

VOLUME THREE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
James E. Lockemy, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213468

APPENDIX

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PLAINTIFF'S EXHIBIT #73 (PHOTOGRAPH)

Marion Bowman, Jr. - Cross-Exam

1 THE COURT: At a later date?

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: If you want to renew your
4 objection beyond the Jackson v. Denno I have no
5 objection to that at all.

6 MR. CUMMINGS: Right, ma'am.

7 THE COURT: That's the only objection.
8 There hadn't been any objections at that point
9 to this record.

10 MR. CUMMINGS: As of now, no.

11 THE COURT: Let me hear the whole question.

12 BY MR. BAILEY:

13 Q Were you given Miranda rights at the Hall
14 Institute when you got up there?

15 A Yes, sir.

16 Q Okay. And they gave -- there was a typed report
17 that they typed out; is that correct? It's in the
18 case file that you have.

19 MR. CUMMINGS: Judge, objection. That's
20 hearsay.

21 THE COURT: What about that, Mr. Bailey?

22 MR. BAILEY: Your Honor, I wasn't asking
23 him anything other than was there a typed
24 report. I don't think that's hearsay if he even
25 saw in the file or he didn't.

Marion Bowman, Jr. - Cross-Exam

1 THE COURT: Did it exist. I'll overrule
2 the objection.

3 Q Did you read over that typed report?

4 A I didn't read over it, sir, but I have it.

5 Q You have it?

6 A Yes, sir.

7 Q Okay. Do you recall getting an IQ test?

8 A No, sir.

9 Q Okay. You don't recall anybody instructing you
10 or telling you that you had taken an IQ test there?

11 A No, sir.

12 Q Okay. And you have not read the report?

13 A No, sir.

14 Q Okay. And why is that? Do you not have the
15 ability to read the report?

16 A I just didn't read it.

17 Q Okay. Would you dispute that you have a verbal
18 IQ of 86?

19 A I don't know what that mean.

20 Q Okay. When they gave you your Miranda rights at
21 the Hall Institute, it was the same rights that had
22 been given to you earlier, is that correct, by the
23 deputies, by Mr. Stephenson?

24 A By Mr. Van Doran on the 22nd.

25 Q Well, the 17th, the 22nd, the 27th. You had

Marion Bowman, Jr. - Cross-Exam

1 been given Miranda rights before; is that correct?

2 A Yes, sir.

3 Q Before you got to the Hall Institute you had
4 been read Miranda rights?

5 A Yes, sir.

6 Q Okay. When they read the Miranda rights to you
7 at the Hall Institute, were those the same rights
8 that they gave you before; the right to a lawyer, the
9 right to stop talking, that kind of thing?

10 A I believe so, sir.

11 Q Okay. And when they read those rights to you at
12 the Hall Institute, did you understand what they were
13 saying at that point in time?

14 A Yes, sir. They stopped me and explained as they
15 were talking to me, sir.

16 Q Okay. And you understood; is that correct?

17 A Yes, sir.

18 Q Okay. Mr. Bowman, you have had some involvement
19 with the criminal justice system before this arrest;
20 have you not?

21 A Yes, sir.

22 Q Okay. And I want to ask you about that.

23 MR. BAILEY: And this is for the sole
24 purpose, Your Honor -- not to impeach, I would
25 never get into this in front of the jury, but

Marion Bowman, Jr. - Cross-Exam

1 for the purpose of the Jackson v. Denno hearing.

2 Q Back on March 13th, 1998 you were arrested in
3 Orangeburg County for two charges of burglary and
4 petty larceny; is that correct?

5 A Arrested in March '98, no, sir. I was in prison
6 March '98.

7 Q Okay. What were you in prison for in March of
8 '98?

9 A I believe a third degree burglary charge, sir.

10 Q Okay. There were actually two third degree
11 burglary charges; is that correct?

12 A I don't remember two.

13 Q Okay. Let me see if I can help you out a little
14 bit here, Mr. Bowman.

15 MR. BAILEY: Judge, can I have these marked
16 for identification?

17 MR. CUMMINGS: It's for ID only. Thank
18 you.

19 THE COURT: Yes. State's Exhibits 14 and
20 15 for ID.

21 (Marked for identification was State's Exhibit
22 14, sentencing sheet.)

23 (Marked for identification was State's Exhibit
24 15, sentencing sheet.)

25 Q This is State's 14 and 15, ask whether or not

Marion Bowman, Jr. - Cross-Exam

1 these are certified copies of sentencing sheets where
2 you were sentenced for on two charges of third degree
3 burglary?

4 A Yes, sir. It's stamped.

5 Q Okay. And when you were arrested on those
6 charges, you were appointed a lawyer through the
7 Orangeburg Public Defender Office; is that right?

8 A Yes, sir.

9 Q And Mr. Michael Culler was appointed to
10 represent you; is that correct? Go ahead and look on
11 the paper if you like, to refresh your memory. Does
12 it have Attorney Mike Culler on both those pieces of
13 paper?

14 A Yes, sir.

15 Q Do you remember now when you got arrested for
16 burglary in Orangeburg County in 1998 you were
17 appointed the chief public defender in Orangeburg
18 County, Michael Culler, to represent you?

19 A I wasn't arrested in '98, I was arrested in '97,
20 sir.

21 Q All right. Well, let me ask you this then. In
22 1997 when you got arrested for two charges of
23 burglary do you recall applying for a public defender
24 and having Michael Culler appointed to represent you,
25 Mr. Bowman?

Marion Bowman, Jr. - Cross-Exam

- 1 A Yes, sir.
- 2 Q Okay. Now, when you were arrested, do you
- 3 recall who the arresting officer was?
- 4 A Big Larry, Barbara Walters.
- 5 Q Big Larry and Barbara Walters. Did they give
- 6 you Miranda rights when you were arrested?
- 7 A Not that I remember.
- 8 Q You don't remember?
- 9 A No, sir.
- 10 Q You can't say they did or they didn't, you don't
- 11 remember?
- 12 A I don't remember.
- 13 Q But you were aware by virtue of the fact that
- 14 you had previously been appointed a public defender
- 15 that if you got arrested that you were entitled to a
- 16 lawyer; is that right?
- 17 A Yes, sir.
- 18 Q Okay. Now, in late 1999 you were again arrested
- 19 for assault and battery with intent to kill,
- 20 burglary, and armed robbery; were you not?
- 21 A Yes, sir.
- 22 Q Okay. Were you appointed a lawyer then?
- 23 A Yes, sir.
- 24 Q Who was that lawyer?
- 25 A Ms. Peggy Hinds, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q And she's also with the public defender's
2 office; is that right?

3 A Yes, sir..

4 Q And you filled out a piece of paper in the jail
5 and they appointed Ms. Hinds to represent you; is
6 that right?

7 A Not that I remember. We went to a bond hearing.
8 We came to a bond hearing, then they told us the
9 public defender would be coming.

10 Q Okay. Who arrested you on those charges?

11 A Barbara Walters and Randy Williams.

12 Q Did they give you Miranda rights in conjunction
13 with that arrest?

14 A No, sir.

15 Q Later on that same year you got arrested for
16 unlawful carrying of a pistol, possession of a pistol
17 by a felon; is that correct?

18 A Yes, sir.

19 Q Okay. Were you appointed a lawyer then?

20 A They told me they were going to appoint me one.

21 Q Okay. Who told you that?

22 A When I went to bond hearing.

23 Q Did they appoint you a lawyer?

24 A I don't know.

25 Q With your experience in the criminal justice

Marion Bowman, Jr. - Cross-Exam

1 system having been arrested at least three times
2 prior to this incident we're talking about here
3 today, you knew that when you got arrested you had a
4 right to an appointed lawyer; is that right?

5 A Yes, sir. After I got to a bond hearing, yes,
6 sir.

7 Q You knew that from the moment of your arrest you
8 could request a lawyer if you wanted a lawyer at that
9 time; did you not?

10 A No, sir. I didn't.

11 Q Okay. On the morning of 17th of September 2001,
12 you were at your wife's trailer in Branchville; is
13 that right?

14 A September?

15 Q Excuse me, February.

16 A Yes, sir.

17 Q Okay. And at some point I believe you testified
18 that one of your stepchildren told you the police
19 were outside; is that correct?

20 A Told me the police passing through.

21 Q Passing through?

22 A Yes, sir.

23 Q Driving by your house?

24 A Yes, sir.

25 Q Okay. And why would that have been a matter of

Marion Bowman, Jr. - Cross-Exam

1 concern to you if the police car in Branchville is
2 driving by your house?

3 A It wasn't. I just looked out the window.

4 Q Okay. Now, at the time he told you, your
5 stepson told you about the police car, you were
6 sitting in a chair smoking a cigarette?

7 A I believe so, sir. I was -- I think I was
8 smoking a cigarette, sir.

9 Q Okay. So you were awake; is that right?

10 A Yes, sir.

11 Q All right. So whatever time you had gone to
12 sleep the previous night or early that morning, you
13 had slept and you had woken up of your own freewill
14 and were awake sitting there in your underwear
15 smoking a cigarette; is that correct?

16 A No, sir. What woke me when they came, when
17 my -- because I have a nephew that's sick.

18 Q Okay.

19 A And what woke me was they all came from their
20 grandmama house and said my nephew wasn't feeling
21 good.

22 Q Okay. At any rate the police did not wake you
23 up, you were awake smoking a cigarette that morning;
24 is that correct?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q The reason you got upset, went into the child's
2 bedroom, not your bedroom but a child's bedroom and
3 hid under the bed, because you knew there was a
4 warrant out for you for receiving stolen goods; is
5 that right?

6 A I didn't know a warrant out for me.

7 Q Okay. Did you know the police were looking for
8 you for receiving stolen goods?

9 A No, sir. I never know I had a charge.

10 Q Well, Mr. Bowman, tell us why then you would
11 tell your wife not to let the police in the trailer
12 and then you would go hide under the bed in the
13 children's bedroom?

14 A I told them don't open the door for the police.

15 Q Why not?

16 A I mean, I don't deal with the police, sir.

17 Q You don't?

18 A No, sir.

19 Q And you're telling this Court under oath you did
20 not know there was an outstanding warrant for your
21 arrest for receiving stolen goods?

22 A Yes, sir. That's what I'm saying, sir.

23 Q Okay. Now, you recall Officer Van Doran,
24 Detective Van Doran being one of the law enforcement
25 officers that came to that trailer that morning; do

Marion Bowman, Jr. - Cross-Exam

1 you not?

2 A Yes, sir.

3 Q And Detective Van Doran read Miranda rights to
4 you; did he not?

5 A No, sir. He didn't.

6 Q He did not?

7 A No, sir.

8 Q You're saying under oath that Mr. Van Doran did
9 not read Miranda rights to you?

10 A Yes, sir.

11 Q Okay. And you were in your underwear; is that
12 correct?

13 A Yes, sir.

14 Q And you asked to get clothing before they
15 carried you out?

16 A Yes, sir. I did.

17 Q All right. You had a pair of black Levi's
18 there; is that right?

19 A Yes, sir.

20 Q Those are the pants that you had on when you
21 went to the trailer?

22 A Yes, sir.

23 Q All right. And they got those pants to give
24 you?

25 A Yes, sir. They did.

Marion Bowman, Jr. - Cross-Exam

1 Q Searched the pockets of those pants?

2 A I didn't see them search it.

3 Q Okay. Well, they produced Kandee Martin's watch
4 out of your pants pocket; did they not?

5 A I didn't see them do that, either.

6 Q Okay. Now, at the time you left the house did
7 you know that Kandee Martin's watch had been in your
8 pants pocket?

9 A I knew it was in my pocket, yes, sir.

10 Q Okay. So you knew that you were being arrested
11 by the police and you knew that Kandee Martin's watch
12 was in your pocket; is that right?

13 A Yes, sir.

14 Q They carried you to Branchville?

15 A Yes, sir. They did.

16 Q And began to question you about the death of
17 Kandee Martin; is that right?

18 A No, sir. They had me sitting in Mr. Boom
19 Walters -- had me sitting in his office for like an
20 hour and a half.

21 Q And after an hour and a half and they began to
22 ask you questions, if I recall your testimony
23 yesterday they were asking you about the death of
24 Kandee Martin and the burning of her body; is that
25 correct?

Marion Bowman, Jr. - Cross-Exam

1 A No, sir. They asked me about when the last time
2 I saw Kandee Martin.

3 Q And this is the same Kandee Martin whose watch
4 you knew you had in your pocket; is that right?

5 A Yes, sir.

6 Q Okay. And at what point in time that day did
7 they tell you we think Kandee Martin is dead, her
8 body's burned up in a car?

9 A I don't know. But it was afternoon and her
10 daddy came in the town hall and started raising his
11 voice.

12 Q But at some point that day you found out Kandee
13 Martin had been murdered; is that correct?

14 A Yes, sir.

15 Q Okay. And you knew you had her watch in your
16 pocket?

17 A Yes, sir.

18 Q And you knew you were in a bit of trouble by
19 that point; did you not?

20 A No, sir. I didn't.

21 Q Okay. Now, with your at least three prior
22 arrests, you knew that talking to a law information
23 officer was a pretty big deal; did you not?

24 A Yes, sir.

25 Q Okay. Now, I'm going to show you State's Number

Marion Bowman, Jr. - Cross-Exam

1 1.

2 MR. BAILEY: If I can approach, Your Honor.

3 THE COURT: All right.

4 Q It's a "Statement of Miranda Rights" form Mr.
5 Cummings asked you about; is that right?

6 A Yes, sir.

7 Q And any question in your mind that those are
8 your initials?

9 A They're mine, sir.

10 Q They're yours?

11 A Yes, sir.

12 Q Okay. And who was it that went over that rights
13 form with you?

14 A Mr. Van Doran, sir.

15 Q Okay. And you recall Mr. Van Doran going over
16 that form with you; is that correct?

17 A I don't remember him going over it, but I
18 remember him asking me to sign it, sir.

19 Q Okay. And you did more than sign it, you went
20 ahead and you initialed each one of those rights
21 separately; is that correct?

22 A Yes, sir.

23 Q "You have the right to remain silent," you
24 initialed that?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. You understand what that means, don't
2 you, as we speak right now you have the right to
3 remain silent?

4 A Yes, sir.

5 Q Okay. And the second one, "Anything you say can
6 and will be used against you in a court of law," you
7 understood that; did you not?

8 A I understand, sir.

9 Q Okay. You understood then, too?

10 A He didn't read this to me then, sir.

11 Q Okay. Did you have the ability at that time,
12 Mr. Bowman, if you had wanted to, to have read to
13 yourself, "You have the right to remain silent," did
14 you have that ability to read that?

15 A Yes, sir. I could read it a little bit.

16 Q Okay. And if you read that, you would have
17 understood what that meant, right?

18 A Yes, sir.

19 Q Okay. But you went into the tenth grade and you
20 passed tenth grade regular English; is that right?

21 A Yes, sir.

22 Q Okay. And this next one down here "You have the
23 right to talk to a lawyer and have him present with
24 you while you are being questioned," you understand
25 that, don't you?

Marion Bowman, Jr. - Cross-Exam

1 A Yes, sir. I do.

2 Q Okay. And the one after that "If you can't
3 afford to hire a lawyer one will be appointed to
4 represent you before any questioning if you wish."
5 And you knew that was true because it had happened to
6 you, on other occasions you had had a lawyer
7 appointed to you when you were arrested?

8 A After I went to a bond hearing, yes, sir.

9 Q And you can decide at any time to exercise these
10 rights and not answer these questions. You
11 understood that, right?

12 A I understand now, sir.

13 Q Okay. Did you understand then that you could
14 quit talking?

15 A They just kept coming in telling me I had to
16 talk before I leave, sir.

17 Q That isn't the question I asked you. I asked
18 you back then if you had read this, this last right
19 here about exercising these rights to not answer
20 questions, would you have understood that?

21 A Yes, sir. If I would have read it, yes, sir.

22 Q Did anybody keep you from reading that? Did
23 they say, Mr. Bowman, sign this paper, but you can't
24 read it?

25 A They didn't say Mr. Bowman sign this paper you

Marion Bowman, Jr. - Cross-Exam

1 can't read it, no, sir, they didn't.

2 Q You had the opportunity to read that; did you
3 not?

4 A No, sir. I didn't.

5 Q You didn't, okay. Why not?

6 A Because I was sitting back in the chair with my
7 hand cuffed and I said, "I don't want to talk to you
8 all."

9 Q Okay.

10 A Mr. Coker got up and walked out the room and
11 came back and told Mr. Van Doran that I would be
12 there until I answer their questions.

13 Q And how did that keep you from reading this
14 paper?

15 A I never had that paper.

16 Q You had to have the paper, Mr. Bowman, if you
17 signed your name here, didn't you?

18 A Mr. Van Doran had a clipboard and he turned the
19 clipboard towards me, told me to sign the paper, sir.

20 Q How about when you had your initials up there,
21 did you have a chance to read when you signed your
22 initials right beside each one of those rights?

23 A No, sir. After I signed it they told me to go
24 back and initial it, sir.

25 Q So you're saying you signed the waiver of

Marion Bowman, Jr. - Cross-Exam

1 rights, then you initialed it?

2 A Yes, sir.

3 Q And at that time when you had the pen in your
4 hand and the pen touching that paper, you're saying
5 that you could not have read that paper if you'd
6 wanted to?

7 A I could have, sir.

8 Q Okay. But you didn't, did you?

9 A No, sir.

10 Q And you're saying they didn't read it to you?

11 A No, sir. They didn't.

12 Q Okay. And the time this happened, 11:25, was
13 that about the time you remember all this happening?

14 A I don't know what time it was, sir, I didn't
15 have a watch.

16 Q You had Kandee Martin's watch, didn't you?

17 MR. CUMMINGS: Judge, I'm going to object.
18 Your Honor, that was not a question, it was a
19 statement by Mr. Solicitor.

20 MR. BAILEY: I said, "Didn't you?"

21 MR. CUMMINGS: I'm sorry, I didn't hear the
22 first words.

23 THE COURT: It's still an objection with
24 the posing terms of a question?

25 MR. CUMMINGS: Yes, ma'am.

Marion Bowman, Jr. - Cross-Exam

1 THE COURT: You've asked him at that point
2 in time did you have a watch or did you have
3 Miss Martin's watch.

4 MR. BAILEY: And then I said, "Didn't you?"

5 THE COURT: All right. I'll allow him to
6 answer the question.

7 MR. CUMMINGS: Judge, we know as a matter
8 of fact on the record that he did not have a
9 watch. The police had his pants, they had the
10 evidence. He did not, could not have had it.
11 They took all his clothes off. Facts not in
12 evidence.

13 MR. BAILEY: I'll withdraw it.

14 THE COURT: Thank you, Mr. Bailey.

15 Q Let me hand you what's been marked State's
16 Number 3, Mr. Bowman, ask you about this form here.
17 You talked yesterday about Major Stephenson going
18 over that form with you; is that correct?

19 A Yes, sir.

20 Q And Major Stephenson is the one that gave you
21 the lie detector test?

22 A Yes, sir.

23 Q Okay. And you signed that piece of paper and
24 another piece of paper consenting to give a lie
25 detector test; is that right?

Marion Bowman, Jr. - Cross-Exam

- 1 A I did what he told me to do, sir. Yes, sir, I
2 did.
- 3 Q That is your signature there; is that correct?
- 4 A Yes, sir.
- 5 Q Okay. And are you saying that Major Stephenson
6 did not read those rights to you?
- 7 A If he did, I didn't hear them.
- 8 Q Well, I'm afraid I wasn't there, you were there.
- 9 A Yes, sir.
- 10 Q And I'm asking you to the best of your
11 recollection, this is a yes or no question, did Major
12 Stephenson read those rights to you?
- 13 A No, sir.
- 14 Q He did not?
- 15 A I didn't hear him, sir, if he did.
- 16 Q Okay. And he handed you that piece of paper at
17 some point because your signature is on there; is it
18 not?
- 19 A Yes, sir.
- 20 Q Okay. And you signed it?
- 21 A Yes, sir. I did.
- 22 Q And your testimony is that you did not read
23 those rights and those rights were not read to you?
- 24 A Yes, sir.
- 25 Q Major Stephenson lied when he said --

Marion Bowman, Jr. - Cross-Exam

1 MR. CUMMINGS: Objection. That's pitting
2 witnesses.

3 THE COURT: Sustained.

4 Q Down here under the "Waiver of Rights," did you
5 sign that?

6 A Yes, sir.

7 Q That's your signature?

8 A Yes, sir.

9 Q No question about that being your signature?

10 A It's mine, sir.

11 Q Okay. And your testimony is you did not read
12 that waiver and did not have that waiver read to you?

13 A Yes, sir.

14 Q Okay. Now, we're talking about 12:34, right
15 after lunchtime. At that point during that day on
16 the 17th you knew Kandee Martin had been murdered,
17 right?

18 A No, sir. I didn't.

19 Q Okay. Your testimony here, Mr. Bowman, is that
20 at 12:34 when you're beginning to be polygraphed on
21 your knowledge of Kandee Martin's death you didn't
22 know she was dead?

23 A They didn't ask me about death of Kandee Martin,
24 sir, they asked me did I see her car, sir.

25 Q Okay. Mr. Bowman, after you signed both of

Marion Bowman, Jr. - Cross-Exam

1 those Miranda, written Miranda warnings, we're
2 getting into 2:10 p.m., that afternoon, I'm going to
3 hand you State's Number 2, three pages, we've
4 established Terry Van Doran wrote that out.

5 A Yes, sir.

6 Q That's your signature at the bottom of that
7 page?

8 A Yes, sir. It is.

9 Q Okay. And before you signed that signature you
10 had signed two Miranda rights acknowledgements and
11 waivers on those forms; is that right?

12 A On two other pieces of paper, sir?

13 Q Yeah.

14 A Yes, sir. I signed them.

15 Q Okay. First page, that's your signature there;
16 is it not?

17 A Yes, sir. It is.

18 Q Turn to the next page. That's your signature?

19 A Yes, sir. It is.

20 Q Okay. Third page?

21 A Yes, sir. It is.

22 Q That's your signature. Now, at that time -- let
23 me get that back from you. At 2:10 p.m. did you know
24 that Kandee Martin had been murdered?

25 A Yes, sir. I did.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. And when is it that you found out she'd
2 been murdered?

3 A After Mr. Stevens unhooked me from that machine,
4 sir.

5 Q So after Mr. Stephenson gave you the polygraph,
6 then they told you Kandee Martin had been murdered?

7 A Yes, sir. They told me I was lying.

8 Q Okay. And this is the first written statement
9 you gave; is that right?

10 A I didn't give it.

11 Q Okay. The first one you signed?

12 A Yes, sir.

13 Q Okay. Now, in that first written statement --

14 MR. BAILEY: Bear with me a second, please,
15 Judge.

16 THE COURT: Okay.

17 Q In that first written statement you denied any
18 involvement in Kandee Martin's death; is that right?

19 A Yes, sir.

20 Q And you blamed a guy named Terry Kelly, or
21 Peanut; is that right?

22 A I said Peanut. Mr. Van Doran said Terry Kelly.

23 Q So you told Mr. Van Doran that Peanut was
24 involved in Kandee Martin's death; is that right?

25 A Yes, sir. I told him what somebody told me.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. Now, 4:40 p.m. there was a second written
2 statement; is that right? That's State's Number 4.

3 A Yes, sir.

4 Q Okay. And that's in Mr. Van Doran's handwriting
5 also; is that correct?

6 A Yes, sir.

7 Q Okay. Your signature is on the first page?

8 A Yes, sir.

9 Q Okay. What does it say right above the
10 signature right here?

11 A "I have read the foregoing statement or have had
12 it read to me, and it is true and correct to the best
13 of my knowledge. I have given this statement freely
14 and voluntarily and have been provided a copy of my
15 statement," sir.

16 Q Now, Mr. Bowman, what you just read is not
17 written on there. That's printed on that form; is
18 that right?

19 A Yes, sir.

20 Q And that was printed on that form at the time
21 you signed immediately beneath that; is that correct?

22 A I wasn't paying attention.

23 Q I didn't ask if you were paying attention. I
24 said was that printed on there before you signed it?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

- 1 Q Okay. Second page it's got the same thing
2 there, doesn't it?
- 3 A Yes, sir. It do.
- 4 Q And you signed that also?
- 5 A Yes, sir. I signed it.
- 6 Q Third page?
- 7 A Yes, sir.
- 8 Q Same thing, that's your signature there?
- 9 A Yes, sir.
- 10 Q And Terry Van Doran and Mr. Coker signed on each
11 one of those pages?
- 12 A Yes, sir.
- 13 Q Okay. Now, in that statement -- you've read
14 over the statement, haven't you, as part of the file?
- 15 A Now, yes, sir. I did.
- 16 Q Okay. And in that particular statement what you
17 said then was that the same guy, Terry Kelly and
18 Taurus Gantt whose street name is Dog, were involved
19 in Kandee Martin's death; is that right?
- 20 A I was -- I said that Gap told me.
- 21 Q Okay.
- 22 A That Dog and Peanut.
- 23 Q Okay. Did you tell Mr. Van Doran that someone
24 had told you that Terry Kelly and Dog had been
25 involved in Kandee Martin's death?

Marion Bowman, Jr. - Cross-Exam

1 A I told him that Gap said that, yes, sir.

2 Q Okay. So what's in that statement, in essence,
3 is what you told Mr. Van Doran; is that right?

4 A That's what I told him someone told me, yes,
5 sir, it is.

6 Q Okay. So let me go back to this again here,
7 this is State's 4, the second statement. Go ahead
8 and read that to yourself if you would, and then I
9 want to ask you if the information that's in that
10 statement is or is not what you told Mr. Van Doran.

11 A (The witness complies.) No, sir. It's not.

12 Q Okay. What's different about what you told him
13 and what's in that statement, Mr. Bowman?

14 A Well, first off I wouldn't have said my sister
15 had a gray car because my sister's car was blue.
16 When I was talking to him I always said Gap said
17 Peanut said.

18 Q Okay.

19 A I never saw Peanut until we was at the club,
20 sir.

21 Q Okay.

22 A I wouldn't have give Peanut my shoes because I
23 had on my Adidas boots. And Travis took me home from
24 the projects.

25 Q Okay. So there's some details there you're

Marion Bowman, Jr. - Cross-Exam

1 saying are different from what you told Mr. Van
2 Doran?

3 A Yes, sir.

4 Q Starting right here he then said -- this is on
5 page 2, could you read that out loud?

6 MR. BAILEY: Your Honor, I apologize, I'm
7 asking this for a reason that I'll connect up
8 later.

9 THE COURT: All right.

10 Q "He then said..."?

11 A "He then said he and Dog had just split up and
12 that nigger is crazy."

13 Q Keep reading.

14 A "He wanted to --"

15 THE WITNESS: Excuse me, Your Honor.

16 A "-- fuck that dead girl. Terry then said we
17 fucked her up, we shot her."

18 Q Did you tell Mr. Van Doran that?

19 A I told him Gap said that.

20 Q Okay. Later on that day Larry Williams, the
21 sheriff of Orangeburg County, came to the Branchville
22 police station; is that right?

23 A That night, yes, sir.

24 Q Okay. And you call him Big Larry?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

- 1 Q You know Larry Williams?
- 2 A Yes, sir.
- 3 Q Your family knows him?
- 4 A Yes, sir.
- 5 Q Known him all your life?
- 6 A Yes, sir.
- 7 Q Okay. Before Larry Williams got there, had your
8 wife been over to the police station?
- 9 A I didn't see her if she did.
- 10 Q Okay. Did somebody bring you some food to
11 eat --
- 12 A No, sir.
- 13 Q -- before Larry got there?
- 14 A No, sir.
- 15 Q Okay. Now, when Larry Williams got over there,
16 he talked to you, right?
- 17 A Yes, sir.
- 18 Q Did he give you Miranda rights?
- 19 A No, sir.
- 20 Q Let me show you State's Number 6, and ask if you
21 see your signature on there?
- 22 A Yes, sir.
- 23 Q Okay. Now, about halfway down that first page
24 your signature is there; is it not?
- 25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q And you recall signing that?

2 A Yes, sir.

3 Q Down at the bottom that's your signature also?

4 A Yes, sir.

5 Q Would you go ahead and read the first part of
6 the page just starting "I, Marion Bowman..." out
7 loud?

8 A "I, Marion Bowman, have been read my rights and
9 I --" what does that say?

10 Q I can't help. If you can't read it, just skip
11 it over.

12 A "-- understand my rights. I willing to talk
13 with Sheriff Larry Williams of the Orangeburg County
14 sheriff office in --" I don't know what that word say
15 "-- to the death of Kandee Martin of Branchville. I
16 have also asked Sheriff Williams to write this
17 statement for me. I can read and write and I
18 complete the tenth grade of school."

19 Q Did you tell Larry Williams you had finished the
20 tenth grade and you could read and write?

21 A No, sir. I didn't.

22 Q Okay. But, in fact, you had gone to the tenth
23 grade and you can read and write, can't you?

24 A I can read a little, sir.

25 Q Okay. And did you read that part that Larry

Marion Bowman, Jr. - Cross-Exam

1 Williams wrote up there before you signed your name
2 right underneath it?

3 A No, sir. I didn't.

4 Q How did it come about that you signed your name
5 there saying you could read and write and you didn't
6 read those seven or eight lines?

7 A When Big Larry came in the courtroom he started
8 telling me that that white girl is dead and them
9 crackers going to hang me, and he start asking me
10 where I been. Then he came back after a while later
11 and asked me to sign it.

12 Q All right. Was Major Stephenson in the room
13 when you signed that?

14 A No, sir.

15 Q Had he been in there earlier?

16 A No, sir.

17 Q You're saying that Major Stephenson was not with
18 Larry Williams when you first started talking to him?

19 A He was standing by the door, yes, sir.

20 Q Okay.

21 A When Big Larry first walked in.

22 Q Okay. Did you talk about what you knew of the
23 death of Kandee Martin while Major Stephenson was
24 still in the room?

25 A No, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. And I think I asked you this before, down
2 at the bottom, that's your signature at the bottom of
3 the first page?

4 A Yes, sir.

5 Q Okay. And the second page, that's your
6 signature?

7 A Yes, sir.

8 Q Okay. And the third page, that's your
9 signature?

10 A Yes, sir.

11 Q And is it correct that every one of those pages
12 and every one of the written statement forms we've
13 gone over so far have the same language at the bottom
14 of each page that says "I've read the foregoing
15 statement or have had it read to me and it's true and
16 correct to the best of my knowledge. I've given this
17 statement freely and voluntarily and have been
18 provided a copy of my statement"?

19 A Yes, sir.

20 Q Every page says that, doesn't it?

21 A Yes, sir.

22 Q Now, have you read over this statement, the
23 first statement you gave Larry Williams?

24 A Yes, sir.

25 Q Is there anything in that statement that you did

Marion Bowman, Jr. - Cross-Exam

1 not tell Larry Williams?

2 A A whole lot, sir.

3 Q Okay. Tell me what's in that statement -- first
4 of all, tell me what is correct in that statement and
5 then what is incorrect.

6 A Big Larry only asked me questions like where was
7 I that day. And I told him in the projects. He
8 asked me did I see Kandee that day. And I told him I
9 saw her a couple of times and then we went to -- when
10 I went to Frankie house she was out there and --
11 excuse me, Your Honor -- but she sucked my penis and
12 we had sex. And then he started asking me did I know
13 whether her car -- did I know her car got burned up.

14 Q Okay. Now, what is it in there did you not tell
15 him?

16 A I didn't tell him nothing about no McAlhany
17 Road, I didn't say no Peanut and Gap show up.

18 Q Now, Gap is Taiwan Gadson, your cousin; is that
19 right?

20 A Yes, sir.

21 Q Okay. Now, in that statement did you tell Larry
22 Williams, you dropped this part about Taurus Gantt
23 and said that Terry Kelly, whose nickname is Peanut,
24 and Taiwan Gadson, or Gap, had murdered Kandee
25 Martin?

Marion Bowman, Jr. - Cross-Exam

1 A I don't remember him saying -- I don't remember
2 telling him saying Gap did anything.

3 Q Okay. So you're denying telling Larry Williams
4 that Gap was involved in the murder of Kandee Martin?

5 A I never told Big Larry that. I told him that
6 Gap told me Peanut had shot Kandee.

7 Q Okay. In that statement it was report -- it
8 reflects in that statement that you told me that you
9 had information that Kandee Martin was shot by Gadson
10 one time and Terry Kelly twice; is that right? Do
11 you see that in the statement?

12 A Yes, sir.

13 Q Okay. Did you tell Larry Williams that?

14 A No, sir. I didn't.

15 Q All right. You do remember signing this
16 statement, don't you?

17 A Yes, sir.

18 Q There isn't any question all of the signatures
19 I've shown you so far today have been -- that have
20 Marion Bowman, Jr., they are your signatures?

21 A Yes, sir.

22 Q That you signed those, nobody forged your name,
23 or anything like that?

24 A No, sir.

25 Q Okay. Now, the time 10:05 p.m. is here. Is

Marion Bowman, Jr. - Cross-Exam

1 that about the time Larry Williams finished the
2 statement?

3 A I don't know what time he finished it.

4 Q Was it dark outside?

5 A Yes, sir.

6 Q Now, a short while after that you were
7 transported from then Branchville police station to
8 the Orangeburg Calhoun Detention Center; is that
9 correct?

10 A A long while after that.

11 Q Okay. In the early morning the next day?

12 A Yes, sir.

13 Q And who transported you?

14 A Wally.

15 Q Wally is Wally McAlhany?

16 A Yes, sir.

17 Q All right. And when you got to the jail, you
18 were booked in early that morning, right, the morning
19 of the 18th?

20 A I went to the sheriff office first.

21 Q Okay. And tell us again what happened when you
22 went to the sheriff's office.

23 A Went to the sheriff office, Mr. Wally took me in
24 the room where this was -- this black guy I think
25 sitting behind the desk and reached in a packet and

Marion Bowman, Jr. - Cross-Exam

1 gave me a warrant.

2 Q Okay. All right. I'm going to hand you
3 Defendant's Number 7. Is this the warrant he gave
4 you, receiving stolen goods?

5 A Yes, sir.

6 Q And you got served with that before they locked
7 you up?

8 A Yes, sir.

9 Q Okay. Then you went over to the jail. And this
10 is Defendant's Exhibit Number 2, which is booking
11 papers, right?

12 A Yes, sir.

13 Q Got your picture and your weight of 170 pounds;
14 is that right?

15 A Yes, sir.

16 Q Did you tell them you weighed 170?

17 A Yes, sir.

18 Q Okay. Is that what you weighed?

19 A Yes, sir.

20 Q And after you got locked up, settled in, you go
21 to sleep?

22 A No, sir. Not right then.

23 Q Okay. What did you do?

24 A My roommate woke up with his door open and he's
25 sitting there and asked me what I was in there for.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. As far as your involvement with any
2 correctional officers or law enforcement people
3 before you saw anybody else, did you go to sleep?

4 A Yes, sir. I did.

5 Q I think you said yesterday you slept through
6 breakfast?

7 A Yes, sir.

8 Q Okay. And then I believe you said that you had
9 a little bit of lunch?

10 A Yes, sir.

11 Q What time was that?

12 A I think they serve lunch at like 11:30, twelve
13 o'clock.

14 Q Okay. So you ate a little bit of lunch at 11:30
15 or 12:00?

16 A Yes, sir.

17 Q On the 18th, that's a Sunday?

18 A Yes, sir.

19 Q Okay. And then somebody came, according to your
20 testimony yesterday, and escorted you back over to
21 the sheriff's office; is that right?

22 A Big Larry.

23 Q Okay. Big Larry came over there?

24 A Yes, sir.

25 Q And your testimony is you did not request

Marion Bowman, Jr. - Cross-Exam

1 through a correctional officer to see the sheriff; is
2 that right?

3 A Yes, sir.

4 Q Okay. You did not do that?

5 A No, sir. I didn't.

6 Q Okay. And do you know about what time it was
7 when you say Larry Williams came over there
8 personally and picked you up and carried you back
9 across the street?

10 A It was about chow time.

11 Q Chow time. After you had already eaten, right?

12 A No, sir. They didn't -- we come out on rec at
13 five o'clock, that's when they feed us. So it was
14 before when they came in to feed us, we didn't start
15 our rec yet.

16 Q Are we talking about before lunch, before
17 supper?

18 A Before dinnertime, the last meal of the day.

19 Q You already said about 11:00 or so you had eaten
20 some lunch?

21 A Yes, sir.

22 Q You hadn't been brought over to the sheriff yet?

23 A No, sir.

24 Q He came over later on in the afternoon before
25 that evening meal?

Marion Bowman, Jr. - Cross-Exam

1 A Yes, sir.

2 Q He carried you across the breezeway to the
3 sheriff's office?

4 A Yes, sir. To his office.

5 Q His office. Did he take you anywhere else
6 before he took you to his office?

7 A No, sir. He didn't.

8 Q Did you see any other law enforcement officers
9 there?

10 A When I got to his office?

11 Q When you got over to the sheriff's office in the
12 hallway or any of the offices beside his office, did
13 you see anybody else?

14 A When I got in his -- when we was going to his
15 office Mr. Van Doran, Mr. Stevens, and Barbara
16 Walters was standing in the hallway.

17 Q Okay. Did they take you to a different room
18 before you went to the sheriff's office?

19 A No, sir. They took me inside the sheriff
20 office.

21 Q Did any of the other officers talk with you
22 before you went in and talked with the sheriff?

23 A Yes. Yes, sir.

24 Q Who talked to you?

25 A Mr. Stevens -- at first when I first went over

Marion Bowman, Jr. - Cross-Exam

1 there Big Larry took me in his office and he gave me
2 a cigarette, which was a Camel cigarette, told me he
3 wanted me to go over there and talk to the Dorchester
4 County police.

5 Q Okay. And what did you say about that?

6 A I told him I had nothing to say to them people.

7 Q Okay. You didn't talk to the -- the police
8 didn't come into the room first and you asked them I
9 don't want to talk to you, I want to talk to the
10 sheriff, that didn't happen?

11 A Big Larry sent me across the hall in Barbara
12 Walters' office where Mr. Stevens and Mr. Van Doran
13 was.

14 Q Okay.

15 A And I told him I didn't want to talk to them.
16 And they got up and went and got Big Larry.

17 Q Did you say I don't want to talk to them, I want
18 to talk to Big Larry?

19 A I said, "I don't want to talk to no police."

20 Q Okay. So you deny telling them you wanted to
21 talk to the sheriff?

22 A I never told them that.

23 Q Okay. Now, you go in the office, just you and
24 the sheriff; is that right?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q And I hand you State's Number 7 for
2 identification. And this is a statement form, same
3 format as the other three forms we talked about,
4 right?

5 A Yes, sir.

6 Q And your signature is on there about halfway
7 down that page, isn't it?

8 A Yes, sir.

9 Q Okay. Can you read for the record where it
10 says, "I, Marion Bowman..."

11 A "I, Marion Bowman, have --" looks like
12 "requested --"

13 Q Okay.

14 A "-- Larry Williams to write this statement for
15 me. I can read and write and fully understand what I
16 am doing."

17 Q Okay. And is that your signature right under
18 that?

19 A Yes, sir.

20 Q Okay. And did you then talk to Larry Williams
21 about the facts of Kandee Martin's murder as you knew
22 them at that time?

23 A I didn't talk to Big Larry about nothing. He
24 started telling me what my cousin had told Dorchester
25 County police and him.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. So is it your testimony, I want to be
2 real clear on this, that on the 18th, the time we're
3 talking about now, you did not give Larry Williams
4 any additional information besides what you had given
5 the police the previous day; is that correct?

6 A That's right, sir.

7 Q Okay. I want you to read this thing, take your
8 time, and tell me if there's anything in here that
9 you told Larry Williams.

10 A I didn't tell him nothing in that statement.

11 Q Okay.

12 MR. BAILEY: Bear with me a second here.

13 THE COURT: All right.

14 (Pause in proceedings.)

15 Q I want to call your attention -- I'm on page 2
16 about a third of the way down, I want to go over this
17 with you. We'll read it together and you tell me if
18 I'm saying anything that's not on this paper.

19 "I shot her. I helped Gap drag Kandee in
20 the woods. I had her right leg and her shoe came
21 off. After we got her in the woods, Gap pulled her
22 pants down and I asked Gap 'What you going to do?'
23 And he said. 'I'm going to fuck her or something.
24 I'm going to feel her pussy, I know it's still
25 warm.'" Did you tell Larry Williams that?

Marion Bowman, Jr. - Cross-Exam

- 1 A No, sir. I didn't.
- 2 Q Do you have any knowledge of that occurring?
- 3 A No, sir.
- 4 Q You testified when Larry Williams began to slap
5 you or hit you that you yelled out?
- 6 A I asked him why he was hitting me, sir.
- 7 Q Did you yell out?
- 8 A I asked him "Why you hitting me?" I held my
9 hand up, sir.
- 10 Q Okay. Did you scream, did you holler?
- 11 A When he backhanded me I didn't scream, I just
12 drop my face back.
- 13 Q Okay. And when you got out in the hallway after
14 that, were the other deputies out there, Barbara
15 Walters, Terry Van Doran, any of the other deputies?
- 16 A They didn't take me nowhere until Wally came.
- 17 Q Okay. Did you tell Wally the sheriff just
18 slapped me around, made me sign a paper that I didn't
19 write, don't know nothing about it?
- 20 A He didn't make me sign it then.
- 21 Q Okay. What about the first part of the page
22 there, the part you read where you signed, did you
23 sign that then?
- 24 A No, sir. I didn't.
- 25 Q Okay. Did you see him fill that piece of paper

Marion Bowman, Jr. - Cross-Exam

1 out in the office?

2 A No, sir. I didn't.

3 Q Okay. Did you see this paper at all while you
4 were in Larry Williams' office?

5 A While I was in Barbara Walters' office when he
6 first came in there, asked me to sign the paper and I
7 told him no.

8 Q Okay. And that's before you got slapped around;
9 isn't that right?

10 A Yes, sir. When I told him I wasn't going to
11 sign it he asked me if I wanted a cigarette. Again,
12 when I reached across the desk one of my handcuffs
13 was -- when I leaned for him to put the cigarette to
14 my lip, he put the cigarette to my lip and then it
15 was like he going to light the cigarette and he
16 backhanded me across the right side of my face.

17 Q I want to make sure I understand. At the time
18 that had happened had you seen this piece of paper?

19 A Yes, sir.

20 Q And where did you see it?

21 A He tried to get me to sign it.

22 Q Okay. So it was all filled out?

23 A Yes, sir.

24 Q So are you saying before you even talked to
25 Larry Williams on the 18th this paper, all, I think

Marion Bowman, Jr. - Cross-Exam

1 five pages of it, was already totally filled out
2 except for your signature?

3 A Yes, sir.

4 Q Okay. And you did not sign any portion of this,
5 the part you just read or the bottom of the pages
6 while you were in the Orangeburg sheriff's office?

7 A No, sir. I didn't.

8 Q That didn't happen?

9 A No, sir.

10 Q Okay. So Mr. McAlhany then took you back to
11 Branchville?

12 A Yes, sir.

13 Q And did you tell Mr. McAlhany in the car on the
14 way back the sheriff just slapped me around?

15 A No, sir.

16 Q Who had the piece of paper that you had seen
17 earlier?

18 A Last I saw it was in Big Larry hand.

19 Q Okay. And when you got to Branchville, it was
20 just you and Mr. McAlhany in the car, or anybody else
21 with you?

22 A Just me and Wally. And I was laying on the back
23 seat.

24 Q Okay. Laying down because you were tired, or
25 what?

Marion Bowman, Jr. - Cross-Exam

1 A I was just laying down.

2 Q Okay. When you get to Branchville, is your wife
3 there?

4 A Yes, sir.

5 Q Who else was there?

6 A Officer Lichtenberger, Barbara Walters, Mr. Van
7 Doran, Big Larry, and Wally.

8 Q When did you see that piece of paper again?

9 A When Barbara Walters told me that I couldn't
10 talk -- I was going to talk to my wife to come home.

11 Q Okay. So you were talking to your wife in the
12 conference room?

13 A Yes, sir.

14 Q Barbara Walters was around?

15 A Yes, sir. She was -- if those two tables was
16 put together, she was on the other end, she was on
17 like the end by the door in Branchville Town Hall and
18 me and my wife was on the other end of the table.

19 Q She told you to come on. Then when did you see
20 that paper again?

21 A When I walked out into the hallway.

22 Q Okay. Who had it?

23 A Big Larry.

24 Q Okay. And what happened then? You saw Big
25 Larry in the hallway, he had the paper?

Marion Bowman, Jr. - Cross-Exam

- 1 A Yes, sir.
- 2 Q What happened?
- 3 A He asked me was I going to sign it, or what.
- 4 Q Okay. And what did you say?
- 5 A I signed it.
- 6 Q Okay.
- 7 A I didn't say nothing.
- 8 Q Okay. All right. Then they carried you on back
- 9 up to the jail?
- 10 A Yes, sir.
- 11 Q And Wally McAlhany carried you back up?
- 12 A Yes, sir.
- 13 Q Okay. Now, on the 20th they transferred you to
- 14 the Dorchester County Jail; is that right?
- 15 A Yes, sir.
- 16 Q Let me show you Defendant's Exhibit Number 4 and
- 17 ask if you can recognize that?
- 18 A That's me, sir.
- 19 Q That's your picture?
- 20 A Yes, sir.
- 21 Q What's your weight there now?
- 22 A Two hundred.
- 23 Q Okay. What was it earlier this other time, 170?
- 24 A Yes, sir.
- 25 Q Did you tell them you gained 30 pounds?

Marion Bowman, Jr. - Cross-Exam

1 A I didn't say nothing to them. They wrote what
2 they wanted to, sir.

3 Q Okay. How much did you weigh at that time?

4 A I was still weighing the same I did when I got
5 booked in, sir.

6 Q Okay. Now, you're out of the Orangeburg jail,
7 you're in the Dorchester County Detention Center; is
8 that correct?

9 A Yes, sir.

10 Q Okay. Did you tell anybody at the detention
11 center that you had been slapped around by Larry
12 Williams, the sheriff of Orangeburg County?

13 A I told no police officer at the time, sir.

14 Q Okay. Did you tell anybody that wasn't a police
15 officer?

16 A I was telling the inmates in the back a couple
17 days later.

18 Q Give me some names. Who did you tell at the
19 jail that you got slapped around by Larry Williams?

20 A T. P., John Robertson.

21 Q What's T. P.'s whole name?

22 A T. P.

23 Q Is he still over there?

24 A No, sir.

25 Q T. P., Pringle. Okay. Who else?

Marion Bowman, Jr. - Cross-Exam

1 A Larry Gillian.

2 Q Larry Gillian, okay. He's over there, right?

3 A Yes, sir.

4 Q Okay. Who else?

5 A Everybody else is gone. Those are the ones I
6 was talking to.

7 Q There are complaint forms there if you have a
8 complaint about anything, your food, your clothes,
9 your cell mate, whatever, you can fill out a
10 complaint form; is that right?

11 A Yes, sir.

12 Q Did you fill out a complaint form saying that
13 Larry Williams had slapped you around a couple days
14 earlier?

15 A No, sir, because the guys who had been there a
16 little bit longer told me as soon as I see my
17 attorney to tell her.

18 Q All right. Now, within a couple of days' time
19 after you got to the jail you went to medical and
20 said you had a rash; is that right?

21 A Yes, sir.

22 Q Okay. Where was that rash at, what part of your
23 body?

24 A On my legs and my arm.

25 Q All right. On your face?

Marion Bowman, Jr. - Cross-Exam

1 A No, sir.

2 Q Let me show you Defendant's Exhibit Number 10.
3 You still had that rash in early March, didn't you?

4 A Yes, sir. On my arms, yes, sir.

5 Q Okay.

6 MR. BAILEY: If I can approach.

7 Q Have you seen this before? This is out of your
8 medical records. Rash back again, face swollen.

9 A I can't read that. I don't know what it says.

10 Q Was your face swollen in early March from that
11 rash like that report says?

12 A No, sir. My face was not swollen.

13 Q From the rash or from anything?

14 A When Big Larry hit me the swelling -- I had got
15 Tylenol and the swelling in my face had went down
16 before I even start. The cover made me itch, that's
17 why I had the rash, sir.

18 Q Okay. Let me ask you this: When you were taken
19 from Orangeburg to Branchville that night to see your
20 wife, did you tell your wife that Larry Williams had
21 slapped you?

22 A I didn't tell her nothing like that, sir.

23 Q Did you have a visible mark on your face, or
24 swelling, or anything where somebody could look at
25 you and tell where you had been slapped around?

Marion Bowman, Jr. - Cross-Exam

1 A Yes, sir. My face was puff up.

2 Q Okay. And how close did you get to your wife?

3 A A little bit closer than about right here.

4 Q Did she make any remark about what happened to
5 your face?

6 A No, sir.

7 Q I'll show you Defendant's Exhibit Number 3 which
8 has been marked for identification, call your
9 attention down here to the 22nd. Did you request to
10 see Dorchester County detectives on that day?

11 A No, sir. I didn't.

12 Q Okay. Are you a hundred percent positive of
13 that?

14 A Yes, sir.

15 Q Okay. But you did see them, right?

16 A Yes, sir. They took me to get my blood.

17 Q Okay. And after you gave the blood at around
18 eleven o'clock you saw Mr. Van Doran and Mr. Coker;
19 is that right?

20 A I don't know what time it was.

21 Q Okay. Let me see if this helps, this is State's
22 Number 8 for identification, that's another Miranda
23 rights form.

24 A They got 11 o'clock on it, sir.

25 Q Okay. Does that look like about the time you

Marion Bowman, Jr. - Cross-Exam

- 1 saw them?
- 2 A We don't have a clock, so I couldn't tell you
- 3 what time it was.
- 4 Q Okay. Was it before lunch or after lunch?
- 5 A I think it was during lunch.
- 6 Q Okay. What time is lunch?
- 7 A Eleven o'clock, sir.
- 8 Q Okay. All right. These initials beside each
- 9 one of these rights, those are your initials?
- 10 A Yes, sir.
- 11 Q And this name here, Marion Bowman, Jr. is your
- 12 name?
- 13 A Yes, sir.
- 14 Q And you recall signing your name to that paper?
- 15 A Yes, sir.
- 16 Q And by then by your own admission you had signed
- 17 at least two similar forms, is that correct, two
- 18 written Miranda forms?
- 19 A Yes, sir.
- 20 Q Okay. Did you read this one?
- 21 A No, sir.
- 22 Q Okay. Mr. Bowman, by this time you're in jail,
- 23 right?
- 24 A Yes, sir.
- 25 Q You've been charged with murder and arson?

Marion Bowman, Jr. - Cross-Exam

1 A Yes, sir.

2 Q And are you telling this Court that with your
3 experience and your prior arrests and your knowing
4 the system that you did not read that Miranda form,
5 you just signed your name to it because they told you
6 to?

7 A Yes, sir. I did.

8 Q Okay. Why?

9 A Because they told me to.

10 Q Okay. So they told you to, so you signed it
11 without reading it?

12 A Yes, sir.

13 Q Did they tell you you can't read this, just go
14 ahead and sign it?

15 A No. They said, "Sign the piece of paper."

16 Q Okay. Did they prevent you from reading that
17 paper?

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

19 Q You could have read it if you wanted to?

20 A Yes, sir.

21 Q Why didn't you read it?

22 A I just signed the paper like they told me, I
23 didn't read it.

24 Q Okay. This is Defendant's Exhibit Number 6 that
25 you looked at when you testified, it's dated the 26th

Marion Bowman, Jr. - Cross-Exam

1 of February.

2 A Yes, sir.

3 Q To the best of your recollection, is that the
4 first date that you asked for a public defender?

5 A No. That's not the first date I asked for,
6 that's the day she came.

7 Q That she came or the date --

8 A That's the day she gave me Ms. Marva
9 Hardee-Thomas.

10 Q Okay. When you say she came, Ms. Thomas didn't
11 see you that day, did she?

12 A No, Ms. Kathy.

13 Q How long after that -- I don't want you to tell
14 me anything y'all might have said, but how long after
15 February 26th was the first time you saw Ms.
16 Hardee-Thomas?

17 A I think it was a little -- first I got a letter
18 like two or three days later and then I think that
19 next week she came and saw me, so it was I would say,
20 roughly, maybe eight, nine days, something like that.

21 Q I want to call your attention to a few days
22 after that, which would be February the 27th, okay?

23 A Yes, sir.

24 Q Now, do you know Lieutenant Carmichael?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q Do you know Sergeant Guest?

2 A Yes, sir.

3 Q Do you know Corporal Wallace?

4 A It's two Corporal Wallaces.

5 Q Okay. Do you know two Corporal Wallaces, one
6 black and one white?

7 A Yes, sir.

8 Q Okay. Do you know Corporal Santos?

9 A Yes, sir.

10 Q How about Sanders?

11 A Yes, sir.

12 Q Okay. And do you recall talking to any of these
13 people early in the morning of February the 27th.
14 asking to talk to Sergeant Coker?

15 A No, sir.

16 Q Okay. And if you had asked any of these people
17 to get word to Sergeant Coker that you wanted to
18 talk, would you remember that? Would that be
19 important enough to you to remember?

20 A Yes, sir.

21 Q And you didn't do that?

22 A No, sir, because when we first got there they
23 was telling everybody to put everything on paper.

24 Q Do you recall saying anything early that morning
25 to any of these correctional officers, at about six

Marion Bowman, Jr. - Cross-Exam

1 o'clock or after that?

2 A No, sir.

3 Q Okay. What about around eleven o'clock, do you
4 recall saying anything to any of them?

5 A No, sir.

6 Q Making any request?

7 A No, sir.

8 Q Nothing at all. About midday that day you again
9 saw Sergeant Van Doran, Sergeant Coker; is that
10 right?

11 A Yes, sir.

12 Q And you signed another Miranda form that would
13 be, what, number four?

14 A Yes, sir.

15 Q And your initials are on each one of the rights?

16 A Yes, sir.

17 Q Waiver of rights, you've signed that, that's
18 your name?

19 A Yes, sir.

20 Q No question about it?

21 A No, sir.

22 Q Did you read the form before you signed it that
23 time?

24 A No, sir.

25 Q Okay. Why not?

Marion Bowman, Jr. - Cross-Exam

1 A Because when I signed it, I told them that I
2 didn't want to talk to them because Ms. Marva
3 Hardee-Thomas was my lawyer.

