

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Roger E. Henderson, Circuit Court Judge

MICHAEL A. LIVINGSTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001739

APPENDIX

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IN THE COURT OF GENERAL SESSIONS
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Original

2009-GS-26-2658,
2659, and 2912

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THE HONORABLE LARRY B. HYMAN, JR.;

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

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VOLUME 1

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REPORTER'S NOTE:

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1 (WHEREUPON: The court was called to
2 order for this particular case by the Bailiff at 10:11 AM,
3 August 11, 2009; and all pertinent parties, along with their
4 counsel, were present in the courtroom.)

5 BAILIFF:

6 Order in the court. All rise.

7 THE COURT:

8 Thank you. Thank you. Please be
9 seated.

10 How about the jury panel?

11 All right; give me a jury.

12 (WHEREUPON: A jury venire general
13 panel of 40 jurors was escorted into the courtroom at 10:12
14 AM, August 11, 2009; and was in fact present during the
15 following proceedings.)

16 THE COURT:

17 Good Morning. It's good to see you
18 all.

19 I see that -- uh -- you all have your
20 -- uh -- your -- your lucky horseshoe this morning. You got
21 drawn -- uh -- to sit on this jury panel.

22 Uh -- Again, I want to thank you for
23 your service and tell you how much we appreciate you being
24 here.

25 I apologize for -- uh -- bringing you

1 into the courtroom so late -- uh -- this morning.

2 Uh -- We've been here for -- for
3 quite some time.

4 There are a lot of preliminary
5 matters that need to be taken care of.

6 Before we begin -- uh -- a trial, we
7 like to have all the exhibits marked. And it kind of makes
8 things move along much smoother once we have a jury
9 selected; and they're -- they're not as many long pauses and
10 -- and delays during the trial.

11 And it's better for a juror when --
12 when we can move along smoothly and we don't have those
13 things happen.

14 It's better to focus your attention.

15 But we try to take care of all those
16 matters -- everything that we can before we bring you in.

17 And -- And generally, we may have
18 that problem -- uh -- during the trial.

19 But if we do, I always like to take
20 an opportunity to explain to the jury what we have been
21 doing.

22 I don't want you to think that we've
23 just been sitting back there twiddling our thumbs and
24 wasting your time.

25 I promise you, we won't do that.

1 Uh -- I -- uh -- qualified you
2 generally as jurors yesterday.

3 And what we are going to have to do
4 this morning -- or need to do -- is:

5 Qualify you specifically as to this
6 particular case.

7 We are about to begin the case of the
8 State of South Carolina versus Michael Anthony Livingston,
9 who has various charges.

10 And we'll talk about that in a few
11 minutes.

12 But, I want to talk to you a little
13 bit about how the jury selection process works.

14 As I said:

15 I'm going to be asking you some
16 questions in a few minutes that will determine whether or
17 not you might have any preconceived notions or any interest
18 or prejudice or bias about this particular case.

19 And once we determine that, we're
20 going to go right into the process of actually selecting
21 jurors.

22 Now as I said yesterday:

23 There are two sides to this court.

24 We have the civil side. And we have
25 the criminal side. And they differ in the way that we go

1 about actually selecting a -- a jury.

2 If we have a civil trial, everybody
3 who's in the -- in the pool -- is given a new and secret
4 number that you don't even know about.

5 And there's -- uh -- a list made
6 randomly -- uh -- from -- from the jury pool. And they are
7 given to the attorneys.

8 And the attorneys will be given an
9 opportunity to strike from that list. And they strike by
10 these new numbers.

11 So you won't even know if you were on
12 the list or if you were struck.

13 Now doesn't that sound like a nice,
14 neat, clean way to do that? And it is.

15 But, on the criminal side, each and
16 every one who is selected -- uh -- may be called forward.

17 And me ask you to come forward right
18 up here in front of this podium. And you turn around. And
19 you face the -- uh -- the lawyers.

20 And at that time, the State will
21 either say:

22 Present the witness (sic).

23 Or:

24 Excuse the witness (sic) on this
25 case.

1 And if they say: excuse you; you just
2 step down and return to your seat.

3 If they say: present you; then the
4 Defense has an option to exercise some of its strikes.

5 And it will either say:

6 Judge, swear this witness (sic).

7 In which case, you would go over to
8 the -- to the jury box.

9 Or, the defense may say:

10 Excuse the witness (sic) on this
11 particular case.

12 Now a lot of people find that to be
13 an embarrassing -- uh -- situation or -- or process.

14 I ask you -- uh -- to not be
15 embarrassed if you are struck. It is absolutely nothing
16 personal.

17 I tried cases in this courthouse and
18 the old courthouse for 32 years. And let me give y'all a
19 secret.

20 These lawyers don't know what they're
21 doing. They don't have a clue as to how they are supposed
22 to strike a jury or not strike a jury.

23 They may strike you just because of
24 the way you part your hair.

25 They may strike you because you don't

1 have any hair.

2 They -- It -- It's nothing more than
3 just a hunch on their part -- a feeling.

4 More likely than not, what it is, is
5 that:

6 They see someone else on that jury
7 panel that they feel, because of that person's background or
8 education or -- or -- or work, that that person might be
9 more sympathetic to their position in the case.

10 And that is the reason that they
11 strike a particular witness to reach that other one -- or --
12 or juror.

13 So don't be concerned at all if you
14 are struck.

15 Now most of you are sitting there
16 saying:

17 Well, Judge, I'm hoping I'm going to
18 get struck. I don't want to serve.

19 But, again, I tell you:

20 Your service here is extremely
21 important. And this case would not be resolved except for
22 your willingness to stand here as a juror in this case.

23 Now, I want to ask you some
24 questions; but I'm going to have to put you under oath
25 first.

1 If you would, Madam Clerk.

2 (WHEREUPON: The jury venire to be
3 questioned for possible service in this case was properly
4 and duly sworn by the Clerk at 10:18 AM, August 11, 2009.)

5 THE COURT:

6 Thank you. All right.

7 Now, as I -- uh -- mentioned earlier:

8 This is the case of the State of
9 South Carolina versus Michael Anthony Livingston.

10 Mr. Livingstone is charged with the
11 offense of murder.

12 It is alleged that he did murder one
13 Ervin Graham.

14 He's also charged with possession of
15 a weapon during the commission of a violent crime; that
16 being the same murder.

17 Uh -- Uh -- And the victim there was,
18 again, Ervin Graham.

19 And he's also charged with armed
20 robbery in that -- uh -- event.

21 Now, let me say this:

22 The fact that a person may be charged
23 with an offense, or that we may have an indictment charging
24 that person with an offense, does not in any way change the
25 presumption of innocence in a case.

1 The Defendant is presumed to be
2 innocent. The fact that he is charged or indicted is not
3 evidence; and should not be considered by any juror as
4 evidence of -- of his or her guilt.

5 In that regard, first of all, let me
6 ask you this:

7 Has anyone ever been related by blood
8 or marriage, either to the Defendant?

9 Now again, that is Mr. Michael
10 Anthony Livingston.

11 Mr. Livingston is seated here in the
12 courtroom.

13 Mr. Livingston, if you would stand up
14 please and turn around so the -- uh -- juror may -- jurors
15 may see you.

16 WHEREUPON: The Defendant stood and
17 faced the jury panel as instructed.

18 THE COURT:

19 Thank you sir.

20 Is anyone related by blood or
21 marriage; or have you been related by blood or marriage, to
22 -- uh -- Mr. Livingston, or the victim in this case, who was
23 Mr. Ervin Graham?

24 And Mr. Richardson, I understand that
25 Mr. Graham was also a resident of this County?

1 Is that correct?

2 MR. RICHARDSON:

3 Yes sir. Up around Myrtle Beach.

4 THE COURT:

5 He was from the Myrtle Beach area.

6 Has anyone on this jury panel ever
7 been related by blood or marriage to either the Defendant in
8 this case or the victim?

9 (No response.)

10 THE COURT:

11 There's no response.

12 Has anyone ever had a close personal
13 or social relationship with either the Defendant --

14 Yes ma'am?

15 JUROR 29, KATHRYN BLACK:

16 I think I might have taught Mr.
17 Graham, because of his age and he went to Myrtle Beach --

18 COURT REPORTER:

19 I'm sorry. I'm not picking her up.

20 THE COURT:

21 Stand up, if you would? And -- uh --
22 my -- my court reporter is having a little difficulty
23 hearing you --

24 JUROR 29, KATHRYN BLACK:

25 I think I might have taught Mr.

1 Graham at Myrtle Beach Elementary.

2 THE COURT:

3 Uh-huh.

4 JUROR 29, KATHRYN BLACK:

5 Uh -- I'm not positive of that. But
6 -- uh -- I think I -- that it's possible.

7 THE COURT:

8 All right. And your name is?

9 JUROR 29, KATHRYN BLACK:

10 Kathryn Black.

11 THE COURT:

12 And -- uh -- Ms. Black --

13 JUROR 29, KATHRYN BLACK:

14 I taught at Myrtle Beach Elementary
15 from '84 to '94.

16 THE COURT:

17 Well, you sound like you've had a lot
18 of experience then?

19 JUROR 29, KATHRYN BLACK:

20 Yeah.

21 THE COURT:

22 Ms. -- uh -- Ms. Black -- uh -- would
23 the fact that you may have taught him -- In grade school, I
24 believe you said?

25 JUROR 29, KATHRYN BLACK:

1 Yes.

2 THE COURT:

3 Would the fact that you may have
4 taught Mr. Graham at sometime in the past, any way -- in any
5 way affect your ability to be a fair and effective juror?

6 JUROR 29, KATHRYN BLACK:

7 I would try to be fair; but -- uh --
8 if -- you know -- I -- I --

9 THE COURT:

10 Do you --

11 JUROR 29, KATHRYN BLACK:

12 -- I'm just saying who I think it is.

13 I -- And I'm not positive of that.

14 I just --

15 THE COURT:

16 Do you think you could set that aside
17 and -- and give both the State --

18 JUROR 29, KATHRYN BLACK:

19 I would try.

20 THE COURT:

21 -- and --

22 JUROR 29, KATHRYN BLACK:

23 I would try.

24 THE COURT:

25 Are you sure you could do it?

1 That's what I have to determine.

2 JUROR 29, KATHRYN BLACK:

3 Okay.

4 I would definitely try be fair.

5 THE COURT:

6 Do you have any doubts as to your
7 ability to be fair?

8 JUROR 29, KATHRYN BLACK:

9 My doubt is that:

10 If it's not the gentleman that I
11 think it is -- uh -- I'm -- you know --

12 THE COURT:

13 Your doubt is that since you taught
14 him, you might have some interest or -- or biased or
15 prejudice in this case?

16 JUROR 29, KATHRYN BLACK:

17 Yeah.

18 THE COURT:

19 All right.

20 Well, Ms. -- uh -- Black, what I'm
21 going to do is:

22 I'm going to set you aside in this
23 case, then.

24 JUROR 29, KATHRYN BLACK:

25 Okay.

1 THE COURT:

2 Thank you for sharing that with us;
3 all right.

4 JUROR 29, KATHRYN BLACK:

5 I'm -- I'm sorry.

6 THE COURT:

7 That's all right. That's nothing to
8 be sorry about.

9 We appreciate your candor.

10 COURT REPORTER:

11 Could I get her number, Your Honor?

12 THE COURT:

13 Uh -- And again, your number was?

14 JUROR 29, KATHRYN BLACK:

15 29.

16 THE COURT:

17 Number 29; okay.

18 Now, I'm going to read to you a list
19 of possible witnesses that may be called in this case.

20 Now, these are not witnesses that we
21 are sure that we're going to hear from; but they are
22 potential witnesses.

23 Uh -- And I want to ask you:

24 Has anyone been related by blood or
25 marriage to any of these people on the list; or have you had

1 a close personal or social relationship with any of these
2 people?

3 Anthony Jefferson?

4 Jamar Wilson?

5 Lamar Vereen?

6 Barron Lewis?

7 Charles Willard?

8 Thomasina Roy?

9 Lynette Hamilton?

10 Corey Strickland?

11 Connie Taylor?

12 Cuperlacus Vereen?

13 Catherine Egan?

14 And I may repeat some of these --

15 these names as I move to the second list:

16 Chad Wilson?

17 Chaquette Gause?

18 Officer Robert Deal, with the Horry

19 County Police Department?

20 Stephen L. Clark?

21 Officer John Lewis, Horry County

22 Police Department?

23 Officer Mark Bonner, Horry County

24 Police Department?

25 Officer Scott Bogart, Horry County

1 Police Department?

2 Tyrone Hart?

3 Talia Black?

4 Officer Todd Cox, Horry County Police

5 Department?

6 Lori Rabon, Horry County Police

7 Department?

8 Officer Jonathan Martin, Horry County

9 Police Department?

10 Dan DeFreese, with South Carolina Law

11 Enforcement Division?

12 Dr. Edward Proctor?

13 Leon Keel?

14 Tony Wilson?

15 Coaty Deas?

16 Kalamison Hill?

17 Lindsay Pate Robinson?

18 Has anyone had a close personal or
19 social relationships with any of those persons; or, are you
20 related by blood or marriage to any of those persons?

21 Yes ma'am?

22 Please stand.

23 JUROR 253, GLORIA MARTINEZ:

24 I've worked with Dr. Proctor.

25 THE COURT:

1 You worked with Dr. Proctor?

2 And your name is?

3 JUROR 253, GLORIA MARTINEZ:

4 Gloria Martinez.

5 THE COURT:

6 And Ms. Martinez, would the fact that
7 you worked with Dr. Proctor in any way affect your ability
8 to be fair an impartial juror?

9 JUROR 253, GLORIA MARTINEZ:

10 Uh -- (Not Audible.)

11 COURT REPORTER:

12 I'm sorry. I --

13 JUROR 253, GLORIA MARTINEZ:

14 It wouldn't.

15 THE COURT:

16 It would not?

17 JUROR 253, GLORIA MARTINEZ:

18 No.

19 THE COURT:

20 Could you give both the State and the
21 Defense a fair trial?

22 JUROR 253, GLORIA MARTINEZ:

23 Yes sir.

24 THE COURT:

25 Thank you very much.

1 And your number was?

2 JUROR 253, GLORIA MARTINEZ:

3 Uh -- 253.

4 THE COURT:

5 253. Thank you very much, Ms.

6 Martinez.

7 Yes ma'am?

8 JUROR 258, STEPHANIE MCCALLUM:

9 I was classmates with Officer Robert
10 Deal.

11 THE COURT:

12 With Officer Deal?

13 Would the fact that you -- uh -- were
14 -- were a classmate of -- of Officer Deal -- Would that be
15 in school or college?

16 JUROR 258, STEPHANIE MCCALLUM:

17 At Webster.

18 THE COURT:

19 All right.

20 Would that in any way affect your
21 ability to be a fair and impartial juror?

22 JUROR 258, STEPHANIE MCCALLUM:

23 Hopefully not.

24 THE COURT:

25 Could you give both the Defense and

1 the State a fair trial?

2 JUROR 258, STEPHANIE MCCALLUM:

3 Yes.

4 THE COURT:

5 Thank you very much.

6 And your number was?

7 JUROR 258, STEPHANIE MCCALLUM:

8 258.

9 THE COURT:

10 258. Thank you very much.

11 All right.

12 The attorneys in this case are:

13 Mr. Scott Joye, and Mr. Jimmy

14 Richardson.

15 Mr. Joye is a -- in private practice

16 here in Horry County.

17 Mr. Joye, if you would -- uh -- tell

18 them who else is in your firm?

19 MR. JOYE:

20 Certainly.

21 And I'm not Joye with the -- with the

22 -- either the billboards or the commercials; but I'm Scott

23 Joye of Joye, Nappier and Risher.

24 Uh -- We have a firm. There are four

25 lawyers there -- uh -- myself -- uh -- we're in Murrells

1 Inlet -- and -- uh -- Mark Nappier, John Risher, and Wendy
2 Hardin -- uh -- also, my assistant is -- uh -- Alexis High;
3 and she'll be helping me in -- during the course of this
4 case.

5 THE COURT:

6 All right.

7 And Mr. Richardson is with the Horry
8 County Solicitor's office. They have numerous attorneys.
9 But they are not in private practice.

10 And they all work -- uh -- as I said,
11 for Mr. Hembree, our -- our elected -- uh -- Solicitor.

12 Now, has any member of the jury panel
13 ever been represented by any of the attorneys that have been
14 named, or involved in this case, or -- or by their law firm
15 in the case of -- of Mr. -- uh -- Joye?

16 Or do you have a close personal or
17 social relationship with any of these attorneys?

18 Or are you related in any way, form,
19 or fashion, to any of the attorneys?

20 There is --

21 Yes ma'am?

22 JUROR 257 MARY ANN MAZUS:

23 I was involved in a credit card
24 fraud. Somebody had stole my identity.

25 THE COURT:

1 Yes ma'am?

2 JUROR 257 MARY ANN MAZUS:

3 And I'm not sure.

4 Somebody from the State represented
5 me; but I'm not sure if it was this gentleman.

6 THE COURT:

7 All right.

8 Well, let me ask you this:

9 Would the fact that you -- uh -- are
10 -- were the victim of a crime, and that crime was prosecuted
11 by the Stat -- and I think that's the circumstance that
12 you're describing to me?

13 JUROR 257 MARY ANN MAZUS:

14 (Nods in the affirmative.)

15 THE COURT:

16 Would that in any way -- or would it
17 in any way -- affect your ability to be a fair and impartial
18 juror?

19 JUROR 257 MARY ANN MAZUS:

20 I don't -- No. It won't.

21 I can be impartial.

22 THE COURT:

23 Okay. Could you be fair to both the
24 State and the Defense; and give them each a fair trial?

25 JUROR 257 MARY ANN MAZUS:

1 Yes.

2 THE COURT:

3 And your number, ma'am?

4 JUROR 257 MARY ANN MAZUS:

5 Uh -- 257.

6 THE COURT:

7 And your name?

8 JUROR 257 MARY ANN MAZUS:

9 Mary Ann Mazus.

10 THE COURT:

11 All right, Ms. Mazus. Thank you for
12 that information.

13 Has any member formed or expressed an
14 opinion about any issue or matter involved in this case?

15 And let me take you what I'm asking
16 you there:

17 Uh -- As I have already indicated,
18 the Defendant in this matter has been charged.

19 He has just been charged.

20 And again, I want to impress upon you
21 the fact that that is not evidence.

22 But he has been charged -- uh -- with
23 the murder of one Ervin Graham, which occurred on July the
24 30th of 2007. And it involved a gunshot.

25 It occurred here in Horry County.

1 There was -- uh -- an alleged robbery
2 that took place during -- uh -- that event. And the event
3 was accompanied by the use of a firearm.

4 And he is, again, simply charged with
5 possession of a weapon during the commission of a violent
6 crime.

7 All of this occurred July the 30th,
8 of 2007.

9 Have you read any newspaper reports?

10 Have you seen any TV reports?

11 Has anyone discussed this with you?

12 Have you discussed it with anyone?

13 Have you formed any opinion about
14 this case?

15 Do you know anything about this case?

16 (No response.)

17 THE COURT:

18 Again, there is no response.

19 I want to also ask you -- and -- and
20 I don't know if this is -- is going to come up.

21 I don't know if it is going to be an
22 issue, or -- or evidence in this case.

23 Uh -- When we're assigned a case to
24 try; actually, we judges try not to get into the -- the
25 factual basis for the case.

1 We try to have an open mind and rely
2 just on the evidence that's presented during the trial.

3 We like to be as fresh to that case
4 as -- as you are as jurors.

5 And that's the proper thing for us to
6 do.

7 We should not have formed any bias or
8 prejudice about this case.

9 Uh -- So, I don't know exactly what
10 evidence we're going to have -- uh -- in this case.

11 But, does anyone have such a strong
12 feeling regarding drugs, or -- or guns, or gangs, that you
13 feel that it would affect your ability to be a fair and
14 impartial juror in this case?

15 If we heard testimony concerning
16 drugs, guns, gangs; anything of that nature; could it
17 prevent you from giving both sides a fair trial?

18 (No response.)

19 THE COURT:

20 There is no response.

21 Is any member of the jury panel aware
22 of any bias or prejudice towards either the State or the
23 Defense in this case?

24 (No response.)

25 THE COURT:

1 There is no response.

2 Is there any member of the jury panel
3 that was a member of the grand jury which issued the
4 indictments in this case?

5 And I think we covered that pretty
6 much yesterday.

7 But if you -- Now having heard about
8 the case, if you were on the grand jury and you think it may
9 have been an indictment that was issued while you were
10 there, we need you to -- to indicate that?

11 (No response.)

12 THE COURT:

13 And there is no response.

14 Is there any member of the jury panel
15 who is a member or contributor to any group which has its
16 prime -- as its primary concern -- the promotion of law
17 enforcement or victims rights?

18 And these groups would be -- uh --
19 such things of -- and certainly -- uh -- this is not an
20 exclusive list -- but -- uh -- groups like MADD, SADD, or
21 CAVE, which is citizens against violent crimes.

22 Uh -- Is anyone a member or a
23 contributor to any such group as that?

24 (No response.)

25 THE COURT:

1 And there is no response.

2 Is -- uh -- there any member of the
3 jury panel that knows any reasons whatsoever why you could
4 not serve -- or should not serve -- as a juror in this case,
5 with particular emphasis being placed on your ability to be
6 fair and impartial to both the State and the Defense?

7 (No response.)

8 THE COURT:

9 Anything further, Mr. Richardson?

10 MR. RICHARDSON:

11 No sir.

12 MR. JOYE:

13 May we approach just one second,
14 Judge?

15 MR. JOYE:

16 Yes, you may.

17 (WHEREUPON: Counsel for each party
18 conferred off the record with The Court at the bench at
19 10:32 AM, August 11, 2009.)

20 THE COURT:

21 I think I asked you this question in
22 -- in another form; but let me ask it this way:

23 Has any member been the victim of a
24 violent crime, and as a result of that would have a
25 prejudice or bias against the Defendant, or would, for any

1 reason, be unable to give fair and effective jury service?

2 That is: be fair to both the State
3 and the Defense?

4 (No response.)

5 THE COURT:

6 There is no response.

7 All right.

8 Madam Clerk, will you give us the
9 first juror.

10 CLERK:

11 Juror Number 11, Tobrina Bailey.

12 (WF)

13 If you would come forward, please?

14 THE COURT:

15 And, if you would, Ms. Bailey, just
16 come right around; and right in front of the podium; and
17 turn around, and -- and face the -- uh -- the attorneys.

18 (WHEREUPON: The juror came forward
19 and turned and faced counsel table as instructed.)

20 THE COURT:

21 Thank you, Ms. Bailey.

22 CLERK:

23 What say the State?

24 MR. RICHARDSON:

25 Please present the juror.

1 CLERK:

2 Defense?

3 MR. JOYE:

4 Please seat Ms. Bailey.

5 THE COURT:

6 All right.

7 CLERK:

8 Please be seated in the --

9 THE COURT:

10 Ms. Bailey, if you would, take -- if
11 you would.

12 And when you come forward, please
13 bring your personal effects just in case you are -- you are
14 selected; all right.

15 JUROR:

16 Sorry.

17 THE COURT:

18 That's all right, Ms. Bailey.

19 I didn't tell you that. I should
20 have.

21 JUROR:

22 Thanks.

23 (WHEREUPON: This juror, having been
24 accepted by the parties, was seated as a juror in this
25 case.)

1 CLERK:

2 Juror Number 29 was excused.

3 Juror Number 168, Lee Greene. (BM)

4 (WHEREUPON: The juror came forward
5 and turned and faced counsel table as instructed.)

6 CLERK:

7 What say the State?

8 MR. RICHARDSON:

9 Please present the juror.

10 MR. JOYE:

11 Please seat Mr. green.

12 THE COURT:

13 Mr. Greene, if you would, have a seat
14 in the jury box.

15 (WHEREUPON: This juror, having been
16 accepted by the parties, was seated as a juror in this
17 case.)

18 CLERK:

19 321, Larry Ridgeway? (WM)

20 (WHEREUPON: The juror came forward
21 and turned and faced counsel table as instructed.)

22 MR. RICHARDSON:

23 What say the State?

24 MR. RICHARDSON:

25 Please present Mr. Ridgeway.

1 CLERK:

2 Defense?

3 MR. JOYE:

4 Please excuse the juror from the
5 trial of this case.

6 CLERK:

7 You are excused from this particular
8 case.

9 (WHEREUPON: This jury panel member,
10 not being accepted by all parties, returned to the panel and
11 was not seated as a juror in this case.)

12 CLERK:

13 37, Michael Brandt? (WM)

14 (WHEREUPON: The juror came forward
15 and turned and faced counsel table as instructed.)

16 CLERK:

17 What say the State?

18 MR. RICHARDSON:

19 Please present Mr. Brandt.

20 CLERK:

21 Defense?

22 MR. RICHARDSON:

23 Please seat the juror.

24 CLERK:

25 Please be seated in the jury box.

1 (WHEREUPON: This juror, having been
2 accepted by the parties, was seated as a juror in this
3 case.)

4 CLERK:

5 130, Stephen Fleishaker? (WM)

6 (WHEREUPON: The juror came forward
7 and turned and faced counsel table as instructed.)

8 CLERK:

9 What say the State?

10

11 Please present Mr. Fleishaker.

12 CLERK:

13 Defense?

14 MR. JOYE:

15 Please excuse the juror from the
16 trial of this case.

17 CLERK:

18 You are excused from this particular
19 case.

20 (WHEREUPON: This jury panel member,
21 not being accepted by all parties, returned to the panel and
22 was not seated as a juror in this case.)

23 CLERK:

24 74, Jessica Clauser Grobarcik? (WF)

25 JUROR:

1 Grobarcik.

2 (WHEREUPON: The juror came forward
3 and turned and faced counsel table as instructed.)

4 CLERK:

5 What say the State?

6 MR. RICHARDSON:

7 Please present Ms. Grobarcik.

8 CLERK:

9 Defense?

10 MR. JOYE:

11 Please seat the juror in the trial of
12 this case.

13 CLERK:

14 Please be seated in the jury box.

15 (WHEREUPON: This juror, having been
16 accepted by the parties, was seated as a juror in this
17 case.)

18 CLERK:

19 194, Angela Inman? (WF)

20 (WHEREUPON: The juror came forward
21 and turned and faced counsel table as instructed.)

22 CLERK:

23 What say the State?

24 MR. RICHARDSON:

25 Please present Ms. Inman.

1 CLERK:

2 Defense?

3 MR. JOYE:

4 Please seat Ms. Inman.

5 CLERK:

6 Please be seated in the jury box.

7 (WHEREUPON: This juror, having been
8 accepted by the parties, was seated as a juror in this
9 case.)

10 CLERK:

11 416, James Wicker? (WM)

12 (WHEREUPON: The juror came forward
13 and turned and faced counsel table as instructed.)

14 CLERK:

15 What say the State?

16 MR. RICHARDSON:

17 Please present Mr. Wicker.

18 CLERK:

19 Defense?

20 MR. JOYE:

21 Please excuse Mr. Wicker from the
22 trial of this case.

23 CLERK:

24 You are excused from this particular
25 case.

1 (WHEREUPON: This jury panel member,
2 not being accepted by all parties, returned to the panel and
3 was not seated as a juror in this case.)

4 CLERK:

5 258, Stephen -- Stephanie McCallum?

6 (BF)

7 (WHEREUPON: The juror came forward
8 and turned and faced counsel table as instructed.)

9 CLERK:

10 What say the State?

11 MR. RICHARDSON:

12 Please present Mr. Mc -- uh -- excuse
13 me -- Ms. McCallum.

14 CLERK:

15 Defense?

16 MR. JOYE:

17 Please seat Ms. McCallum in the trial
18 of this case.

19 CLERK:

20 Please be seated in the jury box.

21 (WHEREUPON: This juror, having been
22 accepted by the parties, was seated as a juror in this
23 case.)

24 CLERK:

25 160, Lisa Gore? (WF)

1 (WHEREUPON: The juror came forward
2 and turned and faced counsel table as instructed.)

3 CLERK:

4 What say the State?

5 MR. RICHARDSON:

6 Please present Ms. Gore.

7 CLERK:

8 Defense?

9 MR. JOYE:

10 What was her number?

11 CLERK:

12 160.

13 MR. JOYE:

14 Please excuse Ms. Gore from the trial
15 of this case.

16 You're excused from this particular
17 case.

18 (WHEREUPON: This jury panel member,
19 not being accepted by all parties, returned to the panel and
20 was not seated as a juror in this case.)

21 CLERK:

22 121, Donna Edwards? (WF)

23 (WHEREUPON: The juror came forward
24 and turned and faced counsel table as instructed.)

25 CLERK:

1 What say the State?

2 MR. RICHARDSON:

3 Please present Ms. Edwards.

4 CLERK:

5 Defense?

6 MR. JOYE:

7 Please seat Ms. Edwards.

8 CLERK:

9 Please be seated in the jury box.

10 (WHEREUPON: This juror, having been
11 accepted by the parties, was seated as a juror in this
12 case.)

13 CLERK:

14 32, Timothy Bogart? (WM)

15 (WHEREUPON: The juror came forward
16 and turned and faced counsel table as instructed.)

17 CLERK:

18 What say the State?

19 MR. RICHARDSON:

20 Please present Mr. Bogart.

21 CLERK:

22 Defense?

23 MR. JOYE:

24 Give me that number one time -- one
25 more time? I'm sorry?

1 CLERK:

2 32.

3 MR. JOYE:

4 Please seat the juror.

5 CLERK:

6 Please be seated in the jury box.

7 (WHEREUPON: This juror, having been
8 accepted by the parties, was seated as a juror in this
9 case.)

10 CLERK:

11 115, Crystal Doyle? (WF)

12 (WHEREUPON: The juror came forward
13 and turned and faced counsel table as instructed.)

14 CLERK:

15 What say the State?

16 MR. RICHARDSON:

17 Please present Ms. Doyle.

18 CLERK:

19 Defense?

20 MR. JOYE:

21 Please seat Ms. Doyle.

22 CLERK:

23 Please be seated in the jury box.

24 (WHEREUPON: This juror, having been
25 accepted by the parties, was seated as a juror in this

1 case.)

2 CLERK:

3 145, Cynthia Gantt? (WF)

4 (WHEREUPON: The juror came forward
5 and turned and faced counsel table as instructed.)

6 CLERK:

7 What say the State?

8 MR. RICHARDSON:

9 145?

10 CLERK:

11 Yes sir.

12 MR. RICHARDSON:

13 Please present Ms. Gantt.

14 CLERK:

15 Defense?

16 MR. JOYE:

17 Please excuse Ms. Gantt from the
18 trial of this case.

19 CLERK:

20 You are excused from this particular
21 case.

22 (WHEREUPON: This jury panel member,
23 not being accepted by all parties, returned to the panel and
24 was not seated as a juror in this case.)

25 CLERK:

1 38, Alayna Branton? (WF)

2 (WHEREUPON: The juror came forward
3 and turned and faced counsel table as instructed.)

4 CLERK:

5 What say the State?

6 MR. RICHARDSON:

7 Please present Ms. Branton.

8 CLERK:

9 Defense?

10 MR. JOYE:

11 Please present the juror.

12 CLERK:

13 Please be seated in the jury box.

14 (WHEREUPON: This juror, having been
15 accepted by the parties, was seated as a juror in this
16 case.)

17 CLERK:

18 360, Jennifer Spicer? (WF)

19 (WHEREUPON: The juror came forward
20 and turned and faced counsel table as instructed.)

21 CLERK:

22 What say the State?

23 MR. RICHARDSON:

24 Please present Ms. Spicer.

25 CLERK:

1 Defense?

2 MR. JOYE:

3 Please seat Ms. Spicer.

4 CLERK:

5 Please be seated in the jury box.

6 (WHEREUPON: This juror, having been
7 accepted by the parties, was seated as a juror in this
8 case.)

9 CLERK:

10 154, Kathy Smith? (WF)

11 (WHEREUPON: The juror came forward
12 and turned and faced counsel table as instructed.)

13 CLERK:

14 What say the State?

15 MR. RICHARDSON:

16 Please present Ms. Smith.

17 CLERK:

18 Defense?

19 MR. JOYE:

20 Please excuse Ms. Smith from the
21 trial of this case.

22 CLERK:

23 You are excused from this particular
24 case.

25 (WHEREUPON: This jury panel member,

1 not being accepted by all parties, returned to the panel and
2 was not seated as a juror in this case.)

3 CLERK:

4 359, Nancy Snyder? (WF)

5 (WHEREUPON: The juror came forward
6 and turned and faced counsel table as instructed.)

7 CLERK:

8 What say the State?

9 MR. RICHARDSON:

10 Please present Ms. Snyder.

11 CLERK:

12 Defense?

13 MR. JOYE:

14 Please seat Ms. Smith (sic).

15 CLERK:

16 Please be seated in the jury box.

17 (WHEREUPON: This juror, having been
18 accepted by the parties, was seated as a juror in this
19 case.)

20 THE COURT:

21 Mr. Roth, move Ms. Spicer over one.

22 WHEREUPON: The Bailiff directed Ms.
23 Spicer as instructed by the Court.)

24 CLERK:

25 417, James Wiehe? (WM)

1 (WHEREUPON: The juror came forward
2 and turned and faced counsel table as instructed.)

3 THE COURT:

4 One and two.

5 CLERK:

6 What say the State?

7 MR. RICHARDSON:

8 Please present the juror.

9 CLERK:

10 Defense?

11 MR. JOYE:

12 Please excuse Mr. Wiehe from the
13 trial of this case.

14 CLERK:

15 You are excused from this particular
16 case.

17 (WHEREUPON: This jury panel member,
18 not being accepted by all parties, returned to the panel and
19 was not seated as a juror in this case.)

20 CLERK:

21 81, Anna Coppotelli? (WF)

22 (WHEREUPON: The juror came forward
23 and turned and faced counsel table as instructed.)

24 CLERK:

25 What say the State?

1 MR. RICHARDSON:

2 Please present Ms. Coppotelli.

3 CLERK:

4 Defense?

5 MR. JOYE:

6 Please seat Ms. Coppotelli.

7 CLERK:

8 Please be seated in the jury box.

9 (WHEREUPON: This juror, having been
10 accepted by the parties, was seated as a juror in this
11 case.)

12 CLERK:

13 Two alternates, Judge?

14 THE COURT:

15 Yes.

16 CLERK:

17 162, Gefranya Graham? (BF)

18 (WHEREUPON: The juror came forward
19 and turned and faced counsel table as instructed.)

20 CLERK:

21 What say the State?

22 MR. RICHARDSON:

23 Please seat Ms. Graham.

24 CLERK:

25 Defense?

1 MR. JOYE:

2 Please excuse Ms. Graham from the
3 trial of this case.

4 CLERK:

5 You are excused from this particular
6 case.

7 (WHEREUPON: This jury panel member,
8 not being accepted by all parties, returned to the panel and
9 was not seated as a juror in this case.)

10 CLERK:

11 275, Jeri Muller? (WF)

12 (WHEREUPON: The juror came forward
13 and turned and faced counsel table as instructed.)

14 CLERK:

15 What say the State?

16 MR. RICHARDSON:

17 Please present the juror.

18 CLERK:

19 Defense?

20 MR. JOYE:

21 Please seat the juror.

22 CLERK:

23 Please be seated in the jury box.

24 (WHEREUPON: This juror, having been
25 accepted by the parties, was seated as a juror in this

1 case.)

2 (WHEREUPON: The jury selection,
3 consisting of 12 jurors and 2 alternates, was completed at
4 10:45 AM, August 11, 2009.)

5 THE COURT:

6 All right; we have our jury.

7 I'm going to allow you to go back to
8 your juryroom to -- to be -- uh -- refreshed.

9 Uh -- Ms. Spicer, if you would,
10 always occupy that seat.

11 Ms. Coppotelli and Ms. More?

12 JUROR:

13 Muller.

14 THE COURT:

15 Muller.

16 If you would occupy those seats.

17 The rest of you may seat -- sit
18 anywhere in the jury box that you may choose when we bring
19 you back in; and all during the trial.

20 Mr. Roth, would you take them back to
21 their juryroom. Make sure they're some refreshments for
22 them.

23 (WHEREUPON: The jury empanelled in
24 the case withdrew from the courtroom at 10:46 AM, August 11,
25 2009; and was no longer present during the following

1 proceedings.)

2 THE COURT:

3 All right.

4 Uh -- It's my understanding that we
5 already have a jury for Judge John.

6 Is that correct?

7 CLERK:

8 Uh --

9 THE COURT:

10 He had a different group?

11 CLERK:

12 Yes sir.

13 THE COURT:

14 All right. So --

15 CLERK:

16 35 was pulled and sent over there.

17 THE COURT:

18 All right.

19 So this -- this group is excused,

20 then; okay?

21 CLERK:

22 Yes sir.

23 THE COURT:

24 You're excused for the balance of the
25 day.

1 I -- You are probably excused for the
2 remainder of the week. Uh -- But I would ask that you
3 please -- uh -- call back -- uh -- at that number that you
4 were given -- uh -- this evening.

5 Uh -- And -- And call back each day
6 until you receive a message that you're no longer required.

7 I would anticipate this case would
8 the balance of the week for me.

9 Uh -- Judge Young may require a jury
10 later in the week. But I'm not so sure about that.

11 So we'll ask you to keep calling back
12 until they tell you not to call back.

13 But, you're excused for the day.

14 Thank you so much for being here.

15 (WHEREUPON: The remaining jury
16 venire, not empanelled in the case, withdrew from the
17 courtroom at 10:48 AM, August 11, 2009; and was no longer
18 present during the following proceedings.)

19 THE COURT:

20 Any challenge to the jury?

21 MR. RICHARDSON:

22 None from the State, Your Honor?

23 MR. JOYE:

24 No, Your Honor.

25 I don't believe Mr. Richardson

1 actually struck anyone.

2 (Laughter.)

3 THE COURT:

4 Makes it rough on him, doesn't it,

5 Mr. Richardson?

6 Okay.

7 What we're going to do is take about
8 10 minutes gentlemen. And we'll have the jury back in. And
9 you prepared to go forward after a few preliminary remarks
10 by me?

11 MR. JOYE:

12 Yes, Your Honor.

13 THE COURT:

14 You ready?

15 MR. RICHARDSON:

16 Yes sir.

17 THE COURT:

18 Okay. Thank you.

19 Let's take about 10.

20 (WHEREUPON: The court was declared
21 in recess at 10:49 AM, August 11, 2009.)

22 (WHEREUPON: The court was called to
23 order by the Bailiff at 11:00 AM, August 11, 2009; but all
24 pertinent parties, along with their counsel, were not back
25 and present in the courtroom until 11:03 AM, at which time

1 the following proceedings took place.)

2 MR. RICHARDSON:

3 Wait. I'm going to call their names
4 to make sure they're not on this list.

5 Now Ms. Keel, his mother, I told her
6 she could stay in even if she is called as a witness.

7 THE COURT:

8 Wait. Is there a motion to
9 sequester, or --

10 MR. JOYE:

11 Well, yes sir.

12 I -- We had pretty much have agreed
13 to sequester the witnesses.

14 THE COURT:

15 Okay.

16 MR. JOYE:

17 But -- But, Your Honor, Ms. Keel
18 would be the mother. I don't -- She's not a fact witness.

19 THE COURT:

20 I would --

21 MR. JOYE:

22 I certainly don't have any --

23 THE COURT:

24 Okay. Then --

25 MR. JOYE:

1 -- any objection to her being in the
2 courtroom.

3 THE COURT:

4 All right.

5 MR. RICHARDSON:

6 All right.

7 THE COURT:

8 So there is -- uh -- a -- an order to
9 -- uh -- uh -- sequester any witnesses; is that correct?

10 MR. JOYE:

11 Yes sir; an agreement to sequester.

12 THE COURT:

13 An agreement?

14 MR. JOYE:

15 Yes sir.

16 THE COURT:

17 Okay.

18 MR. RICHARDSON:

19 I'm just going to make sure that
20 these people aren't in here.

21 Chaquette Gause?

22 (No response.)

23 Uh -- Robert Deal has already left.

24 Stephen Clark has left.

25 Tyrone Hart's in lockup.

1 Talia? Go out there.
2 WHEREUPON: Talia Black left as
3 directed.
4 Todd Cox?
5 (No response.)
6 Lori Rabon?
7 (No response.)
8 Jonathan Martin?
9 (No response.)
10 Dan DeFreese?
11 (No response.)
12 Dr. Parker?
13 (No response.)
14 Leon Keel?
15 (No response.)
16 He's not here?
17 Tony Wilson?
18 (No response.)
19 UNIDENTIFIED SPEAKER:
20 There is some that went downstairs.
21 MR. RICHARDSON:
22 Okay.
23 Don't let Tony or -- uh -- Leon be in
24 here.
25 If they come in, you need to remove

1 them.

2 UNIDENTIFIED SPEAKER:

3 No, they not coming in here.

4 MR. RICHARDSON:

5 Okay.

6 And -- uh -- Kal Hill?

7 (No response.)

8 And Lindsay Robinson.

9 (No response.)

10 Okay.

11 THE COURT:

12 All right.

13 And did the agreement allow witnesses
14 to stay in the courtroom after they've testified?

15 MR. JOYE:

16 Yes, Your Honor. I think there's no
17 reason --

18 THE COURT:

19 Okay. All right. Very well.

20 MR. JOYE:

21 If there is any issue that that I
22 think that may need to be relief --

23 THE COURT:

24 All right.

25 MR. JOYE:

1 -- re -- be dealt with later, I'll
2 bring it up.

3 THE COURT:

4 All right. Okay.

5 All right. Are we ready for a jury?

6 MR. RICHARDSON:

7 Yes sir.

8 THE COURT:

9 Okay. Bring them in.

10 (WHEREUPON: The jury empanelled in
11 the case was escorted back into the courtroom at 11:07 AM,
12 August 11, 2009; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 All right, Ms. Spicer, as I said
16 earlier, you will act as our Forelady. And the last jurors
17 will be our alternates. Again, I ask you to always occupy
18 that seat.

19 Uh -- Let me, before you are sworn,
20 tell you that -- uh -- again, that we appreciate your --
21 your service as jurors this week.

22 You have two very find Bailiffs who
23 will be assisting you; Ms. King and Mr. Roth.

24 Mr. Roth is always my Bailiff.

25 Ms. King is up this week from the --

1 uh -- from the Family Court acting as our Bailiff.

2 But let me remind you that:

3 They are here to help you, if you
4 have any problems whatsoever. If you need to send any
5 message to me, Mr. Roth is the one to do it.

6 And if Mr. Roth doesn't have you
7 doesn't have you donuts or a ham biscuits in the morning,
8 how about letting me know; because I'm going to know;
9 because when I have a jury, he brings me a ham biscuit too;
10 if I can talk him into it anyway.

11 Uh -- We'll try to have some
12 refreshments for you each morning and -- and have cokes and
13 -- and crackers and things of that nature when we go out.

14 Uh -- Again, if you are uncomfortable
15 at any time during a trial -- uh -- if -- if you're -- uh --
16 if you need a -- a restroom break and -- and I am not being
17 attentive enough to -- to break for you, raise your hand.

18 And I promise you, I will immediately
19 send you out -- uh -- uh -- and back to your jury room -- uh
20 -- for any purpose that you need to go.

21 If I send for you, and you've been
22 taking a break, or you are deliberating -- you're having
23 lunch; Ms. Spicer, if you're not ready to come, you just
24 send word back to me that you're not ready for -- uh -- for
25 me to bring your jury out; and -- uh -- and we'll wait on

1 you.

2 Uh -- Now, I want to make a few
3 preliminary remarks to you after we have sworn you. And I'm
4 going to ask the Clerk to do that.

5 WHEREUPON: The jury panel selected
6 for this case was duly sworn in open court 11:09 AM, August
7 11, 2009.

8 THE COURT:

9 Very well.

10 Now, what I'm about to tell you is
11 certainly not a charge on the law.

12 At the end of this case, I will give
13 you a full and complete charge on the law that you are to
14 use in your deliberations.

15 But you have been selected as fair
16 and impartial jurors.

17 The most important thing that a jury
18 does, is:

19 It determines what the facts are in
20 this case.

21 The facts may be different from some
22 of the evidence that -- that you hear in this case.

23 You are to sift through all the
24 evidence and only the evidence that you hear in this
25 courtroom in determining what the -- the facts are.

1 And that is an awesome
2 responsibility, because:

3 In an appeal, if I make a mistake,
4 the Supreme Court, or the Court of Appeals, can correct an
5 error that I make, particularly one of law.

6 But there's almost no way that an --
7 an appellate court can correct an error that you make in
8 your determination of what the facts are.

9 Uh -- Your determination of the facts
10 will be held inviolate -- uh -- as -- as -- forever in this
11 case.

12 So it is important that you play
13 close -- close attention to the -- the -- uh -- evidence
14 that you have heard.

15 And in determining what the facts
16 are, let me tell you this, that:

17 You can believe one witness over
18 many.

19 You can believe the many over one.

20 You can believe part of what a
21 witness says; or none of what a witness says; or all of what
22 a witness may say this case.

23 And in doing so, you can use any
24 method that you, in your experience, have determined to be
25 reliable in reaching the truth or determining whether

1 someone is telling you the truth or whether that person may
2 be mistaken in their -- uh -- their testimony.

3 You can consider such things as the
4 opportunity the person had to see or observe or hear what he
5 or she is testifying to.

6 You can consider that person's
7 ability to remember and recall things.

8 You can consider that person's
9 interest, prejudice, or bias, in the case; if they have any.

10 You can consider anything that you
11 feel is important, including that persons appearance on the
12 witness stand.

13 Sometimes we call that: a person's
14 demeanor.

15 All of these things are for you --
16 are tools for you as a juror to use in determining what the
17 facts are.

18 And once you determine what the facts
19 are, you will apply those facts to the law that I gives you
20 -- give you.

21 And just as you are the sole and
22 exclusive judges of the law -- of the facts in the case, I
23 am the sole and exclusive judge of the law.

24 And you must be guided in your
25 deliberations by the law as I give it to you, whether you

1 agree with that law or not.

2 Because as I said, as you are the
3 sole and exclusive determiners of the facts, I am the sole
4 and exclusive givers of the law that you -- uh -- will
5 apply.

6 I want to ask you:

7 Not begin your deliberations in this
8 case until you have seen all the evidence that will present
9 -- be presented; not only the State's evidence, but any
10 evidence that the Defense may put up in this case.

11 I would advise you that the State's
12 not compelled -- or the Defense is not compelled to put up
13 any evidence.

14 They don't have any responsibility in
15 this case -- uh -- as far as proving anything to you.

16 Uh -- But if they do, I want to ask
17 you to remember to wait until you have heard the evidence
18 that the Defense has, as well as the State; and not begin
19 your deliberations, not even among yourselves.

20 I don't even want you to talk about
21 this case this evening when you go home.

22 And I know it's hard to sit down with
23 your husband's, wives, boyfriends, or -- or friends, period;
24 and they say:

25 What did you do today?

1 And you tell them you're on a jury,
2 but you can talk about it.

3 Because, to talk about it with anyone
4 might lead to some comment that that person would make that
5 could -- uh -- sway you one way or the other in your
6 determination of the facts in this case.

7 Uh -- Again, I ask you not to look at
8 any TV programs.

9 There may be something reported in
10 the newspapers.

11 As I said, this is a murder case.
12 Sometimes that happens. Don't -- uh -- Don't do that.

13 Don't go out and make any independent
14 investigations.

15 I had a juror one time that wanted to
16 go out and -- to the scene -- uh -- of -- of -- of the case,
17 and -- and take measurements and stuff.

18 Don't -- Don't do that.

19 You -- You're going to have to decide
20 this case solely based on what you hear from this witness
21 stand.

22 And the most important thing you can
23 do in that regard is to keep an open mind.

24 Don't make any decisions or reach any
25 conclusions about this case until you have heard all of the

1 evidence.

2 And I want you to remember that:

3 The Defendant begins this case with a
4 presumption of innocence.

5 He is presumed to be innocent.

6 And the State has the burden of
7 removing that presumption by proving to you, and each and
8 every one of you, that the Defendant is guilty beyond a
9 reasonable doubt.

10 Now in just a minute, the attorneys
11 are going to make what is called: an opening remark.

12 And in that, you will hear about this
13 case.

14 Uh -- Each side, I -- I believe --
15 will tell you what they think they will be able to prove or
16 show in the trial of this case; or what the evidence might
17 show in this -- in this case.

18 Basically, it is the evidence from
19 their point of view.

20 It will give you some idea as to what
21 this case is about.

22 I ask you to listen to very
23 carefully, because often opening remarks are very important
24 in providing jurors with an overview of the case.

25 However, let me, again, remind you,

1 that those opening remarks are not evidence in the case.

2 It's simply the attorneys -- both the
3 -- the State and the Defense -- it's their position or -- or
4 the -- the evidence that they anticipate viewed from their
5 point of view in this case.

6 Now sometimes during the trial of the
7 case, you may hear one of the lawyers say something like:

8 Your Honor, I -- I object.

9 Or:

10 Your Honor, I have a question of law.

11 Or:

12 Your Honor, I have something that we
13 need to take up outside of the presence of the jury.

14 And I may send you out of the
15 juryroom. Sometimes that -- I mean: out of the courtroom.

16 Sometimes that becomes very tedious.
17 And we apologize for that.

18 But it is not that we are trying to
19 keep anything from you.

20 It's simply this:

21 There may be an evidentiary matter in
22 which I am required to make some comment on that evidence,
23 or its weight, or its validity.

24 I may have to express my personal
25 opinion.

1 That would be highly improper.

2 Because, I'll tell you:

3 If at any time during this trial, I
4 suggest to you by words, actions, or -- or otherwise, that I
5 have an opinion about a piece of evidence, I ask you to
6 please disregard that.

7 I'm not entitled to have any opinions
8 about the evidence.

9 Because you, as a jury, are the sole
10 and exclusive judges of the facts in this case.

11 And you should not be swayed in any
12 way by anything you may pick up from me.

13 So for that reason, I sent you out of
14 the courtroom when I know that I may have to be speaking or
15 talking about a particular piece of evidence.

16 And that's why judges send jurors out
17 of the -- uh -- the courtroom.

18 Now again, I want to remind you that:

19 It's your solemn duty to determine
20 the facts in this case.

21 And in doing that, there is nothing
22 more important than you paying close attention to the
23 evidence in this case.

24 And as I said:

25 If at anytime you've become

1 distracted; you -- you -- either your back's hurting or you
2 need a restroom break, or anything like that, I want your
3 hand up.

4 I want to make sure that you are not
5 being distracted.

6 And we can stop, and we can take a
7 break, any time, if it's -- if it's necessary, so long as
8 you are -- are attentive to the evidence in this case.

9 Now, I believe that we will begin by
10 Mr. Richardson giving you an opening remark.

11 MR. RICHARDSON:

12 Thank Your Honor.

13 Madam Foreperson, ladies and
14 gentlemen:

15 On July 30th, 2007, Michael
16 Livingston killed -- murdered Ervin Graham.

17 He used a 9 millimeter pistol to do
18 so.

19 And in that act, he took the victim's
20 vehicle and drove that vehicle approximately two miles to a
21 wooded location, where it wouldn't be found.

22 And it wasn't found.

23 And you're going to hear testimony
24 that that body wasn't found until about 10 days later.

25 He had such as the in that vehicle

1 from July 30th, 2007, to, I believe it was, August 8th,
2 2007.

3 I'm not going to go into why right
4 now. I'm going to let the witnesses hash that out.

5 But, on those facts alone:

6 The fact that he shot the victim in
7 the head twice at point-blank range.

8 The fact that he, along with others,
9 took the victim's vehicle.

10 The fact that, he along with others,
11 to the victim's gun.

12 The fact that a gun was used in the
13 commission of a violent crime.

14 Those are the 3 indictments that you
15 have before you here today.

16 Now, I want to apologize up front.

17 And I will tell you:

18 Uh -- Some of the witnesses that
19 you're going to hear from, you may very well not like.

20 I'm going to introduce you to a few
21 of them before they take the stand. And you will see why
22 you won't like them.

23 Because, for the majority, they're
24 going to get up here, and they're going to tell you:

25 I too, am charged with murder.

1 I too, am charged with use of a
2 weapon during the commission of a violent crime.

3 And I too, am charged with armed
4 robbery.

5 They are going to tell you that:
6 They are under a proffer from the
7 State.

8 In other words, a contract between me
9 with these people.

10 They are going to tell you about
11 that. That nobody has promised them anything. However, we
12 would use the fact that they tried to help us when they are
13 sitting in that seat.

14 Because, every one of them are tried
15 -- are charged -- I shouldn't say everyone of them; most of
16 them are charged with the same crimes that this young man is
17 charged with.

18 So, the reason I apologize is:
19 These people; they are not Boy Scouts
20 been by any means.

21 Uh -- And I would submit to you at
22 some point:

23 When somebody robs a church, you
24 might have deacons and choir members to come in and testify
25 as to what they saw.

1 What you'll find here is:
2 None of these young men are deacons
3 or choir members.
4 Some of them have records.
5 More pressing than any record that
6 they've got, is the charges that they've got against them.
7 Now, you were going to hear that they
8 are very closely related for the most part.
9 You're going to hear from a young man
10 named Tony Wilson and his brother Chadd Wilson.
11 And Chadd's going to tell you:
12 Yes, I'm charged with murder.
13 I'm charged with armed robbery.
14 And I'm charged with the weapon
15 charge.
16 And he's going to tell you that he
17 grew up in the same yard with Michael Livingston, when they
18 were little boys.
19 They grew up together.
20 They are first cousins.
21 He now lives, he'll tell you, in the
22 back -- in the same yard that Michael's grandmother lives
23 in.
24 And he don't want to be here.
25 He loves his cousin very much.

1 Tony will tell you:
2 We grew up together.
3 Uh -- And I hate doing this.
4 I hate telling on my cousin.
5 But here's what I saw.
6 A young man named Coaty Deas; you're
7 going to hear from him.
8 And Coaty is going to tell you:
9 I was there when Michael shot Ervin
10 Graham twice in the back of the head.
11 Not only was I there, but I drove the
12 vehicle.
13 I actually took possession of the
14 victim's truck.
15 And as the -- uh -- victim in this
16 case, Ervin Graham, lay slouched down over the center
17 console, I sat on part of the victim. And I drove him to
18 that wooded lane.
19 And I did that that the direction of
20 this Defendant, Michael Livingston.
21 I did it.
22 And he'll tell you something else.
23 He'll tell you:
24 When I got him to that point, Michael
25 told me to shoot him. And I shot him. Not once, but twice.

