

VOLUME FIFTEEN

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

OCT 18 2013

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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PLAINTIFF'S EXHIBIT #73 (PHOTOGRAPH)

1 RECROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Back at that deposition they asked you if you
4 had seen Marion Bowman drinking on the day of that
5 incident and your response was what?

6 A The best of my knowledge I think I said no.

7 Q Right. So, you don't recall ever seeing him
8 drinking on the day of the incident?

9 A No.

10 MR. WATERS: Nothing further, Your Honor.

11 THE COURT: You can step down.

12 (Witness excused).

13 THE COURT: Now, Mr. Johnson, you are still
14 under subpoena, so you may be called back or you
15 may not but you don't need to stay here as long as
16 they are in contact, okay?17 MR. BROWN: Your Honor, just on that note,
18 there is something I had for the number but I have
19 803 378-7038. I would like the Court to inquire.20 THE COURT: Mr. Johnson, is that the number
21 to reach you at?

22 THE WITNESS: Yes, 803 --

23 MR. BROWN: 803 378-7038?

24 THE WITNESS: Call it right now.

25 THE COURT: Go ahead, call it, see what

1 happens.

2 MR. WATERS: You need to make sure to keep it
3 on.

4 THE COURT: Is it ringing?

5 MR. BROWN: I will turn it up.

6 THE WITNESS: 803 378-7038.

7 MR. BROWN: That is what I just called.

8 THE COURT: Sir, but it didn't ring.

9 MR. BROWN: It says disconnected.

10 THE COURT: Ma'am, do you know his cell phone
11 number, ma'am?

12 SPECTATOR: That is his number in my phone.

13 MR. BROWN: We'll call her.

14 THE COURT: No, no use calling her, let her
15 call you.

16 Have you got it?

17 MR. BROWN: Yes.

18 THE COURT: We got it. Mr. Johnson, just be
19 aware we may call you.

20 Next witness, please.

21 MR. SINCLAIRE: Call Darien Williams, Your
22 Honor.

23

24

25

1 DARIEN WILLIAMS,
2 after being first duly sworn, testified as follows:

3 THE COURT: Mr. Court Reporter, I may not
4 have heard him, but the Clerk just swore in this
5 witness? Is that right, Madam Clerk?

6 THE CLERK: Yes, sir.

7 THE COURT: He's under oath, you may proceed.

8 MR. SINCLAIRE: Thank you, Your Honor.

9 The Court's indulgence?

10 THE COURT: Give us your name, sir.

11 THE WITNESS: Darien Williams.

12 THE COURT: All right, Mr. Williams, we'll be
13 with you in a second.

14 Mr. Sinclair, are you ready to proceed or do
15 you want to wait for Mr. Brown to get back?

16 MR. BROWN: Out of an abundance of
17 precaution, Judge, I would like to wait for Mr.
18 Brown.

19 MR. WATERS: The State would concur.

20 THE COURT: All right, Mr. Brown is back in
21 the courtroom. Proceed, Mr. Sinclair.

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. SINCLAIRE:

24 Q Mr. Williams, how old are you?

25 A 27.

1 Q And why are you in prison now?

2 A For second degree lynching.

3 THE COURT: Did you say second degree
4 lynching?

5 THE WITNESS: Yes.

6 Q Do you know Marion Bowman?

7 A Yes, sir.

8 Q Tawain --

9 A Yes, sir.

10 Q -- Gadson? Travis Felder?

11 A Yes, sir.

12 Q And Hiram Johnson?

13 A Yes, sir.

14 Q On February 22nd, 2001, do you remember you
15 were interviewed by Detectives Michael Miller and
16 Alvin Coker?

17 A Yes, sir.

18 Q Do you remember giving them a written
19 statement on that day at 3:30 in the afternoon?

20 A Yes, sir.

21 Q I'm showing you now that which has been
22 marked Plaintiff's Exhibit Number 35. I ask if you
23 recognize this statement and your signature at the
24 bottom?

25 MR. WATERS: Excuse me, could I see it?

1 THE COURT: Is this a statement that was done
2 before trial of the case?

3 MR. SINCLAIRE: Yes. I was showing the
4 statement was prepared February 22nd, 2001, prior
5 to trial.

6 THE COURT: Have you finished reading it?

7 THE WITNESS: Yes, sir.

8 THE COURT: Go ahead.

9 BY MR. SINCLAIRE:

10 Q In that statement do you remember telling
11 Sergeant Coker that you saw Gap at 8:00 p.m.?

12 A Yes, sir.

13 Q All right. Who is Gap?

14 A Tawain Gadson.

15 Q All right. Had you seen Tawain Gadson before
16 that on that date?

17 A Yes, I seen him earlier that day.

18 Q I notice in your statement, on the second
19 line, the first statement you gave, you said, "He
20 was wearing a burgundy Hawaiian style shirt with
21 Hawaiian trees on it, blue jeans and white sweater
22 cap."

23 Do you recognize that in your first
24 statement?

25 A My first statement?

1 Q Do you see that? Is that what you told
2 Sergeant Coker?

3 A Yes, sir.

4 Q Do you remember what Tawain Gadson was
5 wearing earlier that day?

6 A No, sir.

7 Q You had seen him before you first walked up
8 at 8:00 o'clock?

9 A I seen him, I seen him around 4:00 o'clock.

10 Q So, you saw him around 4:00. Do you remember
11 what he was wearing around 4:00?

12 A No, sir.

13 Q Have you had an opportunity to read your
14 first statement you gave on February 22nd, 2001?
15 What parts of that statement are not true?

16 MR. WATERS: Your Honor, I would object at
17 this point. Number one, I think that question is
18 overly broad. Number two, again it just goes back
19 to the same thing, there is no allegation
20 whatsoever that Darien Williams has been called as
21 a witness or anything he said should be used to
22 impeach any of the other State's witnesses.

23 THE COURT: On your first part of your motion
24 it is granted. The second part, I'll proceed and
25 let you ask the questions. We'll determine what

1 connection it has to it. But, Mr. Sinclair, make
2 your question a little more specific, sir.

3 BY MR. SINCLAIRE:

4 Q Mr. Williams, I show you now a document
5 marked Plaintiff's Exhibit 39, a statement of
6 Miranda rights, waiver of rights, and ask you if
7 you recognize your initials on each of those
8 Miranda warnings as well as your signature
9 underneath the waiver?

10 A Uh-huh.

11 Q You have to answer verbally, you have to
12 speak. Do you recognize your signature and the
13 initials beside those Miranda warnings?

14 A Yes.

15 MR. SINCLAIRE: Your Honor, I move
16 Plaintiff's 39 into evidence at this time.

17 THE COURT: This is back in February of '01
18 also?

19 MR. SINCLAIRE: It is.

20 MR. WATERS: Your Honor, subject to my
21 relevance and amendment objections, other than that
22 I have no objection.

23 THE COURT: What were you going to say, Mr.
24 Sinclair?

25 MR. SINCLAIRE: I apologize, Your Honor. The

1 Court's indulgence?

2 MR. WATERS: In fact, let me rephrase that.
3 I object based on my relevance and amendment
4 objection.

5 THE COURT: Okay.

6 MR. SINCLAIRE: It is not February, Judge,
7 November 7th, 2001.

8 THE COURT: Which was this trial?

9 MR. SINCLAIRE: The trial was in May of 2002.

10 THE COURT: The statement was made in
11 November, '01, at least a waiver given November,
12 '01?

13 MR. SINCLAIRE: Correct.

14 THE COURT: Is that a different statement
15 than you showed him?

16 MR. SINCLAIRE: No, Your Honor, it is not.
17 I'm not sure what it has to do --

18 MR. BROWN: We understand that he has given
19 numerous statements, we have no record of what
20 those other statements were but they are oral
21 statements, they are not anywhere in the
22 prosecutor's file.

23 THE COURT: Mr. Sinclair, you want to put in
24 a waiver of rights in November of '01 and you are
25 going to connect the relevance to this case?

1 MR. SINCLAIRE: I believe, I hope to do that,
2 Your Honor.

3 THE COURT: Put it in. I'll see if you can
4 connect the relevance to it, November '01. You
5 need to give the court reporter the number. What
6 is it, 34?

7 MR. SINCLAIRE: 39, Your Honor. At this time
8 in evidence.

9 THE COURT: 39 is in evidence. See if it has
10 any relevance.

11 (Darien Williams Waiver of Rights form marked
12 and received in evidence as Plaintiff's
13 Exhibit Number 39).

14 MR. SINCLAIRE: Before we get to Plaintiff's
15 39, Judge, I want to ask Mr. Williams some other
16 questions that will help bring that document into
17 some relevance.

18 BY MR. SINCLAIRE:

19 Q Mr. Williams, you were, after you gave that
20 first statement to Sergeant Coker --

21 THE COURT: Which was in? It shows several
22 statements.

23 MR. SINCLAIRE: Thank you.

24 Q the statement you still have in your hand,
25 February 22nd, 2001, at 3:30, 3:30 in the

1 afternoon, after you gave that statement were you
2 offered a polygraph exam by Officer Stephenson?

3 MR. WATERS: Your Honor, again I object based
4 on the relevance and the amendment ground I
5 previously expressed.

6 THE COURT: Overruled. What is your answer?

7 THE WITNESS: Sir?

8 THE COURT: His answer is sir? He obviously
9 didn't hear your question.

10 BY MR. SINCLAIRE:

11 Q After your original statement, the one you
12 still hold in your hand --

13 A Yes, sir.

14 Q -- were you offered a polygraph by Officer
15 Stephenson, T. E. Stephenson of the Dorchester
16 County Sheriff's office?

17 A Yes, sir, he said he would give me a
18 polygraph but --

19 Q All right. I show you now which has been
20 marked Plaintiff's Exhibit 34.

21 MR. WATERS: Could I see that? Your Honor,
22 I object to showing this to this witness. This is
23 the polygraph result prepared by T. E. Stephenson,
24 not anything we have gotten. I don't see any point
25 in showing that to this particular witness.

1 THE COURT: I don't know if he got it or not.

2 BY MR. SINCLAIRE:

3 Q Did you every see a copy of this report?

4 A Huh-uh.

5 THE COURT: The answer is no?

6 A No, sir.

7 Q At the time of your arrest, the time you were
8 first being interviewed in February 22nd, 2001, did
9 you have a lawyer?

10 A Yes, sir.

11 Q On February 22nd, 2001, who was your lawyer?

12 A I had Andrew Grimes was my lawyer.

13 Q Was Andrew Grimes a Dorchester County Public
14 Defender?

15 A Yes, I think Summerville.

16 Q Worked in the Summerville office?

17 A Yes, sir.

18 Q During the polygraph exam that occurred on
19 February 22nd, 2001, do you remember the Examiner
20 Stephenson asking you did you move or had you moved
21 Kandee Martin's body from the woods?

22 A Yes, sir, I remember he asked me that.

23 Q What was your answer to that question?

24 MR. WATERS: Your Honor, again I object on my
25 relevance and amendment ground.

1 THE COURT: Overruled.

2 Q Did you move or help move Kandee Martin's
3 body from the woods?

4 A No, I did not.

5 Q "Do you remember him asking you last week did
6 you move or help move Kandee's body --"

7 THE COURT: Do you mean last week from here,
8 or --

9 Q I apologize, the question read last week,
10 it's a quote.

11 THE COURT: Are you talking about February of
12 '01 did he ask him did he see him last week?

13 Q During the polygraph exam do you remember
14 Examiner Stephenson asking you, "Last week did you
15 move or help move Kandee Martin's body from the
16 woods?"

17 A No, sir.

18 MR. WATERS: Your Honor, again I ask for a
19 continuing objection on this line of questioning.

20 THE COURT: Continuing objection.

21 Q If Examiner Stephenson had asked you that
22 question what would your answer have been?

23 A No.

24 Q Do you remember Examiner Stephenson asking
25 you, "Are you withholding any information about the

1 death of Kandee Martin?" Do you remember him
2 asking you that question?

3 A Yes, I remember he asked me that.

4 Q What was your answer to that?

5 A No.

6 Q After that polygraph did you then prepare a
7 second statement with Sergeant Coker?

8 A Yes, sir.

9 Q I'm showing you now that which is marked
10 Plaintiff's Exhibit 36. I ask you if you recognize
11 this second statement and your signature at the
12 bottom of it?

13 THE COURT: He reviewed it. What is your
14 question?

15 Q Do you recognize that signature at the bottom
16 of the page?

17 A Yes, sir.

18 Q Is this your second statement you gave to
19 Sergeant Coker?

20 A Yes, sir.

21 MR. SINCLAIRE: I move Plaintiff's Exhibit 36
22 in evidence, Your Honor.

23 THE COURT: What's the relevance to this
24 case?

25 MR. SINCLAIRE: I believe it is relevant.

1 THE COURT: What is it about? Is this a
2 questioning was done about his involvement or
3 noninvolvement in the murder allegation?

4 MR. SINCLAIRE: It is, Your Honor.

5 THE COURT: And your objection is?

6 MR. WATERS: I object on relevance and my
7 amendment ground previously expressed. It is not
8 relevant to any issue that has been pled and also I
9 object to it, to their attempt to amend the
10 pleadings.

11 THE COURT: He hasn't stated what particular
12 reason he wants it in. Is there a particular
13 reason you want the statement in?

14 MR. SINCLAIRE: There is, Your Honor. There
15 is evidence in this statement provided by Mr.
16 Williams that was never used during
17 cross-examination of the State's witnesses.

18 MR. WATERS: They clearly had these
19 statements before.

20 MR. SINCLAIRE: Ineffective impeachment,
21 ineffective assistance of counsel.

22 THE COURT: You all told him you all, you all
23 told Mr. Waters you were going to show that Mr.
24 Williams here should have been impeached or you are
25 saying that in your petition you just say

1 impeachment without mentioning Mr. Williams?

2 MR. BROWN: That second part. The second
3 part we did allege ineffective impeachment. Now,
4 to give context --

5 THE COURT: As to Mr. Williams?

6 MR. BROWN: No.

7 THE COURT: How is is he going to prepare for
8 him?

9 MR. BROWN: We were going to depose Mr.
10 Williams and we found out he was in prison and we
11 said -- I don't want to have shrugging of shoulders
12 from the AG. The point I'm making here is we
13 discussed having him transported or us going there,
14 and maybe Mr. Sinclair will help me, about whether
15 we wanted to do that since the deposition was
16 scheduled for August 26, or they just wanted to go
17 forward with his exam at the hearing of September
18 15th.

19 Now, if we waived, and I'm going to put this
20 out there right now to clear this up, if we somehow
21 or other waived a valid claim on behalf of Mr.
22 Bowman, then I need to sit down, withdraw from the
23 case and he needs to sue me for malpractice,
24 because I am doing the best I can.

25 THE COURT: Mr. Brown, Mr. Brown, why do you

1 get so angry when we're trying to discuss
2 something?

3 MR. BROWN: Because a trial is there to
4 introduce evidence. That is all we're trying to
5 do.

6 THE COURT: When I ask questions you act
7 like, goodness, it offends you for someone to ask
8 you questions.

9 MR. BROWN: Because I'm offended at him
10 saying I can't introduce evidence if I hadn't put
11 the evidence in --

12 THE COURT: He doesn't get to make that
13 decision, you are talking to me and I haven't held
14 you up about anything.

15 MR. WATERS: If he wants to be offended,
16 I'll him.

17 THE COURT: Let me do this, Mr. Brown, since
18 you are the one discussing this. Mr. Brown, are
19 you saying, then, until this witness testified
20 today you didn't know there was impeachable
21 evidence that was in the statement compared to what
22 he said at the trial?

23 MR. BROWN: Until he answers the questions.

24 THE COURT: Did he testify at trial?

25 MR. BROWN: No, but let me make sure you

1 understand.

2 THE COURT: So, what you are saying, there is
3 stuff in there that he could have been called to
4 impeach him?

5 MR. BROWN: I have to give you some context
6 on that. We didn't know until we got, we didn't
7 know until we got the prosecutor's file a week ago,
8 seventeen months after subpoena or however long, or
9 eighteen months after subpoena, and we didn't get
10 it until then. If you recall, SLED, Dorchester had
11 that under threat of contempt from Your Honor
12 before I got those. So, this is apparent on the
13 part of the State of not complying with their
14 subpoenas to give us information. So, less than two
15 weeks ago we get the prosecutor's file, eight
16 three-inch binders of information, including
17 information from the prosecutor who has now been
18 put under subpoena and will be here, that he
19 intended to present Darien Williams. Darien
20 Williams gives information which proves that other
21 witnesses testified at trial lied, and we just
22 found out that. Until the week before trial the
23 prosecutor Bailey believed Darien Williams' story
24 and we just found that out because we just got
25 their file.

1 THE COURT: So, you just got that statement
2 two weeks ago?

3 MR. BROWN: No, sir, we just -- we assumed
4 that this statement was no good because Darien
5 Willaims was minor, but what we know is this. We
6 know that the prosecutor for fourteen months of
7 this prosecution believed Darien Williams, which
8 means he believed everybody else was lying, and
9 then at time of trial it comes out that, at the
10 time of trial it comes out that he doesn't believe
11 Darien Williams' story, he believes other stories,
12 and we're going to ask Solicitor Bailey about that,
13 I'm going to put him on notice today he is shifting
14 his theory of who is guilty and who is not within a
15 week of trial.

16 THE COURT: All right. Help me go back to
17 the question I'm trying to ask. What you're
18 interviewing this witness about, questioning now
19 are things you are saying it's surprising you and
20 you didn't put it down or you didn't put it down in
21 your third application because you only got the
22 Solicitor's file, you got it two weeks ago?

23 MR. BROWN: Yes. I can give you the exact
24 date. It is when -- bear with me. It is when the
25 investigator on our case drove down and Mr.

1 Sinclair and I went to lunch, and I'm going to
2 guess it was the week of, it was, I think it was
3 September 2nd, it was after Labor Day.

4 THE COURT: Are you saying now you are
5 requesting you add another ground to your
6 application, and if it is, what is it so I can look
7 at it?

8 MR. BROWN: We will say this. We believe
9 that the prosecutor committed misconduct because he
10 is shifting his theory of who is guilty or not.
11 Now, we can't go forward and say he allowed false
12 testimony to be presented because we don't know
13 whether he believed the testimony was true or not
14 because he is shifting it in his own notes.

15 THE COURT: Are you saying you want to amend
16 your PCR application to allege prosecutorial
17 misconduct?

18 MR. BROWN: We have already got it pled in
19 some ground.

20 THE COURT: But you want to allege
21 prosecutorial misconduct in regard to the statement
22 you have by Mr. Williams?

23 MR. BROWN: Well, I think, again, this is
24 only upon information and belief because I want to
25 make sure it's clear that we have maybe the

1 threshold to pass Rule 11. Maybe -- I'm not going
2 to fall in that trap, we know Judge Lloyd has
3 issued a Rule 11 sanction.

4 THE COURT: I'm not trying to get you in a
5 trap.

6 MR. BROWN: I understand.

7 THE COURT: I'm asking questions. I don't
8 seem to get a straight answer from you. All I'm
9 asking is, I assume you all know the responses this
10 witness is going to give, or you don't know the
11 responses?

12 MR. BROWN: We have no clue.

13 THE COURT: So, when you ask him these
14 questions you don't know if his answers are going
15 to help you or hurt you?

16 MR. BROWN: We know what his statement says,
17 I have to put this in context, I think actually it
18 hurts the State's witnesses.

19 THE COURT: Let me see the statement.

20 MR. BROWN: You have to put it in context.

21 Travis --

22 THE COURT: Let me read it first.

23 MR. BROWN: Yes, sir.

24 THE COURT: It is printed out.

25 MR. BROWN: Your Honor, we have Hiram Johnson

1 sitting in the courtroom and he probably doesn't
2 need to be in here, he is subject to recall.

3 THE COURT: Well, let me read the statement.
4 You hand me that. If you can't handle it let me
5 know.

6 Okay, I have read the statement. Was this
7 statement not given to the defense during the
8 course of the trial?

9 MR. BROWN: That statement was. What we
10 don't believe has been turned over is that the
11 prosecutor believed that statement in May of 2002,
12 which that statement contradicts testimony that he
13 put up within a month, I mean, he's shifting what
14 he believes.

15 THE COURT: You see, you're discussing all
16 that but I don't have any information about that.

17 MR. BROWN: And we are going to link it up
18 when the prosecutor takes the stand.

19 THE COURT: Your purpose of this witness is
20 what?

21 MR. BROWN: To lay the groundwork to show the
22 prosecutor believed the story that Tawain Gadson,
23 if you will recall, the man who said he, they asked
24 him this question, were you there, did you put the
25 body in the trunk of the car, did you help burn the

1 car that night? He says no. Mr. Williams says
2 yes. The prosecutor says within a month --

3 THE COURT: He says Marion and Travis put the
4 body in the trunk?

5 MR. BROWN: And I asked Tawain if he was even
6 there, he says no. He testified at trial he wasn't
7 there. This is the star witness against my client.

8 MR. SINCLAIRE: The next witness up, Judge,
9 is Travis, who absolutely denies that part.

10 THE COURT: What is your objection to him
11 asking questions about that?

12 MR. WATERS: Well, my objections are again
13 relevance because it is not relevant to any issue
14 that has been pled. None of that has been pled,
15 anything about failure to call Darien Williams,
16 failure to use Darien Williams to impeach some of
17 the other State's witnesses. Again, Your Honor,
18 the statute requires use, PCR requires the grounds
19 be specifically set forth and the rules and the
20 statute require the facts must be specifically set
21 forth.

22 THE COURT: You feel the defense should have
23 called Darien Williams?

24 MR. BROWN: We feel, believe it or not, that
25 the prosecutor should have been found to have

1 committed misconduct when he says he believes
2 Darien Williams.

3 THE COURT: Now, have you put the State on
4 notice that you feel that the prosecutor engaged in
5 misconduct by not presenting this evidence?

6 MR. BROWN: No. It is not that evidence.

7 THE COURT: Not preventing what, then?

8 MR. BROWN: That the prosecutor believed
9 Tawain Gadson was there when the body was burned.

10 THE COURT: So, therefore the prosecutor
11 committed prosecutorial misconduct by not telling
12 the Court, telling the defense or what?

13 MR. BROWN: That is exactly, that he believed
14 it to be true.

15 THE COURT: When Mr. Gadson testified -- he
16 put, he put Mr. Gadson up?

17 MR. BROWN: That's correct.

18 THE COURT: One of his witnesses he believes
19 lied?

20 MR. BROWN: That's correct.

21 THE COURT: And you believe he should have
22 told the Court that and this person is going to
23 establish, I guess, that Gadson was there?

24 MR. BROWN: We haven't asked him that but
25 that is what we believe.

1 THE COURT: Now, where in your petition is
2 that in there?

3 MR. BROWN: We didn't get, we didn't, and I
4 want you to understand, we got the prosecutor's,
5 I'm going to ballpark, 3,000 page file, we got it
6 before we filed this amended application which he
7 said was not filed soon enough, but we didn't get
8 through all the documents because we didn't get it
9 even two weeks ago from the beginning of this
10 hearing, less than two weeks.

11 MR. WATERS: Your Honor --

12 MR. BROWN: I'm sorry, I'm not finished, Mr.
13 Waters.

14 THE COURT: I will ask you this. It seems
15 like almost every witness you have called have been
16 things you all didn't find out until we got up
17 here.

18 MR. BROWN: We didn't get 3,000 pages of the
19 file, we have not come in here and asked for a
20 continuance yet and we got dumped 3,000 pages in
21 response to a fifteen month old --

22 THE COURT: Why did they only get this two
23 weeks ago?

24 MR. WATERS: This is the first I have heard
25 of this. I would have been happy to expedite that.

1 No one called me, never called you and said,
2 They haven't given me the file." Had they done so,
3 then I --

4 THE COURT: I remember the Sheriff's
5 Department file, once we got on to them about it
6 they gave it to you.

7 MR. BROWN: That's true.

8 MR. WATERS: Your Honor, these statements
9 were in the police file which they had prior to
10 that.

11 THE COURT: No, his issue is he felt like Mr.
12 Bailey believed Mr. Williams.

13 MR. BROWN: He says that, we found notes from
14 Mr. Bailey saying that.

15 THE COURT: He says he found this two weeks
16 ago, he just got it. I don't know what Mr.
17 Williams is going to testify. It depends on what
18 he says.

19 MR. WATERS: What relevance would the
20 prosecutor's subjective belief at any given time
21 during the course of an investigation be? That
22 would be the first question.

23 THE COURT: All I can discern from Mr. Brown
24 is he feels that Mr. Bailey put up testimony that
25 he knew was not true.

1 MR. WATERS: Your Honor, they also could have
2 filed another amended application even after the
3 third one because they obviously knew of his claim.
4 They set this up, they said from the beginning of
5 trial, the first day, that they, "Well, we are
6 probably going to amend during the course," and
7 they obviously knew these things, they should have
8 disclosed them.

9 THE COURT: He said he didn't know it until a
10 week or so.

11 MR. WATERS: He could have filed a fourth
12 amendment at that time, let me know. He could have
13 let me know. Instead, they are trying to come in
14 here and circumvent the notice by eliciting
15 testimony and then in post-trial briefing raise a
16 whole slough of new issues. I think that is
17 inappropriate.

18 As for as canceling the deposition, I never
19 said anything about canceling. We went to Leiber
20 and deposed Ricky Davis without any problem. I had
21 no hand in whether or not we deposed Darien
22 Williams or not. That was their deposition.

23 MR. BROWN: I have to stop and say this. We
24 need a continuance, Your Honor, we'll ask for it
25 right now so I can comply with all the requirements

1 Mr. Waters want me to do. I have never done a
2 capital PCR in this short a time.

3 THE COURT: All right. This short of time?

4 MR. BROWN: That's correct. I have not been
5 on this case for two years, I have never done one,
6 my fourth one is the fastest one I have ever had.

7 THE COURT: I mean, you're telling me you do
8 most of them two years after --

9 MR. BROWN: I have one still pending seven
10 and half years later.

11 THE COURT: Let's proceed on with your
12 questions. I overrule your objection, Mr. Waters,
13 let's go ahead. Mr. Sinclair had other questions.

14 MR. SINCLAIRE: I'm trying to find my place.

15 BY MR. SINCLAIRE:

16 Q Mr. Williams, was the realization you had
17 failed the polygraph the motivation for you to tell
18 the truth in your second statement?

19 A Yes, sir. You know what I'm saying -- there
20 is something I would like to say. When can I have
21 my time to talk?

22 Q Let me just ask you the questions.

23 A Okay.

24 THE COURT: I'll give you a chance to talk
25 later.

1 Q In your second statement you say, top line,
2 three lines down from the top, "We went to the
3 Horizon E-Z Shop?

4 Do you see that, in your second statement?
5 Do have a copy of it there with you?

6 THE COURT: I will give you this one right
7 here. It starts about right there, okay?

8 A This is sometning I want to talk about, this
9 statement right here.

10 THE COURT: What do you want to say about
11 this statement?

12 THE WITNESS: Right now, this statement right
13 here, you know what I'm saying, the reason I wrote
14 this statement, understand, they interrogate me,
15 you know what I'm saying, they scare me up. I do
16 not know nothing about this case, sir, you know
17 what I'm saying, they made me write a statement
18 because they said I lied and they make me take the
19 polygraph test, you know what I'm saying. After I
20 take the polygraph test they say I'm lying. I
21 don't know nothing about this case, man, the only
22 thing I wrote by this statement right here --

23 THE COURT: When you say this statement right
24 here, what number has that statement got on it?
25 That green dot.

1 THE WITNESS: 35.

2 THE COURT: So, do you know about 35?

3 THE WITNESS: Yes, sir. You know what I'm
4 saying, I wrote the statement, you know what I'm
5 saying, they interrogated me and scare me up. I
6 done been on probation about this thing, I didn't
7 know, I didn't know nothing about this stuff, you
8 know what I'm staying, so that is why they give me
9 probation, to try to talk, second degree arson,
10 misprison of felony, suspended on year of
11 probation.

12 MR. BROWN: Your Honor, we would ask to be
13 able to amend because he admitted he lied to the
14 police in his second statement.

15 THE COURT: Are you eating something?

16 MR. BROWN: I apologize.

17 THE COURT: Anyway, when you say -- which is
18 35? Is 35 the statement?

19 THE WITNESS: This right here, sir.

20 THE COURT: Let me see that. 35 is the
21 statement on 2/22/01. Anyway, you say that
22 statement is true?

23 THE WITNESS: Yes, sir, this one right here.

24 THE COURT: The other one is not? Let me see
25 the other one you say is not true. Now, have you

1 marked that one, Mr. Sinclair? That's 36.

2 All right, let's proceed on, I have heard him
3 say that but let's proceed on.

4 BY MR. SINCLAIRE:

5 Q Just to reiterate the last question I asked,
6 Judge, was it the fact you failed the polygraph
7 your motivation for giving your second statement?

8 THE COURT: Which is number 36.

9 Q Thank you, Plaintiff's Number 36 with the
10 second statement in capital letters at the top in
11 parentheses.

12 MR. WATERS: Again I object on relevance and
13 amendment ground.

14 THE COURT: Overruled.

15 MR. WATERS: Thank you.

16 BY MR. SINCLAIRE:

17 Q Was the fact you had failed your polygraph
18 what motivated you to tell the truth in your second
19 statement?

20 A I told you that they interrogate me after I
21 failed, after they said I failed the polygraph
22 test, they telling me, they are telling me things,
23 you understand, I went along with, you understand,
24 to hurry get it over with. I do not know nothing
25 about this case, I'm trying to tell you all I don't

1 know nothing about it.

2 Q So that we're clear --

3 A I don't know nothing about it, sir, nothing,
4 anything about it.

5 Q In the statement you signed dated February
6 the 23rd, 2001, at 1:15 in the morning did you tell
7 the police that you went to the Horizon E-Z Shop
8 with Tawain Gadson and Tawain got gas in a jug or
9 large two or three liter soda bottle? Did you tell
10 the police that?

11 A Sir --

12 Q Just answer my question. Did you tell the
13 police that and then you can explain?

14 A Yes. Just like I said, they was putting
15 pieces and pieces about things, you know what I'm
16 saying, they already had me, I didn't know nothing
17 about this, sir, I do not know nothing about that,
18 I didn't know nothing about that.

19 Q So, what you are telling the Court today is
20 that the police were the ones that told you Tawain
21 had bought the gas in a jug or in a two or three
22 liter soda bottle?

23 A They put it like that, they put it in that
24 situation, man, you interrogate me, interrogating
25 me had me scared, man, made me say things, man. I

1 don't know nothing about this case, man, nothing
2 about this case, I don't know nothing.

3 Q Is it safe to say, based on what you're
4 telling the Court today, that the information that
5 is in your second statement, you got from the
6 police, that is what the police was telling you
7 happened?

8 MR. WATERS: Your Honor, I object to the
9 leading.

10 THE COURT: Overruled.

11 A I don't know anything about the case, sir.

12 Q Well, before we get to that part let me just
13 ask you some specifics about the statement that you
14 signed February 23rd. Have you got it in your
15 hand? It says second statement at the top.

16 THE COURT: It says 36 on the green tab.

17 Q Did you tell the police or did the police
18 tell you that Tawain Gadson bought gas in a jug, a
19 large two or three liter soda bottle?

20 A Sir --

21 Q Did you tell the police that or did the
22 police tell you that? Is it in your statement?

23 A You see, what happened, what happened was the
24 police mostly had find out what it was and then
25 they started asking me questions. Like I said,

1 man, they interrogated me, scare me up. I don't
2 know nothing about this stuff, man.

3 Q In the end you adopted this as your
4 statement?

5 A Yes, sir.

6 Q The information in it either came from you or
7 the police, that is what we're trying to find out
8 today.

9 MR. WATERS: Your Honor, I object to the
10 leading.

11 THE COURT: Overruled.

12 Q Did you or the police say two or three liter
13 coke bottle filled with gasoline?

14 A Police said, I ain't said it.

15 MR. BROWN: Your Honor, we would now ask to
16 be able to amend.

17 THE COURT: Mr. Sinclair, please proceed.

18 Q You say the police say. "Tawain Gadson put
19 the gas in the trunk of Kandee's car and we went to
20 the Villas Apartments"?

21 A Sir, I was already in the projects when they
22 came with the car.

23 Q In your statement you adopted as your own,
24 February 23rd, did you or the police say, "Tawain
25 put the gas in the trunk of Kandee's car and we

1 went back to the Villas Apartments"?

2 A Like I say, I was already in the Villas
3 projects when they came with the car.

4 Q Just answer my question. It is in your
5 statement. Did you say it or did the police say
6 it?

7 A Like I said, sir, I was already in the
8 projects when they came in the car? I tell you, I
9 don't know nothing about this case, man.

10 Q You were already in the projects when they
11 came in the car? Explain that statement to me.
12 What you just said, "I was already in the projects
13 and they came to me in the car." What car are you
14 talking about? Don't look at your statement,
15 answer my question, what car were you talking about
16 just now in your testimony?

17 A Kandee's car.

18 Q Okay. Who was they, "They came to the
19 projects in the car"?

20 A Bowman, Bowman came, Bowman, and I can't
21 remember who the other person was.

22 Q Where did you go in the car?

23 A Went to the club.

24 Q What club was that?

25 A Allen Murray in Bowman.

1 Q Allen Murray club in Bowman, South Carolina?

2 A Yes.

3 Q Today do you remember whether Tawain Gadson
4 was in the car with you, in Kandee's car when you
5 went to the Allen Murray Club?

6 A Yes, sir.

7 Q Was Hiram Johnson in the car with you when
8 you went to the Allen Murray club?

9 A Yes, sir.

10 Q And Marion Bowman?

11 A Yes, sir.

12 Q In your statement, so you won't have to count
13 the lines let me point it out for you, in your
14 statement, Plaintiff's Exhibit Number 36, where it
15 says we, can you read from that point forward?

16 A Yes.

17 Q What does that say?

18 A "We then went to Nursery Road and turned
19 right. We stopped by some woods where Marion and
20 Tawain got out. Travis Felder had followed us from
21 the club to Nursery Road. Marion took the baby
22 seat out of the trunk and put it back on the back
23 seat. Tawain stood by the car while Marion and
24 Travis dragged Kandee's body out of the woods."

25 Q And the two of them put her in the trunk?

- 1 A Yes.
- 2 Q What does it say after that?
- 3 A "I got scared and wanted --"
- 4 Q It says, "I could see blood on her clothes"?
- 5 A "I could see blood on her clothes and I got
6 scared and wanted to go home. Marion wanted to
7 burn the car but agreed to take me back to
8 Branchville. We got back to town around 2:45 a.m.
9 Marion dropped me off and Tawain off in front of
10 the apartments. Tawain went inside apartment ☐
11 I walked to my house. My mother had to get out of
12 bed to let me inside. Travis was following Marion
13 when I got out of the car. I did not help burn the
14 body or the car. I don't know what they did with
15 the gun."
- 16 A Yes, that's what it said.
- 17 Q That information that is in your statement of
18 February 23rd, 2001, did you tell the police that?
- 19 A Yes, sir.
- 20 Q Is that the truth?
- 21 A No, sir.
- 22 Q You just testified that the reason you gave a
23 second statement was because the polygraph scared
24 you into telling the truth?
- 25 A Yes, sir.

1 Q But today you are saying that's not the
2 truth?

3 A It's not the truth, man, I tell you, that is
4 why they didn't charge me with it, they knew I
5 didn't have nothing to do with it, man, I was
6 telling them things for them just to leave me
7 alone, I didn't have nothing to do with it there,
8 this is the truth here, 34, I don't know nothing
9 about the case, man, nothing.

10 Q Okay. Isn't it true that they did charge you
11 with this offense? I show you now that which is
12 marked Plaintiff's Exhibit Number 38. It's a
13 warrant for your arrest. Do you recognize this
14 warrant that you were served with?

15 A Yes, sir, I remember this.

16 Q And again who was your lawyer that
17 represented you on that charge?

18 A Andrew Grimes.

19 Q He was with the Summerville Branch.
20 Dorchester County Public Defender's office, is that
21 correct?

22 A Yes, sir.

23 Q Is that where Marva Hardee-Thomas worked?

24 A I don't remember that.

25 MR. WATERS: Again I want to object to any

1 sort of conflict allegation that may be trying to
2 be created at this point between Marion and
3 everybody else.

4 THE COURT: Noted. We will see where this
5 goes.

6 MR. SINCLAIRE: Your Honor, I move
7 Plaintiff's 38 into evidence at this time.

8 MR. WATERS: Your Honor, I object for the
9 same reasons.

10 THE COURT: All right. What is it, Mr.
11 Sinclair?

12 MR. SINCLAIRE: It's the warrant for
13 accessory after the fact of arson third degree.

14 THE COURT: The police charged him with
15 accessory after the fact of the vehicle being
16 burned?

17 MR. SINCLAIRE: That's correct.

18 THE COURT: Put it in evidence, 38, whatever.

19 THE WITNESS: The reason they charged me with
20 this is because this statement right here, that is
21 why they charged me with that.

22 THE COURT: When you say this statement right
23 here, what number is that?

24 THE WITNESS: Statement 36, that is why they
25 charge me with that, understand, it all boiled

1 down, it all boil down to, when they charged me
2 with that, that is when they had brought up I went
3 to the court, I went and seen my lawyer, my lawyer
4 had got the charge dropped to misprisonment of
5 felony. I had nothing to do with the situation,
6 you know what I'm saying, I was seeing mental
7 health and all kind of stuff, you know what I'm
8 saying, that is why I didn't know, I didn't tell
9 the truth about the case, they know I didn't have
10 nothing to do with it, they know that statement 35
11 was the statement, the truth and honest statement
12 that I had give the first time.

13 MR. SINCLAIRE: Just so the Court is aware,
14 Judge, I think what he is saying is basically true,
15 he was paraphrasing the information that is
16 provided in an affidavit attached to the warrant.
17 I will just read that into the record.

18 THE COURT: Read what into the record?

19 MR. SINCLAIRE: The substance of the
20 affidavit that corroborates what I think he was
21 just trying to explain to the Court.

22 THE COURT: But he says 35 is true and 36 is
23 not.

24 MR. SINCLAIRE: Well, the affidavit
25 references two statements.

1 THE COURT: You have got it in evidence, why
2 can't I just read it myself?

3 MR. SINCLAIRE: I just wanted to go along
4 when he had it so he could read along with it.

5 THE COURT: If you need to question him about
6 it, fine. I thought you were reading it into the
7 record so it would be in the record.

8 MR. SINCLAIRE: Well --

9 THE COURT: It is already in the record since
10 it's an exhibit.

11 MR. SINCLAIRE: Thank you, Judge.

12 THE COURT: Where is the exhibit you put in,
13 the warrant, do you still have it in your hand?

14 MR. BROWN: He has it, Your Honor.

15 THE COURT: No, the warrant, he has it. I
16 just want to make sure, I see this marked and all,
17 I want to make sure whatever goes in evidence stays
18 over there.

19 MR. SINCLAIRE: Okay.

20 BY MR. SINCLAIRE:

21 Q Mr. Williams, when did you cut a deal with
22 the Solicitor's office to resolve this accessory
23 after the fact of arson warrant?

24 A Cut a deal?

25 MR. WATERS: Your Honor, I object to the

1 relevance of this question.

2 THE COURT: Overruled.

3 Q What became of this accessory after the fact
4 of third degree arson warrant?

5 A What you mean by that? I don't understand
6 what you talking about, man.

7 Q Did you enter a guilty plea to this charge?

8 A Yes, I entered a guilty plea.

9 Q What was the charge you entered a guilty plea
10 to?

11 A Misprisonment of a felony.

12 Q And did the Solicitor speak at the sentencing
13 when you pled guilty to misprison of a felony?

14 A Did the Solicitor speak?

15 Q Who was the judge who sentenced you?

16 A I think, I think it was a lady judge, I can't
17 remember.

18 Q Judge Diane Goodstein?

19 A Yes, that is who I think it was.

20 Q And the Solicitor that presented the facts,
21 that gave a basis for the judge accepting that
22 plea, who was that Solicitor?

23 A I can't remember, man.

24 Q Do you remember what the Solicitor told Judge
25 Diane Goodstein prior to your being sentenced?

1 A No.

2 Q The plea that you entered was to misprison of
3 a felony. That misprison of a felony being
4 relative to this case?

5 A Yes, I reckon. You see, the reason why, the
6 reason why, the reason why they come with me with
7 agreement and charged me with misprison of felony,
8 they know I didn't have nothing to do with the
9 case, and then because of my mental health problems
10 and stuff I have, that's why they dropped, you
11 know, that is why they know I didn't have nothing
12 to do with the case, man, I tell you, I don't know
13 nothing about it, man.

14 Q The misprison, what were the allegations of
15 what you had done?

16 A What do you mean? I don't understand what
17 you talking about, man.

18 Q Did they say you had concealed evidence?

19 A Huh?

20 Q Did the Solicitor say you had concealed
21 evidence in the investigation of Marion Bowman?

22 A What do you mean by concealed evidence?

23 Q Misprison of a felony is a legal term. I'm
24 trying to figure out if you know what they alleged
25 you had done that merited the charge misprison of a

1 felony.

2 A The only thing they know, only thing they
3 know, I was lying, only thing they know, that I was
4 telling them things about, I was telling them
5 things, you know what I'm saying, telling them
6 things about which I didn't know nothing about, you
7 know what I'm saying?

8 Q You went over those facts and circumstances,
9 the lies that you told the police, with your lawyer
10 Andy Grimes?

11 A Sir?

12 Q Did you go over the different lies that you
13 told the police with your lawyer Andy Grimes?

14 A I don't understand what you're saying, man.

15 Q Is it your understanding that you entered a
16 plea to misprison of a felony based on lies that
17 you told the police?

18 A Yes, sir.

19 Q And what was the sentence that you received?

20 A I received three years suspended to one year
21 probation.

22 Q And when did you enter that plea?

23 A Man, I can't remember.

24 Q Was it after Marion Bowman's trial, was it
25 after May of 2002?

1 A I think it was right after the trial, the day
2 after the trial or something, I can't remember,
3 man.

4 MR. SINCLAIRE: The Court's indulgence?

5 Q Just so we're clear, in your second
6 statement, Plaintiff's 36, when it says, "We went
7 to the Horizon E-Z Shop, Tawain got gas in a jug or
8 large two or three liter soda bottle," did you tell
9 the police that or did the police tell you that?

10 MR. WATERS: Your Honor, I object to the
11 leading and asked and answered as well.

12 THE COURT: I will let you ask it again, I
13 know it's been answered. I guess it's been
14 answered, I'm not sure it has been answered
15 clearly.

16 A Yes, sir. Like I said, yes.

17 Q Did you tell the police that?

18 A Yes. I told the police that, I did not tell
19 you that, you know what I'm saying, wait man, I
20 telling you, you know what I'm saying, the
21 statement and stuff, they said I was lying, they
22 said I was lying about the situation, you know what
23 I'm saying, they know I didn't have nothing to do
24 with it and stuff, you understand what I'm saying,
25 that is what they told me the charge I had.

1 Q But that information, did you get that from
2 the police or did you -- I mean how would you come
3 up with that? Is that true?

4 A Hey, listen, I didn't have nothing to do with
5 it, man, that is all I know, I didn't have nothing
6 to do with it, man, them guys know it, everybody
7 know, Tawain Gadson, Hiram Johnson, all know I
8 didn't have nothing to do with it, they know I
9 didn't know nothing about it, you know what I'm
10 saying, all them know that.

11 Q But that is a very specific piece of
12 information. My question to you is did the police
13 tell you --

14 MR. WATERS: I object to his statement.

15 A Listen, man --

16 Q Did the police tell you that?

17 A I don't know nothing about this case, man.

18 Q I'm asking you about your statement, did the
19 police tell you that?

20 MR. WATERS: Your Honor, asked and answered.

21 THE COURT: Overruled. I will let him go a
22 little longer.

23 Q Yes or no, did the police tell you about
24 Tawain buying the gas and putting in a two or three
25 liter bottle of coke?

1 A No, sir.

2 Q Well, okay. So, which time did you lie?

3 Earlier you testified the police told you or just
4 now when you say the police didn't tell you, which
5 time?

6 A I don't understand what you're saying, sir.

7 Q You testified earlier the police told you
8 Tawain had put the gas in the two or three liter
9 soda bottle.

10 MR. WATERS: I object to that question.

11 THE COURT: I think you have about asked it
12 as many times as you can ask. I'm not sure.

13 MR. SINCLAIRE: I'm trying to figure out
14 which one is the lie.

15 THE WITNESS: Listen, sir, like I said, man,
16 I do not know nothing about this case, man, I
17 pleaded the Fifth, I plead the Fifth, I plead the
18 Fifth, get me a lawyer.

19 THE COURT: Do you have any other questions
20 you haven't already asked, Mr. Sinclair?

21 MR. SINCLAIRE: I do, Your Honor.

22 THE COURT: Sir, you have to answer, respond
23 to the questions. You say you plead the Fifth but
24 no one is asking you questions at this time, sir,
25 regarding anything other than things you have

1 talked about in your statement in the past, so
2 let's proceed on.

3 Would you hand these to the court reporter
4 right here and hand this back to Mr. Sinclaire.

5 BY MR. SINCLAIRE:

6 Q I show you now that which is marked
7 Plaintiff's Exhibit Number 37 and ask you if you
8 recognize that letter? Do you recognize the
9 handwriting on that?

10 A Yes, sir.

11 Q Pop, is Pop one of your nicknames?

12 A Yes, sir, I wrote that.

13 MR. SINCLAIRE: I would move Plaintiff's 37
14 into evidence at this time, Your Honor.

15 THE COURT: Can I see it?

16 MR. SINCLAIRE: Sure.

17 MR. WATERS: Your Honor, I object obviously
18 on the relevance, on the amendment thing, on the
19 lack of notice as well also this was not attached
20 to the interrogatories, and additionally, Your
21 Honor, I would note that as an additional ground in
22 support of my amendment and relevance objections,
23 not only on this witness, but Hiram Johnson, the
24 interrogatories only state these individuals will
25 testify to the consumption of alcoholic beverages

1 by Marion Bowman on the date of the incident and
2 nothing else.

3 MR. BROWN: He has waived that as to Hiram
4 Johnson, Your Honor.

5 MR. WATERS: I don't think Your Honor has
6 given a final overall decision.

7 THE COURT: You know, do you all have the
8 original of this? I mean, there are a couple words
9 I can't read.

10 MR. BROWN: I beg the Court's indulgence,
11 Your Honor, on that. With client authorization I
12 have now been allowed to give the original from my
13 client to the Court.

14 THE COURT: When you say authorization, I
15 assume you say this is a copy of an original, I
16 assume the original has everything this has on it.

17 MR. BROWN: It does. What was confidential
18 is that the original was in the possession of my
19 client. Without waiving any other confidences, he
20 has allowed me to take the original from his file
21 which he has with him today and give it to Your
22 Honor in response to your request.

23 THE COURT: Well --

24 MR. BROWN: you asked whether I had the
25 original and I didn't.

1 THE COURT: I want to make sure, there are a
2 couple words -- I just assume that -- how did you
3 all get this copy?

4 MR. BROWN: I hadn't been authorized to say
5 anything else.

6 MR. WATERS: It has never been provided to
7 me, Your Honor.

8 THE COURT: You all never gave a copy of this
9 to the State?

10 MR. BROWN: If you will notice, Your Honor,
11 at the top of the one that will be handed up it has
12 a notation to counsel which is a limitation upon my
13 right to give that to anyone.

14 MR. WATERS: If they rely on it --

15 THE COURT: Right, if you are going to rely
16 on it you have to give the whole thing, in my view.
17 But anyway, let me look and see.

18 MR. BROWN: A copy was -- well, we need to at
19 least mark the other one as an exhibit so I can
20 explain it. The difference is one says legal,
21 lawyer only, and it was provided, they were
22 provided one that did not have legal, lawyer only
23 on it, but the one with legal, lawyer only on it
24 was given to me with instructions it was for me
25 only.

1 THE COURT: I understand but that doesn't
2 mean you can say, "I am going to use a porition of
3 it." All or none.

4 MR. BROWN: He gave me both. The copy, he
5 kept the original with the legal, lawyer only. He
6 then had another copy made with legal, lawyer only
7 on it. I don't think we care which one goes in
8 because I have now been authorized to release from
9 our confidence the legal, lawyer only.

10 THE COURT: What do you all contend the
11 relevance of this is, now?

12 MR. SINCLAIRE: Because this witness, it
13 supports this witness' testimony today that he was
14 threatened by the police.

15 THE COURT: All right.

16 MR. SINCLAIRE: And said he was scared.

17 THE COURT: Right, he said that.

18 MR. SINCLAIRE: I think.

19 THE COURT: You all were aware of that before
20 you got to court.

21 MR. SINCLAIRE: I had never heard him testify
22 to that before.

23 THE COURT: Well, you heard him testify to it
24 in a letter.

25 MR. SINCLAIRE: I never heard him testify to

1 that in court before, Judge.

2 THE COURT: Okay, I know that but you all
3 were aware this witness felt he was pressured by
4 the law.

5 MR. SINCLAIRE: I didn't know he would say it
6 under oath, Judge, frankly.

7 THE COURT: What did you think he was going
8 to say under oath? You didn't know, did you?

9 MR. SINCLAIRE: I thought he was going, I
10 thought he was going to state the second statement
11 was true, Judge, because he was threatened by the
12 polygraph.

13 THE COURT: You thought you were going to use
14 this to buttress him and now apparently you want to
15 use it to --

16 MR. SINCLAIRE: I wasn't going to introduce
17 it at all until my learned co-counsel pointed out
18 the significance of it, Judge.

19 THE COURT: Let Mr. Waters look at it,
20 please.

21 MR. WATERS: Your Honor, this goes to whether
22 or not it is admissible as to conforming the issues
23 to the proof or not.

24 THE COURT: All right. Mark the yellow sheet
25 of paper there, if you would, Mr. Court Reporter.

1 Everybody quiet.

2 MR. SINCLAIRE: Plaintiff's 40, Your Honor.

3 THE COURT: Plaintiff's 40 is in evidence
4 over the objection of the State.

5 (Handwritten letter marked and received in
6 evidence as Plaintiff's Exhibit Number 40).

7 BY MR. SINCLAIRE:

8 Q Mr. Williams, is that the letter you wrote to
9 Marion Bowman?

10 A Yes, sir.

11 Q All right. In that letter, Mr. Williams, you
12 say, "I had told them I didn't know nothing." Is
13 that correct, "They said you and Tawain told them I
14 had nothing to do with it." Is that correct?

15 A Yes, sir, that is how they started getting
16 information out of me, after they lied and said
17 they told him that I had something to do with it.

18 Q All right. That is what it says in your
19 letter, "They made me write a statement, I told my
20 lawyer I don't know nothing, they had me scared"?

21 A Yes, sir.

22 Q And was that true?

23 A Yes, sir.

24 MR. SINCLAIRE: Thank you, Mr. Williams,
25 answer any questions counsel might have.

1 THE COURT: Mr. Waters.

2 MR. WATERS: Thank you, Your Honor. Again,
3 Your Honor, for the record, any questions I ask, I
4 ask they not be deemed to waive my objections that
5 I have raised but I can either ask him nothing or,
6 you know, because I don't know how Your Honor is
7 ultimately going to rule with regard to amending
8 their claims.

9 THE COURT: You noted that. Proceed on.

10 MR. WATERS: Thank you, Your Honor.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Mr. Williams, you have been asked about your
4 two statements here that you were given. Correct?