4 Q Okay. So you didn't say anything to them?

5 A No, sir. I didn't.

6 Q Is that the day that you went out and smoked the
7 cigarette with Agent Helms?

8 A No, sir.

9 Q That was the 22nd?

10 A Yes, sir.

11 Q Okay. When you went out and smoked the
12 cigarette on the 22nd, did you talk to Agent Helms
13 about how Kande Martin's car got burned up?

14 A No, sir.

15 Q Did you mention anything about buying gasoline
16 or pouring gas on the car, anything of that nature?

17 A No, sir. I didn't.

18 Q Are you positive?

19 A Yes, sir. Only thing he asked me about was the
20 tattoo on my arm.

21 Q Okay. Nothing else?

22 A Nothing else, sir.

23 Q You're as sure of that as anything you said here
24 today?

25 A Yes, sir.

Marion Bowman, Jr. - Cross-Exam

1 Q Okay. Let me call your attention to the first
2 day of March and ask whether or not you recall
3 filling out some papers on your medical history and
4 assessment, this is State's Number -- excuse me,
5 Defendant's Number 9. Do you recognize that?

6 A No, sir. I don't.

7 Q You don't? Call your attention to the bottom
8 right hand. Is that your signature?

9 A Yes, sir.

10 Q Okay. Look at it real carefully because I want
11 to make sure that's your signature.

12 A Yes, sir. It's my signature, sir.

13 Q Do you remember signing that?

14 A I don't remember signing it, but that's my
15 signature.

16 Q Do you remember a nurse, or a doctor, or
17 somebody there getting a medical history from you?

18 A Ms. Goodier.

19 Q Ms. Goodier, all right. And did Ms. Goodier
20 say, ask you if you've had an injury in the past
21 three months or have an injury now?

22 A Yes, sir.

23 Q And that form is checked yes, isn't it?

24 A Yes, sir.

25 Q Did she check yes after you told her you had an

Marion Bowman, Jr. - Cross-Exam

1 injury? Did she check that off, or you checked it
2 off?

3 A She was checking, I didn't.

4 Q Okay. And at that point in time then I'm sure
5 you told her "Larry Williams slapped me in the face
6 and still hurts," didn't you?

7 A No, sir. I didn't.

8 Q Were you afraid of Nurse Goodier?

9 A I wasn't talking to no police, sir.

10 Q She's not a police, is she?

11 A Nobody like that.

12 Q Okay. So to answer my question you didn't tell
13 any of the medical personnel that you had been
14 slapped?

15 A No, sir. I didn't.

16 Q Okay. And over here where if you've got a yes
17 answer you explained it, did you tell her you were
18 hit in the head, but you didn't know what happened?

19 A I might have did.

20 THE COURT: We're going to take a break
21 when you get to a breaking point.

22 MR. BAILEY: Okay. This might be a good
23 place.

24 THE COURT: I wondered, you seemed as
25 though you were about to shift a little bit.

Marion Bowman, Jr. - Cross-Exam

1 MR. BAILEY: I am, but it won't be too much
2 longer.

3 THE COURT: That's not a problem. I don't
4 want you to feel rushed. We will take about a
5 ten-minute break. Ten-minute break. All right.

6 MS. HARDEE-THOMAS: Thank you.

7 THE COURT: You know, Mr. Bowman, same
8 thing, just because you're on the stand your
9 lawyers can't talk to you. Do you realize that?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: All right. Mr. George will
12 take you out.

13 (Recess, from 11:51 p.m. to 12:09 p.m.)

14 THE COURT: All right. We'll continue with
15 cross-examination, Mr. Bailey.

16 MR. BAILEY: Thank you.

17 Q Mr. Bowman, I asked you earlier about your visit
18 to the Hall Institute where you underwent the
19 psychiatric evaluation. You testified you had been
20 given Miranda rights there, you understood those
21 rights. And then the people there asked some
22 questions, is that correct, to determine your state
23 of mind at the time this offense occurred?

24 A Yes, sir.

25 Q Okay. I'm going to show you a paper here and

Marion Bowman, Jr. - Cross-Exam

1 ask you to read it to yourself, and I'm going to ask
2 you if you recall making this statement to the
3 psychiatrist at the Hall Institute. Just read to
4 yourself started "He reportedly said..." on down to
5 right here. Down to right here.

6 A Right here, sir?

7 Q Yeah. You reportedly said down to there.

8 A (The witness complies.) No, sir.

9 Q You didn't say that?

10 A Not show me Kandee body, no, sir.

11 Q Okay. What about the rest of it, about the
12 molesting the dead body sexually, did you tell them
13 that?

14 A He said he was about to?

15 Q Using that to refresh your memory, Mr. Bowman,
16 did you tell the people at the state hospital an
17 account of Kandee Martin being sexually molested
18 after her death?

19 A I didn't say she was, I said that Gap said
20 Peanut was about to.

21 Q Okay.

22 A Use this word?

23 Q Yeah.

24 THE WITNESS: Use this word?

25 Q If that's what you said.

Marion Bowman, Jr. - Cross-Exam

1 A Gap said that I said he said that he was about
2 to fuck her or feel her pussy.

3 Q This was after she had been dead?

4 A Sir?

5 Q That was after she was dead, right?

6 A Yes, sir.

7 Q Okay. Now, there's similar language in Larry --
8 in the number four written statement you gave Larry
9 Williams; is that correct?

10 A Yes, sir.

11 Q Okay. And didn't you just testify that you did
12 not tell Larry Williams that?

13 A I did not.

14 Q Okay. But the same information that you say
15 Larry Williams made up, would have had had to have
16 made it up because you didn't give him any of that
17 information, is something you said at the state
18 hospital later on?

19 MR. CUMMINGS: The door is open. I know
20 that witness is out in the hallway.

21 THE COURT: Thank you. Just shut the door.

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: All right.

24 Q Okay. Let me back up a minute. Referring to
25 State's Number 7 for identification which is the

Marion Bowman, Jr. - Cross-Exam

1 statement written out by Larry Williams on the 18th
2 that you said was written out with no input from you
3 at all by Larry Williams. And you just signed it,
4 right?

5 A Yes, sir.

6 Q Okay. You read a portion of that statement,
7 said you did not say this to Larry Williams, he made
8 it up. "I helped Gap drag Kandee in the woods. I
9 had her right leg. Her shoe came off after we got in
10 the woods. Gap pulled her pants down and I asked Gap
11 'What you going to do?' And he said, 'I'm going to
12 fuck her or something, I'm going to feel her pussy.'"
13 You said you did not say any of that to Larry
14 Williams; is that right?

15 A No, sir. I didn't.

16 Q When you talked to the people at the Hall
17 Institute, did you say that Gap had asked Kelly --
18 Terry Kelly to go with him, that he would show him
19 something, or that he had asked you to go with them?

20 A Yes, sir. He asked me to go with him.

21 Q Okay. And that you went with him and he showed
22 you Kandee's body in the bushes?

23 A I said he wanted to show me.

24 Q Is this wrong where they quote you as saying --

25 MR. CUMMINGS: Judge, I object. This is

Marion Bowman, Jr. - Cross-Exam

1 not a quote, this is hearsay. Respectfully I
2 know the solicitor is asking him is that what
3 you said. He's already said no. This is
4 another person's document, another person's
5 typewriting, respectfully. And they've compiled
6 a lot of information here based on almost two
7 pages of information received from law
8 enforcement. I think my client has asked to
9 answer that. I know Mr. Bailey is going to ask
10 him what he said, but not what somebody else is
11 writing down or typed down. He said these are
12 not his words.

13 THE COURT: Let me hear the question, first
14 of all.

15 And, Mr. Bowman, don't answer the
16 question. I've got to hear the question, I've
17 got to rule on an objection, so don't you answer
18 the question, okay?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right.

21 Q Okay. Did you say to the people at the Hall
22 Institute "I went with him and he showed Kandee's
23 body in the bushes." Did you say that to them?

24 MR. CUMMINGS: Objection. The way this
25 question's worded, Mr. Bailey has now asked him

Marion Bowman, Jr. - Cross-Exam

1 did he tell those people that.

2 MR. BAILEY: That's what I asked him.

3 THE COURT: That's what he's just asked,
4 did you say to them this statement. Any
5 objection?

6 MR. CUMMINGS: Objection to that, no,
7 ma'am.

8 THE COURT: Very well. You now may answer
9 the question.

10 A No, sir. I didn't say he showed me anything. I
11 said he wanted to show me, that's what I told them.

12 Q Okay. All right. And did you say, "I asked
13 what happened and he said the bitch wouldn't trick."
14 Did you say that to him?

15 A I remember saying that.

16 Q Okay. Did you say her clothes were pulled down
17 and you asked why and he said he was about to fuck
18 her, her pussy's still warm?

19 A No, sir. I didn't.

20 Q Larry Williams wasn't with you at the Hall
21 Institute, was he?

22 A No, sir.

23 Q Okay.

24 MR. BAILEY: Indulge me a second, please,
25 Your Honor.

Marion Bowman, Jr. - Cross-Exam

1 THE COURT: All right.

2 (Pause in proceedings.)

3 MR. BAILEY: Your Honor, that's all I have
4 of this witness at this time.

5 THE COURT: Thank you.

6 Redirect.

7 MR. CUMMINGS: Thank you. Just a few.

8 REDIRECT EXAMINATION

9 BY MR. CUMMINGS:

10 Q Good afternoon, sir.

11 A Good afternoon.

12 Q I'm going to go right back to the very beginning
13 of this matter. You were arrested for charges of
14 armed robbery and other charges out of Orangeburg
15 County; is that correct? Have you ever been arrested
16 for armed robbery, Marion?

17 A Yes, sir.

18 Q What was the verdict of that case?

19 A Not guilty, sir.

20 MR. BAILEY: Your Honor, that's not
21 relevant.

22 MR. CUMMINGS: I want to make sure -- it's
23 very relevant, Judge, I want to make sure this
24 record is clear and correct. My client was
25 arrested; he was found not guilty. After he

Marion Bowman, Jr. - Redirect Exam

1 went to a trial he was asked about an arrest and
2 I want to make sure the record's clear of that.

3 MR. BAILEY: The sole reason of asking him
4 about the arrest is it shows familiarity with
5 the process. The outcome of that particular
6 case is neither here nor there.

7 THE COURT: I agree that it's -- it's --
8 the purpose was to elicit information about
9 familiarity of Mr. Bowman with the criminal
10 process and therefore Miranda rights and his
11 rights to have attorneys appointed and it's
12 not -- it's not relevant, but, please, proceed,
13 Mr. Cummings.

14 MR. CUMMINGS: Thank you, Your Honor.

15 Q When you were first picked up did anybody share
16 with you that you had the right to ask for an
17 attorney that day?

18 A No, sir.

19 Q When you went back and met with all these
20 officers, nothing is in your handwriting at all on
21 any of these pieces of paper that are called alleged
22 statement forms?

23 A No, sir. It's not.

24 Q The only thing that's consistent is each one has
25 your signature?

Marion Bowman, Jr. - Redirect Exam

1 A Yes, sir.

2 Q As far as Mr. Williams, when he came there, it's
3 your testimony still after speaking with Mr. Bailey
4 that you never saw this gentleman write this
5 statement out in front of you?

6 A I never saw him write that.

7 Q When you went and were taken by Sergeant
8 McAlhany down to Branchville, why did you sign the
9 paperwork at Branchville?

10 A Because besides him hitting me, he was going to
11 lock my wife up and have my kids taken.

12 Q Okay. As far as your statements to Mr. Williams
13 down there at the Branchville, you said you didn't
14 tell him nothing, nothing I think is what your words
15 were, or say anything, you just signed the forms at
16 Branchville?

17 A Yes, sir.

18 Q Was your wife still present?

19 A She was still in the courtroom.

20 Q As far as your reading capability, what has
21 happened with you since you've been in the Dorchester
22 County Jail since February 20th of 2001?

23 A I learned to read a whole lot better, sir.

24 Q How?

25 A Going to school with my teacher, Ms. Bothman,

Marion Bowman, Jr. - Redirect Exam

1 and different inmates.

2 Q Now, when you went to the state hospital were
3 you represented by counsel?

4 A I already had Ms. Marva Hardee-Thomas.

5 Q Was any attorney present with you that day?

6 A No, sir.

7 Q What was your understanding of why you went, I
8 think you used the words the other day, to the crazy
9 house?

10 A When I got there they told me that they wanted
11 to talk to me about what happened when I got arrested
12 so they can help me.

13 Q So they can help you?

14 A Yes, sir.

15 Q Okay. Did you sign anything at the state
16 hospital?

17 A Yes, sir. I did.

18 Q What did you sign?

19 A The paper where they asked me did I want them --
20 they asked me did I want to call Ms. Marva
21 Hardee-Thomas.

22 Q What did you say?

23 A And I told her, I told them I was mad at her at
24 the time because she didn't answer my phone call.
25 Something like that.

Marion Bowman, Jr. - Redirect Exam

1 Q Okay. Did you ever put anything in writing to
2 the state hospital or write any statements out for
3 them?

4 A No, sir.

5 Q Okay. Did you ever see the information that
6 the -- either the medical doctor, or the social
7 workers, psychologist ever had from law enforcement
8 when you went to the state hospital?

9 A No, sir.

10 Q They didn't put out any documents to show you
11 statements or forms?

12 A No, sir.

13 Q Was their interview tape recorded?

14 A No, sir.

15 Q Who -- did you see anybody writing anything down
16 up there?

17 A I think a man was sitting in the corner writing
18 stuff down while the lady was talking to me.

19 Q Mr. Bailey showed you what's been a report
20 generated as a result of examination of the state
21 hospital. Have you ever seen that report other than
22 through discovery?

23 A No, sir.

24 MR. CUMMINGS: Beg the Court's indulgence.

25 THE COURT: All right.

Marion Bowman, Jr. - Redirect Exam

1 (Pause in proceedings.)

2 Q I don't mean to delay this. When you were shown
3 Defendant's Exhibit Numbers 9 and 10 which are forms
4 about injuries to the hospital.

5 MR. CUMMINGS: May I approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 MR. CUMMINGS: Okay.

9 Q Going down to the third block, again, there's a
10 block checked. What is that block checked for?

11 A "Have you had an injury in the past three
12 months, or have injury now?"

13 Q What did you tell the medical person that was
14 the cause of the injury?

15 A I didn't tell her what was the cause, sir.

16 Q Was anything written down? If you look on the
17 right-hand column where there are blocks for people
18 to write, is there anything written in there?

19 A Yes, sir. It's two different things.

20 Q All right. Let me look over your shoulder. One
21 is diabetes runs in family.

22 A Yes, sir.

23 Q Okay. Top thing says hit with head -- "Hit in
24 the head, don't know what happened." Why did you say
25 that to somebody if you didn't tell them what caused

Marion Bowman, Jr. - Redirect Exam

1 the injury?

2 A Because when she was asking me did I have -- did
3 I have an injury anytime, I said, yes. Then I told
4 her. And then I thought about she going to tell the
5 police.

6 Q You have made a statement to Ms. Thomas and I
7 the other day that the lady in the jail was not very
8 polite to the inmates. What was that statement that
9 you made?

10 A When Mr. Coker and them came to get my blood she
11 told me -- she kept trying to stick me with the
12 needle, she stuck through my vein, told me my veins
13 was hard to find and if she didn't know any better I
14 was an IV drug user.

15 Q What was your response back to that lady?

16 A I said, "You're taking my blood, you know
17 whether I use drugs or not."

18 Q Did that make you angry?

19 A Yes, sir. It did.

20 Q Did you trust law enforcement after what
21 happened on the 17th, throughout, until we're here
22 today?

23 A No, sir.

24 Q Were you adamant about -- again, this is for the
25 purposes of this hearing, were you adamant in making

Marion Bowman, Jr. - Redirect Exam

1 sure that I asked you about the issue of the armed
2 robbery that you were found not guilty of because you
3 were angry being arrested for that when you knew you
4 didn't do something wrong?

5 A Yes, sir.

6 Q And that's why you don't like the police?

7 A Yes, sir.

8 Q You were put --

9 MR. BAILEY: Your Honor, if Mr. Cummings
10 wants to be sworn and testify, I'll consent to
11 that because that's what he's doing.

12 THE COURT: I think he's leading a little
13 bit, too.

14 Mr. Cummings?

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: Don't lead.

17 Q Why don't you want to talk to the police?

18 A 'Cause the first time I got arrested -- the
19 first time I ever had a dealing with the police was
20 when I was a juvenile and someone said that I had did
21 something and then they later found out that I didn't
22 do it. Then my cousin had killed himself and I took
23 a charge for another one of my cousins so he wouldn't
24 go to jail, but he went anyway.

25 And after that I got arrested for a charge

Marion Bowman, Jr. - Redirect Exam

1 that I didn't know nothing about because my mama
2 boyfriend, at the time my mama boyfriend got hit by a
3 truck on the interstate.

4 Q Mr. Bowman, have you ever written out a
5 statement for any law enforcement officer concerning
6 the charges or the burglaries that Mr. Solicitor
7 showed you today?

8 A No, sir.

9 Q Had you ever written out any statements at all
10 for the time you were arrested for the armed robbery?

11 A No, sir.

12 Q Had you ever written out in the statements for
13 law enforcement at any time anywhere prior to being
14 involved in this issue?

15 A No, sir.

16 Q And you didn't write any statements out in this
17 case?

18 A No, sir.

19 Q When they asked you about your experience with
20 law enforcement dealing with Miranda forms, or your
21 rights as we call them, for constitutional rights to
22 be in court, that's the extent of your experience?

23 A Yes, sir.

24 MR. CUMMINGS: Beg the Court's indulgence.

25 THE COURT: All right.

Marion Bowman, Jr. - Redirect Exam

1 (Pause in proceedings.)

2 MR. CUMMINGS: Judge, that's all the
3 questions I have back on redirect, and I thank
4 Your Honor.

5 MR. BAILEY: Nothing further on recross,
6 Your Honor.

7 THE COURT: Come on down, Mr. Bowman.
8 (Whereupon, the witness steps down from the
9 witness stand.)

10 THE COURT: All right. Call your next
11 witness.

12 MR. CUMMINGS: Thank you, Judge.
13 Mr. McAlhany, please.

14 THE COURT: All right.
15 (Wayne W. McAlhany, called as a witness, having
16 first been duly sworn, is examined and testifies
17 as follows:)

18 THE COURT: And if you would please be
19 seated. Mr. Taylor will help you with the
20 microphone. And if you will state your full
21 name for the record and spell your last name.

22 THE WITNESS: Wayne Wallace McAlhany, Jr.
23 M-c-A-l-h-a-n-y.

24 THE COURT: Your witness.
25

Wayne W. McAlhany - Direct Exam

DIRECT EXAMINATION

2 BY MR. CUMMINGS:

3 Q Good afternoon, Mr. McAlhany. I understand you
4 are no longer working for the Orangeburg Sheriff's
5 Department?

6 A That's correct.

7 Q Very sorry to lose you, sir. I don't know if
8 you understood that or not?

9 A Yes.

10 Q You were with the Orangeburg Sheriff's
11 Department for how many years, sir?

12 A Approximately three and a half.

13 10 When did you complete the academy?

14 A From January '99 through March of 1999.

15 Q All right, sir. And let me call your attention
16 back to the month of February 2001. Were you
17 employed by the sheriff's department at that time?

18 A Yes, sir.

19 Q And in particular I call your attention back to
20 the month of February in that year dealing with
21 Mr. Marion Bowman.

22 A Yes, sir.

23 Q Are you familiar with that, sir?

24 || A Yes, sir.

25 | 0 Do you see Mr. Bowman anywhere in the courtroom

Wayne W. McAlhany - Direct Exam

1 here today?

2 A Yes, sir.

3 Q Can you please point him out for the record,
4 sir?

5 A Right there.

6 Q Can you give a physical description?

7 A White shirt, blue/gold, I think, gold tie. Blue
8 and gold tie.

9 Q Okay. All right. What shift were you working
10 back on the 17th of February 2001?

11 A As far as time of day?

12 Q Your road duties.

13 A I was a road deputy. I believe I was a corporal
14 at the time and working just patrol.

15 Q All right, sir. But what hours would you
16 normally work back in February 2001?

17 A I was -- I believe at that time I was on a
18 midnight shift, which ran from 7:00 p.m. to 7:00 a.m.
19 in the morning.

20 Q All right. So 12-hour shift?

21 A Twelve-hour shift.

22 Q And in particular I want to go back now and just
23 start with a little bit of colloquy here this
24 morning. How did you learn to be here today?

25 A Got subpoenaed.

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1 Q Okay. By the defense?

2 A Yes.

3 Q All right. But in the meantime now you've
4 talked to Solicitor Bailey, elected solicitor?

5 A Yes.

6 Q When did you have a conversation with Mr.
7 Bailey, sir?

8 A It was --

9 Q Today's Friday.

10 A Today's Friday. I believe it was Wednesday. I
11 believe it was Wednesday.

12 Q All right, sir. Who told you to call our
13 elected solicitor?

14 A Let me think back. I think it was someone from
15 the sheriff's office, they called me in and left a
16 message. I believe it was a message. Or I can't
17 remember if it was a message or -- I -- I can't
18 remember if it was a message or if it was someone
19 actually talked to me. I believe -- excuse me just
20 for a minute, I'm thinking.

21 Q Take your time, sir.

22 A Okay. I believe it was Major Walters, she gave
23 me a call if I remember correctly.

24 Q Did anybody tell you anything about witnesses
25 being sequestered, or not speaking about the facts of

Wayne W. McAlhany - Direct Exam

1 this case or anything dealing with this as far as
2 coming to court?

3 A No. She just told me to make contact with
4 Solicitor Bailey.

5 Q All right. And you didn't ask back in the
6 normal course of being a good learned law enforcement
7 officer who's usually nosey, say what for? Why would
8 you want me to call the solicitor?

9 A She said it's in reference to the Bowman trial
10 case.

11 Q Okay.

12 A And I said, okay. And she gave me his cell
13 number and I made contact with Solicitor Bailey.

14 Q Any other colloquy or conversation between you
15 and Major Walters?

16 A No, sir.

17 Q Where are you employed now?

18 A With Waddell Naree Financial Services.

19 Q And you began that -- you resigned from the
20 sheriff's department what date?

21 A It was -- my final day was April the 8th. And
22 two weeks before that I turned in my notice.

23 Q Yes, sir. You gave resignation, all right. And
24 I want to go back to that month now, February of 2001
25 you said you were working a 12-hour shift. Did you

Wayne W. McAlhany - Direct Exam

1 receive a communication or orders to go from -- let
2 me go back a little bit. What area were you
3 patrolling in Orangeburg starting at seven o'clock at
4 night?

5 A Orangeburg area, area around Orangeburg.

6 Q Around Orangeburg city limits?

7 A Yes, sir. Just on the outskirts of Orangeburg.
8 We were broken basically the Orangeburg, Orangeburg
9 area, which consists of basically the whole entire
10 county except for the lower end, Holly Hill, Santee
11 area, I didn't work down that. I was working in the
12 Orangeburg area.

13 Q What about Branchville?

14 A It consisted of the Orangeburg area.

15 Q Branchville is part of the Orangeburg area?

16 A Yes, sir.

17 Q All right. So you have that like 18- to 20-mile
18 jurisdiction range?

19 A Yes, sir. It's pretty, pretty large.

20 Q Okay. And did you receive a communication of
21 some sort from anybody directing you to go to the
22 Branchville area?

23 A Which night was this now?

24 Q This was the 17th, sir.

25 A What night was that?

Wayne W. McAlhany - Direct Exam

1 Q Should be a Saturday.

2 A Saturday. That -- I can't remember. If --
3 there were two separate, two separate nights that I
4 went down to Branchville. Is this the first night or
5 is this the second night?

6 Q I would stipulate to you and I think Mr. Bailey
7 would stipulate to you this is the first time.

8 A Okay. I was told to go to the town hall.

9 Q Okay. By who?

10 A I believe at the time my supervisor was, I
11 believe, Eric Kirkland, Lieutenant Kirkland.

12 Q Lieutenant Kirkland?

13 A I believe so.

14 Q All right. Was this over the radio
15 communication?

16 A I don't recall if it was -- I think he may have
17 gave me a radio communication and then told me to
18 call him by telephone, I believe. I'm not for sure.

19 Q Okay.

20 A I can't state for sure.

21 Q All right.

22 A Because I can't really remember how that
23 transpired.

24 Q Did you ask the lieutenant -- obviously most of
25 the time corporals do not ask lieutenants to question

Wayne W. McAlhany - Direct Exam

1 their orders, but did you ask him what you were going
2 down there for?

3 A He said someone needed to be transported,
4 transported back to the -- the detention center in
5 Orangeburg.

6 Q Okay. About what time did you get down there,
7 sir?

8 A Probably it's just a roundabout number in the
9 eight o'clock area, between 8:00 and 8:45 I would
10 say.

11 Q All right, sir. Do you gentlemen or ladies in
12 your profession, sir, particularly your department,
13 keep like logs or mileage logs in your car?

14 A We do it by radio because it's recorded on the
15 911 line, I mean on the sheriff's office line. So
16 it's we just give our mileage actually on the radio
17 so it's on tape.

18 Q And you do that, you give your mileage?

19 A When we're transporting prisoners, yes, sir.

20 Q Okay. And I want to go back that day. When you
21 get that call about eight o'clock at night you go to
22 Branchville Town Hall. And when you get down there,
23 what's the very first thing you do?

24 A Walk in and find out what I'm there for.

25 Q Okay.

Wayne W. McAlhany - Direct Exam

1 A Who I'm supposed to transport.

2 Q When you got there what did you see? I want you
3 to describe for the record what did you see when you
4 got down there?

5 A On that night I got there, and of course parked
6 on the side of the town hall.

7 Q Yes, sir.

8 A Walked in to the town area. There were several
9 Dorchester County units there, officers, deputies
10 there.

11 Q Would you be able to recall approximately how
12 many Dorchester County law enforcement officers were
13 there?

14 A Three or four or five.

15 Q Okay, sir.

16 A That's guessing, about four or five.

17 Q All right, sir. How many members of your agency
18 there, sir?

19 A Approximately three.

20 Q Okay, sir. And can you recall their names, the
21 three people that were involved in your agency?

22 A It was Sheriff Williams, Larry Williams,
23 Investigator Varnadeaux.

24 Q Yes, sir.

25 A Myself. That's all I recall right now from

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1 Orangeburg County Sheriff's Office.

2 Q All right, sir. Did you see anybody else from
3 the Branchville Police Department there?

4 A I think Chief Boom Walters was there.

5 Q All right, sir. Any ladies there?

6 A I do not recall any ladies being there.

7 Q Okay. When you got there, who did you go up and
8 ask about what you were required to do as part of
9 your duty, sir?

10 A I think I spoke with Investigator Varnadeaux.
11 And I really don't remember what I asked him as far
12 as word for word, but he said they would be ready for
13 me to transport someone back shortly and that I was
14 just waiting there.

15 Q Okay, sir. And you waited there until about
16 what time, sir?

17 A It was probably I would say -- it was late. It
18 was probably 11:30, 11:00. 11:30, 12:00.

19 Q That's when you left Branchville, sir?

20 A That's when I transported Mr. Bowman back to
21 Orangeburg.

22 Q What was your understanding why you were
23 transporting this citizen from the Branchville area
24 to the Orangeburg County facilities that you
25 gentlemen and ladies use?

Wayne W. McAlhany - Direct Exam

1 A Just told me to transport him. I was following
2 orders. I mean, they just told me to transport him
3 back to -- to the detention center.

4 Q Okay. So you were just following orders, take
5 this person, in other words human being, and
6 transport them up to where?

7 A To the Orangeburg County Detention Center.

8 Q Right to the detention center. I mean, pull in
9 the sallyport?

10 A Sallyport.

11 Q Okay. I'm going to show you a document and ask
12 you are you familiar with procedures of putting
13 people into the county jail that you used to work
14 under, sir? Just take a moment and look at
15 Defendant's Exhibit Number 2.

16 A (The witness complies.) This is pretty much --

17 Q I'm sorry, you have to speak up, buddy.

18 A What do you want to know about it?

19 Q Is that normally generated as a result of you
20 bringing somebody to the county jail, in particular
21 Mr. Bowman?

22 A Basically this is just the jail -- it's, you
23 know, what the jail -- they use for their paperwork.

24 Q Would it be fair to say that when you gave the
25 person of Mr. Bowman to the jail, did you fill out

Wayne W. McAlhany - Direct Exam

1 any of that paperwork? If you didn't --

2 A Well, I didn't fill this out because this is
3 just nothing but a computer printoff of what the
4 jailers type into the computer.

5 Q I got you. Do you write down the time that you
6 bring the prisoner to the jail, sir, for your records
7 or for you to say what you did that night, or show a
8 log or whatever?

9 A Not for my personal records, no.

10 Q All right, sir. Did you keep any personal
11 records back that -- in the car like you used to have
12 a clipboard in the middle, you used to have to hand
13 write everything down?

14 A I didn't keep anything for this.

15 Q Did you write any incident reports?

16 A Not for this incident.

17 Q Did you do a booking report?

18 A Not for this incident.

19 Q Did you charge Mr. Bowman with anything,
20 Mr. McAlhany?

21 A No. No, sir.

22 Q Okay. You take him, put him in the jail. Did
23 the jailer or anybody ever ask you, well, tell me
24 what the reason is for bringing this man in to me,
25 give me the charging document?

Wayne W. McAlhany - Direct Exam

1 A I don't recall.

2 Q Well, that's pretty important because you just
3 can't put a citizen in the jail because you don't
4 like them, right?

5 A Well, I mean seriously I can't recall. I mean,
6 I don't recall.

7 Q Okay. I'm going to show you a document, sir,
8 and ask you now this is a photostatic copy marked as
9 State's ID Number 8 and ask you have you ever seen
10 this document, sir? And just take a moment and look
11 at it.

12 A (The witness complies.) I can't recall. I mean
13 seen it, I don't remember. If I did see it, I don't
14 remember.

15 Q All right, sir.

16 A Because I -- we do so many warrants, I saw so
17 many warrants on a daily basis until I don't recall
18 if I saw that actual warrant or not.

19 Q Okay. Do you remember of your own personal
20 knowledge, recollection, sir, I understand that, you
21 know, you've just been pulled up here and you're
22 brought to the courthouse, do you remember ever
23 serving legal process on Mr. Bowman, particularly the
24 night of the 17th, or the day of the 18th?

25 A I do not recall doing that.

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1 Q Okay, sir. I'm going to approach you again,
2 sir, politely.

3 A Okay.

4 Q Ask you if you can identify the signature on
5 State's ID Number 7?

6 A Yes, sir. That is my signature.

7 Q Okay. When did you sign that document, sir?

8 A It appears to be the 18th of February 2001.

9 Q All right, sir. Where would you have signed
10 that document at, sir? Because it says that you
11 served legal process upon Mr. Bowman.

12 A Okay. It was somewhere within Orangeburg County
13 that's all I can -- I can't remember where, exactly
14 where.

15 Q And you did not fill out an incident report or
16 anything saying that you served a warrant on the
17 person of Mr. Marion Bowman, Jr. at this date, this
18 time?

19 A I do not recall. I do not recall.

20 Q Well, would you have written an incident report
21 or something like that?

22 A If, if it's already been -- a case number's
23 already been issued, all you would enter -- you would
24 fill out a supplemental report to that original case
25 number.

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1 Q All right. Because like warrant served, right,
2 because you're clearing off a case; is that correct?

3 A You're just showing the warrant, you indicate
4 the warrant number on the incident supplemental
5 report.

6 Q Yeah. Like a warrant executed, right?

7 A Yes, sir.

8 Q Somebody's got to get it out of the computer?

9 A Right.

10 Q Okay. Did you do that, fill out a supplemental
11 report or anything that night?

12 A I don't recall.

13 Q Or later on that day?

14 A I do not recall. I do not recall.

15 Q Has anybody shown you any documents to assist
16 you with coming to a courtroom today?

17 A No, sir.

18 Q Okay.

19 A That's why my mind is so -- it's pretty vague
20 because it's been so long, because I really don't
21 remember exactly.

22 Q You don't remember where you served this legal
23 process on this gentleman?

24 MR. BAILEY: Judge, I hate to keep
25 objecting, but Mr. Cummings asks the same

Wayne W. McAlhany - Direct Exam

1 questions repeatedly and I object.

2 MR. CUMMINGS: Judge, there are two
3 separate items I asked this gentleman about and
4 that's why some of the questions might sound
5 like they're duplicated, but they're not. One
6 is an attested true copy that does not bear any
7 signature of Mr. McAlhany as he attested to and
8 one that does have his signature on it.

9 THE COURT: Your question now is did he
10 serve that particular document?

11 MR. CUMMINGS: Yeah, did he serve.

12 THE COURT: I'll allow it.

13 Q Did you ever take Mr. Bowman to a bond hearing
14 of your personal knowledge, sir?

15 A No, sir.

16 Q Okay. I call your attention now to the second
17 day, okay?

18 A All right.

19 Q And you are working again the Orangeburg, same
20 area, Deputy?

21 A Yes.

22 Q Excuse me, Mr. McAlhany now. And when you're on
23 the road what happened, sir, who calls your attention
24 to do something next?

25 A It was my supervisor at the time, Eric Kirkland.

Wayne W. McAlhany - Direct Exam

1 Q Okay.

2 A Told me to go to the complex, which is our
3 office.

4 Q Yes, sir. When you say "our office," which
5 complex?

6 A As far as the Orangeburg County Sheriff's Office
7 Law Complex.

8 Q Exactly what building did you go to? In other
9 words, what area of the building, sir?

10 A I just went in the sheriff's office, is the
11 sheriff's office building which is shared by the city
12 and the sheriff's office. But on one side is the
13 sheriff's office and the other side is the Department
14 of Public Safety, but I went in the sheriff's office,
15 on the sheriff's office side.

16 Q All right, sir. And what -- please tell us for
17 the record exactly what you did when you went inside
18 the sheriff's side of that building.

19 A Went in the office. I don't recall if I got him
20 from the jail or if somebody already signed him out
21 of the jail. I can't recall.

22 Q But you know he was out of the jail?

23 A I don't know. I can't remember.

24 Q Okay.

25 A I can't remember if he was -- if he was still

Wayne W. McAlhany - Direct Exam

1 in, in the detention center and signed him out, or if
2 he was already out. I can't remember.

3 Q Okay. And what were you to do with this person
4 that somehow got into your possession?

5 A I was given instructions to take him to
6 Branchville Town Hall to meet with his wife.

7 Q Who told you that?

8 A My supervisor, Eric Kirkland, told me that that
9 was -- that he was told to tell me or get someone
10 from the shift. And I'm, of course, from Branchville
11 so I'm familiar with where town hall is so he sent
12 me, he assigned that duty to me to take him,
13 Mr. Bowman, to Branchville Town Hall in order to see
14 his wife. I didn't know why, I didn't ask any
15 questions why, he told me to do it and that's -- and
16 I did that.

17 Q Okay. Now, do you remember what day of the week
18 this was back in February of 2001?

19 A Not right offhand.

20 Q Okay. Did you find it odd or strange to be
21 given an order to take somebody down to see their
22 wife out of the jail down to Branchville? It's in
23 your mind now.

24 A No, sir. Well, I mean, it's -- I didn't know
25 why we'd take him to Branchville, but I took him down

Wayne W. McAlhany - Direct Exam

1 there. I didn't ask any questions why because I was
2 given an order and I, you know, did that.

3 Q Did Mr. Bowman ask you where he was going?

4 A Not that I recall.

5 Q Do you remember Mr. Bowman ever asking you if
6 you were taking him to a bond hearing?

7 A I do not recall him asking me that.

8 Q You never afforded him the right to a bond
9 hearing because you know you put him in jail at least
10 the 17th, early morning hours of the 18th, right?

11 A True, yes, sir.

12 Q When is a citizen entitled to a bail or bond
13 hearing?

14 A I really don't know.

15 Q You've been doing the job how many years?

16 A Three and a half.

17 Q How many people have you put in jail, just left
18 them there, didn't know if they got a bond hearing or
19 not?

20 A Well, I usually make it the next morning, that's
21 my -- been my, my personal dealings with prisoners.

22 Q Mr. McAlhany, I don't want to question you and
23 I'm trying to -- you look very uncomfortable up here
24 when I asked you about whether it was strange or not
25 to have somebody taken out of the jail to go down to

Wayne W. McAlhany - Direct Exam

1 see their spouse after they're incarcerated. Are you
2 uncomfortable on that question?

3 A I didn't know for what reason. I've never done
4 that before, I didn't know for what reason it was
5 for. I didn't ask why, I just -- I just did it.

6 Q Did you ever learn why?

7 A Yeah. To meet with his wife.

8 Q Okay. When you got there, how many people were
9 there?

10 A Myself, Investigator Varnadeaux, I believe. I'm
11 not for sure. I think Officer Lichtenberg,
12 Lichtenberger from the Branchville Police Department
13 may have been there.

14 Q All right, sir.

15 A I don't recall if -- I can't remember anybody
16 else who was there for sure.

17 Q Okay. How about members of your agency
18 including any bosses or superiors?

19 A Other than Varnadeaux that's the only person I
20 can remember from Orangeburg County sheriff.

21 Q All right, sir. How about from Dorchester
22 County?

23 A I don't recall.

24 Q Okay. Well, what did you do with the person of
25 Mr. Bowman when you got to Branchville?

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1 A I was told by, I believe, Mr. Varnadeaux to --
2 there's a conference, a conference room there in the
3 town hall, and carry Mr. Bowman in there. And he sat
4 at the end of the conference table and -- and I stood
5 by the door.

6 Q You stood by the door?

7 A Yes, sir.

8 Q Okay. And you left him alone in there with his
9 spouse?

10 A I don't -- I don't recall if she was already
11 there or if she was brought there.

12 Q Okay. Did you have any conversations with any
13 of the officers, like Mr. Lichtenberger or Varnadeaux
14 about what your purpose was down there?

15 A I think I asked Varnadeaux what -- you know, why
16 is he here. And he said to meet with his wife. And
17 that was the extent of the conversation. That's the
18 extent of the conversation.

19 Q Okay. How long were you at the Branchville Town
20 Hall with Mr. Bowman being in your custody?

21 A Probably 45 minutes to an hour. Forty-five
22 minutes, approximately.

23 Q Did you ever see Mr. Bowman have any papers in
24 his hands?

25 A I don't recall.

Wayne W. McAlhany - Direct Exam

1 Q You're standing right outside the door, right,
2 the whole time he's in there with his bride?

3 A Yes. Yes, sir.

4 Q Okay. Did you see him walk out with any copies
5 of any papers or anything?

6 A I don't recall.

7 Q He's in jail garb, right, when you transported
8 him from Orangeburg?

9 A Right.

10 Q And he's your prisoner, for lack of better
11 words?

12 A He was being detained. I was -- he was under my
13 custody, detained.

14 Q Okay, sir. And as far as the purpose of being
15 there, who said he was done meeting with his wife?

16 A I don't recall.

17 Q Okay. It's your testimony today you never saw
18 Major Barbara Walters there at the head of the table,
19 or meeting with Mrs. Bowman?

20 A I never saw her there.

21 Q Okay. You never saw your boss, I mean the big
22 boss, Larry Williams?

23 A I do not recall him being there.

24 Q And as far as Mr. Bowman, he was only there
25 about 45 minutes to an hour of your testimony?

Wayne W. McAlhany - Direct Exam

1 A Approximately.

2 Q And then you took him back to the jail, right?

3 A Yes, sir.

4 Q And do you recall what time you might have taken
5 the gentleman back to the jail?

6 A Approximately anywhere between 9:00 and 9:30.

7 Q Okay, sir. And, again, no records, no charts.
8 Do you have to sign somebody out of the jail?

9 I apologize, let me make myself clear. Did
10 you have to sign anybody out of the jail that day to
11 take him out and down to Branchville?

12 A Like I said, I don't recall if he was already
13 signed out or if I signed him out.

14 Q How about when you bring them back?

15 A Yes, sir. When you bring him back you sign him
16 in.

17 THE COURT: Hold on one second.

18 (Train.)

19 MR. CUMMINGS: Thank you, Judge.

20 Q Thank you, sir. What exactly do you sign?

21 A Just a form indicating if the prisoner or
22 detainee is in or out. There's a space up here where
23 you sign if they're out of the center. And when they
24 come back in you sign down lower stating that you,
25 you know, brought them back.

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1 Q Because you're responsible to make sure they get
2 back in there, right?

3 A Yes.

4 Q Okay. And that was the extent of your
5 involvement with Mr. Bowman?

6 A Yes, sir.

7 Q And you haven't seen him again until today?

8 A I haven't seen him.

9 Q Okay. Next couple of days after you put him in
10 the jail on about the 18th, did you ever do anything
11 else with Mr. Bowman's person?

12 A No, sir. I didn't have any contact with him.

13 Q Were you ever instructed to go back and make
14 sure he got a bond hearing or anything in Orangeburg
15 County?

16 A No, sir.

17 Q Okay. Did you fill out any forms for Mr. Bowman
18 after you served him that warrant according to your
19 signature, sir?

20 A As far as what type forms? I don't -- well,
21 that's what I'm asking because I don't -- I didn't
22 fill out any other forms.

23 Q You just served him a warrant and that's it?

24 A Yes, sir.

25 Q Okay.

Wayne W. McAlhany - Direct Exam

1 A As far as I can recall.

2 Q Where did you get the warrant from to serve it
3 on him?

4 A I do not recall who gave me the warrant.

5 Q Did you have the warrant in your possession at
6 the jail?

7 A On the first day?

8 Q The first day, yes, sir.

9 A I can't recall. I don't remember. Because,
10 like I said, I don't know if it was served at the
11 detention center or, you know, in Branchville. I
12 don't remember where I served the warrant.

13 Q Okay. But clearly it's signed by you on the
14 18th?

15 A If it -- it says the 18th on the warrant so
16 that's --

17 Q If you need to read it, read it again. I don't
18 want to put words in your mouth.

19 A It says the 18th.

20 Q State ID Number 7 -- excuse me, Defense ID
21 Number 7.

22 A It says this warrant was served on him on the
23 18th of February 2001. And that is my signature.

24 Q Okay. All right. If you'll just leave that up
25 there for a moment.

Wayne W. McAlhany - Direct Exam

1 A (The witness complies.)

2 MR. CUMMINGS: Beg the Court's indulgence.

3 THE COURT: Okay.

4 (Pause in proceedings.)

5 Q You never saw Mr. Myers at the jail anytime the
6 night of the 17th? He was a correctional officer for
7 the Orangeburg County Regional Detention Center.

8 A I don't recall because I'm really not familiar
9 with Mr. Myers.

10 Q Okay. And you never saw Mr. Myers when you
11 brought this gentleman back to the jail?

12 A Like I said, I'm not familiar with Mr. Myers.
13 If he was in here I wouldn't recognize him because I
14 don't know who he is.

15 Q Do you remember the first night you said you saw
16 Mr. Varnadeaux there, was the gentleman wearing like
17 clothing like you today, what we call plain clothes,
18 or was he dressed in other clothing types?

19 A I don't recall if he was, you know, in shirt and
20 tie or if he was in some type of green outfit, I'm
21 not sure.

22 Q Like fatigues?

23 A Yes, sir. I'm not for sure because they wear
24 both.

25 Q Okay. How about the next day, do you remember

Wayne W. McAlhany - Direct Exam

1 how Varnadeaux was there, how he was dressed there?

2 A No, sir. I don't recall the way he was dressed.

3 Q When Mr. Bowman was in your car the very first
4 night going to the jail, just describe his physical
5 appearance and his demeanor.

6 A On the first night?

7 Q Yes, sir.

8 A He acted normal. I mean, he didn't -- he didn't
9 act strangely, he acted -- from what I -- I really
10 don't know him that well. He acts normally. But, I
11 mean, he didn't seem distraught or anything, he just
12 seemed fine and normal.

13 Q Did you have any conversation with this
14 gentleman, and this is what this hearing's about, did
15 you have any conversation with this gentleman at all
16 from the time you did your job, sir, in Branchville
17 and transport him up to the sheriff's office?

18 A No, sir, because when we transport we have the
19 cage and the plexiglass and I had the radio on, so --
20 I mean, I made it a point not to speak with him
21 because I did not want to speak with him because of,
22 you know, the -- I just didn't want to speak with
23 him. I made a point not to speak with him.

24 Q Tell me why, though -- you just hesitated a
25 moment ago -- as a professional police officer.

Wayne W. McAlhany - Direct Exam

1 A Because I don't want to speak with him, I don't
2 want to hear anything from him. If he's accused of
3 something I don't want to know because all I was
4 there is transport. All I wanted to do was
5 transport, I didn't want to get involved in anything
6 else.

7 Q All right, sir, didn't want to get involved.
8 How about the next day, you pick him up -- clearly,
9 you pick him up after he's been in jail all day. Can
10 you describe, again, for the record just a few
11 moments ago, how he appeared to you and how he acted?

12 A He acted fine. He acted just like he did the
13 day before.

14 Q Okay. No conversations in the car again?

15 A No. When I spoke with him I said, Hello. And
16 of course he said, Hi. Other than that no
17 conversations. The plexiglass was up and the radio
18 was on.

19 Q Okay. So to get this clear, you did not desire
20 to speak to the gentleman, nor did he desire to speak
21 to you?

22 A I did not want it -- I did not speak with him; I
23 did not want to speak with him.

24 Q Okay.

25 MR. CUMMINGS: Just beg the Court's

Wayne W. McAlhany - Direct Exam

1 indulgence one second.

2 THE COURT: All right.

3 Q Just out of sake of -- did you go to school with
4 Mr. Bowman?

5 A He was several years behind me in school, but I
6 really didn't have any -- much contact with him
7 because of the difference in the years. I really
8 didn't know him that well.

9 Q All right, sir. And you stated you lived in the
10 Branchville area during about January, February,
11 2001?

12 A Yes.

13 Q Okay. And, again, just for the record, and last
14 question I'm going to ask you here now, nothing was
15 told to you about why you were bringing an inmate to
16 see his wife on a Sunday night?

17 A I was told that he was being brought there to
18 see his wife. To see his wife. And I didn't ask why
19 or what reason. They said he was going to see his
20 wife and -- and I just transported him to the town
21 hall to see his wife.

22 Q Thank you, sir. That's all the questions I have
23 of this gentleman. I thank you, sir.

24 THE COURT: Cross-examination.

25

Wayne W. McAlhany - Cross-Exam

CROSS-EXAMINATION

1

2 BY MR. BAILEY:

3 Q I'll be very brief with you. You knew
4 Mr. Bowman by sight from both y'all being from
5 Branchville; is that correct?

6 A Yes, sir.

7 Q Okay. And on the 17th you testified that when
8 you brought him to Orangeburg to serve the warrant on
9 him and put him in jail pursuant to that warrant that
10 you noticed something unusual about him?

11 A No, sir. Not a bit.

12 Q Did you see any injuries, or bruises, or marks?

13 A No, sir.

14 Q Did he complain of any such thing?

15 A No, sir.

16 Q The next day, that Sunday when you escorted him
17 from Orangeburg to Branchville, did you -- how close
18 did you get to him? Did you cuff him yourself with
19 your cuffs to get him in the car, or what?

20 A Like I said, I don't recall if -- if he was
21 already out of jail or if I got him from jail. If he
22 was in -- already in jail, then the jailers actually
23 cuffed him. But I mean I would be within a foot of
24 him.

25 Q You would have put him in your car?

Wayne W. McAlhany - Cross-Exam

1 A Yes, sir.

2 Q When you got to Branchville you would have taken
3 him out of the car?

4 A Yes, sir.

5 Q So you would have had physical contact with him
6 at that point?

7 A Yes, sir.

8 Q Did you notice, again, talking about the 19th
9 either when you picked him up in Orangeburg or
10 arrived with him in Branchville, any bruises, any
11 cuts, any abrasions, anything in his facial area or
12 anywhere else?

13 A No, sir.

14 Q Did he complain to you of being beaten up?

15 A No, sir.

16 THE COURT: Mr. Bailey, you asked about the
17 19th.

18 MR. BAILEY: Nineteenth.

19 Q Did he complain to you on the 19th that he had
20 been beaten up?

21 A No, sir.

22 Q Okay. Do you know what he was doing on the trip
23 from Orangeburg to Branchville? I understand he's in
24 the back seat. Is there a cage between the front and
25 the back?

Wayne W. McAlhany - Cross-Exam

1 A Yes, sir.

2 Q Okay. Did you make it -- did you look back in
3 the rearview mirror and see what he was doing?

4 A I just always make it a habit to check on the
5 person back there. And he was just riding. He
6 wasn't fidgeting or anything, he was just basically
7 riding.

8 Q Do you recall him sleeping on the way back? I
9 know it's been a while.

10 A Yes, sir. I think he was. I think when -- I
11 think when we were on the way back he actually was
12 lying down. I believe he did lie down in the seat.

13 Q Okay. All right. That's all I've got. Thank
14 you very much.

15 MR. CUMMINGS: I think just a couple on
16 redirect.

17 REDIRECT EXAMINATION

18 BY MR. CUMMINGS:

19 Q I promise you're almost out of here. When you
20 picked Mr. Bowman up, were there what I like to call
21 like the calvary going down the highway? Like you're
22 in a marked car, right, back in February?

23 A Yes.

24 Q Okay. Were there any other police cars in front
25 of you, behind you, or going down towards

Wayne W. McAlhany - Redirect Exam

1 Branchville, like Mr. Van Doran or any detectives
2 from Dorchester County?

3 A I do not recall. I do not recall if some of
4 them was, you know, following me or not, or in front
5 of me, I don't recall.

6 Q You don't recall?

7 A No, sir.

8 Q Okay. And Mr. Bailey asked you a few moments
9 ago whether you saw any injuries on my client, asked
10 him any questions about his physical being?

11 A No, sir.

12 Q You didn't want to talk to this gentleman at
13 all? You just told Her Honor that.

14 A Exactly.

15 Q Thank you. No further questions.

16 THE COURT: Recross?

17 MR. BAILEY: No, sir.

18 THE COURT: Is this witness free to leave
19 at this time?

20 MR. CUMMINGS: Yes, sir. Judge, we thank
21 this gentleman, wish him well on his new career.

22 THE COURT: Do you wish me to instruct him
23 about the subpoena?

24 MR. CUMMINGS: Yes, ma'am. Please.

25 THE COURT: Number one, you've been served

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1 with a subpoena. This case is to begin May the
2 13th. And I need you before you leave to be
3 sure that the solicitor, as well as Ms.
4 Hardee-Thomas and Mr. Cummings have your numbers
5 where you can be reached so that your
6 obligations to be here will be minimized in
7 terms of having to wait before you testify.
8 I'll tell you that first. So if you'll do that
9 before you leave.

10 THE WITNESS: Okay.

11 THE COURT: Secondly, the witnesses are
12 sequestered in this hearing. And as a result of
13 that and as a result further that you won't know
14 who's testifying in this matter and not
15 testifying in this matter, you'd be well advised
16 not to discuss it for that reason because you
17 won't know if you're discussing it with someone
18 who is, in fact, a witness and therefore would
19 be sequestered. So I would remind you that you
20 are sequestered and the witnesses are
21 sequestered in this particular hearing.

22 Any objections to my comments?

23 MR. BAILEY: Not from the State, Judge.

24 MR. CUMMINGS: Not from the defense, Judge.

25 THE COURT: He's going to give you numbers.

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1 MR. CUMMINGS: Right.

2 THE COURT: Let me ask, let me let you
3 focus on that, both of you, and then I'll....
4 (Whereupon, the witness steps down from the
5 witness stand.)

6 THE COURT: All right. Now, I think now is
7 probably a good time for us to take our lunch
8 break. How many more witnesses, approximately,
9 do you have?

10 MR. CUMMINGS: Judge, we were going to call
11 Officer Lichtenberger, if I get the name
12 correctly. We had called them earlier this
13 morning to have him up here. We didn't know how
14 long Mr. Bowman would be. He asked us politely,
15 he couldn't make it, trying to find a job right
16 now, been released by the St. George PD in some
17 way. I don't know his personal issues, but
18 Marva said a child is sick this morning with
19 him. We'd think it would be a short witness
20 this afternoon. Or to not delay the Court, if
21 he's unavailable today we would ask that -- to
22 do that at the same time Ms. Bowman would
23 testify.

24 THE COURT: All right. Is he under
25 subpoena?

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1 MR. CUMMINGS: Yes, ma'am. He's been
2 notified. We've talked to him and he's aware of
3 this, but, again --

4 THE COURT: And he would be the concluding
5 witness?

6 MR. CUMMINGS: Concluding other than
7 Ms. Bowman, Judge. I'm sorry.

8 THE COURT: No, no. You are correct, other
9 than Ms. Bowman.

10 MR. CUMMINGS: Yeah.

11 THE COURT: All right.

12 MR. CUMMINGS: Before Your Honor leaves the
13 building we can call and find out so we don't
14 delay you, ma'am.

15 THE COURT: What I would like to do, if he
16 can be here say 2:15, 2:30 and have a time to
17 come in and testify and be gone it might be --
18 that would be my preference.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: If you would check with him
21 about that. And then you'll be ready to go
22 forward with any rebuttal witnesses you have at
23 that time?

24 MR. BAILEY: What I'm probably going to
25 ask, Judge, and I won't know this, there's still

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1 at least two witnesses left to go, that being
2 Ms. Bowman and Mr. Lichtenberg, I would prefer
3 to kind of -- I may not have anybody to call in
4 response to these people, but not hearing them,
5 I don't know that. So I'd kind of like to hold
6 my cards on that until I see what develops.

7 THE COURT: In other words, you want the
8 defense to go ahead and finish their witnesses
9 and then you'll call your rebuttal witnesses?

10 MR. BAILEY: It could very well be that I
11 will have nothing --

12 THE COURT: That you'll have none?

13 MR. BAILEY: -- at that point.

14 THE COURT: All right. And has anyone
15 checked with Mr. Loy's office to get some sense
16 of when he is returning?

17 MR. BAILEY: Robby Robbins is supposed to
18 be trying to contact him. My understanding was
19 he was going to Los Vegas for some reason.
20 Never left town. I don't know if he ran out of
21 money before he left or what happened. He
22 didn't leave.

23 I've asked him to try to locate his
24 client and get back with us to let us know when
25 he's available. And I can call now and check

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1 and see.

2 THE COURT: That would be great. Let's do
3 that and then let's regroup when we return. And
4 let's say that we'll regroup at 2:30, that gives
5 you time to do that and get a bite of lunch and
6 then we'll see where we are. And, again, if
7 your witness can be here at 2:30 that will be --
8 that would be excellent.

