

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Scott Sprouse, Circuit Court Judge

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MAY 29 2018

S.C. SUPREME COURT

JERRY L. SCANTLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002084

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 292101

ATTORNEYS FOR RESPONDENT

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1 hand on the Bible and raise your right hand for me,
2 sir.

3 [Whereupon, Mr. Bromage is duly sworn by the
4 clerk of court as follows: do you solemnly swear to
5 truthfully answer all questions asked of you by this
6 court, so help you God]

7 THE WITNESS: I do.

8 THE CLERK OF COURT: Please be seated.

9 [Whereupon, Mr. Bromage takes the witness stand]

10 THE CLERK OF COURT: State your name and spell
11 it for the Court, please.

12 THE WITNESS: Robert E. Bromage. B-R-O-M-A-G-E.

13 - - - - -

14 ROBERT E. BROMAGE,

15 Having Been First Duly Sworn,

16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. THORNTON:

19 Q. Captain Bromage, who do you work for, sir?

20 A. Beaufort County Sheriff's Office.

21 Q. And did you work for the Beaufort County
22 Sheriff's Office in May of 2010?

23 A. I did.

24 Q. Have you worked for them continuously since
25 then?

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1 A. Yes, sir.

2 Q. Did you have occasion to have any connection to
3 the case of the State versus Jerry Scantling involving the
4 murder of Mr. Green?

5 A. I did.

6 Q. And did you have any interviews with
7 Mr. Scantling, the defendant in this case?

8 A. On three different occasions.

9 Q. And do you remember the dates of those
10 interviews?

11 A. I do. May 27th, 2010, May 28th, 2010, and June
12 9, 2011.

13 Q. Captain Bromage, there was -- were you in the
14 courtroom earlier when some audio was played?

15 A. I was.

16 Q. All right. And was that your voice? I think
17 all but one of those clips, was that your voice on the
18 tape?

19 A. Yes, sir.

20 Q. Let me ask you a question. I want to just go
21 ahead and end the suspense right now. Do you sometimes
22 tell defendants that you have evidence that you don't
23 actually have?

24 A. Yes, sir, we do.

25 Q. All right. How many interviews have you

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1 conducted over the course of your career?

2 A. In twenty-three years, probably about between
3 500 and 1,000. Probably over a hundred involving homicide
4 cases. So quite a few.

5 Q. Let me ask you a question. Is it unusual for a
6 defendant to come in and not tell you the whole truth the
7 first time you talk to them?

8 A. I'd be shocked if they told me the truth the
9 first time.

10 Q. So you mean to tell me that if you do an
11 interview with a defendant, they don't just walk in and
12 just admit to everything they've done?

13 A. No, sir. In a perfect world they would, but
14 unfortunately we have to -- we have to mislead them
15 sometimes, we have to trick them sometimes. And that's --
16 that's part of interview interrogation.

17 Q. Do you remember telling Mr. Scantling that you
18 had -- that you had his DNA or could have his DNA?

19 A. Absolutely. Many times.

20 Q. And there's no way, even with your own lab, you
21 could get DNA back in five days, could you, or three days?

22 A. It would be difficult, yeah. I would say --

23 Q. You didn't have it in this case, did you?

24 A. We didn't have it yet, no.

25 Q. What about the video of Hilton Head Gardens?

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1 A. There was no video there.

2 Q. Now, when you're telling defendants these
3 things, are you telling them that so they'll lie to you?
4 What's the purpose of doing that?

5 A. We're trying to provide an environment where
6 they're most likely to tell the truth, and give them the
7 impression that we have more than we actually do, up
8 front.

9 Q. So is the purpose of that to get them to confess
10 to crimes they didn't do?

11 A. No. To get them to confess to crimes they did
12 do.

13 Q. Now, you said you talked to Jerry Scantling on
14 three different days; is that right?

15 A. That's correct.

16 Q. Now, I know I asked you this kind of in a broad
17 sense. In this case with Jerry Scantling, did he walk in
18 and tell you the exact same story the whole time?

19 A. He changed his story many times in the first
20 interview, he changed it in the second interview, and in
21 the third one he didn't know anything.

22 Q. You mean to tell me he didn't give you the
23 entire full story from the get-go?

24 A. No. It started out --

25 Q. Go ahead. Tell me what he told you the first

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1 time you talked to him.

2 A. It started out he had no idea who Leonard Green
3 was, had no idea about the red pickup truck. And when
4 presented with evidence or proposed evidence from myself
5 and Master Sargent Riley, he came around and said he ran
6 into Leonard Green twice on Saturday, the day he
7 disappeared.

8 Q. Let me ask you a question with regard to that.
9 Now, you're talking about the Wal Mart. Did he reference
10 -- do we know which Wal Mart?

11 A. The Wal Mart on Hilton Head.

12 Q. All right. So he's not talking about the Wal
13 Mart in Savannah?

14 A. No. That's totally separate.

15 Q. All right. Well, let me ask you this. What did
16 he -- at what time did he say he was with the victim in
17 this case, Leonard Green?

18 A. Sometime late morning on Saturday, Saturday the
19 22nd of May, 2010. And then 11:00 or 12:00 at night he
20 ran into him again --

21 Q. I'm sorry. I'm sorry. I didn't mean to
22 interrupt you. 11:00 or twelve o'clock at night?

23 A. In the morning and at night.

24 Q. Night?

25 A. He ran into him twice that day.

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1 Q. And that would have been the night of the
2 murder?

3 A. Within a couple of hours of Leonard Green being
4 murdered. That's correct.

5 Q. So he admitted to you that he was with the
6 victim around the time frame of when the victim was
7 murdered?

8 A. He admitted that. Yes, sir, he did.

9 Q. All right. What else did he -- what other
10 things did he tell you that you found interesting?

11 A. Well, he suggested that Leonard Green had made a
12 move on him, he suggested he was gay, he suggested that he
13 was a sexual predator, he suggested that he kidnaped him,
14 he -- if you want specifics, I'll certainly provide them.

15 Q. Yeah, give me some specifics, if you have them
16 noted down somewhere.

17 A. Initially he said he had never rode with Leonard
18 Green, never got in his truck. He said he saw him at Wal
19 Mart that morning but didn't get a ride with him. He said
20 he asked him for a ride and Leonard Green gave reference
21 to his penis, so he said he walked away.

22 Q. All right. Let me stop you right there,
23 Captain.

24 So he says first he never rode with him --

25 A. That's correct.

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1 Q. -- then he says he saw him at Wal Mart but
2 didn't ride with him?

3 A. Right.

4 Q. Then he says, well, I asked him for a ride but
5 he talked about my penis so I walked away?

6 A. Exactly.

7 Q. All right. Go ahead.

8 A. He said at one point, what if I said this man
9 tried to kidnap me. He said, what am I looking at or --
10 I'm going to ask you what I'm looking at if I tell you how
11 this went down.

12 Q. All right. Would you go back over that one
13 again, please.

14 A. He said specifically, I'm going to ask you what
15 I'm looking at if I tell you how this went down. At which
16 point we responded, we can't offer you anything at all; we
17 can't offer you a deal, we can't -- that's not our job; we
18 can provide you with a -- like under the statute, and
19 that's it.

20 Q. All right. What else?

21 A. It says he admits seeing the victim later that
22 night, which would have been Saturday on the 22nd of May,
23 and it says the victim was trying to get him to ride with
24 him to Ridgeland.

25 Q. And what -- do you know anything about why --

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1 what -- does the victim in the case, Mr. Green, have any
2 connection to Ridgeland?

3 A. He had a house in Ridgeland. That's correct.

4 Q. Okay. Go ahead, sir.

5 A. He says that it was actually 11:00 or 12:00 the
6 night of the murder, which is when he ran into Leonard
7 Green on Matthews Drive. He admitted to stealing the
8 Monte Carlo from Savannah. He admitted, over an hour into
9 the interview, that he was in the truck with the victim
10 during the daytime -- which is Leonard Green -- during the
11 daytime at Wal Marts. It says he caught a ride to Hilton
12 Head Gardens.

13 Q. All right. And I'm sorry. Go ahead.

14 A. Okay. Jerry Scantling lives on the street.
15 Lives in the breeze ways there, so that's -- that's --

16 Q. All right. So let me ask you a question. And,
17 again, I just want to go back over this so it's clear to
18 this jury.

19 So he starts out with he doesn't know him, he's
20 never seen him before, then it's I never rode with him,
21 then it's I asked him for a ride, and then later on, over
22 an hour into the interview, he finally comes off of, well,
23 yeah, I got a ride with him but it was during the day?

24 A. Right. And that was after we brought up the DNA
25 and the truck, fingerprints in the truck. He thought

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1 about it and said, I caught a ride with him --

2 Q. And when you say DNA in the truck and
3 fingerprints in the truck, did you have DNA or
4 fingerprints in the truck --

5 A. I don't even --

6 Q. -- at that time?

7 A. I don't even think we had the truck. We didn't
8 have the truck back from Savannah at that point.

9 Q. All right. So he finally comes off with the
10 fact -- he, being Jerry Scantling, that he had a ride,
11 caught a ride, or was in the truck with the victim?

12 A. Yes, sir.

13 Q. All right. Go ahead, sir.

14 A. Tried -- he said, he tried to get me to his
15 house that night. Referring to the victim's house in
16 Ridgeland. The dude tried to make a move on me, and I
17 wasn't having it. And admits to using the victim's phone.

18 Q. Uh-huh.

19 A. Asked him to use the phone. Of course, when I
20 asked who he called, he couldn't provide any name at all
21 and we figured out later it was Donald Cooper who actually
22 received that telephone call.

23 Q. If I could stop you for just a second, Captain.

24 A. Yes, sir.

25 Q. I'm going to show you what's been introduced as

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1 Exhibit 66. I realize this was not your part of the
2 investigation. But is that the phone you're referring to
3 and the phone number that was called?

4 A. It appears to be, sir, yes.

5 Q. So Jerry Scantling admits to you now that he did
6 use the victim's phone?

7 A. Right. Again, after being told that we'd be
8 able to get DNA off the phone and fingerprints and
9 everything else.

10 Q. Right.

11 And so he admits it, but he denies calling Dirty
12 Red?

13 A. He denied calling Dirty Red. And, you know,
14 says he couldn't remember. He had a number written down
15 and he called a friend and couldn't recall who the friend
16 was he called or anything like that. That was his words.

17 Q. All right. Was that the -- for lack of a better
18 word, the gist of the first interview?

19 A. That was the significant parts of the first
20 interview.

21 Q. All right. And this obviously takes place over
22 probably more than two hours. Is that fair to say?

23 A. A couple of hours, with numerous cigarette
24 breaks and I think a lunch break.

25 Q. Let me ask you this. Did you -- you talked to

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1 him again you said three times total. What's the date of
2 the second interview?

3 A. The second interview is May 28th, 2010.

4 Q. And what did he tell you of any significance
5 that you found in the second interview?

6 A. He said it -- identified it as a red Ford pickup
7 truck that he -- that Leonard Green was driving.
8 Identified a photograph I provided him as Leonard Green.

9 Q. All right. Let me stop you right there.

10 [Whereupon, State's Exhibit Number 73 is marked
11 by the court reporter]

12 Q. [Mr. Thornton] I'm going to hand you what's
13 been marked as State's Exhibit 73 for identification. I'm
14 going to ask you if you can identify that photograph.

15 A. Yes, sir. This is a photograph of Leonard Green
16 that I presented to Jerry Scantling in the second
17 interview on May 28th. He actually signed it and
18 indicated he saw this individual, Leonard Green, on the
19 22nd, which is the Saturday, at 11:30 p.m.

20 Q. Is that an accurate depiction of Leonard Green
21 in the photo that you showed Jerry Scantling of him during
22 your second interview?

23 A. It is.

24 Q. Has it been altered or changed in any way?

25 A. No, sir. It's the original.

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1 MR. THORNTON: Your Honor, I would ask that
2 State's Exhibit 73 be moved into evidence.

3 MR. WALKER: No objection.

4 THE COURT: Without objection.

5 [Whereupon, State's Exhibit Number 73 is
6 admitted into evidence by the Court]

7 Q. [Mr. Thornton] Go ahead, sir. After you --
8 after he identified that photograph, does he talk about
9 anything else?

10 A. He does. What I tried to do in the second
11 interview was minimize the gravity of the whole thing to
12 Jerry to give him a way to explain what happened, and by
13 suggesting that Leonard had made a move on him, we went
14 down that road a little bit. And what he said, something
15 ain't right about him, something about his mouth ain't
16 right, somebody would bust his ass. He again admitted to
17 being a thief and he stole a car from Savannah. He
18 changed his story now to say he never used -- never used
19 the phone and he never was in the red pickup truck. And
20 that was after he admitted it the first day.

21 Q. All right. So now he's changed his story back
22 to he was never in the truck and he never used the phone?

23 A. Right. He didn't change that the entire second
24 interview. I believe he stayed with that story.

25 Q. All right. But he changed that from the first

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1 interview; is that correct?

2 A. That is correct.

3 Q. All right, sir. Go ahead.

4 A. Said between 11:00 or 12:00 that Leonard Green,
5 he was in a red pickup truck, that he -- that would be
6 between 11:00 and 12:00 on Saturday night, the 22nd, did a
7 U-turn on Mathews Drive in front of Jerry -- pulled in
8 front of him and talked between three and five minutes and
9 had a conversation where Leonard tried to get him back to
10 his house. And he said he was okay with Leonard during
11 the daytime but felt that Leonard was a threat to him so
12 he did not get in the truck that night.

13 Q. All right. And what about the third interview?

14 A. Well, he said in the second interview also --

15 Q. I'm sorry. Go ahead.

16 A. -- also that, I don't see something -- I don't
17 see how something with my DNA could be anywhere around
18 that dude. Talking about Leonard Green.

19 Q. All right. What did he say in his third
20 interview?

21 A. The third interview --

22 Q. Was that as long as the others or was it
23 relatively short?

24 A. It was relatively short. That was the day we
25 actually charged him with the murder.

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1 Q. All right. And I'm going to --

2 MR. THORNTON: Need to get this pre-marked,
3 Judge. I'm sorry.

4 [Whereupon, State's Exhibit Number 74 is marked
5 by the court reporter]

6 Q. [Mr. Thornton] I'm going to hand you what's
7 been marked for identification at this point as State's
8 Exhibit 74. Can you identify that? What is that, sir?

9 A. This is a print from the video outside of the
10 Wal Mart in Savannah taken on May 23rd, 2010, where the
11 victim Leonard Green's phone was located in the trash in
12 the men's room.

13 Q. All right. And is that -- is that a video that
14 you've reviewed and can verify that that still is from the
15 video?

16 A. Yes, sir, this is a still from that video.

17 Q. All right. And who did that -- who did you
18 believe was that walking into the Wal Mart in Savannah?

19 A. Jerry Scantling.

20 Q. All right. Is it a very clear picture or is it
21 somewhat blurred?

22 A. Somewhat blurred. But if you know Jerry, it
23 looks like Jerry --

24 Q. How long have you known Jerry Scantling?

25 A. Since he was twelve, thirteen years old.

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1 Q. All right. Let me ask you this. Did you ask
2 Jerry Scantling any questions, or did you show him that
3 photograph, in the third interview?

4 A. I think I said exactly, Jerry, who's this.

5 Q. And what was his response?

6 A. I ain't going to take -- I ain't going to say
7 it's me, I ain't going to say it ain't, I don't want to
8 incriminate myself. That's exactly what he said.

9 Q. Now --

10 MR. WALKER: I have to object at this point,
11 Your Honor.

12 THE COURT: Subject to your prior, yes,
13 objection. Noted for the record. Thank you, sir.

14 MR. WALKER: But I also want to avoid any
15 comments on his exercising any of his rights --

16 THE COURT: All right. Just keep going. Let's
17 get past that.

18 MR. THORNTON: Yes, ma'am.

19 THE COURT: Thank you.

20 Q. [Mr. Thornton] Captain Bromage, let me ask you
21 this, just to refresh. I know you were involved in some
22 of the bits of investigation. Where was the Monte Carlo
23 stolen out of that Jerry Scantling told you he stole?

24 A. Jerry told me it was stolen out of
25 Yamacrawville, which is in Savannah. And that's where it

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1 was stolen from.

2 Q. And do you know where the officers with your
3 department were dispatched to the victim's truck?

4 A. Right over here behind the courthouse.
5 Parkview or Parkside apartments. It's in the city
6 jurisdiction.

7 Q. All right. Let me rephrase my question.

8 Do you know where your officers were dispatched
9 to to go process the victim's truck where it was found
10 abandoned?

11 A. It was found abandoned in Savannah.

12 Q. Okay. Did you review the videotape? And it's
13 actually been entered into evidence. State's Exhibit 56,
14 did you review that videotape as part of pulling the still
15 shots from it from Wal Mart?

16 A. I did. I did. I went through that a few times,
17 yes, sir.

18 Q. Is there a vehicle that would match the victim's
19 truck, what appeared to be a Ford pickup truck, extended
20 cab?

21 A. Yes.

22 Q. And by the way, what is the time stamp on --

23 THE WITNESS: I handed it back to you.

24 MR. THORNTON: Your Honor, Court's indulgence
25 for a moment. I'm sorry.

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1 THE COURT: That's okay.

2 [Whereupon, Mr. Thornton reviews documents]

3 MR. THORNTON: Sorry, Judge. I have too many
4 photographs up here..

5 Q. [Mr. Thornton] What is the time stamp on
6 State's Exhibit 74 showing, I ain't saying it's me and I
7 ain't saying it's not, Jerry Scantling going into the Wal
8 Mart on Ogeechee Road?

9 A. May 23rd, 2010, 11:39:39 a.m.

10 Q. All right. So 11:30 in the morning?

11 A. Yes, sir.

12 Q. On Sunday, the 23rd?

13 A. Sunday the 23rd.

14 Q. All right. Thank you.

15 MR. THORNTON: Your Honor, the Court's
16 indulgence, please, for one moment.

17 [Whereupon, Mr. Thornton reviews documents]

18 MR. THORNTON: May we approach, Your Honor?

19 THE COURT: [Indicates affirmatively]

20 [Whereupon, an off-the-record bench conference
21 is held]

22 MR. THORNTON: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. THORNTON: Your Honor, the Court's
25 indulgence, please, one moment.

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1 THE COURT: Sure.

2 [Whereupon, Mr. Thornton reviews documents]

3 Q. [Mr. Thornton] Captain Bromage, were you at
4 all -- were you involved in some way of the seizure of
5 Mr. Scantling's clothing that he was wearing when
6 arrested?

7 A. I believe I was, sir.

8 Q. All right, sir. And did that clothing more or
9 less match the clothing that was on that videotape?

10 A. Yes, sir.

11 Q. And other than that, sir -- and I realize
12 that -- was your main connection the interview of Jerry
13 Scantling and then one or two other interviews? Was that
14 your main connection with this case?.

15 A. My main direct involvement. I oversaw the --

16 Q. Yes, sir.

17 A. -- the entire investigation.

18 MR. THORNTON: All right. Thank you very much.

19 Your Honor, again, subject to recall, I've got
20 noting further for Captain Bromage.

21 Thank you, Captain. Please answer any questions
22 Mr. Walker has.

23 THE COURT: Mr. Walker.

24 MR. WALKER: Good morning.

25 THE WITNESS: Good morning, Mr. Walker.

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CROSS-EXAMINATION

1
2 BY MR. WALKER:

3 Q. You interviewed Mr. Scantling three separate
4 times; correct?

5 A. I did, sir.

6 Q. You've done a lot of interviews in your career;
7 correct?

8 A. I have.

9 Q. You've had training on how to do it; correct?

10 A. Yes, sir.

11 Q. All right. Have you had training that dealt
12 with avoiding false confessions?

13 A. Absolutely. Yes, sir.

14 Q. Why don't we want a false confession?

15 A. Why don't we want -- we want to make --

16 Q. Why don't we want --

17 A. -- we want to make sure -- we want to make sure
18 that we are actually putting the right person behind bars
19 at the end of the day.

20 Q. So you would want to avoid things that might
21 encourage false confessions; correct?

22 A. Yes, sir.

23 Q. All right. Your testimony is that it's common
24 for you to use lies and deceit when interrogating
25 suspects?

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1 A. It is absolutely the accepted practice when you
2 feel like you're being lied to, yes, sir.

3 Q. Well, I mean, you went into this interview with
4 your mind made up that Jerry Scantling had done this;
5 right?

6 A. The facts -- the facts that we had gathered that
7 far would indicate that Jerry was heavily involved in the
8 murder of Leonard Green.

9 Q. Okay. And anything that he told you differently
10 than that is a lie so you need to lie to him to get him to
11 change his story to the truth?

12 A. We were at the scene. We understand what the
13 scene told us. We understand the vehicle was still
14 missing at the time. We understand he was at the Hilton
15 Head Gardens with the victim's pickup truck on the night
16 of his murder. And when I got out there at nine o'clock
17 that morning, Leonard Green had been dead for several
18 hours.

19 Q. Okay.

20 A. It was very time -- very short window of when
21 Leonard Green was murdered, between probably twelve
22 o'clock and 2:30 in the morning, 2:15.

23 Q. So you told Jerry that? Heavily involved?

24 A. Heavily involved, yes, sir.

25 Q. And he said, no. You're heavily involved; we

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1 have information you're around and all. Then you said,
2 we've got your DNA, we've got your --

3 A. Right.

4 Q. -- fingerprints, we've got your video?

5 A. Yes, sir.

6 Q. All right. And the only way you can help
7 yourself out is to tell us what happened and give us your
8 version?

9 A. And also telling him that we couldn't do
10 anything for him, we couldn't offer him any deal. That's
11 correct.

12 Q. You couldn't help him, but the only way he could
13 help himself --

14 A. If -- if --

15 Q. -- was to give some information?

16 A. -- if there was a second side to the story.
17 What the scene told us was one thing and what Jerry
18 Scantling was telling us was absolutely another thing.

19 Q. We've heard from all the other witnesses --

20 A. Right.

21 Q. -- about the scene. I'm just telling --

22 A. Right.

23 Q. -- you about what you talked to Jerry --

24 A. Okay. Fair enough.

25 Q. The only way he could help himself was to help

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1 you?

2 A. Right.

3 Q. Okay. And he's in bad shape.

4 A. Yes, sir.

5 Q. When you walked in, you're telling him he's in
6 very bad shape and he needs to help himself?

7 A. And looking for him, sir. That's correct.

8 Q. Okay. You said that Jerry's story changed in
9 the interviews that you had conducted; correct?

10 A. It changed several times in the first interview.
11 In the --

12 Q. They changed; right?

13 A. They changed considerably, yes, sir.

14 Q. They changed from, I was in the car to I never
15 was in the car. Correct?

16 A. That's correct.

17 Q. In the morning he's about -- said -- first
18 interview: I got a ride from Wal Mart back to the
19 Gardens. He told you that. It doesn't say he said, no, I
20 never got in the car because the guy was a little off.

21 A. Right.

22 Q. Okay. And so that was a change about what
23 happened that morning?

24 A. Yes, sir.

25 Q. Okay. Then he also changed about whether or not

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1 he had asked to borrow the victim's phone; correct?

2 A. That's correct.

3 Q. He said one time, yeah, I tried -- I thought I
4 was going to make a call and then he said, no, I never did
5 that?

6 A. Correct. Yes, sir.

7 Q. And that was a change.

8 What never changed was that I'm the -- well, and
9 then you had asked both times that he was driving down the
10 road -- not driving, because he was on a bicycle -- was on
11 the road and the defendant's truck came up to him and they
12 had an interaction?

13 A. A three- to five-minute interaction, yes, sir.

14 Q. Yeah. I'm just -- on Mathews Drive?

15 A. Mathews Drive. Correct.

16 Q. And where, you know, he said, the guy wanted me
17 to come with him to Ridgeland, and he was off, and all
18 that stuff?

19 A. Yes, sir.

20 Q. And that was consistent between both?

21 A. Yes, sir.

22 Q. All right. And never changed that he never got
23 in the car with Mr. Green that night?

24 A. He never said he got in the car with Mr. Green
25 that night. That's correct.

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1 Q. That's the same in both interviews --

2 A. Both -- three interviews --

3 Q. -- and the last --

4 And that -- he told you he was going to go sleep
5 in the laundromat that night; right?

6 A. That's correct.

7 Q. Okay. And so he said, that guy left and I went
8 to the laundromat?

9 A. Right. That's what he said.

10 Q. And that never changed?

11 A. Correct. He slept.

12 Q. All right. And he said, I never saw the guy
13 again?

14 A. Right.

15 Q. All right. And that never changed?

16 A. That never changed.

17 Q. It also never changed that he had never seen the
18 guy before that day?

19 A. I'm sorry, sir?

20 Q. He had never seen him, didn't know him from
21 around or anything, he hadn't seen him around --

22 A. That's what he indicated.

23 Q. -- he said, my only interaction with that guy --

24 A. Right.

25 Q. -- Wal Mart that morning and I was going along

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1 and that guy pulled up to me and flipped around and came
2 up to me and initiated another contact?

3 A. That's correct.

4 Q. If someone were sitting in a sheriff's
5 department conference room being interviewed, being told
6 by a police officer -- who we all have great respect for
7 and assume they're looking out for us and would be honest
8 and tell us the truth, and doing their jobs as protecting
9 the community -- said, we're accusing you of a heinous
10 crime, it's going to be very bad for you, you're fucked,
11 unless you help us, this -- we have you -- evidence of you
12 basically committing the crime, can you tell us something
13 that can help you out, do you see how that might elicit
14 someone trying to help themselves out even if they weren't
15 involved?

16 A. I don't see where it did in this --

17 Q. Because Jerry did it; right?

18 A. Yes, sir. We --

19 Q. Right --

20 A. -- yes -- yes, sir --

21 Q. -- so anything he tells you that says he didn't
22 do it is obviously not true?

23 A. Again, we had the facts. Like I explained, we
24 had the facts from the scene, we had the facts from --

25 Q. You didn't --

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1 A. -- Hilton Head Gardens --

2 Q. You didn't. You're telling him --

3 A. -- from the scene. We had the facts from the
4 scene.

5 MR. THORNTON: Your Honor, I object. He's
6 arguing with him. He's not letting him answer the
7 question.

8 THE COURT: Okay. Again, don't argue with the
9 witness.

10 MR. WALKER: I apologize.

11 THE COURT: Let him finish. Ask him a question.
12 Captain Bromage is going to answer.

13 Q. [Mr. Walker] Let me ask you this question. At
14 the time you interviewed, the first time, Jerry Scantling
15 at the scene -- on the scene of the murder, you had no
16 information connecting Jerry Scantling to that boat
17 landing derived from the scene of the murder?

18 A. If Jerry was with Leonard Green before he
19 disappeared --

20 Q. Yeah. We're getting there.

21 A. -- we had Jerry at the Hilton Head Gardens with
22 a red pickup truck --

23 Q. Again, I'm just --

24 A. Belonging to --

25 Q. -- trying to clarify --

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1 A. -- Leonard Green within two hours of --

2 THE COURT: Mr. Walker, don't interrupt him.

3 Let him finish.

4 A. There was substantial evidence that Jerry
5 Scantling committed this murder. And there still is --

6 Q. [Mr. Walker] I agree with --

7 A. -- and that has not changed, sir.

8 Q. I agree with you.

9 A. Thank you.

10 Q. At the scene nothing connected Jerry, that you
11 knew so far, to being -- I mean, excuse me -- to the
12 murder? At the time of the first interview, nothing at
13 the scene of the crime connected him to that murder?

14 A. No.

15 Q. Okay. So then what you had connecting him to
16 the murder was the statements of the people at Hilton Head
17 Garden saying, we saw him in the truck?

18 A. Yes, sir.

19 Q. And that was -- that was the connection you had
20 to the murder at the time of the interview?

21 A. During the interview, it certainly evolved. It
22 certainly evolved into a whole lot more than that. So --

23 Q. Right. I'm just trying to get an accurate --

24 A. Yes, sir.

25 Q. -- picture of what --

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1 A. We try not to have --

2 Q. -- what information you had --

3 A. We try not to have tunnel vision when we go into
4 it.

5 Q. -- and what information you were making up --

6 A. -- go into it.

7 Q. -- at the time.

8 A. We try not to have tunnel vision when we go into
9 it. Jerry's statements were highly indicative that he was
10 directly involved in the murder of Leonard Green.

11 Q. I think he said over and over and over and over,
12 I wasn't involved in the murder of Leonard Green.

13 A. I'm going to ask you, what I'm looking at if I
14 tell you how it went down? In over a thousand interviews,
15 I can tell you if somebody tells me that --

16 Q. Right.

17 A. -- they're directly involved with the murder.

18 I don't know where Pinckney Island is. Pinckney
19 Island was two miles from where he grew up. So we already
20 know he's lying to us throughout the investigation,
21 throughout the interview.

22 Q. I mean, it's obvious he's not telling the truth,
23 because his story changes from the first second.

24 A. That is correct.

25 Q. Okay. Well, he can tell the truth about some

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1 things and not other things; correct?

2 A. That is correct.

3 Q. Obviously, you're doing it to him in the
4 interview.

5 A. Our job is to elicit a truthful confession,
6 which we did not get a truthful confession from him. We
7 got bits and pieces. We got --

8 Q. How do -- I mean --

9 A. -- classic minimization of what he did.

10 Q. Right. And --

11 A. And then offer a for instances: well, if he
12 kidnaped me, what's that going to do for me. Suggesting
13 that if Leonard was the aggressor, what am --

14 Q. Please stop.

15 A. -- I looking at.

16 Q. Please stop. Please stop.

17 A. Okay, sir. I'm sorry.

18 MR. WALKER: Your Honor, I would ask that the
19 witness not be instructed -- to be instructed not to
20 comment on the truthfulness and not truthfulness of
21 the interview or what that means. That's for the jury
22 to decide.

23 THE COURT: Okay. You need to ask him a
24 question. You're going to answer it. And then
25 if it's not responsive to the answer, then you can

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1 go ahead and object and we'll go from there. But
2 you need to ask him the question and he's going to
3 answer it.

4 MR. WALKER: Thank you.

5 Q. [Mr. Walker] The first interview was the
6 longest one; correct?

7 A. A few hours. Yes, sir.

8 Q. And the tone often was like ours, spirited?

9 A. We do become spirited in these interviews.

10 Q. Would you say that that was a more spirited
11 interview than probably the other two?

12 A. We're dealing with a very serious murder here.
13 Yes.

14 Q. Right.

15 A. Very serious.

16 Q. So there are raised voices in this interview?

17 A. To a degree. There's no screaming. There's
18 raised voices, there's direct questions, there's --

19 Q. More so than --

20 A. -- and talk.

21 Q. -- the other two interviews?

22 This was the first interview. It was the most
23 intense. It was the longest.

24 A. Right.

25 Q. Okay. You're saying things to him like, you

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1 know, first interview at 22:50, you're fucked, the only
2 way you can help yourself is to tell us who did it or why
3 you did it, things like that, multiple times; correct?

4 A. Correct. With an explanation.

5 Q. Right. Talking about how this is as bad as it
6 gets and it looks horrible; correct?

7 A. Very serious murder. That's a correct
8 statement, yes.

9 Q. So if somebody says, well, if I tell you
10 something, how does that affect what you're telling me --

11 A. If he --

12 Q. I mean -- let me formulate the question. The
13 thing about --

14 A. Okay. Well, I'll answer the question --

15 Q. I know.

16 Is that responsive to the questions you're
17 asking him?

18 A. It's a response to the question I asked him.

19 Q. Okay. And then you take it to mean one thing
20 and it could mean other things?

21 A. Based on my experience, I take it one way, quite
22 frankly.

23 Q. Well, and again --

24 A. Yeah.

25 Q. -- you take it one way.

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1 And in that first interview he says, I met him
2 at the Wal Mart, he came up to me at the Wal Mart parking
3 lot, I met him that night I was driving, he turned around
4 and we talked. The difference in the first interview and
5 the second interview is whether he got into the car in the
6 morning; correct?

7 A. That's --

8 Q. One difference?

9 A. One difference, yes, sir.

10 Q. Another difference is whether he asked to use
11 the phone or not; correct?

12 A. That's correct.

13 Q. He did admit to stealing the Monte Carlo;
14 correct?

15 A. Yes, he did.

16 Q. Didn't try and fight you on that or anything
17 like that? Said, I stole it. Correct?

18 A. Yeah. It wasn't -- it wasn't in the first
19 couple of minutes of the first interview, but he admitted
20 it after a while.

21 Q. It was when you asked him about it; right?

22 A. I think he had already been confronted with the
23 murder.

24 Q. But when you got around to the Monte Carlo, he
25 said, yeah, I --

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1 A. Sure. Just trying to, you know, get a baseline
2 of some kind of truth.

3 Q. And he --

4 A. Some kind of --

5 Q. -- and he said he stole it because the keys were
6 in it; right?

7 A. Right.

8 Q. Now, you testified a moment ago to Mr. Thornton
9 that you had known Jerry a long time; right?

10 A. I've known him since he was a young man, about
11 twelve or thirteen years old. Knew his family. Knew his
12 father, knew his stepfather, yes, sir.

13 Q. Okay. So you remember telling Jerry at
14 seventeen and a half minutes into the interview that this
15 looks fucking horrible; this is not the same kid I know?

16 A. Yeah. Yes, sir.

17 Q. Okay. And to be fair, again, you had an initial
18 period of interview and then y'all took a lunch break;
19 right?

20 A. That's correct.

21 Q. The first interview that we're talking about.

22 A. First interview.

23 Q. Then you came back and had another period --

24 A. Right.

25 Q. -- and there were cigarette breaks in the middle

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1 of all that?

2 A. There were.

3 Q. Okay. You let him go to the bathroom?

4 A. Did all the right things to make sure he was
5 comfortable, yes, sir.

6 Q. Gave him some water?

7 A. Yes, sir.

8 Q. Now, you make a lot of this statement where
9 Jerry says, what -- if I -- well, I mean, let me put it to
10 you this way. Do you remember going along with the
11 comments you made earlier, twenty minutes into that second
12 interview -- first interview but after the lunch break,
13 Jerry saying, if I said this man kidnaped me, how does
14 that help?

15 A. That's minimization. That's a big deal.

16 Q. Do you remember him saying it?

17 A. Oh. Yes, sir. Very clearly.

18 Q. Because you're putting out there that, well,
19 maybe this guy made a move on you, maybe --

20 A. Absolutely. Baby steps --

21 Q. -- this guy made --

22 A. -- to getting to the truth. That's exactly how
23 we conduct an interrogation. Correct

24 Q. Because that's how he can help himself out?

25 A. It'd give him one way to give us an explanation

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1 of what happened. To help himself out, I don't know about
2 all that.

3 Q. Okay. You had said something in your -- kind
4 of going through some things in your direct testimony
5 about -- and this may have just been a misspeak
6 [phonetic]. But you said that he had kidnaped -- told you
7 that he had kidnaped him. But I think at no point did
8 Jerry actually say he had kidnaped him to you. He said he
9 was worried about being kidnaped; correct?

10 A. Yeah. I believe he probably said something like
11 that. I can't be one hundred percent on that.

12 Q. Well, you remember him saying, about thirty
13 minutes into that interview after the lunch break, the
14 dude was real weird like a kidnapper; I wouldn't get into
15 the truck?

16 A. I called him a sexual predator, called him a lot
17 of different things to -- right.

18 Q. That's because you had called him a pedofile
19 first; right?

20 A. I called him a pedofile?

21 Q. Mister -- you said, he's like a pedofile but
22 said, oh, no, that's the wrong word, that's with kids, but
23 he's like a sexual predator. Do you remember saying that
24 to Jerry?

25 A. I know what a pedofile is and --

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1 Q. I know you do.

2 A. -- I can't see --

3 Q. You corrected yourself on the tape.

4 A. Well, maybe I did. Yeah, that's definitely a
5 wrong statement right there. That's --

6 Q. Right.

7 A. Right.

8 Q. Well, do you remember -- you don't remember that
9 part of the conversation?

10 A. There was a lot of conversation. I called him a
11 predator. I may have called him a lot of things to get
12 Jerry to a point to where he would tell us what happened,
13 the truth.

14 Q. But if Jerry calls him a predator, it would be
15 after you had said it?

16 A. Yeah. I mean, said he -- the guy was weird and
17 he thought he was gay and didn't feel comfortable around
18 him.

19 Q. If he called him a kidnapper, it would be after
20 you suggested he was a kidnapper?

21 A. I don't know about that, sir.

22 Q. Okay.

23 A. Again, he mentioned kidnaping a couple of
24 times: what if I said -- what if I said he kidnaped me,
25 what would that do, that kind of things.

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1 Q. Yeah. And, again, multiple times throughout
2 this process you're putting out scenarios that Jerry could
3 latch onto, you're trying to help him latch onto, and tell
4 the truth; correct?

5 A. We're giving him scenarios so he can minimize it
6 and take the lifeline, so to speak, and --

7 Q. Okay.

8 A. -- wanted to get him to that point. And,
9 actually, the objective would be to get him farther on
10 what he actually did. That's how we do an interrogation.

11 Q. Right. So one of those lifelines is thirty-six
12 minutes and you're saying the victim's stalking you and --
13 remember telling him that, he insults you, trying to get
14 him to take?

15 A. Jerry told us what he said to him, and that's a
16 clear path we're going to take.

17 Q. Okay.

18 A. Said he had a little dick, or something like
19 that, according to Jerry. So that's one way of going. He
20 had ran into him twice that day. So we're giving him --
21 we're giving him an opportunity to take that.

22 Q. Right.

23 We've heard testimony before. You were in the
24 courtroom about -- earlier testimony about this interview;
25 correct?

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1 A. Portions of it.

2 Q. Yeah.

3 The tape recorder that was -- that it was being
4 taped on, do you have that or --

5 A. I believe the first interview, Master Sargent
6 Riley had it.

7 Q. Riley had it.

8 A. And then the second one, I had it. And the
9 third one we had a -- I think a video inside the room.

10 Q. Remember telling Jerry an hour and thirty-six
11 minutes and forty seconds into this interview that, they
12 don't pay us enough to make us liars?

13 A. What was the context of that? I mean, you're
14 reading --

15 Q. You said, I'm not lying to you, Jerry; we've got
16 all this stuff on you; they don't pay us enough to make us
17 liars.

18 You remember saying that, don't you?

19 A. I probably did, sure.

20 Q. All right. Apparently, they do pay you enough
21 to make you a liar.

22 A. Not to be dishonest, at the end of the day.

23 Q. All right. And you talked to Jerry about
24 information you had gotten from Dirty Red; correct?

25 A. Yeah, we gave him that information.

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1 Q. Okay. And you gave Jerry information about the
2 crime throughout the interview; correct? Like you said
3 you showed him a picture of the victim and --

4 A. Showed him a picture of the victim the following
5 day --

6 Q. Right.

7 A. -- and it was just a --

8 Q. I shouldn't have said that. I shouldn't have
9 said that.

10 A. Right. Not the crime scene --

11 Q. A few interviews --

12 A. -- we didn't show him pictures of the crime
13 scene --

14 Q. I understand.

15 A. -- we didn't give him details that, you know, he
16 wouldn't -- how we would tell he's telling the truth is
17 what he comes up with to corroborate the scene and
18 corroborate what happened that night.

19 Q. I understand.

20 A. Which that's what we do. Yes, sir.

21 Q. But details were mentioned to him; correct?

22 A. I would suggest that, -- yeah -- you've seen over
23 there, that's a detail. That was given to him.

24 Q. Right. Well, he was told that the victim was
25 shot twice? Officer Riley. Correct?

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1 A. Yes. That sounds right.

2 Q. At one point he was told what kind of gun was
3 used; correct?

4 A. I think we said a .45.

5 Q. Right.

6 A. Right.

7 Q. So those kind of -- not every detail. But as
8 you're talking about it --

9 A. A lot --

10 Q. -- we know this --

11 A. A lot going on --

12 Q. -- we know this --

13 A. -- at the scene and that wouldn't ruin our
14 interrogation at all.

15 Q. I understand. I'm just -- you're giving him
16 details, you're giving him lifelines --

17 A. A little mixture. That's --

18 Q. All right.

19 A. -- that's how you do it. That's how you do an
20 interview.

21 Q. You told Jerry that, Dirty Red doesn't like us.
22 Referring to the police; correct?

23 A. I'd say that's a fair statement.

24 Q. Yeah.

25 Doesn't want anything to do with us and he's

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1 getting a monkey off of his back. And this is an hour and
2 forty minutes into the interview. Do you remember that?

3 A. Dirty Red wanted nothing to do with this. I
4 don't remember if I said that exactly during my interview
5 but I probably said something in that direction, yes, sir.

6 Q. Do you remember telling Jerry that Dirty Red was
7 on probation and that he had to cooperate with the police?

8 A. I don't remember -- recall saying that, no, sir.
9 I'm not sure if he was on probation or not, to be honest
10 with you, back in 2010, no.

11 Q. All right. Let's move on to the next thing.
12 You've got another interview. You said -- I believe in
13 your direct you said that Jerry said somebody would bust
14 his ass, just a moment ago to Sean Thornton. Remember
15 that? Talking about the victim --

16 A. Talking about the victim's mouth, the way he
17 talked to Jerry: somebody will bust his ass, the way he
18 was talking.

19 Q. And so that's what you're saying. But do you
20 remember the exact quote being, about thirteen and a half
21 minutes in, the way he talked, somebody's going to bust
22 his head, certain people don't take that?

23 A. That sounds almost exact, yes, sir.

24 Q. That provided some context for that quote.

25 A. I'm sorry?

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1 Q. That's a fair contextual placement of that
2 quote?

3 A. Right.

4 Q. Okay. And then on the second interview -- we
5 talked about it a little before -- was much more relaxed.
6 Would you agree?

7 A. Right. It was a one-on-one, me and Jerry.
8 That's correct.

9 Q. Okay. And, you know, I don't know if you --
10 just a little night's sleep or you decided to take a
11 different tact or whatever, but everybody seemed to be a
12 little calmer. Would you say that's fair?

13 A. It was fine-tuning some details, was our
14 purpose --

15 Q. It was a more conversational --

16 A. Right.

17 Q. -- versus confrontational --

18 A. Yes, sir.

19 Q. -- interview?

20 A. Absolutely.

21 Q. Okay. And there weren't these threats of, you
22 know, some horrible fate befalling Jerry --

23 A. I have never suggested a fate of Jerry
24 Scantling, Mr. Walker.

25 Q. Not to say that you personally threatened him,

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1 but that his situation was dire? That would be the
2 interview --

3 A. I would say he was in bad shape. Things weren't
4 looking --

5 Q. But that was more stress in the first interview
6 than the second one?

7 A. I think so, yes, sir.

8 Q. Okay. And there was less, if any, of this talk
9 about evidence you didn't have. You played straight up
10 with him --

11 A. Right.

12 Q. -- in that interview?

13 A. I think it was a -- it was a shorter interview,
14 too, I believe. Yes, sir.

15 Q. And Jerry went into more details about his
16 interaction with Mr. Green?

17 A. He did.

18 Q. So he said, it was at the Wal Mart in the
19 morning that Mr. Green first asked to see Jerry's
20 genitalia?

21 A. Yes, sir.

22 Q. All right. And Jerry told you he said, get in
23 the truck, come on. And he said, no, I'm straight. I'm
24 sorry. I'm not being clear.

25 And then later that night, when the second

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1 interview, there was more talk of a sexual nature;
2 correct?

3 A. Yes, sir, I believe so. Yes, sir.

4 Q. And that Mr. Green wanted Jerry to go to
5 Ridgeland with him?

6 A. Yes, sir.

7 Q. And, in fact, offered him some money if he would
8 go; correct?

9 A. That's part of the conversation.

10 Q. Okay. And Jerry told you he said, no, I'm
11 straight, and then he left.

12 A. Yes, sir.

13 Q. Well, they both left.

14 A. Went on their --

15 Q. They went their --

16 A. -- separate way.

17 Q. -- separate ways?

18 A. Right, sir.

19 Q. Do you recall telling Jerry in that second
20 interview, about twenty-five and a half minutes in, that
21 Mr. Green was a sex offender type person, all you've got
22 to do is talk to the people that knew him?

23 A. I don't recall saying that, Mr. Walker.

24 Q. Do you recall Jerry giving you information that
25 Mr. Green had some dealings with Jamar McGraw and William

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1 Barnes at the Gardens? Twenty-eight minutes in.

2 A. You would have to play that for me, sir, because
3 I don't remember those names coming up. Jerry said he had
4 never met them before that day.

5 Q. Right.

6 Well, this would have been information he
7 garnered from someone else.

8 A. I don't remember, no, sir.

9 Q. You don't remember?

10 A. No, sir.

11 Q. You didn't investigate anything like that?

12 A. [No response]

13 Q. You didn't have any part of investigating any
14 other relationships Mr. Green might have had with other
15 people in this case?

16 A. No. Not directly, no, sir.

17 Q. Do you recall being given information by Jerry
18 that Will Barnes was looking through the trash cans at the
19 Gardens?

20 A. I really don't know who Will Barnes is.

21 Q. Okay.

22 A. And I don't remember saying that. No, I don't.

23 Q. Him saying Javon [phonetic] and Will were
24 looking through the trash cans?

25 A. I said that, Mr. Walker?

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1 Q. No. If you recall Jerry telling you that.

2 A. No. No, I don't. Matter of fact, I don't
3 recall that at all.

4 Q. Okay. Then we have quite a long period of time
5 before the next interview; correct?

6 A. Yes, sir.

7 Q. And that interview was really consistent pretty
8 much with the second interview that you had, although I
9 guess he was more --

10 A. No. There was --

11 Q. -- vague on details?

12 A. There was some different things in that
13 interview.

14 Q. Okay. There were differences, but it was
15 consistent that he still maintained he'd always -- he had
16 never been in the truck with the guy --

17 A. Right.

18 Q. -- and never been at the boat landing?

19 A. Right. He was very vague. His --

20 Q. Right. A lot more vague.

21 A. His recollection was very vague.

22 Q. In this third interview, do you recall telling
23 Jerry -- do you recall telling Jerry, about thirty-seven,
24 almost thirty-eight minutes in, that you and the police
25 knew that Leonard went around doing the wrong thing; he

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1 went around paying for sex from young guys just out of
2 prison?

3 A. I'm not sure what context that was stated in.
4 Probably another attempt to get him to minimize what he
5 did, to get him -- to get him at that baby step, you know.
6 So --

7 Q. Is that something --

8 A. I don't think there's any evidence of Leonard
9 Green doing that --

10 Q. That's what I'm saying --

11 A. -- when I said that it was, again, trying to get
12 to the point where Jerry was.

13 Q. Do you recall telling Jerry forty-five minutes
14 into that third interview: that's hard for me to believe;
15 I didn't peg you as someone that would do this?

16 A. If you want to play that part? because I
17 don't -- I don't remember. I could have said that, sure,
18 but I hate to tell you something I'm not sure of.

19 Q. You don't remember saying that?

20 A. I don't remember saying that.

21 Q. But you could say that credibly to Jerry,
22 because you had known him for so long?

23 A. I've known Jerry since he was twelve or
24 thirteen. That's a long time. Yeah.

25 Q. Like Jerry would feel that you guys maybe had a

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1 friendly relationship?

