

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

BOBBY A. GILBERT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001981

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) COUNTY OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.)

BOBBY ALEXANDER GILBERT)
DEFENDANT.)

TRANSCRIPT OF RECORD
08-GS-16-1031, 1032, 1039
April 27, 2009
Darlington, South Carolina

BEFORE:

THE HONORABLE HOWARD P. KING, JUDGE; AND JURY

APPEARANCES:

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PATTI MCKENZIE, ESQ.
Assistant solicitors
Attorney for the State

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Attorney for the Defendant

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Circuit Court Reporter

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1 **THE COURT:** All right, Mr. Redmond, what's the first
2 matter?

3 **MR. REDMOND:** May it please the Court, Your Honor,
4 before you at this time seated at the Defense table is
5 Bobby Gilbert. That's on indictment 2008-GS-16-1013 for
6 murder: 2008-GS-16-1032, for larceny in excess of five
7 thousand dollars; and finally, 2008-GS-16-1039, that being
8 for armed robbery. He is represented by Trey Watts and
9 the State is ready to proceed with the trial of this case.

10 **THE COURT:** All right, ladies and gentlemen of the jury
11 panel, if you would give me your attention. What I'm
12 going to tell you is not evidence in this case. It is
13 simply the allegations of the indictment, but I tell you
14 what the allegations are in the indictment so that you can
15 determine if you know anything about the case or anything
16 that would prevent you from being able to serve as a juror
17 in this case, if you would have any kind of conflict of
18 interest. As I say, this is not evidence. It is simply
19 the allegations of the indictment, but the State does
20 charge the defendant Bobby Gilbert with an indictment
21 number 08-1031 with the crime of murder alleging that he
22 did by himself or with Jamie Gilbert or Christopher
23 Samuel, or any combination thereof, in the County of
24 Darlington on or about January 17th, 2007, feloniously and
25 willfully and with malice aforethought kill one Tyrone

1 Cornelius Brown with blunt force trauma to the head and by
2 running over the victim with an automobile and that
3 Mr. Brown died as result of these injuries and charges are
4 one of murder.

5 Also, he is charged in indictment 08-GS-16-1039 with
6 the crime of armed robbery alleging also that on January
7 the 17th, 2007, that Mr. Bobby Gilbert did with Mr. Jamie
8 Gilbert and Christopher Samuel, or combination of them,
9 violate South Carolina law that while armed with a deadly
10 weapon did feloniously take from the person in the
11 presence of Tyrone Cornelius Brown by means of force,
12 intimidation, certain moneys, property, specifically a
13 2002 Honda Accord and a bank card. The charge is one of
14 armed robbery. And then in indictment 08-GS-16-1032 he is
15 charged with larceny in excess of five thousand dollars,
16 again, with Jamie Gilbert and Christopher Samuel on
17 January 17th, taking the 2002 Honda Accord with intent to
18 deprive the owner permanently of such property, the owner
19 being Mr. Tyrone Cornelius Brown. Those are the charges
20 against the defendant, and to these charges the defendant
21 has pled not guilty. The defendant Mr. Bobby Gilbert is
22 represented by Mr. Watts.

23 Mr Watts, would you stand and introduce yourself to the
24 jury and have your client stand and face the jury please.

25 MR. WATTS: Good morning, ladies and gentlemen, my name

1 is Trey Watts. I also go by W.S. Watts, the third. I am
2 a partner with Smith Watts and Associates in Hartsville.
3 With me is Bobby Gilbert. I am representing him before
4 you today. Also associated with our firm are Gwen Hunt
5 who is a criminal attorney in our office. My partner is
6 Karl Smith.

7 THE COURT: Thank you. You may be seated. The State
8 of South Carolina is represented by Mr. Kernard Redmond.

9 Mr. Redmond, would you stand, introduce yourself, give
10 the name of any lawyers with whom you'll be working.

11 MR. REDMOND: Thank you, Your Honor, may it please the
12 Court, ladies and gentlemen, my name is Kernard Redmond.
13 I'm deputy solicitor for the Fourth Circuit. That
14 comprises Darlington, Dillon, Marlboro, Chesterfield
15 County. Originally from Hartsville seated with me is
16 Hattie McKenzie. She is assistant solicitor with our
17 office as well seated in Darlington. Thank you, Your
18 Honor.

19 THE COURT: Thank you. All right, ladies and
20 gentlemen, before we select the jury in this case I need
21 to ask you some questions. Please give your attention to
22 these questions, and if any of them apply to you then
23 respond accordingly. Is any member of the jury panel
24 related by blood or connected by marriage to the defendant
25 Mr. Bobby Alexander Gilbert, if so please stand.

1 (There was no response.)

2 THE COURT: Is any member of the jury panel related by
3 blood or connected by marriage to the victim in this case,
4 Mr. Tyrone Cornelius Brown, if so please stand.

5 (There was no response.)

6 THE COURT: The following individuals may appear as
7 witnesses in this case, and this is a fairly extensive
8 witness list and I'm going to go over this. I would ask
9 that if any of the witnesses are present in court that if
10 you will stand when your name is called. Teresa Hennegan,
11 Norris Patterson, April Cooke of the Hartsville Police
12 Department, Andy Locklair of the Dillon County Sheriff's
13 Office -- Darlington County Sheriff's Office, I'm sorry.
14 Jamie Gilbert, Barbara Brooks, Janice Ross, M.D; Russ
15 Harrell, Darlington County Sheriff's Office; Colon Duncan,
16 SLED; Laurie Shacker, S-H-A-C-K-E-R of SLED; John
17 Ortuno of SLED; Jeff Parrott, formerly with SLED; Teresa
18 Hooks with SLED; Lilly Gallmon of SLED; Robyn Bryant,
19 Darlington County Sheriff's Office; Chuck Norton,
20 Darlington County Sheriff's Office; Rachel Chapman,
21 Darlington County Sheriff's Office; Heather Brumett,
22 B-R-U-M-E-T-T of the Horry County Sheriff's Office;
23 Christopher Samuels; Reese Ashley; Yeicha, Y-E-I-C-H-A,
24 Harriott, H-A-R-R-I-O-T-T; Lillian Pooler; Chaniqua,
25 C-H-A-N-I-Q-U-E, Pooler; Sarah Gilbert; Robert Gilbert;

1 Antonio Robinson. Thank you, you may be seated.

2 Is any member of the jury panel related by
3 blood or connected by marriage to any of the proposed
4 witnesses, if so, please stand.

5 (There was no response.)

6 THE COURT: Is any member of the jury panel close
7 personal friends of any of the parties, their lawyers, or
8 any of the witnesses whom I have read off to you, if so,
9 please stand.

10 Let's start with the gentleman in the red shirt. Yes,
11 sir, your name.

12 THE POTENTIAL JUROR: Paul.

13 THE COURT: And your number?

14 THE POTENTIAL JUROR: 50.

15 THE COURT: 50. All right, Mr. Hall, tell me what your
16 situation is.

17 THE POTENTIAL JUROR: Close personal friends with April
18 Cooke of the Hartsville Police Department.

19 THE COURT: All right, sir. The fact that Ms. Cooke
20 may appear as a witness in this case, would you be able to
21 evaluate her testimony same as you would any other
22 testimony, the demeanor of any other witness in this case,
23 and give that testimony such weight as it should deserve?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Would the fact that you are acquainted with

1 her cause you to give any more or less weight to her
2 testimony than you would any other witness?

3 THE POTENTIAL JUROR: No, sir.

4 THE COURT: And would you be able to put aside the fact
5 that you are acquainted with her and to give to the
6 Defendant and the State a fair and impartial trial based
7 on the evidence in this case?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: And would you do that?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: All right, thank you, sir.

12 All right, yes, ma'am, tell me your name please, ma'am.

13 THE POTENTIAL JUROR: Retha Church, 20.

14 THE COURT: 20. All right, Ms. Church, tell me what
15 your situation is.

16 THE POTENTIAL JUROR: I work with Robert Gilbert.

17 THE COURT: Work with who?

18 THE POTENTIAL JUROR: Robert.

19 THE CLERK OF COURT: The defendant.

20 THE COURT: All right. And that -- tell me who is --
21 who is that, Mr. Watts?

22 MR. WATTS: The father of the defendant, Your Honor.

23 THE COURT: Father of the defendant, all right.

24 Thank you, ma'am.

25 Yes, sir, blue shirt.

1 THE POTENTIAL JUROR: 43, acquaintance of Mr. Locklair.

2 THE COURT: I'm sorry?

3 THE POTENTIAL JUROR: I said 43 is the number and
4 acquaintance of Mr. Locklair, Officer Locklair.

5 THE COURT: Oh, okay. All right, would the fact that
6 Mr. Locklair may be a witness in this case, would you be
7 able to evaluate his testimony the same as you would any
8 other witness in this case?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: And would the fact that you're acquainted
11 with him prevent you from giving to the State and
12 Defendant a fair and impartial trial?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: You'd be able to set that aside and give
15 both sides a fair and impartial trial?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: Would you do that?

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: Thank you, sir.

20 Is any member of the jury panel related by blood or
21 connected by marriage to a member of the Darlington County
22 Sheriff's Department, the Hartsville Police Department, or
23 the State Law Enforcement Division? Any member of the
24 jury panel related by blood or marriage to a member of the
25 Darlington County Sheriff's Department, Hartsville Police

1 Department or the State Law Enforcement Division, if so,
2 please stand.

3 All right, yes, sir, let's take the lady in the black
4 dress please. Yes, ma'am, your name.

5 THE POTENTIAL JUROR: I have two ---

6 THE COURT: Tell me your name first.

7 THE POTENTIAL JUROR: Juror number 82, Kaitlyn Luther.
8 I have two cousins-in-law that are state troopers.

9 THE COURT: What's their job?

10 THE POTENTIAL JUROR: They're state troopers.

11 THE COURT: State troopers, okay. All right. Would
12 that fact prevent you from giving to both the State and
13 the Defense a fair and impartial trial based on the
14 evidence?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: Would you be able to set that aside and
17 decide the case based upon the evidence you hear in the
18 courtroom?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: And would you do that?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: Thank you, Ma'am. Yes, sir, green and
23 white striped shirt.

24 THE POTENTIAL JUROR: 69.

25 THE COURT: I'm sorry, I ---

1 **THE POTENTIAL JUROR:** 69. My aunt works with the
2 Hartsville Police Department, Marlene Johnson, works with
3 the Hartsville Police Department.

4 **THE CLERK OF COURT:** His aunt.

5 **THE COURT:** Would that fact keep you from giving to
6 both the State and the Defendant a fair and impartial
7 trial based on the evidence?

8 **POTENTIAL JUROR:** Yes, sir.

9 **THE COURT:** Is that a yes?

10 **THE POTENTIAL JUROR:** Sir?

11 **THE COURT:** Come up please, I can't hear you.

12 (WHEREUPON, potential juror approached the
13 Bench for an on-the-record discussion.)

14 **THE COURT:** All right, tell me, again, what's the —

15 **THE POTENTIAL JUROR:** Marlene Johnson, works with the
16 Hartsville Police Department.

17 **THE COURT:** Who works for the police department?

18 **THE POTENTIAL JUROR:** Marlene Johnson.

19 **THE COURT:** What are you — what's she to you?

20 **THE POTENTIAL JUROR:** My aunt.

21 **THE COURT:** Your aunt, all right. Now my question is,
22 does that -- would that fact prevent you from giving to
23 both the State and the Defense a fair and impartial trial?

24 **THE POTENTIAL JUROR:** No, sir.

25 **THE COURT:** Would you be able to put that aside and

1 decide this case based upon what you hear in this
2 courtroom?

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: Okay, all right. Thank you, sir.

5 (End of Bench conference.)

6 THE COURT: Yes, ma'am, lady in the white.

7 THE POTENTIAL JUROR: Elbony Horton.

8 THE CLERK OF COURT: 57, Your Honor.

9 THE COURT: 57. All right, Ms. Horton, what's your
10 situation?

11 THE POTENTIAL JUROR: My cousin works for Darlington
12 County Sheriff's Office, the other cousin is a Darlington
13 County magistrate.

14 THE COURT: Okay. Would the fact that you do have
15 cousins that work for those two agencies prevent you from
16 giving to the State and the Defense a fair and impartial
17 trial?

18 THE POTENTIAL JUROR: Huh-uh.

19 THE COURT: Is that a no?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: All right. Would you be able to put that
22 aside and decide this case based upon what you hear in
23 this courtroom?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: And would you do that?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Thank you, Ma'am.

3 Is any member of the jury panel related by blood or
4 connected by marriage to a member of any other law
5 enforcement agency, if so, please stand.

6 (There was no response.)

7 THE COURT: Is any member of the jury panel currently
8 employed by or a member of your immediate family employed
9 by the South Carolina Attorney General, the Solicitor for
10 the Fourth Judicial Circuit, or the Solicitor for the
11 Fourth Judicial Circuit, if so, please stand.

12 (There was no response.)

13 THE COURT: Has any member of the jury panel currently
14 employed or been employed within the last ten years with
15 any civilian or military law enforcement agency, if so,
16 please stand.

17 (There was no response.)

18 THE COURT: Is any member of the jury panel a member of
19 or contributor to any group that has as its primary
20 purpose the promotion of law enforcement or victim's
21 rights? Examples would be CAVE, MADD, SADD, CADRE, any of
22 those type organizations, any member of the jury panel a
23 member of those particular organizations or any similar
24 type organization, if so, please stand.

25 (There was no response.)

1 **THE COURT:** There may have been some publicity in
2 connection with this case. Is any member of the jury
3 panel aware of any of the facts of this case through media
4 publication or otherwise that would prevent you from
5 giving to both the State and the Defense a fair and
6 impartial trial based on evidence that you hear in this
7 courtroom, if so, please stand.

8 (There was no response.)

9 **THE COURT:** Has any member of the jury panel or member
10 of your immediate family -- and I define immediate family
11 as spouse, parent, brother, sister or child. Has any
12 member of the jury panel or immediate, of your immediate
13 family, been a victim of a violent crime? That would be a
14 crime upon their person. If so, please stand.

15 (There was no response.)

16 **THE COURT:** Is any member of the jury panel represented
17 now or been represented in the last ten years by any
18 member of the Darlington County Solicitor's Office, if so,
19 please stand.

20 (There was no response.)

21 **THE COURT:** Is any member of the jury panel or has any
22 member of the jury panel or member of your immediate
23 family, as I have defined that term, been represented in
24 the last ten years by Mr. Watts or any member of his law
25 firm, if so, please stand.

1 (There was no response.)

2 THE COURT: Is any member of the jury panel other than
3 what has already been disclosed to me close personal
4 friends of any of the parties, their lawyers, or any of
5 the witnesses whom I have read off to you, if so, please
6 stand. Other than what has been disclosed.

7 (There was no response.)

8 THE COURT: Does any member of the jury panel know
9 anything about the facts of this case as I have briefly
10 recited them to you, if so, please stand.

11 (There was no response.)

12 THE COURT: Has any member of the jury panel formed or
13 expressed an opinion as to the guilt or innocence of the
14 defendant Bobby Alexander Gilbert, if so, please stand.

15 (There was no response.)

16 THE COURT: Is any member of the jury panel aware of
17 any interest, any bias, or any prejudice for or against
18 the defendant, if so, please stand.

19 (There was no response.)

20 THE COURT: Other than what has been disclosed to me,
21 can each member of the jury panel give to the State and
22 the Defendant a fair and impartial trial, if not, please
23 stand.

24 (There was no response.)

25 THE POTENTIAL JUROR: Your Honor.

1 THE COURT: Yes, ma'am.

2 THE POTENTIAL JUROR: My name is Margaret Suchland. I
3 believe my number is 120. I have to be first to admit my
4 31 years with the Department of Corrections made me lead
5 to not being fair as I can possibly be. I spent a long
6 time with defendant's attorneys, please.

7 THE COURT: You said you're number 131.

8 THE CLERK OF COURT: 120.

9 THE COURT: 120, okay. All right. And you feel that
10 would -- that fact would or could influence your
11 impartiality in this matter?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: Thank you, Ma'am, I appreciate your
14 standing and thank you very much.

15 All right. Again, other than what has been disclosed
16 to me does any member of the jury panel know of any reason
17 whatsoever why he or she should not serve as a juror in
18 this case, if so, please stand.

19 All right, come forward please.

20 Come on up, counsel.

21 (Potential juror and counsel approached the Bench for an
22 on-the-record discussion.)

23 THE CLERK OF COURT: Juror number, 21, Your Honor.

24 THE POTENTIAL JUROR: I don't know anything about the
25 case or victim. The victim I went to school with. I went

1 to school with him. I don't have any -- I don't have any
2 knowings about anything but I did attend school with him.

3 THE COURT: Would the fact prevent you from giving to
4 both the State and the Defendant a fair trial?

5 THE POTENTIAL JUROR: Yes, sir. I don't want no part
6 of none of it to be honest with you.

7 THE COURT: You think it would influence?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: All right, thank you.

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: Thank you.

12 (End of on-the-record Bench discussion.)

13 THE COURT: Additional questions on behalf of the
14 State, Mr. Redmond?

15 MR. REDMOND: None from the State, Your Honor.

16 THE COURT: The Defense, Mr. Watts?

17 MR. WATTS: None, Your Honor.

18 THE COURT: All right, come up just a minute, Counsel.

19 (WHEREUPON, counsel approached the Bench for an
20 off-the-record discussion.)

21 THE COURT: All right. Anything before we begin the
22 jury selection on behalf of the State, Mr. Redmond?

23 MR. REDMOND: Not from the State, Your Honor.

24 THE COURT: Mr. Watts?

25 MR. WATTS: None, Your Honor. We just ask voir dire be

1 made part of the record, Your Honor.

2 THE COURT: All right, I will submit the voir dire to
3 the court reporter and have her... The Clerk will put the
4 name of all the qualified jurors in the rotating drum
5 here.

6 THE COURT: Mr. Clerk, you may proceed.

7 THE CLERK OF COURT: Thank you, Your Honor. Juror
8 number 122, Steven Tally (white male). What saith the
9 State?

10 MR. REDMOND: Please present Mr. Tally.

11 THE CLERK OF COURT: What saith the Defense?

12 MR. WATTS: Please excuse this juror.

13 THE CLERK OF COURT: You've been excused from this
14 case, Mr. Tally. If you would just have a seat back in
15 the audience for me please.

16 Juror number 116, David Stone (white male). What saith
17 the State?

18 MR. REDMOND: Please present Mr. Stone.

19 THE CLERK OF COURT: What saith the Defense?

20 MR. WATTS: Please seat the juror.

21 THE CLERK OF COURT: Please have a seat in the jury box
22 for me over here, Mr. Stone.

23 Juror number 150, Sylvester Samuel (black male). What
24 saith the State?

25 MR. REDMOND: Your Honor, may we approach.

1 THE COURT: Yes, sir.
2 (WHEREUPON, counsel approached the Bench for an
3 off-the-record discussion.)
4 THE CLERK OF COURT: What saith the State?
5 MR. REDMOND: Please excuse Mr. Samuel.
6 THE CLERK OF COURT: You've been excused in this case,
7 Mr. Samuel. Thank you.
8 Juror number 139, Martha Dunn (white female). What
9 saith the State?
10 MR. REDMOND: Please present Ms. Dunn.
11 THE CLERK OF COURT: What saith the Defense?
12 MR. WATTS: Please excuse Ms. Dunn.
13 THE CLERK OF COURT: You've been excused from this
14 case, Ms. Dunn. If you would have a seat back in the
15 audience for me please.
16 Juror number 84, Mary Macarley (white female). What
17 saith the State?
18 MR. REDMOND: Please present Ms. Macarley.
19 THE CLERK OF COURT: What saith the Defense?
20 MR. WATTS: Please seat the juror.
21 THE CLERK OF COURT: Please have a seat in the jury box
22 for me, Ms. Macarley.
23 Juror number 28, Evonne Douglas (black female). What
24 saith the State?
25 MR. REDMOND: Please present Ms. Douglas.

1 THE CLERK OF COURT: Which saith the Defense?
2 MR. WATTS: Please seat the juror.
3 THE CLERK OF COURT: Please have a seat in the jury box
4 for me, Ms. Douglas.
5 Juror number 50, Paul Hall (white male). What saith
6 the State?
7 MR. REDMOND: Please present Mr. Hall.
8 THE CLERK OF COURT: What saith the Defense?
9 MR. WATTS: Please excuse the juror.
10 THE CLERK OF COURT: You've been excused for this case,
11 Mr. Hall. Thank you.
12 Juror number 44, Kenneth Graham (black male). What
13 saith the State?
14 MR. REDMOND: Please excuse Mr. Graham from this case.
15 THE CLERK OF COURT: You've been excused from this
16 case, Mr. Graham. If you will have a seat back in the
17 audience for me please.
18 Juror number 151, Bradley Kelly (white male). What
19 saith the State?
20 MR. REDMOND: Please present Mr. Kelly.
21 THE CLERK OF COURT: What saith Defense?
22 MR. WATTS: Please seat the juror.
23 THE CLERK OF COURT: Please have a seat in the jury box
24 for me, Mr. Kelly.
25 Juror number 118, Glenn Street (black male). What

1 saith the State?

2 MR. REDMOND: Please present Mr. Street.

3 THE CLERK OF COURT: What saith Defense?

4 MR. WATTS: Please excuse the juror.

5 THE CLERK OF COURT: You've been excused from this
6 case, Mr. Street. Thank you.

7 Juror number 4, Matthew Bauer (white male). What saith
8 the State?

9 MR. REDMOND: Please present Mr. Bauer.

10 THE CLERK OF COURT: What saith the Defense?

11 MR. WATTS: Please seat this juror.

12 THE CLERK OF COURT: Please have a seat in the jury box
13 for me, Mr. Bauer.

14 Juror number 125, Debra Truett (white female). What
15 saith the State?

16 MR. REDMOND: Please excuse Ms. Truett from this trial.

17 THE CLERK OF COURT: You've been excused from this
18 case, Ms. Truett. Thank you.

19 Juror number 79, Cynthia Lee (white female). What
20 saith the State?

21 MR. REDMOND: Please present Ms. Lee.

22 THE CLERK OF COURT: What saith the Defense?

23 MR. WATTS: Please excuse this juror.

24 THE CLERK OF COURT: You've been excused from this
25 case, Ms. Lee. Thank you.

1 Juror number 55, Sunina Hickmon (black female). What
2 saith the State?

3 MR. REDMOND: Please excuse Ms. Hickmon from this
4 trial.

5 THE CLERK OF COURT: You've been excused from this
6 case, Ms. Hickmon. Thank you.

7 Juror number 59, Jacqueline Hunter (white female).
8 What saith the State?

9 MR. REDMOND: Please present Ms. Hunter.

10 THE CLERK OF COURT: What saith the Defense?

11 MR. WATTS: Please excuse this juror.

12 THE CLERK OF COURT: You've been excused from this
13 case, Ms. Hunter. Thank you.

14 Juror number 29, Sindy Dove (white female). What saith
15 the State?

16 MR. REDMOND: Please present Ms. Dove.

17 THE CLERK OF COURT: What saith Defense?

18 MR. WATTS: Please excuse this juror.

19 THE CLERK OF COURT: You've been excused from this
20 case, Ms. Dove. Thank you.

21 Juror number 57, Elbony Horton (black female). What
22 saith the State?

23 MR. REDMOND: Please present Ms. Horton.

24 THE CLERK OF COURT: What saith the Defense?

25 MR. WATTS: Please excuse this juror.

1 **THE CLERK OF COURT:** You've been excused from this
2 case, Ms. Horton. Thank you.

3 Juror Number 16, Lisa Byrd (white female). What saith
4 the State?

5 **MR. REDMOND:** Please present Ms. Byrd.

6 **THE CLERK OF COURT:** What saith Defense?

7 **MR. WATTS:** Please excuse this juror.

8 **THE CLERK OF COURT:** You've been excused from this
9 case, Ms. Byrd.

10 Juror number 117, Nellie Stone (white female). What
11 saith the State?

12 **MR. REDMOND:** Please present Ms. Stone.

13 **THE CLERK OF COURT:** What saith the Defense?

14 **MR. WATTS:** Please excuse this juror.

15 **THE CLERK OF COURT:** You've been excused from this
16 case, Ms. Stone. Thank you.

17 **MR. REDMOND:** Ms. Clerk, my count is four and ten.

18 **THE CLERK OF COURT:** That's correct.

19 **MR. REDMOND:** Thank you.

20 **THE CLERK OF COURT:** Juror number 141, Laurie Gurley
21 (black male). What saith the State?

22 **MR. REDMOND:** Please present Mr. Gurley.

23 **THE CLERK OF COURT:** Any show for cause from the
24 Defense?

25 **MR. WATTS:** None.

1 THE CLERK OF COURT: If you'll have a seat in the jury
2 box for me, Mr. Gurley.

3 Juror number 146, Angela Moore (white female). What
4 saith the State?

5 MR. REDMOND: Please present Ms. Moore.

6 THE CLERK OF COURT: Is there any show for cause from
7 the Defense?

8 MR. WATTS: None.

9 THE CLERK OF COURT: If you'll have a seat in the jury
10 box please for me, Ms. Moore.

11 Juror number 131, Melinda Wilds (black female). What
12 saith the State?

13 MR. REDMOND: Please present Ms. Wilds.

14 THE CLERK OF COURT: Is there any show for cause from
15 the Defense?

16 MR. WATTS: None.

17 THE CLERK OF COURT: If you'll have a seat in the jury
18 box for me, Ms. Wilds.

19 Juror number 54, Louise Henson (white female). What
20 saith the State?

21 MR. REDMOND: Please present Ms. Henson.

22 THE CLERK OF COURT: Is there any show for cause from
23 the Defense?

24 MR. WATTS: None.

25 THE CLERK OF COURT: If you'll have a seat in the jury

1 box for me, Ms. Henson.

2 Juror number 115, Gregory Stidham (white male). What
3 saith the State?

4 MR. REDMOND: Please present Mr. Stidham.

5 THE CLERK OF COURT: Is there any show for cause from
6 the Defense?

7 MR. WATTS: None.

8 THE CLERK OF COURT: If you'll have a seat in the jury
9 box for me, Mr. Stidham.

10 Juror number 11, Bobby Brown (black male). What saith
11 the State?

12 MR. REDMOND: Please present Mr. Brown.

13 THE CLERK OF COURT: Any show for cause from the
14 Defense?

15 MR. WATTS: None.

16 THE CLERK OF COURT: If you will have a seat in the
17 jury box please for me, Mr. Brown.

18 Juror number 93, Harland Morse (white male). What
19 saith the State?

20 MR. REDMOND: Please present Mr. Morse.

21 THE CLERK OF COURT: Any show for cause from the
22 Defense?

23 MR. WATTS: None.

24 THE CLERK OF COURT: If you'd have a seat please for me
25 in the jury box, Mr. Morse.

1 **THE COURT:** All right, counsel, two alternates please.
2 Two and one.
3 **THE CLERK OF COURT:** Juror number 88, Bonnie Mishue
4 (white female). What saith the State?
5 **MR. REDMOND:** Please present Ms. Mishue.
6 **THE CLERK OF COURT:** What saith the Defense?
7 **MR. WATTS:** Please seat the juror.
8 **THE CLERK OF COURT:** Please have a seat in the first
9 chair outside the jury box for me, Ms. Mishue.
10 **THE COURT:** Alternate Number 2.
11 **THE CLERK OF COURT:** Juror number 24, Cynthia
12 Crunkleton (white female). What saith the State?
13 **MR. REDMOND:** Please present Ms. Crunkleton.
14 **THE CLERK OF COURT:** What saith the Defense?
15 **MR. WATTS:** Please excuse this juror.
16 **THE CLERK OF COURT:** You're excused from this case,
17 Ms. Crunkleton.
18 Juror Number 23, Linda Croyle (white female). What
19 saith the State?
20 **MR. REDMOND:** Please excuse Ms. Coyle from this trial.
21 **THE CLERK OF COURT:** You've been excused for this case,
22 Ms. Coyle. Thank you.
23 Juror number 18, Danny Cassidy (white male). Any show
24 for cause from the State?
25 **MR. REDMOND:** None.

1 THE CLERK OF COURT: What say from Defense?

2 MR. WATTS: Please excuse this juror.

3 THE CLERK OF COURT: You've been excused from this
4 case, Mr. Cassidy. Thank you.

5 Juror Number 34, Jane Evans (white female). Any show
6 for cause from the State?

7 MR. REDMOND: None.

8 THE CLERK OF COURT: Any show for cause from the
9 Defense?

10 MR. WATTS: None.

11 THE CLERK OF COURT: If you will have a seat in the
12 second chair outside the jury box for me, Ms. Evans.

13 THE COURT: Anything with regard to selection of the
14 jury on behalf of the State, Mr. Redmond?

15 MR. REDMOND: Yes, there will be, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, let me ask you to go to your jury room for just a
18 moment please. And well, it may be more than just a
19 moment. It might be 10 or 15 minutes while we take care
20 of this matter. Please go with the bailiff to your jury
21 room. Let me tell you that it would be inappropriate for
22 you to discuss this matter among yourselves. I know you
23 do not know anything about the case, but don't discuss it
24 among yourselves at this time.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 12:08 p.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: Counsel, come up.

4 (WHEREUPON, counsel approached the
5 Bench for an off-the-record discussion.)

6 THE COURT: Mr. Redmond, I believe you indicated that
7 you have a motion.

8 MR. REDMOND: Yes, sir, Your Honor. The State would
9 make a Batson motion at this time, and I put on the record
10 particularly —

11 THE COURT: All right, I'll come back to that in just a
12 moment. So the State is challenging the strikes of the
13 jury on the basis of Batson versus Kentucky. Are there
14 any matters from the Defense, Mr. Watts, as far as the
15 strikes of the jury is concerned?

16 (Attorney confers with defendant.)

17 MR. WATTS: Beg the Court's indulgence one second, Your
18 Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. WATTS: Your Honor we make the same motion, Your
22 Honor, regarding Batson, the striking of the jurors.

23 THE COURT: All right. Both the State and Defense are
24 making a Batson motion or a challenge to the jury on the
25 basis of Batson versus Kentucky. Under the South Carolina

1 cases State versus Chapman, 1995 case, the Court is
2 required to hold a Batson hearing when requested and it
3 will do so at this time. Since the State made the first
4 motion then we will look at the State's Batson challenge.
5 The test for attacking the peremptory challenges by the
6 State is that the party who make the motion must show that
7 the juror is that cognizant racial group or under JEB
8 versus Alabama gender discrimination; and secondly, that
9 the peremptory challenge was used to exclude the juror on
10 grounds of race.

11 Mr. Redmond, I'll be glad to hear from you.

12 MR. REDMOND: Thank you, Your Honor, may it please the
13 Court, the particular juror statewide challenge would be
14 122, that was the first strike juror. 129 was the second
15 defense strike. Juror 50 was the third defense strike.
16 And just for the record, 122 was a white male. 129 is a
17 white female. 50 is a white male. 118 is a white male.
18 That would be the next challenge. Then juror number 79 is
19 a white female. Juror number 59 is a white female. Juror
20 number 29 is a white female. Juror number 16 is a white
21 female. And juror number 117 is a white female. And as
22 it relates to the alternate, Judge, 24 is a white female;
23 and 18, juror number 18, is a white male.

24 THE COURT: All right. So if I understand, your
25 challenge is to nine of the ten strikes that the State

1 exercised, I mean the Defense, exercised were white,
2 either male or female; and that two of the alternates that
3 the State, I mean the Defense, challenged or struck were
4 also white. So your challenge is on the basis of race
5 under Batson and gender; is that correct?

6 MR. REDMOND: It's on the basis of both actually
7 because there was a string there as it results to the
8 principal jury where it was several white females in a row
9 that were challenged so we would actually document both
10 the basis of race and gender.

11 THE COURT: All right, so 79, 59, 29, 16 and 17, 117
12 were all white females in a row. And of course 139 was
13 also white female. So eight white female and two white
14 males as far as the principal jury is concerned; is that
15 correct?

16 MR. REDMOND: That's correct, Your Honor.

17 THE COURT: You making it under both Batson and JEB
18 versus Alabama?

19 MR. REDMOND: That's correct, Your Honor.

20 THE COURT: All right. I would find there is a
21 cognizant racial group and it does appear that the
22 challenge was used to exclude juror on groups of race.
23 Mr. Watts, the burden shifts back to the defense to show
24 the reasons to give a racially neutral explanation in
25 striking the jury. First, 122, juror number 122, white

1 male.

2 MR. WATTS: Your Honor, regarding juror 122, that was
3 Mr. Steven Tally. 127, he's a white male, also had a
4 corporate background. Based on those issues and age and
5 corporate background, just mindset, we believe he would be
6 a juror we would wish on the jury.

7 THE COURT: Age and corporate background?

8 MR. WATTS: From the little we're able to get through
9 from the information we've had, Your Honor.

10 THE COURT: What was his corporate background?

11 MR. WATTS: I believe he works at Progress Energy.
12 That's the information I have from what we gained from
13 earlier.

14 THE COURT: All right, juror number 139.

15 MR. WATTS: Your Honor, case of Mr. — juror
16 number 139, we are using our discretion through
17 information gained regarding her employment status, her
18 age, level of education.

19 THE COURT: And what was her employment status?

20 MR. WATTS: She's retired now.

21 THE COURT: Age?

22 MR. WATTS: We listed 63.

23 THE COURT: And also you said education.

24 MR. WATTS: Education, she —

25 THE COURT: What was that?

1 MR. WATTS: She said she completed twelfth grade, Your
2 Honor.

3 THE COURT: It shows -- 250, juror number 250.

4 MR. WATTS: Your Honor, this was a white male,
5 Mr. Paul, he was included based on his previous indication
6 that he knows one of the witnesses from the Hartsville
7 Police Department. Also his medical background I believe
8 he's an EMS worker.

9 THE COURT: Juror number 118.

10 MR. WATTS: As far as juror 118, Your Honor, listed
11 occupation of truck driver, ninth grade education, born
12 1964. Other than for these reasons and we just had
13 unilateral decision to strike him from the jury pool jury
14 selection, Your Honor.

15 THE COURT: 79.

16 MR. WATTS: As far as juror 79, Your Honor, I believe
17 are listed employer were McLeod Regional Medical facility
18 as executive secretary or medical background.

19 THE COURT: Why is medical background a factor?

20 MR. WATTS: Your Honor, one of the key issues is, you
21 know, the autopsy report who believes the time of death,
22 cause of death, and these issues related to that and we
23 believe that medical background is a factor in whether or
24 not they believe the State's evidence or comes beyond a
25 reasonable doubt what the State contends.

1 THE COURT: All right. So what on this juror, besides
2 the fact that she is -- you probably know more about the
3 juror than I do, but I see her according to the jury list
4 she works at McLeod but as a executive secretary. Why
5 would that be a medical background?

6 MR. WATTS: Well, Your Honor, her association with the
7 medical facility as far as executive secretary. We don't
8 know exactly who she's working for executive secretary
9 for, chief of surgery, is she executive CFO. That's a big
10 question. Anyone involved in the hospital is going to
11 have experience and information that they obtained
12 regarding medical background and medical information.

13 THE COURT: All right. Anything with regard to this
14 juror other than the fact that you assert medical
15 background?

16 MR. WATTS: Nothing else, Your Honor.

17 THE COURT: That's all with her?

18 MR. WATTS: Yes, sir.

19 THE COURT: Okay. 59.

20 MR. WATTS: Regarding juror number 59, Your Honor, I
21 believe she's listed as EMT or medical background, and her
22 association as a local EMS worker brings her in close
23 contact with law enforcement and medical knowledge.

24 THE COURT: Okay, so EMS worker. And what else did you
25 say?

1 MR. WATTS: Well, her duties as a local EMS employee
2 brings her in close contact with law enforcement, albeit
3 Sheriff's Office, City Police, Highway Patrol.

4 THE COURT: Okay. 29.

5 MR. WATTS: Your Honor, regards to juror number 29, she
6 listed in her employ stay-at-home mom. It seems that
7 while she didn't indicate she had young children at the
8 home then there's lots of time involvement that she could
9 be exposed to similar type story, watching a lot of that
10 information comes through the continued cable news
11 network, I figure that was good exposure.

12 THE COURT: That's speculation; isn't it?

13 MR. WATTS: Yes, sir, that was speculation, but it was
14 our discretion at that point to use and in that election
15 strike, Your Honor.

16 THE COURT: All right, so you're saying other than your
17 discretion you really don't have a reason?

18 MR. WATTS: Your Honor, given her education level, her
19 indication that her —

20 THE COURT: What's her education level?

21 MR. WATTS: She listed as 12. I believe she's
22 previously indicated her husband was self-employed. She's
23 a stay-at-home mother, age 52 years. That point, that was
24 our excuse for her disqualification.

25 THE COURT: Okay, 16.

1 MR. WATTS: 16. With regards to number 16, Your Honor,
2 there again, this is a medical case. It was a former --
3 she's project administrator for Blue Cross Blue Shield Tri
4 Care which are insurance, medical insurance companies.
5 Being project administrator going to have familiarity with
6 medical information. She may be familiar with codes or
7 any other kinds of diagnostics that may be presented at
8 trial through SLED or through forensic examiner who
9 examined the body. That may lead to a belief that she may
10 be more or less influenced by what's presented, more
11 influenced by what law enforcement presents due to her
12 background of medical knowledge that we ---

13 THE COURT: Where's indication that she's got medical
14 knowledge? Looks like to me she's administrator of Blue
15 Cross Blue Shield.

16 MR. WATTS: Well, Your Honor, coding and knowledge of
17 the numbers go with coding, assign a number to it. You
18 have to know procedure as whether or not it's taken care
19 of or what different diagnostics are to properly assigned
20 a number to it so then my -- knowing diagnostic codes I
21 have to know what the actual procedure is, what cause
22 procedure entail making diagnosis whether or not that's
23 appropriate. But that also brings that level of medical
24 knowledge maybe misused in the matter present at hand when
25 presented with medical evidence regarding the pathology.

1 THE COURT: All right. 117.

2 MR. WATTS: Your Honor, again, with 117 listed as
3 retired but also listed as retired with Blue Cross Blue
4 Shield. That's the same information that we have, Your
5 Honor, as far as coding and knowledge of how to assign a
6 diagnostic code, the level number. What does that -- what
7 does that treatment or diagnosis describe or how is it
8 listed. Enabling this knowledge we believe may be
9 improperly exercised on that, their point, when listening
10 to the medical evidence.

11 THE COURT: Alternate number 24.

12 MR. WATTS: Your Honor, I think -- as far as juror
13 number 24 is listed, high school education, unemployed.
14 Also I believe she indicated she was a recent transplant
15 from around here, might not be able to use from
16 information presented by the defense and law enforcement
17 to the proper extent of current knowledge base for the
18 surrounding area. She indicated hers -- she was a recent
19 transplant in South Carolina.

20 THE COURT: 18.

21 MR. WATTS: Your Honor, number 18, 63 year old male
22 retired from Sunoco. Typically I find that retired
23 executives who are members from the corporate world give a
24 little bit more background could have gone out more only
25 listed retired from to know do not exactly what job he

1 performed but —

2 THE COURT: So you can't say he was an executive, you
3 don't know.

4 MR. WATTS: I can't say he's an executive this time,
5 Your Honor. We don't have enough information.

6 THE COURT: So the question is, what is your racially
7 neutral reason?

8 MR. WATTS: My racially, you know, neutral older male.
9 I didn't think would be right frame of mind to listen to
10 our cause, Your Honor.

11 THE COURT: Okay, all right.

12 All right, Mr. Redmond, the Defense counsel having
13 given a racial and gender neutral explanation for striking
14 the jurors that you challenged, nine on the principal
15 panel, two of the alternates and two alternates that they
16 did strike, the burden then shifting back to you as the
17 moving party to show that the race neutral explanation or
18 gender neutral explanation was mere pretext. I'll be glad
19 to hear from you.

20 MR. REDMOND: May it please the Court, Your Honor,
21 first I would actually cite Payton versus Course. That's
22 a 1998 South Carolina case. It's actually 495 S.E.
23 Second, 205. And it talks about generalization of the
24 entire group. Now I think your last, I guess your last
25 questions or last conversation with Mr. Watts, was

1 interesting in the sense that it came down to one that was
2 talking corporate, somebody put in a corporate rule and
3 then there was discussion about age generalizing based on
4 the fact that this person was of a certain age, and that's
5 why they were struck. And Your Honor, I think, one, in
6 generalizing that way but then I would harken to the sixth
7 juror that was actually called by the clerk, juror 28, who
8 I believe is, was born in 1955 if I remember correct. She
9 is a black female. 1952, excuse me, but then in as it
10 relates to juror 129, parts of the issue became the age
11 but she was actually three years younger, born in 1955 I
12 think, and that is something that the Court can take into
13 consideration as it relates to a showing of pretext by the
14 Defense. I think that the reasons that were given ---

15 THE COURT: They also had the -- both same education.
16 That was another reason they gave. Both 12th grade
17 education.

18 MR. REDMOND: That's correct, Judge. And so with that
19 and between the issues of the age that were, I would
20 submit, were generalized by the Defense, the fact that he
21 actually seated a black female juror that was similarly
22 situated as a white female, at least one white female
23 juror that was actually struck by the Defense, I would
24 submit that there is a showing of pretext in this
25 particular situation and that the reasons given by the

1 Defense are not sufficient, do not meet the standard, and
2 therefore, we would ask that the jury be — this jury be
3 redrawn.

4 THE COURT: Let me ask you, Mr. Redmond, about juror
5 number 59. Well, let's go back for a minute. Let's go to
6 juror number 50, Mr. Hall. Does the State challenge that
7 that is being his reasoning there being pre-textual?

8 MR. REDMOND: We don't actually because given the fact
9 that obviously the — I think the juror that indicated he
10 knew April Cooke who is one of our witnesses so we would
11 withdraw any motion as it relates to that juror.

12 THE COURT: All right. What about juror number 59, the
13 local EMT?

14 MR. REDMOND: We would also withdraw that one as it
15 relates to Ms. Hunter. I believe that was juror 159.

16 THE COURT: Right, all right. All right. What about,
17 are there the others that you feel like that the reasons
18 are valid?

19 MR. REDMOND: Beg the Court's indulgence.

20 THE COURT: 122, being a white male and in corporate
21 background, Progress Energy.

22 MR. REDMOND: We would still uphold our objection to
23 that.

24 THE COURT: 159, being the white female and that's one
25 we had comparison to. 118, white male truck driver.

1 MR. REDMOND: And Your Honor, again, we get into the
2 age. That issue I think had come up as well. We would
3 still maintain our objection.

4 THE COURT: All right. What about 79, the reason being
5 given because of the medical background that she worked at
6 McLeod.

7 MR. REDMOND: I think that's a stretch, Your Honor, to
8 make that assumption without further voir dire which of
9 course the parties, both State and Defense, are entitled
10 to to avoid such speculation. The Defense did not ask for
11 any questioning as it relates to the juror's occupation
12 and education so we would submit that that is still
13 pre-textual because there was a cure. Defense failed to
14 exercise that cure so we would maintain our objection.

15 THE COURT: All right. Let's go to alternates.
16 Number 24 with regard to the white female being from out
17 of state.

18 MR. REDMOND: And Your Honor, actually I would, because
19 I did review some notes and I remember the fact that she
20 is unemployed. I don't know if he said that but since
21 it's in the record that she is unemployed that actually
22 does fall within a reason from what I was seeing so we
23 would remove any objection to that juror.

24 THE COURT: Okay. The Court then does understand the
25 motion made by the State, the Defense counsel reasons for

1 striking those jurors, and the State's reply to those
2 reasons. Let's now take a look at the motion on behalf of
3 the State with, I mean, on behalf of Defense with regard
4 to the Defense's objection which I believe -- let me start
5 that over again. Let me hear now on behalf of the
6 Defendant with regard to strikes exercised by the State,
7 the Defense having made a motion under Batson and JEB
8 versus Alabama as well.

9 Mr. Watts.

10 MR. WATTS: Thank you, Your Honor. May it please the
11 Court, we take exception to strikes made as far as juror
12 number 150 which was the first strike made. Juror --
13 second strike, number, juror number 44. And the fourth
14 juror stricken was juror number 55. The first juror 150
15 was a black male. The second juror stricken by the State
16 was a black male. A fourth juror stricken by the State
17 was a black female. Your Honor, we argue that three
18 quarters of that are based on pre-textual discriminatory
19 measure on Batson as far as striking by race.

20 THE COURT: All right. Then the Defense has identified
21 racially cognizant group, Mr. Redmond, and shift the
22 burden shifting back to the State to show that the reason
23 for the strike was racially neutral. No challenge under
24 JEB so gender is not an issue, just with regard to race,
25 all black.

1 MR. REDMOND: Thank you, Your Honor. May it please the
2 Court, and this would apply to numbers 150 and 55. Both
3 of them are actually cousins of a co-defendant, Chris
4 Samuel. And as a matter of fact, we came up to side bar
5 and I tried to get it struck for cause figuring that it
6 would not be and the Court of course corrected, made me
7 exercise peremptory challenge. But that's the reason for
8 those two challenges because of their ties and knowledge
9 of one of the codefendants. They did not indicate that
10 when at the time in Court's questioning about witnesses,
11 but we were actually informed prior to that, in fact,
12 those two jurors were cousins.

13 THE COURT: All right. Number 44.

14 MR. REDMOND: As it relates to 44, he has pending gun
15 charges. We did confirm he has pending gun charges in
16 Florence County. And in fact, two reasons there. One,
17 Teresa Henneghan, who is one of our witnesses, in fact our
18 first witness, she is employed at the Florence County
19 Detention Center. And secondly, the fact that there was a
20 gun involved there is going to be testimony regarding a
21 gun in this case. We felt that we were within way beyond
22 pretext in excusing that particular juror.

23 THE COURT: All right, Mr. Watts, the State having
24 articulated a racially neutral reason the burden shifts
25 back to the striking party to show that the race neutral

1 explanation to mere pretext. I'll be glad to hear from
2 you.

3 MR. WATTS: Thank you, Your Honor. As far as the
4 State's explanation of the cousins of the co-defendant,
5 just as much as a question about voir dire whether or not
6 there could be a curative. Also, more questions they
7 could have asked, anyone had any knowledge or first-hand
8 knowledge or family members to make sure they had gone
9 through and asked those questions to identify prior to the
10 jury striking selection. We would withdraw motion
11 regarding number 44 regarding pending gun charges. I
12 believe they are presently in Florence.

13 THE COURT: All right. All right, Counsel, anything
14 else?

15 MR. REDMOND: Nothing further other than that and that
16 provided us the information was a person familiar with the
17 parties. She's actually, I believe, present in the
18 courtroom. She made the State aware of those two jurors
19 after she saw, made us aware that they were, in fact, on
20 that jury panel so we did have ---

21 THE COURT: The source of that information was what?

22 MR. REDMOND: The source of information is actually
23 present in the courtroom, Shanna Samuels. She actually
24 made Ms. McKenzie aware of what we relayed to the Court.

25 THE COURT: All right. Thank you, Counsel. I want to

1 take a look at it, take a look at the law. We'll take
2 about five minutes.

3 MR. REDMOND: Thank you, Your Honor.

4 MR. WATTS: Thank you, Your Honor.

5 (WHEREUPON, a recess was taken from the proceedings.)

6 THE COURT: We're back on the record with regard to the
7 matter State versus Bobby Gilbert and the jury is still
8 out. The rest of the panel is out and the jury to be
9 selected is in the jury room. I have reviewed my notes
10 and I'm prepared to give a preliminary ruling but without
11 giving a detailed ruling on the matter there are matters
12 in selection of the jury that are going to require the
13 restrike of the jury. So what I'm going to do is to bring
14 the entire panel back as well as the other jury back at
15 this time, excuse them for lunch, and then after they have
16 gone, after I've had a chance to get all my notes and
17 thoughts together will tell you which ones are the ones
18 that will actually not be allowed and the ones that will
19 be allowed at a later time. But let's go ahead and take
20 care of the jury instead of keeping them waiting anymore.
21 It is going to the Batson and JEB motions are going to
22 require restriking of the jury so we may as well go ahead
23 and send them to lunch.

24 All right, bring the panel in and as well as the jury
25 in this case. Have the jury in this case sit in the jury

1 box.

2 (WHEREUPON, the jury was returned to the courtroom at
3 approximately 12:56 p.m., and the following proceedings
4 commenced in open court.)

5 THE COURT: All right, thank you very much, ladies and
6 gentlemen, thank you for your patience. I apologize that I
7 did not have some place for you to go, but the law does
8 require that matters that I have to take up have to be
9 taken up on the record outside the presence of both the
10 jury that's selected and the jury panel. We have taken
11 care of those matters and I will tell both the remainder
12 of the panel and this jury that the legal reasons the jury
13 in this case is going to have to be restructured. And so I'm
14 going to excuse this jury and I'm going to require all of
15 you to be back please this afternoon at 2:30 when we will
16 go through the selection of process again. There is legal
17 issues that have come up that I do have to redo the jury
18 or restructure the jury, and we will do that this afternoon.
19 I'm going to go ahead and in a few minutes put on the
20 record for the attorneys the reasons that this was
21 necessary but I didn't want to keep you waiting
22 unnecessarily any longer. So I'm going to excuse you now
23 and I'm going to ask you be back, all of you, even the 14
24 of you who were selected in this case to be back and out
25 with the panel at 2:30 this afternoon. We'll be ready to

1 proceed in this case so everyone is excused for lunch.

2 Please come back to the courtroom at 2:30. Thank you.

3 I'll see you at that time.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 12:59 p.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: First, with regard to the State's motion
8 under both Batson versus Kentucky and JEB versus Alabama,
9 the Court finds that except for certain instances, first
10 of all, I find that the striking of juror number 50, the
11 white male Mr. Hall, was permissible and that even with
12 the State's agreement that he had -- he knew a witness
13 from the Hartsville Police Department, and is EMS worker,
14 and I find there was no discriminatory purpose in striking
15 him and that the strike of juror number 50 was permissible
16 under the case law. Similarly, the striking of juror
17 number 59, the white female who was an EMT, was
18 permissible, was not pre-textual, and that was a valid
19 reason. And the striking of juror number 24 as an
20 alternate was a valid reason and was not pre-textual.
21 The State has agreed with all of these and so in
22 restriking of the jury the Defense would be entitled to
23 exercise strikes against those three defendants again.

24 I do find, however, that the striking of juror number
25 122 was pre-textual, that the Defense has not given a

1 racially neutral explanation for striking the jury under
2 Batson versus Kentucky. In fact, juror number 122 is very
3 similar background to juror number 116 who was kept on the
4 jury by the Defense. I would also find that juror number
5 139, the reasons the State has not given -- the Defense
6 has not given a racially neutral explanation for striking
7 this juror, statements being that it was in their
8 discretion that her employment status that retired, 63,
9 and has 12th grade education. There were other people
10 with 12th grade education that was seated on the jury as
11 well, and that under the Payton case the generalization of
12 the entire group is not permissible so that that strike
13 was not permissible as well.

14 Similarly, I would find that juror number 118 was not a
15 racial and while it was racially neutral explanation it
16 was not -- it was pre-textual because, again, that was a
17 generalization as a truck driver with a ninth grade
18 education. And the only reason the State gave -- the
19 Defense gave, was that it was in their discretion. Juror
20 number 79 was a white female, the reason being given that
21 she worked for McLeod with medical background. First of
22 all, there are other jurors that had medical backgrounds
23 but does not mean there's anything in her background with
24 medical. Her occupation was given as executive secretary
25 and I don't see how that would be applicable to the facts

1 of this case. I would also find that the reason for
2 striking this jury was not a racially nor gender neutral
3 under the case law and that strike would not be allowed in
4 the future.

5 With regard to juror number 29, again, even in
6 questioning from the Court the Defense counsel admitted
7 that there was speculation on their part and that it was
8 he felt like just jury discretion but that is not a
9 racially neutral explanation. 16, white female, medical
10 insurance background, that is not a racially neutral
11 explanation. And 117, retired, worked for Blue Cross Blue
12 Shield, that is not a racially or gender neutral
13 explanation. All of those are pre-textual and those
14 strikes would not be allowed.

15 So then with regard to the alternates, I would find
16 that the reason for striking juror number 18 is also
17 pre-textual; that he was an older male retired from
18 Sunoco. That would be similar to a juror that would have
19 been seated in the past. All of these I find, except for
20 jurors 50, 59, and 54, the Defense has not shown that the
21 reasons given were racially and gender neutral and were
22 not pre-textual, and therefore, I would disallow those
23 strikes. That is 122, 139, 118, 79, 29, 16, and 117.
24 After restriking the jury the Defense will not be allowed
25 to strike those jurors. With regard to -- one other thing

1 is that I think the comparison made by the State between
2 juror number 28 and 29 is very valid. 29 was struck, 28
3 was kept, 29 was white female, 28 was black female.
4 There's very little in their background to distinguish
5 those two ladies other than race.

6 Now with regard to the motion made by the Defense to
7 strike — to disallow the three strikes of the State, on
8 jurors number 150, 44, and 55 the one on juror, number 44,
9 was withdrawn because he had pending gun charges. The
10 Defense maintained their motion with regard to 150 and to
11 55, but the State's explanation was that these were
12 cousins of a co-defendant. I find that this is a valid
13 reason and that the State has met its burden of showing
14 that the race neutral explanation was given and that it
15 was not pre-textual and I would find that those strikes
16 are valid. With those notations then, we restrike the
17 jury this afternoon at 2:30. Thank you. We'll be in
18 recess until 2:30 on this case. You may be excused.

19 (WHEREUPON, court was in recess for a lunch
20 break.)

21 THE COURT: Back on the record with regard to the
22 matter of the State versus Bobby Gilbert. Mr. Gilbert is
23 present in the courtroom with his attorney. The State is
24 present and is represented by Mr. Redmond. Is there
25 anything before we go through the jury selection process,

1 Mr. Redmond?

2 MR. REDMOND: Nothing from the State, Your Honor.

3 THE COURT: Mr. Watts.

4 MR. WATTS: Nothing from Defense, Your Honor.

5 THE COURT: All right, ladies and gentlemen of the
6 jury, I have already of course asked you certain questions
7 about your knowledge that you may have of this matter and
8 I've already qualified you as jurors.

9 Mr. Clerk, we will go through the selection process
10 again just as we did a while ago with the same exclusions.
11 (WHEREUPON, State Exhibits Nos. 1 through 5 were marked
12 for identification only and Court Exhibits 1, 2, and 3
13 were made a part of the record.)

14 THE CLERK OF COURT: Juror Number 148, James Odom.

15 MR. REDMOND: Please present Mr. Odom.

16 THE CLERK OF COURT: What saith the Defense?

17 MR. WATTS: Please seat the juror.

18 THE CLERK OF COURT: Please have a seat in the jury box
19 for me, Mr. Odom.

20 Juror number 50, Paul Hall (white male). What saith
21 the State?

22 MR. REDMOND: Please present Mr. Hall.

23 THE CLERK OF COURT: What saith the Defense?

24 MR. WATTS: Please excuse the juror.

25 THE CLERK OF COURT: You've been excused, Mr. Hall.

1 Thank you.

2 Juror number 122, Steven Tally (white male). What
3 saith the State?

4 MR. REDMOND: Please present Mr. Tally.

5 THE CLERK OF COURT: What saith the Defense?

6 MR. WATTS: Please seat the juror.

7 THE CLERK OF COURT: Please have a seat in the jury box
8 for me, Mr. Tally.

9 Juror number 103, Elizabeth Robinson (black female).
10 What saith the State?

11 MR. REDMOND: Please present Ms. Robinson.

12 THE CLERK OF COURT: What saith the Defense?

13 MR. WATTS: Present the juror.

14 THE CLERK OF COURT: Please have a seat in the jury
15 box, Ms. Robinson.

16 Juror number 123, Amy Taylor (white female). What
17 saith the State?

18 MR. REDMOND: Please present Ms. Taylor.

19 THE CLERK OF COURT: What saith the Defense?

20 MR. WATTS: Please excuse this juror.

21 THE CLERK OF COURT: You've been excused from this
22 case, Ms. Taylor. Thank you.

23 Juror number 59, Jacqueline Hunter (white female).
24 What saith the State?

25 MR. REDMOND: Please present Ms. Hunter.

1 THE CLERK OF COURT: What saith Defense?
2 MR. WATTS: Please excuse this juror.
3 THE CLERK OF COURT: You're excused from this case,
4 Ms. Hunter.
5 Juror number 130, Cheryl Ann Weikle (white female).
6 What saith the State?
7 MR. REDMOND: Please present Ms. Weikle.
8 THE CLERK OF COURT: What saith Defense?
9 MR. WATTS: Please seat the juror.
10 THE CLERK OF COURT: Please have a seat in the jury box
11 for me, Ms. Weikle.
12 Juror Number 141, Laurie Gurley (black male). What
13 saith the State?
14 MR. REDMOND: Please present Mr. Gurley.
15 THE CLERK OF COURT: What saith the Defense?
16 MR. WATTS: Please seat the juror.
17 THE CLERK OF COURT: Please have a seat in the jury box
18 for me, Mr. Gurley.
19 Juror number 146, Angela Moore (white female). What
20 saith the State?
21 MR. REDMOND: Please present Mr. Moore.
22 THE CLERK OF COURT: What saith Defense?
23 MR. WATTS: Excuse the juror.
24 THE CLERK OF COURT: You've been excused in this case,
25 Ms. Moore.

1 Juror number 138, Lori Dixon (white female). What
2 saith the State?

3 MR. REDMOND: Please present Ms. Dixon.

4 THE CLERK OF COURT: What saith the Defense?

5 MR. WATTS: Please seat the juror.

6 THE CLERK OF COURT: Please have a seat in the jury box
7 for me, Ms. Dixon.

8 Juror number 149, Jessica Parker (white female). What
9 saith the State?

10 MR. REDMOND: Please present Ms. Parker.

11 THE CLERK OF COURT: What saith the Defense?

12 MR. WATTS: Please seat the juror.

13 THE CLERK OF COURT: Please have a seat in the jury
14 box, Ms. Parker.

15 Juror number 118, Glenn Street (white male). What
16 saith the State?

17 MR. REDMOND: Please present Mr. Street.

18 THE CLERK OF COURT: What saith the Defense?

19 MR. WATTS: Please seat the juror.

20 THE CLERK OF COURT: Please have a seat in the jury box
21 for me, Mr. Street.

22 Juror number 125, Debra Truett (white female). What
23 saith the State?

24 MR. REDMOND: Please excuse Ms. Truett from this trial.

25 THE CLERK OF COURT: You've been excused from this

1 case, Ms. Truett. Thank you.

2 Juror number 23, Linda Croyle (white female). What
3 saith the State?

4 MR. REDMOND: Please excuse Ms. Croyle from this trial.

5 THE CLERK OF COURT: You've been excused from this case
6 Ms. Croyle. Thank you.

7 Juror number 30, Clarence Dubose, II (black male).
8 What saith the State?

9 MR. REDMOND: Please present Mr. Dubose.

10 THE CLERK OF COURT: What saith the Defense?

11 MR. WATTS: Please seat the juror please.

12 THE CLERK OF COURT: Please have a seat in the jury box
13 for me, Mr. Dubose.

14 Juror number 100, Lydia Pauley (black female). What
15 saith the State?

16 MR. REDMOND: Please present Ms. Pauley.

17 THE CLERK OF COURT: What saith the Defense?

18 MR. WATTS: Please seat the juror.

19 THE CLERK OF COURT: Please have a seat in the jury box
20 for me, Ms. Pauley.

21 Juror number 65, Timmy Jett (black male). What saith
22 the State?

23 MR. REDMOND: Please present Mr. Jett.

24 THE CLERK OF COURT: What saith the Defense?

25 MR. WATTS: Please excuse the juror.

1 THE CLERK OF COURT: You've been excused from this
2 case, Mr. Jett. Thank you.

3 Juror Number 18, Danny Cassidy (white male). What
4 saith the State?

5 MR. REDMOND: Please present Mr. Cassidy.

6 THE CLERK OF COURT: What saith the Defense?

7 MR. WATTS: Repeat the number please.

8 THE CLERK OF COURT: 18, Danny Cassidy.

9 MR. WATTS: Your Honor, may I approach.

10 THE COURT: Yes, sir.

11 (WHEREUPON, counsel approached the Bench for an
12 off-the-record discussion.)

13 MR. WATTS: Please seat the juror.

14 THE CLERK OF COURT: Please have a seat in the jury box
15 for me, Mr. Cassidy.

16 Juror number 82, Kaitlyn Luther (white female). What
17 saith the State?

18 MR. REDMOND: Please present Ms. Luther.

19 THE CLERK OF COURT: What saith the Defense?

20 MR. WATTS: Please seat the juror.

21 THE CLERK OF COURT: Please have a seat in the jury
22 box, Ms. Luther.

23 Alternates. Juror Brian Bedard (white male).

24 THE COURT: Alternate one.

25 THE CLERK OF COURT: What saith the State?

1 MR. REDMOND: Please present Mr. Bedard.

2 THE CLERK OF COURT: What saith the Defense?

3 MR. WATTS: Please excuse the juror.

4 THE CLERK OF COURT: You've been excused in this case,
5 Mr. Bedard.

6 Juror number 102, Joseph Revell (white male). What
7 saith the State?

8 MR. REDMOND: Please present Mr. Revell.

9 THE CLERK OF COURT: What saith the Defense?

10 MR. WATTS: Please seat the juror.

11 THE CLERK OF COURT: Please have a seat in the first
12 chair outside the jury box for me, Mr. Revell.

13 THE COURT: Alternate number 2.

14 THE CLERK OF COURT: Juror number 34, Jane Evans (white
15 female). What saith the State?

16 MR. REDMOND: Please present Ms. Evans.

17 THE CLERK OF COURT: What saith the Defense?

18 MR. WATTS: Please seat the juror.

19 THE CLERK OF COURT: Please have a seat in the second
20 chair outside the jury box for me again.

21 THE COURT: Anything with regard to selection of the
22 jury on behalf of the State, Mr. Kernard?

23 MR. REDMOND: Nothing from the State, Your Honor.

24 THE COURT: From the Defense, Mr. Watts?

25 MR. WATTS: Nothing from Defense, Your Honor.

1 **THE COURT:** All right. Counsel approach just a moment
2 please.

3 (WHEREUPON, counsel approached the Bench for an
4 off-the-record discussion.)

5 **THE COURT:** All right, ladies and gentlemen of the jury
6 selected in the trial of this case. We have a number of
7 matters that we need to tend to this afternoon before we
8 can go forward on this case, and I have to do those on the
9 record and outside of your presence. I don't want to keep
10 you waiting in that jury room unnecessarily so what I have
11 decided, after conferring with counsel, that the best
12 thing to do is to excuse you for the rest of the afternoon
13 and allow you to come back in the morning. We will have
14 all of these matters taken care of; we'll be ready to go
15 forward.

16 Just two or three things before I excuse you. First of
17 all, later on in this case I will name one of the twelve
18 members of the jury or will allow you to select one of
19 your own as the foreperson of the jury. I'll allow you to
20 do that. That foreperson should always sit in the first
21 seat here on the front row. The two alternates should
22 always sit in the seats where they're seated. The rest of
23 the seats in the jury box are not reserved. It does not
24 matter the order you come and go from the courtroom, does
25 not matter where you sit in the jury box. I would

1 certainly ask you go all the way down so it wouldn't be a
2 decision crawling over one another reserving the first
3 seat on the front row for the foreperson. When that
4 foreperson is named and the two seats back here for the
5 alternates where they will sit at all times throughout
6 this trial. I will also tell you that it will be improper
7 for you to discuss this matter among yourselves when you
8 reassemble in the jury room tomorrow or at any time during
9 the course of the trial until I tell you it is appropriate
10 for you to begin your deliberations.

11 Now I know you do not know anything about the facts of
12 this case except what I have briefly told you the
13 allegations of the indictment were. But it will be
14 improper for you to discuss this case. In the morning
15 reassembling in the jury room you can talk about anything
16 you want to talk about, sports, weather, children,
17 grandchildren, anything at all, but don't talk about this
18 case. And this admonition will apply throughout the trial
19 of the case until all of the testimony is in and the
20 arguments of counsel have been made and you have had
21 instructions on the law by the Court. So do not talk
22 about this case among yourselves in any way whatsoever.
23 Similarly, do not talk about the case to anyone else when
24 you see your family or your friends. You can tell them
25 that you're serving on the jury but you can't tell them

1 anything about the case and the reason for that is pretty
2 apparent. You have got to decide this case based upon
3 what you hear in this courtroom and not on the basis of
4 what anyone else might say.

5 Also, do not allow anyone to talk with you about the
6 case. If anyone should approach you or try to talk with
7 you about the case, get their name or their description
8 and report it to the bailiff. They will report it to me
9 and I will deal with them. Finally, do not listen to any
10 media reports on television or radio -- I don't know
11 whether there will be any -- or read any newspaper
12 accounts of this case. Again, I don't know whether there
13 will be any. With due respect to all of my friends in the
14 media, they do not always get things exactly accurate as
15 to what happened in the courtroom. You've got to decide
16 this case based upon what you hear in the courtroom and
17 not on the basis of anything you might read in the news
18 media. So with those admonitions I am going to excuse you
19 now, allow you to go about your business for the rest of
20 the afternoon, and ask you please to be back in your jury
21 room tomorrow morning, not in the courtroom but in your
22 jury room tomorrow morning at 9:30. We'll be ready to go
23 forward. Have a pleasant rest of the afternoon. We'll
24 see you tomorrow.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 12:57 p.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: All right. Again, just for the record so
4 the record will be complete in case there is an appeal on
5 the matter, we of course did restrike the jury after I
6 granted the Batson motion. My notes recollect -- reflect,
7 and counsel, you tell me if your notes reflect anything
8 different. My notes reflect that jurors -- that number
9 122, 118 and 18 were three of the jurors that I found did
10 violate Batson in the previous jury striking and the
11 Defense would not be able to strike them this time. And
12 there was a Bench conference with whether or not my ruling
13 applied to juror number 18 because he was an alternate
14 jury on the first jury that was selected but is on the
15 principal jury this time. My ruling was that my ruling on
16 the first jury applied here and that the Defense would not
17 be able to strike him, and therefore, 122, 118, and 18
18 were all seated on this jury. Is that your -- what your
19 records reflect as well, Mr. Redmond?

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

21 THE COURT: Mr. Watts?

22 MR. WATTS: Yes, Your Honor.

23 THE COURT: Okay. But I will let the record reflect
24 that Mr. Watts did ask me about 18 and that was the --
25 that was the ruling of the Court. All right, are there

1 any trial motions on behalf of the State, Mr. Redmond?

2 MR. REDMOND: State has no motions at this time.

3 THE COURT: On behalf of the Defense, Mr. Watts?

4 MR. WATTS: Yes, Your Honor. There are numerous. I
5 think the first clarification, Your Honor, I know

6 Solicitor Redmond had earlier indicated the three
7 indictments that moving forward in this matter. Just for
8 clarification purposes, if I may, I think one indictment
9 that was not named was the criminal conspiracy. Your
10 Honor, that was something that was forwarded to my office
11 on the 20th. My understanding that charge is going to be
12 dismissed with prejudice; isn't that correct?

13 MR. REDMOND: That's correct. The State will not
14 proceed with this, just for the record the reason being
15 that charge was brought when we thought we might have to
16 try all three defendants and may have Brewton issue that
17 arises. Obviously with the other two having pled that
18 Brewton issue no longer exists so it's a moot point so we
19 are not moving forward on that.

20 THE COURT: Do you have that indictment number,
21 Mr. Redmond?

22 MR. REDMOND: I should. I've got it. Your Honor, it's
23 2009-GS-- 2009-GS-16-660.

24 THE COURT: The State will be nol prossing that
25 indictment, is that —

1 MR. REDMOND: That's correct, Your Honor.

2 MR. WATTS: Well, there's one more issue. There's
3 indictment with financial transaction card fraud that's
4 indicated as 2007-GS-16-761. I believe that's the same
5 issue.

6 MR. REDMOND: And the same outcome, Your Honor. We are
7 not proceeding with that indictment.

8 THE COURT: All right. So indictment number
9 07-GS-16-761 for financial transaction card fraud will be
10 nol prossed as well?

11 MR. REDMOND: That's correct, Your Honor.

12 THE COURT: All right.

13 MR. WATTS: Your Honor, we had previously addressed, we
14 move under Jackson v. Denno deal with issues of
15 voluntarily, excuse me, any statements made by defendant,
16 use of those statements in the trial. We would move that
17 the statements obtained were involuntary and should be
18 declared inadmissible in this matter.

