Your Honor, we renew our objections
13 previously made.

14 THE COURT: Are you talking about pretrial?

15 MS. HODGES: Yes, sir.

16 THE COURT: All right. Overrule the objection.

17 Q And so after, after you received that information did
18 you also receive information about a situation at a Texaco
19 station?

20 A I did.

21 Q When you went to the Texaco station, what did you do,
22 sir?

23 A I went there to look at the video of a possible
24 suspect. The video was -- the clerk could not give me the
25 video at that time. The video was maybe an hour or two

John Burgess

Direct examination by Mr. Barnette

1 later. The video was brought to city hall for me to look
2 at. And I looked at the video of the suspect.

3 MS. HODGES: Your Honor, I'm going to object to the
4 suspect.

5 THE COURT: Let me see y'all just a minute, please.

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

8 Q When you was talking about a suspect, you're talking
9 about Howard Sims in this case.

10 A That's correct.

11 Q And was that video from May the 26th?

12 A That's correct. It was.

13 Q 2007?

14 A Yes, sir.

15 Q And in that video did you see Howard Sims?

16 A I did in the video.

17 Q And did you see the clothes that he was wearing in the
18 video?

19 A Yes.

20 Q And later on once you received this information and
21 everything did you -- was Howard Sims arrested at a later
22 date?

23 A He was.

24 Q And in that arrest, what kind of clothes was he wearing
25 when he was arrested?

John Burgess

Direct examination by Mr. Barnette

1 A He was wearing a Hardees baseball cap; blue shorts,
2 blue jean shorts, excuse me; black and red Hardees shirt;
3 and black Nike tennis shoes; and white socks.

4 Q And did y'all take pictures of Mr. Sims?

5 A Somebody did, yes. I'm not sure who.

6 Q Okay. Going back, let me show you what's been marked
7 as State's Exhibit 82 and 83. What are those items, sir?

8 A It's the, a map of the overall area of the incident and
9 then just an overhead colored view of the incident.

10 MR. BARNETTE: Your Honor, I'd like to enter these two
11 items into evidence at this time.

12 THE COURT: Eighty-two and 83?

13 MR. BARNETTE: Yes, sir.

14 MS. HODGES: No objection, Your Honor.

15 THE COURT: They are admitted.

16 (Map marked State's Exhibit No. 82; map marked State's
17 Exhibit No. 83.)

18 Q And what day did you speak to Ms. Meadows?

19 A It was on June the 1st, later on that afternoon.

20 Q Showing the jury the map here, is this the Duncan Park
21 area right here?

22 A Step down?

23 Q Yes, sir, you may.

24 (Whereupon, the witness left the stand.)

25 A That's correct.

John Burgess

Direct examination by Mr. Barnette

1 Q And is this Highway 56 or Union Street?

2 A Union Street, yes, sir.

3 Q And what street is this that we're talking here?

4 A That's Lucern Drive.

5 Q And is this the area of 203 Carlton?

6 A Yes, off of Quail -- Quail Drive.

7 Q And that's Quail Drive that comes off there.

8 A Yes, sir. Carlton Drive crosses.

9 Q Just to give the jury some idea, this is the picture
10 showing about where it is in relationship to Spartanburg, is
11 that right?

12 A Yes.

13 Q I show you State's Exhibit 83. If you would, show me
14 about where the house is at 203 Carlton Drive.

15 A It's either right here, or this one right here is 203.

16 Q I think it's this one.

17 A Yes, sir.

18 Q Where is Quail Drive? Where is the house on Quail
19 Drive supposed to be on this map approximately?

20 A I'm assuming it's right here, yeah, pretty sure.

21 Q Could it be on that corner there?

22 A Yes. I believe it's right here.

23 Q 418. And you spoke to her and received information
24 from her.

25 A Yes.

John Burgess
Direct examination by Mr. Barnette

1 Q And later on you received information from the Texaco.

2 A That's correct.

3 Q And based off that information you created a photo
4 lineup.

5 A That's right.

6 Q And the photo lineup you showed David Lammers.

7 A That's correct.

8 (Whereupon, the witness returned to the stand.)

9 Q Showing you State's Exhibit 91. Is this a photo lineup
10 you created for Mr. Lammers?

11 A That's correct.

12 Q And in that lineup, did you show that lineup to him?

13 A I did.

14 Q And did you suggest any answers to him or a person in
15 there he should know or anything like that?

16 A No.

17 Q What happened once you showed him the lineup?

18 A David looked at it. He looked at it for a few seconds,
19 maybe 20 or 30 seconds. He's sitting down as he's looking
20 at it. He says it's not the first three, it's not the
21 bottom two, it's this gentleman, the one he circled.

22 Actually, he said it's not these three, it's not these
23 two, which he's referring to it's not one, two or three or
24 four or five, it's number -- or excuse me. It's not five or
25 six, it's No. 4 and 5.

John Burgess
Direct examination by Mr. Barnette

- 1 Q And he pointed that out himself.
- 2 A Yes.
- 3 Q And you didn't help him or anything like that.
- 4 A No.
- 5 Q And is that his circle on that?
- 6 A Yes. He circled the whole picture and signed the date
- 7 and time and his name.
- 8 Q Did he do that pretty straightforward?
- 9 A Yes, without any hesitation.
- 10 Q And did you ask him a question after that?
- 11 A I did.
- 12 Q Why did you ask him a question?
- 13 A Well, the case was coming along quite, quite good
- 14 and --
- 15 MS. HODGES: Objection, Your Honor.
- 16 THE COURT: Sustained.
- 17 MR. BARNETTE: I'll rephrase the question or whatever.
- 18 Q Did he comment that he was 50 percent sure to you?
- 19 A He did.
- 20 Q And was that in response to your question?
- 21 A It was.
- 22 Q And why did you ask him the question?
- 23 A When you're dealing with this type of case, you know,
- 24 this is -- you need to be pretty sure.
- 25 Q Well, did he act like he was pretty sure?

John Burgess
Cross-examination by Ms. Hodges

1 A Oh, yes. He picked it up without any hesitation.

2 Q So you thought he was pretty sure about it.

3 A Yes.

4 Q And that was where he initialed and circled.

5 A He signed his name and put the date and time, yes, sir.

6 Q And did Ed Guthro and Courtney Westphel, did they
7 handle the forensics at the house at 203 Carlton Drive?

8 A As far as I know they both did, yes.

9 MR. BARNETTE: And one moment, Your Honor, please.

10 (Pause.)

11 Q Please answer any questions Ms. Hodges may have for
12 you, sir.

13 CROSS-EXAMINATION

14 BY MS. HODGES

15 Q Investigator Burgess, you had an extended interview
16 with Mr. David Lammers shortly after you were notified about
17 the incident that happened at Carlton Drive, is that
18 correct?

19 A That's correct.

20 Q And, in fact, he gave you a description of the person
21 that he saw in the home.

22 A That's correct.

23 Q He described it to you as a black male about 6'1" or
24 6'2, 210 to 215 pounds, wearing a blue-pocketed t-shirt, is
25 that right?

1 A And bulging eyes, yes.

2 Q And bulging eyes. All right. And based off of that
3 description you went and prepared a photo lineup, based on
4 his description and the other information you gathered in
5 your investigation, is that correct?

6 A That's correct, yes.

7 Q All right. And you showed that lineup to him, in fact,
8 the same day, just later on in the, later on in the day or
9 the late morning, early afternoon, is that correct?

10 A Correct, yeah. I got there about 1:35 in the morning,
11 and the date or the time indicated on the photo lineup was
12 3:00 p.m.

13 Q Okay. So a little more than 12 hours later.

14 A Uh-huh, yes.

15 Q Okay. You would think, I mean, obviously something
16 fresh in your mind, right?

17 A Yes.

18 Q Okay. And he described to you that what he described
19 to us yesterday, the struggle that he had, that he struggled
20 with the person and got a very closeup view of him and was
21 able to basically handle him in such a way that he was able
22 to be able to give you an estimate as to this person's size.

23 A That's correct.

24 Q And you found that to be credible, right?

25 A Yes.

John Burgess
Cross-examination by Ms. Hodges

1 Q Okay. And he tells you then that when he looks at the
2 photo lineup that he's only 50 percent sure, is that
3 correct?

4 A After I asked him.

5 Q You asked him how confident he was.

6 A Yes.

7 Q He says he was only 50 percent sure.

8 A Correct.

9 Q All right. He also described to you the fact that the
10 lighting in that room was dim.

11 A Yes. The only thing illuminated was the T. V. and the
12 monitor.

13 Q The T. V. and the computer monitor.

14 A Yes.

15 Q Okay. And we saw pictures yesterday of the T. V. and
16 the computer monitor. In those pictures yesterday both the
17 T. V. and computer monitor were actually off, weren't they?

18 A On the picture, yes.

19 Q Okay. You don't have any dispute that the pictures
20 reflect what the pictures reflect. In other words, the
21 pictures are accurate as far as you know.

22 A Yeah. We probably turned off the T. V. and the
23 computer, yes.

24 Q All right. Did you ever enter the crime scene
25 before -- was a search warrant obtained for the crime scene?

John Burgess
Cross-examination by Ms. Hodges

1 A Somebody did, yes.

2 Q Okay. Did you -- had entered the crime scene before
3 that search warrant was obtained?

4 A I did.

5 Q And what did you do in that crime scene?

6 A I took a view of the crime scene itself. I went back
7 in there. I was having David taken up to city hall so we
8 could speak to him out of the, the crime scene. I went in
9 there, and David had on a pair of shorts and flip-flops.
10 And I went into the, into the house and obtained a shirt
11 from, from inside the room.

12 Q From inside which room?

13 A I believe it was his room.

14 Q Okay.

15 A David's room.

16 Q All right.

17 A And then I went back in there and received a phone call
18 from Investigator Guthro about taking the, taking David's
19 clothes and went back in there one more time to get a pair
20 of shorts for David.

21 Q Because the clothes that Mr. Lammers was wearing at the
22 time that he was taken to the police department were
23 actually taken into evidence.

24 A That's correct.

25 Q So he said he needed some additional clothing.

John Burgess
Cross-examination by Ms. Hodges

- 1 A Yes.
- 2 Q So you went in there twice to get clothing for him --
- 3 A That's correct.
- 4 Q -- prior to the search warrant for the crime scene.
- 5 A That's correct.
- 6 Q All right. The -- you obviously had an opportunity to
- 7 see Mr. Lammers, David Lammers, throughout the entire
- 8 process.
- 9 A That's correct.
- 10 Q Can you describe what his condition was in terms of
- 11 blood on his body?
- 12 A David, David had blood from pretty much the neck all
- 13 the way down to his toes. The only thing he had on was the
- 14 gray shorts and flip-flops.
- 15 Q Okay. And, in fact, swabs were taken from him there at
- 16 the police department of the blood that was on him.
- 17 A That's correct.
- 18 Q Okay. Were you present during the taking of those
- 19 swabs?
- 20 A I believe I was.
- 21 Q In fact, there, I mean, Investigator Guthro takes
- 22 several swabs from him. He's essentially, as you said,
- 23 covered neck to toe.
- 24 A Yes.
- 25 Q Okay. And that is a couple of hours or so after the

John Burgess
Cross-examination by Ms. Hodges

1 incident happened, right?

2 A It says, at 5:25 there's a consent, yes.

3 Q Okay. All right. So it was at 5:25 you do the consent
4 to take the swabs. Or the consent is not the swabs that are
5 taken from the body or blood. This consent are actually the
6 buccal swabs, right?

7 A Yes. That's correct.

8 Q So at 5:25 that morning you're actually taking what we
9 call a buccal swab. What is a buccal swab?

10 A A buccal swab is, take swabs in the mouth to enter,
11 between the gum and cheek, using for D. N. A. comparisons.

12 Q Okay. And so kind of like a Q-tip.

13 A Yes.

14 Q You just roll it around inside of your mouth. And
15 y'all took that in order to -- because you had just taken
16 some other evidence and you might compare it, have something
17 that SLED could compare to, right?

18 A That's correct.

19 Q Okay. And that's pretty standard procedure.

20 A Yes.

21 Q Okay. Buccal swabs doesn't involve any sort of needle
22 or anything, does it?

23 A No. It's very -- it's the best way to go.

24 Q Pretty much a noninvasive procedure.

25 A That's correct.

John Burgess
Cross-examination by Ms. Hodges

1 Q Okay. You saw the clothing that Howard Sims was
2 wearing, correct, when he was arrested?

3 A Yes.

4 Q All right. And you described that to include bluejean
5 shorts, shoes, a shirt and a baseball cap.

6 A That's correct.

7 Q Okay. Also had on a black and red t-shirt.

8 A I'm pretty sure it had Hardees on it, yes.

9 Q Okay. And that's in some respects different than the
10 description of clothing that you were given by Mr. David
11 Lammers, wasn't it?

12 A Yeah, a blue pocketed t-shirt, yes.

13 Q Okay. So he was not wearing the blue pocketed t-shirt.

14 A No.

15 Q And he was not covered neck to toe.

16 A I'm sorry? Mr. Sims.

17 Q Mr. Sims was not covered neck to toe in blood.

18 A No. He had some blood on him but not --

19 Q Some blood but was not covered like Mr. David Lammers
20 was.

21 A Oh, no.

22 Q And you're seeing Mr. Sims on June the 1st, isn't that
23 right?

24 A That's correct, later on that afternoon.

25 Q Okay. Did you request a search warrant for Mr. Sims?

John Burgess
Redirect examination by Mr. Barnette

1 A I didn't do one.

2 Q Okay.

3 A The information was being gathered so one could be
4 done, yes.

5 Q All right. And was one done?

6 A Yes.

7 Q All right. And what was seized under that search
8 warrant was the clothing, correct?

9 A That's correct.

10 Q Okay. And that was the only thing that was seized, was
11 just the clothing.

12 A Yes.

13 Q Okay.

14 MS. HODGES: Beg the Court's indulgence just a moment.

15 (Pause.)

16 MS. HODGES: That's all I have for Investigator
17 Burgess. Thank you, Your Honor.

18 MR. BARNETTE: A few questions on redirect, Your
19 Honor.

20 REDIRECT EXAMINATION

21 BY MR. BARNETTE

22 Q You picked up Mr. Sims later on June the 1st, or he was
23 brought to --

24 A Yes, to us.

25 Q And the clothes he had on, there was pictures taken of

John Burgess
Redirect examination by Mr. Barnette

- 1 those clothes.
- 2 A Yes.
- 3 Q Was you present for that?
- 4 A I don't think I was.
- 5 Q I'll go to another witness about that.
- 6 A Yes.
- 7 Q Did you see, see what kind of shoes he was wearing and
8 so forth?
- 9 A Yes. He had a Nike shoe.
- 10 Q And you saw blood on him.
- 11 A Yes.
- 12 Q On his clothes and so forth. The shoes, have you been
13 to the scene?
- 14 A I have.
- 15 Q Did you see any shoe prints at the scene?
- 16 A I did.
- 17 Q Let me show you what's been marked as State's Exhibit
18 63. Is that a picture of the shoe print you saw?
- 19 A It is, yes.
- 20 Q Is that in a carpet in the bedroom?
- 21 A It was.
- 22 Q Does this picture fairly represent what you saw?
- 23 A Yes.
- 24 MS. HODGES: No objection, Your Honor.
- 25 MR. BARNETTE: May I publish it to the jury, Your

John Burgess
Redirect examination by Mr. Barnette

1 Honor?

2 THE COURT: You may. What number is that?

3 MR. BARNETTE: Item 63.

4 (Photograph marked State's Exhibit No. 63.)

5 Q And did you see the shoes that he was wearing that day?

6 A I did.

7 Q Let me show you what's been marked as State's Exhibit
8 No. 2. Are those the shoes that he was wearing that day,
9 sir?

10 A That's correct.

11 Q And those was gathered as part of the search warrant.

12 A It was.

13 MR. BARNETTE: Your Honor, I'd like to move State's
14 Exhibit 2 into evidence at this time.

15 MS. HODGES: Your Honor, we renew our objections made
16 pretrial.

17 THE COURT: Overruled.

18 (Shoes marked State's Exhibit No. 2.)

19 MR. BARNETTE: Your Honor, may I publish these to the
20 jury?

21 THE COURT: You may.

22 Q When you was looking at ~~the bottom of these shoes~~, what
23 did you notice, sir?

24 A Appears ~~the same print pattern as what was in the~~
25 ~~house.~~

John Burgess
Redirect examination by Mr. Barnette

1 Q And talking to Mr. Lammers -- Mr. Lammers cooperated in
2 every way, isn't that right, in your investigation?

3 A Oh, yes.

4 Q And he consented and gave you a buccal swab.

5 A That's correct.

6 Q He gave you the clothes. Anything you needed, he gave
7 to you.

8 A That's correct.

9 Q Let me show you State's Exhibit 2 here or whatever.
10 Did you notice this shoe pattern was similar to the one
11 y'all found at the scene?

12 A Yes, very similar.

13 Q And was Mr. Lammers wearing the shoes when this
14 struggle occurred, or, I mean, wearing flip-flops or
15 anything? Was he, have blood on his bear feet?

16 A I don't think he had any shoes on. I think he had
17 blood on the bottom of his feet.

18 Q And did his brother, was he barefooted and have blood
19 on his feet?

20 A I don't know. He had left before I got there.

21 Q That's the shoe print that y'all found.

22 A I think it's the only one we found.

23 Q And is that -- and, obviously, it didn't match the
24 flip-flops or anything like that similar to that.

25 A Oh, yes. It's the same exact pattern.

John Burgess
Redirect examination by Mr. Barnette

1 Q And you did see what the defendant was wearing that
2 day?

3 A I did. I don't think I was present when they were
4 actually taking photographs of him.

5 Q But you remember what he was wearing that day, right?

6 A Yeah, when he came in, yes.

7 Q And I show you State's Exhibits 75 and 76. Do those
8 pictures fairly represent what he was wearing that day?

9 A That's correct.

10 MR. BARNETTE: Your Honor, I'd like to move State's
11 Exhibits 75 and 76 into evidence at this time.

12 MS. HODGES: No objection, Your Honor.

13 THE COURT: They are admitted.

14 (Photographs marked State's Exhibits Nos. 75 and 76.)

15 MR. BARNETTE: I would like to publish these to the
16 jury, Your Honor.

17 THE COURT: You may.

18 Q Is that a picture of what he was wearing that day?

19 A That's correct.

20 Q And that's a picture of Mr. Sims.

21 A That's correct.

22 Q And this is a picture of what he was, from behind was,
23 wearing also.

24 A That's correct.

25 Q And those are the same shoes that we just saw.

John Burgess
Redirect examination by Mr. Barnette

1 A Same shoes, yes.

2 Q And you also obtained his other clothes, his shirt,
3 pants, socks and cap, is that right?

4 A That's correct.

5 Q Let me show you what's been marked as State's
6 Exhibit 4, State's Exhibit 3, State's Exhibit 5 and State's
7 Exhibit 6. Was those items that was obtained from Mr. Sims?

8 A It was.

9 Q And was these placed into evidence?

10 A They were.

11 MR. BARNETTE: Your Honor, I'd like to move these
12 items into evidence at this time.

13 MS. HODGES: Your Honor, we renew our objections to
14 these items.

15 THE COURT: Based upon the pretrial objections?

16 MS. HODGES: Based upon pretrial objections, Your
17 Honor.

18 THE COURT: Overruled.

19 (Bluejean shorts from the defendant marked State's
20 Exhibit No. 3; white sock from defendant marked State's
21 Exhibit No. 4; swab from shirt marked State's Exhibit No. 5;
22 Hardees camp from defendant marked State's Exhibit No. 6.)

23 Q Okay. And these items were sent to SLED for analysis.

24 A Yes.

25 Q And so forth. And was a knife obtained from the scene

John Burgess
Recross-examination by Ms. Hodges

1 also?

2 A Yes.

3 Q I show you what's been marked as State's Exhibit

4 No. 11. Is this the knife? I will let you open that. Be
5 careful. Was that the knife y'all obtained from the scene?

6 A That's correct.

7 MR. BARNETTE: Your Honor, I'd like to move State's
8 Exhibit 11 in at this point.

9 MS. HODGES: Your Honor, my understanding of the
10 investigation is that Investigator Burgess did not actually
11 retrieve this knife. I don't think he's actually in the
12 chain of custody to be able to establish that.

13 MR. BARNETTE: I'll just introduce it through another
14 witness, Your Honor.

15 THE COURT: Okay.

16 Q Thank you, sir. Please answer any questions Ms. Hodge
17 may have of you.

18 RECROSS-EXAMINATION

19 BY MS. HODGES

20 Q You don't have any training in latent print or print
21 analysis, do you?

22 A Yes, I do.

23 Q You do?

24 A Yes.

25 Q And you didn't do any sort of comparison then of the

John Burgess
Recross-examination by Ms. Hodges

1 shoes to the pictures.

2 A Not of the shoe, no -- not of the footwear, no. Just
3 the latent prints.

4 Q And you've never been qualified to testify as an expert
5 in this court before regarding latent print analysis.

6 A No.

7 Q And you can't render an opinion other than your own
8 opinion as to whether those shoes created that print that
9 was seen in the photo.

10 A That's correct.

11 Q All right. And you will agree with me that these shoes
12 are a pretty popular brand of shoe.

13 A Yes.

14 Q Several young men in this community, and I would say
15 throughout the nation, wear Air Jordans.

16 A That's correct.

17 Q All right. And it's not necessarily an uncommon size
18 of shoe.

19 A I'm not sure what size it is, basically.

20 Q Okay. But, I mean, it's, it's not the size of
21 Shaquille O'Neal's foot.

22 A Correct.

23 Q So you would agree with me Shaquille O'Neal has
24 probably got an uncommon size of shoe.

25 A That's correct.

John Burgess
Recross-examination by Ms. Hodges

1 Q You know, somebody who has perhaps a men's size four or
2 five has a pretty uncommon size of shoe.

3 A That's correct.

4 Q So this is within a range of pretty common sizes of
5 shoes.

6 A Yes.

7 Q All right. And you would agree with me that the Air
8 Jordans in this particular case have a pattern that are
9 probably the same for Air Jordans -- that are manufactured
10 the same time those Air Jordans were manufactured.

11 A I would say so, yes.

12 Q All right. So other than your opinion that the prints
13 are the same or the prints appear similar or whatever, you
14 can't render that as an expert opinion in this case.

15 A That's correct.

16 Q All right.

17 MS. HODGES: I have nothing further, Your Honor.

18 MR. BARNETTE: No further questions of this witness,
19 Your Honor.

20 THE COURT: You may step down.

21 MR. BARNETTE: Your Honor, I would like to call
22 Belinda Meadows.

23

24

25

Belinda Meadows
Direct examination by Mr. Barnette

1 BELINDA MEADOWS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q Ms. Meadows, if you would, give your full name for the
5 record, please.

6 A Belinda Meadows.

7 Q And, Ms. Meadows, where does your mother live?

8 A 118 Quail Drive.

9 Q And how far away is that 203 Carlton Drive?

10 A It's on the corner.

11 Q So is it within eyesight? I mean, can you see it
12 from --

13 A It is within viewing.

14 Q Back on, do you remember, did Investigator John Burgess
15 come and speak to you?

16 A Yes.

17 Q And speaking to you, did you give him some information?

18 A Yes, I did.

19 Q If you would, tell the jury what information you gave
20 concerning what you saw.

21 A We were sitting in the house, and the children came in
22 running because they seen a strange person coming down the
23 street on a bicycle.

24 As they came in, they screamed. I got up and I went
25 out. I looked at the door, and I seen him coming down the

Belinda Meadows
Direct examination by Mr. Barnette

1 street on a bicycle.

2 He went around the corner. As he went around the
3 corner, I don't know what happened when he went around the
4 corner, because he was out of viewing range for me to see
5 him.

6 But I stood in the door. And as I stood in the door my
7 mom got up, and she came over. And we went out and stood on
8 the porch. As we stood on the porch we seen him come back
9 up the street.

10 He went to a house that was across the street but at a,
11 at an angle. It was two doors up. And there was, they had,
12 some boxes on the side of the road. He got a box from
13 there, and he went back to the church parking lot.

14 When he went back to the church parking lot, a few
15 seconds later Mr. Lammers came up. And he was running and
16 he was talking on his cell phone.

17 And he was behind the church. He came out on that
18 bicycle, and he rode across the parking lot. There's a pass
19 that sets up there, and he stopped at that pass on that
20 bicycle. And he turned around, and he looked to see if
21 anybody was following him.

22 MS. HODGES: Objection to speculation, Your Honor.

23 THE COURT: Overruled.

24 Q Do you see that individual in court today, ma'am?

25 A Yes, I do.

Belinda Meadows
Direct examination by Mr. Barnette

1 Q Can you identify him for the jury?

2 A That's him sitting over there with the white shirt on.

3 MR. BARNETTE: Your Honor, I would ask the record
4 reflect that she has identified the defendant.

5 THE COURT: It shall.

6 Q Let me take you back, ma'am. What kind of bicycle was
7 he riding on?

8 A It was a girl's bicycle. It was a funny shade of
9 green. I want to say maybe like a sea foam or a teal green
10 and white bicycle.

11 Q So he had -- the kids had came and said they saw a
12 strange man in the neighborhood.

13 A Yes.

14 Q And that's what drew your attention to him.

15 A Yes.

16 Q And obviously you took a good look at him.

17 A Yes, I did.

18 MS. HODGES: Objection to leading, Your Honor.

19 THE COURT: Don't lead her, please.

20 MR. BARNETTE: Okay.

21 Q How close was you to him or how long did you get to
22 look at him going by?

23 A I looked at him until he got out of my eye sight.

24 Q And you saw him come back to get a box?

25 A Yes.

Belinda Meadows
Direct examination by Mr. Barnette

1 Q And did he put something in the box or --

2 A When he went around that church, I don't know what he
3 put in that box because it was out of viewing range.

4 Q And so you obviously saw him come to, and then he came
5 back across.

6 A Yes.

7 Q And did he have to come back across again?

8 A Yes, he did.

9 Q Let me show you the map that has been entered into
10 as...

11 (Pause.)

12 Q Showing you State's Exhibit 83, ma'am. If you would,
13 could you step down for a second, Ms. Meadows?

14 (Whereupon, the witness left the stand.)

15 Q Can you show me using this laser pointer? If you will,
16 ma'am, just come over here and use this pen if you will.

17 Show me where your mother's house is approximately there on
18 Quail Drive, this being Quail Drive and this being the
19 church.

20 A You said this is Quail?

21 Q Yes, ma'am.

22 A It would be this house here.

23 Q Okay. And so you saw -- which direction did he come in
24 front of your house when the children saw him?

25 A He came down, down the street this way, came down.

Belinda Meadows
Direct examination by Mr. Barnette

- 1 Q And then you saw him go around the corner?
- 2 A Yes.
- 3 Q That's when you lost sight of him?
- 4 A Yes.
- 5 Q And then did you see him come back?
- 6 A Yes, I did.
- 7 Q And which direction was he coming?
- 8 A He came, he came back the same way that he went to get
- 9 the box.
- 10 Q And about approximately which house did he stop in
- 11 front of to get the box?
- 12 A I want to say from your map, I want to say it's this
- 13 one.
- 14 Q So he stopped clearly in front of y'all's house.
- 15 A Wait a minute, wait a minute. What is this here, this
- 16 one? Is this a house?
- 17 Q Yes, ma'am.
- 18 A Because there's a house. This is a house on this. He
- 19 did stop at the second house, because it sets back.
- 20 Q Yes, ma'am. Then did he go -- where did he go from
- 21 there once he got the box?
- 22 A He came back down, came back down and went the same way
- 23 that he went the first time.
- 24 Q And where did he go?
- 25 A He went --

Belinda Meadows
Direct examination by Mr. Barnette

- 1 Q Which church did he go behind?
2 A He went behind the church. It sets back. This is the
3 church, so he went back behind it.
4 Q And where is the last time you saw him at?
5 A He came out, and he went across the, across this way.
6 There's a pass back up in here.
7 Q So he went back across the woods through here.
8 A Yeah, there's a pass.
9 Q Thank you, ma'am.
10 (Whereupon, the witness returned to the stand.)
11 Q And, ma'am, let me ask you a question.
12 The man you saw that day on that bicycle, do you see
13 him in the courtroom here today?
14 A Yes, I do.
15 MS. HODGES: Asked and answered, Your Honor.
16 THE COURT: Overruled.
17 Q Could you identify him again, ma'am?
18 A Yes, I can.
19 Q And do you remember what kind of pants he was wearing?
20 A I wanna think some jeans.
21 Q And was they long?
22 A He had on long, some jeans, some bluejeans.
23 Q Blue jean shorts or pants, or do you know?
24 A Pants.
25 MR. BARNETTE: One moment, Your Honor, please.

Belinda Meadows
Cross-examination by Ms. Hodges.

1 (Pause.)

2 Q Please answer any questions Ms. Hodges may have for
3 you.

4 CROSS-EXAMINATION

5 BY MS. HODGES

6 Q Ms. Meadows, my recollection of how you just, you had
7 previously talked about the clothes you saw Mr. Sims wearing
8 or the person you think was Mr. Sims wearing when you saw
9 him in the neighborhood that day, right? And you just told
10 us that there was some bluejeans and he was actually wearing
11 long bluejeans, is that right?

12 A Uh-huh.

13 Q Okay. And my recollection is you also said he was
14 wearing a red in color shirt.

15 A Yes.

16 Q That it was not a stripe shirt however. It kinda of
17 had like a -- some sort of geometric or some other kind of
18 design on it, is that right?

19 A That's right.

20 Q Okay. And it was a shirt that, that appeared to be
21 cotton, and it was a short-sleeve shirt, right --

22 A Yes.

23 Q -- with a collar? And it also had like, looks like a
24 button-down shirt.

25 A Yes.

Belinda Meadows
Cross-examination by Ms. Hodges

1 Q Now, the pattern may not be similar to what, you know,
2 we commonly think of as a Hawaiian shirt, but it was
3 basically kind of that style.

4 A Yes.

5 Q Like a Hawaiian type shirt.

6 A Yes.

7 Q But with a geometric cut pattern.

8 A Uh-huh.

9 Q And it had -- did it have more than just the red color
10 in it?

11 A Yes. It had multi colors in it.

12 Q Multi colors. Okay. And it was not striped.

13 A No.

14 Q You're sure it wasn't striped.

15 A No. It wasn't stripe.

16 Q You had just told us that you pretty much were,
17 because, you know, the children alerted the fact to you that
18 there was somebody in the neighborhood they didn't know, you
19 basically looked at the person you saw that day until that
20 person got out of eyesight, right?

21 A Yes.

22 Q How long would you say you got a chance to look at
23 them?

24 A I want to say maybe three minutes.

25 Q Okay. Something that you were able to pretty well

Belinda Meadows
Cross-examination by Ms. Hodges

1 observe him, right?

2 A Yes.

3 Q Okay. And because you were focused on him the entire
4 time --

5 A I watched him.

6 Q -- he was riding that bike.

7 A Yes, I did.

8 Q Okay. And I just want to make sure that I understood
9 your testimony regarding -- are you able to see from where
10 you're sitting?

11 A Sure.

12 Q Let me see. I think we've actually had this kinda
13 oriented this way as we've been looking at it. My
14 understanding is that you were saying that your house, or
15 your mother's house rather, is this one right here, is that
16 correct?

17 A Yes.

18 Q Okay. And that the boxes you saw him getting were from
19 this one here kind of across the street.

20 A Yes.

21 Q Okay. And he went -- did he go on this side of the
22 house or on the other side of the house to go back behind
23 the church, do you remember?

24 A He came back down the street.

25 Q Okay. When you say coming back down the street, are

Belinda Meadows
Cross-examination by Ms. Hodges

1 you talking going in this direction --

2 A Yes, and so he went --

3 Q -- coming towards the bottom here?

4 A He went across. See, there's the street. Go straight
5 this way and it bears back to, bears back around.

6 Q Bears back here.

7 A So he went straight because there is a parking lot
8 leading into the church.

9 Q Okay. So he basically came -- if he was here at this
10 house getting the boxes --

11 A Uh-huh.

12 Q -- he came back down this way and over to the church
13 this way..

14 A Yes.

15 Q Okay.

16 A Because he had to come back past us to go to the
17 church.

18 Q Okay. All right. Thank you, ma'am.

19 MS. HODGES: Beg the Court's indulgence just one
20 moment.

21 (Pause.)

22 Q Thank you, Ms. Meadows.

23 MR. BARNETTE: One moment, Your Honor, please.
24
25

Belinda Meadows
Redirect examination by Mr. Barnette
Recross-examination by Ms. Hodges

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q Just going back to what -- he was riding what kind of
4 bike, again, ma'am?

5 A It was a girl's bicycle. It was teal or sea foam green
6 and white.

7 Q And it was during the daytime that you saw him.

8 A Yes.

9 Q Do you remember what kind of shoes he was wearing?

10 A They were a dark color, tennis shoe.

11 Q Thank you, ma'am.

12 A Uh-huh.

13 RECROSS-EXAMINATION

14 BY MS. HODGES

15 Q Just very briefly, Ms. Meadows. The day that we're
16 talking, talking about, May the 26th of 2007, is that
17 correct?

18 A Yes.

19 Q Okay. And that's the day that you saw the person you
20 think was Mr. Sims.

21 A Yes.

22 Q Okay. Thank you, ma'am.

23 MR. BARNETTE: One question if I can, Your Honor.

24

25

Henrietta Meadows
Direct examination by Mr. Barnette

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q Do you think that's him, or was that the person you
4 saw?

5 A That's the person I saw. I know that's him. I have no
6 doubt.

7 Q Thank you, ma'am.

8 THE COURT: You may step down.

9 MR. BARNETTE: I would like to call Ms. Meadows to the
10 stand.

11 HENRIETTA MEADOWS, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 Q Ms. Meadows, if you would, give us your full name,
15 please.

16 A Henrietta Meadows.

17 Q Ms. Meadows, where do you live at, ma'am?

18 A 118 Quail Drive.

19 Q And how long have you lived there, ma'am?

20 A Twenty-nine years.

21 Q Back on May the 26th of 2007, if you would, tell the
22 jury what you saw that day.

23 A Well, we were sitting in my living room, and the girls,
24 they were outside playing. And they ran inside. They say
25 there's a strange man coming down the street on a bicycle.

Henrietta Meadows
Direct examination by Mr. Barnette

1 Well, Belinda was closer to the door, so she was the
2 first to get to the door, and then I came out.

3 So he passed us. He went to the right, which is
4 Carlton Drive. And after that he disappeared.

5 So we came back in the house, and we let them go back
6 outside. So we say, well, we probably need to go back out
7 here. So we went back outside.

8 Then he come back. He wasn't gone long. And he came
9 back and went to the mailbox up the street and picked up a
10 red box and went back past us to the back side of the church
11 and put something in the box and went around the back of the
12 church, come out on the upper side and went up to the path.

13 Q And during that time did anybody come out from the
14 Lammers' residence?

15 A Mr. Lammers came out talking on his cell phone. And I
16 say, well, something must have happened.

17 MS. HODGES: Objection to speculation, Your Honor.

18 THE COURT: Overruled.

19 A So, so after a while as he went up in the path, I sent
20 one of the girls over to tell him that he had gone up
21 through the path on the bicycle.

22 Q Let me ask you this question, ma'am.

23 It wasn't this Mr. Lammers. It was his brother, is
24 that right?

25 A Yes.

Henrietta Meadows
Direct examination by Mr. Barnette

1 Q Okay. Do you see the man in the courtroom today that
2 you saw?

3 A Yes.

4 Q Can you show, tell us who he is, sir, ma'am?

5 A The man sitting there with the white shirt.

6 MR. BARNETTE: Your Honor, the record will reflect
7 that she's identified the defendant in this case.

8 THE COURT: It shall.

9 Q And that's the man you saw that day.

10 A Yes.

11 Q And what was he riding, ma'am?

12 A He was riding a bicycle, a green-colored looking
13 bicycle with white on it.

14 Q And you got three opportunities to see him as he drove
15 by.

16 A Yes.

17 Q And he was a stranger in your neighborhood.

18 A Yes.

19 Q Had you ever seen him in that neighborhood before?

20 A No.

21 MR. BARNETTE: One moment, Your Honor, please.

22 (Pause.)

23 Q Please answer any questions Ms. Hodges may have for
24 you.

25

Belinda Meadows
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q Ms. Meadows, you did not talk to the police around the
4 time that Mr. Lammers died, did you?