9 MR. CUMMINGS: Absolutely. Thank you,
10 Judge.

11 THE COURT: All right.
12 (Lunch recess taken from 1:07 p.m. to 2:30 p.m.)

13 THE COURT: All right. Both of you were
14 going to give me a report about your witness,
15 Mr. Cummings, and Mr. Loy for you, Mr. Bailey,
16 so let me hear from you.

17 MR. BAILEY: While he's looking, as I said
18 earlier, I talked with Mr. Loy -- or Robby
19 talked with Mr. Loy. He is in town, he has made
20 contact with Ms. Bowman. And she'll be coming
21 into my office with Mr. Loy tomorrow since she
22 does have a plea agreement with the State. And
23 I will interview her at that point in time and
24 then you can turn her over to Mr. Cummings if he
25 would like any time after that, that weekend.

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1 And she should be available Monday to testify.

2 THE COURT: Excellent.

3 MR. CUMMINGS: That's wonderful. Thank
4 you. I don't know how Marva's weekend is,
5 but....

6 MS. HARDEE-THOMAS: I'll make myself
7 available.

8 THE COURT: I'll leave it to you to arrange
9 for that meeting.

10 MR. CUMMINGS: You got an inside line?

11 MR. BAILEY: I'll give you a cell phone, I
12 have it all the time.

13 MR. CUMMINGS: Okay.

14 THE COURT: His name is --

15 MR. CUMMINGS: Lichtenberger,
16 L-i-c-h-t-e-n-b-e-r-g-e-r, I believe, Judge.

17 THE COURT: He will be available Monday?

18 MR. CUMMINGS: Yes, ma'am.

19 THE COURT: All day Monday?

20 MR. CUMMINGS: Whatever Her Honor's
21 preferences are, pleasures are.

22 THE COURT: In other words, he'll make
23 arrangements Monday?

24 MR. CUMMINGS: Absolutely, Judge.

25 THE COURT: I know both you and Mr. Robbins

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1 are involved in setting the times for Monday.
2 What time -- because I know the jury's coming in
3 at 2:00.

4 MR. BAILEY: The jury's coming in at 2:00.
5 What I was anticipating is getting the jury
6 generally qualified, going ahead and picking the
7 jury for the Hall case. As far as I know Monday
8 morning is free. I mean, we would be doing
9 pleas or whatever that morning, but nothing that
10 can't wait.

11 THE COURT: We'll just reconvene this
12 matter at 9:30 on Monday morning, that way you
13 can let your witness know and both of you can
14 let Ms. Bowman know over the weekend.

15 One of the things that we began
16 Tuesday that I would like to complete is I
17 wanted to make -- Ms. Hardee-Thomas's
18 certification from the Supreme Court has now
19 been sent to her and I'd like to make that a
20 Court's Exhibit. And do you want to give that
21 to Robin and just show it to Mr. Bailey, too.

22 And what I'd like to do -- and, again,
23 for the record, because I am well aware of both
24 your qualifications, but if you would, please,
25 let us make a record regarding your

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1 qualifications. And we'll begin with you, Mr.
2 Cummings. You would represent to the Court that
3 you have at least five years' experience as a
4 licensed attorney and at least three years'
5 experience in the actual trial of felony cases?

6 MR. CUMMINGS: Yes, ma'am. I was admitted
7 to the bar in November of '86, ma'am. And I
8 disclosed to this my client. I used to work for
9 Mr. Bailey in the solicitor's office, before
10 that I was the appointed public defender for a
11 solid year. Since I was the youngest member of
12 the bar back in 1989, not age wise, but length
13 in service, and thereafter, Judge, I had two
14 other death penalty cases against Mr. Solicitor
15 in this case before, so I do have over the
16 number of years, ma'am. This is my third death
17 penalty case with Mr. Bailey, ma'am.

18 THE COURT: All right. As lead counsel?

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: All right. Very well, thank
21 you so much. And, Ms. Hardee-Thomas, you as
22 well.

23 MS. HARDEE-THOMAS: Yes. I believe I
24 was -- I started practicing September 19th,
25 1995. And in that capacity I was in private

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1 practice and doing contract public defender and
2 have been doing so since then. I worked for Mr.
3 Bailey in I think '95 in Orangeburg?

4 MR. BAILEY: '95 sounds about right.

5 MS. HARDEE-THOMAS: In Orangeburg. And
6 came back to Dorchester County to work in
7 private practice and the public defender's
8 office. I've been in private practice since
9 then.

10 THE COURT: I think you and I had had a
11 conversation before you interviewed with the
12 public defender's board many, many years ago.

13 MS. HARDEE-THOMAS: Yes. I have been in
14 private practice since September 19th, 1995. I
15 worked on, I believe, two or three death penalty
16 cases as second chair and this is my first time
17 working as first chair in that capacity.

18 THE COURT: And you are qualified and
19 certified by the South Carolina Supreme Court as
20 lead counsel in a capital case?

21 MS. HARDEE-THOMAS: Yes. I've been
22 practicing in criminal since -- criminal law in
23 felony cases since September 19th, 1995.

24 THE COURT: 1995. Thank you both so very
25 much.

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1 Now, if I may, we still have motions
2 which are outstanding which we will need some
3 time for. I know there is the motion regarding
4 the photographs, that comes to mind. And seems
5 as though when we argued the motions I remember
6 that one we set aside for its own period to
7 decide the issue regarding the defense's
8 objection to the admissibility of any
9 photographs, and the defense needs to go through
10 each photograph, photograph by photograph. Of
11 course, at this point those photographs have not
12 been presented to the Court.

13 And I know that that is a motion that
14 is outstanding. I know there's a motion to
15 change venue that is outstanding, but clearly
16 until the time of jury selection that would not
17 be ripe to be heard. And, counsel, can you help
18 me and -- the purpose of this whole discussion
19 is for me to try to ascertain how many more days
20 we're going to need, days or hours or minutes,
21 to argue motions.

22 MR. CUMMINGS: Obviously, Judge, the first
23 onerous is on us. I would say, Your Honor, just
24 for the record, and then, again, I know that
25 this is not blindsiding by either way or either

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1 of us. Obviously, Judge, I probably would have
2 a motion to argue the validity of the arrest
3 based on some testimony that's come out and
4 probably leave that to Her Honor's pleasure as
5 to how much Mr. Bailey and I argue that point of
6 law. Judge, there will be some issues as to
7 any -- there will probably be a search and
8 seizure issue, Your Honor, again, dealing with
9 the elements of the effect of the arrest and the
10 manner thereof, ma'am.

11 I have some motions, Judge,
12 particularly dealing with the polygraph now
13 since there's been a big integral part here.
14 And I know, Your Honor, that's normally a motion
15 that we'll either make together because some
16 testimony may come out adverse to Your Honor's
17 instructions and prohibit that, so I know I
18 would have a motion in limine for that.

19 We have an issue, Judge, of nicknames
20 which we all know is an issue in our state from
21 some of the former ones, my client. I will make
22 a motion in limine again, I'll put this in
23 writing, have it in writing. I just want to
24 make sure we get our ducks in a row, my client's
25 nickname, street name is Black, B-l-a-c-k. To

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1 avoid any sense of prejudice coming into this
2 case since we have an alleged white -- we have a
3 white lady who's dead, we have a black gentleman
4 accused of the crime, other black members of the
5 community that are accused of crimes, I would
6 ask that the motion in limine be heard and
7 hopefully granted to keep the nickname Black
8 out. And, again, I know sometimes it's by
9 accident or by just comfortableness the way
10 people talk, but, you know, that would be an
11 issue I would like to argue if we have to.

12 I don't have any off the top of my
13 head other than I know arrest, search, and
14 seizure. And of course depending on how Her
15 Honor rules at the end of this motion perhaps
16 some time to argue that, either Mr. Bailey or I.
17 So I don't think more than probably three days
18 of arguments. Because most of the other stuff,
19 Judge, is going to be completely legal and --

20 THE COURT: Okay. Yeah.

21 MR. BAILEY: Judge, I wouldn't anticipate
22 that much time for this reason: I think the
23 validity of the arrest and search and seizure
24 issue would kind of of necessity have to be
25 decided as part of the Jackson v. Denno. I

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1 would be prepared to argue that as soon as the
2 testimony is completed in the Jackson v. Denno.

3 As far as the polygraph, I have no
4 intention of trying to introduce the polygraph.
5 It was brought up in Jackson v. Denno strictly
6 to show that Miranda rights were given yet
7 another time. And I would not think Mr.
8 Cummings would want this in since he failed the
9 polygraph, so I don't think we have an issue on
10 that at all.

11 MR. CUMMINGS: I have one expert's opinion,
12 with the humblest respect to my colleague.
13 Mr. Stephenson said he failed the polygraph.
14 It's a moot point since it's not admitted into
15 court, I defer that for an academic argument.

16 THE COURT: All right.

17 MR. BAILEY: The nickname, Your Honor, I
18 would agree not to -- not to refer to him by the
19 nickname if he doesn't want me to. He is known
20 in the Branchville community by J. R., Black,
21 and also by Marion. I guess if the laywitnesses
22 I call have been calling that since they knew
23 him from a child, their statements sometimes
24 refer to him as Black, then I can't promise you
25 they wouldn't in the natural course of testimony

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1 call him by that.

2 THE COURT: I understand.

3 MR. BAILEY: But I certainly wouldn't
4 elicit that. And I agree with Mr. Cummings, the
5 racial factor should not enter into it. And I
6 think that would apply to both sides because
7 during this hearings there's some what I believe
8 to be playing the race card when Larry Williams
9 testified. And I would ask the Court to try to,
10 or ask everybody to try to hold that to a
11 minimum. I don't think it bears any part in
12 this.

13 THE COURT: So it very well may not need --
14 we may not need three days. One of the -- also
15 one of the items that I wanted to have some time
16 to do was, of course, deal with the issues
17 regarding the jury. Those questionnaires
18 return, we'll need to have some time to do that.

19 Very well, then, I will endeavor in an
20 abundance of caution to set aside that amount of
21 time. If we don't need that amount of time for
22 actual hearing time I can certainly use it.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: I know you could use it as well
25 so I will endeavor to try to set that much time

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1 aside.

2 MR. BAILEY: If you could protect me next
3 week after Monday, I would anticipate that Hall
4 trial may last the majority of the week.

5 THE COURT: Indeed.

6 MR. BAILEY: But anytime after that I'm a
7 hundred percent free.

8 THE COURT: In other words, let's don't
9 have hearings next Friday.

10 MR. BAILEY: All right.

11 THE COURT: Okay. Very well. Which really
12 raises a scheduling issue that I'm happy for you
13 to be present that I need to discuss with you,
14 because I've got a Beaufort County matter that I
15 need to schedule and they're trying to do that
16 on Friday afternoon, so I need to hear from you
17 some scheduling matters.

18 MR. CUMMINGS: I just thought of something.
19 I know Your Honor has been very accommodating to
20 everybody in here. Monday morning at 9:30, I
21 know you've been doing this a number of years,
22 too, it's like a mass back here and they want
23 three things. They want to talk to the public
24 defenders they can't get to, trying to work
25 deals out of, pleas out before you take the

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1 bench. I'm worried the more people that learn
2 about this the harder it may be for us to have a
3 clean hearing here for any issues of press or
4 notoriety in dealing with our motion for change
5 of venue.

6 I know I serve Your Honor's pleasure,
7 and we all do, in here for coming to court. Is
8 9:30 Monday really a time that we would be able
9 to really do any work in here?

10 THE COURT: That's a good point, Mr.
11 Cummings.

12 MR. BAILEY: On second thought I kind of
13 agree with that. We'll start that, try in the
14 afternoon, always last-minute things that are to
15 be done before that. It may kind of jam us up.

16 MR. CUMMINGS: If you say four o'clock in
17 the afternoon, you say 6:00. Not that I'm
18 trying to impose on you, ma'am.

19 THE COURT: That's all right.

20 MR. CUMMINGS: I'm trying to think that --

21 THE COURT: Sure.

22 MR. CUMMINGS: -- number of years Mr.
23 Bailey ran the court I used to help, I know what
24 it's like here Monday mornings.

25 THE COURT: My concern -- let me share with

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1 you my concern based upon what -- a little bit
2 of what I now know is that I am concerned that
3 Friday -- I mean Monday afternoon very well may
4 be taken up with Jackson v. Denno hearings on
5 the other case, the Hall case.

6 MR. BAILEY: Mr. Bolus has told me now he
7 may change his mind, that he had no issue in
8 regard to the statement she made, so that may
9 not be a problem or an issue.

10 THE COURT: Well, and you and I probably
11 just need to call him when we are concluded to
12 try to lock that down a little more, certainly
13 how much time we'll need for that matter.

14 MR. CUMMINGS: Or any other day you want
15 us. I know Her Honor's asked us to keep this
16 moving along, but any other day that
17 Mr. Solicitor or you, ma'am.

18 THE COURT: I think that in all candor the
19 Monday is appropriate. And the reason I think
20 Monday is appropriate is because, number one,
21 you all have laid the groundwork; number two, I
22 think that Mr. Bailey probably needs, in all
23 fairness to him, to conclude this portion and
24 move on mentally to getting ready to try another
25 serious trial.

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1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: So I think that Monday makes
3 sense. I think that roll call should be over by
4 ten o'clock?

5 MR. BAILEY: They tell me about 9:30.

6 MS. HARDEE-THOMAS: 9:30.

7 THE COURT: So the courtroom ought to be
8 cleared by eleven o'clock. Perhaps that makes
9 sense, too, at eleven o'clock for us to convene
10 the hearing at that time. And, you know, what
11 if that doesn't work? We'll figure that out at
12 that time.

13 MR. BAILEY: All right.

14 THE COURT: But I think it makes sense for
15 us to begin at eleven o'clock. That way we
16 have -- we still have several hours before the
17 jury comes in, and I think that's probably
18 appropriate to do that.

19 MR. CUMMINGS: Yes, ma'am.

20 MR. BAILEY: All right.

21 MR. CUMMINGS: That's fine, Judge. Thank
22 you.

23 MR. BAILEY: Your Honor, one other matter
24 that just occurred to me. Sheriff Williams I
25 think was told to be on standby in case he

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1 needed to be recalled or something. He has told
2 me that he's got a trip to Colorado planned.
3 I'm not sure when he's leaving, when he's coming
4 back, but it may conflict with Monday. I'd
5 asked him to come by here and I can find out
6 now. And I'm not sure whether you still
7 anticipate needing him. Or, I mean, if we had
8 to hold it open past Monday I'm sure it's not
9 going to be --

10 MR. CUMMINGS: I don't want to keep that
11 gentleman at all from his trip.

12 THE COURT: Neither do I, but if he's
13 needed, he's needed.

14 MR. CUMMINGS: Absolutely. If the
15 solicitor could find out if this gentleman
16 really has to be out of town on Monday.

17 THE COURT: Sure.

18 MR. CUMMINGS: If he has to be, then I
19 think we would --

20 THE COURT: Why don't we find that out now?

21 MR. BAILEY: All right. I think he's back
22 here now.

23 THE COURT: Oh, he's here now?

24 MR. BAILEY: Yeah. I asked him to come by
25 because he was concerned about --

State vs. Bowman Volume VIII

1 THE COURT: You can ask him to step in
2 or -- either way, really.

3 (Pause in proceedings.)

4 THE COURT: Good afternoon, Sheriff
5 Williams.

6 SHERIFF WILLIAMS: Good afternoon. How are
7 you?

8 THE COURT: We were trying to just schedule
9 some time to conclude the Jackson vs. Denno
10 hearing and your presence may be needed at some
11 point. I don't know that there's any certainty
12 about that, but it may be. And I understand
13 that you have a trip to Colorado planned?

14 SHERIFF WILLIAMS: Yes, ma'am.

15 THE COURT: Do you mind sharing with us
16 when you're planning to travel to Colorado?

17 SHERIFF WILLIAMS: Yes, ma'am. I have a
18 flight departing Sunday morning and my return
19 flight is the 28th. And I'll be in Longmont,
20 Colorado.

21 THE COURT: On the 28th of April?

22 SHERIFF WILLIAMS: Yes, ma'am.

23 THE COURT: So you will be away some --

24 SHERIFF WILLIAMS: Two weeks.

25 THE COURT: -- two weeks.

State vs. Bowman Volume VIII

1 MR. CUMMINGS: This gentleman leaves
2 Sunday, this Sunday.

3 THE COURT: That's this Sunday.

4 MR. CUMMINGS: May it please the Court,
5 Your Honor?

6 THE COURT: Yes. Thank you, Sheriff. If
7 you don't mind, we'll now talk behind your back.
8 Thank you so much.

9 MR. CUMMINGS: Judge, we talked across the
10 table, I would like to have this on the record.
11 I would like to be allowed, I know this is not
12 the normal procedure, be allowed to make sure my
13 client understands what I'm doing here, and
14 along with Ms. Thomas.

15 THE COURT: Why don't you do this: We are
16 under no rush. Why don't we adjourn. Why don't
17 we let you step back into an area where you can
18 talk to him. And you talk to him freely and you
19 take your time, you take all the time you need,
20 and then when you have finished then we'll
21 proceed at that time.

22 MR. CUMMINGS: Thank you, ma'am.

23 THE COURT: All right. Very well. Just
24 ask the Sheriff to wait until then.

25 (Recess, from 2:48 p.m. to 3:23 p.m.)

State vs. Bowman Volume VIII

1 MR. CUMMINGS: Judge, I think we're going
2 to wait for you to be settled. Mr. Bowman
3 wanted to say something.

4 MR. BOWMAN: Mr. Cummings, Ms. Marva talked
5 it over to me and I think Mr. Williams can go.

6 MR. CUMMINGS: I concur we had a
7 conversation in the back. I explained to him
8 that the sheriff has testified, that we'll leave
9 his testimony at rest.

10 THE COURT: Oh, very well. All right.
11 Thank you. All right. Thank you. Anything
12 further along that line do you need Sheriff
13 Williams?

14 MR. BAILEY: No. No, I don't anticipate
15 needing him. He'll be back before trial, so if
16 anything comes up I guess we'll address it then.

17 THE COURT: We'll deal with it at that
18 point. I leave you to address him and he's free
19 to go on his trip.

20 MR. BAILEY: All right.

21 THE COURT: Anything further we can do
22 today?

23 MR. BAILEY: I can't think of a thing.

24 MR. CUMMINGS: Nothing else from the
25 defense today, Judge. Thank you.

State vs. Bowman Volume VIII

1 THE COURT: Mr. Bailey and I were in
2 chambers, and I certainly want to share with you
3 that as you all may or may not know that there
4 is a case, a murder trial that is currently
5 scheduled for Monday. We simply talked to
6 Mr. Bolus to try to schedule that, that's what
7 it was about. As I put on the record earlier,
8 we have called him. That's what we have done to
9 sort of be sure in terms of our schedule on
10 Monday having this hearing at eleven o'clock
11 will pose no problems whatsoever. We'll
12 reconvene this hearing at 11 o'clock on Monday.

13 MR. CUMMINGS: Thank you, Judge.

14 MR. BAILEY: Thank you, Your Honor.

15 MS. HARDEE-THOMAS: Thank you, Your Honor.

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 18th day of July 2003.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

1031

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

 **ORIGINAL**

STATE OF SOUTH CAROLINA,) VOLUME IX Pages 1031 - 1078
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) JACKSON VS. DENNO
MARION BOWMAN, JR.,) April 15, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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1 (Monday, April 15, 2002.)

2 MR. CUMMINGS: I don't think there's any
3 members of press out here, but because of the
4 nature of this hearing I just want to make sure
5 there's nobody here from the news media that I
6 don't recognize.

7 THE COURT: They should know they have to
8 request permission.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: The only requests I have are
11 for this afternoon.

12 MR. CUMMINGS: Thank you, ma'am.

13 THE COURT: I don't see any members of the
14 press. Do we have any members of the press
15 proper in the courtroom? No members of the
16 press, all right.

17 MR. CUMMINGS: Thank you, Judge.

18 THE COURT: Thank you, Mr. Cummings. All
19 right. And we are here for the purpose of
20 continuing the Jackson vs. Denno hearing in the
21 Bowman matter and, Mr. Cummings, Ms.
22 Hardee-Thomas.

23 MS. HARDEE-THOMAS: We're calling
24 Mrs. Dorothy Bowman.

25 THE COURT: All right.

Dorothy M. Bowman - Direct Exam

1 MS. HARDEE-THOMAS: Please come forward and
2 be sworn in.

3 THE COURT: Yes, ma'am. If you'd place
4 your left hand on the Bible and raise your right
5 hand.

6 (Dorothy M. Bowman, called as a witness, having
7 first been duly sworn, is examined and testifies
8 as follows:)

9 THE COURT: All right. And if you would
10 please step forward and then be seated. I'm
11 going to ask you to try to remember to keep your
12 voice up and I'm going to ask you to state your
13 full name for the record.

14 THE WITNESS: My name is Dorothy Mae
15 Bowman.

16 MR. LOY: Your Honor, John Loy of the
17 Dorchester Bar. I don't know exactly how to
18 proceed, but I'll make the Court aware that
19 Ms. Bowman is indicted also, is under indictment
20 for related -- for a matter related to this
21 case.

22 THE COURT: Yes, sir.

23 MR. LOY: She's testifying in accordance
24 with a plea agreement, an agreement with the
25 State across the board. She is under indictment

Dorothy M. Bowman - Direct Exam

1 and I'd ask the Court whether or not she's
2 entitled to an instruction, that if there's a
3 question or a problem with her testimony if she
4 wants to confer with me, whether she's entitled
5 to do that or not. I don't anticipate it. I
6 think she's just going to answer everything
7 that's presented to her, but I am here on her
8 behalf and in the event that becomes an issue
9 would like clarification from the Court.

10 THE COURT: All right. Mr. Loy, as I
11 understand your purpose of being here today to
12 represent your client is to, if you will,
13 protect your client.

14 MR. LOY: That's correct, Your Honor.

15 THE COURT: To be sure that she testifies
16 in accordance with, I gather, the plea agreement
17 and to protect her rights. And insofar as I am
18 concerned I intend for you to do that. If you
19 need to stand and object on her behalf, I expect
20 you to stand and object on her behalf and we
21 will handle those objections as they come, all
22 right?

23 MR. LOY: Thank you, Your Honor.

24 THE COURT: Because I certainly -- that is
25 your purpose and your sole purpose here today

1 and would certainly anticipate that you would
2 make those objections on her behalf.

3 MR. LOY: Thank you, Your Honor.

4 THE COURT: Now, as you ask for me to
5 instruct her, I'm not quite sure how you wish
6 for me to instruct her, in that I am sure you've
7 met with her in these regards. Tell me how you
8 wish for me to instruct her.

9 MR. LOY: Your Honor, I was more seeking
10 clarification from the Court. And I think that
11 with the understanding if it begins to -- if I
12 feel a need to I'll stand up and object. And if
13 you just instruct her at that point, don't
14 answer until we get a ruling on the objection or
15 whatever matter it is I address I think that
16 would be adequate, Your Honor.

17 THE COURT: All right. All right. And
18 anyone else wish to be heard on that issue?

19 MR. BAILEY: State does not, Your Honor.

20 MR. CUMMINGS: Co-counsel with Marva, I'll
21 just come up here then, she's obligated in the
22 plea agreement as we represented by
23 Mr. Solicitor. And John was kind enough to meet
24 with us on Saturday, Judge, put that on the
25 record, make sure that everyone knows that this

1 lady's not just called in here blindly. She
2 would tell the truth about any question she's
3 asked and that's all we understand from the plea
4 agreement, that's the only protection other than
5 her right to counsel.

6 MR. LOY: I just never know where it's
7 going to go, Your Honor.

8 THE COURT: I understand where you are
9 coming from. Yes, sir, Mr. Bailey.

10 MR. BAILEY: What Mr. Cummings said is an
11 accurate representation of the agreement. She
12 does have a plea agreement with the State, her
13 obligation is to testify truthfully in this or
14 any other proceeding.

15 THE COURT: Thank you, then. Let me just
16 reiterate that for you, Ms. Bowman. In the
17 event that Mr. Loy says objection, then your
18 mouth is to close and you are not to answer
19 until I've had an opportunity to rule on the
20 objection. Just for your information, an
21 objection is a -- is the method by which an
22 attorney notifies the Court that there may be a
23 rule of evidence which is being violated, or, I
24 gather, in this instance some concern about
25 perhaps your constitutional rights. An

Dorothy M. Bowman - Direct Exam

1 objection is the way that an attorney brings
2 that to my attention.

3 If, in fact, there is an objection,
4 really by any of these lawyers, might be that
5 I'm ruling on a matter of evidence by these
6 other attorneys or regarding the representation
7 of you by your attorney, be mindful that at that
8 point wait, don't answer, allow me to rule on
9 the objection and then you will be instructed
10 either to answer the question or not.

11 If I sustain the objection, then you
12 will not answer the question. If I overrule the
13 objection, then you will answer the objection.
14 But we'll try to make that clear as we go
15 through this process. If there is an objection
16 and a ruling on the objection we'll try to make
17 that clear for you, do you answer or do you not
18 answer. And if you are not clear, just say do I
19 answer or do I not answer and we'll make it
20 clear for you, okay?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Do you understand what I'm
23 talking about?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: In other words, you got to

Dorothy M. Bowman - Direct Exam

1 listen to lots of people this morning. Very
2 well. The only thing that I'm going to ask you
3 to do is to be mindful that Ms. Keil has got to
4 be able to hear you and hear you clearly. Use
5 the microphone. You don't have to shout, but
6 just be sure everyone can hear you, okay?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right. Your witness.

9 DIRECT EXAMINATION

10 BY MS. HARDEE-THOMAS:

11 Q Good morning, Mrs. Bowman.

12 A Good morning.

13 Q Can you tell the Court where you lived on
14 February 16th of 2001?

15 A At that time I was staying on
16 in Branchville.

17 Q Okay. And how long have you lived there since
18 that time?

19 A I'd say about three or four weeks, something
20 like that.

21 Q You lived there on the 16th three months prior?

22 A (Nodding.)

23 Q Okay. And was Mr. Marion Bowman living with you
24 at that time?

25 A No, ma'am.

Dorothy M. Bowman - Direct Exam

1 Q Okay. Where was he living?

2 A All over.

3 Q Okay. All right. Since you've been there for
4 three months, was Mr. Bowman able to bring his
5 clothing to the home at that time?

6 A When his clothes was placed in my house, that's
7 before he got in trouble.

8 Q Okay. Are you talking about before
9 February 16th?

10 A Yes, ma'am.

11 Q So his clothes were already there?

12 A Yes, ma'am.

13 Q And do you know if all of his clothes were
14 there?

15 A All I account for, yes, ma'am.

16 Q Okay. At one time did his mother ask you to
17 come pick up his clothes from her house?

18 A She once told him to come get his own clothes.

19 Q Okay. So he had clothes elsewhere also?

20 A Yes, ma'am.

21 Q Okay. Now, can you tell us what you remember on
22 the, I believe, 17th of February?

23 A Make it more clear.

24 Q Where were you on the 17th of February?

25 A Home.

Dorothy M. Bowman - Direct Exam

1 Q Home, okay. Were you home during the early
2 morning?

3 A Yes, ma'am.

4 Q Do you remember what time Mr. Bowman came in?

5 A No, not exactly.

6 Q Okay. Do you remember at any time that the
7 police came to your door?

8 A No, but I know it was sometime between 8:00,
9 9:00, something like that.

10 Q Okay. What happened, who came to your door?

11 A Boom.

12 Q Who?

13 A Branchville town cop, Boom Walters.

14 Q Okay. And he asked you to come in?

15 A He knocked on the door for --

16 MR. BAILEY: I want to object to Ms.
17 Hardee-Thomas leading her. She's just putting
18 the words in her mouth.

19 THE COURT: Very well. Don't lead.

20 MS. HARDEE-THOMAS: No problem.

21 Q What happened?

22 A He knocked on my door and he said something
23 about some kind of -- he had Dorchester County with
24 him and something about J. R. and a warrant. And he
25 asked me can he come in and look for J. R. And I

Dorothy M. Bowman - Direct Exam

1 told him yeah.

2 Q Okay. So you allowed him to come in?

3 A Yes, ma'am.

4 Q Where was Mr. Marion Bowman at that time?

5 A Somewhere down that hallway.

6 Q Okay. All right. Were the officers able to
7 come in?

8 A Yes, ma'am.

9 Q And what happened after that?

10 A Well, they allowed for me to stay in the front
11 room while they went down the hall to search for him.

12 Q Did they show you any documents?

13 A No, ma'am.

14 Q Okay. Did you ask for any documents?

15 A No, ma'am.

16 Q Okay. What happened after that?

17 A Then after that they found him. And then one of
18 the officer asked me did he have any clothes in my
19 house and I said yes. He asked me can I go get them,
20 and I went and got them.

21 Q Okay. What did you remember getting?

22 A I remember getting him a pair of black pants and
23 a shirt, gray shirt.

24 Q Okay. Was he able to put them on in your
25 presence?

1 A No, ma'am. He was handcuffed, I had to put them
2 on for him.

3 Q Okay. What happened after that?

4 A Then after that they lock him up, took him, put
5 him in the police car, took him away. They was still
6 at my house searching. And then after they finished
7 searching they got -- well, while they was searching
8 they had me sign some kind of waiver form.

9 Q Okay. Was it a search warrant form?

10 A Sort of something like that. Just telling me
11 about what they took from his house, like his pants,
12 his watch, and stuff like that.

13 Q All right. Did you have an opportunity to see
14 Mr. Bowman that day?

15 A They had him downtown for a while.

16 Q When you say "downtown," where downtown?

17 A Branchville police station.

18 Q Okay. Did you have an opportunity to see him at
19 Branchville police station?

20 A I think we were once told that we could bring
21 him some food.

22 Q You said "we"?

23 A Me, his mama, his sister, we took him some food.
24 We handed it to one of the police and he gave it to
25 him.

1 Q So you never saw him?

2 A I don't remember seeing him there.

3 Q But did you bring him the food?

4 A Yes, ma'am.

5 Q Did you have an opportunity to meet with

6 Mr. Bowman at this time after that day?

7 A Yes, ma'am.

8 Q When was that?

9 A One time when Branchville police came to my
10 house. That's when I was still living in the trailer
11 and he knocked on the door, he said, "Would you
12 please come go with me?" I asked him where we was
13 going. He said that I was going to talk to J. R.
14 And I said, "Okay."

15 So I had my little boy. He asked me what I
16 was going to do with my little boy. And I said,
17 "Well, I'm going to take him home." He took me to my
18 mom house to drop my little boy off, from there went
19 uptown to Branchville police station in the
20 courtroom. I saw J. R. sitting at the table, he had
21 shackles on his feet, handcuffs on. I sat one seat
22 down from J. R. and he really never -- I asked him, I
23 said, "What you doing in here?"

24 MR. BAILEY: Objection, hearsay from
25 Mr. Bowman.

Dorothy M. Bowman - Direct Exam

1 Q Just don't say what he said. Basically just
2 tell what you remember happening that day.

3 A Okay. I asked him, I said, "What you doing
4 here?"

5 MR. BAILEY: Objection, Your Honor. I
6 think she's getting into responses and that
7 would be hearsay.

8 THE WITNESS: I apologize.

9 Q Okay. Can you go back to who, who was the
10 person that brought you there?

11 A I think Lichtenberger.

12 Q All right.

13 A I remember Lichtenberger.

14 Q Did he tell you why he was there?

15 A J. R., no.

16 Q Did they tell you why he was at your home?

17 A He wanted me to go with him so I could see J. R.

18 Q Okay. All right. And when you got there, do
19 you remember what day this was?

20 A No, not for certain.

21 Q Okay. You had seen Mr. Bowman on the 17th?

22 A Uh-huh (affirmative response).

23 THE COURT: That's a yes?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay.

1 Q How far after was Mr. Lichtenberger at your
2 home?

3 A I'd say like maybe -- probably it was later on
4 that night or something.

5 Q Okay. So on the 17th in the morning you saw
6 Mr. Bowman. That afternoon you went to take him some
7 food?

8 A Yes, ma'am.

9 Q So when did you -- when was Mr. Lichtenberger at
10 your house to go see Mr. Marion Bowman?

11 A He came to my house that night and I said --

12 Q What do you mean by night?

13 A It was probably about 7:00 or 8:00, somewhere in
14 there.

15 Q Okay. All right. And what do you remember?
16 You were taken to your mom's house to deliver your
17 child?

18 A Yes, ma'am.

19 Q And then you were taken to Branchville Town
20 Hall?

21 A Yes, ma'am.

22 Q And at Branchville what do you remember seeing?
23 Who do you remember seeing there?

24 A Barbara Walters, Big Larry, and
25 Mr. Lichtenberger and some other man, some man. I

Dorothy M. Bowman - Direct Exam

1 can't remember because I never seen him before.

2 Q All right. Do you remember seeing any other
3 officers?

4 A Unh-unh (negative response).

5 Q Okay. How long were you there, Ms. Bowman?

6 A I'd say a good five, maybe five, ten minutes,
7 something like that.

8 Q Okay. Were you and Mr. Bowman inside a room?

9 A Yes, ma'am. We was never alone.

10 Q Which room? Okay. Which room?

11 A I call it the courtroom.

12 Q Okay. And who else was in the room with you?

13 A Some man. I never seen him before, I don't know
14 his name.

15 Q Okay. Where was Sheriff Williams at that time?

16 A Must have been standing up in the hallway.

17 Q How do you know that?

18 A Because I know a lot of people outside the door
19 because they never shut the door on us.

20 Q Where was Barbara Walters?

21 A Standing up in the hallway.

22 Q Okay. And you said someone was in the room with
23 the two of you?

24 A Yes, ma'am.

25 Q Who was it?

Dorothy M. Bowman - Direct Exam

1 A I don't know his name, I never seen him before.

2 Q Was it the officer that brought you,

3 Mr. Lichtenberger?

4 A No, I don't think so. I can't remember.

5 Q Okay. All right.

6 MS. HARDEE-THOMAS: Beg your indulgence.

7 THE COURT: All right.

8 (Pause in proceedings.)

9 Q Mrs. Bowman, how long have you been married to
10 Mr. Bowman?

11 A Counting this year three years.

12 Q Three years. Do you have any knowledge whether
13 or not he could read or not?

14 A Yeah, he can read.

15 Q Okay. All right. Does he read the newspaper?

16 A Yes, ma'am.

17 Q Okay. You've seen him read the newspaper?

18 A Yes, ma'am.

19 Q No further questions.

20 CROSS-EXAMINATION

21 BY MR. BAILEY:

22 Q Ms. Bowman, I want to back up just a little bit
23 and talk to you about the date that Marion got
24 arrested. And that morning you were at home; is that
25 correct?

Dorothy M. Bowman - Cross-Exam

1 A Yes, sir.

2 Q That would have been a Saturday, the 17th?

3 A Yes, sir.

4 Q And you have two children?

5 A Yes, sir.

6 Q You have a baby now, but at that time you had
7 two children?

8 A Yes, sir.

9 Q And how old are those children back then?

10 A Now my oldest boy's 11, my youngest boy is nine;
11 my baby, she's six months.

12 Q Now, that morning, that Saturday the 17th of
13 February, 2001, where were those children?

14 A They was at my mom house.

15 Q Okay. They were not at the -- your house; is
16 that correct?

17 A Yes.

18 Q Okay. And who lived at that trailer in
19 February 2001, who lived at your trailer?

20 A With me, should I say, two stayed with me.

21 Q Yeah.

22 A Me and my kids.

23 Q Okay. And you testified that Marion Bowman,
24 although you were married, did not live there; is
25 that correct?

Dorothy M. Bowman - Cross-Exam

1 A Yes, sir.

2 Q Okay. Now, do you recall what time, roughly

3 what time it was when Marion got home that --

4 A I'd say about almost daybreak, something like
5 that.

6 Q He got home around daybreak on February 17th?

7 A Yes, sir.

8 Q Okay. And when the police came you said that --

9 I believe you said it was around eight or nine
10 o'clock in the morning?

11 A Yes, sir.

12 Q Where were your children then?

13 A They was still at my mom house.

14 Q Your testimony is your children were not at
15 home?

16 A Yes, sir.

17 Q When the police came by?

18 A (Nodding.)

19 Q What was your husband, Marion Bowman, doing when
20 the police car came by?

21 A Yes, sitting on the chair.

22 Q Okay. Was he awake?

23 A Yeah.

24 Q Okay. All right. And the police knocked at the
25 door; is that correct?

Dorothy M. Bowman - Cross-Exam

1 A Yes, sir.

2 Q And you went to the door, you saw Boom Walters
3 who you knew; is that right?

4 A Yes, sir.

5 Q And how long had you known Chief Walters?

6 A For a while, since I been in Branchville.

7 Q All right. And Chief Walters asked if he could
8 come in and look for Marion; is that right?

9 A Yes, sir.

10 Q Okay. Did you let him in?

11 A Yes, sir.

12 Q Were you afraid of Chief Walters?

13 A No, sir.

14 Q Were you afraid of other police?

15 A No, sir.

16 Q Did you let them in voluntarily?

17 A Yes, sir.

18 Q Did they ever tell you they had a search warrant
19 for Marion?

20 A They said something like that, about a warrant
21 and Marion, yes, sir.

22 Q Did they say anything about an arrest warrant?

23 A I can't remember that. I don't think so.

24 Q What did they say about a warrant, to the best
25 of your recollection? If they talked about a

1 warrant, what did they say?

2 A They had a warrant for his arrest.

3 Q Okay. All right. And how many police came into
4 your house?

5 A During that time I'd say about three or four.

6 Q Four of them, okay. And they came in with your
7 permission?

8 A Yes, sir.

9 Q And at some point after coming into the house
10 they arrested your husband; is that correct?

11 A Yes, sir.

12 Q And where was he, what part of the house was he
13 in when he got arrested?

14 A I was in the front room, they said they found
15 him in the bedroom beside the bed.

16 Q All right. Now, there was a question asked
17 about what kind of clothes -- let me back up a
18 minute. When the police came, how was Marion
19 dressed?

20 A He had on a pair of boxers and no shirt.

21 Q Okay. So he just had on his underpants?

22 A Yes, sir.

23 Q Okay. Now, what clothes did he wear when he
24 left, when the police took him off?

25 A Okay. A black jeans and a gray shirt.

1 Q Okay. Do you remember him leaving in a pair of
2 your jogging pants, a gray shirt with a pocket that
3 belonged to you?

4 A Not to my recollection, no.

5 Q You think he left in his own clothes?

6 A Yes.

7 Q Now, later on that day I believe you testified
8 that you and your mother-in-law and possibly one of
9 Marion's sisters carried some food over to the
10 Branchville police office?

11 A Yes, sir.

12 Q Okay. And do you recall whether or not you saw
13 Marion?

14 A I don't remember seeing him, no.

15 Q Okay. I'm trying to get fixed in my mind when
16 it was that the police officer came to your trailer,
17 picked up and carried you back over to the
18 Branchville police office. Was it that day, or the
19 next day, or later on? Or when was it?

20 A It must have been -- I think it was that same
21 day then, on that night.

22 Q That night?

23 A Yes, sir.

24 Q Okay. Officer, was it Lichtenberger, is that
25 him?

Dorothy M. Bowman - Cross-Exam

- 1 A Yes, sir.
- 2 Q Okay. He came the same night Marion got
3 arrested and gave you a ride to the police station?
- 4 A Yes, sir.
- 5 Q Okay. And you spoke to your husband at that
6 time; is that correct?
- 7 A Yes, sir.
- 8 Q Okay. Did you see any marks on Marion?
- 9 A No, sir.
- 10 Q Any swollen lip or bruise to his face, or
11 anything of that nature?
- 12 A No.
- 13 Q Were you close enough to him where if he had
14 been injured in the face you would have noticed it?
- 15 A Yes, sir.
- 16 Q Let me show you a piece of paper, ask if you
17 recognize this, Ms. Bowman.
- 18 A Yes, sir.
- 19 Q Okay. What is that?
- 20 A That's the thing they gave me a copy of where
21 they took at my house and they asked me to sign it.
- 22 Q That's dated February 17th, 2001?
- 23 A Yes, sir.
- 24 Q That's your signature on it?
- 25 A Yes, sir.

Dorothy M. Bowman - Cross-Exam

1 MR. BAILEY: Could I have this marked?

2 THE COURT: Yes.

3 MS. HARDEE-THOMAS: No objection.

4 THE COURT: Have you seen it? You all have
5 seen it?

6 (Marked for identification was State's Exhibit
7 16, Consent to Search.)

8 Q Ms. Bowman, do you recall when it was that you
9 next saw your husband?

10 A Um, we came to see him.

11 Q In the jail?

12 A Uh-huh (affirmative response).

13 Q Okay.

14 THE COURT: That's a yes?

15 A Yes, sir.

16 MR. BAILEY: Your Honor, I believe that's
17 all I have of Ms. Bowman.

18 THE COURT: All right. Redirect.

19 REDIRECT EXAMINATION

20 BY MS. HARDEE-THOMAS:

21 Q Now, Ms. Bowman, you indicated that when the
22 police came Marion was sitting up in the chair. Had
23 you rubbed something on his chest that morning?

24 A Yeah. When he came in that morning he said his
25 chest was hurting so I rubbed some Vicks on his

1 chest, he fell asleep in my arms.

2 Q I'd ask you what time was it -- how much time
3 had you rubbed, I guess, the ointment on his chest?

4 A I don't know, about like five minutes, something
5 like that.

6 Q Was it daybreak?

7 A No. It was something like in the morning time.

8 Q In the morning time, okay, all right. Now, you
9 were asking -- you were answering that -- the
10 solicitor asked you whether or not it was a search
11 warrant or a warrant. What do you remember the
12 police saying?

13 A I believe they said arrest warrant. They ain't
14 never had no warrant to search my house.

15 Q Okay. All right. Now, with regards to whether
16 or not you remember what type of clothes you put on
17 Marion, do you know if it was his clothes or yours?

18 A Sure weren't my clothes.

19 Q Okay. All right. One second. Now, with
20 regards to you seeing Marion, you indicated when the
21 police came that day the morning with the warrant or
22 search warrant?

23 A Uh-huh (affirmative response). Yes, ma'am.

24 Q And then you went to take Marion some food?

25 A In the afternoon, yes, ma'am.

Dorothy M. Bowman - Redirect Exam

1 Q And you said they came back that same day to
2 pick you up. Or was it the next day?

3 A I believe it was the night when I went down
4 there to see J. R.

5 Q Everything happened in the same day?

6 A Yes, I believe so.

7 Q Could it have been the next day?

8 A It might have, but I mean that's how I remember.

9 Q Okay. All right.

10 MS. HARDEE-THOMAS: Beg your indulgence,
11 Your Honor.

12 THE COURT: Okay.

13 MS. HARDEE-THOMAS: Thank you.

14 THE COURT: Any recross?

15 MR. BAILEY: No, ma'am.

16 THE COURT: Very well. You may come down.
17 And is this witness free to leave?

18 THE WITNESS: Thank you.

19 MR. CUMMINGS: Judge, give this nice,
20 polite lady the same instruction.

21 THE COURT: I certainly will. Just stay
22 there for me just for a couple more minutes,
23 Ms. Bowman, because there are a couple things I
24 need to tell you. You've been served with a
25 subpoena and it will continue to be in effect

1 for the trial. The trial will begin May the
2 13th. And just be sure you're staying in
3 contact with Mr. Loy, because I would also tell
4 Mr. Loy jury selection is to begin on May 13th.
5 And just be sure he can reach you when he needs
6 to because these lawyers will contact Mr. Loy
7 when you are needed, all right? She's worried
8 about missing the days. We will give you as
9 much consideration about that as we can,
10 Ms. Bowman, okay? Very well. Just be sure
11 you're staying in contact with Mr. Loy.

12 THE WITNESS: I ain't going nowhere.

13 THE COURT: Only other thing I mention to
14 you this has been a sequestered hearing. What
15 that means is as you waited outside to testify,
16 people who are testifying are outside the
17 courtroom. You don't know who may or may not be
18 testifying in this case, so you'd be well
19 advised not to talk about your testimony, of
20 course, with anyone other than your attorney
21 which would be fine, okay?

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Any comments, any objections to
24 my comments?

25 MR. BAILEY: Nothing from the State, Your

Dorothy M. Bowman - Redirect Exam

1 Honor.

2 MR. CUMMINGS: Nothing from the defense.

3 MS. HARDEE-THOMAS: Nothing from the
4 defense, Your Honor.

5 (Whereupon, the witness steps down from the
6 witness stand.)

7 MR. CUMMINGS: We would call
8 Mr. Lichtenberger to the stand, Your Honor.

9 THE COURT: Yes, sir. If you'd place your
10 left hand on the Bible and raise your right
11 hand.

12 (Glenn C. Lichtenberger, called as a witness,
13 having first been duly sworn, is examined and
14 testifies as follows:)

15 THE COURT: If you would please be seated.
16 And when you are seated, it's a bit to get
17 around that microphone, I'm going to ask you to
18 state your full name for the record and spell
19 your last name.

20 THE WITNESS: Glenn Charles Lichtenberger
21 L-i-c-h-t-e-n-b-e-r-g-e-r.

22 DIRECT EXAMINATION

23 BY MR. CUMMINGS:

24 Q Good afternoon now, sir.

25 A Good afternoon.

Glenn C. Lichtenberger - Direct Exam

1 Q I want to recall your attention to February,
2 month of February, 2001, and ask you if you were --
3 who were you employed by during that month, sir?

4 A Branchville Police Department.

5 Q All right, sir. And how long had you worked at
6 the Branchville Police Department?

7 A Probably about a year and a half at that time.

8 Q All right, sir. And you're very familiar with
9 your boss, Chief Boom Walters?

10 A Yeah.

11 Q All right. And in particular were you working
12 the weekend of the 17th and 18th of February? It's a
13 Saturday and Sunday.

14 A Yes, I was.

15 Q All right. I'm going to bring your attention
16 back. Did you have any particular duties in dealing
17 with anything dealing with Mr. Marion Bowman, the
18 gentleman seated at the table next to Ms. Thomas?

19 A Mostly almost like gofer work.

20 Q Okay.

21 A I do things that the chief wanted me to do.

22 Q On that Saturday how many people were at your
23 town police department as far as law enforcement
24 capacity that you can recall?

25 A I would say at least, probably, five or six.

Glenn C. Lichtenberger - Direct Exam

1 Q All right, sir. Can you just tell us just
2 professionally the number of agencies that were there
3 that you were aware of?

4 A There was ourselves as Branchville, Dorchester
5 County, and I believe Orangeburg County also.

6 Q All right, sir. And on Saturday did you ever
7 have the occasion to lay eyes on the person of
8 Mr. Bowman?

9 A Saturday, no, sir.

10 Q All right. And Saturday night what time did you
11 get off duty?

12 A Two o'clock a.m.

13 Q Two o'clock in the morning, meaning the next
14 day?

15 A Sunday morning.

16 Q Did you have any particular duties to do on a
17 Sunday, on the 18th, that involved either Mr. Bowman
18 or anything in your professional capacity, sir?

19 A Some of the investigation was still going on. I
20 recall late -- I won't say late that night, later
21 that night, Sunday night, dark time I'll say. I
22 don't know how late it was.

23 Q Yes, sir.

24 A I recall Sheriff Williams coming over the radio
25 and asked me to give him a phone call.

Glenn C. Lichtenberger - Direct Exam

1 Q All right, sir.

2 A I went to the office, gave him a phone call. At
3 that time he was asking me if I could go pick up
4 Mr. Bowman's wife and bring her to the police
5 station.

6 Q All right, sir. For what purpose?

7 A I believe he was bringing Mr. Bowman in and he
8 was going to have them to meet.

9 Q All right, sir. What were your instructions in
10 dealing with picking up Ms. Bowman, what was the
11 legal reason that you were picking her up?

12 A The legal reason. I don't believe there was a
13 legal reason. I called up the chief at that time and
14 asked the chief, because it was kind of odd and I
15 wanted to make sure my superior knew what I was
16 doing. I called the chief and the chief said go
17 pick -- pick up Ms. Bowman.

18 Q Okay. What was the understanding that you had
19 about the reason for picking up Ms. Bowman?

20 A That he was going to meet with his wife.

21 Q Okay. For what reason?

22 A I do not know.

23 Q Okay. Please tell Her Honor and the record here
24 today exactly what you did as a result of first
25 getting a phone call from Mr. Williams and then

1 getting a communication with your chief. What did
2 you do?

3 A After the phone call from Sheriff Williams I
4 called up Chief Boom Walters. He confirmed for me to
5 go ahead and do what the sheriff wanted me to do. I
6 left, I went to Mrs. Bowman's house, told her what
7 was going on. She didn't have a sitter for the kids.
8 At that time I took her and the children over to her
9 mother's house --

10 Q So you were like a --

11 A -- to drop off the children.

12 Q Yes, sir.

13 A And then proceeded to the police department.

14 Q Did Ms. Bowman ask you any particular reason why
15 an officer came to pick her up?

16 A I don't recall. I'm not too sure if I told her
17 that Sheriff Williams was bringing Mr. Bowman down,
18 or if I said that Sheriff Williams wanted me to bring
19 her down. I'm not sure.

20 Q All right, sir. And you guys made no written
21 reports of this, nothing, right?

22 A No, sir.

23 Q Again, I'm not trying to be critical of you,
24 sir, you've been up here and you had a chance to
25 speak to Mr. Bailey and I?

Glenn C. Lichtenberger - Direct Exam

1 A Yes, sir.

2 Q Some of the other buddies you've had over the
3 years around here.

4 A Yes, sir.

5 Q When you put a female in the car, what is your
6 policy and procedure about putting a woman with
7 children in the car especially?

8 A Call dispatch, let them know we're giving a
9 female an escort to a certain place, starting
10 mileage, ending mileage of the vehicle.

11 Q Did you do that?

12 A Yes, sir.

13 Q Who did you call that keeps the dispatch logs
14 for anything at the Branchville Police Department?

15 A It would be Orangeburg County.

16 Q Orangeburg County. And as far as you know, sir,
17 again, did you find this strange, what you were
18 requested to do?

19 MR. BAILEY: Objection, whether he found it
20 strange or not. I mean, he's testified as a
21 fact witness as to what he did. He's already
22 testified he thought it was odd.

23 MR. CUMMINGS: I'll move on. He's right,
24 it was odd.

25 Q So how long -- when you put this lady in the car

Glenn C. Lichtenberger - Direct Exam

1 you took her to her mother for babysitting?

2 A Yes.

3 Q Then what did you do with the person of
4 Ms. Bowman?

5 A Ms. Bowman was transported to the police
6 department.

7 Q And when you got to the police department, who
8 was there?

9 A Sheriff Williams and I believe another deputy
10 with Mr. Bowman.

11 Q Okay. And what did you do when you delivered
12 the package, Ms. Bowman?

13 A I left.

14 Q Okay. And did you have to do anything else that
15 night?

16 A Yes. I came back and brought Mrs. Bowman back
17 to her mother's house.

18 Q And did you call that in again, sir?

19 A Yes, sir.

20 Q So mileage, beginning and ending?

21 A Yes, sir.

22 Q Okay. And nobody ever told you write down any
23 reports, or do anything?

24 A No, sir.

25 Q Did you see anybody down there with any

Glenn C. Lichtenberger - Direct Exam

1 paperwork for Mr. Bowman?

2 A No, sir.

3 Q Did you see anything as far as paperwork for
4 Mrs. Bowman?

5 A No, sir.

6 Q Had the words "Department of Social Services" or
7 any other legal agency been involved of used in the
8 term of Mrs. Bowman?

9 A No, sir. As far as I know.

10 Q Officer, you never asked the sheriff why you
11 were picking this female up?

12 A No, sir.

13 Q As far as your involvement after this, did you
14 have any other involvement at all with Ms. Bowman or
15 Mr. Bowman after the 18th of February?

16 A I don't -- don't recall I did. I don't believe
17 I did.

18 Q Okay, sir. Now, you've worked in the town for
19 about a year and a half prior to February?

20 A Yes, sir.

21 Q Do you need a glass of water or something, or
22 something --

23 A That's all right. I just have this cough.

24 Q Were you aware of any outstanding charges on the
25 person of Mr. Bowman?

1 A No. There would be rumors of certain things
2 going on. Never charges, no.

3 Q You never saw any photocopies of warrants or
4 anything there?

5 A No, sir. No, sir.

6 Q And you -- how many police officers are at the
7 Branchville Police Department in February 2001?

8 A At that time there was three.

9 Q And if you'll name them, please, for the record.

10 A There was Chief Boom Walters, myself, and Ronald
11 Judy.

12 Q Yes, sir.

13 MR. CUMMINGS: Your Honor, just beg the
14 Court's indulgence.

15 THE COURT: All right.

16 (Pause in proceedings.)

17 Q Again, I know that you're picking up a lady on a
18 Sunday night. Were there any female officers there
19 to afford Ms. Bowman any protection?

20 A No, sir.

21 Q On a Sunday night, excuse me. None at all that
22 you recall?

23 A No, sir.

24 MR. CUMMINGS: That's all the questions we
25 have of this gentleman.

Glenn C. Lichtenberger - Direct Exam

1 Q Thank you. Please answer any questions Mr.
2 Bailey has.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. BAILEY:

6 Q You did not take any notes, or do an incident
7 report, or supplemental report, or anything of that
8 nature?

9 A No, sir.

10 Q Okay. As far as the dates when you were
11 involved here, we're talking about the weekend, that
12 17th and 18th, Saturday and Sunday.

13 A Yes, sir.

14 Q Is there any question in your mind about when
15 the events took place, whether it was Saturday or
16 Sunday?

17 A Yes, sir. There could be, yes, because I have
18 nothing to look at, so I would have to go by -- by
19 strictly when Mr. Bowman, when the incident happened
20 and when the things occurred.

21 Q Okay. The incident. You're talking about the
22 murder that's being investigated?

23 A Yes, sir.

24 Q Okay. And what's your recollection of when the
25 body was found in the burned car?

Glenn C. Lichtenberger - Cross-Exam

1 A I believe, say, about four o'clock in the
2 morning.

3 Q Okay.

4 A It would be the Saturday morning.

5 Q Okay. And what was your involvement that
6 Saturday after the body is found, like 4:00 a.m. that
7 Saturday, what were you doing that day?

8 A I came in at my normal time, would be six
9 o'clock, to Branchville.

10 Q Okay.

11 A And at that time I was just told what was going
12 on. Knowing that it didn't happen in Branchville, we
13 were just assisting Dorchester County.