19 THE COURT: All right. The State (sic) has made a
20 motion to suppress any statements made by the defendant on
21 the basis they were involuntarily made. That motion
22 having been made, the burden shifts to the State to prove
23 under Jackson versus Denno that the statements were freely
24 and voluntarily made.

25 Mr. Kernard, you may proceed and call whatever

Proffer - A. Locklair

1 witnesses are appropriate.

2 MR. REDMOND: Thank you, Your Honor, may it please the
3 Court. The State would first call Andy Locklair, Captain
4 Andy Locklair.

5 **PROFFER EXAMINATION**

6 WHEREUPON,

7 **ANDY LOCKLAIR,**

8 having been duly sworn by the Clerk of Court, testified as
9 follows:

10 MR. REDMOND: May it please the Court, if it please the
11 Court, Your Honor.

12 THE COURT: Yes, sir.

13 **DIRECT EXAMINATION**

14 BY MR. REDMOND:

15 Q Captain Locklair, with whom are you employed?

16 A Darlington County Sheriff's Office.

17 Q How long have you been so employed?

18 A Eighteen years.

19 Q And are you now a captain with the Darlington County
20 Sheriff's Office?

21 A I am.

22 Q And at the time of this incident back in January 2007
23 in that capacity were you working with the Sheriff's
24 Office?

25 A I was an investigator.

Proffer - A. Locklair

1 Q Okay. Did you investigate the case against the
2 defendant?

3 A I did.

4 Q And pursuant to your investigation did at some point
5 you pick the defendant up from his residence at Mackton
6 Road I believe or Mackton Drive out in Oates?

7 A I did.

8 Q And is that in Darlington County?

9 A It is.

10 Q And was he brought back to the Hartsville Police
11 Department?

12 A He was.

13 Q And did you conduct an interview at that time?

14 A Yes, I did.

15 Q And if I may present to you what has been marked as
16 State's Exhibit 2.

17 MR. REDMOND: Permission to approach the witness, Your
18 Honor.

19 THE COURT: Yes, sir.

20 BY MR. REDMOND:

21 Q If you'll review that and let me know when you're ready
22 to answer a few questions.

23 A I am.

24 Q And is that a Miranda waiver form?

25 A Yes, it is.

Proffer - A. Locklair

1 Q Is that a form that was prepared prior to any
2 questioning of Bobby Gilbert?

3 A Yes, it was.

4 MR. REDMOND: Just briefly, and Your Honor, I
5 apologize, I actually made an extra copy for the Court as
6 well.

7 BY MR. REDMOND:

8 Q And let me just go through this form with you. In the
9 top right corner where it's got DOB. Is that the
10 defendant's date of birth?

11 A It is the defendant's date of birth.

12 Q And below that is defendant's social security number?

13 A Yes, it is.

14 Q Is that the party identified as Bobby Gilbert?

15 A Yes, sir, it is.

16 Q And is that party here in the courtroom today?

17 A Yes, sir, the defendant is here.

18 Q And would you point him out for us?

19 A Sitting at the defense table (indicating).

20 Q Now we ask that the record reflect that.

21 THE COURT: Record will so reflect.

22 BY MR. REDMOND:

23 Q And now at the time that this statement was taken who
24 was with you at that time?

25 A Myself and Lieutenant Robyn Bryant.

Proffer - A. Locklair

1 Q Also with the Sheriff's Department?

2 A Yes, sir, he is.

3 Q And did you read, go through this form with defendant?

4 A This form, yes, sir, we did.

5 Q Okay. And let's just go through the first part, I
6 guess, what's labeled one through four. Could you explain
7 to the Court exactly what that, what that is?

8 A This is a city of Hartsville Miranda waiver form
9 advising the defendant of his rights. We use the City of
10 Hartsville Miranda waiver form because we didn't have one
11 from the county. We were at the location of Hartsville
12 City Police Department. This Miranda form here as Number
13 1 where it says: I'm sober, competent, sufficient
14 intelligence: Do you understand this form and my rights?
15 Mr. Gilbert indicated in the affirmative by his initials
16 being outside of Number 1. Number 2: Can I read and
17 write and understand English language. Mr. Gilbert again
18 answered in the affirmative by his initials being outside
19 of Number 2. Number 3: I have received the following
20 form following formal years education. He indicated 11th
21 grade with the 11 and indicated that by his initials
22 outside of Number 3. And Number 4: I have not been
23 promised anything. And he answered that with initials
24 outside Number 4.

25 Q And each of those initials, are those the defendant's

Proffer - A. Locklair

1 initials outside on the left, far left?

2 A Yes, they are.

3 Q Okay. Now let's move to the next section. Could you
4 explain to the Court what that section entails?

5 A Next section is: Before we ask you any questions you
6 must understand your rights. This is the actual Miranda
7 warnings here as pursuant to the Miranda case, Miranda
8 versus Arizona. Number 1: I have read the rights or I
9 have the right to remain silent is number one. Number
10 two, anything you say can be used against you. Number
11 three, you have the right to talk with a lawyer for advice
12 before we ask you any questions and have them with you
13 during any questioning. Number four, if you cannot afford
14 to hire a lawyer one will be appointed for you before any
15 questioning if you wish. Number 5, if you decide to
16 answer questions without having a lawyer present you will
17 still have the right to stop answering any questions at
18 any time until you talk to a lawyer.

19 Q Okay. And did you read these rights to him?

20 A Yes, sir, we did.

21 Q Okay. Did he have an opportunity at some point to
22 review this whole form prior to signing it?

23 A Yes, he did.

24 Q Okay. Now the next section talks about waiver of
25 rights. Could you explain that for us?

Proffer - A. Locklair

1 A A waiver of rights simply says that: I have read this
2 statement of my rights and understand and know what my
3 rights are. I am willing to make a statement and answer
4 questions. I do not want a lawyer at this time. I
5 understand and know what I am doing. No promises or
6 threats have been made to me. No pressure or coercion of
7 any kind has been used against me.

8 Q Okay. And did the defendant sign that particular form?

9 A Yes, he did.

10 Q And I did not mention, but what date was this done?

11 A This was done on 18th day of January, 2007.

12 Q And what time was that done?

13 A This was done that morning around or early that -- mid
14 day around 12:15 p.m., excuse me.

15 Q Now is that -- did you sign this particular form?

16 A Yes, I did.

17 Q And did Lieutenant Bryant sign this form?

18 A Yes, he did.

19 Q Now is it your -- well, let me ask you this, was he at
20 any point threatened, coerced, deprived of any basic human
21 needs? In other words, to force him to sign this waiver,
22 give you a statement?

23 A No, he was not.

24 Q Okay. Was his statement free and voluntary?

25 A Yes, it was.

Proffer - A. Locklair

1 Q Did you feel from your observation of the defendant
2 that he understood what you were telling him and that he
3 understood his rights?

4 A Yes, he did.

5 MR. REDMOND: At this point the State would move
6 State's Number 1 in evidence for purpose of this hearing
7 at this time.

8 THE COURT: Any objection, Mr. Watts?

9 MR. WATTS: Your Honor, if I may, I do have an
10 objection but it appears, number one, apparently
11 introduction of exhibits have been introduced without me
12 being able to look at it and I have a question about
13 number 1. I have a question about this Hartsville Police
14 Department form because from the records I have I don't
15 think they've ever been provided.

16 THE COURT: Records you have of what?

17 MR. WATTS: From the discovery I've had, Your Honor,
18 and description and City of Hartsville form for which he
19 was indicating as exhibit which was inappropriately
20 already entered into evidence. I don't know this has been
21 provided in discovery.

22 MR. REDMOND: Your Honor, my recollection ---

23 THE COURT: Wait just a minute. First of all, your
24 objection is that exactly what? One is discovery. Any
25 other objection that you hadn't been produced, other

1 objection besides that?

2 MR. WATTS: The other objection, Your Honor, would be
3 the issue of trying to indicate pre-marking of one,
4 marking that as an exhibit to be introduced as evidence
5 prior to being shown or having discussed with opportunity
6 to object.

7 THE COURT: It hadn't been introduced because I hadn't
8 looked at it. He was just identifying it so I'm treating
9 that as having been marked as State's Number 2 for I.D.
10 purposes only at this point.

11 MR. WATTS: Yes, Your Honor.

12 THE COURT: And we'll see whether it's going to be
13 introduced into evidence. That's — besides that, we're
14 not before the jury so it's no problem. The proper time
15 for objection is probably would have been prior to the
16 time that he read it; but be that as it may, it is for ID
17 purposes only at this time. Now tell me, Mr. Watts, your
18 position is that this was not provided in discovery?

19 MR. WATTS: Yes, Your Honor. I've got a defense
20 notebook. As I go through I have got a copy and the only
21 issue regarding Miranda or any other statements made by
22 Mr. Gilbert is a copy of a video taped statement or
23 authorization of notice of introduction of recorded
24 statement but I have not received this in discovery, Your
25 Honor.

1 **THE COURT:** All right, Mr. Redmond.

2 **MR. REDMOND:** If it please the Court, Your Honor, I
3 tell the Court that we had fully -- I cannot specifically
4 recall or know -- Mr. Watts and I went through everything
5 on Thursday. According to our records everything was
6 provided to the Defense including that particular form.
7 When I got the file it was actually in the primary part of
8 the file that was provided to the Defense so I cannot
9 explain. But I can tell the Court as an officer of the
10 Court that the State did comply with Rule 5 in regards to
11 this particular waiver form.

12 **THE COURT:** Mr. Watts, anything you want to add?

13 **MR. WATTS:** Your Honor, I would respond. I did come
14 over and go through the issues with Mr. Redmond about what
15 we had. I had showed him the video at the same time,
16 recorded statement, but I didn't show him because I didn't
17 have it, Your Honor.

18 **THE COURT:** Well, tell me this Mr. Watts, how are you
19 prejudiced? You got it now. What further do you need?

20 **MR. WATTS:** Well, Your Honor, having it received right
21 now, the opportunity to discuss this matter with my client
22 and prepare information regarding the initial statement or
23 purports to attend is --

24 **THE COURT:** How much time do you need? I'll give you
25 appropriate amount of time to discuss it with your client

1 if you need additional time to now that you have the
2 document to discuss it with your client and determine
3 whether you've got objections, any further objections
4 based upon the content of the document as opposed to the
5 time.

6 MR. WATTS: Yes, Your Honor. If you will give me brief
7 15 minutes, if I can have that. If I can have 15 minutes
8 it may take less than that to come back.

9 MR. REDMOND: Your Honor, just for the record, just
10 want to put in on the record so it's clear, it is
11 referenced in Page 6 of the Sheriff's Department report
12 that he was read his rights and while at Hartsville Police
13 Department. Reason I want to make that clear on the
14 record is I don't want it to appear as if we're about to
15 get into a statement that the Defense was not aware of
16 because it's actually in the records that we provided even
17 though we don't officially have to provide ---

18 THE COURT: As I understand Mr. Watts' position is he
19 admits having the statement, only thing he says he was not
20 furnished to him happens to be this Miranda form. You're
21 saying that the things that were furnished to him did
22 advise him of that, the rights were given to the
23 defendant, but you can't say for sure whether this
24 particular form was ever given to him.

25 MR. REDMOND: I cannot say that for sure.

1 **THE COURT:** All right. That being the case it does
2 appear he had notice his rights were given to him and I
3 will take a brief recess to give Mr. Watts an opportunity
4 to talk with his client with regard to admissibility or
5 inadmissibility of the Miranda form based upon the fact
6 that it may not have been furnished to him before now.

7 Any other things that have been marked right now as far
8 as I'm concerned they have all been marked I.D. You
9 should get those back from the court reporter. Go ahead
10 and give him, let him have opportunity to look at them,
11 see if he's got an objection and ---

12 **MR. REDMOND:** I've done that, as a matter of fact,
13 while we're talking, Judge. Thank you, Your Honor.
14 (WHEREUPON, a recess was taken from the proceedings.)

15 **THE COURT:** Back on the record with regard to State
16 versus Gilbert, three indictments that we have taken
17 earlier today. We took a break to give the Defense an
18 opportunity to talk with his client about what has been
19 marked as State's Exhibit Number 2 for identification.

20 And the position, Mr. Watts, is what at this point?

21 **MR. WATTS:** Your Honor, the position right now is, of
22 course, as we mentioned before this is something that's
23 new to us as of today. Also I don't know if you want to
24 go into what I expect my client to testify to.

25 **THE COURT:** No, we'll let him testify when the time

Proffer - A. Locklair

1 comes for purposes of Jackson versus Denno hearing to
2 determine whether or not any statement made is admissible.
3 We will go ahead with a copy at this time as State's
4 Number 2 with the instructions, Mr. Redmond, to try to
5 find the original of the waiver form from the files of the
6 appropriate law enforcement agency. We'll -- I will then
7 make a determination after all of the evidence is in
8 whether or not the matter should be excluded or the
9 statement should be excluded because of the waiver form,
10 but I'll have to wait and see what our testimony is. Go
11 forward with this witness with using the photo copy as
12 State's Number 2 for identification.

13 MR. REDMOND: Thank you, Your Honor, may it please the
14 Court.

15 BY MR. REDMOND:

16 Q Captain Locklair, is that an accurate and true copy of
17 the statement that -- and that I think that's State's 2.
18 Is that an accurate true copy of that particular Miranda
19 waiver form?

20 A Yes, it is.

21 Q Okay. And did the defendant sign that form?

22 A Yes, he did.

23 Q And in your opinion did he understand his rights as
24 they were being read and explained to you?

25 A Yes, he did.

Proffer - A. Locklair

1 Q Was he threatened or coerced in any way or denied any
2 basic human needs in order to get him to give this
3 statement?

4 A No, he was not.

5 Q Was it free and voluntary?

6 A Yes, it was.

7 Q And let's get to the crux of the statement itself.
8 After you read and went through this Miranda waiver did he
9 in fact give you an oral statement?

10 A He did.

11 Q And is that statement reflected in your report?

12 A Yes, it is.

13 Q And could you publish at this time for the Court
14 exactly what the defendant told you at that time?

15 A Beg the Court's indulgence. After getting back to
16 Hartsville P.D. Mr. Gilbert was advised of his right and
17 told us that he wanted to talk to us. Bobby first told us
18 that he did not know the victim that well, but he did know
19 the victim was going to North Carolina because he wanted
20 to get away for a while. I then asked him about the
21 number of the place in which Tyrone, which is the victim,
22 was staying in North Carolina. He gave us a number. This
23 number was to a community college in North Carolina and
24 there was no answer to that number. When we asked about
25 the victim's car Bobby stated that he did not have, nor

Proffer - A. Locklair

- 1 has he had the victim's car. Bobby was not giving us all
2 he knew about this case when asked about the car. Bobby
3 then stated that he got a call from the victim late
4 Tuesday night about picking the car up from the bus
5 station of Florence and taking it to the victim's house.
6 Bobby stated that he told the victim he did not know where
7 his house was and that the victim told him he did not care
8 to keep it, the car that is. Bobby told us that he never
9 drove the car; that he and his cousin Jamie went to the
10 bus station and Jamie drove the car away. And that was
11 the last time he saw the car. Then called the bus station
12 to see if Tyrone Brown, the victim, had bought a bus
13 ticket. Spoke with the attendant there and found out the
14 victim's name was not in the system of buying a bus
15 ticket. She stated the name sounded familiar but could
16 not be sure.
- 17 Q Okay, let me stop you there because is the conclusion
18 of the defendant's statement where he indicates that he
19 never drove the car and that he and his cousin Jamie went
20 to the bus station and Jamie drove away with the car?
- 21 A Yes.
- 22 Q That was -- was that the end of his first statement?
- 23 A That was the end of his first statement.
- 24 Q Okay. Now let me go back a minute because did you
25 actually the night before call the cell phone which the

Proffer - A. Locklair

1 defendant answered?

2 A Yes.

3 Q Okay. And could you tell the Court the circumstances
4 surrounding that and then tell the Court what -- let me
5 ask you this: Was he in custody at the time that he gave
6 the statement or that you talked with him the night
7 before?

8 A No, he was not.

9 Q Okay. Was this over the phone or were y'all face to
10 face the first time?

11 A Over the phone.

12 Q Okay. Now tell the Court, first of all, the
13 circumstances leading up to that particular phone call and
14 then tell the Court exactly what he said during that phone
15 call.

16 A This case first started we were working a missing
17 persons report on the victim. In gathering information
18 trying to locate the victim we were able to contact the
19 victim cell phone provider and get the last numbers used
20 to call out on the cell phone. One of these numbers
21 belonged to the defendant Mr. Bobby Gilbert at which time
22 I called that number to try to find out if the person
23 answering the phone had seen, talked with, or heard from
24 the victim Mr. Tyrone Brown. All right. The person on
25 the other end answered the phone, used the name of Dequan

Proffer - A. Locklair

1 Smith. I asked Mr. Dequan Smith if he knew where the
2 victim was. He stated that he did not, that the victim
3 had went to North Carolina is all he knew, to get away for
4 while. The next day when we got the information that this
5 Bobby Gilbert was involved with the car I called the
6 number provided to me by a co-defendant, of Mr. Gilbert's
7 cell phone, which was the same number I had received the
8 night before from the cell phone provider. When I called,
9 the same person answered the phone, this time identifying
10 himself as Mr. Bobby Gilbert at which time I asked him
11 then if he could come to the office to speak with us in
12 reference to this case. He did not have a ride. His
13 mother was ill so, therefore, I went to his resident on
14 Mackton Road and retrieved him, brought him back to the
15 office.

16 Q And when you got to the office, when you say to the
17 office was that Hartsville Police Department?

18 A It was the Hartsville Police Department.

19 Q Now after he give you the statement saying that Jamie
20 drove away with the car and whatnot, did he give you
21 another statement later that day?

22 A Yes. The story kept changing; that he didn't know the
23 name -- well, that the victim was going to North Carolina
24 to buy -- took him to the bus station, with the bus
25 station story. Once we found that was not true we then

Proffer - A. Locklair

1 asked Mr. Gilbert if he would take a polygraph
2 examination, his answer being yes.

3 Q Okay. Without getting into any of the results of that
4 examination, since this is an in-camera hearing outside
5 the presence of the jury, but after the examination did he
6 give you another statement?

7 A Yes, he did.

8 Q Okay. Let me show you what has been marked exhibit,
9 the Court's permission to approach the witness.

10 THE COURT: Yes, sir.

11 BY MR. REDMOND:

12 Q State's Number 2. And counsel has seen the copy of
13 State's -- I said 2, I think that's 3 actually. State's
14 Exhibit Number 3.

15 A 3.

16 Q Could you identify that document for the Court?

17 A This is an introduction of a tape recorded statement
18 form.

19 Q And why do you use this particular form?

20 A To document on the actual recording the information
21 that the person giving their statement, giving their
22 information on that particular recording.

23 Q Okay. And could you explain to the Court -- well,
24 let's just talk about the first part with the blanks and
25 whatnot. Were those blanks filled in with information

Proffer - A. Locklair

1 that the defendant provided to you?

2 A Yes, they were.

3 Q Okay.

4 THE COURT: Excuse me, Mr. Redmond, what's the ID
5 number on that exhibit?

6 MR. REDMOND: I think that's ID number 3 if I'm not
7 mistaken.

8 THE WITNESS: It is.

9 BY MR. REDMOND:

10 Q I think it's State's 3, I apologize. Now let's go to
11 the bottom part where it starts with, do you understand.

12 What is the nature of that particular section of this
13 particular document?

14 A This is to make sure that everyone is aware that the
15 person is being video or tape recorded.

16 Q Okay. And is this read to them while the tape is
17 moving or is it read to them before the tape?

18 A It is read to them while the tape is moving.

19 Q Okay. And at the time of this second statement was he
20 given his Miranda rights again?

21 A Yes, he was.

22 Q And at that time was he threatened, coerced, or
23 deprived any basic human needs in order to get him to give
24 a statement?

25 A No, he was not.

Proffer - A. Locklair

1 Q Did he -- was he forced or coerced to give this
2 statement?

3 A No, he was not.

4 Q Was it free and voluntary?

5 A Yes, it was.

6 Q And did you still feel that he understood his rights?

7 A Yes, sir, he did.

8 Q And at the time of the recorded statement was, was the
9 second statement recorded?

10 A Yes, it was.

11 Q And could you tell the Court at this time what he says
12 in the statement and then we'll play the tape at the
13 conclusion of these proceedings, but I think it's in your
14 notes. So if you could tell the Court at this time what
15 the defendant said in that second statement.

16 THE COURT: This is the recorded statement?

17 MR. REDMOND: This is the recorded statement, yes, sir.

18 THE COURT: Okay.

19 THE WITNESS: He told me the video statement that
20 Tuesday night he was at Farmington Apartments with Jamie
21 and a man named Chris. Bobby said that Chris wanted a
22 ride to the country and if knew someone that would take
23 him. They called the victim Tyrone Brown, or Tyrone, as
24 it's listed in the report, and asked him to give him a
25 ride from Farmington Apartments. Tyrone told him that he

Proffer - A. Locklair

1 would. He stated that when Tyrone arrived at the
2 apartments he asked the victim to give his cousin a ride
3 home too, and the victim, Tyrone, said okay. Bobby,
4 Jamie, and Chris got into the car with the victim. Bobby
5 stated that he got into the passenger seat. Jamie sat
6 behind him and that Chris sat behind the victim, Tyrone.
7 Bobby stated that Chris wanted to go out to the country
8 and be dropped off after Tyrone took me home, is what he
9 said. But Tyrone did not know where they were going so
10 Bobby said, I'll ride with you out there. Bobby stated
11 that Chris told Tyrone to take him down a dirt road off of
12 Una Road. When they got to this road Chris pulled a gun
13 and put it to Tyrone's head. Bobby said what -- man, what
14 are you doing. That's when Chris pointed the gun at Bobby
15 and then stated that Chris got out of the car and pulled
16 Tyrone out of the car and hit him in the head with a gun
17 and stated that Tyrone went down. And Chris hit him again
18 with something else. Bobby then stated that Chris got
19 into the driver's seat and ran over Tyrone. Then he
20 backed up over the victim, then drove over him again.
21 Bobby stated that Jamie got out of the -- got out and
22 helped Chris load the body in the trunk. Bobby stated the
23 plan -- Bobby stated there was plans to dump the body in a
24 pond off of Una Road but that many people fish there.
25 They took the body to a place off of Sandbox Road and

Proffer - A. Locklair

1 there dumped the body. Went on to say Chris made him stay
2 at Farmington Apartments with him and Jamie that night.
3 The next day Bobby said that Chris made him go with him,
4 clean the car out. He found a credit card and Chris
5 wanted to see if it worked. He then went and got the gas.
6 Then Chris took me by my aunt's house. Bobby stated then
7 he made his way home. I asked Bobby to show us where the
8 killing took place and he said he would.

9 Q And did he, in fact, show you — well, did he show you
10 where the victim's body was?

11 A He did.

12 Q And did he take you to a location out on Cornfield
13 Road?

14 A Yes, he did.

15 Q Now, and again, I did not ask you, but where was the
16 statement, the second statement that was recorded, where
17 was that taken?

18 A That was taken at Darlington County Sheriff's Office.

19 Q Okay, all right.

20 MR. REDMOND: Beg the Court's indulgence.

21 THE COURT: Yes.

22 MR. REDMOND: Your Honor, that's all the questions that
23 I would have for Captain Locklair at this particular time.

24 THE COURT: All right, cross-examination, Mr. Watts.

25 MR. WATTS: Thank you, Your Honor.

Proffer - A. Locklair

CROSS-EXAMINATION

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BY MR. WATTS:

Q Captain Locklair, I think you earlier testified that on the evening of the 17th you made a phone call to a cell phone number?

A Yes, I did.

Q Okay. And during this conversation you were not face-to-face with the person you were talking to; is that correct?

A No, I was not.

Q Was there a recording made of that conversation?

A No, there was not.

Q Okay. Was there anything that was available to you that could positively identify who you were talking to?

A No, there is not.

Q Okay. And I think the next morning indicated the 18th is when you contacted Mr. Bobby Gilbert; is that correct?

A Yes, it is.

Q At what time did you first contact with Mr. Gilbert?

A That morning between 1:30 and 11:00 roughly.

Q And was that the first phone call or when you picked him up?

A That was the first phone call. I picked him up shortly after that.

Q How long did it take you to get to his house?

Proffer - A. Locklair

1 A Approximately 15 minutes.

2 Q Okay. And did you ever ask Mr. Gilbert about anything,
3 where he'd been the night before or what he'd been up to
4 at any time during the car ride when you picked him up?

5 A No conversation during the car ride.

6 Q Okay. And you said you transported him to the
7 Hartsville Police Department; is that correct?

8 A Yes, I did.

9 Q And where was he placed upon arrival at the Hartsville
10 Police Department?

11 A In an office.

12 Q Okay. He wasn't placed in a holding cell?

13 A No, sir, he was not.

14 Q Would you -- did you at any time ask any questions of
15 Mr. Gilbert while he was in a holding cell at the
16 Hartsville Police Department?

17 A No, sir, I do not recall any holding cell conversation.

18 Q Okay. At any time when you were trying to obtain this
19 city of Hartsville waiver statement which I believe has
20 been identified as State's I.D. Number 2, prior to having
21 this form completed did you ask Mr. Gilbert any question
22 about whether they had any kind of intoxicating substances
23 in his system?

24 A No, I did not.

25 Q Okay, all right. Did Mr. Gilbert ever volunteer any

Proffer - A. Locklair

1 statements about whether he had any intoxicating subject
2 -- excuse me, any kind of intoxicating material in his
3 system?

4 A To me he did not.

5 Q Okay. In the completion of the City of Hartsville
6 Miranda form where did you get the information? Did you
7 obtain it solely from Mr. Gilbert or did you use a prior
8 case file to fill in some of that information?

9 A The information we received was from Mr. Gilbert
10 himself.

11 Q Okay. It's your testimony that you actually witnessed
12 Mr. Gilbert initial one through four and also sign the
13 bottom of this form which is State's Exhibit I.D. 2; is
14 that correct?

15 A Yes.

16 Q And subsequent to the oral statement provided to you at
17 the Hartsville Police Department you took Mr. Gilbert to
18 the Darlington County Sheriff's Department; is that
19 correct?

20 A Yes, sir.

21 Q And how did you transport him?

22 A He rode in the car with me.

23 Q Okay. And I might not have asked this question the
24 first time. When he first picked him up was he -- were
25 you in an unmarked car or were you in your own vehicle,

Proffer - A. Locklair

- 1 what were you driving?
- 2 A In an unmarked car.
- 3 Q And unmarked law enforcement vehicle?
- 4 A Yes, sir, Ford.
- 5 Q And was Mr. Gilbert placed in the front or the back?
- 6 A He was in the front seat with me.
- 7 Q And on the ride from the Hartsville Police Department
- 8 to the Darlington County Sheriff's Department where was
- 9 Mr. Gilbert?
- 10 A He was in the front seat of the car with me.
- 11 Q The same vehicle?
- 12 A Yes, sir.
- 13 Q And at any time prior to taking the video recorded
- 14 statement did you have any conversations with Mr. Gilbert
- 15 regarding anything he had in his system that would make
- 16 him impaired or anything that would be intoxicating at
- 17 this time?
- 18 A No, I did not.
- 19 Q And do you recall ever asking on the video statement
- 20 whether or not Mr. Gilbert had taken any intoxicating
- 21 substances, alcohol, drugs, prescription, or not?
- 22 A I do not recall.
- 23 Q Okay. Is that something that is normally part of your
- 24 questioning script or interrogation?
- 25 A No, it is not.

Proffer - A. Locklair

1 Q Okay. I think you testified earlier you've been in law
2 enforcement for how long?

3 A Eighteen years.

4 Q Eighteen years. Have you ever in your professional
5 capacity found that in intoxicating material or if someone
6 is intoxicated they're not able to give a coherent
7 statement?

8 A If someone is intoxicated they're most likely not able
9 to give a coherent statement.

10 Q And have you ever run into someone who's been able to
11 speak coherently but may still indicate they're under the
12 influence of intoxicating substances?

13 A I probably have, yes, sir.

14 Q And at no time during your obtaining the video
15 statement did you ever request or ask for any information
16 whether Mr. Gilbert had any intoxicating substances in his
17 system?

18 A No, I did not.

19 Q And to your knowledge did anyone else?

20 A To my knowledge I do not know unless he was asked by
21 the polygraph examiner.

22 Q Okay.

23 MR. WATTS: Beg the Court's indulgence, Your Honor.

24 THE COURT: Yes, sir.

25 ///

Proffer - A. Locklair

1 MR. WATTS: I have no additional, Your Honor.

2 MR. REDMOND: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MR. REDMOND: No redirect examination, Your Honor.

5 THE COURT: All right, thank you, sir. You may step
6 down.

7 Mr. Redmond, I understand that you have now obtained
8 from the police files the original State's Number 2.

9 MR. REDMOND: That's correct, Your Honor.

10 THE COURT: You wish to substitute that for the copy as
11 State's Number 2 for identification. Show this to Mr.
12 Watts and then we'll substitute it for the copy we've been
13 dealing with.

14 (Pause.)

15 THE COURT: Any objection to substituting it with a
16 copy as far as taking care of all the authenticity
17 problems? You'll still have the right to question the
18 production of it, timeliness, the timeliness of the
19 production, Mr. Watts. You understand.

20 MR. WATTS: Thank you, Your Honor. No objection to the
21 substitution.

22 THE COURT: All right, we'll substitute the original
23 City of Hartsville Miranda waiver form as State's Number 2
24 for identification.

25 (Copy was substituted with original.)

Proffer - R. Bryant

1 MR. REDMOND: Thank you, Your Honor.

2 THE COURT: All right. Proceed.

3 MR. REDMOND: Next the State will call Robyn Bryant.

4 PROFFER EXAMINATION

5 BY MR. REDMOND:

6 Q By whom are you employed, Robin?

7 A Darlington County Sheriff's Office.

8 Q And in what capacity are you employed with the
9 Sheriff's Office?

10 A Currently I'm a deputy and fugitive investigator
11 assigned to the United States Marshal Service fugitive
12 task force.

13 Q Okay. And at the time of this incident back in January
14 of 2007 were you employed with the Sheriff's Office?

15 A Yes, I was. I was lieutenant over criminal
16 investigations for the Sheriff's Office.

17 Q And how long had you been employed with the Sheriff's
18 Office?

19 A All together, Mr. Redmond, I have been employed with
20 the Sheriff's Office somewhere I think in around the,
21 maybe, 20, 25, 24/25 year range total time.

22 Q Okay. And getting directly to January 18th of 2007 did
23 you have the opportunity to encounter the defendant that
24 day at the Hartsville Police Department?

25 A Yes, sir, I did.

Proffer - R. Bryant

1 Q And did you ride with Investigator Locklair, or Captain
2 Locklair, did you ride with him to pick up the defendant
3 or did you meet them at Hartsville Police Department that
4 day?

5 A At that day went to Hartsville Police Department
6 notified the two individuals had been found in the vehicle
7 belonging to the victim Mr. Brown and met Mr. Locklair
8 there. He later picked up on his own Mr. Gilbert while I
9 stayed and did some interviews with some other folks.

10 Q Now were you there at the time the defendant was
11 interviewed by investigator or Captain Locklair?

12 A Yes, sir, I was there when he brought him in. He and I
13 did this interview together.

14 Q And let me approach with the Court's permission with
15 what's been marked as State's Exhibit Number 2, and if
16 you'll review that and let me know when you're ready to
17 answer a few questions.

18 A Yes, sir.

19 Q Do you recognize that document?

20 A Yes, sir, I do.

21 Q And could you tell the Court what that document is?

22 A This document is the Miranda waiver of rights, is
23 actually City of Hartsville Police Department form. We
24 were at Hartsville Police and did not have one of our
25 forms available, but this is a form — and actually I

Proffer - R. Bryant

1 filled out the information on the top of this as far as
2 Mr. Gilbert's name, where we were at, current date, and
3 the approximate time along with date of birth and social
4 security number.

5 Q Okay. And were you present during the entire
6 interview?

7 A Yes, sir, for that interview at Hartsville Police
8 Department.

9 Q And is that your signature on the bottom of that form?

10 A Yes, sir, it is. It also has my -- at that time would
11 have been my radio i.d. number of 103.

12 Q And were you present when these rights were discussed
13 with the defendant?

14 A Yes, sir, I was.

15 Q And in your opinion did the defendant understand what
16 was going on?

17 A Yes, sir. He appeared very intelligible, coherent, and
18 knowledgeable about what we were asking him about.

19 Q And did he specifically seem to understand his rights
20 as you explained them to him as--

21 A Yes, sir.

22 Q --y'all explained them to him?

23 A Yes, sir, he did.

24 Q Was he threatened, coerced, forced, or deprived any
25 basic human needs in order to get him to give this

Proffer - R. Bryant

1 statement?

2 A No, sir, nothing at all.

3 Q Okay. And in fact, was his statement free and
4 voluntary?

5 A Free and voluntary, yes, sir.

6 Q Did the defendant sign that document?

7 A Yes, sir, he did.

8 Q Okay.

9 A His is actually -- if I may interrupt, his is actually
10 the first signature on the signature line.

11 Q Okay, thank you. Now without getting into the -- it's
12 already in the record as to what was said. Let me just
13 ask you, again, as the defendant was telling you what
14 y'all -- what he was telling you that time, the first time
15 at Hartsville P.D, at any time did he seem to be under
16 duress or did he seem to feel threatened or forced or
17 coerced in any way by y'all?

18 A No, sir.

19 MR. REDMOND: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. REDMOND: That's all the questions I have.

22 THE COURT: Cross-examination, Mr. Watts.

23 **CROSS-EXAMINATION**

24 BY MR. WATTS:

25 Q At the time on January 18th, 2007 when you first met

Proffer - R. Bryant

1 Mr. Gilbert, where did you first meet him at the
2 Hartsville Police Department?

3 A In a office I think we had borrowed to do the interview
4 in.

5 Q Was Mr. Gilbert already in the office when you came in
6 and first met him, or was he brought into the office after
7 you arrived?

8 A He -- he was -- I had already arrived as I stated at
9 Hartsville P.D. and then whenever we were able to get in
10 touch I think Investigator Locklair was able to get in
11 touch with Mr. Gilbert. He went and picked him up while I
12 was still -- I was there doing interviews so when he came
13 in I was already at the police department.

14 Q Were you in the middle of a interview at the time to
15 your knowledge when Investigator Locklair arrived?

16 A I recall that I was already talking to someone prior to
17 that interview with Mr. Gilbert.

18 Q Okay. Are you aware of any time that Mr. Gilbert was
19 placed in a holding cell at the Hartsville Police
20 Department?

21 A I don't know where he was placed at when he came in
22 because, again, I was doing other -- I was assisting other
23 interviews at the time.

24 Q Okay. You indicated you filled in the top part of the
25 City of Hartsville form that's been identified as, listed

Proffer - R. Bryant

1 as State's I.D. 2.

2 A Yes, sir.

3 Q And where did you get that information that you filled
4 in?

5 A Asked him -- well, I filled in of course knowing what
6 his name is and then where we're at, of course the current
7 date, and the time is pretty much agiven. The date of
8 birth and security number I would have to ask him that
9 information and would have been obtained it from him
10 personally.

11 Q Was there any discussion about where Mr. Gilbert had
12 been prior to being picked up the night before during your
13 conversation?

14 A The night before where he had been?

15 Q Uh-huh.

16 A We had -- other than talking to him in the statement as
17 to where, or what was going on, but I don't think we got
18 -- we had a -- I'm not -- excuse me, let me refer to some
19 notes here and I'll. There was discussion, Mr. Watts,
20 about phones, the phone conversation that allegedly that
21 he and Mr. -- he and Captain Locklair, now had on that
22 night and why he had used a fictitious name and things of
23 that sort about a nickname he had used.

24 Q Okay. So was there any discussion about his
25 activities, about where he had been, or who he had been

Proffer - R. Bryant

1 with, or what activities he had been pursuing?

2 A Excuse me just a minute. Other than he had given an
3 account to us at that time that he was called by Mr. Brown
4 and asked to pick up a car at the bus station in Florence,
5 or pick up Mr. Brown's car. Then he took Jamie Gilbert
6 with him to get it.

7 Q Okay. At any time did you give -- ask the question of
8 whether or not he was under the influence of any drugs or
9 alcohol?

10 A No, sir, I did not.

11 Q Okay.

12 A Well, I'm sorry, let me do this. Let me go back and
13 say this -- he initials on this form that he is sober,
14 competent, and sufficiently intelligent to understand the
15 form and his rights, and that is read to him as a part of
16 his rights from this form.

17 Q Okay. But you're not aware whether or not he was under
18 the influence of any kind of intoxicating substances--

19 A No.

20 Q --that would affect his competency?

21 A Not specifically, he did not appear to be.

22 Q Okay. Were you present for any conversations prior to
23 the video taped statement at the Darlington County
24 Sheriff's Department?

25 A No, sir. Those interviews were done by other persons

Proffer - R. Bryant

1 there.

2 Q So the limit of your knowledge and involvement was at
3 the Hartsville Police Department the morning of the
4 18th; is that correct?

5 A That -- that would be correct as far as any interviews.
6 I did go later when Mr. Gilbert showed us the scene where
7 allegedly this incidence had happened and took us to where
8 the body had been found.

9 Q Okay.

10 MR. REDMOND: No further questions, Your Honor.

11 THE COURT: Redirect.

12 MR. REDMOND: Nothing, Your Honor.

13 THE COURT: Thank you, Mr. Bryant.

14 All right, Mr. Redmond, what else would you like to
15 present in the way of voluntariness of the statement under
16 Jackson versus Denno.

17 All right, come around please.

18 MR. REDMOND: Lastly, Your Honor, briefly Investigator
19 Chuck Norton.

20 WHEREUPON,

21 **CHUCK NORTON,**

22 having been duly sworn by the Clerk of Court, testified as
23 follows:

24 **PROFFER EXAMINATION**

25 **BY MR. REDMOND:**

Proffer - C. Norton

1 Q And Chuck, where are you working right now, what
2 capacity are you working?

3 THE COURT: Have him give his name for the record.

4 BY MR. REDMOND:

5 Q I'm sorry. Tell us your name for the record.

6 A My name is Deputy Chuck Norton.

7 Q And by whom are you employed?

8 A Darlington County Sheriff's Office.

9 Q And how long have you been so employed?

10 A Approximately 17 years.

11 Q And in what capacity were you so employed on
12 January 18th, 2007?

13 A As an investigator.

14 Q And were you present during an interview at the
15 Hartsville Police Department involving the defendant?

16 A No, sir.

17 Q Were you present at an interview at the Sheriff's
18 Office with the defendant?

19 A Yes, sir.

20 Q Okay. And if I could approach with what's marked as
21 State's Exhibit Number 3, just let you review that and see
22 if you -- let me know when you're ready to answer any
23 questions.

24 A Okay.

25 Q And I don't know if I made this clear before, but what

Proffer - C. Norton

1 time does it indicate that this information was taken from
2 the defendant?

3 A The way it looks on the 18th approximately 2:14 p.m.
4 No, that's 7:14, I'm sorry. Yeah, I was looking at -- it
5 says seven, I'm sorry.

6 Q Is that the time that the interview, the video tape
7 interview concluded?

8 A Yes, sir, that's the time it concluded.

9 Q And were you present during the entire interview
10 between Investigator or Captain Locklair and the
11 defendant?

12 A Yes, sir.

13 Q Okay. And can you tell the Court whether or not the
14 defendant gave this statement freely and voluntarily?

15 A Yes, sir, he did.

16 Q And was he -- did he understand in your opinion what he
17 was being read and explained?

18 A Yes, sir, he did.

19 Q And did he seem again to be giving the information
20 freely and voluntarily?

21 A Yes, he was.

22 Q Was he threatened, coerced, or in any way deprived of
23 any basic human needs to get him to give a statement?

24 A No, sir, he was not.

25 Q And again, you were present during the entire

Proffer - C. Norton

1 interview?

2 A Yes, sir.

3 Q And what time again did that interview conclude?

4 A It concluded 1/18/07 at 7:14 p.m.

5 Q And is that form, is that standard operating procedure
6 when a witness or a defendant is given a video statement?

7 A Yes, sir, it is.

8 Q Okay.

9 MR. REDMOND: Beg the Court's indulgence.

10 THE COURT: All right, sir.

11 BY MR. REDMOND:

12 Q And is -- well, Chuck, is this the extent of your role
13 in this particular case?

14 A Yes, sir, for this, and then later on I went out to the
15 scene and that was it.

16 Q Okay. Thank you.

17 MR. REDMOND: I have nothing further, Your Honor.

18 THE COURT: Cross-examination, Mr. Watts.

19 MR. WATTS: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. WATTS:

22 Q Were you at the police department when Mr. Gilbert
23 arrived, Investigator Locklair, Captain Locklair now?

24 A No, sir.

25 Q Okay. So when you arrived and first met Mr. Gilbert

Proffer - C. Norton

1 where was he?

2 A At the Sheriff's Office.

3 Q Okay. More specifically, inside the Sheriff's Office
4 where was he? Was he in your office?

5 A No, sir, he was in the investigative unit at the
6 Sheriff's Office. We have an interview room over there.

7 Q So he was in an interview room; is that correct?

8 A Yes, sir.

9 Q And do you know how long he'd been there prior to your
10 arrival?

11 A I cannot recall. It shouldn't be too long.

12 Q Okay. At any time did you have any discussions with
13 Mr. Gilbert regarding any kind of intoxicating substances
14 he may have in his system?

15 A No, sir.

16 Q Did you ever ask?

17 A Investigator Locklair was conducting the interview and
18 I was just in there as a witness.

19 Q So you pretty much didn't ask any question, just sat
20 there and listened?

21 A I sat there and listened and witnessed the video
22 statement.

23 Q Okay. Did you ever actually speak and have any
24 questions for Mr. Gilbert?

25 A No, sir, I did not. No, sir.

Proffer - C. Norton

1 Q Did you ever have a conversation that day with Mr.
2 Gilbert independent?

3 A I -- if I could look at the notes I'll check and make
4 sure.

5 Q Let me retrack that a minute and ask a better question.

6 A Yeah.

7 Q Leading up to and the completion of that individual
8 video statement did you have any kind of conversation with
9 Mr. Gilbert?

10 A No, sir.

11 Q All right. Subsequent to that interview and up to the
12 time did you go with them afterwards?

13 A Yes, sir.

14 Q Okay.

15 A Go to the scene?

16 Q Did you have any conversations with Mr. Gilbert from
17 the end of that video tape to when you went out on this
18 trip with Mr. Gilbert?

19 A No, sir.

20 Q Okay. Do you understand what happened to Mr. Gilbert
21 after he gave this statement?

22 A I think after he give the statement I left and then
23 they got together and he took lieutenant and Captain out
24 to the scene.

25 Q Okay. Do you know if he was under arrest at the time

1 or not?

2 A Not sure.

3 Q Okay.

4 A I don't think he was.

5 MR. WATTS: No further questions, Your Honor.

6 THE COURT: Redirect.

7 MR. REDMOND: No redirect, Your Honor.

8 THE COURT: All right. Thank you, sir, you may step
9 down.

10 MR. REDMOND: That will be the State's proffer on the
11 Jackson v. Denno, Your Honor.

12 THE COURT: All right, sir.

13 MR. REDMOND: Oh, well, let me back up. With the
14 exception of the tape that'd be as far as the live
15 testimony.

16 THE COURT: All right, sir. All right. I'll be
17 glad -- what I'd like to do is, since this is before the
18 Court and in the admissibility that the Court has got to
19 determine, what I'm interested in is the part of the tape
20 that will contain Miranda warnings. The actual content of
21 the statement or what he said to the police is not the
22 issue that is before me so I would like to see the part of
23 the video that contains the Miranda warnings or the
24 initial part of the statement till he gets to the merits
25 after he -- once he gets to the merits I don't need to

1 hear that.

2 MR. REDMOND: And with the Court's permission I'm going
3 to attempt to do this. I might have to.

4 THE COURT: Perhaps we got an eight year old around
5 here somewhere that can...

6 This is identified as State's ---

7 MR. REDMOND: That'd be Number 1, Your Honor.

8 THE COURT: For identification, okay.

9 MR. REDMOND: Judge.

10 THE COURT: Yes.

11 MR. REDMOND: With the Court's permission we can get a
12 lap top. This was actually recorded on a CD.

13 THE COURT: That's CDR.

14 MR. REDMOND: R as opposed to an RW so it won't play.

15 THE COURT: All right, I will give you an opportunity
16 to present that. Go ahead and get the equipment that you
17 need to do that. And rather than hold up the hearing be
18 getting the necessary equipment for me to view that before
19 we finish the hearing this afternoon. It has been
20 proffered, and I will view it before we finish the
21 hearing. In the meantime, Mr. Watts, the defendant has
22 the right to offer any testimony including his own
23 testimony regarding the issue of the admissibility of the
24 statement and without waiving his Fifth Amendment right so
25 I will be glad to allow you or will allow you to present

Proffer - B. Gilbert

1 any testimony including the defendant's testimony if he
2 wishes to testify.

3 MR. WATTS: Thank you, Your Honor.

4 (Attorney confers with defendant.)

5 MR. WATTS: Your Honor, I call Mr. Bobby Gilbert to the
6 stand.

7 THE COURT: All right, come up, Mr. Gilbert.

8 WHEREUPON,

9 **BOBBY GILBERT,**

10 having been duly sworn by the Clerk of Court, testified as
11 follows:

12 **DIRECT EXAMINATION**

13 BY MR. WATTS:

14 Q Mr. Gilbert, how long had you been awake by the time
15 that you were contacted by Investigator Locklair on the
16 18th?

17 A A good minute.

18 Q You need to speak up for the court reporter.

19 A A good little while.

20 Q A good little while. Now give me an idea how many
21 hours that could be.

22 A Three, four.

23 Q Okay. So at the previous evening had you been using
24 any kind of intoxicating substances?

25 A Yes, sir.

Proffer - B. Gilbert

1 Q Okay. What were you using the previous night?

2 A Jagermeister and Everclear.

3 THE COURT: You're going to have to speak up. I can't
4 hear you.

5 THE WITNESS: Jagermeister and Everclear.

6 BY MR. WATTS:

7 Q Okay, alcohol. Anything else?

8 A Ecstasy.

9 Q Okay. And the following morning when you were
10 contacted did you take any other intoxicating substances
11 at the time?

12 A Mixed drink called Nyquil.

13 THE COURT: I'm having trouble hearing.

14 BY MR. WATTS:

15 Q Speak up real loud.

16 A A mixed drink called Nyquil.

17 Q You indicated a mixed drink called Nyquil. What's in a
18 mixed drink that you're talking?

19 A Jagermeister 151, Everclear, and half a capsule of
20 Everclear, I mean.

21 THE COURT: I'm sorry, sir. You're not doing yourself
22 any good, the Court any good, the court reporter any good,
23 or anyone else if we can't hear you.

24 THE WITNESS: It's 151, Ecstasy, Everclear, and
25 Jagermeister.

Proffer - B. Gilbert

1 BY MR. WATTS:

2 Q Okay. And at what time approximately did you take that
3 on the morning of the 18th?

4 A It was around 8:30.

5 Q Around 8:30. When you were contacted by now Captain
6 Locklair, investigator at the time, did they indicate they
7 wanted to come pick you up?

8 A Yes, sir.

9 Q Okay. When you were picked up by Investigator Locklair
10 where did you ride in the car?

11 A In the back seat.

12 Q In the back seat. When you arrived at the Hartsville
13 Police Department where were you first taken?

14 A In the holding cell.

15 Q Okay.

16 THE COURT: Speak up again.

17 THE WITNESS: In the holding cell.

18 BY MR. WATTS:

19 Q In the holding cell, okay. How long were you in that
20 holding cell that morning?

21 A About 30 minutes.

22 Q Okay. Did anyone ever ask any questions while you were
23 in the holding cell?

24 A Investigator Locklair.

25 Q Okay. And subsequent to being taken from the holding

Proffer - B. Gilbert

1 cell where did you go?

2 A In the little office.

3 Q Okay. At any time during the morning did you tell
4 Investigator Locklair that you had taken Nyquil or had
5 anything that would cause you to be intoxicated?

6 A In the ride to the office and plus at the office.

7 Q Okay. And in the ride at the office you're indicating
8 going to the Hartsville Police Department; is that
9 correct?

10 A Yes, sir.

11 Q Okay. At any time did you tell Investigator or
12 Lieutenant Bryant, Robyn Bryant, you had anything
13 intoxicating in your system?

14 A No, sir.

15 Q So your indication about having taken this Nyquil, this
16 mixed drink that contained these substances you described,
17 was to Investigator Locklair; is that correct?

18 A Yes, sir.

19 Q Okay. Were you intoxicated at the time?

20 A Yes, sir.

21 Q Okay. Subsequent to the completion of talking at the
22 Hartsville Police Department where were you taken?

23 A To Darlington.

24 Q To Darlington?

25 A Detective's office.

Proffer - B. Gilbert

1 Q Okay. So you were taken to the Darlington County
2 Sheriff's Department; is that correct?

3 A Yes.

4 Q And you went into the detective's wing; is that
5 correct?

6 A Yes, sir.

7 Q Where did you go after getting out of the car?

8 A In one of the office.

9 Q Okay. When you rode over from the Hartsville Police
10 Department to the Sheriff's Department where did you ride
11 in the car?

12 A In the back seat.

13 Q Okay. At any time were you asked by anyone, that you
14 recall, while you were at the Sheriff's Department whether
15 or not you were intoxicated?

16 A No, sir.

17 Q Had you told Investigator Locklair already that you
18 were intoxicated?

19 A Yes, sir, before I got there.

20 Q Did they proceed to go ahead and try to give you these
21 warnings and try to talk with you even after you indicated
22 that you were intoxicated?

23 A Yes, sir.

24 Q Okay. Subsequently given your video statement what
25 happened to you? What happened after you gave your video

Proffer - B. Gilbert

1 statement?

2 A They dressed me out in jail uniform and shackled me and
3 took me to the site.

4 Q So immediately after your interview you were
5 handcuffed; is that correct?

6 A Yes, sir.

7 Q And you were changed from your regular street clothes
8 into a prison issued uniform; is that correct?

9 A Yes, sir.

10 Q Excuse me, detention center uniform. When you were
11 placed in the back seat of the car that morning did you
12 feel like you were under arrest?

13 A Yes, sir.

14 Q Did you ever ask anyone if you were under arrest?

15 A No, sir.

16 Q Okay. Did you feel that they had the intention to keep
17 you in custody?

18 A Yes, sir.

19 Q Okay. Were you ever given an opportunity to sleep or
20 lay down or rest during the day?

21 A No, sir.

22 Q Okay. And did you ever ask if you could talk to anyone
23 else other than the investigators, family member, an
24 attorney, anyone else?

25 A No, sir.

Proffer - B. Gilbert

1 Q No further questions.

2 THE COURT: All right, Mr. Redmond.

3 MR. REDMOND: Briefly, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. REDMOND:

6 Q You said you didn't have a chance to rest that day, but
7 you skipped the part where wasn't sometime between --
8 isn't it true that after you left Hartsville P.D. you go
9 to the Sheriff's Department, right? You didn't
10 immediately give a statement because didn't you take a
11 polygraph test --

12 A Yes, sir.

13 Q --in between? You didn't mention that, did you?

14 A No, sir.

15 Q Okay. So when you're talking about not being able to
16 rest you skipped the part of that whole process. You were
17 undergoing a polygraph examination, right?

18 A Yes, sir.

19 Q That you agreed to do, right?

20 A Yes, sir.

21 Q Okay.

22 MR. REDMOND: That'd be all the questions I have for
23 the purposes of this hearing. Thank you so much, Your
24 Honor.

25 THE COURT: Redirect.

Proffer - B. Gilbert

1 MR. WATTS: Yes, Your Honor, very briefly.

2 **REDIRECT EXAMINATION**

3 BY MR. WATTS:

4 Q Mr. Gilbert, did you ever sign this form?

5 A No, sir.

6 THE COURT: Mr. Redmond — wait a minute. Is that
7 responsive to the direct exam-- or cross-examination?

8 MR. REDMOND: Your Honor, the State would submit it's
9 not. I only asked him about the polygraph examination. I
10 did not ask anything concerning that form.

11 THE COURT: What about that, Mr. Watts?

12 MR. WATTS: Your Honor, in regard to Mr. Redmond's
13 question about polygraph, time to rest, I think that was
14 indicative of what he'd been doing during the day but as
15 far as initial request that still followed up to what I
16 had regarding earlier testimony.

17 THE COURT: Overruled. You'll acknowledge the rule is
18 that direct examination and cross-examination, then
19 recross examination is limited to those matters brought
20 out on cross. Is that not correct?

21 MR. WATTS: Yes, Your Honor.

22 THE COURT: Well, where is —

23 MR. WATTS: Withdrawn, Your Honor.

24 THE COURT: All right, okay. Anything further?

25 All right, thank you, you may step down.

1 MR. WATTS: Nothing further, Your Honor.

2 THE COURT: Are we in a position to get me an
3 opportunity -- or are you getting your equipment that I
4 can see. Well, first of all, Mr. Watts, let me ask you,
5 is there further testimony on behalf of defendant with
6 regard to the admissibility of the two statements?

7 MR. WATTS: None, Your Honor.

8 THE COURT: So evidentiary-wise for my consideration
9 then what has already been testified to by the three
10 witnesses and the defendant, four witnesses in this case,
11 plus the recorded statement and I'll watch part of that
12 recorded statement at this time.

13 MR. REDMOND: Thank you, Your Honor, and I've got the
14 disk.

15 (State's Exhibit 1 was played for the Court.)

16 MR. REDMOND: And Your Honor, just so you'll know, we
17 made arrangements to have a projector so even with that
18 tape we won't have any problems tomorrow.

19 THE COURT: All right. Well, this is for the purpose
20 of the Court hearing now to decide for my purposes as
21 determining the admissibility and that would be all the
22 evidence that the State has on the Jackson v. Denno. The
23 question is that, Mr. Watts, in hindsight and in fairness
24 to the defendant, I believe that you should be allowed to
25 ask him the question that you want to ask and not be hung

1 on the technicality that you overlooked that during the
2 process of direct examination. I know that was your
3 purpose so you can put him back on the stand.

4 MR. WATTS: Thank you, Your Honor, very briefly.

5 (Bobby Gilbert resumed his seat on the witness stand.)

6 BY MR. WATTS:

7 Q Bobby, you've already been sworn in. Just briefly.
8 There's a form that has been identified as State's I.D. 2,
9 City of Hartsville Miranda waiver form. Did you sign this
10 form?

11 A No, sir.

12 Q Okay. Did you initial this form?

13 A No, sir.

14 Q Okay.

15 MR. WATTS: No further questions, Your Honor.

16 THE COURT: Cross-examination, Mr. Redmond.

17 MR. REDMOND: For the purpose of this hearing, no. No,
18 Your Honor.

19 THE COURT: All right, thank you, sir. You may step
20 down.

21 All right, Mr. Watts, you're the moving party. I will
22 be glad to hear from you by way of argument with regard to
23 the motion to suppress and let's approach it from the
24 standpoint of two issues in the motion to suppress. One
25 is the motion to suppress the verbal statement given to

1 the officers at the Hartsville Police Department and the
2 second would be the recorded statement at the Darlington
3 Sheriff's Office.

4 MR. WATTS: Your Honor, in regard to the first oral
5 statement given at the City of Hartsville, you've heard
6 testimony from Mr. Gilbert indicating that he had taken
7 substance into his body that would create an incompetent
8 or incompetency in his ability to understand and correctly
9 judge what his rights were and difficulty and an
10 impairment in his ability to reason, then it would be
11 improper -- render him in incapacitated state, and also
12 prevent him from knowingly and intelligently waiving any
13 of his rights. In testimony from the investigators who
14 took the reports or took the statements there has been no
15 affirmative disclosure that they ever asked or tried to
16 find out whether or not he was intoxicated at the time,
17 that no part was -- that actually question it appears that
18 was just read out to him or slid in front of Mr. Gilbert.

19 Of course, you've heard his testimony he never signed
20 that form, Your Honor. So as far as the first oral
21 statements given to investigators at the Hartsville
22 Police Department we would allege that by testimony
23 presented, number one, he didn't sign that form; and
24 number two, he was incapacitated at the time and could not
25 provide a knowing, intelligent waiver of his rights.

1 And the second part, Your Honor, regarding the video
2 statement, again, I would indicate that due to the
3 intoxicating substance that he'd taken into his body he
4 could not knowingly, intelligently waive his right and
5 withholding information or not providing -- he not
6 knowingly, intelligently waived his Miranda rights.
7 You've heard testimony that he felt as if he was already
8 incarcerated at the time.

9 THE COURT: Well, isn't that the only issue as far as
10 incarceration is concerned as to whether Miranda rights
11 were even necessary. And I agree with you, I don't think
12 there's any question he's in custody and he wasn't free to
13 leave at either time so there's no question in my mind
14 that Miranda rights are necessary. It's not like it was a
15 non-custodial interrogation. I would rule at this point
16 that the -- both interrogations were custodial. I don't
17 think there's any question about that.

18 MR. WATTS: Yes, Your Honor. And going on to the
19 second, the issue of incapacity due to intoxication, not
20 being able to knowingly and voluntarily waive any of his
21 rights and giving a statement, and also the sheer fact he
22 was in a situation of duress, been up a very long time
23 dealing with these issues, constant questioning, between
24 the questioning in the morning, questioning in the
25 afternoon, it'd been mentioned without talking about the

1 results, the mention of a polygraph test, then this video
2 statement and wrapping and spanning the long hours of the
3 day, Your Honor, that given the totality of the situation
4 and the testimony you've heard from Mr. Gilbert we would
5 say he was in no position to freely and voluntarily waive
6 his rights to give statements and those statements should
7 be suppressed. Thank you, Your Honor.

8 THE COURT: One question before I call on Mr. Redmond.

9 MR. WATTS: Yes, Your Honor.

10 THE COURT: As far as the Jackson v. Denno matter is
11 concerned you would concur that for purposes of
12 admissibility for this Court to rule on now the burden is
13 on the State to show the voluntariness of the statement
14 and that it was taken in compliance with Miranda. What's
15 your view of the level of proof that must be shown by the
16 State?

17 MR. WATTS: Your Honor, I think it's got to be more
18 than them just filling out a form and sliding it
19 across —

20 THE COURT: What's the legal burden of proof though for
21 the State?

22 MR. WATTS: Your Honor, I believe the legal burden of
23 proof is a clear and convincing evidence.

24 THE COURT: At this stage?

25 MR. WATTS: Be beyond a reasonable doubt, excuse me,

1 Your Honor.

2 THE COURT: No, I don't believe -- okay, what's your
3 view on that?

4 MR. WATTS: Preponderance?

5 MR. REDMOND: My understanding is preponderance, Your
6 Honor.

7 THE COURT: That's correct. Preponderance of the
8 evidence at this level. The State's burden is to prove by
9 a preponderance of the evidence that the statement was
10 voluntarily taken in compliance with Miranda. All right,
11 let me hear from you, Mr. Redmond.

12 MR. REDMOND: Thank you, Your Honor. May it please the
13 Court, briefly, the State would just contend, and I think
14 the issue, the standard at this point is preponderance.
15 We've had testimony from three officers that have
16 indicated that he was read his rights exhaustively in this
17 particular situation. We've heard the video. Further, I
18 think Mr. Watts' arguments are more issues for
19 cross-examination and for argument to the jury as opposed
20 to admissibility, which is what we're here on which is why
21 that standard is by a preponderance of the evidence. I
22 think clearly the State has met that burden of
23 preponderance with the -- on the issue of admissibility.
24 Anything else that Mr. Watts wants to get into to convince
25 the jury that it wasn't voluntarily is open season. But

1 at this point, Your Honor, for purposes of admissibility
2 we would submit that it is, in fact, admissible and that
3 we have carried our burden.

4 THE COURT: All right. Reply argument, Mr. Watts?

5 MR. WATTS: Your Honor, I think that the preponderance,
6 the number of witnesses that we can show up, well, the
7 only person they can have as many law enforcement people
8 as they can in these interviews to make their case, show
9 up and have extra witnesses come. I've got one defendant.
10 One defendant that was present and one was there. He's
11 given the evidence and I think that there is enough there
12 based on his own testimony regarding intoxication and the
13 failure of anyone else to go through it and question it or
14 deny it or find some way where it's even addressed in more
15 than just a token fashion and a form is still supportive
16 of meeting our case and not carrying the burden,
17 preponderance of the evidence.

18 THE COURT: All right, sir. All right, before I rule,
19 Mr. Watts, what is your position on the admissibility of
20 the exhibits that have been offered? One, being the CD
21 ROM of the record interview. Do you have any problems
22 with the admissibility of that for purposes of this
23 hearing as a Court Exhibit Number 1?

24 MR. WATTS: For purposes of this hearing, Your Honor,
25 no, I had been presented with that.

1 **THE COURT:** All right. That's Court Exhibit Number 1.
2 Number 2 -- and will be admitted as Court Exhibit Number
3 1. Exhibit 2 is the City of Hartsville Miranda form, the
4 original of which has now been marked and so that should
5 remove any problems under Rule 901 regarding the
6 authentication or the -- or Rule 1003, requirement of the
7 original because the original has been produced so there
8 shouldn't be any problems from that from the standpoint of
9 the rules of evidence. The only question then becomes
10 from the standpoint of Rule 5 of the Rules of Criminal
11 Procedure does the State -- does the Defense object to the
12 admissibility of that as State's Exhibit Number 2 for
13 purposes of this hearing?

14 **MR. WATTS:** Yes, Your Honor, we object to the admission
15 of that due to the fact it has not been provided to
16 date.

17 **THE COURT:** And tell me how that -- how you're
18 prejudiced by that?

19 **MR. WATTS:** Well, Your Honor, the first thing is, this
20 is unlike the video statement where it's just a form
21 that's just submitted where law enforcement has filled out
22 all the information. This is a supposedly something
23 Mr. Gilbert did sign, something he supposedly initialed
24 and something he supposedly signed in his own handwriting.
25 To get it the day of the trial I have no opportunity, even

1 if I can talk with my client and he admits or tells me he
2 didn't sign it, how else am I going to try to check this
3 to bring any other proof that is possible, handwriting,
4 any -- there's nothing I can do other than say he didn't
5 sign it. I have no opportunity to address the issue by
6 any outside means other than discussions with my client to
7 say whether or not he recognizes it or signed it.

8 THE COURT: All right. And number 3 is the document
9 referring to the introduction of the tape recorded
10 statement. Do you have any objection to that to be
11 admitted into evidence as State's Exhibit Number 3 for
12 purposes of this hearing?

13 MR. WATTS: I have no objection to that, Your Honor, as
14 this has been filled out completely by law enforcement.

15 THE COURT: All right. Mr. Redmond, what's your
16 position from the State's standpoint on State's Number 2?

17 MR. REDMOND: As relates to State's Number 2 the
18 Miranda waiver from City of Hartsville the State would
19 contend that the defendant has not been prejudiced
20 because, quite frankly, and the defendant has testified
21 and said it's not mine, I didn't sign it. I did -- as I
22 indicated earlier it is referenced in the report that he
23 was read his rights. That's been referenced in the report
24 that was provided to Defense ions ago, several months ago.
25 Further, the defendant did have a chance to confer with

1 his client and his client has now indicated that it is not
2 his signature. Truth be told, Your Honor, it doesn't
3 necessarily prejudice him since I'm the one with the
4 burden of proof as it relates to the jury. Obviously that
5 may put me in a different position so, and when I say
6 different position I mean in the sense of having deal with
7 that as yet another issue. So from that standpoint, not
8 only do I think the defendant is not prejudiced by that
9 particular issue, but I think that any problems have been
10 cured through the course of this hearing, that providing
11 of the original and again the defendant took the stand
12 regarding that particular issue, so I think they did have
13 enough time to confer to decide what course of action to
14 take. They took that course of action today, and so Your
15 Honor, we would submit that there is no prejudice.

16 MR. WATTS: Your Honor, if I may briefly respond.

17 THE COURT: Yes, just a minute. All right, yes, sir.

18 MR. WATTS: Briefly, Your Honor, just being presented
19 with it today, if I had had that material beforehand there
20 may have been an opportunity to bring another witness to
21 testify on behalf. So saying that we've been able to take
22 corrective measures by just presenting a witness on my
23 client in this matter that's kind of tying my hands
24 exactly in a way I only have one witness where I can
25 bring. So I think to say that it's been cured by just

1 having the hearing doesn't allow ---

2 THE COURT: What other type witness could you or would
3 you have called?

4 MR. WATTS: Your Honor, if it was really something we
5 were looking at and I knew about it could be handwriting
6 analysis. It could be someone else to look at it and give
7 us the veracity of the signature.

8 THE COURT: All right. From the standpoint of
9 admissibility of State's Number 2 I'm going to overrule
10 the Defense's objections. I don't think that there was
11 any intentional withholding pursuant to Rule 5 by the
12 State; and in fact, it would be my view that the State had
13 thought that everything was produced. I did require them
14 to produce and immediately give a copy which was furnished
15 as soon as the witness was called. I also required the
16 State to get the original from the law enforcement files
17 to give the Defense an opportunity to look at the original
18 as well, and also there was a recess taken by the Court to
19 give the defendant an opportunity to talk with his counsel
20 regarding State's Number 2. Furthermore, the testimony of
21 the officer is that he was, and that it is actually
22 referred to in an earlier report, that he was given his
23 constitutional rights. And finally, the defendant was
24 allowed to and did take the stand and was given the
25 opportunity to deny that he signed the statement, which he

1 actually did take the stand and deny that he signed the
2 statement. Therefore, from the standpoint of
3 admissibility I think that the statement is admissible,
4 and the State would admit State's Number 2 into evidence
5 as a part of the record for the Jackson versus Denno
6 hearing.

7 It then becomes a question for me to determine the
8 believability or the testimony or the credibility of the
9 testimony presented by both the State and the Defendant on
10 these issues. But from a standpoint of admissibility I
11 believe that by the earlier references in the police
12 report, by the opportunity to confer with counsel, and by
13 the opportunity to testify and deny that he made this
14 statement or that he signed this form, the prejudice issue
15 has been overcome by any failure to produce that might
16 have occurred. I'm not saying that it did. I just don't
17 think that there is any prejudice to him from that
18 standpoint. So the statement Number 2 will be admitted
19 into evidence.

20 Now with regard to Jackson versus Denno it is axiomatic
21 that a defendant in a criminal case is entitled to an
22 independent evidentiary hearing to determine the
23 voluntariness of statements made, or statement or
24 statements made prior to the submission of such statements
25 to the jury. Thus, where there's conflicting evidence

1 about a statement the Court must first make a finding as
2 to the validity of a statement and if the statement is
3 found to be valid by the Court it should be submitted to
4 the jury. In making the determination the trial judge
5 should examine the totality of the circumstances including
6 the background, experience, and conduct of the accused
7 surrounding the utterance or the statement to determine
8 whether the statement -- whether the State has met its
9 burden of proof so as to warrant the admission of the
10 confession or statements. The test of admissibility of
11 the statement is whether it was knowingly, intelligently,
12 and voluntarily given. A confession may not be extracted
13 by any sort of threats or violence or obtained by any
14 direct or implied promises, however slight, or by the
15 exertion of any improper influence. Part of the State's
16 burden during this hearing is to prove by a preponderance
17 of the evidence that the State has voluntarily complied
18 with the requirements of Miranda versus Arizona. The
19 State bears this burden of proof even when the defendant
20 had signed a waiver of rights form. Although custody is a
21 factor to be considered in determining voluntariness, the
22 defendant need not show that he was in custody at the time
23 the statement was made to request a Jackson versus Denno
24 hearing on the voluntariness issue. However, I have
25 previously ruled that there is no question that the

1 defendant in this case was in custody at the time of both
2 alleged statements, that is, the verbal statement made to
3 the police at the Hartsville Police Department or the
4 recorded statement made at the Darlington County Sheriff's
5 Office. He was not free to leave and thus was in custody.
6 And that being the case, then the Miranda warnings would
7 be required.

