

VOLUME NINE

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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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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1 done that, ma'am.

2 THE COURT: Yes.

3 MR. CUMMINGS: You had done that
4 extensively. We were going to argue that prior
5 to that Friday and when the Court -- due to
6 unforeseen circumstances we did not have that
7 court that Friday before to finish up our
8 motions, but that has adequately been addressed.
9 Any objections to voir dire that we had placed
10 we have already placed on the record.

11 THE COURT: Right.

12 MR. CUMMINGS: Your Honor has chosen the
13 voir dire you deemed appropriate, you ruled on
14 my motion; therefore, Judge, that motion has
15 been addressed.

16 THE COURT: Right.

17 MR. CUMMINGS: Your Honor, respectfully,
18 the second one that has been taken care of was,
19 Your Honor, under our constitution we had asked
20 that type two jurors be -- not be excluded from
21 jury service in the case of Mr. Bowman. You
22 have ruled, respectfully, as I understand,
23 Judge, I know you'll correct me if I'm wrong.

24 THE COURT: I have.

25 MR. CUMMINGS: That according to our

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1 statutory scheme under 16-3-20, that there are
2 certain qualifications of jurors that have to be
3 able to consider both types of punishments. We
4 have also filed that motion, Judge, and for the
5 record you have ruled respectfully over my
6 objection and, therefore, Judge, that motion has
7 been ruled on.

8 And then after we started, Your Honor,
9 respectfully, and if the Court needs a copy of
10 this I'll pass this one up because you don't
11 have it.

12 THE COURT: Okay.

13 MR. CUMMINGS: Mr. Solicitor had politely,
14 Mr. Bailey served us with notice that there may
15 be an issue that comes up with a gentleman named
16 Mr. Mood. We've been looking at the witness
17 list of the State, I don't see Mr. Mood's name
18 on it per se. But we have filed a motion and a
19 motion to suppress any and all statements in
20 that for violation of Rule 5 or Brady, Judge.
21 It was our contention after contacting the
22 attorney who represents Mr. Mood, Mr. Cameron
23 Marshall, we had asked Mr. Marshall if we could
24 see his client and of course he said no. We had
25 asked him when and if he might have met with

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1 Mr. Solicitor or any member of his staff about
2 certain comments that were allegedly made by my
3 client, and that had been like two or three
4 DoX months earlier to this and shortly before trial,
5 days before, Judge, we were copied, of course,
6 under Rule 5 and Brady with the issue of any and
7 all statements that might be alleged to have
8 been made by Mr. Mood against codefendants and,
9 of course, the defendant on trial, Judge.

10 Your Honor, we would ask in reading
11 our motion if -- and I'll put the exact dates in
12 here. As grounds for this motion the defendant
13 would show that on May 7, 2002 that
14 prosecution's office provided by fax information
15 for the first time concerning their intent to
16 use the aforementioned witness in this case,
17 Mr. Mood, even though the prosecution has had
18 possession of said information for approximately
19 three months. All parties have been aware the
20 trial is scheduled to begin on May 13th, such
21 notice on such potentially important information
22 prejudices the defendant and deprives him of due
23 process and fundamental fairness required by law
24 and we would ask that this witness be excluded
25 or his information be suppressed, Your Honor.

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1 And I'll sit down for a moment.

2 MR. BAILEY: Your Honor, that kind of got
3 ripe at the time I interviewed, or finally had
4 arrived at a plea agreement with James Taiwan
5 Gadson who is also facing murder charges here.
6 Mr. Mood has some drug charges, he was housed in
7 the Dorchester County Jail, and he claimed to be
8 privy to some information in regard to the
9 involvement of both Mr. Bowman and Mr. Gadson.

10 And at the time that I arrived at the
11 plea agreement I sent that information to Mr.
12 Cummings to comply with Brady in the event he
13 felt like that was of any impeaching value of
14 any of the witnesses that we might call. I do
15 not have any present intention of calling
16 Mr. Mood and that's why he's not on the witness
17 list.

18 THE COURT: Very well.

19 MR. BAILEY: I guess I would go ahead and
20 consent to the motion.

21 THE COURT: Very well.

22 MR. CUMMINGS: Thank you, Judge. Thank
23 you, Mr. Bailey.

24 Your Honor, the next witness -- excuse
25 me, our next motion is a motion in limine to

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1 prohibit any reference to the truthfulness of
2 the State's witness by solicitor and that is the
3 impermissible bolstering of a witness by the
4 solicitor. And we would ask for a motion in
5 limine ruling on, Your Honor, understanding we
6 have to renew these all through the trial that
7 any statements made by any witnesses, that they
8 are totally improper and invade the province of
9 the jury to determine the credibility of
10 witnesses. And that would constitute an
11 improper bolstering, Your Honor, respectfully,
12 by the State.

13 And Your Honor, respectfully, that
14 motion is there to make sure that through
15 statements or through the attempted introduction
16 of any plea agreements that we would argue, Your
17 Honor, respectfully, State vs. Gerald
18 Diddlemyer, 371 S.E.2d, 793, it's a 1988 case,
19 Judge. The mere fact that a plea agreement
20 might state in there that certain facts, certain
21 obligations, and it says that your truthful
22 testimony all throughout any plea agreements or
23 said written agreements, Your Honor, would be an
24 impermissible bolstering.

25 THE COURT: All right.

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1 MR. BAILEY: Your Honor, I think what Mr.
2 Cummings is, as I understand his motion, there's
3 numerous witnesses that the State intends to
4 call that have been charged, have entered into
5 written plea agreements with the State and, of
6 course, part of that plea agreement is they
7 would get a reduction in charge or sentence or
8 some consideration in exchange for their
9 truthful testimony.

10 And the State -- the case on that is
11 State vs. Calvin Alphonso Shuler, that was the
12 death penalty case I tried here in Dorchester
13 County with Judge Rawl as the judge, that issue
14 was directly addressed when there was a
15 codefendant that I called that had a federal
16 plea agreement. I elicited from that witness,
17 Mr. Jones, Desmond Jones, that he did have a
18 plea agreement and that plea agreement required
19 that he testify truthfully and he was getting a
20 reduction in charges. That was an issue on
21 appeal and our Supreme Court addressed that in a
22 fairly lengthy fashion. And I quote from that
23 opinion that "It was not error for the solicitor
24 to introduce the plea agreement on direct
25 examination because the solicitor was entitled

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1 to anticipate inevitable cross-examination of a
2 federal inmate and to dispel any notion he was
3 hiding something from the jury."

4 Most courts generally recognize the
5 prosecution can introduce evidence of a plea
6 agreement during direct examination of a State's
7 witness. And I can hand that up to the Court.

8 THE COURT: Thank you. Yeah, let me see
9 that.

10 MR. BAILEY: Your Honor, if Mr. Cummings
11 wants to avoid any mention of a plea agreement
12 whatsoever by either side, then, of course, I
13 would agree not to get into it. What I don't
14 want to happen is not mention it and then Mr.
15 Cummings get up same as in this case here and
16 give the jury the impression I had something to
17 hide from the jury I wasn't disclosing, that I
18 was trying to hide.

19 MR. CUMMINGS: Judge, as you read any of
20 these proposed plea agreements in writing, it is
21 constantly in there, truthful testimony,
22 truthful testimony. And in one particular case
23 and with the testimony in the plea agreement we
24 read from Mr. Gadson, that it may infer the
25 State would go back to seek the death penalty

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1 against him when death notice has not been
2 served on Mr. Gadson as I understand it. If I'm
3 wrong Mr. Bailey will correct me.

4 MR. BAILEY: I did not intend to introduce
5 the agreement itself because it's got stuff in
6 there about polygraphs and other things that we
7 agree not to get into, but I do want to elicit
8 that they do have a plea agreement and that plea
9 agreement is they get a break if they testify
10 truthfully.

11 THE COURT: Describe the terms as you have
12 described them, that this is the agreement.

13 MR. CUMMINGS: Absolutely fine with that,
14 Judge. I just want to make sure the written
15 paper did not be presented to anybody or
16 introduced into evidence, Judge.

17 THE COURT: I think that's not a problem
18 because Mr. Bailey does not intend to introduce
19 the written document.

20 MR. BAILEY: That's correct, Your Honor.

21 THE COURT: Or does intend to ask him about
22 it, but does not intend to introduce a written
23 agreement.

24 MR. CUMMINGS: Thank you, Judge.

25 MR. BAILEY: Your Honor, I would, again,

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1 offer, if Mr. Cummings does not want to get into
2 them at all I would not mention it.

3 THE COURT: I notice that he ignored that,
4 Mr. Bailey, so I took that to mean that he
5 didn't want to go there.

6 MR. CUMMINGS: The greatest thing in the
7 world I ever got was they have to reveal the
8 deal.

9 THE COURT: Right.

10 MR. CUMMINGS: That was something that the
11 United States Constitution required. Judge,
12 there was a motion filed also to sequester the
13 jury, Judge, and that has been done.

14 THE COURT: Done.

15 MR. CUMMINGS: That was elicited the last
16 moment and we put it in writing.

17 Judge, we have asked and requested a
18 motion that there not be any further comments
19 about this case to the news media, TV station,
20 or radio stations either by solicitor, law
21 enforcement, jail, defense counsel in any way
22 about this case. This case is now readied to be
23 tried in this courtroom, the jury's sequestered.
24 In the abundance of caution, the protection of a
25 fair and impartial trial for my client, I would

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1 ask basically that the law enforcement
2 personnel, solicitor, our defense team and
3 anybody at the jail be prohibited from making
4 any comments about this now from the press. If
5 the press wants to cover the trial under Your
6 Honor's instructions, public forum, that's your
7 province, but I would ask we, the court
8 personnel, not talk about this case to the
9 press.

10 THE COURT: Mr. Bailey.

11 MR. BAILEY: Your Honor, I agree for this
12 reason. Even though the jurors are sequestered,
13 the witnesses will be sequestered, and I would
14 hate for a witness to read what another witness
15 had testified to in the paper, see it on
16 television or something. I don't know that we
17 can prevent that happening because there's going
18 to be media coverage.

19 THE COURT: Sure.

20 MR. BAILEY: My only concern would be that
21 the way Mr. Cummings had expressed the extent of
22 the proposed gag order it's pretty all inclusive
23 and I don't have any way to contact -- are we
24 going to be up here in the trial the next week
25 or ten days or whatever, that I can't contact

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1 all these people and know them, advise them of
2 the extent of the order.

3 THE COURT: I understand.

4 MR. CUMMINGS: May it please the Court,
5 Judge. The reason that came about in particular
6 now is this has been, for lack of better words,
7 at least we believe a misprint of any
8 communication issues that have been presented to
9 the *Summerville Journal Scene, News & Courier*,
10 Judge, as we found out came out right before the
11 trial that jury selection begins and gave the
12 names of the solicitor, gave the names of the
13 defense counsel, stated jury selection will
14 begin. Cold, mundane, professional article.

15 Somehow in the *Summerville Journal*
16 *Scene* at least on two occasions now, the
17 Wednesday before we started trial and then that
18 Monday when we were starting to come to court
19 and pick the jury, there's issues in there
20 stating my client is charged with kidnapping,
21 that my client is charged with criminal sexual
22 conduct, that my client is charged with numerous
23 things. And there are two indictments and only
24 two indictments, murder, alleged murder and
25 alleged arson, ma'am, in the third degree.

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1 Where they got that information from, Judge,
2 that says they quote Sheriff Ray Nash, he is a
3 law enforcement personnel.

4 I know, and I say this as an officer
5 of the Court, Mr. Bailey would not tell anybody
6 anything that was not correct, just like
7 Ms. Thomas and I would not say anything to the
8 press that was incorrect. Judge, that is
9 prejudicial to my client, it can form a bias or
10 opinion. And you have taken great strides to
11 protect this jury and inquire of this jury for a
12 fair and impartial trial of Mr. Bowman as to
13 their knowledge and extent of knowledge as to
14 their surrounding by media coverage, what
15 they've read, what they've heard, what they've
16 seen. So far the jurors have said if they did
17 see anything, they could set it aside.

18 But if the constant situation now is
19 that they're going to misprint wrong
20 information, then that may and possibly cause my
21 client to not have a fair trial in particular if
22 these jurors were to get any comments or any
23 outside information from their family as we go
24 along, and from anything they may pick up. And
25 I know SLED is assigned to guard them, assigned

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1 to make sure they don't get any communications,
2 but we've had two misprints here.

3 And I respectfully say to the Court
4 that that is the only reason why I ask for that
5 motion, Judge, is not -- and, again, it's almost
6 like a safety valve for us. If we're not
7 talking to them we know that information did not
8 come from us.

9 THE COURT: What is it -- tell me -- what
10 I'm hearing from both of you is that there is a
11 need, and what I'm trying to do is ascertain
12 what the need is. Obviously if they're not --
13 if I'm -- if I'm going to issue a gag order for
14 certain individuals and for certain agencies and
15 they are not present before the Court with an
16 opportunity to be heard, it's not fair, I'm not
17 willing to do that. And I gather that that
18 motion wasn't served on those other individuals
19 and giving them an opportunity to be heard, so
20 I'm reluctant to do that.

21 I have no problem issuing an order for
22 court personnel if it's done by consent. And
23 hasn't been a problem in the case and I don't
24 anticipate that it would be a problem in the
25 case; however, with some of the other agencies

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1 that you mention I think you've got to serve
2 them, I think they would have to have notice of
3 an opportunity to be heard and that concerns me.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: Now, if you feel compelled to
6 do that, though, Mr. Cummings, I urge you to do
7 it and I will hear that one morning.

8 MR. CUMMINGS: If I may, Judge, just for
9 the record to verify what we are saying I would
10 like to pass up a copy of a Wednesday, May 15th,
11 2002 article and make this part of the Court's
12 Exhibits.

13 THE COURT: Sure. I think what I'm telling
14 you is that I'm denying the motion.

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: In fact, I'm hearing from you
17 and Mr. Bailey similar comments and I urge you
18 to craft something, you can craft something when
19 you get some time, I'm happy to do that.

20 MR. CUMMINGS: Yes, ma'am.

21 THE COURT: In other words, I think you
22 need to do that together because it must be
23 limited and it must be specific. And if you all
24 could craft that and then if the need is -- I am
25 happy to, to have you serve them and hear that

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1 matter early in the morning.

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: All right.

4 MR. CUMMINGS: Thank you, Judge. Your
5 Honor, we have not been put on notice and it's
6 not normally the court proceedings that this
7 court shares with us whether or not there's
8 going to be a TV camera.

9 THE COURT: I'm happy to tell you I've had
10 one request from Channel 4 and that is the only
11 request that I have had today and I am happy for
12 you to know that.

13 MR. CUMMINGS: Yes, ma'am. We are asking
14 for a motion to prohibit the electronic
15 broadcast of court productions, to avoid
16 potential witnesses watching TV, watching what's
17 going on in here. I know it's totally within
18 Her Honor's province. There has not been any
19 issues with news cameras up front or anything
20 dealing with severe press, that the jurors may
21 be intimidated or the jurors may feel, for lack
22 of better words, Your Honor, that they're in a
23 compound setting. Like we see some of the media
24 issues like in the Susan Smith case and some of
25 the other ones, you couldn't even get to the

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1 courthouse through the trucks.

2 But if there's one there we're asking
3 that it not be televised, but, again, that is
4 within Your Honor's province. I have attached a
5 memo to my motion, Your Honor, I'm sure you've
6 read it, that is totally within your province
7 pursuant to our rules and I just, again --

8 THE COURT: Yes. You know, my feeling
9 about that is that I think it's going to take
10 more than -- simply more than your concern about
11 where this is watching the television news
12 reports. And I absolutely understand your
13 concern about that, but I think our law has been
14 very clear that if you limit televisions in the
15 courtroom and when they request appropriately to
16 be here, that you do that with great care. And
17 I do not think that just because there is a
18 concern that potential witnesses may watch the
19 television news reports is sufficient for me to
20 block the TV cameras. If it becomes a safety
21 issue of some force or factor, I certainly want
22 to hear that, but at this juncture just on that
23 basis I'm not going to bother television
24 cameras.

25 MR. CUMMINGS: Your Honor, of course,

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1 again, pursuant to our Rule 605, and that's why
2 I state that correctly, I know that you would
3 not allow the type of atmosphere that most
4 jurors are used to seeing on either Court TV or
5 what happened out in California, one particular
6 case, and that we've had decorum in the this
7 courtroom and dignity and the only reason why we
8 reinforce that motion is to say that we would
9 not want that to happen, Judge, pursuant to Rule
10 605 that says it's within your province, the
11 effect of televised proceedings on witnesses is
12 our main argument but, of course, Judge, is not
13 the only argument because it deals with about
14 this potential people seeing -- the State
15 seeking a death penalty against people and it
16 is, and all reluctance and all candor, an
17 intimidation issue as to other witnesses, that
18 they see the power of the State, see how people
19 are brought to the courtroom.

20 I filed the motion, Judge, you ruled
21 respectfully, I'm going to sit down.

22 THE COURT: Thank you. But, however, now,
23 Mr. Cummings, I want you to be mindful if the
24 concern changes, if the complexion of this case
25 changes, feel free to renew your motion at a

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1 later time. But as the facts are before me now,
2 the circumstances before me now I'm going to
3 respectfully deny your motion and allow cameras
4 if it's requested, mindful of the feed situation
5 as you are.

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: And I will certainly address
8 those. And certainly in my experience, which
9 I've had a little bit here recently, they have
10 been quite unobtrusive.

11 MR. CUMMINGS: Yes, ma'am. And, Judge,
12 along that line we had earlier filed a motion
13 for a change of venue. And part of the process
14 and when the motion for venue is ripe is, of
15 course, to see whether or not we would get a
16 panel of fair and impartial jurors that have not
17 been overly biased or exposed to adverse media.

18 I've explained to Mr. Bowman that
19 we've got a jury picked. And some jurors stated
20 they read something about it, some jurors said
21 they early on saw something on TV, but all of
22 them have stated for the record under their oath
23 that anything they read could be put aside. I
24 don't believe, Your Honor, respectfully, to
25 protect Mr. Bowman's rights, we move for a

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1 change of venue to make sure that he would
2 receive a fair and impartial trial. I don't
3 believe, Judge, that that has risen to the level
4 where we could not have gotten 12 good people,
5 plus the alternates, Judge, if we would have had
6 an over media coverage.

7 I think I filed the motion and I know
8 if any issue comes up in the trial I would renew
9 it. As I see right now, Judge, as an officer of
10 the Court, I don't believe I would move to
11 change venue in this case.

12 THE COURT: Thank you very much. Anything
13 further?

14 MR. CUMMINGS: Judge, I think we have the
15 one stipulation on the record and I want to make
16 sure we do that. We do, I believe, have a
17 public courtroom right now.

18 THE COURT: Yes. Yes. I think I want to
19 handle that last.

20 MR. CUMMINGS: Yes, ma'am.

21 THE COURT: All right. All right. And you
22 have your motion.

23 MR. BAILEY: Yes, ma'am. Before I get into
24 that, Your Honor, Mr. Cummings also had a motion
25 to prohibit the State from referring to the

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1 defendant by his nickname.

2 THE COURT: Oh, yes.

3 MR. BAILEY: I don't know if we wanted to
4 address that.

5 MR. CUMMINGS: Yes, ma'am. I put that in
6 writing after we had talked about it in the
7 court and previous things.

8 THE COURT: Yes.

9 MR. CUMMINGS: And, Your Honor, if I may
10 take a few moments, I thank Mr. Bailey, again,
11 Judge, my client's nickname, for lack of better
12 words, is Black. It's spelled B-l-a-c-k. Your
13 Honor, my client is an African-American citizen,
14 he is clearly, Judge, in a case here today where
15 Your Honor has heard from one of the other
16 issues that we have worked very hard, Mr. Bailey
17 and I and Ms. Thomas, Mr. Lafond, and all the
18 members of the solicitor's office staff to keep
19 race out of this case and give any citizen a
20 fair and impartial trial.

21 It would be unduly harmful, Your
22 Honor, respectfully, to my client to be referred
23 to constantly as Black. He has a name, his name
24 is Mr. Marion Bowman, Jr. The Court has
25 admonished even us lawyers to not use each

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1 other's first names in court because of the
2 decorum and respect for the bench in our
3 proceedings. And I would ask, Your Honor, that
4 any reference to him be prohibited, that we have
5 a motion in limine to not use nicknames.

6 Inadvertently once in a while, Judge,
7 we all know people call each other by a name. I
8 may refer to my deputy over here as Sammy, you
9 know, anything. But, Judge, respectfully, we
10 are asking for a motion in limine to be granted
11 and an order granted that his nickname not be
12 allowed to be used in court.

13 And, likewise, it would go for the
14 defense that we could not impede or try to call
15 other people by their nicknames. Understanding,
16 Judge, with that situation, with the fact that
17 my client is an African-American male, I think
18 it's imperative for the Court it might cause
19 great prejudicial harm to my client to be
20 referred by his nickname in this courtroom based
21 on the fact that there may be some quantitative
22 rationale or reasoning to race issue in here as
23 well as the connotation that we treat --
24 somebody might treat a black person differently
25 then a white person, or the fact that he's black

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1 may cause some inner prejudice or inner feeling
2 of bias against any citizen.

3 THE COURT: Yes, sir, Mr. Bailey.

4 MR. BAILEY: Your Honor, I certainly don't
5 intend to play any kind of race card here and I
6 think the jury can see that Mr. Bowman is
7 African-American. I don't consider that
8 nickname to be a derogatory name. I mean, Mr.
9 Cummings might, I do not. And I have talked to
10 numerous people in the Branchville community in
11 preparation for this case and I don't think any
12 of them has referred to him as Marion, either
13 call him J. R. or Black, that's his nickname,
14 that's how he's known.

15 Other codefendants here they pretty
16 much all got a nickname and I don't think
17 there's anything derogatory about it. I'm not
18 going to refer to him as Black if Mr. Cummings
19 does not want me to; however, these people who
20 have know him all of his life, or automatically
21 when they talk about it they will either say
22 J.R. or Black.

23 THE COURT: Your point is he would be
24 referred to as his -- by his nickname for
25 identification purposes.

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1 MR. BAILEY: Yes, Your Honor. The other
2 thing is I would anticipate that there would be
3 some testimony in regard to some dying
4 statements made by the victim after she was shot
5 the first time in which she did refer to him by
6 that name as Black. And if I'm prohibited from
7 even mentioning that, then I can't get this
8 excited utterance, this res gestae in in the
9 manner in which it was given by the victim.

10 THE COURT: Mr. Bailey and Mr. Cummings, I
11 think that the law is clear that if a nickname
12 is -- it's not prejudicial when it's used to
13 prove something at issue in a trial, and
14 identification clearly is such an issue. Mr.
15 Bailey has assured me that he will not, he will
16 endeavor not to use except, I'm sure, in
17 identification purposes.

18 He may be required to say when you use
19 the nickname, Black, who are you referring to.
20 So I can't keep you from uttering the word, the
21 nickname, because to do that could get to be
22 nonsensical; however, he has indicated that he
23 doesn't intend to argue his nickname other than
24 for identification purposes. And I'm going to
25 deny your motion on the basis that as I am

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1 understanding the solicitor, that the nickname
2 would be used just for identification purposes.

3 You need to renew your motion if it
4 seems that it's becoming something else, but so
5 long as the purpose of having and using -- or
6 using the nickname is for identification
7 purposes, clearly I think it's admissible.

8 MR. CUMMINGS: Thank you, Your Honor. Note
9 my objection.

10 THE COURT: Yes, sir. Yes, sir. Now,
11 motion to reconsider I think remains; is that
12 right?

13 MR. BAILEY: Yes, ma'am. I had filed the
14 motion to -- for Your Honor to reconsider the
15 order in the Jackson v. Denno hearing which
16 suppressed the statement given by the -- the
17 confession given by the defendant to Sheriff
18 Larry Williams of Orangeburg County.

19 Your Honor, I sat out the basis for
20 that motion in the motion itself and you heard
21 arguments extensively on that previously and I
22 won't get into that again.

23 What I do have that I'd like Your
24 Honor to take into consideration and to give you
25 the background on it, when late during the week

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1 prior to the time that we started jury
2 selection, I met over in the jail with James
3 Taiwan Gadson and his attorney, Gene Dukes and
4 we did arrive at a plea agreement. I provided
5 Mr. Cummings with a copy of that agreement.

6 And in the course of discussing in
7 Mr. Dukes' presence with Mr. Gadson about his
8 recollection of events and what he knew about
9 the case, he told me that there was some letters
10 that he had knowledge of that Mr. Bowman had
11 written to his wife, Dorothy Mae Bowman.

12 Dorothy Mae Bowman also has charges
13 pending against her, she's represented by John
14 Loy. When I found out these letters may exist I
15 contacted Mr. Loy and asked whether or not
16 through him Mrs. Bowman would give us these
17 letters to see if they're of any evidentiary
18 value.

19 Now, Your Honor, Mr. Bowman, as you'll
20 recall during the course of the Jackson v. Denno
21 hearing, contended that he was illiterate, that
22 he was unable to read or write to any real
23 extent and that he was so illiterate that he
24 couldn't read and understand the Miranda rights,
25 if you'll recall that testimony he gave under

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1 oath.

2 I attached several of these letters to
3 the notice of motion for reconsideration. One
4 of those letters, Your Honor, is dated
5 March 26th, 2001, shortly after the arrest, and
6 I believe that prior to the time counsel had
7 been appointed to him. And if I might, with
8 Your Honor's permission, publish a portion of
9 that letter to his wife.

10 And she, Your Honor, did produce these
11 and can authenticate the handwriting in them as
12 being Marion Bowman's handwriting "Please go to
13 a lawyer and ask them where can you find a law
14 book on statement and evidence suppression and
15 buy it and mail it to me."

16 And, Your Honor, that same letter also
17 has a P. S., "Tell Hiram to send me a letter of
18 what he told the police, please, it's
19 important." Now, Hiram is Hiram Johnson, we
20 believe, who's also a potential State's witness
21 who was with Mr. Bowman at various times during
22 the date of the murder.

23 And, Your Honor, I think this
24 statement by itself is entitled in the letter
25 that within -- within a matter of weeks after

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1 his arrest before he's been to a lawyer he's --
2 this man who claims to be illiterate is writing
3 a letter trying to develop a theory of evidence
4 suppression, statement suppression.

5 And there's also a letter, Your Honor,
6 dated March the 12th to his wife where I quote
7 Mr. Bowman "Did you talk to Big Larry yet? I'm
8 supposed to get a bond hearing between the 19th
9 and 20th of this month."

10 Your Honor, Big Larry, that's another
11 street name for Larry Williams, the sheriff of
12 Orangeburg County, the same Larry Williams this
13 man claimed beat him, threatened him by putting
14 his hand on a gun and coerced wife and children.
15 That's dated March 12th. To me that's
16 inconsistent with his testimony that this guy
17 terrified him and intimidated him to the extent
18 he confessed to something he didn't do and here
19 he is asking his wife to contact this same
20 individual.

21 And, Your Honor, the letters go on and
22 on showing his fairly high degree of literacy
23 and attempts to suborn perjury by various people
24 involved in the case. One of the letters dated
25 April the 11th, 2001 says, "Dot, listen, no

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1 matter what the police or anyone say don't
2 believe them. I need you to say that you did
3 not tell the police to search house and that
4 only thing they said was that they had warrant,
5 they arrested me for receiving stolen goods and
6 that was all they said." Finally, Your Honor --

7 THE COURT: All right. I will look at
8 this. Given the time that I've had I have not
9 had time to study it and I will do that. Do you
10 need to be able to have your decision before you
11 can make your opening statement?

12 MR. BAILEY: No. I can get by that without
13 that.

14 THE COURT: Let me look at this over the
15 balance of this evening.

16 MR. BAILEY: Sure. Thank you, Your Honor.

17 THE COURT: Thank you. All right. We need
18 to have the in-camera hearing and I think -- I
19 think what we will do, it will be easier for us
20 to go back into the grand jury area or back in
21 chambers, let us do that. I think that will be
22 easier given the number of folks in the jury
23 room. Oh, you all stay, we'll go, I'm sorry, of
24 course.

25 (The following proceedings are held in

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1 chambers.)

2 THE COURT: The question that I had asked
3 counsel to address and address with you,
4 Mr. Bowman, had to do with opening statement and
5 whether or not in your lawyer's opening
6 statement, Mr. Bowman, counsel, whether or not
7 you intended to concede anything. And if you
8 did, I wanted to hear about it. I wanted to
9 also hear from Mr. Bowman about that and be sure
10 that he knew that you were conceding whatever
11 you would be conceding in the opening statement.
12 Have you had a chance to explain that, first of
13 all, to Mr. Bowman?

14 MR. CUMMINGS: First, yes, ma'am. And,
15 Judge, we have not been given permission to
16 concede anything other than the one stipulation
17 which was while talking to the Court to protect
18 my client from any reference to a prior crime in
19 case he chooses to remain silent in the case in
20 chief, in the guilt phase, Your Honor, I'm
21 sorry.

22 THE COURT: Very well. So what you're
23 telling me is there will be no concession of
24 anything in the opening?

25 MR. CUMMINGS: No, ma'am.

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1 THE COURT: Very well.

2 MR. CUMMINGS: My client has not authorized
3 me to concede anything. Marva?

4 MS. HARDEE-THOMAS: That's correct.

5 THE COURT: Mr. Bowman, is that correct?

6 MR. BOWMAN: Yes.

7 THE COURT: Okay. And you're prepared to
8 proceed understanding that?

9 MR. CUMMINGS: Yes, ma'am.

10 MS. HARDEE-THOMAS: Yes, ma'am.

11 THE COURT: That's all we need.

12 MR. CUMMINGS: Thank you, Judge. Prior to
13 anything about Mr. Bailey talking about anything
14 of the nature of the arrest I know we have to go
15 on the record.

16 THE COURT: Thank you very much. And I'm
17 thinking we probably need to have -- he needs to
18 be in here for that. George, do you mind just
19 stepping out.

20 MR. TAYLOR: Mr. Bailey?

21 THE COURT: Just step to the door and ask
22 them to get Mr. Bailey in for that because he
23 needs to know where we are for that.

24 I'm so glad you're here, Mr. Young.
25 You remember Mr. Young?

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1 MR. BAILEY: Yeah.

2 THE COURT: Mr. Young says he has a slipped
3 disc, he has numbness in his hand, he's having
4 terrible neck pain. The SLED officer said why
5 don't you bring them up to them. Well, you
6 know, he just didn't. So he wants a
7 chiropractor and/or some medicine. I said we'll
8 start with the Advil and we'll work our way up.

9 MR. BAILEY: Okay.

10 THE COURT: I told him we would stop at
11 quarter 'til 5:00 today so he can make the
12 graduation.

13 MR. CUMMINGS: Judge, when we had done the
14 earlier court proceedings about the nature of
15 the arrest and -- no, no, no, we are willing to
16 stipulate that my client was arrested on
17 2-17-2001 at the residence of his spouse.

18 THE COURT: Okay.

19 MR. BAILEY: What I'll do is just instruct
20 the witnesses who testify on that to say they
21 went there and arrested him and leave it at
22 that. What I'd like to do to make sure they
23 don't forget and blurt something out, is if we
24 could to send the jury out when I call the
25 witness and caution him on the record. And

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1 while we're on that subject there's been some
2 talk off and on in the different statements
3 about crack cocaine.

4 THE COURT: Yes.

5 MR. BAILEY: Which I don't think is really
6 part of the case, although it kind of pops up
7 peripherally. And the people that I think may
8 blurt something like that out, I'd like to do
9 the same thing.

10 THE COURT: Sure.

11 MR. BAILEY: It will slow that down a
12 little bit by sending the jury in and out, but I
13 want to make sure they understand and don't
14 forget between the time I tell them and the time
15 they testify.

16 MR. CUMMINGS: Absolutely, Judge. And,
17 again, we thank everybody for looking out for
18 what I call the red arrows.

19 THE COURT: Great. Okay. All right.
20 Anything else?

21 MR. CUMMINGS: That's it, Judge. Other
22 than we'll get back in the courtroom and if
23 you'll give us a moment just to collect our
24 thoughts.

25 THE COURT: Absolutely. Great.

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1 (The following proceedings are held in open
2 court.)

3 THE COURT: Thank you all so much, and
4 please be seated. Ladies and gentlemen, we just
5 had an opportunity to have an additional motion.
6 I want to go ahead and just place that on the
7 record.

8 There has been a representation by Mr.
9 Bailey that he intends to call the mother of
10 Ms. Kandee Martin on a limited issue in the
11 guilt phase. And I think that we, of course, if
12 there is a penalty phase, would call her in that
13 event. But there is a sequestration of
14 witnesses order that is in effect and he was
15 concerned about that, concerned about her
16 ability to testify in the penalty phase for that
17 limited purpose as I understand, and the purpose
18 having to do with the purchase of a watch.

19 And I will allow her to testify in the
20 penalty phase to that extent and release her
21 from the sequestration order so that she may be
22 present along with her family for the course of
23 the trial. I note the exception of the defense
24 and make that determination over the objection
25 of the defense and note your exception for the

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1 record.

2 All right. Anything further before we
3 bring the jury out?

4 MR. BAILEY: Nothing from the State, Your
5 Honor.

6 THE COURT: Also let me announce that
7 Ms. Luisi is the presiding juror.

8 (Whereupon, the jury returns to the courtroom at
9 2:19 p.m.)

10 THE COURT: Ms. Luisi, thank you for
11 serving in the capacity of the presiding juror
12 and you know now to keep that seat throughout
13 the trial.

14 Ladies and gentlemen, at this time I'm
15 going to ask Ms. Graham to swear you in as the
16 jury in this case.

17 THE CLERK: Thank you.
18 (Whereupon, the jury is sworn.)

19 THE CLERK: Thank you.

20 THE COURT: Good afternoon, ladies and
21 gentlemen. All of you are hopefully now safely
22 settled in your homes away from home for the
23 next several days. I trust that the
24 accommodations will be comfortable. It's not
25 home, but it's the best we can do and I trust

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1 that you will be comfortable there, the time
2 that you will spend with us.

3 Now, ladies and gentlemen, the first
4 thing that's going to happen is that you, as you
5 just know, you were placed under oath, you have
6 been sworn in now as the jurors in the trial of
7 this case. Now, before we begin the trial of
8 this case I need to tell you a little bit about
9 what the procedure is going to be about and tell
10 you procedurally and factually how we are going
11 to proceed from this point on.

12 It is helpful to me in my introductory
13 instructions to you if any of you will just
14 raise your hand if you've ever served as jurors
15 before. I know we had several folks. I thought
16 we had several folks who had been on juries
17 before.

18 Now, this may be a review of
19 information for you, so please bear with us. To
20 the others of you it will be new information.
21 Procedurally, ladies and gentlemen, when I
22 finish talking to you in just a moment the first
23 thing that will happen is that you are going to
24 hear the opening statements from the attorneys.

25 The State, through Mr. Bailey, will

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1 stand before you and will make an opening
2 statement on behalf of the State in which he
3 will outline for you briefly the charges
4 contained in the indictment and some of what the
5 State intends to offer by way of proof in
6 support of those charges.

7 When Mr. Bailey has finished the
8 opening statement on behalf of the State, Mr.
9 Cummings or Ms. Hardee-Thomas on behalf of the
10 defense will stand and make an opening statement
11 in that regard. The defendant is not required
12 to make an opening statement, but I understand
13 in this case there will be an opening statement
14 through one of the attorneys.

15 The opening statements, ladies and
16 gentlemen, are not evidence in this case, they
17 cannot be considered by you as evidence, they
18 are simply a preview about what this case is all
19 about. They are helpful to you because they
20 will tell you something in a preview fashion
21 what the case is going to be about. In
22 listening to those opening statements, you will
23 be in a better position to understand the
24 evidence once you actually begin to hear it.

25 Now, once the opening statements have

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1 been made, then you will begin to hear the
2 evidence and the testimony coming in to the
3 trial of this case. We hope to present,
4 hopefully a witness or two here today to get the
5 trial begun this afternoon.

6 Evidence that will come before you
7 will take two forms. One of those forms is the
8 form of sworn testimony from this witness chair
9 where all of you have sat being questioned
10 yourselves. Witnesses will take the oath and
11 sit in this chair and tell you what they purport
12 to know about this case subject to questions
13 from both the State and the defense.

14 Evidence may also take the form of
15 photographs, documents, diagrams, maps, things
16 of that sort. I don't know what the evidence is
17 going to be in this case, but that is the type
18 of thing that normally comes into evidence under
19 our rules.

20 The State will present evidence and
21 testimony first in the case. After the State
22 has presented its evidence and testimony the
23 defendant has a right to present evidence and
24 testimony, but he doesn't have to. And I will
25 tell you why in just a moment.

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1 After all the evidence and testimony
2 has been presented from whatever source it might
3 come, the lawyers will come back before you and
4 make their final or closing arguments. In these
5 closing arguments they are allowed to outline
6 for you the inferences that they claim you
7 should draw from the evidence which you have
8 heard, inferences which support their positions
9 in this case.

10 Once you have heard the final
11 arguments from the lawyers, then I will instruct
12 you on the law, will charge you as to the law.
13 In other words, once -- some judges use the word
14 instructions and some use charge, I will use
15 those interchangeably. You'll no doubt get used
16 to me calling them charge on the law, the
17 instruction on the law. Now, once you have
18 received the charge or the instruction on the
19 law, then you will go to your jury room to
20 deliberate and reach a verdict on this
21 particular case.

22 Now, ladies and gentlemen, as I told
23 you earlier and I remind you again, during the
24 course of this trial you may not discuss this
25 case among yourselves. You cannot talk among

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1 yourselves about it during the trial. You may
2 hear somebody testify about something and it may
3 interest you and you may even have some
4 questions that you want to talk to each other
5 about it, but you can't do that. The reason
6 that you cannot do that, ladies and gentlemen,
7 is because once you start to talk about the
8 evidence and testimony you will start to make up
9 your mind about it, you will start to reach
10 conclusions based on your discussions.

11 Later in the trial of the case you may
12 hear evidence that is different from what you
13 may have heard earlier, but if you have already
14 started to make up your mind and discuss this
15 evidence amongst yourselves and draw
16 conclusions, you are not going to receive the
17 later evidence and testimony with an open mind,
18 because you will already have started to close
19 your mind.

20 That's the reason you can't talk about
21 this case at any time during the course of the
22 trial until all of the evidence, all of the
23 testimony has been presented, until the final
24 arguments have been given to you and the charge
25 on the law, instruction on the law has been

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1 rendered by me. Then, and only then, you begin
2 to discuss this case among yourselves.

3 Obviously, of course, I don't need to
4 remind you of this, but I must. You can't talk
5 with anybody else or expose yourself to any
6 information about the case from whatever source
7 it might come.

8 Now, ladies and gentlemen, during the
9 trial of the case you will not be allowed to
10 take notes. Some of you, no doubt, have thought
11 about that, no doubt some of you would like to
12 do that, but you will not be allowed to take
13 notes. So you will have to rely on your memory,
14 and that means that you are going to have to pay
15 attention during the course of this trial.

16 Keep an open mind as well as an open
17 ear, but if you can't hear a witness testifying
18 because they are not speaking loudly enough, and
19 that no doubt may happen, just raise your hand
20 and let me know. What I will do is have the
21 witness speak up, adjust the microphone, we'll
22 do whatever we need to do to be sure that you
23 can hear what goes on, just let me know.

24 Every word that is being said in this
25 courtroom in your presence is being said for

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1 your benefit and no one else's. So if you are
2 not hearing it, then we are doing all of this
3 for nothing, so please let us know if you cannot
4 hear any questions or answers, or anything that
5 I say during the course of the trial.

6 Now, ladies and gentlemen, I told you
7 that the opening statements were not evidence.
8 Let me tell you now that the closing arguments
9 are not evidence, either. For that matter, the
10 questions that the attorneys ask are not
11 evidence.

12 So what, then, is evidence? Evidence,
13 ladies and gentlemen, is not the questions
14 themselves, but the answers to those questions.
15 Sometimes you might hear a long, involved,
16 suggested question, that's called inferences and
17 innuendos, and the answer to that question might
18 be no. That means that question doesn't have
19 any evidentiary value at all, the answer is no.

20 So it is not the questions upon which
21 your verdict must be based in this case, it is
22 the answers to those questions that must support
23 your verdict together with the documents, the
24 diagrams, the photographs, the charts, and those
25 other kinds of things that I told you about

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1 earlier.

2 Now, the reason that it's important
3 that you understand what evidence is and is not
4 is this: Because, ladies and gentlemen, you are
5 the judges of the evidence, you are the judges
6 of the facts. You have to decide what occurred
7 in this matter and no one else can do that but
8 you.

9 Now, ladies and gentlemen, some judges
10 say that the jurors have the easy job in the
11 case and that the judges have the hard job
12 because they have to handle the law. Now that
13 could also be because you're always concerned
14 about what it is that you have to do.

15 Now, all I have to do is decide
16 whether or not you can hear different parts of
17 the evidence. And once I decide that evidence
18 is appropriate for you, then obviously you are
19 entitled to hear it or see it. Whether or not
20 you believe it is up to you. The weight you
21 give it is up to you, the value you give that
22 evidence is entirely up to you and no one can
23 tell you about those things. So let me say once
24 again that it's important that you pay
25 attention, because if you don't you are not

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1 going to be in a position when the trial is over
2 to go back into the jury room and talk about the
3 evidence and to assign the weight and value and
4 truthfulness to it.

5 Now, I told you a little while ago
6 that the defendant in this case did not have to
7 make an opening statement and that he does not
8 have to offer evidence and testimony if he
9 doesn't want to, because as I told each of you
10 when you were being qualified here as jurors in
11 this case, and as I told you on Monday before
12 the process even began, Mr. Bowman has pled not
13 guilty to the charges contained in the
14 indictments. He is, therefore, presumed
15 innocent of the charges and that means he does
16 not have to prove his innocence. The burden of
17 proof is on the State to prove guilt, if it can
18 do that, to the satisfaction of each and every
19 one of you by offering evidence that satisfies
20 you of guilt beyond a reasonable doubt.

21 So, what you will do over the next
22 several days is listen to the evidence and the
23 testimony that is presented. When the trial is
24 over you will determine the truth of that
25 evidence and testimony and you will take that

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1 truth and you will apply it to the law that I
2 will give you to the truth as you have found it
3 to be and you will arrive at your verdict which
4 speaks the truth in this case. You will, in
5 essence, be deciding whether or not the State
6 has met its burden of proof. In a nutshell,
7 that's what you do.

8 It is my intention, ladies and
9 gentlemen, that we will work from nine o'clock
10 each morning to about six o'clock each night,
11 because you are away from home and we will work
12 a little longer hours than we would normally to
13 try to get this information before you as
14 quickly as we can.

15 I wanted to mention another process to
16 you and it really comes as one of my tasks as
17 the judge of this case. You are the judges of
18 the facts and I am the judge of the law. And we
19 have in our law rules of evidence. Because as
20 in sports or business or any other structured
21 activity there are certain rules that both sides
22 must obey when presenting evidence. Obviously a
23 trial is a structured activity and those rules
24 must be obeyed. They are called the rules of
25 evidence. And the purpose of the rules is to

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1 ensure that the information you receive is the
2 most trustworthy and reliable information
3 available.

4 When an attorney stands and says
5 "objection," that's the means by which an
6 attorney calls to my attention as the judge of
7 this court that there is perhaps a rule of
8 evidence which has -- that I need to look at.
9 And that's the procedure.

10 For this reason you must not hold an
11 attorney's objection against his or -- his
12 clients, nor should you conclude from my ruling
13 on the objection that I favor one side or the
14 other because I can assure you that I do not.

15 When I -- oftentimes I'll need to talk
16 to attorneys about a matter of law and I'll ask
17 them to approach. Sometimes I will need to ask
18 you to step back to your jury room so that I may
19 discuss a matter of law outside your presence.
20 Irrespective of whether I have them approach or
21 I have to ask you to step to your jury room, and
22 that no doubt will happen throughout this trial,
23 and that's a normal process, please know that no
24 one's trying to keep anything from you, it just
25 gives me an opportunity to decide matters of

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1 law. That is my task in this case. So, please
2 know that if I ask them to approach or ask them
3 to step to the jury -- ask you to step to the
4 jury room, that what I am doing simply is
5 deciding a matter of law as is my task. Yours,
6 of course, is to listen very attentively and the
7 other matters that we have previously talked
8 about.

9 Now, ladies and gentlemen, I'm going
10 to ask that you draw close as we listen to the
11 opening statements.

12 Mr. Bailey.

13 MR. BAILEY: Thank you, Your Honor.

14 I introduced myself to all of you all
15 at one point or another during the week when we
16 went through the qualification process, I'm
17 Walter Bailey, I'm solicitor for the First
18 Judicial Circuit which covers Dorchester County
19 and Orangeburg County and Calhoun County.

20 Let me introduce you at this time to
21 the other people at counsel table. This is Ben
22 Lafond, he's an assistant solicitor with my
23 office, beside him is Alvin Coker and he's a
24 detective sergeant with the Dorchester County
25 Sheriff's Office. He's the case officer for the

Opening Statement by Mr. Bailey

1 sheriff's office in this case. And beside him
2 is Darlene Simmons who also works for the
3 solicitor's office, she'll be helping us out.

4 I want to thank you all for your
5 patience and for being here and going through
6 this kind of grueling week-long qualification
7 process. As you all know by now Marion Bowman,
8 Jr. seated at the other counsel table is charged
9 with the murder of a young woman named Kandee
10 Martin. Kandee Martin was 21 years old, she
11 lived in Branchville, which is a few miles on
12 the other side of the Dorchester County line in
13 Orangeburg County. Marion Bowman is also
14 charged with arson in the third degree.

15 And I know a couple of you all have
16 had some previous jury service, but I can assure
17 you that this case is the most important case
18 that you will ever sit as a juror on, and indeed
19 any juror can ever sit on. So as the judge
20 says, it demands your strict attention
21 throughout the trial and I would ask you to
22 please pay close attention to everything that
23 takes place here.

24 The judge earlier read the two
25 indictments. And she explained to you the

Opening Statement by Mr. Bailey

1 indictments are not evidence, they're the
2 charging papers, they're what brings the
3 defendant into the court to face you, the jury,
4 on these charges. And the trial that we go
5 through, any criminal trial is divided into five
6 parts. You start out with the opening
7 statements, which is not evidence, it's a
8 preview or road map of where we intend to go.

9 And following the opening statements
10 you're going to hear testimony from a series of
11 witnesses by the State, they'll be sworn to tell
12 the truth. Some of these witnesses are going to
13 introduce photographs or physical evidence that
14 will become part of the record that you'll have
15 when you deliberate, and others will just tell
16 you what their recollection of certain events
17 is. Following all of the testimony you're going
18 to hear closing arguments. That's an
19 opportunity for lawyers to kind of sum up and
20 try to emphasize what they think are the
21 important parts of the testimony that's been
22 placed. That's not evidence, either.

23 Following that you're going to have
24 instructions from the judge, she will tell you
25 what the law is and it will be your duty to

Opening Statement by Mr. Bailey

1 accept that law and apply it to the facts as you
2 find those facts to be. And you do that during
3 the final, fifth stage where you deliberate.
4 You go back in the jury room and you apply the
5 law to the facts and you use your good, everyday
6 common sense.

7 And if I can stress anything to you
8 I'm going to ask you to use your common sense.
9 Just because you're in court, you're listening
10 to a lot of technical stuff, a lot of legalese
11 doesn't mean you leave your common sense at
12 home. We all want you to bring your common
13 sense here, your everyday experiences and use it
14 when you analyze this evidence and make your
15 decision. What a trial is, ladies and
16 gentlemen, is simply a search for the truth.
17 And you are the finders of the truth. You
18 decide what the truth is and base your decision
19 on that.

20 Now, when Judge Goodstein instructs
21 you on law, at the end of that case she's going
22 to give you legal definitions of everything you
23 need to know as far as the law. She will define
24 the crime of murder to you. And murder is the
25 killing of another human being with malice

Opening Statement by Mr. Bailey

1 aforethought. And she will define malice to
2 you. And malice is an evil state of mind, a
3 depraved state of mind, a depraved heart.

4 And the aforethought means that that
5 state of mind that makes a homicide a murder has
6 to exist before the act of killing, but she will
7 explain all that to you. And she'll talk to you
8 about arson, she'll define that to you. And in
9 the context of this case, arson in the third
10 degree makes it a crime for somebody to
11 willfully and maliciously set fire to an
12 automobile.

13 Now, everybody other than some of the
14 speculators out here in this courtroom has a
15 specific job to do. We're all here for a reason
16 and purpose. The SLED agents and the bailiffs
17 are here to assist you to maintain order and
18 decorum in the courtroom. The court reporter,
19 Ms. Keil here, is going to take down every
20 single word that is said in this courtroom by
21 anybody and make a permanent record of it.

22 My job is to present evidence on
23 behalf of the State of South Carolina concerning
24 the charges against Marion Bowman, Jr. and as
25 you know to attempt to prove to you through the

Opening Statement by Mr. Bailey

1 evidence, sworn testimony, the guilt of the two
2 charges that Marion Bowman is charged with,
3 murder and arson in the third degree to your
4 satisfaction beyond a reasonable doubt. And I
5 accept that burden of proof in this and any
6 other trial that I prosecute. Mr. Cummings, Ms.
7 Hardee-Thomas, represent the defendant.

8 And Judge Goodstein has two roles.
9 Her first role is it's like a referee, she
10 presides over the trial, she rules on
11 objections, she just maintains the -- she sets
12 the stage. As Mr. Cummings said during the
13 qualification, she's the boss.

14 At the end of the trial she switches
15 roles, she becomes a teacher and instructor, she
16 tells you what the law is. And your role,
17 ladies and gentlemen, your job is the most
18 important job of any of us. You could probably
19 do without the lawyers and maybe do without some
20 of the other court personnel, we can't do
21 without a jury. Your job is to find the truth
22 from the facts as you find those true facts to
23 be, to accept the law as the judge gives it to
24 you, put the facts and the law together and
25 simply bring back a verdict that speaks the

Opening Statement by Mr. Bailey

1 truth using your good, everyday common sense.

2 And the way you do that, ladies and
3 gentlemen, is you judge these witnesses.

4 They'll be sitting in this chair, they'll be
5 under oath, look them in the eye, size them up,
6 judge them like you would when you deal with
7 somebody in your everyday day and decide whether
8 or not what that witness is saying makes sense.
9 Does it have a ring of truth about it? Is it
10 consistent with what other witnesses are saying?
11 Is it consistent with the physical evidence that
12 comes in at some point during the trial?

13 And you can't really decide that until
14 you heard everything and that's why the judge
15 said to reserve judgment, don't discuss the case
16 among yourselves until you heard everything and
17 the judge has instructed you on the law and you
18 go back and deliberate. And, again, use your
19 common sense.

20 Now, what I'm going to say to you now
21 is not evidence, it's a preview or a summary of
22 what I expect the State's evidence to show. And
23 what I'm going to talk about and what you're
24 going to listen to over the next couple of days,
25 two or three days, is not going to be a pretty

Opening Statement by Mr. Bailey

1 picture, is not going to be pleasant for you to
2 hear about it. My job is to relate the facts to
3 you as those facts exist and I will attempt to
4 do that.

5 And I want to tell you right at the
6 beginning, you all aren't going to like some of
7 the witnesses you see that will be called by the
8 State of South Carolina. You're not going to
9 like them. And you're going to find out that
10 some of these witnesses have criminal records.
11 You're going to find that other witnesses have
12 been charged for some crime affiliated with this
13 case and that they have plea bargains or plea
14 agreements with the State of South Carolina in
15 which they're getting some consideration either
16 in a charge or a sentence for their testimony.
17 And by all means you should take that into
18 consideration when you listen to these
19 witnesses. But, again, judge their credibility.
20 Does it make sense? Is it consistent? Do you
21 believe them? Is it consistent with the
22 physical evidence? Judge those witnesses'
23 credibility as you would any other witness.

24 In this case you're going to hear
25 testimony that February 16th, 2001, the

Opening Statement by Mr. Bailey

1 defendant, Marion Bowman, Jr., another man named
2 James Taiwan Gadson, and the defendant, Kandee
3 Martin, got together in Branchville where they
4 all live. And you're going to hear they were in
5 Kandee Martin's car, which was a Ford Escort.
6 Kandee Martin is driving, Bowman and Gadson are
7 passengers in the car. And you will hear that
8 they drove out to a rural area in Dorchester
9 County near Reevesville called Independent
10 School Road, Nursery Road, that's out of the
11 town of Reevesville, that Kandee Martin was
12 instructed to stop the car out there and that
13 all four of them got out of the car.

14 And you'll hear testimony from James
15 Gadson who will be testifying under a plea
16 agreement in this case, that he walked off a
17 short distance from where Kandee Martin and the
18 defendant, Marion Bowman, were and he heard a
19 gunshot. And Kandee Martin ran toward him and
20 Marion Bowman was behind her and chased her a
21 short distance to where Gadson was standing and
22 shot her a second time and that she died.

23 And you'll hear testimony that after
24 the second shot that there was numerous shots
25 fired, two shots hit her, one in the lower back

Opening Statement by Mr. Bailey

1 and one in the back of the head. You'll hear
2 testimony that Marion Bowman then dragged
3 Kandee's body into the woods, Bowman and Gadson
4 drove her car back to Branchville.

5 Later on that night the two of them,
6 Bowman and Gadson, and two friends of theirs,
7 Hiram Johnson and Darian Williams, who may also
8 testify in this case, took her car and went to a
9 beer joint in Bowman, I think it's Allen
10 Murray's Club, and that they all wore gloves in
11 the car. They drove back from the beer joint,
12 maybe 2:30, three o'clock, early in the morning
13 of February 17th and that Marion Bowman was
14 driving the car, the other three guys, Gadson,
15 Hiram Johnson, Darian Williams, were dropped off
16 and that Marion Bowman then picked up a guy
17 named Travis Felder.

18 This is shortly after three o'clock in
19 the morning of February 17th by that time, and
20 that he told Travis Felder to follow his car.
21 He was still driving Kandee Martin's car. Drove
22 back out to the scene of the murder with Felder
23 following him and that he got out of the car,
24 went into the woods, dragged Kandee Martin's
25 body out of the woods, put it in the trunk of

Opening Statement by Mr. Bailey

1 her car, told Felder to take his car and make a
2 U-turn, turn the car around. When Felder did
3 that, Marion Bowman drove Kandee Martin's car
4 across to the other side of the highway and
5 burned the car with her body in the trunk. And
6 you'll hear arson experts from State Law
7 Enforcement Division testify that the cause of
8 the burning of the car and the body in the trunk
9 was arson.