5 A Yes, sir.

6 Q Okay. And in the first one you stated that
7 Marion Bowman told you that if you mentioned to
8 anyone he had Kandee's car he would blow your
9 brains out, right?

10 A Yes, sir.

11 Q Okay. Is that true?

12 A Yes, sir.

13 Q Marion told you that?

14 A Yes, sir.

15 Q Okay. So, that part we can all agree is
16 true, correct?

17 A Yes, sir.

18 Q That was when you were in the car with him on
19 the way to Allen Murray Club?

20 A Yes, sir.

21 Q Okay. He also gave you some gloves and made
22 you put those on, is that correct?23 A He didn't make me put them on. I put them on
24 to get in the car. I was drunk; we all been
25 drinking, I was going to the club to have good time

1 and stuff, understand?

2 Q He just handed you some gloves and you put
3 them on, right?

4 A Yes, sir.

5 Q All right. Then in your first statement you
6 state that after you all left the club, that Marion
7 was in Kandee's car and dropped you and Tawain of
8 at Branchville, the Villas, right?

9 A Yes, sir.

10 Q That's true?

11 A Yes, sir.

12 Q And Travis was not back yet?

13 A No, sir.

14 Q All right. And then you said the last time
15 you saw anything it was Marion and Hiram in
16 Kandee's car?

17 A Yes, sir.

18 Q Okay. All right. Then you gave a second
19 statement here. Correct?

20 A Yes, sir.

21 Q And in that statement you just kind of
22 changed the end part, right?

23 A Yes.

24 Q You say that everybody went to the scene
25 where Kandee's body was?

1 A Yes, sir. That is when the police, the
2 officer was, that is after I took the lie detector
3 test, that statement, 35, after I done took the lie
4 detector test. That statement, that is when they
5 said I was lying, they was throwing things at me,
6 telling me I'm lying, "If you want to tell me what
7 happened, Tawain already tell me he know something
8 about it, you might as well go ahead," you
9 understand what I'm saying?

10 Q Okay. After that you were let go, correct?

11 A Yes, sir.

12 Q All right. And then at some point in
13 October, 2001, you got arrested for accessory after
14 the fact, correct?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q Okay. And then after that did you
19 subsequently tell Sergeant Coker of the Dorchester
20 County Sheriff's office that you did not see Travis
21 Felder at the scene at anytime --

22 A Yes, sir.

23 Q -- when the car was burning?

24 A Yes, sir.

25 Q That was the third version?

1 A Yes, sir.

2 Q Okay. So, at that point you just for some
3 reason stated that Travis Felder wasn't there,
4 right?

5 A Yes, sir.

6 Q Okay. So, the first time Travis, the first
7 time you didn't know anything, the second time
8 Travis was there, and the third time Travis wasn't
9 there. Is that correct?

10 A Yes, sir.

11 Q Okay. All right. Now, did you know a fellow
12 named Patrick Strange?

13 A Patrick Strange?

14 Q Yes. Killed himself by shooting himself in
15 the head?

16 A Yes.

17 Q How did he die?

18 A Huh?

19 Q How did he die?

20 A He shot his self. What that got to do with
21 this here?

22 Q I'm just asking you that. Answer the
23 question, please.

24 THE COURT: Did you know him?

25 A Yes, I know him.

1 Q Did he -- how did he die?

2 A He had shot his self.

3 Q He shot himself playing Russian roulette?

4 A Yes, sir.

5 Q Did you every tell the police that Hiram
6 Johnson did it?

7 A Sir?

8 Q Did you ever tell the police that Hiram
9 Johnson did it?

10 A Did I ever tell the police that?

11 Q Yes.

12 A Not to my knowledge, I can't remember if I
13 did.

14 Q Okay. All right. Now, I'm going to ask this
15 delicately. It is true you have had some mental
16 health issues, is that right?

17 A Yes, sir.

18 Q Can you describe those for the Court?

19 A What do you mean can I describe them to the
20 Court?

21 Q What mental health problems have you had?

22 A Like I was a slow learner and stuff in school
23 and stuff, you know what I'm saying, I was going to
24 see a psychiatrist, back and forth seeing a
25 psychiatrist, I used to take hyper medicine and

1 stuff because in school and stuff, you know what
2 I'm saying, but on the street I stopped taking
3 medication but I still going to see, see the
4 psychiatrist and stuff about it, you know what I'm
5 saying, but I hadn't seen no one since I been
6 locked up.

7 Q You have or have not?

8 A I have not.

9 Q Are you on any medication at this point?

10 A No, sir.

11 Q But you have been on medication in the past?

12 A Yes, sir.

13 Q Do you know what your diagnosis was?

14 A No, sir.

15 MR. WATERS: The Court's indulgence just one
16 moment, Your Honor.

17 Your Honor, I have nothing further at this
18 time.

19 THE COURT: Mr. Sinclaire?
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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. SINCLAIRE:

3 Q Mr. Williams, you testified on
4 cross-examination just now on the day in question,
5 February 16, 2001, you had all been drinking. Is
6 that correct?

7 A Yes, sir.

8 Q To your recollection what had Marion been
9 drinking?

10 A What he been drinking?

11 Q Yes.

12 A All us drinking beer and stuff.

13 Q Did anybody drink any gin?

14 A I can't remember. I can't remember.

15 Q How long have you known Marion Bowman?

16 A All my life. That is my first cousin.

17 Q And does he have a habit of drinking every
18 day?

19 A Well, all of us used to drink every day. I
20 can't tell you if he had a habit or not, you know
21 what I'm saying?

22 Q I'm now showing you Plaintiff's Exhibit 39
23 that is dated November 7th, 2001. It appears on
24 that day that you were again advised of your
25 Miranda rights by Sergeant Alvin Coker.

1 What was the substance of your conversation
2 with Sergeant Coker on November 7th, 2001?

3 A I can't remember.

4 Q Did he meet with you to talk about this case
5 again?

6 A I can't remember, man.

7 Q Didn't you just tell Mr. Waters that you had
8 changed your story and told Sergeant Coker
9 something different than you had testified to or
10 told the police earlier?

11 A Yes, sir.

12 Q And what was that?

13 A I can't remember what was it.

14 MR. SINCLAIRE: The Court's indulgence, Your
15 Honor?

16 Thank you, Your Honor, no further questions.

17 THE COURT: Anything else, Mr. Waters?

18 MR. WATERS: No, sir, Your Honor.

19 THE COURT: All right. Take Mr. Williams
20 back.

21 (Witness excused).

22 THE COURT: Instead of us taking a break and
23 coming back, it's 12:30, do you want to do a lunch
24 hour now?

25 MR. WATERS: Yes, sir.

1 THE COURT: If you would, Mr. Waters, come
2 get these two things and hand them to the court
3 reporter there.

4 MR. BROWN: Your Honor, at this time we would
5 offer that Mr. Williams who just testified be sent
6 back to the Department of Corrections Manning
7 facility subject to the ability to recall later on.

8 THE COURT: Do you have any objection to
9 that?

10 MR. WATERS: No, sir, Your Honor.

11 THE COURT: You all can take him on back.
12 Thank you all.

13 All right, we'll see you all about 1:45 or
14 so. You all have a good lunch.

15 MR. WATERS: I'm sorry, the time?

16 THE COURT: About 1:45 or so, 1:50, something
17 like that.

18 (Recessed at 12:33 p.m.).

19 (Reconvened at 2:35 p.m.).

20 THE COURT: All right. Do we have the next
21 witness?

22 MR. SINCLAIRE: I put those statements up
23 there, statements of Mr. Williams. Judge, I tried
24 to move them in evidence earlier, there was an
25 objection and now that we're through with the

1 witness I'll now move them into evidence.

2 THE COURT: Okay, do you object?

3 MR. WATERS: Yes, sir. I objected as I have
4 been stating throughout both of those witnesses,
5 based on the amendment and relevance issue.

6 THE COURT: I'm going to admit them into
7 evidence over the objection of the State.

8 MR. SINCLAIRE: Thank you, Judge.

9 THE COURT: Okay, next witness, please.

10 MR. BROWN: Your Honor, at this time we would
11 call Mary LeMatty.

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1 MARY LeMATTY,
2 after being first duly sworn, testified as follows:

3 THE COURT: Okay, Miss LeMatty, if you will,
4 pull that microphone around there and give us your
5 name for the record.

6 THE WITNESS: Mary LeMatty, L-e-M-a-t-t-y.

7 THE COURT: All right.

8 MR. BROWN: May it please the Court.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. BROWN:

11 Q Miss LeMatty, would you tell the Court what
12 you do currently?

13 A I'm Public Defender for the First Judicial
14 Circuit.

15 Q In May of 2002 and the months preceding that
16 what were you doing at that time?

17 A I was the attorney for Dorchester County
18 Department of Social Services.

19 MR. BROWN: Your Honor, to speed things up, I
20 just have a couple questions. I'm going to refer
21 her to pages 4547 of the trial transcript, which
22 would be in Volume 10.

23 THE COURT: In the time we're talking about
24 you were the attorney for DSS, right?

25 THE WITNESS: That's correct.

1 THE COURT: And you are looking at transcript
2 page --

3 THE WITNESS: 4547, Your Honor.

4 THE COURT: 4547, all right..

5 BY MR. BROWN:

6 Q Have you had the opportunity to read from
7 that page through to page 4549?

8 A I have.

9 Q Okay. And I'm going to ask you some
10 questions regarding a court order. Do you recall
11 being, or responding to a subpoena at that time?

12 A At that time apparently I did. The
13 transcript certainly says I did.

14 Q Okay. And what I would like to find out, the
15 court order, to give a litte preface in there, the
16 Court orders the Department of Social Services to
17 provide some records to the defense attorneys for
18 Marion Bowman, the records of Marion Bowman, Jr.,
19 then goes on, clarification, also include Charlie
20 Bowman, Marion Bowman, Sr., Kendra Bowman, Yolanda
21 Bowman, and my question is what DSS records were
22 provided on May 20, 2002, to Marion Bowman's
23 attorneys?

24 A I would have to answer by saying I have read
25 this transcript and certainly believe that I was

1 present and said what it states. I stated to the
2 Court that kind of thing. I have no independent
3 recollection of this event at all and I have no
4 independent recollection of producing any
5 documents.

6 THE COURT: Does the transcript reflect the
7 Court ordered her to give records of the people you
8 mentioned?

9 MR. BROWN: Yes, sir.

10 THE COURT: She is now just saying she
11 doesn't remember independently this occurring?

12 MR. BROWN: She doesn't even remember the
13 episode occurring or whether any records were
14 given. That is my characterization.

15 THE COURT: Okay.

16 BY MR. BROWN:

17 Q Now, does that also mean you could have
18 provided some records, I don't mean you personally,
19 but you in the capacity of DSS?

20 A I could have, yes.

21 Q Okay. And maybe you can explain if this is
22 not true, then, would it be strange to argue over
23 records that didn't exist?

24 MR. WATERS: Your Honor --

25 THE COURT: Just ask her. What is your next

1 question? She doesn't remember. You don't
2 remember doing what the Court told you to do?

3 THE WITNESS: I do not.

4 Q Would you have come to court to discuss the
5 subpoena issue if there were no records?

6 A If I was subpoenaed to come to court I would
7 come to court. If, and I can't speak to this case
8 in particular because, I'm sorry, I just don't
9 remember, but it was my practice then if we were,
10 if records were subpoenaed we would want a court
11 order to divulge the existence of any records that
12 couldn't be divulged by any other exception under
13 the statute. So, regardless of whether or not I
14 was independently aware of the existence of a
15 record, I would have come to court about it in
16 response to subpoena and done whatever the Court
17 ordered us to do.

18 Q I'm going to try to take that a little bit at
19 a time.

20 A I'm sorry.

21 Q That's all right. The first thing, I will
22 try to make this very simple, the subpoena wasn't
23 really for you to be a witness, was it?

24 A No.

25 Q The subpoena, I think Mr. Cummings, the trial

1 lawyer said, "All we want is the records from DSS
2 at this time so we can have our mitigation team be
3 prepared to testify."

4 A He said he wanted records if any existed,
5 yes.

6 Q Okay, right. And are you aware of any other
7 proceedings where you responded to a subpoena and
8 discussed it with the Court something like, "Your
9 Honor, we got the subpoena but we need a court
10 order," or is this the only time you're aware of
11 now?

12 A It would be the only time in this particular
13 case but, no, I wouldn't say common but it did
14 happen. I was with Social Services for five years
15 and there was more than one occasion when I went to
16 court and basically said, "Judge, I'm here because
17 of a subpoena, I will give whatever the Court says
18 to give."

19 THE COURT: I think I have had you before.

20 THE WITNESS: More than likely.

21 Q But you're not talking about this case?

22 A No.

23 Q Do you have any recollection of going to
24 court over the issue of DSS records in Marion
25 Bowman's case? You said you don't remember this

1 one. Do you have any recollection of any other
2 hearing?

3 A No.

4 Q So, based on the refreshing of your
5 recollection from this transcript, this would be
6 the only one you recall?

7 A Yes.

8 Q Okay. And we don't know one way or the other
9 whether the records were turned over?

10 A No, I do not recall.

11 Q And who would have actually turned the
12 records over?

13 A Somebody else at DSS would have looked for
14 them. I think, depending on their age and
15 location, there were, to the best of my
16 recollection, certain things kept on site for a
17 certain amount of time at DSS and then records
18 would go someplace else and I don't know where
19 someplace else is. It might have been Columbia,
20 but depending on the age of what was being looked
21 for, it could have been in house or could have been
22 in another location but I would not have been the
23 one to personally go and find that out.

24 Q I got you. And is there a name, a title of
25 that person?

1 A I would say probably Patricia Gadson.

2 Q She --

3 A She is an administrative assistant, I believe
4 she is still at DSS.

5 Q This is in Dorchester?

6 A Dorchester County.

7 Q If you will note, you were there and it says,
8 "According to Mr. Cummings, there was an
9 investigation in the case somehow out of Orangeburg
10 and was transferred to Dorchester." How would he
11 have learned that without DSS telling him that?

12 A I have no idea unless one of the individuals
13 involved who were being investigated by DSS could
14 have told him that.

15 Q Would they know the case was transferred?

16 A They would know a case was transferred. That
17 is part of the procedure that is supposed to
18 happen. If your case is transferred from one
19 county to the next you would get a caseworker in
20 the new county, so, you know, the DSS agent would
21 tell their client that.

22 Q Would a caseworker be involved, I don't know
23 the answer, is the caseworker involved when it is a
24 food stamp type issue or is that an investigatory
25 issue?

1 A I'm not sure what you're asking me.

2 Q Maybe I asked the wrong way. Basically DSS
3 is involved in two different things. One is like
4 family support?

5 A Financial issues, yes.

6 Q And what is the other area?

7 A Human services, child abuse and neglect.

8 Q Would there be a case manager that would have
9 transferred, I'm going to use his phrase,
10 investigation records, is that family support or is
11 that the investigation side?

12 A If there was an investigation into alleged
13 abuse or neglect of a child that would be a
14 separate person and a separate part of DSS than
15 somebody who would, say, handle food stamps or
16 other services for the family. That would be a
17 separate individual.

18 Q And is there a case manager on either type of
19 issue? I'm asking --

20 A A case --

21 Q Would there have been a case manager if it
22 was just child support or, excuse me, or family
23 services type?

24 A No, there wouldn't be an abuse investigator
25 if it was just a financial services type case.

1 Q I understand that.

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

3 Q If the word investigation is used, is that
4 more, and give me the right phrase, if it's food
5 stamps what is that called?

6 A It would just be a case, it would be a family
7 services case.

8 Q Family services? And the other side of the
9 coin is called?

10 A Just abuse and neglect or human services,
11 basically.

12 Q Family services and human services?

13 A Financial services, human services. I really
14 don't remember the exact proper name for the
15 financial side because I wasn't really involved in
16 that.

17 Q Okay. I'm just trying to get something we
18 can call an apple and an orange here today. We
19 have financial services and then we've got human
20 resource, or human services? Human services is the
21 investigatory for abuse?

22 A Yes, those caseworkers investigate abuse and
23 neglect.

24 Q And are there caseworkers that do the
25 financial end?

1 A There are. If what you are asking is would a
2 caseworker for one side do the work for another
3 side the answer is no, it is two separate people
4 and two separate processes.

5 Q There would be a caseworker regardless of
6 which side of DSS they were seeking assistance
7 regarding?

8 A There would be a caseworker for each side.

9 Q Okay.

10 A There would be one for, if the family wanted
11 food stamps but is also being investigated for
12 alleged abuse or neglect they would have a food
13 stamp caseworker and they would have an
14 investigation or assessment caseworker, they would
15 have two different people.

16 Q And how about the phrase investigation, I
17 know that is not what you all use, that was
18 referred to by the Court, said there was an
19 investigation transferred. Does that tell you
20 anything about what type of records there might
21 have been?

22 MR. WATERS: Your Honor, I object to that
23 question. I think that is a statement by Mr.
24 Cummings --

25 MR. BROWN: My only response would be --

1 THE COURT: Let me hear your question again.

2 Q When the term investigation had been
3 transferred, which is what the Court was told and
4 you provided a response, on the next page is your
5 response?

6 A Yes, sir.

7 Q What does that, if that refreshes your
8 memory, what were you talking about with the word
9 investigation?

10 THE COURT: What does that mean to you?

11 THE WITNESS: What that means to me is there
12 would have been an abuse or neglect investigation
13 that would have been transferred from one county to
14 the next county and the most common reason for that
15 would be if the family moved from county A to
16 county B.

17 THE COURT: When you say that on the
18 transcript there, is that what I --

19 THE WITNESS: I believe they are talking
20 about an abuse and neglect case.

21 THE COURT: That is what it meant to her.

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

23 BY MR. BROWN:

24 Q Well, I'm going to ask you a question because
25 you're here. So, how would we get those records

1 now?

2 A You would contact general counsel in
3 Columbia, discuss with them what type of court
4 order they would need to inquire into that matter
5 for you, obtain such a court order and I would
6 imagine they would find you whatever may or may not
7 exist out there.

8 MR. BROWN: Thank you.

9 THE COURT: Okay, Mr. Waters.

10 MR. WATERS: Thank you, Your Honor.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Miss LeMatty, how are you doing today?

4 A Fine, thank you.

5 Q My name is Creighton Waters, I hadn't had a
6 chance to introduce myself to you.7 You were asked about refreshing your
8 recollection by this transcript. You still don't
9 have any independent recollection, do you?

10 A I'm sorry, I don't --

11 Q When you were asking questions about what Mr.
12 Cummings meant you were inferring, you don't have
13 any independent recollection, correct?14 THE COURT: I didn't let her answer what Mr.
15 Cummings meant. I'll let her answer what she
16 interpreted that to mean when she was given that
17 information.18 MR. WATERS: I'm simply following up. That
19 is what Mr. Cummings said, I'm just asking her if
20 she doesn't have any independent recollection of
21 these events and exactly what they were talking
22 about. That is the only question I have.23 THE COURT: Right, but I didn't permit her to
24 say what Mr. Cummings meant, I didn't permit her,
25 no way she knows what he meant, just what it meant

1 to her.

2 BY MR. WATERS:

3 Q Let me just change the question a little bit.
4 You don't have any recollection or knowledge as to
5 what type records were being discussed at that
6 point, is that correct?

7 A I guess let me answer this in the way that
8 what really this means to me is it would have been
9 an abuse or neglect investigation and to me I would
10 not have necessarily, I guess I can't say one way
11 or the other, but it would have been more common
12 for me to be called up there to produce records on
13 that type of an investigation than on something to
14 do with food stamps.

15 Q Okay. What if someone was asking for all DSS
16 records and there were records on both sides, the
17 financial and the human services, would two people
18 go up there or just one person?

19 A In terms of --

20 Q In terms of the attorney going to talk to the
21 Court as you did in this case.

22 A I'm trying to recall because it has been a
23 while. It could have been just me, they could have
24 also sent somebody else, depending on the nature of
25 the records. I mean, maybe if it was for something

1 like child support, maybe one of the child support
2 attorneys would have gone. Sometimes they had
3 people from Columbia to, you know, respond to
4 various places and do various things.

5 Q Right. And you also, because you don't have
6 any independent recollection, you don't know if
7 there were any records?

8 A No.

9 Q You don't know that, you just came up first
10 to get the court order, then you were going to go
11 back and find whatever there was and disclose it at
12 that time. Is that correct?

13 A That's correct.

14 Q So, it could have been you all went back and
15 there was nothing there?

16 A It's certainly possible.

17 Q And you were asked about whether or not you
18 recalled any other proceedings or subpoenas or
19 anything like that, and you don't recall anything
20 else, just like you don't recall this one?

21 A Are you talking about as for as this case?

22 Q For this case.

23 A That's correct, I don't.

24 MR. WATERS: Thank you very much. Nothing
25 further, Your Honor.

1 THE COURT: Mr. Brown?

2 MR. BROWN: Nothing further for Miss LeMatty,
3 I appreciate her being in attendance.

4 THE COURT: Miss LeMatty, where are you
5 practicing now?

6 THE WITNESS: With the First Circuit Public
7 Defender's office. We have a term of General
8 Sessions this week.

9 THE COURT: You're going back up to St.
10 George, the big city, and if we need you we'll call
11 you. Have a good week?

12 THE WITNESS: Thank you. Nice to see you
13 again.

14 THE COURT: Tell Judge Goodstein don't start
15 too early or stay too late.

16 THE WITNESS: Thank you.

17 (Witness excused).

18 THE COURT: Mr. Brown, next witness, please.

19 MR. SINCLAIRE: Travis Felder.

20 THE COURT: Come on up, Mr. Witness, if you
21 would, please, sir.

22

23

24

25

1 TRAVIS DeWITT FELDER,
2 after being first duly sworn, testified as follows:

3 THE COURT: Mr. Felder, see that microphone
4 in front of you there, we have to hear you. Give
5 me your full name, sir.

6 THE WITNESS: Travis DeWitt Felder.

7 THE COURT: All right, your witness, Mr.
8 Sinclaire.

9 MR. SINCLAIRE: Thank you, Your Honor. May
10 it please the Court.

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. SINCLAIRE:

13 Q Mr. Felder, how old are you?

14 A 27.

15 Q Where do you live?

16 A Charleston, South Carolina.

17 Q All right. And do you know Marion Bowman?

18 A Yes, I do.

19 Q How long have you known him?

20 A Since school, elementary school.

21 Q All right. How did you find out the police
22 were looking for you back in February of 2001?

23 A They called my mama's house.

24 Q What did you do as a result of getting a
25 phone call that the police were looking for you?

1 A I went up to the police station.

2 Q All right. Where was the police station that
3 you went to?

4 A The one in Branchville.

5 Q And who did you talk to there?

6 A I don't know, some officers from Dorchester
7 County.

8 Q I'm sorry, I didn't hear.

9 A Some officers from Dorchester County.

10 Q Thank you. And the first time you went there
11 did you speak with the officers from Dorchester
12 County?

13 A No.

14 Q Okay.

15 A I mean, I didn't did nothing like that, they
16 just came in, they just, you know --

17 Q They asked you if you knew anything about the
18 incident involving Kandee Martin?

19 A Yes.

20 Q What did you tell them?

21 A No.

22 Q You told them, "I don't know anything about
23 Kandee Martin, I didn't have anything to do with
24 her death," is that correct?

25 A Yes, sir.

1 Q And did you leave after that?

2 A Yes, sir.

3 Q You were free to go?

4 A Yes, sir.

5 Q All right. And were you subsequently
6 notified that they wanted you to come back down
7 again?

8 A They came there on the Monday, February 19th,
9 they came and they called the house again and they
10 said, "We got warrant on you from Dorchester
11 County, it is just a matter of time for us to get
12 them from Orangeburg County, so would you come on
13 down," and I went on down to Dorchester County and
14 they locked me up.

15 Q The second time they just called you up and
16 said, "We have a warrant for your arrest, we need
17 you to turn yourself in"?

18 A Yes. I did that.

19 Q Okay. I'm showing you Plaintiff's Exhibit
20 Number 16 and ask if you recognize that statement
21 of Miranda rights, with the initials to the left of
22 the Miranda warnings and the signature under the
23 waiver of rights?

24 A Yes.

25 Q Are those the rights they advised you of and

1 are those your initials on that document?

2 A Yes, sir.

3 Q Is that your signature at the bottom?

4 A Yes, sir.

5 MR. SINCLAIRE: All right, thank you. I move
6 Plaintiff's Exhibit 16 into evidence.

7 MR. WATERS: Your Honor, the only issue
8 raised as to Mr. Felder, impeachment, this was
9 raised a few different ways in regard to viewing on
10 videotape, if they are trying to create some new
11 claim with regard to polygraph, whatever the case
12 may be, either free-standing claim which obviously
13 would be barred, but any sort of claim under
14 ineffective assistance, I would object on the same
15 ground with regard to relevance and adopt my prior
16 argument.

17 THE COURT: That is noted but insofar as my
18 admitting this evidence, I overrule your request.
19 I'm not sure how to respond other than what you
20 said is noted but that will come in evidence.

21 Number what?

22 MR. SINCLAIRE: Plaintiff's 16, Your Honor.

23 THE COURT: Plaintiff's 16 is in evidence.

24 (Waiver of rights form marked and received
25 in evidence as Plaintiff's Exhibit 16).

1 MR. SINCLAIRE: Would you like to see that,
2 Your Honor?

3 THE COURT: Is it a waiver?

4 MR. SINCLAIRE: Yes.

5 THE COURT: I don't need it.

6 BY MR. SINCLAIRE:

7 Q After you were advised of your Miranda
8 warnings and waived them did you give the police a
9 similar statement to the one you had told them
10 before you were arrested?

11 A Yes, sir.

12 Q That statement was, "I don't know anything
13 about it, I didn't have anything to do with it"?

14 A Yes.

15 Q Is that correct?

16 A Yes, sir.

17 Q You told them you had not participated in
18 this incident and had no prior knowledge of it. Is
19 that correct?

20 A Yes, sir.

21 Q And do you remember what the warrants were
22 for that they had prepared for you?

23 A Accessory after the fact of murder and an
24 arson charge, I can't remember.

25 Q Okay. I'm showing you now that which has

1 been marked Plaintiff's Exhibit Number 17. Do you
2 recognize this warrant for accessory to felony
3 murder and arson? It was served on you February
4 the 19th, 2001.

5 A Yes, sir.

6 Q Okay.

7 MR. SINCLAIRE: I move Plaintiff's 17 into
8 evidence at this time, Your Honor.

9 MR. WATERS: Same objection I just previously
10 expressed.

11 THE COURT: Noted and it's in evidence. Go
12 ahead and give it to the court reporter. 16 and 17
13 you have put in so far?

14 MR. SINCLAIRE: Yes, Your Honor.

15 (Arrest warrant marked and received in
16 evidence as Plaintiff's Exhibit 17).

17 BY MR. SINCLAIRE:

18 Q That warrant is for accessory to felony
19 murder, is that correct?

20 A Yes, sir.

21 Q And in that warrant it cites at the top
22 Section 16-1-40. Do you see where it has been
23 handwritten 40 over the 110?

24 A Yes, sir.

25 Q Down in the body of the warrant itself where

1 after big bold capital letters it says accessory to
2 felony murder, slash, arson, in violation of, that
3 section is 16-1-40, isn't it?

4 A Yes, sir.

5 Q Okay. And the allegations in that particular
6 warrant signed by, sworn to and attested to by
7 Sergeant Alvin Coker, it says a co-defendant Marion
8 Bowman, Jr., signed a written statement wherein he
9 stated that between the incident time
10 aforementioned the defendant," which would be you,
11 correct?

12 A Yes, sir.

13 Q "And a co-defendant James Tawain Gadson took
14 the victim to a remote area of Dorchester County
15 where they shot and killed the victim Kandee
16 Martin." That is talking about you and Tawain
17 Gadson shooting and killing Kandee Martin?

18 MR. WATERS: Your Honor, I would object.
19 This is Sergeant Coker's affidavit.

20 THE COURT: Whatever the affidavit is, it
21 speaks for itself, so I'm not going to ask him to
22 interpret what it means.

23 MR. SINCLAIRE: The reason -- I'm not asking
24 him to interpret, Judge, but if I may, the reason,
25 it is significant as to what was his impression at

1 the time, I would like to get that.

2 THE COURT: Yes, but you want to ask him what
3 they, what he felt they charged him with doing. Is
4 this a warrant he's reading from?

5 MR. SINCLAIRE: Yes, Your Honor.

6 THE COURT: Okay. "After reading the
7 warrant," you're going to ask him to read this
8 warrant, "what did you feel they were saying you
9 did?"

10 BY MR. SINCLAIRE:

11 Q Back in 2001, after having been served that
12 warrant, what did you feel that they charged you
13 with?

14 A Murder and arson.

15 THE COURT: Do you want to ask him did he
16 have any impression about what they said he did to
17 commit the murder, or accessory to the murder?

18 MR. SINCLAIRE: It sounded to me, Your Honor,
19 the court reporter will be able --

20 THE COURT: Because the records are in the
21 record, number one, that's in the record. If you
22 want the words in the record --

23 MR. SINCLAIRE: I did want the record in the
24 record and his answer as well, Judge. His answer
25 was he thought he had been charged with murder and

1 arson.

2 THE COURT: Is that right?

3 THE WITNESS: Yes.

4 THE COURT: That is what he thought.

5 MR. SINCLAIRE: Thank you.

6 BY MR. SINCLAIRE:

7 Q I'm showing you now that which is marked

8 Plaintiff's Exhibit Number 18. I ask if you

9 recognize this warrant for arson third degree?

10 A Yes, sir.

11 Q Is that the arson third degree warrant they
12 served on you back in February, 2001?

13 A Say that again.

14 Q Is that the warrant for arson third degree
15 that was served on you in February of 2001?

16 A No, sir.

17 Q Are you Travis DeWitt Felder?

18 A Yes, sir.

19 Q Do you not recall being served on February
20 19, 2001, with a warrant for arson in the third
21 degree?

22 A No, sir.

23 Q You just testified to this Court you thought
24 you were being charged with murder and arson?

25 A Yes, sir.

1 Q Isn't that the arson that you were being
2 charged with?

3 A Yes, sir.

4 MR. SINCLAIRE: Your Honor, I move
5 Plaintiff's 18 into evidence at this time.

6 MR. WATERS: Same objection as the previous
7 two, Your Honor.

8 THE COURT: Based on those two objections
9 that I overruled, it can come in.

10 (Warrant marked and received in evidence as
11 Plaintiff's Exhibit Number 18).

12 BY MR. SINCLAIRE:

13 Q All right. Did you hire an attorney to
14 represent you on accessory before the fact of
15 murder and arson third degree charges?

16 A Yes, sir.

17 Q And who was that lawyer?

18 A I had two lawyers. I had Clyde Dean and I
19 was represented by Charles Williams.

20 Q Was Clyde Dean appointed to represent you?

21 A No.

22 Q You had retained him first and fired him?

23 A Yes.

24 Q And you subsequently retained Charles
25 Williams?

1 A Yes, sir.

2 Q And did Mr. Williams explain to you, then,
3 that you were looking at accessory before the fact
4 of murder which is life or death in prison and ten
5 years for the arson third degree?

6 A Yes.

7 MR. WATERS: Your Honor, I object to that
8 question as an incorrect statement of the law.

9 MR. BROWN: That's not true.

10 THE COURT: Mr. Sinclair, what was your
11 question?

12 MR. SINCLAIRE: Did Mr. Williams explain to
13 him that he was charged with accessory before the
14 fact of murder and arson, which carries life in
15 prison or death, and arson third degree which
16 carries up to ten years?

17 MR. WATERS: Your Honor, the State Supreme
18 Court has expressly ruled accessory before the fact
19 of murder does not carry the death penalty.

20 THE COURT: But Mr. Sinclair is asking if
21 Mr. Williams told him. It may be true or false.
22 Is that what Mr. Williams told you?

23 (No response).

24 THE COURT: Or do you remember?

25 THE WITNESS: He told me I was looking at

1 twenty years.

2 THE COURT: Okay. That is what he said, Mr.
3 Sinclaire, Mr. Williams said he was looking at
4 twenty years.

5 BY MR. SINCLAIRE:

6 Q When you were arrested and when you first met
7 with your attorney, maybe Clyde Dean, is he the one
8 told you you were looking at life or death in
9 prison?

10 A No, he never talked to me about that.

11 Q Were you subsequently indicted for accessory
12 after the fact to the murder and arson third
13 degree? Did you ever see your indictment?

14 A No, sir.

15 Q Were you made aware by Mr. Williams you had
16 been indicted for accessory after the fact of
17 murder which carried up to fifteen years?

18 A I don't recall.

19 Q Did Mr. Williams tell you you had been
20 indicted for arson third degree which carried up to
21 ten years?

22 A I don't recall, sir.

23 Q Your best recollection, though, is that your
24 lawyer at the time, your retained counsel advised
25 you were looking at twenty years minimum for the

1 two charges you had been arrested for?

2 A Yes, sir.

3 Q And you never gave a written statement to the
4 police in this case, did you?

5 A No, sir.

6 Q But about a month before the trial you were
7 provided an opportunity to take a polygraph exam.
8 Isn't that correct?

9 A I don't recall.

10 Q All right. It may be this document won't
11 refresh your recollection but I'm going to see. I
12 would like to show you that which is marked
13 Plaintiff's Exhibit Number 15 and ask if this
14 Dorchester County Sheriff's office polygraph report
15 refreshes your recollection of sitting down with
16 Sergeant Van Doran --

17 MR. WATERS: Your Honor, I object to this.

18 THE COURT: Let's see if it refreshes his
19 recollection.

20 MR. WATERS: I think he should be asked if he
21 has ever seen this document. If he hasn't, it
22 couldn't refresh his recollection.

23 BY MR. SINCLAIRE:

24 Q Do you remember sitting down with Sergeant
25 Van Doran and giving a polygraph?

1 A No, sir.

2 Q Have you ever seen that document before?

3 A No, sir.

4 Q Let me ask you some questions anyway. At the
5 polygraph exam do you remember Sergeant Terrance A.
6 Van Doran asking you did you see Kandee Martin's
7 body placed into the trunk of her car? Do you
8 remember him asking you that?

9 A No, sir.

10 Q If he had asked you that what would your
11 answer have been?

12 A Say again.

13 Q If Sergeant Van Doran asked you did you see
14 Kandee Martin, on April the 16th, 2002, did you see
15 Kandee Martin's body placed in the trunk of her car
16 what would your answer have been on April 16, 2002?

17 A What's that date again?

18 Q The exam was on April 16th, 2002. Did you
19 discuss with Charlie Williams the taking of a
20 polygraph exam?

21 A I don't recall.

22 Q So, back to the previous question, did you
23 see Kandee Martin's body, when asked on April 16,
24 2002, did you see Kandee Martin's body placed in
25 the trunk of her car what would your answer have

1 been?

2 MR. WATERS: Your Honor, he has already said
3 he doesn't recall that. He is asking what his
4 answer would have been on April 16, 2002.

5 THE COURT: I'm curious about April 16th.
6 From what you have asked him so far, how would the
7 Court know that is a special day? Do you know
8 anything about April 16, 2000 and what?

9 MR. SINCLAIRE: 2002, Your Honor.

10 THE COURT: 2002.

11 THE WITNESS: I don't recall, sir.

12 MR. WATERS: If he wants to ask him if he saw
13 Kandee Martin's body being put in the car that is a
14 fair question.

15 MR. BROWN: Quite honestly --

16 THE COURT: I'm concerned about this.

17 MR. BROWN: We're going to recall --

18 THE COURT: You may be calling him but has
19 this guy, the witness, been charged with a crime
20 other than these? He was charged with these two
21 matters, with accessory to felony murder, I've
22 still not understood yet whether the warrant is for
23 accessory after the fact or before the fact. Which
24 is the warrant?

25 MR. SINCLAIRE: The warrant says before the

1 fact, Your Honor.

2 THE COURT: Okay. Then arson three, but what
3 I'm concerned with is I don't want to prejudice
4 this fellow in regard to making statements that may
5 or may not incriminate him, that's the only thing
6 I'm concerned about. You asked what he and his
7 lawyer talked about. You know, I'm concerned,
8 about, which I know Mr. Brown is concerned about,
9 lawyer/client privilege.

10 MR. BROWN: He wants to assert a privilege?

11 THE COURT: You all give me one second, I'll
12 be right back.

13 All right, sorry about that. Let's continue
14 on. We were on the issue that I mentioned that I
15 was concerned about making sure we didn't get into
16 attorney/client privilege and we went over the two
17 charges he had. He was charged with accessory
18 after or before the fact?

19 MR. SINCLAIRE: The warrant reads accessory
20 before the fact to murder and arson.

21 THE COURT: And then whether he does or does
22 not remember making some comments on April 16th?

23 MR. SINCLAIRE: Correct, Your Honor.

24 THE COURT: 2002.

25 All right, what is your next question, Mr.

1 Sinclair?

2 MR. SINCLAIRE: Thank you.

3 BY MR. SINCLAIRE:

4 Q Do you remember during a deposition we took
5 on August 26, 2008 -- do you remember having a
6 deposition?

7 A Yes, sir.

8 Q And during that deposition, without revealing
9 any attorney, anything you have discussed with your
10 lawyer, do you remember me asking you, "Okay, when
11 did you and Mr. Williams decide to cooperate, when
12 did you and Mr. Williams decide to cooperate with
13 the Solicitor's office in the prosecution of Marion
14 Bowman?"

15 Do you remember when that was?

16 A No, I don't.

17 Q Would it refresh your recollection if I
18 showed you the transcript where it says you decided
19 to cooperate after you spoke with Mr. Williams?

20 A Let me see.

21 Q Okay. Referring to the transcript, page
22 eight, lines --

23 MR. WATERS: Page what?

24 Q Page eight, lines 15, 16 and 17 and 18 and
25 19.

1 A Yes, after I talked to Mr. Williams.

2 Q Again, do you also remember, if I asked you,
3 "Did you tell Mr. Williams everything you knew
4 about this case," did you do that, did you tell Mr.
5 Williams everything you knew about this case?

6 A Yes.

7 Q And was it your decision then at that time to
8 enter into a plea agreement with the Solicitor's
9 office?

10 A Yes.

11 Q As part of that plea agreement you had to
12 testify truthfully, is that correct?

13 A Yes, sir.

14 Q Do you remember that you had to tell the
15 absolute truth at any trial proceeding?

16 A Yes, sir.

17 Q And do you remember agreeing that you were
18 not going to be able to omit any facts or attempt
19 in any way to benefit while on the witness stand?
20 Do you remember that as part of your plea
21 agreement?

22 A Say again, sir.

23 Q As part of your plea agreement do you
24 remember saying you were not going to be able to,
25 not able to omit facts or attempt in any way to

1 benefit while on the witness stand?

2 A Yes, sir.

3 Q And you knew that, I mean, you went over that
4 with your lawyer, correct, before you testified?

5 A Yes, sir.

6 Q And as part of that plea agreement you also
7 were required to do what is known as a debriefing
8 with the Solicitor's office, is that correct?

9 A Yes, sir.

10 Q And do you remember meeting with Solicitor
11 Bailey and Charles Williams at Mr. Williams'
12 office?

13 A Yes, sir.

14 Q So, your lawyer was there and the Solicitor
15 was there. It was actually at Mr. Williams'
16 office, correct?

17 A Yes, sir.

18 Q And during that debriefing you told Solicitor
19 Bailey everything about that night, including the
20 fact that you had bought the gas.

21 Is that correct?

22 MR. WATERS: Your Honor, I object to the
23 leading.

24 THE COURT: Is that correct?

25 A I don't recall.

1 Q I refer you -- have you discussed your
2 testimony today, since our deposition have you
3 discussed it with anybody at all, the contents of
4 your deposition and what you thought you might be
5 testifying here today?

6 A Say again.

7 Q Did you talk to anybody since your deposition
8 about your deposition or about what you were going
9 to testify to here today?

10 A Did I talk to anyone, yes, I did.

11 Q Did that person or persons suggest to you it
12 would be a good idea to change your testimony from
13 the deposition?

14 A No, sir.

15 Q And I would like to show you -- who were the
16 people you spoke to?

17 A My parents.

18 Q Anybody else?

19 A Cousins.

20 Q Could I have the names of your cousins you
21 spoke to?

22 A Harry Carson, Jo Ann Britt, Kenneth Britt,
23 Alena Britt. There is a bunch of people, man, I
24 mean my cousins, my cousins out there.

25 Q It's your testimony today that none of them

1 told you to change your testimony from the
2 deposition, is that correct?

3 A No.

4 Q All right. Let me just refer you, then, to
5 deposition page 27, lines 23 through 25 and on to
6 page 28, lines 1 and 2. Do you remember during
7 your deposition --

8 THE COURT: It must have been someone's
9 written rule of law that says depositions must be
10 encased in the loudest folders possible. I am
11 opening the deposition of Mr. Travis Felder taken
12 on the 26th of August, 2008, court reporter Elaine
13 McLeod, and what page did you want to refer to?

14 MR. SINCLAIRE: Page 27, Your Honor, lines 23
15 through 25. And then on to page 28, lines 1 and 2.

16 THE COURT: Looking at the deposition, I will
17 hand it to you, Mr. Felder, these depositions have
18 page numbers and then they have line numbers and he
19 wants to read where it says Q, that means that's a
20 question, A means that that was your answer. He's
21 going to read at the bottom of that page 27 and one
22 line that goes over to the next page. Then it has
23 your answer. If you would just read, when he
24 finishes reading the question read the one answer
25 you gave on the next page but let him, watch as he

1 reads. Go ahead and read the question.

2 Q "In your meeting with the Solicitor
3 originally you told him you had bought the gas that
4 was used to burn Kandee Martin and her car, right,
5 Kandee Martin and her car?"

6 A I said, "Yes, sir."

7 Q So, is it true that in your debriefing with
8 the Solicitor you told him that you had bought the
9 gas that was used to burn Kandee Martin and her
10 car?

11 A According to the paper, yes, sir.

12 Q No. Isn't that what you testified to on
13 August 26, 2008?

14 A Yes, sir.

15 Q And isn't that the truth?

16 A Yes, sir.

17 Q Now, is it also true that you met with the
18 Solicitor again that morning before you testified
19 at trial, and by that, I mean the day you were
20 called, the first day you were called as a witness
21 did you meet with the Solicitor to go over your
22 testimony?

23 A I can't remember every time I met with him.
24 I met with him about twice, that is what I said
25 when I told you what's his name.

1 Q All right. I would like to hand you now that
2 which is the trial transcript of the Marion Bowman
3 trial and refer you to page 4110, lines three
4 through eight. It is redirect examination by Mr.
5 Bailey where the question from Mr. Bailey to you
6 is, "Travis, we met in your lawyer's office a
7 couple weeks ago, right," and that was the
8 debriefing, "is that correct?" Your answer at that
9 time was?

10 A Yes.

11 Q Okay. Mr. Bailey asked you again, "And this
12 morning we also talked, is that correct?"

13 A Yes.

14 Q So, at least according to Mr. Bailey, his
15 next question is, "So, you have actually talked to
16 me two times?" And your answer then during the
17 trial?

18 A Yes, sir.

19 Q Do you also remember being called back to the
20 stand during the trial of Marion Bowman?

21 A Yes, sir.

22 Q And before that testimony do you recall
23 meeting again with Solicitor Bailey before you were
24 called back to the witness stand?

25 A I don't recall.

1 Q Okay. Open February 16th, in the early
2 morning hours of February 17th, roughly 3:03
3 o'clock in the morning where were you?

4 A I was what?

5 Q Roughly 3:00 --

6 A The hours was what?

7 Q Roughly 3:00 o'clock in the morning.

8 A I was, I was out in the country in Dorchester
9 County.

10 Q After you all had gone to the Allen Murray
11 Club where did you go?

12 A I went in the projects, Villas Apartments.

13 Q Which apartment were you in, whose apartment?

14 A Valona Smith.

15 Q And what was going on there?

16 A I was laying down.

17 Q All right. And when you left the Allen
18 Murray Club, Allen Murray Club where did you go
19 enroute to Valona Smith's apartment, where did you
20 go?

21 A I went to the store.

22 Q Which store was that?

23 A E-Z Horizon.

24 Q What did you buy there?

25 A Some chips.

1 Q Some chips? All right. And then what
2 happened after you had got back to Valona's
3 apartment and you were eating the chips?

4 A Mr. Bowman came to the door.

5 Q All right.

6 A Knocked on the door, said, "Come here, let me
7 talk to you, man."

8 Q What happened after that?

9 A Word for word?

10 Q Yes.

11 A You let me see my testimony?

12 Q Do you have any recollection of it today?

13 A Say that again.

14 Q Do you have any independent recollection of
15 what Mr. Bowman asked you to do?

16 A I can't tell you word for word. If I miss
17 one word you tell me I left one word out and I'm
18 lying.

19 Q Directing your attention to the trial
20 transcript, page 4093, the question -- I will back
21 up just a little bit, page 4092, talking about,
22 "What time were we talking about then?" "Around
23 3:00 o'clock, somewhere there." "Around 3:00
24 a.m.?" "Yes."

25 Then the question to you, "Okay. When he

1 said that to you what did you do?" I'm sorry, back
2 up a little farther. "Okay, go ahead and tell the
3 jury what occurred when Marion Bowman arrived at
4 the apartment."

5 A "Knock at the door, let Mr. Bowman in, we
6 opened the door, said come in, he came in, he said
7 hey Trav, come here, let me holler at you."

8 Q All right. And the question was, "Said,
9 Trav, come here, let me holler at you," right
10 quick, quick like?

11 A Yes.

12 Q About what time are we talking about by then?

13 A 3:00 o'clock.

14 Q Around 3:00 a.m.?

15 A Around 3:00 a.m.

16 Q When he said that to you what did you do?

17 A I got up and went outside and closed the
18 door.

19 Q All right. And the question is, "When you
20 say he, you got to give his name." Your answer
21 was?

22 A Mr. Bowman.

23 Q All right. Full answer?

24 A "Mr. Bowman. Mr. Bowman. I talked to Mr.
25 Bowman, he said come here."

1 Q All right. On further direct examination by
2 Mr. Bailey, on page 4094 he asked, "Okay, and did
3 you follow the car?" Your answer was?

4 A "Yes, sir."

5 Q And then where it picks up there, "Who was
6 driving the car?"

7 A "Mr. Bowman was driving the car."

8 Q All right. "And did you leave the town of
9 Branchville?"

10 A "Yes."

11 Q "Okay. Tell the jury where he went, where
12 you followed him." What was your answer?

13 A "We went out down McElhanney Road, then we
14 went out to Nursery Road."

15 Q "Okay. And what happened when you got out to
16 Nursery Road?"

17 A "He pulled, he pulled up, he pulled in a
18 little ways and he pulled over to the right side of
19 the road."

20 MR. WATERS: Your Honor, let the record
21 reflect they were simply reading from the
22 transcript, there were not questions and answers.

23 THE COURT: So reflected.

24 Q Isn't it true, Mr. Felder, that at that point
25 you left out the fact that you had bought the gas

1 that was used to burn Kandee Martin's car and
2 Kandee Martin?

3 A Yes, sir.

4 Q Okay. And that was an intentional omission
5 on your part, wasn't it?

6 A No, sir.

7 Q Referring back to page 4091, in direct
8 examination from the Solicitor, starting at line 9,
9 4091, starting at line 9, okay, just talking about
10 leaving the club, and his single question was,
11 "Okay, where did you go when you left the club?"
12 And what was your answer?

13 A "We went back to Branchville."

14 Q The full answer?

15 A "We went, I went, I went back to Branchville,
16 I went to the store and got some chips."

17 Q "What store did you go to then?"

18 A "E-Z Horizon."

19 THE COURT: That is also read from the
20 transcript of the trial.

21 Q No question, Mr. Felder, though, that on
22 direct examination, a simple question, okay, where
23 did you go when you left the club, your answer at
24 that time was, "I went, went back to Branchville, I
25 went to the store and got some chips." That was

1 your answer to the simple question from Mr. Bailey,
2 "Okay, and where did you go when you left the
3 club?" Isn't that correct?

4 A Yes, sir.

5 Q All right. So we're clear, two and a half
6 pages later, about 30 seconds later in your
7 testimony you are asked another direct question, a
8 very simple open ended question from Mr. Bailey.
9 "All right, and did you leave the town of
10 Branchville?" Your answer was yes. And the
11 question was, "Okay, tell the jury where he went,
12 where you followed him." And as we now know, as
13 you just testified to, your answer was, "We went
14 out down McElhanney Road and went out to Nursery
15 Road"?

16 A Yes, sir.

17 Q Don't you think that if your plea agreement
18 required you to testify to the absolute truth and
19 not omit any fact, that the jury would have been
20 interested to know that you went to the E-Z Horizon
21 store and bought gasoline enroute to McElhanney
22 Road and then down Nursery Road?

23 MR. WATERS: I object to the form of that
24 question.

25 THE COURT: All right, overruled.

1 MR. WATERS: The question was what the jury
2 might be interested in.

3 THE COURT: Okay. Just explain, if you would
4 like to explain why you didn't answer the way he
5 said.

6 THE WITNESS: I was nervous at the time and I
7 forgot.

8 THE COURT: Okay. That's his answer.

9 MR. SINCLAIRE: The Court's indulgence, Your
10 Honor?

11 BY MR. SINCLAIRE:

12 Q Do you remember during the deposition that
13 you gave we went over this very issue?

14 A Yes, sir.

15 Q And when asked that question, "Okay, tell the
16 jury where he went and where you followed him," and
17 what was your answer? Your answer was, "We went
18 out down McElhanney Road." Is that correct?

19 A What page are you on?

20 Q Page 22, line 17.

21 THE COURT: We're dealing with the deposition
22 here?

23 MR. SINCLAIRE: We are, Your Honor.

24 THE COURT: The deposition?

25 THE WITNESS: Yes, sir.

1 BY MR. SINCLAIRE:

2 Q You said, "We went out McElhanney Road, went
3 out Nursery Road," that was your direct answer to
4 that direct question, correct, your answer was,
5 line 24?

6 A Yes, sir.

7 Q All right. Then I said, "That's a lie, isn't
8 it?" Your answer was what?

9 A "I don't remember what road it was. I mean,
10 like I said, if it is, it is. Like I said, sir, I
11 went down the road."

12 Q The question was, "Listen, listen, it's
13 pretty simple, tell the jury where he went and
14 where you followed." Your answer was what?

15 A "I don't remember."

16 Q The question is, "The truth is you followed
17 him to the E-Z Horizon store where he told you to
18 go inside and buy the gas. That's the truth, isn't
19 it?" Your answer was?

20 A "Okay, yes, sir."

21 Q The question was, "That is not down
22 McElhanney Road, then went out to Nursery Road, is
23 it?"

24 A "No, sir."

25 Q So, at least in your deposition you admitted

1 that that was not the truth, that that was an
2 absolute intentional omission on your part?

3 A No, it was not intentional omission.

4 Q All right. I believe it was during
5 cross-examination during the deposition by Mr.
6 Waters, on page 42, lines 18 through 20 --

7 MR. WATERS: What page?

8 MR. SINCLAIRE: 42, 18 through 20.

9 Q You didn't leave that relevant information
10 out during your trial, that you had gone to the E-Z
11 Horizon store and bought the gas that was used to
12 burn the car because nobody asked you?