5 A No.

6 Q You did not talk to the police when they came to your
7 house and talked with your daughter.

8 A Well, I was in their presence because, yeah, I was
9 sitting in the living room when he was there.

10 Q Okay. But you didn't. He didn't take a statement from
11 you.

12 A No.

13 Q And didn't show you any pictures.

14 A No. I just looked on as he was showing them to her.

15 Q So you actually saw them as he was showing them to her.

16 A Uh-huh.

17 Q And you saw which one she picked out.

18 A Right.

19 Q Okay. And you saw that a year ago.

20 A Excuse me?

21 Q You saw that a year ago.

22 A Yes.

23 Q Okay. And you didn't actually get questioned by
24 anybody directly until just a couple of weeks ago, isn't
25 that right?

Belinda Meadows
Cross-examination by Ms. Hodges

1 A No.

2 Q So a couple of weeks ago then somebody came to your
3 house and started talking to you about this case, right?

4 A No. No one came there. I talked to the guy the other
5 day, but that's it. He only came there one time.

6 Q And he came. Who came to your house?

7 A The police came. Then the solicitors, they came out.

8 Q And the solicitor. And that was about a few weeks ago,
9 a couple of weeks, two or three weeks ago the solicitors
10 came and talked to you.

11 A Right.

12 Q And that's when you told them what you had seen. But
13 the police didn't take a statement from you.

14 A No.

15 Q Okay. And you have no idea what, if anything -- it
16 looked like he put something in a box, but you have no idea
17 what was put in the box.

18 A No. I don't know what he put in the box.

19 Q Okay.

20 MS. HODGES: That's all I have, Your Honor.

21 MR. BARNETTE: No further questions, Your Honor.

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

23 MR. BARNETTE: We would ask for both of the last two
24 witnesses to be excused, Your Honor.

25 THE COURT: They may be.

Ankit Basnet
Direct examination by Mr. Barnette

1 (Whereupon, the witnesses were excused.)

2 MR. BARNETTE: I would like to call Mr. Basnet to the
3 stand, please.

4 ANKIT BASNET; having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 THE COURT: Let me see y'all just a minute before you
8 start.

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

11 Q Sir, if you would, give us your full name, please.

12 A Ankit Basnet.

13 Q If you would, just get up a little -- talk loud enough
14 so this jury can hear you in the back. Okay?

15 A Ankit Basnet.

16 Q And where do you live at, sir, or where do you live at
17 presently?

18 A Now?

19 Q No. Where you came from, sir.

20 A Massachusetts.

21 Q Okay. Back on June the 1st, I mean, May the 26th of
22 2007, where was you living at, sir?

23 A Boiling Springs.

24 Q And where was you working at, sir?

25 A Texaco gas station.

Ankit Basnet

Direct examination by Mr. Barnette

1 Q And is that the Texaco station located across from the
2 post office here downtown?

3 A Yes, sir.

4 Q On West Main -- West Henry Street?

5 A Yes, sir.

6 Q Let me show you what's been marked as a C. D., No. 80,
7 I believe. Was you working about 11:30 that night?

8 A Yes, sir.

9 Q And does this C. D., State's Exhibit No. 80, is that,
10 is this a true representation of what you saw that night?

11 A Yes, sir.

12 MR. BARNETTE: Your Honor, I'd like to enter State's
13 Exhibit No. 80 into evidence at this time.

14 MS. HODGES: Your Honor, subject to our previous
15 motions.

16 THE COURT: It's admitted.

17 (D. V. D. marked State's Exhibit No. 80.)

18 Q During that...

19 MR. BARNETTE: And, Your Honor, I would like to
20 publish this at the appropriate time.

21 THE COURT: You may.

22 Q Did you see an individual come into your store?

23 A Yes, sir.

24 Q And that individual, is he in court today?

25 A Yes, sir.

Ankit Basnet

Direct examination by Mr. Barnette

1 Q Do you see him here in court today?

2 A Yes, sir. He's, he has on a white shirt beside the
3 lady.

4 Q Can you point at him, where he's at, sir?

5 A Yes, sir. There.

6 MR. BARNETTE: Your Honor, I'd like for the record to
7 reflect that he's identified the defendant in this case.

8 THE COURT: It shall.

9 Q What did he ride? What did he come to the Texaco on?
10 What was he riding?

11 A A bicycle, lady's bicycle.

12 Q What color was that bicycle?

13 A It was green color.

14 MR. BARNETTE: Your Honor, I'd like to publish this at
15 this time.

16 THE COURT: You may.

17 (Whereupon, the D. V. D. was shown to the jury.)

18 Q Is that you working behind the counter, sir?

19 A Yes, sir.

20 Q Is that the gentleman you saw come in your store?

21 A Yes, sir.

22 Q Is that Mr. Sims, the gentleman you see in court today?

23 A Yes, sir.

24 Q Was those the items that he was wearing when he came
25 into your store?

Ankit Basnet

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q I'll show you the other clips too. Is this just
3 another angle in the store?

4 A Yes, sir.

5 Q Do you see him drive up in the green bicycle on this?

6 A Yes, sir.

7 Q Is that him right there?

8 A That's.

9 Q Is that him coming out?

10 A Yes, sir.

11 Q Just going back to the beginning there, if you would,
12 tell the jury when you saw him go across the -- across.

13 I'll try to stop it.

14 A Right there.

15 Q That was him and he was riding the --

16 A A lady's bicycle.

17 THE COURT: Can you identify which one we're talking
18 about since there's more than one person in that video?

19 Q Which person are you talking about, sir?

20 A The guy with the red t-shirt with a stripe wearing
21 black, stripe, wearing a black hat like on a bicycle.

22 Q That's the gentleman you're talking about that's going
23 on the bicycle?

24 A Yes, sir.

25 Q There's also a third clip. Is this the third clip on a

Ankit Basnet
Cross-examination by Ms. Hodges

1 different angle? And that's him?

2 A Yes, sir, that's him.

3 Q And which gentleman is it again that we're describing?

4 A With the black cap with t-shirt, white and black
5 striped.

6 Q And later on you met with Investigator John Burgess, is
7 that right?

8 A Yes, sir.

9 Q And you identified Mr. Sims as the individual that came
10 in your store that day.

11 A Yes, sir.

12 Q And they obtained the video and information from
13 y'all's video machine.

14 A Yes, sir.

15 MR. BARNETTE: One moment, Your Honor, please.

16 (Pause.)

17 Q Please answer any questions that Ms. Hodges may have
18 for you.

19 CROSS-EXAMINATION

20 BY MS. HODGES

21 Q Mr. Basnet, you have identified the person in this
22 video wearing a red shirt with stripes on it, is that
23 correct?

24 A Yes, ma'am.

25 Q All right. Isn't it true that you originally told

Ankit Basnet
Cross-examination by Ms. Hodges

1 police that the person had a green shirt on?

2 A No, ma'am.

3 Q And didn't you originally tell the police that the
4 person had a baseball cap backwards, wearing a baseball cap
5 backwards?

6 A No, ma'am.

7 Q So your testimony today is that that stripe shirt is
8 the shirt that you remember him wearing and it definitively
9 had stripes in it.

10 A Yes, ma'am.

11 Q Okay. And this happened on May the 26th of 2007.

12 A Yes, ma'am.

13 Q About 11:30 at night.

14 A I guess.

15 MS. HODGES: Okay. I have nothing further from
16 Mr. Basnet, Your Honor.

17 MR. BARNETTE: We ask this witness be excused, your
18 Honor.

19 THE COURT: He may be.

20 Thank you.

21 MR. ELLIS: The state calls Investigator Ricky
22 Spurgeon.

23

24

25

Ricky Spurgeon
Direct examination by Mr. Ellis

1 RICKY:SPURGEON; having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. ELLIS

4 Q Please introduce yourself to the jury.

5 A Good morning. I'm Ricky Spurgeon with the Spartanburg
6 Public Safety Department, an investigator in the criminal
7 investigation division.

8 Q Thank you.

9 Are you familiar with the events on June the 1st of
10 2007?

11 A I am, sir.

12 Q And were you one of the investigators on that case?

13 A That's correct.

14 Q Basically, how did you become involved in this case?

15 A I was summoned to assist in the investigation because
16 there was an incident or a homicide on Carlton Drive. And I
17 was called to come and canvass the area basically and to
18 gather witnesses, take statements. That was what I was
19 called for.

20 Q And through the investigation of yourself and other
21 investigators and officers on the scene was a suspect
22 developed in that case?

23 A Yes, sir.

24 Q And who is that suspect?

25 A Mr. Sims.

Ricky Spurgeon
Direct examination by Mr. Ellis

1 Q Were officers asked to locate Mr. Sims at that point?

2 A Yes, sir. Investigator Burgess showed me a still
3 photo. And I went out to look for the person that was in
4 that still photo.

5 Q Were you able to locate Mr. Sims?

6 A I did.

7 Q And where did you locate him?

8 A I located him at 261 Caulder Circle, or it's Caulder
9 Avenue, excuse me. It was the old Shirley's Pantry, which
10 is now torn down.

11 I located Mr. Sims within that facility which was a
12 store. Upon approaching him, ~~he initially took off~~ and ran
13 to the bathroom to evade me. ~~I was already familiar with~~
14 ~~him, being an investigator in that area.~~ When I confronted
15 him and asked him to talk to me, I asked him his name
16 initially. ~~He stated his name was~~ Jamel Watson. I brought
17 him outside and I told him I knew his real name. And we
18 proceeded to city hall.

19 Q So when you first saw him, he ran.

20 A He ran.

21 Q Did he go to the bathroom?

22 A He ran into a bathroom and gave a false name.

23 Q And what's his reaction when you told him what his real
24 name was?

25 A When I told him I was familiar with him, he sort of --

Ricky Spurgeon
Cross-examination by Ms. Hodges

1 his head sort of dropped. And he came on to city hall.

2 Q And what did you do at that point, after that? Did you
3 take him somewhere?

4 A I took him to the interview room.

5 Q Thank you.

6 MR. ELLIS: One moment, Your Honor.

7 (Pause.)

8 MR. ELLIS: Thank you, Your Honor.

9 Q Please answer any questions Ms. Hodge may have.

10 A Yes, sir.

11 CROSS-EXAMINATION

12 BY MS. HODGES

13 Q Investigator Spurgeon, you actually filled out the
14 booking report for Mr. Sims, is that correct, the booking
15 card? Do you remember doing that?

16 A I remember transporting him to the county facility,
17 ma'am. So that might entail filling out the booking card.

18 Q Okay.

19 MS. HODGES: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 Q I ask if you recognize this, sir.

22 MR. BARNETTE: Your Honor, may we approach for one
23 second?

24 THE COURT: Yes.

25 (Bench conference held off the record in the presence

Ricky Spurgeon
Cross-examination by Ms. Hodges

1 of the jury but out of the hearing of the jury.)

2 Q Have you had a chance to review that, sir?

3 A Yes, ma'am.

4 Q And what is the weight of Mr. Sims?

5 A The weight?

6 Q Yes, sir.

7 A At that point in time he gave me a weight of 165.

8 Q Okay. And what is his height?

9 A 6'.

10 Q 6'. And did he give you any fixed address?

11 A No, ma'am, he didn't. He didn't give me no fixed
12 address.

13 Q All right. And you've had an opportunity to see
14 Mr. Sims today.

15 A Yes, ma'am.

16 Q Is that an accurate, the 165, is that approximately an
17 accurate weight for him, would you say, an estimation?

18 A He looks a little healthier now.

19 Q Okay. A little healthier meaning?

20 A A little more weight.

21 Q A little more weight. So back on June the 1st he was
22 actually a little skinnier.

23 A He probably was 160 or 165. Now he looks probably
24 about 175 or 180.

25 Q Okay. Thank you, sir.

Ricky Spurgeon
Cross-examination by Ms. Hodges

1 MR. ELLIS: Nothing further, Your Honor. We ask the
2 witness be excused.

3 THE COURT: All right. You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 (Whereupon, the witness was excused.)

6 THE COURT: We'll take a short break.

7 I'll ask the jury to please go to your jury room. Do
8 not discuss the case. We'll bring you back after that
9 break.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Court is in recess for 15 minutes.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Are we ready for the jury?

15 MR. BARNETTE: I will be calling a witness out of
16 order for SLED. They happened to be in another court. So
17 we'll be calling Amy Stephens next.

18 THE COURT: Okay. Bring the jury in.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. The jury is present, Mr.
22 Barnette.

23 MR. BARNETTE: Your Honor, I would like to call Amy
24 Stephens to the stand, please.

25

Amy Elizabeth Stephens
Direct examination by Mr. Barnette

1 AMY ELIZABETH STEPHENS, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q Ms. Stephens, if you would, give your full name for the
5 record.

6 A Amy Elizabeth Stephens.

7 Q Where do you work at, ma'am?

8 A I'm a forensic technician at the South Carolina Law
9 Enforcement Division.

10 Q And you had another court case this afternoon, so we're
11 having to call you out of order today, is that correct?

12 A Correct.

13 Q What's your main duty there at SLED, ma'am?

14 A My main duty is we log in evidence that is brought to
15 SLED for forensic examination.

16 Q Let me show you what's been marked, I believe, Items 1
17 through 8, or 2 through 8. Excuse me. Let me show you
18 what's been marked and entered into evidence as State's
19 Exhibit 2.

20 Did Investigator Russell Porter from the department of
21 public safety bring some items to you, ma'am?

22 A He did.

23 Q And did he log those items in with y'all's department?

24 A He did.

25 Q And when they brought them here, were they sealed and

Amy Elizabeth Stephens
Direct examination by Mr. Barnette

1 everything? Did y'all put them into a sealed container once
2 they got to SLED?

3 A We did. We put them in a sealed container.

4 Q If you would, tell the jury a little bit about that
5 procedure.

6 A What we do is the officer, the submitting officer, will
7 bring in the evidence that they're wanting to have testing
8 done with. We will put it either in a heat-sealed pouch and
9 seal it up, or a box.

10 If it's a box such as this one, we will tape the sides
11 and the bottom, and also the sides and the top, and put our
12 SLED-evidence-seal tape on the top and the bottom.

13 The officer who is submitting the evidence will initial
14 and date on the bottom of the box and on the top of the box.
15 And that serves as a tamperproof seal for the analyst,
16 whoever receives the evidence.

17 Q And these items, State's Exhibit 2, which are the black
18 tennis shoes --

19 A Yes.

20 Q -- and State's Exhibit 3, which is the bluejean shorts
21 or bluejeans pants --

22 A Yes.

23 Q -- and State's Exhibit 4, which is a white sock --

24 A Yes.

25 Q -- and State's Exhibit 6 which is the hat --

Amy Elizabeth Stephens
Direct examination by Mr. Barnette

1 A Yes.

2 Q -- and State's Exhibit 5 which is the shirt --

3 A Yes.

4 Q -- and then also State's Exhibits 7 and 8, I believe
5 are blood standard from John Lammers --

6 A Yes.

7 Q -- and mouth swabs for David Lammers --

8 A Correct.

9 Q -- they were also submitted by Investigator Porter.

10 A Correct.

11 Q And when y'all logged those in was they sealed in a
12 container and secured?

13 A When the swabs and the standards were logged in, they
14 were in this original envelope right here. And we would
15 have put it in a heat-sealed pouch like this and sealed the
16 top of it and have the officer initial or sign right here
17 and date and then initial and date on the seal.

18 Q And State's Exhibit 1, was this a lot of the packaging
19 those items came in?

20 A Yes, to my knowledge, yes.

21 Q And they were secured in those items when they came to
22 SLED.

23 A Yes.

24 Q And who would have opened those items up for y'all to
25 put for y'all to put them in y'all container?

Amy Elizabeth Stephens
Cross-examination by Ms. Hodges

1 A We actually don't open the items when they come to
2 SLED. They are previously sealed. We actually will just go
3 to the box and then have the submitting officer put it in
4 the box for us. We don't open the box or the bags or
5 envelopes or anything.

6 Q And Investigator Porter brought those down and then
7 y'all distributed them that way.

8 A Correct.

9 Q And they would not be opened until they are analyzed by
10 Jan Bryson.

11 A Correct.

12 Q And they were sealed up when they was put in this box.

13 A Yes.

14 Q And they were secured. Nobody had tampered with them
15 or anything at all.

16 A No.

17 Q If you would, please answer any questions that
18 Ms. Hodges may have for you.

19 CROSS-EXAMINATION

20 BY MS. HODGES

21 Q Ms. Stephens, I have a copy of a SLED laboratory
22 forensic services request. Do you have a similar copy?

23 A I don't have a receipt. I have the original log-in
24 sheet.

25 Q Okay. And when, what day, did you receive the items?

Amy Elizabeth Stephens
Cross-examination by Ms. Hodges

1 A I received them on 6/6 of 2007.

2 Q And approximately what time?

3 A At 1356 p.m.

4 Q Which would -- military time would be 11:56 in the
5 afternoon?

6 A Correct.

7 Q Okay. And once the items are placed in the box and
8 sealed, you then send them on, basically log them in so that
9 they can then be picked up by the other analysts, other
10 departments?

11 A Correct. We put them in our evidence storage room,
12 which is a locked area.

13 Q You haven't had any other dealings with the evidence
14 other, other than what you testified about today.

15 A I returned it to the agency.

16 Q But other than that.

17 A No.

18 Q Thank you, ma'am.

19 A You're welcome.

20 MR. BARNETTE: We ask this witness be excused, Your
21 Honor.

22 MS. HODGES: No objection.

23 THE COURT: You may be. Thank you.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness was excused.)

Edward Victor Guthro
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I would like to call
2 Investigator Guthro to the stand, please.

3 EDGAR VICTOR GUTHRO, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q If you would, sir, please give your full name for the
7 record.

8 A Edward Victor Guthro.

9 Q Where do you work at, sir?

10 A Spartanburg Department of Public Safety.

11 Q And what's your position there, sir?

12 A Forensic investigator.

13 Q And how long have you been with the department, sir?

14 A Nineteen and a half years.

15 Q And was that your present position back on June the
16 1st of 2007?

17 A It was.

18 Q Was you and another forensic officer called to 203
19 Carlton Drive here in Spartanburg?

20 A Yes, sir.

21 Q And when you arrived there, what did you do, sir?
22 About what time did you arrive and what did y'all do once
23 you got there?

24 A I was notified at my residence roughly 1:30 in the
25 morning by our lieutenant. While I was in route he

Edward Victor Guthro
Direct examination by Mr. Barnette

1 contacted me again and asked me to respond to the hospital
2 and photograph the deceased prior to responding to the
3 scene.

4 Q And did you do that, sir?

5 A I did.

6 Q And once that was done, what did you do, sir?

7 A I responded to the scene of the incident, and when I
8 arrived I spoke with Investigator Burgess who told me that
9 the brother, David Lammers, had just been transported to
10 city hall and that he had a lot of blood on him.

11 A warrant for the residence had not been obtained yet,
12 and I wanted to see the type of blood patterns that were on
13 Mr. Lammers, on David Lammers, so I responded to city hall.

14 Q And once you got there did you speak with Mr. Lammers?

15 A I did.

16 Q Did he cooperate in every way?

17 A Yes, sir, he did.

18 Q And did you examine him and locate him and talk to him
19 about what happened?

20 A I did.

21 Q Later on did y'all obtain a search warrant for the
22 residence?

23 A Yes, sir.

24 Q And did you go in the residence?

25 A I did.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 Q And did you take several photographs of the residence?

2 A Yes, sir.

3 Q Some of these have been entered in, some of them
4 haven't. Let me show you the ones that have not been
5 entered in yet.

6 I show you State's Exhibits 65, 66, 67, 68, 69, 70, 71,
7 72, 73, 74. Do those pictures fairly represent what you saw
8 that day or saw when you went back out, sir?

9 A Yes, sir, they do.

10 Q Let me show you what's been marked as State's Exhibits
11 59, 61, 62, 37, 22, 31, 32, 34, 35, 36, 28, 38, 39, 40, 41,
12 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53. Will you
13 look at those items, sir, to see if those fairly represent
14 what you saw?

15 A Yes, sir. They do.

16 Q Let me show you State's Exhibit 54. Is that another
17 picture that fairly represents what you saw there at the
18 scene?

19 A Yes, sir. They do.

20 Q And did you also -- was there pictures taken of the
21 defendant and what he was wearing that night or later that
22 day?

23 A Yes, sir.

24 Q Let me show you what's been marked -- 75 and 76 have
25 already been entered into evidence. Let me show you 77 and

Edward Victor Guthro
Direct examination by Mr. Barnette

1 78. Do those pictures fairly represent what you saw that
2 night or that day?

3 A Yes, sir, they do.

4 MR. BARNETTE: Your Honor, I'd like to enter, I'd like
5 to enter these exhibits into evidence at this time.

6 MS. HODGES: We have no objection, Your Honor.

7 THE COURT: Let me be sure I've got them right.

8 We have got Exhibits 22 --

9 MR. BARNETTE: Yes, sir.

10 THE COURT: -- 28, 31, 32, 34 through 54, 59, 61, 62,
11 77, 78, 65 through 74. Any others?

12 MR. BARNETTE: I think that's it, Your Honor.

13 THE COURT: They are admitted without objection.

14 (Photographs marked State's Exhibits Nos. 22, 28, 31,
15 32, 34 through 54, 59, 61, 62, 65 through 74, 77 and 78.)

16 MR. BARNETTE: Permission to publish these items to
17 the jury, Your Honor?

18 THE COURT: You may.

19 Q Starting with State's Exhibit 18. And this has already
20 previously been entered into evidence.

21 Is that a picture of the house that y'all went to, sir?

22 A Yes, sir, it is. That's the front of the residence.

23 Q State's Exhibit No. 19, what is that a picture of, sir?

24 A The back of the residence.

25 Q And did y'all notice on State's Exhibit 20, did you

Edward Victor Guthro
Direct examination by Mr. Barnette

1 notice a ladder back there, sir?

2 A Yes, sir.

3 Q And where was the ladder located?

4 A It was located underneath the bathroom window, which is
5 connected. The bathroom itself is connected to the victim's
6 bedroom.

7 Q And did you go in that bathroom and look at that window
8 and so forth?

9 A Yes, sir, I did.

10 Q State's Exhibit 21, what is that, sir?

11 A That's the rear door of the residence and a handicap
12 ramp that leads up to it.

13 Q When you went inside, you took pictures of everything
14 inside, sir.

15 A Most everything, I would say.

16 Q Yes, sir. State's Exhibit 23, can you tell the jury
17 what that is, sir?

18 A That is the kitchen floor. The victim had been removed
19 prior to my arrival there. But that's where the victim was
20 located when he was transported by E. M. S.

21 Q State's Exhibit 25, what is that, sir?

22 A That's a photograph of the phone, which is a
23 wall-mounted phone. And the receiver is hanging on, onto
24 the floor near that pool of blood.

25 Q And State's Exhibit 26.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 A Another photograph of the same thing. It's further
2 back.

3 Q I'm not going to go through every picture that you took
4 that night or whatever.

5 But let me go back to State's Exhibit 22. That picture
6 there, what time did you go back out to the scene on this,
7 sir, during the day of June the 1st?

8 A On the search warrant?

9 Q Yes, sir.

10 A Yes, sir, after, yes.

11 Q What was these items in the back yard?

12 A Those were items that were located at one point
13 according to the brother on the windowsill of that bathroom
14 that were now strawn across the back yard.

15 Q So these were located on the back windowsill of that
16 bathroom window.

17 A Initially, yes.

18 Q And they were all scattered out back.

19 A Yes, sir.

20 Q Showing you State's Exhibits 84, 85, 86, 87 and 93, do
21 those items, do those pictures, fairly represent what you
22 saw back there before you had the placards?

23 A Yes, sir. These are those items prior to being marked
24 with evidence placards.

25 MR. BARNETTE: Your Honor, I would like to move these

Edward Victor Guthro
Direct examination by Mr. Barnette

1 into evidence at this time.

2 THE COURT: What numbers are they?

3 MS. HODGES: Your Honor, it appears to be 84 through
4 87, and No. 93, which the Court may not have on its initial
5 list. And I have no objection to those photographs.

6 THE COURT: All right. Eighty-four through 87 and 93?

7 MR. BARNETTE: Yes, sir.

8 THE COURT: They are admitted.

9 (Photographs marked State's Exhibits Nos. 84 through 87
10 and 93.)

11 Q At the placard No. 1 beside the ladder, what was found
12 there, sir?

13 A Item No. 1 was a bottle of Adidas Aftershave located
14 underneath the window near the ladder.

15 Q Let me show you what's been entered into evidence as
16 State's Exhibit 86. Is this a picture of that bottle that
17 y'all found?

18 A That's correct.

19 Q And that was originally on the windowsill?

20 A Yes, sir.

21 Q What is the item at No. 2, sir?

22 A Item No. 2 is a tube of cortisone cream located in the
23 back yard.

24 Q Let me show you what is been entered as State's Exhibit
25 87. What is that, sir?

Edward Victor Guthro
Direct examination by Mr. Barnette

1 A That's that tube prior to being marked with the
2 placard.

3 Q And what is No. 3, sir?

4 A No. 3 is a toothbrush located in the back yard.

5 Q And I show you what's been entered into evidence as
6 State's Exhibit 85. What is that, sir?

7 A That toothbrush prior to being marked.

8 Q And what is No. 4, sir?

9 A No. 4 is a tube of Colgate toothpaste located in the
10 back yard.

11 Q Let me show you what's State's Exhibit 93. What is
12 that, sir?

13 A That item prior to being marked with the placard.

14 Q But all of these items weren't found inside the
15 bathroom. They were found outside.

16 A That's correct. In the back yard.

17 Q If they was thrown on the floor in the bathroom --

18 MS. HODGES: Your Honor, object to leading.

19 THE COURT: Do not lead.

20 Q What's the significance to you of those items being in
21 the back yard instead of the bathroom?

22 A An individual trying to enter through that window in
23 the nighttime, were he to knock those items onto the floor,
24 throw them onto the floor, they would make noise, versus
25 throwing them behind him in the back yard where nobody

Edward Victor Guthro
Direct examination by Mr. Barnette

1 inside the residence would hear, would hear those items.

2 Q Showing you State's Exhibit 33. What is that, sir?

3 A That is a picture from the inside of that bathroom
4 window.

5 Q And did you look at this window?

6 A I did.

7 Q The screen, is it easy to open or close or --

8 A Yes, sir. The storm window on the outside of the
9 window was in the open position, locked open. The main
10 glass window was also in the up position. The screen
11 window, which is down, raises but will not stay up. It
12 raises very easily and goes down very easily all by itself.

13 Q During that time did you see any footprints in the
14 residence?

15 A Yes, sir. In the kitchen where the large pool of blood
16 was located there were all sorts of footprints from E. M. S.
17 and police personnel.

18 In the bedroom, in the victim's bedroom, one footprint
19 was located, or shoe print.

20 Q Was there anybody that was back in there or anything
21 like that?

22 A Sir?

23 Q Was that a secured area, nobody was back in the bedroom
24 as far as you know?

25 A To my knowledge, no. The E. M. S. or prior police

Edward Victor Guthro
Direct examination by Mr. Barnette

1 personnel wouldn't have any reason to be in there.

2 Q Did you get the chance? Obviously, you saw
3 Mr. Lammers.

4 A Yes.

5 Q And did, was he wearing shoes when this incident
6 occurred? Did he have blood on the bottom of his feet?

7 A He had blood on the bottom of his feet. There was also
8 blood on the top of the flip-flops that he was wearing. And
9 when you step on a soft surface that has blood on it, a
10 significant amount of blood, the blood will usually ooze up
11 between the toes of the person. And he had blood had oozed
12 up between his toes and was on like the tops of his toes.

13 Q And the shoe print you found in the bedroom, would that
14 similar to what he was wearing or what he would have had on?

15 A No, sir.

16 Q The victim in this case, the other Mr. Lammers, did --
17 when you saw him did he have any shoes or anything on?

18 A No, sir, he did not.

19 Q Let me show you what's been entered in as State's
20 Exhibit 63. One moment. Did you take pictures of this
21 footprint, sir?

22 A I did.

23 Q Let me show you what's been marked as State's
24 Exhibit 61. Tell the jury what that is, sir.

25 A Item No. 12 was the footprint which was located.

Edward Victor Guthro
Direct examination by Mr. Barnette

- 1 Q Let me show you State's Exhibit 62. What is this, sir?
- 2 A It's another photograph of the same print.
- 3 Q And later on, what time did you see Mr. Sims when you
- 4 took the photographs?
- 5 A At about 1945.
- 6 Q That day, June the 1st?
- 7 A Yes, sir.
- 8 Q So that would have been about 7:45 p.m. that day?
- 9 A That's correct.
- 10 Q Did you see his shoes? I think they've been entered as
- 11 State's Exhibit No. 2. Did you look at the pattern, look at
- 12 the bottom of his shoes concerning the pattern that you saw
- 13 on the floor?
- 14 A Yes, sir, I did.
- 15 Q Are they similar?
- 16 A Yes, sir.
- 17 Q Did you also secure a sword from the kitchen table?
- 18 A Yes, sir, I did.
- 19 Q That's already been entered into evidence as State's
- 20 Exhibit 12. Is this the sword that you obtained, sir?
- 21 A Yes, sir.
- 22 Q And is it sharp or anything?
- 23 A No, sir. It's more of a display item.
- 24 Q Did you also obtain a knife from the bedroom?
- 25 A Yes, sir, I did.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 Q Let me show you what's been State's Exhibit No. 11. If ()
2 you would, sir, take a look at that.

3 A Yes, sir. This is the knife that I collected from the
4 victim's bedroom.

5 MR. BARNETTE: Your Honor, I'd like to move this into
6 evidence at this time.

7 MS. HODGES: I have no objection, Your Honor.

8 THE COURT: It's admitted. That's No. 11?

9 MR. BARNETTE: Yes, sir.

10 (Knife marked State's Exhibit No. 11.)

11 MR. BARNETTE: May I publish it to the jury, Your
12 Honor?

13 THE COURT: You may.

14 Q Was that the knife that you found in the bedroom, sir? ()

15 A Yes, sir, it is.

16 Q Was that sent to SLED for testing also with the other
17 items?

18 A Yes, sir, it was.

19 Q I show you what's been marked State's Exhibit 64. Was
20 that where the knife was found?

21 A Yes, sir, near a closet door on the right as you enter
22 the room.

23 Q Did you collect swabs from the area also, sir?

24 A Yes, sir, numerous swabs.

25 Q And did you also go to the autopsy too, sir?

Edward Victor Guthro
Direct examination by Mr. Barnette

1 A I did.

2 Q Did you collect a -- was a buccal swab collected from
3 the victim in this case -- John Lammers?

4 A A buccal swab?

5 Q No. A blood standard. I'm sorry. A blood standard.

6 A A blood standard was collected by Dr. Wren from the
7 victim and turned over to me, yes.

8 Q Was you present when he collected that sample?

9 A I was.

10 Q And did you secure that sample?

11 A I did.

12 Q And once it was secured, was that put into evidence?

13 A Yes.

14 Q And was it sealed at the time you put it into evidence?

15 A Yes.

16 Q And was there also a mouth swab that was obtained from
17 David Lammers in this case?

18 A I believe there was. I don't believe I actually am the
19 one that collected that. If I can see the bag, I can tell
20 you for sure.

21 Q Let me let you look at the bag.

22 A It was collected by Investigator Burgess.

23 MR. BARNETTE: Your Honor, at this time I would like
24 to enter State's Exhibit No. 7 into evidence at this time.

25 MS. HODGES: No objection, Your Honor.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 THE COURT: It's admitted.

2 (Standard from John Lammers marked State's Exhibit No.
3 7.)

4 Q Did you collect -- was there fingernail scrapings that
5 was collected from the victim in this case?

6 A Yes, sir.

7 Q And was you present for that, sir?

8 A Yes, sir, I was.

9 Q If you would, take a look at State's Exhibit 13 and see
10 if that's that item.

11 A Yes, sir, this would be those items.

12 MR. BARNETTE: Your Honor, I would like to enter
13 State's Exhibit 13 into evidence at this time.

14 MS. HODGES: We have no objection to 13, Your Honor.

15 THE COURT: It's admitted.

16 (Fingernail scrapings marked State's Exhibit No. 13.)

17 Q Through the pictures here -- I don't want to go through
18 every one of them -- but was there evidence that obviously
19 that in this case David Lammers tried to help John Lammers
20 in the kitchen with towels and so forth?

21 A Yes, sir.

22 Q And talking to him, the blood that was on him and
23 everything, what did it appear to come from from what you
24 saw?

25 A Initially, when I saw him he had, he was covered by

Edward Victor Guthro
Direct examination by Mr. Barnette

1 what's known as a transfer stain. In other words, blood is
2 on one object. And he either touched that object or that
3 object touched him.

4 And then he also had what's called low velocity
5 spatter, which is simply blood dropped on the backs of his
6 legs and on the back of his shorts.

7 The information that I had obtained from what little I
8 had at that point from investigators didn't explain that.
9 So I had to have him go into a little more detail. And once
10 he told me in more detail what had taken place, that would
11 explain the blood spatter that was on him.

12 Q So there's no question in your mind that what he told
13 you was what happened in that situation.

14 MS. HODGES: Objection to that question, Your Honor.

15 THE COURT: Sustained.

16 MR. BARNETTE: I will rephrase the question.

17 Q So based off the information you had, was he a suspect
18 in this case after you talked to him?

19 A After I talked to him more in-depth, and also the
20 finding of that shoe print, implied that there was a third
21 person other than the two brothers there. And in my mind,
22 no, sir, at that point he was no longer a suspect.

23 Q And also there was evidence that was sent down to SLED,
24 the defendant's shoes and socks and so forth, is that right?

25 A That's correct.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 Q And in taking pictures of those items, of them, did you
2 notice blood on his clothing, the defendant's clothing?

3 A Yes, sir, I did.

4 Q Let me show you State's Exhibit 75. Is that the
5 clothes he was wearing when you saw him, sir?

6 A Yes, sir, it is.

7 Q And State's Exhibit 76, is this the back side of him,
8 that he was wearing?

9 A Yes, sir.

10 Q I will find those in a minute. State's Exhibit 32,
11 what is that, sir?

12 A That's the victim's bed and a blood stain on a
13 comforter.

14 Q Showing you State's Exhibits 38 and 39, what is this,
15 sir?

16 A Items 13, 14, and 15 were all blood spatter located
17 above the headboard, which the bed is located just to the
18 right of the door that enters into the bedroom as you're
19 facing the door from inside the room. And those were -- I
20 want to make sure, but I believe those were a part of a
21 cast-off pattern. They're definitely blood spatter.

22 Q Okay. And you collected swabs from those areas.

23 A Yes.

24 Q And I show you a closeup of 13, 14 and 15. State's
25 Exhibit 40 is 13, and State's Exhibit 41 is 14, is that

Edward Victor Guthro
Direct examination by Mr. Barnette

1 correct, sir?

2 A Yes, sir.

3 Q And State's Exhibit 42 is 15. Let me show you State's
4 Exhibit 43. What are those, sir?

5 A Those are almost completely on the other side of the
6 room. They're, again, it is blood spatter. It's a cast-off
7 pattern, blood that is being cast off, of whatever weapon is
8 being used located on the other side of the bedroom.

9 Q Did you collect swabs from those too, sir?

10 A Yes, sir.

11 Q Let me show you State's Exhibit 48. Tell us what that
12 is, sir.

13 A Excuse me. From the angle I have here, I believe that
14 are some, oh, again, I'm sorry. Cast -- that's, again,
15 cast-off blood spatter located in between those rolled
16 pieces of tape.

17 Q And these numbers correspond to the swab that you took,
18 is that right?

19 A That's correct.

20 Q And State's Exhibit 50, what is that, sir?

21 A That is the, the area where a large pool of blood had
22 been located, also where that footprint had been located.
23 And I have cut that area out of the carpet.

24 Q State's Exhibit 51, what is that, sir?

25 A Again, that is more blood spatter located on the

Edward Victor Guthro
Direct examination by Mr. Barnette

1 headboard of the bed.

2 Q And State's Exhibit 52, what is that a picture of, sir?

3 A It's a closer photograph of the same thing, which is
4 impact spatter with a passive flow. In other words, blood
5 is struck back when the force of gravity has made the blood
6 run.

7 Q And you collected swabs from those also.

8 A Yes, sir.

9 Q Be Nos. 23 and 24.

10 A Yes, sir.

11 Q Let me show you State's Exhibit 71. And what is that a
12 picture of, sir?

13 A That is, again, a picture of the kitchen floor where
14 the victim was located when officers arrived, identified as
15 area, I believe, 31 there.

16 Q Okay. And State's Exhibit 73, what is that, sir?

17 A Thirty-three (sic) is an area of blood spatter on the
18 bottom of the kitchen stove. There's a transfer stain
19 there, and there's also spatter which could be from an
20 impact, which an impact doesn't necessarily mean somebody
21 being hit. It could be, for example, the victim's foot or
22 something fallen in blood that had pooled on the floor.