10 Later on that day on the 17th, in the
11 afternoon of February 17th, Marion Bowman was
12 arrested in Branchville at his wife's house and
13 a lady's watch was found in his pocket that will
14 be identified by Kandee Martin's mother as her
15 watch. There will be other testimony that
16 you'll hear. You'll hear testimony of a gun, of
17 a .38 caliber pistol that was found in the
18 Edisto River by divers. And you're going to
19 hear from Marion Bowman's sisters and his wife,
20 they will testify also under a plea agreement,
21 that after Marion Bowman was arrested, Dorothy
22 Mae Bowman, his wife, found this pistol in a
23 piece of furniture, some type of chair or sofa,
24 gave that to one of the sisters, who in turn
25 gave that to her father.

Opening Statement by Mr. Bailey

1 And eventually these two girls
2 retrieved the gun from a place where it was
3 hidden and threw it in the Edisto River. And
4 you're going to hear from a SLED firearms expert
5 that examined that pistol, examined shell
6 casings found at the scene of the murder and he
7 says that's the gun that fired those fatal shots
8 into Kandee Martin.

9 There will be other evidence that
10 you're going to hear. These are just some of
11 the significant, main points, but there will be
12 other evidence that I'll just reserve until you
13 actually hear this in the trial.

14 Again, what I'm telling you is not
15 evidence. The evidence you base your decision
16 on will come from that witness stand. This is
17 just what I anticipate or expect will happen as
18 these witnesses that take the stand to testify.

19 I'm confident, ladies and gentlemen,
20 that at the end of this case when y'all have
21 heard all of the evidence and the law from the
22 judge, you'll find that the evidence presented
23 to you will satisfy you that Marion Bowman, Jr.
24 is guilty of the murder of Kandee Martin beyond
25 a reasonable doubt and is guilty of arson in the

Opening Statement by Mr. Bailey

1 third degree, the burning of her car beyond a
2 reasonable doubt. The guilt, innocence of the
3 issues here, the question is did he do it. That
4 you will have to decide. Can the State prove he
5 did what we say he did beyond a reasonable
6 doubt.

7 And this trial won't be like on
8 television where it's over in half an hour or an
9 hour. It's going to take a little time. There
10 were a lot of people involved in this thing to
11 one degree or another that you're going to hear
12 from. It's going to take maybe two or three
13 days for the State to complete its testimony.
14 Each witness has something to say or they
15 wouldn't be called. And it may not sound that
16 important when you hear them, but it's like
17 putting the pieces of the puzzle together,
18 you've got to wait until you get that last piece
19 of the puzzle in there sometimes before it makes
20 any sense.

21 So, please pay close attention to all
22 the witnesses, try to follow their testimony,
23 and, again, please use your common sense, follow
24 the evidence and the law. My sole purpose in
25 being here as your solicitor is to present the

Opening Statement by Mr. Bailey

1 truth to you and I can only ask that at the
2 close of this trial when you deliberate you come
3 out and you reach a verdict, that your verdict
4 speaks the truth. Thank you.

5 THE COURT: Thank you, Mr. Bailey.

6 MR. BAILEY: Yes, ma'am.

7 THE COURT: Mr. Cummings.

8 MR. CUMMINGS: Thank you, Judge,
9 Mr. Bailey.

10 Madam Forelady, ladies and gentlemen .
11 of the jury, I'm Norb Cummings. Seated at the
12 table is Ms. Marva Hardee-Thomas, my co-counsel.
13 Both of us, as you have been told for the last
14 five days, have been Court appointed to
15 represent Mr. Marion Bowman, Jr., this gentleman
16 seated with the blue coat. The other young lady
17 at the end of the table is a girl who goes to
18 college, she's a summer intern, she's agreed to
19 help us today because we are all that Mr. Bowman
20 has today as a citizen to be standing before you
21 for trial. You good ladies and gentlemen are
22 the buffer between what the police say and an
23 automatic issue and a citizen's right to a fair
24 and impartial jury trial by his peers.

25 Now, a lot of you are going to be

Opening Statement by Mr. Cummings

1 angry about that. You've been up here for five
2 days. And as I look in your eyes right now you
3 probably don't want to ever hear my name again,
4 or maybe Ms. Thomas's again, or Mr. Bailey's
5 again, or Mr. Lafond's name again, or anything
6 else about our court system. But, ladies and
7 gentlemen, the one thing Her Honor said, the one
8 thing Mr. Bailey said, the one thing that I'll
9 say to you is it's the only system in the world
10 that's assured for over 200 something years it
11 works.

12 Do we not think while the rest of the
13 world looks at us and why they are so jealous
14 and why they try to knock down our buildings,
15 why they try to kill our people. This system
16 works because of you. And it only works for you
17 if you really -- I mean this from every ounce of
18 being within me, it only works if you keep your
19 solemn oath, oath as a juror to give any citizen
20 who's presented on charges by the State to make
21 the State prove them guilty beyond a reasonable
22 doubt. Because if you're not going to do that,
23 then the last five days we wasted your precious
24 time, your valuable time. We've wasted five
25 days on this earth. As we all know, that's five

Opening Statement by Mr. Cummings

1 days that could be spent elsewhere with loved
2 ones, doing our business, doing anything.

3 And I'm willing to beseech you on
4 behalf of Mr. Bowman, you have told this citizen
5 that you can be fair and impartial. And I'll
6 bet you when you all came through here and you
7 listened to all of us, first the judge gives you
8 the instructions, can you, will you, and as Mr.
9 Bailey said again, kind of coined that phrase in
10 here, she's like the referee.

11 I'm not a particularly a basketball
12 fan, I like to watch football where people kind
13 of hit each other, but I know when she blows the
14 whistle in here she makes the call. And I'm
15 glad that was pointed out by Her Honor that if
16 anybody stands up here and makes an objection,
17 folks, please don't hold anything against
18 Mr. Bowman. If my speech or mannerism offends
19 you in any way or if anything on behalf of
20 Mr. Bowman is presented, said, or anything that
21 causes you to dislike me, I know you couldn't
22 dislike Ms. Marva Hardee-Thomas, she's very
23 polite, very kind, very ladylike. Me, I'm kind
24 of like a bull in a china shop, and I mean that
25 respectively to you.

Opening Statement by Mr. Cummings

1 We have the greatest decorum and the
2 greatest dignity in this courtroom. You've seen
3 everybody get along with each other. You have
4 already seen some examples, some of you about
5 objections and how we handle each other. The
6 lawyers, the court personnel in here, everybody
7 as Mr. Bailey stated has a job to do. And
8 you'll see Her Honor run this courtroom in this
9 state and in this county the way a courtroom's
10 supposed to be run. There's no antics, there's
11 no play for the theatrics. This is human life,
12 this is the real issue for you folks today.

13 I know when all of you came in here on
14 Monday and you saw over 300 people in this room
15 it automatically kicked off in any citizen's
16 mind that this was serious, that this was
17 something big, that this was something like,
18 uh-oh, we're all going to be up here for a long
19 time. Yes, you are. Yes, it is. And, yes,
20 it's the most serious thing in the world for
21 everybody in this room today, but in particular
22 to have another citizen's case in your hands.

23 That's what the jury does. It
24 determines from facts and evidence as you folks
25 presume those facts in evidence, as you take in

Opening Statement by Mr. Cummings

1 your collective minds. That young lady up
2 there, that lady is the judge, she's the boss.
3 When she gives you the law, everybody, including
4 the State prosecutor, Mr. Bailey, myself, and
5 anybody else on the defense team, Ms. Thomas, or
6 anybody else on the prosecutor's team, will tell
7 you that is the law and you must follow it.
8 That is not a trick that you're going to hear
9 from some sort of defense attorney like smoke
10 and mirrors. It is, ladies and gentlemen, what
11 you've got to follow.

12 Now, you're not going to like it. I
13 stand up here before you and would look like
14 Bozo the Clown if I stood up here and asked you
15 not to be angry, to not be upset, to not want to
16 set aside and hurry up with anything to get you
17 back home to your loved ones. Because we've
18 taken you away from your loved ones, meaning we,
19 the system. But you've promised, you've
20 promised to give everybody a fair and impartial
21 jury trial and that's all you're as good as is
22 your word. And I know that each of you said
23 that you could do that.

24 It's so easy when you hear the first
25 name to close your mind. It's so easy when you

Opening Statement by Mr. Cummings

1 read something. Well, okay, I read it, must be
2 something to it. How many times, ladies and
3 gentlemen, have you read something that is not
4 correct? How many times have you ever been told
5 something that's not correct? And how many
6 times have we rushed to judgment when we come
7 home and find the cookie jar for those of you
8 ladies and gentlemen who have siblings, all of a
9 sudden the cookie car is broken in the kitchen,
10 Mamma comes home and the first one she grabs her
11 hand on is the closest one near the cookie jar
12 and says "Did you break it?"

13 What do you have to do as a fair and
14 impartial mommy who loves all her children? You
15 got to find out how the cookie jar got broken.
16 Maybe, maybe the train went by and it fell off
17 the shelf. And you'll hear the train go by lots
18 of times while we're up here and you'll hear it
19 stop. Maybe the child reaching for a cookie
20 broke it. Maybe it was a guy about my size that
21 might have been married to one of the nice,
22 polite ladies, or your spouse that comes home,
23 gentleman, reaches for the cookie jar and broke
24 it and didn't get time to clean it up because he
25 wanted to make sure the kids didn't step on

opening Statement by Mr. Cummings

1 broken glass. Before you rush to judgment,
2 isn't it proper to find out? That's your job.
3 I'm going to ask you to do that. On behalf of
4 Mr. Bowman I am going to ask you to do your job.

5 Ladies and gentlemen, if I go back
6 through the things and say burden of proof,
7 presumption of innocence, all those things I
8 said in the beginning you're going to get
9 particularly angry at me because you're going to
10 say, Mr. Cummings, you asked me to do my job.

11 Ms. Thomas, you've asked me to do my job.
12 Mr. Bowman, you've asked me to do my job as
13 jurors. I'll do it. Now, go on to this and let
14 us do our job. And I want you to do that.

15 And here's how. What happened on that
16 night is we've lost a young lady and there's no
17 getting around that, ladies and gentlemen.
18 There is a -- according to what Mr. Bailey
19 states there is a loss of a young lady. That
20 happened. You've got to figure out what
21 happened, how it happened, where it happened,
22 when it happened and who did it.

23 You will hear, as Mr. Bailey has
24 stated a moment ago as the solicitor,
25 Mr. Bowman's charged with two offenses. Two.

Opening Statement by Mr. Cummings

1 Murder and arson in the third degree. And he
2 has pled not guilty to that. And by that you
3 must presume he is innocent. No more talk about
4 presumption, and I look you all in the eyes
5 right now because you promised to do that.

6 The other issue is everything outside
7 of those two parameters is not in this courtroom
8 today. As Mr. Bailey, the solicitor has told
9 you, you may not like some of the people who
10 come in the courtroom, you may not like hearing
11 some of these things. Ladies and gentlemen,
12 nobody has created a perfect world. And in my
13 opening argument this morning to you I want you
14 to know that there is no such thing as perfect,
15 there is no such thing as absolute. If you find
16 beyond a reasonable doubt certain things, then
17 so be it, you find that putting your collective
18 minds together. If you don't, you must find the
19 defendant not guilty.

20 And I say that in opening and I'll
21 have a chance again and so will Ms. Thomas, will
22 come up here and talk to you in closing argument
23 depending on whether Ms. Thomas or I talk to you
24 again. So, please don't hold that out that one
25 or both of us is more important than the other,

Opening Statement by Mr. Cummings

1 we're not. We're co-counsel and that will never
2 happen.

3 I want you, ladies and gentlemen, as
4 the finders of the truth to find the truth. I
5 want you to look at -- Mr. Bailey said there
6 would be some witnesses in here, be some other
7 people in here. Ask yourself why do they have a
8 reason to want to be in here? Number two, is
9 their credibility at issue? You're the judge of
10 credibility.

11 Ladies and gentlemen, what happened on
12 that weekend happened, how, where, when, and who
13 did it is for your issues and only yours. And
14 you've got to dig down deep inside putting your
15 collective minds together to find out the
16 answers to those questions. Along that line I
17 told you it's going to be easy to jump to
18 conclusions, it's going to be easy to want to
19 say I've heard enough. Please, that's not
20 enough. No citizen has to do anything. And,
21 again, here we come back with the foundations of
22 principles, you've promised to hold that
23 foundation dear.

24 Ladies and gentlemen, when you go back
25 through the evidence in this case as presented

Opening Statement by Mr. Cummings

1 by the State, you have to look and ask yourself
2 are there pieces of this puzzle missing. And if
3 there are, does it cause you a reasonable doubt.
4 Ladies and gentlemen, you look at the young
5 people involved in the case and you're going to
6 want to shake your heads. You're going to want
7 to shake your heads and look at the totality of
8 the circumstances. You're going to want to be
9 angry, you may even want within you to lash out.
10 Her Honor will tell you in your jury service you
11 have no one to reward, you have no passions, no
12 prejudice because you've assured us that
13 anything inside you can be set aside to give
14 every citizen a fair and impartial trial. To do
15 other than that is to break your solemn oath and
16 I know you wouldn't do that. You're only as
17 good as your word.

18 If I've done anything to offend you
19 during this trial, please don't hold that
20 against Mr. Bowman. I've said that twice.
21 Because we're all human beings, we all make
22 mistakes, ladies and gentlemen. We all make
23 mistakes. In a few moments I'm going to walk
24 over to the table here and I'm going to stand
25 for just a moment and then conclude my opening

Opening Statement by Mr. Cummings

1 statement with you if you'll just allow me. I
2 don't ever want to turn my back on you good
3 folks, if you please, but allow me one moment to
4 go over to the table and just stand there and
5 address you from there. And I will beg the
6 Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause in proceedings.)

9 MR. CUMMINGS: Ladies and gentlemen, this
10 is Mr. Marion Bowman, Jr. He is brought to you
11 today to stand before you, to be put in your
12 hands for judgment. I ask you to judge this man
13 by your oath, by your promise, and by your civic
14 duty and not to hold any issues of differences
15 aside, put them all aside, to treat everybody
16 the same in this courtroom. Every citizen
17 brought before -- past that bench is protected
18 by Her Honor, the law, and you good ladies and
19 gentlemen of the jury. On behalf of Ms. Thomas
20 and I, we now proceed with the trial of
21 Mr. Bowman in your hands.

22 Thank you, Judge.

23 THE COURT: Thank you, Mr. Cummings.

24 Mr. Bailey, if you would please call
25 your first witness.

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1 MR. BAILEY: Your Honor, can we approach
2 briefly?

3 THE COURT: Yes.

4 (Whereupon, a bench conference was held
5 off the record in the presence of the
6 jury, but out of the hearing of the jury.)

7 THE COURT: Ladies and gentlemen, there is
8 a very brief matter of law that I must take up
9 outside your presence. I'm going to ask you to
10 step to your jury room, but we will not be long.
11 Be mindful not to discuss this matter or allow
12 anyone to discuss it with you. We will be with
13 you shortly.

14 (Whereupon, the jury retires to the jury room at
15 3:06 p.m.)

16 MR. BAILEY: I just want to check to see if
17 the jurors can see through this here, I'm not
18 sure whether it's blocked.

19 THE COURT: Yes.

20 MR. BAILEY: Your Honor, this is Hank
21 Koger, Joseph Fogle, and Keith Rivers are the
22 first three witnesses for the State. And I
23 would like to issue some precautionary
24 instructions to them in the presence of the
25 Court to make sure that nothing inadvertently

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1 comes out.

2 THE COURT: Thank you. Yes, sir.

3 Gentleman, if you'll listen very
4 carefully to Mr. Bailey. If you do not
5 understand what he is saying or can't hear him,
6 raise your hand so he'll know that you don't
7 understand him, all right? Thank you gentlemen.
8 All right. Pay attention to him real carefully.

9 MR. BAILEY: Before I call you all as
10 witnesses in front of the jury, we have an
11 agreement among counsel and the Court that we're
12 not getting into anything involved in any
13 illegal drugs, cocaine, anything of that nature.
14 So I would ask that in the course of your
15 testimony that you all not mention anything like
16 that, you know. Do you all three understand?

17 THE COURT: All three of you? All of you
18 understand that? Do you have any questions
19 along those lines to Mr. Bailey so that I'm sure
20 that you are clear?

21 MR. FOGLE: Joseph Fogle says he understand
22 everything he said.

23 THE COURT: Thank you, Mr. Fogle.

24 Yes, sir, your name?

25 MR. KOGER: Koger, William Koger.

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1 THE COURT: Yes, sir. Your name?

2 MR. RIVERS: Keith Rivers.

3 THE COURT: Thank you, Mr. Rivers.

4 Gentlemen, you all understand now not
5 to mention those things that Solicitor Bailey's
6 mentioned?

7 MR. FOGLE: Yes.

8 MR. KOGER: Yes.

9 MR. RIVERS: Yes.

10 THE COURT: Thank you so much.

11 Who would you call first?

12 MR. BAILEY: Mr. Koger will be the first
13 one, Your Honor.

14 THE COURT: Mr. Koger, if you would stay.
15 Gentlemen, you can go ahead and wait out back
16 because you're sequestered. Mr. Lafond will be
17 sure you know where to be.

18 All right. I think that concludes
19 what you needed to do?

20 MR. BAILEY: Yes, ma'am.

21 THE COURT: All right. Why don't we bring
22 him around. Come on and stand right here and
23 you can be seated and then we'll get the jury
24 in. You bring them on back in. You got to
25 remember to keep your voice up for me, though.

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1 We'll let the jury get seated. And you're fine,
2 we're just going to let our jury come in and get
3 seated then we'll swear you in.

4 (Whereupon, the jury returns to the courtroom at
5 3:10 p.m.)

6 THE COURT: Thank you so much, ladies and
7 gentlemen.

8 Mr. Bailey, if you would call your
9 first witness.

10 MR. BAILEY: State would call Hank Koger.
11 (William H. Koger, called as a witness, having
12 first been duly sworn, is examined and testifies
13 as follows:)

14 THE WITNESS: William H. Koger. K-o-g-e-r,
15 Koger.

16 THE COURT: Yes, sir. If you will state
17 your full name for the record and spell your
18 last name for us, please, sir.

19 THE WITNESS: William Henry Koger, last
20 name is K-o-g-e-r.

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. Mr. Koger, what I would like to do if you could
24 talk up loud enough where I can hear you, then these
25 ladies and gentlemen on the end over here beside me

William H. Koger - Direct Exam

1 can hear you, okay?

2 A. Yes.

3 Q. So just try to talk up kind of loud. Mr. Koger,
4 where do you live?

5 A. .

6 Q. All right, sir. Is that in Branchville?

7 A. Branchville, South Carolina.

8 Q. All right. How long have you lived in that part
9 of the county?

10 A. I've been there since '85.

11 Q. Okay. And where is your house in relation to
12 the Branchville Villa Apartments?

13 A. Next door.

14 Q. Next door to it?

15 A. Across the street from the Villas.

16 Q. All right. And, Mr. Koger, I want to talk about
17 February the 16th, 2001. Were you at home that day?

18 A. Yes, I were.

19 Q. All right. And is your yard sort of -- at that
20 time is your yard kind of like a hangout where people
21 come by there and drink a beer?

22 A. Yes. We have sit there and drink beer, hang
23 out.

24 Q. Got kind of a 55-gallon drum there y'all light a
25 fire when it's cold, all kind of hang around?

William H. Reger - Direct Exam

1 A. We light a fire, yes.

2 Q. People from the villas, they would come over
3 there and visit with you and kind of socialize; is
4 that correct?

5 A. Yes.

6 Q. Okay. Now, let me ask you this. Do you know
7 the defendant here, Marion Bowman, seated beside Mr.
8 Cummings?

9 A. Yes, I do.

10 Q. Okay. How long have you known him?

11 A. All his life. All of his life.

12 Q. Okay. All right. And do you recall whether or
13 not he was out at your house that afternoon?

14 A. Yes. Yes, he was.

15 Q. Okay. And do you know a fellow named James
16 Taiwan Gadson?

17 A. Yes, I do.

18 Q. Okay. And was he at your house that day?

19 A. Yes, he were.

20 Q. Okay. How about Hiram Johnson?

21 A. Yes, he were.

22 Q. He was there also?

23 A. Yes.

24 Q. Okay. Now, about what time of the day was it
25 when you saw Marion Bowman?

William H. Koger - Direct Exam

1 A. We started, we started about 9:00, 10:00,
2 11 o'clock that morning, about 11 o'clock that
3 morning.

4 Q. Okay. So he was over at your house
5 February 16th, 2001 at about 11:00 a.m.?

6 A. Yes.

7 Q. Was he there the whole time or did he come and
8 go?

9 A. He was there at one time, he went to the meat
10 market and he came back.

11 Q. Okay. Went to a meat market and then he came
12 back over to your house?

13 A. Yes, he did.

14 Q. All right. And what do you remember, if
15 anything, Marion Bowman doing over at your house when
16 he came back over?

17 A. What you mean? Specific question, what you
18 mean? I don't understand. Repeat the question.
19 What you mean?

20 Q. Do you recall seeing Marion Bowman doing
21 anything out there near the trash barrel?

22 A. Yes, when we came back from the meat market.

23 Q. Okay.

24 MR. CUMMINGS: Judge, I'm going to object
25 to the leading, please, respectfully.

William H. Koger - Direct Exam

1 THE COURT: All right. You may proceed.

2 Q. Okay.

3 A. He came back from the meat market and he asked
4 me where was his shit.

5 Q. Slow down a little bit now because I'm having a
6 little trouble hearing you.

7 A. When he came back from the meat market he asked
8 me where was his shit.

9 Q. Where was his shit?

10 A. Yes. I told him I didn't know what he was
11 talking about. And he said, my pistol.

12 Q. My pistol.

13 A. That's what he said.

14 Q. Okay. And had you seen a pistol that day?

15 A. I never seen a pistol, never seen a gun.

16 Q. All right. What happened after that, Mr. Koger?

17 A. He accused Taiwan Gadson of taking it out of the
18 trash barrel.

19 Q. When you say he --

20 A. Marion Bowman.

21 Q. Marion Bowman accused who now?

22 A. Taiwan Gadson.

23 Q. Okay. Of doing what?

24 A. Of removing the gun out of the trash barrel.

25 Q. Removing his gun out of trash barrel?

William H. Koger - Direct Exam

1 A. At first he said where was his pistol? I asked
2 him why would he put a pistol in the trash barrel
3 with all that paper in there, somebody could throw a
4 match in there, kill someone or something like that.
5 That was it.

6 Q. All right. Okay. And what happened after that?

7 A. He got -- he start arguing with Taiwan Gadson
8 about it.

9 Q. Okay.

10 A. But then that's when Hiram Johnson walked up and
11 said --

12 MR. CUMMINGS: Objection, Your Honor,
13 hearsay.

14 THE COURT: Sustained.

15 Q. Don't tell us what Hiram Johnson said, but what,
16 if anything, did you see Marion Bowman doing after
17 Hiram Johnson came up?

18 A. Well, him and Hiram Johnson left.

19 Q. Okay. And after he and Hiram Johnson left, did
20 they come back?

21 A. Well, he came back.

22 Q. How long were he and Hiram gone?

23 A. A few minutes. A few minutes he came back.

24 Q. Okay. When they went off, did you see where
25 they went?

William H. Koger - Direct Exam

1 A. They went across the street.

2 Q. Okay.

3 A. Where they went, I don't know, after that.

4 Q. Okay. And after a few minutes you said they
5 came back?

6 A. They came back.

7 Q. Okay. Do you recall seeing either one of --
8 either James Gadson or Marion Bowman later on that
9 day or that night?

10 A. Yes. I saw them when they came -- when they
11 left that evening. And then they came back about,
12 I'd say about eight o'clock that night.

13 Q. Okay.

14 A. That's the next time I saw them, about eight
15 o'clock.

16 Q. When they came back, do you recall how they got
17 to your house?

18 A. They walked.

19 Q. You saw them walking up to your house?

20 A. Walked up to my house.

21 Q. Okay. Mr. Koger, that's all I have. Please
22 answer any questions Mr. Cummings might have for you.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. CUMMINGS:

William H. Koger - Cross-Exam

1 Q. Good afternoon, Mr. Koger, I'm Norb Cummings.
2 I'm going to stand back here now, if you can't see
3 me, you tell me.

4 A. I can see you.

5 Q. If you can't hear me, all right? You got
6 together with the fellows about nine o'clock in the
7 morning?

8 A. About 11 o'clock.

9 Q. About 11 o'clock?

10 A. Yeah, somewhere in there.

11 Q. Okay. Only thing Marion and you standing around
12 by the barrel all day?

13 A. Only thing -- I don't understand what you're
14 saying.

15 Q. In the morning standing around by the barrel?

16 A. No. We didn't stand around by the barrel, not
17 all day.

18 Q. Okay. Just in the morning?

19 A. This particular morning my friend was having a
20 birthday, they was getting meat together to have a
21 party for him.

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

23 (Pause in proceedings.)

24 MR. CUMMINGS: Thank you. That's all the
25 questions we have of this gentleman, Judge.

William H. Koger - Cross-Exam

1 THE COURT: All right. Any redirect?

2 MR. BAILEY: No redirect, Your Honor.

3 THE COURT: All right. Is this witness
4 free to leave?

5 MR. BAILEY: Yes, ma'am.

6 THE COURT: You are free to go.

7 (Whereupon, the witness steps down from the
8 witness stand.)

9 THE COURT: Please call your next witness.

10 MR. BAILEY: Call Joe Fogle.

11 THE COURT: If you would come forward,
12 please, and be sworn.

13 THE CLERK: Put your left hand on the
14 Bible, raise your right hand, state your full
15 name for the record, spell your last, please.

16 THE WITNESS: Joseph Fogle, F-o-g-l-e.
17 (Joseph F. Fogle, called as a witness, having
18 first been duly sworn, is examined and testifies
19 as follows:)

20 THE CLERK: Have a seat there, please.

21 THE COURT: Thank you. Once the microphone
22 is in place, would you state your full name for
23 the record, spell your last name for us.

24 THE WITNESS: Joseph Fogle, F-o-g-l-e.

25 THE COURT: Your witness.

Joseph F. Fogle - Direct Exam

1

2

DIRECT EXAMINATION

3

BY MR. LAFOND:

4

Q. Good afternoon, Mr. Fogle. As you know, my

5

name's Benji Lafond and I work with Mr. Bailey here

6

at the office. Can you please tell the jury where

7

you live?

8

A. I live at [REDACTED], Branchville, South

9

Carolina.

10

Q. Do you know the defendant, Marion Bowman?

11

A. Yes, sir. I do.

12

Q. Can you, please, point him out for the jury?

13

Can you describe him, what is he wearing?

14

A. The fellow in the green, green jacket, white

15

shirt, tie.

16

Q. Okay. Does Mr. Bowman have a nickname that you

17

commonly use for him?

18

A. Yes.

19

Q. What's that nickname?

20

A. Black.

21

Q. Okay. How long have you known Mr. Bowman?

22

A. About five years.

23

Q. Are you close friends with him?

24

A. Yes.

25

Q. Okay. Do you know James Taiwan Gadson?

Joseph F. Fogle - Direct Exam

1 A. Yes.

2 Q. Does he have a nickname that you commonly call
3 him?

4 A. Little Gap.

5 Q. Little Gap, okay. How long have you known James
6 Taiwan Gadson?

7 A. About the same length of time.

8 Q. Okay. Do you remember the afternoon of
9 February 16th, 2001?

10 A. Yes, I do.

11 Q. Okay. Why do you remember it?

12 A. It was the day before my birthday.

13 Q. Okay. Where were you on that day?

14 A. We was at William Henry Koger's house down on
15 78.

16 Q. Okay. And on that day did you see the
17 defendant?

18 A. Yes, I did.

19 Q. Where was he?

20 A. He was at -- at first he was going, he was at
21 his sister's place, he told me he was going to get
22 the meat for my birthday. The next time I seen him
23 he was at William Henry Koger's house.

24 Q. Okay. What, if anything, do you recall
25 Mr. Bowman doing or saying at Hank's house?

Joseph F. Fogle - Direct Exam

1 A. When he came back from Grover getting the meat
2 he was raising cane about something he left in the
3 garbage can.

4 Q. What was he raising cane about?

5 A. Something he left in the garbage can.

6 Q. What was that? What did he say?

7 A. His gun.

8 Q. Was he looking for the gun?

9 A. Yes.

10 Q. Was he upset that he couldn't find the gun?

11 A. Yes, sir.

12 Q. Okay. Do you know Hiram Johnson?

13 A. Yes.

14 Q. Okay. Was Hiram Johnson at Mr. Koger's house
15 that day?

16 A. Yes.

17 Q. Okay. Was he there when Mr. Bowman was looking
18 for his gun?

19 A. Yes. He came up as he was mentioning it, and
20 Hiram said, hey, what you raising cane about?

21 MR. CUMMINGS: Objection, Your Honor, it's
22 hearsay, please.

23 THE COURT: Sustained.

24 Q. Without saying what Mr. Johnson --

25 THE COURT: Sustained. Hearsay.

Joseph F. Fogle - Direct Exam

1 Q. Without saying what Hiram Johnson said, what did
2 Mr. Bowman do next?

3 A. They walked away.

4 Q. Okay. Did you actually see the gun that day?

5 MR. CUMMINGS: Objection, Your Honor,
6 that's leading, please.

7 THE COURT: Yes. No leading. Do not lead,
8 please.

9 Q. Can you state whether or not on February 16th if
10 you saw a gun?

11 A. No.

12 Q. Okay. Do you remember on February 16th whether
13 or not Mr. Bowman said anything about Kandee Martin?

14 MR. CUMMINGS: Judge, objection, it's
15 leading.

16 THE COURT: Mr. Lafond, don't lead.

17 Q. Did you have any conversations with Mr. Bowman
18 on February 16th?

19 A. Yes.

20 Q. Okay. What were those conversations about?

21 A. Okay. First conversation was about getting the
22 meat for my birthday. The second conversation was
23 when he asked me to take him somewhere.

24 Q. Okay. Where did he take you? Where did you
25 take him on that day?

Joseph F. Fogle - Direct Exam

1 A. I took him up to my cousin's house, Frankie
2 Martin.

3 Q. Okay. Did Marion say anything to you on the way
4 to Frankie's house?

5 A. No.

6 Q. Okay. Can you state whether or not there was
7 any conversation about Kandee Martin?

8 MR. CUMMINGS: Judge, I'm going to object,
9 that's leading. They're just trying to
10 bootstrap what they couldn't get out on the last
11 question, ma'am.

12 MR. LAFOND: It's a yes or no answer, Your
13 Honor, it doesn't question --

14 MR. CUMMINGS: It's leading.

15 THE COURT: I'm going allow him to answer.
16 You may answer the question.

17 A. Yes.

18 Q. What was that conversation about?

19 A. He had said she had owed him some money.

20 MR. LAFOND: Okay. No further questions,
21 Your Honor. Oh, I'm sorry. No further
22 questions, Your Honor.

23 THE COURT: Very well.

24 Q. Please answer any questions the defense may
25 have.

Joseph F. Fogle - Direct Exam

1 THE COURT: Cross-examination.

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

3 (Pause in proceedings.)

4 CROSS-EXAMINATION

5 BY MR. CUMMINGS:

6 Q. When you got to the house, sir, who was there?

7 A. Frankie Martin and Kandee. I did not see
8 Kandee, but the car was there.

9 Q. Just the car. So you can't say if that nice
10 lady was there or not?

11 A. No.

12 Q. Okay. And it's not uncommon to see people at
13 that house, is it?

14 A. No.

15 Q. You guys all know each other?

16 A. Yes.

17 Q. All friends?

18 A. Yes.

19 MR. CUMMINGS: Beg the Court's indulgence,
20 Your Honor.

21 THE COURT: All right.

22 MR. CUMMINGS: That's all the questions I
23 have of this gentleman. Thank you.

24 THE COURT: Very well. Any redirect?

25 MR. LAFOND: No redirect, Your Honor.

Joseph F. Fogle - Cross-Exam

1 THE COURT: You're free to go.

2 (Whereupon, the witness steps down from the
3 witness stand.)

4 MR. BAILEY: May he be excused, Your Honor?

5 THE COURT: I just did.

6 MR. BAILEY: I'm sorry.

7 Call Keith Rivers.

8 (Keith Rivers, called as a witness, having first
9 been duly sworn, is examined and testifies as
10 follows:)

11 THE CLERK: Have a seat.

12 THE COURT: Your witness, Mr. Bailey.

13 MR. BAILEY: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. You're Keith Rivers?

17 A. Yes.

18 Q. Okay. Mr. Rivers, tell the jury, please, where
19 you live.

20 A. Branchville, South Carolina.

21 Q. All right. How long have you lived in
22 Branchville?

23 A. All my life.

24 Q. Okay. Do you know the defendant in this case,
25 Marion Bowman?

Keith Rivers - Direct Exam

1 A. Yes.

2 Q. And could you point him out for the record,
3 please?

4 A. Over there.

5 Q. Okay.

6 THE COURT: Remember, keep your voice up
7 for me, please.

8 Q. Okay. Just if you would, Mr. Rivers, just talk
9 loud where I can hear you, then these jurors on the
10 end can hear you, okay?

11 A. Okay.

12 Q. Can you describe him? Just for the record can
13 you point towards his table over here? How is
14 Mr. Bowman dressed?

15 A. How is he dressed?

16 Q. Yes, sir.

17 A. He has a suit and a tie on.

18 Q. Okay. All right. How long have you known
19 Marion Bowman?

20 A. I guess ten years, 11 years.

21 Q. All right. And does he have any nicknames that
22 he goes by in the Branchville area?

23 A. Black.

24 Q. Okay. Any other nickname?

25 A. J. R.

Keith Rivers - Direct Exam

1 Q. J. R., okay. And how about James Taiwan Gadson,
2 do you know him?

3 A. Yes.

4 Q. How long have you known James Taiwan Gadson?

5 A. Probably about the same length of time.

6 Q. All right. Mr. Rivers, I want to ask you about
7 the afternoon of February 16th, 2001. Do you recall
8 where you were that day?

9 A. In Hank Koger's yard.

10 Q. All right. What were you all doing there?

11 A. Drinking beer, drinking liquor, and talking.

12 Q. All right. And calling your attention to maybe
13 2:00, 3:00 p.m. that afternoon. Would you state
14 whether or not you saw Marion Bowman or James Gadson
15 there?

16 A. Yes, I did.

17 Q. Both of them?

18 A. Uh-huh (affirmative response).

19 Q. Okay. And do you recall what Marion Bowman was
20 saying or doing at that time?

21 A. We was just all just talking, having a good
22 time, that's all.

23 Q. Okay. Do you recall Marion Bowman saying
24 anything in particular?

25 A. All I remember that him and Taiwan had an

Keith Rivers - Direct Exam

1 argument over a gun.

2 Q. All right. And did you hear that argument?

3 A. I heard little bits of pieces of it. I didn't
4 pay too much attention to it.

5 Q. What bits and pieces of what Marion Bowman might
6 have said did you hear?

7 A. Something about Taiwan you know where my gun at,
8 or something like that. Or you saw where it was or
9 something like that.

10 Q. All right. And how long did that argument back
11 and forth go on over the gun?

12 A. I guess five, ten minutes, maybe.

13 Q. Okay. All right. And later on that evening,
14 between like 12:30 and one o'clock, where did you go,
15 if anywhere?

16 A. Where did I go?

17 Q. Yes, sir.

18 A. My wife sister had a birthday party in Bamberg
19 and I went to that.

20 Q. Okay. And did you go anywhere else after that?

21 A. She and I left from there and went to Allen
22 Murray to get another beer and whatnot, and then go
23 home.

24 Q. Okay. Where is Allen Murray's Club located?

25 A. Right outside of Bowman.

Keith Rivers - Direct Exam

1 Q. Okay. And when you went to the Allen Murray
2 Club did you see anybody there that you knew?

3 A. I seen J. R.

4 Q. Okay. J. R. being Marion Bowman?

5 A. Marion.

6 Q. Anybody else?

7 A. I think Hiram was in the car with him, too.

8 Q. Okay. Is Hiram, Hiram Johnson?

9 A. Yes.

10 Q. Okay. All right. Mr. Rivers, that's all I've
11 got. Thank you. Please answer any questions Mr.
12 Cummings might have for you.

13 THE COURT: Cross-examination.

14 MR. CUMMINGS: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Mr. Rivers, I'm Norb Cummings, I'm going to walk
18 over here for a moment, I just didn't want to not pay
19 attention to you, sir. Mr. Rivers, I want to go back
20 a little bit. You said you've known this young man
21 about five years?

22 A. About ten or 15 years, something like that.

23 Q. Ten or 15 years, I'm sorry. And you also know
24 Mr. Taiwan Gadson?

25 A. Yes.

Keith Rivers - Cross-Exam

1 Q. Okay. And that day you're out at approximately
2 what time in the morning drinking beer, sir?

3 A. In the morning?

4 Q. Yes, sir. What time did you see the fellows out
5 there in the morning?

6 A. We was there drinking beer that afternoon.

7 Q. Afternoon, okay, sir. Not that morning?

8 A. No.

9 Q. Okay. And then, let's see, according to what
10 you just told Mr. Bailey that you heard something
11 happen between Taiwan and Mr. Bowman?

12 A. Yes.

13 Q. Okay. And Marion was asking where something
14 was, right?

15 A. Yes.

16 Q. So he didn't have what he was looking for, did
17 he?

18 A. I guess not.

19 Q. Thereafter you went to a birthday party in
20 Bamberg; is that correct, sir?

21 A. Yes.

22 Q. Okay. And, again, you come back about what
23 time, Mr. Rivers?

24 A. I guess about 12:00, one o'clock.

25 Q. Okay. And when's the next time that you see

Keith Rivers - Cross-Exam

- 1 Mr. Taiwan Gadson?
- 2 A. I don't see him anymore.
- 3 Q. At all?
- 4 A. Right.
- 5 Q. The rest of that day?
- 6 A. Right.
- 7 Q. Okay. And you told Mr. Bailey that that was
- 8 2-16-2001, right?
- 9 A. Yes.
- 10 Q. Okay. Did you see him at all on the 17th of
- 11 February?
- 12 A. That was the next day?
- 13 Q. Yes, sir. At what time?
- 14 A. You say that's the next day?
- 15 Q. Yeah.
- 16 A. No, I didn't see him.
- 17 Q. Didn't see him at all?
- 18 A. No.
- 19 Q. I think it's your testimony, Mr. Rivers, if I'm
- 20 wrong now you tell me, you go to Allen Murray's Club?
- 21 A. Uh-huh (affirmative response).
- 22 Q. Where is that located at, sir?
- 23 A. Bowman.
- 24 Q. In Bowman. Could you give us like the physical
- 25 landscape where it is, you know, in Bowman?

Keith Rivers - Cross-Exam

1 A. I guess it's about five, six miles outside of
2 Bowman on 178.

3 Q. All right, sir. Going towards Orangeburg, or
4 which direction?

5 A. Going towards that Rosinville, something like
6 that.

7 Q. Towards Rosinville, all right. And then who do
8 you see at that time in the morning at Allen Murray's
9 Club?

10 A. J. R.

11 Q. J. R., Mr. Marion Bowman, Jr. Who was he there
12 with?

13 A. Hiram Johnson.

14 Q. Okay. And what did you do while you saw
15 Mr. Bowman there, what were you two doing?

16 A. I just asked him if he wanted to go in the club
17 and get me a beer.

18 Q. Okay. And what happened, did he do that?

19 A. They said they wasn't going in.

20 Q. Okay. So you're positive you saw that man at
21 what time in the morning?

22 A. Like I said, I guess it was about 12:00, one
23 o'clock.

24 Q. No mistake about that, Mr. Rivers?

25 A. No mistake.

Keith Rivers - Cross-Exam

1 Q. And then what did you do the rest of the night?

2 A. Went home with my wife.

3 Q. You never saw Mr. Taiwan Gadson?

4 A. No.

5 MR. CUMMINGS: Beg the Court's indulgence,
6 Your Honor.

7 THE COURT: Yes, sir.

8 Q. Did you not tell Mr. Bailey you saw Mr. Bowman
9 in his sister's car?

10 A. That's the car him and Hiram was sitting in.

11 Q. What's his sister's name, sir?

12 A. I think it's Yolanda. I don't know which one of
13 his sister's car it was.

14 Q. What kind of car is it?

15 A. Some kind of gray Volkswagen, or something like
16 that.

17 Q. A VW. Not a Bug, but the other kind, like Paseo
18 or something?

19 A. I'm not sure what kind it was. I know it was a
20 Volkswagen, at least I think it was, anyway.

21 Q. You've seen him with that car, you know his
22 sister's car?

23 A. That's his sister's car.

24 Q. You know that for a fact?

25 A. Yeah.

Keith Rivers - Cross-Exam

1 Q. You saw him in that car at what time?

2 A. 12:00, 1:00 in the morning.

3 Q. Thank you, Mr. Rivers.

4 MR. CUMMINGS: That's all the questions I
5 have, Your Honor, of this gentleman.

6 MR. BAILEY: No redirect, Your Honor.

7 THE COURT: Is this witness free to leave?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: Very well, you are free to go.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Please call your next witness.

13 MR. BAILEY: State calls Carolyn Brown.

14 THE COURT: All right.

15 THE CLERK: Put your left hand on the
16 Bible, raise your right hand, state your full
17 name for the record, spell your last.

18 THE WITNESS: Carolyn Brown, B-r-o-w-n.

19 (Carolyn L. Brown, called as a witness, having
20 first been duly sworn, is examined and testifies
21 as follows:)

22 THE CLERK: Have a seat there, please.

23 THE COURT: Your witness, Mr. Bailey.

24 MR. BAILEY: Thank you, Your Honor.

25

Carolyn L. Brown - Direct Exam

1

2

DIRECT EXAMINATION

3

BY MR. BAILEY:

4

Q. Tell the jury your full name, please.

5

A. Carolyn L. Brown.

6

Q. All right. Ms. Brown, where do you live?

7

A. I stay at [REDACTED], Orangeburg.

8

Q. Okay. And is that in the Branchville Villas

9

Apartments?

10

A. No. I was staying there. I no longer stay

11

there.

12

Q. Okay. Back in February 2001 did you live in

13

Branchville Villas?

14

A. Yes, Apartment [REDACTED].

15

Q. Okay. Is that next door to Hank Koger's house?

16

A. Yes. That's right across the street.

17

Q. Do you know the defendant in this case, Marion

18

Bowman, Jr.?

19

A. Yes, I do.

20

Q. Okay. And for the record, can you point him

21

out, please?

22

A. Right there.

23

Q. Okay. And how is he dressed?

24

A. Excuse me?

25

Q. What's he wearing?

Carolyn L. Brown - Direct Exam

- 1 A. A green suit.
- 2 Q. Okay. White shirt?
- 3 A. White shirt, tie.
- 4 Q. Okay. All right. How long have you known
- 5 Marion Bowman?
- 6 A. For four years.
- 7 Q. Okay. Now, does Marion have a nickname?
- 8 A. J. R.
- 9 Q. J. R. Does he have another nickname?
- 10 A. Black.
- 11 Q. And people in Branchville refer to him by either
- 12 one or both of those nicknames?
- 13 A. Yes, sir.
- 14 Q. Okay. And how about James Taiwan Gadson, do you
- 15 know him?
- 16 A. Yes, sir.
- 17 Q. How long have you known him?
- 18 A. Four years also.
- 19 Q. Okay. And Travis Felder, do you know him?
- 20 A. Yes, sir.
- 21 Q. How long have you known Travis Felder?
- 22 A. Four years also.
- 23 Q. Okay. Call your attention to Friday, February
- 24 the 16th, 2001, and ask whether or not you were home
- 25 that day?

Carolyn L. Brown - Direct Exam

- 1 A. Yes, I was.
- 2 Q. Okay. And you were living in Branchville Villas
- 3 Apartments next door to Hank Koger's house?
- 4 A. Yes, sir.
- 5 Q. Do you recall going over to Hank Koger's house?
- 6 A. Yes, sir.
- 7 Q. Okay. What was going on over there?
- 8 A. We was getting together, a party for Joe Fogle,
- 9 was cleaning some chicken and stuff at a neighbor's
- 10 house and we walked back and forth across the street
- 11 to see what was going on.
- 12 Q. Who do you recall being over to Hank Koger's
- 13 yard that afternoon, that day?
- 14 A. A lot of us, Taiwan, J. R., me.
- 15 Q. Slow down a little bit and talk up a little bit.
- 16 You said Taiwan. Is that Taiwan Gadson?
- 17 A. Yes, sir.
- 18 Q. Okay. Who's the next person you remember being
- 19 there?
- 20 A. J. R.
- 21 Q. J. R. being Marion Bowman, Jr.?
- 22 A. Marion Bowman, Hank Koger, Joe Fogle. It was a
- 23 good bit of people in the yard.
- 24 Q. Okay. And while you were there at Hank Koger's
- 25 house out in the yard, when Marion Bowman was there

Carolyn L. Brown - Direct Exam

1 did you hear him saying anything?

2 A. It was an argument started about a gun, somebody
3 moving a pistol.

4 Q. Okay. Just tell us what you recall Marion
5 Bowman saying.

6 THE COURT: Remember to keep your voice up
7 for us, too, please, ma'am.

8 A. He --

9 Q. Got to give a name now, I know --

10 A. J. R. started arguing with Taiwan about moving a
11 gun that was supposed to be in the barrel.

12 MR. CUMMINGS: Objection, Your Honor,
13 supposedly.

14 A. Well, it was an argument about a gun that was
15 moved out the barrel.

16 Q. All right. Okay. And did you see Marion Bowman
17 later on that day?

18 A. Yes, I did.

19 Q. Where did you see him?

20 A. Um....

21 Q. Shortly after that did you see him anywhere
22 else?

23 A. I seen him in the car with his sister and
24 another female.

25 Q. Okay. All right. After Marion Bowman and

Carolyn L. Brown - Direct Exam

1 Taiwan Gadson had the argument about the gun, did you
2 see what they did, if anything?

3 A. No.

4 Q. Okay.

5 MR. BAILEY: Your Honor, I have nothing
6 further of Ms. Brown at this time, would reserve
7 the right to call her up later on for a separate
8 matter.

9 THE COURT: All right. Yes, sir.
10 Cross-examination, Mr. Cummings.

11 CROSS-EXAMINATION

12 BY MR. CUMMINGS:

13 Q. Ms. Brown, I'm going to be very brief. If you
14 can't hear me now, you tell me, okay?

15 A. All right.

16 Q. Ms. Brown, let's go back a little bit now. You
17 work at North American Container Company?

18 A. I was at the time.

19 Q. Yes, ma'am. And you've known those people you
20 said for about four years, right?

21 A. Yes, sir.

22 Q. Okay. And you're home on that Friday, 2-16 of
23 2001, in the afternoon preparing some food?

24 A. Yes, sir.

25 Q. All right. Were you inside your house?

Carolyn L. Brown - Cross-Exam

1 A. No. I was inside another girl's house.

2 Q. Okay. And that's what I want to say. What
3 apartment were you inside?

4 A. Apartment ☐.

5 Q. All right. Now, if we look at -- and I want to
6 recall your attention back to where you used to live,
7 in the Villa Apartments, right?

8 A. Okay.

9 Q. The people commonly call that the projects?

10 A. Yes, sir.

11 Q. All right. What apartment did you formerly live
12 in, ma'am?

13 A. I lived in Apartment ☐ until I got transferred
14 to ☐.

15 Q. Okay. As we go in the projects, they start with
16 what number as you drive in, down to 10?

17 A. It starts from 10 on 'til like 34 -- 31 or 34, I
18 believe.

19 Q. Okay. So we start at 10, okay. And you said
20 you were in apartment number...?

21 A. ☐.

22 Q. All right. How many units are to the apartments
23 before there's a break or a space between the units?

24 You know how they're different buildings, right?

25 A. There's like five.

Carolyn L. Brown - Cross-Exam

1 Q. There's like five. So we go like ten to 15,
2 right?

3 A. Yes.

4 Q. Then there's a space between the next building;
5 is that correct, ma'am?

6 A. Yes.

7 Q. And then there's some more buildings and then
8 there's a space and then there's some two-story homes
9 there, right?

10 A. Yes, sir.

11 Q. Okay. I just want to make sure you and I are
12 talking about the same place and same thing, all
13 right?

14 A. Yes, sir.

15 Q. I'm just going to ask you some questions.

16 A. Okay.

17 Q. Now, you were in Apartment ☐?

18 A. Yes, sir.

19 Q. And who lives there, ma'am?

20 A. Tosha Rivers was living there at that time.

21 Q. Is she any relation to you?

22 A. No.

23 Q. And from ☐, that building there, where were you
24 exactly inside that building?

25 A. Well, I was back and forth in the kitchen back

Carolyn L. Brown - Cross-Exam

1 outside.

2 Q. Okay. Kitchen and outside. And while you're
3 inside the home, how far is the barrel from inside
4 the Apartment ☐?

5 A. I'm not exactly sure, but if I was standing
6 outside I could see the barrel from where I was
7 standing under the tree.

8 Q. All right. Now, I want you to look at where I
9 am. At the end of the jury box now, was the barrel
10 as close to where I'm standing right here to the end
11 of where this young lady and young man is?

12 A. It could have been a little further back.

13 Q. If you see this in the courtroom somewhere, tell
14 us about how far back.

15 A. I'm going to say about behind the lady that has
16 the green jacket on.

17 Q. Okay. All right, ma'am. So about, one, two,
18 the second row in the jury room in this courthouse;
19 is that about right?

20 A. From my calculation.

21 Q. Yes, ma'am. I'm not trying to trick you now, I
22 just want to tell us about how far.

23 A. From my calculation.

24 Q. Yes, ma'am.

25 A. I can't give you a direct.

Carolyn L. Brown - Cross-Exam

1 Q. And do you have any music on inside the place?

2 A. No, sir.

3 Q. Okay. You're in there cooking and the kitchen's
4 in the back part of the apartment?

5 A. We wasn't cooking, we was cleaning chicken.

6 Q. Cleaning food, I'm sorry. I want to make sure
7 that's correct. You were cleaning in the front area
8 which is the living room, right?

9 A. No.

10 Q. Where were you cleaning the food, in the back
11 part?

12 A. In the kitchen in the sink and I was walking
13 back and forth outside.

14 Q. Okay. And is it true, Ms. Johnson, that did
15 somebody tell you what you just said for the
16 solicitor? I'm sorry, I'm looking at something,
17 Ms. Brown.

18 A. No.

19 Q. Okay.

20 A. I was out there when the argument started.

21 Q. Okay. And your words were they were arguing
22 about some gun?

23 A. About someone moving a gun out the barrel, yes.

24 Q. Well, obviously Marion didn't have the gun then
25 if he had to argue about it, right?

Carolyn L. Brown - Cross-Exam

1 A. No.

2 Q. Okay. And then let's go -- as you're standing
3 out there that day, who else was out there, ma'am?

4 A. Hank Koger, Joe Fogle. It was a good many
5 people. And I don't recall everybody that was there
6 because it was a while back that it happened.

7 Q. Yes, ma'am. Is it fair to say that, you know,
8 and, again, now I'm not trying to trick you here, a
9 lot of people out there, a lot of people talking?
10 How many fellows around this barrel?

11 A. Hum?

12 Q. How many fellows were around this area?

13 A. I'm going to say at least about -- it was about
14 a good 15, 20 people around.

15 Q. Fifteen, 20 people. A lot of people talking at
16 that time, right?

17 A. Yeah.

18 Q. Okay. So a lot of different conversations were
19 flying back and forth between folks?

20 A. Yes, but -- yes, sir.

21 Q. Okay. And then I just want to go a little bit
22 now and talk to you a little bit more. You then went
23 down to Valorna's apartment, Apartment [redacted]?

24 A. This was later on that afternoon.

25 Q. I'm sorry?

Carolyn L. Brown - Cross-Exam

1 A. That was later on that afternoon.

2 Q. In the afternoon, okay. So you're down there in
3 the afternoon. And can you tell us what happened
4 next? While you're down there that afternoon, what
5 happened after that?

6 A. Well, we was all getting ready to go to the
7 club.

8 Q. Which club is that, ma'am?

9 A. Allen Murray in Bowman.

10 Q. Okay. And who were you going to go with?

11 A. I went with Travis Felder.

12 Q. Okay. Do you have a special relationship with
13 Mr. Felder?

14 A. No, I don't.

15 Q. Just a friend?

16 A. Just friends.

17 Q. And did you, did Travis agree to take you to
18 Allen Murray's club?

19 A. Yes.

20 Q. Okay. At the time when you -- did you ever get
21 to the club that night? Let me ask you that way.

22 A. Yes, I did.

23 Q. What time did you get there?

24 A. It was after twelve o'clock.

25 Q. After 12:00?

Carolyn L. Brown - Cross-Exam

1 A. It was after 12:00.

2 Q. Okay. Now, after twelve o'clock, who did you
3 see at the club?

4 A. Well, it was a good many of us that went to the
5 club. Me and Travis left together.

6 Q. You and Travis?

7 A. Left together to go to the club. Yolanda Bowman
8 and some other girls rode in her car. They left us,
9 I had to find a ride to the club. I asked Travis to
10 take me to the club and he took me to the club.

11 Q. All right, ma'am.

12 A. When I got there Yolanda Bowman, Lavette
13 Brown-Collie and like three other girls was there.

14 Q. Semeeka (phonetic) Prioleau?

15 A. Yeah.

16 Q. Okay. I think you mentioned Lavette, right?

17 A. That's my sister.

18 Q. Yes, ma'am. Okay. And then I want to take you
19 back a little bit later. What time approximately did
20 you leave the club?

21 A. We left around a quarter to 2:00 -- I mean,
22 2:45.

23 Q. 2:45?

24 A. Yes, sir.

25 Q. Okay. And you drove in whose car?

Carolyn L. Brown - Cross-Exam

- 1 A. Travis Felder.
- 2 Q. Okay. And you went straight back to
- 3 Branchville; is that right?
- 4 A. Straight back. It was me, Travis Felder.
- 5 Valorna Smith was in the car with the other girls,
- 6 but she rode back with me and Travis Felder.
- 7 Q. Yes, ma'am. Now, this is about what time of the
- 8 morning on Saturday morning?
- 9 A. I'm going to say we got back to Branchville, I'm
- 10 going to say about three o'clock. We went to the
- 11 store, got a bag of chip and dip and went to
- 12 Valorna's apartment.
- 13 Q. Who went in and did that, who went in and bought
- 14 the other stuff?
- 15 A. Travis went in and got the chip and dip.
- 16 Q. Okay. And then you went straight back to
- 17 Valorna's apartment, right?
- 18 A. Yes.
- 19 Q. Okay. Now, the young lady Valorna.
- 20 A. Yes.
- 21 Q. Okay. Was she working on Travis's hair?
- 22 A. Yeah, she was opening his hair.
- 23 Q. Okay. And no question about that, right, ma'am?
- 24 A. What was that?
- 25 Q. You have no question about that she was working

Carolyn L. Brown - Cross-Exam

1 on that young man's hair?

2 A. No questions at all.

3 Q. And about that time, right?

4 A. No questions at all.

5 Q. Okay. And then about 15 or 20 minutes later you
6 got a knock on your door?

7 A. On her door, yeah.

8 Q. Excuse me very much, you're absolutely correct,
9 her door.

10 A. Yes, sir.

11 Q. Okay. And when you heard this knock on the
12 door, the rest of the folks, who was the person
13 knocking on the door?