13 MR. WATERS: I'm sorry?

14 Q Correct?

15 MR. WATERS: Is that question in the
16 deposition?

17 MR. SINCLAIRE: No. I'm asking another
18 question.

19 Q At the trial, the trial of Marion Bowman?

20 A Okay.

21 Q You didn't leave that fact out that you went
22 to the E-Z Horizon store and bought the gas because
23 nobody asked you, did you, that is not in the
24 deposition? I'm asking you a direct question. You
25 didn't testify at trial, did you?

1 A Yes, I had to come back and testify.

2 Q During, during the original testimony you
3 left that out, didn't you?

4 A That is part of my original testimony because
5 I had to come back.

6 Q And you didn't leave it out?

7 A I didn't leave it out intentionally.

8 Q Well, when asked by Mr. Waters at the
9 deposition, "And what was the reason why you didn't
10 mention it in your initial testimony," your answer
11 on August 26th was what?

12 A "I had a lot of stuff on the table, I was
13 scared. I was scared, I was in jail for three
14 months and, you know what I'm saying, I lost my
15 job, I ain't had nothing."

16 Q You were scared to admit at trial that you
17 had bought the gas because that's accessory before
18 the fact to arson, isn't it, that is arson, you had
19 a lot of stuff, you were scared you would get tried
20 and convicted for a greater offense, the arson
21 itself instead of accessory after the fact, isn't
22 that correct?

23 A No, sir.

24 Q At the trial, just so that we're clear, at
25 the trial when Mr. Bailey is also trying to

1 rehabilitate your testimony he says, on page 4925,
2 in asking you why you left out the fact you bought
3 the gas, line 17, 4925, line 17, Mr. Bailey asked
4 you, "Why didn't you tell us that the other day,
5 Mr. Felder?" And your answer was?

6 A "Excuse me."

7 Q And he said, "Why didn't you tell us about
8 the gasoline the other day?" And your answer then
9 was?

10 A "You didn't ask."

11 Q But they had asked, they had asked you
12 exactly about following Marion Bowman out, this is
13 Solicitor Bailey's examination, Mr. Bailey asked
14 you exactly about following Marion Bowman out to
15 Nursery Road the same way he had asked you about
16 how you left Allen Murray Club and went home.
17 Isn't that correct, an open ended question?

18 A Say the question again, sir.

19 Q An open ended question from Walter Bailey
20 about when you are leaving the Allen Murray Club
21 and going back to Valona's house, about where did
22 you go and your answer was, "I went to the E-Z
23 Horizon store and bought chips." Isn't that
24 correct?

25 A No, sir.

1 Q Page 4094, question, line 3. "And did you
2 leave the town of Branchville?" What was your
3 answer from the trial?

4 A "Yes."

5 Q Open ended question. "Okay, tell the jury
6 why you went --" I'm sorry. Page 4091, line 8,
7 4091, line 9, okay, open ended question, "And where
8 did you go when you left the club?" What was your
9 answer?

10 A That ain't the question.

11 Q What was your answer starting on line 10?

12 A "I went, went back to Branchville, I went to
13 the store and got some chips."

14 Q "And what store did you go to?"

15 A "E-Z Horizon."

16 Q All right. Two pages later, 4094, another
17 direct open ended question from Solicitor Bailey,
18 line 3, "All right, and did you leave the town of
19 Branchville?" What was your answer?

20 A "Yes."

21 Q "Okay. Tell the jury where he went and where
22 you followed him." And what was your answer?

23 A "We went down McElhanney Road, then we went
24 out Nursery Road."

25 Q And that's a lie, isn't it, because isn't it

1 true you left Valona's apartment and went to the
2 E-Z Horizon store where you bought gas and put
3 three dollars worth of gas into a red gas can that
4 you say Marion Bowman gave you, isn't that the
5 truth?

6 A Yes, sir.

7 Q So, isn't that where you went when you
8 followed him from Valona's apartment?

9 A Yes.

10 Q You didn't go down McElhanney Road and out
11 Nursery Road, the truth is you went to the, he gave
12 you a gas can and you went to the E-Z Horizon store
13 and bought three dollars worth of gas?

14 A Yes.

15 Q "Would you tell the jury where he went, where
16 you followed him?" And the answer is, "We went out
17 McElhanney Road and went out to Nursery Road,"
18 that's a lie, isn't it?

19 A Yes, sir.

20 Q All right. And you had another chance to fix
21 that, to fix that lie by omission when Mr. Cummings
22 had a chance to stand up and cross-examine you for
23 the first time, and that is on page 4105, line 7.
24 Page 4105, line 7. Are with you me. And Mr.
25 Cummings asked, "Okay, 3:00 o'clock in the

1 morning," because he just heard your testimony,
2 "then you go with him, from your testimony, to
3 Nursery Road, just followed him out in the car,
4 right?" This is during the first part of the
5 trial, and what was your answer?

6 A "Yes, sir."

7 Q So, even when Mr. Cummings asked you, "Am I
8 understanding your testimony correctly, that from
9 your testimony you went to Nursery Road, just
10 followed him out in the car, right?" And your
11 answer was what? Line 10.

12 A "Yes, sir."

13 Q You didn't tell the truth then either about
14 going to the E-Z Horizon and buying the gas and
15 putting it in a can, Marion Bowman, that would be
16 the absolute truth, wouldn't it, according to your
17 testimony?

18 A I told the truth.

19 Q You told a half truth. The absolute truth
20 would have included a very significant fact,
21 according --

22 MR. WATERS: I object to counsel's statement.

23 Q The absolute truth would have been, "All
24 right, I followed him to the E-Z Horizon store
25 where I bought three dollars worth of gasoline and

1 put it in a can"?

2 A I came back to court and I testified to that.

3 Q We'll get to that. But before you were
4 brought back to court to testify to the whole truth
5 you also left out the fact that three dollars worth
6 of gas you carried in your car to Nursery Road,
7 isn't that correct?

8 A Yes, sir.

9 Q You didn't testify to that during your
10 original trial, the first time you were up there,
11 did you?

12 A No, sir.

13 Q You didn't testify that you bought the three
14 dollars worth of gas and you didn't testify you
15 carried the gasoline to Nursery Road, did you, in
16 your original testimony?

17 A No, sir.

18 Q How was it that you found yourself back on
19 the witness stand in the penalty phase of this
20 trial?

21 A They called me back.

22 Q They called you back? Who called you back?

23 A My lawyer told me I needed to go back down
24 there.

25 Q Did you meet, again, did you meet with the

1 prosecutor and/or Mr. Cummings before you took the
2 stand again?

3 A I don't recall.

4 Q I'm showing you now Plaintiff's Exhibit
5 Number 14 and ask you if you recognize that plea
6 agreement, that agreement. See if that is your
7 signature on the last page of it?

8 A Yes, sir.

9 Q Okay. And also signing that last page are
10 Solicitor Walter Bailey, Jr., is that correct?

11 A Yes.

12 Q And your attorney Charles Williams, attorney
13 for the defendant?

14 A Yes, sir.

15 MR. SINCLAIRE: Your Honor, I move
16 Plaintiff's 14 into evidence at this time.

17 MR. WATERS: Your Honor, as long as it's
18 limited to the allegations that were raised in the
19 amended application, except for my previous
20 objection to the third amended application, those
21 would be my only objection.

22 THE COURT: I'll admit it in evidence.

23 (Plea agreement marked and received in
24 evidence as Plaintiff's Exhibit 14).

25 MR. BROWN: Your Honor, on that note, because

1 this is a little different, he was deposed on
2 August 26, we found out he lied in his trial
3 testimony and --

4 THE COURT: That is your characterization.

5 MR. BROWN: He said it today.

6 THE COURT: Well, anyway --

7 MR. BROWN: And --

8 THE COURT: -- I'm going to admit this, I
9 will admit the matter.

10 MR. BROWN: I just wanted to respond it was
11 amended after that deposition, in fact it was
12 amended within two days of receiving the
13 transcript, maybe even the day of receiving his
14 transcript in our hands of the deposition. I don't
15 know how much faster we could have amended it.

16 THE COURT: It's in evidence.

17 BY MR. SINCLAIRE:

18 Q I direct your attention to the second
19 paragraph on the first page. Do you agree that,
20 "The defendant Travis DeWitt Felder further
21 understands and agrees that the State will advise
22 the sentencing judge at the time of the plea as to
23 the extent of his truthful cooperation with the
24 State provided all the terms of this agreement are
25 fully complied with." Is that correct?

1 A Yes, sir.

2 Q All right. "And said plea will take place
3 after the trial of Marion Bowman, Jr., and the
4 other individuals named herein." Is that correct?

5 A Yes, sir.

6 Q We talked about the debriefing at paragraph
7 five on the second page. "The defendant Travis
8 DeWitt Felder understands and agrees his
9 cooperation is to include but is not limited to a
10 truthful and complete debriefing of his knowledge
11 concerning any and all criminal activity or
12 unlawful activity he has been involved with, is
13 aware of or knows about." You did that, correct?

14 A Yes, sir.

15 Q And paragraph eight, the top of the next
16 page, "The defendant Travis DeWitt Felder
17 understands and fully agrees to tell the absolute
18 truth at any trial or proceeding either when
19 questioned by the attorney for the State of South
20 Carolina or being cross-examined by any attorney
21 representing any defendant who is being tried." Is
22 that correct?

23 A Yes, sir.

24 Q You agreed to tell the absolute truth?

25 A I told the truth.

1 Q Okay. And then on paragraph ten of the final
2 page, "The defendant Travis DeWitt Felder further
3 understands and agrees that any testimony given by
4 him must be factual and truthful and that he is not
5 able to omit facts or attempt in any way to benefit
6 while on the witness stand either the State of
7 South Carolina or any defendant he may testify
8 about in any future proceeding or trial"?

9 A Yes, sir.

10 Q You entered into that plea agreement with
11 Solicitor Bailey and you subsequently entered a
12 guilty plea to accessory after the fact to arson
13 third degree. Is that correct, accessory after the
14 fact to arson third?

15 A Yes, sir.

16 Q All right. So, what that meant to you was
17 that they were not-prossing the indictment for
18 accessory after the fact of murder, that is either
19 fifteen or ten years, depending on what your
20 understanding was, based on your conversations with
21 Mr. Williams. Is that correct?

22 MR. WATERS: Your Honor, I object to that
23 question. I think he can ask him what his
24 understanding was but there were a lot of predicate
25 facts in there.

1 THE COURT: A lot of them. Go ahead and
2 answer. What would your answer be, they would drop
3 the arson third?

4 THE WITNESS: Drop the accessory before the
5 fact.

6 THE COURT: What was your understanding,
7 whatever the deal was, what they were dropping and
8 not dropping? What was your understanding?

9 THE WITNESS: The understanding was they
10 would drop accessory after the fact of murder and
11 arson.

12 THE COURT: Okay.

13 BY MR. SINCLAIRE:

14 Q And that meant you weren't going to be
15 exposed to the fifteen years for accessory before
16 the fact of murder, correct -- accessory after the
17 fact of murder, correct?

18 A Possibly fifteen years.

19 Q And you weren't going to be exposed to the
20 ten years for the arson third degree, were you?

21 A Possibly.

22 Q When you say possibly, that means you are
23 recognizing those are the maximum sentences, is
24 that correct?

25 A No.

1 Q You thought they were ten and ten?

2 A No, sir. What it was, he said, "This is your
3 plea agreement and I can try to help you," and that
4 is what it was.

5 Q Are you talking about Mr. Bailey?

6 A Yes.

7 Q Okay. Just so we're clear, what did Mr.
8 Bailey tell you when he met with you and your
9 lawyer and you signed that plea agreement?

10 A I don't remember word for word what he said.
11 I mean, I signed the paper and identify it, he
12 said, "You know, this is your plea, we're going to
13 drop the charge down to arson third degree."

14 Q Accessory after the fact of arson third
15 degree?

16 A I guess.

17 Q All right. Well, did Mr. Williams tell you
18 that carried a maximum sentence of five years in
19 prison?

20 A No, sir.

21 Q Did the judge tell you that prior to your
22 sentencing?

23 A I don't recall.

24 Q Do you recall Solicitor Bailey appearing at
25 your sentencing and talking to Judge Diane

1 Goodstein before she imposed sentence?

2 A Yes, sir.

3 Q And what did Solicitor Bailey say at your
4 sentencing?

5 A I can't tell you word for word.

6 Q Did he tell Judge Goodstein that you had
7 testified truthful at the trial and had assisted
8 him in the prosecution of Marion Bowman?

9 A Something to that extent.

10 Q And what was your sentence?

11 A I'm thinking, I'm not for sure, three years
12 suspended to three years on probation.

13 Q And?

14 A And community service and stuff like that.

15 Q Have you still got the deposition transcript
16 up there? Refer to page 53. Starting on line 14,
17 "How long have you known Marion Bowman?"

18 A "Elementary school."

19 Q "All right. So, just say the last ten years,
20 did you know Marion Bowman to drink on a regular
21 basis?"

22 A Yes.

23 Q The question, "The big 42 ounce ones, bottle
24 of gin?" Your answer?

25 A "Bottle of gin, beer, whatever."

1 Q The question was, "Is it safe to say he
2 drank every day, too?"

3 A "Yes, sir."

4 Q And if Mr. Cummings had asked you that
5 question during trial would you have testified the
6 same way?

7 A Yes, sir.

8 MR. SINCLAIRE: The Court's indulgence, Your
9 Honor?

10 Answer any questions defense counsel, I'm
11 sorry, counsel might have for you.

12 MR. WATERS: Your Honor, I have been here
13 since 1:30, might I go across the hall real quick?

14 THE COURT: Do you need to go to the restroom
15 at all, sir?

16 THE WITNESS: No, sir.

17 THE COURT: Anyone else need to go to the
18 restroom, go to the restroom.

19 (Recessed at 4:04 p.m.).

20 (Reconvened at 4:10 p.m.).

21 THE COURT: All right, cross-examination, Mr.
22 Waters.

23 MR. WATERS: Thank you, Your Honor, may it
24 please the Court.

25

CROSS EXAMINATION

QUESTIONS BY MR. WATERS:

Q Mr. Felder, how you doing today?

A All right.

Q First I want to ask you a couple questions based on a comment I heard from the other side of the aisle here. You remember that deposition we had you have been asked questions about?

A Yes, sir.

Q Had you ever seen, prior to that time had you ever seen me before in your life?

A No, sir.

Q Had you ever had a phone call from me?

A No, sir.

Q Have you ever had a letter from me?

A No, sir.

Q And after that time when was the next time you saw me?

A Down here.

Q Down here?

A Yes, sir.

Q Did I call you during that period of time?

A No, sir.

Q Did I write you a letter during that period of time?

1 A No, sir.

2 Q Did I come and see you during that period of
3 time?

4 A No, sir.

5 Q Okay. Did Mr. Alphonso Simon come and see
6 you any of that time?

7 A No, sir.

8 Q Did he write you a letter or call you?

9 A No, sir.

10 Q Did any law enforcement officer come and see
11 you about this case?

12 A No, sir.

13 Q Did anyone call you or write you a letter
14 from law enforcement about this case?

15 A No, sir.

16 Q Did anyone from the Attorney General's office
17 call or write you about this case?

18 A No, sir.

19 Q When you had that deposition back in August
20 had you been provided with your, with a copy of
21 your trial testimony?

22 A No, sir.

23 Q Okay. So, you were coming in and testifying
24 cold about something that happened six years ago,
25 is that correct?

1 A Yes, sir.

2 Q All right. And since that time has anyone
3 provided you a copy of this deposition?

4 A Today.

5 Q Today? So, nobody mailed you a copy of this
6 deposition?

7 A No, sir.

8 Q Nobody called you up about your answers you
9 gave?

10 A No, sir.

11 Q What about your trial testimony, anybody give
12 you a copy of that?

13 A No, I didn't get it. I don't, I don't know
14 whether I received it, I don't know whether my
15 parents received it but I didn't get one.

16 Q Okay. So, the bottom line is since this
17 deposition nobody has provided you with a copy of
18 this deposition and nobody from the Attorney
19 General's office or law enforcement has contacted
20 you about the answers you gave at that deposition,
21 is that correct?

22 A No, sir.

23 Q That's correct?

24 A Yes, that's correct.

25 Q Okay. All right. Now, right now you're

1 presently, you are a diesel mechanic, is that
2 correct?

3 A Yes, sir.

4 Q You work at Coburg, is that right?

5 A Yes, sir.

6 Q You have a family, just had a son born, as I
7 recall?

8 A Yes, sir.

9 Q Okay. And you have been working off and on
10 at Coburg for a number of years, is that correct?

11 A Yes, sir.

12 Q Okay. Now, you were asked some questions
13 about going to the E-Z Horizon and the gas can, and
14 I just want to get it straight. Tell me what
15 happened when Marion Bowman, I'm not asking you
16 word for word, just the best of your recollection
17 right now, what happened when Marion Bowman came to
18 your door?

19 A He knocked on the door, I came to the door,
20 he said, "I need to holler at you." We went
21 outside, he said, "Hey, I need to get rid of this
22 car." He got a gas can, I went to the store and he
23 waited.

24 Q When he said, "I need to get rid of this
25 car," what did you think he meant by that?

1 A I figured he was going to park it in the
2 woods, he needed some gas, didn't want to go to the
3 station in the car, so all right, I go to the store
4 and get some gas, he park it and leave it, that
5 will be a wrap.

6 Q He gave you the gas can?

7 A Yes.

8 Q And what did he ask you to do?

9 A Put a couple gallons of gas.

10 Q Okay. So you went to the store and put that
11 gas in at the E-Z Horizon, is that correcct?

12 A Yes, sir.

13 Q Where was Marion Bowman at the time you were
14 putting that gas in the gas can at E-Z Horizon
15 store?

16 A The next street, I mean like a street across
17 from it.

18 Q Describe it as best you can.

19 A 70 toward, going toward Bamburg, 70 that goes
20 through town, I was at the stop sign.

21 Q He was kind of pulled over out of sight on
22 the side road, is that right?

23 A Yes, sir.

24 Q Okay. Then he told you, he told you to
25 follow him?

1 A Yes, sir.

2 Q Okay. And then you were asked about whether
3 you lied when you said that you all went out from
4 McElhanney Road to Nursery Road, but that is
5 exactly where you went, correct?

6 A Yes, sir.

7 Q You followed Marion Bowman out from
8 McElhanney Road to Nursery Road, is that correct?

9 A Yes, sir.

10 Q Okay. All right. Now, there was a video
11 camera present in that store, right?

12 A Yes, sir.

13 Q Did you all know there was a video camera in
14 that store? Did you know there was a video camera
15 in that store?

16 A Any store? In the store, yes.

17 Q So, if whoever went up there and purchased
18 the gas was going to end up on the video camera, is
19 that correct?

20 A Yes, sir.

21 Q And Mr. Bowman was parked on the side of the
22 road outside of any view of the camera, correct?

23 A Yes, sir.

24 Q Okay. What you just related to me is exactly
25 what you told us back on August 28, correct?

1 A Yes, sir.

2 Q And that was without having any review of
3 your trial testimony, right?

4 A Yes, sir.

5 Q Okay. All right. So, you testified at trial
6 and then tell me how it was that you came back and
7 testified again.

8 A My lawyer called me and told me I needed to
9 go back down there.

10 Q Okay. What happened after that?

11 A I came back and went on the stand and he told
12 me --

13 Q Did you meet with the defense lawyer at all?

14 A No. He called me on the phone, told me go
15 down there.

16 Q Which is that, Charles Williams?

17 A Mr. Charles Williams.

18 Q He told you you needed to come back down
19 there, they wanted you to testify again?

20 A Yes, sir.

21 Q When you got down there they put you right up
22 on the stand and talked to you first what happened?

23 A I don't recall.

24 Q But they got you up on the stand and the
25 defense attorney asked you if that was you on the

1 tape, correct?

2 A Yes, sir.

3 Q You told him it was?

4 A Yes, sir.

5 Q And then he asked you some more questions and
6 you told us exactly what you just said, Marion
7 Bowman gave you the gas can and asked you to get a
8 couple dollars worth of gas, correct?

9 A Yes, sir.

10 Q All right. So, you told that in front of the
11 jury in the sentencing phase, is that right?

12 A Yes, sir.

13 Q Okay. All right. Now, you were asked why
14 you left that out the first time and I believe that
15 you stated that you were scared. Is that correct?

16 A Yes, sir.

17 Q Okay. Do you recall what you told us at the
18 deposition?

19 A Not word for word, no.

20 Q All right.

21 MR. WATERS: Court's indulgence just one
22 moment?

23 Q Look at page 42, line 20.

24 A Yes, sir.

25 Q What was your answer from lines 20 to 23?

1 A "I had a lot of stuff on the table, I was
2 scared. I was scared, I was in jail for three
3 months and, you know what I'm saying, I lost my
4 job, I had nothing."

5 Q You ain't had nothing?

6 A "I ain't had nothing."

7 Q I want you to turn over to page 49 and read
8 your answer beginning at line 19.

9 THE COURT: This is the deposition again?

10 MR. WATERS: Yes, sir, it is.

11 MR. WATERS: Questions, Your Honor,
12 deposition of August, 2008.

13 THE COURT: Page 49, line 19?

14 BY MR. WATERS:

15 Q Read your answer when that question was
16 raised again.

17 A "I don't know, this case cost me a lot more
18 than I want it to be, you know what I'm saying, and
19 I barely can get a job right now because, because
20 of this. I made a mistake and I, I made a mistake
21 and I paid the price for it and so this part of my
22 life I blacked out. I'm trying, I'm trying, I
23 don't want to remember none of this, so when I'm
24 telling you I don't recall, I don't recall."

25 Q Okay. So, let me ask you about that. Again,

1 you got called into this deposition some six years
2 after this trial and you hadn't had any
3 preparation, correct?

4 A No, sir.

5 Q Nobody had contacted you about this case?

6 A No, sir.

7 Q Nobody had let you review your trial
8 testimony or refresh your recollection or anything
9 like that?

10 A No, sir.

11 Q So, you were just trying to answer these
12 questions as best you could years later, is that
13 right?

14 A Yes, sir.

15 Q Okay. Now, you were asked some questions
16 about whether or not you told the Solicitor that
17 you went out to, that you went to the E-Z Horizon
18 store to get the gas prior to going out to
19 McElhanney road and Nursery Road. Correct?

20 A Yes.

21 Q Okay. And at one point you stated that you
22 didn't remember what you told the Solicitor,
23 another point you stated you did tell him that, at
24 least today you said you don't remember and then in
25 the deposition you said that you did remember that

1 or you did tell him that. Which is it, or do you
2 remember?

3 A I don't recall.

4 Q Well, I mean, we're right here under oath,
5 this is where it counts.

6 A Yes, I understand.

7 Q I don't want a false answer, I want you to
8 give the best true answer. I don't care if it's
9 not a good answer unless it's a true answer, the
10 best you've got.

11 A To the best of my knowledge, sir, I don't
12 remember what I told the Solicitor.

13 Q Okay. So, you don't remember your
14 conversations with Walter Bailey word for word?

15 A No, sir.

16 Q Let me ask you something else. I think you
17 also testified, do you remember a time when you and
18 Tawain Gadson and Marion Bowman went to Orangeburg
19 to purchase a weapon?

20 A Yes, sir.

21 Q Okay. And who bought a weapon that day?

22 A Marion Bowman.

23 Q What kind of gun was it, do you remember?

24 A It was a .380.

25 Q All right. And did that gun he bought that

1 day appear to be the same gun he had tucked in his
2 waist during the course of the day or during the
3 course of that evening?

4 A Yes, sir.

5 Q Do you remember we talked a little bit at
6 that deposition about Darien Williams, right?

7 A Yes, sir.

8 Q Are you familiar with Darien's reputation for
9 telling the truth in the community in which you all
10 live?

11 A Yes, sir.

12 Q What is that reputation?

13 A It's not good.

14 Q Okay. In fact I think you said something to
15 the effect he's liable to say anything?

16 A Yes, sir.

17 Q And that you have also seen him flip out?

18 A Yes, sir.

19 Q Okay. What about Marion Bowman's reputation,
20 he was known as a pretty rough dude, is that
21 correct?

22 A Yes, sir.

23 Q And I think the way you described it, it was
24 better to be his friend?

25 A Yes, sir.

1 Q And that you didn't want to push his button
2 or mess with him?

3 A Yes, sir.

4 Q You were asked a little bit about Marion
5 Bowman and his drinking. Do you recall seeing Mr.
6 Bowman drinking on the time that you spent with him
7 on the night of that incident?

8 A I don't recall.

9 Q Okay. Do you recall him slurring his words
10 and staggering around and acting all drunk?

11 A I don't know, I don't recall.

12 Q Okay.

13 THE COURT: Stop your question right there
14 just one second.

15 MR. WATERS: Yes, sir, Your Honor.

16 (Brief recess).

17 THE COURT: Go ahead with your questions.

18 MR. WATERS: Thank you, Your Honor.

19 BY MR. WATERS:

20 Q Mr. Felder, you were asked about when you got
21 arrested for this warrant, you stated that you
22 thought you were being charged with murder and
23 arson?

24 A Yes, sir.

25 Q Okay. Did you think you were being charged

1 with murder or accessory to murder?

2 A Accessory to murder.

3 Q You were never confused you were actually
4 being charged with murder itself?

5 A No, I wasn't charged with murder, myself.

6 Q Okay. So, you never had that belief,
7 correct?

8 A No, sir.

9 Q In fact, when you all had that initial
10 arraignment where it was you and Tawain Gadson and
11 Mr. Bowman all there together they didn't arraign
12 you on murder charges, did they?

13 A No, sir.

14 Q Okay. All right. When you ultimately -- let
15 me ask you this. At the deposition you were asked
16 about when you decided to cooperate with the law
17 enforcement. Right?

18 A Yes, sir.

19 Q And that was after you had a discussion with
20 your lawyer, correct?

21 A Yes, sir.

22 Q And what did he tell you when you all had
23 that discussion?

24 A I was looking at a great amount of time and,
25 "From what you're telling me you need to go ahead

1 and plead with the State."

2 Q So, you told him everything you knew?

3 A Yes, sir.

4 Q And his judgment to you was that, what did he
5 tell you, he told you you needed to tell the truth,
6 is that what he told you?

7 A Tell the truth.

8 Q Those were the words from Mr. Williams,
9 correct?

10 A Yes, sir.

11 Q So, it wasn't any polygraph or anything like
12 that, it was Mr. Williams saying, "You need to tell
13 the truth and let's see what we can do with the
14 State," correct?

15 A Yes, sir.

16 Q That is exactly what you told us at the
17 deposition that you can recall after six years as
18 well, right?

19 A Yes, sir.

20 Q At anytime did anyone, Solicitor Bailey or
21 anyone that worked for him suggest facts to you to
22 testify?

23 A No, sir.

24 Q Did they tell you to not testify about the
25 going to the gas station?

1 A No, sir.

2 Q Did anyone in law enforcement suggest facts
3 to you?

4 A No, sir.

5 Q Did they tell you not to tell about going to
6 the gas station?

7 A No, sir.

8 Q So, like your attorney, they just told you to
9 tell the truth, correct?

10 A Yes, sir.

11 Q Did anybody in law enforcement or the
12 Solicitor's office ask you to do anything but tell
13 the truth?

14 A No, sir.

15 MR. WATERS: Your Honor, I have nothing
16 further at this time.

17 THE COURT: Any redirect?

18 MR. SINCLAIRE: Just briefly, Your Honor.

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REDIRECT EXAMINATION

QUESTIONS BY MR. SINCLAIRE:

Q That videotape from the E-Z Horizon store, the one you knew was inside, they gave a copy of that videotape to Mr. Williams, didn't they, as part of your discovery?

A I don't recall.

Q Well, your face appears on the video after 3:00 o'clock buying gas, is that correct?

A Yes, sir.

Q Okay. And you and Mr. Bailey talked about that fact, didn't you, Mr. Bailey and Mr. Williams?

A Say again.

Q You and Mr. Williams talked about the fact that they had hard core evidence that your face was on the videotape buying gasoline prior to Kandee's car being burned with her in it, isn't that correct?

A Hard core evidence that I -- I don't understand the question, brother.

Q Was your face on the video?

A Yes, sir.

Q Was your face on the video buying gasoline?

A Yes, sir.

Q Did you talk about that with your lawyer?

1 A Yes, sir.

2 Q You covered that ground, just so we're clear,
3 you told your lawyer everything about this case?

4 A Yes, sir.

5 Q Including you bought the gas before the car
6 was burned?

7 A Yes, sir.

8 Q All right. And your lawyer went over with
9 you the plea agreement you entered into with
10 Solicitor Bailey, isn't that correct?

11 A Yes, sir.

12 Q Your lawyer didn't advise you to withhold
13 information from the Solicitor, did he?

14 A No, sir.

15 Q So he says, "Look, you're signing a plea
16 agreement that basically waives all your appellate
17 rights, you've got to tell them the truth." Is
18 that correct?

19 A Yes, sir.

20 Q And as part of that, that you met with
21 Solicitor Bailey in a debriefing and told him you
22 bought the gas, your lawyer was sitting right
23 there, he would have known you were leaving that
24 out, correct?

25 MR. WATERS: I object.

1 THE COURT: The question is do you remember
2 if you told Solicitor Bailey that when you talked
3 to him or not?

4 THE WITNESS: I don't know, sir, I don't
5 remember.

6 BY MR. SINCLAIRE:

7 Q Okay. What you're saying, then, is that you
8 lied to us in your deposition, is that correct?

9 A No. I'm saying I didn't lie to you in your
10 deposition.

11 Q Okay. The question was very clear in your
12 deposition and there was no equivocation at that
13 time, there was no I don't remember at that time,
14 page 27, line 23. Do you have your transcript?

15 Question, "In your meeting with the Solicitor
16 originally you told him you had bought the gas that
17 was used to burn Kandee Martin and her car, right?"
18 And what was your answer?

19 A Yes, sir.

20 Q "No, I don't remember." Then, this was
21 August 26, you told us unequivocally you told the
22 Solicitor that you bought the gas, isn't that
23 correct, isn't that what you told us?

24 A That is what the transcript says.

25 Q So, you're saying today you don't remember

1 but the truth is you told the Solicitor that,
2 didn't you?

3 A Yes, sir.

4 Q At your trial Solicitor Bailey's
5 cross-examination of you?

6 THE COURT: Could I see that one second?
7 Give me one second.

8 MR. SINCLAIRE: Yes, sir.

9 THE COURT: Okay, go ahead, yes, sir.

10 BY MR. SINCLAIRE:

11 Q At your trial, after the defense lawyer calls
12 you to the stand and brings to the Solicitor's
13 attention for the first time that you bought the
14 gas, the Solicitor asked you --

15 THE COURT: By the way, is this in the guilt
16 phase or the penalty phase?

17 MR. SINCLAIRE: Penalty.

18 THE COURT: It never was brought up there.

19 Q The Solicitor says, "Why didn't you testify
20 to that earlier," and your answer was? What did
21 you say that day?

22 A I was scared.

23 Q No, that is not what you said.

24 THE COURT: Well, then read it, it's in the
25 transcript. Do you want to show it to him?

1 A Where at in the transcript?

2 Q Page 4925, line 17, cross-examination by Mr.

3 Bailey. "Why didn't you tell us that the other

4 day, Mr. Felder?" Your answer was, "Excuse me?"

5 "Why didn't you tell us that about the gasoline the

6 other day?" And your answer then was?

7 A "You didn't ask."

8 Q Of course they did ask, didn't they, we have

9 been all over that. They asked you the same way

10 about where you went from the club back to the

11 Villas, as they did when you said you followed

12 Marion out to Nursery Road, didn't they, "Where did

13 you go?" Do you remember that?

14 A Yes.

15 Q When they asked you when you left the club,

16 open ended question, your answer was, "I went to

17 the E-Z Horizon store and bought chips." Is that

18 correct?

19 A Yes, sir.

20 Q When they said, "And where did you follow

21 Marion?" You said, "Went out McElhanney Road to

22 Nursery Road," didn't you?

23 A Yes, sir.

24 Q And even when, on cross examination in your

25 original testimony at trial, he said, "Where did

1 you go," and you said, "Out Nursery Road to
2 McElhanney rode, McElhanney Road to Nursery Road,"
3 right?

4 A Yes.

5 Q Completely leaving out the fact you went and
6 bought three dollars worth of gasoline, put it in a
7 can and carried it in your car to where you say you
8 saw Marion drag the body out of the woods. Right?
9 You completely left that out because nobody asked
10 you that?

11 A I forgot, sir.

12 Q You forgot that you bought the gas before an
13 arson?

14 A Sir, I left that part out, I forgot to put it
15 in my testimony.

16 Q Well, at least at the deposition you came up
17 with a different answer as to why you hadn't put it
18 in your testimony. Do you remember that?
19 Deposition page 42.

20 THE COURT: I have it.

21 Q Line 18.

22 THE COURT: I think you're referring to line
23 20, aren't you?

24 MR. SINCLAIRE: That was his answer, Your
25 Honor.

1 THE COURT: You can read line 20.

2 BY MR. SINCLAIRE:

3 Q On page 42, the answer?

4 A "I had a lot of stuff on the table, I was
5 scared, I was scared, I was in jail for three
6 months, you know what I'm saying, I lost my job, I
7 had nothing."

8 Q Well, that's completely different than nobody
9 asked me or you didn't ask me, isn't it, that's a
10 conscious decision, I'm scared if I say I bought
11 the gas, so that's different from you didn't ask
12 me, isn't it?

13 A It's different. I mean, but this is seven
14 years later, I'm saying, like I say, I didn't have,
15 you know, no preparation for you.

16 Q Did you have some preparation for us today?

17 A No.

18 Q You hadn't spoken to anybody in law
19 enforcement about your testimony?

20 A No.

21 Q Out in the hallway even before you came to
22 the witness stand?

23 A No.

24 Q Okay. Now, Mr. Waters asked you about buying
25 the gasoline. Before I get to that, the first

1 thing, you have already testified to that, Marion
2 shows up, according to your testimony, says, "I
3 need to get rid of this car." Is that correct?

4 A Yes.

5 Q And then you followed him or you went to the
6 E-Z Horizon store and bought gasoline. Is that
7 correct?

8 A Yes, sir.

9 Q Isn't it true that you bought the gasoline so
10 that you could then use the gasoline to get rid of
11 the car?

12 A To go put it in the woods, yes.

13 Q To put the car in the woods and torch it,
14 isn't that correct?

15 A No, sir.

16 Q Do you want us to believe that you bought gas
17 in a red gas can and you were going to just leave
18 it in the car?

19 A No, sir. We was going to put the gas in the
20 car so he could get where he was going.

21 Q You didn't do that, though, did you?

22 A No.

23 Q You took, you drove behind Mr. Bowman,
24 according to your testimony, with the gas can,
25 three dollars worth of gas in your hand and then

1 when you got out to where he parked the car in the
2 abandoned field you gave him the gas?

3 A Yes.

4 Q And according to your testimony, what
5 immediately followed after you gave him the
6 gasoline, what happened?

7 A He burned the car.

8 Q And it is your testimony that came as a
9 complete shock to you, he burned the car?

10 A No. After he put the gas on it, I mean, yes,
11 he burnt the car.

12 Q You saw him put the gas on it?

13 A Yes.

14 Q You weren't driving down the road and doing a
15 U-turn or anything, you saw him pour gasoline on
16 the car?

17 A Yes.

18 Q All right. That is slightly different from
19 your trial testimony, isn't it?

20 A Can I see my testimony, then?

21 THE COURT: He wants to see the area you're
22 referring to. What area are you referring to that
23 is different? I assume he hasn't had a transcript
24 in his home perusing it over.

25 MR. SINCLAIRE: Correct, Your Honor.

1 THE COURT: What page are you referring to?

2 MR. SINCLAIRE: Judge, that one surprised me,
3 I didn't know he was going to change that part of
4 his testimony.

5 THE COURT: How do we know he changed it?
6 Can you show me where you're talking about he
7 changed it?

8 BY MR. SINCLAIRE:

9 Q Do you recall testifying at trial that you
10 gave the gas to Marion and you drove off and made a
11 U-turn and came back and the car was burning, do
12 you remember that?

13 A I don't remember word for word what I said at
14 trial, sir.

15 THE COURT: Without the details, you saw the
16 car on fire?

17 THE WITNESS: Yes, sir.

18 BY MR. SINCLIARE:

19 Q All right. So, have you found where we're
20 talking about?

21 A Uh-huh.

22 Q 4099, line 20, down at line 20 it says, "All
23 right, you left from here, Mr. Bowman left from
24 here, he told me to go up and turn my car around."
25 Your answer on line 23 was?

1 A "Okay."

2 Q Okay. The answer, "Okay." Question, "Okay."
3 Answer, "He pulled in this area right here." I
4 think you're pointing to a diagram at that time.
5 Do you remember that?

6 A Yes, I guess.

7 Q Then your answer, "I went farther up the road
8 and turned around." Is that correct? And the
9 question was, "Where did you park?"

10 A "Came back as I turned around, I came back
11 and parked in the middle of the road."

12 Q And the answer was, the question, "Okay."
13 Then you said?

14 A "He was already up it, he was already up in
15 here."

16 Q Subsequent to that, I think you said you did,
17 on 13, "Okay, after he went up in that little field
18 as you described, you stopped your car in the road,
19 and what is the next thing you saw?" And the
20 answer was?

21 A Line thirteen?

22 Q "Yes, sir."

23 A "I seen him get out of the car, lit
24 something, threw it in the car, the car was on
25 fire."

1 Q So, you did see him light the car after you
2 did the U-turn?

3 A Yes, sir.

4 Q Did you at the time or do you know now why it
5 would have been he told you to do a U-turn instead
6 of, "Just stand right here until we leave"?

7 A Because that was the direction going back
8 home.

9 Q Okay. So, did you see him pour any gas on
10 the car? You didn't see him pour any gas on the
11 car, did you?

12 A According to this I didn't see that.

13 Q So, which one is the truth, did you see him
14 pour gas on the car or you didn't see him pour gas
15 on the car?

16 A The truth is he lit the car on fire.

17 Q Did you see him pour any gas on the car?

18 A Sir, I didn't say that at trial and you're
19 trying to make me out a liar and I'm, like I'm
20 trying to say, I told the truth at trial, that's
21 all, I mean, that's all I can tell you.

22 Q Mr. Felder, I'm not trying to make you out to
23 be anything. You testified today you saw him pour
24 gas on the car. You testified at trial that you
25 didn't. I'm just asking you which one is the

1 truth.

2 THE COURT: Wait a minute. Was he asked at
3 the trial, "Did you see him pour gas on the car?"
4 You are reading from the statements he made about
5 the fire as meaning he said, "I did not see him
6 pour gas on the fire." From what he read, one
7 could say, "I saw him set the car on fire."
8 Whether he actually saw him pour gas on it or not,
9 he might have meant he saw him pour it on or might
10 not have. I'm missing the significance. The
11 significant statement is he saw him set the car on
12 fire. Whether he actually saw him pour the gas
13 before he set the car on fire or not, if you see
14 some significance in that as for as differences, I
15 can see your comment and concerns about not saying
16 anything about getting gas before, in the guilt
17 phase, but I'm just concerned about this point
18 about whether he saw him pour gas on it or not, as
19 opposed to seeing him light it?

20 MR. SINCLAIRE: No, Your Honor.

21 THE COURT: The car caught on fire for some
22 reason.

23 MR. WATERS: There is no denial anywhere in
24 the statement or the transcript's talking about.

25 THE COURT: Okay.

1 MR. SINCLAIRE: We'll move on.

2 THE COURT: All right.

3 BY MR. SINCLAIRE:

4 Q Travis, when you and Marion talked about
5 stress relief what are you talking about?

6 A Say again.

7 Q Stress relief, did you and Marion share an
8 expression called stress relief, you drive around
9 drinking Natural Lights?

10 A Are you talking --

11 Q Did you drive around drinking?

12 A When I get off work.

13 Q That night when you got off work were you at
14 a friend's house between 7:00 and 8:00?

15 A Yes.

16 Q Do you remember seeing Marion there, asking
17 him if he was going to the Club Get It?

18 A I guess so. I don't remember, I don't
19 recall, I don't recall. The name is vague to me.

20 Q Well, very specifically about what you
21 remember being in front of a magistrate when you
22 were charged with accessory before the fact of
23 murder, the stuff that is important.

24 A Okay. That was what was in the paper,
25 charged three suspects in a murder trial, I mean

1 Club Get It. Get It wasn't in the paper.

2 Q Do you remember him asking you, "When you get
3 back if you go to the club Allen Murray come back
4 and get me here at Valona's," do you remember that?

5 A No, sir.

6 Q When he came to your house 3:00 o'clock in
7 the morning do you remember giving him two Natural
8 Light bottles?

9 A No, sir.

10 Q From the cooler in your car, do you remember
11 that?

12 A No, sir.

13 Q But this stress relief you all did, was that
14 a habit of you all's?

15 A We would go drinking on the weekend, we drink
16 a beer every day.

17 Q You drink a beer every day and this happened
18 on the weekend, too, didn't it?

19 A Yes.

20 MR. SINCLAIRE: Thank you. Answer any
21 further questions Mr. Waters may have.

22 THE COURT: Okay.

23 MR. WATERS: Thank you, Your Honor.

24

25

1 RECROSS EXAMINATION

2 QUESTIONS BY MR. WATERS

3 Q Mr. Felder, do you remember when we had that
4 deposition you talked about back in August, about a
5 month ago?

6 A Yes, sir.

7 Q Okay. And that was a good bit different than
8 it was today, wasn't it?

9 A Yes, sir.

10 Q You came in and they were smiling at you,
11 shaking your hand, correct?

12 A Yes, sir.

13 Q And asking you about your newborn son?

14 A Yes, sir.

15 Q Telling you congratulations, is that right?

16 A Yes, sir.

17 Q You had come in there cold, you hadn't had
18 anything to do with this case since 2002, is that
19 right?

20 A Yes, sir.

21 Q They just started asking you some questions
22 and they weren't confrontational, were they?

23 A No, sir.

24 Q Is it a whole lot different today than it was
25 then?

1 A Yes, sir.

2 Q Okay. So, is it fair to say you were
3 answering the questions as best you could but this
4 was a whole different thing, a whole different
5 level of intenseness than it was at that
6 deposition?

7 A Yes, sir.

8 Q Were you trying to lie at any time during the
9 course of that deposition?

10 A No, sir.

11 Q All right. Now, I'm still confused on the
12 thing about the Solicitor, whether or not you told
13 him about the gas can or not. I don't know that we
14 resolved that yet. We keep going backwards and
15 forth.

16 MR. SINCLAIRE: Objection, that has been
17 asked and answered.

18 MR. WATERS: He went through it.

19 THE COURT: Ask your question.

20 QUESTIONS BY MR. WATERS

21 Q All right. So, you have a definite memory in
22 your mind right now of telling Solicitor Bailey
23 that before you followed Marion Bowman out to
24 Nursery Road and torched the car with Kandee's body
25 in it that you went to the E-Z Horizon store and

1 put that couple dollars worth of gas in the gas
2 can?

3 A No, I don't have permanent memory.

4 Q Okay. When they were showing you this paper
5 where you answered yes, sir, that was in a much
6 less intense environment at the time?

7 A Yes, sir.

8 Q The truth is right now as you search your
9 memory, again I just want to know the truth, I
10 don't care if yes, sir or no, sir, I just want to
11 know the truth, do you have a specific memory of
12 telling him that?

13 A No, sir.

14 MR. WATERS: Okay. Nothing further, Your
15 Honor.

16 THE COURT: I know you can read the
17 deposition again and he will say yes, sir on the
18 deposition, so if you want to do that again I will
19 just note that you read the deposition and it says
20 yes, sir.

21 MR. SINCLAIRE: But beyond the deposition,
22 Judge, I asked him after we went through that whole
23 thing, "Is that the truth that you told me," and he
24 said yes.

25 THE COURT: You did ask him that, too, and he

1 just told Mr. Waters he does not have a memory of
2 it, he told you that was true what he said in the
3 deposition. That's his testimony.

4 MR. SINCLAIRE: Thank you, Judge. I
5 absolutely concur with your opinion but just so the
6 record is clear I would like to ask him again.

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REDIRECT EXAMINATION

QUESTIONS BY MR. SINCLAIRE:

Q You went over the debriefing where the Solicitor and your lawyer were present, didn't you?

A Yes.

Q And you had gone over the fact that your face was on the video buying the gas, with your lawyer, hadn't you?

A Sir --

Q Yes or no, then you can explain.

THE COURT: Or if you don't know say you don't know.

A I don't know.

MR. SINCLAIRE: Thank you.

THE COURT: Let me ask you this. I would like to know this. I'm trying to get the events going on before you went to the store, okay? You were at club with Mr. Bowman?

A No, I was at the club, I was at Allen Murray Club.

THE COURT: Is that Allen Murray Club?

MR. WATERS: Yes, sir.

THE WITNESS: I went to the club.

THE COURT: Which is in Bowman also?

MR. WATERS: It's nearby, I'm not quite sure

1 exactly.

2 THE COURT: You keep referring to the Bowman
3 town?

4 THE WITNESS: It's on 178.

5 THE COURT: Okay. So, you were there at the
6 club?

7 THE WITNESS: Yes.

8 THE COURT: All right. Then what happened?

9 THE WITNESS: I came from the club, came back
10 to Branchville, I bought me some chips because I
11 usually go get something to eat after the club.

12 THE COURT: Did you buy chips at a store
13 different than where you bought the gas?

14 THE WITNESS: No, same store.

15 THE COURT: Why did you stop at that store?

16 THE WITNESS: To get some chips.

17 THE COURT: How did it come about you bought
18 gas?

19 THE WITNESS: After I got to the apartment I
20 met with him, he knocked on the door and I said, he
21 said he wanted to get rid of the car, I came out
22 with the --

23 THE COURT: He said he wanted to get rid of
24 what car?

25 THE WITNESS: Kandee Martin's car. Okay. He

1 gets this gas can, "Get me some gas."

2 THE COURT: He said he was going to do what?

3 THE WITNESS: He was going to park, take it
4 out in the woods and park it and leave it.

5 THE COURT: Why?

6 THE WITNESS: Because he wanted to get rid of
7 it.

8 THE COURT: Did he tell you why?

9 THE WITNESS: No.

10 THE COURT: Did you ask him?

11 THE WITNESS: No. I guess he stole it, I
12 mean.

13 THE COURT: All right. So, he told you that
14 the car that he had that was Kandee Martin's was
15 out of gas and had pulled over to the side
16 somewhere and he wanted gas to drive it out to the
17 country?

18 THE WITNESS: No.

19 THE COURT: What did he tell you?

20 THE WITNESS: He said, "Go steal me some gas,
21 get me some gas."

22 THE COURT: Did he show you the car he needed
23 to park?

24 THE WITNESS: Yes.

25 THE COURT: The car was at a parking lot in

1 your apartments?

2 THE WITNESS: Yes.

3 THE COURT: So, your understanding was he
4 wanted gas because the car would not move from
5 where it was or what?

6 THE WITNESS: No, wasn't told put extra gas
7 in it to get out, all the way out in the country.
8 He went a good distance, you know what I'm saying,
9 you know.

10 THE COURT: Was your understanding then that
11 the car may have had some gas but just not enough
12 gas to drive as far as he wanted to drive it?

13 THE WITNESS: Yes, sir.

14 THE COURT: You're understanding was he
15 wanted to steal it or had already stolen it?

16 THE WITNESS: He had already stole it.

17 THE COURT: Then did he ride with you to the
18 store?

19 THE WITNESS: No, sir.

20 THE COURT: Did he drive behind you in the
21 car?

22 THE WITNESS: He drove -- not exactly.

23 THE COURT: Well, how did the store thing
24 happen? You go back to the same store where you
25 bought the chips earlier?

1 THE WITNESS: Yes.

2 THE COURT: And what happened?

3 THE WITNESS: He went around the block.

4 THE COURT: Who went around the block?

5 THE WITNESS: Marion Bowman went around the
6 block, parked on the street going toward -- he was
7 facing Branchville.

8 THE COURT: Did you see him where he parked?

9 THE WITNESS: Yes.

10 THE COURT: From the store?

11 THE WITNESS: Yes.

12 THE COURT: He parked there and you went in
13 to get gas?

14 THE WITNESS: Yes.

15 THE COURT: Where did you get the red can?

16 THE WITNESS: He had it when he showed up to
17 the apartment.

18 THE COURT: He gave you a can?

19 THE WITNESS: Yes.

20 THE COURT: Then you went back to this E-Z,
21 what is it called?

22 THE WITNESS: Horizon.

23 THE COURT: E-Z Horizon?

24 THE WITNESS: Horizon.

25 THE COURT: E-Z Horizon? You went in and you

1 got gas?

2 THE WITNESS: Yes, sir.

3 THE COURT: Did you ask him why he couldn't
4 go get the gas?

5 THE WITNESS: No, sir.

6 THE COURT: Do you know why he wanted you to
7 go get the gas?

8 THE WITNESS: He just wanted me to go get it.
9 I guess he didn't want to be seen.

10 THE COURT: That's what you thought?

11 THE WITNESS: Yes.

12 THE COURT: So, you went and put gas in a red
13 can, three or four or five gallon, however much it
14 was?

15 THE WITNESS: Three dollars.

16 THE COURT: I'm just curious. Did he give
17 you money to pay for it or you paid for it out of
18 your pocket?

19 THE WITNESS: I paid for it out of my pocket.

20 THE COURT: So, a man comes, a friend of
21 yours, I guess, Bowman, you are not kin to Mr.
22 Bowman?

23 THE WITNESS: No, sir.

24 THE COURT: Just a friend?

25 THE WITNESS: Yes.

1 THE COURT: So, he comes up and gives you the
2 can and not only wants you to buy it so he won't be
3 seen, to your understanding, he wants you to pay
4 for it?

5 THE WITNESS: Yes.

6 THE COURT: He didn't give you any money for
7 it?

8 THE WITNESS: No.

9 THE COURT: You didn't have any problem with
10 that?

11 THE WITNESS: No, sir.

12 THE COURT: How much was it back then?

13 THE WITNESS: I don't know.

14 THE COURT: About five bucks, something like
15 that, five or ten bucks?

16 THE WITNESS: For what?

17 THE COURT: The gas.

18 THE WITNESS: No, I mean three dollars.

19 THE COURT: That's right, three dollars, you
20 put three dollars worth of gas in the can, that was
21 going to give him enough to get away with it, get
22 away farther. Then you put the gas in your car,
23 the back seat somewhere or trunk or wherever you
24 can. Where did you put it?

25 THE WITNESS: Back seat.

1 THE COURT: You drive over to where he is or
2 head out somewhere?

3 THE WITNESS: I drive over to where he is,
4 where he was.

5 THE COURT: And then follow him?

6 THE WITNESS: Yes.

7 THE COURT: All right. So, when you go out
8 and the car is burned, did you see anything about
9 the car that was suspicious to you?

10 THE WITNESS: No.

11 THE COURT: Did you know whose car it was?

12 THE WITNESS: Yes.

13 THE COURT: Now, how did you know whose car
14 it was?

15 THE WITNESS: I just did, she had a car
16 looked just like it, I mean.

17 THE COURT: So, you knew her?

18 THE WITNESS: Yes.

19 THE COURT: You had seen her in the car
20 before?

21 THE WITNESS: Yes.

22 THE COURT: All right. So, after the car was
23 set on fire he came back and got in your car?

24 THE WITNESS: Yes.

25 THE COURT: You all drove back where?

1 THE WITNESS: I dropped him off home.

2 THE COURT: At his home, then you went back
3 to your apartment?

4 THE WITNESS: Yes.

5 THE COURT: I just wanted to clear that up.
6 All right, any other questions as a result of my
7 questions?

8 MR. SINCLAIRE: Just a few, Your Honor.

9 BY MR. SINCLAIRE:

10 Q There is no question that the gas that you
11 were buying wasn't because you needed extra gas to
12 get to where you were going, is it?