14 Q Okay. So did you get involved in any way in the
15 investigation of the case?

16 A Trying to locate the weapon.

17 Q Okay.

18 A I went out with Dorchester County to several
19 sites.

20 Q Okay.

21 A To show them what the sites were.

22 Q Anything besides that?

23 A No, sir.

24 Q Were you around the police station that day in
25 and out?

Glenn C. Lichtenberger - Cross-Exam

- 1 A That Saturday?
- 2 Q Yes, sir.
- 3 A Just when I went on duty, six o'clock on.
- 4 Q Okay. But during the course of your shift it
- 5 was 6:00 a.m. to what time?
- 6 A I was in and out. 6:00 a.m. to 2:00.
- 7 Q 6:00 a.m. to 2:00. I'm sorry, what? You saw
- 8 her at 6:00 a.m.?
- 9 A 6:00 p.m. on Saturday morning to 6:00 -- or to
- 10 2:00 a.m. Sunday morning.
- 11 Q Okay. I'm sorry, I thought you said that you'd
- 12 come on at 6:00 a.m. and the body had been found?
- 13 A No, sir. Now, I believe I was told that the
- 14 body was found at 4:00 a.m. that Saturday morning. I
- 15 was only told when I came to work.
- 16 Q Okay.
- 17 A That Saturday night.
- 18 Q You came to work that Saturday night at 6:00
- 19 p.m.?
- 20 A Right.
- 21 Q So during the day you did not do anything?
- 22 A I didn't, no, sir.
- 23 Q You weren't even at work?
- 24 A No, sir.
- 25 Q Okay. That evening when you came in, what was

Glenn C. Lichtenberger - Cross-Exam

1 going on the Saturday evening at 6:00 p.m. when you
2 went in the police station?

3 A A lot of officers were around.

4 Q Okay.

5 A The chief was telling me what was going on.

6 Q All right.

7 A I believe at that time everybody was already
8 picked up.

9 Q Okay. Do you recall seeing Marion Bowman at the
10 police station that evening?

11 A I believe he might have been there, I believe.
12 I believe he might have been there, yes, sir.

13 Q Did you see him? Do you recall seeing him?

14 A Yes. Yes, sir. I do. I believe he was in the
15 back room.

16 Q Okay. Who was he with; do you remember?

17 A One of the Dorchester deputies.

18 Q Okay.

19 A I believe.

20 Q Did you observe what was going on?

21 A No.

22 Q Okay. Did you see any of Mr. Bowman's family
23 members, wife, mother, sisters, anybody that Saturday
24 evening?

25 A I'm not sure who they were. There was a couple

1 of ladies in the chief's office.

2 Q Okay.

3 A I'm not sure what relation, though.

4 Q All right. Okay. And your best recollection is
5 that it was the following evening, Sunday evening
6 when you went and picked Ms. Bowman up, carried her
7 over to the police station?

8 A Yes, sir.

9 Q Okay. And at no time did you hear anybody
10 threaten Ms. Bowman with charges, or children being
11 put in DSS custody; is that correct?

12 A No, sir.

13 Q Did you hear Marion Bowman being threatened with
14 that?

15 A No, sir.

16 Q All right, sir. I believe that's all I have.
17 Thank you very much.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. CUMMINGS:

21 Q Did you know Ms. Dorothy Bowman, his wife, from
22 working in the area?

23 A I -- yeah. I knew her as -- I knew who she was,
24 yes.

25 Q I know Mr. Bailey asked you that politely if you

Glenn C. Lichtenberger - Redirect Exam

1 saw any other ladies around there. Do you remember
2 seeing her that Saturday night?

3 A No. I don't recall seeing her that night.

4 Q But Sunday you pick her up definitely?

5 A Yes, sir.

6 Q And then when you brought Ms. Bowman to the town
7 hall, now I want to make sure, do you remember where
8 she went, or whether she was occupying what space
9 inside your town hall?

10 A She went into -- I believe she went in the front
11 door. I'm not sure, but I believe she went in the
12 front door and she met with Sheriff Williams.

13 Q Okay.

14 MR. CUMMINGS: That's all the questions I
15 have. Thank you, Your Honor. And, again, if
16 Your Honor would kindly instruct this gentleman,
17 too.

18 THE COURT: I will. Any recross?

19 MR. BAILEY: Nothing from the State, Your
20 Honor.

21 THE COURT: All right. This matter is
22 anticipated to go to trial on May the 13th. You
23 have a subpoena and that subpoena will remain in
24 effect. I just would like for you, and
25 appreciate if you would be sure that both Mr.

1 Bailey as well as Mr. Cummings and Ms.
2 Hardee-Thomas have the numbers where you can be
3 reached so that they can stay in contact with
4 you so you do not have to stay here beginning
5 the 13th until the time that you are needed for
6 your testimony, if you are needed for your
7 testimony. If you will do that, that will allow
8 them to stay in contact with you.

9 THE WITNESS: Sure.

10 THE COURT: All right. The witnesses to
11 this hearing have already been sequestered, and
12 as a result of that I would tell you that you
13 are well advised not to talk about your
14 testimony. Because you don't know who's going
15 to be a witness and who isn't going to be a
16 witness to this matter, so you would be well
17 advised --

18 THE WITNESS: Yes ma'am.

19 THE COURT: -- to keep your own counsel in
20 terms of talking about your own testimony
21 unless, of course, you have your own lawyer and
22 certainly you should talk to your own lawyer
23 about that.

24 THE WITNESS: Right.

25 THE COURT: Any objection to my comments?

1 MR. BAILEY: None from the State, Your
2 Honor.

3 MR. CUMMINGS: Nothing from the defense,
4 Judge.

5 MS. HARDEE-THOMAS: Nothing.

6 THE COURT: You may come down. Make sure
7 they have your how to reach you information and
8 then you may be free to go.

9 THE WITNESS: Thank you.

10 THE COURT: Yes, sir.

11 (Whereupon, the witness steps down from the
12 witness stand.)

13 MR. CUMMINGS: Judge, that would be the
14 conclusion of Jackson v. Denno from the defense,
15 ma'am.

16 THE COURT: Rebuttal, Mr. Bailey?

17 MR. BAILEY: Your Honor, could I have a
18 moment to confer with Mr. Coker?

19 THE COURT: Absolutely. Absolutely.

20 (Pause in proceedings.)

21 MR. BAILEY: Your Honor, the State has no
22 reply testimony.

23 THE COURT: Very well. All right.
24 Counsel, do you propose to argue at this time
25 for the -- regarding this particular motion?

1 Let me hear from you. Are you prepared to do
2 that at this time?

3 MR. BAILEY: State's prepared, Your Honor.

4 MR. CUMMINGS: I know the State's prepared.
5 I know they're getting ready to pick a jury this
6 afternoon. I don't know whether the Court wants
7 to take it at all before that. I would like to
8 have additional time to argue, only because I do
9 want to give Mr. -- speak to Mr. Bowman a few
10 more moments, make sure I cover some issues.

11 THE COURT: There are some things -- having
12 spent some time this weekend going over my notes
13 and doing some work regarding questions that I
14 have that I wanted to be able to pose to you and
15 I would like also an opportunity to conclude
16 that work before we actually argue the Jackson
17 v. Denno so that suits me well.

18 MR. CUMMINGS: I know, Your Honor, we're
19 going to be up here pretty much all week and I'm
20 willing to come back up here whenever this trial
21 is finished or whenever Your Honor's pleasure is
22 to bring us back up to argue that.

23 THE COURT: All right. I don't know when
24 we'll be able to do that. Let things sort of
25 settle down today and in the morning.

1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: And then I feel like we'll have
3 a better opportunity. And then Mr. Bailey needs
4 the ability to refocus now on his other matter.
5 I know it won't be Friday. And if we're not
6 able to argue on Thursday, then it will be
7 probably sometime next week. Hopefully sometime
8 next week.

9 MR. CUMMINGS: Thank you, Judge.

10 MR. BAILEY: Thank you, Your Honor.

11 MR. CUMMINGS: Thank you for your patience
12 this morning also, Your Honor.

13 THE COURT: All right. Now, Mr. Bailey,
14 does that conclude everything that we have until
15 2:00, until the jury comes back?

16 MR. BAILEY: To the best of my knowledge,
17 Judge, it does. I mean, I can check with
18 Mr. Robbins, see if he has anything.

19 THE COURT: Looks like he's lost his
20 audience, so I think that's probably correct.

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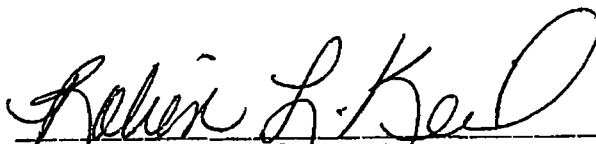
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 19th day of July 2003.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME X Pages 1079 - 1178
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) JACKSON VS. DENNO ARGUMENTS
MARION BOWMAN, JR.,) April 17, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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1 (Wednesday, April 17, 2002.)

2 THE COURT: To begin with I would just ask
3 if you've had an opportunity to review the
4 reading materials?

5 MR. BAILEY: We have, Your Honor.

6 THE COURT: All right. Any concern about
7 any publications?

8 MR. BAILEY: Your Honor, I have no concern
9 about any of the publications there. If I
10 could suggest maybe get some *Sports*
11 *Illustrated*, *Poplar Mechanics*.

12 THE COURT: Isn't that great. Some guy
13 things?

14 MR. BAILEY: Seems like there was a lot of
15 girl things. *Oprah*.

16 THE COURT: *Rosie*, yeah, and *Southern*
17 *Living*.

18 MR. BAILEY: *Southern Living*.

19 THE COURT: Listen, but I got the USC and
20 the Clemson thing. I thought I did really,
21 really well.

22 MR. BAILEY: I saw that.

23 THE COURT: More guy things, all right.
24 I'll get some more guy things. I may make
25 y'all get some guy things. Okay, I'll get some

1 guy things.

2 MR. CUMMINGS: The only thing we did have,
3 Judge, take out any magazines that had 9/11
4 reference to it. I think we all know we were
5 all in court that day when that thing happened.
6 For once -- this is an old cop talking -- the
7 respect has come back to fire people, EMS
8 personnel, and law enforcement. And just on
9 the side of caution and discretion perhaps to
10 take that out in this case.

11 THE COURT: Sure. Did you find more than
12 one with the reference to 9/11?

13 MR. CUMMINGS: Two. Rosie's magazine there
14 was a reference about babies being born on the
15 9/11 day and I think in the Carolina magazine
16 showed Shelton there, the proud gentleman he
17 is, there is a proud conversation about how our
18 country has changed since 9/11.

19 THE COURT: So we need to take out
20 *Southern Living*.

21 MR. CUMMINGS: And Carolina magazine I
22 saw.

23 THE COURT: You mean the one with Dean
24 Smith on the front?

25 MR. CUMMINGS: Yes.

1 THE COURT: Okay. Great.

2 MS. HARDEE-THOMAS: *Southern Living*.

3 MR. CUMMINGS: *Southern Living* is just
4 about decorating, curtains.

5 THE COURT: Okay. So *Carolina* magazine.

6 MR. CUMMINGS: Other than that I concur
7 with Mr. Bailey.

8 THE COURT: You did acknowledge Dean
9 Smith. You did see him playing golf and he
10 looks really good.

11 MR. CUMMINGS: He looked really good. I
12 defer Her Honor's anticipated look about how we
13 look as far as old guys in here. He looked
14 like a nice guy playing golf.

15 THE COURT: I will remove those two and I
16 will add some *Sports Illustrated*.

17 MS. HARDEE-THOMAS: One more argument,
18 Your Honor. I was in here earlier with regard
19 to Ms. Braithwaite, I wanted to put on the
20 record that my client consented to that aspect.

21 THE COURT: All right. As I understand
22 what had occurred is that while
23 Ms. Hardee-Thomas has handled no pleas this
24 week, the only exception has been the
25 Braithwaite matter because the statute gives

1 her 30 days before trial, before a capital
2 trial, to protect her so that she can focus on
3 that matter.

4 And, Mr. Bowman, I understand that
5 certainly you are aware of that and that -- but
6 that you did consent and were gracious enough to
7 understand that Ms. Hardee-Thomas needed to handle
8 that particular plea because of the impact on a
9 case next week; is that right?

10 MR. BOWMAN: Yes, ma'am.

11 THE COURT: Very well.

12 MR. CUMMINGS: Thank you, Judge. Just put
13 it on the record.

14 THE COURT: Okay. Now, that brings us to
15 the argument on the Jackson v. Denno. And I
16 want to share with counsel, then I want to hear
17 from you on all the matters that you want to
18 tell me, and I genuinely mean that. I have an
19 area that I would like you to give special
20 attention to if you would, because I have been
21 going back through my notes and have portions,
22 and I think you all do, too, I have portions of
23 the transcript. I think I probably have most
24 of the transcript that I have been reviewing.

25 And I think it would come as no surprise

1 to counsel that the area that I am -- not that I'm
2 not concerned about all these areas because I am,
3 and I genuinely mean that, but I would like you to
4 specifically address your attention to State's
5 Exhibit Number 7 for identification purposes, and
6 the testimony of Sheriff Williams as it relates to
7 the testimony of about everybody else that
8 testified, particularly the major, his number two
9 in charge. So let me just -- the State has the
10 burden of proof as you know --

11 MR. BAILEY: Yes, ma'am.

12 THE COURT: -- on those.

13 MR. BAILEY: State's Number 7 for ID, is
14 that the number four statement that would have
15 been the second Larry Williams statement?

16 THE COURT: It is the second Larry
17 Williams statement, yes, sir.

18 MR. BAILEY: Okay. All right.

19 THE COURT: It's the statement the defense
20 takes the position was coerced in exchange
21 for -- or coerced as a result of Sheriff
22 Williams saying if you don't sign this
23 statement I'm going to arrest your wife, and
24 look how powerful I am, and I'm going to have
25 DSS take your kids. And to show you how

1 powerful I am I'm going to have her brought to
2 Branchville. That was the Sunday afternoon
3 visit.

4 MR. BAILEY: Okay.

5 THE COURT: Or Sunday evening. Yes, sir.

6 MR. BAILEY: Thank you, Your Honor. Your
7 Honor, of course I'm going to have to talk
8 about some other stuff to get to that point, so
9 if I can back up.

10 THE COURT: I know you are. I know you
11 are.

12 MR. BAILEY: Of course what we're dealing
13 with here is voluntariness. And the standard,
14 as I understand it, at this juncture is we need
15 to prove the statements were made voluntarily
16 by a preponderance of the evidence. And if
17 Your Honor deems that they are, they would then
18 be submitted to the jury. And we have the
19 burden of convincing the jury beyond a
20 reasonable doubt, so we're dealing with a
21 threshold issue.

22 When the burned car was found the early
23 morning hours of February the 17th Marion Bowman's
24 name came up in the investigation. Authorities
25 wanted to talk to -- Chief Boom Walters of the

1 Branchville Police Department had knowledge and a
2 copy of an unserved arrest warrant for Marion
3 Bowman for receiving stolen goods. Chief Walters,
4 Dorchester County authorities, and Orangeburg
5 County deputies went to Mrs. Bowman's trailer home
6 in the city limits of Branchville within Chief
7 Walters' jurisdiction in order to effect an arrest
8 of Mr. Marion Bowman. I believe Mr. Cummings is
9 going to challenge validity of that arrest, so I
10 want to mention that in some detail.

11 Marion Bowman admits he did not reside
12 in that trailer. And his testimony, Dorothy Mae
13 Bowman, his wife, corroborates that, that she
14 lived there with her children, that he did not
15 live there, although some clothing may have been
16 there.

17 So in regard to the allegation of these
18 officers forced their way in improperly, allege
19 they had a search warrant and all that; number
20 one, Mr. Bowman would have no standing to raise
21 that issue, he would have no expectation of
22 privacy if that was not his residence.

23 Number two, even if he had standing
24 Mrs. Bowman's testimony, which I think would
25 submit is very credible, is that she knew Boom

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1 Walters, she was not afraid of the police
2 officers, she let them in voluntarily. They said
3 they had an arrest warrant for Marion Bowman, but
4 she denied they ever said they had a search
5 warrant, so I think the search warrant thing is a
6 non-issue.

7 Marion Bowman is arrested at the house
8 pursuant to that Orangeburg receiving stolen goods
9 warrant, he's carried to the Branchville police
10 station and town hall. But prior to that Terry
11 Van Doran testified that he from a card gave
12 Mr. Bowman his Miranda rights, he understood those
13 Miranda rights, was taken to the police station.

14 And in regards to the validity of the
15 arrest, I cited during the course of the testimony
16 I think on the -- forget what day it was -- two
17 South Carolina death penalty cases, State vs.
18 Mitchell Sims, 405 S.E.2d 377, and State vs.
19 Holmes, 464 S.E.2d 334. Both of those cases
20 standing for the proposition that a police officer
21 can lawfully make an arrest pursuant to an arrest
22 warrant they know about within their jurisdiction
23 without having that warrant physically in their
24 presence. So whether or not they had the warrant
25 with them, whether he was served with the warrant

1 at the time of the arrest I think doesn't really
2 make any difference according to our Supreme
3 Court.

4 At eleven o'clock a.m. the first written
5 Miranda warnings were given to Mr. Bowman at the
6 Branchville Town Hall. He signs that, he admits
7 that's his signature, he's initialed the
8 individual rights, that's undisputed. Mr. Van
9 Doran, Mr. Coker had witnessed that signature and
10 that Miranda. He thereafter gave a verbal
11 statement which he exonerated himself, but
12 implicated a guy named Terry Kelly.

13 At 12:34 there's another written Miranda
14 given Tim Stephenson. Again, it's undisputed that
15 Mr. Bowman signed the Miranda, that that's
16 witnessed. At 2:10 p.m. or thereabouts, he gives
17 the first of four written statements. In that
18 statement he implicates this Terry Kelly,
19 exonerates himself.

20 Your Honor, this statement and the three
21 other statements that are given are all on
22 Dorchester County Sheriff's Office forms. Each
23 page of each one of those documents contains the
24 wording "I have read the foregoing statement or
25 have had it read to me, it's true and correct to

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1 the best of my knowledge. I've given the
2 statement freely and voluntarily and have been
3 provided a copy of my statement."

4 Again, that is in every single page of
5 every one of the four statements and Marion Bowman
6 has acknowledged signing all those pages. That
7 statement was witnessed by Mr. Van Doran and Tim
8 Stephenson.

9 4:40 p.m. that same afternoon the second
10 written statement is given by Marion Bowman, it's
11 witnessed by Mr. Van Doran and Mr. Coker. Again,
12 that statement, written statement Mr. Bowman
13 exonerates himself, implicates the other people.
14 8:50 p.m. the third written statement is given.
15 Initially Tim Stephenson's there, Sheriff Larry
16 Williams is present. Mr. Stephenson leaves the
17 room, a third statement is given. Again,
18 Mr. Bowman exonerates himself in that statement.
19 After that he is transported that evening by
20 Deputy McAlhany, I believe, to the Orangeburg
21 detention center.

22 Prior to his incarceration to the
23 Orangeburg Calhoun Detention Center Mr. McAlhany
24 serves the Orangeburg County warrant for receiving
25 some stolen goods on Mr. Bowman, he's then locked

1 up. The next day, which was a Sunday, sometime
2 between lunchtime and suppertime, Mr. Bowman's
3 brought from the jail across the breezeway to the
4 sheriff's office.

5 The State's testimony, if I can
6 summarize it without exact quotes, Barbara
7 Walters, Terry Van Doran, Major Stephenson are in
8 Branchville, they receive word and they don't
9 recall who that word came from, but that's what
10 prompted them to go from Branchville to
11 Orangeburg, they received word that Mr. Bowman
12 wants to speak to law enforcement. They go there
13 and arrive at the Orangeburg sheriff's office.

14 Sergeant Van Doran testified that he and
15 Tim Stephenson walked into a room in the sheriff's
16 office, Marion Bowman is seated there, and when he
17 approached Marion Bowman, Bowman said he wanted to
18 talk to the sheriff. Mr. Van Doran says he goes
19 across the hall, the sheriff is in his office or
20 in an office across the hall, he asks -- tells the
21 sheriff that Mr. Bowman wants to talk to him. The
22 sheriff agrees to talk to him. Sergeant Van Doran
23 then gives the sheriff a blank Dorchester County
24 statement form.

25 THE COURT: What concerns me about that --

1 let me stop you there.

2 MR. BAILEY: Yes, ma'am.

3 THE COURT: Because that's where I begin
4 the testimony aside from what Mr. Bowman says,
5 police officers, as I understand it either --
6 and I was pulling my notes, either the major or
7 Sheriff Williams says that he spoke -- I think
8 it was perhaps the major that said that the
9 sheriff spoke with Mr. Bowman on that Sunday
10 evening pursuant to a request from Dorchester
11 County. Remember that testimony?

12 MR. BAILEY: Yes, ma'am. But deputy --
13 that falls into line with what Sergeant Van
14 Doran said, is that he talked to Bowman across
15 the hallway and then he went over there and
16 told the sheriff that Mr. Bowman wanted to talk
17 to him.

18 Now, that was a request by Dorchester
19 County that the sheriff talk to him. Now, that
20 does not address the question of how he got from
21 the jail over to the sheriff's office.

22 THE COURT: Hold on one second, let me
23 pull that.

24 MR. BAILEY: Okay.

25 (Pause in proceedings.)

1 THE COURT: All right. Here it is.
2 It, § 088y1t is the testimony of Sheriff Williams
3 that says -- of course he says that he talks to
4 him because there were some co-defendants, and
5 that Detective Coker asks him to talk again to
6 Mr. Bowman. It's your position -- of course
7 nobody knows how he came to go from -- from the
8 jail over to the sheriff's department. I think
9 everybody agrees that that's somewhat unusual
10 on a Sunday afternoon.

11 MR. BAILEY: That's correct.

12 THE COURT: But nobody knows who prompted
13 him to be taken over there. But in any event,
14 the sheriff says that he was asked by Detective
15 Coker and -- but there's a lot of lack of
16 clarity about that.

17 MR. BAILEY: I agree, Your Honor, there is
18 a lot of lack of clarity due to the passage of
19 time and faulty recollection on the details.
20 Mr. Cummings, I think --

21 MR. CUMMINGS: Again, not to -- and I
22 know, Your Honor, we don't have a jury present
23 or anything on this, the length of time has
24 nothing to do with their knowledge. It's their
25 burden, their responsibility. The length of

1 time a client -- doesn't have any hold over a
2 major capital case. And that's the only thing.
3 And I know they kept coming up here saying it's
4 been so long, it's been so long I can't recall.
5 That's their job to recall it. And that's my
6 only academic argument with Mr. Bailey and I
7 stand up for an objection that I don't want the
8 length of time from arrest by the State until
9 we come to this courtroom by the State to have
10 any impact on Her Honor's decision today in any
11 arguments in this room. The fact that a
12 policeman can't recall what he did when he made
13 the arrest is the State's problem, not the
14 defendant's.

15 THE COURT: I understand, Mr. Cummings,
16 just make notes.

17 MR. CUMMINGS: Yes, ma'am. I apologize to
18 my colleague.

19 THE COURT: Yes, sir. I'm with you. All
20 right.

21 MR. BAILEY: Your Honor, I can only -- in
22 regard to that specific testimony about him
23 saying that Sergeant Coker had asked him, my
24 only thoughts are that he's an Orangeburg
25 deputy, he's not familiar with the Dorchester

1 County people, that perhaps he thought Van
2 Doran -- got the two of them mixed up. That's
3 the only thing I can think of, the only logical
4 explanation. And it's I think a rational
5 explanation if that's what occurred.

6 THE COURT: Tell me what is the State's
7 position about what occurred on Sunday
8 afternoon, and then I want you to stop at the
9 time that the statement is given.

10 MR. BAILEY: All right. The State's
11 testimony, the State's position is that however
12 Marion Bowman got across that breezeway, and I
13 would concede that this is a Sunday afternoon,
14 but I would disagree that that would be an
15 unusual situation where you have a person who's
16 being questioned on a very, very brutal murder,
17 that the investigation's ongoing with these
18 different agencies. The sheriff's in his
19 office on Sunday, everybody's working, it would
20 not be highly unusual since he's given three
21 prior written statements that are conflicting
22 and the investigation's continuing, to either
23 bring him at his request or at their request
24 across the street to see if he would talk to
25 him further. And that's, in fact, what

1 happened.

2 But at any rate, the sheriff's
3 recollection is that he was requested by
4 Dorchester County to talk to Bowman, he agreed to
5 talk to Bowman, he got the statement for him.
6 Admittedly it was not an Orangeburg County
7 statement form from somebody from Dorchester
8 County. And that kind of corroborates Terry Van
9 Doran's testimony, that he's the one that asked
10 Larry Williams to talk to him, he gave him the
11 statement.

12 He then, Mr. Van Doran left, left the
13 statement with the sheriff. He is hanging around
14 in the hallway or in an adjacent office. And from
15 roughly 7:35 to 9:00 p.m. Mr. Bowman is present
16 with Larry Williams, the sheriff. He comes out,
17 the sheriff comes out at the end of that period of
18 time, gives the written statement, signed
19 statement which is the number four statement which
20 is the critical statement here because that is the
21 statement that -- where Mr. Bowman implicates
22 himself as well as Taiwan Gadson, the other
23 defendant charged with murder here.

24 THE COURT: What is the State's position
25 between what happened with Mr. Bowman between

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1 4:40 and 7:30?

2 MR. BAILEY: Between 4:40 and 7:30.

3 THE COURT: It's my understanding he was
4 checked out of the jail at 4:40.

5 MR. BAILEY: Your Honor --

6 THE COURT: Isn't that what -- am I
7 correct or incorrect?

8 MR. BAILEY: I believe that is correct,
9 Your Honor, he was checked out of the jail at
10 4:40. And I would assume since he's checked
11 out of the jail he's sitting over there in that
12 office waiting for someone to talk to him. And
13 the people in Branchville get word that he's
14 there to be talked to. They leave, they get
15 there. That took some time. I'm not sure what
16 else they were doing.

17 I think, Your Honor, there's a lot going
18 on here in Branchville with this investigation,
19 dozens and dozens of people that are being talked
20 to, there's a search for a weapon, there's a lot
21 going on. But I don't know that what was
22 happening between 4:40 and 7:35 is really that
23 critical in my mind, anyway, to the voluntariness
24 of the statements given. There's no testimony
25 that he was being abused during that period of

1 time, threatened, coerced, that anything adverse.
2 There's nothing from either side saying that
3 anything occurred during that period of time that
4 would have affected the voluntariness of his
5 statement, written statement number four.

6 But at any rate, Larry Williams at the
7 end of that session with Mr. Bowman which ended I
8 think around 9:00 p.m., comes out of the room,
9 gives the written statement to a Dorchester
10 deputy. Detective Van Doran says he received the
11 statement signed in Orangeburg from the sheriff,
12 he turned that over to Sergeant Coker and it ended
13 up in the case file and thereafter was introduced
14 into evidence.

15 THE COURT: But apparently Mr. Coker
16 wasn't there, it was Mr. Turner.

17 MR. BAILEY: Van Doran was there and
18 Turner was there and Stephenson was there, Your
19 Honor. Mr. Coker was not in Orangeburg.

20 THE COURT: Not there.

21 MR. BAILEY: He was in Branchville doing
22 some things around Branchville when this
23 happened. But at any rate, I don't believe
24 there's any testimony that Mr. Coker was there.
25 But Sergeant Van Doran testified that he

1 subsequently after receiving the original
2 statement from the sheriff signed by Marion
3 Bowman, that he received that in Orangeburg and
4 subsequently turned that over to Alvin Coker.
5 Of course, Mr. -- Sergeant Van Doran's
6 testimony under oath that he got the signed
7 statement in Orangeburg conflicts with Marion
8 Bowman's statement that he didn't sign that
9 statement, it wasn't even his statement and
10 that the statement was done in Branchville
11 later on that evening. But at any rate, Your
12 Honor, Bowman is then transported that evening
13 from the sheriff's office to Branchville.

14 THE COURT: Based upon a conversation and
15 an agreement between the sheriff of Orangeburg
16 County and the Dorchester County deputies.

17 MR. BAILEY: That is my recollection of
18 the testimony. Although I would agree with the
19 Court and would agree with Mr. Cummings that
20 there's a lot of imprecision, or, again, at the
21 risk of getting Mr. Cummings excited, again,
22 poor recollection of the specifics of it. But
23 we concede, and I think it's undisputed in the
24 jail records that we produced in discovery to
25 Mr. Cummings, show that he was taken out of the

1 jail and that he was checked back in I think
2 10:22 or something p.m.

3 So he did go to Branchville, he met with
4 his wife, his wife testified about the meeting.
5 Of course, the defendant's account of what
6 occurred at the sheriff's office and at
7 Branchville differs drastically from Sheriff
8 Williams' testimony under oath. Sheriff Williams,
9 of course, said while he was in that room with
10 Marion Bowman he did not threaten him, he didn't
11 threaten his wife, he didn't threaten the children
12 with DSS custody, he didn't strike Marion Bowman,
13 he didn't abuse him in any way, that he testified
14 that he would not have done such a thing. And,
15 Your Honor, I would submit that the chief law
16 enforcement of Orangeburg County when he's being
17 accused of that kind of misconduct, that his
18 testimony would be entitled to great deference in
19 this case.

20 THE COURT: Let me tell you what concerns
21 me, is that the sheriff has no memory, none, of
22 the discussion with Dorchester County, of the
23 agreement to send Mr. Bowman to Branchville, of
24 going to Branchville, of nothing to do with
25 Branchville. I'm very concerned about that.

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1 MR. BAILEY: I agree the sheriff's memory
2 is faulty.

3 THE COURT: No memory.

4 MR. BAILEY: Very faulty. Your Honor, and
5 I think what you've got to do since the
6 sheriff's memory is faulty, it's not faulty
7 about what happened in that room, it's faulty
8 about what happened after, after they came out
9 of the room. But I would think you have to
10 look to the other people that were involved.
11 Obviously to look at Marion Bowman and judge
12 his credibility, what he has to gain or lose by
13 telling the truth or not telling the truth, to
14 look at Mr. McAlhany who was a deputy that,
15 frankly, didn't want to get involved.

16 He knew Marion Bowman from school, he
17 was a year or two ahead of him and he said that he
18 didn't want to initiate a conversation with him.
19 He said that he got close to him, he put the cuffs
20 on him and he says there's no marks, or bruises,
21 or abrasions, or anything indicating he got
22 slapped around.

23 He's brought -- Mr. McAlhany brings him
24 to Branchville. Mrs. Bowman testifies that the
25 police come out and ask her to come to the police

1 station. They're not threatening her with DSS
2 custody of the children, they're not threatening
3 to arrest her at that point in time for not
4 letting them in the house or anything of that
5 nature, she goes freely, voluntarily, she's not
6 afraid of the police. She sits down in the
7 conference room with her husband, she's sitting
8 right across from him and she clearly, Your Honor,
9 said that there's no marks, there's no bruises,
10 there's no indication he's been slapped around or
11 anything of that nature. This is his wife
12 testifying to that.

13 THE COURT: Let me tell you, let me get
14 right to it and tell you what I'm concerned
15 about. Very serious, very serious allegations
16 that that statement would have been attained
17 based upon a threat to have Ms. Bowman arrested
18 and have the children taken. The statement in
19 accordance with Mr. Bowman was the statement
20 was made to him, not to his wife, but to him
21 and that that was -- that was the coercion.

22 What worries me absolutely is the
23 following: You've just said that Detective Coker
24 was in Branchville, denies knowing, denies him
25 coming back on Sunday evening. And maybe that has

1 to do with the time when he left Branchville.
2 That concerns me. It concerns me that the major
3 talks about a conference that went on between the
4 sheriff and the Dorchester County officers, one of
5 which was Van Doran. I remember Van Doran's
6 testimony at that point, he was extremely
7 uncomfortable when he was asked whether or not he
8 had heard during the course of -- because he said
9 he didn't participate in that decision being made
10 to transport Mr. Bowman to Branchville, but that
11 he had heard something, he sort of remembered
12 vaguely, about maybe he was taken to Branchville
13 on Sunday evening. I am very uncomfortable with
14 that.

15 I'm very uncomfortable with also
16 Detective Coker saying I didn't know anything
17 about it until it got testified to in the
18 courtroom. I'm very concerned about that.
19 Because while I absolutely understand that there
20 was a tremendous amount of effort ongoing to
21 investigate this particular matter, that's not
22 insignificant to be transporting late Sunday
23 evening Mr. Bowman back to Branchville for the
24 purpose of meeting with his wife. And no one was
25 able to testify on behalf of the police why that

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1 was done. I'm very concerned about that.

2 Sheriff says he didn't know anything
3 about it, although his major said it was part
4 of -- it was his agreement. The Dorchester County
5 police officers vaguely, kind of, sort of remember
6 something about it. And yet no one says we did
7 that because Marion Bowman was incredibly upset,
8 he was -- I mean, and what is so troubling to me
9 about it, you know, Mr. Bailey, is that everybody
10 agrees it was unusual. In fact, Lichtenberger
11 says he thought it was so unusual when he received
12 a phone call from the sheriff Sunday evening that
13 he called his chief because he was so concerned
14 about it.

15 MR. BAILEY: Your Honor, I would, again,
16 and I've got some more to say that could relate
17 back to this in regard to the issue of
18 credibility, but I would just say that -- and I
19 agree with the Court, that you've got a big
20 hole there as far as the reason, the rationale
21 for him being transported back. But I would
22 also submit, Your Honor, that you're dealing
23 with some very, very high level law enforcement
24 people and that if these were people that were
25 prone to do this kind of lying under oath, is

1 what it amounts to, if that's what happened,
2 that they would have gotten together and that
3 they would have come up with something better
4 than I don't remember.

5 These people were very, very cognizant
6 of the sequestration order and I told each one of
7 them not to talk to anybody else. And so it
8 wasn't a situation where, you know, there's
9 confusion there, but it's -- if they wanted to be
10 dishonest with the Court it would have been very,
11 very easy once they saw the direction this thing
12 was taking to get together and cook something up.

13 And that didn't happen, Your Honor.
14 They're all testifying independently their
15 admittedly faulty recollections of what happened.
16 And I concede that he went to Branchville, I
17 concede there's nothing in the record to show
18 specifically who authorized that trip or the
19 purpose for that trip.

20 But the only testimony you've got that
21 anything improper motivated that trip is Marion
22 Bowman's own testimony. And, again, I think you
23 have to judge his credibility, that I would like
24 to address further.

25 THE COURT: Absolutely. I want to hear

1 that. Let me just tell you another part of it
2 that concerns me when we're talking about
3 whether or not they cooked anything up. I am
4 concerned that if it's a policy of Orangeburg
5 that when a woman is transported, and I gather
6 Branchville, too, that when a woman is
7 transported and children are transported that
8 they call in, they report the time, they report
9 the event, they make a record of it.

10 Orangeburg sent back a response to the subpoena
11 that there was absolutely no information that
12 had anything to do with it, with this
13 particular case, when clearly there was some
14 information. And that would have been, I
15 gather, the Lichtenberg tapes when he called
16 in, reported I've got Ms. Bowman, I've got her
17 child, I'm transporting her to Branchville.
18 And that --

19 MR. BAILEY: Your Honor, again, I don't
20 know how long they retain those dispatch tapes
21 and all, logs, I'm not sure if that is in
22 existence. I can state as an officer of the
23 Court that I have not seen any dispatch logs,
24 I've not seen any tapes or anything of that
25 nature.

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1 THE COURT: Let me tell you one thing that
2 I absolutely believe, Mr. Bailey, is that if
3 you had them the defense would have them. I
4 want you to know, and I think the record needs
5 to reflect that that subpoena didn't come to
6 you, that subpoena went straight to Orangeburg.
7 And I absolutely believe that if you had them,
8 the defense would have had them. So I
9 absolutely do believe that, agree with you
10 completely. And Norfolk Southern is cruising
11 by.

12 (Train.)

13 THE COURT: All right. Yes, sir.

14 MR. BAILEY: Your Honor, in regard to
15 credibility and, again, the only, only evidence
16 in the record specifically stating that any
17 improper coercion was brought to bear on Marion
18 Bowman is from Marion Bowman himself. Now, the
19 first three statements that he admittedly
20 signed and were witnessed and all that, he's
21 testified that -- when I asked him to go
22 through it he would pick out parts, yeah, I
23 said this, but I didn't say that.

24 Now, when you get to the fourth
25 statement it's an entirely different situation as

1 far as he's concerned. He says that he didn't
2 give any statement to Larry Williams verbal or
3 written. He went in there, he did not want to
4 talk to Larry Williams, didn't know why he was
5 being brought in there, the statement was there,
6 it was written out, he was asked to sign it. And
7 when he refused to sign the previous written out
8 statement is when all these horrible things
9 started to occur, where the sheriff reached for
10 his gun, slapped him around, threatened the wife,
11 threatened the children and all that.

12 Now, Your Honor, jumping ahead,
13 Mr. Bowman is ultimately sent to the Hall
14 Institute for evaluation. He is given Miranda
15 rights at the Hall Institute. After that he gave
16 an account of what had occurred. Now, backing up
17 again and, again, I apologize for the language,
18 I'm quoting this direct out of the number four
19 statement which was State's Number 7 for
20 identification because I think it is significant.
21 In that statement which is part of the Larry
22 Williams statement he says is made up out of hole
23 cloth and nothing in that is his, it was
24 prewritten out ahead of him, he says, Gap pulled
25 down her pants -- "Gap pulled her pants down. And

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1 I asked Gap 'What you going to do?' And he said,
2 'I'm going to fuck her or something. I'm going to
3 feel her pussy, I know it's still warm.'"

4 Subsequently he goes to the Hall
5 Institute for the evaluation, he's Mirandised.
6 They stated he read and understood his Miranda
7 rights. And he then says this: And they said
8 that he stated that Gap asked him to go with him
9 and that he would show him something. "I went
10 with him and he showed Kandee's body in the
11 bushes. I asked what happened. He said, 'The
12 bitch wouldn't trick.' Her clothes were pulled
13 down and I asked why and he said he was about to
14 fuck her, her pussy is still warm."

15 Your Honor, Larry Williams wasn't at the
16 Hall Institute. What he's telling these people at
17 the Hall Institute, this one little detail is
18 strikingly similar to what's in the statement that
19 Larry Williams testified he got from Marion
20 Bowman. And Marion Bowman said he had not one
21 thing to do with that statement, so I think that
22 bears strong on his credibility.

23 Marion Bowman says under oath, "I can
24 barely read." Your Honor, he got up there on the
25 stand and he read stuff out of the statement. He

1 hesitated over a few words due to handwriting I
2 think, not his lack of ability to understand those
3 words. It's come out that he's finished the tenth
4 grade regular English with a passing grade. He --
5 his wife was asked about his ability to read and
6 she said, "Yeah, Marion can read. He reads good."

7 Ms. Hardee-Thomas says, "Does he read
8 the paper?"

9 "Yeah, he reads the paper." So he flat
10 out lied to the Court about his ability to read in
11 order to avoid the consequences of the Miranda
12 warnings.

13 He testifies under oath, Your Honor,
14 that when the police came out there they
15 threatened with a search warrant. That's how they
16 gained entry. Mrs. Bowman says, no, that didn't
17 happen. They said they had an arrest warrant.
18 Never said they had a search warrant, let them in
19 voluntarily.

20 Mr. Bowman says his stepchildren were
21 there, that one of the stepchildren says the
22 police are outside. He then went into the other
23 room. Ms. Bowman said the stepchildren weren't
24 even home, they're with her mother. And these are
25 minor details, Your Honor, but he was there and he

1 has the obligation to tell the truth about
2 everything.

3 He says that he had no clothing there.
4 They took his pants for evidence because the
5 victim's watch was in the pocket. And he said
6 that he dressed in his wife's jogging pants and a
7 gray tee-shirt, I think he said, with a pocket on
8 it. Mr. Cummings went into detail about whether
9 he would have had a pocket to carry the warrant if
10 he received it at that time. And he described the
11 clothing in detail. Ms. Bowman says he didn't
12 dress in my clothes, he had some clothes there
13 that he wore out of there. Again, this just goes
14 to his credibility.

15 Again, as far as Larry Williams beating
16 him, and I would submit that if you believe that
17 Larry Williams threatened, threatened him with
18 arresting his wife and threatening the children
19 with DSS custody, that that has no more or less
20 credibility than the story about him being beaten
21 by Larry Williams. If he would do one, he would
22 do the other I would submit.

23 Again, his wife who was sitting right
24 across from him that evening sees no marks, no
25 bruises, no scratches, no complaints, no

1 spontaneous cries of pain, nothing, nothing out of
2 the way. Mr. McAlhany, again, nothing out of the
3 way. And I submit to you, Your Honor, that what
4 this shows is that he's just lying under oath
5 about what occurred here.

6 February the 20th Mr. Bowman is put in
7 the Dorchester County Jail charged with the murder
8 and arson that he's facing here now. February the
9 22nd he's interviewed by Agent Helms, Coker, and
10 Van Doran after getting a written Miranda right on
11 that occasion. February 26 was the last
12 interview -- excuse me, February 26 he fills out a
13 written form asking for a lawyer to be appointed.
14 Ms. Hardee-Thomas is appointed on that form. The
15 deputies didn't know he'd asked for a lawyer.

16 The next day, the 27th, they
17 interviewed him again. And there's a jail record
18 introduced stating that 11:00 p.m. that the shift
19 supervisor "Called Detective Coker to inform him
20 that Marion Bowman stated he is ready to tell the
21 truth." And, again, we don't have a correctional
22 officer that was called by either side that got up
23 here and said, yeah, I delivered this message to
24 the shift supervisor, but it's in the jail record
25 and it makes sense that that's why he would have

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1 been brought over there. And that was the final
2 interview by Coker and Van Doran and, again, he's
3 now given a different version of what happened.

4 Your Honor, I think there are a couple
5 of cases that don't specifically address your
6 concern because it boils down to a credibility
7 issue. And, again, the burden of proof is by a
8 preponderance, not beyond a reasonable doubt. But
9 there are a couple of cases in general that have
10 some similarities and some fairly striking
11 similarities to this case. And the first I'd like
12 to cite is State vs. Sandra Crawley.

13 THE COURT: Yeah. I got it right here
14 last week, yes, sir. Court of Appeals
15 decision.

16 MR. BAILEY: Yes, ma'am.

17 THE COURT: Yes, sir.

18 MR. BAILEY: And the Crawley case --

19 THE COURT: Has striking similarity, seven
20 and a half hours, polygraph.

21 MR. BAILEY: Polygraph, murder charge and
22 arrest. I think also arrested on a different
23 charge initially in that case as well as this
24 case.

25 THE COURT: Yes. Likewise the concern of

1 the defendant there was not being told about
2 why she was being questioned. And the Court of
3 Appeals is very clear that that wasn't
4 required.

5 MR. BAILEY: Yes, ma'am. In that case
6 they went into just the general law on Jackson
7 v. Denno and Miranda rights and the issue is
8 whether or not she gave the statement freely
9 and voluntarily. And they go on to state the
10 test regarding admissibility of a confession is
11 voluntariness. And in that case, Your Honor,
12 they cited the Van Doran -- excuse me, the Van
13 Dolan case which is a South Carolina death
14 penalty case I'm sure Your Honor's familiar
15 with. And that case in my mind sets out
16 probably the outer perimeters of what is
17 allowed, what the State could do and still have
18 the Court admit that statement.

19 The Van Dolan case they lied to the
20 defendant, they said that they had -- a police
21 artist did a composite sketch of him through a
22 one-way mirror and told him that was a witness
23 that gave that sketch. They told him they had
24 shell casings from the crime scene they had gotten
25 out of the firearms locker room at SLED. Out and

1 out deception. In that case I think justice --
2 the decision in the Finney case they characterized
3 that police conduct as reprehensible, but still
4 you get back to whether or not that overcame his
5 freewill and voluntariness and they held it did
6 not.

7 And I would submit in this case that
8 there's no evidence. Even if you accepted
9 everything Marion Bowman said as gospel, that his
10 freewill was overborne by what occurred throughout
11 this entire process, this is a man familiar with
12 the system, he's been arrested before, he's been
13 Mirandised before, he's had lawyers appointed
14 before, he is admittedly by the time he got to
15 Larry Williams, if I'm not mistaken, there are at
16 least two written Miranda warnings and there's
17 testimony, numerous other Miranda warnings and
18 reminders of Miranda warnings.

19 And this is not a stupid individual, he
20 is street smart, he's street wise, he knows what's
21 going on. And, Your Honor, I would submit that
22 knowing that he is being questioned on a murder
23 that to confess to something he didn't do based on
24 his contention that his wife was threatened, his
25 stepchildren were threatened, that he was beaten

1 is just totally incredible. And even if Your
2 Honor thought that that conduct might have
3 occurred, there's still no evidence that that
4 overbore his freewill and voluntariness.

5 In the Crawley decision our Court of
6 Appeals, I think it was Judge Clarey's decision,
7 the opinion is written by Judge Howell, they
8 quoted Colorado vs. Spring, United States Supreme
9 Court case.

10 THE COURT: Yes.

11 MR. BAILEY: And I quote, "It seems
12 self-evident that one who is told he is free to
13 refuse to answer questions is in a curious
14 posture to later complain that his answers were
15 compelled." And that's what he's doing, he's
16 claiming his answers were compelled after being
17 Mirandised over and over and over again, Your
18 Honor.

19 There's also an unpublished -- if I
20 could -- I've got the Crawley case with a couple
21 others I mentioned, if I could approach.

22 THE COURT: Okay.

23 MR. BAILEY: And Mr. Cummings has copies
24 of those. In the U.S. vs. Haynes which is a
25 Fourth Circuit case, they dealt with an

1 interview that lasted on and off for 16 hours.
2 They pointed out the defendant was familiar
3 with the criminal justice system, was
4 cooperative throughout the interview, alert,
5 and congenial, that there were numerous breaks.

6 In this case there was testimony from
7 the wife that she brought food over to him and
8 that it's similar to what occurred here. Ask if
9 he needed anything. His request for food, drink,
10 and cigarettes, restroom facilities was honored.
11 And that was held to be appropriate.

12 Your Honor, again, what it boils down to
13 is an issue of credibility. And, again, I'm not
14 trying to hide the fact, or diminish the fact, or
15 downplay the fact that the sheriff of Orangeburg
16 County and other law enforcement officers have a
17 less than clear recollection of the transporting
18 of Mr. Bowman to Branchville and the reason for
19 that transportation. I admit that's there and
20 that's a problem, but it's an issue of
21 credibility.

22 And if you believe everything that
23 Marion Bowman has said over the last week under
24 oath what you would have to find is that Sergeant
25 Van Doran lied, that Sergeant Coker lied, that

1 SLED Agent Helms lied when he testified about the
2 details of one of those conversations they had,
3 that Lieutenant Carmichael was in error and lied
4 about her having information that he wanted to see
5 the deputies on the 22nd -- the 27th. That Major
6 Walters got up here and lied, that Major Tim
7 Stephenson lied about the Miranda, his
8 understanding the Miranda, that the sheriff lied,
9 and his own wife lied.

10 Your Honor, I submit the only person
11 that had any motivation, any reason to come up
12 here and tell you something that isn't true is the
13 defendant, Marion Bowman.

14 THE COURT: Thank you, Mr. Bailey.

15 MR. BAILEY: Thank you.

16 THE COURT: Yes, sir.

17 MR. CUMMINGS: May it please the Court,
18 Judge. I apologize.

19 THE COURT: Whoa. Whoa. I need to take a
20 short break. Very short break, give you a
21 chance to organize your thoughts. It won't be
22 but maybe three minutes.

23 (Recess, from 1:01 p.m. to 1:10 p.m.)

24 THE COURT: Mr. Cummings.

25 MR. CUMMINGS: I would like to stand up

1 and apologize for jumping up like I did. I
2 said it openly, obviously everybody in this
3 courtroom has a job to do and everybody's done
4 it and along that line I would first apologize
5 to the bench and to Mr. Bailey, but for Mr.
6 Bailey being the gentleman that he was and as
7 our elected solicitor and, again, a friend of
8 mine, and Mr. Bowman knows that.

9 On Friday when we started Jackson v.
10 Denno hearings the solicitor handed me what
11 appeared to be something out of an Orangeburg case
12 file. And that is where we got the very first
13 issue and knowledge that my client, after I was
14 given the death penalty notice, Judge, and Court
15 appointed, was ever taken from any jail cell on a
16 Sunday afternoon and brought down to speak to law
17 enforcement. But for that gentleman doing that we
18 would never have gotten that from any law
19 enforcement people, period, bottom line. And that
20 is in your record.

21 And so I would like to start maybe at
22 the tail end and go forward. I'm going to start
23 with the issue of that case. My client on the
24 jail records that is in Your Honor's exhibits,
25 clearly at 16:40 is taken out of the jail, 4:40 in

1 the afternoon. He's there in the jail in law
2 enforcement custody, he's incarcerated.

3 Pursuant to Section 22-5-510, Her Honor
4 Jean Toals' instructions to the bench and bar out
5 here how we're going to do bail hearings, how
6 clients are going to be taken out of jail, you
7 know, signed by the legislature and put in act in
8 1998. This section says in subsection B "A person
9 charged with a bailable offense must have a bond
10 hearing within 24 hours of his arrest and must be
11 released within a reasonable time, not to exceed
12 four hours after the bond is delivered to the
13 incarcerating facility."

14 And, Judge, every peace officer is
15 deemed to know that because they go to classes and
16 they learn things. Every peace officer in this
17 state understands that the most important thing
18 for any person inside a jail cell is the word
19 "out." They want to get a bail and a bond and
20 they want to know the charges against them.

21 And at that time a very fundamental and
22 important due process right really connects with
23 the defendant charged and that is his Sixth
24 Amendment right to counsel. And that clearly is
25 coming out in all the case law we've had in the

1 last 20 years of when the Sixth Amendment attaches
2 to a defendant.

3 If he had been given an opportunity on
4 that day as law enforcement requires, because we
5 clearly know from every witness in this case that
6 my client was arrested in the early morning hours
7 of the 17th, exactly what time? Only God in this
8 room knows now because nobody has got the correct
9 times. And every officer I talked to it wasn't
10 Dorchester County's case, it was Orangeburg's.

11 And you're right, Mr. Bailey made a
12 wonderful objection in the opening when I began my
13 cross-examination about I've tried maybe as an old
14 prosecutor to lead that officer and get him to say
15 I want to know what my client was arrested for.
16 Very fundamental, important knowledge for a client
17 to know what he's being taken in handcuffs for.

18 And we have a particular statute on
19 point in this state, I think 17-13-120, or 150,
20 that says if they failed to do that they can be
21 prosecuted. That statute's still valid. A lot of
22 officers forget that. Nobody in -- again, I defer
23 to Your Honor reading the transcript, but nobody
24 remembered telling him who arrested him, who --
25 what he was arrested for. If we take Chief Boom's

1 issue since credibility is, I'm going to say here,
2 a backhand issue, and I mean no pun intended, but
3 I mean, again, a backhand issue here, credibility.
4 What are policemen doing riding around with copies
5 of warrants? We did away with that with the old
6 rubber stamps years ago and that is a violation of
7 our criminal procedure laws in this state,
8 clearly. It's either a valid arrest warrant with
9 a judge's signature on it or it's a debunk piece
10 of paper.

11 What happens now when he's arrested we
12 look at whatever time that morning that Your Honor
13 gives weight to. And that's, again, the issue
14 that I have here, every time I ever try to ask
15 that voir dire question of the juror that do you
16 put more weight on an officer's testimony versus a
17 citizen, I get yelled at by the bench for
18 presenting it. But in today's hearing in the
19 courtroom, of course, credibility pops up, but
20 we've got to use the same standard, citizen versus
21 citizen. One happens to have a badge, an elected
22 office, one happens to be a 20-year-old kid living
23 on the street. That is Your Honor's province.
24 You've been around long enough and it's not an
25 academic argument between the solicitor and I. It

1 is the fundamental issue here that comes to call.

2 The State always has the burden of
3 proving what they do and why. We know they take
4 the human being into custody on the morning of the
5 17th. We know he's taken to the Branchville
6 Police Department. We know from the record that
7 Chief Boom took him there. And after that he's
8 turned over to who and for what purpose?

9 Normally a person is brought in,
10 warrant's handed to them, signature, another
11 officer that serves a warrant pursuant to our
12 criminal procedure laws also, so he's informed and
13 there's a witness saying I told him what he was
14 under arrest for, and I've complied with our State
15 statutes so I don't get in trouble. Because if I
16 fail to tell him, I could go to jail.

17 As we go through the witnesses that
18 morning, the first Miranda form, Judge, that's
19 been marked a State's Exhibit has his initials
20 down the left-hand column. Mr. Van Doran did
21 that. No question he gave him Miranda. The issue
22 there as far as weight of that is did Mr. Bowman
23 understand his Miranda warnings, did he decide to
24 talk? That is for Your Honor's province.

25 My client says he gave them information,

1 what he heard from some other people. And it's
2 not in my client's handwriting, nor is it anywhere
3 recorded so that there would be no questions that
4 were in this five-day, now almost six-day Jackson
5 v. Denno hearing because it easily could have been
6 prevented. All it would have taken is a
7 mechanical device or a recording device that shows
8 video images to show that he gave this statement
9 freely, voluntarily, and knowingly.

10 The case that was just handed to us
11 today, this guy's in custody -- excuse me, this
12 gal -- 16 hours. Lady's in the same spot, she's
13 in the same spot, Crawley.

14 THE COURT: Crawley is seven and a half
15 hours of interrogation.

16 MR. CUMMINGS: In the same spot. And
17 comfortable colloquy is going on, no different
18 agencies coming in, they're dealing with one
19 person. Our Court put whatever weight on it
20 they wanted to looking at that and there was
21 clear testimony, the person knew they were
22 arrested, they knew they were there, they knew
23 that they're in talking on that. That's a
24 brand new case that came out.

25 And I know the trend of the courts are

1 to hold it very conservative. And we don't like
2 Miranda in this country anymore, did us all a
3 disfavor in '65. The problem is that it is still
4 the law of the land.

5 I want to keep going back and try to
6 focus on looking at Mr. Bowman being in custody
7 that morning. His testimony is he's handcuffed to
8 the chair, there's some controversy between the
9 police on whether he is or isn't. And then, of
10 course, the police did use trickery and deceit
11 like in Van Dolan and say who wants to take a
12 polygraph test, polygraph is not admissible, turn
13 him over to Major Stephenson.

14 We're looking at the time factor now,
15 he's there from early morning now into the
16 afternoon. If Her Honor looks at the very first
17 time on State's Exhibit Number 1, the very first
18 alleged statement here, all these statements
19 there's oral conversations and then hours later
20 they say he signed it. So we know they were
21 written outside this man's presence and that's
22 clearly from Mr. Van Doran and from Mr. Coker, the
23 gentlemen.