14 A. I look out the window to see if I could see
15 anyone. I didn't see nobody. I opened the door,
16 Marion Bowman, J. R. stuck his head in there and said
17 in the door saying, "Man, Trav, could you run me
18 home?"

19 Q. So you saw J. R., Marion Bowman there, at the
20 time you just told these ladies and gentlemen?

21 A. Well, after we got back to the club it was after
22 three o'clock, so it was like after three o'clock he
23 had a knock on the door, I answered it, it was J. R.
24 He said, "Man, could you run me home?" I look out to
25 see if anybody was out there with him. There was

Carolyn L. Brown - Cross-Exam

1 nobody out there with him, a car or nothing. They
2 got in the car and they left out the projects.

3 Q. Okay.

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

5 THE COURT: All right.

6 Q. Just one second as I'm walking this way. And
7 your testimony today, you're absolutely sure about
8 what you just testified about, right?

9 A. Yes, sir.

10 MR. CUMMINGS: Thank you, Judge. Beg the
11 Court's indulgence.

12 THE COURT: Uh-huh (affirmative response).

13 (Mr. Cummings and Ms. Hardee-Thomas conferring
14 with Mr. Bowman.)

15 Q. How long was Travis gone, ma'am, before he came
16 back to you?

17 A. I'm going to say about 15, 20 minutes.

18 Q. Fifteen to 20 minutes?

19 A. At the most, yes.

20 Q. At the most. And when Travis got back, how did
21 he appear to you?

22 A. He appear fine, they went upstairs, him and
23 Valorna went upstairs, and me and my baby father was
24 downstairs and we called it a night after that.

25 Q. Did anything in particular catch your attention,

Carolyn L. Brown - Cross-Exam

1 like did somebody look disheveled, or looked like
2 they were in the mud or anything?

3 A. No.

4 Q. Did they smell of anything?

5 A. No.

6 Q. And did Travis come back to you and say
7 anything?

8 A. Nothing. He went upstairs with Valorna because
9 I had my company down which was Valorna brother and I
10 was seeing him and that was it.

11 Q. Yes, ma'am. Everything was normal?

12 A. Everything seemed normal to me.

13 MR. CUMMINGS: That's all the questions I
14 have of this witness, Judge. Thank you. Thank
15 this lady.

16 REDIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. Ms. Brown, do you wear a watch?

19 A. No, I don't.

20 Q. Are you wearing a watch now?

21 A. No, I'm not.

22 Q. Okay. And when you talk about different times
23 something happened, what time it was in the morning,
24 or 15, 20 minutes, are you guessing at that?

25 A. Well, a guess, yeah.

Carolyn L. Brown - Redirect Exam

1 Q. Because you don't wear a watch?

2 A. I don't wear a watch, so I couldn't give you a
3 direct time.

4 Q. Okay.

5 A. But it didn't seem no more than 15, 20 minutes
6 they were gone.

7 Q. Okay. Let's back up a little bit. When you
8 went to Allen Murray Club you went with Travis
9 Felder, I believe?

10 A. Yes, I did.

11 Q. Just the two of you all went there?

12 A. Yes, sir.

13 Q. When you left Allen Murray Club it was the two
14 of you all, Valorna Smith went back?

15 A. Yes, sir.

16 Q. And while -- do you know how Valorna got to the
17 Allen Murray Club?

18 A. She rode in the car with Yolanda Bowman.

19 Q. That's Marion's sister, right?

20 A. Yes.

21 Q. What kind of car did she drive?

22 A. At the time it was a little blue car.

23 Q. Okay.

24 A. The name of it, I don't know.

25 Q. Okay. And when you got to Allen Murray Club,

Carolyn L. Brown - Redirect Exam

1 did you see Yolanda's little blue car in the parking
2 lot?

3 A. Yes, I did.

4 MR. BAILEY: That's all I've got right now.
5 Thank you very much.

6 THE COURT: Any recross?

7 RECROSS-EXAMINATION

8 BY MR. CUMMINGS:

9 Q. Were there clocks in the house that you were in?
10 TV on?

11 A. Yeah, actually.

12 Q. Are you very comfortable with the time you just
13 said?

14 A. Yes.

15 Q. Thank you.

16 THE COURT: Very well. You may come down.
17 She is not to be excused, though; is that
18 correct?

19 MR. BAILEY: Your Honor, I wouldn't expect
20 to call her again today.

21 THE COURT: Oh, all right. You're still
22 remaining under subpoena, but as I understand it
23 the solicitor's office will let you know when
24 you are needed again.

25 THE WITNESS: Okay.

Carolyn L. Brown - Recross-Exam

1 THE COURT: So you are free to go for
2 today.

3 THE WITNESS: All right.
4 (Whereupon, the witness steps down from the
5 witness stand.)

6 THE COURT: Thank you. Call your next
7 witness, please.

8 MR. CUMMINGS: Can we make that both ways
9 too, please?

10 THE COURT: Yes, both ways. I'm sorry,
11 from both. Both may need you.

12 MR. CUMMINGS: Thank you, Judge.

13 MR. BAILEY: The State would call Eddie
14 Waters.

15 THE CLERK: Put your left hand on the
16 Bible, raise your right hand, state your full
17 name, spell your last, please.

18 THE WITNESS: Edward Waters.

19 THE CLERK: Spell your last name.

20 THE WITNESS: W-a-t-e-r-s.

21 THE CLERK: Have a seat.

22 (Edward Waters, called as a witness, having
23 first been duly sworn, is examined and testifies
24 as follows:)

25 THE COURT: State your name for the record,

Edward Waters - Direct Exam

1 please.

2 THE WITNESS: Edward Waters.

3 THE COURT: You need to keep your voice up,
4 the gentleman way back in the back has to hear,
5 okay? Keep your voice strong.

6 MR. BAILEY: If you would indulge me a
7 moment, I'm going to show Mr. Cummings some
8 photographs I was going to ask him to identify.

9 THE COURT: All right.

10 MR. BAILEY: I would like to mark
11 photographs for identification only, not put in
12 evidence.

13 THE COURT: Okay.

14 (Marked for identification were State's Exhibits
15 1 through 6, photographs.)

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. You're Eddie Waters?

19 A. Yes, sir.

20 Q. Okay. Mr. Waters, tell the jury, please, where
21 you live.

22 A. [REDACTED], Rowesville, South Carolina.

23 Q. Okay. Rowesville is over in Orangeburg County?

24 A. Yes, sir.

25 Q. Okay. Between Branchville and Orangeburg?

Edward Waters - Direct Exam

1 A. Yes, sir.

2 Q. Okay. Back in February 2001, where were you
3 living?

4 A. [REDACTED].

5 Q. That's good, I can hear you clear now. If you
6 just kind of keep that up so I can hear you, this
7 lady on the end can hear you, okay?

8 All right. That's in Branchville?

9 A. Yes, sir.

10 Q. All right. Mr. Waters, back in February 2001,
11 did you know Kandee Martin?

12 A. Yes, sir.

13 Q. Okay. And how long had you known her then?

14 A. My whole life.

15 Q. Okay. Were you born and raised in Branchville?

16 A. Yes, sir.

17 Q. Okay. What about the defendant in this case,
18 Marion Bowman, Jr., did you know him back then?

19 A. Yes, sir.

20 Q. Okay. And go ahead, just for the record, point
21 him out in court, please.

22 A. He's sitting over there.

23 Q. What's he wearing?

24 A. Green suit.

25 Q. Okay. Sitting in between -- beside Mr. Cummings

Edward Waters - Direct Exam

1 and Ms. Hardee-Thomas?

2 A. Yes, sir. Yes.

3 Q. All right, sir. All right. I want to call your
4 attention to Friday, February the 16th, 2001, late
5 afternoon, ask where you were at?

6 A. I was at Charles Fralix's house.

7 Q. Okay. And I'm going to show you a couple
8 photographs here marked State's 1 and 2 and ask you
9 to state whether or not these are pictures of Charles
10 Fralix's house?

11 A. Yes, sir.

12 MR. BAILEY: Okay. And I'm going to try
13 putting these on this projector, Your Honor, I
14 might have to pass them around.

15 THE COURT: Are they in evidence?

16 MR. BAILEY: Yes, ma'am. We had agreed.

17 MR. CUMMINGS: Yes, ma'am. Without
18 objection, Judge.

19 THE COURT: State's Exhibits 1 and 2 in
20 evidence without objection, they are
21 photographs.

22 (Entered into evidence was State's Exhibit 1,
23 photograph.)

24 (Entered into evidence was State's Exhibit 2,
25 photograph.)

Edward Waters - Direct Exam

1 Q. Okay. Mr. Waters, if you could just step up for
2 a minute and if you could just come around kind of
3 beside where the SLED agent is.

4 MS. HARDEE-THOMAS: Your Honor.

5 MR. CUMMINGS: Our prompter is not working,
6 Judge.

7 THE COURT: Just a second, we're having a
8 technical --

9 MR. BAILEY: Technical problem.

10 THE COURT: Turn it on.

11 MR. CUMMINGS: Don't leave a lawyer around
12 machinery.

13 Q. Mr. Waters, is that Charles Fralix's house?

14 A. Yes, sir.

15 Q. And that's located in Branchville; is that
16 correct?

17 A. Yes, sir.

18 Q. And this is State's Number 2. I'm going to put
19 that up there now and ask you if that's kind of a
20 closer-up shot of his house?

21 A. Yes, sir.

22 Q. And that's where you were on the afternoon of
23 February 16th, 2001?

24 A. Yes, sir.

25 Q. Okay.

Edward Waters - Direct Exam

1 THE COURT: Keep your voice up now, you
2 don't even have the microphone.

3 Q. Okay. And what were you doing there that
4 afternoon?

5 A. He's my uncle. I just recently got off work and
6 just came over to visit.

7 Q. Drinking some beer, just hanging around?

8 A. Yes, sir.

9 Q. Friday afternoon and gotten off work?

10 A. Yes, sir.

11 Q. Okay. I want to ask you whether or not you saw
12 Kandee Martin that afternoon?

13 A. Yes, sir. I seen her.

14 Q. Okay. And where did you see her?

15 A. Well, she had stopped by the house and when I
16 got there she was already there.

17 Q. Okay. You're talking about Charles Fralix's
18 house?

19 A. Yes, sir.

20 Q. Okay. And did you see her there more than one
21 time?

22 A. Yes, sir.

23 Q. Okay. She came and left?

24 A. Yeah, she came and left.

25 Q. Okay. When she came and left and came back, the

Edward Waters - Direct Exam

1 first time she came back did you have any
2 conversation with her?

3 A. Yes, sir.

4 Q. Okay. And how did she get to Charles Fralix's
5 house?

6 A. She drove.

7 Q. Okay. And do you recall what kind of a car she
8 drove?

9 A. Kind of a gray Escort.

10 Q. Okay. Ford Escort?

11 A. Yes, sir.

12 Q. I'm going to show you four pictures marked for
13 identification. These are not pictures of Kandee
14 Martin's car, but I want to ask you to look at these
15 and state whether or not other than the color that's
16 the car like her car?

17 A. Yes, sir.

18 Q. I'll just put one of them up on the screen, if I
19 can.

20 THE COURT: They're in evidence as well?

21 MR. CUMMINGS: Just as ID, Judge.

22 MR. BAILEY: ID only at this point, Your
23 Honor.

24 THE COURT: All right.

25 MR. BAILEY: This is State's 6.

Edward Waters - Direct Exam

1 Q. She was in a car kind of like that car, a light
2 colored Ford Escort?

3 A. Yes, sir.

4 Q. Was she by herself, have somebody with you her?

5 A. By herself.

6 MR. CUMMINGS: Objection, your Honor,
7 leading. I know the solicitor is trying to move
8 quickly, but leading, please.

9 MR. BAILEY: I don't think it's leading,
10 Your Honor.

11 THE COURT: I'll allow the question. You
12 may proceed.

13 Q. Was anybody else in the car with her?

14 A. No, there wasn't anybody with her.

15 Q. All right. Now, when she pulled up the second
16 time, where were you?

17 A. I was on the porch, but she called me to the
18 car.

19 Q. Okay. So you walked over to the car?

20 A. Yes, sir.

21 Q. And how close were you to the car?

22 A. Standing right beside, leaning in the window.

23 Q. Okay. And you all were having a conversation?

24 A. Yes, sir.

25 Q. Okay. And while you were standing beside Kande

Edward Waters - Direct Exam

1 Martin's Ford Escort talking to her, did anybody else
2 show up?

3 A. Marion -- somebody driving a car pulled up with
4 Marion in the back of the car.

5 Q. All right. And could you tell who was driving
6 the car?

7 A. No, sir.

8 Q. Okay. But you said Marion was in the back of
9 the car?

10 A. Yes, sir.

11 Q. For the record, you're referring to the
12 defendant in this case, Marion Bowman; is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. Now, the car Marion Bowman was riding in,
16 where did that car go in relation to where Kande
17 Martin's car was where you were talking to her?

18 A. It pulled up on the passenger side of the car.

19 Q. Okay. It pulled up on the passenger side of
20 Kande Martin's car; is that correct?

21 A. Yes, sir.

22 Q. Okay. And what part of the car was Marion
23 Bowman seated in when it pulled up?

24 A. The back driver's side.

25 Q. Okay. And did the car stop?

Edward Waters - Direct Exam

1 A. Yes, sir.

2 Q. Okay. How close did the car Marion Bowman was
3 in stop in relation to where Kandee Martin's car was
4 already parked?

5 A. Within three or four foot.

6 Q. Okay. And how close were you to Kandee Martin's
7 car?

8 A. I was at the window.

9 Q. At the window talking to her?

10 A. Yes, sir.

11 Q. Okay. And what occurred, what did you observe
12 after the car that Marion Bowman was in stopped
13 beside Kandee Martin's car?

14 A. He had his window down and he was --

15 Q. When you say "he"...?

16 A. Marion Bowman had his window down and was trying
17 to get her attention. She told him to hold on a
18 minute.

19 Q. When you say he was trying to get her attention,
20 how do you know that?

21 A. Well, he was sitting at the window with his
22 window rolled down.

23 Q. Okay.

24 A. Asking for her.

25 Q. Okay. And you said she said, "Hold on a

Edward Waters - Direct Exam

1 minute"?

2 A. Yeah. She said, "Hold on a minute."

3 Q. Okay. What, if anything, did you observe after
4 that?

5 A. He said something to her after she said that
6 like --

7 Q. Try to give -- for the record you say he, you
8 know what you're talking about.

9 A. Marion Bowman.

10 Q. Okay. Marion Bowman said what?

11 A. "Fuck waiting a minute," something in that way.

12 Q. Fuck -- I'm sorry?

13 A. "Fuck waiting a minute."

14 Q. "Fuck waiting a minute"?

15 A. Yeah.

16 Q. Did you hear him say anything else?

17 A. Yeah. He said, "I'm about to kill this bitch."

18 Q. Okay. He said, "I'm about to kill this bitch"?

19 A. Yes, sir.

20 Q. What happened then?

21 A. He drove off.

22 Q. The car drove off, okay. Mr. Waters, that's all
23 I have. Please answer any questions that Mr.
24 Cummings may have for you.

25 THE COURT: Cross-examination.

Edward Waters - Direct Exam

1 MR. CUMMINGS: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. CUMMINGS:

4 Q. Mr. Waters, I'm going to bring you back to that
5 day. What time did you get off work?

6 A. I ain't sure what time I got off work.

7 Q. And you went over deliberately to go over to
8 Charles Fralix's house and drink beer?

9 A. Yes, sir.

10 Q. So there's no question you were drinking beer
11 that day?

12 A. Not at that time. I just got there.

13 Q. You just got there?

14 A. I just got off work. I was there 20 minutes.

15 Q. Okay.

16 A. At the most.

17 Q. So it's your testimony, sir, that you just get
18 there and Kandee pulls up?

19 A. Yes, sir.

20 Q. Okay. You're over at Charles Fralix's house,
21 that's the house everyone saw on the screen the
22 picture identified?

23 A. Yes, sir.

24 Q. Does the house look like that today?

25 A. No, it's burned down.

Edward Waters - Cross-Exam

1 Q. Burned down. How long ago?

2 A. I think about four months ago.

3 Q. Four months ago. And when you went over there
4 to see Mr. Fralix, did Mr. Fralix have a friendship
5 with Miss Martin, sir?

6 A. Yes, sir.

7 Q. Were they boyfriend and girlfriend, sir?

8 A. I'm not sure what you would call it. I guess in
9 that way.

10 Q. They had a social relationship; would that be
11 fair to say?

12 A. Yes, sir.

13 Q. Okay. Just like, you know, you have a
14 friendship with Miss Martin also?

15 A. No -- well, yeah. Yes.

16 Q. Social friendship, right?

17 A. Yes.

18 Q. Everybody knew each other as friends?

19 A. Yes, sir.

20 Q. Now, when you first are there, it's your
21 testimony that you left Mr. Fralix, right, or you
22 were up there on his porch or in his house?

23 A. I was on his porch.

24 Q. You come out there when you see Miss Martin pull
25 up?

Edward Waters - Cross-Exam

1 A. Yes, sir.

2 Q. She wanted to do what with you, sir, what were
3 you doing?

4 A. She wanted to borrow money for gas.

5 Q. Did you lend her any money?

6 A. I lend her \$5 for gas.

7 Q. Okay. And then you see a car pull up. You
8 don't know whose driving, right?

9 A. No, I don't know the driver.

10 Q. But you're so certain that you see Mr. Bowman
11 there, correct?

12 A. Yes, sir.

13 Q. And you're so certain that you hear him while
14 you're standing over by Miss Martin?

15 A. Yes, sir.

16 Q. Trying to get her attention. And you're
17 certain, and it's so certain in your mind you hear
18 something said that Mr. Bowman is angry at her; is
19 that right?

20 A. Yes, sir.

21 Q. Okay. So you were so certain about that the
22 very first time you ever talked to a police officer
23 you pointed that out to him; did you not?

24 A. Not the first time I talked to him I didn't
25 point it out.

Edward Waters - Cross-Exam

1 Q. No. As a matter of fact, you gave your first
2 statement to the police when, sir?

3 A. The day after the murder.

4 Q. The day after?

5 A. Yes, sir.

6 Q. Okay. When it's fresh in your mind, isn't it?
7 The next day after you hear something horrible,
8 correct?

9 A. Yeah.

10 Q. And you're so devastated about the loss of your
11 social friend, Mr. Waters, I want you to hear this,
12 okay? I want you to answer my question to these good
13 folks over here. It's fresh in your memory the next
14 day that you went and you told Mr. Miller, a
15 detective with Dorchester County, that very important
16 fact you just told these folks today in this
17 courtroom, didn't you?

18 A. Yes, sir.

19 Q. You did?

20 A. Later on I did. Not at that point.

21 Q. Later on, okay. Well, let's go back. When was
22 the second time you gave a statement?

23 A. I was at work.

24 Q. September 17th of 2001; was it not?

25 A. Yes, sir.

Edward Waters - Cross-Exam

1 Q. And how did that statement come about, how did
2 the police officer get to you?

3 A. He drove to where I was working at.

4 Q. Where was that?

5 A. Sumter.

6 Q. Sumter?

7 A. Manning.

8 Q. Manning?

9 A. Manning.

10 Q. Excuse me, okay. Manning is in Sumter County.
11 I don't want you nervous, I don't want you upset,
12 okay?

13 A. Yes, sir.

14 Q. All this time goes by, February 'til September.
15 And you had how many ample opportunities between
16 February and September to reread what you wrote or
17 gave a statement on after the loss of that wonderful
18 friend of yours?

19 A. The same day that I gave the statement another
20 friend of mine had went up there and said we had
21 heard him say something. And nobody ever came to get
22 another statement from us, so that's how that went.

23 Q. That's how that went. But you never picked up
24 the phone? Mr. Waters, answer my question. You
25 never picked up the phone?

Edward Waters - Cross-Exam

1 A. No, I didn't.

2 Q. You never got in your car and drove to the
3 solicitor's office, police department, sheriff's
4 department, sir, or any other law enforcement agency
5 to give them that vital information that day?

6 A. No, sir.

7 Q. It wasn't until a cop comes seven months later
8 that you remember words now, right?

9 A. Yes, sir. I remembered that day. I just didn't
10 talk to anyone at that time until someone else came
11 and talked to me.

12 Q. Is it true, Mr. Waters, did you write your own
13 statement, or did the policeman write it for you?

14 A. I wrote my own statement.

15 Q. Seven months later you remember that about your
16 friend, you remember Marion says that, correct?

17 A. Yes. I remember the same day. Like I said, I
18 just -- I had already made a statement. Nobody else
19 came to get another statement from me.

20 Q. Did anybody tell you to say what you said in
21 that second statement, Mr. Waters?

22 A. No, sir.

23 Q. No, sir. You had been drinking beer over at
24 Fralix's house that day, didn't you?

25 A. No, I hadn't. I just got off work, I have to

Edward Waters - Cross-Exam

1 say that again.

2 Q. You had just got off work, okay. Thank you very
3 much.

4 MR. CUMMINGS: That is all the questions I
5 have of this gentleman.

6 THE COURT: Redirect?

7 MR. BAILEY: No redirect, Your Honor.

8 THE COURT: Is this witness free to leave?

9 MR. BAILEY: Yes, ma'am.

10 MR. CUMMINGS: Yes, ma'am.

11 THE COURT: Very well, you are free to go.

12 (Whereupon, the witness steps down from the
13 witness stand.)

14 THE COURT: Please call your next witness.

15 MR. BAILEY: Yolanda Bowman.

16 THE CLERK: Put your left hand on the
17 Bible, raise your right hand and state your name
18 for the record, spell your last, please.

19 (Yolanda S. Bowman, called as a witness, having
20 first been duly sworn, is examined and testifies
21 as follows:)

22 THE CLERK: Have a seat.

23 THE COURT: I need to remind you to please
24 keep your voice up, we need all of our jurors to
25 be able to hear you, all right?

Yolanda S. Bowman - Direct Exam

1 THE WITNESS: Yes, ma'am.

2 THE COURT: If you would state your full
3 name for the record. We will have a sound
4 check.

5 THE WITNESS: Yolanda Bowman.

6 THE COURT: You're going to have to keep
7 your voice up louder for us. Try again.

8 THE WITNESS: Yolanda Bowman.

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. If you just look over here at me, talk up loud
12 where you can hear this lady here and this gentleman
13 back here can hear you, okay? So you got to keep
14 your voice up. Your full name is what?

15 A. Yolanda Shanique Bowman.

16 Q. Okay. Ms. Bowman, where do you live?

17 A. At [REDACTED] [REDACTED] [REDACTED], Branchville.

18 Q. Okay. And are you related to the defendant in
19 this case, Marion Bowman, Jr.?

20 A. Yes.

21 Q. Okay. How are you related?

22 A. He's my brother.

23 Q. Okay. And for the record, can you point him
24 out?

25 A. Right there.

Yolanda S. Bowman - Direct Exam

1 Q. Sitting beside Mr. Cummings there in the --

2 A. With the green suit on.

3 Q. Blue/green coat, okay. Ms. Bowman, I want you
4 to tell the jury whether or not you have criminal
5 charges pending against you for accessory after the
6 fact of murder?

7 A. Yes.

8 Q. Okay. And are you aware that you could, with
9 those charges, go to prison?

10 A. Yes.

11 Q. Okay. And do you have a lawyer that represents
12 you on those charges?

13 A. Yes.

14 Q. Who is that lawyer?

15 A. Mr. Kenneth Cooper.

16 Q. Okay. And is Mr. Cooper here in court today?

17 A. Yes, sir.

18 Q. Okay. And through your lawyer, Mr. Cooper, have
19 you worked out a plea agreement with the State of
20 South Carolina?

21 A. Yes, sir.

22 Q. Okay. And under that plea agreement are you
23 going to get a probationary sentence if you testify
24 truthfully?

25 A. Yes, sir.

Yolanda S. Bowman - Direct Exam

1 Q. Okay. Are you present here today pursuant to
2 that agreement to testify truthfully under oath?

3 A. Yes, sir.

4 MR. CUMMINGS: Judge, I'm going to object
5 to any more bolstering about that, please.

6 MR. BAILEY: That's all I have, Your Honor.

7 THE COURT: Very well. You may proceed.

8 Q. Ms. Bowman, did you know Kandee Martin?

9 A. Yes.

10 Q. All right. And do you know a young woman named
11 Katrina West?

12 A. Yes, sir.

13 Q. Okay. How do you know Katrina West?

14 A. She's my cousin.

15 Q. Okay. Which would make her your brother's
16 cousin, of course, right?

17 A. Yes, sir.

18 Q. Is she a first cousin, or what?

19 A. Yes, sir.

20 Q. Okay. Does she live in Branchville also?

21 A. Yes, sir.

22 Q. Okay. I want to call your attention to February
23 the 16th, 2001 and state whether or not you recall
24 being at Katrina's apartment in Branchville that
25 afternoon?

Yolanda S. Bowman - Direct Exam

1 A. Yes.

2 Q. Okay. And would you state whether or not your
3 brother, Marion Bowman, Jr., was at Katrina West's
4 apartment?

5 A. Yes.

6 Q. Okay. And did y'all leave the apartment that
7 afternoon, the three of you?

8 A. Yes, we did.

9 Q. Okay. And where did you go, where were you
10 planning on going?

11 A. We was planning on going to the pharmacy.

12 Q. Okay. That's the pharmacy in Branchville?

13 A. Yes, sir.

14 Q. And was it still daytime?

15 A. Yes.

16 Q. And when y'all left, the three of you, how did
17 you leave the apartment?

18 A. In my car.

19 Q. Okay. What kind of car did you have at that
20 time?

21 A. A Volkswagen.

22 MR. BAILEY: Offer these without objection.

23 MR. CUMMINGS: Absolutely, Judge.

24 THE COURT: All right. State's Exhibits, I
25 believe, 7 and 8 in evidence without objection;

Yolanda S. Bowman - Direct Exam

1 is that correct?

2 MR. CUMMINGS: Judge, the last two are
3 without objection, the picture of the house
4 without objection, the other four photographs
5 are ID only.

6 THE COURT: That's what I understand.

7 MR. CUMMINGS: Thank you, Judge.

8 THE COURT: One and 2 are in, 3, 4, 5, 6
9 are ID, so 7 and 8?

10 MR. CUMMINGS: Seven and 8.

11 THE COURT: Okay. Without objection, they
12 are photographs.

13 (Entered into evidence was State's Exhibit 7,
14 photograph.)

15 (Entered into evidence was State's Exhibit 8,
16 photograph.)

17 Q. Ms. Bowman, I'm going to hand you State's 6 and
18 7 in evidence, ask whether or not those are pictures
19 of the car you had back then?

20 A. Yes, sir.

21 Q. And that's a blue Volkswagen. Is it a Fox or
22 Rabbit?

23 A. Fox.

24 Q. Fox, okay. And that's the car y'all were
25 driving --

Yolanda S. Bowman - Direct Exam

- 1 A. Yes, sir.
- 2 Q. -- February 16th getting ready to go to the
3 drugstore; is that right?
- 4 A. Yes, sir.
- 5 Q. Okay. And as y'all drove to the drugstore, who
6 was driving the car?
- 7 A. I was.
- 8 Q. And where was Katrina West sitting?
- 9 A. On the passenger side.
- 10 Q. Where was your brother, Marion Bowman, Jr.,
11 sitting?
- 12 A. Behind me.
- 13 Q. Okay. And are there some railroad tracks in
14 Branchville?
- 15 A. Yes, sir.
- 16 Q. Okay. What, if anything, happened when you all
17 got to the area around the railroad track as you were
18 going toward the drugstore?
- 19 A. You said what happened?
- 20 Q. Yeah.
- 21 A. We stopped for Marion to talk to Kandee and she
22 hold up --
- 23 Q. Slow down just a second now. Stopped for Marion
24 to talk to Kandee, is that what you said?
- 25 A. Yes, sir.

Yolanda S. Bowman - Direct Exam

1 Q. Okay. Where did you stop?

2 A. On the right side. We was on her right as soon
3 as we crossed the tracks.

4 Q. Let me ask you it again. What part of the town
5 of Branchville did y'all stop in?

6 A. In town by Eddie Waters' house.

7 Q. Okay. Let me show you a picture of a house
8 here, and this is State's 1 and 2, and ask if that's
9 the house that y'all stopped at?

10 A. Yes, sir.

11 Q. Okay. You were driving the car, Ms. Bowman; is
12 that correct?

13 A. Yes, sir.

14 Q. Okay. And whose idea was it to stop at that
15 house that's in that picture?

16 A. Marion's.

17 Q. Okay. Marion told you to stop there?

18 A. Yes, sir.

19 Q. Okay. And as you approached this house where
20 Marion told you to stop, what did you see in the
21 yard, if anything?

22 A. Kandee was sitting in a car talking to Charlie,
23 Charlie was standing up outside the car.

24 Q. Okay.

25 A. And I seen a few more people standing out there,

Yolanda S. Bowman - Direct Exam

.1 but --

2 Q. Hold on a second now. Let me show you. This
3 picture has been marked State's Number 7 for
4 identification. Besides the color of it, does that
5 look like the car you saw stopped there?

6 A. Yes, sir.

7 Q. Okay. So you saw a car like that parked in
8 Fralix's yard. Could you tell who was in the car?

9 A. Kandee.

10 Q. All right. Was she by herself there?

11 A. Sitting in the car. She was the only one in the
12 car.

13 Q. Okay. And did you see anybody else near the
14 car?

15 A. Yeah, Charlie.

16 Q. Okay. And what's Charlie's last name, do you
17 know?

18 A. Fralix, I think.

19 Q. You think. Was there more than one person in
20 the yard?

21 A. I think it was, but I don't remember who.

22 Q. Okay. But you saw -- at any rate saw Kandee
23 Martin talking to somebody in the yard?

24 A. Uh-huh (affirmative response).

25 Q. Okay. And your brother, Marion Bowman, told you

Yolanda S. Bowman - Direct Exam

1 to stop there?

2 THE COURT: Was that a yes or no, ma'am?

3 THE WITNESS: Yes.

4 Q. Okay. So your brother, Marion Bowman, told you
5 to stop there?

6 A. Yes, sir.

7 Q. And what did you do then?

8 A. I stopped.

9 Q. Okay. And how close to the car that Kandee was
10 in did you stop your blue Volkswagen?

11 A. I was right beside hers.

12 Q. Right beside it, okay. Did your car have a
13 radio in it?

14 A. Yeah, it has a radio.

15 Q. Okay. Was the radio broken or working at that
16 time?

17 A. It was working.

18 Q. Okay. Was it on or off?

19 A. I don't remember.

20 Q. Okay. And do you recall whether or not the
21 windows were rolled up or down in your car?

22 A. I know Marion's was down and mine was down. I
23 don't remember if Katrina's was down.

24 Q. Okay. You said Marion was in the back seat?

25 A. Uh-huh (affirmative response).

Yolanda S. Bowman - Direct Exam

1 Q. Was he behind you, or was he behind --

2 A. Behind me.

3 THE COURT: Just watching the uh-huhs and
4 unh-unh, Mr. Bailey. When you say that, that
5 means our court reporter has to interpret what
6 you mean. I don't want her to have to
7 interpret, I want you to say what you mean. So
8 if you would please answer audibly for us, all
9 right? Thank you, ma'am. Thank you, Mr.
10 Bailey.

11 MR. BAILEY: Thank you, Your Honor.

12 Q. Okay. Ms. Bowman, I think I was asking you
13 where was Marion, your brother Marion, seated behind
14 you on the driver's side or behind Katrina West in
15 the passenger side?

16 A. He was behind me.

17 Q. Okay. And when he asked you to stop the car
18 beside Kandee Martin's car you did stop; is that
19 correct?

20 A. Yes, sir.

21 Q. Okay. Please tell the jury what happened after
22 you stopped the car.

23 A. Marion was trying to say something to Kandee and
24 she hold up -- she held up her finger saying wait a
25 minute.

Yolanda S. Bowman - Direct Exam

1 Q. Okay. Now, for the record you were gesturing.

2 Show the jury what Kandee --

3 A. She did like this.

4 Q. Okay. She did like that?

5 A. Uh-huh (affirmative response).

6 Q. After your brother tried to get her attention?

7 A. Yes, sir.

8 Q. Okay. And what happened next after she held her

9 finger up like that?

10 A. She never said anything else to him, so he was

11 like "Fuck it, that bitch" --

12 Q. You said "he." Now we got --

13 A. Marion.

14 Q. Marion said, "Fuck it"?

15 A. Uh-huh (affirmative response).

16 Q. Okay. And after Marion said, "Fuck it," what,

17 if anything, did he say next?

18 A. "That bitch be dead by dark."

19 Q. "That bitch be dead by dark"?

20 A. Yes, sir.

21 MR. CUMMINGS: Judge, I'm going to object.

22 THE COURT: All right.

23 MR. CUMMINGS: If I may be heard outside.

24 THE COURT: Do you all want to approach?

25 MR. CUMMINGS: Yes, ma'am. We'll do that.

Yolanda S. Bowman - Direct Exam

1 THE COURT: All right.

2 (Whereupon, a bench conference was held
3 off the record in the presence of the
4 jury but out of the hearing of the jury.)

5 Q. You know about what time of the afternoon it was
6 when Marion Bowman said, "That bitch be dead by
7 dark"?

8 A. Between 4:00 and 6:00 because it was almost time
9 for the pharmacy to close.

10 Q. Still daylight in February?

11 A. Yes, sir.

12 Q. Now, you talked to deputies shortly after Kandee
13 Martin's body was found, didn't you?

14 A. Yes, sir.

15 Q. Okay. Did you tell them what you're testifying
16 to today --

17 A. No, sir.

18 Q. -- at that time? Why not?

19 A. Because I was scared.

20 MR. BAILEY: Your Honor, I have nothing
21 further of Ms. Bowman at this point, would
22 reserve the right to recall her later on.

23 THE COURT: Okay. Cross-examination.
24
25

Yolanda S. Bowman - Cross-Exam

CROSS-EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Ms. Bowman, I'm going to ask you a lot of
4 questions and I want you to please feel free if you
5 can't understand my questions now you tell me, okay?
6 All right. Very first thing I want to ask you today
7 is this: When you were in the car with your brother,
8 you're up front, correct?

9 A. Yes, sir.

10 Q. You're driving?

11 A. Yes, sir.

12 Q. Okay. What had you been doing all day earlier
13 that day?

14 A. I don't remember.

15 Q. You don't remember at all?

16 A. I was at my cousin's house.

17 Q. What were you doing at your cousin's house?

18 A. I don't remember.

19 Q. Is it you don't remember, or you just don't want
20 to tell these folks that you don't remember what you
21 were doing all day?

22 A. I don't remember.

23 Q. Well, how is it that you only have selective
24 memory, Ms. Bowman? Selective memory means you only
25 want to remember parts and don't remember certain

Yolanda S. Bowman - Cross-Exam

1 parts.

2 A. All I remember I was at my cousin's house.

3 Q. Doing what?

4 A. Sitting with her.

5 Q. Just sitting there all day, right, just talking?

6 A. All day.

7 Q. All day. And then there came a time where you

8 left. And you left to go to the pharmacy; is that

9 correct?

10 A. Yes.

11 Q. Okay. Whose idea was it to go to the pharmacy?

12 A. Katrina's.

13 Q. Katrina's. And you're riding in the car. And

14 Mr. Bailey asked you a question about the radio on,

15 radio off, broken, not broken. That radio worked

16 fine, didn't it?

17 A. Yes.

18 Q. And you rode with the radio on, didn't you?

19 A. I don't remember.

20 Q. You don't remember. Now, that's not that big of

21 a deal, but, you know, I'm sure you like listening to

22 music and stuff while you're driving along with your

23 friends, correct?

24 A. Yes.

25 Q. I know you're getting angry at me, but I want

Yolanda S. Bowman - Cross-Exam

1 you to answer my questions and there's an important
2 reason to answer these questions in here.

3 Ms. Bowman, you stopped there. There's how
4 many other people at Fralix's house?

5 A. I don't remember how many people was there. I
6 seen some people, though.

7 Q. Yes, ma'am. Did you see anybody drinking there?

8 A. No. I wasn't paying that close attention what
9 they was doing.

10 Q. You didn't see anybody walk out to the cars with
11 beer cans or anything?

12 A. No.

13 Q. You didn't see anybody out there that you
14 remember today? I mean, this is very important
15 today.

16 A. Did I see anybody that I remember?

17 Q. Yes.

18 A. I saw Charlie and Kandee.

19 Q. Okay.

20 A. And I seen other people, but I don't remember
21 who they was.

22 Q. Your brother and Kandee were friends; were they
23 not?

24 A. Kandee was everybody's friend.

25 Q. Yeah. And then that day, the first statement

Yolanda S. Bowman - Cross-Exam

1 you give to the police, isn't it true you said that
2 Marion said, "The bitch owed me some money and I want
3 my money today"?

4 A. Yes.

5 Q. Okay. You said that, right, you remember that?
6 That's not a trick question, you remember that he
7 said that, right?

8 A. Yes, he did. He said she owed him money.

9 Q. Okay. And you said that to the police on
10 May 26th, 2001; did you not?

11 A. I don't remember what date.

12 Q. Well, how many times have you met with members
13 of the solicitor's office preparing for your
14 testimony today?

15 A. Twice.

16 Q. Let me help you. I know you at least met on the
17 7th of May, right?

18 A. I don't remember the dates, but if I'm not
19 mistaken it was twice.

20 Q. Twice.

21 A. That was in Summerville.

22 Q. Recently, right, the 7th of May?

23 A. Once was recently, yeah.

24 Q. Okay. And before that, when?

25 A. I don't remember the day.

Yolanda S. Bowman - Cross-Exam

1 Q. How many times have you met with either members
2 of law enforcement or SLED to go over what you're
3 testifying about today?

4 A. I don't remember.

5 Q. Well, we know at least on the 26th of May; isn't
6 it true, ma'am?

7 A. Twenty-sixth of May?

8 Q. I can't hear you.

9 A. My lawyer and the solicitor.

10 Q. Okay. That's what I'm saying. How many times
11 did you meet with the solicitor, not your lawyer.
12 How many times with the solicitor, police, anybody
13 that wanted to talk to you about what you remembered,
14 what you are testifying to today?

15 A. A few times. I talked to the solicitor face to
16 face once.

17 Q. Yes, ma'am. And then the rest of the day on the
18 16th, Marion was with you in the car?

19 A. Not the rest of the day.

20 Q. Okay. What happened next? Where did you go
21 next?

22 A. We went -- after we left from by Kandee's car we
23 were going to go to the pharmacy, but we never made
24 it there. We went towards another set of apartments,
25 he stopped and talked to another lady.

Yolanda S. Bowman - Cross-Exam

1 Q. Okay.

2 A. Then we went back to the apartments.

3 Q. Okay. All right.

4 A. He asked me to take him to the store, I took him
5 to St. George to the Grover Meat Market.

6 Q. Okay. And he bought some meat for whose party?

7 A. Joe Fogle, I think. I'm not sure.

8 Q. Okay.

9 MR. CUMMINGS: Beg the Court's indulgence,
10 Your Honor.

11 THE COURT: All right.

12 (Mr. Cummings and Ms. Hardee-Thomas conferring
13 with Mr. Bowman.)

14 MR. CUMMINGS: Judge, that's all the
15 questions we have of this nice lady. I know
16 she's subject to recall both from the State and
17 perhaps from the defense.

18 THE COURT: All right. Very well. Any
19 redirect?

20 MR. BAILEY: No direct, Your Honor.

21 THE COURT: Yes, ma'am. You are free to
22 leave for today, but you may be recalled so
23 you're not free from your subpoena, all right?

24 THE WITNESS: Okay.

25 THE COURT: Do you understand that?

Yolanda S. Bowman - Cross-Exam

1 THE WITNESS: Yes, ma'am.

2 (Whereupon, the witness steps down from the
3 witness stand.)

4 THE COURT: Counsel, let me see you just a
5 second.

6 MR. CUMMINGS: Yes, ma'am.

7 (Whereupon, a bench conference was held
8 off the record in the presence of the
9 jury but out of the hearing of the jury.)

10 THE COURT: All right. Ladies and
11 gentlemen, we are about to conclude for today.
12 We are going to break a little bit today, we've
13 gotten an awful lot of -- you all were selected
14 today, we called five or six witnesses, I think
15 six witnesses, so we've made good progress for
16 today. We've got an obligation that we need
17 to -- one of your number needs to make and I
18 agreed before he was selected to do that and
19 we're going to live up to that.

20 You are about to go to your new homes
21 away from homes and have dinner this evening.
22 Be mindful, though, while you are together if
23 any of you make any calls, et cetera, be mindful
24 not to discuss this matter or allow anyone to
25 discuss it with you.

State vs. Bowman - Volume XIX

1 We are going to begin in the morning
2 at nine o'clock promptly. And I know that your
3 detail will have you here in plenty of time, as
4 I understand it you'll have breakfast where you
5 are in the morning. Have a good evening and I
6 look forward to seeing you in the morning at
7 nine o'clock. Thank you so much.

8 (Whereupon, the jury is excused at 4:28 p.m.)

9 THE COURT: Thank you, everyone. Counsel,
10 just so you know, I'd like -- I would appreciate
11 it if you all would be here around 8:30 in the
12 morning just in the event that there are any
13 issues. I'll be here at 8:00, so if there are
14 any issues y'all get together because I will be
15 here so that you're ready to go right at 8:30 if
16 you need to hear anything. Obviously we've got
17 the motion to reconsider which we will hear in
18 the morning at 8:30 before the jury gets here at
19 9:00.

20 Marking exhibits, did you all -- did
21 you all ever have that opportunity?

22 MR. BAILEY: Judge, we did not. We were
23 going to do it during a break in the jury
24 selection process and a break never came.

25 MR. CUMMINGS: It never happened. And we

State vs. Bowman - Volume XIX

1 lost that one Friday because of the holiday,
2 Judge.

3 THE COURT: Indeed. Such as it was.

4 MR. CUMMINGS: It was a working holiday for
5 us, though.

6 THE COURT: Indeed. Perhaps since there is
7 some time now you all can endeavor to do that.

8 MR. BAILEY: All right.

9 THE COURT: I would appreciate it because
10 it would allow things to move along if you have
11 your exhibits. If not, I'd appreciate if maybe
12 you all could endeavor to maybe be here a little
13 bit after 8:00 in the morning. I know you're
14 going to be here, Mr. Bailey, because you've
15 been here every morning at 8:00. In other
16 words --

17 MR. BAILEY: You want to do it now, though?

18 THE COURT: I don't even care if you mark
19 them all, I just want you to mark the ones that
20 you're going to need for a while to keep things
21 moving.

22 MR. CUMMINGS: Yes, ma'am. We'll stay.

23 THE COURT: Either way you all decide, work
24 with Ms. Keil to see what works best for you.
25 And, again, if you don't want to do them all in

State vs. Bowman - Volume XIX

1 one sitting, do enough to carry us for one day
2 or so.

3 Thank you so much. You all have a
4 pleasant evening and I'll see you in the morning
5 at 9:00.

6 MR. BAILEY: Thank you.

7 THE COURT: As you know we are taking
8 Mr. George to graduation.

9 MR. CUMMINGS: Yes, ma'am. We understand
10 that. We understand he's in good hands with
11 whatever gentleman or lady you assigned.

12 THE COURT: Excellent.

13 MS. HARDEE-THOMAS: Your Honor, just one
14 more matter. We had asked if our client could
15 be here while we're marking the exhibits.

16 THE COURT: I know. I recall that,
17 exactly. Security will remain while you all do
18 that.

19 MR. CUMMINGS: Thank you, Judge.

20 THE COURT: Thank you all so much and we
21 will leave the courtroom.

22 - - - oOo - - -

23

24

25

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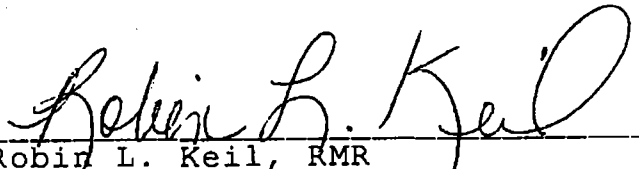
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 26th day of August 2003.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

3757

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
: COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XX Pages 3757 - 4050
: Plaintiff,) TRANSCRIPT OF RECORD
: -versus-) JURY TRIAL
: MARION BOWMAN, JR.,) May 18, 2002
: Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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7	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (May 18, 2002.)

2 (Marked for identification were State's Exhibits
3 9 through 70.)

4 THE COURT: Please be seated. All right.
5 Counsel, anything other than, of course, the
6 motion to reconsider which I have under
7 advisement?

8 MR. BAILEY: Nothing from the State, Your
9 Honor.

10 MR. CUMMINGS: Nothing else from defense,
11 Your Honor.

12 THE COURT: Would it disadvantage either of
13 you if I waited until we had a break to give you
14 that decision?

15 MR. BAILEY: That would be fine from us,
16 Your Honor.

17 MR. CUMMINGS: Nothing else from us, Judge.

18 THE COURT: Let us have our jury, please.
19 (Whereupon, the jury returns to the courtroom at
20 9:03 a.m.)

21 THE COURT: Good morning, ladies and
22 gentlemen. And I hope you all had a pleasant
23 evening and early morning. At this time we will
24 continue with the State's case.

25 Mr. Bailey.

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1 MR. BAILEY: Thank you, Your Honor. The
2 State calls Katrina West.

3 (Katrina West, called as a witness, having first
4 been duly sworn, is examined and testifies as
5 follows:)

6 THE COURT: Yes, ma'am. If you would just
7 state your name once more for the record.

8 THE WITNESS: Katrina West.

9 THE COURT: Ms. West, if you would be so
10 kind to keep your voice up, I need for the
11 ladies and gentlemen all the way over there in
12 the jury box to be able to hear you without
13 struggling, okay?

14 THE WITNESS: Okay.

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. Ms. West, tell the jury, please, where you live.

18 A. Branchville Villa, Apartment ☐.

19 Q. Okay. Did you live there back in February 2001?

20 A. Yes.

21 Q. Okay. And Branchville Villa is an apartment
22 complex; is that right?

23 A. Yes.

24 Q. In Branchville. Do you know the defendant in
25 this case, Marion Bowman, Jr.?

Katrina West - Direct Exam

1 A. Yes, my first cousin.

2 Q. He's your first cousin. Could you point him out
3 for the record, please?

4 A. Right --

5 Q. For the record he's seated beside Mr. Cummings
6 on the end; is that correct?

7 A. Yes.

8 Q. Okay. Do you know his sister who would also be
9 your first cousin, Yolanda Bowman?

10 A. Yes.

11 Q. I want to call your attention to February the
12 16th, 2001. You lived at Branchville Villas back
13 then; is that correct?

14 A. Yes.

15 Q. That afternoon were you at home?

16 A. Yes.

17 Q. Would you state whether or not anybody came to
18 your apartment that afternoon?

19 A. Yolanda was already there, Marion and Taiwan
20 came over.

21 Q. Marion Bowman and Taiwan Gadson came over to
22 your apartment that afternoon?

23 A. Yes.

24 Q. Okay. And at the time Marion came over to your
25 apartment, do you remember how he was dressed?

Katrina West - Direct Exam

1 A. Black jeans, a dark colored shirt. And he had a
2 gun in his back pocket later that afternoon.

3 Q. A gun in his back pocket?

4 A. Yes.

5 Q. Okay. And after Marion Bowman showed up at your
6 apartment you said that Yolanda was already there; is
7 that right?

8 A. Yes.

9 Q. Did you leave the apartment?

10 A. To go to the pharmacist.

11 Q. All right. And when you left to go to the
12 pharmacist, who went with you?

13 A. Yolanda was driving, Marion was in the back seat
14 passenger side behind Yolanda, and I was in front.

15 Q. Whose car were you in?

16 A. Yolanda's.

17 Q. I'm going to show you what's already been marked
18 as Exhibits 7 and 8 for the State and ask whether or
19 not these are pictures of the car that you went in?

20 A. Yes.

21 Q. Okay. And you say you were in the front seat
22 with Yolanda driving?

23 A. Yes.

24 Q. And your cousin, Marion Bowman, was in the back
25 seat; is that correct?

Katrina West - Direct Exam

1 A. Yes.

2 Q. Now, what happened as y'all drove toward that
3 drugstore?

4 A. We made a left turn, went across the tracks,
5 made a right, and we stopped in front of Fralix
6 house.

7 Q. Okay. Slow down just a second. The car being
8 driven by your cousin, Yolanda, stopped at Charles
9 Fralix's house; is that correct?

10 A. Yes.

11 Q. Why did she stop there?

12 A. Marion wanted to speak with Kandee.

13 Q. Okay. And is she -- or as you approach Charles
14 Fralix's house, did you see anybody out in the yard
15 in the house?

16 A. A few guys.

17 Q. Okay. And did you see any other cars there?

18 A. I saw Kandee's car.

19 Q. All right. Hold on a second here, Ms. West.
20 I'm going to show you four pictures marked 3, 4, 5,
21 and 6 for identification only. This is not Kandee
22 Martin's car. Was that a car like her car?

23 A. Yes.

24 Q. I'll let you look at all four of them.

25 A. Yes.

Katrina West - Direct Exam

1 Q. And besides the color does that look like her
2 car?

3 A. Yes.

4 Q. All right. Now, did you recognize Kandee Martin
5 in her car?

6 A. Yes.

7 Q. Okay. And what was she doing as y'all pulled up
8 beside her?

9 A. Talking to a friend.

10 Q. Okay. Was the friend inside the car or outside
11 of her car?

12 A. Standing.

13 Q. Okay. Now, the car that y'all were in,
14 Yolanda's blue Volkswagen, do you recall whether or
15 not the windows were up or down?

16 A. Marion window was down, Yolanda window was down,
17 and I don't really think mine was down, I don't know.

18 Q. Okay. All right. And from where you were
19 sitting in the car which is the front passenger seat,
20 could you see Kandee?

21 A. Yes.

22 Q. Okay. And go ahead and tell the jury, please,
23 what happened after Yolanda stopped the car beside
24 Kandee's car.

25 A. Yolanda stopped the car and Marion yelled out

Katrina West - Direct Exam

1 the window, "Yo." And she turned back and did like
2 this.

3 Q. Okay. You said "she." Now we've got to use the
4 name.

5 A. Kandee turned as in saying hold one minute and
6 he said --

7 Q. He said -- you got to use --

8 A. Marion said, "Fuck that ride. That bitch will
9 be dead dark fall."

10 Q. "Fuck that ride. That bitch will be dead dark
11 fall"?

12 A. Yes.

13 Q. Okay. Did Yolanda drive off then?

14 A. Yes.

15 Q. Was it still light when this happened?

16 A. Yes.

17 Q. All right. Ms. West, I want you to answer any
18 questions Mr. Cummings has for you, okay?

19 A. Okay.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. CUMMINGS:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. Ms. West, I'm going to stand way back here and

Katrina West - Cross-Exam

1 if you can't hear me now you tell me. Let's go back
2 early in the day on the 16th. You were at your home,
3 ma'am?

4 A. Yes.

5 Q. All right. And you stated for Mr. Bailey that
6 was the Branchville Villa Apartments?

7 A. Yes.

8 Q. Everybody calls that the projects?

9 A. Yes.

10 Q. Okay. And let's go back again with that morning
11 and when -- about what time did you first see
12 Yolanda?

13 A. She was already there all day.

14 Q. All right. What were you girls doing?

15 A. Just sitting out.

16 Q. Sitting out, hanging around?

17 A. Yeah.

18 Q. Drinking?

19 A. No.

20 Q. Not at all?

21 A. No.

22 Q. You got to answer verbally, I'm sorry. Not at
23 all?

24 A. No.

25 Q. Okay. Was there anything in particular you were

Katrina West - Cross-Exam

1 doing?

2 A. No.

3 Q. Just --

4 A. Other than might have been playing with my
5 little baby.

6 Q. Okay. Inside the house?

7 A. Yes.

8 Q. And whose idea was it to go for a ride to the
9 pharmacy?

10 A. Mine, because I had to go get his medicine.

11 Q. No question you were inside that little blue
12 Volkswagen?

13 A. Yes.

14 Q. Okay. And if I may for a moment, please. I'm
15 going to show you what's been marked State's Exhibit
16 Number 7.

17 MR. CUMMINGS: Your Honor, may I approach
18 the witness for a moment?

19 THE COURT: You may.

20 Q. That's the villa apartments in the background
21 there?

22 A. Yes.

23 Q. Okay. And that's the highway shed behind the
24 villa apartments?

25 A. Yes.

Katrina West - Cross-Exam

1 Q. About what unit number is that car parked in
2 front of?

3 A. Twenty-two and 23.

4 Q. Twenty-two, 23. Those are -- if I may, sir,
5 excuse me. Those are the ones that are like the
6 double decker ones, two story?

7 A. Uh-huh (affirmative response).

8 Q. Okay. And they're on the far end of the
9 projects, right?

10 A. Uh-huh (affirmative response).

11 THE COURT: That's a yes?

12 A. Yes.

13 Q. I'm sorry, ma'am. I know you and I are having a
14 nice conversation, but Her Honor asks you say yes or
15 no to answer the question.

16 I'm going to show you what's been
17 marked State's Exhibit Number 8. And that's the same
18 car?

19 A. Yes.

20 Q. Are there -- looking at that picture, are there
21 units behind there also?

22 A. Yes.

23 Q. Okay. What apartment numbers would they be?

24 A. Thirty.

25 Q. Thirty, okay. Those are two story also, right?

Katrina West - Cross-Exam

- 1 A. No, flat.
- 2 Q. Single ones?
- 3 A. Yes.
- 4 Q. Okay. I'm going to leave them right here for a
- 5 moment. The three of you adults.
- 6 A. Yes.
- 7 Q. Was your child with you in the car?
- 8 A. No.
- 9 Q. Who stayed behind to watch the baby?
- 10 A. I can't remember.
- 11 Q. Okay. You don't remember who you left your
- 12 child with?
- 13 A. Might have been my next door neighbor.
- 14 Q. Okay. You went in the car to ride downtown
- 15 Branchville to go to the pharmacy. Which pharmacy?
- 16 A. Branchville Pharmacy.
- 17 Q. You go down and you stop at Charles Fralix's
- 18 house?
- 19 A. Yes.
- 20 Q. Okay. And how many people were at Charles
- 21 Fralix's house that afternoon?
- 22 A. I can't remember. It was some guys out there,
- 23 though.
- 24 Q. Okay. And what were they doing?
- 25 A. Standing around.