13 A Now, yes, no, it ain't no question now.

14 Q Nursery Road is about eleven miles from E-Z
15 Horizon, is that correct?

16 A Yes.

17 Q It's not a long way, you don't need a lot of
18 gas to go eleven miles?

19 A I didn't buy a lot of gas.

20 Q You didn't testify to any of the stuff that
21 you were just asked by the Court, in the original
22 trial, did you, when asked where did you go?

23 A Yes, I did testify.

24 Q During the original time you took the stand,
25 all those important facts, none of those were

1 brought out in your original, the first time you
2 went to the witness stand, were they?

3 A No, sir.

4 Q Why didn't you give him the gas after you
5 bought three dollars worth of gas, when you met up
6 with him around the corner?

7 A Because he pulled off.

8 Q And that is when you knew that you were using
9 the gas to go down to Nursery Road, isn't that
10 correct, to get rid of the car?

11 A Park the car.

12 Q You use those terms interchangeably, park the
13 car, get rid of the car. Correct?

14 THE COURT: Your term get rid of the car,
15 he's concerned you mean burn the car. His
16 testimony so far is he thought he was going to pull
17 the car over to the side and leave it in the
18 country. Am I correct or wrong?

19 THE WITNESS: Yes, sir.

20 Q You knew, according to your testimony, that
21 when Marion pulled away before you could give him
22 the gas, that that gas wasn't needed to get to
23 Nursery Road, didn't you? If you needed to get
24 farther out in the country he would have put the
25 gas in the car before he drove off and left you,

1 wouldn't he?

2 A Yes.

3 Q And at that point you didn't turn around and
4 drive back to the house?

5 A He needed a ride home, couldn't park out
6 there and run back.

7 Q Right. When you got out there you gave him
8 the gas?

9 A Yes.

10 THE COURT: Anything else, Mr. Waters?

11 MR. WATERS: Yes, please.
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1 RECROSS EXAMINATION

2 QUESTIONS BY MR. WATERS

3 Q Just to clear it up, you're on that tape
4 twice, right?

5 A Yes, sir.

6 Q The first time you got there was when you
7 were coming back with Valona?

8 A Valona Smith.

9 Q Valona Smith, you bought chips and dip,
10 right?

11 A Yes.

12 Q You all went back to her place and you all
13 were eating chips and dip and watching the movies,
14 that is when Marion Bowman came and knocked on the
15 door?

16 A Yes.

17 Q The second time you are on the tape is when
18 he came back to buy the gas?

19 A Yes, sir.

20 Q We have already covered this but I want to go
21 back through it in response to the judge's
22 questions. But again, Marion Bowman had a rough
23 reputation, correct?

24 A Yes, sir.

25 Q And I think you testified in your deposition

1 when I asked you about that, the way you expressed
2 it was it was better to be his friend than not to
3 be his friend, correct?

4 A Yes.

5 MR. SINCLAIRE: This is outside the
6 examination.

7 THE COURT: Overruled. I think he can
8 testify why he paid for it himself and stuff like
9 that.

10 Q When Marion Bowman comes and asks for a ride
11 it is best to go ahead and do what Marion Bowman
12 wanted, correct?

13 A Yes.

14 Q You didn't want to be on his bad side in the
15 neighborhood of the Villas, correct?

16 A No, sir.

17 THE COURT: Anything else, Mr. Waters?

18 MR. WATERS: No, I think that's it, Your
19 Honor.

20 THE COURT: Before you ask him a question.
21 Mr. Sinclair asked you, when you drove the car out
22 there you had the gas in your car, right?

23 THE WITNESS: Yes.

24 THE COURT: Did you anticipate you were going
25 to give him the gas to be driving farther, you

1 thought he was going to need gas to drive out a
2 long distance?

3 THE WITNESS: That is what I thought when we
4 initially talked. Then we drove out there, he
5 needed a ride back, so I went ahead and followed
6 him.

7 THE COURT: But while you were riding out
8 there why didn't you give him the gas?

9 THE WITNESS: Because he was ahead of me.

10 THE COURT: All right. So, when he pulled
11 over to the side that is when you gave him the gas?

12 THE WITNESS: Yes, sir.

13 THE COURT: Did you know what he was going to
14 do with it then?

15 THE WITNESS: Then, you mean when we got
16 there, or in the woods?

17 THE COURT: I mean before you went and pulled
18 around and turned around and all. He told you to
19 go turn around?

20 THE WITNESS: Uh-huh.

21 THE COURT: And come back. Before you went
22 and turned around to come back did you know what he
23 was going to do with the gas?

24 (No response).

25 THE COURT: I tell you what, I will let him

1 ask the questions. Anymore questions you've got?

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. SINCLAIRE:

3 Q You didn't buy the gas because you were
4 afraid of Marion Bowman, did you?

5 A Say again.

6 Q You didn't buy the gas because you were
7 afraid of him, you just did a favor to a friend,
8 isn't that correct?

9 A I did it because -- yes.

10 THE COURT: Any other questions?

11 MR. SINCLAIRE: Briefly, Your Honor.

12 That's all I have, Your Honor, thank you.

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1 FURTHER RECROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q All right, Travis, I'm just trying to get
4 this straight now. He comes and knocks on the door
5 and says, "Let's go park this car, I need you to
6 get me some gas." Right? He gives you the can.
7 What were you thinking then when he gave you the
8 can to put the gas in?

9 A To go park the car.

10 Q Okay. What were you thinking he needed to do
11 with it?

12 A Get rid of it, I mean.

13 Q Do with the gas?

14 A Put it in the car.

15 Q Okay. Where did Marion Bowman park while you
16 were getting the gas?

17 A The next street on 78.

18 Q Okay. You got the gas and put it in your car
19 and drove out, and what did Marion Bowman do as you
20 came driving out of the gas station?

21 A He pulled out.

22 Q Okay. He didn't say anything else to you, he
23 just pulled out?

24 A He pulled out.

25 Q Okay. And then you followed him, correct?

1 A Yes, sir.

2 Q When you got to where he stopped, okay, what
3 did he do then?

4 A He came and got the gas.

5 Q Okay. Then what did he do then after that?

6 A He pulled a body out to the woods.

7 Q Then all of a sudden you saw a body being
8 pulled out of the woods?

9 A Yes.

10 Q What did you think was going to happen then?

11 A Nothing good.

12 Q Okay. All right. Now, they just asked you
13 if you bought the gas because you were afraid of
14 Marion Bowman, right?

15 A Yes.

16 Q That is what you just answered. You weren't
17 afraid of him, it was just better to keep him on
18 your good side or you on his good side?

19 A Yes, sir.

20 Q He was a friend of yours?

21 A Yes, sir.

22 Q But he was not somebody you wanted to cross?

23 A No, sir.

24 MR. WATERS: Nothing further, Your Honor.

25 THE COURT: Anything else?

1 MR. SINCLAIRE: No, Your Honor. We would ask
2 this witness be advised he will be recalled.

3 THE COURT: Mr. Felder, you work close by
4 here, don't you? Do you work at the place we tried
5 to find you yesterday?

6 THE WITNESS: Yes.

7 THE COURT: I don't want to cause you to be
8 away from your work but please know we may need you
9 at certain times. Now, do they have your phone
10 number?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Has everybody got his
13 phone number?

14 MR. WATERS: I don't have it.

15 MR. BROWN: We do.

16 THE COURT: What is your cell phone number?

17 THE WITNESS: 320 -- 843 330-3110.

18 THE COURT: 330-3110?

19 THE WITNESS: Yes.

20 THE COURT: Make sure you keep it by so if we
21 need you we will be calling you. If we don't,
22 don't worry about it. We may need you, it may be
23 this week or sometime in the future.

24 MR. WATERS: What time do you usually work?

25 THE WITNESS: 2:00 to 11:00.

1 THE COURT: Where do you work, again?
2 THE WITNESS: Coburg Dairy.
3 THE COURT: What do you do?
4 THE WITNESS: Refrigeration mechanic.
5 THE COURT: So, you work on refrigerators
6 that cool the milk and all that?
7 THE WITNESS: Yes, sir.
8 THE COURT: Can you fix them?
9 THE WITNESS: Yes, sir.
10 THE COURT: Pretty soon you will be an
11 air-conditioning man and make a bunch of money.
12 THE WITNESS: I'll try.
13 THE COURT: You may step town.
14 THE WITNESS: Your Honor, can I leave to go?
15 THE COURT: You can leave the building. If
16 we need you we will call you. You can go to work
17 and everything else but just keep the phone in case
18 we need you.
19 THE WITNESS: Thank you.
20 (Witness excused).
21 THE COURT: Have you got another witness
22 ready after we take a break?
23 MR. BROWN: Yes, sir. Call Officer
24 Stephenson.
25 THE COURT: Okay.

1 (Recessed at 5:04 p.m.).

2 (Reconvened at 5:20 p.m.).

3 THE COURT: Okay.

4 MR. SINCLAIRE: I need on the record for him
5 to be sworn.

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1 TIM STEPHENSON,
2 after being first duly sworn, testified as follows:

3 THE COURT: Okay, let's go ahead. Officer,
4 how you doing this afternoon?

5 THE WITNESS: Fine, sir.

6 THE COURT: Okay, Officer, what is your name
7 please? Speak in the microphone, please.

8 THE WITNESS: Tim Stephenson, spelled
9 S-t-e-p-h-e-n-s-o-n.

10 THE COURT: All right, your witness.

11 MR. BROWN: May it please the Court, before I
12 go to the questions, we have information that a
13 person who we have asked to be back in the
14 courtroom, who I have never met before in my life
15 but I understand it is Mr. Fogle, has been here
16 sitting in on the trial.

17 THE COURT: Is he in the courtroom now?

18 MR. BROWN: Right behind us. I understand on
19 top of being at the trial here for the last couple
20 days, he also went to lunch with Mr. Felder before
21 his testimony and of course I haven't asked him
22 what was discussed, we hadn't asked Mr. Felder what
23 he discussed with Mr. Fogle, but I thought that I
24 would bring that to the Court's attention because
25 Mr. Felder was at least here when he knew that

1 there was a sequestration order and he abided by
2 it, Mr. Felder, that is, by not being in the
3 courtroom to hear the testimony.

4 THE COURT: Did someone ask Mr. Fogle not to
5 be here?

6 MR. BROWN: I don't know the man.

7 THE COURT: Well, okay. Right at this stage
8 there is nothing has been done wrong but I think
9 you have a right to know what they discussed at
10 lunch.

11 Mr. Fogle, come around, please, and let me
12 ask a couple things. If you would, Madam Clerk,
13 put him under oath.

14 SPECTATOR FOGLE,
15 after being first duly sworn, stated as follows:

16 THE COURT: How you doing today?

17 MR. FOGLE: All right, sir.

18 THE COURT: You know Mr. Felder?

19 MR. FOGLE: I know everybody.

20 THE COURT: You know everybody? Why are you
21 here, just interested or some other reason?

22 MR. FOGLE: No, these are my people, I was
23 with them the day of the party and everything
24 happened for me, because the day was my birthday.

25 THE COURT: All right. Did you go to lunch

1 today with Mr. Felder?

2 MR. FOGLE: Yes, I did.

3 THE COURT: Did you have other people there
4 other than you?

5 MR. FOGLE: No, there wasn't.

6 THE COURT: Just you and him?

7 MR. FOGLE: Yes.

8 THE COURT: Where did you have lunch?

9 MR. FOGLE: Went to Arby's.

10 THE COURT: You like their sandwiches there,
11 crispy chicken --

12 MR. FOGLE: Sandwiches.

13 THE COURT: Rubens and stuff like that?

14 MR. FOGLE: Huh-uh, ground beef.

15 THE COURT: All right. Now, did you all talk
16 about the testimony?

17 MR. FOGLE: No, sir.

18 THE COURT: You didn't talk about the case at
19 all?

20 MR. FOGLE: No.

21 THE COURT: All right. Do you want to ask
22 him any questions, Mr. Brown?

23 MR. BROWN: I would ask, since we're going to
24 recall Felder, that he not speak to Felder until I
25 have the chance to recall him.

1 THE COURT: Mr. Fogle, don't speak to Mr.
2 Felder until after this trial is over, okay, sir?

3 MR. FOGLE: All right.

4 THE COURT: Thank you. Any questions from
5 you, Mr. Waters?

6 MR. WATERS: No, sir.

7 THE COURT: Thank you.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: Mr. Fogle, we're not making you
10 leave, now.

11 THE WITNESS: My ride is fixing to leave me.

12 THE COURT: All right.

13 Now we're back to Mr. Stephenson with a p-h.
14 Your witness.

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. BROWN:

17 Q Mr. Stephenson, can you tell us a little bit
18 of your involvement in the investigation of the
19 death of Kandee Martin?

20 A I was called to do a polygraph test in that
21 case.

22 Q And which polygraph test might that be?

23 A After looking through the case file I see
24 where it looks like I ran four polygraph
25 examinations.

1 Q Do you recall the witnesses you polygraphed?

2 A Not right off the top of my head, no.

3 Q Would one of those have been Tawain, James
4 Tawain Gadson?

5 A Without looking, sir, I wouldn't know.

6 Q And in an effort to refresh your memory I
7 will ask you to look at what has been identified as
8 Plaintiff's Exhibit 7. Does that refresh your
9 recollection of your participation in this
10 investigation?

11 A It tells me I ran a polygraph test on
12 February 18th, 2001, on James Tawain Gadson.

13 Q Okay. And to just try to get some groundwork
14 matters out here, if you would look at what has
15 been identified as Plaintiff's Exhibit 34.

16 A All right, sir.

17 Q Does that refresh your recollection?

18 A It's a polygraph report that I did on
19 February 22nd.

20 Q And, so, according to the document and your
21 refreshed recollection you performed a polygraph of
22 both Darien Williams and Tawain Gadson?

23 A According to the documents, yes, sir.

24 Q And do those have your handwriting on them?

25 A Yes.

1 Q And those are documents you prepared?

2 A Yes, sir.

3 MR. BROWN: We would ask they be entered in
4 evidence, Your Honor.

5 MR. WATERS: Your Honor, I would object,
6 again for the same grounds.

7 THE COURT: Could I see what the documents
8 are? What are these documents?

9 THE WITNESS: Polygraph exams.

10 MR. WATERS: My objection is not to the, any
11 hearsay thing or anything, he has obviously
12 identified them, I don't have any problem with
13 that, but inasmuch as they are attempting to create
14 some new claim that the witnesses should have been
15 impeached on the fact that they were given
16 polygraphs and then failed them, that is not pled
17 and I would object as I have been stating
18 throughout the course of the day, but not only
19 relevance, but any attempt to amend the
20 proceedings.

21 MR. BROWN: We're not admitting them, Your
22 Honor, we're not admitting them for the truth of
23 the polygraph but in the examination of both of
24 these witnesses who have already come before Your
25 Honor they were both questioned and I guess I can

1 ask this question in front of this witness, I need
2 a little guidance because I don't know if I want to
3 talk about the previous testimony in front of this
4 witness.

5 THE COURT: But are you wanting to put these
6 in to show that the defense should have done
7 something with them?

8 MR. BROWN: There is something like that,
9 Your Honor.

10 THE COURT: Is this information the defense
11 didn't have?

12 MR. BROWN: We believe they had them.

13 THE COURT: If they had them what could they
14 do with them?

15 MR. BROWN: It is interesting in State v.
16 Moore, excuse me, U.S. v. Moore, which is a Fourth
17 Circuit Case which I handed Your Honor, I'm
18 actually looking for my copy, just from memory,
19 having argued a similar issue in the Fourth
20 Circuit, the Fourth Circuit allowed testimony
21 regarding a government witness changing their story
22 after, and in that case they weren't polygraphed,
23 they were threatened to be polygraphed, and the
24 government said it was admitted to show a motive to
25 change the story and in that case it was a little

1 reverse, in that case it wasn't a motive, we would
2 say, the defense would argue a motive to lie or
3 change a story to help the State, in that case it
4 was the government witness that they said came to
5 see the light or came clean after they threatened
6 to polygraph him.

7 THE COURT: But we know from the response of
8 Mr. Williams and Mr. Gadson they said they didn't
9 see these reports.

10 MR. BROWN: We didn't admit them through
11 them, oh, no, no.

12 THE COURT: What I'm saying, they didn't say
13 they saw this report.

14 MR. BROWN: They said that due to the results
15 of the polygraph, that they changed, that they
16 changed their statements, it is a motive to change
17 their statements.

18 MR. WATERS: Your Honor, the difference in
19 the Moore case, I haven't, again, first of all I
20 need to say obviously these things are in the
21 police file which they will concede they have had
22 for months, now they come with this case and I
23 think it is further proof of an attempt to
24 circumvent the notice requirement because clearly
25 it is the kind of thing they could have, it goes

1 right to the heart of my argument about amending on
2 the fly, which is exactly what they are trying to
3 do. It shouldn't be admissible for that.

4 But that is not what Moore held. In Moore
5 the witness gave a different reason for why he
6 changed his testimony and they wanted to show that,
7 no, that is not the case, it was actually the
8 threat of a polygraph. It went directly to
9 contradict the reason the witness gave and here we
10 have nothing like that, so then it was a viable
11 claim, it doesn't lie under the circumstances of
12 this case.

13 MR. BROWN: Your Honor, briefly, the claim is
14 failure to adequately impeach. We're going to
15 further develop this. The reason we wanted to
16 admit it was this. We did not know until this
17 hearing, which is why you have a hearing to flesh
18 out evidence by claims that have been raised by
19 discovery, because we don't expect all the evidence
20 to come out in discovery, just enough to go in
21 trial and focus on the issues. We already knew
22 that there were issues about impeachment of Darien
23 Williams and James Tawain Gadson, especially
24 Gadson. Gadson was never even questioned about any
25 of his denials, none of his statements he gives the

1 police come out. The star witness from the
2 government moved from death murder down to less
3 than five years of actual jail time and he is only
4 questioned for 17 pages in a transcript, roughly 15
5 minutes of questioning, about none of his previous
6 encounters --

7 THE COURT: What I'm asking is this. You
8 obviously had these documents before.

9 MR. BROWN: But we didn't know they were
10 going to say that those tests influenced their
11 changing the statement until they told us in court
12 today, or this week.

13 THE COURT: Well, they -- a very interesting
14 question.

15 MR. BROWN: We cross examined them.

16 THE COURT: Right.

17 MR. BROWN: With very pointed questions right
18 on issue.

19 THE COURT: They didn't volunteer it, many
20 times they were agreeing with you as for as their
21 statements on that.

22 What do you say, Mr. Waters?

23 MR. WATERS: Well, I mean, Your Honor, this
24 is part and parcel of what we talked about. They
25 say, "We didn't know he was going to testify until

1 he came in here." This is what a trial is for,
2 we're under a sequestration order. How in God's
3 green earth am I supposed to, you know, respond to
4 this kind of thing when I have got witnesses who
5 are sequestered except for really Mr. Cummings and
6 Marva Hardee-Thomas that I understand I'm allowed
7 to have contact with but, you know, they are having
8 their cake and eating it too. They circumvent the
9 notice requirement for changes they obviously could
10 have raised, that this is the nature of the claim,
11 he could have raised the claim and said upon
12 information and belief, blah, blah, blah, or made
13 the allegation, then we see what the evidence
14 proves at trial. They can't just pretend like it
15 didn't exist and sandbag me in the middle of the
16 trial about stuff.

17 THE COURT: Let me ask you this.

18 MR. BROWN: Yes.

19 THE COURT: You knew a long time ago that the
20 results of the polygraph test were such that this
21 person Mr. Stephenson here thought that, that their
22 answers to questions five, seven and ten were
23 attempted deception, indicative of attempted
24 deception?

25 MR. BROWN: Actually we don't know what their

1 answers are.

2 THE COURT: Well, I'm asking, you knew that
3 Mr. Stephenson had these reports where he said the
4 responses were indicative of deception? That's
5 what it says.

6 MR. BROWN: That's correct. Actually I don't
7 care too much about the --

8 THE COURT: No --

9 MR. BROWN: Yes, sir, I'm sorry, I had read
10 those in their entirety.

11 THE COURT: All right. So, for a while, a
12 long time ago, whatever, a month ago, you knew Mr.
13 Stephenson had filed reports that indicated that he
14 thought the responses of Mr. Williams and Mr.
15 Gadson to questions five, seven and ten or
16 whatever, whatever their responses were they were
17 indicative of attempted deception.

18 Now, since you knew that, when you questioned
19 the two people, Mr. Gadson and Mr. Williams and you
20 didn't, one of them, did you depose one only and
21 not both of them?

22 MR. BROWN: That's correct.

23 THE COURT: And Mr. Gadson you deposed?

24 MR. BROWN: Yes, sir.

25 THE COURT: Now, when you deposed Mr. Gadson

1 did you ask him about why he changed his testimony?

2 MR. BROWN: No, sir.

3 THE COURT: Okay. Is that the reason for
4 that, was why -- I mean, you knew he changed his
5 testimony, right?

6 MR. WATERS: They asked him about the
7 polygraph test.

8 MR. BROWN: We did ask him about the
9 polygraph test and I want to make sure you
10 understand that, because here is what we still
11 don't know. We don't know until we ask this
12 witness, which I'm a little cautious about talking
13 about it, we don't know what the answers even right
14 now, two years of being Mr. Bowman's lawyer, I
15 don't have a clear answer. I'm going to give you
16 an example -- I'm really, I would really rather not
17 do this with him sitting in here.

18 THE COURT: I have not even asked you the
19 question. I wish you could ask your questions
20 instead of giving speeches. If you could just
21 answer my questions, you will have full opportunity
22 to add all the stuff later on.

23 MR. BROWN: Okay.

24 THE COURT: Therefore, when you had the
25 document indicating that this gentlemen, this

1 witness thought that it was indicative of attempted
2 deception, when you saw Mr. Gadson at his
3 deposition, are you telling me then that you had no
4 idea, you had no idea that he would ever answer
5 that knowledge that someone thought he, in your
6 words, failed the polygraph had influenced him into
7 changing his testimony? That thought never came to
8 you all's mind to ask that question?

9 MR. BROWN: Quite honestly I thought --

10 THE COURT: I'm talking about at the
11 deposition.

12 MR. BROWN: Your Honor, with approximately
13 8,000 pages, I can't tell you what he said about
14 his deposition. I examined him three days ago.

15 THE COURT: And the deposition was three days
16 ago?

17 MR. BROWN: No. I examined him here three
18 days ago and the deposition was three months ago.

19 MR. WATERS: I have it right here.

20 THE COURT: You told me, you told me just a
21 few minutes ago that you had no idea you were, you
22 were surprised that he would say that his thoughts
23 of failing the polygraphed made him change his
24 story, you were surprised by that. That means you
25 had no idea about this until you heard him testify,

1 right?

2 MR. BROWN: Well, I think the expected
3 response would be, "I changed my response to tell
4 the truth." But that is not what he says. He
5 says, when asked, "Did you change it because they
6 said you lied in the thing," he said yes.

7 THE COURT: I know what the question was.
8 I'm going to go by memory. The question was not
9 why did you change your testimony. The question
10 was did you change your testimony because you knew
11 you had failed the lie detector test, the
12 polygraph? In other words, you all asked the
13 question with that in it as opposed to asking why
14 have you changed your testimony. You sort of had
15 your, as if you wanted that answer to be it was the
16 polygraph test.

17 MR. BROWN: I led him, no doubt.

18 THE COURT: Therefore you must have had
19 suspicions that the polygraph test had some reason
20 for him changing his testimony.

21 MR. BROWN: To let you know, we asked Travis
22 Felder the same question and we led him the same
23 way and he did not give that response.

24 THE COURT: Okay. That's the difference
25 between the witnesses, you are talking about. I'm

1 talking about what you knew. I'm addressing you
2 right now when you're saying that you were totally
3 surprised with his answer and that is why you could
4 not give the State notice that you were going to
5 try and have the fact that they changed their
6 testimony as though --

7 MR. BROWN: Let's make sure we understand.
8 We have clearly flat out put in there that they
9 failed to impeach Tawain Gadson with prior
10 statements, or prior inconsistent statements,
11 excuse me. That is clearly in there.

12 THE COURT: Well, I guess one thing I'm doing
13 this for is to make sure you don't realize, or
14 think that, I was a trial lawyer for many years,
15 Mr. Brown --

16 MR. BROWN: Yes, sir.

17 THE COURT: -- and I have been a trial judge
18 for many years.

19 MR. BROWN: Yes, sir.

20 THE COURT: And in fact I would not want you
21 to do that and think I have no idea about the
22 reason certain questions are asked certain ways and
23 not other ways and the reason certain questions are
24 not asked at all at deposition.

25 MR. BROWN: Yes, sir.

1 THE COURT: And asked later.

2 MR. BROWN: Yes, sir.

3 THE COURT: The only thing I want to respond
4 to you on, Mr. Waters, is that I'm, I want a full
5 examination to occur on something as serious as
6 this for everybody and if for some reason something
7 goes on that now requires you to look further into
8 it to get replies and responses on something of
9 this nature I will give you all the time in the
10 world.

11 MR. WATERS: Does that mean I'm relieved from
12 sequestration order?

13 THE COURT: When you say relieved from
14 sequestration --

15 MR. WATERS: Does that mean I can talk to
16 people about the issues that have been raised in
17 this courtroom in order to respond to them?

18 THE COURT: Yes, you may, once we have gone
19 through what we need to go through. Obviously you
20 have got to have an opportunity to look into this
21 because I agree with you that some of this stuff,
22 although in an open ended wide range one can say,
23 "I'm going to attack why his credibility wasn't
24 attacked by the trial lawyers for Mr. Bowman."
25 Unless you zero in on what areas it's hard to know

1 exactly where you're going to do it unless you go
2 through every word and, so, on the issue of this
3 polygraph have you talked to Mr. Cummings and them
4 about it yet?

5 MR. WATERS: No.

6 THE COURT: I will let you discuss that issue
7 with them.

8 MR. BROWN: We would like to be there, Your
9 Honor.

10 THE COURT: I will permit you to discuss that
11 issue with them and I will permit you to discuss
12 that issue with them but you don't have to discuss
13 it while you're all together.

14 MR. BROWN: And may I ask, during that
15 discussion are they allowed to talk about the
16 testimony that came out in trial?

17 THE COURT: You can ask anything about the
18 issue regarding polygraph. Sequestration is a
19 totally discretionary thing with a trial judge. I
20 think in all fairness, this thing coming out, you
21 can talk with them by yourself and if you wish to
22 talk with them by yourself, plus these witnesses
23 are not only witnesses, they are officers of the
24 court.

25 MR. BROWN: Yes, sir.

1 THE COURT: So, I will permit you all to talk
2 to them.

3 MR. BROWN: My only point is, Your Honor --

4 MR. WATERS: Your Honor, Miss Hardee-Thomas
5 is under suspension, I'm not exactly sure why.

6 THE COURT: I'm not sure what the status of
7 that is as for as officers of the court..

8 MR. BROWN: She may still be.

9 THE COURT: I think suspended means you are
10 still an attorney, you just cannot do certain
11 things practicing law but you still have the duties
12 of an attorney.

13 MR. WATERS: Still subject to that, actions
14 taken.

15 Your Honor, my understanding was in the
16 beginning when we looked at the issue with Mr.
17 Cummings' file I was expressly authorized at some
18 point to meet with Mr. Cummings and Marva
19 Hardee-Thomas to discuss that.

20 THE COURT: Let's do it this way. My
21 sequestration issue regarding Miss Smalls and Mr.
22 Cummings is limited as of them, I'm doing you all
23 both, limited as to them. These issues keep coming
24 out. In all fairness to everyone I'll permit you
25 all to talk to them.

1 MR. WATERS: Thank you, Your Honor.

2 MR. SINCLAIRE: Your Honor, my only concern,
3 Judge, peripherally --

4 THE COURT: You're in pain over it, I feel
5 your pain.

6 MR. SINCLAIRE: You do?

7 THE COURT: You have been in pain all day
8 over there.

9 MR. SINCLAIRE: I didn't have a copy, I'm
10 glad someone appreciates it, I didn't have a copy
11 of this file. In my preparation for Mr. Bowman I
12 used my highlighter, I used blue sticky notes and
13 things of that nature, I didn't get all my files,
14 their files were returned to them, they may have
15 some idea of what I thought was significant about
16 Mr. Bowman. I'm not concerned we can do anything
17 about it but I'm concerned about lifting the
18 sequestration order for Mr. Waters and Mr. Simon to
19 now go speak to them about it. They are going to
20 then say, "Look, here is what Mr. Sinclair is
21 focused on," and they will say, "Well, you're
22 right, because we saw all this testimony at trial
23 and this is what you got to do." For what it's
24 worth, I don't know there is any cure for it, I'm
25 just concerned, you know.

1 THE COURT: You mean you actually marked up
2 their original file?

3 MR. SINCLAIRE: Yes, while I was reading the
4 transcript and some of the stuff I used my yellow
5 highlighter on their original files, I did.

6 THE COURT: Why would you not have made a
7 copy of something and marked on?

8 MR. SINCLAIRE: Well, Mr. Brown, as Mr. Brown
9 said, there is 8,000 pages. For me, as I'm reading
10 as fast as I can, to stop at this issue and pull
11 out a copy --

12 THE COURT: Insofar as that's there, if you
13 feel it gives anyone notice, it gives them notice,
14 too.

15 MR. SINCLAIRE: I just brought it to the
16 Court's attention.

17 THE COURT: Okay. They are officers of the
18 court. If they try to give you ideas of the
19 strategy, please let me know, just ask them not to
20 give you ideas about strategy.

21 MR. WATERS: I don't want that. I don't
22 think Norb Cummings would do that. I don't think
23 he put actual work product in there. He may have
24 tagged pages. At a minimum all it would do is
25 provide notice I have been screaming about.

1 THE COURT: He can right then go look at the
2 files if he wanted to, just like you all can. He
3 can go look at the files now if it gives him any
4 thought or ideas, if he wishes.

5 All right, let's proceed on but as to Mr.
6 Cummings and Miss Smalls, you all can talk with
7 them, we'll go on with your questions.

8 How you doing today, Mr. Stephenson?

9 THE WITNESS: Fairly well.

10 THE COURT: Have you been out there waiting a
11 long time?

12 THE WITNESS: Six hours, sir, with a
13 migraine.

14 THE COURT: You know, I had those for a
15 while. There are all kinds of thoughts about you
16 can do this for it, that for it. The only thing I
17 know to do for it is go in a dark room, quiet, no
18 food and nobody talking.

19 THE WITNESS: It's called sleep.

20 THE COURT: You're in the wrong place for
21 that.

22 MR. WATERS: A loud courtroom, light, with a
23 bunch of attorneys yelling.

24 THE COURT: You are handling it very well.
25 When I get migraines I have to go in a dark room,

1 no noise.

2 Let's proceed on, we'll try to get you there
3 as soon as we can.

4 THE WITNESS: Thank you.

5 MR. BROWN: May it please the Court, again I
6 would offer these two items, Number 7 and Number
7 34.

8 THE COURT: In evidence.

9 MR. BROWN: Thank you.

10 THE COURT: What numbers are they?

11 THE WITNESS: 7 and 34.

12 (Polygraph examination results marked and
13 received in evidence as Plaintiff's Exhibit
14 Numbers 7 and 34).

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. BROWN:

17 Q If we could, turn to the deposition which is
18 item 7, excuse me, polygraph report which is item
19 7, involving James Tawain Gadson. Now, we don't
20 have the answers that he gave to your questions, I
21 think they are called the relevant questions, is
22 that right?

23 A That's right.

24 Q Help me with this, okay? There are three
25 relevant questions?

1 A Correct.

2 Q We don't actually have the answers he gave
3 but you were the one who asked the questions and
4 maybe you can recall. Here is what it says.
5 Question five that you asked him was did you shoot
6 Kandee Martin, and did he tell you he did?

7 A He responded no to all three questions.

8 Q Okay.

9 MR. BROWN: Your Honor, if I may have just a
10 brief indulgence?

11 Q Now, was there any type report that was typed
12 up or given, not this report, but was there any
13 report given that said that he said no, he did not
14 shoot Kandee Martin, and also that he said no, he
15 wasn't withholding information about her shooting?

16 A No, sir.

17 Q And, so, basically this is the report of what
18 transpired in that meeting?

19 A That's correct.

20 Q All right. And who else was there?

21 A Where, sir?

22 Q At the polygraph, besides you and Mr. Gadson?

23 A During the polygraph?

24 Q Yes, sir.

25 A Just the two of us.

1 Q And was there anybody else who was able to
2 listen in or hear those responses?

3 A No, sir.

4 Q Did you ever tell either Marva Hardee-Thomas
5 or Norbert Cummings that he answered these three
6 questions in the negative? Did you ever tell them
7 orally?

8 MR. WATERS: Your Honor, I believe that he
9 has already conceded the defense had these reports.

10 MR. BROWN: The reports. I'm asking whether,
11 whether negative responses were ever given.

12 MR. BROWN: We concede we had the report,
13 that is why we want the report in.

14 THE COURT: You say you had the report, you
15 mean --

16 MR. BROWN: Excuse me, that Mr. Bowman's
17 trial attorneys had this polygraph report.

18 THE COURT: That you show as Exhibit --

19 MR. BROWN: It is now entered as Plaintiff's
20 Number 7.

21 THE COURT: It's not the question and answer,
22 the exhibit where he says seven, nine and ten, I
23 think it is?

24 THE WITNESS: Five, seven and ten.

25 THE COURT: Five, seven and ten are

1 indicative of deception.

2 MR. BROWN: That's correct.

3 THE COURT: What is your question now?

4 MR. BROWN: Did he ever, I asked whether he
5 ever --

6 THE COURT: Mr. Stephenson.

7 MR. BROWN: I asked Mr. Stephenson whether he
8 ever prepared a report with their answers included
9 in that.

10 THE COURT: Did you?

11 THE WITNESS: No. This is the report.

12 BY MR. BROWN:

13 Q Then I asked whether anybody else was in the
14 room besides Mr. Gadson to hear the negative
15 answers.

16 A No.

17 Q And whether anybody else could listen in
18 through taping, monitoring, and then the last
19 thing, well, and I believe this is the last in this
20 area, is whether he ever verbally told defense
21 counsel, defense counsel being trial defense
22 counsel, Mr. Cummings and Marva Hardee-Thomas, that
23 the answers to these question were no?

24 A To the question, that is where we were at?

25 Q That was the question.

1 A The question is did I ever tell Marva
2 Hardee-Thomas or Norb Cummings that he answered no
3 to those questions?

4 Q Yes, sir.

5 A The answer is no.

6 MR. BROWN: Beg the Court's indulgence.

7 Q Okay. Let me ask you, and I assume you told
8 him at some point you didn't believe him?

9 MR. WATERS: Told who?

10 Q Excuse me, I'm assuming, gosh, let me get
11 your title right, officer.

12 A Major.

13 Q Major? Major Stephenson, I'm sorry, Major
14 Stephenson, I'm sorry, I've never been in the
15 military.

16 THE COURT: He's not in the military.

17 MR. BROWN: I have never had any dealings
18 with rank.

19 THE COURT: I'm Judge, by the way.

20 MR. BROWN: I do my best, Your Honor.

21 BY MR. BROWN:

22 Q Major Stephenson?

23 A Yes, sir.

24 Q Did you tell Tawain Gadson that you didn't
25 believe his answers?

1 A I don't recall saying that to him.

2 Q Okay. And, so, you don't know what he left
3 that room thinking?

4 A Sir, no, I do not.

5 Q And because this has come up with another
6 witness, I believe, these two, just for edification
7 of the Court and the record and all of us,
8 polygraph is fairly, I don't want to say invasive,
9 but it's, you have to be hooked up to some stuff,
10 right, you know you're being polygraphed when
11 you're polygraphed?

12 MR. WATERS: Your Honor, I think there is a
13 better way to ask that question.

14 MR. BROWN: I will try to get to it quicker.

15 Q Explain to us what happens when a person is
16 polygraphed.

17 A Okay. When a person is polygraphed there are
18 components attached to their fingers, pneumograph
19 tube wrapped around their chest and their stomach
20 and a blood pressure cuff, depending on
21 instrumentation, either placed around their thumb
22 or on their arm. So, yes, one would hope they
23 would know they were being polygraphed.

24 Q Is it a fairly significant event in most
25 people's lives, do you think?

1 MR. WATERS: I object to that.

2 Q I withdraw that, let me rephrase it. Would a
3 person, maybe you answered it, is it not likely
4 they be polygraphed -- how many times is a normal
5 subject polygraphed in their life, non law
6 enforcement?

7 MR. WATERS: I object. No way for him to
8 know that.

9 THE COURT: Do you know?

10 THE WITNESS: No, sir.

11 THE COURT: He doesn't know.

12 BY MR. BROWN:

13 Q Most of the time the first encounter, that's
14 the first time they have been polygraphed pole? Do
15 you ask that question?

16 A If they have taken a polygraph?

17 Q Yes.

18 A I usually do.

19 Q What is more likely than not their answer?

20 A No.

21 THE COURT: Have you ever been polygraphed?

22 THE WITNESS: Oh, yes, sir, a bunch of times.

23 THE COURT: Unusual, then?

24 THE WITNESS: Yes, sir.

25 MR. BROWN: I would ask you for statistical

1 probability -- I'm sorry, withdraw that.

2 THE COURT: We'll get Dr. De Graef for that.

3 BY MR. BROWN:

4 Q Let me ask you to take a look at Exhibit
5 Number 34.

6 I beg the Court's indulgence. This was done,
7 and the record reflects, February, 2001, very early
8 on. Do you recall meeting with Darien Williams?

9 A No, sir, I do not.

10 Q Okay. But according to these notes and I
11 assume they refresh your recollection about some of
12 this, and you asked him whether he moved or he had
13 moved Kandee Martin's body, and again this is
14 Darien Williams?

15 A Yes, sir.

16 THE COURT: Go ahead.

17 Q And you don't know Mr. Williams is in prison
18 right now, do you?

19 A I have no idea.

20 Q You have no idea, okay. And a tall fellow,
21 6-2, 6-3?

22 A No.

23 Q Okay. All right. But you asked him three
24 questions?

25 A Yes, sir.

1 Q "Did you move or help move the body"?

2 A Correct.

3 Q And let me make sure, you remember the
4 investigation, basically you are asking him whether
5 he was involved in moving the body out of the
6 woods, I guess before an arson occurred. Do you
7 recall that?

8 A I don't have that recollection that you just
9 stated.

10 Q What do you recall? Just give me a baseline
11 so I know where I can work.

12 A I do not remember testing him.

13 Q Okay.

14 A My recollection of this case is that she was
15 found in an automobile that had been burned.
16 Obviously by asking this question I didn't just
17 make that up, there is a reason for it. The
18 investigators probably provided me with information
19 which helped me in determining what my relevant
20 questions would be for quantification in this test,
21 so that is why I asked that question, it was a
22 relevant issue to the case.

23 Q And you would talk to somebody like -- I
24 think Alvin Coker was the lead investigator.

25 A I don't remember which one I talked to but I

1 would not have come up with that question on my own
2 without knowing some of the facts from someone who
3 was involved.

4 Q This is on behalf of Dorchester County?

5 A That's correct.

6 Q You are not --

7 A No, I work for Calhoun County now.

8 Q And Alvin Coker worked in Dorchester County?

9 A Yes, sir. If I'm not mistaken, he was like
10 the lead investigator on the case.

11 Q Sure. It may have been him you spoke to?

12 A It could have been.

13 Q Again, very early on in the investigation,
14 the date reflects that. So, there was a question
15 about Darien Williams moving or helping move the
16 body from the woods?

17 A Uh-huh.

18 Q In other words, asking in a more general way,
19 "Were you out there when the body was --"

20 THE COURT: You know, my experience, my
21 experience in polygraph, they just ask the
22 questions. I don't know if you need to be adding
23 what he meant by the question, he just asks the
24 question. A lot of times he is given written
25 questions to ask.

1 MR. BROWN: Sure.

2 THE COURT: And not have anything behind the
3 question other than he's sometimes just a
4 facilitator to ask the question, he is not as much
5 doing the investigation as he is asking the
6 question.

7 Is that about right?

8 THE WITNESS: Yes, sir, essentially.

9 THE COURT: In fact you kind of want to be
10 set back a little bit so you don't have a feeling
11 one way or the other, so you just ask the question
12 without having any purpose in it other than getting
13 an answer?

14 THE WITNESS: That's the case a lot of times.

15 MR. BROWN: Thank you.

16 THE COURT: That is what I'm concerned about
17 when you say meaning such and such. He just asks
18 the question.

19 MR. BROWN: I understand. Yes, sir.

20 BY MR. BROWN:

21 Q And the next one is just a slight variation?

22 A Right.

23 Q Saying last week did you move or help move
24 the body from the woods?

25 A If it helps any, sir, this is what is called

1 a zone comparison test.

2 Q Sure.

3 A And it's an adopted test by the Department of
4 Defense Polygraph Institute, where there are three
5 relevant questions. That is standard protocol.
6 There is a lot of research behind these type tests,
7 where five, seven and ten are in the relevant
8 parts, and five and seven is basically the same
9 question, with seven being just a slight variation
10 but pretty much the same question, last week, last
11 year, last month, while in school, while you were
12 at work did you do, and repeat question number
13 five. And then at ten are you withholding any
14 information from police, did you lie in your
15 statement, are you hiding anything from police.
16 So, they are all questions that require the
17 negative response. Polygraph examiners all over
18 the world that do this type of test, which this is
19 probably the most single used test anywhere in the
20 world, not just the United States, and those
21 questions all require the negative response.

22 Q Exactly where I'm going. So, you're fairly
23 confident that the answers to these three questions
24 were no?

25 A That's correct.

1 Q And just for sake of knowing, if he would
2 have said, "Yes, I'm withholding information about
3 the shooting," or, "Yes, I did move the body," you
4 would take that as a confession?

5 A More than likely, yes, sir.

6 Q Okay. And more than likely he said no to
7 these questions?

8 A That's correct.

9 Q And did you prepare a report that indicated
10 his negative responses to these?

11 A This is my report that you're holding, sir.

12 Q And did you have anyone else in the room
13 besides you and Mr. Williams on this one, or is
14 that the norm?

15 A It is not normal, the only time I have ever
16 had someone else in the room was when I had to use
17 an interpreter for language barriers.

18 Q And you didn't go give an oral statement to
19 the trial attorneys about what their answers were?
20 In other words, you didn't go say they answered
21 this no, no, no, to Mr. Bowman's attorneys?

22 A I had no conversation with the trial
23 attorneys in this case.

24 Q Okay. Just to make sure, again, it would be
25 a confession if they had answered yes and you would

1 take it that way, you do Mirandize them?

2 A Yes, sir.

3 MR. BROWN: Beg the Court's indulgence.

4 No other questions of Major Stephenson.

5 THE COURT: Okay.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Major Stephenson, I'm going to get you out of
4 here as soon as I can. I have a couple questions.5 First of all as as for as how you and law
6 enforcement use polygraph, it is pretty much an
7 investigative tool, correct?

8 A That's exactly what it is, yes, sir.

9 Q And, so, it is not going to be conclusive of
10 the manner in which the investigation is conducted.
11 Is that fair to say?

12 A That's correct.

13 Q It is just offered to the investigative
14 officers as another tool for them to judge which
15 way the investigation needs to go but it doesn't
16 necessarily define it?

17 A That's correct.

18 Q Okay. Ultimately it is up to the
19 investigating officer and conversations with other
20 officers working as superiors on how to make use of
21 this investigative tool you provide them?

22 A Sure.

23 Q All right. Now, you said you did four
24 polygraphs in this case?

25 A Yes.

1 MR. WATERS: I'm going to have two marked
2 real quick here. Defendant's 1 and 2.

3 THE COURT: All right. Are you all ready to
4 proceed?

5 MR. WATERS: Yes.

6 MR. BROWN: Your Honor, he is going to move
7 to admit these, they are going to be with our
8 consent subject to, one, and I don't know if he is
9 offering them this way, it won't be an objection.
10 Maybe he will want to tell you what they are.

11 THE COURT: Maybe he should, he's got them.

12 MR. WATERS: I think the discussion is
13 whether or not we're offering these polygraph
14 reports as substantive evidence of the truth of
15 what Major Stephenson found as his results. That
16 is though polygraph evidence is generally not
17 admissible in court.

18 THE COURT: The word generally, I heard you
19 say, because in the military courts that's not
20 true.

21 MR. WATERS: I have not attempted to offer
22 this as admissible evidence of the truth of the
23 results he reached. I'm simply offering them for
24 the results of the investigation, how it proceeded.
25 I think Mr. Brown is okay with that.

1 MR. BROWN: And we'll let them in with that
2 limitation.

3 THE COURT: Very good. Have you marked them
4 as State exhibits?

5 MR. WATERS: Yes, defense exhibits actually
6 for the purpose of this hearing.

7 THE COURT: Yes.

8 MR. WATERS: We're respondent but he has
9 plaintiff and defendant stickers.

10 THE COURT: Okay. You're entering them as
11 respondent exhibit, or defendant exhibit, what
12 number is it?

13 MR. WATERS: 1 and 2.

14 THE COURT: 1 and 2, Respondent or Defendant
15 Exhibits 1 and 2.

16 (Polygraph examination administered to Terry
17 Kelly marked and received in evidence as
18 Defendant's Exhibit Number 1).

19 (Polygraph examination administered to Marion
20 Bowman marked and received in evidence as
21 Defendant's Exhibit Number 2).

22 BY MR. WATERS:

23 Q I'm going to show you Number 1 first and see
24 if you recognize that document?

25 A Yes, sir.

1 Q Okay, what is that?

2 A A polygraph report that I completed on
3 February the 18th.

4 Q And who was that on?

5 A Terry Kelly.

6 Q And again you probably, correct me if I'm
7 wrong, don't have any independent recollection of
8 that?

9 A No, sir.

10 Q But in that particular case you found no
11 deception on the part of Terry Kelly?

12 A That's correct.

13 Q And then here is Defendant's 2 and I would
14 like for you to look at that one and tell me if you
15 recognize that document?

16 A Yes, sir. A polygraph report completed on
17 February the 17th.

18 Q And who did that involve?

19 A Marion Bowman.

20 Q Okay. And in that report, let me have it
21 back real quick, in that one, much as you did with
22 Tawain Gadson and Darien Williams, you found
23 deception indicated as to your three questions?

24 A That's correct.

25 Q There are only three relevant questions in

1 that protocol you followed?

2 A Yes, sir.

3 Q Ten total?

4 A That's correct. There is a total of ten
5 questions, five, seven and ten being the relevant
6 questions.

7 Q And by irrelevant, I guess nonrelevant or
8 irrelevant questions would be things like normally
9 we would give a truthful answer, like what is your
10 name, where do you live, things like that?

11 A That is what we call an irrelevant question,
12 yes, sir.

13 Q All right.

14 MR. WATERS: Your Honor, I have nothing
15 further at this time.

16 MR. BROWN: Actually we would just excuse
17 him. I don't plan on recalling him.

18 THE COURT: Do you have any other questions?

19 MR. BROWN: No, sir.

20 THE COURT: You will be around if we need
21 you? Are you working in Dorchester County?

22 THE WITNESS: Calhoun County, sir.

23 THE COURT: Just up I-26?

24 THE WITNESS: Yes, sir.

25 THE COURT: If we need you we'll get in touch

1 with you. Other than that, go rest up, we'll see
2 you later on.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Where did you get your hair cut,
5 I'm sorry, shaved?

6 THE WITNESS: I do it with a mirror.

7 THE COURT: When I was employed with the
8 National Guard four years ago I almost did that
9 when we were in Kosovo, some of my colleagues were
10 doing that. When you are in the Army sharing
11 restrooms and all that, the thing is, I was a
12 colonel in there, I almost did it, and then I said
13 how can you do that every day? But you do that
14 about, what, every two or three days?

15 THE WITNESS: Right. It saves about \$15 a
16 week, that is why I do it.

17 THE COURT: \$15 a week?

18 THE WITNESS: Yes.

19 THE COURT: If somebody gave you fifteen
20 bucks a week you would have long hair?

21 THE WITNESS: Yes, sir.

22 THE COURT: I just saw the needle go over
23 like that on that response.

24 (Witness excused).

25 THE COURT: Let's get another witness, if we

1 can. I'm ready to go a little late tonight, let's
2 get another witness.

3 MR. BROWN: We call Officer Van Doran. There
4 was another witness was here, I told him to leave,
5 he is going to be very lengthy. We had the lead
6 investigator in the case.

7 THE COURT: Van Doran?

8 MR. BROWN: No, sir.

9 THE COURT: The lead investigator is Coker?

10 MR. BROWN: He was here. We were --

11 THE COURT: What were you going to say, Mr.
12 Waters?

13 MR. WATERS: While we were looking for a
14 witness I was going to ask the Court's permission
15 to text my wife real quick that we're still in
16 court.

17 THE COURT: While we're doing this, is there
18 going to be any need for other people in the
19 Department of Corrections, because I have gotten an
20 e-mail about the situation with the Department of
21 Corrections, gas problems. Are we going to need
22 other people other than those have already
23 testified, that we need to recall?

24 MR. BROWN: One second. No, sir, again with
25 the caveat you did say subject to being recalled, I

1 guess?

2 THE COURT: Yes, sir.

3 MR. BROWN: No, sir.

4 THE COURT: Okay.

5 Officer Van Doran?

6 THE WITNESS: Yes.

7 THE COURT: Come on around, please, sir.

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1 TERRANCE A. VAN DORAN,
2 after being first duly sworn, testified as follows:

3 THE COURT: You haven't been waiting long,
4 have you?

5 THE WITNESS: I didn't know I was supposed to
6 be here. I was here for something else.

7 THE COURT: Really this is just a coincidence
8 you were out there?

9 THE WITNESS: I was on telephone standby, I
10 hadn't been told to be here.

11 THE COURT: It's a good thing you were here.
12 Give us your full name, please.

13 THE WITNESS: Terrance A. Van Doran.

14 THE COURT: Is Van Doran little v-a-an, or
15 big?

16 THE WITNESS: Capital V-a-n, space, capital
17 D-o-r-a-n.

18 THE COURT: Van Doran?

19 THE WITNESS: Yes.

20 THE COURT: Your witness, Mr. Brown.

21 MR. BROWN: May it please the Court?

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. BROWN:

24 Q Please tell us what your involvement was in
25 the investigation of Kandee Martin's death in 2001,

1 2002?

2 A At the time I was an investigator with the
3 Sheriff's office and I initially responded to an
4 incident location where a car was burned and a body
5 was found in the car and we later followed up the
6 investigative leads that led us to, I'm just
7 summarizing, I don't specifically know what you're
8 asking for, but we ended up going and, excuse me,
9 talking to a gentleman I believe by the last name
10 of Fralick, who gave us some information that led
11 us to Orangeburg and an Orangeburg officer informed
12 us there was a warrant for Mr. Marion Bowman out of
13 Orangeburg, which led us to a residence where he
14 supposedly lived, where we subsequently arrested
15 Mr. Bowman.

16 The following investigation, many people were
17 involved, and he was subsequently arrested and
18 charged with homicide. I worked that case with
19 other detectives up to a point to where I no longer
20 worked it because I left the area to go to a school
21 that I went to.