8 The Court will first address the matter of the verbal
9 statement at the City of Hartsville Police Department, and
10 the Court would find that the statement was knowingly,
11 intelligently, and voluntarily given and that at the time
12 was given in accordance with Miranda. The officers
13 testified that his Miranda warnings were given. They
14 actually read into the report the things that he was told.
15 Even if he contends that he did not sign this statement he
16 did not deny that those things were told to him by the
17 officers. So even if you took his statement as being true
18 that he did not sign his statement there is no denial in
19 the record as to what the officers told him at the City of
20 Hartsville Police Department when before taking the verbal
21 statement and that was the four matters here that he's
22 sober, competent, and sufficiently, intelligently,
23 intelligent to understand this form and his rights, that
24 he can read write and understand the English language. I
25 have received the following formal education, 11 years,

1 and I have not been promised anything. Officer Locklair
2 testified that he read him each one of those and there's
3 been no denial of that. Furthermore, Officer Locklair
4 testified that he told -- read the five Miranda warnings
5 of his right to remain silent, anything you can say
6 against him could be used in court, that you have the
7 right to talk to a lawyer for advice before we ask you any
8 questions and have him with you during questioning, and if
9 you cannot afford a lawyer one will be appointed for you
10 before questioning if you wish, and if you decide to
11 answer questions now without having a lawyer present you
12 will have the right to stop answering at any time until
13 you talk to a lawyer. Officer Locklair indicated that he
14 verbally told him every one of those things, and again,
15 there has been no denial in the record that he was told
16 these matters by Officer Locklair. So it's very clear to
17 me that he was given the Miranda warnings even if you
18 disregard State's Exhibit Number 2, that he signed the
19 waiver form.

20 My finding would be that by a preponderance of the
21 evidence the State has proven that he did, in fact, signed
22 it, signed the form, but that is not necessary for me to
23 make a determination in view of the fact that the verbal
24 testimony uncontradicted, is that he was given these
25 warnings. So that being the case, the verbal statement

1 given at the Hartsville Police Department will be
2 admitted.

3 Furthermore, with regard to the written, I mean, the
4 recorded statement the Court has had an opportunity to
5 view that and has -- would make a finding on the record
6 that he was given the Miranda warnings as is shown in
7 that; and further, that this would belie his claim of
8 intoxication. Incidentally, with regard to the first
9 statement I do specifically recall both of the officers
10 saying that he did not appear to be intoxicated. I
11 specifically appear -- specifically recall Lieutenant
12 Bryant being asked that question, and he said he did not
13 appear to be intoxicated. That would be with regard to
14 the first statement.

15 With regard to the second statement the Court has had
16 an opportunity to view the verbal, I mean the recorded
17 statement, and he does not appear to the Court to be
18 intoxicated on that statement. Also, I do not find that
19 he was under any duress in making the statement, and
20 therefore, the Court would pre-conclude that the State has
21 proven by a preponderance of the evidence that the
22 statement was knowingly, intelligently, and voluntarily
23 made. The defendant was in custody at the time that it
24 was made, but he was given his Miranda warnings and the
25 recorded statement is also valid and admissible into

1 evidence.

2 All right, that will conclude the matters with regard
3 to Jackson versus Denno. Are there other pretrial matters
4 that we need to address, Mr. Redmond?

5 (WHEREUPON, State Exhibit No. 2 was admitted into
6 evidence.)

7 MR. REDMOND: None from the State, Your Honor.

8 THE COURT: Anything else from the Defense, Mr. Watts?

9 MR. WATTS: Yes, Your Honor.

10 MR. REDMOND: Your Honor, while he's looking, I did
11 misspeak. We do have a Blaire matter since he was
12 evaluated. At some point we got the report. Once we get
13 to a certain point I don't foresee that taking long. As a
14 matter of fact, if the Court will indulge me we have shown
15 Mr. Watts a copy and I think there's already a marked
16 exhibit that I've shown Mr. Watts.

17 THE COURT: All right, we'll come to the Blaire hearing
18 in just a minute. Let's see what other motions the State
19 has -- I mean, the Defense has.

20 MR. WATTS: Your Honor, I must address today as a
21 motion -- motion to suppress any information that has been
22 gained from my client's cell phone. As of today I
23 received a search warrant. This is just another example
24 of being supplied with late Rule 5 discovery information.
25 Essentially what this is, is it is a warrant that

1 described today for all media phone numbers or any other
2 information that was located on my client's cell phone
3 when he was under — brought under arrest. I think this
4 search warrant was completed and signed on the 30th of
5 June, 2008, and I think in looking at this there's a phone
6 book, there are pictures, there are other issues. And as
7 far as the date upon which the information was supplied
8 versus when it was obtained I just want to have the issue
9 —

10 THE COURT: All right. What's the issue, I'm sorry.

11 MR. WATTS: The issue is, Your Honor, I'm asking to
12 verify that the material taken from the phone was obtained
13 within the requirements and the time frame of the search
14 warrant having not been able to check that or be able to
15 make sure that was done in a timely fashion because as I
16 am getting a copy of the search warrant today as an issue
17 required information on when this information was obtained
18 pursuant within ten days of the search warrant and also —

19 THE COURT: There's no return on the search warrant?

20 MR. REDMOND: Your Honor, there's no return on the
21 search warrant as of yet. I think we're supposed to be
22 trying to get that tomorrow with the magistrate, and I can
23 briefly address that. Your Honor, the proceeds from the
24 search warrant were turned over along with everything a
25 long time ago, however, we did not have a copy of the

1 search warrant so we contacted law enforcement last week
2 to procure copy of the search warrant and we got it today.
3 And so the proceeds from the search warrant were already
4 turned over, but the actual search warrant itself was not.
5 And at this point, Judge, Your Honor, I tell the Court
6 that my understanding is -- correct me if I'm wrong --
7 that the magistrate who actually did this search warrant,
8 Judge Bell, Guy Bell I believe, I will mark, not available
9 today but was supposed to know for sure first thing in the
10 morning about this return. Quite frankly, if we do not
11 have the return I think that issue will resolve itself.

12 THE COURT: Well, let me see, I got two problems with
13 this, Mr. Redmond. I got the first problem of the fact
14 that by the matter wasn't turned over from law enforcement
15 to your office so you can turn it over to the defense
16 counsel in a timely manner, June 30th, 2008. This is
17 May -- I mean, April the 27th of 2009, and he's just now
18 getting the search warrant. That's the first problem I
19 have with it. And the second problem is why wasn't there
20 a timely return filed with the search warrant? Why should
21 we have to have the magistrate come up here to testify
22 that it was returned. I have a real problem with it.

23 MR. REDMOND: And Your Honor --

24 THE COURT: And this is the very thing that I talked to
25 law enforcement about last Tuesday when -- or Thursday

1 when I was over here about evidence being withheld from
2 the Defense and I can see no reason why this evidence was
3 withheld.

4 MR. REDMOND: And Your Honor, quite frankly, I wish I
5 was in a position to respond as far as being able to give
6 the Court appropriate answers. I cannot explain. I do
7 not know why the return was not sent from the magistrate
8 to law enforcement.

9 THE COURT: Or the search warrant for that matter.
10 When did you get the search warrant?

11 MR. REDMOND: Today. As soon as I got it I made
12 Mr. Watts aware of it and made him a copy.

13 THE COURT: And there's no return attached to it?

14 MR. REDMOND: That's correct, Your Honor.

15 THE COURT: All right. The evidence obtained as a
16 result of the search warrant is suppressed.

17 MR. REDMOND: Thank you, Your Honor.

18 MR. WATTS: Thank you, Your Honor. Beg the Court's
19 indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. REDMOND: And Your Honor, if I could clarify, just
22 for the purpose of law enforcement I didn't fully state --
23 I'm not opposing the Court's decision. I actually
24 understand it. I'm not trying -- I just want to make the
25 record clear as it results to placing blame. The phone

1 was actually examined at SLED. The search warrant was
2 obtained for the purposes of SLED so it wasn't actually in
3 the Sheriff's Department file. We actually had to get
4 this from the SLED file and the return is not in there,
5 and that's why we were contacting the magistrate so I
6 wanted to make sure I'm clear as to who -- where the ball
7 got dropped.

8 THE COURT: Well, it's very clear to me that the
9 Solicitor's Office is charged with the knowledge of
10 anything that's in the possession of law enforcement,
11 whatever agency it is, and failure to produce it is a
12 responsibility of the Solicitor's Office.

13 MR. REDMOND: And we understand and accept that
14 responsibility and accept the Court's ruling, Your Honor.
15 Thank you.

16 THE COURT: All right.

17 MR. WATTS: Your Honor, if I may.

18 THE COURT: Yes, sir.

19 MR. WATTS: Your Honor, I previously made a motion to
20 regarding the State's use of any prior convictions, if
21 they intend to any kind of Lyle evidence of prior bad
22 acts.

23 THE COURT: Well, my understanding from pretrial
24 conferences the State does not intend to offer Lyle or
25 pretrial -- I mean, or prior bad acts in its case in

1 chief. Is that correct?

2 MR. REDMOND: That is absolutely correct, Your Honor.

3 MR. WATTS: Thank you, Your Honor.

4 THE COURT: We'll address anything else at the
5 conclusion of the State's case.

6 MR. WATTS: Yes, Your Honor. Thank you, Judge ---

7 THE COURT: All right.

8 MR. WATTS: ---for putting that on the record.

9 THE COURT: Also, while I'm -- while we're waiting on
10 Mr. Watts, there's one other thing we need to put on the
11 record. Just be careful about, both counsel, in view of
12 the Court's ruling with regard to the admissibility of the
13 statements. Keep in mind that apparently during the
14 interim between the verbal statement and the recorded
15 statement the polygraph issue cannot come out before the
16 jury.

17 MR. WATTS: Yes, Your Honor.

18 MR. REDMOND: And I will make sure that -- I think
19 we're all aware of that so we appreciate the Court's
20 admonition.

21 THE COURT: All right.

22 MR. WATTS: Your Honor.

23 THE COURT: Yes, sir.

24 MR. WATTS: In going forward on the three indictments
25 that the State has decided to move forward with, we would

1 move to quash each indictment based on insufficiency of
2 the evidence and failure on the indictments of its face to
3 state within particularity as required to be done before
4 the jury is sworn in.

5 THE COURT: All right. Do you have some particular
6 problem with the indictment that does not conform to State
7 versus Gentry? State versus Gentry holds indictments are
8 not jurisdictional but are simply notice requirements.
9 And in what way do they not advise the defendant of the
10 charges against him?

11 MR. WATTS: Your Honor, as far as the indictment on the
12 armed robbery I think as far as notice is concerned with
13 that is specificity which I believe that —

14 THE COURT: Specificity as to what?

15 MR. WATTS: As to the bank card, Your Honor, but I have
16 a question for Mr. Redmond. Are y'all presenting any
17 evidence regarding since you dropped the financial
18 transaction card fraud —

19 THE COURT: Wait a minute, no, you can't talk to him.
20 You got to talk to me so she can take this down.

21 MR. WATTS: I apologize, Your Honor, I was trying to
22 clarify. The question was, since an earlier indictment or
23 a separate indictment has been discharged which was
24 financial transaction card fraud with specificity it deals
25 with a bank card in the armed robbery indictment.

1 **THE COURT:** Correct.

2 **MR. WATTS:** The question is exactly which bank card
3 referring to.

4 **THE COURT:** Doesn't that become an evidentiary matter?

5 **MR. WATTS:** Your Honor, I think that is a question I'm
6 trying to address, may not rise to the level of concern in
7 this matter as you can find for notice of the crime—

8 **THE COURT:** I would rule that it does not rise to level
9 of not having notice. Under State versus Gentry will
10 become a matter of proof and the State has to present
11 their case.

12 **MR. WATTS:** Yes, Your Honor.

13 **THE COURT:** All right. It is my view that all three
14 indictments do meet the requirements of State versus
15 Gentry by adequately informing the defendant of the nature
16 of the charges against him. No specific matters have been
17 presented to the Court that would indicate the defendant
18 did not have notice, and I would therefore overrule the
19 motion to quash the indictments.

20 **MR. REDMOND:** Thank you, Your Honor.

21 **MR. WATTS:** Your Honor, I believe that may be all. We
22 wish to address the Blaire issue. I think I would be able
23 to double check to make sure there are no other motions
24 from Defense, Your Honor.

25 **THE COURT:** All right. All pretrial motions on behalf

1 of Defense having been dealt with except the Court will
2 now turn its attention to the matter of competency and
3 State versus Blaire. Tell me, Mr. Redmond, what happened.
4 The defendant was by agreement or by request of the
5 Defense of what moved up to be examined for competency to
6 stand trial and meet competency to know the difference
7 between right and wrong, or just one?

8 MR. REDMOND: It's actually just -- and I'll actually
9 lead to Ms. Patty McKenzie. She is going to address the
10 Blaire issue.

11 MS. MCKENZIE: Your Honor, that was ordered by Judge
12 Dianne Goodstein on July 21st of 2008. She signed an
13 order that a evaluation for competency be done, and that
14 evaluation was completed through the South Carolina
15 Department of Disabilities and Special Needs.

16 THE COURT: And there's a copy of that I believe you
17 said has been marked as a State's Exhibit?

18 MS. MCKENZIE: Yes, Your Honor.

19 THE COURT: What number is that?

20 MS. MCKENZIE: I believe it's 4.

21 THE COURT REPORTER: I made it a Court's Exhibit,
22 Judge.

23 MS. MCKENZIE: Okay. Court's Exhibit 2 and 3, Your
24 Honor, with the evaluation and with a cover letter.

25 THE COURT: Court's 2 and 3?

1 MS. MCKENZIE: Yes, sir.

2 THE COURT: All right, Mr. Watts, have you been given a
3 copy of the letter and the evaluation from the Department
4 of Disabilities and Special Needs that have been marked as
5 Court's Exhibits Number 2 and 3?

6 MR. WATTS: Your Honor, if I may approach, just to
7 confirm I -- make sure. I think I've seen them, just to
8 make sure of the dates and to be absolutely clear on the
9 record. Yes, Your Honor, I have been provided a copy.

10 THE COURT: Any objection to the Court's considering
11 those two exhibits?

12 MR. WATTS: No objection, Your Honor.

13 THE COURT: All right. The Court does have the two
14 exhibits, and I will say for the record that the forensic
15 evaluation dated -- the evaluation was 8/19/08. The date
16 of the report, date signed is 8/26/08. Give me just a
17 minute to review this please.

18 (Pause.)

19 THE COURT: All right. Ms. McKenzie, anything further
20 you would like to offer?

21 MS. MCKENZIE: No, Your Honor.

22 THE COURT: All right. Mr. Watts, anything you wish to
23 offer with regard to question of competency?

24 MR. WATTS: No, Your Honor.

25 THE COURT: All right. The Court would find that the

1 report dated 8/26/08 does make the finding that
2 Mr. Gilbert does not meet criteria for a diagnosis of
3 mental retardation psycho-educational evaluation results
4 indicate scores well above the range of mental retardation
5 and both intellectual functioning and adaptive
6 functioning. Mr. Gilbert clearly has adaptive skills
7 which would enable him to live and work independently.
8 His performance in today's evaluation was better than
9 would be expected based upon his verbal IQ scores. There
10 is no indication of mental illness. Mr. Gilbert
11 understands the charges against him. He demonstrates a
12 good factual and rational understanding of the legal
13 proceedings. He demonstrates an excellent ability to
14 provide adequate assistance to his attorney in his
15 defense. We therefore respectfully offer the following
16 opinion: Presence of mental retardation, no; competency
17 to stand trial, yes.

18 The Court would also note that because Mr. Gilbert has
19 testified in this matter earlier with regard to the
20 question of admissibility of the statements the Court has
21 had the opportunity to independently evaluate his
22 capacity; and even though I am not a psychologist, I found
23 that his answers to his questions were responsive. The
24 questions posed to him were responsive and that he did
25 understand what was going on. Accordingly, the Court

1 finds the defendant has the capacity to fully understand
2 and appreciate the nature of the charges lodged against
3 him and the extent of his own peril to understand the
4 function and proceedings of the Court and to assist his
5 attorney in the development and execution of an adequate
6 defense. Based upon the medical testimony and my personal
7 observation of the defendant I find as a fact that
8 Mr. Bobby Gilbert is competent to stand trial. And I will
9 give the Court's exhibits back to the court reporter for
10 filing in this matter.

11 All right, Mr. Watts, anything else? I think you've
12 already told me nothing else. Anything else from
13 Mr. Redmond on behalf of the State?

14 MR. REDMOND: Nothing further, Your Honor.

15 THE COURT: Do you -- does the State know of any reason
16 why we would not be able to proceed with this matter in
17 the morning at 9:30 before the jury?

18 MR. REDMOND: State knows of no reason.

19 THE COURT: Does the Defense know of any reason why we
20 will not be able to proceed in the morning at 9:30 before
21 the jury?

22 MR. WATTS: None, Your Honor.

23 THE COURT: That being the case we will be recessed
24 until 9:30 tomorrow in the morning. Be prepared to go
25 forward at that time. Thank you.

1 (WHEREUPON, State Exhibits Nos. 6 and 7 were marked for
2 identification only.)

3 (Court was adjourned and resumed on April 28, 2009.)

4 THE COURT: Back on the record with regard to the
5 matter of the State versus Bobby Gilbert. Mr. Gilbert is
6 present in court with his attorney Mr. Watts. The State
7 is present with Mr. Redmond and Ms. McKenzie.

8 Mr. Redmond and Mr. Watts, I know there was certain
9 exhibits that needed to be marked and I assume that those
10 have been done.

11 MR. REDMOND: We had not completed it, but we've
12 actually got some -- and I can handle it during the course
13 of the trial so the State's ready to proceed, Your Honor.

14 THE COURT: Well, let's do that, and let me remind
15 counsel, that those sorts of things need to be done before
16 the time that the jury is to report, be it in the morning
17 or be it at lunch time so that we do not delay the matter
18 as far as the jury is concerned. I want to make the
19 maximum use and most efficient use of the jury's time and
20 start when the jury is here and not tend to matters that
21 could be tended to with the jury in the jury room. So
22 let's to mark -- try to mark exhibits and do those sort of
23 things beforehand or when the jury is not present.

24 MR. REDMOND: Yes, sir, Your Honor.

25 THE COURT: All right. Anything before the jury is

1 brought in, Mr. Redmond?

2 MR. REDMOND: Nothing from the State, Your Honor.

3 THE COURT: Anything from the Defense, Mr. Watts?

4 MR. WATTS: Nothing from Defense, Your Honor.

5 THE COURT: All right, we have all the jurors.

6 THE BAILIFF: Yes, sir.

7 THE COURT: Bring the jury in please.

8 THE BAILIFF: All right.

9 (WHEREUPON, the jury was returned to the courtroom at
10 approximately 9:45 a.m., and the following proceedings
11 commenced in open court.)

12 THE COURT: Good morning, everyone, and thank you very
13 much for your promptness in being back here this morning.
14 I apologize for keeping you waiting in your jury room a
15 few minutes. I try to make it a practice to not keep
16 jurors waiting in the jury room unnecessarily, but we did
17 get started fairly close to time, and we will try to keep
18 it as close to the time that I can tell you to be back
19 here so that I will not waste your time and can operate
20 the court as sufficiently as possible. We are now
21 prepared to go forward with the trial of this case.

22 Mr. Clerk, would you swear this jury for me please.

23 THE CLERK OF COURT: Yes, sir. If everyone would
24 please rise and raise your right hand for me please.

25 (WHEREUPON, the jury was sworn.)

2 THE COURT: Thank you, sir. All right, ladies and
3 gentlemen, before we begin the actual trial of this case I
4 thought it might be helpful if I explain to you basically
5 how trial proceeds. Before I do that, however, I do want
6 to ask you if anyone has tried to contact you about this
7 matter over the evening recess I would need to know about
8 that now.

10 THE COURT: Negative response and that's good. Thank
11 you. All right, as I said, I will explain to you
12 basically how a trial proceeds. I know that each of you
13 have seen trials on television, but I think that you will
14 find that real trials are a great deal different than they
15 are on television. First of all, the State will make an
16 opening statement. An opening statement is not evidence.
17 It is simply an outline to help you understand what the
18 State expects the evidence will show. The Defendant may,
19 if he wishes to, present an opening statement but he
20 doesn't have to for reasons that I will explain later.

21 Following the opening statement you will hear the
22 testimony and evidence in this case. This will consist of
23 testimony from the State and the State's witnesses as well
24 as any physical exhibits which may be introduced into
25 evidence. And I know that there will be physical exhibits

1 introduced into evidence, and I want to say at this time
2 that during the course of the trial the lawyers may ask me
3 for permission to publish those physical exhibits.
4 Publish simply means a legalistic term meaning show those
5 exhibits to the jury, and I will grant the lawyers the
6 right to publish or show you those exhibits and they will
7 hand them to you and you can pass them around the jury
8 box. Do not be concerned if you do not have as long to
9 look at an exhibit as you would like to while you're
10 sitting there in the jury box. Anything that is
11 introduced and received into evidence will go with you to
12 the jury room whenever you retire to deliberate your
13 verdict in this case, and you will have ample opportunity
14 to study that exhibit for as long as you would like to.

15 Following the completion of the testimony the attorneys
16 will again have the opportunity to make what is called a
17 closing statement or summation to you. This is an
18 opportunity for the attorneys to summarize the case from
19 their respective points of view. Again, these arguments
20 are not evidence. Following the closing statements by the
21 attorneys I will instruct you on the law of South Carolina
22 as it pertains to the issues that have arisen in this
23 case. When I have completed my instructions to you you
24 will be permitted to begin your deliberations in order to
25 reach a verdict.

1 Now, ladies and gentlemen, you're now the jury in this
2 case and I want to take just a few minutes to tell you
3 something about your duty as jurors and to give you some
4 preliminary instructions. At the end of this trial I will
5 give you more detailed instructions and those instructions
6 will control your deliberations.

7 It will be your duty to decide from the evidence what
8 the facts are. You and you alone are the judges of the
9 facts. You will hear the evidence, decide what the facts
10 are, and then apply those facts to the law which I will
11 give to you. That is how you reach a verdict. In doing
12 so you must follow the law whether you agree with it or
13 not. The evidence will consist of the testimony of
14 witnesses, documents, and other things received into
15 evidence as exhibits and any facts on which the lawyers
16 agree or which I may instruct you to accept.

17 Now you should not take anything that I may say or do
18 during this trial as indicating what I think of the
19 evidence or what your verdict should be. I am not
20 permitted to have an opinion on the evidence. That is a
21 matter solely for you, the jury, to decide. The same law
22 that makes you the judge of the facts makes me the judge
23 of the law. You must take the law as I give it to you
24 regardless of what you think the law is or what the law
25 ought to be. If I'm wrong on the law there's another time

1 and place for that error to be corrected; but for this
2 case, you must accept the law as I charge it to you.

3 Now this is a criminal case brought by the State of
4 South Carolina. The State charges the defendant with
5 three offenses. They are contained in this -- these three
6 indictments. The three offenses are murder, armed
7 robbery, and larceny in excess of five thousand dollars.
8 The indictments are not evidence of anything. They are
9 simply the description of the charges made by the State
10 against the defendant. The defendant has pled not guilty
11 to these charges and is presumed innocent unless and until
12 proven guilty beyond a reasonable doubt. A reasonable
13 doubt is the kind of doubt that would cause a reasonable
14 person to hesitate to act. A defendant has the right not
15 to testify and never has to prove innocence or present any
16 evidence. The burden of proof is always on the State of
17 South Carolina.

18 Now there are certain things that are not evidence and
19 you must not consider them as evidence in deciding the
20 facts of this case. Statements and arguments of the
21 attorneys are not evidence. Questions and objections of
22 the attorneys are not evidence, and testimony that I
23 instruct you to disregard is not evidence. Evidence may
24 be direct or circumstantial. Direct evidence is testimony
25 by a person about what that person personally saw or heard

1 or did. Circumstantial evidence is indirect evidence.
2 One of the examples that I use of circumstantial evidence
3 is if I went to bed one night and it was not snowing and I
4 wake up the next morning and there was snow on the ground,
5 that would be circumstantial evidence that it had showed
6 the night before. On the other hand, if during the course
7 of the evening I wake up and look out the window and I see
8 it snowing, that is direct evidence that it snowed that
9 night. So that is just kind of a simplistic explanation
10 of the difference between circumstantial and direct
11 evidence. The law permits you to give equal weight to
12 both, but it is for you to decide how much weight to give
13 to any of the evidence.

14 There are rules of evidence which control what can be
15 received into court. When a lawyer asks a question or
16 offers an exhibit into evidence and a lawyer on the other
17 side thinks that it is not permitted by the rules, that
18 lawyer may object. If I overrule the objection the
19 question may be answered or the exhibit may be received.
20 If I sustain the objection the question cannot be answered
21 or the exhibit cannot be received. Whenever I sustain an
22 objection to a question or deny a motion to admit an
23 exhibit into evidence you must ignore the question or the
24 existence of the exhibit and you must not guess what the
25 answer would have been or what the exhibit would have

1 shown.

2 Sometimes it may be necessary for me to request that
3 you leave the courtroom while I discuss with the attorneys
4 legal questions that come up during the trial. If this
5 occurs you should not speculate about our discussions or
6 the reasons that you were asked to leave the room. This
7 is simply a procedure that the law requires when certain
8 legal issues arise. There also may be occasions when I
9 ask the attorneys to approach the Bench so that I can
10 discuss a legal question or issue with them in private. I
11 will do this as often as possible so that you are not be
12 required to leave the courtroom more than is absolutely
13 necessary. Again, if I ask the attorneys to step up to
14 the Bench or if I ask you to leave the courtroom, please
15 don't think that anybody is trying to hide anything from
16 you or keep any evidence from you. This is simply a
17 procedure used by all lawyers and by all courts to
18 determine and decide legal questions.

19 Now in deciding the facts of this case you may have to
20 decide which witnesses to believe and which witnesses not
21 to believe. This is called credibility. You may believe
22 everything a witness says or only part of it or none of
23 it. In deciding what to believe you may consider a number
24 of factors including the witnesses' ability to see or hear
25 or know the things the witness testified to, the quality

1 of the witness' memory, the witness' manner or demeanor
2 while testifying, whether the witness has an interest in
3 the outcome of the case or any motive, bias, or prejudice,
4 whether the witness was contradicted by anything the
5 witness said or wrote before the trial or by any other
6 evidence, and how reasonable was the witness' testimony
7 when considered in the light of other evidence which you
8 do believe.

9 Now just a few words to you about your conduct as
10 jurors, some of which I have already mentioned to you but
11 they're important enough that they bear repeating. First
12 of all, do not talk to each other about this case until
13 the end of the case when you go to the jury room to decide
14 on your verdict. So any time that you're there in the
15 jury room between now and the time I tell you it is time
16 for you to begin your deliberations would be premature.
17 You can talk about anything you want to talk about but
18 don't talk about this case. Talk about, as I said
19 yesterday, children, sports weather, anything at all, but
20 don't talk about this case until I tell you it is
21 appropriate for you to begin your deliberations. Do not
22 talk with anyone else about this case until the trial has
23 ended following your verdict and you have been discharged
24 as jurors. This means do not discuss the case with
25 members of your family or friends or with anyone else.

1 You may tell them that you are a juror, but don't tell
2 them anything about this case until you have been
3 discharged by me. Do not let anyone talk to you about the
4 case. If anyone should try to talk to you about the case,
5 get their name or their description, report it to the
6 bailiff. He will report it to me and I will deal with
7 them.

8 Do not read any news stories or articles or listen to
9 any radio or television reports about the case. As I told
10 you yesterday you've got to decide the case based upon
11 what you hear in this courtroom and not on the basis of
12 what you might hear or see in the news media. You're not
13 to consider as evidence anything that you may see or hear
14 when court is not in session. Do not do any research such
15 as consulting dictionaries or reference materials or the
16 internet, and do not do any investigation about the case
17 on your own. If you need to talk with me or to get any
18 message to me, simply give a signed note to the foreman --
19 I mean, to the bailiff. The bailiff will give that to me
20 and I will try to deal with your problem.

21 Are there any objections to my opening remarks on
22 behalf of the State, Mr. Redmond?

23 MR. REDMOND: None from the State, Your Honor.

24 THE COURT: On behalf of Defense?

25 MR. WATTS: None, Your Honor.

1 **THE COURT:** All right, ladies and gentlemen, the first
2 thing that we do in connection with any case is the matter
3 of opening statements and for that purpose I will
4 recognize the assistant solicitor and representative of
5 the State, Mr. Redmond.

6 Mr. Redmond.

7 **MR. REDMOND:** Thank you, Your Honor, may it please the
8 Court.

9 **THE COURT:** Yes, sir.

10 **MR. REDMOND:** Mr. Watts, ladies and gentlemen, the
11 reason we are here originated on January 16th, 2007. And
12 as I sat last night thinking about what I was gonna say to
13 you this morning, this case is particularly heinous, and
14 it's hard because what you're going to hear is hard. What
15 you're going to see is hard. What you're going to see and
16 hear is criminal. It's criminal because it resulted in
17 the death of Tyrone Brown. And you're going to hear from
18 his sister in just a few minutes. And in thinking about
19 what am I going to say to you this morning because this is
20 an opening statement, it's not argument; it's a statement.
21 But it's a question of putting everything in context so
22 you will know what to expect during the course of this
23 trial. And the bottom line is this, Tyrone Brown was
24 betrayed by a friend, or someone he thought was a friend,
25 that being the defendant. On that particular evening the

1 defendant called Tyrone to come to Farmington Apartments.
2 Now Tyrone lived on South Center Road. So he calls his
3 friend to come all the way to Farmington Apartment. But
4 here's the thing, and you'll hear this during the course
5 of the trial, the reason he called him was to set him up
6 to rob him and ultimately murder him. So he goes to
7 Farmington Apartments. There the defendant's cousin and
8 another individual Chris Samuel, his cousin is Jamie
9 Gilbert, they're also there. First Jamie and the
10 defendant get in the car. Then they turn around on the
11 way out toward Oates, come back to Farmington Apartments
12 and that's where they get Chris Samuel. They leave
13 Farmington. They go out to Oates. First, they go to this
14 house belonging to a Hilga Welsh off of Sandbox or on
15 Sandbox Road out in Oates community. And that's where
16 this incident takes its tragic heinous turning because at
17 that point the defendant, who initiated the idea to rob
18 Mr. Brown, defendant pulls out a gun. The defendant makes
19 Mr. Brown undress. The defendant starts beating him. The
20 defendant (sic) is running, fighting for his life. The
21 defendant (sic) is beat up severely. The defendant (sic)
22 is forced into the truck of his own vehicle. Keep in mind
23 the victim Mr. Brown is driving his own vehicle. He is
24 forced into his own vehicle, the trunk of his vehicle,
25 still fighting, spraying mace.

1 That wasn't enough. They have to take him across the
2 street, and you'll see these areas to this little thicket
3 where there happens to be a cinder block. At that point
4 the defendant takes that cinder block and repeatedly
5 smashes the head of Tyrone Cornelius Brown. Tyrone was
6 only 30 years old at the time. He was a beautician in
7 Florence. He was loved and respected. He was pleading
8 for his life as that block is being dropped on him by the
9 defendant. But oh, that's not enough. They put him back
10 in the trunk of the car. They leave that area on Sandbox,
11 then drive out to Cornfield. If you're familiar with
12 Oates you go Seven Pines and then you make a left on Una
13 Road, go over to the pond and then you come out in
14 Cornfield, Cornfield Road. Turn on Cornfield, make a
15 right. Go to Cornfield. Again, he's in his own car,
16 stuffed in the trunk of his own car. Take him out of the
17 trunk. Put him on the ground. The defendant asked his
18 cousin Jamie Gilbert to run over him, and that's exactly
19 what he did. Jamie runs over the victim Mr. Brown. Put
20 him back in the trunk. Then they drive back to Sandbox
21 but they go further down Sandbox to this wooded area. And
22 then the ultimate act as if everything else is not
23 disrespectful, but in the ultimate act of disrespect they
24 dump his body naked out in the woods about 25 or so feet
25 into the woods. And you'll see the pictures of these

1 areas and what I've just described.

2 They leave him -- leave him -- leave in the car.
3 Defendant and Jamie end up at Farmington Apartments; and
4 then the next day, the 17th, riding around different
5 areas. And you'll hear testimony to that. But this case
6 broke on the 18th. But before that, and you'll hear
7 testimony about the fact that we're able to obtain
8 information, called the defendant's cell phone at which
9 time he gave some nickname or some alias that he uses, and
10 you'll hear about that. But then on the 18th Norris
11 Peterson, who you will hear from shortly as well, is
12 looking for his friend. He worked in Hartsville. Norris
13 lives not too far from where Tyrone lived, happens to see
14 the car at Farmington Apartments, calls 9-1-1, follows the
15 car until Hartsville P.D. -- and April Cooke will be here
16 to testify to that, gets behind the car, and they actually
17 stop the car after a brief chase that led them back to
18 Farmington Apartments. And at that point it begins to
19 unravel. We get the car, discover the victim Tyrone
20 Brown's car. At that point start getting information.
21 The defendant is brought in later that same day.

22 You'll hear testimony about what he had to say. And
23 here's the thing, tell you one thing at first and tell you
24 something else, but listen very closely to the statements
25 that the defendant gives because I submit to you that at

1 the conclusion of this case you will see, as I do,
2 significant gaps in there. It's called self-serving,
3 trying to save his own rear end. But we'll get to that
4 later.

5 Defendant gives -- one of his reports, gives a
6 statement at Hartsville P.D., records one at the Sheriff's
7 Department. But here's the other thing, we've got the car
8 but I hadn't told you that we found Mr. Brown. The
9 defendant actually takes law enforcement to the body after
10 finally telling them somewhat of what happened, and I
11 stress, somewhat of what happened. But it's interesting
12 some of the things he skips and you will hear that when
13 you -- when we get into that. Subsequently we find the
14 brick. We did not find the block that same day, and I
15 will submit to you at the conclusion of this case you will
16 see that that is very important, the fact that we didn't
17 find that block at the time that the defendant went out
18 there. He skipped certain things and you will see this
19 during the course of testimony. We also talked with the
20 other two co-defendants and you'll hear testimony from
21 Jamie Gilbert later today regarding what really happened
22 out there and how they really, really killed Mr. Brown.

23 Ladies and gentlemen, again my name is Kernard Redmond.
24 I'm the deputy solicitor here in Darlington County or
25 actually the Fourth Circuit. And as I told you yesterday

1 I serve Darlington County, Dillon County, Marlboro, and
2 Chesterfield counties in my role as deputy solicitor. I'm
3 going to be assisted today by Ms. Patty McKenzie. She's
4 an assistant solicitor here headquartered in Darlington.
5 Now as I told you I'm originally -- I'm originally from
6 Hartsville. The most poignant things about this case and
7 you will hear through the testimony the route that Tyrone
8 took to his own death is that he passed right by my
9 parents' house on his way to Farmington Apartment so.

10 This case is an important case to everybody involved.
11 The defendant is entitled to a fair trial and we intend on
12 giving him a fair trial. But after that fair trial I'll
13 submit to you that the evidence will show that the
14 defendant is, in fact, guilty of murder, armed robbery,
15 and larceny of the victim. The burden of proof in this
16 case as the judge indicated is beyond a reasonable doubt.
17 The judge will instruct you on that at the conclusion of
18 the case. Some have have defined that as being -- making
19 a reasonable person hesitate to act being reasonable
20 doubt. Others have said evidence that leaves you firmly
21 convinced of the defendant's guilt satisfies that burden.
22 His Honor will instruct you at the conclusion of the case
23 but I'll submit to you you don't -- you don't leave your
24 common sense with you. One of the things that you will
25 have and will always have is your common sense. That's

1 why we picked you to hear this case.

2 And at the conclusion of this case, again, I submit to
3 you that once you heard this -- and let me apologize in
4 advance for some of the evidence that we are going to have
5 to show you. There is going to be graphic evidence that
6 the State presents, and I apologize for that in advance
7 but I have to show it to you because you deserve to see
8 what really happened, what these defendants led by the
9 defendant Bobby Gilbert, what they did to this poor man
10 who thought he was just going to help out somebody he
11 thought he was -- who was a friend. I -- I'm sure this
12 case is not going to be easy for anybody to hear, see,
13 have to live with especially this family; but I assure you
14 this, when you hear everything keep in mind what the
15 defendant says in his statement, what he's trying to get
16 them to believe. And using your common sense I will
17 submit to you that at the conclusion of the case it will
18 be clear beyond a reasonable doubt that this defendant did
19 rob Tyrone Brown; that this defendant did steal his car;
20 but most importantly and most heinously, this defendant
21 not just participated in, he initiated and actually went
22 about carrying out the act of killing Tyrone Cornelius
23 Brown.

24 I thank you in advance. I appreciate your service. I
25 appreciate your attention. And at the conclusion of the

1 case I'll have an opportunity to fit -- to put it all
2 together for you in my closing argument; but again, I
3 thank you in advance and we look forward to beginning the
4 presentation of this case. Thank you again.

5 THE COURT: Mr. Watts, does defendant care to make an
6 opening statement?

7 MR. WATTS: Yes, Your Honor.

8 THE COURT: All right, you may do so.

9 MR. WATTS: Thank you, Your Honor. If it please the
10 Court.

11 THE COURT: Yes, sir.

12 MR. WATTS: Good morning, ladies and gentlemen. I
13 normally hate to use a podium, but I had to take some
14 notes. I have to look down to what Mr. Kernard is saying,
15 Mr. Redmond is saying. Initially, you know who's sitting
16 beside the table with me? It's Mr. Bobby Gilbert. He's
17 been charged by the State. As the judge has told you
18 already those indictments aren't evidence. The charges
19 are not evidence. That's the State's contention. You
20 heard what the State has to do. It's the State's burden.
21 They have to go -- and I'm glad Mr. Redmond went through
22 and talked about reasonable doubt. The judge is the one
23 who instructs you on that. Keep that in mind. I'm really
24 glad he started talking about common sense because you
25 have that. Nobody can take that away from you. When you

1 listen to this case please use it. It was interesting he
2 starts talking about gaps. That's where your common sense
3 is going to come in. When they're presenting their case
4 you're going to see the gaps. You're going to see how it
5 doesn't fit up to the way they've projected it, his
6 outline of what happened. They got to prove it. You
7 can't take what Mr. Redmond just said and say that's the
8 way it happened, that's the way it was, that's how he did
9 it. Evidence comes from the stand or the exhibits as the
10 judge has instructed you. Now there's no question the
11 judge is going -- the one who is going to instruct you on
12 the law. He's going to tell you how you have to look at
13 it. It's the State's responsibility to put up the
14 evidence in this case and convince you. You make that
15 determination, no one else. You have to look at it from
16 the eye of everything. When they put it up who is the
17 person making the statement, what have they got to gain
18 and lose, what are the circumstances surrounding their
19 statements, when was it time-wise, those are important
20 too. What's the time frame of all these activities.
21 Police activity, what's the time frame in that? How long
22 does it take, how short does it take. There's details
23 that were brought up. And Mr. Redmond stated to you, and
24 I want you to go through and make sure that when you're
25 listening to the presentation of the evidence you can see

1 him back it up because he can tell you anything he wants
2 to but he has to back it up. You look at Mr. Gilbert here
3 at the table and I've known Mr. Gilbert for a long time
4 now. He's innocent. You're looking at him. He is viewed
5 as innocent. It is the State's job to convince you. The
6 judge said you can't hold it against him if he has nothing
7 to say. The State's job is to present the case and to
8 convince you. I don't think they can. I don't think you
9 can look at the evidence that's going to be presented in
10 this case and find him guilty of any of the charges
11 because you remember there's three. Charged him with
12 murder, charged him with armed robbery, charged him with
13 grand larceny excess of five thousand dollars, essentially
14 the stealing of the car. When you look at the evidence
15 how are they going to be able to convince you beyond a
16 reasonable doubt that this is what Mr. Gilbert did.
17 You're going to hear from the co-defendants. You're going
18 to hear what they got to say. And it's interesting we
19 talk about what statements were made. I want you to
20 listen to those statements from everybody involved, the
21 number, what's said.

22 If you look at the evidence of when this thing started
23 talking about some stuff that happened on the 18th. Take
24 into account who they're stopping, who they're talking to,
25 what's going on, what are the circumstances around them.

1 You know, you have to look at this in the eye of how are
2 you going to convince me, how are you going to show me
3 that's what he did, because that's their job. You can't
4 take it on face value just because he's sitting in this
5 courtroom he must have done it. You can't take on face
6 value that just because law enforcement is talking about
7 it -- and they will. They're going to talk about it.
8 They got an idea. You know what their idea is; they have
9 already told you. They're considering him the master
10 mind, whatever, the initiator. I can tell you the
11 evidence isn't going to bear that out.

12 As you're listening today, listen through the week,
13 please make sure -- I know you took -- taken this duty
14 seriously and you intend to listen intently. Please do
15 so, take care, because this is a serious matter. And this
16 is very serious. And I'm sorry for the victim's family.
17 Please don't take this as me being callous or feeling
18 strong. I feel strongly for my client Bobby. I feel
19 strongly for him. He didn't do what the State is charging
20 him with, and this is terrible. Any loss of life is hard.
21 And this situation is terrible. I want you to listen to
22 what the others say who are involved in this, and you can
23 be the judge yourself by who did what, okay. At the end
24 of the day, at the end of this trial I think it's going to
25 be very clear Mr. Gilbert hadn't done what the State's

SW - T. Henneghan- Direct

1 charged him with, and I think at that time you're going to
2 see it the way I do. That while the State has thought
3 this is what they had, they really don't have anything.
4 Thank you, ladies and gentlemen.

5 THE COURT: All right, Mr. Redmond, you may call your
6 first witness.

7 MR. REDMOND: The State calls Teresa Henneghan.

8 THE CLERK OF COURT: If you will come forward to be
9 sworn please.

10 WHEREUPON,

11 **TERESA BROWN HENNEGHAN,**

12 having been duly sworn by the Clerk of Court, testified as
13 follows:

14 THE CLERK OF COURT: If you will have a seat up there
15 for me please.

16 **DIRECT EXAMINATION**

17 **BY MR. REDMOND:**

18 Q Could you state your name for the record.

19 A Teresa Brown Henneghan.

20 Q Ms. Henneghan, where do you reside at this time?

21 A [REDACTED] Stagecoach Road, Effingham.

22 Q And where are you employed, Ms. Henneghan?

23 A Florence County Detention Center.

24 Q And in what capacity are you employed?

25 A I'm training sergeant.

SW - T. Henneghan- Direct

1 Q Okay. And are you married?

2 A Yes, sir.

3 Q And do you have any children?

4 A Yes, one girl and one boy.

5 Q Okay. How do you know, or how did you know Tyrone
6 Cornelius Brown?

7 A He is my brother.

8 Q Okay. And do you remember when you first discovered he
9 was missing?

10 A Yes, sir, I was at work.

11 Q Okay. And could you tell, was that on January 17th,
12 2007?

13 A Yes, sir.

14 Q And please tell the ladies and gentlemen of the jury
15 how you came to find out that your brother was missing.

16 A I received a phone call at work a little after 12:00
17 from one of his employees Richard Scott stating that he
18 did not show up for work, and they had made several
19 attempts to get in touch with him by his cell phone and
20 were not able to speak to him.

21 Q So what did you do at that point, Ms. Henneghan?

22 A After I hung up with him I decided I would try and call
23 him myself just to see if maybe I could get in touch with
24 him and someone else answered the phone, and they
25 indicated to me that Tyrone was busy and he couldn't come

SW - T. Henneghan- Direct

- 1 to the phone.
- 2 Q Was it Tyrone that you talked to?
- 3 A No, sir, it was not him.
- 4 Q Do you know who that was?
- 5 A I have no idea who that was.
- 6 Q So what did you do next? Tell me what happened next.
- 7 A I became alarmed because my brother normally did not
- 8 share his cell phone. It was something that, you know, he
- 9 kept on him at all times so I decided to leave and go by
- 10 his house to see if he was at home and maybe if he was
- 11 sick or, you know, just what I could find out at his
- 12 residence.
- 13 Q And just for the record what -- what was his cell phone
- 14 number?
- 15 A [REDACTED]-3941.
- 16 Q Okay. Now thank you. Continue. What did you do next?
- 17 A I left from work and I went to his residence. When I
- 18 arrived there the door was unlocked so I went on in. And
- 19 I just began to look around to see, you know, what
- 20 everything looked like. His bag was packed, ready to go
- 21 to work the following morning. He did hair so he had his
- 22 towels folded up neatly on the chair. You could tell that
- 23 he was cleaning up and because the trash wasn't quite
- 24 taken up yet like he just stopped in the middle of
- 25 something. TV was playing in his room and he wasn't at

SW - T. Henneghan- Direct

1 home and neither was his car.

2 Q Okay. Now what did you do upon discovering this?

3 A I became very concerned so I decided to go ahead and
4 call in and see if I could have a missing person's report
5 done. I wasn't sure if they would take it that early
6 because it hadn't been 24 hours yet, but my -- I was very
7 alarmed that I could not reach him, and he wasn't at home.
8 He's the type of person we basically would have known, you
9 know, where -- somebody would have known where he would
10 have gone if he decided not to go to work. I filed -- I
11 called in and I waited for the Sheriff's Department to
12 arrive to file the report.

13 Q And did you file a report?

14 A Yes, sir, I did.

15 Q Let me show you what's been marked as State's Exhibit
16 Number 7.

17 MR. REDMOND: Permission to approach the witness, Your
18 Honor.

19 THE COURT: Yes, sir.

20 BY MR. REDMOND:

21 Q Have you had an opportunity to see that exhibit?

22 A Not this exhibit. I basically had a copy of the report
23 that I filed.

24 Q Okay. And is that a copy of the report that you filed?
25 And if you could look on the back and if there's any other

SW - T. Henneghan- Direct

1 information on the second page rather.

2 A Yes, sir.

3 Q Okay.

4 MR. REDMOND: And at this time, Your Honor, I would
5 move to introduce that State's Exhibit Number 7.

6 THE COURT: I thought it had already been marked and
7 introduced.

8 MR. REDMOND: It has not been introduced. None of the
9 exhibits have been introduced; they're just marked.

10 THE COURT: All right. As I said, anything that in
11 pretrial anything that has been marked and agreed upon by
12 the parties is in evidence without further authentication.
13 I will admit that into evidence. But unless it has an ID
14 number I will assume that each of you have agreed upon the
15 exhibit and it will be in evidence already without further
16 moving. All right, go ahead.

17 MR. REDMOND: Your Honor.

18 MR. WATTS: Your Honor, may we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON, counsel approached the Bench for an
21 off-the-record discussion.)

22 THE COURT: All right. So it's being offered -- so
23 it's actually being shown now as State's Exhibit Number 6
24 for identification and you're being, offering it into
25 evidence, is that correct, Mr. Redmond?

SW - T. Henneghan- Direct

1 MR. REDMOND: Yes, Your Honor.

2 THE COURT: Any objection?

3 MR. WATTS: Yes, Your Honor.

4 THE COURT: What's your objection?

5 MR. WATTS: The objection is the witness cannot lay
6 proper foundation for the first page of that exhibit. And
7 she indicated she knew and had seen before the second page
8 but had no knowledge of the first page.

9 THE COURT: All right.

10 MR. REDMOND: And Your Honor, I think she actually
11 indicated she was the one that filled out the report but I
12 can ask her a couple of questions.

13 THE COURT: Ask her what you want to ask and I'll see.

14 BY MR. REDMOND:

15 Q Is that the report -- now that you've had the chance to
16 see both pages is that the report that you actually
17 prepared?

18 A Yes. This is the information that I gave to law
19 enforcement. The first report I was referring to was
20 actually a copy of the Sheriff's Office incident report.

21 Q Okay. But on that did you give them that information?

22 A Yes, sir, I did.

23 Q And is that your signature on the back page?

24 A Yes, sir, it is.

25 Q Okay.

SW - T. Henneghan- Direct

1 MR. REDMOND: Your Honor, with that I would move to
2 introduce it at this time.

3 THE COURT: All right, what's your position, Mr. Watts?

4 MR. WATTS: No objection, Your Honor.

5 THE COURT: All right, admitted into evidence as
6 State's Number 6 without objection.

7 THE COURT REPORTER: Judge.

8 MR. REDMOND: And Your Honor, just so you'll know ---

9 THE COURT: I'm sorry, what number?

10 THE COURT REPORTER: I believe it's number 7.

11 THE COURT: 7? All right. State's Number 7 without
12 objection. All right.

13 (WHEREUPON, State Exhibit No. 7 was admitted into
14 evidence.)

15 MR. REDMOND: And Your Honor, at this time I ask to
16 mark this picture as State's 8, and Mr. Watts has actually
17 seen all of the pictures that I plan to introduce. If I
18 could, that this be marked as State's Exhibit Number 8.

19 THE COURT: Is it -- any objection to it, Mr. Watts?

20 MR. WATTS: No objection, Your Honor.

21 THE COURT: No objection. All right, be admitted into
22 evidence as State's Number 8 without objection.

23 MR. REDMOND: Thank you, Your Honor.

24 (WHEREUPON, State Exhibit No. 8 was marked for
25 identification and received into evidence.)

SW - T. Henneghan- Direct

1 BY MR. REDMOND:

2 Q Let me show you what's been marked as State's Exhibit
3 Number 8. Do you recognize that picture?

4 A Yes, sir, I do.

5 Q Could you tell the jury what that is a picture of?

6 A This is my brother -- my brother's Honda Accord.

7 Q Okay. Now you go to the house, you call law
8 enforcement, you do the report. Tell the jury what steps
9 or what did you do after that?

10 A At first I started calling all of his friends, family
11 members, anybody that I thought may have seen him, just
12 basically trying to get as many family members involved to
13 see if we could locate him. We eventually met at my
14 mother's house later on that night. We had been told the
15 last phone call he had talked about Farmington Apartments
16 trying to find out where it was located. So we all got in
17 a vehicle and we started riding around on the Hartsville
18 area, Farmington Apartments, any apartment complex,
19 trailer parks, business parking lots, any place that we
20 thought the vehicle, you know, could have been located in
21 the Hartsville area. We basically drove around for a
22 couple of hours, discussed doing missing person, missing
23 fliers, something to post up to see if anybody had seen
24 him.

25 Q And did you know the defendant?

SW - T. Henneghan- Direct

1 A No, sir, I did not.

2 Q Tell me how and when you found out what had happened to
3 Tyrone.

4 A I believe it was on March the 18th a little bit after
5 11 p.m.

6 Q March or January?

7 A I'm sorry, January 18. A little bit after 11 we're at
8 my mother's house and Lieutenant Bryant as well as
9 Investigator Locklair came to the house, and I believe
10 there were some more people with them and basically told
11 them that my brother was found not living.

12 Q Okay. And could you repeat that? Somebody was
13 coughing. Could you repeat that. How -- what did they
14 tell you?

15 A We were told that my brother was found not living.

16 Q Do you remember the time you saw Tyrone?

17 A I don't know the exact date and time I saw him, but I
18 had last spoken to him that Tuesday trying to arrange a
19 hair appointment with him on Thursday.

20 Q And was Thursday the day that you were informed that he
21 was not living?

22 A Yes, sir, it was.

23 MR. REDMOND: Beg the Court's indulgence, Your Honor.

24 THE COURT: All right, sir.

25 MR. REDMOND: Your Honor, that'd be all the questions

SW - T. Henneghan - Cross

1 I have.

2 THE COURT: Cross-examination, Mr. Watts.

3 MR. WATTS: Thank you, Your Honor, if it pleases the
4 Court.

5 CROSS-EXAMINATION

6 BY MR. WATTS:

7 Q Ms. Henneghan, I think you earlier testified that you
8 gave the information on the SLED missing person report?

9 A Yes, sir, I did.

10 Q Okay. And did you give identifying information about
11 your brother?

12 A Yes, sir, I did.

13 Q Okay. And I believe we've already got it entered into
14 evidence. We have the first sheet of the missing person
15 report. Can you tell me what it says under scars, marks,
16 and tattoos.

17 A Birthmark on his left cheek. It looks like a patch of
18 grapes. Appendix removed, scar on one of his shoulder,
19 and one testicle removed.

20 Q Okay. So you were able to supply some distinguishing
21 and physical characteristics of your brother to law
22 enforcement; is that correct?

23 A Yes, sir.

24 Q Okay. And you provided this information on the 17th of
25 January 2007; is that correct?

SW - T. Henneghan - Cross

1 A Yes, sir.

2 Q I think you earlier testified that you never met

3 Mr. Gilbert; is that correct?

4 A That is correct.

5 Q Okay. Never heard mention of Mr. Gilbert's name?

6 A No, sir.

7 Q Okay. Did your brother have a lot of friends you
8 didn't know about?

9 A Yes, sir. He has lots of friends that I -- more
10 friends than I have.

11 Q Okay. But you never heard anything about Mr. Gilbert?

12 A No, sir.

13 Q Okay.

14 MR. WATTS: No further questions, Your Honor.

15 THE COURT: Redirect.

16 MR. REDMOND: No redirect, Your Honor.

17 THE COURT: All right. Thank you, ma'am, you may step
18 down.

19 MR. REDMOND: The State would next call Norris
20 Peterson. I meant Patterson, I'm sorry. Your Honor,
21 while he's coming up if I could hand these to the court
22 reporter and we can save some time that way.

23 THE COURT: Sure.

24 (WHEREUPON, State Exhibits Nos. 9 through 13 were marked
25 for identification only.)

SW - N. Patterson - Direct

1 WHEREUPON,

2 **NORRIS PATTERSON,**

3 having been duly sworn by the Clerk of Court, testified as
4 follows:

5 **MR. REDMOND:** May it please the Court, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY MR. REDMOND:**

8 **Q** And please state your name for the record.

9 **A** Norris Patterson.

10 **Q** And Mr. Patterson, where do you reside?

11 **A** [REDACTED] South Center Road in Darlington.

12 **Q** Okay. And is that near where Tyrone Brown lived?

13 **A** Yes, it's right down the street.

14 **Q** And where are you employed, Mr. Patterson?

15 **A** World Finance.

16 **Q** And how long have you been working there?

17 **A** Since 2001 so that would be about eight years.

18 **Q** Okay. And so you were working there on -- in January
19 of 2007?

20 **A** Yes, I was.

21 **Q** Okay. How would you describe your friendship with
22 Tyrone?

23 **A** I considered Tyrone a brother. We had been friends.

24 We had been best friends for since, since high school,

25 which, and I graduated in 1994 so it's been well over 15

SW - N. Patterson - Direct

1 years.

2 Q How did you come to find out that he was missing in
3 January, on the 17th of January?

4 A His fellow employee Richard called my job and asked did
5 I know where he was because he hadn't shown up for work.

6 Q Now let me back up. Had you seen Tyrone the night
7 before?

8 A Yes, I did.

9 Q Okay. Could you tell the jury about that.

10 A Well, on the 16th after I came home from work that day
11 they -- a little later on I prepared dinner and Tyrone and
12 I normally when he prepared dinner I would eat with him or
13 he would eat with me. So after preparing dinner I asked
14 him did he want me to bring him dinner, and he said yeah.
15 And so I went down to his house and took him a plate.

16 Q And then once you got to his house did you help him
17 with anything? Tell me what y'all did.

18 A Well, he was in the process of cleaning up and so he
19 needed me to help him move a dresser and we moved it to
20 the outside of his house.

21 Q Okay.

22 A Yeah.

23 Q And did you leave shortly thereafter?

24 A Yes, I did.

25 Q Okay.

SW - N. Patterson - Direct

1 A I did.

2 Q And what did you do after you left Tyrone's house?

3 A I went back home and I just started watching a movie,
4 and shortly after that Tyrone had actually called me while
5 the movie was on and I didn't answer the phone. I just
6 said, well, I'll call him back once the movie goes off and
7 I did just that. I called him back when the movie was off
8 and he said that -- well, I, the reason why I was calling
9 was that I wanted to find out where Farmington Apartment,
10 I need directions to Farmington Apartments. And he said,
11 but I already got the directions now but thank you anyway,
12 and I said okay so I went to bed.

13 Q Okay. Now the next day you get the call from Richard
14 telling you Tyrone was missing. Tell the members of the
15 jury what you did next.

16 A Instantly I took it upon myself to call him, and
17 someone answered his phone and it seemed like they were
18 playing jokes. And knowing my best friend, nobody would
19 have answered his phone. Instantly that threw up red
20 flags. After -- after I talked to Richard and I called
21 Tyrone I...

22 Q And take your time.

23 A Yeah, it's tough. It's...

24 Q And if you do need to take, you know, take a minute
25 just let us know. You need some water?

SW - N. Patterson - Direct

1 A Yeah, I think I'm okay. I decided -- and it was
2 basically around my lunch hour so I decided to go to his
3 house to see whether or not I could, you know, whether he
4 was home. And so I did just that. I raced over to his
5 house to see whether he was there, and the door was
6 unlocked. And his door wouldn't have been unlocked. And
7 the lights were on. And I called his name as I walked in
8 and he didn't answer, and so I eventually I left. And I
9 knew that our last conversation he was asking about
10 Farmington Apartments so I left his house and went back to
11 Hartsville and I drove through Farmington Apartments to
12 see if I could find his car and it wasn't anywhere to be
13 found. So eventually I -- after speaking with his cousin
14 about trying to figure out where he was, I eventually went
15 back to work. After I left work that evening I went
16 directly to Tyrone's mom's house and that's when we all
17 six of us, we got in the SUV and we went to Hartsville,
18 back to Hartsville, to see whether or not we could locate
19 his car or him. And after we wasn't able to we eventually
20 went back to his mom's house and myself back to my house.
21 And then after that the following day I -- I in the back
22 of my mind I'm thinking, okay, the last time I talked to
23 him he was wanting to know where Farmington Apartments
24 were so I knew that I needed to keep going out there to
25 see if I could see him out there or to see his car or

SW - N. Patterson - Direct

1 anything. So on my way to work that next morning I go
2 again to Farmington Apartments and there was his car. His
3 car -- someone -- a girl and a boy was getting in his car.
4 And I panicked. I panicked not only because I saw my best
5 friend's car. I panicked because it wasn't him getting in
6 his car; and on top of that, his trunk, the trunk on his
7 car was slightly elevated. And I know my best friend's
8 car. I know that that wasn't normal. And so...

9 Q What did you do? And again, if you need to take a
10 minute just let me know.

11 A I called 9-1-1.

12 Q Okay.

13 A And I didn't want to get -- let them get out of my
14 sight because I knew this was my friend's car and I knew
15 he wasn't in there. And so I parked a little ways from
16 where his car was, and I didn't want to let it out of my
17 sight and they eventually left the apartment complex and
18 went around the corner to a gas station and was getting
19 gas, and I was at the business next door waiting on the
20 cops. So they eventually left the gas station, and I left
21 behind them because I didn't want to just -- talking about
22 Tyrone's car to get out of my sight. And shortly after
23 that, a few seconds later the cops, I saw them in my
24 rearview mirror so I pulled to the right and they got in
25 behind the car. And I eventually just followed the

SW - N. Patterson - Direct

1 direction where they were going and the chase ended up at
2 in Farmington Apartments where it had -- where I
3 originally spotted the car.

4 Q Okay. So after that what did you do? Did you stay out
5 near the scene for a while?

6 A Yes, I did. I did. I called his -- I called his
7 cousin Katina. I called his -- I think -- I asked her to
8 call everyone else and tell everybody that I had located
9 his car, and I think she probably did that. And a little
10 while later I met up with her and I met up with his --
11 Tyrone's mother and his father. And eventually after
12 talking with him as to what happened I decided to go back
13 to work; and when going back to work I knew that I
14 wouldn't be able to function right at work so I decided to
15 go back and be with them where they had started gathering
16 at the police department.

17 Q Okay.

18 A And we stayed at the police department for a couple of
19 hours and then eventually I went home, back home, after we
20 left the police department. And then I went back to work
21 and then that's basically, basically all of that.

22 Q How did you find out, what ultimately, how did you find
23 out that Tyrone was no longer alive?

24 A After leaving work that particular day I went to my
25 part-time job to pick up my paycheck and Tyrone's cousin

SW - N. Patterson - Direct

1 Katina asked -- she called me and she asked me to come to
2 Tyrone's mother and father's house as soon as I could get
3 there. And when I got there that's when they told me that
4 he wasn't alive anymore.

5 Q Did Tyrone know the defendant?

6 A Yes, he did.

7 Q And could you tell us how, how you know that he knows
8 the defendant?

9 A Tyrone and I were best friends. We knew what each
10 other was doing at all times. He met Bobby at a gas
11 station not far from our house. Bobby had car trouble and
12 Tyrone helped him out. He helped him with his car. So
13 that's basically how they met. I never actually met Bobby
14 in person, but I always knew of him but as being the guy,
15 you know, that Tyrone helped when his car was down.

16 Q Okay. And how long did to the best that you recall,
17 how long or about how long did they know each other?

18 A I'm -- I don't know the exact day but it was probably
19 six months to a year, if not more.

20 Q Okay. So the first time they met Tyrone helped the
21 defendant ---

22 A Tyrone helped him. His car was running hot and Tyrone
23 offered a hand to help him.

24 Q All right. Thank you so much. I have nothing further.
25 Please answer any questions Mr. Watts may have.

SW - N. Patterson - Cross

1 THE COURT: Cross-examination, Mr. Watts.

2 MR. WATTS: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WATTS:

6 Q Mr. Patterson, you said Mr. Brown knew Mr. Gilbert
7 because he assisted with a vehicle?

8 A Yes.

9 Q Okay. And you never met Mr. Gilbert; is that correct?

10 A No.

11 Q Okay. And have you ever talked to him on the phone?

12 A Who?

13 Q Mr. Gilbert.

14 A No.

15 Q Okay. So you never had any contact with Mr. Gilbert
16 whatsoever?

17 A No.

18 Q Okay. So the only information you can present to the
19 Court is what you were told by Mr. Brown?

20 A Absolutely.

21 Q Okay. And unfortunately Mr. Brown is not here to
22 verify any of that information; is that correct?

23 A Exactly.

24 Q Okay. Did you earlier testify that it was uncommon for
25 Mr. Brown's phone to go to voice mail?

SW - N. Patterson - Cross

1 A No, I don't think I testified to that.

2 Q All right. I think earlier you testified that you had
3 tried to call him and someone picked up; is that correct?

4 A Yes.

5 Q Okay. And what day was that?

6 A On the 17th.

7 Q On the 17th?

8 A Uh-huh.

9 Q Okay. Did you ever indicate that to law enforcement?

10 A Yes, I did.

11 Q Okay. Did you ever give a statement law enforcement?

12 A I did.

13 Q When did you give your statement to law enforcement?

14 A I can't remember the exact date, but it was that
15 following Monday.

16 Q Okay. And about what time -- let me ask you this. Did
17 you try to call and get this unidentified person who
18 picked up the phone before or after you were contacted by
19 the coworker?

20 A After.

21 Q After?

22 A Uh-huh.

23 Q Okay. Had you tried to call Mr. Brown prior --

24 A Yes.

25 Q ---to getting the call?

SW - N. Patterson - Cross

1 A Yes, sir, I did.

2 Q And what happened then?

3 A If I'm not mistaken it did go straight to the voice
4 mail.

5 Q Okay. Is there any reason why your statement would
6 leave out any indication of someone picking up his phone
7 when you tried to call after being notified by, I believe,
8 Richard?

9 A Could you repeat that please.

10 Q Sure. Do you remember giving a statement to Darlington
11 County?

12 A Yes, I do.

13 Q Okay. And at that time you gave them all the
14 information that you had at that time; is that correct?

15 A Yes.

16 Q Okay. And when you gave that statement did you tell
17 them everything you knew at the time?

18 A Yes.

19 Q Okay. And do you recognize this statement?

20 A Yes, I do.

21 Q Okay. And in that statement -- I want you to hold on
22 to it.

23 A Okay.

24 MR. REDMOND: Your Honor, just to make sure the record
25 is preserved, I think it be appropriate that at least be

SW - N. Patterson - Cross

1 marked for defense one for ID purposes at this point, and
2 the State would have no objection if he wants to admit it.

3 THE COURT: That's up to him and don't think it does
4 need to. I think under 613 he's identified what the
5 statement is and he has the right to use it for
6 impeachment purposes without introducing it into evidence.
7 Objection is overruled.

8 BY MR. WATTS:

9 Q On the -- start on the second page, okay. I think it
10 says -- read me that, where it says -- I mean, looking at
11 it it says you called him again, is that correct?

12 A Yeah.

13 Q Read that section for me.

14 THE COURT: Now, that, I'm not going to allow. He's
15 not going to read from the statement. That is not
16 permissible. You can ask him about the inconsistencies,
17 but you cannot have him read from his statement.

18 BY MR. WATTS:

19 Q On Page 2 is there any indication that you -- is there
20 anything in that statement you wrote out that says you
21 talked and got someone on their voice mail when you tried
22 to call Tyrone's number?

23 A No, not on Page 2.

24 Q Okay, thank you. Any indication that you called and
25 got someone else other than Tyrone on Page 1?

SW - N. Patterson - Cross

- 1 A No, not on Page 1.
- 2 Q Okay. Any indication that you called the cell phone
- 3 number for Mr. Brown and got someone other than him on
- 4 Page 3?
- 5 A No, not on Page 3.
- 6 Q Did you give any other statements to law enforcement?
- 7 A No, I didn't, and that was the only statement I give.
- 8 Q And it's consisting of three pages; is that correct?
- 9 A Yeah.
- 10 Q And in that statement you didn't make any mention of
- 11 anyone picking up Tyrone's phone and pretending it was him
- 12 and talking instead of it being Tyrone?
- 13 A Not in that statement.
- 14 Q Okay. And there weren't any additional statements; is
- 15 that correct?
- 16 A No, there weren't any additional statements?
- 17 Q So today on the stand is the first time you talked
- 18 about how someone had picked up and tried to --
- 19 A Yeah. We -- I called Tyrone several times, several
- 20 times. I mean, he was missing.
- 21 Q Okay. But now is when you're saying that somebody
- 22 picked up?
- 23 A Yeah. One of the times that I called somebody did pick
- 24 up.
- 25 MR. WATTS: Court's indulgence for one moment, Your

SW - N. Patterson - Cross

1 Honor?

2 THE COURT: All right.

3 BY MR. WATTS:

4 Q Mr. Patterson, did you see the people that were in the
5 vehicle when it was stopped at Farmington?

6 A Yes, I did.

7 Q We're talking about Mr. Brown's vehicle?

8 A Yes, I did.

9 Q And we're talking about the 18th?

10 A Uh-huh.

11 Q You did see the people inside the vehicle at that time?

12 A Yes, I did.

13 Q I think you said one was a female; is that correct?

14 A Yes.

15 Q And did you see the other individual who was a male?

16 A Yes.

17 Q Okay. Was that Mr. Gilbert?

18 A No.

19 Q Okay.

20 MR. WATTS: No further questions, Your Honor.

21 THE COURT: Redirect.

22 MR. REDMOND: Briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MR. REDMOND:

25 Q Did you know who it was on the phone when you called

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1 and somebody picked up, did you know who it was?

2 A No.

3 Q Okay. So you aren't saying it was the defendant that
4 answered, are you?

5 A No.

6 MR. REDMOND: Nothing further, Your Honor.

7 THE COURT: Recross.

8 MR. WATTS: Nothing further, Your Honor.

9 THE COURT: All right, thank you, you may step down.
10 All right, Mr. Redmond.

11 MR. REDMOND: Your Honor, at this time I yield to Ms.
12 McKenzie.

13 MS. MCKENZIE: Your Honor, at this time the State would
14 call Investigator Cooke.

15 WHEREUPON,

16 **APRIL COOKE,**

17 having been duly sworn by the Clerk of Court, testified as
18 follows:

19 THE CLERK OF COURT: Have a seat please.

20 BY MS. MCKENZIE:

21 Q Please state your full name for the record.

22 A April Cooke.

23 Q And where are you currently employed?

24 A Darlington County Sheriff's Office.

25 Q And now where were you employed in January of 2007?

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- 1 A Hartsville City Police Department.
- 2 Q And what was your position with Hartsville P.D.?
- 3 A Investigator and evidence custodian.
- 4 Q Okay. Do you recall working on January 18th, 2007?
- 5 A Yes, I do.
- 6 Q Were you working on the morning of that day?
- 7 A Yes, I was.
- 8 Q Did you become aware of a car that belonged to a
- 9 missing person that was spotted in Hartsville?
- 10 A Yes, I did.
- 11 Q And how did you become aware of that?
- 12 A Our dispatcher gave out the call through our radio
- 13 system to Sergeant Kelly.
- 14 Q Okay. Did you hear that call?
- 15 A I did.
- 16 Q And where were you at when you heard that call?
- 17 A I was at the intersection of West Carolina Avenue and
- 18 Sixth Street in Hartsville.
- 19 Q What was the description of that car?
- 20 A It was a black in color Honda Accord.
- 21 Q Did you see a car matching that description?
- 22 A Yes, I did.
- 23 Q What point did you see the car?
- 24 A I was on Barefoot Avenue off of West Carolina Avenue.
- 25 The vehicle crossed over Barefoot on Oak Avenue. It was

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1 traveling on Oak Avenue and crossed over Barefoot when I
2 was traveling down Barefoot.