1 This young man Ervin Graham; he's
2 certainly -- you -- you're not going to find him to be a
3 saint either.

4 But he didn't deserve what he got; 4
5 bullet holes to the head.

6 And that's what you're going to hear
7 from.

8 And you're going to hear from -- from
9 a -- a young man, Calvin Hill.

10 He's actually named -- I can't even
11 pronounce his first name. I call him Kal.

12 But you're going to hear from him.

13 He's not charged with anything.

14 Kal says:

15 I live right up the road from them.

16 I was up there.

17 I saw the entire thing take place.

18 I didn't see them when they took the
19 body to the dump site, but I saw Michael shoot him twice in
20 the head.

21 I saw him die.

22 And you may very well hear from
23 Michael's common law wife.

24 Very sketchy. But she will say:

25 I picked them up.

1 When they were leaving that wooded
2 area, I picked up Coaty Deas. I picked up Chadd Wilson.
3 And I picked Michael Livingston.

4 And I took them back to my house.

5 And those young men will tell you
6 when they got back to that house, what they did as far as --
7 uh -- destroying the clothes that they had on them.

8 They'll tell you that when they read
9 the dumpsite leaving the -- uh -- victim's body, that they
10 got this plan to blow up the vehicle -- to do away with all
11 the evidence.

12 And they will tell you that they
13 filed into that vehicle fired into the vehicle trying to get
14 the vehicle to explode.

15 They will mention 3 different
16 pistols.

17 They will tell you that the
18 Defendant, Michael Livingston, fired the first two shots
19 from the 9 millimeter.

20 They will tell you -- Coaty will tell
21 you:

22 I took the victim's gun, a 40
23 caliber, and I shot him twice.

24 And Chadd will tell you:

25 I never shot the victim.

1 I understand I'm charged with murder,
2 but I never shot him.

3 I used a .38 to fire into the back of
4 the -- uh -- vehicle -- to try to get it to blow up.

5 The -- uh -- projectiles; you will
6 see -- uh -- the shell casings.

7 You'll see a lot of that stuff.

8 And then you'll hear from some
9 detectives that will say:

10 I don't know any of the young men.

11 But I'll tell you this:

12 I went out and I found that crime
13 scene.

14 Uh -- They will tell you a jogger
15 came upon it and found it by smell.

16 And that:

17 When they were called out, they went
18 to that scene and found this young man dead in the vehicle.

19 And they would tell you:

20 This is the -- the -- uh --
21 projectiles that I picked up.

22 Here's what I found.

23 And here's what I didn't find.

24 And -- uh -- of course, they will
25 tell you that:

1 Over the course of 10 days, there is
2 no DNA to speak up.

3 That:

4 We tried that, but 10 days of heat
5 and maggots and that sort of stuff destroys the DNA.

6 And this case isn't about DNA anyway.

7 We know who's DNA it is, even if SLED
8 doesn't pick up on it.

9 If there is a man with 4 bullet
10 wounds to the head slumped over and that was what used to be
11 blood in the floorboard, it's not a case of who it is.

12 What you're going to have -- and this
13 case is all about this -- those witnesses -- the ones that
14 you hear from -- are they concocting some scheme to get at
15 their cousin?

16 Are they making all of this up to get
17 at Michael?

18 Because, it's not:

19 Who is dead?

20 It's not:

21 Whether or not there's a murder?

22 Clearly there's a murder.

23 Clearly a weapon was used.

24 And clearly the man's vehicle was
25 moved after he was dead.

1 The elements are all there.
2 The only thing for you to determine
3 is:

4 Are these young men credible enough
5 when it comes to Michael Livingston?

6 Did Michael shoot him once?

7 Did he shoot him twice?

8 Did he shoot him all 4 times?

9 Because, there's 4 shots in his head.

10 And at the end of that -- and I'll go
11 into this in a lot more detail.

12 But Judge Hyman is going to tell you
13 that:

14 There is a action of the law known
15 as:

16 Hand of one; hand of all.

17 And even if he didn't shoot the first
18 time into the victim -- much like Chadd -- he's just as
19 guilty.

20 We're not asking you to pick between
21 those, though.

22 We're going to put up testimony that
23 Michael Livingston fired two shots at point-blank range into
24 the victim's head. And that the victim died as a direct
25 result of that.

1 And Dr. Proctor is another person
2 that you will hear from.

3 And Dr. Proctor will say:

4 I don't know any of them. None of
5 your witnesses. None of -- None of the Defense witnesses.

6 I don't know the victim.

7 I know that a young man came in very
8 badly decomposed. That I removed one projectile from his
9 head. And I found 4 paths -- bullet paths -- through his
10 head. And that he would have died as a direct result of any
11 one of those.

12 So that's what you got.

13 I -- I hate that we've got to go down
14 this together and talk about -- you know -- this trail that
15 leads you from Bombing Range Road to -- uh -- a wooded path
16 where the victim was later found.

17 I hate to have to listen to people
18 tell you about corporal smells and -- and -- and insects,
19 and -- uh -- maggots everywhere. I -- you know.

20 But the judge has already told you:

21 When you hear from these people, it's
22 going to be easy to get real mad and make up your mind and
23 say:

24 Michael did this stuff.

25 But in fairness to him, you need to

1 hear everybody.

2 And you need to hear cross-
3 examination that comes from Mr. Joye.

4 And you need to hear anybody that
5 they choose to put up.

6 And at the end of that, you're going
7 to have to make a determination about Michael's involvement
8 in this.

9 And I will tell you upfront:
10 To a degree, it's confusing.
11 There are 3 guns.

12 There are numerous nicknames, which I
13 will try to keep that straight for you.

14 Uh -- And there are numerous people
15 that shot into that vehicle.

16 And there is at least two people that
17 shot the victim.

18 Just as though you're going to be
19 really upset with Michael and pull to make a determination
20 before it's time about guilt or innocence, you're also going
21 to wonder about these other people.

22 Golly, these people are terrible too.

23 But they're going to tell you that:

24 At some future date, they're going to
25 be seated where Michael's at.

1 They're going to be in front of a
2 jury of 14 just like you guys. And that will be their day.

3 But today and tomorrow, it's
4 Michael's day.

5 And I want you to listen, as -- as
6 gruesome as the details might be, because it is important.

7 Because this is where we find
8 justice.

9 And you're going to be asked about a
10 lot of things -- but I want you to -- about reasonable
11 doubt.

12 You're going to be asked about a
13 bunch of stuff.

14 And it's all important.

15 But when your oath -- Your oath was
16 to seek justice; nothing more, nothing less.

17 And that's what I'm going to ask you
18 to do at the end of this trial.

19 Right now, I'm going to ask you to
20 listen to Mr. Scott Joye as he gives you a brief opening
21 statement. And then we will start calling witnesses.

22 One -- One more thing. One more
23 thing.

24 Because of time restraints -- uh --
25 Dr. Proctor; I'm going to have to call him out of order.

1 So generally he would always do the
2 pathology. He would be the last witness.

3 But, I'm going to have to call him
4 out of order. And then, I'll have to put some people after
5 him; because he's not available -- uh -- tomorrow.

6 So just try to keep that straight
7 when you're going through it also; that -- uh -- there is
8 going to be other stuff to come.

9 But he should be here today at 3
10 o'clock. And he'll -- he'll tell you his version of what he
11 thought.

12 I appreciate your attention so far.

13 It should be two days -- uh -- with
14 the testimony. Uh -- Maybe into Thursday; but I doubt it.

15 But -- But thank you for being here.

16 And please listen to Mr. Joye

17 THE COURT:

18 Mr. Joye?

19 MR. JOYE:

20 Your Honor;; ladies and gentlemen:

21 Not guilty. Not guilty.

22 Michael Livingston is telling you
23 sitting right here without ever saying a word:

24 I'm not guilty.

25 I did not kill Ervin Graham on July

1 30th, 2007.

2 He's waited for two years for his day
3 in court, to come here, to tell you:

4 Listen to what's said on that witness
5 stand.

6 And using your common sense, judge
7 the credibility of these folks who are going to testify.

8 And I'm going to tell you:

9 Not only are they not credible; they
10 are incredible.

11 Each and every one of them has told
12 more stories about this case. You need a score card to keep
13 it straight.

14 Chadd Wilson; Coaty Deas; both
15 charged with murder.

16 They got a contract with the State by
17 and through Mr. Richardson.

18 It's called a proffer.

19 And in that proffer, what they are
20 telling you is:

21 We hadn't really decided exactly what
22 we're going to charge you with.

23 Although, you're charged with:

24 Murder; armed robbery; possession of
25 a firearm by -- uh -- during a crime of violence.

1 We don't know that that's essentially
2 what you're going to plead to somewhere down the road.

3 I'll submit to you:

4 They would testify to any -- anything
5 to lessen their culpability; to get a break from the State.

6 I don't know what that break's going
7 to be.

8 You don't either.

9 You don't either.

10 Why don't they give you a -- what --
11 they know what they're going to say.

12 Why don't they give you and tell you
13 what -- the kind of deal they're going to give them.

14 Ladies and gentlemen, in the 13 years
15 that I've been practicing law, I can tell you this:

16 You can go to J. Reuben Long; and you
17 can get anybody to say anything to get them a break.

18 What's not going to happen -- what
19 you're not going to see -- what you're not going to have --
20 is physical evidence pointing to the guilt of Michael
21 Livingston.

22 They can tell you that there is 4
23 shots into the head of the victim Ervin Graham.

24 I'll submit to you:

25 They can prove but that one gun was

1 used to shoot into the head of Ervin Graham; that being a 40
2 caliber projectile that was found in his skull.

3 They can't identify another bullet
4 that shot Ervin Graham in the head.

5 What they can do, is:

6 They can't get the co-defendants who
7 said anything from:

8 There was one shot.

9 That it happened at Lacey's place.

10 That it happened in my -- my
11 grandmamma's yard; to whatever. They will tell you.

12 Now, this is a criminal trial.

13 And in a criminal trial, it's not:

14 He might be guilty.

15 Some little scintilla of evidence.

16 Some little bit of evidence that
17 points to the -- someone's guilt.

18 It's not even:

19 Maybe he's guilty.

20 You know; a little bit more this way
21 than the other way, if you imagine the scales of justice.

22 What they've got to prove is:

23 Beyond a reasonable doubt.

24 Ladies and gentlemen, Michael

25 Livingston sits here cloaked in a robe of innocence.

1 It's called:
2 The presumption of innocence.
3 And only if -- and only if --
4 eventually the 12 of you -- of you -- believe beyond a
5 reasonable doubt those folks who sit on this test -- this
6 stand and testify -- only if those folks -- you can believe
7 those folks beyond a reasonable doubt.
8 And I'll submit to you:
9 There is no way in the world.
10 And if you follow your oath, you
11 can't not have a doubt in this case.
12 You're going to have a doubt.
13 There is no way in the world, given
14 these witnesses.
15 Now, I'm going to tell you what we
16 think; why I think what I think.
17 Soon the judge will instruct you
18 that:
19 You are here to render a verdict.
20 Now verdict means: to speak the
21 truth.
22 What I'm going to tell you about is
23 the concept called prosecutorial truth.
24 And I'm going to tell you:
25 I believe Mr. Richardson absolutely

1 believes what he believes.

2 What happens in this case is the fact
3 that:

4 Law-enforcement comes to a conclusion
5 before they've spoken to one eyewitness in this case.

6 They already had their conclusion
7 drawn with the first witness they spoke to.

8 So, instead of starting here and
9 moving forward in the investigation, they started here at
10 the goal:

11 Michael Livingston charged with
12 murder.

13 And they worked their way backwards.

14 And why do we know that?

15 Well, let me tell you why we going to
16 know that.

17 Law-enforcement, in -- in talking to
18 Kal Hill, who is the only person not charged in this case --
19 and I don't know why?

20 He lies to them up and down at the
21 very start of the investigation.

22 He doesn't know anything about
23 anything.

24 He wasn't even there.

25 He was down the road.

1 He was at his girlfriend's house.

2 Do you think they charged him with
3 obstruction of justice or what we call: misprison of a
4 felony?

5 No.

6 They say:

7 Look, we know you're there, Kal.

8 We know you're there.

9 We got evidence.

10 We know who shot him.

11 We know that Amp shot him.

12 Right here.

13 The only witness who has nothing to
14 gain in this case.

15 The only witness who is not even
16 charged, and should have been for lying to law-enforcement
17 when it first comes up.

18 So then, we get to the other 4 people
19 who were there.

20 Excuse me; the other 3 people who
21 were there.

22 Chadd Wilson. Charged with murder.
23 Charged with armed robbery. Charged with possession of a
24 weapon during the commission of a crime.

25 Chadd is going to testify to anything

1 they want him to say.

2 He's looking for a deal, see.

3 Under their own contract.

4 We don't even know if we're going to
5 continue on with this particular charge of murder or armed
6 robbery.

7 And even if we do, we may -- we've
8 got some suggestions for the judge based on your
9 cooperation.

10 So, Chadd -- his brother Tony.

11 His brother Tony goes to another
12 man's house and shoots it up.

13 And Tony's going to tell you about
14 that because they say he's involved.

15 And guess what?

16 He has the only weapon that's been
17 found that's tied to anything to do with this case; a .38
18 caliber revolver.

19 Now, we know that there was a .38
20 revolver, because there was a projectile in the tire of the
21 vehicle that was shot up in the woods.

22 Nobody say:

23 Ervin Graham was not killed.

24 No one.

25 What they're saying is:

1 Michael Livingston is not guilty of
2 it.

3 Not one piece of physical evidence;
4 not one thing, other than 4 people; 3 of whom are looking
5 for deals.

6 The fourth of whom has been told on
7 tape; you're going to hear it:

8 We know you didn't do it, Kal.

9 We know Amp did it -- Amp being
10 Michael Livingston.

11 We know he did it.

12 But, we will send you down for it.

13 We'll give you 30 years to life, when
14 we know you didn't do it. We know Amp did it.

15 What is a man going to say?

16 You're saying:

17 You're going to put me in prison for
18 30 years to life? I'm going to tell you a story.

19 I'm going to tell you exactly what
20 you want to hear.

21 So when you are examining their
22 credibility, ladies and gentlemen, you follow that oath.

23 You listen to what they got to say.

24 And look at them. And see if you would buy a used car from
25 any of them.

1 I submit to you:

2 You cannot, by using those 4
3 witnesses, find beyond a reasonable doubt that Michael
4 Livingston had anything to do with the murder and armed
5 robbery of Ervin Graham.

6 Not guilty.

7 THE COURT:

8 Thank you.

9 Mr. Richardson?

10 MR. RICHARDSON:

11 Tony Wilson.

12 WHEREUPON: TONY WILSON WAS DULY

13 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Scoot up. Speak into the microphone.

17 If you would state your full name and
18 -- and spell your last name.

19 WITNESS:

20 Tony Angelo Wilson; W-i-l-s-o-n.

21 DIRECT EXAMINATION BY MR. RICHARDSON:

22 Q. What was your middle name again, Tony?

23 A. Angelo.

24 Q. Spell that for me please.

25 A. A-n-g-e-l-o.

1 Q. All right. Tony, do you go by any -- uh -- nick names?

2 A. Yeah; Lope (phonetic).

3 Q. Lope (phonetic)? Is that short for anything?

4 A. That's -- uh -- for my name, Angelo.

5 Q. Antelope?

6 A. Yeah.

7 Q. All right, Tony. Uh -- Please tell us where you live?

8 A. 3549 Bombing Range Road, Longs, South Carolina, 29568.

9 Q. Who -- Who lives there with you, Tony?

10 A. My mom and my dad.

11 Q. All right. How about Chadd? Does he live with you?

12 A. Yes sir.

13 Q. Who?

14 A. Yes sir.

15 Q. Okay. And Chadd is your brother?

16 A. Yeah.

17 Q. All right. Anybody else live there?

18 A. Yeah; my uncle, my brother, my little sister.

19 Q. What's your little brother's name?

20 A. Travis.

21 Q. Travis? And your sister is who?

22 A. Kelly.

23 Q. Kelly? So y'all live there together?

24 A. (Nods in the affirmative.)

25 Q. All right. Is there any other house on that

1 particular piece of land?

2 A. Yes sir.

3 Q. And who's is that?

4 A. That's my grandmamma's house.

5 Q. Your grandma. All right. Now how are you kin to
6 Michael?

7 A. That's my first cousin.

8 Q. All right. And did you grow up near Michael?

9 A. Yes sir.

10 Q. All right. How close did you grow up to Michael?

11 A. Right there in the same household?

12 Q. Same house?

13 A. (Nods in the affirmative.)

14 Q. And that's you first cousin?

15 A. (Nods in the affirmative.)

16 Q. Does Michael go any other names?

17 A. Juvie (phonetic).

18 Q. Juvie (phonetic)?

19 A. (No response.)

20 Q. Juvie?

21 A. (Nods in the affirmative.)

22 Q. Anything else that you call him?

23 A. Uh-uh.

24 THE COURT:

25 The -- uh -- court reporter's having

1 difficulty understanding the -- or hearing the -- the
2 witness.

3 Would you move that microphone up a
4 bit, Mr. Richardson, perhaps?

5 COURT REPORTER:

6 No; he just nodding his head, Your
7 Honor.

8 THE COURT:

9 Oh, he's nodding his head.

10 MR. RICHARDSON:

11 Okay.

12 THE COURT:

13 All right. Uh --

14 MR. RICHARDSON:

15 Speak in the mike.

16 THE COURT:

17 Let me advise you to always answer
18 verbally.

19 Uh -- The court reporter's having
20 difficulty picking up nods; okay.

21 WITNESS:

22 (No response.)

23 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

24 Q. All right. And -- And that's -- Tony, that's the
25 reason that I'm sitting over here.

1 I want the jury to be able to hear
2 you too; okay?

3 A. All right.

4 Q. All right. So don't nod. Just answer yes or no, or
5 whatever you feel comfortable with.

6 So how long, Tony, have you known
7 Michael?

8 A. All my life.

9 Q. All right. And were y'all close growing up?

10 A. Yes sir.

11 Q. You remain close today?

12 A. Yeah.

13 Q. All right. And why are you here testifying against
14 Michael?

15 A. Uh -- The shooting of Ervin Graham.

16 Q. All right. Was that on July 30th of 2007?

17 A. Yes sir.

18 Q. All right. Tony, tell us -- uh -- let's -- Before the
19 shooting, where were you at?

20 A. I was at my house.

21 Q. All right. Did you have occasion to go out to the
22 front yard of your house?

23 A. That's where I was at; sitting outside in the front
24 yard.

25 Q. All right. And is there -- uh -- What do y'all hang

1 round out there?

2 A. A tree.

3 Q. There's a tree out there?

4 A. (Nods in the affirmative.)

5 Q. And when you say y'all, who all was with you, Tony?

6 A. Me, Amp, Ted and C.

7 Q. All right. Now when you say --

8 COURT REPORTER:

9 Amp, Ted and who?

10 WITNESS:

11 C.

12 MR. RICHARDSON:

13 C?

14 WITNESS:

15 (Nods in the affirmative.)

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. All right. And when you say Amp; who are you talking
18 about?

19 A. Juvie (phonetic).

20 Q. Juvie (phonetic)?

21 A. (Nods in the affirmative.)

22 Q. So Michael would go by Amp or Juvie?

23 A. (Nods in the affirmative.)

24 THE COURT:

25 Is that Judy?

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1 MR. RICHARDSON:

2 Juvie (phonetic).

3 THE COURT:

4 Juvie (phonetic)? Okay.

5 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

6 Q. All right. And Tony, you said that Chadd was out there
7 too?

8 A. Yes sir.

9 Q. All right. And Chadd's your brother?

10 A. Yes sir.

11 Q. Do you -- What do you call him?

12 A. I call him Chadd.

13 Q. Does he have any nicknames?

14 A. Roster (phonetic).

15 Q. Roster?

16 A. (Nods in the affirmative.)

17 Q. Okay. Anything else that Chadd goes by?

18 A. No.

19 Q. All right. And you also said there was a young man
20 out there by the name of C? Who is C?

21 A. Coaty Deas.

22 Q. All right. Are you any kin to C?

23 A. No.

24 Q. How long have you known C?

25 A. About a couple of years. About 7 or 8 years.

1 Q. All right. And y'all hanging out by the tree.

2 A. (Nods in the affirmative.)

3 Q. Did -- Did you know -- uh -- a young man by the name of
4 Ervin Graham?

5 A. Yeah.

6 Q. All right. And how did you know Ervin?

7 A. I just knew him from the streets.

8 Q. What did Ervin go by? Did he have any other sort of
9 name?

10 A. F. I.

11 Q. All right.

12 COURT REPORTER:

13 Excuse me. Are you saying F. I.?

14 WITNESS:

15 (Nods in the affirmative.)

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. Tony, did -- uh -- Ervin live near y'all?

18 A. Uh-uh.

19 Q. Okay Did there come a time that Ervin Graham came to
20 where y'all were at?

21 A. Yes sir.

22 Q. All right. And how did he -- Was he driving
23 something?

24 A. Yeah. He was driving his gray truck.

25 Q. Gray truck?

1 A. (Nods in the affirmative.)

2 Q. Uh -- What kind of truck was that Tony?

3 A. A Chevrolet Tahoe.

4 Q. Tahoe? Sort of like a -- a Suburban type truck?

5 A. Yeah.

6 Q. Okay. Do you know what caused Ervin to come up there?

7 A. He was supposed to be coming to get paid.

8 Q. Get paid for what?

9 A. For some money that were in a drug transaction that Amp
10 had owed him some money.

11 MR. JOYE:

12 I'm -- Your Honor, may we approach
13 very briefly?

14 THE COURT:

15 Yes sir.

16 (WHEREUPON: Counsel for each party
17 conferred off the record with The Court at the bench at
18 11:53 AM, August 11, 2009.)

19 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

20 Q. Tony, did you hear any sort of a conversation, either
21 direct or over the phone, with regard to Ervin Graham on
22 July 30th, 2007?

23 A. I ain't heard no conversation on no phone.

24 Q. Did not? All right. So how do you know that Ervin was
25 coming on that day?

1 A. I ain't knowed he was coming. He just came.

2 Q. All right. Let me ask you this:

3 Did you buy or sell drugs through
4 Ervin Graham?

5 A. No I did not.

6 Q. Of your own personal knowledge, do you know whether or
7 not Chadd, your brother, bought or sold drugs through Ervin
8 Graham?

9 A. Uh-uh.

10 Q. From your own personal knowledge, do you know
11 whether --

12 MR. JOYE:

13 I'm going to object, Your Honor.

14 I think you'd have to lay out -- lay
15 some foundation to -- to go where he's going.

16 And that just goes straight to where
17 we were just -- had a conversation --

18 THE COURT:

19 Let me hear his question -- this --
20 this next question.

21 MR. RICHARDSON:

22 I'm just asking: Does he have any
23 personal knowledge that Amp bought drugs from Fido.

24 THE COURT:

25 Well, let's just see whether he has

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1 any personal knowledge?

2 WITNESS:

3 Yeah.

4 MR. RICHARDSON:

5 You do?

6 WITNESS:

7 (Nods in the affirmative.)

8 MR. RICHARDSON:

9 All right. And --

10 THE COURT:

11 I'll allow it.

12 MR. RICHARDSON:

13 He says that he did.

14 THE COURT:

15 I'll allow it.

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. And on that particular date, had you ever interacted
18 with Fido or Ervin Graham for any other reason but drugs?

19 A. No sir.

20 Q. So every time Ervin came around, there would be drugs?

21 A. Yes sir.

22 Q. And from your personal knowledge with regard to Amp --
23 uh -- you said that he bought and sold drugs through Ervin
24 Graham.

25 What do you know about that?

1 A. I just know he was getting drugs from Ervin Graham.

2 Q. Do you know -- uh -- with regard to the setup, how --
3 any sort of payment plan -- how that went?

4 A. He was going to give him like \$400.00 or something like
5 that.

6 Q. All right.

7 MR. JOYE:

8 How --

9 THE COURT:

10 I'll -- uh -- instruct the --

11 MR. JOYE:

12 How would he know that?

13 I mean, he didn't even know he was
14 coming.

15 How would he know -- gone know he was
16 going to give him \$400.00?

17 THE COURT:

18 Sustained.

19 I'm going to ask the jury to
20 disregard that last response, unless you can reconstruct it
21 in some fashion, Mr. -- uh -- Richardson.

22 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

23 Q. Tony, do you know about the \$400.00 or you guessing?

24 A. I'm assuming he was probably going to pay him some
25 money. That's what I'm saying -- telling you right now.

1 Q. All right. You say he was calling him?

2 A. Yeah. He had to call him for him to come.

3 Q. All right. But you didn't hear a call?

4 A. No, I ain't hear the call.

5 Q. All right. Okay.

6 THE COURT:

7 All right. I will instruct the jury
8 to please disregard that line of questioning and the
9 responses concerning any amount of money or any phone call
10 between the Defendant and the victim.

11 MR. RICHARDSON:

12 Okay.

13 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

14 Q. Okay. Now, Ervin pulled up at your -- in your front
15 yard?

16 A. (Nods in the affirmative.)

17 Q. Is that right?

18 A. Yes sir.

19 Q. Okay. Did Ervin get out of the vehicle?

20 A. No sir.

21 Q. All right. Did -- Tell me what you saw next? Saw or
22 heard?

23 A. Uh --

24 Q. Tell me what you saw or heard next?

25 A. I ain't -- We was just -- I was talking to F. I. -- all

1 it was, just talking -- you know what I'm saying.

2 Amp got in the backseat. He got the
3 gun. And he shot him.

4 Q. All right. You say Amp got in -- You were talking to
5 Ervin Graham or Fido?

6 A. Yeah.

7 Q. All right. And where were you standing?

8 A. Like right there outside of his window.

9 Q. All right. So his door was closed?

10 A. Yeah, his door was closed.

11 Q. All right. And Amp went to the backseat. Did he open
12 the back door?

13 A. Yeah.

14 Q. All right. And you said that Amp shot him?

15 A. (Nods in the affirmative.)

16 Q. Did Amp have -- Did you see a -- a pistol before Amp
17 shot him?

18 A. No; I ain't see the --

19 MR. JOYE:

20 Your Honor, he can ask him what
21 happened and tell us; but -- but --

22 THE COURT:

23 I think you are leading him a little
24 bit there, Mr. Richardson.

25 MR. JOYE:

1 He's leading him, Your Honor.

2 THE COURT:

3 Uh -- If you -- If you would, just
4 rephrase your question. Ask him what he saw.

5 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

6 Q. Did you ever see a pistol?

7 A. Not until after I heard a gunshot.

8 Q. All right. So you saw Amp open the door? And you
9 heard a gunshot?

10 A. Yes sir.

11 Q. All right. When was the first time you saw a pistol?

12 A. When Amp turned around and I -- when I had seen what
13 had happened.

14 Q. All right. And did -- Were you able to determine who
15 had the pistol?

16 A. Yes; because he had came back. Then he did it again;
17 shot him again.

18 Q. All right. Before he shot him the second time, were
19 you able to figure out who had the pistol?

20 A. Yeah.

21 Q. Do you know what kind of pistol it was?

22 A. A 9 millimeter.

23 Q. All right. And you're saying Amp had the 9
24 millimeter? A. (Nods in the affirmative.)

25 Q. All right. Say yes or no, please.

1 A. Yeah.

2 Q. Okay. Now, had you ever seen that 9 millimeter before
3 that day?

4 A. Yeah.

5 Q. Tell me when and where?

6 A. I just seen it when he just keep it on him.

7 Q. When you say he keeps it on him, who keeps it on him?

8 A. Amp.

9 Q. So Amp walked around with a 9 millimeter?

10 A. Yeah.

11 Q. All right. And on that date, Amp shot Fido with the 9
12 millimeter?

13 A. Yeah.

14 Q. All right. Now, after Amp shot him, you said that he
15 walked back around and shot him again?

16 A. Yeah.

17 Q. Tell me about that. How did that go on?

18 A. He just walked around to see what was going on. Then
19 he just came back and shot him again.

20 Q. How close, Tony, in proximity, was the first shot to
21 the second?

22 In other words, was it (slaps the
23 rail in front of the jury twice in quick secession); or was
24 it a longer period between the shots?

25 A. It was like right -- right together.

1 Q. All right. Anybody else -- Did you see any other gun?

2 A. No; I ain't seen no other gun.

3 Q. Did you have a gun on you that day?

4 A. No; I ain't had no gun on me that day?

5 Q. Tony, is there any doubt in your mind as to who shot
6 the victim in this case?

7 A. No.

8 Q. Are you sure that it was your cousin, Amp?

9 A. Yeah.

10 Q. Did you see anybody else shoot Ervin Graham?

11 A. No.

12 Q. All right. And all this took place at -- in your front
13 yard?

14 A. Yeah.

15 Q. All right. Now, Tony, what happened next?

16 A. They jumped in the truck. Then they went where they had
17 carried the body at.

18 Q. All right. When you say: They jumped in the truck.

19 Who are they?

20 A. Amp, Ted and C.

21 Q. Amp, Ted and C?

22 A. (Nods in the affirmative.)

23 Q. Okay. And you didn't -- you don't know where they
24 carried the body?

25 A. Uh-uh.

1 Q. Did anybody ever take you out there later?

2 A. No.

3 Q. So you don't know where the body ended up?

4 A. Uh-uh.

5 Q. Tell me what you saw from your own eyes after the
6 shooting?

7 A. I seen them jumped in the truck; and they left.

8 Q. Okay. When they left -- Now, if you leave your front
9 yard and go left, where do you go?

10 A. To highwayman 90.

11 Q. If you go right, where do you go?

12 A. On Dewitt Road.

13 Q. All right. Do you remember -- Do you know which way
14 they turned?

15 A. They turned right.

16 Q. They turned right. They went away from 90 back down
17 Dewitt Road?

18 A. Yeah.

19 Q. And you were not there at the dump site?

20 A. No.

21 Q. All right. Did you see your brother or Amp again that
22 day; or C?

23 A. Yeah.

24 Q. You did?

25 A. (Nods in the affirmative.)

1 Q. Approximately how long from that time of the shooting
2 did you see them again?

3 A. About 20 minutes.

4 Q. 20 minutes? And where did you next see them?

5 A. At my house.

6 Q. Where the tree is?

7 A. Yeah.

8 Q. Okay. Now, Tony, did you see any blood on Chadd?

9 A. No.

10 Q. Did you see any blood on Coaty?

11 A. No.

12 Q. How about on Amp?

13 A. No.

14 Q. Were Coaty, Amp, and Chadd, wearing the same clothes
15 that you saw them in earlier?

16 A. Yeah.

17 Q. Okay. From your own personal knowledge, do you know
18 if they changed clothes?

19 A. They had burnt the clothes.

20 Q. They had burnt the clothes. Did you see that?

21 A. No.

22 Q. How do you know that?

23 A. Because that's what they said.

24 Q. Who is they?

25 A. That's what all of them had said.

1 Q. Did Amp tell you that they had burnt the clothes?

2 A. Yeah.

3 Q. All right. Do you know where they burnt the clothes?

4 A. No.

5 Q. Tony, did you have a see the -- uh -- 9 millimeter
6 again?

7 A. No.

8 Q. Tony, did you ever see the .40 caliber gun?

9 A. No.

10 Q. All right. So the only pistol you ever saw was the 9
11 millimeter?

12 A. Yeah.

13 Q. And you saw that fired twice?

14 A. Yeah.

15 Q. And who's hand was that in?

16 A. Michael.

17 Q. And that's your first cousin?

18 A. Yeah.

19 Q. All right. Did Michael, or Amp, or Juvie (phonetic),
20 all being the same person; did he say anything to you later
21 about what you had saw.

22 Q. He told me:

23 What the fuck I had told them people.

24 Q. All right.

25 COURT REPORTER:

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1 Excuse me. I didn't get that
2 exactly.

3 What did you say he told you?

4 What --

5 WITNESS:

6 He said:

7 What the fuck did you tell them
8 people?

9 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

10 Q. All right. And where were you at when he said that to
11 you, Tony?

12 A. In J. Reuben Long.

13 Q. So you went to J. Reuben Long? And who's the people
14 that Amp was concerned with you talking to?

15 A. The police.

16 Q. All right. So you talked with the police?

17 A. (No response.)

18 Q. True or false?

19 A. True.

20 Q. Okay. And when you were leaving -- or going with the
21 police -- that's when you heard Amp say to you:

22 What the F did you tell them?

23 A. Yeah.

24 Q. Tony, how many days after the -- uh -- shootings, did
25 you talk with the police?

1 A. About 12 days.

2 Q. What caused you to be in police custody -- brief?

3 A. I had got arrested for a -- uh -- they said: first-
4 degree burglary.

5 Q. Okay. And who's place did you burglarize?

6 A. Uh -- D-Block.

7 Q. D-Block?

8 A. (Nods in the affirmative.)

9 Q. All right. Now, what's the D-Block's real name?

10 A. I don't know his real name.

11 Q. Was anybody with you when you went to D-Block's house?

12 A. Yeah.

13 Q. What was the purpose of you going to D-Block's house?

14 A. He was going around telling people that we had did it.

15 Q. And when you say "we," who was he telling --

16 A. Like "we." Like me and everybody else. Like, you know
17 what I'm saying.

18 I heard that he was going around
19 telling people that we did it.

20 Q. Okay. Who went with you to D-Block's house?

21 A. Me, Coaty, Atalia, and Tammara (phonetic).

22 Q. You, Coaty -- or C; right?

23 A. Yeah.

24 Q. Atalia? Now who is she?

25 A. That's -- uh -- She out there.

1 Q. All right. Are you kin to her?

2 A. No, I ain't kin to her.

3 Q. Uh -- Is that your girlfriend?

4 A. Yeah.

5 Q. All right. Y'all got any children together?

6 A. No.

7 Q. All right. Now, who is the other girl?

8 A. Tammara.

9 Q. Tamma (phonetic)? Who is that?

10 A. Tammara Walters.

11 Q. All right. Is she kin to you?

12 A. No.

13 Q. What's her relationship to you?

14 A. Uh -- It was C' girlfriend.

15 Q. Okay. So you, C., Tamala (phonetic), and Atalia
16 (phonetic) go to D-Block's house?

17 And what happens at D-Block's house?

18 A. We was going there to beat him up.

19 Q. Going to beat him up?

20 A. Yeah.

21 Q. Because he had been saying that you were involve in
22 this?

23 A. Yeah.

24 Q. Did you hear D say that you were involved in this?

25 A. Yeah.

1 Q. All right. Who else did D say was involved in it?

2 A. He was just telling like -- you know what I'm saying --
3 all of us -- like who was he think was involved with it.

4 I don't know exact names.

5 Q. Okay. But he included you in that list?

6 A. Yeah.

7 Q. Because he thought you were there, or you were involved
8 with it?

9 A. (Nods in the affirmative.)

10 Q. All right. Did -- Did anybody bother you -- uh --
11 because your name had been mentioned in this murder?

12 A. Nah.

13 Q. Okay. And y'all went over there to D-Block's house.
14 Was there -- Did you shoot a gun in the house?

15 A. No.

16 Q. Was you there when a gun was shot?

17 A. Yeah.

18 Q. Who shot the gun?

19 A. C.

20 Q. Coaty?

21 A. (Nods in the affirmative.)

22 Q. All right. And did you ever hit D-Block?

23 A. Yeah. I hit him.

24 Q. And what did you tell him when you hit him?

25 A. Keep my name out his mouth.

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1 Q. Keep your name out of -- Keep your name out of his
2 mouth?

3 A. (Nods in the affirmative.)

4 Q. Okay. And you were arrested, then, for burglary and --
5 uh --

6 A. Assault and battery, high and aggravated nature.

7 Q. All right. Did you tell the police what you had done?

8 A. Yes sir.

9 Q. And did you tell the police why you had done it?

10 A. Yes sir.

11 Q. And did you -- Were you able to give them information
12 with regard to this murder?

13 A. Yes sir.

14 Q. As being the underlying factor in your going over
15 there?

16 A. Yes sir. .

17 Q. All right. Did -- uh -- Who did -- Did you -- Were
18 you able to tell the police who had killed -- uh -- Ervin
19 Graham?

20 A. Yes sir.

21 Q. Any did you tell them?

22 A. Michael.

23 Q. All right. When you were talking to the police, did
24 you tell them anybody else that was involved in that crime?

25 A. Yes sir.

1 Q. And who was that?

2 A. Chadd.

3 Q. And Chadd is your brother?

4 A. Uh-huh.

5 Q. So you told the police your first cousin and your
6 brother were involved in the murder?

7 A. Yes sir.

8 Q. Did you tell them who shot Ervin Graham?

9 A. Yes sir.

10 Q. Who did you tell them shot Ervin Graham?

11 A. Michael.

12 Q. Tony, I want to show you what has been marked as
13 State's Exhibit Number 2.

14 THE COURT:

15 I assume you've seen it, Counsel?

16 MR. JOYE:

17 We -- We have.

18 I just want to make sure of which and
19 what it is.

20 Okay. All right.

21 I just want the opportunity --

22 THE COURT:

23 Any objection?

24 MR. JOYE:

25 No, Your Honor. I just want the

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1 opportunity to look at whatever he's --

2 THE COURT:

3 Okay. All right.

4 MR. JOYE:

5 -- he's talking about.

6 THE COURT:

7 All right. Feel free to move about
8 the courtroom if you need to.

9 MR. JOYE:

10 Thank you, Judge.

11 MR. RICHARDSON:

12 Tony let me -- Just for the -- Can he
13 step down?

14 THE COURT:

15 Certainly.

16 MR. JOYE:

17 You want that easel?

18 MR. RICHARDSON:

19 No; that's okay. I'll hold it.

20 COURT REPORTER:

21 If you would, put him in front of
22 that mike.

23 MR. RICHARDSON:

24 I will.

25 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

1 Q. Tony, you've still got to keep your voice up; okay.

2 A. (Nods in the affirmative.)

3 Q. All right. Do you recognize this overhead?

4 A. Yes sir.

5 Q. All right. And what's that overhead of?

6 A. Uh -- (Not Audible.) -- my grandma's house.

7 COURT REPORTER:

8 I'm sorry. I'm not picking him up.

9 MR. RICHARDSON:

10 All right. Stand a little closer.

11 He's saying at --

12 THE COURT:

13 The Bombing Range Road and his
14 grandmother's house.

15 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

16 Q. All right. Let's show the jury. You just point out,
17 please, where your grandma's house?

18 A. (The witness did as instructed.)

19 Q. All right. And that's Michael's grandmas too?

20 A. Yes sir.

21 Q. Is that where he grew up as a kid?

22 A. Yes sir.

23 Q. And now where is your house?

24 A. (Points somewhere on the exhibit.)

25 Q. All right. And that's where you live with Chadd?

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1 A. Yes sir.

2 Q. All right. Now, point out, if you will, where -- uh --
3 the shooting actually occurred?

4 A. (Points somewhere on the exhibit.)

5 Q. Over there at that tree?

6 A. (Nods in the affirmative.)

7 Q. Okay. And now when they left, you're saying:

8 They went back out to the right?

9 A. Yeah.

10 Q. All right.

11 THE COURT:

12 The exhibit, Mr. Richardson, please?

13 Yes sir.

14 Tony, you can -- you can have a seat
15 back up here.

16 COURT REPORTER:

17 Is that entered into evidence?

18 THE COURT:

19 I'm waiting.

20 MR. RICHARDSON:

21 Your Honor, if there is no objection
22 -- uh -- I would like to enter all of these -- uh --
23 overhead in -- into evidence.

24 I think we have looked at them
25 earlier; and --

1 (Begins to confer with opposing
2 counsel.)

3 This won't come in for awhile.

4 MR. JOYE:

5 Yeah. All the --

6 THE COURT:

7 All right. What -- What do you have
8 them marked?

9 Do you have them premarked, there,
10 Mr. Richardson?

11 MR. RICHARDSON:

12 Yes sir.

13 THE COURT:

14 And what are they?

15 If there's no objection, let's just
16 go ahead and -- and enter them.

17 MR. JOYE:

18 1, 2, and 3, Judge.

19 THE COURT:

20 1, 2, and 3.

21 MR. RICHARDSON:

22 And they're just maps.

23 THE COURT:

24 Without objection.

25 WHEREUPON: THREE OVERVIEWS THAT WERE

1 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
2 NUMBERS 1, 2, AND 3 FOR IDENTIFICATION, WERE ENTERED INTO
3 EVIDENCE WITHOUT OBJECTION.

4 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

5 Q. Okay. Tony, I want to -- I'm going to ask you -- uh --
6 just a couple of more questions.

7 And partially, it's because I don't
8 remember.

9 Did you give the police -- uh -- the
10 wrong address for the shooting?

11 A. Yeah.

12 Q. All right. Where did you tell the police originally
13 the shooting was to have taken place?

14 A. At Lacey's.

15 Q. Lacey's place?

16 A. (Nods in the affirmative.)

17 Q. All right. Now how close is Lacey's place to your
18 grandma's house -- or your house?

19 A. About 3 or 4 houses down the road.

20 Q. All right. So nearby?

21 A. (Nods in the affirmative.)

22 Q. Would it be within a quarter of a mile?

23 A. Yeah.

24 Q. All right. And why did you tell the police that it
25 took place at Lacey's?

1 A. Because I ain't want them to think -- you know what I'm
2 saying -- it happened in my grandma's yard or nothing like
3 that related.

4 Q. You didn't want your grandma or that house to be
5 involved with it?

6 A. Yeah.

7 Q. Is there any other reason that you would've told them
8 that it took place at Lacey's place?

9 A. Uh-uh.

10 Q. Tony, I want you to make sure to tell this jury:

11 Are you absolutely positive that your
12 cousin is the one that shot Fido?

13 A. Yeah.

14 Q. Are you sure that he shot him twice?

15 A. Yeah.

16 Q. Did you see any sort of scuffle between the two of them
17 leading up to it?

18 A. No.

19 Q. And your testimony to this jury is that:

20 Ervin Graham was still seated in the
21 vehicle when he was shot?

22 A. Yeah.

23 Q. And the last time you saw Ervin Graham was when he was
24 being driven off?

25 A. Yeah.

1 MR. RICHARDSON:

2 I have no further questions. But
3 you'll need to answer questions Mr. Joye has for you.

4 COURT REPORTER:

5 Your Honor, can I have just a minute
6 to change this file?

7 THE COURT:

8 Certainly.

9 Mr. Joye, if you would, the -- uh --
10 court reporter needs to change his file.

11 MR. JOYE:

12 Certainly, Your Honor.

13 WHEREUPON: The court reporter began
14 to change out his digital recognition file at 12:14 PM,
15 August 11, 2009.

16 MR. RICHARDSON:

17 Your Honor, I've got --

18 COURT REPORTER:

19 Wait a minute. I've got to get my
20 file back up.

21 MR. JOYE:

22 May we approach, Judge?

23 THE COURT:

24 Sure.

25 (WHEREUPON: Counsel for each party

1 conferred off the record with The Court at the bench at
2 12:15 PM, August 11, 2009.)

3 COURT REPORTER:

4 I'm ready, Your Honor.

5 THE COURT:

6 All right.

7 Madam Forelady, would you take your
8 jury into the juryroom for just a moment ago -- uh -- and
9 take a little break. I think you need one by now.

10 (WHEREUPON: The jury empanelled in
11 the case withdrew from the courtroom at 12:17 PM, August 11,
12 2009; and was no longer present during the following
13 proceedings.)

14 THE COURT:

15 All right.

16 MR. JOYE:

17 Judge before he does that, can -- I
18 just want -- I don't want this question to be something that
19 -- that -- that allows him to implicate the answer.

20 THE COURT:

21 You don't want him to lead.

22 MR. JOYE:

23 In other words -- In other words a
24 leading -- another leading question that's basically --

25 THE COURT:

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1 I -- Okay. I -- I know that Mr.
2 Richardson has had some difficulty communicating here.

3 But -- uh -- you know -- for the most
4 part, it -- it's been things that have not been offered for
5 the truth, but rather they were responses that -- maybe it
6 would have involved some hearsay.

7 But I think they weren't for the
8 truth; but rather to explain this Defendant's state of mind
9 -- or this witnesses' state of mind.

10 Let's just go ahead and -- and try to
11 keep away from any hearsay. Let's try to not lead him. And
12 -- uh -- see where we we'll go with it.

13 VOIR DIRE EXAMINATION BY MR. RICHARDSON IN THE ABSENCE OF
14 THE JURY:

15 Q. And -- And Tony, what I'm going to ask about here,
16 outside of the jury, deals with only either your personal
17 knowledge, whereas you saw it or heard it; or if Mr.
18 Livingston told you something; okay; but not other people
19 having told you something.

20 A. (Nods in the affirmative.)

21 Q. Do you have any personal knowledge with regard to Amp's
22 house being broken into?

23 A. Yes.

24 Q. And how do you get -- how did you get that personal
25 knowledge?

1 A. Because we came back one night to my grandma's house
2 together before he had went back there to his house to see
3 that his house was --

4 COURT REPORTER:

5 I'm sorry. I'm sorry; I'm losing
6 him.

7 THE COURT:

8 I can't hear it either.

9 MR. RICHARDSON:

10 All right. Tony, a little bit
11 slower for me.

12 COURT REPORTER:

13 A little slower and into the mike,
14 Tony.

15 VOIR DIRE EXAMINATION BY MR. RICHARDSON IN THE ABSENCE OF
16 THE JURY CONTINUED:

17 Q. Go ahead.

18 A. Now, after -- Right after his house got broken into, we
19 came to the house -- and we had went back there -- and we
20 saw the door kicked in the house.

21 Q. All right. Did Amp say who had broken into his house?

22 A. Yeah.

23 Q. And who was that?

24 A. F. I.

25 MR. RICHARDSON:

1 All right.

2 And that's all I would ask him.

3 One -- One more thing.

4 VOIR DIRE EXAMINATION BY MR. RICHARDSON IN THE ABSENCE OF
5 THE JURY CONTINUED:

6 Q. Do you remember, in proximity to the shooting, how far
7 back it would have been that Amp's house got broken into?

8 A. Probably like two weeks.

9 Q. Two weeks.

10 A. (Nods in the affirmative.)

11 MR. RICHARDSON:

12 That's all I would ask him.

13 MR. JOYE:

14 Your Honor, I -- I don't know --

15 First and foremost, we don't know whether or not this is
16 true.

17 Secondly:

18 Uh -- I don't know that there's ever
19 been any report or anything -- and how anyone would have
20 implicated Mr. Graham short of seeing them or anything else.

21 It just seems to be something that --
22 that we can't prove. And it's being offered for the proof
23 of the matter asserted.

24 THE COURT:

25 But does it make any difference as to

1 whether the victim did it or not?

2 It's offered to show the state of
3 mind of the Defendant. And it's offered to show what he
4 believed.

5 Uh -- And -- And that's where it
6 would be probative.

7 It would come under 401 as being, I
8 think -- uh -- relevant.

9 I don't think it's substantially --
10 it's prejudicial value would substantially outweigh its
11 probative value.

12 I think it's admissible there.

13 It's a statement by your Defendant.

14 It doesn't make any difference
15 whether it's true or not. It's offered for another purpose;
16 and that is: to show his state of mind.

17 And -- And that's my view on it.

18 MR. JOYE:

19 Well, Your Honor, I would just renew
20 the objection; saying:

21 It's more prejudicial than probative.

22 THE COURT:

23 Okay. All right.

24 And -- And the standard is:
25 substantially more.

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1 MR. JOYE:

2 Yeah, it's substantially more.

3 THE COURT:

4 All right. Okay.

5 THE COURT:

6 We're going to -- We're going to all
7 take a quick break; and -- but let me ask you to do one
8 thing.

9 I've been advised that one of the
10 jurors is having some trouble -- uh -- uh -- understanding
11 you.

12 So speak slowly and clearly.

13 But since your testimony is very
14 important -- uh -- to both sides here, and they -- and the
15 jury needs to -- uh -- to hear you.

16 The rest of us, it doesn't make a
17 whole lot of difference. But, it's really important for
18 that jury to be able to hear you.

19 WITNESS:

20 Okay.

21 THE COURT:

22 So I'll ask you:

23 When we start back up, to -- to think
24 about what you're staying, and -- and speak into the mike,
25 and slowly.

1 Thank you.

2 All right let's -- uh -- uh -- The
3 jury's not ready to come back.

4 Let's all take about 10 minutes or
5 so; and -- uh -- we'll -- we'll come back in; all right.

6 MR. RICHARDSON:

7 Can he -- Can he come down and go to
8 the bathroom?

9 THE COURT:

10 Yes. Yes, he can. He can.

11 I would caution him not to discuss
12 his testimony any further with anyone.

13 But -- uh -- I'm going to let him
14 come down.

15 MR. JOYE:

16 I would ask for this Deputy to
17 accompany him, just to make sure that nobody talks to him.

18 THE COURT:

19 All right.

20 If you would, Mr. Hemmingway.

21 DEPUTY:

22 Yes sir.

23 THE COURT:

24 If he needs to go to the restroom,
25 you accompany him. Make sure no one talks to him.

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1 All right.

2 We'll take a quick break.

3 (WHEREUPON: The court was declared
4 in recess at 12:22 PM, August 11, 2009.)

5 (WHEREUPON: The court was called to
6 order by the Bailiff at 12:33 PM, August 11, 2009; and all
7 pertinent parties, along with their counsel, were back and
8 present in the courtroom.)

9 BAILIFF:

10 All rise.

11 THE COURT:

12 All right. Please be seated.

13 Mr. Hemingway, the jury's having some
14 problems understanding this Defendant. Let's keep entry and
15 exit in the courtroom to a minimum.

16 DEPUTY:

17 Yes sir.

18 (WHEREUPON: The jury empanelled in
19 the case was escorted back into the courtroom at 12:34 PM,
20 August 11, 2009; and was in fact present during the
21 following proceedings.)

22 THE COURT:

23 Ladies and gentlemen of the jury, I
24 hope you had an opportunity to refresh yourselves.

25 If it any time you're having

1 difficulty -- uh -- hearing -- uh -- this witness or any
2 other witness' -- uh -- testimony, let me know. Raise your
3 hand -- whatever?

4 Uh -- And -- And we'll have him
5 repeat the response -- uh -- do what we can to accommodate
6 you; okay.

7 We want to make sure that you hear
8 all the testimony; okay.

9 MR. RICHARDSON:

10 And --

11 THE COURT:

12 Mr. Richardson, I believe you had
13 another question or two?

14 MR. RICHARDSON:

15 Yes sir. Thank you. Just a couple
16 more.

17 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

18 Q. Tony, do have any personal knowledge of a break-in at
19 Michael's house?

20 A. Yes.

21 Q. All right. And tell the jury where that personal
22 knowledge comes from?

23 A. Comes from that Juvie (phonetic) was -- ran -- ran up
24 from down the road; and had went into that his house was
25 broken into. And that's why. That's my knowledge of that.

1 COURT REPORTER:

2 I'm not -- I'm not understanding the
3 first part of that.

4 WITNESS:

5 At first, when his house first got
6 broken into, he came back and said his house was broken
7 into; then came into the yard and got us.

8 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

9 Q. All right. So you went. And tell what you saw.
10 Did you see any sign of forced entry?

11 A. Yeah, the back door was broke down.

12 Q. Okay. Now, did Michael, or Amp, say anything to you
13 as to who had done it?

14 MR. JOYE:

15 Uh -- He can ask him:
16 What was said.
17 But, again, that's -- that really is
18 too much --

19 THE COURT:

20 Okay. Just ask him what --

21 MR. JOYE:

22 -- leading.

23 THE COURT:

24 -- what --

25 MR. RICHARDSON:

1 All right.

2 THE COURT:

3 -- Michael told him.

4 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

5 Q. Tony, was anything said to you about that door?

6 A. Yeah. He was like: F. I. did it. Because he was
7 come -- going out towards 90, F. I. was coming in.

8 F. I. was trying to stop him.

9 And he kept going.

10 F. I. had went and did it.

11 Q. And when you say "he," you say Amp said: F. I. did it?

12 A. Yeah.

13 Q. But you don't know if F. I. broke into the house?

14 A. No, I did not know.

15 Q. Do you have any other reason -- Did Michael say any
16 other reason why he believed that F. I. had done it?

17 A. Uh-uh.

18 MR. RICHARDSON:

19 Okay.

20 And Your Honor, that's all the
21 questions that I --

22 THE COURT:

23 Okay.

24 Mr. Joye, you may cross-examine.

25 CROSS-EXAMINATION BY MR. JOYE:

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1 Q. Good morning, Mr. Wilson.

2 A. (No response.)

3 Q. How many times do you think you've been interviewed
4 about this case?

5 A. About four.

6 Q. Can you remember who you've speak -- spoken to each
7 time?

8 A. Yeah.

9 Q. Okay. Who did you speak to the first time you were
10 interviewed?

11 A. The detectives.

12 Q. Do you remember their names?

13 A. Uh-uh; I don't remember their names.

14 Q. Okay. Now, when you were speaking to them:

15 Y'all would talk a little bit.

16 And they would tell you what they
17 thought was -- you were not being truthful about?

18 A. No sir.

19 Q. Oh, they didn't say:

20 No; we -- we know better than that.

21 A. (No response.)

22 Q. 'Cause we know -- We already know the answer to what
23 we're saying.

24 A. No; they ain't said.

25 Q. They never said that?

1 A. No.

2 Q. Okay. So when you told them the first time that you
3 were interviewed that you heard one shot, that was a lie;
4 wasn't it?

5 A. No, it wasn't a lie.

6 Q. Oh, you didn't -- You heard -- Now, you just said that
7 you heard two shots.

8 A. I heard two shots.

9 Q. Okay. But when you told them the first time you
10 interviewed that it was one shot, that was a lie; wasn't it?

11 A. Yeah.

12 Q. Okay. And, you said it happened at Lopes -- at -- at
13 -- uh -- Lacey's place.

14 And that was a lie; wasn't it?

15 A. Yeah.

16 Q. And you said that you were just coming off on the
17 scene.

18 And that was a lie; wasn't it?

19 A. Yeah.

20 Q. And when you said that -- uh -- Juvie or Amp or Michael
21 Livingston got in the car and drove off; that was a lie;
22 wasn't it?