23 Q Let me show you State's Exhibit -- and that was marked
24 33, is that right?

25 A Yes, sir.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 Q And State's Exhibit 74, what is that, sir?

2 A It's difficult to see in that photograph, but 34 is a
3 small transfer blood stain that is on the inside of the rear
4 storm door.

5 Q Let me show you State's Exhibit 78. That's a picture
6 of the defendant's shoes, is that right?

7 A Yes, sir.

8 Q And looking at that, did y'all apparently see blood on
9 those shoes?

10 A Yes, sir. They were also tested with what's known as
11 an O. B. G. I. test and tested positive for human blood
12 prior to being sent to SLED for analysis.

13 Q Okay. Could you tell the jury a little bit about that?

14 A O. B. G. I. is a blood test that we use. It's not just
15 presumptive for blood, but it actually will tell you whether
16 or not it's human blood, the one and only exception being
17 ferret blood, which is the only false positive that it has.

18 The shoes and his shirt were tested with that test and
19 tested positive for human blood.

20 Q But also his socks was taken and so forth?

21 A His socks were taken. As he was removing his sock
22 after he took the shoes off, I noticed that his socks were
23 on inside out. And as he removed his socks, he was careful
24 not to turn them back right-side out. So once he had
25 removed them we turned them inside out, and there was large

Edward Victor Guthro
Direct examination by Mr. Barnette

1 transfer blood stains around what would be the outside of
2 the sock up around the cuff area.

3 Q So when he took the shoes off, his socks was inside
4 out.

5 A That's correct.

6 Q And what did you see inside of those socks, in the
7 inside part?

8 A Blood.

9 Q And was that sent to SLED for testing too?

10 A Yes, sir.

11 Q It was definitely on the inside of the sock.

12 A Yes, sir, what would normally be the outside of the
13 sock, but they had been turned inside out. So the blood was
14 now on the inside as it would be -- as he had them on, the
15 blood would be against his leg.

16 Q At the scene you took swabs obviously of the blood and
17 everything. Did you also check for fingerprints?

18 A Yes, sir, I did.

19 Q And in looking at the fingerprints, if I put my hand
20 like that, will I automatically leave a fingerprint there?

21 A No, sir, not automatically.

22 Q Why not?

23 A It could be a lot of different reasons. It could be
24 the amount of moisture in your hand. It could be the type
25 of surface that you're touching. Or you could leave a print

Edward Victor Guthro
Direct examination by Mr. Barnette

1 that is just simply enough to let you know somebody touched
2 it with no ridge detail either by sliding your hand or just
3 not having enough moisture to leave a decent print to begin
4 with.

5 Q So is it hard to obtain prints at crime scenes a lot of
6 times?

7 A It can be, yes, sir.

8 Q And looking at this crime scene, did you try to obtain
9 prints from different areas?

10 A Yes, sir. I fingerprinted the inside and the outside
11 of the window that the ladder was located under. I printed
12 the ladder itself. The ladder was initially, according to
13 David Lammers, under the kitchen window.

14 MS. HODGES: Objection to hearsay, Your Honor.

15 THE COURT: Sustained.

16 Q Did you check where the ladder was located, did you
17 check it, all the location?

18 A Yes, sir. I dusted the sink inside the bathroom, which
19 is just under that window where the ladder is located, in
20 case somebody had supported themselves on that sink as they
21 were entering the residence.

22 I dusted the areas where the struggle had taken place;
23 I dusted the headboard of the bed, the doorknobs, the adult
24 magazines that were laying on the floor, because part of the
25 struggle had taken place on top of those magazines. I

Edward Victor Guthro
Direct examination by Mr. Barnette

1 collected those magazines in case the suspect might have
2 touched those magazines during that struggle. Those were
3 printed.

4 They were also C. D.'s and C. D. cases that were taken
5 for the same reason. Part of the struggle had occurred on
6 top of those. Those were also processed for prints.

7 Q And in processing these do you always get useful
8 prints?

9 A Not always.

10 Q And what prints you did obtain, did you send those in
11 for additional analysis?

12 A They were submitted for AFIS analysis. I believe the
13 only prints that came back with a positive match, the prints
14 belonged to David Lammers.

15 Q So the prints was -- there was an analysis done of the
16 prints or whatever. What prints there was came back to
17 David Lammers?

18 A That's correct.

19 Q Was that surprising to you that they came back to him?

20 A No, sir. He lives in the residence.

21 Q Did you also find a flashlight there, sir?

22 A Yes, sir, I recall finding a flashlight.

23 Q Let me show you State's Exhibit 14. Is that the
24 flashlight that y'all found at that location?

25 A Yes, sir.

Edward Victor Guthro
Direct examination by Mr. Barnette

1 Q Did y'all...

2 MR. BARNETTE: Your Honor, I'd like to move that into
3 evidence at this time.

4 MS. HODGES: No objection, Your Honor.

5 THE COURT: What number is it?

6 MR. BARNETTE: Fourteen.

7 THE COURT: Fourteen. It's admitted.

8 (Flashlight marked State's Exhibit No. 14.)

9 Q And obviously y'all looked at that. Was there any
10 information that was obtained from that?

11 A I know it was submitted. I don't know what those
12 results were. I submitted it because it had visible blood
13 on it. And being it was a nighttime and a probable
14 burglary, I thought it might have been belonged to the
15 actual suspect versus people who lived there.

16 MR. BARNETTE: One moment, Your Honor. I'm trying to
17 find one piece of evidence.

18 (Pause.)

19 Q How many swabs did you take from the blood inside the
20 house, sir?

21 A Items 13 through 34 were all blood swabs.

22 Q Was Items 13, 24, 25 and 34 submitted to SLED with the
23 rest of the items?

24 A Yes, sir.

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

Edward Victor Guthro
Direct examination by Mr. Barnette

1 10, 9, 14, and 16. Was these four of the swabs that you
2 obtained, sir?

3 A Yes, sir. They are all marked at the location that
4 they were collected from, my name and my badge number.

5 MR. BARNETTE: Your Honor, I'd like to enter these
6 into evidence at this time.

7 THE COURT: What are those numbers again?

8 MR. BARNETTE: It will be 9, 10, 15 and 16, Your
9 Honor.

10 MS. HODGES: No objection, Your Honor.

11 THE COURT: They're admitted.

12 (Swabs marked State's Exhibits Nos. 9, 10, 15 and 16.)

13 Q State's Exhibit No. 9, is that No. 13 on your picture,
14 sir?

15 A That's correct. No. 13 was collected from the wall.

16 Q And that was collected from the wall near the light
17 switch in the bedroom.

18 A Yes, sir.

19 Q No. 10, is that No. 24 in the picture?

20 A Yes, sir, that's correct.

21 Q And that was found on the headboard?

22 A That's correct.

23 Q And Item 15 found in the bedroom door, is that right,
24 sir, No. 25 on yours?

25 A Inside the bedroom door, yes, sir.

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 Q And Item 16, which is No. 34, that was hard to see on
2 the door, from the storm door.

3 A That's correct. That's a swab from the inside of the
4 rear storm door.

5 Q All of these items were submitted, along with items
6 that were sent, that we talked about, sent to SLED for
7 analysis.

8 A Yes, sir. They all went to SLED.

9 Q Were they sent for D. N. A. analysis?

10 A That's correct.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q Please answer any questions Ms. Hodges may have for
14 you, sir. Thank you.

15 CROSS-EXAMINATION

16 BY MS. HODGES

17 Q Investigator Guthro, all of the photographs that we've
18 seen today are essentially photographs that you took, is
19 that correct?

20 A That's correct.

21 Q I show you first what's State's Exhibit No. 64. It's
22 your placard No. 6, which my understanding is the importance
23 of this photograph is the knife that was found here on the
24 floor next to a closet door, is that correct?

25 A That's correct. The magazine is already, or also,

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 important. But they're a different item number. Item No. 6
2 was the knife.

3 Q And that was found by you in the bedroom, is that
4 correct?

5 A That's correct.

6 Q All right. And do you know -- when you responded on
7 the scene, at what point did you actually start taking the
8 items, physically packaging them into envelopes and
9 physically taking them into possession and removing them out
10 of the home?

11 A I believe the physical items, the knife -- I can look
12 and make sure. The knife, the magazines, the actual
13 physical items other than the blood were collected on the
14 1st. And the actual blood swabs, I believe, were collected
15 on the 2nd.

16 Q Okay. So anything other than a blood swab was actually
17 done on June the 1st, correct?

18 A I believe so.

19 Q All right. And my understanding is you attended the
20 autopsy in this case.

21 A Yes.

22 Q And the autopsy was done on which day?

23 A On 6/2 at about 0830.

24 Q June 2nd at 8:30 in the morning.

25 A Yes.

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 Q Okay. And then you would have collected the swabs
2 after that?

3 A Yes. I believe I returned to the scene after that.
4 Let me read it and make sure while I've got it in my hand.
5 (Pause.)

6 A Yes. After the autopsy I returned to 203 Carlton Drive
7 and collected Items 13 through 34.

8 Q Okay. And we know that your Items 13 through 34 are
9 the blood swabs that you collected in this case.

10 A That's correct.

11 Q Do you have an explanation as to why the crime scene
12 log places you in the home collecting items starting at 0800
13 that morning on June the 2nd?

14 A I would have no idea unless I was there for a brief
15 period of time and then went to the autopsy. I don't
16 recall.

17 Q Do you have an explanation as to why the crime scene
18 log has you signing in at 0800 and not leaving again until
19 1700 that day?

20 A Well, it would be a guess on my part since I don't keep
21 that log. But I would assume from the it sounds of that
22 that I arrived on the scene at 8:00 and then I attended the
23 autopsy at 8:30 and was not logged out, would be what I
24 would get out of that.

25 Q And whose responsibility is it to make sure that you're

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 logged in and logged out?

2 A Whoever was maintaining the crime scene log at the
3 time.

4 Q And it's not your responsibility to make sure that
5 they're doing their job?

6 A No, ma'am.

7 Q Okay. So the purpose of the crime scene log is to make
8 sure that there's control over who is in and out of the
9 scene, correct?

10 A That's correct.

11 Q So the crime scene log, at least in reference to you on
12 June the 2nd, is not accurate.

13 A At least not completely accurate, that's correct.

14 Q Okay. Do you remember the -- you testified that the
15 fingerprints that were collected and actually came back with
16 a positive identification, they came back to Mr. David
17 Lammers. Do you remember which prints those were?

18 A Yes. One off of a light bulb which had been unscrewed
19 on his back porch, the back porch light. And I believe it
20 was several off the magazines. I don't recall if any of
21 them were off of the C. D. covers or not. I know that there
22 was a large number of prints recovered off the C. D. covers
23 and the magazines. The ones that had a match were David
24 Lammers.

25 Q Okay. And then any other fingerprints that you took

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 that were raised came back either inconclusive or nothing
2 found.

3 A Correct.

4 Q Okay. And I understand you didn't do that analysis but
5 somebody in your department did that analysis.

6 A That's correct.

7 Q State's No. 22 is the photograph of the back yard with
8 your placards marked. Refresh our -- we know No. 1 is the
9 ladder. And that's essentially right up against the back of
10 the house, is that right?

11 A Well, actually I think No. 1 was the shaving cream that
12 just happens to be located beside the ladder.

13 Q Okay. No. 1 is the shaving cream by the ladder that
14 the ladder is up against the house.

15 A Yes.

16 Q Okay. And no prints on the shaving cream and no prints
17 on the ladder.

18 A Those were not processed by me. Those were actually
19 processed by Investigator Westphel. And I'm not sure what
20 the results were on that.

21 Q Okay. Item No. 2, how far would you estimate that is
22 from the back of the home?

23 A Maybe 15 feet roughly.

24 Q How about Item No. 3?

25 A Moving that again, probably to 25 or so.

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 Q And Item No. 4?

2 A Probably 30 or 35 roughly.

3 Q So we have somewhere between 15 to 35 feet for
4 everything other than the ladder and the aftershave or
5 whatever, shaving lotion bottle, right?

6 A Roughly, yes.

7 Q Okay. Did you process the windows, the screens, the
8 window, try and process it for any prints?

9 A Yes, not the mesh part of the screen but the actual --

10 Q The framing?

11 A The framing, yes.

12 Q Any prints lifted from the window screens?

13 A No.

14 Q And do you have any personal knowledge as to whether
15 the window had been opened, had been opened or left open by
16 the homeowner, homeowners in this case?

17 A The actual storm window and the actual glass window, I
18 do not know if they were normally kept that way. I just
19 know they were that way when I dealt with it, yes, ma'am.

20 Q Okay. You testified that there were several police
21 personnel and E. M. S. prints in, in and/or around the blood
22 pool that was found on the kitchen floor.

23 Was there any attempt made to take prints from any of
24 those personnel or photographs of their shoes to eliminate?

25 A That kind of effort was made after the shoe print was

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 located in the bedroom, which was a tennis shoe print. And
2 none of the police personnel or E. M. S. personnel were
3 wearing that type of a shoe.

4 Q Okay. You would agree with me that that type of shoe
5 is a common shoe.

6 A Yes.

7 Q And that there would be more than one pair of shoes
8 that would make that type of print.

9 A Yes.

10 Q You had mentioned, I think it was, Photograph No. 32.
11 We saw the blood stain on the comforter in the bedroom. Did
12 you actually take the comforter or the sheets or any of
13 those sort of things into evidence that had blood on them?

14 A I do not believe we did in this case. The actual blood
15 stain on the bed, and particularly on the sheet, was a
16 transfer stain which had been made from Mr. Lammers' back
17 when he had been pushed on the bed, David Lammers' back when
18 he had been pushed on the bed, at one point. But to the
19 best of my recollection, no, we did not collect the
20 comforter or the sheet.

21 Q Mr. David Lammers wasn't able to tell you everything
22 that had gone on in that bedroom prior to him entering the
23 bedroom though, was he?

24 A That's correct.

25 Q He wouldn't had had any knowledge about what else went

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 on in there.

2 A Right.

3 Q You're coming onto the scene long after Mr. John
4 Lammers and Mr. David Lammers and whoever else was in that
5 bedroom left the bedroom, correct?

6 A Correct.

7 Q So you don't really have any idea to definitively
8 ensure that that, you know, definitely was a transfer stain
9 from David Lammers landing on, on the sheets, correct?

10 A I know it was a transfer stain.

11 Q We know it's a transfer stain. But we can't tell for
12 certain that it was because of David Lammers being on the
13 bed.

14 A Correct, not as a positive.

15 Q Could have been from somebody else.

16 A Potentially.

17 Q Could have been some sort of other transfer blood from
18 the victim or whoever onto the bed, correct?

19 A It would be possible.

20 Q Right. And we don't have any idea now as to whose
21 blood was transferred in that stain onto the clothing, onto
22 the bed clothing.

23 A All the blood that was recovered and swabbed to my
24 understanding that was recovered belonged to the victim,
25 John Lammers. That blood that was on the bed, were that

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 much blood, had it belonged to somebody else, they would
2 have dropped blood elsewhere also. But, no, I cannot say
3 for sure it was --

4 Q You can't say for sure.

5 A That's correct.

6 Q You had mentioned that regarding the socks that
7 Mr. Sims was wearing that there was a large transfer stain
8 on the inside towards the top of the sock or what appeared
9 to be the inside looking at it as he was wearing them and
10 that that transfer stain would have gone onto basically left
11 the stain onto him.

12 A Yeah. His socks came into contact with something that
13 had blood on them. In other words, it was not individual
14 drops of blood. It was from touching an object that had a
15 lot of blood on it.

16 Q Touching an object that had blood on it. So it wasn't
17 an actual -- like if, you know, you cut a finger and you
18 hold it over the perfectly clean sock and get a drop of
19 blood, it wasn't that kind of stain.

20 A No. It had a lot of --

21 Q And it was from rubbing up against something.

22 A Yes.

23 Q Okay. And you also testified that that transfer on the
24 sock would have actually left blood on his ankle, correct?

25 A No. That's not what I said. What I said was when I

1 observed him he had socks on inside out, which would put
2 that blood stain against his leg. It might have been dry
3 when he turned them inside out. I don't know that he would
4 have had blood on his leg or not.

5 Q Did you take any sort of samples or swabs of Mr. Sims
6 at the ankle to see if any blood had transferred over onto
7 him?

8 A No.

9 Q Didn't observe any blood on his skin.

10 A No.

11 Q The blood spatter that you're talking about on that --
12 I believe both on the headboard as well as, looks like, on
13 the T. V. box where the T. V. or something had come into,
14 you called it cast off.

15 A That's correct.

16 Q A cast-off pattern. My understanding is if somebody,
17 for example, is stabbed with a sharp object and then that
18 object is actually removed, that at that point there is some
19 physics involved in terms of whatever fluid or blood or
20 whatever is on that object that's doing the stabbing, that
21 you're going to be moving it in a direction, kind of an
22 arcing direction, and that that blood or whatever is going
23 to be building and kinda just casting off the end of the
24 knife.

25 A That's correct.

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 Q All right. And that's what you're talking about when
2 you're talking about cast-off.

3 A Yes, which may not actually come from the first initial
4 stab. It's generally developed after a multiple trauma has
5 occurred and there's a lot of blood.

6 Q So as you kinda collect material on the end of the
7 knife or on the knife or whatever and it's kinda moving
8 around, moving about, that's when you're going to start to
9 get a cast-off pattern, correct?

10 A That's correct.

11 Q Okay. And you observed cast-off on the headboard of
12 the bed in the victim's bedroom, right?

13 A Definitely above it. I'd have to look and see what I
14 described it as over the headboard, but definitely above the
15 headboard, yes.

16 Q Definitely above the headboard.

17 A Yes.

18 Q And you also have some blood on the headboard.

19 A Right.

20 Q We also know that we have a cast-off pattern on a box
21 away from the bed, right?

22 A Right.

23 Q I believe you said there also was apparently, may have
24 been some cast-off also on the magazines or on the floor.

25 A No.

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 Q No?

2 A There's some magazines and a C. D. located on a dresser
3 which is above that box that you were describing that had
4 cast-off on it.

5 Q Okay. So those are the magazines that had cast-off.

6 A Right.

7 Q It's not on a dresser above the box.

8 A Right.

9 Q Okay. So there's cast-off in more than one area of
10 this bedroom.

11 A There's cast-off. Initially, when this incident
12 occurred the bedroom door would have been closed, which is
13 why you have blood and cast-off on the inside of the door.

14 Q Okay.

15 A As you're facing that door from the inside of the room,
16 the victim would have had been to the left of that door, and
17 the suspect also, in order to put cast-off on that door.

18 The cast-off that's in that room will be consistent
19 with a person who most likely had a knife in their right
20 hand at the time. As they cast it off, it goes across the
21 wall. And it's on the right, on their right, and crosses
22 over behind them.

23 Blood is directional. So it casts off at an angle
24 behind him, hits the boxes over there. Is there cast-off
25 elsewhere in the room? All the cast-off I saw would have

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 been consistent with that, what was most likely the initial
2 contact.

3 Q Okay.

4 A Everything else was either transfer or just a large
5 pool of blood.

6 Q And transfer is basically, you know, you put your hand
7 in something and then rub up against something else. That's
8 what we're calling a transfer. So it was what some lay
9 person might call a smear or smudge or whatever. That's
10 what we mean by transfer, right?

11 A Well, a swipe is a type of transfer, but it is a
12 different type of stain.

13 Q So basically --

14 A But, yeah, it's an object with blood on it touching
15 another object, whether it's living or inanimate or whatever
16 the case may be.

17 Q Okay. The clothing that you -- did you actually seize
18 the clothes from Mr. Sims? Did you actually take them into,
19 into your, into evidence?

20 A Yes.

21 Q Okay. And then you did what you called, I think, the
22 O. B. T. I. test, the basic or the presum -- or the
23 beginning primary, preliminary test.

24 A That is correct. I can tell you the actual name if you
25 want to hear it, but I've got to read it because I can't say

Edward Victor Guthro
Cross-examination by Ms. Hodges

1 it without reading it.

2 Q O. B. T. I. is probably easier for all of us to spell
3 and say.

4 A Yes.

5 Q Did you do that test at the police department?

6 A Yes.

7 Q And that is not something that is definitive in terms
8 of being able to, you know, definitively ascertain that that
9 is human blood or that that is any particular person's
10 blood, correct?

11 A It will not tell me that it is any particular person's
12 blood. And it is to my knowledge the most accurate test
13 that we have for actuals to tell you that is human blood.

14 The only false positive that I know that I'm aware of
15 that it has is farret blood.

16 Q All right. So you're saying that it's the most
17 accurate test known other than if somebody were to happen to
18 have farret blood on their shirt or something.

19 A Known to me.

20 Q Known to you.

21 A Yeah.

22 Q All right. And you're saying that the shirt that
23 Mr. Sims was wearing tested positive for human blood.

24 A Yes.

25 Q Okay. Did you use that test on the flashlight?

Edward Victor Guthro
Cross-examination by Ms. Hodges

- 1 A I don't recall. I don't, I don't think I did.
- 2 Q Okay. And yet you thought that, that it was possible
- 3 that, that, that there was some blood on it and that it was,
- 4 could have belonged to a suspect or somebody other than the
- 5 homeowners.
- 6 A It's possible. That was all, yes.
- 7 Q But it didn't have any, didn't have any real, you know,
- 8 definite --
- 9 A Definite value?
- 10 Q Right.
- 11 A No.
- 12 Q Okay. And the photographs that you took of the
- 13 clothing that we've seen today, I mean, those accurately
- 14 represent what you saw when you took those photographs.
- 15 A That's correct.
- 16 Q Okay. You said you took those photographs at 1945?
- 17 A I believe that's correct.
- 18 Q Okay. Any explanation as to why the crime scene log
- 19 has you leaving the crime scene on June the 1st at 2130?
- 20 A At 9:30?
- 21 Q Yes, sir.
- 22 A Which date are you referring to?
- 23 Q On June the 1st. You took the photographs on June the
- 24 1st, right, of the defendant in his --
- 25 A Yes. Those photographs would have been taken roughly

Edward Victor Guthro
Redirect examination by Mr. Barnette

1 at 1945, yes.

2 Q Which is 7:45 in the evening.

3 A Correct.

4 Q And 2130 would be 9:30 in the evening.

5 A Yes.

6 Q So you don't have an explanation as to why the crime
7 scene log has you still on scene at 1945 when you're
8 supposedly taking the photographs at the police department.

9 A No, I don't. I can tell you what time I took the
10 photographs.

11 Q Okay.

12 MS. HODGES: That's all I have, Your Honor.

13 MR. BARNETTE: Just one, Your Honor, on redirect.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q You also have found blood on the shoes also.

17 A That's correct.

18 Q Thank you, sir.

19 THE COURT: You may step down.

20 MR. ELLIS: Your Honor, the state calls Officer
21 Courtney Westphel.

22 COURTNEY WESTPHEL, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. ELLIS

25 Q Please introduce yourself to the jury.

Courtney Westphel
Direct examination by Mr. Ellis

1 A I am Courtney Westphel.

2 Q And where are you employed?

3 A I'm employed with the Spartanburg Public Safety
4 Department. I'm a forensic technician.

5 Q Thank you.

6 Now, you're aware of the events of June the 1st of
7 2007.

8 A Yes, sir.

9 Q And did you respond there shortly after the incident?

10 A I did.

11 Q For what purpose?

12 A Actually, I was asked to respond in reference to this
13 case. I got there at approximately 6:28 in the morning just
14 to help process the scene.

15 Q All right. And did you help process the scene in the
16 back yard area?

17 A Yes, I did.

18 Q While in the back yard of that residence did you find
19 any items?

20 A Yes.

21 MR. ELLIS: Approach with this, Your Honor.

22 Q Ms. Westphel, I am handing you what's been marked for
23 identification as State's Nos. 88, 89, 90 and 92. Do you
24 recognize those items?

25 A Yes, I do.

Courtney Westphel
Direct examination by Mr. Ellis

1 Q And what are those items?

2 A Starting with this one, is a tube of cortisone cream.

3 MS. HODGES: I'm sorry. What is this one?

4 THE COURT: Refer to the number, please.

5 THE WITNESS: Oh, I'm sorry.

6 A No. 88 is a tube of cortisone cream; No. 89 is a
7 toothbrush with a clear handle; No. 90 is a bottle of Adidas
8 aftershave or cologne; and No. 92 is a tube of toothpaste.

9 Q Thank you.

10 Those items were recovered in the back-yard area, you
11 said.

12 A Yes, they were.

13 Q By you?

14 A Yes.

15 MR. ELLIS: Your Honor, permission at this time to
16 admit Exhibits 88, 89, 90 and 92 into evidence.

17 MS. HODGES: I have no objection, Your Honor.

18 THE COURT: They're admitted.

19 (Tube of cortisone marked State's Exhibit No. 88;
20 toothbrush marked State's Exhibit No. 89; shaving lotion
21 bottle marked State's Exhibit No. 90; and tube of toothpaste
22 marked State's Exhibit No. 92.)

23 Q Officer Westphel, this is a picture of the back yard of
24 the residence, is that correct?

25 A Yes.

Courtney Westphel
Direct examination by Mr. Ellis

1 Q And this is the location where those items were
2 located.

3 A Yes, it is.

4 Q This is State's Exhibit No. 22. Again, what is entered
5 into evidence as State's Exhibit No. 87, what is that?

6 A That, that's the tube of cortisone cream which would
7 have been Item No. 2.

8 Q State's No. 86, what is this?

9 A That is the Adidas cologne or aftershave that was found
10 in the back yard.

11 Q Where about in the back yard was that found?

12 A There was a, the ladder below the bathroom window. It
13 was located kind of at the ladder.

14 Q Showing you State's No. 85, what is this?

15 A I believe that's the toothbrush that was located just
16 there in the grass in the back yard.

17 Q And also State's Exhibit No. 93, what is that?

18 A That is the tube of toothpaste there in the back yard.

19 Q Okay. Now, were any other items located in the back
20 yard?

21 A Yes, there were a few other items located.

22 Q What are those?

23 A There was also a Coke can and a, like a, pink plastic
24 denture container.

25 Q In processing all of these items did you check for

Courtney Westphel
Cross-examination by Ms. Hodges

1 fingerprints?

2 A Yes, I did.

3 Q And were any fingerprints located?

4 A Yes. There was a, there was a fingerprint lifted from
5 the cologne bottle and also from the denture container.

6 Q Were those prints able to be matched with anyone?

7 A To my knowledge, no, they weren't. They didn't come
8 back to anyone.

9 MR. ELLIS: The Court's indulgence one moment.

10 (Pause.)

11 Q Thank you. Please answer any questions Ms. Hodges may
12 have.

13 CROSS-EXAMINATION

14 BY MS. HODGES

15 Q Just to make sure I'm clear, the cortisone cream, the
16 toothbrush, the Adidas cologne or aftershave bottle and the
17 tube of toothpaste were all fingerprinted.

18 A Yes, they were.

19 Q And you actually did that, dusted them for prints and
20 then lifted the prints from them.

21 A Yes, ma'am.

22 Q And the only prints you were able to lift was from the
23 cologne bottle and the, and the denture container.

24 A Yes.

25 Q And to your knowledge there were no usable prints or no

Russell Porter
Direct examination by Mr. Ellis

1 identifiable prints at that point.

2 A Correct.

3 Q Did you do any of the other processing of the evidence
4 inside the house?

5 A No. I don't believe I did. I was there assisting
6 Investigator Guthro, but I didn't actually collect any of
7 the items or process them for further prints. I believe he
8 did all of that.

9 Q And did you ever have an occasion to observe Mr. Sims
10 at the police department later that evening?

11 A I don't believe so. I don't recall.

12 Q All right. Thank you, ma'am.

13 MR. ELLIS: Your Honor, we have nothing further from
14 this witness. We ask she be excused.

15 THE COURT: You may step down.

16 (Whereupon, the witness was excused.)

17 MR. ELLIS: Your Honor, the state calls Investigator
18 Russell Porter.

19 RUSSELL PORTER, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. ELLIS

22 Q Please introduce yourself to the jury.

23 A Russell Porter.

24 Q Where are you employed?

25 A Spartanburg Public Safety Department.

Russell Porter
Direct examination by Mr. Ellis

1 Q In what capacity?

2 A I'm an investigator with the criminal investigation
3 division.

4 Q Thank you.

5 Now, you were the investigator June the 1st of 2007.

6 A Yes.

7 Q And following the development of Mr. Sims as a suspect,
8 did you take part in the collection of evidence from him?

9 A No, I did not.

10 Q Did you at any point recover any items from him or take
11 any items from the evidence at the department of public
12 safety?

13 A From the evidence department, yes. I transported
14 evidence to SLED.

15 Q Let me show you what's introduced into evidence as
16 State's Exhibit No. 3, State's No. 4, State's No. 5, No. 6,
17 No. 2. Are you familiar with those items?

18 A I am.

19 Q And from where did you obtain them?

20 A From our evidence room.

21 Q When you obtained them, how were they packaged?

22 A They were packaged in evidence envelopes or evidence
23 packaging from our, from our department.

24 Q I show you what's been marked as State Exhibit No. 1.
25 Do you recognize that?

Russell Porter
Direct examination by Mr. Ellis

- 1 A Yes.
- 2 Q What is that item?
- 3 A It is a packaging that we use in our evidence rooms.
- 4 Q Is that the packaging that those other items, 2
- 5 through Items 3, 5, 4 and 6, is that the packaging those
- 6 items would have been in?
- 7 A Yes, it would have been, yes.
- 8 Q When you received those packages were they sealed?
- 9 A Yes, sir.
- 10 Q In what way were they sealed?
- 11 A They were sealed in our, in our envelope folded over
- 12 and sealed.
- 13 Q Were there any kind of markings on there to indicate
- 14 that as well?
- 15 A They have, these items indicated biohazard, which
- 16 indicated they had blood on them. So they had a red sticker
- 17 or red seal on them.
- 18 Q All right. I show you what's been marked as State's
- 19 Exhibit No. 8 and State's Exhibit No. 7. Do you recognize
- 20 those items?
- 21 A I do.
- 22 Q How do you recognize those?
- 23 A These were the blood standards from our, from our
- 24 victim.
- 25 Q All right. They're both from the victim, or who are

Russell Porter
Direct examination by Mr. Ellis

1 they both from?

2 A This particular envelope had the blood standard from
3 John Lammers.

4 Q What is that?

5 A Envelope State's Exhibit No. 7. And the State's
6 Exhibit No. 8 will be a mouth swab from David Lammers.

7 Q And were those packages closed and sealed?

8 A Yes, yes, they were.

9 Q State's Exhibit No. 2 is a box there with the shoes.

10 A Yes.

11 Q When you received that was it sealed?

12 A This box was sealed by, by SLED. This is the box that
13 I took evidence down, took the items down. The clerk put
14 them inside the box and sealed that box in my presence with
15 this yellow tape you see on it.

16 Q Before you received the shoes, they were sealed
17 obviously.

18 A The shoes, yes, from us, yes.

19 Q Thank you. I'm sorry.

20 Now, when you received these items, what did you do
21 with them? Did you take them to SLED?

22 A Yes, I did.

23 Q And who did you deliver them to when you arrived at
24 SLED?

25 A I delivered them to the evidence technician there,

Russell Porter
Cross-examination by Ms. Hodges

1 Ms. Amy -- Amy Stephens.

2 Q And when you gave them to Ms. Stephens were they still
3 closed and sealed?

4 A Yes.

5 Q Have they been tampered with in any way?

6 A They have not.

7 Q What did you do once you handed them to Ms. Stephens?

8 A Once I -- she and I counted the items off and put them
9 in the box, also in the, in the heat-shrink package. The
10 box is closed and sealed, as you see the yellow tape here.
11 I initialed it, she initialed it. Got a date and a time
12 that's on it. And I turned the lab over to her.

13 Q Thank you. One moment please.

14 (Pause.)

15 Q Please answer any questions Ms. Hodges may have.

16 CROSS-EXAMINATION

17 BY MS. HODGES

18 Q How are you doing?

19 A All right.

20 Q Let's talk about Item No. 2, the shoes. These shoes
21 were shoes that you supposedly brought from -- to the police
22 department in a sealed condition, right?

23 A Right.

24 Q To SLED. These shoes are not in the same condition in
25 which you took them to SLED though, are they?

Russell Porter
Cross-examination by Ms. Hodges

1 A They are not.

2 Q There's obviously been some processing done to them.
3 There's a hole in the toe on the left shoe, right?

4 A Right.

5 Q And then there looks to be a hole on the inside of the
6 back towards the heel on the right shoe, correct?

7 A That's correct.

8 Q And these shoes that appear black in the photographs
9 are no longer black, are they? I mean, they --

10 A They are black and red.

11 Q Black and red. Okay. So they do not appear today as
12 they did when you took them to SLED, correct?

13 A That's correct.

14 Q You didn't put the red on them.

15 A No, sir.

16 Q Thank you, sir.

17 MR. ELLIS: Your Honor, we ask this witness be
18 excused.

19 THE COURT: You may step down.

20 MR. BARNETTE: May we approach, Your Honor?

21 THE COURT: Yes.

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

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to recess now for lunch.

1 I'll ask you to remember the instruction previously
2 given you. Do not discuss the case with any person in any
3 fashion whatsoever, including your fellow jurors.

4 Do not conduct any research or do your own
5 investigation into any issue, and do not permit yourselves
6 to be exposed to any type of media coverage that relates to
7 the case or other persons discussing matters that might
8 pertain to the case.

9 As you leave, you'll be leaving as you have previously
10 through the back door. When you come back, I'm going to ask
11 that you please go directly to your jury room. Please be
12 back there not later than 2:30 this afternoon.

13 Don't wander through the halls or stand out on the
14 steps. There might be people talking about this case or
15 talking about another case that you think is about this
16 case. And you might be exposed to information that's
17 inaccurate or inappropriate for you to consider. So in
18 order to avoid any type of inadvertent information about a
19 case, I'll just ask that you leave the courthouse directly
20 when you go to lunch. And when you come back, please go
21 back directly to your jury room.

22 Please be back there not later than 2:30 this
23 afternoon, 2:30 this afternoon. Have a good lunch.

24 (The following takes place outside the presence of the
25 jury.)

Motion

1 THE COURT: Court is in recess until 2:30. ()

2 (Whereupon, a recess was taken.)

3 THE COURT: All right. Are we ready for the jury?

4 MR. BARNETTE: Your Honor, we have one matter I'd like
5 to bring to the Court's attention.

6 Our next witness is going to be Dr. Wren. Your Honor,
7 we're calling him out of order to avoid a conflict he has
8 later in the day.

9 One of the things that came up, and I noticed on the
10 defense witness list, they had the toxicologist from SLED on
11 their list. The toxicology was the victim's toxicology on
12 this case.

13 I can make this a court's exhibit. This is something I
14 got from SLED when I found they had a toxicologist on the
15 witness list. ()

16 I would make a motion in limine about anything about
17 this. To me it's not relevant because there's no evidence
18 that the victim was self-defense or anything, I mean,
19 attacked the defendant or anybody like that. And anything
20 that was mentioned about this would be, first, not relevant
21 to the case. Second, it would not be, be more prejudicial
22 than probative in that case.

23 THE COURT: All right. Ms. Hodge.

24 MS. HODGES: Thank you, Your Honor. May it please the
25 Court.

Motion

1 Your Honor, the -- I think it's a matter of protocol
2 that when the autopsy is done that the blood sample is sent
3 down to SLED for analysis.

4 The analysis by Mr. Tracy McKinnon who is the
5 toxicologist who analyzed the sample in this case, the
6 results show a .63 milligrams per liter of amphetamines,
7 which is actually according to Mr. McKinnon's report, as
8 well as my conversations with him, what is considered to be
9 a toxic level.

10 The effect of that would be consistent with what was
11 observed by, I think it was, Officer Coe-James that
12 testified, as well as I think there's some testimony through
13 the 9-1-1 tape in terms of the victim feeling very hot,
14 having trouble breathing. It also showed an elevated level
15 of Ephedrin and Phenylpropanolamine, which is a metabolite
16 of the Ephedrin and the amphetamine.

17 Your Honor, we think it's relevant to show essentially
18 the victim as he was when, you know, when this case came to
19 the attention of law enforcement.

20 And also, Your Honor, I think -- and I don't know what
21 Dr. Wren's testimony would be on this issue -- but I think
22 that also may be relevant as to a finding or something for
23 the jury to consider regarding the cause of death and any
24 findings that were made in the autopsy.

25 THE COURT: Well, are you suggesting that you have

Motion

1 information or testimony that would reflect that that was
2 the cause or contributing cause of his death?