2 A. Part of the interview process is building a
3 rapport with the person you're talking to, absolutely.
4 Getting on their level, talking on their level.

5 Q. He doesn't call you Captain Bromage; is that --

6 A. Absolutely not. He calls me Flash.

7 Q. Right.

8 A. That's my nickname as a young detective back in
9 the mid '90s.

10 Q. And that's -- you know, things are calming down.
11 Y'all are having a conversation. Those are the -- it's
12 like it's a friendly situation. He's calling you Flash,
13 you're calling him Jerry. It's all --

14 A. Right. There's -- you know, there's a purpose
15 to it. It wasn't --

16 Q. There's a purpose. I -- again, I --

17 A. -- just to hang -- hang out with Jerry and, you
18 know, have cigarettes with him.

19 MR. WALKER: All right. Beg the Court's
20 indulgence.

21 [Whereupon, Mr. Walker reviews documents]

22 [Whereupon, Mr. Walker and Ms. Carroway confer]

23 MR. WALKER: Thank you, Your Honor. I don't
24 have anything else.

25 THE COURT: Anything further?

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1 MR. THORNTON: Nothing, Your Honor.

2 THE COURT: All right. You may step down,
3 Captain.

4 [Whereupon, Mr. Bromage is excused and exits the
5 witness stand]

6 THE COURT: I think right now is a very good
7 time for a lunch break.

8 MR. THORNTON: Yes, ma'am.

9 THE COURT: Ladies and gentlemen of the jury, by
10 the clock back there it looks like it's about 12:40 or
11 so. I'm going to ask that you be back in your jury
12 room by 1:45. That gives you about an hour and five
13 minutes.

14 Is that enough time, Madam Foreperson, for y'all
15 to grab something, come back?

16 The lawyers are trying very hard today to put
17 everything in front of you as quickly and efficiently
18 as possible, and we want to keep moving. So, again,
19 if anyone is running a few minutes behind, don't be
20 concerned. Although by about two o'clock, we are
21 going to be concerned and we're going to be looking
22 for you.

23 So, again, we look forward to seeing y'all back
24 right around 1:45. Thank you. And, again, do not
25 discuss this case. You are excused.

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1 THE BAILIFF: Thank you, Your Honor.

2 [Whereupon, the jury exits the courtroom at
3 12:44 p.m.]

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: All right. Anything else we need to
6 do?

7 MR. WALKER: Your Honor?

8 THE COURT: Yes?

9 MR. WALKER: I just want to put on the record
10 the sidebar we had about the statement Officer Bromage
11 said that Jerry made to him regarding the photograph
12 purported to be of him entering the Wal Mart.

13 THE COURT: When he commented he said, I'm not
14 going to say it's me but I'm not going to say that it
15 wasn't me?

16 MR. WALKER: And then the last part of that
17 statement was, I don't want to incriminate myself.
18 And we would --

19 THE COURT: I don't want to incriminate myself.

20 MR. WALKER: -- we would just argue that any
21 focus on that statement would be a comment on my
22 client's -- to exercise his right against self-
23 incrimination.

24 THE COURT: Other than he's the one that
25 mentioned it.

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1 Go ahead, Mr. Thornton.

2 MR. THORNTON: Your Honor, I understand where
3 Mr. Walker is going, but I do disagree with him
4 because the case law is very clear that any assertion
5 as to his rights to counsel or anything else have to
6 be clear and unequivocal. And I ain't going to say
7 it's me and I ain't going to say it ain't, I don't
8 want to incriminate myself, is not a clear indication
9 of his right to remain silent or his indication of
10 right to counsel or anything else. It's, at best,
11 ambiguous and I don't think it's even a reference to
12 his rights. So I would disagree and I think both of
13 those comments are a fair statement.

14 THE COURT: I do, too. And I overruled you from
15 the bench. And I appreciate you remembering -- your
16 reminding me to put it on the record, Mr. Walker.

17 MR. WALKER: Yes. And again -- and because of
18 that -- and because if I were him, I would want to
19 harp on it, probably. I wanted to stand up now, not
20 having to put reasoning on the record at the time it
21 occurred, if it did occur. We would just again submit
22 it's a -- violation and it's -- the comment on it is
23 improper. And we're not saying that the assertion --
24 the right was violated or that he didn't assert that
25 any comment on the attempted assertion, is our issue.

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1 So that -- if it does become an issue, I can just
2 renew my earlier objection.

3 THE COURT: That's fine.

4 MR. WALKER: Thank you.

5 THE COURT: All right, y'all. Lunch. We'll be
6 back in about fifty minutes or so and if there's
7 anything we need to put on the record, we're fine. Is
8 that correct?

9 MR. THORNTON: Yes, ma'am.

10 THE COURT: Also, Mr. Walker, if there is
11 anymore tapes or statements that you need to play, can
12 y'all cue it up over the lunchtime if there is
13 something you anticipate? I don't know if there is
14 any, but just in case, based on the witnesses that are
15 coming up. I would appreciate that.

16 Although I will tell you, Mr. Walker, I think
17 that went very well, how you did that. I mean, I
18 think it was very smooth.

19 MR. WALKER: Thank you.

20 THE COURT: So thank you. Anything?

21 MR. THORNTON: No, ma'am.

22 THE COURT: All right. We'll see y'all back in
23 about fifty minutes or so.

24 [Whereupon, a recess is taken from 12:47 p.m. to
25 2:08 p.m.]

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1 THE COURT: Mr. Thornton, are we ready to go?

2 MR. THORNTON: The State is ready, Your Honor.

3 THE COURT: You're ready, Mr. Walker?

4 MR. WALKER: The defense is ready. Just one
5 matter.

6 The solicitor and I have discussed the witnesses
7 coming later in the afternoon, that we might have to
8 have an in-camera hearing with that witness.

9 THE COURT: What witness is that?

10 MR. THORNTON: The State agrees that it probably
11 be -- would be smart.

12 Her name is Brittany Raines.

13 THE COURT: Okay.

14 MR. THORNTON: And the reason -- we'll just go
15 ahead and put it on the record now, Your Honor. The
16 reason is Ms. Raines gave a statement to law
17 enforcement, ostensibly [phonetic] statements made
18 to her by Jerry Scantling. Part of those statements
19 involve the burglary.

20 Now, I've already cautioned her once. But I
21 find it, in the past, has been helpful when they get
22 to come in and I can tell them that as we're going
23 through the process, as well.

24 And then Mr. Mathews [phonetic] had an
25 additional concern, I believe. So --

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1 THE COURT: Okay.

2 MR. WALKER: There is some indication in her
3 comments to law enforcement that -- her statement is,
4 well, I don't know all the story but my mom filled in
5 some of the gaps for me. And I'm trying to determine
6 which parts of her statement are her direct knowledge
7 and what she heard from somebody else.

8 THE COURT: Okay. So we need to -- we need to
9 do them. Okay.

10 MR. THORNTON: Yes, ma'am.

11 THE COURT: A proffer first.

12 MR. THORNTON: But that will be after probably
13 the first four witnesses, so it's probably going to be
14 a good place to break at that time anyway.

15 THE COURT: You just tell me that that's who.
16 Okay?

17 MR. THORNTON: Yes, ma'am.

18 THE COURT: Sounds good.

19 All right. Let's bring them in, Norman. Thank
20 you.

21 THE BAILIFF: Thank you, Your Honor.

22 [Whereupon, State's Exhibit Number 75 is marked
23 by the court reporter]

24 [Whereupon, the jury enters the courtroom at
25 2:12 p.m.]

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1 THE BAILIFF: All right. Your Honor, the jury
2 is seated.

3 THE COURT: Thank you.

4 Welcome back, ladies and gentlemen. I trust
5 everyone had a nice lunch.

6 At this time we're going to go ahead and
7 continue the trial of this case. Mr. Thornton, if
8 you'll call your next witness.

9 MR. THORNTON: Yes, Judge. Dr. Grayson Amick,
10 please.

11 And, Your Honor, while Dr. Amick is taking the
12 stand, I did want to go ahead and -- actually, I'll
13 wait until he gets sworn in. There's a couple of
14 housekeeping evidentiary matters.

15 [Whereupon, Dr. Amick comes forward]

16 [Whereupon, Dr. Amick is duly sworn by the clerk
17 of court as follows: do you solemnly swear to
18 truthfully answer all questions asked of you by this
19 court, so help you God]

20 THE WITNESS: I do.

21 THE CLERK OF COURT: Please be seated.

22 [Whereupon, Dr. Amick takes the witness stand]

23 THE CLERK OF COURT: State your name and spell
24 it for the Court, please.

25 THE WITNESS: My name is Gray Amick. A-M-I-C-K.

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1 MR. THORNTON: Your Honor, at this time, just
2 because we're going to have our DNA analyst testify, I
3 want to make sure all the swabs are in evidence.
4 State's Exhibit 75, which are the swabs taken by Tim
5 French, of the victim's vehicle. I would like to move
6 them into evidence at this time.

7 MR. WALKER: No objection.

8 THE COURT: Without objection, they're admitted.

9 [Whereupon, State's Exhibit Number 75 is
10 admitted into evidence by the Court]

11 MR. THORNTON: Also, Your Honor, the court
12 reporter and I discussed this one. We weren't sure
13 whether I introduced it or not. So State's Exhibit
14 74, which is the photograph referenced by Captain
15 Bromage, of what he indicated was Jerry Scantling at
16 the Wal Mart on Ogeechee Road in Savannah. Ask that
17 be moved into evidence.

18 MR. WALKER: No objection.

19 THE COURT: Without objection, it's in evidence,
20 as well.

21 MR. THORNTON: Thank you.

22 [Whereupon, State's Exhibit Number 74 is
23 admitted into evidence by the Court]

24 MR. THORNTON: Thank you, Judge.

25

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GRAYSON AMICK,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q. Dr. Amick, what are you a doctor of, sir?

A. I have a Ph.D. in biochemistry.

Q. And where do you currently work?

A. I currently work at Richland County Sheriff's
Department.

Q. And what do you do for them?

A. Currently I'm the technical leader or the
supervisor of the DNA laboratory.

Q. And how long have you been doing that?

A. Since the laboratory was created in 2004, so
about nine years.

Q. And where did you work before that?

A. I worked at South Carolina Law Enforcement
Division, commonly known as SLED, for eleven years.

Q. All right. What did you do for SLED?

A. In my later tenure, probably six years -- for
the first five years I was a toxicologist, forensic
toxicologist, and then for six years I was a DNA analyst
in the DNA department.

Q. All right. So roughly how many years do you

1 have of DNA and supervisory DNA analysis experience?

2 A. About fifteen years DNA analysis experience.

3 About six of those -- I'm sorry. About nine of those as a
4 supervisor.

5 Q. Dr. Amick, you said you had a Ph.D. in
6 biochemistry. How many -- have you ever been qualified as
7 an expert in DNA analysis in court in South Carolina?

8 A. I have.

9 Q. How many times?

10 A. Approximately eighty times.

11 MR. THORNTON: Your Honor, at this time I would
12 ask that Dr. Amick be qualified as an expert in the
13 field of DNA analysis.

14 MR. WALKER: No objection.

15 THE COURT: All right. Ladies and gentlemen, in
16 this case Dr. Amick is being qualified as an expert in
17 DNA analysis. Ladies and gentlemen, that allows him
18 to give his opinion and the reasons for his opinion.
19 However, ladies and gentlemen, of course anything he
20 testifies to you can compare and use it as you see
21 appropriate and as compared to other evidence in this
22 case.

23 Q. [Mr. Thornton] Dr. Amick, did you do some
24 testing in a case submitted to you by Beaufort County
25 Sheriff's Office?

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1 A. I did.

2 Q. And you've heard some of the testimony,
3 obviously. Was it in this case, the State versus Jerry
4 Scantling?

5 A. Yes, it was.

6 Q. And did you test some swabs that were submitted
7 to you? I believe the reference on your report is off of
8 a Highpoint firearm, the murder weapon in this case?

9 A. I don't think I tested that.

10 [Whereupon, the witness reviews documents]

11 A. I'm sorry. Yes, I did. It was -- they weren't
12 swabs, as I received them. They were extracts.

13 Q. [Mr. Thornton] I'm sorry. I apologize for
14 that.

15 So did you test extracts from swabs from the --
16 referenced as handgun slide and stock and then a victim's
17 standard which would be the standard of Leonard Green?

18 A. I did.

19 Q. All right, sir. And were you able to find any
20 DNA on the slide and stock?

21 A. Yes. There was DNA on the slide and stock.

22 Q. And before we go further, let me ask you this.
23 There has been testimony that things were sent to SLED and
24 then things were subsequently sent to you. Why would that
25 be done?

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1 A. In this case the reason that was done was at the
2 time, which was late 2010, we had validated a new
3 procedure that was more sensitive at the time so Captain
4 Bromage, through some thorough investigation, felt to try
5 to attempt to get DNA profiles from these items that I did
6 our testing with this Morrison [phonetic] kit. So they
7 sent those extracts to me to attempt analysis profiles.

8 Q. All right, sir. Thank you.

9 Dr. Amick, were you able to pull a profile off
10 of the handgun slide and stock?

11 A. Yes.

12 Q. And what is it, sir?

13 A. The DNA result that I developed from item 20 was
14 a mixture and reading from my report the DNA profile, the
15 major contributor matched the victim in this case, which
16 was item 21 in my report. And then there is a statistical
17 statement to back that up.

18 Q. All right, sir. And so it positively identified
19 the victim as the major contributor?

20 A. That's correct.

21 Q. And there is a minor contributor; is that true?

22 A. That's correct. And the minor DNA profile
23 developed from item 20 was entered into CODIS, or the data
24 base, the DNA database.

25 Q. And that was an unknown person, and it was not

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1 Jerry Scantling; correct?

2 A. That's correct.

3 Q. Now, if you could, Dr. Amick, obviously as an
4 expert in DNA analysis can you explain to the jury the
5 difference between say DNA that you might find if your
6 blood was on a gun as opposed to DNA -- what they call
7 touch DNA?

8 A. Well, there's no difference in the DNA. I mean,
9 the DNA is the DNA. The difference is in the quantity
10 that -- probably you're talking about the quantity that's
11 left on any particular piece of evidence. So if there's
12 blood at a scene, the quantity of DNA in that sample or on
13 that piece of evidence is quite high because there's lots
14 of DNA in blood. Any body fluid, for that matter. So
15 saliva, semen, blood, those have lots of DNA in them. So
16 when you have that type of evidence, you have a pretty
17 high likelihood to obtain a DNA profile.

18 Touch DNA is still DNA. It's still human DNA.
19 You're still going to get the same profile from the same
20 source, but the quantity -- usually, when you're
21 describing touch DNA the quantity of DNA there is a lot
22 less and you may get a profile from something swabbed that
23 may have been touched and you may not get a profile of
24 something that's swabbed and that's touched.

25 Q. Dr. Amick, there's been -- obviously, you have

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1 not been here during this trial. But there is a
2 stipulation between the prosecution and defense that the
3 gun in question, the handgun, was stolen from a man named
4 Sam Crews and that both he and his son are excluded as
5 having any touch DNA on this weapon that you tested. But
6 let me ask you a question. Is that why that may be? In
7 other words, the owner of a gun you would assume touches
8 it. So does the fact that you've touched something
9 automatically mean you're going to leave touch DNA?

10 A. No. No. The -- like I said, I mean, when you
11 touch something, you may or may not leave DNA. It's kind
12 of like a fingerprint scenario where, depending on what
13 you touch, who's touching it, you know, whether you're
14 sweating, whether you shed cells or not, there's lots of
15 factors involved. So the answer is you can own something
16 and touch it and you may not leave enough DNA there to get
17 a DNA profile. And the converse is true, as well. You
18 may leave a DNA profile if you touch.

19 Q. Would the wearing of gloves affect touch DNA?
20 In other words, if I put on gloves and then touched a gun,
21 say, is it more or less likely I would leave touch DNA on
22 the gun if I handled it while wearing gloves?

23 A. Oh. It's quite less likely that you would leave
24 a DNA profile if you have gloves on. I mean, we wear
25 gloves, when we do the analysis in the laboratory, to keep

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1 from contaminating evidence so --

2 Q. Dr. Amick, I'm glad you mentioned that. We
3 heard earlier that -- the jury heard a term called cross-
4 contamination. Is that what you're talking about?

5 A. It -- yes. I mean, there's many different types
6 of contamination. So some would define cross
7 contamination as contaminating one piece of evidence from
8 a -- by another, so contaminating two pieces of evidence.
9 So there's other types of contamination, as well. But
10 usually that's what's referred to as cross-contamination.

11 Q. And what -- again, just so the jury is clear.
12 What is the process that you as an analyst take on your
13 hands to prevent your DNA from being left on something?

14 A. Well, there's many contamination -- or anti-
15 contamination measures that we take in a laboratory
16 involving controls, blanks, negatives, physical barriers
17 like gloves -- not latex -- nitrile gloves. There's
18 procedural parameters we follow when we -- the procedure
19 -- gloves in a certain way to prevent contamination. So
20 there's many contamination type procedures to keep from
21 contaminating evidence. But physically we wear gloves and
22 change them between items, between samples. We wash our
23 instruments between samples, between items, so there are
24 many anti-contamination procedures that we take.

25 MR. THORNTON: Thank you very much, Dr. Amick.

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1 I don't have any further questions. Please answer any
2 questions Mr. Walker has for you.

3 THE COURT: Mr. Walker.

4 MR. WALKER: Good afternoon.

5 THE WITNESS: Good afternoon.

6 CROSS-EXAMINATION

7 BY MR. WALKER:

8 Q. Kind of going through the explanation of the
9 science that you just gave, it's fair to say -- I believe
10 the solicitor used the term blood DNA and touch DNA. And
11 you said pretty much all body fluids are the same, as far
12 as having a higher percentage of DNA in them versus what
13 you would term touch DNA; correct?

14 A. Yeah. Relatively speaking, there's a lot more
15 DNA in a body fluid than there would be from a touch DNA
16 sample.

17 Q. But there's no actual difference in the DNA
18 itself?

19 A. That's correct. The DNA profile that you would
20 obtain, say from my blood and from something that I touch,
21 would be the same profile.

22 Q. And you keep saying DNA profile. You had
23 earlier said DNA is kind of like a fingerprint. Is that
24 what -- you're kind of equating the profile as equal to
25 the fingerprint?

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1 A. Yeah. But when I said that, that was a --
2 that's a different -- that was a different context. I
3 meant it as if you've ever heard some -- the fingerprint
4 experts testify, they'll say, you know, it depends on the
5 person and the surface and all that if you -- whether you
6 leave a fingerprint or not. That's the context I used --

7 Q. Well, let me stop you there and ask you about
8 the actual fingerprint on your hand. Not an impression of
9 a fingerprint, but I'm talking about the actual
10 fingerprint. Would you say that's a fair analogy between
11 a DNA profile and the actual fingerprint someone has?

12 A. Yeah. It's a -- it's kind of a molecular
13 fingerprint of an individual, so it's unique to every
14 individual except for identical twins. However, identical
15 twins have different fingerprints. But, yeah, it's a
16 unique identifier for an individual in a molecular sense.

17 Q. Okay. So when you develop that profile, you get
18 enough points of measurement that you can say this is a
19 uniquely identifying DNA profile?

20 A. If you get enough information, yes, you can say
21 that.

22 Q. Okay. And you said the item you tested, item
23 20, was items from the gun that was submitted into
24 evidence in this case and you termed it as a mixture. And
25 that's literally what it is, right, just two sets of DNA

1 mixed together?

2 A. I don't -- I can look at it and tell you whether
3 -- I can't say it's two when I --

4 Q. Or some amount --

5 A. -- it's more than one --

6 Q. -- of -- yeah.

7 A. -- it's more than one individual, yes.

8 Q. And so if two people bled onto the same spot, it
9 would be reasonable to think you would be able to find two
10 pieces of DNA and they wouldn't influence each other?

11 A. Influence each other?

12 Q. Well, it's not -- one person's DNA being present
13 doesn't change someone else's DNA that's present?

14 A. That's correct. If you had two dots of blood
15 from two different people, you will get a profile that's a
16 mixture, like we talked about here and you would, as an
17 analyst, be able to interpret there's at least two people
18 here. And you may or may not, depending on the amounts
19 there, be able to pick out if this is -- these all belong
20 to one person, these all belong to another person.

21 Q. Okay. And in this case you developed two
22 profiles off of number 20, which is from the gun?

23 A. I don't think I said two. I said a mixture.
24 Let me look at the profile --

25 Q. Yeah, please do --

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1 A. -- and I can qualify --

2 Q. -- refer to your notes that you were referring
3 to earlier.

4 A. Because it could be two, it could be three, it
5 could be more.

6 Q. I'm talking about item 20 off of your notes from
7 your conclusion.

8 A. Item 20 says a mixture, and then I have a major-
9 minor. So it's most likely to -- let me check.

10 [Whereupon, the witness reviews documents]

11 THE WITNESS: Give me a second.

12 MR. WALKER: Take your time.

13 [Whereupon, the witness reviews documents]

14 A. I would say it's pretty accurate to say that's
15 two individuals.

16 Q. [Mr. Walker] And please keep that open. I want
17 to ask you a couple more questions about --

18 You say that the major contributor matched it --
19 matched item 21, which is the victim's standard. What
20 is -- in that context, what do you mean by a standard?

21 A. Okay. In that context we use the word standard
22 to mean that sample came directly from that individual.
23 So there's unknowns, like evidence, so from a crime scene.
24 And then the people involved will be contacted by
25 investigators and we will get a swab or blood from those

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1 individuals, and that's their standard. So I'll run that
2 individual and know what their DNA profile is so I can
3 compare it to the others to exclude or include them.

4 Q. Okay. And so there's already testimony that the
5 defendant in this case, Jerry Scantling, his DNA was not
6 part of that standard you found on the murder weapon?

7 A. That's correct.

8 Q. Not standard, but the mixture on the murder
9 weapon?

10 A. That's correct.

11 Q. And, in fact, you developed -- there is a full,
12 complete profile on the murder weapon that we don't know
13 who it is?

14 A. Not full and not complete.

15 There's a minor -- there's a minor contributor
16 that --

17 Q. Okay. Well, let me stop you there because that
18 -- as a non biochemist, I took major contributor and minor
19 contributor to mean there was more of the victim's DNA
20 than the other DNA.

21 A. That's correct.

22 Q. Okay. So that's -- but you were still able to
23 differentiate into two profiles?

24 A. That's correct.

25 Q. Okay. And that second profile, that we don't

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1 know who it is, we don't know who it is?

2 A. That's correct.

3 Q. Okay. And not only did you test that against
4 Mr. Scantling, but you were also submitted standards for
5 the other investigators and things in this case; correct?

6 A. There were several people, yes.

7 Q. So it was tested amongst a number of standards
8 you were supplied and no one matched it?

9 A. As well as put into the database and nothing
10 matched it.

11 Q. What database is that?

12 A. CODIS, which stands for Combined DNA Indexing
13 System. It's basically the U.S.'s national DNA database.

14 Q. Is there something like that for fingerprints?

15 A. Yeah. It's analogous to AFIS, which is the
16 fingerprint database.

17 Q. Which is you just kind of throw it out there and
18 see if maybe someone's been encountered before --

19 A. Not quite that --

20 Q. -- that you can match?

21 A. I mean, it's not quite that flippant. I mean,
22 there's specific qualities --

23 Q. Well, I'm sure there --

24 A. -- and issues --

25 Q. -- are. But for lay purposes --

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1. A. It's entered into the database, if it's eligible
2 -- and there's eligibility issues -- and then every week,
3 based on the FBI's protocol, all those profiles get
4 searched and any candidate hits would come back to the lab
5 that submitted them. So we haven't gotten a candidate hit
6 back from that minor profile, is what I'm saying.

7 Q. So we talked that you're more likely to get more
8 actual DNA from a body-fluid sample than from a touch DNA
9 sample and we've talked about wearing of gloves might
10 decrease the transference of DNA from touch DNA; correct?

11 A. I think the term was there's a lot less
12 likelihood that you will get a DNA profile from somebody
13 wearing gloves and them touching a piece of evidence.

14 Q. So that piece of evidence would be less likely
15 to have DNA on it?

16 A. It would be less likely to have that person's
17 DNA on it, yes.

18 Q. Could you test the gloves?

19 A. You could test the gloves.

20 Q. And would they be likely to have DNA on there?

21 A. It's possible to test the gloves. It depends on
22 the type of glove as to what your success rate is going to
23 be getting DNA. But they can be tested.

24 Q. Okay. And touch DNA probably more so --
25 well, you tell me if I'm saying this wrong. But it's

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1 probably -- touch DNA is probably more fragile than DNA.

2 I mean, would that be true?

3 A. No.

4 Q. Well, I shouldn't say more fragile, the DNA
5 itself, but the likelihood of developing a profile.

6 A. Yes. The likelihood of developing a profile is
7 less with touch DNA. Just it's based on quantity.

8 Q. And touch DNA is touch -- you know, you touch
9 something and it rubs off of you onto whatever it is being
10 tested; correct?

11 A. That's correct.

12 Q. Okay. So it's also possible that that DNA could
13 be then rubbed off; correct?

14 A. That's possible.

15 Q. So you wouldn't be able to develop a profile?

16 A. That's correct.

17 Q. So you're more likely to develop a profile from
18 someone that's more recently tested an item, or someone
19 more likely in the past that have touched an item, all
20 things being -- other things being equal?

21 A. It completely depends on the item and where. I
22 mean, we process a lot of touch DNA in our lab and, you
23 know, things that are like doorknobs and common things, we
24 get profiles from other mixtures. So it's not unlikely to
25 get a profile. But if something is a common item, then

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1 you're going to get less probative information from it
2 because it's touched by many different people. I don't
3 know if that answered your question or not but --

4 Q. It's information that's useful. I think we can
5 go farther with it.

6 A doorknob, like you just gave us, if I touch it
7 I'm likely to leave DNA on there; correct?

8 A. It's possible.

9 Q. Okay. It's possible for me to leave DNA on
10 there. But if other people touch it, is it possible for
11 them to rub my DNA off while transferring their own?

12 A. That's possible.

13 Q. And so would you say it's fair to -- is it fair
14 to say the more recently someone touched something, the
15 more likely it is to have their DNA on it?

16 A. Yeah, I think that's an accurate statement.

17 MR. WALKER: Okay. Beg the Court's indulgence.

18 [Whereupon, Mr. Walker and Ms. Carroway confer]

19 MR. WALKER: That's all I have, Judge.

20 MR. THORNTON: Briefly.

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REDIRECT EXAMINATION

BY MR. THORNTON:

Q. Dr. Amick, you've mentioned, and Mr. Walker asked you a couple of times, about CODIS. What -- who -- what are the standards that go in CODIS?

A. You mean the quality standards or the --

Q. I'm sorry. I should be more specific.

You said that when you have something that's of sufficient quality to send to CODIS, you send it and it's tested. What is it tested against? In other words, who are the standards from that go into CODIS?

A. Okay. There's two kind of parts to CODIS. One is evidence. So laboratories like my laboratory, the SLED laboratory, all state, local laboratories who subscribe to it, develop profiles from evidence and enter them into CODIS.

The other part of it is called convicted offenders. I think this is what you're asking.

Q. Yes, sir.

A. That is -- and it depends on the state and the laws of the state. But all the states now have what are called all-felony laws. So if are convicted of a felony in a state, for example, South Carolina, when you are processed at the jail or facility they'll take your standard, blood or a buccal swab, and they send it to the

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1 state custodian of the database. In this case it would be
2 SLED. They develop your profile and put that in CODIS.
3 So CODIS is a mixture of evidence profiles and people that
4 have been convicted of crimes, felonies. And every week
5 those are searched against themselves, against each other,
6 against every state in the country. Does that answer your
7 question?

8 Q. Thank you. It does. Thank you very much, sir.

9 MR. THORNTON: No further questions, Your Honor.

10 MR. WALKER: I don't have anything else. Thank
11 you.

12 MR. THORNTON: I would ask that --

13 THE COURT: Is there any objection to Dr. Amick
14 being excused?

15 MR. THORNTON: No, ma'am.

16 THE COURT: You are excused.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you.

19 [Whereupon, Mr. Amick is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness, Mr.
22 Thornton.

23 MR. THORNTON: Agent Cromer, with South Carolina
24 Law Enforcement Division.

25 [Whereupon, Ms. Cromer comes forward]

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1 THE CLERK OF COURT: Would you place your left
2 hand on the Bible and raise your right hand for me,
3 please.

4 [Whereupon, Ms. Cromer is duly sworn by the
5 clerk of court as follows: do you solemnly swear to
6 truthfully answer all questions asked of you by this
7 court, so help you God]

8 THE WITNESS: I do.

9 THE CLERK OF COURT: Please be seated.

10 [Whereupon, Ms. Cromer takes the witness stand]

11 THE CLERK OF COURT: State your name and spell
12 it for the Court, please.

13 THE WITNESS: My name is Suzanne Cromer.
14 C-R-O-M-E-R.

15 - - - - -

16 SUZANNE CROMER,

17 Having Been First Duly Sworn,
18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q. Agent Cromer, who do you work for?

22 A. I'm employed by the South Carolina Law
23 Enforcement Division, commonly referred to as SLED.

24 Q. And what do you do for SLED?

25 A. I am a firearm and tool-mark examiner.

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1 Q. And, ma'am, did you -- how long have you been
2 doing that?

3 A. I've been with SLED for fourteen years. I've
4 been an examiner since 2000. So a little over thirteen
5 years.

6 Q. And have you ever been qualified in firearm and
7 tool-mark identification in court in South Carolina?

8 A. Yes, sir, I have. Approximately sixty times.

9 MR. THORNTON: Your Honor, I would ask that
10 Agent Cromer be made an expert for the purposes of
11 firearm and tool-mark identification and analysis.

12 MR. WALKER: No objection.

13 THE COURT: Ladies and gentlemen, just as I did
14 with Dr. Amick previous, only here Agent Cromer is
15 being qualified as an expert in the area of firearm
16 and tool analysis. Ladies and gentlemen, again, that
17 allows her to give her opinion to you, as well as her
18 reasons for the opinion. Again, as I reminded you
19 before, that is to use as you see appropriate compared
20 to the other evidence in the case.

21 MR. THORNTON: Thank you, Your Honor.

22 Q. [Mr. Thornton] Agent Cromer, let me ask you one
23 question to start with. I'm going to hand you what's been
24 entered into evidence. There's actually two things in
25 here. It's State's Exhibit 1-A and 1-B and could you --

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1 it's out of the bag, obviously, but could you identify
2 that for me, please?

3 A. State's Exhibit 1-A is the firearm that I
4 examined in this case. I know that because it's inscribed
5 with my lab number, my item number, and my initials. It
6 is a Highpoint firearm, model JHP .45 auto caliber, serial
7 number X4110189.

8 Q. Agent Cromer, did you test that firearm in this
9 case?

10 A. Yes, sir, I did.

11 Q. Okay. I'm going to hand you now what's been --
12 I'm sorry. Could you look in the box and tell me what 1-B
13 is?

14 A. Included -- I'm assuming the magazine is
15 included in 1-A?

16 Q. It is. Yes, ma'am.

17 A. And there's the magazine.

18 And 1-B is four unfired .45 auto rounds that are
19 in a sealed container with my initials and seal date.

20 Q. And, ma'am, I'm going to hand you what has not
21 been entered into evidence yet but has been marked for
22 identification as State's Exhibit 54. Can you identify
23 that for me, please? If you need to open it, ma'am, you
24 can.

25 A. State's Exhibit 54 is one fired bullet. It's my

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1 item 15. Again, it's in a sealed container with my
2 initials and seal date.

3 Q. Did you do any analysis with regard to State's
4 Exhibit 54?

5 A. Yes, sir, I did.

6 Q. All right. And let me ask you this. If you
7 could -- if you could go ahead and examine State's 54 and
8 see if it's been altered or changed in any way or if it's
9 still in the same sealed condition it was when you
10 examined it.

11 A. Again, the base of this bullet is scribed with
12 my lab number, my item number, and my initials, and it is
13 in -- the outer container is still sealed with my initials
14 and my seal date.

15 Q. And has that been altered or changed in any way?

16 A. No, sir, it does not appear not [phonetic].

17 MR. THORNTON: Your Honor, at this time I would
18 ask that State's Exhibit I believe it's 54 --

19 THE WITNESS: Yes, sir.

20 MR. THORNTON: -- be moved into evidence.

21 MR. WALKER: No objection.

22 THE COURT: Without objection.

23 [Whereupon, State's Exhibit Number 54 is
24 admitted into evidence by the Court]

25 Q. [Mr. Thornton] Agent Cromer, is that, in

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1 fact -- I know you tested this. Is that the bullet that
2 was retrieved from the victim in this case, Leonard Green?

3 A. It was labeled as from autopsy of Leonard Green.

4 Q. Yes, ma'am.

5 Did you -- what kind of analysis did you do with
6 regard to that bullet and that firearm?

7 A. When I receive evidence like this in a case, the
8 first thing I do is look at the type of ammunition or type
9 of bullet I have. I determined this to be a .45 auto
10 jacketed hollow-point bullet. I then move to the firearm.
11 I check it to make sure that it is safe to fire. If I
12 deem that it is safe to fire, I will go ahead and shoot
13 what I call test fires. I shoot similar ammunition to
14 what I received in this case. I shoot them into a --
15 there's a two-story bullet-recover tank full of water. I
16 pull my bullets out of the water. And then I will
17 microscopically compare them to each other, as well as any
18 fired cartridge cases that I have, to see how this firearm
19 marks as it is -- are bullets and cartridge cases. Then I
20 compare it to my unknown, my evidence. This is all done
21 on a comparison microscope. I do it on a comparison
22 microscope because it allows me to look at two images
23 side-by-side at the same time. So I put my test on the
24 left, my evidence on the right, and then I go from there.
25 And I did that in this case.

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1 Q. All right. With regard to State's Exhibit 54,
2 which I believe is your SLED item 15, which is the bullet
3 from the autopsy of the victim in this case, Leonard
4 Green, were you able to determine conclusively whether
5 that bullet was fired by State's Exhibit 1-A?

6 A. No, I wasn't.

7 I could not exclude this firearm as being the
8 one that fired this bullet, but I could not say that it
9 did.

10 What I'm looking at on the bullet is the rifling
11 characteristics. We call it a GRC exam, General Rifling
12 Characteristics. I'm looking at that rifling that is
13 imprinted on the bullet by being fired. The rifling is
14 what's in the gun barrel to put rotary motion on that
15 bullet.

16 The rotary motion is kind of similar to a
17 quarterback throwing a football. When he throws that
18 football, he wants it to go into a tight spiral so it will
19 travel more accurately towards its target. That's the
20 same premise with the bullet or the projectile. You want
21 it to spin so it will travel more accurately towards its
22 target.

23 Now, this rifling is made up of a series of
24 lands and grooves, raised and depressed areas, and
25 different manufacturers have different numbers of lands

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1 and grooves. For instance, this gun has seven lands and
2 grooves. That means seven raised areas, seven depressed
3 areas, inside that gun barrel, and they twist or spin --
4 the bullet will spin to the left.

5 So first off, it was unique in that there's only
6 one known manufacturer at this time that uses seven lands
7 and grooves left twist in a .45 auto firearm, and that is
8 the Highpoint firearm, which is this manufacturer. So I
9 could not exclude.

10 But what I'm also looking at is the individual
11 defects or individual identifying characteristics, which
12 microscopically look like scratches, and there just were
13 not enough to definitively conclude whether or not this
14 bullet was fired by this firearm.

15 Q. Would it be fair to say, Agent Cromer, that you
16 can, in your expert opinion, say that State's Exhibit 54,
17 the bullet from the body of Leonard Green, was fired by a
18 Highpoint .45?

19 A. At this time there's only -- the only known
20 manufacturer that uses seven left rifling in a .45 auto is
21 a Highpoint firearm.

22 Q. And that bullet is consistent with a .45 caliber
23 bullet?

24 A. Yes, sir.

25 Q. And that State's 1-B is, in fact -- or, excuse

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1 me -- 1-A is, in fact, a Highpoint .45 caliber pistol
2 capable of firing that bullet; is that correct?

3 A. That is correct.

4 Q. Did you also -- as a final question, Agent
5 Cromer, did you also prepare swabs of the 1-A, State's
6 1-A?

7 A. Yes, I did. I took three swabs of State's 1-A
8 as my agrinion. I took a swab of the grip area, of the
9 trigger area, and the slide and the slide stock. The
10 slide stock is what holds the slide back on the firearm.

11 Q. And who did you turn those over to?

12 A. I hand-delivered them to Lilly Gallman in the
13 DNA department.

14 Q. And is Lilly Gallman here today?

15 A. Yes, she is.

16 MR. THORNTON: Thank you. Your Honor, I have no
17 further questions for Agent Cromer.

18 Thank you, ma'am. Please answer any questions
19 Mr. Walker has.

20 THE COURT: Mr. Walker?

21 MR. WALKER: I don't have any questions. Thank
22 you.

23 THE COURT: All right. Any objection to Agent
24 Cromer being excused?

25 MR. THORNTON: I do not, Your Honor. But I

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1 believe they all rode together, so she'll probably
2 wait.

3 THE COURT: Okay. You're excused.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 [Whereupon, Ms. Cromer is excused and exits the
7 witness stand.

8 THE COURT: Call your next witness.

9 MR. THORNTON: Yes, ma'am. Agent Gallman.

10 [Whereupon, Ms. Gallman comes forward]

11 THE CLERK OF COURT: Please raise your right
12 hand, put your --

13 [Whereupon, Ms. Gallman is duly sworn by the
14 clerk of court as follows: do you solemnly swear or
15 affirm that the testimony you give to the Court in
16 this trial shall be the truth, so help you God]

17 THE WITNESS: Yes, I do.

18 [Whereupon, Ms. Gallman takes the witness stand]

19 MR. THORNTON: Agent Gallman, would you please
20 state your name for the record and spell your last
21 name?

22 THE WITNESS: It's Lilly Smalls Gallman.

23 G-A-L-L-M-A-N.
24 - - -
25 - - -

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LILLY GALLMAN,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q. Agent Gallman, who do you work for?

A. I work for the South Carolina Law Enforcement Division as a forensic DNA analyst.

Q. And is that the organization commonly known as SLED?

A. Yes, it is.

Q. And you said you did DNA analysis. What is your -- do you have a particular educational component that allows you to do that?

A. Yes, I do. I have a degree in biology from the University of South Carolina. Once I received my degree in biology, I continued working there in the area of molecular genetics. I began working with the South Carolina Law Enforcement Division, in January of 1990, as a forensic DNA analyst. Since that time, I have been trained in the area of serology, which is the study of body fluids, and I also have attended the FBI DNA typing schools.

Q. How long -- have you ever been qualified, Agent Gallman, to testify as an expert in DNA analysis in South

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1 Carolina?

2 A. Yes, I have.

3 Q. How many times, ma'am?

4 A. Approximately seventy.

5 MR. THORNTON: Your Honor, I would ask that
6 Agent Gallman be qualified as an expert in the field
7 of DNA analysis.

8 MR. WALKER: No objection.

9 THE COURT: Again, ladies and gentlemen, this
10 expert is being allowed to testify in the area of DNA
11 analysis. It allows her to give her opinion and,
12 again, her reasons for the opinion. And, again, it's
13 for you to use as you see appropriate, compared to the
14 other evidence in the case.

15 MR. THORNTON: Thank you, Your Honor.

16 Q. [Mr. Thornton] Agent Gallman, I realize that --
17 would it be fair to say that you tested a lot of items in
18 this case?

19 A. Yes, I did.

20 Q. All right. To shorten this up, I will just ask
21 you about some specific items, if that's all right with
22 you.

23 First, I would like to ask you about item --
24 your item 1.2, which is labeled as the swab from the
25 Verizon cell phone. There was DNA found on that; is that

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1 correct? And please feel free to -- I realize there's a
2 lot of items, and this was some time ago, so please feel
3 free to refer to your report.

4 A. Yes. I was able to develop -- obtain DNA from
5 item 1.2.

6 Q. All right. And it is a mixture of at least two
7 individuals; correct?

8 A. That's correct.

9 Q. And Leonard Green was excluded from that DNA
10 profile; is that correct?

11 A. Yes, she was.

12 Q. And Jerry Scantling was also excluded from that
13 DNA profile, wasn't he?

14 A. That's correct.

15 Q. All right. And it says here that the mixture is
16 not suitable for CODIS. What does that mean? We heard
17 from Dr. Amick, a few minutes ago, that there has to be
18 certain standards. What does that mean that it wasn't
19 suitable for CODIS?

20 A. With this particular item, item 1.2, it is a
21 mixture and we have low-level of DNA in that sample.
22 There are certain guidelines we follow, as to whether this
23 could be entered into CODIS or not, to alleviate the fact
24 you getting hits on -- back on quite a few individuals.

25 Q. Yes, ma'am.

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1 A. So with this particular DNA profile, it was not
2 suitable for CODIS, based on that. You had low level of
3 DNA and it was not -- we was not able to separate a major
4 or minor contributor.

5 Q. All right. Thank you, ma'am. Moving on.

6 DNA profile from item 2, which is labeled on
7 yours as swab of stain near marker 7.

8 A. Yes.

9 Q. And I'm just going to go ahead because I believe
10 you have several of these grouped together, because they
11 all came back the same way. So if it's all right, I'll
12 just go through them -- we'll just go all through the same
13 results, if that's all right with you.

14 A. Okay.

15 Q. Item 5, one swab of stain near marker 3-A; item
16 6, a swab of stain near marker 3-B; item 7, swab of gun,
17 Highpoint, which says -- and all of these, by the way, on
18 the initial report say blood indicated and then there's
19 DNA analysis; is that right?

20 A. That's correct.

21 Q. All right. 9.2, which is swab from item 9
22 trigger area of .45 caliber handgun. Ma'am, as to 2, 5,
23 6, 7 and 9.2, were you able to develop a blood-based DNA
24 profile?

25 A. Yes, I was.

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1 Q. And who is that DNA profile of?

2 A. The DNA profile of Leonard Green matches these
3 items.

4 Q. So Leonard Green's DNA is on -- is a swab of
5 stain near marker 7, the swab of stain near marker 3-A,
6 3-B, item 7, the swab of the Highpoint gun, and, more
7 specifically, 9.2, the swab of the trigger area of the .45
8 caliber gun, and all that was from blood. Is that what's
9 referenced on your report?

10 A. Blood was indicated on those items and then I
11 did a DNA analysis on those items.

12 Q. All right. So when Dr. Amick talked earlier
13 about it's the same DNA but you have touch DNA versus DNA
14 from a fluid, this was actually from blood; is that
15 correct?

16 A. Based on the information I have, it was from
17 blood.

18 Q. Yes, ma'am.

19 A. There was blood found there.

20 Q. Right. And then that was swabbed and taken and
21 the DNA profile developed was of?

22 A. It was from those items. I can't say directly
23 from the blood because once the DNA is extracted, you
24 don't know what body fluid it's coming from.

25 Q. I understand. Thank you, ma'am.

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1 All right. Item 4 is a swab of the pistol
2 magazine area. It says blood indicated, DNA analysis?

3 A. Yes.

4 Q. And it says that -- I know it's a mixture, but
5 who can you -- can you positively identify one person as
6 having been the contributor to this DNA?

7 A. Yes. I'm reading from my report. The DNA
8 profile of the major contributor coming from item number 4
9 to this mixture also matches the DNA profile of Leonard
10 Green.

11 Q. All right. And the minor contributor, there's
12 not enough to even analyze; is that correct?

13 A. It's not enough to say who it could possibly
14 belong to.

15 Q. 9.1, ma'am, swab from item 9, the grip of the
16 .45 caliber handgun, and 9 point -- yes, ma'am, 9.1. Did
17 you -- were you able to get a DNA profile?

18 A. Yes. The partial DNA profile available from
19 item 9.1 also matches the DNA profile of Leonard Green.

20 Q. All right. Now, ma'am, if you will go back to
21 page I believe it's 9 of your report. We have items 37.5,
22 which is swab from driver's door handle and window crank
23 from the victim's vehicle, 37.10, swab from driver's side
24 rear armrest from the victim's vehicle, 37.11, swab from
25 driver's headrest from the victim's vehicle; 37.12, swab

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1 from dashboard knobs of victim's vehicle. Were you able
2 to pull DNA from that?

3 A. Yes. All our items were mixtures of at least
4 two individuals and they were not suitable for CODIS
5 entry.

6 Q. All right. Now, were you able to positively
7 exclude the victim, Leonard Green?

8 A. Yes, I was able.

9 Q. Were you also able to exclude Jerry Scantling?

10 A. Yes.

11 Q. Now, DNA from item 37 point -- I'm sorry. Let
12 me go back here. I realize there's a lot of them. 37.1,
13 swabs from the steering wheel from the victim's vehicle.
14 Were you able to pull DNA from that?

15 A. The DNA from that was also a mixture.

16 Q. Yes, ma'am.

17 A. And the DNA profile, the major contributor to
18 this mixture is an unidentified individual.

19 Q. all right. And did you submit that to CODIS?

20 A. Yes, I have.

21 Q. And have you gotten a hit back, to this day?

22 A. No, not that I know of.

23 Q. Was Leonard Green excluded?

24 A. Yes, he was.

25 Q. And was Jerry Scantling excluded?

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1 A. Yes.

2 Q. Along -- and of course I've left these other
3 folks out. Along with several officers that submitted
4 their standards to you, as well; is that correct?

5 A. Yes. They were submitted as elimination
6 standards.

7 Q. All right. 37.6 and 37.8. 3.6, the swabs from
8 passenger headrest, 37.8 is from the gearshift knob. Did
9 you attempt to get DNA from those items?

10 A. Yes, I did. I --

11 Q. And were you able to get any?

12 A. I was not able to get a SDR DNA profile from
13 those items.

14 Q. Ma'am, if you will now go to -- it's all
15 contained in my same report, but it may actually be a
16 separate report from you, dealing with the Panasonic
17 headphones, item -- I believe your original item was 45.
18 Were slides prepared for you by someone on item 45?

19 A. Yes, swabs were taken from the Panasonic -- the
20 headphones.

21 Q. And who took those swabs?

22 A. Betty Butler.

23 Q. And is Ms. Butler also here?

24 A. Yes, she is.

25 Q. Once those swabs were taken, were you able on

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1 the item -- your item 45 -- and then, obviously, 45.1 and
2 45.2 were swabs taken from those headphones. Did those
3 headphones contain a DNA profile you were able to
4 positively identify?

5 A. Yes. From item 45.1, the partial DNA profile
6 developed from item 45.1 matches the DNA profile of Jerry
7 Scantling.

8 Q. All right. Who -- obviously, you wouldn't know
9 that. But it would be the defendant in this case.

10 Let me ask you: did you -- a lot of times when
11 you see on television you get -- if you get a positive
12 identification, they always talk about there's a number
13 associated with it. Were you able to do a probability
14 number in this case of that being somebody else's DNA?

15 A. Yes. Once -- we are required that once you
16 establish that you have a match between evidence and a
17 known standard --

18 Q. Yes, ma'am.

19 A. -- then a statistical value has to be applied to
20 that match, and in this particular case it was one in
21 sixty-seven million.

22 MR. THORNTON: All right. Your Honor, the
23 Court's indulgence, please.

24 [Whereupon, Mr. Thornton reviews documents]

25 MR. THORNTON: Sorry, Your Honor. One more

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1 moment, please.

2 [Whereupon, Mr. Thornton reviews documents]

3 MR. THORNTON: Your Honor, I have nothing
4 further at this time.

5 Thank you, Agent Gallman. Please answer any
6 questions Mr. Walker has.

7 MR. WALKER: Good afternoon, Agent Gallman.

8 THE WITNESS: Good afternoon.

9 CROSS-EXAMINATION

10 BY MR. WALKER:

11 Q. All those items that we just went through with
12 the solicitor, the only thing you developed a match for
13 Mr. Scantling was the headphones; correct?

14 A. The only item that there was not a mixture --

15 Q. Right. That you were --

16 A. -- was item --

17 Q. -- able to positively --

18 A. -- number 45 --

19 Q. -- identify --

20 A. -- 45.1.

21 Q. -- a profile for Jerry Scantling was that 45.1
22 from the Panasonic headphones?

23 A. Yes.

24 MR. WALKER: Thank you. That's all I have.

25 THE COURT: Anything further?

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1 MR. THORNTON: Nothing further, Your Honor.

2 THE COURT: Agent Gallman, you are excused.

3 MR. THORNTON: Your Honor, I would like one
4 moment to -- I've got to excuse the other SLED agents
5 and I just want them to know why, since we've taken
6 care of the chain-of-custody issue --

7 THE COURT: Okay. Should we --

8 MR. THORNTON: -- with the Court's permission.

9 THE COURT: -- take a break right now or --

10 MR. THORNTON: It probably would be a good idea,
11 Judge.

12 THE COURT: Okay. You may go ahead and step
13 down, Agent. Thank you.

14 THE WITNESS: Thank you.

15 [Whereupon, Ms. Gallman is excused and exits the
16 witness stand]

17 THE COURT: Ladies and gentlemen of the jury,
18 we're going to take a brief recess. Again, go grab a
19 cup of coffee. We'll be right back with you. Do not
20 discuss the case. It wouldn't be appropriate to do
21 so. Thank you.

22 [Whereupon, the jury exits the courtroom at
23 2:59 p.m.]

24 THE BAILIFF: The jury is clear, Your Honor.

25 THE COURT: Thank you.

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1 Y'all, let's go ahead and just take a quick five
2 minutes, you can talk to your agent, and then we'll
3 come back and we'll go ahead and do the one proffer.

4 Is that fine with you?

5 MR. THORNTON: Yes, ma'am. That will fit
6 perfectly with what we're doing.

7 THE COURT: We'll be back in five minutes.

8 MR. THORNTON: Thank you, Judge.

9 [Whereupon, a recess is taken from 2:59 p.m. to
10 3:30 p.m.]

11 THE COURT: All right. Do you want to go ahead
12 and do that proffer?

13 MR. THORNTON: Yes, ma'am. Brittany Raines.

14 THE COURT: Come on forward, Ms. Raines.

15 [Whereupon, Ms. Raines comes forward]

16 THE COURT: Ma'am, if you -- will you place your
17 left hand on the Bible and raise your right hand.
18 Right here.

19 [Whereupon, Ms. Raines is duly sworn by the
20 clerk of court as follows: do you solemnly swear to
21 truthfully answer all questions asked of you by this
22 Court, so help you God]

23 THE WITNESS: Yes.

24 THE CLERK OF COURT: Please be seated.

25 [Whereupon, Ms. Raines takes the witness stand]

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1 THE CLERK OF COURT: State your name and spell
2 it for the Court, please.

3 MR. THORNTON: Say your name. Say your full
4 name and then spell your last name for the record.

5 THE WITNESS: Brittany Raines. R-A-I-N-E-S.

6 MR. THORNTON: Okay. Ms. Raines, let me ask you
7 just a few questions.

8
9 BRITTANY RAINES,

10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 PROFFER

13 BY MR. THORNTON:

14 Q. First of all, did you and I have a conversation
15 both some time ago, and also today, that we're going to
16 focus your statement only on the events that happen as
17 they relate to the murder in this case? Is that correct?

18 A. Yes, sir.

19 Q. All right. Did you give a statement to law
20 enforcement to I believe -- I want to say its -- was it
21 Captain Bromage?

22 A. Uh-huh.

23 Q. Bob Bromage --

24 A. Yes.

25 Q. -- with Beaufort County?

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1 A. Yes, sir.

2 Q. Okay. And did you give a statement in relation
3 to things that Jerry Scantling told you?

4 A. Yes, sir.

5 Q. Where were you when these statements -- when
6 Jerry told you this story?

7 A. In jail.

8 Q. All right. And where was Jerry?

9 A. In jail.

10 Q. All right. Now, do you see Jerry in the
11 courtroom?

12 A. Yes.

13 Q. Where is he?

14 A. Right there [indicates].

15 Q. All right. You're indicating the defendant,
16 Jerry Scantling?

17 A. Yes, sir.

18 Q. And do you know him?

19 A. Yes, sir.

20 Q. And how do you know him?

21 A. I had a relationship with him when I was real
22 young.

23 Q. Okay. So would it be fair to say that at one
24 time you were boyfriend and girlfriend, for lack of a
25 better word?

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1 A. Yeah.

2 Q. All right. How were you able -- you're in the
3 women's side and he's in the men's side, I'm assuming.
4 How were you -- what cells were you in? Do you remember?

5 A. I was in Bravo 1 and -- I don't remember.

6 Q. If you don't remember --

7 A. 141.

8 Q. Okay. And is there a way between the Bravo
9 men's side and the women's side that you can communicate
10 in the particular cells you were in?

11 A. There's a vent.

12 Q. All right. And does that vent run through both
13 cells?

14 A. Yes, sir.

15 Q. Okay. And is that how you communicated with
16 him?

17 A. Yes, sir.

18 Q. And did you know it was Jerry because of your
19 prior relationship?

20 A. Yes, sir.

21 Q. What did he tell you? And if you need your
22 statement -- do you have a copy of your statement you
23 gave?

24 A. Yeah.

25 Q. Okay. Do you --

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1 A. I don't need it.

2 Q. All right. What did -- about the murder of --
3 or any murder that he may have committed, what did he tell
4 you?

5 A. He just told me that the sheriff's department
6 was trying to put charges on him for murder but that they
7 didn't have any evidence and that -- he basically told me
8 most of the details.

9 Q. Okay. Well, that's why I'm asking you why -- if
10 you need to refer back to your statement you can, because
11 I want to know what the details are, so --

12 A. Okay.

13 Q. What did he tell you that he did?

14 A. He told me that he killed a gay guy.

15 Q. Okay. And did he tell you -- do you know what
16 caliber gun --

17 A. A .45.

18 Q. Okay. So he told you in this case he used what
19 caliber?

20 A. A .45.

21 Q. All right. And --

22 A. A Highpoint .45.

23 Q. A Highpoint .45.

24 Did he tell you how many times he shot him?

25 A. Two.

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1 Q. Did he tell you whether or not there was any
2 kind of struggle, did he say he just shot him, or did he
3 say he did other things to him, as well?

4 A. No. He said they fought.

5 Q. Okay. Did he say -- did he use any particular
6 term about what he did to him?

7 A. He said he pistol-whipped him.

8 Q. So he said he pistol-whipped him. Did he say
9 what he did after that?

10 A. [No response]

11 Q. Your statement is right in front of you. Did he
12 say anything that -- what happened after he shot him and
13 pistol-whipped him?

14 A. Yeah. He stole his truck.

15 Q. All right. And where did he go?

16 A. Savannah.

17 Q. Did he talk about the victim's phone at all?

18 A. Yeah. He said he did have the phone and that he
19 called people off the phone.

20 Q. All right. Did he identify a particular person
21 that he made phone calls to?

22 A. Well, he said the sheriff's department thought
23 that he called Donald Cooper.

24 Q. Okay. Would you look at your statement on --
25 and I'm not sure if yours is hole-punched or not. But it

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1 would be one, two, three, four, five, six, seven, eight,
2 nine, ten, eleven, twelve lines down where it says: he
3 told me that he called. What does that say?

4 A. Yeah, he did. But at first he told me that they
5 thought that he called. But then as it went on, I mean,
6 he -- he basically -- yeah, he admitted it.

7 Q. All right. We've already talked about it was a
8 Highpoint .45. Did he tell you where he left the truck?

9 A. In Savannah.

10 Q. All right. And did he tell you how he got back
11 to Beaufort?

12 A. He stole a car.

13 Q. All right. And did he tell you where this
14 occurred?

15 A. No, not exactly where.

16 Q. Okay. Did he tell you in general?

17 A. Not -- don't exactly remember.

18 Q. Okay. Look at the bottom of your statement.
19 What does it say?

20 A. Oh. Where -- you mean the murder?

21 Q. I'm sorry. Yeah. I should have been more
22 specific.

23 Did he say where he shot and killed the victim
24 in this case?

25 A. On Pinckney Island.

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1 Q. On Pinckney Island.

2 MR. THORNTON: All right. Your Honor, that
3 would be the testimony. I know Mr. Walker has some.
4 And that would be exactly how I would phrase it and
5 ask it to keep it away from the mention of the
6 burglary.

7 THE COURT: Okay. Mr. Walker?

8 MR. WALKER: Thank you, Your Honor.

9 PROFFER

10 BY MR. WALKER:

11 Q. Just a moment ago you were -- Ms. Raines, you
12 were saying that he initially told you that the sheriff's
13 office thought he had called Donald Cooper. Then you
14 said, well, he basically admitted it. Then you said, no,
15 he did admit it.

16 A. Well, we talked about it but -- and eventually
17 it did come out, I mean, he did call him.

18 Q. So he said to you, I called Donald Cooper --

19 A. Yes.

20 Q. -- from the dead guys phone?

21 A. Well, he didn't say the dead guy. He said he --
22 that he had the phone and that he made a couple of phone
23 calls and that Donald was one of them.

24 Q. Okay. So all the facts you've just testified to
25 are things that he told you?

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1 A. Yes, sir.

2 Q. Do you remember meeting with law enforcement at
3 the jail, Officer Riley, and giving him a letter?

4 A. Yes.

5 Q. Do you remember having a conversation with him?

6 A. Yes.

7 Q. About both Mr. Scantling and your pending
8 federal charges?

9 A. Yes.

10 Q. But you told Officer Riley that there were spots
11 about Jerry's story you didn't know and it was your mother
12 that filled those in?

13 A. Some of it she did, like as to what color the
14 truck was and stuff like that. There were things that I
15 didn't know that she knew.

16 Q. Okay. And about where it happened?

17 A. About where it happened?

18 Q. Yeah. You told --

19 A. I mean, it could --

20 Q. -- Officer Riley your mom told you that.

21 A. Well, it very well could be true, but, I mean, I
22 don't exactly recall. But I -- I'm -- I don't know if he
23 exactly told me where it happened or if it was her, but
24 there were certain parts of the story that she knew that I
25 didn't.

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1 MR. WALKER: Court's indulgence.

2 [Whereupon, Mr. Walker and Ms. Carroway confer]

3 MR. WALKER: I think, Your Honor, at this point
4 I would just go ahead and exclude the witness as
5 unreliable. She can't determine what she actually
6 heard and what she was told by other people, not
7 Mr. Scantling.

8 THE COURT: Go ahead.

9 MR. THORNTON: Judge, I don't think there's been
10 a basis laid for that. I mean, he talked about one
11 issue with where it was located. I mean, she seemed
12 very clear in her statement. And I don't think she
13 listed the color of the truck in the statement and I
14 was -- and nor did I ask her what color the truck was.
15 That was the other piece of information she said came
16 from her mother.

17 Also, for the record I just wanted -- for
18 Mr. Walker's purposes, I don't believe it was -- he
19 said Riley. I think it was Adams that she met with
20 and not Riley, just for record purposes, because I
21 don't want her confused when you're throwing out
22 officer names. I believe it was actually Mr. Adams
23 she met with.

24 THE COURT: Okay.

25 MR. THORNTON: I'll be happy to re-ask her some

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1 of these same questions and ask her did the
2 information she provided to me, was that what he told
3 her or what her mother told her.

4 THE COURT: And that's -- what you need to
5 understand, Ms. Raines, is that I can't have you
6 testifying to something that your mother told you.

7 THE WITNESS: I understand.

8 THE COURT: You can only testify as to what you
9 know as to be the facts, not what you've learned
10 through anyone else. So, again, anything you testify
11 to, it has to be limited strictly to that.

12 MR. WALKER: And I would say, Your Honor, the
13 solicitor's last question on direct was, you know,
14 read your statement, where did the murder happen. He
15 told me it happened at Pinckney Island. I just asked
16 her about that statement she gave, that it was her
17 mother that told her that. I asked her, well, which
18 ones do you remember and which ones you don't and she
19 said, well, I can't really remember which. And now
20 we're just giving her a chance to -- you know, she's
21 completely unreliable. And, frankly, she's a
22 jailhouse informant with pending charges and trying to
23 get something out of it at the time. I'm not -- not
24 currently, but --

25 THE COURT: Ms. Raines, can you remember

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1 accurately what you were told by Mr. Scantling when
2 y'all were talking through the vent?

3 THE WITNESS: I can remember -- I just don't
4 remember if he told me if it was at Pinckney Island or
5 not. That's the only part that I can't remember if he
6 told me or if my mom told me.

7 THE COURT: Okay.

8 THE WITNESS: I know he told me that it happened
9 in between the bridges. Which I am from here. I know
10 that that's Pinckney Island.

11 THE COURT: So he told you it was in between the
12 bridges?

13 THE WITNESS: Yeah. He did tell me that it was
14 between the bridges.

15 THE COURT: So that's what you can testify to.
16 You can testify to that but you can't take the second
17 leap if you don't know if your mother provided it or
18 if he told you it was Pinckney Landing? Okay? You
19 can only say exactly as he told you. Do you
20 understand that?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. And you say that's the only
23 thing that you're not --

24 THE WITNESS: Yes, ma'am.

25 THE COURT: -- sure whether or not it came from

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1 your mother versus whether or not Mr. Scantling --

2 THE WITNESS: Yes.

3 THE COURT: -- told you. Correct?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay.

6 MR. WALKER: And I would just point out there's
7 nothing about a statement from him that it happened
8 between the bridges in her statement, ever.

9 THE COURT: All right. Anything further?

10 MR. THORNTON: There is on behalf of the State,
11 but I'll wait until Mr. Walker is finished.

12 MR. WALKER: I don't have anymore questions.

13 Again, my point is that I specifically asked her
14 can you remember when and she said, I have trouble
15 remembering which ones and which not. And then she,
16 when called on it, attempted to modify that earlier
17 statement. And it's just basic, you know, 403
18 reliability standard that, you know, it's just -- it's
19 certainly prejudicial, and it's not probative to
20 anything because it changes depending on what you can
21 catch her in.

22 THE COURT: Yes?

23 MR. THORNTON: Your Honor, my recollecting of
24 the questioning was, the only thing that she was
25 unsure of, that she talked about, was whether it was a

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1 red Ford truck, which I didn't elicit and I'm not
2 going to because it's not in her statement, and
3 Mr. Walker's question about the Pinckney Island boat
4 landing issue. That's how I understand the
5 questioning. That's how she explained it when you
6 asked her.

7 Finally, Judge, I think that a confession to
8 murder by a defendant is fairly probative, and I
9 certainly think that far outweighs whatever he's
10 worried about prejudicial effect.

11 Additionally, I would ask that Mr. Walker be --
12 and I know he will be, but I'm just reminding him --
13 be very careful about casting dispersions about she's
14 a jailhouse informant who has charges, trying to get
15 something. She didn't get anything from my office.
16 She was never made any promises by me or anybody in my
17 office.

18 THE COURT: You can ask that on redirect after
19 he --

20 MR. THORNTON: Yes, ma'am. I just --

21 THE COURT: -- asks it, certainly.

22 MR. THORNTON: -- I just, you know --

23 THE COURT: Okay.

24 MR. WALKER: And I'm sorry, Your Honor --

25 THE COURT: Hold on just a minute before we do

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1 this. I think we need to, though, with this witness,
2 limit her testimony to what she gave in her original
3 statement. Now, again, you say Mr. Walker says in her
4 statement she never said it happened between the two
5 bridges but now she's offering that up. I'm a little
6 bit concerned because I am concerned now that there
7 has been other people talking to her. Clearly, her
8 mother has spoken to her.

9 MR. THORNTON: Yes, ma'am.

10 THE COURT: I mean, she needs to be able to
11 limit what she has to the statement she gave when she
12 had a better recollection.

13 MR. THORNTON: I will -- Judge, I will eliminate
14 the question about Pinckney Island. I will just
15 eliminate it.

16 THE COURT: Okay.

17 MR. THORNTON: So that solves that issue.

18 And I will stick with -- other than the --
19 again, the first statement about the burglary, which
20 is the very first sentence. I will stick with just
21 the questions. And, again, I may have to lead a
22 little bit, but I will do my best to just keep it
23 limited to exactly what it is and I will try not to
24 lead much.

25 THE COURT: Okay. And my next questions is has

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1 she recently read a copy of her statement?

2 MR. THORNTON: Yes, ma'am. She's got a copy. I
3 handed her a copy --

4 THE COURT: You have one?

5 THE WITNESS: Yes.

6 MR. THORNTON: -- I handed her a copy --

7 THE COURT: And you've recently read it?

8 MR. THORNTON: -- and she's got it.

9 THE COURT: Yes. Okay.

10 Yes?

11 MR. WALKER: Just two points, Your Honor, then
12 we'll go on to questioning.

13 But, you know, our concern, of course, is that
14 this statement reflects the product of conversations
15 that she's had. And so while we're pleased that we
16 can point out that she has mentioned the boat landing,
17 we assert that we have no real reliable way of
18 determining what is and isn't hers.

19 And the second thing I would do is just play the
20 part of the interview with Adams that -- where she
21 says that it was her mother that told her a number of
22 things, just so that will be in the record.

23 THE COURT: Well, do I need to hear that as part
24 of the proffer right now to decide whether or not it's
25 reliable?

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1 MR. WALKER: I don't think it could hurt. I've
2 got it cued up right here.

3 THE COURT: How long is the interview?

4 MR. WALKER: Well, wouldn't say the whole
5 interview. I just -- that, you know, one-minute
6 section where she says, I talked to my mom --

7 THE COURT: Does it refer to some particular,
8 though, items she's given? Because my question is if
9 I hear one little portion of it, how do I know if
10 she's talking about everything in her interview or if
11 she's talking about just the most recent item that she
12 discussed, which was whether or not this Pinckney, you
13 know, boat landing --

14 MR. WALKER: I think it's clear from the context
15 that she's just kind of talking generally. I mean, if
16 you need more -- it's not a long interview. It's
17 about fifteen minutes that deals with Mr. Scantling
18 and then there's another ten minutes or so dealing
19 with her pending federal charges. Okay. But I have
20 the part cued up where she says, my mother filled in
21 gaps. That's very short.

22 THE COURT: Okay. Well, then let's cue up the
23 fifteen minutes and let me hear it.

24 MR. WALKER: You want to hear the whole thing?

25 THE COURT: Not the part where you're talking

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1 about her charges. The fifteen minutes where she
2 talks about Mr. Scantling.

3 [Off the record momentarily]

4 MR. WALKER: Again, just for some context, we're
5 starting about eleven minutes in.

6 Jerry, will you unplug that in, please? I'm
7 sorry. My battery is not particularly good. I'm
8 going to move it up by the microphone.

9 We're going about eleven minutes in because --
10 to request a visit from her to him. She had a letter
11 that she wanted to give him. When he came to visit
12 her, she did not bring it to the interview with her so
13 there's like a ten-minute gap while she goes back and
14 retrieves it. They don't really have a substantive
15 conversation. So we're starting at about eleven
16 minutes into the recording but it's really, you know,
17 where that part about Mr. Scantling starts, and then
18 we'll just let that play for you.

19 [Whereupon, the recorded statement of Ms. Raines
20 is played for the Court from 3:46 p.m. to 3:55 p.m.]

21 [The recording is not transcribed by the court
22 reporter]

23 MR. WALKER: Your Honor, she's just asking
24 what's going on with her federal case there.

25 THE COURT: Okay. I do think -- I do think her

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1 testimony is probative and certainly would outweigh
2 any prejudice. And one thing I want to make
3 absolutely sure, Ms. Raines, you understand, is you
4 can only testify as to what you know yourself, not
5 what your mom or anyone else told you or that Jerry or
6 Mr. Scantling told them and told you.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: So I heard you say on here that you
9 didn't know about the truck, you didn't know where it
10 happened. So you can't testify as to that. Do you
11 understand that?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: You can only say what you know of
14 your own independent know. Okay?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Yes?

17 MR. THORNTON: I just had one question, Judge.
18 We're talking about the color of the truck; is
19 that correct?

20 THE COURT: Well, you tell me. Did you know it
21 was a truck?

22 THE WITNESS: I knew it was a truck, I just
23 didn't know what color it was.

24 THE COURT: Okay. That's fine, then.

25 Okay. Anything? Anything else?

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1 MR. THORNTON: I don't have anything else, Your
2 Honor.

3 THE COURT: The only thing I need to also
4 caution you on, Ms. Raines: I don't want to hear the
5 word burglary come out of your mouth. Do you
6 understand?

7 THE WITNESS: I understand.

8 THE COURT: You're not to discuss that in any
9 way. Do you understand that?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay.

12 MR. THORNTON: I instructed her that, Judge.
13 Also, the fact that it's a stolen gun. I said that --

14 THE COURT: Okay.

15 MR. THORNTON: -- not that. That's why --

16 THE COURT: Exactly.

17 MR. THORNTON: -- I specifically avoided those
18 items.

19 THE COURT: Thank you.

20 All right. Anything further?

21 MR. THORNTON: Your Honor, while we're doing
22 this, I would ask permission to step to the back for
23 about thirty seconds. Ms. Padgett knows -- didn't
24 have anything in her statement, indicated she knew
25 nothing about burglary or anything else, but she does

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1 know a lot about him from the past and I just want to
2 caution her --

3 THE COURT: Not to talk about any prior bad
4 acts.

5 MR. THORNTON: Not to talk about any prior bad
6 acts or anything. If I could just have about thirty
7 seconds, because I just got permission today from her
8 lawyer to be able to talk to her so --

9 THE COURT: Okay. You can go ahead and do that.
10 Ms. Raines, that's brings up another --
11 Go ahead.

12 MR. THORNTON: Yes, ma'am.

13 THE COURT: That brings up another good point
14 that -- again, I know you said you've known him for a
15 number of years. You can't say anything that he has
16 done wrong or bad in the past. You understand that;
17 right?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Okay.

20 [Off the record momentarily]

21 MR. THORNTON: She's been so-instructed, Your
22 Honor.

23 THE COURT: Fabulous. All right. Are we ready
24 to go?

25 MR. THORNTON: We are, Judge. Ms. Raines would

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1 actually not be my next witness.. The next will be
2 very short so I ask that she be allowed to step down
3 and step back out into the hallway.

4 THE COURT: Okay. Ms. Raines, you can step down
5 and when we bring you back in we're going to swear you
6 in all over again in front of the jury, because they
7 haven't seen you. Okay?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you.

10 [Whereupon, Ms. Raines is excused and exits the
11 witness stand]

12 THE COURT: Who is your next witness?

13 MR. THORNTON: The next witness will be Officer
14 Rogers, who is seated right there, Judge. He's from
15 the detention center.

16 And then it would be Ms. Raines and then it
17 would be Ms. Padgett.

18 THE COURT: Okay.

19 [Off the record momentarily]

20 THE COURT: Okay. Let's bring in the jury.
21 Thank you.

22 [Whereupon, the jury enters the courtroom at
23 4:02 p.m.]

24 THE BAILIFF: The jurors are present, Your
25 Honor.

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1 THE COURT: Thank you. Welcome back, ladies and
2 gentlemen.

3 Mr. Thornton, call your next witness.

4 MR. THORNTON: Thank you, Your Honor. Officer
5 Rogers.

6 [Whereupon, Mr. Rogers comes forward]

7 THE CLERK OF COURT: Would you place your left
8 hand on the Bible and raise your right hand for me,
9 please, sir.

10 [Whereupon, Mr. Rogers is duly sworn by the
11 clerk of court as follows: do you solemnly swear to
12 truthfully answer all questions asked of you by the
13 Court, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Please be seated.

16 [Whereupon, Mr. Rogers takes the witness stand]

17 THE CLERK OF COURT: Please state your name and
18 spell it for the Court]

19 THE WITNESS: Darrien Rogers. R-O-G-E-R-S.
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DARRIEN ROGERS,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q. Mr. Rogers, who do you work for, sir?

A. Beaufort County Detention Center.

Q. And what do you do for the detention center?

A. I'm a correction officer.

Q. Did you work for the Beaufort County Detention Center as a correctional officer in May of 2011?

A. Yes, sir.

Q. And did you have an occasion to have contact, on May 8th of 2011, with Jerry Scantling?

A. Yes, sir.

Q. And can you identify Jerry Scantling in the courtroom?

A. Yes, sir. The defendant.

Q. All right. And who else did you have contact with on May 8th, 2011, as far as in relation to your meeting with Mr. Scantling?

A. I had contact with Brittany Raines through the Bravo One officer.

Q. Okay. Through the Bravo One officer.

Now, if you could explain: where was Jerry

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1 Scantling housed at the detention center and -- on this
2 date and where was Brittany Raines?

3 A. Okay. He was housed -- Mr. Scantling was housed
4 in Bravo Two and Ms. Raines was housed in Bravo One, which
5 the two housing units share a wall.

6 Q. All right.

7 A. And he --

8 Q. Let me -- I'm sorry. Let me stop you for a
9 second.

10 Now, so you obviously -- in the detention center
11 you keep males and females --

12 A. Separate.

13 Q. -- separately; is that correct?

14 A. Yes, sir.

15 Q. All right. And you said they share a wall. Is
16 there anything that connects the cells through that wall?

17 A. Yeah. They share a vent.

18 Q. And is it possible for inmates to communicate
19 through that vent?

20 A. Yes, sir.

21 Q. So would it be fair to say that a female on one
22 side can communicate with a male on the other side?

23 A. Yes, sir.

24 Q. Okay. And how -- and they do that through what?

25 A. Through the vent.

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1 Q. Did you have reason to believe that Jerry
2 Scantling and Brittany Raines were communicating in
3 May of -- specifically, May 8th, 2011?

4 A. Yes, sir.

5 Q. And did you hear that yourself?

6 A. What happened was the Bravo One officer at that
7 time was PFC Singleton. She called me via radio to give
8 her a call. I called -- when I called her, she told me
9 she had a female inmate, a Ms. Raines, talking through the
10 vent to one of my male inmates in Bravo One.

11 I entered Bravo One and as I walked up to inmate
12 Scantling's cell, 140, I could hear him talking. He was
13 the only inmate in the cell. When I got up to the cell
14 window, he was at the vent and that's when I notified him
15 that I was going to write him up for that violation.

16 Q. So he was actually talking in your presence as
17 you entered the cell?

18 A. Yes. I didn't know who he was talking to, but I
19 knew he was talking to a female through the vent.

20 Q. All right. And who would have been the female
21 in that cell, according to your records at the jail?

22 A. It would be Brittany Raines, because she was on
23 ray [phonetic] status, was locked down.

24 MR. THORNTON: All right. Thank you very much,
25 sir. I don't have any further questions. Please

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1 answer any questions Mr. Walker has.

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Walker.

4 MR. WALKER: The Court's indulgence.

5 [Whereupon, Mr. Walker and Ms. Carroway confer]

6 CROSS-EXAMINATION

7 BY MR. WALKER:

8 Q. Did you have any interaction with Ms. Raines
9 about when you say that Jerry was up by the vent?

10 A. No, sir. I only went by the officer in the pod,
11 her comments. She had the interaction with the female
12 inmate.

13 Q. So you don't know what Ms. Raines would have
14 said to her?

15 A. No, sir. She did write a statement. She did
16 write a supplement to my report.

17 Q. Who did?

18 A. The female officer. PFC Singleton. And she
19 basically --

20 Q. You made a report about it?

21 A. Yes. I made a report on it and she did a
22 supplement page, a supplement, to my report.

23 Q. Well, did Ms. Raines contribute to that report?

24 A. PFC Singleton put a quote in there from what she
25 told her. She quoted what she told her in the statement.

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1 [Whereupon, Mr. Walker and Mr. Thornton confer]

2 MR. WALKER: May we approach, Your Honor?

3 THE COURT: You may.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 Q. [Mr. Walker] And you prepared a report about
7 this incident; correct?

8 A. Yes, sir.

9 Q. And Ms. Raines did write a statement about it?

10 A. Not to my knowledge.

11 Q. How would it get onto the report --

12 A. What happens, when --

13 Q. -- attached if you didn't write it?

14 A. -- I wrote a DR. So when I write a -- when I
15 write a --

16 Q. What's a DR?

17 A. A DR is a discipline report. Basically goes
18 under investigation by classification. At that time, the
19 inmate is allowed to write a statement. And all I can
20 fathom [phonetic] from her having a statement in my report
21 is that she wrote a statement to cover herself on that
22 report. So I have -- I have no knowledge.

23 Q. So she would have to have given the statement to
24 you and then you attached it to the report?

25 A. No, sir.

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1 Q. Okay.

2 A. The only one --

3 Q. I -- I -- okay.

4 A. The only one I would attach is the one from the
5 officer when they wrote their statement.

6 Q. Okay. Thank you. So it's your report that you
7 had kind of put it all in one place.

8 A. No, sir.

9 Q. Thank you for that.

10 Now, there was a disciplinary proceeding as a
11 result of this, your report of this incident, is that
12 correct, at the jail?

13 A. I believe so, sir, yes, sir.

14 Q. And Mr. Scantling was found not guilty at that
15 disciplinary proceeding; isn't that correct?

16 A. Like I said, I don't have that in front of me
17 but --

18 Q. You weren't a part of that --

19 A. No, we --

20 Q. -- at all? Okay

21 A. That's separate from us.

22 Q. Okay. I thought you would have been a
23 participant in that.

24 A. No, sir.

25 MR. WALKER: All right. Well, thank you. I

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1 don't have anything further.

2 THE COURT: Okay.

3 MR. THORNTON: Nothing further. Ask that he be
4 excused.

5 THE COURT: All right. You are excused, sir.
6 Thank you.

7 [Whereupon, Mr. Rogers is excused and exits the
8 witness stand]

9 THE COURT: Would you call your next witness,
10 Mr. Thornton.

11 MR. THORNTON: Brittany Raines.

12 THE COURT: Come on forward to be sworn.

13 [Whereupon, Ms. Raines comes forward]

14 THE COURT: Come on forward to be sworn.

15 THE BAILIFF: Up there by the table to be sworn.

16 THE CLERK OF COURT: Would you place your left
17 hand on the Bible and raise your right hand for me,
18 please.

19 [Whereupon, Ms. Raines is duly sworn by the
20 clerk of court as follows: do you solemnly swear to
21 truthfully answer all questions asked of you by this
22 court, so help you God]

23 THE WITNESS: Yes, I do. I did that wrong,
24 didn't I?

25 THE CLERK OF COURT: Please be seated.

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1 [Whereupon, Ms. Raines takes the witness stand]

2 THE CLERK OF COURT: State your name and spell
3 it for the Court, please.

4 MR. THORNTON: Would you say your name out loud,
5 please, Ms. Raines, and spell your last name for the
6 record.

7 THE WITNESS: Brittany Raines. R-A-I-N-E-S.

8 - - - - -

9 BRITTANY RAINES,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. THORNTON:

14 Q. Ms. Raines, where do you -- let me ask you a
15 basic question first.

16 Do you know a man named Jerry Scantling?

17 A. Yes, sir.

18 Q. Is he in this courtroom?

19 A. Yes, sir.

20 Q. Where is he?

21 A. Right there.

22 Q. You're indicating the defendant in this case,
23 Jerry Scantling?

24 A. Yes, sir.

25 Q. How do you know him?

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1 A. I used to date him when we were in school.

2 Q. All right. So you've known him for a long time?

3 A. Yes, sir.

4 Q. In May of 2011, Ms. Raines, were you
5 incarcerated at the Beaufort County Detention Center?

6 A. Yes, sir.

7 Q. And did you have occasion to talk to Jerry
8 Scantling?

9 A. Yes, sir.

10 Q. And let me ask you a question. How is it
11 possible? I would assume they keep the males and females
12 separate. How is it that you were able to talk to him?

13 A. There is a vent that went from my room to his
14 room.

15 Q. All right. And is that from the men's side to
16 the women's side?

17 A. Yes, sir.

18 Q. And were you able to communicate through that
19 vent?

20 A. Yes, sir.

21 Q. All right. Did Jerry Scantling ever make any
22 statements to you in reference to a murder?

23 A. Yes, sir.

24 Q. Can you tell me what he told you about the
25 murder?

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1 A. He told me that the sheriff's department wanted
2 him for homicide but they didn't have any evidence, and
3 then he continued to tell me that he did kill a gay man.

4 Q. He told you he killed a gay man?

5 A. Yes, sir.

6 Q. Did he tell you what he killed him with?

7 A. He told me that he killed him with a Highpoint
8 .45.

9 Q. Did he tell you how many times he shot him?

10 A. Two.

11 Q. Did he tell you anything about whether he struck
12 him at all, or did he just shoot him? Did he give you
13 anymore information about that?

14 A. Yeah. He said he pistol-whipped him.

15 Q. All right. So he says he killed a gay man with
16 a .45 caliber Highpoint and he said that he pistol-whipped
17 him. Did he tell you anything about the man, as far as
18 what happened after that? Where he went or anything?

19 A. Yeah. He stole the man's truck and went to
20 Savannah.

21 Q. And did he tell you anything about what happened
22 while he was in Savannah or how he got back?

23 A. He stole another car to come back. A Monte
24 Carlo.

25 Q. He told you he stole a Monte Carlo and came

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1 back?

2 A. Yes.

3 Q. Did he give you any information about the man's
4 cell phone? The victim's cell phone.

5 A. Yes. That he did had it, and he made a few
6 calls on it and that one of them was -- one of them was to
7 Donald Cooper, and the sheriff's department knew about it.

8 MR. THORNTON: The Court's indulgence, Your
9 Honor, please.

10 THE COURT: Thank you.

11 [Whereupon, Mr. Thornton reviews documents]

12 Q. [Mr. Thornton] Ms. Raines, obviously you were
13 incarcerated at one time in the Beaufort County Detention
14 Center; is that correct?

15 A. Yes, sir.

16 Q. And you've been convicted of crimes in the past,
17 haven't you?

18 A. Yes, sir.

19 Q. And there is a federal charge that's been
20 referenced, also, that you have. Do you still have that
21 open case?

22 A. I have not been indicted yet, but I'm still
23 waiting on an indictment.

24 Q. You have a petit larceny back from 2001. Does
25 that sound right?

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1 A. Yes.

2 Q. Another petit larceny in 2005? March of 2005?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. All right. A conviction for possession of
7 paraphernalia, I would assume that's drug paraphernalia,
8 and also a conviction for giving false information in
9 March of 2011; is that correct?

10 A. Yes, sir.

11 Q. All right. Another drug violation in 2011?

12 A. Yes, sir.

13 Q. Driving under suspension, 2011?

14 A. Yes, sir.

15 Q. And then you said you had federal charges? Or
16 that you haven't been indicted yet but you have a federal
17 charge now. What does that deal with?

18 A. Counterfeit payroll checks.

19 Q. Okay. At any time, did anybody from my office,
20 myself included, make any promises to you about your
21 federal charges or any other charge?

22 A. No, sir.

23 Q. Did I ever ask you to make any allegations or
24 did anyone from law enforcement ask you to make false
25 allegations to try to get yourself out from under some

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1 charge?

2 A. No, sir.

3 MR. THORNTON: All right. Thank you.

4 I have nothing further, judge.

5 I would ask you to please, Ms. Raines, answer
6 any questions Mr. Walker has.

7 THE COURT: Mr. Walker?

8 CROSS-EXAMINATION

9 BY MR. WALKER:

10 Q. You said -- let me back up.

11 The solicitor just asked you about the statement
12 you gave on May the 13th of 2011; correct?

13 A. Yes, sir.

14 Q. And you got -- you say you got this information
15 talking through a vent to Jerry Scantling; correct?

16 A. Yes, sir.

17 Q. All right. And did you actually get in trouble
18 for talking through the vent to Jerry Scantling?

19 A. Yes, sir.

20 Q. All right. You know, they have a whole
21 disciplinary process that they have there; correct?

22 A. Yes, sir.

23 Q. Did you write a statement in regards to that
24 disciplinary proceeding?

25 A. I can't recall. I'm sure I did.

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1 Q. I'm going to hand you this. And I apologize.
2 The photocopy, that's the best I could get it. But ask
3 you if you recognize that.

4 [Whereupon, the witness reviews documents]

5 A. Yes.

6 Q. [Mr. Walker] What is that?

7 A. That's my statement.

8 Q. All right. Your name is signed at the bottom?

9 A. Yes, sir.

10 Q. And relate to the disciplinary proceeding where
11 you're accused of talking through the vents to Jerry
12 Scantling?

13 A. Yes, sir.

14 Q. Would you read us your statement?

15 A. It says: Ms. Singleton came to my door and
16 asked me who I was talking to and I said nobody, I was
17 listening to the radio; and then she asked me if I was
18 talking to some boy; she called his name; I really wasn't
19 talking to anybody; I still got a warning for it, though.

20 Q. So even though you denied talking to anyone,
21 they still gave you a warning?

22 A. Yes, sir.

23 Q. And that's where they said they -- you were
24 talking to Jerry Scantling?

25 A. Yes, sir.

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- 1 Q. Did you like your time in jail?
- 2 A. Not really.
- 3 Q. Is that a place you prefer to be?
- 4 A. No.
- 5 Q. So you don't want to go to jail?
- 6 A. No.
- 7 Q. You would do what you needed to do to stay out
- 8 of jail?
- 9 A. I haven't done anything to go to jail.
- 10 Q. What about this pending federal charge we've
- 11 got?
- 12 A. That has nothing to do with it.
- 13 Q. Well, if you get indicted for that, you can go
- 14 to jail; right?
- 15 A. Yeah. But telling the truth about him isn't
- 16 going to get me off of my federal charge. It has
- 17 absolutely nothing to do with it.
- 18 Q. What about a state charge?
- 19 A. I don't have any state charges.
- 20 Q. Not any more.
- 21 A. You're right. Because I served my time.
- 22 Q. Back in April 30th of 2011; about a week before
- 23 this statement of this incident on 5/8/2011, you were
- 24 arrested for forgery; isn't that correct?
- 25 A. Yeah. And that's why my charges are going

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1 federal. The forgery was dropped.

2 Q. It was dropped in the state?

3 A. Yeah, because it's going federal. It's being
4 picked up by federal.

5 Q. You're aware you could be prosecuted both by the
6 State of South Carolina and the federal government
7 concurrently --

8 A. Okay.

9 Q. -- correct? Did you know that?

10 A. Uh-huh. It does not mean --

11 Q. Just because the feds charge you doesn't mean
12 the state can't charge you.

13 A. Okay.

14 Q. But that charge no longer exist at the state
15 level?

16 A. No, it doesn't.

17 Q. And we're waiting to see what's going to happen
18 to it at the federal level?

19 A. Right.

20 Q. Okay. Would it be fair to say you don't always
21 tell the truth?

22 A. Not necessarily.

23 Q. Well, you either always tell the truth or you
24 don't always tell the truth.

25 A. I probably don't always tell the truth.

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1 Q. The solicitor went through some of your prior
2 encounters with law enforcement. It seems like back in
3 March of 2011 you were having problems telling the truth
4 because you were convicted of giving false information to
5 the police; isn't that correct?

6 A. Yes, sir.

7 Q. And then the solicitor asked you next about
8 another drug charge and you said you remembered that;
9 correct?

10 A. Yes, sir.

11 Q. But that actually also involved not telling the
12 truth; isn't that right? You were charged with obtaining
13 prescription drug frauds [phonetic] by deceit. Isn't that
14 correct?

15 A. Uh-huh.

16 Q. Then you were arrested shortly thereafter on the
17 forgery charge, which no longer exists at the state level.

18 A. I was arrested at the same time.

19 Q. Thank you. But that no longer exists?

20 A. Uh-huh.

21 Q. But you would agree with me that forgery, as a
22 criminal offense, is a truth-telling or a deceit or a
23 crime of honesty; is that correct?

24 A. No.

25 Q. No.

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1 So a forgery can be an honest person?

2 A. No.

3 Q. Okay. It's true also, isn't it, that as
4 recently as last month in Statesboro, Georgia, you've been
5 convicted of shoplifting; is that correct?

6 A. Yes, sir.

7 Q. Now, the federal charges that are still pending,
8 or still waiting indictment, that's another case in which
9 you gave information to the authorities; isn't that
10 correct?

11 A. Not in reference to this.

12 Q. I understand. But you tried --

13 A. But that had to do --

14 Q. -- to be helpful to the authorities?

15 A. Negative. Only in my case. That has nothing to
16 do with you.

17 Q. So you didn't give information to the
18 authorities --

19 A. That's not relevant here.

20 Q. -- at a federal hearing?

21 MR. WALKER: Well, Your Honor, I would ask that
22 the witness be instructed to answer the question.

23 THE COURT: All right. Ms. Raines, you need to
24 answer the question. If you need to explain it after
25 that, you can. But you need to answer the question.

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1 A. I gave them information in reference to myself.
2 I did not give them information in reference to anyone
3 else.

4 Q. [Mr. Walker] So you didn't tell them who you
5 interacted with in your pending federal charge?

6 A. They arrested us all at the same time. I lived
7 in my mother and my sister -- I mean, there was no one for
8 me to tell them about. They wanted to know what I did.

9 Q. And you were happy to fully cooperate with them?

10 A. I always cooperate.

11 MR. WALKER: Court's indulgence.

12 [Whereupon, Mr. Walker and Ms. Carroway confer]

13 THE COURT: Anything further, Mr. Walker?

14 MR. WALKER: No, I don't have anything else.

15 Thank you, Your Honor.

16 MR. THORNTON: Nothing further, Your Honor.

17 THE COURT: Any objection, then, to Ms. Raines
18 being excused? From anyone?

19 MR. THORNTON: Ask that Ms. Raines be excused.

20 MR. WALKER: No objection.

21 THE COURT: You are excused.

22 THE WITNESS: Thank you.

23 [Whereupon, Ms. Raines is excused and exits the
24 witness stand]

25 THE COURT: Mr. Thornton, your next witness.

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1 MR. THORNTON: Cynthia Padgett.

2 [Whereupon, Ms. Padgett comes forward]

3 THE CLERK OF COURT: Would you place your left
4 hand on the Bible and raise your right hand for me,
5 please.

6 [Whereupon, Ms. Padgett is duly sworn by the
7 clerk of court as follows: do you solemnly swear to
8 truthfully answer all questions asked of you by this
9 court, so help you God]

10 THE WITNESS: Yes, ma'am.

11 THE CLERK OF COURT: Please be seated.

12 [Whereupon, Ms. Padgett takes the witness stand]

13 THE CLERK OF COURT: State your name and spell
14 it for the Court, please.

15 THE WITNESS: My name is Cynthia Padgett.

16 C-Y-N-T-H-I-A P-A-D-G-E-T-T.

17 - - - - -

18 CYNTHIA PADGETT,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. THORNTON:

23 Q. Ms. Padgett, let me ask you a question. Do you
24 know Jerry Scantling?

25 A. I do.

MIA PERRON, CVR-CM-M

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1 Q. All right. Is he in this courtroom right now?

2 A. He is.

3 Q. Where is he?

4 A. Over there [indicates] at that table.

5 Q. Seated here with his attorneys?

6 A. That's correct.

7 Q. Do you know Brittany Raines?

8 A. I do.

9 Q. How do you know her?

10 A. She's my daughter.

11 Q. And how long have you known Jerry Scantling?

12 About how many years?

13 A. Probably fifteen. Let's see. Brittany is
14 thirty-one. Probably sixteen. Right at sixteen years.

15 Q. All right. And did mister -- did the defendant
16 in this case, Mr. Scantling, have a relationship with your
17 daughter Brittany?

18 A. He did.

19 Q. And is that how you know him?

20 A. It is.

21 Q. Let me ask you a question. Obviously, ma'am,
22 you're currently incarcerated in Beaufort County Detention
23 Center; is that correct?

24 A. That's correct.

25 Q. And back in May of 2011, were you also detained

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1 or incarcerated at the Beaufort County Detention Center?

2 A. That's correct.

3 Q. Did you have any occasion to have contact or
4 talk to Jerry Scantling?

5 A. I did.

6 Q. Okay. Do they keep -- I'm assuming they keep
7 the males and females separate, ma'am, at the detention
8 center; is that correct?

9 A. They do.

10 Q. All right. How were you able to talk to Jerry
11 Scantling?

12 A. Through the ventilation system that went into
13 the cell I was locked in and he was in the cell on the
14 other side.

15 Q. All right. Is that the Bravo One and Bravo Two
16 we talk about?

17 A. I was in -- that's correct. I was in cell 141
18 in Bravo One. And from what he told me, he was in Bravo
19 Two.

20 Q. All right. And are you -- is that where the
21 vent runs through those two cells?

22 A. Correct.

23 Q. Okay. Now, when you said he said, I'm assuming,
24 then, you can't see who's on the other side of the vent?

25 A. I can't.

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1 Q. How were you able to determine it was Jerry
2 Scantling?

3 A. There were several ways that I determined it was
4 Jerry. Number one, he told me he was Jerry. Number two,
5 through the days that we talked -- and we talked too many
6 times to count through the days -- you know, we talked
7 about a lot of stuff. We talked about different things
8 that, you know, he and Brittany had done, and things that
9 we had all done together, places that we were at, food
10 that we ate.

11 Q. So they were things that only Jerry Scantling
12 would know?

13 A. That's correct.

14 Q. Did you also recognize him by his voice?

15 A. I did.

16 Q. So any doubt in your mind that was Jerry
17 Scantling you were talking to?

18 A. None.

19 Q. All right. In those discussions with Jerry
20 Scantling, did he talk to you about a crime that he had
21 committed?

22 A. He did.

23 Q. All right. And what did he tell you about that
24 crime?

25 A. He told me several things about it. He told me

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1 that there was a man that he had met through another
2 person.

3 Q. Right. Who is the other person?

4 A. Donald Cooper.

5 Q. Okay. So through Donald Cooper he meets a man.
6 And what else does he say?

7 A. He said that the man worked with Donald Cooper
8 at the Pizza Hut and that there was an occasion where
9 there was an altercation.

10 Q. All right. Well, let me ask you a question.
11 Did you write a statement to law enforcement about these
12 statements made to you by Jerry Scantling?

13 A. I did.

14 Q. And do you have that in front of you?

15 A. I do.

16 Q. Okay. Just so we can keep it clear, if you'll
17 go down to just about the middle of the page, there's a
18 word in quotes. Does it say what this altercation started
19 over?

20 A. Yes. He said that he felt that he was
21 disrespected.

22 Q. All right. What does it say then?

23 A. By the man that he had met through Donald
24 Cooper, he said that the man had worked with Donald Cooper
25 at the Pizza Hut; he says that the man was shot; he said

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1 that he took the man's truck to Savannah to sell and stole
2 a car to come back in; he said that he had the man's cell
3 phone; and he said that there was an altercation that had
4 taken place or -- he said that the incident altercation
5 had taken place on Joe Frazier Road. I'm not sure if
6 that's the incident where he was disrespected --

7 Q. Right.

8 A. -- or if it was the incident where the man was
9 shot or -- I'm not sure exactly because, I mean, it was a
10 long time ago. And he says that the man's body was --
11 that the police found the man's body at Pinckney Island
12 between the bridges.

13 Q. And are those the statements that Jerry
14 Scantling made to you about --

15 A. That is correct.

16 Q. -- what his charges were?

17 A. That is correct.

18 Q. And what he did?

19 A. That -- he didn't make any statement to -- he
20 had told me that his charges, that he had been there on a
21 burglary and but then he said --

22 MR. WALKER: Your Honor, objection.

23 THE WITNESS: I'm sorry. I mean, I --

24 THE COURT: Ladies and gentlemen, I'm going to
25 strike that. It's not appropriate. You are not to

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1 consider it.

2 MR. WALKER: I've got a matter of law, Your
3 Honor.

4 THE COURT: Yes. We're going to finish with
5 this -- go.

6 Q. [Mr. Thornton] Ms. Padgett, just with relation
7 to what he told you, these are the statements that he made
8 to you about what he did?

9 A. That is correct.

10 Q. Okay. Now, let me ask you, Mr. Padgett -- Ms.
11 Padgett. I apologize. You've got what would probably
12 best be deemed as a pretty extensive criminal record.
13 Would that be fair to say?

14 A. That is correct.

15 Q. And you've got a possession with intent to
16 distribute marijuana charge conviction -- I'm sorry. You
17 were convicted of simple possession of marijuana back in
18 the mid '90s; is that right?

19 A. That's correct.

20 Q. Possession of drug paraphernalia in the mid
21 '90s?

22 A. Yes, sir.

23 Q. You have some theft charges, stealing of tobacco
24 plants and grand larcenies also from the mid '90s?

25 A. I do.

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1 Q. Several other petty larcenies from the late
2 '90s?

3 A. [No response]

4 Q. Obtaining good under false pretenses.
5 Basically, crimes involving checks and other types of
6 dishonesty. Would that be fair to say?

7 A. That is correct.

8 Q. Lots of financial traction -- financial
9 transaction card frauds, which would basically be like
10 debit cards and those types of things?

11 A. That's correct.

12 Q. Driving offenses, giving false information to
13 police or law enforcement, in general. All of that would
14 be correct, would it not be, ma'am?

15 A. That is correct.

16 Q. Also, ma'am, you are currently under a federal
17 charge; is that correct?

18 A. I am awaiting federal indictment.

19 Q. And you obviously were not in here. Ms. Raines
20 talked about that. Is that a pending case that you have
21 along with her?

22 A. That is correct.

23 Q. Ma'am, in order to -- did anybody in either law
24 enforcement or my office in any way attempt to get you to
25 testify by promising you we would do anything on any state

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1 charges that you currently have or federal charges that
2 you are awaiting?

3 A. No, sir.

4 MR. THORNTON: All right. I have nothing
5 further, Your Honor.

6 Please answer any questions Mr. Walker has.

7 THE COURT: Mr. Walker.

8 [Whereupon, Mr. Thornton and Mr. Walker confer]

9 MR. WALKER: Good afternoon, ma'am.

10 THE WITNESS: Good afternoon.

11 CROSS-EXAMINATION

12 BY MR. WALKER:

13 Q. The solicitor started off by asking you about
14 Jerry Scantling. And he asked you that Jerry Scantling
15 made statements to you concerning crimes that he had
16 committed; correct?

17 A. That's correct.

18 Q. But in the case we're talking about here, the
19 only crimes that he committed that he admitted to
20 committing were taking the man's truck to Savannah and
21 then stealing a car in Savannah and coming back; is that
22 correct?

23 A. I read my statement to you and those were the
24 things that he admitted to.

25 Q. Right.

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1 He, in fact, did not admit to shooting Mr.

2 Green?

3 A. He said the man was shot.

4 Q. Right.

5 A. And I assume Mr. Green is the victim, because I
6 don't know who the man --

7 Q. It is. Thank you. I should have made that
8 clear. The victim in this case is named Mr. Green.

9 Do you recall having a discussion with Officer
10 Adams of the Beaufort County Sheriff's Office?

11 A. Yes, I do.

12 Q. Talking about this case?

13 A. I'm sorry?

14 Q. Talking about this case?

15 A. That is correct.

16 Q. And telling Officer Adams that Jerry had
17 indicated somebody else was involved and you thought that
18 that was Dirty Red or Donald Cooper?

19 A. That is correct. He did say that he met the
20 gentleman through Donald Cooper. He didn't say that he
21 was involved in anything I made a statement to.

22 Q. I understand.

23 A. Uh-huh.

24 Q. But did you tell the officer that through the
25 course of your discussions with Jerry that you felt that

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1 he was covering up for Donald Cooper?

2 A. I don't recall that, no.

3 Q. Okay. Come back to that.

4 The solicitor's office asked you about some of
5 your criminal charges, but he certainly didn't cover them
6 all, did he?

7 A. No, he didn't.

8 Q. All right. He didn't ask you about a burglary
9 conviction you had; isn't that correct?

10 A. No. I didn't hear him asking me about it, no,
11 sir.

12 Q. You were convicted of burglary?

13 A. I was convicted of a second-degree burglary.
14 Yes, sir, that's correct. In the early '90s.

15 Q. Well, 1996. The conviction date is January the
16 21st, 1997; correct?

17 A. Okay. Well, '90s.

18 Q. Okay. And, again, many crimes of theft and
19 dishonesty: grand larceny, petty larceny, obtaining goods
20 under false pretenses, et cetera. Correct?

21 A. Yes, sir. I think we went over that.

22 Q. You've been to prison for some of these charges;
23 correct?

24 A. I've been to prison for a violation of
25 probation. That is correct.

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1 Q. And you're put on probation when -- after a
2 conviction; correct?

3 A. Yes, sir.

4 Q. That's how it generally works. And then if you
5 don't do what you're supposed to do on probation, then
6 they revoke that and send you to prison. That's how that
7 works; right?

8 A. Yes, sir, that is correct. That's normally how
9 that works.

10 Q. And that's what happened in your case?

11 A. Yes, sir, that is what happened in the case. I
12 violated my probation.

13 Q. All right. Is that the only time you've been to
14 prison?

15 A. That is correct.

16 Q. Did you find that to be an enjoyable experience?

17 A. It was great. No, I didn't --

18 Q. So you're looking forward to going --

19 A. -- find it enjoyable.. I'm sorry.

20 Q. So you don't want to go back to prison?

21 A. Of course not, sir. I mean, that's crazy to
22 think that that would be enjoyable.

23 Q. You mentioned federal charges that you have
24 pending, right? Or awaiting indictment?

25 A. I am awaiting indictment. I have not been

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1 indicted of any federal charges.

2 Q. Those stem from some state charges of multiple
3 counts of forgery and petit larceny; correct?

4 A. No. Those stem from some state charges for
5 forgery. But there were no charges of petit larceny in
6 the federal indictments or in the federal cases at all.
7 Pending indictments.

8 Q. Okay. And these were forgeries that happened in
9 April of 2010?

10 A. No. These are forgeries that happened in -- I
11 was arrested April 15th of 2011, and the forgeries I
12 believe occurred within the few months before that.

13 Q. Okay. And three counts of forgery; correct?

14 A. That is correct.

15 Q. And a count of possession of cocaine?

16 A. That is correct.

17 Q. And you gave your statement to the police
18 against Mr. Scantling in August 30th of 2011; isn't that
19 correct?

20 A. Yes, that is correct.

21 Q. And then in November, all of those forgery
22 charges were dismissed; isn't that correct?

23 A. They were dismissed pending indictment --

24 Q. Through the federal --

25 A. -- through the federal -- from the Secret

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1 Service and they were dismissed with they could be
2 reinstated. With option to reinstate. That is correct.

3 Q. So the state-level charges left and then we're
4 waiting to see what the federal government is going to do?

5 A. The federal government or -- yeah. The Secret
6 Service.

7 Q. And you're aware that it is possible to be
8 charged at both the state and federal level --

9 A. I am.

10 Q. -- for the same offense? Okay.

11 MR. WALKER: Beg the Court's indulgence.

12 [Whereupon, Mr. Walker and Mr. Thornton confer]

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: It's my understanding they're going
16 to go cue up a tape. Ladies and gentlemen, if anyone
17 wants to stand and stretch, you're welcome to.

18 [Off the record momentarily]

19 THE COURT: Ladies and gentlemen, my
20 understanding from the attorneys is we're going to
21 finish with this witness and then we have another very
22 short witness, as well, and that's going to conclude
23 for today. All right? Just so y'all know what to
24 expect. Okay?

25 [Off the record momentarily]

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1 MR. WALKER: All right. Ms. Padgett, I'm going
2 to play a portion of the interview that you gave to
3 Investigator Adams in order that you might refresh
4 your memory. All right?

5 And this is eleven minutes and eighteen seconds
6 with the interview.

7 [Off the record momentarily]

8 [Whereupon, CD is played for the jury from
9 4:48 p.m. to 4:49 p.m.]

10 [The recording is not transcribed by the court
11 reporter]

12 Q. [Mr. Walker] Do you recall indicating to
13 Officer Adams that your impression was that Dirty Red --
14 he was covering for Dirty Red or that he might have been
15 there, he wouldn't say if he was or wasn't?

16 A. Having heard what you just -- what the tape
17 just said, I mean, I heard that. But, I don't see where
18 that indicated that I believe that he was covering for
19 anybody else, no. I mean, I did say that I believe that
20 Dirty Red -- or that -- when I say Dirty Red, I mean
21 Donald Cooper --

22 Q. Right.

23 A. -- that I believe that Donald Cooper introduced
24 him to this man. I'm not sure what Donald Cooper's
25 intentions were because Donald Cooper's never spoke to me

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1 about that. The only thing I can testify to is what Jerry
2 Scantling said to me. And I don't -- I don't believe I
3 ever got the impression --

4 Q. Well, let me stop you there. I'm not
5 necessarily saying that the words covered for came out
6 of your mouth.

7 A. Okay.

8 Q. But had Donald Cooper been there and Jerry
9 Scantling concealed that fact, that would be equivalent to
10 covering for him; correct?

11 A. If Donald Cooper -- I can't make the assumption
12 that Donald Cooper was there --

13 Q. I'm not asking you to make that assumption.

14 A. -- so, I mean, I can't say that Jerry was
15 covering for Donald Cooper. I can't say that because I
16 don't know that.

17 MR. WALKER: All right. That's all I have, Your
18 Honor. Thank you.

19 THE COURT: Anything further?

20 MR. THORNTON: No, ma'am.

21 THE COURT: All right. You may step down.

22 [Whereupon, Ms. Padgett is excused and exits the
23 witness stand]

24 THE COURT: If the State will call their next
25 witness.

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1 MR. THORNTON: Officer Calhoun.

2 [Whereupon, Mr. Calhoun comes forward]

3 THE CLERK OF COURT: Would you place your left
4 hand on the Bible and raise your right hand for me,
5 please.

6 [Whereupon, Mr. Calhoun is duly sworn by the
7 clerk of court as follows: do you solemnly swear to
8 truthfully answer all questions asked of you by this
9 court, so help you God]

10 THE WITNESS: Yes, ma'am.

11 THE CLERK OF COURT: Please be seated.

12 [Whereupon, Mr. Calhoun takes the witness stand]

13 THE CLERK OF COURT: State your name and spell
14 it for the Court, please.

15 THE WITNESS: My name is Todd Calhoun.

16 C-A-L-H-O-U-N.

17 - - - - -

18 TODD CALHOUN,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. THORNTON:

23 Q. Mr. Calhoun, who do you work for, sir?

24 A. I work for the Beaufort County Sheriff's Office.

25 Q. And did you work for them back in May of 2010?

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1 A. Yes, sir.

2 Q. And what do you do for them?

3 A. I'm currently a staff sargent assigned to the
4 northern enforcement division. At that point in time, I
5 was a sargent assigned to the southern investigations
6 branch.

7 Q. Sargent Calhoun, you've heard some of the
8 testimony in this case today; is that correct?

9 A. Yes, sir.

10 Q. All right. Did you have some involvement in
11 this case?

12 A. Yes, sir.

13 Q. Specifically, sir, did you provide what's called
14 a six-pack photo line-up to a William Barnes?

15 A. Yes, sir.

16 Q. And there was testimony from Angela Viens that
17 she -- of the four eyewitnesses that have come forward,
18 she did three of them. So you did Mr. Barnes. Who was
19 the fourth?

20 A. Yes, sir.

21 Q. Let me ask you this. The jury has already heard
22 testimony about what a photo line-up is. Did you provide
23 a photo line-up to Mr. Barnes?

24 A. Yes, sir.

25 Q. And was Jerry Scantling's photograph in that?

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1 A. Yes, sir.

2 Q. Now, did you indicate to him that Jerry
3 Scantling -- well, first of all, did you indicate to him
4 that the person that he said tried to sell him a truck was
5 there or wasn't there or did you say it could be either
6 way?

7 A. No. I made no inference to that.

8 Q. Okay. So did you make any inference as to who
9 he should pick?

10 A. No, sir.

11 Q. All right. Was he able to identify the man who
12 tried to sell him the victim's truck at the gardens in the
13 early-morning hours after his murder?

14 A. Yes, sir.

15 Q. And who did he pick out?

16 A. Mr. Scantling.

17 Q. And is Mr. Scantling in the room here today with
18 us?

19 A. Yes, sir. He's seated over there, with the
20 white shirt and the multi-colored tie.

21 MR. THORNTON: Thank you. I have no further
22 questions. Please answer any questions Mr. Walker
23 has.

24 THE COURT: Mr. Walker?

25 MR. WALKER: No questions, Your Honor.

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1 THE COURT: All right. You may step down, sir.
2 Thank you.

3 THE WITNESS: Thank you, ma'am.

4 [Whereupon, Mr. Calhoun is excused and exits the
5 witness stand]

6 MR. THORNTON: Your Honor, the -- we are
7 reaching the very end of the State's case and I don't
8 believe we have anymore short witnesses, so I would
9 ask the Court to go ahead. I realize it's not quite
10 five o'clock. If the Court will forgive me for ending
11 at 4:50. But I don't believe we have any other short
12 witnesses.

13 THE COURT: All right. Ladies and gentlemen,
14 it's my understanding we have maybe one or two
15 witnesses left, which we'll begin promptly in the
16 morning. 9:30 still okay with everybody? You-all
17 have been wonderful to have been in here on time, so
18 apparently it's not been a problem.

19 I need to tell you again: do not discuss this
20 case. Do not do any independent research based on
21 anything you've heard. Do not drive by any of the
22 sites that you've heard talked about.

23 Again, go home, eat a good meal, have a good
24 night's sleep.

25 Madam Foreperson, I also need you to inquire of

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1 the jury of tomorrow. If for some reason we were to
2 go late, if someone has a conflict or a problem or an
3 absolute time they have to leave, we will honor that.
4 I don't want anyone worried about that, but I just
5 need to make sure that I know. All right?

6 Ladies and gentlemen, thank you. We appreciate
7 y'all so much for being here, and your attention.

8 We'll see y'all at 9:30 tomorrow morning.

9 THE BAILIFF: Thank you, Your Honor.

10 [Whereupon, the jury exits the courtroom at
11 4:54 p.m.]

12 THE BAILIFF: The jury is clear, Your Honor.

13 THE COURT: Mr. Thornton, remind me what type of
14 expert you have coming tomorrow.

15 MR. THORNTON: Pathologist, Your Honor.
16 Dr. Batalis. And although I always hate to pin myself
17 up, just because I've got tonight to think about it, I
18 believe he would be the last witness.

19 THE COURT: Okay. I understand that. Okay.
20 Well, we'll go ahead and break.

21 And, however, you, Mr. Walker, need to put
22 something on the record.

23 - - -

24 - - -

25 - - -

MOTION FOR A MISTRIAL

MR. WALKER: As to the -- not the previous witness but the witness today, Ms. Padgett, there was a reference to a pending burglary charge of my client, he said he's -- that's why he was in jail. Of course, we've taken extraordinary precautions about that particular charge in this case. It was severed.

As far as the jury knows, the only other criminal activity he's charged with is stealing the Monte Carlo, that's why he was arrested and placed in jail, according to the testimony here. She was specifically warned ahead of time.

We discussed with the State the importance of keeping that information [phonetic]. And it's out there, we can't unring that bell, and we would move for a mistrial, Your Honor.

THE COURT: Go ahead, Mr. Thornton.

MR. THORNTON: Your Honor, with all due respect, it certainly wasn't intentional. We have kept great pains. But the reason is not because it was a burglary; the reason is because it was the burglary of the firearm. That certainly wasn't mentioned.

I take part responsibility. I asked a fairly inartful question. What I meant to say was that he admitted to -- and I think I said charges and then

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1 admitted to, and she did that. As soon as it left her
2 mouth, you could tell it was not intentional. It
3 certainly wasn't elicited on my part.

4 While I understand the defense's concern, I
5 certainly don't think it rises to the level of a
6 mistrial. Had she made the comment, oh, the burglary
7 where he stole the gun that he used, then I think we
8 would be in a lot different boat. But all she said
9 was burglary. And while I regret that it happened, I
10 would respectfully submit that it is nowhere near the
11 level of a mistrial. And the State would not object
12 to a curative instruction or anything else that the
13 Court felt like you needed to do.

14 THE COURT: Okay. Well, obviously, we had told
15 everyone not to state the word burglary. But I really
16 don't see any resulting prejudice.

17 Again, your client himself has already admitted
18 to the possession of a stolen vehicle.

19 I made and did a curative instruction
20 immediately after the statement to wipe it away. We
21 kept going with the testimony in an effort not to draw
22 attention to it, as well. So I think I've done
23 absolutely everything I can. And as you all know, a
24 mistrial is a very extreme measure to be avoided if at
25 all possible.

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1 Respectfully, I'm going to deny your motion for
2 a mistrial.

3 MR. WALKER: Thank you, Your Honor.

4 MR. THORNTON: Your Honor, I do have one matter
5 I would like to put on the record.

6 THE COURT: Yes, sir.

7 MR. THORNTON: And let me preface this by saying
8 Mr. Walker and I have tried cases together for years,
9 and I know that this is not intentional on his part.
10 However, both with Ms. Raines and with Ms. Padgett, he
11 made reference to the fact that, well, state charges
12 have been dismissed and don't you understand you can
13 be charged with state and federal. That is, at best,
14 misleading because, frankly, under the petit policy,
15 they can't prosecute it, if we prosecute it, without
16 written permission from the Department of Justice.

17 And it, as Mr. Walker knows, is -- routine would
18 not even be the word. I don't remember a time in the
19 fifteen years I've practiced law in this circuit when
20 we have prosecuted somebody and then sent them
21 federally to be prosecuted for the same offense, and
22 to infer otherwise is, frankly, very misleading to the
23 jury and I don't -- I just -- the only request I have
24 is that that not be brought up in closing argument
25 because I think it is, at best, misleading.

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1 THE COURT: Okay. Well, they certainly can't be
2 convicted for the same charge in both federal and
3 state court, for certain. And as we all know how that
4 practically happens, they indict State, and federal
5 takes their sweet time in deciding whether or not
6 they're going to pick it up.

7 So, again -- Mr. Walker, again, that is
8 misleading.

9 MR. WALKER: Your Honor, I disagree that it is.

10 THE COURT: They can be prosecuted in -- they
11 can't be convicted in both places of the same crime.

12 MR. WALKER: I don't -- I think -- I don't
13 believe that's an accurate statement of the law. I
14 think both people can, in fact, under concurrent
15 jurisdiction, do --

16 MR. THORNTON: I'll stipulate --

17 MR. WALKER: I'll stipulate it's very rare, but
18 I think that it's technically possible to do.

19 MR. THORNTON: I will stipulate that that is
20 true, Judge. But they can't do it without getting
21 written permission from the Department of Justice.
22 And I think to allude that and then say -- and then
23 just leave it at that, I mean, it's almost to the
24 point now where if he does that, then I need to be
25 able to get up and say, well, you know, Mr. Walker,

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1 how many times since you've been here has one of your
2 clients -- I mean, this is -- we routinely dismiss
3 when the feds pick it up and alluding otherwise I
4 think is misrepresenting to the jury. I think it's
5 very misleading.

6 THE COURT: I think you can explain in your
7 closing argument, then, if you feel like that they may
8 have some kind of misinterpretation, that you can turn
9 around and explain to them that --

10 MR. THORNTON: Yes, ma'am.

11 THE COURT: -- that's not the case and that's
12 not what occurred.

13 MR. THORNTON: Then that was my only issue with
14 it, Judge. I just don't think it's an accurate
15 representation of the practical application of how we
16 do federal versus charges.

17 MR. WALKER: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MR. WALKER: He and I might talk about,
20 obviously, maybe some way we can come to an agreement.

21 THE COURT: Yes.

22 MR. WALKER: Thank you, Your Honor. I don't
23 have anything else.

24 THE COURT: Anything further?

25 MR. THORNTON: No, ma'am. Nothing from the

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1 State. Thank you.

2 THE COURT: Okay. Y'all, 9:30 tomorrow morning?

3 MR. THORNTON: 9:30. Yes, ma'am.

4 THE COURT: Is that fine?

5 MR. THORNTON: Yes, ma'am.

6 And I've asked Dr. Batalis to be here by 9:00,
7 just to make sure that there's no issues. And I'll
8 confirm with him right now.

9 THE COURT: Very good. And he's coming from
10 Charleston?

11 MR. THORNTON: Yes, ma'am.

12 THE COURT: Okay.

13 MR. WALKER: I think -- Your Honor, I think --
14 right now, the only thing I anticipate pre -- you
15 know, without the jury, would be the admissibility of
16 certain evidence that they would seek to introduce
17 through the doctor. So we would just have a hearing
18 about the admissibility of photos and that sort of
19 thing.

20 MR. THORNTON: I'll have him here -- I'll ask
21 him to be here about 8:45. That way, I can talk to
22 him for a few minutes.

23 THE COURT: That's fine. We'll all be here by
24 9:15 --

25 MR. THORNTON: Yes, ma'am.

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1 THE COURT: -- and we can go ahead and clean
2 that up for anything we need to. Okay?

3 MR. WALKER: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. WALKER: Right now, that's all I would have.

6 MR. THORNTON: Thank you, Judge.

7 THE COURT: Okay. Thank you, y'all.

8 [JURY TRIAL ADJOURNS AT 5:01 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Carmen T. Mullen, on Wednesday, February 27, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 2nd day of August, 2013.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-606-

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) CASE NO.: 2010-GS-07-01315

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 JERRY SCANTLING,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 4 OF 4

held before the Honorable Carmen T. Mullen
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Beaufort County Courthouse
 Beaufort, South Carolina
 on Thursday, February 28, 2013, Commencing at 9:44 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE: Sean P. Thornton, Esquire
14th Circuit Solicitor's Office
Post Office Box 2226
Beaufort, South Carolina 29901

FOR THE DEFENDANT: Matthew Walker, Esquire
Lauren Carroway, Esquire
14th Circuit Public Defender
Post Office Box 525
Beaufort, South Carolina 29901

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PROCEEDINGS

1
2 THE COURT: All right. Mr. Thornton, you are
3 still standing. What do you need?

4 MR. THORNTON: I was just waiting. Whenever the
5 Court is ready, Judge, there's a couple of matters
6 that we need to put on the record.

7 THE COURT: Okay.

8 MR. THORNTON: First off, I just -- for the
9 Court's information -- I've already told Mr. Walker
10 this and had a fairly brief discussion with your law
11 clerk about it yesterday afternoon and this morning.
12 In the possession of a stolen vehicle indictment, I
13 think the wrong code section is referenced in the body
14 of the indictment. Also, it's under the old dollar
15 amount, which I think was correct in 2010, which is
16 one to 5,000 for the first level of --

17 THE COURT: Right.

18 MR. THORNTON: -- of felony.

19 It's always been my position that the defendant
20 gets the benefit of the doubt in a law change, so I
21 would ask that the statute -- I handed it up -- would
22 be having a statute-number change, Your Honor, to I
23 think it's 16-21-80 and that the dollar amount be
24 changed to two to ten to give the benefit -- to give
25 the defendant the benefit of the doubt. With regard

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1 to that, obviously it's one of the things that I had
2 not done yet.

3 I'm going to ask to be permitted to re-call
4 John Adams for two questions. One question will
5 be: at my request, did you look up the NADA value on
6 an '86 Monte Carlo. And I provided the printout to
7 Mr. Walker this morning, which is \$5,000 for average
8 retail.

9 THE COURT: Okay.

10 MR. THORNTON: My second question, although I
11 think it's been testified to by several witnesses, I
12 just want to actually show him State's Exhibit --

13 THE COURT: The picture of the Monte Carlo?

14 MR. THORNTON: No, ma'am.

15 THE COURT: Okay.

16 MR. THORNTON: State's Exhibit 57, which is a
17 picture of the red truck, just so he can say, yes,
18 they did actually run the tag and that is the victim's
19 truck. I think it was testified to by several
20 witnesses, but I haven't actually had an officer
21 testify that they --

22 THE COURT: That the tag was run and it was --

23 MR. THORNTON: Yes, ma'am.

24 THE COURT: -- officially registered to him --

25 MR. THORNTON: Yes, ma'am.

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1 THE COURT: I understand.

2 MR. THORNTON: That would be the only two
3 questions I would ask him.

4 THE COURT: Okay.

5 MR. THORNTON: Dr. Batalis is here and ready to
6 go. I will put him up and that will be the end of the
7 State's case.

8 THE COURT: All right. Sir?

9 MR. WALKER: He informed me they intend to
10 produce a lot of photographs, and we would have some
11 objections to some of those.

12 The Court's indulgence. I need one of the items
13 that's already in evidence.

14 [Whereupon, Mr. Walker reviews documents]

15 MR. WALKER: I will hand up to the Court what's
16 already been entered into evidence as State's Exhibit
17 Number -- or if you just --

18 THE COURT: Why don't you guys just -- why don't
19 you both just come around right here. We'll need to
20 take a look at them.

21 What has already been entered in? This one?

22 MR. THORNTON: Yes, ma'am.

23 THE COURT: Which is State's Exhibit Number 39.

24 Mia, are we on the record?

25 THE COURT REPORTER: Yes, ma'am.

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1 THE COURT: Thank you. Thank you.

2 Okay. So State's 39 is already in.

3 MR. THORNTON: Yes, ma'am.

4 THE COURT: And that shows what appears to be a
5 laceration from you allege to be a pistol-whip --

6 MR. THORNTON: Yes, ma'am.

7 THE COURT: -- is that correct?

8 MR. THORNTON: That is correct, Your Honor.

9 THE COURT: Okay.

10 MR. WALKER: And just for the record, I would
11 characterize that as a star-shaped laceration on the
12 skull of the victim.

13 My position would be, as opposed to the proposed
14 entry of State's Exhibit 78 and 79, that those two are
15 duplicative with each other and duplicative with
16 State's 39 that's already been entered. I don't think
17 we need three different shots of it.

18 THE COURT: Okay. I don't think we need 78.
19 But 79 shows where it is and I think that's fair game,
20 because I don't think you can necessarily tell in
21 State's 39 that it's on the head.

22 So I would say you can go ahead and use -- yeah,
23 79. But we're not going to use 78.

24 MR. THORNTON: Yes, ma'am.

25 THE COURT: Okay?

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1 MR. WALKER: Next I will hand you what is
2 proposed State's 80, 81 and 82, showing -- have a full
3 torso of the victim laid out in autopsy showing wounds
4 to his back and abrasion to the bullet wounds. Those
5 are duplicative with each other.

6 THE COURT: The abrasions to the back, is there
7 a theory? Are they from dragging or are they --

8 MR. THORNTON: Yes, ma'am.

9 THE COURT: -- is that what the --

10 MR. THORNTON: Yes, ma'am. That's what --

11 THE COURT: -- theory is?

12 MR. THORNTON: That's what my theory is, yes,
13 ma'am.

14 THE COURT: That's what your theory is.

15 MR. THORNTON: It also shows the bullet wound to
16 the back.

17 MR. WALKER: And as to the abrasion, as you
18 pointed out, there's also a magnification of that in
19 State's 83, which I would say was duplicative of the
20 three I've already handed up. It's clearly visible on
21 those photos.

22 THE COURT: All right. What is the beneficial
23 value of 82? What is that showing? Other than I can
24 see the abrasions. You really can't see the bullet
25 wounds.

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1 MR. THORNTON: Judge, I'll -- we can do -- I
2 think that's 82, State's proposed 82. I'm happy to
3 kick that one out, if you want me to just hold it.

4 THE COURT: Okay. I think let's take that one
5 out.

6 MR. THORNTON: Yes, ma'am.

7 THE COURT: And maybe let's take this one out,
8 80. I don't think you need -- I think this is
9 probably the best shot of being able to show where the
10 dragging is and then, additionally, the bullet wounds.
11 And that -- it's not necessarily duplicative. I mean,
12 it basically shows that, you know, there was dragging.
13 And, quite frankly, it shows the what I would consider
14 to be dragging lines --

15 MR. THORNTON: It shows more detail.

16 THE COURT: -- or marks. Yeah.

17 So, yeah, we'll go ahead and leave 83 and 81 in.
18 Okay?

19 MR. WALKER: Your Honor --

20 THE COURT: Then what else?

21 MR. WALKER: We wouldn't have an objection to 84
22 and 85. Those are the two different bullet wounds.

23 THE COURT: Okay.

24 MR. WALKER: 86 is a photograph of the bullet
25 recovered from the body. That's actually been -- the

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1 actual physical bullet has been placed in evidence. I
2 don't know if we need another picture of it.

3 MR. THORNTON: My argument with that, Judge --
4 and not trying to be difficult. Mr. Walker is right.
5 The bullet is in evidence. But the problem is the
6 bullet is in something, it's in plastic --

7 THE COURT: And they can't see it.

8 MR. THORNTON: -- and that's also as it was
9 pulled out of the body. I think that that's relevant.

10 THE COURT: Okay. We'll go ahead and --

11 MR. THORNTON: And it's not bloody. There's no
12 blood obvious --

13 THE COURT: Right.

14 MR. THORNTON: -- on it or anything.

15 THE COURT: That's Number 86. Yeah. I don't
16 find anything offensive or wrong with that in any way.

17 MR. WALKER: That was what I had.

18 THE COURT: And that was it? Okay. So we're
19 good. Just put on the record the ones that I'm
20 keeping out, Mr. Thornton.

21 MR. THORNTON: Yes, ma'am.

22 Your Honor, you are excluding State's proposed
23 78, State's proposed 82 and -- I'm sorry -- State's
24 proposed 80. I meant to get those in order. But 78,
25 80 and 82.

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1 THE COURT: Very good. We're going to put all
2 these in. Okay.

3 MR. WALKER: I'll put this back in the already-
4 entered pile and then --

5 THE COURT: Okay.

6 THE COURT REPORTER: I need the pictures,
7 though.

8 MR. THORNTON: Do you need the ones she kept
9 out, too?

10 THE COURT REPORTER: Yes.

11 MR. THORNTON: All right. I was about to
12 destroy those so I'm glad you said something, Miss
13 Mia.

14 THE COURT: Okay. Thank you, Mia.

15 One other thing I need you to do for me,
16 Mr. Thornton: what evidence do we have tying
17 Mr. Scantling to the burglary that we haven't been
18 discussing? Other than -- I understand that there was
19 a -- the gun that was taken from that burglary is the
20 gun that was found at the scene. But --

21 MR. THORNTON: You also have the testimony -- or
22 I would have the testimony of the codefendant, who's
23 father's house it was, Justin Crews. I have
24 witnesses, one named I believe it's Jeffrey Hraban,
25 who identified the two of them together I want to say

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1 on the same day of the burglary. It may have been the
2 day before. But walking towards the house where the
3 gun was stolen. I have Pam Lathan, who does not --
4 who could not identify Mr. Scantling but saw Justin
5 Crews, on the day in question, walking and identified
6 him and said he was walking with a black male, that
7 Mr. Crews acted weird or funny that day because
8 normally he waves and didn't wave back. But most of
9 it is based on the testimony of the codefendant,
10 Justin Crews.

11 THE COURT: Okay. You don't have anything like
12 Mr. Scantling's fingerprints at the burglary scene --

13 MR. THORNTON: No, ma'am.

14 THE COURT: -- or anything like that?

15 MR. THORNTON: The only fingerprint I have at
16 the scene is the codefendant.

17 Like I said, I have witness statements that --

18 THE COURT: And that's Mr. Crews, whose father
19 lived in the house; correct?

20 MR. THORNTON: Yes, ma'am.

21 THE COURT: Okay. Okay. All right.

22 MR. WALKER: And if I could just kind of address
23 a little bit of that.

24 The only thing that we've addressed that's
25 actual evidence in this particular case that we've

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1 been dealing with is the gun. The other stuff
2 obviously wasn't testified to and really are different
3 witnesses than we've heard from.

4 As for the allegations that Mr. Scantling went
5 in, this was a burglary of Justin Crews' father's
6 house --

7 THE COURT: Right.

8 MR. WALKER: -- the gun was taken from a bedside
9 table next to the parents' bed. The only thing taken
10 from the house -- there's a large dog in the house.
11 And Mr. Crews has failed several polygraphs as to his
12 truthfulness about his story about Mister --

13 THE COURT: Okay. I just wanted to make sure
14 that there wasn't any actual physical DNA evidence on
15 the burglary scene that links or puts Mr. Scantling in
16 that house.

17 MR. THORNTON: No, ma'am.

18 THE COURT: Okay. I'm fine, then.

19 All right. Are y'all ready to go? Is the State
20 ready?

21 MR. THORNTON: Judge, there is one other very
22 minor matter. I would -- especially based on your
23 rulings, I've got -- I'm going to have to alter a
24 slide that I was going to show the jury and change
25 photographs so that I only put the one that I'm going

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1 to have in evidence. Could we have about a ten- to
2 fifteen-minute break --

3 THE COURT: Sure.

4 MR. THORNTON: -- between the last thing we do
5 and argument and when I start -- have to start
6 argument?

7 THE COURT: Between the last thing you do --

8 MR. THORNTON: In other words, whenever the
9 final thing that we do prior to argue and charge,
10 could I just have about a ten- to fifteen-minute
11 window to --

12 THE COURT: Sure. Sure.

13 MR. THORNTON: -- change photos and get ready?
14 That's all I was --

15 THE COURT: Sure. Okay. I thought you meant
16 you needed it right now for the pathologist.

17 MR. THORNTON: No, ma'am. Once we're done with
18 everything except argument --

19 THE COURT: You've got it.

20 MR. THORNTON: -- I would just like a ten-minute
21 break --

22 THE COURT: You've got it.

23 MR. THORNTON: -- so I can get it organized.

24 THE COURT: Not a problem.

25 MR. THORNTON: Thank you, Judge. That's it for

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1 the State.

2 THE COURT: All right. Anything else, Mr.

3 Walker? Are we ready to bring them in?

4 MR. WALKER: We are, Your Honor.

5 THE COURT: All right. Let's bring the jury in.

6 THE BAILIFF: Yes, Your Honor.

7 THE COURT: Thank you.

8 [Off the record momentarily]

9 THE BAILIFF: The jury is entering, Your Honor.

10 [Whereupon, the jury enters the courtroom at

11 9:55 a.m.]

12 THE BAILIFF: The jury is seated, ladies and
13 gentlemen.

14 THE COURT: Thank you.

15 Good morning, ladies and gentlemen. I'm glad
16 y'all got here. I know there was a wreck, coming over
17 from the island, that I got stuck in myself this
18 morning.

19 At this time we're going to go ahead and
20 continue with the trial of this case.

21 Mr. Thornton, if you'll call your first witness
22 for this morning, sir.

23 MR. THORNTON: Thank you, Your Honor. The State
24 re-calls John Adams to the stand.

25 THE COURT: Come on back up, sir.

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1 [Whereupon, Mr. Adams comes forward]

2 THE CLERK OF COURT: Do you want me to swear him
3 again, Judge?

4 THE COURT: Please. It's a new day.

5 [Whereupon, Mr. Adams is duly sworn by the clerk
6 of court as follows: do you solemnly swear to
7 truthfully answer all questions asked of you by this
8 court, so help you God]

9 THE WITNESS: I do.

10 THE CLERK OF COURT: Please be seated.

11 [Whereupon, Mr. Adams takes the witness stand]

12 THE CLERK OF COURT: State your name and spell
13 it for the Court, please.

14 THE WITNESS: My name is John Adams. I'm an
15 investigator with the sheriff's office. My last name
16 is A-D-A-M-S.

17 MR. THORNTON: Thank you.
18
19
20
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23 - - -
24 - - -
25 - - -

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1 JOHN ADAMS,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. THORNTON:

6 Q. Detective Adams, there's been testimony --
7 obviously, you're the case officer. You've been here the
8 entire time. There was testimony involving a car stolen
9 by Mr. Scantling out of Savannah, which is a Monte Carlo.
10 Do you recall that?

11 A. Yes, sir.

12 Q. And at my request did you go to the NADA Blue
13 Book and pull a blue book value on that Monte Carlo?

14 A. Yes, sir, I did.

15 Q. What is the average retail, sir, for a 1986, I
16 believe, Chevy Monte Carlo?

17 A. The average retail value of that is \$5100 and
18 fifty -- I'm sorry. Fifty-one -- \$5,150.

19 Q. Detective Adams, I'm going to show you what's
20 been marked as State's Exhibit 57, which has been
21 testified to by several people, I believe. But out of an
22 abundance of caution, State's Exhibit 57, which is in
23 evidence, is a photograph of a Ford F-150 red pickup
24 truck, is it not?

25 A. Yes, sir, it is.

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1 Q. All right. As part of the investigation from
2 the sheriff's office, was the VIN number and plate number
3 on the truck identified as the State's Exhibit fifty -- is
4 it seven?

5 A. 57. Yes, sir.

6 Q. Is that -- was the plate VIN number run on that
7 truck?

8 A. Yes, sir, they were.

9 Q. And who did that come back to?

10 A. The victim, Leonard Green.

11 MR. THORNTON: I have no further questions.

12 Please answer any questions Mr. Walker has.

13 THE COURT: Mr. Walker?

14 MR. WALKER: No further questions.

15 THE COURT: All right. You may step down, sir.

16 MR. THORNTON: Thank you, Your Honor.

17 [Whereupon, Mr. Adams is excused and exits the
18 witness stand]

19 MR. THORNTON: Dr. Nicholas Batalis, Your Honor.

20 THE COURT: Come on up, Dr. Batalis.

21 [Whereupon, Dr. Batalis comes forward]

22 THE CLERK OF COURT: Sir, would you place your
23 left hand on the Bible and raise your right hand for
24 me, please.

25 [Whereupon, Dr. Batalis is duly sworn by the

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1 clerk of court as follows: do you solemnly swear to
2 truthfully answer all questions asked of you by this
3 court, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Please be seated.

6 [Whereupon, Dr. Batalis takes the witness stand]

7 THE CLERK OF COURT: State your name and spell
8 it for the Court, please.

9 THE WITNESS: My name is Nicholas Ike Batalis.
10 B-A-T-A-L-I-S.

11 - - - - -

12 NICHOLAS BATALIS, M.D.,

13 Having Been First Duly Sworn,

14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MR. THORNTON:

17 Q. Dr. Batalis, who do you want for, sir?

18 A. I work for the Medical University of South
19 Carolina in Charleston.

20 Q. And what do you do for them?

21 A. I'm a forensic pathologist.

22 Q. And what does that mean?

23 A. A forensic pathologist is a medical doctor with
24 a specialty in forensic pathology, which is an area of
25 medicine that involves performing autopsies in order to

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1 determine the cause and manner of death.

2 Q. Dr. Batalis, obviously I'm referring to you as
3 Doctor. Do you have a doctorate degree?

4 A. I have a Doctor of Medicine degree, yes.

5 Q. And what sort of education do you have beyond
6 your medical degree?

7 A. So after completing medical school, I did a
8 four-year training program in general pathology at MUSC.
9 So to become a general pathologist, that would be somebody
10 who would interpret a biopsy to determine if you had
11 cancer or not. We would also be the one that would help
12 your doctor interpret any laboratory tests. So that's
13 a four-year program, after which I passed a two board
14 exam -- two national board examinations to become board
15 certified in anatomic and clinical pathology.

16 After that general certification, I then went on
17 to do a one-year specialized training or fellowship in
18 forensic pathology. At the completion of that, again took
19 another examination to become board certified. And after
20 that, I've been on staff at MUSC for almost five years
21 now.

22 Q. Dr. Batalis, have you ever been -- how many
23 autopsies have you performed?

24 A. Somewhere between 1,000 and 1500.

25 Q. Have you ever been qualified as an expert in

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1 state or federal court in South Carolina?

2 A. Yes. Several times in state court.

3 Q. How many times, would you gather?

4 A. Probably somewhere around thirty times.

5 MR. THORNTON: Your Honor, at this time I would
6 ask that Dr. Batalis be declared an expert in the
7 field of forensic pathology.

8 MR. WALKER: No objection.

9 THE COURT: Ladies and gentlemen, again, as you
10 understand with previous witnesses, Dr. Batalis is
11 going to be permitted to give his opinion, and the
12 reasons for his opinion, in the area of forensic
13 pathology. Again, that is for you to use as you see
14 appropriate and as compared to other evidence in the
15 case.

16 MR. THORNTON: Thank you, Your Honor.

17 Q. [Mr. Thornton] Doctor, did you perform an
18 autopsy on the victim in this case, Leonard Green?

19 A. Yes, I did, on May 24th, 2010.

20 Q. And could you go through the evidence of injury
21 or what you did?

22 A. Let me first explain just the general process of
23 an autopsy.

24 So when we first receive a body in our autopsy
25 suite, the first thing we would do is take photographs as

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1 we receive the body before we made any manipulations. We
2 then would disrobe the body, clean up the body, and take a
3 new set of photographs with the body cleaned up.

4 At that point we then perform an external
5 examination, which is basically looking at the body from
6 head to toe looking for any tattoos, scars, hair color,
7 eye color. So just normal stuff. In addition, any
8 evidence of trauma.

9 After we complete the external exam, we would
10 then move on to the internal exam, which we make surgical
11 type incisions to open the body and then dissect the
12 organs one by one.

13 After the completion of that, we then generate
14 our report. So that's the full autopsy.

15 Regarding this case, the major findings on our
16 external exam were two gunshot wounds and then several
17 other blunt-force injuries scattered on the back and head,
18 predominately.

19 Q. All right. Dr. Batalis, could you go first to
20 the gunshot wounds and describe for the jury where they
21 were located?

22 A. Yes. So the first gunshot wound was on the left
23 side of the abdomen. So just a little bit above where the
24 bellybutton would be and a couple of inches to the left.
25 So there was a gunshot entrance wound there on the left

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1 side of the abdomen. That bullet then went through kind
2 of crossing the body from left to right. It went through
3 portions of the small and large intestines, then into the
4 muscle, and then into -- fractured the right hip. And
5 then we recovered that bullet from the right hip.

6 So the bullet was essentially, again, traveling
7 across the body, a little bit towards the back, and just a
8 little bit downward. And, again, in its course it
9 perforated the small and large intestines.

10 And then we recovered that bullet in the hip.
11 It was a what appeared to be a large caliber bullet. We
12 cleaned it up, photographed that, and then submitted that
13 to the officer attending the autopsy.

14 The second gunshot wound we saw was almost in
15 the middle of the back, just about a half-inch left of
16 midline. So the -- again, the first entrance wound was in
17 the stomach, went to the right hip. The second entrance
18 wound is in the middle of the back. That entrance wound,
19 the bullet, after striking the skin in the middle of the
20 back then basically coursed almost straight from back to
21 front through the body and just a little bit to the left.
22 So as that bullet traveled through the body, it struck the
23 kidney, which caused a great deal of bleeding. So we
24 recovered at least a liter of blood, at the autopsy,
25 within the abdominal cavity.

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1 After striking the kidney, it also struck the
2 intestines. Again, the small and -- the small intestines.
3 It struck the stomach and then exited the stomach, the
4 front side of the abdomen, very, very close to where that
5 entrance wound was. So we had the second entrance -- the
6 second gunshot wound, again, entered the back and then
7 exited the front of the stomach and, again, in its course,
8 perforated the kidney, the intestines and stomach.

9 Q. Dr. Batalis, would those be considered wounds
10 that would cause a fatality?

11 A. Yes. The amount of bleeding that we recovered
12 at the autopsy. In addition, once you perforate the
13 bowel, you're going to get bleeding with that and then you
14 can also -- you're predisposed to infection.

15 Q. Dr. Batalis, what were your other findings of
16 injury?

17 A. So the other findings that we noticed, there
18 were large areas of abrasions or scrapes, kind of
19 superficial scrapes, on the upper left side of the back
20 and then the -- kind of the back left side of the head.
21 So we had those two injuries.

22 Additionally, on the nose -- so right about here
23 [indicates], the top right side of the nose and the bottom
24 left side of the nose we had two abrasions -- and, again,
25 abrasions are scrapes -- and also lacerations. A

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1 laceration is where you get tearing of the skin with a
2 blunt-force injury. So being struck with some sort of an
3 object, whether a fist or some other -- any type of
4 object, or if the body fell to the ground or was pushed to
5 the ground. So the skin striking some sort of a blunt
6 surface. So we had tears of -- again, two tears on the
7 nose.

8 Additionally, we had three other lacerations on
9 the scalp. So we had two lacerations near the top of the
10 scalp and then a deeper one near the back of the head.
11 The most severe of those was the one at the back of the
12 head. It went almost down to the skull and caused some
13 bleeding around the outside of the skull. None of those
14 actually caused any skull fractures or any bleeding inside
15 the head, but we did have those three, again, lacerations,
16 from blunt-force injuries.

17 The last two injuries we had were over both
18 eyes. So over the right eye we had about a half-inch
19 injury and over the left eye about twice that. So an
20 injury about an inch long. These injuries could have been
21 caused by a sharp object, an incised wound, or it also
22 could have been caused by an injury with a blunt object
23 but with an edge as opposed to, you know, a flat surface
24 it could -- if it was hit by a blunt object, it would have
25 been, you know, from an edge, not the flat side.

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1 So in total I believe that was five lacerations
2 on the scalp and nose, the two lacerations or incised
3 wounds on his eyes, and then the abrasions on the back.

4 MR. THORNTON: The Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Thornton and Mr. Walker confer]

8 Q. [Mr. Thornton] Dr. Batalis, I'm going to hand
9 you -- we'll just do these one at a time, sir -- what's
10 been marked for identification as State's Exhibit 76 and
11 ask if you can identify that photograph for me.

12 A. Yes. State's Exhibit 76 is a photograph I took
13 of the decedent, which depicts the left side of the face.

14 Q. And does that also indicate one of the injuries
15 you were discussing?

16 A. Yes. This actually shows two of the injuries.
17 It shows the laceration on the left side of the nose and
18 also the injury over the left eye.

19 Q. All right, sir. I'm also going to show you
20 what's been marked as State's Exhibit 77 and ask if you
21 can identify that picture.

22 A. State's Exhibit 77 is a photograph I took of the
23 back left side of the decedent's head, and it shows the
24 abrasion I mentioned on the back left side of the head,
25 the scraping of the skin.

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1 Q. Doctor, are those pictures a fair and accurate
2 depiction of how Mr. Green appeared when you did his
3 autopsy?

4 A. Yes.

5 Q. Have they been altered or changed in any way?

6 A. No.

7 MR. THORNTON: Your Honor, I would ask that
8 State's Exhibit 77 -- 76 and 77 be moved into
9 evidence.

10 MR. WALKER: No objection.

11 THE COURT: Without objection, they're in
12 evidence.

13 [Whereupon, State's Exhibit Number 76 is
14 admitted into evidence by the Court]

15 [Whereupon, State's Exhibit Number 77 is
16 admitted into evidence by the Court]

17 [Whereupon, Mr. Thornton proffers documents to
18 the jury]

19 Q. [Mr. Thornton] Dr. Batalis, I'm now going to
20 hand you what's been marked for identification as State's
21 Exhibit 79. And go ahead and give you State's 81 for
22 identification, also, and ask as to each of those pictures
23 -- and if you could just reference them by the exhibit
24 number when you describe what they are. Do you recognize
25 those photographs, sir?

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1 A. Yes, I do. So State's Exhibit 79 is a
2 photograph I took at the autopsy that shows the right side
3 of the decedent's head. In this picture, the
4 identification label for the autopsy is located directly
5 beneath one of the lacerations or tearing of the skin that
6 we saw on the scalp. And then also if you look at the
7 bridge of the nose, you can see the laceration on the nose
8 that I mentioned earlier.

9 State's Exhibit 81 is then a photograph of the
10 decedent's back, with him face down on the table, and this
11 -- this picture shows two things. One, it shows a large
12 area of abrasions on the left side of the back. So those
13 scrapes that were on the left side of the back similar to
14 what you just saw on the left side of the head. And then
15 also in the middle of the picture is the gunshot entrance
16 wound that I described -- a second gunshot entrance that I
17 described that entered the back and came out the front of
18 the abdomen.

19 Q. Are those accurate as far as -- is that a fair
20 and accurate depiction of the wounds that you've described
21 on Leonard Green when you did his autopsy?

22 A. Yes.

23 Q. Have they been altered or changed in any way?

24 A. No.

25 MR. THORNTON: Your Honor, I would ask that

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1 State's Exhibit I believe it's 79 and 81 be moved into
2 evidence.

3 THE COURT: Without objection?

4 MR. WALKER: [No response]

5 THE COURT: Without objection?

6 MR. WALKER: I apologize, Your Honor. Without
7 objection.

8 THE COURT: Without objection, they're in
9 evidence.

10 [Whereupon, State's Exhibit Number 79 is
11 admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Number 81 is
13 admitted into evidence by the Court]

14 [Whereupon, Mr. Thornton proffers documents to
15 the jury]

16 Q. [Mr. Thornton] I'm going to hand you what's
17 been marked as State's Exhibit 83 and 84, ask you if you
18 can identify those, Dr. Batalis.

19 A. Yes. State's Exhibit 83 is that photograph I
20 took of the decedent's back. This is going to be a much
21 closer photograph, though. I don't remember the number,
22 but the picture you just saw of the back and the hole.
23 This is going to be a focused-in on the abrasions on the
24 upper left side of the back.

25 State's Exhibit 84, then, is also a photograph I

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1 took of the decedent's back at autopsy. This is now a
2 focused picture -- a picture focused in on the gunshot
3 entrance wound of the back.

4 So essentially these two, State's Exhibit 83 and
5 84, will show you in better detail the injury that would
6 show -- that were shown on the full picture of the
7 decedent's back.

8 Q. Are those a fair and accurate depiction of
9 Leonard Green on the day you did his autopsy?

10 A. Yes.

11 Q. Have they been altered or changed in any way?

12 A. No.

13 MR. THORNTON: Your Honor, I would ask that
14 State's 83 and 84 be moved into evidence.

15 MR. WALKER: No objection.

16 THE COURT: Without objection.

17 [Whereupon, State's Exhibit Number 83 is
18 admitted into evidence by the Court]

19 [Whereupon, State's Exhibit Number 84 is
20 admitted into evidence by the Court]

21 [Whereupon, Mr. Thornton proffers documents to
22 the jury]

23 Q. [Mr. Thornton] Finally, Doctor, I'm going to
24 hand you what's been marked for identification as State's
25 Exhibit 85 and 86 and ask if you can identify those last

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1 two photographs for me.

2 A. Sure. State's Exhibit 85 is a photograph I took
3 of the decedent's abdomen. So this is of the left side of
4 the abdomen. This picture shows both the entrance -- the
5 first gunshot wound I described, the entrance wound that
6 entered the stomach and then terminated where we found the
7 bullet in the right hip. So there are two wounds that are
8 illustrated on this. An entrance wound is a very circular
9 wound and it's located right above the tag.

10 Just above that entrance wound is a more
11 irregular-appearing wound and this is the exit wound that
12 corresponds with the gunshot wound from the back. So
13 where -- the gunshot wound that entered the back exited
14 the stomach just above where the gunshot wound to the
15 stomach entered.

16 State's Exhibit 86 is a photograph I took, at
17 the autopsy, of a bullet. And the -- after we removed the
18 bullet from the body, we then cleaned the bullet up and
19 then photographed it before we submitted it to the
20 officer.

21 Q. Doctor, are those -- both those pictures a fair
22 and accurate depiction of, one, of Mr. Green, and the last
23 photograph of the bullet you recovered from Mr. Green on
24 the date of his autopsy?

25 A. Yes.

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1 Q. Have they been altered or changed in any way?

2 A. No.

3 MR. THORNTON: Your Honor, I would ask that
4 State's Exhibit 85 and 86 be moved into evidence.

5 MR. WALKER: No objection.

6 THE COURT: Without objection, they're in
7 evidence.

8 [Whereupon, State's Exhibit Number 85 is
9 admitted into evidence by the Court]

10 [Whereupon, State's Exhibit Number 86 is
11 admitted into evidence by the Court]

12 [Whereupon, Mr. Thornton proffers documents to
13 the jury]

14 Q. [Mr. Thornton] Dr. Batalis, one of the things
15 you mentioned earlier was that the wounds about the head,
16 there are several. Obviously, there's lacerations above
17 the eye and there's a fairly deep wound laceration to the
18 head; is that correct?

19 A. Yes.

20 Q. You testified earlier that that could have been
21 from the edge of a flat surface. Let me ask you a
22 question. I'm going to hand you what's been marked for
23 identification as State's 1-A. Would one of the edges on
24 the slide of a pistol, if you were struck with that would
25 that be consistent with those wounds?

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1 A. Yes.

2 Q. Dr. Batalis, is one of the things that you do
3 also to determine the manner as well as the cause of
4 death?

5 A. Yes.

6 Q. What was the manner of death in the case of
7 Leonard Green?

8 A. The manner of death in this case was homicide.

9 MR. THORNTON: Your Honor, I have no further
10 questions.

11 Thank you, Doctor. Please answer any questions
12 Mr. Walker has.

13 MR. WALKER: I have no questions, Your Honor.

14 THE COURT: Any objection to Dr. Batalis being
15 excused, to go back to Charleston, from anyone?

16 MR. THORNTON: Ask that he be allowed to be
17 excused, Judge.

18 THE COURT: You are excused, Doctor. Thank you,
19 sir.

20 THE WITNESS: Thank you, Your Honor.

21 MR. THORNTON: Thank you, Doctor.

22 [Whereupon, Dr. Batalis is excused and exits the
23 witness stand]

24 MR. THORNTON: Your Honor, with that, the State
25 rests.

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1 THE COURT: Ladies and gentlemen, at this time
2 the State has rested their case. There is a matter of
3 law I need to take up with the attorneys. I am going
4 to send you back to your jury room. I remind you do
5 not discuss this case. It wouldn't be appropriate to
6 do so. We'll be right back with you.

7 And, y'all, if you need anything, please let us
8 know. I see we've got a couple of people that are
9 sick, as well. And as you can all probably hear, I've
10 got a terrible cold. So if you need anything, if we
11 can get you -- I have plenty of vitamins and cough
12 medicine and whatever you need. So just let us know.
13 All right?

14 Thank you. Y'all are excused back to your jury
15 room.

16 [Whereupon, the jury exits the courtroom at
17 10:16 a.m.]

18 THE BAILIFF: The jury is clear, Your Honor.

19 THE COURT: Thank you.
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MOTION FOR A DIRECTED VERDICT

THE COURT: All right. Any motions, Mr. Walker?

MR. WALKER: Your Honor, at this time I would move for a directed verdict.

THE COURT: Thank you. All right. Any argument or --

MR. WALKER: The Court has heard the lack of evidence and can certainly make its own mind up, Your Honor, from what it has heard.

THE COURT: Obviously, viewing the -- or the evidence in the light most favorable to the State, I think there is a jury issue as to whether or not Mr. Scantling committed these acts, and we are going to submit it to the jury.

Mr. Walker, do you intend on introducing anything?

MR. WALKER: We would rest.

We would like to go ahead and have a talk with Mr. Scantling.

THE COURT: Would like to? If now is fine with him, I'll be happy to go ahead and do that at this time.

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DEFENDANT'S RIGHTS

THE COURT: Mr. Scantling, thank you. And I'm just going to go ahead and swear you in, sir.

Do you swear or affirm -- if you would just raise your right hand.

[Whereupon, Mr. Scantling is duly sworn by the Court as follows: do you swear or affirm the testimony you give will be the truth, so help you God]

MR. SCANTLING: Yes, ma'am.

THE COURT: And if you just would -- I apologize. I have a cold and so I need you to speak up a little bit. I'm having a hard time hearing.

Sir, this is the point in the trial where you have the right to testify or not testify on your own behalf. What I want you to know and understand and appreciate is that you can claim the protections that are given to you under the constitution of the United States and under the fifth amendment that says, in part, that no person or no defendant is ever compelled to be a witness against themselves. I want you to understand and appreciate, sir, that if you choose not to testify in this case, I will tell the jury in my jury charge that they cannot even consider that, that they can't even discuss it back there, because, again, that would be totally inappropriate.

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1 But I do also want you to know that you do have
2 the right, if you chose to, to testify in this case.
3 But I also want you to know that if you chose to
4 testify in this case, that you would be subject to the
5 same rules as all the other witnesses. You could be
6 examined and cross-examined on any prior acts that
7 they deem are relevant. And certainly you would have
8 to testify, or could be asked, any question that would
9 be relevant to this case. Also, if you had any, like
10 I said, prior criminal acts within the last ten years
11 or if they were a crime of moral turpitude, they could
12 ask you about those, as well.

13 I want to make absolutely sure, sir, that you
14 understand your constitutional rights. And I know
15 that Mr. Walker and Ms. Carroway have spoken with you
16 about whether or not to testify. But what I want to
17 make sure you understand and appreciate is these are
18 personal rights. No one can tell you what to do. I
19 expect you to counsel with them and discuss how the
20 trial has unfolded and whether or not you should
21 testify, but, again, these are rights that only you
22 can exercise. And I want to make sure you understand
23 your rights first. Do you, sir?

24 MR. SCANTLING: Yes, ma'am.

25 THE COURT: And have you had an adequate

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1 opportunity to speak with Mr. Walker and Ms. Carroway
2 about whether or not you wish to testify?

3 MR. SCANTLING: Yes, ma'am.

4 THE COURT: Do you want to testify in the trial
5 of this case, sir?

6 MR. SCANTLING: No, ma'am.

7 THE COURT: All right, sir. And that is your
8 choice and your right, sir?

9 MR. SCANTLING: Yes, ma'am.

10 THE COURT: All right. Thank you. You may be
11 seated.

12 [Whereupon, Mr. Scantling complies]
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CHARGE CONFERENCE

1
2 THE COURT: Okay. Does anyone have any special
3 request for a jury charge?

4 MR. THORNTON: I don't have anything special,
5 Your Honor. One that I do think we at least maybe
6 want to put a discussion on the record, I just heard
7 Mr. Walker mention this morning, was manslaughter.

8 THE COURT: Well, we need to go ahead. I can
9 tell you that having drafted it, I did put voluntary
10 manslaughter in mine as a lesser included offense. I
11 think it was Captain Bromage that actually offered
12 that up at the very beginning in his conversations
13 with Mr. Scantling during his interview.

14 You're requesting, I presume, the voluntary
15 manslaughter charge?

16 MR. WALKER: Yes, Your Honor.

17 And, again, as to the first part of your
18 question, we don't have any special charges or
19 anything that would be different from the bench book.

20 And we have requested the manslaughter charge.

21 THE COURT: Okay.

22 MR. THORNTON: I just wanted to be -- you know,
23 I'm not going to argue it, Judge. I know that
24 generally speaking, if the Court wants to do it,
25 especially if defense counsel is asking for it, I know

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1 out of an abundance of caution we should do it.

2 THE COURT: I do think there is -- I do think
3 there is evidence in this case where they could find
4 that this could have been an armed robbery that just
5 went bad and that there was no necessary
6 premeditation. And so I do think that there's a
7 possibility the jury could find that.

8 MR. THORNTON: The only other question that I
9 would have, Judge, on behalf of the State, is do
10 you -- and forgive me. It's just been a while since
11 we've tried a case. Do you do the firmly convinced
12 language on reasonable doubt?

13 THE COURT: Yes, I do. I do both. I do the --
14 yeah, I do both.

15 And let me go through it. I'm going to tell you
16 both just what I plan on charging and if there's
17 anything that I plan on charging that you object to,
18 speak out. Okay?

19 Obviously, I'm going to charge murder, voluntary
20 manslaughter, armed robbery, possession of a weapon
21 during the commission of a violent crime, and
22 possession of a stolen vehicle. I am charging
23 presumption of innocence, as I always do. Reasonable
24 doubt, as I always do. The duties of the jury and the
25 trial judge: they're the jury of the facts; I'm the

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1 judge of the law. I am charging -- again, explaining
2 direct and circumstantial evidence. My standard
3 charge on credibility of witnesses, to be judged by
4 the jury. Expert witnesses. The fact that the
5 defendant has not testified is not even to be
6 considered in the jury room. Also, I am charging
7 prior inconsistent statements by witnesses. And then
8 also that there are alleged statements that have been
9 made by the defendant and while I admit that -- that
10 while I've admitted those into evidence, whether or
11 not you believe they made -- he made those is for
12 them, ultimately, to decide.

13 Criminal intent: I'm charging criminal intent
14 if you want me to, Mr. Walker. I haven't met a
15 defense counsel who doesn't want it, so far, but I
16 assume --

17 MR. WALKER: Yes. Yes. That's fine, Your
18 Honor.

19 THE COURT: -- I assume you want it.

20 Additionally, like I said, I'm charging murder,
21 voluntary manslaughter, armed robbery, and possession
22 of a weapon during the commission of a crime, and
23 possession of a stolen vehicle. And that the -- or
24 the verdict must be unanimous. It must be the verdict
25 of all the jurors.

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1 Anything else?

2 MR. WALKER: We would request a mere presence,
3 Your Honor.

4 THE COURT: Tell me what facts you have, that
5 you believe were presented, that would suggest a mere
6 presence charge.

7 MR. WALKER: The fact that the -- the only thing
8 that ties Mr. Scantling to the scene that's, you know,
9 actually an unbiased piece of evidence, is the DNA on
10 headphones, which are kind of isolated on the -- I
11 guess the northeast corner of the parking lot where
12 all the items of evidence were gathered. And the fact
13 that the murder weapon has a separate person's DNA
14 profile, who was unknown, on it. So under that, I
15 think, you know, someone could have been shooting
16 while he was there handling the gun. There's
17 indication of someone else, from the evidence. It's
18 arguable someone else was there.

19 THE COURT: Okay. So this will be a true mere
20 presence where it's a crime being committed, and not
21 just a mere association --

22 MR. WALKER: Correct, Your Honor.

23 THE COURT: -- with a person who commits a
24 crime? A little bit of a stretch on mere presence,
25 quite frankly. But go ahead.

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1 MR. THORNTON: I was going -- Your Honor, I just
2 object basically on the basis you just said. And if
3 we're going to do mere presence, I would ask that it
4 be very carefully structured because what I -- you
5 know, because then you're going to get into if you
6 charge that and it's in association, then you're going
7 to have to -- I'm going to ask for the hand of one is
8 the hand of all.

9 THE COURT: Yeah. Let me tell you what I intend
10 on doing. And I'm going to take out portion: mere
11 presence at the scene is not sufficient to prove
12 someone guilty of a crime. A defendant's presence
13 where a crime is being committed does not make a
14 defendant -- see, I don't know how --

15 [Whereupon, the Court reviews documents]

16 MR. WALKER: Your Honor, we just --

17 THE COURT: I think we -- the whole idea -- how
18 about --

19 I'm going to just charge this: mere presence at
20 the scene is not sufficient to prove someone guilty of
21 a crime. The burden is on the State to prove every
22 element of the crime charged. If you find after
23 viewing all the evidence that the State has proved
24 that the defendant was only present at the scene of a
25 crime and if they have not proved beyond a reasonable

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1 doubt any other participation in the crime, then you
2 must find the defendant not guilty.

3 MR. WALKER: That sounds perfect to us.

4 THE COURT: And that way I kind of cut out --
5 really, there's no association, no accomplice in this,
6 so I'm just going to cut out that entire portion.
7 Okay? And I think that --

8 MR. THORNTON: The State would not object to
9 that, Your Honor.

10 THE COURT: All right. And I want you-all to
11 take a look at the verdict form.

12 [Whereupon, Mr. Thornton and Mr. Walker review
13 documents]

14 [Off the record momentarily]

15 THE COURT: All right. Any objections to the
16 verdict form? From the State?

17 MR. THORNTON: None, Your Honor.

18 THE COURT: From the defense?

19 MR. WALKER: None, Your Honor.

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1 RENEWED MOTION FOR A DIRECTED VERDICT

2 THE COURT: All right. Mr. Walker, let's go
3 ahead -- because you are not intending on putting up
4 any evidence, so we don't have to break with the jury,
5 I'll go ahead and note for the record that you're
6 going to go ahead and rest, and let's renew your
7 motion for a directed verdict at this time before the
8 jury comes back out. And I know you need ten or
9 fifteen minutes, so we're going to take that. But
10 let's go ahead and just renew it right now.

11 MR. WALKER: And I would just -- with the
12 intention of -- the defense would rest.

13 We would renew our motion for a directed
14 verdict, Your Honor, and all my prior motions, and
15 everything I've said.

16 THE COURT: Everything you've objected to,
17 again, you're preserving for the record. All right.

18 MR. WALKER: I'm just doing --

19 THE COURT: All right. And, respectfully, you
20 know, I'm denying your motion based on all my prior
21 rulings. Obviously, I do think there's evidence from
22 which this jury could find that your client was guilty
23 of what he has been charged with, and I'm going to
24 send it to the jury.

25 All right. With that said, about fifteen

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1 minutes? Is that what you need, Mr. Thornton?

2 MR. THORNTON: That's all I need, Judge.

3 THE COURT: All right. Mr. Walker, are you
4 good? Fifteen minutes or so and we'll get going?

5 MR. WALKER: Yes, Your Honor.

6 THE COURT: All right. Y'all, by the clock back
7 there it is 10:25. How about we start back up at
8 quarter to 11:00?

9 How long do you intend on arguing, Mr. Thornton?

10 MR. THORNTON: No more than twenty minutes,
11 Judge.

12 THE COURT: Okay. Mr. Walker, I'm not going to
13 limit you. I just need to know, roughly.

14 MR. WALKER: I would say, depending on what I
15 have to respond to, what I have would probably be
16 maybe thirty at the most. But then anything else that
17 he brings up that I hadn't planned to address.

18 THE COURT: Certainly. Okay. All right. Well,
19 we'll go ahead and take a little more than fifteen
20 minutes to get ready, and we'll be back. Thank you.

21 MR. THORNTON: Thank you, Your Honor.

22 [Whereupon, a recess is taken from 10:29 a.m. to
23 10:57 a.m.]

24 THE COURT: Is the State ready?

25 [Off the record momentarily]

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1 THE COURT: Ready to go, Mr. Walker?

2 MR. WALKER: Yes, Your Honor.

3 THE COURT: All right. Ladies and gentlemen,
4 for those of you that are in the back, out of respect
5 for the attorneys I want to make sure that the jury is
6 paying attention to the attorneys during their closing
7 arguments. Would you please just keep your movement
8 to a minimum.

9 I can also tell you that when I begin my charge
10 on the law, the doors will actually be locked so you
11 cannot get out. So if you don't want to sit through
12 it, go ahead and leave right now. All right?

13 Additionally, ladies and gentlemen, just for all
14 of you, as well, I don't want to see any head-bobbing
15 or facial expressions when maybe the attorneys are
16 saying something, as far as the case is concerned,
17 either in agreement, disagreement. Again, that's not
18 appropriate and it also diverts the attention from the
19 jury to you as opposed to paying attention to the
20 attorneys, who is who they are supposed to be
21 listening to. All right?

22 So with that said, let's bring them on in,
23 Norman.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: Thank you.

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1 [Off the record momentarily]

2 THE BAILIFF: The jury is entering, Your Honor.

3 THE COURT: Thank you.

4 [Whereupon, the jury enters the courtroom at
5 10:59 a.m.]

6 THE BAILIFF: Your Honor --

7 THE COURT: Thank you.

8 Welcome back, ladies and gentlemen of the jury.

9 Mr. Walker, do you want to go ahead and rest for
10 the jury?

11 MR. WALKER: May it please the Court. At this
12 time, the defense rests.

13 THE COURT: Thank you.

14 Ladies and gentlemen, at this time the defense
15 rests, as well. What we have left to do is hear the
16 closing arguments from the attorneys. I am then going
17 to charge you the law that's applicable to this case
18 and we are going to send the case to you for your
19 deliberations. All right? So at this time --

20 MR. THORNTON: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. THORNTON: Mr. Walker.

24 - - -

25 - - -

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CLOSING ARGUMENT

1
2 MR. THORNTON: May the 22nd and 23rd of 2010,
3 Jerry Scantling committed murder. He's a murderer
4 because he murdered Leonard Green, he's a robber
5 because he stole his truck while killing him, he's a
6 thief because he stole that Monte Carlo from Savannah
7 and brought it back here, and he is a coward because
8 he shot the man in the back. That's what this case is
9 about.

10 Pinckney Island boat landing, late evening May
11 22nd, early-morning hours of May 23rd. You've heard a
12 lot of testimony in this case. There's been a lot of
13 witnesses. What I told you at the beginning of this
14 case still holds: don't leave your common sense at
15 the door. When you walk in that jury room, use your
16 life experience, use your common sense. That's why
17 you were selected for this jury.

18 This is going to be my last opportunity to talk
19 to you. Mr. Walker is going to get up in a minute and
20 he'll do his closing. I don't get a response. This
21 is it for me. And I don't know what Mr. Walker is
22 going to get up and tell you. What I tell you is not
23 evidence and what he tells you is not evidence. And
24 he may talk about a lot of speculation. You know,
25 Dirty Red, Donald Cooper has been thrown out. The

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1 name -- one of the witnesses, William Barnes, has been
2 thrown out. And there is some unknown touch DNA on
3 the weapon, on the murder weapon, in question. Nobody
4 tried to hide that from you. It's there. We tested
5 it. It's there.

6 One of the things that Mr. Walker brought out,
7 though, that I want y'all to keep in mind. You
8 remember all the painstaking approach he took to
9 telling you all the convictions that Mr. Barnes had
10 and the fact that he asked Detective Bromage, Captain
11 Bromage, doesn't -- Dirty Red or Donald Cooper,
12 doesn't he hate y'all and isn't he already on
13 probation. Captain Bromage said yes. Do you remember
14 when Gray Amick was up there and I asked him what
15 CODIS was and who's in CODIS? So if this is about
16 William Barnes or if this is about Dirty Red or any of
17 these other folks that Mr. Walker may talk about,
18 where is the CODIS hit? So let's not talk about
19 speculation, let's talk about what we know.

20 It's always entertaining how defendants, when
21 they come in front of the judge and the jury in
22 cases like this why they always want to talk about all
23 the -- the witnesses aren't credible; you heard those
24 convictions. Well, think about this, y'all. If you
25 had just murdered a man and were trying to sell his

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1 truck at 1:00, 2:00, three o'clock in the morning, who
2 do you think you're going to be running into? Your
3 buddies, your associates, people that you know,
4 because that's who you're going to ask at 2:00 or
5 three o'clock in the morning. Do y'all know where
6 there's any green at? So when you're shopping for
7 drugs and trying to unload the stolen truck of a man
8 you just murdered, are you likely to be selling that
9 to the folks going to Sunday school the next morning?
10 No, you're not. Do you get credit, do you get a break
11 cut to you, because you happened to pick your
12 girlfriend, who happens to have multiple convictions?
13 So you're supposed to get a break for that when they
14 come to testify against you?

15 So let's talk about what we do have in this
16 case, and not about speculation. What is the evidence
17 against Jerry Scantling?

18 If anybody can't see that, y'all please let me
19 know.

20 Let's talk about the time line in this case.
21 You know that his brother, Herman, sees him at
22 10:30 p.m. the night of the 22nd. That was testified
23 to by Mr. Adams when asked by Mr. Walker. You know
24 that Jerry Scantling, out of his own mouth, tells
25 Captain Bromage he's with the victim at 11:00 to

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1 12:00 p.m. the night of his murder. That comes out of
2 his own mouth: I see him. He claims it's a three- to
3 five-minute conversation. But he puts himself with
4 the victim the night of the murder, when the murder
5 would have had to have occurred, based on the
6 testimony. Within a couple of hours of that,
7 somewhere between 2:00 and three o'clock in the
8 morning, you have William Barnes, Ishmil Frazier, and
9 Derik King all saying, he's trying to sell us a truck
10 for cash, the truck of the victim in the case, who
11 would have had to have been murdered right then.

12 What do you have next? Altovise Green sees him
13 throwing items in the dumpster 4:00 to five o'clock in
14 the morning. Now, I want y'all to think about that.
15 Not one, not two, not three, four separate people got
16 up and testified that Jerry Scantling was in the red
17 Ford pickup. One of them positively identified the
18 car that was the exact Ford pickup of Leonard Green,
19 the victim. All of them independently picked him out
20 of a photo line-up. All of them independently pointed
21 to him right here in this courtroom. Leonard Green's
22 body is discovered 8:30 to 9:00 a.m. at the boat
23 landing. Next, you have Jerry Scantling, the victim's
24 truck and the victim's phone all at the Savannah Wal
25 Mart the next morning at 11:39. Remember, somebody

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1 who, there was testimony, is homeless. But he's
2 magically is able to get to Savannah. How do you know
3 he's in Savannah? Because he's seen by Savannah Metro
4 Officer Brown. The next day, 5:24 -- and I'm sorry.
5 That says thirteen. Obviously, that should be 2010.
6 And it's the same with that. He's stopped in a Monte
7 Carlo stolen out of Savannah. Is all of this just a
8 coincidence? Is this magically some giant conspiracy
9 with all these independent witnesses coming forward
10 and the fact that Jerry Scantling happens to be at any
11 place any piece of evidence pops up in this case?
12 Jerry Scantling's DNA is at the murder scene. You
13 know he's there. You know that because of the
14 headphones, which are in evidence. His DNA is not on
15 the gun. You know what? Neither is the owner of the
16 gun, Sam Crews. Do you think it's reasonable to
17 assume that the owner of the gun has touched it a few
18 times? His touch DNA is not on it. Who else's DNA
19 isn't on it? Justin Crews, the owner's son.

20 Do you remember all the swabs -- and I know --
21 thank y'all for being patient, getting in that much
22 evidence. Do you remember all the swabs that were
23 taken of the victim's truck? The steering wheel, the
24 headrest, the seats, the door handles, the doorknobs.
25 How many times was the analyst able to say that the

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1 owner of the truck's own touch DNA is on the truck?
2 Zero. Why? Because touch DNA does not have a lot of
3 DNA in it. So Leonard Green's DNA, touch DNA, wasn't
4 even in his own truck. What other possible reason
5 could there be for Jerry Scantling's DNA not being on
6 the gun? Oh, that's right. When he was picked up in
7 the stolen car he stole out of Savannah, he had gloves
8 with him.

9 William Barnes, Ishmil Frazier, Derik King, not
10 one, not two, but three people, and Altovise Green --
11 count them, four -- all say that he was riding around
12 in a red Ford pickup. Altovise Green also says, by
13 the way, at 4:00 to 5:00 in the morning I went out to
14 smoke a cigarette and I saw him throwing stuff out of
15 the truck. Do y'all remember that? What did they
16 find in the dumpster? Paperwork belonging to Leonard
17 Green. It's a traffic ticket with Leonard Green's
18 name on it.

19 What does he tell Bob Bromage and tell Brittany
20 Raines? That he used the victim's cell phone. Who
21 does he tell Brittany he calls? Donald Cooper. When
22 they find the victim's phone at the Wal Mart where
23 Jerry Scantling just happened to magically appear,
24 whose number is on the phone at 2:30 in the morning?
25 Donald Cooper's. Isn't it interesting -- and by the

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1 way, if Mr. Walker gets up again and talks about
2 Donald Cooper, you might want to think about the fact
3 that if Donald Cooper had anything to do with this,
4 why would he be calling his own number from the
5 victim's phone at two o'clock in the morning? Jerry
6 Scantling admitted, I used the victim's phone. He
7 told Brittany, I tried to call Donald Cooper. Donald
8 Cooper's number is in the victim's phone after he
9 would have had to have been dead. The victim's phone
10 and truck are at Wal Mart.

11 Who else is seen at Wal Mart? I ain't going to
12 say it's me and I ain't going to say it's not. Is
13 this picture fantastic? No, it's blurry. Did Jerry
14 Scantling tell Bob Bromage, no, man, I wasn't in
15 Savannah; that's not me. No, he didn't. What did he
16 say? I ain't going to say it's me and I ain't going
17 to say it's not. What does he tell Captain Bromage?
18 What am I looking at if I tell y'all how it went down;
19 he tried to get me to his house that night; the dude
20 tried to make a move on me and I wasn't having it.
21 Talks about using the phone. Something ain't right
22 about him; somebody would bust his ass.

23 This is an interesting statement. Do you
24 remember what he told Matt Rauch when Matt pulled him
25 over and stopped him in the stolen car? What you --

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1 what are you arresting me for; I can see about the
2 car, but I didn't do anything else. What of anything
3 else is he talking about? If he doesn't know why he's
4 being stopped or if he doesn't think he's got
5 something to worry about, what anything else is he
6 referring to?

7 He confessed to Brittany Raines. One of the
8 things that you'll have to determine, that the judge
9 will talk to you about, is credibility of witnesses,
10 do you believe a witness. That's totally your
11 purview. That's what you're here to do, among several
12 things, being the judges of the facts. One of the
13 things that will be talked about is does the witness
14 have a reason to lie or a motive to lie. Something
15 that Mr. Walker brought up, and we want to set this
16 straight right now. Nobody was offered any deal in
17 this case to testify or give testimony. It is routine
18 when the federal government picks up charges for the
19 State to dismiss those charges. And I don't know what
20 kind of deal you think anybody may have gotten. One
21 of them is still in cuffs and had to be brought over
22 from the detention center. Another part of
23 credibility is is what they told you from the stand
24 made more likely or less likely, based on all the rest
25 of the evidence. What things does Brittany Raines'

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1 statements about what Jerry Scantling confessed to
2 her, is it supported by the evidence? She said that
3 he told her he killed Leonard Green -- he didn't name
4 him -- with a Highpoint .45. State's Exhibit 1,
5 ladies and gentlemen, is a Highpoint .45, yet another
6 in a series of mind-boggling coincidences all pointing
7 to Jerry Scantling as the killer. What else is it
8 consistent with? She said he told her he was shot
9 twice. And there are, count them, not one but two
10 bullet wounds, including the cowardly one in the back.
11 He shot a gay guy, is what he told Brittany. He also
12 told that to Bob Bromage. Do you remember that
13 extensive discussion that they had about that and
14 about he was trying to make a move on him and all
15 those things? What else? Stole his truck and took it
16 to Savannah. Where did they find Leonard Green's
17 truck? In Savannah. She also said that he told her
18 that he stole a Monte Carlo. What was he located in
19 when he got back here? A stolen Monte Carlo stolen
20 out of Savannah. He also told Brittany that he
21 pistol-whipped him. Does everybody remember that?
22 Said he pistol-whipped him. That's important. Why is
23 that important? What did Dr. Batalis tell you? When
24 I handed him this firearm he said that the wounds to
25 his head were consistent with being stuck by an object

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1 with an edge and, yes, it would be consistent with
2 being hit with that pistol. Where else would that
3 detail possibly come from, that he was pistol-whipped?
4 Testimony of Dr. Batalis, it's consistent with that.
5 It's also consistent with those two wounds.

6 He also made a statement to Cynthia Padgett.
7 What did he tell her? There was an altercation; he
8 was shot; I stole his truck. If this was -- again, it
9 would have to be a huge conspiracy involving I guess,
10 you know, everybody from a doctor at MUSC on down. If
11 the accusation is that Brittany and the mama made this
12 up, why would their stories be somewhat different?
13 Wouldn't they match exactly? Or would you more likely
14 tell more to your girlfriend or ex-girlfriend than you
15 would to her mama? What did he tell the mama? He
16 told the mama, yeah, I stole his truck and he was
17 shot. He never told her, he never admitted, that he
18 did shoot him. He just said he was shot and there was
19 an altercation and told her where. He told Brittany a
20 lot more. Does that make sense to you that he would
21 tell the girlfriend more? Finally, he disrespected
22 me. What is that consistent with? The way this dude
23 talked, somebody's going to bust his ass; he made a
24 move on me and I wasn't having it. All those
25 statements sound familiar? They're also very

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1 consistent with one another. And we all know what
2 happens when you disrespect Jerry Scantling. You get
3 murdered in cold blood, robbed, drug on the ground,
4 and buried under palm fronds. Because that's how
5 Jerry Scantling handles when people disrespect him.

6 Now, ladies and gentlemen, DNA is at the scene.
7 There is a confession to not one but two people.
8 There are statements he makes that look clearly like a
9 confession to Bob Bromage. How else is all this
10 happening? The time line: he puts himself with the
11 victim at the time of the victim's death. He's in the
12 victim's truck, trying to sell it, an hour or so
13 later. He then takes the truck to Savannah and
14 abandons it and steals another vehicle to get back.
15 He's caught on camera. There are four eyewitnesses
16 that can all put him trying to sell the truck. I
17 submit to you, ladies and gentlemen, there is
18 mountains of evidence to convict Jerry Scantling.

19 The one issue in this case is that his DNA is
20 not on the gun. That's why Gray Amick testified.
21 That's why those gloves are in evidence. That's why
22 the fact that Leonard Green's DNA isn't in his own
23 truck, is it's touch DNA.

24 Oh. One other thing I wanted to mention. And
25 you probably were wondering at the time why I kept

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1 emphasizing it. What else is consistent with what
2 Brittany Raines said? that he was pistol-whipped?
3 You've got Dr. Batalis' testimony, you've got the
4 photographs of the injuries. What else do you have
5 that's consistent? You have the victim's blood all
6 over this gun. Do you remember me asking about the
7 difference of was it blood DNA and they said, yes,
8 blood was indicated and we pulled DNA from that? The
9 victim's blood was on the slide, the grip and the
10 trigger. How do you get the victim's blood on the
11 slide, the grip and the trigger? You get it by
12 striking them in the head with it. That's how you get
13 the victim's blood on the murder weapon. Is that
14 consistent with a pistol-whipping and is that
15 consistent with what Jerry Scantling told Brittany
16 Raines and what Dr. Batalis testified to? That's what
17 credibility is based on: does what the witnesses
18 testified make it more or less likely, based on all
19 the other evidence.

20 At the end of the day, ladies and gentlemen, the
21 State has got the burden of proof in this case. We've
22 got to prove Jerry Scantling guilty beyond a
23 reasonable doubt as to all the charges. That's our
24 job. And at the end of this case, ladies and
25 gentlemen, there can be no doubt that Jerry Scantling

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1 is guilty. The judge is going to talk about what a
2 reasonable doubt is. And a reasonable doubt is the
3 kind of doubt that causes you to hesitate to act. But
4 if you're firmly convinced that Jerry Scantling is
5 guilty, then he's guilty. All the State can ask you
6 to do when you go back there is use that life
7 experience and use that common sense and remember all
8 of the pieces of the puzzle that we've put together
9 for you. Because at the end of the day, ladies and
10 gentlemen, Jerry Scantling is a murderer, he's a
11 robber, he's a thief, and he is a coward. Thank you.

12 MR. WALKER: The Court's indulgence for one
13 moment, Your Honor.

14 [Whereupon, Mr. Walker and Ms. Carroway confer]

15 MR. WALKER: I've got a matter of law. We can
16 do that maybe after my close, or do you want to do it
17 now?

18 THE COURT: Afterwards is fine.

19 MR. WALKER: The Court's indulgence for one
20 moment.

21 THE COURT: Sure.

22 [Whereupon, Mr. Walker reviews documents]

23 - - -

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CLOSING ARGUMENT

MR. WALKER: Mr. Leonard Green's blood was all over this gun. The reason, according to Mr. Thornton, that Jerry Scantling's DNA isn't on this gun is because of these gloves. But Mr. Green's blood isn't all over these gloves. More likely that Jerry Scantling's DNA is not on there: because he never touched the gun. There's no credible evidence that he ever did. I'll address that some more in a moment.

The State has told you a nice story, trying to take the facts, the voluminous evidence that we've had, eighty-something pieces of evidence -- and I am not going to go through all of it because, frankly, you don't need all of it to make your decision. There is really for you remaining one simple question. What credible evidence that's been introduced that Jerry had that gun in his hand and pulled the trigger.

I would like you to imagine for a moment two large cliffs separated by a cavern. You're on one side of it with Jerry Scantling. On this side of the cliff, that's the -- to put your verdict down right now would have to be not guilty. It's the State's job -- well, before I get to that: the reason that it'll have to be not guilty is because you'll remember on Tuesday we talked about the law says that even though

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1 you're impartial at the beginning of a trial, any
2 defendant is presumed innocent beyond -- until the
3 State has proved him guilty beyond a reasonable doubt.
4 Or her guilty. And then, you know, we say that and it
5 kind of sounds lawyerly and legally that they're
6 presumed innocent. And what does that mean? That
7 means you're sitting in the box and Mr. Thornton gets
8 up here, well, Jerry Scantling is a murderer. You go
9 no, he's not; prove it. That's your initial thought.
10 You've got to prove it. Show me the evidence. And
11 they tried to do that. That's their job. That
12 evidence -- remember we're standing on a cliff. We
13 want -- they want you to get to the other side where
14 your verdict will have changed to guilty. And to do
15 that, they need to build you a bridge of the evidence,
16 a bridge that is firm, a bridge that you would not
17 hesitate to cross, a bridge that isn't rickety. And
18 how do we tell if the bridge is rickety? You hear the
19 solicitor say -- or you might hear yourself say in
20 your head, as you're thinking about the case or later
21 when you're deliberating you might hear another juror
22 say something like, it might have happened this way.
23 Might isn't proof beyond a reasonable doubt, because
24 might means we don't know. You might hear say -- or
25 think, it could have happened this way, it could have

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1 happened that way. You don't know that it did.
2 That's not beyond a reasonable doubt. Maybe it
3 happened this way, or maybe this explains the problem
4 we're having with our case. Maybe he was wearing
5 gloves and that's why his DNA is not on the gun that
6 they say he pistol-whipped and shot Mr. Green with.
7 Maybe means we don't know. That's not beyond a
8 reasonable doubt.

9 You might even say, probably happened this way.
10 And that's a perfectly good standard in the Court of
11 Common Pleas in a civil trial, we discussed on
12 Tuesday, because the standard there is that the
13 evidence makes something more probable than not.
14 That's the literal definition of probably. But it
15 also tells you that you don't know beyond a reasonable
16 doubt.

17 When evaluating talk you just heard from
18 Mr. Thornton, these are the kind of things that you
19 have to think critically about. Because when they
20 start talking like that, start making you think like
21 that in order to obtain a verdict, shifting the burden
22 of the State's job of proving the job to you and
23 hoping you'll do their job for them, hoping that
24 bridge he's building, even though it's got some
25 potholes in it, instead of going right across that,

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1 you'll jump that pothole for them.

2 I'm always amused when I hear a State's attorney
3 say, ladies and gentlemen of the jury, just use your
4 common sense. Because that's code for we don't have
5 the evidence to fill in this particular gap in our
6 argument, so we want you to just assume from your life
7 experiences that that's what happened, because if I
8 could show you through the evidence that that
9 particular fact is true, you wouldn't need common
10 sense. It would be waiving the obvious. Those types
11 of words, common sense, probably, might, maybe, could
12 have, those require a verdict of not guilty.

13 Now, you didn't hear from Jerry. The judge
14 will tell you that that's not something you're to
15 consider in your deliberations. What's he going to
16 tell you? that he didn't do it? He told that to
17 Captain Bromage. Bromage didn't want to hear it. He
18 told that to a lot of people. They've all made up
19 their minds that that's not the truth. A little bit
20 of I guess behind the scenes baseball, behind the
21 scenes courthouse. If the defense puts up any
22 evidence or any testimony, then I don't get to talk to
23 you -- so I advised Jerry not to talk to you, because
24 I very highly value the ability to speak to you to
25 clear up some of the points made by the solicitor's

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1 office and some of the shadings of the evidence.

2 For instance, in the time line that was put up
3 before you, you saw that the truck and the phone were
4 at the Wal Mart just the next day. And Leonard
5 Green's DNA wasn't in the truck. Amazing. So that
6 would be a reason why we could disregard the lack of
7 DNA on the weapon. But they know that the truck is at
8 the Wal Mart, because it's on a video. They don't
9 actually get the truck until several weeks later from
10 other people. So some time has passed before they
11 attempt to collect DNA from that truck. Just like on
12 the gun: that the owner of the gun did not have any
13 DNA on it. Well, again, time has passed since the
14 owner of the gun had last handled it, because it was
15 stolen from him.

16 You heard Dr. Amick say with touch DNA you're
17 more likely to develop a profile from the person
18 that's most recently touched it. On the gun he
19 developed a profile, unfortunately, from Mr. Green,
20 probably the last person that touched it other than
21 the person who we have a DNA profile of and we don't
22 know who that is. We do know it's not Jerry
23 Scantling.

24 I want to talk a little bit about the charges
25 before I address some other things. The solicitor's

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1 office didn't get into it, but the judge will go into
2 the elements of each charge. And we talked a little
3 bit about that on Tuesday and I told you that the
4 State would certainly be able to prove and, in fact,
5 we admitted, the possession of a stolen vehicle for
6 the Monte Carlo. Right? I said, they're going to be
7 able to prove that. And not only will they be able to
8 prove it, but Jerry admitted it to Captain Bromage in
9 the interview where they put Officer Rausch on the
10 stand and said, I stopped him in the car, he was
11 driving it. That's not a problem. You should go
12 ahead and for that charge you can save some time in
13 the back, he's not that guilty [phonetic].

14 And when you're talking about the other charges
15 which are alleged to have occurred at the boat
16 landing, did those hinge on one thing? The State has
17 to prove to you beyond a reasonable doubt that that
18 gun was in Jerry's hand, and he pulled the trigger,
19 for any of those charges to result in a guilty. If
20 they can't do that, those charges fall. And they're
21 -- the pending charges. I don't think you can have
22 one without -- for instance, possession of a weapon
23 during a violent crime, you would have to have the
24 other ones be guilty before you have it.

25 When the judge is reading to you the charges,

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1 she'll also discuss the charges that you have heard
2 before, manslaughter. That is a lesser charge than
3 murder. It deals with the absence or presence of the
4 element of premeditation. Based on the evidence we
5 heard, whoever pulled that trigger on the gun -- and
6 we don't remember -- know who that is because the DNA
7 profile that was developed, we have no idea who it
8 was. The fact of the circumstances of the scene and
9 other things might lead you to find that it wasn't a
10 murder, but a manslaughter. And that would be
11 something that you would be able to consider in your
12 jury room.

13 You've heard a lot of flack. On this evidence
14 you can refer to when you're making your decisions --
15 and I submit to you you probably won't look at very
16 much of it because you won't need it to make your
17 decision about really the one important question in
18 this case. Now, some of it obviously he does have to
19 put in to meet his element standards that -- you know,
20 the Monte Carlo was stolen, things like that.

21 But for instance, the witness you heard today:
22 what does that tell you? The coroner told us on
23 Tuesday that Mr. Green had died. You saw pictures of
24 the wounds from the scene. It's another way to make
25 it seem like they have a lot more than they really do.

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1 It's also a way for you to see pictures of a dead body
2 right before you're supposed to decide and perhaps
3 appeal to your emotions to get you to overlook the
4 fact that the actual evidence in this case is still
5 lacking.

6 There's no credible evidence putting that gun in
7 Jerry Scantling's hand. There is only one piece of
8 evidence at all that purports to put the gun in Jerry
9 Scantling's hand, and that's Brittany Raines. She is
10 not credible, and I will deal with that a little more
11 later.

12 We keep saying what does the evidence prove,
13 look at the evidence, why do we need the evidence.
14 Well, that's how you investigate a crime. That's so
15 we can see. And Mr. Bromage said, when we had the
16 crime scene out there, we had no evidence about who
17 could have committed this crime. He had some other
18 information from other places, but from the crime
19 scene we had nothing. When they got to the crime
20 scene, anybody in Beaufort County could have been a
21 suspect. Well, really, as far as you can get from
22 Beaufort County in eight hours could have been a
23 suspect. So that's why you gather evidence, so that
24 the more evidence you gather, the more people you can
25 exclude, the better picture you can get, the more

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1 precisely you can narrow down what happened or what
2 the possible events could have been. And that's why
3 we do it.

4 And it's unfortunate -- and I don't think --
5 well, rarely it's done with malice. But I think there
6 is a tendency to get a little tunnel vision. And the
7 people that are charged with investigating crimes
8 start investigating a person and stop investigating
9 the crime. And that's what happened here. Just,
10 unfortunately, poor investigation.

11 Let's talk about that initial investigation.
12 They went out to the scene, they roped it off. They
13 roped it off to keep from contaminating it so that
14 they could make sure they had good evidence. Bear
15 with me as I try and sort through these photos. As
16 you have seen, there are very many of them. We've
17 seen photos --

18 Well, we've talked about, you know, what could
19 have been gathered and what could have been done,
20 possibly. We've talked about tire tracks; you know,
21 did you try and compare those with anybody. They said
22 no. And it's a parking lot. There are a large number
23 of tire tracks. You heard Officer Adams say, I had
24 full resources of the department, I wasn't being
25 hurried, I wasn't being constrained in any way in the

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1 course of my investigation. Conceivably, they could
2 have gone up there and just, if we see an impression,
3 we'll get it. You see, Mr. Walker, that's really too
4 much to expect. That goes beyond our common sense to
5 expect them to do that. I submit that it would. I
6 think it would -- the common person and their common
7 sense would expect for -- the police actively
8 identified a set of tire tracks as potential evidence,
9 for them to at least follow that up. The same with
10 the beer cans we saw, the cigarette butts, all those
11 things. Or at least preserve them in the cache so if
12 they develop some more information later, they would
13 then be able to compare them. You would think they
14 could compare them with the other vehicles that are
15 already there and kind of abandoned and what's going
16 on with those. We've got a dead body here and there
17 are some cars, maybe we should see what's going on
18 with them, who they belong to, is there any possible
19 relation to the decedent. That was never done because
20 they started developing that tunnel vision: some guys
21 that they saw Jerry Scantling in the decedent's truck.
22 Well, I don't need to go look at these cars, or check
23 out these tire tracks, or -- it's got to be Jerry
24 Scantling. The fact that four people saw Jerry
25 Scantling in the decedent's truck only proves that

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1 Jerry Scantling stole his truck. He stole it at the
2 boat landing. I'll come back to that point a little
3 bit later.

4 I want to focus a little more on the
5 investigation or lack thereof. And, again, I point
6 this out because the State is trying to say, you know,
7 there's just so much evidence and you -- you know, so
8 just ignore the fact that somebody else's DNA is on
9 the gun that killed the guy, and Jerry Scantling's did
10 not, so just ignore that, ladies and gentlemen of the
11 jury, because of all this other great investigation
12 and stuff we've done. But they didn't. You heard
13 Bromage. Jerry's in there talking to him a couple of
14 days later. Bromage is giving him the whole
15 treatment, hollering at him, telling him that he's got
16 evidence that they don't have. He said he's got his
17 DNA, he's got a video of him doing stuff. Jerry says,
18 I didn't shoot that guy. Oh, no, you -- you did it.
19 Even in my discussions with him, Bromage didn't want
20 to hear any possibility. It just completely boggled
21 his mind that there would be -- the fact that his DNA
22 is on the gun, that somebody else's is, just kind of
23 zips through his mind and he's totally convinced that
24 he doesn't even need to worry about that, because he's
25 decided what all the evidence is going to show --

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1 You heard two different road deputies say that
2 auto break-ins at other times occur regularly at that
3 boat landing. But did they follow up with any of
4 those other incidents perhaps being related? Didn't
5 hear anything like that.

6 Mr. Thornton made a big deal about, you know,
7 they didn't check my tires or his tires. And they
8 didn't. And, again, there's no impression made of
9 these tracks to check against anyone's tires, should
10 someone of interest come into their purview. They
11 didn't make impressions to be able to check against
12 the victim's truck when they got it some weeks later,
13 so they don't know if that's the victim's truck tires
14 or some person that met the victim there. Again, I'm
15 just talking about number two, the truck tire from the
16 diagram. And here are the drag marks and things. So
17 we know that this is kind of right around where
18 they're concerned the incident actually happened.
19 We're not going say, hey, why didn't they check this
20 tire mark way down here -- although a thorough job
21 would have done that. But something that ain't marked
22 as evidence, right by the bloody trail of the drag
23 mark, they didn't follow up on or didn't preserve.
24 Derik King said everybody in that breeze way had a
25 car. Might have been interesting to have checked it

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1 against their cars. Would have been easy to do. It
2 may have been interesting, may not have been. I mean,
3 we don't know because they didn't do it.

4 Again, beer cans, cigarettes, easily processable
5 for DNA, fingerprints. None of that done. Just made
6 up their mind. So if it doesn't help them chase who
7 they decided is guilty, they don't need to do it. And
8 he's looking -- don't get me wrong. This is a bad
9 case for Jerry. The guy is dead and a few hours later
10 Jerry is driving around in his car and people see him.
11 Forty years ago, that's it. Thank God for the
12 advances we have. Think about the consternation of
13 the sheriff's office, all being complacent. And
14 Bromage is like, we've got our man, we're going to get
15 him, we're going to send that gun off and get his DNA.
16 Uh-oh. Somebody else had that gun. And they checked
17 it against everybody they thought would have had it
18 and now we've got a problem with our case: our
19 presuppositions have been upended because we didn't
20 investigate the case, we investigated Jerry.

21 I'm probably going to touch on this again,
22 but I wanted to make the point. We talked about --
23 Mr. Thornton was real big -- there's -- the victim's
24 blood is all over the gun. He explains away Jerry's
25 lack of DNA by the gloves. There's no blood. And

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1 then if we're concerned that the reason the DNA isn't
2 on the gun is because Jerry was wearing gloves, why
3 don't we test the gloves for Jerry's DNA? Amick said
4 you can certainly easily do that. His hand is in
5 there and you can check it out. He's trying to use
6 this to fix the hole in his case and get you to do
7 their job for them.

8 As I said, the only pieces of evidence that puts
9 the gun in Jerry's hand is Brittany Raines' statement
10 that, Jerry told me he did it. So if you believe
11 Cynthia Padgett and Brittany Raines, then you can mark
12 guilty on the verdict form as to the other charges
13 because, you know, if you believe them, he confessed
14 to them that he did it. But why in the world would
15 you believe them? First, does their story make sense?
16 If you had just committed a crime, which you're
17 denying to everybody, would you then confess it to
18 people? And people that we had a very short exposure
19 to. I think it's safe to say none of us would think
20 that they were particularly trustworthy or credible,
21 that we've learned about their history and criminal
22 history and their history of giving information to
23 police and their history of being -- interacting with
24 the police. We only met them for a short time. Jerry
25 had known them since he was fifteen. He knows the

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1 kind of people they are. Why is he going to confess
2 to them that he's committed a murder when he knows
3 they're the type that run off at the mouth to the
4 police to save themselves? Mr. Thornton, well, he's
5 going to tell his girlfriend about this murder because
6 he's more comfortable with her. Brittany said they
7 dated when she was younger. How many of you are going
8 to confess to your ex that you've committed a heinous
9 crime which you're trying to keep up [phonetic]? I'm
10 sure some of you have an ex relationship that probably
11 you don't get along with. But there were details that
12 were specific about he told her there was a Highpoint
13 .45 and he shot him twice. That's a clincher; right?
14 These statements from Thelma and Louise here are in
15 August of 2011, over a year after this shooting. You
16 remember Bromage and Riley are talking to Jerry
17 Scantling four or five days after the shooting: we
18 got you, we know what you're doing, we know you shot
19 him with a Highpoint .45, we know you shot him twice.
20 All details. They're fully out, over a year later,
21 the details of this crime.

22 And then Jerry is talking to them at the jail:
23 they're saying I did this, they're saying I did that,
24 they're saying I shot this guy with a .45. Come on.
25 From Brittany. Got pending criminal charges. Maybe

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1 I'll help myself out instead of -- he's told me what
2 they're saying he said; now I'll just add the fact
3 that he told me he did it and see if I can't help
4 myself out a little bit. But Brittany would never do
5 that. She's as honest as the day is long. Cynthia,
6 too.

7 Brittany: we found her lying right here on the
8 stand. Oh, I was having that talk with Jerry and we
9 got in some trouble, we had the disciplinary hearing;
10 that's when he was telling me all this stuff. Well,
11 you wrote a statement, as part of that disciplinary
12 hearing, to try and get out of trouble there at the
13 jail. Said you weren't talking to anybody, you were
14 listening to the radio. That statement and the
15 statement she gave here in court can't be true. They
16 both can't be true. She lying then, she lying now?
17 When is she not?

18 You heard about their records: forgeries,
19 falsely signing documents, falsely giving information
20 to police, obtaining drugs by deceit, thieving,
21 committed fraud. The apple didn't fall far from the
22 tree. And both of them will say and do anything that
23 they think will help them to get what they want. And
24 it's proven by the lengthy criminal records that you
25 saw. All these convictions are -- it's not like, hey,

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1 I get drunk and get in fights; I'm a habitually
2 dishonest person. Judge their demeanor in here: how
3 dare you question my honesty; why would the jury be
4 interested to know what I was telling the federal
5 government about other people; now I'm snitching on
6 other people; that's not relevant; accusing somebody
7 of murder, but it's not relevant; how dare you ask me
8 that. Well, we asked about it because they've got
9 stuff to hide.

10 I find in my practice sometimes talking to
11 people, clients, other lawyers, TV kind of sets us up
12 for the Perry Mason-Matlock moment. You're a liar.
13 Yes, you caught me; I confess. Only if that were what
14 happens in the courtroom. All the liar has is their
15 story, and they'll stick to it. It's your job to
16 evaluate their credibility. And I think you'll be
17 able to easily do that, as far as those two go. With
18 Brittany -- had something to gain, I mean, that we can
19 point to. Who knows what other motives they may have
20 had with their relationship to Jerry or whatever. The
21 State was very clear: we did not offer or promise
22 anything to either of those two in exchange for their
23 statements. Like that renders those statements pure
24 as the driven snow. And if, in fact, it's true that
25 they didn't -- I'm not trying to say that they did.

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1 And the reason they don't do that is because if they
2 did, I would stand up there and say these statements
3 were bought and paid for and you should ignore them.
4 Which would be true. So to head off that argument,
5 they don't make promises. I'm not so concerned with
6 what the State did or did not -- I mean, it would be
7 interesting to know if they had done that, but I don't
8 believe they did.

9 Why it's important for your consideration is not
10 what the State was thinking about the outcome of their
11 charges, but what Brittany and Cynthia were thinking
12 about the outcome of their charges. What can I do to
13 help myself out; if I just sit here and don't say
14 anything, I'm not helping myself out; maybe if I help
15 out the police, they'll help me.

16 It is indeed rare for a state prosecution to
17 continue after the federal government has picked up
18 the charges. You heard, though, that they're actually
19 still waiting for the federal government to pick up
20 the charges. And, again, going to what they were
21 thinking, not what the State was offering -- but at
22 the time these statements were made, they had pending
23 state charges. They had a problem they needed some
24 help with, so they were helping themselves.

25 I think from what you saw of them, you wouldn't

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1 let them in your house to clean it. They'd rob you
2 blind. Certainly wouldn't trust them on anything.
3 But the State of South Carolina wants you to trust
4 them. And, again, it's the only thing that puts that
5 gun in Jerry's hand, is Brittany's statement. But
6 they're what you're supposed to make an important life
7 decision on. Right? Because reasonable doubt is
8 hesitation --

9 As the judge will tell you, is hesitation to act
10 when making an important life decision. And it is an
11 important life decision. It's important in your life.
12 It's something that you want to get right. The judge
13 has told you that you're the jury of the facts, you're
14 the sole determiner of the facts, and what you decide
15 is pretty much final. There's not a whole lot of ways
16 to fix it if you were to make an error. And so I
17 think, rightly, you would want to be concerned that
18 you made a correct decision. And it's certainly an
19 important decision in Jerry's life that you're making.
20 We should make that decision based on Cynthia and
21 Brittany? You would not believe a word they told you
22 in any other context. How is it fair that you're
23 asked to believe them here? If they told you they had
24 built a bridge and it was safe to drive your family
25 across, would you load up your kids in the car and go?

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1 It's the same bridge the State is trying to build.
2 It's rickety. It's not credible. Their supposed
3 evidence is not even remotely credible and it is
4 worthless for your decision-making process.

5 So if we go from the non-credible evidence to
6 consider, what is the credible evidence we can
7 consider? Well, that's easy. There is none. The
8 State has proved that Jerry is a car thief. That's
9 what the evidence proves. That's not the story I'm
10 putting on top of the evidence, that's not the story
11 they're putting on top of the evidence. Jerry was in
12 the victim's car. He was seen in the victim's car.
13 You can assume -- I think a reasonable person, any
14 reasonable juror, is going to assume it wasn't gifted
15 to him. But we know Jerry's a car thief because
16 that's what he told Bromage. I'm a car thief, I stole
17 that Monte Carlo. How did you steal that Monte Carlo?
18 Where did you steal it? Well, the keys were in it.
19 That's how I could steal it. We know he takes stuff
20 out of cars. Remember Officer Viens?

21 Then Ishmil Frazier said he had gone around
22 trying to sell, you know, GPS units and things like
23 that. He's homeless, you know. It's not a good
24 habit, it's not a good thing, but he does it. So if
25 you're a car thief or if you want to check some cars

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1 to see if you can scam something, where do you go?
2 You go to a parking lot. It's dark out. There's lots
3 of cars there. Right? The cops got there, said there
4 were a bunch of cars there. You get there, there's a
5 truck there, it's dark, you're checking the door
6 handles, this one's open, the keys are in it, I don't
7 see anybody around here. Right? It took the police
8 fifteen minutes to find Mr. Green in the broad
9 daylight. So, oh, there's a truck, want to go.
10 That's what they've proved. That's what the evidence
11 proves: he was there at the boat landing, he was in
12 the truck. And people saw him in the truck. And I'm
13 not going to get into that they didn't see him, but I
14 think you do need to ask yourselves questions about
15 those people because they're frankly a little bit
16 shady.

17 I'll back up and say the only person that Mr.
18 Thornton tried to say, well, there's been no CODIS hit
19 so we don't need to check out these other people. But
20 the only person who had felony convictions that got
21 cross-examined by me was Mr. Barnes. So we haven't
22 heard any evidence about the criminal records of these
23 other people. They may or may not be in CODIS. It
24 wouldn't hurt to maybe see if their tires matched some
25 tire tracks at the boat landing. It wouldn't have

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1 hurt. Not hard to do. But think about old William
2 Barnes said Jerry came by, talked to me and my
3 boyfriend for a few minutes; how much did he want for
4 it? \$5,000. Well, your statement, oh, no, it was
5 8,000; you're right; I could have -- you know. Well,
6 and then he left. See anybody else around? Nobody
7 else was around. Then Ishmil Frazier goes, oh, we
8 were all standing around talking for awhile and then
9 Jerry and William Barnes and his boyfriend all got in
10 the truck and left together.

11 Altovise Green is related to Mr. Green. She
12 tells you, well, I noticed it because I thought it was
13 weird, a guy cleaning out his car at whatever time in
14 the morning. Not, I noticed him because he was
15 driving my uncle's truck. And she doesn't call the
16 police about it, she calls another relative who calls
17 the police. What's going on there? And says, I never
18 said anything about Donald Cooper and him being parked
19 over by Donald Cooper's house. But then Officer Viens
20 says, no, she told me she saw him, Jerry, over at
21 Donald's house.

22 And if they're being straight up with us, why
23 are we having these problems? What does it hurt to at
24 least check? Did DNA swabs. They were throwing them
25 around like confetti. Add one more to the pile.

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1 Photograph the tires if you're not going to take any
2 impressions. Oh, but Jerry made some weird and
3 cryptic statements and that's got to be proved
4 someway. Jerry's not the Pope. Jerry stole the guy's
5 truck. And maybe he wanted to be a little cryptic
6 about that, especially when you're telling him you're
7 trying to hook him up for the murder of the guy,
8 somebody he doesn't know, that he's only met that day,
9 who approached him twice. Officer Bromage said, well,
10 that obviously means he's guilty. Well, I mean,
11 that's an interpretation. You know, that's one thing
12 it could be. But it certainly doesn't prove that.
13 It's just his -- the police might have said applied to
14 that statement. Could be, you've been told you're on
15 the hook for murder, that you are fucked -- pardon my
16 language, but that's what Officer Bromage said; this
17 is your chance to help yourself out; you're going to
18 lose it if you don't help yourself out; I didn't shoot
19 the guy; tell us the truth; we know you did it; we
20 know you were there. Well, what if I tell you I was
21 kidnaped or what if I -- you know, what am I looking
22 at if I tell you how it went down. Maybe those
23 comments are in response to the treatment he's getting
24 from the police for coming on strong and lying to him.
25 Which, as an aside, I think we should be able to

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1 expect better of from our policemen. An ingenuous
2 disrespect for the law and for them -- the same kind
3 of behavior that they criticized the people there
4 with; that if we can engage in that kind of behavior,
5 you can expect responses that are gauged back to you.

6 Then he said, oh, no, but he told Officer
7 Rausch, I didn't do anything else. And that proves he
8 murdered somebody? Why are you stopping me? Remember
9 Officer Rausch said, I hadn't told him anything. Then
10 he said, why are you stopping me, why are you stopping
11 me, I concede the car, I didn't do anything else.
12 It's a long reach to get from there to putting a gun
13 in his hand, especially when that gun has somebody
14 else's DNA on it.

15 And I encourage you -- we talked about the
16 purpose of an investigation, to gather evidence, the
17 more evidence you gather the more people you exclude
18 the more scenarios are no longer possible. They have
19 given you a scenario. I've mentioned one scenario
20 that much more closely fits the fact. And I imagine
21 y'all could come up with other scenarios on your own
22 that fit the same actual physical evidence that they
23 have. And if you could do that, they haven't proved
24 their case beyond a reasonable doubt.

25 Now, I want to say a word about Mr. Green.

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1 There was not -- a lot of testimony elicited about him
2 picking up -- trying to pick up Mr. Scantling and
3 being a homosexual, him picking up other people, from
4 Bromage and other things. And we elicited that. Not
5 saying bad things about him or saying he's not a
6 person or anything like that, or that -- to try and
7 find any way that he deserved the unfortunate fate
8 that befell him. The point that we bring that out
9 for, for you, is that I don't think any of us would
10 agree that that is smart behavior, encountering random
11 men and propositioning them for sex, because you don't
12 know them, you don't know what kind of person you're
13 about to meet, you're going to meet other people who
14 probably aren't engaging in smart behavior if they
15 take you up on the offer, right? No one would counsel
16 your kids if some guy comes up to you in a pickup
17 truck and offers you sex, you should get in and go.
18 So either other people intend to make poor decisions
19 or are perhaps desperate: I'll give you some money if
20 you come ride with me. And it's not that -- him being
21 a homosexual. We would say it would be unwise and
22 poor behavior if instead of Mr. Green it was Ms. Green
23 going around driving and propositioning random people
24 to get in the car and go engage in elicited sexual
25 activity. Because you just don't know what you're

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1 going to get. You're opening yourself up to the
2 chance of much more dangerous encounters when you
3 engage in that kind of thing.

4 And the point I might make there is that day,
5 according to Jerry, he's twice made contact with Jerry
6 to be propositioned. Once was in the morning and then
7 later in the day. And I think we can say it was kind
8 of on his mind that day. And he tried twice and so he
9 hadn't really had any luck. So if he's feeling that
10 and talks to Jerry and Jerry says, no way, man, I'm
11 straight and I'm going to go to the laundromat and go
12 to bed and you have a nice life, well, who's to say he
13 doesn't stop the next guy he sees on the road and make
14 the same proposition and that's the guy we've got DNA
15 on the gun? I don't know. I'm just supposing. But
16 the fact that I can suppose shows that the
17 investigation wasn't done properly, because the
18 investigation is supposed to whittle out these other
19 scenarios so that we can definitively say that didn't
20 happen, this is what happened.

21 Officer Bromage said that Jerry's story was
22 changing and that's indicative of him -- you know,
23 that should be, you know, some kind of proof. But,
24 you know, it never changed about the question you're
25 asking yourself. Jerry said, I never shot that guy.

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1 He never said anything about -- he always maintained,
2 I've never had a gun and I never shot that guy and I
3 never got in the car with him that night. And, again,
4 if you're hollered at and said, we're going to get
5 you, we're going to charge you with murder, and this
6 is the thing, I think maybe you would not necessarily
7 try to be initially forthcoming.

8 It's not out of the realm of possibility to
9 think that your story might change, especially since
10 you're being encouraged by the police to help yourself
11 out. And what did Jerry say to Officer Bromage?
12 Officer Bromage -- you know, this is just a few -- I
13 think he said, five days after the shooting, and we've
14 got your DNA and you're screwed up, this is it. And
15 he's saying, you know, he's had investigation, he
16 deals with this all the time, he knows DNA isn't
17 coming back, he knows what it does, who does it prove.
18 What did Jerry tell him? I didn't do nothing; if you
19 have DNA, it will show I didn't kill Leonard Green.
20 Jerry was confident the DNA wasn't there.

21 The solicitor made some hay with Donald Cooper
22 or Dirty Red's number being in the phone. And I'll
23 preface all this. Let me back up again and say that
24 the evidence could be used to show and support the
25 State's theory of the case. Maybe that's what they're

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1 taking from it. And the evidence can show that, but
2 it doesn't prove that that is, in fact, what happened.
3 And it's not their job to come up with a story for you
4 that matches the evidence. It's their job to present
5 you with evidence that only gives you one possible
6 story. But Dirty Red's number was in the victim's
7 phone. That's some kind of big proof, except for the
8 fact that Dirty Red and the victim worked together,
9 knew each other. What was the nature of the
10 relationship between Dirty Red? We never had -- Dirty
11 Red's name was called out as a potential witness, but
12 we never heard from him. It all comes back to the
13 gun. Somebody had this gun. It wasn't Jerry. We
14 don't know who it is. But they -- the State wants you
15 to ignore that and find Jerry guilty anyway.

16 Dr. Amick: it's more likely to get DNA from
17 the more recent person to touch it. The owner hadn't
18 touched it in weeks. The same with the truck.
19 Mr. Green had been deceased for a week by the time
20 they swabbed it. But they swabbed his gun. Mr.
21 Green's DNA was on it because he had been shot with it
22 and he'd been hit with it. His blood was on it. So
23 was the person that shot him. Who was that? It
24 wasn't Jerry Scantling. He could have kept his DNA on
25 [phonetic] by wearing the gloves. What does -- it

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1 tells you they haven't proved that point beyond a
2 reasonable doubt.

3 And look at how much of a stretch they're
4 making. Remember the officer in Savannah that saw him
5 down there? I asked her, did you see him wearing any
6 gloves? No, I didn't see him with any gloves.
7 Officer Viens: were you the one that searched that
8 car initially? No, I think somebody else searched it;
9 I don't even know where those gloves were originally;
10 just when you looked in the car, they were on that
11 bench; yeah. Nobody tested them. They weren't of any
12 evidentiary value. They've only become valuable now
13 because they have to explain away the fact that the
14 person whose DNA they expected to be on the gun was
15 not.

16 DNA is a device. DNA hasn't already made up its
17 mind about who it's going to get. Remember Bromage
18 said, we'll get him. DNA is objective. DNA is
19 credible. No DNA means not guilty. The bridge the
20 State has built for you is impassable. It won't carry
21 you to the other side. The law, your oath, the
22 evidence, all dictate you must hesitate to act and
23 that your verdict be not guilty. Thank you for your
24 attention.

25 THE COURT: Ladies and gentlemen, my charge is

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1 going to take about fifteen or twenty minutes. Does
2 anyone need a break before I go ahead and begin? Are
3 y'all okay? Anyone want to stand and take a stretch,
4 you're welcome to. You need a break? All right.

5 Ladies and gentlemen, what I'm going to ask you
6 to do is this: go back to the jury room. As soon as
7 whoever needs to refresh themselves is done, knock on
8 the door. We're going to bring you directly back in,
9 I'm going to charge you on this case, and we are going
10 to send the case to you for your deliberations. All
11 right? Thank you.

12 MR. THORNTON: Thank you, Your Honor.

13 THE COURT: And, again, do not discuss this
14 case.

15 [Whereupon, the jury exits the courtroom at
16 12:17 p.m.]

17 THE BAILIFF: The jury is clear, Your Honor.

18 THE COURT: Mr. Walker, you had an objection you
19 needed to put on the record during Mr. Thornton's
20 closing?

21 MR. WALKER: Yes, Your Honor. It would be a
22 Boyle violation, Your Honor. Mr. Thornton addressing
23 the jury said, did he tell them he wasn't in Savannah,
24 no, he didn't, commenting on the defendant's silence.
25 And we would move for a mistrial.

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1 THE COURT: Mr. Thornton?

2 MR. THORNTON: Judge, it's because this is a --
3 Doyle only applies if he exercises his rights to
4 counsel, which he never did. Doyle applies as post
5 Miranda silence. What he said was, and what I was
6 referencing, was a statement, which I actually very
7 carefully stayed away from the last sentence, which
8 seemed to be Mr. Walker's main issue with that, which
9 was -- and I don't want to incriminate myself. I
10 didn't even mention that part. I just said, I ain't
11 going to say it was me and I ain't going to say I
12 wasn't. That's the part I was talking about. And I
13 don't believe that is a Doyle violation.

14 And at the appropriate time, since you asked Mr.
15 Walker to wait, I had some objections, also, in his
16 closing I wanted the Court to address but I'll wait
17 until he's done.

18 THE COURT: Okay.

19 MR. WALKER: And, again, it's not -- it's not
20 necessarily the addressing of the statement but the
21 fact that he inferred to the jury that he should have
22 told them where he was and the fact that he didn't
23 implies some sort of guilt. And, again, Ms. Carroway
24 was kind enough to write it down. She tells me that
25 it's pretty much verbatim: did he tell them that he

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1 wasn't in Savannah; no, he didn't.

2 THE COURT: Okay. Let's go ahead and put your
3 objections on the record.

4 MR. THORNTON: Yes, ma'am.

5 THE COURT: I think we're going to have plenty
6 of time for everybody to reread Doyle over the break.

7 MR. THORNTON: Doyle, again, is post Miranda
8 silence, Judge.

9 THE COURT: Your objections. Go ahead.

10 MR. THORNTON: My objection is Mr. Matthew on
11 several occasions argued facts not in evidence. There
12 was no testimony as to the length of time between the
13 burglary and the stealing of the gun and the testing
14 of it or the murder. His reference was it was weeks.
15 He said that definitively. There's absolutely no
16 testimony as to that, because we couldn't mention the
17 burglary so there's no way it could have been
18 mentioned.

19 Number two, he referenced the fact that Bromage
20 told Scantling that it was a Highpoint .45. The only
21 thing I remember Bromage saying from the stand was
22 that they said it was a .45 and you shot him twice,
23 not a Highpoint. Which I think is an actual pretty
24 big deal. That was not -- my understanding, it was
25 not testified to by Captain Bromage.

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1 Finally, he testified that Altovise Green is a
2 relative of Leonard Green. The only testimony to that
3 was somebody said, I don't know; because the name is
4 the same, she might be a relative; I'm not sure. He
5 asserted positively that she was a relative. None of
6 that was testified to, none of it was a fact in
7 evidence, and I would object to all of it and ask that
8 a curative instruction be given.

9 THE COURT: All right. Y'all, let's all go take
10 five minutes. Come on quickly back and we'll go ahead
11 and get ready to charge the jury. Okay?

12 [Whereupon, a recess is taken from 12:22 to
13 12:30 p.m.]

14 THE COURT: All right. Is the State ready to
15 go?

16 MR. THORNTON: The State is ready, Your Honor.

17 THE COURT: Is the defense ready?

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: Thank you. Let's bring them in,
20 Norman.

21 THE BAILIFF: Yes, Your Honor.

22 [Off the record momentarily]

23 THE BAILIFF: The jury is entering, Your Honor.

24 THE COURT: Thank you, Bob.

25 [Whereupon, the jury enters the courtroom at

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1 12:31 p.m.]

2 THE BAILIFF: Your Honor.

3 THE COURT: Thank you, bob.

4 Ladies and gentlemen, welcome back again. If
5 any of you can't hear me during the charge, if you
6 would just please just wave your hand. I apologize.
7 I've got a bad cold and I'm not hearing real well.
8 And I am known to be loud, so usually it isn't a
9 problem.

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CHARGE OF THE COURT

THE COURT: Madam Foreperson, ladies and gentlemen of the jury, it is now my duty to charge you on the law that's applicable to this case.

Now, the State has charged the defendant, Jerry Scantling, with the offenses of murder, armed robbery, possession of a weapon during the commission of a violent crime, and possession of a stolen vehicle.

Now, I remind you, ladies and gentlemen, that the fact that the defendant was arrested, charged and indicted is not evidence in this case, nor does it create any presumption for inference of guilt. The indictments are simply the documents and the formal written instruments which contain the charges that are made against the defendant. They are the formal documents by which the case is brought into this courtroom.

Now, ladies and gentlemen, the defendant, Jerry Scantling, has pled not guilty to these indictments and that plea puts the burden on the State to prove the defendant guilty beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it's an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed

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1 innocent of the offenses for which the indictment was
2 issued unless guilt has been proven by evidence satisfying
3 you, the jury, of that guilt beyond a reasonable doubt.

4 Now, this presumption of innocence does not end
5 when you begin your deliberations but it accompanies the
6 defendant throughout the trial until you reach a verdict
7 of guilt based on evidence satisfying you of that guilt
8 beyond a reasonable doubt.

9 Ladies and gentlemen, the presumption of
10 innocence is not a mere legal theory, it's not just a
11 legal phrase we use, it is a substantial right to which
12 every defendant is entitled unless you, the jury, are
13 satisfied from the evidence of the defendant's guilt
14 beyond a reasonable doubt.

15 Now, what is a reasonable doubt in the law? A
16 reasonable doubt is the kind of doubt that would cause a
17 reasonable person to hesitate to act. Now, the State has
18 the burden of proving the defendant guilty beyond a
19 reasonable doubt. And some of you may have served as
20 jurors in civil cases where you were told that it was only
21 necessary to prove that a fact is more likely true than
22 not true, such as by the greater weight or what we call
23 the preponderance of the evidence. In criminal cases the
24 State's proof must be more powerful than that. It must be
25 beyond a reasonable doubt. Proof beyond a reasonable

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1 doubt is proof that leaves you firmly convinced of the
2 defendant's guilt. Now, ladies and gentlemen, there are
3 very few things in this world that we know with absolute
4 certainty and in criminal cases the law does not require
5 proof that overcomes every possible doubt. If based on
6 your consideration of the evidence you are firmly
7 convinced that the defendant is guilty of the offenses
8 charged, you must find him guilty. If, on the other hand,
9 you think there is a real possibility that the defendant
10 is not guilty, you must give the defendant the benefit of
11 the doubt and find him not guilty.

12 Now, ladies and gentlemen, I'm going to remind
13 you that during this trial you and I have certain duties
14 to perform. As the trial judge, it's my responsibility to
15 preside over the trial of the case and I also have the
16 duty to rule on the admissibility of the evidence that's
17 offered during the trial.

18 Ladies and gentlemen, you are to consider only
19 the competent evidence that's before you. If there was
20 any testimony stricken from the record in the case during
21 the trial, you must disregard that testimony. You are to
22 consider only the testimony which has been presented from
23 the witness stand and any exhibits which have been made a
24 part of the record of this case and any stipulations of
25 the counsel.

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1 I have the additional duty of charging you the
2 law that's applicable to this case. As the presiding
3 judge, I am the sole judge of the law of this case and
4 it's your duty as jurors to accept and apply the law as I
5 will now state it to you. If you already have an idea as
6 to what the law is or what you think the law ought to be
7 and it does not agree with what I now tell you the law is,
8 you must abandon this idea because you are sworn to accept
9 the law and apply the law as I state it to you.

10 In every case that is tried in this court before
11 a jury, the jury becomes the sole and exclusive judge of
12 the facts in a case. The trial judge cannot state,
13 comment on, or make any statement to a trial jury about
14 the facts in a case. Since you, the jury, are the sole
15 judge of all facts in this case, you are not to infer from
16 what I have said during the progress of this trial, in
17 ruling upon the admissibility of evidence or otherwise, or
18 anything that I now say to you during the course of this
19 instruction, that I have any opinion about the facts in
20 this case. The law does not allow me to have an opinion
21 about the facts in this case. Again, this is a matter
22 solely for you, the jury, to determine.

23 Now, ladies and gentlemen, there are two types
24 of evidence which are generally presented during a trial.
25 That is direct evidence and circumstantial evidence.

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1 Direct evidence is the testimony of a person who claims to
2 have actual knowledge of the facts, such as an eyewitness.
3 It's evidence which immediately establishes the main fact
4 to be proved. Circumstantial evidence is proof of a chain
5 of facts and circumstances indicating the existence of a
6 fact. It is evidence which immediately establishes
7 collateral facts from which the main fact may or may not
8 be inferred. Circumstantial evidence is based on
9 inference and not on personal observation. The law makes
10 absolutely no distinction between the weight or value to
11 be given to either direct or circumstantial evidence, nor
12 is a greater degree of certainty required of
13 circumstantial evidence than direct evidence.

14 Ladies and gentlemen, you should weigh all of
15 the evidence in this case and after weighing all the
16 evidence if you're not convinced of the guilt of the
17 defendant beyond a reasonable doubt, you must find the
18 defendant not guilty. On the other hand, after hearing
19 all the evidence in this case if you are convinced of the
20 guilt of the defendant beyond a reasonable doubt, you must
21 find the defendant guilty.

22 Ladies and gentlemen, necessarily you must
23 determine the credibility of witnesses who have testified
24 in this case. And credibility simply means believability.
25 It becomes your duty as jurors to analyze and to evaluate

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1 the evidence and determine which evidence convinces you of
2 its truth. In determining the believability of witnesses
3 who have testified in this case, you may believe one
4 witness over several witnesses or several witnesses over
5 one witness. You may believe a part of the testimony of a
6 witness and reject the remaining part of the testimony of
7 that same witness. You may believe the testimony of a
8 witness in its entirety or reject the testimony of a
9 witness in its entirety. You may consider whether any
10 witness has exhibited to you any interest, bias,
11 prejudice, or other motive in this case. You may also
12 consider the appearance and manner of a witness while on
13 the witness stand.

14 Ladies and gentlemen, the rules of evidence
15 ordinarily do not permit witnesses to testify to opinions
16 or conclusions. An exception to this rule exists for
17 witnesses that we call expert witnesses, a witness who by
18 education and experience has become an expert in some art,
19 science or profession may give an opinion as to the
20 subject the witness claims to be an expert in and may also
21 give the reasons for their opinion. You should consider
22 any expert opinion given by a witness and like any other
23 evidence, give it the weight you think it deserves. If
24 you decide that an expert witness' opinion is not based on
25 sufficient education and experience, or if you decide that

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1 the reasons given in support of the opinion are not sound,
2 or that the opinion is outweighed by other evidence, you
3 may disregard the opinion entirely. An expert witness'
4 testimony is to be given no greater weight than that of
5 other witnesses, simply because the witness is an expert,
6 and you do not have to accept an expert's opinion even
7 though it is uncontradicted.

8 Ladies and gentlemen, I instruct you and
9 emphasize that the fact the defendant did not testify is
10 not a factor to be considered by you in any way in your
11 deliberations and in your consideration on the question of
12 the guilt or innocence of the defendant. It must not be
13 considered by you in any manner whatsoever. A defendant
14 has the constitutional right to remain silent and the
15 assertion of this right must not be considered by you in
16 your deliberations. I repeat: under your oath you are to
17 draw no conclusion whatsoever from the fact that the
18 defendant in this case did not testify. The fact that
19 this defendant did not testify should not even be
20 discussed in the jury room. The burden of proof, as I've
21 stated to you, is on the State. The defendant is not
22 required to prove himself innocent and the burden of proof
23 remains on the State to prove guilt beyond a reasonable
24 doubt.

25 Now, ladies and gentlemen, there has been

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1 evidence presented that witnesses have made prior
2 statements which are not consistent with the witness'
3 present testimony. You may use this evidence to decide
4 whether to believe the witness. You may also use evidence
5 of the earlier contradictory statements to determine the
6 truth of those statements. It is up to you to decide
7 whether to believe the earlier statements or the testimony
8 given at trial. If a witness has shown to have knowingly
9 testified untruthfully concerning any material matter, you
10 may consider this in determining whether to trust the
11 witness' testimony as to other matters and you may reject
12 all testimony of that witness or give all or part of the
13 testimony the weight you think it deserves.

14 Now, ladies and gentlemen, a statement or
15 statements alleged to have been made by the defendant have
16 been admitted into evidence in this case and while the
17 Court has determined that the statements are admissible, I
18 instruct you that you, the jury, make the ultimate
19 decision of whether or not the defendant made any
20 statements. If the defendant did make the statement or
21 statements, you must determine whether the statement or
22 statements were made by the defendant voluntarily and of
23 his own free will. This means that the statement or
24 statements were not caused by pressure, force, fear,
25 threats, coercion, or intimidation, or by hope or a

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1 promise of leniency or a reward of any kind. In
2 determining whether the statement or statements were
3 voluntary, you should consider both the characteristics of
4 the defendant and the details of the questioning. Some
5 other factors that you may consider are the age of the
6 defendant, the defendant's education or lack thereof, the
7 defendant's mental ability or capacity, the defendant's IQ
8 or intelligence, the defendant's background and
9 environment, and the place and the length of the detention
10 and the nature of the questions, and the advice or lack
11 thereof to the defendant of his constitutional rights.

12 Ladies and gentlemen, you must carefully
13 consider all of the surrounding circumstances before you
14 give any weight to an alleged statement. Now, the
15 statement has the burden -- excuse me. The State has the
16 burden of proving beyond a reasonable doubt that the
17 alleged statement or statements were voluntary. If you
18 determine they were, you may give the statement or
19 statements any further consideration that you deem proper.
20 You must decide what weight, if any, should be given to
21 the alleged statement or statements. If you determine the
22 alleged statement or statements were not the free and
23 voluntary statement or statements of the defendant, you
24 should not consider the statement or statements at all.

25 Ladies and gentlemen, mere presence at the scene

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1 is not sufficient to prove someone guilty of a crime. The
2 burden is on the State to prove every element of the crime
3 charged. If you find after reviewing all the evidence
4 that the State has proved that the defendant was only
5 present at the scene of the crime and that they have not
6 proved beyond a reasonable doubt any other participation
7 in the crime, then you must find the defendant not guilty.

8 Now, in order to establish criminal liability,
9 criminal intent is required. For example, the mental
10 state required to be proven by the State for a particular
11 crime might be purpose, intent, knowledge. Ladies and
12 gentlemen, criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation. And there is no
16 way to prove intent to a mathematical certainty. There is
17 no way medical science can dissect a person's brain and
18 determine what the person had in mind, so the law says
19 that criminal intent may be inferred from the
20 circumstances shown to have existed. This is how you make
21 a determination of whether or not the element requiring
22 intent was present. If -- excuse me. It is not necessary
23 to establish intent by direct and positive evidence but
24 intent may be established by inference in the same way as
25 any other fact: by taking into consideration the acts of

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1 the parties and all the facts and circumstances of the
2 case, based on evidence introduced during the trial of
3 this case. Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do, based on the circumstances shown
6 to have existed.

7 Now, ladies and gentlemen, the indictments in
8 this case allege four different offenses against the
9 defendant, Jerry Scantling. The first is a charge for
10 murder; the second is for armed robbery; next is
11 possession of a weapon during the commission of a violent
12 crime; and, lastly, possession of a stolen vehicle. Each
13 charge is a separate and distinct offense. You must
14 decide each charge separately on the evidence and the law
15 that applicable -- excuse me -- applicable to it,
16 uninfluenced by your decision as to any other charge, with
17 one exception. Ladies and gentlemen, if you find the
18 defendant guilty of murder, voluntary manslaughter, or
19 armed robbery, then you may also find the defendant guilty
20 of possession of a weapon during the commission of a
21 violent crime.

22 And, ladies and gentlemen, at the end, the
23 verdict form will have further instructions for you on
24 this.

25 You will be asked to write a separate verdict of

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1 guilty or not guilty for each charge following the
2 instructions on the verdict form, Madam Foreperson.

3 At this time, I'm going to go ahead and define
4 for you the offenses.

5 The first is for murder. As you know, the
6 defendant is charged with murder in this case. Therefore,
7 the State must prove beyond a reasonable doubt that the
8 defendant killed another person with malice aforethought.
9 Malice is hatred, ill will or hostility towards another
10 person. It is the intentional doing of a wrongful act
11 without just cause or excuse and with intent to inflict an
12 injury or under circumstances that the law will infer an
13 evil intent. Malice aforethought does not require that
14 malice exists for any particular time before the act is
15 committed but malice must exist in the mind of the
16 defendant just before and at the time that the act is
17 committed. Therefore, there must be a combination of the
18 previous evil intent and the act.

19 Ladies and gentlemen, malice aforethought may be
20 express or inferred. And these terms express and inferred
21 do not mean different types of malice, but merely the
22 manner in which malice may be shown to exist. That is,
23 either by direct evidence or by inference from the facts
24 and circumstances which are proved. Express malice is
25 shown when a person speaks words which express hatred or

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1 ill will for another or when the person prepared
2 beforehand to do the act which was later accomplished.
3 For example, lying in wait for a person, or any other acts
4 of preparation going to show that the deed was within the
5 defendant's mind, would be express malice. Malice may be
6 inferred from conduct showing a total disregard for human
7 life. Inferred malice may also arise when the deed is
8 done with a deadly weapon. And a deadly weapon, ladies
9 and gentlemen, is any article, instrument or substance
10 which is likely to cause death or great bodily harm.

11 Ladies and gentlemen, if you find that the State
12 has failed to prove beyond a reasonable doubt that the
13 defendant committed murder, you may then consider whether
14 the State has proved beyond a reasonable doubt that the
15 defendant committed voluntary manslaughter. To prove
16 voluntary manslaughter, the State must prove beyond a
17 reasonable doubt that the defendant took the life of
18 another in the sudden heat of passion based on sufficient
19 legal provocation. Both heat of passion and sufficient
20 legal provocation must be present at the time of the
21 killing to constitute voluntary manslaughter. Sudden heat
22 of passion may, for a time, affect a person's self-control
23 and temporarily disturb a person's reason. The sudden
24 heat of passion must be the type that would make an
25 ordinary person unable to coolly reflect on his actions and

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1 would produce an uncontrollable impulse to do violent.
2 Sufficiently, the provocation must be the type that would
3 make a person of ordinary reason and caution become
4 enraged and to temporarily lose control. The provocation
5 needed for voluntary manslaughter must come from some act
6 of or related to the victim.

7 Ladies and gentlemen, words alone, however
8 vulgar or insulting, are not enough to be legal
9 provocation. Where death is caused by the use of a deadly
10 weapon, the words must be accompanied by some overt
11 threatening act which could have produced the heat of
12 passion. The exercise of a legal right, no matter how
13 offensive it is to another, is never sufficient legal
14 provocation for voluntary manslaughter. If the heat of
15 passion has cooled or if there was enough time between the
16 provocation, if any, and the killing, for the passion of a
17 reasonable person to cool, the killing would not be
18 voluntary manslaughter. In deciding whether a reasonable
19 person would have had enough time to cool off, you should
20 consider all the circumstances surrounding the death. You
21 may consider the nature of the provocation, if any, the
22 defendant's mental and physical state, and the
23 circumstances and relationships between the parties.

24 Ladies and gentlemen, the defendant is also
25 charged with armed robbery. In order to prove this

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1 offense, the State must first prove beyond a reasonable
2 doubt that the defendant took personal property from the
3 person or presence of another person. Property is in the
4 presence of a person if it is within their reach,
5 inspection, observation, or control, so that the person
6 could, if not overcome with violence or prevented by fear,
7 keep possession of the property. The State must also
8 prove beyond a reasonable doubt that the defendant carried
9 the property away, intending to permanently deprive the
10 owner of the property and to keep the property for the
11 defendant's own use. The slightest removal of the
12 property or the complete possession of the property, even
13 for an instant, by the defendant, is sufficient to show a
14 taking and carrying away of the property. And the taking
15 and carrying away of the property must have been done with
16 violence or by putting the owner of the property in fear
17 of violence.

18 Finally, ladies and gentlemen, to prove armed
19 robbery the State must prove beyond a reasonable doubt
20 that the defendant was armed with a deadly weapon during
21 the robbery. A deadly weapon is any article, instrument
22 or substance which is likely to cause death or great
23 bodily harm. Whether an instrument has been used as a
24 deadly weapon depends on the facts and circumstances of
25 each case.

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1 Now, ladies and gentlemen, last, the defendant
2 is charged with possession of a weapon during the
3 commission -- and I apologize. It's not last, it's second
4 to last. The defendant is charged with possession of a
5 weapon during the commission of a violent crime. To prove
6 that charge, the State must prove beyond a reasonable
7 doubt that the defendant was in possession of a firearm or
8 visibly displayed what appeared to be a firearm during the
9 commission of a violent crime. A firearm means that -- a
10 machine gun, automatic rifle, revolver, pistol, or any
11 weapon which will, is designed to, or may be readily
12 converted to expel a projectile. In order to find a
13 defendant guilty of possession of a weapon during the
14 commission of a violent crime, you must first find the
15 defendant guilty of committing a violent crime.

16 I charge you, ladies and gentlemen, the offenses
17 of murder, voluntary manslaughter, and armed robbery are
18 all violent crimes.

19 Lastly, ladies and gentlemen, the defendant is
20 charged with possession of a stolen vehicle, value more
21 than \$2,000 but less than \$10,000. The code section for
22 this charge states that a person not entitled to the
23 possession of a vehicle who receives, possesses, conceals,
24 sells or disposes of it, knowing it to be stolen or
25 converted under circumstances constituting a crime, is

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1 guilty, and the value of the vehicle is more than \$2,000
2 but less than \$10,000.

3 Madam Foreperson, ladies and gentlemen, of the
4 jury, I have now charged you on the law in order to help
5 you guide you to a fair and just result in this case. You
6 are the judges of the facts in this case and so based on
7 your determination of the facts in this case and the law
8 and I've explained it to you, you will soon begin your
9 deliberations. You have been selected as fair and
10 impartial jurors. You are sworn to fairly and impartially
11 try and determine the facts of this case and when you
12 comply with your oath to do so, no one can criticize your
13 verdict. You are to decide this case based solely on the
14 testimony you have heard from the sworn witnesses who have
15 testified before you, along with the evidence in the case
16 and the exhibits presented to you, which you will have
17 back in the jury room with you, and any stipulations that
18 have been entered into, and nothing else. You must decide
19 the issues in this proceeding without any bias or any
20 prejudice towards either party. You cannot allow yourself
21 to be governed by prejudice for or against any person by
22 public opinion or by any other arbitrary factor. Both the
23 defendant and the State have the right to expect that each
24 of you carefully and impartially consider all of the
25 evidence in this case and that you will follow the law, as

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1 I've instructed you, in reaching your verdict in this
2 case.

3 Madam Foreperson, to that end, the law clerk,
4 Allison, has prepared a verdict form. It has the case
5 caption, and it states the charges, and it has a number of
6 questions for you to ask. There is no significance in the
7 order of the verdicts on the verdict form. I want you to
8 know I have to put one before the other and in each trial
9 I just flip guilty and not guilty.

10 Ladies and gentlemen, the verdict form reads:
11 as to the charge of murder, we, the jury, unanimously find
12 the defendant, Jerry Scantling, either guilty or not
13 guilty. If you find Mr. Scantling not guilty of murder,
14 you would then consider the lesser-included offense of
15 voluntary manslaughter. Again, that's number two. It
16 says: as to the charge of voluntary manslaughter, we, the
17 jury, unanimously find the defendant, Jerry Scantling,
18 either guilty or not guilty. You then go on as to the
19 charge of armed robbery. We, the jury, unanimously,
20 again, find the defendant, Jerry Scantling, and either,
21 again, guilty or not guilty. As to the charge of
22 possession of a weapon during a violent crime, we, the
23 jury, unanimously find the defendant, Jerry Scantling,
24 again, either guilty or not guilty. And, lastly, as to
25 the charge of possession of a stolen vehicle, we, the

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1 jury, unanimously find the defendant either guilty or not
2 guilty.

3 Madam Foreperson, there is a line for you to
4 sign your name, when the jury has reached a verdict, and a
5 place for you to date it. When you have reached a
6 verdict, I ask that you knock on your jury room door and
7 we're going to accept you back into the courtroom to
8 receive your verdict.

9 Ladies and gentlemen of the jury, for the very
10 last time, I'm going to send you back to the jury room and
11 I'm going to tell you not to begin discussing this case.
12 If, in fact, there is something further in the law that
13 the attorneys want me to charge you, I'm going to bring
14 you back out here and I'm going to charge you further on
15 the law.

16 If not, Madam Foreperson, you're going to have
17 the verdict form and all the evidence that was entered
18 into this case back in your jury room and that is going to
19 be your signal to begin your deliberations. All right?

20 Ladies and gentlemen, I appreciate your
21 attention. I'm going to go ahead and excuse you back to
22 the jury room. I understand the bailiffs are working on
23 taking care of you-all to feed you. I know it's going to
24 take a little bit of time, and I understand it's never
25 anything too fancy, but, again, we want to make sure you-

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1 all are fine and taken care of.

2 Y'all are excused back to your jury room. And
3 thank you, again.

4 THE BAILIFF: Thank you, Your Honor.

5 [Whereupon, the jury exits the courtroom at
6 12:52 a.m.]

7 THE BAILIFF: The jury is clear, Your Honor.

8 THE COURT: Thank you.

9 Any exceptions or additions to the charge? From
10 the State?

11 MR. THORNTON: No, Your Honor.

12 THE COURT: From the defense?

13 MR. WALKER: No, Your Honor.

14 THE COURT: We're going to go through the
15 exhibits.

16 I just wanted to tell you both you both had
17 excellent closing arguments. I've seen both of you
18 try a number of cases and I think definitely these
19 were your best. And I appreciate it and enjoyed them,
20 definitely. Obviously, this is serious business. But
21 I get to see this every single day, and they were
22 great closing arguments. So thank you.

23 MR. THORNTON: Thank you, Judge.

24 THE COURT: You have both served your respective
25 clients well.

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1 All right. Y'all want to go through the
2 evidence? I'm going to give Norman the verdict form.

3 I will tell you we have ordered them lunch. It
4 won't be here for probably another forty-five minutes
5 to an hour, but I wanted to make sure that they were
6 fed.

7 MR. WALKER: Just I think there are some live
8 rounds in there. Maybe we can keep those in here.
9 But everything else --

10 THE COURT: Ammunition is at a premium these
11 days and hard to come by.

12 MR. WALKER: Right.

13 MR. THORNTON: I have no objection to it. It's
14 rendered safe by the lock in it. But I have no
15 objection. I'm not going to fuss about that.

16 THE COURT: That's fine. Okay.

17 THE BAILIFF: Y'all want to go over this?

18 [Off the record momentarily]

19 MR. THORNTON: The State is satisfied, Your
20 Honor.

21 THE COURT: All right. Defense?

22 MR. WALKER: As is the defense.

23 THE COURT: Okay. Go ahead and take it out, and
24 bring me the alternates.

25 THE BAILIFF: Yes, ma'am.

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1 [Whereupon, evidence goes out to the jury at
2 1:05 p.m.]

3 [Whereupon, the alternates enter the courtroom]

4 THE COURT: I want to thank you-all for serving
5 as alternate jurors in this case and I also wanted to
6 explain to you, also, why I had three of you. This
7 case actually came up and was, in fact, to be tried in
8 October and it was brought and they got two or three
9 days into it and they lost two jurors so the judge who
10 was trying the case, which was John Hayes, had to
11 declare a mistrial because there weren't twelve jurors
12 to go forward. Out of an abundance of caution I
13 wanted to have three, just in case I lost anybody, to
14 make sure it goes forward. As you all understand and
15 appreciate, it costs so much money to put a trial on,
16 to have all these people coming and going, and the
17 preparation for the attorneys is very expensive. I
18 wanted to make sure that there was no doubt in this
19 world this case was going forward and going to finish.
20 We didn't lose anyone, which to me is shocking because
21 usually we do lose at least one person.

22 But, again, I want to thank y'all for being
23 here. We couldn't have done it without you.

24 I will tell you at this point you are permitted
25 to discuss this case. Sometimes the attorneys, or

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1 maybe a witness, will want to ask you what your
2 opinion was or what you thought of what they did or
3 whatever. That is allowed, although you're never
4 required to talk to anyone. If anyone persists in any
5 way -- it's rare that it ever happens. But if they
6 do, you call to the clerk's office and ask for me and
7 I will take care of them because, clearly, you are not
8 under any obligation to discuss the case with anyone.

9 You are also welcome, if you would like to, to
10 stay and wait for the verdict. I have no -- long they
11 are going to be. If you would like to leave, I can
12 tell you that I believe it will be in the newspaper
13 tomorrow morning, certainly. But, additionally,
14 Allison, my law clerk, will give you her card. You
15 can call up here, if you would like, and just --
16 that's into my office -- and just ask the secretary
17 what the verdict is. She'll be happy to tell you.
18 Not a probably.

19 Lastly -- or second to last: if you have made
20 friends with any of the jurors -- again, I have no
21 idea how long they are going to deliberate, but I'm
22 just going to ask that you not speak to them until
23 they've reached a verdict. If for some reason this
24 went overnight and I sent them home, again, I wouldn't
25 want you talking to them about the case or speaking to

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1 them until there actually is a verdict in.

2 All right. And, lastly, I will tell you that
3 you will have your proverbial check that is in the
4 mail. I will tell you that our county council is the
5 one that sets the amount that is paid. Every county
6 council does it in the state. And I always say it
7 certainly isn't representative of the time and the
8 effort that you've put in. I honestly think it's
9 really just a way of us being able to document who was
10 where when. So, again, that will eventually get to
11 you.

12 But, again, I want to tell y'all thank you so
13 much. It's a hard case, and I'll be the first to tell
14 you that. It's a difficult case. I sit in on a lot
15 of murder cases, but this has been a hard one and
16 y'all have been wonderful. I think it's a great jury
17 and I have every confidence in the world in this jury.
18 I really do.

19 So, again, thank you. And I would come shake
20 your hands but I am, as you know, so ill and I don't
21 want to make anyone sick.

22 And I hear congratulations are in order, which
23 we're very excited for you.

24 But, anyway, thank you, y'all. And I can go
25 ahead and dismiss you at this time.

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1 And, Allison, you've given them your card.

2 And we, again, appreciate it. Thank you. Bob
3 is going to take care of you out the door. Right?

4 THE BAILIFF: Thank you, Your Honor. Yes --

5 THE COURT: Thank you, y'all.

6 THE BAILIFF: Yes, ma'am.

7 [Whereupon, the alternates are excused and exit
8 the courtroom]

9 THE COURT: Okay. We're going to be at ease.

10 [Whereupon, a recess is taken from 1:05 p.m. to
11 3:33 p.m.]

12 THE COURT: The jury has sent a question out.
13 They want to know the difference between manslaughter
14 and murder. And then underneath it it says: if
15 provocation is within manslaughter, the definition.

16 What do y'all propose? What do you want to do?

17 [Whereupon, Mr. Thornton and Mr. Walker confer]

18 MR. WALKER: It may be appropriate just for you
19 to reread your charges on the two, manslaughter and
20 murder charges.

21 MR. THORNTON: The State would not object to
22 that, Your Honor. I'm good either way, either reading
23 it or sending it back or both. It makes no
24 difference.

25 THE COURT: Okay. Let's bring them back out and

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1 I'll go ahead and charge them on both murder and
2 manslaughter.

3 Mia, you want to mark this.

4 [Whereupon, Court's Exhibit Number 1 is marked
5 by the court reporter]

6 [Whereupon, Court's Exhibit Number 2 is marked
7 by the court reporter]

8 [Off the record momentarily]

9 [Whereupon, the jury enters the courtroom at
10 3:34 p.m.]

11 THE COURT: Welcome back, Madam Foreperson and
12 members of the jury. I have received a note from
13 y'all asking for the difference of the definition
14 between manslaughter and murder. What I'm going to do
15 is re-charge you on murder and manslaughter. All
16 right? This is, again, exactly what I charged you as
17 to those two charges earlier. Okay?
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RE-CHARGE OF THE COURT

THE COURT: The defendant in this case is charged with murder. The State, therefore, must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought to prove murder. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms express and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person, or any other acts of preparation going to show

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1 that the deed was within the defendant's mind, would be
2 express malice. Malice may be inferred from conduct
3 showing a total disregard for human life. Inferred malice
4 may also arise when the deed is done with a deadly weapon.
5 A deadly weapon is any article, instrument or substance
6 which is likely to cause death or great bodily injury.

7 Ladies and gentlemen, if you find that the State
8 has failed to prove beyond a reasonable doubt that the
9 defendant committed murder, you may consider whether the
10 State has proved beyond a reasonable doubt that the
11 defendant committed voluntary manslaughter. To prove
12 voluntary manslaughter the State must prove beyond a
13 reasonable doubt that the defendant took the life of
14 another in the sudden heat of passion based on sufficient
15 legal provocation. Both heat of passion and sufficient
16 legal provocation must be present at the time of the
17 killing to constitute voluntary manslaughter. Sudden heat
18 of passion may, for a time, affect a person's self-control
19 and temporarily disturb a person's reason. The sudden
20 heat of passion must be the type that would make an
21 ordinary person unable to coolly reflect on his actions and
22 would produce an uncontrollable impulse to do violence.
23 Sufficiently, the provocation must be the type that would
24 make a person of ordinary reason and caution become
25 enraged and to lose control temporarily. The provocation

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1 needed for voluntary manslaughter must come from some act
2 of or related to the victim. Words alone, however vulgar
3 or insulting, are not enough to be legal provocation.
4 Where death is caused by the use of a deadly weapon, the
5 words must be accompanied by some overt threatening act
6 which could have produced the heat of passion. The
7 exercise of a legal right, no matter how offensive it is
8 to another, is never sufficient legal provocation for
9 voluntary manslaughter. If the heat of passion has cooled
10 or if there was enough time between the provocation, if
11 any, and the killing, for the passion of a reasonable
12 person to cool, the killing would not be voluntary
13 manslaughter. In deciding whether a reasonable person
14 would have had enough time to cool off, you should
15 consider all the circumstances surrounding the killing.
16 You may consider the nature of the provocation, if any,
17 the defendant's mental and physical state, and the
18 circumstances and relationships between the parties.

19 Madam Foreperson, those are the two charges as
20 to murder and voluntary manslaughter. Does that answer
21 your question?

22 THE FOREPERSON: It does. Uh-huh.

23 THE COURT: Thank you, ma'am.

24 I'm going to go ahead and send you back to the
25 jury room to continue your deliberations. Thank you.

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1 [Whereupon, the jury exits the courtroom at
2 3:40 p.m.]

3 THE COURT: Any exceptions or additions? From
4 the State?

5 MR. THORNTON: Your Honor, may we approach?

6 THE COURT: You may.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 MR. WALKER: Thank you, Your Honor.

10 No exceptions from the defense, Your Honor.

11 THE COURT: Thank you.

12 MR. THORNTON: No exceptions or additions from
13 the State, Your Honor. Thank you.

14 THE COURT: All right. Thank you, y'all.

15 We will be at ease until we hear back from the
16 jury.

17 [Whereupon, a recess is taken from 3:42 p.m. to
18 4:38 p.m.]

19 THE COURT: My understanding is the jury has
20 reached a verdict.

21 Ladies and gentlemen, for those of you that are
22 here sitting in the gallery watching the case, I'm
23 just going to ask that you please, regardless of what
24 the verdict is, if you could make sure you can contain
25 yourself. If for some reason you feel like you won't

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1 be able to have control of your emotions regardless of
2 what the verdict is, I'm going to ask that you excuse
3 yourself right now, because if there is any type of
4 outburst or any problems, unfortunately I'm going to
5 have to take you into custody. And I will, in fact,
6 do that. All right? So you have been forewarned.

7 And, Al, if you'll go ahead and bring the jury
8 in.

9 THE BAILIFF: Yes, ma'am.

10 [Off the record momentarily]

11 THE BAILIFF: The jury is entering, Your Honor.

12 THE COURT: Thank you, Bob.

13 [Whereupon, the jury enters the courtroom at
14 4:39 p.m.]

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you.

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VERDICT

THE COURT: Madam Foreperson, I understand the jury has reached a verdict.

THE FOREPERSON: Yes, ma'am.

THE COURT: Could you please hand the verdict form to Bob.

[Whereupon, the foreperson proffers documents to the bailiff. The bailiff proffers documents to the Court]

THE BAILIFF: Your Honor.

THE COURT: Thank you.

[Whereupon, the Court reviews documents]

THE COURT: All right. If the defendant would please stand.

[Whereupon, Mr. Scantling complies]

THE COURT: In the case of the State of South Carolina versus Jerry Scantling, as to the charge of murder, we, the jury, unanimously find the defendant, Jerry Scantling, guilty. As to the charge of armed robbery, we, the jury, unanimously find the defendant, Jerry Scantling, guilty. As to the charge of possession of a weapon during the commission of a violent crime, we, the jury unanimously find the defendant, Jerry Scantling, guilty. And as to the possession of a stolen vehicle, we, the jury,

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1 unanimously find the defendant, Jerry Scantling,
2 guilty.

3 You may be seated.

4 [Whereupon, Mr. Scantling complies]

5 THE COURT: Ladies and gentlemen of the jury, if
6 this is your verdict, will you please indicate by
7 raising your right hand.

8 [Whereupon, the jurors comply]

9 THE COURT: Would the defense like this jury
10 individually polled?

11 MR. WALKER: Yes, Your Honor.

12 THE COURT: All right, Ms. LaSandra.

13 THE CLERK OF COURT: Yes, ma'am.

14 THE COURT: Ladies and gentlemen, LaSandra is
15 going to call each of your names. If you would just
16 indicate who you are as she calls your name, and she's
17 going to ask you if this is your verdict and if it is
18 still your verdict. All right? And I'm going to need
19 you to speak up because I need to have it on the
20 record. Okay?

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POLLING OF THE JURY

1
2 THE CLERK OF COURT: Madam Forelady, Dorothy
3 Roehl, would you please stand.

4 Was this your verdict?

5 MS. ROEHL: Guilty. Yes, ma'am.

6 THE CLERK OF COURT: Is it still your verdict?

7 MS. ROEHL: Yes, ma'am.

8 THE CLERK OF COURT: Thank you, ma'am.

9 Austin Anthony, was this your verdict?

10 MR. ANTHONY: Yes, ma'am.

11 THE CLERK OF COURT: Is it still your verdict?

12 MR. ANTHONY: Yes, ma'am.

13 THE CLERK OF COURT: Linda Kodat, is this your
14 verdict?

15 MS. KODAT: Yes.

16 THE CLERK OF COURT: Is it still your verdict?

17 MS. KODAT: Yes.

18 THE CLERK OF COURT: Joseph Martinelli, was this
19 your verdict?

20 MR. MARTINELLI: Yes.

21 THE CLERK OF COURT: Is it still your verdict?

22 MR. MARTINELLI: Yes.

23 THE CLERK OF COURT: John Wareham, was this your
24 verdict?

25 MR. WAREHAM: Yes.

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1 THE CLERK OF COURT: Is it still your verdict?

2 MR. WAREHAM: Yes.

3 THE CLERK OF COURT: Zachary Nelson, was this
4 your verdict?

5 MR. NELSON: Yes.

6 THE CLERK OF COURT: Is it still your verdict?

7 MR. NELSON: Yes.

8 THE CLERK OF COURT: William Toenniessen, was
9 this your verdict?

10 MR. TOENNIESSEN: Yes.

11 THE CLERK OF COURT: Is it still your verdict?

12 MR. TOENNIESSEN: Yes.

13 THE CLERK OF COURT: Christopher Horne, was this
14 your verdict?

15 MR. HORNE: Yes.

16 THE CLERK OF COURT: Is it still your verdict?

17 MR. HORNE: Yes.

18 THE CLERK OF COURT: Ezekial Priester, was this
19 your verdict?

20 MR. PRIESTER: Yes.

21 THE CLERK OF COURT: Is it still your verdict?

22 MR. PRIESTER: Yes.

23 THE CLERK OF COURT: Richard Cvr, was this your
24 verdict?

25 MR. CVR: Yes.

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1 THE CLERK OF COURT: Is it still your verdict?

2 MR. CVR: Yes.

3 THE CLERK OF COURT: Omaira Vause, was this your
4 verdict?

5 MS. VAUSE: Yes, ma'am.

6 THE CLERK OF COURT: Is it still your verdict?

7 MS. VAUSE: Yes, ma'am.

8 THE CLERK OF COURT: And Donald Middleton, was
9 this your verdict?

10 MR. MIDDLETON: Yes, ma'am.

11 THE CLERK OF COURT: Is it still your verdict?

12 MR. MIDDLETON: Yes, ma'am.

13 THE CLERK OF COURT: Thank you.

14 THE COURT: Is there anything further required
15 from this jury? From the State?

16 MR. THORNTON: Nothing from the State, Your
17 Honor. Thank you.

18 THE COURT: From the defense?

19 MR. WALKER: Court's indulgence.

20 [Whereupon, Mr. Walker and Ms. Carroway confer]

21 MR. WALKER: Not at this time.

22 THE COURT: All right. Ladies and gentlemen of
23 the jury, I want to tell you how much we appreciate
24 you sitting and listening to this case. I want to
25 tell you that at the beginning of any criminal court

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1 week we have a number of cases that are placed on the
2 jury trial roster and because we have jurors willing
3 to serve, we are able to dispose of this case by, in
4 addition to jury trials, other means, for instance,
5 guilty pleas or by some diversionary programs. I
6 could never try every criminal case that comes in
7 here. We simply don't have the resources or the time.
8 However, ladies and gentlemen, this case was one that
9 just could not be resolved and so we needed you. And
10 we appreciate it. You have worked diligently and you
11 have been a wonderful jury this week and I want to
12 thank you for that.

13 Ladies and gentlemen, at this time you are
14 permitted to discuss the case, if you would like to,
15 with family members or loved ones when you go home.
16 Sometimes, also the attorneys may want to ask you what
17 you thought about a certain testimony. That is
18 allowed. Of course, ladies and gentlemen, you're
19 never required to discuss this case with anyone. And
20 if for any reason anyone persists and asks you
21 questions, just say, no, thank you. And if they
22 continue, you call up here to the clerk's office, you
23 tell me who it is, and I will take care of them. All
24 right? Again, ladies and gentlemen, thank you so
25 much. We really appreciate it. At this time I will

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1 tell you I am going to go ahead and sentence Mr.
2 Scantling. You are welcome to stay, if you would
3 like, or you are more than welcome to leave, as well.
4 It is completely up to you. I just need to know now
5 those who want to leave. We'll go ahead and escort
6 you out to your cars and we'll be back with you.
7 Okay?

8 Ladies and gentlemen, I'm going to go ahead and
9 release you for the remainder of the week. Again, you
10 have more than done your duty for us and we appreciate
11 that and we are grateful. Ladies and gentlemen, I
12 live on Hilton Head and I'm here, obviously, most of
13 the time. If you ever happen to see me, please,
14 passing -- grocery store or anywhere else, please say
15 hello. Please remind me that you sat as a juror.
16 Again, it's been a pleasure to have you-all. Thank
17 you. You are excused, if you would like, or you may
18 remain in your seats to stay and watch the sentencing.
19 Okay?

20 THE BAILIFF: Anybody wants to leave, you can
21 come now. Or you can stay in the jury box.

22 [Whereupon, the jurors are excused at 5:04 p.m.]

23 THE BAILIFF: The jury is clear, Your Honor.

24 THE COURT: Okay. Are we ready to go?

25 MR. THORNTON: I will be in about one minute --

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SENTENCING

MR. THORNTON: Your Honor, may I pass up the sentencing sheets?

THE COURT: You may.

[Whereupon, Mr. Thornton proffers documents to the Court]

THE COURT: If the defense will go ahead and stand.

You-all are welcome to stay there, if you would like, as opposed to coming up to the bench. You are fine where you are.

Solicitor, let's go ahead and put on the record --

MR. THORNTON: Yes, Your Honor.

Your Honor, Mr. Scantling, pursuant to I believe it's 17-25-45 of the South Carolina Code of Laws, was notified by our office -- he's actually been notified twice. The second time was by myself, personally, Your Honor. And I've got a copy of that notification. He was notified for a life without parole sentence for the violation of the two-strikes, three-strikes law under 17-25-45. His attorney was notified, as was he. I have a proof of service here, along with the notice itself, which I'm happy to make a Court's Exhibit and hand up to the Court at this time.

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1 THE COURT: Okay.

2 MR. THORNTON: Additionally, Your Honor, I have
3 a certified prior conviction for attempted armed
4 robbery which, as the Court knows, is both violent and
5 most serious and qualifies under the statutes. It's
6 actually certified by our clerk of court, Clerk
7 Rosenal [phonetic]. I've got that, also. I'll pass
8 those up to the Court at this time. Mr. Walker has
9 been provided with copies of both, Your Honor.

10 [Whereupon, Mr. Thornton proffers documents to
11 the Court]

12 MR. THORNTON: Pursuant to that, Judge, the
13 solicitor's office is seeking a sentence of life
14 without the possibility of parole on all of the
15 available charges.

16 THE COURT: Mr. Thornton, do I need the victim's
17 family? Would --

18 MR. THORNTON: Yes, ma'am. I was --

19 THE COURT: -- they like to speak?

20 MR. THORNTON: -- just informed that one member
21 of the family would like to speak on behalf of the
22 family.

23 THE COURT: Okay. Yes, ma'am?

24 UNIDENTIFIED: Forgive me, Your Honor, but I
25 need to ask him a question.

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1 THE COURT: Okay.

2 UNIDENTIFIED: Okay? Can I ask --

3 THE COURT: You need to speak --

4 UNIDENTIFIED: Can I ask him?

5 THE COURT: -- with Mr. Thornton?

6 MR. THORNTON: Yes, ma'am?

7 THE COURT: You need to ask Mr. Thornton a
8 question?

9 UNIDENTIFIED: No.

10 THE COURT: Okay. No, ma'am, you are not to
11 speak --

12 UNIDENTIFIED: Oh.

13 THE COURT: -- with Mr. Scantling directly in
14 any way. You need to direct any comments you have to
15 me.

16 UNIDENTIFIED: Okay.

17 THE COURT: You are not to speak to him.

18 UNIDENTIFIED: Okay. Okay.

19 Well, Lee -- well, y'all called him Leonard, but
20 we called him Lee. Lee was my brother. He was -- he
21 would give you his heart. He didn't ask to get killed
22 like this. I don't understand why. But we miss him.
23 My mother, she's got all-timers [phonetic]. She
24 wasn't able to come, so I came in her place. I don't
25 have any legs. Some of you all should know that,

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1 because I got that scooter there. But I thank each
2 and every one. The jury, the sheriff's department,
3 the detective, the judge, the district attorney, I
4 thank all of you very much for my brother. I know
5 he's at peace now. I know he's at peace now. Okay.

6 THE COURT: Thank you.

7 UNIDENTIFIED: Thank you, ma'am.

8 THE COURT: Thank you.

9 MR. THORNTON: Your Honor, because of the
10 statute we're proceeding under, unless you want -- I
11 can go into the rest of his prior record, but I didn't
12 think it was necessary under the circumstances.
13 That's all I'm saying.

14 THE COURT: Actually, would you -- I don't think
15 it's necessary, but I would like to know. Other than
16 the attempted armed robbery that I see Judge Kinard
17 sentenced him to -- I believe it's Judge Kinard. It
18 looks like his sentence. What is his prior record?

19 MR. THORNTON: Yes, ma'am.

20 He has a juvenile record dating back starting in
21 1994, entry onto another's lands and a shoplifting.
22 He then got a petit larceny. He then got a carrying a
23 weapon on school grounds in '95, receiving stolen
24 goods in 1995. He has a damaging or tampering with
25 vehicle in 1996. He has a malicious injury to --

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1 excuse me -- malicious injury to real property in
2 1996. He has a carrying a concealed weapon referral,
3 also in '96. He has -- it's hard to -- sometimes
4 these juvenile records are hard to read. He has some
5 drug charges back from '97, Judge. There's at least
6 one conviction for cocaine, first offense. He has a
7 burglary first degree conviction also I think as a
8 juvenile, Judge. It shows up as R&E in Columbia, but
9 it was in 1999. But it was reported as a sentence not
10 to exceed his twenty-first birthday. He has a, in
11 that same year, possession of cocaine, petit larceny.
12 2002 he has a -- sorry. Yeah. In 2002 he has an
13 armed robbery, which he was convicted. He also has a
14 common-law robbery from 2007. A failure to appear it
15 looks like in 2007. Magistrate level offenses in
16 2010, Judge. A shoplifting and violation of city
17 ordinance. And then the current charges that he has
18 right now, Judge.

19 THE COURT: Thank you.

20 MR. THORNTON: I also have -- and I believe
21 Mr. Walker has been provided with this. I will hand
22 this up to the Court. This is another certified
23 conviction of his common-law robbery. Just to make it
24 a Court's Exhibit. I certainly don't need to hold on
25 to the paperwork.

State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

1 [Whereupon, Mr. Thornton proffers documents to
2 the Court]

3 MR. THORNTON: The reason the State sought the
4 life without parole, Judge, is obviously based on his
5 extensive prior criminal history.

6 THE COURT: Okay. Thank you.

7 MR. THORNTON: Yes, ma'am.

8 THE COURT: All right. Mr. Walker, anything
9 y'all need to tell me?

10 MR. WALKER: Thank you, Your Honor. Briefly.

11 Due to the nature of the statute and the
12 constraints placed on the sentencing, I don't need --
13 think I need to go too much into mitigation, and I
14 won't do that. We understand what the sentence must
15 be and we just ask that the Court run everything
16 concurrently.

17 Also, with an anticipated appeal I have
18 instructed Mr. Scantling that he probably should
19 refrain from making any statements at this time.
20 Thank you.

21 THE COURT: Thank you. Anything to add,
22 Ms. Carroway?

23 MS. CARROWAY: No, Your Honor. Thank you.

24 THE COURT: Mr. Scantling, there isn't anything
25 you want to say, do you?

State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

1 MR. SCANTLING: [Indicates negatively]

2 THE COURT: All right. On indictment number
3 2011-1326 for murder, the sentence of this Court is
4 you be committed to the Department of Corrections for
5 a period of life without parole. On indictment number
6 2011-1328 for armed robbery, the sentence of this
7 Court is you be committed to the Department of
8 Corrections for a period of life without parole. On
9 indictment number 2011-1327 for possession of a weapon
10 during a violent crime, the sentence of this Court is
11 you be committed to the Department of Corrections for
12 a period of five years. And indictment 2010-1350 for
13 possession of a stolen vehicle valued more than 2,000
14 but less than \$10,000, the sentence of this Court is
15 you be committed to the Department of Corrections for
16 a period of five years. Those are all to run
17 concurrent to each other.

18 Good luck to you, sir.

19 MR. THORNTON: Thank you, Your Honor.

20 MR. WALKER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Ladies and gentlemen, I'm going to go ahead and
23 excuse you back to the jury room for just a brief
24 moment.

25 And I'm going to go back and speak with them.

State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

1 Okay? Thank you.

2 THE BAILIFF: Thank you, Judge.

3 [Off the record momentarily]

4 THE COURT: Mia, here's the verdict form and
5 here's the Court's Exhibits which you need to make as
6 a record for the life without parole. Okay? And here
7 are the indictments.

8 [Whereupon, the Court proffers documents to the
9 court reporter]

10 [Whereupon, Court's Exhibit Number 3 is marked
11 by the court reporter]

12 [Whereupon, Court's Exhibit Number 4 is marked
13 by the court reporter]

14 [Whereupon, Court's Exhibit Number 5 is marked
15 by the court reporter]

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State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

MOTION FOR A NEW TRIAL

THE COURT: Mr. Walker?

MR. WALKER: Thank you, Your Honor.

At this time I would again renew all my motions and objections from the previous trial and move for a new trial based, again, on my previous motions and objections as well as, specifically, failure to grant a mistrial when Cynthia Padgett mentioned the burglary, which we had gone into extensively and extensive preparations to keep from hearing [phonetic] the jury; what we would assert was the improper admission of Brittany Raines' unreliable testimony, which, frankly, we would also assert would be really our basis for a conviction in this case; the admission of Jerry's statements taken in violation of Miranda and their argument that rule does not apply in this case; and that in closing, that Mr. Thornton's comments regarding the defendant's right to remain silent versus commenting on his failure to tell them where he had been; and, also, during the polling of the juror -- jury, juror number 151 was in obvious distress, we're putting this for the record, and was crying after responding to the polling, a worry that undue pressure may have been placed upon her, or she seemed to be under some sort of great emotional strain

State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

1 in rendering her verdict; and such other items as may
2 appear from a more careful review of the record.

3 THE COURT: All right. I appreciate that.

4 Respectfully, I am denying your motion for a new
5 trial, based on all my earlier rulings.

6 Additionally, I also saw that juror who seemed
7 to have a few tears in her eyes. But I watched her
8 the entire time. I don't think it was anything more
9 than what appeared to be just understanding the
10 gravity of the situation and realizing how serious
11 this is. And she did not appear to me to have lost
12 control in any way or look like she had been overcome
13 or her will had been overcome in any way. And when
14 called upon to ask whether or not this was her verdict
15 and if it was still her verdict, she unequivocally
16 said yes. There was no wavering whatsoever. And I've
17 experienced wavering before, so that was definitely
18 not there. So, respectfully, I'm going to deny your
19 motion.

20 Thank you, y'all. Y'all both --

21 MR. THORNTON: Thank you, Your Honor.

22 THE COURT: -- did a good job. And thank you.

23 MR. WALKER: Thank you, Your Honor.

24 MR. THORNTON: Yes, ma'am.

25 [JURY TRIAL ADJOURNS AT 5:18 P.M.]

State v. Scantling
Jury Trial - Vol 3 of 4
February 28, 2013

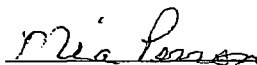
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Carmen T. Mullen, on Thursday, February 28, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 2nd day of August, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-751-

FORM 5

STATE OF SOUTH CAROLINA)

2015-CP-07-2010
IN THE COURT OF COMMON PLEAS

COUNTY OF Beaufort)

Jerry L. Scantling #259057)

~~James L. Scantling #259057~~)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2015 AUG 20 PM 3:21
CLERK
SOUTH CAROLINAINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Court of GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: unknown
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) I was Sentence on FEB. 28th 2013
 - (b) Life Without Parole.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty B _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Courts of Appeal _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied _____
- ii. _____
- iii. _____
- (c) the date of each such result: 7/21/15
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: unknown
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ~~Constitutional Assistance~~
"Ineffective Assistance of Counsel"

- (a) Abuse of discretion, Plain error, Perjury
 (b) Misrepresentation, Prosecutorial Misconduct
 (c) Shifting the Burden of Proof, Vouch

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) fail to Investigate
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof: appeal
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina Court of Appeal
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. denied
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition: 7/21/15
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: unknown
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) c ground 10 m'd first time rising
- (b) this ground.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Matthew Lee Walker
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. ~~Matthew Lee Walker~~ David Alexander
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
New trial on any further relief that I may be entitled.
20. Are you now under sentence from any other court that you have not challenged? No
- _____

STATE OF SOUTH CAROLINA)

County of Beaufort)
Jerry Scantling)

VERIFICATION

I, Jerry Scantling, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jerry Scantling
Jerry Scantling

SWORN to and subscribed before me this 17
day of August, 2015.

JC Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Jerry Seantling
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jerry Seantling
Applicant

SWORN or affirmed to and subscribed before me this
17 day of August, 2015.

JC Franklin
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Jerry L. Scantling, #259057,	)	2015-CP-07-2010
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on August 20, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2010 term of the Beaufort County Grand Jury for one (1) count of Possession, Concealing, or Disposing of a Stolen Vehicle (2010-GS-07-1315). The Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for one (1) count of Murder, one (1) count of Possession of a Weapon During the Commission of a Violent Crime, and one (1) count of Armed Robbery. Matthew Lee Walker, Esquire and Lauren Carroway, Esquire represented him. On February 25, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for five (5) years for the count of Possession, Concealing, or Disposing of a Stolen Vehicle, life without parole for the count of Murder, five (5) years for the count of Possession of a Weapon During the Commission of a Violent

Crime, and life without parole for the count of Armed Robbery. The sentences run concurrently.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Scantling, Op. No. 2015-UP-363 (filed on July 15, 2015). The Remittitur was issued on August 3, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Abuse of Discretion"
 - b. "Plain error"
 - c. "Perjury"
 - d. "Misrepresentation"
 - e. "Failed to investigate"
2. "Prosecutorial Misconduct"
 - a. "Shifting the burden of proof, vouch (sic)"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes the Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal

defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247

(1983).

IV.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

{Signature on Next Page}

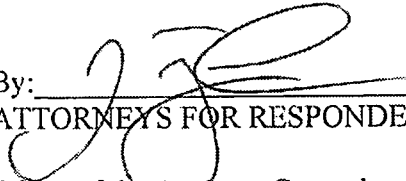
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

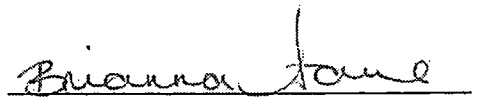
July 7, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2015-CP-07-2010
	)	
JERRY L. SCANTLING, #259057	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 PO Box 1058
 Charleston, SC 29402

DATED this 7th day of July, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2015-CP-07-02010

JERRY L. SCANTLING

PETITIONER

VERSUS

STATE OF SOUTH CAROLINA

RESPONDENT

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

BEFORE HON. R. SCOTT SPROUSE, JUDGE

FEBRUARY 15, 2017

BEAUFORT, SOUTH CAROLINA

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PETITIONER
JERRY L. SCANTLING:

HON. JAMES K. FALK
FALK LAW FIRM, LLC
30 BROAD STREET, SUITE 350
POST OFFICE BOX 1058
CHARLESTON, SOUTH CAROLINA 29402-1058
843-606-6007
jfalklaw@gmail.com

ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

HON. RUSTON NEELY
ASSISTANT ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3970
rneely@scag.gov

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JERRY SCANTLING

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No exhibits were admitted.

2-15-17 SCANTLING V STATE

PCR

1 BEGINNING 11:01 A.M.

2 BY THE COURT:

3 MR. NEELY: Thank you, your Honor. The next case
4 the State would call is the case of Jerry Scantling
5 versus South Carolina. Case Number 2015-CP-07-02010.
6 Applicant is currently incarcerated in the South
7 Carolina Department of Corrections pursuant to orders
8 from Beaufort County Clerk of Court's Office. Applicant
9 was indicted June 2010 term of the Beaufort County Grand
10 Jury for one count of possession of a stolen vehicle;
11 and was indicted by the July 2011 term of court for one
12 count of murder, one count of possession of a weapon
13 during the commission of a violent crime, and one count
14 of armed robbery.

15 Matthew Walker represented him at trial. February
16 25, 2013 applicant proceeded to a jury as indicted. The
17 Honorable Carmen Mullen sentenced the applicant to five
18 years for possession of a stolen vehicle; and life
19 without parole for the count of murder; and five years
20 for count of possession of a weapon during the
21 commission of a violent crime; life without parole for
22 the count of armed robbery; sentences ran concurrently.
23 I believe that was under an LWOP Notice.

24 Notice of appeal was filed pursuant to *Anders v*
25 *California*. South Carolina Court of Appeals, after

1 reviewing the full record, affirmed applicant's
2 convictions, and a remittitur was issued August 3, 2015.

3 THE COURT: All right. Mr. Falk.

4 MR. FALK: Are we doing Jerry Scantling? Okay.
5 Just one clarifying point. I believe there's a merits
6 brief filed, not an *Anders* brief.

7 MR. NEELY: That does appear to be correct, your
8 Honor.

9 THE COURT: Okay.

10 MR. FALK: And your Honor, that's really one of the
11 issues that we want to track here on this is the issue
12 that was brought up in the opinion that was issued in
13 this case, as far as trial counsel's failure to preserve
14 an objection on a *Doyle* violation that came up through
15 an improper closing argument. I'm not sure if this was
16 provided to you, but were you given a copy of the
17 opinion in this case?

18 THE COURT: From the Court of Appeals?

19 MR. FALK: Yes, sir.

20 THE COURT: I have a copy of that.

21 MR. FALK: Okay. And you'll see in that opinion.
22 where they're talking about the failure to preserve the
23 objection, and that's one of the issues that we're going
24 to want to explore during this.

25 THE COURT: Okay.

2-15-17 SCANTLING V STATE

PCR

1 MR. FALK: The other issue that we're raising is,
2 my client feels like that a stipulation was made in this
3 case that he wasn't really advised of, and was really
4 against what he wanted to do; and that he feels that
5 prejudiced him as far as the proof in this case. And we
6 are concerned about prosecutorial misconduct and how a
7 particular statement regarding my client's prior
8 criminal record was made, was published before the jury.

9 THE COURT: I didn't mean to interrupt you, Mr.
10 Falk.

11 MR. FALK: No, no.

12 MR. NEELY: And your Honor, the State would object.
13 I don't believe we have any allegations of appellate
14 counsel violations, ineffective assistance of appellate
15 counsel.

16 MR. FALK: I'm not saying it's appellate counsel.

17 MR. NEELY: Oh, I'm sorry. Okay. I understand
18 that.

19 THE COURT: Okay. All right. Call your first
20 witness.

21 MR. FALK: Call Mr. Walker to the stand.

22 MADAM CLERK: Place your left hand on the *Bible*,
23 and raise your right, please. Do you solemnly swear or
24 affirm the testimony that you give to the Court in this
25 case shall be the truth, so help you God?

2-15-17 SCANTLING V STATE

WALKER - DIRECT

1 MADAM CLERK: You may be seated.

2 MATTHEW WALKER

3 DIRECT EXAMINATION BY MR. FALK:

4 Q Hello, Mr. Walker.

5 A Hello.

6 Q How did you come about representing my client in
7 this case?

8 A He was assigned to me in the Public Defender's
9 Office.

10 Q Okay. And what type of conversations did you have
11 with my client prior to this case going to trial?

12 A We had numerous, extensive conversations about
13 every phase of trying a case: penalties, strategies,
14 the evidence against him.

15 Q Approximately how many times did you meet with him?
16 Was he in custody at the time?

17 A Yes. And I couldn't tell you.

18 Q Do you have a feel for the frequency?

19 A Probably rarely up until trial was imminent, and
20 then pretty heavily at that time.

21 Q Okay. If you could, do you have a copy of the
22 trial transcript -- or the record on appeal?

23 A Yes.

24 Q If you could go to Page 629, which is in Volume 2.

25 A Yeah, let me get to the bottom here. 629?

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1 Q Yes, sir.

2 A All right. I'm there.

3 Q If you could look at that first full paragraph that
4 starts at Line 11, if you could. And if you could just
5 identify what part of the trial was going on right
6 there.

7 THE COURT: What page are you on?

8 MR. FALK: I'm on 629 on the record on appeal.

9 THE COURT: Okay. Okay.

10 MR. FALK: Which is Volume 2 of two.

11 BY MR. FALK:

12 A This appears to be the State's closing argument by
13 Mr. Thornton.

14 Q Okay. And did you have any -- if you could just
15 look at that paragraph that's between pages -- Lines 11
16 and 22.

17 A Okay.

18 Q Do you recall having any concerns about the jury
19 hearing that argument?

20 A I don't recall.

21 Q If I could draw your attention to where the
22 Solicitor says:

23 *I ain't going to --*

24 Apparently, he's quoting Mr. Scantling:

25 *I ain't going to say it's me; I ain't*

1 going to say it's not.

2 Then, he goes on further, quoting him again saying:

3 And I ain't going to say it's me; I
4 ain't going to say it's not.

5 Do you recall that being part of a statement that
6 he had given to investigators?

7 A From my scanning of the transcript, I recall
8 discussion of that statement.

9 Q Okay.

10 A That being a portion of a statement that he gave to
11 Officer Bromage, I believe.

12 Q Well, then, maybe just to sort of refresh your
13 memory, if you could look at Page 665, where you're
14 making a comment to the judge, starting at Line 21.

15 A Right. Yeah, I read that part.

16 Q Okay.

17 A And I guess that's what I was referencing.

18 Q Okay. So you had felt there was a *Doyle* violation,
19 or the *Boyle*? It's *Doyle*, right?

20 A I believe it is *Doyle*. It's either transcribed
21 wrong or I mis-spoke, so.

22 Q Right.

23 A Yeah, so, looks like I did raise the objection
24 there.

25 Q Because that was a post-Miranda statement that he

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1 did, and I think you were -- what did you believe the
2 Doyle violation was?

3 A Well, according to the transcript, on 666, Page 19,
4 is where I'm giving my, I guess, my reasoning there.

5 *It is not necessarily addressing the*
6 *statement, but the fact he inferred to the*
7 *jury. He should have told him where he was.*
8 *And the fact that he didn't, implies some sort*
9 *of guilt.*

10 And then, my co-counsel who second-chaired me, had
11 written down what he had said, and that Mr. Thornton
12 said:

13 *Did he tell them that he was in Savannah?*
14 *No, he didn't.*

15 And so. And then, Mr. Thornton goes why it isn't a
16 Doyle violation and --

17 Q So, again, why did you think it was a Doyle
18 violation?

19 A Well, basically, what you're getting at is, you
20 know, it's a comment on style. Instead of it therefore
21 infers --

22 Q Right.

23 A -- that he's guilty, because he didn't tell them.

24 Q Okay.

25 A So that would have been the violation.

1 Q And it's your recollection that that statement was
2 made post-Miranda? Is that not right?

3 A If I recall, all the statements to Bromage were
4 post-Miranda.

5 Q Because he was in custody at the time?

6 A Right, with Bromage.

7 Q This is actually the third time that Bromage had
8 talked to my client, Mr. Scantling.

9 A Correct. Correct.

10 Q Is that correct?

11 A Correct.

12 Q Okay. So, if you could go to Page 635, and look at
13 lines -- well, I guess it's Lines 15 through 17.

14 A 635. Okay. I've read it.

15 Q What is the point of law that you're referring to
16 there?

17 A To raise the objections.

18 Q Okay.

19 A To the closing, rather than doing them during the
20 closing.

21 Q Okay. Did you consider objecting during the
22 closing argument?

23 A I did.

24 Q Making a contemporaneous objection while the
25 statement was being -- while the prosecutor was actually

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1 speaking?

2 A I believe that I did.

3 Q If you could look from -- if you look from 629,
4 Lines 11 through the end of his statement, it does not
5 look as though you stood up and made an objection.

6 A No. I would not have. If I didn't -- if I wasn't
7 -- I wouldn't have considered it while standing up. I
8 would have considered and said, no, I'll wait 'til at
9 the end and make an objection.

10 Q Okay. So that was your plan was not to make a
11 contemporaneous objection, but to wait 'til the end?

12 A Correct.

13 Q Okay. Did you get a chance to look at the opinion
14 in this case?

15 A It's one paragraph. I wasn't -- it didn't even
16 reference what the objection is, so I wasn't really sure
17 what it referenced.

18 Q Okay.

19 A But I did read the paragraph saying that it wasn't
20 preserved. And I don't know what was argued by
21 appellate counsel as to the preservation. And it may
22 have been an error to not contemporaneously do it during
23 the closing. I don't know.

24 Q Okay, but I mean, but that was not necessarily a
25 trial -- that wasn't a trial strategy thought there, was

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1 it?

2 A Well, it would always be a strategy thought to -- I
3 mean, to the timing of the objection, or to not object
4 at all. I mean.

5 Q Um-hmm.

6 A Because you're worried about how that objection is
7 going to be perceived by the jury, especially, you know,
8 so.

9 Q But if that -- but by waiting, if that meant you
10 failed to preserve the objection, then, that's not part
11 of the strategy. Is that correct?

12 A My belief would be an objection immediately
13 following would preserve it, and if I'm incorrect, I'm
14 incorrect. Or was incorrect at the time.

15 Q Because the objection that you made, the jury had
16 already been charged. Is that correct?

17 A I don't believe so. Well, I take that back. Yeah,
18 she would have done closings; done her charge; sent them
19 out; and told them not to deliberate; and then we would
20 have taken up the law.

21 Q Okay.

22 A And then, after that was done, she would have sent
23 the exhibits back and told them to start deliberating.

24 Q Okay. So, both time you put the grounds for the
25 objection on the record, the jury had already been

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1 charged, and at least left the courtroom initially. Is
2 that correct?

3 A I would think so.

4 Q Okay. Now, if you can look at Page 93, which is
5 Volume 1.

6 A First volume. Okay.

7 Q I guess before we move off the subject, how -- what
8 evidence was there actually putting my client at the
9 scene or responsible for this? Was there any forensic
10 evidence that tied him to the --

11 A To the general scene, yes.

12 Q But how about to the -- I mean, there was no -- was
13 there forensic type of murder, though?

14 A I'm sorry? Ask that --

15 Q But as far as the murder itself, was there any
16 forensic evidence?

17 A Oh, nothing tying him to the victim at all. The
18 only thing forensically that put him anywhere around
19 there was a pair of headphones that has his DNA on them
20 in the parking lot. This happened at a boat landing,
21 and they were in the parking lot of the boat landing,
22 where the body and some items were found, also in the
23 parking lot.

24 Q So, and so there was some DNA evidence that put him
25 in the general area. Is that correct?

1 A Correct.

2 Q Okay. But as far as a weapon, you know, a weapon
3 or any D -- my client's DNA, found on the body, there
4 was none of that, was there?

5 A Oh, no.

6 Q Okay. Were there any witnesses that witnessed?

7 A No.

8 Q So would you call this a primarily a circumstantial
9 case? I mean, was there overwhelming evidence of guilt,
10 did you believe?

11 A No, not at all.

12 Q It was a close case?

13 A It would have been close, except for Mr.
14 Scantling's comments to law enforcement.

15 Q And those are the ones that we're talking about.
16 What other comments are you talking about?

17 A Well, it's not so much -- the comments to Bromage,
18 really, that changed and placed him with the victim that
19 night.