23 A. Yes sir.

24 Q. And when you said he was by himself; that was a lie;
25 wasn't it?

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1 A. Yes sir.

2 Q. And when you said he was by his self; that was a lie;
3 wasn't it?

4 A. Yes sir.

5 Q. Now when you said D-Block was there; that was a lie;
6 wasn't it?

7 A. I ain't said D-Block was there.

8 Q. Do you remember giving a taped interview?

9 A. Yeah.

10 Q. Now, I'm going to ask you again:

11 Are you being as truthful in that
12 answer as you've been about every other answer?

13 A. If he was there, I ain't -- I don't remember him being
14 there.

15 Q. So, if you told law-enforcement that he was there, it
16 was a lie, wasn't it?

17 A. I'm not sure. He probably was there.

18 Q. Oh, now -- So now, you don't know whether he was or
19 wasn't there?

20 A. That's what I'm saying.

21 Q. Okay. So there could have been a much more people
22 there you didn't know?

23 A. Yeah.

24 Q. And in fact, the first time you talked to law
25 enforcement, you told them it was a bunch of crack heads

1 there; right?

2 A. Yeah.

3 Q. And there were 13 or 14 people there; right?

4 A. Yeah.

5 Q. Who were the other people?

6 A. (No response.)

7 Q. Who all was there?

8 A. All right. It was me, Durell (phonetic), Chadd,
9 Barbara, Travis, Amp, C, and Ted.

10 Q. Do you know if they ever spoke to Tra -- Who's Travis?

11 A. That's my brother.

12 Q. And he was there around the tree when this happened?

13 A. Yeah; he was there too.

14 Q. Do you know if -- uh -- law enforcement ever spoke to
15 him about it?

16 A. No.

17 Q. How about Bubba? Who's Bubba?

18 A. That's my little cousin.

19 Q. Do you know if law enforcement spoke to Bubba about it?

20 A. No.

21 Q. Let me ask you this:

22 You said, when you first met, there
23 were just a bunch of crack heads.

24 You didn't hang out like that.

25 And you did know any of them.

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1 That's right?

2 A. Yes sir.

3 Q. And eventually -- And you absolutely didn't tell them C
4 was there; did you?

5 A. No.

6 Q. And C is Coaty Deas?

7 A. Yes sir.

8 Q. And you didn't tell them anything about C being there?

9 A. No sir.

10 Q. So when they asked you; and said:

11 That's all the people that were
12 there.

13 It was a lie of omission that you
14 said:

15 Yeah, that was all that was there.

16 C -- You didn't say anything about C?

17 A. No sir.

18 Q. Didn't say anything about C jumping in the car and
19 driving off with -- with -- uh -- as you say, Michael
20 Livingston and your brother Chadd?

21 A. Yes sir.

22 Q. And in fact, they told you:

23 Now, we know that Roster was there.

24 And you told them you didn't know who
25 Roster was.

1 A. (No response.)

2 Q. You had only knew him by his street name; right?

3 A. Yes sir.

4 Q. Who in fact is Roster?

5 A. That's Chadd. That's my brother.

6 Q. Do you know your brother?

7 A. Yes sir.

8 Q. Okay. So that was a lie too?

9 A. I just ain't wanted to put him in it at the time, man.

10 Q. Huh?

11 A. I just didn't want him -- put him in it at the time,
12 because: like, really, he ain't have nothing to do with it,
13 actually.

14 Q. He didn't? Did you get a .38 caliber revolver back
15 from him?

16 A. Huh?

17 Q. A .38 caliber revolver?

18 A. Yes sir.

19 Q. Okay. You got a .38 caliber revolver from your
20 brother Chadd Wilson?

21 A. Yes sir.

22 Q. Also known as Roster?

23 A. Yes sir.

24 Q. But he didn't have nothing to do with nothing?

25 A. He -- He jumped in the car after they -- when it was

1 over with; and rode off with them.

2 Q. Now, you and Coaty Deas went with an AK-47 and a .38
3 caliber revolver to D-Block's house, didn't you?

4 A. Yes sir.

5 Q. And you punched D-Block in the face?

6 A. Yes sir.

7 MR. JOYE:

8 Your Honor, I (Not Audible.)

9 COURT REPORTER:

10 I'm sorry. I didn't pick up the rest
11 of that.

12 MR. JOYE:

13 (Not Audible.)

14 THE COURT:

15 All right. Let me examine that
16 firearm first, please.

17 MR. JOYE:

18 Sure, Judge.

19 THE COURT:

20 I am going to open it.

21 COURT REPORTER:

22 It hasn't been marked, Your Honor.

23 MR. JOYE:

24 I -- We're going to hand it to you as
25 soon as it comes out of the plastic.

1 Mark it Defense 1, please.

2 Defense 1 without objection?

3 MR. RICHARDSON:

4 Oh, sure.

5 THE COURT:

6 Let the record reveal that the
7 firearm is unloaded and locked securely.

8 WHEREUPON: A .38 CALIBER REVOLVER
9 WAS MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBIT
10 NUMBER 1, AND WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.
11 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

12 Q. Mr. Wilson, I'm going to hand you what has been marked
13 Defense Exhibit Number 1.

14 Who's gun's that.

15 A. Huh?

16 Q. Who's gun is it?

17 A. Who's gun is this, right here?

18 Q. Yes sir?

19 A. This my Roster's gun.

20 Q. Rosters gun? Now, who was it found on, when law
21 enforcement got it?

22 A. It was found on me when I -- when I -- law enforcement
23 got it.

24 Q. For all you know, that gun was used to shoot Ervin
25 Graham?

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1 A. No. That's not the gun that shot Ervin Graham.

2 Q. There were two shots; you say?

3 A. Yes sir.

4 Q. At one of your statements anyway --

5 A. Yes sir.

6 Q. -- you say: two shots.

7 A. (Nods in the affirmative.)

8 Q. In fact, if there were 4 shots fired; if you didn't
9 fire them, you don't know that they didn't come out of that
10 gun?

11 MR. RICHARDSON:

12 Your Honor, I'd just object. He's
13 call for speculation.

14 THE COURT:

15 Well that's what we call cross-
16 examination.

17 WITNESS:

18 That wasn't the gun that shot Ervin
19 Graham, right; because I seen the gun that had shot Ervin
20 Graham.

21 I seen the gun --

22 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

23 Q. So, if someone testified that there were 4 shots to the
24 head of Ervin Graham --

25 A. That would be a lie, 'cause it was at -- I -- When I

1 was -- When they -- When it first happened, was two shots;
2 when he shot in the first time; then we came back and shot
3 him again.

4 And after that, I don't know what
5 happened.

6 They -- They could have shot him
7 again.

8 Q. That gun, then, could have shot him and you not know
9 about it?

10 A. Yeah. I couldn't -- I -- I not know about it.

11 Q. In fact, your brother Chadd Wilson could have put that
12 to the head of Ervin Graham and pulled the trigger twice,
13 for all you know?

14 A. For all I know; yes; right.

15 Q. You kept telling law enforcement that:

16 You've got to help me out on this
17 thing, now.

18 Didn't you?

19 A. I told them:

20 I ain't want no involvement in it.

21 "Cause I know they have charged me
22 with accessory to murder after the fact -- you know what I'm
23 saying -- just 'cause I was there and I had seen it happen.

24 Q. But they could have charged with obstructing justice or
25 -- uh -- misprison of a felony for the numerous lies you

1 told?

2 Couldn't they have?

3 A. I reckon so.

4 Q. They didn't charge you, did they?

5 A. No.

6 Q. Signed a contract with the government on this burglary
7 first and assault and battery of a high and aggravated
8 nature?

9 A. No, I can't -- Say that again.

10 Q. Did you sign a contract with the government to get some
11 help --

12 A. No sir.

13 Q. You did not?

14 A. No sir.

15 Q. Okay. So, who's your attorney, sir?

16 A. Paul Archer.

17 MR. JOYE:

18 Excuse me one second, Your Honor.

19 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

20 Q. So, I want you to look at this. Do you recognize that?

21 MR. RICHARDSON:

22 Do you need to at least mark it as an
23 exhibit?

24 MR. JOYE:

25 I don't think so. No.

1 MR. RICHARDSON:

2 Okay.

3 MR. JOYE:

4 And --

5 THE COURT:

6 All right; Mr. --

7 MR. JOYE:

8 Now, how do you --

9 THE COURT:

10 Mr. Joye, let me interrupt you.

11 I'm going to mark it, then, as -- for
12 identification as a Court's Exhibit -- or -- or let's --
13 let's -- identification.

14 I'm not going to admit it.

15 I'm not going to --

16 MR. JOYE:

17 Thank you, Judge.

18 THE COURT:

19 It's just going to be admitted -- or
20 -- or marked for identification.

21 All right.

22 Mr. Richardson, that's not in.

23 MR. RICHARDSON:

24 Okay.

25 THE COURT:

1 It's marked for identification.

2 He's preserved on that issue at this
3 point.

4 WHEREUPON: TONY WILSON'S CONTRACT
5 WITH THE GOVERNMENT WAS MARKED BY THE COURT REPORTER AS
6 COURT'S EXHIBIT 1.

7 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

8 Q. And I'm going to ask again:

9 Do you have a contract with the
10 government to testify today?

11 A. Me and lawyer had made an agreement. That's all.

12 I ain't made no agreement with no
13 solicitor or no police.

14 Q. So your agreement -- So you're not looked to being
15 helped today from the Solicitor's office?

16 You -- You just going to take your
17 medicine on that burglary first and assault and battery,
18 high and aggravated nature?

19 A. Yes sir.

20 Q. So you're just going to -- You don't want them to -- to
21 give you any help?

22 A. No sir.

23 Q. So you just here, being the good citizen that you are,
24 to testify today?

25 A. I'm just clearing my name out this murder thing; 'cause

1 I ain't got nothing to do with that.

2 Q. Now, you're not adverse to carrying guns; are you?

3 A. Huh?

4 Q. You carry guns?

5 A. No; I don't carry guns like that. I got caught with
6 one, yeah.

7 Q. In fact, didn't you previously have a kidnapping and a
8 pointing and presenting charge?

9 A. Yes sir.

10 Q. What were you pointing and presenting?

11 A. I ain't pointing and presenting nothing. That's -- I'm
12 still waiting on that right now too.

13 Q. So, no question that you charged with pointing and
14 presenting a gun?

15 A. Yeah; I was in charged pointing and presenting a gun.

16 Q. For holding two young men hostage?

17 That's what you're charged with;
18 ain't it?

19 A. Yes sir.

20 Q. Or was charged with?

21 A. (No response.)

22 Q. And you're not looking for any help on any charges you
23 got?

24 A. No sir.

25 Q. Well then, when it says that you signed this for your

1 lawyer -- Let -- Let me ask you real quick:

2 What does that say right there?

3 This -- This contract with the
4 government; what does it say?

5 A. Uh --

6 Q. Ms. Beverly Landrum signed it?

7 A. Yes sir.

8 Q. And she's what?

9 A. She a solicitor.

10 Q. And a solicitor works for the government?

11 A. Yes sir.

12 Q. Just like Mr. Richardson?

13 A. Yes sir.

14 Q. And when you signed this back on the 8th day of April
15 of -- or '09, you're basically saying that:

16 The State -- meaning Mr. Richardson
17 and anybody that works with him -- would consider the extent
18 and degree of your cooperation in this particular case, in
19 deciding a sentence?

20 A. No sir. Mr. Richardson said:

21 I can't do that.

22 Q. Oh, he did? Well, what did Ms. Landrum say right here?

23 A. (No response.)

24 Q. In Number 4?

25 A. (No response.)

1 Q. Ms. Landrum said you -- she was going do it for you,
2 didn't she?

3 A. She didn't offer me nothing.

4 Q. That's right. It doesn't say you're offered anything.

5 A. She didn't offer me nothing.

6 Q. It just says that at some point in time you're going to
7 get some help. And you and your lawyer discussed that?

8 A. No sir. They say I couldn't -- they didn't -- they
9 can't do that.

10 Q. So if Mr. Richardson said that they all signed a
11 proffer agreement with you to ex -- to consider your
12 cooperation, he would be lying?

13 A. Huh?

14 Q. I said --

15 A. He don't --

16 Q. -- if Mr. Richardson said:

17 We signed a we signed a proffer
18 agreement with Anthony Wilson -- Lope Wilson -- if we signed
19 that agreement, then:

20 If he said that, he would be lying?

21 They're going to actually consider
22 what -- what charges to charge you on; what charges to go
23 forward on; what did -- what your cooperation may mean to
24 them --

25 A. Yeah.

Testimony of Tony Angelo Wilson

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1 Q. You -- If he said that, he'd be lying?

2 A. Yeah; he ain't offered me nothing.

3 Q. He ain't offered you nothing?

4 A. (No response.)

5 Q. Now, when you were sitting there with those detectives,
6 that's all you kept saying, is:

7 You got to -- You got to help me on
8 this thing.

9 Right?

10 A. Yeah.

11 Q. And I'm being a hundred percent truthful with you.

12 Right?

13 A. Yeah.

14 Q. Were you a hundred percent truthful with them?

15 A. Yeah.

16 Q. You was? Right from the start?

17 A. I was a hundred percent with them about who did the
18 shooting; but I wasn't -- Not in all the details, I wasn't.

19 Q. Now, when you first gave a statement, you said: you
20 just walking up there. You wasn't in the door frame like
21 you -- windows -- like you said to Mr. Richardson?

22 A. Yeah. I gave them -- I'm saying:

23 I did not -- I ain't give the truth
24 -- the real statement at first; but I did.

25 Q. And you've continued to lie to them. You -- You

1 interviewed with one day; correct?

2 A. Uh-huh.

3 Q. They walked out. They talk amongst themselves.

4 Brought you another drink. Took you outside to smoke.

5 Did all that; didn't they?

6 A. (Nods in the affirmative.)

7 Q. So -- So then they come back in. And they say:

8 Now, Tony, here's where we got a

9 little problem.

10 We know who did the shooting.

11 But you ain't telling us the truth.

12 Didn't they do that?

13 A. (No response.)

14 Q. Repeatedly?

15 A. No sir.

16 Q. They didn't?

17 A. (Nods in the negative.)

18 Q. So if it's on this tape -- this video taped interview

19 with you -- with this video taped interview of you, this

20 videotape would be lying?

21 A. At first I refused to gave -- give a statement. Then I

22 acted like -- you know what I'm saying -- I didn't -- I came

23 to a point with myself and said:

24 Yes, I want to make a statement about

25 the murder thing.

Testimony of Tony Angelo Wilson

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1 Q. And you made several different statements; didn't you?

2 A. Yes.

3 Q. And each of them would change a little bit. Made a
4 statement you didn't know who Roster was.

5 A. (No response.)

6 Q. Made that statement; right?

7 A. Yes.

8 Q. Now, your statement was so bad, they brought you back
9 the second day, after that first initial statement; right?

10 A. Yes sir.

11 Q. Huh?

12 A. (Nods in the affirmative.)

13 Q. That's: Yeah?

14 A. They brought me back.

15 Q. And they wanted to clear some more stuff up. And so
16 they would say things like:

17 Well, no; that didn't happen like
18 that.

19 And:

20 You sure about you -- that happened?

21 Then your statement would change a
22 little bit more, wouldn't it?

23 A. (No response.)

24 Q. You know, little things, like:

25 Whether it happened at Lacey's place

1 or your grandmothers.

2 A. (No response.)

3 Q. Doesn't -- That kind of thing changed, didn't it?

4 A. Well, I just wasn't trying to get everybody else -- you
5 know what I'm saying -- involved with it -- involved with
6 it, man.

7 Q. You sure as the devil wouldn't want to get you involved
8 in it?

9 A. That's right.

10 Q. And no doubt in your mind that you'd lie to keep your
11 own involvement out of it?

12 A. No; I ain't going to lie.

13 Q. But you'll lie for Roster?

14 A. (No response.)

15 Q. But you ain't going to lie for you?

16 A. I'm not lying. I'm telling the truth.

17 Q. You would lie to keep you out of this murder case;
18 wouldn't you?

19 A. I ain't had no involvement in it. So, it really
20 wouldn't matter.

21 Q. You would lie to cover up your involvement in this
22 case; would you not?

23 A. I'd come forward like I'm coming forward right now.

24 Q. Oh, you came forward? So they didn't arrest you and
25 bring you --

Testimony of Tony Angelo Wilson

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1 A. No; I got arrested at first.

2 Q. Oh? So between July 30th and August the 7th, you came
3 forward?

4 A. No; I did.

5 Q. Didn't come -- You didn't come forward because you
6 didn't want anybody to know your involvement.

7 In fact, you went to somebody else's
8 house and beat them up because they were saying you were
9 involved?

10 A. Yes sir.

11 Q. And continued to lie. And never did tell us C was
12 there.

13 A. (No response.)

14 Q. What's C to you? Is he your best friend?

15 A. Nah, that's my -- He one of my friends.

16 Q. He's your running buddy?

17 A. Nah, he ain't my running buddy. He's my friend.

18 Q. In fact, you guys were staying in a motel in North
19 Myrtle Beach when you got arrested, because you were scared
20 off the boys from Myrtle Beach -- Amp's boy -- I mean -- uh
21 -- Ervin's boys coming to find you on this thing; right?

22 A. Huh? That wasn't the reason I was staying in the
23 room.

24 I stay at my house right now.

25 I'm --

1 Q. No; you were staying in a room when you were arrested
2 in North Myrtle Beach --

3 A. Yes; I was --

4 Q. -- weren't you?

5 A. -- staying in the room when I got arrested.

6 Q. In fact, you had dope, just like the dope mentioned in
7 -- having been stolen from Amp?

8 You had dope on you; didn't you?

9 A. Huh?

10 Q. Y'all had dope?

11 A. Yeah, I had --

12 Q. Marijuana; right?

13 A. (Nods in the affirmative.)

14 Q. And some pills?

15 A. (No response.)

16 Q. You had some pills too; didn't you?

17 A. Yes sir.

18 Q. AK-47?

19 A. (No response.)

20 Q. AK-47 was -- when they came in -- was laying there
21 right pretty close to a baby; wasn't it?

22 A. Yes sir.

23 Q. But you wouldn't lie to these people to save your on
24 hide?

25 A. No sir.

Testimony of Tony Angelo Wilson

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1 MR. JOYE:

2 Thanks. Nothing further.

3 THE COURT:

4 Mr. Richardson, is there any
5 redirect?

6 MR. RICHARDSON:

7 Just one.

8 THE COURT:

9 All right, sir.

10 REDIRECT EXAMINATION BY MR. JOYE:

11 Q. Tony, who killed Ervin Graham?

12 A. Michael.

13 Q. Have you ever changed that statement?

14 A. No sir.

15 MR. RICHARDSON:

16 I have nothing further.

17 I'd just ask --

18 THE COURT:

19 All right?

20 MR. JOYE:

21 No, Your Honor.

22 MR. RICHARDSON:

23 I'd just ask that he be able to be
24 excused.

25 THE COURT:

1 Any objection to excusing the
2 witness?

3 MR. JOYE:

4 None, Your Honor.

5 THE COURT:

6 All right.

7 You're excused and released from your
8 subpoena.

9 THE COURT:

10 My goodness. My Goodness.

11 All right. Ladies and gentlemen of
12 the jury, I didn't know it was as late as it is.

13 We're going to take a break for
14 lunch.

15 I'm going to give you about an hour
16 and a half.

17 I'm not going to sequester you for
18 lunch. I'll let you have lunch on your own.

19 Try to be back here about -- uh --
20 1:30 -- no; 2:30 it seems.

21 Maybe I can read that clock as we
22 progress. It's got a little --

23 MR. JOYE:

24 It's one o'clock.

25 THE COURT:

1 Uh -- It's -- uh -- one o'clock now.
2 Let's be back about 2:30, okay.

3 (WHEREUPON: The jury empanelled in
4 the case withdrew from the courtroom at 1:01 PM, August 11,
5 2009; and was no longer present during the following
6 proceedings.)

7 THE COURT:

8 All right.

9 We're in -- uh -- recess until 2:30.

10 (WHEREUPON: The court was declared
11 in recess at 1:01 PM, August 11, 2009.)

12 (WHEREUPON: The court was called to
13 order by the Bailiff at 2:36 PM, August 11, 2009; and all
14 pertinent parties, along with their counsel, were back and
15 present in the courtroom.)

16 BAILIFF:

17 All rise.

18 THE COURT:

19 Be seated. Thank you. Please be
20 seated.

21 Are they bringing them?

22 BAILIFF:

23 Yes sir.

24 THE COURT:

25 Okay, good, yeah.

1 MR. RICHARDSON:

2 Judge, there is a witness that had
3 been sequestered. But his name is Leon Keel.

4 He's the decedent's brother.

5 Uh -- The only thing he could testify
6 to is that he identified the body -- uh -- if that became an
7 issue. He wanted -- He wanted --

8 THE COURT:

9 I don't think that's an issue; is it?

10 MR. JOYE:

11 I don't think it's an issue, Judge.

12 I don't have any problems, even if --
13 even if Mr. Richardson wanted to put him on later to do
14 that. That's fine.

15 He's a -- He's not really a fact
16 witness. He's --

17 THE COURT:

18 All right.

19 MR. JOYE:

20 Identification witness, I guess.

21 THE COURT:

22 Okay.

23 (WHEREUPON: The jury empanelled in
24 the case was escorted back into the courtroom at 2:39 PM,
25 August 11, 2009; and was in fact present during the

1 following proceedings.)

2 THE COURT:

3 Okay.

4 Everybody have a good lunch?

5 JUROR:

6 Yes I did.

7 THE COURT:

8 Good. All right.

9 We're ready to go, Mr. Richardson.

10 MR. RICHARDSON:

11 Thank Your Honor.

12 The State would call Kal Hill.

13 WHEREUPON: KALAMISON HILL WAS DULY

14 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

15 CLERK:

16 All right. Please be seated.

17 Okay. Just scoot up. Speak into
18 the microphone. State your full name and spell your last
19 name.

20 WITNESS:

21 Kalamison Hill; K-a-l-a-m-i-s-on, H-
22 i-l-l.

23 DIRECT EXAMINATION BY MR. RICHARDSON:

24 Q. Is all right if I call you Kal?

25 A. Yeah.

1 Q. All right. Kal, where are you from, please?

2 A. I'm from Patterson, in Jersey.

3 Q. New Jersey?

4 A. (Nods in the affirmative.)

5 Q. And where do you live? Now?

6 A. Over at 3644 Fontana Road.

7 Q. How --

8 COURT REPORTER:

9 Excuse me. Your voice is okay. You
10 don't have to lean up so close.

11 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

12 Q. How -- uh -- Kal, how close do you live to Michael
13 Livingston?

14 A. Like 10, 15 -- 15 feet.

15 Q. All right. Were you at -- uh -- 3549 Bombing Range
16 Road on July 30th, 2007?

17 A. Yes.

18 Q. All right. Tell me please, who was up there?

19 A. It was Michael. Uh -- Some of his cousins. I couldn't
20 remember their names.

21 Q. Okay. Uh -- When you say cousins -- Well, let me ask
22 you if you know some people.

23 Do you know Lope or Tony Wilson?

24 A. Yes.

25 Q. Do you know Chadd Wilson?

1 A. Yes.

2 Q. Were those two boys up there?

3 A. Yes.

4 Q. Do you remember any -- even if not the name -- the
5 nickname of any of the other people that would have been
6 there?

7 A. Uh -- Coaty. Some other people. I wasn't paying
8 attention.

9 I just walked up there.

10 The next thing I know, I walked up
11 there.

12 They was gathering around or
13 whatever.

14 I guess they was mad.

15 The next thing I know, Michael --
16 Ervin -- Ervin -- that's named Fido -- pulled up there.

17 I guess the dude was -- I don't know.
18 He was mad too.

19 So, walked up there.

20 I seen them arguing or whatever they
21 was doing.

22 He jumps in the car, pulled a gun
23 out, and shoot the man in the back.

24 The man jumps out.

25 Were talking about:

1 It's personal or something.

2 And shoot him in the head.

3 Q. All right. Now, where this -- Can you tell us where
4 it occurred?

5 A. Under the tree at they grandma's house or something
6 like that.

7 Q. All right. And when you say "they," you're talking
8 about Tony and Michael and Chadd?

9 A. Yeah.

10 Q. All right, sir. At their grandma's house?

11 A. Yeah.

12 Q. Approximately how long were you there before -- uh --
13 Fido showed up?

14 A. I walked up there like -- About like the same time he
15 showed up, I walked up there. Wasn't thinking nothing.

16 I ain't know nothing was gone go
17 down.

18 I was just at the bad place -- the
19 wrong place at the wrong time.

20 Q. Okay. When you went up -- and we -- we can't get into
21 what anyone else said -- but, did you hear anything am from
22 Amp?

23 A. Yeah.

24 Q. Did Amp say anything?

25 A. Yeah. He was like:

1 Y'all be quiet. It's going to have
2 to kill somebody -- kill somebody.

3 I was like:

4 I don't want no part of it.

5 I'm about to walk off.

6 So the next thing I know, he jumped
7 in the car. Just start shooting.

8 And jumped by out.

9 And just shot him in the head.

10 I seen blood splatter all over the
11 walls and shit, so I just left.

12 Sorry. Excuse my language.

13 Q. All right. Uh -- How many shots did you hear?

14 A. I heard two shots.

15 Q. Two shots? And did you see the first shot?

16 A. I ain't see the first shot. But when he got out the
17 car, I seen the second shot.

18 Q. All right. How close in proximity was the first shot
19 to the second shot?

20 A. Like, back after back?

21 Q. Like: Pow, pow?

22 A. Like: Pow. And then, he jumped out; and pow.

23 Q. Okay. And you at least -- You saw the second shot?

24 A. Yeah; I seen the second shot.

25 Q. And where did the second shot strike him?

1 A. It hit him in the head. (Indicating by gesture.)

2 Q. You're pointing above your left ear?

3 A. He hit him in the head.

4 Q. Yeah.

5 A. Right here. (Indicating by Pointing.)

6 Q. All right. Now, when Fido came up, were you there the
7 entire time that -- that Fido was there?

8 A. No. I walked up there. About the same time he came
9 up there, I walked up there.

10 Q. All right.

11 A. So, we like -- I guess -- met. Like, I don't know.

12 It's all crazy.

13 Q. Did you ever see Fido get out of the vehicle?

14 A. No. He never got out the vehicle.

15 Q. Okay Did you ever speak to Fido?

16 A. No.

17 Q. All right. Did you ever speak to any of them other
18 boys before this took place?

19 A. No, I ain't speak to none of them. I just walked -- at
20 the wrong time. I was there at the wrong time, the wrong
21 place.

22 Q. Okay. And you heard two gunshots?

23 A. Yeah; I heard two gunshots.

24 Q. Please tell me -- or tell this jury -- what happened
25 after those two gunshots.

1 A. After those two gunshots, I seen him jump in the
2 passenger seat. C jumped in the driver's seat. And Chadd
3 jumped in the backseat.

4 And I they just peeled off.

5 They was like:

6 Don't tell nobody. Don't tell nobody

7 I was like:

8 I ain't got no part in none of this.

9 I'm leaving.

10 So I left.

11 And then next thing, like three --

12 four days later, the police come, surrounded my house.

13 I guess, when -- after them boys got
14 busted.

15 They was -- surrounded my house.

16 Then it was like -- Police was
17 telling me, like:

18 Well, C, Chadd, and Antelope told me
19 -- uh -- you -- you -- you was there. And you ain't seen
20 nothing.

21 You was there; but you -- They told
22 me you was there, so?

23 I was like: Nah.

24 I was denying it. I was denying it.

25 But, like:

1 Nah, I don't know nothing.
2 Then they told me -- It was like:
3 You know C, Chadd and --
4 I was like denying.
5 I was like: No.
6 I did lie to them.
7 I said:
8 No. I ain't know -- I ain't know
9 them.

10 But I did know him.
11 And then, they was like:
12 Well, they told us that you was
13 there; and da, da, da, da, da, this.
14 You know what happened.
15 You seen everything they saw.
16 I was like:
17 Oh, really?
18 They gone tell on me like that.
19 So, I was like:
20 Okay, I'm going to just tell the
21 whole truth then.

22 Q. Okay. All right. Let's -- Let's go back for just a
23 -- a little bit to -- uh -- July 30th of 2007.

24 You hear a gunshot.
25 And then, you see the second shot hit

1 him in the head?

2 A. Yeah.

3 Q. All right. Now, again, was there anything said before
4 everybody got into the vehicle?

5 And the only stuff that we can talk
6 about is anything that Amp may have said.

7 A. He just told C to just jump in driver's seat. And just
8 -- They left. They peeled out.

9 Q. And at some point, Amp was -- when he said:

10 Nobody say anything.

11 Was he specifically talking to you?

12 A. I think he was talking to everybody. But I was like:

13 I ain't got no part of this.

14 I ain't wanting to be here. I ain't.

15 I ain't going to have no part of

16 that.

17 Q. Did you go with them to the -- uh -- place where they
18 dumped the body?

19 A. No. I left. I just went home. Went in the woods
20 somewhere. Chilled for a minute. I ain't talk to nobody.

21 Q. Who do you live with, Kal?

22 A. I live with my mom.

23 Q. All right.

24 A. And my stepdad.

25 Q. Have you got any -- uh -- children?

1 A. Yeah. I got a little daughter.

2 Q. Does she live with you?

3 A. She one years old.

4 Q. How much?

5 A. She one years old.

6 Q. So she wasn't born at this time?

7 A. Nah; she was born at this time.

8 Q. All right. You -- Did you tell your mama what you had
9 saw?

10 A. No, I ain't tell my mama none of it. After -- uh --

11 Q. And --

12 A. After the -- the police -- they came and got me and
13 stuff, I wouldn't even tell them nothing either, until they
14 told me -- uh -- Chadd, C, and Tony -- They told me that --
15 uh -- they told them that I was there and stuff.

16 I was like:

17 So, they just going to tell on me
18 like that. I ain't want no part of it. I ain't want
19 nothing to be -- do with it.

20 Q. You didn't volunteer any information?

21 A. No. I wouldn't tell them nothing.

22 Q. Okay.

23 A. Until they told me. They told me Chadd, C, and Tony
24 told that I was there and stuff when they got locked up.

25 Like, I guess they was out of town or

1 something.

2 And they got locked up.

3 And they started telling on
4 everybody.

5 So I couldn't lie to them.

6 Q. Well --

7 A. They already told me they knew who shot the dude; who -
8 - what happened and everything.

9 I was like:

10 How y'all get all that information?

11 They was like:

12 Tony, Chadd, and -- uh -- C told me
13 all of this.

14 They told us all of this.

15 I ain't know what to do.

16 Q. All right. Well, I want to ask you now, point blank:

17 First of all, have you been charged
18 in this case in any connection?

19 A. No.

20 Q. You've not been charged with murder, armed robbery, or
21 any of that?

22 A. No.

23 Q. You got any pending charges?

24 A. Probably got a little marijuana charge; but --

25 Q. In magistrate's court?

1 A. You know, I don't think so. It was just a little
2 marijuana charge.

3 But I -- I went to a class and all
4 that.

5 Q. Okay. Has the State, or anybody else, offered you
6 anything on the marijuana charge to --

7 A. No. They ain't offered me nothing. I just wouldn't
8 tell them nothing.

9 Q. All right. Now the important thing here today is that
10 you tell us exactly who shot Ervin Graham.

11 A. Michael Livingston shot Ervin Graham.

12 Q. Is there any doubt in your mind?

13 A. I seen it with my own two eyes.

14 Q. Did you go to the -- uh -- dump site?

15 A. No. I didn't go to the dumpsite. I stayed in the --
16 I stayed in the woods, because I ain't know what to do.

17 I wasn't talking to nobody.

18 Q. At any time, did you go see where they left the body?

19 A. No.

20 Q. Did you see them when they came back?

21 A. No; I ain't seen them when they came back.

22 A. Did Amp ever say anything to you again about this case?

23 Q. At first he was like:

24 Nobody don't tell nobody. Don't tell
25 nobody.

1 So I kept it in my head not to talk
2 with nobody.

3 Q. And since -- Since that time, has he ever come back
4 to you and said anything about this case?

5 A. No.

6 Q. All right. Do you still live within -- uh -- a
7 hundred yards of Amp's grandma's house?

8 A. Sometimes.

9 Q. Where else to you live?

10 A. Uh -- Little River.

11 Q. Okay. But your mom them live near -- uh -- Amp?

12 A. Yeah.

13 Q. Or Amp's grandmother?

14 A. Yeah.

15 Q. You ever go to where Amp was living -- uh -- at the
16 time of this shooting?

17 A. No.

18 Q. Do you know where he was living?

19 A. No.

20 Q. Did you know -- uh -- Ervin Graham before this date?

21 A. I heard of him. But I ain't really know him like that.

22 MR. RICHARDSON:

23 Okay.

24 The Court's indulgence for just one
25 moment.

1 THE COURT:

2 All right.

3 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

4 Q. Kal -- uh -- when you heard the pop, how many -- did
5 you see anyone with a gun?

6 A. I seen Michael Livingston with a gun.

7 Q. Can you tell this jury what kind of gun it was?

8 A. It was a baby 9 millimeter; all black.

9 Q. Had you ever seen that before?

10 A. No, I ain't seed it.

11 Q. You never seen that gun before that day?

12 A. No.

13 Q. Had you ever seen it since?

14 A. No.

15 Q. Did you see anybody else with a gun drawn at that time?

16 A. No.

17 Q. Any doubt that you heard two shots?

18 A. Yeah; I heard two shots.

19 I seen the second shot.

20 But, the first shot, I just got down
21 a little, like:

22 What's going on?

23 Q. Uh-huh.

24 A. Man, he just jump out the car and just started
25 shooting; and shot again.

1 Q. All right.

2 A. Then when I seen that blood splatter everywhere, I just
3 -- I left. I ain't wanting nothing to do with that.

4 I ain't got nothing to do with that.

5 MR. RICHARDSON:

6 Kal that's all I have for you.

7 If you would answer any questions Mr.
8 Joye might have for you?

9 CROSS-EXAMINATION BY MR. JOYE:

10 Q. Mr. Hill, you said something about a little marijuana
11 thing. Why you tell us a little bit about that?

12 What kind of -- What kind of
13 marijuana thing -- charge did you have?

14 A. It was nothing, but like -- I -- was like a dime bag or
15 something. That ain't nothing, though.

16 Q. You never been charged with trafficking 10 pounds or
17 more marijuana?

18 A. No. No. I don't traffic.

19 MR. RICHARDSON:

20 May we approach, Your Honor?

21 THE COURT:

22 Yeah.

23 (WHEREUPON: Counsel for each party

24 conferred off the record with The Court at the bench at 2:54

25 PM, August 11, 2009.)

1 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

2 Q. Mr. Hill, you've never been charged in April of 2006
3 with trafficking 10 pounds or more of marijuana?

4 A. No. Never trafficked 10 pounds of marijuana.

5 Q. And on that same --

6 A. I don't even know where to get that from. So --

7 Q. And on that same date, charged with possession of less
8 than 1 gram of ice or crack cocaine?

9 A. Yeah. I been charged with crack, now; one time.

10 Q. But you wouldn't know where to get marijuana?

11 A. No. No.

12 Q. But you know where to get crack?

13 A. No I had crack. I had -- I made it myself. I made it
14 myself.

15 Q. Oh, you manufactured crack?

16 A. No, I ain't manufactured it. I made it, like --

17 Q. Well, how --

18 A. I had the powder and stuff.

19 Q. Would you tell the jury how you do that.

20 A. I had the powder and put it in the water.

21 Q. How many times you think you --

22 A. Probably like a gram or something.

23 Q. How many times you reckon you've done that?

24 A. Probably like once -- twice.

25 Q. Just awful bad luck that you got caught when -- one of

1 the two times you ever messed with it; huh?

2 A. Yep; I got caught. But, it happens, though.

3 Q. And have you ever been charged with criminal domestic
4 violence of a high and aggravated nature; say from -- uh --

5 MR. RICHARDSON:

6 Your Honor --

7 MR. JOYE:

8 -- January 2009?

9 MR. RICHARDSON:

10 -- I need to --

11 WITNESS:

12 I have. But they dropped the charges
13 'cause they told -- took a polygraph test; and they -- I
14 passed it.

15 I passed it. So they let me go.

16 But I didn't touch nobody.

17 MR. RICHARDSON:

18 Hold on.

19 WITNESS:

20 I ain't touched the girl or nothing.

21 MR. RICHARDSON:

22 Hold on -- Hold on, Kal.

23 (WHEREUPON: Counsel for each party
24 conferred off the record with The Court at the bench at 2:56
25 PM, August 11, 2009.)

1 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

2 Q. Now, when you first were picked up by law enforcement,
3 you told them you didn't know nothing about nothing; didn't
4 you?

5 A. Yeah. I lied to them. I lied to them. But I did know
6 the truth, though.

7 Q. Now --

8 A. I wasn't trying to nobody in trouble. But till --
9 until Chadd, C, and Lope told them -- oh -- I was there and
10 stuff.

11 So I was like:

12 I'm going to go ahead and tell the
13 whole story, then.

14 Since they done already told it, I
15 can't lie.

16 Q. That wasn't in response to them saying:

17 Look, Kal, we know you didn't do
18 this. We know -- We know Amp pulled the trigger.

19 They told you that, didn't they?

20 A. They told me everything.

21 Q. Yeah.

22 A. They tell me everything.

23 Q. That was before you mentioned any of this other stuff.

24 A. I ain't mentioned any of it. Yeah; that was before I
25 mentioned any of it.

1 Q. But they did --

2 A. So I was just to get everybody -- to make sure nobody
3 wasn't getting in trouble.

4 So I lied to them. I admit that.

5 I told them that I lied to them.

6 Q. And only after they said:

7 Hey, we don't believe you're involved
8 in this thing. But we'd hate for you to go down 30 to life
9 for something you didn't do.

10 So you're either going to be a
11 Defendant or a -- or a witness.

12 Right?

13 A. Yeah.

14 Q. Didn't they tell you that? Specifically, tell you
15 that?

16 A. No. They told me -- This is what they told me.

17 They told me:

18 If you get this -- If you don't tell
19 us this information -- this -- uh -- We don't want you to go
20 down for nothing you ain't do.

21 That's what they told me.

22 Q. And they said they -- Didn't they specifically say:

23 We don't want you to go down --

24 A. No. They said the knew --

25 Q. -- for a murder charge; 30 to life?

1 A. They said they knew who did it.

2 THE COURT:

3 Woe. Woe. Woe.

4 WITNESS:

5 'Cause the people.

6 THE COURT:

7 Woe. Woe. Woe.

8 THE COURT:

9 Let's try not to overlap questions
10 and answers.

11 Now, you wait for Mr. Joye to finish
12 his ans -- his question.

13 And Mr. Joye, you wait for him to
14 finish his answer; okay.

15 MR. JOYE:

16 Thank Your Honor.

17 THE COURT:

18 All right. Go ahead.

19 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

20 Q. Specifically, didn't Detective Troxell or Detective
21 Clark -- and I -- Those were the two first interviewing
22 officers with you; correct?

23 A. Yeah.

24 Q. Didn't, specifically, one of them tell you:

25 We know Amp did it?

1 A. They said: The boys already you told them who did it.
2 When they was locked up, they done told who did it.

3 So I couldn't lie to them.

4 Q. They said:

5 We know Amp did it.

6 A. They had them on -- They had the boys; Chadd, Lope --
7 told me they had them all on tape.

8 So that they played the tape to me.

9 They couldn't lie. So I didn't lie.

10 Q. Okay.

11 A. They didn't lie. So I didn't lie.

12 Q. They played the tape for you?

13 A. Yeah.

14 Q. They played the tape --

15 A. They told me --

16 Q. -- from what they already said?

17 A. They told me, specifically. They told me -- It was
18 like:

19 The boys done already told us who did
20 what; who -- who killed him; who pulled the trigger; and
21 what happened.

22 So I couldn't lie to them.

23 At first, I -- I admitted I lied to
24 them at first, 'cause I didn't want to get nobody in
25 trouble.

1 And then they told them:
2 Uh -- Kal was there.
3 So I was like:
4 All them boys told them I was there?
5 Put my name in the middle of it?
6 Got police come to my house?
7 Circle around my mom's house and
8 stuff.

9 Q. So you saw --

10 A. Yeah, I was heated.

11 Q. Let's talk about --

12 A. I was heated.

13 Q. Let's talk about what you -- what you told them you saw
14 the first time.

15 Says:

16 You -- You were walking from -- from
17 your house?

18 A. Yeah. I told them I was walking from my house --]

19 Q. And you were going to Lacey's?

20 A. Yeah. I was about to walk to Lacey's. But it happened
21 under --

22 Q. And you --

23 A. Never mind about --

24 Q. Let me -- Let me ask the questions. You answer the
25 ones I ask you, please; okay?

1 A. (No response.)

2 Q. And you said you saw them pull up in the parking lot
3 at Lacey's?

4 A. Yeah. s

5 Q. Now that was a lie; wasn't it?

6 A. Yeah. I -- I told you:

7 I admitted to them.

8 I told them I lied to them.

9 Then, I came back and told them the
10 truth --

11 Q. Well --

12 A. -- 'cause ---

13 Q. I --

14 A. -- after them boys -- After them boys told them I was
15 there, I ain't had no choice but to them the truth.

16 Q. I appreciate that Mr. Hill, and I --

17 A. I'm just being honest; that's it.

18 Q. I -- I -- And I understand. And I want to get --
19 flesh that out.

20 But I want to know what you told
21 them; when; and whether it was a lie or not.

22 So if -- if you'll just kind of bear
23 with me, we'll get there; okay.

24 A. (No response.)

25 Q. And -- So you told him that -- that you -- that you

1 were walking from your house and they -- that you saw them
2 pull into Lacey's place.

3 And that was a lie?

4 A. Yeah. I admit that. That was a lie.

5 Q. Okay. And that you didn't see anything; you just
6 heard a gun go off.

7 And that was a lie?

8 A. Nah; I seen it with my own eyes.

9 Q. But you told them. I'm not talking about not what you
10 say you said -- saw now; but what you told them.

11 You told them that you didn't see
12 anything; you heard a gun go off?

13 Isn't that correct?

14 A. The reason why I told them that; 'cause I ain't --

15 Q. I'm -- I'm sorry. Just answer the question I'm asking
16 you, please.

17 A. (No response.)

18 Q. I -- If -- If you want to go into other -- Mr.
19 Richardson can come back and clear things up for you.

20 But just answer the questions that --

21 THE COURT:

22 I'll tell you what I'm going to do.

23 I'm going to let you -- you answer
24 the question.

25 He asked you -- asked you a question

1 that you could answer: yes or no; okay

2 But then, I'm going to let you
3 explain that answer; okay?

4 WITNESS:

5 (No response.)

6 THE COURT:

7 That's what we are going to do every
8 -- every -- everything -- every time.

9 So listen to his questions.

10 Answer his questions as
11 straightforwardly as you can.

12 But if you need to explain any
13 answer, or add to it, I'm going to let you do that; okay.

14 WITNESS:

15 Right.

16 THE COURT:

17 All right; Mr. Joye, you let him
18 finish; all right?

19 Okay; let's go on.

20 MR. JOYE:

21 Okay.

22 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

23 Q. So you told them initially that you heard one shot and
24 took off running; correct?

25 A. Yeah.

1 Q. And that was a lie?

2 A. Yeah. The first -- The first tape I talked to them,
3 that -- that was a lie.

4 That was a lie. I admit it.

5 I told them that.

6 Q. And you said that -- uh -- when -- When they asked you
7 if Michael Livingston told you to keep your mouth shut; you
8 said:

9 I'd run so fast it wouldn't of hurt
10 anyway.

11 And that was a lie?

12 A. No. I didn't say that.

13 Q. So if we play this tape right here, that's not gone be
14 on there?

15 A. No. It shouldn't be on there; 'cause I didn't say
16 that.

17 Q. And are you sure of that?

18 A. Say that again.

19 Q. Are you sure --

20 A. Say that question again.

21 Q. Are you sure of that.

22 A. Say that question again.

23 Q. If it's on -- If it's on this tape, you sure that you
24 didn't say that?

25 A. I didn't say what?

1 Q. That -- (laughs) --

2 A. You got to state the question over again --

3 Q. Okay. All right.

4 A. -- 'cause I'm kind of stuck in the middle of it.

5 Q. I'm understanding. Okay.

6 A. Say it over.

7 Q. You -- You told them -- They specifically ask you --

8 When -- When asked if Michael Livingston told him to keep
9 his mouth shut; you replied:

10 I was so -- running so fast, I
11 wouldn't of heard it anyway.

12 A. Yeah.

13 Q. And that was a lie?

14 A. Yeah. That was a lie.

15 Q. And you told them that you -- uh -- that you then ran
16 back through the woods to your momma's house?

17 A. No. I said:

18 I ran through the woods and chilled
19 in the woods.

20 Q. So you didn't say anything about your momma's house?

21 A. And then I went back to my momma's house.

22 Q. And you denied that you knew anything about the murder;
23 or even being present?

24 A. The reason why I said that:

25 Because like three days before the

1 murder, they called me up there -- Chadd and Livingston
2 called me up there.

3 They wanted to know --

4 MR. JOYE:

5 Woe. Judge, I think he's getting
6 into -- We -- That's got nothing with any --

7 THE COURT:

8 I -- I think he's trying to answer
9 your question.

10 Go ahead and --

11 WITNESS:

12 You want me to go ahead?

13 THE COURT:

14 Yeah.

15 MR. JOYE:

16 Three days before the murder? I --

17 WITNESS:

18 Yeah, Three days before the murder,
19 they questioned me and he held me hostage.

20 So I was like:

21 I wasn't tell -- talking to nobody.

22 They found their guns or whatever
23 that they was looking for, they found them.

24 That's why I -- That's why I lied to
25 the police.

1 That's why I told them I couldn't
2 tell them nothing; because they had me hostage.

3 If you got a gun pointing to your
4 face, what you gone do?

5 You not gone say nothing.

6 CROSS-EXAMINATION BY CONTINUED:

7 Q. So they held you hostage three days before the murder?

8 A. Yeah. That's why I wasn't talking to nobody; no
9 authorities; not even my momma.

10 MR. JOYE:

11 Judge, can we excuse the jury?

12 THE COURT:

13 All right. Let's go back into the
14 juryroom for a moment.

15 (WHEREUPON: The jury empanelled in
16 the case withdrew from the courtroom at 3:06 PM, August 11,
17 2009; and was no longer present during the following
18 proceedings.)

19 THE COURT:

20 Mr. Hemingway, I don't want any
21 acknowledgement by the people or the spectators of any
22 testimony or any face-making or any nodding or shaking your
23 heads.

24 If you see anyone doing that, remove
25 them; okay.

1 DEPUTY:

2 Yes sir.

3 THE COURT:

4 All right.

5 Now, what do we have here?

6 I'm confused as to this testimony.

7 Are we talking about something that
8 occurred prior to the -- uh --

9 MR. JOYE:

10 Yes sir.

11 THE COURT:

12 -- the incident?

13 MR. RICHARDSON:

14 Yes sir, Your Honor.

15 Uh -- What he's doing -- and I made
16 sure not to step in this whole thing -- but, what he's
17 talking about is:

18 When Amp -- uh -- originally thought
19 that Fido had broken into his house, he is saying:

20 I didn't tell the police because I
21 was threatened earlier by Amp, and Chadd, and Coaty.

22 And I don't think Tony was there.

23 But -- uh -- those boys threatened
24 me.

25 Therefore, I wasn't going to run up

1 and tell the police -- uh -- what I knew.

2 THE COURT:

3 And what did those boys threaten him
4 for?

5 I mean, what -- what --

6 MR. RICHARDSON:

7 They thought he broke into their --
8 their house --thought he had broke into Amp's house -- uh --
9 sometime prior to the murder.

10 MR. JOYE:

11 Judge, I'm going to ask for a
12 mistrial.

13 I had no knowledge about this.

14 I've been through every single piece
15 of paper; every single tape; every single -- and all of a
16 sudden, I'm standing here in -- about something I don't
17 know, which would absolutely go to the credibility of Chadd,
18 Coaty and Tony Deas.

19 If they held somebody at gunpoint 3
20 days prior to the murder, I ought to know about it.

21 WITNESS:

22 Ain't nobody going to tell you
23 everything.

24 THE COURT:

25 Please. Let's let Mr. Richardson

1 respond.

2 MR. RICHARDSON:

3 Your Honor, certainly, it's -- He is
4 giving that answer in response to why:

5 I wouldn't have been so ready to run
6 to the police.

7 Uh -- Scott kept hammering him on
8 this idea that:

9 You wouldn't tell the police
10 anything. You were withholding all this evidence.

11 And he is just trying to tell:

12 The reason being is, I felt
13 threatened by Amp. And I felt threatened by Tony. And I
14 felt threatened by Coaty.

15 The thing's about drugs and -- and
16 that sort of stuff.

17 And there is no -- uh -- recording of
18 that.

19 I think he told me that -- uh --
20 earlier.

21 And I said:

22 Do not mentioned that. And I'm not
23 going to ask you about that.

24 But when Mr. Joye asked the question,
25 then there is nothing else that he could have said.

1 When you're asked:
2 Why wouldn't you run and tell the
3 police?

4
5 Why I live down the road from them.
6 And these boys all have guns. And these boys all told me --
7 or -- he wasn't harmed that time.

8 But they all brought him in and said:
9 We believe you broke into this thing
10 -- into this house.

11 MR. JOYE:

12 Your Honor, if that being true, then
13 Mr. Richardson has suborned perjury by letting him get up
14 there and say:

15 The reason he lied was 'cause he
16 didn't want to get nobody in trouble; not because he was
17 threatened.

18 So then he would have been perjuring
19 himself on direct examination with -- with Mr. Richardson --
20 with the Solicitor's office.

21 This isn't a -- This -- This thing's
22 a booby-trap that I had no clue of; and should have been
23 told about.

24 If in fact the gun was held to some
25 witness in this case's head at some point in time, I ought

1 to know that.

2 Judge, in all deference to -- to my
3 friend Mr. Richardson, I've got to ask for a mistrial.

4 Here is what Mr. Richardson said we
5 can anticipate that -- uh -- Kal Hill's going to testify to.

6 WITNESS:

7 I will ask him later that --

8 THE COURT:

9 THE COURT:

10 Wait a minute, Mr. Hill, please.

11 Mr. Hill; don't say anything.

12 WITNESS:

13 Okay.

14 THE COURT:

15 Mr. Joye, have you had -- Had you --

16 How long have you know about this -- this particular
17 witness, Mr. Joye?

18 MR. JOYE:

19 Oh. How long have I known about
20 this witness?

21 THE COURT:

22 Yes sir?

23 MR. JOYE:

24 Judge, I've known about him since I
25 got the case.

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1 Uh --

2 THE COURT:

3 All right.

4 Have you -- Have you had anyone
5 interview this witness?

6 MR. JOYE:

7 No sir, I haven't.

8 THE COURT:

9 All right.

10 I'm going to deny the motion then for
11 a mistrial.

12 And you can develop this further if
13 you would like; or you can leave it where it is; either way
14 you want to do it.

15 MR. RICHARDSON:

16 I don't want anything do with any
17 prior bad acts.

18 MR. JOYE:

19 Well --

20 MR. RICHARDSON:

21 And -- And I certainly wasn't trying
22 to --

23 THE COURT:

24 You didn't bring it up.

25 MR. RICHARDSON:

1 -- ask him questions --

2 THE COURT:

3 You didn't can bring it up. You
4 didn't can bring it up, Mr. Richardson.

5 And you have provided what was in
6 your case in chief.

7 The witness was available; not a
8 victim or anything. The witness was certainly available.

9 I'm not going to grant a mistrial on
10 this.

11 WITNESS:

12 Judge --

13 THE COURT:

14 Mr. Hill.

15 I'm not going to grant a mistrial.

16 I'm going to go forward with the
17 case.

18 Bring that jury in.

19 MR. JOYE:

20 Your Honor?

21 THE COURT:

22 Yes sir.

23 MR. JOYE:

24 If I may, I need a brief recess to
25 talk with my client, 'cause this -- this is --

1 THE COURT:

2 Very well. I'll -- We'll take a
3 brief recess then.

4 All right; Ms. King. Hang on there,
5 all right.

6 All right. We'll take 10 minutes.

7 (WHEREUPON: The court was declared
8 in recess at 3:12 PM, August 11, 2009.)

9 (WHEREUPON: The court was called to
10 order by the Bailiff at 3:19 PM, August 11, 2009; and all
11 pertinent parties, along with their counsel, were back and
12 present in the courtroom.)

13 BAILIFF:

14 All Rise.

15 THE COURT:

16 Thank you very much. Please be
17 seated.

18 MR. JOYE:

19 Judge, I think -- uh -- Mr.
20 Richardson needed -- he's through right now.

21 THE COURT:

22 Okay.

23 MR. RICHARDSON:

24 Judge, I want to ask before they come
25 out:

1 Did you need Dr. Proctor sequestered?

2 MR. JOYE:

3 No sir.

4 THE COURT:

5 No.

6 MR. RICHARDSON:

7 Okay.

8 THE COURT:

9 There's Dr. Proctor. Good to see
10 you.

11 All right. Are we ready?

12 Let me just put on the record that I
13 was -- uh -- that I have looked at the summary that was
14 provided -- uh -- to the Defense by the State.

15 I do not think that the matter that
16 was testified to was exculpatory; would have had to be
17 revealed under Brady.

18 Uh -- The testimony is right along
19 the summary that was given; and the witness was available.

20 So I am denying the -- the mistrial.

21 MR. RICHARDSON:

22 Thank Your Honor.

23 COURT REPORTER:

24 Your Honor, if they want to play
25 something, they probably need to mark it first, at least for

1 identification purposes.

2 THE COURT:

3 All right. What you got there, Mr.

4 Richardson?

5 MR. JOYE:

6 I guess he may want to play that here
7 in a few minutes and introduce it.

8 MR. RICHARDSON:

9 And if we can take -- If now is
10 proper -- uh -- to take that up.

11 If not, then we might could save some
12 time.

13 I would say that he -- that to be
14 able to produce it, is to -- if he said that:

15 Uh -- I don't remember it.

16 Or:

17 It was -- That didn't happen.

18 He's saying:

19 I gave the interview. Everything
20 Scott has said, he said:

21 It's a lie. It's a lie. It's a lie.

22 So he's admitted to everything that's
23 come --

24 THE COURT:

25 Well, I think he has too.

1 Uh -- But of course when he fails to
2 acknowledge that he lied, I think that -- uh -- Mr. -- uh --
3 uh -- Joye is certainly entitled to use -- uh -- his -- uh
4 -- prior statement as a prior inconsistent statement; and
5 can use it for impeachment purposes.