3 MS. HODGES: Well, Your Honor, I think that it's
4 something -- the question is whether it's something that,
5 you know, could be, could have been considered the cause of
6 death.

7 My understanding was cardiac arrest secondary to the
8 blood loss as a result of the stab wounds.

9 THE COURT: I understand.

10 My question is are you telling me that the doxological
11 level of the victim's blood would indicate that he had
12 something in his system that that would have caused or
13 contributed to his death.

14 MS. HODGES: That's my understanding from the
15 toxicologist's testimony, yes, sir.

16 THE COURT: Well, I don't know if the toxicologist is
17 qualified and competent to render a cause of death, an
18 opinion as to the cause of death.

19 MS. HODGES: I don't know that he's competent to
20 render an opinion as to the cause of death, Your Honor, but
21 I think that that's a factor that I think that is fair
22 cross-examination to ask whether that is a factor that
23 would have, you know, should have been considered or would
24 have been considered had those results been available at
25 the time the autopsy was prepared.

Dr. John David Wren (In-camera)
Direct examination by Ms. Hodges

1 THE COURT: Well, do you want to proffer some
2 testimony from Dr. Wren?

3 MS. HODGES: Yes, sir.

4 THE COURT: Okay. Let ask Dr. Wren to come around,
5 please, sir.

6 Just take your seat on the witness stand. She is going
7 to ask you some questions.

8 DR. JOHN DAVID WREN, having
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. HODGES

11 Q You're Dr. David Wren, is that correct?

12 A Yes, ma'am.

13 Q All right. And you are the pathologist that performed
14 the autopsy on Mr. John Wayne Lammers in the case that we
15 are involved with today, is that correct?

16 A Yes.

17 Q And my understanding, Doctor, is that you have been
18 previously qualified as an expert in the courts of South
19 Carolina as a forensics pathologist numerous times.

20 A Correct.

21 Q My understanding from reading your autopsy report is
22 that you were able to determine that the cause of death in
23 this case for Mr. Lammers was a cardiac arrest, and that
24 that was secondary to basically the loss of blood as a
25 result of multiple stab wounds.

Dr. John David Wren (In-camera)
Direct examination by Ms. Hodges

1 A That's correct.

2 Q At the time that the autopsy was performed were samples
3 of the victim's blood taken and sent down to SLED for
4 analysis?

5 A It's routine in all autopsies in those cases that the
6 coroner signs out as deaths within an autopsy to draw blood
7 if it's at all possible.

8 Q Okay.

9 A Homicides, vehicular accidents or vehicle-associated
10 deaths, and children and suicide. No, no, no. I'm sorry.
11 Most. Those three are sent to SLED routinely.

12 Q And in this particular case as the manner of death, it
13 was routine, I mean, it was part of that routine, the
14 routine to check the blood.

15 A Yes. I always do.

16 Q And did you have the benefit of the toxicology report
17 prior to rendering your opinion as to the cause of death?

18 A No.

19 Q Do you have, do you know, have you had an opportunity
20 to look at those, at the toxicology report since?

21 A I don't recall looking at it.

22 Q Okay.

23 MS. HODGES: May I approach the witness, Your Honor?

24 THE COURT: Sure.

25 Q This is actually I think the entire coroner's file, but

Dr. John David Wren (In-camera)
Direct examination by Ms. Hodges

1 this is the report that was provided to me by the toxicology
2 department.

3 A Okay.

4 Q The results to my understanding is that the results
5 showed an amphetamine level of .63 milligrams per liter and
6 that that is what they consider a toxic level of
7 amphetamines in the system. Is that an accurate reading of
8 that report?

9 A That's what it indicates.

10 Q Would that information of the amount of amphetamine and
11 the amount of Ephedrin and Phenylpropanolamine in the
12 victim's system at the time that, that the blood was taken,
13 would that have affected your opinion regarding the cause of
14 death in this case?

15 A I don't think so because amphetamines and Ephedrin are
16 central nervous system stimulants, and as such it would
17 stimulate him more than, than it would depress his bodily
18 functions; and therefore he might even survive longer than
19 he would if it weren't there. So I don't think -- it
20 wouldn't have changed my mind that he died from
21 exsanguination.

22 Q The fact that the Ephedrin and amphetamines were found
23 in conjunction with some Diazepam and Nordiazepam, even
24 though those are trace amounts, would there have been --
25 would that change your opinion at all?

Dr. John David Wren
Direct examination by Mr. Barnette

1 A No.

2 Q Thank you, Doctor.

3 MS. HODGES: Thank you, Your Honor.

4 THE COURT: All right. I sustain the objection to the
5 admission of that testimony relating to the toxicology
6 levels of drugs found in the blood of Mr. Lammers.

7 All right. Anything else?

8 MR. BARNETTE: No, sir. Dr. Wren will be our first
9 witness. I don't know if you need for him to stand down.

10 THE COURT: Let me ask you to step down. We'll have
11 to call you back and have you resworn in front of the jury.

12 All right. Bring the jury in, please, sir.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 We are going to continue with the state's presentation
17 of evidence.

18 Mr. Barnette.

19 MR. BARNETTE: Thank you, Your Honor. I would like to
20 call Dr. Wren to the stand please.

21 ~~DR. JOHN DAVID WREN~~ having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. BARNETTE

24 Q If you would, sir, please give us your full name.

25 A John David Wren.

Dr. John David Wren
Direct examination by Mr. Barnette

1 Q Where do you work at, sir?

2 A I work for Spartanburg Pathology Consultants. I'm
3 president of the group. My job is, entails me to be
4 stationed at Spartanburg Regional Medical Center where I'm
5 the laboratory medical director and one of the pathologists
6 on the staff.

7 Q And how many times have you been qualified in state
8 court as an expert on forensic pathology or as a
9 pathologist?

10 A Probably about between 75 and a hundred times I would
11 imagine.

12 MR. BARNETTE: Your Honor, at this time I'd move him
13 as an expert in forensic pathology.

14 THE COURT: Any objection?

15 MS. HODGES: No objection, Your Honor.

16 THE COURT: Without objection, he is so qualified.

17 Q Dr. Wren, part of your job as a pathologist is
18 autopsies, is that right, sir?

19 A Yeah, as a general pathologist. Most pathologists do
20 hospital autopsies only. As a forensic pathologist I do
21 coroners' cases also.

22 Q And how many autopsies have you done?

23 A About 3,000 in my lifetime.

24 Q An autopsy, is that to determine the cause of death in
25 a person generally?

Dr. John David Wren
Direct examination by Mr. Barnette.

1 A The main purpose of an autopsy is to determine the
2 manner of death, of which there are five -- natural,
3 homicide, suicide, accidental and undetermined. The cause
4 of death is just the sequence of events that leads to a
5 person's death in the physician's opinion.

6 Q Doctor, was you asked to do an autopsy on John Lammers?

7 A Yes.

8 Q And when did you do that autopsy, sir?

9 A I did an autopsy on an individual identified as John W.
10 Lammers on June the 2nd of 2007 beginning at approximately
11 8:45 a.m. in the Spartanburg Regional Medical Center Autopsy
12 Room.

13 Q During your autopsy did you do a diagram of the wounds
14 that he received?

15 A Yes.

16 Q Let me show you what's been marked as State's
17 Exhibit 81. Is that a copy of your diagrams in this case?

18 A Yes. These are copies of the body and the head of the
19 individual.

20 MR. BARNETTE: Your Honor, at this time I'd like to
21 enter this into evidence.

22 MS. HODGES: No objection, Your Honor.

23 THE COURT: It is admitted.

24 (Diagram marked State's Exhibit No. 81.)

25 MR. BARNETTE: May I publish it to the jury, Your

Dr. John David Wren
Direct examination by Mr. Barnette

1 Honor?

2 THE COURT: You may.

3 Q Let me give you -- and if you'd like to step down, sir,
4 you can.

5 (Whereupon, the witness left the stand.)

6 Q If you would, sir, describe what the jury is seeing
7 here. And what does it mean?

8 A This is a body diagram of a male. In this case the
9 wounds are labeled by numbers. Whether they be incised or
10 stab wounds or even gunshot wounds, are labeled by numbers.

11 And they are -- I have an accompanying stab-wound chart
12 in which I labeled pertinent facts about each of the stab
13 wounds, including basically where they were, how big the
14 wound was and any associated findings that I found with
15 them.

16 In this case Mr. Lammers had -- I labeled, I believe it
17 was, 16 wounds that I identified on the body, beside
18 abrasions, which are like there on the knees. He had some
19 superficial lacerations on his lower leg.

20 But the worst wounds were three -- basically, in the
21 back of the head, multiple wounds along the back in somewhat
22 of a pattern, and then three on the front of his body, along
23 with lacerations.

24 Now, some of these wounds -- while attempting to
25 resuscitate Mr. Lammers, they what's called open-the-chest.

Dr. John David Wren
Direct examination by Mr. Barnette

1 They did a thoracotomy incision. And the thoracotomy
2 incision went through some of these wounds. So they were
3 hard to completely approximate.

4 But, nevertheless, he had 16 wounds to the body. A
5 majority of them were in the back and on the back of the
6 head. The ones on the back of the head were actually -- I
7 think there's one on the other diagram -- a large
8 laceration, stab wounds along the left side which would
9 correspond to the wound on the left back of the body. They
10 were just part of that pattern of wounds.

11 But these wounds were essentially all, were all,
12 inflicted with a single-edge blade, except I couldn't tell
13 on one of them. And the wounds entered his chest in the
14 front and actually lacerated lungs on that side and in
15 certain places lacerated arteries.

16 Now, associated with those wounds, even though all the
17 wounds basically are on the left side, he had hemorrhage in
18 his right pleural cavity also, as well as some in the left.
19 But the left side had been evacuated during resuscitation
20 attempts because the -- during resuscitation when they did
21 the thoracotomy incision, they were trying to get as much
22 blood out as they could to see if they could tamponade those
23 wounds to try to stop the bleeding in time to save his life.

24 Q Thank you.

25 You was talking about your stab-wound-chart

Dr. John David Wren
Direct examination by Mr. Barnette

1 information. Is this a copy of that, sir?

2 A Yes, it is.

3 MR. BARNETTE: Your Honor, I'd like to mark this as
4 81-A and move it into evidence. Your Honor, I'd like to
5 enter this into evidence at this time.

6 MS. HODGES: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Stab-wound chart marked State's Exhibit No. 81-A.)

9 Q When you was talking about your wound chart, this,
10 these wound numbers would correspond with the numbers on the
11 diagram.

12 A That's correct. In that case we locate the wound by a
13 checkmark. For instance, let's just say wound No. 4. It
14 was in the chest. And I can't read that, but it says left
15 shoulder there, left shoulder, left shoulder, left shoulder.

16 Stab Wound 3 was in the back, right in the back itself,
17 as was eight and nine.

18 And then the wound itself as oriented on the body, we
19 determine whether the wound is horizontal, meaning of course
20 straight across, or whether it's vertical, up and down, or
21 whether it's oblique, meaning that it's at an angle on the
22 body.

23 And then we measure the wounds from the top of the head
24 and whether it's left or right of midline. And then we
25 measure the actual dimensions of the wound in inches as

Dr. John David Wren
Direct examination by Mr. Barnette

1 shown here. And then we depict whether the wound is, which
2 way, which direction it's going, whether it's going from
3 front to back.

4 For instance this number, first one here, it's going
5 forward. It was going downward, and it was going medially
6 in the body.

7 And then under remarks I tell how deep it is that I can
8 probe and whether there's a sharp edge or not. And so each
9 one of them are diagrammed. And then we take photographs of
10 those wounds to further substantiate or document those
11 wounds.

12 Q Thank you, Doctor.

13 A I might add one more thing.

14 Q Yes, sir.

15 A If someone is stabbed with a knife, it depends. The
16 way a wound is described is there's a length to the wound
17 which corresponds to the actual width of the blade, whereas
18 the width of the wound corresponds to the thickness of the
19 blade. And then the depth of the wound is an indication of
20 how long the weapon was.

21 Unless there's a hilt mark, meaning that the end of the
22 blade, if there was a handle there, if the blade goes all
23 the way in and gets up to the handle, oftentimes you will
24 see an abrasion that's called -- whether it was forceful
25 enough. It'll abraid the skin. So in that case there'll be

Dr. John David Wren
Direct examination by Mr. Barnette

1 a hilt mark there that we can document.

2 And then from the estimated or measured actual depth of
3 the wound we can tell how long the blade was within about
4 25 percent. And in his case he only had one that I thought
5 there might be a hilt mark. But it was in a location where
6 there's soft tissue. And then there's an air space in
7 there. So I couldn't tell how far, how deep it actually
8 went.

9 So the best thing I can tell is take any of these
10 depths and then extrapolate it. It had to be at least
11 1.2 inches long to inflict this wound. And I don't.
12 There's one 2.4 here, No. 15, which is the wound that's in
13 the neck. That one went considerably down into the neck.
14 So I could actually probe down through there and say that
15 that wound, the blade, had to be 2.1 -- 2.4 inches long to
16 reach that depth.

17 Now, there was no hilt mark there. So it could have
18 been five inches or it could have been ten inches. I just
19 know it was at least 2.4 inches long to have inflicted that.

20 So if someone gave me a knife that was one inch long, I
21 would say, well, that's not consistent with the findings
22 that we have.

23 Q Thank you, Doctor.

24 (Whereupon, the witness returned to the stand.)

25 Q Doctor, based on your autopsy and everything, what was

1 your opinion on the cause of death in this case?

2 A Well, after what I found and the view of records that I
3 had from the E. R. and what, what was, the blood that was
4 covering the body and all, I assigned the cause of death,
5 which is sort of like the mechanism of death, as he died as
6 a result of a cardiac arrest, meaning his heart stopped,
7 which everybody's heart stops when they die. But that was
8 the precipitating event. And it was because he bled to
9 death from exsanguination. And then that was, in turn, due
10 to stabbing and incise wounds to the head and body.

11 Q So it was from the loss of blood of these stab wounds,
12 is the reason why he died.

13 A Yes.

14 Q If you would, answer any questions Ms. Hodges may have
15 for you, sir. Thank you.

16 CROSS-EXAMINATION

17 BY MS. HODGES

18 Q Dr. Wren, my understanding is that there was only one
19 wound that had the potential of a hilt mark that you
20 observed.

21 A That I could tell, yes.

22 Q Okay. And because of the area where that wound was,
23 you were not able to be able to give an actual. You could
24 make it in a range of length of the blade that was used, but
25 you can't give an actual definitive calculation.

Dr. John David Wren
Cross-examination by Ms. Hodges

1 A That's correct, because actually I think I said that
2 there was a possible hilt mark. I wasn't even sure it
3 wasn't an abrasion because he had abrasions elsewhere. And
4 it wasn't exactly like you see in a hilt mark.

5 Q Did you do -- and is it part of your protocol to do any
6 swabbing in the wounds to determine if there's other
7 potential D. N. A. mixed in from a suspect?

8 A No. I don't do that. The -- whether, if it's the
9 county or the city, send their crime investigators or the
10 crime unit, it's called investigational unit, to the
11 autopsy. And they will swab various locations. But in this
12 case, you know, 15, I don't think we could. Eventually, you
13 run out of money trying to analyze D. N. A. on people.

14 Q Were you ever brought a potential or a suspected weapon
15 to compare to the wounds that you observed to determine if
16 that may have been the weapon that was used?

17 A No. I wasn't presented a weapon, I don't think.

18 Q Is that something that you could have looked at the
19 weapon, a potential weapon, and looked at the wounds to be
20 able to see if that was a potential weapon that was used?

21 A Yes, that's possible.

22 Q Okay. That's all the questions I have. Thank you.

23 MR. BARNETTE: Just one question, Your Honor, on
24 followup.

25

Dr. John David Wren
Redirect examination by Mr. Barnette
Recross-examination by Ms. Hodges

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q Dr. Wren, he obviously died from these stab wounds --

4 A Yes.

5 Q -- from there. And most of the cuts was in the back,
6 in the left-hand-back side.

7 A Yes. There were no defense wounds indicating that, you
8 know, he didn't, didn't have the capacity or did not try or
9 was surprised so that he did not have a chance to ward off
10 any of the wounds.

11 Q So it's possible he was sleeping or laying down when
12 this happened.

13 A Yes.

14 Q Thank you.

15 RECROSS-EXAMINATION

16 BY MS. HODGES

17 Q Would it be just as possible that he was sitting with
18 his back to his assailant?

19 A Unless he was in a high-back chair.

20 Q Well, if he's sitting --

21 A I said if he was sitting -- if he was sitting in a
22 high-back chair where that area was, was not exposed, he
23 couldn't. I don't know of any physical way he could have
24 been stabbed in the back unless he fell over forward and
25 then was stabbed further.

Jan Bryson
Direct examination by Mr. Barnette

1 Q Say, for example, he was sitting in a low-back chair at
2 a computer terminal with his back to somebody.

3 A That's, that's possible.

4 Q Is that possible?

5 A Yes.

6 Q Thank you, sir.

7 MR. BARNETTE: No further questions, Your Honor.

8 THE COURT: Thank you. You may step down.

9 MR. BARNETTE: Your Honor, we would ask for this
10 witness to be excused.

11 MS. HODGES: No objection.

12 THE COURT: He may be.

13 (Whereupon, the witness was excused.)

14 MR. BARNETTE: Your Honor, I'd like to call Jan Bryson
15 -- Jan Bryson to the stand.

16 JANICE BRYSON, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, ma'am, please give us your full name.

20 A My name is Janice Bryson.

21 Q And where do you work at, ma'am?

22 A I am employed by the South Carolina Law Enforcement
23 Division.

24 Q And what is your position there, ma'am?

25 A I'm a forensic evidence technician in the evidence

Jan Bryson
Direct examination by Mr. Barnette

1 processing department.

2 Q And how many years have you worked there, ma'am?

3 A I've been at SLED for 19 years, and I've been
4 processing for 12 years.

5 Q And how many times have you been qualified in court as
6 a forensic technician?

7 A Approximately 15 or 16 times.

8 MR. BARNETTE: Your Honor, at this time I'd move her
9 as an expert in -- as an evidence technician, Your Honor.

10 MS. HODGES: No objection, Your Honor.

11 THE COURT: She is so qualified.

12 Q Ma'am, let me show you. Did you receive some items
13 that was sealed once you received them to process in this
14 case?

15 A Yes, sir, I did.

16 Q Let me show you what's been marked as State's
17 Exhibit 4, State's Exhibit 3, State's Exhibit 6, State's
18 Exhibit 5, as well as State's Exhibit 2. Let me get some
19 gloves so I can pull these out for you. And also State's
20 Exhibit No. 1, what was that, ma'am?

21 A That was the container in which I received the
22 evidence.

23 Q Okay. And when you received it had it been sealed?

24 A Yes, sir. It was.

25 Q And was it sealed by Investigator Russell Porter, as

Jan Bryson
Direct examination by Mr. Barnette

1 well as Amy Stephens?

2 A That's correct.

3 Q And it wasn't opened until you opened it.

4 A That's correct.

5 Q And concerning what you did, did you do a report,
6 ma'am?

7 A Yes, sir, I did.

8 Q And did you do a SLED report with a worksheet?

9 A Yes, sir.

10 Q Let me show you what's been marked as State's Exhibit
11 17. Is this a copy of your report, as well as your
12 worksheet?

13 A Yes, sir.

14 MR. BARNETTE: Your Honor, I'd like to move State's
15 Exhibit 17 into evidence at this time.

16 MS. HODGES: Your Honor, I would actually object to
17 17. Obviously, she can testify as to what she did and her
18 results. But this would actually, we would argue, be
19 hearsay.

20 THE COURT: Let me see it.

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

23 THE COURT: I understand the objection to it is it's
24 hearsay.

25 MS. HODGES: Yes, sir.

Jan Bryson
Direct examination by Mr. Barnette

1 THE COURT: All right. Overrule the objection. Are
2 there any other grounds?

3 MS. HODGES: And it's also a report that continues
4 to -- it's probably a continuing testimony in the jury
5 room.

6 THE COURT: Overrule the objection.

7 Well, let me ask you this. Are there any matters
8 contained in the reports that the witness will not be
9 testifying to?

10 MR. BARNETTE: No, sir. The way I understand, and let
11 me just ask her to make sure.

12 Q But, ma'am, this is your report and your notes.
13 There's no other information from any other source, is
14 there, other than you?

15 A These are all the copies that I generated.

16 Q Okay. Thank you, ma'am.

17 And looking at these items, State's Exhibit No. 2. If
18 you would, come down here, ma'am, if you would.

19 (Whereupon, the witness left the stand.)

20 Q Did you receive these black Nike Air Jordan shoes?

21 A Yes, sir, I did.

22 Q And did you examine these, ma'am?

23 A Yes, sir.

24 Q And if you would, show the jury. And of course they
25 weren't in this condition when you got them.

Jan Bryson
Direct examination by Mr. Barnette

1 A That's right.

2 Q Were they all black at that time?

3 A That's right.

4 Q If you would, show the jury where you marked where you
5 examined these documents, this shoe as well as this other
6 shoe.

7 A A request was made by the submitting agency to look for
8 blood on the shoes. So I do a visual looking for any areas
9 on the shoe that appeared to be blood.

10 And if I see a stain, I do a chemical test called
11 phenolphthalin. It's a 3-step chemical test that allows me
12 to see a chemical color change if that stain is potential
13 blood. And if I get a positive, I'll cut that area out and
14 send it to the D. N. A. department for further analysis.

15 And I took a cutting from the toe area of the left shoe
16 that was positive for the presumptive test of blood. And on
17 the other shoe I took a cutting from the right shoe, the
18 inside arch area, that was positive for the presumptive test
19 of blood.

20 Q And those cuttings, did you secure them in a separate
21 envelope?

22 A Yes, sir, I did.

23 Q Let me show you what's been marked as State's
24 Exhibit 2.1 and 2.2. Are those the two cuttings that you
25 secured?

Jan Bryson
Direct examination by Mr. Barnette

1 A Yes, sir. When I make the cuttings I place the
2 individual cuttings in a gold coin envelope. I label the
3 envelopes. And I seal and initial the tape, the back of the
4 envelope.

5 Q And you did it on both of those cuttings.

6 A Yes, sir.

7 MR. BARNETTE: Your Honor, I'd like to enter State's
8 Exhibits 2.1 and 2.2 into evidence at this time.

9 MS. HODGES: Your Honor, we renew our objections
10 previously made.

11 THE COURT: Overruled. They are admitted.

12 MR. BARNETTE: Thank you.

13 (Cutting from shoe marked State's Exhibit No. 2.1;
14 cutting from shoe marked State's Exhibit No. 2.2.)

15 Q And these cuttings, who were they sent to from you once
16 you sealed it?

17 A I gave those cuttings directly to John Ortuno in our D.
18 N. A. department.

19 Q And he does D. N. A. analysis?

20 A Yes, sir.

21 Q Let me show you the next item, State's Exhibit 3. Did
22 you examine these shorts, ma'am?

23 A Yes, sir, I did. Those are my initials and the SLED
24 item number.

25 Q And did you take some cuttings from these?

Jan Bryson

Direct examination by Mr. Barnette

1 A Yes, sir, I did. I took three cuttings from the shorts
2 that were positive for the presumptive test of blood.

3 I took one cutting from the front hem area. And I took
4 two cuttings along the waist, waistband of the jean shorts.
5 I took one cutting there and one cutting there that was
6 positive for the presumptive test of blood.

7 Q And you marked the number there or the cutting number
8 like on the front. Was that 3.1 on the bottom of the leg?

9 A Right. Our item number is 3.0, and our subitem off
10 that. So the cutting is 3.1, 3.2 and 3.3.

11 Q And there's a marking on there.

12 MR. BARNETTE: May I publish this to the jury, Your
13 Honor, on the elmo?

14 Q Let me show you what's been, envelopes, 3.1, 3.2, 3.3.
15 Are those the cuttings that you took from the blue jean
16 shorts?

17 A Yes, sir, they are.

18 Q And you secured these. And these was given to who?

19 A John Ortuno.

20 MR. BARNETTE: Your Honor, I'd like to move State's
21 Exhibits 3.1 and 3.2 and 3.3 into evidence at this time.

22 MS. HODGES: Your Honor, we renew our previous
23 objections.

24 THE COURT: Overruled. They're admitted.

25 (Cutting marked State's Exhibit No. 3.1; cutting marked

Jan Bryson
Direct examination by Mr. Barnette

1 State's Exhibit No. 3.2; cutting marked State's Exhibit No. ()
2 3.3.)

3 Q Let me show you what's been marked as State's Exhibit
4 No. 4. And when you look at these items, ma'am, do you try
5 to look in the most concentrated areas?

6 A Yes, sir, I try to take the most concentrated areas.

7 Q That doesn't mean that's the only spot you see.

8 A That's correct.

9 Q And showing you State's Exhibit No. 4, did you collect
10 some cuttings off those, ma'am?

11 A Yes, sir, I did. Those are my initials, the SLED item
12 number. Our item No. 4 and 4.1 is the cutting that I made
13 that was positive for the presumptive test of blood.

14 Q And is there still some red? ()

15 A Yes, sir.

16 Q And that tested positive, I mean, presumptive for
17 blood.

18 A Yes, sir.

19 Q And there's also other -- is there other possible spots
20 also?

21 A Yes, sir. I took a representative sample.

22 Q Let me show you what's been marked as State's
23 Exhibit 4.1. Is that the cutting that you obtained from the
24 sock?

25 A Yes, sir, it is.

Jan Bryson
Direct examination by Mr. Barnette

1 Q And was this sealed, and given to who?

2 A John Ortuno.

3 MR. BARNETTE: Your Honor, I'd like to move State's
4 Exhibit 4.1 into evidence at this time.

5 MS. HODGES: We renew our previous objections, Your
6 Honor.

7 THE COURT: Overruled. It's admitted.

8 (Cutting marked State's Exhibit No. 4.1)

9 Q Let me show you State's Exhibit No. 5, ma'am. Did you
10 examine this shirt?

11 A Yes, sir, I did.

12 Q And what did you do on this shirt, ma'am?

13 A I just swabbed the entire shirt. I just took two swabs
14 and swabbed in front of the shirt. And it was positive for
15 the presumptive test of blood. And I also swabbed the back
16 of the t-shirt. It was our Item No. 5 and 5.2.

17 Q Let me show you State's Exhibits 5.1 and 5.2, ma'am.
18 Was these the two swabs that you obtained from the shirt?

19 A Yes, sir.

20 Q And they were sealed and given to who, ma'am?

21 A John Ortuno.

22 MR. BARNETTE: Your Honor, I'd like to move 5.1 and
23 5.2 into evidence at this time.

24 MS. HODGES: Your Honor, note our previous objections.

25 THE COURT: Overruled. They're admitted.

Jan Bryson
Direct examination by Mr. Barnette

1 (Swab marked State's Exhibit No. 5.1; swab marked ()
2 State's Exhibit No. 5.2.)

3 Q And showing you State's Exhibit No. 6, ma'am. Did you
4 also swab the hat?

5 A Yes, sir, I did.

6 Q And where did you swab that hat?

7 A I just swabbed the entire cap, the outside of the cap.

8 Q Showing you 6.1. Is this the swab that you obtained
9 from the cap?

10 A Yes, sir, it is.

11 Q And this was sealed and given to who, ma'am?

12 A John Ortuno.

13 MR. BARNETTE: Your Honor, I'd like to move 6.1 into
14 evidence at this time. ()

15 MS. HODGES: Your Honor, we renew our previous
16 objections.

17 THE COURT: Overruled. It's admitted.

18 (Swabs marked State's Exhibit No. 6.1)

19 Q If you would, have a seat, ma'am. Thank you.

20 (Whereupon, the witness returned to the stand.)

21 Q And just to ask you one more question about the shoes.
22 Obviously, these were sent for additional processing after
23 you dealt with them.

24 A That's correct.

25 Q And the swabbings were taken that were sent to

Jan Bryson
Direct examination by Mr. Barnette

1 Mr. Ortuno before all of that occurred.

2 A The cuttings, that's correct.

3 MR. BARNETTE: Showing the jury. Permission to
4 publish State's Exhibit 17 to them, Your Honor.

5 THE COURT: You may.

6 Q This is -- State's Exhibit 17 is a copy of the report
7 and worksheet you did on this case, ma'am?

8 A I'm sorry. I couldn't hear you.

9 Q This State's Exhibit 17 is a copy of your report and
10 worksheet.

11 A That's correct.

12 Q On this you just put down what items you looked at and
13 what the results were.

14 A That's correct.

15 Q And looking at your analysis report itself, looking at
16 the worksheet itself, it shows you what you looked at and
17 what you did on them.

18 A That's correct. That's my observation of the items
19 that I processed.

20 Q When you say positive for thalin, what does that mean,
21 ma'am?

22 A That's means that it was positive for the presumptive
23 test of blood.

24 Q And you did that with the tennis shoes, shorts and the
25 socks.

Jan Bryson
Cross-examination by Ms. Hodges

1 A Yes, sir.

2 Q And then you also had diagrams where -- did you have
3 diagrams that you used?

4 A That's correct.

5 Q And you indicated where you took the cuttings from.

6 A Right. I documented where I made my cuttings.

7 Q And that's documented on each item.

8 A That's correct.

9 MR. BARNETTE: One moment, Your Honor, please.

10 (Pause.)

11 Q Please answer any questions Ms. Hodges may have for
12 you, ma'am.

13 CROSS-EXAMINATION

14 BY MS. HODGES

15 Q Ms. Bryson, tell us what a presumptive test for blood
16 is.

17 A When I do a phenolphthalin test and I get a positive
18 presumptive, it means that that area I tested is a good
19 indication that that stain is potential blood.

20 Q So you say potential blood. It's entirely possible
21 that it might not be blood.

22 A That's correct.

23 Q But the only way we really can know whether it is blood
24 or isn't blood is to go ahead with the process that
25 Mr. Ortuno does.

Jan Bryson
Cross-examination by Ms. Hodges

1 A That's correct.

2 Q Okay. When you look at an item, I think you said you
3 first do a visual inspection of the item, correct?

4 A That's correct.

5 Q And on the shorts, you say that you took a
6 representative sample. On the shorts have you had an
7 opportunity to look at them since the day that you did your
8 first examination?

9 A I just glanced at them briefly.

10 Q Okay. Sometimes, in fact, you have to use a microscope
11 to be able to determine, or not a microscope, a magnifying
12 glass to be able to determine, you know, whether there's
13 what looks like blood or not, right?

14 A That's correct. We use a micro -- a magnifying glass.

15 Q Okay. And my understanding is that basically the
16 shorts come to you in a sealed package.

17 A Right.

18 Q Because otherwise you wouldn't look at them if it
19 wasn't sealed, right?

20 A That's correct.

21 Q And so basically once you're finished with them, do you
22 return them back into a sealed package?

23 A I place the shorts back in the paper bag that I
24 received and then place the paper bag back in the box.

25 Q Okay. And is it sealed? Do you seal it back?

Jan Bryson
Cross-examination by Ms. Hodges

1 A Yes. I did.

2 Q Okay. So basically when you've finished with it,
3 you're returning it to evidence to be returned to the
4 agency, it's still in the sealed condition.

5 A That's correct.

6 Q Okay. So the presumption is that nothing has been done
7 to these shorts other than Mr. Barnette and I picking them
8 up and handling them in the course of preparing for trial,
9 right?

10 A That's correct.

11 Q Okay. On these shorts are there any other areas of
12 blood that you see?

13 A Not visually, no.

14 Q Not visually. Okay. So essentially what you saw is
15 what you cut out as a sample, that, the day in the lab that
16 you looked at them when you saw what looked like it could be
17 blood, is what you cut out.

18 A That's correct.

19 Q Okay. And your sampling of 3.2 and 3.1 were actually
20 up on the waistband behind in the back of the short, is that
21 correct?

22 A Item 3.1 was on the front of the shorts at the hem
23 area. 3.2 and 3.3 were along the waistband of the shorts.

24 Q Along the waistband. Okay. And even though on the
25 sock, which I believe is item, or a pair of socks, which is

Jan Bryson
Cross-examination by Ms. Hodges

1 Item 4, you only did one, one cutting from those, correct?

2 A Correct.

3 Q So whatever else may look on there that may be red or
4 may look like it's blood, we don't know for sure whether it
5 is or not, right?

6 A That's correct.

7 Q Okay. Did you do any sort of swabbing on the bottom of
8 the tennis shoes?

9 A I don't remember.

10 Q Well, you haven't been presented any swabs to talk
11 about today from the bottom of the tennis shoes, correct?
12 You haven't been given -- we didn't show you anything. Mr.
13 Barnette didn't give you any swabs or anything from the
14 bottom of the tennis shoes to talk about today.

15 A That's correct.

16 Q So is it fair to say that if there had been something
17 there it more likely would be reflected either in your notes
18 or in the physical evidence that you've had an opportunity
19 to review?

20 A Well, when I do a visual and I see areas that appear to
21 be blood, I try to take the most concentrated areas that
22 appear to be blood.

23 Q So if, if we don't have a record of you doing any swabs
24 on the bottom of the tennis shoes, would it be accurate to
25 say that it probably didn't appear to be a concentration, a

Jan Bryson
Cross-examination by Ms. Hodges

- 1 high concentration of blood on the bottom?
- 2 A No. I can't say that.
- 3 Q All right. Do your notes reflect that you even, that
- 4 you even took a swab?
- 5 A No, they do not.
- 6 Q If you had taken a swab would that be in your notes?
- 7 A That's correct.
- 8 Q Okay. You indicated that you on Item No. 6, the
- 9 baseball cap, that you swabbed the outside of the cap.
- 10 A That's correct.
- 11 Q And we're talking basically kind of whatever, kind of
- 12 sets on the top of the head and the brim, right?
- 13 A Right.
- 14 Q If you had seen blood on the inside of the cap like
- 15 underneath the brim, would that have been an area that you
- 16 would have swabbed?
- 17 A It depends on the size of the stain.
- 18 Q Okay. Do your notes reflect showing that you did any
- 19 sort of indication on the inside of the cap?
- 20 A No.
- 21 Q Okay. The shirt, Item No. 5, my understanding is that
- 22 you did two swabs on the front of the shirt but only one
- 23 swab on the back of the shirt.
- 24 A That's correct.
- 25 Q Is there any reason for the discrepancy between two

Jan Bryson
Cross-examination by Ms. Hodges

1 versus one swab?

2 A It's just the technician's discretion whether to use
3 one or two swabs.

4 Q Okay. And the two swabs, are they basically, did they
5 go over the same area or are they, would they, cover
6 different areas of the shirt?

7 A Different areas of the shirt.

8 Q Do you have any independent recollection as to what
9 area of the shirt you actually swabbed on the, on the front?

10 A I swabbed the front of the shirt.

11 Q Well, where on the front of the shirt?

12 A The whole front of the shirt.

13 Q The whole front of the shirt.

14 A That's correct.

15 Q So you would have done it basically from the neck line
16 to the hem line, and basically for both sleeves.

17 A That's correct.

18 Q That's all the questions I have. Thank you, ma'am.

19 MR. BARNETTE: I have no further questions of the
20 witness. We would ask for her to be excused.

21 MS. HODGES: No objection.

22 THE COURT: You may step down.

23 (Whereupon, the witness was excused.)

24 MR. BARNETTE: I would like to call John Ortuno to the
25 stand.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 (D. N. A. report marked State's Exhibit No. 94 for
2 Identification; supplemental report marked State's Exhibit
3 No. 95 for Identification.)

4 MANUEL JOHN ORTUNO, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q If you would, sir, please state your full name for the
8 record.

9 A Manuel John Ortuno, O-R-T-U-N-O.

10 Q And, sir, back in June of this year where was you
11 working at, sir?

12 A At the South Carolina Law Enforcement Division,
13 commonly referred to as SLED.

14 Q And how long had you been there, sir?

15 A I had been there for 18 years, almost 18 years, a
16 little short.

17 Q And what was your position there then, sir?

18 A A forensic D. N. A. analyst.

19 Q And how many times have you been qualified as a
20 forensic D. N. A. analyst?

21 A It's between 40 and 45 times, including this court,
22 this courtroom.

23 Q In this courtroom. And that's state court.

24 A Yes, sir.

25 Q And what's your educational background, sir?

Manuel John Ortuno
Direct examination by Mr. Barnette

1 A I graduated with honors from the American University in
2 Washington, D. C. with a bachelor's of science degree
3 majoring in chemistry.

4 I have a master's degree also majoring in chemistry
5 from the University of South Carolina at Columbia.

6 I was hired as a researcher in the molecular genetics
7 laboratory performing D. N. A. experiments at U. S. C. in
8 Columbia that lasted approximately three and a half years.
9 And it's led to two publications in peer review journals.