Katrina West - Cross-Exam

1 Q. Anybody have any beer cans in their hand?

2 A. No.

3 Q. You didn't see anybody drinking?

4 A. I guess they didn't.

5 Q. I'm sorry, ma'am?

6 A. I guess they didn't.

7 Q. I want to make sure you --

8 A. I don't really know if they had beer cans
9 because I really wasn't paying them no attention.

10 Q. You weren't paying them any attention, okay.

11 And then was the radio on in the car?

12 A. I can't remember.

13 Q. You don't remember whether or not you had the
14 radio on in the car on that day?

15 A. No.

16 Q. You don't remember who had the windows down or
17 not that day?

18 A. I know Yolanda and Marion's window was down.

19 Q. And then you see a finger pointed up by Miss
20 Martin?

21 A. Yes.

22 Q. Okay. And based on that Marion set right off?

23 A. No. He said, "Fuck that. That bitch will be
24 dead dark fall."

25 Q. You're sure of that?

Katrina West - Cross-Exam

1 A. Yes.

2 Q. Just like you're sure of everything else you
3 told me?

4 A. Yes.

5 Q. How many times have you met with the solicitor's
6 office to state that, ma'am?

7 A. Once.

8 Q. Once. How many times have you talked to the
9 police about that?

10 A. Once.

11 Q. Okay. And have you had any conversations with
12 Ms. Vermetra P. Gadson?

13 A. No.

14 Q. You never talked to that lady?

15 A. Not about the case.

16 Q. Not about the case. So if you had talked to
17 that lady about the case, then you would be wrong
18 about everything else also?

19 A. No.

20 Q. Okay. You just remember selectively what you
21 want to remember today; is that right, Ms. West?

22 A. No.

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

24 THE COURT: All right.

25 Q. Ms. West, isn't it true that other people told

Katrina West - Cross-Exam

1 you things and then you said what you just testified
2 to; isn't that true?

3 A. No.

4 Q. No. You never talked to Ms. Gadson? Remember
5 that you're under oath.

6 A. No.

7 MR. CUMMINGS: Beg the Court's indulgence,
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. CUMMINGS: Thank you, Judge. No other
11 questions we have of this lady.

12 THE COURT: Any redirect?

13 MR. BAILEY: Your Honor, I have a brief
14 matter of law to take up prior to redirect if we
15 could approach.

16 THE COURT: Very well. You certainly may.
17 (Whereupon, a bench conference was held
18 off the record in the presence of the
19 jury but out of the hearing of the jury.)

20 MR. BAILEY: Your Honor, the State has no
21 redirect of this witness.

22 THE COURT: Is this witness free to leave?

23 MR. CUMMINGS: Yes, Your Honor, from the
24 defense.

25 THE COURT: Very well. You are free to go.

Katrina West - Cross-Exam

1 (Whereupon, the witness steps down from the
2 witness stand.)

3 THE COURT: All right, sir. If you would
4 call your next witness.

5 MR. BAILEY: Dennis Judy.

6 (Dennis R. Judy, called as a witness, having
7 first been duly sworn, is examined and testifies
8 as follows:)

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. Mr. Judy, please tell the jury where you live.

12 A. [REDACTED] in Durham's Corner Community
13 out from Ridgeville, South Carolina.

14 Q. All right, sir. I want to show you a map of a
15 portion of Dorchester County, and ask you to take a
16 few minutes to familiarize yourself with that.

17 A. Okay.

18 Q. And can you find the location of your home on
19 the map?

20 A. Okay.

21 Q. You got it there? Let me get a pencil or pen
22 and let's mark that.

23 THE COURT: I have one if you need one.

24 MR. BAILEY: Yes, ma'am. Thank you.

25 Q. If you would just put maybe a J for Judy, the

Dennis R. Judy - Direct Exam

1 approximate location of your home there.

2 A. (The witness complies.)

3 Q. All right. Thank you.

4 MR. BAILEY: Your Honor, I would offer this
5 without objection.

6 MR. CUMMINGS: Absolutely, Judge.

7 THE COURT: Very well. State's Exhibit 70
8 in evidence without objection, it is a map.

9 MR. BAILEY: Your Honor, if I can show Mr.
10 Cummings one other exhibit.

11 THE COURT: Indeed.

12 (Entered into evidence was State's Exhibit 70,
13 map.)

14 MR. BAILEY: Your Honor, I believe we have
15 a brief matter of law to take up with regard to
16 one of the exhibits.

17 THE COURT: Ladies and gentlemen, I need to
18 ask you to please step to your jury room. Do
19 not discuss this matter and do not allow anyone
20 to discuss it with you. There's a matter of law
21 which I must take up outside your presence.
22 Thank you.

23 (Whereupon, the jury retires to the jury room at
24 9:23 a.m.)

25 MR. BAILEY: Your Honor, if I could have

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1 Ms. Keil mark this for identification.

2 THE COURT: Yes, sir.

3 (Marked for identification was State's Exhibit
4 71, crime scene sketch.)

5 MR. BAILEY: Your Honor, State's 71 for
6 identification is a crime scene sketch prepared
7 by Eddie Porter who was a SLED agent that went
8 out to the scene of the crime. And I, of
9 course, provided a copy of -- the smaller copy
10 of it to Mr. Cummings prior to trial.

11 Mr. Judy lives in this vicinity and he
12 drove by the crime scene that night and made
13 some observations that I would ask him to
14 testify to. And I wanted to get him to refer to
15 this sketch to show the -- where he made certain
16 observations.

17 Now, the notations are shell casings
18 and bullets and so forth, obviously he didn't
19 see that because at the time he drove by nothing
20 had occurred yet, but I've got to start at some
21 point. And I would just have it marked for
22 identification and just for the purpose of
23 having him show where his house is in relation
24 to the crime scene and what his observations
25 were as he drove home that night.

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1 MR. CUMMINGS: That is not in this
2 gentleman's handwriting. It says on there death
3 investigation. It's talking about items of
4 evidence found, and markings, circles. They
5 could have got a map of just Nursery Road,
6 Independent School Road, and just stated that
7 here is the school road here, drove down this
8 road this way.

9 This, Judge, is beyond this
10 gentleman's scope and it also, Judge, would
11 reinforce to the jury that this gentleman knows
12 where these items were potentially. Your Honor,
13 this is not a true and accurate representation
14 of what this gentleman has seen or has done. He
15 drove down a road, he was in the approximate
16 area of where the location might have been.

17 That's all this gentleman can testify
18 to other than whatever facts the solicitor wants
19 to elicit as to earlier in the day. It is not a
20 true and accurate representation of what this
21 gentleman was involved in here.

22 MR. BAILEY: Your Honor, in addition to
23 driving by there that day he went out the
24 following morning, there were police officers
25 already there and he made some observations of

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1 some shell casings in the road, I would like to
2 add that.

3 MR. CUMMINGS: He's in the middle of a
4 crime scene --

5 THE COURT: I'm sorry?

6 MR. BAILEY: I'm sorry.

7 MR. CUMMINGS: I don't mean to cut Mr.
8 Bailey off, I apologize.

9 MR. BAILEY: Obviously different people are
10 going to testify in regard to different pieces
11 of evidence and, you know, it's like which came
12 first the chicken or the egg, I've got to start
13 somewhere.

14 THE COURT: Certainly not a problem with
15 him talking about what he saw the morning
16 before. Let me ask you this question: You're
17 telling me that you intend to complete the
18 identification of that document by the
19 individual who made that document?

20 MR. BAILEY: That's correct, Your Honor.
21 What I'm just trying to do obviously is keep
22 things in sort of chronological order so the
23 jury can follow what occurred.

24 THE COURT: I do understand that with that
25 piece of evidence that you are telling me that

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1 you will talk later.

2 MR. BAILEY: As far as the notations on the
3 death investigation I'm sure by now the jury
4 knows this is a death investigation.

5 MR. CUMMINGS: This gentleman cannot
6 possibly testify as to the objects drawn on here
7 by some other man -- or other person, excuse me.

8 THE COURT: I can't even see it that far
9 away. Y'all bring it up to me.

10 MR. CUMMINGS: I'm sorry. May we approach,
11 yeah.

12 MR. BAILEY: I wasn't going to ask him
13 about any of the evidence that they recovered
14 subsequently.

15 MR. CUMMINGS: Then what would be the
16 purpose of putting it in when clearly he's
17 marked where his home's located, he can testify
18 where he's driven past, he can testify to
19 what -- the facts he knows. This document's got
20 to be originated, presented by Mr. Porter, Your
21 Honor, or somebody else respectfully. He's
22 going to be cross-examined about this document,
23 Mr. Porter.

24 MR. BAILEY: Your Honor, if I might, I
25 don't know how much -- what I would anticipate

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1 Mr. Judy testify to is he observed an automobile
2 parked here which matched the description of the
3 victim's automobile. And he would use this to
4 show the location that he saw that automobile.

5 THE COURT: For demonstrative purposes.
6 Here's what I will allow you to do. I will
7 allow him to place -- to testify to those
8 things, place them on this document. For
9 demonstrative purposes he can initial it, but I
10 don't know that I want that document shown to
11 the jury until it's been authenticated and is in
12 evidence.

13 MR. BAILEY: All right.

14 THE COURT: In other words, he can testify,
15 he can put it, he can initial it. Obviously you
16 can argue it, but I think what is appropriate
17 given that -- and let me put for the record
18 there is so much writing on it, there are so
19 many notes on it, that my concern is, is that if
20 something should happen between now and then
21 with the person that put all that information
22 in, then I have a serious problem with this
23 case, with this information coming in at this
24 point for demonstrative purposes with the notes
25 on it.

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1 But I certainly have no problem
2 whatsoever if you want to have him mark it, draw
3 it on there and locate the different items,
4 initial it and then show it to the jury once it
5 comes in in its entirety.

6 MR. BAILEY: What I might do is go ahead
7 and question him without reference to this
8 document and then recall him after Mr. Porter
9 testifies.

10 THE COURT: Thank you.

11 MR. CUMMINGS: Thank you.

12 THE COURT: All right. Let's have our jury
13 back.

14 (Whereupon, the jury returns to the courtroom at
15 9:30 a.m.)

16 THE COURT: Mr. Bailey, you certainly may
17 continue.

18 BY MR. BAILEY:

19 Q. Mr. Judy, how long have you lived at the address
20 that you just described to the jury before the little
21 break we had?

22 A. Approximately at that address 25 years.

23 Q. All right, sir. And I want to call your
24 attention to the evening of Friday, February 16th,
25 2001. Do you recall what you did that evening?

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1 A. Yes, sir.

2 Q. All right, sir. Tell the jury, please, what you
3 did.

4 A. I had a relative come in from up north I hadn't
5 seen for about five years and we were going to take
6 him and his wife out to eat along with my mom and
7 dad. And that afternoon -- or that evening we went
8 out to eat.

9 Q. All right, sir. And did y'all take -- how many
10 cars did y'all go in?

11 A. My cousin, his wife was in his car, and my wife
12 and myself was in our car.

13 Q. And where did y'all go to eat?

14 A. Sweatman's Barbecue over in Holly Hill.

15 Q. All right, sir. What route did you take to get
16 from Sweatman's back to your house when y'all
17 finished eating?

18 A. I left my dad's house in St. George, down
19 Highway 78, went to Reevesville and over to Nursery
20 Road and Nursery Road onto Independent School Road,
21 there to Durham's Corner Road and then McAlhany
22 Road.

23 Q. All right, sir. Do you know approximately what
24 time it was when you got in the area of Independent
25 School Road, Nursery Road?

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1 A. Approximately five minutes to 8:00.

2 Q. All right, sir. And how do you know with that
3 degree of certainty what time it was?

4 A. My wife has a TV show that she watches on Friday
5 nights, Providence, and it comes on at eight o'clock
6 and she was pressuring me to get home to see her TV
7 show.

8 Q. She was telling you drive faster to see the
9 show?

10 A. She wanted to get to see the start of her show.

11 Q. All right. When you got to the area of Nursery
12 Road and Independent School Road, did you make any
13 observations as you approached the vicinity of your
14 house?

15 A. I came around a small curve in the road and I
16 noticed a car at the side of the road.

17 Q. All right, sir. And would you describe to the
18 best of your recollection at this time what you
19 observed about the car on the side of the road?

20 A. Two wheels was on the shoulder of the road, two
21 wheels were on the highway part of the road which
22 would have put it out into the right-of-way. I
23 pulled up to the back of it and moved out to the
24 left, pulled up beside the car, stopped. I thought
25 it was curious that a car would be sitting in the

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1 road like that.

2 I just stopped right directly beside
3 the driver's door of the car. And I noticed that the
4 driver's window was down and I told my wife it was
5 mighty curious that somebody would have broke down
6 and left a car unlocked sitting in the road. About
7 this time she says --

8 MR. CUMMINGS: Objection, Your Honor,
9 hearsay.

10 MR. BAILEY: Your Honor, I am not
11 introducing it for the truth of anything in
12 issue, it's just --

13 THE COURT: I'll allow it for that purpose,
14 yes.

15 Q. Go ahead, Mr. Judy, please.

16 A. And at this time I thought she was going to be
17 late for her show so I didn't stay any longer, I just
18 pulled away.

19 Q. All right. Let me ask you a couple questions
20 about your observations of that car, Mr. Judy. Were
21 the lights on or off in the car?

22 A. Off.

23 Q. Did you see anybody in or around the car?

24 A. No, sir.

25 Q. All right, sir. And do you recall anything

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1 about the make and model of the car?

2 A. Not -- it didn't really stick at that time, but
3 later on after I thought about it I did.

4 Q. All right, sir. I want to show you a couple
5 pictures that have been marked for identification
6 only at this point, Mr. Judy. For the record this is
7 States 4, 5, 6, 7 for identification and ask other
8 than the color if that appears to be a car like the
9 one that you saw?

10 A. Yes, sir.

11 Q. All right, sir. Mr. Judy, how long do you think
12 you were stopped beside that Ford automobile?

13 A. Approximately a minute, maybe a minute and a
14 half.

15 Q. And you may have testified to this previously,
16 but what direction was the car pointed in?

17 A. Pointed towards Independent School Road.

18 Q. Okay. Was it pointed the same direction you
19 were heading?

20 A. Yes, sir.

21 Q. All right, sir. And the next morning would you
22 state whether or not you went back out to the
23 location where you had observed the car the previous
24 evening?

25 A. Yes, sir. I did.

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1 Q. All right, sir. This would have been a Saturday
2 morning, February the 17th, 2001?

3 A. Yes, sir.

4 Q. All right, sir. And did you make any
5 observations in the area around where you had
6 observed the car the previous evening?

7 A. Yes, sir.

8 Q. Tell the jury, please, what you saw.

9 A. Where the car was located the night before,
10 that's where the blood stains and shell casings --

11 MR. CUMMINGS: Objection, Your Honor,
12 speculative. And I have a matter of law now,
13 please.

14 THE COURT: All right, sir. Ladies and
15 gentlemen, if you would please step to your jury
16 room. Do not discuss this matter and do not
17 allow anyone to discuss it with you.

18 (Whereupon, the jury retires to the jury room at
19 9:36 a.m.)

20 MR. CUMMINGS: May it please the Court,
21 Judge, I apologize for jumping up so quick. At
22 this time the defense would move for a mistrial
23 based on what this gentlemen just stated. And
24 further, Judge, in everything we received in
25 discovery there is nothing in here stating this

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1 gentlemen was part of the crime scene, walking
2 around a potential crime scene. He's not listed
3 in any of the people that have ever been around
4 with the collection of evidence, the crime scene
5 protection of the scene, and now it comes out
6 this morning elicited by testimony today that he
7 gets up and gets to look at a potential red
8 stain on the ground and he calls it blood.

9 You know, Your Honor, we have gotten
10 discovery that this gentleman is being allowed
11 to walk around a pool of blood. He's never
12 given a statement. There is an incident report
13 or something from Mr. Coker that this gentleman
14 is walking around.

15 And, Your Honor, this is going to be
16 an issue of contamination of evidence,
17 contamination of crime scene issues, Your Honor,
18 respectfully. And this gentleman is not a
19 chemist. I mean, anybody can sit down and look
20 at a red stain on the ground, but he was sure to
21 know it's blood.

22 The only thing we heard earlier,
23 Judge, and, again, why it is so important to
24 keep that picture out now was to show that this
25 is a nice, polite gentleman that was out that

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1 day and the next day he comes back to a road
2 that is supposedly in the hands of the police
3 and they let a citizen drive through the
4 roadway?

5 THE COURT: Yes, sir, Mr. Bailey.

6 MR. BAILEY: Your Honor, I don't understand
7 the basis for the mistrial motion, I'm at a loss
8 here. I would concede this man is not a
9 chemist, he can't analyze blood, but I can
10 assure you as an officer of the Court, Mr.
11 Cummings also knows this, that there will be
12 evidence where that blood was swabbed, it was
13 identified as human blood and identified as the
14 victim's blood.

15 And he observed the shell casings
16 which obviously is not any kind of scientific
17 evidence. Everything he says can be
18 corroborated later on by other witnesses. The
19 reason I'm eliciting the testimony at this time
20 is to show the proximity of the shell casings
21 where the car was without, of course, getting
22 into the sketch.

23 MR. CUMMINGS: Your Honor, just
24 respectfully, I anticipated something coming out
25 last night, again, and I pulled the case of

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1 Michigan vs. Tyler, 436 United States 499, a
2 1978 case that deals with specifically about
3 what happens when you leave the crime scene
4 alone. And particular in that case it was a
5 fire scene, they had to go back and get an
6 administrative warrant for somebody to go back
7 on the property. Our United States Supreme
8 Court goes into what happens when a crime scene
9 is left alone or is contaminated and I would
10 like to pass this up to Your Honor.

11 THE COURT: All right. Tell me what --
12 your position is that this is relevant for what
13 reason?

14 MR. CUMMINGS: Judge, I think it's relevant
15 that this man has never been put down in any of
16 the chain of custody issues as to being around
17 any potential evidence. Nothing at all. And if
18 this crime scene's contaminated, Your Honor,
19 that is improper, it is improper to not let us
20 know that people are just allowed to walk around
21 this crime scene area. Based on every issue
22 here that SLED had control of the scene, that
23 Dorchester County had control of the scene,
24 other law enforcement agents were out there.

25 THE COURT: Tell me what you know. I don't

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1 even know if this is an issue. What do you know
2 about Mr. Judy?

3 MR. CUMMINGS: What I know about Mr. Judy
4 was that allegedly, Judge, just only what was
5 written in a statement from Mr. Coker, that
6 there's no other written statement taken from
7 this gentleman that we're aware of.

8 THE COURT: All right.

9 MR. CUMMINGS: To find out today that he's
10 allowed to just come and go as he pleases up
11 there then to try and come in --

12 THE COURT: Hold on. Hold on.

13 MR. CUMMINGS: Excuse me.

14 THE COURT: Work with me here, Mr.
15 Cummings.

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: Did you have his name?

18 MR. CUMMINGS: We had his name.

19 THE COURT: Okay. Did you have his contact
20 information?

21 MR. CUMMINGS: Yes, ma'am. And we've done
22 every bit of investigation we could about this
23 issue, Judge.

24 THE COURT: All right.

25 MR. CUMMINGS: Thank you.

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1 THE COURT: Is he mentioned in a statement?

2 MR. CUMMINGS: He is mentioned in a report
3 from Mr. Coker.

4 THE COURT: What does Mr. Coker say?

5 MR. CUMMINGS: That -- Judge, excuse me,
6 Agent Helms from SLED. That this gentleman
7 saw -- again, I'm not going to give up my
8 cross-examination of this gentleman, politely,
9 but that he had observed a certain type of
10 vehicle out there on the side of the road where
11 he could not give a description other than a
12 certain color.

13 THE COURT: Okay.

14 MR. CUMMINGS: And that he was just passing
15 by. And then later on the next day comes back
16 and now we find out he's walking around.

17 THE COURT: Comes back and what? Is he
18 walking around?

19 MR. CUMMINGS: I guess he's allowed to
20 examine the crime scene with the police.

21 THE COURT: But what does the statement
22 say, Mr. Cummings? And you're welcome to show
23 it to me if you prefer.

24 MR. CUMMINGS: Yes, Judge, I was going to
25 try to use it as --

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1 THE COURT: I'm happy to look at it. I
2 need to know. You're telling me you didn't have
3 information and it's relevant, yet you won't
4 give me the information that you had so I can
5 make a determination if this is prejudicing to
6 you in any way. And I'll read it if you prefer
7 that I read it.

8 MR. BAILEY: I'll hand it up if you like.

9 THE COURT: Well, please tell me if there's
10 an issue and y'all want to show me what I need.
11 That doesn't seem quite appropriate.

12 MR. BAILEY: May I approach, Your Honor?

13 THE COURT: Sure. Thank you. All right.
14 Now, thank you.

15 MR. BAILEY: Thank you.

16 THE COURT: Since I have reviewed that it
17 needs to be marked as a Court's Exhibit.

18 (Marked for purposes of the record was Court's
19 Exhibit 32, Agent Helms' notes.)

20 THE COURT: All right, sir. Your motion
21 for mistrial is overruled. Any other motions?

22 MR. CUMMINGS: That's all at the present
23 time, Judge. Thank you.

24 THE COURT: Very well. Thank you.

25 MR. BAILEY: If I might say something while

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1 we're dealing with this area, this type of
2 objection. I have an open file policy, I've
3 given Mr. Cummings everything that I've got.
4 However, I have gone back and interviewed
5 witnesses that have given statements and perhaps
6 witnesses that have not given statements. And I
7 have talked to them and I've gotten information
8 that may be in addition to anything that they
9 had in their statements. And I have not
10 divulged my personal contact of these witnesses
11 to Mr. Cummings and I'm not aware of any
12 precedent that says that I have to.

13 THE COURT: Neither am I.

14 MR. BAILEY: If someone has a conflicting
15 statement then I would tell him, but if it's
16 just adding to it, giving additional detail,
17 then, you know, he has --

18 THE COURT: This is not a civil case as I
19 understand it, clearly. This is a criminal
20 case. Counsel has had benefit of statements,
21 he's had benefit of witnesses, addresses,
22 telephone numbers. I think that I'm not
23 concerned about the issue that he raises. Thank
24 you.

25 MR. BAILEY: Thank you, Your Honor.

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1 THE COURT: All right. Let us have our
2 jury, please.

3 (Whereupon, the jury returns to the courtroom at
4 9:44 a.m.)

5 THE COURT: You may continue, Mr. Bailey.

6 MR. BAILEY: Thank you, Your Honor. Your
7 Honor, I have nothing further of Mr. Judy. At
8 this time I would reserve the right to recall
9 him after I call several more witnesses.

10 THE COURT: Thank you, Mr. Bailey.

11 CROSS-EXAMINATION

12 BY MR. CUMMINGS:

13 Q. The most important question is did you make it
14 home in time for the show for your spouse?

15 A. Yes.

16 Q. So you made it home at 8:00?

17 A. Yes.

18 Q. Okay. The reason why I asked that, sir, is if
19 you saw this car there approximately 7:55 and on
20 Nursery Road, Independence Road, how far did you have
21 to travel approximately, sir, to get back home with
22 your spouse?

23 A. About a mile and a half.

24 Q. Okay, sir. And when you went home that night,
25 the next morning you just happened to get back up and

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1 go back down to Nursery Road?

2 A. That road is the road that my father travels to
3 come see me from St. George and he passed along the
4 road and saw, I guess, the law enforcement was there.

5 Q. And they were all out there that night, right?

6 A. I'm sorry?

7 Q. They were all out there that day?

8 A. Who is that?

9 Q. Law enforcement.

10 A. They were there that next morning and he told me
11 they were there that next morning.

12 Q. Okay. And then let's go back a little bit that
13 night. Did you see the car -- you saw the car as
14 you're on your way home at approximately 7:55, made
15 it home to your house at eight o'clock for your
16 spouse, sir; is that correct?

17 A. Approximately, yes, sir.

18 Q. Okay. You didn't see anybody around that car?

19 A. No, sir.

20 Q. Okay. And do you remember speaking to a
21 gentleman named Mr. Helms from SLED?

22 A. I don't remember the gentleman's name, but I did
23 speak to a SLED agent.

24 Q. Okay. Did you tell him it was a dark colored
25 car, sir?

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- 1 A. Yes, sir.
- 2 Q. Okay. And Mr. Bailey showed you a lighter
3 colored car?
- 4 A. Yes, sir.
- 5 Q. Okay. Did you tell him any particular like
6 shape of car, whether it was square back? Was it a
7 squared back car?
- 8 A. Sort of, yes, sir.
- 9 Q. Okay. You're just going by this car and it
10 happens to catch your attention because it's a car on
11 the side of the road, right?
- 12 A. Yes, sir.
- 13 Q. Okay. And you have a particular issue that
14 you've got to get home in a matter of a certain
15 amount of time?
- 16 A. Yes, sir.
- 17 Q. Okay. And it didn't particularly -- I mean, it
18 caught your attention, but it didn't call anything
19 out of the ordinary at that time for you at 7:55 that
20 night on the 16th, sir; is that correct?
- 21 A. Yes, sir.
- 22 Q. You didn't stop, you didn't get out of the car,
23 you didn't stop see what was going on?
- 24 A. Didn't get out of the car, no, sir. I stopped.
- 25 Q. I apologize, sir. You stopped for a moment or

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1 two and then you were urged to get home?

2 A. Yes, sir.

3 Q. Okay.

4 MR. CUMMINGS: Beg the Court's indulgence,
5 Your Honor.

6 THE COURT: All right.

7 MR. CUMMINGS: Thank you, Judge. Those are
8 all the questions we have of this gentleman at
9 this time.

10 THE COURT: Any redirect?

11 MR. BAILEY: No redirect. I would ask
12 Mr. Judy to stick around for a little while.

13 THE COURT: Yes, sir. You are free to
14 leave the stand at this time, Mr. Judy, but you
15 need to remain in the back. Thank you.
16 (Whereupon, the witness steps down from the
17 witness stand.)

18 MR. BAILEY: Your Honor, if I might,
19 Mr. Judy should not discuss his testimony with
20 any other potential witnesses that might be back
21 there.

22 THE COURT: Yes, sir. If you would call
23 your next witness.

24 MR. BAILEY: Brian Newhouse.

25 (Gordon B. Newhouse, called as a witness, having

Gordon B. Newhouse - Direct Exam

1 first been duly sworn, is examined and testifies
2 as follows:)

3 DIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q. Mr. Newhouse, would you please tell the jury
6 where you live?

7 A. [REDACTED].

8 Q. All right, sir. How far is that from the
9 intersection of Independent School Road and Nursery
10 Road?

11 A. A little over half a mile.

12 Q. All right, sir. And how long have you lived
13 there?

14 A. Since 1993.

15 Q. All right, sir. What type work do you do?

16 A. Manager of a nursery.

17 Q. Okay. And that's Nursery Road, is that the
18 nursery?

19 A. That's correct.

20 Q. All right, sir. And I want to call your
21 attention to the Friday evening February the 16th,
22 2001, somewhere in the evening hours. Were you at
23 home that evening?

24 A. Yes, I was.

25 Q. All right, sir. What were you doing?

Gordon B. Newhouse - Direct Exam

1 A. Watching television.

2 Q. Okay. Do you recall what you were watching?

3 A. Hollywood Squares.

4 Q. Okay. And as you were sitting at home watching
5 your television, would you state whether or not
6 you -- anything attracted your attention?

7 A. I heard something outside, I didn't know what it
8 was, I muted the TV and heard gunshots.

9 Q. All right, sir. And when you say you heard
10 gunshots, you're familiar with the sign of a gun,
11 gunfire?

12 A. Yes, sir.

13 Q. Do you hunt?

14 A. I do.

15 Q. All right, sir. Now, do you recall initially
16 how many gunshots you heard before you muted the TV?

17 A. I don't, I can't -- I don't know. I didn't -- I
18 couldn't tell what caught my attention.

19 Q. All right, sir.

20 A. Once muting the TV I heard three gunshots.

21 Q. All right, sir. And do you recall the sequence
22 of the three gunshots that you did hear after muting
23 the television?

24 A. Three gunshots in probably between ten and 15
25 seconds.

Gordon B. Newhouse - Direct Exam

1 Q. All right, sir. And after hearing those three
2 gunshots, what, if anything, did you do?

3 A. Upon hearing the first one I headed toward the
4 door to leave. By the time I got on the back porch I
5 had heard the third one and then I entered my
6 vehicle.

7 Q. All right, sir. What did you do when you got in
8 your car?

9 A. I headed in the direction of the gunshots.

10 Q. All right, sir. What direction was that?

11 A. That's toward Independent Schoolhouse Road.

12 Q. All right, sir. Did you drive down to that
13 location?

14 A. I had to unlock the gate, so it took me probably
15 a minute and a half to get out of the gate.

16 Q. All right, sir. And after you got out of the
17 gate -- from the time you heard the last gunshot how
18 long do you think it was before you got down to where
19 the --

20 A. Probably two minutes.

21 Q. All right, sir. When you got down to that
22 location that you described, was it dark in that
23 area?

24 A. Yes, it was.

25 Q. All right. Any artificial streetlights or

Gordon B. Newhouse - Direct Exam

1 anything of that nature out there?

2 A. No.

3 Q. We're in the country, right?

4 A. That's right.

5 Q. Did you observe anything there?

6 A. Didn't see anything.

7 Q. All right, sir. And what did you do after
8 looking around and not seeing anything?

9 A. I rode around, rode down the roads, didn't see
10 anything, I went back home.

11 Q. All right, sir. And after that, after you got
12 home, what did you do?

13 A. I continued to watch television.

14 Q. All right, sir. And would you state whether or
15 not you eventually went to sleep?

16 A. Yes. Probably around midnight.

17 Q. All right, sir. And do you recall what woke you
18 up?

19 A. I thought it was more gunshots. In retrospect
20 it was probably the tires on the car exploding.

21 Q. All right, sir. And do you recall about what
22 time that was when you heard a loud noise --

23 A. I didn't really look at a clock. I got up and
24 immediately went back down the road.

25 Q. When you say you went back down the road, did

Gordon B. Newhouse - Direct Exam

1 you go back down to the same location you had been
2 the previous evening?

3 A. Yes, I did.

4 Q. All right, sir. And when you got down there on
5 this occasion, what did you see?

6 A. A car on fire.

7 Q. And can you describe to the jury the extent of
8 the fire when you first got there?

9 A. The flames were probably 15 to 20 feet above the
10 vehicle and it was engulfed, I mean it was -- flames
11 were four to five feet out around the vehicle
12 perimeter.

13 Q. Did you see anybody, or anybody or anything else
14 out there other than that car in flames?

15 A. No, I didn't see anything.

16 Q. And what did you do when you made this
17 observation of the burning car?

18 A. I went back to the -- my residence, looked up
19 the number to the sheriff's department and called it
20 in.

21 Q. Okay. All right, sir. You called that in to
22 the sheriff's department from your home; is that
23 correct?

24 A. Yes, I did.

25 Q. All right. And did you go back out to the

Gordon B. Newhouse - Direct Exam

1 scene?

2 A. They called me back up, asked me to meet a
3 detective at the scene probably 30 minutes later.

4 Q. All right, sir.

5 MR. BAILEY: Your Honor, I would reserve
6 the right to recall Mr. Newhouse. That's all I
7 have at this time.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Good morning, Mr. Newhouse, I'm Norb Cummings.

12 A. Hello.

13 Q. And I'm going to go back a little bit with you
14 also. You're in your home which is a modular home or
15 trailer?

16 A. Trailer house.

17 Q. Yes, sir. That is behind a fence?

18 A. Yes.

19 Q. And you were in your home and watching
20 television. And you stated it was Hollywood Squares?

21 A. Yes.

22 Q. Okay. And then you hear what appears to be
23 gunshots?

24 A. I heard something which caused me to mute the
25 TV. I heard three gunshots.

Gordon B. Newhouse - Cross-Exam

1 Q. All right, sir. You said you heard them in
2 rapid succession within ten or 15 seconds?

3 A. Enough time for me to get up off the couch and
4 get on the back deck, there were three gunshots.

5 Q. After that you went out, got in your vehicle or
6 whatever, unlocked the gate then got in your vehicle
7 and drove down Nursery Road toward Independent School
8 Road?

9 A. That's correct.

10 Q. All right. And do you carry those little
11 portable spotlights and stuff in your cars?

12 A. I did not have one with me at that time.

13 Q. Is that nursery owned by Mr. Dukes, does he work
14 with you out there?

15 A. Yes, he does.

16 Q. Okay. Elderly, polite gentleman, Mr. Dukes?

17 A. He's in his early 50s.

18 Q. Oh, I'll take that back. Young man, Mr. Dukes.

19 When you went out that night, did you
20 call the sheriff's department after hearing those
21 shots, sir?

22 A. No, I did not.

23 Q. You did not call the Department of Natural
24 Resources, wildlife guys?

25 A. No, I did not.

Gordon B. Newhouse - Cross-Exam

1 Q. Went out to see if anybody was night hunting,
2 right?

3 A. That's right.

4 Q. When you didn't see anything you just went back
5 to your home, sir, and remained in the comfort of
6 your home for the remainder of the evening?

7 A. That's correct.

8 Q. Okay. Now, was there anything at all at 7:55,
9 eight o'clock that night that you saw anywhere on
10 Nursery Road that night that called your attention
11 out of the ordinary?

12 A. No.

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

14 THE COURT: All right.

15 MR. CUMMINGS: That's all the questions we
16 have of this gentleman. Thank you, Judge.

17 THE COURT: Yes, sir. Redirect.

18 MR. BAILEY: No redirect, Your Honor. I
19 would just ask Mr. Newhouse not to speak with
20 any of the other people that may be potential
21 witnesses.

22 THE COURT: Does he need to remain now?

23 MR. BAILEY: Yes, ma'am. If he would.

24 THE COURT: All right. If you'll stay with
25 us. And be mindful not to discuss this matter

Gordon B. Newhouse - Cross-Exam

1 with anyone. And if you would exit the
2 courtroom where you entered.
3 (Whereupon, the witness steps down from the
4 witness stand.)

5 THE COURT: Call your next witness.

6 MR. BAILEY: Call Perry Chinnners.

7 (Perry Chinnners, called as a witness, having
8 first been duly sworn, is examined and testifies
9 as follows:)

10 THE COURT: When you get seated I'm going
11 to ask you to state your name again for the
12 record. We'll have a sound check, if you will.

13 THE WITNESS: Perry Chinnners.

14 THE COURT: Thank you. Your witness,
15 Mr. Bailey.

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. Mr. Chinnners, would you please tell the jury
19 where you live?

20 A. Reevesville.

21 Q. All right, sir. And what kind of work are you
22 in?

23 A. I'm a self-employed poultry/crop farmer.

24 Q. All right, sir. Do you do anything else by way
25 of civic duties?

Perry Chinnners - Direct Exam

1 A. Yes, sir. Captain with the Reevesville Fire
2 Department.

3 Q. All right. Were you a captain with the
4 Reevesville Fire Department back in February 2001?

5 A. Yes, sir.

6 Q. All right, sir. And I want to call your
7 attention to the early morning hours of Saturday,
8 February 17th, and ask whether or not you were called
9 out to a fire on Nursery Road?

10 A. Yes, sir.

11 Q. All right, sir. And is there any paperwork
12 involved? Is this an all volunteer fire department?

13 A. Yes, sir. It is.

14 Q. All right, sir. Is there any paperwork involved
15 when y'all respond to a fire?

16 A. Yes, sir. We have a run report.

17 Q. The run report. Let me show you what's been
18 marked State's 9.

19 MR. BAILEY: Your Honor, I believe this is
20 without objection.

21 MR. CUMMINGS: That's correct, Judge.

22 THE COURT: Very well.

23 (Entered into evidence was State's Exhibit 9,
24 fire run report.)

25 Q. Ask if that's the run report for the call you

Perry Chinnners - Direct Exam

1 responded to on February 17th, 2001?

2 A. Yes, sir. It is.

3 Q. All right. And did you fill that out,
4 Mr. Chinnners?

5 A. Yes, sir. I did.

6 Q. All right, sir. What time was the fire called
7 in according to that run report?

8 A. 3:54 a.m.

9 Q. What time did you arrive?

10 A. We was 23 at 4:06 a.m.

11 Q. Twenty-three, does that mean --

12 A. We was on the scene.

13 Q. That's when you all got there?

14 A. Yes, sir.

15 Q. Twenty-three is the code when you arrived?

16 A. Yes, sir.

17 Q. All right, sir. And about how many firemen do
18 you think responded to that fire?

19 A. It's not on this report, but I think it was
20 five. I am not positive, but....

21 Q. All right, sir. Were you the senior man there,
22 the captain?

23 A. I was. I was the officer in charge, yes, sir.

24 Q. All right, sir. And go ahead, please, and tell
25 the jury the rough geographic location of where this

Perry Chinnners - Direct Exam

1 fire was.

2 A. You mean off of Nursery Road?

3 Q. Yes, sir.

4 A. It was maybe 50, 75 foot, maybe a little bit
5 further off of a secondary paved road, Nursery Road,
6 pulled up into a laid out field, if you want to call
7 it a rested field, the driveway of a rested field.

8 Q. All right, sir. Tell the jury, please, what you
9 did when you arrived at about shortly after 4:00 a.m.
10 February 17th.

11 A. I observed a four-door small vehicle fully
12 involved -- well, to the point that it had burned
13 down considerably from what it was at one time.
14 Because this car was burnt really bad and we just --
15 I pulled up on the scene and got set up and went to
16 pump the water.

17 Q. All right, sir. And did you get the fire put
18 out?

19 A. Yes, sir.

20 Q. All right, sir. And when y'all put the fire
21 out, was the trunk of the car open or shut?

22 A. No, sir. No, sir. The trunk was closed.

23 Q. All right, sir. And after you got the fire
24 contained, would you state whether or not y'all
25 opened the trunk of that car?

Perry Chinnners - Direct Exam

1 A. Yes, sir. We did.

2 Q. All right, sir. Please tell the jury what
3 observations you made when you opened the trunk.

4 A. I observed a burnt body, very, very bad burnt
5 body.

6 Q. All right, sir. And after making the
7 observation of the dead, burned body in the trunk,
8 what did y'all do?

9 A. I backed everything out, left my lines, my
10 tools, everything as is, where they were, and pulled
11 everybody back to the front of my pumper truck and
12 everybody stayed there until the proper channels were
13 followed.

14 Q. All right, sir. And did y'all call law
15 enforcement?

16 A. A law enforcement deputy was on the scene with
17 us at the time.

18 Q. All right, sir. So y'all backed off for what
19 reason?

20 A. Main reason I backed off because I -- I mean, I
21 saw all I wanted to see.

22 Q. All right, sir.

23 A. That was something I didn't want to look at no
24 more and I didn't want to disturb --

25 MR. CUMMINGS: Objection, Judge.

Perry Chinnners - Direct Exam

1 Q. Did anybody disturb the crime scene in any way?

2 A. No, sir.

3 Q. Other than putting the fire out, did y'all do
4 anything else until law enforcement got there?

5 A. No, sir.

6 Q. All right, sir. Mr. Chinnners, that's all I
7 have. Please answer any questions Mr. Cummings might
8 have for you.

9 CROSS-EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Good morning, Mr. Chinnners, I'm Norb Cummings.

12 A. Good morning.

13 Q. I just wanted to ask you a few questions this
14 morning, sir, and I thank you for your kindness ahead
15 of time. Mr. Chinnners, you obviously are a gentleman
16 that works very hard. You farm for a living?

17 A. Yes, sir.

18 Q. All right, sir. And you get called out, get a
19 tone at 3:00 -- from your own memory about what time,
20 sir, in the morning?

21 A. 3:54 a.m.

22 Q. All right, sir. Did you check your watch and go
23 back on that report to know what time you actually
24 got toned out?

25 A. Called a dispatcher to get the times from her.

Perry Chinnners - Cross-Exam

1 Q. Okay. So you had a call back to get somebody
2 else to give you the exact time the tone came in?

3 A. Yes, sir.

4 Q. Okay. And do you know who the phone call came
5 in from, from your records?

6 A. No, sir.

7 Q. Okay. How do you normally get your tone calls
8 in the fire department that you are the volunteer
9 captain of, sir?

10 A. Through the Dorchester County dispatching
11 system.

12 Q. All right, sir. And when you get the tone you
13 get it alone or other members who carry like pagers,
14 or the toners I guess they call them?

15 A. Yes, sir. Everyone totes a pager.

16 Q. And you stated, did you go to where the
17 firehouse is?

18 A. That's right. That's correct.

19 Q. So it takes you some time to go to the house
20 since you are donating your time, okay, and you get
21 there. And obviously you're probably qualified to
22 drive the rig or the fire truck, right?

23 A. Yes, sir.

24 Q. Could you just tell the ladies and gentlemen of
25 the jury, was this like a water pumper?

Perry Chinnners - Cross-Exam

1 A. The type of truck I drove?

2 Q. Yes, sir. The type of fire truck.

3 A. It's a tanker pumper, the actual truck that went
4 to this fire.

5 Q. All right, sir. And did you wait for other men
6 or ladies to arrive with you there, or did you take
7 the truck and head towards Nursery Road?

8 A. I didn't personally drive the truck. When I
9 arrived at the firehouse another officer was bringing
10 it out.

11 Q. Do you remember that gentleman's name?

12 A. Yes, I do.

13 Q. Who is that, please?

14 A. Jamie Fender.

15 Q. All right. So the truck rolls, you guys get
16 there. Was the deputy already on Nursery Road, sir?

17 A. I don't recall whether he was there as soon as
18 we pulled up, but if -- I can't recall, but it was
19 within a minute or two. If he wasn't, he was there
20 within a minute or two.

21 Q. And I'm not questioning that night, it's early
22 in the morning, you get called out, you're rolling
23 to -- do you remember what type of call it really was
24 when you got called out, was it a fire? Did they say
25 car fire?

Perry Chinnners - Cross-Exam

1 A. Yes, sir. When it comes out, come across the
2 pager, it's a 10-70, which means fire, 10-70 auto,
3 Nursery Road.

4 Q. All right, sir. So when you get there can you,
5 please, tell the ladies and gentlemen of the jury,
6 and I know it's going to sound like a mundane
7 question to you because you do this a lot, but,
8 please, when you pull up there what's the first thing
9 that happens when the truck pulls up to any scene
10 like that?

11 A. Well, I mean, if the driver of the truck or --

12 Q. Yeah. Give us the whole procedure, tell us what
13 happens.

14 A. I'm driving the truck, I pull up, I lock the
15 brakes down on it, I put the pump in gear and grab
16 the line, or whoever, and you drag the line out.

17 Q. What size line do you grab out, four inch, six
18 inch, two inch?

19 A. Inch and a half.

20 Q. Inch-and-a-half-inch hose, okay. How much
21 pressure comes out of an inch-and-a-half hose?

22 A. However much you want.

23 Q. How much would you have used that night if you
24 were the gentleman operating that?

25 A. Less than 100 pounds, maybe 85 to 90.

Perry Chinnners - Cross-Exam

1 Q. All right, sir. And please continue on. I may
2 stop you periodically just like that to get some more
3 information out. So did you grab the inch and a
4 half?

5 A. Not at first.

6 Q. Okay. So you probably directed some other fire
7 personnel to do that?

8 A. Yes, sir. I did.

9 Q. Okay. And when you see that what did you direct
10 those people to do, Captain?

11 A. I directed a young man to put water on the fire.
12 And I ended up with the hose because I was ready to
13 get home, I didn't feel like he was putting enough on
14 it at the time.

15 Q. I understand, Captain. And now, if I may, I'm
16 going to ask you some questions, they're going to
17 sound like they're probably foolish from a layperson
18 who has not fought a fire, but you take the hose and
19 they start attacking what area for a car fire, just
20 general area?

21 A. The hottest area.

22 Q. Okay. And in your opinion that night where was
23 the hottest area?

24 A. In the rear of the car.

25 Q. All right. So mainly pressure, water pressure

Perry Chinnners - Cross-Exam

1 is pointed at the area around the rear of the car,
2 right?

3 A. Yes, sir.

4 Q. Was this vehicle still up on its tires, or was
5 it down on the ground?

6 A. I believe the tires were done about burnt off
7 the vehicle at the time.

8 Q. All right, sir. So it was down lower?

9 A. Yes, sir.

10 Q. Closer to the ground?

11 A. Yes, sir.

12 Q. All right. So is it fair to say that some of
13 the water pressure would have affected the ground,
14 been placed on the ground underneath the car?

15 A. I don't think so.

16 Q. Okay. Well, the reason I'm asking you that is,
17 did the gas tank explode on this car, sir, from your
18 observation?

19 A. From my observation it would have to have, yes.

20 Q. All right, sir. And would that -- and I'm going
21 to ask you this. Would gas -- was gasoline on the
22 ground around there when you went out and checked
23 after the fire was out?

24 A. I can't tell you whether it was actual gas
25 around the car, no, sir.

Perry Chinnners - Cross-Exam

1 Q. Okay.

2 A. I can't say that.

3 Q. Did you have to put any ground out, I mean like
4 the grass or --

5 A. A little bit, yes, sir.

6 Q. Okay, sir. So that means the hose, the water
7 would push things around; would it not?

8 A. According on what stream of water you had that
9 the nozzle adjusted to. If you had it on a fog
10 pattern like most people would do putting out a grass
11 fire, no, it won't disturb it much at all.

12 Q. Okay. And at that time you stated, and I think
13 when asked by Mr. Solicitor once you popped the trunk
14 you backed out from your experience, training, and
15 your education; is that correct, sir?

16 A. Yes, sir.

17 Q. And you directed the gentleman and ladies, if
18 there were any ladies out there with you that night,
19 to back up and hold everything down until the proper
20 people arrived?

21 A. That's correct.

22 Q. And that's important; is it not, sir?

23 A. That's correct.

24 Q. Because you don't want any contamination of any
25 scene or any potential evidence at that point; is

Perry Chinnners - Cross-Exam

1 that correct, Captain?

2 A. Yes, sir.

3 MR. CUMMINGS: Okay. Beg the Court's
4 indulgence, Your Honor.

5 THE COURT: All right, sir.

6 (Mr. Cummings and Ms. Hardee-Thomas conferring
7 with Mr. Bowman.)

8 MR. CUMMINGS: Judge, that's all the
9 questions we have of this gentleman, we thank
10 him.

11 THE COURT: Redirect?

12 MR. BAILEY: No redirect, Your Honor. May
13 he be excused?

14 THE COURT: Yes. You are free to leave.
15 Thank you.

16 (Whereupon, the witness steps down from the
17 witness stand.)

18 THE COURT: Call your next witness.

19 MR. BAILEY: We call Deputy Kicklighter.
20 (James P. Kicklighter, called as a witness,
21 having first been duly sworn, is examined and
22 testifies as follows:)

23 THE COURT: If you would state your full
24 name for the record, please, sir.

25 THE WITNESS: James Philip Kicklighter.

James P. Kicklighter - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. BAILEY:

3 Q. You're a deputy sheriff with Dorchester County;
4 is that correct?

5 A. Correct, sir.

6 Q. How long have you worked for the sheriff's
7 office?

8 A. Approximately three years, sir.

9 Q. Yes, sir. Would you state whether or not you
10 were on duty as a deputy sheriff on February 17th,
11 2001?

12 A. I was, sir.

13 Q. All right. And do you work the upper end of
14 Dorchester County?

15 A. Yes, sir. District One.

16 Q. All right. Now, I want to ask you, calling your
17 attention to that morning February 17th, early
18 morning hours, 2001, whether or not you were
19 dispatched to a location on Nursery Road in
20 Reevesville?

21 A. Yes, sir. It was in reference to a vehicle
22 fire.

23 Q. All right, sir. And approximately what time did
24 you arrive at that location? Do you have an incident
25 report that you need to refresh?

James P. Kicklighter - Direct Exam

1 A. Yes, sir. I have an incident report. Sir, it
2 was about 4:09 in the morning.

3 Q. 4:09 a.m?

4 A. Right, sir.

5 Q. And the location that you went to, what type
6 of -- what observations did you make when you got
7 there?

8 A. Sir, when I arrived the fire truck was off the
9 road into a small dirt road path. Don't know exactly
10 how far in, but there was a vehicle in front of it
11 that was still smoking. The fire truck was there,
12 several firemen.

13 Q. All right, sir. When you arrived there, was --
14 let me ask you this: The location where you observed
15 the car that had been on fire, was that in Dorchester
16 County?

17 A. Yes, sir. It was off of Nursery Road in
18 Dorchester County.

19 Q. All right, sir. You're familiar with the county
20 line and that was in Dorchester County?

21 A. Right, sir.

22 Q. No question about that?

23 A. No, sir. No, sir.

24 Q. All right, sir. And at the time that you
25 arrived, firemen were there; is that correct?

James P. Kicklighter - Direct Exam

1 A. Yes, sir.

2 Q. Okay.

3 A. Yes, sir.

4 Q. When you observed the car initially was the
5 trunk open or closed?

6 A. The trunk was closed at the time I arrived, sir.
7 They were attempting to open it at that time.

8 Q. Okay. And did they succeed in opening the
9 trunk?

10 A. Yes, sir. They did.

11 Q. And when the trunk was opened, what observation
12 did you make -- were you the first law enforcement
13 officer there?

14 A. Yes, sir. I was.

15 Q. What observations did you make as the first law
16 enforcement officer present?

17 A. When the trunk was opened up we could see there
18 was a body in the trunk.

19 Q. All right, sir.

20 A. At that time I couldn't tell what it was other
21 than a human body.

22 Q. All right, sir. And when you observed the human
23 body, a burned human body in the trunk of that car,
24 sir, what did you do as a law enforcement officer?

25 A. All right. I called everybody to back off from

James P. Kicklighter - Direct Exam

1 the vehicle.

2 Q. What is the reason you do that?

3 A. Don't want to disturb any more than it's already
4 been disturbed as far as the scene is concerned.

5 Q. When you say "already been disturbed," you mean
6 by the efforts to put the fire out?

7 A. By the presence of the firefighters, water hose,
8 and all that, yes, sir.

9 Q. All right.

10 A. We backed off several feet, I put up a tape,
11 it's the yellow tape, "Do Not Cross Line" tape,
12 secured the scene, had the dispatcher notify the
13 command staff and the shift supervisor.

14 Q. All right, sir. And eventually did detectives
15 and investigators come out to the scene?

16 A. Yes, sir. Before the detectives and the
17 investigators arrived, the firemen that was on scene,
18 I gave them all statement papers to have them make a
19 statement of what was -- what they saw. I made a
20 crime scene log with everybody's name on the log that
21 had been in the crime scene prior to discovering the
22 body.

23 And when the detectives arrived on
24 scene I gave them the information and turned the
25 crime scene log and the information over to the

James P. Kicklighter - Direct Exam

1 detectives.

2 Q. All right, sir. Did you stay there from the
3 time you observed the body in the trunk until the
4 time the detectives arrived, were you there the
5 entire time?

6 A. Yes.

7 Q. Okay. And did anybody from the time you
8 observed the body in the trunk until the time the
9 deputies, the detectives arrived, did anybody disturb
10 the crime scene in any way whatsoever?

11 A. No, sir. They did not.

12 Q. Mr. Kicklighter, please answer any questions Mr.
13 Cummings may have for you.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Good morning, Deputy Kicklighter.

18 A. Yes, sir.

19 Q. I just want to go back with you a few questions,
20 sir, if I may.

21 A. All right.

22 Q. And, again, say good morning to you.

23 A. Right, okay.

24 Q. You were working what shift on the 16th through
25 the 17th, sir?

James P. Kicklighter - Cross-Exam

- 1 A. I worked night shift at that time, sir.
- 2 Q. What hours is that?
- 3 A. 6:45 at night, in the afternoon, until 6:45 in
- 4 the morning.
- 5 Q. Twelve-hour shift?
- 6 A. Twelve-hour shifts, yes, sir.
- 7 Q. How did you receive this call, Deputy?
- 8 A. I received it through dispatch over the radio.
- 9 Q. All right, sir. And do you remember your
- 10 approximate location, where you were when you got the
- 11 call on the radio?
- 12 A. I was up in the upper end of the county up
- 13 around the Rainbow gas station, somewhere in that
- 14 area, I'm not -- I couldn't tell you exactly the
- 15 spot, but it wasn't too far away.
- 16 Q. Okay, sir. So it did not take you long to get
- 17 there?
- 18 A. No, sir.
- 19 Q. And when you get there it's like a 10-23 code,
- 20 something like that, you arrive?
- 21 A. Right, sir.
- 22 Q. And you stated I think for Mr. Bailey you
- 23 arrived there at 4:09 a.m.?
- 24 A. That was the dispatch time, yes, sir. Dispatch
- 25 was 3:57, I arrived at 4:09.

James P. Kicklighter - Cross-Exam

1 Q. So you got the call at three minutes before in
2 the morning and you got there at 4:09?

3 A. Approximately that time, yes, sir.

4 Q. When you got there the fire truck was already
5 there?

6 A. Yes, sir. Fire truck was there.

7 Q. And approximately how many people were there,
8 sir?

9 A. Sir, I couldn't tell you exactly. They should
10 have a list of all the statements that I had made. I
11 didn't keep copies of those, I turned all that over
12 to the detectives.

13 Q. All right. Maybe I got ahead of myself there, I
14 apologize to you, sir. Let's go back a little bit.
15 You pull up, the truck's already out, it's there, red
16 lights going on it?

17 A. Right.

18 Q. Okay. Did you meet Captain Chinnors, the nice
19 man that probably passed you on the way out?

20 A. Yes, sir.

21 Q. Okay. And when you got there it was, for lack
22 of better words, it was a car fire?

23 A. Right, sir.

24 Q. Okay, sir. And the firemen were doing what they
25 do, right?

James P. Kicklighter - Cross-Exam

1 A. Right, sir.

2 Q. Okay. Can you recall how many hose lines were
3 out?

4 A. It was a couple of hose lines out, sir. Exactly
5 how many I could not -- I do remember stepping on one
6 of them, so I do know there was one of them.

7 Q. I understand that, sir. And so how long did you
8 say -- and, again, I'm asking you to answer my
9 question, but how long would you say it took the nice
10 ladies or gentlemen who were there that night to put
11 the fire out?

12 A. Sir, I have no idea. The fire was almost out
13 when I arrived. Like I said, they were working on
14 wetting the car down, kind of keeping the smoke --
15 they will smolder for a good long time afterwards.

16 Q. All right, sir. And did you observe any of the
17 ground area there that the firemen were working at?

18 A. Yes, sir.

19 Q. Okay. Were there any concerns on your part or
20 their part to make sure the ground was wetted down?

21 A. Yes, sir.

22 Q. Okay. And you know that for a fact because you
23 want to make sure there's not a brush fire?

24 A. Right.

25 Q. And you weren't going to leave anything until

James P. Kicklighter - Cross-Exam

1 the fire was out?

2 A. Right, sir.

3 Q. Okay. And so how long approximately would you
4 say that you were out there with the folks to make
5 sure the fire was out?

6 A. Well, I'm not quite understanding your question
7 on that, sir.

8 Q. All right. You arrive at 4:09?

9 A. Right, sir.

10 Q. Obviously you're out there for a while.

11 A. Right.

12 Q. Do you remember when you called the detectives,
13 any notes, or files, or anything you did?

14 A. No, sir. That would have to go back to whenever
15 I called for the shift supervisor when we found the
16 body, whatever time it was.