6 MR. RICHARDSON:

7 I agree.

8 Is -- Is there any question about
9 whether or not he has -- uh --

10 THE COURT:

11 Is anything yet, Mr. -- uh -- uh --
12 Joye that he has not admitted that he -- he lied about?

13 Is there anything -- uh --

14 MR. JOYE:

15 Your Honor, part of our theory -- and
16 what we're going to argue later is that -- uh -- is that:

17 Law enforcement told him who they say
18 had shot Mr. Ervin.

19 And they also told him -- and it's on
20 the tape -- if I can figure out where I put it.

21 THE COURT:

22 Didn't -- Didn't he admit that?

23 WITNESS:

24 I knew who shot him.

25 THE COURT:

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1 All right, Mr. Hill.

2 WITNESS:

3 I said it.

4 THE COURT:

5 Please. Please.

6 MR. JOYE:

7 Yeah. That -- That -- On tape, law-
8 enforcement tells Mr. Hill that:

9 He doesn't need to go down for this.

10 That:

11 He can get 30 to life.

12 And he's either going to be a
13 Defendant; or he's going to be a witness; and tells him who
14 law-enforcement believes shot him.

15 Your Honor, what I've got of --

16 THE COURT:

17 Did he --

18 MR. JOYE:

19 -- kind of talking about self-
20 fulfilling prophecies, amazingly enough, he then says that
21 Amp shot him.

22 But he had not prior to that.

23 THE COURT:

24 All right.

25 MR. JOYE:

1 So that's on this tape. And he's not
2 admitted that.

3 THE COURT:

4 Okay. Well, if he hasn't admitted
5 it, then we can do it.

6 But why don't we ask him again and
7 let's see if he admits it?

8 MR. JOYE:

9 That was what I was asking him about
10 when I kind of ended up where I ended up a few moments ago.

11 THE COURT:

12 All right; when we went down the
13 other path.

14 All right. Let's try to keep on the
15 right road this time. And -- uh -- And -- uh -- I -- you
16 can certainly ask him.

17 You're still cross-examining this
18 witness.

19 And I'm going to let you go as -- uh
20 -- as far as I possibly can.

21 All right, Mr. Hemingway, get that
22 jury for me.

23 (WHEREUPON: The jury empanelled in
24 the case was escorted back into the courtroom at 3:24 PM,
25 August 11, 2009; and was in fact present during the

1 following proceedings.)

2 THE COURT:

3 All right.

4 Continue, Mr. Joye.

5 MR. JOYE:

6 Yes sir. Thank you sir.

7 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

8 Q. So when Mr. Richardson asked you earlier on about -- uh
9 -- and you were telling him about how you -- uh -- just
10 didn't get anybody in trouble, that was a lie too; wasn't
11 it?

12 A. No; that wasn't no lie?

13 Q. Wasn't no lie? Well then, didn't you just testify that
14 3 days before the murder, that Chadd, Tony, and Michael
15 Livingston held a gun to your head?

16 A. I said: Chadd, C, and Michael Livingston. I didn't
17 say Tony.

18 Q. Okay.

19 A. You said Tony.

20 Q. Okay. Okay. Chadd --

21 A. You switching it around.

22 Q. Chadd, C, and who else?

23 A. And Michael Livingston right there.

24 Q. Held a gun to your head 'cause they thought you'd
25 ripped off Mr. Livingston's house?

1 A. They thought I stolen his guns or whatever.

2 Q. In other words, someone had broke into --

3 A. But come to find -- Let me finish. I'm not finished.

4 Come to find out, it was they people that stole they gun.

5 So they let me go.

6 They told me they weren't going to

7 let me go until they find they gun.

8 And they people found they guns; and

9 they let me go.

10 That's what it was.

11 That's why I wouldn't tell the

12 authorities; 'cause I knew who killed him.

13 I just won't --

14 Q. Okay. And, in fact, you interviewed with Detective

15 Clark and Detective Troxell on August what -- 9th of '07?

16 A. I couldn't remember. But I think so.

17 Q. Okay.

18 A. I don't know

19 Q. Well, suffice it to say:

20 Sometime in the days after -- uh --

21 that -- after a body was discovered over near Bombing Range

22 Road?

23 A. I seen this man murder somebody in broad daylight. I'm

24 not lying. More people -- A couple of people who's around

25 there too, they seen it too.

1 Q. Sir? Okay. Thank you. I think you testified to that.

2 Now, my question:

3 Did you speak with Detective Clark
4 and Detective Troxell in the immediate days after the body
5 of Ervin Graham was found?

6 A. Yeah. They came and got me. I told you they -- police
7 surrounded my momma' house.

8 Q. Surround your momma's house?

9 A. Yeah. They came and -- They came and got me.

10 Q. Put you in cuffs?

11 A. No; they didn't put me in cuffs. They came and got me
12 and asked me a couple of questions.

13 That's what they came and did.

14 Q. Surround -- Surrounded -- Surrounded your mamma's
15 house?

16 A. Came to my mamma' house.

17 Q. Oh.

18 A. That's what I meant to say. Come to my mama' house.

19 Q. So now they did surround it.

20 A. They came to my mama' house. Well, if you want to say
21 that.

22 Q. I'm just asking you, sir. You said they surrounded it.
23 Now it's came.

24 A. Well --

25 Q. I'm just trying to figure out which it is?

1 A. Well, if they roll up at my house 3 and 4 deep, that's
2 surrounded.

3 Q. They didn't --

4 A. That's how I feel.

5 Q. They didn't call you on the phone and then bust you --

6 A. They ain't called me on the phone or nothing. They
7 came to my house; 'cause somebody told them I was there or
8 something.

9 Q. And then when -- According to your testimony, when they
10 then decided, and told you -- Now, didn't, in fact, they
11 tell you that Amp had shot him.

12 And said:

13 We know Amp shot him.

14 A. I knew who shot him. They -- They said that too.

15 I knew. I knew who shot him.

16 But I just wouldn't cough it up.

17 Q. And only coughed it up after they talked about you
18 going down for the murder; right?

19 A. No. They didn't say I was going down for the murder.
20 They told me -- They told me they might can -- that I might
21 can get some time for -- 'cause I got information they --
22 that they needed.

23 Q. Let me ask you this:

24 Did they charge you with lying to
25 them?

1 Did they charge you with obstructing
2 justice, or -- uh -- or with misprison of a felon or
3 anything for all the lies you told them while --

4 A. No. They knew -- They knew I ain't had nothing to do
5 with it; 'cause --

6 Q. 'Cause they said that you --

7 A. 'Cause they cousin -- they cousin was out there in the
8 middle of the road. Was out there in the middle of the road
9 talking to the police officers.

10 And it was like:

11 You ain't got nothing to do with it.

12 Q. But the officers clearly told you that you could be a
13 Defendant in this case or a witness; didn't they?

14 A. No. I was gone be a witness. I told myself:

15 I'm going up there and tell the
16 truth.

17 They didn't tell me nothing.

18 Q. Oh. You were just going to -- You were going to tell
19 them the truth?

20 Well, didn't you just tell --

21 A. Yeah, 'cause --

22 Q. -- this jury that you didn't tell them the truth --

23 A. I -- At first -- oh, go ahead.

24 Q. -- until after they said that -- that Chadd, and Tony,
25 and C had dimed you out?

1 Then you said:

2 I'm going to tell them the truth.

3 Is that right?

4 A. Yeah.

5 Q. Okay. And -- And at that time, when you decided to
6 dime them out, after they had -- uh -- when you decided to
7 tell them what you say is the truth, you didn't tell him
8 nothing about this thing 3 days earlier?

9 A. 'Cause they ain't -- I don't think they needed to know
10 that. I just told my -- my lawyer.

11 Q. Your lawyer?

12 A. Or Defend -- uh -- Public Defendant or whatever.

13 Q. You got a Public Defender in this case?

14 A. I mean, the lawyer right there. I told him.

15 Q. Which -- Which lawyer?

16 A. No. Matter fact, I told -- uh -- him and I told her.
17 But they didn't --

18 Q. You told her?

19 A. Right there.

20 Q. When did you tell her?

21 A. Like: earlier today. But --

22 Q. Oh --

23 A. But --

24 Q. -- earlier today?

25 A. I --

1 Q. Now --

2 A. I been told them that. When they got that second paper
3 off of me, I been told them that.

4 But I just ain't wanting them to use
5 it in there; 'cause it wouldn't that.

6 That ain't had nothing to do about
7 what happened.

8 Q. So when you met Investigator Moredo --

9 A. Yeah.

10 Q. You met her what; April, May, June, sometime in there?

11 A. I don't know. I couldn't remember. I couldn't
12 remember.

13 Q. Okay. Do you have trouble remembering over time or
14 something?

15 A. No. I ain't -- I'm just saying:

16 I can't remember every -- it ain't
17 been a minute -- like probably about like a month -- two
18 months or so.

19 So --

20 Q. Okay. So you met with her a couple of months ago?

21 A. (Nods in the affirmative.)

22 Q. That's a yes?

23 A. Yeah. Yeah.

24 Q. Did you tell her anything about being threatened with a
25 gun by C --

1 A. I told her about being threatened about -- yeah. I
2 told her that. But then again, I told them what happened;
3 that he shot him in broad daylight; killed him; then I just
4 left.

5 Q. Told her in April or May or June? That was recorded;
6 wasn't it?

7 Didn't she tell you she was recording
8 what y'all were saying?

9 A. Yeah. She recorded what -- everything we said; and I
10 told them.

11 But she didn't --

12 Q. You told her all about it?

13 A. No. When I first came up here, she didn't have that
14 recording on.

15 I just told her:

16 I been threatened and stuff.

17 So -- That's how I feel; 'cause I
18 was.

19 Q. So you were threatened before the murder, but haven't
20 been threatened since?

21 A. Yes.

22 Q. And you live 15 feet away from Michael Livingston? And
23 he's not threatened you?

24 A. He's probably moved or something. I don't know. I
25 don't keep up these people.

1 Q. You don't keep up these people --

2 A. I don't.

3 Q. -- from 15 feet away?

4 A. No. It ain't none of my business. I don't be staying
5 there. I don't be in nobody's business.

6 Q. And it's all convenient that today you tell them about
7 --

8 A. I didn't tell -- I -- I -- I told you:

9 I been told them that.

10 And then I told them today, earlier,
11 which I did. I'm not lying.

12 Q. So -- But you were lying earlier today when you told
13 him that you just didn't want to get anybody in trouble?

14 You were lying to him; weren't you?

15 A. I wasn't lying to him.

16 Q. You weren't?

17 A. I told him the truth -- the truth; and that's it.

18 Q. You weren't lying to him when you told him:

19 I just didn't want to get anybody in
20 trouble?

21 A. I said that. I ain't want nobody to get in trouble.

22 But -- which they done told on me; so
23 I just told everything.

24 They probably done told it already.

25 So I couldn't lie to them.

1 So I just told them everything --
2 what's been going on in my life.

3 Now, I ain't gone lie. I'm going to
4 tell the truth.

5 Q. How can --

6 A. I lied. I lied at first. The first tape they got of
7 me, I ain't had no -- like I said:

8 I ain't wanting nothing to do with
9 that.

10 Whatever they did, that's on them.

11 Q. Then only told the truth after they told you:

12 Well, you can be a witness or you can
13 be a Defendant.

14 Right?

15 A. No. They already knew the truth, 'cause somebody --
16 probably a couple of people done told them. They say they
17 questioned 21 people. So somebody gone say something.

18 Q. And you continued to --

19 A. And I was the last person that they questioned. And
20 they told me that:

21 Them boys told -- told you -- to
22 right about there you out or whatever.

23 So, I was like:

24 I'm going to just go ahead and tell
25 the truth.

1 Q. Exactly my point. You told them what the truth was
2 that they had already related to you?

3 A. No. I already knew the truth.

4 Q. But --

5 A. I already knew --

6 Q. -- you told them the truth as they had already related
7 to you that Amp shot Fido?

8 A. I already knew. I seen it with my own eyes. And I
9 told them that. Can I be excused now? Or y'all ain't
10 finished?

11 Q. Are we keeping you here, Mr. Hill?

12 A. Yeah, I got a job to go to. I work, you know.

13 MR. JOYE:

14 I'm done with him.

15 MR. RICHARDSON:

16 Nothing further, Your Honor.

17 THE COURT:

18 Mr. Hill, you can step down.

19 And does anybody need Mr. Hill here?

20 MR. JOYE:

21 No sir, Your Honor.

22 THE COURT:

23 All right; Mr. Hill, you go to your
24 job.

25 We're going to do Mr. -- uh -- Dr.

1 Proctor next?

2 MR. RICHARDSON:

3 Yes sir, Your Honor.

4 THE COURT:

5 All right.

6 MR. RICHARDSON:

7 The State would call Dr. Edward
8 Proctor.

9 And Your Honor, if you would just
10 address that we called him out of order.

11 THE COURT:

12 All right.

13 Ladies and gentlemen of the jury, we
14 usually try to follow a very -- uh -- set -- uh -- procedure
15 when we are doing this case -- a method that we follow.

16 And usually, Dr. Proctor would be
17 about the last witness.

18 But -- uh -- we understand -- uh --
19 his schedule and we try to accommodate it, just like we try
20 to accommodate our jurors.

21 And so, we're going to take him out
22 of order.

23 MR. JOYE:

24 Judge, I'll certainly stipulate to
25 Dr. Proctor's qualifications.

1 THE COURT:

2 All right.

3 MR. JOYE:

4 It may be that the solicitor may want
5 to put some more of that information in; but we certainly
6 would stipulate to his qualifications as an expert.

7 THE COURT:

8 All right.

9 Dr. Proctor, then, I -- I would
10 assume is offered as an expert in forensic pathology. Is
11 that correct?

12 MR. RICHARDSON:

13 Yes sir.

14 THE COURT:

15 He's to testify as to manner and
16 cause of death, I understand. Is that also correct?

17 MR. RICHARDSON:

18 Yes sir.

19 THE COURT:

20 All right.

21 Ladies and gentlemen, Dr. Proctor is
22 -- uh -- admitted by stipulation as an expert in the field
23 of forensic -- uh -- pathology.

24 WHEREUPON: DR. EDWARD LEROY PROCTOR,
25 JR., WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

1 CLERK:

2 Okay. Please state your full name
3 and spell your last name.

4 WITNESS:

5 My name is Edward Leroy Proctor,
6 Junior; and that's P-r-o-c-t-o-r.

7 MR. RICHARDSON:

8 Thank you Dr. Proctor. And I'm --
9 I'm going to skip all of the preliminary hear -- uh --
10 preliminary questions, and that's all right.

11 DIRECT EXAMINATION BY MR. RICHARDSON:

12 Q. Uh -- How about just please tell the jury, how many
13 times you have testified as an expert, approximately?

14 A. Probably two or three hundred.

15 Q. And many more times, have you done autopsies?

16 A. I average about 250 to 300 a year.

17 Q. And were you able to perform -- uh -- an autopsy on Mr.
18 Ervin Graham?

19 A. Yes sir.

20 Q. Please sir, what was the date of that autopsy?

21 A. Uh -- The autopsy was performed on August the 8th,
22 2007.

23 Q. And who was present, Dr. Proctor?

24 A. I was there. I have an assistant by the name of Leroy
25 Rush, who was there. I think we had -- uh -- a couple of

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1 detectives that were involved in the investigation.

2 I don't have it written there; and
3 probably Detective Clark -- uh -- possibly Detective
4 Troxell; and we had the Horry County Crime Scene Division
5 there. And I think that day it was Officer Deal.

6 THE COURT:

7 Mr. Richardson, let me interject one
8 question for Dr. Proctor.

9 Dr. Proctor, for the benefit of this
10 jury, would you explain -- uh -- what a forensic pathologist
11 is?

12 WITNESS:

13 Yes sir.

14 THE COURT:

15 We can dispense with all the -- uh --
16 preliminaries.

17 MR. RICHARDSON:

18 Yes sir.

19 THE COURT:

20 But let's have that on the record.

21 WITNESS:

22 Thank Your Honor.

23 Uh -- A forensic pathologist, by
24 definition, assists law-enforcement and the legal community
25 in the medical, legal, investigation of death.

1 I am a board certified pathologist,
2 both anatomic and clinical; and subspecialty certified in
3 forensic.

4 And my training in forensic is that:

5 I perform medical, legal,
6 examinations; i.e., autopsies, on people dying under unusual
7 or suspicious circumstances.

8 And we take the information that I
9 have at the time of autopsy; information that we obtain as
10 part of the autopsy; and as part of the legal investigation;
11 and will all of that information, we formulate a cause of
12 death and a manner of death.

13 MR. RICHARDSON:

14 Thank you.

15 WITNESS:

16 Yes sir.

17 MR. RICHARDSON:

18 Thank you Your Honor.

19 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

20 Q. Dr. Proctor, on the day that Ervin Graham's body came
21 in, would you describe to the jury -- uh -- just tell them a
22 little bit about the body?

23 A. Uh -- Yes sir. I was contacted by the coroner's office
24 and we performed this autopsy.

25 This body was badly decomposed.

1 Uh -- Extensive loss of the hair,
2 skin; sloughing of tissues -- uh -- bones were exposed; and
3 there was extensive insect-larval activity.

4 Uh -- Very difficult to initially
5 identify the gentleman.

6 There were -- uh -- tattoos present
7 that -- uh -- we documented.

8 And based upon those tattoos and
9 other information that law-enforcement had, they were able
10 to make -- uh -- a definitive ID of -- uh -- the deceased as
11 -- uh -- Mr. Ervin Graham.

12 Q. Now when you -- uh -- And certainly, there was a lot of
13 photographs taken?

14 A. That's correct; yes sir.

15 Q. All right. But please tell us first -- uh -- the
16 decomposition of skin and that sort of stuff.

17 Uh -- That -- Did that have anything
18 at all to do with the death of Mr. Ervin Graham?

19 A. Uh -- The -- The decompositional changes occurred
20 postmortem or after death.

21 Uh -- His autopsy was performed in
22 August of 2007, which very much is just like the weather
23 we're having right now; extremely hot; extremely humid.

24 Uh -- I was told that the body had
25 been missing for approximately a week.

1 Uh -- It was found outside.

2 So a body exposed this time of year
3 in the elements will undergo extensive decomposition.

4 Q. Were you able to determine a manner of death for Mr.
5 Ervin Graham?

6 A. Yes sir.

7 Q. And please share with the jury what that would be.

8 A. Based upon my examination -- uh -- this gentleman had
9 been shot multiple times in the head, which were documented
10 in my autopsy.

11 And the manner of death would be
12 homicide, which in forensic terminology is:

13 Death at the hands of another.

14 MR. RICHARDSON:

15 And Your Honor, of course, I talked
16 with Mr. Joye.

17 In lieu of any photographs -- uh --
18 I'd like to talk with Dr. Proctor about doing a
19 demonstration on this -- uh --

20 THE COURT:

21 And -- And we've talked about the
22 nature of those photographs. And I think everyone is in
23 agreement that we won't subject the jury to that. And we
24 will use that as a demons -- uh -- demonstrative exhibit.

25 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

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1 Q. Dr. Proctor, would you be able to use this as a
2 demonstrative exhibit and -- uh -- help the jury to
3 understand -- uh -- the approximate bullet paths --

4 A. Yes sir. I can.

5 Q. -- that you found?

6 A. I can. Yes sir.

7 Q. All right. And I've got some dowel rods.

8 COURT REPORTER:

9 You've got some what? I'm sorry.

10 MR. RICHARDSON:

11 Dowell rods.

12 Can Dr. Proctor step down?

13 THE COURT:

14 Certainly.

15 WHEREUPON: The witness stepped from
16 the witness stand to the jury rail and utilized a Styrofoam
17 head and dowel rods to demonstrate his answers.

18 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

19 Q. All right. If you would just track the --

20 A. This gentleman was shot 4 times. There were two
21 entrance wounds on the left side of the head, just above the
22 area of the ear.

23 And there were two entrance wounds in
24 the left far area just below the area of the hairline.

25 And one of the wounds on the left

1 side traversed in a left to right anterior direction through
2 -- it came out -- it's very hard to see here; but it came
3 left to right, and anterior, out of the right forehead area.

4 Another wound on the left side came
5 straight through and slightly down; and came out of the
6 right neck.

7 Now there were two wounds on the left
8 head, just below the hairline and above the eyebrow, that
9 traversed in a left to right direction.

10 One of those exited the head above
11 the right ear.

12 And the fourth projectile remained in
13 the head.

14 Q. Okay.

15 A. So all of the wounds were basically from the left side
16 versus towards the -- the right.

17 Q. Dr. Proctor -- uh -- let's do it -- these dowel rods
18 are touch.

19 If you would -- I'll give you a pen.

20 And -- uh -- if you could just mark
21 for them, the approximate entry wounds -- uh -- and where
22 they were; and then the exit wounds.

23 THE COURT:

24 Could you indicate them as A, B, C,
25 and D; because I --

Testimony of Dr. Edward Proctor

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1 MR. RICHARDSON:

2 Thank you.

3 THE COURT:

4 -- I would assume you have no idea as
5 to what order they were.

6 WITNESS:

7 I -- I cannot tell you what order
8 they were, Your Honor.

9 I certainly cannot.

10 But the two wounds on the left side
11 of the head above the ear would be: A and B, just above the
12 ear.

13 The entry wounds to the left forehead
14 would be C; and D, above the left eye.

15 THE COURT:

16 Could --

17 WITNESS:

18 The exit wounds on the right
19 forehead, sort of towards midline, would be -- would be --
20 would be E.

21 THE COURT:

22 All right.

23 Could we show that as like A(2) or
24 B(2), so we could connect it with --

25 WITNESS:

1 Okay.

2 THE COURT:

3 -- an entry one wound.

4 WITNESS:

5 Yeah. Okay.

6 THE COURT:

7 Like A being that the --

8 WITNESS:

9 Okay. That would be --

10 THE COURT:

11 -- the injury; and A(2) -- or A(1)

12 being the --

13 WITNESS:

14 Certainly.

15 THE COURT:

16 However you would like to do it --

17 WITNESS:

18 Certainly.

19 THE COURT:

20 -- as being the exit wound.

21 WITNESS:

22 All right.

23 Well, we'll have A(1) being the

24 entry. B(1) being the entry.

25 A(2) is an exit wound on the right

1 forehead area.

2 B(2) is an exit wound in the right
3 neck area.

4 C and D traverse the body in a left
5 to right direction with -- let's just say -- C(2); again,
6 an exit in the area of the right ear.

7 And D is the projectile that remained
8 in the head.

9 THE COURT:

10 All right.

11 MR. RICHARDSON:

12 Thank you.

13 THE COURT:

14 Are going to mark that, Mr.
15 Richardson?

16 MR. RICHARDSON:

17 Yes sir.

18 What number we on, Gene?

19 COURT REPORTER:

20 38.

21 MR. RICHARDSON:

22 Your Honor, this would be State's
23 Number 38.

24 THE COURT:

25 Very well.

1 MR. RICHARDSON:

2 Can -- Any objection to moving it
3 into evidence?

4 MR. JOYE:

5 Absolutely not.

6 THE COURT:

7 All right.

8 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

9 Q. And Dr. Proctor, I think you --

10 COURT REPORTER:

11 Wait -- Wait just a moment.

12 MR. RICHARDSON:

13 I'm sorry.

14 WHEREUPON: THE STYROFOAM HEAD MARKED
15 ON BY DR. PROCTOR WAS MARKED BY THE COURT REPORTER AS
16 STATE'S EXHIBIT/S NUMBER 38, AND WAS ENTERED INTO EVIDENCE
17 WITHOUT OBJECTION.

18 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

19 Q. Dr. Proctor, I think you've already said:

20 You don't know -- uh -- which one of
21 those came in first, second, third, or fourth?

22 A. No sir. I cannot tell you the specific order of those
23 wounds. No sir.

24 Q. Can you -- Did you do any calibration of whatever sort
25 of bullet that would have --

1 A. The projectile that was recovered appeared to be a
2 fairly large caliber. But it was -- it was too deformed such
3 that, with my experience, other than to tell you it was
4 larger than a -- a .22 or -- or .32.

5 I -- I would be remiss to tell you
6 the difference between a .38, .40 caliber, .357, those.

7 Uh -- It would take someone with more
8 experience than me.

9 Q. Yes sir. And just for clarification, D(2) would remain
10 inside of the --

11 A. D(2). One of the two that came in the right forehead
12 area remained in the head.

13 Q. And that's the one you're saying -- the projectile that
14 you did find?

15 A. That's correct.

16 Q. All right. And Dr. Proctor, do you know -- uh --
17 Michael Livingston?

18 A. No sir.

19 Q. Do you know -- uh -- Chadd Wilson?

20 A. No sir.

21 Q. Tony Wilson?

22 A. No sir.

23 Q. Uh -- Did you know Ervin Graham?

24 A. No sir.

25 Q. Let me ask you:

1 Uh -- Within a reasonable degree of
2 medical certainty, can you state whether or not one or all
3 of those bullets would have contributed to the death of
4 Ervin Graham?

5 A. Mr. Richardson, he was shot 4 times. And based on the
6 pattern of those wounds, any one of those 4 would have been
7 a fatal injury.

8 And certainly, all 4 of them together
9 were definitely fatal.

10 Q. Were you able to do any sort of -- uh -- DNA work or
11 anything like that?

12 A. The body was badly decomposed. And I was unable to
13 obtain any body fluids because the body was basically
14 decomposed.

15 Uh -- The Horry County Crime Scene
16 Investigators took DNA swabs. But I do not know what they
17 were able to determine.

18 MR. RICHARDSON:

19 The Court's indulgence; just one
20 moment.

21 Dr. Proctor, I believe that's all I
22 have.

23 If you would answer any questions for
24 Mr. Joye.

25 WITNESS:

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1 Yes sir.

2 MR. JOYE:

3 Extremely brief, Dr. Proctor.

4 CROSS-EXAMINATION BY MR. JOYE:

5 Q. Tell the jury about the tattoos that were found on the
6 forearms of Mr. --

7 A. Okay. Mr. Graham, on his right forearm, had a tattoo
8 of the word "Murder;" M-u-r-d-e-r.

9 And on the left forearm, a tattoo of
10 "beach;" B-e-a-c-h.

11 He had a tattoo along the right
12 abdominal area of his body.

13 It was partially decomposed. But --
14 uh -- there was some sort of body figure and -- uh -- boxing
15 gloves.

16 Q. Uh -- So if you read the forearms together, you had:

17 Murder Beach?

18 A. You had;; Murder Beach; yes sir.

19 Q. And all you could tell is that:

20 The 4 entry wounds -- exit wounds --
21 were made by a large caliber weapon?

22 A. That's correct.

23 Q. You could not tell how many weapons or anything of that
24 nature; just simply that they were made by a large caliber
25 weapon?

1 A. I -- I could -- I could determine which were entrance
2 wounds and which were exit, based on the way -- the bone
3 bevels in the skull; but other than to tell you they were
4 larger than an entry wound for a .22 caliber.

5 I could not tell you much else; no
6 sir.

7 Q. The difference between a .357, 9 millimeter, .40 cal --
8 .40 caliber -- just extremely small; isn't it?

9 A. Those -- Those projectiles are very similar in size.

10 Uh -- I know that .38 -- .357 --
11 one's interchangeable with the other.

12 But in terms of the size, and looking
13 at those at the time of an autopsy -- you don't have the
14 casing for the bullet.

15 You just have the projectile end of
16 it and maybe a jacket on the bullet.

17 They're badly deformed.

18 It's very difficult. It's -- It's --
19 Other than tell you that they're a large caliber, I -- I
20 cannot tell you any more.

21 Q. Could have been made by 4 weapons or one?

22 A. Yes sir.

23 MR. JOYE:

24 Thank you, Dr. Proctor

25 REDIRECT EXAMINATION BY MR. RICHARDSON:

1 Q. Just -- uh -- for the jury's knowledge, can you give us
2 a -- a description -- or about how big the bullet wounds
3 could have been?

4 A. Uh -- I -- I think I've described those -- let's see --
5 Mr. Richardson, I did not give exact measurements of these
6 projectiles.

7 But they were all larger than
8 approximately a centimeter across, which an inch is two
9 centimeters; so about -- about a half an inch in diameter.

10 And -- uh -- the larger caliber
11 bullets cause wounds of this size.

12 MR. RICHARDSON:

13 I have nothing -- nothing further.

14 MR. JOYE:

15 Your Honor, certainly, excuse
16 witness.

17 I know Dr. Proctor's got other things
18 to do.

19 (WHEREUPON: The Court motioned for
20 Counsel to come up; and Counsel for each party conferred off
21 the record with The Court at the bench at 3:52 PM, August
22 11, 2009.)

23 THE COURT:

24 All right.

25 Any objection to excusing Dr.

1 Proctor?

2 MR. JOYE:

3 No sir. No sir.

4 THE COURT:

5 Dr. Proctor, you're excused.

6 Thank you very much.

7 WITNESS:

8 Thank Your Honor.

9 THE COURT:

10 You're released from your subpoena.

11 MR. JOYE:

12 Judge, can we approach real quick?

13 THE COURT:

14 Sure.

15 (WHEREUPON: Counsel for each party
16 conferred off the record with The Court at the bench at 3:53
17 PM, August 11, 2009.)

18 THE COURT:

19 The attorneys are whining just
20 because I made them -- I made them work during their break;
21 the breaks that y'all had.

22 And -- uh -- they tell me that the
23 next witness is going to be kind of lengthy. And they need
24 to catch their breath.

25 So we're going to give you another

1 break.

2 I have kept them working while --
3 while y'all had a break.

4 Thank you.

5 (WHEREUPON: The jury empanelled in
6 the case withdrew from the courtroom at 3:54 PM, August 11,
7 2009; and was no longer present during the following
8 proceedings.)

9 THE COURT:

10 All right; we are at ease.

11 (WHEREUPON: The court was declared
12 in recess at 3:54 PM, August 11, 2009.)

13 (WHEREUPON: The court was called to
14 order by the Bailiff at 4:03 PM, August 11, 2009; and all
15 pertinent parties, along with their counsel, except for Mr.
16 Joye, were back and present in the courtroom.)

17 BAILIFF:

18 Order in The Court. All rise.

19 THE COURT:

20 Thank you. Thank you. Please be
21 seated.

22 Before you bring the jury back in, I
23 wants to place on the record the fact --

24 Oh, Mr. Joye is missing. My
25 goodness.

1 WHEREUPON: Mr. Joye returned to the
2 courtroom at 4:04 PM, August 11, 2009.

3 THE COURT:

4 Okay.

5 I'm going to -- uh -- we're -- we're
6 going to have -- I just want to place on the record that:

7 Uh -- Dr. Proctor is my brother-in-
8 law.

9 And that:

10 We had an extensive hearing last week
11 with the Defendant present.

12 Uh -- That was this disclosed to --
13 to everyone involved.

14 Uh -- Everyone agreed that -- uh --
15 that:

16 I should -- uh -- retain jurisdiction
17 of this case and go on and try it.

18 Uh -- Mr. -- uh -- Joye, I understand
19 that -- Well, it was my finding in your statement that -- uh
20 -- your client had no objections whatsoever to Dr. Proctor
21 testifying in my court?

22 MR. JOYE:

23 That's correct, Your Honor.

24 And -- And Dr. Proctor didn't claim
25 you.

Testimony of Coaty Deas

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1 THE COURT:

2 All right. That's -- He never does;

3 but --

4 MR. JOYE:

5 (Laughs.)

6 THE COURT:

7 All right.

8 I just want that on the record.

9 Okay. We're ready?

10 Bring them in.

11 (WHEREUPON: The jury empanelled in
12 the case was escorted back into the courtroom at 4:06 PM,
13 August 11, 2009; and was in fact present during the
14 following proceedings.)

15 THE COURT:

16 All right.

17 Mr. Richardson?

18 MR. RICHARDSON:

19 Thank you, Your Honor.

20 The State would call Coaty Deas.

21 WHEREUPON: COATY DEAS WAS DULY SWORN

22 AND TESTIFIED UNDER OATH AS FOLLOWS:

23 CLERK:

24 Thank you. Please be seated.

25 Okay. Scoot up.

1 If you will state your full name and
2 spell your last name?

3 WITNESS:

4 Coaty Santel (phonetic) Deas; D-e --
5 D-e-a-s.

6 CLERK:

7 Thank you.

8 DIRECT EXAMINATION BY MR. RICHARDSON:

9 Q. Coaty, I'm going to stand over here because I want you
10 to speak up and I want you -- the jury to be able to hear
11 you; okay?

12 A. (Nods in the affirmative.)

13 Q. All right. Coaty, where you live?

14 A. In Conway.

15 Q. All right. Do you live anywhere near -- uh -- where
16 this shooting occurred?

17 A. No sir.

18 Q. All right. Were you at -- uh -- Chadd and Michael's
19 grandmother's house, or in that yard in front of her house,
20 on July 30th, 2007?

21 A. Yes sir.

22 Q. All right. Please tell us:

23 Who else was there?

24 A. Me, Chadd, Amp -- uh -- Kal, and Lope. And I think
25 that that's it.

1 Q. All right. And do you also go by "C?"

2 A. Yes sir.

3 Q. Do you have any other nicknames?

4 A. No sir.

5 Q. All right. What brought you out to Bombing Range Road
6 on July 30th, 2007?

7 A. Selling drugs.

8 Q. Selling drugs?

9 A. Yes sir.

10 Q. Okay. Let me ask you:

11 Do you know -- uh -- Amp?

12 A. Yes sir.

13 Q. Michael Livingston?

14 A. Yes sir.

15 Q. How do you refer to him?

16 A. He was my -- He was a homeboy.

17 Q. All right. So a friend of yours?

18 A. (Nods in the affirmative.)

19 Q. But when you talked with him, or talked with other
20 people about him, did you call him Amp, or Michael, or
21 Juvie, or any other names?

22 A. Just -- Just Amp.

23 Q. You referred to him as Amp?

24 A. (Nods in the affirmative.)

25 Q. And how long had you -- How long have you known Amp?

1 A. I had known him -- I hadn't know him that good at
2 first.

3 I had just now started hanging with
4 him like before that happened.

5 Q. All right. Did you know Tony?

6 A. Yes sir.

7 Q. Had you known Tony longer; or for a shorter period of
8 time than you knew Amp?

9 A. About the same amount of time.

10 Q. And how about Chadd?

11 A. I knew Chadd. I know Chadd.

12 Q. All right. Out of those three, do -- would you have a
13 favorite, as far as a friend?

14 A. Chadd. Chadd.

15 Q. Chadd?

16 A. Yeah.

17 Q. All right. How about Fido, or Ervin Graham? Did you
18 know him?

19 A. Yes sir.

20 Q. How long have you known Fido?

21 A. Since -- uh -- elementary school.

22 Q. Okay. And who -- You sell drugs?

23 A. Yes sir.

24 Q. All right. Who -- uh -- is your drug supplier or was
25 your drug supplier?

1 A. Fido and Amp.

2 Q. Fido and Amp?

3 A. (Nods in the affirmative.)

4 Q. Okay. Uh -- Where -- And you're saying on July 30th,
5 2007, you were there to buy drugs?

6 A. Yes sir.

7 Q. Okay. Now, were you there before Fido came up?

8 A. Yes sir.

9 Q. We're going to have to limit this question to just what
10 you heard from Amp; okay.

11 Did you hear him say anything before
12 Fido pulled up?

13 A. He just -- He say:

14 Uh -- He's gone call him down there;
15 and he get down there, he gone shoot him.

16 Q. Shoot Fido?

17 A. Yeah.

18 Q. All right. Did he -- and if he didn't say, you don't
19 know -- but:

20 Did he give you any reason why he
21 would want to shoot Fido?

22 A. Not really. Not really. He -- It was -- Not really.

23 It was more like -- uh -- he was
24 beefing with him.

25 Q. Beefing? So they had been arguing in the past?

1 A. Yes sir.

2 Q. All right. Had you been present for any of those
3 arguments?

4 A. I was like for one.

5 Q. Do you know what the argument was over?

6 A. He had owed Fido some money.

7 Q. Now, on July 30th, 2007, you heard Amp say that he was
8 going to shoot Fido?

9 A. Yes sir.

10 Q. Who was around when Amp said that?

11 A. Everybody that I called. Uh -- Chadd, Lope -- Like
12 Chadd, Lope, me and Hal, I think.

13 Q. All right. Did -- Did there come a time that -- uh --
14 Ervin Graham pulled up?

15 A. Yes sir.

16 Q. And where did he pull up to?

17 A. Under the tree.

18 Q. Under the tree at -- uh -- Chadd and Tony's grandma's
19 house?

20 A. Yes sir.

21 Q. And Mike -- Michael's grandma's?

22 A. (Nods in the affirmative.)

23 Q. And let -- Just for a jurisdictional question, is that
24 in Horry County?

25 A. Yes sir.

1 Q. Okay. Tell us, Coaty, what happened when Fido pulled
2 up?

3 A. Uh -- I had went to the truck to talk to him, 'cause I
4 did tell him somebody had broke in my house; that I had got
5 robbed.

6 And -- uh -- I'd been going to pay
7 him; but it was going to take some time, you know what I
8 mean.

9 So -- And when -- uh -- like all that
10 was going on, Tony Wilson came and pushed me out the window.

11 He had wanted to holler at him.

12 COURT REPORTER:

13 Because he had wanted what?

14 WITNESS:

15 He wanted to talk to him.

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. All right, Coaty. So you're saying that you owed Fido
18 some money?

19 A. Yes sir.

20 Q. All right. What did Fido -- Was he upset with you for
21 owing him money.

22 A. Nah. He ain't --

23 Q. And you owed him approximately \$500.00?

24 A. Yeah.

25 Q. All right. Did Fido ever get out of the vehicle?

1 A. No sir.

2 Q. All right. So you spoke to him a second. And then
3 Tony came up?

4 A. Yes sir.

5 Q. All right. Just tell the jury what happened at that
6 point.

7 A. I went back under the tree, like -- it like a circle,
8 and the tree in the middle of the circle out where we stood
9 at.

10 I went back underneath the tree.

11 I think I was look -- I was looking
12 at something. And I heard the gunshot.

13 Q. And you heard a gunshot?

14 A. Uh-huh.

15 Q. Did you see the first shot?

16 A. Han, I ain't seen the first shot.

17 Q. What did you do upon hearing the gunshot?

18 A. I looked over -- I looked -- I looked over there. And
19 I seen -- I seen him laying -- I seen him, and -- I don't
20 know -- I just seen him get his head blowed off.

21 Q. All right. Who -- Well -- Did you say pistol?

22 A. Yes sir.

23 Q. And who was holding the pistol?

24 A. Amp.

25 Q. All right. Did there ever come a time that there was a

1 second shot?

2 A. Yes sir.

3 Q. And who shot the second shot?

4 A. Amp.

5 Q. Did you see the second shot?

6 A. Yes sir.

7 Q. And where was Amp standing when he shot Ervin Graham?

8 A. In the back where the -- like the -- behind the
9 driver's side door in the doorway.

10 Q. All right. Was the back door -- back driver's side
11 door open --

12 A. Yes sir.

13 Q. -- or closed?

14 A. It was open.

15 Q. All right. Was he within that door well or somewhere
16 outside of that?

17 MR. JOYE:

18 Your Honor, ask him -- If he'd ask
19 him:

20 Where he was doing?

21 Or:

22 What he was doing?

23 And that type of thing --

24 THE COURT:

25 You are -- You are -- uh -- leading

1 the witness -- uh -- Mr. Richardson; and I ask you not to.

2 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

3 Q. Coaty, what I'm getting at is:

4 Tell me in detail where Amp was
5 standing.

6 A. He was standing behind -- in the doorway behind the
7 driver's side.

8 Q. Okay. The first time that you saw -- you heard the
9 shot and saw Amp, was he there at that point?

10 A. Yes sir.

11 Q. All right. How about the second shot? Where was Amp
12 at?

13 A. In the -- Behind the driver's side door.

14 Q. Same spot?

15 A. Yes sir.

16 Q. Between the first shot and the second shot, did -- shot
17 -- did Amp leave that area?

18 A. After the first shot, he walked behind the truck; and
19 came back; and then shot him again.

20 Q. All right. Were you able to determine what kind of gun
21 was used to shoot Fido?

22 A. It was a 9 millimeter.

23 Q. And how do you know that it was a 9 millimeter?

24 A. 'Cause I had sold it to Amp.

25 Q. You're the one that gave the gun to Amp?

1 A. I ain't gave it. I sold it to him.

2 Q. Did he pay -- How did he pay you?

3 A. With some drugs.

4 Q. All right. So, you sold him that 9 millimeter for
5 drugs?

6 A. Yes sir.

7 Q. Where did you get the 9 millimeter?

8 A. I had took it from somebody.

9 Q. All right. When you say "took it," did you rob
10 somebody of it; or --

11 A. I -- I had went and broke in a car and got it out the
12 car.

13 Q. All right. The 9 millimeter?

14 A. Yeah.

15 Q. And then how far before you -- before this shooting did
16 you give that gun to Amp?

17 A. About two weeks before that.

18 Q. Okay. Now, once Amp shot Fido for the second time,
19 tell the jury what took place then.

20 A. He told me to get in the driver's seat. And we got in
21 -- uh -- me, him, and Chadd, got in the drug -- in the
22 truck. And I drove. He told me where to go at.

23 Q. All right. Now, you got in the driver's seat?

24 A. (Nods in the affirmative.)

25 Q. Was the Defendant -- the victim -- Fido still in the

1 driver's seat?

2 A. Yes sir.

3 Q. All right. Where was he at?

4 A. He was slumped over like -- He was slumped over like in
5 the middle in the armrest in the backseat.

6 Q. Okay. Did y'all move him there? Or is that where he
7 fell?

8 A. That's -- I guess -- That's where he fell at.

9 Q. Okay. So just scooted him over, and you drove?

10 A. Yes sir.

11 Q. All right. Now where did Amp go? What seat was he
12 in?

13 A. In the passenger seat.

14 Q. Front passenger seat --

15 A. Yes sir.

16 Q. -- or back passenger --

17 A. In the front passenger seat.

18 Q. All right. And how about -- uh -- Chadd? Where did
19 he go?

20 A. He was in the backseat.

21 Q. Okay. And the victim was between you and the center
22 console?

23 A. Yes sir.

24 Q. All right. Now, when you left Bombing Range Road -- I
25 mean -- excuse me -- when you left Michael's grandma's

1 house, did you turn left or right?

2 A. Right.

3 Q. Okay. And if you would have turned left, where would
4 you have gone?

5 A. Back to the head of 90 -- on 90.

6 Q. Back to Highway 90?

7 A. Yeah, on Highway 90.

8 A. And did you grow up in that area?

9 A. No sir.

10 Q. All right. What was to the right when you took a
11 right. You said you drove right?

12 A. You go down like -- You go down a couple -- You go down
13 like -- down the road a little bit around the curve --
14 there's a curve back there.

15 Q. Is that road -- Is that road paved?

16 A. Yeah, it's paved.

17 Q. Did there ever come a time that you left the paved
18 road?

19 A. Yeah.

20 Q. All right. How did you know where to drive?

21 A. Amp told me where to go.

22 Q. Amp told you where to turn?

23 A. Yes sir.

24 Q. Did you know where you were going?

25 A. No sir.

1 Q. Had you ever been on that road before?

2 A. I went -- I been on it before.

3 Q. Okay. And you drove and he directed?

4 A. Yes sir.

5 Q. Did Chadd tell you anywhere to go?

6 A. No sir.

7 Q. All right. And tell this jury where you went?

8 A. Uh -- We went on -- uh -- on West Shore Drive; and Amp
9 told me to go down a little path in the woods.

10 Q. So you drove down a wooded path?

11 A. Yes sir.

12 Q. How wide was that road?

13 A. It was just big enough for that one -- one car.

14 Q. Okay. Did you ever come to a stop on that road?

15 A. When we got in the woods, I stopped.

16 Q. Okay. Now tell the jury what took place once you
17 stopped the vehicle.

18 A. All of them got out. And Amp came around the truck and
19 he told me to shoot him.

20 Q. Did he give you a gun?

21 A. Nah, I had the gun up from Fi -- off Fido.

22 Q. So Fido a gun on him?

23 A. Yes sir.

24 Q. Where was Fido's gun?

25 A. It was in his lap.

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1 Q. Okay. And he had it -- he'd had it in his lap when you
2 got in the truck --

3 A. Yes sir.

4 Q. -- to drive?

5 A. Yes sir.

6 Q. So you -- What model of gun was that?

7 A. A .40-cal.

8 Q. Okay. And when you pulled to a stop, you say Amp gets
9 out and tells you to shoot him?

10 A. Yes sir.

11 Q. All right. Tell us what you did.

12 A. I shot him.

13 Q. Okay. Tell us about your shooting him. Did you watch
14 the bullet go in?

15 A. No sir.

16 Q. All right. Tell the jury what happened when you shot
17 him.

18 A. I hadn't a wanted to shoot him. But he had that gun.
19 So I was just like:

20 I had -- I -- I just closed my eyes
21 and shot him.

22 Q. All right. So you shot Fido?

23 A. Yes sir.

24 Q. Did you shoot him once?

25 A. No. After I shot him the first time, he told me to

1 shoot him again.

2 Q. And the second time, where did you shoot him?

3 A. At -- In his face.

4 Q. All right. So did both shots go in his face? Or do
5 you know?

6 A. I don't know.

7 Q. Do you know if the second shot went in his face?

8 A. I don't know. I just heard he had got hit 4 times in
9 the head; but -- uh --

10 Q. All right. Well, two -- You shot him twice?

11 A. Yes sir.

12 Q. Do you know about where you shot him?

13 A. Uh --

14 Q. I mean around the head? Was it in the back of the
15 head; front of the head?

16 A. It was like -- uh -- in the side of it -- side.

17 Q. Side of the head?

18 A. Yes sir.

19 Q. Okay. Now once -- First of all -- and if you don't
20 know, just say: I don't know.

21 Do you have any idea why Amp told you
22 to shoot him?

23 A. I don't know.

24 Q. Was Ervin Graham alive when you shot him?

25 A. No sir.

1 Q. Was he alive when you shot him the first time?

2 A. No sir.

3 Q. Uh -- Or the second?

4 A. No sir.

5 Q. Did he holler or do anything?

6 A. No sir.

7 Q. Was there any noise when you shot him?

8 A. No sir.

9 Q. Okay. And you are fairly sure you shot him twice?

10 A. Yes sir.

11 Q. Well, is any doubt that you shot him twice?

12 A. No sir.

13 Q. All right. Where were you standing when you shot Fido?

14 A. In the front doorway of the driver's side.

15 Q. Okay. And he was still over in the center console
16 part of the vehicle?

17 A. Yes sir.

18 Q. Now upon shooting him, what happened next?

19 A. Uh -- Amp got on the phone. And me and Chadd -- He
20 told me and Chadd to shoot at the gas tank to try to blow up
21 the truck.

22 And so we went back there and shot up
23 -- shot at -- tried to shoot -- shoot at the gas tank.

24 Q. Okay. What sort of gun did you used to shoot at the
25 gas tank?

1 A. The .40-Cal.

2 Q. Did you have any other gun on you?

3 A. Yes sir.

4 Q. What was that?

5 A. A .38, I think.

6 Q. All right. Did you ever use the .38 to shoot at the
7 vehicle?

8 A. No sir.

9 Q. How about Chadd? Did he have a gun?

10 A. Yes sir.

11 Q. And what kind of gun did Chadd have?

12 A. A .38.

13 Q. All right. Did Chadd ever shoot at the vehicle?

14 A. Yes sir.

15 Q. Did Michael ever shoot at the vehicle?

16 A. No. He was on the phone.

17 Q. Do you know who he was on the phone with?

18 A. Not really. I ain't gone know right then. But he had
19 called his girlfriend to come pick us up.

20 Q. Okay. So after -- How did y'all get out of the woods?

21 A. We ran out.

22 Q. All right. And when you ran out, did someone pick you
23 up?

24 A. Yes sir.

25 Q. And who was that?

- 1 A. His girlfriend.
- 2 Q. Do you know her name?
- 3 A. Quick (phonetic).
- 4 Q. Quette (phonetic)? Do you know her last name?
- 5 A. Nah, I ain't know what that is.
- 6 Q. All right. Where did she pick you up?
- 7 A. By West Shore Drive (phonetic).
- 8 Q. Was it anywhere near the wooded path?
- 9 A. Yeah. It was at the top of the path.
- 10 Q. All right. So as soon as y'all got out of the path,
- 11 she was there?
- 12 A. Yes sir.
- 13 Q. To pick you up?
- 14 A. (Nods in the affirmative.)
- 15 Q. And who got into that vehicle?
- 16 A. Me, Amp and Chadd.
- 17 Q. All right. Tell us how you road back?
- 18 A. Amp was in the front. And I was -- uh -- behind Quick
- 19 (phonetic). And Chadd was at the other side, beside me.
- 20 Q. Did you have any blood on you?
- 21 A. No sir.
- 22 Q. How about -- uh -- Amp? Did you see any blood on Amp?
- 23 A. I can't -- No sir.
- 24 Q. How about Tony? I meant -- excuse me -- Chadd?
- 25 A. No sir.

1 Q. All right. Where did -- uh -- Quette (phonetic) take
2 you?

3 A. We went back to they house.

4 Q. And what happened at their house?

5 A. We stripped. They poured -- We poured gas on them --
6 like on our hand; and burned the clothes up and stuff.

7 Q. Whose clothes were burned?

8 A. Me, Amp, and Chadd's.

9 Q. How did you get any new clothes?

10 A. From Amp.

11 Q. What happened to that -- uh -- .40 caliber gun that you
12 had?

13 A. Like, after we -- uh -- went in the house, like, we put
14 them all -- our guns -- we put on the dryer by they back
15 door.

16 And I went and took a shower.

17 And I -- When I came out, it was
18 gone.

19 I ain't seen it no more.

20 Q. All right. When --

21 COURT REPORTER:

22 Excuse me. What was it you put it on
23 outside the back door?

24 WITNESS:

25 The dryer.

1 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

2 Q. Did you ever see that .40 again?

3 A. Yes sir.

4 Q. And when was that?

5 A. I had went out of town and came back about two days
6 after that -- after it happened.

7 Q. And where did you see the .40?

8 A. Amp had it.

9 Q. Where did Amp have it?

10 A. At his -- Underneath the tree in the center block.

11 Q. So there's a cinderblock over there at his grandma's
12 house?

13 A. Yeah. It's a --

14 Q. All right. Have you seen the .40 caliber since?

15 A. No sir.

16 Q. All right. What about the -- uh -- the 9 millimeter?
17 Did you see that after that day on the dryer?

18 A. No sir.

19 Q. All right. Was there anything else on the dryer?

20 A. Like money and drugs.

21 Q. Where did the money and drugs come from?

22 A. From Fido.

23 Q. All right. Who took the money and drugs from Fido?

24 A. Kal grabbed it at first. But I had snatched it from
25 him.

1 And when we went in the house, I put
2 all that on -- on the dryer with the gun and stuff.

3 Q. So Kal grabbed the drugs before y'all ever left the
4 yard?

5 A. Yes sir.

6 Q. Did Kal go with y'all to the dumpsite?

7 A. No sir.

8 Q. So you took them away from Kal and put them back in the
9 vehicle?

10 A. Yeah. I had it on my lap.

11 Q. On your lap?

12 A. (Nods in the affirmative.)

13 Q. All right. When you got into the vehicle, how long
14 did it take you to get the -- uh -- .40 caliber weapon from
15 Fido?

16 A. I -- I think soon -- like, soon as I got into it, I had
17 grabbed -- I seen it and I had grabbed it.

18 Q. Did Fido ever -- uh -- attempt to pick up the .40
19 caliber weapon?

20 A. No sir.

21 Q. So by the time you got the weapon -- uh -- he was
22 incapacitated?

23 A. Yes sir.

24 Q. Now at some point, did you -- Do you know -- uh -- D-
25 Block?

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1 A. Yes sir.

2 Q. And what -- Do you know D-Block's real name?

3 A. I forgot.

4 Q. All right.

5 A. I forgot it.

6 Q. Forgot his name?

7 A. (Nods in the affirmative.)

8 Q. Did you ever go over to D-Block's house?

9 A. Yes sir.

10 Q. And what was the purpose of you going to D-Block's
11 house?

12 A. I always be over there and -- uh -- lite a little chap
13 pop (phonetic).

14 Q. What --

15 A. You talking about that date on it -- I -- I really
16 always been over their.

17 Q. Huh?

18 A. I had all -- We -- I didn't understand your question.

19 Q. Okay.

20 A. I been over --

21 Q. Uh -- You got arrested for shooting up D-Block's house?

22 A. Yes sir.

23 Q. Why did you do that?

24 A. Because I was at my babies' mama's house and he sent
25 them -- he told them people where I was at.

1 Q. And why would D-Block have told you people where you
2 were at? Why would it matter?

3 A. 'Cause we was beefing -- having problems with some
4 people that he had knew.

5 Q. Okay. And did -- Was that related to this case?

6 A. No. It was before. Like, all that was before all
7 this had happened anyway.

8 Q. So did your shooting up D-Block's house have anything
9 to do with -- uh -- Fido's death?

10 A. No sir.

11 Q. Well now, didn't you tell -- didn't you tell the police
12 that -- uh -- D-Block was mad at you for having a part --

13 MR. JOYE:

14 Object, Your Honor.

15 THE COURT:

16 That's leading.

17 Rephrase your question

18 WITNESS:

19 He did -- He tell -- like, the boys
20 that we was beefing with, he -- uh -- he told them, like,
21 about like, I had -- I had something to do with Fido's death
22 and all that.

23 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

24 Q. All right. And did those boys hurt you?

25 A. No. They tried -- They tried to jump me.

1 Q. But you didn't -- you didn't get hurt over what they
2 had said?

3 A. No sir.

4 Q. All right. And with regard to -- uh -- Fido, or Ervin
5 Graham, is there any doubt in your mind as to shot Ervin
6 Graham?

7 A. No sir.

8 Q. Uh -- At Bombing Range Road?

9 A. No sir.

10 Q. And who was that?

11 A. Amp.

12 Q. And how many times did Amp shoot him?

13 A. Two times.

14 Q. And was there any provocation? Did -- Did Ervin go
15 for his gun or anything like that?

16 A. No sir. I ain't seen him.

17 Q. And how many times did you shoot Ervin Graham?

18 A. Two times.

19 Q. Two times?

20 A. (Nods in the affirmative.)

21 Q. And when you shot him two times, it was with a .40
22 caliber pistol?

23 A. Yes sir.

24 WHEREUPON: Mr. Richardson picks up
25 some photographs and shows them to Defense Counsel at 4:35

1 PM, August 11, 2009.

2 MR. RICHARDSON:

3 Are these already in evidence?

4 COURT REPORTER:

5 No.

6 MR. JOYE:

7 No; one, two and three are.

8 MR. RICHARDSON:

9 Okay.

10 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

11 Q. Coaty, let me hand you what has been marked as State's
12 Exhibit 9, 12, and 13. And tell me if you recognize those
13 photographs.

14 A. (Looks at exhibits.) Yes sir.

15 Q. Okay. And what are those photographs of?

16 A. Fido's truck.

17 Q. And do those photographs truly and accurately depict
18 the scene as it would've been on July 30th, 2007?

19 A. Yes sir.

20 Q. Is this -- uh -- State's Exhibit Number 9; do you know
21 how that got there?

22 A. I guess it's that's when -- where Amp shot him.

23 Q. All right. But you know how that got there?

24 A. Yes sir.

25 Q. Was that -- uh -- Do you remember whether or not that

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1 would've been cracked when you drove the vehicle?

2 A. It was -- It was just like that.

3 Q. Was there any blood or anything across that windshield?

4 A. Yes sir.

5 Q. All right. And -- uh -- 13; please -- uh -- tell the
6 jury how those bullet holes got in the back of that vehicle.

7 A. It was from me and Chadd.

8 Q. Trying to shoot up -- blow up the gas tank?

9 A. Yes sir.

10 MR. RICHARDSON:

11 The State would move --

12 THE COURT:

13 Counsel.

14 MR. RICHARDSON:

15 Yes sir. I'm sorry.

16 WHEREUPON: The Court examines the
17 photographs.

18 MR. RICHARDSON:

19 The State would move State's Exhibits
20 9, 12, and 13, into evidence.

21 THE COURT:

22 Very well. Without objection?

23 MR. JOYE:

24 Without objection, Your Honor.

25 THE COURT:

1 Without objection then.

2 WHEREUPON: THE 3 PHOTOGRAPHS,
3 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
4 NUMBER 9, 12, AND 13, WERE ENTERED INTO EVIDENCE WITHOUT
5 OBJECTION.

6 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. Coaty, did you ever talk with -- uh -- Did you ever
8 have an agreement about blowing up that vehicle?

9 A. Yes sir.

10 Q. All right. And tell the jury about that?

11 A. Amp -- Amp telling me like -- like he gone pay me to go
12 back there and burn up the truck.

13 Q. Did you ever do that?

14 A. No sir.

15 Q. But you did try to shoot up the gas tank?

16 A. Yes sir.

17 Q. Did you ever go back to that dumpsite?

18 A. No sir.

19 Q. And when you were arrested for breaking into D-Block's
20 house, did you ever meet with any -- uh -- police and talk
21 with them?

22 A. How you mean?

23 Q. Did the detectives ask you if you wanted to speak with
24 him (sic)?

25 A. Yes sir.

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1 Q. And did you waive your right to an attorney? Or did
2 you speak to them?

3 A. I spoke to them.

4 Q. All right. At some -- Do you remember who you talked
5 with?

6 A. I think Detective Bogart or something.

7 Q. Did you ever -- uh -- talk with Amp about this again?

8 A. No sir.

9 Q. Have you been threatened in any way since July 13th
10 about what would happen if you testified?

11 MR. JOYE:

12 I'm going to object, Your Honor.

13 That's leading.

14 THE COURT:

15 I'm going to sustain.

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. Have you been threatened by anyone since July 30th?

18 A. Not yet. Yeah.

19 Q. No?

20 A. I have; but it was just: He say; she say.

21 Q. Okay. But nothing directly --

22 COURT REPORTER:

23 I didn't understand that last --

24 WITNESS:

25 He say; she say.

1 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

2 Q. Through the grape vine?

3 A. Yes sir.

4 Q. Okay. But Anthony has never -- I mean -- Michael has
5 never said anything to you about harming you?

6 A. No sir.

7 Q. Did y'all -- uh -- at any time from the time that -- uh
8 -- Fido was shot until you left the body, did y'all ever
9 move the body?

10 A. No sir.

11 Q. Okay. And you basically sat on part of -- uh -- Fido
12 as he was driving away?

13 A. Yeah. Not sat on him; but he was right there. He --
14 I could've touched him.

15 Q. Okay. Did you ever see what went with that .38
16 caliber handgun that -- uh -- Tony -- I mean -- that Chadd
17 had?

18 A. No sir.

19 Q. So you don't know nothing with regards to that?

20 A. No sir.

21 Q. How about the .38 that you had? Do you still own that?

22 A. No sir.

23 Q. What happened to that gun?

24 A. I got in a high-speed-chase, and threw it out the
25 window.

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1 Q. Okay. Now as far -- You've admitted to a bunch of
2 stuff that you've never been charged with.

3 But as far as your criminal record,
4 please -- uh -- enlighten the jury of any criminal record
5 that you may have?

6 A. I had juvenile. I've been locked up in juvenile. But
7 for my adult, I had grand larceny, and breaking into -- uh -
8 - breaking into automobiles or something.

9 Q. Okay. And do you know approximately how long ago that
10 was?

11 A. I think -- uh -- 2001.

12 Q. All right. And now with regards to these pending
13 charges that you've got -- uh -- with regard to D-Block, are
14 you charged in that case?

15 A. Yes sir.

16 Q. And do you remember the name of those charges?

17 A. Burglary first, and assault and battery of high,
18 aggravated nature.

19 Q. All right. And with regards to this case -- the case
20 with Fido, what have you been charged with?

21 A. Murder. Uh -- Murder, possession of firearm, and --
22 and robbery.

23 Q. Now, do you have any deal with either me or any other
24 prosecutors?

25 A. No sir.

1 Q. Has anybody promised you anything?

2 A. No sir.

3 Q. Did you sign a proffer agreement?

4 A. No sir.

5 Q. Who is your attorney Coaty?

6 A. Russell Mace (phonetic).

7 Q. All right. And you don't remember signing a -- a
8 contract with the State with regards to your charges -- a
9 proffer agreement?

10 A. No sir.

11 MR. RICHARDSON:

12 I have no further questions; but
13 you'll need to answer any questions Mr. Joye may have for
14 you?

15 CROSS-EXAMINATION BY MR. JOYE:

16 Q. Good afternoon, Mr. Deas. How you doing?

17 A. All right.

18 Q. Smoke a lot of weed; do you?

19 A. Not know more.

20 Q. Well, at the time that -- uh -- that you first talked
21 to any officer about this case, you say you were so high you
22 couldn't really remember anything that happened?

23 A. No sir.

24 Q. You don't remember that?

25 A. I ain't remember it.

1 Q. That would've been right after you were arrested. You
2 don't remember telling Detective Bogart that?

3 A. Not that I can -- I don't.

4 Q. It wouldn't surprise you if you had; would it?

5 A. No sir.

6 Q. 'Cause you didn't want to tell them anything about
7 being at Bombing Range Road when Ervin Graham was shot?

8 A. Yes sir.

9 Q. In fact, you went ahead and told them how upset you
10 were because Ervin Graham was a friend of yours?

11 A. Yes sir.

12 Q. In fact -- Where did you first meet Ervin Graham?

13 A. In elementary school.

14 Q. Okay. So y'all grew up together?

15 A. Not grew up; but --

16 Q. You were -- uh -- you went to school in Myrtle Beach
17 with Ervin Graham?

18 A. Yes sir. And I was incarcerated with him.

19 Q. Incarcerated?

20 A. (Nods in the affirmative.)

21 Q. Okay. So you were in the Department of Corrections
22 with him?

23 A. Yes sir.

24 Q. When he told you when he got out that you needed --
25 when y'all got out that you needed to look him up --

1 A. Yeah.

2 Q. -- and he'd hook you up in the drug business?

3 A. He ain't said it like that.

4 Q. Well, how did he say it?

5 A. He just say when I -- When I got out before, he just be
6 like:

7 Uh -- Come holler at me when -- when
8 we get out.

9 Q. Do you know why he was incarcerated?

10 A. No sir.

11 Q. He didn't tell you what he -- what he was in jail for?

12 A. I can't -- No sir. I can't remember.

13 Q. Were you guys in the same pod at the penitentiary?

14 A. Yes sir.

15 Q. For how long?

16 A. I had went to lock up -- I don't even -- like for --
17 almost like a month. I had went to lock up. And I stayed
18 on lock up until I got -- uh -- came home.

19 Q. Okay. Have you -- uh -- And when did you get out?

20 A. 2004, I think -- two thousand --

21 Q. So let's see.

22 You were convicted in 2001 for grand
23 larceny?

24 A. Yes sir.

25 Q. That makes you a thief; right?

1 A. (No response.)

2 Q. When you steal something, you're a thief; right.

3 A. Yes sir.

4 Q. Yes sir. That's right. Breaking into peoples cars?

5 A. Yes sir.

6 Q. To steal stuff; right?

7 A. Yes sir.

8 Q. And petty larceny? Of course, that's -- larceny means
9 stealing stuff; doesn't it?

10 A. Yes sir.

11 Q. It basically means being a thief; don't it?

12 A. Yep.

13 Q. Now, as it pertains to this case, you -- uh -- you
14 charged with murder?

15 A. (No response.)

16 Q. Okay?

17 A. (No response.)

18 Q. You're charged with armed robbery.

19 A. (No response.)

20 Q. By your own admission, you took the .40 caliber gun
21 from -- from Ervin Graham?

22 A. (No response.)

23 Q. Okay? You shot him in the face with it twice by your
24 own confession?

25 A. Yes sir.

1 Q. And you're also charged with possession of a weapon
2 during a crime of violence?

3 A. Yes sir.

4 Q. Let me ask you this:

5 Have you been charge with being a
6 felon in possession of a weapon?

7 A. Possession of a firearm under malicious act of a crime.

8 Q. Okay. But you could also be charged federally,
9 because you were a convicted felon at the time you at least
10 had -- how many guns?

11 I think you said you sold a 9
12 millimeter to Amp?

13 A. Yes sir.

14 Q. Then you also had a .38 of your own?

15 A. Yes sir.

16 Q. Then you also -- How about -- How about this little
17 weapon, here?

18 MR. JOYE:

19 You guys want to open it for me?

20 WHEREUPON: Defense Counsel picked up
21 a box containing an AK-47 Assault Rifle.

22 MR. JOYE:

23 Your Honor, I don't -- We got some
24 way to open this?

25 You got a knife with you?

1 MR. RICHARDSON:

2 Your Honor, I would just object to
3 this coming in as to any relevance.

4 Uh -- I don't think anybody would say
5 this gun was used to -- within this particular case.

6 THE COURT:

7 Well, I think he's impeaching the
8 witnesses' character and I'm going to let him do it.

9 I want to see it before you swing it
10 around though, please.

11 MR. JOYE:

12 Okay.

13 How about this weapon?

14 THE COURT:

15 Let me see it, Mr. --

16 MR. JOYE:

17 Yes sir.

18 THE COURT:

19 -- Joye.

20 MR. JOYE:

21 Clearly.

22 THE COURT:

23 All right. Let the record show the
24 bolt is retracted and it is securely locked.

25 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

1 Q. How about this weapon, Mr. Deas? You know this weapon?
2 You want to hold it?

3 A. I ain't --

4 Q. Well, it's yours, ain't it? It was yours at one time;
5 wasn't it?

6 A. No sir.

7 Q. Oh; it wasn't no -- yours?

8 A. (No response.)

9 Q. You never had this gun? This ain't the gun you shot up
10 D-Block's house with?

11 A. Yes sir.

12 Q. I thought it was yours; right?

13 A. No sir.

14 Q. Oh? Well, who did it be -- Who did you steal this one
15 from?

16 A. I ain't stole it.

17 Q. Oh? Well, where did you get it from?

18 A. Your client.

19 Q. My client?

20 A. Yep.

21 Q. Oh; ain't that convenient?

22 A. That's how that is.

23 Q. Yeah. So just loaned it to you?

24 A. Yes sir.

25 Q. He got you -- Are there any other guns he loaned to

1 you?

2 A. No sir.

3 Q. Oh. Okay. You sure you don't want to hold it?

4 A. (Nods in the negative.)

5 Q. Now, you -- How many times did you shoot it in D-
6 Block's house?

7 A. It's a machine gun. I don't know.

8 Q. It's a machine gun?

9 A. Yeah.

10 Q. Did you accidentally shoot it? You shot it on purpose;
11 didn't you?

12 A. Yes sir.

13 Q. You let him know you meant business; didn't you?

14 A. Yes sir.

15 Q. Because he's talking on you?

16 A. Not --

17 Q. And you --

18 A. Not -- Not just cause of that.

19 Q. Well, why else did you do it?

20 A. 'Cause he told -- he told each -- he told tell them
21 boys where I was at. And they tried to come to me.

22 Q. So he told on you and made you mad?

23 A. (No response.)

24 Q. You want to show how you shot it into the roof?

25 A. I just held the trigger.

1 Q. Huh?

2 A. I just held the trigger.

3 Q. You shoot it up? You shoot it sideways?

4 Show -- Show the jury how you shot
5 it.

6 A. Like that. (Demonstrates by pointing gun toward the
7 ceiling.)

8 Q. Okay. And you meant to let him know that you would
9 shoot him; didn't you?

10 A. No.

11 Q. No? You wouldn't take a weapon to somebody's house and
12 go in somebody's house with a loaded AK-47?

13 You wouldn't take it there to use it,
14 huh?

15 A. Nah, I wasn't gone shoot him.

16 Q. Now, let me ask you this:

17 If you go in somebody's house and you
18 got a loaded gun, isn't it conceivable you may end up
19 shooting at somebody?

20 A. If you don't know what you're doing; probably.

21 Q. Huh?

22 COURT REPORTER:

23 I'm sorry.

24 WITNESS:

25 If you don't know what you're doing;

1 probably.

2 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

3 Q. So you know what you're doing when you go into
4 somebody's house with a loaded gun; don't you?

5 A. No, I ain't went in there to shoot him.

6 Q. You know what you're doing when you go into somebody's
7 house with a loaded weapon?

8 A. (No response.)

9 Q. How many times you been into people's houses with
10 loaded weapons?

11 A. I don't do that.

12 Q. Oh? You don't do that.

13 A. (No response.)

14 Q. Because you -- you ain't a thief like that. You
15 wouldn't go in somebody's house with a gun?

16 A. Not like -- Not like -- like you trying to make it
17 sound?

18 Q. Well, how am I trying to make it sound, Mr. Deas?

19 A. (No response.)

20 Q. How am I making it sound?

21 A. (No response.)

22 Q. Am I making it sound like you're a thief?

23 A. Yeah. Yes sir.

24 Q. Am I making it sound like you're a felon?

25 A. Yes sir.

1 Q. And in fact, you could get a lot of federal time for
2 having that, being a felon, couldn't you?

3 A. Yes sir.

4 Q. Didn't bother you; did it?

5 A. How you mean?

6 Q. Didn't bother you enough to keep you from doing it; did
7 it?

8 A. (No response.)

9 Q. What's that?

10 A. A clip.

11 Q. And what does it go to?

12 A. The AK.

13 Q. How many bullets does it hold?

14 A. I thought 30 or 50. I don't know.

15 Q. A bundle?

16 A. (No response.)

17 Q. So that's one of them machine guns -- du du du du duut
18 (phonetic)?

19 A. (No response.)

20 Q. How many times did you shoot at the man's house?

21 A. (No response.)

22 Q. How many bullets do you shoot?

23 A. I ain't never really count.

24 Q. And you were later arrested for going to that man's
25 house; correct? D-Block's?

1 A. Yes sir.

2 Q. And when you went to D-Block's house, and got arrested

3 --

4 MR. JOYE:

5 I'm going to put this over here.

6 WHEREUPON: Defense Counsel lays the

7 AK 47 back on the top of the box it was originally in.

8 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

9 Q. Let's see. When you went to D-Block's house and got
10 arrested, who had the .38? You or Lope?

11 A. Ain't nobody had no .38.

12 Q. Okay. When y'all got arrested -- Oh; by the way:

13 Where was this gun found when you
14 were arrested?

15 A. In --

16 Q. Where were y'all?

17 A. In my hotel -- In a hotel room.

18 Q. All right. And wasn't a child present just feet away
19 from this gun?

20 A. Yes sir.

21 Q. How old a child?

22 A. A couple of months.

23 Q. Yeah. And that child is a couple feet away from what?

24 A loaded AK-47?

25 A. Yeah.

1 Q. How about the drugs in that room? The marijuana?
2 Three was some marijuana got taken off of -- uh -- off of
3 Ervin Graham when he -- when he was killed; didn't it?

4 A. I don't think -- No sir.

5 Q. Oh? There wasn't no marijuana --

6 A. It was pills.

7 Q. So that was all -- There wasn't -- So:

8 Anybody that testifies about any
9 marijuana, they were wrong on that?

10 A. I ain't -- I ain't seen -- I seen pills.

11 Q. And Kal took the pills?

12 A. (Nods in the affirmative.)

13 Q. So if Kal says that he took off running after this
14 thing was over, he'd be lying; wouldn't he?

15 MR. RICHARDSON:

16 Your Honor, I object.

17 He's pitting witnesses. And Kal's
18 already gone.

19 MR. JOYE:

20 Your Honor, if he -- if he -- if Kal
21 has already testified --

22 THE COURT:

23 Just ask him what he would say.

24 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

25 Q. Kal didn't take off running; did he?

1 A. He did. But I grabbed -- I grabbed that before he ran.

2 Q. Oh? So Kal went to the vehicle; reached in the vehicle
3 and got the drugs and then took off running?

4 A. Yeah.

5 Q. And you took them back from Kal?

6 A. Yes sir.

7 Q. What kind of pills were they?

8 A. Some X-pills.

9 Q. And wasn't there some X-pills that were found in the
10 motel room with you and Lope when y'all got arrested?

11 A. They ain't charged me with it. I ain't --

12 Q. Didn't charge you with it? That -- That's a good one.

13 A. (No response.)

14 Q. So they didn't charge you with the -- with the dope?

15 A. No sir.

16 Q. In this case?

17 A. No sir.

18 Q. So let's just go ahead and get it straight:

19 You got charged with murder?

20 A. Yes sir.

21 Q. You got charged with armed robbery?

22 A. Yes sir.

23 Q. You got charged with the possession of a weapon in the
24 course of a violent crime?

25 A. Yes sir.

1 Q. You got charged with burglary first?

2 A. Yes sir.

3 Q. And burglary first means breaking into somebody's house
4 while armed with a deadly weapon?

5 A. Yes sir.

6 WHEREUPON: There was a surge and the
7 electricity cut off and on in the courthouse; at which time,
8 the court reporter requested a moment to check his files and
9 reset his equipment at 4:56 PM, August 11, 2009. The Court
10 granted the request and all parties remained in place in
11 court and in session while the court reporter quickly
12 checked and changed his files. And we went back on record
13 at 4:59 PM, August 11, 2009.

14 THE COURT:

15 Are you ready?

16 COURT REPORTER:

17 (Nods in the affirmative.)

18 THE COURT:

19 Okay.

20 The court reporter says he's back on
21 line.

22 You want to read back the last
23 question?

24 Do you need the last question, Mr.
25 Joye?

1 MR. JOYE:

2 I'm kind of confused about where I
3 was, Judge. Yes sir.

4 THE COURT:

5 Can you give him the last question?

6 COURT REPORTER:

7 I'll have to go ahead and pull up
8 everything back, Your Honor, because I've closed that last
9 file.

10 THE COURT:

11 You don't need the last question.

12 MR. JOYE:

13 That last -- I don't need it.

14 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

15 Q. All right. I know we were talking about what you were
16 charged with -- and we decided -- and I'm -- I'm sorry if I
17 Repeat myself to these fine folks sitting over here; but
18 murder?

19 A. (Nods in the affirmative.)

20 Q. Is that: Yes?

21 A. Yes sir.

22 Q. Uh -- Armed robbery?

23 A. Yes sir.

24 Q. Possession of a weapon in the course of a violent
25 crime?

1 A. Yes sir.

2 Q. They didn't charge you with possession of a weapon in
3 the second violent crime where Tony beat up D-Block?

4 A. No. No sir.

5 Q. And -- But you were charged with burglary first there?

6 A. Yes sir.

7 Q. And you were charged with assault and battery, high and
8 aggravated nature.

9 Did you actually do any beating on D-
10 Block too; or just -- just Tony?

11 A. I ain't beat the boy.

12 Q. Huh?

13 A. I ain't -- I ain't hit him.

14 Q. You don't know?

15 A. I did not hit him.

16 Q. You didn't hit him?

17 A. (No response.)

18 Q. You just let Tony hit him?

19 A. I ain't let him do nothing.

20 Q. Well, it ain't going to be a whole lot of fighting back
21 with somebody standing there with a loaded AK-47; is it?

22 A. (No response.)

23 Q. Be kind of dumb to do that; wouldn't it?

24 A. They was already fighting when I walked in there.

25 Q. Oh. Well, what? Did you just shoot up to kind of get

1 them broke up?

2 A. (No response.)

3 Q. Or just cause you like to shoot?

4 A. Because I wasn't thinking.

5 Q. Huh?

6 A. Because I wasn't thinking.

7 Q. 'Cause you were what?

8 A. I wasn't thinking.

9 Q. Thinking? You wasn't thinking?

10 A. (No response.)

11 Q. Huh?

12 MR. RICHARDSON:

13 Tony, speak up.

14 WITNESS:

15 The mike turned off.

16 MR. RICHARDSON:

17 The mike's off?

18 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

19 Q. And -- Now let's talk about what you haven't been
20 charged with:

21 Felony possession of a weapon.

22 You ain't been charged with that;
23 have you?

24 A. No sir.

25 Q. Were you charged with lying to them when they first

1 started asking you about this investigation?

2 A. No sir.

3 Q. But they clearly could have, couldn't they?

4 A. I don't know. I don't know how they --

5 Q. Well, you know you lied to them; right?

6 A. (No response.)

7 Q. You told them that you were smoking so much weed you
8 couldn't remember nothing.

9 A. I ain't -- I don't remember telling them that.

10 Q. Now you said -- and we've already discussed:

11 You're a thief?

12 A. (No response.)

13 Q. Yes?

14 A. Yes sir.

15 Q. And you're a liar?

16 MR. RICHARDSON:

17 Your Honor, asked and answered.

18 He's

19 MR. JOYE:

20 I don't think I've asked him if he's
21 a liar.

22 THE COURT:

23 Ask him one more time.

24 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

25 Q. And a liar?

1 A. If you say so.

2 Q. No sir. I want you to say. Are you a liar?

3 A. I wouldn't say I'm a liar.

4 Q. Okay. You're not a liar?

5 A. (No response.)

6 Q. Now isn't that right?

7 A. (No response.)

8 Q. Given the fact that you've already told people other
9 things about this case?

10 A. (Nods in the affirmative.)

11 Q. Can you speak up? The court reporter needs to get it,
12 sir.

13 A. I ain't told nobody nothing about the case.

14 Q. Now let me ask you this:

15 You said that -- that Michael
16 Livingston said he was going to kill Fido?

17 Is that correct?

18 A. Yes sir.

19 Q. Now when you interviewed with Mr. Richardson, back, I
20 guess, about a couple of months ago; didn't you have a talk
21 with him?

22 A. Yes sir.

23 Q. Y'all talk pretty extensively?

24 A. It was during roll call.

25 Q. Okay. And you -- you and he sat down and had a

1 conversation?

2 A. Not sat down at -- No sir.

3 Q. You never sat down and talked with him about this case?

4 A. Not a couple of months ago.

5 Q. Okay. When?

6 A. It was recent.

7 Q. Huh?

8 A. Recently.

9 Q. Well, you --

10 THE COURT:

11 Sir, I'm going to have to ask you to
12 speak up.

13 The jurors are having difficulty
14 hearing you.

15 I think all of our mikes are out now.

16 So, speak up.

17 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

18 Q. Now you -- uh -- you had a conversation with him about
19 it?

20 A. (No response.)

21 Q. Is that correct?

22 A. Yes sir.

23 Q. And you told him that you went over to the vehicle to
24 buy drugs?

25 A. Yes sir.

1 Q. Now, supposedly you know that Michael's going to go
2 shoot Fido. But you're going to walk over there and be in
3 the line of fire?

4 A. I thought he was just talking.

5 Q. And at that time, you had a .38 on you?

6 A. Yes sir.

7 MR. JOYE:

8 Where is the -- Where is the weapon
9 we had secured, Your Honor?

10 THE COURT:

11 Mr. --

12 MR. RICHARDSON:

13 Gene's got it.

14 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

15 Q. And I'm going to show you what's been marked --

16 THE COURT:

17 (Raps on the bench.)

18 Okay. And we've got this one back
19 up.

20 MR. JOYE:

21 Oh. I -- You know, Your Honor, you
22 remember Judge Floyd.

23 He used to -- When he thought you had
24 talked enough, he would rap like that.

25 THE COURT:

1 (Again, raps on the bench.)

2 (Laughter erupts in the courtroom.)

3 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

4 Q. How about this .38? You recognize that?

5 A. Yes sir.

6 Q. Whose .38's that?

7 A. That's the one -- uh -- Lope got caught with.

8 Q. Where did Lope get this one?

9 A. I don't know.

10 Q. This ain't the .38 you used?

11 A. No sir.

12 Q. So this is a totally unknown gun? You don't -- You --
13 You only know -- seen this one when Lope got caught with it?

14 A. Yes sir.

15 Q. Not at the same time you got caught with the AK-47?

16 A. Yes sir.

17 Q. And now, you said -- Now -- Are you charged with any
18 drug dealing in this?

19 A. No sir.

20 Q. But you're clearly an admitted drug dealer; correct?

21 A. Yes sir.

22 Q. You'd buy and sell from -- uh -- from Ervin Graham?

23 A. What do you say?

24 Q. You'd buy from our Ervin Graham to sell to other
25 people?

1 A. Yes sir.

2 Q. And now you -- uh -- you said that you never signed any
3 kind of agreement to testify in this case?

4 A. No sir.

5 Q. You didn't?

6 A. No sir.

7 Q. So if all of a sudden we produced an agreement for you
8 to testify in this case, it -- you would be a liar; wouldn't
9 you?

10 A. Yes sir.

11 Q. What is that? (Hands the witness a document.)

12 A. I had signed that with my lawyer.

13 Q. To testify in this case?

14 A. (No response.)

15 Q. That would be another lie?

16 A. (No response.)

17 Q. That you just told?

18 A. That was where they told when they charged me.

19 Q. Now you been charged a lot. You ever seen a charging
20 paper like that before?

21 A. I don't know.

22 Q. Your lawyer explain this agreement to you?

23 A. Not really.

24 Q. Oh? He just said: Here; sign this?

25 A. He was talking.

1 Q. And your lawyer told you that by signing this and
2 coming here and testifying to these fine people that you
3 might get a little bit of a break?

4 A. No sir.

5 Q. Oh? He never did tell you that?

6 A. No sir.

7 Q. He didn't explain to you that:

8 The State, meaning Mr. Richardson,
9 shall consider the extent and degree of the cooperation of
10 Coaty Deas in the election of charges and assessing of Coaty
11 Deas.

12 He never told you none of that?

13 A. They hadn't -- They ain't had a conversation of it.

14 Q. So he just said:

15 Sign this agreement.

16 And you just said:

17 Okay; cool.

18 A. No, he just -- No, it hadn't went like that.

19 Q. And you ain't looking for no help from the State for
20 testifying?

21 You just here because you -- you want
22 a good citizen award?

23 A. I want -- No, not really. I needed to get it off my
24 chest.

25 I didn't -- Leniency; huh.

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1 Q. And you didn't have -- You had a -- Did you feel like
2 you needed to get it off your chest before you got caught?

3 A. I -- I -- Ever since it happened, I felt like that.

4 Q. Right. Did you feel like you needed to get off your
5 chest?

6 You called the police, and say:

7 Look, I -- I -- this thing's just
8 eating me up.

9 I got to tell you about it.

10 A. Nah, I ain't said that.

11 Q. No, you didn't do that; did you?

12 A. (No response.)

13 Q. In fact, when they asked you about it, you didn't know
14 nothing about nothing; did you?

15 A. No sir.

16 Q. Is that 'cause:

17 You don't know nothing about nothing.

18 Or is that 'cause:

19 You were just lying to them?

20 A. I ain't wanted my name in it.

21 Q. You ain't wanted your name in it?

22 A. (No response.)

23 Q. Well, your name's all over it. You shot a man in the
24 face twice.

25 A. (No response.)

1 Q. If we believe your story?

2 A. Yes sir.

3 Q. You drove a car into the woods; and left it there with
4 a body in it?

5 A. (No response.)

6 Q. This guy was a friend of yours; wasn't it?

7 A. Yes sir.

8 Q. How do you treat your enemies?

9 A. (No response.)

10 Q. Oh, we know; D-Block. Now let me ask you this:

11 You said you shot him twice in the
12 left side of the face?

13 A. Yes sir.

14 Q. You sure about that?

15 A. I don't know. I had my eyes closed.

16 Q. Well, didn't you tell Mr. Richardson that you had your
17 eyes closes on the first shot; not the second one?

18 A. I told you I shot him in there.

19 Q. Well, so when I just asked you that simple question
20 about shooting him twice in the face you lied again; didn't
21 you?

22 A. I ain't lied.

23 Q. Well, you can't be --

24 A. You asked me about the truth if I shot him in his face,
25 the first one -- When I first shot him, I had my eyes

1 closed.

2 Q. Second shot?

3 A. Yeah.

4 Q. You told Mr. Richardson you -- you saw it hit him in
5 the face; didn't you?

6 A. Yeah.

7 Q. So if you shot the second shot -- and you had already
8 shot the first shot -- and we had already established that
9 two shots -- Let's see. (Picks up State's Exhibit 226 to
10 demonstrate.)

11 Well, right here, C and D.

12 We had already established that.

13 You had to see C-shot when you shot
14 him with D-shot; wouldn't you?

15 A. I --

16 Q. I mean, if -- If the two gunshot wounds are as close as
17 Dr. Proctor's got up here and testified to, and you saw the
18 second shot, you had to see the first one, didn't you?

19 A. Like after it was done?

20 Q. Huh?

21 A. After it was done?

22 Q. Well, yeah, I would assume so.

23 A. Yeah.

24 Q. So you did see he'd -- that he was shot in the face?

25 A. Yes sir.

1 Q. Where you shot him?

2 A. (No response.)

3 Q. Yes sir?

4 A. Yes sir; after he was dead, though.

5 Q. You -- Well, you don't know for certain. You didn't --
6 You take his pulse?

7 A. No sir.

8 Q. Did you feel his carotid artery?

9 A. No sir.

10 Q. And now tell us about -- When you shot him, where was
11 he?

12 A. In the truck.

13 Q. How?

14 A. He was slumped over like in the arm part.

15 MR. JOYE:

16 (Brings a chair over from his
17 counsel's table.)

18 All right.

19 Your Honor, may I?

20 THE COURT:

21 (Nods in the affirmative.)

22 WHEREUPON: Mr. Joye motions for the
23 witness to come down in front of the jury rail; and examines
24 him there as follows:

25 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

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1 Q. Mr. Deas, come on and tell us.

2 He was slumped over?

3 A. Yes sir.

4 Q. So, show us. Sit down in the chair and show us how he
5 was?

6 A. He was like slumped like that (demonstrating).

7 Q. He was like that?

8 A. (Nods in the affirmative.)

9 Q. Did you move him after you shot him?

10 A. No sir.

11 Q. So if we show a picture -- If we were to show a picture
12 and he's kind of slumped with his face down over the
13 console, that ain't the way you remember it?

14 A. (Nods in the affirmative.)

15 Q. He was kind of just sitting up like that?

16 A. Yes sir.

17 Q. After being shot?

18 A. He was leaning -- I'm trying to tell you he was leaned
19 over -- (Not Audible.)

20 COURT REPORTER:

21 Wait a minute. I'm not picking him
22 up there.

23 I'm sorry. You're going to have to
24 speak up, sir.

25 WITNESS:

1 It's like: He was leaned over in the
2 little armrest.

3 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

4 Q. He was leaned over?

5 | A. (Nods in the affirmative.)

6	Q. Like how?

7	A. (No response.)

8 Q. Show us his head -- how his head was.

9 A. Like -- Like that.

10 Q. And then you shot him twice in the face then?

11 | A. Yes sir.

12 Q. Okay. And -- You can take a seat, sir.

13 WHEREUPON: The witness resumed the
14 witness stand.

15 CROSS-EXAMINATION BY MR. JOYE CONTINUED:

16 Q. You stuck the gun in through the window? Or did you
17 stand outside the window and shoot through?

18 A. In the doorway.

19 Q. What is it -- Please explain to the jury what is it you
20 expect to get by testifying today?

21 A. Nothing. I don't --

22	Q. Nothing.

23 A. I don't expect nothing.

24 Q. So, when Mr. Richardson says:

25 | Look, Coaty, we're just going to go

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1 ahead and give you life in prison.

2 We appreciate you testifying.

3 You just going to say:

4 That's fine?

5 A. What I'm -- That's what I'll do?

6 Q. You ain't got no problem with going to prison for life.

7 A. I do; but --

8 Q. Be honest with these people. Tell them the truth.

9 A. (No response.)

10 Q. Tell them the truth. Tell them the truth; that you
11 looking to get some help on this thing.

12 A. I don't --

13 Q. Tell them the truth, Coaty. I know it's in you.

14 A. (No response.)

15 Q. Tell them the truth.

16 A. I already told the truth. I know that I did it. I --
17 I just want leniency.

18 Q. If you hadn't got caught, you wouldn't have never said
19 nothing; would you?

20 A. (No response.)

21 Q. Tell the truth.

22 A. Probably not.

23 Q. So you really ain't in it to make it right; are you?

24 A. Yes sir.

25 Q. What you in it for: You want a deal?

1 A. (No response.)

2 Q. And the cops told you that Amp shot him; didn't they?

3 A. No sir. I was there. I seen.

4 Q. Cops told you that Amp shot him. Said:

5 We know what happened.

6 A. Yeah, they told that; but I was there too. I seen.

7 Q. They told you that Amp shot him. Before you ever
8 mentioned that Amp shot him, they told you?

9 A. How they told me? I was there and I seen.

10 Q. They told you when they were questioning:

11 We know who shot him; didn't they?

12 A. That what they say.

13 MR. JOYE:

14 Thank you, sir.

15 THE COURT:

16 Mr. Richardson, any redirect?

17 MR. RICHARDSON:

18 Yes, sir, Your Honor.

19 REDIRECT EXAMINATION BY MR. RICHARDSON:

20 Q. Coaty -- uh -- with regard to them telling you who shot
21 him:

22 Do you remember if there was any sort
23 of a taped statement of them telling you that; or --

24 A. (No response.)

25 Q. Do you remember anything like that?

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1 A. No sir.

2 MR. RICHARDSON:

3 How about just try and find the
4 statement. (Speaking to his assistant at Counsel's table.)

5 REDIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

6 Q. Now let me ask you while she's looking for that:

7 Uh -- You're saying that that AK-47
8 belonged to Amp?

9 A. Yes sir.

10 Q. And when did you get that gun?

11 A. The day before -- uh -- I got locked up.

12 Q. So it would have been after the shoot -- uh -- Amp
13 killed Fido?

14 A. Yes sir.

15 Q. And Amp give you that gun?

16 MR. JOYE:

17 Your Honor --

18 WITNESS:

19 Yes sir.

20 MR. JOYE:

21 -- I would object to his
22 characterization that Amp killed Fido.

23 I thought that was what we were here
24 to ask them.

25 THE COURT:

1 Well, that's the position he takes.

2 MR. JOYE:

3 Thank you, sir.

4 REDIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

5 Q. Did you see Amp kill Fido?

6 A. Yes sir.

7 Q. Did you see Amp shoot Fido?

8 A. Yes sir.

9 Q. How many times?

10 A. I seen him one time shoot.

11 Q. Did you hear more than one pop?

12 A. Yes sir.

13 Q. How many pops did you hear?

14 A. Two.

15 Q. Did anybody else have a gun?

16 A. (No response.)

17 Q. I mean a gun drawn? I'm just --

18 A. No sir.

19 Q. All right. And then after that, and after you shot
20 him twice, then, the day before you got arrested, he gave
21 you that AK-47?

22 A. Yes sir.

23 Q. And what was the purpose of him giving you the AK-47

24 A. 'Cause some boy was calling my baby mama's phone. I
25 was like:

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1 They was about to come do something.

2 COURT REPORTER?

3 Thinking about what? I'm sorry.

4 WITNESS:

5 They was saying they about to come do
6 something.

7 Then we had --

8 MR. JOYE:

9 Your Honor, I'm going to object.

10 Unless they said that to him, he
11 can't testify to what he said his baby's mama said.

12 THE COURT:

13 I agree. Sustain the objection.

14 Please ignore the response.

15 WITNESS:

16 I heard that. She had to repeat
17 something --

18 THE COURT:

19 All right. All right; please.

20 I'm at telling the jury to re --

21 ignore the response to last question.

22 Now, you may rephrase your question.

23 MR. RICHARDSON:

24 Do you have any personal --

25 THE COURT:

1 Or approach it from another angle.

2 REDIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

3 Q. Do you have any personal knowledge as to why -- uh --
4 you needed that gun?

5 A. Like, how you mean?

6 Q. What was your reasoning for needing that AK-47?

7 And I don't want:

8 Anybody told you.

9 Do you have any personal knowledge?

10 Did you hear anything that made you
11 need a gun?

12 A. Yes sir.

13 Q. All right. And what was that?

14 A. They -- They say they was coming there -- they was
15 coming --

16 MR. JOYE:

17 Unless he -- Your Honor, unless he
18 can specifically say who said what to him --

19 THE COURT:

20 Well, let's analyze it.

21 MR. JOYE:

22 -- I'm going to object.

23 THE COURT:

24 I think that it's admissible.

25 It's clearly hearsay; but it comes

1 under an exception.

2 I think that what we have here is:

3 A statement made which is not offered
4 for the truth of the Statement; but merely to explain his
5 state of mind.

6 Therefore, I think that it's
7 admissible.

8 I don't -- I don't think it makes any
9 different whether they were coming or not.

10 It's to whether not he thought they
11 were.

12 WITNESS:

13 Yes sir.

14 REDIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

15 Q. Now, did you discuss that with Amp; the fact that you
16 thought people were coming to your house?

17 A. Yes sir.

18 Q. Amp gave you this gun?

19 A. Yes sir.

20 Q. Where did Amp have the gun?

21 A. At his house.

22 Q. What part of his house?

23 A. I -- I think it was in his room.

24 Q. All right. Well, when you were at his house -- Did you
25 go to his house?

1 A. Yes sir.

2 Q. All right. Did you see him actually remove the gun
3 from somewhere?

4 A. Yes sir. I know it. It was in the car.

5 Q. Whose car?

6 A. In the abandoned car behind his house.

7 Q. All right. And he gave you that AK-47?

8 A. He told me where to go get it from.

9 Q. Oh? So he didn't give it to you; you went and got it?

10 A. Yes sir.

11 Q. All right, sir. And that was at his house?

12 A. Yes sir.

13 Q. Did he know you got that gun?

14 A. Yes sir.

15 Q. How did he know you got that gun?

16 A. Oh? Well, he told me to go get it.

17 Q. All right.

18 A. He seen me when I got it.

19 Q. Okay. So there was never a situation where he thought
20 you had stolen the gun?

21 A. No sir.

22 Q. Did you have plans to return the gun?

23 A. Yes sir.

24 Q. And how many days after you shut up D-Block's house did
25 -- uh -- was it before you got caught?

1 A. The next day.

2 MR. JOYE:

3 Excuse me one second, Judge.

4 WHEREUPON: The Solicitor returns to
5 his table; and the Defense Counsel goes over to the
6 Solicitor's table and confers with the Solicitor off the
7 record.

8 MR. RICHARDSON:

9 All right. She's -- She's looking
10 for -- uh -- a statement form.

11 REDIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

12 Q. But while she's doing that, I want to make totally
13 clear to this jury; and now is the time:

14 Is any doubt in your mind as to who
15 shot Ervin Graham?

16 A. No sir.

17 Q. And who was that?

18 A. Amp.

19 Q. And who else shot Ervin Graham?

20 A. Me.

21 Q. Okay. And how many times did you shoot him?

22 A. Twice.

23 Q. And how many times did Amp shoot him?

24 A. Twice.

25 Q. And did anybody else to your knowledge shoot him?

1 A. No sir.

2 Q. When you gave this statement to the police, did you
3 ever sign any sort of form saying that you wanted to speak
4 to him?

5 A. No sir.

6 Q. And have you heard any sort of recording of you saying
7 that the police gave you Amp's name before you come up with
8 Amp's name?

9 A. No sir.

10 Q. Would they have needed to give you that name?

11 A. No sir.

12 Q. How long had you known Amp before that?

13 A. I had met him when I got out of prison. I had met him
14 -- I think that was like 2004.

15 Then I had moved to Georgia and came
16 back down here.

17 And that's when I started hanging out
18 with him.

19 Q. So you knew Amp fairly well?

20 A. Yes sir.

21 Q. And you don't ever remember signing a Miranda Form?

22 A. No sir.

23 Q. Do you remember talking to Detective Toby Boyd?

24 A. Well, I talked -- it was a bunch of them, like.

25 Q. All right. Is there any doubt in your mind as to

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1 whether or not Ervin Graham was dead when you shot him?

2 A. No sir.

3 MR. RICHARDSON:

4 I have nothing further.

5 RECROSS-EXAMINATION BY MR. JOYE:

6 Q. Are you as sure that Michael Livingston told you where
7 to get that AK-47?

8 A. Yes sir.

9 Q. Well, how did he tell you; when you previously
10 testified:

11 At no point after the murder, did I
12 talk to Michael?

13 A. You say: about the murder, didn't you?

14 Q. At no point after the murder, did I talk to Michael?

15 A. He's talking about: about the murder.

16 Q. So if you testified:

17 At no point after the murder, you
18 talked to Michael.

19 Then, all of a sudden, Michael gives
20 you a gun?

21 A. He said: Did I talk to him about the murder?

22 Q. And when you testified, you said:

23 At no point after the murder did you
24 talk to Michael.

25 MR. RICHARDSON:

1 And Your Honor, he -- he's answered
2 it several times.

3 MR. JOYE:

4 Well --

5 MR. RICHARDSON:

6 He didn't talk with him about the
7 murder.

8 MR. JOYE:

9 Well --

10 MR. RICHARDSON:

11 That's what he's answered every time
12 he --

13 THE COURT:

14 Well, I'm trying to hear his answer.

15 Ask it one more time.

16 And you answer it.

17 RECROSS-EXAMINATION BY MR. JOYE CONTINUED:

18 Q. When you testified earlier that you never talked to
19 Michael after the murder, was that now also a lie?

20 A. I did not talk to him about the murder. I talked to
21 him. But I ain't talked -- We didn't talk about the murder.

22 Q. Well, why did you say that Michael gave you the AK-47?

23 A. (No response.)

24 Q. Because it had something to do with the murder?

25 A. (No response.)

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1 Q. Just a few minutes ago, didn't you say that.

2 A. (No response.)

3 Q. So if you didn't talk to him about the murder, how are
4 you now talking to him about the murder and needing an AK-
5 47?

6 A. Well, it wasn't about --

7 Q. It can't be both ways --

8 A. -- the murder.

9 Q. -- Mr. Deas.

10 A. It wasn't about the murder. It wasn't about murder.

11 It was about some boys that he say he
12 didn't come with his -- they -- they was like they about to
13 comes shoot us up; so --

14 Q. And why?

15 A. Because we was already -- uh -- beefing with them.

16 Q. You said earlier that you got that weapon from Michael
17 Livingston because the boys were coming after y'all on this
18 thing with Fido?

19 A. Nah, I ain't said that.

20 MR. JOYE:

21 Thank you, Your Honor.

22 WITNESS:

23 I told you:

24 We was already beefing with them.

25 THE COURT:

1 All right.

2 Anything further, Mr. Richardson?

3 MR. RICHARDSON:

4 No sir.

5 THE COURT:

6 All right; you may step down.

7 MR. RICHARDSON:

8 Your Honor, may he be excused from
9 his subpoena?

10 MR. JOYE:

11 Absolutely, Judge.

12 THE COURT:

13 You are excused and released from
14 your subpoena.

15 All right.

16 Ladies and gentlemen of the jury,
17 it's 5:30.

18 That's all we're going to do today.

19 I'd ask you to be in your jury room
20 by about 9:30 in the morning so we can get started.

21 I'm going to try to keep these
22 fellows moving along and start promptly at 9:30; okay.

23 Thank you very much.

24 (WHEREUPON: The jury empanelled in
25 the case withdrew from the courtroom at 5:28 PM, August 11,

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1 2009; and was no longer present during the following
2 proceedings.)

3 THE COURT:

4 All right; we are at ease.

5 Mr. and Mrs. Joye, it was good to
6 have -- see you -- uh -- in court today.

7 I haven't seen you in awhile; but
8 it's good to -- to have you hear.

9 Okay.

10 Gentlemen, 9:30.

11 MR. JOYE:

12 All right.

13 THE COURT:

14 If you've got anything -- any issues
15 -- please be hear early. I will.

16 (WHEREUPON: The court was declared
17 in recess at 5:29 PM, August 11, 2009.)

18 (WHEREUPON: The court was called to
19 order by the Bailiff at 9:31 AM, August 12, 2009; and all
20 pertinent parties, along with their counsel, were back and
21 present in the courtroom.)

22 BAILIFF:

23 All Rise.

24 THE COURT:

25 Thank you. Thank you.

1 Did y'all need to see me?

2 MR. RICHARDSON:

3 I think --

4 MR. JOYE:

5 I think they're waiting on a jury,

6 Your Honor.

7 THE COURT:

8 They got them.

9 MR. JOYE:

10 Oh? They do?

11 THE COURT:

12 We're all here. Please be seated.

13 All right. Bring in the jury?

14 (WHEREUPON: The jury empanelled in

15 the case was escorted back into the courtroom at 9:33 AM,

16 August 12, 2009; and was in fact present during the

17 following proceedings.)

18 THE COURT:

19 Good morning.

20 I see you're all here. Mr. Roth have
21 some biscuits for you this morning?

22 SOME JURORS:

23 Yes sir.

24 THE COURT:

25 Good. Good.

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1 All right.

2 Are we ready -- uh -- Mr. Richardson?

3 MR. RICHARDSON:

4 Yes sir, Your Honor.

5 THE COURT:

6 Mr. Joye, we ready to go forward?

7 MR. JOYE:

8 Yes sir, Your Honor.

9 THE COURT:

10 All right.

11 Call your witness.

12 MR. RICHARDSON:

13 The State would call Robert Deal.

14 THE COURT:

15 Come around, Mr. Deal.

16 WHEREUPON: OFFICER ROBERT DAVID

17 DEAL, JR., WAS DULY SWORN AND TESTIFIED UNDER OATH AS

18 FOLLOWS:

19 CLERK:

20 Please state your full name; and

21 spell your last name.

22 WITNESS:

23 Robert David Deal, Jr.; D-e-a-l.

24 DIRECT EXAMINATION BY MR. RICHARDSON:

25 Q. Officer Deal, please -- uh -- tell this jury where you

1 are employed?

2 A. I'm currently employed with the Horry County Police
3 Department.

4 I'm currently assigned to the Crime
5 Scene Investigations Unit, which is attached to the Criminal
6 Investigations Division -- uh -- better known as -- uh --
7 CID, the detectives; and -- uh -- the --

8 Q. How long have you been with Horry County?

9 A. I've been employed with Horry County for about eight
10 and a half years.

11 I've been part of the Criminal
12 Investigations Division for five; and attached to the Crime
13 Scene Unit for three.

14 Q. And give the jury just a -- a little bit of an idea
15 what you do with the -- uh -- Crime Scene Unit?

16 A. Being part of the Crime Scene Unit, I am tasked with
17 responding out to different type of scenes -- uh -- ranging
18 from obviously homicide scenes to -- uh -- burglary scenes.

19 In addition, we process -- uh --
20 suicides and -- uh -- scenes that patrol officers wouldn't
21 be able to have all the essential tools -- uh -- like high,
22 aggravated nature type cases.

23 In addition -- uh -- we are tasked
24 with processing evidence that comes through our office --
25 items that road officers might pick up.

1 Uh -- If you were to call 911 -- uh
2 -- pick up items at your residence that need to be processed
3 that they couldn't process; that didn't warrant us coming
4 out.

5 Uh -- We process those on a daily
6 basis.

7 In addition -- uh -- I'm tasked with
8 an -- analyzing and testing -- uh -- narcotic substance;
9 along with logging in and processing firearms for ATF,
10 Alcohol, Tobacco, and Firearms.

11 I'm responsible for -- uh --
12 performing E-traces and identifying -- uh -- those weapons
13 and their characteristics.

14 MR. JOYE:

15 Excuse me for one second Your Honor.

16 It's a housekeeping matter.

17 WHEREUPON: Mr. Joye steps over to
18 speak with Mr. Richardson at Counsel's table 15 9:36 AM,
19 August 12, 2009.

20 MR. JOYE:

21 Sorry, Your Honor.

22 THE COURT:

23 That's all right.

24 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

25 Q. The next process I want to go through is to determine

1 whether or not you're an expert in firearms and calibration;
2 okay?

3 Tell the jury whatever -- uh --
4 qualifications that you have as a firearms expert and -- uh
5 -- calibrations expert.

6 Any classes?

7 Any -- uh -- Any things that you've
8 written?

9 Anything like that that would qualify
10 you as an expert?

11 A. Well, being attached to the Crime Scene Unit, I've been
12 to numerous schools.

13 Uh -- I've attending classes at -- uh
14 -- FBI Academy that dealt with firearms.

15 In addition, I have been to schools
16 sponsored by ATF, Alcohol, Tobacco and Firearms, that deal
17 with firearms and firearm restoration of serial numbers.

18 Additionally -- uh -- as my daily
19 responsibility, when a firearm comes in, I process it; and
20 E-trace it, which is tracing it back to the original owner.

21 In addition -- uh -- I've been tasked
22 and have been -- uh -- taught to perform -- uh -- caliper
23 test on projectiles; especially ones that might be
24 questionable -- uh -- if you have multiple -- uh --
25 projectiles on a scene.

1 And that allows you to take the
2 projectile and determine the base -- uh -- which gives you
3 -- uh -- a range of information to -- uh -- characterize
4 that projectile in addition to weight.

5 Uh -- I've also attended a SLED
6 Fellowship three and a half weeks where we worked alongside
7 -- uh -- SLED investigators.

8 And part of that time, we worked in
9 the firearm's section -- uh -- learning the processes of --
10 uh -- firearms' examination.

11 Q. And with regard to calibrating -- uh -- a projectile,
12 please tell the jury some of the -- uh -- things that go
13 along in doing that?

14 A. When I go to -- uh -- examine a projectile to try to
15 determine the possible caliber, I use a digital caliper set
16 some of y'all might be familiar with if you do -- uh --
17 machinery work.

18 Uh -- You -- You would open up the
19 teeth of it and you close it down on the item that you wish
20 to measure the diameter.

21 And it gives you, either in
22 centimeters, millimeters, or inches, depending on what
23 you're looking for.

24 With that number, and also the weight
25 -- uh -- which we would either use in grams or ounces, I

1 think that information, and utilizing forms and information
2 provided by different manufacturers of ammunition, you can
3 -- uh -- determine the possible -- uh -- caliber of
4 ammunition.

5 In any type of shooting -- uh -- you
6 always have the situation where -- uh -- when the projectile
7 strikes and object, it can become deformed.

8 And if that does happen, if you don't
9 have a solid foundation to, either caliper the base of the
10 projectile or get a good weight consistency within the range
11 -- uh -- you'd use: undetermined.

12 Uh -- You would be able to be --
13 undetermine that cal -- uh -- caliber ammunition.

14 Q. And did you -- uh -- do any of this? Did you find any
15 projectiles in this particular case?

16 A. With regards to the --

17 MR. JOYE:

18 Your Honor, can we approach very
19 quickly?

20 THE COURT:

21 Certainly.

22 MR. JOYE:

23 I just want to make sure where we're

24 --

25 (WHEREUPON: Counsel for each party

1 conferred off the record with The Court at the bench at 9:40
2 AM, August 12, 2009.)

3 THE COURT:

4 These fellows learned to whisper in a
5 sawmill.

6 (Laughter erupts.)

7 MR. JOYE:

8 I just want to make sure, Judge.

9 THE COURT:

10 Okay. All right.

11 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

12 Q. Detective Deal -- uh -- in this particular case, did
13 you collect any projectiles?

14 A. Regarding -- Yes, I did.

15 Q. And did you put together a -- a test, or a booklet, or
16 -- uh -- some sort of chart that would aid this jury with
17 the -- uh -- calibration of those?

18 A. I -- uh -- provided a report -- uh -- outlining the
19 projectiles I examined and my findings -- uh -- in that
20 report.

21 Uh --

22 Q. Let me ask --

23 THE COURT:

24 Mr. Richardson, are you offering him
25 as an expert?

1 MR. RICHARDSON:

2 Yes sir.

3 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

4 Q. The next question is:

5 Have you ever been -- uh -- an expert
6 in the State of South Carolina with records to projectiles?

7 A. I have been sworn in twice -- uh -- in two different
8 -- uh -- court cases in this -- uh -- jurisdiction.

9 Q. As an expert?

10 A. Yes sir.

11 MR. RICHARDSON:

12 Yes sir, Your Honor.

13 I would offer him just for the -- uh
14 -- calibrations of these projectiles.

15 THE COURT:

16 All right. Mr. --

17 MR. JOYE:

18 Yes, sir, Your Honor.

19 I don't have any objection to his
20 expertise in that area.

21 THE COURT:

22 All right.

23 He's qualified as an expert in --
24 What you're offering in?

25 Uh -- Firearms' Identification; or --

1 MR. RICHARDSON:

2 Projectile identification.

3 THE COURT:

4 Okay. All right.

5 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

6 Q. Officer, are you a detective?

7 A. Investigator.

8 Q. Investigator? Investigator Deal -- uh -- did you have
9 an occasion to go out to a -- uh -- wooded area off of -- uh
10 -- West Shore Drive?