10 I'm a graduate of the South Carolina Criminal Justice
11 Academy. I completed my training at SLED in the field of
12 forensic serology and D. N. A. analysis.

13 I've attended numerous conferences and seminars. I've
14 taken population and genetics courses. Yearly, on a yearly
15 basis, I, I maintain communication with other scientists in
16 the field. And we've discussed matters pertaining to what
17 is the advances in D. N. A.

18 MR. BARNETTE: Your Honor, at this time I would like
19 to move him as an expert in D. N. A. analysis.

20 MS. HODGES: No objection, Your Honor.

21 THE COURT: He is so qualified.

22 Q If I can, sir, if I can show you and let you look at
23 what's been marked State's Exhibits 2.1, 2.2, 3.1, 3.2, 6.1,
24 3.3, 4.1 and 5.2 and 5.1. I'll let you look at those items,
25 sir, as well as State's Exhibit 9, 10, 15, 16, as well as

Manuel John Ortuno
Direct examination by Mr. Barnette

1 State's Exhibits 12.1, 12-A, 11.1, 11.2, as well as State's
2 Exhibits 7 and 8 and let you look, and 13, and let you look
3 at those items and see if you have looked at those items and
4 tested them in the past.

5 A All of the items that you've mentioned are items that
6 contain my signature, my initials. Most of these are SLED
7 evidence pouches, coin envelopes as we call them. They all
8 contain my signature. Everything that you handed me
9 contains my signature, so I have, in fact, had them.

10 Q Thank you.

11 And, sir, these items are already in evidence, but I
12 need to ask you about a couple before we start discussing to
13 make sure.

14 State's Exhibit 8, which is the mouth swab from David
15 Lammers, did you use that -- did you receive that item that
16 was sealed when you received it?

17 A Yes. This was submitted as a standard for David
18 Lammers.

19 Q And you also received State's Exhibit 7, which is a
20 blood standard from John Wayne Lammers.

21 A Yes. That is a blood standard from John Lammers.

22 MR. BARNETTE: Your Honor, at this time -- I know 7's
23 already been entered into evidence. I'd like to enter
24 State's Exhibit No. 8 into evidence.

25 MS. HODGES: Without objection, Your Honor.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 THE COURT: It's admitted.

2 (Blood standard marked State's Exhibit No. 8.)

3 Q And also I'd like to take a look at State's
4 Exhibits 11.2, 11.1, as well as 12.1 -- 12.1 and 12-A. Are
5 those items that you had done or some swabs that you had
6 received or done yourself, sir?

7 A Yes. Everything that I work on has my initials and the
8 SLED's item number. It now has a state's exhibit number on
9 it. And so, yes, I have.

10 THE COURT: Excuse me. Use that microphone, please.

11 THE WITNESS: I'm sorry.

12 A I have my initials and writing on all of these
13 envelopes indicating, and containers indicating, that I
14 worked on these items.

15 MR. BARNETTE: Your Honor, I'd like to enter State's
16 Exhibits 1 -- 11.1, 11.2, 12.1 and 12-A into evidence at
17 this time.

18 MS. HODGES: No objection, Your Honor.

19 THE COURT: They are admitted.

20 (Swab marked State's Exhibit No. 11.1; swab marked
21 State's Exhibit No. 11.2; swab marked State's Exhibit No.
22 12.1; swab marked Swab marked State's Exhibit No. 12-A.)

23 Q In your analysis on this case, sir, did you do D. N. A.
24 testing on the items that you received, sir?

25 A Yes, sir, I did.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 Q And did you get results from your examination of these
2 items in this case?

3 A Well, I should actually correct what I said earlier.

4 When I receive items, the first question is is there
5 any human body fluid. So I determined whether there was
6 human body fluid on all of the items submitted to me. If
7 there's human body fluid, then I perform D. N. A. analysis
8 on those items.

9 Q And did run an indication or a test on those before you
10 started work on D. N. A. analysis?

11 A Yes. I performed analysis as to whether or not there's
12 human body fluids. First, there -- it did indicate that
13 there was potential human body fluids. I performed D. N. A.
14 analysis.

15 Q And let me show you what's been marked as State's
16 Exhibits 94 and 95. Are those copies of your reports in
17 this case, sir?

18 A State's Exhibit 94 is, and State's Exhibit 95 is a copy
19 of my original report.

20 MR. BARNETTE: Your Honor, I'd like to move State's
21 Exhibits 94 and 95 into evidence at this time.

22 MS. HODGES: Your Honor, State's Exhibits 94 and 95 we
23 object to as exhibits. Obviously, he's going to be able to
24 testify to them. We think that they are hearsay. We think
25 that they are going to have some continuing testimony

Manuel John Ortuno
Direct examination by Mr. Barnette

1 problems in the jury room, plus it's duplicative to his
2 testimony that's going to be given before the jury today.

3 THE COURT: I overrule the objection.

4 (D. N. A. report marked State's Exhibit No. 94;
5 supplemental report marked State's Exhibit No. 95.)

6 MR. BARNETTE: Your Honor, may I publish these to the
7 jury at this time?

8 THE COURT: You may.

9 Q If you would, sir, please step down.

10 (Whereupon, the witness left the stand.)

11 Q Publishing State's Exhibit 94 to the jury, you actually
12 examined two groups of evidence, is that right, sir, in this
13 case?

14 A I performed, I wrote, two reports from two analyses
15 that were performed, yes.

16 Q The first one, the report was generated August the
17 13th of 2007.

18 A Yes, sir.

19 Q And in that case was these some of the items that you
20 first tested to see if blood was indicated on or some kind
21 of fluid?

22 A Yes. These are the items that I performed analyses on.
23 This is the serology component.

24 As I mentioned earlier, first we're looking to see if,
25 in fact, we have any body fluids present. And so what you

Manuel John Ortuno
Direct examination by Mr. Barnette

1 have here are the results of the serology examination.

2 We have blood indicated on several items; no blood
3 indicated on two of those. Those that have blood indicated
4 were taken on to D. N. A. analysis.

5 Q And the cuttings from the shoe, you did have blood
6 indicated.

7 A There were two cuttings that I received from the shoe,
8 and both had blood indicated. Both were sent to D. N. A.
9 analysis.

10 Q And the cutting on the shorts, did you do, was there
11 blood indicated?

12 A The cutting on the shorts, we have three cuttings. All
13 three indicated blood, and all three were taken for, sent
14 for D. N. A. analysis.

15 Q And, again, these numbers, they match up with the
16 cuttings that you received from Jan Bryson, her numbers.

17 A That would be correct.

18 Q And the number where she took those items off those
19 items.

20 A She would have a worksheet that she uses to identify
21 the location of each of these items.

22 Q So the worksheet that she had that we entered in
23 earlier, for example, on the shoes, like the 2.1 from her
24 shoe, would that be the item that's 2.1 on your report?

25 A That's correct.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 Q And the same thing for every item that goes through.

2 The 2.2 off that shoe would be the same 2.2 on your report.

3 A That is correct.

4 Q And did you find any blood on the sock?

5 A The sock is SLED's item 4.1. Blood was indicated, and
6 it was also taken to the lab.

7 Q Was there any blood indicated on the two swabs from the
8 shirt?

9 A There were two swabs from the shirt, neither of which
10 indicated blood. So at that point we stopped.

11 Q And then on the top, the swab from the cap, was there
12 any blood indicated?

13 A There was also no blood indicated on the swabs from the
14 cap.

15 Q And you also received a blood standard from the victim
16 in this case, John Lammers.

17 A That's right. This was shown to me earlier. Item No.
18 7 is the blood standard from John Lammers, and No. 8, you
19 have the swabs from David Lammers, his standards, known
20 samples from the...

21 Q Once you received those, if you would, tell the jury a
22 little bit about D. N. A. analysis and what D. N. A. is.

23 A D. N. A. stands for deoxyribonucleic acid. It's a very
24 large, complex molecule that's found in essentially every
25 cell in the human body.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 THE COURT REPORTER: I can't hear him.

2 THE COURT: You're turning your back to the court
3 reporter. If you do that, she can't hear you.

4 THE WITNESS: All right. Should I start again?

5 THE COURT: Yes, sir.

6 A D. N. A. stands deoxyribonucleic acid. It's a very
7 large complex molecule that's found in essentially every
8 cell of the human body.

9 What scientists found is if you go along the D. N. A.
10 strand you can locate markers, locations in which different
11 people have different size fragments.

12 Now, if you'll allow me to use an analogy, let's say
13 that I present to you a shoe. It's a men size 11 shoe. And
14 you ask yourself who could comfortably fit into the shoe.

15 Well, first of all, all women would be excluded because
16 I said it was a man, a man's shoe. Once we eliminate all
17 the women in this courtroom, for example, all the remaining
18 men could be grouped into different shoe sizes. I'm a size
19 11 man's shoe. There might be one or two of you that are
20 also size 11 men's shoes.

21 Let's assume that there's three of us that remain. Out
22 of this entire courtroom we've reduced the whole population
23 down to three people that can fit in the shoe.

24 With D. N. A. we do the same thing. If you go to one
25 of these markers, what you discover is if your mother gave

Manuel John Ortuno
Direct examination by Mr. Barnette

1 you one size fragment, your father gave you another size
2 fragment.

3 This size fragment can be identical. Mother and father
4 can be the same or they can be different. And we don't have
5 just one marker that we look at. We look at 15 different
6 markers along the D. N. A. strand.

7 When you hear the term D. N. A. profile, what they
8 refer to is these 15 locations along the D. N. A. strand
9 that contain one size fragment from your mother and one size
10 fragment from your father. The sum of all of these size
11 fragments makes up your D. N. A. profile.

12 We take all the items that have human body fluids, and
13 we take them through a series of chemical steps. We arrive
14 at their D. N. A. profile, the sum of all of these fragments
15 that were donated by the mother and the father of the person
16 whose D. N. A. we're looking at.

17 In this particular case we have two individuals that
18 are being submitted as standards. We also developed their
19 D. N. A. profile.

20 All we do then is compare the D. N. A. profile, all of
21 these fragments from these two individuals, and compare them
22 to the D. N. A. profile of the unknown samples.

23 If they match, the D. N. A. came from that person. If
24 they don't match, that person is excluded.

25 Q And did you perform a D. N. A. profile -- obviously,

Manuel John Ortuno
Direct examination by Mr. Barnette

1 you had Mr. John Lammers and Mr. David Lammers' profiles. ()

2 A Yes. I developed profiles from both of those.

3 Q Did you compare those profiles to the items where you
4 found blood?

5 A Yes, I did.

6 Q And if you would, please tell the jury what your
7 results was in this case.

8 A These are the results for Items 2.1-2.2. And what I
9 did there is I saw that there was very little potential
10 blood there. So I combined the two samples. So the dash
11 indicates that, although Ms. Bryson made two cuttings -- I
12 believe those were cuttings. I'm not sure.

13 Yes. 2.1 and 2.2 two are cuttings from the shoe. When
14 I saw them, and I've been doing this for ten years. I
15 realized that I had a good chance of typing in a full
16 profile.

17 And expecting them to be from the same source, I
18 combined the two samples to increase the probability, the
19 likelihood, that I'd develop a profile. And, sure enough,
20 by combining these two, along with Item 3.3 and 4.1, all of
21 them had D. N. A. profiles.

22 Some of these fragments that I mentioned earlier that
23 matched, identically matched, each point, the D. N. A.
24 profile of John Lammers, now --

25 Q Go ahead, sir. I'm sorry.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 A And what we do now is, just as I can determine my size
2 11 shoe, I could easily determine how common a size 11 men's
3 shoe is.

4 You can take a polling, sample 200 people to determine
5 how many people have size 11 and size ten and size nine and
6 so on. We can do the same thing with the D. N. A.
7 fragments. We can grab a random sample from the population
8 and determine how common each of these fragments are that we
9 have.

10 And by doing this and by looking at all of the
11 fragments from the entire profile, we can arrive at a
12 frequency of occurrence. And in this particular case the
13 profile from the evidence from these items, as well as the
14 profile of John Lammers, is found in the population in a
15 frequency of one in 200 trillion.

16 Q Can you write that number down for me, sir, right here
17 if you would so the jury will know what that number actually
18 shows?

19 A This way.

20 Q Write it down. So it's one in 200 trillion, is the
21 odds of this, that John Lammers' blood.

22 A The frequency of occurrence of his profile is one in
23 200 trillion individuals.

24 Q How many people are in the world today?

25 A We're pretty close to six and a half billion.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 Q How many times is this number to that?

2 A This would be about 30,000 times, approximately, the
3 world population.

4 Q Is that a match, sir?

5 A Within reasonable scientific certainty it's my opinion
6 that the D. N. A. profile developed from John Lammers is the
7 same D. N. A. profile that was found on the socks.

8 Q So the blood found on the shoes and the sock and that
9 one part of the shorts is blood from John Lammers.

10 A The D. N. A. profile developed from those items is,
11 originated from John Lammers.

12 Q And also 3.1 off the shorts, John Lammers couldn't be
13 excluded from that. He is a possible contributor to it.

14 A Right. What we have here is 3.1, was a mixture. How
15 do I know that there's more than one person? As I mentioned
16 earlier, you have one sample from your mother and one sample
17 from your father. If they're both different, it's two
18 different fragments.

19 Anything more than two fragments indicates another
20 person. So at that particular item what you have is more
21 than two in the different locations, which indicates a
22 second person.

23 In this particular case what you have is a very strong
24 signal, a strong D. N. A. profile, from what we would call
25 the major contributor, primarily one person. And there's a

Manuel John Ortuno
Direct examination by Mr. Barnette

1 little bit of somebody else. We call that a minor
2 contributor.

3 So in this case John Lammers cannot be excluded as a
4 possible contributor to this mixture. In this mixture if
5 you look at it, you see John Lammers' profile as a major
6 contributor. There is a minor one that's there.

7 David Lammers is excluded as a possible contributor.
8 All it takes is for one or two of these little fragments to
9 be different. And we say that person has to be excluded.
10 And that's what we found here. David Lammers could not have
11 been the minor contributor in this.

12 Q And same situation on 3.2.

13 A 3.2 is the same situation. You have, you have a
14 mixture. You have a major contributor. Let me take a look
15 at 3.1, the actual data.

16 Actually, 3.1, I should, I should go back for a moment
17 to 3.1. It is clearly a mixture. There are more than two
18 of these fragments in many locations.

19 There isn't a clear major or minor, but you have this
20 present in all of them. Therefore he can't be excluded as
21 being in that mixture. Actually, it's 3.2, which, in fact,
22 what you have is a clear major contributor.

23 John Lammers is there. He is there at a frequency of
24 one in 200 trillion. And David Lammers is also excluded as
25 a possible contributor.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 Q And of course the mixture could be someone else that ()
2 wore their pants or anything like that.

3 A That would be typically when we receive standards. We
4 receive evidence from someone known to have worn something,
5 it's nice to have that profile because you'd expect to have
6 his D. N. A.

7 If you wear shorts, there's a good chance your shorts
8 can have D. N. A. So ideally it's nice to have that to
9 eliminate who originally wore the shorts.

10 Q And the person who wore the shorts, it easily could be
11 their part of the mixture on it.

12 A Right. I can't say without having a standard for them.

13 Q Let me show you State's Exhibit 95 here. You done some
14 additional testing also.

15 A Yes, I did.

16 Q And these are the items that you did the testing on.
17 Some of these swabs you received and some of these swabs you
18 did yourself.

19 A That's correct.

20 Q And all of these items that you swabbed like from the
21 knife blade, the handle, the sword, the sword handle, was
22 that done by you in this case, sir?

23 A Let me take a look. I know that the swabs from the
24 pocketknife, which are 11.1 and 11.2, were made by me.

25 THE COURT: Mr. Ortuno, let me ask you. You can use

Manuel John Ortuno
Direct examination by Mr. Barnette

1 the microphone, but let's don't rub up against it, please.

2 THE WITNESS: I'm sorry?

3 THE COURT: I say you're welcome to use that
4 microphone, but please don't rub up against it.

5 THE WITNESS: Okay.

6 A Item No. 9 was submitted as a swab, No. 13, to me.
7 Item 10 was also submitted as a swab. Item No. 12 was
8 submitted as a swab from the sword. And, now, I did, if I
9 could look at the actual envelopes, 12.1 --

10 Q 12.1, sir, right there.

11 A Okay. What we have here is that I received these
12 containers. And one was labeled State's Exhibit 12-A, was
13 labeled as the sword. State's Exhibit 12.1 was labeled as
14 the handle of the sword.

15 So I made these 12 and 12.1 since they were not
16 submitted specifically as this. But clearly the writing
17 indicates that they came from two different sources.

18 Q And did you swab? Let me let you look at State's No.
19 11. Is that the knife that you looked at and swabbed from?

20 A Yes. It has my initials on the box, as well as the
21 envelopes inside.

22 Q And all of these items you found that blood was
23 indicated on.

24 A Yes.

25 Q And also State's Exhibit No. 13, did you look at the

Manuel John Ortuno
Direct examination by Mr. Barnette

1 fingernail scrapings from John Lammers?

2 A Yes, I did.

3 Q And was there blood indicated on those?

4 A Blood was indicated. And I also performed D. N. A.
5 analysis on those.

6 Q And the same thing on swab No. 25 and 34. It's listed
7 as 15 and 16, state's exhibits.

8 A That's correct.

9 Q Once you did the D. N. A. analysis, if you would,
10 explain to the jury what fingernail scrapings are, sir.

11 A The pathologist would -- anything that they have
12 different, some of them are wooden and some of them are
13 plastic. But you have little picks, if you will. And you
14 will scrape underneath the fingernails. If there's a
15 struggle of any kind, there's a chance that perhaps there
16 was skin transfer from one individual, and therefore they're
17 collecting those and --

18 THE COURT REPORTER: I can't hear him.

19 THE COURT: Excuse me. I'm going to have ask you to
20 take your seat and use that microphone. The court reporter
21 is having difficulty picking up your responses.

22 (Whereupon, the witness returned to the stand.)

23 A Typically, the wooden or plastic picks are used. You
24 scrape underneath the fingernails. It's possible that it
25 could have potential skin cells from an individual in the

Manuel John Ortuno
Direct examination by Mr. Barnette

- 1 process of the struggle.
- 2 Q And so you examined those also.
- 3 A I did.
- 4 Q What was the results of your findings once you looked
5 at all of these items, sir?
- 6 A These are the results contained in the report dated
7 August 13th of 2007.
- 8 Q Yes, sir.
- 9 A Or the supplemental report.
- 10 Q Yes, sir. On May the 9th.
- 11 A May the 9th.
- 12 Q Yes, sir.
- 13 A All of the items that are contained in this report, you
14 have SLED's Item 9 and 10, swabs No. 13, swab No. 24, both
15 the swabs from the pocketknife, from the blade, as well as
16 the handle, the swabs from the sword, the swabs from the
17 sword handle, the fingernail scrapings from John Lammers and
18 swabs No. 25 and swabs No. 34, all of these contain the D.
19 N. A. profile that, in fact, matched John Lammers. And,
20 once again, the probability of the frequency, the rarity of
21 that profile is one in 200 trillion.
- 22 Q On the fingernail scrapings, you didn't find any other
23 D. N. A. other than John Lammers.
- 24 A That's correct.
- 25 Q On item 17, is that the hair? There was no D. N. A.

Manuel John Ortuno
Direct examination by Mr. Barnette

1 potentially found.

2 A There was a hair that was found from the knife. It was
3 sent directly to D. N. A. analysis.

4 We take the root. If there's sufficient connective
5 tissue on the root, we can develop a D. N. A. profile from
6 the hair. For that item, which is SLED's No. 17, there was
7 no human D. N. A. obtained. So there was nothing to work
8 with there.

9 Q So you didn't have a root or anything to work with.

10 A There was a root, but there wasn't sufficient
11 connective tissue on the root.

12 And then the last remaining item is SLED's item No. 14.
13 This is a flashlight. And there was insufficient human D.
14 N. A. from item No. 14 to perform and develop a D. N. A.
15 profile.

16 Q Sir, you received these items separate from the socks,
17 the shirt and the shoes that you received. These were
18 received at a different time and a different place.

19 A Yes.

20 Q And so the analysis, as a matter of fact, on these was
21 done on May the 9th of 2008.

22 A That's correct. The final report was issued on May the
23 9th of 2008.

24 Q So they were packaged separately from the items that
25 were in the first group that you tested in August.

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 A I'm not -- I'd have to look at the chain of custody.
2 These items were submitted to SLED. They go to different
3 departments. I would have to check to see each and every
4 item to see if, in fact, when they were in my custody.

5 Q But they were tested at two different times.

6 A They were tested at two different times definitely.

7 MR. BARNETTE: One moment, Your Honor, please.

8 (Pause.)

9 Q Please answer any questions Ms. Hodges may have for
10 you. Thank you, sir.

11 CROSS-EXAMINATION

12 BY MS. HODGES

13 Q Mr. Ortuno, you have copies of your reports in front of
14 you, is that right?

15 A I do.

16 Q Okay. You essentially only analyzed the samples and
17 cuttings that were provided to you, I guess, with the rare
18 exception of the knife. You actually took your own samples
19 and made your own swabs from the knife.

20 A I saw stains on both the handle and the blade. I
21 thought perhaps there was some relevance taking them
22 separately.

23 Q But primarily you essentially are analyzing what's
24 provided to you either through Ms. Bryson or other --

25 A Or the agency, yes.

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 Q Okay. And in this particular case on items, SLED's
2 Item 3.1, that's going to be in your report that's dated in
3 August of 2007.

4 A Yes.

5 Q The, you indicated, and I just want to make sure I
6 understand your testimony. You indicated that that is a
7 mixture with John Lammers as a possible contributor.

8 A 3.1?

9 Q Yes, sir.

10 A It is a mixture. John Lammers cannot be excluded as a
11 possible contributor.

12 Q Okay. And based on your results because -- I mean,
13 that it's the mixture of two persons or more than two
14 persons?

15 A It is at least two persons.

16 Q At least two persons.

17 A It's impossible to say.

18 Q Impossible because we don't really have the other
19 standard to be able to compare it to.

20 A Right. And the strength of the signal of the D. N. A.
21 doesn't allow us to say there's definitely one person and
22 the second one. So it could be two or more.

23 Q So 3.1 could be two or more.

24 A Yes. It's certainly possible.

25 Q Okay. 3.2, that's the one where the language is that

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 John Lammers is the major contributor and Mr. David Lammers
2 is excluded. And that sample is, I mean, there's only two
3 people.

4 A Right. Well, once again, here we clearly have one
5 person who is identified as John Lammers.

6 There's a weaker signal, but it's impossible for me to
7 say it has to be only one person.

8 Q Okay.

9 A It could be two weak signals from two people. But,
10 clearly, John Lammers who is significantly higher in
11 intensity, if you will, is clearly there.

12 Q Okay. Do you have any way of being able to quantify
13 how much is John Lammers versus the other possible D. N. A.
14 profiles? When you say major contributors, I mean, it's
15 50 percent, 60 percent, or is that an inexact science?

16 A It is an inexact. We can't quantitate quite. It would
17 be nice if we could, but we can't do that.

18 Q But, again, we know that it's at least two and
19 potentially could be more than two in that sample.

20 A Right. The frequency, clearly the profile of John
21 Lammers is there. Whether there's another person or
22 persons, I can't say.

23 Q If you had been given a standard from somebody as a
24 suspect in this case, would you have done the same analysis
25 that you did with the blood standards from John Lammers and

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 the buccal swab from David Lammers, the same as that
2 process? You'd just have a third sample that you are
3 comparing.

4 A That's it. You can give me as many standards as you
5 like. I would compare each and every one to the profiles
6 and include or exclude them.

7 Q Okay. The handle, the swabs that you took from the
8 pocketknife, Item 11, and you took 11.1 and 11.2, and that's
9 going to be in the May the 9th report --

10 A Yes.

11 Q -- was there any substance, or are you able to
12 determine from your testing and your department if there's
13 any substance or material present other than, other than
14 blood?

15 A No. We don't test. We're looking specifically for
16 human body fluids. Clearly, you see a stain that looks like
17 blood, you test it for blood. And you go forward.

18 Q And when we say human body fluids, would, would there
19 be any difference in your original, your preliminary
20 serology analysis if there was something on there, say some
21 sort of other human body matter, skin if you will, brain
22 cells, if you will? Would there be any difference in what
23 you would report out as your serology analysis?

24 A All of the cells in the body are going to contain the
25 same D. N. A. What you're suggesting, if I may, heard what

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 you're saying, is that perhaps there could be skin cells
2 that were up underneath the blood sample that might be
3 there.

4 That would also contain D. N. A. Clearly, the
5 predominant profile would be from the, from the stain, the
6 blood stain.

7 If there are skin tells underneath that blood stain, of
8 course I'm not testing for the presence of skin cells.
9 There would be a minor contribution if theoretically there
10 were skin cells there, and assuming that they're sufficient
11 to identify as D. N. A.

12 Q And based on what your results actually showed you
13 through the full D. N. A. analysis, the only D. N. A.
14 profile that was developed was Mr. John Lammers.

15 A That's correct for those two items.

16 Q Okay. The fingernail scrapings, Item No. 13, that's
17 saying there's no other D. N. A. profile or other substance.
18 No other D. N. A. profile was developed from that.

19 A That's correct.

20 Q Item No. 17, the hair that was found on the knife, no
21 human D. N. A. was obtained.

22 Do you have the ability or is it within your protocol
23 to determine if it was some other type of hair? I mean, do
24 you know if it was a human hair for sure that just didn't
25 have sufficient D. N. A. to test, or was it some other type

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 of hair?

2 A Ten years ago I could have said yes to that question.

3 Q Okay.

4 A We have stopped. At SLED we have stopped doing hair
5 analysis, per se. And I was a trace evidence examiner for
6 eight years where I did actually do hair analysis. So I'm
7 somewhat comfortable talking about that, yet we're not
8 allowed to draw a conclusion at this point because we have
9 ceased doing hair analysis.

10 All we do with hair is if it is unlikely a human hair
11 sample, I will look at it under a stereoscope, which is a
12 fancy term for a magnifying glass, and determine whether
13 there is an enough connective tissue, once again.

14 I looked at it and deemed that there was a chance, so.
15 I went ahead and cut the root and extracted it for D. N. A.
16 and performed the analysis. And there wasn't a sufficient
17 amount.

18 Q Okay.

19 A So there are labs that could do that, but we are not
20 qualified at this point to state whether or not it's a human
21 hair.

22 Q Okay. My understanding if we can go back to the
23 August the 13th report, the 2.1 and 2.2 samples, you
24 actually added those together to be able to kind of extract
25 the D. N. A. from them.

Manuel John Ortuno
Cross-examination by Ms. Hodges

1 A Yes. There was a small amount. It was black thick
2 rubber fabric collected from both cuttings. Swabbing
3 combined both study visible stains for P. C. R. When I
4 wrote study visible, to me that's my --

5 THE COURT: Excuse me. You're going to have to use
6 that microphone again.

7 THE WITNESS: I'm sorry.

8 THE COURT REPORTER: And slow down.

9 THE COURT: And slow down.

10 THE WITNESS: I'm sorry.

11 A Black thick rubber fabric was collected from both
12 cuttings. Swabbed and combined both slightly visible stains
13 for P. C. R., which is our term for D. N. A. analysis. That
14 when I wrote, wrote down slightly visible, that tells me
15 that there wasn't sufficient by itself to do a D. N. A. test
16 for 2.1 and a separate test for 2.2.

17 So at that point I have to decide as an analyst whether
18 I should combine the two and increase the chance of getting
19 a profile or run them separately and have a chance of
20 getting what's called a partial profile. And I decided to
21 combine them.

22 Q Would there have been any -- I don't know if the right
23 word is dilution or not -- but would there have been any
24 dilution of that sample had somebody run a presumptive blood
25 test at the originating agency on those two items where the

1 cutting was then taken by Ms. Bryson and then transferred on
2 to you?

3 A Right. To perform a serology test you have to consume
4 some of the sample. And so it's always an issue if you
5 perform a serology test to determine whether, in fact, you
6 have potential human body fluid, are you leaving enough
7 there to perform a D. N. A. test.

8 On the other hand, if we don't know for sure it's a
9 human body fluid, why are we doing a D. N. A. test? I
10 believe that in this particular case Ms. Bryson was able to
11 take a small enough amount to allow me, as it turns out, to
12 perform that. But there's no special formula to guarantee
13 that we're doing the right thing.

14 Q Were you aware that even before it got to Ms. Bryson,
15 that the recording agency or the referring agency had
16 actually done their own testing on the items prior to giving
17 them to you?

18 A I was not aware of that. However we can't take a
19 result from another agency as being the same result that I
20 would get. And, in fact, I repeat the test that Ms. Bryson
21 performs to make sure as well, so.

22 Q But my question is at this point we now know that
23 you're kind of doing the third serology analysis.

24 A That's correct, that's correct.

25 Q I mean, it's possible that at some point we're kind of

Manuel John Ortuno
Redirect examination by Mr. Barnette

1 consuming our sample during rounds one and two.

2 A It's possible. But as I mentioned in this particular
3 case, both were combined.

4 The fact that I had just one D. N. A. profile indicates
5 that it originated from one person. And so by combining I
6 did the right thing. And we have only one profile.

7 In other words, if I had performed these two cuttings
8 separately and had enough D. N. A. to develop a D. N. A.
9 profile, I would have gotten the same thing, you see,
10 because if there would have been two different people and I
11 would have combined them, what would I have gotten? I would
12 have gotten that typical mixture, multiple values in
13 different boxes. And I didn't get that.

14 So in this particular case it wouldn't have mattered
15 because it's only from one person.

16 Q Okay.

17 MS. HODGES: Beg the Court's indulgence a moment.

18 (Pause.)

19 Q Thank you, Mr. Ortuno.

20 MR. BARNETTE: Just two more questions, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BARNETTE

23 Q The cuttings you got from State's Exhibit 2, which is
24 the shoes, State's Exhibit 4, the cutting you got from the
25 socks, and State's Exhibit 3, which is cuttings gotten from

1 the jeans in this case, all of them had a profile of John
2 Lammers.

3 A Yes, sir. They have. Well, the D. N. A. profile
4 developed from those cuttings matched the D. N. A. profile
5 from John Lammers.

6 Q And the match of those are one out of 200 trillion.

7 A Yes, sir.

8 Q And that's the number, one out of 200 trillion.

9 A Yes, sir.

10 Q Thank you, sir.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. BARNETTE: We ask for this witness to be excused,
15 Your Honor.

16 THE COURT: He may be.

17 (Whereupon, the witness was excused.)

18 THE COURT: Ladies and gentlemen, we're going to take
19 a break.

20 So I'll ask you to please go to your jury room. Don't
21 talk about the case. We'll bring you back shortly.

22 (The following takes place outside the presence of the
23 jury.)

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

25 (Whereupon, a recess was taken.)

1 THE COURT: All right. What else does the state
2 intend to present this afternoon?

3 MR. BARNETTE: Your Honor, the state is going to rest.

4 THE COURT: Okay. Ms. Hodges, have you discussed with
5 your client about offering testimony or other evidence?

6 MS. HODGES: Your Honor, I have. My understanding is
7 my client does not wish to testify. And we will not be
8 offering any other testimony or evidence.

9 THE COURT: Okay. Mr. Sims, your lawyer just told me
10 that she's talked to you about your right to testify or
11 call witnesses or present evidence in this case.

12 Has she explained to you that when you're charged with
13 a crime you have an absolute right to remain silent when the
14 time comes for the trial and time comes for you to present
15 evidence? You have an absolute right to remain silent.

16 At the same time, if you want to testify or present
17 other evidence, now is the time for you to do so. This is
18 the only opportunity that you're going to have to present
19 evidence.

20 In other words, you can't wait until after the jury
21 reaches a decision and change your mind and say, well, I
22 wanted to testify but nobody would let me, or I wanted to
23 call a witness and my lawyer wouldn't do it.

24 You have a right to testify and present evidence now if
25 you wish to, because it's your decision. Only you can

1 invoke the right, only you can waive the right. ()

2 Now, have you and your lawyer discussed your right to
3 testify, as well as not testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And did she discuss with you the
6 advantages and disadvantages of testifying and of not
7 testifying?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand what those
10 advantages and disadvantages are?

11 THE DEFENDANT: Yes.

12 THE COURT: And after your discussions with your
13 lawyer about your right to testify or not have you
14 reflected upon your decision? ()

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You have? You haven't thought about it?

17 THE DEFENDANT: I don't -- know what I am saying, I
18 don't want to testify.

19 THE COURT: Well, okay. Well, my question is have you
20 had time to think about your decision as to whether you
21 will or will not testify.

22 THE DEFENDANT: I have, yes, sir.

23 THE COURT: Okay. And after having thought about it
24 have you reached a decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And what is your decision?

2 THE DEFENDANT: I will not testify.

3 THE COURT: All right. You will not testify.

4 THE DEFENDANT: No.

5 THE COURT: Is that a decision that you reached of
6 your own free will and accord?

7 THE DEFENDANT: Yeah, yes, sir.

8 THE COURT: Did anybody force you into it?

9 THE DEFENDANT: No, sir.

10 THE COURT: Anybody pressure you into it?

11 THE DEFENDANT: No, sir.

12 THE COURT: Did anybody suggest that that's the
13 decision that you ought to make?

14 THE DEFENDANT: No, sir.

15 THE COURT: In other words, what I'm asking you is did
16 you make that decision on your own.

17 THE DEFENDANT: Well, I actually didn't make it on my
18 own. I talked to my lawyer.

19 THE COURT: Well, I understand you talked to her. But
20 did she say, well, look here, Howard Lee, this is what you
21 need to do and you don't need to testify?

22 THE DEFENDANT: No.

23 THE COURT: Or did she say you better get up there and
24 testify?

25 THE DEFENDANT: No, no, sir.

1 THE COURT: All right. So she talked to you about it,
2 and you talked to her about it. She told you the
3 advantages and disadvantages of either choice you make.
4 But you're telling me that you're the one that came up with
5 the decision.

6 THE DEFENDANT: Yeah, I, yes, sir.

7 THE COURT: And nobody's pressured you into that
8 decision. You just made it upon your own.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And your decision is that you will not
11 testify.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, do you understand that if you chose
14 to testify that you would have to answer all of the
15 questions asked of you by the prosecutor and by your own
16 lawyer?

17 If you elect not to testify, I'm going to tell the jury
18 they can't hold that against you, they can't consider it.

19 Now, you still don't want to testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have any other witnesses that you
22 want your lawyer to call? You understand you can call
23 other witnesses and still not testify yourself.

24 THE DEFENDANT: No, sir.

25 THE COURT: You don't have any other witnesses you

1 want her to call?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you satisfied with her assistance in
4 your case?

5 THE DEFENDANT: As of right now, I am.

6 THE COURT: Well, that's what I'm talking about, right
7 now. That's the question that's being asked, right now.

8 Well, has she done everything that you asked her to do,
9 sir?

10 (Pause.)

11 THE DEFENDANT: Sir?

12 THE COURT: You didn't hear my question?

13 THE DEFENDANT: What did you say, now?

14 THE COURT: I said has she done everything that you
15 have asked her to do.

16 THE DEFENDANT: Well, I haven't asked her really to do
17 too much. She's been being a lawyer. She's been doing
18 what she is supposed to do.

19 THE COURT: Well, has she refused anything that you
20 asked her to do?

21 THE DEFENDANT: I haven't asked her to do nothing.

22 THE COURT: You haven't asked her to do anything. All
23 right. So you're satisfied with what she's done.

24 THE DEFENDANT: Somewhat.

25 THE COURT: Well, what kind of complaint have you got

1 to make?

2 THE DEFENDANT: I'm not going to say a hundred
3 percent, because I don't know a hundred percent. After the
4 verdict, then I will know.

5 THE COURT: I see. In other words, you're happy with
6 her right now. You think she's done everything she was
7 supposed to. But, now, if the verdict goes against you,
8 you might be unhappy about it?

9 THE DEFENDANT: I'm going to be unhappy eventually.

10 THE COURT: Okay. But right now you think she's done
11 a good job for you.

12 THE DEFENDANT: Yeah.

13 THE COURT: Okay. All right. And you don't have any
14 other witnesses you want her to call or that you want to
15 call.

16 THE DEFENDANT: Uh-uh.

17 THE COURT: All right, sir. We will bring the jury
18 back, and we will close the evidence. And then we'll argue
19 and charge in the morning.

20 Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. The jury is present.

24 Mr. Barnette.

25 MR. BARNETTE: Your Honor, the state would rest at

1 this time.

2 THE COURT: All right. Ms. Hodges, does the defense
3 wish to present any additional evidence?

4 MS. HODGES: No, sir, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, that is
6 all of the testimony or evidence to be offered in the trial
7 of this case.