24 The trend continues, that later on that
25 afternoon after he takes a polygraph they come

1 out, said he does a negative eight and we heard
2 all about that. And Mr. Stephenson kept the file,
3 had notes. Again, didn't even turn them over to
4 Mr. Bailey about that, because it was a form in
5 there that said I understand my rights allegedly
6 signed by Mr. Bowman.

7 Again, Your Honor ordered him to bring
8 the paperwork up to the courtroom. He did that,
9 complied there. We served a subpoena on the
10 sheriff's department for policy and procedure
11 manuals. We got a one-page document. Stephenson
12 says, no, that's not our policy and procedure. So
13 law enforcement is not doing anything to comply
14 with Rule 5 and Rule Brady that they are required
15 to do.

16 Mr. Bailey has. When he learns of that
17 he orders that gentleman to do the same thing,
18 bring your file up. It corroborated what Marion
19 said about a negative eight. How else would this
20 young man have known about that? Because we never
21 had that for discovery. We would not have gotten
22 that but for the Court ordering people to comply
23 with our rules of court. That has to go into some
24 credibility issue here, too, like maybe I have to
25 say this, one little point on his side. Because

1 where else did these numbers come from?

2 The second factor is, look at the second
3 statement, the time of when the second statement
4 is allegedly given orally by my client and then
5 reduced to writing. Mr. Van Doran initials in the
6 left-hand column, underlines the word, does some
7 things, Mr. Bowman signs three pages. You think
8 they would be done with him. Second statement's
9 done, it's now in the afternoon hours, the
10 sheriff, the elected sheriff of Orangeburg County
11 comes that evening. If the Court puts any weight
12 on this following evidentiary testimony that I
13 recall and that is as follows: He didn't want to
14 talk to the police anymore, he didn't want to talk
15 to them white cops anymore. And I know that's the
16 wording that I recall. But he'll talk to Sheriff
17 Big Larry, he'll talk to Sheriff Williams.

18 The third statement doesn't do anything
19 to inculcate my client whatsoever. None of the
20 first three statements inculcate Mr. Bowman at
21 all. End of the night, third statement, he takes
22 statements later on that evening, we know what
23 time he's put in the Orangeburg County jail,
24 approximately 1:18 in the morning on the 18th. He
25 had been there all day. Goes to the jail. 16:40

1 he's taken out of the jail cell.

2 What perplexes all of us in this room,
3 and, again, I try to do this as simple as I can so
4 I can understand it myself, we all know it's
5 Sunday afternoon, we all know he did not want to
6 talk to the white policemen the night of the 17th,
7 at least from the evidence that Your Honor had
8 presented to her in this room, and as we all know
9 we only find the witnesses as they come about or
10 as they are learned, particularly sometimes when
11 the case just jumps out and bites you like it did
12 here.

13 Nobody knew that he was taken out of
14 that jail cell. He thought he was going for a
15 bond hearing. It says so on the jail forms.
16 Mr. Bamberg, keeper of records, said that;
17 Mr. Myers, the correction officer says, yeah,
18 taken out for a bond hearing. Nobody remembers
19 taking a person out of the jail cell and walking
20 them across the breezeway to be spoken to. That
21 is the perplexing part to me.

22 Law information just doesn't lose people
23 because they have to do the time that the
24 client/defendant would have to do if they allow
25 them to escape. That is still our law in this

1 state. What perplexes me on that issue is records
2 and time on a murder investigation, they know this
3 case is going to come to trial. They're working
4 so hard the first day one, two, three alleged
5 statements, but they don't have the statement that
6 they need.

7 All of a sudden he sits over there, and,
8 Your Honor, you point out and my notes go let's
9 look at the time factor here, because I started my
10 initial notes days back when we started this
11 thing. Look at the time of the arrest, the time
12 he's in custody. Look at the time he's spending
13 with law enforcement. Look at the time of these
14 factors. Look at the time he's taken out on a
15 Sunday afternoon. It would have been so easy for
16 any of these law enforcement officers to say,
17 well, you know, we wanted to really be nice to
18 him, so we let him see his wife because he loved
19 her and missed her. That was not said.

20 Ms. Barbara Walters said we've done it a
21 lot. We even did it for a double murder up in
22 Orangeburg, but I knew about that statement.
23 Everybody knew about that. One of the things was
24 he wanted to give a statement and then people were
25 going to let him see his family. That was never

1 raised up in any other trial procedure other than
2 hearing about that. She was proud of that. The
3 sheriff is a humanitarian. Okay. I give great
4 deference to the elected person seeking
5 humanitarian issues with his constituency.

6 But my defense is, though, they take him
7 from the breezeway to the sheriff's office.
8 That's fine. You want to talk to him there? He
9 says under oath to Your Honor he didn't want to
10 talk to any law enforcement officers. Dorchester
11 County guys come there. He said the night before
12 don't want to talk to any of those white
13 policeman. Everybody in Dorchester who talked to
14 him was white, other than Mr. Joyner was the only
15 one in the room guarding him once in awhile.

16 So it behooves the Court to look at it
17 here to say why would he want when he sees the
18 Dorchester County deputy there to re-instigate
19 talking with them? He thought he was going to a
20 bond hearing. He asked the sheriff, from his own
21 words, "Are you taking know a bond hearing?" That
22 would afford him his Sixth Amendment rights by a
23 judge who has to sit there and read him right down
24 the little magistrate's bench book what his rights
25 are. That's not been done.

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1 There's been no bond form presented from
2 anybody here on the so-called charges that
3 Mr. Bowman was arrested on. And I'll get into the
4 Blassingame issue another day, but for all intents
5 and purposes here when we look at this situation
6 he's in that office. If what we take from
7 everybody in here is the best evidentiary issues,
8 Mr. Williams does not write a statement that is
9 done in front of the client. He said it, his
10 pattern, his practice, got wonderful handwriting,
11 all of a sudden there's a statement that's signed.

12 Mr. Van Doran gave testimony. And I say
13 this to you as an officer of the Court and Mr.
14 Bailey, again, being the officer of the Court he
15 is, the other day his testimony is in the record,
16 can't be changed, nobody should be calling him
17 back up. We were given a piece of paper saying,
18 from Mr. Van Doran, that he believes some other
19 matters have arisen. I'm not going to argue about
20 it because it's not in the record, but this man,
21 it's bothering his conscience in some way.

22 MR. BAILEY: Your Honor, I want to object
23 to Mr. Cummings getting off the record. If we
24 want to put this letter into the record let's
25 do it, but let's don't have it both ways. I

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1 did get a letter from Mr. Van Doran after he
2 testified about his recollection of his
3 testimony and I gave that to Mr. Cummings and I
4 would be happy to supplement the record with
5 that letter.

6 MR. CUMMINGS: I don't think it could just
7 come in, as I say, but I want to let the Court
8 know that an officer, another officer of this
9 Court, a police officer wrote something back to
10 the solicitor. And, again, the gentleman that
11 he is and the honorable man that he is, and I
12 say this without trying to blow any smoke
13 towards Mr. Bailey, that he handed it to me as
14 I came up the stairs the other morning. And it
15 was refreshing to hear that. And his testimony
16 is in question and that's why just the letter
17 can't come in.

18 If I'd make that as a Court's Exhibit I
19 would like that, but his testimony is in the
20 record. And, again, some other day now we may
21 have to go to trial and one of the issues I would
22 use is to impeach this gentleman's testimony. And
23 I'm not trying to be smart, it's common sense.

24 THE COURT: Sure.

25 MR. CUMMINGS: You know, I learn about

1 this later on and he didn't know about it. And
2 that's the crux of Her Honor's issue here. The
3 policemen did not take good records here. And
4 they had control of my client for a whole day.

5 THE COURT: All right. Let me stop both
6 of you. What you are telling me is that
7 following Van Doran's testimony that he sent a
8 letter to you, Mr. Bailey, expressing some
9 concern about his testimony?

10 MR. BAILEY: He sent a letter -- first of
11 all, he called me that evening after he
12 testified and said that he was laying awake
13 trying to recollect what had happened, whether
14 he had given accurate answers and exactly what
15 happened as far as that Sunday when Marion
16 Bowman was transported back over there. He --
17 and he gave me what his recollection was. And
18 I said fine, thank you, and hung the phone up.

19 I think it was the next morning he
20 dropped a letter off at my office stating what his
21 recollection at that time was, or his lack of
22 recollection. I then -- I have an open file
23 policy -- gave that letter to Mr. Cummings in the
24 event he wanted to recall Detective Van Doran.
25 He -- with that information he could do it. He

1 chose not to recall him.

2 And again, Your Honor, I'm not trying to
3 hide the letter from anybody.

4 THE COURT: I understand.

5 MR. BAILEY: It's a pretty innocuous
6 letter, but I don't think, Mr. Cummings, it's
7 appropriate for him to get up here and argue
8 the content of the letter without putting it in
9 the record, I mean it just leaves a big gap
10 there.

11 THE COURT: I agree with you. I think
12 that the letter's been referred to, it's now a
13 reality and we ought to make it a Court's
14 Exhibit.

15 MR. CUMMINGS: Yes, ma'am. But I wanted
16 the Court to hear that, that even as we are
17 conducting this case, we already rested after I
18 got this letter. So, I mean, I haven't moved
19 to open it back up, but one of the issues I
20 would have lost here is cross-examination in
21 the real trial in front of the jury.

22 THE COURT: Sure. I understand.

23 MR. CUMMINGS: Because I know the
24 voluntariness issue here is for her Honor's
25 preference and in Your Honor's sole discretion

1 here today until it gets sometime later on to
2 the jury. One of the things paramount in this
3 case is who is remembering what and how when a
4 human being's life is at stake. And that's my
5 main argument. I think the caution of the
6 bench today is the great care we have for this
7 fourth alleged statement and what happened on
8 this Sunday. And that's the issue that gets
9 us.

10 And, again, for argument here, if we
11 look at this, he's there, he's in their care and
12 control that Sunday. His testimony is I don't
13 want to talk to nobody, I don't want a lawyer, I
14 don't want police. That's for Your Honor to
15 decide whether you believe that or not, ma'am.
16 And I'm not going to sit here and try to belabor
17 any points about trying to convince you or
18 anything else.

19 For one reason you heard everybody, you
20 saw everybody, you did everything in here. And
21 sometimes it was ironic that the people who had
22 the main play in this case can't recall what they
23 did and they try to blame it on the case taking so
24 long. That's not fair, that's a violation of due
25 process. They hold all the records, they hold all

1 the times, they hold every bit of information
2 against any citizen in this state. All they give
3 this man is me and this nice lady. That's all he
4 gets. And the powers that the Court gives us to
5 try to get people to help us investigate.

6 This is a law enforcement issue and this
7 is the only protection that we have in this
8 country against law enforcement is a citizen
9 depending on due process and fundamental fairness,
10 particularly when his life's at stake. When we go
11 and look at this now Sunday afternoon is the
12 question. Why in God's name, in any god's name
13 would somebody be taken from a secure facility to
14 go all the way down to Branchville to see a family
15 member? That just goes beyond any issues of
16 common sense to maybe an old man like me.

17 But to know he testified that allegedly
18 Big Larry, the sheriff, says "I'll show you I'm
19 not playing, I'll bring her there." When we found
20 Mr. Lichtenberger, or after we learned of this
21 Sunday trip, Mr. Lichtenberger says, oh, yeah, I
22 remember. And he spoke to Mr. Bailey, he spoke to
23 us and he says, yeah, I was called by Sheriff
24 Williams. But yet the sheriff doesn't remember.
25 Not a cell phone record, not a communication long

1 distance record between Orangeburg County and
2 Branchville Police Department or any phone call
3 record. Who has greater control of access to
4 records for bills, bills are generated,
5 everybody's got to pay public bills of some sort.

6 This kid hears this from an elected
7 sheriff, not his boss, to go pick up a lady on a
8 Sunday, calls it in like Your Honor pointed out.
9 And I made sure as an old cop to put that on the
10 record, because I know you don't put a female in
11 the car without putting mileage and time in. They
12 had control of these records, not my client. I
13 didn't get in the case until June. June of last
14 year the Court appointed me and I didn't actually
15 start working on it until July.

16 It behooves me, again, to say how
17 people -- one sheet of letter without even looking
18 or checking. You could see it in her eyes when
19 she testified. Nothing by Mr. Bowman. We know
20 he's been arrested three times up there. When we
21 had to serve our true copies of his prior
22 convictions I didn't see a Miranda form in there
23 one time. If they're so good at taking statements
24 and he knew Sheriff Williams so well, there should
25 have been another Miranda form signed somewhere in

1 these files. There should have been incident
2 reports. How do you put somebody in jail without
3 keeping an incident report? None of this came out
4 except the true copies out of the courthouse
5 records on Mr. Bowman. Nothing else. If they
6 want to talk about his age, education, experience
7 about dealing with the criminal justice system,
8 let's see the whole thing.

9 We know he was a 20-year-old man when he
10 was arrested in this case. Twenty. And that
11 Sunday night he's taken to see his wife at the
12 station, picked up by the police and they go take
13 her to -- while her children be baby-sat. I just
14 leave that to the Court's discretion and the
15 Court's intelligence about look at the totality of
16 this case.

17 Every case I read you have to look at
18 the totality. I mean, every case look at the
19 total picture and I'm asking the bench to do that.
20 This total picture is this: Citizens in the
21 police control, that lady gets picked up by
22 Mr. Lichtenberger, Agent Walters doesn't remember
23 being at the town hall or not, then when she's
24 cross-examined put on notice from this room in
25 here to testify in court, oh, yeah, this happened,

1 that happened. I'll leave that to Your Honor's
2 reading of her testimony.

3 The one person who didn't remember being
4 there was Sheriff Williams, but yet why was the
5 phone call made to Mr. Lichtenberger to make this
6 lady come to that room? You know, he's so low on
7 the food chain in this case that this poor kid is
8 working for a small department, is ordered to do
9 something he has to call his chief to say is it
10 okay for me to do that.

11 But yet Mr. Walters did nothing on this
12 case. He had no records, no notes, or anything
13 else. He just assisted law enforcement. Assisted
14 with what? He knew him. Pick him up, bring him
15 in.

16 That fourth statement, Your Honor, is
17 not in my client's handwriting, there's no Miranda
18 form attached to that alleged fourth statement
19 whatsoever. The testimony of Marion is he was
20 ordered to sign it, he chose not to there, brought
21 down there, sees his wife, he just signed it. He
22 says he signed it without reading it. He said he
23 signed it because he didn't want his wife to be
24 charged.

25 That statement is the only one that

1 inculcates my client in this case. It is the crux
2 of this case, it is the most important. If,
3 again, looking at the totality of the
4 circumstances -- I just made myself notes here, I
5 promise I'll try to move on quickly -- taken out
6 of a jail on a Sunday, we know now about the
7 Sunday jail trip of his wife, the sheriff calls to
8 have the Branchville PD pick up his wife.

9 The fourth statement was not done
10 properly because if you look at this and you look
11 at the whole statement, where is the time factor
12 that says when the statement started, when it's
13 finished? He's left for a three-hour window here
14 until when the statement may have been written?
15 Until where? Who witnessed the signature of the
16 statement?

17 Mr. Van Doran's statement has two
18 witnesses. Mr. Coker's statement has two
19 witnesses. The second statement has two
20 witnesses. Mr. Stephenson one, okay, he's not
21 familiar with a lot of things, okay, he just did
22 the polygraph. Mr. Williams' statement that night
23 at the jail in Branchville, the holding office,
24 one witness. Everybody else has got two up until
25 now. And then the fourth witness, and that is

1 Larry Williams.

2 Judge, to maintain the integrity of the
3 Court and I call it the sacrosanct issue of
4 whether or not we look at the whole situation
5 there that night, it is imperative upon the Court
6 to look at every issue that says who had control
7 of the situation and why and whether or not --
8 and, again, I read from Judge Howard and a few
9 other gentlemen here, the main question Your Honor
10 has to decide is was this statement given
11 voluntary, knowingly, intelligently, et cetera.

12 And it says voluntarily means that the
13 statement was the expression of the defendant's
14 own freewill, it was not induced by pressure,
15 force, or fear, or the influence of -- or hope or
16 promise of some benefit or reward or extracted by
17 threats, coercion, or intimidation. A statement
18 is not voluntary and may not be used against a
19 defendant unless it is the product of an
20 essentially free and unconstrained choice by its
21 maker. And that is our charge book from Tom
22 Ervin, excuse me. And, Your Honor, that is still
23 the law of the land as I understand it as far as
24 voluntariness, of course, with any more updates
25 that Your Honor may recall that I don't.

1 But I looked at that and I went back and
2 said was there a promise here? I promise you I
3 ain't playing. That was allegedly said by Sheriff
4 Williams. I promise you I can bring this lady to
5 the courtroom. We know she got to the courtroom.
6 Ms. Bowman is facing charges. Mr. Bailey availed
7 himself Saturday morning, last week, to allow us
8 to be there, she was -- we met at 9:30, we went
9 over to Mr. Bailey's office approximately --
10 waited two hours, called, and by the time he was
11 done we went over there and met with her and her
12 lawyer.

13 It appeared that that Saturday meeting
14 was very strained. But, again, you heard her
15 testimony, you heard what she had to say. And the
16 one thing everybody wanted to make sure is that
17 this lady understood she was under charges.
18 Mr. Lichtenberger takes the stand, everybody
19 afforded opportunities to talk to him and that kid
20 said I was told to go pick her up for something
21 and he brought her there. He did it.

22 I think the Court looking at this
23 situation understands that normally on a Sunday
24 nobody's allowed out of that jail. We have old
25 case law and old statutes that you're not supposed

1 to take somebody out of jail. I think that's
2 17-13-120 that says you can't take somebody out of
3 a jail. And that's still on the books, as I
4 recall it. Again, I defer to Your Honor's wisdom
5 and education as to that statute.

6 Where was he taken and for what purpose?
7 Mr. McAlhany had to be the most uncomfortable
8 witness up there I'd seen in a long time. And he
9 didn't remember seeing his big boss there. I
10 wonder why? That's for Your Honor's influence,
11 ma'am, and your decision. But Mr. McAlhany, all
12 he knew is he picked the guy up on the 17th,
13 brings him to the jail on the 18th. He remembers
14 signing an arrest warrant on the 18th. Well, we
15 know he couldn't have done it until he was at the
16 jail, but he didn't remember that. Not a
17 supplemental report, not a time report, nothing
18 about putting that kid in this -- putting this kid
19 in that jail.

20 And, again, everybody who clears a case
21 or writes a warrant out or serves a warrant
22 usually makes a record or a note out of it. Our
23 guys did. They got booking reports when they put
24 Mr. Bowman in jail over here. That's how we found
25 out, made the allegations allegedly from my

1 client's words that he was slapped in the face.
2 There's the booking photographs, there's the
3 booking forms. There's the forms about his
4 weight, there's the forms about the date and the
5 time. Our jail file, they were happy to bring
6 anything to us.

7 When that man either signed statement
8 four, and whatever Your Honor pleases, either
9 under coercion, or duress, or threat, or promise,
10 that made that statement involuntary. Again, it's
11 not in his words. None of these statements are in
12 his handwriting. Again, the State controlled
13 that. The State could have easily had a tape
14 recorder there or video camera there, especially
15 for the main issue in this case. They now have a
16 co-defendant in custody allegedly. At least at
17 08:00 in the morning on that Sunday morning the
18 18th as I read the reports.

19 And, again, we have statements and
20 issues from Mr. Van Doran and Mr. Coker, the typed
21 notes, written notes. They differ, but there's
22 notes. Nothing from Orangeburg County. And
23 Mr. McAlhany, when he got off that stand, left out
24 into the private world. But he had this man and
25 drove him down there Sunday night. And I asked

1 him was it strange and he didn't want to answer
2 that question. Again, I defer to Your Honor as
3 you saw how his demeanor or credibility was in
4 play.

5 Credibility here can be judged in two
6 ways at least from the standing, again, of my
7 notes, Judge. The credibility do we need to keep
8 this case, do we need to make this case, or
9 credibility do we need to do it right. That's the
10 State's burden to do it right. All it would have
11 taken is record keeping, details, show this world
12 that everything we did to comply with all our
13 statutes and all our laws is done correctly, free,
14 voluntarily, knowingly.

15 Because after that day we know that,
16 again, on the 22nd they do a Schmerber issue, they
17 get a search warrant. He's in their jail, he's in
18 the Dorchester County Jail. And when they served
19 the search warrant on him there's six people
20 around him and they write every one of those names
21 down, Earl Asbell, Miss Allyson, everybody.
22 Because that's what they're trained to do and they
23 did that because they needed that.

24 When you execute a search warrant the
25 scrivener writes down who's there for custodial

1 reasons. They complied with that because that
2 paperwork's going back to a judge, okay? He's in
3 their care, he's right there, they're taking blood
4 out of him. Why would they not have a record
5 about who allegedly gets a message from Marion
6 that he wants to speak to them?

7 Now we have a Miranda form on the 22nd
8 that's pulled out, but not one written statement,
9 not even from the police officers. Every other
10 time we have a piece of paper, Miranda, and then
11 we have a written statement by some other officer.
12 That's inconsistent, it's inconclusive. If he
13 wanted to give a statement, don't they think it's
14 important enough to tell Her Honor all these oral
15 statements made by my client, allegedly, and that
16 whatever's in that record now is the record of
17 this case, whatever oral statements were allegedly
18 made by my client, if there is any weight on that,
19 is in this record. Nothing else can come out in
20 the case in chief because you've got to find those
21 statements by my client were made free,
22 voluntarily, knowingly, and admissible as Your
23 Honor's findings.

24 Mr. Van Doran, when asked about that on
25 the 22nd, had a different version of what

1 happened. The SLED agent that comes down here
2 only has six or seven lines in his file. Nothing
3 written from my client. If they're so important
4 about getting information about this kid it could
5 have been written down, it could have been put on
6 a tape, it could have been put in posterity for
7 infinitum. The issue here, though, was Marion
8 testified that he had a cigarette from the guys,
9 laughed, said I'm not going to talk about
10 anything, put him back in his jail cell.

11 Again, that's for Your Honor's
12 preference on the 22nd whether or not he gave any
13 statements free, voluntarily, knowingly. The SLED
14 agent, all he remembered was coming in partially
15 and nothing. Mr. Van Doran never remembered about
16 a cigarette break. Mr. Coker didn't remember
17 about the cigarette break allegedly. SLED agent
18 wrote that down. Okay. Everybody hears something
19 different, everybody perceives something
20 different.

21 The 27th. We know now he applied for a
22 public defender on the 26th. That's all our
23 government gives somebody and that's our
24 procedure. I, again, had the pleasure and
25 privilege of working other areas where at the time

1 somebody is brought to a judge, the judge, besides
2 reading the charge, the possible penalties, the
3 person's right under what we call our Miranda
4 warnings, ma'am, or whatever name the bench wants
5 to call them, and tells them this is how you go
6 apply for preliminary hearing and hands them a
7 form if it's a felony charge or a charge that
8 carries the rights for a preliminary hearing.
9 That is a necessary issue of due process.

10 It also, and in this case if Your Honor
11 believes that he was properly arrested for
12 receiving stolen goods and had a warrant presented
13 to him and properly arrested, that he had the
14 right to a public defender to be attached by this
15 Court. In our area we do it after they're
16 screened by, I guess, a coordinator.

17 But clearly on the 26th law enforcement
18 has got to be put on notice. They may not know
19 that there's a lawyer, but if a man's in jail from
20 the 17th to the 26th, for nine days, no bond
21 hearing had been done other than whether or not
22 Your Honor believes there was one done or one not,
23 when was he given his Sixth Amendment rights by a
24 judge? When was he afforded the right to appear
25 before a judge for the first time? One of the

1 issues that we have here is on the 26th he applied
2 for a PD, public defender, and he doesn't get one
3 until weeks later. That's all we give them in
4 this area and that's all we give poor people. I
5 can't control that, we're dealt with the hands we
6 are given.

7 On the 27th allegedly, again, there's a
8 conflict about whether he gave a statement,
9 whether he did anything that day. Law enforcement
10 controls it. Law enforcement could have seen that
11 nothing was done wrong if they chose to do that.
12 No written statement from my client. None even
13 presented from the police. Whatever's in the
14 record, Your Honor, is there.

15 But it shows that law enforcement was
16 not done by my client. If he had asked --
17 Mr. Coker had testified allegedly that my client
18 wanted some deals, he wanted this, he wanted that.
19 Mr. Van Doran testified to that. Even those guys
20 didn't write anything down about that. That I
21 thought would have been pretty important had my
22 client if they ever wanted to show about freely,
23 voluntarily, knowingly giving statements what
24 better than words, hey, man, can I cut a deal
25 here? Because why would you not -- why would you

1 not want to write that down if somebody's saying,
2 yeah, I guess I'm culpable, I want to cut a deal
3 here. That's like saving law enforcement's
4 posterior here. Because now they're saying, see,
5 he want to cut a deal because maybe he did
6 something wrong and now we're going to get the
7 whole story.

8 The whole story is this: They had
9 control over him, they had every issue with him
10 that they wanted to have. Why they had to push so
11 hard for that fourth statement to make this case
12 is the reason why the Court looks at this and has
13 great hesitation. It's the manner of how you got
14 it, how long he was there, the method of it, and
15 the greatest inducement in the world. And maybe
16 this was a commentary, a true definition of a
17 caring parent is to care for your children. True
18 definition of a man or an adult man is to provide
19 for his family and take care of his family. If
20 somebody took a charge or agreed to sign something
21 so the wife would not be arrested that is clearly
22 great inducement, that is clearly a promise or a
23 reason to give somebody to make a statement. That
24 is the crux of this issue on the fourth statement.

25 And, Your Honor, in every book I've read

1 including the ones that Mr. Bailey, Mr. Clarey had
2 read, it goes to Minnick vs. Mississippi, 111
3 S.Ct. 486, (1990). Counsel's requested,
4 interrogation must cease. He says he asked for a
5 lawyer. There's nothing here even allowing him
6 the time if he did ask for one for somebody to
7 afford him one. He's in Orangeburg County then
8 brought back to Branchville, taken out of
9 Orangeburg after the statement and then charges
10 are made and put here. What county would have
11 been -- given the public defender within the
12 rightful time period of Justice Toal's order and
13 our case statute on bail and bond?

14 Your Honor, again, before I sit down I
15 want to take a moment and talk to co-counsel.

16 THE COURT: Sure.

17 MR. CUMMINGS: And I thank you for the
18 time allowing me to speak.

19 THE COURT: All right.

20 MR. CUMMINGS: I do have one thing from
21 counsel for politely correcting me on this. If
22 the Court looks at that fourth statement and
23 then the way the process is up there as you
24 well know from the state hospital, if anything
25 is sent up to the state hospital, they get that

1 and they read all that first before the
2 defendant goes up there. My client was without
3 the benefit of counsel at that hearing, way
4 before that notice had been given.

5 If there is anything that I can say
6 about that statement it says it parallels what
7 information was given by the State. Mr. Bowman
8 said he told them other people said that.
9 Whatever was said to those doctors up there,
10 again, Your Honor ruled it was hearsay in here.
11 Other than what Mr. Bowman said I think was your
12 specific order. Again, they could have been
13 called here for the purposes of this hearing also,
14 they were not. And therefore, Judge, I don't
15 think you have any way to judge the credibility of
16 any statements given to other people, they're not
17 here to testify about how they took them and what
18 they did. I think that is your ruling and once
19 you ruled that's the law.

20 Your Honor, respectfully, the only thing
21 I want to say is he was without the benefit of
22 counsel and you allowed cross-examination about
23 those statements in your record here of
24 Mr. Bowman, not the doctors, not the social
25 worker. And I would ask that you take my notice

1 of that, ma'am, to you that that's how you ruled.

2 I, again, thank you for the opportunity
3 to speak on Mr. Bowman's behalf, Your Honor, I
4 would ask that the statement be suppressed. Your
5 Honor, I know I would have any -- other motions
6 after that depending on how you rule, ma'am.

7 THE COURT: Certainly. Let me ask you
8 this question. As I understand the discussion
9 that really occurred mid-argument, and that has
10 to do with Van Doran's, Detective Van Doran's
11 letter, let me hear from you about that because
12 it's been mentioned. I'm concerned that it's
13 not a Court's Exhibit at this point. What is
14 your position about making that letter a
15 Court's Exhibit, Mr. Cummings?

16 MR. CUMMINGS: Again, Judge, I'm trying to
17 say this as meaningful and polite as I can.

18 THE COURT: Sure.

19 MR. CUMMINGS: One of the things that I
20 would like to say is that Mr. Van Doran must
21 have wrestled with something in his mind, I
22 can't speculate, and, again, first calls the
23 State and says my best recollection is this,
24 that. His testimony now was in the record. We
25 sequestered the witnesses, communication is

1 made to the State. And obviously Mr. Bailey
2 told him to do whatever he told him to do as an
3 officer of the Court and the good man that he
4 is.

5 Thereafter, Mr. Van Doran puts it in
6 writing. And whatever is in that writing I don't
7 have any way to cross-examine it or ask him any
8 more questions about it. Because I knew when I
9 cross-examined him he had great hesitation. And
10 he let it out of the bag somehow that there was a
11 trip to Orangeburg that night, but he said he
12 didn't know anything about it until he was asked
13 that question on the stand.

14 THE COURT: You mean to Branchville.

15 MR. CUMMINGS: Branchville, you're
16 absolutely correct, ma'am. And I think that
17 caught him wrestling with his mind about, you
18 know, saying if you don't directly hear it you
19 don't know about it, or if you don't ask me any
20 questions I don't have to tell you anything
21 about it. Kind of like the horrible situation
22 that happened in New York with that gentleman
23 in the New York precinct that got violated.
24 And I still to the life of me today cannot find
25 out why any human being would ever do to

1 violate another human being that way. That kid
2 was in police custody, and believe me, nobody
3 volunteered to tell anybody about that one
4 until it came out, until somebody investigated
5 it.

6 And I think Mr. Van Doran did the
7 honorable thing here by trying to wrestle with his
8 on conscience and let solicitor, chief prosecutor
9 know that. And, again, this gentleman being the
10 officer of the Court that he is shared that with
11 me and Ms. Thomas and I'm wrestling with it now.
12 Because if his testimony is not sure at trial I
13 would move to strike his testimony. And for the
14 purposes of this hearing I think it goes to the
15 credibility of people's knowledge. Firsthand
16 knowledge is so important in this room. And if
17 he's calling some issues into question I think
18 that questions what really happened that day and
19 should go to the benefit of the defendant.

20 You know, we're all about fair play,
21 we're all about honesty, and we're all about a
22 fair trial. The only way we can -- the only way a
23 person gets a fair trial is for people to tell
24 exactly what happened. And I hesitate to use the
25 word the truth because truth is in the eye of the

1 beholder. But for heaven's sake, and I say this
2 openly, again, Mr. Van Doran being the true
3 professional gentleman that he is, is wrestling
4 now with himself. His words on that piece of
5 paper are not the entire words, but he's trying to
6 like beg the question, I think I remember this, I
7 think I remember that.

8 I don't want to testify about that
9 because if it's made a Court's Exhibit I want to
10 be able to not have this gentleman -- and this is
11 like letting the monkey out to play with a barrel.
12 If he's told not to know about this and then later
13 on I cross-examine him about it, he can't help but
14 hear about it out in the law enforcement
15 community. We're not going to trial for another
16 month and I am very concerned that the information
17 in that letter is going to get out.

18 So I'm torn. It's kind of like, you
19 know, do I want a sequestered jury, don't I want
20 one. I don't know what to say to Your Honor.
21 And, again, I'm going to use the best legal mind
22 that I can, I don't want to put the contents of
23 the letter out for display. I want to have the
24 Court be aware that an officer who wrestled with
25 something was honorable enough to tell our

1 solicitor and he was honorable enough to share
2 that as the rules require.

3 And that's what we're all about in here.
4 If there's a question it goes to the defendant.
5 Because the sanctity of this Court is paramount.
6 That's all we are as in the eyes of the world,
7 that we live better than everybody else and do
8 better than everybody else because we are who we
9 are. I know you're going to make a ruling on that
10 letter, and maybe the Court wants to see it
11 herself, but, again, it's without
12 cross-examination, it's without anything.

13 THE COURT: I understand.

14 MR. CUMMINGS: And I had rested and for me
15 to move to open it back up, I don't know what
16 else would have been said.

17 THE COURT: I understand. I certainly
18 understand that dilemma.

19 MR. BAILEY: If I can respond to
20 Mr. Cummings. I'm not sure, I know you don't
21 want to go back and forth forever, but I know
22 he did raise a few things I would like to
23 respond to.

24 THE COURT: Oh, absolutely. Let's handle
25 the letter right now. Here's what happened to

1 this record. You both now have made reference
2 to a letter. It is a letter from a witness and
3 to you and, I gather, expresses, based on what
4 I can tell from the two of you, it expresses
5 some concern -- let me just -- I just noticed
6 that you were in here. Just be mindful that
7 this is -- that the witnesses have been
8 sequestered in this hearing. And do you
9 represent anyone personally that has been a
10 witness in this case?

11 MR. SCHLEIN: No, ma'am. I'm a member of
12 Mr. Cummings' firm.

13 THE COURT: Then you ought to be here,
14 thank you. I know that. I know that. I just
15 caught you out of the side of my vision. Of
16 course, because if you were representing
17 someone I was worried about the sequestered
18 nature. You're fine, thank you. Of course
19 you're here.

20 MR. BAILEY: Yes, ma'am.

21 THE COURT: So in terms of our record, Mr.
22 Bailey, what concerns me is if it becomes an
23 issue, and of course I have no way of knowing
24 at this moment, our appellate courts have no
25 way of knowing what in the world we are talking

1 about.

2 MR. BAILEY: That was my concern, Your
3 Honor, that's why I addressed that. Mr.
4 Cummings mentioned the letter in his argument
5 to the Court.

6 THE COURT: Indeed.

7 MR. BAILEY: And I agree with Mr.
8 Cummings, that Mr. Van Doran is a true
9 professional gentleman. He testified here to
10 the best of his ability to recall, which is all
11 we can ask of any witness. And then when he
12 finished -- his testimony was vague about that
13 trip to Branchville as was all the testimony
14 regarding that trip. And he struggled with his
15 recollection. You could tell on the stand that
16 he was trying to bring it up, wasn't coming up,
17 and I submit to Your Honor there's no -- Mr.
18 Cummings probably will agree with me Mr. Van
19 Doran's not going to get up on the bench and
20 lie.

21 THE COURT: Let me share this with you
22 gentleman. I don't know Mr. Van Doran, but
23 here's from my prospective where I am. Major,
24 number two person in Orangeburg testifies. He
25 said there is a meeting that Van Doran

1 participates in with the sheriff. Hear what
2 I'm saying, gentleman. That Van Doran
3 participates in. And an agreement is the term
4 she uses a couple of times. An agreement is
5 reached to transfer Mr. Bowman to Branchville
6 to meet with his wife, okay? That's happened.

7 Then the question that is asked of Van
8 Doran, and all Van Doran says is, and I think
9 Mr. Cummings asked him directly, did you do it?
10 Did you have anything to do with it? And he says
11 no. Then he asks him did you learn anything, or
12 hear anything about it during your investigation?
13 At which point he said, well, kind of/sort of,
14 maybe kind of remember something. That's real
15 different.

16 My concern is that is -- that is an
17 issue for the Court. You've said credibility is
18 what it turns on and you are so right. I've got a
19 number two police officer in Orangeburg telling me
20 it happened with great clarity. I've got her boss
21 saying he doesn't remember anything about it.
22 I've got him calling a uniform deputy who says I
23 was a gofer directly, not going through his chief
24 and alarming him to call his chief and say I've
25 got this phone call from the sheriff, should I do

1 this? And then I have Van Doran who is -- but for
2 Van Doran's testimony at that point in the
3 hearing, sheriff didn't know anything about it,
4 nobody testified knowing about it until the major
5 testified about it. And Van Doran testified after
6 the major, said, well, maybe I heard something
7 about it.

8 Then there's a letter that gets sent to
9 the solicitor that I gather he's having some
10 concerns about his testimony.

11 MR. BAILEY: Your Honor, what he told me,
12 I relay this as an officer of the Court.

13 THE COURT: Sure. Yes, sir.

14 MR. BAILEY: He called me up and said he
15 had been -- at night that he was struggling
16 with his recollection. He wasn't sure that he
17 gave complete answers to the questions, that he
18 was trying to remember what happened. And, you
19 know, he gave me his present recollection after
20 laying there and thinking and thinking and
21 thinking. He put that in written form not at
22 my request, but I guess at his own request
23 because I guess he had some fear that his
24 testimony may have been misleading. I've got
25 an open file policy, gave that letter to Mr.

1 Cummings because I have an open file policy.

2 And Mr. Cummings brought that letter up
3 in his argument. And I don't know how that
4 letter's going to cut, whether it helps him or
5 helps me. I would submit, Your Honor, that it
6 shows this is a man with a conscience who was
7 struggling with trying to recall. And these
8 witnesses should have written every single thing
9 down that happened. If I could back the clock up
10 I would have every one of them have a tape
11 recorder and tape everything and videotape it and
12 find a preacher to witness the videotape. That
13 didn't happen.

14 I'm here to present the facts as the
15 facts developed. And what happened, Your Honor,
16 was this is a Dorchester County case, it happened
17 on the line with Orangeburg County, all of the
18 witnesses practically were in Orangeburg County.
19 Dorchester County goes to Orangeburg to
20 investigate, there's no Orangeburg case jacket,
21 there's no Orangeburg case number because it's a
22 Dorchester County case and these guys in
23 Orangeburg and Branchville don't open a file,
24 they're there to assist, they do stuff because
25 they know these people, they're trying to help out

1 but they're not making any records. And that's
2 the crux of the problem, Your Honor. It's nothing
3 anybody's getting up here and law enforcement
4 lying. They flat out don't remember some details
5 and I concede those are important details.

6 And in regard specifically to the
7 letter, I didn't bring my entire file with me
8 today, I look forward to submit it, I don't know
9 whether Mr. Cummings has it or not, but if you
10 want to seal the letter or whatever, I don't --

11 THE COURT: I think that's appropriate.

12 MR. BAILEY: I don't understand, really,
13 Your Honor, what --

14 THE COURT: I think that's appropriate,
15 and in that I've got to make a determination.
16 I'm not going to read it, but I think for
17 purposes of appeal. And the reason I'm not
18 going to read it is because neither one of you
19 chose to ask to reopen your case, you didn't
20 call him in rebuttal, Mr. Cummings didn't ask
21 to reopen the case. And without that I don't
22 have benefit of what -- of where he is.
23 However, so I don't want to read what he says.
24 I mean, if he's trying to give another
25 rendition of the facts I certainly am not going

1 to read his words. And the reason I'm not
2 going to read his words is because it's (a),
3 not under oath; and (b), it's not subject to
4 cross-examination, so I'm certainly not going
5 to read it. But for the purposes of appeal I
6 think it's important that it be made a part of
7 the record and sealed.

8 MR. BAILEY: Mr. Cummings does not have a
9 copy with him today. I'll produce one
10 tomorrow, I don't have it with me.

11 THE COURT: That would be fine.

12 MR. CUMMINGS: Again, Judge, I did not
13 want -- and I say this to you, I did not want
14 any other issues other than one aspect coming
15 out in here, and that is let this Court know
16 that if somebody had a question, if something
17 is questioned about this thing, the Court has
18 it to know it. And you're sequestering with
19 the important, at least in my humble opinion
20 this morning, between academic arguments
21 between solicitor and I as advocates, you're
22 wrestling with the integrity of this Court and
23 the integrity of anybody with a fair trial.

24 THE COURT: I think I try to do that every
25 day.

1 MR. CUMMINGS: I know, Judge. Again, my
2 words are kind of like jumbling right now for a
3 reason. And that is the -- that's the first
4 time that's ever happened to me in all these
5 years when I prosecuted and defended, and,
6 again, to have somebody ever come back and say
7 different what they testified to. And that's
8 why it came out in my argument for fairness and
9 due process.

10 THE COURT: Sure.

11 MR. CUMMINGS: I know that Mr. Bailey's
12 back up on rebuttal, I'll sit back down, but
13 that's the only reason for that letter is to
14 let the bench know that, my God, there's a
15 question.

16 THE COURT: I understand, sure.

17 MR. CUMMINGS: That has to come out to the
18 bench.

19 THE COURT: Thank you.

20 MR. BAILEY: Your Honor, if I can -- I'll
21 try not to beat the letter to death, but if I
22 can just point out that without getting into
23 the content of the letter, the fact that this
24 witness was conscientious enough to call me up
25 at night and then write that letter knowing I

1 have an open file policy, give that to Mr.
2 Cummings, I think indicates the depth of the
3 dedication and the effort that these officers
4 have to be as honest and to recall as
5 truthfully, as accurately as they can. And I
6 can't go back and create memories that didn't
7 exist and I can't create incident reports that
8 were not written and that is a problem.

9 THE COURT: Let me say this to you, Mr.
10 Bailey. I appreciate your words very much, but
11 I don't know that. And you need to know I
12 don't know that. Because I don't know what he
13 said. I don't know. All I know is what he
14 testified to, all I know is what is in the
15 record. So the fact that he wrote a letter
16 doesn't help me. It doesn't help me support
17 what you say because I don't know what he said.
18 I don't know what he said, he wasn't recalled.
19 Whatever his concerns were now all I know is
20 that he wrote a letter because he was concerned
21 about his testimony and that is all I know.
22 That is all I know.

23 So while I certainly appreciate your
24 words, I don't know that and I need to express
25 that to you that there's no way for me to know

1 that because he was not recalled.

2 MR. BAILEY: Your Honor, if I can address
3 some of the other things Mr. Cummings brought
4 up. And I apologize for belaboring this, I'll
5 try not to rehash what all he said.

6 THE COURT: No, please don't. A couple of
7 tenents of the law I would like to talk about
8 if we may. And one is to sort of -- just some
9 issues quickly. But one of them is the date
10 that the public defender was appointed versus
11 that conversation that occurred in St. George
12 at the jail.

13 MR. BAILEY: Twenty-sixth and 27th?

14 THE COURT: Yes, sir. Yes, sir. As I
15 understand the law, and I have done research on
16 this issue, it is incumbent upon the defendant
17 to clearly express to law enforcement I don't
18 want to talk to you, I want a lawyer, that the
19 law would -- the state of the law at this point
20 would indicate that even though you've
21 requested a public defender, that's
22 insufficient for law enforcement. Even though
23 in the picture that might be information that
24 they may have and may not have, that's
25 insufficient under the law, that the defendant

1 is charged with the responsibility to say I
2 either have a lawyer, I want a lawyer, I'm not
3 talking to you. So that is my understanding
4 regarding the law and the authority at this
5 point insofar as that -- if you will, that
6 issue.

7 And I do think, quite frankly, that the
8 Crawley case there are many of these issues are
9 certainly telling to many of the issues I think
10 that have been raised by Mr. Bowman, I think it
11 comes at an interesting time certainly for me.
12 But, yes, sir.

13 MR. BAILEY: Okay. Your Honor, all of the
14 statements I think are important to a certain
15 degree, but obviously the fourth written
16 statement which is the second Larry Williams
17 statement is a critical statement for both
18 sides. And Mr. Cummings has made a lot about
19 different statutes that may have been violated,
20 different court rules and all of that. And if
21 that occurred that's unfortunate. That is not
22 the issue, whether or not he's brought to a
23 magistrate within a certain time frame, or been
24 appointed a lawyer, or the niceties of the
25 service of the warrant. I mean the warrant was

1 served, it's a valid Orangeburg warrant, it was
2 served prior to his incarceration.

3 But, again, the bottom line is
4 voluntariness. And we're talking about an arrest
5 on the 17th, statement the very next day on the
6 18th. So we're not talking about any long,
7 extended period of time. And I would cite a
8 couple of cases, Your Honor, to do with the time
9 lapses between confession and -- arrest and
10 confession, the first would be State vs. Gilbert
11 and Gleaton, and that is 258 S.E.2d 890, which
12 it's a 1979 South Carolina death penalty case.
13 And our Supreme Court held in that confession, in
14 that opinion that a confession was not
15 inadmissible because the defendant had been held
16 in custody for 27 hours before being taken to a
17 magistrate. I think that's close to the time
18 frame here.

19 And State vs. Bell, it's another South
20 Carolina death penalty case, 406 S.E.2d 165, our
21 Court held that waiting three days after the
22 arrest to take the defendant to a magistrate to
23 appoint a lawyer didn't render an otherwise
24 admissible statement inadmissible.

25 THE COURT: Let me ask you this question:

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1 What was the period of time? You're talking
2 about after the arrest on the Dorchester County
3 charges?

4 MR. BAILEY: I --

5 THE COURT: You're not talking about
6 Orangeburg.

7 MR. BAILEY: I'm talking about Orangeburg.

8 THE COURT: Oh, you're talking about
9 Orangeburg.

10 MR. BAILEY: The statement he gave that's
11 in contention with Larry Williams was before he
12 was arrested in Dorchester County. That
13 statement was on the 18th.

14 THE COURT: Right.

15 MR. BAILEY: The arrest for Dorchester
16 County I believe was the 20th --

17 THE COURT: Right.

18 MR. BAILEY: -- of February, so...

19 THE COURT: So what you're saying, because
20 what I don't -- the piece of information, and
21 maybe perhaps I just missed it, but I don't
22 know that I know when Mr. Bowman was taken to
23 the magistrate for a bond hearing in
24 Orangeburg, if ever.

25 MR. BAILEY: I don't believe there's been

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1 any testimony on that, Your Honor.

2 THE COURT: Okay.

3 MR. BAILEY: I think what occurred was
4 that the events, when the Dorchester County
5 warrant was served that basically superseded
6 and subsumed the Orangeburg County thing. And
7 I don't believe he was ever taken for a bond
8 hearing on the Orangeburg warrant.

9 THE COURT: Okay.

10 MR. BAILEY: But, again, if that happened
11 it would have been after the fact of the
12 confession of the 18th, so I'm not sure if that
13 would really enter into it. He was in
14 Orangeburg custody until the 20th and we talked
15 to him about stuff that occurred before that.

16 THE COURT: Your argument is that we're
17 talking about a period of from the time that he
18 is arrested, sometime 9:00, 9:30, perhaps.

19 MR. BAILEY: Saturday morning to Sunday
20 evening.

21 THE COURT: Saturday morning to best case
22 scenario, I gather, was what, for the State
23 would be 7:30 on Sunday evening.

24 MR. BAILEY: Or 10:30 or so if you take
25 his version of when he signed the document.

1 THE COURT: Right. Exactly. That period
2 of time is within the bounds of the law because
3 of the -- you can wait three days to take an
4 individual to the magistrate.

5 MR. BAILEY: According to those two cases.

6 THE COURT: I do understand your argument.

7 MR. BAILEY: Just a couple other things.
8 Mr. Cummings mentioned Sixth Amendment right.
9 There is no Sixth Amendment right
10 post-indictment in South Carolina. And I would
11 cite, again, State vs. Howard and Weldon, 369
12 S.E.2d 132. That case held the Sixth Amendment
13 right to counsel is case specific and does not
14 attach -- the State doesn't need to establish a
15 waiver if the defendant has invoked his right
16 to counsel for a different offense in a
17 different jurisdiction.

18 And also State vs. Council which held
19 the Sixth Amendment right attaches when
20 adversarial proceedings have started. And they
21 define adversarial proceedings, the Sixth
22 Amendment right attaches only post-indictment. So
23 there are rights that he had. And I can cite a
24 Supreme Court case to the same effect, Texas vs.
25 Cobb, 149 L.Ed.2d 321. So actual Sixth Amendment

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1 would not be a factor here.

2 Your Honor, on credibility, which is
3 a -- voluntariness is the issue and credibility is
4 how you determine whether or not the confession
5 was voluntary. And what Mr. Cummings is asking
6 the Court to believe, again, it's kind of like
7 going to watch a parade where someone's out of
8 step and she says everybody in that parade is out
9 of step but my son. You cannot believe
10 Mr. Bowman's account unless you discount part or
11 all of what every single of the State's witness
12 had to say, there's something each one of them
13 said that was an intentional lie or a total
14 reckless disregard of the attempt to testify
15 truthfully if you believe him. And that would
16 include his wife and every one of the law
17 enforcement officers called by the State.

18 The first confession Larry Williams got,
19 the written confession, number three which was
20 gotten the evening, the Saturday evening. Again,
21 Tim Stephenson was out of the room, just
22 Mr. Bowman and Larry Williams. That written
23 statement exonerated Marion Bowman. It wasn't
24 what they were looking for if they're trying to
25 get him set up, which is what the defense wants to

1 tell you.

2 Now, Your Honor, if Larry Williams'
3 purpose in being there was to browbeat this man,
4 to slap him around, to threaten his wife, to
5 threaten his stepchildren to get him to admit to a
6 crime that he didn't want to do, why would he have
7 generated a statement that evening exonerating
8 Marion Bowman? This bad, fake statement that the
9 defense wants to tell you occurred on Sunday, they
10 could have just as easily have done it on Saturday
11 without going through this long song and dance,
12 the transportation back and forth and all that.
13 They were in Branchville, Mrs. Bowman was in
14 Branchville, they could have done the things that
15 they claimed that they did on Saturday on Sunday.

16 And, again, I mentioned this earlier, if
17 this was a setup, if this was something where
18 Orangeburg County, the highest law enforcement in
19 Orangeburg County, the chief in Branchville, the
20 Dorchester County investigators were wanting to
21 set this guy up, wouldn't they have gotten
22 together and filled these gaps in about this trip
23 back to Branchville? I mean, they honored the
24 sequestration order. They did not talk to each
25 other to my knowledge, they had faulty memories.

1 And, again, I attribute that to the fact they're
2 working a case that's not their case, in the case
3 of the Orangeburg people, it's a Dorchester County
4 case. Their memories were faulty.

5 The defense position is that the reason
6 for this trip on Sunday was to show Marion Bowman
7 we got your wife here held hostage, we got control
8 of her, here she is. Your Honor, I would ask you
9 to review his testimony, Marion Bowman's
10 testimony. I don't recall even Marion Bowman
11 saying that he felt that was the purpose of the
12 trip. I think he said that when they took him out
13 of there he thought he was going to a bond hearing
14 or something.

15 THE COURT: That was in the afternoon. He
16 says that that trip occurred after the sheriff
17 said you're playing with me, don't play with
18 me, I'm the sheriff of this county and I can
19 basically -- I'm a very powerful person, watch
20 what I'll do, I'll have your wife arrested,
21 I'll have the children taken away from her,
22 I'll have her brought to Branchville just so
23 you can see how powerful I am, watch this.
24 Away they go.

25 I'm not saying that's what's occurring,

1 I'm just telling you that's what I recall. That
2 the first time when he left the -- it's his
3 position that when he left the jail at 4:40 on
4 Sunday, that he was going to a bond hearing, not
5 that he asked to see the sheriff. I think it's
6 the sheriff's position that Mr. Bowman came to see
7 him because Mr. Bowman asked to see the sheriff.
8 That's, as I recall, the testimony of how it went.

9 So still in all even with all of this,
10 it's a very troubling part of this hearing. It's
11 just a troubling -- and I've got to struggle with
12 it.

13 MR. BAILEY: I understand that, Your
14 Honor.

15 THE COURT: And I think you're absolutely
16 correct, it comes -- I think it is -- I think
17 credibility is essential to it.

18 MR. BAILEY: And I would agree with -- and
19 I would agree with Mr. Cummings that if based
20 on the totality of all the evidence you heard
21 that -- including Marion Bowman's testimony and
22 everyone else, if Your Honor reaches the
23 conclusion that the sheriff of Orangeburg
24 County lied about that trip to Branchville and
25 told this man that they were holding his wife

1 hostage and that came on the heels of him being
2 slapped around, the sheriff reaching for his
3 gun, I think if Your Honor believes that, his
4 version what occurred, then obviously that
5 statement would have been involuntary and
6 should be kicked out.

7 But, Your Honor, I would ask you to when
8 you take that into consideration as I know you
9 will, to take into consideration the obvious lies
10 that occurred about his reading ability, about the
11 circumstances regarding the arrest, about his
12 testimony under oath, that nothing in that fourth
13 statement was his, but yet he gives the same God
14 awful story about what happened to that victim's
15 body to the people at the State hospital as in the
16 Larry Williams statement. I would ask you to take
17 all that into consideration.

18 THE COURT: I certainly will. I think it
19 bears mentioning that because the State
20 maintains the burden of proof, that it's the
21 statement of the police officers and their
22 totality also that create a problem for me.
23 But, again, it's what I've got to struggle
24 with. That's why I'm here and I'll do it.

25 MR. BAILEY: Thank you, Your Honor.

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1 THE COURT: I will be reviewing certainly
2 your arguments as well as the transcripts.
3 Thank you gentlemen so very much. I think that
4 concludes the Jackson v. Denno hearing.

5 MR. CUMMINGS: Yes, ma'am. From the
6 defense also.

7 THE COURT: And I'm -- what I will do is
8 let me contemplate whether or not I think it's
9 important I should return and put my decision
10 on the record, or whether or not it ought to be
11 reduced to writing. Let me contemplate that as
12 well. And I'll certainly let -- I know we're
13 going to be together much more, but I will let
14 you know how I think it's appropriate to
15 proceed in that regard as well.

16 And I know we got to take a break, all
17 of us, because we've got, we have other things to
18 do today. And so let us take our break, even
19 though I know we're going to be proceeding a
20 little bit behind schedule. Let's take a break.

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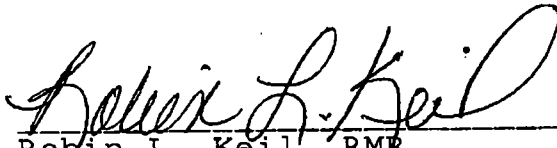
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 21st day of July 2003.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 :
 COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XI Pages 1179 - 1319
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) MOTIONS
)
 MARION BOWMAN, JR.,) May 1, 2002
)
 Defendant.) St. George, South Carolina

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The Honorable Diane S. Goodstein

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EV.

1 (May 1, 2002.)

2 THE COURT: All right. This really, the
3 purpose of my asking you all to be here, and I
4 think we talked about it when last we were
5 together about trying to get all of the motions
6 heard and get as many preliminary jury matters
7 resolved as we could before next week, because
8 even though it is a chambers week the conference
9 is next week and it makes it very difficult for
10 us to do a lot of work next week, so I wanted to
11 try to get as much done this week as we could.