22 Q Let me ask you, do you recall a gentleman by
23 the name of, do you recall an individual named
24 Hiram Johnson?

25 A I remember the name, yes, sir.

1 Q And do you remember speaking with Hiram
2 Johnson --

3 MR. BROWN: I apologize, Your Honor, I didn't
4 mean to sit down.

5 Q Do you recall speaking with Hiram Johnson?

6 THE COURT: I thought maybe you thought you
7 were in North Carolina or somewhere.

8 MR. BROWN: I'm sorry, I was writing
9 something down.

10 Q Do you recall a gentleman named Hiram Johnson
11 being given a ride from Branchville to his house?

12 A Not specifically, no, sir, I do not.

13 Q And maybe this will refresh your memory. Do
14 you recall being at that house and finding some
15 cotton gloves, some brown gloves and taking those
16 into evidence?

17 MR. WATERS: Your Honor, I hate to keep doing
18 this --

19 THE WITNESS: My notes don't reflect that.

20 THE COURT: Wait a second.

21 MR. WATERS: I hate to keep doing this but
22 again we're talking about some issue with Hiram
23 Johnson and brown gloves, I'm not quite sure, there
24 is certainly nothing pled with regard to that.

25 MR. BROWN: All I'm trying to do is jog his

1 memory, it has nothing to do with brown gloves.

2 That was the same meeting.

3 BY MR. BROWN:

4 Q Well, let me back up on this. Have you got a
5 file somewhere?

6 A In my office in St. George, I have my
7 investigative notes, yes, sir.

8 Q Excellent. For the record, you work in St.
9 George right now?

10 A Yes, sir.

11 Q At the jail?

12 A I do, sir.

13 Q Okay. Do you know anything about jail
14 records?

15 A Somewhat, yes, sir.

16 Q Okay. Well, since we're here and there is a
17 lady in the record named Wanda?

18 A She is my operations officer, yes, sir.

19 Q Wanda Taylor?

20 A That's correct.

21 Q This is the only copy I have got but I'm
22 going to put this down as Plaintiff's 41 and
23 obviously you wouldn't recognize the subpoena
24 service document on top but underneath it are some
25 three sets of records. Do you recognize those in

1 your capacity at the jail?

2 A They are standard booking records, yes, sir.

3 Q On those records do they indicate housing
4 placement for the inmates?

5 A There is two different housing placements
6 indicated, yes, sir.

7 Q Okay. But they do have where they were
8 housed during their stay at the jail?

9 A On the first booking report it doesn't have a
10 photograph, it doesn't reflect it, but the other
11 two do, yes, sir.

12 Q And that one is missing placement?

13 A It doesn't seem to be complete, sir.

14 MR. BROWN: Your Honor, at this times we move
15 those in, I say because we actually have the lady
16 who does the records under subpoena to kind of
17 bring us the housing records, but we will withdraw
18 our request if there is an objection.

19 MR. WATERS: Your Honor, could I have a
20 moment?

21 THE COURT: These are from the housing
22 records of Dorchester County?

23 MR. BROWN: For Tawain Gadson, Marion Bowman
24 and Ricky Davis.

25 THE COURT: We're not on Hiram Johnson.

1 anymore, Tawain Gadson?

2 THE COURT: He didn't recall it, and his file
3 is somewhere else, so --

4 THE COURT: Okay.

5 MR. BROWN: I'm trying to do the most we can
6 while we have the witness up here at 6:15, without
7 giving up the chance to go through that testimony
8 at the right time, Your Honor.

9 MR. WATERS: Your Honor, as long as it's
10 specifically limited just to the relevance,
11 relevant to the Ricky Davis statement issue, I have
12 no objection.

13 MR. BROWN: Your Honor, that is there to show
14 that, Ricky Davis said that he was on A side with
15 Tawain Gadson, the records don't say where Ricky
16 Davis was but they do say Tawain was on A side.
17 I'm a little curious why we don't know where Ricky
18 was on August 6, 2001, the day he wrote the
19 statement.

20 THE COURT: You don't object to the admission
21 of the document?

22 MR. WATERS: As long as the relevance is
23 limited to the Ricky Davis issue.

24 THE COURT: Have you got it marked?

25 MR. BROWN: Yes, we do.

1 THE COURT: 41 in evidence.

2 MR. BROWN: Thank you, Your Honor.

3 (Jail housing records marked and received
4 in evidence as Plaintiff's Exhibit 41).

5 BY MR. BROWN:

6 Q Does that record, it speaks for itself but to
7 interpret it, does it indicate Tawain Gadson on
8 August 6, 2001, was on A side?

9 A Yes, sir.

10 Q And just an open question, where does it
11 indicate super max or something like that?

12 Okay. Max would be which side?

13 A We would call what we term maximum security
14 our C side pod.

15 Q Okay.

16 A It is indicated that Marion Bowman was housed
17 in cell C-8 on this particular document.

18 Q And what does it say about Ricky Davis being
19 on C side?

20 A There is no indication, sir, where he was
21 housed.

22 Q Thank you.

23 A Not on this document.

24 Q Okay. And you also do polygraphs?

25 A Yes, sir.

1 Q Okay. Before I get to that, I apologize, let
2 me back up. Do you recall arresting, you mentioned
3 an arrest warrant for Marion Bowman. Do you recall
4 the arrest of Marion Bowman in Branchville?

5 A Yes, sir.

6 Q Okay. You were at a trailer?

7 A Yes, sir.

8 Q And what do you recall regarding the search
9 of that trailer?

10 A I did review my notes on that and to the best
11 of my recollection Mr. Bowman, I was leading Mr.
12 Bowman outside to the, with the Orangeburg
13 officers' assistance to the Orangeburg officers'
14 patrol car, and if I'm not mistaken about that time
15 Lieutenant, at the time Lieutenant Jimmy Nettles
16 arrived and/or was already there, and at some point
17 First Sergeant Coker arrived and to the best of my
18 recollection Lieutenant Nettles read, I can't
19 remember her first name, but Mrs. Bowman a consent
20 to search form and it is my understanding that she
21 in fact agreed to a search of the residence.

22 Q And did you participate in the search?

23 A I did, sir.

24 Q And what did you do when you searched it?

25 A I remember searching in a living room area

1 and other than that I don't remember searching
2 anyplace else in the residence.

3 Q And who else searched the area, that you
4 remember?

5 A I'm relatively sure that First Sergeant Coker
6 would have been involved in that and honestly I
7 don't know who else was without refreshing my
8 memory from notes.

9 Q Among other things, were you all looking for
10 a gun?

11 A Yes, sir.

12 Q Okay. And did you all look through all the
13 places you thought a gun might be?

14 A Within reason.

15 Q And were metal detectors used in that search?

16 A Not to my knowledge, sir.

17 Q And was the place searched when you weren't
18 there as well?

19 A I can't answer that, sir, because I left at
20 some point.

21 Q Were you involved in one search or more than
22 one search?

23 A I also remember searching a block house that
24 was somewhat deteriorated, or grossly deteriorated,
25 it was more like a property with a block house that

1 had fell in but to my recollection, sir, right now
2 that is the only searching I remember doing.

3 Q So, one search of the house where Dorothy Mae
4 Bowman lived and Marion Bowman Bowman?

5 A My involvement, yes, sir.

6 Q Your involvement, yes, sir, that was my
7 question. Thank you for clarifying that.

8 And were any metal detectors used in the
9 search?

10 A I don't know that I have ever seen one used
11 inside a residence.

12 Q Who owns metal detectors, Dorchester County?

13 A Only our crime scene technicians have them
14 and I believe there is one captain that does some,
15 I know he keeps it in his vehicle because he uses
16 it to do some relic hunting but I have never seen
17 him use it for a crime scene, sir.

18 Q Civil war items?

19 A Yes, sir.

20 Q But it's not unheard of to use a metal
21 detector to search for a metal object?

22 A No, sir. We use them frequently on crime
23 scenes to search for shell casings or something
24 like that.

25 Q Okay. Is there any chance, for what it's

1 worth, there was the arrest of Mr. Bowman on the
2 17th of February, 2001, and is there any chance you
3 went back and did a search the next day on the
4 18th?

5 A It's possible, sir, but I don't remember that
6 right off.

7 Q You would have some raw notes on that?

8 A I don't remember, sir.

9 Q And who organizes that? That would be the
10 lead detective that organizes that type search?

11 A Normally that would be true, yes.

12 Q He would get a team or person?

13 A Correct, sir.

14 Q And he keeps kind of a note to send somebody
15 out, this is what happened?

16 A Or each investigator would do a summary and
17 turn it in, one or the other, yes, sir.

18 Q So, it may be that you have done a summary,
19 if you went out the next day you would have done a
20 summary and turned it back in to the lead
21 detective?

22 A That's possible, sir.

23 Q But that would be contained in the files?

24 A Yes, sir.

25 Q All right.

1 MR. BROWN: Your Honor, without waiving any
2 right to question him about the files we don't
3 have, I would like to now turn to another item
4 which has been marked as Plaintiff's Exhibit 15 for
5 ID.

6 BY MR. BROWN:

7 Q Have you seen that?

8 MR. WATERS: Your Honor, just real briefly, I
9 just wanted to inquire of applicant's counsel what
10 files is he talking about he doesn't have?

11 MR. BROWN: Let me make sure I understand.
12 He doesn't have his files.

13 MR. WATERS: Okay.

14 MR. BROWN: We don't believe as for as we
15 know we have been given all the files. He doesn't
16 have his files to look at and I don't have his
17 files, I have a copy of the files that were given
18 to me by Dorchester Sheriff's Department. I fully
19 believe that I have the entire file.

20 THE COURT: What's your question?

21 THE WITNESS: If I could clarify what you're
22 asking, I don't have any original files at all.
23 They were all turned over to Sergeant Coker.

24 MR. BROWN: Great, great. That helps me,
25 too.

1 THE WITNESS: All I have is copies of the
2 original files.

3 BY MR. BROWN:

4 Q Well, all I guess I'm getting at, I don't
5 feel comfortable giving you my copies, if you have
6 a copy that you reviewed and you are familiar with,
7 whether you had your copy?

8 If you will look at the report that I handed
9 you, if I can lead him a little bit, is that a
10 polygraph report of Travis Felder?

11 A It is.

12 Q Okay. On April 16th you met with Travis
13 Felder?

14 A At Solicitor Bailey's request I did, sir.

15 Q Tell us a little bit about the request from
16 Solicitor Bailey.

17 A He wanted me to verify the truthfulness of
18 his statement that was provided to him.

19 Q Okay. And what information, if any, did you
20 have about Travis Felder or his involvement in the
21 crime?

22 A I was pretty familiar with his alleged
23 involvement.

24 Q And he was alleged to have been at some point
25 an accessory to murder?

1 A Correct, sir.

2 Q And an arsonist?

3 A Or involved, yes, sir.

4 Q He was charged with arson?

5 A Yes, I believe he was.

6 Q Did you all know that he bought the gas that
7 burned the car?

8 A Later, yes, sir.

9 Q When was that later?

10 A I mean later in the investigation but prior
11 to the polygraph, yes, sir.

12 Q Okay. So, prior to April 16th you knew
13 Travis Felder had bought that gasoline?

14 A I believe that's my recollection, yes, sir.

15 Q At least before the trial of Marion Bowman?

16 A Yes, sir.

17 Q Any question about that?

18 A Well, you brought up Hiram Johnson's name. I
19 believe there is some memory of that being an issue
20 as well.

21 Q That Hiram bought it?

22 A Again I would have to, I would have to look
23 and see if I was involved in that part of the
24 investigation.

25 Q Just -- I'm not trying to, how can I ask this

1 in an open way? Would you say that you knew about
2 that, is it more likely you knew that Travis Felder
3 bought the gasoline before the trial than after the
4 trial of Marion Bowman?

5 A I really need to refresh my memory to
6 categorically state I knew he bought it.

7 Q Do you recall a videotape from E-Z Horizon
8 Mart?

9 A I remember somebody getting a videotape, yes,
10 sir. I don't know that I was involved in that part
11 of the investigation.

12 Q Okay. But you do, I want to loop back to
13 that other earlier question, you do believe you
14 knew, you do believe you knew around this date,
15 this is a month before the trial, that Travis
16 Felder had bought the gas?

17 A Again, I would have to make sure that I was
18 involved in that, sir. I don't know absolutely
19 that I know he did that.

20 Q But you thought you knew that?

21 A But something, there is something in my mind
22 that tells me that there was something, there was
23 some questioning to him before the polygraph that
24 that might have been a possibility, yes, sir.

25 Q Who questioned him before the polygraph?

1 THE COURT: Now, are we dealing with Travis
2 Felder?

3 MR. BROWN: Yes, sir.

4 THE COURT: Because the two other issues we
5 had were dealing with Williams and Gadson.

6 MR. BROWN: A different polyographer.

7 THE COURT: Okay.

8 THE WITNESS: Bottom line is I can't answer
9 your question categorically as to whether he bought
10 it or not. I know there was some discussion about
11 who bought it.

12 BY MR. BROWN:

13 Q If you knew in fact he did buy it would you
14 know at that time he did buy it?

15 A I'm sorry, would you repeat the question,
16 sir?

17 MR. BROWN: I will withdraw that question.

18 MR. WATERS: I object.

19 THE COURT: I think the objection means he
20 can't understand the question.

21 MR. BROWN: That may be 6:24 calling me.

22 BY MR. BROWN:

23 Q You mentioned at some point there was, gosh,
24 I don't know the right term, questioning of Travis
25 Felder around the time of the April 16th, 2002,

1 polygraph examinations?

2 A I had spoke with his attorney at that time.

3 Q Yes, sir. And there was a specific guideline
4 that you could only test him on the questions that
5 were asked and that was the only things you spoke
6 to him about. So, he said you can't go in there
7 and interrogate him about everything?

8 A That's correct, sir.

9 Q Okay. And had his attorney talked to the
10 Solicitor about that?

11 A It is my understanding he had, sir.

12 Q Did the Solicitor convey that to you?

13 A Yes, sir.

14 Q And that is when -- you don't know that
15 anybody else talked to Travis Felder?

16 A At what point, sir?

17 Q You mentioned there was some questioning of
18 Travis Felder.

19 A Well, I have to do certain questioning
20 concerning life history issues and that sort of
21 thing as part of the polygraph, yes, sir.

22 Q And I'm just trying to, I don't know, what
23 I'm trying to find out is after his arrest, which
24 was fourteen months before, exactly fourteen months
25 before this?

1 A Yes, sir.

2 Q There was some questioning done of Travis
3 Felder during that time frame right then in April
4 of 2002?

5 A I don't know that, sir. I would not have
6 been involved in it if there was.

7 Q Okay. The questioning you're talking about
8 would have been the questioning you did prior to
9 actually cutting the machine on?

10 A Correct, sir.

11 Q All right. You did a little bit of
12 questioning at that time?

13 A Yes, sir.

14 Q You asked him questions that included two
15 relevant questions?

16 A Correct, sir.

17 Q And in response he gave the answers that we
18 see on here?

19 A Correct, sir.

20 Q And there is no question that this
21 information was conveyed back to the Solicitor and
22 back to his attorney?

23 A I personally called the Solicitor and told
24 him the results and I sent the letter.

25 MR. BROWN: Beg the Court's indulgence, Your

1 Honor.

2 Q There is testimony from trial court level, I
3 believe it is actually a Jackson-Deno hearing
4 pretrial, there was a question asked about
5 searching the couch and whether you had searched
6 the couch, and if you had a chance to look at that
7 testimony would that refresh your memory on whether
8 or not you were involved in the search of the
9 couch?

10 A I remember it was more like a love seat kind
11 of couch to the best of my recollection, I don't
12 remember if it reclined or not, but yes, sir.

13 MR. BROWN: And, Your Honor, obviously I
14 would like to question him about, not very long but
15 about some things. I think there is a subpoena, I
16 have to look at it, somewhere in my stack of stuff,
17 where I asked him to bring stuff, he was here just
18 fortuitously, I have no reason to doubt that. I
19 think in fact my co-counsel called earlier but we
20 know how cell phones are, I don't get all my
21 messages, but long story short, I would like the
22 opportunity to question him in the morning
23 regarding his files and I don't know whether there
24 needs to be some kind of cross now or just wait
25 until we finish direct in the morning. That is

1 what I want to ask.

2 THE COURT: In other words, you need your
3 file to answer some of the questions he's asking?

4 THE WITNESS: Well, it depends on what the
5 questions are, because there are some things I
6 didn't do. I actually, I was short lived in this
7 investigation after a point because I actually left
8 for two and a half months out of town.

9 THE COURT: Why don't you ask him all the
10 questions you need to ask him.

11 MR. BROWN: I did. Well, I mean --

12 THE COURT: What questions are you talking
13 about?

14 MR. BROWN: I want to go into the topic of
15 Hiram Johnson and about questioning of Hiram
16 Johnson and the obtaining of a brown glove.

17 THE COURT: Do you have any information in
18 your files about those that will help you testify?

19 THE WITNESS: I don't think I wrote in
20 anything in my personal files that weren't turned
21 in about that. I could be mistaken but I don't
22 think so. I remember something about a vehicle and
23 somebody getting out with a vehicle but I think I
24 was doing something else while they were taking
25 care of that and then I just heard about it as part

1 of the investigation.

2 MR. BROWN: Beg the Court's indulgence, Your
3 Honor.

4 He is my witness, Your Honor, but I'm going
5 to defer to co-counsel for a little assistance.

6 THE COURT: Don't you have his file with you?

7 MR. BROWN: It is not his file. It's about a
8 thousand pages, that is a ballpark.

9 MR. SINCLAIRE: All my file, Judge, I gave to
10 the attorneys, that is why I'm at a little bit of a
11 loss to help him.

12 THE COURT: We'll wait a minute. I would
13 like to get this witness over today.

14 MR. BROWN: Your Honor, it is a fairly narrow
15 topic we're asking to question him on.

16 THE COURT: I would like you all to ask him
17 the questions. If he says he doesn't know, I will
18 ask him to look for his files tomorrow and he can
19 come back if he found anything in the files and
20 bring him back to say something. If he didn't,
21 then ---.

22 MR. BROWN: Okay. What I'm asking, if he was
23 involved in the transportation of Hiram Johnson
24 and, Your Honor, if I could just have a moment to
25 kind of get stuff off my desk maybe I can pinpoint

1 a little easier. I apologize. Again we did, I did.
2 find the subpoena, we did subpoena him to be here
3 with his files.

4 THE WITNESS: Yes, sir.

5 MR. BROWN: That is not any statement against
6 Captain Van Doran, I think we were lucky he was
7 sitting in the hall, we called him.

8 THE COURT: While they're doing that, Mr.
9 Waters, why don't you see if you have any questions
10 of this person in the area of the questions that
11 have already been asked?

12 MR. WATERS: Yes, sir, your Honor.
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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Captain Van Doran, I think you have answered
4 most of what I was going to ask. C side is the max
5 side, correct?

6 A That is what we call our max side, yes, sir.

7 Q Those cells, are they single occupancy in the
8 max?

9 A No, sir.

10 Q Double?

11 A Two or three, depending on the size of the
12 cell.

13 Q And the door has a flap in it?

14 A For service. Some have food service doors
15 and some you have to open to deliver things to and
16 from.

17 Q Like a little metal flap?

18 A Yes, sir.

19 Q All right. Now, you were asked about the
20 jail records and Ricky Davis' record doesn't
21 indicate his placement at that time. Do you have
22 any idea why that may be?

23 A I do not, sir.

24 Q Is that just sometimes it doesn't get entered
25 or is it a common occurrence or you just don't

1 know?

2 A Well, looking at that particular booking
3 sheet, there is no photograph and the cell
4 placement is not listed, so of course since I
5 didn't perform that function by entering that
6 information I couldn't answer why it's not there, I
7 can only tell you that it doesn't appear to be
8 there.

9 Q I understand. And you were asked a little
10 bit about metal detectors. I believe you stated
11 you have never personally used a metal detector?

12 A No, sir, I have.

13 Q You have, just never inside a house?

14 A I have never used one inside a house,
15 correct.

16 Q Is there a particular reason for that?

17 A Because of all the metal objects that would
18 be in the floors and the walls and et cetera, yes,
19 sir.

20 Q That just pretty much makes the instrument
21 useless?

22 A All the screws, nuts and bolts in the
23 furniture, yes.

24 Q And furniture contains a lot of metal as
25 well, correct?

1 A Yes, sir.

2 Q In your experience in using metal detectors
3 it would be unusual for an officer to try to sweep
4 a couch with metal springs with a metal detector?

5 A Yes, sir.

6 Q It would be unlikely to produce any positive
7 result, is that fair to say?

8 A I would say so, yes, sir.

9 Q Okay. All right. Now, also this case, it
10 has been, what, six years since you have had any
11 involvement in this case. Is that correct?

12 A Yes, sir.

13 Q And although you have looked at your file a
14 little bit you don't have it with you right now?

15 A It's on my desk, sir.

16 Q And, so, you are just going on the best of
17 your memory as to what happened?

18 A Correct, sir.

19 Q And you're obviously, as for as your
20 recollections, they are the best of your
21 recollections and you're not here to say, is it
22 possible that you could be proven wrong if you were
23 to look in your records at some point, is that fair
24 to say?

25 A Well, giving details, that's correct, sir.

1 Q Now, I want to ask you a little bit about
2 your polygraph of Travis Felder. Do you have an
3 independent recollection of giving him that
4 polygraph?

5 A Pretty good, yes, I think it is a pretty good
6 recollection.

7 Q What was the date on that, again?

8 A 16 April, 2002, sir.

9 Q And that was at the request of the Solicitor?

10 A Correct, sir.

11 Q Okay. Explain to me a little bit more about
12 the arrangement with the attorney of Travis Felder
13 as to the scope of the polygraph examination.

14 A Quite often attorneys will consent to allow
15 their client to be polygraphed but they want to
16 make sure that the scope of the questioning is
17 limited to certain subjects and that there will be
18 no post interview no matter how the polygraph turns
19 out, or no interview after the polygraph, and that
20 was the agreement in this case.

21 Q Do you recall the nature of the scope that
22 was agreed upon?

23 A That we were to limit the involvement to
24 whether or not he had anything to do with placing
25 Kandee Martin's body back in the vehicle.

1 Q That was it?

2 A Pretty much, yes, sir.

3 Q And your results were simply deception
4 indicated as to seeing the body placed in the car?

5 A Correct, sir.

6 Q All right. Did you attend the trial in this
7 case?

8 A I did, sir.

9 Q Did you attend the entire trial or just
10 portions of it or --

11 A Only the portion where I would have been in
12 the courtroom, sir, to testify.

13 Q You weren't there the entire time?

14 A No, sir.

15 Q All right.

16 MR. WATERS: The Court's indulgence one
17 moment. I don't know if they're ready.

18 THE COURT: Now, have you finished asking him
19 questions?

20 MR. WATERS: I asked for the Court's
21 indulgence but I say I don't know if they are ready
22 to go back to their part.

23 MR. BROWN: I would say this, right now,
24 first of all I need to move into evidence, if I
25 have not, Travis Felder's polygraph report, subject

1 to the same limitations as to the truth of the
2 polygraph result.

3 THE COURT: Can I see that report?

4 Okay, 15 is in evidence.

5 (Travis Felder polygraph report marked and
6 received in evidence as Plaintiff's Exhibit
7 Number 15).

8 THE COURT: Okay, questions?

9 MR. BROWN: I don't have any other questions
10 except one about if there is somebody that can get
11 the real jail housing record on Ricky Davis, see
12 where he was on August 6, 2001?

13 THE WITNESS: I can attempt to go back and
14 try to see if we can pull up that information, sir.
15 I can have my shift lieutenant at this time at St.
16 George do it. If the computer will give us that.
17 We can try, sir.

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN

3 Q There's no paper record?

4 A No, sir, everything is done on the computer.

5 Q In '01 it would have been on computer?

6 A To the best of my recollection, yes. Well, I
7 would have to be sure of my answer because I have
8 only been the jail captain for about seven months.

9 MR. BROWN: Bear with me one second.

10 MR. WATERS: Your Honor, I didn't mean to
11 give up my right, I just thought they were taking
12 back over.

13 MR. BROWN: Oh, no, I'm sorry.

14 THE COURT: It's late in the day, I'm being
15 very sort of accommodating to everyone.

16 MR. WATERS: I understand.

17 MR. BROWN: We do understand. Your Honor,
18 subject to whatever else was asked on cross I don't
19 know I have any other questions. Obviously I'm
20 looking at redirect.21 THE COURT: I want to make sure, though, that
22 you ask him the questions you would ask him if he
23 had his file because he may be able to answer them.
24 If he can't we can let him look at his file.

25 MR. BROWN: We talked about this. At this

1 time keeping him like every other witness, subject
2 to being recalled later, I don't believe there are
3 other questions at this time. I'm obviously not
4 waving redirect.

5 THE COURT: All right, Mr. Waters?

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RECROSS EXAMINATION

QUESTIONS BY MR. WATERS:

Q You were asked a little bit about whether or not there was discussion of Travis Felder getting the gas can?

A Correct, sir.

Q I want to make sure, you know, yes, no, I don't care or I don't know if that is truly the honest answer, but search your memory, I want to know if you have an independent recollection of when that conversation occurred and if it occurred prior to trial or during trial or whatever time, that you know?

A I do not, sir. I just -- all I remember is that there was discussion about a gas can and who would have moved it from one point to another.

Q So, you remember that was an issue at some point during the course of this investigation and trial but you can't honestly say exactly what point that came to your attention?

A That's correct, sir, and to the best of my recollection, reviewing my notes, I don't think I made any comment about that in my notes.

MR. WATERS: Okay, nothing further, thank you.

1 THE COURT: Anything else?

2 MR. BROWN: Just briefly related to that last
3 question.

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q Now, I don't know, what date did you leave?
4 You said you were involved for some time in the
5 investigation. When did you leave?

6 A I would have to get the exact date but I
7 believe it was the very end of February, the very
8 last part of February or the very first part of
9 March.

10 Q '01 or '02?

11 A Of '01.

12 Q And then you came back seven months later?

13 A No, about three and a half months later but I
14 was not involved in the investigation after that.

15 Q Except for this polygraph?

16 A Except for the polygraph, yes.

17 Q Okay. And you did do the polygraph report,
18 that was obviously before trial?

19 A Actually I did two polygraphs but both of
20 them would have been before trial, yes, sir.

21 Q Who was the other polygraph?

22 A Marion Bowman, Sr.

23 Q Okay. What other notes would you have kept
24 of your involvement between April 16th of 2002 and
25 to the end of the trial, the end of May, 2002?

1 A Nothing that I didn't turn in, sir.

2 Q What other debriefings or meetings with the
3 prosecutor or other investigators would you have
4 had?

5 A There was one or two meetings with the
6 Solicitor.

7 Q When did those occur?

8 A I couldn't -- it was prior to trial but I
9 couldn't tell you the dates, sir.

10 Q How many meetings did you have post trial?

11 A Post trial?

12 Q Yes, sir.

13 A I haven't had any.

14 Q Okay. You have never met post trial?

15 A I haven't, sir.

16 Q Okay. And so what you knew about the gas can
17 was prior to trial?

18 A Yes, sir.

19 Q Okay. And is there some feeling that you
20 knew Travis Felder was the one bought the gas and
21 it was captured on video at the E-Z Horizon Mart?

22 A Again I'm sorry, sir, but I can't remember
23 that. I just can't.

24 Q Marion Bowman wasn't charged with buying the
25 gas, was he?

1 A No, sir, not that I remember but again I just
2 remember discussion about gas being bought and
3 about an issue with that.

4 Q Travis Felder is the guy you actually
5 questioned about his involvement with the body and
6 Nursery Road where the body was attempted to be
7 destroyed?

8 A Correct, sir.

9 Q So, that is the part you were focused on?

10 A Correct, sir.

11 Q And they focused you on Travis Fedler's
12 involvement in that, right?

13 A That's correct, sir.

14 Q Are there any notes you compiled, either
15 handwritten notes, any notes about that focus of
16 Travis Felder's involvement in destruction of the
17 body or that car?

18 A It is not attached to this. I would have to
19 check my polygraph packet to see if I did a post
20 summary of any kind but since I was not allowed to
21 question him I don't believe I did but, no, sir, I
22 don't know of any notes that would have pertained
23 to that after this polygraph.

24 Q Okay.

25 MR. BROWN: Your Honor, we would like to have

1 the opportunity for him to check his files for
2 handwritten notes, personal notes, broad, all
3 including but not limited to different things.

4 THE COURT: If you would, Mr. Van Doran, look
5 at your notes tomorrow morning. I'm going to have
6 you come back on the stand and say if you have your
7 notes, anything in your notes regarding the
8 questions you have been asked about this case.

9 THE WITNESS: Yes, sir.

10 THE COURT: They may want to look at your
11 notes, too.

12 THE WITNESS: Very good, sir, I will go back
13 tonight and get them so I don't have to make a trip
14 back to St. George in the morning.

15 THE COURT: Very good. Anything further, Mr.
16 Waters?

17 MR. WATERS: Not at this time.

18 THE COURT: If you will let me know you're
19 out there I will probably bring you in and get you
20 going and get you back on your business.

21 THE WITNESS: Very good, sir.

22 MR. BROWN: First thing, we can get him in
23 and out immediately.

24 THE COURT: If you can have them back about
25 9:30.

1 MR. WATERS: That gives the plaintiff some
2 time to review them.

3 MR. BROWN: Subject to that, obviously.

4 THE COURT: You come back when you're ready,
5 anytime tomorrow when you're ready you come back.

6 THE WITNESS: 9:30 is fine with me..

7 MR. BROWN: We'll call him first if he's here
8 at 9:30.

9 THE COURT: We'll see you then. You may step
10 down.

11 MR. BROWN: And his cell number, according to
12 this, would be 563-0274.

13 THE COURT: You know what, the man is coming
14 back, why do you need that? He is coming back
15 tomorrow.

16 MR. BROWN: I'm sorry, my co-counsel handed
17 it do me.

18 MR. SINCLAIRE: I was looking at it because I
19 was curious.

20 THE COURT: You know what, if we need him we
21 will be able to get this man.

22 MR. BROWN: Yes, sir.

23 THE COURT: Okay. Now, listen, I have gotten
24 emails regarding this petroleum shortage and
25 wondering, I guess they are sending general emails.

1 out to all the judges to see if there are any
2 problems going on with it, and of course Mr. Bowman
3 is being housed here locally, right?

4 MR. BROWN: Leiber.

5 THE COURT: Where do you SCDC people stay?
6 Do you have to stay at the county jail or get nice
7 hotels?

8 SCDC OFFICER: We got one gentleman came from
9 Columbia but we work here locally.

10 THE COURT: Do you all have a place to stay
11 or live here?

12 SCDC OFFICER: Live here.

13 THE COURT: You work with SCDOC but you live
14 here because the prison is here?

15 SCDC OFFICER: Right.

16 THE COURT: You go back and forth to Columbia
17 or are they housing you here?

18 SCDC OFFICER: No, I go back to Columbia but
19 that's not a problem with us, it's not an issue, we
20 have that covered.

21 THE COURT: Okay. And, so, I have emailed
22 back saying the problem we thought we may have had,
23 once my law clerk called Columbia that problem was
24 erased, but there is nobody else we need to sort of
25 get them ready to go to bring them here, is there?

1 MR. BROWN: No, sir, no inmates, and just to
2 let you know, Your Honor, our client is housed at
3 Leiber which is actually closer to this courthouse
4 than the detention center is.

5 THE COURT: You all just take him back and
6 forth to Leiber?

7 SCDC OFFICER: Yes, sir.

8 THE COURT: No one has given you any problem
9 with that at all?

10 SCDC OFFICER: No, sir.

11 THE COURT: Let me just make sure there is no
12 misunderstanding. If for some reason someone tells
13 you not to bring him I'm telling you right now you
14 bring him and then if someone tells you, say,
15 "Well, you better be the one to come because the
16 judge is going to hold you in contempt." You bring
17 him, these are important matters, we have to bring
18 him back and forth. All right?

19 SCDC OFFICER: I understand, sir.

20 THE COURT: All right. We'll see you
21 tomorrow morning around 9:30 or so. See you then.

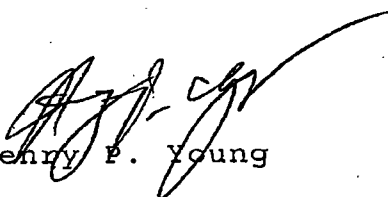
22 (Recessed at 6:46 p.m.).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Dorchester County, South Carolina, on the 17th day of September, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 24, 2008


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2006-CP-18-569

COUNTY OF DORCHESTER

MARION BOWMAN,

-vs-

STATE OF SOUTH CAROLINA,

Defendant.

B E F O R E:

HONORABLE JAMES E. LOCKEMY

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

JAMES ARTHUR BROWN, JR., Esquire
JOHN SINCLAIRE, III., Esquire
Attorneys for the Plaintiff

SAMUEL C. WATERS, Esquire
ALPHONSO SIMON, JR., Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

VOLUME IV OF X
September 18, 2008

1 P-R-O-C-E-E-D-I-N-G-S

2 (Reconvened at 10:25 a.m.).

3 THE COURT: Let's put on the record what we
4 discussed in chambers this morning. In chambers
5 this morning we discussed that it is unlikely we
6 will finish this case this week and we talked about
7 a continuation, as for as times for that, and the
8 29th of, beginning the week of the 29th is a
9 chambers week for Circuit Court and Mr. Sinclair
10 has paid vacation plans beginning the 6th of
11 October, so at this time we're looking at
12 reconvening the 29th and 30th of September and 1st
13 of October at a place we'll designate later. It
14 could be here, it could be somewhere else.

15 But we're looking at that and we'll decide
16 towards the end of the day about tomorrow, how much
17 time we could actually spend tomorrow, and other
18 than that -- oh, yes, also in chambers I asked Mr.
19 Brown and Mr. Waters had they had a chance to check
20 Mr. Van Doran's files to see if we needed to call
21 Mr. Van Doran back up. They were going to check
22 that and Mr. Brown indicated his main concern was
23 seeing if Mr. Van Doran had some way of knowing
24 where Mr. Davis was on a certain day, where he was
25 housed. So, with that, I want to make sure, as to

1 what we discussed in chambers, I have discussed
2 every issue.

3 Can you all think of anything else we
4 discussed in chambers that I haven't put on the
5 record?

6 MR. WATERS: I think that is it.

7 MR. BROWN: Ricky Davis is the person we had
8 a question about.

9 THE COURT: All I wanted, in chambers, did we
10 discuss anything else in chambers?

11 MR. BROWN: No, sir. I wanted to clarify Mr.
12 Davis.

13 THE COURT: Ricky Davis?

14 MR. BROWN: Yes.

15 THE COURT: I see Mr. Van Doran is in the
16 courtroom.

17 So, now that we have done that, are we ready
18 now to begin?

19 MR. WATERS: We're going to put Mr. Van Doran
20 back on the stand briefly for a few more questions
21 and we have also consented to introducing his
22 polygraph packet, excluding the actual chart that
23 was run, and what we're going to do is have Mr. Van
24 Doran testify from it and after he concludes he's
25 going to take that file over to nextdoor and make a

1 copy of it and we're going to substitute that in as
2 the actual exhibit.

3 THE COURT: Do you agree with that, Mr.
4 Brown?

5 MR. BROWN: We do, I think, plus the
6 agreement is it's not being offered for the proof
7 of the results of the polygraph, which --

8 THE COURT: It's offered for the truth?

9 MR. BROWN: Excuse me, not offered for the
10 truth of the polygraph results, as we talked about
11 with the other polygraphs.

12 MR. WATERS: It is not offered to prove that
13 Travis Fedler answered any question truthfully or
14 untruthfully.

15 THE COURT: Mr. Van Doran, you can handle
16 that, sir, as for as getting that done?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Who wants to call
19 him?

20 MR. WATERS: I guess I'll call him.

21 MR. BROWN: It doesn't matter. I would like
22 to be able to question him about what he asks him.

23 THE COURT: Mr. Van Doran, the Court is going
24 to, by agreement of all parties the Court is
25 calling you back up for examination by Mr. Brown

1 and Mr. Waters. Come on back up, Mr. Van Doran.

2 Please understand you are still under oath, sir.

3 THE WITNESS: Yes, sir.

4 THE COURT: Have a seat.

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1 TERRANCE A. VANDORN,
2 having been previously sworn as a witness,
3 testified as follows:

4 THE COURT: Good morning to you. Did you go
5 back last night and get those files?

6 THE WITNESS: I did, sir.

7 THE COURT: All right, I will let you
8 continue cross-examination, Mr. Waters.

9 MR. WATERS: Thank you, your Honor.

10 RECROSS EXAMINATION

11 QUESTIONS BY MR. WATERS:

12 Q Just to reiterate, in your present duties you
13 are head of the Dorchester Jail, is that correct?

14 A The Captain, yes, sir.

15 Q Captain there, okay. And you had said A side
16 is kind of a general population?

17 A That's correct.

18 Q B side is as well?

19 A B side are sentenced people form family court
20 or minor infractions, yes, sir.

21 Q A side is pretrial, B side is sentenced
22 people?

23 A Correct.

24 Q C side is kind of the maximum for the more
25 secure environment?

1 A Yes, sir.

2 Q Okay. Is it possible for someone who is
3 initially in A side to be transferred to C side?

4 A Yes, sir, for any sort of jail infraction
5 that would impose them going to C side for a short
6 period of time.

7 Q So, if they get in trouble, mess up, they can
8 be sent to C side as administrative punishment or
9 segregation?

10 A Correct.

11 Q Or they could -- could they potentially be
12 put there for their own protection or safety?

13 A We also have a D side that we use for
14 protective custody, yes, sir.

15 Q All right. Now let me see that packet there
16 that we have. This is going to ultimately be a ten
17 page exhibit, it is going to be the nine pages in
18 the file as well as a copy of the front of the
19 folder that will be taped together and introduced
20 as one exhibit, Defendant's Exhibit 3, I believe.

21 I wanted to show you a page marked consent to
22 interview with polygraph, and on there what was the
23 limitation of the scope of that polygraph going to
24 be?

25 A I explained to Mr. Felder that the test would

1 surround whether or not he saw Kandee Martin's body
2 placed in the trunk of her car.

3 Q That was based on what his attorney was
4 willing to let him be polygraphed on, is that
5 correct?

6 A Yes, sir.

7 Q It was just as to whether or not he saw
8 Kandee Martin being put in the car?

9 A There was a little latitude but that is what
10 we tested him on, yes, sir.

11 Q Then I want to show you this next page, if I
12 can get that one back, keep them in order. This
13 next page, what does that reflect?

14 A The questions that we actually asked, sir.

15 Q Okay. And there is nine questions on there,
16 is that correct, nine or ten?

17 A Yes, sir.

18 Q Okay. And what were the relevant questions
19 that you asked that are on that list?

20 A Relevant five would be did you see Kandee
21 Martin's body placed into the trunk of her car.
22 And relevant seven would be in February of 2001 did
23 you see Kandee Martin's body placed in the trunk of
24 her car.

25 Q Okay. All right, let me have that back,

1 please. And then on the front of the folder here,
2 right below the case number what does that state?

3 A I placed a note that says that no post test
4 was allowed or I was not allowed to do a post test
5 interview.

6 Q That was based on the limitations placed upon
7 you by the agreement with Mr. Felder's attorney,
8 correct?

9 A Yes, sir.

10 Q All right. So, you weren't able to after the
11 deception -- you found deception on that particular
12 question as to whether or not he saw Kandee put in
13 the car, you weren't then allowed to explore that
14 any further with Mr. Felder?

15 A That's correct, sir.

16 Q All right.

17 MR. WATERS: I believe, again, this is in as
18 Defendant's 3 without objection?

19 MR. BROWN: Without objection, subject to the
20 limitation on the polygraph results.

21 MR. WATERS: Okay.

22 (Polygraph questions marked and received in
23 evidence as Defendant's Exhibit Number 3).

24 MR. WATERS: Your Honor, I believe that is
25 all my questions. I'm going to leave this original

1 in the custody of Mr. Van Doran to make a copy.

2 MR. BROWN: Your Honor, very briefly I want
3 to clarify a couple things.

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q Is it possible somebody like Marion Bowman
4 would be placed on C side from the beginning and
5 that would segregate him?

6 A That's correct.

7 Q He may have been there for an infraction?

8 A That would be a determination that was made
9 as to the nature of the offense and that is what we
10 would normally do with a homicide suspect, is place
11 them on C side, yes, sir.

12 Q Okay. And Tawain Gadson, who was also
13 charged with homicide, he wouldn't have been there
14 because you don't want to put two co-defendants in
15 a murder who are implicating each other?

16 A That would be very consistent with what we're
17 continuing to do now, sir.

18 Q Let me ask you briefly about this. You were
19 placed under limitation, it appears from the
20 report, I think it talks about in the report, on
21 the page that says prepolygraph information form,
22 and who is the investigating officer on that?

23 A I listed Solicitor Bailey since he requested
24 me to run the polygraph, sir.

25 Q And my question, the attorney placed some

1 limitations by agreement?

2 A That is my understanding, yes, sir.

3 Q I'm not really interested in the content, but
4 that information was related to you by the defense
5 attorney?

6 A I spoke to both the Solicitor and the defense
7 attorney, yes, sir.

8 Q And who told you about the agreement?

9 A It was discussed and it was my understanding,
10 and his attorney was outside the polygraph room
11 when the polygraph was ran.

12 Q Okay. You talked to the Prosecutor Bailey to
13 kind of confirm the contours of this?

14 A Yes.

15 Q And so obviously it was an agreement that was
16 entered not just with you and the defense attorney,
17 but with you and Solicitor Bailey and the defense
18 attorney?

19 A Yes, sir.

20 Q Regarding the interview or meeting with
21 Travis Felder?

22 A Correct, sir.

23 MR. BROWN: Beg the Court's indulgence.

24 No further questions.

25 MR. WATERS: Nothing further, Your Honor.

1 THE COURT: All right. Did we ever decide if
2 there was any way of knowing where Ricky Davis was
3 housed.

4 MR. WATERS: We're going to have them look.
5 They say it is unlikely we will be able to find
6 out. We're going to have some people search the
7 archives and report back to us if anything is
8 found.

9 MR. BROWN: The only thing I would like to
10 say, as the plaintiff we're obviously looking for
11 the whereabouts of Ricky Davis on August 6, 2001.
12 I understood they are looking for records related
13 to his placement in relationship to Mr. Bowman on C
14 side but just to be clear, I'm just asking for one
15 day's records, if he can pull them up that way.

16 THE COURT: The petitioner wishes to know
17 where he was on August 6, 2001, the respondent
18 State would like to know if he was ever housed in
19 the same facility with Mr. Bowman.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you, sir. Let them know.

24 MR. BROWN: Thank you.

25 (Witness excused).

1 MR. BROWN: Alvin Coker.

2 ALVIN MICHAEL COKER,
3 after being first duly sworn, testified as follows:

4 THE COURT: Mr. Coker, have a seat, please.
5 Are you catching a plane? You have your luggage
6 there with you.

7 THE WITNESS: Case file, Judge.

8 THE COURT: Case file? All right, if you
9 would, sir, speak into that microphone and give us
10 your full name.

11 THE WITNESS: Alvin Michael Coker, C-o-k-e-r.

12 THE COURT: I wonder if that microphone is
13 on. Tap it.

14 Is there some button we can push somewhere?
15 The microphone is not on.

16 MR. BROWN: It was on yesterday but not
17 today.

18 THE COURT: All right, we probably need to
19 flip that. There you go.

20 THE WITNESS: There we go.

21 THE COURT: All right, the microphone is on,
22 we're resuming, Mr. Coker is sworn.

23 So, Mr. Brown, your witness.

24 MR. BROWN: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 QUESTIONS BY MR. BROWN:

2 Q Officer Coker, would you tell the Court your
3 role in the investigation of Kandee Martin's death?

4 A I was the lead investigator assigned to the
5 case.

6 Q And would you tell us, as part of that role
7 as lead investigator, what other agencies did you
8 work with or communicated with you overall in this
9 investigation?

10 A Orangeburg County Sheriff's office and State
11 Law Enforcement Division were the main two that
12 assisted with us.

13 Q Okay. And did you all also deal with maybe
14 Branchville?

15 A Branchville Police Department, yes, sir.

16 Q Okay. And Branchville's involvement was at
17 what point in this case?

18 A They assisted us in helping to locate the
19 address of the victim, where Miss Martin lived.

20 Q And did they assist you in, gosh, the arrest
21 of Marion Bowman?

22 A I was not present when they actually arrested
23 him, I got there after the fact. I think that was
24 Orangeburg County and I believe one of
25 Branchville's officers was there.

1 Q It was based upon a warrant?

2 A From Orangeburg County.

3 Q Not a Branchville warrant?

4 A No, sir.

5 Q And that was served on the 17th of February,
6 2001?

7 A Yes, sir.

8 Q What do you recall your involvement being on
9 that day?

10 A I got called early a.m., about 4:00 o'clock,
11 responded to Nursery Road in Reevesville, South
12 Carolina, Dorchester County, to a fire, a car fire
13 that had a body in the trunk. Once I arrived on
14 the scene I met with the fire department personnel,
15 found there was a tag from the vehicle that was
16 left there, we got our dispatch center to run that
17 tag, found out it was from a Branchville address
18 and at that point Detective Van Doran and myself
19 went to Branchville.

20 Q Did you later show up to execute, or after
21 the execution of the arrest warrant --

22 A I did.

23 Q -- for Mr. Bowman?

24 A Yes.

25 Q I think it came out a little bit but that

1 warrant was not related to this case, was it?

2 A No, it was not.

3 Q And who else was arrested in that short
4 timeframe dealing with the 17th or 18th through
5 20th of February, 2001, as related to Kandee
6 Martin's death?

7 A After we interviewed Mr. Bowman he gave us
8 some information and we got warrants for Tawain
9 Gadson and a young man from St. George by the name
10 of Terry Kelly, and we could not locate Terry
11 Kelly. Gadson was eventually located and arrested.

12 Q What was Gadson charged with?

13 A He was charged with murder.

14 Q You mentioned a warrant for murder. Who
15 procured that warrants?

16 A I believe I did, sir.

17 MR. BROWN: Beg the Court's indulgence.

18 Q Look at Plaintiff's Exhibit 4.

19 A Yes, sir. This is a warrant for James Tawain
20 Gadson and it has my signature on it as the
21 affiant.

22 Q Were you also the lead officer for the
23 prosecution of him?

24 A Yes, sir.

25 Q And how about the lead officer for the

1 prosecution of Travis Felder?

2 A Yes, sir.

3 Q Would you look at Plaintiff's Exhibit 1.

4 Would you tell the Court what that is?

5 A That would be the indictment, 2001-GS-18-366,
6 indictment against James Tawain Gadson for murder.

7 Q Would you look at Plaintiff's Exhibit 5. See
8 if you're familiar with that.

9 A Yes, sir. It's a statement obtained from
10 James Tawain Gadson on 2/18 at 10:00 a.m.,
11 Detective Van Doran and myself.

12 Q Plaintiff's Exhibit 6?

13 A It is a statement of James Tawain Gadson that
14 was generated on computer by myself, witnessed by
15 Jack Coleman, Orangeburg County Sheriff's office.

16 Q Are you familiar with the mental health
17 evaluation on Tawain Gadson indicated as
18 Plaintiff's 8?

19 A I was probably familiar with it at the time.

20 Q Were you ever contacted by the Department of
21 Mental Health to send some records to them?

22 A No, sir.

23 Q And did they ever interview you about your
24 understanding of the facts?

25 A No, sir.

1 Q Are you familiar with Plaintiff's 9 and
2 Plaintiff's 10?

3 A Plaintiff's 9 is an indictment against James
4 Tawain Gadson, accessory after the fact of murder,
5 and for misprison of a felony.

6 Plaintiff's Exhibit 10 appears to be the same
7 document.

8 Q They are a different date at the bottom that
9 the judge signed it.

10 A Okay. Nine is dated 6/19 and ten is dated
11 6/20.

12 Q Were you present at that proceeding, either
13 of those proceedings?

14 A Obviously I probably was but I really don't
15 recall.

16 Q Just to kind of get this out of the way, he
17 pled to accessory after the fact of murder, Mr.
18 Gadson did?

19 A Yes, sir.

20 Q At the time of his plea what was the position
21 of the Sheriff's Department, through you, what was
22 your understanding of what James Tawain Gadson did
23 to be an accessory after the fact of murder, what
24 act did he do?

25 MR. WATERS: Your Honor, I don't see how that

1 is relevant to any issue we're dealing with here.

2 THE COURT: You asked him what acts did he
3 do?

4 MR. BROWN: What did they believe he did,
5 because he said he was probably at the court
6 proceeding, we don't have the court proceeding, we
7 have asked Tawain Gadson what he did to be an
8 accessory, we know what his answers are.

9 THE COURT: What do you mean, court
10 proceeding?

11 MR. BROWN: June 19 and June 20 he pled
12 guilty and was sentenced twice.

13 THE COURT: We don't have a copy of the
14 transcript?

15 MR. BROWN: No, sir.

16 THE COURT: It is not like it was that long
17 ago. It's not available?

18 MR. BROWN: Six years ago.

19 THE COURT: I know, but as you you know, this
20 case began two years ago. They normally keep them
21 at least five years, I understand.

22 MR. BROWN: I don't know.

23 MR. WATERS: There is a five year rule. I
24 haven't requested it.

25 THE COURT: Anybody attempted to get the

1 transcript?

2 MR. BROWN: No, sir. We thought he would be
3 able to tell us what he did, Mr. Gadson.

4 THE COURT: About what he pled to or --

5 MR. BROWN: We knows what he pled to.

6 THE COURT: Okay. I know.

7 MR. BROWN: We thought he would be able to
8 tell us what in fact he did to be guilty.

9 THE COURT: Are you asking this person's
10 impression of what he did?

11 MR. BROWN: I'm asking what position the
12 State put forth. He was the lead detective for
13 this death and Tawain Gadson and he was present at
14 the hearing.

15 THE COURT: He was lead investigator
16 investigating the death of Kandee Martin.

17 MR. BROWN: That is the first question. I
18 asked him specifically if he was the lead
19 investigator in the prosecution of Travis Felder
20 and Tawain Gadson.

21 THE COURT: He has nothing to do with the
22 prosecution, it's up to the prosecutor.

23 MR. BROWN: He was the lead detective.

24 THE COURT: He provides information, the
25 prosecution decides what they will do.

1 MR. BROWN: Certainly. All I'm trying to
2 find out is what information at the June hearing he
3 was providing the prosecutor as to Tawain Gadson's
4 criminal activity in the accessory to the murder.

5 THE COURT: One assumes at the June hearing
6 he had already done everything. Is that when he
7 pled guilty?

8 MR. BROWN: Well, before the June hearing he
9 was still charged.

10 THE COURT: When you say hearing, you mean
11 guilty plea?

12 MR. BROWN: Yes, sir. Before the June
13 hearing, although you got to remember Mr. Gadson
14 equivocates on whether he had previously pled
15 guilty or not, which we have no indication he
16 didn't plead on that day. He pled, the same day
17 was sentenced but he also said he pled before
18 trial.

19 THE COURT: What is your position?

20 MR. WATERS: I don't think his subjective
21 belief is relevant to any issue. Any issue that
22 would be relevant in this particular proceeding
23 would be whether or not the State disclosed
24 statements and evidence and things they have. But
25 what Mr. Coker believed that James Gadson did is

1 not relevant to issues which we have. There is no
2 dispute that defense counsel had all these
3 statements, had all this evidence. That is just
4 not a relevant question to ask.