17 Q. All right, sir. And at that moment when the
18 firemen popped the trunk.

19 A. Right, sir.

20 Q. Was it your instructions, or the captain's
21 instructions to back off, stop?

22 A. I believe, sir, it would probably be my
23 instructions. I think we all about said the same
24 thing at the same time as far as not trying anybody
25 to take over or anything, it's just we got a problem,

James P. Kicklighter - Cross-Exam

1 let's back up. A couple of them we didn't have to
2 say anything to them, they backed out on their own.

3 Q. Do you understand the importance of people
4 backing up?

5 A. Right, sir.

6 Q. At that point you said you ran yellow tape that
7 said crime scene on it, stay out?

8 A. Right, sir.

9 Q. You're sure of that, you did that?

10 A. Yes, sir. I did that.

11 Q. All right. And then as you complete that, you
12 wait there. And do you remember the first supervisor
13 or the first person who arrives up on the scene that
14 you dealt with?

15 A. No, sir. I really don't remember who it was.
16 There was a number of the detectives, my supervisor,
17 other deputies came up. As far as who it was that
18 arrived first, I couldn't tell that you, sir.

19 Q. Okay. How long did you remain out there at the
20 scene that morning, sir?

21 A. Probably until around nine o'clock, sir.

22 Q. Okay. So you worked past your normal shift?

23 A. Right. I worked past norm shift that day, sir.

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

25 THE COURT: Yes, sir.

James P. Kicklighter - Cross-Exam

1 (Mr. Cummings and Ms. Hardee-Thomas conferring
2 with Mr. Bowman.)

3 MR. CUMMINGS: That's all the questions we
4 have of this gentleman. Thank you, Judge.

5 THE COURT: Any redirect?

6 MR. BAILEY: No redirect, Your Honor.

7 THE COURT: Is this witness free to leave?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: You are free to go.

10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Call your next witness, please.

13 MR. BAILEY: Alvin Coker.

14 (Alvin Coker, called as a witness, having first
15 been duly sworn, is examined and testifies as
16 follows:)

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. Mr. Coker, you're with the Dorchester County
20 Sheriff's Office?

21 A. That is correct.

22 Q. All right, sir. How long have you been in law
23 enforcement?

24 A. Approximately 25 years total.

25 Q. What is your present position and rank with the

Alvin Coker - Direct Exam

1 sheriff's office?

2 A. I'm presently first sergeant assigned to the
3 detective division with Dorchester County Sheriff's
4 Office.

5 Q. All right, sir. Are you the case officer in
6 this case?

7 A. That is correct.

8 Q. All right, sir. And I want to ask you whether
9 or not you were assigned this case on February 17th,
10 2001?

11 A. I was.

12 Q. And would you say whether or not when you got
13 assigned to this case did the sheriff's office
14 recover a license tag from a burned automobile off of
15 Nursery Road on February 17th, 2001?

16 A. Yes, sir. I'm not sure whether the sheriff's
17 office collected it or either SLED, but one of the
18 agencies working in conjunction did collect a tag.

19 Q. All right, sir. And was that tag taken into
20 evidence?

21 A. Yes, it was.

22 Q. I'll hand you what's marked State's 11 and ask
23 if you can identify that, Mr. Coker. While you're
24 looking at that I'm going to show you State's 10,
25 which is a photograph.

Alvin Coker - Direct Exam

1 A. (The witness complies.) Yes, sir. This is a
2 tag that was removed from the victim's car.

3 Q. All right, sir. And would you state whether or
4 not you all ran that tag in an effort to determine
5 the owner of the automobile?

6 A. Yes, sir. Once I arrived on the scene I got the
7 tag number, the tag was still readable. I had our
8 dispatch run it through the Department of Motor
9 Vehicles records file, found out it was registered to
10 Ms. Cordellia -- I believe it's listed as Cordellia
11 and Kandee Martin. Kandee spelled with a K.

12 Q. All right, sir. And would you state whether or
13 not the Dorchester County Sheriff's Office requested
14 that SLED arson team come in to assist in the
15 investigation?

16 A. Yes, sir. We did.

17 Q. All right, sir.

18 MR. BAILEY: Your Honor, I would offer the
19 photograph and the tag and I believe without
20 objection from the defense.

21 MR. CUMMINGS: Thank you, Judge. Your
22 Honor, I think the gentleman stated he couldn't
23 remember who removed the tag or whatever, so we
24 would object at this time to the tag. The
25 photograph, it's a photograph evidentiary wise,

Alvin Coker - Direct Exam

1 Your Honor. I don't think the proper foundation
2 has been laid yet.

3 THE COURT: Very well.

4 MR. BAILEY: Your Honor, I have a matter of
5 law in regard to the evidence in general, if we
6 could take that up.

7 THE COURT: Certainly. Yes, sir. Ladies
8 and gentlemen, if you could please step to
9 your -- this is a good time actually for us to
10 take our morning break and we will do that. And
11 we'll take about a -- oh, by the time we do what
12 we need to do it will probably be about a
13 20-minute to 25-minute break. Those that need
14 to smoke, please let them smoke.

15 Please remember not to discuss this
16 matter and not to allow anyone to discuss it
17 with you. We'll take our morning break.

18 (Whereupon, the jury retires to the jury room at
19 10:22 a.m.)

20 MR. BAILEY: Your Honor, pursuant to your
21 instructions yesterday we stayed late, we marked
22 all of the evidence. It was my impression that
23 Mr. Bowman was present and Ms. Hardee-Thomas and
24 Mr. Cummings, we marked everything and we went
25 through it all and that if there was anything

Alvin Coker - Direct Exam

1 that he objected to we would address that. So
2 my understanding was whatever we marked we
3 agreed that was appropriate evidence now. If
4 Mr. Cummings wants me to call the victim's
5 mother up to identify her tag I can do it that
6 way, I just thought this was a more innocuous
7 was way of presenting that. I don't think
8 there's legitimate issues to the ownership of
9 the car.

10 MR. CUMMINGS: There is no legitimate
11 issues to the car, Judge. I just have an issue
12 of the chain of evidence and that there's going
13 to be some issues here about who recovered what,
14 potentially the crime scene investigation. We
15 premarked items, we still have a right legally
16 to argue the admissibility of evidence, Judge.
17 I didn't waive that right by just premarking
18 items. It's everything is for ID.

19 THE COURT: Clearly you wouldn't and
20 following the Court's instruction simply marking
21 the items, that's correct.

22 MR. BAILEY: I apologize.

23 THE COURT: But what I'm hearing from Mr.
24 Bailey is that in marking -- in going through
25 the process of marking different pieces of

Alvin Coker - Direct Exam

1 evidence he thought some were in by stipulation
2 or by consent and that some were not. Now, he
3 may have misunderstood that.

4 MR. BAILEY: If I did I apologize, Your
5 Honor.

6 THE COURT: What I would ask you to do now
7 with Ms. Keil present, I want you to go back
8 through each and every item of evidence during
9 this break and I want you to review your items
10 with counsel, with both of you to review it --
11 all of you, I'm so sorry, all of you to review
12 it and to be sure that you know what there is
13 agreement and what there isn't agreement. If
14 there's an agreement I want to -- I want you to
15 put it on the record with Ms. Keil.

16 MR. BAILEY: Everything we've put in so
17 far; is that correct? Or all of it?

18 THE COURT: That's correct.

19 MR. BAILEY: Okay.

20 THE COURT: In other words, what I don't
21 want to have happen is this -- I don't want to
22 send this jury out because you all have a
23 disagreement. And if you can tell him nothing's
24 stipulated to that makes it very quick and easy.
25 That way if Mr. Bailey needs to get witnesses in

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1 he can do that, and we'll move along a little
2 quicker.

3 MR. BAILEY: Your Honor, if I could address
4 Mr. Cummings' chain of custody argument. This
5 is not a fungible item, it's like a gun with a
6 serial number on it. And if it's blood or semen
7 or something that you can look at it, can't tell
8 whose it is or otherwise identify it except
9 scientifically my understanding is we establish
10 a chain. But this is clearly a South Carolina
11 issued tag with a number assigned to one person,
12 so I don't think that any chain needs to be
13 established on it, it's what it is.

14 THE COURT: I understand. I understand.
15 I'm going to let you all handle it. I'm going
16 to let you all -- well, let me ask Mr. Cummings
17 to respond to that.

18 MR. CUMMINGS: Judge, there are certain
19 items as to the chain. As to fungible evidence
20 or non-fungible evidence to be contaminated or
21 bothered, there may be some issues that have
22 arisen about people being in the crime scene.
23 And I would respectfully like to preserve
24 evidentiary objections and items, Judge, because
25 as we're reading statements it's inconsistent

Alvin Coker - Direct Exam

1 now to the live testimony as we're going through
2 it already this morning.

3 THE COURT: That's fine, Mr. Cummings.

4 MR. CUMMINGS: Yes.

5 THE COURT: Whatever it is, it is. I don't
6 want you to feel any pressure whatsoever to
7 agree to any items, I genuinely do not. All
8 that I'm hearing between the two of you is that
9 there's some disagreement about what items of
10 evidence there's an agreement about and what
11 items there is no agreement about. You clearly
12 agreed to some.

13 MR. CUMMINGS: Yes, ma'am.

14 THE COURT: You're not going to agree to
15 many, I'm sure. However, my interest at this
16 moment is that the two of you get clear about
17 what items that you agree to and you don't agree
18 to. If you agree to it, I want the issue to be
19 over.

20 MR. CUMMINGS: Yes, ma'am.

21 THE COURT: Do you understand? Unless you
22 say, you know, I agreed to it, but this is
23 changed, Judge, I need to bring that matter to
24 you and then let Mr. Bailey know. So even if
25 you agreed to it and something changes, as long

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1 as Mr. Bailey has an opportunity to recover --

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: -- at that point. Because I
4 don't want to keep having to recall witnesses,
5 et cetera, because Mr. Bailey thinks that
6 there's an agreement and there's not. You
7 understand what I'm saying --

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: -- all of you?

10 MR. BAILEY: Yes, ma'am.

11 THE COURT: So here's what I'll ask you to
12 do during the break, is I'm going to ask you to
13 remark them. With regard to this item of
14 evidence, the question as I understand it is
15 that you maintain that it is a non-fungible item
16 and you likewise feel that the foundation must
17 be laid. Did I understand that clearly?

18 MR. CUMMINGS: Correct, Judge, because of a
19 certain issue that came out on direct evidence
20 by this gentleman.

21 THE COURT: Tell me what about that.

22 MR. CUMMINGS: I'll say, Judge, about
23 Mr. Coker not removing the tag from the car
24 where it was found on the ground, photographed
25 on the ground as you see the photographs show.

Alvin Coker - Direct Exam

1 THE COURT: Right.

2 MR. CUMMINGS: And further that there was
3 another gentleman of the fire service who found
4 the license tag according to everything in
5 discovery and according to everything we
6 subpoenaed from the fire station. So that's my
7 issue, Judge, now it's not consistent with the
8 direct testimony of this polite gentleman and,
9 therefore, that is evidence I would like to have
10 to cross-examine on. And I will, but I mean,
11 Judge, that's why. It was either it was on the
12 ground or it was on the car.

13 THE COURT: Okay.

14 MR. CUMMINGS: Who removed it, who had it,
15 who put it back or whatever, I mean.

16 MR. BAILEY: Your Honor, I don't see
17 where --

18 THE COURT: But aren't those different
19 issues?

20 MR. CUMMINGS: Yeah, they are.

21 THE COURT: Aren't they different issues
22 rather -- the issues of cross-examination about
23 where it came from, where it was, is that a
24 different issue than is this the tag?

25 MR. CUMMINGS: No, ma'am. And, again, that

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1 is the tag and it's -- the identity of the
2 ownership of the car is not in question. I did
3 not object to the photograph of that at all.
4 And, I mean, when Mr. Bailey would have put that
5 in, again, I would have stood up and said that
6 without objection of the photograph. It showed
7 it as it was, it showed it where it needed to
8 be, it showed the evidence. As to the other
9 obtaining issue about who took the tag off or
10 what that's in that bag, Your Honor, I believe I
11 wanted the foundation laid about who, what,
12 when, where, how, and why.

13 THE COURT: I understand.

14 MR. CUMMINGS: I apologize if I didn't make
15 myself clear. It didn't pop up until this
16 direct testimony.

17 THE COURT: I understand.

18 MR. BAILEY: I still don't get it, Your
19 Honor. I mean, I'm sorry. I'm not trying to be
20 flippant, but I don't understand the basis for
21 the objection if there's no dispute as to the
22 ownership of the car and that's really all I'm
23 trying to elicit through introducing the tag.

24 And I called Mr. Coker for the limited
25 purpose of identifying the car at this point and

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1 Mr. Cummings says identity of the car is not in
2 issue, so I don't understand why he would object
3 to it. And if he wants me to, as I said, I will
4 call the victim's mother to say that's her tag.

5 MR. CUMMINGS: It's not needed. He just
6 ask him on DMV records what the tag was and
7 there's the identity. Maybe he's not
8 understanding me and that's my point. I mean
9 real simple, get a DMV tag, run a 10-28, there
10 it is.

11 THE COURT: I'm going to admit the evidence
12 over the objection of the defense. I find that
13 the foundation that while that may be subject to
14 cross-examination in some statement or
15 otherwise, the fact that this is indeed the tag,
16 it's a non-fungible piece of evidence and I
17 don't -- based on what I'm hearing I did not
18 hear that a -- that foundation that this is the
19 tag is required.

20 Now, whether or not there is any --
21 whether or not there's cross-examination that's
22 available to how the tag came to be in the
23 possession of this witness is a different issue
24 and it goes to credibility, but whether or not
25 this is the tag I find is a different issue. I

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1 think cross-examination is certainly available,
2 but I don't feel that that -- I feel that the
3 piece of evidence is, A, relevant; and B, has
4 been authenticated.

5 Thank you. Let's all take our break.

6 MR. BAILEY: Thank you, Your Honor.

7 (Entered into evidence was State's Exhibit 10,
8 photograph.)

9 (Entered into evidence was State's Exhibit 11,
10 license plate.)

11 (Recess, from 10:31 a.m. to 10:52 a.m.)

12 THE COURT: All right. Members of the
13 audience, let's talk about that for a moment.
14 That's not for me. I want you to understand it
15 has nothing to do with me personally, it truly
16 doesn't. But it has an awful lot to do with
17 this position and the respect of this position.
18 I don't want any of you to think that I take
19 that for me, but I must insist because I am the
20 custodian of this position for -- again, not for
21 me, but as this position goes forth in our
22 society it is important that it be respected and
23 that happens to be part of our tradition, so I
24 thank you so much for that and be mindful of
25 that. Thank you so much. Please be seated.

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1 All right. Are we ready to proceed?

2 MR. BAILEY: State's ready, Your Honor.

3 THE COURT: Thank you. All right. Let's

4 have our jury.

5 (Whereupon, the jury returns to the courtroom at

6 10:53 a.m.)

7 THE COURT: Mr. Bailey.

8 MR. BAILEY: Thank you, Your Honor. I have
9 no further questions of Mr. Coker at this point,
10 Your Honor, would reserve the right to recall
11 him later on.

12 THE COURT: I understand.

13 Cross-examination.

14 MR. CUMMINGS: Thank you, Judge, and I'll
15 be brief also. Thank you, Solicitor.

16 CROSS-EXAMINATION

17 BY MR. CUMMINGS:

18 Q. I'm going to stand over here, I know you and I
19 have loud voices. Mr. Coker, what time did you first
20 arrive on the scene that morning?

21 A. I received a call at my home around 4:15, it was
22 probably 4:45 by the time I arrived.

23 Q. Okay. And when you got there, could you please
24 tell the ladies and gentlemen of the jury who was
25 there as far as supervisory personnel for your

Alvin Coker - Cross-Exam

1 department?

2 A. I believe Lieutenant Nettles and Major Mike
3 Turner, I believe they were on scene. Lieutenant
4 Earl Asbell who is head over our crime scene, he had
5 just got there. Of course there were firemen and
6 other deputies on scene.

7 Q. All right. When you got there now for these
8 good folks, okay, you were in here, major case
9 officer, you sitting at the table the entire time in
10 here today?

11 A. Yes, sir.

12 Q. Is that correct, sir?

13 A. That's correct.

14 Q. And you heard Deputy Kicklighter?

15 A. That's correct.

16 Q. All right. And when you got there did you see
17 the area that Deputy Kicklighter had taped off with
18 the crime scene tape?

19 A. Yes, sir. I did.

20 Q. Please tell the ladies and gentlemen of the jury
21 exactly what that area was.

22 A. It was an area in front of where the fire truck
23 was, it's a little small road, came off the highway
24 into a -- that lead back into some fields. A fire
25 truck was pulled up into the road and just ahead of

Alvin Coker - Cross-Exam

1 the fire truck they had roped off the area so that no
2 one could pass beyond that point.

3 Q. Okay. When you -- and, again, this may sound
4 like a question that you don't understand, my logic,
5 but bear with me for a moment. When you got through
6 driving an unmarked police car, right?

7 A. Correct.

8 Q. You came from exactly off of what road onto
9 Nursery Road?

10 A. I came into Reevesville and went out of
11 Reevesville on Heaton Road and then turned right onto
12 Nursery from Heaton Road.

13 Q. Okay. Would you have passed Mr. Newhouse's
14 house on Nursery Road, or would you have come in off
15 Independent School Road?

16 A. I would have passed it.

17 Q. All right. So that means his home would have
18 been on your right, on the passenger side of your
19 car?

20 A. That's correct.

21 Q. Was there anybody at the end of the street past
22 Mr. Newhouse's house holding the street down,
23 blocking it off, or anything at the other end where
24 the stop sign is on Independent School Road?

25 A. No, it was not.

Alvin Coker - Cross-Exam

1 Q. How many cars were on that road when you got
2 there, sir, approximately, how many police vehicles?
3 We'll start there.

4 A. Probably five at the most.

5 Q. All right, sir. We know we have one big fire
6 truck?

7 A. Yes, sir.

8 Q. Okay. Any other vehicles out there of your
9 personal knowledge?

10 A. To my personal knowledge, no, other than --
11 well, let me back up. There was some fire department
12 members I think that drove their personal vehicles to
13 the scene that were parked alongside of the road.

14 Q. Okay, sir. And, again, going back to the early
15 morning there now, is it still your testimony to
16 these folks that you took the license tag off that
17 car?

18 A. No, sir. I did not take the license tag off the
19 car. I observed it there on the scene.

20 Q. Okay. Was it on the ground?

21 A. I believe it was actually laying up -- no, it
22 was on the ground.

23 Q. Okay. So somebody had removed it?

24 A. Somehow it came off the car, I don't know how.

25 Q. Okay. Of your personal knowledge, sir, and,

Alvin Coker - Cross-Exam

1 again, as the senior case officer, do you know who
2 took the tag off the car?

3 A. No, I do not.

4 Q. Okay.

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

6 THE COURT: All right.

7 (Mr. Cummings and Ms. Hardee-Thomas conferring
8 with Mr. Bowman.)

9 MR. CUMMINGS: Judge, nothing further at
10 this time on cross-examination of this
11 gentleman, but I know that Mr. Bailey will
12 recall him.

13 THE COURT: Yes. You may step down.
14 (Whereupon, the witness steps down from the
15 witness stand.)

16 MR. BAILEY: Your Honor, may I confer with
17 Mr. Cummings briefly before I call the next
18 witness?

19 THE COURT: You may.

20 MR. BAILEY: Thank you.

21 (Mr. Bailey and Mr. Cummings conferring.)

22 MR. BAILEY: State calls Eddie Porter.

23 (Edward A. Porter, called as a witness, having
24 first been duly sworn, is examined and testifies
25 as follows:)

Edward A. Porter - Direct Exam

DIRECT EXAMINATION

1
2 BY MR. BAILEY:

3 Q. Mr. Porter, would you please tell the jury where
4 you work?

5 A. The South Carolina Law Enforcement Division,
6 commonly referred to as SLED.

7 Q. All right, sir. And where do you live?

8 A. In West Columbia, Lexington County, South
9 Carolina.

10 Q. What is your educational background?

11 A. I have a bachelor of science degree in criminal
12 justice from the University of South Carolina.

13 Q. All right, sir. And how long have you worked
14 with SLED?

15 A. Approximately two and a half years.

16 Q. All right. And what specifically do you do for
17 SLED?

18 A. I'm currently assigned to Latent Print Crime
19 Scene Unit.

20 Q. All right, sir. And what does the Crime Scene
21 Unit do at SLED?

22 A. When requested by local agencies we respond to
23 that county throughout the state of South Carolina,
24 process scenes for physical evidence and the
25 collection of that evidence.

Edward A. Porter - Direct Exam

1 Q. All right, sir. And were you employed in that
2 capacity back in February 2001?

3 A. Yes, I was.

4 Q. All right, sir. I want to call your attention
5 to February 17th, 2001 and ask whether or not in the
6 course of your duties as a SLED crime scene
7 technician were you sent to Dorchester County with
8 regard to a car fire and homicide?

9 A. Yes, I was.

10 Q. All right, sir. And using your notes if you
11 have any to refresh your memory, approximately what
12 time on February 17th did you arrive in Dorchester
13 County at the scene of the burned car?

14 A. I arrived at 11:40 a.m.

15 Q. All right, sir. And when you got to the area of
16 Nursery Road in Dorchester County were there other
17 law enforcement officers present?

18 A. Yes, there was.

19 Q. From different agencies?

20 A. Yes, sir.

21 Q. All right. Who do you -- do you specifically
22 recall anybody else with SLED that was there the time
23 you got there?

24 A. Yes, I do.

25 Q. Who was that?

Edward A. Porter - Direct Exam

1 A. Special Agent James Helms who was assigned to
2 our arson division.

3 Q. All right. And there were various Dorchester
4 County investigators and deputies and so forth?

5 A. Yes, sir.

6 Q. What were you specifically requested to do as
7 far as the crime scene?

8 A. Our unit, being me specifically, was requested
9 by Agent Helms to process a secondary scene that was
10 located approximately 802 yards -- or feet from where
11 the car that was located that he was processing.

12 Q. All right, sir. And did you observe the burned
13 car when you got there?

14 A. Yes, I did.

15 Q. And you testified that you were primarily
16 focusing in on an area some 802 feet away; is that
17 correct, sir?

18 A. Yes, sir.

19 Q. All right, sir. When you arrived would you
20 testify whether or not the crime scene was secured
21 with that yellow tape and so forth?

22 A. The road was marked off at both ends with a
23 deputy stationary at both sides.

24 Q. All right, sir. And would you state whether or
25 not in order to assist you in kind of putting

Edward A. Porter - Direct Exam

1 everything together, did you draw a sketch, not to
2 scale sketch, of the scene?

3 A. Yes, I did.

4 Q. All right, sir. What I want to do now,
5 Mr. Porter, is to show you what's been marked State's
6 Number 71 for identification and ask if that was an
7 enlargement of the sketch that you prepared in the
8 course of your duties?

9 A. Yes, it is.

10 Q. And obviously it's not to scale, but does that
11 accurately depict what you observed at the scene?

12 A. Yes, sir. And I can attest to it with my
13 initials on the top left-hand corner.

14 Q. All right.

15 MR. BAILEY: Your Honor, I would offer this
16 into evidence at this time.

17 MR. CUMMINGS: Based on limitation the
18 gentleman stated is not to scale and with that
19 following stipulation without objection, Judge,
20 as to his sketch.

21 THE COURT: Very well. Admitted as State's
22 Exhibit 71.

23 (Entered into evidence was State's Exhibit 71,
24 sketch.)

25 Q. In the course of your duties, Mr. Porter, you

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1 normally take photographs of a crime scene?

2 A. That's correct.

3 Q. Did you do that in this case?

4 A. Yes, sir.

5 Q. All right, sir. And I'm going to hand you a
6 series of photographs marked 55 through 69 for
7 identification only. And I would ask if you would
8 look at each one of them and ask whether or not you
9 are familiar with those photographs and whether or
10 not they accurately depict what observations you made
11 on February 17th, 2001?

12 A. (The witness complies.) Yes, they are.

13 Q. All right, sir. And would you state whether or
14 not each one of those photographs relate to something
15 that you've also got depicted in that sketch?

16 A. Yes, sir. They do.

17 MR. BAILEY: I would offer those into
18 evidence, I believe Mr. Cummings has viewed them
19 previously.

20 THE COURT: Let him see them again, please.

21 MR. CUMMINGS: Your Honor, without
22 objection.

23 THE COURT: In evidence without objection.
24 They are photographs.

25 (Entered into evidence were State's Exhibits 55,

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1 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67,
2 68, 69, photographs.)

3 Q. Mr. Porter, what I'm going to do, sir, I'm going
4 to hand you these photographs back here and I'm going
5 to set the pedestal up here. Mr. Porter, I'm going
6 to ask you, if you would, to take those photographs
7 and when you refer to the photographs refer to them
8 by exhibit number in the order that you want to
9 present them, explain to the jury what they depict
10 and how they relate to the sketch that you made which
11 is State's Number 71. So I'll give you a second to
12 put those in order. I'll give you as much time as
13 you need.

14 If you could stand in position where
15 you can refer to the sketch without blocking any of
16 the jurors' views. As you -- each picture, if you'll
17 just give the number and hand it to me I'll put that
18 on the display, all right?

19 A. This is State's Exhibit 55.

20 THE COURT: You've got a good strong voice,
21 just remember Ms. Keil has got to take down what
22 you are saying.

23 THE WITNESS: Thank you.

24 Q. Before we get into that, and I apologize for
25 kind of getting this thing out of order, but you

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1 testified that your area that you concentrated on was
2 some 800 yards away from the burned car, that you
3 observed the burned car?

4 A. Yes, I did.

5 Q. Could you point out the location that you
6 observed the burned car on that photograph?

7 A. The car on the enlargement photograph is going
8 to be right here, in this area right here.

9 Q. Okay. All right.

10 A. And if you come out, directly out into the
11 middle of the roadway from the little carted out path
12 right here, you follow it down to 802 feet,
13 approximately 802 feet to where you see the number 9
14 and that's our reference point right here on Nursery
15 Road.

16 Q. All right, sir. Let me ask you a little bit
17 about the sketch before you get in the pictures.
18 Nursery Road runs left to right?

19 A. Yes, it does. Which dead ends to Independent
20 School Road.

21 Q. Is there a traffic control device or a stop
22 sign?

23 A. There is a stop sign located, I believe, about
24 right here.

25 Q. All right, sir. Okay. If you would, just if

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1 you got a pen here, if you could just -- if you would,
2 just indicate the location, just right "stop" where
3 the stop sign is located.

4 A. (The witness complies.)

5 Q. Roughly where it's located.

6 A. From what I recall I believe it's approximately
7 right here.

8 Q. All right.

9 A. Right here it's a dead end where you have to
10 turn left or right. You can't go straight, there's
11 an arrow at that point.

12 Q. So that circle is your stop sign?

13 A. Roughly what I recall, yes, sir.

14 Q. All right. Okay. Go ahead, if you would,
15 explain those photographs in relation to the sketch,
16 sir.

17 A. If you come down from where the car is and you
18 go like as I stated earlier approximately 802 feet,
19 you'll come to a section approximately right here on
20 the sketch which is 435 feet from Independent School
21 Road. There's a little cutout right here, like a
22 little path that leads back up into the woods which
23 is depicted in the picture right here. There's
24 basically two pine trees right here, if you can see
25 those, there's a cleared out kind of path right here.

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1 That's where that exhibit is taken.

2 Q. You're standing in the road looking into the
3 woods in that photograph?

4 A. On the diagram itself there's an X marked for
5 our diagram and measurements and that's approximately
6 where I was sitting when the photograph was taken, at
7 this point looking into the trees.

8 Q. All right, sir.

9 A. State's Exhibit 69. State's Exhibit 69 is
10 standing in the woods right behind the area labeled
11 14 and 15 pointing out directly into the road where
12 on a photograph you can see I'm just back here and
13 this is Nursery Road running parallel this way.

14 Q. All right.

15 A. State's Exhibit 65. This is going to be a
16 photograph of -- when we respond to crime scenes we
17 have evidence markers which you will see in the
18 photograph which has different numbers on them and
19 they're in yellow. And that depicts, that shows
20 different items of evidence that we were actually
21 concentrating during our processing. And in this
22 particular one it is showing items 7 and 10 which
23 is -- 7, 8, 9, 11, excuse me, showing these items on
24 Nursery Road themselves as a general photograph.

25 Q. All right. What are those items depicted? I

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1 know you can't see them from that distance, but what
2 do those markers indicate?

3 A. Item 11, which is right here, is going to be a
4 .380 Winchester shell casing. And then over to the
5 left is going to be item 7 which is on the shoulder
6 of the roadway which is going to be another .380 auto
7 shell casing. And then right -- let's see, this is
8 going to be 8. Item 8 is going to be another .380
9 Winchester auto cartridge, and then right back here
10 on the far right side is item 9 which is a pool of
11 blood that was noticed at the scene --

12 Q. All right, sir.

13 A. -- in the middle of the road.

14 Q. Where are those on number 71?

15 A. These are depicted right here, 7, 8, 9, and 11.
16 That photograph represents a general photography
17 picture of these items right here.

18 Q. Okay.

19 A. State's Exhibit 66 is another photograph of
20 items 12, 3, 4, and 6, which is an area right here on
21 Nursery Road with the photograph being taken from
22 left to right. And you can also -- I'm not sure if
23 y'all can see it where you're at, but back up in this
24 general area closer to the Suburban the markers 8, 9,
25 and 11 can be seen up here. So it's a photograph

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1 from lower in the road shooting up towards
2 Independent School Road.

3 Q. Okay.

4 A. In those you have item 6 which is another .380
5 auto Winchester cartridge casing. Item 3 which is
6 right here is going to be a bullet which is the top
7 portion of the casing. And 4 and 5 which are these
8 two cones right here, markers, are going to be more
9 .380 Winchester cartridge casings.

10 Q. All right, sir.

11 A. State's Exhibit 60. This is a closeup of item 3
12 which is located right here on the diagram which is a
13 .380 cartridge casing. And the cartridge casing's
14 right here. And that's just marking that piece of
15 item of evidence.

16 Q. Okay.

17 A. State's Exhibit 59 is also on the diagram listed
18 as number 4, which is another .380 cartridge casing,
19 which is located right here in the middle of the road
20 on Nursery Road itself.

21 State's Exhibit 58 is item number 5
22 which is another .380 cartridge casing which is
23 located right here in the photograph.

24 State's Exhibit 57 is item number 6
25 also on the diagram which is on the shoulder in the

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1 roadway which is another .380 Winchester cartridge
2 casing, excuse me, and it's right here in the sketch
3 as item number 6.

4 State's Exhibit 56 is listed on the
5 diagram as number 7 which is this area right here,
6 which is at another .380 cartridge casing which is
7 located right here in the photograph.

8 State's Exhibit 64 is another .380
9 auto Winchester cartridge casing listed on the
10 diagram in the middle of the road as number 8 with
11 the cartridge casing in the photograph being right in
12 front of the marker.

13 State's Exhibit 67 is evidence marker
14 number 9 which is also number 19 on the diagram which
15 is located in the middle of the road which was a pool
16 of blood which also contained some hair and the
17 backing of an earring.

18 State's Exhibit 63 is listed on the
19 diagram as number 10 which is also on the shoulder of
20 the roadway, which is located right here in the
21 photograph just below the number 10, is a black
22 cigarette lighter.

23 State's Exhibit 62 is also listed on
24 the diagram as number 11 which in the photograph just
25 below the marker is another .380 cartridge casing.

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1 State's Exhibit 61 is also on the
2 diagram listed as number 13 which is approximately
3 18 feet 2 inches off the roadway at the beginning of
4 the wood line of the path we talked about earlier.
5 And in the photograph this is a branch and on the
6 branch after doing tests it was --

7 MR. CUMMINGS: Objection, Your Honor, at
8 this point.

9 Q. Let me ask don't get into the tests, but why did
10 you take that photograph?

11 A. It appeared to be a blood stain on that branch
12 itself.

13 Q. All right.

14 A. State's Exhibit 68 is a photograph of markers
15 number 14 and 15 on my diagram which is approximately
16 29 feet 1 inches in the wood directly in the middle
17 of the path, is number 14, it's looks to be a black
18 woman's dress shoe which is in the photograph on the
19 bottom left-hand side. Then item 15 which is also
20 the same as on the diagram, is going to be where the
21 woods were turned up, the pine straw was kind of
22 ruffled a little bit with a red substance on it also.

23 Q. All right, sir. And that's all the photographs
24 that you have at this point in time; is that correct?

25 A. Yes, it is. Yes, sir.

Edward A. Porter - Direct Exam

1 Q. All right. You can go ahead and have a seat for
2 me.

3 A. (The witness complies.)

4 Q. Did you collect all these different items, the
5 shell casings, the bullet and so forth?

6 A. Yes, I did.

7 Q. And what appeared to be blood, did you swab
8 that?

9 A. Yes, I did. And also collected some of the
10 branches and pine straw.

11 Q. All right, sir. And the total number of fired
12 bullets that you collected was how many?

13 A. Six.

14 Q. I'm sorry?

15 A. Six.

16 Q. Fired bullets?

17 A. Oh, fired there's one bullet itself.

18 Q. How many shell casings?

19 A. Six cartridge casings.

20 Q. Thank you, sir. Please answer any questions Mr.
21 Cummings may have for you.

22 MR. BAILEY: I would reserve the right to
23 recall Mr. Porter later on.

24 THE COURT: All right. Cross-examination.

25

Edward A. Porter - Cross-Exam

CROSS-EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Good morning, sir.

4 A. How are you?

5 Q. Mr. Porter, let me begin by stating that
6 obviously you work out of SLED headquarters in
7 Columbia, sir?

8 A. Right.

9 Q. And approximately what time did you receive a
10 phone call for assistance from a local agency, sir,
11 in particular Dorchester County?

12 A. I received the call at 9:45 that morning.

13 Q. All right, sir. And you arrived there, I think
14 you stated for Mr. Bailey, about 11:00...?

15 A. Forty.

16 Q. Okay. It's important that you keep track of
17 your times and that's what you've done?

18 A. Correct.

19 Q. All right, sir. When you got there is it fair
20 to say there were a lot of law enforcement personnel
21 and fire people still out there?

22 A. No, that's incorrect.

23 Q. All right. Tell me how many were out there when
24 you got there.

25 A. No more than four or five at the max.

Edward A. Porter - Cross-Exam

1 Q. All right. Did you write down which people were
2 there at the scene, sir?

3 A. No, I did not.

4 Q. Isn't it kind of important to go down like a
5 scrivener to make sure that everybody you got there
6 when you got to the crime scene was maintained with
7 integrity?

8 A. The portion that I was actually dealing with was
9 actually one person that I know of for a fact.

10 Q. Who was that, sir?

11 A. Earl Asbell.

12 Q. Okay. But prior to that you don't know who was
13 around there or what happened?

14 A. No, I do not.

15 Q. Okay. And that's -- and it's a fair answer
16 back, sir, and I understand that I've asked you a
17 question that you didn't arrive there until 11:40?

18 A. That's correct.

19 Q. All right. When you first got there, do you
20 remember where you parked your vehicle?

21 A. Yes, I do.

22 Q. And where was that, sir?

23 A. Just below on the sketch. If I can --

24 Q. If you need to reflect back to that I will hold
25 it back up for a moment.

Edward A. Porter - Cross-Exam

1 A. If you don't mind.

2 Q. No, sir. Let me hand that to you first and then
3 I'll let you tell these good folks here, I know your
4 voice is big enough, too. If you need to stand back
5 up to show them that's up to you, sir.

6 THE COURT: You may.

7 A. When we first arrived, the Crime Scene Unit, we
8 parked our vehicles way back here on Nursery Road
9 prior to even where the original scene was located.

10 Q. All right, sir. And no question about it you're
11 way down here with your vehicle?

12 A. Yeah. Right back in this general area before
13 you get to the path up here.

14 Q. Okay. That had been roped off at that time?

15 A. Yes, sir.

16 Q. Okay. And if I may have that back just a
17 moment.

18 A. (The witness complies.)

19 Q. Thank you. Okay. If you'll have a seat again,
20 sir. Thank you for your kindness.

21 A. (The witness complies.)

22 Q. Is it the customary practice, sir, by you or the
23 crime scene training you got, that before anything is
24 marked out, marked down, cones put anywhere, that you
25 take the photograph of the general area first just to

Edward A. Porter - Cross-Exam

1 remember where you were and what happened?

2 A. That's correct.

3 Q. All right, sir. And usually you take out like a
4 little -- for lack of better words, like an index
5 card or something, a note, and you write down date,
6 time, location, and place so you can remember what
7 your photographs were?

8 A. No, we don't do that.

9 Q. You don't do that at all?

10 A. No, sir.

11 Q. Okay.

12 A. If I'm understanding your question correctly.

13 Q. The first thing is when you get out there how do
14 you know the roll of film you're having developed is
15 what you just did? You mark down, take a photograph
16 of the date, time, and place, or location in the
17 roadway?

18 A. Each photograph?

19 Q. Yes, sir.

20 A. No, we do not do that.

21 Q. All right. You don't take a spontaneous,
22 general photograph before you even start putting down
23 cones or markers?

24 A. We take general photographs, but we do not
25 document the time and weather and anything else to

Edward A. Porter - Cross-Exam

1 them.

2 Q. Okay. And the reason I asked that is because
3 when you started showing the photographs, items 55
4 through 69, those were all where things were, had
5 like the little plastic cones or markers out except
6 for the general area of the woods, right?

7 A. Correct.

8 Q. Okay. And who pointed those items out to you,
9 did you find them yourself or did other people point
10 them out to you, sir?

11 A. When we first responded there were orange
12 markers or cones better yet marking those items which
13 was right there.

14 Q. So somebody else did that?

15 A. That's correct.

16 Q. Before you even got there?

17 A. That's correct.

18 Q. Okay.

19 A. And then we replaced our cones with their cones.

20 Q. All right. So you -- somebody else did
21 something and then you came back along afterwards and
22 you remarked it with your markings for
23 identification?

24 A. That's correct.

25 Q. All right. Now, besides taking photographs you

Edward A. Porter - Cross-Exam

1 stated you also do certain other things at SLED,
2 right?

3 A. That's correct.

4 Q. Okay. If I show you what's been marked as
5 State's Exhibit Number 62.

6 MR. CUMMINGS: And, Your Honor, I'm kind of
7 illiterate with machinery, I wonder if we could
8 just turn that on for a moment for the jury?

9 Q. And, again, sir, you probably are going to have
10 to refer to your notes or -- and if you need to also
11 I would ask as the other kind officer here to give
12 you your sketch back if you need, too. But item 11
13 on your thing, what does that depict to you, sir, in
14 your photograph that you took?

15 A. A .380 auto Winchester cartridge casing.

16 Q. All right, sir. You carry a sidearm, obviously,
17 by SLED?

18 A. That's correct.

19 Q. You're a sworn, certified law enforcement
20 officer, been through the academy, correct?

21 A. That's correct.

22 Q. All right. Can you look at that shell casing
23 and see if it's of a normal, consistent pattern of a
24 shell casing, or is there anything wrong with the
25 shell casing? If you want to take a look at this

Edward A. Porter - Cross-Exam

1 picture.

2 A. I would have to look at the photograph itself.

3 Q. Beg your attention for a moment. I've been
4 showing you what's marked State's Exhibit 62, sir.
5 Is there anything out of the ordinary of that shell
6 casing?

7 A. It appears to be indented.

8 Q. Indented. That's how you found it, that's how
9 you saw it photographed, correct?

10 A. That's correct.

11 Q. Obviously, sir, you wouldn't change anything,
12 you didn't do anything on that photograph?

13 A. No.

14 Q. So obviously it is an indented shell casing,
15 correct?

16 A. That's how I would describe it.

17 Q. Okay. Let me put that back up there just a
18 moment, publish that to the jury.

19 I'm going to show you first to the
20 jury by publishing this item, it pops up on the TV
21 screen, Exhibit Number 57, sir, then I'll ask Her
22 Honor if I can approach you again to show you the
23 photograph. On your photograph, your notes, sir,
24 what is photograph 57 showing you, sir?

25 A. A .380 auto Winchester cartridge casing.

Edward A. Porter - Cross-Exam

1 Q. All right, sir.

2 MR. CUMMINGS: If I may, again, Your Honor,
3 approach the witness?

4 THE COURT: You may.

5 Q. Does this shell casing, sir, appear to be out of
6 the ordinary when you photographed it or look at it
7 now in this photograph?

8 A. From looking at this picture, yes.

9 Q. What do you see out of the ordinary, sir, of the
10 shell casing?

11 A. It appears the rim is slightly indented also.

12 Q. Indented, all right, sir.

13 I'm going to show you what is marked
14 State's Exhibit and identification Number 58, sir,
15 again, first to the jury, and then to you, sir,
16 kindly. State's Number 58, if you would look at that
17 .380 shell casing also, sir.

18 A. It's another .380 auto Winchester cartridge
19 casing.

20 Q. And does it appear out of the ordinary to you,
21 sir?

22 A. It appears to be in the middle of the roadway
23 with indentions in it also.

24 Q. Indentions means like it's not in a cylindrical
25 form, is what you're saying, basically?

Edward A. Porter - Cross-Exam

1 A. Has a dent in it.

2 Q. Thank you, sir. While I'm up here let me just
3 show you what's been marked Number 59, and I'll
4 publish it back on way to the jury and ask you if you
5 can determine that shell casing, how it looks?

6 A. No, I cannot.

7 Q. You can't, okay.

8 A. Not from that particular --

9 Q. Did you take any --

10 A. Not from that particular photograph.

11 Q. Not from that photograph, all right, sir.

12 MR. CUMMINGS: Let me show it to the jury
13 like I promised. Number 59 on the screen,
14 please.

15 Q. I'm next going to show State's ID in evidence
16 Number 58. And, again, sir, I'll ask you to take a
17 look at that, see if there's anything out of the
18 ordinary of that shell casing that you can examine
19 from your photograph?

20 A. Appears to be slightly dented or indented also.

21 Q. Okay, sir. Thank you. Now, it was your job
22 that day, sir, as a SLED officer to come down at the
23 request of Dorchester County, and you photographed
24 all these items as you were shown where they've
25 already been marked or where the cones were, correct?

Edward A. Porter - Cross-Exam

1 A. I would disagree with that.

2 Q. All right, sir. What would you say then?

3 A. The items that you see photographed here were
4 pointed out to us at that time; however, a field
5 search was also conducted for additional items of
6 evidence also by us.

7 Q. Did you do that first before you took the
8 photographs, or did you take the photographs first
9 and then do the field search?

10 A. We did them both times, before we took
11 photographs, after we took photographs.

12 Q. Okay. When you were there, Agent, were there
13 any civilians walking around, people that were
14 non-certified law enforcement officers either by
15 uniform or by either their badges on their belts or
16 whatever, sir?

17 A. Not that I saw.

18 Q. Not that you saw. You wouldn't let people walk
19 around there whenever you were taking photographs,
20 would you?

21 A. Not at my particular scene I would not.

22 Q. Because you understand the importance of
23 maintaining the integrity of a scene that you later
24 on might be testifying to?

25 A. It would depend on that particular agent and how

Edward A. Porter - Cross-Exam

1 he feels comfortable with it.

2 Q. All right, sir. Understanding the Dorchester
3 County deputies called you for assistance because
4 you're a state agency that has the equipment and the
5 availability to respond to assist law enforcement; is
6 that the purpose, sir?

7 A. Correct.

8 Q. Okay. And then when you get down there on your
9 sketch that you drew, it's not to scale, we
10 understand that, is it fair to say, sir, that your
11 sketch and your photographs depict what you saw when
12 you got there at 11:40 a.m. on the 17th?

13 A. Yes, it does.

14 Q. Okay. And you can't say what happened before
15 that, can you, sir, as a professional?

16 A. No, I cannot.

17 Q. And you can't say how these rounds got on the
18 roadway?

19 A. No, I cannot.

20 Q. You can't say how they were dented?

21 A. No.

22 Q. All right. You can't say how, or where, and
23 when these items were found by anybody, can you,
24 other than you?

25 A. No, I cannot.

Edward A. Porter - Cross-Exam

1 Q. And as far as the location of other items here,
2 you understand that you have taken photographs in
3 what you have marked as 15 on your sketch, the turned
4 up ground in items 14 and 15, sir?

5 A. Yes, sir.

6 Q. Okay. You can't tell these ladies and gentlemen
7 of the jury today who turned that ground up, can you,
8 sir?

9 A. No, I cannot.

10 Q. And you can't say when it was turned up other
11 than when you got there at 11:40 this is how you
12 found it?

13 A. That's correct.

14 Q. Okay. Now, did you take any photographs of the
15 people that were there in law enforcement to verify
16 and document who was present in your crime scene?

17 A. No, I did not.

18 Q. Evidence technicians, or deputies out there or
19 anything in the general crime scene? Because I
20 haven't seen any of those.

21 A. No, I have not.

22 Q. I know we have the one picture of the Suburban
23 down one end of the roadway.

24 A. That's correct.

25 Q. All right.

Edward A. Porter - Cross-Exam

1 MR. CUMMINGS: Beg the Court's indulgence
2 one moment on this gentleman.

3 THE COURT: Yes, sir.

4 (Mr. Cummings and Ms. Hardee-Thomas conferring
5 with Mr. Bowman.)

6 MR. CUMMINGS: Your Honor, subject to Mr.
7 Bailey recalling this gentleman, I have no
8 further questions based on that.

9 THE COURT: All right.

10 MR. CUMMINGS: I'll make sure I return
11 these back to Madam Court Reporter.

12 THE COURT: Any redirect?

13 MR. BAILEY: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. Mr. Porter, if you have an empty shell casing
17 laying on a paved road and a car runs over it would
18 you expect it to bend?

19 A. Yes, I definitely would.

20 THE COURT: Any recross?

21 RECROSS-EXAMINATION

22 BY MR. CUMMINGS:

23 Q. How could a car come down that road and run over
24 it if it has been protected, Mr. Porter? I mean that
25 of the highest respect to you, sir.

Edward A. Porter - Recross-Exam

1 A. From my knowledge of the scene it occurred
2 several hours before law enforcement got there;
3 therefore, the road was open and anyone -- it could
4 have happened at that time.

5 Q. Okay. Anyone or anybody could have interfered
6 with this before you good gentlemen and ladies got
7 there?

8 A. It's possible.

9 Q. Thank you.

10 MR. CUMMINGS: That's all the questions I
11 have, Judge.

12 THE COURT: All right. You may come down,
13 will remain subject to being recalled.
14 (Whereupon, the witness steps down from the
15 witness stand.)

16 MR. BAILEY: Thank you. James Helms.
17 (James Helms, called as a witness, having first
18 been duly sworn, is examined and testifies as
19 follows:)

20 DIRECT EXAMINATION

21 BY MR. BAILEY:

22 Q. Mr. Helms, please tell the jury where you're
23 employed.

24 A. I'm currently employed at the South Carolina Law
25 Enforcement Division, also known as SLED.

James Helms - Direct Exam

1 Q. All right, sir. What do you do at SLED?

2 A. I'm assigned to the arson investigation section.

3 Q. Give us, please, your educational background.

4 A. Attended high school in Virginia, originally
5 from South Carolina, attended high school in
6 Virginia, returned to South Carolina, Columbia, to
7 attend the University of South Carolina, got my
8 four-year degree from USC at which time I joined the
9 Lexington County Sheriff's Department.

10 Q. All right, sir. How long did you work for
11 Lexington County?

12 A. Worked Lexington County approximately nine
13 years.

14 Q. All right, sir. And you may have answered this
15 before, but you're in arson investigations at SLED?

16 A. Correct, sir.

17 Q. What training have you had in arson
18 investigation?

19 A. Have taken the arson investigation course
20 presented by the South Carolina Criminal Justice
21 Academy.

22 Q. All right, sir. And how long was the basic
23 arson course you took?

24 A. It was a two-week class.

25 Q. All right, sir. Is there a test or a

James Helms - Direct Exam

1 certification you get after you finish that course?

2 A. That's correct, sir.

3 Q. Did you get certified when you completed the
4 course?

5 A. Yes, sir. I did.

6 Q. All right, sir. And I want to call your
7 attention to February the 17th, 2001 and ask whether
8 or not in the course of your duties as an arson
9 investigator for SLED whether you were sent to a
10 location in Dorchester County on Nursery Road near
11 Reevesville?

12 A. That is correct, sir.

13 Q. All right, sir. I would ask whether -- you can
14 use your notes if you wish to refresh your memory,
15 but approximately what time did you arrive at the
16 scene on Nursery Road on February 17th, 2001?

17 A. I will say approximately 5:00 to 5:30 a.m.,
18 during the early morning hours.

19 Q. All right, sir. And tell the jury, please, what
20 general observations you made when you arrived on
21 Nursery Road.

22 A. Upon arrival noticed a small four-door vehicle
23 located approximately 100 yards off the paved surface
24 of Nursery Road, which Nursery Road being a paved
25 surface. Observed a vehicle which initial -- the

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1 initial sight appeared to be completely burnt sitting
2 in this field or at a -- the entrance to a field
3 there's a section of wood line that was accessible by
4 what I commonly refer to as a tractor road where
5 tractors are brought into a field to do work.

6 Q. All right, sir. Hold on a second, I want to
7 show you something that's in evidence, I think it's
8 State's 71 which has been testified to as being a
9 sketch drawn by SLED Agent Eddie Porter, and ask
10 whether or not you've seen that before.

11 A. Yes, sir. I have.

12 Q. All right, sir. And if you would, does that
13 show the location of the burned automobile as you
14 observed it?

15 A. That is correct. As designated by the box
16 showing SC registration 153LMA.

17 Q. Okay. Could you point that out to the jury,
18 please?

19 A. It would be located here.

20 Q. You got your thumb in the lower right-hand
21 corner of that. There's a box there?

22 A. Correct, sir.

23 Q. All right, sir. Go ahead and have a seat.

24 A. (The witness complies.)

25 Q. Now, was the fire out by the time you got there,

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1 Mr. Helms?

2 A. Yes, sir.

3 Q. All right, sir. And did you take any
4 photographs of the burned automobile?

5 A. I did, sir.

6 Q. Okay. I'm going to hand you what's been
7 previously marked for identification at this time as
8 State's 17, 18, 19, 12, 13, 14, 15, 16, and ask
9 whether or not these pictures accurately depict the
10 car as you observed it on the morning of
11 February 17th, 2001?

12 A. Yes, sir. They do.

13 MR. BAILEY: Your Honor, would offer these
14 into evidence at this time.

15 MR. CUMMINGS: Thank you, Judge, without
16 objection.

17 THE COURT: Very well. State's Exhibits in
18 evidence without objection.

19 MR. BAILEY: Thank you, Your Honor.

20 (Entered into evidence were State's Exhibits 12,
21 13, 14, 15, 16, 17, 18, 19, photographs.)

22 Q. I'll get you to stand up, please, if you would,
23 and I'll hand this to you. If you can just refer to
24 them by case one at a time and tell the jury what
25 they depict. And if you could stand beside of the

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1 screen where everybody can see you.

2 A. All right, sir. What's marked as State's

3 Exhibit Number 17 --

4 THE COURT: You're blocking some of jurors,
5 Mr. Helms, you're going to have to be careful.

6 Are these going to go on the
7 television?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: All right. They're going to go
10 on the television, very well.

11 Q. If you'll just read, give me the number, hand it
12 to me and I'll put it on the screen and then you can
13 refer to it.

14 A. All right. This is State's Exhibit Number 17.
15 That would be the vehicle, a general overall view of
16 the vehicle that was located as I described before
17 being approximately, give or take, 100 yards off the
18 main road situated at the entrance to a field with a
19 wood line, but that would be the vehicle in question.

20 Q. Okay.

21 THE COURT: Mr. Helms.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Let me hand you a pointer.

24 THE WITNESS: All right. Thank you, ma'am.

25 THE COURT: You can use that and that way

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1 you got a little more freedom to stand back.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: You're very welcome.

4 Q. Next one.

5 A. Next one is State's Exhibit Number 18. Again,
6 the same vehicle as before. You'll note in the
7 interior of the car, that being the steering wheel,
8 driver's side door here, again, showing almost
9 complete burning of the entire interior of the
10 vehicle as far as the passenger compartments go.

11 Next one is State's Exhibit Number 19.
12 This would be the view of the same vehicle from the
13 front, that being the front grill, headlights area,
14 that would be then engine compartment with the trunk
15 raised here in the back. The area around it is noted
16 has been burned away which consisted of dry, tender
17 grass which originated outward from this vehicle and
18 the grass burned from the vehicle back outward.

19 State's Exhibit Number 12, again, the
20 same vehicle as noted before, same view looking from
21 the front. That would be where the radiator was at
22 the front end of the car looking back at a slightly
23 lower angle and a general photo showing the entire
24 condition of the front end of that vehicle.

25 Next one is State's Exhibit Number 13.

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1 This would be a view of the vehicle as described
2 before from the passenger side. Again, an overall
3 photograph showing the general condition of the
4 vehicle, this would be the passenger, front
5 passenger, this being the rear passenger side, trunk
6 open, that would be the front of the vehicle. Again,
7 this would be the area that burned away that was dry
8 grass as a result of the fire.

9 Next one is State's Exhibit Number 14.
10 This photograph was taken showing the engine
11 compartment and rear wheel of the driver's side.
12 This picture originally was taken to try to show the
13 condition of the engine. However, due to the fact
14 the engine -- correction, the hood was in the locked
15 position, this frame which used to be the hood could
16 not be raised.

17 Next one is State's Exhibit Number 15.
18 This is a photograph of the victim's vehicle again
19 shown from the rear, this being the trunk lid that is
20 raised, this area being down here being the trunk
21 where the victim was located.

22 Q. The victim's been removed; is that correct?

23 A. That is correct. She has been removed at this
24 point in time. The -- you may note a few holes here,
25 that is the back of the seat. Those small holes

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1 there are made during the design of the vehicle which
2 is normally covered by cloth or cushion for the back
3 seat when you sit down or lean up against. That
4 would be the taillight that has been burned away and
5 that would conclude on that picture.

6 Next one is State's Exhibit Number 16.
7 State's 16 shows, again, a little closer-up view of
8 the passenger side of the vehicle. Of interest in
9 this picture was this pile of glass here on the
10 ground. That pile of glass indicates to me that at
11 the time of the fire that this window was in the
12 rolled up position. What occurs with the glass being
13 in a rolled up position when the fire occurs, the
14 glass, being safety glass, essentially crumbles,
15 melts, falls down. Had a window been in a rolled
16 down position normally you would find the glass
17 inside this door in the door frame itself.

18 THE COURT: Watch pressing the button when
19 you're on the TV, just putting the red on the
20 jurors and I don't want you to accidentally put
21 that in any of their eyes. Just be careful if
22 you're pointing you mash it down, if not release
23 it.

24 THE WITNESS: Yes, ma'am. I'll return this
25 to you before I --

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1 THE COURT: I just noticed it dancing on
2 the heads of our jurors.