12 So today's work, or the work that I
13 had planned and wanted to do today was to have
14 another, I guess status conference, if you will,
15 so that we can begin to narrow and conclude our
16 pretrial matters and then to hear some motions.
17 And then I wanted to address a matter which is
18 of concern to me which is why I've asked
19 Detective Van Doran to be present here today as
20 well.

21 So if you all will allow me I'd like
22 to begin by reviewing the motions at this
23 moment. And I understand there may be motions
24 filed particularly after you all hear my ruling
25 on the Jackson v. Denno matters, but I wanted to

1 at least as of this moment to ascertain the
2 motions that we have still pending. And if I
3 may begin, I know that the State has filed a
4 motion regarding exclusion of the polygraph both
5 for themselves as well as for the defense.

6 MR. BAILEY: Yes, ma'am.

7 THE COURT: There is the matter regarding
8 the photographs which has been pending, there
9 is -- I have yet to rule on the motion to
10 exclude mentions of religion, et cetera, which
11 was previously filed by the State, and those --
12 and, of course, we have the motion pending which
13 is the motion for a change of venue which still
14 is, of course, premature.

15 So tell me other motions, first of
16 all, from the State's perspective are there?

17 MR. BAILEY: Your Honor, I believe that's
18 it.

19 MR. CUMMINGS: Judge, I know that part of
20 our Jackson v. Denno hearing covered motions to
21 suppress, we talked about the basis of the
22 arrest under Blassingame. We actually had filed
23 on February 28, 2002, and I wanted to make sure
24 that this has been addressed for the record,
25 motion to suppress the search warrant that was

1 issued on the date of the arrest of Mr. Bowman.
2 And some other search warrants, Judge, that were
3 there, just to make sure we cover the record.

4 THE COURT: Sure.

5 MR. CUMMINGS: If -- I don't have the
6 number in front of me, what number that was and
7 I apologize.

8 THE COURT: That's okay. I think we
9 probably -- let's deal with some of those today.

10 MR. CUMMINGS: Yes, ma'am.

11 THE COURT: And let's talk about those
12 today a little bit.

13 MR. CUMMINGS: And then further, Judge, as
14 part of my oral argument around that, anything
15 that was taken on the basis of the arrest of
16 Mr. Bowman, at least like to put on the record
17 about the nature of the arrest so the Court has
18 at least our argument about how he was arrested,
19 what for, et cetera, ma'am, so I can keep the
20 record clear.

21 THE COURT: Yes, sir. Yes, sir. Thank you
22 so much, Mr. Cummings. And other than you've
23 got that motion, and other than the other ones
24 are there any other motions at this point?

25 MR. CUMMINGS: Judge, at this point I don't

1 believe so. Again, we were talking back and
2 forth yesterday also and one of the issues I
3 think Your Honor might have heard in Jackson vs.
4 Denno about the wife giving consent to search
5 that property without my client understanding, I
6 think that would be best by oral arguments now.

7 THE COURT: Sure.

8 MR. CUMMINGS: And it covers, basically,
9 our motion to suppress at that time. And then I
10 have one other one that happened and that should
11 be very quickly also, I believe.

12 THE COURT: Great. Wonderful. Now, the
13 other matters that I wanted to talk about was --
14 other matters I wanted to talk about were the
15 matters involving the jury. And this is -- and
16 this is I need some -- both some input from you,
17 please, both of you, all of you, rather, on this
18 issue.

19 With regards to the jury let me tell
20 you what I understand at this point. I
21 understand that, of course, the questionnaires
22 have gone out, the juror summonses have gone
23 out, we have a number of questionnaires which
24 have been returned, we have the summons that
25 came back have been turned over to the sheriff's

1 department, and the attempts to serve those
2 folks have now been concluded, those efforts.

3 So I think that aside from the
4 questionnaires that we need to have a record and
5 make a record regarding the attempted service
6 for different individuals. I would like to do
7 that this week.

8 MR. CUMMINGS: Okay.

9 THE COURT: And then I know that you all
10 were at least attempting to get together to see
11 if any of the folks who sent in concerns, if you
12 could consent to those concerns or not. And
13 then regarding the folks who have sent in
14 concerns, asked to be excused or transferred, if
15 we can -- I'd like to do those this week as
16 well. And perhaps Friday would be an
17 appropriate time to do that, but that's -- I
18 wanted your input on those issues, Mr. Bailey.

19 MR. BAILEY: Sure. We haven't actually sat
20 down formally and gone through the whole list
21 because we just actually compiled it, but we can
22 do that.

23 THE COURT: In the next day or so.

24 MR. BAILEY: Hopefully, you know, maybe
25 today as far as agree on them.

1 MR. CUMMINGS: Judge, Marva and I spent the
2 majority of the last two days going down people
3 that have asked the Court to be excused, or
4 things that maybe over the years Mr. Bailey and
5 I and Marva have seen or you have where they're
6 asking for a statutory exemption but yet they've
7 not fully known how to ask the Court aggressive.

8 THE COURT: Sure.

9 MR. CUMMINGS: They closed, done a great
10 job trying to put -- as soon as she gets it she
11 calls us and said we got 20 more today, got ten
12 more today. And that's the only reason it's
13 dragging out is waiting for everybody to come
14 back in.

15 THE COURT: Okay.

16 MR. CUMMINGS: We've got at least 100
17 people we can talk about. Because if we have to
18 bring people up, ma'am, by Friday I know you
19 have to give them some notice time to get up
20 here.

21 THE COURT: Sure. To be sure that I afford
22 you time to do that, I don't want to take all
23 your time, since you're here you all can go
24 through that. There was one gentleman that I
25 was concerned about, Ms. Footman mentioned it,

1 that he had some big trip he was supposed to go
2 on and he was supposed to leave today. Did you
3 all hear about that?

4 MR. CUMMINGS: Yes, ma'am.

5 MR. BAILEY: Yeah. Yeah. I have no
6 objection to excusing him. What was that
7 number?

8 MR. CUMMINGS: 277, I believe.

9 THE CLERK: Is that it, 277?

10 MR. BAILEY: Roger Slocum.

11 MS. FOOTMAN: Yes.

12 THE COURT: Roger Slocum?

13 MR. CUMMINGS: Yes.

14 THE COURT: Did you all consent to allow
15 him to go on his holiday?

16 MS. HARDEE-THOMAS: I consent, Your Honor.

17 THE COURT: Thank you.

18 MR. CUMMINGS: Yes, Your Honor. Clearly
19 the gentleman has called every day, he puts on
20 there he's a retired Army veteran, disabled, he
21 would have a hard time following the Court,
22 Court's attention and we would agree, ask the
23 gentleman be released.

24 THE COURT: Very well. And did you all
25 communicate that to Mr. Slocum so he could go on

1 his holiday?

2 MS. FOOTMAN: Not yet.

3 THE COURT: You might want to do that. You
4 may even want to do that now.

5 THE CLERK: We'll do that now, yes.

6 THE COURT: That would be great, just
7 because he's probably on pins and nettles. Very
8 well.

9 THE CLERK: You would like someone from the
10 sheriff's department here to testify that these
11 were --

12 THE COURT: Yes.

13 THE CLERK: When would you like that?

14 THE COURT: You want to handle jury matters
15 on Friday?

16 MR. BAILEY: Judge, whenever you want to, I
17 mean I'm at your disposal.

18 MR. CUMMINGS: Your pleasure, same thing.

19 THE COURT: Why don't we just schedule
20 that, to do that on Friday, ten o'clock on
21 Friday morning.

22 THE CLERK: I'll have someone from the
23 sheriff's department.

24 THE COURT: I need to have whoever did the
25 work. I want to have -- I don't want to have

1 somebody that understands that somebody told him
2 that somebody else did it. I want to have
3 someone who is familiar with that process and
4 participated in that process that can testify
5 that, in fact, service was attempted
6 specifically with the individuals. So I really
7 want somebody who really participated and knows.

8 THE CLERK: Not particularly the officer
9 who served it, but maybe his supervisor? Or you
10 want each officer that signed their name?

11 THE COURT: If there are 15 of them, I
12 don't know. But if there are three of them I
13 would like to have the officers --

14 MS. FOOTMAN: It's about two or three.

15 MR. COKER: Your Honor, just to tell you
16 how it works, normally when they go through the
17 office they are signed out to different
18 districts. We got three districts in the county
19 and it just depends on who's working at the
20 times those get served. So it may be a number
21 of different officers involved.

22 THE COURT: Flo is just telling me there
23 are normally two or three that actually do that
24 work.

25 MS. FOOTMAN: The ones I've gotten back

1 already it's been about two or three different
2 ones.

3 THE CLERK: So we'll -- if those -- if it's
4 three we'll have those officers here.

5 THE COURT: Sounds like they were
6 sensitive. Sounds like the sheriff's department
7 was sensitive in trying to limit the number of
8 folks, which is good. Great. So we'll handle
9 the jury matters at ten o'clock and you all will
10 have some time today. And you will notify
11 depending on when counsel gives you the names of
12 folks that they cannot agree on, then you all
13 will just start notifying them today.

14 MS. FOOTMAN: Yes. They're calling every
15 day.

16 THE CLERK: So y'all let us know the ones
17 y'all cannot agree to excuse as soon as possible
18 and then we'll just let them know they are not
19 excused, they need to be here.

20 THE COURT: Let's ask them to be present
21 say at eleven o'clock on Friday.

22 THE CLERK: Oh, okay. When will y'all give
23 us that information?

24 MR. CUMMINGS: I'll stay up here. We'll
25 stay.

1 MR. BAILEY: Probably take us half an hour,
2 maybe, compare lists.

3 MS. HARDEE-THOMAS: Yes.

4 THE CLERK: So you're through with us,
5 Judge?

6 THE COURT: Now, I know Detective Van Doran
7 is outside, I saw him when I came up this
8 morning. And I want to share with counsel, with
9 you, and also for purposes of the record my
10 concern. And certainly before I hear any
11 testimony I certainly want to hear from you.

12 I have spent a considerable amount of
13 time going through the transcripts in the
14 Jackson v. Denno. And as you all know it was a
15 hearing which went over some, I think, eight
16 days. And I expressed to you when you argued
17 the Jackson v. Denno matter, my concerns about
18 what transpired after -- or the events
19 surrounding the execution of State's Exhibit 7
20 for ID. That is -- has been the position of the
21 defense, that that statement was coerced and it
22 was coerced by threats made against Mr. Bowman's
23 wife and her children.

24 During that argument, counsel, both of
25 you, and I think, Ms. Hardee-Thomas, I don't

1 remember you specifically participating in that
2 argument because it was being handled by Mr.
3 Cummings on behalf of the defense, but I
4 remember the argument was made about some
5 concern which had been expressed by Detective
6 Van Doran regarding his testimony.

7 What concerns me about his testimony,
8 and that has been communicated to the Court, his
9 concern about his testimony, and I gather it's
10 because of the -- well, I don't know what it is,
11 just concern is all I know at this point. What
12 troubles me about the testimony being left in
13 limbo surrounding that event, the event being
14 the -- both the signing of that statement, that
15 statement being State's Exhibit 7 for ID, and
16 the transportation of Mr. Bowman to Branchville
17 and the transportation of Mrs. Bowman to
18 Branchville has been -- my concern is the
19 testimony surrounding those events has been
20 varied.

21 I'm mindful of the testimony of Major
22 Walters and, of course, is the number two person
23 in the Orangeburg sheriff's department, and her
24 clarity about their being an agreement between
25 the sheriff of Orangeburg County and the

1 sheriff's department of Dorchester County about
2 taking Mr. Bowman to Branchville to see his
3 wife.

4 The individuals which she relays to me
5 were present, she originally thought it was
6 Detective Coker and then she says, no, it wasn't
7 Detective Coker, it was Detective -- help me.

8 MR. CUMMINGS: Turner.

9 MR. BAILEY: Turner.

10 THE COURT: Mike Turner. It was Detective
11 Turner. Van Doran was present she testifies and
12 Major Stephenson I think she testifies to. Of
13 course, Van Doran has testified. Van Doran is
14 the only person that testified on behalf of the
15 State, works for the sheriff's department that
16 had any recollection at all of Mr. Bowman going
17 to Branchville. And I think that he relayed
18 that in terms of based on his investigation he
19 remembers hearing something about that.

20 I think that given the posture of
21 where we are, that for purposes of this record
22 at this point I have information that Van Doran
23 who testified in this case is concerned about
24 his testimony. And I think for purposes of the
25 record and that I also have the task of making

1 the decision in the Jackson v. Denno hearing, I
2 am inclined to hear him. But I certainly,
3 before I did that, wanted to give you all an
4 opportunity to talk to me about that, to be
5 heard about that.

6 Yes, sir.

7 MR. BAILEY: Your Honor, I have no
8 objection, he's present. And I would like to
9 state for the record that when the Jackson v.
10 Denno hearing was completed, I believe everybody
11 thought it was over and I did not admonish him
12 not to talk to anybody about the case. I don't
13 know whether he did or did not, but when I was
14 contacted by your office yesterday and told that
15 you wanted to call him back up, I told him not
16 to talk to anybody in preparation.

17 THE COURT: Sure.

18 MR. BAILEY: Just to review his file and
19 prepare to answer any questions. I just wanted
20 to put that on the record, but I certainly have
21 no objection to him testifying.

22 THE COURT: Thank you, Mr. Bailey.

23 MR. CUMMINGS: Judge, thank you. And I
24 want to say this as eloquently as I can without
25 offending anybody, and particularly, Judge, the

1 gentlemen who are out here every night taking
2 care of all of us. Mr. Van Doran's an honorable
3 man, there's no question about that or we
4 wouldn't even be back here talking about this.
5 Your Honor, the State has rested, we rested with
6 all the information we could find and muster and
7 do. I don't want -- and I'm really trying to
8 watch my words, again, carefully.

9 When the letter came back in from Mr.
10 Bailey, again, the solicitor complying with all
11 the rules and ethics that he has gave us a copy
12 of it. And it came up about that point that if
13 the police are still having an issue that the
14 Court must have an issue as to this statement.
15 That was my closing argument when we argued.

16 Some time has passed. And you're
17 right, law enforcement officers talk, I used to
18 be one, they work with each other, again. And
19 I'm not saying this gentleman would ever shade
20 or change his testimony to make anybody happy or
21 comply, but, Your Honor, with the number of
22 years' experience you've had in this, if any
23 questions are asked of you to this gentleman, I
24 know one of the issues we're going to have now
25 is somebody can't better their testimony or help

1 their testimony, because we do have another day
2 where cross-examination is going to be present.

3 But I can't help but think how simple
4 this would have been if anybody would have just
5 kept track of the simple things we teach in
6 school. Somebody's got to be a scrivener,
7 somebody's got to know who's present, somebody's
8 got to know what went on and why. And for
9 people to hide behind, and this is that case out
10 of New York that I'm very appalled about when
11 Mr. Bohema -- I don't know how you pronounce his
12 name -- was hurt in the precinct house in New
13 York by a plunger. Nobody knew anything,
14 whether they had the blue flu or lack of memory.

15 We've not had anything like that in
16 this case. But I know that it puts great strain
17 on us and everybody to try to go find witnesses,
18 people that were involved in this case to show
19 that the police acted properly. And, again,
20 with Mr. Van Doran taking the statement again
21 this -- taking the stand this morning, it leaves
22 us at a quandary about time to think, trying to
23 go back and reread incident reports, reread
24 other issues to freshen his memory up now and I
25 leave that to Your Honor's discretion. I'm not

1 saying that you don't have every right in the
2 world to call him up on the stand. I know if
3 you do this this morning it's because the bench
4 feels it has to have some questions answered.

5 And so I wanted Mr. Bowman to hear
6 that today since this is -- since he's not been
7 told about why we're up here yet this morning.
8 We thought we were doing jury issues this
9 morning and then we were told Mr. Van Doran may
10 be back on the stand today. Mr. Bailey was kind
11 enough to tell me that yesterday when we talked
12 several times.

13 But, Judge, I guess I'm leaving it
14 into the Court's hands about the questioning of
15 this gentleman as to any preparation, any
16 conversations, even as innocent as they may have
17 been. Because I'm sure everybody goes back
18 afterwards and says, hey, what did you do on
19 this or what did you do there.

20 THE COURT: Sure. Let me tell you that I
21 am so aware of that, Mr. Cummings.

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: And I will tell you that the
24 thought passed through my mind when I became
25 aware of that, whether or not to call him at

1 that time. And I was reluctant to do that
2 because of much of what you are saying. And I
3 think the record needs to reflect that when I
4 have gone back and done the work that I have
5 done --

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: -- that I find that the record
8 is incomplete with that out there.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: And understanding exactly where
11 you are coming from, and I truly do, giving that
12 great thought, in that -- in that the issue of
13 the Jackson v. Denno is with the Court.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: And I have to make those
16 decisions I am compelled to recall him. And I
17 will certainly ask of him whether -- who has he
18 talked to, what has he done so that I certainly
19 will have that information.

20 MR. CUMMINGS: Yes, ma'am. I appreciate
21 the Court taking this time with me for a moment
22 to put on the record and explain to
23 Mr. Bowman --

24 THE COURT: Sure.

25 MR. CUMMINGS: -- that it places us all in

1 a legal quandary. We've rested with the
2 evidence that was available from the State that
3 we could have. We found some things out along
4 the way, so has Mr. Bailey found some things out
5 along the way about how and when, who did this.
6 Again, I just say this for the record and Your
7 Honor's questioning, it would have been so easy
8 if somebody just kept track of who, what, when,
9 how, where, and why.

10 THE COURT: I agree with you.

11 MR. CUMMINGS: Yes, ma'am. The reason I
12 say that openly, Judge, it's easy to go back
13 after you've heard testimony or been around to
14 know who did what afterwards, when they did it,
15 why, and know we need to know specifically how.
16 And, again, Judge respectfully --

17 THE COURT: Sure.

18 MR. CUMMINGS: -- I know that this is the
19 Court's issue and I want Mr. Bowman to make sure
20 we do that on the record that this is for Your
21 Honor bringing the witness back up, not either
22 Mr. Bailey or I.

23 THE COURT: That's right. That's correct.

24 MR. CUMMINGS: Thank you, Judge.

25 THE COURT: Thank you so much. Well, I

1 think -- what I will do is obviously it would
2 not be fair once I've examined him not to give
3 you an opportunity to examine him and I'll
4 certainly do that, but I would propose to
5 examine and address those matters with which I
6 am concerned.

7 Very well. Ms. Saulisbury, would you
8 step back out and ask Detective Van Doran to
9 come in, please, ma'am?

10 MS. SAULISBURY: Yes, ma'am.

11 THE COURT: Thank you so much.

12 (Terrence A. Van Doran, called as a witness, having
13 first been duly sworn, is examined and testifies as
14 follows:)

15 THE COURT: Thank you. When you are
16 seated, if you would state your full name for
17 the record.

18 THE WITNESS: Terrence Arnold Van Doran,
19 V-a-n D-o-r-a-n..

20 EXAMINATION

21 BY THE COURT:

22 Q Detective Van Doran, you are here today pursuant
23 to my request. And, of course, I appreciate you
24 being here.

25 A Yes, ma'am.

1 Q Although I understand you didn't have a whole
2 lot of choice about it, I certainly do appreciate you
3 being here. And let me begin by asking you this
4 question. Obviously when we concluded the hearing
5 some, I think, a week and a half, two weeks ago,
6 obviously at the conclusion of -- what everyone
7 thought was the conclusion of the hearing there was a
8 belief obviously that the sequestration would have
9 been over on the case.

10 A Yes, ma'am.

11 Q And then you proceeded with what you would do,
12 I'm sure, to prepare or review or whatever you would
13 do. For purposes of my examination today, will you
14 share with me as much as you can recall the
15 discussions that you have had about the Bowman case?
16 And I don't mind telling you I am most concerned
17 about the events that occurred on the 17th, and
18 particularly on the 18th of February 2001, being the
19 Saturday and the -- particularly the Sunday.

20 A Yes, ma'am.

21 Q Tell me about that. Who have you talked to, if
22 anyone, about that?

23 A Yes, ma'am. I spoke with the solicitor, I spoke
24 with Sergeant Coker. I briefly spoke with Major
25 Stephenson mainly concerning the polygraph issue, and

1 I have briefly spoke to Lieutenant Nettles. Other
2 than that, I can't think that I spoke with anyone
3 other than maybe just a passing comment about, you
4 know, the sequestration, or getting ready for the
5 trial.

6 Q Sure. Sure. Let me tell you what I understand,
7 because I understand a very little bit, but -- and
8 maybe that will explain why I've asked you to come
9 back and return here today. It is my understanding
10 that following your testimony in some form, and I
11 understand that form was a conversation with Mr.
12 Bailey and a letter.

13 A A memo, yes, ma'am.

14 Q Which I have not seen.

15 A Okay.

16 Q So you need to know I have not seen that. I
17 have had the memo sealed, I have not reviewed it.
18 But I understand from counsel that you have expressed
19 some concern. The degree of concern, I have no idea,
20 but some concern about your testimony earlier. And
21 that really is the purpose of you returning.

22 A Yes, ma'am.

23 Q Is that I am interested to know about that
24 concern and I'm interested to know whether or not you
25 feel that you need to (a) correct something you

1 testified to earlier, or expound upon something that
2 you testified to earlier that perhaps you recalled,
3 or whatever.

4 A I expressed the question that was asked about
5 the defendant being allowed to go see his wife and my
6 memory concerning that.

7 Q Yes, sir.

8 A At the time it was not one of those issues that
9 just caused me any real concern and I'm sure that it
10 didn't sink in or, you know, it wasn't something that
11 I filed in my memory, my long term memory or
12 whatever. And after having the chance to think about
13 it for a while I do remember that he did go and see
14 his wife. And I remember that Major Stephenson had
15 left Orangeburg and went back to St. George. And I
16 couldn't remember if I rode with him up to Orangeburg
17 or not. And, therefore, I couldn't remember if I had
18 drove up, rode up with him. You know, it was just
19 one of those things that you're just in the course of
20 doing business.

21 Q You're talking about Sunday the 18th?

22 A Yes, ma'am.

23 Q Okay.

24 A And --

25 Q Tell me what you remember about that.

1 A I remember going up with -- I don't remember if
2 I drove and followed Major Stephenson, I think I
3 testified to that earlier. But, regardless, we went
4 up and Sheriff Williams and Chief Barbara Walters,
5 Major Stephenson, and myself because it was my
6 understanding that the defendant had asked to speak
7 to the investigators again.

8 Q Okay.

9 A And we did that. And, of course, after we got
10 there the defendant had asked to speak to Sheriff
11 Williams. And that's what ended up transpiring. I
12 believe that at some point Sheriff Williams came out
13 and asked for some statement forms, and I remember
14 some questioning about the statement forms. And I
15 gave him statement forms that I had in a little brown
16 folder that I was carrying at the time.

17 And at the end when I was given the
18 statements, I remember now putting those back in the
19 folder. And from my notes and reviewing my notes
20 again, on page 6 of my notes there's a notation about
21 going back to Branchville and having a meeting with
22 officers in the case and leaving there about
23 midnight. And I'm sure now that I gave that
24 statement to Sergeant Coker at that meeting.

25 Q All right.

Terrence A. Van Doran - Examination

1 A Other than that....

2 Q Do you have any memory about anything to do with
3 Mr. Bowman being transported back to Branchville on
4 Sunday evening the 18th?

5 A I think I remember walking out and helping him
6 being put in the patrol car. I think I remember
7 that. And I was in the meeting once we -- you know,
8 once it started back at Branchville. And I don't
9 know that I ever remembered seeing him again after
10 that.

11 Q You were in what meeting?

12 A The meeting where the other officers gathered
13 back at Branchville and met to discuss the case.

14 Q Okay. And was Mr. Bowman present at that time
15 in Branchville?

16 A I think that he was across the hall in one of
17 the smaller rooms, but I'm -- that's just from
18 recollection.

19 Q Tell me who you recall being in Branchville on
20 the evening of the 18th when you think, perhaps,
21 Mr. Bowman was present also.

22 A I think there was a Branchville -- a younger
23 Branchville PD officer that I didn't know. I think
24 at some point, and I don't think he's employed with
25 them anymore, that an officer by the name of Brian

1 Anderson came in at some point. And I had known him
2 from the past and we had a short conversation. And
3 then as best I can remember the other officers
4 continued to arrive and we had the meeting in the,
5 what I would call, courtroom area.

6 Q And who were they?

7 A Well, as best I can remember Lieutenant Nettles,
8 Sergeant Coker, myself, Major Stephenson. Sheriff
9 Williams may have been there, I just don't remember.
10 I don't know if he was or not. He may have been.

11 Q All right. And Major Walters, was she there?

12 A I don't know if she was actually in the meeting,
13 but I think that Chief Boom Walters was there in the
14 building as well and I think he may have come in and
15 out of the meeting. But the meeting ended about
16 midnight and we all went home from there.

17 Q Okay. All right. Have -- anything else that
18 caused you concern about your testimony that you felt
19 like you needed to -- I gather you'd supplement?

20 A I think the only other thing that -- I believe
21 that when Sheriff Williams came out and handed me the
22 statement so I can review it, during my review of the
23 statement he asked me something to the effect do you
24 mind if he goes and sees his wife. And I think I
25 answered something to the effect I don't have any

1 problem with it as long as he doesn't talk to her
2 about the case. Or words to that effect. But, you
3 know, like I said, at the time those things just
4 didn't seem that important to me and they're just
5 bits and pieces that I'm searching to remember as
6 time's gone on.

7 Q Tell me when you recall that last statement.

8 A It would have been while I was reviewing the
9 statement, if I remember correctly.

10 Q Did he say anything other to you than do you
11 mind if he goes?

12 A Not that I recall. It was basically like do you
13 have a problem with it? And I was like I don't have
14 a problem with it, you know, as long as he doesn't
15 talk about the case.

16 Q Did you find that unusual?

17 A I didn't really think about it that much. In
18 hindsight I -- knowing the few things that I do know,
19 it's my understanding that he knows the family, that
20 Sheriff Williams knows the defendant's family, and
21 that his wife may have had problems getting up to see
22 him or something to -- you know, I don't know how
23 easily she could have got up to Orangeburg to see
24 him.

25 I don't know that it was way out of the

Terrence A. Van Doran - Examination

1 ordinary for him to grant that request, but at the
2 same time, you know, my only objection would have
3 been if he would have been able to talk about the
4 case.

5 Q And you think your memory is that the sheriff
6 may have been in Branchville, he may have also
7 traveled to Branchville as well?

8 A Yes, ma'am.

9 Q Okay. All right.

10 THE COURT: Now, does that prompt any
11 questions from either of you, either from the
12 State or from the defense?

13 MR. BAILEY: Just a few for me.

14 THE COURT: All right.

15 EXAMINATION

16 BY MR. BAILEY:

17 Q All right. Mr. Van Doran, it's your
18 understanding the sheriff lives in Branchville,
19 Sheriff Larry Williams?

20 A I didn't know that.

21 Q All right. During the period of time that you
22 were in Orangeburg that Sunday, is there any, any
23 doubt in your mind that Sheriff Williams gave you the
24 statement in Orangeburg at the sheriff's office?

25 A No, sir. No doubt.

Terrence A. Van Doran - Examination

1 Q No doubt he did give you that statement there?

2 A Yes, sir.

3 Q Did you have a chance, based on your
4 recollection at this time, to observe the defendant
5 after he was interviewed by Larry Williams in
6 Orangeburg?

7 A Briefly, yes, sir.

8 Q Okay. And tell us about that. When did you see
9 him, what was going on, how close did you get to him?

10 A Well, he was still -- he was setting in the room
11 where I basically stood and reviewed the statement.

12 Q Okay.

13 A And if memory serves me correctly I helped the
14 deputy walk him out to the car.

15 Q All right, sir. And did you notice anything
16 unusual about him, his face, or any part of his body
17 being injured, or bruised, or anything?

18 A No, sir.

19 Q Okay. Do you recall anything unusual about his
20 demeanor?

21 A No, sir. The best I can remember he was
22 agreeable to what was going on. In other words, he
23 didn't have any problem with what was happening.

24 Q Okay.

25 A I was standing reading the statement, he was

1 setting in the chair. Best I can remember when we
2 walked him out to the car it was just a normal walk
3 out to the car and I went on to Branchville.

4 Q Okay. And when you got to Branchville, tell me,
5 again, do you have a clear recollection of whether or
6 not Bowman was in Branchville at the same time you
7 were there?

8 A I believe he was.

9 Q Okay.

10 A I believe he was across the hall. And at a
11 point the meeting started, and I was in the meeting
12 and didn't see him after that.

13 Q Tell me, when you say, "across the hall," what
14 side of the hall was he at to the best of your
15 recollection?

16 A I think the left -- as you go into Branchville
17 PD and you would pass the chief's office on the left,
18 the courtroom would be on the right. I believe he
19 was standing or setting in a chair on the left-hand
20 side of the hallway. And that's about the last time
21 I remember seeing him on that day.

22 Q Okay. Where was the meeting that you held with
23 the other officers?

24 A In the courtroom as best I can remember.

25 Q Okay. And do you recall any interaction between

Terrence A. Van Doran - Examination

1 any of the other officers and Marion Bowman that
2 evening in Branchville?

3 A No, sir. I mean, other than somebody standing
4 there possibly watching him, no, sir.

5 Q All right. Do you have any recollection seeing
6 his wife there in Branchville?

7 A I don't remember seeing his wife there at that
8 time, no, sir. I saw her earlier the day before.

9 Q Okay.

10 MR. BAILEY: Your Honor, I believe that's
11 all I have.

12 THE COURT: Thank you so much.

13 EXAMINATION

14 BY MR. CUMMINGS:

15 Q Good morning. Still good morning. Good
16 morning, sir. I just have you few questions on the
17 back of Mr. Bailey. And I want to go back a little
18 bit more like Her Honor did, Mr. Van Doran.

19 You testified you knew about the
20 sequestration order and you've complied with that
21 while you were testifying for the couple days we were
22 up here, right?

23 A Yes, sir.

24 Q And then there came a period of time where you
25 had left the building or whatever. When did you go

1 back and prepare that little memo to express your
2 words to the solicitor?

3 A That same evening.

4 Q Okay. So --

5 A As a matter of fact, I first called the
6 solicitor that evening and then I prepared the memo
7 the next day. The next day.

8 Q Did you go back and check your field notes as
9 you were preparing the memo?

10 A Yes, sir. I had checked my field notes.

11 Q And did you go back, and, of course, I know Her
12 Honor asked you this question and I'm just going to
13 say this again, you didn't talk to anybody from the
14 time you left the building, the courthouse, until you
15 picked up the phone and called our solicitor, sir?

16 A Absolutely not, sir.

17 Q Okay. When you did that, you were trying to
18 refresh or remember your memory?

19 A Yes, sir.

20 Q Okay. Because some questions came out in here
21 that you weren't sure of, is that --

22 A Well, at the time they just didn't seem that
23 important to me and, therefore, I didn't remember
24 them like I would remember some other issues, I
25 think.

1 Q You took great steps, in the very first meeting
2 when you met Mr. Bowman you took so many cautions and
3 so many questions about him initialling the side of
4 the form for Miranda warnings is your habit, your
5 practice?

6 A That's just our practice, yes, sir.

7 Q You take great strides about that, don't you?

8 A I do, sir.

9 Q Then there was a statement given?

10 A Yes, sir.

11 Q Then we know then we have a second statement
12 given after the polygraph, all right. And, again,
13 initials down the column?

14 A Well, if I may, I think there's been a little
15 confusion about these statements. The first
16 statement that was given was a verbal statement. The
17 very first statement after Sergeant Coker and I spoke
18 with the defendant was verbal. The first written
19 statement came after the polygraph.

20 Q So then you went back and you wrote that one
21 out?

22 A That's always been my -- my -- my testimony. I
23 think that there's been some minor confusion about
24 that, but that has always been my testimony. If
25 someone was referring to his first statement as a

Terrence A. Van Doran - Examination

1 written statement, it was a -- his very first
2 statement to Sergeant Coker and I was a verbal
3 statement.

4 Q Okay. And then let's go back right to the 18th,
5 okay? Who tells you that Mr. Bowman wants to speak
6 to law enforcement on a Sunday afternoon at four
7 o'clock in the afternoon?

8 A As is in my field notes as best I can recollect
9 it was Major Barbara Walters, but that's my -- that's
10 my understanding.

11 Q How did you receive the communication from an
12 Orangeburg --

13 A I don't have any idea how that -- that request
14 came in.

15 Q Obviously he's in the Orangeburg County jail,
16 right?

17 A Yes, sir.

18 Q I mean, from everything you've talked about,
19 testified about, there's no question or quandary
20 about that?

21 A Yes, sir.

22 Q All right. So you good folks leave our area,
23 Branchville, drive to Orangeburg on a Sunday
24 afternoon?

25 A Yes, sir.

Terrence A. Van Doran - Examination

1 Q Okay. Now, I understand you're old military,
2 rank has its privileges, right?

3 A Yes, sir.

4 Q Okay. So you're up there. And the night before
5 didn't Mr. Williams come to you and say, "Look, if
6 doesn't feel comfortable talking with you guys, I'll
7 talk to him," what we calmly call the third written
8 statement?

9 A I remember some discussion about the fact that
10 if we thought that it would do any good that he
11 would -- that he would talk to him.

12 Q All right.

13 A I don't know that he actually jumped out there
14 and volunteered to talk to him.

15 Q So in other words, that's what I want to say,
16 Dorchester County law enforcement, I'm not saying you
17 per se, sir.

18 A Yes, sir.

19 Q But you, or some member of law enforcement of
20 Dorchester asked the elected sheriff of Orangeburg
21 for some assistance that perhaps --

22 A I think there was some discussion about that,
23 but I don't know that it was an actual will you speak
24 to him for us. I think it was more along the lines
25 of do you think that he would talk to you and tell

1 you any more, and if so would you mind talking to him
2 or something liking that.

3 Q The purpose of -- you guys wanted to try to get
4 a statement?

5 A We wanted to get to the truth, yes, sir.

6 Q I'll ask you to answer my question first. You
7 wanted to get a statement?

8 A Yes, sir.

9 Q Okay. And that's where we're focusing on the
10 Jackson v. Denno. And, obviously, the idea of
11 justice is to get the truth, but you guys, not you
12 per se, sir, but cops wanted a statement, law
13 enforcement?

14 A I think we wanted to get as much information, as
15 much accurate information as we possibly could while
16 we were still working and was right there.

17 Q Okay. And you saw how Mr. Williams did that.
18 He talked to somebody a while, then went back and did
19 a handwritten statement and then came back in the
20 room, right?

21 A I did not observe any of that.

22 Q Well, who did? This is the whole thing. Again,
23 I'm not trying to be smart because you're Her Honor's
24 witness this morning and the Court's witness.

25 A I know Major Stephenson was in with him for a

1 short while. And then after he came out I don't know
2 there was anyone in the room except him and the
3 defendant. And I really don't know exactly which
4 room they were in because I had moved away from the
5 interview at that point, or the interview process at
6 that point.

7 Q So I'm just going to make this as easy as we can
8 for you and I and the Court. Clearly law enforcement
9 asked another law enforcement member to go in and
10 talk to him, correct?

11 A I don't know if the right word's "asked." I
12 think it was just discussed and it was agreed upon.

13 Q Well, in order to have an agreement you have to
14 have meeting of the minds and you have to have some
15 idea that somebody's going to do something. I'm not
16 playing words with you, I'm trying to --

17 A Yes, sir. I agree with what you're saying in
18 total. I just can't specifically answer exactly how
19 the sheriff agreed to speak to the defendant.

20 Q All right. And because of that situation that
21 night, 17th, my client, Ms. Thomas's client is put in
22 jail in Orangeburg County for whatever reason?

23 A For a different warrant that was served on him,
24 yes, sir.

25 Q Okay. Well, going back to that, did you see the

1 warrant served on him?

2 A I had understanding that there was a valid
3 warrant and I was present when he was taken into
4 custody.

5 Q Okay. I understand that. But you never saw the
6 paper?

7 A I don't know that I actually ever saw the
8 warrant in somebody's hands.

9 Q And you never had an NCIC computer check or
10 anything done for your backgrounds verification?

11 A No, but I was told by Chief Walters of the
12 Branchville Police Department and Detective
13 Varnadeaux that there was a valid warrant.

14 Q Okay. Let's go to the 18th. Drive up to
15 Orangeburg, okay. Did you try to talk to Mr. Bowman,
16 you or any members of Dorchester County?

17 A At first myself and Major Stephenson started to
18 try to, yes, sir.

19 Q Okay. There's no question about that, Mr. Van
20 Doran, because you just told Her Honor that's right,
21 you guys wanted to go back in for another statement?

22 A That's correct, sir.

23 Q Okay. How did it come to be then that Sheriff
24 Williams gets involved?

25 A The defendant asked to speak to him.

Terrence A. Van Doran - Examination

1 Q He told you --

2 A He personally told me that he would prefer to
3 speak to Sheriff Williams. I then went to Sheriff
4 Williams and told him what the defendant was saying
5 and he conceded to speak to him.

6 Q Okay. And it's your testimony today -- did you
7 see Mr. Williams write the statement out?

8 A No, sir.

9 Q Did you see where he went to to write the
10 statement?

11 A He and the defendant were both in the office
12 that they were talking together in.

13 Q Did you give Sheriff Williams the blank
14 Dorchester County forms to write the words down?

15 A He came out of the room and asked for some
16 statement forms and I had them in my folder and I
17 gave him the forms, yes, sir.

18 Q Okay. So he came out of the room and got the
19 forms?

20 A Yes, sir.

21 Q And then there's no question now, again, from
22 your memory now, that Mr. Bowman was taken down to
23 Branchville?

24 A I remember him going to Branchville, yes, sir.

25 Q One of the issues that you testified about for

1 the solicitor and for Her Honor, please, is that you
2 didn't want him talking to his wife about the case.
3 Why not?

4 A It was still a very active case, there was still
5 a lot of things that were being investigated. I have
6 worked other cases where unfortunately we have
7 granted access, defendants to speak to family members
8 and that sort of thing, and there has been some
9 interference in the investigation from that.

10 Q And I think it was your testimony the sheriff
11 says "Do you mind if he goes down to see his wife?"

12 A I believe that it was basically do you have a
13 problem with it, or do you care, words to that
14 effect.

15 Q And then your comment was as long as he doesn't
16 talk about the case?

17 A In so many words, yes, sir.

18 Q Isn't that what this whole situation was about,
19 if you had caught them talking about the case would
20 that not have been used to law enforcement's
21 advantage, sir, to try to show that people are trying
22 to hide something up, or maybe inculcate somebody
23 else?

24 A I just didn't want potential evidence being
25 messed with or someone -- another witness being

1 talked to or whatever.

2 Q Well, if that had happened it would have been
3 potential charge of obstruction of justice, maybe, or
4 clearly you would have had more words from my
5 defendant, or more words from his spouse and
6 complicity or conspiracy. But clearly he's
7 controlled by law enforcement, he wasn't able to get
8 out and go sit on the back swing and talk to her,
9 right?

10 A I wouldn't think so, sir. I think he was
11 monitored as if he -- during the visit I'm sure he
12 was monitored, at least I would have hoped he was.

13 Q And that's controlled by -- and, again, sir, not
14 you personally or professionally -- it's controlled
15 by law enforcement, his entire actions once he's in
16 custody is controlled by some law enforcement
17 officer?

18 A I would have to say that's true, sir.

19 Q Yes, sir. And so at that time law enforcement
20 controls who he sees, where he sees the person if at
21 all, when, how, and what the purpose would be, the
22 old saying, why.

23 A Well, certainly defendants are -- people that
24 have been in jails have asked for many different
25 things and some things get granted and some things

1 don't. And I think it's reviewed on a case-by-case
2 basis.

3 Q You would believe this is inducement for him to
4 give a statement? I'm asking you this flat out. On
5 a Sunday when he didn't want to talk to you folks, he
6 gets to see his wife on a Sunday after talking --

7 A I've certainly thought about that. And my
8 opinion is, is that I don't see how seeing his wife
9 had any impact on whether he provided us with a
10 confession or not.

11 Q If you had been told, again, I'm not asking this
12 as a hypothetical because you guys had agreements
13 that afternoon, we had law enforcement cooperation
14 between each other, but if you had been told -- and
15 I'll give you a good example because you've done this
16 for years -- tell us what's going on today or we're
17 going to have your wife picked up and your kids put
18 in DSS custody. Is that clearly intimidation by law
19 enforcement, or coercion?

20 A I've never done that and I wouldn't do that. If
21 someone did that I would think that that would be
22 coercive and I think that the courts have already
23 ruled on that.

24 Q Yes, sir. If it had been like a promise or
25 inducement to say if you talk --

1 MR. BAILEY: Your Honor, I'm going to have
2 to object to this. I think these are questions
3 for the Court to decide. What Mr. Van Doran
4 feels hypothetically would be the case may or
5 may not be what -- it's a matter of law.

6 THE COURT: I understand where you're
7 going. Mr. Cummings, I certainly don't want to
8 limit your cross-examination, but I think that's
9 the law.

10 MR. CUMMINGS: I apologize, Judge.

11 THE COURT: No. You do your
12 cross-examination because you may be going
13 somewhere else.

14 MR. CUMMINGS: I really don't believe that
15 was an unfair question, I would state that for
16 the record, please, Your Honor, to rule on the
17 case. This whole situation is exactly why we're
18 here, that nobody can tell us yet why he was
19 allowed to go see his spouse and you helped put
20 him in the car.

21 THE COURT: I'm happy to have you ask him
22 that specific question.

23 Q Why was he allowed to go see his spouse?

24 A Sir, the only thing I can figure is what I
25 stated before, that Sheriff Williams knew the family,

1 knew the situation of the wife and just thought that
2 it was the decent thing to do. That's the only way I
3 can answer that.

4 Q Okay. And you're speculating on that motive,
5 right?

6 A I am telling you my opinion only.

7 Q And you don't find it rare, because you kept
8 using the word unusual when the solicitor asked you
9 the question, you didn't notice anything unusual
10 about Mr. Bowman. Was it not unusual to be taken out
11 of jail on a Sunday afternoon to meet a family
12 member? This guy is a potential murder suspect.

13 THE COURT: I don't think Sunday afternoon,
14 Mr. Cummings.

15 MR. CUMMINGS: I think it was Sunday
16 afternoon, Judge.

17 THE COURT: Sunday evening.

18 MR. CUMMINGS: I apologize, Sunday evening.

19 THE COURT: I think it's nine o'clock,
20 isn't it?

21 THE WITNESS: It's evening, yes, ma'am.

22 MR. CUMMINGS: I apologize, Judge. I think
23 he was taken out of jail at 4:42.

24 THE COURT: 4:40 out of the jail to the
25 sheriff's department. The statement supposedly

1 says, the statement says it was begun at 7:35,
2 ended approximately nine o'clock so it would
3 have been sometime after nine o'clock when he
4 was transported.

5 MR. CUMMINGS: I apologize. I just got
6 that afternoon time frame out of the jail.

7 Q So all this time he's in law enforcement custody
8 and we know we're trying get another statement from
9 him and you've been very honest, very truthful about
10 that. And this is probably the greatest example that
11 we have about truthfulness, is that when you even had
12 a question in your own mind about anything you
13 contacted our head solicitor. And, again, being the
14 honorable man he is he tells us about it, brings us
15 up here. I think you were troubled about something,
16 right?

17 A I was only troubled because I couldn't remember
18 at the time.

19 Q Would you agree that it smells and looks awful
20 fishy late on a Sunday night to have somebody taken
21 out of the jail?

22 A Well, it's my understanding and it's my opinion
23 that he asked to go see his wife.

24 Q Okay.

25 A And the granting of that request, in my opinion,

1 and I can only tell you my opinion, would just be
2 simply because -- and I have to say Sheriff Williams
3 thought it would be the decent thing to do or he
4 wouldn't have granted the request.

5 Q One of the things that's fortunate about one of
6 the sequestration orders is you don't get to hear the
7 other people's testimony. You took some notes, you
8 took field notes?

9 A Yes, sir.

10 Q Okay. If you --

11 A Well, no. I really didn't take any field notes
12 on this I just -- my notes that I have here are from
13 memory. And like the couple -- I think on Monday I
14 started typing my notes.

15 Q And that's what I want to talk to you about now
16 because I want to make that clear on the record.
17 Because I had no other notes from you about this
18 issue and then when the memo popped up to the
19 solicitor you've been going back now and recreating
20 memos or memory notes now?

21 A No, sir. The notes that I have and I read from
22 are the notes that were prepared way back when this
23 case first began.

24 Q So that's the same notes?

25 A Yes, sir.

1 Q Okay. But you went back to check those notes
2 after testifying to try to clear your own memory up?

3 A That's correct, sir.

4 Q And as far as being unusual, when you put him in
5 the car did you see anybody at all log down the
6 importance of taking Mr. Bowman out that late at
7 night on Sunday afternoon down to see his wife?

8 A All I remember about that is I think I followed
9 the officer out to the car where he placed him in the
10 car and that's about it, sir.

11 Q Okay. When you got there wasn't Mr. Bowman
12 placed in the courtroom with his wife and other
13 people watching him in there instead of a small room?

14 A I don't remember, sir, honestly. I know I
15 arrived back there.

16 Q Okay.

17 A But like I said, I think that for a short period
18 of time I was out at my car. I may have went down
19 and got something to drink waiting on other officers
20 to get there. And then I was talking to the other
21 Branchville officers in the front office.

22 Q So if I asked you from memory or checking back
23 in your notes how many law enforcement personnel were
24 there Sunday night when my client arrived there or
25 during this time? Because you said you had a big

1 meeting?

2 A Well, the other officers arrived shortly after
3 that. I believe there was only a couple of officers
4 there when I first got back to Branchville.

5 Q And then you met until midnight you stated?

6 A Give or take, yes, sir.

7 Q With who, sir?

8 A Again, with Lieutenant Nettles, Sergeant Coker,
9 Major Stephenson, myself. I think -- I think the
10 sheriff may have been there, Sheriff Williams may
11 have been there. Chief Boom Walters I think came in
12 and out of the room. Those are the people that I
13 think I remember being there.

14 Q That you remember. And obviously if you don't
15 remember if Major Walters was there, the wife of
16 Chief Boom Walters?

17 A I don't remember if she was in the room, in the
18 meeting, I just don't remember.

19 Q Here's why I asked that question, Mr. Van Doran,
20 I apologize to you as a gentleman, okay?

21 A Yes, sir.

22 Q You got a lady at the building, and all us guys
23 who shave, law enforcement, you know, we got guns, we
24 got badges, and you got a lady on a Sunday night at a
25 public building. Would you wanted to have a female

1 present at this time you had any female around after
2 dark in any kind of enclosed billing?

3 A Alone, yes, sir.

4 Q So it would probably be fair to say that
5 somebody would have been smart enough to say we ought
6 to have at least a female deputy or at least somebody
7 here since this lady's in the building, right?

8 A She may have been there, I just don't know if I
9 remember seeing her in the meeting.

10 Q Okay.

11 MR. CUMMINGS: Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: All right.

14 (Pause in proceedings.)

15 Q This whole Sunday night is the reason why we're
16 basically here. This whole Sunday night did you see
17 anybody from Orangeburg write anything down, give you
18 folks anything other than the papers that
19 Mr. Williams hands you, is there anything else that
20 you saw somebody else doing from Orangeburg that you
21 can recall that night?

22 A Nothing in writing that I recall, no, sir.

23 Q How much verbal? I mean, again, from Orangeburg
24 County who was talking with you that night?

25 A The only person I remember talking to while the

1 sheriff was taking -- was speaking to the defendant
2 was Chief Walters, Chief Barbara Walters. There may
3 have been another detective there or another officer
4 there when I first got there, but they basically were
5 there and were gone.

6 Q Okay. How far away were you from the room where
7 the sheriff was talking with Mr. Bowman, the elected
8 sheriff, sir?

9 A I would say never further than where I'm sitting
10 to where Solicitor Bailey was sitting.

11 Q How long were you at that building while
12 Mr. Williams was alone with Mr. Bowman, sir?

13 A While he was alone with him?

14 Q Yes, sir.

15 A Forty-five minutes to an hour, maybe.

16 Q And how did it take so long from 4:42 in the
17 afternoon until he's down 7:35, at least on paper,
18 the beginning of the statement? I mean, any idea why
19 it would take, you said, 45 minutes?

20 A Well, we left about that time to go up there.
21 We didn't get there -- I don't remember getting there
22 at 4:42. I think it was later than that when we got
23 up there. Actually I think it was almost dark by the
24 time we got there that time of year if I remember
25 correctly.

1 Q But you stated that he was only with Mr. Bowman
2 about 45 minutes?

3 A To the best of my recollection, I don't think he
4 was with him much over an hour, if that.

5 Q And do you --

6 A Not where they were in the room by themselves.

7 Q And do you recall how many pages statement
8 number 7, or State's ID Number 7 might have been,
9 because you were given possession of it?

10 A I think -- I haven't read it for a long time,
11 but I think it was four or five pages, maybe.

12 Q And when you finished your testimony it was
13 later that night that you went back and tried to
14 recreate something in writing to the solicitor
15 explaining what your questions were about your
16 testimony?

17 A It would have been the next morning.

18 Q Next morning. Thank you.

19 MR. CUMMINGS: That's all the questions I
20 have, Judge. And I thank this gentleman.

21 EXAMINATION

22 BY THE COURT:

23 Q When you say that Mr. Bowman asked to see his
24 wife you're making an assumption, aren't you?

25 A I think I was -- I was in the room reading the

1 statement and I remember something being said about
2 "I want to go see my wife," or....

3 Q Oh, Detective Van Doran.

4 A Something to that effect, ma'am. I mean, that's
5 when the sheriff walked over and asked me "Do you
6 care if he goes and sees his wife?" or words to that
7 effect. But, again, I'm just trying to recall
8 because it just wasn't that important to me at the
9 time.

10 Q Okay. Thank you.

11 THE COURT: Anything further from anyone?

12 MR. BAILEY: Your Honor, nothing further of
13 this witness. I would like to be heard on it.

14 THE COURT: Sure.

15 MR. BAILEY: An issue that may or may not
16 relate directly to this depending on what Your
17 Honor's view of it is.

18 THE COURT: Very well. Thank you.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: You may be excused. Thank you
21 so much.

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 THE COURT: Yes, sir.

25 MR. BAILEY: Yes, ma'am. Your Honor, I'll

1 say this as an officer of the Court, I think Mr.
2 Cummings has all the discovery related to this
3 issue, so it shouldn't come as any surprise to
4 him. Mr. Bowman's wife, Dorothy Mae Bowman, as
5 you -- testified, as you know, has a plea
6 agreement with the State of South Carolina, his
7 two sisters, Kendra and Yolanda Bowman, also
8 have a plea agreement with the State of South
9 Carolina. The pistol that our firearms expert
10 says is the murder weapon was found in the
11 Edisto River. The sisters, Kendra and Yolanda,
12 have given statements to law enforcement that
13 they threw the gun into the river. One of the
14 sisters, Kendra, would testify that she got the
15 gun from Mr. Bowman's wife, Dorothy Mae Bowman.
16 And Dorothy Mae Bowman would testify that the
17 gun was hidden in a piece of furniture in the
18 house.

19 I would just submit that as a possible
20 reason that Mr. Bowman might have to talk to his
21 wife to try to have that potential deadly piece
22 of evidence disposed of. And I think the
23 concerns Mr. Van Doran expressed about him not
24 wanting them to discuss the facts of the case
25 would be the type of thing that I would probably

1 kind of think he had in mind.

2 But, Your Honor, I just proffer this
3 really to show that Mr. Bowman had a reason to
4 want to talk to his wife. And that may or may
5 not be beyond the scope of a Jackson v. Denno
6 hearing, but I think this thing is getting so
7 convoluted and all that, if we're looking at
8 whether or not Sheriff Larry Williams
9 manipulated the system and coerced him into
10 signing this statement because of threats
11 against the wife, I think it's just as likely a
12 scenario that Mr. Bowman was the one that wanted
13 to go ahead and work out something where he
14 could see his wife, because his wife had custody
15 and control of the murder weapon at that time,
16 Your Honor, I just --

17 THE COURT: Thank you so much. Yes, sir.

18 MR. BAILEY: If Your Honor wants me to
19 produce these people as sort of an adjunct to
20 the Jackson v. Denno hearing I can.

21 THE COURT: No, sir. Thank you so much.

22 MR. CUMMINGS: Judge, I stood up and I was
23 at least polite when I stood and I did not
24 interrupt the solicitor's objection and I think
25 I'm controlling my movements better today. But

1 with that proffer, Judge, I wanted to say that I
2 know Your Honor's not heard the evidence or been
3 presented any expert testimony yet as to what
4 was just proffered to you. And, again, Judge,
5 going back as a now defense proffer for a
6 moment, Mr. Bowman was in their custody since
7 Saturday morning. They searched that house
8 either with consent or otherwise depending on
9 how you rule, ma'am, and no gun was found,
10 nothing was found inside that home.

11 This alleged gun that's found is like
12 in June, four or five months later, God knows
13 where it could have been or who. If they were
14 that concerned about what he would tell his
15 spouse, why would they even offer to bring
16 Mr. Bowman to his bride? They controlled him.
17 There was law enforcement in that room and you
18 heard that testimony. Mr. Van Doran had him,
19 that's why we had sequestration.

20 This thing is convoluted and I agree
21 with the solicitor for one reason here, because
22 they didn't do the simple, basic things that
23 most police officers do; who, what, when, where,
24 how, and why. Everybody was involved usually
25 knows in big cases they're going to come to

1 court, they write down what they did and why.
2 This is just out of control because of their
3 actions, not the defendant's. He didn't walk
4 out of the Orangeburg County jail, he wasn't
5 left alone with anybody. If there was a witness
6 to the statement nine times out of ten we
7 wouldn't be seven or eight days into this thing.

8 And this good officer, you heard his
9 testimony. Now, again, you know, what he did I
10 think is probably the greatest reason why we all
11 love living around here. If they have a
12 question or they have something they go back to
13 people. And I'm sitting here trying to say that
14 at least there's some issue here that's
15 bothering everybody. And that's why. It's like
16 nobody knows what the right hand did for the
17 left hand. Well, they got to know. There was a
18 clear meeting and they clearly wanted a
19 statement from my client. That's their purpose.
20 And then, Judge, I argue, again, like we did
21 before, there was inducement and there was
22 coercion and I guess that's for Her Honor's
23 preference. But this is -- even after that,
24 it's still --

25 THE COURT: Oh, absolutely. I'm even

1 concerned about Detective Van Doran just even
2 his last comment, just happened all of a sudden
3 he's in the room and he hears the request. And
4 I -- I'm very troubled. I'm very troubled,
5 counsel, and I'll share that with you.