3 Q And what point did you get behind the car?

4 A As soon as it crossed over Barefoot I turned behind the
5 vehicle on Oak Avenue off of Barefoot Street?

6 Q How long did you follow that car?

7 A As soon as I got behind the vehicle I initiated my blue
8 lights in order to try and stop the vehicle.

9 Q Did the vehicle stop when you initiated your blue
10 light?

11 A Not, not initially, no.

12 Q How long did that take place while your blue light was
13 still going that the car was still traveling? Please
14 describe that for the jury.

15 A We traveled down Oak Avenue headed towards on
16 Fourteenth Street. When we got to Fourteenth Street the
17 vehicle ran through the stop sign, almost striking several
18 vehicles, into a yard. It went through the yard striking
19 a tree and almost hitting a light pole and then continued
20 back on to Fourteenth Street headed towards back towards
21 West Carolina Avenue, and that's when an additional
22 officer had come to assist me and had tried to block the
23 roadway in order to get the vehicle to stop. It ran off
24 the side of the road in order to get around the second,
25 the third additional unit. Eventually turned into

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1 Farmington Apartments around the backside of the apartment
2 complex where it's only wide enough for one car to fit
3 down the road, and a patrol unit pulled in front of the
4 car while myself and Sergeant Kelly behind me was behind
5 the car. The car had nowhere else to go but to stop at
6 that point.

7 Q So if the car would have kept going forward it would
8 have struck the other vehicle?

9 A It -- yes, it would have struck the vehicle of
10 Lieutenant Myers.

11 Q So what happened when y'all got the car stopped?

12 A The driver, which was a female and the passenger which
13 was a male, exited the vehicle. I ordered them back
14 inside the vehicle. They continued to walk away from the
15 vehicle at that point in time. I got -- approached the
16 female driver and Sergeant Kelly approached the male
17 passenger and we put them in investigative detention until
18 we could determine what we -- exactly what was going on.

19 Q Okay. Now tell me about the tag that was on the car.
20 Did you have dispatch run that tag?

21 A It came back to a Ford.

22 Q Was there another tag located in the car?

23 A Sergeant Spech (ph) arrived on scene to assist us, and
24 he found an additional tag that -- in the back seat of the
25 vehicle.

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1 Q Okay. What type car was that tag registered to do, the
2 one that was found in the back seat?

3 A I do not recall. I did not run that tag.

4 Q Okay. Now describe who was found in the car driving
5 the vehicle?

6 A Ms. Harriett was the driver of the vehicle. She was
7 approximately 13 to 14 years of age, and she had no
8 driver's license, no beginner's permit, or anything.

9 Q Now was the passenger identified?

10 A He was later identified as Jamie Gilbert.

11 Q Okay.

12 MS. MCKENZIE: Your Honor, permission to the approach
13 the witness.

14 THE COURT: Yes, ma'am.

15 BY MS. MCKENZIE:

16 Q I'm going to show you what's already been entered into
17 evidence as State's Exhibit Number 8. Do you recognize
18 that?

19 A Yes, I do. That was the vehicle I stopped.

20 Q Okay.

21 MS. MCKENZIE: Thank you. No further questions.

22 THE COURT: Cross-examination, Mr. Watts.

23 MR. WATTS: No questions, Your Honor.

24 THE COURT: All right. Thank you, Ms. Cooke, you may
25 step down.

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1 **MR. REDMOND:** Your Honor, this next witness is Captain
2 Locklair. We've got some exhibits to save time we
3 probably pre-mark and get that straight and a lot of
4 exhibits we will present.

5 **THE COURT:** All right. We've been in the courtroom now
6 about an hour twenty minutes. I think it is appropriate
7 we take our midmorning break at this time. We're going to
8 do that. Ladies and gentlemen, we are going to take a 15
9 minute recess at this time. I'm going to allow you to go
10 to your jury room and relax a little bit. Do not discuss
11 the case among yourselves. Talk about anything you want
12 to but don't talk about this case, but just relax for a
13 few minutes. We'll bring you back in the courtroom in
14 about 15 minutes. Thank you. You may go with the
15 bailiff.

16 (WHEREUPON, the jury was removed from
17 the courtroom at 11:00 a.m., and the following proceedings
18 commenced in open court.)

19 **THE COURT:** All right. From the standpoint of
20 exhibits, Counsel, let's try to get those taken care of,
21 at least the ones you think you'll reach before lunch.
22 What I want to do again is have the court reporter, give
23 her a chance to take a break as well, but I want to have
24 the court reporter mark those exhibits that you can agree
25 upon and go ahead and give them a number. They are in

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1 evidence. We'll -- when we get back in we'll go over
2 those that are in evidence and make sure those are taken
3 care of. If you cannot agree on them give them an I.D.
4 number and whenever you refer to them as either in
5 evidence or for I.D. and we'll approach it from that
6 standpoint. All right, we'll take a 15 minute recess at
7 this time. Be ready to start back at 11:15. Thank you.
8 (WHEREUPON, State Exhibit Nos. 14 through 47 were marked
9 for identification only and a recess was taken from the
10 proceedings.)

11 THE COURT: Back on the record with regard to the
12 matter of the State versus Bobby Gilbert. Mr. Gilbert is
13 present with his counsel. The State is represented by
14 Mr. Redmond who is also present. Counsel, let's talk
15 about the exhibits and see what we've got.

16 MR. REDMOND: Yes, sir.

17 THE COURT: What has been marked as being in evidence
18 and what are IDs?

19 MR. REDMOND: Here is what is going to be in evidence.
20 I'll go through that first, Your Honor. State's Exhibit
21 Number 9, 10, 11, 13 -- I'm sorry, 12 and 13. Beg the
22 Court's indulgence just a moment. 13, 14, 15, 16, 17, 18,
23 and 19 we've agreed. So 9 through 19 are in evidence,
24 Judge.

25 THE COURT: All right. So you agree with that,

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1 Mr. Watts, that counsel has agreed to Exhibits 9, 10, 11,
2 12, 13, 14, 15, 16, 17, 18 and 19.

3 MR. WATTS: Yes, Your Honor.

4 THE COURT: All right. Those are admitted into
5 evidence without any further authentication.

6 (WHEREUPON, State Exhibits Nos. 9 through 19 were admitted
7 into evidence.)

8 MR. REDMOND: Yes, sir. Judge, yeah, we probably need
9 to address a couple of them because they do show pictures
10 of the victim, some of them do. We did not agree to them
11 but are marked for I.D. State's 20, 21, 22, 23, 24, 25 --
12 excuse me, 26, 25 and 26, 27, 28, 29, 30, 31, 32, 33, 34,
13 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 are
14 marked for I.D. purposes. Just so Your Honor will know
15 for the record, that State's Exhibits 32, 33, 34, 35, 36,
16 37, 38, 39, 40, they are pictures from the autopsy. So 32
17 through 40 are pictures of the autopsy, and we won't be
18 seeking to get those in through Captain Locklair. But the
19 rest of the exhibits we do intend on getting in,
20 attempting to get in, through Investigator Locklair and
21 ---

22 THE COURT: Hand me the -- hand up the I.D. exhibits
23 please. And you will be going into those with the next
24 witness except for the autopsy exhibits; is that correct?

25 MR. REDMOND: That's correct, Judge, and of course from

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1 yesterday I'll go forward with what's been marked as
2 identification 1, 2, and 3, that being the documents from
3 the Jackson v. Denno.

4 THE COURT: Correct.

5 MR. REDMOND: I don't think they have been admitted
6 yet.

7 THE COURT: I understand. They'll have to come in as
8 part of the Jackson v. Denno, and I'll also give them
9 their duties with regard to finding voluntariness they've
10 got to do.

11 MR. REDMOND: And Your Honor, lastly, there's a State's
12 Exhibit 47. That is a diagram that Mr. Watts -- it's for
13 I.D. at this point until a foundation is laid for it.

14 THE COURT: All right. Let's see if we can head some
15 of this off before the jury comes in so I won't have to
16 send them out if possible. Mr. Watts, let's look at the
17 exhibits. Apparently beginning with 21. Now this
18 exhibit -- okay, 22, what's the objection to those please.

19 MR. WATTS: Your Honor, I need to lay the foundation to
20 those as far as investigative officer did so, who took the
21 pictures, where they were taken, what time frame. Those
22 are also purported scene and to lay a foundation as to who
23 took, where it took, when it was found.

24 THE COURT: All right. That's through all of those
25 except the autopsy photographs. All right, and then with

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1 regard to the autopsy photographs we'll get into later
2 and we'll take up and worry about those at that time.
3 What's your -- what about the diagram, same thing?

4 MR. WATTS: Yes, sir, Your Honor.

5 THE COURT: All right. In the absence of the jury, Mr.
6 Redmond, let's call the officer to the stand and go ahead
7 and see if we can take care of these, authentication of
8 these photographs, and he can make his objections and then
9 we'll come back to it.

10 MR. REDMOND: Thank you, Your Honor.

11 THE COURT: Go ahead and call your witness.

12 MR. REDMOND: Captain Andy Locklair.

13 WHEREUPON,

14 **ANDY LOCKLAIR,**

15 having been duly sworn by the Clerk of Court, testified as
16 follows:

17 THE CLERK OF COURT: Have a seat.

18 **PROFFER EXAMINATION**

19 BY MR. REDMOND:

20 Q And Captain Locklair, I'm going to first pass to you,
21 and if you could, I'm going to pass you several of these
22 exhibits, and if you could for the benefit of time, I'll
23 ask you to identify each of these pictures but also let us
24 know if you were present at the time that they were taken
25 and whether or not they truly depict what is reflected in

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1 these pictures, okay. So with the Court's permission I'll
2 pass him and he'll identify each exhibit as he's ---

3 THE COURT: That will be fine. Go ahead.

4 THE WITNESS: Exhibit Number 20, State's Exhibit
5 Number 20, I was present at the time this photo was taken,
6 and it does accurately depict the scene in which I seen at
7 that time.

8 BY MR. REDMOND:

9 Q And what is that scene for the record?

10 A This is a scene of the body of the victim located in a
11 wooded area off of Sandbox Road.

12 Q Okay.

13 A State's Exhibit Number 21 is an accurate depiction. I
14 was there when this photo was taken. This is a picture of
15 the closer shot of the victim's body. State's Exhibit
16 Number 22 is an accurate depiction. I was there when
17 this photo was taken. It is also a picture of the
18 defendant -- or excuse me, the victim's body. State's
19 Exhibit Number 23 is an accurate depiction. I was there
20 when this photo was taken. This is a closeup picture of
21 the victim's head. State's Exhibit 24 is an accurate
22 depiction. I was present when the picture was taken.
23 It's a picture of the -- a pair of blue jeans. State's
24 Exhibit 25 is a picture that I took, is an accurate
25 depiction of the scene which I seen that day. It's a

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1 picture from a distance of a cinder block marked with a
2 marker number one. State's ---

3 Q And let me stop you there. I'm going to show you
4 what's been marked as State's Exhibit Number 5. Speaking
5 of the cinder block, have you had a chance to view this
6 exhibit?

7 A I have.

8 Q Is this the cinder block that is reflected in State's
9 Exhibit 25?

10 A Yes, it is.

11 Q Okay. And you can continue please, sir.

12 A State's Exhibit Number 26 is an accurate depiction of
13 the scene. I did take this photo. It's a picture from a
14 distance of the cinder block. State's Exhibit Number 27
15 is an accurate depiction of the scene in which I seen it.
16 I took this picture. It's a longer distance shot of a
17 picture of a cinder block. State's Exhibit number 28 is
18 an accurate depiction of the scene which I seen it. I
19 took this photo. It's a closer shot of the cinder block.
20 State's Exhibit Number 29 is an accurate depiction. I
21 took this photo and it is a closer shot of the cinder
22 block. State's Exhibit Number 30, I was present when this
23 photo was taken. It was taken at our Sheriff's Office.
24 It is a picture of a cinder block and the piece that was
25 with the cinder block. State's Exhibit Number 31 is an

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1 accurate depiction of the photo. I was present when this
2 photo was taken. It is a picture of the two pieces of
3 cinder block married together. State's Exhibit Number 41
4 is a picture of a dirt road off of Sandbox Road leading
5 back to where the body was found. This is an accurate
6 depiction of the scene in reference to where the body was
7 found. State's Exhibit Number 42 is an accurate depiction
8 of a scene of Sandbox Road near an old Pure gas station in
9 reference to a location off of Sandbox Road and where the
10 cinder block was found. State's Exhibit Number 43 is an
11 accurate depiction. It is a picture from where the block
12 was found to a house located across the street. State's
13 Exhibit Number 44 is an accurate depiction. It's a
14 picture from the house across the street back across the
15 road to the Pure gas station. State's Exhibit Number 45
16 is the same picture, however, the shot is moved over to
17 the right to where the location of the cinder block was
18 found. And State's Exhibit Number 46 is an accurate
19 depiction. It is a shot of the driveway going into where
20 the cinder block was found off of Sandbox Road.

21 Q And finally, let me show you what's been marked as
22 State's Exhibit 47.

23 A State's Exhibit Number 47 is a map diagram. It's an
24 accurate depiction of the area located scene one, scene
25 two, scene three, scene four; Bobby Gilbert, the

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1 defendant's residence; Norris Patterson, the witness'
2 residence; Tyrone Brown, the victim's residence; as well
3 as the Farmington Apartment located in Hartsville.

4 Q And again, each of the exhibits that you've just gone
5 through are they -- do they again accurately depict the
6 scenes displayed?

7 A Yes, they do.

8 Q And were you present either at the -- were you present
9 at the time they were taken, or did you actually take the
10 photographs, either one of those two?

11 A I was present at the time they were taken and on some
12 of the photographs actually took them.

13 Q Okay. But in each of the photographs you were
14 physically present at the time?

15 A Yes.

16 MR. REDMOND: Your Honor, that'd be the State's proffer
17 regarding that.

18 THE COURT: All right, you'll be offering those in
19 evidence. Mr. Watts, what's your position on them? And
20 let me do this way, I think it will be an easy way to do
21 it. 20, 21, 22, 23 and 24 are all photographs of the --
22 either the victim at the scene or his clothing. I'll
23 clarify those as group one just for ease of dealing with
24 them. 26, 27, 28, 29, 30, 31 all appear to be from my
25 notes photographs involving cinder block, and 41 through

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1 46 appear to be photographs of the immediate vicinity of
2 the scene. And 40 -- and I call that group three. And
3 then group four will be the diagram. What's the
4 defendant's position regarding the admissibility of group
5 one? That's exhibits, 20, 21, 22 23, and 24.

6 MR. WATTS: Regarding the exhibits group one, they're
7 the pictures of the body, if I may review those.

8 THE COURT: The blue jeans are also included in that
9 group.

10 MR. WATTS: Your Honor, I object to Number 23 as is a
11 ac-- or it's the same information as produced in picture
12 number 22. I think the closeup is something that is
13 trying to induce some disgust or displeasure or something
14 against other feelings of animosity against the defendant
15 regarding the picture with the information that's still
16 accurately displayed in picture 22.

17 THE COURT: All right. Objection to 23 is noted. Go
18 ahead.

19 MR. WATTS: Your Honor, with objection for the entire
20 group I would note the objection since Investigator
21 Locklair did not take these pictures, has not said that he
22 was directly beside the photographer at the time.

23 THE COURT: Well, that's not the test, is it? The test
24 is whether they accurately depict the scene that they are
25 intended to depict. And didn't he testify to that? I

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1 mean, I don't think there's any requirement that the
2 witness take the pictures or that he, as long as he can
3 identify them as accurate depicting the scene I believe
4 that is what's necessary.

5 MR. WATTS: Then as far as the remainder of group no
6 objection.

7 THE COURT: All right. So 20, 21, 22 and 24 you don't
8 have any objection to. But 23 you do object to; is that
9 correct?

10 MR. WATTS: Yes, Your Honor.

11 THE COURT: All right. Let me see 23 and 22.

12 Mr. Redmond, I'll be glad to hear from you with regard
13 to his objection to Exhibit Number 23 and what you think
14 that that illustrates that is not illustrated by Exhibit
15 22 to which he has agreed.

16 MR. REDMOND: And Your Honor, quite frankly, as it
17 relates to this witness I would actually concede that
18 point. I think that would be more appropriate with Doctor
19 Ross especially after the testimony of Mr. Captain
20 Locklair and Jamie Gilbert so I will---

21 THE COURT: 23 is excluded at this time.

22 MR. REDMOND: At this time.

23 THE COURT: Except for the authenticity of it and the
24 relevance of it will be addressed at the time that the
25 medical examiner testifies and we'll determine then

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1 whether it will come in. So for purposes of this hearing
2 20, 21, 22 and 24 are in evidence without objection.
3 (WHEREUPON, State Exhibits Nos. 20, 21, 22, and 24 were
4 admitted into evidence.)

5 THE COURT: 23 is not in evidence at this time, I.D.
6 only.

7 MR. REDMOND: Thank you, Your Honor.

8 THE COURT: What about the other group with regard to
9 the cinder blocks, 25 through 31, Mr. Watts?

10 MR. REDMOND: And Your Honor, just to make clear, 22 is
11 in evidence?

12 THE COURT: Yes, sir. He didn't object to that. 23
13 was the one that he objected to. For the record 20, 21,
14 22 and 24 are in without objection. Group two, the ones I
15 classified as group two, pictures 25 through 31 all have
16 to do with the cinder block.

17 MR. WATTS: Judge, no objection that they accurately
18 depict the scene.

19 THE COURT: All right. 20, 21, 22, 24, 25, 26, 27, 28,
20 29, 30, 31 are admitted into evidence without objection.
21 (WHEREUPON, State Exhibits Nos. 25 through 31 were
22 admitted into evidence.)

23 THE COURT: 41, 42, 43, 44, 45 and 46 I've identified
24 as group four — or group three, I'm sorry, and these are
25 the scenes of the dirt road or the Sandbox or the block

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1 house -- or I mean, the block -- the house located in any
2 of those exhibits. What's the -- again, the witness has
3 identified that as being accurate depiction of the area.
4 And I think the authenticity is appropriate. Are there
5 any other objections to those?

6 MR. WATTS: None, Your Honor.

7 THE COURT: All right. 41, 42, 43, 44, 45, 46 will be
8 admitted into evidence without objection. Number 47, the
9 map.

10 (WHEREUPON, State Exhibit Nos. 41 through 46 were
11 admitted into evidence.)

12 MR. WATTS: Your Honor, I have to object on this as far
13 as it being an accurate depiction. I don't know -- I
14 don't believe he created this. I don't know how good
15 knowledge he has of the accurate foundation about road
16 marks and maps and how this is. I would have to object.

17 MR. REDMOND: We stipulate it's not to-scale. I didn't
18 ask him so we stipulate it's not to-scale.

19 THE COURT: All right. Ask a couple of background
20 questions on it, Mr. -- lay the foundation.

21 MR. REDMOND: All right.

22 BY MR. REDMOND:

23 Q Did you prepare this particular exhibit?

24 A I did not prepare the exhibit.

25 Q Have you had a chance to review this exhibit?

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1 A I have had the chance to review it.

2 Q And in fact, were you the lead investigator in this
3 case?

4 A Yes, I was.

5 Q And are you familiar with Darlington County?

6 A Yes, I am.

7 Q How long have you lived in Darlington County?

8 A 39 years.

9 Q And are you familiar with the areas depicted in this
10 photo?

11 A Yes, I am.

12 Q And just for further foundation could you go through
13 each of them that's listed, starting at the top, for the
14 record and explain the significance and lay the foundation
15 for what each of those are.

16 A Farmington Apartments is located in the City of
17 Hartsville on 14th Street. Bobby Gilbert's residence is
18 located on Mackton Road out in Lydia area of Darlington
19 County. The first scene which is Hilga Welsh's residence
20 is also located on Sandbox Road not far from Mackton Road.

21 THE COURT: Let me ask you something, Mr. Locklair.
22 Where does the map come from? Is that a tax map or what
23 is that -- the actual map that those references, not
24 the -- the reference is there but the roads depicted on
25 there, where does that come from?

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1 THE WITNESS: The actual map come from a Darlington
2 County area map.

3 THE COURT: Okay.

4 THE WITNESS: The scene number one is Hilga Welsh's
5 residence located on Sandbox Road right across the street
6 the same area as the second scene on Sandbox Road. The
7 Una Road area or Una Road, Cornfield Road which is the
8 third scene is accurately depicted here and it is close to
9 Lee County line. Mr. Norris Peterson, the witness's
10 residence, is located here on Center Road, Center Road
11 running through the center of the the County. And Tyrone
12 Brown, the victim's residence, is located here. Your
13 Honor, I've been to every one of these locations and it is
14 accurately depicted on this map as being the general
15 vicinity of where these locations are actually located.

16 THE COURT: Okay. Go ahead, Mr. Redmond, anything
17 else?

18 MR. REDMOND: Your Honor, that would be all that I have
19 at this time.

20 THE COURT: Voir dire with regard to this exhibit,
21 Mr. Watts, questions?

22 **CROSS - EXAMINATION**

23 BY MR. WATTS:

24 Q Mr. Locklair, do you know what version or what map at
25 all was used to created this?

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1 A I do not.

2 Q Okay. Do you have any, other than locations of the
3 city, do you have any indication on this map with the
4 roads of which connecting is there any kind of road
5 markings?

6 A After 18 years of law enforcement I'm used to looking
7 at maps all the time. I can tell you that the general
8 road that description, like for instance, this Highway 151
9 I know Center Road runs from Highway 151 down across
10 Indian Branch Road across 401 and then Center Road coming
11 on down into here. I know this is Highway 401 going into
12 Lamar. I can identify these features because I've seen
13 them before on other maps.

14 Q Okay. Are you able to identify without any kind of
15 indication or other information which roads are these
16 contributing roads, other side roads?

17 A Some of the roads I can identify. Some of the other
18 ones I would not be familiar with the smaller roads.

19 MR. WATTS: Your Honor, that's all the questions I
20 have, Your Honor, but I continue ---

21 THE COURT: All right. Being offered in evidence by
22 the State, State's Number 47. What's Defendant's
23 position?

24 MR. WATTS: Your Honor, I still object to this exhibit
25 as far as we don't know what map or what it -- when it was

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1 created or what map was used, what year, what updates
2 might have been with this in the creation of it. It does
3 not have the level of identification marking of other
4 roads and the vicinity that would make it I think
5 accurately representative I think of general -- the
6 representation is still inadequate as far as having this
7 come in as an exhibit in evidence that is going to be
8 taken back to the jury.

9 THE COURT: All right. The objection is overruled.
10 The exhibit will be admitted into evidence subject to the
11 objection of the defendant in this case, and I think it
12 meets the requirements of Rule 1001, etc., of the South
13 Carolina Rules of Evidence which deal with writings,
14 recordings, and photographs. I think it also meets the
15 requirements of 901(B) regarding illustration which
16 specifically provides that the requirement of authenticity
17 or identification is a condition precedent to
18 admissibility is satisfied by evidence sufficient to
19 support a finding that the matter in question is what the
20 proponent claims. 901(b) says by way of illustration
21 only, not by way of limitation, the following are examples
22 of authentication or identification conforming with the
23 requirements of the rule, testimony of a witness with
24 knowledge that the matter is what it is claimed to be.
25 And I think it definitely meets the requirements of 901(a)

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1 and (b) and is admitted over the objection of the
2 defendant.

3 MR. REDMOND: Thank you, Your Honor.

4 (WHEREUPON, State Exhibit No. 47 was admitted into
5 evidence.)

6 THE COURT: All right. Ready to go forward then.
7 Anything else before we bring the jury in?

8 MR. REDMOND: Nothing from the State, Your Honor.

9 MR. WATTS: Nothing from Defense, Your Honor.

10 THE COURT: All right. Bring the jury in please. You
11 can go ahead and step down till he calls you up.

12 (WHEREUPON, the jury was returned to the courtroom at
13 approximately 11:42 a.m., and the following proceedings
14 commenced in open court.)

15 THE COURT: All right. Thank you very much. And
16 ladies and gentlemen, I don't think I told you this
17 before. I may have, but I can't remember. That later on
18 in this case at some point in this case I will name one of
19 the twelve members of the jury as foreperson of the jury.
20 Of course they will sit in that first seat. In the
21 meantime it doesn't matter where you sit in the jury box.
22 Thank you for your patience. I do apologize for keeping
23 you in the jury room a little longer than we had
24 anticipated. I had anticipated a shorter recess, but we
25 have been in the courtroom now for about the last 25

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1 minutes tending to matters that will expedite the trial
2 of this matter so it hadn't been a situation of keeping
3 you waiting in the jury room while we sat in the back and
4 drank coffee. We've been in the courtroom working for the
5 last 25 minutes or so that we could eliminate some matters
6 that would have required me sending you back to the jury
7 room so that we can move forward expeditiously. So thanks
8 for your patience and we're ready to go forward.

9 All right, Mr. Redmond, you may call your next witness.

10 MR. REDMOND: Thank you, Your Honor. May it please the
11 Court. The State would call Andy Locklair.

12 THE DEPUTY CLERK OF COURT: Put your left hand on the
13 Bible, raise your right please.

14 WHEREUPON,

15 **WILLIAM E. LOCKLAIR,**
16 having been duly sworn by the Clerk of Court, testified as
17 follows:

18 DEPUTY CLERK OF COURT: Have a seat.

19 **DIRECT EXAMINATION**

20 BY MR. REDMOND:

21 Q Could you state your name for the record please.

22 A William E. Locklair, also known as Andy.

23 Q And I will probably refer you too as Andy and/or
24 Captain Locklair if that's okay with you.

25 A That will be fine.

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1 Q Captain, where are you employed at this time?

2 A Darlington County Sheriff's Office.

3 Q And how long have you been so employed?

4 A Approximately 18 years.

5 Q And what is your position now with the Sheriff's
6 Office?

7 A I'm captain over administration, public information,
8 and public relations.

9 Q Okay. In January of 2007 in what capacity were you
10 with the Sheriff's Office?

11 A As an investigator.

12 Q And how long did you work as an investigator before you
13 became captain?

14 A Approximately ten years.

15 Q Okay. Now let me direct your attention to January
16 17th, 2007. Did you report to [REDACTED] South Center Road
17 regarding a missing person?

18 A Yes, I did.

19 Q And could you tell the ladies and gentlemen of the jury
20 about that?

21 A I was investigator on-call for this particular evening,
22 and I received a call from the deputy that actually went
23 to the call to respond to this location. There was some
24 concerns in reference to the missing victim Mr. Brown.
25 When I arrived I spoke with the deputy on the scene and

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1 got some background information from him as to what he had
2 actually learned through the process of taking the report.
3 I found out from him that this was unlike the victim to go
4 missing without calling any of his family members. I also
5 spoke with family members on the scene who gave me some
6 background information of Mr. Tyrone Brown, the victim, in
7 reference to his day-to-day habits, very meticulous about
8 going to work on time, never missed a day at work. This
9 was very unlike him to do something like this. I then
10 retrieved as much information as I could from the family
11 members on the scene, cell phone numbers of such, so that
12 I could try to track down or start the process of looking
13 for the victim. In the process of doing that I was handed
14 some information from Ms. Henneghan in reference to his
15 cell phone number, some other information that would be
16 pertinent to him, and started then trying to contact the
17 cell phone provider to see if I could get any of the last
18 numbers either called to him or that he had actually
19 called.

20 Q And what -- tell us, take us from that point, what
21 occurred after that?

22 A When I left the scene I went to the office. I called
23 the cell phone provider. I got someone on the phone. Of
24 course this is at night now; it's after 5:00. And advised
25 them of the severity of the situation; I was looking for

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1 a missing person. I was able to gather some information
2 after faxing them a copy of the incident report and some
3 other pertinent information. I was able to get from them
4 a couple of cell phone numbers that was used the night
5 before that he actually called. With that information I
6 was able to call that cell phone number. When I called
7 that cell phone number I got a man by the name of Dequan
8 Smith identifying himself as Dequan Smith on the
9 telephone. I asked him if he knew where Mr. Brown was
10 located. He said he didn't know Mr. Brown to start with.
11 Once I asked him that his phone number was on Mr. Brown's
12 records he informed me that Tyrone Brown had left. He was
13 having some family issues and he had left for a period of
14 time, but he was okay. And I said could you have him give
15 me call or could you have him go to whatever agency he's
16 near, law enforcement-wise, so they can inform us that he
17 is indeed safe and secure and okay. He said that he would
18 get back in touch with me. I never heard back from
19 Mr. Dequan Smith.

20 Q Now take us through the rest of the investigation. At
21 this point we're talking about a missing person; is that
22 correct?

23 A At this point we're talking about a missing person.

24 Q Okay. What was the next step in your investigation for
25 missing person at that time?

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1 A I exhausted all means of trying to find Mr. Brown that
2 night. Went home. The next morning I received a call
3 from April Cooke in reference to actually finding the
4 victim's car. We had placed the victim's car on NCIC, or
5 National Intelligence Crime Computer, whatever, NCIC. So
6 it's a national data base. So all law enforcement
7 agencies are able to run a tag number or run a vehicle or
8 run a name and date of birth and able to get information
9 back through us. We done all the information on the
10 computer we could possibly do. The next day we received a
11 call from April Cooke in reference to locating the car. I
12 then drove to Hartsville P.D. to speak to the two
13 occupants of the vehicle, one being Jamie Gilbert, the
14 other one being a 13 year old juvenile.

15 Q Let me back up for a minute. What was the number that
16 you called and got Dequan Smith?

17 A The cell phone number I had called to get to Dequan
18 Smith (843)-[REDACTED]- or excuse me, [REDACTED]

19 Q Okay. And did you subsequently discover that Dequan
20 Smith was really the defendant?

21 A After arriving at Hartsville P.D. we had discussions
22 with other officers there. The information came to us
23 through Jamie Gilbert, who is already at Hartsville P.D.,
24 that he actually retrieved this car from his cousin Bobby
25 Gilbert. I asked for any information telephone

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1 number-wise or location so that I could speak with Mr.
2 Bobby Gilbert to find out where he actually got the car.
3 I was given the number of (843) [REDACTED] recognizing that
4 number from the number that I had the night before for
5 Dequan Smith. I also received a home telephone number for
6 Mr. Bobby Gilbert of (843) [REDACTED] I called the cell
7 phone number, did not get an answer. I called the home
8 number and a person answering the phone identifying
9 himself as Bobby Gilbert answered the phone. It was the
10 same person I talked with the night before identifying
11 himself as Dequan Smith. I asked Mr. Gilbert why did he
12 identify himself last night as Dequan Smith. He said that
13 is a nickname he frequently uses or an alias he frequently
14 uses. At that point I asked him could we talk with him in
15 reference to the car and the whereabouts of Mr. Tyrone
16 Brown.

17 Q Okay. And did you have an opportunity to talk with the
18 defendant?

19 A I did speak with the defendant on the telephone. I
20 asked him would he be willing to come to the office and
21 talk with us and he said he would. He did not have
22 transportation and his mother was sick, was unable to give
23 him a ride. So I advised him then I would actually come
24 to his resident on Mackton Road and pick him up. I went
25 to Mackton Road, retrieved Mr. Gilbert, brought him back

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1 to the police department, and we sat down for an interview
2 with him.

3 Q Now at this interview -- and before we get into his
4 interview, with the Court's permission may I approach the
5 witness.

6 THE COURT: Yes, sir.

7 BY MR. REDMOND:

8 Q I'm going to hand you what's been marked, been
9 previously marked for identification as State's Exhibit
10 Number 2. Do you recall looking at that document?

11 A Yes, I do.

12 Q And could you tell the jury what is that document?

13 A This is a City of Hartsville waiver of rights form.
14 Every citizen of the United States is afforded
15 constitutional rights: Those being the Fifth and Sixth
16 Amendment rights; the Fifth, not being able to
17 self-incriminate oneself; the Sixth Amendment of having
18 legal right to counsel. I advised Mr. Gilbert of his
19 Fifth and Sixth Amendment rights. Having the right to
20 remain silent, that anything he said would be used against
21 him in court, having the right to talk to a lawyer for
22 advice before I ask any questions and have him with him
23 during any questioning. If he could not afford to hire a
24 lawyer one would be appointed for him before any
25 questioning if he wished. And at any time during the

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1 conversation he did not have his attorney with him he was
2 able to stop the conversation and retrieve, or get a
3 lawyer at any time during that conversation. Also --- I'm
4 sorry.

5 Q Oh, go ahead, please continue.

6 A Also, once we read this to them we ask them to sign
7 this waiver of rights. It simply says, I have read the
8 statement of my rights and understand and know what my
9 rights are. I am willing to make a statement and answer
10 questions. I do not want a lawyer at this time. I
11 understand and know what I'm doing. No promises or
12 threats have been made to me. No coercion or pressure of
13 any kind has been used against me. We also ask the
14 defendant if he's sober, competent, and sufficiently
15 intelligent enough to understand the form and understand
16 his rights. Also can he read and write and understand the
17 English language and the years of education he would
18 possibly have received and has he been promised anything.
19 Mr. Bobby Gilbert answered all of these in the affirmative
20 by his initials beside each one of those things and by
21 signing this form at the bottom stating that he did
22 understand his constitutional rights.

23 Q And did he, in fact, sign it?

24 A He did.

25 Q Okay. And the date and the time, could you tell the

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1 jury the date and time of that document we've done?

2 A This date and time that he actually signed was 18th of
3 January, 2007, and the time was at 12:15 p.m.

4 Q Okay.

5 MR. REDMOND: Now, and with that Your Honor, with the
6 Court's, I would ask the Court move to admit at this time.

7 THE COURT: All right. State's Number 2 is admitted
8 evidence. Proceed.

9 MR. REDMOND: Thank you, Your Honor.

10 (WHEREUPON, State Exhibit No. 2 was admitted into
11 evidence.)

12 BY MR. REDMOND:

13 Q Was he threatened, coerced, forced or deprived of
14 anything to get him to give this particular statement?

15 A No, sir, he was not.

16 Q Or to sign that form?

17 A No, sir, he was not.

18 Q After he signed that form did he tell you anything?

19 A Yeah, he gave us a story.

20 MR. WATTS: Your Honor.

21 THE COURT: Yes, sir, what's your objection?

22 MR. WATTS: Based on this is the introduction of
23 inadmissible evidence. We would also move that it
24 violates the -- inadmissible under Miranda v. Arizona and
25 also violates the Fifth, Sixth, and Fourteenth Amendment

1 rights of my client, plus the South Carolina Constitution
2 Article sections 3, 12 and 14.

3 THE COURT: All right. That objection is overruled.

4 Ladies and gentlemen of the jury, let me tell you what
5 we're talking about here. From the standpoint of legal
6 matters, I have admitted into evidence the exhibit 2 that
7 has already been referred to, and I've also admitted into
8 evidence a statement alleged to have been made by the
9 defendant. Before you may consider any statement as
10 evidence in this case you must determine four questions.
11 First, did the defendant make the statement. Second, was
12 the defendant warned of his constitutional rights. Third,
13 did the defendant knowingly and intelligently waive his
14 constitutional rights. And fourth, was the statement
15 given voluntarily.

16 The fact that the Court has admitted a statement into
17 evidence should not be considered by you as any evidence
18 whatsoever that the defendant made such a statement or
19 that the required constitutional safeguards were in fact
20 provided and waived by the defendant so that the statement
21 was voluntarily given because these issues are for you,
22 the jury, to determine. The State must prove beyond a
23 reasonable doubt each of the four requirements which I
24 have just stated to you. They must do this before you may
25 consider the statement as evidence for any purpose

1 whatsoever. Now as to the first requirement, did the
2 defendant make the statement. If you conclude that the
3 defendant did not make the statement you must then totally
4 and completely disregard the statement. If you conclude
5 that the defendant did not make the statement you cannot
6 and you must not consider the statement as evidence in any
7 manner whatsoever. And you should completely disregard
8 the statement in its entirety and every part of it. If you
9 find that the defendant did make the statement you must
10 then consider the second requirement. Was the defendant
11 warned of his constitutional rights. When an individual
12 is taken into custody or otherwise deprived of his freedom
13 in any significant way by a police or law enforcement
14 officer he must be warned of his constitutional rights
15 prior to and before any custodial interrogation or
16 custodial questioning. These rights are: That he has the
17 right to remain silent; that any statement that he does
18 make can and will be used against him in a court of law;
19 that he has the right to select a lawyer of his choice,
20 but if he does not have the money or resources to employ a
21 lawyer the Court will appoint and provide a lawyer to
22 represent him without cost or expense if he so desires;
23 that he has the right to consult a lawyer before answering
24 any questions or making any statement; and that he has the
25 right to have his lawyer present with him at all times

1 during all interviews and all interrogation. If you
2 determine that these constitutional warnings were not
3 given to the defendant prior to the investigation and the
4 taking of the statement or that the defendant was not
5 afforded an opportunity to exercise these rights, you must
6 completely disregard the statement and in that event you
7 cannot consider the statement as evidence in any manner
8 whatsoever. If you find the defendant did make the
9 statement and if you conclude that these constitutional
10 rights were, in fact, given to the defendant and that the
11 defendant was afforded an opportunity to exercise these
12 constitutional rights, you would then consider the third
13 requirement: Did the defendant knowingly and
14 intelligently waive his constitution rights. Before you
15 can consider the statement as evidence the State must
16 prove beyond a reasonable doubt after being given his
17 constitutional warnings that the defendant knowingly and
18 intelligently waived his constitutional rights and agreed
19 to answer questions and make a statement. Therefore, if
20 you find the defendant did not knowingly and intelligently
21 waive his constitutional rights, then any answer given by
22 him or any statement made by him cannot be used against
23 him in any manner whatsoever and you must completely
24 disregard all of the testimony concerning any such answers
25 or alleged statement.

1 **If you find the defendant did make the statement and if**
2 **you conclude that the constitutional warnings were in fact**
3 **given the defendant and that the defendant was afforded an**
4 **opportunity to exercise these constitutional rights, and**
5 **if you further find that the defendant after having been**
6 **given his constitutional warnings, knowingly and**
7 **intelligently waived his constitutional rights and agreed**
8 **to answer questions and make a statement, you would –**
9 **must next consider the fourth requirement: Was the**
10 **statement given voluntarily. The word "voluntarily" means**
11 **the statement was the expression of the defendant's own**
12 **free will and was not induced by any pressure, force, or**
13 **fear or the influence or hope or promise of some benefit**
14 **or reward, or that it was extracted by threats, coercion,**
15 **or intimidation. A statement is not voluntary and may not**
16 **be used against the defendant unless it is the product of**
17 **an essentially free and unconstrained choice of the maker.**
18 **If the statement is voluntary, if the defendant has**
19 **will – to make the statement it may be used against him.**
20 **If the statement is not voluntary it cannot be used**
21 **against him. The true test to be applied is whether a**
22 **statement is freely, voluntarily, understandingly made**
23 **without compulsion or inducement.**
24 **In determining whether or not the alleged statement of**
25 **the defendant was voluntary you may consider all of the**

1 facts and circumstances surrounding the taking of the
2 statement or the making of the statement. You may
3 consider all of the evidence in the case in reaching the
4 ultimate conclusion as to the voluntary or involuntary
5 character of any such statement. Thus, the ultimate
6 question to be resolved by you with respect to the alleged
7 statement of the defendant in addition to the questions of
8 whether or not the defendant in fact made the statement,
9 and whether or not his constitutional rights were observed
10 and knowingly and intelligently waived by him is this:
11 Was the statement the expression of the defendant's own
12 free will made without compulsion or inducement but
13 representing an essentially free and unconstrained choice
14 of the defendant, or was it the product of the overborne
15 will of the defendant. With regard to the alleged
16 statement of the defendant the State must prove by
17 evidence each and every requirement which I have just
18 instructed you beyond a reasonable doubt before you may
19 consider the alleged statement as evidence in this case.
20 So you will see from those instructions that I have given
21 you it is up to you to determine if the State has proven
22 those four elements beyond a reasonable doubt and make a
23 determination to giving statement such weight as it should
24 have.

25 All right, Mr. Redmond, you may proceed.

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1 MR. REDMOND: Thank you, Your Honor, may it please the
2 Court.

3 MR. REDMOND: Before we publish ---

4 THE COURT: Having said that, just for the record, the
5 objection of the defendant is overruled.

6 MR. WATTS: Yes, Your Honor.

7 MR. REDMOND: Thank you, Your Honor.

8 BY MR. REDMOND:

9 Q Let's go back just a minute before you tell us what he
10 told you. Where was this statement conducted?

11 A At Hartsville P.D.

12 Q Okay. And is that why the waiver form is a Hartsville
13 Police Department waiver form?

14 A Yes, it is.

15 Q Okay. Is that one y'all've got there at Hartsville
16 P.D.?

17 A It was one they had. I didn't have one with me so they
18 handed me one.

19 Q Where was the defendant during the time y'all were
20 questioning at Hartsville P.D.?

21 A In an office in Hartsville P.D.

22 Q In an office?

23 A Uh-huh.

24 Q Now back to where we were. Tell the jury, Captain,
25 what the defendant told you at that time at Hartsville

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1 Police Department.

2 A At first he alluded he didn't know the victim that
3 well, but he was able to tell me that he thought the
4 victim went to North Carolina, had a number where the
5 victim was going to, that the victim wanted to get away,
6 was having some family issues and wanted to get away for a
7 while.

8 Q That number, did you subsequently check that number?

9 A Yes, we did.

10 Q Okay. Where did that number come back to?

11 A It was a 910 number. It was a North Carolina number.
12 It came back to a community college up in North Carolina,
13 actually the same college that the victim actually went
14 to, salon school.

15 Q Now you said 910. Was it 910 or 919?

16 A 919, I apologize if I'm wrong on that.

17 Q Now continue with what he told you and I'm sorry to
18 interrupt but after that what did he tell you?

19 A He told us that he went to North Carolina. He had some
20 family problems, to get away for a while, which kind of
21 struck me as odd because he told us at the beginning he
22 didn't know the victim that well, but yet here was someone
23 calling to tell him he's got family issues, that he's
24 going to North Carolina for a while. When I asked him
25 about the car he said that the victim actually called him

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1 to go to the bus station to pick the car up and hang on to
2 the car, didn't care about the car, those issues. A lot
3 of inconsistencies with what he was telling us in
4 reference to the whole story that went on.

5 Q And we'll get into those in a second, but to clarify
6 one other point about the number. Did you attempt to call
7 that number?

8 A We did attempt to call that number.

9 Q And did you get any answer?

10 A Never got an answer.

11 Q Now continue where you were. You talked about the
12 inconsistencies.

13 A We tried to call the number at the North Carolina
14 College. There was no answer. We asked the victim about
15 the car. Bobby Gilbert stated that he did not have, nor
16 has he had the vehicle. Bobby was not giving us all that
17 he knew about the case. We knew he was holding back
18 information because of the consistency we received from
19 the other witnesses. When asked again about the car Bobby
20 stated --

21 MR. WATTS: Objection, Your Honor.

22 THE COURT: Yes, sir.

23 MR. WATTS: I understand that this testimony is
24 supposed to be from the victim's (sic) recollection. I
25 object to his reading from the report directly into the

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1 record.

2 MR. REDMOND: Your Honor, we would submit he can use
3 that to refresh his recollection.

4 THE COURT: All right. I didn't understand his
5 testimony to be reading it into the record. I think he
6 can use the -- the present as a refreshing his
7 recollection. Rephrase the question please. And I think
8 it's probably going to be overruled but let's see exactly
9 what he's testifying to.

10 BY MR. REDMOND:

11 Q Okay. Could you tell us about the inconsistencies that
12 he told you?

13 A He started out by saying he didn't have the car, then
14 came back and said he ---

15 THE COURT: All right. Let's first -- are you taking
16 that from the statement or are you taking it from your
17 recollection after having reviewed the statement?

18 THE WITNESS: Are you asking me the question, Your
19 Honor?

20 THE COURT: Are you reading from the statement or is
21 your testimony reading from the statement, or are you
22 refreshing your own recollection and testifying after --
23 to your recollection after having reviewed the statement?

24 THE WITNESS: I am refreshing my information from notes
25 that I put into the report.

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1 THE COURT: All right. Be admitted into evidence under
2 Rule 612.

3 MR. REDMOND: Thank you, Your Honor.

4 BY MR. REDMOND:

5 Q Please continue, Captain.

6 A Again, talked about not having the car, stated that the
7 victim -- later came back and stated the victim actually
8 asked him to come to Florence to the bus station to pick
9 the car up. Those were some of the inconsistencies that
10 we received from Mr. Bobby Gilbert.

11 Q Okay. Now, and what else did he claim as it relates to
12 the bus station? Did he say anything else about this
13 supposed trip that the victim took to the bus station?

14 A He said he bought a bus ticket and was going to North
15 Carolina up towards Fayetteville.

16 Q And did the defendant indicate that he and Jamie
17 Gilbert had anything to do with that car?

18 A He said that they went over there to pick the vehicle
19 up and brought the vehicle back to Hartsville.

20 Q Okay. And did he tell you that was the last time he
21 saw that car?

22 A That's what he told us that afternoon.

23 Q Okay. Now after he gives you this statement at
24 Hartsville Police Department, could you tell the ladies
25 and gentlemen of the jury what -- did he give you another

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1 statement later in the day?

2 A Yeah. We left the Hartsville Police Department, went
3 back to the Sheriff's Office for more interview. After
4 talking with Mr. Gilbert at the Sheriff's Office he came
5 around with even more information and finally decided to
6 tell us what he, quote, the real story.

7 Q And let me back up. The statement at Hartsville Police
8 Department, was that an oral statement that the defendant
9 gave?

10 A Yes, it was.

11 Q Okay. However, the statement at the Sheriff's
12 Department, was that video recorded?

13 A Yes, it was.

14 Q Okay. Now at the Sheriff's Department was he reread
15 his Miranda rights?

16 A Yes, he was.

17 Q Was he threatened, coerced, promised anything, denied any
18 basic human needs in order to get him to give a statement?

19 A No, he was not.

20 Q Did he give it freely and voluntarily?

21 A Yes, he did.

22 Q And do you -- did you believe he understood what you
23 were explaining to him?

24 A Yes, I did.

25 Q Okay. Now with that, could you tell us what the

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1 defendant told you when you got to the Sheriff's
2 Department.

3 A When we got to —

4 MR. WATTS: Objection, Your Honor. Again, I object to
5 the statement being admissible under Miranda v. Arizona
6 and also its admission violates the defendant's Fifth,
7 Sixth, Fourteenth Amendment rights along with South
8 Carolina Constitution Article 1, Section 3, 12 and 14 in
9 regards to this statement.

10 THE COURT: All right, sir. What is different from
11 your objection now than it was in pretrial hearing, if
12 anything?

13 MR. WATTS: Your Honor, I make the same objection as I
14 made before.

15 THE COURT: All right. That being the case, then the
16 objection is overruled.

17 Again, ladies and gentlemen, you'll recall that I told
18 you that there had been admitted into evidence a statement
19 alleged to have been made by the defendant. Before you
20 may consider this statement as evidence for any purpose
21 you must determine those four questions which I have
22 already dealt with; that is, did the defendant make the
23 statement, was the defendant warned of his constitutional
24 rights, did the defendant knowingly and intelligently
25 waive those rights, and was the statement given

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1 voluntarily. I've defined each one of those matters, and
2 with regard to this statement you must also find that the
3 State has proven beyond a reasonable doubt that those four
4 factors have been proven by the State before you may
5 consider the statement in any manner whatsoever.

6 With those instructions the objection is overruled and
7 you may proceed, Mr. Redmond.

8 MR. REDMOND: Thank you, Your Honor, may it please the
9 Court.

10 BY MR. REDMOND:

11 Q What did he tell you at the Sheriff's Department?

12 A He told us at the Sheriff's Office that he -- Jamie
13 Gilbert and Chris Samuel were at Farmington Apartments and
14 that they wanted a ride out into the country, as he said.
15 And they called the victim Tyrone Brown. Actually, Bobby
16 called the victim Tyrone Brown and asked him to give him a
17 ride from the Farmington Apartment area. Tyrone, I guess,
18 obliged and went to the apartment area at which time
19 Bobby, Chris, and Jamie got in the car with the victim.
20 Bobby states he got into the passenger seat. Jamie
21 Gilbert set behind him, said that Chris Samuel set behind
22 the victim. Bobby stated that he wanted -- Chris wanted
23 to actually get a ride out to the country, be dropped off
24 after Tyrone took him home. So Tyrone had everyone in the
25 car, they left, went out into the country. When they got

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1 out to Cornfield Road off of Una Road Bobby told us in his
2 statement Chris pulled a gun and put it to Tyrone's head.
3 Bobby was objecting to what was going on in his statement
4 and that's when Chris pointed the gun at him is what he
5 said. Bobby then stated that Chris got out of the car ---

6 MR. WATTS: Your Honor, I apologize, I must make this
7 objection again based on the fact that this is not being
8 used to refresh. He's reading directly off. This is not
9 coming from memory. This is coming from him reading
10 directly out of the report.

11 THE WITNESS: Your Honor ---

12 THE COURT: Wait just a minute. Do you have a copy of
13 the report? Has it been furnished to you?

14 MR. WATTS: Yes, Your Honor.

15 THE COURT: Then authenticate the report, Mr. Redmond.

16 MR. REDMOND: I will.

17 BY MR. REDMOND:

18 Q Is the -- what you're reading, is that what the
19 defendant told you?

20 A It is what the defendant told me.

21 Q And is that what is reflected on the tape?

22 A It is what is reflected on the tape.

23 Q Okay. And did you prepare, did you observe the
24 interview?

25 A I was there when he gave the statement on the tape. I

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1 prepared this report as a result of the information given
2 to us on the tape.

3 Q Okay.

4 MR. REDMOND: Your Honor.

5 THE COURT: Objection is overruled.

6 MR. REDMOND: Thank you, Your Honor.

7 BY MR. REDMOND:

8 Q And please continue and let's go back again. Tell us
9 what you were telling the jury that the defendant said.

10 A The defendant said that's when Chris Samuels pulled a
11 gun on the victim and indicated he was going to rob him.

12 The defendant on his statement says he didn't agree with
13 that, but that this is what happened on Cornfield Road.

14 He said then they got out of the car after the victim was
15 assaulted and ran over. They got out of the car, put the

16 body in the trunk of the car, and took it to the location
17 off Sandbox Road and dumped the body in a wooded area off
18 of Sandbox Road.

19 Q Let me stop you there and ask you something. Did he
20 ever mention having gone to Sandbox -- Sandbox Road in the
21 vicinity of Hilga Welsh's house at any time during his
22 statement?

23 A No, he did not.

24 Q Now after he gives a statement, you conclude the
25 recording of the statement, what happened next, what did

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1 y'all do next after that?

2 A I then asked would he take us to the location in which
3 he's referring to on his statement.

4 Q Did he do that?

5 A Yes, he did.

6 Q And could you tell the jury about that.

7 A The first location we went to was on Cornfield Road,
8 which is off of Una Road, in the Lydia area of Darlington
9 County, almost down from the Lee County line. Mr. Gilbert
10 advised us this is where the actual homicide took place,
11 actually showed us tire tracks on the dirt road where they
12 turned around in the victim's car. The second location he
13 took us to was a location where the body was located which
14 is off of Sandbox Road down a small dirt road, a farming
15 road that goes back into a wooded area.

16 Q Okay. Now tell — Cornfield Road, could you tell the
17 ladies and gentlemen of the jury what, if any, evidence
18 you collected at Cornfield Road.

19 A Photographs.

20 Q Okay. And we'll get to those in a little while. Where
21 did you go after you left Cornfield?

22 A After we left Cornfield Road we went down to Sandbox
23 Road to the location where the body was actually placed.

24 Q Okay. And did you locate the body?

25 A Yes, we did.

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1 Q And at that point could you tell the ladies and
2 gentlemen of the jury what took place?

3 A Once we located the body we'd already called SLED crime
4 scene to come in to process the automobile which we had
5 towed to Hartsville P.D. back to our office. After we
6 located the first crime scene initially on Cornfield Road
7 we had SLED crime scene follow us out there to process
8 that scene for any evidence that might have been located.
9 Once we left that location we went to the location off of
10 Sandbox Road where the body was located and had SLED come
11 in to process that scene as well.

12 Q Was the defendant at that time arrested for the murder
13 of Tyrone Brown?

14 A Yes, he was.

15 Q Okay. After that — and let me ask you this, and as
16 far as the scene, was it raining or had it rained
17 previously?

18 A It had rained the night before.

19 Q But you didn't find a block, the concrete block at that
20 time, did you?

21 A We did not.

22 Q Did the defendant take you to the concrete block?

23 A He did not.

24 Q Did he ever specifically mention the concrete block?

25 A He did not.

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1 Q Okay. Now let's move forward. After the defendant is
2 arrested, after he gives a statement, takes you out to the
3 scene, tell the ladies and gentlemen of the jury the next
4 step in your investigation.

5 A He indicated that this Chris Samuel was the one that
6 was actually the key player in this event. The next day
7 myself and Investigator Rachel Chapman went to Hartsville
8 P.D. to try to gain as much detail as we could of the
9 whereabouts of Chris Samuel. We found out that he did
10 stay at Farmington Apartments with a sister at which time
11 we then drove to Farmington Apartments to the sister's
12 apartment number and did locate a Christopher Samuel. We
13 asked Mr. Samuel if he would to come back to the
14 Hartsville detective division to speak with us in
15 reference to this case and his involvement thereof. We
16 brought him back to the office, Mirandized him as well,
17 and took a statement from Mr. Chris Samuels as to his role
18 in this particular homicide and robbery.

19 Q Okay. And let me go back for just a minute to the
20 scene, and I didn't ask you this, but did you collect any
21 evidence at the scene of Mr. Brown's body?

22 A SLED went in and processed the scene of any debris that
23 was near the scene, near the body. We of course retrieved
24 the body and sent to Newberry for postmortem examination
25 as well as photographs taken at the scene where the body

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1 was located.

2 Q And was -- specifically was there -- and we'll get into
3 it in the pictures, but was there a shirt and jeans that
4 were collected in evidence at that time?

5 A Yes, there were.

6 Q And were those processed, given -- through the process
7 at the Sheriff's Department given to Russ Harrell?

8 A Yes, they were.

9 Q And we'll get into that later. Now I interrupted you
10 again and I apologize. Now without saying what Chris
11 Samuel said -- it's Hearsay -- let's talk about what he
12 did. Y'all bring him in to interview. Did he give you
13 any information?

14 A He did give us some information.

15 Q Okay. Now based on that information did he take you to
16 another location that the defendant did not take you to?

17 A Yes. He informed us of a location that we had not
18 previously known of which was located on Sandbox Road
19 probably a mile or two down from where the body was
20 located.

21 Q Did y'all go out there?

22 A Yes, we did.

23 Q And tell the ladies and gentlemen of the jury what you
24 found.

25 A With the information provided to us by Mr. Samuels we

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1 were able to locate a cinder block that was located in a
2 small field area off of Sandbox Road.

3 Q And with the Court's permission, I'm going to ask you
4 at this time briefly to step down if you would. And I'm
5 going to show you what's been marked for I.D. as State's
6 Exhibit Number 1-- I'm sorry, State's Exhibit Number 5,
7 excuse me. Did you recover -- while you're doing that,
8 did you recover the concrete box?

9 A Yes, I did.

10 Q I mean the concrete block?

11 A Yes, I did.

12 Q Have you had a chance to view State's Exhibit Number 5?

13 A Yes, I have.

14 Q And is that the concrete block that you collected at
15 that time?

16 A Yes, it is.

17 Q And I ask you to remove it.

18 THE COURT: Wait just a minute. Offer it? Is it
19 offered into evidence?

20 MR. REDMOND: I'm sorry, I failed to do that. I meant
21 to offer it into evidence.

22 THE COURT: Can't show it to the jury until it's in
23 evidence. What's the defendant's position?

24 MR. WATTS: Previously testified that he found this?

25 MR. REDMOND: He did during the --

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1 THE COURT: Yes, sir.

2 MR. WATTS: No objection.

3 THE COURT: All right, admitted into evidence as
4 State's Number 5 without objection.

5 MR. REDMOND: Thank you.

6 (WHEREUPON, State Exhibit No. 5 was admitted into
7 evidence.)

8 BY MR. REDMOND:

9 Q And I'd ask you to come -- I'll help you with that. If
10 you would, right here, is that the concrete block that you
11 recovered after Chris Samuels took you out to that scene
12 and Sandbox?

13 A This is the concrete block that we recovered from the
14 location off of Sandbox Road.

15 Q And was that the location across the street from Hilga
16 Welsh's home?

17 A Yes, it was.

18 Q Thank you. You can actually put it back in and you can
19 have a seat. Did you -- well, let me ask you this, you
20 talked about what you'd done up to recovering the block.
21 Was that block again stored in evidence with your evidence
22 custodian pursuant to your normal procedures?

23 A Yes, it was.

24 Q Okay. Now, did you -- well, tell the jury the next
25 step in your investigation, what happened next? You

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1 talked with Chris, then what occurred?

2 A We processed the scene, photographed the brick,
3 photographed the surrounding area, collected the evidence
4 there, and we sent the brick to SLED for processing.

5 Q Okay. Now did you ever talk with Jamie Gilbert?

6 A No, I did not.

7 Q Okay. Are you familiar with that Jamie Gilbert gave a
8 statement, -- without getting into what it said, but did
9 he give statements based on your investigation?

10 A Yes, he did.

11 Q Okay. Did he give more than one statement?

12 A Yes, he did.

13 Q As a part of your investigation were there other items
14 that were recovered as well? Were Jamie Gilbert's clothes
15 collected?

16 A Yes, they were.

17 Q Was the defendant's clothes, were his clothes
18 collected?

19 A Yes, they were.

20 Q Were items found at the scene collected? The items
21 found at the scene of Mr. Brown's body also collected?

22 A Yes, they were.

23 Q Okay. Let's talk about Ms. Welsh. Did you have an
24 opportunity at some point to actually talk with her?

25 A I have not had an opportunity to.

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1 Q But was she contacted regarding this investigation?

2 A Yes, she was.

3 Q And was there, without saying what anybody said, were
4 you able to get any information that assisted you in this
5 case?

6 A Yes, I was.

7 Q Okay. And from this -- and was that in fact her
8 residence?

9 A Yes, it was.

10 Q Okay. But was there any information that she heard
11 anything or saw anything?

12 A There was none given to me.

13 Q Okay. There was a tag that was found. I believe
14 Investigator Chuck Norton found the tag. Did that tag
15 that was on the vehicle belong to a Roosevelt Graham based
16 on your investigation?

17 A Based on my investigation, yes, it did.

18 Q And was his residence, I think, on Henry Street here in
19 the City of Darlington?

20 A Yes, it is.

21 Q Are you familiar that Jamie Gilbert gave a final
22 statement, without saying what he said, he gave a final
23 statement of July of 2008?

24 A Yes, I am.

25 Q And were you present for that?

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1 A Yes, I was.

2 Q And was that conducted in Columbia at SLED
3 headquarters?

4 A Yes, it was.

5 Q Thank you.

6 MR. REDMOND: With the Court's indulgence we do have a
7 few exhibits I'd like to get into with this witness.

8 THE COURT: Yes, sir.

9 MR. REDMOND: If I could have the witness step down.

10 THE COURT: Yes, sir.

11 BY MR. REDMOND:

12 Q And what I'm gonna do, and Captain, if I get a little
13 too confusing for you let me know. But I'm going to show
14 you some pictures but I'm gonna also show you this map.
15 And if you could, while you're discussing these pictures
16 if you could allude to the map so that the jury
17 understands where we're talking about, the locations we're
18 talking about. And if I can ask you one more thing
19 because I naturally have a big mouth. But if you can
20 speak loud because your back is going to be somewhat
21 turned to the court reporter so she can hear and pick up
22 what it is you're saying. And I'm just going to hand you
23 these exhibits, and I'm -- I want you to, if you could
24 stand about right here. And if you could first, as far as
25 the car, if you could identify what each exhibit is and

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1 explain to the jury what it reflects.

2 THE COURT: Let me make a suggestion, Mr. Redmond. Let
3 him go on the other side so that he'll be facing the court
4 reporter because it's easier for her to pick it up if he
5 is projecting in her direction.

6 MR. REDMOND: Thank you, Your Honor.

7 THE WITNESS: State's Exhibit Number 9 is a picture
8 accurately depicting the vehicle belonging to the victim
9 Mr. Tyrone Brown. State Exhibit Number 10 is a picture of
10 the victim's vehicle, Mr. Tyrone Brown, as well as State's
11 Exhibit Number 11.

12 Q Let's do this, I'm going to ask you -- hopefully
13 everybody can see. Let's get a little bit closer.

14 A State's Exhibit Number 12 is a tag that was located on
15 the vehicle of Mr. Tyrone Brown. State's Exhibit
16 Number 13 is inside of the vehicle, the same vehicle
17 belonging to Mr. Tyrone Brown.

18 Q And that tag, I forget, is that a vehicle tag?

19 A This vehicle tab is the tag on the -- actually belongs
20 to the vehicle. The tag that you see in the other one is
21 not.

22 Q Thank you.

23 A State's Exhibit Number 14 is the dirt road located on
24 scene number three depicted on this map as Cornfield Road.
25 This is the dirt road here leading into Cornfield Road.

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1 Q Okay, thank you.

2 A State's Exhibit Number 15 is a light pole shot from the
3 field and this is Cornfield Road depicted over here at
4 this point, as well as State's Exhibit Number 16. State's
5 Exhibit Number 17 is a picture of the road sign, Una Road
6 leading into Cornfield Road. State's Exhibit Number 18 is
7 a picture of Una Road, Cornfield Road sign in the daytime
8 and State's Exhibit Number 19 is that same sign at night.

9 Q Now and I – we've got to do it. If you would now go
10 ahead and show us the pictures of the scene as you saw it
11 the night you found Tyrone Brown's body.

12 A State's Exhibit Number 20 is a picture of a wooded
13 area, the body of Mr. Tyrone Brown. This location is
14 located on scene number four depicted on the map. It's
15 the location of the body off of Sandbox Road. State's
16 Exhibit Number 22 is a picture of the body, Tyrone Brown,
17 located scene number four, depicted on the map located off
18 of Sandbox Road. State's Exhibit Number 21 is a picture
19 of the body of Mr. Tyrone Brown located at scene number
20 four, location of body off of Sandbox Road.

21 Q And let me ask you about this picture. Were this shirt
22 and the pants that are found in the picture, were they
23 collected? Were those items you indicated were collected
24 and taken to SLED?

25 A Yes, they were.

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1 Q And let me ask you this, was this the condition which
2 you actually found the body? Was this the condition you
3 found it in?

4 A Yes, it is.

5 Q Okay.

6 A State's Number 24 is a picture of a pair of blue jeans
7 located with the body at location number four off of
8 Sandbox Road. State's Exhibit Number 25 is a picture from
9 a distance of a cinder block located off of Sandbox Road
10 across from Ms. Hilga Welsh's residence depicted on this
11 map at scene number two. State's Exhibit Number 26 is
12 also a picture, this time without the marker, of the brick
13 located at scene number two across from Hilga Welsh's
14 house on Sandbox Road. State's Exhibit Number 27 is the
15 same picture from a different distance with the cinder
16 block located at scene number two on Sandbox Road across
17 from Hilga Welsh's residence. State's Exhibit Number 29
18 is a closeup shot of that cinder block we retrieved from
19 scene number four located off of Sandbox Road across from
20 Hilga Welsh's resident -- excuse me, scene number two.
21 And State's Exhibit Number 28 is another picture of cinder
22 block retrieved from scene number two off of Sandbox Road
23 across from Ms. Hilga Welsh's residence. State's Exhibit
24 Number 30 is a piece of cinder block we retrieved as well
25 as a piece of a cinder block that was located at scene

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1 number two on Sandbox Road across from Hilga Welsh's
2 residence.

3 Q And let me stop you there. Was this part -- was this
4 part of this exhibit? I guess, this be the second piece,
5 was that piece found later on?

6 A That piece was found later on.

7 Q And in fact, you recall to the best of your knowledge
8 when that piece was still located?

9 A Approximately last May or June.

10 Q Okay, all right.

11 A State's Exhibit Number 31, are those two pieces cinder
12 block married together showing they fit together. State's
13 Exhibit Number 41 is a picture of the dirt road in the
14 area where the body of Mr. Tyrone Brown was found.
15 State's Exhibit Number 42 is a picture of Sandbox Road
16 pictured on the left-hand side indicating scene number
17 two, on the right-hand side the driveway of Ms. Hilga
18 Welsh in scene number one. State's Exhibit Number 43 is a
19 picture of Ms. Hilga Welsh's residence. State's Number 44
20 is a picture from Ms. Hilga Welsh's residence, the
21 building across the street. State's Exhibit Number 45,
22 the same picture from Hilga Welsh's residence, camera
23 angle now moved more to the right to the wooded area or
24 the area where the brick or cinder block was found across
25 the street. State's Exhibit Number 46 was the driveway

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1 leading to the area off of Sandbox Road where the cinder
2 block was found across from Ms. Hilga Welsh's residence as
3 depicted as scene number two, Sandbox Road.

4 Q Okay, all right. Captain, you can have a seat. Thank
5 you so much.

6 MR. REDMOND: Beg the Court's indulgence just a minute.

7 THE COURT: Yes, sir. You want to move the easel,
8 Mr. Redmond?

9 MR. REDMOND: Yes, sir.

10 BY MR. REDMOND:

11 Q Let me show you what's been marked State's Exhibit
12 Number 3. Actually, I'll hand you with the Court's
13 permission State's 3 and State's Number 1. First, looking
14 at State's 3 could you tell the jury what that represents?

15 A State's Exhibit 3 is an introduction of tape recorded
16 statement. This is a form that we use at the Sheriff's
17 Office to put down information of someone in which we're
18 taking a taped statement whether it be video or audio.

19 Q And was one prepared in this particular case?

20 A Yes, it was.

21 Q And could you tell the jury what is the -- well, first,
22 before I get into that, did you prepare that particular
23 document?

24 A Yes, I did.

25 Q And is that an accurate copy of that particular

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1 document?

2 A Yes, it is.

3 MR. REDMOND: And at this point, Your Honor, I move to
4 introduce State's 3.

5 THE COURT: Any objection, Mr. Watts?

6 MR. WATTS: None, Your Honor.

7 THE COURT: All right, be admitted into evidence as
8 State's Number 3 without objection.

9 (WHEREUPON, State Exhibit No. 3 was admitted into
10 evidence.)

11 MR. REDMOND: Thank you, Your Honor.

12 BY MR. REDMOND:

13 Q And explain to the jury what it says and what the
14 purpose of that document is.

15 A Reading from this document the top part says,
16 "Introduction of tape recorded statement. The following
17 is a statement of Bobby Gilbert, black male of [REDACTED]
18 Mackton Road, Lamar, South Carolina. Mr. Gilbert's date
19 of birth is [REDACTED] 1976. He is 30 years of age. Social
20 security number [REDACTED]. His telephone number
21 (843) [REDACTED]. Driver's license number is [REDACTED]
22 The statement -- excuse me, has completed 11th grade and
23 can -- or cannot read and write. This statement is in
24 reference to the murder of Tyrone Cornelius Brown which
25 occurred in Darlington on 1/17 of 2007. The statement is

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1 being taken at the Darlington County Sheriff's Office in
2 Darlington, South Carolina on 1/18 of 2007 at 6:50." It
3 doesn't mark here but it was in the p.m. In the presence
4 of myself, Investigator William E. Locklair and
5 Investigator Chuck Norton, Mr. Gilbert. And then we asked
6 following questions. "Do you understand this statement is
7 being tape recorded? Do you have any objections to this
8 statement being tape recorded? You have -- have you been
9 previously advised of your Miranda rights? Do you
10 understand your Miranda rights? And have you been
11 furnished a copy of a signed waiver of rights form? For
12 the record I'm going to advise you of these rights again.
13 Are you willing to give us a statement at this time
14 concerning the matter in question?" And then we take the
15 statement. "Do you understand' -- after the statement,
16 "Do you understand or do you know of anything else you can
17 add to this statement? Is the statement true and accurate
18 to the best of your knowledge? Has anyone promised you
19 anything to make this statement? Have you been threatened
20 or coerced in any kind of way to make this statement?"
21 And it says, "This concludes this statement of Mr. Bobby
22 Gilbert taken at Darlington County Sheriff's Office on
23 1/18/2007, time now is 7:14 p.m."