8 What remains to be done are the lawyers' final
9 summations, after which I'll instruct you on the law. And
10 then you'll begin with your deliberations. That's going to
11 take longer than what we have left this afternoon.

12 So we're going to recess for the day at this time. We
13 will resume in the morning at 9:30 with the lawyers' final
14 summations, my instruction to you as to the law and then
15 your deliberations.

16 So, again, during the overnight recess do not discuss
17 the case with anyone, do not permit anyone to discuss it
18 with you. Do not allow yourselves to be exposed to any type
19 of media coverage that relates to the case -- television,
20 radio or newspaper. Don't conduct any investigation or do
21 any research as it relates to any issue that might have
22 arisen during the trial.

23 Do have a good evening. And please report to your jury
24 room not later than 9:30 in the morning, 9:30 in the
25 morning. Have a good evening.

Motion

1 (The following takes place outside the presence of the ()
2 jury.)

3 THE COURT: Any motions or other matters to address by
4 the state?

5 MR. BARNETTE: None by the state, Your Honor.

6 THE COURT: By the defense?

7 MS. HODGES: Yes, sir, Your Honor.

8 At this time we would make a motion for a directed
9 verdict based on the motions that we made prior to trial,
10 specifically our motion on, regarding the Fourth Amendment
11 violations, our motions in limine, as well as objections
12 that have been raised during the trial.

13 We would argue that there has been insufficient
14 evidence to connect Mr. Sims as the actual assailant in this
15 case. And we would ask the Court for a directed verdict of
16 acquittal at this time.

17 THE COURT: All right. That motion is denied.

18 Any others?

19 MS. HODGES: Not at this time, Your Honor.

20 THE COURT: Does the state have any requests for jury
21 instructions?

22 MR. BARNETTE: No, sir. If I understand it, the
23 verdicts will be either murder or not guilty -- I mean,
24 guilty or not guilty on murder and burglary first. There
25 won't be any lesser includeds in this case.

1 THE COURT: That's true.

2 MR. BARNETTE: And I've heard all the standard charges
3 the Court uses. I don't think there would be any requests
4 to --

5 THE COURT: Okay.

6 MS. HODGES: Your Honor, we would request a charge on
7 mere presence.

8 THE COURT: Well, tell me what your theory is on that.

9 MS. HODGES: Your Honor, the theory is that the state
10 has introduced testimony that on May the 26th of 2007
11 Mr. Sims was seen in the vicinity of the residence on
12 Carlton Drive, as well as the -- it was based on the fact
13 that he was seen in the vicinity as to try and place him as
14 being someone in the neighborhood.

15 That testimony I think is sufficient to allow a mere
16 presence argument or a mere presence charge, as well as the
17 lack of other evidence actually placing him in the, in the
18 home on the night before June the 1st.

19 THE COURT: You're saying that a mere presence
20 instruction is warranted based upon testimony relating to
21 him being in the neighborhood on May the 26th?

22 MS. HODGES: Well, the state -- yes, sir.

23 THE COURT: Okay. I'm going to decline that request.
24 Any others?

25 MS. HODGES: No, sir. Well, the state would actually

1 be charging identity, I mean, we would ask for a request to ()
2 charge on identification.

3 THE COURT: I will instruct that.

4 Any others?

5 MS. HODGES: That will be it, Your Honor.

6 THE COURT: All right. If nothing else, court is in
7 recess until 9:30 in the morning.

8 Let me ask y'all before you go to verify all of the
9 exhibits so we'll have that done and won't have to do that
10 in the morning at 9:30.

11 MS. HODGES: Yes, sir.

12 END OF PROCEEDINGS JULY 16, 2008

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1 (Proceedings July 17, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters to be addressed before the
5 jury is brought in?

6 MR. BARNETTE: None from the state, Your Honor.

7 MS. HODGES: Your Honor, on behalf of the defense,
8 yesterday I had mentioned to the Court news coverage that I
9 had personally seen on Fox News.

10 Yesterday evening after the trial finished I went and
11 did some research on-line. The Fox News' article that was
12 posted on line is very similar to what I had actually seen,
13 which the statement is made that the prosecutor said Sims
14 broke into Lammers' house on at least two times before
15 encountering Lammers during the third burglary.

16 This was an article or, and/or, a news story that
17 essentially indicated that jury selection had begun on
18 Tuesday and that the trial was scheduled to continue
19 yesterday.

20 In addition, I know that W. S. P. A. was in the
21 courtroom yesterday morning. I had, was checking the W. S.
22 P. A. site basically to see what the coverage was from
23 yesterday.

24 The coverage yesterday indicates that the comment is
25 made that officers think he, being Mr. Sims, broke into the

1 house before. Investigators say that Sims was out of prison ()
2 on probation at the time.

3 There is also an indication that shortly after the
4 crime Mr. Lammers' sister had told News Channel Seven that
5 the murder could have been prevented if the officers would
6 have looked into the burglaries more closely. Police said
7 that they were progressively looking for the criminal. Then
8 it goes back into covering the information that was
9 actually -- the courtroom testimony yesterday.

10 When I discovered that article I also saw that there
11 had been an article published the day before on W. S. P. A.,
12 or a news story, again, that says the prosecutors believe he
13 broke into the victim's home and stole items two previous
14 times before breaking in a third time and encountered the
15 victim, John Lammers. In fact, they've established that the
16 knife was stolen during one of the previous break-ins.

17 And that is very similar to the newspaper article that
18 was apparently published in the Herald-Journal. This was on
19 the on-line edition of the Herald-Journal published Tuesday.

20 You know, our concern, Your Honor, and I know that the
21 Court asked the jury yesterday if they had been exposed to
22 any media coverage -- our concern is that the media coverage
23 clearly went into the issues that this Court had ruled were
24 inadmissible for the jury to hear. Our concern is that, you
25 know, any exposure to that or to the families, you know,

1 essentially sets Mr. Sims up for, you know, a trial in the
2 media on testimony and evidence.

3 Number one, that is inaccurate, and, number two, is
4 not, you know, this Court has ruled inadmissible. And, you
5 know, my concern is that the jury, if this jury has been
6 exposed to it, that a, you know, that a mistrial might be in
7 order based on their exposure to inadmissible and inaccurate
8 comments.

9 And we would like to make these as a court exhibit,
10 Your Honor, so they're part of the record if I may.

11 (Internet printout marked Court's Exhibit No. 7.)

12 THE COURT: Okay. So, Ms. Hodges, do I understand
13 that you're simply at this point asking me to inquire of
14 the jury as to whether or not they've been exposed to any
15 information about the case through the media during the
16 overnight recess?

17 MS. HODGES: Yes, sir, at this point. And then I
18 think if there are any positive responses, I think further
19 inquiry may be necessary.

20 THE COURT: Okay. Anything else?

21 MS. HODGES: Nothing from the defense, Your Honor.

22 MR. BARNETTE: Your Honor, if I can have one minute,
23 can I move that table over in front of the jury box if
24 that's okay with Your Honor?

25 (Pause.)

1 THE COURT: All right. Bring the jury in, please. ()

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Good morning, ladies and gentlemen.

5 As you know, when we recessed yesterday all of the
6 evidence had been received, and therefore what remained to
7 be done are the lawyers' final summations, after which you
8 will get the legal instruction from me and then begin with
9 your deliberations.

10 Before we begin with the lawyers' final summations I
11 want to inquire of you as I did yesterday whether or not any
12 juror has been exposed to any type of media coverage,
13 whether it be from radio or television or a newspaper
14 article, and also whether or not any juror has had any ()
15 discussions about the case or been exposed to any
16 discussions regarding the case.

17 If you have been exposed to any type of media coverage
18 relating to this case or have overheard any discussions or
19 been involved in any discussions about the case, I would ask
20 that you please indicate so by raising your hand.

21 (No response.)

22 THE COURT: All jurors have responded in the negative.

23 All right. We'll proceed with the final summations.

24 Mr. Barnette.

25 MR. BARNETTE: May it please the Court, Your Honor.

Closing arguments

1 Mr. Foreman and ladies and gentlemen of the jury, you
2 heard Mr. Ellis tell you earlier about, about this case.
3 Just imagine a man in his own house in his bedroom and being
4 as savagely attacked as you can be attacked.

5 Remember what Dr. Wren said. Wasn't any defense
6 wounds. Here's a man that's been stabbed 16 times and
7 didn't have one defense wound. He never was in a position
8 to defend himself either in bed or at the computer, back
9 from it. An intruder comes in.

10 You heard the testimony of David Lammers. As he's in
11 his bedroom he hears what's going on and hears his brother
12 calling for him, screaming for him. He runs in. And he has
13 this man attacking his brother. He goes in and tries to
14 help him. He picked up just the nearest object he could and
15 tried to rush in to help him. A samurai sword was used.
16 And you'll have it back there with you. It won't cut
17 anything. It wouldn't cut butter.

18 He wrestles around with his brother and tries.
19 Obviously, he goes down the hall and goes to the kitchen.
20 He's bleeding severely from all the wounds he received. You
21 heard the 9-1-1 call, the last words that he spoke.

22 His brother has to let this man go because he tells him
23 he has gun. He knows he's already wounded his brother with
24 something.

25 When he leaves, he leaves a shoe print on the carpet in

Closing arguments

1 the bedroom. And you'll have the shoes to look at the print ()
2 that was taken by the police. And you can see the pattern
3 similar right there.

4 I understand that there's going to be, I don't know how
5 many, of these tennis shoes here in Spartanburg. That
6 eliminates a lot of folks. A lot of people don't wear these
7 type of shoes.

8 He goes down as his brother is trying to help him, and
9 he told him. It's like a horror movie. And he talks about
10 just like the movie "Carrie".

11 But, ladies and gentlemen, this is not a horror movie.
12 This happened in Spartanburg County, in the city of
13 Spartanburg right here in our county.

14 And when you look at the pieces of this, like I said,
15 the shoe print is just one piece of the puzzle. The key
16 testimony, you heard from the Meadows, the folks who lived
17 across the street.

18 Back on May the 26th they see a stranger, a person
19 they've never seen. And she told you, Ms. Meadows did, that
20 she lived there 29 years at 118 Quail Drive. The children
21 come in, her grandchildren, her daughter's children. They
22 say they see a stranger.

23 When you see a stranger in a neighborhood when you've
24 been living there 29 years, you're going to take a look at
25 that person, especially when your kids comes and tells you,

Closing arguments

1 your grandchildren come and tell you.

2 They went out. They see him riding a bicycle, a
3 woman's bicycle. They watched this man go down the street
4 and come back up the street and get a box, because they're
5 watching him like a hawk because they don't know who he is.
6 Never seen him before.

7 He takes this box and go behinds the church and puts
8 something in the box and leaves. And during that time
9 Mr. John Lammers, the victim in this case, is on a phone
10 looking. And she said, Ms. Meadows said, I had to send my
11 children over to talk to him to tell him where the man is.
12 And they identified. Both of them identified that man as
13 the man that came in there that day.

14 Later on that same day, of course this happened in
15 daylight, that night, you heard the testimony from Ankit
16 Basnet, the clerk at the Texaco station. He sees an
17 individual.

18 And you see the video that he identified. I'm going to
19 show you that video again because it's a key part of this.
20 That night, and he identified that man as the man he saw.
21 And you'll see him on -- you'll see it in the video. I'm
22 going to show you the video again. I want you to look at
23 it, as the man he saw.

24 And you see him riding that bike. He was riding a
25 girl's bike, green in color. And look at the clothes he's

Closing arguments

1 wearing. I'm going to show that to you real quick.

2 (Whereupon, the C. D. was played for the jury.)

3 MR. BARNETTE: I want you to look at these shoes he
4 was wearing. I want you to look at the pants he was
5 wearing.

6 You'll have these back there with you. I show you
7 State's Exhibit No. 3. This is on May the 26th. Look at
8 the front of these shorts. Compare those to these. Those
9 are the same shorts where the victim's blood was found on
10 them.

11 You can see the pattern on the front of it. Compare
12 the front pattern that he was wearing that day, five days
13 before this happened.

14 You see the black tennis shoes that he was wearing, the
15 same shoes that he was wearing. He has on white socks.
16 Obviously, that's something he was wearing. I can't prove
17 that that's the same socks he was wearing, but I think it is
18 close to it. But if you would, remember that when you go
19 back into the jury room and you compare them to the evidence
20 in this case.

21 And the other thing too is the bicycle he rode up on.
22 There he comes on the bicycle, the same one he had been
23 using. There he came out.

24 So going from that event to June the 1st. You heard a
25 description of David Lammers. He sees a lineup. And you

Closing arguments

1 will have a copy of the lineup back there where he circles
2 the individual he saw that night. He doesn't say he's
3 50 percent sure. And I'm sure you will hear about that,
4 more about that. But he picks him out of that lineup. He
5 was not told anybody was in that lineup. He says it looks
6 like this man's eyes.

7 And if you noticed on the video too, his eyes is the
8 thing he notices, the very same feature on him. And he I.
9 D.'s him that night off the lineup. And that's the man he
10 picked and circled that night.

11 The other thing too is, and I'm sure you're going to
12 hear about crime walls and everything. Like I say, this is
13 the last time I get to speak to you on behalf of John
14 Lammers and his family. I want to make sure I cover every
15 piece I can with you. I'm trying to anticipate everything
16 to be talked to you about.

17 The police went there obviously and collected
18 fingerprints. They collected blood samples. And on the
19 fingerprints, they fingerprinted everything they could from
20 the standpoint they felt like relevant there. A lot of the
21 prints was not usable like the items that was thrown out of
22 the window. And obviously those was sitting on those window
23 ledge.

24 And you're not going to throw them inside. Why are you
25 not going to throw them inside? Because they can hear you

Closing arguments

1 coming, because they can hear those things hit. They throw ()
2 them out, throw them in the grass where nobody can see or
3 hear them.

4 The window. Obviously, he had a ladder right there
5 that the individual walked up on. And the window was open
6 except for the screen because the air conditioning wasn't
7 working. They didn't have central air. So he had to open
8 the window to get some air in the house, because on June the
9 1st, obviously it's a warm night.

10 And you knew how easy the window. You heard from
11 Investigator Guthro how easily it could be moved up and
12 down. He slid in there after he moved all the items. Of
13 course they fingerprinted all of those areas and wasn't able
14 to get any usable prints or anything from there. ()

15 They also fingerprinted the items that was thrown. And
16 just because you touch something means you didn't leave a
17 fingerprint on it. It's hard to get fingerprints, ladies
18 and gentlemen. And you can see all the items they
19 fingerprinted, and how many items they didn't.

20 The only usable prints they got was David Lammers'
21 prints. They was on magazines, C. D.'s and things, things
22 that generally you would expect somebody that lived there to
23 have their fingerprints on.

24 They did try to go through all of that. They also
25 collected the blood samples, which is, I mean, obviously key

Closing arguments

1 case all the way across the board.

2 You've got shorts, shoes and socks. John Lammers'
3 blood is on these items. And these items are the items that
4 belong to that man right there. One out of 200 trillion.
5 You heard Mr. John Ortuno talk. I mean, you're talking 30
6 times the size of the population of the earth.

7 This blood came from the victim in this case. You
8 heard Investigator Guthro talk about how the socks was
9 turned inside out when they looked and they saw the blood on
10 the shoes and things, and when they saw the socks inside
11 out.

12 One thing I'm sure you're going to be hearing about is
13 there was blood everywhere. Y'all seen the pictures. I
14 mean, it is blood everywhere. They're going to say there is
15 no way if he did this he wouldn't have more blood on his
16 clothes.

17 What stops him from going and changing his clothes and
18 changing his shirt and changing different items out? Like I
19 said, the blood that's on the shorts is back here and on the
20 front. He might have still had blood on his hands and when
21 he decided to put on the shorts or do whatever he needed to
22 do.

23 He didn't change his shoes out. He saw some on his
24 socks and decided to turn them inside out for some reason.
25 Maybe he didn't have another pair of socks. I don't know.

Closing arguments

1 But I can tell you this as an absolute fact, that that ()
2 blood is on his clothes. There's only one explanation for
3 that. He was there that night. He was there and he killed
4 John Lammers.

5 When you go through this you have one thing that you
6 bring, ladies and gentlemen. The lack of experience is your
7 common sense that you bring to court with you.

8 There is no way to explain why that blood is on his
9 clothes unless he was there. There is no way. Evidence
10 shows that. The evidence shows that he was in that
11 neighborhood as a stranger five days before. The evidence
12 shows that he was wearing these shoes and these jeans before
13 this incident even occurred. So it wasn't like he found
14 some clothes or anything like that.

15 Ladies and gentlemen, this is the man that didn't have
16 a chance to defend himself, the situation where a man's
17 brother had to watch him die at a kitchen table.

18 A lot of times my kids watch movies talking about parts
19 of dead man walked. In this case John Lammers tells a lot.
20 There is blood, because his blood is what's leading to show
21 you that that man is absolutely.

22 He is telling you. His blood is a piece of this case
23 that shows you who did this to him. And everything leads,
24 all the evidence if you look at using what you bring here
25 into court today, every piece of evidence leads to one clue.

Closing arguments

1 That man there killed, broke in his house and killed, John
2 Lammers.

3 Like Mr. Ellis asked you, I'm coming to you now. Look
4 at the evidence, all the evidence, if you need to. They can
5 talk about crime scene logs, they can talk about what should
6 have been done or not been done by the police. But the
7 bottom line is what does the evidence show you.

8 It's like if I give you a puzzle of the Statue of
9 Liberty. You say, well, I don't have every piece, but if I
10 have enough pieces of the puzzle you can see the Statue of
11 Liberty.

12 In this case, ladies and gentlemen, every piece of the
13 puzzle that you have leads to only one conclusion, and that
14 conclusion is the man that broke in the house of John
15 Lammers and murdered John Lammers is Howard Lee Sims. And
16 I'm going to ask you to return two verdicts of guilty for
17 murder and burglary in the first degree. Thank y'all.

18 THE COURT: Ms. Hodges.

19 MS. HODGES: Thank you, Your Honor.

20 Things are not always as they seem, ladies and
21 gentlemen. As I told you when we began this case, the state
22 is asking you to decide your case, this case, on
23 speculation, supposition and conjecture.

24 What I'm going to do in the next few moments is talk to
25 you about what the evidence has shown and what the evidence

Closing arguments

1 hasn't shown, because, as I told you, that's just as
2 critical in this case as what the evidence does not show.

3 The judge is going to charge you once the arguments are
4 done. The judge is going to charge you on the law. And
5 he's going to tell you the burden of proof in this case that
6 the state bears is that they have to prove to you that the
7 defendant in this case is guilty beyond a reasonable doubt.
8 And he'll give you a definition of reasonable doubt.

9 Now, you all have had life experiences. I'm pretty
10 sure probably all have watched T. V., probably watched crime
11 shows and watched legal shows.

12 You're going to know about several different types of
13 burden of proof. One burden of proof that's used in the
14 legal system is what we call suspicion. A good example of
15 that is a police officer's on patrol, sees a car weaving
16 side to side, thinks that person might be driving under the
17 influence.

18 He has a suspicion that there's something wrong with
19 this particular person's ability to drive. He puts a blue
20 light on that person, pulls him over based on that
21 suspicion.

22 He continues to talk to the driver. The police officer
23 notices that the driver can't stand, basically he's weaving
24 and wobbling when he stands, may have red, glassy eyes and
25 may have an odor of alcohol on his breath.

Closing arguments

1 At that point the officer probably has what we call
2 probable cause to arrest that person for driving under the
3 influence. It's more than a suspension. You don't just
4 have the weaving and the driving, but you've got more of a
5 higher level of proof at that point.

6 But it's still not enough in this case. This case
7 isn't based on suspicion, this case isn't based on probable
8 cause.

9 Some of you may have sat on juries before. In a civil
10 jury all you have to do is prove the damages or you prove
11 your case by what we call a preponderance of the evidence.
12 That means just a little bit more than 50 percent. Just
13 kind of tip the scales just a little bit in one direction,
14 you have proved your case.

15 That's not the burden of proof in this case, ladies and
16 gentlemen. Your burden of proof is the highest burden of
17 proof known in America. It is beyond a reasonable doubt.
18 That means it doesn't have to be beyond all doubt, as the
19 judge will tell you.

20 It is beyond a reasonable doubt, which means that if
21 you have any questions in your mind as to, well, wait a
22 minute, how does that piece of evidence fit in, that really
23 just doesn't seem to fit, or if you have a hesitation in
24 your mind about, you know, almost, not really sure that
25 they've got it there, that's a reasonable doubt. It's

Closing arguments

1 something that just doesn't fit, that causes you to hesitate ()
2 to act or leaves a question in your mind. That's reasonable
3 doubt.

4 And your sworn duty as jurors is that if you have that
5 question, if you have that hesitation, if you have that
6 doubt, it is your sworn duty to hold the state to their
7 burden and find the defendant in this case not guilty.

8 Now, I told you at the beginning there is not much
9 dispute in terms of the fact that Mr. Lammers was killed in
10 his home on June the 1st of 2007. That issue is undisputed.

11 However the crucial question in this case is did the
12 state prove to you that Howard Sims did that. Did they
13 prove to you that he broke into that home, that he entered
14 that home without permission with the intent to commit a ()
15 crime and did it either in the nighttime or did it armed
16 with a weapon or became armed with a weapon while there, and
17 did he with malice aforethought take the life of another
18 human being? Has the state proven that to you?

19 Because the real point in this case is the identity of
20 the perpetrator, the identity of the person who committed
21 this crime.

22 On June the 1st of 2007 Mr. David Lammers described to
23 Officer Julie Coe-James while it was fresh in his memory, I
24 mean, we're talking moments after it happened, a man that is
25 6'2" who has on a blue-pocketed t-shirt.

Closing arguments

1 He later on describes to investigators during the
2 course of that evening that the person that he sees is
3 between 210 and 220 pounds, that he knows that person is
4 bigger than him. He's 195 pounds. And he knows that the
5 man that he wrestled with is bigger than him, taller than
6 him, heavier than him.

7 And he knows that because he's basically at an arm's
8 length, if not closer, to him because he's able to grab on
9 to that person and hold him. And he's back on the bed. He
10 doesn't know if he was pushed, doesn't know if he fell, but,
11 you know, he's back on the bed and he's holding on to this
12 person that he knows that he's bigger than him.

13 The lights are dim. We have the lights dimmed on and
14 off throughout the entire trial. The lights are even more
15 dim there because here we've actually had some of the
16 lighting. There all you have is a computer screen and a T.
17 V.

18 So it makes sense that the first thing that he's going
19 to see and that he'll focus on in terms of who he is
20 wrestling with is going to be the person's size in terms of
21 height and how big they are, their weight. That makes
22 sense. And that first impression is what lasts. And that
23 makes sense.

24 On the 9-1-1 call he's not able to tell them. He
25 doesn't know who the person is, doesn't know who the person

Closing arguments

1 is. He just knows his brother is bleeding and that he needs
2 an ambulance. He doesn't have any idea who this person,
3 says he had to let him go. The person ran through to the
4 back door.

5 Then the state wants to hinge and kind of bootstrap, if
6 you will, a canvass of the neighborhood. And they go out
7 and canvass the entire neighborhood. And there are only two
8 people that actually can tell the investigators something
9 that happened six days before. May the 26th to June the
10 1st is six days.

11 And six days before at some point during the daylight
12 hours Belinda Meadows says she saw a stranger in her
13 neighborhood. That's kind of a blessed neighborhood if
14 they've only got one stranger in the neighborhood in the
15 last six days in that section of Spartanburg.

16 Be that as it may, six days before she sees a stranger
17 in her neighborhood. And what does she tell us about that
18 stranger? She tells us that he is a black male, that he is
19 riding a green or blue bicycle, that he has on long pants,
20 he has on long jeans, that he is wearing a red shirt that
21 has some sort of geometric design on it.

22 It is not a stripe shirt. It is not a polo shirt or
23 golf shirt. It is a button-down shirt kind of like a
24 Hawaiian shirt, style of shirt. But she definitively knows
25 it, and is adamant it, that is not striped and it's not a

Closing arguments

1 polo shirt.

2 The other thing she tells us is she sees this man. She
3 tells us that this is her mother's house. And that's the
4 house that she pointed out. And she tells us that the place
5 where she sees the man is at this house across the street.

6 However we know from Investigator Burgess' testimony --
7 do it this way, the old-fashioned way. We know from
8 Investigator Burgess' testimony that he tells that us that
9 this house marked here is John David Lammers' house, the one
10 that's marking. You're going to have this out there. But
11 he tells us this one that has the orange marking on it,
12 that's the one that's John David Lammers' house.

13 You can tell by looking at the photograph that they're
14 looking at this. Anything that she is looking, that she is
15 looking at through, all of these trees here. This is the
16 house on Carlton Drive. That's her mother's house.

17 So we have six days, a man is in the neighborhood not
18 even associated near the Lammers' residence from Belinda
19 Meadows' testimony yesterday.

20 She sees Mr. Lammers on a telephone looking around.
21 They send somebody over to say, well, that man that we think
22 that you're looking for, because they don't know, they don't
23 know what, if anything, happened at John Lammers' house that
24 afternoon, we think that the man that we think you're
25 looking for went that direction over behind the church. We

Closing arguments

1 think we saw him put something in a box. We don't know what ()
2 it was. We couldn't see for sure because he went out of
3 view, but we think.

4 Well, ladies and gentlemen, we think, we guess, we
5 suppose is not proof beyond a reasonable doubt, does not
6 identify Howard Lee Sims as being the person that is at the
7 home on June the 1st committing murder and burglary.

8 Ms. Henrietta Meadows, her daughter, her mother, says
9 that she was not even interviewed by the police officers
10 back in May of 2007. She was there. They didn't ask her
11 any questions. She's not asked any questions about this
12 case whatsoever until two or three weeks ago when the
13 solicitor's office goes to her house and happens to start
14 asking her questions. ()

15 She tells you that she was there when she saw her
16 daughter pick Mr. Sims out of a lineup. She was right there
17 with her. She knows who her daughter has already picked
18 out. She knows who her daughter has already identified.
19 She doesn't give an independent statement to the
20 investigators actually investigating the case.

21 I submit to you, ladies and gentlemen, that although
22 the state brought to you two people to make the
23 identification of who was in the neighborhood six days
24 before, you really only truly have heard one person's
25 testimony, that being Belinda Meadows.

Closing arguments

1 The next, they want to show you the video from the
2 Texaco gas station. Again, Howard Lee Sims is supposedly
3 seen on the bike in the gas station, therefore he must have
4 committed the murder, because he's on a bike in a gas
5 station wearing similar clothing six days before.

6 The problem is they haven't tied that together for you,
7 because in that video, which is in the nighttime but the
8 same day, May the 26th, in that video he is wearing a stripe
9 shirt. It is a golf shirt or polo shirt, if you will. He
10 is wearing shorts.

11 He doesn't have a fixed address. We know that. They
12 didn't have a fixed address for him. Where is he hiding all
13 of these clothing, this clothing? I mean, if he's going
14 around breaking into houses, committing murders, doing all
15 of these horrible things on a bicycle, a bicycle doesn't
16 have saddle bags.

17 You know, did the police go and look around behind the
18 church to see if there's something stashed back there?
19 Maybe that's the hiding place. Did they go back behind the
20 church and look to see if maybe that's where the lone
21 counselor (sic) or that's where the other red shirt was or
22 maybe that's where the blue pocketed t-shirt was?

23 Did they look for it? Did they make any effort
24 whatsoever to try and find the clothing that he, that
25 actually was described to them as being worn during the

Closing arguments

1 crime? We didn't hear any testimony about it. If they did, ()
2 we don't know about it. You don't know about it.

3 When they finally decide that they think that Mr. Sims
4 is the suspect in this case, for the murder case, Detective
5 Burgess told you that he was pretty sure that they had their
6 man.

7 They develop a photographic lineup. And you'll have
8 this in evidence. But they develop a photographic lineup,
9 top three rows, top three pictures, bottom three pictures.
10 And they claim that that's him.

11 Mr. Sims is the only person that's wearing a gray
12 t-shirt in that photographic lineup. That's for you to
13 determine whether you think that's important or not in the
14 identification process, because you get to weigh all the
15 evidence and make all the reasonable inferences you can from
16 all the evidence that's provided to you.

17 He's the only person that's got a more slender face.
18 You can see the whites of his eyes more clearly. And yet
19 when David Lammers circles that photo he signs it on
20 June 1st at 3:00 o'clock p.m. And the investigator asks him
21 how sure are you, how confident are you. I'm 50 percent
22 sure, I am 50 percent sure that's the person.

23 Ladies and gentlemen, 50 percent doesn't even get you
24 to the preponderance of the evidence. That's a civil
25 burden. We're not even at the preponderance of the

Closing arguments

1 evidence. Preponderance has got to be 51 percent.

2 They have not been able to successfully identify beyond
3 a reasonable doubt that Howard Lee Sims is the person that
4 committed the crime.

5 But Ms. Hodges, you may say, there is D. N. A. evidence
6 in this case. Yes, indeed there is. Jan Bryson testified
7 yesterday about D. N. A. evidence and blood spots that she
8 found.

9 On the shorts, on these shorts, State's Exhibit No. 3,
10 she tells you it's Evolution brand denim. It's the brand
11 name of the shorts. Pretty popular pair of shorts. Kinda
12 got this acid-wash finish on them, some designs on them.

13 She tells you that she found three spots of blood.
14 Three. She looked at them, sometimes even had to look at
15 them under a magnifying glass to be able to find the blood.
16 But she tells us that the only three spots of blood that she
17 found on these shorts, the only three, she took a cutting
18 of.

19 3.1 we know is from the bottom right hem of the right
20 leg. 3.2, you're looking at the shorts as over the back
21 left pocket. And 3.3, you have the back right pocket.
22 Three spots of blood.

23 She sends that to John Ortuno. John Ortuno tells us
24 that 3.1 is a mixture. It is a mixture of blood, and it is
25 a mixture of what, this is the mixture where Mr. Lammers,

Closing arguments

1 John Lammers, is only a possible contributor. ()

2 This is the blood here on the hem of the right leg.
3 That's the blood that could possibly be one or more unknown
4 persons. That was John Ortuno's testimony. One or more
5 unknown persons could have also contributed. Not could
6 have. Also did contribute to that D. N. A. sample.

7 3.2 from the waistband of the shorts, this one right
8 here, 3.2 is also a mixture. 3.2 has a major contribution
9 from John Lammers. But then, again, it could still be one
10 or more unknown persons that are contributing the rest of
11 that sample.

12 I submit to you, ladies and gentlemen, if you have seen
13 a man riding a bicycle through a neighborhood who, what,
14 doesn't have a fixed address, is picking up boxes and things
15 off the sides of roads, going to curbs picking things up,
16 going around picking things up from behind the church, how
17 do we know those are his shorts? How do we know those are
18 shorts that he happened to be wearing on the day that he's
19 arrested by the police?

20 The only sample of blood that belongs to John Lammers
21 only is this 3.3 right here. You saw how Howard Sims wears
22 his shirt in that video. He's wearing it out over the
23 waistband.

24 How do you get? The solicitor wants you to think that
25 you've got blood on your hands and you're picking up the

Closing arguments

1 backs of your shorts. That's his explanation of how the
2 blood gets there. Maybe so. Maybe he wipes his hands on
3 that. I don't know. I don't know who wiped their hands on
4 the back of their pants. Don't know who picked up the pants
5 from the waistband in the back, because the state and the
6 police department didn't bother to get any sort of sample to
7 compare.

8 On August the 13th of 2007, you're going to have the
9 report with you in evidence. August the 13th of 2007,
10 almost fully a year ago, the state knew that there was a
11 mixture involved in the D. N. A. on this evidence, on this
12 pair of shorts. They knew that there was a mixture because
13 that's the day of John Ortuno's report.

14 Did they bother to investigate the case any more fully
15 to follow up? They didn't have a problem in sending
16 additional evidence down to SLED to be tested on a later
17 date, because John Ortuno tells you definitely he got two
18 batches of evidence, the one batch that involved the
19 clothing and the other batch that involved the swabs from
20 the crime scene, the flashlight, the sword, the knife. So
21 it's not as if they couldn't send it down later, because
22 they sent other things down later.

23 The state failed to meet their burden of proof in tying
24 the D. N. A. results found on the clothing to Howard Sims.
25 The shirt, State's Exhibit No. 5, our shirt, the shirt that

Closing arguments

1 was swabbed at the police department on June the 1st of 2007 ()
2 by the O. B. T. I. test that Edgar Guthro tells us is the
3 most exact, better than any other scientific test known to
4 humankind, unless you're using farret blood, and then you
5 might get a positive, but it's the most exact test, most
6 exact presumptive test.

7 He says there's blood on the shirt. Jan Bryson says
8 her presumptive test shows that there's blood on the shirt.
9 But she's at least honest enough to tell us that that's not
10 a definitive test, that it has to go on to be analyzed.

11 John Ortuno tells us it didn't have any. He did his
12 serology analysis, didn't have any blood on it, and didn't
13 do any further D. N. A. analysis.

14 Same thing with our hat. Saw it all around the top of
15 the hat, no D. N. A. Didn't bother. See anything on the
16 brim, underneath side, the brim of the hat? Didn't swab
17 underneath the side of it.

18 Remember what Guthro tells us about what's happening,
19 the physics and dynamics of motion and what's happening in
20 the bedroom on the night of June the 1st.

21 You have somebody with a knife stabbing. There's blood
22 coming off the knife, the pass-off. And it is moving. If
23 you look at Dr. Wren's diagrams, you've got all the wounds
24 on the left side of the person. You've got somebody with a
25 right hand who is obviously having to come across, if their

Closing arguments

1 right-handed coming across, to stab in the left, which means
2 that stuff is flying. And you're wearing a cap and you're
3 stabbing, and wearing a cap. But you've got no blood on the
4 underneath side of the cap. It just doesn't fit.

5 It's a question. There's reasonable doubt. Six small
6 spots of blood, two on the shoes, tops of shoes or inside,
7 or the inside of the parts of the shoe, two on the shoes,
8 one on the sock. Three unanswered. Six small spots on it
9 in what has been described to you as a veritable bloodbath.

10 And you've seen the photos. You're going to have the
11 photos. Six small spots of blood on the person that is
12 supposedly in the room for an extended period of time
13 wrestling first with John Lammers and then with David
14 Lammers. And all the state can show you is six small spots
15 of blood.

16 This case has a lack of evidence, ladies and gentlemen,
17 a woeful lack of evidence. They want you to believe that
18 through this window somebody broke into the home and started
19 throwing things out the window.

20 Now, we've got some 15 feet, 25 feet, 35 feet is
21 estimates that things are thrown. Just as the state's
22 theory is that, you know, you're not going to open a window
23 and start pushing things over onto the floor because you
24 don't want to disturb who is in there, you're also not going
25 to be throwing things willy-nilly or start hitting objects

Closing arguments

1 in the yard. You know, that doesn't make sense.

2 The shoe print that we've heard so much about, didn't
3 bother to take prints off of any other law enforcement or E.
4 M. S. personnel shoes. We know for a fact that at least one
5 person was in and out of that house before it was even
6 supposed to be processed, before the search warrant got
7 there. We know that person was in and out at least twice.

8 Yet we've got the shoe print, a shoe print from shoes,
9 unlike the testimony, are not Nikes. They're Air Jordans.
10 Anybody who knows anything about name brand athletic shoes
11 knows there's a difference between Nikes and Air Jordans.
12 These are Air Jordans.

13 One spot of blood on a left foot, one spot of blood on
14 the inside of the right. Those are such small spots of
15 blood, ladies and gentlemen, that Mr. Ortuno has to add them
16 together to even be able to get a profile from them.
17 Minuscule, tiny.

18 Twenty years ago D. N. A., you had to have big samples.
19 You don't have to have that any more. These are so small
20 that he cannot get a complete profile from each one
21 individually. He's got to add them together. And he got
22 lucky. He got the profile from one person.

23 We're told that these are black. And you're going to
24 see the pictures. The black shoes that you see in the
25 pictures of when Mr. Sims is arrested, I mean, they are

Closing arguments

1 black shoes with gold emblems.

2 Now these are completely covered in red. It's from
3 ink, from dye. Didn't come from the D. N. A. because we
4 know that because that was asked yesterday when they were
5 taking the cuttings and doing the stuff to determine whether
6 samples had blood on them or not, the D. N. A. It doesn't
7 come from the D. N. A. process.

8 Don't you think -- and they told you that there was
9 some other processing going on. Don't you think if they had
10 somebody that could match that shoe print from the bottom
11 sole of that shoe to that print they claim was found in the
12 house, don't you think you would have heard from them?
13 There is no person that can match the blood.