3 A. Again, the tire being burned away. That would
4 conclude that.

5 Q. All right, sir. Would you have a seat, please.

6 A. (The witness complies.) Thank you, sir.

7 Q. All right, sir. And could you characterize the
8 burn pattern of the car, the pictures that you just
9 described?

10 A. The burn of that vehicle was one where it had
11 become unusually -- I don't know how to phrase it --
12 unusually destructive. Normally cars or vehicle
13 fires with the material that are made into vehicles,
14 whether it be the carpet, the cushions for the seats,
15 the lining, et cetera, typically are not that
16 combustible, it usually takes a fair amount of heat
17 to get them started to burn.

18 With this vehicle when I was examining
19 the vehicle there was probably less than 1 percent of
20 any carpet left in the vehicle. I do not recall
21 there being any -- any foam padding, any cloth
22 material, no -- no lining overhead. Everything that
23 was possibly capable of being consumed by fire that
24 did in fact burn in this vehicle as far as the
25 passenger -- or the interior of the vehicle, front,

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1 rear seats, as well as the trunk.

2 The engine area, again, many parts are
3 designed in the engine compartment are in fact
4 designed for high temperatures just for the obvious
5 nature of what they do. There were some items,
6 though, that were left partially in tact in the
7 engine compartment that would indicate to me the fire
8 began inside the vehicle in the passenger area as
9 versus a fire that began underneath the engine and
10 had time to damage or burn longer, thus do more
11 damage to -- to belts, hoses, et cetera.

12 The one thing that also was -- stood
13 out was the fact that part of the VIN plate did not
14 become destroyed by the fire. The VIN plate, again,
15 is located on the front of the dashboard right in
16 front of the steering wheel, if you would, front,
17 left dashboard.

18 Again, typically with a fire that
19 would start in the engine block and start moving
20 backwards towards the passenger compartment you would
21 expect to see this. This VIN plate was made out of
22 basically a thin strip of metal or aluminum would
23 usually become consumed, melted, or destroyed by the
24 fire.

25 Q. All right, sir. And do you have an opinion as

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1 to whether or not arson was the cause of this car
2 burning?

3 MR. CUMMINGS: Your Honor, may I please be
4 heard on this gentleman's opinion as a matter of
5 law?

6 THE COURT: Sure.

7 MR. BAILEY: I'll back up a little bit,
8 Your Honor.

9 THE COURT: All right.

10 Q. Mr. Helms, you testified earlier that you
11 attended a two-week course. Where was that course
12 given?

13 A. It was given in Columbia, South Carolina.

14 Q. All right, sir. And you were certified after
15 you completed that course?

16 A. Correct.

17 Q. What is the nature of that certification?

18 A. As an arson investigator.

19 Q. All right, sir. And how long have you been in
20 the arson part of the State Law Enforcement Division?

21 A. Approximately just a little over two years.

22 Q. All right, sir. And is there an on-the-job
23 training period where you're put under the guidance
24 of somebody else?

25 A. Correct, sir, for approximately the first --

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1 first six months of employment or beginning in the
2 arson unit you are, I won't say assigned to one other
3 agent, but you essentially are assigned to all the
4 other agents in that unit. When there's a case
5 assigned or there's a fire occurs you then ride with
6 that agent to that scene and work with him.

7 Q. All right, sir. And approximately how many fire
8 scenes did you work as a SLED agent under the
9 supervision of a more senior agent?

10 A. Approximately 30.

11 Q. All right, sir. And after you completed those
12 30 cases under somebody's supervision, were you then
13 authorized to go ahead and conduct those on your own
14 as the chief investigator?

15 A. Yes, sir. I was.

16 Q. All right, sir. And since you acquired that
17 status approximately how many fires have you
18 investigated?

19 A. To date I would say approximately 100 fires.

20 Q. In addition to the 30 that you did under the
21 supervision of somebody else?

22 A. Thirty under supervision, 70 on my own for a
23 total of approximately 100.

24 Q. Total of about 100 fires?

25 A. Yes, sir.

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1 Q. Have you testified in court in the past?

2 A. Yes, I have.

3 Q. As an expert in the field of arson
4 investigation?

5 A. Yes, sir.

6 MR. BAILEY: Your Honor, I would tender
7 Mr. Helms as an expert in the field of arson
8 investigation.

9 THE COURT: Any voir dire?

10 MR. CUMMINGS: Just a few questions of this
11 polite gentleman, please.

12 THE COURT: Certainly.

13 VOIR DIRE EXAMINATION

14 BY MR. CUMMINGS:

15 Q. I'll stand right here, make it quick. You had a
16 two-week course in arson at the academy, taught by
17 the academy, correct, sir.

18 A. Taught by the South Carolina Criminal Justice
19 Academy and the South Carolina Fire Academy in
20 conjunction.

21 Q. All right, sir. And you have not published any
22 materials or written any materials about arson in
23 your career in the last two years?

24 A. No, sir.

25 Q. All right, sir. And prior to that I believe you

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1 told Mr. Bailey and told us that you worked for
2 Lexington County as an investigator, a road deputy?

3 A. Approximately two years a road deputy,
4 approximately six, seven years as a criminal
5 investigator.

6 Q. All right, sir. Not in arson?

7 A. Correct.

8 Q. Okay. And thereafter you've done 30 under the
9 supervision of another agent who had the same type of
10 training at the academy of a two-week course?

11 A. Some of the other agents I was under actually
12 attended national classes put on by -- ATF puts on
13 one school and I want to say it's FBI puts on another
14 school.

15 Q. Yes, sir. And you have not attended those
16 schools as of those dates, sir?

17 A. No, sir.

18 Q. In particular as of February 17th of last year
19 you had not attended those specific academy classes,
20 sir?

21 A. No, sir.

22 MR. CUMMINGS: I just have a matter of law,
23 Judge, if....

24 THE COURT: All right. Let me see you,
25 y'all approach.

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1 (Whereupon, a bench conference was held
2 off the record in the presence of the
3 jury, but out of the hearing of the jury.)

4 THE COURT: Over the objection of the
5 defense I will allow him to testify as an
6 expert.

7 MR. BAILEY: Thank you, Your Honor.

8 THE COURT: Very well. If I may, Mr.
9 Bailey.

10 MR. BAILEY: Yes, ma'am.

11 THE COURT: Short explanation.

12 Ladies and gentlemen, at the time of
13 the concluding instruction I will give you some
14 instruction regarding expert testimony, but I
15 would tell you at this point that under our law
16 normally one is not allowed to give their
17 opinions. However, there's an exception to this
18 and that is by virtue of when by one's
19 knowledge, training, experience, education,
20 profession that they have a particular area
21 which may be of assistance to you in
22 understanding the evidence that they may testify
23 as to those opinions. And that is about what
24 you will hear. You will hear that. Ladies and
25 gentlemen, it will be up to you to determine as

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1 you do each and every witness and we'll talk
2 about that in the concluding instruction, what
3 weight to give to the expert opinion.

4 Thank you, Mr. Bailey.

5 MR. BAILEY: Thank you, Your Honor.

6 BY MR. BAILEY:

7 Q. Mr. Helms, do you have an opinion as to whether
8 or not the cause of the fire of this automobile that
9 you observed was arson?

10 A. Yes, sir. I do have an opinion to that.

11 Q. All right, sir. What is that opinion?

12 A. That opinion would be in fact it was an arson,
13 the fire of this vehicle was intentionally set on
14 fire.

15 Q. All right, sir. That is based on what
16 underlying facts?

17 A. Based on several factors. One, the condition of
18 the vehicle, the burn patterns as discussed earlier
19 and results of evidence that was submitted to SLED
20 for analysis.

21 Q. All right, sir. Now, did you collect some
22 evidence out of the trunk of the car?

23 A. Out of the trunk of the car, yes, sir, I did.

24 Q. All right, sir. Now, what I'm going to do is
25 hand you certain items one at a time and ask if you

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1 can identify them. And first would be --

2 A. Would you like me to step back up?

3 Q. Not just yet, let me....

4 MR. CUMMINGS: Can we approach just for a
5 moment?

6 MR. BAILEY: Just one second, Your Honor.

7 THE COURT: Okay.

8 (Whereupon, a bench conference was held
9 off the record in the presence of the
10 jury but out of the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I need
12 you to step to your jury room. Remember not to
13 discuss this matter or let anyone discuss it
14 with you. There is a matter of law which I must
15 take up outside your presence.

16 (Whereupon, the jury retires to the jury room at
17 12:00 p.m.)

18 THE COURT: Yes, sir.

19 MR. CUMMINGS: May it please the Court,
20 Judge. I thank you for your kindness and time
21 and the method of how we are doing this, Judge.
22 We anticipate the next item of evidence that the
23 solicitor would pull out of the box, we went
24 through it last night, we went through it again
25 when we had the short little break this morning.

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1 THE COURT: Yes.

2 MR. CUMMINGS: Knowing that Agent Helms
3 would be here today. Your Honor, the following
4 items of evidence that will be presented by the
5 State are highly prejudicial. They've seen a
6 burned car, they know there was a fire now, Your
7 Honor's qualified this gentleman as an expert
8 over our humble objection to his giving an
9 opinion, that, Your Honor, these items coming up
10 next are burned, charred, we believe they will
11 cause -- they are more prejudicial than
12 probative, ma'am.

13 And based on that, Judge, would ask
14 you to consider to allow the State to offer this
15 gentleman's direct testimony as to what the
16 items were, photographs of any nature like they
17 have been conducted like the good photographs
18 that this agent took, the other agents have
19 taken, ma'am, to show and depict what these
20 items are other than when these people are going
21 to be handed items that contain either, for lack
22 of better words, carbon or charcoal base that,
23 Your Honor, clearly will impact some prejudicial
24 impact of my client. And, Your Honor, that is
25 the base of objection. I did not want to say

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1 all those things in front of the jury.

2 THE COURT: I understand. What items are
3 we talking about?

4 MR. BAILEY: Your Honor, these are five
5 separate items, they were collected by Agent
6 Helms from the trunk of the automobile. The
7 significance of these items is they were
8 collected by Agent Helms, they were sent to the
9 SLED arson lab, Mr. Helms delivered them to the
10 SLED arson lab. I'll wait for the train.
11 (Train.)

12 MR. BAILEY: Your Honor, what they
13 consisted of was a burned pocketbook, a burned
14 shirt from the victim, some burned books from
15 the trunk, a burned belt and earring and some
16 other miscellaneous, burned debris out of the
17 trunk of the automobile. They were sent to SLED
18 and were analyzed by Alex Layton who is a SLED
19 arson chemist. Mr. Layton's on our witness list
20 and he would testify that all these items had
21 petroleum accelerants in them. Which Mr.
22 Cummings, of course, is not consenting to chain
23 of custody as we know and it's necessary for me
24 to have him identify this and get the chain of
25 custody documentation in order to lay the

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1 foundation that Mr. Layton testified to a very
2 crucial element of our arson third degree
3 charge.

4 THE COURT: Yes, sir.

5 MR. CUMMINGS: May it please the Court,
6 Judge.

7 THE COURT: Yes, sir.

8 MR. CUMMINGS: Your Honor, if I may just
9 for the sake of put my hand on the items, just
10 hold them up for you to look at.

11 THE COURT: Sure. Sure.

12 MR. CUMMINGS: Judge, I thank you for your
13 kindness, I'll stand right here at the middle of
14 the bench.

15 THE COURT: All right.

16 MR. CUMMINGS: Your Honor, as you look at
17 that you couldn't tell what that is and I don't
18 believe, Your Honor, respectfully, that that in
19 and of itself would be of any other evidentiary
20 value.

21 This good agent was photographing
22 everything. What I'm particularly concerned
23 about, Judge, is if you look at that it just
24 clearly can cause prejudice to my client,
25 respectfully. This agent can testify that he

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1 found these items here later on when Agent, I
2 think it's Layton, if I mispronounce the name I
3 apologize, can testify to any scientific tests
4 conducted in and at that point.

5 If Mr. Bailey again believes he needs
6 that to establish the chain of evidence going
7 from Agent Helms to here, what I would state on
8 the record today that what these items found by
9 this gentleman, in particular item -- State's
10 Exhibit Number 50, 51, 52, 53, and 54. And in a
11 moment I'm going to ask my client again to
12 stipulate Agent Helms recovered these items from
13 the trunk, took them then from there to SLED for
14 an analyzation.

15 So I would stipulate, be willing to
16 stipulate to that, not attack any issue of the
17 chain of custody as to this good gentleman to
18 the SLED lab for testing to avoid any
19 implication and prejudicial effect these items
20 may have to this jury today, ma'am.

21 THE COURT: All right. You wanted to talk
22 to your client to see if your client would
23 stipulate?

24 MR. CUMMINGS: And, again, Judge, what I
25 want to say is, and I passed them up here not to

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1 offend anybody in here, not to cause any harm or
2 disrespect to anyone in here today, but if you
3 look at it and as I touch these, more and more
4 carbon comes out, more and more.

5 THE COURT: Okay.

6 MR. CUMMINGS: We've already got a license
7 plate in here that we already know, again, Your
8 Honor, respectfully, our objection, is burned.
9 We already know we have a burned car from the
10 photographs, we already know we have burning
11 from the testimony, we already have testimony
12 from the fireman this lady was found in the back
13 of the car and, respectfully, her body had been
14 burned. So all that is in. There's no question
15 why these items would be needed to prove burning
16 or the evidence of any issue of the fire in the
17 car.

18 THE COURT: All right.

19 MR. CUMMINGS: Respectfully, I have my
20 permission of my client along as with Ms. Thomas
21 as to limitation I have just stated there if
22 that would be satisfactory to the Court to
23 prevent any prejudicial effect of these items
24 against my client, ma'am.

25 THE COURT: And that is Mr. Helms retrieved

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1 these items?

2 MR. CUMMINGS: That's correct, and then
3 passed them on to SLED. And then whenever that
4 agent gets up there to testify as to whatever he
5 found, again, he'll testify from his notes,
6 experience, education, training, his analysis --
7 I'm sorry, I'm rolling. And, Your Honor, at
8 that point, again, it would not with my client's
9 permission attack any chain of custody as to
10 those items mentioned from this agent to the
11 next agent for testing.

12 THE COURT: Thank you very much. That's
13 only part of your concern. The other concern is
14 that the State, obviously one of the charges
15 that the State must -- is alleging and must
16 prove is the arson and that this was an
17 intentionally set fire. And I gather from what
18 I understand from the solicitor that those were
19 the items that were utilized by SLED for the
20 purposes of showing that there was an accelerant
21 used; is that correct?

22 MR. BAILEY: That's correct, Your Honor.

23 THE COURT: Over the objection of the
24 defense I will allow those in. I think the
25 record should reflect that they are -- as you

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1 say they are charred, they are dark. Apparently
2 they have -- there's certain meaning to what is
3 in those exhibits to the expert and he will
4 testify to those, I would believe, but other
5 than that there are -- certainly there are
6 burned items.

7 I don't know that they're recognizable
8 from what I can tell from where I sit, I don't
9 know that they're recognizable specifically, so
10 I don't understand that the prejudicial effect
11 would outweigh the probative value over the
12 objection of the defense. Assuming that all the
13 other matters are met I would --

14 MR. CUMMINGS: All the elements of law.
15 Yes, ma'am. I may hand these back to
16 Mr. Solicitor.

17 THE COURT: Based upon I don't think
18 there's any odor that I can tell, either, they
19 are just -- I certainly can't --

20 MR. CUMMINGS: Just for the record as I
21 touched those you noticed the discoloration of
22 my hand. I'll approach the bench. Looks like
23 there's an oil base or something happening on
24 the bottom of the bag. I don't suggest that
25 we -- I would ask that that not be submitted to

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1 the jury, that's not -- I know how Agent Helms
2 grabbed that bag and then -- or grab whatever
3 items they are now passing them into the bag,
4 but obviously, Judge, something is coming out
5 and smells of a putrid smell.

6 And, again, Judge, that's one of the
7 reasons why with the jury holding those bags,
8 you ruled, I respect your ruling, ma'am, I have
9 no right to argue further, but I don't know if
10 there's any other way to maintain that and --

11 MR. BAILEY: Your Honor --

12 THE COURT: Just before they actually go to
13 the jury we will simply be sure they're clean.

14 MR. BAILEY: Your Honor, could I say
15 something for the record just after you get your
16 computer?

17 THE COURT: I'm sorry. I got it.

18 MR. BAILEY: Just, Your Honor, for the
19 record these all four items are contained in
20 heat sealed plastic bags and I'm holding them in
21 my hand now, I don't detect any odor or any
22 leakage at this time.

23 MR. CUMMINGS: My hands were clean prior to
24 touching the bottom of those bags, handing them
25 back, I haven't touched anything else.

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1 THE COURT: I will just -- before they go
2 to the jury, Mr. Solicitor, if you will just
3 endeavor to be sure that they have been -- the
4 outside of the bag has been cleaned.

5 MR. BAILEY: Yes, ma'am.

6 THE COURT: If it's anything -- it's clear
7 it's certainly not any carbon, it's certainly
8 nothing, none of the debris or carbon out of the
9 bag is coming. If it is some sort of petroleum,
10 we just wipe that down if it is. As you say
11 it's not dripping and I don't know what that
12 could be. It may be a dirty box that it came
13 out of.

14 MR. CUMMINGS: I apologize, I'm not trying
15 to be, you know, less than kind about this. I
16 don't know if this gentleman's got his car out
17 front, one of the other guys, they have those
18 big evidence bags, if the Court would allow us
19 like five minutes, if they want to put that
20 inside another bag, even seal it with tape or
21 whatever, I would not object to that, having
22 those bags placed inside there over,
23 respectfully, the objection made just, again, to
24 maintain the integrity of what you have ruled
25 upon.

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1 THE COURT: In other words, you would like
2 to see them placed in another bag?

3 MR. CUMMINGS: Yes, ma'am. And something
4 see-through, clear.

5 THE COURT: If they have that we'll
6 certainly do that. Do you have that?

7 THE WITNESS: I should have enough bags in
8 my vehicle to do that. I will offer this,
9 though, that when you take a bag and try to put
10 it in another same sized bag, you sometimes run
11 into obvious problems to get it completely
12 sealed, or you may run in a problem of forcing
13 those bags to the point the seam may break.
14 Unlikely it will happen and I will certainly do
15 everything in my powers to keep it from
16 happening.

17 THE COURT: When you do that let's let
18 counsel be present and then we'll know that.
19 That way, and I think it's important that the
20 purpose of doing that, would just keep any oils
21 or whatever that may have come out just to keep
22 them away from the jurors' hands, that would be
23 the purpose. This is not to maintain a chain of
24 custody at this point, it's simply for the
25 cleanliness of the handling of the jury.

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1 MR. BAILEY: Okay. And, Your Honor, we do
2 that now, or do that before the jury gets --

3 THE COURT: No, sir. You don't intend to
4 pass this to the jury at this point, do you?

5 MR. BAILEY: No, ma'am.

6 THE COURT: Just do it sometime before the
7 jury would handle the bags.

8 MR. BAILEY: If I can approach while the
9 jury is out I would just hand it to him to save
10 a little time.

11 THE COURT: Sure. We're going to have to
12 take a break. Thank you.

13 (Lunch recess from 12:12 p.m. to 1:30 p.m.)

14 (Marked for purposes of the record was Court's
15 Exhibit 33, graduation program.)

16 (Marked for identification were State's Exhibits
17 72 through 76)

18 THE COURT: Ready?

19 MR. BAILEY: Yes, ma'am.

20 THE COURT: Let's have our jury.

21 (Whereupon, the jury returns to the courtroom at
22 1:31 p.m.)

23 THE COURT: Ladies and gentlemen, I hope
24 you had a very pleasant lunch as you continue
25 your culinary discovery of Dorchester County.

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1 And I think it probably worked out really well
2 that you were able to eat in your jury room at
3 lunch so you don't have to get in that downpour
4 because I think it was scheduled to catch you,
5 but alas we thwarted that. At this time we will
6 continue with the State's case.

7 BY MR. BAILEY:

8 Q. Mr. Helms, I think when we broke for lunch you
9 testified you had retrieved certain items of
10 evidentiary value from the trunk of the automobile;
11 is that correct, sir?

12 A. That's correct.

13 Q. You have some of those items in front of you
14 there?

15 A. Correct.

16 Q. All right. If you would refer, please, to
17 what's been marked SLED Exhibit 29.

18 A. You wouldn't happen to have a State's evidence
19 number on that, would you?

20 Q. Okay. I'll tell you what let's do, let's just
21 take them one at a time, first one you come to. If
22 you need to refresh your memory with your file, you
23 can please do that, sir.

24 A. What's marked State's Exhibit 50, SLED bag
25 number 29, you have to bear with me, I have to work

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1 with the lighting conditions. This would be an item
2 of evidence that was retrieved by myself from the
3 ground directly behind the trunk of the victim's
4 vehicle. This item has suffered burn damage;
5 however, upon close examination of it, it is an item
6 that is consistent with that of a pocketbook, most
7 likely a female's pocketbook, as well as having some
8 miscellaneous items inside the pocketbook such as
9 maybe something like a lipstick or stuff that's
10 consistent with a female's pocketbook.

11 Q. All right, sir. You collected that, sir, you
12 bagged it up?

13 A. Yes, sir. I did.

14 MR. BAILEY: Your Honor, I would offer this
15 into evidence at this time.

16 THE COURT: All right. Over the objection
17 of the defense, State's Exhibit 50 in evidence
18 without objection -- with objection.

19 MR. CUMMINGS: Yes, ma'am.

20 (Entered into evidence was State's Exhibit 50,
21 burned pocketbook.)

22 Q. Could you tell us the next item, please?

23 A. Next item is marked State's Exhibit 51. Again,
24 it's an item that I collected, labeled SLED bag
25 number 31. This was recovered from the trunk of the

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1 vehicle. And, again, bear with me because we're
2 having lighting difficulties, but this is what
3 appears to be the shirt, the blue and white shirt
4 that was worn by the victim.

5 This part of the shirt is primarily
6 the back, back section of the shirt that was not
7 exposed to the fire and thus survived the fire,
8 unlike the remaining portion of the shirt that was
9 burned away due to the position of the body in the
10 vehicle.

11 Q. All right, sir. And you collected and bagged
12 that; is that correct?

13 A. Yes, sir.

14 MR. BAILEY: I would offer this, Your
15 Honor.

16 THE COURT: All right. Again, State's
17 Exhibit 51 in evidence over objection of the
18 defense.

19 (Entered into evidence was State's Exhibit 51,
20 burned shirt.)

21 Q. Would you tell us the next item?

22 A. Next item is marked State's Exhibit 52, marked
23 as SLED lab bag number 32. Again, is an item that
24 was collected by myself from the trunk of the
25 victim's vehicle at the scene. This consists of a,

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1 again, burned items with notebook, paperwork, and a
2 manual, such as a work manual that someone would have
3 from a place of employment, maybe, these were burnt
4 partially, as is typically books which consist of
5 compressed pages do not burn all the way through, but
6 this, again, was collected from the trunk of the
7 vehicle.

8 Q. All right, sir.

9 MR. BAILEY: Would offer State's Exhibit 52
10 into evidence.

11 THE COURT: Admitted into evidence over the
12 objection of the defense.

13 (Entered into evidence was State's Exhibit 52,
14 burned books.)

15 Q. All right, sir. The next item?

16 A. Next item is marked State's Exhibit Number 53.
17 Again, this is an item that I collected, this was
18 SLED lab inventory bag number 33, the item collected
19 by myself from the trunk of the vehicle belonging to
20 the victim. It is an item that consists of two rings
21 and a piece of burned, burned material that's
22 consistent with maybe a cloth or a plastic, upon
23 estimation it is something that would be consistent
24 with maybe a belt. Also contained in the bag is a
25 gold-style earring, again, I guess female's earring.

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1 Q. All right, thank you.

2 MR. BAILEY: This is State's 53 offered
3 into evidence, Your Honor.

4 THE COURT: In evidence over the objection
5 of the defense.

6 (Entered into evidence was State's Exhibit 53,
7 burned belt and earring.)

8 Q. The final bag, sir?

9 A. The final bag is marked State's Exhibit 54,
10 listed further as SLED lab inventory number bag 36.
11 This is an item that was collected by myself
12 approximately three days later than the other bags of
13 evidence. This was collected from the trunk of the
14 vehicle when the vehicle was in the impound lot of
15 the Dorchester County Sheriff's Department in
16 Summerville.

17 This item consists of a -- of burned
18 debris. I'll refer to it as general, general burned
19 debris that is typically gathered. And consists also
20 of a particle board that was located in the trunk of
21 the victim's vehicle.

22 MR. BAILEY: Offer that, Your Honor.

23 THE COURT: Likewise, State's Exhibit 54 in
24 evidence over the objection of the defense.

25 (Entered into evidence was State's Exhibit 54,

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1 miscellaneous burned debris.)

2 MR. BAILEY: Your Honor, indulge me a
3 second, please, if I can confer with Mr.
4 Cummings.

5 THE COURT: Yes, sir.

6 (Mr. Bailey conferring with Mr. Cummings.)

7 MR. CUMMINGS: Can we approach for a
8 moment, Judge?

9 THE COURT: You may.

10 (Whereupon, a bench conference was held
11 off the record in the presence of the
12 jury but out of the hearing of the jury.)

13 Q. Mr. Helms, the five items that we've been
14 talking about that you've identified that you removed
15 from the trunk of the car, of the area around the
16 trunk of the car, that being State's 50, 51, 52, 53,
17 54, did you carry those to SLED?

18 A. That is correct, sir.

19 Q. The State Law Enforcement forensic laboratory in
20 Columbia?

21 A. That is correct, sir.

22 Q. All right. And when you carried them up there,
23 were they in your sole possession from the time you
24 collected them until the time you carried them to
25 SLED?

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1 A. Yes, sir.

2 Q. And where did you place them when you carried
3 them to the SLED lab?

4 A. They were placed in the rear of my vehicle.

5 Q. When you got to Columbia to the SLED lab where
6 did you take them?

7 A. They were taken inside to the SLED log-in
8 department, which is the main receiving area for any
9 and all evidence coming into SLED.

10 Q. All right. Thank you. That's all I have.
11 Please answer any questions -- excuse me one second,
12 I have a few more questions. I'm almost finished
13 with you.

14 Without getting into what anybody told
15 you, would you state whether or not during the course
16 of your investigation of the crime scene of
17 February 17th, did you talk to an individual
18 identified to you as Dennis Judy?

19 A. Yes, sir. I did.

20 Q. All right, sir. And what specific observations,
21 if any, did you make when you were in Mr. Judy's
22 presence?

23 A. Mr. Judy had driven down the road when I was at
24 the incident location. I was notified by someone
25 there that Mr. Judy wished to talk to me, or that

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1 Mr. Judy was there. He then took me to a location
2 several hundred feet or yards down the roadway
3 towards the stop sign, explained to me what he had
4 observed.

5 I told him I appreciated his time. I
6 think I took his basic information as far as name,
7 telephone from him, in case we needed to contact him
8 later. While there I happened to glance down or
9 around at the roadway and noticed a shell casing that
10 appeared to come from a handgun in the roadway.

11 Upon looking further, several other
12 casings were found, a red stain in the roadway. Upon
13 looking further a piece of an earring was located and
14 some other items off the roadway into a wooded area
15 that from where I was standing appeared to may have
16 been a shoe. And, again, the area from the roadway
17 to where the shoe was located there was a dark, dark
18 colored substance on the grass or leading towards
19 there where the shoe was located.

20 Q. All right, sir. Did you make these observations
21 before a SLED agent, Mr. Ed Porter, arrived?

22 A. That is correct, sir. That was the reason he
23 was requested.

24 Q. After making these observations did you do
25 anything to move the shell casings or do anything

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1 that affected what you had observed?

2 A. No, sir. What I proceeded to do was place my
3 evidence cones at those shell casings and maybe one
4 or two other items and photographed them to document
5 locations where they were in case that during the
6 time crime scene Agent Porter arrived if something
7 were to happen, squirrel run out in the road and eat
8 them, or, you know, some freak accident of nature
9 that caused it to be disturbed.

10 Q. All right, sir. So you made these observations,
11 but your end of it as far as arson investigation was
12 something different, that was the general crime scene
13 was not your area of expertise; is that correct?

14 A. Correct, sir. That's why they were requested.

15 Q. Agent Porter was called in for the non-arson
16 portion of the crime scene?

17 A. Correct, sir.

18 Q. All right. And let me ask you one other thing.
19 Calling your attention to May 27th, 2001, and I would
20 ask whether or not you went to a car lot in Lexington
21 and took some photographs of an automobile?

22 A. Yes, sir. I did, sir.

23 Q. Hold on a second, please. Hand you State's 3,
24 4, 5, 6 for identification only, and ask you if you
25 took these photographs?

James Helms - Direct Exam

1 A. That would be correct, sir.

2 Q. All right, sir. And tell the Court, please, why
3 you took those photographs.

4 A. Picture was taken as a comparison to get a
5 better understanding of what the victim's vehicle
6 looked like prior to the fire, to help further give
7 me a better impression of what -- of what the
8 victim's vehicle was telling me compared to what a
9 new car would look like, if that makes sense.

10 Q. Other than the color of the car, is that -- are
11 those pictures the same make, model car as the
12 victim's car?

13 A. It is the same make and model. Talked with
14 the --

15 MR. CUMMINGS: Objection, Your Honor,
16 that's hearsay, please, what he talked about.

17 THE COURT: Yes.

18 A. It would be the same make, modal, yes, sir.

19 MR. BAILEY: I would offer these into
20 evidence at this time.

21 MR. CUMMINGS: Your Honor, they're not the
22 car, they're a comparison, demonstrative
23 evidence at this point, respectfully, please.

24 THE COURT: I'm going to allow them for
25 demonstrative purposes.

James Helms - Direct Exam

1 MR. BAILEY: Thank you, Your Honor.

2 (Entered into evidence were State's Exhibits 3,
3 4, 5, and 6, photographs.)

4 MR. BAILEY: Reserve the right to recall
5 Mr. Helms, but have nothing further for him at
6 this time.

7 THE COURT: Thank you, Mr. Bailey.

8 CROSS-EXAMINATION

9 BY MR. CUMMINGS:

10 Q. Agent Helms, good afternoon, sir.

11 A. Yes, sir.

12 Q. I'm going to try to move along as quick I can
13 and try to ask you to -- if you need to use your
14 notes or whatever, sir, please do so, okay?

15 A. Yes, sir.

16 Q. When you got -- what time did you arrive here in
17 Dorchester County?

18 A. Again, without looking at my notes and giving
19 you the exact time, I would say approximately 5:30 to
20 5:45, sometime that general time frame.

21 Q. A.m.?

22 A. Correct, sir. I'm sorry, a.m.

23 Q. Daylight, nighttime, dusk, dawn?

24 A. It was still dark, probably 15, 20 minutes
25 beginning to get light.

James Helms - Cross-Exam

1 Q. Had anybody gotten control of the road at that
2 point when you first arrived?

3 A. As far as --

4 Q. Blocking it off for any vehicular traffic?

5 A. My recollection the road was still open, open
6 roadway, vehicles traveling down the paved portion of
7 Nursery Road.

8 Q. All right. So nobody had set up any tapes on
9 the side of the road, nobody had done anything to
10 block that road off?

11 A. Again, as far as the paved main road to my
12 recollection there was no type of barriers or
13 anything to stop traffic on the paved road.

14 Q. All right, sir. And then when you got there,
15 again, did you wait until daylight to start
16 conducting your investigation?

17 A. Went and took a basic look at the vehicle.
18 Again, due to lighting conditions waited until it got
19 light enough to where I could see, yes, sir.

20 Q. Yes, sir. Because you guys -- not you, per se,
21 sir, but law enforcement has control of that area,
22 right? I mean, you're there --

23 A. When you say "area," you're talking about the
24 vehicle area itself or the paved road or...?

25 Q. We'll do it that way, we'll start with the

James Helms - Cross-Exam

1 vehicle first and then we'll go to the paved road.

2 A. Yes, sir. As far as the vehicle, the dirt road
3 or the tractor access road in the field was secured
4 by someone from the sheriff's department.

5 Q. But nothing else controlled that roadway either
6 way from Nursery School Road, Independent Road, or
7 going back toward Mr. Newsome's house?

8 A. As far as the paved Nursery Road not that I'm
9 aware of.

10 Q. All right. Again, going back that morning, how
11 many law enforcement officers would you say were
12 there when you got there?

13 A. There was a combination of fire and law
14 enforcement. I would say approximately, again this
15 is a guess, from my memory six, seven law enforcement
16 officers, maybe, of some capacity.

17 Q. All right, sir. Did you see anybody out there
18 asking the names or who the people were who were out
19 there at that time?

20 A. There was a -- as far as entry into the -- what
21 I'll call the first crime scene, being the vehicle.

22 Q. Yes, sir.

23 A. There was a log taken by some member of
24 Dorchester County Sheriff's Department who had been
25 into that area.

James Helms - Cross-Exam

1 Q. All right, sir. From looking at everything
2 you've done in this case, was the license tag that
3 was -- of the burned vehicle, sir, was that tag on
4 the car or was it off when you took your first
5 photograph of that vehicle? If you need to see them
6 again, please tell me.

7 A. I see it sitting there on the desk. It had been
8 obtained initially by someone other than myself, at
9 which time someone came and either handed me the tag
10 or said the tag's over here which is -- which, of
11 course, the tag I guess has already been presented.

12 Q. Okay, sir.

13 MR. CUMMINGS: If I may approach the
14 witness for just a moment, Judge.

15 THE COURT: You may.

16 Q. I'm going to show you what's been marked as
17 State's Exhibit Number 10, sir, ask you -- I'll step
18 out of your way -- did you see the vehicle tag like
19 that, on the ground like that? I'm sorry.

20 A. I took this picture, so naturally, of course, I
21 did see the vehicle tag. If I don't -- if I'm not
22 mistaken the tag was handed to me, I set it on the
23 ground to document the tag itself.

24 Q. So that tag -- I'm sorry, I don't want to cut
25 you off, sir, please continue.

James Helms - Cross-Exam

1 A. That would not have been the, I assume, location
2 of the tag where it was originally found, I believe
3 that's where I placed it to photograph it.

4 Q. Okay, sir. So that was done by law enforcement
5 near the -- what appears to be a charred area here?

6 A. That picture was taken by me on the ground.
7 Correct, does appear to be a charred area to the
8 right, right of the tag.

9 Q. And if I may just put this up on the prompter
10 for a moment. Again, sir, just clarify if you cannot
11 see that you're welcome -- you are squinting, you're
12 getting to be like me now. There's a monitor right
13 here, sir, if Your Honor will allow you to come up
14 and stand for a moment, look at the monitor.

15 THE COURT: Certainly.

16 Q. And, again, I thank you, sir, for your candor.
17 That is not how the photograph accurately, truthfully
18 depicts how that photograph would have looked or
19 should have looked before you took it, put it on the
20 ground near where the charred area is; is that
21 correct, sir?

22 A. I can testify I have no idea where that tag was
23 originally located by the first person who arrived.
24 That tag was placed there in this position on this
25 ground by myself once it was handed to myself in

James Helms - Cross-Exam

1 order for me to go ahead and document the tag.

2 Q. Okay, sir. But not to put it near where -- the
3 charred areas there?

4 A. I simply sat it down to take a picture of it.

5 Q. Thank you, sir. If you'll go back to the stand
6 for a moment.

7 A. (The witness complies.)

8 Q. All right. Now, again, just going back a little
9 bit here. When you get there the first thing you do
10 as a police officer and a SLED agent here is you
11 photographed the area when it's beginning to get
12 daylight, sir?

13 A. Once there is sufficient light to take pictures,
14 yes, sir.

15 Q. All right, sir. And you made sure that nobody
16 else was allowed to go back up around that vehicle or
17 do anything else around that vehicle while you were
18 present at least?

19 A. The -- I was not in charge of who came in and
20 out of the crime scene. As I was processing the
21 vehicle there was a member of Dorchester County
22 Sheriff's Department as I recollect who was a -- who
23 was posted to document those that entered into the
24 scene itself.

25 Q. So is it fair to say then that while you're

James Helms - Cross-Exam

1 working, you're taking photographs there are other
2 people walking around?

3 A. Inside the crime scene?

4 Q. Yes, sir.

5 A. To a degree. It would have been one or two
6 people from the sheriff's department who would have
7 been assisting me.

8 Q. Okay, sir. Who was that?

9 A. I know the -- Earl Asbell, who I believe is
10 their crime scene guy.

11 Q. Yes, sir.

12 A. And another deputy who is his assistant, female,
13 please forgive me, I cannot recall her name at this
14 time.

15 Q. Ms. Allyson?

16 A. Yes, sir.

17 Q. Let's go back a little bit there now. You take
18 your photographs, you do everything at the scene
19 you're doing there. Do you take control of looking
20 at that vehicle while parked right in its very spot,
21 right, sir? I mean, it was stopped, the wheels
22 are -- looks like the tires are burned off, it's not
23 going anywhere, correct?

24 A. Right, sir.

25 Q. You're there. And can you tell us today, sir,

James Helms - Cross-Exam

1 again, with your training, education, experience, did
2 the gas tank erupt on that car, sir?

3 A. The gas tank was still in tact.

4 Q. So it did not blow?

5 A. No, sir.

6 Q. When you got there, was the ground in the area
7 wet around where this vehicle was from the fire
8 department, sir?

9 A. From the fire department, also from I think it
10 had rained shortly after the fire department arrived
11 and put the vehicle out, an isolated storm had come
12 through.

13 Q. Okay. Were any attempts made to cover the area
14 or cover the ground or anything once you got there,
15 by either you, sir, or members of law enforcement?

16 A. Are you talking about cover it with a tarp or
17 something?

18 Q. Tarp of some sort, yes, sir, or any kind of
19 mechanism you good gentlemen might have used?

20 A. Other than a blanket being brought in for the
21 victim at some point in time, I don't recall a tarp
22 or anything else being laid anywhere.

23 Q. Okay, sir. Now, you've been to class, studies,
24 went to a two-week class at the academy, sir, if I'm
25 not mistaken, right?

James Helms - Cross-Exam

1 A. Yes, sir.

2 Q. If water gets near oil, water gets near
3 gasoline, does it kind of disburse and spread out?

4 A. Water as far as gasoline or oil goes will bead
5 up on the surface of the water.

6 Q. Yes, sir.

7 A. Based on wind, contour of the land, et cetera,
8 would decide where that water flows, thusly where the
9 gasoline or oil as beaded up on top of said water
10 would go.

11 Q. If a pressurized stream of water such as a fire
12 hose is placed on a substance such as like a
13 petroleum based substance, would it push it, would it
14 move it?

15 A. The jet stream of water would move light
16 objects, yes, sir.

17 Q. All right, sir. Did you notice any of the
18 ground disturbed by water pressure or by people
19 moving it when you got there and did your
20 photographs, in particular all the items of the car
21 that you specifically took, sir?

22 A. There was your standard activity around any
23 burned vehicle between hoses being pulled, water
24 being sprayed, boots from firefighters working at the
25 scene.

James Helms - Cross-Exam

1 Q. Yes, sir.

2 A. But, yes, you would have your standard movement
3 of dirt or grass in that general area as typical.

4 Q. All right, sir. And it's fair to say that,
5 again, as a gentleman that you are and the
6 professional that you are, that you can't say how
7 that happened other than by your common sense,
8 experience, and training that obviously any area
9 around that vehicle moved was done as a result of how
10 you just testified?

11 A. I mean, I would have to -- I'm not sure exactly
12 I follow your question, but I'm assuming that --

13 Q. Let me back it up and make it real simple. You
14 don't see how it got disturbed?

15 A. No, sir.

16 Q. You're drawing your conclusions from working
17 other cases, correct?

18 A. And from that scene, yes, sir.

19 Q. Okay. And as far as working out any other
20 issues about that vehicle that day, who had the
21 vehicle towed away under your care and supervision?

22 A. Once I was -- as standard procedure goes, once I
23 am finished with a scene, per se, such as this case,
24 a vehicle, I then contact which in this case I think
25 was Earl Asbell who was there with me.

James Helms - Cross-Exam

1 Q. Yes, sir.

2 A. And informed him that I'm done with the vehicle
3 for right now at this scene, we need to secure it.
4 At that time they make a request, whatever their
5 standard operating procedure is for taking that
6 vehicle from point A to point B.

7 Q. And that's what I want to ask you, sir. Were
8 you present when the vehicle was removed from this
9 tractor road that you testified about?

10 A. Yes, sir.

11 Q. All right, sir. Would you please tell these
12 ladies and gentlemen of the jury exactly the method
13 of how that vehicle was transported away?

14 A. A roll-back or a wrecker vehicle. A roll-back
15 being a type wrecker that has a long platform which
16 is lowered and then it's hoisted, the vehicle is
17 pulled up on to the flatbed of the wrecker. The
18 wrecker then drives off with the vehicle sitting on
19 the back of the flatbed wrecker.

20 Q. When that happened, sir, I'm trying to ask you
21 to go back now and remember, did any water,
22 substance, or anything else fall from the interior of
23 that vehicle as it's being pulled in an upward
24 fashion?

25 A. Not that I recall. I would assume, again, with

James Helms - Cross-Exam

1 any vehicle like this that is wet, because you're
2 changing the angle of the vehicle, that there's going
3 to be some roll-off from the vehicle. My position
4 30 feet away, approximately, I could not exactly sit
5 there and say I saw something roll off that vehicle.

6 Q. And you can't say you didn't see anything fall
7 off?

8 A. Correct.

9 Q. And you will agree with me, I believe, that
10 there is gasoline in a vehicle engine once it has
11 been filled with gasoline and once it's been cranked,
12 it goes through the engine and goes through all the
13 mechanisms and it's usually fuel in the engine block
14 or method of cranking a car up?

15 A. And you want to ask me again as to something --
16 engine, automobiles, all engines are different.

17 Q. Okay. I'm asking --

18 A. So for me to say how much -- because you get
19 fuel injection type engines, et cetera, that my
20 understanding would spray a small amount of gasoline
21 into the engine for it to fire, but common sense will
22 dictate that there's gasoline in the gas tank that
23 runs to the engine compartment.

24 Q. All right, sir. There's a fuel line in that
25 because you've studied that. And I know when you

James Helms - Cross-Exam

1 took your classes at school and of vehicle fire they
2 looked to see what it takes to make a gas tank
3 explode; do they not, sir?

4 A. The gas tanks very seldom explode.

5 Q. Correct. That's a safety design that you learn
6 about in your type of investigations that you are
7 particularly involved in, sir, right?

8 A. Not only a safe design, but a laws of physics
9 design because there's several factors that go into
10 why something will ignite.

11 Q. Okay. And then this vehicle is being pulled
12 with a front angle or back angle the day it was taken
13 out?

14 A. It's noted in my photographs, but the -- if
15 you'll allow me a minute to look at my photographs I
16 can tell you exactly which way it went.

17 Q. Yes, sir.

18 MR. CUMMINGS: May it please the Court,
19 Judge, if I can find them I'll bring them up to
20 the gentleman.

21 Q. I think these are the ones. If there's any
22 others, sir.

23 A. They're not in that stack, if you'll allow me to
24 look in my briefcase.

25 Q. Sure.

James Helms - Cross-Exam

1 (Pause in proceedings.)

2 MR. CUMMINGS: Without objection, Your
3 Honor.

4 THE COURT: Very well.

5 Q. Agent Helms, let me show you this first, then
6 I'll put it on the monitor for these folks and show
7 both of you and ask you if you identify these
8 photographs marked into evidence, sir?

9 THE COURT: They're defendant's --

10 MR. CUMMINGS: One and 2.

11 THE COURT: One and 2 into evidence without
12 objection, they're photographs.

13 (Entered into evidence was Defendant's Exhibit
14 1, photograph.)

15 (Entered into evidence was Defendant's Exhibit
16 2, photograph.)

17 A. Yes, sir. I recognize those pictures as
18 pictures I took.

19 Q. If I may just have them for a moment while I put
20 these on the monitor, sir.

21 A. Yes.

22 Q. And these came out of your briefcase you brought
23 with you today in the courtroom?

24 A. Correct, sir.

25 Q. Okay. I am going to show you the first

James Helms - Cross-Exam

1 photograph here, ladies and gentlemen of the jury,
2 that's -- if you need to come around, sir, please do
3 while I ask you questions.

4 A. If I may.

5 Q. That's the vehicle up on the roll-back?

6 A. That is correct, sir, yes, sir.

7 Q. It looks like what appears to be part of the
8 tire?

9 A. Correct, sir, that would have been the part of
10 the tire that was -- at the time of the vehicle fire
11 that tire would have been underneath that wheel well
12 which is why it was still in tact because it was
13 shielded from the fire and the heat by the wheel and
14 ground it had been resting on.

15 Q. What is this on the bottom right-hand corner of
16 this picture, sir?

17 A. Bottom right or left?

18 Q. Right here.

19 A. Appears most likely to be a latex glove that is
20 by -- used by myself on scenes for -- to keep from
21 contaminating evidence.

22 Q. That's the roll-back?

23 A. Correct, sir.

24 Q. Okay. And that's showing where the object was
25 dragged, the car was dragged?

James Helms - Cross-Exam

1 A. That would be correct. This area roughly in
2 here would have been the location that the vehicle
3 was sitting in.

4 Q. And, again, I know you can't do two things at
5 once and I apologize, sir. It appears the vehicle
6 was lifted up by the tail end and dragged onto the
7 roll-back with the front end going down, correct?

8 A. That would appear correct, yes, sir.

9 Q. Okay. Please have a seat again, sir.

10 A. (The witness complies.)

11 Q. Now, in the photographs that you took and
12 State's Exhibit Number 14 which is marked into
13 evidence, the front end of the hood you can see
14 through it if I'm not mistaken, right? That's
15 already been shown to the jury, so I won't waste our
16 time. You can see down into it?

17 A. Yes, correct.

18 Q. The hood's there, but you can see down in,
19 right?

20 A. Correct.

21 Q. Okay. Were the hoses melted, or still in tact
22 when you did that photograph and you examined the
23 car?

24 A. The hoses, belts, other, I'll say aluminum or
25 light metal products, some of them were completely

James Helms - Cross-Exam

1 burned away, some of them still showed signs of being
2 there.

3 Q. Okay.

4 A. And I believe those were documented
5 approximately three days later once we were able to
6 raise the hood on the vehicle.

7 Q. Okay, sir. Every photograph that you took when
8 you first got there clearly -- and I'm trying to look
9 at the photographs. The license tag was not on the
10 car when you got there?

11 A. Correct.

12 Q. Okay. Now, after you collected these items you
13 passed them to someone else in your agency to conduct
14 further testings, correct?

15 A. Correct, sir.

16 MR. CUMMINGS: Again, Your Honor, I would
17 beg the Court's indulgence for a moment.

18 THE COURT: Yes.

19 (Mr. Cummings and Ms. Hardee-Thomas conferring
20 with Mr. Bowman.)

21 MR. CUMMINGS: That's all the questions we
22 have of this gentleman subject to recall by the
23 State or by us.

24

25

James Helms - Redirect Exam

REDIRECT EXAMINATION

1

2 BY MR. BAILEY:

3 Q. Mr. Helms, when a tire heats up to the extent of
4 the heat generated by a fire like the fire you
5 described, does the tire blow?

6 A. Again, there's no clear-cut -- you're looking at
7 a 50/50 issue as to whether the tire will explode.
8 It depends on the condition of the tire itself. And
9 the reason I say that is if there's a weak spot, some
10 deficiency in the tire, it comes into play. There
11 are shocks, there are some other items that are, I
12 won't say gas, but not a petroleum gas, but a -- such
13 as gas-filled shocks, a helium -- whatever they use
14 in a shock that would explode or make a loud booming
15 noise.

16 Q. Make a loud noise. Now, the first four bags of
17 evidence that you've described, you've got that out
18 of the trunk before the car was moved; is that
19 correct?

20 A. That is correct, sir, yes, sir.

21 Q. All right, sir. Before it got put on the truck?

22 A. Yes, sir.

23 Q. Thank you, sir. That's all I have.

24

25

James Helms - Recross-Exam

RECROSS-EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q. Tires are made out of petroleum base, correct,
4 sir?5 A. They are, yes, sir. They're rubber or some form
6 variation of that, yes, sir.7 Q. And like the radiator hoses, the belts to turn
8 the fan belt, you're talking to a guy who doesn't
9 know anything about engines, but petroleum-based
10 products up in the engine compartment, too?11 A. Again, for me to truthfully answer whether a fan
12 belt or radiator belt has petroleum in it that is
13 something I can truthfully not answer. I think there
14 probably would be somebody from the lab that would be
15 better qualified to do that.16 Q. You know for sure tires are made out of rubber
17 product petroleum based?

18 A. I believe so, yes, sir.

19 MR. CUMMINGS: That's all I have of this
20 gentleman.21 THE COURT: You may come down. Is he
22 excused for the day?23 MR. BAILEY: Yes, ma'am. I think we can
24 excuse him for the day.

25 MR. CUMMINGS: For today, I think.

James Helms - Recross-Exam

1 MR. BAILEY: You can return tomorrow.

2 THE WITNESS: Yes, sir.

3 (Whereupon, the witness steps down from the
4 witness stand.)

5 MR. BAILEY: Your Honor, recall Mr. Judy.

6 THE COURT: All right. Mr. Judy, you come
7 on around, you've already been sworn in.

8 (Dennis R. Judy, called as a witness, having
9 previously been duly sworn, is examined and
10 testifies as follows:)

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Judy, I want to refer you to a piece of
14 evidence that was not into evidence when you
15 testified earlier and this is State's 71. And let me
16 get you to be looking at that for a second while I
17 set this easel up.

18 A. (The witness complies.)

19 Q. Let me know whether you're finished looking at
20 it.

21 A. All right.

22 Q. All right. Mr. Judy, if you can walk around
23 here, let's set this up in front of the jury. What
24 we're going to try to do, if you can stand to this
25 side of it, but try not to block any of the jurors.

Dennis R. Judy - Direct Exam

1 And go ahead and indicate to the jury if you would,
2 please, and I'll get out of your way, where your
3 house is, which --

4 A. In the direction?

5 Q. Yes, sir.

6 A. It would be this way.

7 Q. That way. And so when you were driving from the
8 restaurant back to your home, show the jury on that
9 sketch where you drove.

10 A. I drove down Nursery Road and then it's a stop
11 sign and then Independent School Road.

12 Q. All right. There's a zero over here. Is that
13 approximately where the stop sign would be?

14 A. Yes, sir.

15 Q. Okay. Now, you testified earlier that you saw a
16 car over partially on -- partially off the road. Can
17 you describe that car to the jury?

18 A. I'm sorry?

19 Q. You described that car earlier to the jury so I
20 won't ask you to go through it again, but could you
21 point out on that sketch approximately where you
22 observed that car?

23 A. Right there.

24 Q. All right. And if you would, sir, if you'll
25 just draw a rectangle at the approximate location

Dennis R. Judy - Direct Exam

1 where you observed that car. Let me give you a
2 marker here.

3 A. (The witness complies.)

4 Q. And if you'll draw an arrow in the direction the
5 car was facing.

6 A. (The witness complies.)

7 Q. If you'll just put your initials beside it.

8 A. (The witness complies.)

9 Q. All right, sir. Mr. Judy, that's all I have.
10 Please answer any questions Mr. Cummings might have
11 for you, sir.

12 CROSS-EXAMINATION

13 BY MR. CUMMINGS:

14 Q. Mr. Judy, before you get back up there and get
15 comfortable, I promise I'll keep it short, okay? You
16 already testified that you're driving, your spouse is
17 in the car. I just noticed a moment ago you put your
18 glasses on kind of like this. Was that for the
19 courtroom purposes right now to look at this sketch,
20 sir, something up close?

21 A. Reading glasses.

22 Q. Yes, sir, okay. And then did you have your
23 glasses on that night while you were driving, or you
24 don't need them for driving?

25 A. Don't need them for driving.

Dennis R. Judy - Cross-Exam

1 Q. All right, sir. And then as you come down you
2 see this, you said a dark colored car, correct, sir?

3 A. Yes, sir.

4 Q. All right. And as you go past, and can I ask
5 you politely, sir, what makes you so sure that as
6 you're driving down the road you see that car right
7 in that same spot when there's no landmarks, no
8 markings on the roadway, is there, sir?

9 A. There's no landmarks or markings there other
10 than the fact that I've been traveling that road
11 since I was probably about six years old, my
12 grandparents lived in that area.

13 Q. Yes, sir.

14 A. And that's just a normal route that I go back
15 and forth home and so I know that area real well.

16 Q. Okay. And the reason I'm asking you that is
17 nobody pointed anything else out to you about where
18 the vehicle might have been in connection with the
19 drawing because you didn't do this drawing?

20 A. No, sir.

21 Q. Okay. And you didn't write any of the words on
22 here. You've just been asked by Mr. Bailey politely,
23 sir, Mr. Judy, to mark where you saw your vehicle.

24 All right. If I would get you up
25 there for a moment and ask you a couple more

Dennis R. Judy - Cross-Exam

1 questions, hopefully I'll move quick and get you out
2 of here.

3 A. (The witness complies.)

4 Q. Mr. Judy, when you go home that night the next
5 morning you hear something from a family member, sir,
6 if I'm not mistaken, correct?

7 A. Correct.

8 Q. All right. And from that family member you go
9 back up to Nursery Road?

10 A. Correct.

11 Q. All right, sir. When you got to Nursery Road
12 now was that road blocked off on both ends?

13 A. It was blocked off on one end if I remember
14 correctly.

15 Q. All right, sir. Did you drive onto Nursery
16 Road, sir?

17 A. Yes, sir.

18 Q. In your personal vehicle?

19 A. No, sir.

20 Q. All right. In what?

21 A. I was with my cousin in his vehicle.

22 Q. All right, sir. And what is your cousin's name,
23 sir?

24 A. Henry Walters.

25 Q. All right, sir. And Mr. Walters was driving,

Dennis R. Judy - Cross-Exam

1 sir?

2 A. Yes, sir. He was.

3 Q. Okay. And he drove right down Nursery Road?

4 A. Correct.

5 Q. Okay. Where did his vehicle come to rest on
6 Nursery Road when you went back up? In other words,
7 where did it park?

8 A. At the scene pretty close to where the car was
9 found.

10 Q. Okay. And tell me how it came to be that you
11 met that real nice gentleman named Mr. Helms, sir.

12 A. Well, my cousin, myself pulled up and we got out
13 and he asked who we were and we told him our names.
14 And he just asked us some questions like --

15 Q. What you know?

16 A. Yes, sir.

17 Q. Who are you and what are you doing up here. And
18 then being the gentleman that you are, sir, you must
19 have had a conversation with him?

20 A. He just asked me if I'd seen anything and I told
21 him I seen -- that we both told him we'd seen a car
22 beside the road. And he just asked us, because he
23 asked me could he -- could I show him where the car
24 was parked.