24 Q And let's look at State's Exhibit Number 1.

25 THE COURT: All right, let's stop right there just a

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1 moment. That concludes his reference to that statement.
2 I've been given a notice the students have other
3 obligations and so I'm going to give them the opportunity
4 to leave at this time and so we'll be at ease for just a
5 minute while they leave.

6 (Pause.)

7 THE COURT: All right, Mr. Redmond, you may proceed.

8 MR. REDMOND: Thank you.

9 BY MR. REDMOND:

10 Q State's Exhibit Number 1, is that the cover for the DVD
11 of the defendant's interview?

12 A Yes, it is?

13 Q And is the DVD actually now in the laptop for the
14 presentation?

15 A Yes, it is.

16 Q Okay. And is that an accurate representation of what
17 is depicted on the DVD? In other words, does the DVD
18 accurately depict what took place during the interview
19 with the defendant at the Sheriff's Department?

20 A Yes, it does.

21 MR. REDMOND: And Your Honor, at this time I would move
22 to admit State's 1 --

23 MR. WATTS: Objection, Your Honor.

24 THE COURT: Yes, sir.

25 MR. WATTS: Same reason I object the statement is

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1 inadmissible under *Miranda v. Arizona*. Also its admission
2 violates defendant's Fifth, Sixth, Fourteenth Amendment
3 rights and the South Carolina Constitution Article I
4 Section 3, 12, and 14 Your Honor.

5 THE COURT: All right, is your objection based upon the
6 same things that you've objected to at the pretrial
7 conference?

8 MR. WATTS: Yes, Your Honor.

9 THE COURT: Is there any further or new objections to
10 the things as already been raised by the -- to the Court?

11 MR. WATTS: None, Your Honor.

12 THE COURT: All right. The objection is overruled
13 based upon the previous pretrial hearing. The statement
14 will be admitted into evidence as State's Number 3 subject
15 to the objection previously ruled upon.

16 MR. REDMOND: Thank you, Your Honor. Actually, I think
17 that's State's 1 is the tape. That is the DVD that I was
18 moving.

19 THE COURT: I'm sorry, you're right. State's Number 1,
20 the DVD. State's 3 is the form, both of which have been
21 admitted into evidence. State's 3 is admitted into
22 evidence without objection. State's 1 is admitted over
23 the objection of the defendant previously made.
24 (WHEREUPON, State Exhibit No. 1 was admitted into
25 evidence.)

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1 MR. REDMOND: Thank you, Your Honor. May it please the
2 Court.

3 BY MR. REDMOND:

4 Q A couple of quick housekeeping matters before we play
5 the tape. First of all, I need to ask you about part of
6 your investigation. Did you contact -- did you find out
7 information about the use of the defendant -- excuse me,
8 the victim's card, his bank card?

9 A Yes.

10 Q Okay. Could you tell the jury about that?

11 A The bank card transactions made from the victim's ATM
12 card or gas card or card used to purchase gas with. That
13 information came to us through the bank that the card was
14 actually on.

15 Q Okay. And do your records reflect or do you have the
16 information as to which bank that was?

17 A Yes, if you will.

18 Q And we can indulge you while you refresh your
19 recollection. Thank you.

20 THE COURT: Yeah, I understand the jury needs -- y'all
21 need to take a break, okay. All right, before we go into
22 that then we will take a recess at this time. Let's take
23 just a short recess for about five minutes, then we will
24 be ready to go forward. Thank you. If you will go to
25 your jury room. Please do not discuss the case among

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1 yourselves.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 12:40 p.m., and the following proceedings
4 commenced in open court.)

5 THE COURT: Let's take about -- Mr. Redmond, do you
6 propose to show the video beforehand, I mean, at this
7 time?

8 MR. REDMOND: Actually I had one other issue, and I
9 don't mind telling the Court. This issue with the card
10 and then the value of the vehicle because of the grand
11 larceny and then I was going to play the tape.

12 THE COURT: And about how long is the tape?

13 MR. REDMOND: The tape is right at 15 minutes.

14 THE COURT: Okay. Perhaps since we're gonna take at
15 least five minutes to give the jury a chance to give us a
16 little quick break, then perhaps the better thing to do
17 would be let you go ahead and go into the other things
18 that you want to go in other than the tape and then let's
19 break for lunch and then we'll play the tape and then come
20 back, maybe come back 2:15 instead of 2:30. Does that
21 schedule suit you?

22 MR. REDMOND: That suits me, Your Honor.

23 THE COURT: That's all right with you?

24 MR. WATTS: No objection.

25 THE COURT: Let's take five minutes and be back and see

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1 if we can get everything from this witness that you want
2 to get out of him except the actual playing of the tape
3 and we'll do that after lunch and we'll recess at that
4 time. We'll take a brief recess.

5 (WHEREUPON, a recess was taken from the proceedings.)

6 THE COURT: Back on the record with regard to the State
7 versus Bobby Gilbert. Mr. Gilbert is present in court
8 with his counsel as is State's represented by Mr. Redmond
9 and Ms. McKenzie. We're still in the direct testimony of
10 Officer Locklair. What I would like to do, as I indicated
11 before the break, is to go ahead and get the matters with
12 regard to Mr. Locklair's testimony that you want to
13 accomplish, Mr. Redmond. I'm not going to hold you to
14 this but mainly as much as we can see if we can get that
15 finished before lunch and then after lunch perhaps play
16 for the jury the recorded statement.

17 MR. REDMOND: Yes, sir, Your Honor.

18 THE COURT: Bring the jury in please.

19 (WHEREUPON, the jury was returned to the courtroom at
20 approximately 12:51 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: All right, thank you very much. Ladies and
23 gentlemen, we are now ready to proceed.

24 Mr. Redmond, you may continue the examination of this
25 witness.

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1 MR. REDMOND: Thank you, Your Honor. May it please the
2 Court.

3 BY MR. REDMOND:

4 Q Captain, I think I had asked you when we broke
5 concerning the card; you were telling us about that.
6 Could you continue with that as far as the card being
7 used.

8 A Yeah, the card was a debit card from Pee Dee Federal
9 Credit Union, was used to purchase gas from a local gas
10 station.

11 Q And the value of the car, the car that when you seen
12 exhibit of the car and he's charged with it being more
13 than 5,000 dollars, could you establish the foundation for
14 the value of the car for us?

15 A Yeah, the the value of car we don't base off of Kelly
16 Blue Book or any other blue book market. It's just common
17 value of an automobile. The car was we felt valued more
18 than 5,000 dollars.

19 Q And is that based on your experience as an
20 investigator?

21 A Yes, it is.

22 Q And you have been an investigator for ten years up to
23 this point you said?

24 A Yes, I have.

25 Q And again, this was a 2002 Honda Accord?

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1 A Yes, sir, it was.

2 Q Okay.

3 MR. REDMOND: Beg the Court's indulgence.

4 THE COURT: All right.

5 BY MR. REDMOND:

6 Q And in your experience as an investigator have you had
7 the opportunity to investigate grand larceny of vehicles?

8 A Yes, sir, I was.

9 Q And have you had to go through the process of
10 determining the value of vehicles in your role as an
11 investigator?

12 A Yes, sir, I have.

13 MR. REDMOND: I have nothing further at this time, Your
14 Honor.

15 THE COURT: All right, ladies and gentlemen, I know
16 that was quick but I think it's a good thing for us to do
17 break at this time 'cause further testimony and further
18 State's evidence at this time is going to run us into the
19 lunch hour so we are going to recess for lunch at this
20 time and I'm going to allow you to go and get your lunch
21 and ask you to be back in your jury room. If it suits
22 everyone I will ask that you be back at 2:15. That's
23 about an hour and fifteen minutes so that we can move on
24 with this matter and not take any more time than it is
25 necessary.

1 Again, I would tell you that over the lunch recess do
2 not discuss the case with anyone. Do not allow anyone to
3 discuss it with you. If anyone should approach and try to
4 talk with you about the matter get their name, address,
5 and we will -- I will deal with them. Also, again, please
6 do not watch any television reports or radio reports or
7 any other kind of news media coverage of this and this
8 includes the Internet. Very often that television
9 stations will post things on the internet, and again, I
10 would have to ask and require that you not refer to those
11 sources because you got to decide the case based upon what
12 you hear in courtroom and not anything that might be
13 posted on the internet or in the broadcast or print media.
14 So please refrain from any of those sources because, as I
15 say, you've got to decide the case based upon what you
16 hear here. With that I am going to excuse you, allow you
17 to go and get your lunch and please be back in your jury
18 room 2:15. The jury is excused, only the jury, okay.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 12:56 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: Counsel, before we recess I want to give
23 the jury opportunity to get on the elevators and clear the
24 building.

25 You can step down, Mr. Locklair.

1 THE WITNESS: Thank you.

2 (Pause.)

3 THE COURT: All right. I've been advised the jury has
4 cleared the building, and we will be in recess until 2:15.

5 Please be ready to start back with the jury at that time.

6 If there are any matters that counsel need to confer on do
7 that before 2:15. Thank you. We'll be in recess until
8 2:15.

9 (WHEREUPON, a lunch break was taken.)

10 (WHEREUPON, State Exhibits Nos. 48, 49 were marked for
11 identification only.)

12 THE COURT: Back on the record with regard to the
13 matter of the State versus Gilbert. Mr. Gilbert is not
14 yet present. He is coming — Mr. Gilbert is present and
15 in the courtroom with his counsel Mr. Watts. The State is
16 present represented by Mr. McKenzie and Mr. Redmond.
17 Anything before we bring the jury in, Mr. Redmond?

18 MR. REDMOND: Yes, just to let the Court know we have
19 marked during the break for I.D. State's 48 and 49, that
20 being the T shirt is 49 and 48 is the pants. And they
21 have been marked for I.D. at this time. Mr. Watts has
22 asked that once the witness testifies that the foundation
23 is laid. We've already addressed it in Captain Locklair's
24 testimony from the pictures; that those are the same that
25 reflected in the pictures. So with that, Judge, and out

1 of an abundance of precaution I can briefly ask him to
2 identify those items as the items in the picture just to
3 lay that foundation and then that will conclude.

4 THE COURT: Well, we can do that at the appropriate
5 time. If he lays that foundation you don't have any
6 objection other than if he -- other than that; is that
7 right? Well, just make your objection at that time and
8 we'll go from there.

9 MR. REDMOND: So I'll be real brief.

10 THE COURT: That won't take long. I understand. All
11 right. Bring the jury in please.

12 (WHEREUPON, the jury was returned to the courtroom at
13 approximately 2:17, and the following proceedings
14 commenced in open court.)

15 THE COURT: All right. Thank you very much, ladies and
16 gentlemen, and thank you for your promptness in being
17 back. We are now ready to go forward. Mr. Locklair --
18 the State was still in the process of direct examination
19 or direct testimony of this witness Mr. Locklair and we
20 will continue that direct testimony.

21 Mr. Redmond.

22 MR. REDMOND: Thank you, Your Honor, may it please the
23 Court. Briefly.

24 BY MR. REDMOND:

25 Q Captain Locklair, with the Court's permission I'm

SW - W. Locklair - Direct

1 going to pass what has been marked as State's 48 and 49.

2 And could you look at those and let me know when you're
3 ready to answer a couple of brief questions.

4 A Okay.

5 Q And in your previous -- in your testimony earlier
6 before lunch you testified with some pictures regarding
7 the T-shirt that was found and also pants. Could you
8 identify for the jury what State's Exhibit 48 is.

9 A State's Exhibit 48 is the pants in which we
10 testified -- I testified earlier depicted in the pictures.

11 Q Okay, and State's Exhibit 49?

12 A State's Exhibit 49 is the T-shirt that we discussed in
13 the pictures.

14 Q And were those items passed collected by you?

15 A Those items were actually collected by SLED.

16 Q Were you present at the time they were collected?

17 A I was present when they were collected.

18 Q Okay. And you observed the collection of those items?

19 A Yes, I did.

20 Q And were those items then passed to Russ Harrell
21 pursuant to your normal operating procedures into
22 evidence?

23 A Yes, they were.

24 MR. REDMOND: Your Honor, I move to admit these.

25 THE COURT: All right. Any objection to the admission.

1 of these two items in evidence, Mr. Watts?

2 MR. WATTS: None, Your Honor.

3 THE COURT: All right. Be admitted into evidence as
4 State's Number 48 and 49 without objection.

5 (WHEREUPON, State Exhibit Nos. 48 and 49 were admitted
6 into evidence.)

7 MR. REDMOND: And Your Honor, with that at this time,
8 and I think we might need to adjust the lights in here,
9 the State is ready to proffer the video taped testimony
10 of -- excuse me, the videotaped statement of the
11 defendant.

12 THE COURT: All right. Go ahead and set your equipment
13 up and you can...

14 MR. REDMOND: And Your Honor --

15 THE COURT: You'll recall, ladies and gentlemen, that
16 the testimony was that the statement of the defendant was
17 taken by videotape. The same things that I told you prior
18 to lunch with regard to any statement apply here. You've
19 got to find those four factors that I have previously
20 talked to you about that the State has proven beyond a
21 reasonable doubt before you are entitled to give --
22 consider this statement at all. So the four factors are
23 that did the defendant make the statement, was the
24 defendant warned of his constitutional rights, did the
25 defendant knowingly and intelligently waive his

1 constitutional rights, and was the statement given
2 voluntarily. Once you find those matters beyond a
3 reasonable doubt you would be entitled to give the
4 statement such weight as you think it deserves. If you do
5 not find each one of those factors beyond a reasonable
6 doubt you would disregard the videotaped statement all
7 together. All right, sir.

8 MR. REDMOND: And Your Honor, at this time with the
9 Court's permission I believe Mr. Watts wants to approach.

10 MR. WATTS: May we approach briefly, Your Honor.

11 THE COURT: Yes, sir.

12 (WHEREUPON, counsel approached the Bench for an
13 off-the-record discussion.)

14 THE COURT: All right. Remind me, Mr. Watts, about the
15 matters that we discussed at the Bench and we'll take care
16 or putting those on the record at a later time, but in the
17 meantime, your objection is preserved and we'll go
18 forward.

19 MR. WATTS: Thank you, Your Honor. The only objection
20 we had or motion we make at this time is the validity of
21 any audio or video recording recording during the playing
22 of this.

23 THE COURT: I understand. We'll take that up later.
24 We discussed it on the Bench. We'll put it on the record
25 at a later time.

1 MR. WATTS: Yes, sir.

2 THE COURT: All right, go ahead.

3 MR. REDMOND: Your Honor, if I may with the Court's
4 permission, I have no idea how to work that thing. I
5 think Captain Locklair can work it. With the Court's
6 permission I would ask if he go ahead and set that up and
7 play the videotape.

8 THE COURT: That's fine. Where are you going to show
9 it?

10 MR. REDMOND: Usually, Judge, what we have to do is
11 this back wall we -- we can I guess kill the lights on the
12 back wall. And Your Honor, it actually is pretty visible.

13 THE COURT: Oh, okay, I see, I got you. I was looking
14 for a screen.

15 (State's Exhibit Number 1 was shown to the jury.)

16 THE COURT: All right, Mr. Redmond, you may proceed.

17 MR. REDMOND: Thank you, Your Honor. The only thing I
18 would have, Your Honor, is with the Court's permission
19 since these items are in evidence may I publish at this
20 time the State's exhibits, the photographs and the Miranda
21 waiver and the introduction of the tape recorded statement
22 to the jury at this time.

23 THE COURT: Permission to publish granted.

24 MR. REDMOND: Thank you.

25 THE COURT: You'll recall, ladies and gentlemen, I told

1 you earlier that when the lawyers request the right to
2 publish something to the jury that's just a legalistic
3 term meaning show the jury. And I have granted them
4 permission to publish those exhibits, to show you those
5 exhibits at this time. Do not be concerned if you do not
6 have as long to look at them while you're sitting there in
7 the jury box as you might like. You will be able to take
8 those exhibits with you to the jury room at the time that
9 you retire to deliberate your verdict, but you do have the
10 right while you're sitting there in the box to look at the
11 exhibits and pass them around.

12 MR. REDMOND: Thank you, Your Honor. And with that
13 Your Honor, if I would ask that Captain Locklair please
14 answer any questions that Mr. Watts may have.

15 THE COURT: All right. Well, you want to wait just
16 moment, Mr. Watts, until the jury has had a chance to
17 review these exhibits.

18 MR. WATTS: Yes, Your Honor.

19 (Pause.)

20 MR. WATTS: Your Honor, if it please the Court.

21 THE COURT: Just a moment. All right, Mr. Watts, you
22 may proceed with cross-examination.

23 MR. WATTS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. WATTS:

SW - W. Locklair - Cross

1 Q Captain Locklair, I believe earlier what's been
2 introduced into evidence as the Hartsville Miranda form,
3 okay, you introduced that and you said that you took a
4 statement from Mr. Gilbert at the Hartsville Police
5 Department; is that correct?

6 A Yes.

7 Q Okay. Were there any audio recordings of that
8 statement?

9 A No, there was not.

10 Q Any video recording of that statement?

11 A No, there was not.

12 Q So the only account of what the context of that
13 statement was is your notes?

14 A Yes, sir.

15 Q Okay. You were called to the Hartsville Police
16 Department on January 17th, 2008 -- '7; is that correct?

17 A Yes, sir.

18 Q And you were called in reference that the vehicle which
19 I believe was Mr. Brown's vehicle had been found; is that
20 correct?

21 A Yes, sir.

22 Q Okay. And two subjects had been taken into custody; is
23 that correct?

24 A Yes, sir.

25 Q And the identity of those two individuals, do you

SW - W. Locklair - Cross

1 recall?

2 A Yes, sir. Thirteen year old juvenile and Jamie
3 Gilbert, co-defendant.

4 Q Okay. Was Mr. Gilbert -- Bobby Gilbert was not in the
5 car at the time when it was found, correct?

6 A No, sir, he was not.

7 Q And did you speak with Mr. Jamie Gilbert that day?

8 A I did not.

9 Q Okay. Do you know if anyone else spoke with Jamie
10 Gilbert that day?

11 A Other officers involved in the investigation spoke with
12 him but I did not speak to him.

13 Q Okay. You indicated earlier that one of the
14 co-defendants, I believe it was Mr. Chris Samuel, took you
15 out to a location to find the brick, that concrete block;
16 is that correct?

17 A Yes, sir.

18 Q Okay. And which location?

19 A The location is indicated on this map as being location
20 number two.

21 Q Okay.

22 A Off of Sandbox Road across from Hilga -- I forget the
23 last name -- residence.

24 Q Okay. And on that day he took you himself to half of
25 it or the entire brick?

SW - W. Locklair - Cross

1 A No, sir, just to the half.

2 Q Okay. And what date was that that he actually took you
3 and you found the half as you were directed to the
4 location by Mr. Samuel?

5 A That was the day we interviewed him at Hartsville P.D.

6 Q And what day was that?

7 A I believe that was, I believe -- if you'd let me refer
8 to my notes.

9 Q Absolutely.

10 A I believe it was on the 18th.

11 Q Okay. You interviewed Mr. Samuels on the 18th?

12 A I apologize, it was on the 19th, the day after the 18th.

13 Q Okay. And was anyone else present with you at the
14 time?

15 A Yes.

16 Q Okay. Who was present with you?

17 A Investigator Rachel Chapman.

18 Q Okay. And on the 19th is when you testified is that he
19 took you out to this location number two on the diagram?

20 A If I remember correctly, yes.

21 Q Okay. And I think you had also testified that there
22 was another piece that is alleged with the same part of
23 this brick; is that correct?

24 A Yes.

25 Q And when was that found again?

SW - W. Locklair - Cross

1 A That was found in the summer of last year.

2 Q Okay. Who found it?

3 A I found it.

4 Q Okay. So in the span of January 19th, 2007 till May or
5 June of 2008, how long it took you to find this other
6 piece in that location?

7 A Yes.

8 Q Okay. I think you earlier testified that you'd spoken
9 with Ms. Welsh, is that correct, Hilga Welsh?

10 A I did not.

11 Q Okay. Did you question or interview any other resident
12 in that area?

13 A I did not.

14 Q Okay. You indicated that earlier in the statement that
15 was played you were present for, Mr. Gilbert indicated
16 that Mr. Christopher Samuels struck Mr. Brown in the head
17 with something; is that correct?

18 A He identified Chris as Chris. He didn't know his last
19 name, but yes.

20 Q And but you subsequently found out that the Chris he
21 was indicating was Mr. Christopher Samuel; is that
22 correct?

23 A Yes, I did.

24 Q Part of his statement was he had -- Mr. Christopher
25 Samuels had struck Mr. Brown in the head with something;

SW - W. Locklair - Cross

1 is that correct?

2 A According to his statement, yes, sir, that's correct.

3 Q In your investigation of the scene were there any other
4 items to your knowledge that were found in close proximity
5 to the body?

6 A There were other items collected in close proximity to
7 the body, yes, sir.

8 Q You find any grocery bags?

9 A I don't recall.

10 Q Okay. The co-defendant Jamie Gilbert, did you speak
11 with him on the 17th, 2007?

12 A I do not recall speaking to him on the 17th. He was
13 interviewed by other officers.

14 Q Okay. Do you know whether or not Mr. Gilbert, Jamie
15 Gilbert, was arrested that same day or not?

16 A I believe he was arrested by Hartsville P.D. in
17 reference to the car but I'm not sure.

18 Q Okay. Do you know if he was incarcerated or released?

19 A I have no earthly idea what their charges would have
20 been.

21 Q Okay. To your knowledge no charges were brought by the
22 Darlington County Sheriff's Department against Mr. Jamie
23 Gilbert, the date of the interview when he was found in
24 the car.

25 A No charges were brought that day.

SW - W. Locklair - Cross

1 Q All right. When were charges brought against Mr. Jamie
2 Gilbert.

3 A If I recall correctly I believe the next day.

4 Q Okay. When were charges brought against
5 Mr. Christopher Samuel?

6 A I believe the next day as well.

7 Q Okay. I think earlier we referred to your -- the
8 incident report you've been using, using that to recollect
9 and refresh your memory.

10 A Yes, sir.

11 Q Would you please turn to Page 12 of 18?

12 A Okay.

13 Q And before I ask anymore questions, have you had
14 opportunity to review this report in its entirety?

15 A Yes, I have.

16 Q And you're familiar with what's contained inside this
17 report; is that correct?

18 A Yes, I am.

19 Q Okay. And on Page 12 of 18, if you'll go down to the
20 bottom where it starts with supplement number 12, okay.

21 Does it give a date involving when you and any other
22 investigative officer might have gone to Hartsville
23 Substation to regard Mr. Samuels?

24 A Investigator Rachel Chapman prepared this supplement
25 which is supplement number 12. The supplement was

SW - W. Locklair - Cross

1 prepared on 1/24/2007.

2 Q Okay. And what does that report, that section,
3 indicate that you went and started talking to Hartsville
4 Police Department about Mr. Christopher Samuels?

5 A She indicates on 12/23/2007 approximately 11 a.m.
6 myself and Investigator Locklair, which is myself, went to
7 Hartsville Substation P.D. to speak with April Cooke in
8 reference to Christopher Samuel.

9 Q And at that time does it give anymore information to
10 your knowledge about speaking with Mr. Samuel?

11 A It does.

12 Q Okay. And is that when he was taken down to the
13 Hartsville Police Department?

14 A It is.

15 Q Okay. So on January 23rd of 2007 is when Mr. Samuel
16 was talked to about this matter; is that correct?

17 A Yes, sir, it is.

18 Q Okay. Do you recall when the charges were brought
19 against Mr. Gilbert?

20 A I do not recall.

21 Q Are you currently aware of the status of the case or
22 any disposition regarding the co-defendant Mr. Christopher
23 Samuels?

24 A I believe Mr. Samuels has pled guilty.

25 Q Okay. Do you know what he's pled guilty to?

SW - W. Locklair - Cross

1 A I'm not aware.

2 Q Okay. But you are aware that he's pled guilty to
3 charges associated with this event involving Mr. Brown; is
4 that correct?

5 A Yes.

6 Q Okay. In regards to Mr. Jamie Gilbert are you aware of
7 the status of his case?

8 A I am aware that he has pled guilty, the charges I do
9 not know.

10 Q Okay. And were you present for any of the other
11 statements, either Mr. Christopher Samuels or Jamie
12 Gilbert?

13 A I was present for Mr. Christopher Samuel's statement.

14 Q Okay. You have any independent knowledge who may have
15 taken the statement of Mr. Jamie Gilbert?

16 A No, I do not. I can refer to the incident report as
17 counsel could -- I believe Investigator Chapman may have
18 talked to him. Also some investigators from Hartsville.
19 P.D. as well as Lieutenant Robyn Bryant.

20 Q I think earlier you testified that in regarding the
21 value of vehicle you just place some kind of value on it,
22 an arbitrary value. How do you come up with the amount
23 that you believe a vehicle is worth?

24 A Based on experience over 18 years you're able to
25 determine the value of a vehicle by the market prices or

SW - W. Locklair - Cross

1 what a vehicle may be worth. It's a part of the job.

2 Q Okay. Do you take into account any other kind of
3 damage to the vehicle, mileage, any of those issues?

4 A You would take some of that into consideration. If you
5 had a vehicle that burnt it would be worth a lot less than
6 a vehicle that was not.

7 Q Okay. But as far as consulting any kind of industry
8 books or anything like that you don't use any of them?

9 A Well, we live here in Darlington -- I've lived in
10 Darlington for 39 years and just up the road is Clanton's
11 Auto Auction. I actually worked at Palmetto Auto Action
12 for some number of years, have a vast knowledge of what
13 the basic market value would be for an automobile based on
14 experience. A lot of times officers will refer to a
15 certain type of price. But we're generally putting down
16 the information of which we are provided for the incident
17 report.

18 Q When Mr. Gilbert was brought to the Hartsville Police
19 Department how did he get there?

20 A I'm sorry?

21 Q How was it Mr. Gilbert transported to the Hartsville
22 Police Department?

23 A I'd spoke with him on the telephone. He did not have a
24 ride to the police department. I left and went out and
25 picked him up.

SW - W. Locklair - Redirect

1 Q Okay. In return to the Hartsville Police Department
2 where was Mr. Gilbert in the vehicle?

3 A Mr. Gilbert sat in the passenger seat of my unmarked
4 vehicle.

5 Q Okay. And later on the day you took him to the
6 Darlington County Sheriff's Department; is that correct?

7 A Yes, I did.

8 Q How was he transported that day?

9 A Mr. Gilbert was transported in my unmarked vehicle in
10 the passenger seat.

11 Q Okay. At any time at the Hartsville Police Department
12 was Mr. Gilbert placed in the holding cell?

13 A He was not placed in a holding cell at any time in the
14 Hartsville Police Department.

15 Q Okay.

16 MR. WATTS: Beg the Court's indulgence for just one
17 moment.

18 THE COURT: Yes, sir.

19 MR. WATTS: No further questions, Your Honor.

20 THE COURT: Redirect.

21 MR. REDMOND: Briefly, Your Honor.

22 THE COURT: Yes, sir.

23 **REDIRECT EXAMINATION**

24 BY MR. REDMOND:

25 Q You were asked about him not giving a written statement

SW - W. Locklair - Redirect

1 at Hartsville P.D. Let me just ask you this. If the
2 defendant had told you at Hartsville P.D. that he was
3 present at the time of Mr. Brown's murder what would you
4 have done?

5 A We would have gotten a written statement or video
6 statement or taped statement.

7 Q And then what would you have done?

8 A We would have gone from there to continue to
9 investigate this case.

10 Q Okay. Would you have gone to the scene -- if he told
11 you he was present at the time that he was killed and the
12 body was dumped, what would you have done?

13 A We would have -- yeah, we would have exasperated all
14 means of going to the scenes that he explained to us in
15 his second statement.

16 Q All right. But he didn't admit to that in his first
17 statement?

18 A He did not.

19 MR. REDMOND: Nothing further, Your Honor.

20 THE COURT: Recross.

21 MR. WATTS: No recross, Your Honor.

22 THE COURT: All right. Thank you, Officer, you may
23 step down.

24 THE WITNESS: Thank you, Your Honor.

25 MR. REDMOND: The State at this time will call Jamie

SW - J. Gilbert - Direct

1 Gilbert to the stand.

2 THE COURT: All right. Counsel, while we're waiting
3 for Mr. Gilbert would y'all come up.

4 (WHEREUPON, counsel approached the Bench for an
5 off-the-record discussion.)

6 WHEREUPON,

7 JAMIE GILBERT,

8 having been duly sworn by the Clerk of Court, testified as
9 follows:

10 THE COURT: All right, Mr. Redmond, you may proceed.

11 MR. REDMOND: Thank you, Your Honor. May it please the
12 Court.

13 DIRECT EXAMINATION

14 BY MR. REDMOND:

15 Q State your name for the record.

16 A Jamie Gilbert.

17 Q And how old are you, Jamie?

18 A Nineteen.

19 Q And where are you currently -- well, I'll just point
20 blank ask you, are you currently in jail at Darlington
21 County Detention Center?

22 A Yes, sir.

23 Q And are you in jail related to these charges?

24 A Yes, sir.

25 Q Did you plead guilty to -- did you plead guilty to

SW - J. Gilbert - Direct

1 voluntary manslaughter, armed robbery, and grand larceny?

2 A Yes, sir.

3 Q Related to this case?

4 A Yes, sir.

5 Q Did you also -- were you promised anything in exchange
6 for your testimony?

7 A No, sir.

8 Q Have you been given any time or anything that has been
9 indicated to you for your testimony?

10 A No, sir.

11 Q Okay. Now is your mother Barbara Brooks?

12 A Yes, ma'am -- yes, sir.

13 Q All right. And were you living with her in January of
14 2007?

15 A No, sir.

16 Q Okay. Where were you staying at that time in January
17 of 2007?

18 A At my Uncle Robin house. It was Bobby Gilbert's daddy.

19 Q And where had you stayed before that?

20 A In Timmons ville.

21 Q And who did you stay with in Timmons ville before that?

22 A My friend Crystal.

23 Q And how long did you stay there?

24 A About two months.

25 Q And I'll just ask you why -- where did your mom live?

SW - J. Gilbert - Direct

1 Where does your mom live? Where were you living before
2 you left your mom's house?

3 A Since then Easy Living Trailer Park in Darlington.

4 Q Why did you end up having to leave there?

5 A Because of problems I was causing out there in the
6 trailer park.

7 Q And what kind of problems?

8 A Just like vandalizing the trailer park, doing stupid
9 things too.

10 Q Now, and who did you stay -- who were you living with
11 at the time in January of 2007 that this incident
12 occurred? Who were you living with?

13 A My cousin Bobby and my Uncle Robin and my Aunt Sarah.

14 Q You see your cousin in the court, cousin Bobby in the
15 courtroom today?

16 A Yes, sir.

17 Q And could you point him out for the jury?

18 A Right there (indicating).

19 MR. REDMOND: And Your Honor, let the record reflect
20 that the witness did point to the defendant as being Bobby
21 Gilbert.

22 THE COURT: Record will so reflect.

23 MR. REDMOND: Thank you, Your Honor.

24 BY MR. REDMOND:

25 Q And again, he is your cousin?

SW - J. Gilbert - Direct

1 A Yes, sir.

2 Q Okay. Let me take you to January of 2007. And I want
3 you to tell the jury what was discussed between you and
4 the defendant regarding Tyrone Brown.

5 A He was telling me about -- he didn't say names, telling
6 me about this person that had gotten on him at high
7 school, which I believed him back then, that we could get
8 some money from him. So I was like, all right, we can get
9 the money.

10 Q And when did you -- or did you attempt to get the money
11 from this particular person?

12 A Yes, sir.

13 Q Okay. And when was that?

14 A January 16th, 2007.

15 Q And do you recall about when you had this conversation
16 with your cousin?

17 A A couple of days before that.

18 Q Okay. Let's talk about the 16th of January. Jamie, I
19 want you to tell this jury exactly what you were doing
20 leading up to this incident.

21 A Okay. On January 16th, 2007 I was kicked out my Aunt
22 Sarah house 'cause I had came home late. I was standing
23 in front of the apartments the night before on January
24 16th, 2007. I was kicked out. I called my mother, told
25 my mother I was kicked out of the house. So she was

SW - J. Gilbert - Direct

1 like -- I told my mother to come pick me up. She agreed
2 to come pick me up later. So later on that day,
3 afternoon, she came and picked me up. And she picked me
4 and my cousin Bobby up, took us to Farmington Apartments.
5 That's where she dropped us off at -- I told my mother I
6 love her, and I left her, departed from her. Me and Bobby
7 went upstairs to our girl-- my ex-girlfriend Lillian
8 Pooler house. So we was at Lillian house. We knocked on
9 the door, went inside. I went in the room with Lillian.
10 My cousin Bobby stayed around there in the front. He was
11 talking to one of her sisters, Keshia Pooler, so as
12 Keshia -- I guess Keshia didn't like Bobby or something
13 'cause she had got up and left. So I was in the room with
14 Lillian still. My cousin Bobby came around, knocked on
15 the door, was like I'm about to go do that. I was like,
16 I'll come with you.
17 Q Okay, let me stop you right there. When you say he was
18 about to go do that what did you take that to mean, Jamie?
19 A We were about to go rob the victim.
20 Q Okay. Now after he says let's go do that, tell us what
21 happened, tell the jury what happened next.
22 A So I was like, I'm coming with you. He was like, no,
23 stay here. I like, no, I'm coming with you. So we argued
24 back and forth whether I was going to go or not. Then
25 finally he was like, all right, come on. So I went like

SW - J. Gilbert - Direct

1 in the room and I -- he was telling me that he -- call
2 Tyrone. And Chris Samuel came in with a gun. Him and
3 some more boys had came over with a gun. So that's when
4 my cousin Bobby was like, that's what I need right there,
5 that's what I need right there. So I like, well, go
6 holler at him. So Bobby went to go talk to Chris. I
7 don't know what they were talking about. I went in with
8 my girlfriend. Then that's when Bobby came back around
9 there, was like, all right, let's get ready, let's get
10 ready to do it. So they called the victim up and came out
11 there to Farmington Apartments. I was in the room still.
12 I got out the room. My cousin like, let's go. So we went
13 downstairs, got into the Honda Accord. Tyrone was the
14 driver. My cousin Bobby was the passenger, and I was
15 behind my cousin Bobby. So we drove out to the Oates
16 area. We got out there and stopped 'cause my cousin Bobby
17 had asked me did I have the keys. By the keys he
18 referring to the gun. I was, like, no I don't have it.
19 And when he did it he knocked on the side of his seat. So
20 I like, no, I don't have it, I think it back at the house.
21 It was at Farmington Apartment. So Ty, he like, all
22 right. So he told Tyrone to turn around. Tyrone turn
23 around and we went back to Farmington Apartments. My
24 cousin Bobby got out the car, went to go get Chris, and I
25 was still in the car with Tyrone. My cousin went to go

SW - J. Gilbert - Direct

1 get Chris. Chris came back in with the gun so.

2 Q Let me stop you right there. When -- how old were you
3 at the time?

4 A Seventeen.

5 Q Okay. And when is your birth day?

6 A [REDACTED].

7 Q Okay. And of what year?

8 A 1989.

9 Q Okay. So you had just turned 17.

10 A Yes, sir.

11 Q Okay. Now I'm, just to make sure that everybody can
12 hear I want you to speak as loudly and clearly as you can
13 so that everybody can hear and understand. So go ahead --
14 let me ask you this. And I stopped you at the point that
15 y'all had gone out towards Oates and turned around or
16 about to turn around. So take it up from there. Tell the
17 jury what happened.

18 A So when Christopher got in the car Chris Samuel was
19 behind Tyrone. My cousin was -- Bobby was in the
20 passenger again and I was behind my cousin Bobby. So we
21 backed out. We drove to another part of Oates area where
22 there was a barbed wire fence. I thought we was going to
23 rob the victim right there but we didn't. So but when
24 Chris got in the car he had passed me the gun. I passed
25 the gun to my cousin through the side of the seat right

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1 there. So we back out there towards the barbed wire, then
2 we back out, drove to Hilga Welsh's house on Sandbox box
3 road. We get there and Bobby asked Chris like, you still
4 like to go get that. Chris was like, yeah, and I tapped
5 Chris on the leg so Chris got out the car and started
6 walking. My cousin Bobby pull out the gun on Tyrone and
7 was like, all right, joy ride is over, give it up. So I
8 jump out ---

9 Q Let me stop you right there because I know that you
10 don't want to use certain language and I can understand
11 and appreciate that, but I want this jury to know exactly
12 what happened so I want you to tell this jury exactly what
13 he said.

14 A He pulled the gun. I was like, joy ride is over mother
15 fucker, give it up. So I jump out the back seat, ran
16 around there towards the front seat where Tyrone was
17 driving at and Chris came with me. So we opened the door.
18 I had -- we had our hands balled up like this and other
19 hand like this over Tyrone so Tyrone could not get out the
20 car.

21 Q And let me stop you right there. Now when you say we
22 had our fists like that, who is we?

23 A Me and Christopher Samuel.

24 Q And what was the defendant doing at this time?

25 A He was in the car pointing the gun towards Tyrone. He

SW - J. Gilbert - Direct

1 was getting out the car.
2 Q Okay, now, go ahead.
3 A So as he came around towards the car we were standing
4 over him, over Tyrone. He had a ear piece in his -- a
5 phone piece in his -- I snatched it out and threw it on
6 the ground. And that's when my cousin came around there
7 with the gun, was like, Tyrone was like, what, what, I was
8 only trying to help y'all, what's going on. So my cousin
9 Bobby was like, shut up, just get in the trunk, but he
10 made Tyrone strip so everything -- so nothing was -- no
11 ear piece or nothing was showing so he made him strip.
12 And Tyrone was like, what, I was only trying to help
13 y'all, I do anything you say, just leave me alone. So my
14 cousin is like, just get in the trunk. So Tyrone was
15 like, all right, all right. And he took off and start
16 running. So we ran, chased him, caught him, beat him up,
17 and then we drag him back to the trunk. And we started
18 beating him up again so we put him in the trunk. And then
19 after we were trying to shut the trunk his arm was
20 sticking out, and he had a can of mace. We still shut the
21 trunk down on his arm and ssh; he started spraying the
22 mace. It caught me and Christopher Samuel in the eyes.
23 While my cousin Bobby was on top of the trunk jumping up
24 and down on the trunk like this right here trying to set
25 his hand down so it did not mace him. So as the can was

SW - J. Gilbert - Direct

1 still spraying my face, kicked the can out his hand, it
2 fell on the ground. I picked it up, threw it in the back
3 seat, and kicked Tyrone arm and it roll in the trunk. So
4 my cousin shut the trunk down. My cousin was sitting on
5 the back of the trunk. I got into the driver's side.
6 Christopher Samuel got into the passenger side. So my
7 cousin was telling me where to back out at. So I backed
8 out and as I was backing out I heard something like, oh,
9 shit. It was my cousin, had fell off the car because
10 Tyrone had knocked the trunk up so the trunk came open
11 causing Bobby to fall off the top of the back of the
12 trunk. So I jump out the car, ran, chased Tyrone. We
13 caught him. But before we got to my cousin ---

14 Q Let me stop you right there. Who chased, ran -- who
15 ran and chased Tyrone?

16 A Me and Chris.

17 Q Okay. Now go ahead, I'm sorry.

18 A Before I -- before we chased him my cousin had shot at
19 the victim and he fell on the ground. I don't know if he
20 had scared him or what. He fell on the ground so we ran,
21 called, chased him beat him up some more, dragged him back
22 to the trunk. While we was beating him up my cousin had
23 kicked him in the top of his head and knocked him out. He
24 stopped moving. So we picked him up, put him in the
25 trunk. We sit him in the trunk and so I get -- jump back

SW - J. Gilbert - Direct

1 in the driver's seat, driver's side. Christopher Samuel
2 hanging out the passenger side out the window. Bobby
3 Gilbert was on top of the trunk still because of the trunk
4 going loose. He was still on top of it. So he -- my
5 cousin Bobby was telling Christopher Samuel where to tell
6 me to go. So I backed out and drove down the street. We
7 was on Sandbox Road. They told me to take a left. I
8 turned left on another road. It was not -- no longer than
9 a ten second drive. So we get there and my cousin was
10 like, watch this, and drags Tyrone out by his hand and
11 pull him out the trunk. And there was a piece of concrete
12 about like that big, picks it up off the ground, puts the
13 gun on his hip. Picks it up, boom. Hit him one time with
14 it, boom. Hit him two times with it. Three, four, five,
15 then six times in the head repeatedly with the brick, a
16 piece of concrete. So we stand there then and that's when
17 my cousin was like, he jump -- he went in the truck,
18 pulled out a grocery bag, tied it around Tyrone head to
19 stop the bleeding. We pulled him back in the trunk and my
20 cousin tell us to -- tell me to drive down towards
21 Cornfield Road. So I jumped in the car. I started
22 driving. As I was driving I was like, how are we gonna
23 get the money. He was like, don't worry about it, I got
24 this. So we drive -- he was like -- as we were driving
25 and he was like, I'm gonna need one of y'all to run him

SW - J. Gilbert - Direct

- 1 over. So we get to Cornfield Road where this discussion
2 was happening. He said I'm gonna need one of y'all to run
3 him over. So I looked at Christopher to save my life, you
4 do it. He was like, naw. So then my cousin like, now
5 stop acting like a bitch. I like, don't call me that. So
6 he was like, well do it then. So I jump in the car, turn
7 the music up real loud, closed my eyes, back over Tyrone
8 one time, ran over him again. So then that's when my
9 cousin like, that's enough.
- 10 Q Let me stop you right there. So you have admitted that
11 you were the one that actually drove over Tyrone Brown?
- 12 A Yes, sir.
- 13 Q And you did that at whose direction?
- 14 A My cousin Bobby.
- 15 Q Okay. But you were involved in this whole incident; is
16 that correct?
- 17 A Yes, sir.
- 18 Q All right. Go ahead and continue. What happened at
19 that point?
- 20 A So after we ran him over we put him back in the trunk.
21 Backed out. I jumped back in the driver's seat again,
22 backed out, and drove to where the body was disposed. I'm
23 not sure the name of the road. We drive out there,
24 disposed of the body. I asked my cousin on the way, how
25 we supposed to get the money now, how we gonna get the

SW - J. Gilbert - Direct

1 money now. He was like, man, don't worry about that, just
2 a mission failed. So we get out there towards where the
3 body was disposed, drag Tyrone out the trunk. I throw the
4 clothes and the baskets and everything that was in the
5 trunk, I threw it outside the car. We jump in the car,
6 backs out, drive back towards Farmington Apartments. We
7 just -- we leave Chris Samuel and it's me and my cousin
8 spend the night at Farmington Apartments with Lillian and
9 her sisters till then the next day, which is Wednesday.
10 We got dressed, got washed up, I went to my mother house.
11 And that's when I got to put on my clothes for whatever we
12 were about to do that day. We drive to Florence. We was
13 out there with messing around with some girls in south
14 Florence and east Florence. So we mess with some girls,
15 and I had bought me an ounce weed while we was in
16 Florence. So we backed out again, drove from -- we still
17 out there in east Florence. We go to south Florence.
18 Then we're driving back to Hartsville now. And I fell
19 asleep in the car in the passenger seat. My cousin Bobby
20 wakes me up and tell me the police just called his phone.
21 So I'm high, I'm like....

22 Q Let me stop you right there. What -- again, what were
23 y'all doing and what happened when he said the police just
24 called his phone? Tell me that again.

25 A We was messing with some girls down in Florence.

SW - J. Gilbert - Direct

1 Q And then what happened?

2 A We drove back -- we were driving back to Hartsville and
3 that's when after I had bought my weed I fell asleep in
4 the car, and my cousin woke -- wake me up on the way like
5 on Hartsville Highway where he tell me police just called
6 his phone. Investigator Andy Locklair just called his
7 phone. So he was like, they're looking for the car by
8 satellite. I'm like, man, you tripping, you tripping. So
9 we drive out towards -- we drove back to Hartsville still
10 and then we drove up to Speak Easys. My cousin start
11 wiping his fingerprints and everything down in the car.
12 I'm like, man, he was like, come on, I'm about to walk to
13 my aunt house. I'm like, naw, I'm not about to walk down
14 there 'cause my aunt stay like in Plantation Pines from
15 Speak Easy which is a long walk so I'm like, I'm not going
16 to walk. I'm like, you can walk, just give me the keys.
17 So he gave me the keys. I jumped in the car. I drive,
18 backs up. I drove back to Darlington, bought me some more
19 weed and cigar. I drive back to Florence and mess with
20 some more girls. Then I drive back to Hartsville that
21 night and go back to Farmington Apartments. And then the
22 next day, which is Thursday on the 18th, I had woke up.
23 My cousin was texting the phone, texting Keshia phone
24 telling me to get rid of the car. I never got rid of the
25 car 'cause I was like, I'm not gonna get rid of the car

SW - J. Gilbert - Direct

1 'cause I need something 'cause we ain't got no money or
2 nothing so. As we drive -- so I sitting there, I was
3 texting -- was texting on the phone to Keshia phone. I
4 get up to go get some gas from, I think it was Exxon, get
5 gas from Exxon station for five dollars.

6 Q And where is this at?

7 A In Hartsville.

8 Q And where did you stay the night before?

9 A Hartsville at Farmington Apartments.

10 Q Okay. And then you went to go get gas. Tell us what
11 took place then.

12 A So then me and Waeisha -- so as I drive it --

13 Q What's Waeisha last name?

14 A Harriott. So we get on Green Street and she was like,
15 she wanted to drive so I let her drive and when she got in
16 the driver's seat that's when the police came down in
17 unmarked car -- no, it was regular sheriff's car. So we
18 driving and the unmarked car pulled behind us and the blue
19 lights on. That's when she -- I tell her to keep going.
20 She drove, drove back to Farmington Apartments and that's
21 where we got stopped at, and that's when I had got locked
22 up. Well, that's when I had got detained to be
23 questioned. They questioned me, then released me. Then
24 following up to that next Tuesday was when I got arrested
25 for these charges right here now.

SW - J. Gilbert - Direct

1 Q Let me ask you this, Jamie. When -- as far as the
2 card, who had Tyrone Brown's card?

3 A I did.

4 Q Okay. The card, who had the card, excuse me.

5 A Oh, the card?

6 Q Yes, the card?

7 A Bobby.

8 Q The bank card. And do you remember where the bank card
9 was used?

10 A At Hudson's in Hartsville.

11 Q Okay. You don't know if it was used other than that,
12 do you?

13 A No, sir.

14 Q Because who had the card?

15 A Bobby Gilbert.

16 Q Okay. And the tag, let's talk about the tag on the
17 car. The tag that was on the car, was that the tag that
18 the victim had on the car at the time y'all robbed and
19 killed him?

20 A No, sir.

21 Q Or was that another tag?

22 A That was another tag.

23 Q And who got that tag?

24 A I did.

25 Q And when did you get that tag?

SW - J. Gilbert - Direct

1 A That Wednesday night.

2 Q Okay. And did you get it in Darlington?

3 A Yes, sir.

4 Q And do you remember what kind of vehicle it was you
5 took it off of?

6 A It was a Ford truck. I'm not sure what kind.

7 Q And is that the tag that was on the car -- the stolen
8 tag, is that the tag that was on the car when you were
9 stopped?

10 A Yes, sir.

11 Q And where did you have the victim's tag in the car?

12 A In the back seat.

13 Q Okay. Now let's talk about up -- leading up to the
14 time you got arrested. Do you remember talking with the
15 police on the 18th of January?

16 A Yes, sir.

17 Q And I'll just ask you point blank. Did you tell the
18 police the truth in your statement that day?

19 A No, sir.

20 Q I think you gave three statements that day; didn't you?

21 A Yes, sir.

22 Q Okay. Why didn't you tell the truth at that time,
23 Jamie?

24 A Because I was young and didn't want to take
25 responsibility for my actions.

SW - J. Gilbert - Direct

1 Q Okay. Do you remember talking with Rachel Chapman on
2 the 25th --

3 A Yes, sir.

4 Q --of January of 2007? And would -- or on the 24th I
5 believe it was of 2007, do you remember talking with her?

6 A Yes, sir.

7 Q Okay. And did you tell her more about what happened?

8 A Yes, sir.

9 Q But did you admit to having driven over the victim at
10 any of those statements?

11 A No, sir.

12 Q I believe you gave three written statements on the
13 18th; is that correct?

14 A Yes, sir.

15 Q And you gave an oral statement on the 24th, I believe
16 it was 24th, 25th?

17 A 24th, yes, sir.

18 Q And in any of those statements did you ever admit to
19 having run over Tyrone Brown?

20 A No, sir.

21 Q Who did you claim ran over Tyrone Brown?

22 A Chris Samuel.

23 Q Okay. Is it -- did Chris Samuel run over Tyrone Brown?

24 A No, sir.

25 Q Was Chris -- let me ask you this, when is the last time

SW - J. Gilbert - Direct

1 after this murder, when is the last time that you saw
2 Chris?

3 A On Tuesday night, Tuesday, the January 16th, 2007.

4 Q Okay. Tell us about that. When y'all got back to
5 Farmington Apartments what happened?

6 A Christopher had left us and me and Bobby stayed at the
7 girl's house that night. Bobby went with Chris and his
8 sister stay out there in Farmington too so he probably
9 went to her house. He did not stay at the girl house with
10 us that night.

11 Q Did you see him again before you got arrested?

12 A No, sir.

13 Q Did you -- and as far as your time there before you
14 were ultimately arrested, who were you primarily with up
15 until Wednesday night between the time of the murder and
16 Wednesday night, who were you with during that time?

17 A Bobby Gilbert.

18 Q And did y'all stop by your mother's house at some
19 point?

20 A Yes, sir.

21 Q And could you tell the jury about that again? Let's --
22 let me flesh that out a little bit.

23 A That was that Wednesday when he had the card. He took
24 me to my momma house. I got washed up, put on some fresh
25 clothes 'cause we had already had our day, our day planned

SW - J. Gilbert - Direct

- 1 what we was going to do that day. We was gonna go to
2 Florence, mess with the girls, just chill out together.
3 So that's how I went to my momma's -- that's why I went to
4 my momma's house, to get dressed.
5 Q And do you remember the defendant saying anything about
6 whose car that was, about the car?
7 A He told my mother that it was his girlfriend's car.
8 Q And he -- when you say "he told your mother," who told
9 your mother?
10 A Bobby Gilbert.
11 Q And was Chris Samuels there with y'all during that time
12 when you went to your mother's house?
13 A No, sir.
14 Q And again, this was on Wednesday the day after the
15 murder, right?
16 A Yes, sir.
17 MR. REDMOND: Beg the Court's indulgence.
18 THE COURT: Yes, sir.
19 BY MR. REDMOND:
20 Q And again, I'll ask you -- let me ask you to go back.
21 Did you finally tell the truth in July of 2008?
22 A Yes, sir.
23 Q And was that in Columbia at SLED I believe?
24 A Yes, sir.
25 Q I'm gonna ask you point blank, Jamie. Is what you're

SW - J. Gilbert - Cross

1 telling the jury today the truth?

2 A Yes, sir.

3 Q Okay. Have you accepted responsibility for what you
4 did?

5 A Yes, sir.

6 Q Do you understand that your role in this was wrong?

7 A Yes, sir.

8 Q And who was the master mind behind this robbery and
9 murder?

10 A Bobby Gilbert.

11 Q Your cousin?

12 A Yes, sir.

13 MR. REDMOND: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. REDMOND: That's all the questions I have at this
16 time.

17 THE COURT: Cross-examination, Mr. Watts.

18 MR. WATTS: Thank you, Your Honor, if it please the
19 Court.

20 THE COURT: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. WATTS:

23 Q Back in January of 2007 were you employed at the time?

24 A No, sir.

25 Q Were you in school at the time?

SW - J. Gilbert - Cross

1 A No, sir.

2 Q Okay. Chris Samuels, had you met Chris Samuels prior
3 to January 16th, 2007?

4 A I met him in like 2004 but nothing serious, only just
5 like -- I met him through a friend of his which was a
6 friend of mine.

7 Q Okay. You never attended the same school?

8 A No, sir.

9 Q Never talked to each other?

10 A No, sir.

11 Q How frequently would you go to Farmington during this
12 time when you were staying with your cousin?

13 A About two or three times out the week when before I
14 even had -- before Bobby Gilbert -- before I left Bobby
15 Gilbert to talk to Keshia.

16 Q Yeah.

17 A About two or three times out the week.

18 Q So you were going there at least prior to going and
19 staying at Bobby's house, you were going there two or
20 three times a week?

21 A Yes, sir.

22 Q Were you going about the same frequency when you were
23 over at Bobby house?

24 A No, sir.

25 Q Why didn't you go anymore?

SW - J. Gilbert - Cross

1 A I wasn't staying over there no more.

2 Q Okay. You testified earlier that Chris Samuel came
3 over to the Poolers' house who you were staying with; is
4 that correct?

5 A Yes, sir.

6 Q Is that the first time you saw them over there?

7 A Yes, sir.

8 Q And do you know where he lives?

9 A No, sir.

10 Q More familiar that you lived in Farmington at the time;
11 is that correct?

12 A Yes, sir.

13 Q Yes, sir, you knew, or yes, that was correct?

14 A Yes, I knew — I knew his sister lived out there. I
15 didn't know he lived out there.

16 Q But you knew his sister?

17 A No, sir.

18 Q How did you know his sister lived out there?

19 A Because when he came to the house that night he said he
20 was about to go to his sister. His sister was a
21 bootlegger I believe.

22 Q Sister was a what?

23 A A bootlegger who sell like cigarettes and stuff like
24 that so people come around there.

25 Q Uh-huh.

SW - J. Gilbert - Cross

1 A That's what a bootlegger is.

2 Q Okay. And he told you when he walked in his sister was
3 a bootlegger?

4 A Naw, he was like, I'm about to go to my sister's house
5 to get some cigarettes.

6 Q That's why that came up?

7 A Yes, sir.

8 Q Earlier you've given testimony about statements you've
9 given; is that correct?

10 A Yes, sir.

11 Q Okay. And I think that earlier Mr. Redmond said you
12 gave three statements on the 18th; is that right?

13 A Yes, sir.

14 Q Okay. Then you gave a subsequent statement and I want
15 you to look at this, see if you recognize it please. Let
16 me hand it back. Take that stickie off. That's not a
17 part of that. Take a look at that and tell me if you
18 recognize that please. I'm just looking at the date.
19 What is the date on that?

20 A The date on it is 23rd.

21 Q Okay. So it's the 23rd?

22 A Of January.

23 Q Okay. I want to go through these statements one by
24 one, okay?

25 A Yes, sir.

SW - J. Gilbert - Cross

1 saw that car; is that correct?

2 A Uh-huh.

3 Q Now at that time you said that was all you knew; is
4 that correct?

5 A Yes, sir.

6 Q And he picked you up and he left you with the keys and
7 just -- that's all you knew.

8 A Yes, sir.

9 Q All right. I think in this statement -- where did you
10 indicate that Bobby had gotten the car?

11 A I indicated that on the same day.

12 Q Okay. So he got it on the same day?

13 A Yeah.

14 Q Okay. Taking a look at that part right there. When
15 you're saying that Mr. Gilbert got the car -- read it.
16 Look at it and tell me what it's saying. Is that saying
17 he got it the same day? What's it say?

18 A My cousin told me he just bought the car but he took it
19 to the car -- to the car wash yesterday. That's all I
20 know.

21 Q Okay. So you were telling police that your cousin just
22 bought the car, was just going to leave it and walk away
23 and give it to you; is that correct?

24 A Yes, sir.

25 Q All right. Let me ask you a quick question. You

SW - J. Gilbert - Cross

1 recall your first statement ever saying that you had
2 participated in anything involved in the disappearance or
3 anything that happened to Tyrone Brown?

4 A No, sir.

5 Q But there's a written statement for that, right?

6 A No, sir.

7 Q There's not a written statement for ---

8 A From me?

9 Q From you on the 18th? This isn't your written
10 statement?

11 A Saying...

12 Q Does that say anything about you being at the scene or
13 being involved or dumping the body or anything else?

14 A No, sir.

15 Q No. Okay, but there's a written record of that,
16 correct?

17 A Yes, sir.

18 Q Okay. Warren (sic), I want you to tell me the date on
19 this one. How about read the time too. It's at the
20 bottom.

21 A 12/40 p.m. on the 18th day of January.

22 Q Okay. And in the context of that statement does it
23 ever -- do you ever indicate that you had anything to do
24 with dumping the body or involvement or anything else?

25 A No, sir.

SW - J. Gilbert - Cross

1 Q No. But there's a written statement, right?

2 A Yes, sir.

3 Q And so they took your written statement?

4 A Yes, sir.

5 Q You wrote it out and signed it; is that correct?

6 A Yes, sir.

7 Q But you didn't admit any involvement or anything, is
8 that correct, in that statement?

9 A That's correct.

10 Q Okay.

11 MR. WATTS: If I can mark this, Your Honor, I.D. 2.

12 THE COURT: Defendant's Number 2 for identification
13 only.

14 (WHEREUPON, Defendant Exhibit No. 2 was marked for
15 identification only.)

16 BY MR. WATTS:

17 Q The third statement you gave, just read the top of
18 that, the first line there. Is it new information or is
19 it additional information to the first statement you gave?

20 A This is new information.

21 Q New information? What does it say at the top? It says
22 additional information, correct?

23 A Yes, sir.

24 Q So that was additional from your previous statement.
25 What's the time and date on that?

SW - J. Gilbert - Cross

1 A 6:52 p.m. on the 18th day of January.

2 Q Okay. 6:52 on the 18th of January, all right. And now
3 you're starting to throw a more suspicious light on your
4 cousin; is that correct?

5 A Yes, sir.

6 Q You started talking about him -- now he's starting to
7 do suspicious things or something that doesn't look right
8 to you, is that correct?

9 A Yes, sir.

10 Q At that time did you indicate any involvement in this
11 matter?

12 A No, sir.

13 Q Okay. You didn't involve -- you didn't indicate or
14 state that you had any involvement with dumping the body?

15 A No, sir.

16 Q Or participation in the crime?

17 A No, sir.

18 Q But there's a written report, right?

19 A Yes, sir.

20 Q And that's your signature, right?

21 A Yes, sir.

22 MR. WATTS: If I can mark this as ID please.

23 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
24 identification only.)

25

SW - J. Gilbert - Cross

1 BY MR. WATTS:

2 Q We're moving ahead. We're off at the 18th. Now we're
3 talking about the 23rd. You gave another statement, is
4 that correct?

5 A Yes, sir.

6 Q And in this statement are you indicating anything about
7 Mr. Brown?

8 A Yes, sir.

9 Q You give any information?

10 A Yes, sir.

11 Q What information you giving in that statement?

12 A I said that Christopher Samuels came to Farmington
13 Apartments with a shotgun and nine millimeter. My cousin
14 Bobby had a stack of money and he came to pick me up and I
15 said -- I could be wrong -- but I think they headed to
16 Tyrone house.

17 Q So now you're indicating Chris Samuel and Bobby Gilbert
18 in a robbery --

19 A Yes, sir.

20 Q --at this house?

21 A Yes, sir.

22 Q But not implicating yourself in any wrong doing; is
23 that correct?

24 A Yes, sir.

25 Q And but that's still a written statement; is that

SW - J. Gilbert - Cross

1 correct?

2 A Yes, sir.

3 MR. WATTS: And I mark this as ID 4. Your Honor, if I
4 may.

5 THE COURT: Defense Exhibit Number 4 for identification
6 only.

7 (WHEREUPON, Defendant Exhibit No. 4 was marked for
8 identification only.)

9 BY MR. WATTS:

10 Q Is there any question on Numbers 1, 2, 3, and 4 that
11 these are your statements, written statements?

12 A No, sir.

13 Q Okay. And this is what you told police; is that
14 correct?

15 A Yes, sir.

16 Q Okay. Every one of these is a falsehood, correct?

17 A Yes, sir.

18 Q Okay. Did you also give a video statement?

19 A Yes, sir.

20 Q And when did you give that video statement?

21 A In July of 2007.

22 Q Okay. Is it your test--

23 A Pardon me, excuse me, 2008.

24 Q Okay. And at that time did you indicate in your video
25 statement a gun being fired?

SW - J. Gilbert - Cross

1 A Yes, sir.

2 Q Okay. Did you indicate in that statement who shot?

3 A Yes, sir.

4 Q Okay. You sure?

5 A Yes, sir.

6 Q Who did you say shot in the video statement?

7 A Bobby Gilbert.

8 Q Okay. The testimony you gave in July the same as you
9 gave today?

10 A Yes, sir.

11 MR. WATTS: Your Honor, I move to admit Defendant's
12 I.D. 1 through 4 into evidence.

13 MR. REDMOND: Absolutely no objection, Your Honor.
14 (WHEREUPON, Defendant Exhibits Nos. 1 through 4 were
15 admitted into evidence.)

16 THE COURT: Admitted into evidence Defendant's 1
17 through 4 without objection.

18 BY MR. WATTS:

19 Q You gave a video statement; is that correct?

20 A Yes, sir.

21 Q And did you ever get a copy of that video statement?

22 A No, sir.

23 Q But you know of its existence, correct?

24 A Yes, sir.

25 Q And you participated in it; is that correct?

SW - J. Gilbert - Cross

1 A Yes, sir.

2 Q It's your testimony everything you said in here today
3 is exactly the same as what you said in July; is that
4 correct?

5 A Yes, sir.

6 MR. WATTS: And Your Honor, I would move at this time
7 to be able to show the statement given by Mr. Samuels to
8 SLED back in the --

9 THE COURT: Wait a minute, wait a minute, whoa, whoa,
10 we hadn't identified it yet. It's not in evidence. Come
11 on, Counsel.

12 (WHEREUPON, counsel approached the Bench for an
13 off-the-record discussion.)

14 THE COURT: The video statement of this witness is
15 Defendant's Number 5 is admitted into evidence without
16 objection.

17 MR. REDMOND: Thank you, Your Honor.

18 (WHEREUPON, Defendant Exhibit No. 5 was marked for
19 identification and received into evidence.)

20 THE COURT: Come up just a minute, Counsel.

21 (WHEREUPON, counsel approached the Bench for an
22 off-the-record discussion.)

23 THE COURT: Ladies and gentlemen, I was just checking
24 with counsel about scheduling and if we do get into this
25 statement, which they are going to show you at this time

1 and you do have the right to of course see it because it
2 has been admitted into evidence, would run us normally
3 past our time for our afternoon recess so I think it is
4 appropriate that we take an afternoon recess at this time.
5 We're going to take about a 15 minute recess. Be ready to
6 start back about 4:00. So if you would go to your jury
7 room, please relax. Do not discuss the case among
8 yourselves and we'll be ready to start back at 4:00 so
9 proceed and go with the bailiff please.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 3:44 p.m., and the following proceedings
12 commenced in open court.)

13 THE COURT: All right, you may take the witness back.
14 We'll bring him back shortly. What I'd like to do,
15 Counsel, is we will take a brief recess for court
16 personnel, five, six, seven minutes. Then I'd like to
17 come back in and while we got the jury still relaxing for
18 a few minutes let's address the matters with regard to the
19 evidentiary matters that might be involved with the
20 witness after this. I believe you said, Mr. Redmond, that
21 would be the medical examiner; is that correct?

22 MR. REDMOND: That is correct, Your Honor.

23 THE COURT: We'll do that. So let's take about six or
24 seven minutes and then we'll address those matters. Thank
25 you.

1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 THE COURT: We're back on the record with regard to the
4 matter of the State versus Gilbert. Mr. Gilbert is
5 present in the courtroom with his attorney. The State is
6 present with Mr. Redmond. Before we go into the matter of
7 the medical examiner's testimony and the proposed
8 witnesses that -- I mean, exhibits, that we need to
9 review, let's go back for just a minute, Mr. Watts.

10 MR. WATTS: Yes, Your Honor.

11 THE COURT: And let me let you put on the record
12 whatever you wanted to put on the record with regard to
13 the television reporter that was here during the course of
14 the last witness's testimony.

15 MR. WATTS: Your Honor, all I was requesting the Court
16 was I was asking during the playing of the video
17 submission, the video statement of Mr. Gilbert, that no
18 taping be allowed at that time. I think that the matter
19 now -- that's what we discussed at the bar and that's what
20 I was requesting. I think that that issue is moot now.

21 THE COURT: Well, no, your objection is preserved. And
22 if you still object to that I want -- that's why I'm
23 giving you an opportunity to put it on the record. Do you
24 object to it? You object to the Court's ruling on that?

25 MR. WATTS: No, Your Honor.

1 **THE COURT:** Okay, all right. So that matter is
2 resolved. All right now, Mr. Redmond, tell me about what
3 testimony of the medical examiner you expect may be
4 controversial and may be some objection to.

5 **MR. REDMOND:** Regarding to the pictures, Your Honor,
6 and I don't remember the exhibit numbers but I think Your
7 Honor has those exhibit numbers.

8 **THE COURT:** I do.

9 **MR. REDMOND:** The State would propose making a proffer
10 at this time to establish the fact that those pictures
11 would aid in Doctor Ross' testimony regarding the medical
12 effect and the cause of death of this particular incident
13 on the victim.

14 **THE COURT:** All right. The State is referring to
15 exhibits that have been marked for identification as
16 Exhibit Numbers 32, 33, 34, 35, 36, 37, 38, 39, and 40.

17 Mr. Watts, what's your position?

18 **MR. WATTS:** Your Honor, if I may briefly --

19 **THE COURT:** Yes.

20 **MR. WATTS:** --hold those. Thank you, Your Honor.
21 Your Honor, as far as foundation and make sure who has
22 taken the pictures and given that background information I
23 don't see if there's any other problem after that.

24 **THE COURT:** All right. So from a standpoint if they're
25 properly authenticated then you have no further objection.

SW - J. Ross - Proffer

1 MR. WATTS: Yes, sir, Your Honor, if they're properly
2 authenticated I have no problem.

3 MR. REDMOND: If I can make the proffer at this time,
4 Your Honor.

5 THE COURT: All right. Have her come around and let's
6 go ahead and take care of that.

7 MR. REDMOND: Doctor Ross, if you will step forward.
8 WHEREUPON,

9 **JANICE EDWARDS ROSS,**
10 having been duly sworn by the Deputy Clerk of Court,
11 testified as follows:

12 THE COURT: Come on up, Doctor Ross. This is going to
13 be limited at this time, Doctor Ross, just to the
14 authentication of these photographs.

15 THE WITNESS: Yes, sir.

16 **P R O F F E R E X A M I N A T I O N**

17 BY MR. REDMOND:

18 Q And let me show you, Doctor Ross -- with the Court's
19 permission to approach the witness.

20 THE COURT: Yes.

21 BY MR. REDMOND:

22 Q What's been marked as State's 32 through 40. I believe
23 that's nine photos. Could you look at those photos and
24 let me know when you're ready to answer a few questions.

25 A Yes, sir.

SW - J. Ross - Proffer

1 Q All right. Doctor Ross, who took those photographs?

2 A I did.

3 Q And were they taken at the autopsy on January 19th,
4 2007?

5 A Yes.

6 Q And did you perform the autopsy on the victim?

7 A Yes.

8 Q And at this point we'll develop it further when you're
9 actually testifying in front of the jury, but do those
10 pictures correspond with your testimony regarding the
11 injuries to the victim and the cause of death to the
12 victim Tyrone Brown?

13 A Yes, they do.

14 Q Okay.

15 MR. REDMOND: Your Honor, at this time we would
16 actually go ahead and move those into evidence.

17 MR. WATTS: No objection.

18 THE COURT: All right, be admitted into evidence as
19 State's Numbers 32 through 40 without objection. Give
20 them to the court reporter.

21 And thank you, Doctor Ross, you may step down. And we
22 can now proceed with the witness that was testifying at
23 the time that we took the recess. Bring in the witness
24 please.