14 You heard about whether they could or couldn't match
15 fingerprints. Not a peep about whether somebody can match
16 the shoe print definitively from that shoe to that
17 photograph. And we know that's been processed and some
18 other process done to it.

19 There's no hairs or fibers to associate Howard Sims to
20 this crime scene. There's one hair found on the knife. It
21 wasn't human hair, or it wasn't enough determination, I
22 mean, not enough skin tag associated with the hair root,
23 hair follicle to be able to test to determine.

24 The state's theory of the injuries through Dr. Wren was
25 that Mr. Lammers was, John Lammers was, laying in bed and

Closing arguments

1 this person attacks him. Dr. Wren readily agreed that, oh, ()
2 yeah, it's definitely possible.

3 And then when asked if he was sitting in a chair, he
4 made an assumption. He assumed that when I asked if
5 somebody was sitting in a chair, that it was a high-back
6 chair, something like this. But if somebody were sitting in
7 it unless that person was leaning forward in that chair,
8 couldn't possibly have gotten the injuries because the back
9 basically covers up to the shoulder area which is where the
10 injuries are.

11 We get him a little more information, and it had been a
12 low-back chair, something similar to what y'all are sitting
13 in. People use is desk chairs, medium chairs. Oh, well,
14 yeah, that would have been possible. ()

15 An innocent question asked, could he have been sitting
16 in a chair. And an assumption was made based on an
17 experience, based on a thought process of what he thought I
18 was asking.

19 What's happened in this case? Assumptions are getting
20 made based on what people think had happened. People want
21 to make the evidence fit as opposed to what the evidence
22 really tells us, which is not enough.

23 There are no fingerprints that come back to Howard Lee
24 Sims. The state can try to explain away all they want to,
25 but the fact remains there are no fingerprints that come

Closing arguments

1 back to Howard Lee Sims.

2 The only prints found belonged to Mr. David Lammers.

3 You would expect his prints to be in there. The fact

4 remains fingerprints came back to John Lammers who also

5 lived there. No fingerprints came back to Mr. Sims.

6 No indication that the knife that was found, State's

7 Exhibit No. 11, that this knife that was found, no

8 indication that it was even fingerprinted. The one piece of

9 evidence that you would think you would attempt to

10 fingerprint would be the item that they want to try and

11 claim is the murder weapon. No attempt to fingerprint it.

12 John Ortuno took a swab from the blade and from the

13 handle to test for D. N. A., but no attempt to fingerprint

14 that. It's found in the home, in the bedroom, up against

15 the closet next to some magazines.

16 This is a person who supposedly came in through a

17 window into a bathroom, from the bathroom into the bedroom

18 and commits the attack on John Lammers with a knife that is

19 normally kept in the living room, this letter opener. It is

20 not out to see.

21 Do you really think that somebody came in through the

22 bathroom window, came through the bedroom, went down the

23 hall into the living room, found the knife, came back

24 through and then started the attack? Does that make sense

25 to you?

Closing arguments

1 There are no defensive wounds. Maybe because he was
2 taken by surprise. Maybe because he starts being attacked,
3 he wasn't surprised who was in there. We don't know. Those
4 are unanswered questions.

5 But the fact that those questions exist, ladies and
6 gentlemen, means that the state has not proven their case.
7 Supposition, speculation, conjecture.

8 The crime scene log is inaccurate. Investigator Guthro
9 told that yesterday. Investigator Coe-James tells us that
10 the reason why they do a crime scene log is so that they can
11 document because they know that in a case like this that
12 they need to be able to show the integrity of that crime
13 scene.

14 They need to be able to show to you, because shows like
15 "C. S. I." exist, ladies and gentlemen. Believe it or not,
16 our juries are more educated as to the possibilities that
17 exist in terms of forensic science than the actual
18 probabilities of us being able to produce what Hollywood
19 tells you they can.

20 And it's unfortunate because you don't get D. N. A. in
21 15 minutes like you do on "C. S. I." You aren't able to
22 determine from one hair the entire physics of what happens
23 in a crime scene. And I am not suggesting that to you.

24 What I am suggesting to you is that because we know
25 that a violent crime occurred in that home, that is all the

Closing arguments

1 more reason to ensure that you as an individual are coming
2 in and leaving out, that the person who is standing on the
3 side of the road keeping that log for 12 or 15 or 16 hours a
4 day, that you know that that road patrol officer is
5 reporting it accurately. It's not the road patrol's fault
6 that the crime scene log says he was at the scene until
7 9:30 one evening when he actually left and was gone by 7:45.

8 To tell you the circumstances, ladies and gentlemen,
9 leads to the only conclusion in this case, that a case built
10 on supposition, conjecture, speculation is not proof beyond
11 a reasonable doubt.

12 And as a result of your sworn duty, it's to hold the
13 state to their burden, and that's a hard thing to do. A man
14 is dead in Spartanburg County. That is an undeniable and a
15 horrible fact.

16 The easiest thing in the world to do would be to say
17 there are six spots of blood on clothing, that's it, that's
18 enough, we don't need any more. That's a real easy thing to
19 do. But we wouldn't have asked you to be here if it was
20 easy.

21 As an order of society the constitution asks and
22 requires us to do hard things. In this case it requires you
23 to find Howard Sims not guilty. And I ask you to do your
24 sworn duty, each and every one of you, to find him not
25 guilty. Thank you.

Jury charge

1 THE COURT: Does any juror need to take a break before ()
2 I begin the instruction on the law?

3 We have at least one. So let me ask you to go to your
4 jury room. And I'll back in just a few minutes to gave you
5 that instruction. Don't discuss the case.

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

8 THE COURT: We will be at ease for ten minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. Secure the back door. Bring
11 the jury in.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Mr. Foreman and ladies and gentlemen of
15 the jury, you of course have heard and seen all of the
16 evidence in the case. You've heard the final summations of
17 the lawyers.

18 And therefore it now becomes by duty and obligation to
19 instruct you on the law that's applicable in the case. And
20 then you will be asked to go back and begin with your
21 deliberations. And through that process you'll examine the
22 evidence, you'll decide the facts, apply the law and arrive
23 at a fair and just decision in the case.

24 It is your exclusive duty to determine what the facts
25 are. You do through your own common sense examination and

Jury charge

1 evaluation of all of the testimony and other evidence
2 received during the trial of this case.

3 You 12 jurors alone will decide what weight, value and
4 effect to give to any particular testimony or other evidence
5 in the case. Your sole objective is to simply reach the
6 truth in the matter, and by doing that you will have
7 fulfilled your obligations as jurors. And that is to simply
8 give both the state and the defendant a fair and impartial
9 trial.

10 Now, in this case, as you know, the state has charged
11 the defendant, Howard Lee Sims, with having committed two
12 separate crimes, although those crimes are alleged to have
13 arisen out of one particular event or course of events which
14 the state alleges occurred back on June the 1st of 2007 by
15 way of indictments. And I told you what the indictments
16 are. They're not evidence in the case. They simply set
17 forth the charge brought against the defendant.

18 And in this case the state has accused the defendant,
19 Howard Lee Sims, of having committed the crime of burglary
20 in the first degree and the crime of murder.

21 The state alleges that on June the 1st of 2007 Mr. Sims
22 did wilfully and intentionally enter a dwelling that
23 belonged to David Lammers and John Wayne Lammers, that he
24 entered that dwelling without consent and with the intent to
25 commit a crime therein.

Jury charge

1 Further, they allege in addition to those facts that he ()
2 did either enter the dwelling in the nighttime, or was armed
3 with a deadly weapon, or caused physical injury to a person,
4 or used or threatened the use of a dangerous instrument.
5 And they allege in this case that he did each of those
6 additional factors.

7 They also allege that he did wilfully and with malice
8 aforethought kill one John Wayne Lammers by stabbing him
9 with a knife and that John Wayne Lammers died as a proximate
10 result of those wounds.

11 Now, as to those allegations and as to the charges in
12 each of those indictments the defendant has entered a plea
13 of not guilty.

14 And, as I told you, that plea of not guilty therefore
15 has placed upon the state the burden of proving the
16 allegations that they have set forth in each of those
17 indictments, the burden of proving each of the essential
18 elements that make up the crimes of burglary in the first
19 degree and of murder; and therefore the burden is upon the
20 state to establish the defendant's guilt to the satisfaction
21 of you 12 jurors beyond a reasonable doubt before any
22 verdict of guilty could be returned as to either of the
23 indictments.

24 The burden is never upon a defendant or a person
25 accused of a crime to prove that they are not guilty or to

Jury charge

1 prove that they are innocent because in many cases that
2 would not be possible.

3 The burden is always upon the state in bringing a
4 charge against another to establish that person's guilt
5 beyond a reasonable doubt.

6 You are instructed that it is a vital, important and
7 cardinal rule of law that every defendant in a criminal
8 trial, and it doesn't matter how serious the offense might
9 be for which that person stands charged, that person shall
10 always be presumed innocent of that charge.

11 That presumption of innocence remains with every
12 defendant, as it does with this defendant, from the time
13 that he is placed under arrest and throughout the course of
14 the criminal process and even throughout the course of the
15 actual trial in the case.

16 As I told you, that presumption of innocence will be
17 with Mr. Sims even as you go back into your jury room to
18 begin with your deliberations in this case. And that
19 presumption of innocence will be with him in that jury room,
20 and it'll remain with him forever unless you 12 jurors
21 determine that he's no longer entitled to that presumption
22 of innocence.

23 That is after you've carefully considered all the
24 evidence in the case, and from that evidence you've decided
25 the facts, and after deciding the facts you apply the law as

Jury charge

1 I will have provided it to you, if you 12 jurors unanimously
2 determine that his guilt as to a charge has been proven
3 beyond a reasonable doubt, then he would no longer be
4 entitled to that presumption of innocence. But it's only
5 if, unless and until you are satisfied of his guilt beyond a
6 reasonable doubt that the defendant would no longer be
7 entitled to that presumption of innocence.

8 Now, while the state does have the burden of proving
9 the defendant's guilt to your satisfaction beyond a
10 reasonable doubt, that doesn't mean that the state has to
11 prove his guilt beyond all doubt or beyond any possible
12 doubt. But it does require the state to prove his guilt to
13 your satisfaction beyond a reasonable doubt.

14 The term reasonable doubt should be given its plain and
15 ordinary meaning. A reasonable doubt is the kind of doubt
16 that would cause a reasonable person to hesitate to act upon
17 the information provided. And a defendant is entitled to
18 any reasonable doubt that arises from the evidence or lack
19 of evidence in a case.

20 And if upon any factual issue essential to a finding of
21 a verdict of guilty you have some reasonable doubt as to how
22 that issue should be resolved, it would be your duty to
23 resolve that reasonable doubt in favor of the defendant.

24 And therefore if upon your consideration of the whole
25 case you have a reasonable doubt as to the defendant's guilt

Jury charge

1 as it relates to a particular indictment, it would be your
2 obligation and duty to resolve that reasonable doubt in his
3 favor and to return a verdict of not guilty.

4 And, on the other hand, after you have carefully
5 considered all the evidence in the case, and you've decided
6 the facts and applied the law, if you have no reasonable
7 doubt as to the defendant's guilt as it relates to a
8 particular indictment, then it would be your corresponding
9 duty to find him guilty of that offense and any offense that
10 you find has been proven beyond a reasonable doubt.

11 Now, the same law that provides that you are the judges
12 of the facts also provides that I am the judge of the law.
13 And that simply means that nobody is going to tell you how
14 to arrive at your determination of fact in this case.

15 You do that, as I've stated, through the exercise of
16 good judgment and common sense conscientiously applied to
17 the testimony and the evidence received during the trial of
18 the case.

19 You must however under your oath and obligation as a
20 juror accept the law as I provide it to you as being the law
21 that is applicable in this particular case. In other words,
22 you're not to concern yourself with what you thought the law
23 was before you came to serve as a juror this week or what
24 you think the law ought to be.

25 You must simply accept the law as I provide it to you

Jury charge

1 as being the law that you are to apply in this case. And ()
2 then you take that law and you apply it to the facts as you
3 12 jurors determine those facts to be based upon your own
4 common sense examination and evaluation of all of the
5 testimony and evidence received during the trial of the
6 case.

7 Now, as I've told you, you are the sole judges of the
8 facts in this case. And therefore you are necessarily the
9 sole judges of the credibility and the believability of each
10 witness that has testified during the trial of this case.

11 You 12 jurors alone will decide what weight, value and
12 effect to give to any particular witness' testimony, or even
13 a portion of testimony. And so there are a number of
14 factors which you should consider in arriving at your
15 assessment as to the credibility of a witness' testimony,
16 and I'm going to list those factors for you.

17 You are to consider the demeanor of the witness, that
18 is how the witness appeared to you when the testified from
19 the witness stand. Was the witness straightforward in
20 responding to questions, or was the witness hesitant or
21 evasive in responding to questions that were asked of that
22 particular witness?

23 Simply put, did the witness appear to you to be telling
24 the truth and to have knowledge of the facts to which that
25 witness has testified.

Jury charge

1 You may also consider whether or not the testimony of a
2 witness was consistent, or was it inconsistent with that
3 witness' own testimony or with other testimony or other
4 evidence received during the trial of the case?

5 You may also consider how the witness came to know the
6 facts to which a witness has testified. In other words,
7 what was the opportunity that a witness had to perceive the
8 existence of some fact to which they have testified by
9 having previously used their senses. And then what is their
10 ability to be able to come into court and to accurately
11 recollect to you as to what they have previously seen or
12 heard, or felt for that matter?

13 You may also consider any bias or prejudice or interest
14 that you find a witness might have in a case. In other
15 words, do you find some reason that a particular witness
16 would come into court and would testify one way or another
17 to help or to hurt one side or the other?

18 You may consider any interest that a witness might have
19 in the outcome of the case if you determine that a witness
20 does have such an interest and you find that that interest
21 would bear upon that particular witness' credibility.

22 You may also consider whether or not the testimony of a
23 witness is strengthened, or is it weakened by other
24 testimony or other evidence received during the trial of the
25 case?

Jury charge

1 Now, during the course of this trial you've heard a
2 witness or two that was qualified as an expert in a
3 particular field. Understand that not just any witness can
4 come into court and testify in an opinion form.

5 But a person who has been qualified by the Court as an
6 expert in a particular field, they may come into court.
7 They may testify as to the facts that relate to the matter.
8 And they may render opinions or conclusions based upon those
9 facts.

10 Ordinary lay witnesses are not permitted to do so.
11 They can only testify as to facts that they have perceived
12 by the use of their senses, and then they come into court
13 and they tell you what they previously saw or heard.

14 But where a witness has been qualified as an expert, as
15 I say, that witness may testify in an opinion form. But
16 understand that just because I qualify a witness as an
17 expert should not be taken by you as any indication by me as
18 to how you should consider that witness' testimony.

19 You must judge the credibility and the believability of
20 an expert witness just as you do any other witness. And you
21 may accept that testimony or reject it just as you may any
22 other witness' testimony.

23 Now, because you are the finders of the facts and you
24 are the judges of the credibility of each witness, you are
25 permitted to believe as much or as little of what a witness

Jury charge

1 has testified to as you deem is appropriate. And therefore
2 you may believe everything that a witness testified to; you
3 may choose to believe none of it. You may believe one
4 portion of a witness' testimony and reject some other
5 portion of that same witness' testimony.

6 And in a given case you can believe one witness as
7 opposed to several, or several as opposed to one. But
8 whatever your good judgment and common sense tells you is
9 the most believable and credible testimony is the testimony
10 you should accept. And you should reject any testimony that
11 you find not to be credible or believable.

12 Again, your sole objective is to simply reach the truth
13 in the matter. And by doing that you will have fulfilled
14 your obligations as jurors.

15 While there are various forms of evidence such as
16 testimony, photographs, documents, charts and other types of
17 physical exhibits, there are really only two types of
18 evidence. Either or both of those types of evidence may be
19 used to prove any fact in issue. But the two types of
20 evidence are direct evidence and circumstantial evidence.

21 Now, direct evidence is the testimony of a person who
22 testifies from actual knowledge of the fact. It is
23 testimony by a person who has perceived the existence of
24 some fact by means of his or her senses. And then they come
25 into court and they testify as to what they have previously

Jury charge

1 perceived.

2 Circumstantial evidence, on the other hand, is the
3 proof of some other fact or set of facts which taken either
4 singly or collectively may prove the existence of a fact in
5 question as a necessary consequence, that is by an
6 inference.

7 An inference is simply a deduction of fact that may
8 logically and reasonably be drawn from the proof of some
9 other fact or set of facts. It is a fact not proven by the
10 direct testimony of a witness based upon that witness'
11 personal perception. But it is a conclusion which might
12 reasonably be drawn from the proof of other facts.

13 In other words, you may infer that a particular event
14 occurred or that a particular fact exists based upon the
15 proof of sufficient factual circumstances which would
16 reasonably warrant your arriving at such a conclusion.

17 The law makes absolutely no distinction between the
18 weight or value to be given to either direct evidence, as
19 opposed to circumstantial evidence, nor is a greater degree
20 of certainty required of circumstantial evidence as opposed
21 to direct evidence.

22 Whatever the type of evidence used to prove any fact in
23 issue, you should consider all the evidence presented during
24 the trial of this case. And after carefully considering and
25 weighing all of that evidence in your minds if you are not

Jury charge

1 convinced of the guilt of the defendant as it relates to a
2 particular indictment beyond a reasonable doubt, then you
3 must resolve that doubt in his favor and return a verdict of
4 not guilty as to that particular charge.

5 Now, in this case, as you are aware, the state has
6 charged the defendant with two separate and distinct crimes.
7 Those crimes are burglary in the first degree and the crime
8 of murder.

9 I'm going to instruct you now on the law as it relates
10 to the crime of burglary in the first degree, after which I
11 will also instruct you on the law as it relates to the crime
12 known as murder.

13 Burglary in the first degree is a statutory offense, as
14 is the crime of murder. That just simply means that the
15 legislature has defined the crime by placing it in a code
16 provision in the code of laws.

17 These are those blue volumes you see. Every year the
18 legislature meets. They pass a number of rules and
19 regulations and statutes that govern our conduct in a number
20 of ways.

21 Some statutes that are passed are criminal in nature,
22 which just means that the legislature has defined a criminal
23 offense. And where a person is found to have violated that
24 statute by having engaged in conduct which is prohibited,
25 then it subjects that person to some form of punishment or

Jury charge

1 penalty.

2 But understand that you are never to be concerned with
3 punishment or penalty that may result from any action that
4 you take. Your sole obligation and duty in this case is
5 simply to determine whether or not the state has proven the
6 defendant to be guilty of a crime alleged beyond a
7 reasonable doubt. You're not to consider any potential
8 punishment for a person having been found guilty of a crime
9 that has been alleged against them.

10 In any event, the first offense charged is burglary in
11 the first degree. And there's a statute. That is Code
12 Section 16-11-311 which defines that crime.

13 And it provides that a person is guilty of burglary in
14 the first degree if a person enters a dwelling without
15 consent and with the intent to commit a crime therein, and
16 further that one or more of the following facts are proven:
17 That is when the burglary was committed the person was armed
18 with a deadly weapon, or caused physical injury to a person,
19 or used or threatened the use of a dangerous instrument, or
20 displayed what appeared to be a knife or firearm, or the
21 entering or the remaining, that is the burglary, occurred in
22 the nighttime.

23 Now, based upon that statute, before you could return a
24 verdict of guilty as to the crime of burglary in the first
25 degree it would be necessary that the state has established

Jury charge

1 to your satisfaction beyond a reasonable doubt the following
2 four essential elements which make up that crime.

3 Number one, the state has to prove that the defendant
4 entered a dwelling. Entry into a dwelling is an
5 indispensable element in the crime of burglary. And of
6 course entry is the act of going into the dwelling.

7 As stated, the entry must also be into a dwelling. And
8 a dwelling is defined in the law as a building or other
9 structure which is used or normally used for sleeping,
10 living or lodging by any person.

11 Secondly, there must be an entry of a dwelling without
12 consent. Entering without consent means to enter a dwelling
13 without the consent of the owner or other person otherwise
14 in lawful possession of the premises.

15 Thirdly, there must be an entry of a dwelling without
16 consent and with the intent to commit a crime therein.
17 There must be an intent to commit a crime, whether or not
18 the crime is actually committed, accomplished or completed.
19 But the mere entry of a dwelling without an intent to commit
20 a crime does not constitute the crime of burglary.

21 It is only when there is an entry of a dwelling without
22 consent and with the intent to commit a crime therein that
23 the crime of burglary is complete. And a crime of any grade
24 or severity is sufficient to satisfy this particular element
25 of burglary.

Jury charge

1 And the fourth element which is necessary to establish ()
2 the crime of burglary in the first degree is that when in
3 effecting entry or while in the dwelling or in immediate
4 flight therefrom the defendant was armed with a deadly
5 weapon, or caused physical injury to a person, or used or
6 threatened the use of a dangerous instrument, or displayed
7 what appeared to be a knife or a firearm, or the entering or
8 the remaining occurred in the nighttime.

9 Now, in this particular case the state is alleging that
10 the crime of burglary was committed by the defendant and
11 that he was armed with a deadly weapon, that he caused
12 physical injury to a person, that he used or threatened the
13 use of a dangerous instrument, that he displayed what
14 appeared to be a knife, and that he entered the dwelling in
15 the nighttime.

16 Now, while it is necessary for the state to prove one
17 of those additional facts beyond a reasonable doubt before
18 any burglary could be considered a burglary in the first
19 degree, it's not necessary that the state prove each of
20 those additional factors. The state must simply prove at
21 least one of those factors.

22 So in order for the defendant to be found guilty of
23 burglary in the first degree it would be necessary that the
24 state has proven to your satisfaction beyond a reasonable
25 doubt that the defendant entered a dwelling without consent

Jury charge

1 with an intent to commit a crime therein and that he was
2 either armed with a deadly weapon, or he caused injury to
3 another person, or he used or threatened the use of a
4 dangerous instrument, or he displayed what appeared to be a
5 knife, or the burglary occurred in the nighttime.

6 As you know, the defendant is also charged with having
7 committed the crime of murder. As I stated, murder is also
8 a statutory offense.

9 It is set forth in Section 16-3-10 of the code of laws.
10 And that particular code section provides that murder is
11 defined as the killing of any person with malice
12 aforethought either expressed or implied.

13 The terms expressed or implied refer to the element of
14 malice aforethought. So it is the killing of any person
15 with malice aforethought either expressed or implied.

16 Now, in order for you to find the defendant guilty of
17 the crime of murder it would be necessary that the evidence
18 in this case establishes to your satisfaction beyond a
19 reasonable doubt that the defendant, Howard Lee Sims, did
20 commit some act or acts which proximately caused the death
21 of John Wayne Lammers and that those acts or that killing
22 was done with malice aforethought. Malice aforethought is
23 an essential element of the crime of murder.

24 The term malice is defined as a term connoting an ill
25 will and having the intent to do harm. It is a technical

Jury charge

1 term importing wickedness and excluding just cause or legal
2 excuse. It is something which springs from depravity and
3 from a heart devoid of social duty and fatally bent on
4 mischief.

5 Malice may be likewise defined as a state of mind which
6 indicates a formed purpose and design to do a wrongful act
7 under circumstances that exclude any legal right to commit
8 that act or those acts.

9 The words expressed or implied malice do not mean
10 different kinds of malice but merely the manner in which
11 malice may be shown to have existed, that is to say by
12 either direct evidence or by circumstantial evidence from
13 which you may imply or infer the existence of malice.

14 Malice may be expressed as where there is an expressed
15 threat to kill or a lying in wait or where the circumstances
16 show directly that an intent to kill was entertained by the
17 defendant when the killing took place.

18 Malice may be inferred, though no expressed intent to
19 kill is proven by the evidence in the case, where the facts
20 and the circumstances which have been proven by the evidence
21 in this case satisfy you beyond a reasonable doubt that
22 malice was present in the mind of the defendant at the time
23 any killing took place.

24 The existence of malice may be inferred from the
25 circumstances shown to have existed at the time of the

Jury charge

1 event. And you are permitted to infer the existence of
2 malice if you determine it to be appropriate from proof of
3 an unlawful and an intentional killing of another person
4 without justification or legal excuse.

5 You may infer malice from proof of a wrongful intent to
6 injure another person, through the infliction of serious
7 bodily harm indicative of a wicked or a depraved spirit.

8 You are permitted to infer the existence of malice from
9 proof of the intentional use of a deadly weapon. You are
10 permitted to infer the existence of malice from proof of the
11 intentional commission of an act which is inherently
12 dangerous to human life.

13 You are also permitted to infer the existence of malice
14 from proof of the intentional killing of another person or
15 the intentional commission of criminal acts which result in
16 the death of another person during the commission of a
17 felony which is dangerous to human life or where the
18 circumstances of the crime create a substantial foreseeable
19 risk to human life. And the crime of burglary in the first
20 degree is a crime which is classified as a felony under the
21 law of this state.

22 You are also permitted to infer the existence of malice
23 from proof of the commission of reckless acts which are
24 inherently dangerous to human life and which are done so
25 recklessly as to manifest a depravity of mind signifying an

Jury charge

1 extreme disregard for or an extreme indifference to human
2 life.

3 Malice as an essential element of the crime of murder
4 does not necessarily mean an actual or a specific intent to
5 take human life, even though that might be proven in a given
6 case. But what it does mean is rather a state of mind
7 signifying a general malignant recklessness and extreme
8 disregard for or indifference to human life.

9 Now, even if the facts proven are sufficient to give
10 rise to an inference of malice under the law, such an
11 inference is simply an evidentiary fact to be taken into
12 consideration by you 12 jurors along with all of the other
13 evidence in the case. And you shall give such weight to
14 those inferences -- the weight that you determine they
15 should receive, if any.

16 In other words, you are permitted to infer the
17 existence of malice from proof of any one or more of those
18 circumstances that I have just described to you, as well as
19 from any other evidence received in the case reasonably
20 tending to prove that fact. But you are in no way required
21 to do so.

22 The state is required to prove malice just as it must
23 prove any other essential element of the crime of murder.
24 And it is for you 12 jurors to determine whether or not the
25 evidence in this case establishes malice beyond a reasonable

Jury charge

1 doubt.

2 You must determine whether or not malice existed based
3 upon your consideration of all of the evidence introduced
4 during the trial of this case and any reasonable inferences
5 that might be drawn from that evidence.

6 It is also essential that there exist not only malice,
7 but it must be malice aforethought.

8 The law does not require that malice must exist for any
9 appreciable length of time before the commission of an act
10 proximately causing a fatal result. Indeed, it may be
11 conceived at the very moment that the fatal act or acts is
12 or are committed.

13 It is sufficient in the law so long as the state proves
14 beyond a reasonable doubt both the existence of malice and
15 the commission of an act or acts by the defendant which
16 proximately caused the fatal result.

17 While the state must prove beyond a reasonable doubt
18 that a killing did occur accompanied by the element of
19 malice aforethought in order for the crime of murder to be
20 established, it is not necessary that the state prove any
21 motive for such a killing, although there may be evidence
22 relating to such a fact introduced during the trial of the
23 case.

24 As I have previously told you, the state has the burden
25 of proving each essential element of any crime alleged

Jury charge

1 against the defendant beyond a reasonable doubt. And
2 therefore in this case not only must the state prove beyond
3 a reasonable doubt that the crime of burglary in the first
4 degree and the crime of murder were committed by someone.
5 The state must further prove beyond a reasonable doubt that
6 it was, in fact, the defendant, Howard Lee Sims, that did
7 commit those crimes and that he was the perpetrator of those
8 offenses and it was not someone else.

9 If, after a careful consideration and an examination of
10 all of the evidence received during the trial of this case
11 relating to the issue of the identification of the defendant
12 as the perpetrator of any crime alleged against him or
13 proven to have been committed by someone, where you have a
14 reasonable doubt as to the accuracy of the identification of
15 the defendant as the perpetrator of any particular offense
16 alleged, then you must resolve that reasonable doubt in his
17 favor and return a verdict of not guilty.

18 You are further instructed, and I emphasize to you,
19 that the fact that a defendant does not take the witness
20 stand and testify during the trial of a criminal case is not
21 a factor which may be considered by you jurors during your
22 deliberations nor in your determination as to whether or not
23 his guilt has been proven beyond a reasonable doubt.

24 You may not permit such a fact to weigh in the
25 slightest degree against a defendant. As I have stated, the

Jury charge

1 burden is always upon the state to prove a defendant guilty
2 beyond a reasonable doubt because they have brought the
3 charge. They bear the burden of proof.

4 Therefore you are never to draw any inference nor reach
5 any conclusion from the fact that a defendant does not
6 testify during the trial of a case, nor may that fact be
7 considered by you in any fashion or even discussed by you
8 while you are engaged in your deliberations in this case.

9 Now, Mr. Foreman and ladies and gentlemen of the jury,
10 I am not in any way concerned with what your decision is,
11 but I do tell you that your verdict or verdicts in this case
12 must be unanimous. All 12 of you must be in agreement
13 before any decision may be returned to the Court.

14 Mr. Foreman, as you know, you're going to be called
15 upon to preside over the deliberations in the jury room
16 simply to ensure that those deliberations are carried out in
17 some orderly fashion.

18 But all jurors are expected to participate in those
19 deliberations, because, as I have stated, the verdict of a
20 jury is the unanimous consensus opinion of all 12 jurors.
21 And so all of you will have an equal vote and voice in the
22 ultimate decision, but any decision must be unanimous. All
23 12 must be in agreement.

24 As you go back to deliberate, you can deliberate
25 however you see fit. But you do have two charges. You will

Jury charge

1 be rendering two separate and distinct verdicts. ()

2 Those verdicts may be the same; they may be different.
3 That will depend upon your determination of fact and then
4 your application of the law as it relates to the particular
5 crime charged.

6 With respect to the indictment for burglary in the
7 first degree, if the state has proven to your satisfaction
8 beyond a reasonable doubt that the defendant, Howard Lee
9 Sims, did enter a dwelling of another without consent and
10 with the intent to commit a crime therein, and he did that
11 either in the nighttime or while armed with a deadly weapon
12 or caused physical injury to another person or used or
13 threatened the use of a dangerous instrument or displayed
14 what appeared to be a knife, then under those circumstances
15 your verdict would be guilty.

16 If the state has failed to prove any one or more of
17 those essential elements of the crime or failed to prove
18 that if the crime was proven, they failed to establish that
19 Howard Lee Sims is the person who committed the crime, then
20 in that event your verdict form would be not guilty. So
21 guilty or not guilty, those are the two verdict forms.

22 Mr. Foreman, I'll ask you to indicate that decision on
23 the back of the indictment. You'll see in the lower
24 left-hand corner of each indictment the word verdict. And
25 it's beneath that word that you'll indicate the jury's

Jury charge

1 unanimous decision. Sign your name as the foreperson, place
2 the appropriate date on the verdict. And then we'll bring
3 you back if you've concluded your deliberations.

4 You also have an additional indictment that is charging
5 the crime of murder. Again, if the state has proven beyond
6 a reasonable doubt that the defendant, Howard Lee Sims, did
7 wilfully and with malice aforethought kill John Wayne
8 Lammers, then in that event your verdict would be guilty.

9 If the state has failed to prove any one or more of the
10 essential elements as I have instructed you, then your
11 verdict in that case would be not guilty.

12 So, again, the two verdict forms are guilty or not
13 guilty. Whatever that decision is, indicate it in the
14 space, again, provided underneath the word verdict. Sign
15 your name as the foreperson and place the appropriate date
16 on the indictment.

17 Once you have arrived at your decisions, if you'll
18 knock on the door and let the bailiff know you have reached
19 your decision in each case, then we'll bring you back to
20 receive those verdicts.

21 Now, during deliberations -- I don't know if we have
22 any smokers on the jury. But if we do, you can smoke during
23 deliberations. But you cannot smoke in the jury room. So
24 if anybody wants to smoke, you have to go outside in order
25 to accomplish that purpose.

Jury charge

1 You are instructed however that if any juror is absent
2 from the jury room for any authorized purpose the
3 deliberations have to stop. And they may only resume when
4 all 12 jurors are present so that all may participate.

5 I don't know if your lunch is here yet, but it'll be
6 here shortly if it's not. And I'll leave it up to you.

7 You can deliberate while you eat, or you can just eat
8 and deliberate afterwards, whatever suits you. I'll leave
9 that up to you.

10 During the course of your deliberations if you ever
11 have a question about the evidence in the case, I am never
12 permitted to respond to questions that relate to issues of
13 fact.

14 And so if during your deliberations you wonder if
15 there's some other evidence that could be submitted to you
16 or brought to you or some other evidence exists that you
17 might be able to consider, understand that all of the
18 evidence that you are going to receive in this case has
19 already been received.

20 Even if some other piece of evidence did exist that you
21 think you would like to have or that you think you need,
22 even if it did exist you couldn't have it now because you're
23 going back to begin deliberations.

24 So whether or not other evidence exists, I can't
25 respond to it. But even if it did, you can't have it. All

Jury charge

1 of the evidence you are going to receive has already been
2 received.

3 If however during your deliberations you have a
4 question about testimony that has been received during the
5 trial, we do not have transcripts of witnesses' testimony.
6 But if you think, if you have a question and you think, that
7 that question can be answered by having testimony replayed,
8 then we can bring you back into the courtroom for the
9 purpose of replaying testimony. And we can do that for any
10 witness, and we can do it in its entirety or do it only in
11 part. That just depends on what you need to hear.

12 So I can't address any issues of fact as they relate to
13 the evidence in the case. You are not permitted to have any
14 additional evidence. But if you have a question that can be
15 answered by having testimony replayed, you are permitted to
16 have testimony reheard. But we have to bring you back into
17 the courtroom to accomplish that.

18 If during your deliberations you ever have a question
19 about the law that is applicable, I can answer those
20 questions. I can always provide you an additional
21 explanation of the law or provide you with a clarification
22 of the law should you need such additional explanation or
23 clarification.

24 If at any time, Mr. Foreman, you have a question or an
25 issue that you need to address to me, if you'll simply write

Jury charge

1 it on a piece of paper, give it to the bailiff, he'll
2 provide it to me. And I'll respond to those issues or
3 questions as the need may arise.

4 I think that covers everything. So I'm going to ask
5 the 12 primary jurors, and, Ms. Huitt, I'll ask you to stay
6 with me. I'll ask the 12 primary jurors to please retire to
7 your jury room.

8 But do not begin your deliberations yet. I've got some
9 matters I'll need to address with the lawyers. If I don't
10 need to bring you back for any reason, I'll send word by way
11 of the bailiff that you may begin with your deliberations.

12 In that event he'll bring to the jury room all of the
13 exhibits which have been introduced.

14 And to you, Mr. Foreman, he's also bring the
15 indictments which will serve as the verdict form.

16 So please retire to your jury room. But await my
17 instruction as to when to begin deliberations.

18 (Whereupon, the jury retired to deliberate at
19 11:44 a.m.)

20 (Whereupon, the alternate juror was excused.)

21 THE COURT: Are there any exceptions taken to the
22 instruction or requests for additions to the instruction by
23 the state?

24 MR. BARNETTE: None from the state, Your Honor.

25 THE COURT: By the defendant?

Jury charge

1 MS. HODGES: Your Honor, we would launch an exception
2 to your instructions regarding our previous request for
3 mere presence.

4 THE COURT: Okay. Note your exception.

5 Let me ask y'all to verify the exhibits before they go
6 back.

7 (Pause.)

8 THE COURT: All right. All of the exhibits were
9 accounted for?

10 MR. BARNETTE: Yes, sir.

11 MS. HODGES: Yes, sir, Your Honor.

12 THE COURT: All right. The jury can begin their
13 deliberations. We'll be at ease while they do so.

14 (Whereupon, a recess was taken.)

15 THE COURT: The 9-1-1 call is played from that
16 computer?

17 MR. BARNETTE: Yes, sir.

18 THE COURT: Where is the speaker?

19 MR. BARNETTE: Right there it is.

20 THE COURT: Let me hear what -- I want to be sure they
21 can all hear. We might need to put it in the middle or
22 something.

23 (Whereupon, a portion of the 9-1-1 call was played for
24 the Court.)

25 THE COURT: That's fine.

Jury charge

1 Okay. Bring the jury in. ()

2 (Whereupon, the jury returned to the courtroom at
3 1:38 p.m.)

4 THE COURT: Mr. Foreman, I have your note. I
5 understand you and your fellow jurors would like to rehear
6 the 9-1-1 call.

7 THE FOREMAN: Right.

8 THE COURT: And you'd also like to have replayed the
9 testimony of David Lammers.

10 THE FOREMAN: Yes, sir.

11 THE COURT: Okay. We'll play the 9-1-1 call first.
12 The speaker is on the end of that jury box. If for some
13 reason those on this end can't hear -- I think you'll be
14 able to. But if you can't, raise your hand and let me
15 know.