25 Q. Okay.

Dennis R. Judy - Cross-Exam

1 A. And that's what happened.

2 Q. And while they were doing that was your cousin
3 walking the same roadway with you, sir?

4 A. We was standing at one spot. We wasn't walking
5 around.

6 Q. You didn't walk up and down that road?

7 A. Not at that time.

8 Q. Not at that time. How much longer before you
9 did have the occasion, Mr. Judy, to walk up Nursery
10 Road and back down or whatever you did, sir?

11 A. Just a couple minutes. I just walked down with
12 the deputies and showed them where the car was
13 sitting.

14 Q. Now, was it deputy or Agent Helms, sir?

15 A. A deputy and agent.

16 MR. CUMMINGS: Beg the Court's indulgence,
17 Your Honor.

18 THE COURT: All right, sir.

19 (Mr. Cummings and Ms. Hardee-Thomas conferring
20 with Mr. Bowman.)

21 MR. CUMMINGS: Judge, that's all the
22 questions I have of this gentleman, I thank him.

23 THE COURT: Any redirect?

24 MR. BAILEY: No redirect. Your Honor, may
25 he be excused?

Dennis R. Judy - Cross-Exam

1 MR. CUMMINGS: Without objection, Your
2 Honor, please.

3 THE COURT: Very well, you are free to go.
4 Very well.

5 (Whereupon, the witness steps down from the
6 witness stand.)

7 THE COURT: Call your next witness, please.

8 MR. BAILEY: May Mr. Cummings and I
9 approach briefly, please?

10 THE COURT: Sure.

11 (Whereupon, a bench conference was held
12 off the record in the presence of the
13 jury but out of the hearing of the jury.)

14 MR. BAILEY: Call Dr. Ross.

15 THE COURT: All right.

16 (Janice E. Ross, called as a witness, having
17 first been duly sworn, is examined and testifies
18 as follows:)

19 DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. Dr. Ross, would you please tell the jury what
22 your educational background is?

23 A. Yes, sir. I have a degree in biology from the
24 University of South Carolina, I have four years of
25 medical school and obtained my M.D. from Syracuse

Janice E. Ross - Direct Exam

1 University, the Medical University in Syracuse. I
2 have four years of training in pathology which is the
3 study of disease, we learn how to diagnose from your
4 tissue if you have cancer or not, that kind of thing.
5 We do autopsies.

6 I further am qualified in forensic
7 pathology which is the study of how -- of
8 medical/legal death investigation, how the medical
9 idea -- medical training goes towards forensic work
10 which is the legal homicides, suicides, accidents.

11 Q. Right. And where do you presently work,
12 Dr. Ross?

13 A. Newberry, South Carolina.

14 Q. All right. And do you work in the field of
15 forensic pathology at this time?

16 A. Yes, sir.

17 Q. All right. And would you tell the jury, please,
18 approximately how many autopsies you've performed or
19 participated in?

20 A. At least 3,000.

21 Q. All right. And have you testified in the past
22 as an expert witness in the field of forensic
23 pathology in the courts of this state and other
24 states?

25 A. Yes, sir.

Janice E. Ross - Direct Exam

1 Q. On approximately how many occasions?

2 A. Probably 40 to 50.

3 MR. BAILEY: Your Honor, I would tender
4 Dr. Ross as an expert in the field of forensic
5 pathology.

6 THE COURT: Any voir dire?

7 MR. CUMMINGS: Just a couple questions of
8 this nice lady.

9 VOIR DIRE EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Ma'am, are you board certified?

12 A. Yes, sir. I'm board certified in anatomic,
13 clinical, and forensic pathology.

14 Q. All right, ma'am. And approximately when did
15 you become board certified, ma'am?

16 A. In forensic pathology 1985, in the other fields
17 in 1976.

18 MR. CUMMINGS: Thank you, Your Honor,
19 that's all the questions I have of this nice
20 lady.

21 THE COURT: Very well. Any objection?

22 MR. CUMMINGS: At that point, no, ma'am.

23 THE COURT: Very well. She's so qualified.

24 MR. BAILEY: Thank you, Your Honor.

25 BY MR. BAILEY:

Janice E. Ross - Direct Exam

1 Q. Dr. Ross, I want to call your attention to
2 February 17th, 2001 and ask whether or not you had
3 occasion to perform an autopsy on the body of a
4 21-year-old white female identified to you as Kandee
5 Martin?

6 A. Yes, sir.

7 Q. All right. And was that autopsy conducted in
8 Newberry where you work?

9 A. Yes, sir.

10 Q. Pursuant to the authorization of the Dorchester
11 County coroner?

12 A. That's correct.

13 Q. All right. Doctor, please briefly describe to
14 the jury what a forensic pathologist does in the
15 course of an autopsy.

16 A. In an autopsy we first look at the outside of
17 the body to identify, and help identify the body,
18 number one, and to identify any injury to the body or
19 any evidence of natural disease. Then we do an
20 internal examination to look at each organ and
21 further identify diseases and/or injury.

22 Q. All right. And, Doctor, can you describe in
23 general terms the condition of Kandee Martin's body
24 when it was brought to the -- to Newberry for the
25 autopsy?

Janice E. Ross -- Direct Exam

1 A. Yes, sir. The body was quite burned, partially
2 charred. The only portion of skin that was remaining
3 was some part of the back. The remainder of the skin
4 had been burned away exposing underlying bone and
5 muscle, and indeed part of the right side of the
6 chest and the abdomen had been burned away so there
7 was some exposed intestines and tissue of the chest.

8 Q. All right. Now, I want to ask specifically
9 whether or not you examined the head area?

10 A. Yes, sir.

11 Q. And during the course of an autopsy do you have
12 sketches to show any areas of medical interest that
13 you observe on the bodies that are brought to you?

14 A. Yes, sir.

15 Q. Did you do that in this case?

16 A. Yes, sir.

17 Q. Let me hand you a document that's been marked
18 State's 74 and ask whether or not that is an
19 enlargement of the sketch that you had prepared in
20 the course of the autopsy?

21 A. Yes, it is.

22 Q. Okay.

23 MR. BAILEY: Your Honor, I would offer this
24 into evidence at this time.

25 MR. CUMMINGS: Judge, may I take a closer

Janice E. Ross - Direct Exam

1 look? Without objection, Your Honor.

2 THE COURT: Very well. That is State's
3 Exhibit what?

4 MR. BAILEY: That is State's 74, Your
5 Honor.

6 THE COURT: Seventy-four, thank you, yes.
7 State's Exhibit 74 in evidence without
8 objection.

9 (Entered into evidence was State's Exhibit 74,
10 autopsy head sketch.)

11 Q. Dr. Ross, if you would step around to where I'm
12 standing. If you could stand to the side of that
13 where you don't block any of the jurors off, explain
14 to the jury -- there's a laser pointer, if you
15 like -- explain to the jurors what that picture
16 shows.

17 A. This is just a diagram to show where a bullet in
18 this case entered the body, which direction it went.
19 And in this case it entered on the left side of the
20 head and it continued downward and forward and it
21 continued to the -- from left to right. So this
22 shows you a side view and a back view to give you an
23 idea of where that direction went.

24 So it went from the left side of the
25 head, it continued downward, forward, and to the

Janice E. Ross - Direct Exam

1 right. And it actually came out in the area of the
2 cheek. A lot of this area had been burned away from
3 the fire, but in the course of the autopsy when we
4 were looking inside the head and we could identify
5 the way the bullet went through the brain, the brain
6 is still there, and that showed us the direction and
7 the path of the bullet.

8 Q. All right. And what, what portions, or what
9 vital organs or portions of the brain did that bullet
10 pass through, Doctor?

11 A. Went through the main -- the left part of the
12 cerebrum and out through the inside of the base of
13 the skull.

14 Q. All right. And, Doctor, do you have an opinion,
15 to a reasonable degree of medical certainty, as to
16 whether or not that was a fatal wound?

17 A. Yes. That would be a fatal wound, yes.

18 Q. All right. Now, did you detect evidence of any
19 other gunshot wounds?

20 A. Yes.

21 Q. All right. And did you do any other drawings
22 similar to what you have up there?

23 A. Yes, sir.

24 Q. Okay. Let me show you what's been marked for
25 identification as State's 75 and ask whether or not

Janice E. Ross - Direct Exam

1 you prepared that in the course of your autopsy?

2 A. Yes, sir.

3 Q. All right.

4 MR. BAILEY: Your Honor, I would offer
5 this.

6 MR. CUMMINGS: Yes, ma'am, without
7 objection.

8 THE COURT: Without objection. State's
9 Exhibit 75 in evidence without objection.

10 (Entered into evidence was State's Exhibit 75,
11 autopsy front/back sketch.)

12 Q. Dr. Ross, if you would tell the jury what this
13 depicts.

14 A. Yes, sir. This is obviously a full-body diagram
15 again showing the bullet wound in the head. We also
16 found a bullet wound that went through her left back,
17 side of the back, and it continued again downward and
18 from left to right. In the course -- in that
19 bullet's course we could see internally that it went
20 through the lower lobe of the left lung. And indeed
21 there was 900 cc's or almost a whole liter of blood
22 in that chest cavity bleeding from that wound in the
23 lung.

24 The bullet continued to go through
25 part of the abdomen and it bruised the left kidney

Janice E. Ross - Direct Exam

1 and it also went through the portion of the right
2 kidney. And, again, because there is a defect here
3 from the burning we couldn't see an exact exit wound,
4 but we could tell the pathway by the internal organs
5 or where it went. We saw that it went through the
6 tenth rib and then down, as I said, through the left
7 lung, bruised the left kidney and hit the right
8 kidney and went out. Before we do the autopsy itself
9 we do full body x-rays to look for bullets and none
10 were found.

11 Q. So both bullets passed through the body; is that
12 correct, Doctor?

13 A. Yes, sir.

14 Q. Let me show you a third and final sketch, and
15 this is State's 76 for identification, and ask if you
16 also prepared this?

17 A. Yes, sir.

18 MR. BAILEY: Your Honor, I would offer this
19 into evidence.

20 MR. CUMMINGS: Without objection, Judge.

21 THE COURT: Very well. State's Exhibit 76
22 in evidence without objection.

23 (Entered into evidence was State's Exhibit 76,
24 autopsy side sketch.)

25 A. This just correlates with the other diagram to

Janice E. Ross - Direct Exam

1 show from the side view that, indeed, it goes from
2 the back to the front.

3 Q. All right. Now, Doctor, I think you touched on
4 this before, but specifically what organs did that
5 bullet traverse --

6 A. It went --

7 Q. -- the bullet to the back?

8 A. The bullet went through the back, entered the
9 tenth, through the tenth rib, it hit the lower lobe
10 of the left lung and bled, as I say, almost four
11 units of blood in the left chest cavity. It went and
12 bruised the left kidney and went through the right
13 kidney and out. Inside the abdominal cavity and the
14 cavity where the kidneys are and the liver and all,
15 there was 500 cc's of blood which is almost two units
16 of blood, but, again, there was a defect in the wall
17 in the opening so some blood could have escaped from
18 there.

19 Q. All right. Obviously as far -- you can go ahead
20 and have a seat, Doctor, if you would.

21 A. (The witness complied.)

22 Q. Doctor, there's no way you can tell which wound
23 came first from the autopsy; is that correct?

24 A. No, sir.

25 Q. All right. Now, the wound to the back, was that

Janice E. Ross - Direct Exam

1 a fatal wound?

2 A. Yes.

3 Q. And do you have an opinion to a reasonable
4 degree of medical certainty on whether that type of
5 wound would cause immediate death?

6 A. That type of wound would cause death within four
7 or five minutes, I would say. The wound to the head
8 would cause -- would cause immediate unconsciousness
9 and death within a few minutes also.

10 Q. All right. And with respect to the wound to the
11 back, that would be a matter of minutes?

12 A. A matter of minutes, yes, sir.

13 Q. And would the person necessarily be rendered
14 unconscious, or would they potentially remain
15 conscious for a period of that time?

16 A. With just the wound to the back she may have
17 been conscious for almost up to a minute.

18 Q. All right. Now, during the course of an
19 autopsy, do you normally take certain bodily samples
20 of potential evidentiary value?

21 A. Yes, sir.

22 Q. Did you do that in this case?

23 A. Yes, I did.

24 Q. All right. I'm going to hand you two envelopes
25 and a document. The document has been marked for

Janice E. Ross - Direct Exam

1 identification as State's 21, the two envelopes for
2 identification as State's 48 and 49, and ask if
3 you're familiar with these?

4 A. Yes. These are swabs that we take from the
5 vagina, and we draw blood and other fluids. And
6 these are documented and signed and documented on
7 this form which is an evidence transfer form. And it
8 shows what we took and it shows who picked it up and
9 when.

10 Q. All right. And with respect to the document,
11 first of all for the record State's, for
12 identification 21, does that bear your signature on
13 that?

14 A. Yes, sir.

15 Q. Okay. Dr. Ross, does that indicate that on
16 February the 28th, 2001 that you turned over the
17 items listed on this document which included the
18 victim's blood and the vaginal and other swabs to
19 Laurie Shacker of the State Law Enforcement Division?

20 A. Yes, sir. It's Laurie Shacker of SLED.

21 Q. All right. And during the period of time
22 between February the 17th, 2001 and February the 28th
23 when you turned that over, was that maintained in a
24 secure location within your facility?

25 A. It was locked in our office, yes, sir.

Janice E. Ross - Direct Exam

1 Q. Okay. And once you obtained those samples and
2 sealed them up, did anybody open them, or do anything
3 with them to the best of your knowledge?

4 A. No, they did not. These are heat sealed and
5 maintained.

6 MR. BAILEY: Your Honor, I would offer
7 State's 21 for identification into evidence at
8 this time.

9 MR. CUMMINGS: For ID, and beg the Court's
10 indulgence one moment.

11 THE COURT: All right.
12 (Mr. Cummings and Ms. Hardee-Thomas conferring
13 with Mr. Bowman.)

14 MR. CUMMINGS: Your Honor, without
15 objection based on what Mr. Bailey just stated.
16 (Entered into evidence was State's Exhibit 21,
17 autopsy chain of custody.)

18 MR. BAILEY: Also 48, 49 for identification
19 being the swabs Dr. Ross has described and the
20 victim's blood into evidence also.

21 MR. CUMMINGS: Without objection, Judge.

22 THE COURT: Very well.
23 (Entered into evidence was State's Exhibit 48,
24 vaginal swabs.)
25 (Entered into evidence was State's Exhibit 49,

Janice E. Ross - Direct Exam

1 autopsy blood sample.)

2 Q. Dr. Ross, please answer any questions Mr.

3 Cummings might have for you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. CUMMINGS:

7 Q. Good afternoon, Doctor, I'm Norb Cummings.

8 A. Good afternoon.

9 Q. We tried to go -- Mr. Bailey took you out of
10 order to accommodate you because you're going back to
11 Newberry.

12 A. I appreciate that.

13 Q. Yes, ma'am. Doctor, I just want to ask you a
14 few questions, ma'am. I apologize if we appear to be
15 redundant. This person was presented to you in
16 Newberry County on what date, ma'am?

17 A. February 17th, 2001.

18 Q. And you were the doctor that did the entire
19 examination on this person, ma'am?

20 A. Yes, sir.

21 Q. Okay. And when you did the examination of her
22 you stated that you did an x-ray of the complete
23 body?

24 A. Yes.

25 Q. No other what we call basically metal objects,

Janice E. Ross - Cross-Exam

1 or objects that might contain lead or other
2 composites were found inside this young lady?

3 A. No bullets, right.

4 Q. Okay. And did you find, Doctor, with any care
5 or concern an issue about a leg injury to Miss
6 Martin? I mean, I know this lady was burned, but I
7 mean any particular broken bone, leg there, or bent
8 leg, or anything like that, Doctor?

9 A. I don't -- we did not find one at the time. I
10 believe afterwards we found that there had been some
11 leg injury, but there was -- there wasn't enough
12 there to help identify the body on the x-ray that we
13 took.

14 Q. Okay. And the reason I asked that is because
15 that was before the issue there, not as a result of
16 how the body was presented to you, that's exactly how
17 you found it, correct, ma'am?

18 A. That's correct.

19 Q. All right. And, Doctor, Mr. Bailey asked you a
20 question about the swabs that you did. And you
21 checked for seminal fluid; is that correct,
22 ma'am?

23 A. Yes.

24 Q. And again, Doctor, with the highest respect to
25 you, you can't say as a professional and as a

Janice E. Ross - Cross-Exam

1 qualified doctor of when the seminal fluid could have
2 been placed in there; is that correct?

3 A. That's correct.

4 Q. And there's no way to determine when seminal
5 fluid had been placed inside a body cavity?

6 A. Within days, I mean.

7 Q. Right. So it's within some time. From your
8 findings, Doctor, did it appear that it had been over
9 several days?

10 A. I didn't find any sperm, that doesn't -- that
11 means that there weren't -- there may have been
12 somebody who had a vasectomy, for instance.

13 Q. Yes, ma'am. I'm not asking whether it was --

14 A. So there was nothing there to tell me, document
15 the time of the seminal fluid.

16 Q. Could have been placed there, yes, ma'am.

17 A. Yes, sir.

18 Q. And then, Doctor, one of the most important
19 things I care to ask you about is when you --

20 obviously when you did the work that you did and

21 thoroughly did your examination of this young lady,

22 Doctor, you did not find any carbon dioxide or CO₂ in
23 her lungs when you examined her; is that correct?

24 A. That's correct.

25 Q. So in other words for us layman in particular,

Janice E. Ross - Cross-Exam

1 Doctor, there was no evidence that Miss Martin was
2 alive at the time that her body was burned?

3 A. That's correct.

4 Q. And that's without any doubt medically to a
5 reasonable degree of medical certainty; is that
6 correct?

7 A. To a reasonable degree.

8 Q. I'm sorry, ma'am?

9 A. To a reasonable degree of medical certainty.

10 Q. Yes, ma'am. And, again, the significance of
11 that was there was nothing to allow air to be taken
12 down into the person's lungs?

13 A. There was no evidence of soot in the lungs.

14 Q. That mean's somebody's breathing something in,
15 right?

16 A. There was no evidence that she breathed in
17 smoke.

18 Q. Okay. And, again, Doctor, when you looked at
19 this young lady, did you find an item of undergarment
20 that was in tact on her back, her bra strap, ma'am?

21 A. Yes. Part of the bra was there, the back part
22 where the fasteners were and they are in tact.

23 Q. Again, Doctor, I'm not asking a trick question.
24 The fasteners were in tact?

25 A. That's correct.

Janice E. Ross - Cross-Exam

1 Q. Again, the angles -- or not -- excuse me. The
2 direction that you show the projectiles going through
3 this young lady, there is no question to a reasonable
4 degree of medical certainty as to how you drew and
5 how you made your findings of the path of the objects
6 through this body?

7 A. No, there's no question.

8 MR. CUMMINGS: Beg the Court's indulgence,
9 Your Honor.

10 THE COURT: All right, sir.

11 (Mr. Cummings and Ms. Hardee-Thomas conferring
12 with Mr. Bowman.)

13 MR. CUMMINGS: Your Honor, that's all the
14 questions we have of this young doctor at this
15 time, ma'am.

16 THE COURT: All right. Very well, yes,
17 sir.

18 MR. BAILEY: No redirect, Your Honor. May
19 she be excused?

20 MR. CUMMINGS: Without objection. We thank
21 this nice lady.

22 THE COURT: Very well. You are free to go.
23 (Whereupon, the witness steps down from the
24 witness stand.)

25 MR. BAILEY: James Gadson.

James J. Gadson - Direct Exam

1 (James J. Gadson, called as a witness, having
2 first been duly sworn, is examined and testifies
3 as follows:)

4 DIRECT EXAMINATION

5 BY MR. BAILEY:

6 Q. Mr. Gadson, tell the jury, please, where you
7 live.

8 A. Branchville, [REDACTED].

9 Q. All right, sir. You lived in Branchville all
10 your life?

11 A. Yes, sir.

12 Q. Okay. How old are you now?

13 A. Forty-four.

14 Q. Okay. And where do you work, Mr. Gadson?

15 A. Branchville downtown.

16 Q. You work for the Town of Branchville?

17 A. Yeah, water department.

18 Q. Okay. And how long have you been working for
19 them?

20 A. Off and on about 25 years.

21 Q. Okay. Now, Mr. Gadson, do you know the
22 defendant in this case, Mr. Marion Bowman?

23 A. Yes, sir.

24 Q. Okay. And how do you know him?

25 A. That's my sister's son.

James J. Gadson - Direct Exam

1 Q. All right. For the record, please, point him
2 out. Do you see him sitting here in court?

3 A. Yeah.

4 Q. Okay. Sitting in the white shirt with no coat
5 on?

6 A. Yes, sir.

7 Q. All right, sir. Now, your son is James Taiwan
8 Gadson; is that correct?

9 A. Yes, sir.

10 Q. Okay. All right. Mr. Gadson, I want to call
11 your attention to the afternoon of February 16th,
12 Friday afternoon of 2001 and ask if you recall what
13 you were doing that afternoon?

14 A. I was coming from -- I was coming from the --
15 that's -- that's a restaurant be at where I go in the
16 afternoon. And I slice potatoes and they fix me
17 burgers.

18 Q. All right.

19 A. So I was walking, I was coming in from there.
20 They was parked, Marion Bowman and Hiram, they were
21 parked in a car facing the store when I walk up to
22 them.

23 Q. All right. Facing what store?

24 A. Substation.

25 Q. Okay. And that Substation, that's also --

James J. Gadson - Direct Exam

- 1 A. That called Horizon.
- 2 Q. Horizon EZ Store?
- 3 A. Yes, sir.
- 4 Q. That's in the town of Branchville?
- 5 A. Yeah.
- 6 Q. Did you recognize the car they were in, that
- 7 Marion Bowman and Hiram were in?
- 8 A. His sister blue car is still parked by the pine
- 9 tree with the windows down.
- 10 Q. That's Yolanda, that is his sister?
- 11 A. Yes, sir.
- 12 Q. Let me show you a picture, Mr. Gadson, this is
- 13 State's Number 8. Is that the car they were in?
- 14 A. That's the car.
- 15 Q. All right, sir.
- 16 A. Yeah.
- 17 Q. Did you have any conversation with the defendant
- 18 in this case, Marion Bowman, Jr., did y'all talk?
- 19 A. He gave me \$10 to buy some gloves.
- 20 Q. Okay. Slow down just one second, I don't want
- 21 you to get too far ahead now. Who gave you \$10?
- 22 A. His left hand, J. R.
- 23 Q. When you say J. R. --
- 24 A. That's what we call him.
- 25 Q. That's what you call Marion Bowman, Jr., J. R.?

James J. Gadson - Direct Exam

- 1 A. Yes, sir.
- 2 Q. So he gave you \$10?
- 3 A. Yes, with his left hand.
- 4 Q. Did he say something to you?
- 5 A. Go get four pair of gloves.
- 6 Q. Go to the store and get four pair of gloves?
- 7 A. Yes, sir.
- 8 Q. All right, sir. Did you do that?
- 9 A. I asked him, I said, "How you know four pair in
10 there?" He said, "Just go ahead and get four pair."
11 So with \$10, you know, I can get me a beer.
- 12 Q. Okay. So you had enough left over to get four
13 gloves and a beer?
- 14 A. Yes. I went in the store, there were five pair
15 in there.
- 16 Q. All right. And did you buy the gloves and the
17 beer?
- 18 A. Yeah.
- 19 Q. And after you bought them, what did you do?
- 20 A. I get in the back seat, I got off on the corner.
- 21 Q. Okay. Who did you give the gloves to?
- 22 A. J. R.
- 23 Q. Okay. Can you describe the gloves?
- 24 A. Brown cloth.
- 25 Q. I'm going to hand you a bag and I want you to

James J. Gadson - Direct Exam

1 look in here and see if these look like the kind of
2 gloves you got.

3 MR. BAILEY: And for the record, this is
4 State's Number 45 for identification.

5 Q. Okay. You bought those four with the \$10 Marion
6 Bowman gave you?

7 A. There was five pair in the store, I bought four
8 pair of these.

9 Q. All right, sir.

10 A. Yes.

11 Q. Thank you. How did you get home?

12 A. I walked.

13 Q. Okay. All right. Mr. Gadson, that's all I've
14 got. Thank you for answering my questions. Please
15 answer any question Mr. Cummings, Ms. Hardee-Thomas
16 might have for you.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. CUMMINGS:

20 Q. Mr. Gadson, I'm just going to be asking you a
21 couple of questions now.

22 A. Ten-four.

23 Q. I want to take you back to that day to the 16th
24 of February, 2001. And you remember that, right?

25 A. Ten-four.

James J. Gadson - Cross-Exam

1 Q. All right. And how many times have you gone
2 over what you were going to testify about today in
3 today's court proceeding?

4 A. I never thought no more about it because I
5 ain't -- I just been -- my lawyer asked me to go down
6 to see what I can see about Taiwan when he was going
7 to jail about the accident. And I said, "Oh, man," I
8 said, "you know, that's when J. R. sent me to the
9 store to get the gloves." I just didn't thought no
10 more of it.

11 Q. Because you actually went and bought the gloves
12 at 11:30 on the 16th?

13 A. It was, yes. It was Friday night.

14 Q. Friday night?

15 A. Yeah.

16 Q. Okay. And you're saying that they were in
17 Yolanda's car, right?

18 A. Yeah.

19 Q. Okay. Was your son in the car?

20 A. No.

21 Q. Your son wasn't around, was he?

22 A. No.

23 Q. Did you know where he was?

24 A. No.

25 Q. Okay. Who was in the car with Mr. Bowman when

James J. Gadson - Cross-Exam

1 you saw him?

2 A. Hiram Johnson.

3 Q. Hiram Johnson. And just those two fellows were
4 in his sister's car?

5 A. Yes.

6 Q. And that's your testimony, sir?

7 A. Yeah.

8 Q. Okay. You bought them four pairs of gloves?

9 A. Ten-four, yes.

10 Q. And you got enough to get a beer?

11 A. Yes, there was change back.

12 Q. Had you had any beers earlier that day, sir?

13 A. No. Oh, I drunk two coming from the club.

14 Q. Okay.

15 A. Yeah.

16 Q. At what time did you get to the club, sir?

17 A. I go there about 7:00 or 8:00. Maybe sometime

18 I'll unload the truck. We'll sit back there and me

19 and the old man, we'll juggle while he cook meals.

20 He serve a lot of trays.

21 Q. Yes, sir. And obviously it's Friday night and
22 you had some alcoholic beverages, you had some beers?

23 A. I always drink one before I get to town.

24 Walking down Main Street you cannot too much have it.

25 Q. All right, sir. Now, once you purchased these

James J. Gadson - Cross-Exam

1 gloves you said you got in the car with them for
2 about what --

3 A. On the left side in the back.

4 Q. Okay. And then what did you do?

5 A. Came and drove back out, made a left, went up to
6 the railroad track and made a right, I got off on the
7 corner where I sits at.

8 Q. Where did you go after that?

9 A. I sat there and eat.

10 Q. Okay. That's the last time you saw Mr. Bowman?

11 A. Yeah. And then I went to the house. And after
12 I got to the house and give my pig a little scraps I
13 had, I got a little pot bellied pig, that it dawned
14 on me I thought maybe they were probably having a
15 cookout or something, that's why they want the gloves
16 for. So I walk on around, then I didn't see no fire
17 or nothing. I said, "Wow, they must be cooking
18 somewhere else."

19 Q. Okay. Your son's been charged with a crime
20 connected with this case, too; has he not, sir?

21 A. Yes.

22 MR. CUMMINGS: That's all the questions I
23 have of this gentleman. Beg the Court's
24 indulgence.

25 THE COURT: All right.

James J. Gadson - Cross-Exam

1 (Mr. Cummings and Ms. Hardee-Thomas conferring
2 with Mr. Bowman.)

3 MR. CUMMINGS: That's all the questions we
4 have of this gentleman, Your Honor, thank you.

5 THE COURT: Any redirect?

6 MR. BAILEY: No redirect.

7 THE COURT: Is this witness free to leave?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: Any objection?

10 MR. CUMMINGS: No, Judge.

11 THE COURT: That's fine. You are free to
12 go, sir.

13 (Whereupon, the witness steps down from the
14 witness stand.)

15 THE COURT: I think we will take our
16 afternoon break now. Ladies and gentlemen,
17 we're going to take our afternoon break at this
18 time. Be mindful not to discuss this matter or
19 allow anyone to discuss it with you, we'll take
20 about a 20-minute break. Thank you now.

21 (Whereupon, the jury retires to the jury room at
22 2:58 p.m.)

23 THE COURT: We did want to put that
24 stipulation on the record. Counsel, do you want
25 to draft it during the break?

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1 MR. CUMMINGS: Orally say it right now or
2 Mr. Bailey can if I am misstating it.

3 THE COURT: Sure.

4 MR. CUMMINGS: We agreed to the stipulation
5 of the five items of evidence that were
6 presented that I had made my earlier objections
7 on as to the prejudicial basis, Judge.

8 THE COURT: Yes, sir.

9 MR. CUMMINGS: We stipulated to those five
10 pieces of evidence going from Agent Helms to the
11 forensic SLED lab for their examinations of
12 the -- for chemical base and other issues,
13 ma'am. And I've stipulated there will not be
14 any challenge to that chain of evidence from
15 Agent Helms to that other agent, Agent Layton I
16 believe is his name.

17 THE COURT: Very well.

18 MR. BAILEY: That's correct, Your Honor.

19 THE COURT: Very well. We'll take our
20 break then.

21 (Recess, from 2:59 p.m. to 3:25 p.m.)

22 THE COURT: Anything before we bring the
23 jury out?

24 MR. BAILEY: Your Honor, I've got three
25 short chain of custody witnesses I wanted to get

State vs. Bowman - Volume XX

1 out of the way.

2 THE COURT: Great.

3 MR. BAILEY: I think Mr. Cummings -- I've
4 got a SLED inventory sheet chain of custody form
5 that Mr. Cummings -- I think would be consistent
6 with the earlier ruling didn't want that to come
7 in, which is fine with me as long as that issue
8 isn't raised later on that, you know, where's
9 the document.

10 MR. CUMMINGS: I will not raise that issue
11 either in closing arguments or anything to
12 attack those documents that Your Honor has kept
13 out, please.

14 THE COURT: It would be a similar
15 stipulation?

16 MR. CUMMINGS: Yes, ma'am.

17 THE COURT: Very well. Similar
18 stipulation.

19 MR. CUMMINGS: And, Judge, just so you
20 don't think I am sitting here falling asleep,
21 Mr. Bailey is going to take these next three
22 witnesses and he's going to -- I said I would
23 not object to his leading the witnesses in the
24 chain here to kind of speed things along.
25 They're not anything other than chain witnesses

State vs. Bowman - Volume XX

1 as to --

2 THE COURT: Not only will I not think
3 you're sleeping, I don't think you ever sleep.
4 When most people sleep, I don't think you sleep.

5 MR. CUMMINGS: I want to make sure Your
6 Honor knows I'm not sitting here letting
7 something happen.

8 THE COURT: Thank you for that.

9 MR. BAILEY: I have provided Mr. Cummings
10 with a certified chain of -- SLED internal chain
11 so he's had that, had a chance to examine it and
12 I assume that's the reason he's not going to
13 raise any issue on it.

14 MR. CUMMINGS: Absolutely, Judge.

15 THE COURT: Thank you so much. I
16 understand. Let us have our jury.
17 (Whereupon, the jury returns to the courtroom at
18 3:25 p.m.)

19 THE COURT: All right, ladies and
20 gentlemen, we will now continue the State's
21 case.

22 Mr. Bailey.

23 MR. BAILEY: Thank you, Your Honor. The
24 State calls Laurie Shacker.

25 (Laurie Shacker, called as a witness, having

Laurie Shacker - Direct Exam

1 first been duly sworn, is examined and testifies
2 as follows:)

3 DIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q. You are Laurie Shacker?

6 A. That's correct.

7 Q. Ms. Shacker, you're employed by State Law
8 Enforcement Division; is that correct?

9 A. I am.

10 Q. What do you do there?

11 A. I am a forensic toxicologist.

12 Q. All right. And do you ever get to the situation
13 where you handle any evidence?

14 A. I do.

15 Q. Okay.

16 A. I pick up -- I live in Newberry so I frequently
17 pick up evidence from Newberry Pathology.

18 Q. All right. Let me show you a piece of paper
19 here that's in evidence already, Ms. Shacker, and
20 this is State's 21, and ask whether or not you
21 recognize that?

22 A. I do.

23 Q. Okay. And does your name appear on that?

24 A. It does.

25 Q. Is that a chain of custody form where you

Laurie Shacker - Direct Exam

1 accepted certain items of evidence from Dr. Ross at
2 Newberry?

3 A. That's correct.

4 Q. All right. And that itemizes the material that
5 you picked up?

6 A. Yes, it does.

7 Q. All right. Does that include some vaginal swabs
8 and the victim's blood?

9 A. Yes.

10 Q. Okay. And after picking that up, did you
11 transfer that to the forensic laboratory at SLED?

12 A. I did.

13 Q. Hand you State's 48 and 49 which has been
14 identified as being the containers for the victim's
15 blood and vaginal swab and ask if you see your name
16 on those two --

17 A. I do.

18 Q. -- heat-sealed envelopes?

19 A. My name is on both.

20 Q. All right. Ms. Shacker, I would ask whether or
21 not you took those items from the autopsy to SLED, to
22 the state forensic lab?

23 A. I take them from the office to SLED, to the
24 forensic lab, yes.

25 Q. All right. And tell the jury, please, what the

Laurie Shacker - Direct Exam

1 DNA box is.

2 A. It's a locked refrigerator in the log-in
3 department. It has like a mail slot where you put
4 the evidence bag in that slot.

5 Q. All right. And did both of those items of
6 evidence, the vaginal swabs and the blood, were they
7 put in the DNA box?

8 A. Yes. I placed them in the DNA box.

9 Q. Your initials or your name are on the
10 heal-sealed envelopes; is that correct?

11 A. That's correct.

12 Q. Did you open or any way do anything with that
13 evidence?

14 A. No.

15 Q. You transported that from Newberry, put that in
16 the DNA box; is that correct?

17 A. That's correct.

18 Q. Thank you. That's all I have. Please answer
19 any questions Mr. Cummings may have.

20 CROSS-EXAMINATION

21 BY MR. CUMMINGS:

22 Q. Good afternoon, ma'am. Your job solely was to
23 go, ma'am, as an agent to go pick these items up,
24 bring them back and put them in the proper boxes,
25 like DNA for here, over to maybe for chemical testing

Laurie Shacker - Cross-Exam

1 over here?

2 A. That's correct.

3 Q. And that's it, that's all you did?

4 A. That's all I did.

5 MR. CUMMINGS: Thank you very much. Those
6 are all the questions I have of this nice lady.

7 THE COURT: Very well.

8 MR. BAILEY: May she be excused?

9 MR. CUMMINGS: Without objection, Judge.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Call your next witness, please.

13 MR. BAILEY: Sheree Brown.

14 (Sheree Brown, called as a witness, having first
15 been duly sworn, is examined and testifies as
16 follows:)

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. Ms. Brown, do you work with the State Law
20 Enforcement Division?

21 A. Yes, sir.

22 Q. What do you do there?

23 A. I'm a forensic DNA technician.

24 Q. All right. And in that capacity do you handle
25 evidence on occasion?

Sheree Brown - Direct Exam

1 A. Yes, I did.

2 Q. All right. Ms. Brown, I want to call your
3 attention to March the 5th, 2001 and ask whether or
4 not as part of your duties at SLED you removed
5 certain items consisting of the victim, Kandee
6 Martin's blood, some vaginal swabs which contained
7 items number 1 and 7 from the DNA box, and, please,
8 if you have chain of custody papers you need to
9 refresh your memory with?

10 A. Yes, sir. I do.

11 Q. All right. With respect to the vaginal swab,
12 did you do anything with that vaginal swab?

13 A. No, sir. I didn't.

14 Q. Okay. And with respect to the blood, did you do
15 anything with that? And let me hand you two
16 envelopes that you may need to refer to. This is
17 State's 49 and -- 48 and 49 which has been previously
18 testified as being the envelopes that contained the
19 vaginal swabs and the blood from the autopsy.

20 A. Yes, sir.

21 Q. With respect to the tube of blood that was in
22 that, in one of those envelopes there, what, if
23 anything, did you do with it?

24 A. I preserved it on cloth. In the DNA department
25 to preserve the DNA from liquid blood we go through a

Sheree Brown - Direct Exam

1 procedure to pour it on cloth. We let it air dry and
2 I seal it back up into the pouch. I put my initials
3 back across the heat seal line.

4 Q. After you put the liquid blood onto the cloth
5 and dried that, was that resealed?

6 A. Yes, sir.

7 Q. Okay. And what did you do with the envelope
8 containing the vaginal swabs and the envelope that
9 contained the cloth of blood on it?

10 A. I transferred it to our location, it's a secured
11 location within the DNA department. They both were
12 transferred to this location until it was -- the case
13 was assigned to a DNA analyst.

14 Q. All right. Is that a secure location referred
15 to as the DNA freezer?

16 A. Yes.

17 Q. Thank you. Please answer any questions Mr.
18 Cummings may have for you.

19 CROSS-EXAMINATION

20 BY MR. CUMMINGS:

21 Q. I'm going to stand here for a moment, be very
22 quick with you.

23 A. Okay.

24 Q. You are a technician?

25 A. Yes, sir.

Sheree Brown - Cross-Exam

1 Q. Okay. You don't do the scientific testing on
2 DNA?

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

4 Q. You obtain items like this out of either like an
5 old mailbox or an old some sort of sealed container
6 area?

7 A. A secured locked refrigerator.

8 Q. You take it there, again, for lack of -- I'm
9 going to ask you a few questions, explain it, you
10 actually open the tube?

11 A. Yes, sir. I do.

12 Q. You pour some human blood on some samples,
13 cloth?

14 A. Right. It's 100 percent -- little strip of
15 100 percent unbleached white cloth.

16 Q. At that point you just make sure it's hung up,
17 air dried?

18 A. Yes, sir. It's just laid flat on a little strip
19 of paper with that. That's the only one there, so
20 there's no cross-contamination.

21 Q. And then another person comes in and does some
22 examinations of that which you have already tried to
23 prepare ahead of time to either cut down on time --

24 A. Correct.

25 Q. -- to make sure it's dry?

Sheree Brown - Cross-Exam

1 A. Yes, sir.

2 Q. That's all you do?

3 A. Yes, sir. That's all I do.

4 MR. CUMMINGS: That's all the questions I
5 have of this nice lady, Judge. We thank you.

6 MR. BAILEY: No redirect.

7 THE COURT: Is she free to leave?

8 MR. BAILEY: Yes, Your Honor.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: You are free to go.

11 (Whereupon, the witness steps down from the
12 witness stand.)

13 MR. BAILEY: Dana Fowler.

14 (Dana F. Shutt, called as a witness, having
15 first been duly sworn, is examined and testifies
16 as follows:)

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. I have you down as Fowler. Let me get your last
20 name again, please.

21 A. Shutt, S-h-u-t-t.

22 Q. All right. Ms. Shutt, you work at the State Law
23 Enforcement Division laboratory?

24 A. Yes, I do.

25 Q. What do you do there?

Dana F. Shutt - Direct Exam

1 A. I am a forensic technician with evidence
2 control.

3 Q. All right. And when forensic evidence comes to
4 the SLED forensic slab, is each particular case
5 assigned a unique number?

6 A. Yes, it is.

7 Q. All right. And is each separate item that goes
8 up there, is that assigned a number so you can keep
9 track of what's there as it moves through the
10 different hands up there at SLED?

11 A. That's correct.

12 Q. Okay. All right. Ms. Shutt, I want to call
13 your attention to February the 21st, 2001 and ask
14 whether or not as part of your official duties at the
15 State Law Enforcement Division forensic lab you
16 logged in certain items of evidence brought in by
17 Agent James Helms?

18 A. That is correct.

19 Q. Okay. And did you put those items in the arson
20 evidence room?

21 A. Yes, I did.

22 Q. Okay. And I would ask, referring to your chain
23 of custody forms if you need to, whether those items
24 included SLED items 29, 31, 32, 33, and 36?

25 A. Yes, it did.

Dana F. Shutt - Direct Exam

1 Q. All right.

2 MR. BAILEY: And, Your Honor, for the
3 record I would like just to state that those
4 items that I referred to are in evidence as 50,
5 51, 52, 53, and 54.

6 THE COURT: All right, sir.

7 Q. And, Ms. Shutt, did you do anything with these
8 items other than place them in the arson evidence
9 room?

10 A. No, I did not.

11 Q. Thank you, ma'am. That's all I have. Please
12 answer any questions Mr. Cummings might have for you.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. CUMMINGS:

16 Q. You work inside the SLED lab building or SLED
17 building, right?

18 A. That's correct.

19 Q. People bring the stuff to you?

20 A. Yes.

21 Q. For lack of better words you take it, you, based
22 on the requests that are made by certain people,
23 certain agencies, you channel that to like forensic
24 lab here or firearms tracing there, is that your job?

25 A. That is correct.

Dana F. Shutt - Cross-Exam

1 Q. And that's all you do, correct, ma'am?

2 A. We log in and package the evidence, transfer it
3 to the correct department. And when the analysis is
4 complete then we just throw it back to the submitting
5 agency.

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

7 THE COURT: Okay.

8 (Mr. Cummings and Ms. Hardee-Thomas conferring
9 with Mr. Bowman.)

10 MR. CUMMINGS: That's all the questions I
11 have of this young lady.

12 THE COURT: Any redirect?

13 MR. BAILEY: No redirect.

14 THE COURT: Is this witness is free to
15 leave?

16 MR. CUMMINGS: Yes.

17 THE COURT: You are free to leave.

18 (Whereupon, the witness steps down from the
19 witness stand.)

20 THE COURT: Please call your next witness.

21 MR. BAILEY: James Taiwan Gadson.

22 (James T. Gadson, called as a witness, having
23 first been duly sworn, is examined and testifies
24 as follows:)

25

James T. Gadson - Direct Exam

DIRECT EXAMINATION

1
2 BY MR. BAILEY:

3 Q. Mr. Gadson, what I want you to do, as the judge
4 said, try to talk up loud enough where I can hear
5 you. And if I can hear you that means all these
6 jurors here can hear you, too, okay?

7 A. All right.

8 Q. All right. Mr. Gadson, how old are you?

9 A. Twenty-three.

10 Q. Okay. And where are you from?

11 A. Branchville.

12 Q. Okay. You lived in Branchville all your life?

13 A. Yes, sir.

14 Q. Okay. And at the present time, where do you
15 reside?

16 A. Excuse me?

17 Q. Where are you staying now?

18 A. In Branchville.

19 Q. Right at this present time you're in jail; are
20 you not?

21 A. Yeah.

22 Q. Okay. And you're charged with murder; is that
23 correct?

24 A. Yes.

25 Q. Okay. Are you represented by a lawyer?

James T. Gadson - Direct Exam

1 A. Yes.

2 Q. Okay. Who is that lawyer?

3 A. Mr. Gene Dukes.

4 Q. Okay. Is Mr. Dukes seated out here in the
5 audience?

6 A. Yes, sir.

7 Q. Okay. And through Mr. Dukes, through his
8 representation, you have entered into a plea
9 agreement with the State of South Carolina; have you
10 not?

11 A. Yes, sir.

12 Q. Okay. And would you tell the Court and the jury
13 what that agreement is, your understanding of that
14 agreement?

15 A. Accessory after the fact and misprision of a
16 felony.

17 Q. All right, sir. And are you going to get a
18 negotiated sentence of 20 years for that?

19 A. Yes, sir.

20 Q. Okay. And in exchange for that, dropping the
21 murder charge and allowing you to plead to accessory
22 after the fact of murder and misprision of a felony
23 and receiving a 20-year sentence, have you agreed to
24 testify truthfully in this case?

25 A. Yes, sir.

James T. Gadson - Direct Exam

1 Q. Are you prepared to do that today, to testify
2 truthfully?

3 A. Yes, sir.

4 Q. No matter who questions you?

5 A. Yes, sir.

6 Q. All right. Do you know the defendant in this
7 case, Marion Bowman?

8 A. Yes, sir.

9 Q. Can you point him out for the record, please?

10 A. (Indicating.)

11 Q. You're pointing out the young man in the white
12 shirt, no coat on, beside Mr. Cummings; is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. And are you related to Mr. Bowman?

16 A. Yes.

17 Q. How?

18 A. Brother and sister, son, first cousin.

19 Q. You're his first cousin?

20 A. Yes, sir.

21 Q. Okay. Do you know a person named Hiram Johnson?

22 A. Yes, sir.

23 Q. How do you know him?

24 A. First cousin.

25 Q. Okay. And how about Darian Williams?

James T. Gadson - Direct Exam

1 A. Yes.

2 Q. Okay. How do you know Darian Williams?

3 A. First cousin.

4 Q. All right. Mr. Bowman -- Mr. Gadson, I want to
5 talk about Friday, February 16th, 2001. Did you see
6 your cousin, Marion Bowman, that day?

7 A. Yes.

8 Q. Okay. Now, when I say Marion Bowman, does he
9 have nicknames that he goes by?

10 A. Yes.

11 Q. What do you call him?

12 A. Black.

13 Q. Black, okay. And do you know about what time it
14 was on February 16th, which was a Friday, first time
15 you happened to see Marion Bowman, Jr. that day?

16 A. Early in the morning.

17 Q. Okay. Where did you see him?

18 A. He was in the car with his sister.

19 Q. Okay.

20 A. They was on their way to St. George to the meat
21 market.

22 Q. Which sister was he with?

23 A. Yolanda Bowman.

24 Q. Okay. You said they were going to the meat
25 market?

James T. Gadson - Direct Exam

- 1 A. Yes, sir.
- 2 Q. Okay. And did you go with them?
- 3 A. Yes, sir.
- 4 Q. Whose car did you go in?
- 5 A. Yolanda Bowman's car.
- 6 Q. What kind of car did she have?
- 7 A. Blue Volkswagen.
- 8 Q. This is State's 8, ask if that's the car y'all
9 went in?
- 10 A. Yes, sir.
- 11 Q. Okay. The three of y'all went to the meat
12 market in Grover?
- 13 A. Yes, sir.
- 14 Q. After that where did y'all go?
- 15 A. Back to Branchville.
- 16 Q. Where did y'all go to Branchville?
- 17 A. Back to Marion Bowman and Dorothy Bowman house.
- 18 Q. Okay. And when you went back there, or during
19 that day, would you state whether or not you noticed
20 anything about Marion Bowman?
- 21 A. Yes, sir.
- 22 Q. Okay. What did you notice?
- 23 A. He come out of the house with a little limp.
- 24 Q. With a limp?
- 25 A. Yes.

James T. Gadson - Direct Exam

1 Q. Okay. And did you say anything about the limp?

2 A. I asked him why he was walking like that,
3 because he had a gun in his pants.

4 Q. Okay. He said he had a gun in his pants?

5 A. Yes.

6 Q. Okay.

7 A. He said it was cold.

8 Q. The gun was cold?

9 A. Yes.

10 Q. Okay. And did you see the gun?

11 A. Yes. After he put his beer out of the bag he
12 put it in a bag.

13 Q. He had a beer in the bag, took the beer out of
14 the bag and put the gun in the bag?

15 A. Yes, sir.

16 Q. Okay. Now, did you get a look at the gun when
17 he did that?

18 A. Yes.

19 Q. Okay. Is that a gun that you had seen before?

20 A. Yes.

21 Q. Okay. Where did you see it before?

22 A. When he purchased it.

23 Q. Okay. You were with him?

24 A. Yes.

25 Q. Okay. And approximately how long before

James T. Gadson - Direct Exam

1 February the 16th, 2001 was it that you were with him
2 when he bought the gun?

3 A. About a week and a half or two weeks.

4 Q. Okay. And can you describe the gun?

5 A. Yes, sir.

6 Q. Go ahead and tell us what kind of gun it was.

7 A. .380 High Point automatic, gray at the top,
8 black at the bottom.

9 Q. You say you were with Marion Bowman when he
10 bought the gun?

11 A. Yes, sir.

12 Q. Where did he buy the gun from?

13 A. A dude in Orangeburg.

14 Q. A dude in Orangeburg. Do you know his name?

15 A. No, sir.

16 Q. Okay. I hand you what's been marked State's 42
17 for identification, ask if you can identify that?

18 A. Yes, sir.

19 Q. What is that?

20 A. .380 High Point.

21 Q. Okay. Take a good look at it. I ask whether or
22 not you've seen that gun before?

23 A. Yes.

24 Q. Okay. And is that Marion Bowman, Jr.'s gun?

25 A. That's the gun he had.

James T. Gadson - Direct Exam

1 MR. CUMMINGS: Judge, I object. That's
2 speculation. That gentleman can't have any way
3 of knowing that.

4 MR. BAILEY: Let me rephrase it.

5 Q. Does that appear to look like the gun that
6 Marion Bowman, Jr. bought when you were with him?

7 A. Yes, sir.

8 Q. Does that look like the gun that he had on
9 February 16th, 2001?

10 A. Yes, sir.

11 Q. What did you do or where did you go after that,
12 after you saw Marion Bowman, Jr. with the gun and he
13 removed the gun from his pants into the bag?

14 A. Yolanda took us to the villa projects.

15 Q. Okay.

16 THE COURT: I'm having a little harder time
17 hearing you, Mr. Gadson, remember to try to keep
18 your voice up. Don't get so close to the
19 microphone that we can't understand what you
20 say.

21 THE WITNESS: All right.

22 Q. Go ahead and repeat your answer, please.

23 A. To the villa projects.

24 Q. Okay. And that's the Branchville Villas?

25 A. Yes, sir.

James T. Gadson - Direct Exam

- 1 Q. Okay. And what did you do when you got there?
- 2 A. Went behind Hank Koger house.
- 3 Q. Hank Koger's house?
- 4 A. Yes.
- 5 Q. Is that right next door to the villas?
- 6 A. Right across the street.
- 7 Q. Right across the street, okay. Who do you
- 8 recall being over there at Hank Koger's house?
- 9 A. There was a lot of people out there.
- 10 Q. All right. And when you got there, what did you
- 11 do?
- 12 A. Went up under the tree, sit down drinking.
- 13 Q. Okay. Was Marion Bowman, Jr. there?
- 14 A. He had left. After he put his gun down he left.
- 15 Q. You're getting a little bit ahead of me. Did
- 16 you see him there?
- 17 A. Yes.
- 18 Q. Okay. And what did you see him do, if anything,
- 19 with regard to the gun?
- 20 A. Put it in a barrel, trash barrel.
- 21 Q. Okay. And then after he put the gun in the
- 22 trash barrel, what did he do?
- 23 A. He left and went to the store.
- 24 Q. Okay. And did you continue to stay there?
- 25 A. Yes, sir.

James T. Gadson - Direct Exam

1 Q. Okay. Were you still at Hank Koger's house when
2 Marion Bowman, Jr. came back from the store?

3 A. Yes.

4 Q. Okay. What, if anything, occurred after he got
5 back to Hank Koger's house?

6 A. He start arguing about the gun.

7 Q. Okay. And who was he arguing with?

8 A. Me.

9 Q. Okay. And what did he say to you, if anything?

10 A. He said I the only one knew where it was at.

11 Q. Okay. And did you know where it was at?

12 A. No, I didn't.

13 Q. Okay. And what -- how did that argument -- how
14 long did y'all go back and forth about the gun?

15 A. Not long.

16 Q. Okay. And how did that argument end, what
17 caused it to stop?

18 A. Hiram Johnson got it from by the woods.

19 Q. I'm sorry, Hiram Johnson did what?

20 A. Got it from by the woods.

21 Q. Okay. What's the next thing that you remember
22 happening as far as either you or Marion Bowman, Jr.?

23 A. He pull it out the bag to make sure everything
24 was right and he left.

25 Q. When you say "he," I need you -- this lady is

James T. Gadson - Direct Exam

1 writing it down and we got to get the name. Who put
2 what in the bag?

3 A. Marion. He pull it out of the bag to make sure
4 everything was right and he left.

5 Q. Pulled what out of the bag?

6 A. The gun.

7 Q. To make sure it was there?

8 A. Yes.

9 Q. After he pulled it out of the bag, what did he
10 do with it?

11 A. He put it back in the bag and then he left.

12 Q. Put it back in the bag?

13 A. Yes.

14 Q. When he left, did he take the gun with him?

15 A. Yes.

16 Q. When Marion Bowman, Jr. left did you -- what did
17 you do?

18 A. I stayed there.

19 Q. Okay. And I'm going to ask whether or not you
20 saw Marion Bowman later on that day or that evening?

21 A. Yes.

22 Q. Okay. About what time was it when you saw him?

23 A. About 7:00, 7:30.

24 Q. Okay. Mr. Gadson, do you normally wear a watch?

25 A. No, sir.

James T. Gadson - Direct Exam

1 Q. Okay. So when I ask you about times are you
2 sort of estimating?

3 A. Yes, sir.

4 Q. All right. When you saw Marion Bowman, Jr.
5 again around 7:00 or 7:30, whatever, where was it
6 that you saw him?

7 A. In the car with Kandee.

8 Q. In the car with Kandee?

9 A. Yes.

10 Q. Where were you when you saw Marion Bowman, Jr.
11 in the car with Kandee?

12 A. Behind Hank Koger house under the tree.

13 Q. Okay. And what kind of car were they in?

14 A. A green Ford Escort.

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

16 THE COURT: Okay.

17 Q. Let me show you State's 3. Now, besides the
18 color, does that look like the car they were in?

19 A. Yes.

20 Q. Anybody else in that car or just the two of
21 them?

22 A. Just two.

23 Q. All right. Who was behind the wheel?

24 A. Miss Kandee.

25 Q. Okay. And where was Marion Bowman seated?

James T. Gadson - Direct Exam

1 A. On the passenger side.

2 Q. And did she stop the car or keep going?

3 A. She stopped.

4 Q. Okay. What happened after that? Did you have
5 any conversation with Marion, Jr.?

6 A. He called me from under the tree.

7 Q. Who called you from under the tree?

8 A. Marion Bowman.

9 Q. Okay. When he called you over, what did you do?

10 A. He told me to get in.

11 Q. All right. And, again, you got to use names.

12 A. Marion Bowman told me to get in.

13 Q. Told you to get in the car?

14 A. Yes.

15 Q. Okay. And did you get in the car?

16 A. Yes.

17 Q. Okay. Now, Mr. Gadson, had you been drinking
18 that day?

19 A. Yes.

20 Q. All right. What time did you -- roughly what
21 time did you start drinking?

22 A. Around 1:00.

23 Q. Okay. And this is getting 7:30 or so?

24 A. Uh-huh (affirmative response).

25 Q. What had you been drinking?

James T. Gadson - Direct Exam

- 1 A. Gin.
- 2 Q. Okay. And how many drinks of gin do you think
- 3 you had between one o'clock and say 7:00, 7:30,
- 4 whenever this was?
- 5 A. It was a good little bit.
- 6 Q. Okay. Well, good little bit might be one thing
- 7 to one person, something else to somebody else. How
- 8 many drinks do you think you had?
- 9 A. Everybody was sharing so it been about a fifth,
- 10 a little over a fifth.
- 11 Q. You think you drank a fifth by yourself?
- 12 A. No, everybody together.
- 13 Q. Okay, I got you. How many people were drinking
- 14 out of that fifth bottle?
- 15 A. Mostly everybody that was out there.
- 16 Q. Were you drinking anything else besides the gin?
- 17 A. Beer.
- 18 Q. Okay. How many beers do you think you drank
- 19 that afternoon?
- 20 A. About five.
- 21 Q. Okay. What kind of shape were you in by the
- 22 time Marion Bowman called you over to the car that he
- 23 and Kandee were in by that time as far as the
- 24 consumption of alcohol?
- 25 A. Feeling in good shape.