25 ///

1 (WHEREUPON, the jury was returned to the courtroom at
2 approximately 4:02 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: All right. Thank you, ladies and
5 gentlemen, and all the jurors are present in the courtroom
6 and we are now ready to proceed. At the time that we took
7 the break the cross-examination of this witness was
8 proceeding by the defense. The video statement made by
9 this witness has been introduced into evidence and will be
10 published to you at this time.

11 All right, Mr. Watts, you may proceed.

12 MR. WATTS: Your Honor, at this time we move forward to
13 show the video statement.

14 THE COURT: All right.

15 MR. WATTS: Because he's more technologically advanced
16 than I, I was going to ask Mr. Captain Locklair to make
17 sure this thing runs.

18 (Defendant's Exhibit Number 5, the video statement of
19 Jamie Gilbert, was shown to the jury.)

20 THE COURT: All right, Mr. Watts.

21 MR. WATTS: Thank you, Your Honor, if it please the
22 Court, if I may continue.

23 BY MR. WATTS:

24 Q Jamie, earlier when you were testifying today before
25 ///

SW - J. Gilbert - Cross

1 that video was shown you said Bobby had the gun the whole
2 time, okay?

3 A Yes, sir.

4 Q And then in your statement you're saying you didn't
5 know who shot a gun; is that correct?

6 A Yes, sir.

7 Q Okay. And earlier you say that the brick just appeared
8 out of nowhere; is that correct?

9 A Yes, sir.

10 Q All right. And earlier you had testified was there
11 anything to do with the grocery bag before your earlier
12 testimony?

13 A Yes, sir.

14 Q In the statement, or when you were testifying in open
15 court?

16 A Both times.

17 Q Both times about a grocery bag?

18 A Yes, sir.

19 Q Okay. Is it your contention that a grocery bag at some
20 point was wrapped around Mr. Brown's head?

21 A Yes, sir.

22 Q Okay. At any time do you recall it being taken off?

23 A No, sir.

24 Q No. So as far as you know that that grocery bag should
25 have been there once the body was discovered; is that

SW - J. Gilbert - Cross

- 1 correct?
- 2 A Yes, sir.
- 3 Q Okay. You didn't have any compunction with running him
- 4 over, did you?
- 5 A I don't understand that word.
- 6 Q Okay. You didn't have a problem running over
- 7 Mr. Brown; is that correct?
- 8 A Yes, sir, I did but...
- 9 Q You did? Okay. And so all it took was supposedly for
- 10 someone to call you, to use your own words, a bitch, to
- 11 get you behind the wheel; is that correct?
- 12 A Yes, sir.
- 13 Q Okay. So that's all it took?
- 14 A Yes, sir.
- 15 Q Okay. I think you testified earlier you talking about,
- 16 you know, when you were asked questions about your use of
- 17 alcohol during the day and use of drugs and I think
- 18 specifically we're talking about marijuana, right?
- 19 A Yes, sir.
- 20 Q Okay. You said you had bought an ounce of marijuana?
- 21 A Yes, sir.
- 22 Q What day was that?
- 23 A That Wednesday.
- 24 Q That Wednesday?
- 25 A Yes, sir.

SW - J. Gilbert - Cross

- 1 Q All right. And you were smoking off that ounce of
2 marijuana and then you ended up buying more?
- 3 A Yes, sir.
- 4 Q How much do you smoke in a day or did you at the time?
- 5 A Approximately about 12 blunts a day, whatever. That
6 day right there I was just on and off.
- 7 Q Okay. So on that day you were actually smoking less
8 marijuana than you normally would?
- 9 A Yes, sir.
- 10 Q And you've admitted earlier, your testimony, you were
11 the one who changed the tags in the car; is that correct?
- 12 A Yes, sir.
- 13 Q And in your statement the first person you said changed
14 the tags was who?
- 15 A Was Bobby Gilbert.
- 16 Q First you said it was Bobby, right?
- 17 A Yes, sir.
- 18 Q And then you said it was who?
- 19 A It was me.
- 20 Q Did you say it was both of you?
- 21 A No, sir.
- 22 Q So you said it was Bobby first and then it was you?
- 23 A Yes, sir.
- 24 Q So you came back and then accepted that; is that
25 correct?

SW - J. Gilbert - Cross

1 A Yes, sir.

2 Q Okay. You said you feared for your own safety; is that
3 correct?

4 A Yes, sir.

5 Q And that's why you didn't try to do anything?

6 A Yes, sir.

7 Q Were you fearing for your own safety before or after
8 you ran over Mr. Brown?

9 A The whole time.

10 Q The whole time, okay. And after the 16th on to 17th,
11 okay, is that the day you went to Florence?

12 A Yes, sir.

13 Q Okay. And you said you were messing around with girls
14 all the time?

15 A Yes, sir.

16 Q And you were supposed -- I think you testified you were
17 with Mr. Gilbert; is that right?

18 A Yes, sir.

19 Q Were you scared then?

20 A No, sir, not really.

21 Q Okay. So you weren't scared of, from your own
22 statements, you were saying you weren't scared of Mr.
23 Gilbert any time Wednesday?

24 A No, sir.

25 Q You didn't have any problem engaging in robbing a drug

SW - J. Gilbert - Cross

1 dealer; is that correct?

2 A No, sir.

3 Q Okay. And you earlier testified that you were
4 unemployed at the time; is that correct?

5 A Yes, sir.

6 Q And you earlier testified that you weren't in school at
7 the time; is that correct?

8 A Yes, sir.

9 Q How did you get the money to buy an ounce of marijuana?

10 A I been had the money.

11 Q How did you get the money?

12 A Doing illegal things.

13 Q Doing legal things?

14 A Illegal?

15 Q Doing illegal things. Like what?

16 A Selling crack cocaine.

17 Q You were selling crack cocaine?

18 A Yes, sir.

19 Q Okay. How long had you been selling crack cocaine?

20 A I don't know. I don't keep count of that. I ain't
21 keep record of it but.

22 Q Were you selling crack cocaine prior to going over
23 staying at your aunt's house?

24 A No, sir.

25 Q So you started selling crack cocaine while you were

SW - J. Gilbert - Cross

1 staying at your aunt's house?

2 A Yes, sir.

3 Q Had you ever -- that was the first time you ever
4 started selling crack cocaine was when you went to live
5 with your aunt?

6 A No, sir.

7 Q Okay. So previous to with your aunt you had been
8 selling crack cocaine?

9 A Yes, sir.

10 Q Okay. I don't need exact dates, but about how long had
11 you been selling crack cocaine?

12 A I'd say about two or three months.

13 Q Two or three months?

14 A After I had got kicked out my mother's house.

15 Q So as soon as you got kicked out of your mother's house
16 that's when you started selling crack cocaine?

17 A Yes, sir.

18 Q Had you ever sold to anybody in Farmington?

19 A No, sir.

20 MR. WATTS: Beg the Court's indulgence for just one
21 moment.

22 THE COURT: Okay, sir.

23 BY MR. WATTS:

24 Q Earlier there had been some testimony you said you've
25 taken responsibility for your actions in this case; is

SW - J. Gilbert - Cross

- 1 that correct?
- 2 A Yes, sir.
- 3 Q Okay. And have you pled guilty to any charges in
- 4 relation to this case?
- 5 A Yes, sir.
- 6 Q Do you know what you've pled to?
- 7 A Yes, sir.
- 8 Q Okay. Tell me what you've pled to.
- 9 A Voluntary manslaughter, armed robbery, and grand
- 10 larceny.
- 11 Q Okay. Voluntary manslaughter?
- 12 A Armed robbery.
- 13 Q Armed robbery, and grand larceny?
- 14 A Yes, sir.
- 15 Q Okay. Have you been sentenced on these charges?
- 16 A No, sir. No, sir.
- 17 Q No, okay. When did you plead?
- 18 A Not last Wednesday but the Wednesday before last I
- 19 believe.
- 20 Q Relatively recent; is that correct?
- 21 A Yes, sir.
- 22 Q But you hadn't had a judge yet tell you how much time
- 23 you're going to do; is that correct?
- 24 A Yes, sir.
- 25 Q Okay. Where have you been housed since you were

SW - J. Gilbert - Cross

1 arrested in this matter, where have you been staying?

2 A You got to repeat the question again.

3 Q Since your arrest in 2007 where have you been staying
4 or located? Have you been in the Darlington County
5 Detention Center?

6 A Yes, sir.

7 Q Okay. The whole time?

8 A I got locked up on January the 23rd and like February
9 the 28th I was sentenced to DJJ for 90 days because of a
10 juvenile charge I had, which was simple assault and
11 battery and then that's when I came back to Darlington
12 County Detention Center on April 12th. I been there ever
13 since.

14 Q So April 12th of 2007?

15 A Yes, sir.

16 Q So you said you had a juvenile charge.

17 A Yes, sir.

18 Q Of what?

19 A Simple assault and battery.

20 Q Simple assault and battery. That involved a physical
21 altercation with somebody; is that correct?

22 A It was a sex charge reduced to a simple assault and
23 battery.

24 Q Okay. What was that? What was the original charge?

25 A Criminal sexual conduct.

SW - J. Gilbert - Cross

1 Q Okay. Is it criminal sexual conduct in a degree with a
2 minor or what?

3 A I think, yeah. It was, but I think it was second
4 degree. I could be wrong.

5 Q Okay. So you had -- your own statement you had a
6 criminal sexual conduct charge that was reduced down to a
7 simple assault and battery that you went down to DJJ and
8 since you've returned you've been housed at the Darlington
9 County Detention Center; is that correct?

10 A Yes, sir.

11 Q Have you seen Chris Samuels at the Darlington County
12 Detention Center?

13 A Yes, sir.

14 Q How -- where have you seen him?

15 A They had us in the same pod.

16 Q They got you in the same pod?

17 A They had us in the same pod.

18 Q Ah. They had you in the same pod. What pod was that?

19 A A-pod.

20 Q A-pod. And after you left A-pod where did you go?

21 A B-pod.

22 Q Have you ever seen Christopher Samuels in B-pod?

23 A No, sir.

24 Q Tell me about A-pod. How long were you in A-pod?

25 A The first time, because of the severeness of this

SW - J. Gilbert - Cross

- 1 charge I stayed there for six months. Then I got moved in
2 like August or September. In '07 they moved me to B-pod.
3 Then I be getting in some trouble back and forth so they
4 be sending me back and forth to B and A. Now I
5 permanently remain on B-pod now.
- 6 Q You get in trouble at the detention center?
- 7 A Yes, sir.
- 8 Q What kind of trouble were you getting in in the
9 detention center?
- 10 A Like, see they go by, if you have too many referral,
11 too many writeups then you will be classified into the
12 maximum pod, which is A-pod so that's why I was sent going
13 -- kept going back and forth over there.
- 14 Q And what were you getting written up for?
- 15 A Like kicking on the door and hollering out the door all
16 the time at night and stuff like that.
- 17 Q So even at the detention center you were still engaged
18 in activity that was getting you in trouble; is that
19 correct?
- 20 A Yes, sir.
- 21 Q I believe it was your earlier testimony that you have
22 not seen or talked to Mr. Samuels after the night of 16th
23 going into the 17th of 2007; is that correct?
- 24 A Repeat it again.
- 25 Q You've seen -- let me ask you this way. You've seen

SW - J. Gilbert - Cross

1 Mr. Samuels at the detention center; is that correct?

2 A Yes, sir.

3 Q Have you spoken with him?

4 A Yes, sir.

5 Q Okay. How many times do you think you've spoken with
6 Mr. Samuels?

7 A About two or three times at the most because they keep
8 us separated.

9 Q So did you ever discuss this case?

10 A No, sir.

11 Q What did you discuss when you were talking?

12 A I discussed that my cousin Smoky was with Bobby and
13 this whole situation was about the only thing concern or
14 not any way related to this case but that was just only
15 thing we really been talking about, and he know a couple
16 of people from Hartsville that I know.

17 Q Okay. So essentially the testimony is that even though
18 you're all charged with the same charges, when you had the
19 opportunity to talk you didn't discuss anything with this
20 case?

21 A No, sir.

22 Q Okay.

23 MR. WATTS: Your Honor, that's all the questions I
24 have.

25 THE COURT: All right. Redirect.

SW - J. Gilbert - Redirect

1 MR. REDMOND: Briefly, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MR. REDMOND:

4 Q The assault and battery that you pled to, was that
5 involving a juvenile?

6 A Yes, sir.

7 Q In other words, how old were you at the time?

8 A 16.

9 Q You were -- how old were you in January of '07?

10 A 17.

11 Q And how old were you at the time you got the charge?

12 A 17.

13 Q Okay, and at DJJ. And this was involving a juvenile,
14 right?

15 A Yes, sir.

16 Q I mean, somebody that was younger than you, right?

17 A Can you backtrack real quick.

18 Q Okay. Let me just ask you --

19 A Repeat the two questions again.

20 Q In other words, you were -- when you got the charge
21 from DJJ how old you when you got the charge with DJJ?

22 A I was 16.

23 Q And you were 16 at the time?

24 A Yes, sir.

25 Q And you were charged with having relations with someone

SW - J. Gilbert - Redirect

1 that was younger than you?

2 A Yes, sir.

3 Q Underage. But you were 16?

4 A Yes, sir.

5 Q And it was reduced to assault and battery, right?

6 A Yes, sir.

7 Q Just to clarify and put it in its proper context. Next
8 thing I want to ask you about was, he asked you some
9 questions about the grocery bag. Now do you know for sure
10 what happened to that grocery bag? Can you sit here and
11 say for sure that the grocery bag was not picked up by one
12 of the co-defendants?

13 A No, sir.

14 Q Okay. Now you also talk about being scared of Bobby,
15 the defendant, during the robbery. Let me ask you this,
16 you said you were scared. What was the reason that you
17 went along with this? Did you go along with this for a
18 robbery or did you go along with this for a murder?

19 A I went along for a robbery.

20 Q Okay. And at what point did you get afraid of the
21 defendant's actions, Bobby?

22 A When he picked up the brick, the concrete, the piece of
23 concrete. That's when I was like -- he started beating
24 him and he had a gun on his hip and the way he was looking
25 when he was doing it.

SW - J. Gilbert - Redirect

- 1 Q So at that point he was killing the victim?
- 2 A Yes, sir.
- 3 Q And that scared you?
- 4 A Yes, sir.
- 5 Q Because that's not what you went there for?
- 6 A No, sir.
- 7 Q All right. A couple of followup questions real quick.
- 8 Did you see anybody at the house when y'all first got to
- 9 Hilga Welsh's house? Did y'all -- do you know if she was
- 10 home?
- 11 A No, sir.
- 12 Q Did anybody come out of the house?
- 13 A No, sir.
- 14 Q And again, is everything that you've testified today
- 15 the truth?
- 16 A Yes, sir.
- 17 Q And the bottom line, the most important issue, who
- 18 hit -- who initiated, whose idea was it for the robbery?
- 19 A Bobby Gilbert's.
- 20 Q And who called Tyrone Brown to come pick y'all up at
- 21 Farmington?
- 22 A Bobby Gilbert.
- 23 Q And who was the one that took the gun out and started
- 24 the robbery?
- 25 A Bobby Gilbert.

SW - J. Gilbert - Recross

1 Q And who was the one that when y'all backed -- went
2 across the street, who was the one that took the cinder
3 block and hit the victim?

4 A Bobby Gilbert.

5 Q As a matter of fact, let me show you briefly what's in
6 evidence as State's Exhibit Number 5. Can you tell us
7 what this is?

8 A Same brick he used to hit Tyrone with.

9 Q Thank you. Who told you to run over the victim on
10 Cornfield Road?

11 A Bobby Gilbert.

12 Q Who helped you -- was Bobby Gilbert there when y'all
13 dumped Mr. Brown?

14 A Yes, sir.

15 Q And were you with Bobby Gilbert at the time y'all left
16 and road around as you described in Tyrone Brown's
17 vehicle?

18 A Yes, sir.

19 MR. REDMOND: Your Honor, I have nothing further at
20 this time.

21 THE COURT: Recross? Or redirect, I'm sorry.

22 **RECROSS-EXAMINATION**

23 BY MR. WATTS:

24 Q You said you got scared when allegedly Bobby was the
25 one who picked up this brick and hit Mr. Brown with it; is

SW - J. Gilbert - Recross

1 that correct?

2 A Yes, sir.

3 Q Okay. Did he ever threaten you with the brick?

4 A No, sir.

5 Q Okay. Did he ever make any move at you supposedly?

6 A No, sir.

7 Q But it's just the fact that he had that is what made
8 you scared?

9 A Yes, sir.

10 Q But you weren't scared enough to not ride around with
11 him, correct?

12 A Yes, sir.

13 Q You didn't feel bad enough to take the decedent's
14 vehicle; is that correct?

15 A No, sir -- yes, sir, that's correct.

16 Q You didn't feel bad enough so you did take it?

17 A I didn't feel bad.

18 Q You didn't feel bad at all?

19 A No, sir, not at the time.

20 Q How old was the other individual in relation to that
21 DJJ charge?

22 A I had like four or five co-defendants.

23 Q Well, wait a minute. I'm not talking about your
24 co-defendants.

25 A Oh, you said how old was the ---

SW - J. Gilbert - Recross

- 1 Q The DJJ charge. the girl?
- 2 A The victim?
- 3 Q The victim?
- 4 A Okay, she was 14 or 14.
- 5 Q 13?
- 6 A I'm not for sure.
- 7 Q Don't know?
- 8 A I ain't for sure. I think it was 13 or 14.
- 9 Q You testified it wasn't you who hit Mr. Brown; is that
- 10 correct?
- 11 A Yes, sir.
- 12 Q And your earlier testimony you said that, you know,
- 13 where were you at when Mr. Brown was being struck? Where
- 14 were you in relation to the car?
- 15 A Standing behind it.
- 16 Q Standing behind it, okay. And how far away were you
- 17 from Mr. Brown?
- 18 A About from here to you.
- 19 Q Okay. And so you're at the back of the car and this is
- 20 approximately the area where Mr. Brown is getting hit.
- 21 A Yes, sir.
- 22 Q Correct? By your testimony. Were the keys still in
- 23 the ignition of the car?
- 24 A Yes, sir.
- 25 Q Okay. And at that point that's when you say you got

SW - J. Gilbert - Recross

1 scared, ---

2 A Yes, sir.

3 Q ---correct? Okay. Whey didn't you leave?

4 A Not thinking. Ain't too many places I can go if I live
5 with him.

6 Q Okay. Well, I mean, you already said that you'd gotten
7 kicked out of that house; isn't that correct?

8 A That's what I'm saying so where could I go.

9 Q But you were planning on staying at the Poolers; isn't
10 that correct?

11 A He know I live -- he was there with me the whole time.

12 Q If you were scared you only intended to be there for a
13 robbery and that was your intent then you could have
14 called the police at the Poolers, right?

15 A Yes, sir.

16 Q You could have told them right then you were scared
17 because this is what's happened, you didn't have anything
18 to do with it; is that correct?

19 A Yes, sir.

20 Q And but you didn't leave?

21 A No, sir.

22 Q Did a -- common or frequent kind of thing for you if
23 anybody else says they want to engage in some kind of
24 criminal activity you're going to argue, want to be right
25 there with them?

SW - J. Gilbert - Recross

1 A No, sir.

2 Q So now your testimony you're saying that this all
3 started by supposedly Mr. Gilbert saying he was going to
4 get somebody back.

5 A Yes, sir.

6 Q Okay. You argued with him. You said you wanted to go;
7 is that correct?

8 A Yes, sir.

9 Q What were your expectations that were going to happen?

10 A To go rob the victim and get money from him.

11 Q Okay. And how were you going to deal with, you know,
12 if you took his money what were going to do with it?

13 A Spend it.

14 Q Okay. Spend the money but if -- you were in this
15 victim's car and you were going to rob him. What were you
16 going to do with the victim after you robbed him?

17 A That was left up to Bobby. We never discussed that.

18 Q Oh, that was left up to Bobby. You hadn't given it any
19 thought?

20 A He ain't knew me and I didn't know him so I knew he
21 couldn't come back to me.

22 Q You knew he couldn't come back to you?

23 A The victim, yeah.

24 Q And I think you earlier testified at some point you got
25 sprayed by mace; is that correct?

SW - J. Ross - Direct

1 A Yes, sir.

2 Q He get you in the eye?

3 THE COURT: I believe, Mr. Watts, I believe we're
4 getting outside the scope of redirect examination.

5 MR. WATTS: Yes, Your Honor. No further questions,
6 Your Honor.

7 THE COURT: All right. Thank you. You may step down.

8 Counsel, let me see you just a moment please.

9 (WHEREUPON, counsel approached the Bench for an
10 off-the-record discussion.)

11 THE COURT: All right, call your next witness,
12 Mr. Kernard.

13 MR. REDMOND: The State would next call Doctor Janice
14 Ross, Janice Ross.

15 THE CLERK OF COURT: Place your left hand on the Bible,
16 raise your right hand.

17 WHEREUPON,

18 **JANICE EDWARDS ROSS,**

19 having been duly sworn by the Clerk of Court, testified as
20 follows:

21 THE CLERK OF COURT: Be seated in that chair.

22 **DIRECT EXAMINATION**

23 BY MR. REDMOND:

24 Q Doctor Ross, would you state your name for the record.

25 A Janice Edwards Ross.

SW - J. Ross - Direct

1 Q And where do you work at this time?

2 A In Newberry, South Carolina, in Newberry Pathology
3 Associates.

4 Q And how long have you worked there?

5 A Since May of 2000.

6 Q And what -- in what capacity do you work there?

7 A I'm a hospital pathologist and forensic pathologist.

8 Q Okay. And what -- what is a forensic pathologist?

9 A Forensic, we as a physician, we go through four years
10 of college and four years of medical school and then four
11 years of training in pathology. So we have a bachelor's
12 degree, an M.D., and then further training in pathology
13 which is the study of disease. We learn how to look at
14 tissues from you from surgery, for instance, to identify
15 and diagnose cancers or leukemias. We use laboratory work
16 to help make diagnoses of diseases. We are trained to do
17 an autopsy to find out a cause of death. A forensic
18 pathologist uses all that knowledge for in the legal
19 manner to identify patterns of injury and to look at,
20 identify homicides, suicides, and accidents.

21 Q Now let me ask you this, Doctor Ross, could you tell
22 the jury a little bit about your educational background.

23 A Yes. I have a bachelor's degree from University of
24 South Carolina in biology and I have an M.D. from Upstate
25 Medical Center in Syracuse, New York.

SW - J. Ross - Direct

1 Q Okay.

2 A I did my pathology residency in Upstate Medical Center
3 in Syracuse, New York.

4 Q And could you tell us about your experience since, I
5 guess, since you became a physician. Could you tell the
6 jury your experience.

7 A Yes. I've been a hospital based pathologist for 33
8 years. I've also been an elected coroner. I've been a
9 medical examiner. I've been a chief medical examiner.
10 And in Newberry we are hospital pathologists, plus we do
11 autopsies for coroners, coroners of the state. We do --
12 any county coroner who wants us, to hire us to do the
13 autopsy, can call us.

14 Q Okay. Now how many times have you, if you can
15 estimate, how many times would you say you've been
16 qualified as an expert to testify in court?

17 A In the state of South Carolina over 60 times.

18 Q And if you can guesstimate how many autopsies would you
19 estimate that you've done in your career?

20 A Close to 6,000.

21 Q Okay.

22 MR. REDMOND: Your Honor, at this time I would move to
23 have Doctor Ross qualified as an expert in the field of
24 forensic pathology.

25 THE COURT: Voir dire with regard to qualifications,

SW - J. Ross - Direct

1 Mr. Watts?

2 MR .WATTS: None, Your Honor.

3 THE COURT: All right. The Court will qualify the
4 doctor as an expert in the field of forensic pathology.

5 Ladies and gentlemen of the jury, let me tell you what
6 that means. Ordinarily if a witness is not testifying as
7 an expert the witness's testimony in the form of opinions
8 or inferences is limited to those opinions or inferences
9 which are based upon the perception of the witness; that
10 is, one of the five senses, and are helpful to a clearer
11 understanding of the witness' testimony and do not require
12 special knowledge, skill, experience, or training.
13 However, if scientific, technical, or other specialized
14 knowledge will assist the trier of fact, and that's you in
15 this case, to determine a fact in issue or to understand
16 the evidence, then a witness qualified as an expert may
17 give an opinion. So basically the difference between a
18 nonexpert witness and an expert witness is that an expert
19 witness is allowed to give an opinion, whereas, ordinarily
20 a nonexpert witness is not allowed to give an opinion.
21 And I have qualified the doctor in this case as an expert
22 in the field of forensic pathology.

23 MR. REDMOND: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 MR. REDMOND: Thank you, Your Honor.

SW - J. Ross - Direct

1 THE COURT: All right.
2 MR. REDMOND: May it please the Court.
3 THE COURT: Yes, sir.
4 MR. REDMOND: If I may approach the witness, Your
5 Honor, ---
6 THE COURT: Yes, sir.
7 BY MR. REDMOND:
8 Q ---with what has been marked as State's Exhibit Number
9 6. And I ask you, is that the report that you prepared?
10 Is that the amended report that you prepared regarding
11 this case?
12 A Yes, it is.
13 Q Okay. And let me ask you this, did you prepare that
14 report?
15 A Yes.
16 Q Okay.
17 MR. REDMOND: At this time, Your Honor, I would ask it
18 be introduced as State's Exhibit 6. I don't think it's
19 been introduced yet.
20 THE COURT: All right. It has not. Any objection,
21 Mr. Watts?
22 MR. WATTS: No objection, Your Honor.
23 THE COURT: All right. Admitted into evidence as State
24 Number 6 without objection.
25 ///

SW - J. Ross - Direct

1 (WHEREUPON, State Exhibit No. 6 was admitted into
2 evidence.)

3 BY MR. REDMOND:

4 Q And let me ask you, on the 19th of January of 2007 did
5 you have the opportunity to perform an autopsy on Tyrone
6 Brown?

7 A Yes, I did.

8 Q And pursuant to that autopsy did you make findings that
9 led you to the cause of death?

10 A Yes.

11 Q Okay. And we'll get to that shortly but, let me ask
12 you this. Could you explain your findings as it relates
13 to the injuries that resulted from the -- let me back up.
14 What were you informed was the nature of the incident?

15 A I was told at the time by the coroner that the -- this
16 30 year old black male was found nude near a dirt road,
17 was -- some clothing was present next to him. He was
18 found on the night of January 18th, 2007 and had last been
19 seen alive on January 16th, 2007. Allegedly the witness
20 or, slash, perpetrator stated that the victim had been hit
21 on the head and then run over. He was then transported to
22 the site where he was found in the trunk of a vehicle.

23 Also by history the victim is a transvestite.

24 Q Okay. Now let me ask you this. Did you perform this
25 autopsy?

SW - J. Ross - Direct

1 A Yes.

2 Q And did you make findings regarding the cause of death?

3 A Yes.

4 Q And could you explain your findings in the context of
5 the information you were given from Darlington County
6 regarding this matter?

7 A Well, in the -- during the process of an autopsy we
8 look externally at the body and we identify injuries. No
9 matter what story was told us we just identify what was on
10 the body. So we -- I saw several injuries externally, a
11 lot of bruising and abrasions over the face, forehead,
12 both cheeks, the back of the head, the back -- right side
13 of the head. There were abrasions over the chest and over
14 the back, over the arms, the -- both upper arms were
15 fractured. The left upper leg was fractured. There were
16 a lot of -- there were lacerations and abrasions --
17 abrasions over the lower extremities. Then from the
18 internal examination you could also see that the base of
19 the skull was partially fractured. There was some
20 bleeding around the brain. There was some bruising of the
21 brain. There was -- there were several ribs fractured
22 with very little hemorrhage internally.

23 Q Now, and let me ask you some, I guess, more direct
24 questions regarding the injuries. His legs, were there
25 any fractures noted to either of his legs from what you

SW - J. Ross - Direct

1 got in your report?

2 A Yes. The left thigh bone was fractured.

3 Q Okay. And how about as it relates to his sternum?

4 A His sternum chest plate was fractured along with the
5 ribs.

6 Q And was there a pelvic fracture suffered by the victim?

7 A Excuse me?

8 Q Was there a pelvic fracture suffered --

9 A Pelvic, yes.

10 Q --by --

11 A Yes.

12 Q Now as it relates to the hemorrhaging in the eyes, I
13 believe there was some hemorrhaging in the eyes from what
14 I saw in report. Could you explain that to the jury, the
15 significance of that.

16 A Yes. In one eye, I think it was the left eye, there
17 was some actual bruising. In the right eye there was some
18 what we call petechia, which are little tiny red dots
19 caused by an increase in pressure in capillaries. They're
20 little tiny blood vessels that pop open and cause little
21 bleeding. They're very tiny so it ends up looking like
22 little red dots. And these -- this is caused most
23 commonly by an asphyxiation or choking kind of mechanism
24 or something wrapped around the head and neck.

25 Q Something wrapped around the head and neck. Did I hear

SW - J. Ross - Direct

1 you correctly when you said that?

2 A Yes, or a choking move.

3 Q Okay. Now based upon -- obviously would you term these
4 injuries as being significant and extensive?

5 A Yes.

6 Q Okay. And based upon your examination of the victim in
7 this case what did you determine to be the cause of death
8 in this case?

9 A The, first of all, the injuries to the head and some of
10 the upper chest were hemorrhagic so that told me that the
11 blood was still circulating at the time those injuries
12 occurred. Some of the other injuries in the lower part of
13 the body, the chest and the lower extremities, didn't have
14 that hemorrhage so the cause of death was the cerebral
15 contusion or the bruising of the brain and the fractured
16 skull due to the blunt force injury of the head due to the
17 beating.

18 Q And if I may ask you, with the term regarding a cause
19 of death, a cerebral contusion, could you explain what
20 that means to the jury.

21 A The word contusion refers to a bruise. Organs can
22 bruise just like skin, and if you hit yourself and you're
23 crushing little vessels underneath the skin you get a
24 bruise. It turns purple and then yellow and green. Well,
25 that kind of thing can happen to the brain also. If

SW - J. Ross - Direct

1 you're hit in the head and the brain is forced back and
2 forth and hits against the inside of the skull then it can
3 bruise the surface of the brain.

4 Q And what kind of results could that have to a human
5 being such as this case with Tyrone Brown? How, what
6 effect would that have?

7 A Well, unconsciousness and death.

8 Q Okay. And as to the fractured skull too, could you
9 explain, I guess, the significance of the fractured skull.

10 A There's a fracture of one side of the base of the
11 skull. This means that the significant force on the skull
12 to cause that fracture.

13 Q Okay. Significant force would be necessary to cause
14 that type of fracture?

15 A Yes.

16 Q Okay, thank you. Now I also saw on your report where
17 the other injuries are -- the other injuries talk, I guess
18 talk about postmortem running over by a vehicle. Could
19 you explain those particular findings?

20 A Well, there's injuries on the lower body, the lower
21 chest, the abdomen, the lower extremities, the back. As I
22 said, the scrapes of the skin looked yellow instead of red
23 so there's no reaction to it; there was no circulation.
24 And those types of injuries are consistent with being run
25 over after a death.

SW - J. Ross - Direct

1 Q And when you say "postmortem" does that mean after
2 death?

3 A Yes.

4 Q Okay. Did you amend your report, I guess the report
5 that we've got is an amended report. Could you explain to
6 the Court, to the jury, why you amended your particular
7 report, your initial report?

8 A Yes. In preparation for court previously almost a year
9 ago I in reviewing the case we realized that there were
10 some typographical errors and some errors in the report
11 that, for instance, there -- I had put down that there was
12 an injury, a certain injury on the left arm but it was on
13 the right. And I had in the written report there was
14 written that the appendix was present, but on my evidence
15 form from the autopsy it was specifically stated the
16 appendix was not present. There were a few errors like
17 that.

18 Q Okay. And but did any of those errors change your
19 opinion as to the cause of death?

20 A No, they did not.

21 Q And did they change the nature of the injuries that you
22 actually observed when you examined Tyrone Brown?

23 A No, they did not.

24 Q Now did you -- did law enforcement bring, I believe, a
25 T-shirt and a pair of jeans along with them to the

SW - J. Ross - Direct

1 autopsy?

2 A Yes.

3 Q And were those items returned back with law
4 enforcement?

5 A Yes.

6 Q And was that person Russ Harrell who collected the
7 evidence and carried it back from Newberry?

8 A Yes.

9 Q And now did you draw any samples for toxicology tests?

10 A Yeah.

11 Q And other tests in toxicology, DNA, did you collect
12 those items?

13 A Yes.

14 Q And could you explain to the jury what you collected
15 and who you turned it over to?

16 A Yes. We collected blood, bile, vitreous which is fluid
17 from the eye, gastric fluid, some -- a little small sample
18 of brain tissue, small sample of liver tissue, and swabs
19 of penis, mouth, and rectum for rape kit and DNA.

20 Q Okay. And how many vials total of blood work collected
21 -- or, well let me ask you blood. How many vials of blood
22 were collected and turned over to Deputy Harrell, Russ
23 Harrell?

24 A Total of three.

25 Q And how many other specimens total did you turn over to

SW - J. Ross - Direct

1 Russ Harrell?

2 A One tube of bile, one tube of vitreous, one bottle of
3 gastric, one bottle of brain, one bottle of liver, and
4 then the swabs for the rape kit.

5 Q Okay. And again, who did you turn those items over to?

6 A Russell Harrell.

7 Q Okay, and -- beg the Court's indulgence. Well let me
8 just ask you this. Hypothetically, since you've been
9 qualified as an expert -- and actually you've been in --
10 you've had a chance to hear the testimony today; haven't
11 you?

12 A Yes.

13 Q And based upon the nature of what occurred, what we
14 allege occurred, is that consistent in your opinion with
15 the injuries that you saw, the fact that he was hit with a
16 block several times, possibly as many as six, the fact
17 that he was then run over, the fact that he was beat up on
18 before that, are those consistent with the injuries that
19 you saw when you examined Tyrone Brown?

20 A Yes.

21 Q Okay.

22 MR. REDMOND: Your Honor, at this time I have
23 nothing -- oh, yes, I do. I got the pictures.

24 BY MR. REDMOND:

25 Q And Doctor Ross, if I could, with the Court's

SW - J. Ross - Direct

1 permission.

2 THE COURT: Yes, sir.

3 MR. REDMOND: Ask Doctor Ross to step down and ---

4 THE COURT: Yes, sir.

5 BY MR. REDMOND:

6 Q Doctor Ross, I think -- you're more soft spoken than I
7 am.

8 THE COURT: She needs to be facing the court reporter.

9 MR. REDMOND: Court reporter so...

10 THE COURT: You need to be on the other side.

11 BY MR. REDMOND:

12 Q If you will turn this away and could you explain -- and
13 these already in evidence. State's Exhibit 32, could you
14 tell the jury what that picture, what's the significance
15 of that picture.

16 A Yes. This will show you some redness of the injury on
17 the head as opposed to some, one on the chest, as opposed
18 to these further down that are not that red and yellow
19 base that I talk about being after death.

20 Q And now I'm going to show you State's Exhibit 33.

21 A That's a closer picture of the postmortem injuries.

22 This one is a little redder than up on the top of the
23 chest, but these are not so red.

24 Q State's Exhibit 34.

25 A This is the victim's back. You can see how this one

SW - J. Ross - Direct

1 injury on the right back is a little redder. These on the
2 lower buttocks and all are yellow based.

3 Q And are these injuries consistent with having been run
4 over?

5 A Yes.

6 Q By a vehicle?

7 A Yes.

8 Q Okay. And I show you State Exhibit 35.

9 A Similar, a yellow base abrasion as opposed to these
10 that were on the upper chest area, a more reddish color.

11 Q And now I'm going to show you State's Exhibit 36.

12 A This is the right eye; and these are those little red
13 dots I was talking about, the petechia.

14 Q Okay. And is this petechia, is that evidence of some
15 type of strangulation, choking, or a bag being placed over
16 someone's head?

17 A That's one way it can be defined.

18 Q Okay.

19 A There's some redness on his face abrasions too.

20 Q Thank you, ma'am. And Doctor Ross, let me give you
21 State's Exhibit 37.

22 A This is the left eye. You can see actual bruising of
23 the eye itself. It's more red base abrasions on the
24 forehead.

25 Q Now I'm going to show you what is marked as State's

SW - J. Ross - Direct

1 Exhibit 38. If you will explain the nature of this
2 picture and then explain what injuries are consistent with
3 this picture.

4 A All right. This -- in order to look at the scalp
5 underneath the scalp we have to reflect the skin and these
6 are red based abrai-- bruises on the left side of the
7 head.

8 Q And State's Exhibit 39.

9 A This will be the right side of the head. There's a lot
10 more bruising underneath the skin. The ear is here so
11 this is the back, the side.

12 Q And finally State's Exhibit 40.

13 A This is after we take the brain out and we look at the
14 base of the skull. It shows the fracture line base of the
15 skull.

16 Q Thank you, Doctor Ross, you may please take your seat.

17 A (Witness complies.)

18 MR. REDMOND: Beg the Court's indulgence, Your Honor.

19 THE COURT: Yes, sir.

20 MR. REDMOND: Your Honor, that'd be all the questions
21 that I have for Doctor Ross. Please answer any questions
22 that Mr. Watts might have.

23 THE COURT: All right, thank you.

24 Cross-examination of Doctor Ross, Mr. Watts?

25 MR. WATTS: Thank you, Your Honor.

SW - J. Ross - Cross

CROSS-EXAMINATION

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BY MR. WATTS:

Q Doctor Ross, when did you prepare your first report please?

A When?

Q Yes, ma'am.

A It would be right after the autopsy. I dictated it and then -- it went out -- the original went out on June -- the original would have gone out a few days after the autopsy.

Q When did the autopsy occur?

A January 19th, 2007.

Q Okay. So within the month of January 2007 you believe your report had gone out regarding your findings; is that correct?

A Yes.

Q Okay. And just to be clear, when did you prepare your amended report?

A It was amended on July 16th, 2008.

Q July 16th of 2008?

A Yes.

Q Okay. Did you have an opportunity to reexamine the body or had you just run off your notes for the --

A That's when I got the subpoena for the case earlier, the case that was supposed to go to trial. Let me see if

SW - J. Ross - Cross

1 I have that subpoena. So I reviewed the case at that
2 time.

3 Q Okay. And so in July you reviewed the case. It wasn't
4 until that time that you discovered these discrepancies?

5 A Correct.

6 Q Okay. And I think earlier you classified them as kind
7 of typographical; is that correct?

8 A Well, both typographical and errors of not checking the
9 photographs while I was proofreading the case.

10 Q So you weren't checking what you had when you were
11 writing your first report; is that correct?

12 A Correct.

13 Q And so the mistakes, I mean, the amended versus the
14 original, I mean, we're talking about left and right; is
15 that correct?

16 A Correct.

17 Q So you're indicating injuries or abrasions on the left
18 when it really was the right; is that correct?

19 A On one, on one injury.

20 Q And I think you indicated that you did an internal
21 review of the organs; is that correct?

22 A Yes.

23 Q Okay. And how far did you go in your internal review?

24 Did you in -- look at every organ inside the body or did
25 you stop at the chest cavity?

SW - J. Ross - Cross

- 1 A Oh, we look at every organ in the body.
- 2 Q And on your original report did you indicate whether
- 3 the appendix was present or absent?
- 4 A I indicated it was present.
- 5 Q Okay. And on the amended report what does it indicate
- 6 about the appendix?
- 7 A It is not present.
- 8 Q Okay. That was one of the areas that you did look at
- 9 when you were conducting your autopsy; is that correct?
- 10 A Yeah. The notes from the autopsy itself shows that
- 11 the -- has it written that the appendix is not present.
- 12 Q Okay. But that didn't make the report that you were
- 13 submitting, is that correct, in this matter, the initial
- 14 report?
- 15 A Correct.
- 16 Q Okay. And there's a lot of graphic information we're
- 17 all having to deal with in this case, but the one other
- 18 question I have, when you performed an exam did you
- 19 examine the genitalia?
- 20 A Yes.
- 21 Q Okay. And how did you list the genitalias? How did
- 22 you report that area as being in your initial report?
- 23 A Well, I don't specifically address them but we don't
- 24 take the testicles out in every case.
- 25 Q Okay. Perform a visual examination?

SW - J. Ross - Cross

1 A Yes.

2 Q Okay. And you had taken swabs from the general area;
3 is that correct?

4 A From the penis, yes.

5 Q Okay. Took swabs from the penis so that's in close
6 proximity in the other sexual organs in that area; is that
7 correct?

8 A Yes.

9 Q So it's safe to say you were able to at least visually
10 view that area; is that correct?

11 A Yes.

12 Q Okay. And I believe in your first report you listed
13 that as a genitalia, those of a circumcised adult male; is
14 that correct?

15 A Yes, I did, yes.

16 Q And in your amended report, I believe that's Page 3 of
17 5 and I believe it has been entered. You have that in
18 front of you?

19 A Yes.

20 Q And how are you describing genitalia in that amended
21 report?

22 A Those of a circumcised adult male.

23 Q Okay. And if I may present this to you. This, I
24 believe, has already been entered into evidence as State's
25 Exhibit 7. Can you look, take a look at that for a

SW - J. Ross - Cross

1 second, and I'll give you a minute to review that.

2 (Pause.)

3 BY MR. WATTS:

4 Q Have you had an opportunity?

5 A Yes.

6 Q Okay. And if you would let me look along with you.

7 Can you tell me what is listed as far as scars and marks
8 and tattoos. Can you read that out to me please, ma'am.

9 A Birthmark on left cheek. And quotation marks, patch of
10 grapes.

11 Q Okay.

12 A Appendix removed, scar on one of the shoulders, one
13 testicle removed.

14 Q Okay, thank you. Is that normal genitalia to have one
15 testicle removed?

16 A No, it is not.

17 Q Okay. Do you know what the birthmark, a patch of
18 grapes, do you know what that refers to? Have you ever
19 heard that terminology before?

20 A I assume it's a type of nevus.

21 Q Okay. And a nevus is what?

22 A Well, it's a pigmented area of the skin.

23 Q And what is the distinction, I guess we're talking
24 about a 30 year old black male. What would be the
25 difference that a nevus would cause or create based on

SW - J. Ross - Cross

1 your opinion? How would that be effected, or how would it
2 look?

3 A Like a deeply pigmented area or ---

4 Q Darker or lighter?

5 A Well, it can be both, either one.

6 Q Okay. During your examination did you see any other
7 areas that look like may be a nevus, areas of darker or
8 lighter pigmentation on Mr. Brown?

9 A I don't -- I don't note one, no.

10 Q Okay. You don't note any?

11 A Huh-uh.

12 Q Earlier, talking about a lot of significant injuries in
13 this matter. The majority are a significant amount of
14 fractures in the legs, sternum, ribs, and pelvis; is that
15 correct?

16 A Yes.

17 Q Okay. And regarding the hemorrhaging in the eyes I
18 think you earlier talked about petechia with an increase
19 in pressure. Is that what causes petechia?

20 A That's one thing that can cause it, yes.

21 Q Okay. So an increase of pressure such as the weight of
22 an automobile on the skull, could that cause petechia?

23 A That can.

24 Q Okay. Earlier you talked about cerebral contusion and
25 I think you said the result of a cerebral contusion would

SW - J. Ross - Cross

1 be unconsciousness and death; is that correct?

2 A Yes.

3 Q Okay. If someone is suffering from a -- is that
4 immediate?

5 A Not necessarily.

6 Q On impact?

7 A Not necessarily, no.

8 Q So if it's not immediate that means that they could
9 still have some blood pumping, the heart would be still
10 running, there's still the opportunity for blood flow
11 throughout the body; is that correct?

12 A Yes, yes.

13 Q Okay. Is there any way that you can be absolutely
14 certain that any injuries to the head didn't come from the
15 force or impact with the automobile rather than any other
16 object?

17 A That could be in addition to, yes.

18 Q Okay. In addition to?

19 A The head trauma was while he was alive and was -- the
20 pattern, there was no specific pattern of injury except
21 for his right side of the head which is consistent with
22 being hit with something flat.

23 Q Okay. And there's no way for you to identify anything
24 exactly what flat object it could be, correct?

25 A Correct.

SW - J. Ross - Cross

1 Q Okay. And as far as you know it could have been a flat
2 surface in an automobile; is that correct?

3 A Correct.

4 Q There's been prior testimony -- and I'm not sure if you
5 heard or not but, were you in the courtroom when the
6 testimony about the number of times that Mr. Brown had
7 been struck with the vehicle backing up, going forward?
8 Were you present for that?

9 A Yes.

10 Q Okay. Is it a possibility that Mr. Brown being struck
11 the first time with the vehicle could have had the
12 significant force to cause a fracture as you've indicated
13 due to the impact with the car initially?

14 A It's possible.

15 Q Okay. And is it possible that even if that significant
16 force had been applied through impact with the car that he
17 would still be alive and his organs and blood still
18 pumping after that impact, is that possible?

19 A Ask me that again, I'm sorry.

20 Q Okay. You said it's -- that the cranial contusion and
21 severe fracture at the base of the skull could have been
22 caused from impact with an automobile; is that correct?

23 A Yes.

24 Q And it is not for certain that that impact would
25 necessarily cause immediate death or not; is that correct?

SW - J. Ross - Cross

1 A Correct.

2 Q Okay. So it is possible that after the first impact
3 with a vehicle Mr. Brown could have had significant
4 traumatic injury that could lead to his death from the
5 first, but still be alive and have his organ, his heart
6 pumping blood through the rest of his body; is that
7 correct?

8 A Yes.

9 Q And then subsequent impacts from the vehicle could also
10 cause some of the other damage that you described in your
11 report; is that correct?

12 A Yes.

13 Q Okay.

14 MR .WATTS: Beg the Court's indulgence for one moment,
15 Your Honor.

16 THE COURT: Yes, sir.

17 BY MR .WATTS:

18 Q How many autopsies are typically ongoing or are you
19 performing at one time in any given day?

20 A Usually we do one at a time.

21 Q One at a time? Are all of the deceased that you
22 perform the autopsies on are they in one room, are you
23 going down a line to perform one at a time, or do you keep
24 them all in separate rooms or what's the area? Describe
25 the area where you perform your autopsy.

SW - J. Ross - Redirect

1

2 A We have two autopsy tables. We may have two persons
3 out but we work on one at a time.

4 Q Okay. How many autopsies are you responsible for at
5 any specific time? Is there any cap on how many you can
6 have ongoing at one point in time?

7 A It's just what, what comes in that day.

8 Q Okay. So ---

9 A We -- we're called by the coroner. We schedule them
10 usually at least an hour apart depending on what kind of
11 case it is. If it's very complicated we'll schedule the
12 next one a couple of hours or later.

13 Q How many autopsies in a normal day would you perform on
14 average?

15 A Two.

16 Q Two.

17 MR. WATTS: No further questions, Your Honor.

18 THE COURT: Redirect.

19 MR. REDMOND: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. REDMOND:

23 Q I show you what's been marked as State's Exhibit Number
24 5. Regarding -- and I'll just tell you, I'm going to ask
25 you in reference to the injuries to the head that you

SW - J. Ross - Redirect

1 observed and noted in your report. Would this concrete
2 block cause injuries consistent with your findings?

3 A In some of the head, yes.

4 Q Okay. And would other of the head injuries be
5 consistent with say being beat up, hit, punched, or
6 whatnot, or kicked?

7 A Yes. There were injuries on both sides of the cheek,
8 both cheeks, both sides of the forehead so there were
9 multiple individual injuries.

10 Q Okay. Now the bottom line is, are the injuries – and
11 of course, you were in the courtroom during some of the
12 testimony of one of the witness Mr. Gilbert. The course
13 of conduct that he described, would that be consistent
14 with your findings? The blows to the head, the running
15 over with the vehicle, would that be consistent with your
16 findings?

17 A Yes.

18 MR. REDMOND: And nothing further, Your Honor.

19 THE COURT: Recross.

20 MR. WATTS: Beg the Court's indulgence. Nothing
21 further, Your Honor.

22 THE COURT: All right. Thank you, Doctor Ross. You
23 may step down.

24 MR. REDMOND: And we'd ask that she be excused and
25 allowed to return to Newberry.

1 THE COURT: Any objection, Mr. Watts?

2 MR. WATTS: No objection, Your Honor.

3 THE COURT: You are released. Thank you for coming,
4 Doctor.

5 All right, ladies and gentlemen, we have reached about
6 5:30 in the evening, and I think it is appropriate that we
7 recess for the evening at this time. And we are going to
8 do so, and I'm going to send you to your homes and
9 families. Again, I have certain admonitions that I want
10 to repeat. Do not discuss this case with anyone while
11 you're away from the courthouse. Do not allow anyone to
12 discuss it with you. And when you are reassembling in
13 your jury room tomorrow morning do not discuss it among
14 yourselves. It's still premature for you to begin any
15 discussion about the facts in this case. I would also
16 again caution you against any exposure to any media
17 stories regarding this matter, either television or
18 newspaper or internet, or anything else. If there is
19 anything on the television simply turn that off and do not
20 listen to it, or if there's anything in the newspaper
21 simply put that story down and do not -- do not read it.
22 And also, do not do any research or look at any stories
23 that might appear on the internet. And as I said, the
24 reasons for that are pretty self-apparent. You've got to
25 base this case based upon what you hear in this courtroom

1 and not on the basis of anything else that you might be
2 exposed to.

3 So with those admonitions I am going to excuse you.
4 I'm going to ask you to do one other thing for me, and
5 that is, in the morning when you're reassembling if you
6 would all try to be here about 9:15 we'll start 9:30, if
7 you could get here a few minutes early. I'm gonna ask
8 that the 12 of you who are the principal jury in this
9 matter select one to be the foreperson of this jury. The
10 two alternates should not participate in that vote, but
11 the 12 of you should select a person among yourselves who
12 would serve as foreperson of this jury and be prepared to
13 advise me of that when we start in the morning at 9:30.
14 And of course the foreperson will sit in the first seat on
15 the front row. So with those admonitions then I'm going
16 to excuse you now, ask you to go -- I mean, allow you to
17 go to your homes and families please be back tomorrow
18 morning a little bit before 9:30 in time to elect a
19 foreman but ready to start trial at 9:30. Thank you. You
20 may go.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 5:30 p.m., and the following proceedings
23 commenced in open court.)

24 THE COURT: All right. Again, Counsel, before we
25 adjourn I want to give the jury an opportunity to clear

1 the courthouse before we recess and so this is a good
2 opportunity, Mr. Watts, for me to talk with the defendant
3 about his Fifth Amendment rights so that he will have an
4 opportunity to talk with you before he has to make a
5 decision in that regard. But I do -- would like to go
6 ahead and do that at this time.

7 I would therefore ask you, Mr. Gilbert, if you would
8 just stand in place for me for a moment right where you
9 are. Mr. Gilbert, you may be called as a witness to
10 testify in your own behalf. I now advise you that you
11 have the right to invoke the protections given to you by
12 the Fifth Amendment to the constitution of the United
13 States and a similar counterpart provision of the
14 constitution of the state of South Carolina. The Fifth
15 Amendment to the Constitution of the United States
16 provides in part that no person shall be compelled in any
17 criminal case to be a witness against himself. This
18 provision of constitutional law means that you cannot be
19 compelled or required to testify in this case. This is a
20 right and a privilege which the law extends to you. It is
21 a personal privilege and no one can waive this right
22 except you. You have the right not to testify but you
23 also have the right to testify. The Court will grant you
24 the right to consult with your lawyer before you make a
25 decision. If you elect not to testify your failure to

1 testify cannot be used by the State as an inference of
2 guilt and your failure to testify cannot be considered by
3 the jury in its deliberations and I will so instruct them.
4 If you elect to testify and waive the privileges extended
5 to you by the constitution I advise you that you would
6 then assume the role of a witness in this case and you
7 would then waive or give up any constitutional or your
8 constitutional privilege against self-incrimination. This
9 means that if you voluntarily take the witness stand and
10 testify you then subject yourself to the same rules that
11 govern other witnesses and you may be examined and
12 cross-examined on any relevant issue in this case and you
13 may be impeached to the same extent as any other witness,
14 all of which is subject to the rules of law and the rules
15 of evidence.

16 I further advise you that if you elect to take the
17 witness stand and testify that this decision on your part
18 must be made freely, voluntarily, intelligently, and with
19 knowledge of protections given to you by the Fifth
20 Amendment of the Constitution of the United States and the
21 Constitution of South Carolina, and further, with full
22 knowledge of the consequences of your election to testify.
23 Have you -- you understand what I've explained to you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions that you wish to

1 ask me about your Fifth Amendment rights at this time?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay, all right. I will give you an
4 opportunity to talk with your lawyer about whether you
5 should or should not testify. I'm not going to require an
6 answer at this time; it's not appropriate at this time.
7 But I would ask you to discuss this matter with your
8 lawyer and be prepared at the appropriate time to make a
9 free and voluntary decision as to whether you do or do not
10 wish to exercise your Fifth Amendment rights or whether
11 you wish to waive those rights and testify but we'll get
12 to those at a later time. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, thank you. You may be seated.

15 MR. WATTS: Thank you, Your Honor.

16 THE COURT: Mr. -- scheduling a little bit, Mr.
17 Redmond, tell me about how many more witnesses you
18 anticipate on behalf of the State.

19 MR. REDMOND: I anticipate -- beg the Court's
20 indulgence. Seven. However, I can tell the Court the
21 number is -- several of them are chain of custody
22 witnesses. When I say several -- yeah, seven. I
23 anticipate six, possibly seven witnesses, Your Honor.

24 THE COURT: Well, let me ask you, chain of custody.
25 Mr. Watts, do you have a serious question as to whether or

1 not the chain is complete and there is -- is there any
2 real valid question regarding the chain of custody?

3 MR. WATTS: Your Honor, my review I do have some
4 questions about when evidence was brought in, taken out
5 there, and the actual chain of custody I've been provided
6 there are some issues where it says people didn't know
7 where the matters were. So not trying to be long winded,
8 not trying to be obstinate, I just ---

9 THE COURT: Well, you have that right. I'm just asking
10 you, what are we talking about chain of custody of what
11 kind of evidence?

12 MR. REDMOND: We're talking about the blood evidence.

13 THE COURT: All right. That's one chain of custody
14 that needs to be properly linked 'cause it's fungible
15 evidence like drugs. What else?

16 MR. REDMOND: And actually, that's it, just the blood.
17 But the -- and I don't mind telling the Court, Defense
18 knows, the toxicology taken of the victim we want to at
19 least introduce that to show that it was negative. He had
20 complete negative strain. The evidence processing from
21 SLED that actually took into process from SLED that took
22 the shirt and the pants and developed that as ---

23 THE COURT: That's my point. My point is this, the
24 only place that chain of custody becomes an issue is when
25 you got evidence that can be contaminated or is fungible,

1 like drugs or blood or something of that nature. You
2 don't need a chain of custody link by link when somebody
3 testifies this is the pair of pants that I found at the
4 scene. It doesn't matter where it's been in between if
5 you testify that this is the pair of pants I found at the
6 scene, it's in the same condition it was in at the time
7 that I found it. Same way with a gun or anything of that
8 nature. So if we can avoid some chain of custody
9 witnesses on evidence that is not fungible, then let's do
10 so.

11 MR. REDMOND: And let me just back up, Your Honor, make
12 sure -- when I say evidence processing I'm not talking
13 about a technician. I'm talking about the pants where
14 they have to examine to find any blood and then send that
15 on to DNA. So that's -- when I say evidence processing
16 that's actually the person that would have the person that
17 actually found it and send the sample on to DNA.

18 THE COURT: All right, well I'll just say this. And
19 I'm not -- I don't mean for either one of you to give up
20 anything that you got the right to do. I'm not trying to
21 cut you off from anything at all. But let's not waste
22 time and tilted windmills with things that we don't have
23 to do. If it is something that is a particular piece of
24 evidence and should not -- like a shirt, you shouldn't
25 have to bring in one witness to say I received it from A

1 and then bring B in and say I got it from A and tie all
2 that together. That should not be necessary if the
3 evidence can be followed. Y'all know the rules with
4 regard to chain of custody, but we should not do things
5 that really are just tilting at windmills.

6 MR. REDMOND: And Your Honor, I agree. I will get with
7 Mr. Watts and see if there is any way we can resolve those
8 issues.

9 MR. WATTS: We'll do that right now, Your Honor.

10 THE COURT: All right. So somewhere between six and
11 seven witnesses. How much time?

12 MR. REDMOND: But and that's what I was going to say,
13 Judge. None of them I anticipate being near as long as
14 our last three witnesses so even with those seven
15 witnesses we start at 9:30 I know I can finish this case
16 either just before but possibly just after lunch.

17 THE COURT: Right around lunch time?

18 MR. REDMOND: The State's case, yes, sir.

19 THE COURT: All right. That being the case then,
20 that's what I was just trying to get some idea about, ask
21 to what we were looking at for tomorrow. So I believe the
22 jury has cleared the building; is that correct?

23 THE BAILIFF: Yes, sir, Your Honor.

24 THE COURT: Then we will be in recess until 9:30
25 tomorrow morning. I'll see you at that time. Thank you.

1 (WHEREUPON, the proceedings were concluded for the day to
2 be reconvened on April 29, 2009.)

3 (WHEREUPON, State Exhibits Nos. 50 through 58 were marked
4 for identification only.)

5 THE COURT: Good morning. We're back on the record
6 with regard to the matter of State versus Bobby Gilbert.
7 Mr. Gilbert is present with his counsel and the State is
8 present represented by Mr. Redmond. Mr. Redmond, is there
9 anything before we bring the jury in? I'm advised all the
10 jurors are here.

11 MR. REDMOND: Yes, sir, Your Honor, a couple of
12 matters. First of all, as to the items we can agree on,
13 we can agree on Exhibit 53, that being the DNA analysis.
14 And I'm actually doing it in backwards order, I apologize
15 for that, Judge. 52, the evidence processing report from
16 John Ortuno and both of these are from SLED. Item 53 is
17 Lillian Gallman's DNA report. Item 52 is the evidence
18 report from John Orr Tuno. And then the toxicology report
19 from Laurie Shacker with SLED. That's item 51. We have
20 agreed and can stipulate to those three SLED reports.

21 THE COURT: All right.

22 MR. REDMOND: And Your Honor, as it relates to
23 Exhibit 55, Exhibits 55, 56 and 57 are pictures that were
24 taken by Jeff Parrott at SLED and we can agree on those
25 pictures coming into evidence.

1 THE COURT: You cannot or can?

2 MR. REDMOND: We can. We've agreed that all of those
3 are all admissible.

4 THE COURT: Okay.

5 MR. REDMOND: And Judge, item 50 is the bank records.
6 We got Rose Butler from -- which bank is that?

7 THE WITNESS: Pee Dee Federal Credit Union.

8 MR. REDMOND: Pee Dee Federal Credit Union. We've got
9 her here this morning. She is actually -- we've got the
10 bank records. We can agree on item 50 but it has been
11 marked. We would put her up second this morning to
12 authenticate.

13 THE COURT: All right. So you have not agreed on 50.

14 MR. REDMOND: That's correct, Judge. And you should
15 have a copy of item 50 and those bank reports and the
16 copies I've provided to you.

17 THE COURT: All right. And what else?

18 MR. REDMOND: And the last issue, Judge. I've marked
19 for ID item Exhibit 58. That is the certificate of
20 authenticity and acknowledgment and from Alltel/Verizon
21 along with the verification along with the phone records
22 that they FedEx'd that we did receive this morning. They
23 are sealed. I did make a copy of them for the Court
24 yesterday, but I can pass with the Court's permission this
25 exhibit to show that it has been sealed and authenticated

1 and we would move under Rule 902 that they be admitted
2 into evidence.

3 THE COURT: All right. First of all, let me deal with
4 the ones to which the parties have agreed. Exhibits 51,
5 52, 53, 55, 56, and 57 are admitted into evidence without
6 objection and further authentication unnecessary. 50 is
7 at this time just for identification but that is the bank
8 records and the witness can take care of those in a few
9 minutes. And me hear from you with regard to rule -- to
10 Number 58, the Alltel records, Mr. Watts.

11 MR. REDMOND: And just for the record, while he's
12 looking, I will just remind the Court that we had provided
13 a copy of those cell phone records so to make the record
14 clear this is not a situation where those copies were not
15 provided in Rule 5. It's just for the purpose of getting
16 them admitted we needed to have it authenticated and so
17 that's why we were waiting for that authentication.

18 THE COURT: All right. I'm -- let me hear from you
19 with regard to 58, the cell telephone records from Alltel,
20 Mr. Watts. Why do you contend that they are not
21 admissible?

22 MR. WATTS: Your Honor, regarding the records as far as
23 cell phone authentication we're not going to object to
24 that. We'll agree to that.

25 THE COURT: So you do not object to Rule 58, I mean, to

1 Number 58 itself, the cell phone records?

2 MR. WATTS: No, Your Honor.

3 THE COURT: All right, then, Exhibit Number 58 will
4 also be admitted into evidence without objection. And
5 then we only have the bank records to deal with. In your
6 numbers that you read off to me, Mr. Redmond, you skipped
7 54. What is Exhibit 54?

8 MR. REDMOND: I sure did. I started at 55. 54 is a
9 picture, Judge, that's been agreed to.

10 THE COURT: Has that already -- all right, it has been
11 agreed to? All right, Exhibit Number 54 will also be
12 admitted by agreement. All right. So the only exhibit
13 that has not been agreed on that will take further
14 authentication is Exhibit Number 50, the bank records.

15 MR. REDMOND: That's correct. Judge, as it relates to
16 those particular exhibits that have been admitted into
17 evidence, at the appropriate time, and the Court obviously
18 would have the discretion and decision on this, I would
19 like to be able to publish those exhibits to the jury, not
20 the pictures because the witness is actually coming and he
21 can explain those, but as it relates to the toxicology
22 evidence processing and DNA.

23 THE COURT: Well, it's part of your presentation. At
24 whatever time you wish to publish them simply ask for
25 permission and we'll go from there.

1 MR. REDMOND: Thank you, Your Honor.

2 THE COURT: All right. Anything else from the State
3 before we bring the jury in?

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

6 THE COURT: From Defense?

7 MR. WATTS: Nothing else, Your Honor.

8 THE COURT: Counsel approach just a moment please for
9 one matter I want to discuss with you.

10 (WHEREUPON, State Exhibits Nos. 51 through 58 were
11 admitted into evidence.)

12 (WHEREUPON, counsel approached the Bench for an
13 off-the-record discussion.)

14 MR. REDMOND: Just to let the Court know for the
15 record, I excused Mr. Ortuno from SLED, Ms. Shackle from
16 SLED, and Teresa Hook who is the evidence technician for
17 the victim's blood standard, I've excused them in light of
18 the stipulation so I just wanted to make sure that was
19 okay.

20 THE COURT: All right. Yes, sir, it's your case,
21 Mr. Redmond. You can call whoever you want, and if you
22 don't need them you certainly have the right to excuse
23 them. All right, bring the jury in please.

24 (WHEREUPON, the jury was returned to the courtroom at
25 approximately 9:43 a.m., and the following proceedings

1 commenced in open court.)

2 THE CLERK OF COURT: Ms. Kaitlyn Luther is the
3 foreperson.

4 Okay, Ms. Luther. I understand that your colleagues on
5 the jury have selected you as the forelady of this jury
6 soon you will always sit right where you were and that
7 will be fine and we are ready to go forward. Thank you
8 for your promptness in being back here. We are just a few
9 minutes late in getting started, but we've been in the
10 courtroom since 9:30 attending to administrative matters
11 that will help the case move along more expeditiously.
12 And we are ready to go forward at this time. I do need to
13 ask you if anyone has tried to contact you or talk to you
14 about this case in any manner over the evening recess I
15 would need to know about it now.

16 (There was no response.)

17 THE COURT: And that's a negative response and that's
18 good. The other thing that I would ask, if anybody has
19 read any news stories or seen any television broadcasts
20 about this case in any manner over the evening recess I
21 will also need to know about that now.

22 (There was no response.)

23 THE COURT: And again, negative response and that's
24 good. Thank you.

25 Mr. Redmond, we are ready to go forward.

SW - B. Brooks - Direct

1 MR. REDMOND: Thank you.

2 THE COURT: Mr. Redmond, you may call your next
3 witness.

4 MR. REDMOND: At this time I yield to my assistant
5 Solicitor McKenzie.

6 MS. MCKENZIE: Your Honor, we call Ms. Barbara Brooks.

7 THE COURT: All right.

8 THE CLERK OF COURT: If you will come forward to be
9 sworn please. Place your left hand on the Bible and raise
10 your right.

11 WHEREUPON,

12 **BARBARA MCCALL BROOKS,**

13 having been duly sworn by the Clerk of Court, testified as
14 follows:

15 THE DEPUTY CLERK OF COURT: Step up on the stand for me
16 please.

17 **DIRECT EXAMINATION**

18 **BY MS. MCKENZIE:**

19 Q Good morning, Ms. Brooks.

20 A Good morning.

21 Q Would you please state your full name for the record.

22 A Barbara McCall Brooks.

23 Q And where do you currently reside?

24 A At [REDACTED] Coker Street in Darlington.

25 Q Okay. And how long have you been at that residence?

SW - B. Brooks - Direct

1 A About six months.

2 Q Where were you living in January of 2007?

3 A At [REDACTED] Tulip Drive, Lot [REDACTED] in Darlington.

4 Q And would you please explain to the Court what your
5 relationship is to Jamie Gilbert and also to the defendant
6 Bobby Gilbert?

7 A Jamie Gilbert is my son. He is first cousins to Bobby
8 Gilbert. Their fathers are brothers, but I was never
9 married to Jamie's father so I have no relation to Bobby
10 myself.

11 Q And where was Jamie living around about say the end of
12 December, beginning of January of 2007?

13 A He was living with a girl in Timmons ville initially and
14 from there he went to his Uncle Robert's house in
15 Hartsville.

16 Q And was he staying with his Uncle Robert?

17 A Yes.

18 Q On or about January 17th of 2008 -- 2007?

19 A Actually it was either the 16th or the 17th. I'm not
20 exactly sure. His aunt called and told me to come pick
21 him up.

22 Q Okay. And when you got that phone call to go pick
23 Jamie up did you go pick him up?

24 A Yes, I did.

25 Q And where did you take him?

SW - B. Brooks - Direct

1 A I took him to Farmington Apartments in Hartsville.

2 Q Was anybody else with Jamie on that day?

3 A Yes. Bobby asked if he could ride with us.

4 Q You dropped both of them off ---

5 A Yes, I did.

6 Q ---at Farmington Apartments. Okay. Now when did you
7 see Jamie again after that?

8 A It was the next day in the afternoon he and Bobby came
9 by the house. Jamie said he wanted to take a shower and
10 change clothes. They had on some coveralls and I asked
11 them what were they doing with that. He said we'd been
12 working and got some paint on us. And I said, how are you
13 traveling and Bobby said in my girlfriend's car.

14 Q Did you see the car?

15 A No.

16 Q Did you know Jamie or Bobby to own a car? Did you have
17 knowledge of either of them owning a car?

18 A No.

19 Q Did anybody else come to the house with them on that
20 afternoon?

21 A No.

22 MS. MCKENZIE: I beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 MS. MCKENZIE: That will be all, Ms. Brooks. Please
25 answer any questions Mr. Watts may have.

SW - B. Brooks - Cross

1 THE COURT: Cross-examination, Mr. Watts.

2 MR. WATTS: If it please the Court, Your Honor.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. WATTS:

6 Q Ms. Brooks, you never saw a vehicle on the 17th; is
7 that correct?

8 A No, I didn't.

9 Q So you don't know what kind of vehicle it was?

10 A No.

11 Q Okay. Did you know Mr. Gilbert's girlfriend?

12 A No.

13 Q And did you know if she had a car?

14 A No.

15 Q So you're saying on the 17th that Jamie Gilbert came
16 back to the home?

17 A Jamie and Bobby, yes.

18 Q Jamie and Bobby came together but Jamie took a shower.

19 A Yes.

20 Q Jamie had a change of clothes?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q Do you recall why Jamie could no longer live at his
25 Uncle Robert's house?

SW - B. Brooks - Cross

1 A His aunt told me that he had stayed out the night
2 before and she just wasn't gonna to be able to tolerate
3 that kind of behavior.