11 A. On -- uh -- August the 7th, 2007, I was notified by
12 Sergeant John Lewis, who is the Sergeant over Violent Crime
13 Section.

14 Uh -- He notified me in reference to
15 a deceased black male that was found inside of a vehicle on
16 what was determined as a firebreak trail that was located
17 off of West Shore Drive up off the Highway 90 area of Longs.

18 Q. All right. Now tell us about when you originally
19 arrived, the conditions, the weather conditions, that sort
20 of stuff.

21 A. Uh -- Upon arrival -- uh -- I got notified about 9:30
22 that morning.

23 Uh -- When I arrived on scene -- uh
24 -- due to the nature of the preliminary information, I -- I
25 also had Investigator -- uh -- John Robert Calder (phonetic)

1 and Investigator Heather Brumment (phonetic) as specialist
2 there -- uh -- accompanying me -- uh -- due to the fact of
3 the remote location of the crime scene.

4 Uh -- We carried out our Crime Scene
5 Unit Response Trailer.

6 Uh -- The firebreak was located off
7 of West Shore Drive in a crook in the road; and was located
8 -- uh -- I would say about a quarter-mile down the firebreak
9 on a dirt trail.

10 Uh -- It was very tough for vehicles
11 to get in there.

12 Uh -- And the vehicle was located --
13 uh -- in a wide split -- uh -- on that firebreak.

14 Uh -- Upon arrival, it was probably
15 in the mid-80s to high 80s, temperature wise with a high
16 heat index.

17 Uh -- As the day grew in, it was in
18 the high 90s.

19 It was a heat in -- heat index
20 exceeding 100 -- uh -- degrees.

21 Uh -- The vehicle -- uh -- was -- uh
22 -- unlocked with the victim inside of the vehicle.

23 There was a strong smell of -- odor
24 of -- in our experiences, of a decomp -- or a body that is
25 in the process of being -- uh -- decomposing.

1 Uh -- Through a thorough inspection
2 of the vehicle, we found that there was several items of
3 evidence to evaluate -- items that were located amongst the
4 vehicle and spread out outside into the wooded area that was
5 along this firebreak -- uh -- that we deemed necessary to
6 collect.

7 Q. Let me ask you:

8 Were there any houses around where
9 you found the vehicle?

10 A. Uh -- There was a house located off the firebreak. But
11 it was a good distance away.

12 Uh -- There was a good section of
13 woods -- uh -- between that residence and the firebreak
14 itself.

15 Q. Okay. And did you take any photographs of the
16 firebreak?

17 A. We took numerous photographs -- uh -- leading in from
18 -- uh -- West Shore Drive up to the vehicle; and obviously
19 numerous photographs of the vehicle from different angles;
20 and numerous photographs of the evidential items that we
21 found at the scene; and the items that we collected.

22 Q. I want to show you -- uh -- two charts, I believe are
23 already in evidence, State's Exhibit Number 3.

24 Do you recognize that photograph?

25 A. It is a GIS mapping that I requested -- uh -- our GIS

1 -- uh -- uh -- investigator at our department to print for
2 me.

3 It is at the location of where the
4 vehicle was -- uh -- by using GPS coordinates -- uh -- that
5 we logged.

6 And -- uh -- that is an area -- This
7 map was of 0 -- 2008. So it's not of the actual date of the
8 crime -- uh -- with the -- and it shows that the vehicle is
9 not there, obviously.

10 But yes, this is the general area --
11 uh -- with the red dot marking where the vehicle is located.

12 Q. Also, I want to --

13 THE COURT:

14 That was Exhibit what?

15 MR. RICHARDSON:

16 3, Your Honor.

17 THE COURT:

18 Okay.

19 MR. RICHARDSON:

20 I believe, already in evidence.

21 THE COURT:

22 All right.

23 MR. RICHARDSON:

24 And State's Exhibit Number 1, that is
25 also --

1 MR. JOYE:

2 Without objection, Your Honor.

3 I think that's just a blow-up of the
4 same.

5 THE COURT:

6 Okay.

7 MR. RICHARDSON:

8 This is also already in evidence I
9 believe.

10 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

11 Q. Uh -- Could you point out the location of -- uh --

12 THE COURT:

13 Mr. Richardson, kind of move around
14 where the jury can see.

15 Or either -- uh -- have your -- uh --
16 witness step down.

17 MR. RICHARDSON:

18 Step down?

19 THE COURT:

20 I see -- uh -- my -- our -- uh -- our
21 jurors -- uh -- straining to see around you.

22 MR. RICHARDSON:

23 All right.

24 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

25 Q. All right. Robert, I'll hold it, and -- uh --

1 A. Uh -- This is West Shore Drive right here.

2 Highway 90 runs pretty much -- I
3 mean, it's not on the map, but it runs up here.

4 Uh -- If you come down West Shore
5 Drive -- uh -- right here in the crook that goes through
6 Village Drive, there is a firebreak dirt road that ran -- uh
7 -- through the wooded area.

8 Uh -- If you're familiar with this
9 area, it also runs through Watertower Road -- uh -- section.

10 Uh -- And this firebreak -- uh --
11 runs up to Watertower Road also.

12 Uh -- The red dot is indicating -- uh
13 -- the area where we found the vehicle off the firebreak.

14 Q. Well, let me ask you:

15 From this section, where you turn on
16 to the firebreak, were you able to drive a vehicle down
17 there?

18 A. We were able to drive a couple of off-road style
19 vehicles -- uh -- to get down to the location.

20 Again -- uh -- we responded out there
21 with our crime scene trailer that had a -- uh -- 4-wheel
22 drive gator type vehicle to allow us to carry out our
23 supplies out there; because -- uh -- not all of our
24 vehicle's are 4-wheel drives.

25 Q. Okay. And Officer -- excuse me -- Investigator Deal,

1 did you -- uh -- you say you took photographs -- different
2 photographs -- and -- uh -- collected different pieces of
3 evidence?

4 A. That's correct.

5 Q. Did you prepare for this jury a slideshow of some of
6 those photographs?

7 A. Yes, I did. I -- uh -- As to pho -- photographs
8 collected and taken -- and along -- uh -- I compiled a -- uh
9 -- presentation to kind of outline:

10 A. The conditions and the remoteness
11 of the crime scene, along with identifying key elements of
12 -- uh -- evidence that we -- uh -- collected at the scene.

13 Q. All right. And do you believe that that -- uh --
14 slideshow would help this jury in understanding different
15 portions about where the evidence was gathered; and -- and
16 the remoteness of the crime scene?

17 A. I think it would.

18 MR. RICHARDSON:

19 Your Honor, I would like to publish.

20 MR. JOYE:

21 Without objection, Your Honor.

22 THE COURT:

23 You seen it.

24 MR. JOYE:

25 We've -- We've been through the

1 exhibits.

2 THE COURT:

3 All right.

4 MR. JOYE:

5 He's going to simply --

6 THE COURT:

7 Okay. All right.

8 MR. JOYE:

9 -- put them in a projection form.

10 COURT REPORTER:

11 Would you state for the record what
12 exhibit that was. We marked that, but we need to state for
13 the record what exhibit that was.

14 THE COURT:

15 That last one?

16 COURT REPORTER:

17 Yes sir.

18 THE COURT:

19 Mr. Richardson.

20 MR. RICHARDSON:

21 Yes sir.

22 I need for you to place on the record
23 that last -- uh -- the number of that last exhibit that we
24 discussed.

25 MR. RICHARDSON:

Testimony of Investigator Robert Deal

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1 That I handed --

2 COURT REPORTER:

3 Just that item you're fixing to show.

4 MR. RICHARDSON:

5 Okay.

6 COURT REPORTER:

7 We've marked it earlier.

8 MR. RICHARDSON:

9 Your Honor, this is State's Exhibit
10 Number 14.

11 And this is -- uh -- a copy of all of
12 the photographs that'll be provided.

13 Uh -- It's also in the back -- uh --
14 Gene Marked it. There's a CD of the same.

15 THE COURT:

16 All right.

17 MR. RICHARDSON:

18 And -- And we would move this into
19 evidence at the proper time.

20 WHEREUPON: The courtroom screen was
21 lowered and a slideshow contained in State's Exhibit Number
22 14 was shown to the jury and testified about as follows,
23 beginning at 9:45 AM, August 12, 2009.

24 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

25 Q. Investigator Deal, please flip to the first photograph

1 of tell us what you've got?

2 A. This is a photograph -- uh -- representing us coming
3 down the firebreak from West Shore Drive as we approach the
4 vehicle from the north.

5 Q. Okay.

6 A. This is a second photograph approaching the vehicle --
7 uh -- also at a little bit of a closer distance -- still
8 approaching from the north.

9 Q. Okay.

10 A. Uh -- This is as we approach -- uh -- the rear of the
11 vehicle -- uh -- off the firebreak from West Shore Drive.

12 Q. Let's stop there -- uh -- behind the vehicle.

13 Please tell the jury what that is.

14 A. As we approached -- uh -- the vehicle, we noticed that
15 there was -- uh -- a lot of debris around the vehicle
16 consisting of clothing items; vehicle items; like -- uh --
17 the steering wheel cover -- slip -- stuff like that.

18 Uh -- As we approached, we also
19 noticed there was like clothing items -- uh -- I guess --
20 protruding from the tailgate area.

21 And there were bags of clothes -- uh
22 -- off to the -- uh -- passenger side of the vehicle.

23 Q. Okay. That had been removed from the vehicle?

24 A. It appeared they had been removed from the vehicle; yes
25 sir.

1 Q. Okay.

2 A. Uh -- This is a rearview -- uh -- of the vehicle as we
3 approach -- uh -- outlining the vehicle identification -- uh
4 -- registration tag.

5 Q. Uh -- Go back to that one for a second.

6 Did y'all ever run that tag,
7 Investigator Deal?

8 A. Yes we did.

9 Q. And whose vehicle --

10 A. It came back to -- uh -- the victim Ervin Graham.

11 Q. Okay. Now tell the jury if there's anything else that
12 you noticed -- uh -- in that slide?

13 A. When we originally approached -- uh -- we noticed that
14 there were -- uh -- several gunshot holes in the back of the
15 vehicle.

16 Uh -- And in additionally, as we
17 approached there, we found items of firearm related evidence
18 -- uh -- on the ground.

19 But we definitely could tell that the
20 vehicle had been shot -- uh -- repeatedly, as we approached.

21 Q. Okay.

22 A. When we go into a scene -- uh -- we're -- we're -- uh
23 -- our -- our initial thing is to do a -- uh -- panoramic,
24 or walk around.

25 I am walking around the vehicle

1 photographing.

2 This is the passenger side of the
3 vehicle.

4 Uh -- Behind me is a wooded area --
5 uh -- in the Y -- uh -- the fork of the Y.

6 Q. Did you see any items -- uh -- strown from the
7 passenger side of the vehicle?

8 A. Yes. There was -- uh -- some more clothing items there
9 at the rear corner panel.

10 And in additionally -- uh -- behind
11 where I'm standing in this photograph.

12 Uh -- There was bags of clothing;
13 brand new clothing with tags -- uh -- that looked very -- uh
14 -- new and had not been out there for like months at a time
15 -- you know -- months and months.

16 Q. Did you see any -- uh -- footprints or anything like
17 that around the vehicle?

18 A. The only footwear that we found -- uh -- was that of
19 the jogger that originally called this in to 911.

20 The responding officer -- uh -- when
21 he interviewed him -- uh -- documented or gave notation also
22 of the footwear that he was wearing.

23 And the only shoewear that we found
24 was that of a tennis running shoe.

25 Uh -- And from the information that I

1 received -- uh -- the jogger outlined how he ran through;
2 and that's where we found the footwear.

3 It was mainly located on the driver's
4 side front in the soft sand.

5 Q. Okay.

6 A. The front view of the vehicle:

7 Uh -- Where I'm standing is the
8 direction in which the runner came down the fire trail -- uh
9 -- as he was running and came upon the vehicle.

10 Q. Okay.

11 A. Uh -- Another view, as we wrap around, is the front
12 corner panel of the driver's side.

13 Uh -- You know, we're continuing to
14 look down.

15 Uh -- If you -- Over here, from my
16 last photo, there's some of the clothing items that were
17 strown -- uh -- from the vehicle.

18 Uh -- Like I said, it was brand-new
19 clothing with tags still attached.

20 Q. All right. And -- uh -- tell me:

21 Did you notice anything about the
22 driver's side tires?

23 A. When we first started evaluating and examining, we
24 noticed this front tire was -- uh -- flat.

25 Uh -- In addition, we noticed that

1 there was a -- appeared to be a bullet hole in the front
2 windshield of the vehicle.

3 Q. How about the back tire?

4 A. Uh -- At that time, we also noticed that the back tire
5 was indeed flat -- uh -- additionally on the driver's side.

6 Q. Did you see any other -- uh -- signs of bullet holes to
7 the front of the vehicle?

8 A. The only one that we saw -- uh -- on our initial
9 approach, was the one being in the windshield.

10 Q. Okay.

11 A. During the initial survey -- uh -- we found a firearm
12 related item -- uh -- casing on the ground by the -- near
13 the front driver's tire.

14 Uh -- We then photographed it and
15 collected it as Item 13.

16 It was identified by the -- uh -- the
17 headstamp as a .40 caliber Smith and Wesson, Spear -- uh --
18 cartridge casing.

19 Q. Okay. Now let me pass you what has been marked as
20 State's Exhibit Number 29; and see if you recognize that,
21 please?

22 A. This is Item Number 13 that was collected at the scene
23 -- uh -- the original cardboard box practicing and the
24 casings that -- uh -- was recovered at the scene.

25 Q. All right. And even though we've got it marked

1 State's Exhibit 29, please tell the jurors how they would
2 identify it with regards to your chart?

3 A. Uh -- At the bottom of the package, it's -- uh --
4 labeled Number 13; with the additional information, like the
5 case numbers, the date that it was collected, the collecting
6 officer, and a brief description of the item.

7 The additional red -- uh -- writing
8 was placed there by the SLED firearms' examiner.

9 That's how they make notation that
10 they've analyzed it.

11 Uh -- So that is not -- uh -- part of
12 our -- uh -- initial collection of writing.

13 But we identify it as -- uh -- our
14 evidence number that we place there.

15 Q. So with regard -- Let me also show you State's Exhibit
16 Number 4.

17 MR. JOYE:

18 Yes, Your Honor.

19 I've previously seen that and have no
20 objection to it.

21 COURT REPORTER:

22 Your Honor, are we entering these
23 into evidence when they have no objection? Because I'm
24 marking them and we're not -- It's just -- I don't know
25 whether -- He's just saying he has no objection, but he's

1 not really offering it. And I have to keep up this.

2 MR. RICHARDSON:

3 I move it -- All right.

4 I move State's Exhibit Number 4 into
5 evidence also.

6 THE COURT:

7 All right.

8 WHEREUPON: A DIAGRAM, EARLIER MARKED
9 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 4 WAS
10 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

11 MR. RICHARDSON:

12 Is there any other ones like that?

13 COURT REPORTER:

14 The booklet that you're just showing
15 here.

16 MR. RICHARDSON:

17 I would like to move that into
18 evidence also without objection.

19 MR. JOYE:

20 Without objection, Your Honor.

21 WHEREUPON: A BOOKLET AND SLIDESHOW
22 PRESENTATION, EARLIER MARKED BY THE COURT REPORTER AS
23 STATE'S EXHIBIT NUMBER 14, WAS ENTERED INTO EVIDENCE WITHOUT
24 OBJECTION.

25 COURT REPORTER:

1 And then that casing. I believe --

2 MR. JOYE:

3 The 29.

4 MR. RICHARDSON:

5 Okay. I --

6 THE COURT:

7 The shell casing.

8 COURT REPORTER:

9 I move shell casing 29 into evidence.

10 MR. JOYE:

11 And again, without objection.

12 WHEREUPON: A SHELL CASING, EARLIER

13 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 29,

14 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

15 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

16 Q. Now, Robert, please tell -- uh -- the jury, so that
17 they can read this chart, where they would find Number 13?

18 A. Number 13; this is a sketch that I compiled -- uh --
19 after leaving the scene -- uh -- to outline kind of a -- uh
20 -- image of the scene.

21 And Number 13 is located -- uh -- off
22 the front -- uh -- driver's -- uh -- corner panel.

23 Q. All right. And that is where you found Item Number 13?

24 A. That's correct.

25 Q. Okay.

1 A. Uh -- As we continue to -- uh -- examine -- uh -- the
2 crime scene, we came across a -- another -- uh -- spent --
3 uh -- cartridge casing on the ground.

4 Uh -- This is located -- this says:
5 At the front.

6 But correction; it would be at the
7 rear bumper of the vehicle.

8 Uh -- It was later tagged and
9 collected as evidence, Number 11.

10 It was identified as a spent .40
11 caliber Smith and Wesson, Spear -- uh -- cartridge casing.

12 Q. Investigator Deal, I have handed up to you what has
13 been premarked as State's Exhibit Number 30.

14 Tell -- uh -- the jury if you
15 recognize that?

16 A. That's Item Number 11. That was collected -- uh -- at
17 the scene -- uh -- Spear, .40 caliber Smith and Wesson -- uh
18 -- cartridge casing.

19 Q. And is that insubstantially the same condition as when
20 found it?

21 A. Yes it is.

22 MR. RICHARDSON:

23 Your Honor, we would move State's
24 Exhibit Number 30 into evidence.

25 MR. JOYE:

1 Without objection.

2 THE COURT:

3 Admitted.

4 WHEREUPON: A 40 MM CASING, EARLIER
5 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 30,
6 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

7 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

8 Q. Please -- uh -- before you move on, would you -- would
9 you show the jury where you found State's Exhibit Number 11?

10 A. Number 11 was located at the back driver's rear tire --
11 uh -- bumper area.

12 Q. All right. And that was a .40 caliber --

13 COURT REPORTER:

14 Excuse me.

15 State's Exhibit Number is a photo;
16 right?

17 MR. RICHARDSON:

18 State's Exhibit Number 4 is what he's
19 referring to now.

20 COURT REPORTER:

21 Okay. You said 11; but --

22 MR. RICHARDSON:

23 Uh -- State's -- I'm sorry -- State's
24 Exhibit Number 30 -- State's Exhibit Number 30.

25 Crime Scene marked it Number 11. And

1 that's where the confusion is.

2 WITNESS:

3 Correct. That's wrote on the back.

4 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

5 Q. Okay.

6 A. Continuing through our scene, we located, amongst some
7 clothing and vehicle items -- uh -- at the rear of the
8 vehicle, located a -- uh -- spent projectile -- uh --
9 firearm related evidence -- uh -- in the ground -- uh -- at
10 the rear.

11 We photographed and collected it as
12 Item Number 9 -- uh -- for crime scene purposes.

13 We originally located it and
14 identified it as a spent copper projectile -- jacketed
15 projectile.

16 Using calipers and weight, I was able
17 to identify it as a copper 40 -- 40 Smith and Wesson -- uh -
18 - unknown manufacturer.

19 Q. And that is the projectile. Let me pass you what has
20 been marked as State's Exhibit Number 18..

21 Can you tell the jury what that is?

22 A. This is -- uh -- the spent, copper jacketed, projectile
23 I collected from the scene.

24 I marked it Item Number 9 for crime
25 scene purposes. Uh -- And it's packaged in the cardboard

1 box.

2 Q. And is that in substantially the same condition as when
3 you found it in August?

4 A. It is.

5 MR. RICHARDSON:

6 State would move State's Exhibit
7 Number 18 into evidence.

8 MR. JOYE:

9 Without objection.

10 THE COURT:

11 Without objection, it's admitted.

12 WHEREUPON: THE PROJECTILE, EARLIER
13 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 18,
14 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

15 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

16 Q. All right. Now States Number 18, for your purposes was
17 marked as Number 9?

18 A. For evidential purposes; correct.

19 Q. Please show the jury where Number 9 was found.

20 A. On my sketch, it's located at the rear of the vehicle
21 on -- in dirt -- uh -- appeared to be on the driver's side
22 of the rear of the vehicle.

23 Q. And that's actual bullet part of it?

24 Q. That's the projectile; that's correct.

25 Q. Okay.

1 A. Uh -- Continuing to look around -- uh -- we took notice
2 of the -- the back lift area of the vehicle.

3 Uh -- I no -- I noticed another spent
4 projectile located on the bumper; and photographed and
5 collected it as evidence.

6 Uh -- I marked it as Number 10 for
7 evidential purposes -- uh -- spent copper jacketed
8 projectile.

9 Uh -- Using calipers and -- uh --
10 measurements and weight, I was able to identify it as a
11 copper .40 Smith and Wesson, unknown manufacturer.

12 Q. I hand to you what has been marked as State's Exhibit
13 Number 16.

14 Please tell the jury if you recognize
15 that?

16 A. It's projectile that I collected off the bumper of the
17 -- uh -- vehicle. And it's labeled as Number 10 for
18 evidential reasons.

19 Q. And where would you have marked that on State's Exhibit
20 Number 4?

21 A. On the sketch? It's located on the bumper portion of
22 this vehicle on the driver's side.

23 Q. And that's where you collected it?

24 A. Yes sir.

25 MR. RICHARDSON:

1 The State would move State's Exhibit
2 Number 16 in.

3 MR. JOYE:

4 Without objection.

5 THE COURT:

6 Without objection, it's admitted.

7 WHEREUPON: A PROJECTILE, EARLIER
8 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 16,
9 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

10 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

11 Q. All right.

12 A. We continued around to the passenger side again; and --
13 uh -- located another firearm related item.

14 It was near the back passenger tire
15 of the vehicle.

16 Uh -- It was identified as -- uh --
17 part of a projectile, copper jacketed.

18 We collected it as evidential Item
19 Number 20. It was packaged and boxed during my -- uh --
20 examination of the projectile.

21 I was able to determine that it is a
22 .40 Smith and Wesson, unknown manufacturer.

23 Q. .40 caliber?

24 A. Yeah.

25 Q. I pass to you what has been marked as State's Exhibit

1 Number 19.

2 I believe you've got it marked for
3 evidence as 20.

4 Do you recognize that?

5 A. Yes I do. Uh -- Again it's a projectile collected at
6 the scene -- uh -- placed in a cardboard box with my -- uh
7 -- Number 20 labeled on it.

8 Q. And is that in substantially the same condition as the
9 way -- when you collected it?

10 A. Yes, it is.

11 MR. RICHARDSON:

12 The State would move State's Exhibit
13 Number 19 into evidence.

14 THE COURT:

15 Mr. Joye?

16 MR. JOYE:

17 Without objection. I'm sorry, Your
18 Honor

19 THE COURT:

20 Without objection, it admitted.

21 WHEREUPON: A PROJECTILE, EARLIER
22 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 19,
23 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

24 MR. JOYE:

25 Your Honor, for the purpose of this,

1 we've already agreed they're coming in without objection.

2 THE COURT:

3 All right.

4 MR. RICHARDSON:

5 Okay.

6 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. And would you show the jury on this chart, Investigator
8 Deal, where you found Number 20?

9 A. Number 20 is this item that's -- uh -- sketched by the
10 passenger rear tire in the -- on the ground.

11 Q. Okay.

12 A. After collecting that item, we then proceeded to -- uh
13 -- open up the vehicle to -- uh -- look inside.

14 We opened up the driver's side door
15 -- uh -- in my -- uh -- examination, where we located the
16 victim -- uh -- slumped over -- uh -- the center console
17 area.

18 We opened up the back door on the
19 driver's side.

20 Uh -- And during our examination,
21 located a -- uh -- cartridge casing on the seat -- uh --
22 identified there.

23 We collected it as Item Number 36 for
24 evidential purposes; and was able to identify it as a spent
25 9 millimeter CCI Luger -- uh -- cartridge casing.

1 Q. I pass to you what has been marked as State's Exhibit
2 Number 26.

3 See if you recognize that?

4 A. That is the -- uh -- spent 9 millimeter CCI -- uh --
5 Luger cartridge casing that I collected from the scene on
6 the -- uh -- backseat.

7 Q. And is that substantially the same condition you
8 collected it is August?

9 A. Yes, it is.

10 MR. RICHARDSON:

11 All right. The State would move
12 State's Exhibit Number 26 in without objection.

13 WHEREUPON: A CASING, EARLIER MARKED
14 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 26, WAS
15 APPARENTLY ENTERED INTO EVIDENCE WITHOUT OBJECTION.

16 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. Please -- uh -- show the jury -- I don't think you can
18 find it on here.

19 I'm referring now to State's Exhibit
20 Number 5.

21 Scott -- the other inside chart.

22 MR. JOYE:

23 Yes, sir, Your Honor. I have no
24 problem with that.

25 THE COURT:

1 All right.

2 What are those numbers, Mr.

3 Richardson?

4 MR. RICHARDSON:

5 Your Honor, this chart I'm referring
6 to is:

7 State's Exhibit Number 5.

8 I believe it's already in evidence
9 without objection.

10 THE COURT:

11 All right. Uh -- All right. Let's
12 put it in without objection, then, okay.

13 MR. RICHARDSON:

14 Your Honor, I'd like to move State's
15 Exhibit 5 in.

16 THE COURT:

17 All right. And what does 5
18 represent?

19 MR. RICHARDSON:

20 5 is a representation of the interior
21 of the car.

22 THE COURT:

23 All right.

24 WHEREUPON: A DIAGRAM, EARLIER MARKED
25 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 5, WAS

1 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

2 MR. RICHARDSON:

3 Four is the exterior of the car.

4 THE COURT:

5 All right. Is 4 in as well, Mr.

6 Buckner?

7 MR. RICHARDSON:

8 I'd like to move Number 4 in also.

9 THE COURT:

10 All right. Four is in, then,
11 without objection.

12 REPORTER'S NOTE: State's Exhibit
13 Number 4 was previously admitted without objection. (See
14 page 336.)

15 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

16 Q. Officer Deal -- Investigator Deal, please show the jury
17 where you found Item Number -- State's Exhibit Number 26.

18 You've got marked it as 36.

19 A. Uh -- Evidence Items Number 36 was located on the -- uh
20 -- back seat, behind the driver's seat on the driver's side
21 -- uh -- up in that area on the seat.

22 Q. Now up until this point, you have -- every other thing
23 you've identified as being what caliber?

24 A. .40 caliber Smith and Wesson.

25 Q. And are you sure that this was fired by a nine?

1 A. Yes. Uh -- That item was sent to SLED examination; and
2 --

3 Q. All right. We'll get into -- I'll talk with the SLED
4 agent about that.

5 But the -- uh -- labeling:

6 Does that say anything as to what
7 caliber?

8 A. Yes; the headstamp on the back of the casing -- uh --
9 clearly identifies it as a 9 millimeter Luger CCI brand.

10 MR. RICHARDSON:

11 The State would move State's Exhibit
12 26 into evidence, I believe without objection.

13 REPORTER'S NOTE: State's Exhibit
14 Number 26 was apparently admitted into evidence earlier in
15 the trial without any objection voiced, even though the
16 Court did not verbally state "admitted" at that point or at
17 this point in the trial. (See Page 346.)

18 WITNESS:

19 We then proceeded over to the
20 passenger side front -- uh -- door. We opened it.

21 Uh -- We found another item of
22 firearm related evidence -- uh -- in the -- uh -- doorjamb
23 there.

24 I photographed it and collected it as
25 Item Number 37 for evidential reasons.

1 And it was also identified as a spent
2 a millimeter CCI Luger cartridge casing.

3 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

4 Q. I pass to you what has been marked as State's Exhibit
5 Number 27.

6 See if you recognize that?

7 A. That is the spent 9 millimeter casing -- uh --
8 cartridge casing that I located -- uh -- in the passenger
9 front -- uh -- floor area, identified as Number 37.

10 Q. Is that in substantially the same condition as when you
11 retrieved it in August?

12 A. Yes, it is.

13 MR. RICHARDSON:

14 The State would move State's Exhibit
15 Number 27 into evidence.

16 THE COURT:

17 I think that's without objection?

18 MR. JOYE:

19 Yes sir, Your Honor.

20 THE COURT:

21 Okay.

22 WHEREUPON: A 9 MM CASING, EARLIER
23 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 27,
24 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

25 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

1 Q. And please, your evidentiary Number 37, please show the
2 jury on State's Exhibit Number 5 where you found that item.

3 A. It was up in the passenger -- uh -- doorjamb area -- uh
4 -- up front.

5 Q. And that was a 9 millimeter --

6 A. Yes. The headstamp clearly identified it as a 9
7 millimeter -- uh -- Luger, CCI brand.

8 Q. Okay.

9 A. After completing an initial examination -- interior of
10 the vehicle -- we then backed out.

11 Uh -- We -- We backed out during --
12 along the firebreak going toward West Shore Drive -- uh --
13 where we found numerous -- uh -- spent casings in the bush
14 area -- uh -- there identified by the pink flags.

15 Uh -- We photographed it with our
16 evidence placards.

17 And we collected -- uh -- Items
18 Number 2, 3, 4, 5, 6, 7, and 8 for evidential purposes.

19 Uh -- They were spent casings; all of
20 them headstamped .40 S&W, Spear. And they were spent
21 cartridges.

22 Q. So those were .40 caliber also?

23 A. Yes sir.

24 Q. Let me ask you -- uh -- approximately how far back did
25 you find those .40 caliber -- uh -- casings from the

1 vehicle?

2 A. I can -- If I can refer to my notes, I can give you
3 the approximate distance.

4 Q. Yes sir; please.

5 A. The casings -- uh -- were in a grouping about 5 to 6
6 feet in diameter.

7 And they were roughly 29 to 31 feet
8 from the rear of the vehicle.

9 Q. You found them how far -- I'm sorry -- from the
10 vehicle?

11 A. Between 29 and 31 feet.

12 Q. Let me pass to you what has been marked as State's
13 Exhibits 35, 31 --

14 A. 31 is -- uh -- Item Number 2 for evidential purposes, a
15 spent -- uh -- shell casing -- uh -- headstamped .40 caliber
16 Smith and Wesson that was collected at the scene.

17 Q. Is it in substantially the same condition?

18 A. Yes, it is.

19 MR. RICHARDSON:

20 We would move Item Number 31 into
21 evidence, Your Honor.

22 THE COURT:

23 Without objection.

24 WHEREUPON: A 40 MM CASING, EARLIER
25 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 31,

1 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

2 COURT REPORTER:

3 What about 35 you just mentioned?

4 MR. RICHARDSON:

5 I'll go back to that.

6 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. I hand you what has been marked as State's Exhibit
8 Number 35 --

9 A. This is -- uh -- evidential Item Number 3 that I
10 collected; a .40 caliber Smith and Wesson, headstamped Spear
11 -- uh -- shell casing, located within that cluster of spent
12 casings.

13 Q. Substantially the same condition?

14 A. Yes, it is.

15 MR. RICHARDSON:

16 The State would move Item Number 35
17 into evidence also, Your Honor.

18 THE COURT:

19 Without objection.

20 MR. RICHARDSON:

21 I believe without objection.

22 WHEREUPON: A 40 MM CASING, EARLIER
23 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 35,
24 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

25 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

1 Q. State's Exhibit Number 28, please?

2 A. This is evidential Item Number 4. It's another spent
3 .40 caliber Smith and Wesson, Spear -- uh -- cartridge
4 casing.

5 Uh -- The headstamp identifies it as
6 a .40 S&W, Spear.

7 That was collected amongst the -- the
8 grouping there and labeled Number 4.

9 MR. RICHARDSON:

10 The State would offer that into --
11 State's Exhibit Number 28 into evidence --

12 THE COURT:

13 Also without objection, Mr. Joye?

14 MR. JOYE:

15 Yes sir.

16 THE COURT:

17 All -- All these cartridges are
18 without -- uh -- and casing are --

19 MR. JOYE:

20 Yes sir.

21 THE COURT:

22 -- admitted without objection.

23 MR. JOYE:

24 Yes sir.

25 I don't see purpose of doing it over

1 and over and over and over.

2 THE COURT:

3 Okay. All right.

4 MR. RICHARDSON:

5 All right.

6 Then, I will hand you State's Exhibit
7 34, 36, 32, and 33; and I would ask that all of those be
8 moved into evidence.

9 THE COURT:

10 Are those all from the same cluster
11 that we've talked about?

12 MR. RICHARDSON:

13 Yes.

14 THE COURT:

15 Is that correct?

16 WITNESS:

17 Yes, Your Honor, they are.

18 THE COURT:

19 All right; without objection, Mr.
20 Joye?

21 MR. JOYE:

22 Yes sir.

23 THE COURT:

24 Okay.

25 WHEREUPON: SEVERAL CASINGS, EARLIER

1 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBERS 28,
2 34, 36, 32, and 33, WERE ENTERED INTO EVIDENCE WITHOUT
3 OBJECTION.

4 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

5 Q. Now Investigator Deal, if you would also come down and
6 show the jury where you found those particular -- that
7 cluster that you were speaking of?

8 A. The cluster that I collected and photographed were
9 right around in this area.

10 Uh -- They were grouped in the bushes
11 -- uh -- off the back of the vehicle.

12 Q. And that's approximately 30 feet from the back of
13 vehicle?

14 A. It ranged from 29 feet to 31 feet in a grouping of
15 between 5 and 6 feet in diameter.

16 Q. And all of those were .40 shell casings?

17 A. They were .40 Smith and Wesson, Spears; correct.

18 Q. Okay. Tell us -- uh -- about your photographs there?

19 A. After we completed our initial collection at the scene
20 -- uh -- it was deemed -- uh -- that we would remove the
21 vehicle from that location due to whether and -- uh -- uh --
22 and just keeping everything -- uh -- secure, we towed the
23 vehicle to our impound lot located at the -- in our Brown
24 Building by our contract -- uh -- tow company.

25 Uh -- The vehicle was towed from that

1 location; placed in out impound lot, where we began to
2 process -- uh -- deep -- more deeply into the interior and
3 exterior of the vehicle.

4 Uh -- This photograph right here was
5 the beginning where we -- uh -- examined the front driver's
6 tire.

7 Uh -- Originally, the -- the cut into
8 the tire wasn't as great. It was not as big.

9 Uh -- I cut the car open more to
10 examine it; and when I did so, came across another item of
11 firearm related evidence.

12 We photographed it and collected it.

13 It's -- uh -- evidential Item Number
14 22 -- uh -- a spent lead projectile.

15 During -- uh -- caliper and
16 examination, it was deemed -- uh -- to be a .38 caliber --
17 uh -- with unknown manufacturer.

18 Q. Let me pass you what has marked as State's Exhibit
19 Number 24.

20 See if you recognize that?

21 A. Yes, it is. It's the lead projectile that I collected
22 out of the front driver's tire -- uh -- labeled Number 22 in
23 a brown box -- uh --

24 MR. RICHARDSON:

25 All right. And the State would move

1 -- uh -- State's Exhibit Number 24 into evidence.

2 Without objection?

3 MR. JOYE:

4 Without objection.

5 WHEREUPON: A PROJECTILE, EARLIER
6 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 24,
7 WAS APPARENTLY ENTERED INTO EVIDENCE WITHOUT OBJECTION.
8 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

9 Q. All right. So now we've got a -- a 9, a .40, and the
10 last one you said was a .38?

11 A. That's correct. We have evidence to show that a 9
12 millimeter was -- uh -- was involved, a .40 caliber, and a
13 .38.

14 Further into the processing -- uh --
15 we located -- uh -- another item of firearms' evidence.

16 Uh -- This vehicle had the three-row-
17 seating configuration.

18 This is -- uh -- Located behind the
19 driver, second row seat -- uh -- was the firearm related
20 evidence.

21 We photographed it and collected it
22 as Item Number 48.

23 Q. I'm going to pass to you what has been marked as
24 State's Exhibit Number 25.

25 Please tell me if you can identify

1 Item Number 25?

2 A. State's Exhibit is -- uh -- these -- uh -- Item Number
3 48 for the evidential purposes -- uh -- spent -- uh --
4 projectile that was collected -- uh -- out of the vehicle.

5 Q. Substantially in the same --

6 A. It's in the same shape that I collected it at the time.

7 Uh -- I examined it -- uh -- with
8 calipers and -- and weighed it.

9 But due to the fact of its deformity,
10 I was unable to make a positive identification -- uh -- or
11 manufacturer of the ammunition.

12 Q. Okay. So this has not -- It's calibrated, but it's
13 not -- it's inconclusive?

14 A. It's inconclusive.

15 MR. RICHARDSON:

16 The State would move State's Exhibit
17 Number 25 into evidence, Your Honor.

18 MR. JOYE:

19 Without objection.

20 WHEREUPON: A PROJECTILE, EARLIER
21 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 25,
22 WAS APPARENTLY ENTERED INTO EVIDENCE WITHOUT OBJECTION.

23 WITNESS:

24 Continuing our process:

25 Uh -- By the back rear lift gate --

1 uh -- we found some more firearm related evidence.

2 Uh -- It was photographed and
3 collected is Item Number 50.

4 Uh -- It was identified as a spent
5 copper, lead, projectile.

6 It was also -- uh -- examined by me
7 with calipers and weight; and it was undetermined of what
8 caliber it was manufactured, because of its deformity.

9 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

10 Q. I pass to you what has been marked as State's Exhibit
11 Number 22?

12 A. This is indeed the -- uh -- projectile that was
13 collected -- uh -- labeled as Number 50 -- uh -- and the
14 date; and it is in a consistent shape that we recovered at
15 that time in the vehicle.

16 Q. And did you -- You said you calibrated this; but
17 couldn't determine --

18 A. I used calipers and weighed it; and was unable -- it
19 was inclusive (sic) of what -- uh -- caliber projectile it
20 would be.

21 MR. RICHARDSON:

22 The State would move State's Exhibit
23 22 into evidence.

24 MR. JOYE:

25 Again, without objection.

1 MR. RICHARDSON:

2 Without objection.

3 WHEREUPON: A PROJECTILE, EARLIER
4 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 22,
5 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

6 WITNESS:

7 Continuing:

8 Uh -- We noticed what looks like a
9 projectile hole in the trim molding of the back tailgate
10 area.

11 Uh -- When we lifted up the carpeting
12 and material, we found another projectile -- uh --
13 underneath the flooring.

14 Uh -- We collected it; photographed
15 it and collected it as Item of evidence Number 66.

16 Uh -- I then, through an examination,
17 used calipers and weight; and was able to determine it was a
18 copper 40 Smith and Wesson; still unknown manufacture.

19 Q. I pass to you what has been marked as State's Exhibit
20 Number 21.

21 Do you recognize that?

22 A. Yes. It's a projectile -- uh -- collected is Item
23 Number 66 -- uh -- spent brass projectile -- uh -- in the
24 card board packaging that we did.

25 And it is in the shape -- uh -- and

1 consistency of how we collected it that day.

2 Q. And was that a .40?

3 MR. RICHARDSON:

4 The State would move State's Exhibit
5 21 into evidence without objection.

6 MR. JOYE:

7 Without objection.

8 WHEREUPON: A PROJECTILE, EARLIER
9 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 21,
10 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

11 WITNESS:

12 We then re-examined the back -- uh --
13 tailgate area.

14 And we found -- uh -- some more
15 firearm related evidence that had -- uh -- during the
16 transport from the crime scene to the impound lot, had
17 shifted a little bit.

18 And we had a spent projectile kind of
19 tucked up in the -- uh -- the plastic lip of his bumper.

20 It was photographed and collected as
21 -- uh -- Item Number 67.

22 Uh -- I used calipers and weight, and
23 weighed it and was unable to make a positive ID of what
24 caliber or -- uh -- manufacturer.

25 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

1 Q. I pass to you what's been marked as State's Exhibit 23?

2 A. It is the -- uh -- spent projectile that was collected
3 -- uh -- labeled Number 67, with the date and case number in
4 the brown box that we used.

5 Q. Substantially the same condition?

6 A. Yes, it is.

7 MR. RICHARDSON:

8 The State would move State's Exhibit
9 Number 23 into evidence.

10 COURT REPORTER:

11 Excuse me, sir.

12 Did you say 67?

13 WITNESS:

14 It was evidential Item Number 67.

15 THE COURT:

16 Without objection?

17 MR. JOYE:

18 Without objection, Your Honor.

19 WHEREUPON: A PROJECTILE, EARLIER
20 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 23,
21 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

22 WITNESS:

23 We then proceeded to -- uh --
24 recognize that we had some -- uh -- other projectile holes
25 in the license plate.

1 Uh -- We bent it down and -- to
2 recover another spent projectile.

3 It was photographed and collected as
4 Item Number 68.

5 Uh -- During my examination of
6 calipers and -- uh -- weights was able to determine that it
7 was indeed a .40 Smith and Wesson, unknown manufacturer.

8 Q. I pass you what has been marked as State's Exhibit
9 Number 15.

10 If you can recognize that?

11 A. It's a spent projectile that I collected. Uh -- It's
12 labeled Item Number 68.

13 In my correction up on the slideshow,
14 it says 86. But it is indeed 68. Uh -- And is still in the
15 shape and consistency of how I found it that day.

16 MR. RICHARDSON:

17 State would move State's Exhibit 15
18 into evidence, Your Honor

19 MR. JOYE:

20 Without objection.

21 THE COURT:

22 It's admitted.

23 WHEREUPON: A PROJECTILE, EARLIER
24 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 15,
25 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

1 WITNESS:

2 Uh -- We then proceeded to collect
3 numerous other items throughout the vehicle.

4 We removed the -- uh -- victim from
5 the vehicle.

6 Uh -- When we did that, we were able
7 to open -- uh -- the center console area and examine
8 underneath the victim, where we were -- uh -- able to
9 collect -- uh -- several cell phones -- uh -- that were --
10 uh -- collected as evidential items.

11 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

12 Q. All right. So you collected those 3 phones?

13 A. That is correct.

14 Q. All right. Go right ahead, please.

15 A. Uh -- During the examination -- uh -- we collected the
16 phones.

17 We opened them. We -- uh -- looked
18 into them.

19 Uh -- One of these phones was brand
20 new -- uh -- had nothing on it.

21 Uh -- The Motorola here, we examined
22 it.

23 Uh -- We go through it. And we write
24 down -- uh -- the incoming calls --

25 Q. All right. Hold -- Hold it right there, just a

1 second.

2 Let me pass you what has been marked
3 as State's Exhibit Number 37; and see if you can identify?

4 A. This is one of the phones collected as Item Number 64.

5 Uh -- It's a Motorola phone with a
6 battery and in back casing.

7 But it's from underneath the victim.

8 MR. RICHARDSON:

9 Okay.

10 And the State would move State's
11 Exhibit Number 37 into evidence.

12 MR. JOYE:

13 Without objection, Your Honor.

14 THE COURT:

15 Without objection.

16 WHEREUPON: A CELL PHONE, EARLIER
17 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 37,
18 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

19 MR. RICHARDSON:

20 All right.

21 MR. JOYE:

22 Your Honor, I think we probably have
23 a matter we need to take up before --

24 THE COURT:

25 All right.

1 It's about time for this jury to take
2 a break anyway.

3 Uh -- How about return to your
4 juryroom.

5 Uh -- Mr. Roth, if you would assist
6 them in that, and make sure they have some refreshments.

7 (WHEREUPON: The jury empanelled in
8 the case withdrew from the courtroom at 10:26 AM, August 12,
9 2008; and was no longer present during the following
10 proceedings.)

11 THE COURT:

12 All right. Let's take a few
13 minutes.

14 (WHEREUPON: The court was declared
15 in recess at 10:27 AM, August 12, 2008.)

16 (WHEREUPON: The court was called to
17 order by the Bailiff at 10:40 AM, August 12, 2008; and all
18 pertinent parties, along with their counsel, were back and
19 present in the courtroom.)

20 BAILIFF:

21 Order in the Court; all rise.

22 THE COURT:

23 All right. Please be seated.

24 Okay. Now, I understand that we
25 have -- uh -- an evidentiary matter.

1 Is that right?

2 MR. JOYE:

3 Yes, Your Honor.

4 (Approaching the bench, but speaking
5 out loud in open court.)

6 And -- And what it goes to -- and --
7 uh -- I almost wished he had it had it back up; but -- and
8 I'll come up here and share it with you.

9 (Whereupon Mr. Richardson also
10 approaches the bench.)

11 These are -- What -- uh -- I --
12 they're trying to do is have -- uh -- Investigator Deal
13 testify that these -- These are handwritten phone numbers
14 that Investigator Deal did not write down; but dictated to
15 someone else; of the numbers that came off of this phone,
16 that was found in my -- uh -- found in -- uh -- the
17 decedent's car -- or vehicle.

18 And there are two pictures showing
19 what are alleged to be phone calls to my client's phone.

20 Uh --

21 MR. RICHARDSON:

22 That the decedent called Amp; not
23 that Amp called the decedent --

24 MR. JOYE:

25 And so I -- I've got an objection.

1 I would think the proper way to do
2 that would have been to -- to bring those folks that
3 administered these accounts to testify that:

4 Either my client's cell phone
5 received these calls.

6 Or --

7 MR. RICHARDSON:

8 I'm not putting them up for that
9 though.

10 THE COURT:

11 I'll -- I will let him testify that
12 he reviewed the recent calls on the phone and that he -- uh
13 -- dictated them; and -- and that's what was shown -- uh --
14 on those calls.

15 I'm not going to let him testify as
16 -- that whether a call was received anything else.

17 But that you show's the last call
18 made.

19 MR. JOYE:

20 One of the problems is going to be
21 that -- You're not going to let the -- the photo of the
22 written --handwritten?

23 Because it says -- on the side of it,
24 it says:

25 Amp.

1 MR. RICHARDSON:

2 And he can explain how he got Amp's
3 number; or we can go through the whole process; either way.

4 THE COURT:

5 Why does he even need to put in the
6 list?

7 Why can't he just testify that -- uh
8 -- a review of the recent calls show a call at such and such
9 a time; and a call at such and such a time being made --

10 MR. RICHARDSON:

11 To this number.

12 THE COURT:

13 -- to that number and -- And it
14 doesn't indicate whether it was received or otherwise; does
15 it?

16 MR. RICHARDSON:

17 No sir.

18 THE COURT:

19 An attempt to make a call.

20 MR. RICHARDSON:

21 He will say that -- uh -- it was for
22 41 seconds on July 30th at 6:57.

23 THE COURT:

24 All right. Was that on the phone?

25 MR. RICHARDSON:

1 Yes sir. It was on the phone.

2 THE COURT:

3 I mean, the --

4 MR. RICHARDSON:

5 It was dictated off the phone.

6 THE COURT:

7 The phone will say that?

8 MR. RICHARDSON:

9 Yes sir.

10 THE COURT:

11 I mean, mine doesn't.

12 But I was just --

13 MR. RICHARDSON:

14 And he -- he -- I mean, we -- we can
15 have him testify. But what he will testify to is that:

16 On July 30th, he -- the decedent
17 calls this number at 1:01 p.m.; and stayed on the phone for
18 35 seconds.

19 He made all of these calls.

20 And then, at 6:57, he was on the
21 phone for 41 seconds with 446-9551; not that -- uh -- the
22 other guy talked with him, or anything like that.

23 But that he -- the decedent dialed
24 these two numbers; and he also --

25 THE COURT:

1 Or someone using his phone?

2 MR. RICHARDSON:

3 Right.

4 The phone that was found in the
5 decisions care -- uh --

6 THE COURT:

7 Car.

8 MR. RICHARDSON:

9 -- car -- was -- uh -- one dialed to
10 446-9551.

11 THE COURT:

12 I'd imagine, then, Mr. Joye, you
13 would want all the other calls he's made too, wouldn't you?

14 MR. RICHARDSON:

15 That's fine.

16 MR. JOYE:

17 I'd prefer to have none of them, Your
18 Honor. (Laughs heartily.)

19 THE COURT:

20 I know you would; but let's talk in
21 terms of what this detective can determine from the phone
22 itself.

23 MR. JOYE:

24 Okay.

25 Uh -- Now -- I guess -- uh -- and

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1 then, he'll go into how he found out who that phone was
2 listed to? Or -- Or whose name it was in; or --

3 MR. RICHARDSON:

4 Well, here's what happened -- I mean
5 --

6 MR. JOYE:

7 Because I mean -- I'm confused a
8 little bit about this myself.

9 MR. RICHARDSON:

10 Michael turned himself in a little
11 bit after this.

12 But two officers went out and talked
13 with Shaquette Gause.

14 And Shaquette dialed Michael, telling
15 him to turn himself .

16 I don't know how much we want to get
17 into that.

18 But from that time, they got the
19 number.

20 And Chief Clark, who's the head
21 detective, and here ready to testify if needed, would say:

22 I got this number. And I supplied it
23 to Robert Deal.

24 And when Robert Deal was going
25 through that, then he found that number at 6:57.

1 THE COURT:

2 Shaquette is going to testify?

3 MR. RICHARDSON:

4 We can have her testify. She's his
5 common-law wife.

6 And she's under subpoena. She's
7 here.

8 THE COURT:

9 Okay. To testify as to what his
10 number is?

11 MR. RICHARDSON:

12 In addition to that -- uh -- Chadd
13 Wilson can say who's number it is.

14 I mean, if we -- if we're going to go
15 through that, then that'll be -- that'll be fine too.

16 THE COURT:

17 Your Honor, is this for the record,
18 or is this --

19 THE COURT:

20 Yeah. Let's leave it where it's on
21 the record.

22 (Both counsel are still at the bench
23 speaking out loud to the Court.)

24 THE COURT:

25 Mr. Joye?

1 MR. JOYE:

2 Uh -- I guess if I have -- if it -- I
3 have a problem with the way it's coming in, Judge.

4 If you'll look at the -- at the --
5 the highlighted, the red, and the name written out beside
6 it.

7 I've got a problem with that.

8 MR. RICHARDSON:

9 I wouldn't have to put that in.

10 MR. JOYE:

11 Uh -- I guess I would -- uh --

12 THE COURT:

13 I mean, what I'm looking at, and what
14 I'm thinking about is --is:

15 Him testifying that he reviewed the
16 calls that are clearly shown on the telephone; that are
17 available by bringing up the call log on the phone; and that
18 it showed -- uh -- that:

19 During the day at such and such a
20 time, calls were made from that phone by someone to --

21 MR. JOYE:

22 Another number.

23 THE COURT:

24 Uh --

25 MR. JOYE:

1 And then, tie it in with --

2 THE COURT:

3 -- to -- to this -- to this number;

4 okay.

5 MR. JOYE:

6 And then tie it in with another --

7 THE COURT:

8 Witness.

9 MR. JOYE:

10 -- witness.

11 Yes sir. I -- I think that's

12 probably the proper foundation to do it.

13 I --

14 THE COURT:

15 Okay.

16 MR. JOYE:

17 I just think that -- And I -- I hate

18 to make it --

19 THE COURT:

20 And -- And I don't think Officer Deal

21 can testify that the victim made the phone calls; or that it

22 -- they were received by the Defendant.

23 He can testify that it -- the phone

24 record -- or the call -- call log on the phone indicated

25 that:

1 At these times, phone call was made
2 to that number by someone using that phone.

3 And then:

4 It would apparently have been
5 received by someone at that number.

6 MR. JOYE:

7 And then, there would be two other
8 witnesses, perhaps, that may or may not corroborate whether
9 his phone number --

10 THE COURT:

11 Okay. Okay.

12 MR. RICHARDSON:

13 Your Honor, and just for -- I -- I
14 realize what Scott's saying about the -- subpoena-ing in the
15 people.

16 COURT REPORTER:

17 About the what?

18 MR. RICHARDSON:

19 Subpoena-ing in SunCom or whoever.

20 But this is a series of crack phones.

21 And that phone was registered to a
22 lady in Florida doing business out of Texas; and the
23 business was located in Wisconsin -- something like that --
24 like three different things. It's a crack phone.

25 COURT REPORTER:

1 It's a what phone?

2 MR. RICHARDSON:

3 Crack.

4 So all he's going to do is -- uh --
5 say that he saw that number.

6 And then, I'm going to --

7 MR. JOYE:

8 On a phone found in that car?

9 MR. RICHARDSON:

10 Uh-huh.

11 And I -- I'm not going to go through
12 all of them.

13 But Scott can just go back and have
14 him put in each number.

15 MR. JOYE:

16 Yeah. I -- Judge, I think that
17 would be the proper way to --

18 THE COURT:

19 And you -- And you may want to do it.

20 But I don't know -- It really doesn't
21 have a whole lot of probative value; but we'll -- uh -- and
22 there's no question that these guys knew each other.

23 MR. RICHARDSON:

24 Uh-huh.

25 THE COURT:

1 There's been a lot of testimony
2 concerning that.

3 I'll let you -- let him testify that
4 there was a phone found in the car; and in reviewing the
5 call logs, that phone indicated that someone had made, at
6 these particular times, phone calls to this number.

7 And I don't think Mr. -- Does Mr.
8 Deal have knowledge of -- personal knowledge of whose number
9 that is?

10 Or you going to put that up somewhere
11 else?

12 MR. RICHARDSON:

13 He -- The only way he got it was
14 through Clark. So I would put it through somewhere else.

15 THE COURT:

16 Okay.

17 MR. JOYE:

18 I think he's got to put it in through
19 somewhere else, Judge.

20 THE COURT:

21 Okay. All right.

22 MR. JOYE:

23 That would just be but my feelings.

24 THE COURT:

25 All right.

1 MR. JOYE:

2 Thank Your Honor.

3 THE COURT:

4 Okay.

5 WHEREUPON: Counsels return to their
6 respective tables.

7 THE COURT:

8 Are we ready?

9 MR. RICHARDSON:

10 Yes sir.

11 THE COURT:

12 Okay.

13 Whenever the jury is ready, bring
14 them back in.

15 (WHEREUPON: The jury empanelled in
16 the case was escorted back into the courtroom at 10:50 AM,
17 August 12, 2009; and was in fact present during the
18 following proceedings.)

19 THE COURT:

20 All right. Let's move along.

21 MR. RICHARDSON:

22 Okay.

23 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

24 Q. Investigator Deal, I want to hand you State's Exhibit
25 Number 37 already in evidence.

1 Tell the jury where you found that
2 phone, please.

3 A. This phone was collected, along with -- uh -- two other
4 phones, in the center console area under the victim inside
5 of his vehicle.

6 Q. All right. So the victim was laying over the center
7 console. And then, that was in the center console along
8 with two other phones?

9 A. That's correct.

10 Q. Did you have an opportunity -- Did that phone have any
11 -- uh -- power on it.

12 A. Uh -- There was a slight charge to the phone. We had
13 to continue to power it up while using our charging cables
14 for it.

15 Q. And did you charge that phone up?

16 A. Yes sir. In the course of the investigation we kept
17 the power up.

18 Q. And were you able to -- uh -- pull up any of his most
19 recent calls; or whoever -- uh -- belonged to that phone's
20 most recent calls?

21 A. Yes. We were a -- We were able to pull up all his
22 files -- uh -- like:

23 Dialed calls.

24 Received calls.

25 Text messages.

1 Sent or received.

2 Uh -- And like notepad type messages.

3 Q. Did you make an indication of the numbers that that
4 phone had called?

5 A. Yes -- uh -- myself and Investigator -- Investigator
6 Jack -- uh -- John Robert Calder.

7 Uh -- I -- uh -- dictated the
8 different call logs to him as he wrote them down -- uh -- as
9 we went through the -- uh -- phone.

10 Q. Please tell the jury the -- uh -- I want to go through
11 the last 3 calls that were made on that phone?

12 A. Uh -- Underneath the dialed calls -- uh -- we have a
13 call labeled by the phone in his -- uh -- phone registry --
14 uh -- looks like B -- B K.

15 It was -- uh -- dialed at 7:02 PM on
16 7/30. Uh -- The phone number was 843-855-0582.

17 The following call was to a phone
18 number labeled B E.

19 That number was 843-367-1040. It was
20 at 7:01 PM, 7/30, for 14 seconds.

21 The third phone call was to a phone
22 number labeled as H.

23 The number was 843-446-9551. It was
24 dialed at 6:57 PM, for 41 seconds on 7/30.

25 Q. That'll do. So at 6:57 on July 30th, someone used that

1 phone to dial 446-9551?

2 A. That's correct.

3 Q. Okay. Does that number 843-446-9551 show up anywhere
4 else on the call log for the date of July 30th, two thous --
5 Well, it doesn't say 2007?

6 A. The phone number did appear again -- uh -- in the
7 dialed phone calls.

8 It was dialed again.

9 The number was identified as 8 -- by
10 the num -- letter H.

11 The phone number was 843-446-9551 at
12 1:01 PM, for 35 seconds on 7/30.

13 Q. Okay. And the most recent call to 446-9551 would have
14 been a what time?

15 THE COURT:

16 Is that the most recent or the last?
17 What are you --

18 MR. RICHARDSON:

19 The -- The last.

20 THE COURT:

21 Okay.

22 WITNESS:

23 The last number that was dialed out
24 to that -- The times that the other -- That 843-446-9551
25 number was dialed out on that phone was at 6:57 PM for 41

1 seconds on 7/30.

2 Q. All right. Did you find anything of any significance
3 on the other two phones?

4 A. Uh -- No, we didn't.

5 Q. Okay. Now, were you able to recover the victim's
6 wallet?

7 A. Yes, we were.

8 Q. Okay. And where was that?

9 A. It was located in his back pocket.

10 Q. All right. Was there any identification in that
11 wallet?

12 A. Nothing that we could -- uh -- clearly see, due the
13 nature of the conditions.

14 Q. Was there a driver's license or anything like that?

15 A. Uh -- Not that I found -- uh -- in my investigation.

16 Q. Did you find any money in his wallet?

17 A. I did not find any money during the course of my
18 investigation, or investigation in the vehicle, or on the
19 victim.

20 Q. Not a dollar?

21 A. Didn't find any money.

22 Q. All right. How about -- uh -- Did you find any drugs,
23 either on the victim or in the vehicle?

24 A. Yeah. During the examination of the vehicle -- uh --
25 at the original crime scene -- uh -- located off of West

1 Shore Drive, there was a small, clear, baggie -- uh --
2 envelope of a gray substance that was located on the
3 floorboard on the driver's side between the seat and the
4 door.

5 Q. Did you find any pills?

6 A. There were no pills found in the vehicle.

7 Q. Any crack cocaine?

8 A. No sir.

9 Q. Or cocaine?

10 A. No sir.

11 Q. Any heroine?

12 A. No sir.

13 Q. You found a small amount of marijuana?

14 A. That's correct.

15 Q. You found no money?

16 A. No money.

17 Q. Did you find any guns or weapons?

18 A. We found no weapons -- uh -- in the vehicle.

19 Q. All right. And did you find any receipts, either in
20 the vic -- uh -- vehicle or on the victim?

21 A. Amongst the clothing items in the vehicle, we did find
22 same receipts -- uh -- for purchases -- uh -- in the
23 vehicle.

24 Uh -- Those were -- uh -- photocopied
25 and placed into evidence -- uh -- for preservation.

1 Q. Do you have a copy of those receipts?

2 A. If I can refer to my notes, I can -- uh -- articulate
3 which receipts I did find.

4 Q. Yes sir, please.

5 A. Uh -- One of the receipts that was found was for a
6 Champ Sports.

7 Uh -- The receipt was for Store
8 Number 14288.

9 It was on 7/30/2007 at 5:29 PM for
10 the amount of \$100.00.

11 Q. Did you ever do any investigation to determine which
12 store number that was where that store was located?

13 A. This -- uh -- This information was forwarded on to
14 Detective Steve Clark -- uh -- for his investigation.

15 Q. Okay. With regards to that receipt, does it say --
16 Does it give you the amount of the purchase, sales-tax, and
17 total?

18 A. Yes, it does. Uh -- Subtotal was 84.99 sales-tax was
19 5.95 with a total of 90.94.

20 Q. How was -- uh -- payment made?

21 A. Cash.

22 Q. And what amount of cash?

23 A. Uh -- A hundred dollars.

24 Q. Was there any change given?

25 A. \$9.06.

1 Q. And from that receipt, you say -- give us the time
2 again, please?

3 A. The transaction occurred at 7/30/2007 at 5:29 PM.

4 Q. And this is a receipt that was found in the decedent's
5 vehicle?

6 A. That is correct.

7 Q. Did you, as part of the investigation, swab any of
8 those -- uh -- projectiles or anything else?

9 A. All the cartridge casings that were located and
10 collected at the scene and in the -- uh -- vehicle were
11 swabbed -- uh -- by me for DNA purposes -- uh -- and sent to
12 SLED for examination, along with several other items within
13 the vehicle -- uh -- that was also swabbed to try to -- uh
14 -- find any DNA -- uh -- profiles.

15 Q. Okay. Did you receive the report?

16 A. Yes, I did.

17 Q. Uh -- Do you have any idea if -- if they found
18 anything?

19 A. I would have to refer to their port report.

20 Q. Please do.

21 A. Referring to the South Carolina Law Enforcement
22 Division Forensic Certified Report, Lab Number L07-11815 --
23 uh -- analysis was completed on August 4th, 2009.

24 Uh -- The results of the DNA
25 examination were that DNA obtained from items that we

1 submitted for control for Ervin G. Graham. was insufficient
2 for reliable interpretation.

3 Uh -- No DNA profile was developed
4 for -- uh -- items -- uh -- and I'm going to refer to the
5 item numbers that to SLED has put here: Item 2, 4, 5, 12,
6 15, 21, 28, 35, which are the swabs taken -- uh -- by me of
7 the cartridge casings and other items -- uh -- inside the
8 vehicle.

9 Uh -- Finally:

10 Uh -- DNA profile developed from
11 Items 11 and 22.

12 Those items were -- uh -- swabbed --
13 taken from the cotton, chemical, balls, and -- uh -- swabbed
14 from -- uh -- the headliner.

15 Uh -- It states that:

16 A partial DNA profile developed from
17 Item Number 10 from an unidentified male individual.

18 Then the rest of the items -- uh --
19 they dictated that:

20 No human DNA was detected.

21 The partial DNA profile developed
22 from Items 23 and 31 are insufficient for reliable
23 interpretation.

24 Q. Okay. Did you find any fingerprints?

25 A. We did not find any fingerprints -- uh -- during our

1 processing on the exterior or interior of the vehicle.

2 Q. Would you have expected to have found fingerprints?

3 A. During the course of the investigation we reviewed the
4 weather conditions during the time frame that we feel that
5 this vehicle was left at the scene.

6 And there would have been numerous
7 rain storms.

8 And with that information -- uh --
9 you know -- that would give indication that there was
10 possibly no -- uh -- fingerprints that would be left behind
11 on the vehicle because of the rain -- uh -- would have
12 altered any evidence of the outside of the vehicle.

13 Latent prints -- uh -- are 99 percent
14 water. And the other percentage is -- uh -- consisted of
15 oils and -- uh -- skin particles that are left behind when
16 you touch something.

17 So the likelihood, with the weather
18 conditions, that we would find latent on the vehicle were
19 very slim to none.

20 On the interior of the vehicle, due
21 to -- to the conditions -- uh -- that we found -- uh --
22 because of the -- uh -- severe decomp that was in the
23 vehicle -- uh -- we were unable to find any fingerprints due
24 to the fact of the -- uh -- the breakdown of the body causes
25 different chemical reactions within the vehicle -- uh --

1 that would prohibit us from finding some.

2 Q. All right. And of course you've already testified to
3 the numerous bugs and larvae?

4 A. Yes.

5 Q. Did you go to the -- uh -- autopsy?

6 A. Yes, I did. Uh -- The following day -- uh -- on the
7 8th, we attended -- I attended the autopsy of the victim.
8 And -- uh -- Dr. Proctor was able to recover a -- uh --
9 spent projectile inside of the -- uh -- victim's -- uh --
10 skull.

11 Uh -- After he had collected it -- uh
12 -- from the skull and he transferred to my custody -- uh --
13 where I -- uh -- cleaned it and then packaged it for
14 evidence.

15 Q. Were you there when Dr. Proctor collected --]

16 A. Yes, I was.

17 Q. -- the projectile?

18 A. Yes sir.

19 Q. I pass to you what has been marked as State's Exhibit
20 Number 17; and see if you recognize that?

21 A. It is the -- uh -- spent projectile -- uh -- collected
22 -- uh -- by me at the autopsy, with the assistance of Dr.
23 Proctor -- uh -- the box is labeled "autopsy: and -- uh --
24 "8/8/07." Uh -- And that would be the projectile.

25 Q. Has it been tampered with? Or is it in substantially

1 the same condition as it was when you collected it?

2 A. Yes, it is.

3 MR. RICHARDSON:

4 And the State would move State's
5 Exhibit Number 17 into evidence.

6 MR. JOYE:

7 Without objection, Your Honor.

8 THE COURT:

9 Without objection, it's admitted.

10 MR. RICHARDSON:

11 Thank Your Honor.

12 WHEREUPON: A PROJECTILE, EARLIER
13 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 17,
14 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

15 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

16 Q. Were you able to calibrate that particular projectile?

17 A. I did use calipers on it and weighed it and -- uh -- to
18 be .40 caliber -- uh -- projectile, unknown manufacturer.

19 Q. At the autopsy, did y'all make any attempts to -- uh --
20 to get fingerprints from the victim?

21 A. We attempted to examine the victim's fingers.

22 Uh -- There were several concerns
23 throughout that time about positive ID.

24 Uh -- We were able to make a positive
25 ID due to a tattoo that we were able to locate and bring up

1 on the skin.

2 Additionally, looking at the fingers,
3 they were so badly decomped and the -- uh -- and the
4 fingerprints were -- uh -- not press -- the ridges on the
5 fingers were not present.

6 Uh -- We were unable to fingerprint
7 -- uh -- him.

8 We did, however -- uh -- take several
9 pieces of the victim's -- uh -- hand and sent that off to
10 SLED for examination -- uh -- during the autopsy.

11 Q. Was there any way to hydrate the -- uh -- fingers?

12 A. We attempted to -- uh -- hydrate the fingers. And base
13 -- And basically what we're doing is -- uh -- if anyone
14 remembers:

15 If you've ever put a bandaid on your
16 finger and it kind of swells up a little bit, you're
17 restricting blood flow; and your finger will swell.

18 Well, we do that similarly with
19 fingerprints that we cannot -- uh -- easily get.

20 We will place the rubber band tightly
21 around one of the back -- uh -- knuckles.

22 And then, what we will do, is inject
23 water into the -- uh -- skin behind -- uh -- the finger --
24 uh -- the ridges of the finger, and then swell it up.

25 Due to the severity of the decomp --

1 uh -- the water wouldn't stay in his -- uh -- the fingertips
2 -- not long enough to place the finger properly.

3 Q. Okay. Now just recap:

4 How many different guns did you
5 determine to be used with this particular victim?

6 A. I was able to --

7 MR. JOYE:

8 I would object to the form of the
9 question.

10 I don't we're talking about -- I
11 don't think -- I don't think anyone has any expertise to say
12 how many different weapons does the -- that decedent was
13 shot with.

14 I think that perhaps he can say how
15 many shots --

16 THE COURT:

17 I think he can testify as to --

18 MR. JOYE:

19 -- were in the victim's vehicle --
20 victim's vehicle

21 THE COURT:

22 I think he can testify as to how
23 many different calibers of weapons did he find evidence
24 connected with at the crime scene.

25 MR. JOYE:

1 Yes sir, Your Honor.

2 THE COURT:

3 Yeah.

4 MR. JOYE:

5 And that -- that was my point.

6 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. All right. For a recap with the jury, would you
8 please explain the number of different caliber weapons -- uh
9 -- evidence of -- found at the crime scene?

10 A. I was able to find 3 calibers of firearms used -- uh --
11 during this incident -- uh -- by physical evidence.

12 Q. Okay. And please name those?

13 A. I found evidence that would relate to a .38 caliber
14 weapon; a .40 caliber weapon; and a 9 millimeter caliber
15 weapon.

16 Q. Did you find any shell casings for a .38 caliber
17 weapon?

18 A. I found no -- uh -- casings at the scene -- uh -- for a
19 .38.

20 During the initial examination and
21 survey of the crime scene -- uh -- roughly half-mile -- say
22 a quarter mile to half mile -- closer to Watertower Road,
23 there were some revolver casings located in the area -- uh
24 -- on top of a -- a white plate that -- uh -- were of -- uh
25 -- .38 caliber.

1 Q. That have anything to do with this case?

2 A. Uh -- They were deemed not to have any evidential value
3 due to the fact of the information received -- uh -- by me
4 from the case agent about how -- uh -- the particular -- uh
5 -- participants had exited the area.

6 Uh -- They were collected.

7 But -- uh -- they were deemed not
8 part of this incident.

9 Q. Okay. Explain to the jury if you would the difference
10 between a revolver and a semiautomatic?

11 A. Uh -- A revolver -- uh -- contains -- is a -- uh --
12 pistol that has a cylinder that -- uh -- holds -- uh -- the
13 cartridges.

14 And -- uh -- a revolver can be
15 single-action, double-action, in the sense that:

16 As you pull the hammer back, it
17 rotates the cylinder. When you pull the trigger, the hammer
18 goes forward, discharging the projectile that's inside that
19 -- uh -- cartridge, sending it forward.

20 As you -- uh -- re-cock the -- the
21 fire -- the revolver, the cylinder will rotate, bringing up
22 the next -- uh -- cartridge.

23 Semiautomatic -- uh -- alleviates
24 you having to assist.

25 Basically what happens is:

1 You will load the weapon -- uh --
2 magazine fed. Uh -- The ammunition goes inside of a
3 magazine that is the normally housed in the -- uh -- grip of
4 the weapon, for most handguns.

5 And as you -- uh -- To initiate the
6 firing of the weapon, you would chamber a cartridge from the
7 magazine into the chamber of the weapon.

8 Uh -- As you fire, once the firing
9 pin strikes the cartridge inside of the chamber, due to the
10 gas and energy -- uh -- created by the small explosion that
11 takes place as the projectile's sent down the barrel, it
12 automatically -- uh -- re -- uh -- recalls to the back,
13 causing it to pick up the next cartridge.

14 What will happen then is:

15 As it's doing that, the spent
16 cartridge that you have fired will be in ejected from the
17 weapon, allowing it to be able to feed the next round.

18 And so it -- it cuts out a lot of the
19 headache of you having to reload; and it does it itself.

20 Q. Does -- uh -- Does a revolver kick out the casings?

21 A. The only way to remove the casings from a revolver is
22 for you to do it.

23 And you would have to open the
24 cylinder and to -- uh -- push the release rod to dump the
25 casings out.

1 Q. And I want to show you what is Defense Exhibit Number
2 1.

3 Can you tell the jury if that is a
4 revolver or a semiautomatic?

5 A. That is a revolver.

6 Q. All right. And you say the shell casings would remain
7 in the revolver?

8 A. Either fired or unfired, they would remain inside the
9 cylinder.

10 Q. And you -- you didn't find any shell casings for a .38;
11 but you did find a projectile for a .38?

12 A. I found a projectile for a .38 inside the interior of
13 the scene.

14 I did not find any cartridge casings
15 for a .38.

16 Q. The cartridge casings that you found were 9 and .40?

17 A. Within the immediate crime scene; correct.

18 Q. I pass up to you what has been marked as State's
19 Exhibit 20.

20 Do you recognize that?

21 A. Yeah. It's a partial frag -- fragment of a lead
22 projectile -- uh -- labeled as Item Number 51, that was
23 collected out of the vehicle.

24 Q. Okay. And were you able to calibrate that?

25 A. No sir. It's just a fragment.

1 MR. RICHARDSON:

2 The State would move State's Exhibit
3 20 into evidence.

4 MR. JOYE:

5 Without objection.

6 WHEREUPON: A PROJECTILE, EARLIER
7 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 20,
8 WAS APPARENTLY ENTERED INTO EVIDENCE WITHOUT OBJECTION.

9 MR. RICHARDSON:

10 And just housecleaning -- uh -- is
11 State's 14 in evidence?

12 THE COURT:

13 Was there a photograph of a list at
14 the back of that?

15 MR. JOYE:

16 Yeah.

17 THE COURT:

18 All right. Let's redact that, then.

19 MR. JOYE:

20 You mind if I -- we pull it out. Is
21 that fine with you?

22 THE COURT:

23 Very well. Otherwise without
24 objection.

25 MR. RICHARDSON:

1 The only other thing is:

2 There's CDs so if they -- We would
3 have to redact that if they chose to look at that.

4 THE COURT:

5 Okay. All right. I think the jury

6 --

7 MR. JOYE:

8 Why don't we go ahead and take those
9 out. And if they need them, then we'll --

10 MR. RICHARDSON:

11 Okay.

12 THE COURT:

13 Very well.

14 MR. JOYE:

15 Thank you.

16 The State would also move photographs
17 7, 8, 10, --

18 MR. JOYE:

19 You know, if you want it in that's
20 fine. If you don't, that's fine too. I don't see anything
21 to it; but whatever you want to do.

22 MR. RICHARDSON:

23 All right. The State would move
24 State's Exhibit 7, 8, 10, and 11, in, without objection.

25 THE COURT:

1 Without objection.

2 MR. JOYE:

3 Without objection, Your Honor.

4 WHEREUPON: SEVERAL PHOTOGRAPHS,
5 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
6 NUMBERS 7, 8, 10, AND 11, WERE ENTERED INTO EVIDENCE WITHOUT
7 OBJECTION.

8 THE COURT:

9 We've got everything we've talked
10 about in; is that correct?

11 MR. RICHARDSON:

12 State's Exhibit 38, is that in?

13 COURT REPORTER:

14 Well, the doctor used it without
15 objection, but I don't think you formally --

16 THE COURT:

17 I thought it went in.

18 MR. JOYE:

19 I thought it went in too, Judge.

20 THE COURT:

21 Well, it's in now.

22 MR. RICHARDSON:

23 Thank you. State's Exhibit 38 into
24 evidence, without objection.

25 WHEREUPON: A STYROFOAM HEAD, EARLIER

1 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 38,
2 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

3 MR. RICHARDSON:

4 And I believe that that is all I
5 have.

6 If you would answer any questions
7 that Mr. Joye has for you.

8 THE COURT:

9 All right, Mr. Joye.

10 MR. JOYE:

11 All right.

12 CROSS-EXAMINATION BY MR. JOYE:

13 Q. Investigator Dale, you -- uh -- you said that you
14 didn't be -- given the heat and humidity et cetera -- did
15 you not run -- uh -- attempt to find prints inside the
16 vehicle?

17 A. Yes, we did.

18 Q. You mean, there were no prints on the door handle
19 inside?

20 There were no prints on the steering
21 wheel? No prints on the -- on the gear shift? None of
22 that?

23 A. We examined all the areas of the interior by processing
24 with basic black powder, which is how volcanic ash.

25 And when distributing the powder

1 inside the vehicle -- uh -- due to the fact of the amount of
2 oil that had come to develop due to the fact of the decomp
3 and the decomposition of the victim's body that was -- uh --
4 on all of the items of the vehicle -- uh -- we -- it was
5 impossible for the powder to effectively -- uh -- adhere to
6 surfaces to try to find -- uh -- any latent ridges.

7 We, however, did -- uh -- swab the
8 steering wheel are -- the door handles -- that nature -- as
9 a secondary -- uh -- for possible DNA.

10 And as earlier stated in the DNA
11 report from SLED -- uh -- they were unable to identify any
12 -- uh -- DNA profiles.

13 Q. So, with all the advances in science that we made in
14 the past few years, it's your testimony today that if we --
15 that -- that -- you couldn't possibly find any DNA or
16 fingerprints anywhere on the interior of this vehicle?

17 A. I was unable to find any fingerprints or DNA during the
18 processing of this vehicle at the time.

19 Q. And that would be because the oils would have affected
20 it?

21 A. Due to the nature of the -- uh -- conditions of the
22 walls and the decomposition.

23 Q. But the decomposition would affect the air the vehicle?

24 A. (No response.)

25 Q. And not allow you to find any prints on the door

1 handles or anything? No DNA?

2 A. During the processing, we were able -- unable to find
3 any DNA profile or fingerprints of the interior of the
4 vehicle.

5 Q. And if you found no physical evidence in terms of a
6 transfer of DNA, you certainly couldn't point to Michael
7 Livingston with that; could you?

8 A. That's correct.

9 Q. And -- uh -- now you examined all of these shell
10 casings. How many shell casings do you think you found in
11 total? Do you know?

12 A. Without referring to my notes, I believe there was 10
13 -- uh -- .40 caliber Smith and Wesson, Spears; and two 9
14 millimeter CCI Luger cartridge cases.

15 Q. So you found a total of 12 cartridge cases?

16 A. At the vicinity of the scene; correct.

17 Q. And did you process those for either DNA and/or
18 fingerprints?

19 A. We processed them for DNA.

20 Q. Then you didn't process them for fingerprints?

21 A. No sir.

22 Q. Now, somewhat similar, each and every automatic -- or I
23 would say: not a revolver.

24 But if you got -- not a revolver --
25 you got a semiautomatic weapon; correct?

1 A. Correct.

2 Q. Would you demonstrate how you would put -- and I know
3 that this is exaggerating; okay?

4 And -- uh -- I give them that.

5 Show how you would put the cartridges
6 in there.

7 A. In this type of magazine -- uh -- you would --

8 Q. And that's generally the type of magazine you would see
9 in a -- albeit the different shape and all -- in a pistol;
10 correct?

11 A. Well, this slide goes in front -- This magazine belongs
12 to a rifle.

13 Q. Right. But generally the -- the concept is pretty much
14 though the same in terms of how you would feed the magazine?

15 A. Very similar in nature; correct.

16 Q. Show the jury that how you would do that.

17 A. You would have the cartridge in your -- uh -- hand.
18 And you would push down on the cartridge, relieving pressure
19 on the magazine.

20 Q. So take your thumbprint -- thumb; push it down.

21 A. Yes sir. (Demonstrates.)

22 Q. Okay. And that would be -- Now, as -- as I understand
23 it, when you do that, and this cartridge is fired, at times,
24 the high heat will actually fry a print into the cartridge,
25 won't it?

1 A. There is a possibility.

2 Q. But we didn't test for that; did we?

3 A. The cartridges were examined, but they were not dusted
4 for fingerprints.

5 It was deemed to send them and
6 process them for DNA.

7 Q. Now, let's -- let's think about that a minute. If high
8 heat and humidity would extinguish any possibility of DNA in
9 a vehicle, wouldn't the -- wouldn't the heat from a
10 projectile literally fry off any DNA when the -- when the
11 bullet explodes and all the gas and the heat; wouldn't that
12 immediately destroy any DNA?

13 A. There's a possibility.

14 Q. Probability, wouldn't you say?

15 A. Possibility.

16 Q. So, literally, you had 12 projectiles. You could have
17 tested some; but then you were have had some for finger
18 prints; could you not have?

19 A. We had 12 casings -- cartridge casings.

20 Q. Yeah, casings; yes. Say you had two 9 millimeters; you
21 could have certainly processed one for DNA and one for
22 fingerprints; couldn't you?

23 A. There was a possibility I could have done that.

24 Q. You could've done that?

25 A. (Nods in the affirmative.)

1 Q. Okay. And of course 12 of the .40 caliber -- I mean,
2 10 of the .40 caliber casings; you could have processed
3 that; but you did not; right?

4 A. That's correct.

5 Q. And we have no way of knowing any caliber of weapon --
6 I'm sorry -- uh -- We have no way of knowing, other than one
7 projectile -- We only know of one -- one caliber of
8 projectile used in the actual murder itself?

9 A. (No response.)

10 Q. In the actual homicide itself?

11 A. We only located one caliber of projectile inside the
12 victim's skull.

13 Q. So that's all you can tell about that.

14 A. That's all I can testify to; correct.

15 Q. Yes sir. Okay. Uh -- So we don't have -- There were
16 absolutely zero latents taken from the vehicle?

17 A. We recovered no latents from the vehicle.

18 MR. JOYE:

19 One second, Your Honor.

20 Judge, if you will indulge me a
21 minute.

22 WHEREUPON: Mr. Joye brings two
23 chairs from counsel's table and sets them in front of the
24 jury rail, facing the jury.

25 CROSS EXAMINATION BY MR. JOYE CONTINUED:

1 Q. Investigator Deal, if you would please, come on down.

2 A. (Witness does as requested.)

3 Q. We're going to have to use our imagination a little
4 bit?

5 A. Okay.

6 Q. This is the driver's side seat. This being the
7 passenger seat, what would be here?

8 A. Center console.

9 Q. If you would, please -- and you may want to refer to
10 your photo -- crime scene photographs.

11 And I think you and I discussed one
12 picture that we used earlier?

13 A. Yeah.

14 Q. All right. If you would, could you please re-enact
15 the position of the body as it was discovered by you when
16 you came to the crime scene -- as best you can?

17 A. The body was between the center console here.

18 I would have been bent over with my
19 arm -- my left arm in the passenger seat.

20 And my head was slumped over -- uh --
21 between the two seats into the back.

22 Q. Head down? Back?

23 A. Head down, with -- uh -- the back area exposed upward.

24 And my back legs would -- would be
25 underneath the steering wheel column.

1 Q. And the left side of your body would be pointed toward
2 which door?

3 A. My left side would be nearer to the passenger side.

4 Q. Thank you, sir. Please take a seat.

5 A. (Witness does as requested.)

6 Q. As the Crime Scene Investigator, in your extensive
7 training in crime scene investigation, you can point to no
8 physical evidence that ties Michael Livingston to any of
9 these crime scenes; can you?

10 A. No sir.

11 MR. JOYE:

12 Thank you, Investigator Deal.

13 THE COURT:

14 Anything further Mr. Richardson?

15 MR. RICHARDSON:

16 Just a couple of more questions.

17 REDIRECT EXAMINATION BY MR. RICHARDSON:

18 Q. Do you -- Did you find anything that tied Coaty Deas
19 into this incident?

20 A. No sir.

21 Q. Uh -- Chadd Wilson?

22 A. No sir.

23 Q. Anybody? George Bush?

24 A. No sir.

25 Q. All right. And you don't know these guys?

Testimony of Investigator Robert Deal

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1 A. No sir.

2 Q. You're just here to report what you found?

3 A. That's correct.

4 MR. RICHARDSON:

5 All right.

6 I have no further questions.

7 MR. JOYE:

8 Nothing further, Your Honor.

9 THE COURT:

10 Step down.

11 You need him released -- uh -- Mr.

12 Richardson?

13 MR. RICHARDSON:

14 Yes, sir, Your Honor.

15 THE COURT:

16 Any objection?

17 MR. JOYE:

18 No sir, Your Honor. I -- I don't

19 have any objection.

20 THE COURT:

21 Then, you are released from your

22 subpoena.

23 MR. JOYE:

24 That's kind of the way I figured he

1 was going to go, though.

2 THE COURT:

3 All right.

4 MR. JOYE:

5 (Laughs out loud.)

6 MR. RICHARDSON:

7 All right; the State would call -- uh
8 -- Chadd Wilson.

9 WHEREUPON: CHADD WILSON WAS DULY
10 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

11 CLERK:

12 Scoot up and speak into the
13 microphone.

14 And if you would, state your full
15 name and spell your last name.

16 WITNESS:

17 My name is Chadd Germane Wilson; W-i-
18 l-s-o-n.

19 DIRECT EXAMINATION BY MR. RICHARDSON:

20 Q. Chadd, I'm going to stand over here. I want you to
21 speak up so the jury can hear you; okay.

22 A. Yes sir.

23 Q. All right. Uh -- Are you related to Michael
24 Livingston?

25 A. Yes he's my first cousin.

Testimony of Chadd Wilson

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1 Q. All right. Uh -- How old are you?

2 A. I'm 25.

3 Q. And how old is Michael?

4 A. I believe he's 26 or 27.

5 Q. All right. How -- Have you known him all your life?

6 A. Yes sir.

7 Q. All right. When you grew up, how close was he when
8 you grew up?

9 A. We grew up together.

10 Q. All right. Did you ever live together?

11 A. Nah.

12 Q. Where did -- Growing up, where did Michael live?

13 A. With my grandma.

14 Q. And have you always lived in the trailer in that same
15 yard?

16 A. Yes sir.

17 Q. All right. And who do you live there with?

18 A. My mom and my step dad.

19 Q. All right. How about Tony?

20 A. Huh? My brother.

21 Q. Does he live with you?

22 A. Yes sir.

23 Q. All right. Anybody else live in the house?

24 A. I have another brother and a little sister.

25 Q. What's their names please?

1 A. Chadwick and Kelly (phonetic).

2 Q. Do you have any children?

3 A. One; a daughter.

4 Q. And does she live with you?

5 A. Yes; now.

6 Q. All right. She didn't live with you back in July
7 30th, of 2007?

8 A. Yes, she did.

9 Q. All right. How old is she?

10 A. She's 1 -- 2 now.

11 Q. All right. On July 30th, 2007, did you have occasion
12 to be in the front yard of your grandma's house?

13 A. Yes sir.

14 Q. And who else was there with you?

15 A. A couple more people; Michael, me, Tony, Kal, Coaty,
16 and my little cousin, Bubba.

17 Q. Is that it?

18 A. (Nods in the affirmative.)

19 Q. All right. Now how -- Were y'all -- Did -- How do you
20 refer to Michael.

21 A. (No response.)

22 Q. Do you call him Michael?

23 A. No.

24 Q. What do you call him?

25 A. Amp.

Testimony of Chadd Wilson

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1 Q. Does he have any other nick names?

2 A. Juvie.

3 Q. On that date July 30th, 2007, did you meet Ervin
4 Graham?

5 A. I didn't actually meet him. But he came up there to
6 meet Michael.

7 Q. All right. Ervin Graham -- uh -- does he have any
8 nicknames?

9 A. Uh -- F. I., I believe.

10 Q. F. I.? Do you know him?

11 A. Nah, I don't know him, know him.

12 Q. All right. What did -- Tell my how -- how did he get
13 up there? What was he driving?

14 A. He was driving a SUV.

15 Q. All right. Had you ever seen that vehicle before?

16 A. Yes.

17 Q. Okay. And how do you know Fido, or F.I.?

18 A. Through Amp.

19 Q. Okay. Did you ever -- Have you ever sold drugs

20 A. Yes.

21 Q. All right. And who was your drug suppliers?

22 A. Like, different people.

23 Q. Was Fido one of them?

24 A. Yeah.

25 Q. All right. And what kind of drugs did you sell?

1 A. Crack, heroine, weed.

2 Q. All right. Tell the jury -- uh -- your -- how you
3 went about getting the -- uh -- drugs from Fido?

4 Did you pay -- How -- the payment
5 plan?

6 A. Uh -- He fronted them to me.

7 Q. He fronted them to you?

8 A. Yeah.

9 Q. All right. And just tell the jury what that means?

10 A. He gave them to me and I would pay him when I finished.

11 Q. All right. So you would get the drugs; and then sell
12 the drugs; and then pay Fido?

13 A. Yes sir.

14 Q. Okay. Do you have -- How about -- uh -- Kal?

15 Did he buy drugs from Fido?

16 Or front drugs through Fido?

17 A. No sir.

18 Q. How about -- uh -- Coaty? Do you know if he did?

19 A. Yeah. He gave him some pills one time.

20 A. All right. And did Coaty have the same opportunity;
21 or do you know; to -- uh -- sell the pills and then --

22 A. Yeah. He had the same opportunity.

23 Q. All right.

24 Q. Did you have any sort of partner in selling drugs? Or
25 were you by yourself?

1 A. I was by myself.

2 Q. Okay. And on that date, July 30th, 2007, -- uh -- you
3 say Fido didn't come to meet you?

4 A. Nah, he didn't come to meet me.

5 Q. All right. Who did he come meet?

6 A. I believe, Michael.

7 Q. And do you know what brought Fido up there?

8 A. Michael probably had called him or something.

9 Q. Well not -- Let's don't get into probably. Did -- Did
10 you see Michael call Fido?

11 A. No.

12 Q. All right. Then you didn't hear a conversation
13 between Fido and Michael on the phone?

14 A. No.

15 Q. All right. But Fido shows up?

16 A. Yes sir.

17 Q. Do you remember about what time of day that was?

18 A. I want to say about 5:00 or 6:00.

19 Q. All right. Shows up driving his SUV?

20 A. (Nods in the affirmative.)

21 Q. All right. Tell us, before Fido got there, were -- did
22 you hear Michael or Amp say anything about Fido coming?

23 A. No, I didn't.

24 Q. You didn't hear that?

25 A. (Nods in the affirmative.)

1 Q. All right. And then -- So Fido pulls up. And tell --
2 tell the jury what happened when he drove up?

3 A. When Fido drove up, Amp, he got out -- he got out and
4 talked to everybody. He said "Hey" to everybody.

5 That Amp had made a call. I believe
6 he had called -- uh -- Shaquette's or something. And she
7 come pulled up. He went back to talk to her.

8 And then he came back to talk to
9 Fido.

10 Q. All right. Was anyone else talking to Fido --

11 A. My --

12 Q. -- when this was going on?

13 A. My brother was standing right there in the doorway.

14 Q. Tony was standing at the -- uh --

15 A. Driver-side.

16 Q. When you say in the doorway, where was --

17 A. Driver-side.

18 Q. Driver-side doorway?

19 A. (Nods in the affirmative.)

20 Q. Was -- uh -- Fido in the car or out of the car?

21 A. He was sitting down in the driver seat.

22 Q. He was sitting in the driver's seat? And Tony was
23 standing beside the driver door speaking to him?

24 A. Yes sir.

25 Q. All right. Tell us what happened next?

1 A. I believe -- uh -- Shaquette had left. Michael went
2 and talked to Shaquette. Then had left.

3 Then Michael came up behind him and
4 -- uh -- shot him in the back of the head.

5 Q. Michael shot Fido?

6 A. Yes sir.

7 Q. And what did he do about upon shooting Fido?

8 A. What you mean like what did he do upon?

9 Q. When -- Once Michael shot him, what did Michael do?

10 A. He like -- he started like hesitating and walking
11 around, I guess to gather his thoughts or something.

12 Q. All right. Did -- Did you ever hear a second shot?

13 A. Nah. I didn't hear no second shot.

14 Q. So you heard one shot?

15 A. One-shot.

16 Q. All right. And what did Fido do upon being shot?

17 A. I believe he had -- he had -- he lay down in -- uh --
18 on the passenger-side.

19 Q. All right. Was anything said by Amp at that time?

20 A. He told Coaty to drive and told me to get in.

21 Q. All right. Where did you get in?

22 A. Behind the driver.

23 Q. All right. In the backseat?

24 A. Yes sir.

25 Q. And where did Coaty get in?

1 A. On the driver-side.

2 Q. All right. How about Amp, did he go with you?

3 A. He got on the passenger-side.

4 Q. Passenger-side; front seat or back?

5 A. Front seat.

6 Q. All right. Now with Coaty -- uh -- did y'all -- did
7 anybody move Fido from the driver's seat?

8 A. Nah. I believe like he pushed him over a little bit.

9 Q. All right. And drove seated -- seated beside Fido?

10 A. Yes sir.

11 Q. All right. When y'all left, Coaty was driving?

12 A. Yes sir.

13 Q. Is Coaty from -- uh -- Pawley's?

14 A. Nah; he's from Georgetown or Conway.

15 Q. All right. Uh -- How did -- Do you know how Coaty
16 knew where to drive?

17 A. Amp told him.

18 Q. Told him where to drive?

19 A. Yes sir.

20 Q. And where did y'all go?

21 A. Like on a back road of West Shore -- West Shore.

22 Q. West Shore Drive?

23 A. Uh-huh.

24 Q. And -- uh -- with regard to where the body was left in
25 the vehicle? Was that on West Shore?

1 A. Yes sir.

2 Q. All right. Uh -- Will you step down for just a second.
3 I want you to look at -- you got to keep your voice up,
4 though.

5 A. (Witness steps down in front of the jury.)

6 Q. And I'm referring to State's Exhibit Number 1, already
7 in evidence.

8 A. Okay.

9 Q. Tony, can you identify your house in that photograph?

10 A. Yes sir.

11 Q. All right. Where is it?

12 A. (Not Audible.)

13 Q. Here, I'll tell you what. Push that button right
14 there.

15 COURT REPORTER:

16 I'm not picking him up on his
17 answers.

18 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

19 Q. All right. Please speak up.

20 A. There, sir.

21 Q. Right there?

22 A. Yes sir.

23 Q. All right. And Michael's grandma's house?

24 A. Right at that blue do.

25 Q. Right there.

1 A. (Nods in the affirmative.)

2 Q. All right. Now where in accordance to that blue dot,
3 would you --

4 THE COURT:

5 Mr. Richardson, how about letting the
6 --

7 THE COURT:

8 If you can, bring it around.

9 MR. RICHARDSON:

10 Oh, I'm sorry.

11 THE COURT:

12 We got jurors that are struggling to
13 see what --

14 MR. RICHARDSON:

15 Let me backup a little bit. You got
16 to keep you voice up.

17 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

18 Q. All right. With regard to your grandma's house, where
19 is -- uh -- where did the shooting take place?

20 A. I want to say like, over there on the other side of
21 that driveway right there.

22 Q. Right in there?

23 A. Yeah.

24 Q. All right. Now upon leaving, you were in the backseat
25 -- driver's-side backseat.

1 Did you go back toward 90 this way?

2 A. No sir. No sir.

3 Q. You went this way?

4 A. Yes sir.

5 Q. All right. And you're probably going to have to walk
6 over here.

7 Do you find West Shore Drive on this

8 -- uh -- is this West Shore Drive right here?

9 A. Yes sir.

10 Q. West Shore Drive?

11 A. Yes sir.

12 Q. All right. And this wooded area right here where the
13 body was left, had you ever been down there before?

14 A. Yes sir.

15 Q. When was that?

16 A. Like, when I was young.

17 Q. All right. Go ahead

18 A. (Witness goes back to the witness stand.)

19 Q. When you were young, what were you doing down there?

20 A. It's like a golf resort back there I used to go to.

21 Q. All right. And how did you used to get back there?

22 A. On bicycles.

23 Q. All right. Have you ever been back there with Michael

24 -- or Amp?

25 A. Yeah.

1 Q. How about -- Has -- uh -- Coaty ever been back there
2 with you?

3 A. No.

4 Q. Okay. So, you heard one shot; saw the victim slumped
5 over the center console; and road out to this area with
6 Coaty driving and Michael in the front passenger seat?

7 A. Yes sir.

8 Q. Tell us what happened when the vehicle came to a stop?

9 A. I believe like, Michael like searched in his pockets or
10 whatever. And we all -- I got out.

11 And I was like -- I was about to walk
12 to the side of the road.

13 And it was like, he told Coaty to
14 shoot him again.

15 So Coaty shot him and they were like
16 -- So I just started walking back towards the road.

17 They like --

18 Q. Hold on a minute. Did Coaty shoot him one time or two?

19 A. I really don't know. I believe it was a couple of
20 times.

21 Q. Okay. And do you know whether or not the victim was
22 dead at that point when the body was left there?

23 A. I don't know. I didn't really look at him after --
24 like -- I didn't look at him.

25 Q. You didn't look at after -- You didn't look at him

1 after what?

2 A. After we got the car.

3 Q. All right. And any doubt in your mind that he had
4 already been shot at that point?

5 A. Yeah; he'd already been shot before we got in the car.

6 Q. And who shot him?

7 A. Michael.

8 Q. Michael, Amp, your first cousin?

9 A. Yeah.

10 Q. All right. Did Fido say anything to y'all as y'all
11 were riding down the road?

12 A. Nah.

13 Q. All right. Did Fido have any -- uh -- Did you see a
14 weapon?

15 A. Huh?

16 Q. Did Fido have a weapon --

17 A. I --

18 Q. -- that you saw?

19 A. I didn't see it, like, when he -- when he first got
20 there. But he always carried a weapon.

21 Q. And what kind of weapon did Fido always carry?

22 A. A .40 caliber.

23 Q. .40 caliber?

24 A. (Nods in the affirmative.)

25 Q. Uh -- Have -- What kind of weapon did Michael use to

1 shoot Fido?

2 A. A 9 millimeter.

3 Q. And had you ever seen that 9 millimeter before?

4 A. Yes.

5 Q. Do you know where Michael got that 9 millimeter?

6 A. Coaty had gave it to him. He had stole it from
7 somebody.

8 Q. Coaty stole it from someone and give it to Michael?

9 A. Yeah.

10 Q. All right. Did you ever see Michael shoot the -- uh --
11 victim again at the drop site?

12 A. No sir.

13 Q. And you know that Coaty shot him once? But you don't
14 know any more than that?

15 A. I only know he shot once. I know Michael told him to
16 shoot him.

17 Q. All right. And now, what -- Did you ever fire a
18 weapon on July 30th, 2007?

19 A. Like, at -- at the back of the Jeep.

20 Q. Okay. And what was the purpose of doing that?

21 A. Michael said it would blow it up.

22 A. Blow up the Jeep?

23 A. Yeah.

24 Q. Did it work?

25 A. No.

1 Q. All right. And approximately how many times did you
2 fire?

3 A. Probably like 4 or 5.

4 Q. Okay. What were you using to shoot the back of the
5 Jeep?

6 A. A .38.

7 Q. Do you think you would recognize that .38 if I -- uh --
8 passed it up to you?

9 A. Yes sir.

10 Q. I pass to you what's been marked as State's Exhibit --I
11 mean -- excuse me -- Defense Exhibit Number 1.

12 Do you recognize this?

13 A. Yes sir.

14 Q. Whose .38 is that?

15 A. That's mind.

16 Q. And do you know how we come to get this weapon?

17 A. Yes sir.

18 Q. All right. Tell the jury how we got the weapon.

19 A. Off my brother, Tony.

20 Q. All right. But that's the weapon that you used on that
21 day at the back of the vehicle?

22 A. Yes sir.

23 Q. Did you have another weapon?

24 A. Yes sir.

25 Q. What kind of -- uh -- caliber was that?

1 A. .45.

2 Q. Did you ever use the .45?

3 A. No sir.

4 Q. All right. So the only weapons that were fired would
5 have been a .38, a 9, and a .40?

6 A. Yes sir.

7 Q. All right. What -- What -- And you never saw -- uh --
8 Michael shoot at vehicle any more?

9 A. No sir.

10 Q. What did you do upon -- uh -- leaving the vehicle?

11 A. Started walking back towards the top of the road.

12 Q. And that's West Shore Drive?

13 A. Yes sir.

14 Q. All right. And what happened when you get to West
15 Shore Drive?

16 A. Shaquette was there to pick us up.

17 Q. She picked you up at West Shore?

18 A. Yes sir.

19 Q. And took you where?

20 A. To Michael's house.

21 Q. Okay. Michael's -- uh -- Where did Michael live at
22 that time?

23 A. Him and Shaquette had a house together on Lane Circle.

24 Q. Lane Circle. And that -- How close is that to your
25 grandma's house?

1 A. Walking distance.

2 Q. All right. What happened when you got to -- uh --
3 Shaquette and Michael's house?

4 A. Michael told us to take our clothes off so he could
5 burn them.

6 Q. All right. And when he says "Y'all," you talking
7 about you --

8 A. Coaty.

9 Q. Did Michael take his clothes off?

10 A. Yes sir.

11 Q. All right. And did you -- Where did you get new
12 clothes from?

13 A. Michael gave me like, a pair of shorts.

14 Q. All right. Did you go out with him to burn the
15 clothing?

16 A. No sir.

17 Q. Do you know what happened to the 9 millimeter?

18 A. Michael had it. He like -- That was his. And he kept
19 it.

20 Q. What about with regard to the -- uh -- .40 caliber?

21 A. He took that from Coaty too.

22 Q. Okay. So Michael gained possession of the .40 caliber
23 also?

24 A. Yes sir.

25 Q. How about your .38? Did you give him your .38?

- 1 A. No sir.
- 2 Q. How about your .45? Did you give him that?
- 3 A. No sir.
- 4 Q. If Michael was collecting all the guns, why didn't you
5 give him your .38 and your .45?
- 6 A. Because I didn't really like use mine for nothing to do
7 like most no damage or nothing.
- 8 Q. All right. Let's go back -- uh -- to the crime scene
9 just to the -- uh -- dumpsite there just one minute.
- 10 What -- uh -- What -- Do you know
11 what happened with -- uh -- Fido's money?
- 12 A. Michael took it.
- 13 Q. What about his -- uh -- drugs?
- 14 A. Michael took it.
- 15 Q. What kind of drugs did he have?
- 16 A. I want to say some pills, crank, and marijuana and some
17 -- uh -- some crack.
- 18 Q. Did you get any of those drugs?
- 19 A. No sir.
- 20 Q. You sold -- uh -- heroine, though; right?
- 21 A. Yes sir.
- 22 Q. Did you know anybody else to sell heroine --
- 23 A. No sir.
- 24 Q. In that group?
- 25 A. No sir.

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1 Q. All right. And you didn't get the heroine?

2 A. No sir.

3 Q. How about pills? Did you sell pills?

4 A. No sir.

5 Q. Who sold pills?

6 A. Michael.

7 Q. Uh -- How about Coaty? Did he ever sell pills?

8 A. At one time when he had got it from F. I.

9 Q. And he had gotten pills from FI before?

10 A. Yes sir.

11 Q. Chadd, when you talk about pills, what kind of pills
12 are they?

13 A. X D (Phonetic -- Probably saying "Ecstasy").

14 Q. Okay. Was anything ever said upon -- after y'all
15 burned the clothes?

16 Did -- Did anybody ever say anything.

17 A. (No response.)

18 Q. I can't -- I'm sorry, that's a bad question. Did
19 Michael ever say anything regarding -- uh -- what you guys
20 should do about this whole incident?

21 A. Never talk about it.

22 Q. Okay. Never threatened you in any way?

23 A. No sir.

24 Q. All right. Now at the jail -- uh -- you have -- you
25 and Michael were both at the jail at the same time?

1 A. He was arrested before me.

2 Q. Okay. And did you have any correspondence with -- uh
3 -- Michael by mail while y'all were both at the jail?

4 A. Yeah. He wrote me a couple of times.

5 Q. All right. Did you ever write him?

6 A. Yes sir.

7 Q. And what is the -- the gist of the letters that you
8 wrote to Michael?

9 A. At first I was just -- you know -- I --

10 MR. JOYE:

11 Judge, he -- Objection, Your Honor.

12 I don't -- I don't have copies of the
13 letters that maybe were written.

14 And -- And I just don't know where
15 this is going with him.

16 THE COURT:

17 I think they may --

18 MR. JOYE:

19 I think it may be proffered -- best
20 proffered.

21 MR. RICHARDSON:

22 If we can -- If we can approach.

23 (WHEREUPON: Counsel for each party
24 conferred off the record with The Court at the bench at
25 11:52 AM, August 12, 2009.)

1 THE COURT:

2 Gentlemen, is this going to take a
3 few minutes?

4 MR. JOYE:

5 Yes sir, Judge. It may take me --

6 THE COURT:

7 Take a minute Mr. -- uh -- Roth.

8 We'll take the opportunity to give them a break.

9 (WHEREUPON: The jury empanelled in
10 the case withdrew from the courtroom at 11:53 AM, August 12,
11 2009; and was no longer present during the following
12 proceedings.)

13 (WHEREUPON: Counsel for each party
14 conferred off the record with The Court at the bench at
15 11:54 AM, August 12, 2009.)

16 THE COURT:

17 We'd may a well take a break while
18 we're down.

19 (WHEREUPON: The court was declared
20 in recess at 11:56 AM, August 12, 2009.)

21 (WHEREUPON: The court was called to
22 order by the Bailiff at 12:11 PM, August 12, 2009; and all
23 pertinent parties, along with their counsel, were back and
24 present in the courtroom.)

25 BAILIFF:

1 Order in the Court. All Rise.

2 THE COURT:

3 Thank you. Please be seated. Let's
4 get them.

5 MR. JOYE:

6 I believe we've stipulated that
7 there's going to be a -- uh -- that we're going to strike
8 the issues about the letters.

9 THE COURT:

10 Okay. All right.

11 Uh -- The Solicitor indicates he's
12 not going to go into that.

13 MR. RICHARDSON:

14 And -- And if you want to -- uh --
15 strike and have him not talk about it and let --

16 MR. JOYE:

17 No. No sir. But I told him --

18 MR. RICHARDSON:

19 Okay.

20 MR. JOYE:

21 -- and just -- maybe the judge wants
22 to go into it; but it's not relevant to this case.

23 (WHEREUPON: The jury empanelled in
24 the case was escorted back into the courtroom at 12:14 PM,
25 August 12, 2009; and was in fact present during the

1 following proceedings.)

2 THE COURT:

3 All right.

4 Yes sir.

5 MR. RICHARDSON:

6 Thank Your Honor.

7 DIRECT EXAMINATION BY MR. MR. RICHARDSON CONTINUED:

8 Q. All right. Uh -- Chadd, let me -- uh -- clarify some
9 nicknames too.

10 Uh -- Do you go by anything besides
11 Chadd?

12 A. Roster.

13 Q. Roster?

14 A. Yes sir.

15 Q. And how about Tony, what does he go by?

16 A. Lope.

17 Q. Lope? And -- uh -- Michael goes by --

18 A. Amp or Juvie.

19 Q. Amp or Juvie? And how about Coaty?

20 A. C.

21 Q. C.? Do you know Anthony Jefferson?

22 A. Yeah.

23 Q. All right. Does he have a nickname?

24 A. Uh -- D-Block.

25 Q. D-Block? All right. Now, how -- You said you've

1 known Michael all of your life.

2 How many days a week, here recently
3 before this, did y'all hang out together?

4 A. Mostly everyday.

5 Q. Everyday? Did there ever come occasions that you
6 would call Michael?

7 A. Sometimes.

8 Q. All right. I want to go over a series of phone numbers
9 with you.

10 And you stop if you recognize any of
11 those; okay?

12 A. (Nods in the affirmative.)

13 Q. 843-855-0582?

14 A. (No response.)

15 Q. 843-367-1040?

16 A. (No response.)

17 Q. 843 446-9551?

18 A. That one.

19 Q. You recognize that number?

20 A. Yes sir.

21 Q. And whose number is that?

22 A. Michael's old number.

23 Q. His old Number?

24 A. (Nods in the affirmative.)

25 Q. 843-446-9551?

Testimony of Chadd Wilson

435

1 A. Yes sir.

2 Q. Are you sure of that?

3 A. Positive.

4 Q. And you've called that number before?

5 A. Yes sir.

6 Q. Did you recognize the first two numbers that I called
7 out to you?

8 A. One of them, I believe; the first one too.

9 Q. 843-855-0582?

10 A. Yes sir.

11 Q. Who's that?

12 A. It's -- uh -- It's another dude, Jeffrey.

13 Q. Does he go by T. K. (phonetic)?

14 A. Yes sir.

15 Q. Okay. Do you recognize the 367-1040 number?

16 A. No sir.

17 Q. Okay. All right. Uh -- Chadd, tell the jury who
18 your -- First of all, tell the jury what you are charged
19 with.

20 A. I believe murder and -- uh -- armed robbery.

21 Q. All right. Uh -- Are you charged with possession of a
22 weapon during the commission of a violent crime?

23 A. I believe so; yes sir.

24 Q. Uh -- And what about your new charges? What are you in
25 jail for now?

1 A. Distribution.

2 Q. Distribution of what?

3 A. Crack cocaine.

4 Q. Okay. And who's your lawyer, Chadd?

5 A. Ed Chrisco.

6 Q. All right. Did you talk with -- uh -- someone from
7 the Solicitor's office and Ed Chrisco regarding a proffer?

8 A. Yes sir.

9 Q. And who was that person from the Solicitor's office?

10 A. You.

11 Q. All right. And did you indicate that you were willing
12 to do a proffer?

13 A. Yes sir.

14 Q. What, if anything, did our office, or Mr. Chrisco, or
15 anyone, promise you?

16 A. Nothing.

17 Q. Are you sure?

18 A. I'm positive.

19 Q. All right. But you would hope to get some help on your
20 murder charges?

21 A. I was hoping to want y'all to right the record so I
22 would be charged with murder.

23 Q. All right. But you have been charged with murder?

24 A. Yes sir.

25 Q. Okay. For your part in this incident?

Testimony of Chadd Wilson

437

1 A. Yes sir.

2 Q. Do you deny your part in what took place here?

3 A. No sir.

4 Q. Chadd -- uh -- please tell me your prior record?

5 A. I believe it was a simple possession of marijuana.

6 Q. Okay. From 2005?

7 A. Yes sir.

8 Q. You didn't have anything else?

9 Q. No sir.

10 Q. Were you convicted of that?

11 A. Yes sir. I paid the fine.

12 Q. Paid a fine for a marijuana charge?

13 A. Yes sir.

14 Q. City of Myrtle Beach?

15 A. Yes sir.

16 MR. RICHARDSON:

17 Okay.

18 All right. Uh -- If you would answer
19 any questions that Mr. Joye has for you.

20 THE COURT:

21 Mr. Joye, he's yours.

22 MR. JOYE:

23 Thank you, sir.

24 CROSS-EXAMINATION BY MR. JOYE:

25 Q. Mr. Wilson, how you know Kal Hill?

1 A. He moved down the road.

2 Q. Was he a buddy, or just someone y'all knew; or -- what

3 --

4 A. He --

5 Q. -- what -- How about characterizing him prior to July
6 30th, of 2007?

7 A. He hung around with us; somebody we knew.

8 Q. And -- uh -- 3 days prior to the incident with -- uh --
9 Fido -- uh -- do you remember holding him at gunpoint?

10 A. No sir.

11 Q. You didn't hold him at gunpoint?

12 A. No sir.

13 Q. Threaten to kill him?

14 A. No sir.

15 Q. And that never happened?

16 A. No sir.

17 Q. Was he an enemy of yours?

18 A. No sir.

19 Q. In fact, he kind of was one of your homeys, wasn't he?

20 A. Yeah; he's -- he's all right.

21 Q. Now July 30th, 2007, did -- uh -- on that date -- uh --
22 do you remember after the -- after the shooting took place?

23 A. Yes sir.

24 Q. Kal tried to take the -- take the drugs out the
25 vehicle?

1 A. I didn't see that.

2 Q. You never saw that?

3 A. No sir.

4 Q. And you say you heard one shot?

5 A. Yes sir.

6 Q. You didn't hear two shots?

7 A. No sir.

8 Q. I would assume that that would be a pretty significant
9 something in your life, having seen someone get shot in
10 front of you?

11 You'd know whether you heard one or
12 two; right?

13 A. Yes sir.

14 Q. So -- But you didn't hear but one shot?

15 A. Yes sir.

16 Q. And -- Now when you first talk to the -- with the
17 police, you told them that it happened at Lacey's place?

18 A. Yes sir.

19 Q. And that was a lie; wasn't it?

20 A. Yes sir.

21 Q. And you also -- let's see.

22 You told them that Michael Livingston
23 drove the vehicle. That was a lie; wasn't it?

24 A. Yes sir.

25 Q. You didn't say anything about Coaty being there?

1 A. No sir.

2 Q. That would've been a lie of omission; wouldn't it?

3 A. Yes sir.

4 Q. Because you were going to tell the truth; and you
5 didn't tell them the truth?

6 A. Yes sir.

7 Q. So, no question but that you're a liar?

8 A. I told a lie.

9 Q. How many lies does it take to make you a liar?

10 A. One.

11 Q. And when you first talked with them, you told them you
12 got into the backseat and Michael was in the front seat?

13 A. Yes sir.

14 Q. And you also told them that Fido to Lacey's place to
15 purchase clothing from Baby D?

16 A. Yes sir.

17 Q. Who is Baby-D?

18 A. It's a another dude who sell clothes.

19 Q. He sells clothing?

20 A. Yes sir.

21 Q. And that was a lie?

22 A. No sir. It was actually -- that was the day before.

23 Q. So you saying he -- that was the day before? Didn't
24 have nothing to do with this?

25 A. Nah. That was the day before the incident.

1 Q. But they were all -- weren't asking you about the day
2 before; were they

3 A. No sir.

4 Q. So it was a lie?

5 A. Yes sir.

6 Q. Okay. Thank you.

7 A. (No response.)

8 Q. Uh -- And it's your testimony that Shaquette Gause
9 drove up before this thing happened?

10 A. Yes sir.

11 Q. Now was there some kind of an argument going on that
12 Michael supposedly came up and shot?

13 A. No sir.

14 Q. Everything was kind of -- Everything was cool?

15 A. Everything was cool.

16 Q. Now let me ask you this.

17 When -- When -- Now, C actually drove
18 the car?

19 A. Yes sir.

20 Q. Why wouldn't you tell the police about C being involved
21 in this case?

22 A. I don't know.

23 Q. Were y'all scared of C?

24 A. Not really, really.

25 Q. So he was kind of a bad dude, though; done time?

- 1 A. Yeah.
- 2 Q. Known to carry weapons?
- 3 A. Yeah.
- 4 Q. Known to sell drugs?
- 5 A. No he ain't sell drugs like that.
- 6 Q. He didn't sell drugs?
- 7 A. Not like that. He wasn't --
- 8 Q. Well how -- Exactly how did he sell drugs?
- 9 A. He wasn't known for selling drugs.
- 10 Q. Huh?
- 11 A. He wasn't known for selling drugs.
- 12 Q. C owed \$500.00 to Fido at the time of this incident;
- 13 didn't he?
- 14 A. For pills.
- 15 Q. Huh?
- 16 A. For pills.
- 17 Q. He owed him \$500.00?
- 18 A. That's a one time thing.
- 19 Q. And -- uh -- And so -- It was actually C that called
- 20 Fido; wasn't it?
- 21 A. I don't believe so.
- 22 Q. 'Cause he -- C owed him \$500.00?
- 23 A. Yeah.
- 24 Q. And Fido was coming to get paid by C?
- 25 A. No.

1 Q. He wasn't?

2 A. No.

3 Q. Do you know whether or not C would have actually had
4 \$500.00 to pay Fido?

5 A. Nah, he didn't have \$500.00.

6 Q. Could have kind of been in trouble for that, maybe?

7 A. Nah, it was cool.

8 Q. You sure they were cool?

9 A. Positive.

10 Q. If they were so cool, why'd C shoot him in the face?

11 A. I guess Michael told him to.

12 Q. He sure as the devil wouldn't have to pay the \$500.00
13 back; would he?

14 A. No.

15 Q. Wouldn't be nobody to collect it; would it?

16 A. No.

17 Q. And you sure Shaquette Gause showed up that day?

18 A. Yes sir.

19 WHEREUPON: Mr. Joye brings over a
20 chair from counsel table and places it in front of the jury
21 rail; then sits down in the chair in front (of the jury.)

22 Q. This the driver's side of seat?

23 A. Yes sir.

24 Q. When -- When they got in the car -- When -- uh -- When
25 C got in the car, he kind of pushed Fido back like that;

1 head down, facing kind of towards you?

2 A. Yes sir.

3 Q. Like this?

4 A. Yeah.

5 Q. And kind of sat on him?

6 A. Yes sir.

7 Q. I imagine you could see --

8 A. I wasn't looking.

9 Q. Wasn't looking? Well, you were right there, weren't
10 you?

11 A. Yes sir.

12 Q. You were in the back seat --

13 A. But I ain't --

14 Q. -- driver's side; right there --

15 A. But I ain't want to see that.

16 Q. -- with your head right there?

17 A. But I ain't want to see that.

18 Q. You never looked and saw his head sticking right there
19 at your -- It would've been at your knees, wouldn't it?

20 A. Nah.

21 Q. Huh?

22 A. 'Cause I was like -- I was like -- I was half-way in,
23 and I wanted to be all the way in and comfortable.

24 Q. One second. Uh -- Now, you looking for help from the
25 State in this case; right?

Testimony of Chadd Wilson

445

1 A. I'm not looking for help from the State. I'm looking
2 for -- I'm just to clear my name.

3 I didn't -- I didn't murder nobody;
4 and I --

5 Q. You didn't murder anybody? You charged with murder;
6 aren't you?

7 A. Yes sir.

8 Q. And you don't want to be hung with no murder; do you?

9 A. No sir.

10 Q. How about the armed robbery? You charged with armed
11 robbery?

12 A. Yes sir.

13 Q. So is it your testimony: you didn't take nothing that
14 belonged to --

15 A. Nothing.

16 Q. Now when the police came, where did they find you?

17 A. At my house.

18 Q. Where in your house?

19 A. Under my mama bed.

20 Q. Under your mama's bed?

21 A. Yes sir.

22 Q. Now when somebody ain't got nothing to hide and they
23 ain't involved in doing nothing wrong, they don't have to
24 hide under no bed; do they?

25 A. Not really.

1 Q. But you just thought it'd be a good thing to do?

2 A. I just didn't want to talk to the police.

3 Q. You didn't want to talk to the police?

4 A. (No response.)

5 Q. But you'd eventually talk?

6 A. (No response.)

7 Q. That's correct?

8 A. One day.

9 Q. And lied to them?

10 A. Yeah.

11 Q. In fact, you lied to them and told them you heard two
12 shots; didn't you?

13 A. Probably did. I probably -- I still was high then too,
14 though.

15 Q. Oh? Are you still high?

16 A. I still smoke --

17 Q. Were you high at the time of this incident? You high
18 later? Or was it both?

19 A. Both.

20 Q. So it ain't no question but that you're a liar?

21 A. (No response.)

22 Q. Okay?

23 A. Yeah.

24 Q. Drug dealer?

25 A. Yes sir.

Testimony of Chadd Wilson

447

- 1 Q. Addict?
- 2 A. Yes sir.
- 3 Q. What kind of drugs do you use? PCP?
- 4 A. Yes sir.
- 5 Q. PCP kind of mind alters -- alters your mind?
- 6 A. Yes sir.
- 7 Q. Marijuana?
- 8 A. Yes sir.
- 9 Q. Crack?
- 10 A. No sir.
- 11 Q. No crack?
- 12 A. No sir.
- 13 Q. Powder?
- 14 A. No sir.
- 15 Q. How about heroine?
- 16 A. No sir.
- 17 Q. Just PCP and marijuana, mainly?
- 18 A. Yes sir.
- 19 Q. Alcohol?
- 20 A. Yes sir.
- 21 Q. Uh -- And the truth is: You shot Fido, didn't you?
- 22 A. (Chuckles) No sir.
- 23 MR. JOYE:
- 24 Thank you. No further questions.
- 25 MR. RICHARDSON:

1 Just one question.

2 REDIRECT EXAMINATION BY MR. RICHARDSON:

3 Q. Chadd -- uh -- do you love, Michael?

4 A. Yes sir. He's my first cousin.

5 MR. RICHARDSON:

6 I have nothing further.

7 RECROSS-EXAMINATION BY MR. JOYE:

8 Q. Now, you didn't have any problems throwing Michael on
9 the bus initially, did you?

10 A. It's not throwing him over to the bus. It's --

11 Q. You lied --

12 A. -- the truth.

13 Q. Well, why didn't you tell the truth about C?

14 A. Huh?

15 Q. Huh?

16 A. Just didn't -- I didn't want to.

17 Q. You didn't want to? Well, you love C?

18 A. Yes, he's my homeboy.

19 Q. He's your homeboy?

20 A. Yeah.

21 Q. Love him better than Michael, your own flesh and blood
22 you grew up all of your life with?

23 A. No.

24 Q. Well, you already knew who everybody was saying did
25 this when you talked them the first time, didn't you?

Testimony of Chadd Wilson

449

1 A. Yes sir.

2 Q. You knew everybody was saying: Amp did it?

3 A. Yes sir.

4 Q. You wasn't about to change up the story on that; were
5 you?

6 A. No sir.

7 MR. JOYE:

8 Thank you, sir.

9 THE COURT:

10 All right

11 MR. RICHARDSON:

12 Nothing further.

13 THE COURT:

14 You may step down.

15 How long do you anticipate your next
16 witness?

17 MR. RICHARDSON:

18 Twenty minutes for my part.

19 THE COURT:

20 Normally, I would; but I -- I do have
21 a funeral I have to attend at 1:00.

22 But we going to do is go ahead and
23 break then, all right.

24 MR. RICHARDSON:

1 Yes sir.

2 THE COURT:

3 We'll reconvene at 2:00 o'clock.

4 MR. RICHARDSON:

5 Yes sir.

6 MR. JOYE:

7 Thank Your Honor.

8 BAILIFF:

9 Order in The Court.

10 (WHEREUPON: The jury empanelled in
11 the case withdrew from the courtroom at 12:31 PM, August 12,
12 2009; and was no longer present during the following
13 proceedings.)

14 THE COURT:

15 All right. We're in recess.

16 (WHEREUPON: The court was declared
17 in recess at 12:32 PM, August 12, 2009.)

18 End of Volume 1.

19 Please see following page.

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Volume II
STATE V MICHAEL ANTHONY LIVINGSTON

For Title, Appearances, Contents,
& Index of Exhibits ,
See Volume I

1 (WHEREUPON: The court was called to
2 order by the Bailiff at 2:12 PM, August 12, 2009; and all
3 pertinent parties, along with their counsel, were back and
4 present in the courtroom.)

5 BAILIFF:

6 All rise.

7 THE COURT:

8 Thank you. Be seated.

9 MR. RICHARDSON:

10 Your Honor, if you'd give us just a
11 second, I can --

12 THE COURT:

13 Okay.

14 MR. RICHARDSON:

15 -- uh -- pull up my notes on -- uh --
16 Kal; and we might could avoid starting and stopping.

17 (WHEREUPON: Counsel for each party
18 conferred off the record with The Court at the bench at 2:13
19 PM, August 12, 2009.)

20 THE COURT:

21 All right, gentlemen.

22 It came to my attention during the
23 lunch break that -- uh -- Juror Number 258, Stephanie
24 McCallum -- uh -- has received a -- a phone call.

25 Uh -- Her sister-in-law, who has been

1 suffering from some -- for some time now -- uh -- with
2 cancer has passed away.

3 That is his -- his wife's -- I mean,
4 her husband's sister; apparently very close.

5 I've had an opportunity to speak with
6 her.

7 Gentleman, it is my understanding
8 that you have both agreed and stipulated that the situation
9 is such that it would be appropriate for Ms. McCallum to be
10 excused from further service on this jury.

11 Is that correct Mr. Richardson?

12 MR. RICHARDSON:

13 Yes sir.

14 THE COURT:

15 Is that correct, Mr. Joye?

16 MR. JOYE:

17 Yes, sir, Your Honor. Yes sir, I
18 feel --

19 THE COURT:

20 All right. And it's further my
21 understanding that we have discussed the matter of which
22 alternate would be appropriate, or which alternate should
23 replace Ms. McCallum; and both of you have stipulated and
24 agreed that Ms. Anna -- uh -- Coppotelli -- uh -- Juror
25 Number 81, should move up and take the place of Juror 258.

1 Is that correct, Mr. Mr. Richardson?

2 MR. RICHARDSON:

3 Yes sir.

4 THE COURT:

5 Is that correct, Mr. Joye?

6 MR. JOYE:

7 Yes sir.

8 THE COURT:

9 All right.

10 All right; let's bring in the jury.

11 (WHEREUPON: The jury empanelled in
12 the case was escorted back into the courtroom at 2:17 PM,
13 August 12, 2009; and was in fact present during the
14 following proceedings.)

15 THE COURT:

16 All right.

17 Ladies and gentlemen of the jury, I
18 again want to -- uh -- say that we're sorry for the delay in
19 bringing you after lunch hour.

20 Uh -- However, it came to my
21 attention during lunch -- and you probably have been made
22 aware of this -- that -- uh -- Juror MacCallum has had a --
23 uh -- a death in her family -- uh -- a close relative.

24 Uh -- The attorneys that I have
25 discussed it.

Testimony of Dan DeFreese

455

1 We all agreed that it would be
2 appropriate in that case to have her excused from further
3 service.

4 Uh -- And there is also been a
5 stipulation that Ms. Coppotelli will now move on to the
6 jury.

7 So, if you would, please come around
8 and have a seat in the jury box; and for the remainder of
9 the trial, occupy a seat in the first 12.

10 All right.

11 Mr. Richardson, are we ready to
12 proceed?

13 MR. RICHARDSON:

14 Yes, sir, Your Honor.

15 The State would call can Dan
16 DeFreese.

17 THE COURT:

18 Mr. DeFreese, come around.

19 WHEREUPON: AGENT FRANK DAN DEFREESE
20 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

21 CLERK:

22 Please state your full name and spell
23 your last name?

24 WITNESS:

25 My name is Frank Dan DeFreese; that's

1 D-e-capital F-r-e-e-s-e.

2 CLERK:

3 Thank you.

4 DIRECT EXAMINATION BY MR. RICHARDSON:

5 Q. Mr. DeFreese, what is your title?

6 A. Uh -- I'm an agent.

7 Q. Okay. Agent with South Carolina Law enforcement
8 Division?

9 A. Yes sir.

10 Q. And how long have you been with SLED, please?

11 A. For 42 years.

12 Q. All right. Have you -- uh -- Tell this jury what you
13 do with SLED?

14 A. I'm assigned to the SLED forensic services laboratory
15 located in Columbia.

16 And within the laboratory, I'm
17 assigned to the department where we do the analysis of
18 firearms and tool-mark evidence.

19 Q. And have you ever been -- uh -- qualified as an expert
20 in tool-mark impressions and/or firearms in the past?

21 A. Yes sir, I have.

22 Q. Approximately how many times?

23 A. Between 600 and 700.

24 MR. RICHARDSON:

25 Your Honor, I would move to have

1 Agent DeFreese -- uh -- an expert in tool-mark impressions
2 and firearms.

3 MR. JOYE:

4 Without objection, Your Honor.

5 THE COURT:

6 Without objection, he's so admitted.

7 DIRECT EXAMINATION BY MR. CONTINUED:

8 Q. Agent DeFreese -- uh -- did you have an occasion to
9 review some evidence in this case, State versus Michael
10 Livingston?

11 A. Yes sir. I did.

12 Q. And did you make a report based on -- uh -- your
13 calculations?

14 A. I did.

15 Q. Tell me what you were set and from whom it was sent --
16 uh -- any evidence that you've looked at?

17 A. Uh -- The evidence was transmitted by Robert Deal. And
18 it consisted of .40 Smith and Wesson caliber and 9
19 millimeter Luger caliber cartridge cases.

20 I believe there were nine .40 Smith
21 and Wesson caliber cartridge cases in two 9 millimeter Luger
22 cartridge cases.

23 Q. And I want to pass to you -- uh -- certain exhibits
24 already in evidence.

25 And I'll ask you if these are in fact

1 the shell casings that you looked at up there in SLED and
2 tested.

3 Let me do them as a group.

4 State's Exhibit 31, 35.

5 State's Exhibit 28.

6 State's exhibit 34.

7 State's exhibit 32.

8 State's exhibit 33.

9 State's exhibit 30.

10 State's Exhibit 29.

11 State's Exhibit 26.

12 State's exhibit 27.

13 And State's Exhibit 36.

14 A. Yes sir. I have -- I have examined all of these items.

15 Q. Are those the -- uh -- items that you completed your
16 report on?

17 A. They are.

18 Q. And what could you tell us -- uh -- from looking at
19 those items, please?

20 A. I microscopically compared the cartridge cases that
21 were submitted with each other.

22 I was looking for marks that would be
23 unique to the firearm or firearms, if the case had been --
24 that would permit me to identify the cartridge cases with
25 each other; that is:

1 To make a determination as to whether
2 one gun, two guns; however many guns fired these cartridge
3 cases, collectively.

4 Now, two of the cartridge cases,
5 State's Exhibits 26 and 27 were 9 millimeter Luger caliber
6 cartridge cases.

7 On these two cartridge cases, my
8 microscopic -- uh -- comparison displayed matching breach
9 face impressions on both of these cartridge cases.

10 From that, I concluded that these two
11 cartridge cases were fired by the same firearm.

12 The .40 caliber cartridge cases,
13 which consisted of Exhibits 28, 29, 30, 31, 32, 33, 34, 35,
14 and 36, were likewise compared with each other.

15 I found matching breach face and
16 firing pin marks on all of these fired cartridge cases, from
17 which I concluded that:

18 All of the .40 Smith and Wesson
19 caliber cartridge cases were fired by the same gun.

20 Q. So basically, all of the .40 caliber shell casings were
21 fired from the same gun.

22 And then a separate gun fired the two
23 9 millimeter casings?

24 A. That's correct, sir.

25 Q. Were any other shell casings sent to you to test?

1 A. No sir.

2 Q. So this is the total and -- uh -- You didn't see any --
3 uh -- shell casings?

4 A. This is all the evidence that was submitted in
5 connection with this case.

6 Q. Can you tell whether or not -- uh -- those were fired
7 from a semiautomatic as opposed to a -- uh -- revolver?

8 A. The markings on both sets of cartridge changes cases
9 are consistent with their being fired by a semiautomatic
10 firearm.

11 Uh -- The .40 Smith and Wesson
12 caliber cartridge cases have a distinct rectangular shaped
13 firing pin aperture, and a -- an oblong shaped firing pin.

14 It is a kind of -- uh -- breach face
15 that is used on both Glock firearms an on early production -
16 - some early production Smith and Wesson Sigma Series
17 firearms.

18 So in that sense they are relatively
19 distinct.

20 The two 9 millimeter fired cartridge
21 cases had -- uh -- parallel breach face markings; and they
22 had a -- a firing pin drag in the same direction as the
23 breach face markings; which are consistent with a kind of
24 semiautomatic pistol in which the barrel drops with respect
25 to the breach face during -- during the locking and

1 unlocking phases when the -- the pistol is being loaded.

2 So all of the -- the remaining
3 physical characteristics of these cartridge cases are
4 consistent with their being fired by semiautomatic firearms
5 as opposed to manually operated firearms.

6 Q. And when you say: manually -- uh -- you're speaking of
7 a revolver.

8 A. Well, a revolver is a manually operated handgun; yes
9 sir.

10 MR. RICHARDSON:

11 I think that's all the questions that
12 I have.

13 If you'd answer any questions Mr.
14 Joye might have for you.

15 CROSS-EXAMINATION BY MR. JOYE:

16 Q. Other than -- Other than the fact there are -- you can
17 point to two separate weapons used, you can't really make
18 any conclusions of any other kind about anything except for
19 only one 9 millimeter was used and only one .40 caliber was
20 used?

21 Is that correct?

22 A. That is correct, sir.

23 Q. And both of them being semiautomatic weapons?

24 A. Well, all of the markings are consistent with their
25 being semiautomatics.

1 And the overwhelming majority of all
2 of the firearms in the .40 caliber S&W and 9 millimeter
3 Luger are semiautomatics.

4 MR. JOYE:

5 Thank you, sir. Nothing further.

6 MR. RICHARDSON:

7 We'd just ask that Agent DeFreese be
8 excused from his subpoena?

9 MR. JOYE:

10 Yes sir, Your Honor.

11 THE COURT:

12 All right.

13 Mr. DeFreese, you're released from
14 your subpoena.

15 WITNESS:

16 Thank you.

17 THE COURT:

18 Thank you.

19 MR. RICHARDSON:

20 Your Honor --

21 THE COURT:

22 Mr. Richardson?

23 MR. RICHARDSON:

24 -- uh -- the State rests.

1 THE COURT:

2 The State rests. Very well.

3 Ladies and gentlemen of the jury, the
4 State has rested.

5 There are some matters that I may --
6 I must take up for a few minutes.

7 I'm going to ask you to go to your
8 jury room, please.

9 (WHEREUPON: The jury empanelled in
10 the case withdrew from the courtroom at 2:31 PM, August 12,
11 2009; and was no longer present during the following
12 proceedings.)

13 MR. JOYE:

14 Judge, I --

15 THE COURT:

16 Counsel, the State has rested.

17 MR. JOYE:

18 Yes, sir, Your Honor.

19 And I think this would be a good time
20 for Mr. Richardson and I to talk about that other matter.

21 And I know just -- instead of
22 bringing someone in and have them just a second or two, and
23 -- and then take a break, is a bit unusual, Judge.

24 But I -- I think Mr. Richardson and I
25 need to talk.

1 He hasn't had a chance to talk with
2 his investigator about that one matter that we were --

3 THE COURT:

4 Are you going to make a motion?

5 MR. JOYE:

6 Oh, Yes sir.

7 And -- And I -- If you'll give me
8 just a few minutes, I wanted to talk about these other
9 things.

10 If you would prefer to do that now,
11 I'd be more than happy to.

12 THE COURT:

13 Well, why don't we go a -- That's not
14 going to affect your motion; is it?

15 MR. JOYE:

16 No, Your Honor.

17 THE COURT:

18 Okay. Well, let's go ahead --

19 MR. JOYE:

20 It -- It's not but I -- I'm sorry --
21 I'm getting kind of off on a track, and don't --

22 THE COURT:

23 All right. Let's go ahead and put
24 your motion on the record; all right?

25 MR. JOYE:

1 Your Honor -- uh -- I would move --
2 uh -- for directed verdict in as much as:

3 There is absolutely zero physical
4 evidence that points to the fact that -- uh -- Michael
5 Livingston was involved in this case in any way shape or
6 form.

7 All of it would be testimonial
8 evidence.

9 And any and all of that testimonial
10 evidence -- uh -- uh -- would be flawed, to say the least;
11 perjurers to say the most.

12 Uh -- That -- That these folks that
13 have testified, the codefendants, are all admitted drug
14 dealers, liars -- uh -- drug abusers, thieves.

15 Your Honor, the truth of the matter
16 is:

17 That any of us, in dealing with these
18 folks on an everyday basis, couldn't believe them if they
19 said the sky was blue outside.

20 THE COURT:

21 Mr. Joye, you're going to hurt Mr.
22 Richardson's feelings.

23 MR. JOYE:

24 Well, I didn't meant to hurt his
25 feelings.

1 I hate to pick of his witnesses,
2 Judge.

3 But, therefore:

4 I don't think that there would be any
5 evidence -- any credible evidence -- uh -- to support a
6 murder, armed robbery, or even possession of a weapon during
7 a crime of violence, against my client.

8 Thank you.

9 THE COURT:

10 Of course, I'm not -- on -- on a
11 directed verdict motion -- am not required to weigh the
12 evidence or pass on the sufficiency of the evidence or the
13 quality of the evidence.

14 That's certainly not appropriate on a
15 directed verdict motion.

16 The only thing before me is:

17 Whether or not there is evidence.

18 Uh -- In this case, we have direct
19 evidence in the form of eyewitness' testimony that can
20 certainly justified the -- uh -- jury's verdict of guilty,
21 if one was returned for guilty.

22 Uh -- And that's all we need to do.

23 Uh -- If the jury believes these --
24 uh -- these witnesses, they could certainly base a -- a
25 finding of guilt on that testimony.

1 And I'm going to respectfully deny
2 your motion.

3 All right; now you gentlemen have
4 indicated:

5 Y'all got to powwow again?

6 MR. RICHARDSON:

7 Uh -- I don't think so, Your Honor.

8 Uh --

9 THE COURT:

10 So, you're not going to talk with
11 him?

12 MR. RICHARDSON:

13 We have -- uh -- I'll just tell you
14 and -- uh -- Scott at the same time:

15 Crowman (phonetic) says that:

16 It's two -- uh -- officers; Tim
17 Troxell and Steve Clark.

18 And they're both talking to Kal.

19 And it's -- It's not really -- Both
20 of them are talking over each other.

21 So I guess: either, both, either/or,
22 could -- could verify it.

23 Of course -- uh -- we would object
24 because it's our position that:

25 Kal has already admitted that they

1 told him that the -- uh -- that they thought Amp had did it.

2 And -- uh -- certainly, if this were
3 going to impeach his credibility, he have to say:

4 I don't remember them saying that.

5 Or:

6 I don't remember getting that
7 information.

8 THE COURT:

9 Well, let me -- let me clean up the
10 record a little bit.

11 We -- We talked about this in
12 chambers. And I -- I don't think the record would be clear
13 as to exactly what you're talking about Mr. Richardson.

14 As I understand it, Mr. -- uh -- uh
15 -- Joye -- uh -- is contemplating calling one of the
16 investigators who took a statement from the witness, Kal --
17 -- uh -- and I --

18 MR. RICHARDSON:

19 Hill.

20 THE COURT:

21 Hill; Kal Hill, who has testified.

22 As the purpose of calling that
23 investigator -- uh -- would essentially be to ask him about
24 a -- uh -- a videotaped -- uh -- statement that was given by
25 Mr. Hill.

1 And the question is:

2 Whether or not Mr. Hill -- or the
3 perpetrator of this offense was suggested to Mr. Hill before
4 Mr. Hill gave him that information.

5 Is that correct, Mr. Joye?

6 MR. JOYE:

7 Yes, sir, Your Honor.

8 It's not impeach --

9 THE COURT:

10 Is that what we're talking about?

11 MR. JOYE:

12 It's certainly not impeachment
13 evidence.

14 Uh -- It is absolutely evidence that
15 I believe tends to show that:

16 We have an investigation that puts
17 cart before the horse.

18 THE COURT:

19 All right; then, I miscategorized it.
20 And -- And I understood your
21 position.

22 Your position is that:

23 This was the -- uh -- the -- the rush
24 to judgment.

25 Is that what you're talking about?

1 MR. JOYE:

2 Yes sir.

3 And I think it's classic rush to
4 judgment.

5 I think it's classically shown on
6 this tape, which is not that long.

7 Uh -- 20 minutes ladies, maybe?

8 UNIDENTIFIED SPEAKER:

9 Not that long. I think maybe 10.

10 MR. JOYE:

11 Huh?

12 UNIDENTIFIED SPEAKER:

13 10 minutes.

14 MR. JOYE:

15 10 minutes?

16 It's a 10 minute tape in which, as I
17 remember it -- and of course if it comes out differently I'm
18 -- I'm wrong -- but -- but as I remember it:

19 They get Mr. Hill in the interview
20 room with the tape recorder running and say:

21 Now Mr. Hill, what happened?

22 And at first, he denies, denies,
23 denies, that he was there; that he had anything to do with;
24 he knew anything about it; didn't know nobody; didn't know
25 nothing.

1 And then all of a sudden, they say:

2 Well look, you can be one of two
3 things. You may be a witness or you may be a Defendant.

4 And if you're a Defendant, you don't
5 want to go down for -- for 30 to life on this thing.

6 This is a murder investigation.

7 And guess what?

8 We know you didn't do it.

9 We know Amp did it.

10 THE COURT:

11 All right.

12 Let me -- Let me get my arms around
13 this thing as far as -- uh -- an evidentiary question.

14 It's my understanding that you're not
15 attempting to put up a prior inconsistent or consistent
16 statement as relates to Calvin -- or Kal Hill.

17 What you want to do, is:

18 You want to ask this officer if in
19 fact he suggested the perpetrator to the witness before the
20 witness ever gave him a statement or any other information;
21 that he was working backwards.

22 That's the point you're trying to
23 make.

24 MR. JOYE:

25 Yes sir, and he --

1 THE COURT:

2 So we're not looking to try to
3 backdoor hearsay testimony.

4 The testimony is not offered for that
5 purpose.

6 MR. JOYE:

7 No.

8 THE COURT:

9 This witnesses has testified. You
10 merely want to establish that:

11 The investigator, prior to receiving
12 any information, was suggesting the answers he was looking
13 for.

14 And that:

15 He was going about his investigation
16 in reverse order.

17 Is that what you're telling me?

18 MR. JOYE:

19 Yes sir.

20 And I -- my intention would be to
21 call one of the investigators; not -- In all sincerity,
22 Judge, I can't tell you one from the other on an audiotape.

23 It's not a videotape.

24 And the audiotape is simply saying --
25 uh -- they come in and -- and as I understand their

1 investigation, before they interviewed anyone, they got a
2 call, a lead, from a confidential informant by and through
3 the DEA.

4 And they met with that confidential
5 informant, who told them that:

6 Amp, Michael Livingston, had shot and
7 killed Ervin Graham.

8 And that:

9 The body was taken behind the house
10 and burned.

11 That was the -- the -- the beginning
12 of their investigation.

13 And then at that point, they began
14 working through this investigation.

15 And clearly, when you've got this
16 particular witness being told that:

17 We know you didn't do it.

18 We know you didn't have nothing to do
19 with it.

20 But, we really don't care.

21 We'll let you go down 30 to life,
22 when in fact, we know that Amp did it.

23 And we know I Amp shot him twice in
24 the head.

25 So now you've got -- uh -- someone

1 being threatened with 30 to life as a Defendant; or tell us
2 that Amp did, because we already know that.

3 THE COURT:

4 Well, what you -- you want to do is:
5 Call the investigator; ask him that.
6 You want to approach him with that
7 scenario.

8 If he denies it, you want to use the
9 tape to impeach him?

10 MR. JOYE:

11 Certainly.

12 MR. RICHARDSON:

13 So it would be a prior inconsistent
14 statement on the -- for the officer?

15 THE COURT:

16 Right.

17 MR. JOYE:

18 And -- And Your Honor, it is evidence
19 of -- of drawing your conclusion and going back to connect
20 the dots to where you wanted it to go; instead of ago --

21 THE COURT:

22 I understand.

23 MR. JOYE:

24 -- instead of --

25 THE COURT:

1 Okay.

2 MR. JOYE:

3 -- starting here and ending up with
4 an objective --

5 THE COURT:

6 All right.

7 Well, what I'm going to do is:

8 I'm going to let you talk to the
9 investigator. We'll see what the investigator says.

10 If he -- If he admits it, and says:

11 That's the tact we took.

12 And you and I both know that that is
13 commonly done.

14 It's not something so unusual if that
15 happens; and they can do it.

16 If he says:

17 Yes, I did it.

18 Do you still need the tape?

19 MR. JOYE:

20 The -- The problem I have, Judge, is
21 there were two separate investigators in there.

22 And I've got no clue who's saying
23 what.

24 So then, the problem's going to be --

25 THE COURT:

1 Well, you can just ask him if it was
2 said his presence. If that's what --

3 MR. JOYE:

4 Okay.

5 MR. RICHARDSON:

6 -- the -- the tact he took.

7 Mr. Richardson has no objection to
8 that, I'm sure.

9 MR. JOYE:

10 Well --

11 THE COURT:

12 If he says:

13 We did it.

14 We did it.

15 Correct, Mr. Richardson?

16 MR. RICHARDSON:

17 Yes sir. I'm -- I'm fine with that.

18 I -- And again, my -- my position has
19 always been that it should've come in through Kal.

20 Now I know Kal is gone. And it would
21 all -- be almost virtually impossible to bring Kal back.

22 I believe he was released from his
23 subpoena.

24 But Kal did say:

25 They did tell me that.

1 THE COURT:

2 And -- And I will agree with you.

3 I will agree that -- that I think
4 that Mr. Hill probably said that.

5 But it was difficult to finally --
6 for me to pin down exactly what Mr. Hill was or was not
7 saying.

8 And the tape could have been used --
9 uh -- for impeachment purposes -- uh -- prior inconsistent
10 statement or whatever with Mr. Hill.

11 But I think he can also bring in the
12 investigator and invest -- and -- and question the
13 investigator about the incident; the technique of
14 interrogation that was used.

15 MR. RICHARDSON:

16 I understand; yes sir.

17 THE COURT:

18 Okay. All right.

19 So, I think he can do it either way.

20 Uh -- We'll just have to see how it
21 develops; okay.

22 That's -- uh -- how I'm leaning.

23 That's -- uh -- I believe, how I'm
24 going to -- to rule.

25 Uh -- Mr. Joye -- uh -- I just want

1 to hear where you going with whoever your detective is;
2 whoever your investigator is; whoever the interrogator is.

3 MR. JOYE:

4 Yes sir.

5 Your Honor, what I intend to do is:

6 Call this -- this investigator and
7 state that:

8 Based upon information that you had,
9 that at the time that you spoke with -- uh -- Kal Hill, that
10 you had -- you believed that Michael Livingston was the
11 person that fired the two fatal shots that shot and killed
12 -- uh -- the decedent in this matter.

13 And that:

14 As a matter of that, you brought in
15 Kal Hill.

16 You picked him up out of his home.

17 You brought him in.

18 You told him he was being recorded.

19 You told -- And at first, when he
20 denied any knowledge of any of his, that you in fact said:

21 We know who did it.

22 We know Amp did it.

23 But you don't need to go down for a
24 murder charge that carries 30 to life.

25 THE COURT:

1 Okay.

2 I -- I understand the point you're --
3 you're making. And I -- I -- I've got it totally.

4 I understand what we're talking
5 about.

6 And I think you know where I'm
7 leaning.

8 If we talk about it anymore, I'm
9 going to have to put a new battery in.

10 MR. JOYE:

11 Okay. Well, I -- I thought -- You
12 asked me where I was going to go with it; so I --

13 THE COURT:

14 Okay.

15 MR. JOYE:

16 -- I wanted to let you know.

17 THE COURT:

18 All right. Okay.

19 Uh -- Are we ready to --

20 MR. JOYE:

21 Certainly.

22 THE COURT:

23 -- crank back up?

24 MR. RICHARDSON:

25 Well, he needs -- uh -- Tim Troxell,

1 I would assume.

2 MR. JOYE:

3 Or Steven Clark, either one; I don't
4 care.

5 MR. RICHARDSON:

6 Well, neither one of them's here.

7 I -- I guess -- uh --

8 THE COURT:

9 Holy pee-jee-zees.

10 (Laughter.)

11 THE COURT:

12 Do we have anything else?

13 MR. JOYE:

14 Well, I -- I just -- I specifically
15 told Mr. Richardson that -- I said:

16 Mr. Richardson, don't release anybody
17 from subpoena because I intend to call them; and we were in
18 agreement on that.

19 MR. RICHARDSON:

20 Yeah, but they -- they hadn't been
21 released, Your Honor.

22 Uh -- But I didn't have them down
23 here.

24 Uh -- Nor is -- uh -- None of them
25 are here because I wasn't planning on calling them.

1 But they're all under subpoena.

2 MR. JOYE:

3 Judge, I -- I've made it clear for
4 two solid days.

5 And I didn't put them under subpoena
6 because we talked about prior to this trial that he would
7 not release anybody from subpoena and they would be
8 available at this point in time.

9 And I've --

10 THE COURT:

11 Well, what is -- What is it going to
12 take to -- uh -- to get them down here, then?

13 MR. RICHARDSON:

14 I can call him on his cell. I just
15 want to be clear --

16 THE COURT:

17 Well, let's call him in on his cell.
18 He's the police. He can drive fast.

19 (Laughter.)

20 MR. RICHARDSON:

21 He hasn't been released. He's still
22 under subpoena.

23 THE COURT:

24 All right.

25 MR. JOYE:

1 Your Honor, in the -- in the dura --
2 in the meantime, then I'll talk with his Livingston about --

3 THE COURT:

4 Okay.

5 MR. JOYE:

6 -- testifying.

7 THE COURT:

8 Yeah, let -- what -- let me go ahead
9 and advise him of his right to testify.

10 We can at least use some -- some of
11 that time.

12 MR. JOYE:

13 Yes sir.

14 Mr. Bellamy, did you need me?

15 MR. SCOTT BELLAMY:

16 No sir, Your Honor.

17 THE COURT:

18 All right, Mr. Joye.

19 MR. JOYE:

20 Yes sir. I'm sorry.

21 THE COURT:

22 Clerk, would you put Mr. -- uh --
23 Livingston under oath, please.

24 WHEREUPON; The Defendant was duly
25 sworn in open court by the Clerk at 2:45 PM.

1 THE COURT:

2 Mr. Livingston, at this time I'm
3 going to explain to you certain rights that you have.

4 And if you don't understand anything
5 that I say, please let me know.

6 Uh -- If -- If you want me to explain
7 anything in a more detailed fashion, let me know that.

8 Now, do you understand that?

9 I'll be glad to explain anything --
10 uh -- uh -- several times to you.

11 I want to make sure that you
12 understand what we're talking about here.

13 Is that fair enough?

14 DEFENDANT:

15 (Not Audible.)

16 THE COURT:

17 All right, sir.

18 Now, we've reached --

19 COURT REPORTER:

20 Your Honor, I didn't pick up his
21 answer.

22 THE COURT:

23 What was your reply, sir?

24 DEFENDANT:

25 I understand, Your Honor.

1 THE COURT:

2 All right.

3 Now we've reached the state in the
4 trial when you may present your defense.

5 You have the right to claim the
6 protections given to you by the Fifth Amendment to the
7 Constitution of the United States.

8 And this -- uh -- amendment -- uh --
9 states, in part:

10 No person shall be compelled in any
11 criminal case to be a witness against himself.

12 This means that you cannot be
13 required to testify in this case.

14 You have the right to testify on your
15 on behalf if you wish to do so.

16 However, no one can make you testify.
17 And this is a personal right. And no one can waive this
18 right except you, sir.

19 If you decide to testify, you will be
20 subject to the same rules that govern the other witnesses.
21 And you may be examined and cross-examined on any relevant
22 issue in this case.

23 That is, if you decide you want to
24 testify.

25 In addition, if you have any

1 convictions involving dishonesty, or false statement, or for
2 crimes punishable by the imprisonment for more than one
3 year, and this Court determines that the probative value of
4 admitting this evidence outweighs it's prejudicial effect on
5 you, the Solicitor, that's Mr. Richardson, will be able to
6 introduce your record to attack your credibility.

7 And he does that right in front of
8 the jury.

9 Do you understand that?

10 DEFENDANT:

11 Yes sir.

12 THE COURT:

13 Okay.

14 If you decide to testify, this
15 decision on your part must be freely, voluntarily and
16 intelligently made, with the knowledge of the protections
17 given to you by the Fifth Amen -- uh -- Amendment and the
18 consequences of your decision to testify.

19 If you decide not to testify, I will
20 instruct the jurors that they cannot give that fact -- or
21 give the fact that you have not testified any consideration
22 whatsoever.

23 If you want to remain silent, the
24 jury must not and cannot use it against you in any form or
25 fashion.

1 I will also tell them that there is
2 absolutely no prejudice to you because you did not testify.

3 It's left entirely up to you whether
4 or not to testify.

5 Now, you have an -- a right to talk
6 with your attorney, your family, your friends, or anyone
7 else.

8 But the final decision will be left
9 entirely up to you as to whether you want to testify.

10 Now, do you understand what I've
11 explained to you?

12 DEFENDANT:

13 Yes, Your Honor.

14 THE COURT:

15 Do you want me to re-explain, or
16 revisit anything that I have just told you?

17 DEFENDANT:

18 No sir.

19 THE COURT:

20 You fully understand your rights?

21 DEFENDANT:

22 Yes, Your Honor.

23 THE COURT:

24 Have you -- uh -- had an opportunity
25 to talk to your attorney about this?

1 DEFENDANT:

2 Not yet. We're fixing to talk right
3 now, Your Honor.

4 THE COURT:

5 Okay.

6 Uh -- But have y'all talked generally
7 about your right to testify, in the past?

8 DEFENDANT:

9 Yes, Your Honor.

10 THE COURT:

11 So you and your -- your lawyer have
12 visited this, and y'all going to talk again right now about
13 it.

14 Do you understand that?

15 DEFENDANT:

16 Yes, Your Honor.

17 THE COURT:

18 Okay. All right.

19 I'm going to allow you to talk to
20 your attorney. And I'm going to bring you back and when you
21 have finished discussing this with him.

22 And I'll let you tell me at that time
23 whether or not you wish to testify.

24 And let me tell you how -- uh -- sort
25 of a personal rule that I have:

1 I'm going to ask you whether you want
2 to testify or not.

3 Uh -- Basically, I do that because I
4 have just spent some time explaining to you that you have
5 the right not to testify.

6 I've explained to you the
7 consequences of testifying and what might happen to you if
8 you do testify; and what may happen to you if you don't
9 testify.

10 Uh -- I want you to understand that.
11 But my rule is this:
12 I will let you change that at any
13 time during your trial.

14 Do you fully understand that?

15 DEFENDANT:

16 Yes, Your Honor.

17 THE COURT:

18 All you got to lean over -- do is
19 lean over to your attorney and say:

20 I changed my mind. I want to
21 testify.

22 Or:

23 I change my mind. I don't want to
24 testify.

25 Do you understand that?

1 DEFENDANT:

2 Yes, Your Honor.

3 THE COURT:

4 And I'm going to instruct your
5 attorney:

6 If that happens, I want him to come
7 up here and tell me that privately.

8 I don't want him to say that in front
9 of the jury.

10 Do you understand that?

11 DEFENDANT:

12 Yes, Your Honor.

13 THE COURT:

14 All right.

15 Is there anything else I can do that
16 you feel is necessary to help protect your Fifth Amendment
17 rights?

18 DEFENDANT:

19 No, Your Honor.

20 THE COURT:

21 All right, sir. Thank you.

22 All right.

23 We're willingly at ease.

24 (WHEREUPON: The court was declared
25 in recess at 2:51 PM, August 12, 2009.)

1 (WHEREUPON: The court was called to
2 order by the Bailiff at 3:40 PM, August 12, 2009; and all
3 pertinent parties, along with their counsel, were back and
4 present in the courtroom.)

5 BAILIFF:

6 Order in The Court. All rise.

7 THE COURT:

8 All right, gentlemen. Please be
9 seated.

10 Please be seated.

11 MR. RICHARDSON:

12 Uh -- Just a few more minutes for his
13 part.

14 And -- uh -- he left the room after
15 that. So he's just listening to his part.

16 THE COURT:

17 Okay.

18 REPORTERS NOTE: They are apparently
19 speaking about the next witness, who is listening to an
20 audio tape that he may be asked to testify concerning.

21 THE COURT:

22 And I were about ready?

23 MR. RICHARDSON:

24 Your Honor, he's -- he's about
25 through with his part.

1 THE COURT:

2 Okay. All right.

3 Gentlemen, I just caution you: 5:30 I
4 have a juror that I have promised that she will be released.

5 Short. Okay

6 All right, gentlemen.

7 MR. JOYE:

8 Charges?

9 THE COURT:

10 This is the charge I anticipate
11 giving. Have any -- uh -- additions or objections ready
12 tomorrow morning; okay.

13 MR. JOYE:

14 That's a long --

15 THE COURT:

16 Not long; complete.

17 I -- uh -- haven't -- I don't think
18 I've tried a case with either one of you, have I?

19 Is this the first case I've tried
20 with both of you?

21 MR. JOYE:

22 Yes sir.

23 MR. RICHARDSON:

24 I tried one with you before.

25 THE COURT:

1 All right. It's --

2 MR. RICHARDSON:

3 I wasn't that impressive; apparently.

4 (Laughter.)

5 THE COURT:

6 It's my practice, Mr. Joye, to -- uh

7 -- follow the rule. And -- uh -- I'm going to read my

8 charge verbatim. And then I give the jury a copy of my

9 charge.

10 And that way, we've never had a jury

11 come back and ask for a re-charge on the law.

12 WHEREUPON: Everyone was at ease in

13 the courtroom awaiting the next witness. The witness

14 entered the courtroom at 3:49, PM.

15 THE COURT:

16 All right; are we ready?

17 MR. JOYE:

18 Yes sir.

19 THE COURT:

20 Okay. Bring in that jury, if you

21 would, Ms. King.

22 (WHEREUPON: The jury empanelled in

23 the case was escorted back into the courtroom at 3:52 PM,

24 August 12, 2009; and was in fact present during the

25 following proceedings.)

Testimony of Detective Timothy Troxell

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1 THE COURT:

2 Ladies and gentlemen, I'm sorry again
3 for the delay in keeping you back there in your room.

4 We had a witness that was -- uh --
5 unavoidably detained.

6 We've gotten that witness here.

7 And I promised -- I think one of you
8 -- that we would be done by 5:30.

9 And I promise you all that we'll be
10 done well before then; okay.

11 Mr. Joye?

12 MR. JOYE:

13 Yes Your Honor.

14 Defense would call: Detective Tim
15 Troxell.

16 WHEREUPON: DETECTIVE TIMOTHY TROXELL
17 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

18 CLERK:

19 Thank you.

20 Please state your full name and spell
21 your last name.

22 WITNESS:

23 Timothy Troxell, T-r-o-x-e-l-l.

24 DIRECT EXAMINATION BY MR. JOYE:

25 Q. Detective Troxell -- uh -- you work with Horry County

1 Police --

2 A. Yes, I do.

3 Q. -- Department? And how long have you been a
4 Detective?

5 A. I've been a Detective since November of 2005.

6 Q. And with reference to this case, did you have some
7 involvement this particular case? In the case --

8 A. Yes sir, I did.

9 Q. And subsequent to becoming involved in this case -- uh
10 -- did you have occasion to speak to Kal Hill?

11 Q. Yes sir, I did.

12 Q. And I believe his name's actually Kalamison Hill or
13 something?

14 A. Yes sir.

15 Q. And you have been back in the back reviewing a tape
16 interview between you -- yourself -- uh -- former Detective
17 Steve Clark, and Kal Hill?

18 A. Yes sir.

19 Q. And having listened to that tape, what if anything, can
20 you tell us about -- uh -- Kal Hill being either a defendant
21 or a witness in this case?

22 A. It was my knowledge going into that interview:

23 Kal Hill was present, possibly
24 walking down the street, when this incident took place.

25 Q. So previous to that, you had some information that Kal

1 Hill was -- was there?

2 A. Was walking down the street; yes sir.

3 Q. And previous to going into this interview, you had some
4 information that Amp -- that Michael Livingston had shot or
5 Ervin Graham?

6 A. Yes sir.

7 Q. And in this particular interview, you told Kal Hill
8 that:

9 He could be a witness or he could be
10 a defendant.

11 Didn't you?

12 A. Yes sir, I did.

13 Q. And you told him that the possible punishment could be
14 -- you could a 30 to life on this particular case?

15 A. Yes sir.

16 Q. And you told him that you knew that he was not the
17 shooter?

18 A. Yes sir.

19 Q. And you also told him:

20 You knew that Michael Livingston, or
21 Amp, had shot -- had shot Ervin Graham; and that you needed
22 him to say that; didn't you?

23 A. I didn't say: I needed him to say that; no sir.

24 But I did tell him that I knew who
25 the shooter was.

1 Q. And you told him it was Amp?

2 A. Yes sir, I did.

3 Q. And that was prior -- And up to that point, he had
4 said: He didn't know nothing about nothing?

5 A. Yes sir.

6 Q. So only after you tell him he could do 30 to life, does
7 he then say -- and -- and told him that Amp shot him, did he
8 then say:

9 Amp shot him.

10 Q. No sir. It was sometime after that. And I believe I
11 excused myself from the interview when those statements were
12 made.

13 So the exact extent of his statement;
14 I do not know.

15 Q. You do -- You have review it?

16 A. I didn't review the entire -- I reviewed up until where
17 I exited the room.

18 Q. Okay. But before exiting the room, you told him he
19 could do 30 to life?

20 A. Yes sir, I did.

21 Q. Before exiting the room, you told him that Amp shot
22 him?

23 A. Yes sir, I did.

24 MR. JOYE:

25 Thank you Detective.

1 THE COURT:

2 Anything, Mr. Richardson?

3 MR. RICHARDSON:

4 Yes sir. Just a few.

5 CROSS-EXAMINATION BY MR. RICHARDSON:

6 Q. Is it unusual -- uh -- Do you interview a lot of
7 people?

8 A. Yes sir.

9 Q. All right. And it's not unusual for you to give part
10 of what you already know to the witnesses; is it?

11 A. No, it's not. It's attempt to gain the individual
12 we're interviewing's trust; to let him know that I know a
13 little bit about what I'm talking about; so that he feels a
14 little more comfortable to tell me the full story, or all
15 the information that he knows.

16 Q. So, has it ever been successful for you walk in and
17 say:

18 What happened?

19 A. No sir.

20 Q. All right. And -- And when you suggest that you part
21 of it, did he -- When you told him:

22 I know an Amp did it.

23 Did he told you:

24 No. No. No. No. No. Amp didn't do it.

25 He didn't tell you that; did he?

1 A. No sir. He did not.

2 Q. And even after you told him:

3 I know Amp did it.

4 He still refused to say anything?

5 A. Yes. I believe it went on for a least another 5 to 6
6 minutes with me in the room, encouraging him, and letting
7 him know that we know who had did it before he would even
8 come forward.

9 And I excused myself from the room.

10 So, at that point, I still can't you
11 when he said it.

12 Q. And he never told you: Amp did it?

13 A. Never.

14 Q. But Steve Clark was in the room also; correct?

15 A. Yes sir.

16 Q. And Steve Clark had worked with -- uh -- Kal Hill from
17 a past experience; correct?

18 A. From my understanding, yes sir.

19 Q. And that was where Kal had been a victim; got run off
20 the road and injured?

21 A. Yes sir.

22 Q. And -- And at that point, Steve Clark had helped Kal
23 Hill in some sort of -- uh -- fashion, whereas the -- uh --
24 witness was a victim?

25 A. Yes, he did.

1 Q. And it was obvious that Hill was closer to Clark than
2 he was to you?

3 A. Yes sir. It was obvious that they established some
4 sort of bond between -- uh -- from the prior incident.

5 And he felt a little more comfortable
6 talking to Steve Clark than he did to me.

7 So I excused myself from the room.

8 Q. Did Steve Clark suggest that you leave the room?

9 A. No sir. I -- That was at my own suggestion.

10 Q. All right. So you had already determined that:

11 He would feel more comfortable
12 talking with Clark by himself?

13 A. Yes sir.

14 Q. All right. And at no point, did you give him any of
15 the details of the shooting; did you?

16 A. No sir.

17 Q. You didn't tell him:

18 There were two shots as opposed to
19 one?

20 A. No sir.

21 Q. You didn't tell him where it had taken place?

22 A. No sir.

23 Q. You just told them that your information was that, Amp
24 had shot him?

25 A. Yes sir.

1 Q. And he didn't say:

2 No. No. No. No. Amp hadn't got
3 nothing to do with this?

4 A. No sir, he did not.

5 Q. No. \Even when you questioned him on and on, he never
6 said:

7 Not Amp. Not Amp?

8 A. Yes sir. Even after I mentioned the name "Amp," he
9 still didn't give any acknowledgment to that.

10 Q. And he didn't tell you nothing about Tony or Chadd?

11 A. No sir, he did not.

12 Q. And he didn't say anything about Coaty?

13 A. No sir.

14 Q. It was only after you left that he talked with Steve
15 Clark?

16 A. Yes sir.

17 Q. All right. Now, you had developed this name -- uh --
18 through a confidential informant; correct?

19 A. Yes sir.

20 Q. Amp?

21 A. Yes sir.

22 Q. So someone else that we hadn't even heard from today
23 had said: Amp did it; before anybody else did?

24 A. Yes sir.

25 Q. This was during that time period that the decedent was