James T. Gadson - Direct Exam

- 1 Q. Feeling in good shape?
- 2 A. Yes.
- 3 Q. Okay. All right. Now, when you got in the car
- 4 did you get in the front seat or back seat?
- 5 A. Back. Back seat.
- 6 Q. Where did y'all go?
- 7 A. To the Horizon EZ Shop.
- 8 Q. What did you do there?
- 9 A. That's when the gas was stolen.
- 10 Q. Stole some gas?
- 11 A. Yes.
- 12 Q. Okay. And after leaving the Horizon EZ Store,
- 13 where did you all go?
- 14 A. Down Highway 78.
- 15 Q. Who was driving?
- 16 A. Kandee.
- 17 Q. Okay. And from Highway 78, where did you go?
- 18 A. Past the new high school, made a right turn.
- 19 Q. When she was making these different turns as
- 20 y'all rode away from Branchville, who was deciding
- 21 which way to turn?
- 22 A. Marion.
- 23 Q. Okay. Marion was telling her where to turn?
- 24 A. Yes.
- 25 Q. Okay. Where did she go next?

James T. Gadson - Direct Exam

1 A. Took it to the stop sign, made a left on
2 McAlhany Road.

3 Q. Okay. And after you got on McAlhany Road, where
4 did she go?

5 A. Took it to the stop sign and made a right, right
6 turn.

7 Q. Okay. What happened, where did you go then?

8 A. After you got to that stop sign made another
9 right and a quick left on Nursery Road.

10 Q. Okay. What happened when you got on Nursery
11 Road?

12 A. He told her to turn around by the yellow road
13 sign.

14 Q. Told her to turn around by a yellow road sign?

15 A. Yes.

16 Q. Okay. And did you do that?

17 A. Yes.

18 Q. And after she turned around by the yellow road
19 sign, what did she do?

20 A. She stopped, cut the car off, cut the lights
21 off, we got out.

22 Q. Okay. I want you to slow down a second. Show
23 you a sketch here, ask if you've seen that before?

24 A. Yes.

25 Q. You've seen that?

James T. Gadson - Direct Exam

1 A. Yes.

2 Q. For the record you're looking at State's Exhibit
3 71; is that correct?

4 A. Yes.

5 Q. Okay. And does that show on there where you all
6 stopped?

7 A. Yes.

8 Q. Okay. I want you to step around here.

9 A. (The witness complies.)

10 Q. What I would like you to do here, if you can
11 stand over to the side here where you don't block the
12 jurors on this end here. I got a laser pointer there
13 you could use if you want to.

14 THE COURT: Mr. Bailey, you're going to
15 have to help me, both of you.

16 Mr. Gadson, you've got to keep your
17 voice up because you don't have the microphone
18 and you're very soft spoken, Ms. Keil must take
19 down what you're saying.

20 THE WITNESS: All right.

21 Q. Do you see on that map there approximately where
22 Kandee stopped her car?

23 A. Yes.

24 Q. Okay. Go ahead and point a little light to
25 roughly where the car was stopped.

James T. Gadson - Direct Exam

1 A. (The witness complies.)

2 Q. Okay. So you're indicating on the side of the
3 road down by the bottom; is that correct?

4 A. Yes, sir.

5 Q. Okay. You can go ahead and have a seat up there
6 now.

7 A. (The witness complies.)

8 Q. You testified she stopped the car on the side of
9 the road. And was she heading toward the stop sign?

10 A. Yes.

11 Q. Okay. And I believe you testified she cut the
12 lights off?

13 A. Yes.

14 Q. Did she leave the car running or cut the engine
15 off?

16 A. Cut it off.

17 Q. Okay. And what happened after she cut the
18 engine off?

19 A. Me and Marion got out.

20 Q. Okay. And when you and Marion got out, what did
21 you do?

22 A. We was walking down the road.

23 Q. Okay. How far away from the car did you and
24 Marion walk?

25 A. About -- it was a good little ways, not that

James T. Gadson - Direct Exam

1 far.

2 Q. Did Kandee stay in the car?

3 A. Yes.

4 Q. Okay. Mr. Gadson, what happened after you and
5 Marion Bowman, Jr. walked away from the car?

6 A. He was saying he was going to kill her because
7 she was wearing a wire.

8 Q. Slow down now. You got to use names.

9 A. Marion said he was going to kill her because she
10 had a wire on.

11 Q. Marion said he was going to kill her because she
12 had a wire on?

13 A. Yes.

14 Q. Okay. And after he said that, what happened?

15 A. We was walking down the road, she came down the
16 road then, grabbed him by the right arm, said she was
17 scared.

18 Q. When you said she came down the road, Kandee
19 came down the road toward you all?

20 A. Yes.

21 Q. What did she do?

22 A. She grabbed him by the right arm said she was
23 scared.

24 Q. Grabbed Marion Bowman, Jr. by the arm and said,
25 "I'm scared"?

James T. Gadson - Direct Exam

1 A. Yes.

2 Q. Was it dark by then?

3 A. Yes, pitch dark.

4 Q. Pitch dark. Any streetlights, anything around
5 there that would help you see what's going on real
6 clearly?

7 A. None.

8 Q. Okay. She grabbed him by the arm and said she
9 was scared?

10 A. Yes.

11 Q. Okay. What happened next?

12 A. As we was walking down the road a car came,
13 jumped off in the woods.

14 Q. A car came by; is that right?

15 A. Yes.

16 Q. When a car came by, what did y'all do?

17 A. Jumped in the woods.

18 Q. Okay. And after you jumped in the woods, what
19 happened?

20 A. After the car passed by she was saying she was
21 going to --

22 MR. CUMMINGS: Objection. Hearsay, please.

23 Q. Don't repeat what she said at this point. What,
24 if anything, did Kandee do?

25 A. She on her way to the car.

James T. Gadson - Direct Exam

- 1 Q. Kandee went to the car?
- 2 A. Yes.
- 3 Q. All right. And what did you do?
- 4 A. I was on my way out of the woods.
- 5 Q. All right. And how about Marion Bowman, Jr.,
- 6 what was he doing?
- 7 A. Following her down the road.
- 8 Q. Following who down the road?
- 9 A. Kandee.
- 10 Q. Okay. All right. Let me see if I understand
- 11 it. The car is still parked there?
- 12 A. Yes.
- 13 Q. Y'all have come out of the woods because the car
- 14 that had come by had already gone by?
- 15 A. Yes.
- 16 Q. You said Kandee's walking towards the car?
- 17 A. Yes.
- 18 Q. Okay. What were you doing, were you walking
- 19 somewhere, or standing, or what?
- 20 A. No.
- 21 Q. You had to be doing one or the other.
- 22 A. I'm still by the woods.
- 23 Q. You're still by the woods?
- 24 A. Yes.
- 25 Q. And tell me again so I'll understand what Marion

James T. Gadson - Direct Exam

- 1 Bowman, Jr. was doing.
- 2 A. Walking down the road behind her.
- 3 Q. Behind Kandee?
- 4 A. Kandee, yes.
- 5 Q. Okay. I want you to take your time. And what's
- 6 the next thing that occurred?
- 7 A. I seen three fires come from a gun.
- 8 Q. You see three fires come from a gun?
- 9 A. Yes.
- 10 Q. Did you hear any noise?
- 11 A. No.
- 12 Q. Did you hear gunshot?
- 13 A. Yes.
- 14 Q. Okay. And what direction -- let's go back up
- 15 here to this map again here, okay? I'll give you
- 16 this laser pointer here again, Mr. Gadson. And can
- 17 you point out roughly where you were at when you saw
- 18 the three gun flashes, heard gunshots?
- 19 A. (Indicating.)
- 20 Q. Down that way towards the stop sign?
- 21 A. Yes.
- 22 Q. Okay. And roughly where was Kandee and Marion
- 23 Bowman, Jr.?
- 24 A. (Indicating.)
- 25 Q. Down there?

James T. Gadson - Direct Exam

1 A. Yes.

2 Q. All right. Go ahead and have a seat.

3 A. (The witness complies.)

4 Q. After you heard the three gunshots, saw three
5 gun flashes, what's the next thing you remember?

6 A. Walking up the road, I seen Kandee come running
7 down the road.

8 Q. Okay. In what direction was she running at?

9 A. Towards me.

10 Q. Towards you?

11 A. Yes.

12 Q. Okay. All right. And go ahead and continue.
13 What happened as she ran towards you?

14 A. She stopped.

15 Q. How close was she to you when she stopped?

16 A. From here to the first row of the audience.

17 MR. CUMMINGS: I'm sorry, I couldn't hear
18 the gentleman.

19 A. From here to the first row of the audience.

20 Q. Okay. All right. What happened then?

21 A. She turned around and face Marion Bowman.

22 MR. CUMMINGS: Objection, Your Honor. I
23 would object to anything to hearsay, please.

24 MR. BAILEY: Your Honor, I need to be heard
25 on that, I guess.

James T. Gadson - Direct Exam

1 THE COURT: Very well. Ladies and
2 gentlemen, I'm going to ask you to please step
3 to your jury room. Do not discuss this matter,
4 do not allow anyone to discuss it with you.
5 There is a matter of law which I must take up
6 outside your presence.
7 (Whereupon, the jury retires to the jury room at
8 4:03 p.m.)

9 MR. BAILEY: Your Honor, if I could go
10 ahead and proffer that.

11 THE COURT: All right, sir.

12 Q. Okay. Mr. Gadson, you were testifying that
13 Kandee Martin was running toward you.

14 A. Yes.

15 Q. And she got about as far as where you're at
16 sitting now to the first row of people out here?

17 A. Yes.

18 Q. And go ahead and continue. What happened then?

19 A. She stop and face him. Kandee Martin stop and
20 face Marion Bowman.

21 Q. Okay. What did you hear or see then?

22 A. She was, "Please, Black, don't shoot me no
23 more."

24 Q. "Please, Black, don't shoot me no more"?

25 A. Yes.

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1 Q. Okay. And did she say something else after
2 that?

3 A. She had a child to take care of.

4 Q. She said she had a child to take care of?

5 A. Yes.

6 MR. BAILEY: Your Honor, that would be the
7 extent of the proffer as far as the excited
8 utterance. Obviously from what this witness
9 testified to she has already been shot once, is
10 fearing for her life and is begging not to be
11 shot again and I would submit that satisfies
12 every requirement of the excited utterance I can
13 think of.

14 THE COURT: Yes, sir.

15 MR. CUMMINGS: May it please the Court,
16 Judge. I understand the solicitor needs that to
17 be the excited utterance statement, that he
18 wants it to be as far as evidentiary value. And
19 I apologize if I look like I'm attacking my
20 solicitor, and I'm not. I'm attacking this
21 gentleman who's saying what somebody else said.
22 Your Honor, respectfully, my first objection is
23 it's hearsay. To be an excited utterance, Your
24 Honor, it's coming now from a co-defendant who
25 has pled and cut a deal to plea.

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1 Your Honor, respectfully, the excited
2 utterance is being offered here today for the
3 truth of the matter asserted to establish what
4 we believe, Your Honor, would be the ultimate
5 issue of this case to a malice aforethought, or
6 at least malice applied, Your Honor,
7 respectfully. Your Honor, I've looked at all
8 the hearsay objections, I've noted my objection
9 on the record for the hearsay. As excited
10 utterance rule, Your Honor, I know you've got it
11 before you and you know it well, Judge, I do not
12 believe it qualifies as an excited utterance.
13 The reason for that is stated, Your Honor,
14 respectfully, that without this statement of
15 course it's being offered by the co-defendant,
16 there is no other way for the State to get this
17 item in.

18 And, Your Honor, respectfully, it's
19 easy for somebody to say what somebody else
20 said, especially when that young lady is now
21 deceased. I thought they were going to try to
22 say dying declaration was not taken by law
23 enforcement and was not offered for that
24 purpose, but just excited utterance. And, Your
25 Honor, normally the person is around to say the

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1 excited utterance or bring that out in quick
2 fashion. How it's being presented here it's
3 not.

4 MR. BAILEY: In addition, of course,
5 there's been an -- an excited utterance would
6 also meet the dying declaration exception to the
7 hearsay rule. And the case law, Your Honor, is
8 that certain injuries signify death, certain
9 grave injuries. And I've got a notebook full of
10 cases if Your Honor needs me to cite those for
11 you, but it clearly satisfies the hearsay
12 exception rule. 803 (2) is excited utterance, a
13 statement related to a startling event or
14 condition made while declarant is under stress
15 or excitement caused by the events or condition.

16 THE COURT: Then, of course, the
17 availability of the declarant is immaterial.

18 MR. BAILEY: That's correct, Your Honor.

19 MR. CUMMINGS: Correct.

20 THE COURT: Well, under 803 (2) this is an
21 excited utterance, the availability of the
22 declarant is immaterial, it is admissible under
23 the hearsay rule. It may or may not be a dying
24 declaration, I guess. Your concern about
25 offering it, first of all, as a dying

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1 declaration is that the knowledge of the person,
2 of their condition, the gravity of their
3 condition. It certainly very well may be
4 admissible also as a dying declaration.

5 MR. BAILEY: Yes, ma'am. Admissible under
6 either exception, but I think excited utterance
7 is very clear.

8 THE COURT: I think that as well, so it's
9 probably admissible to both. I think it's
10 certainly admissible certainly as to excited
11 utterance and very well may as to both. All
12 right.

13 MR. BAILEY: Thank you, Your Honor.

14 THE COURT: Note your -- absolutely, sir,
15 note your exception for the record.

16 MR. CUMMINGS: Thank you.

17 THE COURT: All right. Let's have our jury
18 back.

19 MR. CUMMINGS: Your Honor, just for the
20 record before the jury comes, I understand
21 that -- my co-counsel's told me that family is
22 upset and I just want to put on the record if
23 they needed a break or if we needed a break -- I
24 don't want to cause any undue prejudice or --

25 THE COURT: Hold on a second. I

James T. Gadson - Direct Exam

1 understand. I understand. If you want to have
2 your victim's advocate ask if they need a break
3 at this time.

4 MR. CUMMINGS: And I don't mean that to
5 cause any insult or any further injury, Judge.

6 THE COURT: Let me just -- shall I speak to
7 them?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: All right. Let me just, if I
10 may, speak to Miss Martin's family. I know, I
11 can only -- truly can only imagine how very
12 difficult this is. And while I certainly have
13 all the compassion in the world for both
14 families, I must maintain the decorum of this
15 courtroom because this trial, this jury must be
16 allowed to focus on these issues.

17 So I must ask you as difficult, maybe
18 as impossible as that may be, to maintain your
19 decorum. And let me tell you what I try to do.
20 Mr. Lafond, I need you to go down just a little
21 bit. Thank you. Or you can just shift a little
22 bit.

23 What I'm going to ask you to do is
24 this: I'm going to ask you to feel free that if
25 you need to exit quietly the courtroom, you

James T. Gadson - Direct Exam

1 certainly may come and go. I know I've got some
2 rules about folks not coming and going while the
3 testimony is ongoing, but that does not apply to
4 family, either of Mr. Bowman or certainly of
5 Miss Martin's family. So I want you to feel
6 free to be able to come and go as you may need.

7 And it very well may be that at times
8 you are overcome with emotion and you need to do
9 that. What I need you to be very careful to do
10 is this trial must be tried on the facts.

11 Obviously watch -- anyone who watches someone
12 under great emotional upset is going to tug at
13 them, so I need you to be mindful of it. I say
14 that I want you to know to both families with
15 all the compassion in the world for you, but my
16 charge here is to be certain that this trial is
17 tried on the facts. I hope you can appreciate
18 that.

19 But, again, please feel free,
20 particularly at moments precisely like this one,
21 that if you need to be able to exit, I know that
22 you want to hear the information, I think that
23 Mr. Bailey will have for you a pretty close
24 recitation of what was said if you want to read
25 it later, I think that might be more comforting

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1 for you, you can have the information and be
2 able to not be in the courtroom as the trial is
3 going on.

4 I want you to know that you are -- you
5 are to be here and choose to be here, but I just
6 ask your cooperation with us so that we may try
7 this case based on the facts. Thank you so
8 much. Thanks for listening to me, everyone.

9 MR. BAILEY: Your Honor, could have I
10 moment with her before the jury comes in?

11 THE COURT: Absolutely.

12 MR. CUMMINGS: Absolutely. And I thank
13 you, Your Honor. I'm sorry.

14 THE COURT: I've been watching, too. I had
15 asked for Chris to step out there as well.

16 MR. CUMMINGS: Thank you.

17 (Pause in proceedings.)

18 THE COURT: All right. Very well. Okay.
19 All right. Let us have our jury.

20 (Whereupon, the jury returns to the courtroom at
21 4:13 p.m.)

22 THE COURT: All right, Mr. Bailey, you may
23 continue.

24 MR. BAILEY: Thank you, Your Honor.

25 BY MR. BAILEY:

James T. Gadson - Direct Exam

1 Q. Mr. Gadson, I think before we broke you were
2 testifying that you were approximately as far as
3 where you're sitting now to the second row up here.

4 A. First row.

5 Q. First row.

6 A. First row.

7 Q. Excuse me. Kandee Martin had run toward you and
8 stopped at about that distance.

9 A. Yes.

10 Q. Go ahead and continue, please, and tell the jury
11 what you saw and heard after that. Take your time.

12 A. She was running, Kandee Martin was running
13 toward me, Marion Bowman was behind her, she stop,
14 face him and told him not to shoot her no more
15 because she had a child to take of.

16 Q. Give me the best you can remember the exact
17 words you heard Kandee Martin say to Bowman.

18 A. "Please, Black, don't shoot me no more, I have a
19 child to take care of."

20 Q. Then what happened?

21 A. She fell to the ground, he drag her in the
22 woods.

23 Q. All right. Between the time she said, "Don't
24 shoot me no more I have a child to take care of,"
25 what happened right after that?

James T. Gadson - Direct Exam

1 A. He shot at her two times, she fell to the
2 ground.

3 Q. Okay. And was it dark enough where you could
4 tell at that point where she was shot?

5 A. No.

6 Q. Okay. You could not tell?

7 A. No.

8 Q. Okay.

9 A. No, sir.

10 Q. All right. And you say she fell to the ground.
11 What did you see or hear to let you believe she fell
12 to the ground?

13 A. I seen when she fell to the ground.

14 Q. All right. And when you say to the ground, was
15 she on the pavement?

16 MR. CUMMINGS: Judge, I'm going to ask to
17 object to leading, please.

18 THE COURT: Yes, sir. Don't lead.

19 Q. State where she was when she fell.

20 A. Pavement.

21 Q. Okay. And what happened after that?

22 A. He drag her in the woods.

23 Q. You have to use names.

24 A. Marion drag her in the woods.

25 Q. How did he drag her?

James T. Gadson - Direct Exam

1 A. By the feet.

2 Q. Okay. And what did you do when you observed
3 Marion Bowman shoot Kandee Martin, heard her hit the
4 pavement and drag her into the woods?

5 A. Jump in the car.

6 Q. Before you did that what did you do, if
7 anything?

8 A. Messed in my pants a little bit.

9 Q. You messed in your pants?

10 A. Yes.

11 Q. All right. After you observed Marion Bowman
12 shoot Kandee Martin, did you hear him saying
13 anything, did he say anything to you?

14 A. Yes, after he got in the car.

15 Q. What did he say?

16 A. He said, "I shot that B in the head, heard her
17 head hit the ground."

18 Q. He said what now?

19 A. He shot that B in the head, heard her head hit
20 the ground.

21 Q. Shot that B. What did he say, give me his exact
22 words.

23 A. "I shot that bitch in the head."

24 Q. And then what?

25 A. She fell to the ground, told me he heard her

James T. Gadson - Direct Exam

1 head hit the ground.

2 Q. All right. Now, you were in the car. Where
3 were you sitting in the car?

4 A. On the passenger side.

5 Q. Who got behind the wheel?

6 A. Marion Bowman.

7 Q. Okay. Did you see the gun when he got in the
8 car?

9 MR. CUMMINGS: I object. Leading, please.

10 MR. BAILEY: Your Honor, that's not a
11 leading question, it can be answered yes or no,
12 it doesn't suggest the answer. I don't know how
13 else to ask it, I mean....

14 THE COURT: All right. I'll allow -- I
15 think it's leading. I'll ask you to rephrase
16 your question.

17 MR. BAILEY: Okay.

18 Q. State whether or not you observed anything in
19 regard to Marion Bowman, Jr. after he got in the car.

20 A. No.

21 Q. What happened after the two of you all got back
22 into Kandee Martin's car?

23 A. We went back to Branchville the same way we
24 came.

25 Q. Okay. And when you got to Branchville, where

James T. Gadson - Direct Exam

1 did you go?

2 A. On a little dirt road.

3 Q. Okay. What happened when you got to the little
4 dirt road?

5 A. Parked the car in a wooded area behind the coal
6 plant.

7 Q. And what, if anything, did Marion Bowman say to
8 you when y'all drove into Branchville and parked the
9 car?

10 A. He said if I told anyone he was going to blow my
11 brains out.

12 Q. All right. Say it real slow and loud so she can
13 take it down, okay?

14 A. He said if I would have told anyone he was going
15 to blow my brains out.

16 Q. Okay. What did you do after he parked the car
17 in Branchville? Where did you go?

18 A. He got out and went to the villa projects.

19 Q. Okay. And did you go to the villa projects,
20 too?

21 A. I went behind Hank Koger house.

22 Q. You went to Hank Koger's house?

23 A. Yes.

24 Q. What did you do after that?

25 A. We sat in the yard. He went and got his sister

James T. Gadson - Direct Exam

- 1 car, Yolanda car.
- 2 Q. You keep saying "he," and I understand who
- 3 you're talking about, but for the record who got --
- 4 A. Marion Bowman.
- 5 Q. Got his sister's car?
- 6 A. Yes, Yolanda Bowman.
- 7 Q. What car was it, Yolanda's car?
- 8 A. The Volkswagen.
- 9 Q. Okay. What happened then?
- 10 A. Marion said he was going to the store and get
- 11 some beer.
- 12 Q. Okay. Did you go with him?
- 13 A. Yes.
- 14 Q. Okay. What store did he go to?
- 15 A. The Horizon EZ Shop.
- 16 Q. Okay. What happened after he went to the store?
- 17 A. I was the one that went and purchase the beer.
- 18 Q. You got the beer?
- 19 A. Yes.
- 20 Q. Where did y'all go next?
- 21 A. Around to a dude named Fred house.
- 22 Q. Where did you go after that?
- 23 A. After we left Fred house talking to Travis
- 24 Felder, went back to the projects, the villa
- 25 projects.

James T. Gadson - Direct Exam

1 Q. When you got back to the projects, what did you
2 do?

3 A. Went back under the tree to Hank house.

4 Q. Okay. And I'll ask whether or not you saw
5 Marion Bowman, Jr. later on that evening?

6 A. Yes.

7 Q. Where?

8 A. He was leaving, Marion was leaving, him and
9 Hiram left together.

10 Q. Hiram is Hiram Johnson?

11 A. Yes.

12 Q. Okay. They left where together?

13 A. They left in Yolanda car.

14 Q. Okay. Left from where?

15 A. From the projects.

16 Q. Okay. And did you stay there?

17 A. Yes, sir.

18 Q. Okay. Did you see Marion Bowman, Jr. again
19 later on?

20 A. Yes, sir.

21 Q. Where?

22 A. Just before we left to go to the club.

23 Q. All right. Where was that?

24 A. In the projects.

25 Q. Okay. And when you say you left to go to the

James T. Gadson - Direct Exam

1 club, what club are you talking about?

2 A. Allen Murray.

3 Q. Okay. And who went down to Allen Murray's Club?

4 A. Me, Darian Williams, Hiram Johnson, Marion
5 Bowman.

6 Q. Okay. And how did y'all get from Branchville to
7 Bowman where Allen Murray's Club's located?

8 A. Kandee Martin car.

9 Q. Okay. Who drove?

10 A. Marion Bowman.

11 Q. Where were you riding?

12 A. Passenger side.

13 Q. Front or back?

14 A. Front.

15 Q. Where was Darian Williams and Hiram Johnson
16 sitting?

17 A. Back seat.

18 Q. Okay. And after you all got in the car, what,
19 if anything, occurred?

20 A. He had -- he handed out four pair of brown
21 gloves.

22 Q. Who did?

23 A. Marion Bowman.

24 Q. Hang on a second. Let he hand you State's 45,
25 let me ask you to look inside that bag, see what's in

James T. Gadson - Direct Exam

1 there.

2 A. (The witness complies.) Yes.

3 Q. Does that appear to be the kind of gloves that
4 you all were wearing?

5 A. Yes.

6 Q. Okay. All four of y'all put on these brown
7 cotton gloves?

8 A. Yes, sir.

9 Q. Who did you get the gloves from?

10 A. Marion Bowman.

11 Q. Did Marion Bowman say anything about the fact
12 that y'all were in Kandee Martin's car?

13 A. No.

14 Q. Was there any conversation between Marion Bowman
15 and you or anybody else as y'all drove from
16 Branchville to Allen Murray's Club?

17 A. No, sir.

18 Q. Okay. Do you know roughly what time y'all got
19 to the Allen Murray Club?

20 A. Approximately twelve o'clock.

21 Q. Okay. And when you got to the club, what did
22 you do?

23 A. I went inside the club.

24 Q. Okay. And what about Hiram Johnson or Marion
25 Bowman?

James T. Gadson - Direct Exam

- 1 A. They was sitting outside in Yolanda Volkswagen.
- 2 Q. How about Darian Williams, did he stay outside
- 3 the parking lot or go inside?
- 4 A. He was in the club.
- 5 Q. Went to the club with you?
- 6 A. Yes. Travis Felder, too.
- 7 Q. How long do you think you were inside the club?
- 8 A. About an hour.
- 9 Q. Okay. And about an hour or so and then you came
- 10 out?
- 11 A. Yes.
- 12 Q. And would you state whether or not you saw
- 13 Marion Bowman after you came out?
- 14 A. Yes.
- 15 Q. What was he doing?
- 16 A. Sitting in Yolanda Volkswagen.
- 17 Q. Okay. Now, at some point you left the club?
- 18 A. No, sir.
- 19 Q. I mean, you never -- at some point you had to
- 20 have left, right, you're not still there?
- 21 A. We left like two o'clock.
- 22 Q. All right.
- 23 A. After I came out of the club we did.
- 24 Q. Okay. Well, what happened between the time you
- 25 came out of the club and the time you left?

James T. Gadson - Direct Exam

1 A. When I came out the club, Marion Bowman and
2 Hiram Johnson was sitting in the Volkswagen, I got in
3 the back seat and laid down.

4 Q. Okay. By this time, Mr. Gadson, how much had
5 you had to drink?

6 A. That was from drinking all day. I was done
7 drinking then.

8 Q. Were you drunk?

9 A. Near about.

10 Q. And you laid down in the back seat of
11 Volkswagen?

12 A. Yes, sir.

13 Q. Okay. And after that y'all left the club?

14 A. Yes, sir.

15 Q. All right. And whose car did you leave in?

16 A. Kandee's car.

17 Q. Who was driving?

18 A. Marion.

19 Q. Okay. And where were you sitting?

20 A. In the back seat.

21 Q. Okay. Who else was in the car?

22 A. Darian Williams and Hiram Johnson.

23 Q. Okay. Did y'all go back to Branchville?

24 A. Yes, sir.

25 Q. Okay. When you got to Branchville where did you

James T. Gadson - Direct Exam

1 go?

2 A. Villa projects.

3 Q. Okay. And whose apartment did you go to there?

4 A. Meeka, Apartment [REDACTED].

5 Q. You gave a statement to the deputies on February
6 the 18th, didn't you, 2001?

7 A. Yes.

8 Q. Said you didn't know anything, right?

9 A. Yes.

10 Q. That wasn't true, was it?

11 A. No.

12 Q. Why did you lie?

13 A. Scared.

14 Q. Mr. Gadson, I want you to answer any questions
15 Mr. Cummings has for you, please.

16 A. All right.

17 THE COURT: Cross-examination, Mr.

18 Cummings.

19 MR. CUMMINGS: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. CUMMINGS:

22 Q. I want to make sure you hear everything I've got
23 to say on questions, right? And you'll tell me, son,
24 if you don't understand my questions, right?

25 A. Yes, sir.

James T. Gadson - Cross-Exam

1 Q. First thing I want to ask you is on May 13th,
2 this past Monday of this week.

3 A. Yes.

4 Q. You signed a plea bargain agreement, did you
5 not, with the State?

6 A. Yes.

7 Q. And the total agreement that you had is that you
8 will plead to accessory after the fact of murder,
9 correct?

10 A. Yes.

11 Q. And you'll receive a sentence of 15 years?

12 A. Yes.

13 Q. And misprision of a felony, correct?

14 A. Yes.

15 Q. And receive a sentence of five years?

16 A. Yes.

17 Q. You were charged with murder?

18 A. Yes.

19 Q. And you've agreed for this plea bargain so you
20 could testify today against that man right over
21 there, right?

22 A. No.

23 Q. No. You signed this on Monday when this man was
24 picking a jury to go to trial; is that not true?

25 A. I didn't sign the plea against him. I signed it

James T. Gadson - Cross-Exam

1 because that's what I'm charged with, accessory after
2 the fact and misprision of a felony.

3 Q. That's not what you were charged with. You were
4 charged with murder.

5 A. That's what he give me --

6 Q. And --

7 A. That's what he wrote on me, saying --

8 MR. BAILEY: He's cutting him off and I
9 think he needs to be able to answer the
10 questions.

11 MR. CUMMINGS: I'm on cross, I'm trying
12 to --

13 THE COURT: I understand. But you do need
14 to let him finish his answer. If he's not being
15 responsive you let me know, Mr. Cummings.

16 MR. CUMMINGS: Yes, ma'am. I apologize.

17 THE COURT: That's all right.

18 Q. You were never served the notice of death
19 penalty on you at all, were you?

20 A. No, sir.

21 Q. And on Monday you cut this deal for you, that's
22 your own words, no one asked you, you cut this deal
23 for you, right?

24 A. Yes, sir.

25 Q. Okay. And then since Monday you met -- how many

James T. Gadson - Cross-Exam

1 times have you been shown what we call State's
2 Exhibit Number 71? Thank you, sir. How many times
3 have you been shown this?

4 A. None.

5 Q. None?

6 A. No, sir.

7 Q. Never before today, right?

8 A. No.

9 Q. All right. You've already admitted for Mr.
10 Bailey that you lied when you spoke to the police?

11 A. Yes.

12 Q. We know you lied once.

13 A. Yes.

14 Q. And then I think there was a very important
15 issue that has not been asked of you yet. And I want
16 to ask you this and I want you to please understand
17 that I'm going to ask this question of you and I
18 want --

19 MR. BAILEY: Your Honor, I hate to
20 interpose an objection, but I don't think it's
21 appropriate for Mr. Cummings to state what he
22 thinks is important. I mean, I think he should
23 limit himself to asking questions of this juror
24 {sic}.

25 THE COURT: That's correct. Ask the

James T. Gadson - Cross-Exam

1 question.

2 Q. I'll ask it a different way, I just want you to
3 listen to what I'm going to ask.

4 A. Okay.

5 Q. Did you purchase a High Power .380?

6 MR. BAILEY: Your Honor, I object. I have
7 a matter of law.

8 THE COURT: All right. Ladies and
9 gentlemen, please step to your jury room. Do
10 not discuss this matter and do not allow anyone
11 to discuss it with you. We'll be with you
12 shortly.
13 (Whereupon, the jury retires to the jury room at
14 4:28 p.m.)

15 THE COURT: Yes, sir.

16 MR. BAILEY: I think what Mr. Cummings is
17 getting into, and I could be wrong, he'll
18 correct me if I'm mistaken, my information is
19 Mr. Gadson had purchased a pistol at some point.
20 There's no information, I don't think any
21 forensic evidence is going to come to light that
22 the pistol he purchased was the murder weapon.
23 There may be evidence the gun was fired at other
24 places on other occasions.

25 And I have expressly attempted to stay

James T. Gadson - Cross-Exam

1 away from any prior instances involving guns or
2 firing the gun on any other dates. On the part
3 of Mr. Bowman that wouldn't be appropriate Lyle
4 testimony, and since I can't get into that kind
5 of gun involvement on other dates and occasions,
6 I don't think it's relevant or appropriate for
7 him to get into an unrelated gun.

8 If Mr. Cummings tells me that his
9 expert's going to say that the gun that
10 Mr. Gadson purchased was the murder weapon or
11 something, then I think that's totally
12 appropriate. But if he's just trying to muddy
13 the water up by getting into other guns or other
14 weapons, other occasions, I don't think it's
15 relevant.

16 MR. CUMMINGS: As I read the evidence here,
17 and, again, if I'm wrong I'm going to have to
18 listen to something here in this courtroom, but
19 from everything we've read and with the issue
20 that is in question here as to Mr. Gadson having
21 a High Point .380, or purchased one, there is
22 nothing that SLED's going to say that that was
23 the firearm that put any projectile into the
24 body of Miss Martin from everything I've ever
25 read or anything I ever studied in this case.

James T. Gadson - Cross-Exam

1 There's a lot of words that may be
2 consistent with or a probability, but there is
3 nothing that says that projectile found actually
4 came from that round. Nothing. That projectile
5 was so badly damaged. I'm on cross here as to
6 credibility as to this gentleman here. It is
7 absolutely imperative that I be allowed to
8 cross-examine to show bias, prejudice, his issue
9 of why he signed the plea agreement.

10 THE COURT: I understand. Hold on. Yes.

11 MR. BAILEY: Your Honor, he's correct that
12 the SLED forensic firearm man couldn't
13 specifically say that the bullet, the one fired
14 bullet that was found was fired by the gun that
15 we've had marked here in this case. However, he
16 will testify that to the exclusion of any other
17 gun, the shell casings or several of the shell
18 casings found at the scene were fired by the gun
19 that we have marked for identification at this
20 point in time.

21 Now, his expert has examined that gun.
22 And I've not gotten a report from him or any
23 other expert the defense has, but I'm just
24 trying to grope with what the relevance,
25 possible relevance could be of some other gun,

James T. Gadson - Cross-Exam

1 unless Mr. Cummings as an officer of the Court
2 can say that he can tie this other gun that
3 Mr. Gadson purchased to this crime.

4 MR. CUMMINGS: Judge, I don't want to give
5 up my defense. I mean this with the highest
6 respect, I think I'm being put on the spot here
7 and I shouldn't be.

8 THE COURT: Hold on. Hold on. Stop. The
9 question is what matter that is of consequence
10 to this litigation, to this case, does that
11 question do you have that gun make more probable
12 or less probable?

13 MR. CUMMINGS: The issue here, Judge, and
14 respectfully I've been trying to point out, and,
15 again, Judge, it's going right to the heart of
16 my defense and I respectfully object to --

17 THE COURT: Just answer that.

18 MR. CUMMINGS: I can't, Judge, in just that
19 one blank statement.

20 THE COURT: Yeah, you can. Because I don't
21 want you to tell me more than you need to tell
22 me is what I'm telling you, Mr. Cummings. Just
23 tell me what matter which is of consequence to
24 this case does whether or not this man have that
25 kind of gun make more probable or less probable?

James T. Gadson - Cross-Exam

1 MR. CUMMINGS: It has great consequence,
2 Your Honor, into the fact the projectile that
3 has taken the life of this young lady is not
4 identifiable. There are cartridge casings out
5 there.

6 THE COURT: I got it.

7 MR. CUMMINGS: But, Your Honor, as we know
8 from where I'm trying to go all day today --

9 THE COURT: Let me ask you this question:
10 You're telling me that the projectile could have
11 come from this kind of gun?

12 MR. CUMMINGS: Any kind of consistent
13 weapon that would fire any kind of a .380
14 caliber weapon. Could be a Browning, could be a
15 Smith.

16 THE COURT: Got it. I'm with you. Yes,
17 sir. I think it's relevant. Very well. Yes,
18 it's relevant. Anything further?

19 MR. CUMMINGS: Of this gentleman right now,
20 keep going?

21 THE COURT: No, no, no. I'm just talking
22 about on this issue. No. No. Thank you. Over
23 the objection of the State.

24 Let's have our jury.

25 (Whereupon, the jury returns to the courtroom at

James T. Gadson - Cross-Exam

1 4:34 p.m.)

2 THE COURT: Mr. Cummings, you may proceed.

3 MR. CUMMINGS: Thank you.

4 BY MR. CUMMINGS:

5 Q. Mr. Gadson, you purchased a High Power .380 on
6 7-29 the year 2000; did you not?

7 A. Yes.

8 Q. What color was it?

9 A. Same color as that one.

10 Q. Black and gray?

11 A. Yes.

12 Q. Let's go back to that morning. Did you meet up
13 early in the morning on the 16th, correct, sir?

14 A. Yes.

15 Q. Okay. What time did you start drinking?

16 A. Around 1:00.

17 Q. One o'clock in the afternoon?

18 A. Yes.

19 Q. Had not seen Mr. Bowman at all that -- earlier
20 that morning, correct?

21 A. Yes. We went to the meat market.

22 Q. You went to the meat market with him?

23 A. Yes, sir.

24 Q. Okay. So I just want to get this straight now.
25 You were with him when he went to the meat market,

James T. Gadson - Cross-Exam

1 right?

2 A. Yes.

3 Q. Okay. Rode in the car with him, everything
4 fine?

5 A. Yes.

6 Q. Okay. Listen to the radio?

7 A. Yes.

8 Q. Okay. Go to the meat market, purchased some
9 meat?

10 A. Yes.

11 Q. Okay. Come back. Get back about what time?

12 A. Around 12:30, one o'clock.

13 Q. Had not seen Miss Martin at all that morning,
14 had you?

15 A. No.

16 Q. Okay. You stated in your direct examination by
17 Mr. Bailey that you next see Mr. Bowman at about
18 7:30?

19 A. Yes.

20 Q. All the afternoon hours go by, hadn't been
21 around Mr. Bowman, correct?

22 A. After we left the meat market.

23 Q. Right.

24 A. After we got back in the projects, yeah, I seen
25 him.

James T. Gadson - Cross-Exam

1 Q. Okay. Did not see Miss Martin?

2 A. No.

3 Q. Then it's your testimony, and I want to ask you
4 this, how did it come to be that Miss Martin was in
5 your presence?

6 A. How was she in my presence?

7 Q. Yeah.

8 A. When I seen her at 7:30.

9 Q. Where did you see this lady?

10 A. Driving the car.

11 Q. Where was she?

12 A. In the projects.

13 Q. In the projects?

14 A. Yes.

15 Q. Miss Martin was friends with all of you, right?

16 A. Yes.

17 Q. Okay. When you see Miss Martin everybody got in
18 the car, everybody went to the EZ Shop was it,
19 Horizon gas station?

20 A. Marion Bowman was already in the car when he
21 came in the project.

22 Q. Okay. Went up there, went to the station, got
23 some gasoline?

24 A. Yes.

25 Q. Drove off without paying for the gasoline?

James T. Gadson - Cross-Exam

- 1 A. Yes, \$10 worth.
- 2 Q. Okay. Who was driving?
- 3 A. Kandee Martin.
- 4 Q. Okay. And it's your testimony now, and,
- 5 Mr. Gadson, I'm going to ask you this now, it's your
- 6 testimony that you leave Branchville and drive going
- 7 down different roads?
- 8 A. Yes.
- 9 Q. And it's your testimony it was Mr. Bowman
- 10 telling this young lady where to drive, what to do,
- 11 right?
- 12 A. Yes.
- 13 Q. Okay. You were just riding along and saying
- 14 nice things in the back seat, having a good time?
- 15 A. No. I was just sitting back there.
- 16 Q. Just sitting back there?
- 17 A. Yes.
- 18 Q. Going along for the ride?
- 19 A. Yes.
- 20 Q. Nothing going on?
- 21 A. No.
- 22 Q. Not drinking any beer, not having any more gin?
- 23 A. No.
- 24 Q. And I want to make sure I understood you
- 25 correctly, sir, if I didn't, please tell me. You get

James T. Gadson - Cross-Exam

1 out to a road, car stops in the road, Miss Martin's

2 car stops in the road, right?

3 A. She pulls on the side of the road, turn around

4 by the yellow road sign.

5 Q. Okay. Miss Martin stays in the car, that's your

6 testimony?

7 A. Yes.

8 Q. And then it's your testimony in this courtroom

9 today under oath a car comes along?

10 A. Yes.

11 Q. Miss Martin was afraid?

12 A. Yes.

13 Q. There's a car coming, right?

14 A. Yes.

15 Q. It just doesn't make sense. Somebody's afraid

16 there's a car coming. Did you flag the car down?

17 A. No.

18 Q. Did you reassure your friend?

19 A. No.

20 Q. Why did you jump in the woods?

21 A. Because Marion said he was going to pull a

22 caper.

23 Q. You jumped in the woods when you saw a car

24 coming by?

25 A. All of us jumped in the woods.

James T. Gadson - Cross-Exam

1 Q. "All of us jumped in the woods." Didn't I hear
2 a moment ago this young lady said she was afraid?

3 A. Yes. When she came down the road she grabbed
4 him by his right arm.

5 Q. I want to make sure the next testimony is
6 correct. You told these ladies and gentlemen of the
7 jury today that you were walking away towards that
8 stop sign up there; is that correct?

9 A. Me and Marion, yes.

10 Q. Okay. Walking away towards the stop sign?

11 A. Yes.

12 Q. No question about that young man, right?

13 A. Repeat yourself.

14 Q. No, don't think. You walk to the stop sign, is
15 that your testimony?

16 A. Me and Marion, yes.

17 Q. Okay. You held that document up and you told
18 those folks you walked to the stop sign?

19 A. I was standing to the stop sign when he was
20 doing the shooting.

21 Q. When he was doing the shooting?

22 A. Yes.

23 Q. That's important because that pins him instead
24 of you, right?

25 A. No.

James T. Gadson - Cross-Exam

1 Q. No. Also you said you were standing at the stop
2 sign. Do you want to tell these folks you were up
3 there not doing anything, you want to make sure they
4 all hear that, you weren't doing anything, right, you
5 were up there by the stop sign and you were just
6 looking at the stars; is that true?

7 A. I was watching down the road.

8 Q. Watching down the road. And then it's your
9 testimony Kandee, Miss Martin, was looking at him in
10 the face?

11 A. After he shot her the first time.

12 Q. After he shot her?

13 A. Yes.

14 Q. And you're sure about that as you are about
15 everything else here, right?

16 A. Yes.

17 Q. You're absolutely certain?

18 A. Yes.

19 Q. And then you're so certain that you told these
20 folks that you saw flashes of the gun; is that right?

21 A. Yes.

22 Q. But you didn't hear any sounds?

23 A. Yes, gunshots.

24 Q. Oh, you heard gunshots now?

25 A. Yes.

James T. Gadson - Cross-Exam

1 MR. CUMMINGS: Beg the Court's indulgence,
2 Your Honor.

3 THE COURT: All right.

4 (Mr. Cummings and Ms. Hardee-Thomas conferring
5 with Mr. Bowman.)

6 MR. CUMMINGS: May it please the Court,
7 Your Honor, that's all questions I have of this
8 gentleman. I would ask that he be subject to
9 recall.

10 THE COURT: I understand.

11 Any redirect at this time?

12 MR. BAILEY: I don't think so, Your Honor.
13 Could I have one second, please?

14 THE COURT: All right. Certainly.

15 MR. BAILEY: Your Honor, I have no
16 redirect.

17 THE COURT: Very well. And, again, he's
18 subject to being recalled. All right.

19 (Whereupon, the witness steps down from the
20 witness stand.)

21 MR. BAILEY: Your Honor, can we approach in
22 regard to the timing issue?

23 THE COURT: Yes. Yes, thanks.

24 (Whereupon, a bench conference was held
25 off the record in the presence of the

James T. Gadson - Cross-Exam

1 jury but out of the hearing of the jury.)

2 THE COURT: Scheduling matter, ladies and
3 gentlemen. Just bear with Mr. Solicitor while
4 he sees if he has....

5 (Pause in proceedings.)

6 MR. BAILEY: Your Honor, State would recall
7 Carolyn Brown.

8 THE COURT: All right. Yes, ma'am. If you
9 would come along, Ms. Brown. You will recall,
10 Miss Brown, you were sworn in in this case
11 yesterday and your oath still remains in effect.
12 And you come on around. Do you understand that?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Thank you, Ms. Brown.

15 (Carolyn Brown, called as a witness, having
16 previously been duly sworn, is examined and
17 testifies as follows:)

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q. You previously testified that on the night of
21 February 16th, 2001 you went to the Allen Murray
22 Club; is that correct?

23 A. Yes, sir.

24 Q. You said you went I believe with Travis Felder;
25 is that correct?

Carolyn Brown - Direct Exam

1 A. Yes, sir.

2 Q. And what time do you think you left to go to the
3 Allen Murray Club?

4 A. It was after twelve o'clock.

5 Q. Okay. And before going there would you state
6 whether or not you saw Marion?

7 A. Yes, I did.

8 Q. Okay. And where did you see him?

9 A. In the projects.

10 Q. Okay. About what time was it?

11 A. This was a little before 12:00.

12 Q. All right.

13 A. Before we left to go to the club.

14 Q. Okay. What was he doing in the projects?

15 A. He -- everybody -- he came to get Taiwan and
16 Pop. I don't know his real name.

17 Q. Did you see how he got to the projects, whether
18 he walked, was in a car, or whatever?

19 MR. CUMMINGS: Judge, that's leading,
20 please.

21 THE COURT: You can answer the question.

22 A. He was coming from the side of the building.

23 Q. Okay. All right. Did you know Kandee Martin?

24 A. Yes, I did.

25 Q. Did you see her that evening?

Carolyn Brown - Direct Exam

1 A. Yes, I did, earlier that afternoon.

2 Q. Okay. Where did you see her?

3 A. I seen her at the churn in Branchville and then
4 about 30 minutes later I seen her come through the
5 projects.

6 Q. Okay. When she came through the projects, did
7 she drive or walk?

8 A. She was driving.

9 Q. Okay. Driving her car?

10 A. Yes.

11 Q. By herself?

12 A. Yes.

13 Q. Or was somebody with her?

14 A. I just seen her. I don't know if anybody was in
15 the car.

16 Q. Okay. All right. And between the time you
17 described when you saw Marion Bowman at the projects
18 and the time you went to Allen Murray Club, do you
19 recall seeing Marion Bowman?

20 A. Could you repeat that?

21 Q. You testified you saw Marion Bowman at the
22 projects?

23 A. Yes, sir.

24 Q. Later on you went to the club with Travis
25 Felder?

Carolyn Brown - Direct Exam

1 A. Yes.

2 Q. Between those two times did you see Marion
3 Bowman?

4 A. I seen him at the club when I got there.

5 Q. Okay. All right. And when you saw Marion
6 Bowman at the club, where was he, inside or outside?

7 A. He was on the outside of the club.

8 Q. Okay. And what was he doing outside the club?

9 A. They were standing around by his sister car.

10 Q. Okay. And you left the club at about what time?

11 A. About 2:30, quarter to 3:00.

12 Q. All right. Again, how did you leave the club,
13 who were you with?

14 A. I left with Travis Felder and Valorna Smith.

15 Q. Okay. And where did you all go?

16 A. We went to the store, the EZ Shop. And then we
17 went from there to Valorna's house.

18 Q. All right. Do you wear a watch?

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

20 Q. Okay. Do you know roughly what time it was by
21 the time you all got back to Branchville?

22 MR. CUMMINGS: Judge, I want to object.

23 This young lady was on the stand yesterday and
24 asked these same questions. Again, I don't
25 think this is proper recall on this issue.

Carolyn Brown - Direct Exam

1 MR. BAILEY: If I can be heard.

2 MR. CUMMINGS: I may be mistaken.

3 MR. BAILEY: Your Honor, she answered those
4 questions in response to Mr. Cummings'
5 cross-examination and I didn't get into that
6 with her to my recollection.

7 MR. CUMMINGS: I remembered distinctly the
8 solicitor asked her if she carried a watch and I
9 got back up on recross and asked her if there's
10 clocks in the house.

11 THE COURT: I recall that as well. Yes,
12 sir, Mr. Bailey, if you'll just be mindful what
13 you asked yesterday. You certainly may proceed.

14 MR. BAILEY: Okay. All right.

15 BY MR. BAILEY:

16 Q. Roughly what time was it when you got back to
17 the villas?

18 A. It had to be after three o'clock.

19 Q. Okay. And where did you go in the villas?

20 A. I went to Apartment ☐.

21 Q. Okay. Whose apartment is that?

22 A. Valorna Smith.

23 Q. Who else was in the apartment with you?

24 A. Me, Valorna Smith, Travis Felder.

25 Q. What, if anything, occurred after y'all got back

Carolyn Brown - Direct Exam

1 to the apartment?

2 A. What was that?

3 Q. What happened after you got back, what did you
4 all do when you got back?

5 A. Me and Travis Felder, we drunk a beer or two and
6 Valonra was opening his hair.

7 Q. Doing what?

8 A. He had some braids in his hair.

9 MR. CUMMINGS: Judge, same testimony as
10 yesterday, clearly.

11 THE COURT: That is. Sustained.

12 MR. BAILEY: Okay. All right.

13 Q. All right. What happened after that, after
14 you're doing the hair and all?

15 A. There was a knock on the door.

16 Q. Okay. And who arrived?

17 A. I look out the window.

18 MR. CUMMINGS: Judge, same thing.

19 THE COURT: Sustained.

20 MR. BAILEY: There are a few other
21 questions I wanted to ask her in regard to that,
22 I'm kind of laying the predicate to it.

23 THE COURT: Laying the foundation.

24 A. There was a knock at the door, I look out the
25 window to see if I could see anybody. I didn't see

Carolyn Brown - Direct Exam

1 anybody. I opened the door and Marion Bowman, he
2 stuck his head in, he said, "Trav, man, can you run
3 me home?"

4 Q. "Trav, man, can you run me home?"

5 A. Yes, sir. That's what he said.

6 Q. Do you recall what Marion Bowman was wearing?

7 A. No, I don't.

8 Q. Okay. And when he said that would you state
9 whether or not Travis Felder left?

10 A. What was that?

11 Q. Did Travis Felder leave with him?

12 A. Yeah.

13 Q. Ms. Brown, that's all I have. Please answer any
14 questions Mr. Cummings may have.

15 THE COURT: Cross-examination.

16 MR. CUMMINGS: I don't have any questions
17 of this lady based on what we just went over
18 again from yesterday.

19 THE COURT: Okay. Very well. Is she to be
20 recalled or is she free to go?

21 MR. BAILEY: Free to go, Your Honor.

22 THE COURT: All right. Any objection?

23 MR. CUMMINGS: No, Judge, and we thank this
24 young lady.

25 THE COURT: Very well. You are free to go.

Carolyn Brown - Direct Exam

1 (Whereupon, the witness steps down from the
2 witness stand.)

3 THE COURT: All right. Ladies and
4 gentlemen, for scheduling purposes we are going
5 to conclude the testimony for today. Let me
6 tell you how we will be proceeding in the
7 morning. In the morning, if you wish, it's only
8 if you wish, there will be someone in the day
9 room if you wish to go to a nondenominational
10 ecumenical, now you know the biggest word I
11 know, other than maybe Supercalifragilistic-
12 expialidocious. In any event, ladies and
13 gentlemen, if you wish to go to a
14 nondenominational service in the morning, or
15 gathering in the morning would be a better term,
16 someone will be there in the morning at eight
17 o'clock. Eight o'clock for that purpose. And I
18 don't know that it would last a particularly
19 long period of time.

20 We are going to begin tomorrow at ten
21 o'clock in the morning, that gives you time for
22 that and then you get yourselves together, get
23 your breakfast and then you'll be here and we
24 will begin in the morning at 10:00. After
25 tomorrow we'll be back to nine o'clock.

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1 But be mindful, of course, not to
2 discuss this matter or allow anyone to discuss
3 it with you. And I am sure that your folks from
4 SLED, your new-found friends from SLED have a
5 culinary delight planned for you this evening
6 and I look forward to seeing you all in the
7 morning at ten o'clock.

8 (Whereupon, the jury is excused at 4:53 p.m.)

9 THE COURT: All right. Anything further
10 before we break for this evening?

11 MR. BAILEY: Yes, ma'am. Your Honor, I
12 think there's a possibility that I may be able
13 to finish tomorrow.

14 THE COURT: All right.

15 MR. BAILEY: Or if not then, you know, I
16 would get pretty far advanced into the case.

17 THE COURT: Yes, sir.

18 MR. BAILEY: Your Honor has under
19 advisement my motion for reconsideration in the
20 Jackson vs. Denno matter.

21 THE COURT: I do.

22 MR. BAILEY: And your ruling on that would
23 have some effect potentially on what witnesses I
24 need to line up.

25 THE COURT: Now becomes important. I'm

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1 prepared to rule on that. I just didn't want to
2 take the time this morning. I have reviewed
3 your motion, I am not going to change my
4 previous order, I'm going to continue to exclude
5 what has been -- which was State's 7 for
6 identification during the Jackson vs. Denno
7 hearing. And the reason for my ruling was, just
8 to recap, my concern was the issue was raised as
9 to inducement or coercion and I did not find
10 that the State satisfied the burden as to
11 State's Exhibit 7. And that was based upon the
12 clarity that Mr. Bowman was transported to
13 Branchville for a meeting and the circumstances
14 that I went over in great detail.

15 It came down to me as to a -- the
16 State failed to meet its burden that there was
17 no inducement, there was no coercion. Note your
18 exception for the record.

19 MR. BAILEY: Thank you, Your Honor.

20 MS. HARDEE-THOMAS: Thank you.

21 THE COURT: All right. Very well. Thank
22 you all. We'll see you in the morning. I will
23 try to be here certainly before ten o'clock, and
24 if there are any issues we'll handle them then
25 in the morning. And have a good evening,

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1 everyone.

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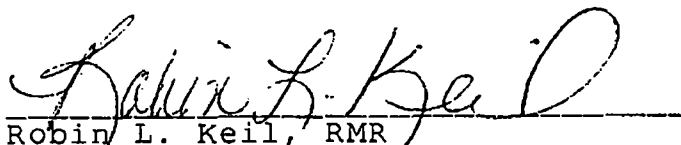
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 5th day of September 2003.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit