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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Maite Murphy, Circuit Court Judge

App. Case No.: 2017-002055

Cornell Devon Tyler, 326023,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME III OF III

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1 Q. Okay. And you've reviewed the reconsideration
2 transcript and the statements by the solicitor. Was
3 anything ever proposed to you about assisting the
4 State in prosecution against Mr. Walker?

5 A. No, ma'am.

6 Q. Now, Mr. Tyler, you're not an attorney, but
7 you've read the transcript, and your attorney makes
8 a change of venue motion. Have you reviewed that
9 change of venue motion that he makes?

10 A. Well, we talked about it. I haven't reviewed
11 it since.

12 Q. Okay. Would you have wanted him to use all his
13 strikes against people -- or to use strikes for
14 people that had been exposed to the media?

15 A. Yes, ma'am.

16 MS. COLEMAN: Objection, Your Honor; calls for
17 a legal conclusion.

18 THE COURT: Sustained. Please move on.

19 MS. COLEMAN: Thank you.

20 BY MS. BLANCHETTE:

21 Q. Mr. Tyler, was there a lot of media exposure in
22 your case?

23 A. Yes, ma'am, a lot.

24 Q. Okay. Was it a concern of yours?

25 A. Yes, ma'am.

1 Q. Was it a concern you discussed with your
2 attorney?

3 A. Yes, ma'am.

4 Q. Okay. And was it your understanding he was
5 going to make a motion for a change of venue?

6 A. Yes, ma'am.

7 Q. And was that successful? Did you get a change
8 of venue?

9 A. No, ma'am.

10 Q. Is that an issue you would have wanted him to
11 be successful on?

12 A. Yes, ma'am.

13 Q. And is that an issue you would have wanted
14 raised on your appeal?

15 A. Yes, ma'am.

16 Q. Okay. We've touched on Mr. James Gleaton. Is
17 there anything else, Mr. Tyler, that you would like
18 to explain as far as your allegation about your
19 attorney being ineffective in regards to James
20 Gleaton?

21 A. Yes, because I just felt like being as that
22 when he came to me with the new evidence, that he
23 didn't check with him before we went back to trial
24 again. I think after he heard it he just said we're
25 going to call you and we're just going to get you on

1 the stand to say what you said.

2 And I think my lawyer should have talked to him
3 one more time before we go to trial because if he
4 had got up there and said what he knew he was going
5 to say, we didn't really need him, you know, at that
6 time because we didn't call him the first time to be
7 our witness.

8 If he was going to say the same thing, why
9 would we call him? We didn't use him for the first
10 trial, so we wasn't going to need him for the second
11 trial.

12 Q. What was your reaction to his testimony at your
13 second trial when you-all called him? Was it what
14 you expected?

15 A. No, ma'am.

16 Q. How so?

17 A. Because my lawyer already told me why we called
18 him. We called him here to say what he said he saw;
19 Edward Walker with the gun coming back in the car,
20 screaming his name and all that, and didn't see me
21 with a gun.

22 Q. And you wanted that information given to the
23 jury; is that correct?

24 A. Yes, ma'am.

25 Q. Okay. And that was the reasoning in calling

1 Mr. Gleaton?

2 A. Yes, ma'am.

3 Q. Okay. Now, when Mr. Gipson was on the stand, I
4 asked him about kind of the key players for the
5 State, Edward Walker, Willie Ware, and Kendall
6 Seawright, and about their testimony. He pointed
7 out a number of inconsistencies in their testimony.
8 Are you alleging today that there is more he should
9 have done in that regard?

10 A. Yes, ma'am.

11 Q. Okay. Specifically Mr. Seawright testified in
12 the first trial that Walker was in the car on the
13 back left, and then in the second trial he testifies
14 that Walker was on top of the car when they left.
15 That inconsistency wasn't brought out. Why is that
16 a factor that you think your attorney should have
17 brought out?

18 A. Because due to the first trial, the jury, only
19 thing they wanted to keep hearing was the statements
20 of the codefendants. That was the biggest thing.
21 That's why it became a hung jury, because they were
22 so big on the statements, the statements, the
23 statements. We stayed there all night, like 2:00 in
24 the morning.

25 And I knew coming into the other trial that the

1 jury going to need to know the inconsistencies
2 because it's no proof of what they're saying, it's
3 no evidence backing up nothing that they're saying
4 that's on me, there's no evidence corroborating what
5 their testimony, you know, to the evidence that the
6 State collected during their investigation.

7 So I felt like that he should have dug in deep
8 with that because that's the State's case, the
9 testimony alone. Without the testimony, the
10 State -- I think it would have been a not guilty
11 verdict.

12 Q. And in the second trial Mr. Seawright makes
13 some additions. On page 150 he adds that they were
14 going to your house to do a spark; on 153 he says
15 that he actually saw you approach the truck with a
16 gun.

17 Your attorney didn't question him on the fact
18 that he didn't say that in his prior testimony. Are
19 those two instances where you would have wanted your
20 attorney to point out the prior testimony that
21 omitted that information?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. But may I add that I think being that the way
25 we cross-examined the witness on the first trial, we

1 did it with the DVDs, you know, because we didn't
2 have paperwork, you know. So I don't know, you
3 know, if that was the reason not to because the
4 jury -- you know, it was taking a long time to
5 cross-examine because, you know, the tape might be
6 30 minutes, the jury got to hear that, you know, my
7 lawyer cross-examined, so I don't know if that was a
8 reason why not.

9 Q. And you sat through both trials, obviously;
10 correct?

11 A. Yes, ma'am.

12 Q. Okay. Did it appear to you that your attorney
13 had streamlined his cross-examination of these
14 witnesses in the second trial?

15 A. Yes, ma'am.

16 Q. Okay. And are you alleging today that that
17 affected the outcome of your second trial?

18 A. It sure did.

19 Q. Okay. Now, this window issue, as I'd like to
20 call it, in closing arguments on page 663, your
21 attorney argues to the jury that, essentially, you
22 couldn't fit out that back window because it didn't
23 close.

24 A. Yes, ma'am.

25 Q. You've reviewed the transcript. Did your

1 attorney bring out that issue with any of the key
2 players from the State and ask them about the window
3 not being able to open all the way, just opening
4 halfway?

5 A. Well, actually, one of my codefendants' lawyer
6 pointed it out to my lawyer and he brought that to
7 me during trial.

8 Q. Okay.

9 A. And my lawyer told me during trial that, you
10 know -- I don't know which codefendant's lawyer it
11 was. He was like, you know, they're saying that --
12 one of the lawyers is saying look at your size, you
13 can't fit through that window. So that was, like, a
14 popup to me. It was something we never talked about
15 because I don't know about that car, I don't know
16 about the windows. So that's how that came about.

17 Q. And would you have wanted your attorney to ask
18 the State's witnesses about that car, about that
19 window, and whether or not it could go up and down?

20 A. Yes, ma'am.

21 Q. Okay. I think you've referenced this, but on
22 page 728 the jury says they want the prior testimony
23 to review, and that testimony was not in evidence.
24 Do you think that testimony was crucial to your
25 case?

1 A. Yes, ma'am.

2 Q. Okay. Do you want to explain that further or
3 do you feel that you've addressed it?

4 A. Well, it's just like I said before: The trial
5 was based on testimony and the jury wanted the
6 testimony because they didn't have no other evidence
7 to corroborate what the State's witnesses were
8 saying. So they wanted to see the inconsistency.

9 And I think that that was very vital because we
10 done had one trial before and the jury kept
11 screaming testimony, testimony, we want to review
12 DVDs, DVDs, DVDs. So I knew that played a major
13 part with the case. So I would have liked for my
14 lawyer to extensively question the witnesses and
15 impeach them with prior inconsistent statements.

16 Q. Now, in closing arguments your attorney does go
17 into how these stories have evolved and changed,
18 talks about a powwow that they had with the
19 solicitor, and he says that this is -- that they've
20 weaved a web of lies, Edward Walker being the main
21 component of that.

22 A. Yes, ma'am.

23 Q. Was it your understanding that, essentially,
24 inconsistencies was going to be the trial strategy
25 going into your trial, showing all the

1 inconsistencies and this web of lies?

2 A. Yes, ma'am.

3 Q. Did your attorney discuss with you any other
4 trial strategies or defenses?

5 A. Well, no, not really, because prior to trial
6 again, Mr. Gipson, my lawyer, met with Mr. Seawright
7 at my father's house in Aiken, because I called my
8 father's house from the phone, you know, and my
9 father said your lawyer is here with Mr. Seawright
10 now.

11 And that's when that came in at -- you know,
12 with the State being that all them getting in a room
13 together and basically going over what they're going
14 to say at trial. That's how that came out, because
15 Mr. Seawright already gave that information to my
16 lawyer prior to the trial.

17 Q. Okay. And Mr. Gipson has testified that
18 there's an open-file policy and he didn't have any
19 concerns that needed to be brought to the Court's
20 attention regarding the conduct of the solicitor's
21 office. Did you have any concerns that you
22 discussed with him regarding the solicitor's conduct
23 in the case?

24 A. Yes, ma'am.

25 Q. Okay. Please explain.

1 A. Because during trial, my lawyer was questioning
2 Mr. Gleaton, he couldn't get out the information
3 that he felt like he was going to say. So my lawyer
4 came back to me and said, you know, he's going to
5 change his statement, you know, something ain't
6 right.

7 So I was like, well, I can see that because
8 that's not what he said he was going to say. So at
9 that time we knew something wasn't right. We knew
10 something wasn't right at that time.

11 Q. And when you say we, just so we're clear
12 because we're on the record here today, who would
13 that we be?

14 A. Me and my lawyer Mr. Gipson.

15 Q. Okay. We've already discussed the issue of
16 alibi. You and Mr. Gipson did not specifically talk
17 about alibi as a defense in this case; is that
18 correct?

19 A. Yes, ma'am.

20 Q. And you don't recall him asking you about alibi
21 witnesses?

22 A. Yes, ma'am, I don't recall.

23 Q. If he would have asked you about alibi
24 witnesses, would you have given him the names of the
25 people that you were with that night and wanted him

1 to talk to them?

2 A. Yes, ma'am.

3 Q. Okay. And would you have wanted --
4 specifically your brother that testified today,
5 would you have wanted him called at your trial?

6 A. Yes, ma'am.

7 Q. Dr. Joel Sexton testified for the State in the
8 area of forensic pathology, I believe. He also went
9 into a discussion of firearms and his familiarity
10 with firearms. You've reviewed the transcript.

11 Would you have wanted your attorney to object on the
12 basis that that exceeds the area of his expertise?

13 A. Yes, ma'am.

14 Q. Mr. Tyler, you've reviewed the transcript and
15 you've actually pointed out several instances to me
16 where you would have wanted your attorney to object
17 in the closing argument. Is that correct?

18 A. Yes, ma'am.

19 Q. And is one of those instances where the
20 solicitor says on page 670 that Mr. Brewer has told
21 the truth from day one?

22 A. Yes, ma'am.

23 Q. Okay. Why did you want your attorney to object
24 to that?

25 A. Because Mr. Brewer said something different in

1 the first trial and the verdicts came out different,
2 you know. So I would want him to object to that, to
3 point that out, you know, because we had two
4 different verdicts. I mean, one declared a mistrial
5 and one was a guilty verdict.

6 But I knew that would have helped me because
7 what Mr. Brewer said at the first trial was
8 beneficial to me because he testified he don't know
9 who approached the vehicle, then after the vehicle
10 followed them and shot, he saw the bodies of two
11 people in that car, which the State's case was three
12 people.

13 The State had no evidence to place me in the
14 car but with testimony. And I think that Mr. Brewer
15 testimony the first trial, it helped me because it
16 was showing that -- you know, my allegations, I'm
17 saying I wasn't in that car, I wasn't around that
18 scene, so I felt like he should have pointed that
19 out more.

20 Q. Would you have wanted your attorney to object
21 when the solicitor essentially said that his
22 witnesses weren't lying on page 706?

23 A. Yes, ma'am.

24 Q. Okay. And would you have wanted him to object
25 on pages 686 through 688 where he explains that

1 Mr. Ware wasn't as fortunate as you, he didn't have
2 the luxury of having an attorney, you had an
3 attorney to help you get your story together?

4 A. Yes, ma'am.

5 Q. Okay. Mr. Tyler, I'll ask you to affirm this:
6 You've raised in your amendment that your attorney
7 was ineffective for failing to enter an objection
8 for the Court not giving the jury charge set forth
9 in State vs. Elmore. I've had you review that case.
10 Are you alleging today that your attorney was
11 ineffective for not making that objection?

12 A. Yes, ma'am.

13 Q. Okay. Mr. Tyler, before I move on and ask you
14 about appellate counsel, this application was filed
15 back in 2013. You had another attorney for quite a
16 period of that time. But I know you've been waiting
17 for this day for a long time. Is there anything
18 else regarding the preparation, investigation
19 leading up to your trials and your attorney's
20 assistance at your trial that you would like to
21 testify about today?

22 A. Is there any objections?

23 Q. Anything else. Anything else you would like to
24 tell the Court about your trial attorney? Anything
25 else in support of your allegations regarding your

1 trial attorney?

2 A. Well, to me, it's simple. I felt like my
3 lawyer, he did a real good job. He met with me, we
4 talked, we got a clear understanding for the first
5 trial. But the second trial, I felt like he went in
6 not prepared thinking that these witnesses were
7 going to say the same thing or thinking that they
8 was, you know, going to be the same way.

9 When we got in there, it was totally opposite,
10 you know. He didn't have nothing -- when they
11 changed they statement, he didn't have nothing to go
12 back. I felt like my lawyer should have went back
13 and re-interviewed all these witnesses prior to the
14 trial, because it was months before I went back to
15 trial.

16 So I think that he should have went back and
17 investigated because had he knew that these
18 statements were going to change, he could have
19 prepared for it and then we could have brought up
20 inconsistencies and had that right on-hand when it
21 was brought up.

22 Q. Same game plan, different outcome?

23 A. Yes, ma'am.

24 Q. Okay. And are you alleging today that as a
25 result of your attorney being ineffective, the

1 outcome of the second trial was different?

2 A. Yes, ma'am.

3 Q. Okay. Let me ask you a little bit about your
4 appellate counsel. Mr. Joey Savitz has been here
5 today, or Joseph Savitz, and testified. He
6 testified regarding the alibi issue that he did
7 raise, but he also -- I asked him questions about
8 two issues he did not raise. Would you have wanted
9 him to raise all meritorious issues on appeal?

10 A. Yes, ma'am.

11 Q. Okay. And are you alleging he was ineffective
12 for not doing that?

13 A. Yes, ma'am.

14 Q. Okay. Mr. Tyler, one last time, I don't want
15 to beat a dead horse, but before I sit down, is
16 there anything else you'd like to tell the Court in
17 support of your application for postconviction
18 relief?

19 A. Well, I mean, I just feel like, you know, had
20 my lawyer investigated properly and investigated
21 again, I think the outcome would have been
22 different.

23 Q. And did he convey to you any concerns going
24 into the second trial that were different from the
25 first trial?

1 A. No, ma'am. Actually, we thought we were going
2 to go in even better, especially with Mr. Gleaton.
3 So we thought we was going to have a better chance
4 of getting a not guilty verdict with that evidence,
5 adding his evidence with the prior inconsistent
6 statements and everybody. So...

7 MS. BLANCHETTE: Your Honor, if I could beg the
8 Court's indulgence just one moment.

9 THE COURT: Yes, ma'am.

10 BY MS. BLANCHETTE:

11 Q. Mr. Tyler, I neglected to ask you about your
12 testimony, one issue from first to second trial. At
13 the first trial on pages -- in the partial
14 transcript that we have, on pages 164 to 165, you
15 testify that you did see the car when it arrived
16 with Mr. Walker. At the second trial you just
17 testified that you merely saw Mr. Walker. Which is
18 the truth? Did you fail to mention that you
19 actually saw the car which would have had the other
20 people in it?

21 A. Yes, prior to them coming to my house.

22 Q. When Mr. Walker first arrived at your house,
23 did you see a car?

24 A. Yes, ma'am.

25 Q. Okay. And at the second trial, you neglected

1 to say that. But you said it at the first trial;
2 correct?

3 A. Yes, ma'am.

4 Q. Okay. Is that information that you think your
5 attorney should have gotten from you at the second
6 trial, that you saw the car that night?

7 A. He should have.

8 Q. Okay. Is there anything further regarding your
9 testimony that you feel that he was ineffective in
10 getting you to testify to at the second trial?

11 A. No, ma'am, just to be more detailed, you know,
12 because, you know, being that -- I just thought that
13 that part being in more detail, being when I opened
14 my door -- I live on a -- I got a screen porch, so
15 as soon as you open the door, you can see the front
16 yard and see what's right in front of you. So it's
17 not like you, you know, can't see.

18 Q. Okay. And I may have asked you already about
19 Ms. Blizzard and Mr. McAllister. How is it that you
20 knew them?

21 A. Teachers and principal.

22 Q. And what year did you graduate from Wagener
23 Salley?

24 A. 2001.

25 Q. Okay. And this -- the incident date was 2005;

1 is that correct?

2 A. Yes, ma'am.

3 Q. So you weren't too far removed from having been
4 in the school with both of them?

5 A. No, ma'am.

6 Q. Okay. Was any discussion had with you as to
7 why they weren't called in the second trial?

8 A. No, ma'am. I thought they was going to be
9 called because I think that played a big factor in
10 the case.

11 Q. Do you want to explain that further, please?

12 A. Yes. I mean, because it's the outcome, you
13 know, because to me, they was trying to paint this
14 picture, but the picture they was trying to paint
15 wasn't adding up to the facts. You know, the facts
16 is, you know, I wasn't a troublemaker, I had kids, I
17 took care of my kids.

18 You got a bunch of guys saying this, okay, but
19 the evidence pointing towards that way, you know.
20 So I felt like my teachers corroborating me that I'm
21 saying I'm not that type of person; I don't, you
22 know, just wake up in the morning, 3:00 and 4:00 in
23 the morning, and just start shooting people.

24 Q. And when they were utilized at your first
25 trial, your attorney, did he give you any feedback

1 saying, hey, that didn't go well, we're not doing
2 that the second time around?

3 A. No, ma'am.

4 Q. So it was your understanding they would be
5 called the second time around?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions of this witness.

10 THE COURT: Cross-examination?

11 MS. COLEMAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. COLEMAN:

14 Q. Hi, Mr. Tyler. How are you?

15 A. I'm doing all right. And you?

16 Q. Good, thank you. You met with your attorney
17 many, many times before trial; right?

18 A. Yes, ma'am.

19 Q. And you reviewed discovery with him; right?

20 A. Yes, ma'am.

21 Q. And you discussed possible defenses to use at
22 trial?

23 A. Yes, ma'am; trial strategy. Yes, ma'am.

24 Q. And you gave him potential witnesses to
25 investigate and he investigated those witnesses;

1 correct?

2 A. Yes, ma'am.

3 Q. Did you feel like you were in the loop with
4 your attorney? Were you on the same page about most
5 things?

6 A. Yeah, you could say that.

7 Q. Okay. And he did -- he communicated with you
8 pretty well?

9 A. Yes, ma'am.

10 Q. Good. The alibi witnesses that we've talked
11 about today, did you tell him about Misty?

12 A. Yes, ma'am.

13 Q. And Misty did not testify today; correct?

14 A. Yes, ma'am.

15 Q. Okay. Did you tell him about Ms. Felder?

16 A. Yes. I told him she came -- she had a friend
17 with her. But, you know, we never talked about her
18 because she wasn't the driver of the car, so --

19 Q. Right. So --

20 A. -- Misty --

21 Q. Sorry. Go ahead.

22 A. So I just told him that Misty -- you know,
23 being that me and Misty was more of a friend than
24 Kaliah --

25 Q. Uh-huh.

1 A. But Kaliah was her best friend. So...

2 Q. Did you give him her name specifically?

3 A. Yes, ma'am.

4 Q. Okay. Did you give him any contact information
5 for her?

6 A. Well, I couldn't give any contact information
7 because I was, you know, as far as in the county. I
8 just gave him the name Misty Huffman.

9 Q. Okay. Do you recall when you told him that?

10 A. Shoot, as soon as we met, as soon as he became
11 my lawyer.

12 Q. Okay. And you testified that you knew James
13 Gleaton was going to tell the truth before the
14 second trial; correct?

15 A. Yes, ma'am.

16 Q. Okay. As far as your brother taking the stand
17 and testifying at trial to help with your alibi
18 defense, would you want to call your brother as a
19 witness if it meant that he'd get himself in trouble
20 by taking the stand?

21 A. Well, I think my brother's testimony wouldn't
22 have hurt him because the same allegation that was
23 against me was against him. Other people were
24 saying that me and my brother did these other
25 actions that there's no evidence saying that.

1 So I don't think my brother coming to court and
2 testifying that we was in the house, we didn't go
3 out and do -- that would have helped my brother,
4 actually. So I would have liked my brother to be
5 called.

6 Q. And was that a conversation you had with
7 Mr. Gipson?

8 A. No, ma'am.

9 Q. No. You testified that you, of course, would
10 have liked your motion for a change of venue to be
11 granted; right?

12 A. Yes, ma'am.

13 Q. And you wanted the case to be held somewhere
14 else?

15 A. Yes, ma'am.

16 Q. If this motion had been successful and the
17 venue were changed to a different location, you
18 still would have been tried on these charges;
19 correct?

20 A. Yes, ma'am.

21 Q. And the State would have still presented the
22 testimony from witnesses and the victims; correct?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. COLEMAN: May I approach the witness?

1 THE COURT: Yes, ma'am.

2 MS. COLEMAN: Thank you, Your Honor.

3 BY MS. COLEMAN:

4 Q: If you would, please take a look at these
5 papers. Mr. Gipson just pulled this from his file.
6 And just see if that refreshes your recollection
7 about any discussion of the car windows.

8 A. Do it refresh?

9 Q. Does that look familiar? Do you recognize
10 those documents?

11 A. No, ma'am. I never seen this.

12 Q. You've never seen it before. Okay. Thank you.

13 MS. COLEMAN: No further questions, Your Honor.
14 Thank you.

15 THE COURT: Any redirect?

16 MS. BLANCHETTE: No, Your Honor.

17 THE COURT: You may step down, sir. Thank you.

18 Now is a good time for us to take a break for
19 lunch. Be back in the courtroom at 1:45.

20 MS. BLANCHETTE: Thank you, Your Honor.

21 MS. COLEMAN: Your Honor, can we have
22 Mr. Gipson released from his subpoena?

23 THE COURT: Any objection?

24 MS. BLANCHETTE: I have no objection, Your
25 Honor.

1 (Off-the-record discussion.)

2 THE COURT: Ms. Blanchette, I understand that
3 concludes your witnesses?

4 MS. BLANCHETTE: It does, Your Honor. I have a
5 couple cases to hand up at the conclusion today, but
6 we have no further witnesses.

7 THE COURT: All right. Thank you, ma'am.
8 You may call your first witness.

9 MS. COLEMAN: The State calls solicitor Bill
10 Weeks.

11 THE COURT: Mr. Weeks.

12 JOHN WILLIAM WEEKS, JR.

13 being first duly sworn, testified as follows:

14 THE WITNESS: I do.

15 THE COURT: Sir, please have a seat and state
16 your name for the record.

17 THE WITNESS: My name is John William Weeks,
18 Jr. I go by Bill.

19 THE COURT: Your witness.

20 MS. COLEMAN: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. COLEMAN:

23 Q. Hello, Mr. Weeks. Thank you for being here
24 today.

25 A. No problem.

1 Q. Where are you currently employed?

2 A. I work for the Second Circuit Solicitor's
3 Office. My employer is Strom Thurmond, Jr.

4 Q. And how long have you been employed there?

5 A. This time, 17 years, 18 -- going on 18 years.
6 I did a stint from '81 to '85. So I think it's
7 about 21 years so far total.

8 Q. Okay. Are you familiar with the case of State
9 v. Cornell Tyler?

10 A. Yes, ma'am.

11 Q. Did you prosecute this case?

12 A. Yes, ma'am, I did.

13 Q. And were you the solicitor on both trials?

14 A. I was.

15 Q. Okay. Are you familiar with a witness who was
16 presented today, Mr. James Gleaton?

17 A. Yes, I'm familiar with him. I hadn't seen him
18 since the trial I don't think, but I was familiar
19 with him.

20 Q. Did you investigate him and meet with him --

21 A. Yes, ma'am.

22 Q. -- before the trial?

23 A. Went to his house, went to --

24 Q. Did you hear his testimony today that he
25 presented?

1 A. I did.

2 Q. Okay. Was this story familiar to you? Had you
3 heard this story before?

4 A. Honestly, I've heard a bunch of versions of the
5 stories in this case. And as Mr. Gipson pointed
6 out, it's been a good many years. Mr. Gleaton, if I
7 recall right, was nicknamed Killer Bee, was
8 initially interviewed by the Aiken County Sheriff's
9 Department and gave a statement.

10 And part of our pretrial preparation for the
11 first trial of Mr. Tyler, I interviewed him and
12 called him as a witness in the first trial, as I
13 recall. There was some stuff during the first trial
14 regarding something happening in the witness
15 sequestration room and we had a little objection
16 about that. And I don't remember, Julie, when I
17 talked to him next.

18 I know that for some reason I decided not to
19 call him as a witness. And so much is involved in
20 all of that between strategy and gamesmanship. And
21 I'd much rather cross-examine a witness than I would
22 direct-examine a witness. So if I feel like the
23 defense may call a witness, sometimes I'll just not
24 call them and lob them up there for the defense to
25 call.

1 But I just get the feeling some of that was
2 involved here. But I also seem to remember
3 Mr. Gleaton -- and I haven't had a chance to check
4 it since I came here today -- I think he had gotten
5 rearrested on some pretty serious charges in the
6 meantime in between trials. And, you know, that was
7 probably going to come out. And it was some
8 allegation about me meeting with Mr. Gleaton and his
9 lawyer, and I don't remember all that.

10 I just know that any time a witness' testimony
11 changed to my knowledge, the first person that got
12 told about it was Byron Gipson because, you know,
13 we're always preparing all the way up to the ball
14 being tossed in the air. And lots of times
15 witnesses do have changes in their testimony, and as
16 soon as they become available to me, I tell the
17 defense lawyer. I was a defense lawyer for 15
18 years. I appreciate that responsibility.

19 Q. Did you threaten Mr. Gleaton in any way?

20 A. I don't know. I don't think I would, I don't
21 think I did. He never really said how I threatened
22 him or I never really understood how I threatened
23 him.

24 I have discussed with witnesses about perjury,
25 I've discussed with witnesses about contacting

1 witnesses in the duration in between trials or
2 before trials, I've discussed with witnesses a lot
3 of things that they might perceive -- people think I
4 threaten them just because I'm six-foot-eight and
5 weigh entirely too much.

6 But as far as physically threatening or legally
7 threatening, I'm pretty sure he had a lawyer with
8 him and if his rights would have been offended or if
9 I would have done anything out of the way with
10 Mr. Gleaton, they would have been all over me. But,
11 honestly, I don't remember threatening him. I've
12 raised my voice with witnesses, I've, you know, told
13 them what I was going to do when I went to trial,
14 but I don't remember threatening Mr. Gleaton.

15 Q. Did you ever tell him that if he did not
16 testify one way or the other he would stay in jail
17 longer?

18 A. Not to my knowledge.

19 Q. Okay. Did you ever withhold anything from the
20 defense in this case?

21 A. No, ma'am.

22 Q. As you've heard from the testimony today and as
23 you recall from the trial, Mr. Gipson made a motion
24 to change the venue in this case. If that motion
25 had been successful and the venue had been changed

1 to another location, would you still have prosecuted
2 this case?

3 A. Absolutely.

4 Q. And would you still have used the same
5 witnesses and the victim's testimony to prosecute
6 him?

7 A. I would have used the evidence that I had, you
8 know. I don't think the location would have changed
9 my trial strategy or the witnesses that I called.
10 But I certainly was going to call Joseph Brewer, the
11 victim, wherever I tried to case.

12 So as far as the other witnesses, like I said,
13 it was a moving target; they had charges pending
14 against them -- some of them had charges pending
15 against them, and whether I would have called them
16 on a trial in Lexington County or a trial in York
17 County, wherever the venue might have gotten changed
18 to, it just would kind of depend on their
19 availability, willingness, and all that. A lot of
20 things involved in there. But just the mere change
21 of venue motion had no effect at all on whether or
22 not I would have tried the case.

23 Q. Okay. I have no further questions. Is there
24 anything that you'd like to add? You've seen the
25 allegations in this case. Is there anything else

1 that you think is worth noting?

2 A. Well, I just want to point out I did not commit
3 prosecutorial misconduct as has been alleged or
4 alluded to. Mr. Gipson had total access to me,
5 total access to my file, total access to the
6 witnesses. He's an extremely competent defense
7 lawyer, and we tried the hell out of this case twice
8 and he did a great job.

9 So I don't know what the -- and I know people
10 get in jail and, you know, the prosecutor is a mean
11 guy, a bad guy, all that. But we had a very
12 professional working relationship and he had
13 complete access to every ounce of information that I
14 had.

15 Now, do I tell him what witnesses I'm going to
16 call or what my trial strategy is or -- no, I don't,
17 because it's still a confrontational or a
18 relationship -- adversarial relationship with that.
19 But that's the only thing I'd like to add.

20 I just would say I didn't do anything -- I
21 mean, whether I did something wrong in closing
22 argument, the Supreme Court is always telling me one
23 way or the other whether or not I've done something
24 wrong. But I didn't feel like we did.

25 I felt like we had as clean a trial, and we had

1 two excellent trial judges in the two trials I had,
2 and it came out against Mr. Tyler. But that was my
3 goal all along was for it to come out against
4 Mr. Tyler. But I appreciate you asking me that. I
5 don't know of anything that I did any different than
6 I do every day.

7 MS. COLEMAN: Thank you. No further questions.

8 THE COURT: Cross-examination?

9 MS. BLANCHETTE: Yes, Your Honor, briefly.

10 CROSS-EXAMINATION

11 BY MS. BLANCHETTE:

12 Q. Solicitor Weeks, do you recall in your
13 discussions with Mr. Gipson, leading up to either
14 trial, him giving you notice that they were going to
15 raise any type of alibi defense or was alibi ever
16 mentioned to you?

17 A. Once again, it's been a long time, 11 years, I
18 think, since the first trial. I usually on a major
19 trial do what's called a reverse Rule 5 to kind of
20 pin them down when I think alibi might be or mental
21 health might be. I don't remember, Ms. Blanchette,
22 whether or not I filed a reverse Rule 5.

23 But I never considered this to be an alibi
24 case. It all happened or started or began in
25 Mr. Tyler's yard and led down the road away from his

1 house and ended up in a field. I didn't consider it
2 an alibi case by all accounts, all witnesses, except
3 maybe Mr. Tyler. He was actively involved in it.
4 So, honestly, I don't know if I made a reverse, but
5 I don't recall. The record would reflect whether or
6 not. I use that as a sword, but I don't think I
7 did. I just didn't consider it.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 MS. COLEMAN: Nothing further.

11 THE COURT: Mr. Weeks, you may step down.

12 MS. COLEMAN: And the State has no further
13 witnesses, Your Honor.

14 THE COURT: All right.

15 Ms. Blanchette, you said you had some cases.

16 MS. BLANCHETTE: I do, Your Honor. And I
17 apologize, Lexis went down yesterday, so you have a
18 couple from different sources here that I had to
19 copy and print out here for you.

20 I was just going to hand up the case of Lowns,
21 which I think to be one of the leading cases on
22 failure to prepare and investigate and the
23 obligations that counsel has leading up to trial,
24 the investigation that needs to be taken place.

25 I have a copy of Walker vs. State which is a

1 Supreme Court decision from 2014. It's a PCR case
2 dealing with alibi and it sets forth the burden of
3 what we have to establish.

4 I have a copy of Gibson vs. State. It was a
5 case that I handled that was reversed by the Supreme
6 Court in May of 2016. And there, the lower court on
7 PCR did not grant relief on the Elmore issue that
8 we've raised today, and that was reversed and relief
9 was granted due to counsel's failure to object to
10 the Court failing to give the proper Elmore
11 instruction. So I have a copy of that for the Court
12 to review.

13 I have a copy of State vs. Ellis which is a
14 2001 Supreme Court decision. That's dealing with
15 expert testimony that exceeds the bounds of their
16 expertise, so that would go to our allegation
17 regarding Dr. Sexton.

18 And then I have Davis vs. Cartledge. It's a
19 United States District Court case dealing with
20 habeas. But I'm submitting that to the Court -- it
21 was just recently decided in 2016 -- because it
22 really gives a good overview of the burden that we
23 have to establish as far as improper comments in
24 closing argument. And I already handed Your Honor a
25 copy of Wilds vs. State. So those would be the

1 cases that I would handing up at this time.

2 Your Honor, I don't typically do a closing
3 argument unless it's requested. So I'm at the
4 Court's --

5 THE COURT: I don't think that's necessary.
6 Thank you.

7 MS. COLEMAN: Your Honor, I would just request
8 that we could submit proposed orders.

9 THE COURT: Certainly. I would be happy to
10 accept those. Can 30 days be sufficient?

11 MS. COLEMAN: Sure.

12 MS. BLANCHETTE: Your Honor, I was going to
13 make one further request in that regard. I have
14 been requesting lately the ability to get the
15 transcript. I just want to make sure that that
16 order is as accurate as possible, especially with
17 the number of witnesses that I called today. So if
18 Your Honor would be inclined to give me time to
19 obtain the transcript and then submit a proposed
20 order, that would be my request at this point.

21 THE COURT: Any objection to that?

22 MS. COLEMAN: I'm not opposed to that. I think
23 that would be helpful. This was a long hearing.

24 THE COURT: I think that would be helpful.

25 MS. BLANCHETTE: Would you like me to notify

1 your law clerk when the transcript is received?

2 THE COURT: That would be great. And if we
3 could be provided a copy as well, that would be
4 helpful.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Aiken County, South Carolina, on the 24th of January, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 2, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF GENERAL SESSIONS
06-GS-02-550-552

THE STATE OF SOUTH CAROLINA
PLAINTIFF
VS.

TRANSCRIPT OF RECORD

CORNELL TYLER, JR.
DEFENDANT

NOVEMBER 28, 2006
AIKEN, SOUTH CAROLINA

~~B E F O R E:~~

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JOHN W. WEEKS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

BYRON E. GIPSON, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

JAMES GLEATON,

DIRECT BY WEEKS.....	3
CROSS BY GIPSON.....	7
PROFFER BY GIPSON.....	14
CONTINUED CROSS BY GIPSON.....	23

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(NONE OFFERED)

1 (WHEREUPON, ON NOVEMBER 28, 2006 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: MR. WEEKS, YOU MAY CALL YOUR NEXT
4 WITNESS.

5 MR. WEEKS: THE STATE WOULD CALL JAMES GLEATON.

6 JAMES GLEATON, AFTER BEING DULY SWORN, TESTIFIED
7 AS FOLLOWS:

8 THE CLERK: YOU MAY BE SEATED IN THE WITNESS BOX.
9 STATE YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

10 THE WITNESS: JAMES GLEATON; G-L-E-A-T-O-N.

11 DIRECT EXAMINATION

12 BY MR. WEEKS:

13 Q MR. GLEATON, WHERE DO YOU LIVE?

14 A [REDACTED] ROAD.

15 Q WINDSOR ROAD?

16 A YES.

17 Q HOW LONG HAVE YOU LIVED THERE?

18 A AT THIS SPOT I HAVE BEEN THERE ABOUT THREE YEARS.

19 Q OKAY. ON AUGUST 27 OF LAST YEAR WERE YOU LIVING
20 THERE THEN?

21 A YES, SIR.

22 Q WERE YOU STAYING THERE THAT DAY?

23 A YES, SIR.

24 Q AND WHAT, IF ANYTHING, HAPPENED THAT DAY THAT YOU
25 HEARD?

1 A WELL, I HEARD SOME -- WELL, I HEARD SOME GUNSHOTS,
2 YOU KNOW, PRIOR TO ME SEEING THE CARS GOING PAST ME.

3 Q WHEN THE CARS WERE GOING -- TELL ME HOW YOU -- WERE
4 YOU ASLEEP? WERE YOU AWAKE?

5 A NO. I WAS WAITING ON MY CAR TO COME BACK WHICH I
6 THOUGHT IT WAS MY CAR COMING DOWN THE ROAD. I THOUGHT
7 THEY WAS RACING MY CAR. WHEN I LOOKED I SEEN IT WASN'T MY
8 CAR.

9 Q DID YOU KNOW WHOSE CAR IT WAS?

10 A IT WAS WILLIE WARE'S CAR.

11 Q DID YOU SEE ANY OTHER CARS?

12 A JUST THE TRUCK.

13 Q AND DID YOU KNOW ANYTHING ABOUT THE TRUCK AT THAT
14 TIME?

15 A NO, SIR.

16 Q ALL RIGHT. DESCRIBE FOR ME, MR. GLEATON, WHAT YOU
17 SAW.

18 A WELL, I JUST SEEN THE TRUCK WHEN IT WENT BY AND THEN
19 I SEEN THE CAR WHEN IT WENT BY AND THEN WHEN IT WENT
20 FURTHER DOWN THE ROAD THAT'S WHEN I HEARD SOME GUNSHOTS,
21 SOME MORE GUNSHOTS.

22 Q WHEN YOU SAY FURTHER DOWN THE ROAD, WOULD THAT BE
23 LEFT OF YOUR HOUSE?

24 A YEA. YOU GOT TO GO PAST MY HOUSE.

25 Q PAST YOUR HOUSE?

1 A RIGHT.

2 Q WHAT IS THE NEXT ROAD DOWN THERE -- THE NEXT PAVED
3 INTERSECTION PAST YOUR HOUSE?

4 A PAST MY HOUSE? I DON'T EVEN KNOW.

5 Q YOU DON'T KNOW THE NAME OF IT?

6 A NO.

7 Q IS THERE A PAVED INTERSECTION?

8 A RIGHT. YOU GOT A CROSSROAD RIGHT THERE.

9 Q OKAY. AND AT THE CROSSROAD -- HOW FAR DO YOU LIVE
10 FROM THAT CROSSROAD?

11 A A LITTLE OVER A QUARTER OF A MILE.

12 Q DID YOU HEAR ANYTHING AS THESE CARS PASSED?

13 A NO, SIR. I JUST HEARD GUNSHOTS. THAT WAS IT.

14 Q DO YOU KNOW HOW MANY?

15 A I TURNED BACK AROUND AND WENT BACK -- I WAS AT JOHN
16 HARTWELL'S HOUSE AND I TOLD HIM THAT I WAS GETTING READY
17 TO WALK HOME. THAT'S WHEN I CAME OUT AND I WAS WALKING
18 BACK HOME.

19 Q DO YOU KNOW HOW MANY GUNSHOTS YOU HEARD?

20 A A LOT OF THEM.

21 Q DID YOU EVER SEE ANY CARS COME BACK THE OTHER WAY?

22 A JUST ONE.

23 Q WHOSE CAR WAS THAT? DO YOU KNOW?

24 A WILLIE WARE'S CAR.

25 Q DID YOU KNOW ANYBODY THAT WAS IN IT? DID YOU SEE

1 ANYBODY?

2 A I AIN'T SEEN NOBODY. I COULDN'T SEE NOBODY IN THE
3 CAR.

4 Q AND THIS WAS ON AUGUST 27?

5 A YEA, ABOUT FOUR SOMETHING IN THE MORNING, THREE OR
6 FOUR IN THE MORNING.

7 Q AT SOME POINT IN TIME THE POLICE COME AND FIND YOU?

8 A WELL, THEY CAME THE SAME NIGHT, MAYBE 10 MINUTES
9 AFTER I GOT IN THE HOUSE BECAUSE THEY SEEN -- WHEN I WAS
10 WALKING HOME A GIRL NAMES JANICE WAS COMING THROUGH AND
11 SHE PICKED ME UP AND DROPPED ME OFF HOME. WHEN I GOT IN
12 THE HOUSE I LOOKED OUT THE WINDOW AND I SEEN A CAR LIGHT.
13 I THOUGHT THAT WAS HER COMING BACK. IT WAS THE POLICE OUT
14 THERE THEN. THEY WAS TURNING AROUND IN MY YARD.

15 Q DID THEY COME AND TALK TO YOU ON A LATER DAY?

16 A A COUPLE OF TIMES.

17 Q DID YOU TELL THEM THE THINGS THAT YOU'RE TELLING US
18 HERE TODAY?

19 A YES, SIR.

20 Q HAD YOU BEEN UP TO -- DO YOU KNOW CORNELL TYLER?

21 A THAT'S MY BEST FRIEND.

22 Q HAD YOU BEEN UP TO HIS HOUSE THAT DAY?

23 A EARLIER. I BEEN UP THERE EARLIER THAT DAY, YEA.

24 Q WHEN YOU SAY EARLIER, WHAT TIME?

25 A ABOUT SEVEN -- SEVEN OR EIGHT, SOMETHING LIKE THAT.

1 Q SEVEN?

2 A THAT NIGHT.

3 Q THE NIGHT BEFORE?

4 A YEA.

5 Q OKAY. WHO WAS THERE--WHEN YOU WERE THERE?

6 A MR. TYLER WAS THERE. HIS BROTHER WAS THERE.

7 Q WHEN YOU SAY MR. TYLER, WHO ARE YOU TALKING ABOUT?

8 A CORNELL TYLER.

9 Q CORNELL. DOES HE GO BY DEUCE?

10 A RIGHT.

11 Q AND HIS BROTHER TREMAINE WAS THERE. JOHNNY MILES WAS
12 THERE. I THINK A GIRL NAMED TREL WAS THERE. IT WAS A
13 PRETTY GOOD MANY PEOPLE THERE.

14 MR. WEEKS: ANSWER ANY QUESTIONS THEY HAVE FOR YOU.

15 CROSS-EXAMINATION

16 BY MR. GIPSON:

17 Q GOOD AFTERNOON, MR. GLEATON.

18 A HOW ARE YOU DOING?

19 Q I AM ALL RIGHT. MY NAME IS BYRON GIPSON. I
20 REPRESENT MR. CORNELL TYLER.

21 A YES, SIR.

22 Q I HAVE A FEW QUESTIONS I WANT TO ASK YOU ABOUT YOUR
23 KNOWLEDGE OF THIS INCIDENT AND YOUR TESTIMONY THAT YOU
24 HAVE ALREADY GIVEN.

25 A UH-HUH.

1 Q IF YOU DON'T UNDERSTAND ONE OF MY QUESTIONS, PLEASE
2 LET ME KNOW AND I'LL TRY TO REPHRASE IT. I AM NOT TRYING
3 TO PUT WORDS IN YOUR MOUTH. NOW, YOU SAID THAT YOU DO
4 KNOW MR. TYLER?

5 A YES, SIR.

6 Q YOU'VE KNOWN HIM FOR HOW LONG?

7 A ALL HIS LIFE.

8 Q OKAY. ALL OF HIS LIFE. AND YOU'RE ABOUT 35 YEARS
9 OLD?

10 A A LITTLE OLDER THAN THAT.

11 Q OKAY. YOU LOOK A LITTLE YOUNGER, BUT I WAS GUESSING.
12 NOW, DO YOU KNOW WILLIE WARE?

13 A YES, SIR.

14 Q HOW DO YOU KNOW WILLIE WARE?

15 A WELL, SEE, I GOT A DAUGHTER BY HIS FIRST COUSIN.

16 Q OKAY. SO, KIND OF SLIGHT FAMILY RELATIONSHIP THERE?

17 A RIGHT.

18 Q DO YOU KNOW EDWARD WALKER?

19 A YEA, I KNOW HIM.

20 Q I'M SORRY?

21 A YES, I KNOW EDWARD WALKER.

22 Q OKAY. AND DO YOU KNOW MR. SEAWRIGHT?

23 A YES.

24 Q KENDALL SEAWRIGHT?

25 A YES, I MARRIED HIS COUSIN.

1 Q YOU MARRIED HIS COUSIN?

2 A YES.

3 Q SO --

4 (WHEREUPON, A CELLPHONE RINGS.)

5 THE COURT: I HAVE LOST ANY RIGHT TO SAY ANYTHING.

6 Q SO, YOU MENTIONED THAT THERE IS A RELATIONSHIP
7 BETWEEN WARE AND --

8 A WALKER.

9 Q -- AND WALKER?

10 A YES. THEY ARE FIRST COUSINS.

11 Q OKAY. SO, WARE AND WALKER ARE FIRST COUSINS?

12 A RIGHT.

13 Q OKAY. AND YOU'RE MARRIED TO YOU SAID ONE OF
14 SEAWRIGHT'S FAMILY?

15 A YES.

16 Q SO, YOU KNOW EVERYBODY THEN?

17 A YEA, I KNOW EVERYBODY.

18 Q SO, YOU'RE INVOLVED IN THIS THING COMPLETELY?

19 A I AIN'T SAID THAT.

20 Q EXCUSE ME. LET ME REPHRASE THAT. WHEN I SAID
21 INVOLVED, YOU ARE INVOLVED WITH TYLER, WARE, WALKER, AND
22 SEAWRIGHT BY WAY OF JUST KNOWING THEM?

23 A YEA.

24 Q AND BEING AROUND THEM?

25 A NEIGHBORHOOD.

1 Q THAT WAS MY ONLY IMPLICATION. I AM NOT TRYING TO PUT
2 WORDS IN YOUR MOUTH. I PROMISE YOU.

3 A YES, SIR.

4 Q NOW, AND, AGAIN, YOU SAID THAT WARE AND WALKER
5 MEANING WILLIE WARE AND EDWARD WALKER ARE FIRST COUSINS? -----

6 A RIGHT.

7 Q ALL RIGHT. NOW, THE EVENING OR THE MORNING OF THE
8 27TH YOU SAW A CAR GO BY YOUR HOUSE; CORRECT?

9 A NOT MY HOUSE, MY FRIEND'S HOUSE.

10 Q OKAY.

11 A I WAS AT MY FRIEND'S HOUSE.

12 Q MR. HARTWELL'S HOUSE?

13 A RIGHT DOWN THE ROAD FROM MY HOUSE.

14 Q ALL RIGHT. AND THAT CAR IS SIMILAR TO YOURS?

15 A YEA, LIKE THE SAME COLOR JUST ABOUT. I KNOW MY
16 LIGHT. MY LIGHTS GO ALL THE WAY ACROSS THE CAR. HIS
17 DIDN'T.

18 Q OKAY. NOW, YOU SAID YOU THOUGHT THAT WAS THEM -- I
19 THINK YOU SAID THEM BRINGING YOUR CAR BACK?

20 A YEA, THE GUY THAT HAD MY CAR. I THOUGHT HE WAS
21 RACING MY CAR.

22 Q BUT WHEN YOU SAID THEM YOU WEREN'T ALLUDING TO
23 MR. TYLER?

24 A NO, SIR.

25 Q I JUST WANTED TO CLEAR THAT UP. NOW, DID YOU SEE

1 MR. TYLER IN THE CAR THAT PASSED BY YOUR HOUSE THAT
2 MORNING? EXCUSE ME -- PASSED BY MR. HARTWELL'S HOUSE THAT
3 MORNING?

4 A NO, SIR.

5 Q DID YOU SEE MR. TYLER IN THE CAR THAT PASSED BACK BY
6 THE HOUSE AFTER THE COMMOTION?

7 A NO, SIR.

8 Q NOW, YOU HAVE HAD AN OPPORTUNITY TO SPEAK WITH SOME
9 OF THE WITNESSES IN THIS CASE; IS THAT CORRECT?

10 A YES, SIR.

11 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO SPEAK WITH
12 KENDALL SEAWRIGHT?

13 A YES, SIR, I DID.

14 Q WHEN WAS THE LAST TIME THAT YOU SPOKE WITH KENDALL
15 SEAWRIGHT?

16 A A COUPLE OF HOURS AGO WHEN THEY PUT US IN THE ROOM
17 TOGETHER.

18 Q AND WHEN YOU SAY A COUPLE OF HOURS AGO -- I'M NOT
19 TRYING TO ASK A STUPID QUESTION, BUT MAYBE I AM. I'M A
20 LITTLE SLOW SOMETIMES.

21 A TWO HOURS AGO.

22 Q TWO HOURS AGO HERE TODAY?

23 A YES, SIR.

24 Q IN THE AIKEN COUNTY COURTHOUSE?

25 A YES, SIR.

1 Q AND WHEN YOU SAY NEXT DOOR, YOU MEAN WHERE?

2 A IN THE JURY ROOM RIGHT THERE -- CONFERENCE ROOM OR
3 WHATEVER IT IS.

4 Q OKAY. SO, THE JURY ASSEMBLY ROOM THAT'S RIGHT NEXT
5 DOOR?

6 A RIGHT.

7 Q OKAY. AND WHAT DID THE TWO OF YOU SPEAK ABOUT?

8 A THIS CASE HERE.

9 Q TELL THE JURY WHAT ABOUT THIS CASE YOU ALL SPOKE
10 ABOUT.

11 A JUST I WAS TELLING HIM BECAUSE HE SAID HE WAS REAL
12 NERVOUS AND THAT SOME OF THE THINGS THAT HE FELT WASN'T
13 RIGHT. SO, I JUST ASKED HIM WHAT IS ONE OF THE THINGS AND
14 ONE OF THE THINGS THAT HE SAID IS THAT --

15 MR. WEEKS: YOUR HONOR, IT IS PROBABLY A MATTER OF
16 LAW. I OBJECT AS TO HEARSAY AT THIS POINT.

17 THE COURT: I SUSTAIN THAT OBJECTION.

18 MR. GIPSON: YOUR HONOR, I THINK IT CAN BE CONSTRUED
19 AS A DECLARATION AGAINST HIS PENAL INTEREST IN THAT IF A
20 WITNESS IS UNAVAILABLE OR SOMETHING AND CAN'T BE BROUGHT
21 IN. WE LAID THE PROPER FOUNDATION FOR IMPEACHMENT IN
22 ASKING HIM SEVERAL QUESTIONS AND IF THERE WERE PARTICULAR
23 QUESTIONS THAT HE OR PARTICULAR STATEMENTS THAT HE HEARD I
24 THINK HE SHOULD BE ALLOWED TO SPEAK ABOUT IT.

25 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO HAVE

1 TO ASK YOU TO STEP TO YOUR JURY ROOM WHILE I TAKE UP THAT
2 MATTER, PLEASE. PLEASE DON'T HAVE ANY CONVERSATION ABOUT
3 THE TRIAL.

4 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 4:57.)

5 MR. WEEKS: YOUR HONOR, I OBJECTED TO HEARSAY BECAUSE
6 IT IS HEARSAY. THERE'S NOT BEEN A FOUNDATION LAID THAT
7 THERE IS THIS SOME SORT OF IMPEACHMENT TESTIMONY. I AM
8 ASSUMING THAT'S WHERE HE IS GOING, BUT THE FOUNDATION
9 WASN'T LAID BEFORE HE ASKED HIM A HEARSAY QUESTION. IT
10 MAY BE OUTSIDE OF THE PRESENCE. I HAVE NO IDEA WHAT THIS
11 MAN IS GOING TO SAY IN REGARD TO A CONVERSATION TWO HOURS
12 AGO IN THE SEQUESTRATION ROOM BECAUSE I HADN'T BEEN OVER
13 THERE TALKING TO HIM. SO, I PROBABLY WOULD NEED TO
14 HEAR -- I NEED TO HEAR THE ANSWER. I MIGHT NOT OBJECT,
15 BUT IT IS CLEARLY HEARSAY BECAUSE THE WITNESS IS NOT IN
16 COURT, AND IT'S AN OUT-OF-COURT STATEMENT OFFERED TO PROVE
17 SOMETHING. I DON'T KNOW WHETHER IT'S RELEVANT.

18 THE COURT: LET ME -- WHY DON'T WE DO THIS?

19 MR. GIPSON, WHY DON'T I GET YOU TO PROFFER THIS
20 TESTIMONY?

21 MR. GIPSON: YES, SIR.

22 THE COURT: IF THERE IS AN OBJECTION, WE'LL DEAL WITH
23 IT.

24 PROFFERED CROSS-EXAMINATION

25 BY MR. GIPSON:

1 Q NOW, AGAIN, YOU KNOW MR. SEAWRIGHT; CORRECT?

2 A YES, SIR, I DO.

3 Q OKAY. AND HE IS -- TO YOUR KNOWLEDGE, HE IS INVOLVED
4 IN THIS CASE; CORRECT?

5 A -- I RECKON HE IS. YES, SIR, HE IS INVOLVED. I RECKON
6 HE IS INVOLVED.

7 Q ALL RIGHT. HE WAS SUBPOENAED TO BE HERE TODAY --

8 A RIGHT.

9 Q -- JUST AS YOU WERE; CORRECT?

10 A CORRECT.

11 Q AND HOW OFTEN HAVE YOU ALL SPOKEN?

12 A THIS IS THE FIRST TIME THAT WE EVER TALKED ABOUT THAT
13 DAY.

14 Q OKAY. AND YOU SAW HIM HERE IN THE COURTROOM?

15 A YEA, THEY PUT US AROUND THERE TOGETHER.

16 Q OKAY. AND WHAT HAPPENED?

17 A ME AND HIM WERE JUST TALKING AND SO I ASKED HIM, I
18 SAID, WELL, DID YOU SEE MR. CORNELL IN THE CAR? FIRST HE
19 SAID HE GOT IN THE CAR. THEN HE SAID HE GOT OUT ON THE
20 SIDE OF THE ROAD AND CAME BACK IN THE CAR. SO, I SAID,
21 NOW, YOU GOT TO HAVE YOUR STORY STRAIGHT WHEN YOU GO IN
22 THERE BECAUSE THEY'RE GONNA, YOU KNOW, WHEN YOU BE IN
23 THERE BECAUSE THAT'S ONE OF THE IMPORTANT THINGS THAT YOU
24 WANT TO KNOW IS WHERE CAN HE BE PLACED AT THE SCENE AND
25 THEN HE IS SAYING ABOUT HE AIN'T SEEN THE GUN AND THEN HE

1 SAID SOMETHING LOOKED LIKE A GUN.

2 I AM JUST EXPLAINING TO HIM THAT HE CAN'T, YOU KNOW,
3 DO IT LIKE THAT. YOU GOT TO YES OR NO.

4 Q ALL RIGHT. AND IF YOU'LL DO THIS FOR ME, WHEN YOU
5 SAY HE IF YOU'LL JUST USE THE NAME. YOU MENTIONED HE IN A
6 COUPLE OF DIFFERENT AREAS. WHEN YOU SAID HE THE LAST TIME
7 WERE YOU REFERRING TO MR. SEAWRIGHT BEING HE?

8 A I WAS SAYING I ASKED MR. KENDALL WAS MR. TYLER IN THE
9 CAR.

10 Q ALL RIGHT.

11 A FIRST HE SAID YEA. THEN HE IS SAYING HE THOUGHT HE
12 GOT OUT AND I JUST EXPLAINED TO HIM HE CAN'T -- YOU NEED
13 TO SAY YEA OR NO -- YES OR NO.

14 Q ALL RIGHT. AND DID HE TELL YOU AT ANY POINT IN TIME
15 THAT HE HAD --

16 MR. WEEKS: OBJECTION TO LEADING, YOUR HONOR.

17 MR. GIPSON: WELL, IT IS A PROFFER.

18 THE COURT: WELL, I'LL LET HIM PROFFER IT.

19 MR. WEEKS: WELL, I MEAN, HE IS TESTIFYING WHEN HE IS
20 LEADING. THAT'S NOT PROFERRING. THAT'S MY POINT.

21 THE COURT: GO AHEAD. ASK HIM THE QUESTIONS.

22 Q DID HE TELL YOU ABOUT HIS TESTIMONY WHILE THE TWO OF
23 Y'ALL WERE TALKING?

24 A NO. HE AIN'T TOLD ME NOT IN NO FULL DETAIL; JUST
25 WHAT I JUST WAS TELLING YOU ABOUT.

1 Q DID HE EVER TELL YOU THAT HE WAS NOT BEING TRUTHFUL?

2 A HE SAID THAT HE BEEN TRICKED INTO SAYING HE HAD A
3 GUN -- SAYING THAT MR. TYLER HAD A GUN. HE SAID HE DON'T
4 RECALL SAYING ABOUT A GUN. I MEAN, THAT'S WHAT HE SAID
5 NOW.

6 Q AND DID HE TELL YOU THAT HE HAD BEEN THREATENED BY
7 ANYBODY?

8 A NOW, HE DID SAY THAT, TOO. HE SAID IF HE CHANGED HIS
9 STORY HE WOULD BE LOCKED UP.

10 Q AND WHEN YOU SAID CHANGE HIS STORY, EXPLAIN THAT.

11 A I MEAN, WHATEVER HE CHOOSED THAT HE WANTED TO CHANGE
12 NOW. I AIN'T SAYING THAT THE MAN IS TELLING THE TRUTH
13 NOW. I AM JUST TELLING YOU WHAT THE MAN TELL ME.

14 Q OKAY. OKAY.

15 A I'LL JUST LEAVE IT LIKE THAT.

16 THE COURT: I GUESS WHAT I -- LET'S GO AHEAD. I NEED
17 SOME HELP, TOO. THIS IS CLEARLY HEARSAY TESTIMONY.

18 MR. GIPSON: YES, SIR.

19 THE COURT: YOU'RE TELLING ME THAT IT FITS UNDER SOME
20 EXCEPTION?

21 MR. GIPSON: I THINK -- AND, YOUR HONOR, QUITE
22 HONESTLY, HE IS UNDER SUBPOENA. WE CAN GET HIM BACK HERE
23 SO HE CAN BE HERE AND HE CAN BE AVAILABLE.

24 THE COURT: I THINK YOU MAY HAVE TO DO THAT.

25 MR. GIPSON: RIGHT. RIGHT.

1 THE COURT: I DON'T KNOW OF ANY EXCEPTION ANY OF THIS
2 WILL FIT UNDER --

3 MR. GIPSON: RIGHT.

4 THE COURT: -- AS WELL AS THE FACT THAT IT APPEARS
5 NOW THAT YOU'RE PITTING WITNESSES AGAINST EACH OTHER.

6 MR. GIPSON: WELL, YOUR HONOR, I THINK IF HE MADE A
7 STATEMENT ABOUT HIS TESTIMONY AND HIM TELLING DIFFERENT --
8 SAYING THAT THINGS WERE DIFFERENT AND HE WAS BAITED INTO
9 SAYING THINGS AND SAID THOSE THINGS AND CAME IN HERE AND
10 SAID SOMETHING DIFFERENT, I MEAN, I THINK THE JURY SHOULD
11 BE ALLOWED TO KNOW THAT HE TOLD SOMEBODY SOMETHING
12 DIFFERENT THAN WHAT HE'S TOLD THIS COURT.

13 THE COURT: WELL, AND, AGAIN, BUT THE JURY IS NOT
14 ALLOWED TO HEAR HEARSAY TESTIMONY UNLESS IT FITS UNDER AN
15 EXCEPTION.

16 MR. GIPSON: YES, SIR.

17 THE COURT: I AM NOT AWARE OF ANY EXCEPTION THAT THIS
18 KIND OF TESTIMONY WOULD FIT IN.

19 MR. GIPSON: I WOULD SAY A DECLARATION AGAINST HIS
20 INTEREST IF HE HAS TOLD -- IT'S NOT IN HIS BEST INTEREST
21 TO SAY THINGS THAT -- ABOUT HIS TESTIMONY TO SOMEONE ELSE
22 WHO -- TO CONTRADICT THE PREVIOUS TESTIMONY THAT HE'S
23 GIVEN LAW ENFORCEMENT. I THINK IT WOULD FIT AS A
24 DECLARATION AGAINST HIS INTEREST BECAUSE THERE ARE SOME
25 THINGS THAT CONTRADICT WHAT HE SAID AND IF HE WAS TOLD BY

1 LAW ENFORCEMENT THAT, AGAIN, IF HE DID NOT TESTIFY
2 CORRECTLY THAT HE, YOU KNOW, MAYBE FACING PERJURY, THINGS
3 OF THAT NATURE, THEN THAT'S A PROBLEM.

4 THE COURT: MR. WEEKS?

5 MR. WEEKS: YOUR HONOR, IT'S NOT A DECLARATION
6 AGAINST INTEREST. MR. SEAWRIGHT IS NOT A PARTY TO THIS
7 ACTION. HE IS NOT EVEN CHARGED. IT IS STILL HEARSAY. I
8 AM NOT SURE. I THINK I KNOW WHERE THEY'RE GOING OR TRYING
9 TO GO, BUT I DON'T THINK THEY CAN GET THERE WITH THIS
10 WITNESS WITHOUT HIM BEING MORE SPECIFIC. THEY HAD THE
11 OPPORTUNITY TO CROSS EXAMINE MR. SEAWRIGHT AND, IN FACT,
12 THEY DID CROSS EXAMINE HIM AND ASKED HIM ABOUT 1100
13 DIFFERENT WAYS AS TO WHETHER OR NOT HE TOLD SOMEBODY
14 DIFFERENT THAN WHAT HE WAS SAYING ON THE STAND AND HE SAID
15 HE DIDN'T.

16 NOW THIS INDIVIDUAL WAS, OBVIOUSLY, IN SEQUESTRATION.
17 SO, HE DIDN'T HEAR WHAT MR. SEAWRIGHT SAID ON THE STAND.
18 SO, I AM NOT SURE --

19 THE COURT: HOW AM I GOING TO LET THIS IN? IT
20 DOESN'T FIT UNDER ANY HEARSAY EXCEPTION. NOW, THAT
21 DOESN'T PRECLUDE YOU FROM RECALLING MR. SEAWRIGHT --

22 MR. GIPSON: YES, SIR.

23 THE COURT: -- AS A WITNESS AND, YOU KNOW, BUT ANY
24 STATEMENTS THAT HE'S MADE OUT OF COURT, THAT'S AN
25 OUT-OF-COURT STATEMENT. IT'S A HEARSAY STATEMENT.

1 MR. GIPSON: WE'LL RECALL HIM.

2 THE COURT: I AM NOT GOING TO ALLOW THIS WITNESS TO
3 TESTIFY AS TO WHAT THOSE STATEMENTS ARE.

4 MR. GIPSON: WE'LL RECALL MR. SEAWRIGHT, YOUR HONOR.
5 NOW, I WILL BRING TO THE COURT'S ATTENTION THAT WE DID ASK
6 HIM A SPECIFIC QUESTION AND I THINK MR. WEEKS IS CORRECT.
7 WE ASKED THE QUESTION DID YOU TELL ANYBODY ELSE INVOLVED
8 IN THIS CASE, YOU KNOW, ANY DIFFERENT STORIES ABOUT, YOU
9 KNOW, WHAT HAPPENED OUT THERE, AND HE SAID, NO, HE DID
10 NOT. SO, NOW WE HAVE A DIRECT STATEMENT.

11 THE COURT: WELL, BUT WHEN DID HE TELL HIM THAT?

12 MR. GIPSON: I'M SORRY?

13 THE COURT: AFTER HE GOT OFF THE STAND OR BEFORE HE
14 GOT ON THE STAND? NOW, AND, AGAIN, WE'RE OUTSIDE OF THE
15 JURY'S PRESENCE.

16 MR. GIPSON: RIGHT.

17 THE COURT: THIS YOUNG MAN IS TELLING US THAT THEY
18 WERE TALKING ABOUT HIS TESTIMONY. SO, APPARENTLY, HE
19 SPOKE TO HIM AFTER HE TESTIFIED.

20 MR. GIPSON: NO, SIR, HE SAID TWO HOURS PRIOR.

21 THE COURT: HE DID SAY THAT. SO, THEN HE PROCEEDED
22 TO TALK ABOUT THE TESTIMONY. SO, I THINK MAYBE HIS TIME
23 IS OFF OR THEY DIDN'T TALK ABOUT THE TESTIMONY. YOU SEE
24 WHAT I'M SAYING?

25 MR. GIPSON: I DO NOT. THEY TALKED TWO HOURS AGO

1 ABOUT HIS INVOLVEMENT IN THIS SITUATION AND WHAT WENT ON
2 AND MR. -- HE'S BEEN SEQUESTERED -- MR. --

3 THE COURT: HERE'S WHAT WE'RE NOT GOING TO DO.

4 MR. GIPSON: YES, SIR.

5 THE COURT: WE'RE NOT GOING TO PIT WITNESSES AGAINST
6 EACH OTHER --

7 MR. GIPSON: YES, SIR.

8 THE COURT: -- AND WE'RE NOT GOING TO GET HEARSAY
9 TESTIMONY IN THAT DOESN'T FIT UNDER AN EXCEPTION.

10 MR. GIPSON: YES, SIR.

11 THE COURT: IF YOU WANT TO CONTINUE YOUR EXAMINATION
12 OF THIS YOUNG MAN AND AT SOME POINT YOU WANT TO RECALL
13 THAT YOUNG MAN, THAT'S --

14 MR. GIPSON: YES, SIR.

15 THE COURT: IT'S NOT GOING TO COME THROUGH HEARSAY.

16 MR. GIPSON: YES, SIR.

17 THE COURT: AND IT DOESN'T FIT UNDER ANY EXCEPTION
18 THAT I'M AWARE OF.

19 MR. GIPSON: MAY I QUOTE A SECTION FROM 804B3, YOUR
20 HONOR?

21 THE COURT: ALL RIGHT.

22 MR. GIPSON: WOULD YOU LIKE FOR ME TO READ THE WHOLE
23 PART? IT IS ACTUALLY THE LAST SENTENCE IN THAT RULE. IT
24 SAYS, A STATEMENT TENDING TO EXPOSE A DECLARANT TO
25 CRIMINAL LIABILITY AND OFFER TO EXCULPATE THE EXCUSED IS

1 NOT ADMISSIBLE UNLESS CORROBORATING CIRCUMSTANCES CLEARLY
2 INDICATE THE TRUSTWORTHINESS OF THE STATEMENT. SO, I
3 THINK HERE WE'RE TRYING -- WE'RE IN THE PROCESS OF LAYING
4 THE FOUNDATION, THE TRUSTWORTHINESS OF THE STATEMENT.
5 THEN AT THAT POINT IF IT IS LAID, ~~I THINK THAT~~ IT COULD
6 COME IN UNDER A STATEMENT AGAINST INTEREST. THAT'S UNDER
7 804B3, YOUR HONOR. THEN AT THAT POINT THE JURY CAN
8 DETERMINE WHETHER OR NOT IT'S CREDIBLE OR BELIEVABLE.

9 THE COURT: WE'RE TALKING ABOUT THE STATEMENT OF
10 MR. SEAWRIGHT?

11 MR. GIPSON: YES, SIR.

12 THE COURT: HOW DOES THE STATEMENT OF MR. SEAWRIGHT
13 SUBJECT HIM TO CRIMINAL LIABILITY?

14 MR. GIPSON: POTENTIAL PERJURY. POTENTIAL PERJURY IF
15 HE IS FOUND TO HAVE LIED UNDER OATH.

16 THE COURT: THE STATEMENT THAT HE -- THE STATEMENT
17 THAT HE MADE ON THE STAND --

18 MR. GIPSON: YES, SIR.

19 THE COURT: -- DOES NOT SUBJECT HIM TO CRIMINAL
20 LIABILITY. NOW, THAT STATEMENT OVER THERE TO SAY TO THIS
21 YOUNG MAN I DID SOMETHING OR I DIDN'T DO SOMETHING --

22 MR. GIPSON: YES, SIR.

23 THE COURT: -- DOESN'T OPEN HIM UP TO PERJURY FOR HIS
24 TESTIMONY UNDER OATH.

25 MR. GIPSON: WELL, AND I TOOK AN EXCERPT OUT, YOUR

1 HONOR, BUT THE ENTIRE STATEMENT SAYS, A STATEMENT WHICH
2 WAS MADE AT THE TIME OF ITS -- THE STATEMENT WHICH WAS AT
3 THE TIME OF ITS MAKING WAS SO FAR CONTRARY TO THE
4 DECLARANT'S PECUNIARY OR PROPRIETARY INTEREST OR SO FAR
5 INTENDING TO SUBJECT THE DECLARANT TO CIVIL OR CRIMINAL
6 LIABILITY OR TO RENDER A VALID CLAIM BY THE DECLARANT
7 AGAINST ANOTHER THAT A REASONABLE PERSON IN THE
8 DECLARANT'S POSITION WOULD NOT HAVE MADE THE STATEMENT
9 UNLESS BELIEVING IT TO BE TRUE. THE STATEMENT TENDING TO
10 EXPOSE THE DECLARANT TO CRIMINAL LIABILITY IN OFFER TO
11 EXCULPATE THE ACCUSED IS NOT ADMISSIBLE UNLESS
12 CORROBORATING CIRCUMSTANCES CLEARLY INDICATE THE
13 TRUSTWORTHINESS OF THE STATEMENT.

14 SO, I THINK -- I READ AN EXCERPT AT FIRST, BUT I
15 BELIEVE THAT IT FITS UNDER THE EXCEPTION IN THE SENSE THAT
16 YOU KNOW, NUMBER ONE, IT CAN BE VIEWED AS A STATEMENT THAT
17 IS SO FAR AGAINST HIS INTEREST, YOU KNOW --

18 THE COURT: HOW IS IT AGAINST HIS INTEREST?

19 MR. GIPSON: IT IS AGAINST HIS INTEREST TO HAVE SAID
20 IN ONE STATEMENT, YOU KNOW, THAT THESE THINGS HAPPENED AND
21 YOU SAY THESE THINGS TO LAW ENFORCEMENT IN 2005 AND THEN
22 PRIOR TO TESTIFYING YOU TELL SOMEBODY ELSE, WELL, YOU
23 KNOW, IT DIDN'T QUITE HAPPEN THAT WAY. I THINK THAT'S
24 AGAINST HIS INTEREST.

25 THE COURT: I'LL NOTE YOUR EXCEPTION, BUT I AM GOING

1 TO -- I AM NOT GOING TO ALLOW THAT TESTIMONY. I DON'T
2 THINK IT FITS UNDER THAT EXCEPTION OF HEARSAY.

3 MR. GIPSON: BUT WITH HIM BEING AVAILABLE, HE CAN BE
4 RECALLED.

5 THE COURT: BUT, CERTAINLY, YOU CAN RECALL HIM.

6 MR. GIPSON: YES, SIR. WE'LL DO THAT, YOUR HONOR.

7 THE COURT: ALL RIGHT. READY TO BRING THE JURY BACK
8 IN, PLEASE.

9 MR. GIPSON: THANK YOU, YOUR HONOR.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
11 APPROXIMATELY 5:10.)

12 THE COURT: WE'RE BACK WITH THE CROSS EXAMINATION. I
13 SUSTAINED MR. WEEKS' OBJECTION, MR. GIPSON. YOU MAY
14 PROCEED.

15 CROSS-EXAMINATION

16 BY MR. GIPSON:

17 Q PREVIOUSLY YOU WERE TESTIFYING THAT YOU SAW A CAR
18 RACE BY AND YOU SAID THAT YOU DID NOT SEE MR. TYLER IN
19 THAT CAR?

20 A I DIDN'T SEE NO ONE IN THE CAR.

21 Q OKAY. SO, YOU -- WERE THERE PASSENGERS IN THAT CAR?
22 DO YOU KNOW?

23 A I COULDN'T TELL.

24 Q OKAY. BUT YOU KNOW THAT YOU DID NOT SEE TYLER IN
25 THAT CAR?

1 A SIR?

2 Q YOU KNOW THAT YOU DID NOT SEE MR. TYLER IN THE CAR;
3 CORRECT?

4 A I DIDN'T SEE NO ONE IN THE CAR.

5 Q OKAY. AND YOU SAID THAT YOU HEARD SHOOTING. DID YOU
6 SEE ANY SHOOTING TAKING PLACE WHEN THE CAR PASSED YOU?

7 A NO. IT WAS FURTHER DOWN THE ROAD. I COULDN'T TELL
8 WHO WAS SHOOTING OR WHAT DIRECTION THEY WERE SHOOTING
9 FROM.

10 Q OKAY. AND IS IT YOUR TESTIMONY THAT LATER YOU SAW
11 THIS SAME CAR COME BACK BY?

12 A YES, SIR, I DID.

13 Q OKAY. AND WHAT DID YOU DO AT THAT POINT?

14 A I STARTED WALKING HOME.

15 Q ALL RIGHT. AND AT WHAT POINT DID YOU RUN INTO LAW
16 ENFORCEMENT?

17 A A COUPLE OF HOURS LATER.

18 Q ALL RIGHT. AND AT THAT POINT --

19 A WELL, NOT NO COUPLE OF HOURS LATER. A COUPLE OF
20 MINUTES LATER WHEN THEY CAME IN MY YARD AND TURNED BACK
21 OUT.

22 Q AND AT THAT POINT -- DID YOU SPEAK TO THEM AT THAT
23 POINT?

24 A NO, SIR. I DIDN'T FIND OUT UNTIL THE NEXT DAY THAT
25 SOMEBODY GOT KILLED.

1 Q OKAY. AND DID YOU SPEAK TO THEM AFTER THAT?

2 A MAYBE -- I DONE FORGOT WHAT WHAT DAY IT WAS. NOT THE
3 SAME DAY.

4 Q BUT SOON AFTER YOU DID SPEAK TO LAW ENFORCEMENT?

5 A YES, SIR, I DID.

6 Q AND YOU EXPLAINED TO THEM WHAT YOU SAW THAT
7 PARTICULAR NIGHT.?

8 A YES, SIR.

9 MR. GIPSON: THAT'S ALL THE QUESTIONS, JUDGE.

10 THE COURT: ANYTHING ON REDIRECT?

11 MR. WEEKS: NOTHING, YOUR HONOR.

12 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

13 (END OF REQUESTED PORTION.)

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CERTIFICATE OF REPORTER

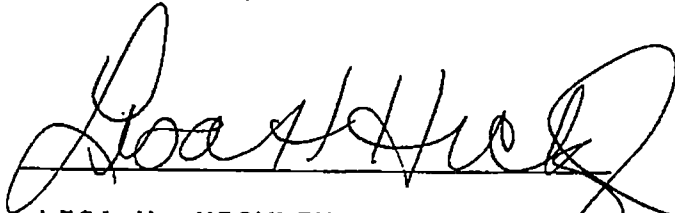
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
PARTIAL TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
AIKEN COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF NOVEMBER,
2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 12, 2007



LISA H. HICKLIN, COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) COURT OF GENERAL SESSIONS
) 06-GS-02-550 THRU 552

COPY

THE STATE OF SOUTH CAROLINA
PLAINTIFF
VS.

TRANSCRIPT OF RECORD

CORNELL TYLER

DEFENDANT

NOVEMBER 27-30, 2006
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS RUSSO, JUDGE; AND A JURY.

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

JOHN W. WEEKS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

BYRON E. GIPSON, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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STATE EXHIBITS

22	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
23	52	PHONE RECORDS	158	

1

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DEFENDANT EXHIBITS

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1 (WHEREUPON, ON NOVEMBER 28, 2006 THE FOLLOWING
2 WITNESSES WERE HEARD AS FOLLOWS:)

3 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
5 APPROXIMATELY 2:38.)

6 THE COURT: ALL RIGHT. I HOPE THAT EVERYONE HAD A
7 GOOD LUNCH. WE'RE READY TO RESUME THE CASE.

8 MR. WEEKS, YOU MAY CALL YOUR NEXT WITNESS, SIR.

9 MR. WEEKS: THANK YOU, YOUR HONOR. YOUR HONOR, THE
10 STATE WOULD CALL KENDALL SEAWRIGHT.

11 THE COURT: MR. SEAWRIGHT, IF YOU WOULD COME AROUND
12 PLEASE TO BE SWORN.

13 KENDALL SEAWRIGHT, AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE HAVE TO SEAT IN THE WITNESS BOX.
16 STATE YOUR FULL NAME FOR THE COURT AND SPELL YOUR LAST.

17 THE WITNESS: MY NAME IS KENDALL SEAWRIGHT;
18 S-E-A-W-R-I-G-H-T.

19 THE COURT: YOU NEED SOME WATER OR ANYTHING?

20 THE WITNESS: I NEED TO SAY IT OVER?

21 THE COURT: NO, YOU'RE GOOD. THANK YOU, SIR.

22 DIRECT EXAMINATION

23 BY MR. WEEKS:

24 Q MR. SEAWRIGHT, HOW OLD ARE YOU?

25 A TWENTY-THREE.

1 Q WHERE DO YOU LIVE?
2 A [REDACTED] ROAD.
3 Q IS THAT IN AIKEN COUNTY?
4 A YES, SIR.
5 Q DO YOU WORK ANYWHERE?
6 A YEA. I DO LAWN CARE FOR EVERT DAVENPORT.
7 Q HOW LONG HAVE YOU BEEN DOING THAT?
8 A ABOUT TWO TO THREE YEARS.
9 Q ARE YOU MARRIED?
10 A NO, SIR.
11 Q DO YOU HAVE ANY CHILDREN?
12 A YES, SIR.
13 Q HOW OLD?
14 A FOUR.
15 Q HOW OLD ARE THEY? ONE, TWO, THREE, AND FOUR?
16 A YES, SIR.
17 Q WERE YOU SUBPOENAED TO TESTIFY HERE TODAY?
18 A YES, SIR.
19 Q NOW, BACK IN AUGUST SPECIFICALLY ON AUGUST 27 OF '05
20 WHERE WERE YOU LIVING THEN?
21 A THE SAME RESIDENCE, [REDACTED] ROAD.
22 Q ON THAT DAY DID YOU MEET UP WITH SOME OF YOUR
23 FRIENDS?
24 A ON THAT NIGHT?
25 Q YEA.

1 A YES, SIR.

2 Q AND WHO WAS THAT?

3 A EDWARD WALKER AND WILLIE WARE.

4 Q WILLIE?

5 A WARE.

6 Q OKAY. AND WHERE DID YOU MEET UP WITH THEM AT?

7 A WHERE AT?

8 Q WHERE AT?

9 A AT ONE OF MY FRIEND'S HOUSE.

10 Q DID Y'ALL GO ANYWHERE?

11 A YES, SIR.

12 Q WHERE DID YOU GO?

13 A WE WENT TO DEAN'S SWAMP.

14 Q ALL RIGHT. AND WHAT WERE YOU DOING -- WHAT WERE YOU

15 GOING THEN?

16 A WE WENT DOWN TO CORNELL TYLER'S HOUSE.

17 Q CORNELL TYLER -- IS HE IN THE COURTROOM?

18 A YES, SIR.

19 Q WHERE IS HE?

20 A (INDICATING.)

21 Q IS HE -- YOU POINTED THAT WAY. IS HE THE DEFENDANT

22 CORNELL TYLER?

23 A YES, SIR.

24 Q YOU WENT TO HIS HOUSE?

25 A YES, SIR.

1 Q ALL RIGHT. DID YOU GO IN?

2 A NO, SIR.

3 Q TELL ME WHAT HAPPENED WHEN YOU GOT THERE. WHAT DID
4 Y'ALL DO?

5 A WE WAS STANDING ON THE PORCH TALKING.

6 Q DID YOU DRIVE THERE?

7 A NO, SIR.

8 Q HOW DID YOU GET THERE?

9 A WILLIE WARE.

10 Q ALL RIGHT. AND WHAT WAS HE DRIVING?

11 A A BUICK.

12 Q DID YOU RECOGNIZE IT AS HIS CAR OR HIS MOTHER'S CAR?

13 A I BELIEVE IT IS HIS.

14 Q NOW, HOW WERE Y'ALL SITTING IN THAT CAR WHEN YOU
15 ARRIVED AT CORNELL'S HOUSE?

16 A I WAS SITTING IN THE BACK, AND EDWARD WALKER WAS
17 SITTING ON THE PASSENGER SIDE, AND WILLIE WARE WAS
18 DRIVING.

19 Q WHO WAS SITTING IN THE FRONT PASSENGER SEAT?

20 A IN THE FRONT PASSENGER? EDWARD WALKER.

21 Q EDWARD WALKER WAS THE FRONT PASSENGER?

22 A YEA.

23 Q WHEN Y'ALL GOT TO THE HOUSE DID YOU ALL GET OUT?

24 A YES, SIR.

25 Q WHERE DID YOU PARK?

1 A WE PARKED IN, LIKE, FRONT OF THE TRAILER.

2 Q WHEN YOU SAY THE TRAILER, WHOSE TRAILER?

3 A I GUESS CORNELL TYLER'S TRAILER.

4 Q DO YOU KNOW WHAT TIME OF DAY OR NIGHT THIS WAS?

5 A I KNOW IT WAS PRETTY LATE.

6 Q PRETTY LATE IN THE DAY OR PRETTY LATE IN THE NIGHT?

7 A AT NIGHT.

8 Q FIXING TO BE MORNING?

9 A YES, SIR.

10 MR. GIPSON: OBJECT TO LEADING, YOUR HONOR.

11 MR. WEEKS: I AM TRYING TO JUST GET IT STRAIGHT WHAT

12 HE MEANS BY LATE. LATE IN THE NIGHT OR LATE IN THE DAY?

13 WAS IT -- DO YOU HAVE AN IDEA AS TO WHAT TIME IT WAS?

14 THE WITNESS: PROBABLY I'D SAY ABOUT 2:30 OR

15 3 O'CLOCK, SOMETHING LIKE THAT.

16 Q NOW, HOW LONG WERE YOU THERE?

17 A WE WASN'T THERE THAT LONG.

18 Q WHAT HAPPENED AFTER YOU GOT THERE?

19 A WE STOOD ON THE PORCH TALKING.

20 Q WHO IS WE?

21 A WELL, ME, EDWARD WALKER, WILLIE WARE, AND CORNELL.

22 Q WAS ANYBODY ELSE THERE THAT YOU SAW AT THAT TIME?

23 A NO, SIR.

24 Q OKAY. NOW, WHAT HAPPENED AFTER Y'ALL WERE TALKING ON

25 THE PORCH?

1 A THAT'S WHEN WE SPOTTED A TRUCK WENT DOWN THE ROAD
2 WITH THE HIGH BEAMS SITTING THERE FOR A GOOD LITTLE WHILE.

3 Q WHAT DID YOU DO?

4 A I STOOD ON THE PORCH.

5 Q YOU SAW A TRUCK DOWN THE ROAD?

6 A YEA, LIKE RIGHT NEXT DOOR OVER THERE.

7 Q WAS IT -- AS YOU ARE SITTING ON THE PORCH AT CORNELL
8 TYLER'S HOUSE LOOKING OUT TOWARDS THE ROAD, WOULD IT BE TO
9 THE LEFT OR TO THE RIGHT?

10 A TO THE LEFT.

11 Q AND WAS IT STILL VERY DARK?

12 A YES, SIR.

13 Q WHAT DID THIS TRUCK DO?

14 A IT WAS SITTING THERE WITH THE HIGH BEAMS ON.

15 Q WHAT, IF ANYTHING, DID YOU OR ANY OF THE PEOPLE ON
16 THE PORCH DO?

17 A CORNELL HAD WENT OUT THERE TO THE ROAD TO SEE WHO IT
18 WAS.

19 Q DID YOU DO ANYTHING AT THAT POINT?

20 A I CAME DOWN THE STEPS AND STOOD IN THE YARD.

21 Q WHAT HAPPENED NEXT?

22 A AND THEN WHEN THEY WENT TO SEE WHO IT WAS THE TRUCK,
23 LIKE, YOU KNOW WHAT I'M SAYING, LIKE SPEED BURST LIKE PAST
24 HIS HOUSE OR WHATEVER.

25 Q WHAT DID YOU SEE THEN?

1 A AFTER THE TRUCK WAS GOING DOWN TREMAINE CAME OUT THE
2 HOUSE AND HE FIRED A COUPLE OF ROUNDS AT THE TRUCK.

3 Q WHO IS TREMAINE?

4 A TREMAINE TYLER.

5 Q ALL RIGHT. AND WHO IS HE IN RELATION TO WHERE YOU
6 WERE?

7 A I GUESS THAT'S CORNELL'S BROTHER.

8 Q WHEN YOU SAY HE CAME OUT OF THE HOUSE WHAT HOUSE ARE
9 YOU TALKING ABOUT?

10 A CORNELL'S HOUSE.

11 Q IS THAT THE SAME ONE THAT YOU WERE STANDING ON THE
12 PORCH TO EARLIER?

13 A YES, SIR.

14 Q WHAT DID YOU SEE CORNELL DO AT THAT POINT?

15 A WELL, AFTER TREMAINE HAD, YOU KNOW, SHOT A COUPLE OF
16 SHOTS THEY JUMPED IN THE CAR TO GO DOWN THE ROAD.

17 Q WHO DID?

18 A CORNELL, EDWARD, AND WILLIE WARE, AND I HAD GOT IN,
19 TOO, AND BEFORE WE LEFT TO GO DOWN THE ROAD I HAD JUMPED
20 OUT.

21 Q FOUR PEOPLE GOT IN THE CAR TO START WITH?

22 A YES, SIR. I WAS ALREADY IN BEFORE THEY GOT IN.

23 Q WHERE DID CORNELL TYLER GET INTO THE CAR AT?

24 A THE BACK SEAT.

25 Q THE BACK RIGHT SIDE OR LEFT SIDE?

1 A BACK RIGHT.

2 Q ALL RIGHT. WHERE DID EDWARD WALKER GET INTO THE CAR

3 AT?

4 A HE WAS ON THE BACK LEFT.

5 Q WHO WAS DRIVING?

6 A WILLIE WARE.

7 Q YOU WERE IN THE FRONT PASSENGER SEAT?

8 A YES, SIR.

9 Q PRIOR TO YOUR GETTING IN THE CAR DID YOU SEE ANYBODY

10 GO BY THE HOUSE?

11 A GO BY THE HOUSE? YEA, THE TRUCK.

12 Q DID YOU SEE WHO WAS IN IT?

13 A I SEEN A WHITE PERSON AND BLACK PERSON.

14 Q ALL RIGHT. WHERE WAS THE BLACK PERSON?

15 A THE BLACK PERSON WAS DRIVING.

16 Q HAD YOU SEEN THAT TRUCK BEFORE TO YOUR KNOWLEDGE?

17 A NO, SIR.

18 Q HOW SOON AFTER THE TRUCK PASSED THE HOUSE DID YOU GET

19 IN THE CAR?

20 A IT WAS GOING DOWN THE ROAD. IT WAS PASSING BY, AND I

21 SAW THEM IN THE CAR, AND THEN THEY CAME AND JUMPED IN THE

22 CAR AND I JUMPED OUT.

23 Q DID YOU HEAR CORNELL TYLER SAY ANYTHING AT THAT

24 POINT?

25 A NO, SIR. HE SAID CARRY HIM DOWN THE ROAD.

1 Q WHO DID HE TELL TO CARRY HIM DOWN THE ROAD?

2 A WILLIE WARE. HE AIN'T CALLED NO NAMES. HE JUST SAID
3 CARRY ME DOWN THE ROAD.

4 Q DID HE GET IN THE CAR WITH ANYTHING?

5 MR. GIPSON: OBJECT TO THE LEADING, YOUR HONOR.

6 THE COURT: YOU CAN REPHRASE.

7 Q DID YOU SEE HIM WITH ANYTHING AT ALL?

8 MR. GIPSON: OBJECT TO THE LEADING, YOUR HONOR.

9 THE COURT: WHAT, IF ANYTHING.

10 Q WHAT, IF ANYTHING, DID CORNELL TYLER HAVE WITH HIM
11 THAT NIGHT?

12 A I SEEN SOMETHING LONG.

13 Q AND WHAT DID IT LOOK LIKE?

14 A IT LOOKED LIKE A GUN.

15 Q ALL RIGHT. DID IT LOOK LIKE A SHOTGUN OR DID IT LOOK
16 LIKE A RIFLE OR BAZOOKA OR WHAT?

17 MR. GIPSON: OBJECT TO LEADING, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 MR. GIPSON: MOVE TO STRIKE.

20 THE COURT: ALL RIGHT.

21 Q WHAT, IF ANYTHING, DID Y'ALL DO AFTER HE GOT IN THE
22 CAR?

23 A AFTER WE GOT IN THE CAR I JUMPED OUT AND THEY WENT
24 DOWN THE ROAD.

25 Q WHO WENT DOWN THE ROAD?

1 A CORNELL, EDWARD WALKER, AND WILLIE WARE.

2 Q DID YOU SEE IF ANYBODY GOT IN THE FRONT PASSENGER
3 SEAT?

4 A NO, SIR.

5 Q WHAT DIRECTION DID THEY GO DOWN THE ROAD?

6 A ALL I KNOW IS THEY WENT STRAIGHT UP DOWN THE DIRT
7 ROAD.

8 Q AND IF YOU WERE STANDING ON THE PORCH WOULD THAT BE
9 TO THE RIGHT OR TO THE LEFT?

10 A TO THE RIGHT.

11 Q WHAT DID YOU SEE, IF ANYTHING, AFTER THAT?

12 A AFTER THEY LEFT THE YARD I AIN'T SEEN NOTHING ELSE.

13 Q WHAT, IF ANYTHING, DID YOU HEAR AFTER THAT?

14 A I HEARD A COUPLE OF GUNSHOTS DOWN THE ROAD.

15 Q WHAT, IF ANYTHING, HAPPENED NEXT?

16 A WHAT YOU MEAN BY HAPPENED NEXT?

17 Q DID YOU SEE ANYBODY ELSE AFTER THAT PERIOD OF TIME?

18 A ARE YOU TALKING ABOUT LIKE THAT WERE IN THE YARD OR
19 SOMETHING? ME AND TREMAINE AND JOHNNY MILES WERE IN THE
20 YARD AFTER THEY HAD DONE WENT DOWN THE ROAD.

21 Q DID YOU SEE WHERE JOHNNY MILES CAME FROM?

22 A NO, SIR.

23 Q DID YOU SEE WHEN HE ARRIVED?

24 A NO, SIR.

25 Q NOW, WHAT, IF ANYTHING, HAPPENED NEXT AT THE HOUSE

1 WHERE YOU WERE LOCATED?

2 A WHEN THEY CAME BACK? YES, SIR, THEY CAME BACK.

3 Q WHO CAME BACK?

4 A CORNELL TYLER, WILLIE WARE, AND EDWARD WALKER.

5 Q WHAT, IF ANYTHING, WAS SAID BY CORNELL TYLER WHEN
6 THEY CAME BACK?

7 A I CAN'T SAY IT CAME FROM CORNELL, BUT SOMEBODY WAS
8 LIKE CLEAN UP OR SOMETHING LIKE THAT.

9 Q WHAT DID YOU DO WHEN THEY CAME BACK?

10 A I STAYED IN THE YARD. THEN I GOT IN THE CAR AND
11 WILLIE WARE AND ED WALKER CARRIED ME HOME.

12 Q DID THEY DROP YOU OFF?

13 A YES, SIR.

14 Q AFTER YOU LEFT THE HOUSE?

15 A YES, SIR.

16 Q DID YOU SEE ANYTHING ELSE THAT NIGHT?

17 A NO, SIR.

18 Q OKAY. WHAT, IF ANYTHING, DID ANYBODY HAVE WHEN THEY
19 ARRIVED BACK AT THE HOUSE?

20 MR. GIPSON: OBJECT TO THE LEADING, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: SIR?

23 Q WHAT, IF ANYTHING, DID ANYBODY HAVE WHEN THEY ARRIVED
24 BACK AT THE HOUSE?

25 A WHAT DID ANYBODY HAVE? I COULDN'T SAY BECAUSE I WAS

1 STANDING IN THE YARD. LIKE I SAID, WHEN THEY CAME BACK
2 THEY GOT OUT AND I HEARD SOMEBODY SAY CLEAN UP AND
3 IMMEDIATELY I JUMPED IN THE CAR AND THEN WE DROVE OFF.

4 Q HOW LONG HAVE YOU KNOWN THE DEFENDANT?

5 A ALL MY LIFE.

6 Q DID YOU GO TO SCHOOL WITH HIM?

7 A YES, SIR.

8 Q HOW LONG WAS THE CAR GONE FROM THE YARD, IF YOU KNOW?

9 A I'D SAY ABOUT -- I DON'T KNOW THE EXACT TIME UNLESS
10 YOU WANT ME TO MAKE AN ESTIMATE OR SOMETHING.

11 Q WELL, DO YOU HAVE AN IDEA AS TO HOW LONG IT WAS GONE?

12 A I WOULD SAY PROBABLY ABOUT --

13 MR. GIPSON: OBJECTION, YOUR HONOR. HE SAID HE
14 DIDN'T KNOW EXACT TIME. ANYTHING ELSE WOULD BE
15 SPECULATION.

16 MR. WEEKS: NOBODY KNOWS THE EXACT TIME.

17 THE COURT: I MEAN, HE CAN GIVE HIS BEST GUESTIMATE.

18 THE WITNESS: I WOULD SAY 10 TO 15 MINUTES.

19 Q AND WHO, IF ANYBODY, GOT OUT OF THE CAR WHEN IT GOT
20 BACK TO THE HOUSE?

21 A WHO GOT OUT THE CAR?

22 Q YES, SIR.

23 A CORNELL.

24 Q ANYBODY ELSE?

25 A AND, WELL, ALL OF THEM REALLY GOT OUT, YOU KNOW WHAT.

1 I'M SAYING, AND THEN I GOT IN, AND THEN EDWARD WALKER AND
2 WILLIE WARE GOT BACK IN THE CAR AND THEN WE LEFT.

3 Q WHEN THEY GOT BACK TO THE HOUSE WHAT SEAT DID THE
4 PEOPLE GET OUT OF THAT WERE --

5 A I BELIEVE CORNELL WERE IN THE BACK SEAT LIKE BEHIND
6 THE DRIVER AND WILLIE WARE WAS DRIVING AND EDWARD WALKER
7 WERE LIKE ON TOP OF THE CAR WHEN THEY CAME BACK.

8 Q WHAT DO YOU MEAN BY ON TOP OF THE CAR?

9 A LIKE HANGING ON THE TOP.

10 Q COULD YOU SEE WHAT HE WAS HOLDING ON TO ON TOP?

11 A IT HAD TO HAVE BEEN A SUN ROOF OR LIKE THE BACK
12 DOOR -- YOU KNOW LIKE YOU HANG ON FROM THE TOP LIKE
13 HOLDING ON.

14 Q WAS THE CAR THAT Y'ALL WERE IN THAT NIGHT, DID IT
15 HAVE A SUN ROOF?

16 A I CAN'T REALLY REMEMBER NOW. I BELIEVE SO. I CAN'T
17 REALLY REMEMBER.

18 Q HAVE YOU LOOKED AT ANY PICTURES OF THE CAR SINCE THAT
19 NIGHT -- OF WILLIE WARE'S CAR?

20 A NO, SIR.

21 Q OKAY. I HAND YOU WHAT'S MARKED STATE'S EXHIBIT
22 NO. 23 AND 24 I AM PRETTY SURE, BUT MY EYES MAY NEED
23 DOUBLE-CHECKING.

24 THE COURT REPORTER: IT'S NO. 24 AND 25.

25 Q WELL, SHE SAYS IT'S 24 AND 25. SO, I WAS WRONG. CAN

1 YOU IDENTIFY THE CAR THAT'S DEPICTED IN THOSE PHOTOGRAPHS?

2 A YES, SIR.

3 Q WHAT CAR IS THAT?

4 A WILLIE WARE'S CAR.

5 Q WHEN Y'ALL WERE ON THE WAY OVER THERE DID YOU SEE
6 ANYTHING IN THE CAR RESEMBLING WHAT YOU SAW MR. TYLER
7 WITH?

8 A ON THE WAY OVER THERE?

9 Q UH-HUH.

10 A NO, I DIDN'T. I AIN'T SEEN NOTHING.

11 Q WELL, DID YOU HAVE ANY GUN?

12 A NO, SIR.

13 Q DID YOU SEE WILLIE WARE WITH A GUN?

14 A NO, SIR.

15 Q DID YOU SEE EDWARD WALKER WITH A GUN?

16 A NO, SIR.

17 Q DID YOU SEE ANY RIFLES OR ANYTHING IN THE CAR?

18 A NO, SIR.

19 Q AND DID YOU SEE ANY ON THE WAY WHEN YOU LEFT THE
20 PLACE?

21 A NO, SIR.

22 Q OKAY. WHY DID YOU GET OUT OF THE CAR?

23 A JUST HAPPENED TO JUMP OUT, SIR.

24 Q WHY DID YOU JUST HAPPEN TO JUMP OUT AT THAT
25 PARTICULAR TIME?

1 A JUST BECAUSE I HAD DONE SEEN, YOU KNOW, SOMEBODY HAD
2 DONE SHOT, YOU KNOW WHAT I'M SAYING? I KNEW IT WASN'T
3 RIGHT FOR ME TO GO DOWN THE ROAD.

4 MR. WEEKS: THAT'S ALL THE QUESTIONS I HAVE. ANSWER
5 ANY QUESTIONS THAT HE HAS FOR YOU.

6 MR. GIPSON: YOUR HONOR, I HAVE A BRIEF MATTER OF LAW
7 I'D LIKE TO TAKE UP.

8 THE COURT: ALL RIGHT. SIDE BAR?

9 MR. GIPSON: WE MAY BE ABLE TO DO IT AT SIDE BAR.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

11 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO HAVE
12 TO SEND YOU OUT FOR A MOMENT. IT SHOULD NOT BE VERY LONG
13 AT ALL. IF YOU WOULD, PLEASE, GO BACK TO YOUR JURY ROOM.
14 REMEMBER NOT TO HAVE ANY CONVERSATION ABOUT THIS CASE AND
15 WE'LL BE BACK OUT JUST SHORTLY.

16 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:58.)

17 THE COURT: ALL RIGHT. NOW, LET ME ASK YOU,
18 MR. GIPSON, THIS IS A TAPE OF A STATEMENT GIVEN EARLIER BY
19 THIS WITNESS; IS THAT CORRECT?

20 MR. GIPSON: YES, SIR. I BELIEVE EVERYBODY WAS --
21 WELL, MANY OF THE DEFENDANTS OR POTENTIAL WITNESSES WERE
22 INTERVIEWED. LAW ENFORCEMENT INTERVIEWED THEM, AND I
23 ACTUALLY HAVE ONE IN MY POSSESSION. IT IS A
24 6-MINUTE-AND-59-SECOND INTERVIEW THAT WAS DONE WITH
25 MR. SEAWRIGHT.

1 THE COURT: IF I MAY ASK, DO WE HAVE ANY TRANSCRIPTS
2 OF THESE STATEMENTS?

3 MR. WEEKS: CERTAINLY, YOU MAY ASK, BUT...

4 THE COURT: WELL, OBVIOUSLY, THE WAY THAT WE WANT TO
5 HANDLE THIS -- I MEAN, IF YOU NEED TO USE IT, I AM
6 ASSUMING IT IS FOR IMPEACHMENT PURPOSES --

7 MR. GIPSON: YES, SIR.

8 THE COURT: -- THEN, LOGISTICALLY, THIS IS GOING TO
9 BE DIFFICULT BECAUSE WE CERTAINLY AREN'T JUST GOING TO
10 PLAY HIS STATEMENT IN TOTAL, BUT IF THERE ARE
11 INCONSISTENCIES I CERTAINLY WANT YOU TO BE ABLE TO PUT
12 THOSE INCONSISTENCIES OUT. HOW ARE WE GOING TO FIND THOSE
13 ON THE TAPE?

14 MR. GIPSON: WE HAVE SOME OF THE TIMES NOTED IN TERMS
15 OF WHEN CERTAIN THINGS WERE SAID. THAT MAY BE THE EASIER
16 WAY, BUT, LOGISTICALLY, I DON'T KNOW IF THERE IS --

17 THE COURT: AND THEN, OF COURSE, FOR EXAMPLE, IF THIS
18 WITNESS HAS TESTIFIED TODAY INCONSISTENT WITH WHAT HE
19 TESTIFIED TO BEFORE, I GUESS YOU CERTAINLY COULD ASK HIM
20 ABOUT IT. OF COURSE, IF HE ADMITS THE INCONSISTENCY.

21 MR. GIPSON: RIGHT. THEN THERE WOULD BE NO NEED.

22 THE COURT: I GUESS WHAT I AM SAYING IS -- AND YOU
23 UNDERSTAND WHERE I AM GOING IS, CERTAINLY, IF THERE ARE
24 INCONSISTENCIES I WANT YOU TO BE ABLE TO BRING THOSE
25 OUT --

1 MR. GIPSON: YES, SIR.

2 THE COURT: -- AND I GUESS THE ONLY NEED WE WOULD
3 HAVE TO PLAY THE THING IS IF THERE IS A DENIAL OF THE
4 INCONSISTENCIES.

5 MR. GIPSON: YES, SIR, AND I AM JUST LOOKING TRYING
6 TO BE PROSPECTIVE ABOUT IT BECAUSE I ANTICIPATE THAT WE
7 MAY NEED TO PLAY THEM ULTIMATELY EVEN AFTER ASKING THE
8 QUESTION. SO, WE CAN HAVE IT READY JUST IN CASE. WE MAY
9 NOT NEED IT. I HOPE YOU'RE RIGHT. I HOPE WE WON'T.

10 THE COURT: JUST, LOGISTICALLY, I AM JUST CURIOUS HOW
11 WE CAN CUE THIS UP WITHOUT SENDING THE JURY IN AND OUT AND
12 IN AND OUT AND IN AND OUT.

13 MR. WEEKS: LOGISTICALLY, I DON'T KNOW HOW TO PUT IN
14 PIECES OF IT IN ANY KIND OF FLUID MANNER.

15 THE COURT: I DON'T THINK YOU CAN IN A FLUID MANNER.
16 THE POSITIVE SIDE ON THIS IS THAT IT'S ON A C.D. SO, IT
17 IS DIGITAL AND WE CAN SKIP. IF YOU'VE GOT ON THERE -- IF
18 YOU KNOW WHERE THE NUMBER IS THAT IT STARTS AT AND ENDS,
19 WE CAN AT LEAST SHOW THAT PART AND CUT IT OFF, BUT THEN GO
20 ON TO THE NEXT ONE.

21 MR. GIPSON: THAT MAY BE -- AND I THINK TO THE BEST
22 OF MY ABILITY WE MAY BE ABLE TO SKIP HERE AND THERE TO
23 SOME PARTICULAR AREAS IN THERE. SO, I'LL TRY TO JUST TAKE
24 A LOOK AT MY NOTES AND MAKE SURE WE CAN.

25 THE COURT: MS. MARSHALL, YOU HAVE ANY SUGGESTIONS ON

1 THAT?

2 MS. MARSHALL: I WAS JUST GOING TO SAY THE PROBLEM IS
3 WE DON'T HAVE A WRITTEN TRANSCRIPT. WE DO HAVE THE TIME
4 OF SOME THINGS THAT WE NOTED, BUT, OBVIOUSLY, WE HADN'T
5 HEARD HIS TESTIMONY TODAY PRIOR.

6 THE COURT: RIGHT. RIGHT.

7 MS. MARSHALL: THERE MAY BE THINGS THAT WE DON'T HAVE
8 THAT ARE ON THE DISK.

9 THE COURT: WELL LET'S DO THIS. FIRST OF ALL, LET'S
10 AT LEAST --

11 MR. WEEKS: TEST IT.

12 THE COURT: LOGICALLY, LET'S TEST IT AND MAKE SURE TO
13 SEE IF IT IS GOING TO WORK FINE.

14 MR. GIPSON: YES, SIR. YES, SIR.

15 THE COURT: THEN I AM GOING TO ALLOW YOU TO DO YOUR
16 CROSS AND IN THOSE AREAS YOU FEEL THERE HAS BEEN AN
17 INCONSISTENCY YOU CAN QUESTION THE WITNESS AND THEN IN
18 TERMS OF RESPONSE YOU CAN DETERMINE WHETHER WE NEED TO GO
19 TO THE TAPES.

20 MR. GIPSON: A SUGGESTION WOULD BE TO DO THE CROSS
21 AND AFTERWARDS I'LL APPROACH AND SEE IF WE STILL NEED TO
22 PLAY IT.

23 MR. WEEKS: LOGISTICALLY THAT WOULD BE THE BEST WAY
24 TO DO IT.

25 THE COURT: LET'S GO AHEAD AND SEE IF IT WORKS.

1 MR. GIPSON: THANK YOU, YOUR HONOR. I BELIEVE THAT
2 WE'RE READY, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 THE COURT: ALL RIGHT. ARE WE READY?

6 MR. GIPSON: YES, SIR.

7 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 3:22.)

10 THE COURT: ALL RIGHT. MR. GIPSON, YOU MAY PROCEED
11 WITH YOUR CROSS EXAMINATION.

12 CROSS-EXAMINATION

13 BY MR. GIPSON:

14 Q MR. SEAWRIGHT, WE MET VERY BRIEFLY BEFORE; IS THAT
15 CORRECT?

16 A YES, SIR.

17 Q I KNOW YOU'RE A LITTLE BIT SOFT SPOKEN SOMETIMES.
18 SO, I AM NOT YELLING AT YOU. I'LL JUST TRY TO TALK A
19 LITTLE BIT LOUDER AND I PROMISE IF YOU YELL AT ME IT WON'T
20 HURT MY FEELINGS. IT HAPPENS ALL THE TIME WHEN I AM AT
21 HOME. I GET YELLED AT ALL THE TIME. SO, I AM JUST GOING
22 TO SPEAK LOUDER, AND I MAY EVEN STEP BACK A LITTLE BIT
23 FARTHER JUST TO ENCOURAGE YOU TO SPEAK UP JUST A LITTLE
24 BIT BECAUSE YOU NEED TO TALK LOUD ENOUGH SO THAT EVEN THE
25 LAST JUROR ON THIS SIDE OF THE BOX CAN HEAR YOU. OKAY?

1 A YES, SIR.

2 Q NOW, YOU MENTIONED -- WELL, LET ME ASK YOU THIS. IN
3 ALL HONESTY YOU REALLY DON'T WANT TO BE HERE TODAY;
4 CORRECT?

5 A YES, SIR.

6 Q AND THIS IS AN AWKWARD POSITION FOR YOU BECAUSE YOU
7 KNOW EVERYBODY INVOLVED WHO'S BEEN ALLEGED TO BE INVOLVED
8 IN THIS SITUATION; CORRECT?

9 A YES, SIR.

10 Q YOU KNOW MR. CORNELL TYLER; CORRECT?

11 A YES, SIR.

12 Q AND YOU KNOW WILLIE WARE; CORRECT?

13 A YES, SIR.

14 Q AND YOU KNOW EDWARD WALKER; CORRECT?

15 A YES, SIR.

16 Q AND YOU ACTUALLY KNOW MR. TYLER BECAUSE YOU WENT TO
17 SCHOOL WITH HIM; CORRECT?

18 A YES, SIR.

19 Q AND YOU KNOW MR. WARE BECAUSE YOU WENT TO SCHOOL WITH
20 HIM; CORRECT?

21 A YES, SIR.

22 Q DO YOU KNOW MR. WALKER BECAUSE YOU WENT TO SCHOOL
23 WITH HIM; CORRECT?

24 A I AIN'T WENT TO SCHOOL WITH HIM.

25 Q IS HE OLDER OR YOUNGER THAN YOU?

1 A OLDER.

2 Q ABOUT HOW MUCH OLDER IS HE THAN YOU?

3 A I DON'T KNOW THE EXACT AGE.

4 Q BUT HE IS OLDER THAN YOU ARE?

5 A YES, SIR.

6 Q NOW, ARE YOU RELATED TO ANYBODY -- TO MR. TYLER?

7 A NOT AS I'M AWARE.

8 Q OKAY. ARE YOU RELATED TO MR. WARE?

9 A NOT AS I'M AWARE.

10 Q ARE YOU RELATED TO MR. WALKER?

11 A NOT AS I'M AWARE.

12 Q ARE ANY OF THE OTHER PARTIES RELATED TO ONE ANOTHER

13 TO YOUR KNOWLEDGE?

14 A YOU TALKING ABOUT THE THREE PEOPLE?

15 Q YES, SIR, THAT I JUST NAMED.

16 A I BELIEVE WILLIE WARE AND EDWARD WALKER ARE RELATED.

17 Q OKAY. HOW ARE THEY RELATED?

18 A I BELIEVE THEY'RE COUSINS.

19 Q YOU BELIEVE THEY'RE COUSINS?

20 A YES, SIR.

21 Q OKAY. SO, WILLIE WARE AND EDWARD WALKER WHO ARE

22 CO-DEFENDANTS IN THIS CASE ARE COUSINS?

23 A YES, SIR, AS FAR AS I KNOW.

24 Q I'M SORRY.

25 A AS FAR AS I KNOW.

1 Q AND THOSE ARE THE TWO PEOPLE WHO YOU RODE WITH;
2 CORRECT?

3 A YES, SIR.

4 Q SO, YOUR TESTIMONY IS THAT YOU ON THIS PARTICULAR I
5 GUESS FRIDAY NIGHT SPILLING OVER INTO SATURDAY MORNING GOT
6 IN THE CAR WITH THEM TO JUST RIDE AROUND?

7 A YES, SIR. WE CAME TO DEAN'S SWAMP.

8 Q WHAT IS GOING ON AT DEAN'S SWAMP THAT YOU WOULD WANT
9 TO GO THERE IN THE EARLY MORNING HOURS?

10 A EDWARD WALKER TOLD WILLIE WARE THAT HE HAD NEEDED TO
11 GO DOWN THERE AND HOLLER AT CORNELL.

12 Q OKAY. SO, YOU DECIDED TO RIDE WITH THEM?

13 A I'M SAYING THAT WAS BEFORE. WE WAS JUST RIDING AND
14 THEN THEY SAID THAT HE NEEDED TO GO DOWN THERE AND HOLLER
15 AT CORNELL.

16 Q OKAY. YOU WERE JUST RIDING. I MEAN, RIDING AROUND
17 DOING WHAT?

18 A IN WAGENER.

19 Q IN WAGENER?

20 A YES, SIR.

21 Q DID YOU GO OUT THAT NIGHT?

22 A WELL, WE JUST COME FROM THE LITTLE POOL HALL IN
23 WAGENER.

24 Q WHAT IS THE NAME OF THE POOL HALL?

25 A THEY CHANGED THE NAME. I BELIEVE IT IS LIKE PEANUTS

1 OR SOMETHING LIKE THAT.

2 Q OKAY. BUT Y'ALL JUST HUNG OUT THERE AND SHOT POOL?

3 A YES, SIR.

4 Q DID YOU HAVE ANY DRINKS?

5 A THEY DON'T SELL ALCOHOL THERE.

6 Q DO THEY ALLOW YOU TO BRING YOUR BOTTLE IN LIKE SOME

7 OF THEM DO?

8 A NO, SIR.

9 Q ALL RIGHT.. SO, IT IS A DRY POOL HALL, BASICALLY?

10 YOU JUST WALK IN THERE AND PLAY POOL?

11 A SODAS AND STUFF. NO ALCOHOL.

12 Q ALL RIGHT. TO YOUR KNOWLEDGE WAS ANYBODY DRINKING

13 WITH THE GROUP THAT YOU WERE WITH DRINKING ALCOHOL THAT

14 PARTICULAR EVENING?

15 A THEY WASN'T TO THE POOL HALL. THEY CAME BY AND

16 PICKED ME UP. WE WAS JUST RIDING AROUND, AND THEN EDWARD

17 WALKER TOLD WILLIE WARE THAT HE NEEDED TO GO DOWN THERE

18 AND HOLLER AT CORNELL.

19 Q OKAY. SO, THE TWO COUSINS PICKED YOU UP FROM THE

20 POOL HALL?

21 A YEA, THEY STOPPED BY.

22 Q HOW DID YOU GET TO THE POOL HALL?

23 A I WALKED.

24 Q OKAY. SO, YOU LIVE WITHIN WALKING DISTANCE OF THE

25 POOL HALL?

1 A YES, SIR. WELL, YES, SIR.

2 Q SO, YOU LEFT THE POOL HALL WITH THE TWO COUSINS AND
3 RODE ON DOWN. YOU JUST KIND OF RODE JUST SO YOU WOULD
4 HAVE SOMETHING TO DO?

5 A YEA. THEY HAD -- YES, SIR.

6 Q OKAY. NOW, DO YOU KNOW IF THEY HAD HAD ANYTHING TO
7 DRINK THAT NIGHT?

8 A NO, SIR.

9 Q DO YOU KNOW IF THEY HAD DONE ANY -- USED ANY KIND OF
10 -- SCRATCH THAT QUESTION. YOU DON'T KNOW IF THEY HAD BEEN
11 DRINKING?

12 A NO, SIR.

13 Q SMELL AN ODOR OR ANYTHING LIKE THAT?

14 A NO, SIR.

15 Q OKAY. NOW, YOU GOT IN THE CAR AND YOU JUST WENT WITH
16 THEM JUST BECAUSE, AGAIN, YOU WERE JUST ALONG FOR THE
17 RIDE; CORRECT?

18 A YES, SIR.

19 Q ALL RIGHT. NOW, DURING YOUR DIRECT EXAMINATION I
20 THINK MR. WEEKS SHOWED YOU WHAT'S BEEN MARKED AS THE
21 STATE'S EXHIBIT NO. 24 AND 25. WOULD YOU TAKE A LOOK AT
22 THOSE TWO AGAIN AND TELL THE JURY WHAT YOU SEE?

23 A WILLIE WARE'S CAR.

24 Q OKAY. WILL YOU DESCRIBE THAT CAR FOR US?

25 A LIKE BLUISH GREEN, A BUICK.

1 Q AND DO YOU NOTICE ANYTHING DISTINCTIVE ABOUT THE TOP
2 OF THAT CAR?

3 A WHAT YOU MEAN?

4 Q JUST DESCRIBE THE TOP OF THE CAR, IF YOU WOULD. CAN
5 YOU SEE ANYTHING THERE?

6 A IT LOOKS LIKE A SUN ROOF.

7 Q OKAY. IT LOOKS LIKE A SUN ROOF?

8 A YES, SIR.

9 MR. GIPSON: I AM GOING TO PUBLISH THESE TO THE JURY,
10 IF I MAY, YOUR HONOR.

11 THE COURT: YES, SIR.

12 Q SO, WHAT WAS THE WEATHER LIKE THAT NIGHT?

13 A I CAN'T REALLY REMEMBER.

14 Q WAS IT RAINING OR ANYTHING LIKE THAT?

15 A NO, SIR.

16 Q ANYTHING IN PARTICULAR THAT YOU REMEMBER?

17 A NO, SIR.

18 Q ALL RIGHT. JUST PROBABLY A NORMAL SUMMER NIGHT?

19 A YES, SIR.

20 Q ALL RIGHT. SO, YOU WERE THE BACKSEAT PASSENGER? YOU
21 WERE THE BACKSEAT PASSENGER?

22 A ON THE WAY THERE?

23 Q YES, SIR.

24 A YES, SIR.

25 Q ALL RIGHT. AND YOU WENT ON DOWN THE ROAD TO DEAN'S

1 SWAMP AREA WHICH YOU LATER SAY IT WAS CORNELL TYLER'S
2 HOME; CORRECT?

3 A YES, SIR.

4 Q ALL RIGHT. WERE THERE ANY GUNS IN THE CAR THAT YOU
5 SAW WHEN YOU WERE IN THAT CAR?

6 A NO, SIR.

7 Q OKAY. WERE THERE ANY GUNS IN THE CAR AT ALL?

8 A WHAT YOU MEAN?

9 Q WHEN YOU WERE IN THE CAR.

10 A OH, NO, SIR, NOT AS I SEEN.

11 Q NOT THAT YOU SAW. NOW, DID YOU AT ANY -- WELL, LET
12 ME ASK YOU ANOTHER QUESTION. I AM GOING TO SKIP AHEAD AND
13 THEN WE'LL COME BACK AND GET BACK ON THIS LINE OF
14 QUESTIONING. YOU WERE INTERVIEWED BY POLICE OFFICERS
15 SEVERAL TIMES DURING THIS CASE; IS THAT CORRECT?

16 A A COUPLE OF TIMES, YES, SIR.

17 Q OKAY. AND THEY -- DID THEY PICK YOU UP AND TAKE YOU
18 AND BRING YOU DOWN TO THE SHERIFF'S DEPARTMENT OR DID THEY
19 JUST MEET WITH YOU RIGHT THERE IN WAGENER?

20 A SOMETIME THEY MET. SOMETIMES THEY CARRIED ME --
21 BRUNG ME TO AIKEN.

22 Q OKAY. SO, YOU DID THAT AT LEAST TWO TIMES?

23 A YES, SIR.

24 Q ALL RIGHT. IN THE COURSE OF GIVING STATEMENTS TO
25 POLICE IS THERE ANYTHING THAT YOU TOLD THEM THEN THAT YOU

1 SAID DIFFERENT THAN HERE TODAY ON THE STAND?

2 A NOT AS I'M AWARE OF.

3 Q OKAY. SO, YOU'RE SAYING THAT YOU TOLD THE COMPLETE
4 TRUTH THEN AND YOU'RE TELLING THE COMPLETE TRUTH NOW?

5 A THAT I'M AWARE OF.

6 Q OKAY. AND THERE IS NOTHING THAT YOU WANT TO CHANGE
7 NOW THAT'S DIFFERENT FROM WHAT YOU SAID BEFORE?

8 A NOT AS I'M AWARE OF.

9 Q OKAY. NOW, WHEN YOU WERE QUESTIONED BY THE AIKEN
10 COUNTY SHERIFF'S DEPARTMENT THEY TAPED THE INTERVIEW; IS
11 THAT CORRECT?

12 A YES, SIR.

13 Q AND WHEN THEY TAPED THE INTERVIEW, DID YOU GO IN AND
14 THEY TAPED THE INTERVIEW IMMEDIATELY AND STARTED ASKING
15 YOU QUESTIONS OR DID THEY TALK TO YOU FOR A WHILE AND YOU
16 ALL -- AND YOU TOLD THEM WHAT YOU THOUGHT YOU WERE GOING
17 TO TELL THEM AND THEN THEY TURNED THE TAPE ON?

18 A WELL, WE TALKED FOR A LITTLE WHILE AND THEN THEY SAID
19 THEY WERE GOING TO VIDEOTAPE.

20 Q OKAY. WHEN YOU SAY A LITTLE WHILE, HOW LONG IS A
21 LITTLE WHILE?

22 A I CAN'T GIVE YOU NO EXACT TIME BEING SO LONG, YOU
23 KNOW WHAT I'M SAYING?

24 Q WAS IT MORE THAN TWO MINUTES? WAS IT MORE THAN 10
25 MINUTES? WAS IT AS LONG AS YOU'VE BEEN SITTING UP ON THIS

1 WITNESS STAND?

2 A NO, SIR. I WOULD SAY ABOUT 20, 30 MINUTES.

3 Q OKAY. SO, THEY TALKED TO YOU 20 OR 30 MINUTES AND
4 THEN THEY TURNED THE VIDEOTAPE ON?

5 A WE WERE IN A LITTLE OFFICE TALKING AND THEN THEY
6 CARRIED ME IN THE ROOM AND SAID THEY WERE GOING TO
7 VIDEOTAPE.

8 Q ALL RIGHT. NOW, WHEN YOU WERE INTERVIEWED IN WAGENER
9 DID THEY TAPE YOU IN WAGENER?

10 A SIR?

11 Q WHEN YOU WERE INTERVIEWED IN WAGENER DID THEY
12 VIDEOTAPE YOU SPEAKING TO THEM IN WAGENER?

13 A NO, SIR.

14 Q DID YOU EVER HANDWRITE A STATEMENT TELLING THEM
15 EVERYTHING THAT TOOK PLACE?

16 A I AIN'T NEVER HANDWRITE NOTHING.

17 Q OKAY. SO, THE ONLY RECORD OF WHAT YOU SAID TO THEM
18 IMMEDIATELY AFTER THIS INCIDENT IS ON THE VIDEO THAT YOU
19 GAVE THEM IN LATE AUGUST OF 2005?

20 A YES, SIR, BUT THE THINGS I WOULD TELL THEM THEY WERE
21 PROBABLY JOTTING IT DOWN, BUT I AIN'T NEVER WROTE NOTHING.

22 Q BUT YOU NEVER WROTE IT?

23 A NO, SIR..

24 Q OKAY. ISN'T IT TRUE THAT IN AT LEAST ONE OF THOSE
25 INTERVIEWS YOU SAID YOU SAW A RIFLE IN THE BACKSEAT?

1 A IN THE BACKSEAT?

2 Q YES, SIR.

3 A I SAID WHEN CORNELL -- WHEN THEY GOT READY TO LEAVE.

4 Q SO, IT'S TRUE THAT YOU SAID -- AND ANSWER TO MY
5 QUESTION YES OR NO --

6 A I AIN'T SAID NO RIFLE. I SAID IT LOOKED LIKE A BROWN
7 GUN.

8 Q OKAY. YOU SAID A BROWN GUN?

9 A I DON'T KNOW --

10 Q SO, YOU DID SEE A GUN IN THE BACKSEAT?

11 A NO. I SAID WHEN HE GOT IN THE CAR AFTER, YOU KNOW,
12 THE SHOOTING WHEN THEY WENT DOWN THE ROAD.

13 Q I AM NOT UNDERSTANDING WHAT YOU'RE SAYING.

14 A I SAID AFTER WHEN THEY WENT DOWN THE ROAD. WHEN HE
15 GOT IN THE CAR THAT'S WHAT HE HAD.

16 (WHEREUPON, A CELLPHONE RANG.)

17 THE COURT: I AM GOING TO HAVE TO GIVE \$100 TO
18 CHARITY. I APOLOGIZE. I USUALLY DO PRETTY GOOD. ANYTIME
19 YOU STAY AWAY FROM HOME -- I DON'T TRUST HOTELS FOR MY
20 WAKEUP CALL. SO I USE MY PHONE. I USUALLY DO PRETTY GOOD
21 PUTTING IT BACK TO VIBRATE.

22 MR. GIPSON, I'M SORRY FOR THE INTERRUPTION. I'LL SEE
23 TO IT THAT I DO SOMETHING.

24 MR. GIPSON: WE WELCOME THE INTERRUPTION, YOUR HONOR.

25 Q NOW, I AM TRYING TO GET CLARIFICATION ON YOU SAID YOU

1 SAW A SMALL GUN IN THE BACK OF THE CAR?

2 A I SAID IT LOOKED LIKE A LONG GUN WHEN HE WENT TO GET
3 IN THE CAR. YES, SIR.

4 Q OKAY. SO, YOU SAID -- NOW YOU'RE SAYING THAT IT
5 LOOKED LIKE A LONG GUN?

6 A THAT'S WHAT I SAID -- A LONG GUN.

7 Q YOU SAW A GUN IN THE BACK OF THE CAR?

8 A WHEN HE WENT TO GET IN THE CAR.

9 Q OKAY. ALL RIGHT. NOW, LET ME ASK YOU THIS. DID YOU
10 EVER SEE CORNELL TYLER SHOOTING AT ANYBODY?

11 A NO, SIR.

12 Q ALL RIGHT. YOU SAID THAT AT SOME POINT IN TIME YOU
13 WERE OUTSIDE AND YOU SAW WALKER AND WHAT'S HIS NICKNAME?

14 A WALKER?

15 Q YES, SIR. WHAT IS EDWARD WALKER'S NICKNAME?

16 A HEAD.

17 Q HEAD. OKAY. SO, YOU SAW HEAD HANGING OUT OF THE
18 CAR?

19 A ON THE WAY BACK.

20 Q OKAY. OUT OF THE TOP OF THE CAR?

21 A YES, SIR, LIKE HANGING ON THE SUNROOF OR ON THE SIDE
22 OF THE DOOR.

23 Q OKAY. OKAY. AND WHAT DID YOU THINK ABOUT SEEING HIM
24 HANGING OUT OF THE SUNROOF OR ON THE SIDE OF THE DOOR?

25 A I'M SAYING THAT'S WHEN THEY CAME BACK.

1 Q OKAY. ALL RIGHT. AND WHEN HE GOT BACK YOU HEARD
2 SOMEBODY SAY CLEAN UP IS WHAT YOU SAID?

3 A YES, SIR.

4 Q OKAY. AND YOU SAID YOU GOT IN THE CAR AND YOU JUST
5 WANTED TO GO HOME?

6 A YES, SIR. THAT'S AFTER THEY HAD DONE CLEARED OUT,
7 YOU KNOW WHAT I'M SAYING, BECAUSE HEAD WANTED TO TALK.

8 Q OKAY.

9 A YES, SIR.

10 Q ALL RIGHT. NOW, WHEN YOU GOT HOME YOU WENT STRAIGHT
11 TO THE AIKEN COUNTY SHERIFF'S DEPARTMENT, DIDN'T YOU?

12 A NO, SIR.

13 Q OKAY. WHEN YOU WENT TO SLEEP AND WOKE UP YOU WENT
14 STRAIGHT TO THE AIKEN COUNTY SHERIFF'S DEPARTMENT?

15 A I AIN'T NEVER WENT THERE. THEY CAME AND PICKED ME
16 UP.

17 Q OKAY. THEY CAME AND PICKED YOU UP?

18 A YES, SIR.

19 Q NOW, WHEN THEY PICKED YOU UP THEY ALREADY KNEW THAT
20 YOU HAD BEEN IN THE CAR WITH THE COUSINS WILLIE WARE AND
21 EDWARD WALKER; CORRECT?

22 A THEY SAID THEY KNOW THAT I WAS DOWN THERE WHEN THE
23 SHOOTING TOOK PLACE.

24 Q OKAY. WHAT PROOF DO WE HAVE THAT YOU WEREN'T IN THAT
25 CAR WHEN ALL OF THOSE THINGS TOOK PLACE?

1 A THAT I JUMPED OUT.

2 Q OKAY. BUT WHAT PROOF DO WE HAVE OF THAT?

3 A I'M SAYING YOU CAN CHECK MY FOOTPRINTS OR WHATEVER.

4 I'M SAYING IT.

5 Q OKAY. BUT YOU WENT -- WELL, YOU TOLD THE POLICE WHEN
6 YOU TALKED TO THEM THAT WILLIE WARE, EDWARD WALKER WERE IN
7 THE CAR AND YOU RODE WITH THEM BEFORE ALL OF THE SHOOTING
8 TOOK PLACE AND YOU RODE WITH THEM AFTER THE SHOOTING TOOK
9 PLACE; CORRECT?

10 A YEA, THEY DROPPED ME OFF HOME.

11 Q OKAY. THEY JUST DROPPED YOU OFF BACK TO YOUR HOUSE
12 IN WAGENER?

13 A YES, SIR.

14 Q OKAY. WHAT DID Y'ALL TALK ABOUT ON THE WAY HOME?

15 A AIN'T NOBODY SAID NOTHING.

16 Q OKAY. ALL RIGHT. SO, IT IS YOUR TESTIMONY TODAY
17 THAT THEY GOT IN THE CAR AFTER ALL OF THIS STUFF HAD
18 HAPPENED AND THERE WAS JUST NOTHING SAID?

19 A IT WAS COMPLETE SILENCE.

20 Q YOU DIDN'T ASK ANY QUESTIONS AND THEY DIDN'T TELL YOU
21 ANYTHING?

22 A NO, SIR.

23 Q OKAY. HAVE YOU EVER BEEN TO A FOOTBALL GAME BEFORE?

24 A YES, SIR.

25 Q OKAY. AND AT THE END OF THE GAME ON THE WAY HOME

1 USUALLY YOU TALK ABOUT WHAT HAPPENED AT THE GAME, DON'T
2 YOU?

3 A YES, SIR.

4 Q ALL RIGHT. SO, YOU ARE EXPECTING THIS JURY TO
5 BELIEVE THIS TRAUMATIC SITUATION HAPPENED, ALL OF THIS
6 SHOOTING THAT YOU JUST TALKED ABOUT TOOK PLACE, PEOPLE
7 JUMPING INTO CARS, HANGING OFF THE TOP OF THE CARS, AND ON
8 THE WAY HOME NOBODY HAS A WORD TO SAY ABOUT ANYTHING?

9 A THEY AIN'T SAID NOTHING TO ME. I COULDN'T KNOW WHAT
10 TOOK PLACE DOWN THE ROAD BECAUSE I AIN'T NEVER WENT.

11 Q HAS ANYBODY TOLD YOU THAT YOU HAD TO TESTIFY A
12 PARTICULAR WAY IN ORDER TO PROTECT YOURSELF --

13 A EXCUSE ME?

14 Q IN ORDER NOT TO BE CHARGED WITH ANYTHING?

15 A CAN YOU REPEAT IT?

16 Q HAS ANYBODY TOLD YOU THAT YOU WOULD BE CHARGED
17 CRIMINALLY IF YOU DID NOT TESTIFY A PARTICULAR TYPE OF
18 WAY?

19 A NO, SIR.

20 Q OKAY. HAVE YOU TOLD ANYBODY IN THIS COURTROOM OR
21 OUTSIDE OF THIS COURTROOM OR ANY WITNESSES IN THIS CASE
22 THAT YOU HAVE NOT BEEN TRUTHFUL ABOUT YOUR TESTIMONY TO
23 POLICE OFFICERS AND TO THE STATE?

24 A NO, SIR.

25 Q OKAY. HAVE YOU TOLD ANYBODY IN THE LAST 24 HOURS

1 THAT YOU WERE NOT TRUTHFUL ABOUT WHAT YOU TOLD THE STATE
2 BECAUSE YOU WERE AFRAID OF THE CONSEQUENCES FROM OF HAVING
3 A CHARGE LEVIED AGAINST YOU IF YOU DID NOT TESTIFY A
4 PARTICULAR WAY?

5 A NO, SIR.

6 Q HAVE YOU TOLD ANYBODY IN THE LAST FIVE HOURS THAT YOU
7 WERE AFRAID THAT IF YOU DID NOT COME IN HERE AND TESTIFY
8 THE WAY YOU TOLD THE STATE YOU WOULD THAT YOU WOULD BE
9 CHARGED CRIMINALLY?

10 A NO, SIR.

11 MR. GIPSON: I WOULD ASK THE COURT'S INDULGENCE FOR A
12 BRIEF MOMENT, YOUR HONOR.

13 THE COURT: YES, SIR.

14 MR. GIPSON: MAY WE APPROACH FOR A BRIEF MOMENT?

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

16 Q LET ME ASK YOU THIS. IT MAY NOT SEEM LIKE IT, BUT
17 WE'RE TRYING TO STREAMLINE THINGS. NOW, ISN'T IT TRUE
18 THAT IN AT LEAST ONE OF YOUR INVESTIGATIONS YOU TOLD
19 POLICE THAT EDWARD WALKER HAD A GUN AND YOU SAW HIM WITH A
20 GUN IN THAT CAR?

21 A NO, SIR.

22 Q SO YOU NEVER SAID THAT?

23 A NO, SIR.

24 Q AND ISN'T IT TRUE IN YOUR STATEMENT THAT YOU NEVER
25 SAID THAT CORNELL TYLER WENT OUT TO THAT CAR DOOR OF THE

1 AIKEN STANDARD TRUCK? YOU NEVER SAID THAT CORNELL TYLER
2 WENT OUT TO THAT TRUCK IN YOUR STATEMENT TO THE POLICE?

3 A I DID SAY THAT. I SAID HE WENT OUT THERE TO THE
4 ROAD:

5 Q NOW, YOU SAID -- IN YOUR STATEMENT HERE TODAY YOU
6 SAID HE WENT TO THE TRUCK?

7 A YEA, THE TRUCK WAS RIGHT THERE IN THE ROAD.

8 Q ALL RIGHT.

9 A YOU KNOW WHAT I'M SAYING?

10 Q SO, YOU'RE SAYING NOW THAT YOU DID SAY THAT IN YOUR
11 PREVIOUS STATEMENTS?

12 A I SAID HE WENT TO THE ROAD.

13 Q SO HE WENT TO THE ROAD OR TO THE TRUCK?

14 A THE TRUCK WAS PARKED RIGHT THERE. THE TRUCK IS
15 PARKED AT THE ROAD AND HE IS STANDING ON THE GRASS RIGHT
16 THERE BY THE TRUCK. HE WASN'T ACTUALLY IN THE ROAD. THE
17 TRUCK WAS RIGHT THERE.

18 Q WHAT WAS HE WEARING?

19 A SIR?

20 Q WHAT WAS HE WEARING?

21 A I COULDN'T -- I CAN'T REMEMBER ALL THAT.

22 MR. GIPSON: OKAY. THANK YOU.

23 THE COURT: DO YOU NEED TO?

24 MR. GIPSON: YES, SIR.

25 THE COURT: WHILE YOU'RE DOING THAT WHILE YOU'RE

1 CUEING IT UP OR WHATEVER --

2 MR. GIPSON: YES, SIR.

3 THE COURT: -- I AM GOING TO EXPLAIN TO THE JURY WHAT
4 WE'RE DOING.

5 MR. GIPSON: YES, SIR.

6 THE COURT: LADIES AND GENTLEMEN, WHAT WE HAVE IS
7 THIS WITNESS GAVE A TAPED STATEMENT TO LAW ENFORCEMENT AT
8 SOME POINT PRIOR TO THIS AND THAT'S THE STATEMENT -- THE
9 TAPE THAT HAS BEEN REFERRED TO. MR. GIPSON IS GOING TO
10 FIND A PARTICULAR LOCATION ON HIS TAPE TO ADDRESS WHATEVER
11 ISSUES HE HAS WITH REGARDS TO THE WITNESS' STATEMENT TODAY
12 VERSUS THE STATEMENT THAT WAS GIVEN AT THE TIME THAT TAPED
13 STATEMENT WAS GIVEN.

14 SO, TYPICALLY, THE WAY THIS IS DONE IS IT'S DONE BY
15 TRANSCRIPT, A WRITTEN STATEMENT OF WHAT WAS SAID IN A
16 STATEMENT. WE DON'T HAVE THAT. WE HAVE A TAPED
17 STATEMENT. SO, THEREFORE, THE ONLY WAY TO CROSS EXAMINE A
18 WITNESS WITH REGARDS TO HIS FORMER STATEMENT THEN IS TO
19 PLAY A PORTION OF THAT STATEMENT. SO, THAT'S THE PURPOSE
20 OF WHAT WE'RE DOING.

21 MR. GIPSON: MAY WE APPROACH FOR ONE MOMENT?

22 THE COURT: YEA.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

24 THE COURT: LADIES AND GENTLEMEN, THE STATEMENT THAT
25 WE'RE REFERRING TO IS NOT THAT LONG AND MR. GIPSON IS

1 MOVING TO HAVE THE STATEMENT ADMITTED IN AND THEN JUST
2 PLAY THE ENTIRE STATEMENT RATHER THAN TRYING TO CARVE OUT
3 A SMALL PORTION.

4 IS THAT CORRECT, SIR?

5 MR. GIPSON: YES, SIR. THAT'S ABSOLUTELY CORRECT.

6 THE COURT: ANY OBJECTION, MR. WEEKS?

7 MR. WEEKS: WITHOUT OBJECTION, YOUR HONOR.

8 THE COURT: ALL RIGHT. SO, AT THIS TIME, LADIES AND
9 GENTLEMEN, WE WILL PLAY THAT FOR YOU IN ITS ENTIRETY AND
10 YOU CAN JUST LISTEN TO THE ENTIRE STATEMENT. IF ANYONE
11 HAS A DIFFICULT TIME HEARING GIVE US A HEAD'S UP AND WE'LL
12 TRY TO TURN IT UP AND TRY TO CLARIFY IT SO YOU CAN HEAR
13 IT.

14 MR. GIPSON: AND, YOUR HONOR, FOR CLARIFICATION
15 PURPOSES I'D LIKE TO MARK THE, FOR LACK OF A BETTER WORD,
16 THE DISK THAT WE, I BELIEVE, HAVE AGREED UPON IS
17 MR. SEAWRIGHT'S TESTIMONY. WE'D LIKE TO MARK THAT AS
18 DEFENSE EXHIBIT NO. 1.

19 THE COURT: THAT WILL BE DEFENSE EXHIBIT 1 WITHOUT
20 OBJECTION.

21 MR. GIPSON: AND I'D LIKE TO PUBLISH IT TO THE JURY.

22 THE COURT: YES, SIR.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 1 WAS MARKED FOR
24 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

25 (WHEREUPON, THE C.D. WAS STARTED AND THEN STOPPED.)

1 THE JUROR: I HAVE A QUESTION. I NEED IT REWOUND A
2 LITTLE BIT. I COULDN'T UNDERSTAND ONE PART. WHO IS
3 DEUCE?

4 THE COURT: WELL, LET ME DO THIS, IF I MAY. LET ME
5 GET YOU TO LISTEN TO THE WHOLE THING AND THE ATTORNEYS
6 STILL HAVE OPPORTUNITIES --

7 THE JUROR: OKAY. I'M SORRY.

8 THE COURT: -- TO QUESTION THE WITNESS AND WE'LL LET
9 IT GO BACK.

10 THE JUROR: CAN YOU REWIND IT JUST A LITTLE BIT?

11 THE COURT: SURE. HOW FAR BACK?

12 THE JUROR: ABOUT A MINUTE, A MINUTE AND A HALF,
13 SOMETHING LIKE THAT.

14 (WHEREUPON, THE C.D. IS STARTED AND THEN STOPPED.)

15 MR. GIPSON: THAT'S THE END OF THAT TAPE, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU MAY PROCEED WITH YOUR
17 CROSS.

18 Q SO, THAT STATEMENT IS CONSISTENT WITH EVERYTHING ELSE
19 THAT YOU'VE SAID IN THIS CASE?

20 A SIR?

21 Q THAT STATEMENT IS EVERYTHING ELSE THAT YOU'VE SAID TO
22 LAW ENFORCEMENT AND NEIGHBORS AND WITNESSES IN THIS CASE?

23 A YES, SIR. WHAT YOU MEAN BY CONSISTENT?

24 Q I'M SORRY?

25 A WHAT DO YOU MEAN BY CONSISTENT?

1 Q IT IS THE SAME. WHAT YOU SAID THERE IS THE SAME --
2 I'LL REPHRASE IT. YOU'RE TELLING US HERE TODAY WHILE
3 YOU'RE HERE UNDER OATH THAT THE STATEMENT THAT YOU HAVE
4 GIVEN HERE TODAY IS THE SAME STATEMENT THAT YOU GAVE IN
5 AUGUST OF LAST YEAR; IS THAT CORRECT?

6 A YES, SIR.

7 Q OKAY. AND YOU'RE ALSO TELLING US THAT YOU HAVE NOT
8 CHANGED THAT STATEMENT; CORRECT?

9 A I AIN'T CHANGED NO STATEMENT.

10 Q AND YOU HAVE NOT TOLD ANYBODY ELSE INVOLVED IN THIS
11 CASE AS A WITNESS OF ANYTHING DIFFERENT THAN WHAT YOU'VE
12 TESTIFIED TO HERE TODAY; IS THAT CORRECT?

13 A YES, SIR.

14 MR. GIPSON: OKAY. THAT'S ALL MY QUESTIONS, YOUR
15 HONOR.

16 THE COURT: ANYTHING ON REDIRECT?

17 REDIRECT EXAMINATION

18 BY MR. WEEKS:

19 Q KENDALL, JUST TO BE CLEAR, WHO IS DEUCE?

20 A CORNELL TYLER.

21 Q CORNELL IS THE DEFENDANT?

22 A YES, SIR.

23 Q AND WHO IS HEAD?

24 A EDWARD WALKER.

25 Q EDWARD WALKER?

1 A YES.

2 Q WHO IS MAINE?

3 A TREMAINE TYLER.

4 Q AND THAT'S CORNELL'S BROTHER?

5 A YES, SIR.

6 Q AND WHEN YOU SAID DEUCE WAS IN THE BACKSEAT WHO WERE
7 YOU TALKING ABOUT?

8 A CORNELL TYLER.

9 MR. WEEKS: THANK YOU, SIR. NOTHING FURTHER.

10 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. CALL
11 YOUR NEXT WITNESS.

12 (WHEREUPON, ON NOVEMBER 29, 2006 THE FOLLOWING
13 PROCEEDINGS WERE HELD:)

14 MR. WEEKS: THANK YOU, YOUR HONOR. THE STATE WOULD
15 CALL JOHN MILES.

16 THE COURT: MR. MILES, IF YOU WOULD PLEASE COME
17 AROUND AND BE SWORN, SIR.

18 JOHN MILES, AFTER BEING DULY SWORN, TESTIFIED AS
19 FOLLOWS:

20 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
21 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST, PLEASE.

22 THE WITNESS: MY NAME IS JOHN MILES.

23 THE COURT: THAT CHAIR HAS WHEELS ON IT, MR. MILES.

24 THE WITNESS: THANK YOU.

25 DIRECT EXAMINATION

1 BY MR. WEEKS:
2 Q JOHN, HOW OLD ARE YOU?
3 A SIXTY.
4 Q AND WHERE DO YOU LIVE?
5 A [REDACTED] AVENUE.
6 Q IN AIKEN?
7 A YES, SIR.
8 Q WHAT DO YOU DO FOR A LIVING?
9 A I FARM.
10 Q AND YOU HAVE YOUR OWN FARM OR YOU FARM WITH SOMEBODY
11 ELSE?
12 A NO, I WORK -- I WORK WITH SOMEBODY ELSE.
13 Q WHO DO YOU WORK FOR?
14 A RONNIE AND JIMMY COOK.
15 Q HOW LONG HAVE YOU BEEN DOING THAT?
16 A ABOUT NINE YEARS.
17 Q BACK IN AUGUST OF 2005 WHERE WERE YOU STAYING THEN?
18 A WITH CORNELL TYLER.
19 Q ON AUGUST 27 OF 2005 WHERE WERE YOU STAYING THEN?
20 A CORNELL TYLER.
21 Q WHERE WERE YOU STAYING AT WITH CORNELL TYLER?
22 A IN THE TRAILER.
23 Q DO YOU KNOW WHERE THAT WAS LOCATED?
24 A THEY CALLED IT THE SWAMP.
25 Q WHY WERE YOU STAYING WITH HIM AT THAT TIME?

1 A I HAD GOT UPSET WITH ONE OF THE GUYS THAT I WAS
2 WORKING WITH.

3 Q ON THE NIGHT OR EARLY MORNING HOURS -- ACTUALLY, THE
4 EARLY MORNING HOURS OF AUGUST 27 OF '05 WERE YOU STAYING
5 THERE THAT NIGHT?

6 A YES, SIR.

7 Q COULD YOU TELL ME WHETHER OR NOT YOU HEARD OR SAW
8 ANYTHING THAT NIGHT?

9 A I HEARD AND SAW.

10 Q TELL ME WHAT YOU HEARD OR WHAT HAPPENED.

11 A I HEARD SHOTS.

12 Q WHERE WERE YOU STAYING? WHERE WERE YOU -- WERE YOU
13 ASLEEP?

14 A I WAS IN THE ROOM SLEEP, BUT I WOKE UP. THE SHOTS
15 WOKE ME UP.

16 Q AND WHERE WERE THE SHOTS FROM?

17 A OUTSIDE. OUTSIDE OF THE HOUSE.

18 Q WHAT HAPPENED THEN?

19 A THEN AFTER THE SHOTS DIED DOWN I CAME TO THE PORCH.

20 Q WHAT DID YOU DO THEN?

21 A I LOOKED AND -- I LOOKED AND MR. WALKER SAID --

22 Q DON'T SAY WHAT ANYBODY SAID.

23 A OKAY.

24 Q I DON'T WANT YOU TO SAY WHAT ANYBODY SAID UNLESS I
25 ASK YOU SPECIFICALLY.

1 A I LOOKED.

2 Q WHAT DID YOU DO AT THAT POINT?

3 A I WENT BACK AND GOT MY GUN.

4 Q WHAT KIND OF GUN DID YOU HAVE?

5 A A SHOTGUN.

6 Q WHAT KIND OF SHOTGUN?

7 A AN AUTOMATIC.

8 Q WHAT GAUGE?

9 A 12 GAUGE.

10 Q WHAT WAS IT LOADED WITH?

11 A BIRD SHOT.

12 Q AND WHAT DID YOU DO THEN, IF ANYTHING?

13 A I JUST STOOD ON THE PORCH.

14 Q WHO ELSE WAS THERE ON THE PORCH WITH YOU?

15 A NOBODY.

16 Q ANYBODY ELSE IN THE YARD?

17 A YES.

18 MR. GIPSON: OBJECT TO LEADING, YOUR HONOR.

19 Q WHO ELSE, IF ANYBODY, WAS AT THE HOUSE?

20 A A LITTLE BOY THEY CALL WEEZER.

21 Q DID YOU KNOW HIS GIVEN NAME?

22 A NO, SIR.

23 Q CAN YOU DESCRIBE HIM?

24 A DARK SKIN. HE IS THIN AND HE WEIGHS ABOUT

25 140 POUNDS -- 50 -- SOMETHING LIKE THAT.

1 Q DID YOU SEE ANYBODY ELSE THERE?
2 A YES.
3 Q WHO ELSE WAS THERE?
4 A JERMAINE.
5 Q DO YOU KNOW HIS LAST NAME?
6 A TYLER.
7 Q IS HE RELATED TO YOU OR TO MR. CORNELL TYLER?
8 A THAT'S HIS BROTHER.
9 Q OKAY. WHO WAS STAYING AT THE TRAILER WITH YOU THAT
10 NIGHT, MR. MILES, IF ANYBODY?
11 A CORNELL, JERMAINE, AND ME.
12 Q CORNELL WHO?
13 A TYLER.
14 Q AND CAN YOU TELL ME WHAT THE SLEEPING ARRANGEMENTS
15 WERE, IF ANY?
16 A I WAS IN THE MIDDLE ROOM. CORNELL WAS ON THE COUCH
17 AND JERMAINE WAS ON THE COUCH. THERE WAS TWO COUCHES IN
18 THERE.
19 Q NOW, DID YOU SEE ANYBODY ELSE THERE AT THE HOUSE THAT
20 NIGHT?
21 A YES.
22 Q WHAT HAPPENED?
23 A WALKER HAD -- THEY SAID WALKER WAS AT THE DOOR AND
24 TOLD HIM TO LEAVE. I HEARD THAT FROM MY ROOM.
25 Q WHO TOLD HIM TO LEAVE?

1 A CORNELL TYLER TOLD HIM TO LEAVE. SO, HE LEFT OUT THE
2 DOOR AND THEN I HEARD A VOICE.

3 Q DID YOU HEAR ANYTHING ELSE BEFORE YOU GOT UP AND WENT
4 OUTSIDE?

5 A YES. THAT WAS SHOOTING.

6 Q DID YOU HEAR ANYTHING ELSE?

7 A I HEARD A VOICE.

8 Q DID YOU GO OUTSIDE?

9 A NO, I WENT TO THE PORCH.

10 Q WHEN YOU WENT TO THE PORCH COULD YOU SEE OUTSIDE?

11 A YES.

12 Q DID YOU SEE ANYTHING ELSE AT THAT POINT?

13 A YES.

14 Q WHAT DID YOU SEE?

15 A I SEE'D CORNELL TYLER, HEAD WALKER. I DIDN'T SEE WHO
16 WAS DRIVING THE CAR. I SEE'D THEM GET IN THE CAR.

17 Q GET IN WHAT KIND OF -- WHOSE CAR?

18 A THE DRIVER'S CAR.

19 Q DID YOU KNOW WHO THAT WAS?

20 A NO.

21 Q ALL RIGHT. WHERE DID YOU SEE THEM GET INTO THE CAR
22 AT?

23 A IN FRONT OF THE HOUSE.

24 Q DID YOU SEE WHERE THEY GOT INTO THE CAR?

25 A IN FRONT OF THE HOUSE.

1 Q WHICH SEAT?

2 A YES. CORNELL GOT IN THE PASSENGER SIDE. HEAD WALKER
3 GOT IN THE BACKSEAT AND SAT ON THE WINDOW LIKE.

4 Q SAT ON THE WINDOW?

5 A YES.

6 Q WHAT DO YOU MEAN; LIKE HIS FEET IN?

7 A HIS FEET WAS INSIDE AND HIS BODY WAS OUTSIDE.

8 Q WHAT, IF ANYTHING, DID YOU SEE THOSE GUYS WITH?

9 A CORNELL HAD A LONG WEAPON.

10 Q HAD YOU SEEN IT EARLIER?

11 A YES.

12 Q WHERE HAD YOU SEEN IT EARLIER?

13 A IN THE HOUSE.

14 Q CAN YOU DESCRIBE IT FOR ME?

15 A IT WAS LIKE -- IT WAS LONG.

16 Q DID IT HAVE A COLOR TO IT?

17 MR. GIPSON: I OBJECT TO THE LEADING, YOUR HONOR.

18 THE COURT: OVERRULED.

19 THE WITNESS: IT WAS BROWN.

20 THE COURT: HE ASKED DID IT HAVE A COLOR.

21 THE WITNESS: BROWN.

22 Q WHERE DID YOU SEE IT IN THE HOUSE EARLIER?

23 A AROUND THE WALL SITTING ON, YOU KNOW, AT THE WALL
24 LIKE ON THE WALL.

25 Q ALL RIGHT. DID ANYBODY ELSE HAVE ANYTHING WHEN THEY

1 GOT IN THE CAR THAT YOU SAW?

2 A NO, SIR.

3 Q DID ANYBODY ELSE GET IN THE CAR OR GET OUT OF THE

4 CAR, IF ANY?

5 A WHEN THEY CAME BACK THEY GOT OUT OF THE CAR.

6 Q WHAT DIRECTION DID THEY GO?

7 A TO THE RIGHT FROM THE HOUSE.

8 Q AND WHO DID YOU SEE IN THE CAR WHEN THEY LEFT?

9 A CORNELL TYLER AND HEAD WALKER. I DIDN'T SEE THE

10 DRIVER.

11 Q WAS ANYBODY ELSE IN THE CAR?

12 A NO, SIR.

13 Q WERE YOU CLOSE ENOUGH TO SEE ALL OF THE OCCUPANTS?

14 A I SEEN THE LITTLE GUY WHEN HE GOT OUT THE CAR.

15 Q THE LITTLE DARK-SKINNED GUY?

16 A YES, SIR. THAT'S WHEN I CAME ON THE PORCH.

17 Q WHICH DIRECTION DID THE CAR GO?

18 A TO THE RIGHT.

19 Q ARE YOU FAMILIAR WITH THAT AREA?

20 A A LITTLE BIT.

21 Q IF YOU GO TO THE RIGHT DO YOU RUN INTO ANYTHING?

22 A THE HIGHWAY.

23 Q WHAT HAPPENED -- DID YOU HEAR ANYTHING AFTER THAT?

24 A YES.

25 Q WHAT DID YOU HEAR?

1 A GUNSHOTS.

2 Q COULD YOU TELL THE DIRECTION THEY WERE COMING FROM?

3 A TO THE RIGHT.

4 Q WHAT HAPPENED NEXT?

5 A THEY CAME BACK TO THE HOUSE.

6 Q WHO CAME BACK TO THE HOUSE?

7 A HEAD WALKER AND CORNELL AND THE DRIVER.

8 Q WHAT HAPPENED THEN?

9 A CORNELL GOT OUT THE CAR WITH THE RIFLE. HE CAME TO
10 THE HOUSE. HE SAID WE GOT TO LEAVE.

11 Q DID YOU LEAVE?

12 A YES.

13 Q WHERE DID YOU GO?

14 A TO MY NIECE'S HOUSE.

15 Q DID YOU DO ANYTHING BEFORE THAT?

16 A YES.

17 Q WHAT?

18 A CORNELL GOT ON THE FOUR-WHEELER AND AT THAT TIME THIS
19 DUDE CAME UP, AND HE ALWAYS WALKED DOWN THE ROAD, YOU
20 KNOW, TO CALL HIS RIDE TO GO TO WORK, AND WHEN HE CALLED
21 THE RIDE TO GO TO WORK CORNELL AND HIM TOOK THE GUN AND
22 WENT UP THE ROAD WITH IT.

23 Q DID YOU SEE WHICH DIRECTION THEY WENT?

24 A THEY WENT TO THE LEFT.

25 Q DID THEY COME BACK?

1 A HE CAME BACK.
2 Q WHO?
3 A CORNELL TYLER.
4 Q WHAT HAPPENED THEN?
5 A THEN LATER ON ABOUT TEN MORE MINUTES THE LADY CAME.
6 Q WHAT HAPPENED THEN?
7 A I ASKED HIM -- HE SAID WE HAD TO LEAVE. CORNELL SAID
8 WE HAD TO LEAVE. I ASKED HIM WAS HE GOING TO AIKEN. HE
9 SAID YEA. I SAID, WELL, I AM GOING TO CATCH A RIDE TO MY
10 NIECE'S HOUSE.
11 Q DID YOU?
12 A YES.
13 Q DID Y'ALL GO STRAIGHT THERE?
14 A YES.
15 Q WHAT, IF ANYTHING, WAS SAID ABOUT THE EVENTS ON THE
16 WAY BY MR. TYLER?
17 A MR. TYLER WAS ON THE PHONE.
18 Q DID YOU HEAR HIM SAY ANYTHING ABOUT THE EVENTS?
19 A NO, NOT THEN. NOT AT THAT TIME.
20 Q WHERE DID Y'ALL GO?
21 A TO MY NIECE'S HOUSE.
22 Q HOW LONG DID YOU STAY THERE?
23 A ABOUT 20 MINUTES. ABOUT 20 MINUTES.
24 Q WHERE DID YOU GO FROM THERE, IF ANYWHERE?
25 A WE WENT TO -- HE WAS WAITING ON -- HE WAS WAITING ON

1 A GUY TO COME PICK US UP -- TO PICK THEM UP, REALLY.
2 Q WHO WAS WITH YOU?
3 A CORNELL TYLER AND JERMAINE TYLER.
4 Q DOES HE HAVE A NICKNAME?
5 A YES.
6 Q WHAT DO THEY CALL HIM?
7 A MAINE.
8 Q WHAT DO THEY CALL CORNELL?
9 A DEUCE.
10 Q DID YOU KNOW THE LADY THAT WAS WITH THEM?
11 A I DON'T KNOW HER NAME.
12 Q WAS ANYBODY ELSE WITH Y'ALL AT THAT TIME?
13 A NO, SIR.
14 Q WHAT, IF ANYTHING, DID YOU DO FROM THERE, JOHN?
15 A A DUDE CAME AND PICKED THEM UP, PICKED US UP.
16 Q WHERE DID YOU GO?
17 A WE WENT TO THE NORTH SIDE.
18 Q NORTH SIDE OF?
19 A THEN WE GOT ANOTHER DUDE IN A CADILLAC, A BLUE
20 CADILLAC.
21 Q WHERE DID YOU GO FROM THERE?
22 A WE WENT TO NORTH CAROLINA.
23 Q WHERE IN NORTH CAROLINA DID YOU GO?
24 A I DON'T REALLY KNOW, BUT WE WAS IN NORTH CAROLINA.
25 Q AND WHAT DAY WAS THIS?

1 A I REALLY DON'T KNOW, SIR.

2 Q WHO WERE YOU WITH IN NORTH CAROLINA?

3 A CORNELL TYLER AND JERMAINE TYLER.

4 Q DID Y'ALL MEET ANYBODY UP THERE?

5 A YES.

6 Q DID YOU KNOW THAT PERSON?

7 A YES.

8 Q WHO WAS THAT?

9 A EARL.

10 Q WHO WAS EARL?

11 A THEIR UNCLE.

12 Q DID Y'ALL STAY WITH EARL?

13 A NO.

14 Q WHY NOT?

15 A HE SAID WE COULDN'T STAY THERE.

16 MR. GIPSON: OBJECT TO THE HEARSAY, YOUR HONOR.

17 Q DID YOU HEAR --

18 THE COURT: SUSTAINED.

19 MR. WEEKS: STRIKE THAT FOR THE RECORD, YOUR HONOR.

20 DID YOU HEAR MR. TYLER SAY ANYTHING TO EARL WHEN YOU

21 WERE UP THERE -- CORNELL TYLER?

22 THE WITNESS: YES.

23 Q WHAT DID HE TELL HIM?

24 A HE TOLD HIM THAT THEY HAD KILLED SOMEBODY.

25 Q DID Y'ALL -- WHAT DID YOU DO FROM NORTH CAROLINA?

1 WHERE DID YOU GO FROM THERE, IF ANYWHERE?

2 A BACK TO COLUMBIA.

3 Q WHERE IN COLUMBIA?

4 A AT A MOTEL.

5 Q HOW LONG AFTER THE EVENTS OF THAT NIGHT WAS THIS WHEN
6 YOU GOT BACK TO COLUMBIA?

7 A ABOUT FIVE HOURS BACK -- YOU KNOW, STAYED UP THERE
8 ABOUT FIVE HOURS.

9 Q DID YOU SPEND THE NIGHT IN NORTH CAROLINA?

10 A NO, SIR.

11 Q WHERE DID YOU SPEND THE NEXT NIGHT?

12 A IN COLUMBIA.

13 Q WHAT HAPPENED THEN?

14 A THE GUY PICKED US UP FROM UP THERE A RON GEE.

15 Q DID HE TAKE YOU SOMEWHERE?

16 A YES, HE DID.

17 Q WHERE DID HE TAKE YOU?

18 A BACK DOWN HOME.

19 Q TO AIKEN?

20 A YES.

21 Q AT SOME POINT DID THE POLICE COME AND TALK TO YOU?

22 A YES.

23 Q HOW MANY DAYS AFTER -- HOW MUCH TIME AFTER YOU GOT
24 BACK?

25 A OH, I WOULD SAY FOUR OR FIVE DAYS, I WOULD SAY.

1 Q MR. MILES, YOU ARE CHARGED WITH A COUPLE OF CRIMES,
2 AREN'T YOU? WHAT ARE YOU CHARGED WITH?

3 A YES, SIR.

4 Q WHAT ARE YOU CHARGED WITH?

5 A I DON'T KNOW, SIR.

6 Q WERE YOU ARRESTED AND PUT IN JAIL?

7 A YES, SIR.

8 Q DID YOU MAKE BOND?

9 A YES, SIR.

10 Q HAS ANYBODY PROMISED YOU ANYTHING OR THREATENED YOU
11 TO GET YOU TO TESTIFY TODAY?

12 A NO, SIR.

13 Q AT THE HOUSE BACK AT THE TRAILER THAT MORNING YOU
14 SAID SOMETHING ABOUT A SHOTGUN.

15 A YES, SIR.

16 Q WHAT DID YOU DO WITH YOUR SHOTGUN?

17 A I PUT IT IN THE WOODS.

18 Q WHERE IN THE WOODS?

19 A BEHIND THE HOUSE.

20 Q DID YOU LEAVE IT THERE?

21 A YES, SIR.

22 Q HAVE YOU EVER SEEN THAT SHOTGUN AGAIN?

23 A NO, SIR.

24 Q DID YOU SHOOT THAT SHOTGUN AT ANYTHING THAT NIGHT?

25 A NO, SIR.

1 Q WHEN THE -- YOU SAID THE CAR CAME BACK?

2 A YES, SIR.

3 Q HOW LONG HAD IT BEEN GONE?

4 A AT LEAST 20 MINUTES.

5 Q WHEN IT CAME BACK WHERE DID THE PEOPLE GET OUT OF THE
6 CAR?

7 A CORNELL GOT OUT ON THE DRIVER'S SIDE. HEAD WALKER
8 GOT BACK IN THE CAR. YOU KNOW, HE WAS HANGING OUTSIDE OF
9 THE CAR.

10 Q WHAT DO YOU MEAN HANGING OUTSIDE.

11 A HE WAS SITTING ON THE RAMP, THE RAMP ON THE BACKSEAT
12 LIKE LIKE THIS.

13 Q YOU SAID CORNELL GOT OUT OF THE DRIVER'S SIDE?

14 A YEA -- NOT THE DRIVER'S SIDE; THE PASSENGER SIDE.

15 Q DID THE DRIVER GET OUT?

16 A NO.

17 Q DID ANYBODY GET IN THE CAR?

18 A YES.

19 Q WHO?

20 A LITTLE WEEZER.

21 Q IS THAT THE SAME LITTLE DARK FELLOW YOU TALKED ABOUT?

22 A YES, SIR.

23 Q WHERE DID THE CAR GO?

24 A I DON'T KNOW. THEY WENT TO -- THEY WENT TO THE
25 RIGHT.

1 Q DID YOU EVER SEE THAT CAR ANYMORE?

2 A NO, SIR.

3 Q DID YOU SEE MAINE OR TREMAINE WITH A GUN THAT NIGHT?

4 A YES, SIR.

5 Q CAN YOU DESCRIBE IT FOR ME?

6 A HE HAD A PISTOL WITH A SCOPE ON IT.

7 Q DO YOU KNOW ANYTHING ABOUT THE PISTOL? WHAT KIND OF

8 CALIBER?

9 A IT WAS A BIG ONE.

10 Q DID HE EVER GET IN THE CAR?

11 A NO, SIR.

12 Q AND GO ANYWHERE? _____

13 A NO, SIR.

14 Q THE FELLOW THAT YOU'VE BEEN CALLING CORNELL, IS HE IN

15 THE COURTROOM?

16 A YES.

17 Q WHERE IS HE?

18 A RIGHT THERE.

19 Q NEXT TO THE DEFENSE LAWYER?

20 A YES, SIR.

21 Q WHAT, IF ANYTHING, DID THE PEOPLE HAVE THAT GOT OUT

22 OF THE CAR WHEN THEY CAME BACK?

23 A I DIDN'T UNDERSTAND WHAT YOU SAID.

24 Q WHAT, IF ANYTHING, DID THE GUYS HAVE WHEN THEY GOT

25 OUT OF THE CAR?

1 A CORNELL HAD A RIFLE WHEN HE GOT OUT THE CAR.

2 Q IS THAT THE SAME RIFLE THAT HE TOOK DOWN THE ROAD?

3 A YES, SIR.

4 Q DID YOU EVER SEE THAT RIFLE AGAIN?

5 A YES, SIR.

6 Q WHEN DID YOU SEE THAT RIFLE AGAIN?

7 A WHEN HE BROUGHT IT BACK IN THE HOUSE.

8 Q THAT NIGHT?

9 A THAT NIGHT.

10 Q AFTER HE WENT DOWN THE ROAD ON THE FOUR-WHEELER DID
11 YOU EVER SEE IT AGAIN?

12 A NO, SIR.

13 MR. WEEKS: ANSWER ANY QUESTIONS THAT THE DEFENSE HAS
14 FOR YOU.

15 MR. GIPSON: I ASK THE COURT'S INDULGENCE FOR A
16 MOMENT.

17 THE COURT: YES, SIR.

18 CROSS-EXAMINATION

19 BY MR. GIPSON:

20 Q GOOD MORNING, MR. MILES.

21 A GOOD MORNING.

22 Q HOW ARE YOU TODAY? SO SO?

23 A YES, SIR.

24 Q BEEN BETTER, BEEN WORSE?

25 A YES, SIR.

1 Q MY NAME IS BYRON GIPSON, AND I AM MR. TYLER'S
2 ATTORNEY. I DON'T BELIEVE THAT WE'VE FORMALLY MET BEFORE,
3 BUT I AM ABOUT TO ASK YOU PROBABLY A LONG SERIES OF
4 QUESTIONS ABOUT YOUR TESTIMONY HERE TODAY. OKAY? ONE OF
5 THE THINGS I AM JUST GOING TO EXPLAIN TO YOU A LITTLE BIT
6 ABOUT THE GROUND RULES. I WILL ASK YOU A SERIES OF
7 QUESTIONS, AND I'D LIKE FOR YOU TO ANSWER THAT QUESTION
8 YES OR NO, AND THEN YOU'LL HAVE AN OPPORTUNITY TO EXPLAIN
9 YOUR ANSWER. IS THAT FAIR ENOUGH?

10 A OKAY.

11 Q OKAY. AND I THINK THAT I MAY NEED YOU TO SPEAK UP
12 JUST A LITTLE BIT BECAUSE YOUR TONE IS A LITTLE LOWER AT
13 THIS POINT. IF I COME A CROSS AS RAISING MY VOICE AT YOU,
14 IT MAY JUST BE IN ORDER TO GET YOU TO SPEAK UP JUST A
15 LITTLE BIT. IT IS NOT MEANT TO BE OUT OF ANY DISRESPECT
16 TO YOU. ALL RIGHT, SIR?

17 A YES, SIR.

18 Q AND ONE OTHER THING, TOO. YOU'RE GOING TO HAVE TO
19 SAY YES OR NO. YOU'LL HAVE TO VERBALIZE YOUR ANSWER AND
20 SAY SOMETHING OUT LOUD BECAUSE THE COURT REPORTER IS
21 TYPING EVERYTHING WE SAY AND IF YOU NOD YOUR HEAD SHE'S
22 NOT GOING TO KNOW IF THAT'S A YES OR NO OR IF YOU SAY
23 UH-HUH OR HUH-UH SHE WON'T BE ABLE TO DETERMINE THAT AS
24 BEING A YES OR NO.

25 A YES.

1 Q SO, IF YOU DO US A FAVOR BY SAYING YES OR NO THAT
2 WILL HELP US ALL OUT. ALL RIGHT. NOW, DID YOU SEE
3 CORNELL TYLER SHOOT ANYBODY?

4 A NO.

5 Q DID YOU SEE CORNELL TYLER SHOOT MR. BREWER?

6 A NO.

7 Q DEBRA -- DID YOU SEE CORNELL TYLER SHOOT DEBRA DORCH?

8 A NO.

9 Q NOW, DURING THE COURSE OF THIS SERIES OF EVENTS YOU
10 WERE INTERVIEWED BY THE AIKEN COUNTY SHERIFF'S DEPARTMENT;
11 IS THAT CORRECT?

12 A YES.

13 Q HOW MANY TIMES?

14 A TWICE.

15 Q ONLY TWICE?

16 A YES.

17 Q ARE YOU SURE IT WASN'T THREE TIMES OR FOUR TIMES?

18 A NO. TWICE I KNOW.

19 Q TWICE THAT YOU REMEMBER?

20 A YES.

21 Q ALL RIGHT. AND AT EACH INTERVIEW YOU WERE PLACED IN
22 A SMALL ROOM AND A DEPUTY OR AN INVESTIGATOR CAME IN THE
23 ROOM WITH YOU AND ASKED YOU A SERIES OF QUESTIONS;
24 CORRECT?

25 A YES.

1 Q AND THEY RECORDED THE INTERVIEW; CORRECT?

2 A YES.

3 Q AND THEY TOLD YOU THEY WERE RECORDING THE INTERVIEW;
4 CORRECT?

5 A YES.

6 Q AT THE BEGINNING OF EACH OF THOSE INTERVIEWS THEY
7 ASKED YOU IF YOU WOULD BE TRUTHFUL TO THEM, DIDN'T THEY?

8 A YES.

9 Q AND YOU TOLD THEM YOU WOULD, DIDN'T YOU?

10 A YES.

11 Q AND YOU WERE TRUTHFUL, WEREN'T YOU?

12 A NO.

13 Q YOU WEREN'T? OKAY. YOU WEREN'T TRUTHFUL THE FIRST
14 TIME?

15 A THE FIRST TIME.

16 Q THE SECOND TIME WERE YOU TRUTHFUL?

17 A YES.

18 Q AND THE THIRD TIME WERE YOU TRUTHFUL?

19 A YES.

20 Q AND ARE YOU BEING TRUTHFUL TODAY?

21 A YES.

22 Q OKAY. IS THERE ANYTHING TODAY THAT YOU SAID
23 DIFFERENTLY THAN YOU SAID TO ANY OF THOSE OFFICERS ON ANY
24 OTHER OCCASIONS?

25 A NO.

1 Q NONE?

2 A YOU SAID THE FIRST TIME?

3 Q NO. TODAY.

4 A I DIDN'T UNDERSTAND THE QUESTION, SIR.

5 Q IS THERE ANYTHING THAT YOU SAID TODAY THAT IS
6 DIFFERENT FROM WHAT YOU TOLD THE OFFICERS ON OTHER
7 OCCASIONS?

8 A YES.

9 Q OKAY. SO, THERE ARE THINGS DIFFERENT THAT YOU'RE
10 SAYING TODAY? IN ESSENCE, THERE ARE THINGS THAT YOU HAVE
11 TESTIFIED TO TODAY THAT YOU DIDN'T TESTIFY TO BEFORE?

12 A WELL, I LIED THE FIRST TIME.

13 Q LET ME MAKE SURE. I WANT YOU TO HEAR MY QUESTION
14 CORRECTLY. THE THINGS THAT YOU TESTIFIED TO TODAY RIGHT
15 HERE IN COURT A COUPLE OF MINUTES AGO --

16 A RIGHT.

17 Q -- THAT YOU DID NOT TELL THE OFFICERS IN ANY OF THESE
18 TAPED INTERVIEWS --

19 A I DON'T UNDERSTAND WHAT YOU'RE SAYING, SIR.

20 Q THERE ARE SOME THINGS THAT YOU SAID TODAY THAT ARE
21 DIFFERENT FROM WHAT YOU TOLD THE OFFICERS IN THE
22 INTERVIEWS THAT WERE RECORDED?

23 A NO. I TOLD THEM THE TRUTH.

24 Q WHAT WAS THE AVERAGE LENGTH OF THE INTERVIEWS THAT
25 YOU HAD WITH THESE OFFICERS? LET'S SAY THE VERY FIRST

1 TIME THAT YOU HAD AN OPPORTUNITY TO BE INTERVIEWED BY AN
2 OFFICER, WHAT WAS THE AVERAGE LENGTH OF THE INTERVIEW?

3 A ABOUT AN HOUR.

4 Q OKAY. AN HOUR?

5 A OR 30 MINUTES. AROUND IN THAT AREA.

6 Q AND HOW DID IT OCCUR? DID YOU GO TO THEM OR DID THEY
7 PICK YOU UP FROM THE HOUSE?

8 A THEY PICKED ME UP THE FIRST TIME.

9 Q OKAY. SO THE FIRST TIME THEY PICKED YOU UP. THEY
10 TOOK YOU DOWN TO THE SHERIFF'S DEPARTMENT; CORRECT?

11 A YES.

12 Q AND AFTER THEY PICKED YOU UP AND TOOK YOU DOWN TO THE
13 SHERIFF'S DEPARTMENT THEY TOLD YOU WHAT YOUR RIGHTS WERE;
14 CORRECT?

15 A RIGHT.

16 Q AND THEY TOLD YOU THEY NEEDED YOU TO MAKE SOME
17 STATEMENTS; CORRECT?

18 A YES.

19 Q AND YOU MADE STATEMENTS?

20 A YES.

21 Q AND EACH TIME YOU TOLD THEM THAT YOU WOULD BE
22 TRUTHFUL WITH THEM, DIDN'T YOU?

23 A YES.

24 Q NOW, DID THEY SPEAK TO YOU FOR A LENGTH OF TIME
25 BEFORE THEY STARTED THE RECORDING?

1 A NO.

2 Q SO, THEY JUST WENT RIGHT TO THE ROOM AND RECORDED YOU
3 EACH TIME THAT IT WAS TIME FOR A STATEMENT TO BE MADE?

4 A YES.

5 Q HAVE YOU REVIEWED ANY OF THOSE STATEMENTS IN
6 PREPARATION FOR YOUR TESTIMONY TODAY?

7 A NO.

8 Q DID ANY OFFICER FROM THE AIKEN COUNTY SHERIFF'S
9 DEPARTMENT, S.L.E.D. MEANING SOUTH CAROLINA LAW
10 ENFORCEMENT DIVISION, OR ANY OTHER LAW ENFORCEMENT AGENCY
11 EVER PROMISE THAT THEY WOULD GO EASIER ON YOU IN YOUR CASE
12 IF YOU TESTIFIED AGAINST MR. TYLER?

13 A NO.

14 Q NEVER?

15 A NEVER.

16 Q DID ANY OFFICERS WITH THE AIKEN COUNTY SHERIFF'S
17 DEPARTMENT, SOUTH CAROLINA LAW ENFORCEMENT DIVISION ALSO
18 KNOWN AS S.L.E.D., OR ANY OTHER LAW ENFORCEMENT AGENCY
19 EVER TELL YOU THAT YOU NEEDED TO TESTIFY IN ORDER TO HELP
20 YOURSELF?

21 A NO.

22 Q NEVER?

23 A NO.

24 Q DID ANY OFFICERS WITH THE AIKEN COUNTY SHERIFF'S
25 DEPARTMENT, WITH THE SOUTH CAROLINA LAW ENFORCEMENT

1 DIVISION ALSO KNOWN AS S.L.E.D., OR ANY OTHER LAW
2 ENFORCEMENT AGENCY EVER TELL YOU OR SUGGEST TO YOU ANY
3 ANSWERS AS TO WHAT HAPPENED OUT THERE?

4 A NO.

5 Q THEY NEVER SUGGESTED ANY ANSWERS TO YOU?

6 A WHAT WOULD HAPPEN TO ME LIKE?

7 Q DID THEY SUGGEST ANY ANSWERS TO YOU?

8 A NO.

9 MR. GIPSON: THE COURT'S INDULGENCE, YOUR HONOR.
10 YOUR HONOR, I'D LIKE TO HAVE A C.D. MARKED AS DEFENDANT'S
11 EXHIBIT NO. 2.

12 THE COURT: ANY OBJECTION, MR. WEEKS?

13 MR. WEEKS: NO OBJECTION.

14 THE COURT: WITHOUT OBJECTION, DEFENDANT'S 2. IT'S

15 A --

16 MR. GIPSON: IT PURPORTS TO BE A RECORDED INTERVIEW
17 WITH MR. MILES.

18 THE COURT: -- AN INTERVIEW?

19 MR. GIPSON: YES, SIR. I BELIEVE IT'S FROM
20 OCTOBER 4. LET ME CHECK MY DATES, YOUR HONOR. I WILL
21 MARK NO. 3 AS WELL, YOUR HONOR, IF I MAY. I BELIEVE NO. 3
22 IS ACTUALLY AN OCTOBER 4TH INTERVIEW AND NO. 2 IS A
23 DECEMBER 4TH INTERVIEW, YOUR HONOR.

24 THE COURT: DO YOU HAVE ANY OBJECTION TO NO. 3?

25 MR. WEEKS: NEITHER ONE OF THEM. I HAVE NO OBJECTION

1 TO EITHER ONE OF THEM IF HE WANTS TO INTRODUCE THEM.

2 THE COURT: ALL RIGHT.

3 MR. GIPSON: I'D LIKE TO INTRODUCE THEM INTO EVIDENCE
4 AND PUBLISH THEM, YOUR HONOR, IF I MAY.

5 THE COURT: ALL RIGHT.

6 (WHEREUPON, DEFENDANT'S EXHIBIT NOS. 2 & 3 WERE
7 MARKED FOR IDENTIFICATION AND RECEIVED INTO
8 EVIDENCE.)

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

10 THE COURT: LADIES AND GENTLEMEN, JUST AS YESTERDAY
11 WHEN WE HAD THAT OTHER TAPED INTERVIEW YOU'RE GOING TO
12 HAVE THIS PRESENTED TO YOU. IF AT ANY TIME YOU HAVE
13 DIFFICULTY HEARING IF YOU'LL WAVE AT US WE'LL TRY TO BOOST
14 THE SOUND OR WHATEVER. OBVIOUSLY, WE'RE LIMITED TO THE
15 EQUIPMENT. HOPEFULLY, YOU'LL BE ABLE TO HEAR IT.

16 (WHEREUPON, THE C.D. WAS STARTED AND THEN LATER
17 STOPPED.)

18 MR. GIPSON: THE COURT'S INDULGENCE ONE MOMENT, YOUR
19 HONOR.

20 THE COURT: YES, SIR.

21 Q MR. MILES, YOU HAVE LISTENED TO A GOOD BIT OF THAT
22 FIRST INTERVIEW THAT YOU DID WITH THE POLICE ON OCTOBER 4,
23 2005; CORRECT?

24 A YES.

25 Q ISN'T IT TRUE THAT YOU LIED THROUGHOUT THAT WHOLE

1 INTERVIEW?

2 A YES.

3 Q ISN'T IT TRUE THAT YOU TOLD THE POLICE AT THAT POINT
4 IN TIME THAT YOU WERE GOING TO BE TRUTHFUL WITH THEM ABOUT
5 EVERYTHING THAT YOU SAID?

6 A YES.

7 Q BUT YOU DIDN'T?

8 A YES.

9 Q NOW, IS THERE ANYTHING PARTICULAR THAT YOU DO WHEN
10 YOU'RE NOT BEING TRUTHFUL? ANY KIND OF FACIAL
11 CHARACTERISTICS? I MEAN, DO YOU BLINK A GOOD BIT? DO YOU
12 STUTTER WHEN YOU TALK? I MEAN, ANYTHING LIKE THAT?

13 A I STUTTER A LITTLE BIT.

14 Q OKAY. SO, WHEN YOU START TO LIE YOU'RE STUTTERING
15 NORMALLY?

16 A NO.

17 Q OKAY. DO YOU BLINK YOUR EYES A GOOD BIT? DO YOU
18 START TO SWEAT? I MEAN, IS THERE ANY WAY THAT WE CAN LOOK
19 AT YOU AND TELL WHEN YOU'RE LYING CERTAIN THINGS START TO
20 HAPPEN?

21 A I WAS AFRAID AT THAT TIME, SIR.

22 Q WELL, I AM NOT TALKING ABOUT THAT TIME. I AM TALKING
23 JUST SPECIFICALLY ABOUT WHEN YOU'RE TELLING THE TRUTH
24 VERSUS WHEN YOU'RE LYING DO YOU DO DIFFERENT TYPES OF
25 THINGS BETWEEN THE TWO? WHAT DO YOU DO WHEN YOU TELL THE

1 TRUTH?

2 A TELL THE TRUTH.

3 Q WHAT DO YOU DO WHEN YOU LIE?

4 A I TELL A LIE.

5 Q IS THERE ANY WAY THAT THE JURY CAN LOOK AT YOU AND
6 TELL THE DIFFERENCE BETWEEN THE TWO?

7 A YES.

8 Q HOW?

9 A BECAUSE I AM TELLING THE TRUTH.

10 Q SO, BASICALLY, WE HAVE TO TAKE YOUR WORD FOR IT?

11 A YES. I AM TELLING THE TRUTH.

12 Q ALL RIGHT. BECAUSE JUST LIKE YOU TOLD MR. PRINCE
13 THAT YOU WERE TELLING THE TRUTH YOU CAN SIT HERE AND TELL
14 THE JURY THAT YOU'RE TELLING THE TRUTH BUT WE REALLY CAN'T
15 TELL BY LOOKING AT YOU THAT YOU'RE DOING ONE OR THE OTHER,
16 CAN WE?

17 A I WAS AFRAID.

18 Q WELL, LET'S DO THIS. YOU MENTIONED THAT YOU RAN DOWN
19 THE ROAD AFTER ALL OF THIS KIND OF STUFF AND YOU GOT IN
20 THE CAR WITH SOMEBODY; CORRECT?

21 A YES.

22 Q WHO WAS THAT PERSON THAT YOU GOT IN THE CAR WITH?

23 A THIS LADY.

24 Q DIDN'T YOU SAY THAT YOU RAN AND YOU DIDN'T SEE THEM
25 AGAIN?

1 A I LIED.

2 Q OKAY. YOU LIED THEN?

3 A YES.

4 Q SO, YOU LIED WHEN YOU SAID THAT YOU NEVER SAW THEM

5 AGAIN AFTERWARDS; CORRECT?

6 A YES.

7 Q AFTER THIS INCIDENT TOOK PLACE?

8 A YES.

9 Q SO, YOU LIED ABOUT THAT?

10 A I LIED ABOUT THAT.

11 Q OKAY. NOW, TELL US -- YOU MENTIONED -- WELL, YOU

12 MENTIONED ON YOUR DIRECT TESTIMONY THAT YOU SAW MR. TYLER

13 GET ON, I GUESS, A FOUR-WHEELER WITH SOMEBODY WHO WALKED

14 UP THE STREET?

15 A IT IS THE TRUTH.

16 Q AND DISAPPEAR WITH SOME GUNS?

17 A IT IS THE TRUTH.

18 Q TELL US IN ANY OF THE STATEMENTS WHERE ANY OF THAT

19 EVER CAME OUT BEFORE TODAY?

20 A I HAD -- I TOLD THEM THAT.

21 Q TELL US -- WHEN DID YOU TELL THEM? WE DON'T FIND IT

22 ON THESE STATEMENTS.

23 A I TOLD THEM THAT.

24 Q WHEN DID YOU TELL THEM IN THESE INTERVIEWS? TELL US.

25 BEFORE TODAY.

1 A I THINK IT WAS WHEN I WAS IN JAIL ON THAT INTERVIEW.

2 Q OKAY.

3 A IT IS ON THE INTERVIEW. IT'S GOT TO BE.

4 Q IT'S GOT TO BE ON THE INTERVIEW THAT MR. TYLER WENT
5 UP THE ROAD WITH SOME GUNS WITH SOMEBODY ELSE?

6 A ON A FOUR-WHEELER.

7 Q ON A FOUR-WHEELER AND HID SOME GUNS. ALL RIGHT.

8 WE'RE GOING TO FIND IT TODAY. AND THAT'S THE TRUTH AS
9 OPPOSED TO THE FACT THAT YOU DIDN'T SEE HIM GET OUT OF THE
10 CAR WITH A GUN?

11 A THAT'S A LIE.

12 Q OKAY. THE FACT THAT YOU DIDN'T SEE HIM GET OUT OF
13 THE CAR WITH A GUN IS A LIE?

14 A HE DID GET OUT OF THE CAR WITH THE GUN.

15 Q OKAY. SO, YOU'RE STAYING THE STATEMENT ON OCTOBER
16 4TH THAT YOU GAVE WAS A LIE AND NOW YOU'RE SAYING YOU SAW
17 HIM GET OUT OF THE CAR WITH HIS GUN?

18 A HE CAME AROUND THE HOUSE WITH THE GUN IN HIS HAND.
19 THAT'S WHAT I'M SAYING.

20 Q OKAY. OKAY. SO, YOU'RE JUST SAYING COMPLETELY YOU
21 JUST LIED OUTRIGHT?

22 A NO. HE GOT OUT OF THE CAR WITH THE GUN NOW.

23 Q YES, SIR.

24 A THAT'S AUTOMATIC.

25 Q OKAY. THAT IS AUTOMATIC?

1 A THAT IS THE TRUTH.

2 Q OKAY. BASED ON YOUR RECORD FOR BEING TRUTHFUL TODAY?

3 A I AM TELLING THE TRUTH, SIR.

4 Q OKAY. TELL US THIS. TELL THE JURY A LITTLE BIT

5 ABOUT YOUR EYESIGHT.

6 A MY EYESIGHT?

7 Q YES, SIR.

8 A IT IS BAD.

9 Q OKAY. TELL US WHAT YOU MEAN BY THAT.

10 A IT'S NOT GOOD, BUT IT'S NOT BAD, BUT IT'S NOT GOOD.

11 Q OKAY. DOES IT GET BETTER AT NIGHT?

12 A NO.

13 Q OKAY. AND YOU TOLD LAW ENFORCEMENT THAT YOUR

14 EYESIGHT WASN'T ALL THAT GOOD, TOO, DIDN'T YOU?

15 A YES.

16 Q TELL US ABOUT THE ACCIDENT THAT YOU HAD WHEN YOU

17 BUMPED YOUR HEAD?

18 A I BUMPED MY HEAD. I GOT A HOLE IN MY HEAD LIKE.

19 Q OKAY. AND YOU GOT A KNOT SOMEWHERE UP HERE, DON'T

20 YOU?

21 A YEA, I DO.

22 Q OKAY. AND IT AFFECTS YOUR MEMORY, DOESN'T IT?

23 A YES.

24 Q AND YOU TOLD LAW ENFORCEMENT ABOUT THAT, TOO, DIDN'T

25 YOU?

1 A YES.

2 Q SO, SOMETIMES THE THINGS THAT YOU CLAIM TO REMEMBER
3 MAY NOT BE AS CLEAR?

4 A RIGHT.

5 Q AND YOU WERE QUITE CLEAR WITH MR. PRINCE ABOUT THAT?

6 A YES.

7 Q OKAY. AND YOU, ESSENTIALLY, TOLD HIM THAT, YOU KNOW,
8 THERE ARE SOME THINGS THAT YOU JUST ARE NOT ABLE TO
9 REMEMBER AND SOMETIMES YOU DON'T GET THEM QUITE RIGHT
10 BECAUSE OF YOUR MEMORY?

11 A RIGHT.

12 Q AND YOUR MEMORY HAS BEEN AFFECTED FOR SOME PERIOD OF
13 TIME BECAUSE OF THAT; RIGHT?

14 A YES.

15 Q WHEN DID YOU HAVE THAT BUMP ON YOUR HEAD?

16 A I WAS ABOUT 12 YEARS OLD.

17 Q OKAY. AND THAT'S THE TRUTH?

18 A THAT'S THE TRUTH.

19 Q OKAY. AND, SO, FOR YEARS YOU HAD A PROBLEM WITH YOUR
20 MEMORY?

21 A YES.

22 Q OKAY. SO, IF SOMEBODY SAYS SOMETHING TO YOU -- WE'LL
23 STRIKE THAT QUESTION, YOUR HONOR. NOW, IT'S TRUE THAT YOU
24 SAID YOU SAW EDWARD WALKER BASICALLY HANGING OUT OF THE
25 TOP OF THAT CAR WITH A RIFLE?

1 A YES.

2 Q AND THAT'S TRUE?

3 A THAT'S TRUE.

4 Q AND YOU SAW EDWARD WALKER HANGING OUT OF THAT CAR
5 GOING DOWN THE ROAD; CORRECT?

6 A YES.

7 Q AND YOU SAW -- WHEN THEY CAME BACK EDWARD WALKER WAS
8 STILL HANGING OUT OF THE CAR WITH A RIFLE?

9 A YES.

10 Q AND YOU SAY THAT'S TRUE?

11 A THAT'S TRUE.

12 Q AND THERE IS NO DOUBT IN YOUR MIND THAT IS WHAT'S
13 TRUE?

14 A THAT'S TRUE.

15 Q OKAY. AND IT'S TRUE THAT YOU SAID THAT SOME PERSON
16 THAT YOU DID NOT KNOW WAS IN THE CAR DRIVING?

17 A RIGHT.

18 Q OKAY. AND THAT PERSON DROVE THEM THERE AND DROVE
19 THEM BACK?

20 A RIGHT.

21 Q ALL RIGHT.

22 A THAT I KNOW OF.

23 Q I'M SORRY?

24 A THAT I KNOW OF. I DON'T KNOW WHO DROVE THEM BACK OR
25 WHO DROVE THEM DOWN.

1 Q OKAY. NOW, IT'S TRUE THAT AS YOU STARTED TO GIVE
2 STATEMENTS TO POLICE AND LATER STATEMENTS IF NECESSARY
3 WE'LL PLAY THEM THEY TOLD YOU ABOUT GOING TO JAIL;
4 CORRECT?

5 A YES.

6 Q AND THEY TOLD YOU THAT YOU WOULD BE IN JAIL FOR QUITE
7 SOME TIME; CORRECT?

8 A YES.

9 Q AND, ESSENTIALLY, THEY SAID AT 60 YEARS OLD YOU MAY
10 HAVE A HARD TIME GETTING OUT IF YOU DON'T TELL US WHAT
11 THEY WANTED TO KNOW; RIGHT?

12 A RIGHT.

13 Q AND DIDN'T THEY TELL US THAT IF YOU DIDN'T TELL THEM
14 WHAT THEY WANTED TO HEAR THAT THEY'D MAKE SURE YOU WENT TO
15 JAIL?

16 A NO. THEY DIDN'T SAY THAT, NO.

17 Q OKAY. DID THEY TELL YOU THAT THEY WOULD HELP YOU
18 WITH YOUR CASE OR CHARGE YOU WITH SOMETHING LESSER IF YOU
19 TOLD THEM WHAT THEY WANTED TO HEAR?

20 A NO.

21 Q OKAY. YOU SAID THAT YOU WERE AFRAID WHEN THE POLICE
22 CAME?

23 A YES.

24 Q WHAT WERE YOU AFRAID OF?

25 A I WAS AFRAID OF THE GUYS THAT MIGHT DO SOMETHING TO

1 ME.

2 Q OKAY. DID YOU TELL THEM THAT?

3 A YES.

4 Q YOU TOLD THE POLICE THAT YOU WERE AFRAID THE GUYS
5 WOULD DO SOMETHING TO YOU?

6 A YES.

7 Q OKAY. SO, WHEN YOU SAID -- SO, YOU'RE SAYING -- ARE
8 YOU INSINUATING THAT YOU WERE THREATENED?

9 A I WAS THREATENED.

10 Q OKAY. WHEN DID YOU TELL IN ANY OF THESE STATEMENTS
11 THE POLICE THAT YOU WERE THREATENED BY ANYBODY?

12 A THE LAST STATEMENT, I THINK.

13 Q OKAY. AND NOW YOU'RE TELLING THE JURY THAT SOMEBODY
14 THREATENED YOU?

15 A YES.

16 Q OKAY. TO MAKE YOU SAY SOMETHING?

17 A NO, TO MAKE ME DON'T SAY NOTHING.

18 Q OKAY. SO, YOU'RE A 60-YEAR-OLD MAN AND YOU'RE SAYING
19 THAT YOU WERE THREATENED AND YOU DIDN'T GO TO THE POLICE?

20 A NO.

21 Q ALL RIGHT. THE FIRST TIME THAT YOU WENT TO THE
22 POLICE WAS WHEN? SOMETIME IN OCTOBER?

23 A YES.

24 Q AND THIS INCIDENT HAPPENED AUGUST 27, 2005; CORRECT?

25 A YES.

1 Q ALL RIGHT. SO, SOME 38 DAYS LATER YOU FIND YOUR WAY
2 DOWN TO THE POLICE DEPARTMENT TO TELL THEM WHAT HAPPENED
3 OUT THERE?

4 A YES.

5 Q OKAY. THIRTY-EIGHT DAYS. AND THE TIME THAT YOU --
6 AND WITHIN THOSE 38 DAYS THE FIRST TIME YOU WENT YOU STILL
7 DIDN'T TELL THEM THE TRUTH?

8 A YES.

9 Q OKAY. NOW, WHEN YOU WENT BACK THE SECOND TIME THEY
10 TOLD YOU YOU WERE UNDER ARREST; CORRECT?

11 A YES.

12 Q WHAT WERE YOU CHARGED WITH?

13 A I DON'T KNOW.

14 Q YOU DON'T KNOW WHY YOU WENT TO JAIL?

15 A NO.

16 Q YOU WEREN'T CHARGED WITH -- SO, RIGHT NOW HAVE YOUR
17 CHARGES BEEN DONE AWAY WITH YET?

18 A NO.

19 Q ALL RIGHT. YOU STILL HAVE PENDING CHARGES IN THIS
20 COURT?

21 A YES.

22 Q ALL RIGHT. AND WHAT HAPPENS AFTER YOU TESTIFY TODAY
23 TO THOSE CHARGES?

24 A I HAVEN'T THE SLIGHTEST IDEA, SIR.

25 Q WHAT DO YOU EXPECT TO HAPPEN ONCE YOU FINISH

1 TESTIFYING HERE TODAY?

2 A I DON'T KNOW, SIR.

3 Q YOU EXPECT THESE CHARGES TO STAY OVER YOUR HEAD AS
4 LONG AS YOU'RE ON THIS EARTH?

5 A YES.

6 Q OKAY. YOU DON'T EXPECT THERE TO BE SOME DISPOSITION
7 OF THESE CHARGES IN SOME WAY, SHAPE, OR FORM?

8 A NO.

9 Q ALL RIGHT. SO, YOU'LL JUST FOR YOUR 70TH BIRTHDAY
10 YOU'LL STILL HAVE THESE PENDING CHARGES THAT YOU DON'T
11 KNOW ABOUT?

12 A YES.

13 Q YOU GOT A BOND, ALSO; CORRECT? A BOND. YOU WERE
14 RELEASED FROM JAIL AND YOU WERE ABLE TO LEAVE THE JAIL;
15 CORRECT?

16 A YES.

17 Q AND THAT WAS AFTER YOU GAVE THESE STATEMENTS;
18 CORRECT?

19 A AFTER I GAVE?

20 Q YES.

21 A THIS STATEMENT NOW?

22 Q NO, THE STATEMENTS ON THESE VIDEOS.

23 A I WAS IN JAIL THEN.

24 Q EXACTLY.

25 A I MEAN I WAS --

1 Q YOU WERE IN JAIL THEN AND YOU GOT OUT AFTER --

2 MR. WEEKS: OBJECTION, YOUR HONOR, IF HE COULD

3 FINISH.

4 THE WITNESS: NO, NO, NO, NO.

5 THE COURT: ALL RIGHT. SUSTAINED. ASK YOUR QUESTION

6 AND LET HIM ANSWER IT.

7 MR. GIPSON: YES, SIR. I APOLOGIZE.

8 WHEN DID YOU GET OUT OF JAIL?

9 THE WITNESS: ABOUT THREE OR FOUR MONTHS AGO, I
10 THINK; SOMETHING LIKE THAT.

11 Q SO, THREE OR FOUR MONTHS AGO WOULD HAVE BEEN AROUND
12 THE SUMMERTIME OF THIS YEAR?

13 A YES.

14 Q WHICH, OF COURSE, WAS AFTER YOU MADE THESE
15 STATEMENTS?

16 A I MADE THEM STATEMENTS BEFORE.

17 Q BEFORE YOU WENT TO JAIL?

18 A YES.

19 Q NOW, ISN'T IT TRUE THAT AFTER YOU LOST WHATEVER JOB
20 YOU HAD, I GUESS, FARMING THAT MR. TYLER TOOK YOU IN? HE
21 ALLOWED YOU TO STAY UNDER HIS ROOF?

22 A YES.

23 Q OR HIS BROTHER'S ROOF, I GUESS?

24 A SEVEN DAYS.

25 Q ALL RIGHT. SEVEN DAYS?

1 A YES.

2 Q ALL RIGHT. HE FED YOU?

3 A WELL, YES.

4 Q OKAY. AND HE EVEN GAVE YOU A JOB SO THAT YOU COULD
5 EARN SOME MONEY WHILE YOU WERE THERE, TOO, DIDN'T HE?

6 A YES.

7 Q OKAY. AND EVEN AFTER DOING THOSE THINGS YOU STILL
8 TOLD SOME LIES ABOUT HIM?

9 A NO.

10 Q NOW, YOU TOLD THE OFFICERS THAT YOU HAD THE SHOTGUN
11 THAT YOU TOOK OUT TO THE PORCH; CORRECT?

12 A YES.

13 Q WHY DID YOU HIDE THAT SHOTGUN BEHIND THE HOUSE?

14 A BECAUSE HE HAD TOOK HIS UP THE ROAD.

15 Q WELL, IN YOUR STATEMENT YOU SAID YOU HID IT BEHIND
16 THE HOUSE BECAUSE YOU JUST WANTED TO GET IT OUT THE HOUSE?

17 A YEA, I GOT IT OUT OF THE HOUSE.

18 Q WHY DIDN'T YOU JUST TAKE IT WITH YOU?

19 A I DON'T KNOW. I WASN'T THINKING.

20 Q YOU WEREN'T THINKING? WELL, YOU WERE THINKING
21 SOMETHING.

22 A YEA.

23 Q YOU TOOK IT OUT THERE AND HID IT IN THE WOODS.

24 A I HID IT IN THE WOODS.

25 Q OKAY. ISN'T IT TRUE THAT YOU ACTUALLY WENT OUT TO

1 THE SIDE OF THE ROAD WITH THAT SHOTGUN WHEN ALL OF THIS
2 STUFF WENT ON?

3 A NO, SIR.

4 Q WHEN THEN WHY DID YOU GO OUT TO THE PORCH WITH A
5 SHOTGUN?

6 A BECAUSE I HEARD THE SHOOTING. I DIDN'T KNOW WHO WAS
7 DOING THE SHOOTING.

8 Q SO, YOU JUST PEEKED OUTSIDE AND THEN WENT AND HID IT
9 IN THE WOODS?

10 A NO.

11 Q SO YOU PEEKED OUTSIDE --

12 A THAT WAS AFTER THEY CAME BACK, SIR.

13 Q AFTER THEY CAME BACK YOU HID IT IN THE WOODS?

14 A YES, SIR.

15 Q ALL RIGHT. AND DID YOU TELL OFFICERS THAT YOU HID IT
16 IN THE WOODS?

17 A YES, SIR.

18 Q YOU DID OR WAS THAT AFTER THEY FOUND IT?

19 A NO. I TOLD THEM AFTER THEY HAD FOUND IT. THEY
20 ALREADY HAD FOUND IT.

21 Q THEN YOU WENT AND TOLD THEM THAT IT WAS YOURS?

22 A YES, SIR.

23 MR. GIPSON: ALL RIGHT. I ASK THE COURT'S INDULGENCE
24 FOR A MOMENT.

25 THE COURT: YES, SIR.

1 Q NOW, BEFORE WE LOOK AT THESE OTHER TAPES YOU
2 MENTIONED YOU WOKE UP TO SHOTS; RIGHT?

3 A YES.

4 Q IF YOU WOKE UP TO HEARING SHOTS HOW DO YOU KNOW WHO
5 WAS SHOOTING?

6 A I WOKE UP TO THE SHOTS BECAUSE I HEARD THEM SHOOTING.

7 Q SO, AGAIN, GOING BACK THROUGH THE DIFFERENCES IN YOUR
8 STORIES, TODAY YOU SAY THAT CORNELL TOOK SOME GUNS UP THE
9 ROAD?

10 A YES.

11 Q BUT YOU NEVER REFERENCED THAT IN OTHER TAPES?

12 A YES.

13 Q OKAY. YOU DID REFERENCE IT? OKAY. NOW, SECOND,
14 YOUR SECOND LIE -- OR, EXCUSE ME, YOUR THIRD LIE YOU SAID
15 A GIRL -- YOU RAN FROM THE SCENE AS SOON AS EVERYTHING
16 HAPPENED AND YOU WENT TO SWAY'S HOUSE AND FROM THERE YOU
17 DIDN'T SEE THE GUYS AGAIN. SO, THAT'S ANOTHER LIE YOU
18 TOLD POLICE THAT PARTICULAR DAY?

19 A YES.

20 Q NOW, YOU SAY THAT AT SOME POINT IN TIME CORNELL TYLER
21 TOLD YOU THAT THEY HAD KILLED SOMEBODY?

22 A YES.

23 Q WHERE IN ANY STATEMENT THAT YOU GAVE THE POLICE WAS
24 THAT EVER MENTIONED?

25 A MY LAST STATEMENT.

1 Q OKAY. AND, LASTLY, YOU SAID YOU SAW A MAN WITH A
2 PISTOL AND A SCOPE. WHERE IN ANY STATEMENT DID YOU SAY
3 THAT BECAUSE, QUITE HONESTLY, YOU SAID YOU DIDN'T KNOW IF
4 IT WAS A PISTOL. YOU COULDN'T TELL. YOU COULDN'T SEE
5 IT -- IN YOUR STATEMENT?

6 A IT WAS A SCOPE ON A PISTOL THAT HE HAD.

7 Q SO, YOU KNOW PISTOLS TODAY. THERE IS A SCOPE ON THE
8 PISTOL?

9 A THERE WAS A SCOPE ON HIS PISTOL.

10 Q OKAY. SO, DID YOU LIE WHEN YOU SAID YOU DIDN'T KNOW
11 PISTOLS?

12 A I DIDN'T KNOW PISTOLS. I TOLD THE TRUTH.

13 MR. GIPSON: YOUR HONOR, I'D LIKE TO ASK THE COURT
14 FOR A BRIEF MATTER OF LAW JUST TO GET SOME LOGISTICS
15 WORKED OUT.

16 THE COURT: ALL RIGHT. THIS WILL BE A GOOD TIME TO
17 TAKE A SHORT BREAK.

18 LADIES AND GENTLEMEN, I AM GOING TO SEND YOU BACK TO
19 THE JURY ROOM AGAIN. NO DISCUSSIONS ABOUT THE CASE. JUST
20 STRETCH YOUR LEGS, RELAX, AND WE'LL BRING YOU BACK OUT IN
21 JUST A MINUTE.

22 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 11:01.)

23 MR. GIPSON: YOUR HONOR, MAY I HAVE A BRIEF MOMENT TO
24 CONFER WITH MY CLIENT?

25 THE COURT: YES.

1 (WHEREUPON, THE ATTORNEY CONFERRED WITH THE CLIENT.)

2 (WHEREUPON, A BREAK WAS TAKEN.)

3 THE COURT: ALL RIGHT.

4 MR. GIPSON: YOUR HONOR, I THINK THAT WE'VE REACHED A
5 COMPROMISE SLIGHTLY, BUT IF I CAN I'D JUST LIKE TO
6 WITHDRAW -- I THINK THAT I MAY HAVE ENTERED TWO AT THE
7 SAME TIME MEANING PLAINTIFF'S (SIC) EXHIBIT 3 AND 2. I AM
8 WITHDRAWING NO. 2.

9 THE COURT: OKAY.

10 MR. WEEKS: NO OBJECTION.

11 THE COURT: ALL RIGHT. NO. 2 IS WITHDRAWN. NO. 3 IS
12 IN.

13 MR. GIPSON: YES, SIR. I THINK THAT WE'RE READY,
14 YOUR HONOR.

15 THE COURT: ALL RIGHT. BRING US THE JURY.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 11:28.)

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF YOU
19 RECALL WE WERE ON MR. GIPSON'S CROSS EXAMINATION OF
20 MR. MILES AND WILL RESUME.

21 MR. GIPSON?

22 MR. GIPSON: THANK YOU, YOUR HONOR.

23 MR. MILES, JUST TO BE CLEAR WHEN I MENTIONED LAW
24 ENFORCEMENT, WHAT IS IT THAT YOU'RE THINKING WHEN I SAY
25 LAW ENFORCEMENT? WHICH PEOPLE ARE YOU ASSUMING ARE LAW

1 ENFORCEMENT SO WE MAKE SURE THAT WE'RE TALKING ABOUT THE
2 SAME PEOPLE?

3 THE WITNESS: THE LAW ENFORCEMENT?

4 Q YES, SIR.

5 A THE PEOPLE THAT LOCK YOU UP.

6 Q THAT'S FAIR ENOUGH. NOW, DID YOU CONSIDER MR. WEEKS
7 AS LAW ENFORCEMENT -- THE GENTLEMAN RIGHT HERE WHO ASKED
8 YOU THE QUESTIONS AT THE BEGINNING OF THE CASE?

9 A YES.

10 Q OKAY. NOW, LET ME ASK YOU THIS. WHEN WAS THE FIRST
11 TIME THAT YOU MENTIONED MR. TYLER GETTING RID OF GUNS AND
12 A FOUR-WHEELER TO LAW ENFORCEMENT?

13 A THE SECOND TIME THEY TALKED TO ME.

14 Q OKAY. SO, THAT WOULD HAVE BEEN OCTOBER OR NOVEMBER
15 OF 2005; CORRECT?

16 A YES, SIR.

17 Q ANYTHING ELSE OUT THERE IS JUST A LIE?

18 MR. WEEKS: OBJECTION, YOUR HONOR.

19 MR. GIPSON: I'LL STRIKE THAT.

20 THE COURT: SUSTAINED.

21 Q NOW, AND THE TESTIMONY YOU'VE GIVEN HERE TODAY IS
22 TRUE?

23 A YES, SIR.

24 Q WHOLE TRUTH AND NOTHING BUT THE TRUTH?

25 A YES, SIR.

1 MR. GIPSON: THAT'S ALL MY QUESTIONS AT THIS TIME,
2 YOUR HONOR.

3 THE COURT: ANYTHING ON REDIRECT?

4 REDIRECT EXAMINATION

5 BY MR. WEEKS:

6 Q MR. MILES, HOW FAR DID YOU GO IN SCHOOL?

7 A SIXTH.

8 Q SIXTH GRADE?

9 A YES, SIR.

10 Q CAN YOU READ?

11 A NO, SIR.

12 Q DID LAW ENFORCEMENT, MYSELF, OR ANYBODY DO ANYTHING
13 TO HELP YOU GET OUT OF JAIL ON BOND?

14 A NO, SIR.

15 Q DID WE DO ANYTHING TO YOUR CHARGES?

16 A NO, SIR.

17 Q THE SAME ONE YOU GOT ARRESTED FOR IS THE SAME ONE YOU
18 STILL GOT PENDING?

19 A YES, SIR.

20 Q IS THIS THE FIRST TIME YOU'VE TESTIFIED IN COURT?

21 A YES, SIR.

22 MR. WEEKS: NO FURTHER QUESTIONS.

23 THE COURT: YOU CAN STEP DOWN.

24 (WHEREUPON, ON NOVEMBER 29, 2006 THE FOLLOWING
25 PROCEEDINGS WERE HELD:)

1 MR. WEEKS: YOUR HONOR, THE STATE WOULD CALL WILLIE
2 WARE.

3 THE COURT: PLEASE COME AROUND, MR. WARE.

4 WILLIE WARE, AFTER BEING DULY SWORN, TESTIFIED
5 AS FOLLOWS:

6 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
7 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

8 THE WITNESS: MY NAME IS WILLIE WARE; W-A-R-E.

9 DIRECT EXAMINATION

10 BY MR. WEEKS:

11 Q MR. WARE, YOU'RE GOING TO HAVE TO SPEAK UP. SO, YOU
12 MIGHT WANT TO SLIDE A LITTLE CLOSER TO THAT MICROPHONE
13 THERE. HOW OLD ARE YOU?

14 A TWENTY-FOUR.

15 Q WHERE DID YOU LIVE BEFORE YOU WERE INCARCERATED?

16 A [REDACTED] ROAD, WAGENER, SOUTH CAROLINA.

17 Q YOU GREW UP IN WAGENER?

18 A YES, SIR.

19 Q YOU GRADUATED FROM HIGH SCHOOL?

20 A YES, SIR.

21 Q BEEN TO ANY KIND OF COLLEGE OR ANYTHING LIKE THAT?
22 ANY KIND OF TRAINING LIKE THAT?

23 A NO, SIR.

24 Q WHERE WERE YOU WORKING PRIOR TO GETTING ARRESTED?

25 A CAROLINA CULINARY.

1 Q CULINARY?

2 A YES.

3 Q WHAT WERE YOU DOING THERE?

4 A MACHINE OPERATOR.

5 Q BACK ON AUGUST 27 OF '05 DID YOU OWN A CAR?

6 A YES, SIR.

7 Q WHAT KIND OF CAR WAS IT?

8 A A BUICK REGAL, '99.

9 Q CAN YOU DESCRIBE THE COLOR OF IT?

10 A IT'S LIKE GREEN.

11 Q AND WERE YOU IN POSSESSION OF THE CAR ON AUGUST 27 OF
12 '05?

13 A YES, SIR.

14 Q WHO, IF ANYBODY, WERE YOU WITH ON THAT DAY, MR. WARE?

15 A MR. WALKER AND MR. SEAWRIGHT.

16 Q WHEN DID YOU GET UP WITH THEM? WHEN DID YOU GET UP
17 WITH THEM? WHEN DID YOU --

18 A RIGHT AFTER WORK.

19 Q ALL RIGHT. THAT WOULD HAVE BEEN WHAT TIME?

20 A I'D SAY PROBABLY ABOUT ONE; 1 O'CLOCK.

21 Q IN THE MORNING?

22 A YES, SIR.

23 Q WAS IT DARK?

24 A YES, SIR.

25 Q ALL RIGHT. WHAT DID YOU DO AFTER THAT?

1 A THEY ASKED ME TO GIVE THEM A RIDE TO WINDSOR ROAD.

2 Q DID YOU GO THERE?

3 A YES, SIR.

4 Q WHO WAS DRIVING?

5 A MYSELF.

6 Q ALL RIGHT. WHO WAS IN THE CAR AND WHAT POSITIONS
7 WERE THEY IN?

8 A MR. WALKER WAS IN THE FRONT PASSENGER SEAT AND
9 MR. SEAWRIGHT -- HE WAS IN THE BACK.

10 Q DOES SEAWRIGHT HAVE A NICKNAME?

11 A WEEZER.

12 Q AND WALKER -- DOES HE HAVE A NICKNAME?

13 A HEAD.

14 Q WHERE DID YOU GO THAT NIGHT, MR. WARE?

15 A HE HAD ASKED ME TO TAKE HIM TO MR. TYLER'S HOUSE.

16 Q MR. TYLER -- WHICH MR. TYLER?

17 A CORNELL.

18 Q DOES HE HAVE A NICKNAME?

19 A YEA, DEUCE.

20 Q WHERE DID MR. TYLER LIVE OR WHERE DID YOU TAKE HIM
21 THAT NIGHT, IF ANYWHERE?

22 A I HAD TOOK HIM TO HIS HOUSE. I DON'T REMEMBER THE
23 NAME OF THE ROAD.

24 Q IS IT A DIRT ROAD?

25 A YES, SIR.

1 Q IS IT OFF OF WINDSOR ROAD?

2 A YES, SIR.

3 Q DO YOU KNOW WHAT TIME YOU GOT THERE?

4 A NOT EXACTLY.

5 Q YOU'RE GOING TO HAVE TO SPEAK UP A LITTLE BIT, OKAY?

6 A NOT EXACTLY.

7 Q THAT WAS NOT EXACTLY?

8 A I DON'T KNOW THE EXACT TIME.

9 Q WHEN YOU GOT THERE WHAT DID YOU DO?

10 A I WAS --

11 Q SPEAK UP NOW.

12 A WELL, MR. WALKER AND MR. SEAWRIGHT HAD GOT OUT THE
13 VEHICLE, AND I HAD STAYED IN THE VEHICLE FOR A COUPLE OF
14 SECONDS OR A MINUTE OR WHATEVER, AND I HAD GOT OUT AND
15 USED THE RESTROOM.

16 Q WHERE DID YOU PARK?

17 A IN FRONT OF THE TRAILER, MOBILE HOME.

18 Q WERE YOU OUT OF THE HIGHWAY OFF THE ROAD?

19 A YEA, IN THE DRIVEWAY.

20 Q ALL RIGHT. WHAT HAPPENED NEXT AFTER THEY GOT OUT?

21 A THEY HAD WENT ON THE PORCH.

22 Q WHO?

23 A MR. WALKER AND MR. SEAWRIGHT HAD WENT ON THE PORCH.

24 Q WHAT HAPPENED THEN?

25 A I HAD WENT AND USED THE RESTROOM AND WENT TO THE

1 PORCH AND ASKED THEM WAS THEY READY.

2 Q WHEN YOU WENT TO THE RESTROOM WHERE DID YOU GO TO THE

3 RESTROOM?

4 A OUTSIDE OF THE MOBILE HOME.

5 Q IN THE YARD?

6 A YES.

7 Q WHAT DID YOU DO THEN?

8 A THEN I WENT BACK IN THE VEHICLE.

9 Q JUST SITTING IN THE DRIVER'S SEAT?

10 A YES, SIR.

11 Q WHAT HAPPENED THEN?

12 A THEN A VEHICLE WAS COMING DOWN THE ROAD.

13 Q FROM WHICH DIRECTION?

14 A FROM THE OPPOSITE FROM WINDSOR ROAD.

15 Q ALL RIGHT. DID YOU SEE THIS VEHICLE?

16 A YEA. I SAW THE HEADLIGHTS APPROACHING.

17 Q WHAT HAPPENED NEXT?

18 A THEN MR. TREMAINE TYLER -- HE HAD RUN OUT TO THE

19 ROAD.

20 Q WHO IS TREMAINE TYLER?

21 A CORNELL'S BROTHER.

22 Q WHAT HAPPENED NEXT?

23 A THEN MR. SEAWRIGHT HAD CAME AND GOT IN THE CAR AND

24 THEN I HEARD SOME SHOTS FROM A FIREARM AND THEN MR. TYLER

25 HAD GOT IN THE VEHICLE.

1 Q PRIOR TO HEARING THE SHOTS DID YOU SEE ANY OTHER
2 VEHICLES?

3 A I STILL SAW HEADLIGHTS.

4 Q DID YOU SEE THAT VEHICLE LATER?

5 A YEA, I HAD SAW IT PASS.

6 Q PASS WHAT?

7 A PASS THE MOBILE HOME.

8 Q PASS YOU?

9 A YEA, I WAS STILL IN THE YARD.

10 Q WHAT HAPPENED NEXT AFTER THE VEHICLE PASSED? DID YOU
11 SEE WHAT KIND OF VEHICLE IT WAS?

12 A IT WAS A TRUCK.

13 Q DID YOU SEE WHO WAS IN IT AT THAT TIME?

14 A NO, SIR.

15 Q THAT WAS A NO?

16 A NO, SIR.

17 Q YOU HAVE TO ANSWER YES OR NO.

18 A NO, SIR.

19 Q WHAT HAPPENED NEXT?

20 A THEN MR. TYLER HAD JUMPED IN THE VEHICLE AND TOLD ME
21 TO FOLLOW THE VEHICLE.

22 Q WHICH MR. TYLER?

23 A CORNELL TYLER.

24 Q WHERE DID HE GET IN THE VEHICLE AT?

25 A HE HAD GOT IN THE BACK PASSENGER SEAT.

1 Q DID ANYBODY ELSE GET IN THE VEHICLE?

2 A NO, SIR. MR. SEAWRIGHT HAD JUMPED OUT OF THE
3 VEHICLE.

4 Q DID ANYBODY ELSE GET IN THE VEHICLE?

5 A NO, SIR.

6 Q WAS MR. WALKER THERE?

7 A YES, HE WAS.

8 Q WHERE WAS HE?

9 A HE WAS ON TOP OF THE VEHICLE.

10 Q COULD YOU SEE WHERE HIS LEGS WERE?

11 A NO, SIR.

12 Q DID ANYBODY BRING ANYTHING TO THE VEHICLE?

13 A YEA, MR. TYLER HAD A FIREARM.

14 Q WHAT KIND OF FIREARM?

15 A A RIFLE.

16 Q WHAT COLOR WAS IT?

17 A BROWNISH.

18 Q DID YOU SEE ANYBODY ELSE WITH A WEAPON AT THAT TIME?

19 A NO, SIR.

20 Q WHAT HAPPENED NEXT?

21 A THEN WE HAD FOLLOWED THE VEHICLE DOWN WINDSOR ROAD.

22 Q HOW DO YOU GET FROM WINDSOR ROAD FROM CORNELL TYLER'S
23 DRIVEWAY?

24 A I WENT OUT THE DRIVEWAY AND MAKE A RIGHT AND THEN
25 MADE A LEFT ON WINDSOR ROAD.

- 1 Q IS WINDSOR ROAD A PAVED ROAD?
- 2 A YES, SIR.
- 3 Q WAS IT PAVED THEN?
- 4 A YES, SIR.
- 5 Q AND THE ROAD CORNELL TYLER LIVES ON, IS IT DIRT?
- 6 A YES, SIR.
- 7 Q COULD YOU SEE THE VEHICLE AHEAD OF YOU?
- 8 A YES, SIR.
- 9 Q HOW FAR AHEAD OF IT WAS IT WHEN YOU PULLED OUT OF THE
- 10 DRIVEWAY?
- 11 A I DON'T KNOW THE EXACT.
- 12 Q WAS IT A GOOD WAYS OR A SHORT WAYS?
- 13 A IT WAS A GOOD WAYS.
- 14 Q HOW DID YOU CATCH THAT VEHICLE OR DID YOU?
- 15 A WE AIN'T CAUGHT UP ALL THE WAY WITH THE VEHICLE. WE
- 16 JUST GOT IN CLOSE.
- 17 Q TELL ME WHAT YOU DID, MR. WARE.
- 18 A I FOLLOWED THE VEHICLE.
- 19 Q ALL RIGHT. DID YOU HAVE TO CLOSE THE GAP BETWEEN THE
- 20 TWO OF THEM?
- 21 A YES, SIR.
- 22 Q ALL RIGHT. DID YOU CLOSE IT BEFORE YOU GOT TO THE
- 23 STOP SIGN OR AFTER?
- 24 A BEFORE.
- 25 Q AT THE STOP SIGN WHAT HAPPENED?

1 A WE TURNED AROUND.

2 Q ALL RIGHT. AT WHICH STOP SIGN ARE YOU TALKING ABOUT?

3 A AT THE END OF WINDSOR ROAD.

4 Q IS THERE A STOP SIGN AT THE END OF THE DIRT ROAD?

5 A YES, SIR.

6 Q WHAT DID YOU DO AT THAT STOP SIGN?

7 A I HAD MADE A LEFT.

8 Q COULD YOU SEE THE CAR AT THAT POINT THAT WAS AHEAD OF

9 YOU?

10 A THE TAILLIGHTS.

11 Q SO YOU HADN'T CAUGHT UP TO IT YET, HAD YOU?

12 A NO, SIR.

13 Q YOU DIDN'T CATCH UP TO IT UNTIL WHEN?

14 A UNTIL WE GOT ABOUT TO CLOSE TO STONE MET DRIVE.

15 Q WHAT HAPPENED?

16 A THEN THERE WAS SHOTS COMING FROM THE BACK PASSENGER

17 VEHICLE.

18 Q WHO WAS SHOOTING?

19 A MR. TYLER.

20 Q HOW WAS HE DOING THAT?

21 A I GUESS HANGING OUT THE WINDOW.

22 Q DID YOU SEE MR. WALKER SHOOT ANY?

23 A NO, SIR.

24 Q DID YOU SEE WHETHER MR. WALKER HAD A GUN OR NOT?

25 A NO, SIR.

1 Q WERE YOU SHOOTING ANY?

2 A NO, SIR.

3 Q WHAT WERE YOU DOING?

4 A I WAS DRIVING THE VEHICLE.

5 Q HOW FAST DID YOU GET UP TO, MR. WARE?

6 A ABOUT 70.

7 Q HOW FAR AWAY FROM THE VEHICLE WERE YOU?

8 A I DON'T KNOW EXACT.

9 Q WHAT IS THE CLOSEST THAT YOU GOT TO IT? FROM ME TO

10 YOU OR CLOSER?

11 A ABOUT A LITTLE FURTHER. I DON'T KNOW EXACTLY.

12 Q A LITTLE FURTHER THAN FROM ME TO YOU?

13 A YES, SIR.

14 Q COULD YOU SEE ANYBODY IN THE VEHICLE?

15 A NO, SIR.

16 Q WHAT KIND OF VEHICLE WAS IT?

17 A A TRUCK.

18 Q WHAT HAPPENED NEXT AFTER THE SHOOTING? HOW MANY

19 SHOTS DID YOU HEAR?

20 A MULTIPLE SHOTS.

21 Q HOW MANY? DO YOU GOT ANY IDEA?

22 A I DON'T KNOW EXACT.

23 Q WHAT HAPPENED AFTER YOU HEARD THE SHOTS?

24 A WE CONTINUED TO FOLLOW THE VEHICLE AND THEN GOT TO

25 THE FOUR-WAY AT THE INTERSECTION AND THEY TOLD ME TO TURN

1 AROUND.

2 Q WHAT DID YOU SEE HAPPEN TO THE VEHICLE AT THAT POINT?

3 A I SEEN IT RAN OFF THE ROAD.

4 Q DID YOU SEE ANYTHING ELSE AT THAT POINT?

5 A NO, SIR. I JUST SEEN IT WENT OFF THE ROAD AS I
6 TURNED AROUND.

7 Q WHERE DID YOU GO WHEN YOU TURNED AROUND?

8 A BACK TO THE TYLER RESIDENCE.

9 Q WHAT DID YOU DO THERE?

10 A MR. TYLER GOT OUT OF THE VEHICLE AND MR. WALKER AND
11 MR. -- MR. WALKER AND MR. SEAWRIGHT HAD GOT INTO THE
12 VEHICLE.

13 Q DID ANYBODY TAKE ANYTHING OR REMOVE ANYTHING FROM
14 YOUR VEHICLE WHEN YOU GOT THERE?

15 A YES, WELL, MR. TYLER LEFT OUT THE VEHICLE WITH A
16 FIREARM.

17 Q ANYBODY ELSE REMOVE ANY FIREARMS FROM THE VEHICLE?

18 A NO, SIR.

19 Q DID YOU HAVE A FIREARM IN THE VEHICLE THAT NIGHT?

20 A YES.

21 Q WHAT KIND WAS IT?

22 A A 380.

23 Q WHERE WAS IT?

24 A IT WAS IN THE GLOVE COMPARTMENT.

25 Q DID YOU EVER REMOVE THAT FIREARM OR TAKE IT OUT AT

1 ANY TIME?

2 A NO, SIR.

3 Q DID YOU EVER SHOOT IT THAT NIGHT?

4 A NO, SIR.

5 Q WHEN DID THE POLICE COME TO VISIT YOU?

6 A AUGUST 29.

7 Q WHAT DID YOU DO WITH THAT PISTOL THEN?

8 A I AGREED TO LET THEM GET IT BECAUSE I AIN'T WANTED TO
9 LEAVE IT TO THE HOUSE.

10 Q WHY DIDN'T YOU -- WHY DID YOU GIVE IT TO THE POLICE?
11 DID THEY ASK YOU FOR IT?

12 A NO, BECAUSE I HAD VOLUNTEERED BECAUSE MY LITTLE
13 COUSINS THEY WERE COMING HOME FROM SCHOOL AND I AIN'T
14 WANTED TO LEAVE IT IN THE HOUSE AND ONE OF THEM GET A HOLD
15 TO IT.

16 Q DID YOU GIVE STATEMENTS TO THE POLICE THAT DAY,
17 MR. WARE?

18 A YES, SIR.

19 Q WERE YOU ARRESTED THAT DAY?

20 A YES, SIR.

21 Q WHAT WERE YOU CHARGED WITH?

22 A WITH MURDER AND ATTEMPT TO KILL.

23 Q ARE YOU STILL WITH CHARGED WITH MURDER AND ASSAULT
24 WITH INTENT TO KILL?

25 A YES, SIR.

1 Q ARE YOU REPRESENTED BY AN ATTORNEY?

2 A YES, SIR.

3 Q ANYBODY PROMISED OR OFFERED TO GIVE YOU ANYTHING IN
4 EXCHANGE FOR YOUR TESTIMONY HERE TODAY?

5 A NO, SIR.

6 Q YOUR ATTORNEY TELL YOU ANYTHING ABOUT ME OR THE LAW
7 ENFORCEMENT PROMISING YOU ANYTHING?

8 A NO, SIR.

9 Q HAVE YOU BEEN IN JAIL SINCE AUGUST 29 OF LAST YEAR?

10 A YES, SIR.

11 Q DO YOU KNOW IF THERE WERE ANY OTHER CARS IN THE YARD
12 THAT NIGHT THAT WERE OPERABLE THAT WOULD WORK?

13 A NO, SIR.

14 Q YOU DON'T KNOW OR THERE WEREN'T ANY?

15 A I DON'T KNOW. I DON'T HAVE NO IDEA.

16 Q I HAND YOU STATE'S EXHIBIT NO. 24 AND 25 AND ASK IF
17 YOU CAN IDENTIFY WHAT'S IN THOSE PICTURES?

18 A THE CAR I WAS DRIVING THAT NIGHT OF THE ACCIDENT.

19 Q IT IS WHAT?

20 A THE CAR I WAS DRIVING -- MY VEHICLE.

21 Q OKAY. IS THAT IN BOTH OF THEM?

22 A YES, SIR.

23 Q MR. WARE, WHAT, IF ANYTHING, WAS SAID WHEN YOU GOT
24 BACK TO THE HOUSE?

25 A NO, SIR. I HAD NO IDEA.

1 Q DID MR. WALKER EVER LEAVE THE CAR AFTER YOU GOT BACK
2 TO THE HOUSE?

3 A NO, SIR. HE HAD GOT INTO THE VEHICLE.

4 Q FROM THE OUTSIDE OF THE VEHICLE?

5 A YES, SIR.

6 Q NOW, HOW FAST YOU SAY YOU GOT UP TO?

7 A SEVENTY.

8 Q AND MR. WALKER IS HANGING ON TO THE VEHICLE WHILE
9 YOU'RE GOING 70 MILES AN HOUR?

10 A YES, SIR.

11 Q COULD YOU SEE WHERE HE HAD HIS FEET?

12 A NO, SIR.

13 Q COULD HE HAVE HAD THEM IN THE CAR?

14 A I HAD NO IDEA.

15 Q NOW, YOU AT LEAST CAME TO ONE STOP SIGN AT THE END OF
16 THE DIRT ROAD; IS THAT RIGHT?

17 A YES, SIR.

18 Q YOU COULD HAVE STOPPED THEN, COULDN'T YOU, TURNED
19 AROUND, AND SAID I AIN'T FOLLOWING NO MORE?

20 A YES. I HAD STATED TO THE INVESTIGATOR THAT WHEN WE
21 CAME TO THE END OF THE DIRT ROAD I AIN'T SEEN THE VEHICLE
22 AND THEY DEMANDED ME TO FOLLOW THE VEHICLE.

23 Q WHO MADE YOU FOLLOW THE VEHICLE?

24 A I GUESS MR. TYLER.

25 MR. GIPSON: OBJECT TO SPECULATION, YOUR HONOR.

1 Q WELL, DID SOMEBODY SAY ANYTHING TO MAKE YOU FOLLOW?

2 THE COURT: I'M SORRY. I DIDN'T HEAR THE ANSWER.

3 MR. GIPSON: HE SAID HE GUESSES.

4 THE COURT: SUSTAINED.

5 MR. GIPSON: I MOVE TO STRIKE, YOUR HONOR.

6 THE COURT: ALL RIGHT. STRIKE THAT.

7 Q DID ANYBODY SAY ANYTHING DURING YOUR TIME IN THAT
8 VEHICLE TO MAKE YOU FOLLOW IT?

9 A YES, ALL TYPE OF STUFF.

10 Q ALL TYPES OF STUFF. TELL ME SOME OF THE TYPES OF
11 STUFF THAT MR. TYLER MAY HAVE SAID, IF ANYTHING.

12 A TELLING ME TO FOLLOW THE VEHICLE, DEMANDED ME TO
13 FOLLOW THE VEHICLE.

14 Q BUT YOU COULD HAVE STOPPED?

15 A YES, SIR, BUT I FELT I AIN'T HAD NO CHOICE.

16 CROSS-EXAMINATION

17 BY MR. GIPSON:

18 Q MR. WARE, MY NAME IS BYRON GIPSON. I AM MR. TYLER'S
19 ATTORNEY, AND I HAVE A SERIES OF QUESTIONS I AM GOING TO
20 ASK YOU ABOUT THE TESTIMONY THAT YOU JUST GAVE, BUT ALSO
21 STATEMENTS THAT YOU'VE MADE PRIOR TO TODAY TO LAW
22 ENFORCEMENT. ALL RIGHT? ONE THING I AM GOING TO ASK THAT
23 YOU DO IS THAT YOU SPEAK VERBALLY. IF YOU NOD LIKE THIS
24 OR SAY UH-HUH OR HUH-UH, THE COURT REPORTER IS NOT GOING
25 TO BE ABLE TO PICK UP WHAT YOU SAY. SO, I NEED YOU TO

1 GIVE AN AFFIRMATIVE MEANING A YES OR NO ANSWER -- AN
2 AFFIRMATIVE ANSWER OR A NEGATIVE ANSWER MEANING A YES OR
3 NO ANSWER AND THEN YOU CAN EXPLAIN YOUR TESTIMONY. ALL
4 RIGHT?

5 A YES, SIR.

6 Q THANK YOU. I MAY NEED YOU TO SPEAK UP JUST A LITTLE
7 BIT MORE, TOO. NOW, YOU PUT YOUR HAND ON THE BIBLE A
8 COUPLE OF MOMENTS AGO AND YOU SWORE TO TELL THE TRUTH, THE
9 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, DIDN'T YOU?

10 A YES, SIR.

11 Q AND THAT'S WHAT YOU'VE DONE HERE TODAY?

12 A YES, SIR.

13 Q IS THERE ANY STATEMENT THAT YOU MADE PRIOR TO TODAY
14 THAT CONTRADICTS THE THINGS THAT YOU SAID TODAY?

15 A NO, SIR.

16 Q AND THAT'S YOUR TESTIMONY AND YOU'RE STICKING TO IT?
17 WHAT YOU SAID UP HERE JUST NOW IS THE TRUTH?

18 A YES, SIR.

19 Q ALL RIGHT. NOW, THIS HAS BEEN A TRAUMATIC EXPERIENCE
20 FOR YOU AND YOUR FAMILY, HADN'T IT?

21 A YES, SIR.

22 Q AND IT'S BEEN SOMETHING THAT'S AFFECTED YOU DEEPLY;
23 RIGHT?

24 A YES, SIR.

25 Q AND YOU'VE BEEN IN JAIL FOR SOME 15 OR SO MONTHS AND

1 YOU'VE HAD TO PUT YOUR LIFE ON HOLD BECAUSE OF SOME OF THE
2 THINGS THAT YOU DID AND SOME OF THE CHOICES THAT YOU MADE
3 IN AUGUST OF 2005; CORRECT?

4 A YES, SIR.

5 Q AND IT'S CAUSED, YOU KNOW, YOUR FAMILY SOME PAIN AS
6 WELL, HAVEN'T IT?

7 A YES, SIR.

8 Q AND IT'S MADE YOUR MOTHER A LITTLE SAD ABOUT THINGS?

9 A YES, SIR.

10 Q YOUR GRANDMOTHER, TOO; RIGHT? IS SHE LIVING?

11 A NO, SIR.

12 Q OKAY. WELL, IT'S MADE YOUR FAMILY -- EXCUSE ME FOR
13 THAT, BUT IT'S MADE YOUR MOTHER A LITTLE SAD?

14 A YES, SIR.

15 Q NOW, WHAT IS YOUR MOTHER'S NAME?

16 A MARYANN WARE.

17 Q NOW, WHO IS ERNESTINE WALKER?

18 A THAT'S MY AUNT.

19 Q THAT'S YOUR AUNT?

20 A MY AUNT. MY MOTHER'S SISTER.

21 Q THAT IS YOUR MOTHER'S SISTER?

22 A RIGHT.

23 Q AND SHE HAS A DAUGHTER NAMED SHERRY ANN WALKER;
24 RIGHT?

25 A YES, SIR.

1 Q SO, TELL THE JURY WHO SHERRY ANN WALKER'S SON IS.
2 A MR. WALKER.
3 Q WHO?
4 A MR. WALKER.
5 Q MR. WHO WALKER?
6 A EDWARD WALKER.
7 Q EDWARD WALKER. YOU'RE TALKING ABOUT HEAD?
8 A YES, SIR.
9 Q THE SAME PERSON WHO YOU'VE BEEN REFERENCING IN THIS
10 CASE THE WHOLE TIME?
11 A REFERENCING?
12 Q WHO YOU SAID -- WHO YOU'VE BEEN TALKING ABOUT FOR THE
13 LAST COUPLE OF MINUTES -- EDWARD WALKER; CORRECT?
14 A YES.
15 Q SO, THAT'S YOUR COUSIN?
16 A YES, SIR.
17 Q SO, THE TWO OF YOU WERE TOGETHER THAT NIGHT?
18 A YES, SIR.
19 Q YOU AND EDWARD WALKER, YOUR COUSIN; RIGHT?
20 A YES, SIR.
21 Q DID YOU EVER TELL LAW ENFORCEMENT THAT WAS YOUR
22 COUSIN?
23 A YES, SIR.
24 Q WHEN DID YOU TELL THEM THAT?
25 A THE DAY I WAS ARRESTED.

1 Q OKAY. IN YOUR INTERVIEW?

2 A I TOLD THE INVESTIGATORS.

3 Q OKAY. IN YOUR INTERVIEW?

4 A I SUPPOSE.

5 Q AND HE IS CHARGED WITH MURDER AND ASSAULT AND BATTERY
6 WITH INTENT TO KILL JUST LIKE YOU ARE; RIGHT?

7 A YES, SIR.

8 Q Y'ALL ARE CHARGED SIMILARLY IN THIS CASE, AND, SO,
9 THE MAN WHO YOU ARE ALLEGING TODAY JUMPED ON TOP OF YOUR
10 CAR AND RODE FOR 2.2 MILES AT 70 MILES AN HOUR LIKE A
11 STUNT MAN IS YOUR COUSIN?

12 A YES, SIR.

13 Q ALL RIGHT. AND ISN'T IT TRUE THAT YOU ARE COMING IN
14 HERE TODAY NOT TELLING THE WHOLE TRUTH ABOUT EVERYTHING
15 BECAUSE YOU'RE TRYING TO PROTECT HIM A LITTLE BIT?

16 A NO, SIR.

17 Q ISN'T IT TRUE THAT AT SOME POINT IN TIME IN YOUR
18 INITIAL INVESTIGATION -- EXCUSE ME, IN YOUR INITIAL
19 INTERVIEW YOU TOLD LAW ENFORCEMENT THAT YOUR COUSIN HAD A
20 GUN?

21 A NO, SIR.

22 Q YOU NEVER SAID THAT HE HAD A PISTOL OR SOMETHING LIKE
23 THAT?

24 A NO, SIR.

25 Q OKAY. ISN'T IT TRUE THAT YOUR COUSIN GOT IN THAT

1 CAR, STOOD UP THROUGH THE SUNROOF AND SHOT THROUGH THAT
2 SUNROOF?

3 A NO, SIR.

4 Q WHY WAS YOUR COUSIN HANGING ON TOP OF THE CAR?

5 A I HAVE NO IDEA.

6 Q HE JUST LIKES TO DO STUFF LIKE THAT?

7 A I HAVE NO IDEA.

8 Q WHY DIDN'T YOU JUST STOP AND LET HIM IN THE CAR?

9 A BECAUSE I AIN'T HAD NO CONTROL. I AIN'T HAD NO
10 CHOICE BUT TO DRIVE.

11 Q YOU WERE THE DRIVER OF THE VEHICLE. YOU PRESSED YOUR
12 FOOT ON THE GAS AND DROVE; CORRECT?

13 A YES, SIR.

14 Q YOU PUT YOUR BLINKER ON AND TURNED THE STEEL HAND
15 OVER HAND TO THE LEFT AND TO THE RIGHT; CORRECT?

16 A YES, I CONTROLLED THE VEHICLE, BUT I AIN'T HAD NO
17 CONTROL.

18 Q OVER THE SITUATION?

19 A THE SITUATION.

20 Q EVERYTHING JUST HAPPENED AND IT WASN'T YOUR FAULT,
21 BASICALLY?

22 A YES.

23 Q OKAY. AND, SO, AS YOUR COUSIN JUMPED ON TOP OF THE
24 CAR YOU SAID YOU WENT ALL OF THE WAY DOWN TO THE FIRST --
25 YOU TOOK A RIGHT OUT OF MR. TYLER'S HOME, WENT DOWN THE

1 ROAD AND STOPPED AT THE FIRST STOP SIGN; CORRECT?

2 A SLOWED DOWN.

3 Q SLOWED DOWN. AT THAT POINT IN TIME YOUR COUSIN
4 DIDN'T FLY OFF THE TOP OF THE WINDSHIELD OR ANYTHING, DID
5 HE?

6 A NO, SIR.

7 Q WAS HE SPIDERMAN OR SOMETHING?

8 A I HAD NO IDEA WHAT HE WAS TRYING TO BE.

9 Q SO, YOU HUNG A RIGHT AT THAT POINT AND THEN YOU
10 REACHED SPEEDS UP TO 70 MILES AN HOUR, CORRECT, AND HE IS
11 STILL HANGING ON?

12 A YES, SIR.

13 Q DID HE SAY YEE-HAW OR SOMETHING? I MEAN, ANYTHING?
14 HE HUNG ON THE ENTIRE TIME?

15 A YES, HE WAS ON TOP OF THE CAR.

16 Q OKAY. AND YOU'RE CLAIMING THAT HE DID NOT HAVE A
17 GUN, DID NOT HAVE ANYTHING. HE WAS JUST HANGING ON JUST
18 FOR THE RIDE?

19 A I SUPPOSE. I DON'T KNOW IF HE HAD A GUN OR NOT.

20 Q WELL, YOU JUST SAID THAT HE DIDN'T HAVE ONE A MINUTE
21 AGO. NOW YOU'RE --

22 A I DON'T HAVE NO IDEA IF HE HAD ONE OR NOT.

23 Q SO, NOW YOU'RE SAYING AGAIN YOU'RE NOT SURE IF HE HAD
24 ONE, BUT A MINUTE AGO YOU SAID HE DIDN'T HAVE ONE?

25 A REPEAT THAT AGAIN.

1 Q I'M SORRY?

2 A REPEAT THAT AGAIN.

3 Q A MOMENT AGO BEFORE I STOOD UP HERE YOU SAID HE
4 DIDN'T HAVE A GUN.

5 A I DID NOT SAW HIM WITH A GUN.

6 Q OKAY. BUT NOW YOU'RE SAYING YOU DON'T KNOW IF HE HAD
7 ONE OR NOT?

8 A NO, I DON'T KNOW.

9 Q OKAY. AND YOU'RE DENYING THAT YOU TOLD LAW
10 ENFORCEMENT THAT HE HAD ONE?

11 A I NEVER TOLD THE LAW ENFORCEMENT THAT HE HAD ONE. I
12 TOLD THEM I AIN'T HAD NO IDEA.

13 Q OKAY. LET ME ASK YOU THIS AND WE'LL GET BACK TO THAT
14 IN A MOMENT. YOU SAID THAT YOU WORKED AT CAROLINA
15 CULINARY IN WEST COLUMBIA?

16 A YES, SIR.

17 Q OKAY. I KNOW YOU WORK LONG DAYS THERE. SO, YOU
18 ENDED UP GETTING BACK HOME IN WAGENER SOMETIME LATE THAT
19 EVENING; CORRECT?

20 A YES, SIR.

21 Q AND, AGAIN, YOU GOT TO BE VERBAL SO THAT THE COURT
22 REPORTER -- YOU SAID YES?

23 A YES.

24 Q OKAY. SO, YOU LEFT FROM CAROLINA CULINARY, DROVE
25 HOME TO WAGENER, AND AT SOME POINT IN TIME YOU DETERMINED

1 THAT YOU WERE GOING TO GO HANG OUT A LITTLE BIT; RIGHT?

2 A YES, SIR.

3 Q SO, YOU CALLED YOUR COUSIN OR YOUR COUSIN CALLED YOU?

4 A I HAD WENT TO ONE OF MY ASSOCIATE'S HOUSE.

5 Q OKAY. AND YOUR COUSIN WAS THERE?

6 A YEA, HE WAS IN THE AREA. HE HAD SAW ME.

7 Q SO, Y'ALL RODE OUT TOGETHER FROM THERE?

8 A YES. HE ASKED ME TO TAKE HIM TO WAGENER.

9 Q OKAY. THEN WHEN DID KENDALL SEAWRIGHT COME INTO THE
10 PICTURE?

11 A WHEN WE GOT TO WAGENER.

12 Q OKAY. WHAT HAPPENED THEN?

13 A THEN HE ASKED ME TO TAKE HIM TO WINDSOR ROAD.

14 Q OKAY. WELL, WHEN DID YOU PICK UP KENDALL?

15 A WHILE WE WAS IN WAGENER.

16 Q WHERE?

17 A ON CEDAR ROAD.

18 Q WHERE?

19 A ON CEDAR ROAD.

20 Q IS THAT HIS HOUSE?

21 A NO, A ROAD IN WAGENER.

22 Q HE WAS JUST HANGING OUT ON THE SIDE OF THE ROAD AND
23 YOU JUST PICKED HIM UP?

24 A NO. HE WAS AT SOMEBODY'S HOUSE ON THAT ROAD.

25 Q OKAY. Y'ALL DIDN'T MEET UP AT A CLUB OR ANYTHING?

1 YOU JUST WENT AND PICKED HIM UP AT SOMEONE'S HOUSE?

2 A YES, SIR.

3 Q AND FROM THERE YOU WENT ON DOWN TO MR. TYLER'S HOUSE,
4 YOU SAID?

5 A YES, SIR.

6 Q ALL RIGHT. NOW, IT IS YOUR TESTIMONY THAT FROM THAT
7 POINT ON YOU DROVE TO MR. TYLER'S HOUSE, STOOD OUT --
8 WELL, MR. WARE AND I GUESS WEASEL AS YOU CALL MR.
9 SEAWRIGHT WENT UP TO THE PORCH AND YOU WENT AND RELIEVED
10 YOURSELF TO USE THE BATHROOM OUTSIDE?

11 A YES, SIR.

12 Q WHY DON'T YOU JUST GO IN AND ASK TO USE THE BATHROOM?

13 A BECAUSE I JUST USED IT OUT THE DOOR.

14 Q OKAY. AND THAT'S WHEN THE TRUCK PULLED UP?

15 A A COUPLE OF MINUTES LATER.

16 Q AT WHAT POINT IN TIME DID YOUR COUSIN APPROACH THE
17 TRUCK?

18 A I DON'T HAVE NO IDEA IF HE APPROACHED IT OR NOT. I
19 WAS INSIDE OF THE VEHICLE.

20 Q YOU WERE INSIDE WHAT?

21 A INSIDE OF THE VEHICLE.

22 Q OKAY. SO, YOU DON'T KNOW IF HE APPROACHED THE
23 VEHICLE OR NOT?

24 A I DON'T KNOW.

25 Q ALL RIGHT. DID YOU SAY FROM THERE MR. TYLER SAID GET

1 IN THE CAR AND YOUR -- AND, HEAD, YOUR COUSIN, JUMPED ON
2 THE CAR AND YOU TOOK OFF AFTER THEM?

3 A MR. TYLER DIDN'T TELL ME TO GET INSIDE OF THE
4 VEHICLE. I WAS ALREADY INSIDE OF THE VEHICLE.

5 Q OKAY. SO, HE JUMPED IN THE CAR?

6 A YES, SIR.

7 Q ALL RIGHT. NOW, AFTER ALL OF THESE THINGS TOOK PLACE
8 YOU WERE ARRESTED AUGUST 29 OR SO OF LAST YEAR?

9 A YES, SIR.

10 Q ALL RIGHT. AND AFTER YOU WERE ARRESTED YOU WERE, OF
11 COURSE, HOUSED AT THE AIKEN COUNTY DETENTION CENTER;
12 CORRECT?

13 A YES, SIR.

14 Q YOU AND YOUR COUSIN WERE HOUSED TOGETHER FOR SOME
15 PERIOD OF TIME, WEREN'T YOU -- SAME AREA?

16 A FOR -- YEA, IN ONE POD. IT WAS ABOUT FOR A DAY OR
17 SOMETHING, DAY OR TWO.

18 Q OKAY. SO, Y'ALL WERE TOGETHER AFTER THIS HAPPENED;
19 CORRECT?

20 A NO, WE WASN'T TOGETHER. HE WAS ON TOP AND I WAS ON
21 THE BOTTOM.

22 Q STILL IN CONTACT?

23 A NO, NOT IN CONTACT.

24 Q OKAY. YOU NEVER HAD ANY CONTACT WITH HIM AT THAT
25 POINT IN TIME?

1 A NO, SIR.

2 Q DID YOU EVER MEET SOMEBODY NAMED SHAUN?

3 A SHAUN?

4 Q YES, SIR.

5 A YEA.

6 Q BILLY SMITH?

7 A YES.

8 Q AND THE FOLKS CALL HIM SHAUN?

9 A YES, SIR.

10 Q DID YOU EVER TALK ABOUT ANYTHING WITH HIM?

11 A NO. HE TRIED A COUPLE OF TIMES TO TALK TO ME ABOUT

12 THE SITUATION.

13 Q DID YOU EVER SHARE ANYTHING WITH HIM?

14 A NO, JUST THE SAME STUFF -- JUST THAT I STATED IN THE

15 STATEMENT.

16 Q OKAY. AND THE SAME STUFF THAT YOU'RE STATING HERE

17 TODAY IS WHAT YOU SHARED WITH HIM?

18 A YES, SIR.

19 Q NOW, AND, AGAIN, YOU SAT DOWN WITH LAW ENFORCEMENT ON

20 AT LEAST ONE OCCASION AND THEY RECORDED A STATEMENT WITH

21 YOU; CORRECT?

22 A YES, SIR.

23 Q AND AS THEY RECORDED THAT STATEMENT WITH YOU YOU TOLD

24 THEM WHAT YOU BELIEVED WAS THE TRUTH AT THAT POINT IN TIME

25 OVER A YEAR AGO?

1 A YES, SIR.

2 Q AND WHAT YOU'RE TELLING US IS WHAT YOU'RE SAYING HERE
3 TODAY IS EXACTLY THE SAME AS WHAT YOU TOLD THEM IN AUGUST
4 OF 2005?

5 A YES, SIR.

6 MR. GIPSON: IF I CAN ASK THE COURT'S INDULGENCE I'D
7 LIKE TO TAKE UP A QUICK MOMENT OF LAW.

8 THE COURT: ALL RIGHT. CAN WE TAKE IT UP OVER HERE?

9 MR. GIPSON: YES, SIR.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

11 MR. GIPSON: IF WE COULD MARK THIS PLAINTIFF'S
12 C.D. -- DEFENSE 4. I'D LIKE TO HAVE IT ENTERED INTO
13 EVIDENCE AT THIS POINT IN TIME, YOUR HONOR.

14 MR. WEEKS: WITHOUT OBJECTION, YOUR HONOR

15 THE COURT: DEFENSE 4 IS IN WITHOUT OBJECTION.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 4 WAS MARKED FOR
17 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 MR. GIPSON: MAY I PUBLISH IT TO THE JURY, SIR?

19 THE COURT: YES, SIR.

20 THE JUROR: JUDGE, CAN HE TURN THE SPEAKERS THIS WAY
21 SO WE CAN HEAR BETTER?

22 THE COURT: HERE'S WHAT WE'RE DOING. THAT ONE
23 SPEAKER -- GO AHEAD AND STICK IT OVER THAT WAY.

24 MR. GIPSON: YES, SIR.

25 THE COURT: THE OTHER SPEAKER WE HAVE IN FRONT OF

1 THAT MICROPHONE WHICH IS SUPPOSED TO BE BRINGING THE SOUND
2 THROUGH UP HERE. SO, WE CAN LEAVE THAT ONE ON THAT
3 MICROPHONE AND TURN THE OTHER ONE TOWARDS THE JURY.
4 HOPEFULLY, THAT WILL HELP..

5 MR. GIPSON: I CAN TRY TO TURN IT THIS WAY. WE CAN
6 WORK ON THE VOLUME A LITTLE BIT.

7 (WHEREUPON, THE C.D. WAS STARTED AND THEN LATER
8 STOPPED.)

9 THE JUROR: WE CAN'T HEAR THAT AT ALL.

10 THE COURT: THE PROBLEM, LADIES AND GENTLEMEN -- AND
11 I DON'T KNOW THAT WE CAN FIX IT IS THAT WHEN THE INTERVIEW
12 WAS TAKEN MR. WARE IS SOFT-SPOKEN ANYWAY AND THE
13 MICROPHONE THERE WAS KIND OF FAR FROM HIM. I DON'T KNOW
14 THAT THERE IS ANY WAY WE CAN FIX IT WITH THE EQUIPMENT
15 THAT WE GOT. I THINK WE JUST HAVE TO PLAY IT AND IT'S IN
16 EVIDENCE.

17 MR. GIPSON: IT'LL BE AVAILABLE TO THEM.

18 THE COURT: IT WILL BE AVAILABLE TO YOU DURING THE
19 DELIBERATIONS IF YOU NEED TO RE-LISTEN TO IT. IT,
20 UNFORTUNATELY, IS THE BEST THAT WE'VE GOT RIGHT NOW.

21 MR. GIPSON: THANK YOU. MAY I ADDRESS THE JURY AND
22 ASK THEM IF THEY NEED ME TO REWIND IT TO THE BEGINNING?

23 (WHEREUPON, MANY JURORS SPOKE AT ONCE.)

24 MR. GIPSON: THEY WERE ASKING IF IT WAS ON THE C.D.
25 OR D.V.D. AND I JUST WANTED TO LET THE JURY KNOW I

1 COULDN'T REALLY ADDRESS THEM DIRECTLY, BUT IT'S NOT OUT OF
2 DISRESPECT.

3 MR. WEEKS: THEY'RE ON C.D., YOUR HONOR.

4 (WHEREUPON, THE C.D. WAS STARTED AND THEN LATER
5 STOPPED.)

6 MR. GIPSON: THAT'S ALL. WE NEED TO PLAY ABOUT
7 ANOTHER FOUR MINUTES. I APOLOGIZE.

8 (WHEREUPON, THE C.D. WAS STARTED.)

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

10 (WHEREUPON, THE C.D. WAS STOPPED.)

11 Q NOW, MR. WARE, YOU STILL CONTEND THAT EVERYTHING YOU
12 SAID TODAY WAS TRUTHFUL?

13 A YES, IT WAS TRUTHFUL. IT WAS CLOSE ENOUGH. I AIN'T
14 HEARD NOTHING IN A YEAR AND SOME CHANGE.

15 Q HAVE YOU EVER HEARD THE TERM CLOSE ONLY COUNTS IN
16 HORSE SHOES AND HAND GRENADES? HAVE YOU EVER HEARD THAT
17 BEFORE? WAS IT TRUTHFUL OR NOT TRUTHFUL?

18 A IT WAS TRUTHFUL.

19 Q SO, YOU'RE SAYING TODAY THAT YOU SAID EXACTLY THE
20 SAME THING THAT YOU SAID THEN?

21 A FROM MY POINT OF VIEW, YES.

22 Q OKAY. FROM YOUR POINT OF VIEW DID YOU SAY IN THIS
23 STATEMENT THAT WE JUST LISTENED TO THAT YOUR COUSIN HAD A
24 GUN?

25 A HE COULD HAVE HAD A GUN. IT IS A POSSIBLY HE COULD

1 HAVE. I DON'T KNOW.

2 Q DID YOU SAY IN YOUR STATEMENT BACK THEN THAT YOUR
3 COUSIN WAS OUT OF THE CAR SHOOTING?

4 A NOT AS I RECALL.

5 Q DID YOU SAY IN YOUR STATEMENT BACK THEN THAT YOU
6 DIDN'T SEE DEUCE SHOOTING ANYBODY? YOU JUST SAID YOU
7 HEARD SOME SHOTS BECAUSE YOU WERE IN THE FRONT SEAT AND
8 THIS WAS GOING ON AND YOU HEARD SHOTS?

9 A YES, I HEARD SHOTS.

10 Q SO, WHY ARE YOU CHANGING YOUR STATEMENT AROUND TODAY?

11 A TALKING ABOUT I HEARD SHOTS?

12 Q I'M TALKING ABOUT PERIOD. YOU'RE IN HERE TODAY AND
13 YOU'RE TESTIFYING BECAUSE YOU'RE TRYING TO HELP YOURSELF;
14 ISN'T THAT RIGHT?

15 A NO. I AM TELLING THE TRUTH.

16 Q YOU HAVE BEEN CHARGED WITH SOME SERIOUS CHARGES;
17 CORRECT?

18 A YES.

19 Q AND YOU KNOW THAT YOU HAVE ADMITTED TO DRIVING THAT
20 CAR; CORRECT?

21 A YES.

22 Q YOU'VE ADMITTED TO DRIVING THAT CAR DOWN THE ROAD,
23 HANGING A RIGHT OR HANGING A LEFT. YOU FOLLOWED DEBRA
24 DORCH WHILE SHE WAS DRIVING THAT TRUCK, DIDN'T YOU?

25 A YES.

1 Q AND AS YOU FOLLOWED HER YOU SPED UP AND CHASED HER AT
2 LEAST UP TO 70 MILES AN HOUR BASED ON YOUR OWN TESTIMONY;
3 CORRECT?

4 A YES. I AIN'T HAD NO CHOICE.

5 Q AND AS YOU HAD NO CHOICE, AS YOU SAY TODAY, AS YOU
6 FOLLOWED AND CHASED HER WITH YOUR COUSIN WHO YOU SAY WAS
7 SHOOTING -- YOU KNOW, A YEAR AGO YOU SAID WAS SHOOTING AND
8 NOW YOU SAY HE WASN'T SHOOTING, BUT AS ALL OF THESE THINGS
9 HAPPENED YOU WERE DIRECTLY INVOLVED IN THE THINGS THAT
10 WENT ON THAT NIGHT, WEREN'T YOU?

11 A NO, SIR.

12 Q AND BECAUSE OF YOUR DIRECT INVOLVEMENT IN THAT THE
13 ONLY WAY THAT YOU CAN POTENTIALLY ASSIST YOURSELF NOW IS
14 TO TRY TO COME IN AND CHANGE THE STORY AND TESTIFY TO HELP
15 YOURSELF? RIGHT?

16 A NO, SIR.

17 Q AND, ALSO, BY TESTIFYING TO ATTEMPT TO HELP YOURSELF
18 YOU CAN ALSO KIND OF HELP YOUR COUSIN, TOO, CAN'T YOU?

19 A NO, SIR.

20 Q AND IT'S YOUR TESTIMONY TODAY THAT YOU'RE HERE
21 TELLING THE TRUTH?

22 A YES.

23 Q AND YOU TOLD THE TRUTH, THE WHOLE TRUTH, AND NOTHING
24 BUT THE TRUTH TODAY?

25 A YES.

1 Q AND YOU DID THE SAME THING ON AUGUST 9, 2005 YOU TOLD
2 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

3 A AUGUST 29?

4 Q YES, SIR, WHENEVER YOU GAVE THAT STATEMENT WE JUST
5 PLAYED. YOU TOLD THEM THE WHOLE TRUTH THEN, TOO, DIDN'T
6 YOU?

7 A ARE YOU TALKING ABOUT ON AUGUST 29, NOT AUGUST 9;
8 RIGHT?

9 Q THE DATE THAT YOU GAVE THIS STATEMENT YOU TOLD THEM
10 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

11 A AS I RECALL.

12 Q AND YOUR RECOLLECTION A YEAR AGO OR 15 MONTHS AGO IS
13 MORE THAN LIKELY A LITTLE BIT BETTER THAN IT IS TODAY?

14 A REPEAT YOURSELF.

15 Q YOUR RECOLLECTION, YOUR REMEMBRANCE IS BETTER 15
16 MONTHS AGO ABOUT SOMETHING THAT HAPPENED THAN IT IS A YEAR
17 LATER? YOU REMEMBERED BETTER THEN THAN YOU DO NOW, DON'T
18 YOU?

19 A YES, SIR.

20 Q NOW, LET ME ASK YOU THIS. YOU SAY THAT YOU GOT IN
21 THE CAR WITH YOUR COUSIN AND MR. SEAWRIGHT WHO YOU PICKED
22 UP FROM A FRIEND'S HOUSE AND YOU TOOK THEM BACK TO WHERE?

23 A I DROPPED MR. SEAWRIGHT BACK OFF ON CEDAR ROAD AND
24 MR. WALKER -- HE DROPPED OFF SOMEWHERE AROUND CEDAR ROAD.
25 I DON'T REMEMBER THE EXACT ROAD.

1 Q OKAY. WHAT DID Y'ALL TALK ABOUT ON THE WAY HOME?

2 A NOTHING. WE WERE STILL IN SHOCK.

3 Q Y'ALL WERE STILL IN SHOCK?

4 A YES, SIR.

5 Q SO --

6 A I WAS.

7 Q YOU WERE IN SHOCK?

8 A YEA.

9 Q NOTHING WAS DISCUSSED ABOUT THE INCIDENT ON THE WAY
10 HOME?

11 A NO, SIR.

12 Q DO YOU EVER GO TO THE MOVIES?

13 A YES.

14 Q AND YOU EVER GO WITH A BUNCH OF FRIENDS?

15 A YES, SIR.

16 Q AND AFTER THE MOVIES AND Y'ALL GET BACK IN THE CAR
17 WHAT DO YOU DO?

18 A TALK ABOUT WHAT HAPPENED IN THE MOVIE.

19 Q AND IT'S YOUR TESTIMONY THAT AFTER SUCH A TRAUMATIC
20 EXPERIENCE WITH YOUR COUSIN AND YOUR FRIEND SEAWRIGHT WHO
21 YOU PICKED UP FROM A FRIEND'S HOUSE, Y'ALL HAD NOTHING TO
22 SAY TO ONE ANOTHER?

23 A STILL IN SHOCK.

24 MR. GIPSON: I ASK THE COURT'S INDULGENCE ONE MOMENT.

25 THAT'S ALL MY QUESTIONS, YOUR HONOR.

1 THE COURT: REDIRECT?

2 REDIRECT EXAMINATION

3 BY MR. WEEKS:

4 Q MR. WARE, DID YOU SEE ANYBODY THAT NIGHT WITH WHAT
5 APPEARED TO BE A RIFLE?

6 A YES, SIR.

7 Q WHO?

8 A TALKING ABOUT WHO HAD THE RIFLE? MR. TYLER.

9 Q DID YOU EVER SEE MR. WALKER WITH A RIFLE?

10 A NO, SIR.

11 Q I'M SORRY. SOMEBODY COUGHED.

12 A NO, SIR.

13 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT'S
14 WE'VE REACHED THE LUNCH HOUR. WE'RE GOING TO BREAK AT
15 THIS TIME FOR LUNCH.

16 (WHEREUPON, ON NOVEMBER 30, 2006 THE FOLLOWING
17 PROCEEDINGS WERE HELD:)

18 MR. GIPSON: THANK YOU, YOUR HONOR. GOOD MORNING.
19 THE DEFENSE WOULD LIKE TO CALL MR. WILLIE DESHAUN SMITH.

20 THE COURT: MR. SMITH, IF YOU WOULD PLEASE COME
21 AROUND TO THE FRONT HERE AND BE SWORN IN, SIR.

22 WILLIE DESHAUN SMITH, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: PLEASE HAVE A SEAT IN THE WITNESS BOX.
25 STATE YOUR FULL NAME FOR THE COURT AND SPELL YOUR LAST.

1 THE WITNESS: MY NAME IS WILLIE DESHAUN SMITH;
2 S-M-I-T-H.

3 DIRECT EXAMINATION

4 BY MR. GIPSON:

5 Q MR. SMITH, WHAT I'LL DO AND IT'S WHAT I'VE HAD TO DO
6 FOR SOME OTHER FOLKS -- YOU'RE A LITTLE BIT SOFT SPOKEN
7 AND THERE IS A MICROPHONE IN FRONT OF YOU. SO, YOU MAY
8 EITHER NEED TO LEAN UP JUST A LITTLE BIT TO SPEAK IN THE
9 MICROPHONE OR I'LL HAVE TO STAND A LITTLE BIT FARTHER BACK
10 AND ENCOURAGE YOU TO SPEAK UP SO THAT I CAN HEAR YOU BACK
11 HERE AND SO THAT ALL THE JURORS CAN HEAR YOU.

12 A ALL RIGHT.

13 Q YOU'LL NEED TO SPEAK A LITTLE BIT LOUDER.

14 A OKAY.

15 Q I STILL CAN'T HEAR YOU.

16 A ALL RIGHT.

17 Q ALL RIGHT. THANK YOU. THANK YOU, MR. SMITH. NOW,
18 YOU SAID YOUR NAME IS WILLIE DESHAUN SMITH?

19 A YES, SIR.

20 Q WHAT IS YOUR NICKNAME?

21 A I DON'T HAVE ONE. SHAUN.

22 Q SO, YOU'RE AFFECTIONATELY KNOWN BY MANY PEOPLE AS
23 SHAUN?

24 A YES, SIR.

25 Q AND THAT COMES FROM YOUR MIDDLE NAME OF DESHAUN?

1 A YES, SIR.

2 Q ALL RIGHT. HOW OLD ARE YOU, MR. SMITH?

3 A THIRTY-TWO.

4 Q AND WHERE ARE YOU FROM?

5 A AIKEN, SOUTH CAROLINA.

6 Q NOW, WHAT ARE YOU IN JAIL FOR RIGHT NOW?

7 A STRONG ARMED ROBBERY AND SECOND DEGREE BURGLARY.

8 Q DID YOU DO IT?

9 A YES.

10 Q AND DID YOU GO TO TRIAL AND YOU WERE FOUND GUILTY?

11 A NO, I PLEAD GUILTY.

12 Q YOU PLEAD GUILTY. AND AS A RESULT OF THE GUILTY PLEA

13 THAT'S WHY YOU'RE IN JAIL RIGHT NOW?

14 A YES.

15 Q WHERE ARE YOU BEING HOUSED?

16 A AT WATEREE RECORRECTIONAL INSTITUTION.

17 Q AND WHERE IS THAT LOCATED?

18 A IN REMBERT, SOUTH CAROLINA.

19 Q REMBERT, SOUTH CAROLINA? THAT'S SOMEWHERE AROUND

20 SUMTER?

21 A YES.

22 Q BETWEEN SUMTER AND CAMDEN?

23 A YES.

24 Q NOW, DID YOU HAVE AN OCCASION WHEN YOU WERE FIRST

25 ARRESTED ON THESE CHARGES TO BE HOUSED IN THE AIKEN COUNTY

1 DETENTION CENTER?

2 A YES, SIR.

3 Q AND I STILL NEED YOU TO SPEAK A LITTLE BIT LOUDER.

4 A YOU SAID OCCASION?

5 Q YEA. WERE YOU HOUSED AT THE AIKEN COUNTY DETENTION
6 CENTER?

7 A YES, SIR. YES, SIR.

8 Q ABOUT HOW LONG WERE YOU THERE?

9 A I WAS THERE FOR LIKE 13 MONTHS.

10 Q AND DID YOU HAVE AN OPPORTUNITY TO MEET ANY OF THE
11 I'D SAY PRINCIPALS, BUT ANY OF THE PEOPLE INVOLVED IN THIS
12 PARTICULAR CASE?

13 A YES, SIR.

14 Q ALL RIGHT. WILL YOU TELL THE COURT WHO THOSE PEOPLE
15 ARE THAT YOU MET?

16 A EDWARD WALKER, WILLIE WARE, AND CORNELL TYLER.

17 Q AND DO YOU SEE ANY OF THOSE FOLKS IN THE COURTROOM
18 TODAY?

19 A YES, SIR.

20 Q WHO DO YOU SEE IN THE COURTROOM TODAY?

21 A CORNELL TYLER.

22 Q CORNELL TYLER? NOW, DO YOU RECOGNIZE ANYBODY SITTING
23 AT THIS TABLE?

24 A YES, SIR.

25 Q WHO DO YOU RECOGNIZE?

1 A MR. BILL WEEKS, MS. BRENDA BRISBIN.

2 Q AND ARE THEY PROSECUTORS FOR THE STATE?

3 A AND MR. PRINCE.

4 Q WHO IS MR. PRINCE?

5 A I DON'T KNOW. HE JUST CAME TO -- I KNOW MR. ROYSTER.
6 HE WAS MY DETECTIVE. HE WAS MY DETECTIVE FOR MY CASE, AND
7 I WROTE A STATEMENT TO MR. ROYSTER TO GIVE TO MR. PRINCE.

8 Q AND, SO, YOU MET MR. PRINCE, BASICALLY, AFTER WRITING
9 THE STATEMENT?

10 A WELL, HE SHOWED UP WITH MS. BRISBIN AND MR. WEEKS.

11 Q ALL RIGHT.

12 A AT THE COUNTY JAIL.

13 Q AT THE COUNTY JAIL? SO, ESSENTIALLY, YOU'VE MET THEM
14 IN INVESTIGATION OF THE CASE?

15 A YES, SIR.

16 Q ALL RIGHT. IS IT TRUE THAT YOU -- YOU SAID THAT YOU
17 WROTE A STATEMENT OF SOME SORT?

18 A YES, SIR.

19 Q WITHOUT GOING INTO THE SPECIFICS IN THAT STATEMENT
20 WHAT WAS YOUR PURPOSE OF WRITING THE STATEMENT?

21 A MY PURPOSE OF WRITING THE STATEMENT IS THAT BECAUSE
22 -- WELL, THE PERSON -- I'VE HEARD FROM THE PERSON THAT,
23 WELL, THAT THE CRIME WAS COMMITTED BY WAS TELLING ME ABOUT
24 THE CRIME.

25 Q NOW, WHILE YOU WERE IN JAIL DID YOU HAVE AN

1 OPPORTUNITY TO MEET WILLIE WARE?

2 A YES, SIR.

3 Q DID YOU HAVE CONVERSATIONS WITH HIM?

4 A YES, SIR.

5 Q WHAT TYPES OF CONVERSATIONS DID YOU HAVE WITH

6 MR. WARE?

7 A ABOUT WHAT HAPPENED IN THIS CASE RIGHT HERE.

8 Q AND WHAT DID YOU LEARN BASED ON YOUR CONVERSATIONS

9 WITH MR. WARE?

10 A WELL, HE TOLD ME -- HE TOLD ME WHAT HAPPENED.

11 Q WHAT DID HE SAY HAPPENED?

12 A HE SAID THAT HIM AND HIS COUSIN EDWARD WALKER AND

13 SOMEBODY -- HE DIDN'T NAME THE THIRD PERSON, BUT THEY WAS

14 RIDING AROUND. EDWARD WALKER ASKED HIM TO TAKE HIM TO

15 MR. CORNELL TYLER'S HOUSE AND HE SAID WHEN THEY GOT THERE

16 HE SAID HE WAS -- HE WAS SITTING IN THE CAR AND MR. WALKER

17 WENT AROUND THE SIDE. HE SAID HE WAS WAITING FOR

18 MR. WALKER. AS HE WAS WAITING FOR MR. WALKER SOME LIGHTS

19 CAME UP IN THE YARD. AS THE LIGHTS CAME UP IN THE YARD HE

20 SAID HE DIDN'T KNOW -- HE DIDN'T KNOW WHO IT WAS, BUT HE

21 WAS WAITING IN THE CAR FOR WALKER TO FINISH WHAT HE WAS

22 DOING. ALL HE KNOWED WAS THAT WALKER JUMPED IN THE CAR

23 WITH THE GUN AND TOLD HIM TO FOLLOW THE TRUCK -- A RED

24 TRUCK -- AND AS HE WAS FOLLOWING THE RED TRUCK WALKER GOT

25 OUT OF THE WINDOW AND STARTED SHOOTING AT THE TRUCK.

1 Q LET ME ASK YOU THIS. DID HE EVER MENTION ANYBODY
2 ELSE BEING IN THAT CAR?

3 A NO, SIR.

4 Q AND YOU SAID A THIRD PERSON. DID HE SAY ANYTHING
5 ABOUT THAT THIRD PERSON, WHO THAT THIRD PERSON WAS?

6 A NO, HE JUST SAID THAT A THIRD PERSON WAS IN THE CAR
7 WHEN THEY WAS RIDING AROUND -- HIM, WALKER, AND THE THIRD
8 PERSON.

9 Q OKAY.

10 A AND THAT'S WHEN ALL THREE OF THEM WENT TO CORNELL
11 TYLER'S HOUSE.

12 Q OKAY. WHEN THIS INCIDENT WITH THE TRUCK TOOK PLACE,
13 WHERE WAS THE THIRD PERSON?

14 A HE DIDN'T NAME NO THIRD PERSON.

15 Q DID YOU EVER HEAR MR. TYLER'S NAME MENTIONED IN THIS
16 WHOLE SITUATION DURING YOUR CONVERSATIONS WITH MR. WARE?

17 A NO, SIR; ONLY ABOUT THAT THEY WHEN OUT THERE TO SEE
18 HIM.

19 Q OKAY. BASED ON YOUR CONVERSATIONS WITH MR. WARE -- I
20 AM TRYING TO GET MY W'S STRAIGHT. BASED ON YOUR
21 CONVERSATIONS WITH MR. WILLIE WARE, WHAT DID YOU COME TO
22 BELIEVE TOOK PLACE?

23 MR. WEEKS: OBJECTION.

24 THE COURT: SUSTAINED.

25 Q WHAT ELSE DID MR. WARE -- EXCUSE ME. WHAT ELSE DID

1 MR. WALKER TELL YOU?

2 MR. WEEKS: OBJECTION.

3 MR. GIPSON: NOT WALKER -- MR. WARE TELL YOU?

4 MR. WEEKS: OBJECTION. IT SETS THE FOUNDATION FOR
5 WHATEVER, WHAT ELSE. HE'S GOT TO PUT MORE OF A FOUNDATION
6 IN THAT QUESTION.

7 THE COURT: I AM GOING TO ALLOW IT. OVERRULE IT.

8 Q WHAT ELSE DID MR. WARE TELL YOU?

9 A HE SAID AFTER WALKER WAS SHOOTING AT THE CAR HE SAID
10 THAT THE CAR STARTED FLIPPING. HE SAID WALKER GOT BACK --
11 WALKER GOT BACK IN THE CAR, LEANED BACK IN THE CAR AND HE
12 TURNED AND HE SAID HE WAS SCARED. HE SAID -- BECAUSE I
13 ASKED HIM WHY DIDN'T HE STOP. I SAID, WHY YOU JUST DIDN'T
14 STOP? HE SAID BECAUSE HE WAS SCARED. HE SAID ALL THEY
15 KNEW IS THEN THE TRUCK STARTED FLIPPING. THEY TURNED
16 AROUND AND HE CAME BACK.

17 Q OKAY. WHAT ELSE DID MR. WARE TELL YOU HAPPENED AFTER
18 HE CAME BACK?

19 A HE JUST SAID THAT WHEN THEY CAME -- WHEN THEY WENT
20 BACK, HE SAID THEY WENT BACK AND WALKER JUMPED OUT OF THE
21 CAR AND SAID, WE HANDLED THAT.

22 Q ALL RIGHT. AS A RESULT OF YOUR CONVERSATION WITH
23 MR. WARE DID HE TELL YOU ANYTHING ELSE ABOUT THIS
24 PARTICULAR SITUATION?

25 A NO, SIR.

1 Q AND BASED ON YOUR TESTIMONY HE NEVER MENTIONED
2 CORNELL TYLER BEING IN THAT CAR?

3 A NO, SIR.

4 Q WHY ARE YOU HERE IN COURT TODAY TELLING PEOPLE THIS?

5 A BECAUSE I HEARD IT FROM -- WELL, I AIN'T GOING TO SAY
6 -- I HEARD IT FROM THE DUDE THAT TOLD ME IN HIS MOUTH. I
7 HEARD IT FROM THE HORSE'S MOUTH.

8 MR. WEEKS: OBJECTION. I COULDN'T UNDERSTAND WHAT HE
9 WAS SAYING. I HEARD IT FROM THE DUDE. I AM NOT SURE WHO
10 THAT WAS.

11 THE WITNESS: WELL, FROM WILLIE WARE'S MOUTH. I'M
12 SORRY.

13 THE COURT: OKAY.

14 Q WHEN YOU SAY YOU HEARD IT, YOU MEAN HIS VERSION OF
15 WHAT HAPPENED?

16 A YES, SIR.

17 Q DID YOU GO TO THE POLICE WITH WHAT HAPPENED?

18 A YES, SIR.

19 Q AND DID YOU -- AND WHAT HAPPENED WHEN YOU WENT TO
20 THEM?

21 A NOTHING.

22 MR. GIPSON: I ASK THE COURT'S INDULGENCE VERY
23 BRIEFLY.

24 THE COURT: YES, SIR.

25 Q ARE YOU RECEIVING ANYTHING FOR YOUR TESTIMONY HERE

1 TODAY?

2 A NO, SIR.

3 Q WHY ARE YOU IN HERE TODAY?

4 A JUST TO MAKE SURE THAT JUSTICE IS SERVED RIGHT HERE,
5 JUST TO MAKE SURE IT DOESN'T HAVE ADD ANOTHER STRIKE TO
6 HIS -- INCRIMINATING SOMEBODY THAT I KNOW DIDN'T DO NO
7 CRIME.

8 Q AND YOU'RE SAYING -- YOU HAVE BEEN IN JAIL BEFORE?

9 A YES, SIR.

10 Q EVEN BEFORE NOW YOU'VE BEEN IN JAIL A FEW TIMES;
11 CORRECT?

12 A CORRECT.

13 Q ALL RIGHT. AND YOU SAID YOU DID WHAT YOU'RE IN JAIL
14 FOR?

15 A YES, SIR.

16 Q ALL RIGHT. SO, WHAT DOES IT MEAN TO YOU IF YOU FEEL
17 THAT SOMEBODY IS BEING WRONGFULLY ACCUSED?

18 MR. WEEKS: OBJECTION, YOUR HONOR, IRRELEVANT.

19 THE COURT: SUSTAINED.

20 MR. GIPSON: I ASK THE COURT'S INDULGENCE VERY
21 BRIEFLY, YOUR HONOR.

22 Q NOW, MR. SMITH -- I GOT ALL OF THESE W'S GOING IN MY
23 HEAD. I AM TRYING TO MAKE SURE I GET IT RIGHT. MR.
24 SMITH, DID ANYBODY MAKE YOU COME FORWARD AND TESTIFY HERE
25 IN COURT TODAY?

1 A NO, SIR.

2 Q DID YOU VOLUNTEER?

3 A YES, SIR.

4 Q OKAY. AND, AGAIN, YOU VOLUNTEERED BECAUSE WHAT?

5 A TO MAKE SURE JUSTICE IS SERVED IN THIS CASE.

6 MR. GIPSON: THAT'S ALL MY QUESTIONS AT THIS TIME,

7 YOUR HONOR.

8 THE COURT: MR. WEEKS?

9 CROSS-EXAMINATION

10 BY MR. WEEKS:

11 Q MR. SMITH, WHERE WERE YOU BEING HOUSED IN THE AIKEN
12 COUNTY DETENTION CENTER?_____

13 A I WAS HOUSED IN A-POD, C-POD, D-POD.

14 Q PRETTY MUCH YOU TOURED THE WHOLE PLACE THEN, DIDN'T
15 YOU?

16 A YES, SIR.

17 Q ALL RIGHT. YOU WERE IN THERE AT SOME POINT WITH
18 CORNELL TYLER, TOO, WEREN'T YOU?

19 A YES, SIR.

20 Q AND ARE YOU RELATED TO MR. TYLER?

21 A NO, SIR.

22 Q AND YOUR PURPOSE IN TALKING TO ME AND MS. BRISBIN WAS
23 ABOUT YOUR CASE, WASN'T IT?

24 A YES, SIR.

25 Q THE ONE THAT YOU PLEAD GUILTY TO?

1 A YES, SIR.

2 Q AND THE ONE THAT YOU'RE SERVING AN EIGHT-YEAR
3 SENTENCE FOR?

4 A YES, SIR.

5 Q AND WHILE WE WERE MEETING WITH YOU YOU WERE GIVING US
6 WRITTEN STATEMENTS FROM YOURSELF ABOUT TWO OR THREE
7 DIFFERENT DEFENDANTS AT THE AIKEN COUNTY JAIL ON VARIOUS
8 CHARGES, WEREN'T YOU?

9 A YES, SIR.

10 Q AND THE WRITTEN STATEMENTS YOU GAVE US WASN'T FROM --
11 WASN'T ABOUT WILLIE WARE. IT WAS FROM EDWARD WALKER,
12 WASN'T IT?

13 A YES, SIR.

14 Q SO, YOU DIDN'T GIVE US ANY KIND OF WRITTEN STATEMENT
15 SAYING WILLIE WARE HAS HAD TOLD YOU ANYTHING, DID YOU?

16 A NO, SIR.

17 Q SO, THE FIRST TIME THAT YOU'VE TOLD ANYBODY -- STACY
18 PRINCE, BILL WEEKS, OR BRENDA BRISBIN -- THIS STORY ABOUT
19 WILLIE WARE IS TODAY, ISN'T IT?

20 A YES, SIR.

21 Q THANK YOU.

22 A CAN I SAY SOMETHING?

23 Q HOW LONG HAD YOU MET -- WHEN DID YOU MEET MR. GIPSON?
24 MR. GIPSON: YOUR HONOR, HE ASKED TO SAY SOMETHING.
25 MR. WEEKS: HE DOESN'T GET TO VOLUNTEER.

1 MR. GIPSON: I THINK HE GETS TO ANSWER A QUESTION.

2 THE COURT: HE CAN ANSWER IF IT'S IN RESPONSE TO

3 MR. WEEKS' QUESTION.

4 THE WITNESS: IT IS IN RESPONSE.

5 THE COURT: ALL RIGHT.

6 MR. GIPSON: THANK YOU, YOUR HONOR.

7 THE WITNESS: THE REASON WHY -- THE REASON WHY -- THE

8 REASON WHY IS BECAUSE WHEN I WROTE THE STATEMENTS ABOUT

9 MR. WALKER THEY DIDN'T DO NOTHING ABOUT IT. THEY DIDN'T

10 FOLLOW IT UP. SO, I FELT THERE WAS NO NEED FOR ME TO SAY

11 ANYTHING ABOUT MR. WARE.

12 Q I SEE. AND YOU DIDN'T GET THE DEAL YOU WERE ASKING

13 FOR EITHER, DID YOU?

14 A IT WASN'T NO DEAL -- IT WASN'T NO DEAL PROPOSED.

15 Q I SEE. NOW, WHEN WAS THE FIRST TIME YOU MET

16 MR. GIPSON?

17 A WHEN WAS IT?

18 Q UH-HUH.

19 A I MET HIM A COUPLE OF MONTHS AGO.

20 Q HOW MANY TIMES DID YOU TALK TO HIM ABOUT THIS

21 STATEMENT SINCE?

22 A TWICE.

23 Q YOU NEVER PUT IT IN WRITING YET, HAVE YOU?

24 A IT WASN'T. NO.

25 MR. WEEKS: NO FURTHER QUESTIONS.

1 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.
2 (WHEREUPON, ON NOVEMBER 30, 2006 THE FOLLOWING
3 PROCEEDINGS WERE HELD:)

4 THE COURT: MR. GIPSON, YOU MAY CALL YOUR NEXT
5 WITNESS.

6 MR. GIPSON: I'D LIKE TO CALL CORNELL TYLER, JR.

7 THE COURT: MR. TYLER, IF YOU'D PLEASE COME AROUND
8 AND BE SWORN, SIR.

9 CORNELL TYLER, AFTER BEING DULY SWORN, TESTIFIED
10 AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT IN THE WITNESS BOX.
12 STATE YOUR FULL NAME FOR THE COURT AND SPELL YOUR LAST.

13 THE WITNESS: MY NAME IS CORNELL TYLER; T-Y-L-E-R.

14 DIRECT EXAMINATION

15 BY MR. GIPSON:

16 Q GOOD MORNING, MR. TYLER.

17 A GOOD MORNING.

18 Q I THINK BY THIS POINT YOU PROBABLY KNOW WHO I AM.

19 A YES, SIR.

20 Q SO, I WON'T REINTRODUCE MYSELF TO YOU. AT LEAST I
21 HOPE YOU DO. NOW, DO YOU HAVE A NICKNAME, MR. TYLER?

22 A YES, SIR.

23 Q WHAT IS IT?

24 A DEUCE.

25 Q I WILL HAVE TO ASK YOU A SPEAK UP JUST A LITTLE BIT

1 MORE.

2 A DEUCE?

3 Q DEUCE?

4 A YES, SIR.

5 Q WHAT DOES THAT MEAN?

6 A NUMBER TWO. I AM THE JUNIOR OF MY FATHER. SO, I

7 GUESS MY FATHER GAVE ME THAT NAME WHEN I WAS A LITTLE BOY

8 AND EVERYBODY STARTED CALLING ME THAT.

9 Q SPEAK A LITTLE BIT MORE CLEARLY FOR ME. YOU SAID YOU.

10 WERE A JUNIOR?

11 A YES, SIR; FROM MY FATHER.

12 Q ALL RIGHT. AND, SO, SINCE YOU'RE THE JUNIOR MEANING

13 THE SECOND, THAT'S WHERE DEUCE COMES FROM?

14 A YES, SIR.

15 Q HOW OLD ARE YOU, MR. TYLER?

16 A TWENTY-FOUR.

17 Q WHERE ARE YOU YOU FROM?

18 A SPRINGFIELD, SOUTH CAROLINA.

19 Q HAVE YOU BEEN THERE MOST OF YOUR LIFE?

20 A YES, SIR.

21 Q BORN AND RAISED?

22 A YES, SIR.

23 Q ALL RIGHT. DID YOU GO TO SCHOOL THERE?

24 A I WENT TO SCHOOL IN WAGENER, SOUTH CAROLINA.

25 Q WAGENER-SALLEY HIGH SCHOOL?

1 A YES, SIR.

2 Q ALL RIGHT. WHEN DID YOU FINISH WAGENER-SALLEY?

3 A 2001.

4 Q YOU GOT FAMILY IN SPRINGFIELD?

5 A YES, SIR, MOST OF MY FAMILY.

6 Q WHO IS YOUR FAMILY?

7 A WELL, LIKE THE TYLERS, THE WILLIAMS.

8 Q AND ARE YOUR PARENTS HERE IN THE COURTROOM?

9 A YES, SIR.

10 Q AND WHERE ARE THEY?

11 A SITTING RIGHT OVER THERE.

12 Q NOW, TELL US JUST A LITTLE BIT ABOUT YOURSELF. DO

13 YOU WORK?

14 A YES, SIR.

15 Q WHERE DO YOU WORK?

16 A I WORK WITH CLERKEN MCGEE (PHONETIC) CONSTRUCTION

17 COMPANY OUT OF ORANGEBURG.

18 Q OKAY. AND IS THAT THE ONLY JOB -- HOW LONG ARE YOU

19 WITH OR WERE YOU WITH THEM?

20 A I STARTED IN LIKE 2004.

21 Q OKAY. DO YOU HOLD ANY OTHER JOBS OR DID YOU HOLD ANY

22 OTHER JOBS?

23 A YES, SIR, I WORKED WITH MY COUSIN D. BELL. HIS NAME

24 IS ERNEST DARNELL BELL.

25 Q OKAY. WHAT DID YOU DO FOR MR. BELL?

1 A WE WORKED ON CARS. WE'RE LIKE MECHANICS, HOOK UP
2 RADIO SYSTEMS, PUT TRANSMISSIONS IN CARS. ANYTHING REALLY
3 PEOPLE NEED, WE DO.

4 Q OKAY. WOULD THERE BE ANY OTHER JOBS THAT YOU'VE HELD
5 SINCE GRADUATING FROM HIGH SCHOOL?

6 A YES, SIR, A COUPLE OF THEM. I WORKED AT EDISTO TURF
7 AND FARM. I WORKED AT A CAR WASH IN AIKEN -- JOE'S CAR
8 WASH -- AND I WORKED WITH DURRELL PADGETT BRICK MASON
9 COMPANY, MY COUSIN.

10 Q OKAY. AND IN 2005 WERE YOU HOLDING ANY OF THESE
11 JOBS?

12 A YES, SIR.

13 Q WHICH ONES WERE YOU HOLDING IN 2005?

14 A I WAS WORKING WITH DARNELL ERNEST BELL AND CLERKEN
15 MCGEE (PHONETIC).

16 Q NOW, WHAT KIND OF HOURS DID YOU WORK?

17 A I WORKED -- WELL, IT DEPENDED ON -- BECAUSE WE GO
18 AROUND AND WE DO CONSTRUCTION WORK. SO, SOMETIMES WE
19 LEAVE TOWN LIKE IF I AM WORKING IN ORANGEBURG. BUT NINE
20 TIMES OUT OF TEN IT WILL BE EIGHT OR TEN HOURS, FOUR TEN'S
21 OR FIVE EIGHTS.

22 Q FOUR TENS OR FIVE EIGHTS?

23 A YES, SIR.

24 Q WHEN YOU'RE WORKING THOSE SHIFTS WHAT KIND OF TIMES
25 WOULD YOU GET HOME DURING THE EVENING?

1 A KIND OF LATE, ABOUT 5 OR 6 O'CLOCK.

2 Q DO YOU HAVE ANY CHILDREN, MR. TYLER?

3 A YES, SIR.

4 Q CAN YOU TELL THE JURY ABOUT THAT?

5 A I GOT THREE CHILDREN. THEY ARE SIX, FOUR, AND TWO.

6 Q AND ARE YOU CURRENTLY TAKING CARE OF THOSE CHILDREN?

7 A YES, SIR.

8 Q NOW, WHERE WERE YOU LIVING IN AUGUST OF 2005?

9 A 344 UNION ACADEMY ROAD.

10 Q WAS ANYBODY LIVING AT THAT ADDRESS WITH YOU?

11 A YES, SIR, ME AND MY BROTHER. I HAD LET JOHNNY MILES

12 STAY FOR ABOUT A WEEK.

13 Q OKAY. WHY DID YOU LET JOHNNY MILES STAY THERE?

14 A HE GOT FIRED FROM HIS JOB AND I WANTED TO -- YOU

15 KNOW, HE WAS A FRIEND OF THE FAMILY. HE ASKED ME COULD HE

16 STAY FOR A LITTLE WHILE. I SAID, YEA, I CAN LET YOU STAY

17 UNTIL YOU GET ON YOUR FEET. I WILL HELP YOU OUT.

18 Q AND, SO, YOU SAID HE STAYED THERE FOR ABOUT A WEEK OR

19 SO?

20 A YES, SIR.

21 Q NOW, TELL US -- YOU SAID YOUR BROTHER ALSO LIVES

22 THERE?

23 A YES, SIR.

24 Q ALL RIGHT. TELL US ABOUT YOUR BROTHER.

25 A WELL, MY BROTHER -- HE GOT LIKE A MENTAL PROBLEM. HE

1 HAD THAT SINCE HE GROWED UP. SO, I WATCH OVER HIM AND
2 MAKE SURE HE DON'T GET IN TROUBLE AND STUFF. HE IS KIND
3 OF SLOW. HE IS 26 AND GOT THE MIND OF LIKE A TEN-YEAR-OLD
4 AND I LEARNED THAT THROUGH MY MOTHER TAKING HIM THROUGH
5 SCHOOL AND THEN THROUGH SCHOOL HE RIDE A DIFFERENT TYPE OF
6 BUS AND THE DIFFERENT TYPE OF CLASSROOMS. SO, I KNEW
7 SOMETHING. YOU KNOW, I KNEW LIKE HE HAD A LITTLE PROBLEM.

8 Q AND HE LIVES IN THAT HOME -- YOU ALL LIVE IN THAT
9 HOME TOGETHER; IS THAT CORRECT?

10 A YES, SIR.

11 Q ALL RIGHT. NOW, TELL US A LITTLE BIT ABOUT THE
12 LIVING ARRANGEMENTS WHEN YOU SAID MR. MILES WAS THERE AS
13 WELL. TELL US A LITTLE BIT ABOUT THE LIVING ARRANGEMENTS.
14 I WAS REMODELING MY HOUSE AT THE TIME, BUT I HAD THE BACK
15 ROOM -- THAT'S MY ROOM AND THE MASTER BEDROOM THAT'S ON
16 THE FAR SIDE OF THE TRAILER AND MY BROTHER AND JOHNNY
17 MILES SLEEP IN THE LIVING ROOM.

18 Q AND WERE THERE ANY OTHER ROOMS IN THE HOUSE?

19 A YES, SIR. THERE WERE TWO MORE OTHER ROOMS IN THE
20 BACK.

21 Q OKAY. WHAT WAS IN THOSE ROOMS?

22 A WELL, THE SECOND ROOM HAD A BED, BUT MY BROTHER'S
23 ROOM IN THE BACK -- HE JUST HAD JUNK BACK THERE LIKE
24 T.V.'S AND V.C.R.'S. I WASN'T FINISHED WITH HIS ROOM
25 REMODELING. SO, HE COULDN'T REALLY SLEEP BACK THERE.

1 Q OKAY. NOW, DO YOU REMEMBER THE DATES OF APRIL 26 --
2 EXCUSE ME, AUGUST 26 AND AUGUST 27?

3 A YES, SIR.

4 Q ALL RIGHT. WILL YOU TELL US GENERALLY WHAT WAS GOING
5 ON IN THE EVENING OF THE 26TH AND THEN WE'LL LEAD INTO THE
6 27TH?

7 A WELL, THE 26TH STARTED OUT --

8 Q WELL, LET ME ASK YOU THIS, IF I CAN, BEFORE YOU DO
9 THAT.

10 A YES, SIR.

11 Q WAS THERE ANYTHING PARTICULAR THAT BRINGS YOUR
12 ATTENTION BACK TO THAT SERIES OF DATES?

13 A YES, SIR.

14 Q WHAT IS IT? WHAT BRINGS YOUR ATTENTION BACK TO THAT?

15 A TO THE 27TH?

16 Q YES, SIR.

17 A WELL, LATE THAT NIGHT ABOUT 11 O'CLOCK I HAD A FRIEND
18 CAME OVER. HER NAME IS MISTY. BEFORE SHE WAS GOING TO
19 CLUB VERDIS SHE CAME BY MY HOUSE. ME AND MY BROTHER WAS
20 PLAYING THE PLAY STATION.

21 Q OKAY. NOW, YOU SAID THE CLUB VERDIS. WHAT IS CLUB
22 VERDIS?

23 A IT IS ON 302. IT IS ABOUT 10 OR 15 MINUTES FROM MY
24 HOUSE.

25 Q ALL RIGHT. SO, YOU AND YOUR BROTHER -- MISTY CAME BY

1 AND YOU AND YOUR BROTHER WERE PLAYING THE PLAY STATION?

2 A YES, SIR.

3 Q WHAT WERE YOU PLAYING ON THE PLAY STATION?

4 A WHAT WERE WE PLAYING?

5 Q YES, SIR.

6 A MADDEN '05.

7 Q I'M SORRY?

8 A MADDEN '05 FOOTBALL GAME.

9 Q FOOTBALL GAME. WHO IS YOUR TEAM?

10 A MY TEAM?

11 Q YES, SIR.

12 A BUCCANEERS.

13 Q ARE YOU ANY GOOD?

14 A I AM ALL RIGHT. MY BROTHER IS A LITTLE BETTER THAN
15 ME.

16 Q ALL RIGHT. SO, YOU'RE PLAYING MADDEN '05?

17 A YES, SIR.

18 Q ALL RIGHT. WHAT HAPPENED FROM THERE?

19 A WELL, MISTY CAME BY AND SHE SAID HOW ABOUT GO TO THE
20 CLUB? I SAID, WELL, OKAY, THAT'S ALL RIGHT. SHE ASKED ME
21 COULD SHE COME BY LATER ON THAT NIGHT AFTER SHE LEAVES THE
22 CLUB. I SAID, WELL, YEA, YOU CAN COME BY. I'LL PROBABLY
23 WAKE UP WHEN YOU KNOCK ON THE DOOR. SO, SHE SAID OKAY.
24 THEN SHE LEFT. MY BROTHER CONTINUED PLAYING THE GAME. SO
25 SHE CAME ABOUT LIKE 11, ABOUT 12. SO, SHE LEFT. MY

1 BROTHER CONTINUED PLAYING THE GAME. I WENT TO SLEEP.

2 THEN I HEARD A KNOCK ON MY DOOR.

3 Q ABOUT WHAT TIME WOULD THAT HAVE BEEN?

4 A I WOULD SAY THAT WAS PROBABLY ABOUT THREE SOMETHING,
5 CLOSE TO FOUR.

6 Q DO YOU HAVE A CLOCK IN THE HOUSE, A WATCH, ANYTHING
7 LIKE THAT?

8 A MY CELLPHONE.

9 Q OKAY. ALL RIGHT.

10 A BUT I HAD IT ON THE CHARGER MOST OF THE TIME.

11 Q OKAY. NOW, WHAT HAPPENED WHEN YOU HEARD THE KNOCK AT
12 THE DOOR? WHAT DID YOU DO NEXT?

13 A I WOKE UP. I THOUGHT THAT WAS MY FRIEND COMING BACK,
14 BUT IT WAS EDWARD WALKER CAME TO MY DOOR. HE KNOCKED ON
15 MY DOOR. HE ASKED ME -- HE WAS LIKE -- HE CALLED ME DEUCE
16 AND HE SAID, DEUCE, WHAT ARE YOU DOING? I AM CHILLING.
17 WHAT ARE YOU DOING AT MY HOUSE THIS LATE AT NIGHT? YOU
18 KNOW WHAT I MEAN? I GOT MY BROTHER HERE. I GOT JOHNNY
19 MILES. HE SAID, NO, I NEED TO BORROW SOME MONEY. WHEN HE
20 FIRST GOT OUT OF PRISON I LET HIM BORROW \$20 TO GET HIS
21 LITTLE SON SOME DIAPERS AND STUFF AND LOOK OUT FOR HIM
22 BECAUSE I KNOW THAT HE NEEDED SOME HELP. SO, I GAVE HIM
23 \$20. I SAID, WELL, YOU NEED TO LEAVE. HE ASKED COULD HE
24 USE THE BATHROOM. I SAID, NO, YOU CAN'T USE THE BATHROOM.
25 HIM AND MY BROTHER -- Y'ALL AIN'T REALLY GETTING ALONG

1 ABOUT THIS LITTLE GIRL THAT I DON'T KNOW WHAT THAT'S
2 ABOUT. SO, HE NEEDED TO LEAVE. SO, HE WALKED OUT THE
3 DOOR. I CLOSED THE DOOR. I WENT BACK IN MY BEDROOM. I
4 LAID DOWN ABOUT 30-SOMETHING SECONDS. I STARTED HEARING
5 GUN SHOTS.

6 Q NOW, YOU SAID -- SO, MR. WALKER WENT OUTSIDE?

7 A YES, SIR.

8 Q AND YOU CLOSED THE DOOR?

9 A YES, SIR, AFTER I TOLD HIM TO LEAVE.

10 Q ALL RIGHT. DID YOU GO OUTSIDE ON THE PORCH BEFORE
11 THAT POINT?

12 A NO, SIR. I STOOD ~~IN THE~~ DOORWAY TALKING TO HIM.

13 Q OKAY. AND YOU SAID AT THAT POINT YOU LEFT -- EXCUSE
14 ME; YOU TOLD HIM TO LEAVE AND YOU WENT BACK?

15 A YES, SIR. HE ASKED TO USE THE BATHROOM.

16 Q SO, CONTINUE. WHAT HAPPENED NEXT?

17 A SO, AFTER I TOLD HIM TO LEAVE I WENT BACK TO MY ROOM.
18 I LAID DOWN, AND I HEARD SOME SHOTS. SO, I THOUGHT, WELL,
19 MAYBE THAT COULD BE SOMEBODY HUNTING OR ANYTHING. SO, I
20 DIDN'T REALLY THINK THAT SOMETHING WAS REALLY GOING ON.

21 Q WHY WOULD YOU -- EXCUSE ME. WHY WOULD YOU THINK THAT
22 WAS SOMEBODY HUNTING?

23 A BECAUSE AROUND MY NEIGHBORHOOD THERE IS A LOT OF
24 HUNTING GOING ON.

25 Q OKAY. AND, SO, YOU SAY YOU HEARD SHOTS AND THOUGHT

1 MAYBE THAT WAS WHAT WAS GOING ON?

2 A YES, SIR.

3 Q ALL RIGHT. WHAT HAPPENED NEXT?

4 A SO, AFTER I HEARD THE SHOTS I GOT UP. I KIND OF
5 STOOD STILL. I SAID, WELL, LET ME GO OUT THERE AND CHECK
6 AND SEE DO I SEE ANYTHING. ABOUT THE TIME I GOT TO THE
7 DOOR I AIN'T SEE NOBODY. SO, I CLOSED THE DOOR BACK.
8 JOHNNY MILES WOKE UP LIKE YOU HEARD THAT. I WAS LIKE,
9 YEA, BUT I DON'T SEE NOBODY. SO, MAYBE IT COULD BE
10 SOMEBODY HUNTING. SO, I WENT BACK, LAID DOWN.

11 ABOUT THREE TO FOUR MINUTES LATER I HEARD ANOTHER
12 KNOCK COME BACK ON MY DOOR REAL HARD. BOOM, BOOM, BOOM,
13 BOOM. SO, I GETS UP. I OPENED THE DOOR. I SAID, WHAT'S
14 UP? IT IS WALKER. HE SAID, MAN, YOU NEED TO LEAVE.

15 MR. WEEKS: OBJECTION.

16 THE COURT: SUSTAINED.

17 Q YOU CAN TELL WHAT YOU SAID BUT NOT WHAT SOMEBODY ELSE
18 SAID.

19 A NO, THAT'S -- WELL, I GOT UP. I WENT TO THE DOOR.
20 IT WAS WALKER.

21 Q ALL RIGHT.

22 A HE SAID, YOU NEED TO LEAVE FROM AROUND HERE.
23 SOMETHING JUST HAPPENED. I TRIED TO ASK HIM WHAT
24 HAPPENED. HE WOULDN'T TELL ME.

25 Q WHAT DID YOU DO AS A RESULT OF MR. WALKER COMING TO

1 YOUR DOOR?

2 A I TOLD HIM TO LEAVE. HE SAID SOMETHING HAPPENED.

3 MR. WEEKS: OBJECTION.

4 MR. GIPSON: YOU CAN'T TELL US WHAT HE SAID. WHAT
5 DID YOU DO AS A RESULT OF WHAT MR. WALKER -- OR YOUR
6 CONVERSATIONS WITH MR. WALKER?

7 THE WITNESS: WHEN HE LEFT?

8 Q YES, SIR.

9 A OKAY. I WENT BACK TO MY ROOM. I THOUGHT -- I GOT MY
10 BROTHER AND JOHNNY MILES. I SAID, MAN, WALKER SAID WE
11 NEED TO LEAVE AROUND HERE OR SOMETHING LIKE THAT. I DON'T
12 KNOW WHAT HAPPENED, BUT JUST IN CASE SOMETHING DID HAPPEN
13 WE MIGHT JUST NEED TO LEAVE AND BE SAFE ON THE SAFE SIDE.
14 WE HEARD THE SHOTS. WE DON'T KNOW WHO THEY'RE INTENDED
15 FOR OR WHAT. SO, JOHNNY MILES GOES OUTSIDE. I DON'T KNOW
16 WHAT HE DID, AND MY BROTHER -- WE GET READY. SO, BY THAT
17 TIME MY FRIEND CAME BACK FROM THE CLUB. SHE PULLS UP. I
18 SAID, COULD YOU TAKE US SOMEWHERE? SHE SAID, WHERE? I
19 SAID, FAMILY. WHICH JOHNNY MILES -- THAT'S HIS NICKNAME.
20 I SAID, CAN YOU TAKE US SOMEWHERE? DO YOU KNOW SOMEWHERE
21 WE CAN GO? HE SAID, YEA, I GOT A FAMILY MEMBER IN AIKEN.
22 SHE IS MY NIECE.

23 Q WHEN YOU SAID HE YOU'RE TALKING ABOUT JOHNNY MILES?

24 A YES, SIR.

25 Q OKAY. AND YOU'RE SAYING JOHNNY MILES TOLD YOU YOU

1 COULD GO TO HIS NIECE'S HOUSE?

2 A YES, SIR.

3 Q WHY DID YOU FEEL LIKE YOU NEEDED TO GO TO SOMEBODY'S
4 HOUSE?

5 A AFTER WALKER TOLD ME THAT I NEEDED TO LEAVE AND I
6 HEARD SHOTS I KIND OF FIGURED SOMETHING HAD HAPPENED
7 INSTEAD OF THE HUNT WAS GOING ON.

8 Q WHY DIDN'T YOU JUST PICK UP THE PHONE AND CALL
9 SOMEBODY?

10 A WELL, MY CELLPHONE -- IT AIN'T GOT A GOOD REACH FROM
11 MY HOUSE. I HAVE TO WALK UP AND DOWN THE DIRT ROAD TO GET
12 A GOOD SIGNAL. SO, ~~BY THE TIME~~ I WAS GOING TO DO THAT MY
13 FRIEND HAD DROVE UP.

14 Q OKAY. SO, WHAT DID YOU DO NEXT?

15 A SO, WE GOT IN THE TRUCK WITH MY FRIEND. WE HEADED
16 TOWARDS AIKEN. I ASKED JOHNNY MILES -- I SAID, DO YOU
17 THINK THAT WE NEED TO STAY AT YOUR NIECE'S HOUSE FOR A
18 LONG TIME OR DO WE NEED TO MAKE OTHER ARRANGEMENTS TO
19 LEAVE FROM THERE? HE SAID, WELL, MAYBE, I DON'T KNOW YET.
20 I SAID, WELL, LET ME TRY TO CALL MY UNCLE.

21 Q NOW, WHAT KIND OF TIME PERIOD ARE WE TALKING ABOUT?
22 I MEAN, ARE WE TALKING ABOUT 20 MINUTES? ARE WE TALKING
23 ABOUT A COUPLE OF HOURS? WHAT KIND OF TIME PERIOD ARE WE
24 TALKING ABOUT?

25 A TIME PERIOD OR FOR WHAT, SIR.

1 Q FROM THE TIME YOU LEFT THE SPRINGFIELD AREA AND YOU
2 WENT TO JOHNNY MILES' NIECE'S HOUSE?

3 A HOW LONG IT TOOK TO GET THERE?

4 Q YES, SIR.

5 A IT PROBABLY TOOK ABOUT 30 MINUTES.

6 Q OKAY. HOW LONG WERE YOU AT HIS NIECE'S HOUSE?

7 A WELL, WE WENT -- I CALLED MY UNCLE FIRST. I COULDN'T
8 GET NO ANSWER. I LEFT A MESSAGE ON HIS PHONE SAYING I
9 MIGHT NEED TO COME UP THERE AND CHILL WITH YOU FOR A
10 LITTLE WHILE.

11 Q OKAY.

12 A SO, WE STAYED THERE UNTIL ABOUT 8 O'CLOCK THAT
13 MORNING. ABOUT 7 -- ABOUT 7 OR 8 WE WENT TO SLEEP.

14 Q WHY DIDN'T YOU CALL 9-1-1? WHY DIDN'T YOU CALL THE
15 POLICE? WHY DIDN'T YOU DO SOMETHING ELSE IF YOU FELT LIKE
16 SOMETHING WRONG HAD HAPPENED OUT THERE?

17 A BECAUSE I REALLY DIDN'T KNOW WHAT HAPPENED, AND I
18 DIDN'T WANT TO PUT MY NAME INVOLVED IN SOMETHING THAT I
19 DIDN'T KNOW WHAT HAPPENED, AND I COULDN'T REALLY TELL THEM
20 NOTHING, AND I AM KIND OF SCARED OF THE POLICE ANYWAY IF I
21 WAS TO CALL THEM AND DIDN'T KNOW NOTHING.

22 Q SO, DID YOU EVER LEARN ANYTHING ABOUT SOMETHING
23 HAPPENING OUT THERE -- SOME KIND OF INCIDENT HAPPENING OUT
24 IN AND AROUND THERE? NOT IN YOUR HOUSE, BUT AROUND YOUR
25 HOME AND AROUND THAT AREA?

1 A YES, SIR.

2 Q WHAT DID YOU COME TO LEARN?

3 A I LEARNED THAT SOMEBODY HAD GOT SHOT AND KILLED.

4 Q AND WITHOUT TELLING ME IF SOMEBODY TOLD YOU THAT, DID
5 YOU LEARN THAT FROM CONVERSATION?

6 A CONVERSATION.

7 Q YOU LEARNED IT FROM CONVERSATION?

8 A YES, SIR, ON MY PHONE.

9 Q AFTER LEARNING THAT SOMEONE HAD BEEN SHOT AND KILLED
10 WHY DIDN'T YOU GO TO THE POLICE THEN?

11 A WELL, I GOT NERVOUS BECAUSE AFTER I LEARNED THAT THE
12 POLICE WERE AROUND IN MY AREA LIKE AROUND MY HOUSE THEN I

13 LEARNED THAT THEY WAS, BASICALLY, TRYING TO SAY I HAD
14 SOMETHING TO DO WITH IT. I AIN'T HAD NOTHING TO DO WITH
15 THIS. SO, WHY ARE THEY LOOKING FOR ME?

16 Q BUT IF YOU DIDN'T HAVE ANYTHING TO DO WITH IT, WHY
17 DIDN'T YOU JUST GO AND TELL THE PLACE I DIDN'T HAVE
18 ANYTHING TO DO WITH THIS?

19 A BECAUSE I WAS AFRAID.

20 Q AFRAID OF WHAT?

21 A AFRAID OF WHAT THEY MIGHT TRY TO SAY OR DO TO ME
22 THINKING THAT I HAD SOMETHING TO DO WITH A MURDER. I
23 DON'T BE IN TROUBLE. I DON'T GET IN TROUBLE. I DON'T
24 HANG AROUND TROUBLED PEOPLE LIKE THAT.

25 Q SO, WHAT DID YOU DO NEXT?

1 A SO, NEXT AFTER I HEARD?

2 Q YES, SIR.

3 A JOHNNY MILES SAID, MAN, I GOT A FRIEND THAT MIGHT
4 COULD TAKE YOU IF YOU NEED TO GO -- OR US. I SAID, WELL,
5 CALL HIM UP. SO, HE CALLED HIS FRIEND. WE LEFT HIS
6 HOUSE. HE TOOK ME TO MY UNCLE IN ROCK HILL.

7 Q WHY DID YOU GO ALL OF THE WAY TO ROCK HILL, SOUTH
8 CAROLINA?

9 A I WANTED TO CLEAR MY MIND AND TALK TO MY FAMILY
10 MEMBERS JUST IN CASE SOMETHING HAD REALLY HAPPENED THAT I
11 NEEDED TO GET ME COUNSEL OR LAWYER, TO HIRE ME A LAWYER.
12 SO, THAT'S WHAT I DID. I TALKED TO MY MAMA. I SAID,
13 MAMA, LOOK, WE NEED TO GET A LAWYER BECAUSE I AIN'T
14 NOTHING TO DO WITH WHAT PEOPLE ARE SAYING HAPPENED, AND I
15 WANTED TO PROVE MY INNOCENCE. I WANTED TO COME AT LEAST
16 FIGHT TO COME TO COURT AND AT LEAST TELL THE FAMILY
17 BECAUSE I KNEW I COULDN'T TALK TO THE FAMILY WITHOUT
18 CONTROVERSY IF MY NAME IS PUT IN SOMETHING.

19 SO, I WANTED TO COME TO COURT TO BE ABLE TO SHOW THAT
20 I AIN'T HAD NOTHING TO DO WITH THIS AND I AIN'T GOT NO
21 VIOLENCE. I WANT TO TELL THE FAMILY JUST LIKE I AM ON THE
22 STAND NOW I AM SORRY ABOUT WHAT HAPPENED. I AM VERY
23 SORRY, BUT FROM THE BOTTOM OF MY HEART I DIDN'T DO THAT.
24 I AIN'T GOT NOTHING TO DO WITH THAT. PEOPLE ARE LYING ON
25 ME. THAT IS JUST LIKE ANYBODY GET IN A SITUATION THEY

1 WILL LIE AND COME TO JAIL AND BRAG ABOUT IT. THEY'LL TELL
2 EVERYBODY ABOUT THE CRIME, BUT THEY DON'T WANT TO DO THEIR
3 TIME, AND I THINK THAT'S NOT RIGHT FOR PEOPLE TO BE ALL IN
4 THE JAILHOUSE BRAGGING ABOUT KILLING SOMEBODY AND PUTTING
5 MY NAME IN IT TO COVER UP WHAT THEY DID.

6 Q DID YOU HAVE A GUN THAT NIGHT?

7 A NO, SIR.

8 Q DID YOU SHOOT ANYBODY THAT NIGHT?

9 A NO, SIR.

10 Q OR MORE ACCURATELY THAT MORNING?

11 A NO, SIR.

12 Q DID YOU SHOOT DEBRA DORCH?

13 A NO, SIR.

14 Q DID YOU SHOOT JOE BREWER?

15 A NO, SIR.

16 Q DID YOU SHOOT AT DEBRA DORCH?

17 A NO, SIR.

18 Q DID YOU SHOOT AT JOE BREWER?

19 A NO, SIR.

20 Q WERE YOU IN WILLIE WARE'S CAR?

21 A NO, SIR.

22 Q WHY ARE WE SUPPOSED TO BELIEVE THAT YOU WEREN'T IN
23 THAT CAR?

24 A WELL, AS THE JURY CAN SEE, FOR ONE, MR. BREWER SAID
25 HE SAW TWO PEOPLE IN THE CAR. FOR TWO, IF I WAS TO BE

1 AROUND ANYTHING OR ANY TYPE OF LEVEL LIKE THAT SOME KIND
2 OF EVIDENCE WOULD BE ON ME. I DON'T MATTER IF -- LIKE A
3 FOOTPRINT THAT THEY FOUND THAT WASN'T MINE. A HUNDRED
4 FINGERPRINTS ON THE CAR THAT WASN'T MINE. GUNPOWDER
5 RESIDUE ON MY HAND -- THEY DIDN'T GET NONE. LYING
6 STATEMENTS. PEOPLE COMING TO COURT SAYING ONE THING, AND
7 THEN WHEN YOU PLAY THE TAPE IT IS A WHOLE DIFFERENT STORY.

8 Q ARE YOU ON THIS STAND RIGHT NOW TO TELL THE TRUTH?

9 A YES, SIR.

10 Q I AM STILL TRYING TO UNDERSTAND IF YOU DIDN'T DO
11 ANYTHING WRONG THEN WHY LEAVE AIKEN, SOUTH CAROLINA?

12 A A LOT WENT THROUGH MY MIND. YOU KNOW, ~~I WAS~~ SCARED.

13 I WAS VERY NERVOUS. I HAVE NEVER BEEN IN TROUBLE. YOU
14 KNOW, I'M THINKING IF SOMEBODY PUT MY NAME INVOLVED IN
15 SOMETHING LIKE THIS, I AIN'T NEVER GET OUT NO MORE. I AM
16 SCARED. I AM THINKING I CAN'T NEVER COME BACK HOME FROM A
17 CHARGE LIKE THIS. I GOT THREE KIDS I LOVE. I TAKE CARE
18 OF THEM. I PAY CHILD SUPPORT FOR TWO OF THEM. I HAVE MY
19 LITTLE BABY DAUGHTER. SHE WAS SIX MONTHS AT THE TIME. MY
20 SONS -- THEY COME AROUND MY HOUSE. MY LITTLE DAUGHTER
21 COMES TO MY HOUSE. I DON'T HAVE NO WEAPONS AROUND BECAUSE
22 KIDS LIKE TO PLAY. MY MOTHER DROPPED MY LITTLE SISTER OFF
23 SOMETIMES AND I KEEP HER.

24 Q HOW OLD IS YOUR LITTLE SISTER?

25 A SHE IS ABOUT EIGHT.

1 Q LET ME ASK YOU THIS. WHAT DID YOU DO NEXT AFTER YOU
2 WENT TO ROCK HILL, SOUTH CAROLINA FOR A WHILE? WHAT
3 HAPPENED NEXT?

4 A I HAD A FRIEND TO CALL ME AND WE TALKED FOR ABOUT TEN
5 MINUTES, AND I TOLD HIM, I SAID, MAN, I AIN'T HAD NOTHING
6 DO WITH THIS. I SAID, I CALLED MY LAWYER. SO I AM GOING
7 TO COME BACK AND FIGHT THIS. SO, HE SAID, YOU NEED A
8 RIDE? I SAID, YEA, COME PICK ME UP. SO, HE CAME AND
9 PICKED ME UP. WE STAYED IN COLUMBIA FOR A LITTLE WHILE.
10 MY MAMA AND MY DADDY GOT MY LAWYER AND I GOT MY GIRLFRIEND
11 TO CALL INVESTIGATOR CAIN. I SAID, WELL, LOOK, CALL
12 INVESTIGATOR CAIN AND LET HIM KNOW THAT I AM COMING TO
13 TURN MYSELF IN BECAUSE I AIN'T HAD NOTHING TO DO WITH
14 THIS. SHE CALLED INVESTIGATOR CAIN ABOUT THREE DAYS BACK
15 TO BACK. INVESTIGATOR CAIN WAS TELLING HER, TELL HIM TO
16 TURN HIMSELF IN AND DO THE RIGHT THING.

17 Q DON'T TELL US WHAT INVESTIGATOR CAIN SAID. DID YOU
18 COME BACK TO AIKEN, SOUTH CAROLINA?

19 A YES, SIR.

20 Q WHO DID YOU COME BACK TO AIKEN, SOUTH CAROLINA WITH?

21 A WHO DID I COME BACK FROM COLUMBIA TO AIKEN COUNTY
22 WHICH?

23 Q WHEN YOU CAME BACK TO AIKEN -- LET'S SCRATCH THAT
24 QUESTION IF WE CAN AND START OVER. YOU CAME BACK TO
25 AIKEN, SOUTH CAROLINA?

1 A YES, SIR.

2 Q WHAT WAS YOUR PURPOSE?

3 A TO TURN MYSELF IN.

4 Q DID YOU TURN YOURSELF IN?

5 A YES, SIR.

6 Q WHO WAS WITH YOU?

7 A MY FATHER, MY LAWYER, SHERIFF MICHAEL HUNT, DETECTIVE
8 STACY PRINCE, AND SOME MORE DETECTIVES.

9 Q OKAY. BUT YOU CAME BACK HERE AND YOU TURNED YOURSELF
10 IN?

11 A YES, SIR.

12 Q OKAY. THEY DIDN'T PICK YOU UP ON THE SIDE OF THE
13 ROAD SOMEWHERE?

14 A NO, SIR.

15 Q THEY DIDN'T PICK YOU UP IN THE WOODS SOMEWHERE HIDING
16 IN THE BLACK HILLS OF NORTH CAROLINA, DID THEY?

17 A NO, SIR. ACTUALLY, THEY GOT THE PHONECALL TO KNOW
18 THAT I WAS TURNING MYSELF IN.

19 Q OKAY. AND YOU DID WHAT YOU SAID YOU WERE GOING TO
20 DO?

21 A YES, SIR.

22 Q WHY SHOULD THE JURY COME IN HERE TODAY AND BELIEVE
23 THAT YOU HAD NOTHING TO DO WITH ALL OF THESE ACTIVITIES
24 THAT ARE PLACED AROUND YOUR PROPERTY?

25 A WELL, BECAUSE I AM NOT A VIOLENT PERSON. I WENT TO

1 SCHOOL ALL MY LIFE. I TOOK CARE OF MY KIDS, AND I HAD MY
2 KIDS AT AN EARLY AGE WHEN I WAS STILL PLAYING FOOTBALL IN
3 SCHOOL. I COULD HAVE WENT TO COLLEGE AND PLAYED FOOTBALL,
4 BUT MY KIDS' MOTHER SAID SHE THINK IT WOULD BE BETTER IF I
5 STAYED HOME AND HELP TAKE CARE OF THE KIDS SO I COULD SIT
6 AS THE DADDY.

7 SO, I AM NOT A VIOLENT PERSON. I GOT NO RECORD. ALL
8 I DID WAS WORK AND TRY TO HELP PEOPLE TO THE BEST OF MY
9 KNOWLEDGE. I DON'T GET IN TROUBLE. I DON'T LIKE
10 VIOLENCE. I DON'T EVEN LIKE GUNS. NOBODY KNOWS NOT TO
11 HAVE A GUN AROUND ME BECAUSE I DON'T LIKE -- ANY ACCIDENT
12 COULD HAPPEN BETWEEN A GUN AND I AM NOT A VIOLENT PERSON.

13 ALL I DID WAS WORK. I STARTED WORKING SINCE I WAS 15
14 YEARS OLD EVERY SUMMER. I DON'T BE IN THE STREETS. I
15 WORK. MY FATHER BOUGHT MY FIRST CAR. I PUT THE FIRST
16 SYSTEM IN IT.

17 Q WHAT DO YOU MEAN WHEN YOU SAY SYSTEM?

18 A LIKE STEREO SYSTEM. A LOT OF SPEAKERS AND STUFF LIKE
19 THAT.

20 Q ARE YOU GUILTY OF THE CRIME THAT YOU'RE CHARGED WITH?

21 A NO, SIR.

22 MR. GIPSON: I'D LIKE TO ASK THE COURT'S INDULGENCE
23 ONE MOMENT, YOUR HONOR.

24 PLEASE ANSWER ANY QUESTIONS -- WELL, ONE LAST
25 QUESTION. IS THERE ANYTHING ELSE THAT YOU THINK THIS

1 COURT NEEDS TO KNOW AND THIS JURY NEEDS TO KNOW ABOUT THIS
2 PARTICULAR SITUATION?

3 THE WITNESS: YES, SIR.

4 Q NOT WHAT SOMEBODY SAID.

5 A YES, SIR.

6 Q BUT ABOUT THIS SITUATION THAT YOU'RE IN COURT FOR?

7 A YES, SIR.

8 Q WHAT IS THAT?

9 A I DON'T THINK IT'S FAIR FOR YOU TO HAVE TWO PEOPLE IN
10 JAIL BRAGGING ABOUT WHAT THEY DID TELLING PEOPLE THAT
11 THEY'RE GOING TO PUT THE BLAME ON SOMEBODY ELSE AND
12 BRAGGING THAT THEY KILLED SOMEBODY AND I GOT TO COME TO
13 COURT TODAY WHEN HE SHOULD BE SITTING IN THIS SEAT. I
14 DON'T THINK THAT'S RIGHT. I HAVE BEEN IN JAIL FOR 15
15 MONTHS. MY KIDS -- SINCE I'VE BEEN IN JAIL THEY DON'T
16 HAVE REALLY A STABLE HOME. I MISSED TWO CHRISTMASES WITH
17 THEM, TWO BIRTHDAYS -- SOMETHING I NEVER MISSED BEFORE. I
18 NEVER MISSED CHRISTMAS BEFORE ON THE STREETS.

19 I DON'T THINK IT IS FAIR FOR ME TO BE COMING TO COURT
20 TODAY WITH THE SOLICITORS AND THE INVESTIGATORS SEEING IT
21 IS NOT NO EVIDENCE ON ME. SO, IF IT'S NOT NO EVIDENCE,
22 THAT SHOULD GO TO SHOW YOU THAT SOMETHING IS NOT RIGHT.
23 THEN YOU PUT THREE PEOPLE ON THE STAND THAT CLAIM THEY SAW
24 THIS, BUT WHEN YOU PLAY THE STATEMENTS IT'S A WHOLE
25 DIFFERENT STORY FROM A YEAR TO NOW. YEA, TRUE, YOU'RE

1 GOING TO GET ON THE STAND AND SAY WHEN I AM GOING TO COURT
2 AND SAY I DID ALL OF THIS BECAUSE YOU THINK YOU'RE GOING
3 TO GO HOME. YOU ARE TELLING EVERYBODY IN JAIL, OH, I AM
4 GOING HOME IN DECEMBER BECAUSE YOU FEEL LIKE I AM GOING TO
5 GET CONVICTED TODAY. THE WHOLE JAIL -- MAN, THESE CATS
6 SAY THEY'RE ABOUT TO GO HOME AFTER YOU GO TO JAIL. I
7 SAID, THAT AIN'T TRUE. I SAID, BECAUSE I AM GOING TO COME
8 AND FIGHT AND LET THE FAMILY KNOW AND THE JURY KNOW AND
9 THE JUDGE AND EVERYBODY IN THIS COURTROOM THAT I HAD
10 NOTHING TO DO WITH THAT SHOOTING THAT NIGHT.

11 I'M SORRY, MR. BREWER. I'M SORRY TO MS. DORCH'S
12 FAMILY. I HAD NOTHING TO DO WITH THAT. MY PRAYERS GO OUT
13 TO Y'ALL EVERY NIGHT. MY MOTHER, MY FATHER -- THEY RAISED
14 ME RIGHT. I WENT TO CHURCH. I SUNG ON THE CHOIR. I HAD
15 NO PROBLEM GOING TO CHURCH. I BELIEVE IN GOD AND JESUS
16 CHRIST, HIS SON THAT DIED FOR OUR SINS. I BELIEVE IN
17 THAT, AND BY ME PUTTING MY HAND ON THE BIBLE I REALLY DO
18 TAKE THAT SERIOUSLY. WHEN YOU'RE SPEAKING ABOUT THE
19 BIBLE, THAT'S VERY SERIOUS. WHEN YOU'RE SPEAKING ABOUT
20 THE TRUTH, THAT'S SERIOUS.

21 I AM NOT NO TROUBLEMAKER. ALL I DID WAS WENT TO
22 SCHOOL, GO TO CHURCH. JUST LIKE NOW I AM IN JAIL NOW. I
23 STILL DO THE SAME THING. I STILL PRAY. I STILL ASK THE
24 LORD TO SOFTEN Y'ALLS HEARTS TO LET Y'ALL REALLY SEE
25 WHAT'S GOING ON AND NOT JUST WHAT PEOPLE HEAR, BUT TO SEE

1 BECAUSE WHAT PEOPLE SAY YOU SHOULD HAVE SOMETHING TO
2 FOLLOW UP WHAT YOU SAY. AIN'T NO WAY THAT YOU'RE GOING TO
3 SAY SOMETHING AND IT'S NOTHING TO ADD UP TO WHAT YOU SAY.
4 YOU CAN'T SAY ONE PLUS ONE IS THREE AND YOU KNOW IT'S TWO,
5 AND I THINK IT'S JUST NOT FAIR FOR A GUY TO BE IN PRISON
6 OR BE IN THE COUNTY JAIL BRAGGING ABOUT HE IS ABOUT TO GO
7 HOME AND I DO THE REST OF MY LIFE IN PRISON AND AS SOON AS
8 HE HITS THE STREET HE IS OUT THERE BRAGGING AGAIN TELLING
9 EVERYBODY, OH, HE DONE GOT AWAY. I THINK THAT'S NOT FAIR.

10 Q SO --

11 A I THINK THAT THE BREWER FAMILY AND MS. DORCH'S FAMILY
12 NEEDS TO REALLY CONSIDER AND REALLY LISTEN TO WHAT IS
13 REALLY GOING ON AND WHAT HAPPENED. I HAD NOTHING TO DO
14 WITH THAT.

15 Q SO, YOU SAY ALL THOSE THINGS TO SAY YOU'RE NOT GUILTY
16 OF WHAT YOU'RE CHARGED WITH?

17 A I AM NOT GUILTY. I AM NOT GUILTY. I AM NOT GUILTY.
18 MR. GIPSON: PLEASE ANSWER ANY QUESTIONS THAT MR.
19 WEEKS HAS FOR YOU.

20 CROSS-EXAMINATION

21 BY MR. WEEKS:

22 Q DID YOU HAVE A CELLPHONE ON AUGUST 27 OF '05?

23 A YES, SIR.

24 Q AND I THINK YOU SAID IT WASN'T WORKING?

25 A NO. I SAID MY AREA --- I HAVE TO BE IN CERTAIN AREAS

1 TO TRY TO CALL. I CAN CALL SOMEBODY, BUT THE PHONE WILL
2 JUST DIE DOWN. BECAUSE OF THE AREA I HAVE TO WALK DOWN
3 THE ROAD TO REALLY TALK LIKE I WANT TO.

4 Q DID YOU GET THROUGH THE DISCOVERY PROCESS COPIES OF
5 ALL OF THE PHONE RECORDS AND EVERYTHING FROM YOUR
6 CELLPHONE? DID YOU SEE THOSE WITH YOUR LAWYER?

7 A NO, SIR.

8 Q CAN YOU READ, MR. TYLER?

9 A YES, SIR.

10 Q WOULD YOU TELL ME WHOSE PHONE RECORDS THOSE ARE IF
11 YOU RECOGNIZE THEM?

12 A THE PHONE RECORDS? WHERE ARE THEY AT, SIR?

13 Q THAT IS THIS. THESE ARE THE PHONE NUMBERS THAT WERE
14 CALLED.

15 A OKAY. ACCOUNT HISTORY SUMMARY, CORNELL TYLER.

16 Q DID YOU HAVE A CELLPHONE AT THAT TIME?

17 A YES, SIR.

18 Q DO YOU RECOGNIZE ANY OF THOSE NUMBERS CALLED? IT
19 WOULD BE ON THE RIGHT SIDE.

20 MR. GIPSON: MAY I APPROACH, YOUR HONOR?

21 THE COURT: YES, SIR.

22 THE WITNESS: WHERE ARE THE NUMBERS THAT ARE BEING
23 CALLED, SIR?

24 Q MY QUESTION IS --

25 MR. GIPSON: I HAVE A BRIEF OBJECTION. MAY WE

1 APPROACH FOR A BRIEF MOMENT?

2 THE COURT: SURE.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

4 MR. GIPSON: I'LL WITHDRAW MY OBJECTION, YOUR HONOR.

5 THE COURT: YOU MAY PROCEED, MR. WEEKS.

6 (WHEREUPON, STATE'S EXHIBIT NO. 52 WAS MARKED FOR
7 IDENTIFICATION ONLY.)

8 Q ONCE AGAIN, I HAND YOU WHAT'S MARKED JUST FOR
9 IDENTIFICATION AS STATE'S EXHIBIT NO. 52, I THINK. CAN
10 YOU OR CAN YOU NOT IDENTIFY WHAT'S CONTAINED IN THOSE
11 PAPERS?

12 A NO, SIR. I DON'T REALLY SEE OR RECOGNIZE ANY OF THE
13 NUMBERS.

14 Q YOU DON'T RECOGNIZE ANY OF THE NUMBERS?

15 A I RECOGNIZE SOME DOWN TO THE BOTTOM. YES, SIR.

16 Q WELL, LET ME ASK YOU THIS. DO YOU REMEMBER HOW MANY
17 TIMES YOU USED YOUR CELLPHONE ON AUGUST 22, 2005?

18 A IT DEPENDS ON WHAT TIME YOU'RE TALKING ABOUT.

19 Q WELL, I'M TALKING ABOUT FROM ABOUT 12 MIDNIGHT TO
20 11 O'CLOCK THAT NIGHT?

21 A FROM TWELVE?

22 Q MIDNIGHT ON THE 27TH OR THE 26TH UNTIL MIDNIGHT THE
23 NEXT NIGHT.

24 A TWENTY-SIXTH ALL THE WAY THROUGH THE 27TH?

25 Q UH-HUH.

1 A YES, SIR. I GOT A LOT OF PHONECALLS.

2 Q YOU GOT A LOT OF PHONECALLS?

3 A YES, SIR.

4 Q ALL DURING THE NIGHT?

5 A NO, NOT THE NIGHT OF THE 26TH TO THE 27TH. NO, SIR.

6 Q WELL, FROM 4 O'CLOCK IN THE MORNING ON THE 27TH UNTIL
7 MIDNIGHT OF THE 27TH DO YOU HAVE AN ESTIMATE AS TO HOW
8 OFTEN YOU USED YOUR CELLPHONE?

9 A NOT THAT MUCH, SIR.

10 Q NOT THAT MUCH. AND BY MIDNIGHT OF THAT NIGHT YOU
11 WERE IN NORTH CAROLINA, WEREN'T YOU?

12 A BY MIDNIGHT? NO, SIR.

13 Q WHEN DID YOU GET TO NORTH CAROLINA WITH YOUR UNCLE
14 EARL?

15 A I GOT UP THERE -- I LEFT FROM JOHNNY MILES' NIECE'S
16 HOUSE AT ABOUT 8:30 OR 9 O'CLOCK THAT MORNING. I GOT TO
17 NORTH CAROLINA ABOUT 12 OR 1 O'CLOCK THAT NOON.

18 Q SO, YOU WERE FROM 4 O'CLOCK IN THE MORNING UNTIL
19 12 O'CLOCK OR 1 O'CLOCK THAT NOON YOU HAD ALREADY LEFT THE
20 STATE OF SOUTH CAROLINA AND WERE IN NORTH CAROLINA?

21 A YES, SIR, FROM LEAVING FROM THAT NIGHT. I WOKE UP.
22 YES, SIR.

23 Q AND IT WAS YOU AND YOUR BROTHER, WASN'T IT?

24 A YES, SIR.

25 Q AND JOHNNY MILES, WASN'T IT?

1 A AND JOHNNY MILES.

2 Q AND YOU WERE RUNNING FROM THE LAW, WEREN'T YOU?

3 A NO, SIR.

4 Q WHAT WERE YOU RUNNING FROM, MR. MILES -- I MEAN,
5 MR. TYLER?

6 A SIR, I WAS AFRAID.

7 Q YEA. YOU WERE AFRAID?

8 A YES, SIR.

9 Q SO, YOU WERE RUNNING BECAUSE YOU WERE AFRAID?

10 A I WASN'T RUNNING, I GUESS. I WASN'T RUNNING, SIR. I
11 TURNED MYSELF IN.

12 Q YEA. SEVENTEEN DAYS LATER AFTER THIS EVENT -- IT WAS
13 ON SEPTEMBER 13, WASN'T IT?

14 A YES, SIR.

15 Q AFTER YOU HAD HIRED A LAWYER?

16 A YES, SIR.

17 Q AFTER YOU HAD CLEANED UP YOUR HOUSE?

18 A CLEANED UP WHAT HOUSE, SIR? I DIDN'T CLEAN.

19 Q YOUR HOUSE. YOU NEVER WENT BACK TO YOUR HOUSE AFTER
20 THAT?

21 A NO, SIR.

22 Q NOBODY WENT BACK TO YOUR HOUSE AFTER THAT?

23 A NO, SIR; NOT THAT I KNOW OF.

24 Q OKAY. DOES MAINE HAVE ANY GUNS?

25 A NO, SIR.

1 Q NONE WERE AT THE HOUSE THAT NIGHT?

2 A NO, SIR.

3 Q AND YOU HEARD SHOTS. WHERE DID THOSE SHOTS COME
4 FROM?

5 A THEY SOUND LIKE FROM EITHER THE WOODS IN FRONT OF MY
6 HOUSE. IT WAS DIRECTLY IN FRONT OF MY HOUSE.

7 Q AND IT WAS A NUMBER OF SHOTS, WASN'T IT?

8 A YES, SIR.

9 Q DO YOU KNOW ANYTHING AT ALL ABOUT HUNTING, MR. TYLER?

10 A YES, SIR.

11 Q WHO IS GOING TO BE HUNTING AT 4 O'CLOCK IN THE
12 MORNING WITH A NUMBER OF SHOTS IN FRONT OF YOUR HOUSE?

13 A I DON'T KNOW, SIR. I HEAR SHOTS ALL THE TIME.

14 Q AND YOU JUST WENT BACK TO SLEEP?

15 A I LAID BACK DOWN. I AIN'T WENT BACK TO SLEEP, SIR.

16 Q YOU LIVE IN A TRAILER?

17 A YES, SIR.

18 Q YOU WEREN'T CONCERNED AT ALL ABOUT YOUR BROTHER WHO
19 YOU HAVE BEEN PROTECTING ALL OF THESE YEARS?

20 A YEA, I WAS CONCERNED, SIR.

21 Q BUT YOU DIDN'T DO ANYTHING?

22 A BUT I AIN'T THOUGHT NOTHING WAS HAPPENING AT THAT
23 TIME OF THE MORNING BUT HUNTING.

24 Q IT WAS DARK, WASN'T IT?

25 A YES, SIR.

1 Q OKAY.

2 A DEER HUNTING DON'T BE IN THE DARK, SIR?

3 Q I KNOW A LOT ABOUT DEER HUNTING, MR. TYLER.

4 A IT DON'T BE IN THE DARK SOMETIMES?

5 Q NOT IN MY NECK OF THE WOODS.

6 A OH, OKAY.

7 Q NOW, YOU WENT TO NORTH CAROLINA AND YOU BOUGHT NEW
8 CLOTHES, DIDN'T YOU?

9 A NO, SIR.

10 Q WELL, WHEN DID YOU PACK YOUR CLOTHES AND EVERYTHING
11 TO GO ON THIS TWO-WEEK TRIP?

12 A ~~I DIDN'T HAVE TIME TO PACK MY CLOTHES.~~

13 Q SO, YOU HAD TO BUY CLOTHES, DIDN'T YOU?

14 A NO, SIR.

15 Q WELL, WHAT DID YOU WEAR IN NORTH CAROLINA?

16 A I WASHED MY CLOTHES OUT.

17 Q YOU WASHED THEM OUT?

18 A YES, SIR.

19 Q CLEANED THEM UP, DIDN'T YOU?

20 A YES, SIR. I WAS TOO NERVOUS.

21 Q YEA, I SUPPOSE --

22 A I COULD -- AND, SIR, I CALLED THE LAWYER.

23 Q I'M SURE YOU DID.

24 A I TURNED MYSELF IN, SIR. IF I HAD ANYTHING TO HIDE,
25 I WOULDN'T BE HERE TODAY IN TRIAL.

1 Q I UNDERSTAND THAT THAT IS WHAT YOUR STORY IS TODAY;
2 IS THAT CORRECT?

3 A SIR?

4 Q YOU HIRED A LAWYER?

5 A YES, SIR.

6 Q YOU CALLED A NUMBER OF LAWYERS, DIDN'T YOU?

7 A YES. WELL, MY FAMILY WAS DOING MOST OF IT.

8 Q AND ALL THIS TIME YOU WERE CLEARING YOUR MIND, IF I
9 UNDERSTAND IT; RIGHT?

10 A YES, SIR.

11 Q YOU WERE ALSO CLEARING YOUR CLOTHES OF ANY GUNSHOT
12 RESIDUE, WEREN'T YOU?

13 A NO, SIR.

14 Q WHEN DID YOU LEARN ABOUT GUNSHOT RESIDUE?

15 A SIR, I DON'T KNOW NOTHING ABOUT GUNSHOT UNTIL I CAME
16 TO JAIL.

17 Q OKAY. NOW, YOUR BROTHER WAS ASLEEP ON THE COUCH
18 WASN'T HE?

19 A YES, SIR.

20 Q AND JOHNNY MILES --

21 A HIM AND MR. MILES.

22 Q AND JOHNNY MILES -- HE KIND OF WAS IN THE MIDDLE
23 BEDROOM, WASN'T HE?

24 A NO, SIR. HE WAS ON THE COUCH.

25 Q DID JOHNNY MILES HAVE A SHOTGUN?

1 A NOT THAT I KNOW OF, SIR.

2 Q OKAY. BUT NO QUESTION HEAD WALKER CAME TO THE HOUSE
3 AND WANTED TO COME IN AND SEE YOU ABOUT SOMETHING?

4 A YES. HE WANTED TO BORROW SOME MONEY, I GUESS, FOR
5 HIS SON.

6 Q YOU TOLD HIM TO GET THE HELL OUT OF THERE, DIDN'T
7 YOU?

8 A I TOLD HIM, IT IS TOO LATE. WHAT ARE YOU DOING HERE?
9 I STILL GAVE HIM \$20. HE ASKED ME COULD HE USE THE
10 BATHROOM. I TOLD HIM NO.

11 Q YOU TOLD HIM BECAUSE HE AND MAINE HAD HAD
12 ALTERCATIONS BEFORE. MAINE IS NOT ALTOGETHER RIGHT?

13 A NO, SIR.

14 Q THAT HE NEEDED TO GET OUT OF THERE, DIDN'T HE?

15 A SIR?

16 Q THAT HE NEEDED TO GET OUT OF THERE?

17 A YES, SIR. YES, SIR. YES, SIR.

18 Q NOW, HOW DID HE GET THERE?

19 A MR. WALKER?

20 Q UH-HUH.

21 A WITH HIS COUSIN.

22 Q DID YOU SEE ANYBODY ELSE?

23 A NO, SIR.

24 Q YOU KNOW SEAWRIGHT, DON'T YOU?

25 A I KNOW HIM.

1 Q WAS HE THERE?

2 A I AIN'T SEEN HIM.

3 Q YOU DIDN'T SEE HIM THE WHOLE NIGHT?

4 A NO, SIR.

5 Q AND YOU KNOW HIS COUSIN WILLIE WARE?

6 A YES, SIR.

7 Q WHAT KIND OF CAR DID MR. WARE HAVE?

8 A HE GOT A BUICK REGAL.

9 Q REGAL?

10 A YES, SIR.

11 Q OKAY. AND IT WAS OUT THERE THAT NIGHT?

12 A YES, SIR; PARKED IN THE FRONT.

13 Q EARLIER IN THE NIGHT YOU KIND OF HAD A PARTY THERE OR
14 SOMETHING, HADN'T YOU? HADN'T THERE BEEN A BUNCH OF
15 PEOPLE AT YOUR HOUSE?

16 A I HAD A COOKOUT, SIR.

17 Q A COOKOUT? BUNCH OF PEOPLE AROUND YOUR YARD?

18 A I HAD ABOUT TEN PEOPLE.

19 Q OKAY. HOW LONG DID IT TAKE YOU TO CALL YOUR MAMA
20 AFTER YOU LEFT YOUR HOUSE THAT MORNING?

21 A WELL, HOW LONG IT TOOK FOR MY MOTHER TO CALL ME.

22 Q OKAY.

23 A SHE CALLED ME THAT MORNING.

24 Q OKAY. AND SHE CALLED YOU THAT MORNING AND TOLD YOU
25 THAT SOMEBODY HAD DIED, DIDN'T SHE?

1 A WELL, YES, SIR.

2 Q AND YOU PROCEEDED TO NORTH CAROLINA FOR TWO WEEKS?

3 WELL, IT WAS MORE THAN TWO WEEKS, WASN'T IT?

4 A I WASN'T IN NORTH CAROLINA BUT A DAY.

5 Q OH.

6 A AND I CAME BACK TO COLUMBIA.

7 Q AND HID IN A MOTEL, DIDN'T YOU?

8 A I STAYED IN A MOTEL. I DIDN'T HIDE.

9 Q WELL, IF YOU WEREN'T HIDING, THEN WHO WERE YOU
10 CALLING?

11 A LAWYERS.

12 Q LAWYERS... OKAY.

13 A AND INVESTIGATORS.

14 Q OKAY.

15 A MR. CAIN, AS A MATTER OF FACT. HE KNEW I WAS COMING
16 TO TURN MYSELF IN. SHERIFF MICHAEL HUNT KNEW I WAS COMING
17 TO TURN MYSELF IN. STACY PRINCE KNEW I WAS COMING TO TURN
18 MYSELF IN. MR. PRINCE WAS PRESENT. I SHOOK HIS HAND, AS
19 A MATTER OF FACT -- HIM AND MR. MICHAEL HUNT.

20 Q MR. TYLER, THERE IS NOT A DISPUTE THAT YOU TURNED
21 YOURSELF IN.

22 A YES, SIR. SO, IF I DID ANYTHING, MR. WEEKS, WHY
23 WOULD I HAVE TURNED MYSELF IN? I COULD HAVE BEEN IN
24 JAMAICA, CALIFORNIA.

25 Q WELL, LET'S TALK ABOUT THAT. MR. MILES CAME BACK TO

1 AIKEN, DIDN'T HE?

2 A YES, SIR.

3 Q AND DO YOU THINK SOMETIME MR. MILES MIGHT HAVE LET IT
4 LEAK WHERE YOU WERE AT? YOU DON'T THINK THE POLICE WERE
5 RIGHT ON YOUR TAIL UP IN COLUMBIA?

6 A THEY KNEW WHERE I WAS. I WAS LETTING THEM KNOW.

7 Q YOU WERE LETTING THEM KNOW THAT YOU WERE GOING TO
8 TURN YOURSELF IN.

9 A YES, SIR.

10 Q OKAY.

11 A THE WHOLE TIME.

12 Q THIS IS THE 13TH OF SEPTEMBER?

13 A YES, SIR.

14 Q AFTER YOU'VE HAD PLENTY OF TIME TO TALK TO LAWYERS
15 AND INVESTIGATORS AND THAT SORT OF STUFF?

16 A I AIN'T HAD PLENTY OF TIME, SIR. IT TOOK ME A COUPLE
17 OF DAYS TO GET MY MIND BACK ON AT LEAST HALFWAY DECENT.
18 THIS IS A MURDER THAT YOU'RE TALKING ABOUT, MR. BILL
19 WEEKS. IT IS SOMETHING VERY SERIOUS. THIS IS MY LIFE ON
20 THE LINE.

21 Q MR. TYLER, YOU TOOK YOUR BROTHER AND YOU TOOK JOHNNY
22 MILES TO NORTH CAROLINA, DIDN'T YOU?

23 A I DIDN'T TAKE THEM. JOHNNY MILES GOT A FRIEND TO
24 TAKE US.

25 Q JOHNNY MILES GOT HIS FRIEND TO TAKE Y'ALL TO NORTH

1 CAROLINA?

2 A TO ROCK HILL, SIR.

3 Q THIS IS THE JOHNNY MILES THAT'S HAVING TO LIVE AT
4 YOUR HOUSE BECAUSE HE CAN'T PAY HIS BILLS?

5 A WELL, HE COULD PAY HIS BILLS. HE JUST GOT FIRED FROM
6 HIS JOB. HE NEEDED SOMEWHERE TO STAY BECAUSE I GUESS HE
7 WAS STAYING IN ONE OF HIS BOSS'S TRAILERS.

8 Q WHAT WAS HE DOING FOR YOU WHILE HE STAYED THERE?

9 A WELL, HE WOULD WORK WITH ME AND DARNELL AT THE SHOP,
10 ERNEST BELL. HE'LL FEED MY DOGS -- MY REGISTERED PIT
11 BULLS.

12 Q AND DID YOU HAVE THOSE REGISTERED PIT BULLS AT YOUR
13 HOUSE?

14 A I HAD A COUPLE OF THEM, SIR.

15 Q ALL RIGHT. AND DID YOU LEAVE THEM THERE THAT NIGHT
16 AND GO TO NORTH CAROLINA?

17 A YES, SIR.

18 Q HOW DID YOU MAKE ARRANGEMENTS TO TAKE CARE OF YOUR
19 REGISTERED PIT BULLS?

20 MR. GIPSON: OBJECT TO THE RELEVANCE, YOUR HONOR.

21 THE COURT: OVERRULED. IT IS CROSS EXAMINATION.

22 Q HOW DID YOU MAKE ARRANGEMENTS TO TAKE CARE OF YOUR
23 REGISTERED PIT BULLS WHILE YOU WERE IN NORTH CAROLINA?

24 A I DIDN'T MAKE ARRANGEMENTS, SIR.

25 Q YOU JUST LEFT THEM THERE?

1 A YES, SIR.

2 Q HOW MANY DID YOU HAVE?

3 A I HAD ABOUT THREE TO FOUR THERE AT THE TIME.

4 Q HOW MANY DID YOU OWN?

5 A I OWNED ALL OF THEM.

6 Q AT THE TIME?

7 A I OWN ABOUT TEN.

8 Q WAS MILES FEEDING ALL OF THOSE FOR YOU?

9 A YES, SIR.

10 Q WHO DID YOU MAKE ARRANGEMENTS WITH TO FEED YOUR DOGS
11 WHILE YOU CLEARED YOUR MIND IN NORTH CAROLINA?

12 A MY OTHER DOGS WAS AT MY UNCLE'S HOUSE. MY UNCLE
13 TAKES CARE OF THEM FOR ME, TOO. I HAD TWO DIFFERENT YARDS
14 BECAUSE I HAD FEMALES AND MALES BECAUSE I DIDN'T WANT ALL
15 OF THEM TO BE AROUND EACH OTHER IN CASE THEY GET LOOSE AND
16 SOMETHING OCCASIONALLY HAPPEN.

17 Q NOW, YOU KNOW JAMES GLEATON, DON'T YOU?

18 A YES, SIR.

19 Q HE IS YOUR COUSIN OR BEST FRIEND?

20 A YEA, I KNOW HIM FROM LIVING IN MY NEIGHBORHOOD. YES,
21 SIR.

22 Q HE SAID YOU'RE HIS BEST FRIEND. ARE YOU HIS BEST
23 FRIEND?

24 A WE ARE FRIENDS. I AIN'T GOING TO SAY BEST, BUT WE'RE
25 FRIENDS.

1 Q AND HE STAYS UP ON WINDSOR ROAD?

2 A YES, SIR.

3 Q AND DO YOU KNOW A GUY NAMED SLUGGER?

4 A YES, SIR.

5 Q GOES BY SLUGGER?

6 A YES. HIS NAME IS JAMES ROBINSON, SIR.

7 Q AND DO YOU KNOW A GUY RONNIE B.?

8 A RONNIE?

9 Q RONNIE B.

10 A RONNIE G.

11 Q RONNIE G.

12 A RONNIE MILLER, SIR.

13 Q HE IS THE ONE THAT CAME UP TO COLUMBIA AND BROUGHT
14 YOU BACK DOWN HERE, WASN'T HE, OR WENT TO NORTH CAROLINA
15 AND BROUGHT YOU TO COLUMBIA, WASN'T HE?

16 A YES, SIR, HE PICKED ME UP.

17 Q OKAY. AND RATHER THAN BRING YOU BACK WAGENER OR
18 BRING YOU BACK TO YOUR MOTHER'S HOUSE HE TOOK YOU TO A
19 MOTEL IN COLUMBIA?