4 Q So his actions and his behavior was causing him to be
5 kicked out of the home; is that correct?

6 A Yes.

7 Q Okay.

8 MR. WATTS: Beg the Court's indulgence for one moment,
9 Your Honor.

10 THE COURT: All right.

11 BY MR. WATTS:

12 Q Ms. Brooks, why wasn't your son Jamie living with you
13 at the time?

14 A He had some issues with the landlord at Easy Living
15 about loitering and hanging around the property.

16 Q Okay. So his actions had also caused a situation for
17 you where you were in jeopardy of losing your residence;
18 is that correct?

19 A Yes, we had already started looking around for some
20 places to move to when he chose to go live with his
21 girlfriend in Timmons ville.

22 Q Okay. And did your family interact a lot with Mr.
23 — Bobby Gilbert's family?

24 A No, sir.

25 Q Do you know how much interaction that Jamie and Bobby

SW - R. Butler - Direct

1 had prior to this time?

2 A This is the first time that Jamie ever had any contact
3 with Bobby.

4 Q Okay.

5 MR. WATTS: No further questions, Your Honor.

6 THE COURT: Redirect.

7 MS. MCKENZIE: None, Your Honor.

8 THE COURT: All right. Thank you, Ma'am, you may step
9 down.

10 All right, Mr. Redmond, Ms. McKenzie.

11 MR. REDMOND: Thank you, Your Honor, may it please the
12 Court. The State would next call Rose Butler to the
13 stand.

14 THE COURT: All right. Come around please, Ms. Butler.

15 THE CLERK OF COURT: Place your left hand on the Bible,
16 raise your right.

17 WHEREUPON,

18 **ROSA ANN BUTLER,**

19 having been duly sworn by the Clerk of Court, testified as
20 follows:

21 THE CLERK OF COURT: Have a seat up here for me please.

22 **DIRECT EXAMINATION**

23 BY MR. REDMOND:

24 Q Please state your name again for the record.

25 A It's Rosa Ann Butler.

SW - R. Butler - Direct

1 Q And I said Rose, I apologize.

2 A That's okay.

3 Q By whom are you employed, Ms. Butler?

4 A Pee Dee Federal Credit Union.

5 Q Okay. And did you receive a subpoena regarding bank
6 records of Tyrone Brown?

7 A Yes, sir, I did.

8 Q And let me show you with the Court's permission, if I
9 may approach.

10 THE COURT: Yes, sir.

11 BY MR. REDMOND:

12 Q What's been marked for identification as State's
13 Exhibit Number 50. Could you look over that and let me
14 know when you're ready to answer a few questions.

15 A Okay, I'm familiar with it so I think I'll be all
16 right.

17 Q Okay. Now when you got the subpoena did you actually
18 -- are you a representative at the bank, were you working
19 at the bank at the time?

20 A Yes, sir. I was not working at the bank at the time
21 these transactions were made, but I am representative of
22 Pee Dee Federal. I'm the office manager.

23 Q In fact, you do have -- you do have access to records
24 of people who have had accounts currently or in the
25 past; is that correct?

SW - R. Butler - Direct

1 A Yes, sir, that is correct.

2 Q And in fact, did you forward these exhibits to -- that
3 exhibit, excuse me, to the Solicitor's Office upon request
4 by subpoena?

5 A Yes, sir. At the time the subpoena was sent I was
6 already employed here and I was the actual person to do
7 the research and fax those records to you.

8 Q And in your review of those records have those records
9 been kept and provided in accordance with your standard
10 operating procedure?

11 A Yes, sir.

12 Q Okay.

13 MR. REDMOND: Your Honor, we move to admit at this time
14 State's 50.

15 THE COURT: Ms. Watts.

16 MR. WATTS: No objection, Your Honor.

17 THE COURT: All right, admitted into evidence as
18 State's Exhibit Number 50 without objection.

19 (WHEREUPON, State Exhibit No. 50 was admitted into
20 evidence.)

21 MR. REDMOND: Thank you, Your Honor.

22 BY MR. REDMOND:

23 Q Let me direct your attention on the front page to some
24 transactions that have been underlined. It says in the
25 left, and far left, January 19th, 2007 and it talks about

SW - R. Butler - Direct

1 purchases made between the 18th and the 19th in the far
2 left. Could you explain what these reports, what that
3 means?

4 A Yes, sir. The transaction in the amount of 24-dollars
5 was done at Hudson Quik Mart out of Hartsville, South
6 Carolina. And if you'll look to the right you'll see the
7 date January -- or the 17th, January '07, and then it
8 gives you a time at 10.02. What that is, is that the
9 actual date of authorization for a debit card transaction,
10 the debit card that was issued by our credit union. And
11 at the time what it does is the system places a hold on
12 that money, and it may come out the next day or it may
13 come out a couple of days later. So with this first
14 transaction that I'm talking about this 24-dollars it
15 actually was authorized on January 17th but it cleared the
16 account on January 18th.

17 Q Okay. And so where it's underlined January 17th, is
18 that the day that the card was actually used?

19 A Yes, sir, that is correct. That is the authorization
20 date of the card.

21 Q And let's move up to the one next one above it at
22 16:42. Could you tell the jury what that particular
23 purchase shows?

24 A That purchase is for 19 dollars and 43 cents and it was
25 to Kentucky Fried chicken in Florence and it was made on

SW - R. Butler - Direct

1 January 17th at 16:42 which is military time.

2 Q So that purchase was made in Florence.

3 A Yes, sir.

4 Q And now let's move up to the top at -- where it says
5 Sunoco Service Station.

6 A Okay. That transaction was in the amount of 63-dollars
7 and 41 cents. It was authorized on January the 17th and
8 it cleared the account on January the 19th and it was to a
9 gas station Sunoco. And that was in Hartsville, South
10 Carolina authorized at 12:36.

11 Q Now the dates that when it actually cleared, let me
12 just ask it like this. Is it possible that a transaction
13 can clear like -- let me ask you like this. Let's say I
14 make two transactions today, one at 8:00, one at 12:00.
15 Is it possible that when it clears the one at 8:00 can
16 actually clear before the one I did -- I mean, the one at
17 12:00 can clear before the one I did at 12:00?

18 A You're talking about clearing on the same day? I think
19 it's possible to clear at any time after the authorization
20 simply because merchants have so many days that they can
21 send those transactions through.

22 Q And to be a little clearer, the reason I ask that, if
23 you'll look at the top, the one that was made at Sunoco
24 Service Station at 12:36 at the very top. It says it was
25 made at 12:36 on the 17th of January; is that correct?

SW - R. Butler - Direct

1 A Yes, sir, that's correct.

2 Q And it actually is above the one that cleared on
3 the 17th at six -- at 16:42; is that correct?

4 A Yes, sir, that's -- but that also -- that would also
5 depend on the merchant to clear another system.

6 Q But the key part that tells you when that card is used,
7 for your purposes which date, which time tells you exactly
8 when that card was used?

9 A The one in the right-hand corner which is the
10 authorization date and time.

11 Q Okay.

12 A That's the actual date and time of the use of the card.

13 Q And that's what's underlined on this exhibit?

14 A Yes, sir.

15 Q And to be clear, these transactions occurred on the
16 17th of January of 2006 -- I mean, 2007?

17 A 2007, yes, sir.

18 Q Okay.

19 MR. REDMOND: Your Honor, I have nothing further at
20 this time.

21 THE COURT: Cross-examination, Mr. Watts.

22 MR. WATTS: Briefly, Your Honor, if it please the
23 Court.

24 **CROSS-EXAMINATION**

25 BY MR. WATTS:

SW - R. Butler - Cross

- 1 Q Ms. Brooks (sic), can you tell me what the balance in
2 the account was on the 16th?
- 3 A Ms. Butler.
- 4 Q I'm sorry, Ms. Butler, I apologize.
- 5 A Let me look at it 'cause my order here is reversed.
- 6 Q Okay.
- 7 A All right. There are two balances showing on the 16th.
8 On 1/16 at 16:44:06 a deposit was made in the amount of
9 725-dollars which gave him a balance of 76-dollars. And
10 on that same day a point of sale that had been authorized
11 the day before cleared the account of 20-dollars and 50
12 cents which then gave him a balance of 55-dollars and 50
13 cents so that was the balance before any of the other
14 transactions that were made.
- 15 Q So essentially the value of that card, the value of
16 that account was 55.50 on the 16th?
- 17 A At the last transaction on the 16th, yes, sir.
- 18 Q Okay. And I know you've got the printout in form
19 before you, but does anything you have in front of you
20 indicate who you used the card?
- 21 A Not -- no, sir. Not actually -- not without video
22 or...
- 23 Q Okay. You don't have any video, do you?
- 24 A No, sir.
- 25 Q You don't have any knowledge of who used that card

SW - R. Butler - Redirect

1 when those transactions occurred; is that correct?

2 A No, sir.

3 Q I'm sorry.

4 A Okay.

5 Q Is that correct that you have no knowledge?

6 A I have no knowledge of who used the cards.

7 Q Thank you.

8 MR. REDMOND: One redirect question. Oh, I'm sorry,
9 assuming Mr. Watts is finished.

10 MR. WATTS: His assumption was correct, Your Honor.

11 THE COURT: Go ahead, Mr. Redmond.

12 MR. REDMOND: For once an assumption is correct.

13 **REDIRECT EXAMINATION**

14 BY MR. REDMOND:

15 Q Ms. Butler, in looking at the balance — and Mr. Watts
16 got into it — they basically wiped out the card. I show
17 the last one says a running balance zero; is that correct?

18 A Yes, sir, that was correct.

19 MR. WATTS: Nothing further, Your Honor.

20 THE COURT: All right, anything further recross?

21 MR. WATTS: Nothing further, Your Honor.

22 THE COURT: Thank you, Ma'am, you may step down.

23 MR. REDMOND: And Your Honor, with the Court's
24 permission we'd ask that Ms. Butler be excused in being so
25 kind for coming on such short notice.

SW - L. Gallman - Direct

1 MR. WATTS: No objection.

2 THE COURT: You are excused, Ms. Butler. Thank you for
3 coming.

4 MR. REDMOND: The State will next call Lilly Gallman
5 from State Law Enforcement Division.

6 WHEREUPON,

7 **LILLY SMALLS GALLMAN,**
8 having been duly sworn by the Clerk of Court, testified as
9 follows:

10 **DIRECT EXAMINATION**

11 BY MR. REDMOND:

12 Q And again, state your name for the record.

13 A My name is Lilly Smalls Gallman.

14 Q And by whom are you employed?

15 A I'm employed with the South Carolina Law Enforcement
16 division.

17 Q And in what capacity are you employed?

18 A I'm employed as a forensic scientist and the DNA
19 Department.

20 Q And how long have you been employed as a DNA analyst?

21 A I began working with SLED as a forensic DNA analyst in
22 January of 1990 so I've been there 19 years.

23 Q And so you've tested a lot of samples in that time,
24 haven't you, Ms. Gallman?

25 A Yes, I have.

SW - L. Gallman - Direct

1 Q And as it relates to your education could you tell the
2 jury your educational background please?

3 A I have a degree in biology from the University of South
4 Carolina. Once I received my degree I continued working
5 in the area of molecular genetics where I did cloning and
6 sequencing of DNA and also instructing graduate students
7 in the laboratory. Once I began working at SLED as a
8 forensic DNA analyst I -- I attended the FBI DNA typing
9 school where we learn to handle forensic evidence. I've
10 also been trained by serologists who were at SLED for a
11 while in the area of serology where you learn how to
12 identify body fluids. I've also taken advanced genetics
13 courses and advanced statistics courses. I've also
14 attended the South Carolina Criminal Justice Academy to
15 become a certified police officer.

16 Q Okay. And with all of that let me ask you, how many
17 times have you been qualified to testify as an expert?

18 A Approximately 60.

19 Q As a matter of fact, I think you were in Charleston
20 yesterday in a trial to testify.

21 A Yes, I was.

22 MR. REDMOND: At this time, Your Honor, the State would
23 move to have Ms. Gallman qualified as an expert in the
24 field of DNA analysis.

25 THE COURT: Voir dire with regard to qualification,

SW - L. Gallman - Direct

1 Mr. Watts?

2 MR. WATTS: No objection, Your Honor.

3 THE COURT: All right. The Court will qualify Ms.

4 Gallman as an expert in the field of forensic DNA

5 analysis. Ladies and gentlemen of the jury, you'll recall

6 that I told you yesterday that ordinarily a witness who is

7 not qualified as an expert can only testify to those

8 things that are within the witness's perception such as

9 things within the five senses. However, a witness who is

10 qualified by training, experience, education, or otherwise

11 and can offer testimony that will help the trier of

12 fact -- and that's you -- to decide a fact in issue may

13 testify in the form of an opinion, and I have qualified

14 Ms. Gallman as an expert in the field of DNA analysis and

15 she will be allowed to give her opinion. All right.

16 MR. REDMOND: Thank you, Your Honor. If it please the

17 Court.

18 BY MR. REDMOND:

19 Q We show you what's been previously marked as State's

20 Exhibit Number 53. And ask you if you recognize that

21 document, and let me know when you're ready to answer a

22 few questions.

23 A Yes. This is a copy of my report.

24 Q Okay. And let's talk about your report with State's

25 Exhibit 53. But before we get into that, tell the jury

SW - L. Gallman - Direct

1 this, and I say layman's terms, as best you can explain
2 what it is you do as relates to DNA, how you go about
3 doing your particular job, if you would mind educating the
4 jury if you will.

5 A DNA stands for Deoxyribonucleic acid which is
6 considered to be the blueprint of the body. Everyone's
7 DNA is different except for identical twins. As you know,
8 they come from the same egg. Since everyone's DNA is
9 different we're able to distinguish whether there's a
10 match or there's not a match between a piece of evidence
11 and a standard be it blood from a subject or a victim or a
12 buccal swab, which is just a swab from the inside of a
13 person's mouth and determine whether we have a match
14 between those two items. When I receive evidence at SLED
15 it could be swabs or cuttings from items that, like in
16 this particular case, like from blue jeans or from a T
17 shirt. I make a smaller cutting which is then used to
18 extract a DNA from and take it through the process to
19 generate a DNA profile from those items. I do this with
20 both the evidence and with the standard. And once a DNA
21 profile is generated from the evidence and the standard I
22 check and see if they match or whether they do not match.

23 Q Okay. And did you do that in this particular case?

24 A Yes, I did.

25 Q And could you explain for the juries -- well, let me

SW - L. Gallman - Direct

1 ask you this, as far as determinate match, what -- how do
2 you go about determining a match and what is, I guess, the
3 standard that's used to determine a match?

4 A In -- what we do is we generate what's called a DNA
5 profile. We look at 16 areas on the DNA chromosomes and
6 generate a DNA profile from that. And the same thing is
7 done with the evidence as is done with the standard either
8 from blood or from a buccal swab. Once the profile is
9 generated they're dis-compared to see if they match or
10 whether they do not match. And once we distinguish that
11 there is a match then statistical value has to be applied
12 to that particular match or how frequent that particular
13 DNA profile is seen in any given population.

14 Q Okay. Now in reference to this case could you explain
15 your findings to the jury as to what you tested and what
16 you were able to find relating to DNA evidence.

17 A Okay. I received quite a few pieces of evidence and
18 I'll go through them and explain to you exactly what I
19 have. I tested a number of items, but the ones that I did
20 DNA on would -- first I'll give you SLED item number and
21 then tell you what the item is. So SLED Number 16 was the
22 blood standard from Tyrone Brown, which I used as the
23 standard to compare to the evidence. Then the evidence is
24 item number 13.1, which is a swab from Tyrone Brown,
25 penile swab from Tyrone Brown. And 13.2 also was a penile

SW - L. Gallman - Direct

1 swab from Tyrone Brown. Those two items only generated
2 Mr. Brown's profile. There was no DNA profile foreign to
3 him. Item 14.1, which is a swab from a T-shirt, 14.2,
4 14.3, 14.4 were cuttings from the T-shirt, and they all
5 match Mr. Brown. Item 15.2, 15.3, 15.4, 15.5, which were
6 cuttings from the blue jeans, they also match Mr. Brown.
7 Item — let me back up. Item 15.2 and 15.4, when you do a
8 DNA extraction first thing you have to do is check and see
9 if you have any DNA there to work with. And on those two
10 items no human DNA was detected. Item Number 19.1, which
11 is a swab collected from the cinder block, also matched
12 Mr. Brown. Items number 30, 31, 32, 33, 34, 36, and 37
13 also matched Mr. Brown. Item Number 30 was a swab from
14 the trunk of the car. Item Number 31 was also a swab from
15 the trunk. Item Number 32 was the cutting from carpet
16 beside the hammer. Item number 33 was a swab from the
17 trunk lid. Item Number 34 was a swab under the middle of
18 the car. Item Number 36 was a swab from under the car
19 also and Item Number 37 was swab around the vehicle that
20 was between the front tires. And all of these items, all
21 the items that I tested matched Mr. Brown.

22 Q And let's go back and I specifically want to direct
23 your attention to item 19.1. 19.1 was a swab from a
24 cinder block —

25 A That's correct.

SW - L. Gallman - Direct

1 Q ---that was forwarded to you?

2 A Yes.

3 Q And again, to be clear, the blood on the cinder block
4 from that swab, was it your finding that it matched Tyrone
5 Brown's DNA?

6 A That's correct.

7 Q That was his blood on that cinder block?

8 A Yes, sir.

9 MR. REDMOND: And to be further clear, for the record I
10 think we've stipulated item 14, the T-shirt, and item 15,
11 the jeans actually allude to -- and I'm looking for the
12 exhibit, okay. Exhibit 48 which is Tyrone Brown's pants.
13 I think we can stipulate, Your Honor, that that is
14 actually item 15 in this report. Item 14 in this report
15 is Exhibit 49, which is the T-shirt, so in essence we can
16 stipulate that the T-shirt and the blue jeans which blood
17 was found belonging to Tyrone Brown were actually these
18 two exhibits that have already been entered into evidence.

19 THE COURT: Does the Defense so stipulate?

20 MR. WATTS: No objection to that stipulation.

21 THE COURT: All right. The stipulation will be
22 admitted as the exhibit matching the corresponding -- or
23 not corresponding, but the identified description in the
24 report.

25 MR. REDMOND: Beg the Court's indulgence just a moment.

SW - L. Gallman - Direct

1 BY MR. REDMOND:

2 Q And you conducted this test -- when did you conduct
3 this test?

4 A Report was issued in July of '08 but the tests were all
5 done in '07.

6 Q And as it relates to evidence, when you receive
7 evidence, just so the jury will have an idea about that,
8 could you explain like when you get items forwarded to you
9 what is the process and procedure for making sure that
10 those items are preserved so that you are testing an
11 accurate sample?

12 A When bulk items like the blue jeans and a T-shirt come
13 in they will go to the evidence processing department
14 where they will make the cuttings for me. These items are
15 put in small coin envelopes and sealed and then placed in
16 plastic pouch and that's also sealed and initialed. This
17 evidence is then given to me, and I check to make sure it
18 is sealed properly and that the chain has -- the chain of
19 custody is intact.

20 Q Okay. And did you find so in this case?

21 A Yes, I did.

22 Q If you felt that there was a problem with the chain or
23 how the evidence was packaged would you have conducted a
24 test?

25 A No. The first thing I would do would backtrack on the

SW - L. Gallman - Cross

1 chain to make sure that everything was done correctly even
2 though there might -- the pouch might not have been sealed
3 properly I would go back to the person that handled the
4 evidence last.

5 Q But in this case did you have to do any of that?

6 A No, I did not.

7 Q Thank you. I have nothing further.

8 THE COURT: Cross-examination, Mr. Watts.

9 MR. WATTS: Thank you, Your Honor. If it please the
10 Court.

11 **CROSS-EXAMINATION**

12 BY MR. WATTS:

13 Q I believe you have your report in front of you; is that
14 correct?

15 A Yes.

16 Q On the first page of the report I think there's a
17 subheading that says DNA analysis; is that correct? On
18 the right-hand side.

19 A Yes.

20 Q Okay. And under that DNA analysis it has a date; is
21 that correct? What's the date on that?

22 A July 15th, 2008.

23 Q Okay. And then lists incident date a little farther
24 down. And what is the date on that?

25 A January 18th, '07.

SW - L. Gallman - Cross

1 Q Okay. And underneath that there are three names
2 listed. Can you tell me who they are.

3 A The victim's name Tyrone Brown and two names that are
4 listed as suspects, Bobby Gilbert and Christopher Samuels.

5 Q Just two names?

6 A There are two suspects.

7 Q Okay. So --

8 A There's three names: One, the victim.

9 Q You're right, there are three names, but as far as
10 suspects there's only two listed on your report; is that
11 correct?

12 A That's correct.

13 Q Anywhere in your report is name Jamie Gilbert
14 mentioned?

15 A No.

16 Q Okay. And in looking through your report I think you
17 earlier testified there was DNA from Mr. Brown, swabs that
18 were on the cinder block; is that correct?

19 A That's correct.

20 Q Okay. And were you given any kind of samples or swabs
21 from a vehicle in this case?

22 A The swabs that came from the vehicle were from the
23 trunk and from under the -- and from the outside of the
24 car.

25 Q Okay. I think the -- if I'm correct, if you look at

SW - L. Gallman - Cross

1 34, 35, 36 and 37. Please identify 34 through 37 as
2 listed on your report.

3 A Item Number 34, swab from under the middle of the car.
4 Number 36 is swab from under the car front bumper area,
5 and Item Number 37 is swabs from under the vehicle between
6 the front tires.

7 Q Okay. And in your report it says blood indicated; is
8 that correct?

9 A Yes.

10 Q Okay. It says, see DNA results; is that correct?

11 A Yes.

12 Q Okay. And for those items we just mentioned there the
13 profile matched whom?

14 A Tyrone Brown.

15 Q Okay. So that was Mr. Brown's DNA profile from the
16 blood found on the outside exterior of the car and
17 undercarriage essentially; is that correct?

18 A Yes.

19 Q Okay. And when you're talking about being able to get
20 a sample of the transfer of DNA, since you're an expert in
21 this matter I ask you, are there other ways to transfer
22 DNA to items? Is blood the only way you can extrapolate a
23 DNA result?

24 A No, it's not.

25 Q Can you -- how -- where else can you get DNA from?

SW - L. Gallman - Cross

1 A Well, the DNA in your body is all the same so if you
2 have transfer from any body fluids or even with touch DNA
3 you can get transfer.

4 Q Okay. Touch DNA?

5 A Yes.

6 Q How does touch DNA occur? How do you test for touch
7 DNA?

8 A Just that you touch a item and then you take a swab
9 from where the person touched and you could possibly pick
10 up their DNA depending on how many cells are being flushed
11 off your body at that time.

12 Q Okay. I think you said you received some swabs from
13 the cinder block; is that correct?

14 A Yes, I have number -- my Item Number 19.1.

15 Q Your Item Number 19. And would that -- those swabs
16 also be able to pick up any kind of epithelial DNA or
17 anything else as well?

18 A Yes.

19 Q Okay. So if there was other DNA it would be contained
20 possibly in that sample that you got from the cinder
21 block; is that correct?

22 A If it was there where the swab was taken from it could
23 possibly happen.

24 Q Okay. Did your office have capability to receive the
25 entire cinder block and do a test of the entire block?

SW - L. Gallman - Cross

1 I'm not asking if you did it. I'm just asking if you have
2 the capability in your office to do so.

3 A Yes, sir. We've had cinder blocks brought to SLED
4 before.

5 Q Okay. Did you perform any epithelial test or any other
6 kind of analysis on that block other than what you
7 provided with swabs?

8 A No. When you're testing for DNA it doesn't matter
9 whether it's epithelial, blood, saliva, what it is, the
10 procedural is still the same.

11 Q Okay. So if somebody else's DNA was on there in the
12 same area that the swab was taken then you'd have found
13 it; is that correct?

14 A Not necessarily.

15 Q Okay.

16 A If depending on how much of that person's DNA was there
17 as to whether I would have been able to identify it.

18 Q Is there a way to register that somebody's DNA is there
19 but it's too small of an amount to indicate whom?

20 A There are times when that happens.

21 Q Was there any indication in this instance?

22 A No, there was not.

23 Q Just to be clear, in your entire report all your
24 results talked about DNA from Mr. Brown; is that correct?

25 A That's -- every item that I analyzed and developed a

SW - L. Gallman - Redirect

1 DNA profile from came back to match Mr. Brown.

2 Q Okay, all right. And in your report it shows that some
3 things you didn't analyze; is that correct?

4 A That's correct.

5 Q Okay. So even all the evidence that was submitted to
6 you involved in this case you didn't analyze all of it; is
7 that correct?

8 A No, all of it was not analyzed.

9 Q Okay.

10 MR. WATTS: Beg the Court's indulgence one moment, Your
11 Honor.

12 THE COURT: Yes, sir.

13 MR. WATTS: No further questions, Your Honor.

14 THE COURT: Redirect.

15 MR. REDMOND: Briefly.

16 **REDIRECT EXAMINATION**

17 BY MR. REDMOND:

18 Q As relates to samples that you actually tested, you
19 talked about the names listed on there, did you ever
20 receive a sample from Bobby Gilbert to test against
21 anything?

22 A No, I did not. The only standard that I received to
23 compare to the evidence was from Mr. Brown.

24 Q And lastly, when it says no analysis performed, could
25 you explain why analysis wouldn't be performed in certain

SW - L. Gallman - Redirect

1 situations as it relates to this? I see some parts where
2 there was no semen identified, but if you can just explain
3 that I think I'll be done.

4 A Okay. There are items submitted which were called
5 smears which is a microscope slide. When the swab is made
6 it's smeared on a microscope slide so we call it a smear.
7 There was a oral smear made, a rectal smear made from
8 Mr. Brown, and also penile smears that were made from him;
9 they were not tested. The oral swabs that were made, the
10 swab itself was tested for the presence of semen and it
11 was negative for semen. The rectal swabs that were used
12 to make the smear was tested for the presence of semen and
13 they were negative for semen.

14 Q And so when it says no analysis performed that's items
15 8, 9 and 10. If you go a little further which he didn't
16 ask you, if you go a little further down that explains why
17 no analysis is performed; is that correct?

18 A That's correct. I tested the actual swabs and not the
19 smears.

20 Q Thank you.

21 MR. REDMOND: Nothing further, Your Honor.

22 THE COURT: Recross.

23 MR. WATTS: Briefly, Your Honor.

24 **RECROSS-EXAMINATION**

25 BY MR. WATTS:

SW - L. Gallman - Recross

1 Q So you were never submitted any samples from any of the
2 codefendants in this case for testing?

3 A No, sir. I did not have any foreign profiles to
4 Mr. Brown to compare to someone else.

5 Q So you never found anything other than Mr. Brown's DNA
6 on anything that you provided or were provided; is that
7 correct?

8 A All of the samples that I tested matched Mr. Brown.

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

10 THE COURT: All right. Thank you, Ms. Gallman. You
11 may step down.

12 MR. REDMOND: And Your Honor, may we approach as
13 relates to a housekeeping matter?

14 THE COURT: Yes. Would you like to have this witness
15 excused?

16 MR. REDMOND: Oh, yes, absolutely.

17 THE COURT: Any objection?

18 MR. WATTS: No objection, Your Honor.

19 THE COURT: All right, you're excused, Ms. Gallman.

20 (WHEREUPON, counsel approached the Bench for an
21 off-the-record discussion.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury, we moved along a little quicker this morning than we
24 had expected. One of the reasons is, of course I told you
25 -- we kept you in the jury room a few minutes. That's

1 because the parties were able to agree on some evidence
2 without calling the individuals to authenticate the
3 evidence, and otherwise we would be taking their testimony
4 right now but they were excused and the evidence is in the
5 record. We do -- the State is, still have some more --
6 does still have some more evidence to present to you, and
7 we're waiting on the witness to get here but it may be 20
8 or 30 minutes before that witness gets here. So I think
9 we'll go ahead and take a break at this time, let you
10 relax. As soon as that witness gets here we'll be ready
11 to go forward. We have moved along because of the
12 stipulations that the parties were able to enter into,
13 which is a good thing. So if you would, go to your jury
14 room but don't discuss the case among yourselves. You can
15 talk about anything you want to. The bailiffs will also
16 allow you to go downstairs if you want to for a few
17 minutes and then we'll be ready to go just as soon as that
18 witness gets here. Thank you. If you would go to the
19 jury room.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 10:29 a.m., and the following proceedings
22 commenced in open court.)

23 THE COURT: All right. We will be in recess until we
24 hear from the witness. In the meantime, Mr. Watts, be
25 sure and make sure your client understands his

1 constitutional rights, and as soon as we have completed or
2 the State has completed their case we'll need a decision
3 as to whether he wishes to exercise his Fifth Amendment
4 rights.

5 MR. WATTS: Yes, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, a recess was taken from the proceedings.)

8 THE COURT: Back on the record with regard to the
9 State versus Gilbert. Mr. Gilbert is present with his
10 counsel. The State is also present, Ms. McKenzie and
11 Mr. Redmond. Mr. Redmond, I understand your witness is
12 here and you're ready to proceed?

13 MR. REDMOND: Yes, sir, Your Honor. We're just marking
14 and we've agreed on some exhibits, some more pictures, and
15 then the State will be ready. And I don't anticipate this
16 being a very long witness.

17 (WHEREUPON, State Exhibits Nos. 59 through 78 were marked
18 for identification only.)

19 MR. REDMOND: Your Honor.

20 THE COURT: All right. Yes, Mr. Redmond.

21 MR. REDMOND: Mat it please the Court, for the record
22 we've got some pictures that I intend to introduce through
23 Mr. Jeff Parrott. These are all photographs. For the
24 record they're State Exhibit 61, 62, 63, 64, 65, 66, 67,
25 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78. Those are all

1 photographs that we do plan on introducing through this
2 witness, but I understand the Defense has no objection to
3 those being admitted and the State would so move at this
4 time.

5 THE COURT: Any objection to Exhibits 61 through 78
6 being admitted, Mr. Watts?

7 MR. WATTS: No objection, Your Honor.

8 THE COURT: All right, admitted without objection.

9 THE COURT REPORTER: How about 59 and 60?

10 MR. REDMOND: Did I miss 59 and 60? Uh, oh.

11 (Pause.)

12 MR. WATTS: No objection, Your Honor.

13 THE COURT: All right, 59 and 60, which are also
14 admitted into evidence at this time. All right. Now you
15 have a witness, one witness that is here, is that correct?

16 MR. REDMOND: That is correct, Your Honor.

17 (WHEREUPON, State Exhibits Nos. 59 through 78 were
18 admitted into evidence.)

19 THE COURT: And you anticipate that will be your last
20 witness?

21 MR. REDMOND: I do anticipate that.

22 THE COURT: But you had some publications I believe you
23 wanted to make as well.

24 MR. REDMOND: Exactly. At the close of my case, Your
25 Honor, I would ask once I finish with this witness then

1 I'm going to ask to be allowed to publish those, some
2 exhibits. And I can tell the Court on the record I'm
3 going to ask to publish State's Exhibit 50, 51, 52, 53,
4 and 58.

5 THE COURT: Okay. All right.

6 MR. REDMOND: And with that, Judge, I think I've got my
7 pictures organized and I'm ready to proceed with
8 Mr. Parrott.

9 THE COURT: Okay. Anything further, Mr. Watts?

10 MR. WATTS: Nothing further regarding exhibits. If
11 this is their last witness and the State plans to rest
12 after this witness I have some motions to make.

13 THE COURT: Would it be to -- you make those
14 publications and this be your last witness and plan to
15 rest?

16 MR. REDMOND: That's correct, Judge. I've checked to
17 make sure I've admitted everything I need to admit so I'm
18 prepared to go ahead and rest.

19 THE COURT: Normally I would say let's, you know, maybe
20 go ahead and save a little time and address those motions,
21 but I think the better thing to do is let's since the
22 importance of this matter to everyone concerned let's go
23 ahead and do it by it correct procedure and let the State
24 rest. Okay. Mr. Bailiff, if you'll bring the jury in
25 please.

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1 (WHEREUPON, the jury was returned to the courtroom at
2 approximately 11:12 a.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: All right. Good morning, ladies and
5 gentlemen again, and thank you for your patience in this
6 matter. Again, we have handled some administrative things
7 that have expedited the trial of this case, but also the
8 witness that we were awaiting has arrived and we are ready
9 to go forward at this time.

10 And Mr. Redmond, you may call your next witness.

11 MR. REDMOND: Thank you, Your Honor, may it please the
12 Court. The State calls Jeff Parrott.

13 THE CLERK OF COURT: If you'd come forward to be sworn
14 please. Place your left hand on the Bible, raise your
15 right.

16 WHEREUPON,

17 JEFF PARROTT,

18 having been duly sworn by the Clerk of Court, testified as
19 follows:

20 MR. REDMOND: May it please the Court.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. REDMOND:

24 Q Mr. Parrott, by whom are you employed at this time?

25 Where do you work at this time?

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1 A Currently?

2 Q Yes.

3 A I work for myself. I own a company called Forensic
4 Consulting and Training services. I train law enforcement
5 officers throughout the state of South Carolina.

6 Q And how long have you been doing that, sir?

7 A Currently about two months now.

8 Q Okay. And prior to that did you formerly work with the
9 State Law Enforcement Division?

10 A Yes, I did. I was the senior agent assigned to the
11 latent crime scene unit.

12 Q And how long did you do that, sir?

13 A I did that for -- I was starting my tenth year at that
14 time.

15 Q Okay. And what kind of training and education -- give
16 us your educational and training background, if you would,
17 in your field.

18 A Sure. Formal education started I received a bachelor
19 of science degree from University of South Carolina before
20 beginning my work in law enforcement. From that point of
21 course attended the Criminal Justice Academy in Columbia,
22 South Carolina. I began working with Newberry County
23 Sheriff's Office in 1992; and from that point on
24 October 1992, took my first class in crime scene
25 processing and at that point I realized that that's the

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1 niche that I wanted to go into, that was kind of my thing.

2 So now almost — well, almost 17 years later but

3 16-and-a-half plus years later I've been processing crime

4 scenes ever since. I went from Newberry County Sheriff's

5 Office to the city of Columbia for five years and then

6 almost ten years with the State of South Carolina.

7 Q And how many times have you been qualified as an expert
8 in the field of crime scene analysis?

9 A Sixteen times throughout the state, both in state and
10 federal courts. I also had actually attended roughly just
11 over 4500 hours worth of classes in that field of science,
12 in the forensic science field.

13 MR. REDMOND: Your Honor, at this time I move to have
14 Mr. Parrott qualified as an expert as a crime scene
15 expert.

16 THE COURT: Voir dire with regard to qualifications,
17 Mr. Watts?

18 MR. WATTS: No objection, Your Honor.

19 THE COURT: All right. The Court will qualify Mr.
20 Parrott as an expert in the field of crime scene analysis.
21 Again, ladies and gentlemen, you recall that I had
22 previously advised you when other experts have testified
23 that the testimony of experts is that they are allowed to
24 give an opinion whereas normally nonexpert witness is not
25 allowed to give an opinion, and I will have qualified

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1 Mr. Parrott in his field and as an expert.

2 You may proceed.

3 MR. REDMOND: Thank you, Your Honor.

4 BY MR. REDMOND:

5 Q Now were you dispatched to Darlington County on the
6 18th of January 2007?

7 A Yes, sir, I arrived at Darlington county Sheriff's
8 Office at 6:55 p.m. on that particular evening.

9 Q And after you got to the Sheriff's Office did you
10 subsequently go to a scene at Cornfield Road in Darlington
11 County?

12 A Yes, sir, I did.

13 Q And could you tell the jury what you did at that time.

14 A At that time I investigated the scene. First of all,
15 when I arrived at the scene we're briefed by the local
16 agency to kind of give us an idea as to what was going on
17 there. From that point we kind of -- you hear it a lot of
18 times, put the pieces of the puzzle together to see if it
19 all fits. Once I arrived there, first of all, first thing
20 we do is get out of truck and start taking photographs as
21 is, as the scene is. At that time I noticed there were
22 some tire tracks leading that were on the road, went off
23 the road for a period of time, back on the road and then
24 off the road again, kind of swerving on and off the road.
25 Also took several measurements at that point regarding

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1 those, as we call them tire impressions, the swerving on
2 and off the road at that location.

3 Q And were you able to get any impressions, and if not,
4 why.

5 A No, sir, I was not. Apparently there was a heavy rain
6 that had occurred there just prior to us arriving. If I
7 can give you an idea to kind of relate as if you were
8 walking down the beach and your foot impression in the
9 sand or you make a sand castle and the tide comes up and
10 washes it away, that's basically what I was left with.
11 You could see the impression but the detail within the
12 impression was completely washed away due to the rainy
13 conditions.

14 Q And you were doing this at the time do you -- when you
15 went out with law enforcement to the -- to the first scene
16 and then to the next scene, do you know, were you made
17 aware that the defendant was actually directing y'all
18 where to go?

19 A Yes, sir, yes, sir.

20 Q So he was in another vehicle, I believe, other than the
21 vehicle you were in?

22 A Oh, definitely, yes, sir.

23 Q But he was, in fact, leading you to these locations?

24 A Yes, sir, he was.

25 Q Okay. So he leads you to Cornfield. Then after that

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1 tell the jury where you went.

2 A We left Cornfield Road and we were led to a location.
3 It was a wooded location. I had -- I noted it as -- let's
4 see. Turn on to Sandbox Road from Andrews Mill Road
5 traveling northeast on Sandbox to a dirt road on the
6 right. Travel east and northeast, stop in the middle of a
7 corn field so I was unaware there were no markings as far
8 as road markings. Normal signs we kind of went off road I
9 guess you could say, and best I could describe it did so
10 by the direction of travel.

11 Q And at that particular point in time -- and again, when
12 you say -- you aren't saying -- what you were just
13 describing your direction you stopped in the middle of a
14 cornfield, not on Cornfield Road?

15 A That's correct. It was actually a -- looked like a
16 field, a corn field next to a wooded area.

17 Q And that was off of Sandbox Road?

18 A That's correct.

19 Q Okay. Tell us what you saw at that time. Just wanted
20 to clarify that, but tell us what you saw at that time.

21 A Sure. Again, it was a plant -- looked like a old field
22 or planted area to my right if you should envision that
23 and then to the left a large wooded area. Within that
24 wooded area as I turned you could see items kind of thrown
25 about. You could see plastic, some CDs, just personal

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1 items, personal effects. Entered into that wooded area.

2 Walked back into that wooded area through a pathway that
3 was somewhat clear 47 feet 6-inches. And that's where we
4 discovered the body of the victim.

5 Q And I didn't ask you this previously, but did you take
6 pictures of each of the locations that you responded to
7 that evening?

8 A Yes, sir, took photographs. First thing we did, again,
9 is step out the vehicle and photograph things exactly how
10 we see it so that as we walk through if something gets
11 moved we know exactly where it was at the time.

12 Q Now, then did you go back do the Sheriff's Department?

13 A We did.

14 Q And I guess this gets into the purpose of—

15 A Yes, sir, we departed the woods there at 11:15 p.m. and
16 then I arrived back at the Sheriff's Office at 11:30 p.m.
17 that evening.

18 Q Now when you got back to the Sheriff's Office you
19 collected samples from the vehicle; is that correct?

20 A That is correct.

21 Q Okay. And could you tell the jury, once you got to the
22 Sheriff's Office, examined the vehicle that was there,
23 what kind of vehicle was it by the way?

24 A The vehicle was a black Honda Accord, South Carolina
25 tag. I noted that as well as the VIN number.

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1 Q Okay. And tell us what you did when you got to the
2 Sheriff's Department and processed that vehicle.

3 A Again, briefed by the local agency as to what they had.
4 I finally came about the vehicle. It was stored in their
5 covered area, sally port is what it's referred to, just an
6 area adjacent to the Sheriff's Office itself where it
7 couldn't be rained on or because of the weather issues.
8 Again, took photographs exactly how it was at the time we
9 arrived, around the vehicle as well as inside the vehicle,
10 and ended up underneath the vehicle as well.

11 Q Okay. Now before I get into what you actually found,
12 did the defendant ever take y'all to a location further up
13 Sandbox Road with a cinder block? Did you ever go to that
14 area that night?

15 A I did not.

16 Q Okay.

17 A I did not.

18 Q And again, the defendant was leading y'all where to
19 go; is that correct?

20 A Correct. The evening I was there he was leading us
21 everywhere.

22 Q And did he lead y'all to a location where there was a
23 cinder block found on that evening?

24 A That I'm not aware of.

25 Q Okay.

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1 A About leading to a cinder block.

2 Q Did you actually go to or collect any evidence from a
3 cinder block at all that night?

4 A I did not.

5 Q Okay. Now when you get to the Sheriff's Department,
6 you're processing the vehicle, then tell us what -- what
7 did you do and what did you find and where did you find
8 it?

9 A Sure. Again, we look at the vehicle, photograph the
10 vehicle, then we start doing interior search. We search
11 areas that are readily available, things that you can
12 readily see, search those, flip those over, make sure
13 there's no evidence of any probative evidence we might
14 come across. Then we kind of work our way a little more
15 detailed search after that. Start going underneath the
16 seats, around the actual engine compartment, the trunk
17 compartments. Come to find out I started looking
18 underneath the vehicle and at that point discovered what
19 appeared to be to me appeared to be blood and some type of
20 body tissue underneath the vehicle. So at that point I
21 asked for the use of a jack and some jack stands so I
22 could climb underneath the vehicle, underneath the
23 vehicle, and further my investigation with photographs and
24 take swabs of that potential evidence.

25 Q Okay. Now you collected those samples and then take

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1 them back to Columbia to SLED?

2 A That's correct.

3 Q As a matter of fact, I failed to mention, you live in
4 Columbia or in the Columbia area; don't you?

5 A Yes, sir, all the -- at that time all the crime scene
6 investigators were based out of the Columbia area. We
7 respond out of the Columbia area to the other locations
8 around the state which we have 46 counties and about 232
9 municipalities that we travel too and Columbia is that
10 central location. Now they're regionalized.

11 Q Okay. Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. REDMOND: Beg the Court's indulgence, with the
14 Court's permission if I could ask the witness to step down
15 I have some photographs I'd like to go through with him..

16 THE COURT: Sure. You may step down, sir.

17 MR. REDMOND: And Mr. Parrott, if you will stand over
18 here to my left and just speak loudly so that the court
19 reporter can hear you.

20 BY MR. REDMOND:

21 Q The first set of pictures, if you can identify the
22 exhibit number. We'll, I'll identify them to you and just
23 hand them to you. Tell us what State Exhibit 19. is.

24 A State's Exhibit 19 is a photograph of Una Road and
25 Cornelius -- I'm sorry, Cornfield Road. That's the street

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1 sign. It's just an identifier. When we get to that
2 location typically take photographs of exactly where we
3 are.

4 Q State's Exhibit 59?

5 A State's Exhibit 59 is a photograph looking down that
6 sandy roadway Cornfield Road just documenting the
7 condition that you can see the rain and the water standing
8 on the roadway after the rain had fallen as well as some
9 of the impressions leading off the edge of the road that I
10 was interested in.

11 THE COURT: Excuse me, Mr. Redmond, let me suggest that
12 you get on the other side. Well, no, you're all right but
13 he needs to maybe move down this way a little bit. The
14 court reporter has to hear you as well so be sure to keep
15 --

16 THE WITNESS: Sorry, Judge.

17 BY MR. REDMOND:

18 Q State's Exhibit 60?

19 A State's Exhibit 60 is a mark -- actually, my initials
20 in a telephone pole. This telephone pole, normally they
21 have identifiers on them, numbers and such that the phone
22 company or electric company uses to identify them. This I
23 couldn't find anything so in order to kind of make it
24 unique I engraved my initials on a particular pole and
25 used that as point of measurement back to those areas that

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1 the impressions left the roadway from my recordings and
2 measurement purposes. That way I can identify that pole
3 later.

4 Q Now I'm going to show you and tell us where these
5 exhibit's occurred. State's Exhibit 20. Did you take
6 these pictures by the way?

7 A I did. State's Exhibit 20 is the area of the creek
8 where the victim was found in the condition the victim was
9 found at the time I walked up.

10 Q State's Exhibit 21.

11 A State's Exhibit 21, it's just a little more closeup
12 picture of the same photograph of the victim lying in
13 partially in the creek. We do general photographs,
14 midrange photographs, then closeup as we approach.

15 Q State's Exhibit 22, did you take this photo?

16 A I did. This is a photograph of the victim himself.
17 Once we removed some clothing that was draped over his
18 face and body, took another photograph again to see the
19 condition of the body at the time we arrived and the time
20 we began our investigation.

21 Q And State's Exhibit 24?

22 A 24, that's an article of clothing that was draped over
23 the victim's body. Laid those out make sure there wasn't
24 anything potential that could potentially get lost through
25 the transportation of that evidence. So we went ahead

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1 laid that out and took a photograph at that time.

2 Q Okay. Now moving on to State's Exhibit Number 8 could
3 you tell the jury where that was and what it is?

4 A Okay. This is the vehicle that was processed. It was
5 in, again, you can see it's in the sallyport of the
6 Sheriff's Office. It's that covered area I was telling
7 you about that's out of the weather and the inclement
8 conditions. That's the vehicle that we started with.
9 Again, these are all photographs as we approach as we see
10 it at the time we arrived, okay.

11 Q State's Exhibit 9?

12 A State's Exhibit 9 is just the passenger side of the
13 same vehicle. You'll see these photographs as I walk
14 around the vehicle just take photographs completely
15 surrounding the vehicles so we can document that. You'll
16 see the kind of over and over as we walk around the
17 vehicle.

18 Q Okay. I'm actually going to show you -- skip to State
19 Exhibit Number 9 -- I mean, Number 12.

20 A Sure.

21 Q Could you tell us what that is?

22 A Yes, sir. This is -- this is a photograph of the
23 closeup, more closeup photograph of the license plate that
24 was on the vehicle at the time we arrived. Again, just
25 going around to the back of the vehicle that first one was

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1 the front; it's just kind of working the way around, okay?

2 Q And State's Exhibit 13?

3 A State Exhibit 13 is where the vehicle doors have been
4 opened and start documenting what's on the inside with
5 photography. And like I said, just documenting it as we
6 see it as we arrive. This is how the back seat looked.

7 Q I'm going to show you what's been marked as State's
8 Exhibit 54. Could you explain the significance of that
9 photo.

10 A Sure. State's Exhibit 54 is a photograph of the
11 underneath side of the vehicle. This is — once the
12 vehicle was lifted up I was able to take a little better
13 picture, little better photograph of that area, underneath
14 the vehicle and what appeared to me to be blood on that,
15 the bottom of the vehicle itself.

16 Q State's Exhibit 55?

17 A This again is another photograph of the underneath side
18 of the vehicle. You can see in this particular photograph
19 where the lift that I've used to hold up the vehicle so I
20 could crawl underneath basically sliding on my back on the
21 concrete to take photographs. Again, just documenting
22 things I saw underneath the vehicle.

23 Q State's Exhibit 56.

24 A Another shot of another area that had question about
25 something that looked unusual, body fluids, or tissues.

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1 Just took another photograph of it. As you can probably
2 see that looks like one of the frames of the vehicle
3 underneath.

4 Q State's Exhibit 57?

5 A 57 is another photo of another area of interest to me.
6 When I looked up underneath the vehicle this is more what
7 I consider a tissue that I found underneath the car. Took
8 a photograph of that as well prior to collecting.

9 Q State's 62?

10 A State's 62 is the same vehicle with the trunk now open,
11 just documenting the trunk itself, anything in the vehicle
12 or anything in the trunk that might have been in question.

13 Q And State's 63?

14 A State's 63 is a photograph of an area of question the
15 same vehicle in the trunk area. If you're looking at the
16 back of the vehicle it would be on the passenger side is
17 where this is located. That's how you would orient this
18 particular photo. You have the side, passenger side tail
19 light there, right-hand side of the picture, okay. There
20 looking at it more closely would be this discolored area
21 as well as the area just inside the trunk itself or inside
22 the trunk itself.

23 Q State's 60-- I'm sorry.

24 A Again, this is the passenger side of the vehicle that
25 you're looking at from here.

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1 Q State's 64.

2 A Okay. State's 64 is the trunk in the open portion.
3 This is a midrange photo of State's Exhibit -- midrange
4 photo of State's Exhibit 57 which you saw prior, okay.
5 This is the trunk mid area that showed the relationship to
6 where that's located and what I found at that time. This,
7 if you look, is on the driver's side with the trunk lid
8 itself open. That's how you would orient that particular
9 photo.

10 Q State's 65?

11 A State's 65 is an area of question just right at the
12 back portion of that trunk itself; that you lift that back
13 lid right directly in front usually where the latch is
14 that locks the trunk lid itself, just an area just
15 discoloration as well as you see a hammer right there.
16 You see the edge of a hammer, again, that's in question.
17 That's something I collected for evidence. There's some
18 discoloration right there on that edge which I documented
19 with scale tape, photographed prior to collecting.

20 Q State's 66?

21 A State's 66 is the same trunk area. See the hammer in
22 there as well as that scale tape. Scale tape is just
23 documenting the, what appears to be transfer stain of what
24 I felt may be blood I was gonna collect, took that to
25 collect and take it back to SLED for actual analysis. But

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1 again, documenting those areas prior to collection of the
2 evidence itself.

3 Q Okay. I'm gonna show you State's 67 and 68.

4 A Sure. This particular photo, State's Exhibit 68, is a
5 photograph of the -- just the inside lid of the trunk lid.

6 As the trunk lid is raised it's something you look at

7 above you, and if that would be a proper orientation.

8 This is just a closeup photograph of that same area you
9 can see the same tape. I'm sorry. State's Exhibit 67 is
10 just a more closeup photograph of that same area. Again,
11 seeing something that was questionable and documenting
12 photographs and scale tape prior to collecting.

13 Q State's 69?

14 A State's Exhibit 69 is, again, of that same trunk lid
15 area. As you look up as you'd be looking up as the trunk
16 is raised toward you you can see -- you can see the
17 locking mechanism right here which actually locks the
18 trunk down. You can see that over there.

19 Q State's 70?

20 A State's 70 is the underneath side of the vehicle and
21 you can see in the foreground here you can see the lift,
22 jack stand, is what we use to hold it up the vehicle to
23 climb underneath and you can see there seems to be, what
24 appeared to be, to me to be more of a tissue and sandy
25 area that I considered a questionable area.

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1 Q And State's 71?

2 A State's 71 is just an area beneath the vehicle. Again,
3 you can see the sand and then the discoloration, a reddish
4 pink discoloration which drew my attention to that
5 location and then took samples from underneath the vehicle
6 for that purpose.

7 Q State's 72?

8 A 72 is an area again below the vehicle, just a general
9 search from front to back of that vehicle with a bunch of
10 spots in question. This would be the orientation of
11 State's Exhibit 72, again, documenting it after collecting
12 it in evidence.

13 Q State 73?

14 A States' 73, area underneath the vehicle with that same
15 red discoloration with the sand mixed.

16 Q State 74?

17 A State's 74 on the left side you can see the lift, the
18 jack that was used to pull up the vehicle in one section
19 beginning that discoloration and area of question that was
20 documented prior to collection.

21 Q State's 75?

22 A State's 75 is the passenger side underneath portion of
23 the vehicle, front of the vehicle. You can see on the —
24 on your left you can see the passenger side front tire
25 just in the picture to give you a little orientation in

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1 how that actually...

2 Q State's 76?

3 A State's 76, again, now this photograph is taken kind of
4 in the outside of the vehicle looking underneath. Appears
5 to be the passenger side of that vehicle. Just trying to
6 get as much documentation as possible underneath that
7 vehicle using the different sources of light to do that to
8 get the best photographs we can in regard to collecting
9 evidence.

10 Q State's 77?

11 A State's 77 shows the underneath side of the vehicle.
12 You can see areas of discoloration. There were question
13 -- prior photos have shown them in more detail. This is
14 more of a general to midrange photo which kind of shows
15 the orientation of those areas. This is looking from the
16 outside of the vehicle kind of looking underneath as it's
17 looking underneath the vehicle so.

18 Q And finally State's 78?

19 A State's 78 is the passenger side, underneath side of
20 the vehicle. Justs like that, on the control arms for the
21 passenger side front tire up edge of it, in there, as well
22 as the lift we're using to give you orientation that some
23 of these lower portions of vehicle you see has those
24 discolored parts on them to lower hanging portions of the
25 vehicle.

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1 Q Thank you. You can have a seat. Thank you.

2 A (Resumes seat on the stand.)

3 Q And Mr. Parrott, would that be the extent of your -- is
4 this the extent of your role in this particular case
5 processing the scene? Did you have anything else to do
6 after the evidence you collected on the 18th?

7 A The evidence itself I did collect those swabs from
8 those questionable areas underneath the area,
9 approximately eight swabs that I took back to the SLED
10 laboratory for further analysis and processing.

11 Q Okay. And was that sent to the appropriate place
12 within SLED for testing?

13 A That's correct.

14 MR. REDMOND: I have nothing further with this witness
15 at this time.

16 THE COURT: Cross-examination, Mr. Watts.

17 MR. WATTS: Yes, Your Honor, thank you.

18 THE COURT: Yes, sir.

19 MR. WATTS: If it please the Court.

20 **CROSS-EXAMINATION**

21 BY MR. WATTS:

22 Q Mr. Parrott, I think you indicated that you went out to
23 the Cornfield Road scene on the night of the 18th; is that
24 correct?

25 A Yes, sir. We left the Sheriff's Office just slightly

SW - J. Parrott - Cross

1 after 8:00 on the 18th.

2 Q Okay.

3 A To go to that location.

4 Q And from the pictures you've already shown us and
5 explained it was dark when you got there; is that correct?

6 A Very, yes, sir.

7 Q Did you ever — I know you took a couple of pictures
8 but did you ever return to that scene again to take any
9 further pictures?

10 A No, sir, I did not.

11 Q Okay. Was the extent of your investigation in the
12 Cornfield Road site the evening of the 18th and that was
13 it, correct?

14 A That's correct.

15 Q And the other scene where Mr. Brown's body was found,
16 you went there on the night of the 18th; is that correct?
17 The same day you went to Cornfield?

18 A We left Cornfield and went directly there, yes, sir.

19 Q Same time. So I'm assuming it was dark at the same
20 time.

21 A I was trying to give you an exact time but just to
22 clarify, but yes, sir, it was right after, it was right
23 after that.

24 Q Okay. And did you ever return to the scene where Mr.
25 Brown's body was found after the 18th?

SW - J. Parrott - Cross

- 1 A No, sir.
- 2 Q Okay. So the extent of your investigation as far as
- 3 the scene was just the night of the 18th?
- 4 A Let me refer back.
- 5 Q Physical residence?
- 6 A Cornfield Road had the area where the victim's body was
- 7 found and then the Sheriff — back to the Sheriff's Office
- 8 where the vehicle was processed, yes, sir.
- 9 Q Okay.
- 10 A The — I was trying to make sure it didn't roll — I
- 11 think it actually rolled into the morning of the 19th just
- 12 for clarification purposes.
- 13 Q Basically into the early hours?
- 14 A Correct, correct.
- 15 Q Okay.
- 16 A Right. We left at 1:43 in the morning so it would
- 17 actually roll into the next one.
- 18 Q Okay. The majority of the photos that you explained
- 19 and published to the jury were regarding the car; is that
- 20 correct?
- 21 A Yes, sir.
- 22 Q Okay. And regarding the photographs you took from the
- 23 undercarriage of the car, I think from your memory were
- 24 they containing a lot of sand and grit?
- 25 A Yes, sir.

SW - J. Parrott - Cross

1 Q In the undercarriage?

2 A Yes, sir. Appeared to be sand mixed with whatever more
3 dense liquid. Like I say, my experience I just...

4 Q It was your assumption of blood?

5 A It appeared to be blood.

6 Q Okay. And I think this is a picture earlier you
7 indicated that you took of the Cornfield Road; is that
8 correct?

9 A State's Exhibit 59.

10 Q 59, that's your picture?

11 A Yes, sir.

12 Q The sand you observed on the undercarriage of the car
13 was it consistent with the type of sand you observed on
14 this Cornfield Road?

15 A That would be more of a trace question that actually
16 compared sand and crystallization, but if you're talking
17 color consistency in my opinion very consistent.

18 Q Very consistent in your opinion. You've been qualified
19 already as expert so you're allowed to give your opinion.
20 You also took photographs and collected evidence of the
21 interior of the trunk; is that correct?

22 A Yes, sir.

23 Q Okay. And you got it from the carpeting of the trunk;
24 is that correct?

25 A Yes, sir.

SW - J. Parrott - Cross

1 Q And you got it from the carpeting of the trunk. You
2 also got it from the edges, part of the actual lid of the
3 roof. Is that all correct?

4 A Yes, sir.

5 Q Okay. Is there any way for you to determine when that
6 blood got there, whether it was prior to the Cornfield
7 Road site or after? Is there any way you can tell when
8 that blood was deposited?

9 A Not inside the vehicle.

10 Q Okay.

11 A The exterior portion of the vehicle you would have to
12 just use your reasoning in that because it was a rainy
13 night. Typically you would think that stuff would be
14 washed off over a period of time.

15 Q Okay. But when you investigated you found trace under
16 the blood traces underneath the car, which you assume was
17 blood at the time?

18 A Correct.

19 Q Which you took pictures?

20 A Correct.

21 Q You also observed the sand?

22 A That's correct.

23 Q What you previous testified was consistent in your
24 opinion to the sand at Cornfield Road location that you'd
25 taken a picture of?

SW - J. Parrott - Cross

- 1 A Could be.
- 2 Q And you cannot determine when the blood was deposited
3 on the interior of the trunk; is that correct?
- 4 A That's correct.
- 5 Q Okay. So you have no way to determine whether it
6 happened before anyone arrived at Cornfield Road or after?
- 7 A Correct.
- 8 Q Okay. Beg the Court's ---
- 9 A This sample was dry and it only takes -- it only takes
10 blood about four minutes to dry to start drying. So at
11 that time it was -- if it was wet you could, you know, but
12 it, like I said, it was DNA.
- 13 Q To which sample are you referring, interior or
14 exterior?
- 15 A Interior. Exterior was still damp.
- 16 Q All right. There's a picture of a hammer in one of
17 your photographs that you did. Did you ever do any kind
18 of sampling or take any analysis from the hammer, collect
19 any evidence from the hammer?
- 20 A Refer back to my notes. Can I refer to a copy of the
21 report, latent crime scene report?
- 22 Q Absolutely.
- 23 A I don't have a copy of that. If you don't mind, do you
24 have one of those?
- 25 Q I have a copy of the ---

SW - J. Parrott - Cross

1 A Latent print crime scene report. It was not included
2 in my case file. I do, however -- I do, however, have my
3 examination work sheet. I can use that.

4 Q Okay. If you'd just refresh your memory.

5 A I that -- yes. That item was visually examined, femur
6 (ph) cyano. Visually examined, processed with black
7 powder. Visually examined again with no value for
8 identification purposes for the purpose of fingerprints.

9 Q So as far as you could tell at that time or the value
10 of that is, is that correct?

11 A Correct, correct as far as fingerprint purposes.

12 Q And this has already been introduced as evidence. This
13 is listed as State's Exhibit 27. You recognize that area?

14 A Not in the daylight, no, sir.

15 Q All right.

16 A Sorry. It's similar to the corn-- it appears to be
17 similar to that corn field area but I can't, I can't be
18 sure.

19 Q Okay.

20 A I say Cornfield; that's the name of the road. The area
21 which the victim was found beside the corn field in the
22 wooded area.

23 Q I understand. Just, since you can give your opinion,
24 take a look at that and tell me as far as what you see in
25 State's Exhibit 27, does that have the same type of soil .

SW - J. Parrott - Cross

1 or ground kind of consistency as you observed out on the
2 Cornfield Road site?

3 A The Cornfield Road was basically sand.

4 Q Okay.

5 A And this is a more grassy area.

6 Q Okay, thank you.

7 A Yes, sir.

8 Q In your opinion as a crime scene investigator, the
9 evidence that you observed --

10 A Yes, sir.

11 Q --for undercarriage of the car, is that consistent
12 with someone being run over?

13 A Yes, sir.

14 Q Okay.

15 MR. WATTS: Beg the Court's indulgence one moment.

16 THE COURT: Yes, sir.

17 MR. WATTS: No further questions, Your Honor.

18 THE COURT: Redirect.

19 MR. REDMOND: No redirect, Your Honor.

20 THE COURT: All right, thank you, sir. You may step
21 down.

22 MR. REDMOND: And Your Honor, with the Court's
23 permission I ask Mr. Parrott be allowed to return to the
24 capital city.

25 THE COURT: All right. Any objection, Mr. Watts?

1 MR. WATTS: No objection.

2 THE COURT: All right. The witness is excused. Thank
3 you for coming.

4 MR. REDMOND: And Your Honor -- I'll wait till the
5 witness is clear, I'm sorry.

6 THE COURT: Okay.

7 MR. REDMOND: If it please the Court, Your Honor, at
8 this time that concludes the State's testimony,
9 testimonial evidence. I do, however, at this time wish to
10 publish several items that have been entered into evidence
11 at this time.

12 THE COURT: All right.

13 MR. REDMOND: With the Court's permission.

14 THE COURT: All right, ladies and gentlemen of the
15 jury, I'm going to grant permission to Mr. Redmond to
16 publish this evidence. It is in evidence and has been
17 marked in evidence and you'll recall that I told you at
18 the first of this case that the lawyers might request
19 permission the publish certain things to you and I know
20 they have already done that. Mr. Redmond has passed
21 exhibits around to you in the jury box. He will also have
22 the right to publish these exhibits to you. That's simply
23 a legalistic term meaning show or read the exhibits to
24 you. Do not be concerned if you do not have as long to
25 look at them or do not understand them completely while

1 they're being presented here in the courtroom. Anything
2 that has been introduced into evidence will go with you to
3 your jury room when you retire to reach a verdict. But
4 permission to publish the exhibits is granted.

5 MR. REDMOND: Thank you, Your Honor, may it please the
6 Court. First, the State will publish State's Exhibit 50
7 in evidence as testified to by Rosa Butler with the bank.
8 We would ask to publish that at this time. Next Your
9 Honor, is State's Exhibit Number 51. That is the
10 toxicology report which reflects negative findings as to
11 the blood of the victim Tyrone Brown for any drugs or
12 alcohol. Next Your Honor, is State's Exhibit 52. That is
13 an evidence processing report that shows the evidence that
14 was processed at SLED and some of which forwarded to the
15 DNA department. State's Exhibit 53, that is the DNA
16 analysis that Ms. Gallman testified to earlier today with
17 the results and corresponding information. And finally,
18 Your Honor, and attached is the certificate of
19 authenticity or acknowledgment. Actually, two
20 certificates of authenticity and acknowledgment and a
21 verification as well. This is for the cell phone records
22 of the defendant. This is State's Exhibit 58. Under
23 Rule 902 the State at this time — the State had moved to
24 admit and now wishes to publish to the jury.

25 THE COURT: All right, permission granted.

1 MR. REDMOND: And with that, Your Honor, the State
2 respectfully rests at this time.

3 THE COURT: All right. We'll wait just a few minutes
4 to give the jury an opportunity to review these exhibits.

5 (Pause.)

6 THE COURT: All right. Thank you very much, ladies and
7 gentlemen. You have heard the State announce now the
8 State has rested. That means you have heard all the
9 testimony you will hear from the State at this time.
10 There are certain matters of law which I now need to take
11 up with the attorneys in this case. I have to do that on
12 the record and outside of your presence so I'm gonna ask
13 that you go to your jury room for a few minutes while I
14 take care of these matters and then we'll be ready to
15 resume. We should be ready in about 10 minutes or 15 at
16 the max. Thank you very much, and if you would, go to
17 your jury room. Do not discuss the case among yourselves;
18 it's still premature for you to do so.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 12:04 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: All right, Mr. Watts, motions on behalf of
23 the Defendant.

24 MR. WATTS: Yes, Your Honor. At this time the Defense
25 would make a motion for directed verdict on all three

1 indictments, Your Honor.

2 THE COURT: Grounds.

3 MR. WATTS: Your Honor, based upon the grounds that
4 there's been a failure of competent evidence tending to
5 prove the charge as in the indictment, Your Honor. And I
6 understand as far as I can take them one at a time, Your
7 Honor?

8 THE COURT: Yes, I want to hear from you each one --
9 let's address the first indictment for murder first.
10 Let's take them separately.

11 MR. WATTS: Yes, Your Honor.

12 THE COURT: Go ahead.

13 MR. WATTS: Your Honor, the State has failed to provide
14 competent evidence regarding the necessary elements of
15 murder. First off, they have failed to provide competent
16 evidence of Mr. Gilbert's actually causing the death of
17 killing Mr. Brown. The second -- the third element of
18 with malice aforethought they have failed to provide
19 competent evidence regarding malice aforethought. We've
20 heard evidence about how as far as one of his State's own
21 witnesses knew that this was a friend of Mr. Brown's and
22 there's no indication there's anything otherwise. I think
23 there was some other evidence presented about some kind of
24 altercation, but typically that's not what you're going to
25 find with malice. But this time we move that there should

1 be a directed verdict on behalf of defendant based on the
2 State not being able to prove the elements to provide
3 competent evidence regarding the elements of murder.

4 THE COURT: All right, sir.

5 MR. WATTS: Also — excuse me, Your Honor, I apologize.

6 Also the State has failed to show that the alleged blunt
7 force trauma to the head had anything to do or was the
8 cause of death at the time. There's also been competent
9 evidence regarding the impact that has occurred to the —
10 Mr. Brown regarding the impact with the vehicle being run
11 over. We've had evidence where someone has already
12 admitted under oath they were the individual which caused
13 that damage. There's no — the medical examiner that came
14 through. It was provided there was no way to
15 differentiate when or how that trauma came about. That
16 can absolutely put it on Mr. Gilbert that he's the one who
17 actually wielded this.

18 THE COURT: Didn't his cousin testify that he was the
19 one beating him over the head with the cinder block?

20 MR. WATTS: His cousin did testify to that.

21 THE COURT: All right, okay. All right. Let me hear
22 from you on armed robbery.

23 MR. WATTS: Beg the Court's indulgence for one second,
24 Your Honor. Your Honor, we're talking about the taking or
25 attempted taking of course personal property of another

1 with intent to deprive possession of use of force,
2 threats, intimidation, or the deadly weapon. There has
3 been testimony regarding a weapon being used. There's
4 been testimony about what was going on, who was intent to
5 deprive or, what the actual State's witness Mr. Gilbert,
6 Jamie Gilbert, identified he was the one who was looking
7 for something to take, he was going to take the car. And
8 as far as the taking of that property there's been no
9 competent evidence that the State can show that
10 Mr. Gilbert actually took with the intent to deprive any
11 of the possessions of Mr. Brown. Also going through with
12 the State's evidence that has been provided Mr. Gilbert
13 was in possession of the car when the arrest was made. So
14 all evidence indicates that Mr. Jamie Gilbert had
15 possession of the car.

16 THE COURT: Who had the weapon? According to the
17 testimony.

18 MR. WATTS: According to the testimony Mr. Gilbert had
19 a brick and also Jamie Gilbert had the car that used it as
20 a deadly weapon as well.

21 THE COURT: But didn't Mr. ---

22 MR. WATTS: Mr. Jamie Gilbert ---

23 THE COURT: Isn't the testimony also that Mr. Bobby
24 Gilbert had the pistol held on the defendant?

25 MR. WATTS: I believe there was testimony, Your Honor,

1 about there being a pistol involved. There have been no
2 evidence regarding any kind of gun other than, other than
3 he says there was a gun around. There's been no finding
4 of it, no presentation ---

5 THE COURT: Well, that's true, but I mean, there's
6 there's testimony---

7 MR. WATTS: There has been testimony, Your Honor.

8 THE COURT: ---in the record if I recall it correctly
9 that according to Mr. Jamie Gilbert Mr. Bobby Gilbert was
10 holding the weapon on the victim in this case.

11 MR. WATTS: The testimony, my understanding was, that
12 Mr. Gilbert was holding a weapon on the victim at the time
13 but then now he's also telling the -- using it that he put
14 the weapon away when using this brick, there was no intent
15 to take anything. That's describing a beating in the
16 course of it so the weapon is not ---

17 THE COURT: Well, let's -- I'll address then first the
18 weapon being the pistol.

19 MR. WATTS: Yes.

20 THE COURT: But there's also to be an armed robbery it
21 does not have to be a pistol or a knife. Can't it be --
22 can a rock be a weapon or a baseball bat?