5 THE COURT: Well, I will let you ask, Mr.
6 Brown, the investigator Mr. Coker what evidence he
7 had about Mr. Gadson. As for as his individual
8 beliefs one way or the other, I don't see how that
9 is relevant

10 MR. BROWN: I don't want beliefs.

11 THE COURT: Tell him what information you
12 have regarding the activities of Mr. Gadson in this
13 murder.

14 MR. BROWN: Your Honor, just to make clear
15 for its relevancy, we have pled --

16 THE COURT: I have ruled on it, so why can't
17 you just ask?

18 MR. BROWN: I just want to make, I don't mind
19 telling him where I'm going with it, it is relevant
20 to the question of whether Gadson was allegedly
21 impeached at trial.

22 THE COURT: Mr. Brown, ask him the question.

23 MR. BROWN: Sure.

24 BY MR. BROWN:

25 Q So, what was it that the State, I know --

1 THE COURT: No, sir. What information did
2 you have? I'm worried about information he had,
3 he's the one that you are asking, what he knew.

4 MR. BROWN: I understand. Let me back up and
5 ask a different question.

6 BY MR. BROWN:

7 Q At some point in time, I guess I will go
8 straight to one of my other claims, you actually
9 swore before a Magistrate that Tawain Gadson did
10 shoot and kill Kandee Martin, didn't you, you swore
11 under oath that was true?

12 A Yes, sir, I did, based on the information we
13 had at the time.

14 Q And then exactly four months later you swore
15 under oath again that Tawain Gadson shot the victim
16 or possibly aided a different way in her death, did
17 you not, to a different tribunal?

18 A Yes, sir, but it was grand jury. I do not
19 have any say-so in the way that is worded. That
20 comes from the Solicitor's office.

21 Q This is Plaintiff's 1, right?

22 A Yes, sir.

23 Q I want to make sure, who was a witness at
24 that proceeding?

25 A It says me, yes.

1 Q Was there any other witness at that
2 proceeding?

3 A Not to my knowledge.

4 Q And as for as we know this is the statement
5 that you went in to witness the veracity thereof?

6 A Yes, sir.

7 Q And in that statement it says in part that
8 Tawain Gadson did kill one Kandee Martin by means
9 of shooting the victim?

10 A That's what it says, yes, sir.

11 Q So, at least on February 17th of 2001 and
12 later on June 18th, 2001, you swore to a tribunal
13 that Tawain Gadson was the shooter.

14 MR. WATERS: Your Honor, that is not what he
15 just testified. I believe he just stated the
16 Solicitor wrote that information. If he wants to
17 ask him what he swore to in that proceeding before
18 the grand jury I think that is a fair question. I
19 would also remind counsel he is on direct, he is
20 starting to lead.

21 THE COURT: I note your objection about the
22 leading. I'm going to be liberal with that.
23 Obviously we're dealing with witnesses that
24 obviously counsel perceives as being adverse. But
25 in any event, just tell us, on the arrest warrant

1 as well as on the indictment when you appeared
2 before the grand jury, do you remember what you
3 said?

4 THE WITNESS: I swore to, excuse me, I swore
5 to tell the truth.

6 BY MR. BROWN:

7 Q And let's go first to Plaintiff's 4, which
8 was the first --

9 A Based on the information I had at that time
10 that was the truth.

11 Q Which --

12 A The best of my knowledge.

13 Q I understand. And to try to move the
14 proceedings along, at that time the truth you swore
15 to was that Tawain Gadson was the shooter. I mean,
16 is that your affidavit that says such?

17 A Yes, sir.

18 Q Was there other information besides that
19 contained in this used to orally supplement this
20 warrant?

21 A No, sir.

22 Q All right. Moving to Plaintiff's 1. This is
23 the charge as drafted, that went before the grand
24 jury, that you were testifying regarding?

25 A Yes, sir.

1 Q All right. And at the time of testimony, you
2 were the only person that testified, we established
3 that part?

4 A Yes, sir.

5 Q Okay. And you were asked to testify about
6 your knowledge in relationship to a statement from
7 the Solicitor that Tawain Gadson was the shooter?

8 A When I testified I testified to the grand
9 jury of the facts as I knew them. Again --

10 Q Do you ever recall testifying in
11 contradiction to that statement, did you testify
12 something that was against this?

13 A I don't recall. I may have. Again, I didn't
14 write the wording on there.

15 Q I want to be sure. You may have testified in
16 contradiction to a prosecutor's claim before a
17 grand jury --

18 MR. WATERS: Your Honor, again --

19 A I'm not following your question totally here.

20 MR. WATERS: Your Honor, I don't know that
21 this is an appropriate question. He can ask him
22 what did he testify to. He just asked him whether
23 he testified to a contradiction, that is a
24 different thing and it also has to do with a legal
25 issue we all know the answer to as to why the

1 indictments for murder are drafted like that, how
2 an indictment drafted as a principal can support
3 various convictions. The only question he can ask
4 him is, "What did you tell the grand jury?"

5 THE COURT: I assume that is what you are
6 asking, what he did. He knows nothing about the
7 thoughts of others, prosecution or not, prosecutor
8 or not.

9 MR. BROWN: The question of identity of the
10 shooter is at the very heart of the case at trial.

11 THE COURT: So you want to ask him what he
12 did or what somebody else did?

13 MR. BROWN: What he swore under oath as a
14 representative --

15 THE COURT: Ask him what he said.

16 MR. BROWN: I understand.

17 BY MR. BROWN:

18 Q And did you swear under oath that Tawain
19 Gadson was the shooter or aided the shooter?

20 A I swore to the grand jury to tell the truth
21 based on the facts that I had.

22 Q Yes, sir. And --

23 A The facts were Tawain Gadson was present
24 during the shooting but the information we had at
25 the time was that Marion Bowman, Jr., fired the

1 fatal shot.

2 Q And that gets to my question I already asked,
3 which is, are you telling me you testified in
4 contradiction to this statement signed by Walter
5 Bailey, the prosecutor?

6 THE COURT: No, sir. Do you consider the
7 testimony you gave there in contradiction to any
8 other testimony you gave?

9 A No, sir.

10 Q How can you reconcile that with the statement
11 that Tawain Gadson did kill Kandee Martin by means
12 of shooting her?

13 MR. WATERS: Objection, Your Honor.

14 A Sir, I can't answer for the Solicitor.

15 THE COURT: He's answered you. He said he
16 can't answer.

17 MR. WATERS: Your Honor, before I forget, I
18 have the --

19 THE COURT: Let me ask you something. I'm
20 not sure if he's saying this but we all know the
21 issue of the hand of one is the hand of all.

22 MR. BROWN: That is not what it says.

23 THE COURT: You charge someone with burglary
24 if they are outside as lookout, you don't say they
25 were lookout, they were burglars, they broke in the

1 home.

2 MR. BROWN: You charge the person who bought
3 the gas with arson, not with accessory after the
4 fact. I totally agree with that statement.

5 THE COURT: What I'm saying is the fact he
6 may have said that Mr. Gadson was a murderer
7 because he was there at the time and although he
8 may not have pulled the trigger, why are you saying
9 it's in contradiction?

10 MR. BROWN: Because that statement says he
11 was the shooter or he assisted. I mean, that is
12 the heart of this case.

13 THE COURT: Continue on. Hopefully maybe you
14 will open it up for me a little better about your
15 heart of this case.

16 MR. WATERS: Your Honor, that is how it is
17 done in South Carolina.

18 MR. BROWN: That is called sloppy indictment,
19 Your Honor.

20 MR. WATERS: The indictment does not require
21 you to say that -- it also can support a conviction
22 under the hand of one is the hand of all.

23 MR. BROWN: We concede all of that. There is
24 sworn testimony that accompanied this presentation.
25 Your Honor --

1 THE COURT: Let me ask you, this is a
2 witness.

3 MR. BROWN: Yes.

4 THE COURT: The witness has said what he
5 intended, what he did, what he investigated, that
6 is all he can say. What did you want him to say?

7 MR. BROWN: He gave a conclusion about his
8 testimony, it was truthful. I'm not arguing that
9 his testimony is not truthful, actually to the
10 contrary, I'm assuming his testimony that Tawain
11 Gadson was the shooter is truthful.

12 THE COURT: I'm going to let you continue to
13 ask him questions about what he did.

14 MR. BROWN: Sure.

15 THE COURT: So, continue on but don't, when
16 you start asking him about whether or not that's in
17 contradiction or not, that is subject to
18 interpretation.

19 MR. BROWN: The conclusion his testimony is
20 truthful is also subject to interpretation.

21 THE COURT: Well, subject to me as a finder
22 of fact.

23 MR. BROWN: I mean the grand jury, that he
24 testified to the truth.

25 THE COURT: Right.

1 MR. BROWN: He said that.

2 THE COURT: Ask him your next question.

3 MR. WATERS: Your Honor, very briefly, could
4 I go ahead and substitute this in, from Detective
5 Van Doran?

6 THE COURT: What he just brought back?

7 MR. WATERS: Yes, sir.

8 THE COURT: Show it to Mr. Brown.

9 MR. WATERS: Thank you, Your Honor.

10 THE COURT: What number is that?

11 THE WITNESS: Three, Your Honor.

12 THE COURT: All right. Proceed on, Mr.
13 Brown.

14 BY MR. BROWN:

15 Q Did you speak with Solicitor Bailey before
16 you testified to the grand jury?

17 A Either him or one of his representatives,
18 yes, sir.

19 Q Which representative would that have been?

20 A I don't recall. There were several of them
21 there.

22 Q Okay. Robbie Robbins?

23 A Possibly.

24 Q You can't recall which other prosecutor was
25 there at the grand jury presentation?

1 A No, sir, I can't.

2 Q Is that about as accurate a memory as the
3 testimony you provided?

4 A I'm not following what you're saying here,
5 Mr. Brown.

6 Q Your recollection of who was there is not
7 very clear, I guess?

8 A There was a number of Solicitor's office
9 staff that were at the courthouse.

10 Q That had a right to practice law and took
11 this case to the grand jury?

12 A I don't think any of them were in the
13 courtroom.

14 Q Who directed the evidence in relationship to
15 the allegation inside the grand jury room?

16 A I went in, was sworn, gave them the facts of
17 the case as I knew them.

18 Q Did they ask any questions?

19 A They asked quite a few questions, yes, sir.

20 Q Okay. And obviously the questions were in
21 relationship to the matter before them?

22 A Yes, sir.

23 Q Okay. Which was as presented on the body of
24 the indictment which is Plaintiff's Exhibit 1?

25 A They asked quite a few questions and, yes,

1 sir, that could have been.

2 Q Did they ask you questions about stuff that
3 is not written on this indictment?

4 A They asked questions concerning the case as a
5 whole.

6 Q Okay. And at some point in time did they
7 indicate disbelief in part of this indictment?

8 A No, sir.

9 Q And you were testifying under oath?

10 A Yes, sir.

11 Q Later on Tawain Gadson enters a plea to
12 accessory after the fact to murder?

13 A Yes, sir.

14 Q What did he do to aid the murder after the
15 fact?

16 MR. WATERS: Your Honor, again I object.
17 First of all that is a legal conclusion.

18 THE COURT: Did you have anything to do with
19 making the decision for him to plead to that?

20 THE WITNESS: No, sir. In fact that came
21 strictly through counsel's and the Solicitor's
22 office.

23 THE COURT: He said he didn't have anything
24 to do with it.

25 MR. BROWN: I don't care about the charge,

1 I'm talking about the investigation, what facts as
2 lead investigator did he have --

3 THE COURT: Did you have facts about what he
4 did to assist in the perpetration of the murder?

5 THE WITNESS: Based on the witness statements
6 and the other evidence that we gathered after the
7 fact.

8 BY MR. BROWN:

9 Q What were those facts?

10 A We had the gun issue that came up, we found
11 the gun, tied it back to Mr. Bowman, we had other
12 witnesses that put the gun with Mr. Bowman.

13 Q What does that have to do with Tawain Gadson?

14 A Tawain was with Mr. Bowman. By his own
15 admission, by his own admission he was there when
16 the shooting took place and he was there during the
17 burning of the car, if memory serves me right.

18 Q Okay. You believe that's true?

19 A Yes, sir.

20 Q Okay. You say if memory serves you right.
21 Helping dispose of the body or burn the car with
22 the body afterward would be accessory to murder,
23 wouldn't it?

24 A Yes, sir.

25 Q Now, to back up a step, what facts made

1 Tawain or supported the argument he was guilty of
2 murder? I understand he didn't plead to that but
3 his murder charge got dismissed after Mr. Bowman's
4 trial and he entered a plea agreement that
5 subjected him, if he did not cooperate, to a murder
6 charge. What facts in your knowledge supported his
7 guilt to murder?

8 A The fact he was there when it happened, had
9 prior knowledge based on statements we had that Mr.
10 Bowman was planning to kill her.

11 Q He knew that Mr. Bowman was going to kill
12 Kandee Martin before her shooting?

13 A Based on the information provided to us, yes,
14 sir.

15 Q Would you like to take the opportunity to
16 look through your file and find that information,
17 please, and I will certainly provide you with his
18 statement if you would like to look at that?

19 THE COURT: Let know when you're ready to
20 start, Mr. Coker.

21 All right, the last question to Mr. Coker was
22 did he have anything in the file that indicated Mr.
23 Mr. Gadson's knowledge about the murder before it
24 happened?

25 MR. BROWN: Actually what made him guilty of

1 murder, what supported his participation --

2 THE COURT: I thought the question was about
3 did he have anything in the file regarding whether
4 he knew the murder was going to happen before they
5 went out there.

6 MR. BROWN: That was a more specific
7 question.

8 THE COURT: That was the question?

9 MR. BROWN: Yes, sir. Because of the
10 preceding question had to do with what made him
11 guilty.

12 THE COURT: That's the question. Do you have
13 anything in your file?

14 THE WITNESS: In Mr. Gadson's statement he
15 provided.

16 BY MR. BROWN:

17 Q Which of those two?

18 A The second statement.

19 Q It's on the back.

20 A Plaintiff's Exhibit 6. He indicates that
21 while riding out to Nursery Road Mr. Bowman kept,
22 had his hand up, kept acting, pointing like he was
23 shooting a gun toward the back of her head, in a
24 gesture as if he were shooting her.

25 Q Okay. And was there any question that he saw

1 a gesture indicating shooting as opposed to
2 pointing out houses to rob? You would want to know
3 that?

4 A No. The story as given to us was he had his
5 finger up toward the back of her head like he was
6 shooting a gun toward her head.

7 Q If he told you his hand was up gesturing, the
8 same finger, index finger out towards a house to
9 rob, that wouldn't have the same significance to
10 you, would it?

11 A If he were maybe pointing out the window.

12 Q Would it have the same significance for the
13 murder, he's pointing at a house as opposed to
14 pointing at her head?

15 A I would, personally I would think that, you
16 know, there is something else going on.

17 Q There is a difference between pointing at a
18 house out the window with the index finger and
19 pointing to the back of someone's head with the
20 index finger?

21 A Yes.

22 Q One is indicative of a murder, one is
23 indicative of something else?

24 A You could say that.

25 Q Okay. And that is not something that was

1 just ambiguous or accidentally put in his statement
2 that you typed for him?

3 A No, sir.

4 Q And that's the evidence that he knew there
5 was going to be a murder before the shots were
6 fired? This was before the shots were fired?

7 A Yes, sir.

8 Q And that's, again to just kind of go back to
9 that question, that is your at least in part
10 evidence that Tawain Gadson knew about the murder
11 prior to the murder itself?

12 A Yes, sir.

13 Q Now, what information did you have that he
14 participated as an affirmative act with that
15 knowledge of the murder?

16 THE COURT: Are we waiting for the next
17 question?

18 A He was talking.

19 THE COURT: I guess he was waiting to answer
20 the question when you were listening.

21 Q I'm trying to do both, Your Honor.

22 A Sorry. Also the information that Mr. Gadson
23 gave us in that same statement was that Mr. Bowman
24 had told him he was going to kill Kandee Martin
25 because she had been wearing a police wire when she

1 bought drugs from Mr. Bowman at some earlier date.

2 Q As an aside, was that true, was she an
3 informant?

4 A No one would confirm that.

5 Q I thought so.

6 A We didn't know.

7 Q How about Clarence Booker, do you know who
8 that is?

9 A I recall seeing the name in the file.

10 Q Clarence Booker is a drug trafficker, in
11 prison now.

12 MR. WATERS: Your Honor --

13 THE COURT: I'm beginning to think this is
14 totally irrelevant. Proceed.

15 MR. BROWN: We'll back out of that at this
16 point in time.

17 BY MR. BROWN:

18 Q Did you all turn over evidence of her being
19 an informant as that would lead to other killers?

20 A We never found any evidence of her being an
21 informant.

22 Q Did you look?

23 A Orangeburg County said she wasn't working for
24 them, SLED said ~~she wasn't working~~ for them, and we
25 never were able to find any truth to that.

1 Q DEA?

2 A No one would admit that that she was involved
3 as being an informant. Everyone denied it.

4 Q Are there rules about identifying the
5 identify of informants?

6 A We never got any information from anyone in
7 those regards.

8 Q Okay. According to Tawain's own statement,
9 number two, he knew there was going to be a
10 killing?

11 A I think he had knowledge of it, yes, sir.

12 Q And to make that knowledge and presence to be
13 guilty of a crime, for criminal liability, what
14 steps did he take, to your knowledge, what facts do
15 you have he took some step in accordance with that?

16 MR. WATERS: I don't see how this is relevant
17 to any issue.

18 THE COURT: Is there anything you haven't
19 told him already about that?

20 MR. BROWN: He has told me nothing, he told
21 me nothing about what Tawain Gadson did. I have
22 asked Tawain Gadson what he did. All we know, that
23 he was present at the scene of the crime. Without
24 knowledge, he was not guilty of anything.

25 THE COURT: So therefore you are here wanting

1 his conviction to be reversed?

2 MR. BROWN: I don't believe it and they
3 didn't believe it.

4 THE COURT: But he was convicted of it. I
5 mean, whether he should have been or shouldn't have
6 been, I'm not sure I'm getting your point.

7 MR. WATERS: This has no relevance to Mr.
8 Marion Bowman's trial. The only issue would be of
9 relevance would be if the police did not disclose
10 the information that they had of any Brady. They
11 are subject to believe how the prosecutors
12 ultimately decided to resolve Mr. Gadson's claims,
13 as long as that was out in the open, and there is
14 no indication it wasn't, and certainly no issue
15 that he --

16 MR. BROWN: Your Honor, this is whether he
17 was impeached. There is no record, seventeen pages
18 isn't much impeachment of Tawain Gadson. Whether
19 he held her arms while she was shot, pushed her
20 down while she was shot, or did any single thing
21 that made him guilty. That is the way I would
22 examine the star witness. It isn't, "Were you the
23 shooter? You did A, B, C, are you guilty of
24 murder," blah, blah, blah.

25 MR. WATERS: Of course we're going on the

1 standard of what a reasonable lawyer would do,
2 whether or not he was ineffective and that
3 ineffectiveness was a major contributor to Mr.
4 Bowman being convicted.

5 MR. BROWN: Which there is zero impeachment
6 with his criminal activity, that is textbook
7 malpractice, Your Honor.

8 MR. WATERS: Your Honor, the law is clear
9 that cross examination is purely in the strategic
10 control of the attorney and there are all kind
11 different styles and viewpoints on it are
12 warranted. I think it is rare to say you should
13 ask that question or this question would ever be
14 the standard to claim cross examination is
15 ineffective. I guess we're getting into legal
16 argument. Bottom line is this inquiry is
17 irrelevant to that issue.

18 MR. BROWN: Your Honor, if he asked whether
19 or not he was looking at the stars, "Weren't you
20 looking at the stars instead of the barrel of the
21 gun?"

22 THE COURT: We're still going way beyond this
23 witness. I think this witness is trying to tell
24 you all he can. However, we all know that
25 prosecutors, once the case is theirs, and defense

1 attorneys, are creative in trying to work out
2 things that sometimes the judge accepts and
3 sometimes the judge will not accept, but was trying
4 to find out if there is something about his
5 investigation he hadn't told you regarding Gadson.

6 Is there something about Gadson you haven't
7 told him about the investigation?

8 THE WITNESS: No, sir.

9 THE COURT: He has told you everything he
10 knows about Gadson's involvement.

11 BY MR. BROWN:

12 Q So, you have no information he did anything?

13 THE COURT: Other than what he has told you.

14 MR. BROWN: He didn't tell me he did
15 anything. He was there.

16 THE COURT: What else is your information
17 about Gadson?

18 THE WITNESS: He was there.

19 BY MR. BROWN:

20 Q What else?

21 A He went back later.

22 Q He went back later to the body scene?

23 A To the body scene.

24 Q Helped put it in the car?

25 A Helped put her in the car, or was there when

1 she got put in the car and was there during the
2 burning of it.

3 Q Of the body in the car?

4 A Yes.

5 Q By Travis Felder and Marion Bowman?

6 A Yes.

7 Q What information did you have to make Travis,
8 I mean Tawain Gadson guilty to accessory after the
9 fact that he wasn't there at the killing?

10 A I need to correct myself. According to Mr.
11 Gadson's statements he wasn't there when the car
12 was burned.

13 Q Is it true he was or is it true he wasn't?

14 MR. WATERS: Your Honor, I would object. All
15 he can say is what he gathered by his
16 investigation.

17 THE COURT: Just tell us what your
18 investigation is, what your investigation showed.

19 A Based on information we had he was not there
20 when the car was burned but that Mr. Travis Felder
21 was there and Mr. Felder allegedly told him the car
22 had been burned.

23 Q What about Darien Williams' statement?

24 MR. WATERS: Jim, I can't see the witness.

25 MR. BROWN: I'm sorry.

1 THE COURT: That helps?

2 MR. WATERS: Mr. Brown --

3 MR. BROWN: Yes, sir.

4 MR. WATERS: -- you're standing right in my
5 way.

6 THE COURT: Let's go.

7 THE WITNESS: If I might have a moment to
8 find this info.

9 MR. BROWN: Let me see if I can help you.
10 How about Plaintiff's 35 and Plaintiff's 36?

11 MR. WATERS: Mr. Brown --

12 MR. BROWN: And I'm using the exhibits --

13 THE COURT: I tell you what, for everybody's
14 situation, if anyone wants to move, just move, you
15 can stand in front of Mr. Brown, I will tell you to
16 move, too.

17 MR. BROWN: Thank you.

18 THE COURT: Except Mr. Brown apparently feels
19 it's important to stand where he's standing, I
20 assume.

21 MR. BROWN: Well, I'm in proximity to the
22 witness and the exhibit, Your Honor.

23 THE COURT: In attempting to unblock the view
24 I had forgotten the last question as you went over
25 it.

1 MR. BROWN: He said he no longer had
2 information.

3 THE COURT: The question?

4 MR. BROWN: The question was did Darien
5 Williams not say Tawain Gadson was there when the
6 body was put in the trunk and burned.

7 THE COURT: Did you have a statement from
8 Darien Williams?

9 THE WITNESS: I'm reading over it, you know,
10 Your Honor.

11 MR. BROWN: I have provided two plaintiff's
12 exhibits or two statements of Darien Williams.

13 THE COURT: If the statements say that why do
14 we need to ask him?

15 MR. BROWN: Because he said he was wrong, he
16 didn't have information Tawain was there.

17 THE COURT: Right.

18 MR. BROWN: But these statements say he was
19 there.

20 THE COURT: So therefore those statements say
21 he was there.

22 MR. BROWN: I'm trying to prove it in
23 evidence, not by my statement.

24 THE COURT: If he's making a mistake in his
25 answer today what's the relevance of it?

1 MR. BROWN: Because I don't want to bring him
2 back to clarify --

3 THE COURT: We know for a fact Darien
4 Williams made the statements because they are in
5 evidence, they're in evidence.

6 MR. BROWN: Your Honor, it is hard for me to
7 apologize for being an advocate for my client,
8 aggressive advocate for my client.

9 THE COURT: I'm not asking you not to be.
10 Are you asking did he maybe not have possession of
11 these statements?

12 MR. BROWN: He said he didn't have
13 information Tawain was there and I believe I'm
14 impeaching his answer with two exhibits.

15 THE COURT: All right, let's impeach him.
16 Did you then not have -- did you have those
17 statements?

18 THE WITNESS: Not at the time I wrote my
19 notes, Your Honor. It may be in my notes farther
20 back.

21 BY MR. BROWN:

22 Q Does it indicate the date, or I will do it by
23 looking at the exhibit, that those statements were
24 taken?

25 A 35 was taken on 2/22.

1 Q Of 2001?

2 A 2001. And the notes I was reading from were
3 actually done on 2/18, 2001.

4 Q And you have got, those notes have been
5 updated, right?

6 A They probably are.

7 Q Why don't we look at a set after that date to
8 see if you had that information contained in those
9 two statements?

10 A According to Mr. Williams' statement, Exhibit
11 35 --

12 THE COURT: Are we all listening to the
13 answer here?

14 Q Yes, sir.

15 A Mr. Williams stated that Marion dropped him
16 and Tawain off in front of the apartments.

17 Q Does he also not indicate in the other
18 statement that Tawain was there at the crime scene,
19 the arson?

20 A In State's Exhibit 36, where he indicates
21 that Marion and Tawain got out and that Travis
22 Felder followed them there from the club and that
23 Marion put the babyseat in the trunk, he took the
24 babyseat out of the trunk, put it back on the back
25 seat and Tawain stood by while Marion and Travis

1 dragged Kandee's body out of the woods and the two.
2 of them put her in the trunk. He says he could see
3 blood on her clothes.

4 Q That statement, Darien Williams clearly
5 indicates at the time of the placement of the body
6 in the trunk and the burning of the car Tawain
7 Gadson was present at the arson scene?

8 A Yes, sir.

9 Q During the commission of the arson?

10 A Yes, sir.

11 Q Okay. Now, that is some information that he
12 aided the arson by being present there?

13 MR. WATERS: Your Honor, again I object to
14 relevance of this. If he wants to ask these
15 questions of Norb Cummings as to why he didn't, if
16 that is what the statement says and why he didn't
17 then ask Gadson or whoever else.

18 MR. BROWN: I appreciate that advice.

19 MR. WATERS: But I don't understand --

20 MR. BROWN: But it is my trial, Your Honor,
21 and I --

22 THE COURT: He is not trying to give you
23 advice, he is explaining an objection.

24 MR. WATERS: It is not relevant unless this
25 officer did not turn over something, then that

1 might be relevant to this proceeding, but this
2 questioning goes nowhere, Your Honor.

3 MR. BROWN: Your Honor --

4 MR. WATERS: I object.

5 MR. BROWN: Your Honor --

6 THE COURT: Continue on, Mr. Brown.

7 MR. BROWN: Thank you, Your Honor.

8 BY MR. BROWN:

9 Q Besides the information that Tawain was
10 involved as an accessory after the fact by
11 disposing of the body killed during the shooting he
12 witnessed and knew about beforehand, what
13 information did you have to support the threat of
14 the murder prosecution against Tawain Gadson?

15 MR. WATERS: Your honor --

16 THE COURT: Overruled. Do you have anything,
17 you're not the one prosecuting, I understand that
18 but as for as any investigation evidence, I'm
19 really trying not to get your opinion, I don't want
20 your opinion.

21 BY MR. BROWN:

22 Q I'm going to show you Plaintiff's 3. I don't
23 know if you are aware of that. It is in the
24 Clerk's file, Tawain Gadson's plea agreement. You
25 were the lead investigator, I don't know if you

1 were aware, you were at some of the court
2 proceedings.

3 A I may have received a copy of it after the
4 court proceedings.

5 Q And clearly the document, Plaintiff's 3,
6 indicates the State at some point said without
7 cooperation that Gadson was subject to murder.
8 Now, what evidence --

9 MR. WATERS: Your Honor.

10 THE COURT: Wait a minute. That is the State
11 saying it, not him.

12 MR. BROWN: He is the lead detective, my
13 question is as the lead detective.

14 THE COURT: Tell us this, sir, just tell me
15 this. Tell him this and end it here. Tell us all
16 the information you had about Tawain Gadson, tell
17 me all the information you had about what his part
18 of the crime was, tell us and that is all, that's
19 all, tell us what you haven't told us already about
20 Tawain Gadson's participation in the crime. Is
21 there anything you haven't told us that you as
22 investigator found out?

23 THE WITNESS: Not that I'm aware of, Your
24 Honor.

25 THE COURT: He says his information, then,

1 would be what he has already told you about what he
2 had about Tawain Gadson's involvement. I already
3 know it, I heard him say it. So, therefore let's
4 proceed on.

5 MR. BROWN: And, Your Honor, I'm sorry, I'm
6 not sharp enough to process that much testimony.

7 THE COURT: Do you want him to repeat what he
8 said already?

9 MR. BROWN: I want time to write down what
10 that guilt fact for Tawain Gadson for murder is.

11 THE COURT: All I want you to tell me is what
12 you investigated as for as participation of Tawain
13 Gadson. You don't make prosecution as to murder,
14 you gather information, is my understanding of the
15 criminal justice system. Can you tell us what
16 information you gathered about the participation of
17 Tawain Gadson in this event? If you want to
18 summarize it, summarize it.

19 THE WITNESS: We had statements from Mr.
20 Bowman, a number of statements putting Mr. Gadson
21 there. Mr. Gadson in his own statements put
22 himself there before and after.

23 BY MR. BROWN:

24 Q Whose statement put him there before and
25 after?

1 A Mr. Gadson's puts him there in the car with
2 Mr. Bowman at the scene when the shooting took
3 place, puts him there going back.

4 Q Gadson's statement put him going back to the
5 scene of the killing?

6 A We have Mr. Williams' statements putting him
7 there.

8 Q And buying the gasoline, according to Mr.
9 Williams' statement?

10 A Yes, sir.

11 Q So, he did no affirmative act to be guilty of
12 murder?

13 MR. WATERS: Your Honor, I object.

14 THE COURT: I sustain. That's a legal
15 conclusion. You can say what you did to make you
16 go get the warrant and all that, I thought you
17 already had, but what else do you want to ask him?

18 Q Before the trigger was fired what did Tawain
19 do that you investigated?

20 A He was standing in the roadway.

21 Q And if there is shooting out front and we all
22 witness it do we arrest everybody for that?

23 A No, sir.

24 Q And what is the difference?

25 A I'm not following your question totally.

1 Q What did he do that was wrong?

2 A As for as the warrant, based on the
3 information that we had at the time, he was charged
4 with --

5 Q At which time?

6 A Early on in the investigation.

7 Q You are talking about --

8 A We had enough probable cause at the time, we
9 got a warrant charged him with murder.

10 Q And what kept that murder indictment pending
11 until and after the trial of Marion Bowman?

12 MR. WATERS: Your Honor, I object. That's
13 clearly within the purview of the prosecutor.

14 MR. BROWN: We're bringing the prosecutor
15 here, too, I know we're going to ask him those
16 questions.

17 THE COURT: Good, ask the prosecution.

18 BY MR. BROWN:

19 Q What evidence did you provide the prosecutor
20 upon his request or not regarding Tawain Gadson's
21 guilt of murder, not accessory after the fact?

22 A The prosecutor had a copy of the entire case
23 file, front to back, everything I had he had.

24 Q Okay.

25 MR. BROWN: And, Your Honor, that answer, I

1 guess we will go through each document in that file
2 and ask whether that was information about Tawain.
3 I'm trying to tie this down --

4 THE COURT: I'm just curious --

5 MR. BROWN: That's the heart of the case.

6 THE COURT: Yes, sir, but he keeps answering
7 over and over about the same thing. He says he
8 gave the prosecution his entire file, he says, he
9 has already said what his investigation revealed to
10 him about Tawain Gadson's. Other than him saying
11 here two or three times what his investigation
12 revealed how Tawain Gadson was involved in this
13 event, what other information do you want?

14 MR. BROWN: And you know what, Your Honor, I
15 agree, I think a simpler thing would be to move his
16 file into evidence.

17 THE COURT: Okay. Do you have any -- have
18 you already got copies of the file?

19 MR. BROWN: I have a acopy of his file.

20 MR. WATERS: I have a copy but obviously
21 there is all kind of various objections that go to
22 every individual document in there. I don't mind
23 marking it as a court's Exhibit, and I don't know
24 if we can like reserve all objections as to the
25 form as to any particular document, but I can't

1 agree to admitting an entire file. I have gone
2 through it but there is all kinds of things in
3 there. If we just wanted to put it in only for the
4 purposes of his investigation, I have no objection
5 to that, but as for as any hearsay, there is all
6 kinds of stuff.

7 MR. BROWN: In response, because his
8 limitations are well received by plaintiff, what we
9 would suggest is tag it as admissible as his
10 response of the evidence of Tawain Gadson's guilt.

11 THE COURT: So, you think there are things in
12 the file he hasn't testified to here today?

13 MR. BROWN: He said, the question was what
14 evidence he had about Tawain Gadson that he gave
15 the prosecutor.

16 THE COURT: I'm just curious --

17 MR. BROWN: He said, "My file."

18 THE COURT: I'm just curious. Are you
19 contending there are things in the file that he is
20 not telling the Court today about his investigation
21 of Tawain Gadson?

22 MR. BROWN: That is not a yes or no answer,
23 Your Honor.

24 THE COURT: What kind of answer is it? I'm
25 just curious, do you want me to send him outside

1 and you can answer the question?

2 MR. BROWN: That is not the problem. I will
3 be quite honest with you.

4 THE COURT: Are you all contending he is not
5 telling us something? I mean, is he holding back
6 from me?

7 MR. BROWN: The contention, which I will put
8 here, the argument, I don't know it is what you
9 want, is that they had knowledge that they relied
10 upon, this is classic Kyle v. Whitley, they had
11 knowledge and belief that Tawain Gadson was the
12 shooter, they believed that through that plea
13 agreement.

14 THE COURT: All right. So, you had
15 information Mr. Gadson was the shooter you are not
16 telling me about?

17 MR. BROWN: I didn't say not telling.

18 THE WITNESS: No, sir. Early on information
19 provided by Mr. Bowman was that Tawain Gadson was
20 the shooter, he and a man named Terry Kelly.

21 THE COURT: When you say he and a man who is
22 he, Mr. Bowman and Mr. Kelly, or Mr. Kelly and Mr.
23 Gadson?

24 THE WITNESS: Mr. Bowman initially provided
25 us with information that Mr. Gadson and Terry Kelly

1 were the two people that killed Kandee Martin. We
2 obtained warrants on Terry Kelly and on Mr. Gadson
3 for the murder. It was later determined that Mr.
4 Kelly wasn't involved, wasn't there, those warrants
5 were dismissed. Once we, once we got Mr. Gadson,
6 started interviewing him, of course other things
7 came out about Mr. Bowman and the case just
8 blossomed from there.

9 MR. BROWN: And, Your Honor, Your Honor is
10 aware that on May 13th, 2002, the State, and this
11 is not a question for him, this is part of my
12 argument, the State said, "Tawain Gadson, if you
13 don't cooperate with us we may charge you with
14 murder again and seek the death penalty without
15 your objection," and you can't do that for somebody
16 who has no evidence, that there is no belief. The
17 State believed Tawain Gadson --

18 THE COURT: The State did that having no
19 evidence other than they are trying to persuade Mr.
20 Gadson to cooperate?

21 MR. BROWN: That is relevant --

22 THE COURT: Regarding Mr. Cummings?

23 MR. BROWN: That is relevant impeachment
24 material, that the State is bluffing a man into
25 pleading when he has no guilt. Their

1 investigation, whether it is sterling or sloppy, or
2 their shifting beliefs --

3 THE COURT: What questions do we have left to
4 ask this person?

5 MR. BROWN: He answered it by saying, "My
6 entire file." I said that's fine, let's move it
7 into evidence.

8 THE COURT: As a court exhibit put the file
9 in. We're really getting too much final argument
10 here than we are questioning.

11 MR. BROWN: It is only in response to his
12 objection, Your Honor.

13 THE COURT: I know, but I just get concerned
14 about the same question asked over and over.

15 MR. BROWN: If he sat down and didn't object
16 I wouldn't have to argue.

17 THE COURT: Well -- the next question of this
18 witness? The file is in as a court exhibit.

19 MR. BROWN: It doesn't go in the record as
20 that.

21 THE COURT: It will be part of the file of
22 the case.

23 MR. BROWN: My understanding, I have to
24 reference my knowledge with, with other court
25 reporters, that on appeals that court exhibits do

1 not go up.

2 THE COURT: Yes.

3 MR. WATERS: Court exhibits can go up if they
4 are designated.

5 THE COURT: I always do it in every trial I
6 have, especially messages from the jury and all
7 that while they're deliberating, so in any event,
8 it will go up.

9 MR. WATERS: Your Honor, I just also for
10 safety's sake, I think we need to verify there from
11 Mr. Coker he has a copy of that file in case there
12 is other proceedings.

13 THE WITNESS: That is my file.

14 THE COURT: Make copies of it.

15 THE WITNESS: I have provided copies to Mr.
16 Waters and to --

17 MR. BROWN: Mr. Sinclair.

18 THE WITNESS: -- Mr. Sinclair.

19 MR. BROWN: And my investigator.

20 THE COURT: Do you all have a copy? I'm not
21 going to have him put the original in.

22 MR. BROWN: Actually I haven't verified it's
23 the same copy. I take his word for it but that is
24 my copy.

25 THE COURT: Okay. What I'm telling you is

1 I'm not going to require him to put the original
2 in. If you all want to at some break go over that
3 with him and put a copy in, that's fine.

4 MR. BROWN: What I would suggest is that we
5 substitute out a copy of that file just like we did
6 the polygraph.

7 THE COURT: That's what I'm saying, that is
8 what we're doing.

9 MR. BROWN: I don't have a copy to
10 substitute, I have my copy.

11 THE COURT: Whatever. He may put a copy of
12 that, you all can work it out with him to get a
13 copy of it.

14 MR. BROWN: Excellent. And just for the
15 record I'm moved it as the next plaintiff's
16 exhibit, Number 42, I move the entire file of Alvin
17 Coker in in response to his question that the
18 evidence that he had of Tawain's guilt is, quote,
19 in his file.

20 THE COURT: All right.

21 (Investigative filed marked as Plaintiff's
22 Exhibit Number 42 for Identification).

23 THE COURT: Your next question?

24 BY MR. BROWN:

25 Q Let's talk about Travis Felder. You were

1 involved in the investigation of the fire?

2 A No, sir. State Law Enforcement Division was
3 involved in the arson investigation.

4 Q I guess I go back to the legal part. You
5 were involved as lead investigator in the
6 investigation of Travis Felder?

7 A Yes, sir.

8 Q Okay. If you will take a look at --

9 MR. BROWN: Beg the Court's indulgence one
10 second.

11 Q For purposes of refreshing your recollection
12 would you take a look at Plaintiff's 17 and
13 Plaintiff's 18?

14 A Seventeen was the warrant affidavit against
15 Mr. Travis Felder, charging him with accessory to a
16 felony, murder and arson.

17 Plaintiff's Exhibit 18 would be the warrant
18 affidavit charging Mr. Felder with arson third
19 degree.

20 Q Okay. Does that refresh your memory of
21 Travis Felder's case?

22 A Somewhat.

23 Q Were you the detective on that case?

24 A I was the lead investigator for the entire
25 case. Agent James Helms did most of the arson

1 investigation side.

2 Q Do you know where the E-Z Horizon store is?

3 A Yes, sir. It's in Branchville. There is
4 actually two stores with the same name across the
5 street from each other.

6 Q And do you recall who purchased the gasoline
7 from E-Z Horizon Mart?

8 A Yes, sir. Based on some of the statements
9 and stuff there was some talk about the fact they
10 went and purchased gas.

11 Q Okay. And was it Travis Felder that bought
12 the gas?

13 A I believe so, yes, sir.

14 Q Okay. That was your belief during the
15 prosecution of this case?

16 A Yes, sir.

17 Q And was that information conveyed to the
18 prosecutor?

19 A Yes, sir.

20 Q And that was conveyed to him prior to Mr.
21 Bowman's trial?

22 A Yes, sir.

23 Q There is no question about that?

24 A Everything we had in the case was given to
25 the Solicitor's office.

1 Q Specifically the information that Travis
2 Felder purchased the gas?

3 A I'm quite sure it was.

4 Q Quite sure?

5 A Yes, sir.

6 Q Okay. What information did you have that
7 Travis Felder was accessory to the murder?

8 A If I might refer back to my notes?

9 Q And this is the same item which would be
10 proffered as Plaintiff's 42 and Court Exhibit 2,
11 for the record.

12 A Okay, sir. Mr. Gadson indicated that Mr.
13 Felder told him the car had burned. And Mr. Darien
14 Williams later indicated he was there. According
15 to my notes Mr. Felder would not give us a
16 statement when we talked to him.

17 Q Was that -- do you have a date that Mr.
18 Felder refused to speak with you?

19 A 2/19/01. I think that was the day of the
20 arrest. If I might, can you repeat the question
21 again, Mr. Brown?

22 Q Sure. Is there any question Travis Felder
23 bought the gas?

24 MR. WATERS: Your Honor, I object. That is
25 beyond his knowledge, again.

1 MR. BROWN: He already answered.

2 THE COURT: Did your investigation reveal he
3 bought the gas, is that what your investigation
4 reveals?

5 A Based on other statements he bought the gas,
6 yes, sir.

7 Q How about the E-Z Horizon videotape?

8 A The videotape that I viewed was very poor
9 quality, I could not recognize anyone on the video.
10 I think they sent the video, or the video was sent
11 to SLED in an attempt to try to print some still
12 photos from it. They didn't have a lot of success
13 in printing them because of the way the tape was
14 recorded. There were a few photos that were made,
15 which I got copies of and, as I say, I can't
16 recognize anyone on those photographs.

17 Q Okay. You went and interviewed Mr. Felder
18 and took him that video from your folder and said,
19 "Is this you on it," with Charles Williams as his
20 lawyer?

21 A I may have, I don't recall.

22 Q And he said, "That's my face on that video"?

23 MR. WATERS: Your Honor, I object to the
24 leading.

25 A I don't recall that.

1 THE COURT: He said he doesn't recall.

2 Q What did he say when he was questioned about
3 his face being on the video?

4 A I don't recall. I don't have that in my
5 notes, that I can find.

6 Q If that wasn't him on the video would you
7 have still charged him with this?

8 A I'm sure I wouldn't.

9 Q Your accusing him with the arson was based on
10 the fact he was the person purchasing the gas from
11 the E-Z Horizon store?

12 MR. WATERS: I can't hear, Mr. Brown. Would
13 you speak up, please?

14 THE COURT: He said are you charging him with
15 arson because he was the one that purchased the gas
16 at the E-Z Rider Convenience Store.

17 Q Horizon.

18 THE COURT: Horizon.

19 A That and based on the co-defendant's
20 statements, yes, sir.

21 Q And that video?

22 A Yes, sir.

23 Q And that being, I just want to make sure, I
24 want to make it clear, and that video?

25 A Again, I don't recollect everything on the

1 video, I haven't seen it since this investigation,

2 so --

3 Q For the record, the video is marked for
4 purposes of this record as Defense Exhibit 19 from
5 the trial record, Your Honor, and it has been or is
6 being located by the Clerk of Court.

7 THE COURT: When you say this exhibit, the
8 exhibit --

9 MR. BROWN: The videotape.

10 THE COURT: The video from the E-Z Horizon?

11 MR. BROWN: And the purchase of the gasoline.

12 BY MR. BROWN:

13 Q That was something you all certainly were
14 interested in?

15 A We were. I think Detective Miller initially
16 picked up the tape, gave it to me, I in turn gave
17 it to Agent Helms who took it for further analysis
18 at SLED headquarters.

19 Q And eventually it ended up in the hand of the
20 prosecutor?

21 A Yes, sir.

22 Q And that was a crucial piece of evidence
23 regarding the arson charge?

24 A Yes, sir.

25 Q Regarding who to charge with the arson?

1 A Yes, sir.

2 Q Now --

3 MR. BROWN: Beg the Court's indulgence while
4 I look for the document, Your Honor.

5 THE COURT: While you're looking at
6 everything let's take a few minutes.

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: Step down, just don't discuss
9 your testimony with anyone.

10 MR. BROWN: Thank you, Your Honor.

11 (Recessed at 11:54 a.m.).

12 (Reconvened at 12:20 p.m.).

13 THE COURT: All right, let's come on with
14 your questions of Investigator Coker.

15 MR. BROWN: Thank you..

16 BY MR. BROWN:

17 Q I will hand you what has been marked as
18 Plaintiff's 43 and 44 and ask you if you recognize
19 those documents?

20 A 43 would be the indictment for arson third
21 degree for Travis DeWitt Felder, and 44 is the
22 accessory after the fact indictment against Travis
23 DeWitt Felder.

24 MR. BROWN: And we would move those in
25 evidence. They are from the Clerk files, I don't

1 know if the State has an objection.

2 MR. WATERS: No objection.

3 THE COURT: What numbers again?

4 THE WITNESS: 43 and 44.

5 THE COURT: In evidence, 43 and 44.

6 MR. BROWN: Thank you.

7 (Travis Felder arson indictment markd and
8 received in evidence as Plaintiff's Exhibit
9 Number 43).

10 (Travis Felder accessory after the fact of
11 murder was marked and received in evidence as
12 Plaintiff's Exhibit Number 44).

13 BY MR. BROWN:

14 Q Who was the witness in the grand jury
15 proceedings regarding those charges?

16 A That would be me, sir.

17 Q Any other witnesses?

18 A No, sir.

19 Q And Mr. Felder was indicted in fact not for
20 accessory of fact of arson, but for arson?

21 A That's correct.

22 Q That is consistent with him purchasing the
23 gasoline?

24 A Correct.

25 Q Do you know a guy named Ricky Davis?

1 A I do not know him.

2 Q I'm sorry, do you know who Ricky Davis is?

3 A I have a letter from Ricky Davis that was

4 written but I do not know Ricky Davis.

5 Q Where did you get that letter from?

6 A It came through the jail.

7 Q Did it come. --

8 A I don't know who gave it to me.

9 Q Did it come from Mr. Bowman?

10 A I don't know who gave it to me. I cannot

11 recall who gave it to me or how I got it.

12 Q Did it come from Marva Hardee Thomas?

13 A Possible. I do not know and cannot recall.

14 Q Would you have noted it if it had come from

15 Mr. Bowman?

16 A I probably should have noted who it came from

17 in my notes but I did not, so --

18 Q Yes, sir. And when you say you got it from

19 the jail, you got the original one?

20 A I have the original.

21 Q Okay. And by chance the original envelope?

22 A There was no envelope.

23 Q You don't think there was an envelope?

24 A No, sir, just a handwritten note on a sheet

25 of legal pad.

1 Q And did that come -- you say it came from the
2 jail. Did it come in the mail?

3 A I can't recall how it came into my
4 possession. I can only assume it came through one
5 of the jailers and came to me.

6 Q Okay. And I was just really trying to figure
7 it out, there is no trap here or anything. I don't
8 know if your notes reflect, investigative notes,
9 about the receipt of that item but it is dated
10 August 6th?

11 A Correct.

12 Q And it was before the trial that you received
13 that?

14 A Correct.

15 Q So, it would be subsequent to August 6, 2001?

16 A Yes, sir.

17 Q And was it received about that time?

18 A I would assume so. I can't recall when I
19 received it, I don't recall who gave it to me.

20 MR. BROWN: Your Honor, the document I'm
21 going to show him is introduced as Plaintiff's 2 at
22 his deposition. We now seek to introduce it as an
23 exhibit for this hearing.

24 THE COURT: I thought it was in his file.
25 His file is coming in.

1 MR. BROWN: This is not the letter.

2 THE COURT: It's not in his file?

3 MR. BROWN: Actually I believe it is but I
4 wanted to mark it separately. His file is
5 cumbersome.

6 THE COURT: All right. Any objection?

7 MR. BROWN: What I was going to explain, I
8 was going to ask the court reporter to put the
9 Exhibit Number 45 on top of the Plaintiff's Exhibit
10 2 because it would be confusing, we already have a
11 Plaintiff's 2.

12 THE COURT: Okay.

13 MR. BROWN: I'm going to have it marked to
14 cover that.

15 MR. WATERS: No objection to that, Your
16 Honor.

17 THE COURT: It's in.

18 (Handwritten note marked and received in
19 evidence as Plaintiff's Exhibit Number 45).

20 BY MR. BROWN:

21 Q I will show you what has been marked
22 Plaintiff's Exhibit 45.

23 A Yes, sir, a handwritten note.

24 Q And just from Plaintiff's 45, those are notes
25 regarding your investigation into that letter that

1 you received, the Ricky Davis letter?

2 A It was just notes to the effect of, you know,
3 as for as his social and descriptors, address, what
4 he was charged with.

5 Q Okay. And at the bottom it says was in the
6 cell block with Tawain Gadson?

7 A Correct.

8 Q Is that something that you found out as part
9 of your investigation?

10 A Apparently so.

11 Q Okay. It is not a summary of the letter
12 itself, is it?

13 A No.

14 Q Okay. And is another copy of that in your
15 file?

16 A Yes, sir, I have the original right here.

17 Q Of the letter? You also have the original
18 note?

19 A Of this note, yes, sir.

20 Q And that is also in the file?

21 A Yes, sir.

22 Q Are they actually contained in very close
23 proximity?

24 A Back to back.

25 Q Okay. To kind of keep the record succinct,

1 I'm trying to find Ricky Davis' letter. And the
2 letter we're referring to, the Ricky Davis letter
3 of August 6, there is a Plaintiff's Exhibit 11.
4 Does Plaintiff's Exhibit 11 look like that letter,
5 a xerox of that letter?

6 A Yes, sir, that is a copy of it.

7 Q Not a very legible one, or not nearly as
8 legible.

9 A No, sir. I didn't make all these copies.

10 Q I'm sorry, for the record, okay, I think the
11 file contains the original so it is better, more
12 legible?

13 A Correct.

14 Q I'm going to show you what is marked for ID
15 as Plaintiff's Exhibit 46. See if you identify
16 that?

17 A Yes, sir. That's the handwritten note I made
18 where James Tawain Gadson said he had a High Point
19 9 millimeter from Woody's Pawn Shop sometime in '99
20 or 2000. He alleged it was stolen from his
21 sister's car in Orangeburg and that Darien Williams
22 was with him at the time.

23 Q Okay. And two things I want to focus on in
24 that. That's Tawain Gadson's statement to you?

25 A Yes, sir.

1 Q And Tawain Gadson says he bought a gun from a
2 pawn shop?

3 A Yes, sir.

4 Q Tawain Gadson says that gun is a 9 millimeter
5 gun?

6 A Correct.

7 Q That is not in fact true, is it?

8 A No, sir. In fact he had purchased a .380.

9 Q A High Point .380?

10 A Yes, sir.

11 Q He also tells you he no longer has that gun,
12 doesn't he?

13 A Correct.

14 Q He says it was stolen from under a brick or
15 out of a car?

16 A Out of a car.

17 Q All right. Did he ever tell you it was
18 stolen from under a brick?

19 A Not that I recall.

20 Q Not that your note there indicates?

21 A No.

22 Q And as straightforward as I can, is there
23 anything you would like to look at in your file
24 that would help you find out or remember if Tawain
25 Gadson ever told you his gun was stolen from under

1 a brick instead of a car?