6 Let me shift, though, because as I
7 have gone through the different statements, oral
8 and written, what I'm -- what I particularly now
9 would like to hear from you is the statements
10 that were presented during the Jackson v. Denno.
11 I guess we never really talked about them. Of
12 course I have not seen the exhibits, they're
13 identification, and I have not specifically
14 looked at those. I certainly have my notes and
15 transcript from the hearing, but -- and I guess,
16 Mr. Bailey, let me ask you the statements that
17 I'm asked to consider are obviously the first
18 oral statement?

19 MR. BAILEY: Yes, ma'am.

20 THE COURT: And the detective talks about
21 that there's some confusion about whether
22 subsequent to the oral statement that was given
23 to Detective Van Doran and Detective Coker,
24 whether or not there was a written statement
25 prior to the polygraph. Because clearly there's

1 one after the polygraph. What of that, Mr.
2 Bailey?

3 MR. BAILEY: My understanding was is he
4 said there was a verbal statement given that
5 morning, polygraph was given next, then the
6 three written statements were given that
7 afternoon.

8 THE COURT: All right. Then there's the
9 statement that is given to Detective -- I mean,
10 to Sheriff Williams.

11 MR. BAILEY: That night, the two
12 statements, one the 16th, one the 17th.

13 THE COURT: One 17th, one 18th.

14 MR. BAILEY: Right, I'm sorry.

15 THE COURT: So let me just ask you to recap
16 them. We've got the oral statement prior to the
17 polygraph.

18 MR. BAILEY: Yes, ma'am.

19 THE COURT: The statement after the
20 polygraph.

21 MR. BAILEY: That's correct.

22 THE COURT: Given to...?

23 MR. BAILEY: Coker and Van Doran.

24 THE COURT: Okay. And then the statement
25 to Sheriff Williams.

1 MR. BAILEY: No. It was the second written
2 statement, again, given to Coker and Van Doran.

3 THE COURT: Okay.

4 MR. BAILEY: And then there was the third
5 written statement, that was the one that started
6 out Tim Stephenson, Larry Williams and Tim
7 Stephenson was asked to leave the room. That
8 was the first Larry Williams statement. And
9 then, of course, the one we're dealing with here
10 the next day. Those are the four written
11 statements. And then there were two, I think,
12 after he was transported to Dorchester County
13 and --

14 THE COURT: One on the 22nd and one on the
15 27th. And those are oral statements.

16 MR. BAILEY: Both verbal. And I had a note
17 from Sergeant Coker. I'm sorry, first one was,
18 I'm correct, was Sergeant Van Doran and Tim
19 Stephenson, the second one was Van Doran and
20 Coker, third was Larry Williams and, of course,
21 the fourth Larry Williams. I know you haven't
22 reviewed those statements.

23 THE COURT: That's right.

24 MR. BAILEY: This gets into the importance
25 of the fourth statement on the following day.

1 The three written statements, the verbal
2 statement given on the first day were all
3 exculpatory statements. And the investigation
4 wasn't consistent with those statements, that it
5 was an ongoing investigation, they didn't
6 believe Mr. Bowman's first statement, so that's
7 what led to the last statement.

8 THE COURT: Sure. All right.

9 MR. BAILEY: Your Honor, Mr. Cummings kind
10 of got into an argument on what sounded like
11 maybe a final argument and I didn't know whether
12 we were at that point yet or not, but I --

13 THE COURT: Final argument on...?

14 MR. BAILEY: On the Jackson v. Denno issue.
15 I'm not sure if you want to hear from us on that
16 or whether....

17 THE COURT: You know, let me tell you, you
18 know what I'm struggling with.

19 MR. BAILEY: I understand exactly what
20 you're struggling with.

21 THE COURT: Any words the two of you have
22 I'm happy to hear from you, because my plan is
23 to conclude my work today on this issue.

24 MR. BAILEY: Okay.

25 THE COURT: Because you need to know where

1 you are and I, quite frankly, need to make that
2 decision and we can all move on from that point.

3 Yes, sir, Mr. Bailey.

4 MR. BAILEY: Your Honor, I would be a fool
5 not to get up here and concede that that date is
6 awful fuzzy in everybody's memory. The first
7 year I was solicitor we had 23 murders in
8 Orangeburg County in 1993, that's like every
9 other weekend. I've got a file in my office on
10 double homicide in Orangeburg that is probably
11 no more than half an inch thick. And I hate to
12 say it, but murders are routine in Orangeburg,
13 this was not an unusual occurrence. It wasn't
14 an Orangeburg case, they didn't generate any
15 paperwork. When it is their own case they don't
16 generate a lot of paper on it. And I think
17 we're struggling with a lot of bad memories.
18 Sergeant Coker's the case officer and his file
19 is this thick. I mean Mr. Cummings has seen
20 that, it's a tremendous effort to document
21 everything that took place.

22 THE COURT: I've seen the notebooks. I've
23 seen law enforcement notebooks, yes, sir.

24 MR. BAILEY: Unfortunately he was not
25 present in Orangeburg on that Sunday afternoon,

1 Sunday evening to document everything and I'm
2 sure if he had been there we wouldn't be here.
3 But the bottom line is it was not documented, it
4 boils down to a credibility issue. And, again,
5 I think the bottom line is whether or not as far
6 as credibility, there are two people in that
7 room, Larry Williams, elected sheriff of
8 Orangeburg County, and Marion Bowman who, of
9 course, is the defendant, with every reason in
10 this world to fabricate the story that he came
11 up with.

12 He alleged that he was beaten, yet
13 even his wife testified that she saw no marks,
14 he didn't act anything out of the ordinary.
15 Mr. McLin, who transported, saw nothing wrong
16 with him, didn't appear to be in stress of any
17 type. Van Doran who was there recalled seeing
18 nothing that would cause him any concern about
19 any physical abuse.

20 Mrs. Bowman didn't say anything about
21 being threatened, coerced, her children being
22 threatened or anything. She was asked to come
23 down there, she came down there, she met with
24 him and he didn't express any concern, any fear,
25 or anything of that nature.

1 Your Honor, again, I said this before,
2 but if there was an effort on the part of the
3 sheriff of Orangeburg County to take another
4 county's case and jeopardize his whole career
5 and basically commit perjury and potentially go
6 to prison over it, certainly it wouldn't make
7 any sense for him to do that with a Dorchester
8 County case that he wasn't concerned enough
9 about to even document anything, or open a file,
10 or assign a case number to it. If he had wanted
11 to commit these felonies that he would have to
12 have committed if you accept Mr. Bowman's
13 version of what happened, then it would have
14 happened the first day. If they had wanted to
15 get him to confess they would have done it that
16 Saturday instead of going through all this
17 Sunday afternoon, Sunday night stuff
18 transporting back and forth.

19 All the players were there,
20 Mrs. Bowman was there, the sheriff was there,
21 Marion Bowman was there, the statement forms
22 were there, everything was in place. I mean, if
23 they weren't operating in good faith why would
24 they have, you know, conjured up an exculpatory
25 statement. And, again, Your Honor, in regard to

1 Mr. Bowman's credibility, you've heard him
2 testify that he can't read, his wife gets up
3 there, yes, he can read, he reads the newspaper.

4 The statement that we're dealing with
5 here, that supposedly is made up by Larry
6 Williams out of hole cloth, he claims not to
7 have any input into that statement at all, it
8 was prewritten and handed it to him as a
9 completed statement. He's told to sign it, he
10 hadn't read it. But the account of necrophilia
11 that's related in that statement is almost
12 verbatim what he told the people at the state
13 hospital. And, again, Your Honor, that just it
14 bears on credibility.

15 And I think you got one person's word
16 against another and a whole lot of other people
17 on the edges with poor memories and no notes.
18 And I concede it puts the Court in a -- there's
19 nothing really to grab onto here.

20 THE COURT: It is very difficult. And what
21 is difficult about it, and I've gone back and
22 researched it, and of course once the -- it's
23 not a burden shifting that happens with the
24 State. Once it's raised it still remains the
25 State's burden. And everyone agrees that it was

1 most unusual to have transported him to
2 Branchville that evening, everyone agrees that
3 it was unusual. Except, of course, for the
4 sheriff who has absolutely no memory of it
5 occurring at all, which is of great concern, but
6 does deny that he would never do anything like
7 that.

8 And it just -- it just is -- and no
9 one gives any explanation of why it occurred.
10 You know, I mean there was some talk about it
11 was humanitarian. And I got to tell you that
12 I'm not -- I give no stock in Detective Van
13 Doran's last comment because it was way too
14 convenient, to be honest with you. And I hate
15 to say that about an officer, but I gave him
16 every opportunity when I brought him in here to
17 tell me anything he remembered about that. And
18 he did not remember hearing the defendant ask to
19 go to see his wife until that was an issue and
20 that's way too convenient. So I must tell you
21 that I put no stock in his testimony, that all
22 of a sudden he happens to remember that. And
23 that's very disconcerting to me.

24 I continue to struggle with it. It is
25 the State's burden. He was, the defendant was

1 immediately transported to Branchville in a most
2 unusual fashion and it's disconcerting. And I
3 will continue to look at it over the balance of
4 this evening because I do plan to make a
5 determination, let you all know what that is
6 tomorrow. Thank you also for the statements.

7 Do you agree with the counting of the
8 statements by Mr. Bailey?

9 MR. CUMMINGS: Yes, ma'am. And, Judge,
10 that's what -- again, I'll be very brief because
11 I know Your Honor has heard both of us for days.

12 THE COURT: Okay.

13 MR. CUMMINGS: The setting is the main
14 thing. It's not a credibility issue under
15 Jackson vs. Denno, Your Honor, of course
16 witnesses from years of experience, but it's not
17 a credibility issue. It goes to whether freely,
18 voluntarily, knowingly given, or whether there's
19 any promise, coercion, duress. And the Court
20 has to look at the surroundings, the totality.
21 Everybody argues the totality today.

22 Well, one of the issues that came up
23 today, thank goodness, was Mr. Van Doran said,
24 "We didn't want him talking to his wife." So
25 what was the purpose of bringing him down there

1 for then if we didn't want him to talk to his
2 spouse, this humanitarian issue that Your Honor
3 picked up on, too. And this maybe is too simple
4 for me to understand here, but they wanted a
5 statement. And that came out, again, today from
6 Mr. Van Doran and that's what cops do. They're
7 nosey, they weren't -- you know, they wouldn't
8 be in the job they're in. But they wanted a
9 statement. They brought him there. If he was
10 not allowed to talk to her, then why have
11 Mr. Bowman there to see his spouse?

12 And, Judge, I like to teeter-totter.
13 There was no burden shifting as you pointed out
14 here, but clearly we look at the teeter-totter
15 issue without going back up here, it lends great
16 credence to the Court to look at Mr. Bowman,
17 I'll show you how powerful I am as the elected
18 sheriff and I'll have your wife brought there.

19 Mr. Lichtenberger said he was ordered
20 by the sheriff to pick her up. These are simple
21 folks, Judge. And you saw Ms. Bowman, obviously
22 you had to see my client, you look at their age,
23 education, experience with law enforcement.
24 Everybody knows Chief Boom Walters. They carry
25 copies of warrants around which is against our

1 criminal rules and regulations.

2 If the policeman comes to her door,
3 what choice has she got as long as she's not
4 going to jail. They said, well, you're going to
5 go see Marion, whatever they said. We're
6 speculating. That evidence is for Your Honor's
7 discretion, you've read the transcripts, you've
8 read what was testified to.

9 Judge, the first thing is every one of
10 these statements; one, two, three, they didn't
11 have what they wanted and now they want to go
12 back and get more. That's the main crux in this
13 thing as to the fourth written statement, they
14 had to have more that day. And they got it
15 somehow.

16 That somehow is for Your Honor's
17 discretion. And clearly we got an unwitnessed
18 statement. It's got witness lines on those
19 statement forms for a reason and I point that
20 out to the bench because how easy it would have
21 been to have somebody witness State ID Number 7,
22 how easy it would have been to have the wife
23 brought to the law enforcement complex so that
24 some people would say, you know, have her up
25 here and then Mr. Bowman could have control of

1 the situation. He was brought to somebody else,
2 he's in their hands.

3 Your Honor, as far as the good faith
4 argument here, it's not good faith when they
5 can't recall, when the government can't recall.
6 This is not individual axis, the government
7 versus Mr. Bowman, State of South Carolina. And
8 so, judge, we know the non-humanitarian issue
9 clearly is a nice word, but it's not there for
10 human or else why would he have been allowed to
11 talk to his spouse? They had him in custody for
12 two days now, they control his every movement.
13 He could have got to a phone, maybe, up there.

14 The sheriff of Orangeburg, the senior
15 law enforcement officer, doesn't even tell an
16 underling to write an incident report down or
17 make sure you control the situation? That goes
18 beyond every condition. If we look around at
19 the number of officers in this room, the
20 experience they had back when Major Moultrie was
21 on the job and out here every day, everything
22 was who, what, when, where, how, and why. And
23 they had a scrivener around and he knew how to
24 tell people correct it, write it down, do
25 whatever.

1 Smitty, like every case around here,
2 they make him go do things now still. And
3 that's what I'm looking at here, is who
4 controlled this? Is there a reason why there
5 was no control? And the reason is, Judge, they
6 got what they wanted that night, a statement.

7 I know, Judge, this is a legal
8 quandary issue, and I say this openly to the
9 bench and to my solicitor, too. If Orangeburg
10 has a habit of not documenting things, if
11 Orangeburg has a habit of not following the
12 rules and regulations that our case law set out
13 and our statutes, then so be it. I think it was
14 Justice Leonard Hand said, "If the constable
15 errs the guilty may go free." And I don't want
16 to misquote that, I'm trying to go back a lot of
17 years now and remember. It's not that we want
18 the guilty to go free, we want the rules
19 followed, we want the regulations followed, we
20 want our case law followed.

21 Jackson v. Denno, the State's got the
22 burden of proving every statement was given
23 free, voluntarily, knowingly and not by promise,
24 coercion, duress, ma'am. And, Judge, it's not a
25 credibility issue. And it's easy to say we got

1 cop versus a citizen. Well, we're not allowed
2 to ask that question on voir dire. I mean, if
3 there's a reason why we're not allowed to ask
4 it. And I keep trying to point that out to
5 everybody that we can't put any more weight as
6 to having a badge versus not having one. And
7 the other issue is we all know that anybody
8 who's got to deal with the State's got to say
9 what they got to say or else they lose their
10 deal. And the one thing is, first question we
11 both asked, the solicitor and I, and Ms. Bowman,
12 why are you here?

13 You know, I look at this case and I
14 say it's hard for me to attack my own police
15 officers in my own county. And I've done that.
16 And I've even heard some backtalk about why am I
17 being so hard on my policemen, why am I being so
18 hard? And I think the greatest thing in the
19 world that we all did in here is try to do
20 justice. And I wanted to say that out loud here
21 today because I respect everybody who's in this
22 room, worked with them for years and I helped
23 prosecute when I worked for Walter, and the only
24 thing we want to do is try to make sure the
25 rules and regs are followed.

1 I'm asking you, Judge, the statement
2 be suppressed. I believe that it was induced, I
3 believe that Mr. Bowman was coerced and I'm
4 asking Your Honor that would be my final
5 argument on behalf of Ms. Thomas, Mr. Bowman,
6 and I, that the statements be suppressed, ma'am.

7 THE COURT: Thank you, sir.

8 MR. CUMMINGS: Thank you.

9 THE COURT: All right. Very well. Let me
10 move on, if I may, to some other issues. And
11 one would be the ruling on the request of the
12 State that there not be any matters regarding
13 religious, quoting from the Bible, et cetera.
14 And I want to cite for your purposes the State
15 vs. Patterson case, 324 S.C. 5, 428 S.E.2d, 760,
16 1997 case. And in that case of course the
17 concern of the appellant was that the trial
18 judge erred in prohibiting him from repeating
19 the Biblical stories during the closing
20 arguments.

21 And let me say that for purposes of
22 this trial I do not want there to be any
23 references, any Biblical references. And I
24 gather I adhere to render unto Cesar that which
25 is Cesar's and unto God that which is God's.

1 And I believe this is Cesar's work, rather than
2 the Lord's work and so I'm going to ask that
3 religious references not be a part of this
4 trial.

5 I guess, Mr. Bailey, I'm going to have
6 to ask you to prepare that order for me.

7 MR. BAILEY: All right.

8 MR. CUMMINGS: Just note my objection,
9 respectfully, for the record.

10 THE COURT: Absolutely. And let me say
11 your argument was eloquent, but based upon my
12 research this is how I wish for this trial to
13 proceed.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: With regards to the polygraph,
16 have you had a chance to look at that motion?

17 MR. CUMMINGS: Absolutely, Judge. I concur
18 125 percent, and I'll make it real simple, yes,
19 ma'am.

20 THE COURT: Great. Thank you. Another
21 order for me, please, Mr. Bailey, on the
22 polygraph. That venue still is premature. And
23 then we've got the photographs and the motion to
24 suppress. So why don't we take a short break,
25 all right?

1 MR. BAILEY: Your Honor, I've got the
2 photographs with me if you want to see those now
3 or after the break, whenever.

4 THE COURT: We'll just do it after the
5 break, we'll all take us a short break and then
6 we'll return and do that. And you have the -- I
7 gather the photographs that we're going to deal
8 with would be the photographs specifically that
9 you intend to introduce into evidence?

10 MR. BAILEY: Yes, ma'am.

11 THE COURT: All right.

12 MR. BAILEY: Can I release Mr. Van Doran?

13 THE COURT: Absolutely.

14 MR. BAILEY: Thank you.

15 THE COURT: Thank you.

16 (Recess, from 12:40 p.m. to 1:27 p.m.)

17 THE COURT: All right. I want to do the
18 suppression, handle that next. All right. Then
19 we'll do photographs last.

20 MR. CUMMINGS: I want to start from the
21 very beginning of the date of the arrest of
22 Mr. Bowman if I might. Your Honor, again, my
23 client, this may overlap. I apologize if I'm
24 not making myself clear right off the bat. When
25 my client was arrested my first legal argument,

1 Your Honor, the arrest of my client was
2 unconstitutional, unlawful, this is based on the
3 following argument: That my client, as you look
4 through the transcript, look through all the
5 notes, nobody remembers who placed him under
6 arrest.

7 We have a specific statute in South
8 Carolina that says a defendant must be informed
9 of his rights to an arrest, he must be given
10 notice of the charges. We clearly know from
11 Mr. McAlhany that he was not served any copy of
12 a warrant until the 18th of February when he was
13 placed in the Orangeburg County jail.

14 Looking back the alleged warrant for
15 receiving stolen goods, Your Honor, clearly was
16 taken out sometime in December and my client was
17 arrested on February 16th, morning hours of the
18 17th. For what nature I'll leave to Your
19 Honor's preference and your deference, ma'am, as
20 far as the nature of the arrest.

21 And I believe the arrest is unlawful
22 based on the following issues. Pursuant to
23 Blassingame, Your Honor, I must be specific as
24 to my allegations. One, my client was not
25 informed of the nature of the arrest and what

1 for. I don't think there's any testimony
2 anywhere in here that saying either Chief
3 Walters or whoever said you're under arrest for
4 stolen goods. None of that. No evidence
5 offered as far as this presumption of the case
6 here whether or not he really was given the
7 right to understand the nature of the offense,
8 whether it was a felony or misdemeanor. There's
9 been no proof saying he had knowledge of an
10 outstanding felony warrant. Judge, a copy of a
11 warrant is insufficient. This is illegal to
12 have a copy of a warrant. The copy of the
13 warrant hasn't even been produced in the various
14 stages of this issue.

15 Again, I know we're dealing with an
16 Orangeburg County issue. The solicitor brought
17 up the case file from Orangeburg and in that
18 case file it shows my client had never received
19 a bail or bond hearing as to that offense. That
20 is in violation of our state statute as dealing
21 with arrest.

22 Now, we all know that nobody cares
23 about the receiving stolen goods charge, but
24 that is the nature of the offense and nature of
25 the arrest. And, Your Honor, pursuant to Wong

1 Sun vs. California (phonetic), Your Honor, any
2 fruits of the illegal arrest should be
3 suppressed. Judge, as far as Escavedo vs.
4 California, again, that is the wingspan case.
5 My client is taken into custody by whomever, I
6 don't know if it's Dorchester County.
7 Dorchester County had no authority to arrest my
8 client in Orangeburg County, Your Honor,
9 respectfully, there is state law and case law
10 and I don't want to misquote, that that says
11 anybody sees a felon they have the right to
12 arrest a felon without a warrant, but when a
13 third party's home you have to have a search
14 warrant.

15 Judge, no search warrant was ever
16 issued to enter the residence of Mrs. Bowman.
17 She made it real clear on the stand that was her
18 home. I know the State would argue that my
19 client has no standing as to that, but the very
20 first issue that pops into question here is was
21 my client arrested and evidence received
22 lawfully. One of the exceptions to the search
23 warrant rule, and this is search incident to
24 lawful arrest. Well, when the pants were
25 obtained, were received and gathered by law

1 enforcement, was it an Orangeburg County officer
2 who got the pants? No. It was a Dorchester
3 County officer, Mr. Van Doran, or either
4 Mr. Coker from my memory being correct.

5 And they stated for the Court, again
6 I'm not trying to be in error here, they stated
7 he needed a pair of pants to put on, therefore
8 they go to a couch, they see a pair of pants
9 there. Clearly they're walking around in the
10 home.

11 As they find a pair of pants they say,
12 no, let's not give him his pants, we may have it
13 for evidentiary value based on what is my
14 argument to the Court. What legal reason do
15 they have to seize his clothing? He's arrested.
16 Allegedly, if the Court were to find that his
17 arrest for receiving stolen goods is lawful,
18 what issue is the pants based on that case? And
19 that's why it's imperative for the Court to
20 understand why this man was arrested. So if
21 they're saying a search incident to lawful
22 arrest at that time that -- again, Your Honor,
23 we believe the arrest was unlawful.

24 If they're saying they were seeking
25 evidence, we know from the exhibits that's

1 presented to the Court that Mrs. Bowman gave
2 consent allegedly to my client having his pants
3 searched inside her home. Well, she didn't sign
4 the consent form, the search begins at 10:23 and
5 the search ended at 10:50. At that time they
6 obtained one pair of black Adidas boots located
7 in the living room, one pair of black Levi's
8 jeans in question here, a lady's watch with a
9 brown band located in left front pants pocket,
10 also a tube of Blistex, subject's driver's
11 license, a receipt. One more item, Judge, one
12 black coat located in the back bedroom. All
13 items recovered by Sergeant Coker. He is a
14 Dorchester County officer.

15 Your Honor, they had no authority at
16 that location to search. There is not a legal
17 issue. There was not a legal search warrant
18 drafted at that point. They got permission from
19 Ms. Bowman to search. She can't give permission
20 for his pants, respectfully, Judge. And she
21 made it real clear that he didn't live there.
22 He hung out there once in a while, but that was
23 not his residence. He had standing for his
24 items, maybe not the location if the Court were
25 to rule that way, but he had standing as to his

1 position, his person.

2 Your Honor, respectfully, the next day
3 they go back after my client's clearly in
4 custody and they get another consent to search
5 form. And that's signed, again, Sergeant, looks
6 like, Lichtenberger on the 18th. And with this
7 consent to search form they search the property
8 again. At that point my client is clearly in
9 custody, he is out of the residence. They
10 searched that house upside down, inside out for
11 a weapon, other items, bullets, you name it.
12 They found nothing. Four months later
13 mysteriously somebody says they had a dream and
14 a weapon is found in some water. My client's
15 incarcerated the whole entire time from February
16 until June when this item is allegedly found
17 and, by the way, law enforcement has found it.

18 Any information that deals with
19 Mr. Bowman would be stale four months later.
20 There's nothing concerning Mr. Bowman as to the
21 information dealing with recovery of any
22 evidentiary items here. Obviously any citizen
23 can call the police, any citizen can tell people
24 anything that they choose to. But as to
25 anything dealing with Mr. Bowman, he clearly was

1 in custody, he had no standing to argue any
2 issue dealing outside of items found by other
3 people and to try to be tagged back into this
4 case.

5 But, Your Honor, respectfully, going
6 back to this, if the fruits of the poisonous
7 tree, if he was arrested unlawfully, any
8 unlawful information was gathered as a result of
9 the unlawful arrest to include these statements,
10 then I am asking the Court to suppress those
11 statements.

12 The case law has -- says you are to
13 look at the totality of the circumstances
14 surrounding the arrest, surrounding the
15 searching, if the officers are acting in good
16 faith, give great weight to good faith, the
17 matters. Because of the combination of the
18 officers involved in this case, Dorchester
19 County and Orangeburg, I'm asking the Court to
20 go back briefly and look at their jurisdiction
21 and their authority to be in that home and what
22 nature of the offense to arrest my client.

23 Your Honor, respectfully, any items
24 that were found in his pants he did not give
25 permission for anybody to seize or gather for

1 any evidentiary purposes. Law enforcement
2 clearly was there. They used the pretext of a,
3 for lack of better words, Judge, receiving
4 stolen goods charge that somebody knew about,
5 okay? And you've heard all the testimony about
6 how they got there and why.

7 THE COURT: Let me ask you this: What
8 about I think it's State vs. Sims?

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: State vs. Holmes I think is the
11 second case. What about those cases?

12 MR. CUMMINGS: Yes, ma'am.

13 THE COURT: I've read those cases and what
14 those cases indicate it appears -- and, of
15 course, they both cite is it New York vs.
16 Payton?

17 MR. CUMMINGS: Yes, ma'am. They refer to
18 Payton, yes, ma'am.

19 THE COURT: What those cases, as I
20 understand what they stand for, they stand for
21 the proposition that a warrant does not have to
22 be in hand so long as law enforcement is acting
23 upon information that there is in existence a
24 valid warrant, which is what was testified to
25 consistently by the officers.

1 MR. CUMMINGS: And that goes to the weight,
2 Your Honor, that I tried to present here whether
3 or not they really knew that there was an
4 outstanding warrant, since it was only allegedly
5 signed by a judge in December. No case file or
6 anything had ever been gathered about this case
7 and there was some talk of a copy of a warrant
8 being -- floating around.

9 But every time I asked a question
10 about who had the warrant, who had access to it,
11 how it got there, who got the warrant to get
12 Mr. McAlhany to sign, and he couldn't remember I
13 think because he never wrote anything down about
14 booking report or how or where he got the
15 warrant, how he served it on him. It was not
16 served or gathered until the next day on the
17 18th. I defer to Your Honor's reading of those
18 cases. I'm making the best legal argument I can
19 on behalf of my client.

20 THE COURT: I understand.

21 MR. CUMMINGS: That if there is a felony
22 arrest made here, then obviously he does not
23 have to have a warrant in their possession. But
24 with the confusion there that day I don't
25 believe anybody testified that they arrested

1 Mr. Bowman, respectfully, Judge, for receiving
2 stolen goods based on the warrant there even
3 after the week who arrested who and for what
4 reason. And they have to comply with our state
5 statute, Judge, respectfully, telling a citizen
6 what he's arrested for and how, or else it's an
7 illegal arrest. The officer may be prosecuted.

8 And on that note, Judge, and of course
9 I would reargue my motion that anything that's
10 found as a result of that since it was a search
11 incident to lawful arrest, it would be an
12 illegal search. If the Court were to find that
13 Mrs. Bowman gave consent, she had the standing
14 to argue that it's my house, she gave consent to
15 search his pants, again, I respectfully disagree
16 with Her Honor. But I know, Judge, that's
17 probably where the State's going, that he has no
18 standing to argue.

19 But to arrest a citizen at a home of
20 another party the State has to have a search
21 warrant if it's not voluntarily allowed into the
22 presence of a house. And this is a third
23 party's house then. This is the spouse of
24 Mr. Bowman, but, respectfully, this lady made it
25 real clear that he stayed a lot more places than

1 just there and that it was not his main
2 residence.

3 THE COURT: She certainly did. She
4 certainly did.

5 MR. CUMMINGS: Your Honor, the legal
6 argument that I would present to you is as
7 follows: Clearly Mr. Bowman did not give
8 consent, clearly Mr. Bowman, everything they
9 found, was a result of the arrest as Your Honor
10 finds the facts and as testified to here today.
11 Your Honor, respectfully, this consent to search
12 form clearly is after my client is arrested and
13 items are seized. And there's no question about
14 the testimony of that. And I believe from your
15 reading of the transcript that may be in Her
16 Honor's preference or deference, but I believe
17 that has happened.

18 Your Honor, respectfully, as to that
19 issue the most important day in question as his
20 arrest -- taking all those cases in the context,
21 it does go back to looking at the circumstances
22 and the totality is Payton really is right on
23 point on this issue except for the fact that my
24 client would have had every opportunity to have
25 known what he was being placed under arrest for

1 to protect his well being and maybe have some
2 say in this thing as far as whether or not those
3 pants clearly belonged to his control, his
4 dominion. They were outside his wingspan.

5 Law enforcement at that time would
6 need a search warrant to obtain them for
7 evidence, they seized those. They're looking
8 for a murder issue not receiving stolen goods
9 clearly, they had no issues of the fruits of the
10 crime of receiving stolen goods. And so we
11 look, again, going back to the totality of what
12 was the purpose of taking his pants.

13 In and of itself Blistex is not
14 illegal, in and of itself a watch is not
15 contraband or illegal, in and of itself his
16 black Levi's are not contraband or illegal.
17 Clearly law enforcement took those items to
18 enhance the investigation of the alleged
19 homicide investigation. And that's the issue
20 for search and seizure here, that how did they
21 obtain these pants, did they do it through
22 officer safekeeping. He was arrested,
23 incarcerated, they chose to seize those pants as
24 a result of a homicide investigation not
25 receiving stolen goods, not for any issue of

1 contraband, Judge.

2 Based on that I believe because of the
3 nature of the arrest and offense that the
4 officers searched without consent. They did the
5 searching prior to getting any consent from
6 Mrs. Bowman, therefore, Judge, respectfully, the
7 pants and anything found therein should be
8 suppressed.

9 MR. BAILEY: I don't think there's any
10 dispute even through there was an outstanding
11 arrest warrant, nobody has really challenged the
12 validity of that warrant. And the two cases
13 that Your Honor referred to, Sims and Holmes,
14 clearly stand for the proposition that the
15 officer does not have to have that warrant in
16 hand as long as they know about it. Chief Boom
17 Walters said that he knew of the existence of
18 that warrant, they went out there, they arrested
19 him clearly under that warrant and not under the
20 murder case which didn't come until much, much
21 later.

22 In regard to the standing issue, if
23 you get past the search warrant requirement or
24 the arrest warrant situation, Mrs. Bowman owned
25 that, or rented that trailer. She claimed that

1 was her house, he had some clothing there but
2 didn't live there. Mr. Bowman says that was not
3 my home. Your Honor, he had no expectation of
4 privacy in a place that was not his home. So
5 number one -- my position is twofold. Number
6 one, no standing on the part of Mr. Bowman;
7 number two, if he had standing we're dealing
8 with third party consent and there's several
9 cases that I think are in point on that, first
10 being State vs. Middleton which is 222 S.E.2d,
11 763. All these are South Carolina cases.

12 In Middleton there was a question
13 whether a pair of pants, some tennis shoes
14 should be admitted into evidence. They belonged
15 to Middleton, were obtained in a search of his
16 bedroom two days after a rape and robbery.
17 His -- the defendant's father had signed a
18 consent to search form and Middleton contended
19 the pants and shoes should have been excluded
20 under the Fourth Amendment because the father's
21 consent was ineffective and not voluntary.

22 And our Supreme Court referred to U.S.
23 Vs. Matlock, 415 U.S. 164, which set out the
24 test for determining whether a third party had
25 sufficient status to consent to a search. And

1 that test is whether the third party possessed
2 common authority over, or had some other
3 sufficient relationship to the premises or
4 effects searched. And they went on to hold that
5 Middleton's father had sufficient status under
6 the test in Matlock to consent to the search of
7 Middleton, the defendant's bedroom, where the
8 pants were taken.

9 Common authorities clearly established
10 from the fact that Middleton's father both
11 provided and also occupied the apartment which
12 Middleton lived. This case is even stronger for
13 the proposition that Mrs. Bowman could consent
14 to it. There's no contention even that
15 Mr. Bowman was in his own bedroom or bedroom he
16 used. The testimony was he was in the one of
17 the children's bedrooms hiding under the bed in
18 his underwear. So clearly he had no expectation
19 of privacy.

20 The scenario regarding the pants as it
21 unfolded in this case was he was arrested for
22 receiving stolen goods, an Orangeburg case, an
23 Orangeburg deputy is there, Dorchester deputies
24 there all acting in concert. They don't want to
25 carry him out to the car in his underwear, his

1 pants are there, my recollection is --

2 THE COURT: They send Ms. Bowman for the
3 pants.

4 MR. BAILEY: He wanted to put those pants
5 on. Obviously the law enforcement has a right,
6 there may be a gun, or a knife, whatever there,
7 before given those pants to check it out. And
8 they did. They found a woman's watch in the
9 pocket, which clearly was unusual enough to
10 raise an alarm in their mind, especially in view
11 of the fact that they're dealing with
12 investigating the death of this young woman. So
13 two other cases on point. And, again, our case
14 is closer than these cases are because
15 Mr. Bowman's saying this isn't my apartment,
16 this isn't where I live, and Mrs. Bowman's
17 saying the same thing.

18 State vs. Moultrie, 248 S.E.2d, 486
19 dealt with a defendant sharing a room with a
20 young woman. The young woman's father, Robert
21 Evans, owned the house. Police approached the
22 owner of the house, he consented to the search
23 of the residence. They, again, referred to
24 Matlock, common authority, and says the guest in
25 Evans' home, appellate assumed the risk, the

1 homeowner would allow others into the area.

2 Final case, Your Honor, State vs.
3 Pressley, 341 S.E.2d, 626 which the Court dealt
4 coincidentally with a watch and a ring which
5 were the proceeds of a burglary that the
6 defendant was accused of. The watch and ring
7 were admitted into evidence because of the
8 search of the residence. The Court held that a
9 third party may grant consent to search the
10 premises if they possess common authority over
11 the premises. Mrs. McClown who gave the consent
12 did not relinquish control over premises simply
13 because Presley resided at her home on occasion.
14 Presley was a guest in Mrs. McClown's house and
15 she maintained common authority, sufficient
16 relationship to premises to consent to search.

17 Your Honor, I think all three of those
18 cases are directly on point. Somebody with the
19 lawful ownership or right to occupy a premises
20 can consent not only to search of their
21 premises, but to items found in the premises
22 which is exactly what occurred here. And I
23 would submit that the arrest was valid and a
24 subsequent consent to search by Ms. Bowman was
25 also valid, any fruits of that should be --

1 MR. CUMMINGS: I wanted to listen carefully
2 to Mr. Solicitor, and that is I believe that he
3 stated their position is that they wanted to
4 check the pants for weapons. And that's what
5 the search is about under Terry vs. Ohio, other
6 cases clearly saying that they have a right.
7 And also the Williams case, if an officer knows
8 that like contraband/drugs are kept in glass
9 vials or other things now based on our age,
10 education, experience, and training they have a
11 right to go and say when they're patting
12 somebody down I know that's a drug container
13 probably and they go stick their hands in the
14 pockets. But other than that unless they have
15 that burden of proof showing that, they don't
16 have the right to dig their hands in other
17 people's pockets, or in particular items of
18 personal issues here.

19 These trousers -- the key here is
20 Dorchester County. It wasn't based on a consent
21 to search form. They're consenting to search
22 for what? They're going in looking for evidence
23 and therefore, Judge, when they checked the
24 pants out saying it's for officer safety. When
25 they feel something that's not contraband or not

1 in issue they could have stopped, they clearly
2 had every right in the world to stop.

3 THE COURT: Let me ask you this question:
4 I thought that the watch was inventoried after
5 the consent to search was signed.

6 MR. CUMMINGS: Inventoried on this, but I
7 think the testimony would show, Judge, that when
8 he asked for something to put on the officers
9 went through his pants and found that and then
10 got the consent to search form signed and
11 therefore, it's really not a consent. This is
12 clearly a search either incident to lawful
13 arrest which has not been testified to, or it
14 was a search of his pants pocket for officer
15 protection and, therefore, this watch is not
16 contraband. And I made sure I put that on the
17 record. And also not fruits of a crime because
18 there's no investigating an issue, Judge.

19 And it could have been a man's watch
20 in the pocket. If they say, well, I felt the
21 leather band and a watch, just because they felt
22 that did not mean that they had the right to go
23 further. They could have stopped, got a search
24 warrant. They had ample opportunity, had him in
25 custody if they're saying he's in custody, they

1 clearly could have gotten that, had plenty of
2 time to do that, Judge. That's why it's not
3 inevitable discovery, it's not like they're
4 coming across and the watch is in plain view as
5 the last cases stated. Moultrie clearly shows
6 that these were items that were out. And they
7 were looking for particular items of a crime at
8 that point. These pants were checked, Mr. Van
9 Doran's statement and the other officers for
10 officer safety. And clearly the watch can't
11 hurt a policeman.

12 THE COURT: What about that, Mr. Bailey?

13 MR. BAILEY: Your Honor, this is not a
14 Terry situation, Terry situation where you don't
15 have probable cause to make an arrest. He was
16 being arrested. Terry applies to clothes you're
17 wearing, where you're intrusively trying to
18 stick your hand into somebody's pocket or
19 whatever in clothes they're wearing, physically
20 touching them. He wasn't wearing these pants.
21 Totally different situation. The consent was
22 found, was signed by Mrs. Bowman --

23 THE COURT: Can't pat down clothes that
24 people aren't wearing.

25 MR. BAILEY: Absolutely. And before the

1 watch was removed from the premises, the consent
2 form was signed, but clearly they had a right to
3 search the pants by two -- for two reasons. One
4 would be the consent of Mrs. Bowman who occupied
5 the premises, and he wasn't wearing the pants at
6 the time, he had no expectation of privacy. And
7 number two is that he was being arrested and he
8 wanted to wear those pants out of there. And
9 obviously if you're searching for weapons that's
10 a justification for it and you find a packet of
11 marijuana, some other contraband, or something
12 illegal, or something that may be the fruits of
13 a crime, they have a right to go ahead and take
14 that, too. That's what happened in this case.
15 Thank you.

16 THE COURT: Thank you so much. All right.
17 I'm going to deny your motion, defense motion to
18 suppress, because pursuant to the cases of Sims
19 and Holmes and United States vs. Payton I do
20 find that based upon the testimony that I have
21 heard, I do find that the -- there was an arrest
22 which was made and the arrest was made based
23 upon information that there was a valid warrant.
24 And, in fact, there was a valid warrant. And so
25 I find that, first of all, it was a valid

1 arrest.

2 And secondly I deny your motion
3 because I find that based upon the testimony
4 that I have heard and would find that Mr. Bowman
5 was under arrest and asked for his pants, that
6 pursuant to -- that as I recall Mrs. Bowman
7 retrieved the pants, the pants were examined by
8 law enforcement, they were examined incident to
9 that arrest, could not because he couldn't pat
10 down the pants and I find there was no
11 expectation of privacy.

12 They did have consent certainly to
13 come into the house by Ms. Bowman, it was her
14 home, it's not his home. And before the watch
15 and the pants were removed from the residence
16 there was a consent to search which was signed.
17 And I would respectfully deny your motion for
18 the reasons also as articulated by the
19 solicitor.

20 MR. CUMMINGS: Thank you, ma'am. I know
21 you've noted my objection.

22 THE COURT: Over the objection of the
23 defendant, of course. Of course.

24 All right. Now, that's that. Which I
25 think remains -- any other -- let me ask you

1 this question before we move on: Any other
2 suppression or search issues at this point?

3 MR. CUMMINGS: At this point no, Judge.

4 THE COURT: Thank you. All right. Which
5 moves us to photographs, right?

6 MR. BAILEY: Yes, ma'am. Could I address
7 one thing in regard since it's not -- it's a
8 sort of collateral issue as far as the search
9 warrant.

10 THE COURT: Sure.

11 MR. BAILEY: I mean the Orangeburg arrest
12 warrant.

13 THE COURT: Yes, sir.

14 MR. BAILEY: This is one of those
15 situations I think where when we get to trial
16 something may be admissible for one reason,
17 inadmissible for something else. Obviously the
18 fact there's an outstanding warrant would
19 normally be inadmissible.

20 THE COURT: Right.

21 MR. BAILEY: The fact it shows why they
22 were there, validly there, you know, there's
23 some justification for introducing that.

24 THE COURT: Yes, sir.

25 MR. BAILEY: I guess I need some guidance

1 from Mr. Cummings as far as whether or not he
2 wants me to get into the Orangeburg arrest
3 warrant, which would obviously imply that he
4 committed some unrelated criminal offense the
5 jury may have to speculate on, or whether we --

6 THE COURT: Admit it with a curative
7 instruction.

8 MR. CUMMINGS: But then again, Judge, and,
9 again, I'm not trying to make crosshairs here,
10 but every procedural due process right -- I'm
11 going to use God's name here -- in God's name
12 has been violated. He's never been brought to a
13 bond hearing on that case, he's never been
14 arraigned or presented anything on that case.

15 All we've ever gotten when Mr. Bailey
16 brought that case file up a couple Fridays ago,
17 how we learned about this stuff jumping out of
18 the box here, was that they had an arrest
19 warrant. Never had a right to a preliminary
20 hearing which is a fundamental right. They have
21 to give him a form. A magistrate has got to
22 give you your rights. So in other words,
23 everybody wants to say he was validly arrested,
24 but there's never been a due process
25 follow-through on this man's charges.

1 THE COURT: That's a different issue, isn't
2 it?

3 MR. CUMMINGS: Well, yeah, but I guess what
4 I'm trying --

5 THE COURT: And it seems to me that while
6 those certainly may be legitimate issues and he
7 certainly may want to make motions in the other
8 case, and I don't mean to be cavalier about it,
9 I guess it sounds cavalier, Mr. Cummings --

10 MR. CUMMINGS: No.

11 THE COURT: -- but insofar as this case is
12 concerned --

13 MR. CUMMINGS: I got a quandary again
14 because --

15 THE COURT: -- the relevance is whether or
16 not it was a legal arrest. And I think that it
17 was based on the case law, based on what I've
18 heard it was a legal arrest.

19 MR. CUMMINGS: You have ruled that. And
20 now as solicitor, again, pointed out correctly,
21 and I would argue, jump up and down, too, that,
22 you know, they can't bring that in normally
23 unless I open up Pandora's box. So you're
24 right, the quandary here is how do we tell the
25 jury how Mr. Bowman gets arrested at his wife's

1 house that morning and here we are today 18
2 months later. And yet as a result of that
3 so-called valid warrant, again, respectfully,
4 Judge, we are in a quandary because nothing's
5 ever happened on the case, it's like 18 months
6 later and nothing's ever happened.

7 THE COURT: I understand. I think that the
8 question remains is do you have a proposal for
9 the solicitor, some other means and way to
10 handle that matter, or do we fashion, do you
11 fashion, and I certainly want your input and the
12 solicitor's input, fashion a curative
13 instruction.

14 MR. CUMMINGS: Judge, I would like to have
15 some time to think about it.

16 THE COURT: I know you would, that's why
17 he's raising that at this point, so you don't
18 have to do that off the top of your head.

19 MR. CUMMINGS: It popped up one other time
20 in a case that, you know, here we are again, law
21 enforcement controls it, you know.

22 THE COURT: But likewise, Mr. Cummings, as
23 you get into the statements and into the
24 information which you may be presenting to the
25 jury, you may be getting into it just as much as

1 the solicitor does.

2 MR. CUMMINGS: Absolutely. That's why, you
3 know, I'm trying to walk that legal tightrope.

4 MR. BAILEY: That's why I brought it up at
5 the time to give him a chance to mull it over.

6 THE COURT: You'll have to go into the
7 mulling phase.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: Great.

10 MR. CUMMINGS: Thank you, Judge. And Mr.
11 Bailey's correct, and I knew --

12 THE COURT: Just got to think about that
13 one.

14 MR. CUMMINGS: -- this jack-in-the-box was
15 going to come up and jump out at us because the
16 Jackson v. Denno hearing and everything, we're
17 talking about it, but then we've got the other
18 rules of evidence that come into play about
19 prior bad acts. I'm not talking about Lyle, I
20 mean any other issues that might be outstanding
21 out here that get into a case that's not --

22 THE COURT: Now we're into your stream of
23 consciousness.

24 MR. CUMMINGS: Yeah.

25 THE COURT: I empathize with you, Mr.

1 Cummings, that it's one of those issues that
2 bears consideration and thought to which I am
3 absolutely certain the defense will give --

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: -- to it.

6 MR. CUMMINGS: Because I'm appointed on
7 this case here and yet it arises out of
8 something out of Orangeburg County, and it
9 arises out of -- months have passed before we
10 even get involved in the case and nothing's been
11 done on it. I don't mean with us, but, I
12 mean -- and, again, there's no statute of
13 limitations in our humble state.

14 THE COURT: Alas.

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: All right. Anything further,
17 any other mulling --

18 MR. BAILEY: No mulling from the State,
19 Your Honor.

20 THE COURT: -- that you want to share with
21 the defense? All right. Very well. All right.
22 Now I think we're into photographs.

23 MR. BAILEY: Judge, you want me to have
24 these marked?

25 THE COURT: Yeah. I think we must have

1 them marked for Court's identification, Court's
2 Exhibit.

3 (Marked for purposes of the record were
4 Court's Exhibits 6 through 17, photographs.)

5 MR. BAILEY: Your Honor, State's (sic) 6
6 through 12 show the victim's body at the crime
7 scene.

8 THE COURT: Just one second.

9 MR. BAILEY: I'm sorry, Court's Exhibits 6
10 through 12 show the victim's body as it was
11 found at the crime scene and immediately after
12 it was removed from the trunk at the crime
13 scene. And the remainder of them, which would
14 be 13 through 17, show the victim's body at the
15 autopsy. If I could approach.

16 THE COURT: All right. How do you want to
17 proceed, just beginning with 6 and going through
18 it? And I gather that the State would propose
19 to admit all of these photographs?

20 MR. BAILEY: That's correct, Your Honor.

21 THE COURT: Okay. And none of them in the
22 guilt phase; is that right?

23 MR. BAILEY: None in the guilt phase, Your
24 Honor.

25 THE COURT: All right. Now, how do you

1 wish to propose, do you want to take them and
2 tell me why they are different and the need for
3 each one?

4 MR. BAILEY: Yes, ma'am. If I could get
5 those back from you, I need to have the copies
6 here.

7 THE COURT: Sure. Do you have any copies
8 at all so we don't have to be passing them back
9 and forth?

10 MR. BAILEY: I apologize, I don't. I do
11 have back at the office smaller copies, but I
12 didn't bring them with me.

13 THE COURT: That's okay. Let me ask Mr.
14 Cummings, do you have copies of these that you
15 can follow along?

16 MR. CUMMINGS: Yes, ma'am. We have copies
17 of all those photos.

18 THE COURT: Would you be opposed to the
19 solicitor standing here so that I may view them
20 as he's discussing them?

21 MR. CUMMINGS: No, ma'am. We'll come up
22 here with you.

23 THE COURT: That would be fine. Come on,
24 Mr. Bailey, that way.

25 MR. BAILEY: Just for the record.

1 THE COURT: I think so. I think so.

2 MR. BAILEY: State's 6 shows a portion of
3 the victim's body from a little bit below the
4 neck down to below the knees. The body has been
5 removed from the trunk of the car where it was
6 burned and laid on a piece of white cloth.

7 And, Your Honor, the relevancy of this
8 picture is that it shows the victim's body as
9 the State contends of course that the defendant
10 not only murdered the victim, but he burned her
11 body in the trunk of her automobile. And it
12 shows the appearance of the burn wounds to her
13 torso and to the upper portion of her legs.

14 THE COURT: All right. And also I think it
15 bears noting that these are color photographs.

16 MR. BAILEY: They are, Your Honor.

17 THE COURT: All right.

18 MR. BAILEY: State's 7 is a -- all of these
19 are color photographs, is a photograph taken of
20 the victim's body, again, immediately after it
21 was removed from the trunk of the automobile
22 where it was burned. The relevancy of this is
23 it not only shows the burning of the skull and
24 left side of the face and neck area, but it
25 shows the bullet hole in the back of her head.

1 THE COURT: Okay.

2 MR. BAILEY: State's 8 is a photograph of
3 the rear end of the defendant's car -- excuse
4 me, the victim's car with the trunk open showing
5 the body exactly as it was observed by the
6 firemen and the Dorchester County deputy when
7 they opened the trunk.

8 THE COURT: Okay.

9 MR. BAILEY: State's Number 9 is another
10 photograph just a little closer up of the
11 right-hand portion of the trunk as you approach
12 from the back. And it shows more clearly the
13 appearance of the -- both arms and the burning
14 of the facial area and it goes down through the
15 torso. Again, it depicts what's shown in the
16 previous picture, but at a closer angle, a
17 closer view through the camera, a slightly
18 different angle.

19 Court's Number 10 is an even closer
20 view. And this shows primarily the facial area,
21 showing the burning of the facial area, facial
22 and neck area. Eleven shows the victim's body
23 after being removed from the trunk on a cloth.
24 The difference is the victim's back is exposed.

25 The earlier, one of the early pictures

1 showed the defendant lying on her back in the
2 trunk of the car where she was burned and this
3 shows the contrast between the relatively
4 unburned appearance of the back and the burned
5 appearance of the front of the body.

6 State's 21 is a similar picture,
7 although it's taken slightly further back and
8 shows lower down on the body the burn marks
9 there.

10 THE COURT: All right.

11 MR. BAILEY: Autopsy?

12 THE COURT: Yeah.

13 MR. BAILEY: State's 13 is a picture of the
14 victim on the autopsy table lying on her back,
15 shows her entire body other than those parts of
16 the body that have been consumed by the fire.
17 And in the autopsy picture her clothing has been
18 removed to show the entire extent of the burn
19 damage to her entire body in the top portion.

20 THE COURT: All right.

21 MR. BAILEY: Fourteen is another picture of
22 the victim's body at the autopsy table, it shows
23 her turned over onto her side exposing the back
24 area, and shows -- again, similar to the crime
25 scene photograph it shows the relative unburned

1 area of the back compared to the front of the
2 body, it shows the burn injuries to the back of
3 the head and to the left side.

4 Fifteen is another picture of the
5 victim's entire body lying on her back in the
6 autopsy room. It's taken from the opposite side
7 from the earlier picture showing the body on the
8 back. Sixteen is a picture taken at autopsy,
9 the back of the victim's head, again, showing
10 the closeup of the gunshot wound to the back of
11 the head.

12 Final picture, Number 17, shows the
13 victim on the autopsy table with an autopsy
14 attendant pulling her body over on to the right
15 side, it shows the entire length of the victim's
16 body showing the burn damages from head to toe
17 from the backside.

18 THE COURT: All right. Now, let me hear
19 from you. Obviously the condition, you're going
20 to tell me that the condition of the victim, the
21 manner in which she was left, if you will, are
22 certainly relevant issues for the jury?

23 MR. BAILEY: Yes, ma'am.

24 THE COURT: Obviously you're also going to
25 tell me that the wound, the entry wound, the

1 bullet wound to her skull is also relevant
2 evidence.

3 MR. BAILEY: Would corroborate the
4 testimony of the pathologist, Your Honor.

5 THE COURT: Right.

6 MR. BAILEY: As well as show circumstances
7 of the crime, characteristics of the defendant.

8 THE COURT: Very well. All right. My
9 question to you is in order to accomplish, first
10 of all, the bullet wound there are two
11 photographs. One is the victim in the car and
12 the autopsy photo that clearly shows the wound,
13 the bullet hole to her skull. And I would ask
14 both of those are necessary for what purpose?

15 MR. BAILEY: Your Honor, I think Dr. Sexton
16 who would testify -- excuse me, not Dr. Sexton,
17 somebody in his office, pathologist, would
18 probably feel more comfortable testifying with
19 regard to a photograph they took at autopsy,
20 they personally took. That's the reason I
21 wanted the autopsy photograph in.

22 The photograph of the crime scene I
23 think is more probative of the body as it was
24 actually -- the condition it was left in, the
25 location it was left in and is relevant from

1 that aspect.

2 THE COURT: Let me ask you this question:
3 The question that I would have for you is do you
4 maintain that in order to show the condition of
5 the body in which it was left that all seven
6 photographs are required?

7 MR. BAILEY: Your Honor, I believe so. I
8 went through them.

9 THE COURT: Yes, sir.

10 MR. BAILEY: And there may be some
11 duplication there, but they were all intended to
12 show different aspects of what was observed at
13 the crime scene. And I will concede that they
14 are similar to some of the autopsy pictures,
15 but, again, the reason for that is that the
16 pathologist I think would rather testify to
17 their own pictures and the crime scene people to
18 what they observed.

19 THE COURT: All right, sir. All right.
20 First of all with regards to the -- if you will,
21 the bullet wounds.

22 MR. CUMMINGS: Okay.

23 THE COURT: Let me ask you to address those
24 two.

25 MR. CUMMINGS: May it please the Court,

1 Judge.

2 THE COURT: Yes, sir.

3 MR. CUMMINGS: As to the bullet wound, your
4 Honor, I'll start from the very beginning, how I
5 was prepared to argue this.

6 THE COURT: All right.

7 MR. CUMMINGS: If the pictures did not, if
8 they were not prejudicial they wouldn't want to
9 introduce them. And so the defense in every
10 case, including Gardner, Woomer, and all the
11 ones I've read.

12 THE COURT: All of them.

13 MR. CUMMINGS: Yes, ma'am. Everybody talks
14 about it. If it wasn't that way the prejudicial
15 effect over probative value we wouldn't be
16 talking, that's Roger Dale Johnson.

17 Judge, as to the bullet wound to the
18 head, there is ample way with a black and white
19 photograph, respectfully, that could have been
20 done. We've got one of the best crime scene
21 technicians in the world with Earl Asbell, and
22 he's a blessing to every law enforcement agency
23 that ever deals with him. I know that the
24 purpose of color is to enhance what the jury
25 will get to see. And sometimes with modern

1 technology it behooves anybody to stand back and
2 say you want to see a picture? Well, we can
3 make it look very colorful. I think the State,
4 we could make it look very colorful, very
5 graphic. This lady is charred. A black and
6 white photograph would show the same entrance of
7 the bullet wound or anything the State would
8 present for evidentiary value in a black and
9 white photograph.