16 After we play that call, we'll replay the testimony.
17 Okay.

18 (Whereupon, State's Exhibit No. 79 was replayed for the
19 jury.)

20 (Whereupon, the testimony of David Lammers was played
21 for the jury.)

22 THE COURT: Okay. That's it. If you will, please
23 retire to your jury room and continue with your
24 deliberations.

25 (Whereupon, the jury retired to deliberate at

Verdict

1 2:25 p.m.)

2 (Question from the jury marked Court's Exhibit No. 8.)

3 THE COURT: We will continue to be at ease while the
4 jury is deliberating.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. I understand the jury has
7 reached a decision. Are we ready to receive the verdict?

8 MR. BARNETTE: The state is ready, Your Honor.

9 MS. HODGES: The defense is ready, Your Honor.

10 THE COURT: Okay. Bring them in.

11 (Whereupon, the jury returned to the courtroom at
12 3:00 p.m.)

13 THE COURT: Mr. Foreman, have you and your fellow
14 jurors reached a unanimous decision as to each of the
15 separate indictments?

16 THE FOREMAN: Yes, sir, we have.

17 THE COURT: Have you indicated those decisions on the
18 back of the indictments as requested?

19 THE FOREMAN: Yes, sir, I have.

20 THE COURT: Have you signed your name as the
21 foreperson and dated it?

22 THE FOREMAN: Yes, sir.

23 THE COURT: All right. If you will, please hand those
24 verdict forms up by way of the bailiff.

25 You may publish the verdicts.

Verdict

1 THE CLERK: In the State of South Carolina, County of
2 Spartanburg, in the Court of General Sessions, the State
3 vs. Howard Lee Sims, Indictment No. 2008-GS-42-3750,
4 indicted for burglary first, the jury has reached a verdict
5 of guilty. Signed by the foreperson the 17th day of July,
6 2008.

7 Indictment No. 2007-GS-42-5920, the State of South
8 Carolina vs. Howard Lee Sims, indicted for murder, the jury
9 has reached a decision with a verdict of guilty. Signed by
10 the foreperson. This is the 17th day of July of 2008.

11 Ladies and gentlemen of the jury, is this your verdict
12 and still your verdict? If so, please raise your right
13 hand.

14 (Whereupon, all responded in the affirmative.)

15 THE CLERK: So say you all.

16 THE COURT: Does the defendant wish to have the jury
17 polled?

18 MS. HODGES: Yes, sir, Your Honor.

19 THE COURT: All right. Poll the jury, please, ma'am.

20 THE CLERK: Ladies and gentlemen of the jury, at this
21 time I will pose a question to you, after which I will call
22 your name and juror number.

23 Will you please stand and give your response to my
24 question, the question being is this your verdict and still
25 your verdict.

Verdict

1 Juror No. 21, Paul Boover, is this your verdict and
2 still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: No. 148, Marty Shelton.

5 THE JUROR: Yes, it is.

6 THE CLERK: No. 170, Dewey Welchel.

7 THE JUROR: Yes.

8 THE CLERK: No. 28, Heather Calvert.

9 THE JUROR: Yes.

10 THE CLERK: No. 175, Larry Williams.

11 THE JUROR: Yes.

12 THE CLERK: No. 180, Christopher Xavier.

13 THE JUROR: Yes.

14 THE CLERK: No. 52, Glen Eudy.

15 THE JUROR: Yes.

16 THE CLERK: No. 47, I am sorry, No. 155, Amanda

17 Sosbee.

18 THE JUROR: Yes.

19 THE CLERK: No. 8, Kayla Baker.

20 THE JUROR: Yes.

21 THE CLERK: No. 53, Laura Ford.

22 THE JUROR: Yes.

23 THE CLERK: No. 171, Ellen Westmore, Wetmore. I'm

24 sorry.

25 THE JUROR: Yes.

Motion and sentence

1 THE CLERK: No. 164, Richard Turner.

2 THE JUROR: Yes.

3 THE COURT: All right. Any other matters to be
4 addressed with the jury present?

5 MR. BARNETTE: None from the state, Your Honor.

6 MS. HODGES: None from the defense, Your Honor.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: Any matters to address prior to the
9 imposition of sentence?

10 MS. HODGES: Your Honor, we'd at this time make a
11 motion for a new trial based upon the objections we made
12 prior to trial, the objections that we've made during trial
13 and the evidence that the Court has heard.

14 We also make a motion on the fact that the evidence
15 heard by the jury, despite their decision, was not
16 sufficient to render a verdict of guilty in this case on
17 either of these charges.

18 THE COURT: All right. That motion is denied.
19 Anything else?

20 MS. HODGES: No, sir.

21 MR. BARNETTE: Your Honor, I need to hand some
22 sentencing sheets to Ms. Hodges.

23 Can we speak to the family for one second, Your Honor?

24 THE COURT: Okay.

25 (Pause.)

Sentence

1 THE COURT: Ms. Hodges, did you ask Mr. Sims to sign a
2 sentencing sheet?

3 MS. HODGES: I did, Your Honor.

4 THE COURT: He refuses?

5 MS. HODGES: Yes, sir.

6 THE COURT: Okay. Anything further from the state?

7 MR. BARNETTE: No, sir. Well, I talked to the family,
8 Your Honor. They appreciated the Court's patience and are
9 just glad that justice has come in this case for what
10 happened to John Lammers in this case.

11 His prior record, Your Honor. In 1990 he had assault
12 and battery; 1991, he was convicted of armed robbery; 1991,
13 also assault and battery of a high and aggravated nature;
14 2006, he was convicted of shoplifting. His parole was
15 revoked in 2006, I assume, on the armed robbery before. And
16 then he was convicted of aggravated assault and battery in
17 2007.

18 THE COURT: Okay. Ms. Hodges, do you and your client
19 agree with the solicitor's recitation of his criminal
20 record?

21 MS. HODGES: Your Honor, Mr. Sims denies being
22 convicted of the aggravated assault and battery in 2007.
23 It shows that he was received in custody from my looking at
24 the rap sheet for that charge. But I don't think that was
25 an additional conviction. I don't see the additional

Sentence

1 conviction. I just show that he was actually received in
2 the Department of Corrections. I think that was from a
3 prior probation violation.

4 MR. BARNETTE: And, Your Honor, it does show he was
5 received in that case. It may have been the previous ABHAN
6 which he was convicted of.

7 THE COURT: Okay.

8 MS. HODGES: I think that looks like that was from the
9 1991 ABHAN, Your Honor.

10 THE COURT: All right. Ms. Hodges, I'll hear from you
11 and Mr. Sims.

12 MS. HODGES: Thank you, Your Honor. May it please the
13 Court.

14 Mr. Sims is 34, well, actually 35.

15 THE COURT: Thirty-five. He's 35.

16 MS. HODGES: My math, he's actually 35 years of age,
17 Your Honor.

18 He is -- the Court's heard the evidence in this case
19 and the motions.

20 We would -- I think the Court knows has not been made a
21 record in the case (sic). This was a situation where an
22 arrest was not immediately made on these charges due to the
23 amount of evidence that was available at the time that
24 Mr. Sims first became a suspect in this case.

25 We would ask the Court to be as lenient as possible on

Sentence

1 Mr. Sims at this point in sentencing in this matter.

2 THE COURT: All right. Mr. Sims, anything you want to
3 add to what your lawyer has just told me?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. On Indictment 2007-5920, an
6 indictment for murder, wherein you have been found guilty
7 by the jury, Sentence of the Court is you, Howard Lee Sims,
8 be confined to the South Carolina Department of Corrections
9 for the period of your natural life.

10 Indictment 2008-3750, an indictment for burglary in the
11 first degree, wherein you have also been found guilty by a
12 jury of that offense, the Sentence of the Court is you be
13 confined to the South Carolina Department of Corrections for
14 the period of your natural life.

15 Now, Mr. Sims, you have a right to appeal the decision
16 of the jury and the Sentence of the Court. You must file
17 any notice of your intention to appeal those decisions
18 within ten days of today's date. Your lawyer will discuss
19 that with you.

20 All right. Anything else?

21 MS. HODGES: No, sir.

22 THE COURT: All right. Court is in recess.

23 END OF REQUESTED TRANSCRIPT OF RECORD

24

25

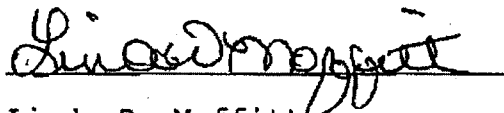
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15th, 16th and 17th days of July 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 22, 2009



Linda D. Moffitt
Circuit Court Reporter

FORM 5

2012-CP-42-4121

STATE OF SOUTH CAROLINA)

COUNTY OF)

Spartanburg SC.)

IN THE COURT OF COMMON PLEAS

Howard Lee Sims Jr #213525)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Spartanburg County Detention Center
2. Name and location of Court which imposed sentence Spartanburg County Court House 100 N. Main St.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (Dwelling) 08-GS-42-3750
 (a) Burglary, First Degree
 (b) Murder 07-GS-42-5920
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) July 17, 2008 life without Parole - Murder
 (b) July 17, 2008 life without Parole - Burglary First Degree (Dwelling)

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 2, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to each results:
- i. Unpublished Opinion No. 2012-up-266
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) INEFFECTIVE ASSISTANT COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) LAWYER failed to object to testimony BY OFFICER saying HE was Already familiar with
APPLICANT TRANSCRIPT Pg. 264 Lines 13-14
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? S.C. Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. South Carolina Court of Appeals
- ii. Appellate Division
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. Post Office Box 11629
- iii. Columbia S.C. 29211
- iv. _____
- (c) the disposition thereof:
- i. Dismissed
- ii. _____
- iii. _____

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- iv. _____
- (d) the date of each such disposition:
- i. Submitted April 2, 2012
- ii. Filed May 2, 2012
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Unpublished Opinion No. 2012-UP-256
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. N/A
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. N/A
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) N/A
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? ~~yes~~ No
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes, dismissed
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Kathy Hodges Spartanburg S.C.
- ii. Public Defender Office
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. ~~Spartanburg County Court~~ Spartanburg County Courthouse
- ii. South Carolina Court of Appeals
- iii. _____
19. State clearly the relief you seek in filing this application:
- REVERSE AND REMITTED
20. Are you now under sentence from any other court that you have not challenged?
- No

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STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Howard L. Ginn

SWORN to and subscribed before me this 9
day of Aug, 2012

Debra Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Howard Lee Sims
Applicant

SWORN or affirmed to and subscribed before me this

9 day of Aug, 2012.

Debra Sims
Notary Public

My Commission Expires: 11-4-2015

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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4121
Howard Lee Sims, Jr., #213525,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed October 2, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the November 2007 term of the Spartanburg County Grand Jury for murder (2007-GS-42-5920). Applicant was also indicted at the July 2008 term of the Spartanburg Grand Jury for burglary, first degree (dwelling) (2008-GS-42-3750). Applicant was represented by Kathleen J. Hodges, Esquire. On July 15-17, 2008, Applicant proceeded to a jury trial, where the jury found Applicant guilty as indicted. Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of life for murder and life for burglary, with the sentences to be served concurrently.

A timely Notice of Appeal was filed on the Applicant's behalf by Joseph L. Savitz, III, Esquire, and an appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State

v. Sims, No. 2012-UP-256 (Ct. App. May 2, 2012). The Remittitur was sent down on May 18, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to object to testimony of Officer.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH CIRCUIT

2012-CP-41-21

HOWARD LEE SIMS, JR. # 213525

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

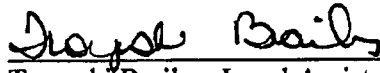
STATE OF SOUTH CAROLINA,

Respondent

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Brandt Rucker, Esq.
522 North Church St.
Greenville, SC 29601

DATED this 8th day of January, 2014


Troyeshi Brailey, Legal Assistant
For Respondent

Howard L. Sims #213525
 LEE CORR. INST. DET. SOUTH #2235
 990 WISACKY HWY.
 BISHOPVILLE, SC 29010

Dear Ms. Blackley,

I'm writing to ask if you would file this
 Amendment in your office and send one copy to the
 side attorney below and one copy back to me for
 my file. Thank you for all your help with this matter.

Aug; 28, 2014.

ATTORNEY
 MR. BRANDT RUCKER, Esq.
 522 North Church Street
 GREENVILLE, S.C. 29601

CC: FILE
 H.L.S.

Mr. Brandt Rucker Esq.

Respectfully Submitted

s/ Howard L. Sims

Howard L. Sims #213525
 LEE CORR. INST. DET. SOUTH
 990 WISACKY HWY. #2235
 BISHOPVILLE, S.C. 29010

RECEIVED
 2014 SEP -2 PM 4:00
 M. HOPE BLACKLEY

Howard Sims #213525
 Lee Cozz. Inst, Darlington South #2235
 990 Wisk Ky Hwy
 Bishopville S.C. 29010

Aug. 28, 2014

RE: LEGAL ISSUE

MR. BRANDT RUCKER:

I RECEIVED YOUR LETTER TALKING ABOUT THE
 DATES OF MY HEARING. I'd LIKE TO GO OVER THE ISSUES YOU
 HAVE BEFORE WE GO TO COURT SO WE WILL BE ON THE SAME PAGE.
 HERE ARE THE ISSUES AND I'd LIKE TO AMEND TO THE P.C.R.
 I LOOK FOR ASSISTANCE WITH THESE ISSUES OF OURS.
 I WILL BE LOOKING FOR A SUMMARIZED (SCOPE) ON YOUR ISSUES.

Sincerely
~~Howard Sims Jr.~~
 Howard Sims JR #213525

CLERK OF COURT
 2014 SEP -2 PM 4:00
 M. HOPE BLACKLEY

State of South Carolina
County of Spartanburg

IN THE COURT OF COMMON PLEAS
of Spartanburg County

HOWARD LEE SIMS JR.
V.

AMENDMENT TO ORIGINAL
POST CONVICTION CLAIM

State of South Carolina

CASE No: 2012-CP-42-4121

Application Contains in His Claim 10.(A) AND SO ON IN POST-CONVICTION APPLICATION OF INEFFECTIVE ASSISTANCE OF COUNSEL WITH MODIFICATION AND ADDITIONAL CLAIMS; TO ORIGINAL POST-CONVICTION APPLICATION.

Application HERE BY MOVES TO AMEND
His Post-Conviction Application

THE APPLICANT, THROUGH HIS UNDERSIGNED ATTORNEY RESPECTFULLY REQUESTS HIS ATTORNEY TO AMEND HIS APPLICATION FOR POST-CONVICTION RELIEF.

STATEMENT OF ISSUES

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY ALLOWING AN INVESTIGATOR TO TESTIFY THAT "[HE] WAS ALREADY FAMILIAR WITH [MR. SIMS] BEING AN INVESTIGATOR IN THAT AREA". AS THIS TESTIMONY TENDED TO PLACE MR. SIMS IN ISSUE, CHARACTER IN ISSUE, IN VIOLATION OF RULE 404, SCRE THE STATES COURT'S AS WELL AS FEDERAL COURT'S ARE OBLIGATED TO ENFORCE FEDERAL LAW ON THIS ISSUE. THE EXHAUSTION REQUIREMENT THAT WHEN A PRISONER ALLEGES THAT HIS CONTINUED CONFINEMENT FOR A STATE COURT CONVICTION VIOLATED FEDERAL LAW. THE STATE COURT MUST HAVE THE FIRST

IDE 12

OPPORTUNITY TO REVIEW THIS CLAIM AND PROVIDE ANY NECESSARY RELIEF. E.g. ROSE V. LINDY, 455 U.S. 509, 515-16, 102 S.Ct. 1198, 71 L.Ed 379 (1982). Furthermore, the exhaustion doctrine is satisfied even if the State Court does not fully consider the claim. AS LONG AS it had a fair opportunity to do so because it was reasonable informed of the nature of the claim. SEE Anderson v. Harless 459 U.S. 4. (1982) (PERCURIAN); SEE ALSO PICKED V. CONNOR 404 U.S. 270, 275-76 (1971) (discussing the doctrine of the exhaustion); Wise v. Warden, 839 F.2d 1030, 1033 (4th Cir. 1981). (App the Exhaustion doctrine). IN GENERAL, THIS RELEVANT FACTS AND LAWS MUST BE APPRISED THE CLAIM RESTS, IN WHOLE OR IN PART ON THE FEDERAL CONSTITUTION TO: Thus for PENDING PURPOSES, Counsel should ensure that all the ground for Post Conviction Relief fairly inform the Court of the relevant facts, and the claims Federal Constitution basis. For the same and other similar reasons Counsel should make certain to PLEA SUBSTANTIVE. [AND]...

* **TWO**; INEFFECTIVE ASSISTANCE OF COUNSEL GROUNDS FOR UNOBTAINED AND OBJECTED TRIAL ERROR TO PROPERLY PRESERVE THE CLAIM FOR AN APPELLATE REVIEW

IN CAPITAL AND NON CAPITAL CASES. IN RULE 404 SCRE PROVIDES THAT CHARACTER EVIDENCE IS GENERALLY INADMISSIBLE ESPECIALLY "[E]VIDENCE OF OTHER CRIMES, WRONGS, OR ACTS". SEE ALSO STATE V. LYLE, 125 S.C. 406, 119 S.E.2d 903 (1923).

Counsel was INEFFECTIVE FOR NOT OBJECTING THE TRIAL JUDGE ERROR BY ALLOWING THIS TESTIMONY OF INVESTIGATOR RICKY STURGEON AS WHEN HE SAID "I WAS ALWAYS FAMILIAR WITH HIM,

being an investigator in that area. ZDA P. 264 line 16 also see ZDA P. 264 lines 7-18. This statement along with others is reversible error by allowing an investigator to testify that "[he] was already familiar with [Mr. Sims] as this testimony along tended to place Sims character at issue, in violation of Rule 404, SCRE.

The defense counsel was so constitutionally ineffective it along violated Mr. Sims rights to effective assistance of counsel guaranteed by the 6th and 14th Amendment to the U.S. Constitution and by Article 13 and 14 of the South Carolina Constitution.

Rule 404 provides that the character evidence is generally inadmissible especially "[e]vidence of other crimes, wrongs, or acts." See also State v. Lyle in 125 S.C. 406, 118 S.E.2d 803 (1973). Unlike the situation in State v. Thompson 352 S.C. 552, 575 S.E. 2d 777 (Ct. App. 2003), and the cases cited therein. The investigators testimony in this case plainly implied that Mr. Sims was a known Police character in this issue, in violation of Rule 404 SCRE. Nevertheless, since defense counsel did not object to the testimony. The court may hold that this issue is barred procedurally on a direct appeal and should be raised in a post-conviction relief application instead. See for example State v. Haselden 353 S.C. 190, 577 S.E. 2d 445 (2003). If not the court should reverse Mr. Sims conviction for murder and first degree burglary and remand for a new trial. As it is clear under circumstances such as, are disclosed by the record here; and it's power to do so, even in the

absence of a statute cannot be questioned. Attorneys are officers of the court and are bound to render service when required by such an appointment. See Coley, Constitutional Limitations SUPRA 700 AND NOTE. THE Amendment makes the Procedural Bar Found therein Mandatory rather than discretionary, unless the Applicant can be established. Good cause to that failure to consider the claim will result in a Fundamental Miscarriage of Justice Whereby defendant claiming Ineffective Assistance of Counsel SEE McCoy v. State, (Opinion 27214, Feb 2013) The South Carolina Supreme Court reversed and remanded for a hearing.

IN Addition to providing a necessary safeguard for a defendant a Plain Error Rule also conserves scarce Judicial Resources. For example Maryland recognizes that the scope of Appellate Court review includes the right to decide an unpreserved issue if necessary or desirable to guide the Trial Court or to avoid the expense and delay of another appeal. M.D.R. App P. 8-131(a), without considering the costs of continued, time-consuming litigation, the effect of [State v. Torrence, 305 S.C. 45, 69, 406 SE2d 315, 328 (1991)] has been to disregard all unpreserved errors and channel any claims based on those errors into Post Conviction Proceedings. Given these demands, it should come as no surprise that even experienced Non-Capital or Capital litigators will make glaring and prejudicial mistakes.

"Most lawyers or pro-se defendants assigned
4 of 12

to cases or have to do there own case" In South Carolina, ARE far from "Experienced Litigators." Thus EXACERBATING the risk of fundamental, Prejudicial error.

A defendant should not have to shoulder the burden of a major lapse on the part of counsel requiring the defendant to bear this risk accords insufficient weight to the defendant's interest in a Fair Trial (SEE)

Bailey v. State, 309 S.C. 455, 463, 424 S.E. 2d 503, 508 (1992)

The Court recognized that Attorneys labor under tremendous stress due to both the nature of the proceedings and their knowledge that performance will be scrutinized carefully in Post-Conviction Proceedings and their knowledge unbarring contemporaneous objection Rule only intensifies these problems and makes it more difficult to recruit able and experienced Capital and Non-Capital Trial Attorneys

Therefore, South Carolina should join the courts of other Jurisdictions and allow review of plain errors in spite of failures by overburdened Capital or NonCapital Counsels to raise Contemporaneous objections at trial.

Other State Courts have recognized the importance of Plain Error in assuring substantial Justice, see e.g. McMillan v. State, 594 S.O.2d 1253, 1262 (Ala. Crim App. (1991)). (Noting that the "[Plain Error] rule requires that we notice any plain error or defect in the proceedings under review, whether or not brought to the attention of the courts, and take appropriate action. When such error has or probably has adversely affected the substantial rights of the Appellant"); Couner v. State, 303 S.E.2d 266, 276-77 (Ga. 1983). (conducting a "Review of the Record... [to] conclude that the sentence was not imposed under the influence of passion, prejudice or other arbitrary factor"). State v. Fox 760 P.2d 670, 675 (Haw. 1988) "Where plain errors were committed and substantial rights were affected thereby, the errors may be noticed although they were not brought to the attention of the [Trial] Court" quoting Haw. R. Penal P. 52 (b); People v. Robinson, 178 N.W.2d 804, 807 (Mich. Ct. App. 1970) (Noting that the Plain Error rule "requires an appellate court to review the whole case and in context with that review determine if the error complained of resulted in a miscarriage of Justice.") or if refusal to hold that the error is reversible error is inconsistent with substantial Justice"; State v. Marquez 529 P.2d 283, 286 (N.M. Ct. App. 1979) stating that "Plain error has been characterized... as grave errors which seriously affect substantial right of the accused... result in a clear miscarriage of

Justice [or] are obvious") (quoting) (United State v. Campbell, 419 F.2d 1144 (5th Cir. 1969).

ARGUMENT

The following discussion in this Argument Attempts to Summarize "The [Counsel] ERRORS" at Trial (SEE State v. Baccus, 367, S.C. 41, 48, 625 SE 2d 929 (2001))

This [Court] is bound by the Trial Court Factual Finding unless there are clearly ERRONEOUS"

Id. (citing) State v. Quattlebaum, 238 S.C. 441, 452, 527

SE 2d 105, 111 (2000). An abuse of discretion occurs when

the trial Court Ruling is based on an error of law or

when grounded in Factual Conclusions, State v. Jennings 394 S.C. 473, 477-78, 714 SE 2d 91, 93 (2011).

The Argument of whether a Person has acted "Blatantly" is distinct from question of whether there has been "Waiver" of a Trial Right;

The former Argument can be answered only by examining the relevant Circumstances to determine if he has been coerced while the latter Turns on extent of His Knowledge Schneekloth v. Bustamonte 93 S.Ct. 2041, 412 U.S. 218, 36 L Ed 2d 854 on Remand 479 F.2d 1047 - Searches 180. A Waiver Issue may be raised on Appeal in context of Ineffective Assistance Claim and defendant may denied Effective assistance of counsel: U.S.C.A Const. Amend. 6th Sixth - People v. McCarty, 212 Cal. Rptr. 114, 166 Cal. App. 3d crim.

LAW 1035 (7) 11/66, 10 (1).

THE UNITED STATES SUPREME COURT'S DECISIONS ESTABLISH THAT A STATE CRIMINAL TRIAL PROCEEDING INITIATED AND CONDUCTED BY THE STATE ITSELF, IS AN ACTION OF THE STATE WITHIN MEANING OF THE U.S. CONST. AMEND. XIV A DEFENDANT WHO MUST FACE FEROUS CHARGES IN STATE COURT WITHOUT THE ASSISTANCE OF COUNSEL GUARANTEED BY U.S. CONST. AMEND. VI HAS BEEN DENIED DUE PROCESS OF LAW, UNLESS A DEFENDANT CHARGED WITH A SERIOUS OFFENSE, WAS COUNSEL ABLE TO INVOKE THE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS THAT DISTINGUISH THE AMERICAN SYSTEM OF JUSTICE A SERIOUS RISK OF INJUSTICE INFECTS THE TRIAL ITSELF. WHEN A STATE OBTAINS A CRIMINAL CONVICTION THROUGH SUCH TRIAL IT IS THE STATE THAT UNCONSTITUTIONALLY DEPRIVES THE DEFENDANT OF HIS LIBERTY BY LETTING THE TRIAL JUDGE COMMIT REVERSIBLE ERROR WHEN HE ALLOWED INVESTIGATOR RICKY SPURGEON TO TESTIFY.

II. ISSUE

COUNSEL FAILED TO OBJECT ON ALL POSSIBLE GROUNDS TO INFLAMMATORY AND IRRELEVANT EVIDENCE PRESENTED BY THE PROSECUTION. AS A RESULT OF COUNSEL'S FAILURE TO MAKE ALL APPROPRIATE OBJECTIONS, APPLICANT'S SENTENCE IS UNRELIABLE.

Concerning the Establishment of a Chain of Custody of all Evidence

THE STATE ALLEGED THAT IT HAD RECEIVED

8 of 12

Evidence of shoes and socks with the blood/DNA of the deceased victim on them.

HOWEVER ON JUNE 1 of 2007, This material evidence was collected but the **CHAIN of Custody** of this Evidence was Not Established until JUNE 6, 2007. Counsel fell below an objective standard of Reasonableness, Counsel KNEW these facts, and under the SIXTH AMENDMENT for its failing to investigate the Totality of the circumstances Surrounding Whether the **CHAIN of Custody** of the EVIDENCE was truly EVER Established of the day of JUNE 6, 2007. It would have been VERY CRUCIAL to the Muzdar defense of MR. Sims because the state sole evidence of guilt was based upon this chain of This evidence whose Absents for (6) Six days.

Because Counsel Representation was deficient, it establish prejudice to applicants only defense, had Counsel clearly investigated this Totality of the circumstances he would have discovered THAT THEIR WAS NO ESTABLISHED CHAIN OF CUSTODY AND THAT THE STATES EVIDENCE OF THE D.N.A. WAS INSUFFICIENT TO SUPPORT A FINDING OF GUILT

[C]OUNSEL Abandoned his role as defense counsel and in fact help bolster the case against his client... (SEE) STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984). Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsel's failure to make all appropriate objections applicants sentence is unreliable.

Clearly the outcome of the proceedings would have turned out different had counsel pursued this sole strategy and affirmative defense, and based upon the above stated fact in this case counsel's deficient performance violated Applicant's (6th) Sixth Amend. right afforded by the United States Constitution and ultimately denied Mr. Sims to a FAIR TRIAL UNDER THE UNITED STATES CONSTITUTION.

Clearly Counsel's Representation on the issue of Establishment of a chain of Custody of the Evidence of DNA was not only deficient under the 6th Sixth Amendment but it also fell below an objective standard of reasonableness and ultimately violated his Sixth Amendment right. Citing BUTLER V. STATE 397, 522 87, 88 (S.C. 1990).

Due to the lack of counsel not establishing issues for appeal of the Chain of Custody being established failure to challenge this plain error their would have been effective counsel but the error prejudice the appeal.

So counsel was ineffective and prejudice the Applicant, had counsel performance been effective in the challenge of this reversible plain error their would've been a fair probability beyond a reasonable doubt that his trial proceedings would have turned out different.

The evidence in this case would have showed that the alleged evidence of the shoes and socks and Jean shorts with the victim DNA on them was collected on June 1, 2007. However there was no established chain of custody of the State's evidence until June 6, 2007. This chain was not established for nearly one whole week, and could have been tampered with and you'll further find that the evidence could have established the innocence. Defendant has met his Burden, so all evidence must be suppressed and all evidence obtained pursuant to the chain of custody of the evidence in this case because the outcome would have turned out different. Clearly the conviction must be REVERSED AND SENTENCE VACATED AND CASE DISMISSED.

III ISSUE

The Applicant argued that counsel was ineffective for not objecting to the in court identification. It was contended that since the accused had been subjected to the Pretrial identification procedures without the benefit of counsel's presence and because those procedures were "so unnecessary conducive to irreparable mistaken identification (see) Stovall v. Denno 388 U.S. 293, 302 (1967) as to constitute a denial of Due Process.

Any in court identification would necessarily
11 of 12

be tainted and should be excluded (per se.) In support of that contention, had counsel relied upon the Wade Gilbert-Stovall line of cases United States v. Wade 388 U.S. 218 (1967); Gilbert v. California 388 U.S. 263 (1967); Stovall v. Denno, 388 U.S. 293 (1967). decided by the United States Supreme Court in 1967. Because when identification confrontation between suspect and the crime victim does not occur immediately after the crime, one of the factors in determination of whether identification evidence based on such confrontation is admissible whether a confrontation was so postponed that observed identification stimuli have lost their acuity U.S.C.A. Const. Amend 6th 5th. Defendant did not waive his right to Counsel at Identification Confrontation at the Photograph line-up or scene of the crime where only the Pant were Identified.

And because Photograph line-ups are basically ONE-ON-ONE procedures, there is a certain amount of Potential Prejudice to the defendant inherent in their use. Upon that basis some experts have argued that the Defendant Assertion is not without Merit.

THE END

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CLERK OF COURT
2014 SEP -2 PM 4:01
H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OF SPARTANBURG)

C/A#:2012-CP-42-4121

Howard Lee Sims, Jr,)

Plaintiff,)

State of South Carolina)

Defendant.)

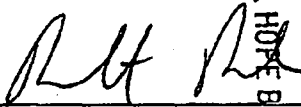
**NOTICE OF MOTION TO AMEND
APPLICATION FOR POST-CONVICTION
RELIEF**

The Applicant, by and through his attorney, Brandt Rucker, hereby moves this Honorable Court to amend his Post Conviction Relief Application, pursuant to S.C. Codes of Law Section 17-27-70 (1976) and South Carolina Rules of Civil Procedure by adding the following grounds to his previous application and amendments.

Ineffective Assistance of Counsel

1. Trial Counsel was ineffective for failing to object to an unduly suggestive, and unconstitutionally obtained, photo lineup.
2. Trial Counsel was ineffective for failing to object to the admission of evidence collected pursuant to the unconstitutionally obtained arrest warrant of the Applicant.
3. Trial Counsel was ineffective in for failing to object to the admission of items introduced into evidence used to identify the Applicant based on the insufficient proof of the chain of custody of said items.
4. Trial Counsel was ineffective for failing to object to improper character evidence testimony provided by the prosecution.

Respectfully submitted,


 Brandt Rucker
 Attorney for Applicant
 522 North Church Street
 Greenville, S.C. 29601
 (864)271-9925

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 SEP 11 PM 2:19
 M. HOPE BLACKLEY

Greenville, S.C.
 September 9, 2014

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 HOWARD LEE SIMS, JR.,) TRANSCRIPT
 5 APPLICANT,) OF
 6 VS.) RECORD
 7 STATE OF SOUTH CAROLINA,) 2012-CP-42-4121
 8 RESPONDENT.)

9
 10 March 23rd, 2015
 11 Spartanburg, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 J. BRANDT RUCKER
 17 ESQ.
 18 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 Assistant Attorney General
 21 Attorney for the Respondent

22 PAMELA E. GREEN
 23 Circuit Court Reporter
 24 Seventh Judicial Circuit
 25

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	HOWARD SIMS	
5	Direct examination by Mr. Rucker	7
6	Cross-examination by Ms. White	20
7	KATHLEEN HODGES	
8	Direct examination by Ms. White	27
9	Cross-examination by Mr. Rucker	39
10	Redirect examination by Ms. White	50
11		
12	Closing by Mr. Rucker	51
13	Closing by Ms. White	51
14	Certificate	55
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Chain of Custody	16	17

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Respondent's Exhibits</u>		
3				
4	R-1	Documents		31
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P R O C E E D I N G S

THE COURT: All right. You may call the first case.

MS. WHITE: Thank you, Your Honor.

We're gonna have Mr. Howard Lee Sims versus the State. It's Case Number 2012-CP-42-4121. Mr. Sims is represented today by Mr. Brandt Rucker.

He was indicted in November of '07 on charges of murder and burglary first degree. Proceeded to trial where he was represented by Kathy Hodges. He received sentences of life on July 15th through 17th, 2008. There was an appeal filed and an Anders brief was submitted on his behalf. Mr. Sims submitted a pro se brief as well. The convictions and sentences were affirmed.

He alleged ineffective assistance of counsel in that counsel failed to object to the testimony of an officer and then there was an amended application that was filed September 11th, 2014. That should also be in your packet.

THE COURT: Uh-huh. (Affirmative).

MS. WHITE: Alleging that counsel was ineffective for failing to object to an unduly suggestive and an unconstitutionally obtained photo lineup, ineffective for failing to object to admission of evidence collected pursuant to an unconstitutionally obtained arrest warrant, ineffective for failing to object to admission of items

Howard Sims - Direct examination
by Mr. Rucker

1 introduced into evidence used to identify the Applicant
2 based on insufficient proof of chain of custody, and
3 ineffective for failing to object to improper character
4 evidence provided by the prosecution.

5 I will turn it over to Mr. Rucker at this time.

6 THE COURT: Mr. Rucker.

7 MR. RUCKER: Your Honor, may it please the Court?

8 THE COURT: Yes, sir.

9 MR. RUCKER: We are going forward on those claims --

10 THE COURT: All right.

11 MR. RUCKER -- as stated.

12 I call my client, Howard Sims, to the stand.

13 THE COURT: Come forward, sir, to my left and be --
14 raise your -- right around here, sir.

15 (Applicant complies.)

16 THE COURT: When you get there, if you'll place your
17 left-hand on the Bible. Raise your right to the best of
18 your ability.

19 HOWARD SIMS, being first duly
20 sworn, testified as follow:

21 THE COURT: Have a seat please.

22 (Applicant complies.)

23 THE COURT: State your full name, sir.

24 THE WITNESS: Howard Lee Sims, Junior.

25 THE COURT: Thank you.

Howard Sims - Direct examination
by Mr. Rucker

1 Counselor, your witness.

2 MR. RUCKER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. RUCKER:

5 Q Mr. Sims, what's your current sentence that you're
6 serving?

7 A A life without parole.

8 Q Okay. And where are you serving that?

9 A Lee Correctional.

10 Q All right. We're gonna work through your -- the
11 amendments that you've done and the ineffective claim,
12 ineffective assistance of counsel claims.

13 You understand?

14 A (Witness nods affirmatively.)

15 Q You have to speak---

16 A Yes.

17 Q -- speak out loud, sir.

18 A Yes, sir.

19 Q All right. Specifically what is your objection to the,
20 the investigator or the police officer's testimony?

21 What do you believe should of been done by Ms. Hodges?

22 A Well, Ms. Hodges, she should of objected to the, to
23 the, to the, to the testimony. By allowing an --
24 Investigator Spurgeon to like issue -- I mean my character,
25 put my character in issue.

Howard Sims - Direct examination
by Mr. Rucker

1 Q Okay. And how did he put your character into issue?

2 A By saying that he was familiar with me in a, in the
3 area like he, like he know me or I been a part of a -- some
4 kind of crime or something that he done had dealings with me
5 or something like that right there.

6 Q Okay. And she failed to object to that testimony?

7 A Yes, she didn't object.

8 Q All right. And what other testimony by officers do you
9 believe she should of objected to?

10 A Well, it's -- that's the, that's the only, that's the
11 only officer that she should of objected to that, that, that
12 I -- that's one of my claims, you know what I'm saying, she
13 should of objected to that right there.

14 Q Sure.

15 And as far as any investigators or any other police
16 personnel, do you think she should of objected to their
17 statements?

18 A Well, Mr., Mr. -- well, Mr. Steadman, Jay Steadman was,
19 you know what I'm saying, I, I wanted him to be here, right,
20 but he said that, that, that, that the claims, the claims
21 that I had that, that he got search warrants for and stuff
22 like that right there, I wanted, you know what I'm saying,
23 him -- I mean it was false is when he, when he -- when I had
24 got it.

25 Q Why do you believe it was false?