23 MR. WATTS: Anything that you can, I believe, the way
24 the statute reads and the way the law reads if you
25 reasonably believe it's something that can do you harm,

1 yes, sir, you can clarify that as a weapon. So I'm not
2 basing this just on the fact whether he had a pistol or
3 not or whether he was throwing a brick.

4 THE COURT: Regardless of exactly who did what to whom
5 in this situation under South Carolina, South Carolina
6 law, have we got accomplice liability here?

7 MR. WATTS: Well, Your Honor, I think that goes to the
8 testimony of who was trying to do what at the time, and
9 there has been some evidence that has said that he was
10 supposedly going to rob at the time and then this went the
11 wrong way so I think---

12 THE COURT: So I'm -- what I'm saying is if you take
13 Mr. Jamie Gilbert's testimony as absolute and say that he
14 said they were going to rob and all that sort of stuff
15 wouldn't that also go over to your client under the theory
16 of accomplice liability if the jury believes that.

17 MR. WATTS: If the jury were to believe it, but I think
18 mere presence of him making a phone calling can counteract
19 that accomplice liability. Just because someone is there
20 doesn't mean they took part in the, you know, planning and
21 opportunity, planning a crime or taking the commission of
22 the act. I think they'd have it take it that there was an
23 actual plan.

24 THE COURT: Okay.

25 MR. WATTS: But of course Mr. Jamie Gilbert has

1 testified. There is some evidence ---

2 THE COURT: And isn't that the test under rule ---

3 MR. WATTS: ---if look at the weight ---

4 THE COURT: Isn't that test under Rule 19? Isn't the
5 test not at this point on my part the weight to be given
6 to the evidence, that that is a factual matter in the --
7 that is for the jury to determine. But under Rule 19 the
8 test that the Court has to apply is whether or not there
9 is any evidence that would support the charges, and that
10 is up to the jury to determine what weight is to be given
11 to that evidence. Your Honor, I agree it's a test of the
12 existence or nonexistence but also in that rule says
13 competent evidence.

14 But competent -- and I can tell you right now,
15 Mr. Watts, that that rule is getting ready to change. I
16 am working on a -- I'm head of a task force that is
17 rewriting and revising the criminal rules recommending to
18 the Supreme Court changing in the criminal rules. And one
19 of the unanimous recommendations of that committee is
20 going to be that that language be changed to if there's a
21 failure of evidence in the record because the use of
22 competent in that sentence is widely misunderstood.
23 Competent as it's used in that sentence means admissible
24 evidence or admitted evidence. It does not mean anything
25 about the weight of the evidence that is supposed to go,

1 but when it says failure of competent evidence it's
2 talking about evidence in the record. But you're not
3 alone. Most of the Defense lawyers use the argument of
4 failure of competent evidence and argue to the Court there
5 is no competent evidence and that's what's going to result
6 in the changing of that rule to language that says failure
7 of evidence in the record. That rule goes on to say and
8 ruling on the motion the trial judge consider on the
9 existence or nonexistence of the evidence and not its
10 weight. So it's my view that competent there means
11 admitted evidence or admissible evidence and not the
12 weight to be given to the evidence because competent makes
13 it look like I'm weighing the evidence. Go ahead and tell
14 me about the grand larceny. What's your position on the
15 grand larceny?

16 MR. WATTS: Your Honor, my position on the grand
17 larceny issue is the fact that there's been a — I think
18 that the ambiguity regarding the testimony and, we have
19 two issues essentially talking about the card that was
20 taken and you have a balance that's in the record as far
21 as the value of the car, 55-dollar value as far as the
22 bank card. We have the testimony regarding the value of
23 the vehicle. I think that that is ambiguous. There was
24 no other foundation other than just I kind of think that's
25 what it is, and it seems like it's just an arbitrary

1 amount that is just awarded.

2 THE COURT: But you didn't object it to. It's in the
3 record.

4 MR. WATTS: Your Honor, I questioned him about it,
5 you're right. I did ask him that, admit it into the
6 record.

7 THE COURT: All right. Now anything else, Mr. Watts,
8 you want to add? I understand --

9 MR. WATTS: Not regarding any directed verdict motion,
10 Your Honor.

11 THE COURT: Yes, sir, Mr. Redmond.

12 MR. REDMOND: Briefly, Your Honor. And I think you've
13 addressed most of it in your questions to the Defense.
14 Obviously there is testimony in the record regarding,
15 first, the murder charge. The defendant -- Jamie Gilbert
16 during the whole testimony indicated the defendant was
17 involved. And you indicated accomplice liability, also
18 testified that he was the one that actually dropped the
19 stone repeatedly on to the victim. So there is obviously
20 evidence, and again, the standard being in a light most
21 favorable to the State in this regard on this motion. We
22 would submit the State has introduced evidence that would
23 allow us to have this case decided by a jury.

24 As it relates to armed robbery, Your Honor will recall
25 this initially began as a plot to rob, at least on Jamie

1 Gilbert's behalf, based on what he testified his
2 communications were with the defendant both prior to this
3 incident. And as a matter of fact, prior to the incident,
4 before the incident, and even during the incident when the
5 issue came up about the money the comment was made by the
6 defendant that this was just a mission failed. So
7 obviously I think all that ties him into the robbery. And
8 finally, as it relates to grand larceny and as the Court
9 indicated there was no objection. The Captain Locklair
10 testified based on his experience and work with
11 investigative matters regarding vehicles and valuation of
12 vehicles, even explained to the Court how he does that.
13 We would submit that there is enough evidence to have all
14 three charges submitted to the jury.

15 THE COURT: All right. As the moving party would you
16 like to reply, Mr. Watts?

17 MR. WATTS: No reply, Your Honor.

18 THE COURT: Okay. All right, under Rule 19 of the
19 South Carolina Rules of criminal procedure, as we have
20 already discussed, either side or the Defense has the
21 right at the conclusion of the testimony to make a motion
22 for a directed verdict if there is a failure of competent
23 evidence tending to prove the charge or charges in the
24 indictment. The rule goes on to say that in ruling on the
25 motion the trial judge should consider only the existence

1 or nonexistence of evidence and not its weight. Of
2 course, that tells me that it is the jury who has to make
3 the determination of the weight to be given to the
4 evidence, and I am to determine only the existence of
5 evidence in the record. With regard to the murder there
6 is absolutely no question that the defendant died, I mean
7 the victim died, and that he died of a homicide. The
8 medical examiner was very clear on that. Even if there
9 were not more, there's evidence that the parties in this
10 case were all involved in the actions that resulted in the
11 death of the victim in this case and that under accomplice
12 liability they would all be liable as one. With regard to
13 the malice element, the use of a deadly weapon creates the
14 inference of malice. And even again, if there were not
15 more, and I think there's plenty of circumstantial
16 evidence that there was malice in this case but there's
17 direct evidence of a use of a weapon, not maybe the weapon
18 that caused the death but there's the use of the weapon
19 being a pistol in the crime. And further, the cinder
20 block is evidence that that could -- from which the jury
21 could easily conclude that that was the murder weapon and
22 can be a weapon. And I think that there is plenty of
23 evidence of malice aforethought by virtue of the fact that
24 the way that this crime occurred both direct and
25 circumstantial evidence so I would deny the motion for

1 summary judgment with regard to the crime of murder.

2 Similarly, with armed robbery, I would deny the motion
3 for armed robbery. The elements of armed robbery are in
4 the record. It is a matter for the jury to determine the
5 weight to be given, but there was a weapon-- a pistol being
6 used. There was also other type of weapons being used,
7 and there is evidence that property was taken from the
8 victim, all of which would lead to an armed robbery if the
9 jury believes that evidence. And again, under the theory
10 of accomplice liability one is liable as all of them are
11 liable. I am troubled a little bit about the grand
12 larceny situation because the testimony is pretty clear
13 that the bank card was valued less than the amount that
14 would give rise to the grand larceny, but the vehicle was
15 valued at an amount that would give rise to an amount that
16 would create the crime of grand larceny. However, based
17 upon the record and evidence that's in the record, I'm
18 compelled to deny the motion there because the value given
19 to the vehicle in -- which is in evidence and was
20 uncontested -- is that it exceeded the amount which would
21 give rise to grand larceny. I think the amount was 6500
22 dollars, but I'm not sure the exact amount but it was a
23 number of thousands of dollars and that would be grand
24 larceny. I'm not sure the witness was competent to
25 testify to that, but he was allowed to and did testify to

1 that and so that's the element in the record by which I've
2 got to decide the motion and so the motion would be denied
3 with regard to the grand larceny as well.

4 All right, Mr. Watts, have you had a chance to talk
5 with your client about his Fifth Amendment rights?

6 MR. WATTS: Yes, Your Honor.

7 THE COURT: All right. Mr. Redmond, before we get into
8 that because this always impacts upon whether or not he's
9 going to testify or not, tell me what the State's position
10 is with regard to impeachable offenses under 609.

11 MR. REDMOND: And Your Honor, may it please the Court,
12 it appears that in March of 2000-- excuse me, in February
13 of 1997 he was sentenced here in Darlington County for
14 common law robbery.

15 THE COURT: What's the date?

16 MR. REDMOND: The date was 2/26/97. He received a ten
17 year sentence; however, I'm actually waiting to hear back
18 from the Department of Corrections as it relates to
19 exactly when he was released. He got a concurrent two
20 year sentence on a possession of a weapon and a concurrent
21 five year sentence for possession of a stolen vehicle.

22 THE COURT: Well, Mr. Watts, I'm sure your client would
23 be able to tell us when he got out of prison.

24 MR. WATTS: I'm sure he would, Your Honor.

25 THE COURT: All right, let's find out.

1 (Attorney confers with defendant.)

2 MR. WATTS: December 2003, Your Honor.

3 THE COURT: 2003?

4 MR. REDMOND: We submit it is in, within the ten year

5 range in which he was released from the incarceration, so

6 therefore we would seek to introduce that on the issue of

7 credibility.

8 THE COURT: For common law robbery.

9 MR. REDMOND: Common law robbery he got a possession

10 of weapon and possession of a stolen vehicle.

11 THE COURT: Is possession of a weapon a crime for which

12 he could have gotten more than one year in prison?

13 MR. REDMOND: Yes, he actually received -- and I don't

14 know the exact statute, but it says here two years

15 concurrent so I don't know if that was possession of

16 stolen weapon which is up to five years. It just says

17 possession of a weapon --

18 THE COURT: Or underage or whatever. It could have

19 been one or the other. But if he got a two year sentence

20 then there may be the -- all right. Common law robbery,

21 possession of weapon, what's the other one?

22 MR. REDMOND: Possession of a stolen vehicle, Your

23 Honor.

24 THE COURT: All right. What else?

25 MR. REDMOND: And in 2006, April 18th, 2006 he got a

1 burglary second degree nonviolent conviction. The
2 sentence was five years suspended to three years probation
3 suspended to three years probation.

4 THE COURT: All right. Mr. Watts, what's your position
5 on the State's contention that both the 1997, three
6 convictions and 2006 convictions are impeachable offenses.

7 MR. WATTS: Your Honor, I think that according to the
8 rules where it says when you release the 1997, 6 and 7 --
9 the release date was 2003, Your Honor. I think that would
10 be ---

11 THE COURT: Within the rule.

12 MR. WATTS: ---within the rule, and I think the later
13 offenses that were described would well fall within the
14 ten year even with the charges and convictions that the
15 sentencing is for.

16 THE COURT: So you don't dispute then that they, the
17 State would have the right, if he takes the stand the
18 State would have the right to use those as impeachable
19 offenses; is that right?

20 MR. WATTS: Do not dispute that.

21 THE COURT: All right. Now we go back to the Fifth
22 Amendment questions. Have you, Mr. Watts, had a chance to
23 discuss with your client whether he -- the rights that he
24 has under the Fifth Amendment of the United States
25 Constitution as well as the South Carolina Constitution?

1 MR. WATTS: Yes, Your Honor, I have described his
2 rights.

3 THE COURT: In your opinion does he understand those
4 things?

5 MR. WATTS: In my opinion he does understand his
6 rights.

7 **EXAMINATION BY THE COURT**

8 Q Mr. Gilbert, let me ask you to stand a minute for me
9 please. Your lawyer has explained to me that he has
10 explained your constitutional rights, and of course
11 yesterday the Court also explained your constitutional
12 rights under the Fifth Amendment to the Constitution.
13 That is, that you cannot be required to testify in this
14 matter. You have the right and privilege against
15 self-incrimination. If you do not -- if you wish, you
16 exercise that right, the jury will not be able to consider
17 the fact that you did not testify in this matter. This is
18 a personal privilege and no one can exercise this
19 privilege except you. No one can waive this privilege
20 except you. It is up to you. My question to you now is,
21 have you discussed with your lawyer whether you should or
22 should not testify in this case?

23 A Yes, sir.

24 Q Have you understood what both Mr. Watts and I have
25 explained to you about your Fifth Amendment Rights?

1 A Yes, sir.

2 Q Do you have any questions that you want to ask to
3 either Mr. Watts or me about your Fifth Amendment Rights?

4 A No, sir.

5 Q And you have understood what we have explained to you;
6 is that correct?

7 A Yes, sir.

8 Q All right. Have you made decision as to whether you do
9 or do not wish to testify in this matter?

10 A Yes, sir.

11 Q And what is that decision?

12 A No, I do not wish to testify.

13 Q And is that decision freely and voluntarily made on
14 your part?

15 A Yes, sir.

16 THE COURT: All right. The Court will then find that
17 the defendant has made a free, voluntarily, knowing and
18 intelligent decision to exercise his rights under the
19 Fifth Amendment to the Constitution and not testify in
20 this case and the Court will respect that decision and
21 will instruct the jury accordingly. Thank you. You may
22 be seated.

23 All right, Mr. Watts, that being the case, does the
24 Defense plan to present any other evidence or testimony in
25 this matter?

1 MR. WATTS: We're not going to present any other
2 evidence or testimony, Your Honor.

3 THE COURT: All right. So the Defense will rest as
4 well?

5 MR. WATTS: Yes, Your Honor.

6 THE COURT: All right, Counsel, I propose then at this
7 time to bring the jury back in, allow Mr. Watts to
8 announce that the Defense has rested and I will send the
9 jury to lunch. We will then take up and have a charge
10 conference regarding the charges and the possible verdict
11 forms, and we'll do closing arguments after lunch. 12:30,
12 time we do those things will be another 15 minutes. I'll
13 bring the jury back at 2:00 and we'll start about 2:00
14 with closing arguments.

15 All right, bring the jury in please.

16 (WHEREUPON, the jury was returned to the courtroom at
17 approximately 12:28 p.m., and the following proceedings
18 commenced in open court.)

19 THE COURT: We have concluded the matters that we
20 needed to do on the record and outside of your presence,
21 and we are ready to go forward.

22 Mr. Watts, does the Defense wish to present any
23 testimony or evidence in this matter?

24 MR. WATTS: No, Your Honor, Defense rests.

25 THE COURT: All right. The Defense has rested in this

1 case, ladies and gentlemen, and that means you have now
2 heard all of the testimony and evidence that you will hear
3 in this case. There are only two things that remain to be
4 done. Those are the arguments of counsel and the
5 instructions on the law by the Court. Those will take us
6 a good while counting the arguments and instructions on
7 the law, and since it is 12:30 I think it is better we go
8 ahead and break for lunch at this time, bring you back,
9 and then we will go into arguments and charge this
10 afternoon. So I'm going to excuse you now. We've got a
11 few matters still we have to do from administrative
12 standpoint and then get some lunch for all the court
13 personnel so I'm going to ask you be back in your jury
14 room please at 12:00. We'll be ready to go with the
15 instructions and the arguments at that time. Again, I
16 would tell you over the lunch recess it is still premature
17 to begin any discussion of this case when you're
18 reassembling there in the jury room. Do not discuss the
19 case among yourselves. Do not discuss it with anyone else
20 and do not allow anyone to discuss it with you. And do
21 not read any news stories or do any research on the
22 computer or otherwise regarding this matter, and be back
23 in your jury room please at 2:00 and we'll try to be ready
24 to go promptly at that time. Thank you. Have a pleasant
25 lunch. I'll see you this afternoon.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 12:30 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: All right. Counsel, requests for charge to
5 hand up, either side?

6 MR. WATTS: Your Honor, if we may, I have some and I
7 was waiting to make sure that I had everything and I had a
8 packet already prepared in triplicate so I can submit, but
9 I would ask the Court's indulgence just a couple of
10 minutes just to make sure I've got everything that I want
11 to use and separate it out depending on what the State's
12 evidence was going to be.

13 THE COURT: All right, go ahead.

14 MR. REDMOND: And Your Honor, of course I went down
15 during the break and forgot but I can just tell the Court
16 that normally the only special instruction I was gonna ask
17 for isn't going to apply since the Defense didn't put up
18 any evidence. And you already referenced accomplice
19 liability.

20 THE COURT: I figured you were going to ask for that.

21 MR. REDMOND: That's -- I was going to -- and that
22 would be the only thing, Judge.

23 THE COURT: Okay.

24 (Pause.)

25 THE COURT: All right. For the purposes of what I will

1 charge, this is what I plan to charge, is that I'll have
2 my general felony charge which will include burden of
3 proof, presumption of innocence, reasonable doubt,
4 credibility. All those are included in my general felony
5 charge. I will also charge the crimes, of course, of
6 murder, armed robbery, and larceny. In addition to that
7 it would be my intention to instruct the jury on expert
8 witnesses, direct and circumstantial evidence, the
9 voluntariness of statements or confessions, accomplice
10 liability, mere presence, and the defendant not
11 testifying. Those are the things that I see are the
12 issues that are involved.

13 Now let's look at the requests that have been handed up
14 by the State, and we'll -- I mean, by the Defense and
15 we'll number them as we go through. Number 1 is contained
16 in my general felony charge and will be charged in the
17 language which I use in my general felony charge but it is
18 basically the same as has been handed up. Defendant's
19 Number 2, again, again that is contained in my general
20 felony charge. It will be charged in the language of my
21 general felony charge, but rather than the exact language
22 that has been handed up here to the Court. Number 3, I
23 have a reasonable doubt charge that I use that does
24 contain the hesitate to act and also for a doubt for which
25 you could give a reason. That's my own language.

1 Actually, it's one that Judge Baxley developed and I liked
2 it so well I use his, but it does contain the same
3 language that is contained in the Defendant's request
4 number 3. Mere presence, I indicated that I would charge
5 that. I will use the language direct from Judge
6 Anderson's -- more than likely will use the language
7 directly from Judge Anderson's charge book, but there will
8 be a mere presence charge given. That is also contained
9 in the general -- the coconspirator or association. I'll
10 make sure that that -- that's appropriate; I'll make sure
11 that it is included.

12 I am going to give a charge that I use, probably Judge
13 Ervin's charge on voluntariness of the statement. I won't
14 contain the language that you have here because it uses
15 the defendant's name and that's getting a little bit close
16 to commenting on the facts. But I will charge on the
17 voluntariness of the statement and the duty of the jury to
18 find that the statement was freely and voluntarily given
19 and that burden rests on the State beyond a reasonable
20 doubt.

21 Tell me why the next one -- and I'm not sure about what
22 number we're on now but we're talking about the conviction
23 of a crime. Why is that appropriate in this case?
24 There's been no testimony regarding his character -- his
25 character is not in evidence and there's been no evidence

1 of convictions of crime. He didn't testify.

2 MR. WATTS: I'm not referring to Mr. Gilbert. I'm
3 talking about Jamie Gilbert who gave -- the witness.

4 THE COURT: All right. Any objection to that charge,
5 Mr. Redmond?

6 MR. REDMOND: No, sir, Your Honor.

7 THE COURT: All right. Causation is part of the murder
8 charge. It will be contained in my general charge on
9 murder. Resolution of doubt in favor of the defendant is
10 contained in my charge. Burden of proof and malice are
11 both contained in my felony charge. What about the cause
12 in fact request, Mr. Redmond?

13 MR. REDMOND: I would object to that as well based upon
14 in this situation based upon the fact that the evidence is
15 with the instruction on accomplice liability this almost
16 flies in the face to accomplice liability. I think it was
17 put in there and designed to counteract a hand of one,
18 hand of all charge because but I think that mutually
19 exclusive in this case based on evidence that's in the
20 record we would actually oppose this particular
21 instruction on cause and fact.

22 THE COURT: Well, it gets a little bit into the comment
23 of the facts. What if ---

24 MR. REDMOND: And Your Honor, I think that's really the
25 crux of my objection is the way it's worded here.

1 THE COURT: Right.

2 MR. REDMOND: I would strongly oppose the wording of
3 it. I'm sure there is a causation charge that would be
4 appropriate and even in light of the accomplice liability;
5 but this language, I think, is way into the facts of the
6 case and I would oppose it.

7 MR. WATTS: Your Honor, I'll be happy to change the
8 language somewhat of course to remove the name.

9 THE COURT: It's not the name causing me the problem.
10 It's by saying that it's got to be shown the death of
11 Tyrone Brown was proximate caused by the conduct of
12 striking Tyrone Brown. That's the problem that he has,
13 and that's the factual -- that's the factual comment that
14 he objects to.

15 MR. WATTS: I would -- Your Honor, there's been
16 testimony both ways that Mr. Jamie Gilbert saying that
17 there was his actions that were brought about; that
18 Mr. Gilbert, Bobby Gilbert brought about these actions
19 from telling. There's also been testimony that when Mr.
20 Gilbert found out about what he was trying to do or asked
21 what was going on when that came from his statement. So I
22 think that the charge itself is valid. As far as --

23 THE COURT: Why isn't it a comment on the facts though
24 if I say caused by the conduct of striking Tyrone Brown.
25 Isn't that a comment on the facts?

1 MR. WATTS: Well, I mean, the whole thing about this is
2 he's the one with the brick. Jamie Gilbert plead ---

3 THE COURT: I know that. But you can argue that all
4 day long, but as far as the law is concerned that's a
5 comment on the facts and I can't charge on the facts.

6 MR. WATTS: I remove that about the striking, Your
7 Honor. I withdraw that. And I think there might be a
8 typo in there but for the conduct by the defendant.

9 MR. REDMOND: I would still contend, Your Honor, it --
10 it actually would be confusing to the jury I think.

11 THE COURT: I've got a little bit of a problem with
12 that being accomplice liability. You don't deny or you
13 don't contend accomplice liability charge is not
14 appropriate, do you, Mr. Watts?

15 MR. WATTS: Your Honor, as far as accomplice liability,
16 the appropriate charge, Your Honor, I think you said you
17 have a general charge and I don't know the facts of it,
18 how your general charge is written, but I think the big
19 issue ---

20 THE COURT: You got Judge Anderson's book there?

21 MR. WATTS: No, sir, I have ---

22 THE COURT: That's what I'm going to use.

23 MR. WATTS: I have F. Patrick Hubbard's charge book,
24 Your Honor.

25 THE COURT: That's not a charge book. And Pat Hubbard

1 -- that's just a treatise. Pat Hubbard is not -- doesn't
2 know much -- I mean, he's already in law there. He's not
3 objected. I'll use Judge Anderson's. If we use Judge
4 Anderson's on accomplice liability I think it is
5 appropriate in this case. And I'll let you know on that
6 one. All right, I'm keeping -- let's number cause in fact
7 as number -- I'll go through them in just a minute. We'll
8 take care, clean this up. I may have them a little
9 different order than you got them. I'm going to call this
10 one Number 11. Cause in fact, Number 11, we'll deal with
11 that in a few minutes. Intervening cause, where is the
12 evidence of intervening cause? The vehicle?

13 MR. WATTS: Yes, Your Honor.

14 THE COURT: What's your position, Mr. Redmond?

15 MR. REDMOND: And Your Honor, again, the vehicle, we
16 contend it's all one incident and I think, again, we're
17 getting to the point where it's -- if there's an attempt
18 to confuse the jury. I don't know -- I'm not saying it's
19 purposeful, but I think it would tend to confuse the jury
20 because if you talk about intervening actors and the way
21 that, again, with the accomplice liability, hand of one
22 hand of all, which the Court has indicated they're going
23 to instruct. If they're all engaged in different acts.
24 If the jury believes that they engage in different acts
25 during this same course of conduct then we throw in

1 intervening act to charge again ---

2 THE COURT: Let me ask Mr. Watts this and I'm going to
3 move this on. If all of them are acting together in
4 concert under an accomplice liability theory does it
5 matter which one was driving the car or where the death
6 was caused by the block or the car? If they were all
7 acting under accomplice liability theory what difference
8 does it make? The intervening cause, I mean, it's all
9 part of one act.

10 MR. WATTS: I mean, Your Honor, the testimony has been
11 that he was called to give them a ride. That was the
12 testimony that's been presented. There's other testimony
13 that's been presented that Mr. Gilbert was the one who set
14 up in concert of this. I think there's enough from the
15 testimony in the record given when the State introduced
16 Mr. Gilbert's statement that he didn't know what was going
17 on, all he was doing was getting a ride. And it would be
18 appropriate that we charge that. Even if the State
19 does -- I mean, if the jury does believe that something
20 went on outside, we're talking about different scenes,
21 different time periods of cooling off where there was
22 nothing, I mean, if we're talking about the drive then
23 there's time to make a decision. I think that's a
24 significant amount of time to separate.

25 THE COURT: I'll look at it. I'll let you know before

1 arguments. All right, and multiple indictments separate
2 consideration; I agree with that. That would be according
3 to the number I have used, 13. And finally, permissive
4 inferences. And I don't -- I'm not going to charge that;
5 that's charge on the facts. Plus the fact that most of
6 that is contained in my general charge as well so. All
7 right, here's what I have done and numbered and will tell
8 y'all and break for lunch right now. Going through them,
9 one, contained in general charge; two, contained in
10 general charge. Let me tell you what they are so your
11 numbers will correspond to mine. One, general charge on
12 proof is in my general charge. Number two, burden of
13 proof is in my general charge. Number three, a reasonable
14 doubt. I will use my reasonable doubt charge. Number
15 four, mere presence. I will use Judge Anderson's charge,
16 but not the language that is here. Judge -- five, I will
17 use my charge with regard to the statements. That's
18 defendant statements to authorities and rather than the
19 one submitted. General number six is the causation
20 requirement. That's in my general charge. Number seven
21 is the reasonable doubt in favor of the defendant. That's
22 in my general felony charge. Number eight is malice and
23 burden of proof. That's in my general felony charge.
24 Then the others that I'm going to let you know on
25 number nine about -- I've -- number nine, credibility of a

1 character, conviction of crime, I will charge that.
2 Number ten, mere presence or association of a
3 coconspirator, I will charge that. Number 11 I'm going to
4 let you know on. Number 12 I'm going to let you know on.
5 And Number 13 I will — multiple indictments, I will
6 charge that. Eleven being cause in fact and 12,
7 intervening cause. I'll let you know on those two.
8 Permissive inferences is the last one, and I'm not going
9 to charge that.

10 The rest of them will be worked into the charge except
11 for the two that I'll let you know after lunch what the
12 Court's ruling is on what I have numbered Number 11 as
13 cause in fact and Number 12 intervening cause. I'll let
14 you —

15 MR. WATTS: May I make a brief motion that I move to
16 have any jury charge left that's been submitted that are
17 rejected due to you have your own charge or rejected due
18 to deciding you're not going to charge anything like that
19 to be submitted and made a part of the Court's record,
20 Your Honor.

21 THE COURT: Yes, sir, absolutely. You can make them
22 all — we'll make the whole bundle part of the record and
23 I will give those to the court reporter when I have
24 finished my ruling.

25 MR. WATTS: Thank you, Your Honor.

1 MR. REDMOND: Thank you, Your Honor.

2 THE COURT: All right, time for argument. Mr. Redmond,
3 are you going to waive opening?

4 MR. REDMOND: I am going to waive opening.

5 THE COURT: How much time you need, Mr. Watts?

6 MR. WATTS: Your Honor, I suspect somewhere between 30
7 to 45 might be a little bit longer this time but not much
8 longer than that. I would think 30.

9 THE COURT: I think 30 minutes is plenty of time. How
10 much time are you going to need?

11 MR. REDMOND: I'd say 30 minutes, Your Honor.

12 THE COURT: Let's hold it to 30 minutes, Counsel, and
13 be ready to start back 2:00.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Back on the record with regard to the
16 matter of the State versus Bobby Alexander Gilbert. Mr.
17 Gilbert is present in court with his attorney Mr. Watts.
18 The State is present with Ms. McKenzie and Mr. Redmond.
19 Counsel, I think the only two things that I have still
20 before we go into the arguments charge are the
21 determination of the charges as requested by the defendant
22 and what the Court is going to charge again if you'll
23 follow me with the copies that you have, and let's make
24 sure we got the numbers right so that if you want to take
25 exception you'll be able to do so. But general charge on

1 proof is number one. Burden of proof is number two.
2 These are the ones submitted by Mr. Watts. Reasonable
3 doubt is number three. Statement to authorities is number
4 five. What I did with number four, let's leave it that
5 way for now. I got them numbered this way. Causation
6 requirement is number six. Reasonable doubt, five, of the
7 defendant is number seven. Defendant's requested
8 instruction number eight is burden of proof. I guess
9 where we'll make known there'll be a complete set.
10 Permissive inference, we'll make is number four and I've
11 denied that one, but I'll put it in the packet. Number
12 nine is credibility and conviction of crime which I've
13 indicated I would charge. Number ten is mere presence and
14 that is okay, but it will be contained in my general
15 charge. Number 13, multiple indictments, I will charge
16 that. I'm sorry, I missed it. I messed up. Let's go
17 back again and get these numbers straight, my mistake. I
18 did have a number four, and that was mere presence and I
19 will use mere presence charge. And then we will make the
20 last one the one that the permissive inferences as number
21 13, and then number 12 is intervening cause and number 11
22 is cause in fact. I am going to deny the request number
23 11 for cause in fact. I think it is confusing when
24 charged in connection with the accomplice liability
25 charge, and I also think that it is not a correct

1 statement of the facts and also may be a charge on the
2 facts so I'm denying 11 but let it be made part of the
3 record. On Number 12 I will add to the end of my
4 accomplice liability charge the following language.
5 Defendant's conduct is not proximate cause of death if
6 death is the result of an independent act by another
7 person not his accomplice.

8 MR. REDMOND: No objection from the State.

9 THE COURT: So that's the way I'll handle that. All
10 right, now with that then I'm going to -- I'll give --
11 when we finish the charges I'll give an entire set of the
12 charges to the court reporter to make a part of the
13 record.

14 MR. WATTS: Thank you, Your Honor.

15 MR. REDMOND: Thank you, Your Honor.

16 THE COURT: Anything else before we go forward?

17 MR. REDMOND: Nothing from the State, Your Honor.

18 MR. WATTS: Yes, Your Honor, we have one more motion.

19 Again, we assert the motion for a directed verdict on
20 behalf of the defendant, Your Honor, based upon the same
21 as the previous motion.

22 THE COURT: All right. The record will reflect the
23 motion has been made for directed verdict at the
24 conclusion of all the testimony pursuant to Rule 19. The
25 Court's ruling is the same. There is evidence in the

1 record giving -- making jury issues of the all three
2 charges against the defendant and the motion will be
3 respectfully denied.

4 MR. WATTS: Thank you.

5 THE COURT: All right, bring the jury in.

6 (WHEREUPON, the jury was returned to the courtroom at
7 approximately 2:10 p.m., and the following proceedings
8 commenced in open court.)

9 THE COURT: All right. Thank you, ladies and
10 gentlemen. I hope everyone had a good lunch, but not so
11 much to eat you're going to be put to sleep. But we have
12 completed all the testimony in this case and there are
13 only two things that remain to be done. Those are the
14 arguments of counsel and the instructions on the law by
15 the Court. I will tell you now, as I did at the first of
16 this case, that the arguments of the lawyers are not
17 evidence in this case. You will decide the case based
18 upon the evidence that you have heard from this witness
19 stand and from any exhibits that have been introduced into
20 evidence. But the lawyers have the right, not only the
21 right but the duty, on behalf of their clients to address
22 you now and to give you their views of what they think the
23 evidence shows. When they have completed that I will then
24 instruct you on the law of South Carolina as it applies to
25 the facts of this case as you may find those facts to be

1 and then you will be allowed to go to your jury room to
2 deliberate your verdict.

3 You will hear first from Mr. Watts on behalf of the
4 defendant and then from Mr. Redmond on behalf of the
5 State.

6 Mr. Watts.

7 MR. WATTS: Thank you, Your Honor. If it please the
8 Court.

9 THE COURT: Yes, sir.

10 MR. WATTS: Good afternoon, ladies and gentlemen. This
11 is the last time you're gonna hear from me. This is the
12 last time I get to speak to you. This time, as you've
13 heard this is what I tell you what I believe has been
14 shown, what has been shown. This is where I get to
15 summarize what has been presented to you. Some things
16 you'll remember from the beginning of this case. There
17 are issues the judge talked to you about. Innocence. You
18 view Mr. Gilbert in that manner. It's up to the State to
19 prove their case. The State has the burden. The State
20 has the burden of proof, okay. And you'll remember, that
21 burden is beyond a reasonable doubt. The judge is going
22 to give you charges on what I'm talking again; but I want
23 to tell you now, beyond a reasonable doubt. That's what
24 they have to do. They have to meet that proof. They have
25 to go that far.

1 The story as its been presented is that Mr. Gilbert by
2 getting in contact with Mr. Brown set up this chain of
3 events. That's how the Solicitor's Office views this.
4 That's what they've been saying the whole time. This is
5 the way it's been presented to you. But when you look at
6 what's been going on, what's been presented, how they
7 connected it, how are they bringing you the facts, 'cause
8 that's what you're here to determine, the facts. What are
9 they bringing to the table, what are they showing, to make
10 you believe that the way they view this case is the
11 correct manner. Well, let's talk about it. First, we
12 have Ms. Henneghan, Mr. Brown's sister. We heard from
13 them. There's no doubt she loved her brother, and there's
14 no doubt this is a terrible thing that Mr. Brown's gone.
15 He will not come back; that is true. We heard information
16 regarding Mr. Brown that his sister was able to provide.
17 But I want you to think about this. As sorry as you may
18 feel, the matter is, what can the State prove? And this
19 -- since Ms. Henneghan, what did she provide? She talked
20 about a missing person's report, right? Information on
21 missing person report talked about some distinguishing
22 characteristics of Mr. Brown. Now that's gonna come again
23 later, and I think you know what I'm referring to because
24 she was given information about his physical
25 characteristics that came up later in the autopsy that

1 were missed and were misrepresented or excluded. Wrong,
2 this is wrong. That's what we have from Ms. Henneghan.

3 Mr. Patterson, his friend, came up testified that they
4 knew what was going on, he had great a relationship with
5 him, knew what was happening all the time. What did he
6 tell you about the relationship with Mr. Gilbert? What he
7 said he thought they'd met about six months ago helping
8 change a tire or some car trouble, okay. And he testified
9 that he knew a lot about what was going on with Mr.
10 Brown's life. He said he knew, had a good relationship,
11 okay. Later on when you heard testimony from another
12 witness, Jamie Gilbert, about how this was some kind of
13 high school altercation or something that went back that
14 far in the past okay. If there had been an altercation in
15 the past like Mr. Jamie Gilbert alleged, I don't think he
16 would have stopped and helped him for car trouble. I
17 think that would have been something that Mr. Patterson
18 would have known. And there's a discrepancy we have of
19 that.

20 Now we talk about the police investigation, what's
21 going on. We had Captain Locklair here, talked about what
22 went on. Talked about his statement and the initial
23 statement. They talked about Hartsville. If it had been
24 anything important, if he had indicated anything we'd have
25 taken a written report but we only take a written report

1 when there's an implication of knowing where the body is
2 or having some kind of involvement. When Mr. Jamie
3 Gilbert was on the stand I asked him about three
4 statements given on the 18th that were written, and he
5 gave another one on the 23rd. So, take statements
6 sometimes; we don't take statements sometimes. Need to
7 document it if you're going to talk to him. It's not
8 there.

9 The investigation. What happened? Car stopped. They
10 brought April Cooke from Hartsville. What was she able to
11 testify to? As it relates to my client, nothing. She
12 stopped the car. It was Jamie Gilbert and a young female
13 in that car. That's all she had to say. She couldn't
14 provide anything else that had anything to do with Mr.
15 Bobby Gilbert. We jumped a little bit out of order. We
16 had Mr. Colehan (sic) from SLED who we heard today, lots
17 of pictures, lots of pictures, pictures of the scene at
18 night, pictures of the vehicle, pictures of the trunk.
19 All that stuff related to what, the vehicle. You've heard
20 testimony from one of the co-defendants who's already
21 pled, hadn't yet been sentenced, hadn't yet been
22 sentenced, already pled regarding he's the one responsible
23 for running over Mr. Brown. He's admitted to that. I
24 don't have to convince you of it; he told you himself. So
25 that's what they got there as far as that SLED

1 investigation.

2 Now talking about later on, finding the brick. Said
3 Mr. Samuels went out, showed them the brick. Found that
4 in January '07. And then they found the other half back
5 in June, May, June, 2008. Must not have searched very
6 hard, must not have looked very hard in that area. Then
7 we had questions about, yes, we had somebody, somebody
8 talked to Ms. Welsh, the lady who was supposed to be in
9 the front yard. Somebody must have talked to her. Is
10 anybody else questioned in the area 'cause they're
11 alleging that an altercation took place in scene one and
12 two; that's where it started. And from the way it was
13 described in testimony that was loud, yelling, running,
14 beating, screaming, slamming. I didn't hear anything from
15 anyone else in the area about what went on. Did you hear
16 anything. That's pretty simple right there. Hear
17 anything on this night, were you home, were you driving
18 by. Didn't have any of that. I can tell you what they
19 did fix at home. They fixated on phone call. That must
20 have been it. Must have been it. Called. If you called
21 you're responsible for the whole thing, okay. Who else --
22 who's bringing that to you? Who's leading you up to this?
23 Jamie Gilbert. Who's already pled and admitted to what he
24 did. He's talking about it. He's talking about it. And
25 what he said the rationale was it doesn't matter from the

1 information we got from Mr. Patterson about what kind of
2 relationship they have. But who else have you had other
3 than law enforcement who kind of looked around some and
4 took statements and then pieced together some kind of idea
5 what happened? From the defendants who've already pled
6 earlier, haven't been sentenced.

7 We get to Mr. Gilbert himself, Jamie Gilbert. He got
8 up here. He started talking. He admitted a lot of stuff.
9 His initial statements were false. He admitted on the
10 stand his responsibility for these actions. He told you
11 what he did. He was kind of glib about it, wasn't exactly
12 contrite. Still getting in trouble. And then out of his
13 own mouth -- I didn't ask him -- he starts talking about
14 prior convictions. He starts talking about prior trouble
15 he had. I asked him, was he employed or in school and the
16 answers were negative. He said in his statements, was
17 pretty consistent there, he bought a significant amount of
18 marijuana. Where did you get the money? Well, I was
19 selling crack. Okay, that's his employment. But when you
20 look at his history, he's not living with his mom. He's
21 already gone from his mom's house; he's causing that much
22 trouble. He's now come over living with his aunt who is
23 Bobby Gilbert's mother for a week. Ms. Brooks' own mother
24 testified that they'd probably been knowing each other
25 about a week, okay, about a week. This isn't somebody I

1 grew up with from birth. Her testimony was, about a week,
2 a week-and-a-half, okay. So how much are you gonna know
3 about somebody in a week, week-and-a-half, even if they
4 are blood related. You're gonna know their dispositions
5 and what they intend to do and what they think they could
6 do? Are you gonna find out in a week that somebody who is
7 staying at your house is a crack dealer who's had prior
8 criminal arrest. He couldn't even stay there because he
9 was gone. He was bouncing to another place. Almost got
10 his own mother in trouble. And then he's getting in
11 trouble at the detention center. Think he's learning any
12 lessons? I think that shows a proclivity. Back to what I
13 said about pled but not sentenced. That's important.
14 That's important. He already did it. Had him sit in the
15 stand. What did he do? That's the one. That's the one
16 who started it. He's the one who controlled it. He did
17 it all. All it took for him was to say something to me,
18 some mild profanity and something -- I might think it's
19 major or not, but that got me behind the wheel, he made me
20 do it. All it took was -- all it took was for him to call
21 me a bitch and that got me behind the wheel, made me run
22 somebody over. That's what he said. That's what he said.

23 But of course, he's here testifying for the State.
24 He's helping them point the finger at who? Just who I
25 told you. Bobby Gilbert. Bobby earlier, we talked about

1 when did things happen. On the 18th? Bobby's picked up,
2 talks, cooperates. Said there had been testimony he took
3 them to where the scene was. What did they do when they
4 got back? They -- before -- before they left he stripped
5 him out of his clothes, put him in jails. Took his
6 clothes, took him out there, brought him back, he's got
7 warrants. And there was some confusion about when Chris
8 Samuels and Jamie Gilbert were talked to. It took them a
9 while; it wasn't that next day. It was late. The way I
10 remember the evidence it was the 23rd. You look at the
11 18th/23rd, that's five days. Information was given
12 according to what they produced. What did they do. They
13 indicated this is a heinous murder. This is something
14 that's terrible. We'll give them a few days. We're going
15 to check on them later; we got you. We're okay with you.
16 We'll see what we can find later; we're not going to worry
17 about it too much.

18 Takes me to the medical examiner. The forensic
19 pathologist who came up. She's got tons of experience,
20 done it a lot, expert, done it all, do it all the time. I
21 had to get an amended report. Why did you have to get an
22 amended report. Well, there's some typographical stuff,
23 stuff I just saw was wrong. Okay. What about in the
24 amended report that you still have the same information
25 from the first report and it's wrong. What was the

1 information that I'm talking about? I mean, it's not
2 normal to be missing one of your testicles. That's not
3 normal genitalia. Now does that have a great impact on
4 what they're charged right now. Well, it does when you're
5 basing your information on what her opinions are. If she
6 can't see that, and she admitted she was down there
7 because she took swabs, didn't pay attention to that. She
8 was in the area. And I'm not trying to get too graphic
9 with you; but she was close enough, should have been able
10 to tell. Both reports, the first one and second said it
11 was normal. That was information that was supplied by
12 Ms. Henneghan back on the missing person report. Bad
13 enough, right and left, can't figure that out; but when
14 you're missing that out, I have serious questions about
15 what your report says. Additionally, she couldn't tell
16 you what the difference was between a potential of any
17 impact with that cinder block versus an impact of an
18 automobile, okay. She couldn't tell you.

19 You know, yeah, it's possible, it's possible. Jamie
20 Gilbert was talking about a garbage bag or grocery bag
21 that was wrapped around the decedent's head, okay. Never
22 saw anything about that. I ain't never seen a grocery bag
23 introduced here, do you? And then they come and say,
24 well, this petechia can be caused by suffocation or
25 pressure. And backtrack, well that could have been caused

1 by a grocery bag; don't have the bag, but it could have
2 been caused by the bag, but it also can be caused by
3 pressure. And she conceded that that could be caused by
4 the pressure of being run over by an automobile.

5 You've got -- you're going to see -- they're graphic
6 autopsy photos. Focus all the way. The head, the
7 injuries to the head. You heard testimony about the
8 severe damage that was done to the rest of the body. Arms
9 fractured, leg, pelvis, ribs, sternum, all that damage
10 there. Did you see any of that closeup? We have some
11 pictures of the body, yes. And you have pictures of the
12 back of the head. You have the pictures where they have
13 taken back of the skin to show you the brain. And they
14 have pictures of showing you the fracture to the skull
15 which, again, Doctor Ross said could have been caused by
16 impact with a vehicle or the impact of being run over.
17 They show you any of that other damage? Focus on the
18 head. Because why? Because that's what the co-defendants
19 are saying that my client did, what they're saying. So
20 where did that damage come from? Had to be from the
21 impact. That's what they're saying. In my opinion, I can
22 give it to you 'cause I can tell you how I view the case.
23 They downplay the significance of the other injuries that
24 occurred to Mr. Brown because they're trying to do what,
25 trying to point at him, Mr. Gilbert, because he's the one

1 in the courtroom today. And the other defendant's already
2 pled, hadn't been sentenced. Who are you going to point
3 at? He's the one who's in the courtroom today.

4 A lot of exhibits. You're going to have a lot of stuff
5 to look at. Like I said, there's pictures of the scene,
6 of the road, of you know, here's the brick, here's the
7 roadway. Here's the autopsy photos. Of course you're
8 going to see that because they have admitted that, trying
9 to prove their case that Mr. Gilbert caused this. I
10 submit to you he didn't cause this. But look at what the
11 testing is. Toxicology goes through and it's negative,
12 okay. Had somebody from SLED to come. What they talking
13 about, okay. Tells you Mr. Brown wasn't intoxicated.
14 What's that tell you? Does his intoxication or not have
15 anything to do with what they're charging Mr. Gilbert
16 with? No.

17 The evidence processing, talks about all the stuff they
18 took, talks about what they took. Got the shirt and jeans
19 and it lists -- clothing lists. Mr. Gilbert. All the
20 stuff they took from Mr. Gilbert, no blood detected,
21 negative results. Clothing belonging to Jamie Gilbert,
22 nothing. No blood detected, no forensic evidence,
23 nothing. Wait a minute. Wait a minute. Christopher
24 Samuels' clothes aren't in here. What happened to those
25 clothes? It's not in this report. Two out of three ain't

1 bad. All this DNA, had to come in here and testify about
2 the DNA. She's qualified. She's an expert. What does
3 this show? Only that the evidence and the pictures they
4 saw and showed you from the scenes correlate with
5 Mr. Brown's DNA. What does that prove? Beyond a
6 reasonable doubt that Mr. Bobby Gilbert caused any of
7 this? All it's saying is they found Mr. Brown's blood.
8 And we knew it was going to be on the undercarriage, knew
9 it would be on his clothes, knew it'd be in the trunk
10 because you already heard testimony about what Jamie
11 Gilbert did. And that's nothing new.

12 You're going to get to look at these. Hey, they even
13 highlight it for you. These are the phone calls. It's
14 the records as they bring them in here saying that this is
15 what ties, this is why the lazor beam is there, this is
16 what it is there's a phone call, got it going. Okay. Got
17 the phone calls. And when you look at this there were --
18 there were some phone calls at the same time too between
19 the highlighted areas. There are some other calls,
20 general time frames. Who did he call? They bothered to
21 ask him that? They bother to investigate that, tell you
22 who they called? Trying to plot with anybody else or not?
23 Who was he called? No, they got it highlighted. That's
24 the phone call. Transaction records with the card. Came
25 up testified to value. Initially it looked like 75. Then

1 she correct me it's 55-dollars. Got any way to prove or
2 show who used this card or not? No, can't. I can only
3 tell you it was used and when it was used. All right.

4 These are all things you're going to be able to take
5 back. While you're looking at them please remember what
6 I'm saying. Please remember what I'm saying when you're
7 viewing these pieces of evidence. I already talked about
8 the autopsy photos; you've seen them already. You're
9 going to look at them again. I don't need to show them to
10 you right now. You know what they present. It's terrible
11 to look at. I already told you, this is a terrible thing
12 that happened to Mr. Brown. But the State has charged --
13 while I'm talking about charge, the judge already said
14 about indictments. That's just a charging document.
15 That's not proof. That's what the State's alleging. The
16 State has brought this. They are charging him with
17 murder, the most serious thing you can charge with against
18 a person. They're charging him with amend robbery,
19 charging him with grand larceny. Based on what? Based on
20 who? Jamie Gilbert. All the reason I've already told
21 you, again, that's who they hung their hat on.

22 Chris Samuels apparently was staying, at least from the
23 testimony, had a sister there who was -- Jamie Gilbert
24 knew well enough she was a bootlegger -- knew something
25 about the place. He never met Christopher Samuels, never

1 met him before. Maybe one time back in 2004 but nothing
2 really serious. Didn't know him. But this is a guy that
3 shows up at this place that's in the same area, pops for
4 the first time ever. And he's been -- Jamie's been
5 testifying he'd been living on and off with the Poolers.
6 This is the first time he's ever seen him. Decides that
7 this is the time to get involved with a robbery, thinks
8 it's a great idea. Don't know you guys, never met you,
9 that sounds like a good idea, let's get involved, let's
10 go, let me jump in the car with him. Take him on out in
11 the country, let's see what happens. Again, it's
12 incomprehensible to think that the story they're talking
13 about with Bobby that he's going to get involved in
14 something like this with a cousin, even though he's a
15 cousin he's known about a week, week-and-a-half. And some
16 other guy he's never met, y'all come on, I'm gonna get
17 y'all involved in something that can send me away, that
18 can get me in so much trouble, but you guys I don't know
19 come on with me, we're gonna do it. I contend to you that
20 Jamie Gilbert, Christopher Samuels knew each other a lot
21 more than you've heard. Speaking of Christopher Samuels,
22 y'all know he's a co-defendant. You've heard testimony
23 before that he's already pled, hadn't been sentenced.
24 Didn't hear anything else.
25 If y'all on sheer weight of papers, of official titles,

1 on these items. If you're going by weight, I mean,
2 it's -- if you're going to go by weight I'll have these --
3 -- well, the State's evidence might have in mind --
4 there's a lot of paper there. What does that paper add up
5 to? That paper doesn't add up to anything. That beyond a
6 reasonable doubt can link Mr. Gilbert and link Bobby to
7 this for being found guilty because the standard is beyond
8 what? Beyond a reasonable doubt. And you've heard enough
9 that I think you have to really think about, there's going
10 to be do it in your mind about how did this happen, who
11 started this, why did this occur. Do I really believe
12 Jamie Gilbert, with everything I heard him testify, not
13 that I'm telling you now what you heard him say, do I
14 really believe what he's got to say, how this went down,
15 knowing what I know about him.

16 I laid it out to you, ladies and gentlemen. What did
17 they put up for you? What did they put up to convince you
18 beyond a reasonable doubt that my client, Bobby, did what
19 he's been alleged to do, and what they charged him. And
20 you got to think hard about that because I told you what
21 the charge is. Y'all know what they charged him with. I
22 want to thank you for the attention you've paid during
23 this trial. Like I said, this is the last time I get to
24 talk with you. I think I tend to dive in and start
25 getting to the meat of it before I tell you how much I

1 appreciate it 'cause without you we wouldn't be here
2 today. We wouldn't be able to get a resolution to this
3 because this incident occurred back when, 2007 of January.
4 I know when Mr. Gilbert had been arrested he was arrested
5 back in January 2007.

6 Ladies and gentlemen, we're in April, getting ready to
7 be May of 2009. Tell me from what you've heard, what's in
8 the -- what's come in the last six months, what's really
9 something that says, wow, this is what we need. It's not
10 there; we had this. Now we're here. Finally we're in
11 front of you; we can get a determination. Again, when you
12 view this evidence you have to look and see whether the
13 State has convinced you beyond a reasonable doubt and the
14 way you're viewing Mr. Gilbert he's innocent unless he
15 can -- they can convince you beyond a reasonable doubt.
16 And the judge will charge you on the law again. I'm not
17 the judge; I'm not going to charge you on the law. Ladies
18 and gentlemen, I say it again, I don't get to talk to you
19 again. And I know Mr. Redmond is gonna get up. He's
20 gonna give you his opinion. He's gonna lay it out for
21 you. He's gonna have a drastically different
22 interpretation of what he's provided. All I ask for you
23 is to take into account what I said and what you've seen,
24 what's been reasonable to you by the State. It's their
25 stuff; they brought it up. Thank you again.

1 THE COURT: Mr. Redmond.

2 MR. REDMOND: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. REDMOND: Mr. Watts, ladies and gentlemen.

5 Mr. Watts talked a lot about what I was thinking and
6 whatnot but last I looked I think I can convey what I'm
7 thinking to you myself. And when he said that he's laid
8 it out for you, there are some glaring things that he
9 skipped. Of course he's going to say and address those
10 things which put the client in the most favorable light.
11 But there was something that he just failed to mention or
12 that he can't explain. He said his client cooperated.
13 Client didn't take them at the point to Sandbox Road where
14 this was found with Tyrone's Brown's blood. Didn't take
15 him there. Took him to the body trying to minimize what
16 he said. Ladies and gentlemen, as I told you before, one
17 of the things you do take back in that room with you is
18 your common sense. He just skipped this -- as a matter of
19 fact, not just skipped it. Let me back up and clarify.
20 He claimed everything took place out at Cornfield Road at
21 the first scene, the only scene that Jeff Parrott went to
22 other than the scene of the body. Did not even mention
23 Sandbox, did not mention where the cinder block was found.
24 And the reason I'm bringing that to your attention, ladies
25 and gentlemen, when you are assessing and determining

1 whether or not what the defendant said in his statement is
2 credible, I ask that you take that into consideration.
3 Another thing that Mr. Watts failed to mention to you,
4 talked about phone calls. And I was looking, and it's
5 highlighted for you, and of course we got the calls that
6 were made between the victim and the defendant the nights
7 it occurred. But in his statement that he gave, the
8 recorded statement he claims that the number that he gave
9 Andy Locklair was a false number. It was given by Chris.
10 Well, here's the thing that's confusing. On the 17th --
11 on the 17th of January at about 1957 which is military
12 time. Real time that is 17:57. Guess what phone number
13 the defendant calls. (919) [REDACTED], the same number that
14 he gives to Andy claiming that he got that number from
15 Christopher Samuel. Doggone lie. And it's right here in
16 these authenticated records. Oh, and then I was
17 looking -- of course, Mr. Watts isn't going to mention
18 this to you. I noticed something else. About three hours
19 later, excuse me about an hour later at 20:54, which is
20 8:54, there are two phone calls placed. One for 19
21 seconds and another one for a minute 54 seconds. Again,
22 this is from the defendant's phone. Guess what number he
23 dialed, the victim's number. [REDACTED]. But remember, this
24 is the day after the victim is dead. And remember, Jamie
25 Gilbert told you that Chris Samuels had the cell phone.

1 We don't know what happened with the cell phone after, but
2 the defendant from his phone called that number. Oh, and
3 something else, remember the testimony of Andy Locklair?
4 I'll submit to you why he made that call. Because the
5 defendant had already been contacted by law enforcement.
6 So whoever had this phone he felt compelled to call the
7 cell phone that belonged to the victim who we already knew
8 was dead. These are not minor things, ladies and
9 gentlemen, but I didn't hear anything about that from
10 Mr. Watts.

11 I mean, it's easy to talk about what we don't have.
12 Let's talk about what we do have. And let me talk to you
13 for a minute about Jamie Gilbert. What Jamie Gilbert did
14 was absolutely unequivocally reprehensible. Do not
15 mistake anything that I say here to try to put light on
16 that fact. He has pled guilty; he will be sentenced.
17 There is no recommendation on his sentence, but at least,
18 at least, out of the three of those individuals he had the
19 wherewithal to come forward to you and tell you what
20 happened. And this is how -- and His Honor will talk bout
21 witness credibility. How do you determine whether or not
22 you can believe somebody. When you look at the
23 defendant's taped statement you see what I call
24 minimalization. Oh, yes, I was there. So there's no
25 question he was there when Tyrone brown was killed. But

1 no, he's minimizing his role. Mere prejudice as I think
2 the term is used. Jamie comes in, tells you what
3 everybody else did but more importantly told you what he
4 did. He took that statement nine months before he pled as
5 has been put in the record. So it's not like he just said
6 that last week. No, he gave that statement in July. You
7 saw the statement because the Defense thankfully played
8 it. I couldn't play it based on the Rules of Evidence but
9 I am very appreciative of the fact they did play that
10 statement because it gives you the opportunity to see
11 that, one, Jamie's statement, Jamie's facts are consistent
12 from the time he gave that statement to the time he
13 testified here in court. And he volunteered -- this is
14 another thing that can tell you whether somebody is being
15 upfront and honest with you. And I think to use your
16 term, Mr. Watts, he volunteered certain information about
17 himself that was not very flattering because he was trying
18 to be and was being honest with you about what transpired
19 and about himself. He told you, ladies and gentlemen,
20 about the problems he's had. He told you why he got
21 kicked out. So yes, I would adopt that term. He's
22 volunteered that information. That's something that's
23 very important for you to take into consideration when you
24 are assessing a witness' credibility. Jamie told you what
25 happened.

1 Now let's talk about that for a bit. But before I get
2 into that, of course His Honor is going to instruct you
3 that the State does have the burden of proof in this case.
4 And I guess to let Mr. Watts tell it I should not have
5 even stood up to say anything, I guess we don't have
6 anything. But let's back it up a minute and let's look at
7 everything. We know the defendant was there. Let's start
8 there. Even by the defendant's own words we know the
9 defendant was there. Even in the defendant's statement we
10 know the defendant had lied. Well Jamie lied. You know
11 why everybody was lying? They were lying to try to
12 cover themselves. That's what they were doing. It does
13 not take a rocket scientist to figure that out. That's
14 what they were doing at the time. The difference between
15 the defendant and Jamie is that Jamie finally stepped
16 forward and accepted responsibility for what he did. And
17 this is another thing that I don't want you to forget. I
18 don't want you to forget anything I'm saying. The
19 defendant's 30 years old. Jamie and Chris were 17. Jamie
20 had just turned 17 at the time. And Mr. Watts says, well,
21 they only knew each other a week and a half or really knew
22 each for a week and a half. As the testimony from both
23 Ms. Brooks and Jamie indicates, when Jamie got -- to use
24 his term -- kicked out of the residence of which the
25 defendant lived, the defendant volunteered to go with him.

1 He rode with Jamie to Farmington Apartments. Why is that?
2 Huh. Tell you why that is. Remember they had already
3 discussed, as Jamie said, this plan to rob Tyrone. So
4 even though Jamie getting kicked out of the house the
5 defendant tags along, decides to tag along, voluntarily
6 tags along because they had already discussed the the plan
7 they were going to put in action to rob and unfortunately
8 kill Tyrone Brown. That's why he went. So again, don't
9 be fooled. Let's look at everything here.

10 Also ladies and gentlemen, Jamie told you about a gun
11 being used. Now he never said that Tyrone Brown was shot
12 in the autopsy report, confirms that. Was not shot. But
13 Mr. Watts talks about -- and this is another thing too --
14 making light of. And I'm not -- this is not an affront to
15 the Defense. But let me make one thing abundant clear
16 here, there is not a dang thing regarding the death Tyrone
17 Brown that I would even remotely take lightly, and quite
18 frankly, I resent the assertion. We talk about what
19 injuries to take lightly. Is there any question that this
20 poor man was brutalized, hit over the head, and run over.
21 Even by the defendant's own statement that he gave he
22 talks about the fact that he was run over. So again,
23 whether he was hit in the head and run over isn't in
24 dispute. The defendant even said he makes a big deal
25 about the autopsy report, and okay, fine. But the funny

1 thing is, none of the injuries that resulted in the cause
2 of death were mistakes so scrivener's error. Those were
3 -- those were consistent. And here's the thing when you
4 assess again a witness' credibility. Doctor Ross told you
5 to her credit that in reviewing in preparation for trial
6 she realized that she had made errors as it results to the
7 notes and amended her report. She didn't come up here and
8 try to, you know, make it happen or make it go by. She
9 reviewed it, realized there were some mistakes, corrected
10 them. But the mistakes did not -- and I asked her several
11 times -- did not have anything to do with the cause of
12 death. I hope the Defense isn't trying to claim somehow
13 that meant he wasn't hit over the head and run over. If
14 he is, have at it, we're smarter than that. Ladies and
15 gentlemen, I have no doubt of that.

16 Let me talk about some things regarding the defendant.
17 I talked to you about the fact he didn't take him to
18 Sandbox Road where the cinder block was. Please do not
19 lose sight of that fact, again, common sense. 'Cause he
20 knew that's where he had bashed the head of Tyrone Brown.
21 That's why he didn't take them to Sandbox. The defendant
22 did not want that block found; he didn't. But yet he
23 cooperated, to use the Defense items. Remember as well
24 when you talk about where these things happened it's kind
25 of interesting, ladies and gentlemen, that if you look at

1 it, the defendant actually is the one that lives in that
2 area. All of these things, all of these scenes occurred
3 right in close proximity to the defendant's home. He knew
4 these places. He knew the cinder block right down the
5 road walking distance. That's why he's familiar with
6 these areas. Oh, by chance, they happen to pull up into a
7 place with a cinder block there's used to bash poor
8 Mr. Brown's head? No. The defendant was aware of these
9 things. Again, common sense. Common sense goes back in
10 the jury room with you along with the other evidence.

11 Then the defendant in his statement admits that he had
12 told lies. I mentioned that earlier. Lied about the bus
13 station. He comes up with this story. But then he
14 finally gets in there. And then there's some other lies.
15 And that's why we called Barbara Brooks, and she wasn't up
16 long. And you might be wondering, well gosh, what's the
17 significance of that? Well, the significance was the
18 defendant's statement he claims that Chris and Jamie,
19 especially Chris, forced him against his will to stay at
20 the apartments that night. Then it came back and they
21 were originally when Andy called and whatnot. Well, Ms.
22 Brooks testified that Jamie and Chris -- excuse me, Jamie
23 and the defendant came to her house and the defendant said
24 that it was his girlfriend's car. Chris was nowhere
25 around. And Jamie testified they didn't see Chris again

1 after they got back to Farmington. The defendant's lying
2 to you, ladies and gentlemen, and don't look past that.
3 He's lying to you.

4 Then there was -- in looking at the tape and talking
5 about being afraid or being forced or whatnot, even in the
6 tape there were times where the defendant had the
7 opportunity to tell someone, even if it wasn't the police,
8 that he had opportunity to tell someone what happened as
9 he says this was something that he ends up in the middle
10 of it. But yet, he tells no one about it. And even once
11 he talks to law enforcement. The first at least two times
12 he talks to law enforcement he lies. Tyrone's gone to
13 North Carolina, Tyrone's gone to North Carolina, we went
14 to the bus station to pick up the car but I never drove
15 the car. Jamie took the car and left. Again, ladies and
16 gentlemen, these things harken to your common sense.
17 Jamie tells you that the defendant has the idea to rob
18 Tyrone. Jamie tells you that the defendant called Tyrone.
19 And even in the defendant's own statement he admits that
20 he called Tyrone. He calls Tyrone to Hartsville, passes
21 right down Russel Road as he said in his statement, right
22 by my parents house. Goes to Farmington, meets up with
23 Chris -- excuse me, with Jamie and Bobby, the defendant.
24 Leaves, goes to Oates but then oh, the gun, Chris had the
25 gun. That's how Chris came into play because Chris had

1 the gun. They then go, as I told you, in my opening, go
2 back to get Chris, get Chris at Farmington and then they
3 all go out to Oates and then they go straight to the
4 house. First, Hilga Welsh's house, and there was some
5 talk about Ms. Welsh, one of the things you find is you
6 can't make somebody say what they may know if they don't
7 know anything. Then that's what you have to live with.
8 Investigator Locklair testified he had talked with her,
9 but more importantly, Chris — excuse me, Jamie testified
10 that nobody came out there that night. He doesn't even
11 know if anybody was home that night. And if you look at
12 the pictures of that area, it's not like you got a lot of
13 houses close together like they're in the city. It's out
14 in the country. And this was in the middle of the night
15 as well, after midnight. Then they beat him up -- no,
16 excuse me, the defendant, once they picked up Chris and he
17 gets the gun, they stop. And I'm not going to repeat the
18 language he used but that's the point that he held up
19 Mr. Brown, Tyrone.

20 Then let's look at the nature of what transpired.
21 Here's what I'm getting at. This, ladies and gentlemen,
22 we're talking about — I submit to you it wasn't a robbery
23 gone bad. I submit to you that it was a robbery to Jamie
24 and Chris, a robbery as he testified to. But this was an
25 act of anger. And why do I say that, Kernard? Okay, they

1 were just going to rob him and that went bad. There was a
2 gun, okay, shoot him. But not before anything started.
3 They started beating him and then go and bash his head
4 with a block. But that ain't enough. Then, have to take
5 it, and Bobby directs him to run him over. Bobby knew
6 Mr. Brown. We don't know how they knew each other. We
7 have an idea about how long they knew each other. But I
8 submit to you, ladies and gentlemen, Bobby Gilbert knew
9 Tyrone. Came, picked them up. Bobby Gilbert knew those
10 were among the last breaths that Tyrone would ever take.
11 He knew going into it. As Jamie told you, there was not
12 even an attempt to get any money. He didn't say, you
13 know, give me the money, whatnot. He just started to
14 beating and bashing and getting him in the trunk and
15 whatnot. This was staged by the defendant. It was
16 manipulated by the defendant and he had the gall to bring
17 two young, albeit stupid, two young and stupid kids in his
18 plan. So now in essence we have three victims, the other
19 two victims, they'll get what they deserve because let me
20 address, they were stupid. Tyrone did not deserve any
21 part of this. Tyrone Brown, and one of the reasons for
22 toxicology report to show you, ladies and gentlemen, like
23 somebody that had had drugs or alcohol in their system.
24 He was just trying to help somebody that he thought of as
25 a friend.

1 Now let's -- let me just back up for just a minute and
2 talk about Teresa especially and her testifying about what
3 she found when he discovered he was missing; that
4 everything was on, same thing with Norris. Poor Tyrone.
5 Left everything on. He thought he was coming back home.
6 He had no idea, no idea what he was taking himself into.
7 Now let me just talk for a minute about Norris. Now I
8 consider Norris the hero here. Because his friend -- he
9 testified his best. Friend Norris went above and beyond
10 the call of duty. On behalf of the State I thank you for
11 that. He went above and beyond the call of duty because
12 he kept going to the places that he figured Tyrone might
13 be, but he also went by Farmington 'cause that's where
14 Tyrone told him he was going. So he had the wherewithal
15 and the common sense to keep looking around Farmington.
16 And low and behold he -- he tipped over the first domino.
17 That was the first domino that resulted in us being able
18 to stand here with the defendant sitting at this table
19 rightfully charged with murder. Thank you, Norris.

20 As I told you before, this is not an easy case
21 emotionally. I would submit to you, ladies and gentlemen,
22 that when you look at what's been presented, you've heard
23 from Jamie, you've seen the statement of the defendant,
24 you've seen the gaps as I referred to earlier in his
25 statement, the self-serving gaps, I've shown you phone

1 records with calls to numbers that he claims somebody gave
2 to him but calls he made from his phone. Oh again, after
3 being alerted that the police had called. It can't be
4 easy for the family to have to sit here and listen to what
5 was presented in court. The State has charged the
6 defendant with murder, taking the life of another with
7 malice aforethought. His Honor will instruct you that use
8 of a deadly weapon can infer malice. He's charged with
9 armed robbery because even though he didn't get any money
10 they took the card, but they also took the car that they
11 road around and went to Florence. Oh, and by the way,
12 Jamie's further corroboration for Jamie, he talks about
13 the fact that they went to Hartsville to Hudsons. They
14 went to Florence. He didn't have the card. He wasn't
15 sure whether or not he used the card again, the defendant,
16 but low and behold the card was used in Florence. And
17 Jamie said they went to Florence. He's also charged with
18 grand larceny of the vehicle. Obviously after they dumped
19 his body they decided to take the vehicle. And I say
20 "they" for important reason. You'll also be instructed on
21 the law of accomplice liability, what we in the legal
22 circle call hand of one, hand of all. In other words, if
23 you got three people who are engaged in a common
24 enterprise don't get hung up on whether or not Jamie did
25 this or whether or not Chris did that. The fact is they

1 were all acting together and the results therefrom
2 unfortunately are attributable to all. And His Honor will
3 explain that more fully. But we submit to you, ladies and
4 gentlemen, again, and I wish I could keep saying it over
5 and over and over but I'm not because I'm going to sit
6 down soon. But it's just striking to me the fact that
7 he's cooperating and supposedly being forthright with
8 them, not -- it'd be one thing if he just forgot about
9 that. But no, he says on his statement that he was beat
10 with something at Cornfield and then they went and dumped
11 the body. Never mentioned, never mentioned Sandbox.
12 Ladies and gentlemen, that is a fact that is not small.
13 It is very significant along with everything else that
14 I've explained to you.

15 Now quite frankly, I'm sure there are things and items
16 that I may have missed and you've got your recollections
17 of what is in evidence. But I submit to you that with
18 everything that I've said, more importantly, with
19 everything that you've seen and heard in this case the
20 State has met its burden of proof in proving that the
21 defendant, the defendant Bobby Gilbert, is in fact guilty
22 of the murder of Tyrone Cornelius Brown. The defendant is
23 able to be here today to accept the judgment that you
24 render. Tyrone didn't have that opportunity. And one of
25 the things that I would ask you to consider, and to