20 A NO. HE TOOK ME STRAIGHT TO COLUMBIA, SIR.

21 Q AND WHERE DID YOU STAY IN COLUMBIA?

22 A TO A MOTEL.

23 Q NO QUESTION THAT THE SHOOTING WAS ABOUT 4 O'CLOCK IN
24 THE MORNING THAT YOU HEARD?

25 A YES, SIR.

1 Q AND THERE IS NO QUESTION THAT JOHNNY MILES WAS THERE
2 AND WILLIE WARE OR WALKER'S COUSIN?

3 A AND WALKER.

4 Q NOW, DID YOU HEAR ANY OTHER VEHICLES THAT NIGHT?

5 A NO, SIR. I JUST -- AFTER I HEARD THE SHOTS I HEARD
6 LIKE ONE VEHICLE LIKE TOOK OFF.

7 Q IS THERE ANY REASON YOU CAN THINK OF WALKER WOULD
8 WANT TO PROTECT YOUR HOUSE?

9 A NO, SIR.

10 Q MR. TYLER, YOU SAID YOU TURNED YOURSELF IN AFTER YOU
11 TALKED TO THE LAWYERS AND HIRED A LAWYER?

12 A AND INVESTIGATORS, SIR.

13 Q AND INVESTIGATORS. AND YOU CAME UP AND YOU SAID
14 SOMETHING ABOUT SHAKING MR. PRINCE'S HAND WHEN YOU TURNED
15 YOURSELF IN?

16 A MR. PRINCE, SHERIFF MICHAEL HUNT, AND THE
17 INVESTIGATOR.

18 Q SO, WHY WERE YOU SO SCARED OF THE POLICE THAT YOU HAD
19 TO HIDE OUT IN NORTH CAROLINA AND COLUMBIA?

20 A BECAUSE I HEARD THEY WAS LOOKING FOR ME ON A MURDER
21 CHARGE, SIR, AND I WAS WANTED DEAD OR ALIVE.

22 Q DEAD OR ALIVE?

23 A YES, SIR.

24 Q AND THEN WHEN I GOT UP -- WHEN THE LAWYER WAS TELLING
25 ME THAT IT'S ONE OF THEM VERY TRIGGER-HAPPY, SO BE SAFE.

1 THAT'S WHY HE CAME UP THERE.

2 Q OKAY.

3 A YES, SIR.

4 Q NOW, NEXT DOOR IF YOU'RE LOOKING OUT YOUR FRONT DOOR
5 MR. FRONTIS WILLIAMS LIVES NEXT DOOR, DOESN'T HE?

6 A YES, SIR.

7 Q AND WOULD THAT, STATE'S EXHIBIT NO. 49, BE A PICTURE
8 OF THE FRONT OF YOUR HOUSE --

9 A YES, SIR.

10 Q -- ON OR ABOUT AUGUST 27 OF '05?

11 A YES, SIR.

12 Q OKAY. AND IS THAT THE FRONT YARD WHERE YOU HAD YOUR
13 COOKOUT?

14 A YES, SIR.

15 Q OKAY.

16 A THE GRILL IS STILL RIGHT THERE.

17 Q HUH?

18 A THE GRILL IS STILL RIGHT THERE.

19 Q THE WHAT STAYED RIGHT THERE?

20 A THE GRILL.

21 Q THE GRILL STAYED RIGHT THERE ON THE CORNER?

22 A YES, SIR.

23 Q OKAY. IS THAT YOUR FOUR-WHEELER IN THE FRONT?

24 A YES, SIR.

25 Q AND THIS ROAD, STATE'S EXHIBIT NO. 31, IS A PICTURE

1 Q AND YOU NEVER TOLD HIM THIS STORY?

2 A NO, SIR. WELL, ACTUALLY, SIR, WHEN HE CAME INTO THE
3 POD I TOLD MS. PERRY THAT MR. SMITH IS INVOLVED IN MY CASE
4 BECAUSE HE ALREADY WROTE THE STATEMENT BEFORE I CAME TO
5 JAIL, SIR, TO THE INVESTIGATORS. I CAME TO JAIL SEPTEMBER
6 13. THE INVESTIGATOR STACY PRINCE GOT THE STATEMENT ON
7 THE 13TH. SO, THE STATEMENT HAD TO DONE CAME BEFORE I
8 CAME TO JAIL. SO, I ALREADY KNEW HE WAS INVOLVED IN THE
9 CASE FROM THE PRELIMINARY HEARING. SO, WHEN HE CAME TO MY
10 POD I TOLD MS. PERRY -- I SAID, YOU NEED TO GET HIM OUT OF
11 THE POD BECAUSE HE IS INVOLVED IN MY CASE. YES, SIR.

12 Q BUT HE WAS STILL THERE A MONTH WITH YOU?

13 A YES, SIR.

14 MR. WEEKS: THANK YOU. NO FURTHER QUESTIONS.

15 MR. GIPSON: I HAVE NO QUESTIONS, YOUR HONOR.

16 THE COURT: THANK YOU MR. TYLER. YOU MAY STEP DOWN.

17 (END OF REQUESTED PORTIONS OF TRANSCRIPT OF RECORD.)

18

19

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25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
PARTIAL TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
AIKEN COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF NOVEMBER,
2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MARCH 12, 2007

LISA H. HICKLIN, COURT REPORTER

VOLUNTARY STATEMENT

Time 11:04 Date Oct 03 2015

Page 1 of 2 pages

Location where statement was obtained IN CAR

Name James Edward Gleaton DOB [REDACTED] SS [REDACTED]

Address [REDACTED] City [REDACTED] State [REDACTED] Zip [REDACTED]

I completed the 12 grade in school, and CAN CANNOT read and write. (Circle one)

X JG
ON August 27, 2015 at approximately 3:00 in the morning. I James Gleaton were at John Hartwell house. John and I heard a gun shot. We didn't pay it any mind because this happens a lot. I heard a car coming at a high rated speed so I went to have a look. The first vehicle had just pass but I notice a green car coming at a high rated speed also so assume the 1st vehicle was racing. I thought it was my car but after further observation I realize it was Willie Ware car. I did not see who was driving nor anyone hanging on top nor out of the sun roof. When the car went further down Windsor Road there were several gun shots. Maybe a minute or so Willie Ware car can back pass at a high rated speed. I then left John Hartwell house and walk home when James Green pick me up and carry me to my house. X JG

I have read or have had read to me this statement consisting of 1 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 11:15 a.m./ p.m. on the Monday day of Oct 03, 20 05.

James E. Gleaton
Signature of person giving voluntary statement

INV. 6497
Witness

Witness

I have been given a copy of this statement consisting of 1 pages.

Initials of person making statement: X JG

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

The State of South Carolina,

Plaintiff,

-vs-

Cornell Tyler, Jr.,

Defendant.

IN THE GENERAL SESSIONS COURT
IN THE SECOND JUDICIAL CIRCUIT

Case Nos.: H874288; H874278
2006-~~65~~-02-550

MOTION FOR CHANGE OF VENUE

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

NOV 09 2007

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Barbara Higgins
Deputy Clerk

To: THE HONORABLE J. MICHELLE CHILDS

The Defendant, Mr. Cornell Tyler, respectfully moves for a change of venue pursuant to S.C. Code Annotated 17-21-80, which allows the removal of a criminal case to another county in the same circuit whenever there is a finding that a fair and impartial trial cannot be had in the county where such action or prosecution commenced. Fair is defined as not exhibiting any bias and therefore reasonable.¹ Impartial is defined as having no direct involvement or interest and not favoring one person or side more than another.²

The Defendant's alleged criminal actions have been vehemently publicized in newspaper articles and roughly criticized in the newspaper's editorials and blogs. The highly negative nature of these disseminations has tainted a large group of potential jurors. These publications have included talks of the victim's kind nature and the loving family she left behind along with close coverage of the Defendant's first trial in Aiken County. These things, combined, have made Aiken County a place where the Defendant will not be able to receive a fair and impartial trial. Many potential jurors will have heard or read some damning information related to this case and have developed unreasonable and biased feelings toward the Defendant. The citizens of Aiken

¹ <http://encarta.msn.com/dictionary/fair.html>

² <http://encarta.msn.com/dictionary/1861620336/impartial.html>

FILED *November 9* 2007
Liz Godard
C.C.P. & G.S.
Barbara Higgins
Deputy Clerk

County have a direct involvement or interest in not favoring the Defendant because of the status of the individual murdered, the family that was publicly left behind because of the murder, and the gruesome nature and justification proposed by the prosecution of the crime.

Respectfully submitted,



Byron Gipson, Esquire
Attorney for Defendant
130 Centre Street
Post Office Box 1825
Orangeburg, SC 29115
(803) 536-9610

November 9, 2007
Orangeburg, South Carolina

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SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE GENERAL SESSIONS COURT
IN THE SECOND JUDICIAL CIRCUIT

The State of South Carolina,

Plaintiff,

-vs-

Cornell Tyler, Jr.,

Defendant.

Case Nos.: 2006-GS-02-550; 2006-GS-02-551
2006-GS-02-552

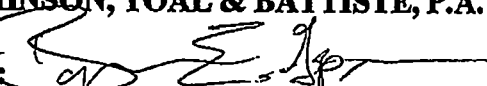
PROPOSED WITNESS LIST

Proposed witnesses for Defendant, Cornell Tyler, Jr.:

1. Cornell Tyler, Jr.
2. Monroe Danley
3. Marsha Blizzard
4. Mr. Whetstone
5. Mr. McAllister
6. Willie D. Smith
7. Frank Buckett
8. Mr. Hartley
9. Kendall Seawright
10. James Gleaton
11. Ira Parnell (SLED)
12. Edward Walker
13. Fredrick Scott
14. James Gleaton
15. Kisha Scott
16. W. ~~Guines~~

Respectfully submitted,

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

Byron E. Gipson, Esquire
Attorney for Defendant
Post Office Box 1825
130 Centre Street
Orangeburg, South Carolina 29116
(803)536-9610

Orangeburg, South Carolina

January 7 2008

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2013-CP-02-02859

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 17, 2013. Respondent submitted its Return on July 29, 2014. An evidentiary hearing was convened on January 24, 2017, at the Bamberg County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the April 2006 term of the Aiken County Grand Jury for Murder (2006-GS-02-552), Assault and Battery with Intent to Kill (2006-GS-02-551), and Possession of Firearm or Knife During Commission of Or Attempt to Commit a Violent Crime (2006-GS-02-550). Byron Gipson, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was convicted as indicted. On January 10, 2008 Judge Newman sentenced Applicant to thirty year term of imprisonment for Murder, twenty year term of imprisonment for Assault with Intent to Kill, and five year term of

imprisonment for Possession of Weapon During Commission of Violent Crime, with all sentences to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf by Robert M. Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Cornell D. Tyler, Op. No. 2012-UP-448 (Ct. App. filed July 18, 2012). The Remittitur was issued on February 21, 2013.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate all of the facts and circumstance surrounding my case."

Applicant filed an amended application on December 20, 2016, claiming the following additional allegations:

1. Ineffective assistance of trial counsel for failure to effectively prepare and investigate prior to trial.
2. Ineffective assistance of trial counsel for failure to obtain and/or communicate plea offers to Applicant.
3. Ineffective assistance of trial counsel for seating two jurors exposed to media thus resulting in the Court's denial of the change of venue motion.
4. Ineffective assistance of trial counsel for failure to utilize witnesses at trial.
5. Ineffective assistance of trial counsel for failure to properly utilize defense witnesses at trial. Alternatively, newly discovered evidence and/or prosecutorial misconduct regarding witness James Gleaton.
6. Ineffective assistance of trial counsel for failure to fully impeach and cross-examine the State's witnesses and failure to pursue matters of

prosecutorial misconduct alluded to in cross-examination and closing argument.

7. Ineffective assistance of trial counsel for failure to object to expert testimony that exceeded the expert's area of qualified expertise. Transcript pp. 417-419.
8. Ineffective assistance of trial counsel for failure to fully develop an alibi defense and request an alibi charge at trial.
9. Ineffective assistance of counsel for failure to make contemporaneous objections to the State's closing argument.
10. Ineffective assistance of trial counsel for failure to object to the trial judge's failure to use the permissive inference language approved in State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), during the charge to the jury.
11. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal; specifically, but not limited to trial counsel's arguments regarding venue and the "hand of one" charge.
12. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Marcia Blizzard, Andrew McAllister, Joseph Savitz, Kaliah Felder, Tremain Tyler, James Gleaton, and Trial Counsel Byron Gipson (hereinafter "Trial Counsel"). Respondent presented testimony from Solicitor John Williams Weeks, Jr.

Marcia Blizzard testified that she is an art teacher at Busbee Corbett Elementary-Middle School in Aiken County, and Applicant is a former student of hers. She stated that she was called to testify at Applicant's first trial, which ended in a mistrial, as a character witness. She testified that Applicant was a good student in school. She stated that she was not contacted to testify at Applicant's second trial, at which he was convicted, but she would have been willing to testify.

Andrew McAllister testified that he is a retired educator from Aiken County and he was formerly an assistant principal at Applicant's school. He stated that in his role he was familiar with students who had to have correctional discipline, and Applicant was never one of those students. He stated that he testified as a character witness at the first trial, but was not asked to appear at the second trial.

Joseph Savitz testified that he is retired from the South Carolina Office of Appellate Defense, and he handled Applicant's appeal. He stated that he had no recollection of handling this case, but he had reviewed the brief that he submitted prior to the evidentiary hearing. He stated that his standard practice was to submit Anders briefs in cases where there were no meritorious issues for direct appeal but they could begin to set up a potential issue for post-conviction relief, and that is probably what he did in this case. He testified that Applicant's defense in this case was alibi, but no alibi charge was requested, so he noted it for PCR rather than briefing it on direct appeal.

Mr. Savitz testified that if he did not brief a meritorious issue in the direct appeal, it was because he did not think that it was meritorious at the time. He stated that he was familiar with the case of Israel Wilds v. South Carolina because he wrote the appellate brief in that case and he was found to be ineffective for his brief in the PCR action for failing to brief the issue of "hand of one, hand of all." He stated that he wished he had raised the "hand of one, hand of all" issue sooner because he believed that they probably would have won on appeal if the issue were preserved for appeal. However, he stated that if there was evidence presented in Applicant's case that there were two or more shooters acting in concert, then that evidence would differentiate the case from the Wilds case in which he was found ineffective.

Kaliah Felder testified that on the night of the crime she stopped at Applicant's house on her way to the club at 11:30 or 12:00 at night. She stated that she left the club that night at 2:30 or 3:00 A.M. and returned to Applicant's house, where she arrived between 3:00 and 3:30 A.M. She stated that when she arrived, she saw Applicant walking up the dirt road talking on his phone. Ms. Felder testified that she and her friend Misty, who was with her, stopped and talked to Applicant for a while, and Applicant asked them for a ride. She stated that Applicant, his brother, and an older man got in their car and they gave them a ride, but she does not recall where they took them. She stated that she did not hear about the shooting that happened that night until three or four days later.

Tremain Tyler testified that he is 36 years old and Applicant is his younger brother. He stated that he grew up with learning difficulties and was in special needs programs throughout his life. He stated that he was criminally charged as a result of the shooting in this case and he spent eight years in the county jail as a result. He stated that he never testified at either of his brother's trials. He testified that he was asleep on the night of the event at his house when Mr. Walker came to the door. He stated that Mr. Walker left after speaking with Applicant and came back a short time later, and based on the conversation with Mr. Walker, he understood that they needed to leave the area, so they got a ride with Kaliah and Misty to the Aiken County area. Mr. Tyler testified that Applicant was at the house with him between when Mr. Walker spoke to him and left and when he came back. He stated that he was appointed an attorney to represent him on his criminal charges after the shooting.

James Gleaton testified that he testified at Applicant's first trial in November of 2006 and at the second trial in January of 2008. He stated that he gave a statement to law enforcement, stating that he was at Mr. Hartwell's house around 3:00 A.M. on the night of the shooting. He

saw a car come by, then a second car that he recognized as Willie Ware's car. He stated that he did not see anyone hanging from the car as it drove by. He heard shots fired, then Willie Ware's car drove by him again at a high rate of speed. He stated that he had given this story to law enforcement, and he testified to the same story at the first trial. After the first trial, he stated that he wanted to change his story and tell the truth at the second trial, and he and his attorney went to meet with Solicitor Bill Weeks, but the Solicitor told him that if he changed his testimony, he would not get out of jail.

Mr. Gleaton testified that the true story is when he saw the car drive by the second time, he saw Edward Walker hanging out of the car with a long rifle in his hand. He stated that he did not tell this version of the story at the first or second trial because he did not want his friends to go to jail, but now he wants to tell the truth. He stated that he could not see who else was in the car; he could only see Mr. Walker hanging out of the car.

Byron Gipson (Trial Counsel) testified that he met with Applicant countless times for countless hours preparing for the first trial. He stated that he met with Applicant's mother and father, he went to Wagener and to the area where the shootings took place, and he did extensive preparation with the witnesses that he was aware of. He stated that he did not use a private investigator, but he met with all witnesses himself. He stated that Applicant maintained his innocence before the trial, and there were no plea offers extended to him by the State. Before the second trial, Trial Counsel stated that he spent many hours reviewing and meeting with his client as well as other witnesses, and attempting to determine what new strategy the State would use in the new trial.

Trial Counsel testified that he strategically chose not to use the character witnesses at the second trial that were used at the first trial because they were very effectively cross-examine by

the Solicitor when they first testified. He stated that it did not seem like a very effective strategy the second time around because they had other witnesses to use. Trial Counsel testified that he made a motion for a change of venue before the second trial, but it was denied by the trial court because he had not used all of his jury strikes in the selection of the jury. He stated that he did not use all of his strikes because each of the jurors selected told the trial court that they could be fair and impartial in their decision, even if they had already been exposed to the facts of the case through the media.

Trial Counsel testified that he chose not to use Tremain Tyler as a witness at Applicant's trial because his testimony may have damaged Applicant's story, Tremain was facing the same criminal charges as Applicant, and Tremain's lawyer and family did not want him to testify. He testified that he never knew about Kaliah Felder and was not aware of her before the trial, but he did not think her testimony would have been helpful at trial because she did not testify about what happened during the crime, but after the crime took place. He stated that he had never heard the version of James Gleaton's testimony that he gave at the evidentiary hearing, but if he had known about it he would have had him testify about the "true story" at the second trial.

Trial Counsel testified that he saw nothing in his interactions with the prosecutor in this case to cause him to think that he had done anything improper. He stated that he did not feel the need to object to expert witness Joel Sexton's testimony about shooting pistols and weapons because his testimony was cumulative at that point in the trial and he could probably gather a lot of information about the weapon from the exit wounds in the body, and he did not want to lose credibility with the jury by objecting to every witness. Trial Counsel testified that he chose not to call Johnny Miles as a witness because you never know what he will say, and he had told him before that there was a long rifle in the house, that Applicant ran out of the house with a rifle,

and that they hid a rifle later, which obviously would have damaged Applicant. He stated he chose not to object to the Solicitor's closing argument because sometimes objecting looks fearful and irritates judges and juries.

Applicant testified that he spoke with Trial Counsel about the witnesses they would use at trial, and they never discussed using his brother, Tremain, as an alibi witness because he was mentally challenged. He stated that, before the trial, Trial Counsel did not think that using Misty as an alibi witness would change the jury's verdict.

Solicitor Weeks testified that he prosecuted Applicant's case, and took part in both trials. He stated that he interviewed James Gleaton as part of his pre-trial investigation and he called him as a witness at the first trial. He stated that he strategically decided not to call him as a witness at the second trial because he would rather cross-examine a witness than direct examine them, and he let the defense use him instead. He stated that Mr. Gleaton had been arrested on other charges between the first and second trial. He stated that he did not recall meeting with Mr. Gleaton and his attorney before the second trial, but if Mr. Gleaton had met with him and changed his testimony, the first person Solicitor Weeks would tell is Trial Counsel.

Solicitor Weeks testified that he does not recall threatening Mr. Gleaton in any way, and he did not withhold anything from the defense in this case. He stated that if Trial Counsel had been successful on his motion for a change of venue and the trial had been held in another county, he still would have prosecuted the case, called the same witnesses, used the same evidence, and had the same trial strategy. He stated that he never considered this an alibi case.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

Failure to prepare and investigate prior to trial

Applicant alleges that Trial Counsel was ineffective for failing to investigate and prepare for trial. This allegation is meritless.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances,

applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

At the hearing, Trial Counsel put forth several reasons why he chose not to use certain witnesses to support an alibi defense, including the witnesses' credibility, questions about their usefulness to his case, and the potential for the prosecution to elicit harmful testimony. The Court finds trial counsel's testimony to be credible and supported by the evidence in the record. Trial Counsel credibly testified, and Applicant agreed, that they met countless times to discuss and prepare for both trials. Trial Counsel investigated every witness he was able to and spent numerous hours of his time investigating this case and preparing for trial. Applicant has failed to prove that any further investigation or preparation would have changed the outcome of the trial, and this allegation is denied and dismissed with prejudice.

Failure to obtain or communicate plea offers

Applicant alleges Trial Counsel was ineffective for failing to obtain or communicate plea offers from the State. Trial Counsel credibly testified that there were no plea offers extended to Applicant before his trial. He stated that the allegations against Applicant were extremely heinous, and most solicitors are unwilling to make an offer that is less than murder for thirty years, day for day, which is no better than being convicted at trial, but he does not recall the State offering any plea deals at all. PCR tr. 58. Applicant has failed to prove that any plea offers were extended to Applicant and that Trial Counsel failed to communicate them to his client. Trial Counsel could not have been ineffective for failing to communicate plea offers to Applicant because there were none offered, and therefore Applicant has not proven any deficiency or prejudice in this regard.

It is clear from Trial Counsel's credible testimony that the State was unwilling to extend any plea offers in this case because of the severity of the charges and the high-profile nature of the case in the community. Trial Counsel cannot be held ineffective for failing to make the State do something that is within their discretion to do or not to do. The solicitor has broad discretion in choosing the offenses with which a defendant will be charged and in plea negotiations leading up to trial. See State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

Criminal defendants have no constitutional right to a guilty plea. State v. Kerr, 330 S.C. 132, 143, 498 S.E.2d 212, 217 (Ct. App. 1998). Instead, they have a right to a trial by a jury of their peers, and they may waive this right by choosing to plead guilty. Id. Applicant had no right to an extension of a favorable plea deal, and Trial Counsel cannot be found ineffective for failing to obtain something that Applicant is not entitled to. Furthermore, even if Applicant were correct in his argument that Trial Counsel should have gotten him a plea deal, there is no prejudice because his choice to plead guilty would result in the same outcome as his trial: a conviction with a sentence for murder.

Applicant has failed to prove both deficiency and prejudice, and this allegation is denied and dismissed with prejudice.

Change of venue motion

Applicant alleges that Trial Counsel was ineffective for seating two jurors who had been exposed to the media, resulting in the denial of his motion for a change of venue. This allegation is meritless and must be denied.

Trial Counsel's motion for a change of venue is thoroughly argued and explained beginning on page 22 of the trial transcript. He explained the high-profile nature of the case to

the trial court and the issues of concern for this specific murder case within their community. The trial court denied the motion, explaining that Trial Counsel chose to seat two jurors who admitted they had been exposed to the media in this case but he had not used all of his jury strikes. Trial tr. 33. The jurors who were seated told the trial court that, although they had been exposed to the media, they could be fair and impartial in deciding this case.

Trial Counsel explained in the trial transcript and testified at the evidentiary hearing that he chose to seat those jurors because they indicated they could be fair and impartial, and there were other potential jurors on the list that he had researched and wanted to save his jury strikes for. The trial court clearly felt that the jury selected could be fair and impartial and that the *voir dire* process corrected any potential issues with the case's exposure to the media. This Court finds that Trial Counsel was not deficient in his handling of the change of venue motion. He argued vigorously and used his strikes appropriately according to the strategy that he indicated both at the trial and at the evidentiary hearing. This Court will not question his strategy with the benefit of hindsight.

Further, Applicant has failed to prove that he was prejudiced by the denial of his motion for a change of venue. Testimony presented at the evidentiary hearing clearly indicated that, even if the motion had been granted and the trial had been held in another venue, the State would have prosecuted the case the same way, with the same witnesses, evidence, and strategy. This Court finds that the outcome of the trial would not have been different if the trial were held elsewhere, and there is no prejudice. Because Applicant has failed to prove deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Failure to utilize witnesses at trial

Applicant has failed to meet his burden of proving that Trial Counsel was ineffective in any way for failing to utilize any witnesses at trial. Trial Counsel presented a valid trial strategy for his use of and choice not to use every witness at trial. Furthermore, this Court finds that none of the testimony presented from additional witnesses at the evidentiary hearing would have changed the outcome of the trial, so there can be no prejudice to Applicant. Therefore, this allegation is denied and dismissed with prejudice.

Newly Discovered Evidence regarding James Gleaton

Applicant alleges that the testimony of James Gleaton presented at the evidentiary hearing constitutes newly discovered evidence that should allow Applicant a new trial. This allegation is meritless.

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 329-30, 256 S.E.2d 737, 739 (1979)).

This Court finds that Applicant has failed to prove that Gleaton's new testimony fits all five of these requirements. The testimony likely would not change the outcome of the trial because Gleaton would be impeached with his prior testimony from multiple statements to law enforcement as well as testimony from the first and second trial, which directly rebuts his new testimony. Applicant must also prove that the new testimony could not have been discovered before the trial with due diligence, yet Applicant himself testified that he knew of Gleaton's new

testimony before the second trial, yet they did not use it. The testimony is not material to the issue of guilt or innocence; his new testimony involves seeing another codefendant, Edward Walker, hanging out of the vehicle with a gun. This new testimony does not prove that Applicant was not also in the car or shooting at the victim, as well. At the trial, there was testimony presented that there may have been more than one shooter in the vehicle. Gleaton's testimony that he saw Edward Walker with a gun does not mean that Cornell Tyler could not possibly have been in the car with a gun, as well.

This Court further finds Gleaton's recantation testimony unreliable and incredible. South Carolina courts are held to a high standard when considering the credibility of recantation testimony. "We have said that " '(r)ecantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.'" State v. Wright, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977) (citing State v. Whitener, 228 S.C. 244, 89 S.E.2d 701." State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959)). Gleaton testified twice under oath before a jury that he could not see anyone in the vehicle. Now, at the evidentiary hearing, he claims that he was lying on the stand at the first two trials and wants to explain what really happened, that he actually saw Edward Walker in the car with a rifle. This Court finds Gleaton's testimony incredible.

Because Applicant failed to prove all five elements of newly discovered evidence, and because Gleaton's testimony is unreliable and incredible, this allegation is denied and dismissed with prejudice.

Prosecutorial Misconduct regarding James Gleaton

Applicant alleges that Solicitor Weeks committed prosecutorial misconduct by threatening witness James Gleaton not to change his testimony at the second trial. This allegation is meritless.

Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be dismissed.

This Court finds Gleaton's testimony that he was threatened to be not credible. Solicitor Weeks testified that he did not threaten Gleaton in any way or tell him how to testify at trial. Solicitor Weeks chose not to use Gleaton as a witness for the State at the second trial, so he would not have had any reason to tell him how to testify. This Court finds that Applicant has failed to prove any kind of misconduct on behalf of the Solicitor in this case, and this allegation is denied and dismissed with prejudice.

Failure to object to expert testimony

Applicant has failed to meet his burden of proving that Trial Counsel was ineffective for failing to object to expert testimony that was outside the scope of his expertise. The expert's

testimony as to the type of weapon used was merely cumulative to what had already been presented to the jury and Trial Counsel gave a credible, strategic reason for not objecting. Any objection would not have kept the evidence of the firearm out of the trial and the jury's consideration, so there was no prejudice to Applicant. Therefore, this allegation is denied and dismissed with prejudice.

Failure to develop alibi defense

Applicant's allegation that Trial Counsel was ineffective for failing to develop an alibi defense is meritless. Applicant testified at the evidentiary hearing that he never discussed an alibi defense with Trial Counsel, but he wanted him to use his brother Tremain and other witnesses, such as Misty, Kaliah Felder and Johnny Miles, to corroborate his trial testimony as an alibi defense. However, Trial Counsel credibly testified that he had investigated Misty and was never able to get in contact with her. He stated that he was never aware of and never knew about Kaliah Felder because she moved to New York after the crime occurred, so he could not have gotten in contact with her to use her as a witness. Trial Counsel credibly testified that Johnny Miles was sick during the second trial and he chose not to call Johnny Miles as a witness because he was afraid his testimony would hurt Applicant. Finally, Trial Counsel credibly testified that he made a conscious decision not to use Tremain Felder as a witness for several reasons, including the fact that Tremain was facing the same criminal charges as Applicant and his attorney did not want him to testify and possibly incriminate himself at Applicant's trial. Because Trial Counsel offered a strategic reason for not using Tremain or Johnny Miles and attempted to investigate the other witnesses but was unable to reach them, this Court finds that Trial Counsel was not deficient in this manner.

Secondly, Applicant was not prejudiced by this failure to develop or request an alibi defense because the testimony presented at the evidentiary hearing and at the trial does not constitute an alibi. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995). "A charge on the defense of alibi is not required when an accused person merely denies committing the criminal act. Alibi means elsewhere, and the charge should be given when the accused submits that he could not have performed the criminal act because he was in another place at the time of its commission." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980). "In other words, by an alibi the accused attempts to prove that he was at a place so distant that his participation in the crime was impossible... And since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id.

Applicant's testimony at trial was that he was asleep; Edward Walker knocked on his door and woke him up to ask him for money, then left. Trial tr. 554-597. He stated that when Edward Walker first knocked on his door, it was "about three-something. Close to four" in the morning. Trial tr. 557-58. Shortly after, Applicant went back in his room to lay down, then he heard shots and went outside to see what happened. He did not see anything, so he laid down again until Edward Walker knocked on his door again and told him to leave because something had happened. He then testified that Misty came back to the house and gave he and his brother a ride to Aiken. Trial tr. 565.

Even if Applicant's story had been corroborated by alibi witnesses at trial, his story does not meet the definition of an alibi because it does not prove that it was physically impossible for him to have participated in the crime. Just because Applicant claims that he was at his house laying down when the shooting occurred, his testimony does not show that it was physically impossible for him to be in the vehicle shooting at the victims just outside his house. An alibi instruction would have been improper in this case.

Furthermore, Applicant cannot prove any prejudice from the failure to use Johnny Miles and Misty as witnesses because their testimony was not presented at the evidentiary hearing. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

Because Applicant has failed to meet his burden of proving either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to object to State's closing argument

Applicant alleges Trial Counsel was ineffective for failing to object to portions of the State's closing argument. Trial Counsel credibly testified that he saw nothing objectionable in Solicitor Weeks' closing argument and strategically chose not to object to allow the jury to look more favorably upon the defense. Applicant has further failed to prove that any of the Solicitor's statements in his closing argument were improper, inappropriate, objectionable, or changed the outcome of the case. Therefore, this allegation is denied and dismissed with prejudice.

Failure to object to permissive inference language

Applicant's allegation that Trial Counsel was ineffective for failing to object to the lack of permissive inference language is denied. This Court finds that Trial Counsel was deficient in failing to object to the trial judge's malice charge. The malice charge given in this case clearly did not incorporate the permissive inference language approved in State v. Elmore¹. Trial Counsel testified that he did not bring to the trial court's attention the fact that it had deviated from the standard Elmore instruction on permissive inference. However, this Court finds that Applicant was not prejudiced by this deficiency, so the allegation must be denied.

Applicant argued to this Court that Trial Counsel should be found ineffective for this failure to object based on a recent South Carolina Supreme Court case, Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016), reh'g denied (June 15, 2016). Gibson granted post-conviction relief in the same situation, holding that trial counsel was deficient for failing to object at that the applicant was prejudiced "[b]ecause there was little evidence of malice aside from the use of a gun." Id. at 266, 786 S.E.2d at 124. The current case differs from Gibson in this regard. "In determining whether petitioner was prejudiced by trial counsel's deficient performance, this Court must decide whether the erroneous malice instruction contributed to the verdict based on all the evidence presented to the jury." Id. (citing Rose v. Clark, 478 U.S. 570, 106 S.Ct. 3101 (1986); Plyler v. State, 309 S.C. 408, 424 S.E.2d 477 (1992)). "The Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the

¹ State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). Elmore suggested that courts start using the following language in their jury charges: "The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, [sic] are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive."

jury without the erroneous malice charge.” Id. (citing Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008)).

This Court finds that Applicant was not prejudiced by the trial court’s lack of permissive inference language because there was substantial evidence presented to the jury to allow them to infer malice aside from the fact that a deadly weapon was used. “Malice is defined as being hatred or ill-will. Malice is wrongful intent to injure another person. It indicates a wicked or depraved spirit intent on doing wrong. Malice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it.” State v. Fuller, 229 S.C. 439, 93 S.E.2d 463, 466 (1956); Heyward, 197 S.C. at 375, 15 S.E.2d at 671.

The evidence presented at trial showed the jury that Applicant and the men with him at the time saw a truck slow down in front of his house in the very early hours of the morning. Applicant’s brother ran into the road with a pistol and shot at the truck as it sped away. The men piled into a vehicle, and, without knowing who was in the truck or why they were in front of their house, they pursued a high speed chase behind the truck. Applicant used a long rifle to shoot from his vehicle at the truck several times, striking both victims in the truck, until the truck ran off the road, flipped, and crashed in a field. Applicant then returned to his home and fled the scene.

This Court concludes that the erroneous malice instruction did not contribute to the verdict based on all of the evidence presented to the jury. In this case, the jury need not have relied on the presumption of malice from the use of a deadly weapon to find that Applicant acted with malice in the commission of the crime. In addition to there being no evidence that would have reduced, mitigated, excused, or justified the homicide, there was overwhelming evidence of

malice apart from the use of a deadly weapon. Accordingly, Applicant was not prejudiced by trial counsel's failure to object. Therefore, even though Trial Counsel was deficient for failing to object to this language, there was no prejudice to Applicant in this case. This allegation is denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Applicant cannot satisfy either requirement of the Strickland test.

Appellate Counsel testified that if he did not brief a meritorious issue in the direct appeal, it was because he did not think that it was meritorious at the time. Although Applicant argued that his case was similar to State v. Wilds, 407 S.C. 432, 756 S.E.2d 387 (2014), this Court finds otherwise. In Wilds, the evidence presented at trial showed that there was only one shooter, Wilds. The South Carolina Court of Appeals held that “because no evidence in the instant case indicated anyone other than Wilds was the shooter, we find the PCR court correctly determined the trial court erred in charging the jury on accomplice liability.” Wilds at 440, 756 S.E.2d at 391. The court granted Wilds a new trial, holding that his appellate counsel was ineffective for failing to brief the issue of the trial court’s accomplice liability instruction.

In the current case, however, there was evidence presented at Applicant’s trial that there may have been more than one shooter. This sets Applicant’s case apart from Wilds entirely. Testimony at the trial indicated that Tremain Tyler, Applicant’s brother, had a gun and shot a handgun at the victims’ vehicle. Trial tr 155, 257. Willie Ware testified at trial that he had a gun inside the vehicle at the time of the shooting. Trial tr. 264. Willie Ware testified on cross-examination that Edward Walker could have been shooting a gun from the top of the car, as well, Trial tr. 276, and that he heard multiple shots coming from the vehicle he was in, Trial tr. 284. After Ware testified that he did not tell law enforcement that Edward Walker had a gun in the car, Trial Counsel impeached him with a portion of his videotaped statement to law enforcement, in which Ware told them that Edward Walker had a pistol. Trial tr. 299.

Willie Smith testified at trial that Ware told him that Edward Walker got into the car with a gun and shot at the victims’ truck. Trial tr. 511-2. He stated that Edward Walker told him that he was shooting a pistol. Trial tr. 521. Fredrick Scott testified that Edward Walker told him he needed to hide a gun after the shooting took place. Trial tr. 533.

Trial Counsel testified at the evidentiary hearing that, although he did not like it, there was evidence in the record that supported the trial judge's accomplice liability instruction. When the trial court instructed the jury on accomplice liability, Trial Counsel requested a "mere presence" instruction.

Based on the trial testimony and the testimony from the evidentiary hearing, this Court finds that there was evidence presented at trial that more than one person in the vehicle had a firearm and could have shot at the vehicle. This is the exact opposite of the fact pattern in Wilds, and the Court finds that the trial court's "hand of one, hand of all" charge was proper. Therefore, Appellate Counsel could not have been ineffective for failing to brief this issue because it would not have been successful on appeal. This Court finds that Appellate Counsel was not deficient in choosing not to brief this issue based on the evidence presented at trial, and there was no prejudice to Applicant by the failure to brief this issue because the result of the appeal would not have been different. Because Applicant failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

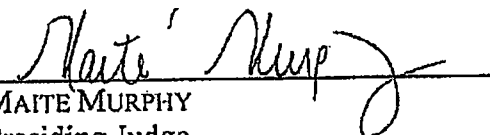
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of May, 2017.


MAITE MURPHY
Presiding Judge
Second Judicial Circuit

St. Mary, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Cornell Tyler, 326023,
☒ Plaintiff

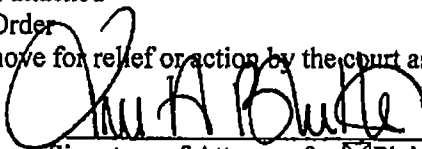
v.

State Of South Carolina
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-02-02859

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 29070 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:		Defendant's Attorney: Julie A. Coleman, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Rule 59, SCRPC Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant May 25, 2017 Date submitted			
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Cornell Tyler #326023,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2013-CP-02-02859

MOTION PURSUANT TO
RULE 59(a) & (e), SCRCP

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. Applicant was indicted during the April 2006 term of the Aiken County Grand Jury for Murder (2006-GS-02-551), Assault and Battery with Intent to Kill (ABWIK) (2006-GS-02-551), and Possession of a Weapon During a Violent Crime (2006-GS-02-550).

On November 27, 2006, Applicant was called to trial in front of the Honorable Thomas A. Russo at the Aiken County Courthouse. Applicant was represented by Byron Gipson, Esquire. On November 30, 2006, the trial concluded with a hung jury.

On January 7, 2008, Applicant was called to trial in front of the Honorable Clifton Newman at the Aiken County Courthouse. Applicant was represented by Byron Gipson, Esquire. On January 10, 2008, Applicant was found guilty as indicted. Judge Newman sentenced Applicant to a term of thirty years for Murder, a term of twenty years for ABWIK, and a term of five years for Possession of a Weapon. A motion for reconsideration was timely filed. A hearing was held on April 30, 2008, by which the motion was denied. A direct appeal was timely filed.

Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense, perfected Applicant's appeal. Thereafter, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Cornell D. Tyler, Op. No. 2012-UP-448 (Ct. App. filed July 18, 2012). The Remittitur was issued on February 21, 2013.

On December 17, 2013, an Application for Post Conviction Relief was timely filed. Respondent submitted a Return July 29, 2014. On December 20, 2016, Applicant, through counsel, filed an Amendment to his Application, which amended his claims of ineffective assistance of trial/plea counsel as follows:

1. Ineffective assistance of trial counsel for failure to effectively prepare and investigate prior to trial.
2. Ineffective assistance of trial counsel for failure to obtain and/or communicate plea offers to Applicant.
3. Ineffective assistance of trial counsel for seating two jurors exposed to media thus resulting in the Court's denial of the change of venue motion.
4. Ineffective assistance of trial counsel for failure to utilize witnesses at trial.
5. Ineffective assistance of trial counsel for failure to properly utilize defense witnesses at trial. Alternatively, newly discovered evidence and/or prosecutorial misconduct regarding witness James Gleaton.
6. Ineffective assistance of trial counsel for failure to fully impeach and cross-examine the State's witnesses and failure to pursue matters of prosecutorial misconduct alluded to in cross-examination and closing argument.
7. Ineffective assistance of trial counsel for failure to object to expert testimony that exceeded the expert's area of qualified expertise. Transcript pp. 417-419.
8. Ineffective assistance of trial counsel for failure to fully develop an alibi defense and request an alibi charge at trial.
9. Ineffective assistance of counsel for failure to make contemporaneous objections to the State's closing argument.
10. Ineffective assistance of trial counsel for failure to object to the trial judge's failure to use the permissive inference language approved in State v. Elmore, 279 S.C. 417, 308 S.E.2d

781 (1983), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), during the charge to the jury.

11. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal; specifically, but not limited to trial counsel's arguments regarding venue and the "hand of one" charge.
12. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On January 24, 2017, an evidentiary hearing was conducted at the Bamberg County Courthouse in front of the Honorable Maite Murphy. Applicant was present and was represented by Tricia A. Blanchette, Esquire. The State was represented by Julie A. Coleman, Assistant Attorney General. At the close of the hearing, both parties requested the opportunity to obtain the transcript prior to the submission of proposed orders. By way of an email prior to the receipt of the transcript, the parties were instructed that the Honorable Maite Murphy intended to deny the Application and only requested a proposed order from Respondent. On May 2, 2017, an Order of Dismissal was issued, which was filed on May 19, 2017. Applicant, via counsel, received an emailed copy of the filed Order on May 19, 2017, from which this Motion follows.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Specifically, Applicant is concerned with the summary of the testimony and omission of issues properly alleged. Applicant would further request that this

Court review the full evidentiary hearing transcript, reconsider the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCP.

In support of this argument, Applicant would ask this Court to consider the following regarding how the standing Order addressed the testimony elicited at the evidentiary hearing and reconsider the findings in the standing Order:

1. As to the summation of the testimony and rulings regarding the testimony of Attorney Savitz, Applicant would submit the following is not properly addressed and/or considered in the standing Order:
 - a. Attorney Savitz did brief the alibi issue; whereas the Order states "he noted it for PCR rather than briefing it on direct appeal." Order p. 5, Evidentiary Hearing Transcript pp. 17-18.
 - b. Attorney Savitz testified that he "missed" the hands of one issue on appeal, and he wished he would have raised it sooner. Evidentiary Hearing Transcript pp. 18-21. When taken in context, his response regarding the issue not being meritorious, as reported in the Order, tie back to his failure to recognize the issue as meritorious as was addressed in the finding that he was ineffective in Wilds. Evidentiary Hearing Transcript p. 21. Attorney Savitz testified that there was no way to distinguish Applicant's case from Wilds' case. Evidentiary Hearing Transcript pp. 23-25.
2. As to the summation of the testimony and rulings regarding Kaliah Felder, Applicant would submit the following is not properly addressed and/or considered in the standing Order:
 - a. Ms. Felder testified that it was typical to give Applicant a ride, nothing was out of the ordinary on the night in question, and she would not have ridden with Applicant in the vehicle if she had any concern that something was not right. Evidentiary Hearing Transcript pp. 29-31.
3. As to the summation of the testimony and rulings regarding Tremaine Tyler, Applicant would submit the following is not properly addressed and/or considered in the standing Order:
 - a. Mr. Tyler did not give a written statement. Evidentiary Hearing Transcript p. 37.
 - b. Mr. Tyler testified that he was not contacted by Applicant's defense counsel, and he would have been willing to speak with him about Applicant's case. Evidentiary Hearing Transcript pp. 37-8.

- c. Mr. Tyler testified that Applicant did not leave in a vehicle except for when he left with him in Misty's vehicle, and he could have testified to that fact at trial. Evidentiary Hearing Transcript p. 39.
4. As to the summation of the testimony and rulings regarding James Gleaton, Applicant would submit the following is not properly addressed and/or considered in the standing Order:
 - a. Mr. Gleaton testified that he told defense counsel about the meeting with the Solicitor where he was told that he would not get out of jail if he changed his story. Evidentiary Hearing Transcript p. 48. He further testified that he would have admitted at trial that he felt threatened by the Solicitor if Mr. Gipson would have asked him at trial. Evidentiary Hearing Transcript pp. 50-51.
 - b. Mr. Gleaton gave a lengthy explanation as to why he withheld information at trial and was coming forward with the truth now. Evidentiary Hearing Transcript pp. 47-49.
 - c. Mr. Gleaton testified to the details he had regarding the night in question. Evidentiary Hearing Transcript pp. 51-3.
5. As to the summation of the testimony and rulings regarding the testimony of Attorney Gipson, Applicant would submit the following is not properly addressed and/or considered in the standing Order:
 - a. Attorney Gipson testified that Ms. Felder's testimony did corroborate Applicant's story regarding Misty coming and giving them a ride to the Aiken area. Evidentiary Hearing Transcript p. 79.
 - b. Attorney Gipson was questioned and offered responses regarding his failure to impeach the State's witnesses with their prior testimony. Evidentiary Hearing Transcript pp. 86-87, 92-3.
 - c. Attorney Gipson was questioned and offered testimony regarding requesting an alibi charge. Evidentiary Hearing Transcript pp. 97-100.
 - d. Attorney Gipson testified that he did not identify an issue with the malice instruction, but he agreed "there's an objection that can be made in those situations." Transcript pp. 107-8.
6. As to the summation of testimony and rulings regarding the testimony of Applicant, Applicant would submit the following is not properly addressed and/or considered in the standing Order:

- a. Applicant testified to his knowledge of James Gleaton's meeting with the Solicitor and expected testimony at the second trial. Evidentiary Hearing Transcript pp. 124-6, 133-136, 140-1.
- b. Applicant testified that he expected the character witnesses to be called at the second trial and counsel did not discuss a reason for not calling them with him. Evidentiary Hearing Transcript pp. 126, 148-9.
- c. Applicant testified that defense counsel never discussed alibi with him and that he wanted Misty, Kaliah and his brother called at trial. Evidentiary Hearing Transcript pp. 126-131, 141-2.
- d. Applicant testified regarding Mr. Seawright's testimony and counsel's failure to fully impeach him, and other witnesses, with prior testimony. Evidentiary Hearing Transcript p. 135-7.
- e. Applicant testified regarding counsel's failure to object to the Solicitor's closing argument. Evidentiary Hearing Transcript pp. 142-144.
- f. Applicant testified that counsel failed to properly prepare for the second trial. Evidentiary Hearing Testimony pp. 144-6.
- g. Applicant testified regarding omissions in his testimony from the first to second trial and counsel's failure to question him properly in the second trial. Evidentiary Hearing Transcript pp. 147-8.

Specifically, as the "Findings of Fact and Conclusions of Law" the standing Order fails to address the following as to each issue addressed:

1. The section addressing preparation and investigation fails to mention that two trials were held and distinguish between preparation and investigation for each trial.
2. The section addressing the change of venue motion fails to address the claim of ineffective assistance of appellate counsel for failure to raise the issue on appeal.
3. The section addressing failure to utilize witnesses at trial does not address the four witnesses called that were not utilized at the second trial.
4. By way of his Amendment and at the evidentiary hearing, Applicant alleged: "Ineffective assistance of counsel for failure to properly utilize defense witnesses at trial." The standing Order does not reference or address this claim as it relates to James Gleaton or Applicant.
5. By way of the Amendment and at the evidentiary hearing, Applicant alleged: "Ineffective assistance of counsel for failure to fully impeach and cross-examine the State's witnesses and failure to pursue matters of prosecutorial misconduct alluded to in cross-examination

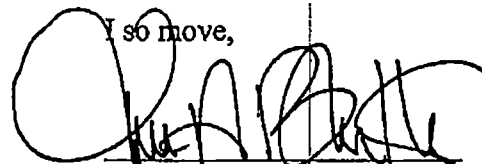
and closing argument". This issue was addressed by Applicant and trial counsel at the evidentiary hearing, and it is absent from the standing Order.

6. By way of the Amendment and at the evidentiary hearing, Applicant alleged that counsel was ineffective for "failure to request an alibi charge": This issue was addressed by Applicant, Attorney Savitz and Attorney Gibson, yet it is absent from the standing Order.

Finally, Applicant would ask the Court to completely reconsider the denial of relief.

Specifically but not abandoning any claims, Applicant would ask this Court to find that the failure to present an alibi defense and request an alibi charge, the failure to utilize witnesses, and the failure to object to the malice instruction warrant reversal. Additionally, Applicant would ask this Court to find that the testimony from James Gleaton and on matters relating to James Gleaton warrant the granting of a new trial.

For the above stated reasons and in consideration of the testimony and evidence offered at the evidentiary hearing, Applicant would respectfully request that this Court review the full evidentiary hearing transcript and hold a motion hearing to allow Applicant, through counsel, to address this Court regarding the standing Order of Dismissal. Applicant would further request that this Court reconsider the standing Order of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

I so move,


Tricia A. Blanchette
Bar #74904
Attorney for Applicant
Post Office Box 2147
Leesville, SC 29070

May 25, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Cornell Tyler #326023,)
Applicant,)

2013-CP-02-02859

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 25th day of May 2017, a copy of a Motion Pursuant to Rule 59, SCRCP, to Julie A. Coleman of the Attorney General's Office, at:

Office of the Attorney General
Att: Julie A. Coleman, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

May 25, 2017

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Cornell Devon Tyler, #326023,

2013-CP-02-02859

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

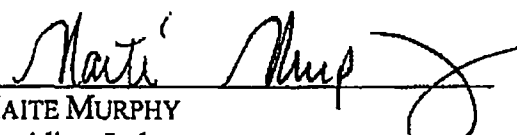
Respondent.

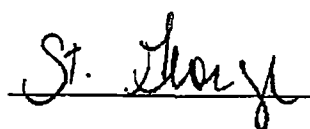
This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 17, 2013. An Order of Dismissal was filed on May 19, 2017, denying the application for post-conviction relief. Applicant filed its Motion Pursuant to Rule 59(a) & (e), SCRPC on May 25, 2017. After careful consideration of Applicant's motion, the record before the Court, and the evidentiary hearing testimony, this Court finds the motion should be denied.

IT IS THEREFORE ORDERED:

1. That Applicant's Motion Pursuant to Rule 59(a) & (e), SCRPC is denied.

AND IT IS SO ORDERED this 15th day of Aug., 2017.


MAITE MURPHY
Presiding Judge
Second Judicial Circuit

 South Carolina