2 A I don't recall him ever telling me that but
3 give me a moment to look back through my notes.

4 Q I just want to make sure.

5 MR. BROWN: While he is looking, Your Honor,
6 we would now move Plaintiff's Exhibit 46 into
7 evidence with the caveat that the highlighting
8 marks on it were put there by counsel for the
9 plaintiff in this proceeding and not by Mr. Coker.

10 MR. WATERS: No objection, Your Honor.

11 THE COURT: Is that the original?

12 MR. BROWN: No, sir.

13 THE COURT: Why can't we copy it again and
14 you won't have the highlighting?

15 MR. BROWN: I have no problem substituting
16 it.

17 THE COURT: We'll do that later. If it is
18 not, we realize the green highlighting was done by
19 Mr. Sinclair.

20 MR. BROWN: Thank you, Your Honor.

21 THE COURT: So you won't be blamed for it.

22 MR. BROWN: Thank you, Your Honor.

23 THE COURT: In evidence.

24 MR. BROWN: Thank you.

25 (Handwritten note regarding Tawain Gadson's

1 purchasing gun marked and received in
2 evidence as Plaintiff's Exhibit Number 46).

3 THE COURT: Have you looked through your file
4 enough to know whether the gun was behind a rock or
5 whatever?

6 THE WITNESS: As for as the gun he purchased,
7 what I have in my notes on 2/19/01, I stated it was
8 stolen from a car, his sister's car while he was in
9 Orangeburg.

10 THE COURT: Okay.

11 BY MR. BROWN:

12 Q Thank you. Are you familiar with a Tiara
13 Coleman and Margaret Hawkins?

14 A I might can recall interviewing them or
15 taking part in some interviews with them, with
16 them, I believe.

17 Q I'm going to show you what has been marked as
18 Plaintiff's Exhibits 29 and 30 which are already in
19 the record.

20 A Yes, sir. I was not present when these
21 statements were taken but I do have copies in my
22 file.

23 Q Okay. With that I will, I will move to a
24 different issue we talked about.

25 You talked to, when you talked to Tawain

1 Gadson about the theft of his gun as noted in
2 Plaintiff's Exhibit 46 did he tell you he reported
3 the gun stolen?

4 A No, sir. He said he never reported it
5 stolen.

6 Q And would that be even to a pawn shop owner?

7 A He said he never reported the 9 millimeter
8 stolen. He didn't specify police or whatever.

9 Q And if he would have told you that he
10 reported it stolen to a pawn shop owner would you
11 have noted that?

12 A Yes, sir.

13 Q And that is something you would have followed
14 up on?

15 A Yes, sir.

16 Q To see if he had reported it stolen prior to
17 Kandee Martin's death?

18 A Yes.

19 Q Are were you involved in any way in the
20 retrieval of the casings that are referenced in the
21 statements listed as Plaintiff's 29 and Plaintiff's
22 30?

23 A No, sir. That would have been Agent Helms
24 from the State Law Enforcement Division.

25 Q I'm running the risk of some hearsay here.

1 Is there any question he didn't retrieve those
2 casings?

3 A No, sir.

4 MR. WATERS: I object -- withdraw the
5 objection.

6 MR. BROWN: I will ask Agent Helms.

7 THE COURT: He answered.

8 BY MR. BROWN:

9 Q So, did he get those casings?

10 A Yes, sir.

11 Q And to try to finish out this chain here,
12 would those have been turned over ultimately to
13 SLED and firearms examiner David Collins?

14 A Yes, sir.

15 Q Are you familiar with an individual named
16 Wayne Mood?

17 MR. WATERS: Your Honor, I object to
18 relevance.

19 THE COURT: Do you know who Wayne Mood is?

20 THE WITNESS: I do not know him, no. I'm not
21 saying he is not mentioned somewhere in my report
22 but I do not know him.

23 BY MR. BROWN:

24 Q Do you know an attorney named Cameron
25 Marshall?

1 A No, I do not.

2 Q So, you had no involvement -- is there any
3 way you can look in your file and see if you had
4 any involvement personally in the interview of
5 Wayne Mood?

6 MR. WATERS: Again, Your Honor, I object to
7 relevance.

8 THE COURT: Look at your file and see if you
9 had any personal involvement with Wayne Mood.

10 Was this witness deposed?

11 MR. BROWN: Yes, sir.

12 BY MR. BROWN:

13 Q I will show you a document that just came to
14 my attention and may help you.

15 A Yes, sir. It's one of my notes, the name is
16 on there but I don't recall why it's there.

17 Q And since this document is not mine to offer
18 up, if you can somehow locate that note maybe we
19 can put it in context in relation to Court's
20 Exhibit --

21 A I have the original right here.

22 Q -- along with what has been offered as
23 Plaintiff's 42 and Court Exhibit 2. And that
24 document is contained in that --

25 A That would be the letter with Ricky Davis, is

1 that the one you're referring to?

2 Q -- entire file.

3 A Sir?

4 Q You have got a note that we're talking about
5 right now that is not marked, which is contained
6 within your file?

7 A Yes.

8 Q And your file is Court's Exhibit 2 and ID'd
9 as Plaintiff's Exhibit 42, and that is contained
10 therein?

11 A Yes.

12 Q Okay. And on the box where it has Wayne
13 Mood's name, whose name is right above it?

14 A Ricky Davis, or Rick Davis.

15 Q Okay. Does that help your memory with who
16 those people are, Wayne Mood, who he is?

17 A Ricky Davis would have been the one that,
18 whose name is on the note. I don't recall why I've
19 got Wayne Mood's name there.

20 Q Would Rick Davis be some information you all
21 had that Tawain Gadson was guilty of murder?

22 A If you put stock in that letter.

23 Q It would be some information in your file
24 that Tawain Gadson was a murderer, shooter?

25 A If you put stock in that letter.

1 Q Okay. Likewise if Wayne Mood had said that
2 Tawain Gadson was a shooter that would also be
3 evidence?

4 MR. WATERS: Your Honor, I object to that
5 question.

6 MR. BROWN: Withdraw that question.

7 THE COURT: It's withdrawn.

8 BY MR. BROWN:

9 Q I'm going to ask you take a look at --

10 MR. WATERS: The Court's indulgence one
11 moment, Your Honor?

12 MR. BROWN: Your Honor, I think by agreement
13 between petitioner and respondent we would move
14 that then Sergeant Coker, now Detective Coker?

15 THE WITNESS: Still sergeant.

16 MR. BROWN: Sergeant Coker's narrative which
17 I think is actually titled investigative report be
18 entered into evidence as Plaintiff's 47. It is
19 contained within Plaintiff's ID 42 and Court's
20 Exhibit 2 as a portion of his entire file and we
21 have agreed to enter the entire narrative in.

22 THE COURT: You agree, 47?

23 MR. WATERS: I think it would be easier
24 instead of pulling out excerpts of his narrative.

25 MR. BROWN: What we're going to do later on

1 is make a copy and have that marked as 47.

2 THE COURT: All right.

3 MR. BROWN: So it is separated.

4 THE COURT: All right.

5 MR. BROWN: Thank you, Your Honor.

6 (Detective Coker narrative marked and
7 received in evidence as Plaintiff's Exhibit
8 Number 47).

9 BY MR. BROWN:

10 Q To show you a specific page out of that, I
11 don't know how else to reference it except the
12 portion concerning Clarence Booker. Do you agree
13 that at some point there was some investigation
14 done regarding Clarence Booker?

15 A Yes, sir. Sally Booker told us Clarence and
16 Sammy told Tawain to take Kandee's car because
17 Kandee owed them money.

18 Q Okay. So, according to those people, Tawain
19 was instructed or asked to participate in the theft
20 of Kandee Martin's car?

21 A According to Miss Booker, yes.

22 Q I do have a copy of some notes taken 3/2/2001
23 at 8:30.

24 A If I saw them I might recall but I don't see
25 them in mine.

1 Q I'm going to hand you an excerpt.

2 THE COURT: Do I hear a cell phone? Okay.

3 A Yes, sir, I found it.

4 Q Excellent. And for purposes of the record,
5 is that contained in the investigative summary that
6 we have down as, put in evidence as 47?

7 A It is.

8 Q Plaintiff's 47, okay. And for our future
9 purposes, how would you reference that entry into
10 Plaintiff's 47? We're looking at it, at the one
11 dated 3/2/01?

12 A 0830 hours, 3/2/01.

13 Q Okay. And that note documents your review of
14 the E-Z Horizon tape, doesn't it?

15 A Yes, sir.

16 Q All right. And do you recall an
17 investigation into a person who appears on that
18 tape?

19 A Yes, sir.

20 Q Why were you all interested in that, in
21 pursuing that portion of the tape?

22 A Because the individual that was speaking on
23 that tape had made mention that someone was at the
24 pumps talking about someone had just killed someone
25 and we were trying to find that individual to get

1 statements from them.

2 Q And what time were they there?

3 A That was 08 -- well --

4 Q What time was the person at the pumps?

5 A About 2:30 a.m. on 2/17/01.

6 Q And did the voice on the tape or the person
7 on the tape indicate it was a person at the pump or
8 more than one person at the pump?

9 A It says the guys, never says how many.

10 Q Plural?

11 A It's plural.

12 Q So, you're interested because you reviewed
13 the tape -- why do you find that interesting?

14 A We've got a car that was burned, we've got
15 somebody at the pump talking about, you know, they
16 killed someone, they were going to get rid of the
17 car and a body.

18 Q Not somebody, but people?

19 A People.

20 Q People at the gas pump are saying, "We killed
21 somebody?" I want to make sure your notes say they
22 had killed a girl.

23 A That is the way I referenced it, yes, sir.

24 Q Okay.

25 A That is the way he referenced it on the

1 video. I don't have his exact words.

2 Q Okay. So, you watched the video and you from
3 the video see a person saying that there is more
4 than one person at a pump and that they had killed
5 a girl and were going to get rid of the body and
6 the car?

7 A Correct.

8 Q Now, that is certainly relevant to this
9 investigation, isn't it?

10 A Yes, sir.

11 Q Would you attribute any relevance to that
12 regarding the identity of the killers?

13 A Yes, sir.

14 Q According to Travis Felder, Marion Bowman
15 didn't go to the gas pumps, did he?

16 A No.

17 Q If both of those statements are true it may
18 be there were other people at the gas pumps saying
19 they killed a girl that night?

20 MR. WATERS: Your Honor, I object to that.
21 That is beyond his personal knowledge.

22 THE COURT: If you know, say it. Do you have
23 it in your files?

24 THE WITNESS: I can only base what I put in
25 my notes on what was on the tape.

1 BY MR. BROWN:

2 Q And when you put that together with what
3 Travis Felder says, the possibility is persons
4 other than Marion Bowman are saying they killed a
5 girl?

6 A I think that would be a matter of
7 interpretation, that was one of the reasons why we
8 wanted to talk to this man.

9 Q Okay. And if you knew his name was Henry
10 Bruce McLean would that help you?

11 A Yes, sir. We actually attempted to track him
12 down. Unfortunately we never could find him.

13 Q I want to make sure I understand where this
14 note appears. The way the note appears, there is
15 really no question, is there, that he makes this
16 statement on that tape?

17 A No, sir, there was no question that he made
18 the statement on the tape.

19 Q Okay. And that is a statement you heard with
20 your own ears on that tape?

21 A Yes.

22 Q Would you find it interesting if Henry Bruce
23 McLean lives at [REDACTED] in Branchville to
24 this day?

25 MR. WATERS: I object.

1 THE COURT: Would you find that surprising?

2 A No, sir, I wouldn't find it surprising today.
3 During the time Agent Helms or/and myself made a
4 diligent search trying to find this man we went to
5 several addresses, actually had a meeting set up
6 with Octavia LeGree, who is the clerk and this
7 gentleman's girlfriend, they were supposed to meet
8 us in Orangeburg at the Orangeburg County Sheriff's
9 office and never showed up. And each time we
10 visited the residence, according to the addresses
11 we were given, we couldn't catch anyone home.

12 Q So, you all tried to track down Mr. McLean
13 through Octavia LeGree?

14 A Octavia LeGree who was the store clerk during
15 that time.

16 Q Would you still like to talk to Mr. McLean?

17 MR. WATERS: Your Honor, I object.

18 THE COURT: Would you?

19 A I would probably be interested in talking to
20 him. I don't know what relevance it would have at
21 this point but --

22 Q If he indicated to you that there were guys
23 at the pump talking about killing this girl and
24 Marion Bowman was not the guys at the pump and you
25 only have this statement, it is not something he

1 knew was being recorded in a verbal form on that
2 video, it would be interesting in this murder
3 investigation, wouldn't it?

4 A Yes, sir, but that alone was not the reason
5 why Mr. Bowman was charged.

6 Q I understand that.

7 THE COURT: Aren't we getting more into your
8 motion for a new trial than the issues here?

9 MR. BROWN: Your Honor, I'm glad you brought
10 that up, because my client doesn't have counsel on
11 that motion, I can't serve a dual role, and I say
12 that, that is not the basis for our motion. The
13 motion I filed on his behalf --

14 THE COURT: I know that. Your question to
15 him about that -- what is your initial question?

16 MR. BROWN: Thank you.

17 BY MR. BROWN:

18 Q And this is the same videotape that documents
19 the purchase of the gas?

20 A You can't see the gas pumps from that video,
21 if memory serves me right.

22 Q But this is the same E-Z Horizon, you
23 mentioned more than one E-Z Horizon store, this is
24 the same E-Z Horizon store?

25 A Yes.

1 Q This is the same videotape you all were
2 looking at to find the identity of the gas
3 purchaser?

4 A Yes.

5 Q Who we later, at least to this day, know was
6 Travis Felder?

7 A Yes.

8 Q And that's the same videotape that was
9 entered into trial as Defendant's Exhibit 19?

10 A Yes, sir. I don't have a list to see what it
11 was but it was entered at trial.

12 MR. WATERS: It appears it was Defendant's
13 19.

14 MR. BROWN: I ask the Court to take notice
15 with reference to his testimony later on.

16 THE COURT: Exhibit 19 at the trial?

17 MR. BROWN: Yes, sir.

18 THE COURT: It was 19 at trial.

19 BY MR. BROWN:

20 Q Again, that is the same video regarding the
21 purchase of the gas by Travis Felder?

22 A Yes, sir.

23 Q And it's the same video regarding Bruce
24 McLean's, the person we believe is Bruce McLean,
25 statement that guys at the pump say they killed a

1 girl and need to get rid of her body and car?

2 A Correct.

3 Q Hiram Johnson, does that name ring a bell?

4 A Yes, sir.

5 Q And I don't know if it is a portion of the
6 file, your file. You know the file better than I
7 do. Do you have somewhere you can reference your
8 investigation regarding Hiram Johnson?

9 A Yes.

10 Q Okay. Do you understand Hiram Johnson had
11 charges pending against him at the time of this
12 investigation?

13 A No, sir.

14 Q You weren't aware of it?

15 A I was not aware of it.

16 Q And when did you all first come to approach
17 Mr. Johnson about his knowledge of Kandee's death?

18 A I believe, let's see, I believe it was on the
19 22nd of February Mr. Johnson, we actually spoke to
20 Chief Walters of the Branchville Police Department
21 about Mr. Johnson and Mr. Johnson had came up to
22 the police department to be interviewed there.

23 Q Which police department did he come to?

24 A Branchville Police Department.

25 Q And were you involved in that interview?

1 A Yes, sir.

2 Q And what time did this interview take place?

3 A It was at 1627 hours, which would have been
4 4:27 p.m.

5 Q Did you all arrest him for possession of a
6 stolen vehicle?

7 A No.

8 Q Did you all tell him he might be arrested for
9 that?

10 A No.

11 Q Did he tell you that he was riding in a
12 vehicle that he knew was stolen?

13 MR. WATERS: Your Honor, at this point, not
14 to continue to harass you with the issue but I
15 object on the relevance and amendment grounds. If
16 there is a specific issue they are going with this
17 I would at least like them to disclose it, if you
18 overrule my objection, so that I know where to go
19 for the remainder of this proceeding.

20 THE COURT: I'm just going to overrule the
21 objection, let you determine that by listening.

22 Do you have that in your file, that he knew
23 it was stolen?

24 Q That he knew the vehicle he was riding in was
25 stolen?

1 A According to my notes he said he had gone to
2 the club with Marion, Tawain and Darien and that he
3 had seen Marion with a gun in his lap while Marion
4 was driving to the club and that Marion told, had
5 told Trina West about killing Kandee Martin and he
6 was not clear on the timeframe as to when Marion
7 told Trina West or how he knew Marion told her.

8 Q What does he say about the car being stolen?

9 A He doesn't mention the car being stolen at
10 that time.

11 Q And is there a second interview done?

12 A There was.

13 Q When was that?

14 A The second interview was done on April the
15 5th, it should have been 1340 hours, and that was
16 done, we actually met with him at his father's fish
17 market in Branchville.

18 Q And when was that, again?

19 A Sir?

20 Q When was that, again?

21 A When?

22 Q Yes, sir.

23 A That was on April the 5th and I have got a
24 typo here. I think it was supposed to be 1340
25 hours, which would have been 1:40 p.m.

1 Q Okay. And then did you also meet with him on
2 the 5th, that was on the 5th, did you also meet
3 with him at Simpson's Carwash and Tire?

4 A That would be it. It is kind of a
5 combination business his father runs, Simpson Tire,
6 slash, Fish Market.

7 MR. BROWN: Beg the Court's indulgence.

8 Q Is there any chance it could be a carwash and
9 fish market?

10 A At the time we actually spoke to Hiram's
11 father and according to the sign was on the
12 building it said Simpson's Tires and there was
13 another little adjoining building that said
14 something about fish market.

15 Q Did you all meet with him in the fish market
16 or the tire store?

17 A Actually it was kind of out front, I think.

18 Q Did you ever see any fish?

19 A No, sir. I really wasn't there looking for
20 any.

21 Q I understand. 1400 or 1300 hours?

22 A According to my notes, and there again I do
23 have a typo on here, I was thinking it was 1340.

24 Q The note you're referring to is part of the
25 summary that has already been entered into evidence

1 as Plaintiff's 46?

2 A Yes, sir, it is.

3 Q What can you tell me about some brown cotton
4 gloves?

5 A He had indicated that he was at the store,
6 Horizon E-Z Shop, and James Gadson, Sr., also known
7 to them as Bubblegum, went in the store at Mr.
8 Bowman's request and purchased some brown gloves
9 and that later on that night they got in the car,
10 Marion gave them the gloves and told them to put
11 them on because he didn't want to leave any
12 fingerprints in the car.

13 Q Where do you have that recorded?

14 A It's in this interview we did with him.

15 Q When was that interview?

16 A The same date, the same time, at the fish
17 market or tire store.

18 Q That was on the 5th of April?

19 A Correct.

20 Q 2001?

21 A Correct.

22 Q Did you ever get any brown cotton gloves that
23 you believed to be the gloves referenced in that
24 statement?

25 A Agent Helms actually took custody of gloves.

1 Q And were those gloves taken into police or
2 government custody in April of 2001 or back in
3 February of 2001?

4 A I think initially there was a glove, a single
5 glove found at the crime scene.

6 Q Okay.

7 A There again, I didn't work the crime scene.
8 I believe that Mr. Johnson actually provided Agent
9 Helms with a pair of gloves.

10 Q About when was that?

11 A This was, I think, right after this
12 interview.

13 Q It was in April, not in February?

14 A I don't recall.

15 Q Certainly I would like for you to try to
16 verify whether it was February 22nd, 2001, at
17 approximately 1735.

18 THE COURT: What date in 2001?

19 MR. BROWN: February 22nd.

20 THE COURT: 2001?

21 MR. BROWN: Yes, sir.

22 THE COURT: 5:35 in the afternoon.

23 THE WITNESS: I did not receive any from him
24 that day.

25 BY MR. BROWN:

1 Q I understand that. Is there information in
2 your file that the gloves, that the pair of gloves
3 from Hiram Johnson were received on February 22nd,
4 2001?

5 A It may be in one of the other officers'
6 notes.

7 Q Do you have those in your file?

8 A Yes, sir.

9 Q If you looked at those notes would they help
10 you refresh your recollection?

11 A I'm checking it right now, sir.

12 Q That's a yes. I would ask you to do so.

13 A That would have been Agent Helms and
14 Detective Miller that escorted Mr. Hiram Johnson
15 from the Branchville P.D. back to his residence in
16 Branchville where Mr. Johnson turned over a pair of
17 brown cotton gloves that had been worn on the night
18 of 2/16/02.

19 Q Okay. So, there is an interview we know
20 about on 2/22/01 that you participated in?

21 A Yes, sir.

22 Q At the Branchville P.D.?

23 A Correct.

24 Q And according to the notes you reviewed,
25 within one hour other officers involved in this

1 investigation received a pair of brown gloves that
2 very same day, about an hour and eight minutes or
3 something to be exact, or exact, from the same
4 person being interviewed, Hiram Johnson?

5 A Yes, sir.

6 Q All right. At that time what significance
7 did you attribute to those gloves, if any, that
8 were involved in part of that meeting with Hiram
9 Johnson?

10 A Based on information that we had, excuse me,
11 we felt that it was possible and according to Mr.
12 Johnson that was the ones he wore that night, so we
13 put quite a bit of stock in that.

14 Q Okay. So, at the time of the collection of
15 the gloves there was significance when Hiram
16 Johnson says, and I don't have a statement from
17 that day, "I wore these gloves to keep my prints
18 from being on a stolen car"?

19 A I don't recall him ever saying he knew the
20 car was stolen, not during that interview.

21 Q Gosh, I know I'm going to draw an objection.
22 Did you ever know anybody that drives around with
23 gloves in a car at night?

24 MR. WATERS: Your Honor, I object.

25 THE COURT: Overruled.

1 A No, sir.

2 THE COURT: You have never seen anybody drive
3 around --

4 Q I don't mean driving gloves, I mean brown
5 cotton work gloves.

6 A No. It raises red flags.

7 Q Okay. I mean, if you stopped somebody and,
8 if you stopped a car full of youth driving around
9 in the middle of the night and all of them were
10 wearing brown cotton gloves would you think
11 something mysterious was afoot?

12 MR. WATERS: Your Honor, I object to that
13 question. I don't see how that is relevant.

14 THE COURT: It is easier to let him answer.

15 Q I'm sorry?

16 A I would but during the time of this
17 investigation on the night in question we didn't
18 have any reports of that car being stolen.

19 Q February 22nd?

20 A February 22nd we knew, you know, something
21 had gone awry.

22 Q February 22nd you all found the burned car?

23 A No, sir.

24 Q By that date --

25 A You referred to if I found someone driving

1 around with cotton gloves, yes, I would think there
2 was something wrong.

3 Q I understand that. But by February 22nd when
4 you're interviewing Hiram, I'm kind of asking the
5 obvious, we have a burned up body in the back of a
6 burned up car and there is an investigation into
7 that, the person's death and the arson.

8 A Yes, sir.

9 Q And at that point in time, I beg the Court's
10 indulgence, you had interviewed Darien Williams?

11 A We interviewed quite a few people, yes, sir.

12 Q Did he ever indicate, for lack of a better
13 word, that the car was stolen?

14 A Yes.

15 Q When you interviewed Hiram there was some
16 idea in the law enforcement community involved in
17 this investigation that Kandee's car was in fact
18 stolen?

19 A Yes, sir.

20 Q And he says, "We wore some brown cotton
21 gloves riding around in this car"?

22 A Yes, sir.

23 Q Okay. So, I'm going to ask the question
24 instead of make a statement. What do you believe
25 Hiram Johnson's consciousness of guilt was riding

1 around in that car with brown gloves?

2 MR. WATERS: Your Honor, I object.

3 THE COURT: Sustained.

4 Q Would you find the fact Hiram rode in a car
5 you believed was stolen, while wearing brown cotton
6 gloves, to be suspicious? Do you find that
7 suspicious?

8 A Yes, sir, I would.

9 Q Why?

10 A Not many people ride around in a car with
11 gloves on unless it is driving gloves.

12 Q What discussions did you have regarding
13 charging Hiram Johnson with possessing a stolen
14 vehicle?

15 A I don't recall having any, to be honest with
16 you.

17 Q Did you ever charge a person in his situation
18 with possession of a stolen vehicle?

19 MR. WATERS: Your Honor, I object to
20 relevance.

21 THE COURT: I'll sustain that. Some people
22 have, other people have not.

23 MR. BROWN: Can we take notice of that?

24 THE COURT: That some people have been
25 charged with driving a stolen vehicle?

1 MR. BROWN: Possessing a stolen vehicle as a
2 passenger.

3 THE COURT: Oh.

4 MR. BROWN: That was my question to him, I
5 rephrased it.

6 THE COURT: I would assume in the history of
7 criminology somebody has been charged with
8 possession of a stolen vehicle while they were a
9 passenger in the car.

10 MR. BROWN: Justified?

11 THE COURT: I can't take notice of that, I
12 don't know. Have you ever done it?

13 THE WITNESS: Yes, sir, I have done it.

14 THE COURT: He's done it.

15 MR. BROWN: That's enough for me and the
16 record.

17 BY MR. BROWN:

18 Q I'm sorry, please clarify it.

19 A I can't tell you why we didn't charge him
20 here, I really don't know. Our concentration was
21 on the murder and the arson at the time, so we were
22 still trying to get information.

23 Q Okay, right, but it is not something that
24 would be unfathomable by the lead investigator in
25 the case?

1 A Correct.

2 Q And part of the investigation, part of the
3 investigation, although ultimately you kind of
4 phrase it as a murder/arson investigation, also a
5 stolen car investigation?

6 A Yes, sir.

7 Q Because ultimately that is one of the
8 allegations made at trial against Mr. Bowman, was
9 arson?

10 A We did not charge him with the vehicle
11 larceny. I think that came up through the
12 Solicitor's office.

13 Q But ultimately there is an allegation of
14 theft related to the car?

15 A Correct.

16 Q That is part of the investigation, the theft
17 of the car?

18 A You could say that.

19 Q Okay. So, there is some significance to that
20 issue, about the theft and possession of that
21 stolen vehicle?

22 A Yes, sir.

23 Q All right, thank you. Besides your notes,
24 were there written statements regarding Hiram
25 Johnson's interview, either part one on February

1 22nd, 2001, either part one in the Branchville
2 Police Department you participated in, or the
3 second part of that interview where the gloves were
4 retrieved an hour and eight minute later, or what
5 was recorded besides your notes?

6 A I have Detective Miller's notes, I have
7 Investigator/Agent Helms' notes.

8 Q And at which portion of these interviews were
9 they at?

10 A I'm sorry, I didn't understand the question.

11 Q At what, I would like to call it two
12 interviews, one at the Branchville Police
13 Department and one at Hiram Johnson's house, if you
14 want to do it that way, or if it was one interview
15 at two places, who was at each part?

16 A Detective Miller and myself were at the first
17 part, I believe it was Miller, let me verify that.
18 Yes, sir, at the initial interview it was myself
19 and Detective Mike Miller. I'm not sure what time
20 Agent Helms showed up. I think he came in shortly
21 after we started or shortly after we finished, and
22 I and Detective Miller were going to take Mr.
23 Johnson home. Then that is when the issue with the
24 gloves came up.

25 Q He didn't immediately tell you he had these

1 gloves?

2 A He did not tell me, no, sir, not during my
3 portion of it.

4 Q Is it because you failed to ask questions in
5 a manner that would have elicited that information?

6 MR. WATERS: Your Honor, I object. I don't
7 know how he could possibly know that.

8 A I honestly don't remember.

9 THE COURT: He doesn't remember.

10 Q Okay. Would you --

11 A I will say this for the Court and it is noted
12 in here that Mr. Johnson was extremely difficult to
13 interview because of his, it was kind of hard to
14 tell, he had been shot in the head and there was
15 other issues there with him, we couldn't tell if it
16 was, what we were receiving was because of his
17 gunshot wound or the fact he was just trying to
18 cover up his participation.

19 Q Okay. So, he may have been trying to cover
20 up his knowledge?

21 A Yes.

22 Q Okay. Does that appear in your notes?

23 A Yes, sir, That is noted along with that
24 interview that I did.

25 Q That there was possibly an attempt to deceive

1 the police by Hiram Johnson on the 22nd of
2 February, 2001?

3 A Yes, sir.

4 Q Did you Mirandize Mr. Johnson?

5 A Yes, sir, he was.

6 Q And that was on February 22nd, 2001?

7 A That's correct.

8 Q And is that noted in those same summary notes
9 that are entered as Plaintiff's 46?

10 A Yes, sir, it is.

11 Q Okay. And you Mirandized him because he was
12 in custody?

13 A No, sir. No, sir, he was not in custody.

14 Q Out of an abundance of precaution to make
15 sure it was a good statement?

16 A Yes.

17 Q Did you ask him to bring his lawyer along?

18 A No, sir, because I wasn't aware he had
19 charges against him.

20 Q How about his lawyer involved in the
21 shooting?

22 A That had happened sometime prior.

23 Information I got about that came through Chief
24 Walters.

25 Q You knew he was suing Orangeburg?

1 A I did not know that at the time. I found
2 that out later.

3 Q Okay. And did he ever ask for a lawyer?

4 A No, sir.

5 Q Did you ever talk to his lawyer before Marion
6 Bowman's trial?

7 A I may have but I don't remember.

8 Q Okay. Do you know if you spoke to a
9 gentleman named Will Bryant?

10 A That name doesn't ring any bells, no, sir.

11 Q How about John O'Leary?

12 A I don't recall.

13 MR. BROWN: Beg the Court's indulgence.

14 THE COURT: How much longer do you anticipate
15 on direct?

16 MR. BROWN: I may be finished. I'm trying to
17 look through my notes to make sure I didn't leave
18 anything out, Your Honor, that is exactly what I'm
19 doing, thank you so much. I'm cognizant of the
20 time as well.

21 BY MR. BROWN:

22 Q We kind of opened this up, we talked a little
23 bit about the arrest of Marion Bowman, if you will
24 recall?

25 A Yes, sir.

1 Q And you indicated he was arrested in
2 Branchville?

3 A Correct.

4 Q Okay. What can you tell me about the events
5 following or surrounding his arrest, as for as
6 Dorothy Mae Bowman's house?

7 A When I got to the house with Lieutenant
8 Nettles Mr. Bowman was already in custody. A
9 consent to search was obtained from Miss Bowman to
10 go in and search her house. Lieutenant Nettles,
11 Sergeant Van Doran, I was present, I actually
12 photographed some items that were collected,
13 specifically a pair of pants, a watch that came
14 from the pants and a little bit of loose change or
15 something, and a pair of boots. We did not find a
16 gun at that time.

17 Q What did you do to try to find a gun at that
18 time?

19 A We searched through the house, places that
20 you would normally find weapons but we did not find
21 a weapon.

22 Q You say we. Who was that that was involved
23 in that search?

24 A Myself, Van Doran and Lieutenant Nettles.

25 Q Who is Nettles?

1 A He was the lieutenant over investigations at
2 the time, James Nettles.

3 Q Anyone else involved in that search?

4 A I don't think anyone else went in the house.

5 Q And which day did these, did you and these
6 other two individuals search the house?

7 A On the day that Mr. Bowman was arrested,
8 which was February the 17th.

9 Q Was there another search done of that house?

10 A Orangeburg County received information that
11 the gun was supposed to be in a chair in the house
12 and some of their officers and I believe Major Tim
13 Stephenson went back to the house and obtained a
14 second consent to search from Miss Bowman and went
15 in in an attempt to find the weapon and they came
16 back out and said they had failed to find it.

17 Q Besides Officer Stephenson, who else
18 participated in that search?

19 A Bear with me, I'll see if I can find my
20 notes. I was not present at that search. I did
21 not have it listed in my section of notes.

22 Q I have no problem with you viewing notes to
23 refresh your recollection.

24 A Okay, reviewing the consent to search at
25 2/18/01, [REDACTED], residence of Dorothy

1 Mae Bowman, Major Tim Stephenson, Sergeant Glen
2 Lickenburger, I think that is the way he pronounced
3 it, and Major Robert Walters and a
4 Detective/Sergeant T. A. Van Doran were the ones
5 present at that search.

6 Q Van Doran was present at both the searches?

7 A According to the consent to search form, yes,
8 sir.

9 Q And in relationship to the arrest what time
10 was the search that was conducted on the day of the
11 arrest, the 17th?

12 A I'm sorry?

13 Q On February 17th, 2001, Marion Bowman was
14 arrested?

15 A Yes, sir.

16 Q In relationship to that arrest what time was
17 that search conducted?

18 A On the 17th the search began at 10:22 a.m.
19 and it ended at 10:50 a.m.

20 Q What do we know about the search on the 18th?

21 A The 18th, they do not have a time listed.

22 Q You wanted to find that gun?

23 A Sorry?

24 Q You wanted to find that gun?

25 A Yes, sir.

1 Q Are you aware of any other searches?

2 A There was a search made of an old abandoned
3 house with just walls, I think the house was
4 started and never was finished somewhere in that
5 same vicinity, cement block walls, no roof, no
6 floor joists, had been there for years, had trees
7 growing up inside it. That structure and the
8 surrounding area was searched.

9 Q I guess I will go back. Were there any other
10 searches of Dorothy Bowman's house, or Dorothy Mae
11 Bowman's house?

12 A Not that I'm aware of, no, sir.

13 Q Okay. Now, do you recall testifying at Mr.
14 Bowman's trial?

15 A Yes, sir.

16 Q And --

17 THE COURT: It's time to break for lunch.
18 You said you were almost through but I have a
19 feeling you are going to be awhile.

20 MR. BROWN: It's on the exact same subject,
21 it is going to be a very quick question, I've tried
22 to set it up right here.

23 THE COURT: All right.

24 BY MR. BROWN:

25 Q I'm going to hand you volume nine of the

1 trial transcript, page 4153, it spills over, there
2 is some testimony, if you would like to review
3 those two pages. If you will, let me know when
4 you're finished.

5 A Okay, sir.

6 Q All right. And during those two pages you
7 discussed more or less the search, you discussed,
8 excuse me, Your Honor, you discussed the search of
9 the house?

10 A Yes, sir.

11 Q And it starts at line 22 on 4153 and there is
12 a question, "Go ahead and continue, how you all
13 conducted that search." And on the next page,
14 4154, you were asked, "Did you have a metal
15 detector with you on that occasion?"

16 Which occasion is that?

17 A That was the day that he was arrested, on the
18 17th.

19 Q Was a metal detector used in the other
20 search?

21 A There was a metal detector used around the
22 old block house, not at Miss Bowman's house, not by
23 me. I never saw one there.

24 Q You're not aware whether a metal detector --
25 however I can ask it, however you want to answer

1 it, what is your knowledge about the use of a metal
2 detector at the search you were not at of Dorothy
3 Mae Bowman's house?

4 A That I was not at?

5 Q Yes.

6 A I'm unaware one was used if it was at all.

7 Q You don't know whether there was or not?

8 A No.

9 Q I'm not trying to put words in your mouth, if
10 you want to explain it some more.

11 A I never was told a metal detector was used.

12 Q Who is the guy with the metal detector, who
13 is the guy who walks around with it?

14 A Lieutenant Earl Asbill, who is over crime
15 scene.

16 Q And Lieutenant Asbill did utilize a metal
17 detector during this investigation?

18 A Yes, sir.

19 Q Anyone else use a metal detector in this
20 investigation?

21 A Not that I'm aware.

22 Q Is he the one that used it at the search of
23 the block building?

24 A Yes, sir.

25 Q Was Dorothy Mae Bowman at that search?

1 A I don't recall seeing her there. She could
2 have been but I don't recall seeing her. I think
3 it was just law enforcement.

4 Q Would she have had a reason to be at that
5 block building?

6 A Not that I'm aware of.

7 Q She didn't own the building?

8 A I don't know who owned the building.

9 Q You had no knowledge she owned the building?

10 A No, sir.

11 Q Okay. And you all wouldn't invite one of the
12 murder suspect's wives down to help you all with
13 the search, would you?

14 A I wouldn't normally, no, sir.

15 Q Okay. And you all, there is no knowledge
16 about her being invited to that search?

17 A Not by me, no, sir.

18 MR. BROWN: Beg the Court's indulgence.

19 Q Now I just want to back up and clear up the
20 search where the items were found in a pair of
21 jeans. Was that the same search you reference
22 conducting with Van Doran and Nettles?

23 A Correct.

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

25 Your Honor, I tried to do this subject to my

1 ability to question him again regarding the
2 statements about the number of searches and the
3 days and times of the searches. I have no other
4 questions for direct at this time. I say that
5 because if he doesn't go into it on cross I can't
6 go back in it on redirect. I'm trying to reserve
7 that opportunity to cover any subject of the facts.
8 It's 1:35.

9 THE COURT: Are you saying that you have
10 other questions on direct, or are you not?

11 MR. BROWN: Only about the searches.

12 THE COURT: Just think about it over lunch.

13 MR. BROWN: There you go.

14 THE COURT: We'll see you at 2:45. Sir, have
15 a good lunch but don't discuss your testimony.

16 THE WITNESS: All right, sir.

17 THE COURT: We're in recess until 2:45.

18 MR. BROWN: Thank you, Your Honor.

19 (Recessed at 1:36 p.m.).

20 (Reconvened at 3:00 p.m.).

21 THE COURT: Okay, we'll come back. There are
22 some matters I understand you want to discuss, Mr.
23 Brown?

24 MR. BROWN: Yes, sir.

25 THE COURT: Okay.

1 MR. BROWN: All right, the first thing has to
2 do with a witness who is an expert, named Dr. Bill
3 Kissiah. Information regarding Dr. Kissiah's
4 testimony has been provided by interrogatories.
5 Dr. Kissiah is here. Obviously it is not a
6 surprise that the last authorized funding for Dr.
7 Kissiah, he say here he is on his way, he has been
8 here since Tuesday, Tuesday afternoon. We thought
9 we were going to get him Tuesday, which was on our
10 witness list we have, he is our next witness. I
11 would like a little guidance from the Court about
12 what to tell Dr. Kissiah. Two things would be I
13 think he is ruffled, out of staying here. He --

14 THE COURT: Are you finished with your direct
15 of this witness?

16 MR. BROWN: I am.

17 THE COURT: And he's going to have redirect?

18 MR. BROWN: Or cross.

19 THE COURT: How long will Dr. Kissiah take?

20 MR. BROWN: I want instructions, I will keep
21 him here.

22 THE COURT: You said he is your next witness?

23 MR. BROWN: He is my next witness.

24 THE COURT: Well, he's ready to go, I think
25 we can get him this afternoon.

1 MR. BROWN: That's exactly the instruction
2 I'm looking for. I'm going to have him remain.
3 That answers that question. I would rather do that
4 than bring him back. That's fine, thank you, Your
5 Honor.

6 Then as for as this witness, they have
7 located the videotape which is a copy, my
8 understanding, that the clerk has found their copy
9 that was entered.

10 For the Court's edification, the original
11 tape rests with Detective Coker and I say that
12 because there has been discussion about the quality
13 of the tape. I'm not a videographer but I would
14 assume like xerox copies, quality goes down as it
15 is generations removed from the original.

16 So, there is an original, we have a copy
17 entered in evidence in 2002 and that is the one
18 referenced as Defendant's 19 from the trial
19 exhibits, and then the original if ever needed I
20 would reference is in Detective Coker's hands. I
21 would ask him to keep that secure from destruction,
22 as that is the original, if there is a question
23 regarding that.

24 THE WITNESS: Judge, just for the record, we
25 do maintain any homicide evidence forever, until we

1 get ordered by the Court we can destroy it.

2 THE COURT: All right, very good.

3 MR. BROWN: No another questions.

4 THE COURT: Cross-examination?

5 MR. WATERS: Thank, Your Honor.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Sergeant Coker, how are you doing today?

4 A I'm doing fine.

5 Q It's fair to say, obviously, it has been six
6 years or so since this case occurred, correct?

7 A Yes, sir.

8 Q Okay. And obviously you have had a chance to
9 review your file some in preparation for your
10 testimony today, is that correct?

11 A Yes, sir.

12 Q But you probably don't know this case like
13 you did back in 2001, 2002. Is that correct?

14 A No, I don't.

15 Q Okay. And obviously your notes which we have
16 been reading a lot from so far on your direct
17 examination would be the best reflection of the
18 activities that you took during the course of this
19 investigation, is that correct?

20 A Yes, sir.

21 Q All right. I just want to start with a quick
22 question. When you arrested Mr. Bowman on the
23 morning of the 17th, I believe, was he drunk at
24 that time?

25 A I wasn't there when he was arrested.

1 Q Right.

2 A When I saw him he did not appear to be drunk
3 or intoxicated.

4 Q All right.

5 Q Okay. Now, the next step in the
6 investigation, as I understand it, was you all just
7 started talking to people who might have seen
8 Kandee and eventually talked to a Charlie Fralick.
9 Is that correct?

10 A Correct.

11 Q What did Mr. Fralick tell you?

12 MR. BROWN: Objection, hearsay.

13 MR. WATERS: I'm going through the course of
14 the investigation, I'm not offering it for the
15 truth of the matter asserted.

16 THE COURT: You are going into sort of having
17 him indicate why he did certain things?

18 MR. WATERS: Exactly. There has been a lot
19 of questions about affidavits to warrants,
20 indictments, things like that. I'm trying to
21 explain how certain things get to the way they
22 ultimately ended up aside from some sort of
23 subjective belief. It is really only offered for
24 the steps he took in his investigation.

25 THE COURT: All right. Anyway, what I'm

1 going to do, I'm going to let you prove it, then I
2 will let you know if I'm going to let it in.

3 MR. BROWN: Thank you.

4 BY MR. WATERS:

5 Q Let me ask it this way. Did you receive any
6 information that the victim had been with the
7 defendant during the course of the evening?

8 MR. BROWN: Same hearsay objection.

9 THE COURT: What was the question, did he
10 what?

11 MR. WATERS: Did he receive information that
12 the victim had been with the defendant.

13 THE COURT: Okay, I overrule that objection.
14 That's a yes or no answer.

15 THE WITNESS: Yes.

16 BY MR. WATERS:

17 Q Subsequently did you go and pick up Marion
18 Bowman?

19 A Officers from Orangeburg County picked him
20 up, he was taken to the Branchville Police
21 Department.

22 Q Okay. And then you subsequently interviewed
23 Mr. Bowman, is that correct?

24 A Correct.

25 Q All right.

1 MR. BROWN: Your Honor, at this time under
2 Mincey versus Arizona we would raise a claim that
3 any attempted admission of a statement that was
4 declared to be involuntarily given would be no
5 longer admissible for any reason.

6 MR. WATERS: Three were voluntarily given,
7 this one was involuntarily given.

8 THE COURT: As an Officer of the Court can
9 you state that was introduced in evidence?

10 MR. WATERS: It is my understanding from
11 reading the transcript that is what it says.

12 THE COURT: Aren't there exhibits in the case
13 somewhere?

14 MR. WATERS: Ultimately after that the
15 prosecutor didn't introduce any at trial, Judge
16 Goodstein found the first three were admissible,
17 the fourth one was not, correct?

18 MR. BROWN: We agree.

19 THE COURT: All right.

20 BY MR. WATERS:

21 Q I'm going to show you what is marked as
22 Defendant's Exhibit 4. See if you recognize that?

23 A Yes, sir. This is a statement was taken by
24 T. A. Van Doran and Major Tim Stephenson from
25 Marion Bowman on 2/17/01, at 2:10 p.m.

1 Q Okay. And was that statement provided to you
2 in your investigation?

3 A It was.

4 Q Okay. And based on what was relayed in that
5 statement did you subsequently, did the officers
6 subsequently seek an audience with one Terry Kelly?

7 A They did.

8 Q Okay. And were you part of the interview
9 with Terry Kelly?

10 A No, sir, I don't recall interviewing Terry.

11 Q All right.

12 A I believe it was Major Stephenson, if I might
13 reflect back on my notes? Apparently I spoke to
14 him briefly and he indicated he had nothing to do
15 with the case, Major Tim Stephenson came in and
16 administered a polygraph.

17 MR. BROWN: We would object.

18 THE COURT: Object to what? He just said he
19 was administered polygraph. Do you anticipate the
20 question?

21 MR. BROWN: I anticipate the answer.

22 MR. WATERS: I didn't ask him the result.

23 THE COURT: You may question him.

24 BY MR. WATERS:

25 Q I show you what is marked Exhibit 5, Defense

1 Exhibit 5. I will show you this document. Do you
2 recognize that?

3 A This is a statement from Marion Bowman, Jr.,
4 dated 2/17/01, 1640 p.m., T. A. Van Doran and
5 myself.

6 Q Okay. Is that the second statement that Mr.
7 Bowman gave that was provided to you as the chief
8 investigating officer?

9 A Yes.

10 Q All right.

11 MR. WATERS: The Court's indulgence for one
12 moment?

13 Q I'm going to show you Defendant's Exhibit 6,
14 a two page document. See if you recognize that?

15 A Yes, sir. This is a third statement of
16 Marion Bowman, Jr., taken at the Branchville Police
17 Department, it looks like 8:57 p.m., February 17th,
18 2001.

19 Q Now, in that statement, and I'm not offering
20 it for the truth of the matter asserted -- I take
21 that back, it's the defendant's statement. Did Mr.
22 Bowman in that statement essentially say that Gap,
23 or James Tawain Gadson, was the one who initially
24 fired the shots that killed Kandee Martin? I will
25 let you review it to refresh your recollection.

1 MR. BROWN: Which statement?

2 MR. WATERS: This is the third one.

3 THE COURT: That was also determined to be
4 free and voluntarily given?

5 MR. WATERS: Yes, sir, Your Honor.

6 BY MR. WATERS:

7 Q Let me rephrase it. In that statement did
8 Mr. Bowman say Tawain Gadson, also known as Gap,
9 showed him the victim's body and said that he had
10 killed her?

11 A Yes.

12 Q Okay. All right, I'm going to show you what
13 has been marked as Plaintiff's Exhibit 4 and see if
14 you recognize that document?

15 A Yes, sir. That would be the warrant
16 affidavit that I typed up, James Tawain Gadson, for
17 violation of murder.

18 Q Okay. That was the Gadson murder arrest
19 warrant, correct?

20 A Correct.

21 Q Now look at the affidavit on there, and it's
22 true that in the affidavit you put in there that
23 you were going based on the fact that Marion
24 Bowman, Jr., had given a statement in which he had
25 given you the information claimed in that third

1 statement regarding his allegation that Gap had
2 shown him the victim's body and had told him he
3 killed the victim?

4 MR. BROWN: Your Honor, that is a
5 mischaracterization.

6 Q Tell me what your affidavit says.

7 MR. BROWN: There you are, it's in evidence.

8 A All right. Mr. Bowman provided us
9 information, he provided a written statement
10 wherein he stated between the incident times
11 aforementioned that the defendant and co-defendant
12 approached him while driving the victim's car, the
13 defendant and co-defendant had confided in him the
14 defendant and co-defendant had shot and killed the
15 victim Kandee Martin. The defendant and
16 co-defendant then recruited Marion Bowman, Jr., to
17 assist them in moving the victim's body and
18 destroying the car and other evidence by burning
19 them.

20 Q All right. So, the arrest warrant that was
21 issued for James Gadson was based on the
22 information that had been provided to you by Marion
23 Bowman, Jr., correct?

24 A Correct.

25 Q Okay. And again when you swear to an

1 affidavit for an arrest warrant you're swearing to
2 the information that has been given to you at that
3 time. Correct?

4 A Correct.

5 Q And you are swearing to the existence of
6 probable cause, correct?

7 A Correct.

8 Q You are not swearing to proof beyond a
9 reasonable doubt, are you?

10 A No.

11 Q You are swearing to, "This is why we need to
12 go look at this individual, arrest this
13 individual," correct?

14 A Correct.

15 Q All right. Okay. I want you to get out your
16 investigative notes, the narrative that we have
17 been discussing, if you would, please.

18 A Okay.

19 MR. WATERS: Your Honor, real quick, I do
20 have an issue as to the fourth statement. Mr.
21 Bowman did give a fourth statement and there has
22 been a lot called into question as to why the
23 officers put certain things in their affidavits and
24 why certain charges were brought. A lot of that
25 has to do with Mr. Bowman's fourth statement. They

1 of course at that time had no way to know that a
2 judge would ultimately exclude that statement, so I
3 would like to get into it only to the extent as it
4 shows how that affected the officers' decisions in
5 what they subsequently did, not for any substantive
6 fact that is in it for the truth of the matter
7 asserted.

8 THE COURT: Mr. Brown?

9 MR. BROWN: First of all we note that the
10 statement was ruled involuntarily given and that
11 issue was not appealed either interlocutorily or
12 during the appeal, cross appeal issues on the
13 direct appeal. The issue of it being involuntarily
14 given is now the law of the case and we believe
15 that in-like statements that are given in violation
16 of the Miranda protections, involuntariness, this
17 is an unreliable piece of evidence.

18 THE COURT: When you asked Detective Coker,
19 Sergeant Coker, about what evidence did he have,
20 why did he do this, why did he do that, is it your
21 position, then, that he is not permitted to say, "I
22 did this because after the statement he made," if
23 that statement was not made voluntarily, although
24 he did in fact do it because of what the statement
25 said?

1 MR. BROWN: And I believe in response to a
2 question like that he can say, "I did it because of
3 the statement that I was given."

4 THE COURT: And then can someone ask what was
5 in that statement?

6 MR. BROWN: No, sir.

7 THE COURT: So, therefore you can't challenge
8 his reasons for, for example, if Mr. Waters were to
9 ask him now, "Why did you arrest him and why did
10 you not charge, why did you decide not to pursue
11 charges against -- " who is the gentleman who ended
12 up pleading?

13 MR. BROWN: Travis Felder.

14 THE COURT: Not Travis.

15 MR. BROWN: Tawain Gadson.

16 THE COURT: Mr. Gadson, and he said, "I did
17 it because of that fourth statement," you're not
18 permitted to go into what is in that fourth
19 statement, showing he had something in there that
20 had something to do, had nothing to do with his
21 basis for answering the question?

22 MR. BROWN: Quite frankly, Your Honor, I have
23 been somewhat limited in being able to ask him why
24 charges were, or negotiations were made at all.

25 THE COURT: You think you were limited, I

1 think you pretty much asked the questions you
2 wanted to ask. We did a lot of discussions but I
3 think you pretty much asked the questions. What
4 I'm saying is, if he had a basis for what he did
5 and that basis was later on ruled an involuntary
6 statement and he may have been, and the statement
7 may have been gathered involuntarily and the judge
8 ruled it was, it's the law of the case, but if in
9 fact he based it, something he did, would you
10 challenge and say he had no basis for it, would it
11 be improper for you to argue to me that he had no
12 basis for it when in fact he had a statement which
13 was involuntary but, you know, to him he thought he
14 gave him good information, whether he did or not, I
15 don't know, are you going to argue he had no reason
16 to do something and not permit him to put something
17 in that gives him at least a reason, it may not
18 have been a rational reason or may not even be a
19 fair reason?

20 MR. BROWN: Your Honor, let me respond with
21 this. It's a pandora's box about to be opened.

22 THE COURT: I don't want to do that.

23 MR. BROWN: Because the allegations --

24 THE COURT: Sorry.

25 MR. BROWN: The allegations that the

1 statement is involuntary is in part because of the
2 issue about the sheriff in Orangeburg threatening
3 to sic DSS upon Marion Bowman's family. In fact, I
4 guess it is some kind of implicit finding by the
5 trial judge there is some evidence of that. It now
6 may open the door to a side issue.

7 THE COURT: This statement was taken by
8 Orangeburg Police as opposed to --

9 MR. WATERS: It was taken by Chief Larry
10 Williams in Orangeburg, it was not Dorchester
11 County.

12 THE COURT: This gentleman had nothing to do
13 with it?

14 MR. WATERS: But he was the one making the
15 charge, the arrest warrant, and he was the one
16 investigating the case. There has been lots of
17 questions why he did this, why he did that. I
18 think it is relevant, which one of their
19 allegations is why did they put in their affidavit
20 that James Gadson said he shot the victim. The
21 reason is they had a statement from Marion Bowman,
22 he stated that.

23 THE COURT: He has already testified on
24 direct he had Mr. Bowman saying that.

25 MR. WATERS: I don't recall that. I'm just

1 trying to tie it all together.

2 THE COURT: In response to one of the
3 questions by Mr. Brown he said that, "We had Mr.
4 Bowman saying that Mr. Gadson did the killing."

5 MR. WATERS: Right. And I introduced the
6 third statement right there in which he blames it
7 on Gap as well. He just says that, you know, he
8 says Gap earlier, and Gap took him and showed him
9 where the body was and told him he killed the
10 victim, things of that nature. Then there was a
11 fourth statement where it was kind of a joint
12 endeavor. That is the one that was ruled
13 inadmissible.

14 THE COURT: The fourth statement says joint
15 endeavor, changes things in the first three.

16 MR. WATERS: Exactly.

17 THE COURT: The case law you have, does the
18 case law you have discuss admitting it just to give
19 a basis why a policeman did something?

20 MR. BROWN: That holding in Mincey is that
21 you cannot even use an involuntary statement to
22 impeach a person that gives a flat contradictory --

23 THE COURT: I can understand that.

24 MR. BROWN: So, if Marion Bowman took the
25 stand and said, "I was not involved at all," you

1 could not even take that statement, even though it
2 could possibly be, possibly, assuming the statement
3 was correct, even if involuntarily given but
4 correct, would be perpetrating a fraud on the
5 court, the Court would not allow it.

6 THE COURT: All right, I can understand we're
7 dealing with impeaching a person who, what he said,
8 when the statement is not voluntarily given,
9 therefore not believable, almost inherently it is
10 not believable for the reasons you don't permit it
11 in because it is taken under conditions that make
12 it such that it probably isn't believable. But if
13 this person had nothing to do with the taking of
14 the statement but he had the statement and he based
15 some things he did on this statement without regard
16 to whether voluntary or not, even going into that
17 area, but he did things and we're only really
18 dealing with why he did certain things, what would
19 the logic be of why you could not use that
20 statement, not to show it was true, it could be
21 very much of a lie, but to show why he did
22 something?

23 MR. BROWN: Because then the government's
24 benefitting from conduct that a Court's --

25 THE COURT: How is the government

1 benefitting?

2 MR. BROWN: Because you are allowing them to
3 base actions later on in this proceeding to justify
4 an action based on conduct that all courts in the
5 world consider reprehensible.

6 THE COURT: We all consider the improper
7 nature of involuntary statements and do not admit
8 them because not only you do not want to condone
9 those things, they are wrong, to condone trickery
10 or punishment or torture or whatever else, but also
11 because of the inherent nature you can't believe
12 them because of that.

13 MR. BROWN: Yes, sir.

14 THE COURT: But here, if you ask this
15 gentleman, "Did you go to so and so's house on a
16 Thursday," and he says yes, and you say, "Why did
17 you go?" "Well, I went because there's evidence
18 that he committed a crime." "Really? Show me that
19 evidence." And if all he has is that statement can
20 he show it to you?

21 MR. BROWN: We believe he can say, "In
22 response to information I had." He's trying to get
23 into the actual information.

24 THE COURT: You are not going to argue this
25 person had no information, even though he had it

1 there, maybe, I don't know, something that he based
2 what he did on, you are not going to argue he had
3 no basis for charging Mr. Gadson, from what he told
4 me, told us some information, he had no real basis
5 for charging Mr. Gadson with the murder because you
6 have argued he had no real legal basis for
7 charging, you are not going to argue that?

8 MR. BROWN: Actually to the contrary, we are
9 arguing he had plenty of reasons to charge Mr.
10 Gadson and that in fact Gadson was the shooter and
11 that Gadson should have been impeached and that the
12 exculpatory information that proved Gadson's guilt
13 should have been offered, I don't mean his
14 statement, but offered to prove that Gadson was the
15 shooter and a liar in his trial. So, I'm --

16 THE COURT: Well, you have argued both sides
17 of it.

18 MR. BROWN: I'm trying to make sure he's not
19 going to get up here and say there was no evidence,
20 because if there was evidence the jury should have
21 heard it. As an aside they didn't, Your Honor.

22 THE COURT: I will be glad to review the
23 Mincey case if you wish me to but I really think
24 that that case is going to, when you are using
25 something that was improperly obtained and you are

1 then using it for some sort of evidence that
2 someone actually said something and later said
3 something else, well, you are going to the truth of
4 those things. Here we're not dealing with the
5 truth but only a basis, and I will overrule your
6 objection and you can note your objection.

7 MR. BROWN: And, Your Honor, can I note my
8 objection?

9 THE COURT: For the limited purposes --

10 MR. WATERS: Your Honor --

11 THE COURT: -- of basing, of Sergeant Coker
12 showing why he did certain things, not for what is
13 in there as being true, and I will state that the
14 truthfulness of that statement, if Judge Goodstein
15 ruled it inadmissible, the truthfulness of it, in
16 my mind, is such that I would not even consider
17 whether it's true or not, myself, with regard to
18 the case.

19 MR. BROWN: And I understand that is what he
20 is offering it for. I want to make sure for this
21 record from here to every court that ever sees it
22 they are not ever allowed by his own limitation
23 from looking inside the parenthesis of that
24 statement for what it says.

25 THE COURT: Exactly. The only reason, you

1 want to give a basis of why he did certain things,
2 right?

3 MR. WATERS: Yes, sir. And, Your Honor, I
4 agree with everything you say. I want to be clear
5 that I'm not trying to circumvent anything, I'm not
6 trying to do anything untoward. I simply need to
7 factually respond when Sergeant Coker has been
8 called into question as to the actions he took and
9 his affidavit and things of that nature. I do not
10 in any respect say that this statement is
11 admissible for the truth of the matter asserted or
12 whatever, or the admissions contained therein, I do
13 not under any circumstances intend to impeach Mr.
14 Bowman, if he was to testify, with this statement.
15 That is not my intent. I'm not trying to violate
16 any rules. I just want to ask him, because if it's
17 called into question why he wrote things in the
18 affidavit, why he wrote things in his notes, then I
19 think we have to understand how the investigation
20 went and why those things were written and
21 unfortunately this is part and parcel of it.

22 MR. BROWN: And two things on that, Your
23 Honor. One, I'm not giving up my objection because
24 I'm not aware, anytime an inherently unreliable
25 piece of evidence is being allowed in as a piece of

1 evidence, I don't understand what the argument is
2 here, I don't want to give up on my objection, but
3 I want to make clear as PCR counsel and certainly
4 as this Attorney General knows, my client can be
5 considered to have waived any guilt phase issues if
6 there is some admission of guilt and we, by talking
7 about that limitation and speaking about why it is
8 being offered in no way waives any guilt phase
9 issue or concedes any guilt. My client has never
10 conceded any guilt in this case. We want to make
11 that crystal clear.

12 Again my fear is that sometime some kind of
13 federal habeas review or at some point in time
14 there may be some argument made, which I'm not
15 putting forth, that my client has somehow or
16 another conceded his involvement in this murder,
17 and he categorically does not and I want to do my
18 best as his attorney to make sure that is crystal
19 clear. A, I'm objecting to it, and two, that I
20 understand the limitation being that it is not
21 offered by the State as substantive information
22 contained in that statement.

23 THE COURT: Well, that is noted and obviously
24 I have not done a review to determine whether that
25 statement was voluntarily made or not. A judge has

1 already made a ruling on that statement, that
2 judge's decision is the law in the case, law of the
3 case. This is an involuntary statement and that
4 doesn't change and nothing in that statement can be
5 used in a court of law against Mr. Bowman as to
6 whether he's guilty of this crime or not.

7 MR. BROWN: Thank you for understanding that,
8 Your Honor.

9 MR. WATERS: And I agree, Your Honor. This
10 is simply, it really just relates to Travis Felder
11 and that's the extent of it, but I'm going to now
12 have this marked.

13 MR. BROWN: Your Honor, we'll say this. Just
14 to make clear, because I got a feeling there is
15 going to be a series of questions in relationship
16 to this exhibit and I need to make sure that my
17 continuing objection, without having to stand up
18 every time when there is reference to the substance
19 of this statement, that that doesn't waive my
20 objection.

21 THE COURT: Okay, it doesn't waive your
22 objection.

23 MR. BROWN: And, so, I say that anytime there
24 is a reference from the State to this statement,
25 because it is going to come up, I'm sure, with

1 other witnesses, it is going to come up with every
2 witness, I got a feeling, from here on out and
3 obviously if some witness says because of A, B, C
4 in that fourth statement, I want to make sure I
5 have done everyting possible without popping up and
6 down.

7 THE COURT: Noted, noted.

8 MR. BROWN: I understand. Thank you, Your
9 Honor.

10 MR. WATERS: Thank you, Your Honor.

11 BY MR. WATERS:

12 Q All right. Detective Coker, I'm going to
13 show you now what has been marked as Defendant's 7
14 and see if you recognize that document as one was
15 provided to you in the course of your investigation
16 as the lead officer here?

17 A Yes, sir.

18 Q Okay. And that was a statement taken by
19 Larry Williams of the defendant Marion Bowman?

20 A Correct. Sheriff Larry Williams took this
21 statement.

22 Q Okay. And you were at the trial, obviously,
23 as the chief investigating officer?

24 A Yes, sir.

25 Q That was the one excluded from evidence by

1 Judge Goodstein, is that correct?

2 A Yes, sir, the best of my memory.

3 Q You heard our discussion so we're going to
4 handle this thing with kid gloves, but the question
5 is you received that in the course of your
6 investigation. Correct?

7 A Correct.

8 Q And if you need to review it go ahead but did
9 that statement contain any reference to Travis
10 Felder, not specifically, but just that it did?
11 And to help you out, it's on the last page.

12 A Yes, sir, the first paragraph.

13 Q Okay. All right. Now, based on that
14 information there with regard to Travis Felder did
15 you subsequently issue an arrest warrant for Mr.
16 Felder?

17 A I did.

18 Q Okay. And I think it has already been
19 entered in evidence but do you recall what that was
20 for?

21 A I believe it was for the arson.

22 Q I'm going to show you Plaintiff's 10, excuse
23 me, 17 and 18, and take a look at those.

24 A It's for, Plaintiff's Exhibit 18, warrant
25 affidavit for arson third degree, and Plaintiff's

1 Exhibit 17 was the warrant affidavit for accessory
2 to a felony murder and arson.

3 Q Okay. Let me see those real quick. All
4 right. Now I want you to look at this affidavit
5 closely and see if there was a typo with regard to
6 the use of the word defendant?

7 MR. BROWN: Object to characterization.

8 THE COURT: That, I may have concern with.

9 MR. WATERS: Okay, let me ask it more
10 specifically. Thank you, Your Honor.

11 BY MR. WATERS:

12 Q All right. Now, in these warrants you were
13 charging Travis DeWitt Felder with the arson and
14 the accessory, correct?

15 A Yes.

16 Q All right. Now I'm going to show you this
17 line right here at the beginning, "Between the
18 hours of 2000 2/16/01 and 3:30 of 2/17/01, located
19 in a wooded area/field on Nursery Road, near the
20 town of Reevesville," it goes on and on, but it
21 talks about Mr. Felder and refers to him as the
22 defendant. Correct?

23 A Correct.

24 Q And that is how you usually do it, obviously,
25 in a warrant?

1 A Yes, sir.

2 Q Now I want you to now look down at this line
3 right here beginning with a co-defendant,
4 parenthesis, Marion Bowman, Jr., and review that
5 line right there.

6 A Okay.

7 Q Tell me when you're done.

8 A Okay.

9 Q Okay. All right. So, right here when you
10 put, "A co-defendant Marion Bowman, Jr., provided a
11 written statement wherein he stated that between
12 the incident time aforementioned the defendant and
13 a co-defendant James Tawain Gadson took the victim
14 to a remote area of Dorchester County where they
15 shot and killed the victim Kandee Martin," isn't
16 that correct, inasmuch as we refer to Travis Felder
17 as the defendant?

18 A Yes.

19 Q Okay. Now, is that correct, with the
20 information you had?

21 A Yes.

22 Q That Travis Felder and James Gadson, that
23 Travis Felder and James Gadson had killed Kandee
24 Martin?

25 A Without reading each statement verbatim, I

1 would, that is what it says.

2 Q Okay, that is what it says. All right, let
3 me ask you this. When you're doing these warrants
4 is it sometimes common to do what is called cutting
5 and pasting from prior warrants that have similar
6 information in there?

7 A Yes.

8 Q So, it is possible if you were cutting and
9 pasting from one warrant to the next that
10 occasionally when you have to kind of change the
11 name something might not get changed as an
12 oversight, is that possible?

13 A Correct, it's possible.

14 MR. BROWN: Object.

15 THE COURT: I overrule your objection.

16 MR. BROWN: Sure. I withdraw it to that
17 question.

18 BY MR. WATERS:

19 Q All right. That is as far as I will go. All
20 right, so, you got the statement from Marion
21 Bowman, the fourth one, and you went out and picked
22 up Travis Felder, correct?

23 A Correct.

24 Q All right. I want to, if you would pull out
25 your investigative notes and go to 2/19/01, and

1 we're looking for, 2/19/01, the first mention of
2 Travis Felder in bold.

3 A Okay.

4 Q Do you have that?

5 A Yes, sir.

6 Q All right. And that is, those are notes from
7 your interview with Travis Felder, correct, your
8 first interview with him?

9 A Correct.

10 Q What did he tell you at that point?

11 A That he had no knowledge of the murder and
12 arson, he appeared to be afraid, staring straight
13 forward.

14 Q Pretty much he gave you nothing?

15 A He said very little, yes, sir.

16 Q Is it fair to say after that he did what we
17 call lawyering up?

18 A He did.

19 Q All right. So, you didn't have any
20 substantive statement from Travis Felder at that
21 point in time, is that correct?

22 A I did not.

23 Q Okay. Now I want you to turn over to page,
24 well, they are not paginated but 2/27/01.

25 A Okay.

1 Q Okay. All right. And actually I'm going to
2 have you look down at 3/02/01, which is at the
3 bottom of that page. Have you got it?

4 A I've got it.

5 Q Just review those notes real quick. Does
6 that describe you all's investigation in obtaining
7 the videotape from the E-Z Horizon store?

8 A It does.

9 Q Okay. So, from reading those notes, the
10 truth is that you all were reviewing that videotape
11 based on the information regarding Octavia LeGree
12 and the Jamacian boyfriend who you never were able
13 to speak with, is that correct?

14 A Correct.

15 Q So, it had nothing to do with Travis Felder
16 getting the gas can, is that correct?

17 A Correct.

18 Q Okay. So, because at that time you didn't
19 have any information that Travis Felder had filled
20 up the gas for the gas can, is that correct?

21 A I think that's fair to say, yes, sir.

22 Q So, as you review your notes it appears when
23 you all got there for that videotape, correct me if
24 I'm wrong, don't let me put words in your mouth, as
25 you got that videotape it had to do with the

1 investigation into the statements allegedly made by
2 the unknown people in the parking lot at the gas
3 station as opposed to anything to do with Travis
4 Felder?

5 MR. BROWN: Your Honor, why doesn't he ask
6 him what it was? I understand this is cross,
7 leading questions are in your discretion.

8 THE COURT: Overruled.

9 A I'm sorry. Repeat the question.

10 Q I'll repeat the question. It was a long
11 question, I apologize. When you all got that
12 videotape it was to investigate Octavia LeGree and
13 the Jamaican boyfriend and what they heard and it
14 didn't have anything to do with Travis Felder or
15 any information you had about him and the gas can?

16 A I think when we got the tape we were actually
17 looking to see if we could find if anyone bought
18 gas. It just so happened that in reviewing the
19 tape the clerk, you know, we observed the clerk
20 talking to this subject there with the Jamaican
21 accent, which we later found out was her boyfriend.

22 Q Right. Now let's go back to Mr. Bowman's,
23 I'm not talking about the hot potato statement, but
24 we'll go back to Mr. Bowman's first statement which
25 was number five here it. I'm looking over on page

1 two and see if you find any reference where Marion
2 Bowman told you on that date he saw Terry Kelly and
3 that Terry Kelly not only made some damaging
4 admissions but that Terry Kelly had a liter jug or
5 some sort of jug or plastic bottle?

6 Starting at the top of the page.

7 A Yes, sir.

8 Q Okay. So, Marion Bowman, when you all were
9 interviewing him or when he was being interviewed
10 shortly after the incident and after his arrest
11 told you that Terry Kelly had gotten himself a jug
12 or some sort of bottle, correct?

13 A Gallon jug and a two liter bottle.

14 Q You all were of course asking him about the
15 murder of Kandee Martin and the torching of her car
16 with her inside of it, correct?

17 A Correct.

18 Q Okay. Does that refresh your recollection as
19 to why you all may have been looking at the
20 security tape?

21 A Yes, sir.

22 Q As to the E-Z Horizon?

23 A Yes, sir.

24 Q All right. And what is that recollection
25 now?

1 A Well, like I say there, we were trying to
2 find anyone on the tape that may have gone in to
3 get a small amount of gas. Their tapes do not show
4 the pumps, so we couldn't see the pumps and it was,
5 viewing the tape, it is hard to see the, actually
6 they ring up a sale, it comes up on the screen, but
7 it is a quad screen, so the screen is rather small.
8 It is kind of hard to see the writing and tell
9 what's there. Some of them you can, some of them
10 you can't.

11 Q Now, where is the E-Z Horizon store in
12 relation to the Villas or the projects or however
13 they have been referred to a number of different
14 ways?

15 A They are on Highway 78 going into
16 Branchville, the Villas Apartments are on the right
17 as you are coming into town, go past that to the
18 stop sign, turn left and the Horizon E-Z Shop would
19 have been on the right.

20 Q All right. So, you got that videotape and
21 your testimony is you heard what the Jamaican
22 boyfriend was saying on it, correct?

23 A Correct.

24 Q You viewed the videotape, correct?

25 A Correct.

1 Q Did you see Travis Felder or did you
2 recognize Travis Felder on that videotape?

3 A I did not recognize him on the tape, no.

4 Q Okay. And I believe you testified earlier
5 that James Helms took the tape to be, for stills to
6 be made or something like that. Could you explain
7 that?

8 A Agent Helms, I signed the tape over to him,
9 he took the tape to SLED headquarters, turned it
10 over to their technical department there and they
11 made copies of the tape and also attempted to do
12 the still photographs from the tape.

13 Q All right. And was that helpful?

14 A Not to me, no.

15 Q Okay.

16 A I still couldn't tell who it was on the tape
17 they made the stills of.

18 Q So, you never recognized Travis Felder on
19 that tape?

20 A No, sir.

21 Q Did anyone talk to you in law enforcement
22 prior to this trial and say, "Hey, that is Travis
23 Felder on the tape"?

24 MR. BROWN: Hearsay, Your Honor. It goes to
25 the truth of the matter asserted.

1 MR. WATERS: It goes to his knowledge, that
2 if he had some knowledge not disclosed.

3 THE COURT: The videotape of the convenience
4 store where someone communicated that was Travis
5 Felder?

6 MR. WATERS: Exactly. He said he viewed it
7 and he did not ever see Travis Felder on there, I'm
8 asking him if anyone else told him, "Hey, I saw
9 Travis Felder."

10 THE COURT: Are you trying get into why he
11 charged Travis Felder or talked to Travis Felder?

12 MR. WATERS: No. There has been an
13 allegation made that somehow the State --

14 MR. BROWN: Your Honor, now we're getting
15 into argument by counsel which could prejudice his
16 response. With all due respect to Mr. Coker, we're
17 all human.

18 THE COURT: Okay. What action of Detective
19 Sergeant Coker are you trying to get him to tell us
20 why he did it?

21 MR. WATERS: I'm trying to get him to say
22 that he did not --

23 THE COURT: No, what action is it? Is there
24 some action he did that you're trying to get him to
25 state some reason why he did it?

1 MR. WATERS: Right. That he didn't know that
2 Travis Felder was on that videotape, no one told
3 him that.

4 MR. BROWN: He just injected the answer.

5 THE COURT: I didn't ask you to give the
6 answer. I was trying to find out was there
7 something you were trying to get him -- okay, I
8 will let you ask him this. Did he hear from anyone
9 that Travis Felder was on the videotape. I will
10 overrule your objection, I will let you ask that.

11 MR. BROWN: If I may articulate it, backward
12 hearsay by saying what he didn't hear, by talking
13 about what he did hear?

14 THE COURT: So articulated and I will
15 overrule the objection. You can ask him did anyone
16 tell him Travis was on the tape.

17 BY MR. WATERS:

18 Q Prior to trial did you yourself recognize or
19 did you receive any information that Travis Felder
20 was on that tape?

21 A I have notes says he went in the store
22 2:56:27 and came out of the store at 2:58 and
23 whatever seconds. I personally did not recognize
24 him on the tape.

25 Q Right.

1 MR. BROWN: May we inspect where that is in
2 that?

3 THE WITNESS: It is just a little sticky note
4 attached to this sheet. That is all it is.

5 MR. BROWN: That is not actually even part of
6 it?

7 THE COURT: Hold on one second.

8 MR. BROWN: Can you give us some direction in
9 case that sticky note may not be copied in my copy
10 of the file?

11 THE WITNESS: If you look at the booking
12 report for Travis.

13 MR. BROWN: Which volume, to begin with?

14 THE WITNESS: I'm in volume one. It is
15 toward the back.

16 MR. BROWN: Okay. I think my copy is
17 backwards. His booking, Travis' booking?

18 THE WITNESS: Correct. I'm assuming that
19 page, the booking report.

20 MR. BROWN: All right. Interestingly, they
21 copied it in the sleeve.

22 THE WITNESS: Yes.

23 THE COURT: Did you all find what you needed
24 to find?

25 MR. WATERS: The other attorneys stepped out

1 for a second, I will go get them.

2 THE COURT: Go get them.

3 Are you all ready? Are we ready or not

4 ready?

5 MR. BROWN: We're ready, Your Honor.

6 THE COURT: Let me know if you're not. Do

7 you need another minute?

8 MR. BROWN: Maybe ten seconds.

9 THE COURT: All right. I'm worried about

10 your doctor.

11 BY MR. WATERS:

12 Q All right, when we left after you had just

13 told us about a sticky you had with your file,

14 could you turn back to that page?

15 A Yes, sir.

16 Q Let me ask you this. Do you remember the

17 tape from E-Z Horizon being played of Travis Felder

18 being played at anytime in the trial?

19 A I don't recall it being made.

20 Q Okay. What that reflects right there is on

21 top of the booking report -- whose booking report

22 is that?

23 A Travis Felder.

24 Q On top of that you have a sticky?

25 A That was just a marker to mark the page.

1 Q I'm talking about on the booking report.

2 A On the booking report, yes.

3 Q And there is a sticky on it?

4 A Right.

5 Q And what does it say?

6 A It says in store 2:56:27, and it says 2:58
7 out.

8 Q Do you remember when that sticky was placed
9 there?

10 A I do not. I haven't looked at this file
11 since the trial, until I was notified to be here.

12 Q That is what I wanted to know, okay. And do
13 you recall in the interim before lunch commenting
14 when we were looking for the videotape that you
15 don't remember the videotape being played at the
16 trial, this was off the record, just a comment?

17 A I may have.

18 Q Okay. All right, moving on, now let's go
19 back to Mr. Bowman's statements one more time.
20 Again I'm not using the hot potato statement, I'm
21 using four, five and six. I want you to look in
22 there and tell me if Mr. Bowman described a silver
23 and black .380 High Point in those statements?

24 A In Defendant's Exhibit 4 he said that he had
25 a pistol -- I'm sorry?

1 THE COURT: Is that Number 4 he's looking at?

2 MR. WATERS: Yes, sir.

3 THE COURT: I thought you said you were not
4 using that one but you are using that?

5 THE WITNESS: Defendant's Exhibit 4, Your
6 Honor.

7 MR. WATERS: Defendant's 7 is the hot potato.

8 THE COURT: All right.

9 MR. WATERS: Your Honor, for the record,
10 anytime I pick up that statement I will give
11 everybody full notice so there is no question about
12 it.

13 THE WITNESS: In the statement, Defendant's
14 Exhibit 5, he mentions seeing the gun, chrome and
15 gray with black handgrips, automatic pistol.

16 BY MR. WATERS:

17 Q I'm sorry, repeat that.

18 A Defendant's Exhibit 5, he said that the gun,
19 "He showed me a chrome and gray with black
20 handgrips semiautomatic pistol."

21 Q Okay. Then finally on six -- that is all I
22 need to know.

23 A The first page is not here.

24 Q We'll correct that in a minute. The bottom
25 line is that Marion Bowman told you that Gap had a

1 black and silver .380 pistol, correct?

2 A I don't know he mentioned the caliber but he
3 mentioned a black and silver semiautomatic.

4 Q Okay. And as we have already established,
5 you all went and picked up James Tawain Gadson and
6 ultimately he gave a statement, correct?

7 A Right.

8 Q Okay. And I want to show you what has been
9 marked Plaintiff's Exhibit 6, and looking at about
10 five lines down, and Tawain Gadson also described a
11 black and silver .380 semiautomatic in possession
12 of Marion Bowman, correct?

13 A Yes, sir.

14 Q Okay. And in the course of investigation did
15 you all receive information about Mr. Bowman on the
16 day of the incident at Hank Coker's house having a
17 black and silver semiautomatic?

18 A Yes.

19 Q Okay. So, correct me if I'm wrong, you had
20 information that there was a black and silver .380
21 or semiautomatic in play, correct?

22 A Correct.

23 Q All right. Now, Mr. Gadson told you that he
24 in fact had purchased such a gun. Is that right?

25 A Yes, sir.

1 Q All right.

2 A I believe he told us he had bought a nine
3 millimeter.

4 Q Okay.

5 A When in reality SLED checks turned out he
6 actually bought a .380.

7 MR. WATERS: I'm going to have this document
8 marked as a defendant's exhibit. See if you
9 recognize that document?

10 A Yes, sir. This is a print-out that Agent
11 Helms obtained from the SLED regulatory office
12 showing where James T. Gadson purchased a High
13 Point Model CF .380, .380 caliber pistol.

14 Q Can you read the serial number on that?

15 A Let me find it. 0647 -- hold on. I'm sorry.
16 Serial number is P732433.

17 Q Okay, thank you. So, you all had information
18 that Tawain Gadson had in fact legally purchased a
19 black and silver .380 High Point weapon with a
20 serial number you just read, correct?

21 A Correct.

22 Q Okay. Now, were you also familiar, I think
23 you have been asked about these, these are
24 Plaintiff's 30 and 29, the statements of Tiara
25 Coleman and Margaret Hawkins.

1 A Yes, sir.

2 Q Okay. And generally what did those describe?

3 A That there had been some shooting near the
4 apartments or at the apartments on prior occasions.

5 Q And that Marion Bowman had given the gun to
6 Tawain Gadson who fired it up in the air?

7 A Correct.

8 Q Okay. So, you had that information as well,
9 is that right?

10 A Yes.

11 Q All right. So, given all this information
12 you had about a black .380 and your information
13 that Tawain Gadson had in fact purchased one, what
14 was your initial conclusion with regard to the gun?

15 A We actually thought that the gun he purchased
16 was the gun used in this case at that time.

17 Q Did you know that Marion Bowman and Tawain
18 Gadson, or Gap, ran together?

19 A Yes.

20 Q Okay. All right. So, as you just said, you
21 all thought that James Tawain Gadson's weapon had
22 to be the murder weapon because of all the
23 descriptions you had and that SLED report, correct?

24 A Correct.

25 Q All right. So, if you put in a search

1 warrant or your notes in your investigative file
2 that tie Wayne Gadson's .380 with that serial
3 number is believed to be the murder weapon that was
4 based on the best information you had gathered at
5 that particular time, is that correct?

6 A That would be correct.

7 Q Did you do any gun line-ups in this case
8 where you have a print-out of pictures of various
9 High Point weapons?

10 A Agent Helms actually obtained a two page High
11 Point line-up that actually showed the different
12 models of their weapons.

13 Q Okay.

14 A And, yes, we did show them to several people.

15 Q Did you show it to Marion Bowman?

16 A Yes, sir, I think so.

17 Q And did he in fact identify a black and
18 silver .380 automatic gun from an automatic gun
19 line-up?

20 A He did.

21 MR. BROWN: Your Honor, we raise the
22 objection that we raised previously based on the
23 fact this statement came after the involuntary
24 statement.

25 MR. WATERS: If that's true I was not aware.

1 I thought that came earlier. Maybe we can ask him.
2 If in fact it came after the involuntary statement
3 I will withdraw that question and answer. I was
4 under the impression it came before.

5 THE COURT: Do you know which statement it
6 was?

7 THE WITNESS: I don't recall if it was the
8 first or last.

9 THE COURT: He doesn't recall.

10 MR. WATERS: I withdraw it.

11 THE COURT: Withdrawn.

12 MR. BROWN: Thank you.

13 BY MR. WATERS:

14 Q So, we have established you guys thought
15 Gadson's .380 was the murder weapon. Did anything
16 subsequently occur to change your mind on that?

17 A Yes.

18 Q If you could, just recount the story to me.

19 A Detective Quinton Joiner and myself went back
20 to Branchville eventually to do follow-up
21 interviews and we met with Mr. Bowman's sisters.

22 Q Why sisters? Why did you meet with them?

23 A We had received some information that the gun
24 had actually been -- well, let me back up. The
25 issue came up as for as the gun being in a sofa,

1 and then we went back and found, I think it was
2 Miss Burkhart who gave us a consent to search the
3 the sofa that had been in the apartment and as a
4 result of that we found a box of .380 ammo.

5 Q Where did you find that?

6 A It was a sofa bed and the way it was designed
7 it had a thick padding on the front kick board and
8 there was a split right in the middle. This .380
9 ammo was between that padding and that kick board,
10 all the way down on one end of that, under that
11 padding.

12 Q You had to kind of reach up in there?

13 A You had to reach way up in there almost to
14 the extent of my arm to get it out.

15 Q All right.

16 A as a result, we then got information that
17 Miss Dorothy Bowman, Mr. Bowman's wife, had
18 actually taken the gun and given it to --

19 MR. BROWN: Your Honor, obviously this is
20 hearsay, a good bit of it. "We talked to somebody,
21 got information, somebody said something."
22 Obviously that part of it.

23 MR. WATERS: Your Honor, there is an
24 allegation --

25 THE COURT: Listen, assuming what he's saying

1 is why he did things he did, not truth of the
2 matter asserted, but as to the results of the
3 investigation, it is almost, giving the result of
4 it, sometimes it may be part hearsay, if he
5 endorses it as his investigation I will overrule
6 your objection as long as it didn't come from
7 involuntary statements.

8 MR. WATERS: It did not. There is an
9 expressed allegation that trial counsel failed to
10 impeach based on statements and search warrants
11 made by Investigator Coker that Tawain Gadson's
12 .380 was believed to be the murder weapon. I'm
13 trying to explain that, why it wouldn't have been
14 done by counsel and why trial counsel knew it
15 wasn't done. That is the sole purpose of this
16 questioning.

17 MR. BROWN: There is a claim, Your Honor,
18 that they believe Tawain Gadson's gun was used.

19 THE COURT: All right. Overruled.

20 BY MR. WATERS:

21 Q All right. You went to talk to the sisters.
22 Did you have information that the sisters had been
23 with him that night as well?

24 A Yes, they had all been, supposed to have all
25 been out to a club called Allen Murray, they had

1 seen each other at the club, we knew there had been
2 some contact between them that night.

3 Q Okay. Did you interview one of the sisters
4 and did one of them tell you something that was of
5 interest, and again only for the purposes of your
6 actions in the investigation?

7 MR. BROWN: Your Honor, again he is just now
8 getting into, let me say this, he has got a file of
9 interviews of, I won't ballpark, twenty people, so
10 if it is okay for me to ask him what all these
11 other people told him, then I guess, it still
12 doesn't make me feel better, I guess it turns this
13 trial into massive hearsay introduction, because
14 his objection to that entire file was hearsay
15 contained therein, and if he wants to enter the
16 entire file I would make that motion again.

17 MR. WATERS: Your Honor, I'm not offering it
18 for hearsay. He certainly went through these notes
19 right and left. I'm trying to establish the belief
20 about how the gun changed --

21 THE COURT: The belief about the gun by whom?

22 MR. WATERS: Mr. Coker. One of the first
23 allegations goes to failure to impeach Mr. Coker or
24 to bring out before the jury that Mr. Coker had put
25 in a search warrant and his notes that James

1 Gadson's .380, not Marion Bowman's .380, was
2 believed to be the murder weapon. I was explaining
3 how they initially came to that belief and how it
4 subsequently changed. That is all I'm trying to
5 do.

6 MR. BROWN: If I may briefly respond, I tried
7 to ask about how the belief that Tawain Gadson was
8 charged with murder and then allowed to plead to
9 something else and then was still subject to being
10 recharged with murder, and that was supposed to be
11 a question for the presecutor.

12 MR. WATERS: Your Honor --

13 MR. BROWN: This is exactly how they are
14 shifting beliefs.

15 THE COURT: As I recall, we were discussing
16 then about who makes the decision on that.

17 MR. WATERS: Your Honor --

18 THE COURT: If you need, you might as well
19 tell the doctor he is not going to make it today.

20 MR. BROWN: I would like that opportunity.

21 THE COURT: If you need to in your redirect
22 to bring up something to show that impeachment
23 would have worked, then you can.

24 MR. BROWN: Okay.

25 THE COURT: I have been involved in several

1 capital PCR's but I have never been in one that has
2 gotten so much of the details of the testimony in
3 about the various investigations done by the police
4 officers as detailed as this one, but then again,
5 that goes to the quality of the attorneys involved,
6 I'm sure. But I will, we'll proceed, you may ask
7 the question. Overruled.

8 MR. WATERS: Thank you, Your Honor.

9 BY MR. WATERS:

10 Q All right. Let me just short-circuit it.
11 You subsequently received information from Marion
12 Bowman's family that the gun had been thrown in the
13 river, that's in the trial record, right?

14 A Correct.

15 Q And you all sent divers to the river to go
16 look for it?

17 A Correct.

18 Q Again in the trial record. And when they
19 found that weapon and pulled it up and you went
20 over to look at the serial number what was your
21 thought at that moment?

22 A I actually thought it was the gun until I
23 checked the serial number and found out it was a
24 different serial number.

25 Q You thought it was whose gun?

1 A I thought it was Gap's gun.

2 Q You thought the serial number was going to be
3 the one here in Defendant's Exhibit --

4 A I really did, yes.

5 Q And then all of a sudden it was a surprise,
6 it was an entirely different weapon, correct?

7 A Right.

8 Q That is all I need to do on that. All right,
9 I asked you a couple questions, I will ask you a
10 couple questions about Mr. Darien Williams if I can
11 find his warrant here. Okay, here you go,
12 Plaintiff's Exhibit 38. Would you remind the Court
13 what that is again?

14 A Plaintiff's Exhibit 38 would be the warrant
15 affidavit for accessory after the fact of arson
16 third degree against Darien Antonio Williams, AKA
17 Pop.

18 Q Okay. Why don't you turn over and look at
19 the affidavit and read the last few sentences and
20 see if that refreshes your recollection as to your
21 interactions with Mr. Williams and why you all
22 sought that warrant?

23 A Yes, sir. Because according to this the
24 defendant originally indicated he was not present,
25 however he repeatedly states that he was, he was

1 present when the body was placed in the vehicle and
2 the car was burned.

3 Q Keep going.

4 A Against the laws and peace of the State of
5 South Carolina. That is the last sentence.

6 Q Let me see it quickly. Starting there, each
7 time, right there.

8 A "Each time the defendant repeats his story
9 the story changes. The defendant originally
10 indicated that he was not present, however now
11 repeatedly states he was present when the body was
12 placed in the vehicle and the car was burned."

13 Q Okay. So, your affidavit right there
14 reflects that you were just getting so much stuff
15 from Darien Williams each time you talked to him,
16 different stuff?

17 A Correct.

18 Q And you were asked about some of Darien
19 Williams' statements, and I'm just going to ask you
20 about this one. This is my copy. Do you recognize
21 that supplementary report there?

22 A Yes. That would be one of my supplementary
23 reports.

24 Q Down at the bottom does it say what Mr.
25 Williams -- hold on.

1 THE COURT: Go ahead.

2 Q All right. Does that refresh your
3 recollection as to what Mr. Williams told you on
4 that particular occasion about whether or not he
5 saw Travis Felder at the scene of the fire?

6 A Yes, sir.

7 Q What did he tell you at that point?

8 A He did state that he did not see Travis
9 Felder at the fire scene at anytime but did see him
10 talking with Marion Bowman, Jr., at Allen Murray
11 Club earlier in the night.

12 Q Okay. So, in that one he said he didn't see
13 Travis Felder?

14 A Correct.

15 Q At the scene?

16 A Correct.

17 MR. WATERS: Court's indulgence? I believe
18 I'm about done.

19 I apologize, Your Honor, I misplaced a
20 document, if you will just give me one second.

21 THE COURT: Your witness indicates he needs
22 to take a break. How long will it be? I would
23 like to step down for a minute.

24 MR. WATERS: It will be very short but it
25 would probably be a good time to do that.

1 THE COURT: Okay.

2 MR. WATERS: Your Honor, I mean --

3 THE COURT: No, no.

4 MR. WATERS: I'm not trying to push you at
5 all.

6 THE COURT: I was just thinking interestingly
7 enough, were you the first witness this morning?

8 THE WITNESS: Second.

9 MR. BROWN: Pretty much the first witness.

10 MR. WATERS: Your Honor, I would have been
11 done by now, I just apparently put something in the
12 wrong file and now I can't seem to locate it. I
13 apologize for that.

14 THE COURT: That's all right. Just send
15 someone to let me know when you all are ready to
16 get started back. Don't discuss your testimony.

17 (Recessed at 4:26 p.m.).

18 (Reconvened at 4:44 p.m.).

19 THE COURT: All right, where are we?

20 MR. WATERS: Just a few more questions, Your
21 Honor, on cross examination of Sergeant Coker.

22 THE COURT: Did you find the document you're
23 looking for?

24 MR. WATERS: I did, Your Honor, I appreciate
25 the Court's indulgence.

1 BY MR. WATERS:

2 Q Sergeant Coker, I'm going to show you what
3 has been marked Defendant's Exhibit 9 and see if
4 you recognize that document?

5 A Yes, sir. It would be a rap sheet for Hiram
6 Johnson, Jr.

7 Q Okay. And who pulled that and on what date?

8 A It appears it came from one of our CAD
9 systems through NCIC on --

10 Q Does it have an attention name right there?

11 A That was attention to me but at the time I
12 wasn't NCIC certified so someone else actually ran
13 it, 2/26/2001.

14 Q That meant it was done at your request,
15 though, right?

16 A Yes, sir.

17 Q Does that sheet reflect any pending charges
18 for Hiram Johnson?

19 A No, sir, not that I see.

20 Q Okay. All right. One final question.

21 Where, to the best of your recollection, was this,
22 I think you called it a block house or whatever, in
23 relation to Dorothy Bowman's house? And just
24 generally, I don't mean precisely?

25 A It was in the same general area, I don't

1 remember whether to the right or to the left of it,
2 it was somewhere in that same general area.

3 Q Like the lot nextdoor or on the same lot or
4 across the street?

5 A It wasn't the same lot. It seems like it was
6 down the street a little ways.

7 Q Was there any particular reason why you all
8 searched that?

9 A Yes, sir. We had been given information that
10 the gun had been hidden, that it had been hidden
11 somewhere in that building, in that structure.

12 MR. WATERS: Okay, all right. Your Honor, I
13 have nothing further at this time.

14 THE COURT: All right, redirect?

15 MR. BROWN: May it please the Court?
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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q Let's see where I can start here. Rap sheets
4 show unserved active warrants?

5 A Sometimes. If they have been put in NCIC.

6 Q Okay. So if, for instance, Hiram Johnson has
7 a charge pending in First Circuit for receiving
8 stolen goods that was issued by a Magistrate three
9 months before that rap sheet was run and remained
10 active thereof it could be on that rap sheet
11 although I know you say it's not?12 A I don't see it on this rap sheet. Apparently
13 it was not put in the NCIC.14 Q That would make it no less of a pending
15 charge, would it?16 A No, sir. I mean, it would still be a pending
17 charge if there was a charge there. It doesn't
18 necessarily show up on a rap sheet. Someone has,
19 from that agency has to enter it into NCIC as a
20 wanted person for it to show up.21 Q I show you what has been marked for ID
22 Plaintiff's Exhibit 48. Does that appear to be a
23 warrant that was issued for Hiram Johnson, one of
24 those three pages appear to be a warrant issued to
25 Hiram Johnson prior to the date of running that rap

1 sheet?

2 A It does, in Orangeburg County.

3 Q Which is in the First Judicial Circuit?

4 A Yes, sir.

5 Q Does that rap sheet just look at Dorchester

6 County?

7 A No, state wide.

8 Q When Hiram Johnson was interviewed what

9 county was he in? Do you recall, back at the

10 Branchville interview?

11 A Branchville, I think we actually interviewed

12 him in Branchville and also in our --

13 Q What county is Branchville in?

14 A Branchville is in Orangeburg County.

15 Q And does it appear that warrant was active

16 for his arrest on the day you all interviewed him

17 at the Branchville Police Department?

18 A Bear with me.

19 Q Yes, sir.

20 A It appears this warrant was issued on

21 11/13/2000 by Judge Davis, signed by apparently

22 Officer Kinsey and it was served, looks like on

23 5/29/2001.

24 Q So, Hiram Johnson met with you -- let me

25 stop. Could you have arrested somebody in another

1 county if there is a warrant?

2 A If I know there is a warrant. Had I known
3 this warrant existed at the time we would have
4 actually had Orangeburg County arrest him.

5 Q Fair enough, but at that time you as a law
6 enforcement officer met with him in a law
7 enforcement capacity in the Law Enforcement Center
8 in Orangeburg County he had a warrant against him
9 for his arrest?

10 A Apparently so from this, yes.

11 Q And he was Mirandized?

12 A Yes.

13 Q What kind of deal was cut with him?

14 A I didn't make any deals with him.

15 Q Fair enough.

16 MR. BROWN: We would move, I believe without
17 objection, Plaintiff's Exhibit 48 into evidence
18 and, Your Honor, we just got this, I sent a request
19 yesterday, after Hiram Johnson testified, by my
20 investigator, he brought that to me today in the
21 middle of this proceeding. Obviously the rap sheet
22 would not have indicated some of this stuff, which
23 again you have to be certified to run the real rap
24 sheets.

25 MR. WATERS: No objection.

1 THE COURT: All right, in evidence.

2 (Hiram Johnson warrant marked and received in
3 evidence as Plaintiff's Exhibit Number 48).

4 BY MR. BROWN:

5 Q Do you know who Hiram Johnson's lawyer was on
6 this charge?

7 A No, sir, I do not.

8 MR. BROWN: Plaintiff's Exhibit 49.

9 Q I ask you to take a look at Plaintiff's
10 Exhibit 49. Is there an indictment number at the
11 top of that page?

12 A Yes, sir.

13 Q Is it consistent with the indictment number
14 on Plaintiff's Exhibit 48 now in evidence?

15 A It appears to be.

16 Q And does it list his defense attorney?

17 A It says John O'Leary.

18 MR. BROWN: We would offer Plaintiff's 49
19 into evidence.

20 MR. WATERS: No objection, Your Honor.

21 (Hiram Johnson indictment marked and received
22 in evidence as Plaintiff's Exhibit 49).

23 THE COURT: For my information, what is the
24 date of these charges? Are these the ones he has
25 testified about?

1 MR. BROWN: The ones he denied having
2 charges, is my recollection, he denied having
3 charges during the pendency of this trial.

4 MR. WATERS: Your Honor --

5 MR. BROWN: Or investigation.

6 MR. WATERS: -- what he testified was, he
7 initially said that but then when he was reminded
8 he said yes, there was those, that was part and
9 parcel of the lawsuit where he was shot.

10 THE COURT: That was dismissed just recently?

11 MR. WATERS: Exactly. I think it says 2004.

12 THE COURT: Your Honor asked him if there was
13 evidence of a deal and I think there was some
14 statement from petitioner's counsel that
15 circumstantial evidence of a deal being cut is that
16 he was arrested pending the charges by the
17 Solicitor's office and after his favorable
18 testimony as the State's witnesses the charges --

19 THE COURT: It's in evidence, I was just
20 curious.

21 MR. BROWN: I don't think I was the
22 questioning counsel.

23 BY MR BROWN:

24 Q Let me ask you about the notes that have been
25 referenced. Whose sticky note is it that appears

1 on the Travis DeWitt Felder booking report?

2 A It appears to be my handwriting. I honestly
3 do not remember writing it. I don't know when it
4 got put there.

5 Q It appears to be your handwriting?

6 A Appears to be.

7 MR. BROWN: I apologize, Your Honor.

8 Q I ask you to take a look at Plaintiff's
9 Exhibit 50.

10 A Yes, sir, a copy of Travis Felder's booking
11 report with sticky note attached to the front of
12 it.

13 Q And the times on there are the times off the
14 little video meter?

15 A Yes, sir, I'm assuming.

16 Q And I assume being the times that are
17 relevant, that the time of him entering and leaving
18 the E-Z Horizon Mart were relevant to your
19 investigation?

20 A In looking at the tape, say we were trying to
21 find anyone that might have gone in to purchase gas
22 in a small amount at that time, I personally didn't
23 recognize him in there, I didn't, you know, those
24 tapes, if you look at them, some of them you can
25 recognize people, some of them you can't.

1 Apparently at some point in time we recognized he
2 was in there at this time and he went back out at
3 approximately two minutes later.

4 Q And just to kind of get some context, he said
5 he went in there and bought chips and also he went
6 in there and bought gas used to burn this car.
7 Which of those times would have been noted on this
8 post-it sticky, and the tape speaks for itself?

9 A That would have been the total time in the
10 store. Apparently he came in at 2:56:27, when he
11 came in the door, and he went out the door at 2:58,
12 and I didn't record the seconds when he went out
13 the door, so total in the store approximately two
14 minutes.

15 Q We're talking about the gas burning purchase,
16 the gasoline purchase, we're not talking about the
17 chips and dip purchase he says happened first?

18 A Apparently. This would have been about that
19 2230 timeframe.

20 Q Okay. Is it more likely this note deals with
21 his purchase of gasoline?

22 A Probably.

23 Q Okay. And obviously you have kind of implied
24 this, this post-it note was the time of the
25 purchase of gasoline on the videotape, there is

1 some, by the fact it is affixed to his booking
2 report there is some law enforcement attribution of
3 that purchase to Travis Felder?

4 A I would assume so.

5 Q Okay. And that is included in your case
6 file?

7 A Yes, sir.

8 Q Your law enforcement file?

9 A That's the only mention I have of it, is that
10 sticky note.

11 Q Which is, right, in the file involving this
12 investigation?

13 A Yes, sir.

14 Q Which has been marked also for ID and
15 proffered?

16 A Correct.

17 Q Now, you were asked about your belief that
18 Tawain Gadson's gun was the gun used in the crime?

19 A Yes, sir.

20 Q And I think you were asked if you base that
21 in part upon the Tiara Coleman and Margaret Hawkins
22 information, and you were provided a copy of their

23 --

24 A Partially, yes, sir.

25 Q Okay. I think it references Plaintiff's

1 Exhibit 29 and Plaintiff's Exhibit 30.

2 A Yes, sir.

3 Q Okay. And you're familiar with David
4 Collins' conclusion?

5 A I have read it, it has been awhile since I
6 reviewed it.

7 Q That these shells were fired, that were
8 attributed to being fired by Tawain Gadson were
9 fired by the gun that killed Kandee Martin?

10 A Correct.

11 Q To be clear on the record, we have offered
12 Plaintiff's Exhibit 50 into evidence.

13 MR. WATERS: No objection, Your Honor.

14 THE COURT: In evidence.

15 (Travis Felder booking report marked and
16 received in evidence as Plaintiff's Exhibit
17 Number 50).

18 BY MR. BROWN:

19 Q How long did law enforcement believe Darien
20 Williams' statement regarding his knowledge -- let
21 me back up. Darien Williams never said he was
22 there when Kandee Martin was killed, did he?

23 A No, sir.

24 Q In none of the statements did he claim to be
25 an eyewitness?

1 A No, sir.

2 Q His statements vacilated on whether he was a
3 witness to the burning of the vehicle?

4 A Correct.

5 Q How long did -- are you aware law enforcement
6 endorses or believes in those statements?

7 MR. WATERS: Your Honor, I object to that
8 statement. Again, I don't know --

9 THE COURT: I was thinking a while ago, is
10 your question what he believed?

11 MR. BROWN: I will ask him that.

12 THE COURT: Ask him.

13 BY MR. BROWN:

14 Q How long did you believe Darien Williams'
15 statement about witnessing the burning of the car?
16 I think his statement, one of them says Tawain
17 helped put the body in the car and Travis was there
18 and Darien was there, I think it was a lot of
19 people there at the burning of the car.

20 MR. WATERS: Your Honor, I object to that
21 question.

22 MR. BROWN: Let me rephrase it.

23 Q I will go back to the question the Court
24 allowed. How long did you believe it?

25 A He gave us more than one statement.

1 Q Yes, sir.

2 A More than one interview, and in one of those
3 statements he actually described the route they
4 took back to the car.

5 Q Yes, sir.

6 A Which was believable.

7 Q Yes, sir.

8 A So, I still believe to this day that he was
9 telling me the truth in that particular instance.

10 Q About going back to the scene?

11 A About going back to the scene.

12 Q He obviously at some point says he witnessed
13 other people there, too?

14 A Correct.

15 MR. BROWN: Beg the Court's indulgence.

16 I have no more questions but my co-counsel
17 has something he wishes to consult with me on.

18 THE COURT: Consult.

19 MR. BROWN: Thank you.

20 BY MR. BROWN:

21 Q As lead detective in a murder investigation,
22 capital case, you were at least consulted at some
23 point about what was going on in the prosecution?

24 A Yes, sir.

25 Q For instance, you spoke with Solicitor Bailey

1 about Travis Felder?

2 A At times.

3 Q Sure, and I will use that as an example, as
4 an example of how you were kind of the point person
5 for the prosecutor's office to go to with law
6 enforcement?

7 A Basically, yes, sir.

8 Q I'm just going to ask you, have you ever seen
9 or heard, ever seen or heard of Tawain Gadson being
10 threatened with the death penalty and it being
11 removed from the table if he cooperated?

12 MR. WATERS: Your Honor, I object to that
13 question. He has handed him a document. I think
14 he needs to ask if he first recognizes it.

15 THE COURT: He asked him, he is not asking
16 him anything about the document, he asked, "Have
17 you ever heard that?"

18 A Not that I can recall.

19 Q And have you ever seen that document?

20 A There may be a copy of it in my file but I
21 don't think I have ever read this document. If
22 there is a copy it was obtained after the fact,
23 after the court.

24 MR. BROWN: Nothing further, Your Honor.

25 THE COURT: Any recross?