10 I know we're dealing with the penalty
11 phase and there's been ample case law dealing
12 with that. And I think, Judge, again I'm
13 arguing this in the best way possible to
14 maintain any humanity left on this issue, and
15 that is they control how this lady is autopsied,
16 they control the crime scene. I have
17 absolutely -- you can buy black and white film
18 cheaper than you can color.

19 If the Court, again, respectfully, if
20 the Court over our objection on to any of these
21 photographs coming into evidence.

22 THE COURT: Surely.

23 MR. CUMMINGS: I know, Your Honor, I'm
24 going to have to academically argue this as much
25 as I can. That bullet wound clearly will be

1 allowed in I believe by Her Honor, it's just a
2 question of whether or not we can present that
3 to the jurors if, God forbid, we reach the
4 penalty phase. And whether or not there was any
5 black and white photographs taken, whether or
6 not they could be presented to the Court in lieu
7 of that color photograph.

8 THE COURT: I'll ask that question at this
9 point: Any black and white photos taken?

10 MR. BAILEY: Your Honor, all the
11 photographs are color photographs. I guess that
12 I could probably get those color photographs,
13 attempt to reproduce them in black and white.
14 But I'm not a photographer, but I think they can
15 lose some clarity if you try to develop them in
16 black and white.

17 THE COURT: Quite frankly that was a
18 concern that I had as well because the bullet
19 wounds, even on the photograph, even on -- and
20 I'm looking at Court's Exhibit 16, it's not even
21 on the color photograph. It's somewhat
22 difficult even with the tape beside it, it's
23 somewhat difficult to locate. I don't know. I
24 simply don't know what a black and white
25 photograph will do.

1 MR. CUMMINGS: But, again, we would have
2 the expert's testimony. And, again, this is
3 where I'm trying to argue --

4 THE COURT: To point to it?

5 MR. CUMMINGS: Yes, ma'am. That the
6 necroscopist, or forensic autopsy person,
7 whatever you want to call them anymore, will
8 come in here. And they'll have the little dolls
9 and their little Styrofoam head, probably, after
10 all these years of doing this, and they'll show
11 entrance wound, exit wound, or whatever damage
12 is there. And that clearly is a demonstrative
13 piece of evidence for the jury to hear. And it
14 can be even in the penalty phase shown that way,
15 Judge.

16 You can take a drawing on a cardboard,
17 and we never use the chalkboard because of
18 appellate reasons, but any piece of paper up
19 there and show entrance and exit. So if the
20 State's banking on that photograph coming into
21 evidence to say this is to show the bullet
22 wound, the entrance of that, then, Judge, I
23 think there's scientifically better ways of
24 evidence.

25 And, again, I know the purpose of that

1 photograph is to show the entrance and exit
2 wound. Well, I can come back with academic
3 argument showing that they can show it ten
4 different ways. Bring a copy of a skull in and
5 show it if they want to. For the purpose of
6 that photograph, Judge, that clearly is
7 prejudicial, it is a horrific looking image of a
8 human being. And I know they have to take each
9 photograph each way. That photograph clearly,
10 Judge, the probative value there to show the
11 entrance and exit wound, I've given a logical
12 and reasonable explanation of how they can
13 present it.

14 That clearly, Judge, my humble
15 argument would make the jury inflamed, it would
16 cause my client irreparable harm in arguing that
17 to the jury on that case. And clearly there
18 could be other evidentiary ways to just show
19 that photograph, just to show it would elicit in
20 my humble opinion, again, Judge, the passion of
21 that jury. And that's the reason why that
22 photograph's taken, there's no question.

23 THE COURT: All right. I want to hear,
24 yeah, I want to hear all -- I think I want to
25 hear the balance of all the arguments and then I

1 will rule. And I guess that wasn't very fair to
2 you to start with Number 16 which is sort of not
3 even in the middle. But I do think that there
4 are naturally two different categories, we have
5 the autopsy category and then the scene
6 category.

7 MR. CUMMINGS: Judge, there's one case I
8 would like to just -- I didn't mean to just sit
9 down and stop talking, State vs. Frank
10 Middleton. In that case clearly it says it was
11 error for the State to introduce color autopsy
12 photographs of victims showing scalp pulled away
13 from the skull. And in this case that clearly
14 it's a head showing a bullet wound, but it's
15 just like significantly cut out. It's not
16 looking right at the head to find that bullet
17 wound and that would be my argument.

18 THE COURT: Let me ask you this question:
19 In that particular case as I recall the scalp
20 was pulled away by virtue of the autopsy.

21 MR. CUMMINGS: Correct. But here the
22 necroscopist has control of that photograph, and
23 if I'm not mistaken, and that is 13 through 16,
24 are the autopsy photographs. And so I just
25 think if the jury gets to see the initial ones

1 the solicitor is going to argue vehemently for,
2 the actual crime scene, how the body was found,
3 they're going to be clearly duplications. I
4 haven't even brought the duplication argument
5 out yet, but that's a head shot, it's a closeup
6 as I understand it.

7 And clearly, Judge, here if it says
8 that the -- stipulate to this lady was shot in
9 the head there was no reason to put it in. And,
10 again, before I can do any of that I would have
11 to get blessing of my client and approval of
12 Ms. Thomas and work in conjunction, because
13 we're way before the second phase. And I know
14 in every other case even when getting ready to
15 do the penalty phase the judge still lets us
16 argue evidentiary, again, to renew everything,
17 ma'am, and maybe by that time after what comes
18 out in the case in chief to come back with some
19 other legal arguments and suppression motions.

20 THE COURT: I understand, certainly. And
21 I'm going to be jumping around on you all and,
22 please, feel free to approach and look at these
23 with me because I know that we're sharing and I
24 don't want you to be at a disadvantage. I would
25 ask you regarding Court's Exhibit Number 8, Mr.

1 Cummings, and that's -- the purpose of this
2 photograph as I understand it is that that is
3 what, if you will agree, to law enforcement,
4 this is how they found the victim, this is how
5 they found the car.

6 MR. CUMMINGS: As to Number 8, ma'am,
7 you're asking me as an officer of the Court,
8 and, again, I want Ms. Thomas to make a comment
9 on this also, that is represented to us by
10 everything we've done in this case, all our
11 investigation, that when we believe the firemen
12 popped the trunk there was a human being found
13 in there and then when daylight arrives those
14 photographs were taken.

15 And so the argument the State would
16 use, ma'am, all the case law I've read, says
17 they can show the photograph of the person as
18 they are found in that condition. I don't have
19 any legal argument to make to Your Honor other
20 than, again, Judge, same thing, it's more
21 prejudicial than probative. You might inflame
22 the passions of the jury to give the ultimate
23 penalty in this case to my client.

24 And, Judge, again, we're waiting on
25 all the people that might have done something

1 here, the fire hose might have moved something
2 around in there, you name it. I don't have that
3 yet to fully argue before the Court.

4 THE COURT: Okay.

5 MR. CUMMINGS: But I think the State's
6 probably going to argue that's how when the
7 trunk was popped somebody found her.

8 THE COURT: I think that's probably -- I
9 think you've already argued that, Mr. Bailey.

10 MR. BAILEY: Yeah.

11 THE COURT: All right. Now, let me ask
12 this question of you.

13 MR. CUMMINGS: Again, one more thing,
14 Judge. Again, I don't know if any black and
15 whites could have been taken, should have been
16 taken, or have been taken. That's all we've
17 been given is color photographs by the State.

18 THE COURT: Apparently there were no black
19 and white photographs taken based on what I've
20 been told.

21 What I'm observing with the other
22 photographs at the scene, Mr. Bailey, is that
23 there are -- most of them are showing portions
24 of the victim's body. And let me just remark
25 for you that it appears that Court's Exhibit 12

1 and Court's Exhibit 11 appear to be the same
2 area, one is a closeup of the other. I am not
3 inclined to allow both of them.

4 So I think that based upon the case
5 law that certainly allows the State in the
6 penalty phase to show the condition of the body,
7 I think that particularly in this instance both
8 sides of the body I think are relevant, so I
9 certainly would allow the State to, at this
10 juncture, I understand at some point we may
11 reargue these, but for your purposes and for
12 today I would allow either Court's Exhibit 11 or
13 12, but not both of them because I find them to
14 be duplicative.

15 And then Court's Exhibits 6, 9, and 10
16 all appear to be the victim's lying on her back
17 and, therefore, relevant on the issue of the
18 condition of the victim as she was left by her
19 assailant. But there's duplication. And I'll
20 share that with you so I can tell you that all
21 three of these would not come in.

22 Yes, sir, Mr. Cummings.

23 MR. CUMMINGS: Thank you, Judge.

24 THE COURT: Yes, sir.

25 MR. CUMMINGS: Just for protection of the

1 record.

2 THE COURT: Surely.

3 MR. CUMMINGS: I know that we're way early
4 in the game here.

5 THE COURT: Yes, sir.

6 MR. CUMMINGS: But I know that when we
7 ruled on Number 8, again, when the trunk
8 allegedly is popped open and they find the lady.

9 THE COURT: Yes, sir.

10 MR. CUMMINGS: I know that, Judge, I was
11 going to ask you just to preserve my argument
12 about who, what -- you know, fire hose might
13 have changed something in there, or any other
14 chemicals being placed in there pending further
15 objection, further argument, Judge, at the
16 appropriate time.

17 THE COURT: Absolutely. Presented here,
18 we're a week away from trial.

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: At some point they've got to
21 make the determinations, but if you want to
22 renew them on the basis of additional
23 information, absolutely, Mr. Cummings.

24 MR. CUMMINGS: Thank you, Judge.

25 THE COURT: And at this juncture it would

1 be -- particularly Court's Exhibit 8 would be
2 admissible over the objection of the defendant.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: All of these over the objection
5 of the defendant irrespective of what
6 photographs may be admitted. So that Court's
7 Exhibit 8 would be admitted. I'm going to allow
8 the State to either pick 11 or 12, one of them
9 to be admitted, again over the objection of the
10 State -- of the defendant, I'm sorry. And with
11 regards then I'm back to 9, 10, and 6.

12 MR. CUMMINGS: And 6.

13 THE COURT: Let me say that Court's Exhibit
14 6 shows the victim's torso and Court's Exhibit 9
15 and 10 show the victim's upper body. And it
16 appears that on the scene photographs that
17 Court's Exhibit Number 6 is the only photographs
18 that shows the lower part of the victim's body
19 with her lying on her back, so I think over the
20 objection of the defendant would be admissible.

21 And with regards to her upper body,
22 again, Court's Exhibits 10 and 9 are duplicative
23 and would not allow them both, Mr. Bailey. So
24 if you would -- I'll allow the State to pick one
25 of these two. They're very similar, one is a

1 closeup, the other is not a closeup. And,
2 again, the relevancy is the upper body with the
3 victim lying on her back.

4 Now, with regards to Court's Exhibit
5 16 and Court's Exhibit 7, they both show the
6 wound to the back of her skull. And at this
7 juncture I understand where you're coming from
8 and you can renew --

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: -- any motions to exclude these
11 two, but I will ask you to likewise to pick one
12 of these two. They're very similar, would not
13 allow both of them with the bullet wound.

14 Now, now we're on to the autopsy. I
15 can tell you -- Mr. Bailey, let me give you my
16 impression, then I want to hear from you, then,
17 of course, from Mr. Cummings. These
18 photographs, the autopsy photographs, are very
19 similar to the scene photographs. And what they
20 depict, insofar as I can tell, is they depict
21 the charred condition of the victim's body front
22 and back.

23 So I will need for you to tell me why
24 the autopsy photographs, what information would
25 the pathologist, what would you proffer they

1 would be interested in having, because it seems
2 to me that the photographs are very similar, one
3 set she's at the scene, the other set the body
4 is of course on the autopsy.

5 MR. BAILEY: With respect to the pictures
6 showing the victim's back, there may be some
7 duplication as in the crime scene pictures. The
8 State's testimony would be the victim was shot
9 two times, once in the back of the head and once
10 in the back. And although the condition of the
11 body doesn't clearly show the back wound, the
12 pathologist can indicate there on at least one
13 of those showing the back where that injury was,
14 where that fatal wound was. There were two
15 fatal wounds.

16 Your Honor, of course, the reason for
17 the State wanting to put the autopsy pictures in
18 is twofold, one being to corroborate the
19 testimony of the pathologist and the other one
20 being similar to the crime scene photographs to
21 show the circumstances of the crime and
22 characteristics of the defendant. And the
23 actual crime scene photographs most of them show
24 the body in the trunk. There's a lot of burned
25 debris and other material that appears to be

1 almost the same color and it's really hard to
2 see the detail because it's so much there, some
3 of the crime scene pictures. In the autopsy
4 pictures it shows the victim's body on a piece
5 of white clothe and I think much more clearly
6 shows the victim's body and the injury, not only
7 the gunshot wounds but the fire injury to the
8 body.

9 THE COURT: Yes, sir.

10 MR. CUMMINGS: Thank you, Judge. Your
11 Honor, the very first issue here is normally
12 when we look at the autopsy photographs they are
13 there to show the jury how this person died.
14 This person, there's been no testimony, nor can
15 there be any testimony from what we received,
16 that this lady was alive when burned. So the
17 allegation, or at least the fear that the jury
18 may implicate torture worries me greatly on
19 behalf of Mr. Bowman.

20 You know, they want to talk about
21 characteristics. Characteristics is not what
22 these photographs are trying to show, because
23 it's the same thing as what Your Honor's already
24 ruled on over the defense's objection dealing
25 with how the body was found.

1 The State's argument, the strongest
2 one that he's made, it will help the
3 necroscopist or forensic autopsy guy explain the
4 wounds, that's what he's doing in the case in
5 chief. He'll have the Styrofoam head, he'll
6 have the drawings of the body in there, he'll
7 have his autopsy report that he'll be reading
8 from, not evidentiary wise but reading from and
9 talking about, and showing up to the jury
10 somehow where a person is shot either by hand or
11 by whatever means other than a photograph. And
12 he can do that. Doesn't need that photograph to
13 roll the body over to show a wound back there.

14 The head wound, Judge, clearly as you
15 saw a moment ago, again, going back to the same
16 thing as the autopsy, that will be testified to
17 earlier, so that's not the argument that would
18 carry any weight here, respectfully, against my
19 colleague.

20 What happens here, and every case law
21 I've read in here versus Williams and the rest
22 of them, Judge, normally they look at the person
23 to show wounds to neck, the face, the forearms.
24 We have a bullet wound to the head and we have a
25 bullet wound that's somehow on her torso region.

1 That clearly can be shown and also testified to
2 by any necroscopist taking the stand in the case
3 in chief.

4 Those photographs and the autopsy
5 table, that white sheet, enhance, and that's
6 what they do. It's not showing the
7 characteristics, it's to enhance. And I
8 appreciate Mr. Bailey, he really did point that
9 out to the Court, it's trying to show the
10 differences. Well, you're creating a scene
11 then. You're not portraying the victim in the
12 light found, you're not portraying evidentiary
13 issues as you would testify to, you're enhancing
14 it.

15 That point, if there's just an issue
16 of showing a photograph of the back wound, the
17 Court can narrow down if Your Honor rules over
18 my objection, the State with the authority and
19 the power that they have, can take a small
20 photograph and show the area of the wound.
21 Wouldn't take more than a three by five. Again,
22 I'm not asking the Court to do that, but clearly
23 that eight by ten glossy you're looking at there
24 shows nothing more than what we saw on the first
25 items offered in, Judge. You know, the one

1 thing everybody --

2 THE COURT: I need to find -- I hate to do
3 this during your argument, but, Mr. Bailey,
4 which of the autopsy photographs show -- you're
5 going to need to look -- shows the second wound?

6 MR. BAILEY: Okay. Let me get my glasses.

7 THE COURT: You can borrow mine.

8 MR. BAILEY: They'll do just as well, all
9 the same.

10 THE COURT: We could probably all share the
11 reading glasses.

12 MR. BAILEY: Your Honor, either 17 or 14
13 should show that particular aspect.

14 THE COURT: Okay.

15 MR. CUMMINGS: I'm sorry, Judge.

16 THE COURT: You just needed to know that
17 the wound is depicted on --

18 MR. CUMMINGS: Right.

19 THE COURT: -- 14 and 17.

20 MR. CUMMINGS: I'm not a doctor, speaking
21 away from madam court reporter, I studied the
22 photographs the best I can and I can't see any
23 entrance wound or exit wound on that body at
24 all. And, again, that would be my main argument
25 with Mr. Bailey.

1 And then on this one it shows the
2 necroscopist or the assistant just rolling the
3 body over, but you can't see any wound from that
4 view.

5 MR. BAILEY: Your Honor -- I'm sorry. I
6 thought you were finished.

7 MR. CUMMINGS: I was going to say obviously
8 it's intended to show the wound. And they could
9 have done a closeup of that area showing an
10 entrance or exit wound, that I don't see the
11 entrance or exit wound.

12 MR. BAILEY: Your Honor, of course that's
13 why I want the pathologist here so they can
14 testify as to exactly what they observed here,
15 can show us the specific details. If you would
16 follow Mr. Cummings' argument you would never in
17 any death penalty case ever have an autopsy
18 picture in because you've already got the cause
19 of death in or else the defendant wouldn't have
20 been convicted in the first place.

21 And Mr. Cummings keeps saying
22 throughout this entire thing, and I'm certainly
23 not criticizing him, but the State controlled
24 this, the State controlled that, the State
25 controlled the pictures, they control the body

1 when it comes out of the trunk and all that. If
2 we get to the point where these pictures are
3 shown to the jury, it would mean they've already
4 found this man guilty of the murder beyond a
5 reasonable doubt, so he would have controlled
6 that body, he controlled what happened to the
7 body, the cause of death and the burning of the
8 body. And I think that, Your Honor, at that
9 point in time is when this all becomes relevant.

10 To address his -- Mr. Cummings'
11 comments about the body on the big piece of
12 white cloth, yeah, I want to enhance it, I want
13 the jury to know exactly what occurred to this
14 body, what happened to it. The body itself was
15 not altered, it's moved from one place to
16 another and they can more clearly see the extent
17 of the -- what amounts to postmortem abuse to
18 that body because that's all the burning is, a
19 form of postmortem abuse, and there are numerous
20 cases that have held that's an appropriate thing
21 to show. Start from the Shaw case on up.

22 MR. CUMMINGS: Judge, just to follow up on
23 that briefly as you're looking, if had my
24 druthers, you're right, I don't think the
25 autopsy photographs have any evidentiary value

1 other than to show cause of death. Cause of
2 death will be established in this case by
3 medical testimony. And I know we're talking
4 about penalty phase issue here. And if it is
5 meant to enhance, then it's morally wrong. We
6 want the jurors to see what happened at autopsy
7 is nothing but desecration of a human body
8 medically done.

9 And there's been so much arguments
10 about whether or not people want a body
11 autopsied, whether or not people have removed
12 body parts for scientific evidence against
13 parents' unknown permission or consent. So
14 you're right, somebody does control that body
15 if, in fact, the argument goes the defendant, or
16 an alleged defendant does something to a human
17 being's person. And that's what we want to do
18 is show the jury so we can get them to want to
19 vote for death, then I think it's reprehensible
20 and I think it's wrong, Judge, respectfully.

21 And that's why we try to make
22 controlled rules because obviously photographs
23 are intended to do what they are intended to do
24 and that is to get somebody so angry they'll
25 vote to take another human being's life,

1 respectfully. Thank you, ma'am.

2 THE COURT: Counsel, I'm -- y'all are
3 making many trips up, but I need you to look at
4 Court's Exhibits 11 and 12. And this may put
5 you at a disadvantage, Mr. Bailey, but does --
6 do those photographs, to your knowledge, show
7 the -- as it's been described to me fatal wound
8 to the back?

9 MR. BAILEY: Your Honor, I think both of
10 these would, and, again, the back is so crusted
11 over after the gunshot wound's inflicted that
12 you can't readily see it. I would think that if
13 we're getting to decide on one or the other that
14 probably 12 would show it, would be more likely
15 to show it since it shows a greater area of the
16 back.

17 THE COURT: Because this has the autopsy
18 labeling on it, but it seems less clear.

19 MR. BAILEY: I'm not sure if the label's
20 covering up the wound or not. I would think
21 probably not, but --

22 THE COURT: Because as I look and try, you
23 know, just try to compare I think that perhaps
24 it seems that that spot seems to be consistent.
25 And just from viewing the two it seems more

1 readily apparent actually on the photograph
2 taken by the police officers.

3 MR. BAILEY: I'm not 100 percent sure that
4 is the gunshot wound. There's an indication
5 that something appeared to be a third gunshot
6 wound that wasn't and that's....

7 THE COURT: All right.

8 MR. BAILEY: I think that the actual
9 gunshot wound is lower. If I can look at my
10 notes.

11 THE COURT: Certainly. Certainly. You may
12 need to take the photographs with you, too, and
13 so you can compare the two.

14 MR. BAILEY: According to the autopsy
15 report the gunshot wound to the back --

16 THE COURT: Yes, sir.

17 MR. BAILEY: -- is 17 1/2 inches from the
18 top of the head and 6 1/2 inches to the left of
19 the midline, so that may -- very well may be it.

20 MR. CUMMINGS: But for argument I don't
21 think there's any way for Your Honor to look at
22 that and see it. Normally you can see the hole.

23 THE COURT: All right. What I'm going to
24 do, I'm going to do two things at this point.
25 And I know that we talked earlier about the

1 State picking one of the scene photographs of
2 the victim's back. And it seems to me that
3 State's Exhibit 12 depicts the wounds at least
4 as clearly, if not more so, than the autopsy
5 photograph and, therefore, I'm going to exclude
6 the autopsy photos showing the back of the
7 victim.

8 What I'm going to keep, and I can tell
9 you that I will not allow Court's Exhibit 17 to
10 come into evidence, I'm going to exclude that
11 one. What I am going to take under
12 consideration and, therefore, I'm going -- I'm
13 likewise going to exclude 14 and I am going to
14 consider whether to admit either Exhibit 13 or
15 15. And the reason -- and I want to go back and
16 look at, review the research on photographs.

17 And the reason for doing that is that
18 it is -- it shows the body of the victim. I'm
19 going to consider that and I want to look at
20 some -- a couple of matters before I make that
21 determination. But just to recap so we're all
22 clear.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: I've asked the State to decide
25 between Court's Exhibit 7 and 16 showing the

1 wounds to the head, and likewise between Court's
2 Exhibit 12 and 11 showing the victim's back.
3 I've admitted 8 and 6 and have asked the State
4 to pick either 9 or 10 that shows the upper body
5 as she was found at the scene. I have excluded
6 Exhibits 17 and 14. And I have under
7 consideration Court's Exhibit 13 and 15, both of
8 them would not be admitted, but I will consider
9 whether one of them is -- would be admitted.
10 Got your notes?

11 MR. BAILEY: Your Honor, thank you.

12 THE COURT: All right. Very well. Okay.
13 So that concludes the photographs at this point.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: I have my notes and I've lost
16 my notes.

17 (Pause in proceedings.)

18 THE COURT: So that motion to suppress is
19 done, polygraph is done, photographs are done,
20 religion is done, venue is not ripe. I think
21 that concludes our work for today. Not your
22 work for today, but our work together for today,
23 doesn't it?

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: All right. I'm trying to think

1 tomorrow. Does that leave us any work that we
2 can do on this matter tomorrow?

3 MR. BAILEY: Not that I can think of.

4 THE COURT: Okay.

5 MR. CUMMINGS: We'll stay and look at the
6 jurors as those things come in. Just so you
7 know, they're still trickling in. If Flo
8 will -- she usually calls for Mr. Bailey or I or
9 Marva, and if they'll give us the most updated
10 ones as possible, we've been running up and down
11 the highway, I know Walter has, too, because we
12 won't be able to finish everything by Friday if
13 we don't have everything back.

14 THE COURT: I know that. All I care about
15 doing is getting it as far as we can on Friday.
16 I was in great hopes that we could finish the --
17 that process with the jury next Friday, but that
18 is not going to be possible because it's a
19 holiday and the courthouse is going to be
20 closed.

21 So Thursday is the judicial
22 conference, Wednesday's the judicial conference,
23 Tuesday is preparation for judicial conference,
24 because I'm in charge of the judicial conference
25 at least in terms of the convention part.

1 Monday we'll see. I don't know that that will
2 make a lot of sense to do a Monday. Let me give
3 some thought, you give some thought.

4 MR. CUMMINGS: We can always meet you, too,
5 in Summerville if we have to come last minute at
6 your office just to go over some of the jurors
7 that maybe have sent something in.

8 THE COURT: I think we need to plan on it
9 even if I have to come back Thursday afternoon
10 or -- well, I guess we could do it in my office,
11 my office can be open.

12 MR. BAILEY: My only concern is if we're
13 getting into consent to excuse people that
14 technically don't qualify for the exemption
15 whether or not it's a critical stage where the
16 defendant needs to be there.

17 THE COURT: Yes, certainly.

18 MR. CUMMINGS: They can probably drive him
19 down to your office, no pun intended, drive him
20 down to your office in their care, we've got a
21 court reporter there, courtroom there if we need
22 it. And I'm just trying to find out instead of
23 coming up back and forth --

24 THE COURT: We're going to do something.
25 I'll either come back Thursday afternoon or

1 we'll do something on Friday down at Deming Way.

2 Let me check on that to see which is available.

3 MR. BAILEY: Friday, this week, day after
4 tomorrow?

5 THE COURT: No, no. Friday this week
6 hopefully we can handle the bulk and then Friday
7 next week to handle -- or Thursday to handle any
8 other information that we have, any other jurors
9 that we have, okay?

10 MS. HARDEE-THOMAS: Thank you.

11 THE COURT: Thank you.

12 MR. CUMMINGS: Thank you, Judge.

13 THE COURT: Thank you. All right.

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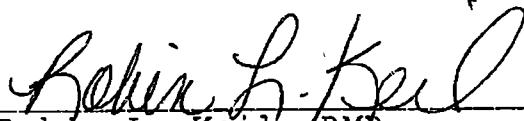
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 22nd day of July 2003.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XII Pages 1320 - 1379
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) JACKSON VS. DENNO RULING
MARION BOWMAN, JR.,) May 2, 2002
Defendant.) St. George, South Carolina

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The Honorable Diane S. Goodstein

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I N D E XWITNESSES**JAMIE M. ZENSEN**

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-018	Affidavits of Service	1329	

1 (May 2, 2002.)

2 THE COURT: Hi. Stop, you're perfect.
3 Would you place your left hand on the Bible and
4 raise your right hand?

5
6 (Jamie M. Zensen, called as a witness, having
7 first been duly sworn, is examined and testifies
8 as follows:)

9 THE COURT: Thank you. If you would please
10 be seated. And Mr. Taylor's going to help you
11 with the chair. That chair needs to be moved
12 over actually. I'm going to ask you to state
13 your full name for the record and spell your
14 last name.

15 THE WITNESS: Okay. Jamie Michelle Zensen,
16 Z-e-n-s-e-n.

17 THE COURT: Thank you all so much.
18 Do you want me to do the examination,
19 counsel, or do you want to start?

20 MR. BAILEY: I guess you if you don't mind.
21 I'm not sure what paper she had, I'm not sure
22 what to ask her.

23 EXAMINATION

24 BY THE COURT:

25 Q. Ms. Zensen; is that right?

Jamie M. Zensen - Examination

1 A. Yes, Zensen.

2 Q. Did you have occasion to receive some juror
3 summons from the Dorchester County clerk's office?

4 A. Yes, ma'am.

5 Q. And did you have occasion to attempt service of
6 those juror summons?

7 A. Yes, ma'am.

8 Q. And do you have a list of the juror summons that
9 you received?

10 A. No, ma'am.

11 Q. Okay.

12 A. I'm given a list and it's highlighted and we go
13 out and we knock on the doors and try to make
14 contact. And if we're unable to make contact we'll
15 check with the neighbors to see if that person lives
16 there.

17 Q. All right. And where is your list?

18 A. After we go out and try to make contact, each
19 week it's signed off and faxed back into our civil
20 process department.

21 Q. Okay. So how will I know the names of the
22 individuals that you sought to serve the summons on?

23 A. We have -- on the list itself we write beside
24 it, you would have to get that from the civil
25 department or civil process department, we write what

1 we found there. In other words, if the person's
2 moved.

3 Q. Yes, ma'am. And you did not bring that with
4 you?

5 A. No, ma'am. I was not given that list.

6 THE COURT: How come? I mean...okay.

7 Q. Where is the list?

8 A. I'm assuming that the civil department has it.

9 Q. Where? Physically where? In Summerville?

10 A. It would be in St. George.

11 Q. In St. George?

12 A. Yes. Probably right across the street.

13 Q. All right. Would you see if you can go get
14 that?

15 A. Yes, ma'am.

16 Q. Thank you so much. I'm so glad it may be
17 nearby. Thank you. Any other information that would
18 help you testify regarding the folks that you
19 received those summons and who you served and what
20 you did.

21 A. Okay.

22 Q. Thank you so much.

23 THE COURT: Ms. Footman.

24 MS. FOOTMAN: Yes.

25 THE COURT: Be sure the people -- maybe I

1 wasn't clear and I apologize to you if I was not
2 clear. The purpose of this hearing is that in a
3 case such as this it is required that the
4 summons that were served of course are then
5 submitted to the sheriff for service.

6 MS. FOOTMAN: Yes, ma'am.

7 THE COURT: And if there is non service
8 then there must be a record kept of that and
9 there must be an explanation given for why
10 service was, in fact, not made upon a particular
11 juror, or whatever jurors were not served.
12 That's the purpose of this hearing.

13 MS. FOOTMAN: Okay.

14 THE COURT: So when you -- didn't you
15 contact the officers for us?

16 MS. FOOTMAN: No, ma'am.

17 THE COURT: Who did that?

18 MS. FOOTMAN: I assume that their office
19 did. I have the affidavits that they sent me
20 back, but now I'm not aware this is what we were
21 going to be doing now.

22 THE COURT: Okay.

23 MS. FOOTMAN: I could have brought those up
24 and she may refer to that.

25 THE COURT: You need to go do that.

1 MS. FOOTMAN: Do you want me to go get
2 them?

3 THE COURT: Yes, ma'am. And tomorrow
4 that's the purpose of this hearing. So whatever
5 information impacts on individuals that the
6 summons were -- you know, that they were not
7 served by mail, were sent to the sheriff,
8 whatever return was given back, whatever
9 affidavits of non service, any of that
10 information, all of that must be made a part of
11 the record and that's the purpose of us being
12 together today. I'm so sorry that you were not
13 aware of that.

14 MS. FOOTMAN: I was going to do that
15 tomorrow.

16 THE COURT: The reason we did it today
17 simply was because this officer had to go out of
18 town tomorrow.

19 MS. FOOTMAN: I'll be right back.

20 THE COURT: Thank you so much.

21 I thought we made that clear.

22 MR. BAILEY: I thought so, too.

23 MR. CUMMINGS: I know we're on the record
24 in here, but it seems like paper is just not
25 coming with anybody unless it says you bring

Jamie M. Zensen - Examination

1 back. And I guess, Judge, maybe from now on --

2 THE COURT: All right.

3 MR. CUMMINGS: -- we'll have to do that.

4 THE COURT: Great. Very well. I'll tell
5 you what let's us do. I'll step down, there are
6 a couple things I can be doing.

7 MR. CUMMINGS: Yes, ma'am.

8 THE COURT: Great.

9 (Recess, from 1:31 p.m. to 1:39 p.m.)

10 THE COURT: All right. We're back on the
11 record. And Deputy Zensen is here and she now
12 has her documents.

13 BY THE COURT:

14 Q. And, Deputy Zensen, you just told me that you
15 received various summons from the Dorchester County
16 Clerk of Court's office?

17 A. Yes, ma'am.

18 Q. And you attempted to serve those summons.

19 A. Yes, ma'am.

20 Q. And were you able to serve some, and you weren't
21 able to serve some?

22 A. I -- yes, ma'am. I believe there was maybe one
23 or two that may have possibly been served.

24 Q. Very well. The majority of them you were unable
25 to serve?

1 A. That is correct.

2 Q. All right. And once you attempted to serve
3 those summons, those juror summons, did you
4 subsequently sign an affidavit on each and every
5 juror summons that you attempted to serve?

6 A. Yes, ma'am.

7 Q. And did you, in fact, attempt to serve each and
8 every summons that you had?

9 A. Yes, ma'am.

10 Q. All right. Would you go through with me the
11 individual's summons that you attempted to serve.
12 And if you remember anything about them, about the
13 attempted service, how you would have gone about that
14 process I'd appreciate that.

15 A. Okay. The first one was a Patricia A. Tucker at
16 [REDACTED] in Ladson.

17 Q. Did you go to that address?

18 A. Yes, ma'am. I went to that address. The young,
19 I can't remember if it was a lady or gentleman I
20 spoke to, stated that that subject no longer lived at
21 that, that they were renting that house at [REDACTED].

22 Q. And had subsequently moved?

23 A. Yes, ma'am.

24 Q. All right. And you signed an affidavit --

25 A. Yes, ma'am. I did.

1 Q. -- of non service? Thank you.

2 THE COURT: I think we'll mark all of these
3 as one exhibit unless you all require to have
4 them marked separately?

5 MR. BAILEY: One's fine.

6 MR. CUMMINGS: One's fine.

7 THE COURT: We'll mark them as a Court's
8 Exhibit.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: Thank you.

11 (Marked for purposes of the record was
12 Court's Exhibit 18, affidavits of service.)

13 A. And then the next one was a Theyla, it's
14 T-h-e-y-l-a, and the last name on that is Snider, at
15 [REDACTED] located in Ladson.

16 Q. And did you try to serve that?

17 A. By knocking on the door, yes, ma'am. And nobody
18 was -- no one does not live at that address.
19 Primarily we just put that on there if we try to make
20 contact and the person says they don't live there we
21 just write they don't live there.

22 Q. Very well. And contact was attempted. Did you
23 execute an affidavit?

24 A. Yes, ma'am. It was that affidavit. All these
25 affidavits were marked on April 27th of 2002.

1 Q. Thank you.

2 A. The next one was a Sarah Ferguson and she's at
3 [REDACTED] in Summerville, also, again,
4 on 4-27-2002, and she does not live at that address.

5 Q. Very well.

6 A. A Jean, and I guess it's Foether, it's
7 F-o-e-t-h-e-r, at [REDACTED] and that's
8 also in Summerville, on 4-27-2002, does not live at
9 that address.

10 Q. All right.

11 A. And a Robin Hawhee, it's H-a-w-h-e-e, at [REDACTED]
12 [REDACTED], and that subject does not live at
13 that address. On that one I actually didn't mark the
14 date, but I'm assuming it was 4-27.

15 MR. CUMMINGS: Pardon, Your Honor, trying
16 to get the last name of that person.

17 THE COURT: Hawhee.

18 THE WITNESS: Hawhee, H-a-w-h-e-e.

19 A. And on that one, Your Honor, I did not mark the
20 date on that one, but I'm assuming it would be the
21 4-27.

22 Q. You're confident that's a summons you attempted
23 to serve?

24 A. Yes, ma'am.

25 Q. And you, in fact, signed the affidavit?

1 A. Yes, ma'am.

2 Q. You recognize that as your signature?

3 A. Yes.

4 Q. Very well. And the best of your recollection
5 you signed it on the 27th of April 2002?

6 A. Yes, ma'am.

7 Q. Any other ones?

8 A. No, ma'am. I only had the five that I had that
9 day signed. We divide them up in our regions --

10 Q. Yes.

11 A. -- between the officers. We go out, we try to
12 make contact.

13 Q. And when you say that you attempted to make
14 contact on each and every one of those, you,
15 yourself, attempted to make contact?

16 A. Yes, ma'am. You go and knock on a door.

17 Q. Knock on the door. And if no one is responsive
18 do you all knock on neighbors' doors?

19 A. If they're not responsive down at the bottom it
20 says, "first attempt, second attempt, third attempt."
21 We will write there "no answer." Or if we make
22 contact with somebody and they said that this subject
23 was not home, we write "negative contact" down here
24 at the attempt. We do not sign the affidavit as
25 "does not live there" unless that person physically

1 is not there, or does not live there.

2 Q. All right. Thank you so much.

3 THE COURT: Any questions from the State?

4 MR. BAILEY: None from the State, Your
5 Honor.

6 THE COURT: From the defense?

7 MR. CUMMINGS: Just one.

8 EXAMINATION

9 BY MR. CUMMINGS:

10 Q. On each one of those affidavits other than the
11 ones where they say people either moved or no longer
12 there, were there more than one attempts of your
13 personal knowledge, ma'am, on these affidavits?

14 A. If there was, sir, it would be marked down here.
15 But on all of these five I had in my hand there were
16 no other attempts other than what I've done myself
17 and signed the affidavits to.

18 Q. That's all the questions I have.

19 MR. CUMMINGS: Thank you, Judge.

20 EXAMINATION

21 BY THE COURT:

22 Q. With those -- let me see those.

23 A. Sure. This is just a blank one.

24 Q. And on all of yours that you served, you made a
25 determination that the individuals no longer lived at

1 the addresses; is that correct?

2 A. Yes, ma'am. Yes, ma'am.

3 Q. All right. So you didn't have first, second,
4 third attempt because you were able to determine --

5 A. That they were not there, yes, ma'am. That they
6 no longer lived there.

7 Q. Thank you so much. If you would hand that to
8 our court reporter.

9 A. Okay.

10 Q. Thank you so much for being here today and enjoy
11 your trip to Atlanta.

12 A. Thank you.

13 Q. Yes.

14 THE COURT: Anything further?

15 All right. I am prepared to issue my
16 ruling as a result of the Jackson v. Denno
17 hearing. And I would just ask before I do that
18 anything from either of you?

19 MR. BAILEY: Your Honor, if you are
20 prepared to rule I have nothing to say unless
21 Mr. Cummings does.

22 THE COURT: Good for you, Mr. Bailey. And
23 you want to know in advance if he's got anything
24 to say.

25 MR. CUMMINGS: The old saying less is more,

1 and I think you've heard us until your Honor may
2 be tired of us.

3 THE COURT: Never.

4 MR. CUMMINGS: That's it, Judge, we leave
5 it in your hands.

6 THE COURT: Thank you. Thank you very
7 much. All right. This would be the ruling of
8 the Court. And I have identified -- before I
9 begin let me make sure that I have the
10 statements that I think they are and I want to
11 be sure that we are all singing off the same
12 sheet of music, if you will. There's the oral
13 statement that was the first statement that was
14 given on 2-17. Then there was a written
15 statement which was given on 2-17 which was the
16 first written statement and it was actually
17 given after the polygraph.

18 Then there was the second written
19 statement and then there was the -- actually the
20 third written statement, although it would be
21 the fourth statement in all. There was the
22 statement given to Sheriff Williams, then there
23 is the fourth written statement, the fifth
24 statement overall, if you will, which is the
25 statement on the 18th which would really be the

1 only statement on the 18th. And then there was
2 the -- on 2-22 there was an oral statement which
3 would be the second oral statement which would
4 be overall a sixth statement, and then an oral
5 statement which would be the third oral
6 statement or the seventh statement overall given
7 on 2-27.

8 I would just ask of you, are those all
9 the statements?

10 MR. BAILEY: That's correct, Your Honor,
11 according to my recollection and my notes.

12 THE COURT: Thank you. Thank you.

13 How about you, Mr. Cummings?

14 MR. CUMMINGS: Judge, I think the way you
15 have formatted it is correct, my only posture to
16 the Court is whether or not the Court was going
17 to take the individual as oral statement or oral
18 reduced to writing later on for the purposes of
19 any appellate record. How you just announced
20 them is correct numbers of verbiage that was
21 either allegedly given by my client, or as Your
22 Honor found was reduced to writing by law
23 enforcement.

24 THE COURT: The oral -- thank you for that.

25 MR. CUMMINGS: Yes, ma'am.

1 THE COURT: I would tell you that when I
2 refer to oral statements as I have just done,
3 what I'm referring to are the statements that I
4 heard that were oral statements. There were
5 field notes done of those statements, but that
6 the statements were never reduced to writing and
7 were never -- there were -- no signatures of
8 Mr. Bowman were on those statements.

9 MR. CUMMINGS: That's correct. Thank you,
10 Judge.

11 THE COURT: Do you think that's clear
12 enough?

13 MR. CUMMINGS: Yes, ma'am.

14 THE COURT: All right. Very well. All
15 right. With regards to the oral statement, the
16 first statement given on 2-17, Detective Van
17 Doran testifies that he read the defendant a
18 Miranda card when he was placed under arrest at
19 the house. There was testimony again that the
20 defendant did not ask for counsel after he was
21 taken into custody. There was testimony that
22 his demeanor was fine. Detective Coker states
23 that he read Miranda rights again and that
24 Detective Van Doran went over those rights again
25 before the oral statement was given.

1 And that on the Miranda statement of
2 rights and the initials were placed there on
3 each of those, the statement of the rights and
4 the waiver of rights form was signed around
5 11:25 a.m., I find that the oral statement there
6 given was freely and voluntarily made.

7 And I think the record should reflect
8 that I believe that the law imposes on the Court
9 two questions. Number one, were Miranda rights
10 given; and secondly, were the statements freely
11 and voluntarily given. And those are really --
12 and when you look at the research some of them
13 tend to want to blend those two, but I think
14 that the investigation is really twofold and the
15 holding would, therefore, be twofold: Was
16 Miranda given and was the statement given freely
17 and voluntarily as well.

18 All right. Then written statement
19 number one which was given on 2-17. And on that
20 occasion regarding the Miranda rights the
21 defendant signed a waiver of rights at 12:34.
22 Detective Van Doran says he informed defendant
23 of his rights verbally and while there was not
24 another Miranda form given I find that the law
25 does not require that an additional Miranda form

1 be given. Once the Miranda warnings are given,
2 they continue until such time as the defendant
3 informs law enforcement he doesn't wish to talk
4 anymore, or ceases to talk, or certainly ask for
5 counsel.

6 None of these offenses I find occurred
7 between the oral statement one and the written
8 statement that were given on the 17th, so I find
9 that the first written statement was likewise
10 given freely and voluntarily. And the other
11 testimony, of course, that the statement was
12 read back to the defendant and that the
13 defendant acknowledged the statement is true
14 when he signed the statement and the statement
15 was witnessed and he was provided with a copy of
16 the statement.

17 With regards to the written statement
18 number two, Detective Van Doran and Detective
19 Coker were present apparently around 4:40 in the
20 afternoon. Van Doran reminded the defendant of
21 his Miranda rights, the statement was written
22 and the statement was signed. I find that
23 Miranda warnings had been given and that this
24 statement, the second written statement was
25 likewise given freely and voluntarily.

1 I think it also bears mentioning that
2 these two statements maintain also internal
3 signature, or internal initials of the
4 defendant. Not only had he signed them, but he
5 had initialled different changes throughout the
6 statement which indicated to me participation
7 irrespective of whether the defendant read it or
8 it was read to him, certainly indicated to me
9 participation in that statement being read back
10 to Mr. Bowman.

11 Now, written statement number three
12 which was also on the 17th, that is the
13 statement that was generated as a result of a
14 meeting that began between Sheriff Williams,
15 Major Stephenson and the defendant, that Major
16 Stephenson left the meeting. Sheriff Williams
17 testified that he reminded the defendant of his
18 Miranda rights; however, I find that to this
19 point the defendant had not invoked his Miranda
20 rights, he had not ceased the questioning, he
21 had not requested counsel and in addition find
22 that Sheriff Williams testified that he reminded
23 him of his Miranda rights.

24 He gave a statement and he signed the
25 statement and he initialed, he also internally

1 initialled changes in this statement which
2 indicated to me that apparently Sheriff Williams
3 read him the statement back. There at least
4 appears to be more participation in this
5 statement internally. And it is only witnessed
6 by the sheriff. And I find that this statement,
7 considering the totality of the circumstances,
8 the preponderance has been met that this
9 statement was freely and voluntarily given and
10 the Miranda warnings were in place.

11 Now, with regards to the fourth
12 statement, this was a statement that was given
13 in the sheriff -- well, it's given in Orangeburg
14 allegedly. The defendant says that he actually
15 signed this statement in Branchville, but that
16 it was generated in Orangeburg. It appears from
17 the testimony that the defendant was checked out
18 of the jail at 16:37, at 4:37 in the afternoon.
19 The records of the jail talk about -- the note
20 on the jail record is that Mr. Bowman is exiting
21 to go to a bond hearing.

22 Interestingly enough, when Solicitor
23 Bailey asks the sheriff, asks Sheriff Williams
24 about whether or not there was any inducement,
25 or promises, or anything made to the defendant

1 on the 17th, prior to him giving the written
2 statement on the 17th, the testimony of the
3 sheriff says that the defendant asked him to get
4 him a bond, or to get him out of jail. Says
5 that he was afraid, he being the defendant was
6 afraid. And the sheriff says at that time,
7 regarding the statement on the 17th, "I'll try
8 to help you, but I don't know what I can do."

9 The testimony of law enforcement at
10 that point becomes extraordinarily varied, I
11 think. And I've tried to listen as carefully as
12 I know how. Detective Van Doran testified
13 yesterday and he testified earlier that he
14 remembers traveling from Branchville to
15 Orangeburg at approximately six o'clock on
16 Sunday, late Sunday afternoon, based upon a call
17 that was communicated, although he doesn't know
18 who called, that the defendant wanted to talk to
19 law enforcement.

20 The sheriff in his testimony about the
21 18th says a couple of things. He, first of all,
22 says that he talked to the defendant based upon
23 the defendant's -- no. He talked to Mr. Bowman
24 based upon the request of law enforcement, of
25 Dorchester County sheriff's deputies. He

1 subsequent says that he talked to Mr. Bowman,
2 because on the 17th they said they'd get back
3 together and talk again.

4 He also says that at the time that he
5 took the statement from Mr. Bowman that there
6 were no Dorchester County sheriff's deputies
7 present. The Dorchester County sheriff deputies
8 say that they were present when the statement
9 was given. And the interesting part of this
10 discussion is that you could conceivably think
11 that what the sheriff is referring to is that in
12 the room where he was talking to Mr. Bowman that
13 it was only Mr. Bowman and he were present and
14 there were no Dorchester County sheriff's deputy
15 present in the room, except that that discussion
16 involves how did the statement of Mr. Bowman get
17 to be on a Dorchester County statement form.

18 And the sheriff testifies that he was
19 not -- was not given to him by a Dorchester
20 County sheriff's deputy, that there were no
21 Dorchester County sheriff's deputies present.
22 Although yesterday Detective Van Doran testifies
23 that, in fact, he was outside the door and he
24 had the Dorchester County statement and that's
25 what he handed to the sheriff and that is what

1 the sheriff used when he wrote the statement of
2 Mr. Bowman down which is now known, I would just
3 add, as State's Exhibit 7 for identification
4 purposes.

5 On the document, on State's Exhibit 7,
6 it says that the statement begins at 7:35 p.m.
7 There's no explanation given for where was
8 Mr. Bowman, what was going on with Mr. Bowman
9 between 4:37 -- or 4:37 and 7:35. And the
10 sheriff illuminates that not at all. At the
11 time that the statement is given in Orangeburg
12 the defendant apparently is present in, if not
13 the sheriff's office, in the number two person,
14 the under sheriff, the major, Major Walters'
15 office in Orangeburg in the sheriff's
16 department. So he has been transported from the
17 jail over to the sheriff's department, sheriff's
18 office.

19 It's also interesting on
20 cross-examination that the sheriff acknowledges
21 a conversation with the defendant wherein the
22 defendant says he was concerned about
23 Mrs. Bowman. The sheriff also says on the 18th
24 that the defendant renewed his request for a
25 bond. Also when the sheriff initially testifies

1 that he talks to Mr. Bowman on the 18th at the
2 request of Dorchester County sheriff's deputies,
3 he also testified that he had had no notes and
4 he had had no phone calls from Mr. Bowman asking
5 for a meeting between the sheriff and
6 Mr. Bowman.

7 With regards to the statement itself,
8 State's Exhibit Number 7 is the only written
9 statement which there are no initials internally
10 within the statement. I think standing alone
11 that fact would be of no consequence. Also the
12 sheriff, when he begins his testimony about his
13 interview with the defendant on the 18th, in
14 addition to say that he spoke with the defendant
15 because he was requested to do so by Dorchester
16 County and then subsequently because he and
17 Mr. Bowman had made arrangements on the 17th to
18 talk again, he also says that -- and really it
19 goes to his reasons why the Dorchester County
20 sheriff's deputies asked him to speak to
21 Mr. Bowman. He says that there were some
22 questions in regards to what their discovery was
23 and what may have been included in his
24 statement. And then he goes on to say that what
25 he means is that there had been information

1 regarding co-defendants, and that that prompted
2 Dorchester County to ask him to talk to
3 Mr. Bowman again.

4 It also bears noting, and I do this
5 only for the record so that this record will
6 understand my struggle with this statement, he
7 also, he being the sheriff, also even though the
8 solicitor tries to direct him a little bit, he
9 testifies initially that he talked to Mr. Bowman
10 on Sunday in Branchville. Says during the
11 second interview on the 18th around seven
12 o'clock he's in Branchville at the town hall.

13 Interestingly enough, and I just note
14 this for the record, the sheriffs allays as he
15 relates that meeting with Mr. Bowman on the
16 18th, he says that Mr. Bowman asks if he could
17 get him a bail or bond again. And what the
18 sheriff says, he says on the 18th is, "I can't
19 promise to get you out of jail. The best I can
20 do is talk to your parents and try to help them
21 in getting you out, but I can't do anything
22 against the policy or the law."

23 The sheriff, I think it's also
24 important to note, that he testifies that he
25 thinks that the operation is a joint

1 responsibility, the investigation. And by the
2 investigation I don't think he is at all meaning
3 the receiving stolen goods, I think he's talking
4 about the murder investigation. He talks about
5 the tape recording and says that he knows that
6 Mr. Bowman wouldn't want to be tape recorded,
7 but there's no explanation of why he knows that
8 about Mr. Bowman. And that's why he didn't tape
9 record him.

10 Also it's important I think for the
11 record to note that while I believe even in
12 Orangeburg there was a co-defendant, I think
13 Mr. Gadson was in Orangeburg for a while, and I
14 understand that he was subsequently, like
15 Mr. Bowman, transported to Dorchester County,
16 the sheriff did not interview Mr. Gadson at any
17 point in time.

18 The statement was handwritten by the
19 sheriff. Also important for the record to
20 reflect, and I have found because it's been
21 testified to that the sheriff kept no notes of
22 any kind, no field notes, no incident reports,
23 no records of any kind even though he testified
24 that he considered this to be a joint
25 responsibility for this investigation. I say

1 that because the sheriff, himself, describes
2 this statement as a confession, and it --
3 particularly as the testimony continues to
4 unfold in this matter, I have great concern
5 about the lack of knowledge of the circumstances
6 surrounding this particular statement.

7 And then the question is asked of him,
8 "Did you ever tell the defendant that you would
9 take him to Branchville, or have a member of law
10 enforcement take him to Branchville to see his
11 wife after he talked to you?"

12 He said, "No." I think I must find
13 that based on all the evidence that I have heard
14 that he most assuredly, and maybe he didn't tell
15 the defendant specifically, but he absolutely --
16 and I find that the sheriff orchestrated
17 Mr. Bowman being taken to Branchville
18 immediately after this statement was written.
19 When the question gets asked of the sheriff did
20 he, the sheriff, allow the defendant to be taken
21 by Deputy McAlhany or anyone else to the
22 Branchville Police Department to see his wife,
23 that evening, that Sunday evening after the
24 statement was written, he first of all says he
25 doesn't recall and says maybe. And then it goes

1 to a -- there were a lot of actions regarding
2 the case and then he says certainly didn't do
3 that in exchange for any confession.

4 And then when he gets asked by -- on
5 cross-examination whether or not the
6 defendant -- he had the defendant taken to
7 Branchville after the statement was written he
8 clearly says he has no memory. And then on
9 cross-examination, the cross-examination is
10 asked "Based on your investigation of this case
11 did you later learn he was taken to
12 Branchville?" And he says he has no memory.

13 This is what occurred as I find it
14 based upon the testimony that has been given,
15 this is what I find occurred. I find that the
16 sheriff wrote out a statement. I find that
17 after he wrote out a statement that he came out
18 of the door, came out of the meeting with
19 Mr. Bowman, the defendant, he very shortly if
20 not immediately had a conversation with
21 Dorchester County sheriff's deputies, that as
22 testified to by Major Walters who is the number
23 two person in Orangeburg in the sheriff's
24 department. And she testifies that the sheriff
25 came out, talked to the deputies from Dorchester

1 County and they were all in agreement that they
2 would transport him to see his wife, meaning
3 that the defendant would be transported to see
4 his wife.

5 That is the testimony that Detective
6 Van Doran who she -- who Major Walters
7 identifies as being present, initially does not
8 remember being present, does not remember that
9 conversation, returned, did remember a
10 conversation between he and the sheriff about
11 taking the defendant to see his wife in
12 Branchville.

13 I find that what then transpired is
14 that he was immediately placed in a car driven
15 by Detective -- or driven by Deputy McAlhany
16 who, himself, described this event as being an
17 unusual one. I find it was an unusual one
18 because at this point we're sometime after nine
19 o'clock on Sunday evening, and the defendant is
20 placed in a sheriff's deputy car in Orangeburg
21 and immediately transported to Branchville some
22 many miles away, 14, 15, 16 miles away on Sunday
23 night.

24 I find that based upon the testimony
25 of Officer Lichtenberg, or Lichtenberger, that

1 the sheriff himself called Officer
2 Lichtenberger. And the reason to me that this
3 is quite unusual is because Lichtenberger is not
4 an Orangeburg County sheriff's deputy. He is
5 employed by the Town of Branchville. And
6 Lichtenberger remembers being instructed by the
7 sheriff to go pick up Marion Bowman's wife,
8 Dorothy Bowman. Again, in the night of the
9 18th. Lichtenberger testifies, and I think the
10 record needs to reflect very uncomfortably, that
11 he found this communication to be so unusual
12 that he called his chief of police, Chief
13 Walters, to ask him am I to do this. And Chief
14 Walters says, "Do what he tells you to do."

15 Lichtenberger goes and picks up
16 Ms. Bowman and her children, or child, drops the
17 children off for babysitting and then transports
18 Ms. Bowman to the Branchville Town Hall. I find
19 that that is an extraordinarily unusual
20 circumstance. I find that it is remarkable that
21 the sheriff would not have remembered those
22 events.

23 The testimony is controverted both
24 certainly by Mr. Bowman and law enforcement
25 regarding whether or not the sheriff returned to