20 Q Um-hmm.

21 A Less, in my mind, important were alleged comments
22 he made to jailhouse witnesses. But I think he put
23 himself with the victim on the night of the murder with
24 his comments to law enforcement.

25 Q And one of those comments was a part of this. I'm

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1 not saying it isn't me; or I'm not going to quote me in
2 that.

3 A I mean, those were part of it, but the issue was
4 really, he gave several statements that changed.

5 Q Okay. Um-hmm.

6 A I didn't see the guy at all, to, oh, he gave me a
7 ride, to, you know, his -- he -- he, you know, instead
8 of saying I don't know anything about anything or saying
9 nothing, he, you know, he said, I don't, you know, I
10 kind of saw him, to, oh, I kind of had interaction with
11 him, to, oh, I was with him.

12 And I think the changing nature of the comments
13 were very damaging, as well as him putting himself with
14 the victim on the night in question, when that's the
15 only thing that puts him with the victim is his
16 statements.

17 Q Okay.

18 A And I Will say, before we leave the prior
19 objection, I don't recall it this way. Most likely was
20 that I just felt the timing or the optics were wrong to
21 object at the time. But it's also possible that I did
22 Miss it, and co-counsel said, hey, you need to object to
23 this, and then I raised it towards the end.

24 Q Okay. How many murder trials had you done prior to
25 this?

1 A Not very many.

2 Q Violent crimes?

3 A A lot.

4 Q Okay. All right. Now, we'll swing back around to
5 the stipulation on Page 93.

6 A Yes.

7 Q Which is Lines 14 to 19.

8 A Yes.

9 Q What was the significance of that stipulation?

10 A It had to do with the DNA evidence. Obviously, the
11 best fact for Jerry was that someone else's DNA was on
12 the gun.

13 Q Um-hmm.

14 A You know, that was the greatest fact that he had
15 this whole case. So, in order to foreclose the idea
16 that, well, you know, they're going to testify that
17 that's a stolen gun, or it's a, you know, it's not his
18 gun, then I felt it was necessary to get in that the DNA
19 on there was not the people whose gun it was.

20 Q Um-hmm.

21 A That we have an unknown person's DNA, so, you know,
22 that -- that I can then argue, hey, look, we don't --
23 there's somebody out there who handled this gun that we
24 don't know who it is, and that's the gun that's found
25 with the dead body, maybe that's the guy that shot him.

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1 So it's to put out that the gun, that the murder weapon,
2 the DNA on there was not the people who had a legitimate
3 reason to have DNA on it, and it wasn't Jerry's.

4 Q Was there a thought of calling Justin Crews
5 (phonetic spell) as a witness?

6 A No.

7 Q Was there an agreement between you and the
8 prosecution in exchange for the stipulation that you
9 wouldn't call Justin Crews as a witness?

10 A No.

11 Q Were it your understanding that Justin Crews
12 actually stole the gun from his father, Sam Crews?

13 A That would have be the argument that I would have
14 made in a trial of burglary, but there were both co-
15 defendants in the case.

16 Q Um-hmm.

17 A And Justin was implicating Jerry?

18 Q Um-hmm. Did you talk with my client about agreeing
19 to the stipulation?

20 A I don't recall if I did.

21 Q Okay. Now, the other concern, and you just sort of
22 alluded to it, was the fact that Mr. Scantling had
23 pending charges at the time of this trial. Is that
24 correct?

25 A Correct.

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1 Q Okay. And those were burglary charges?

2 A The primary defense concern as to that burglary
3 charge was that the fact that he was charged with the
4 burglary where the murder weapon that was stolen would,
5 in the jury's mind, be a DOT -- or connect a DOT, or to
6 put him at the scene or connect him with the gun.

7 Q Um-hmm.

8 A So that was the -- so that was the reason for the
9 beyond the concern of other charges, the focus on that
10 particular burglary charge that no mention would be made
11 that that burglary involved the murder weapon.

12 Q It looks as though great things were gone through
13 to try to stop Mrs. Raines from testifying about the
14 burglary charge. Is that fair to say?

15 A That is fair to say. And other State's witnesses,
16 officers. I mean, every State's witness was this was
17 not something that needs to be brought up.

18 Q But she let the cat out of the bag. Is that fair
19 to say? If you could look at Page 550?

20 A I did read that earlier. To answer your question,
21 yes. If there's a specific thing you want me to look
22 at, I can.

23 Q Just to confirm that in her statements, Lines 19
24 through 21.

25 A Let me -- I'm turning to it. Yes, I see that.

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1 That's where she mentioned that he was in jail on a
2 burglary, which I objected to.

3 Q What else did you do after you objected to it? Did
4 you move for a mistrial?

5 A I believe I did.

6 Q Do you believe that the prosecutor was possibly
7 inviting her to still say that? I mean, didn't the
8 prosecutor kind of admit to the fact that he's
9 questioned --

10 A I believe that in my argument he did concede that
11 he asked the question in such a way that that response
12 could have been anticipated.

13 Q Did you find that to be possibly misconduct on the
14 part of the solicitor?

15 A I would say he would take it as far close to the
16 line as he thought he could.

17 Q Was a curative instruction given?

18 A I don't recall. I think the judge said something
19 about that. It would be in the transcript. I don't
20 recall. I normally would -- would argue to a judge that
21 a curative instructive -- instruction Will not cure, and
22 ask for a mistrial, would be a normal practice.

23 Q Okay.

24 A Because I just believe it reinforces in the jury's
25 mind the thing you're telling them not to --

1 Q Not to think about it.

2 A Not to think about it.

3 MR. FALK: I have no further questions.

4 THE COURT: All right. Mr. Neely?

5 MR. NEELY: Thank you, your Honor.

6 MATTHEW WALKER

7 CROSS-EXAMINATION BY MR. NEELY.

8 Q Starting with the *Doyle* violation, my understanding
9 from reading the transcript was you actually objected on
10 a matter of law directly after the closing argument was
11 finished by Mr. Thornton?

12 A That is correct.

13 Q And then, the judge said, I'll hear you; just wait
14 until I give the jury instruction. And then she gave
15 the jury instruction, and then she heard you on that
16 objection.

17 A That's correct.

18 Q But you did actually object directly after the
19 closing argument?

20 A I did.

21 Q And even though you argued it was a *Doyle*
22 violation, in this case, per your discussion in your
23 testimony earlier, one of the greatest pieces of
24 evidence against Mr. Scantling was the changing stories
25 that he gave law enforcement. Is that correct?

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1 A In my opinion, that is correct. I didn't interview
2 the jurors to see what they believed was the issue, but
3 from my analysis of the case, that was the most damaging
4 evidence.

5 Q And the statement that you argued was a *Doyle*
6 violation was basically the first statement in a series
7 of statements that he gave to Detective Bromage in this
8 case.

9 A I don't know when the statement was given. I don't
10 -- the order. I just remember that they changed, and
11 that the only thing putting him with the victim was his
12 statements.

13 Q But he gave three separate statements to Bromage?

14 A Right.

15 Q One of which was, I, you know, maybe I was there;
16 maybe I wasn't there.

17 A Right.

18 Q And then, another statement, was, I was there and I
19 saw the victim and spoke. And then, the last statement
20 being, you know, I had interaction with the victim.

21 A I believe that's correct, yes.

22 Q So, from the State's perspective, this is part of a
23 changing story, and not just a silent -- a comment on
24 the defense silence?

25 A You'd have to ask Mr. Thornton that. I mean, I --

1 obviously, I argued that he was commenting on -- he was
2 trying to infer guilt by not -- by not -- by bringing it
3 up.

4 Q Certainly. And I understand that. But from the
5 defense side of the case, one of your client's biggest
6 problems was not his silence, but his lack thereof.

7 A That is true.

8 Q And then, there was also -- well, let me ask you
9 this. Do you remember the case well enough to kind of
10 give us a summary of the evidence against your client?

11 A I'm sorry. Can you ask that again?

12 Q Do you have a good enough working memory of the
13 case, to give us a summary of the evidence against your
14 client at trial?

15 A Yes. Well, not exhaustively, but to try and
16 overall, I guess the evidence most -- the most pertinent
17 piece of evidence against my client were his DNA being
18 found at the scene of the boat landing where the body
19 was found. To my mind, the statements given to police,
20 the testimony of the jailhouse witnesses, whether
21 they're true or not, then there were kind of the first
22 order level of things against him. And then, there was
23 second order of stuff of being caught in a stolen car,
24 being -- having photographs with the victim's cell
25 phone. Which, I don't even know -- can't remember

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1 whether we got into or not about the victim's cell phone
2 being found in a Wal-Mart in Florida. You know, to me
3 the big three were him putting himself at the scene, the
4 DNA of the headphones corroborating him being at the
5 scene, and --

6 Q Do you recall there being witness testimony that
7 placed your client in the victim's truck that night?

8 A If there was -- and again, this is going off memory
9 -- the only testimony in my mind that would have put my
10 client in the victim's truck is Mr. Scantling's
11 testimony. I can't remember if he said he caught a ride
12 with the defendant or not, but that would have been the
13 only thing putting him in the truck. There was no --
14 there was no physical evidence for when they recovered
15 the truck or anything of Mr. Scantling ever having been
16 in it or anything like that.

17 Q And do you recall a witness speaking to Mr.
18 Scantling, throwing papers into a dumpster?

19 A I do. I mean, I do, now that you mention that,
20 recall the testimony. There was some people at a hotel
21 saying they saw him in the victim's truck that night
22 cleaning it out. And they were -- something distinctive
23 about the truck where they knew it was the victim's, and
24 I can't remember why that was. But I do -- later that
25 night or the next -- I think it was the next morning,

1 the witness -- the witnesses at the hotel did put him in
2 the truck.

3 Q In the early morning hours of that same night?

4 A Of the night of the murder, right. And again,
5 which we would have argued from a defense perspective
6 that, you know, he's at a boat landing and finds an
7 empty truck, you know. So, what? But.

8 Q And law enforcement actually found identifying
9 documents from the victim in that dumpster when they
10 went and looked; did they not?

11 A Yes.

12 Q And then, just going back, they found the victim's
13 cell phone, I believe, whenever they found the defendant
14 in, I believe, Georgia?

15 A Defendant was -- they found him back here driving
16 the stolen car, and they found the victim's cell phone
17 in a Wal-Mart in Georgia. It had been left in a
18 bathroom or something. Or in a trash can or something
19 in Georgia. And I can't remember if somebody found it
20 and called, or if they pinged it, or what. But there
21 was a -- there were Wal-Mart surveillance photos that
22 seemed very strongly to indicate that Mr. Scantling was
23 there at the same time the phone was there.

24 Q And going back to the admission of the burglary,
25 you made a motion for a mistrial at that time that came

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1 out. Is that correct?

2 A Yes.

3 Q And the judge denied that motion for a mistrial,
4 and found that the defendant wasn't overly prejudiced by
5 that information.

6 A Yes.

7 MR. NEELY: I believe that's all the questions I
8 have, your Honor.

9 THE COURT: Any re-direct?

10 MR. FALK: Just briefly re-direct, your Honor.

11 MATTHEW WALKER

12 RE-DIRECT EXAMINATION BY MR. FALK:

13 Q Mr. Walker, if you could look at Page 423, which is
14 in the big binder. Starting at Lines 1 through 15.

15 A One moment. Yeah.

16 Q So, and that is sort of the factual basis for the
17 solicitor's comment in his closing argument; is it not?

18 A Yes.

19 Q Okay. And that was brought before the Court's
20 attention, so it was -- that didn't come as any surprise
21 to you when -- that that was out there?

22 A Right, right.

23 MR. FALK: Okay. No further questions.

24 THE COURT: All right. Are there anything further
25 from this witness?

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1 MR. NEELY: Not from the State, your Honor.

2 THE COURT: Thank you, sir. You can step down.

3 MATTHEW WALKER: Thank you, your Honor.

4 THE COURT: Mr. Scantling, come around to the
5 witness chair, please.

6 MADAM CLERK: Place your left hand on the *Bible*,
7 and raise your right, please. Do you solemnly swear or
8 affirm the testimony you give in this case to be the
9 truth, so help you God?

10 JERRY L. SCANTLING: Yes, ma'am.

11 MADAM CLERK: You may be seated.

12 JERRY L. SCANTLING

13 DIRECT EXAMINATION BY MR. FALK:

14 Q Mr. Scantling, do you recall how many -- do you
15 recall your conversations with Mr. Walker?

16 A You talking about before the trial?

17 Q Before the trial.

18 A He basically saying -- basically said that, you
19 know, they all, um, they going to try to, um, they
20 offered me 30 and all this, and blase', blase'; and it's
21 going to be hard for you to beat trial, because they
22 going -- you know what I'm saying? Such and such and
23 such. You know. It's like he ain't really had no
24 strategy. You know, like, he was just basically saying
25 they're going to give you 30. You know what I mean.

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1 Or, if you don't take that, you're going to get a life
2 sentence or you're going to get 30. You know. That's
3 the conversation I remember having with him right before
4 we went in the courthouse, you know.

5 Q Those were conversations regarding Mr. Justin Crews
6 and the stipulation.

7 A It was, basically, you know, that he, um, he's
8 implementing [[sic] me as the person that basically was
9 -- he was implementing me and , um, as having the murder
10 weapon or something, and they wanted to work a deal like
11 I don't mention his name and he don't mention my name,
12 and stuff like that.

13 Q He was implicating you?

14 A Yeah. He was saying basically he had -- he had the
15 gun. I mean, he's basically saying he gave me the gun;
16 the last time he seen the gun, he gave to me.

17 Q Okay. Did you want to call Mr. Walker -- in fact,
18 did you want to call Mr. Crews?

19 A I mean, I feel like it should have been
20 investigated, you know, what I'm saying, to the point
21 that it could have been a better strategy or I could
22 have had a better understanding on what was really going
23 on, you know what I'm saying, about the deal, you know
24 what I'm saying, the stipulation.

25 Q Because it's your understanding is that if there

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1 had been testimony of somebody who had to come before
2 the person was shot, correct?

3 A Sir, can you repeat that again, please.

4 Q Well, you would have wanted the jury to hear that
5 Justin Crews had the gun.

6 A Basically. Yes, sir. Yes, sir.

7 Q Yeah.

8 A Yes, sir.

9 Q And Justin Crews had stolen the gun from his
10 father. Is that correct?

11 A Yes, sir.

12 Q Okay. And it was your understanding that there was
13 some kind of deal? Is that --

14 A Yeah. It was like, a deal, like, impeachment,
15 basically. You know what I'm saying? Like a deal like
16 as far as he cannot come to my trial and say he gave me
17 the gun.

18 Q Um-hmm.

19 A And he and all this. Basically it was just like, a
20 deal, like a stipulation.

21 Q Okay. Okay. And we've discussed with Mr. Walker,
22 we've discussed some of the concerns regarding
23 preserving the objection for the argument about your
24 Doyle violation. And are there other -- are there other
25 concerns that you have about his representation?

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1 A Yeah. I feel like -- I feel like my whole due
2 process was violated.

3 Q Why is that?

4 A I mean, from the get-go, you know, cause I been
5 sitting in the County, but I put in two fast, speedy
6 trials, you know. And nobody never answered with me and
7 stuff, you know. And you know, just using all reliable
8 witnesses, preparing, you know. But basically, the
9 ineffective assistance of counsel. You know what I'm
10 saying? I feel like that was ineffective a lots of
11 things, strategies. Like, when I'm sitting in the
12 court, you know how they got two lawyers; and Ms. Lauren
13 Carroway was in there, and she like, what is doing,
14 like, object. And he never objected to the things he
15 was supposed to object to, and he just waited. And --
16 and when it got back to the point of preserving grounds
17 for my appeal, they're basically saying, well, his
18 objection was untimely.

19 Q Um-hmm.

20 A So I feel like I ain't had a fair trial from the
21 get-go.

22 Q Okay.

23 MR. FALK: Your Honor, we have no further
24 questions.

25 THE COURT: Any cross?

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1 MR. NEELY: Nothing from the State, your Honor.

2 THE COURT: Thank you, Mr. Scantling.

3 A All right, sir. Hey, um, I wanted to see, sir --
4 never mind. Never mind. I want to raise a issue.

5 MR. FALK: Oh, I'm sorry.

6 A If it was all -- if it was all right with you all,
7 with the Court?

8 THE COURT: I'll allow you the question, but I'm
9 going to --

10 MR. FALK: I thought I had -- I thought I invited
11 that.

12 THE COURT: -- allow cross to be re-opened, if Mr.
13 Neely --

14 MR. FALK: Sure.

15 JERRY L. SCANTLING

16 CONTINUE DIRECT EXAMINATION BY MR. FALK:

17 Q Was there something else you wanted to say?

18 A I mean, with the witness, they should have been no
19 -- the jury should have knew that they's -- Brittany
20 Raines is a employee of the State. They should have
21 knew that she been testifying on people, and she's a
22 jailhouse informant, and you know, she had cases. I
23 mean, you know what I'm saying? There wasn't -- it was
24 stuff that had been never brought up.

25 Q Okay.

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1 A I mean, I feel like the investigation with their
2 own investigators was saying we never really basically
3 thoroughly invest -- investigated the scene of the
4 crime. That was mentioned.

5 And about my stories being switched up, it's
6 because he been lying to me from the get-go. He
7 admitted that he was lying to me from the get-go. You
8 know, and my story never -- my story was never I was
9 with Mr. Green. My story was I saw the guy and he
10 stopped the truck, and he asked did I want to ride with
11 him. And I said, no, I'm straight. And I went my way,
12 and he went his way.

13 I never said that I been with this man, hanging
14 with this man, or none of that. And he made it seem,
15 like, paint-- was picture painted like, you know, I'm
16 hanging with this man, basically, like, okay, I had to
17 been the one that did it, cause such-and-such; I seen
18 him at this such-and-such time. And then, okay, I'm the
19 one had to did it because I seen him at this time, when
20 it was hours, you know what I'm saying, after my
21 statement that, you know what I'm saying, that they
22 found this guy dead. And it was mentioned like he's a
23 pedophile and a pervert. So, I basically said, you
24 know, I feel like, you know, he was engaged in a risky
25 behavior. I really saying that he could have, you know

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SCANTLING - CROSS

1 what I'm saying, he just messed around and messed with
2 the wrong person, you know what I'm saying, from his mop
3 [[sic], you know what I'm saying, that he probably got
4 his own head busted, basically. You know what I'm
5 saying. Basically.

6 MR. FALK: Thank you.

7 THE COURT: Any questions to the witness in
8 response to those additional questions?

9 MR. NEELY: Just one.

10 JERRY L. SCANTLING

11 CROSS-EXAMINATION BY MR. NEELY:

12 Q Your attorney did argue in his closing argument
13 that the jailhouse snitches were not credible because of
14 their criminal history and their history of giving
15 information to the police. Do you remember that?

16 A I have no recall that. I mean, it would never -- I
17 mean, it wasn't never -- I don't -- where's that in the
18 motion?

19 Q Page 649, on the record of appeal. Lines 19 to 24.
20 Line 19 to 24.

21 A Yes, sir. Yeah, I just -- I just had to recall my
22 memory. It just -- from my understanding, you know, I
23 just wanted, you to know what I'm saying, I felt like
24 they should have been known. I mean, it had never been
25 brought to dispute. It's testifying on people to get

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1 off charges, basically. They always end up testifying.
2 They always end up with charges, and the testifying on
3 somebody in the -- in the case, basically what I'm
4 saying. And they had charges just somehow disappear, or
5 they never went -- went, or whatever, you know.

6 It was at the time that they said the Fed -- they
7 waiting on the Feds, but the State picked it up or
8 something. You know what I'm saying? The Feds ain't
9 wanting -- wanting them no more and all that. And I was
10 just saying that I just wanted that not to be left out.
11 That, you know, they always, somehow, they was talking,
12 in people's cases and with charges. So, that's
13 basically unreliable witness, basically. That's a
14 unreliable. I just wanted to put that out there, you
15 know.

16 Q And that's what your attorney argued?

17 A Okay.

18 COURT REPORTER: I'm sorry. What was your answer?

19 *That's what your attorney argued?* What was your answer?

20 A Yes, sir.

21 MR. NEELY: That's all the questions I have.

22 MR. FALK: No further witnesses, no re-direct.

23 THE COURT: Okay.

24 MR. FALK: Your Honor, could I just make some
25 points on the law, in summary?

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ARGUMENT

1 THE COURT: Okay. Hold it. Thank you, Mr.
2 Scantling.

3 JERRY SCANTLING: All right.

4 THE COURT: You can go back to the table.

5 JERRY SCANTLING: All right.

6 ARGUMENT:

7 THE COURT: All right. Any summation?

8 MR. FALK: Yes, your Honor. I'm really trying to
9 track the sort of appellate arguments in this case.
10 David Alexander filed a merits brief. He raised two
11 issues. One was whether trial -- whether the Court was,
12 you know, abused its discretion in not granting a
13 mistrial. And the other issue, and the first issue that
14 it raised was the fact, well, was the -- of the *Doyle*
15 violation that was made during the closing argument.

16 The State's brief, they certainly harped on the
17 fact that the issue in closing argument was not
18 preserved. And if you read the Supreme -- the Court of
19 Appeals opinion on this, that's the only comments they
20 made, was the issue was not preserved.

21 And if I could just read from *State versus Black*,
22 which is 462 Southeast 2nd 311. And the South Carolina
23 cite is -- maybe there's not a parallel South Carolina.
24 I'm sorry, I don't have a South Carolina cite. But
25 anyway, it's Footnote 7 on 315 of the Westlaw cite:

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1 It is a fundamental principle that a
2 contemporaneous objection is required at trial
3 to properly preserve an error for appellate
4 review.

5 Then they have the cites.

6 The proper course to be pursued when
7 counsel makes an improper argument is for
8 opposing counsel to immediately object, and
9 to have a record made of the statements and
10 language complained of, and to ask the court
11 for a distinct ruling thereon.

12 Failure to object when the evidence is
13 offered constitutes a waiver of the right
14 to object. An issue which is not properly
15 preserved cannot be raised for the first time
16 on appeal.

17 Anyways, the State, in its opinion, was quoting the
18 Black case, and I guess we can read between the lines on
19 what they're saying here, is that it certainly looks
20 like an issue that appellate defense was a meritorious
21 issue of the fact that there was a Doyle violation which
22 obviously is something that is speaking under
23 constitutional rights to remain silent. The argument
24 that it's a Doyle violation is a constitutional
25 deprivation, and that the only reason why that the Court

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ARGUMENT

1 did not address whether or not it was a *Doyle* violation
2 was because the objection was not properly preserved.
3 And I think it can be pretty well assumed that that was
4 error on trial counsel's part, and not a question of
5 trial strategy; and that, as a result of the trial
6 counsel's trial strategy, the objection wasn't
7 preserved. So we think that my client is entitled to
8 the relief on the fact that it was a close case, and the
9 Court -- the jury was able to hear on the statement
10 which we believe is a *Doyle* violation. And the Court of
11 Appeals would certainly argue that the only reason why
12 it didn't address the merits of the issue was because it
13 was not properly preserved.

14 THE COURT: Thank you, Mr. Falk. Mr. Neely.

15 MR. NEELY: I don't think it is a *Doyle* violation.
16 I mean, a *Doyle* violation is, you know, *post-Miranda*
17 silent and commenting on the defendant's right to invoke
18 his *Fifth Amendment* right not to speak. In this case,
19 we have a defendant that's saying -- I mean, the
20 statement that was quoted in the closing argument was, *I*
21 *ain't going to say it was me; I ain't going to say it*
22 *wasn't me*. That's not exactly invoking a right to *post-*
23 *Miranda* silence.

24 And in fact, as Counsel testified on the stand, it
25 wasn't the silence that was the applicant's problem. It

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ARGUMENT

1 was the fact that he spoke to law enforcement three
2 separate times and gave three separate stories. The
3 first being, you know, I don't know what you're talking
4 about; I wasn't there. The second being, well, I was
5 there but, you know, I don't know what you're talking
6 about. And the third being, all right, well, yeah, I
7 was there, and I spoke with the guy that night, but
8 that's it. And so, that was one of the words that --
9 the words from his mouth were the worst evidence against
10 him.

11 So, I don't believe it's a *Doyle* violation at all.
12 I appreciate Counsel made the argument. Obviously, the
13 Court didn't find it persuasive at the time he made the
14 argument, and I don't think the Court of Appeals Will
15 find it persuasive. I think that for applicant to prove
16 his case on a PCR level for punishment that should have
17 been appealed is, they just show that the appeal would
18 have been granted. And in this case, I don't think the
19 appeal would be granted. I don't think trial counsel --
20 trial judge thought it persuasive either.

21 THE COURT: Okay. Thank you. Mr. Falk, I'll give
22 you the last word.

23 MR. FALK: My client was confronted with a piece of
24 evidence, and he says, I'm not going to say that's me.
25 It seems to me that when somebody asks you a question,

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ARGUMENT

1 were at the scene, and the response is, I'm not going to
2 say that's me, then, I think that's certainly invoking
3 the right not to admit to being at the scene of the
4 crime. I mean, and we do think it's a *Doyle* violation.
5 We think this is an issue that the Court of Appeals
6 should hear.

7 THE COURT: Thank you. All right. I will read the
8 material submitted. I'm going to take this under
9 advisement. I'll have my law clerk email you my
10 decision. Thank you, gentlemen.

11 MR. FALK: Your Honor, do you want to see the
12 appellate briefs?

13 THE COURT: If you'd like to make those a part of
14 the record, that's fine.

15 MR. FALK: We'll submit these in. I'll provide the
16 file appellate brief and the --

17 THE COURT: Have you seen these, Mr. Neely?

18 MR. NEELY: Yes, your Honor.

19 THE COURT: Okay. Okay. All right. I'll make
20 those part of the package of materials.

21 MR. FALK: Thank you, your Honor.

 END PROCEEDING 11:49 A.M.

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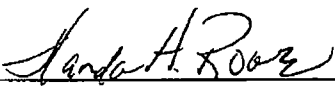
CERTIFICATE OF REPORTER

FEBRUARY 15, 2017 TRANSCRIPT OF PCR HEARING
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing Transcript of PCR Hearing is a true and accurate record of the proceedings had on said date, in the case of Jerry L. Scantling versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2015-CP-07-02010; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature December 24, 2017.



Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Case no. 2015-CP-07-2010

Jerry L. Scantling, #259057,

v.

ORDER OF DISMISSAL

State of South Carolina,

Applicant.

This Court convened an evidentiary hearing into the matter on February 15, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Matthew L. Walker Counsel, Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted by the June 2010 term of the Beaufort County Grand Jury for Possession, Concealing, or Disposing of a Stolen Vehicle 2010-GS-07-1315. Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for Murder, Possession of a Weapon During the Commission of a Violent Crime, and Armed Robbery. The State was represented by Deputy Solicitor Sean Thornton, Esquire, of the Solicitor's Office for the Fourteenth Judicial Circuit. On February 25, 2013, the Applicant proceeded to a jury trial

RSS

pursuant to which he was found guilty as indicted. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for 5 years for Possession, Concealing, or Disposing of a Stolen Vehicle, life without parole for Murder, 5 years for Possession of a Weapon During the Commission of a Violent Crime, and life without parole for the count of Armed Robbery. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 1967. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Scantling, O No. 2015-UP-363 filed on July 15, 2015. The Remittitur was issued on August 3, 2015.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. "Ineffective Assistance of Counsel"
 - a. "Abuse of Discretion"
 - b. "Plain error"
 - c. "Perjury"
 - d. "Misrepresentation"
 - e. "Failed to investigate"
2. "Prosecutorial Misconduct"
 - a. "Shifting the burden of proof, vouch sic"

III. SUMMARY OF FACTS

On the early morning of May 23, 2010, Jerry Scantling Applicant shot and killed the victim, Leonard Green, near the Pinckney Island landing in Beaufort County.

The victim suffered two gunshot wounds. R. 596. The first entered on the left side of the abdomen, went through portions of the small and large intestines, then into the muscle and fractured the right hi R. 596-97. The bullet was recovered from the right hi R. 597. The second gunshot wound was almost in the middle of the back. R. 597. It struck the kidney, the small intestine, and went through the stomach. R. 597-98. The forensic pathologist testified that it

RSS

appeared the victim suffered two scrapes on the head, one on the upper left side of the back of the head, and the other kind of on the back left side of the head. R. 598. There were also abrasions to the victim's nose. R.598-99. Several other lacerations were located on the victim's scalp and in the face. R.599. The pathologist indicated that some of the abrasions and lacerations could have been caused by blunt force trauma from a sharp object or a blunt object with an edge. R. 599.

Several witnesses testified that Applicant was driving a red or burgundy Ford F-150 sometime after the shooting. William Barnes testified that on May 23, 2010, a man stopped by his apartment and offered to sell him the truck. R. 188-89, 195. Barnes noted the man told him that he got the truck from Savannah. R. 192. Barnes also noted that the man requested that Barnes throw some clothes that were in a briefcase into the trash for him, but Barnes refused. R.190-91. In the courtroom, Barnes identified Applicant as the man who attempted to sell him the truck. R. 193-94.

Ishmil Frazier, another resident at the apartment complex, testified that on May 23, 2010, he saw a guy at the complex in a truck that he recognized. R. 202. Frazier also indicated that it was a red Ford truck. R.203-04. In the courtroom, Frazier also identified Applicant as the man he saw driving the truck. R. 205-06.

Derik King testified that he was at the apartment complex on the early morning of May 23, 2010. R. 213-14. He indicated that a red truck pulled in recklessly into the complex. R. 215. King noted that the man driving the truck also attempted to sell the truck. R. 215-16. In the courtroom, King also identified Applicant as the person who was driving the red truck that morning. R. 216-17. King also testified that he saw Applicant driving a black Monte Carlo at a later date. R. 217-18.

Altovise Green also lived in the same apartment complex as Barnes and Frazier. See R. 228. She saw Applicant cleaning out a big pickup truck in front of a dumpster at the apartment complex around 2:30 a.m. on May 23. R.229-30, 233. Green also noted that she saw Applicant later that morning in a black Monte Carlo that kept breaking down. R. 230. Green also testified that she recalled Applicant had flashed a pistol when he was around a group at some other date. R. 231-32.

Frazier, King, and Green also identified Applicant in photo lineups. R. 394-97. The victim's cell phone records indicated that calls from the phone were placed to a number associated with Donald Cooper and Ramona Coleman between 11:57 m. on May 22 and 2:37 a.m. on May 23. R.390-91, see R. 407-08.

A Hi-Point .45 caliber pistol was recovered from the scene. R. 90, 92. It was stipulated that the gun was stolen from the home of its owners. R. 70, 93. Blood on the firearm was determined to belong to the victim. R. 495-98. The projectile recovered from the victim's body was consistent with being fired by a Hi-Point .45 firearm, but could not be conclusively matched to the firearm that was recovered from the scene. R. 485-86, 487-90.

Several items with the victim's name were recovered from the dumpster at the apartment complex. R. 262-64. A pair of black headphones with Applicant's DNA was recovered from the murder crime scene. R. 171, 257-59, 298, 499-501. The victim's cell phone was located at a Wal Mart in Savannah. R. 266, 338-39. The victim's truck was also found in Savannah. R. 270.

Applicant was arrested in a stolen Monte Carlo from Savannah. R. 299, 379-81. A 1986 Monte Carlo average retail value was \$5150. R. 591-92.

Applicant made several statements to both law enforcement and to two individuals at the Beaufort County Detention Center.

Captain Robert Bromage testified that he interviewed Applicant three times. R. 410. During the first interview, which occurred on May 27, 2010, Applicant initially denied knowing the victim. R.412-13. Applicant eventually admitted to running into the victim twice on the Saturday the victim disappeared, once in the late morning and once between 11 and 12 that night. R. 413. He asserted that he saw the victim at the Wal Mart on Hilton Head. R. 413. The second time would have been within a couple hours of the victim's murder. R. 414. Applicant had suggested the victim was gay and that the victim had made an advance on Applicant. R. 414. Applicant eventually admitted that he had asked for a ride from the victim in the morning meeting, but he did not get a ride from him. R. 414. According to Bromage, he later admitted that he did receive a ride from the victim to an apartment complex. R. 416.

Applicant indicated that when he saw the victim on the night of May 22, the victim was trying to get Applicant to go with him to Ridgeland. R. 415, 417. Applicant also admitted to using the victim's cell phone. R. 417. He did not provide law enforcement with the name of the person he called. R. 417, 418. Applicant did admit to stealing the Monte Carlo in Savannah. R. 416.

In the second interview, conducted on May 28, 2010, Applicant identified the victim's truck in a photograph. R. 419. Applicant also identified the victim in a photograph. R. 419. Applicant again admitted that he stole the car from Savannah, but he also denied using the victim's cell phone and denied being in the victim's truck. R. 420. According to Bromage, during the second interview, Applicant maintained that he saw the victim between 11 and 12 on May 22. R. 421. Applicant stated that he and the victim had a three to five minute conversation in which the victim attempted to convince Applicant to go to the victim's house with him. R. 421. Applicant indicated that he declined the victim's invitation. R. 421.

In the third interview, which was done on the day Applicant was charged with the murder, Bromage showed Applicant a print made from a still from a surveillance video of the outside of a Wal Mart in Savannah on May 23, 2010. R. 421-22. Bromage indicated that he knew the individual in the print was Applicant. R. 422-23. Applicant would not identify the individual in the still. R. 423.

Brittany Raines, Applicant's ex-girlfriend who was being held at the Beaufort County Detention Center in May 2011, testified that she communicated with Applicant through a vent in a wall between her cell and Applicant's cell. R. 533-35. She testified that Applicant told her that he killed a gay man with a Highpoint .45 caliber gun. R. 535. Applicant stated that he shot the man twice, and that he pistol whipped the man. R. 535. According to Raines, Applicant admitted to her that he also stole the man's truck and went to Savannah. R. 535. Raines also indicated Applicant stated he had used the victim's cell phone to make a few phone calls, including one to Donald Cooper. R. 536. Raines also testified that Applicant informed her that he stole a Monte Carlo to return to Beaufort. R. 535-36.

Cynthia Padgett, Brittany Raines' mother who was also incarcerated at the Beaufort County Detention Center in May 2011, testified she also talked with Applicant through a vent in the wall at the detention center. R. 545-47. Padgett noted that Applicant told her that he met the man he shot through Donald Cooper. R. 549. Applicant had indicated that the man worked with Donald Cooper at Pizza Hut. R. 549. Applicant had stated the man was shot, and Applicant took the man's truck to Savannah to sell it. R. 549-50. Applicant also stated that he stole a car to come back to South Carolina, and he had the man's cell phone. R. 550. According to Padgett, Applicant had told her that the altercation between him and the man occurred on Joe Frazier Road, and the police found the man's body at Pinckney Island between the bridges. R. 550.

IV. SUMMARY OF TESTIMONY

Counsel testified he spoke with Applicant numerous times. Although he could not recall with specificity how many. He believed the solicitor's comment during his closing argument was a Doyle violation, but the court ruled it was not preserved. The timing of his objection on the alleged Doyle violation was a matter of trial strategy. He wanted to object outside the presence of the jury. The defendant's statements to law enforcement, combined with the forensic evidence, provided overwhelming evidence of guilt.

Applicant testified the State offered a 30 year plea offer. He wanted a better strategy from Counsel. Applicant wanted the owner of the gun to testify. Applicant agreed Counsel properly impeached the jailhouse informant.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 1985. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 1984. The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant's testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by the alleged deficiencies. This Court finds Counsel properly

prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant. This Court finds Counsel rendered adequate assistance and exercised professional judgment his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to investigate.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated the bedroom being messed up and bruises is spurious. Applicant did not prove what Counsel would have found if Counsel had investigated. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate or that Applicant was prejudiced by Counsel's lack of investigation. Accordingly, this Court denies and dismisses this allegation.

2. Doyle violation.

The solicitor's comment was not improper. Therefore, this Court finds Counsel was not deficient for failing to properly preserve the objection for appeal. The court has previously held an issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404

S.C. 465, 475, 746 S.E.2d 41, 47 (2013). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability. "Since the [issue] was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in [applicant's] PCR claim. When the defendant claims counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded." *Id.* at 465, 746 S.E.2d at 47. Therefore, this Court must determine whether the underlying claim was meritorious and there was a reasonable probability it would have resulted in reversal and a new trial.

During his closing argument, the solicitor stated:

Who else is seen at Wal-Mart? **I ain't going to say it's me and I ain't going to say it's not.** Is this picture fantastic? No, it's blurry. Did Jerry Scantling tell Bob Bromage, no, man, I wasn't in Savannah; that's not me. No, he didn't. What did he say? **I ain't going to say it's me and I ain't going to say it's not.** What does he tell Captain Bromage?

R. 629, ll 11-17.

This Court finds the statements made by the solicitor were not comments on the Applicant's exercise of his right to remain silent. In Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 1976, the United States Supreme Court reversed a drug conviction where the state impeached a defendant using his post-arrest silence. 426 U.S. at 619-20. In reaching this conclusion, the Court premised its ruling on preserving the safeguard Miranda warnings place on one's Fifth Amendment rights, stating, "while it is true that the Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings." *Id.* at 617-18 emphasis added. Further explaining their ruling, the Court,

in footnote ten, noted the error in Doyle stemmed from a fear that one's exercise of their right to silence could, via subsequent impeachment at trial, be perceived by the jury as evidence of guilt. Id. at 619 n.10. It was in this context that the Court found "it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." Id. at 618.

In footnote eleven of Doyle, the Court illustrated other uses of post-arrest silence which, it explained, did not violate Due Process:

It goes almost without saying that the fact of post-arrest silence could be used by the prosecution to contradict a defendant who testifies to an exculpatory version of events and claims to have told the police the same version upon arrest. In that situation the fact of earlier silence would not be used to impeach the exculpatory story, but rather to challenge the defendant's testimony as to his behavior following arrest.

Id. at 620.

Unlike the case in Doyle, the comment made by the solicitor here were not a comment on the defendant's exercise of his right to remain silent. Instead, the solicitor was commenting on the statement made by Applicant after he was given his Miranda warnings.

While Doyle bars the use against a criminal defendant of silence maintained after receipt of government assurances, Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 1976, a defendant who voluntarily speaks after being given Miranda warnings has not heeded the admonitions of the government and has not in any way relied on governmental assurances, but to the contrary, has chosen not to remain silent.

State v. Kimsey, 320 S.C. 344, 346, 465 S.E.2d 128, 130 Ct. Ap 1995.

Applicant's contention the statement was an invocation of his right to remain silent is not supported by the record. As noted by the trial court and the solicitor, the statement itself is ambiguous as to whether Applicant wanted to end the interrogation or invoke his right to silence. It merely reflected that Applicant did not want to identify the person in the still he was shown

from the surveillance video. Since Applicant's statement was not an invocation of his right to remain silent, it was fair for the solicitor to comment on the statement during his closing argument because it was evidence presented at trial. See Copeland, supra noting solicitor's closing argument must be confined to evidence in the record.

Applicant never denied that he was in Savannah. To the contrary, Applicant admitted that he stole the Monte Carlo in Savannah. R. 416. Second, the question that prompted the statement from Applicant was not whether he was in Savannah; it was whether he could identify the person in the still photo. In light of the testimony regarding the statements already made by Applicant regarding the fact that he was in Savannah, this Court finds the solicitor's comment was a fair comment based upon the evidence presented at trial.

This Court also finds any error was harmless pursuant to the standard set forth in Brecht v. Abrahamson, 507 U.S. 619 1993 and the factors announced in State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 1996. In particular, the comment during closing argument on the statement at issue was very limited. Furthermore, the evidence supporting Applicant's guilt was overwhelming.

In Brecht v. Abrahamson, 507 U.S. 619 1993, the United States Supreme Court held that Doyle violations squarely fit into the category of Constitutional violations termed by the Court as "trial error." 507 U.S. at 529. Trial error "occur[s] during the presentation of the case to the jury," and is subject to harmless-error analysis because it "may ... be quantitatively assessed in the context of other evidence presented in order to determine [the effect it had on the trial]." Arizona v. Fulminante, 499 U.S. 279, 307-308 1991. Accordingly, on direct review, an alleged Doyle violation is subject to the harmless error standard first laid out in Chapman v. California, 386 U.S. 18 1967 that the error in question must be "harmless beyond a reasonable doubt."

Brecht, 507 U.S. at 630; see State v. Pickens, 320 S.C. 528, 530, 466 S.E.2d 364, 366 1996 holding in the context of a Doyle violation, the Court applies a harmless-error analysis. In Pickens, our Supreme Court elaborated on the relevant factors a court should consider when reviewing whether a Doyle violation is harmless, stating, “[t]he record must establish the reference to the defendant’s right to silence was a single reference, which was not repeated or alluded to; the solicitor did not tie the defendant’s silence directly to his exculpatory story; the exculpatory story was totally implausible; and the evidence of guilt was overwhelming. Id. at 531, 466 S.E.2d at 366.

Based on the factors outlined in Pickens, this Court finds the alleged Doyle violation was harmless. First, there was only one reference with respect to Petitioner’s invocation of his right to remain silent, specifically the reference by Captain Bromage. Additionally, the State never commented upon or alluded to Petitioner’s invocation of his right to remain silent in argument. Instead, the solicitor only commented on the statement that Applicant did make during his third interview. Petitioner’s guilt was overwhelming. First, he admitted to law enforcement on several occasions that he stole the Monte Carlo while he was in Savannah. R. 416. Thus, there is no question that he was guilty of possession of a stolen vehicle. Second, there was overwhelming evidence establishing Applicant was guilty of murder, armed robbery, and possession of a weapon during the commission of a violent crime. Two witnesses testified that Applicant admitted to them that he shot and killed the victim. Ms. Raines testified that Applicant had told her that he shot the man twice, and that he pistol whipped the man. R. 535. The pathologist testified that the victim suffered from two gunshot wounds, and that he had abrasions and lacerations on his face that was consistent with being struck by a sharp object or a blunt object with a sharp edge. R.596-99. Ms. Raines also testified that Applicant told her that he shot the

victim with a Hi-Point firearm. R. 535. The firearms analyst testified that the projectile recovered from the victim was shot by a Hi-Point firearm, and that the projectile was consistent with being fired by the Hi-Point firearm that was found at the scene. R. 485-86, 487-90. According to Raines, Applicant admitted to her that he also stole the man's truck and went to Savannah. R. 535. The victim's truck was found in Savannah. Raines also indicated Applicant stated he had used the victim's cell phone to make a few phone calls, including one to Donald Cooper. R. 536. Law enforcement also found the victim's cell phone, and they were able to determine that calls were placed to a phone number associated with Donald Cooper between 11:57 m. and 2:33 a.m. R. 390-91. Raines also testified that Applicant informed her that he stole a Monte Carlo to return to South Carolina. R. 535-36. Applicant was caught in a Monte Carlo that he admitted to law enforcement was stolen.

Ms. Padgett testified Padgett noted that Applicant told her that he met the man he shot through Donald Cooper. R. 549. Applicant had indicated that the man worked with Donald Cooper at Pizza Hut. R. 549. The victim did, in fact, work with Donald Cooper at a Pizza Hut. R. 403-04. Applicant told Padgett the man was shot, and Applicant took the man's truck to Savannah to sell it. R. 549-50. Applicant also stated that he stole a car to come back to South Carolina, and he had the man's cell phone. R. 550. According to Padgett, Applicant had told her that the altercation between him and the man occurred on Joe Frazier Road, and the police found the man's body at Pinckney Island between the bridges. R. 550. The victim was found at the Pinckney Island landing.

Four eyewitnesses testified that they saw Applicant in a truck that fit the description of the victim's pickup truck very early in the morning after the shooting was believed to have occurred. R. 188-94, 202-06, 213-16, 228-30, 233, 394-97. All four eyewitnesses identified

Applicant as the driver of the truck, and items belonging to the victim were found in a dumpster where one of the eyewitnesses saw Applicant cleaning out the truck. R. 188-94, 202-06, 213-16, 228-30, 233, 262-64, 394-97. Applicant was also caught on surveillance video outside a Wal-Mart in Savannah where the victim's cell phone was located, and also near where the victim's truck was located. Headphones with Applicant's DNA were found at the murder scene. R. 171, 257-59, 298, 499-501.

Therefore, this Court finds Applicant has failed to prove the underlying claim was meritorious or there was a reasonable probability it would have resulted in reversal and a new trial. Accordingly, this Court denies and dismisses this allegation.

B. Prosecutorial Misconduct and False Testimony

Applicant's allegation that there was prosecutorial misconduct and false testimony is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20b 2003. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 1974. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 1993. Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 1989. Further, Applicant also failed to provide any credible evidence the State offered any evidence in bad faith or elicited perjury testimony. Applicant's own assertion a witness failed to tell the truth is not sufficient evidence on which to base this allegation. No evidence was presented or testimony elicited proving the State used false testimony in convicting Applicant.

Therefore, this Court finds Applicant has failed to show why this allegation is appropriate for PCR. Further, this Court finds Applicant failed to prove the State presented any false testimony. Accordingly, this Court dismisses this allegation.

C. Abuse of Discretion and Plain Error

Applicant's claims of Abuse of Discretion and Plain Error must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"Abuse of Discretion" and "Plain Error" are not cognizable claims, but are instead are appropriate for direct appeal. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a

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substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues on appeal. His failure to do so has waived this allegation as a ground for relief.

Accordingly, this Court denies and dismisses these allegations for failing to state a cognizable claim for which relief can be granted.

VI. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of September, 2017.



R. SCOTT SPROUSE
Presiding Judge
14th Judicial Circuit

Walhalla, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701326

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about May 23, 2010, the Defendant, Jerry Scantling, did feloniously, willfully, and with malice aforethought, kill and murder the victim, Leonard Green, by means of shooting the victim with a handgun, and that Leonard Green did die in Beaufort County as a proximate result thereof on or about May 23, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

300

WITNESSES

Adams (BCSO)

ARREST WARRANT NUMBER

J338954

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

JUL 21 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0701326

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Jerry Scantling

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701327

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Beaufort County, South Carolina, on or about May 23, 2010, the Defendant, Jerry Scantling, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of murder and/or armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

J. Adams (BCSO)

ARREST WARRANT NUMBER

J338955

ACTION OF GRAND JURY

True Bill

Bonnie P. Ponder
Foreperson of Grand Jury
Date:

JUL 21 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0701327

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Jerry Scantling

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701328

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

That on or about May 23, 2010, in Beaufort County, South Carolina, at Fording Island Road, Bluffton, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, Jerry Scantling, did take and carry away goods and/or monies from the person or immediate presence of Leonard Green with the intent to permanently deprive him of possession thereof, to wit: a Ford pick-up truck and for cellular telephone; in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

887

WITNESSES

J. Adams (BCSO)

ARREST WARRANT NUMBER

J338956

ACTION OF GRAND JURY

Brian P. Pocher
Foreperson of Grand Jury
Date:

JUL 21 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701328

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Jerry Scantling

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon**

SC Code: 16-11-0330(A)
CDR Code:0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.